

5

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge for Beaufort County
Trial Court Case No.: 2009-CP-07-02573

Appellate Case No.: 2012-213579

CASHMAN PROPERTIES, LLC Respondent

-vs.-

WNL PROPERTIES, LLC; E. OSWALD LIGHTSEY TRUST f/b/o LOUISE
LIGHTSEY BAUGHMAN; THE TRUST UNDER WILL OF E. OSWALD LIGHTSEY
DATED AUGUST 8, 1958, AND CODICIL DATED March 23, 1976, FOR THE
BENEFIT OF LILLIAN LIGHTSEY DRAWDY; AND THE TRUST UNDER THE
WILL OF E. OSWALD LIGHTSEY FOR THE BENEFIT OF CLAUDIA LIGHTSEY
WARE..... Appellants

RECORD ON APPEAL – VOLUME 1

J. Ashley Twombly, Esquire
TWENGE + TWOMBLY LAW FIRM
311 Carteret Street, Beaufort, SC 29902
Telephone: (843) 982-0100
Twombly@twlawfirm.com
ATTORNEYS FOR APPELLANTS

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965, Columbia, SC 29202
Telephone: (803) 779-7599
jnichols@bntdlaw.com
ATTORNEYS FOR RESPONDENT

RECEIVED

JAN 17 2014

SC Court of Appeals

Roberts Vaux, Esquire
James P. Scheider, Jr., Esquire
Mark S. Berglind, Esquire
Vaux & Marscher, P.A.
P.O. Box 769, Bluffton SC 29910
Telephone: (843) 757-2888
Facsimile: (843) 757-2889
Roberts.vaux@vaux-marscher.com
Jim.scheider@vaux-marscher.com
mark.berglind@vaux-marscher.com
ATTORNEYS FOR RESPONDENT

INDEX

Declaratory Judgment Not Ending Case.....	4
Amended Declaratory Judgment.....	12
Supplement to Amended Declaratory Judgment	21
Amended Complaint	22
Third Amended Answer to Amended Complaint	46
Motion to Reconsider or in the Alternative Alter Judgment.....	54
Supplement to Motion to Reconsider or in the Alternative Alter Judgment	56
Plaintiff's Memorandum in Law in Opposition to Motion to Reconsider.....	58
10/31/11 Trial Transcript	68
2/28/12 Hearing Transcript on Costs	275
8/15/12 Hearing Transcript on Motion to Reconsider	316
Exhibit 2.....	339
Exhibit 3.....	341
Exhibit 4.....	345
Exhibit 5.....	348
Exhibit 6.....	350
Exhibit 7.....	355
Exhibit 9.....	357
Exhibit 12.....	364
Exhibit 14.....	366
Exhibit 15.....	379
Exhibit 16.....	381
Exhibit 17.....	383
Exhibit 19.....	385

Exhibit 20.....	387
Exhibit 21.....	389
Exhibit 22.....	391
Exhibit 23.....	393
Exhibit 24.....	396
Exhibit 25.....	399
Exhibit 26.....	401
Exhibit 27.....	404
Exhibit 28.....	406
Exhibit 30.....	408
Exhibit 32.....	413
Exhibit 33.....	415
Exhibit 34.....	417
Exhibit 36.....	420
Exhibit 38.....	422
Exhibit 39.....	424
Exhibit 40.....	426
Exhibit 41.....	428
Exhibit 42.....	431
Exhibit 43.....	440
Exhibit 44.....	442
Exhibit 45.....	446
Exhibit 47.....	448
Exhibit 52.....	451

Exhibit 54.....	454
Exhibit 57.....	456
Exhibit 59.....	459
Exhibit 60.....	461
Exhibit 61.....	530
Exhibit 63.....	575
Exhibit 64.....	580
Exhibit 65.....	599
Exhibit 66.....	626
Exhibit 67.....	657
Exhibit 68.....	661
Certificate of Counsel	663

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-07-2573

Cashman Properties, LLC

Plaintiff,

v.

WNL Properties, LLC; E. Oswald Lightsey
Trust f/b/o Louise Lightsey Baughman; the
Trust Under Will of E. Oswald Lightsey Dated
August 8, 1958, and Codicil Dated March 23,
1976, for the Benefit of Lillian Lightsey
Drawdy; and the Trust Under Will of E.
Oswald Lightsey for the Benefit of Claudia
Lightsey Ware,

Defendants.

Declaratory Judgment

not ending case

2011 DEC 22 AM 9:08
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This case concerns the ownership and use of a pier, pierhead and two floating docks attached to the pierhead. It was commenced by the filing of a Summons and Complaint on May 29, 2009. The Notice of Lis Pendens was filed on May 21, 2009. The Defendants answered on August 10, 2009. This matter was referred to me with finality and direct appeal to the South Carolina Supreme Court pursuant to that certain order dated July 27, 2011.

This matter came before the Court for trial on October 31, 2011 and November 1, 2011. At the pretrial hearing both parties moved to substitute the named parties to reflect intra-family transfers of property during the litigation of this case. Cashman Properties, LLC (hereinafter "Cashman") was substituted for Eugene Keeny Cashman, Jr., as Trustee of the Eugene Keeny Cashman, Jr., Revocable Trust, and Kathleen Gilmore Cashman, as Trustee of the Kathleen Gilmore Cashman Revocable Trust. WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o

Louise Lightsey Baughman; the Trust Under Will of E. Oswald Lightsey Dated August 8, 1958, and Codicil Dated March 23, 1976, for the Benefit of Lillian Lightsey Drawdy; and the Trust under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware (hereinafter "Lightsey") was substituted for E. Oswald Lightsey Trust, Wachovia Bank, N.A., as Trustee Under the Last Will and Testament of E. Oswald Lightsey, and Margaret L. McMillan Payne and Elizabeth L. McMaster, as Trustees of the Residuary Trust Pursuant to the Last Will and Testament of E. Oswald Lightsey.

Based on the testimony of the witnesses and exhibits entered into evidence, the Court finds and concludes as findings of fact the following:

Findings of Fact

1. This Court has jurisdiction over the parties in this matter and the subject matter thereof.
2. This case involves the ownership of a pier, pierhead and two floating docks ("Dock 3") located in Beaufort County, South Carolina.
3. The litigants each own real property located across the street from the pier and common property in the Brighton Beach Subdivision in Bluffton, South Carolina. Cashman owns the property located at 35 Oyster Street, Bluffton, South Carolina, District 600 Map 039 Submap 00C Parcel 0128 Block 0000 (hereinafter "Cashman Property") (Exhibit 70). Lightsey owns the property located at 31 Oyster Street, Bluffton, South Carolina, District 600 Map 039 Submap 00C Parcel 0126 Block 0000 (hereinafter "Lightsey Property") (Exhibit 71).
4. The base of the pier is attached to land, which is designated as common property for the benefit of all Brighton Beach Subdivision property owners to access the May River ("River").

239

~

5. In 1941, the Cashmans built a dock ("Dock 1"). Dock 1 was destroyed and then later replaced by another dock ("Dock 2"). Both Dock 1 and Dock 2 were constructed by and paid for by the Cashmans. The Cashmans obtained a permit from the United States War Department on September 29, 1941 (Exhibit 6) for the construction of Dock 2. The permit allowed for the construction of the pier but does not mention floating docks (Exhibits 6 and 17). Both docks were used by both the Lightseys and Cashmans.
6. The litigants, although corporate in name, are essentially the descendants of neighbors, the Cashman family and the Lightsey family, who for approximately eighty (80) years shared the common access to the River by way of either Docks 1, 2, or 3 without dispute.
7. Neither the Cashman nor the Lightsey properties abut the River; the common right to access the River arises from the rights granted to both parties in prior deeds (Exhibit 3). Neither party makes claim to the land below the mean high water mark (which belongs to the State). The parties further acknowledge that the highland portion of the dock adjoins common property in their subdivision.
8. During the period of Dock 2, the Lightseys built a so-called "spur dock," which appears to be not a dock at all, but rather a marsh walkover, which is no longer in existence.
9. Dock 2 was later destroyed. Dock 3 (the dock in question) was built in the early 1960s. Dock 3 (like Dock 1 and Dock 2) originated from the common area and extended into the River. Although no permit was entered into evidence, correspondence from the Department of the Army (Exhibit 22) references a permit obtained by the Lightsey Brothers, a construction company affiliated with some of the Lightsey family members. The October 1, 1960 drawing for the application for the proposed Dock 3 allows for a

pier but no floating docks (Exhibit 12 and 22). It is undisputed that the Lightseys built Dock 3.

10. After the construction of Dock 3, the Lightsey and Cashman families cooperatively and continuously used Dock 3, which included the installation by the Cashmans, at their own expense, a series of floating docks and ramps on the Eastern side of the pierhead. The float and ramp are accessed from land exclusively by use of the pier and pierhead. The Cashmans performed maintenance on Dock 3, and installed and maintained water and power to the same.
11. The Cashmans built a floating dock onto Dock 3 on or about 1961 when Dock 3 was completed. This was done without a permit and without permission from the Lightseys. Prior to 1968, according to the Army Corps of Engineers, there was no enforcement of dock permits (Exhibit 62). When the Cashmans needed to replace the floating dock in 1977, they requested a modification of the Lightseys' permit through the District Engineer. The Cashmans used the same proposed drawing as submitted by the Lightseys on October 31, 1960 (Exhibit 12), and added a floating dock (Exhibit 21). The Lightsey parties attempt to rely on correspondence to establish ownership of Dock 3, dated May 9, 1977 (Exhibit 19), to the permitting authority, District Engineer. Such correspondence is not indicative of ownership, but rather is the format in which the permit holder would request the aforementioned modifications to permit the floating dock.
12. Mr. Will McMaster testified at the trial. Mr. McMaster is the spouse of a Lightsey descendant. I give no weight to the hearsay testimony in which Eugene K. Cashman, Sr., purportedly requested a formalized agreement from Mr. McMaster when Mr. McMaster

438

~

was visiting his brother-in-law, Norris Lightsey Laffitte, at the subject property. Even if I were to give weight to such statements, the intent was merely to formalize in writing the ownership of the dock in question which had already been established, and not to request permission to use Dock 3.

13. Until the current controversy, the parties had cooperatively used the common area and Docks 1, 2, and 3 to access the water for over 80 years without permission from each other. In 2005 the Cashmans attempted to replace the floating dock, which had again been destroyed in a storm. However, the Cashmans could not access Dock 3 because the Lightseys placed a lock on the gate. Eugene Keeney Cashman, Jr., requested a key from Mr. Norris Lightsey Laffitte. Mr. Laffitte mailed Mr. Cashman a key. However, Mr. Laffitte later requested that Mr. Cashman return the key. He informed Mr. Cashman by letter dated March 21, 2005 that the Lightsey family wanted exclusive use of Dock 3 (Exhibit 45). The Lightsey property was subsequently listed for sale and included Dock 3 in the listing (Exhibit 67). Until aforementioned letter there was no evidence presented that the Lightseys asserted an exclusive right to Dock 3.

14. The Cashmans continually accessed and repaired the pier and pierhead areas of the three docks since the construction of Dock 1 and the floating dock to the east of Dock 3 since 1961.

15. Although it appears both parties have provided some maintenance on Dock 3 over the years, the majority of costs have been borne by the Lightseys. The Lightseys have never requested contribution from the Cashmans for these expenses.

5 38 8

16. The parties have established a consistent and cooperative pattern and practice for the joint use and ownership of Docks 1, 2, and 3 for over eighty (80) years, wherein each party has independently of the other utilized all three docks during this period.¹

ACCORDINGLY, based on the above findings of fact, testimony and evidence presented, I make the following conclusions of law:

1. The Plaintiff presents a justiciable controversy, and a Declaratory Judgment pursuant to the Uniform Declaratory Judgments Act, S.C. Code 15-53-10, et. seq. is necessary to determine the rights and relationship of the Parties in this action;
2. The ownership of Dock 3 is appurtenant to the Lightsey Property and Cashman Property.
3. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence that the Cashmans claimed a right to the aforementioned docks for approximately eighty (80) years.
4. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence a substantial belief that Cashmans had the right to use the aforementioned docks to access the River and that their use and enjoyment continued uninterrupted for at least eighty (80) years.
5. The Plaintiff and Defendants are co-owners as tenants in common of the entire pier and pierhead;
6. There has been no effective ouster.

¹ The litigants have a long-term friendly relationship which has apparently not been damaged by the parties' inability to reach a resolution of the issues. The Court has merely been asked to reach a result which the parties cannot. It is the hope and belief of this Court that the end of this litigation will re-commence the cooperative legacy that the families have built on the May River.

6 7/8

u

7. In the absence of an agreement or contract, a fixed and permanent structure constructed on common property and used by co-owners in a manner such as this becomes common property.
8. The Plaintiff and the Defendants are responsible for the payment of all expenses for maintenance and upkeep directly relating to the pier and pierhead from the date of filing of the Summons and Complaint (September 8, 2009) and continuing; and
9. Any claim for costs borne by the Defendants prior to the filing of the Summons and Complaint is barred by laches.

ACCORDINGLY, IT IS HEREBY ORDERED,

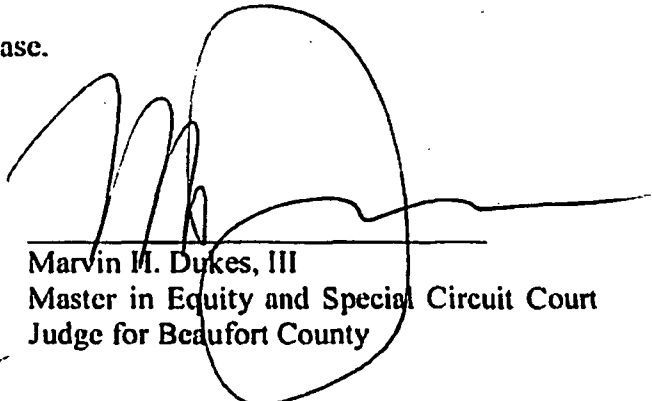
1. That the Plaintiff and Defendants are co-owners as tenants in common of the entire pier and pierhead;
2. The ownership of Dock 3 is appurtenant to the Lightsey Property and Cashman Property;
3. That the Plaintiff is entitled to immediate access to the pier and pierhead and shall not be barred from the pier and pierhead by the Defendants or any other person or entity acting on the Defendants behalf;
4. Within five (5) days of the date of this Order, the Defendants shall either unlock the gate located on the pier or deliver a key to the Plaintiff for the lock to the gate;
5. That the Plaintiff and Defendants shall split equally the expenses directly relating to the pier and pierhead incurred by the Defendants from September 8, 2009 to the date of this Order;
6. That the Defendants, within thirty (30) days from the date of this Order, shall submit to the Court the amount of all expenses directly relating to the pier and pierhead from September 8, 2009 to the date of this Order;

7-28

8

7. That the Court will determine the amount of the expenses to be paid to the Defendants by the Plaintiff;
8. That the Parties and their successors in interest shall split equally all costs for future necessary maintenance and upkeep of the pier and pierhead;
9. That these dock costs shall include, but not be limited to, insurance, taxes, maintenance and upkeep for the pier and pierhead;
10. That the Court will hold a supplemental hearing, within sixty (60) days from the date of this Order, for the sole purposes of determining a method of payment for the maintenance and upkeep for the pier and pierhead, the creation of an operating and maintenance agreement for the pier and pierhead, which shall be executed by the parties and recorded in the Beaufort County Register of Deeds Office, and for the amount to be reimbursed to the Defendants as identified in Paragraph 7 above; and
11. That for appeal purposes only the Order of the supplemental hearing to determine costs shall be considered the final Order in this case.

AND IT IS SO ORDERED.


Marvin M. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

Monday December 19, 2011
~~Tuesday, December 06, 2011~~
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-07-2573

Cashman Properties, LLC

Plaintiff,

v.

WNL Properties, LLC; E. Oswald Lightsey
Trust f/b/o Louise Lightsey Baughman; the
Trust Under Will of E. Oswald Lightsey Dated
August 8, 1958, and Codicil Dated March 23,
1976, for the Benefit of Lillian Lightsey
Drawdy; and the Trust Under Will of E.
Oswald Lightsey for the Benefit of Claudia
Lightsey Ware,

Defendants.

Amended Declaratory Judgment

2012 NOV -5 PM 4:39

*Pursuant to Motion to Defendants' motion reconsider, heretofore filed, the following Order is
entered and shall replace that Order filed 12/22/11.*

This case concerns the ownership and use of a pier, pierhead and two floating docks attached to the pierhead. It was commenced by the filing of a Summons and Complaint on May 29, 2009. The Notice of Lis Pendens was filed on May 21, 2009. The Defendants answered on August 10, 2009. This matter was referred to me with finality and direct appeal to the South Carolina Supreme Court pursuant to that certain order dated July 27, 2011.

This matter came before the Court for trial on October 31, 2011 and November 1, 2011. At the pretrial hearing both parties moved to substitute the named parties to reflect intra-family transfers of property during the litigation of this case. Cashman Properties, LLC (hereinafter "Cashman") was substituted for Eugene Keeny Cashman, Jr., as Trustee of the Eugene Keeny

Cashman, Jr., Revocable Trust, and Kathleen Gilmore Cashman, as Trustee of the Kathleen Gilmore Cashman Revocable Trust. WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman; the Trust Under Will of E. Oswald Lightsey Dated August 8, 1958, and Codicil Dated March 23, 1976, for the Benefit of Lillian Lightsey Drawdy; and the Trust under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware (hereinafter "Lightsey") was substituted for E. Oswald Lightsey Trust, Wachovia Bank, N.A., as Trustee Under the Last Will and Testament of E. Oswald Lightsey, and Margaret L. McMillan Payne and Elizabeth L. McMaster, as Trustees of the Residuary Trust Pursuant to the Last Will and Testament of E. Oswald Lightsey.

Based on the testimony of the witnesses and exhibits entered into evidence, the Court finds and concludes as findings of fact the following:

Findings of Fact

1. This Court has jurisdiction over the parties in this matter and the subject matter thereof.
2. This case involves the ownership of a pier, pierhead and two floating docks ("Dock 3") located in Beaufort County, South Carolina.
3. The litigants each own real property located across the street from the pier and common property in the Brighton Beach Subdivision in Bluffton, South Carolina. Cashman owns the property located at 35 Oyster Street, Bluffton, South Carolina, District 600 Map 039 Submap 00C Parcel 0128 Block 0000 (hereinafter "Cashman Property") (Exhibit 70). Lightsey owns the property located at 31 Oyster Street, Bluffton, South Carolina, District 600 Map 039 Submap 00C Parcel 0126 Block 0000 (hereinafter "Lightsey Property") (Exhibit 71). For purposes of this litigation "Cashman property" does not include the after-acquired Bridge Street property.

4. The base of the pier is attached to land, which is designated as common property for the benefit of all Brighton Beach Subdivision property owners to access the May River ("River").

5. In 1941, the Cashmans built a dock ("Dock 1"). Dock 1 was destroyed and then later replaced by another dock ("Dock 2"). Both Dock 1 and Dock 2 were constructed by and paid for by the Cashmans. The Cashmans obtained a permit from the United States War Department on September 29, 1941 (Exhibit 6) for the construction of Dock 2. The permit allowed for the construction of the pier but does not mention floating docks (Exhibits 6 and 17). Both docks were used by both the Lightseys and Cashmans.

6. The litigants, although corporate in name, are essentially the descendants of neighbors, the Cashman family and the Lightsey family, who for approximately eighty (80) years shared the common access to the River by way of either Docks 1, 2, or 3 without dispute.

7. Neither the Cashman nor the Lightsey properties abut the River; the common right to access the River arises from the rights granted to both parties in prior deeds (Exhibit 3).

Neither party makes claim to the land below the mean high water mark (which belongs to the State). The parties further acknowledge that the highland portion of the dock adjoins common property in their subdivision.

8. During the period of Dock 2, the Lightseys built a so-called "spur dock," or "spare dock" which appears from the photographs in evidence not to be a dock at all, but rather a marsh walkover, which is no longer in existence.

9. Dock 2 was later destroyed. Dock 3 (the dock in question) was built in the early 1960s. Dock 3 (like Dock 1 and Dock 2) originated from the common area and extended into

the River. Although no permit was entered into evidence, correspondence from the Department of the Army (Exhibit 22) references a permit obtained by the Lightsey Brothers, a construction company affiliated with some of the Lightsey family members. The October 1, 1960 drawing for the application for the proposed Dock 3 allows for a pier but no floating docks (Exhibit 12 and 22). It is undisputed that the Lightseys built Dock 3.

10. After the construction of Dock 3, the Lightsey and Cashman families cooperatively and continuously used Dock 3, which included the installation by the Cashmans, at their own expense, a series of floating docks and ramps on the Eastern side of the pierhead. The float and ramp are accessed from land exclusively by use of the pier and pierhead. The Cashmans performed maintenance on Dock 3, and installed and maintained water and power to the same.
11. The Cashmans built a floating dock onto Dock 3 on or about 1961 when Dock 3 was completed. This was done without a permit and without permission from the Lightseys. Prior to 1968, according to the Army Corps of Engineers, there was no enforcement of dock permits (Exhibit 62). When the Cashmans needed to replace the floating dock in 1977, they requested a modification of the Lightseys' permit through the District Engineer. The Cashmans used the same proposed drawing as submitted by the Lightseys on October 31, 1960 (Exhibit 12), and added a floating dock (Exhibit 21). The Lightsey parties attempt to rely on correspondence to establish ownership of Dock 3, dated May 9, 1977 (Exhibit 19), to the permitting authority, District Engineer. Such correspondence is not indicative of ownership, but rather is the format in which the

permit holder would request the aforementioned modifications to permit the floating dock.

12. Mr. Will McMaster testified at the trial. Mr. McMaster is the spouse of a Lightsey descendant. Although his testimony was hearsay, it was offered without objection. Mr. McMasters testimony involved 2 very brief conversations with Eugene K. Cashman, Sr; one for 30-40 seconds in the late 1980s and one for one and one-half minute in 1990 or 1991. During these conversations Eugene K. Cashman, Sr., purportedly requested a formalized agreement from Mr. McMaster on permissive use of dock 3. Although I have no question as to Mr. McMaster's credibility, based on the brevity of the conversations and the passage of time I do not give them very much weight when compared with the other evidence in the case. Even if I were to give weight to such statements, I find that the intent was merely to formalize in writing the relationship of the parties which had already been established, and not to request permission to use Dock 3.

13. Until the current controversy, the parties had cooperatively used the common area and Docks 1, 2, and 3 to access the water for over 80 years without permission from each other. In 2005 the Cashmans attempted to replace the floating dock, which had again been destroyed in a storm. However, the Cashmans could not access Dock 3 because the Lightseys placed a lock on the gate. Eugene Keeney Cashman, Jr., requested a key from Mr. Norris Lightsey Laffitte. Mr. Laffitte mailed Mr. Cashman a key. However, Mr. Laffitte later requested that Mr. Cashman return the key. He informed Mr. Cashman by letter dated March 21, 2005 that the Lightsey family wanted exclusive use of Dock 3 (Exhibit 45). The Lightsey property was subsequently listed for sale and included Dock

3 in the listing (Exhibit 67). From the time of Dock 3's construction until the aforementioned letter Lightseys had never asserted an exclusive right to Dock 3.

14. The Cashmans continually accessed and repaired the pier and pierhead areas of the three docks since the construction of Dock 1 and the floating dock to the east of Dock 3 since 1961.

15. Although it appears both parties have provided some maintenance on Dock 3 over the years, the majority of costs have been borne by the Lightseys. The Lightseys have never requested contribution from the Cashmans for these expenses.

16. The parties have established a consistent and cooperative pattern and practice for the joint use and ownership of Docks 1, 2, and 3 for over eighty (80) years, wherein each party has independently of the other utilized all three docks during this period.¹

ACCORDINGLY, based on the above findings of fact, testimony and evidence presented, I make the following conclusions of law:

1. The Plaintiff presents a justiciable controversy, and a Declaratory Judgment pursuant to the Uniform Declaratory Judgments Act, S.C. Code 15-53-10, et. seq. is necessary to determine the rights and relationship of the Parties in this action;
2. The ownership of Dock 3 is appurtenant to the Lightsey Property and Cashman Property.
3. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence that the Cashmans claimed a right to the aforementioned docks for approximately eighty (80) years.

¹ The litigants have a long-term friendly relationship which has apparently not been damaged by the parties' inability to reach a resolution of the issues. The Court has merely been asked to reach a result which the parties cannot. It is the hope and belief of this Court that the end of this litigation will re-commence the cooperative legacy that the families have built on the May River.

4. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence a substantial belief that Cashmans had the right to use the aforementioned docks to access the River and that their use and enjoyment continued uninterrupted for at least eighty (80) years.

5. The Plaintiff and Defendants are co-owners as tenants in common of the entire pier and pierhead;

6. There has been no effective ouster.

7. In the absence of an agreement or contract, a fixed and permanent structure constructed on or adjoining common property and used by co-owners in a manner such as this becomes common property.

8. The Plaintiff and the Defendants are responsible for the payment of all expenses for maintenance and upkeep directly relating to the pier and pierhead from the date of filing of the Summons and Complaint (September 8, 2009) and continuing; and

9. Any claim for costs borne by the Defendants prior to the filing of the Summons and Complaint is barred by laches.

ACCORDINGLY, IT IS HEREBY ORDERED,

1. That the Plaintiff and Defendants are co-owners as tenants in common of the entire pier and pierhead;

2. The ownership of Dock 3 is appurtenant to the Lightsey Property and Cashman Property;

3. That the Plaintiff is entitled to immediate access to the pier and pierhead and shall not be barred from the pier and pierhead by the Defendants or any other person or entity acting on the Defendants behalf;

4. Within five (5) days of the date of this Order, the Defendants shall either unlock the gate located on the pier or deliver a key to the Plaintiff for the lock to the gate;

5. That the Plaintiff and Defendants shall split equally the expenses directly relating to the pier and pierhead incurred by the Defendants from September 8, 2009 to the date of this Order;

6. That the Defendants, within thirty (30) days from the date of this Order, shall submit to the Court the amount of all expenses directly relating to the pier and pierhead from September 8, 2009 to the date of this Order;

7. That the Court will determine the amount of the expenses to be paid to the Defendants by the Plaintiff;

8. That the Parties and their successors in interest shall split equally all costs for future necessary maintenance and upkeep of the pier and pierhead;

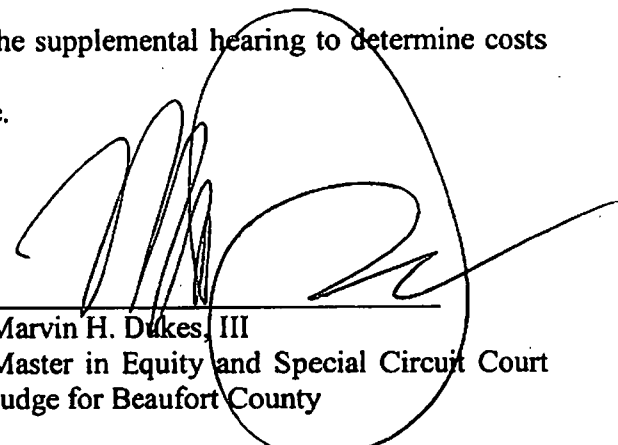
9. That these dock costs shall include, but not be limited to, insurance, taxes, maintenance and upkeep for the pier and pierhead;

10. That the Court will hold a supplemental hearing, within sixty (60) days from the date of this Order, for the sole purposes of determining a method of payment for the maintenance and upkeep for the pier and pierhead, the creation of an operating and maintenance agreement for the pier and pierhead, which shall be executed by the parties and recorded

in the Beaufort County Register of Deeds Office, and for the amount to be reimbursed to the Defendants as identified in Paragraph 7 above²; and

11. That for appeal purposes only the Order of the supplemental hearing to determine costs shall be considered the final Order in this case.

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

Tuesday, December 06, 2011
Beaufort, South Carolina

COPY

² At the time of this revised Order post-reconsideration, the items in 6-10 above, had been heard and ruled upon by Order filed 7/10/12.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-07-02573

Cashman Properties, LLC,

Plaintiff(s),

vs.

WNL Properties, LLC; E. Oswald Lightsey,
Trust f/b/o Louise Lightsey Baughman; the
Trust Under Will of E. Oswald Lightsey
Dated August 8, 1958, and Codicil Dated
March 23, 1976, for the Benefit of Lillian
Lightsey Drawdy; and the Trust Under Will
of E. Oswald Lightsey for the Benefit of
Claudia Lightsey Ware,

Defendant(s).

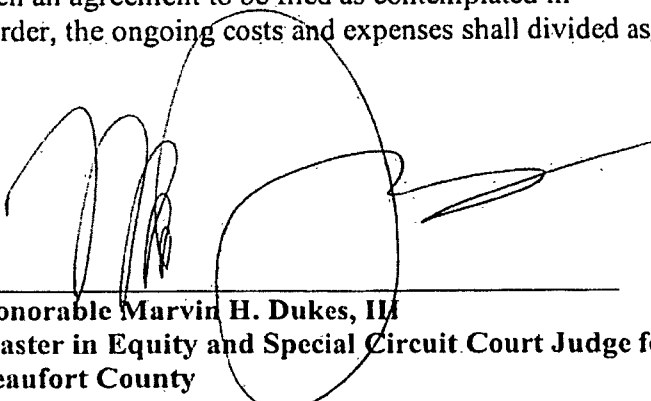
Supplement to
**AMENDED DECLARATORY
JUDGMENT**

2012 NOV 15 PM 2:56
JEROME
BEAUFORT
CLERK OF COURT

Pursuant to request from the parties for a conference call on the Amended final order in this case, one was held on 11/15/12 at 9am. After hearing from the parties it appears that ambiguity in the amended order requires the following clarifications, which are hereby Ordered and made a part of the final amended Order:

- 1) To the extent not stated, the Court denies Plaintiff's claim for prescriptive easement.
- 2) Insofar as the parties were unable to reach an agreement to be filed as contemplated in paragraph 10, page 9 of the Amended Order, the ongoing costs and expenses shall be divided as Ordered in preceding paragraph 8.

IT IS SO ORDERED:



Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge for
Beaufort County

November 15, 2012
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-2573

Eugene Keeny Cashman, Jr., as Trustee
of the Eugene Keeny Cashman, Jr.,
Revocable Trust, and Kathleen Gilmore
Cashman, as Trustee of the Kathleen
Gilmore Cashman Revocable Trust

Plaintiffs,

v.

E. Oswald Lightsey Trust, Wachovia
Bank, N.A., as Trustee Under the Last Will
and Testament of E. Oswald Lightsey, and
Margaret L. McMillan Payne and
Elizabeth L. McMaster, as Trustees of the
Residuary Trust Pursuant to the Last Will
and Testament of E. Oswald Lightsey,

Defendants.

AMENDED COMPLAINT

The Plaintiffs Eugene Keeny Cashman, Jr., as Trustee of the Eugene Keeny Cashman, Jr., Revocable Trust, and Kathleen Gilmore Cashman, as Trustee of the Kathleen Gilmore Cashman Revocable Trust, (hereinafter "Plaintiffs") complaining of the Defendants E. Oswald Lightsey Trust, Wachovia Bank, N.A., as Trustee Under the Last Will and Testament of E. Oswald Lightsey, and Margaret L. McMillan Payne and Margaret L. McMaster, as Trustees of the Residuary Trust Pursuant to the Last Will and Testament of E. Oswald Lightsey (hereinafter "Estate") and Wachovia Bank, N.A., (hereinafter "Wachovia"), respectfully allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiffs own property in Beaufort County, South Carolina.

MSB

2. Upon information and belief, the Defendants, as Trustees, hold title to property in Beaufort County, South Carolina, located at 31 Oyster Street, Bluffton, SC, 29226.

3. This Court has jurisdiction of the parties and the subject matter alleged herein.

INTRODUCTION AS TO THE FACTS AND BACKGROUND

4. The Plaintiffs incorporate all allegations and statements contained in this Amended Complaint by reference as if fully set forth herein verbatim.

5. The Plaintiffs and Defendants, as Trustees, own property adjacent to one another located on Oyster Street, Beaufort County, South Carolina.

6. The property pertinent to this Amended Complaint was originally deeded from Thomas O. Lawton and C.E. Ulmer to W. Fred Lightsey ("Lot 1"), L.T. Waters ("Lot 2") and J.O. Cashman ("Lot 3") on August 31, 1931 (see deed recorded in the Beaufort County Register of Deeds Office in Book 54, Page 227, attached as Exhibit "B").

7. Upon information and belief, Louise Cleland Lightsey originally acquired Lot 1 by deed recorded in the Beaufort County Register of Deeds Office in Book 394, Page 1272 and said property is more fully described therein.

8. The Plaintiffs acquired Lot 3 by deed recorded in the Beaufort County Register of Deeds Office in Book 01592, Page 1617 and said property is more fully described therein.

9. The Plaintiffs acquired Lot 2 by deed from Anthony Ryan, Jr., and Tawana Ryan dated April 7, 1999 recorded in the Beaufort County Register of Deeds Office in Book 1159, Page 906 (attached as Exhibit "C"). Upon information and belief, the

2 MSB

Ryan family purchased the property from the Carter family who purchased the property from the Waters family.

10. The Lightsey Family and Plaintiffs' families have owned Lots 1 and 3 for close to eighty (80) years.
11. There is deep-water access to the May River across the street (Oyster Street) from Lot 1, Lot 2 and Lot 3.
12. Across the street from the Defendant and Plaintiffs' property is a small plot of land, roughly one-tenth (1/10) an acre in size (hereinafter described as "1/10 acre plot of land"), which, upon information and belief, is owned by the Plaintiffs (see Exhibit "B").
13. In the early 1930s Eugene Cashman's grandfather constructed a dock (hereinafter referred to as "Dock 1"), which extended from the 1/10 acre plot of land.
14. The Cashman family allowed the neighboring family, the Waters, to use Dock 1.
15. Upon information and belief, Dock 1 was destroyed in a storm in or about 1944.
16. In or about 1946, the Cashman family constructed Dock 2 in the same vicinity as the now destroyed Dock 1. The Lightsey family assisted in providing building material for the dock.
17. The Cashman family permitted the Lightsey and Carter families' use of Dock 2.
18. The Cashman, Lightsey and Carter families jointly owned and maintained Dock 2 until the 1960s when Dock 2 was destroyed beyond repair by a storm.
19. The Lightsey family constructed a new dock (Dock 3) in the same vicinity as Dock 2 following the storm. Dock 3 consisted of a gate and walkway that lead to a pier head with two attached floating docks.

20. The families continued joint use of the walkway.
21. The Plaintiffs' and their family constructed, maintained and regularly used the floating dock located to the east of the walkway.
22. The two families used the walkway jointly without the permission of the other to access the floating docks.
23. The Plaintiffs' and their family provided electricity and water to Dock 3; the electricity ran from the Plaintiffs' property under Oyster Street to the dock; the water line was connected to the Plaintiffs' property and ran through a drain under Oyster Street and to Dock 3.
24. In about 2004 or 2005 the floating dock located on the east side and maintained by the Plaintiffs and their families was damaged by a storm.
25. The Plaintiffs intended to repair the damaged floating dock and engaged the services of a firm to do so; however, prior to commencement of the repairs the Defendants and/or Lightsey family members placed a lock on the gate to Dock 3.
26. After more than seventy-five (75) years of using the 1/10 acre plot of land and adjoining docks, in March of 2005 a member of the Lightsey family notified the Plaintiffs that they were no longer allowed to use the walkway that led to the floating docks.
27. The Plaintiffs continue to maintain the electricity to the dock.
28. Upon information and belief, the Defendants do not own exclusive rights to Dock 3, and therefore, cannot exclude the Plaintiffs from using Dock 3.
29. Upon information and belief, the Defendants are attempting to sell the property and include Dock 3 in the sale of the property (see Exhibit "D").

4 *MSB*

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

30. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Amended Complaint by reference thereto as if fully set forth herein verbatim.
31. That the Plaintiffs and the Estate are, by virtue of the facts set forth in the preceding paragraphs, the joint owners, as tenants in common, of the fixture (i.e., the walkway and pier head) located on and emanating from the Common Property.

WHEREFORE, the Plaintiffs pray that this Honorable Court issue an Order finding the Plaintiffs and Defendants are joint owners of the fixture affixed to the Common Area as tenants in common and for such other relief as this Court may find just and proper.

FOR A SECOND CAUSE OF ACTION
(Prescriptive Easement)

32. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Amended Complaint by reference thereto as if fully set forth herein verbatim.
33. The Plaintiffs and their family claimed ownership of Dock 1 and Dock 2 and joint ownership of Dock 3 with the Lightsey family.
34. The Plaintiffs maintained Dock 3 and constructed the floating dock and its ramp located on the east side of the walkway.
35. The Plaintiffs and their family used the walkway to access their floating dock without interruption from the Lightsey family and Defendants until March of 2005.

5 MSB

36. The Plaintiffs and their family's use of the dock was and is under a claim of right based on the agreement entered into between the two families.
37. The Plaintiffs and the Cashman family's use of the Common Area is under claim of right for close to eighty (80) years, and that said use was continuous and uninterrupted until Defendants' placing of lock on gate in or about March of 2005.
38. The Plaintiffs have acquired a prescriptive easement over the Common Area, the walkway, pier head and floating dock, and therefore, joint legal ownership with the Defendants.
39. Due to the Defendants' actions, the Plaintiffs have incurred damages from loss of use and enjoyment of property rightfully owned.

WHEREFORE, the Plaintiffs pray that this Honorable Court determine ownership rights of the dock at issue; grant the Plaintiffs actual and punitive damages for loss of use and enjoyment of their property; grant the Plaintiffs costs incurred, including but not limited to attorneys' fees for bringing this action and for such other relief as this Court may find just and proper.

FOR A THIRD CAUSE OF ACTION
(Resulting Trust)

40. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Amended Complaint by reference thereto as if fully set forth herein verbatim.
41. The Plaintiffs, Estate, and their families used, maintained, enjoyed and constructed the walkway.

6 MSB

42. The Plaintiffs, among other things, maintained the electricity and water to the walkway and floating docks.

43. The Lightsey family and Defendants enjoyed and benefited from the maintenance and use of the dock.

44. Even if the Defendants held legal title to the dock, they hold such title in trust for the benefit of the Plaintiffs because of the continuing improvements the Plaintiffs made to the dock in question.

45. It is inequitable for the Defendants to impede the Plaintiffs' access to the walkway and floating dock after benefiting from the Plaintiffs' improvements.

46. It is inequitable for Defendants to benefit from the maintenance and improvements by the Plaintiffs and Plaintiffs' family by declaring exclusive ownership of the dock.

WHEREFORE, the Plaintiffs pray that this Honorable Court determine ownership rights of the dock at issue; grant the Plaintiffs actual and punitive damages for loss of use and enjoyment of the their property; grant the Plaintiffs costs incurred, including but not limited to attorneys' fees, for bringing this action; and for such other relief as this Court may find just and proper.

FOR A FOURTH CAUSE OF ACTION

Temporary and Permanent Injunction, Damages and Attorney Fees
(as to the use of the dock)

47. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Amended Complaint by reference thereto as if fully set forth herein verbatim.

48. The Defendants refuse to allow the Plaintiffs access to what is rightfully theirs.

7 MSB

49. The Defendants, by locking the gate to the dock, are depriving the Plaintiffs of the use and enjoyment of their property; that said actions by Defendants are causing the Plaintiffs irreparable harm, and that the Plaintiffs are without an adequate remedy at law for said harm.

50. The Plaintiffs are in need of a temporary injunction enjoining the Defendants from prohibiting Plaintiffs' access to the walkway and pier head until the Court can determine ownership rights to the property.

WHEREFORE, the Plaintiff prays that this Honorable Court issue a temporary and permanent injunction enjoining the Defendants prohibiting, in any way, the Plaintiffs use and enjoyment of the dock at issue; and such further relief this Court deems just and proper.

FOR A FIFTH CAUSE OF ACTION

(Adverse Possession as to the walkway, pier head, and floating dock)

51. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Amended Complaint by reference thereto as if fully set forth herein verbatim.

52. The Plaintiffs constructed the floating dock located east of the walkway and pier head; the Plaintiffs used the walkway and pier head to access their floating deck.

53. The Plaintiffs and the Plaintiffs' family have used and enjoyed the walkway, pier head and floating dock continuously and exclusively for more than forty (40) years, and therefore, own title to the walkway, pier head and floating dock through adverse possession.

54. The Plaintiffs have used and enjoyed the floating dock located to the east of the walkway and pier head continuously and exclusively for more than forty (40) years

8 MSB

until it was destroyed and Plaintiffs could not repair the dock due to the Defendants' actions.

WHEREFORE, the Plaintiffs pray that this Honorable Court determine ownership rights of the land at issue in the Plaintiffs' Fourth Cause of Action; determine that the Plaintiffs' acquired said land through deed and/or adverse possession; and for such other relief as this Court may find just and proper.

WHEREFORE, the Plaintiffs pray that this Honorable Court:

1. determine ownership rights of dock at issue;
2. determine that the Plaintiffs and Defendants are joint owners of the dock;
3. grant the Plaintiffs a temporary and permanent injunction enjoining the Defendants from barring Plaintiffs access to the dock;
4. grant the Plaintiffs actual and punitive damages for the loss of use and enjoyment of their property;
5. grant the Plaintiffs costs and attorneys' fees for bringing this action; and
6. grant such other relief as this Court may find just and proper.

VAUX & MARSCHER, P.A.

Mark Berglind, Esquire
Roberts Vaux, Esquire
Mark S. Berglind, Esquire
Attorneys for the Plaintiffs
Post Office Box 769
Bluffton, South Carolina 29910
(843) 757-2888

September 3, 2009
Bluffton, South Carolina

Exhibit "A"



The Beaufort County Assessor's office makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

PID #: R600 039 00C 0126 0000

Key #: 507507

Owner Info

LIGHTSEY LOUISE CLELAND
WACHOVIA BANK N A ETAL
% TRUST REAL ESTATE DEPT 1426 MAIN ST 16 FL
COLUMBIA, SC 29226
Location: 31 OYSTER ST

Legal Info

LOTS 1-2-3A S 1/2 LOT 4A

Land Data

Year: 2009
Neighborhood Code: P014
Acres: 0.00
Agriculture Use: 0
Income Value: 0
PCS: 11
PCA: 6116

Historic Info

Year	Land	Building	Features	Market*	Assessed	Taxes	Payment
2008	\$416,000	\$98,000	\$12,000	\$526,000	\$31,560	\$6,526.11	\$0.00
2007	\$416,000	\$98,000	\$12,000	\$526,000	\$31,560	\$6,252.28	\$6,252.28
2006	\$416,000	\$98,000	\$12,000	\$655,460	\$31,560	\$5,687.35	\$5,687.35
2005	\$416,000	\$98,000	\$12,000	\$655,460	\$31,560	\$5,292.85	\$5,292.85
2004	\$416,000	\$98,000	\$12,000	\$655,460	\$31,560	\$5,133.80	\$5,133.80
2003	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,817.71	\$1,817.71
2002	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,751.60	\$1,751.60
2001	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,640.33	\$1,640.33
2000	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,604.33	\$1,604.33
1999	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,523.72	\$1,523.72
1998	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,378.59	\$1,378.59
1997	\$30,000	\$71,300	\$6,150	\$107,450	\$6,447	\$1,438.67	\$1,438.67
1996	\$30,000	\$71,300	\$6,150	\$107,450	\$6,447	\$1,427.09	\$1,427.09

Sales Info

Owner	Book	Page	Date	Inst.	Qualif	Vacant/Impr	Sale Price
LIGHTSEY LOUISE CLELAND	2234	494	20050907	111	I	I	\$1.00
LIGHTSEY LOUISE CLELAND	1947	1026	20040429	111	L	I	\$1.00
LIGHTSEY LOUISE CLELAND	394	1272	19831201	GW	A	I	\$0.00

Building Characteristics

Number	Improvement Type	Year Built	Stories	Rooms	SQFT	Living Area
1	RSS20WPH	1930	2.0	8	2904	1848
2	RSS20WPH	1930	2.0	0	1071	504

Building Area

Number	Description	SQFT
1	SCR POR ROOF POST SCR TO FLR	208
1	BASE	924
2	BASE	504

Exemptions

Year	Amount
	\$0.00

*Market: This is either the assessor's market value as of the last countywide reappraisal, value effective 12/31/2002 or the Assessable Transfer of Interest (ATI) market value as per SC Code section 12-37-3150, value effective 12/31/2007.

Exhibit "B"

54 p 227

Thos. O. Lawton & O.E. Ulmer } COUNTY OF BEAUFORT.
To: Devopant to stand seized. } Whereas Ws. Thos. O. Lawton of Hampton County, and C.E. Ulmer of Beau-
Marie W. & Alma S. Farmer } fort County, both in the State of South Carolina, have heretofore
sold and conveyed (or executed our Bonds for Title to) certain par-
cels or lots of land at what is popularly known as "Brighton Beach", on May River, approximately
two miles from the village of Bluffton, in Beaufort County, in the State aforesaid, unto (1) C.B.
Ray (now deceased), (2) J.W. Chisolm, (3) Florida O. Sexton, (4) William Colcock (who has recently
conveyed his lot unto Z.E. McGowney), (5) Mary C. Salley, (6) Percy M. All, (7) Maria F. Farmer,
(8) Alma S. Farmer, (9) Fred M. All, (10) J. O. Hechardeon, (11) W.R. Davis, (12) Rosa M. Riley,
(13) J.B. Stone (who has recently conveyed his lot unto Mrs. Arthur M. Kennedy), (14) J.H. Bookler, (15)
William Colcock, (16) Miss Louise Prothro, (17) D.M. Busbee, (18) Kenneth Ramsey, (19) C.W. Howard,
(20) G.R. Hudson, (21) W. Fred Higginsey, (22) L.T. Whitera, (23) L.O. Garbman, and (24) Jack Wertz,
Kenneth Ramsey, and Jester Rhodes, as will more fully appear by reference to the records of the
office of the Clerk of Court and Register of Mesne Conveyance of said Beaufort County;
And Whereas, between the High Water Mark of said May River and the Southern (front) property
(or boundary) line of the lots now owned by the Estate of C.B. Ray, deceased (whose lot is unnum-
bered upon the Map or Plat hereinafter first referred to), and by the said J.W. Chisolm, Florida O.
Sexton, B.B. McGowney, Mary C. Salley, Percy M. All, Marie W. Farmer, Alma S. Farmer, Fred M. All
and J.C. Richardson, (whose lots are numbered upon the Map hereinafter first referred to from 29
to 40, both inclusive), We, the said Thos. O. Lawton and O.E. Ulmer, were now, and were, at the time
said lots were sold and conveyed by us, seized in fee and possessed of a strip of land approximately
sixty (60) feet in depth, and approximately four hundred and sixty-seven and five-tenths (467.5)
feet in length, (the same beginning at a point approximately forty-five feet West of the extreme
Western boundary line of Lorton Drive-- a street twenty-five feet in width-- and extending in an
Eastern direction across the entire frontage of said lot of the Estate of C.B. Ray, across said
Lorton Drive, across the entire frontage of said Lots Numbers 29 to 40, both inclusive, and across
Mullet Street to its extreme Eastern boundary line, as will more fully appear by reference unto a
Map of Property of Thos. O. Lawton & O.E. Ulmer on the May River near Bluffton, Beaufort County, S.C.
surveyed and sub-divided by Tomlinson Engineering Company of Columbia, S.C. February 15th, 1923,
L.A. Pearson, Engt;
And Whereas, all of the lots now owned by the persons and Estates named in the first paragraph
of this Instrument were sold and conveyed by us, the said Thos. O. Lawton and O.E. Ulmer, in accor-
dance with, and by reference to, the Map or Plat mentioned in the concluding clause of the second
paragraph of this Instrument, (and a few of said lots were also sold and conveyed by us in accordance
with, and by reference to, a later and additional Plat or Map of "Brighton Beach", made for us by
Jas. C. Covington, C.E., of Columbia, S.C. on Jan. 2nd, 1926); and upon verbal assurance made by
us at the time of the respective sales that it was the intention, purpose and design of us, the
said Thos. O. Lawton and O.E. Ulmer, that we, and our heirs, should forever stand seized and possess-
ed of, and that we, and our heirs, should forever hold, the said strip of land (approximately 60 feet
in depth by approximately 467.5 feet in length) IN TRUST for the common use and benefit of all
present and/or future owners of lots in our said sub-division at "Brighton Beach", upon the terms
and conditions hereinafter set forth; and that we would dedicate to the common use and benefit of
all said lot owners, present and future, all streets, ways and drives named and/or shown and delin-
ed upon both of said Plats or Maps hereinafore mentioned and referred to, upon the terms and
conditions hereinafter set forth;
And Whereas, at the time of the sale of each of the said lots heretofore conveyed by us unto
the persons named in the first paragraph of this Instrument, it was understood and agreed by and
between said purchasers and us, the said Thos. O. Lawton and O.E. Ulmer, that no portion of said strip
of land (approximately 60 feet in depth by approximately 467.5 feet in length), as aforesaid and
lying between the High Water Mark of May River and the front (Southern) property line of the lots
now owned by the persons and Estates named in the second paragraph of this Instrument, should ever
be sold or conveyed by us, or by our heirs, EXCEPT to a Trustee IN TRUST for the common use and
benefit of all present and/or future owners of lots in our said subdivisions; that said strip of
land should always and forever remain open, unimproved and unobstructed in any manner whatsoever,
EXCEPT as hereinafter provided for; that no houses, buildings, or structures (of any size or shape
whatsoever) should ever be erected, constructed, built or placed upon said strip of land; that all
present and/or future owners of lots in our said sub-divisions at "Brighton Beach" should have at
all times, both now and in the future forever, SO LONG as any of said lots should be used for
residential purposes, a full, free, complete, unobstructed and unimpeded access to and from said
May River, and to and from its waters and beach, over, along and across the entire length (467.5
feet) and depth (60 feet) of said strip of land for the purpose of swimming, boating, fishing, hunt-
ing, and all other like pleasures and purposes; and particularly that all present and/or future
owners of lots lying adjacent to, and fronting immediately upon, said strip of land should have at
all times, both now and in the future forever, SO LONG as any of said lots should be used for vaca-
tion, residential purposes, a full, free, complete, unobstructed and unimpeded view of said May
River, EXCEPT as hereinafter provided, and a full, free, complete, unobstructed and unimpeded flow
of air, wind and breeze from said May River, over, across and along the entire length and depth of
said strip of land;
And Whereas, although such has always been our intention, understanding, and agreement with the
owners of lots in our said subdivisions, no instrument of writing so protecting said lot owners,
or perpetually dedicating to them the rights and privileges hereinabove recited, has ever been
executed by us;
And Whereas we, the said Thos. O. Lawton and C.E. Ulmer, are now desirous, by these Presents,
so to protect all existing and/or future owners of lots in our said sub-divisions: as well as Thos.
O. Lawton the present owner of a tract of land adjacent thereto containing 64 acres and any future
lot owners in said 64 acre tract.
And Whereas we, the said Thos. O. Lawton and O.E. Ulmer, are also seized in fee and possessed of
a narrow strip of land at the entrance to "Brighton Beach" lying between Oyster Street and the
High Water Mark of May River, and opposite Lots Numbers 1-2-3 and 4 in Block "A" upon Map of said
"Brighton Beach", made by Jas. C. Covington, C.E. and dated January 2nd, 1926, and extending in a
North-Eastern direction in front of said lots and along said Oyster Street to a ditch (which
said ditch is the property line between said strip of land and a larger tract of land owner individ-
ually by the said Thos. O. Lawton), and thence along said ditch (and between Oyster Street and such
ditch) and along Oyster Street to a point where the latter intersects Lorton Drive, as to the common
use of which for pleasure purposes by all present and/or future owners of lots in our said sub-
divisions as well as in the 64 acre tract owned by Thos. O. Lawton above mentioned we have always
had the same understanding and agreement as that hereinabove recited, and as to which we have always
had the same intention, purpose and design as that hereinabove recited;
And Whereas we, the said Thos. O. Lawton and C.E. Ulmer, are likewise seized in fee and possessed
of still a third strip of land twenty-five (25) feet in width, lying between Mullet Street and the
High Water Mark of May River, beginning at the extreme Southern terminus of said Mullet Street, where
the same intersects what is popularly known as "May River Drive" (though the latter is not actually
dedicated or designated upon either of the Maps hereinafore mentioned and referred to, at a point
twenty-five (25) feet East of the South-Eastern corner of Lot Number 40 (as shown on Map of Tomlinson
Engineering Company, dated February 15th, 1923, hereinafore first referred to) and extending along

25

along said Lot Number 109 in a southerly direction, across Drinker Street, to and along Lot Number 127 to its Southern, front corner, thence along the fronts of Lots Numbers 127, 128, 129 and 130 to the corner of Lot Number 131 at Drum Street, thence in a slightly Southwesterly direction across said Drum Street and along side of Lot Number 135 to its Southern, front corner, thence along the front of Lots Numbers 136, 138, 1940, across Drum Street, in a slightly Northwesterly direction, and along the front of Lots Numbers 136 and 137, and across Croaker Street to a point where the latter intersects Sailor's Choice Street, and thence along said Sailor's Choice Street in a slightly Western direction, to the extreme North-Western corner of Lot Number Sixty-One (61), to a point there said Sailor's Choice Street intersects Lawton Drive, as to the common use of which for pleasure purposes by all present and/or future owners of lots in our said sub-divisions (delimited upon the two Plats or Maps heretofore mentioned and referred to) at "Brighton Beach" in Beaufort County, South Carolina, as well as in the 64 acre tract of Thos. O. Lawton above mentioned, we have always had the same understanding and agreement as that hereinbefore recited, and as to which we have always had the same intention, purpose and design as that hereinbefore recited;

And Whereas We, the said Thos. O. Lawton and O.E. Ulmer, do now desire, by these Presents, so to protect all present and/or future owners of lots in our said sub-divisions as well as in the 64 acre tract of Thos. O. Lawton above mentioned, in the exercise of the rights and privileges hereinbefore mentioned, and so to covenant and agree with them, in writing, that they may be perpetually assured of the enjoyment of such rights and privileges in all three (3) of the strips of land hereinabove mentioned and described;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That we, Thos. O. Lawton and O.E. Ulmer, upon the terms and conditions hereinafter named, and for and in consideration of the "Premises" hereinbefore recited, and for and in consideration of the sum of One (\$1.00) Dollar to each of us in hand paid, at and before the sealing of these Presents, by Marie W. Farmer and Alma S. Farmer, both of the town and county of Allendale, in the State aforesaid, (the payment and receipt whereof is hereby acknowledged) by each of us to have been made for and on behalf of the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and for and on behalf of all other present and/or future owners of lots in our said sub-division at "Brighton Beach" their heirs and assigns, including the said Thos. O. Lawton his heirs and assigns, have covenanted and agreed, and by these Presents do covenant and agree, with the said Marie W. Farmer and Alma S. Farmer, on behalf of themselves and their heirs and assigns, and on behalf of all other present and/or future owners of lots in our said sub-divisions, their heirs and assigns, including the said Thos. O. Lawton his heirs and assigns that we, the said Thos. O. Lawton and O.E. Ulmer, and our respective heirs after our deaths, respectively, shall forever stand seized and possessed of, and that we, and our heirs, shall forever hold, the said three (3) strips of land hereinbefore particularly mentioned and described in Paragraphs Two, Seven and Eight IN TRUST for the common use and benefit of the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and IN TRUST for the common use and benefit of all other present and/or future owners of lots in our said sub-divisions at "Brighton Beach", including the said Thos. O. Lawton his heirs and assigns, UPON THE TERMS AND CONDITIONS HEREINAFTER SET FORTH; that we and our heirs, shall likewise forever hold all streets, ways and drives named and/or shown upon both of the Plats or Maps heretofore mentioned and referred to and lying South of Fourth Street and Sailor's Choice Street, IN TRUST for the common use and benefit of said Lot Owners, UPON THE TERMS AND CONDITIONS HEREINAFTER SET FORTH; that neither of us, nor any of our heirs, shall ever sell and/or convey unto any person, firm, association, or corporation whatsoever, either of said three (3) strips of land hereinabove mentioned, and particularly described in Paragraphs Two, Seven and Eight hereof, or any portion of either of said strips of land; that said three (3) strips of land shall always and forever remain open, unimproved and unobstructed in any manner whatsoever, EXCEPT as hereinafter provided for; that no houses, buildings or structures, of any size or shape, whatsoever, shall ever be erected, constructed, built or placed upon either of said strips of land, or upon any portion of either of them; that the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and all other present and/or future owners of lots in the said sub-divisions hereinabove mentioned, their heirs and assigns, including the said Thos. O. Lawton his heirs and assigns shall have at all times, both now and in the future, SO LONG AS any of said lots shall be used for vacation, residential purposes, full, free, complete, unobstructed and unimpeded access to and from said May River, and to and from the waters and benches, over, along and across the entire length and depth of each and every of said three (3) strips of land for the purpose of swimming, boating, fishing, hunting, and all other like pleasures and purposes; and particularly that the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and all other present and/or future owners of lots lying adjacent to, and fronting and abutting immediately upon, said three (3) strips of land hereinbefore particularly described in paragraphs Two, Seven and Eight including the said Thos. O. Lawton his heirs and assigns shall have at all times, both now and in the future forever, SO LONG AS any of said lots shall be used for vacation, residential purposes, a full, free, complete unobstructed and unimpeded view of said May River, EXCEPT as hereinafter limited, and also a full, free, complete, unobstructed and unimpeded flow of air, wind and breeze from said May River over, across and along the entire length and depth of each and every of said three (3) strips of land, TO ALL OF WHICH We, the said Thos. O. Lawton and O.E. Ulmer, do covenant and agree, and to the faithful performance of which We do hereby bind ourselves, and our heirs, Executors and Administrators forever, SUBJECT ONLY to the following terms, conditions and limitations, namely:

- (1) That no sewage shall ever be dumped, placed or discharged in any manner whatsoever into the waters of said May River by any of the present and/or future owners of lots in our said sub-divisions at "Brighton Beach", or by any agent, servant or employee of any of said Lot Owners; or by Thos. O. Lawton his heirs and assigns.
- (2) That, if so desired, shade and ornamental trees and shrubbery may be planted upon said three (3) strips of land;
- (3) That, should it ever become necessary or desirable to place water mains and/or sewer pipes in the streets, ways and drives of "Brighton Beach", the same may be done, PROVIDED, HOWEVER, that no sewage disposal shall ever be dumped, placed or discharged into said May River;
- (4) That, should it ever become necessary or desirable to erect telephone and/or telegraph lines at "Brighton Beach", the streets, ways and drives thereof may be subjected to a reasonable use for such purposes;
- (5) That, should it ever become necessary or desirable to erect electric light and/or power lines at "Brighton Beach", the streets, ways, and drives of our subdivisions may be subjected to a reasonable use for such purposes;
- (6) That, should it ever become necessary or desirable to use either artificial or natural gas at "Brighton Beach", the streets, ways and drives of our said sub-divisions may be subjected to a reasonable use for such purposes;
- (7) That, should it ever become necessary or desirable, in the interest of a complete enjoyment and use of the strip of land first hereinabove described by the owners of lots in our said subdivisions, to close the drive-way commonly called May River Drive, from Lawton Drive, on the West, to Mullist Street, on the East, a distance of 372.5 feet, the same may be done, to the end that vehicular traffic shall not impair, impede or obstruct the free and common use of said strip of land by pedestrians.

IN WITNESS WHEREOF, We, the said Thos. O. Lawton and O.E. Ulmer, have hereunto subscribed our names, and affixed our seals at Bluffton, South Carolina, this 31 day of August, A.D. 1931.

Thos. O. Lawton (LS) J.E. Ulmer (LS) By Thos. O. Lawton Atty in fact IN THE PRESENCE OF: W. Jesse Davis F.C. Buckner
STATE OF SOUTH CAROLINA PERSONALLY appeared before me F.C. Buckner and made oath that he saw the COUNTY OF HAMPTON within named Thos. O. Lawton and J.E. Ulmer sign, seal, and as their Act and Deed, deliver the within written Declaration of Trust and Covenant to Stand Bequeathed; and that he with W. Jesse Davis witnessed the execution thereof. F.C. Buckner SPOKE to before me this 31 day of August, A.D. 1931. (Seal) Jesse W. Chisolm Notary Public for South Carolina, STATE OF SOUTH CAROLINA, I, Jesse W. Chisolm, a Notary Public for South Carolina, COUNTY OF BEAUFORT unto all whom it may concern that Mrs. Marline W. Lawton, the wife of the within named Thos. O. Lawton, did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and unto all other present and future owners of lots in the sub-divisions of Thos. O. Lawton and J.E. Ulmer at "Brighton Beach", Beaufort County, South Carolina, the within premises and assigns, IN TRUST for the common use and benefit of all said lot owners, all her interest and estate, and also all her right and claim of Dower, of in and to all and singular the three (3) strips or parcels of land particularly mentioned and described in Paragraphs Two, Seven and Eight of the within Declaration of Trust and Covenant to Stand Bequeathed, GIVEN under my Hand and Seal this 31 day of August, 1931. (Seal) Jesse W. Chisolm (LS) Notary Public for South Carolina.
Recorded & Certified October 25th, 1939. *Oliver L. Rodgers* Deputy C.C.C.P.

X.B. Rodgers, C.C.C.P. } THE STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT COUNTY OF COMMON PLEAS
To: Conveyance } J. E. Rodgers, Clerk of the Court of Common Pleas and General Sessions
J.R. Godley } in and for the County aforesaid, and Greeting:
WHEREAS, Alfred Moore and others, on or about the day of May, 1939, exhibited their complaint in the Court of Common Pleas for Beaufort County, against Jesse and F.M. Cleveland, individually and as trustees, etc., and others, praying judgment in relation to the premises hereinafter mentioned and described, and the same having come on to be heard on the day of 1939, and to be further heard on September 13th, 1939, and resulted in a decree of the said Court whereby it was adjudged and decreed that the said premises hereinafter mentioned and described be sold by J.E. Rodgers, Clerk of said Court in and for said County, on the terms and for the purposes mentioned in the said decree, as by reference thereto on file in said court will appear, to J.R. GODLEY for the sum of SIXTY SEVEN HUNDRED & FIFTY-\$6,750.00 DOLLARS, paid or secured to be paid by the said J.R. GODLEY in accordance with the provisions of said decree, and the said J.R. GODLEY having complied with the terms and provisions of the said decree by paying or securing to be paid the said purchase price, NOW

KNOW ALL MEN BY THESE PRESENTS, that I, J.E. RODGERS, Clerk of the Courts of Common Pleas and General Sessions in and for Beaufort County, in consideration of the sum of SIXTY SEVEN HUNDRED AND FIFTY DOLLARS paid and secured to be paid to me by the said J.R. GODLEY, (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said J.R. GODLEY, his heirs and assigns forever:

All that tract or parcel of land situated on St. Helena Island, Beaufort County, S.C., and known as the Oaks Plantation, and being the property conveyed to John B. Cleveland, and others by separate deeds to separate tracts which will be found in the records of the Clerk of Court for Beaufort County, as follows: In Deed Book 32 Page 267; Deed Book 49 Page 101 Deed Book 46 Page 68; Deed Book 41 Page 587; Deed Book 41 Page 665; Deed Book 26 Page 541; Deed Book 29 Page 660. Said deeds were fully describe the property as follows: That lot of land on said St. Helena Island, bounded north by lands of McDonald, Wilkins & Company; south by Cuffie Chaplain; east by Johnston River, west by lands of J.B. Cleveland and Alfred Moore by the Probate Judge of Beaufort County at a sale in aid of assets by the Administrator of David Simmons to pay his debts, as shown in Deed Book 32 Page 267.

ALSO another parcel of land on said Island, being part of the Oaks Plantation; bounded north and east by Robert Sumter; south by lands now or formerly of David Simmons, and west by J.F. & J.B. Cleveland, et al; containing 5 ACRES, and being the southern half of a 10 acre lot bought from Violet Armstrong by Robert Sumter, Jan. 16, 1908 by deed recorded in Book 26 Page 797. See Deed Book 45 Page 10.

ALSO another tract, formerly known as part of the Oaks Plantation and sold April 7, 1924 for delinquent taxes assessed in the name of Patrick Garrett by Jas. M. Bailey, then Sheriff; containing 5 ACRES, more or less; bounded north by Robert Sumter; east by the Olevlands; south by the Estate of Ansel Chaplain and west by David Simmons. See Sheriff's Sales Book Page 287 and the deed of J.E. Moore, Sheriff to Alfred Moore, et al, Book 45 Page 68.

ALSO another tract of said Island and being part of Oaks Plantation; containing 10 ACRES; bounded on the north-west and west by the lands of Moore and the Olevlands and on the south by lands which they bought from the Christensen, and east by Mackless Hayward, and north-east by lands of Quake Green. See deed of David Simmons in Book 31 Page 557.

ALSO another tract of land on said Island, being part of the old Oaks Plantation; bounded by lands of Patrick Garrett, Pompey Simmons and George Sarmelli; containing 5 ACRES, and being the same conveyed to Cuffie Chaplain by H. Christensen Feb. 19, 1900, and by Chaplain to the Cleveland and Moore by deed recorded in Book 41 Page 668.

ALSO, that tract of land on said Island, being part of the original tracts known as The Oaks, and formerly the property of G.O.T. Pope, now measuring and containing 150 ACRES, more or less; being conveyed to Edward B. Waters by a Sheriff's deed under a decree of foreclosure dated August 1, 1874, by a deed of Sheriff William Wilson, recorded in Deed Book 10 Page 260, said tract bounded north and south by rivers and marshes, and east by a line run by the U.S. Government dividing it from a tract which once formed a part of said plantation, and which was laid off under the direct tax Commissioners of the United States. The southern and northerly boundaries described as waters and marshes are sometimes called Odoms Creek, Oowhead Creek, Johnston river and Wallace Creek. See deed of Edward B. Waters to John B. and J.F. Cleveland and recorded in Book 26 Page 541, and deed to a 1/3 interest therein from John B. and J.F. Cleveland to Thos. E. Moore, by deed recorded in Book 29 Page 62.

ALSO two other tracts, each being a part of the former Oaks Plantation and containing 20 and 10 ACRES, respectively, and more fully described in a deed of N. Christensen, and Frederik H. Christensen to J.F. & J.B. Cleveland and T.E. Moore, recorded in Deed Book 29 Page 660. The 20 acre tract is composed of Lots 15, 16, 17 and 18 of Section 26 of Township 1, south of Beaufort base line, and Range 1, west of St. Helena Meridian. The 10 acre tract is bounded on the north by land now or formerly of Mackless Hayward; west by lands of the School farm, east by Patrick Garrett and south by Robert Sumter. These two tracts were conveyed to N. Christensen, father of the grantors above, by deeds recorded in Book 26 at Page 24 and Book 26 at Page 666, and by him willed to the above grantors.

J.E. Moore died intestate in 1912, leaving his brothers, Alfred Moore, Andrew E. Moore and

Exhibit "C"

3/10/00
2/

19874

BEAUFORT COUNTY, S.C.
RECORDING FEES COLLECTED
TRANSFER FEES \$
COUNTY \$ STATE \$ 551-28

906

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT

We, ANTHONY V. RYAN, JR. and TAWANA P. RYAN, in the State aforesaid, for and in consideration of the sum of TWO HUNDRED TWELVE THOUSAND and No/100ths (\$212,000.00) DOLLARS, and other valuable consideration to us in hand paid at and before the sealing of these presents by EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN whose mailing address is Memphis, TN, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns, forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" INCORPORATED HEREIN.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns, forever.

AND we do hereby bind ourselves and our Heirs, Assigns and Personal Representatives, to warrant and forever defend all and singular the said Premises unto the said EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN as hereinabove provided against ourselves and our Heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

BEAUFORT COUNTY TAX MAP: 600/039/00C/0127/0000

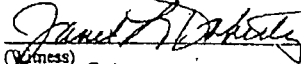
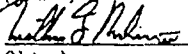
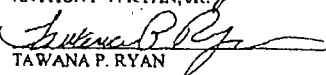
55

[Handwritten signature]

[Small printed text]

WITNESS our Hands and Seals this 23 day of April, 1999.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

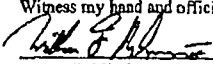
 (Witness)  (Notary)	 ANTHONY V. RYAN, JR.  TAWANA P. RYAN

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned notary public, do hereby certify that ANTHONY V. RYAN, JR. and TAWANA P. RYAN, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 23 day of April, 1999


 Notary Public for South Carolina
 My commission expires: 12-21-01

(Sealed Instrument)

EXHIBIT "A"

PARCEL 1: ALL that certain piece, parcel or lot of land situate, lying and being at Brighton Beach, in Bluffton Township, Beaufort County, South Carolina, triangular in shape, containing all of Lots 10 and 11 and portions of Lots 12 and 13 and more particularly described as follows: Beginning at a point where the line separating Lots 13 and 14 touches an unnamed road, then extending in a southerly direction along said road for a distance of two hundred fifteen (215') feet, more or less, to the southernmost tip of Lot 2 on said road; thence northeasterly direction for a distance of one hundred seventy-five and one-half (175.5') feet, more or less, to the northernmost point of the line separating Lots 4 and 6; and thence in a northwesterly direction for a distance of one hundred thirty-one (131') feet, more or less to the point of beginning; bounded on the North, East and South by the lands of Lightsey and that of Louise Boyd Carter, a/k/a Louise B. Carter, and on the West by an unnamed road, as will more fully appear by reference to a Map of Brighton Beach made for T.O. Lawton and C. E. Ulmer, January 2, 1926 by Jas. C. Covington, as recorded in the Beaufort County Registry of Deeds, Beaufort, South Carolina.

PARCEL 2: AND ALSO that certain piece, parcel or lot of land situate, lying and being in said Township of Bluffton, County of Beaufort, known as the North half of Lot Number Four (4) in Block A of said Brighton Beach, measuring twenty-five (25') feet on Oyster Street and running back one hundred (100') feet, and bounded on the North by Lot Number Five (5), on the East by Oyster Street, on the South by the remaining portion of Lot Four (4) property of W. Fred Lightsey, and on the West by Lot Number Eleven (11) (as contained in "Parcel 1" above). For a more detailed description, reference is hereby craved to the above noted plat of survey, of record, made by Jas. C. Covington, January 2, 1926, in said Beaufort County Registry of Deeds, Beaufort, South Carolina.

ALSO, ALL of that certain parcel, lot or tract of land, known as Lot Number Five (5) in Block A (with a three (3) room cottage thereon), situate, lying and being in said Brighton Beach Subdivision and being bounded as follows: On the North by Lot Number Six (6) of said subdivision, on the East by Oyster Street, on the South by Lot Number 4 of same, and on the West by Lots Number Eleven (11) and Twelve (12), of same. Said Lot being rectangular in shape and fronting on Oyster Street a distance of fifty (50') feet, more or less, and running back in a southern direction a distance of one hundred (100') feet to said Lots 11 and 12 as will more fully appear by reference to the above and within noted plat made by Jas. C. Covington, January 2, 1926.

This being the same property conveyed to the within Grantors, Anthony V. Ryan, Jr. and Tawana P. Ryan by deed dated June 20, 1996 and recorded in the Beaufort County Registry of Deeds, Beaufort, South Carolina, in Book 875 at Page 667.

This Deed was prepared in the Law Office of Vaux & Marscher, P.A., Post Office Box 769, Bluffton, South Carolina; by William F. Marscher, III.

Vast
FILED 1507
APR 13 1999
BK 1159 PG 906
FOLDER #

900

RECORDED THIS 17 DAY
OF May 1999
IN BOOK AF PAGE 532
Sharon P. Bennis
AUDITOR, GEORGE COUNTY, S.C.

Exhibit “D”



Dock on May River Included



Randall L. Fisher, CPM
Vice President
Real Estate Advisor

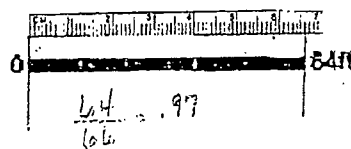
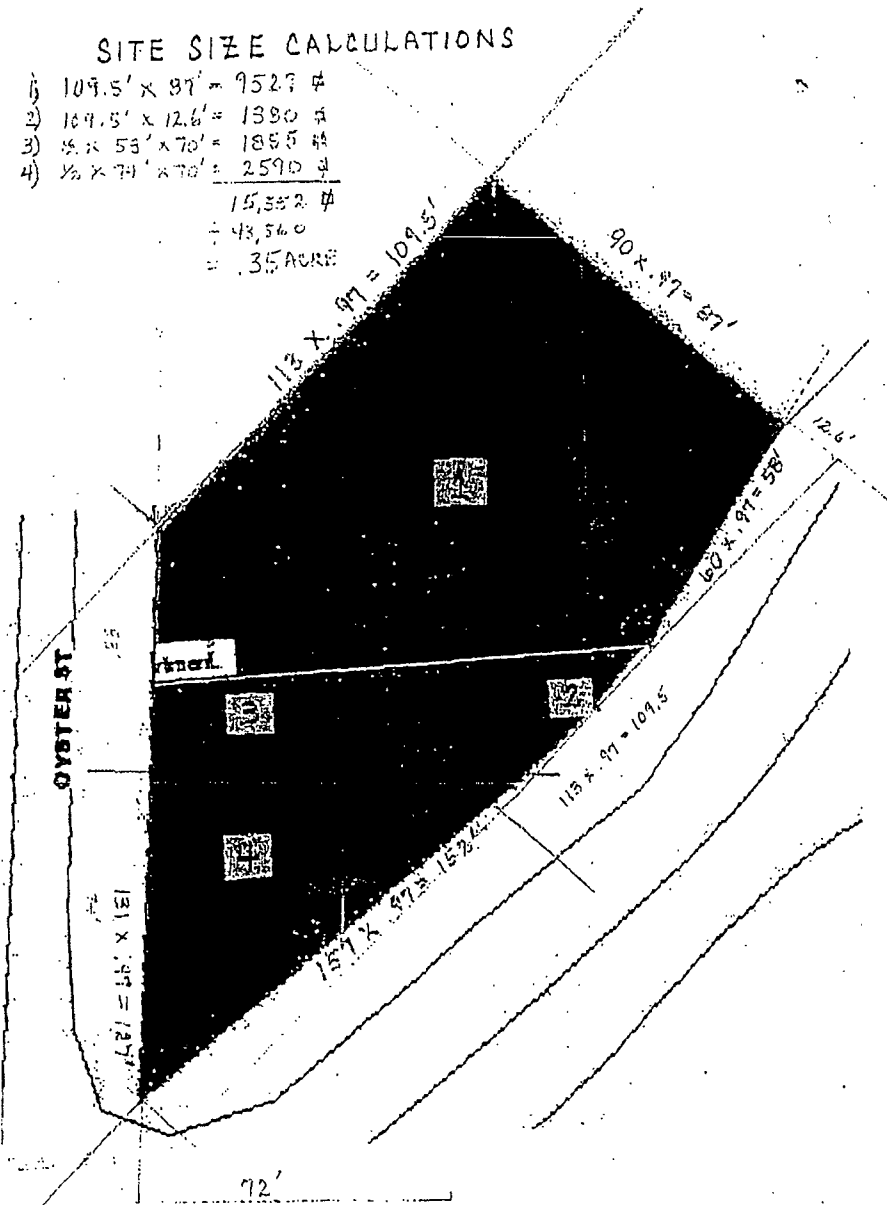
WACHOVIA TRUST

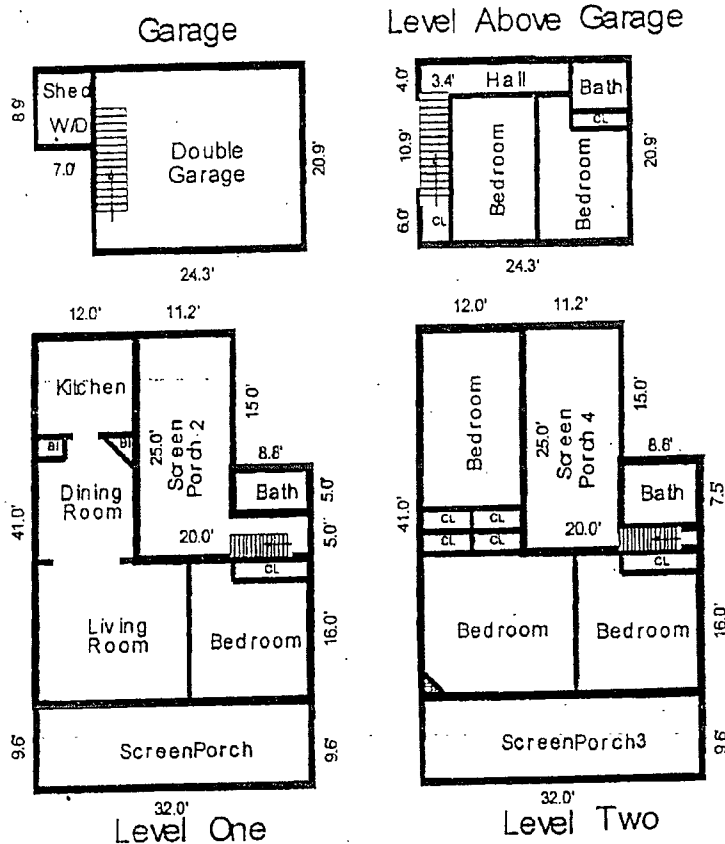
Wachovia Bank, N.A.
SC9346
1426 Main Street, 16th Floor
Columbia, SC 29226
Tel 803 765-3110
Fax 803 765-3099
randy.fisher@wachovia.com

SITE SIZE CALCULATIONS

- 1) $109.5' \times 87' = 9527 \text{ sq ft}$
- 2) $109.5' \times 12.6' = 1380 \text{ sq ft}$
- 3) $53' \times 70' = 3710 \text{ sq ft}$
- 4) $74' \times 70' = 5180 \text{ sq ft}$

$$\begin{aligned} &15,352 \text{ sq ft} \\ &\div 43,560 \\ &= .35 \text{ ACRE} \end{aligned}$$





Scale: 1/4" = 1'-0"

Comments:

AREA CALCULATIONS SUMMARY				LIVING AREA BREAKDOWN		
Code	Description	Size	Totals	Breakdown		Subtotals
GLA1	First Floor	812.00	812.00	First Floor		
GLA2	Second Floor	812.00	812.00	12.0 x 41.0		492.00
GLA3	First Floor Bath	44.00	44.00	16.0 x 20.0		320.00
GLA4	Second Floor Bath	66.00	66.00	Second Floor		
GLA5	Living Above Garage	470.81	470.81	12.0 x 41.0		492.00
P/P	Screen Porch	307.20		16.0 x 20.0		320.00
	Screen Porch 2	324.00		First Floor Bath		
	Screen Porch 3	307.20		5.0 x 8.8		44.00
	Screen Porch 4	302.00	1240.40	Second Floor Bath		
GAR	Double Garage	507.87	507.87	7.5 x 8.8		66.00
OTS	Shed/Laundry	62.30	62.30	Living Above Garage		
				20.9 x 20.9		436.81
				3.4 x 4.0		13.60
				3.4 x 6.0		20.40
TOTAL LIVABLE (rounded)			2205	9 Areas Total (rounded)		2205

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2009-CP-07-02573

Eugene Keeny Cashman, Jr., as Trustee)
of the Eugene Keeny Cashman, Jr.)
Revocable Trust, and Kathleen Gilmore)
Cashman, as Trustee of the Kathleen)
Gilmore Cashman Revocable Trust,)

Plaintiffs,)

v.)

THIRD AMENDED ANSWER

TO AMENDED COMPLAINT

E. Oswald Lightsey Trust, Wachovia)
Bank, N.A., as Trustee Under the Last Will)
and Testament of E. Oswald Lightsey, and)
Margaret L. MacMillan Payne and)
Elizabeth L. McMaster, as Trustees of the)
Residuary Trust Pursuant to Article VII)
of the Last Will and Testament of W.)
Norris Lightsey,)

Defendants.)

Defendants Wachovia Bank, N.A., as Trustee under the Last Will and Testament of E. Oswald Lightsey, and Margaret L. MacMillan Payne and Elizabeth L. McMaster, as Trustees of the Residuary Trust pursuant to Article VII of the Last Will and Testament of W. Norris Lightsey (incorrectly identified in the Amended Complaint as Margaret L. McMillan Payne and Elizabeth L. McMaster, as Trustees of the Residuary Trust Pursuant to the Last Will and Testament of E. Oswald Lightsey), answering the Amended Complaint, respectfully allege:

FOR A FIRST DEFENSE

1. Except as admitted herein, all allegations of the Amended Complaint are denied.
2. Defendants lack sufficient information to admit the allegations of paragraph 1 of the Amended Complaint. Therefore, the allegations are denied.
3. Defendants admit the allegations of paragraph 2 of the Amended Complaint.
4. Paragraph 3 of the Amended Complaint is a finding or conclusion properly within the province of the Court. To the extent that paragraph 3 contains allegations of

10 SEP 10 PM 2:48
JEREMY A. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

fact, Defendants lack sufficient information to admit the allegations; therefore, the allegations are denied.

5. In response to paragraph 4 of the Amended Complaint, Defendants incorporate all allegations and statements contained in this Answer by reference.
6. Defendants admit so much of paragraph 5 of the Amended Complaint as alleges that they own property on Oyster Street, Bluffton, South Carolina. Defendants lack sufficient information to admit the allegation that Plaintiffs own adjacent property; therefore, any such allegation is denied. Defendants deny any other allegations of paragraph 5.
7. Answering paragraph 6 of the Amended Complaint, Defendants crave reference to the documents recorded in the office of the Register of Deeds for Beaufort County, South Carolina. Defendants admit that they own the properties shown as Lots 1, 2, 3, and the southern half of Lot 4 on a plat or survey of Brighton Beach Subdivision made by James C. Covington dated January 2, 1926 and recorded in the Office of the Register of Deeds for Beaufort County. Defendants lack sufficient information to admit any other allegations of paragraph 6; therefore, any such allegations are denied.
8. Answering paragraph 7 of the Amended Complaint, Defendants crave reference to the documents recorded in the office of the Register of Deeds for Beaufort County, South Carolina. Upon information and belief, Fred Lightsey died testate and left his property to his two sons, William Norris Lightsey and E. Oswald Lightsey. Defendants lack sufficient information to admit any other allegations of paragraph 7; therefore, any such allegations are denied.
9. Defendants lack sufficient information to admit the allegations of paragraph 8 of the Amended Complaint; therefore, the allegations are denied.
10. Defendants lack sufficient information to admit the allegations of paragraph 9 of the Amended Complaint; therefore, the allegations are denied.
11. Defendants lack sufficient information to admit the allegations of paragraph 10 of the Amended Complaint; therefore, the allegations are denied.
12. Defendants lack sufficient information to admit the allegations of paragraph 11 of the Amended Complaint; therefore, the allegations are denied.
13. Defendants admit so much of paragraph 12 of the Amended Complaint as alleges that there is a parcel of land across Oyster Street that is dedicated to the common

use and benefit of present and future owners of lots in Brighton Beach subdivision upon the terms and conditions set forth in that certain Declaration of Trust and Covenant of Thomas O. Lawton and C. E. Ulmer dated August 31, 1931 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on October 25, 1939 in BK 54 PG 227. Defendants lack sufficient information to admit any other allegations of paragraph 12 of the Amended Complaint; therefore, any such allegations are denied.

14. Defendants lack sufficient information to admit any allegations of paragraph 13 of the Amended Complaint; therefore, any such allegations are denied.

15. Defendants lack sufficient information to admit any allegations of paragraph 14 of the Amended Complaint; therefore, any such allegations are denied.

16. Defendants lack sufficient information to admit any allegations of paragraph 15 of the Amended Complaint; therefore, any such allegations are denied.

17. Defendants lack sufficient information to admit any allegations of paragraph 16 of the Amended Complaint; therefore, any such allegations are denied.

18. Defendants lack sufficient information to admit any allegations of paragraph 17 of the Amended Complaint; therefore, any such allegations are denied.

19. Defendants lack sufficient information to admit any allegations of paragraph 18 of the Amended Complaint; therefore, any such allegations are denied.

20. Defendants admit so much of paragraph 19 of the Amended Complaint as alleges that the Lightsey family constructed the currently existing pier and dock. Defendants lack sufficient information to admit any other allegations of paragraph 19; therefore, the allegations are denied.

21. Defendants admit so much of paragraph 20 of the Amended Complaint as alleges that the Lightsey family allowed members of the Cashman family to use the currently existing walkway until March 21, 2005. Any other allegations of paragraph 20 are denied.

22. Defendants deny the allegations of paragraph 21 of the Amended Complaint.

23. Defendants admit so much of paragraph 22 of the Amended Complaint as alleges that the Lightsey family used the current walkway and allowed the Cashman family to use the current walkway until March 21, 2005. Defendants lack sufficient information to admit any other allegations of paragraph 22; therefore, the allegations are denied.

24. Defendants lack sufficient information to admit any allegations of paragraph 23 of the Amended Complaint; therefore, any such allegations are denied.
25. Defendants admit so much of paragraph 24 of the Amended Complaint as alleges that a dock used by members of the Cashman family was damaged or not maintained by the Cashmans and was lost sometime prior to November 2004. Defendants lack sufficient information to admit any other allegations of paragraph 24; therefore, the allegations are denied.
26. Defendants admit so much of paragraph 25 of the Amended Complaint as alleges that the Lightsey family placed a lock on the gate sometime between August 2004 and February 2005. Defendants lack sufficient information to admit any other allegations of paragraph 25; therefore, the allegations are denied.
27. Defendants admit so much of paragraph 26 of the Amended Complaint as alleges that in March 2005, the Lightsey family notified the Plaintiffs that they no longer had permission to use the walkway and pier. Defendants lack sufficient information to admit any other allegations of paragraph 26; therefore, the allegations are denied.
28. Defendants lack sufficient information to admit any allegations of paragraph 27 of the Amended Complaint; therefore, any such allegations are denied.
29. Defendants deny the allegations of paragraph 28 of the Amended Complaint.
30. Defendants admit the allegations of paragraph 29 of the Amended Complaint.
31. In response to paragraph 30 of the Amended Complaint, Defendants incorporate all allegations and statements contained in this Answer by reference.
32. The allegations of paragraph 31 of the Amended Complaint are denied.
33. In response to paragraph 32 of the Amended Complaint, Defendants incorporate all allegations and statements contained in this Answer by reference.
34. Defendants lack sufficient information to admit the allegations of paragraph 33 of the Amended Complaint; therefore, the allegations are denied.
35. Defendants deny the allegations of paragraph 34 of the Amended Complaint.
36. Defendants admit so much of paragraph 35 of the Amended Complaint as alleges that prior to March 2005, members of the Cashman family were allowed to use the walkway. All other allegations of paragraph 35 are denied.

37. Defendants admit so much of paragraph 36 of the Amended Complaint as alleges that prior to March 2005, members of the Cashman family were allowed to use the dock. All other allegations of paragraph 36 are denied.
38. Defendants lack sufficient information to admit the allegations of paragraph 37 of the Amended Complaint; therefore, the allegations are denied.
39. Defendants deny the allegations of paragraph 38 of the Amended Complaint.
40. Defendants deny the allegations of paragraph 39 of the Amended Complaint.
41. In response to paragraph 40 of the Amended Complaint, Defendants incorporate all allegations and statements contained in this Answer by reference.
42. Defendants deny the allegations of paragraph 41 of the Amended Complaint.
43. Defendants lack sufficient information to admit the allegations of paragraph 42 of the Amended Complaint; therefore, the allegations are denied.
44. Defendants admit so much of paragraph 43 of the Amended Complaint as alleges that the Lightsey family has enjoyed and benefitted from the use of the dock and from maintenance performed by the Lightsey family. Any other allegations of paragraph 43 are denied.
45. Defendants deny the allegations of paragraph 44 of the Amended Complaint.
46. Defendants deny the allegations of paragraph 45 of the Amended Complaint.
47. Defendants deny the allegations of paragraph 46 of the Amended Complaint.
48. In response to paragraph 47 of the Amended Complaint, Defendants incorporate all allegations and statements contained in this Answer by reference.
49. Defendants deny the allegations of paragraph 48 of the Amended Complaint.
50. Defendants deny the allegations of paragraph 49 of the Amended Complaint.
51. Defendants deny the allegations of paragraph 50 of the Amended Complaint.
52. In response to paragraph 51 of the Amended Complaint, Defendants incorporate all allegations and statements contained in this Answer by reference.

53. Defendants admit so much of paragraph 52 of the Amended Complaint as alleges that until the dock located on the east side of the pier head was destroyed and lost, Plaintiffs were allowed to use the walkway, pier head, and the dock located on the east side of the pier head. Defendants lack sufficient information to admit any other allegations of paragraph 52; therefore, the allegations are denied.
54. Defendants deny the allegations of paragraph 53 of the Amended Complaint.
55. Defendants admit so much of paragraph 54 of the Amended Complaint as alleges that the Cashman family was permitted to use the floating dock located to the east of the pier head until it was destroyed and lost. Defendants lack sufficient information to admit any other allegations of paragraph 54; therefore, the allegations are denied.

FOR A SECOND DEFENSE

56. Defendants incorporate all allegations and statements contained in this Answer by reference.
57. Plaintiffs' Second Cause of Action fails to allege facts sufficient to constitute a cause of action for a prescriptive easement because Plaintiffs' use was not continuous and uninterrupted for twenty years prior to the commencement of this action.

FOR A THIRD DEFENSE

58. Defendants incorporate all allegations and statements contained in this Answer by reference.
59. Plaintiffs' Third Cause of Action fails to allege facts sufficient to constitute a cause of action for resulting or constructive trust because it fails to allege that Defendants have acquired property that does not equitably belong to them or that has been acquired through breach of trust or violation of fiduciary duty.

FOR A FOURTH DEFENSE

60. Defendants incorporate all allegations and statements contained in this Answer by reference.
61. Plaintiffs' Fourth Cause of Action fails to allege facts sufficient to warrant injunctive relief because it fails to allege that Plaintiffs are suffering irreparable harm and because Plaintiffs are not without a remedy at law.

FOR A FIFTH DEFENSE

62. Defendants incorporate all allegations and statements contained in this Answer by reference.
63. Plaintiffs' Fifth Cause of Action fails to allege facts sufficient to constitute a cause of action for adverse possession because there is no allegation that Plaintiffs were in actual, open, notorious, hostile, continuous and exclusive possession of the walkway, pier head, or floating dock for ten years prior to the commencement of this action.

FOR A SIXTH DEFENSE

64. Defendants incorporate all allegations and statements contained in this Answer by reference.
65. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, and laches.

FOR A SEVENTH DEFENSE

66. Defendants incorporate all allegations and statements contained in this Answer by reference.
67. Plaintiffs' claims are barred by the applicable statute of limitations.

FOR AN EIGHTH DEFENSE

68. Defendants have paid taxes and insurance on the dock and maintained the pier, walkway, gate, pier head, gazebo and the west ramp and floating dock without contribution from the Plaintiffs.

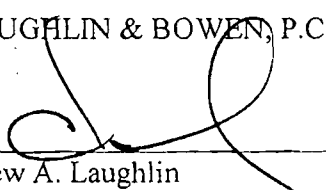
FOR A NINTH DEFENSE

69. The preceding paragraphs of this Answer are incorporated here by reference.
70. Enforcement of any alleged agreement purporting to grant the Plaintiffs an interest in the subject pier and pier head is barred by the statute of frauds, §32-3-10, Code of Laws of South Carolina.

[Intentionally Left Blank]

WHEREFORE, Defendants pray that Plaintiffs' Complaint be dismissed, with prejudice, that costs be assessed against the Plaintiffs, and for such other and further relief as may be appropriate.

LAUGHLIN & BOWEN, P.C.

By: 

Drew A. Laughlin
SC Bar No. 3141
Attorneys for Defendants

P.O. Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700
(843) 689-9300 (fax)
drew.laughlin@laughlinandbowen.com

September 8, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2009-CP-07-2573
CASHMAN PROPERTIES, LLC,	)	
Plaintiff,	)	
vs.	)	
WNL PROPERTIES, LLC, E. OSWALD	)	NOTICE OF MOTION AND MOTION
LIGHTSEY TRUST f/b/o LOUISE	)	TO RECONSIDER OR IN THE
LIGHTSEY BAUGHMAN, THE TRUST	)	ALTERNATIVE ALTER JUDGMENT
UNDER WILL OF E. OSWALD	)	ON BEHALF OF PLAINTIFF
LIGHTSEY DATED AUGUST 8, 1958,	)	
AND CODICIL DATED MARCH 23,	)	
1976, FOR THE BENEFIT OF LILLIAN	)	
LIGHTSEY DRAWDY, AND THE	)	
TRUST UNDER WILL OF E. OSWALD	)	
LIGHTSEY FOR THE BENEFIT OF	)	
CLAUDIA LIGHTSEY WARE,	)	
Defendants.	)	

12 JAN -5 PM 3:27
CLERK OF COURT
S.C.

TO: MARK S. BERGLIND, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

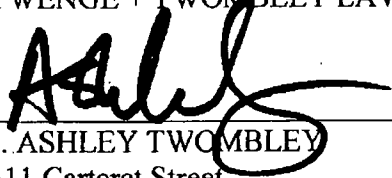
YOU WILL PLEASE TAKE NOTICE that Defendants by and through their undersigned attorneys, hereby move The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge for Beaufort County, for an Order pursuant to Rule 59(b), SCRCP, requesting that he reconsider his Order of December 19, 2011 finding in favor of Plaintiff or in the alternative, requesting that he amend his findings pursuant to Rule 52(b), SCRCP.

This motion is made pursuant to Rule 59(e) and 52(b) of the South Carolina Rules of Civil Procedure. This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings heretofore

filed, and any and all affidavits, memorandums and supporting material which may be served on or before the date of service hereon.

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorney for Defendants

Beaufort, South Carolina

January 3, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-07-2573

CASHMAN PROPERTIES, LLC,

Plaintiff,

vs.

WNL PROPERTIES, LLC, E. OSWALD
LIGHTSEY TRUST f/b/o LOUISE
LIGHTSEY BAUGHMAN, THE TRUST
UNDER WILL OF E. OSWALD
LIGHTSEY DATED AUGUST 8, 1958,
AND CODICIL DATED MARCH 23,
1976, FOR THE BENEFIT OF LILLIAN
LIGHTSEY DRAWDY, AND THE
TRUST UNDER WILL OF E. OSWALD
LIGHTSEY FOR THE BENEFIT OF
CLAUDIA LIGHTSEY WARE,

Defendants.

**SUPPLEMENT TO MOTION TO
RECONSIDER OR IN THE
ALTERNATIVE ALTER JUDGMENT
ON BEHALF OF PLAINTIFF**

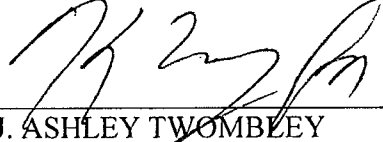
TO: MARK S. BERGLIND, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendants by and through their undersigned attorneys; hereby supplement their motion requesting that The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge for Beaufort County, for an Order pursuant to Rule 59(b), SCRPC, reconsider his Order of December 19, 2011 by requesting that he also reconsider his order of July 10, 2012 finding in favor of Plaintiff re costs, or in the alternative, requesting that he amend his findings pursuant to Rule 52(b), SCRPC. Defendants have yet to receive "written notice" of the order pursuant to Rule 5(a), SCRPC and Rule 59(b); however, Defendants are going ahead and filing this motion out of an abundance of caution.

This motion is made pursuant to Rule 59(e) and 52(b) of the South Carolina Rules of Civil Procedure. This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings heretofore filed, and any and all affidavits, memorandums and supporting material which may be served on or before the date of service hereon.

TWENG + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorney for Defendants

Beaufort, South Carolina

August 1, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-2573

Cashman Properties, LLC

Plaintiff,

v.

WNL Properties, LLC; E. Oswald Lightsey
Trust f/b/o Louise Lightsey Baughman; the
Trust Under Will of E. Oswald Lightsey
Dated August 8, 1958, and Codicil Dated
March 23, 1976, for the Benefit of Lillian
Lightsey Drawdy; and the Trust Under
Will of E. Oswald Lightsey for the Benefit
of Claudia Lightsey Ware,

Defendants.

**Memorandum of Law in Opposition
to Defendants' Motions to Reconsider**

2012 AUG 15 PM 1:14
CLERK OF COURT
SOUTH CAROLINA

Now Comes the Plaintiff, through undersigned counsel, and presents the following

Memorandum of Law in Opposition to Defendants' Motions to Reconsider:

The Defendants' Motions do not state the basis for which the Defendants wish the Court to reconsider and/or alter its Declaratory Judgment dated December 22, 2011 and Order on Costs dated July 10, 2012, so the Plaintiff does not know on what basis or what issues the Defendants wish the Court to alter or reconsider its decisions. In any event, and in an effort to assist the Court, the following is the applicable law at issue and the relevant facts that support the elements therein, and thus support the Court's Orders.

1. The Court correctly issued a Declaratory Judgment that the Plaintiff and Defendants are co-owners as tenants in common of the entire pier and pierhead.

The Uniform Declaratory Judgment Act, S.C. Code 15-53-20 reads:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

The Act goes on to read in S.C. Section 15-53-130:

This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.

Based on the conduct of the parties for close to eighty (80) years, the Court was correct in issuing a declaratory judgment that the Parties are joint owners of the pier.

Upon information and belief, the Defendants contend that the Court cannot issue a Declaratory Judgment without first finding a prescriptive easement or a resulting trust. The Defendants have provided no law in support. The statute is clear that the Court has the ability to "declare rights, status and other legal relations whether or not further relief is or could be claimed." This is exactly what the Court has done in this case with the issuance of the Declaratory Judgment. *right that they have a prescriptive easement*
right that they proved adverse possession.

Even if the Defendants were correct in their assertion that the Court must find a prescriptive right prior to issuance of a Declaratory Judgment, the Court did just that in the Declaratory Judgment. The Court made the following conclusions of law:

"4. Based on the totality of the circumstances, the Plaintiff demonstrated by **clear and convincing evidence that the Cashmans claimed a right to the aforementioned docks for approximately eighty (80) years.**

5. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence a substantial belief that Cashmans had the right to use the aforementioned docks to access the River and **that their use and enjoyment continued uninterrupted for at least eighty (80) years."**

Declaratory Judgment, pg. 6, December 22, 2011 (emphasis added). The Court concluded as a matter of law that the elements creating a prescriptive right to the entire pier and pierhead existed.

2. The Plaintiff satisfied by clear and convincing evidence a prescriptive easement over the pier and pierhead.

Upon information and belief, the Defendants contend that the Plaintiff has failed to meet its burden of proof relating to its cause of action for a prescriptive easement.

“The following prerequisites must be met to establish a right by prescription: (1) There must be continued and uninterrupted use or enjoyment of the right for a period of 20 years. (2) The identity of the thing enjoyed must be proven. (3) The use must have been adverse or under a claim of right.” *Horry County v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 267 (1993)(citing *County of Darlington v. Perkins*, 269 S.C. 572, 239 S.E.2d 69 (1977), *Crystal Pines Homeowners Assoc. v. Phillips*, Ct. App. Op. No. 4832, May 4, 2011 (citing *Matthews v. Dennis*, 365 S.C. 245, 249, 616 S.E.2d 437, 439 (Ct. Ap. 2005).

As quoted above, the Court found that these elements were satisfied by clear and convincing evidence.

a. There must be continued and uninterrupted use or enjoyment of the right for a period of 20 years.

The testimony presented by Eugene K. Cashman, Jr., Bette Davis Cashman, Diane Reynolds and Norris Lightsey Laffite as well as the exhibits establish this element:

Eugene K. Cashman, Jr.:

He, his grandfather and father and the Cashman family used and enjoyed Dock 3 and the floating dock from the date it was constructed (1961-1962) until 2005. Tr. Tr. pgs 25-28.

He testified in depth, using photographs, their use of the prior docks dating back to the 1920s. Tr. Tr. pgs 28-37, Exhibit 66.

Mr. Cashman testified that when Dock 3 was completed the Cashman family constructed a floating dock, which they later obtained a permit for in the 1970s. Tr. Tr. pgs. 25-27, 89-90.

Mr. Cashman testified that the Cashman family provided lights, electricity dating back to the late 1970s or early 1980s, water dating back to the 1970s, maintenance and insurance to the pier. Tr. Tr. pgs. 34-38, 41, 45-46 see also letter from Chubb insurance admitted into evidence as Exhibit 59.

Bette Cashman Davis:

Ms. Davis testified regarding the history of the piers and the family's continued use and enjoyment of the three piers. Tr. Tr. pg. 113-117.

She testified that from 1961 until 2004 they spent Christmas, Thanksgiving and Summer vacations at the Oyster Street house and used the pier. Tr. Tr. pg. 114.

She testified that the Cashmans replaced two raps and 2-3 floating docks since 1961. Tr. Tr. pg. 117.

Diane Reynolds:

Ms. Reynolds testified that she began using the dock with the permission of the Cashman, Lightsey and Carter family since 1975 and that she observed the Cashman family using the dock since that time. Tr. Tr. 104-107.

Norris Lightsey Laffite

Mr. Laffite acknowledges that while he was visiting the property between 1965 -1972 and 1983-1998 the Cashman family used the Dock frequently. He testified that he saw

them because they were neighbors. He stated that they were often out in the river. (Ex. 60, p. 23, line 22- p. 24, line 9).

Mr. Laffitte acknowledges that the Cashman Family provided electricity to the Dock from at least 1983. (Ex. 60, p. 44, line 15-24).

Exhibits:

The documents and pictures indicate that the Cashman family used the dock dating back to the early 1920s. This is evident in the correspondence from the Corps of Engineers and letters concerning the replacing of the pier and floating dock (Ex. 15-28). The repair documents (Ex. 64) show that the Cashman family continued to use maintain the pier. The meeting minutes from October 27, 2004 refer to the Cashman floating dock (Ex. 41). The meeting minutes from March 16, 2005 states for the first time the Lightsey family wanted exclusive use (44). The agenda for the meeting states that Norris mailed him a key and questioned who owned the dock.

The Defendants may contend that because the transfer of the property from Eugene K. Cashman, Sr. to Eugene K. Cashman, Jr. and Betty Cashman Davis occurred in 1994 that the 20-year requirement is not satisfied. This does not conform to the law and the facts. "A party's use must meet all requirements throughout the 20-year period, and if tacking is used, "the use by the previous owners must also meet the requirements of a prescriptive easement." *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420, 424 (S.C.App. 1997). Eugene K. Cashman, Jr., Bette Davis Cashman, Diane Reynolds and Norris Lightsey Laffite as well as the exhibits establishes by clear and convincing evidence that the use of the previous owners, dating back to the 1920s, met the requirements of a prescriptive easement.

b. The identity of the thing enjoyed must be proven.

The Pier and floating dock have been identified. The Plaintiff does not believe this to be contested by the Defendants.

c. The use must have been adverse or under a claim of right.

Matthews v. Dennis, 365 S.C. 245, 616 S.E.2d 437 (S.C.App. 205) concerns a road. The Court held that "A party claiming a prescriptive easement under a claim of right must 'demonstrate a substantial belief that he had the right to use the parcel or road based upon the totality of the circumstances surrounding the case.'" Id at 616 S.E.2d at 440 (quoting *Hartley v. John Wesley United Methodist Church*, 355 S.C. 145, 151, 584 S.E.2d 386, 389 (Ct.App. 2003). The Court went on to hold that "the record supports the special referee's finding that 'Plaintiffs have established that theirs has always been a belief that they have had a right to use of the subject roadway for ingress and egress, and had openly done so for well in excess of twenty years.'"

Crystal Pines presents facts similar to the facts at hand. In *Crystal Pines* the dispute revolved around a boat ramp. The ramp was constructed in 1980 by Phillips' predecessor. The testimony revealed that some of the homeowners in the area used the ramp from 1980 to 2004 when Phillips locked the gate. The homeowners brought suit alleging a prescriptive easement. The Court found that a prescriptive easement did exist because the ramp was used without permission, the plat listed the area as common property and the houses were advertised as having deep water access.

Again, the testimony presented by Eugene K. Cashman, Jr., Bette Davis Cashman, Diane Reynolds and Norris Lightsey Laffite as well as the exhibits establishes this element:

Eugene K. Cashman, Jr.:

Mr. Cashman testified in his deposition and at trial that on one occasion he called the Sheriff's office to report vandalism and that he placed no trespassing signs on the dock.
Tr. Tr. pg. 27.

That he never asked permission to use the pier, pierhead or floating dock. Tr. Tr. pg. 27.

The use was not interrupted until February of 2005. Tr. Tr. pg. 44.

See also the Cashman testimony listed under (a) above which shows by the use, maintenance, permitting and construction of a floating dock that the Plaintiff claimed a right to the pier, pierhead and floating dock.

Bette Cashman Davis:

Ms. Davis testified that the Cashman's, with the Lightseys, owned the pier and floating dock. Tr. Tr. pgs. 116-117.

See also the Davis testimony listed under (a) above which shows by the use, maintenance, permitting and construction of a floating dock that the Plaintiff claimed a right to the pier, pierhead and floating dock.

Diane Reynolds:

Ms. Reynolds testified that she used the dock with the permission of the Cashman, Carter and Lightsey and that all three families told her they owned it together. Tr. Tr. pg. 107, see also letter submitted as Ex. 38.

Norris Lightsey Laffite:

Mr. Laffitte acknowledges that he cannot produce a clean title for the Dock and that he cannot produce a clean title for the property from which the Dock is attached because it is common property. (Ex. 60, p. 42, line 13- p. 43, line 23).

Mr. Laffitte acknowledged that the Cashman Family did not ask permission to use Dock 3 or the floating dock. (Ex. 60, p. 39, lines 18-24).

The east floating dock is known as the Cashman floating dock. (Ex. 60, p.40, line 6-15).

Mr. Laffitte was asked who owned the floating dock on the east side. His reply is the Cashmans. (Ex. 60, p. 53, lines 10-20).

Exhibits:

The Exhibits are numerous, but they show a story dating back to the 1930s whereby the Cashmans were intimately involved with the pier, pierhead and eventually in 1961 the floating dock. The exhibits show that Cashmans claimed a right to the pier, pierhead and floating dock. Even the Defendants in their meeting minutes refer to the floating dock as the "Cashman dock." (Exhibit 41)

Considering the totality of the circumstances, the elements of a prescriptive easement have been satisfied by clear and convincing evidence. As stated above, the Court, in its Declaratory Judgment, found that as a matter of law:

"4. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence that the Cashmans claimed a right to the aforementioned docks for approximately eighty (80) years.

5. Based on the totality of the circumstances, the Plaintiff demonstrated by clear and convincing evidence a substantial belief that Cashmans had the right to use the aforementioned docks to access the River and that their use and enjoyment continued uninterrupted for at least eighty (80) years."

3. Resulting Trust

no resulting trust found - no. 89 (c) motion pending
- departed by law

"A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another." *Donnan v. Mariner*, 339 S.C. 621, 529 S.E.2d 754, 758 (Ct.App. 2000).

"Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another. The general rule is that when real estate is conveyed to one person and the consideration paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself, and accordingly a resulting trust is raised in his behalf. The presumption, however, may not be in accord with the truth. It may be rebutted and

the actual intention shown by parol evidence.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248-49, 489 S.E.2d 472, 475 (1997).

South Carolina law is clear that a resulting trust arises, if at all, only at the time of the purchase of the land or good at issue. *Larisey v. Larisey*, 77 S.E. 129, 130 (S.C. 1913) (citing *Surasky v. Weintraub*, 73 S.E. 1029, 1031 (S.C. 1912)). A resulting trust “cannot arise from subsequent transactions, change of circumstances or intention.” *Id.* “Such a trust must arise, if at all, at the time the purchase is made. The funds must then be advanced and invested. It cannot be made by after advances, or funds subsequently furnished. It does not arise upon subsequent payments, under a contract by another to purchase.” *Surasky v. Weintraub*, 73 S.E. 1029, 1031-32 (1912) (citing *Olcott v. Bynum*, 17 Wall. 59, 21 L.Ed. 570 (1872)).

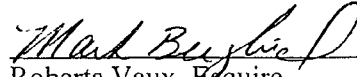
The Defendants only argument is that because this is not dealing with title real estate a result trust cannot arise. They provide no case law to support this contention. According to *Larisey*, a resulting trust arises, if at all, only at the time of the purchase of the **land or good** at issue. *Larisey*, 77 S.E. 129, 130 (1913).

The Cashmans built a floating dock in 1961 or 1962. This, upon information and belief, is not in dispute. The Cashmans permitted, constructed and maintained the floating dock. Based on the testimony and exhibits (see specifically Ex. 15-29) the intent from day one was that the Cashmans owned the floating dock. The Defendants cannot now contend that they own it in order to sell the exclusive use of the dock. The Plaintiff is entitled to a resulting trust.

Conclusion

Based on the arguments herein and the testimony, exhibits and arguments present at the trial of this case the Plaintiff respectfully requests that the Court Deny the Defendant’s Motion to Alter or Reconsider its Declaratory Judgment and Order on Costs.

VAUX & MARSCHER, P.A.



Roberts Vaux, Esquire

James P. Scheider, Esquire
Mark S. Berglind, Esquire
Attorneys for the Plaintiffs
Post Office Box 769
Bluffton, South Carolina 29910
(843) 757-2888

August 15, 2012
Bluffton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	
Eugene Keeny Cashman,	)	CASE NO.: 2009-CP--07-02573
Jr., as Trustee of the	)	
Eugene Keeny Cashman,	)	
Jr. Revocable Trust, and	)	
Kathleen Gilmore Cashman,	)	
As Trustee of the	)	
Kathleen Gilmore	)	
Cashman Revocable Trust,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
E. Oswald Lightsey Trust,	)	
Wachovia Bank, N.A., as	)	
Trustee Under the Last	)	
Will and Testament of	)	
E. Oswald Lightsey, and	)	
Margaret L. McMillan	)	
Payne and Elizabeth	)	
L. McMaster, as Trustees	)	
Of the Residuary Trust	)	
Pursuant to Article VII	)	
Of the Last Will and	)	
Testament of W.	)	
Norris Lightsey,	)	
	)	
Defendants.	)	
	)	

Reference Hearing held before the Honorable
H. Marvin Dukes, III, Master in Equity and Special
Circuit Judge for Beaufort County in his chambers
at the Beaufort County Courthouse, 102 Ribaut
Road, Courtroom 3, Beaufort, South Carolina

commencing at approximately 9:30 a.m. on the 31st
day of October, 2011 and on the 1st day of
November, 2011.

APPEARANCES:

For the Plaintiffs: Mark Berling, Esquire
James Scheider, Esquire
Post Office Box 769
Bluffton, SC 29910

For the Defendants: Ashley Twombly, Esquire
311 Carteret St.
Beaufort, SC 29902

Reported by: Joanne B. McDonald, CVR

INDEX OF WITNESSES:

Eugene Kenny Cashman, Jr.

Direct Examination	17
Cross Examination	49

Diane Reynolds

Direct Examination	104
Cross Examination	108

Betty Cashman Davis

Direct Examination	111
Cross Examination	118

William McMaster

Direct Examination	167
Cross Examination	174

REPORTER'S INDEX TO EXHIBITS

All exhibits were provided to the Court in a Notebook originally numbered 1-68 and three were added during the trial or numbers 69, 70 and 71. All exhibits in the notebook were offered and received into evidence by Judge Dukes on Page 183 of this Transcript without objection.

COURT: Good morning, everyone. We are here in the case of Cashman v. Lightsey, et al., Civil Action Number 2009-CP-07-2973. We have discussed a few matters off the record and I believe are ready to begin. Do you want to make an opening statement or just call your first witness?

MR. BERGLIND: Brief opening statement Your Honor. I would have brought a bigger picture but I didn't know we were getting a courtroom. First, Mark Berglind for the Plaintiff. I am here with Jim Scheider, Gene Cashman, Jr., Kathy Cashman and Betty Cashman Davis. This case involves a dock dispute. The dock is located on the May River and I am not sure if you can see this, but I am going to mark on it and then I will hand it up to you if that is all right?

COURT: All right.

MR. BERGLIND: This is a dock dispute between the -- basically between the Cashman family and the Lightsey family. The Lightseys are the Defendants in this case. The dock is here -- is located right here. That is the pier. It abuts common property and this property in 1926 was designated by Thomas Lawton as park recreational property for the benefit of the Brighton Beach Subdivision. As you can see he designated a number of park areas on the May River and you can see these other docks that abut these park areas. The Cashman family owns this lot here as you can see there and also a lot to the left of it. It is on Oyster Street and located across the street from the pier. The Lightsey family owns the property on the corner. The Cashmans acquired this lot with a cottage on it in the 1930's. They acquired the lot adjacent to it in 1999 and the Lightseys acquired their lot back in the 1930's. As to this pier that is existing now, you probably can't see it from there,

but I will point it out to you. There are two floating docks on the pier though. This one here and as you can see there is no floating dock here but if you look closely you can see there are two pilings and you will learn through the testimony and evidence as to why there is no floating dock there. You will hear evidence today and tomorrow that this floating dock on the west side is known as the Lightsey floating dock. You will hear evidence today and tomorrow that this floating dock that was here on the east side was known as the Cashman dock. And if you would like -- and Your Honor the reason why I brought up that the Cashman family and the Lightsey family acquired their properties in the 1930's is because the relationship between the Lightseys and the Cashmans began back in the 1930's and even before then. You will hear evidence and testimony that Mr. J. O. Cashman back in the 1930's constructed a pier in the same vicinity as the pier that I circled for you. That pier was destroyed sometime late '30's early '40's and in 1941

J. O. Cashman acquired a permit to construct a second pier and that was built sometime between 1941 and 1946 in that same vicinity. You will see exhibits and hear testimony that the Cashman family when they sold property at times they wrote in the deeds that other Brighton Beach homeowners were allowed to use that pier, Pier No. 2 as we call it. As to Pier No. 1 and Pier No. 2 this was something that was used by the Lightsey and the Cashman family.

COURT: This one is 2?

MR. BERGLIND: That one is actually 3. We will get to that one.

COURT: All right, sorry.

MR. BERGLIND: It is a little confusing. Pier 1 and Pier 2 were used by the Cashman family and the Lightsey family and it was also used by a family called the Carter family. It was -- you will hear testimony and see evidence that it was maintained by the Lightsey family and the Carters. In the 1960's or actually the late 50's early 60's dock number 2, the second dock was destroyed.

I believe it was by a storm. At that time the Lightsey brothers - I believe it was a construction company - acquired a permit for -- there's evidence in the file that they acquired a permit to construct a third dock. Now there is no permit in the evidence. We have not been able to find one and the Lightseys have not been able to actually produce a permit for dock number 3. But there is evidence from the Corp that there was a permit at some time. Now with dock number 3 which is the dock that is existing - - there now that you can see and is circled - -

COURT: Just so I am clear and trying to follow here, were docks number 1, 2 and 3 in the same place?

MR. BERGLIND: They were in the same vicinity.

COURT: But 2 replaced 1 and 3 replaced -- or maybe this is an issue but okay.

MR. BERGLIND: You will hear evidence from my witnesses and from the evidence that

we have provided in this notebook that it was in the same area as the first two docks.

COURT: Okay. So that is an issue.

MR. BERGLIND: I don't know if that's an issue or not but in 1961-1962 the Lightsey brothers constructed a third dock. Now with that dock came the floating docks and you will see in 1961 the application for the third pier the Lightsey brothers did not provide for a floating dock on either side. However, you will hear testimony that floating docks were constructed. One by the Cashmans and one by the Lightseys. The Cashman's on the east side; the Lightsey's on the west side. Pier 3 and the two floating docks were used -- you will hear evidence and testimony that was maintained by the Cashman and the Lightsey families and this was starting in 1961 or 1962 when the dock was constructed. In 1975-1977 something happened to the Cashman floating dock and they needed to replace that floating dock. You will see evidence where they sent in correspondence to the Army Corp of Engineers to get a permit to

replace the floating dock on the east side. You will see letters from the Corp back to Mr. Cashman stating "We can't give you a permit to replace that floating dock because the 1941 permit that J. O. Cashman acquired and the 1961 permit that the Lightsey brothers acquired don't provide for floating docks." It is at that time that and you will see letters from Mr. Cashman to the Corp that he used the Lightsey brothers application to add a floating dock to the pier head. In 1977-1978 the Cashman family replaced that floating dock. Since then the Cashman family has also had to replace it on several occasions and they have had to maintain it and replace ramps and just do typical maintenance work that you would have to do on a deep water dock. They have done that up to 2004. In 2004 the Cashmans realized that they again had to replace the floating dock on the east side of the pier head. When they went to do this, they noticed there was a lock on the gate and they were told by the representative from the Lightsey family in

March of 2005 that they could no longer use that floating dock. They could no longer use the pier and that the key that had actually been mailed to them for the lock to the gate had to be returned. Based on this, we filed a Complaint asking for a declaratory judgment as to who has rights to this dock and the floating dock. The legal theories that we have filed are prescriptive easements, resulting trust and adverse possession. We have also asked for injunctive relief whereby the Lightseys will have to take down the lock or provide us with a key to that dock. Just a short note, docks 1 and 2 were constructed by the Cashman family. They had a construction business and they constructed docks 1 and 2. You will see evidence to that effect. Dock number 3 due to the Lightsey family construction company, they constructed pier number 3. It was the Cashman family that constructed the floating dock on the east and repaired it and continued to maintain it. You will hear evidence from our witnesses that they have insurance, providing water and

electricity, not only to the floating docks, but also to the pier itself. And that's all I have Your Honor unless you have any questions?

COURT: No questions now, thank you.

MR. TWOMBLEY: Your Honor, Ashley Twombley on behalf of what I have collectively referred to as the Lightsey family. There are a lot of things Mark talked about that we do contest and you are going to have to wait and see what the evidence will show you. But basically what this case boils down to is a case about no good deed going unpunished. The Lightsey family built this dock in 1961. They got a permit for it. They paid for every dime to build it. They have maintained it. You will see the evidence and see who spent what on the pier and the dock. They have excluded others from it and as a neighborly accommodation, they have allowed the Cashman family to use it, but the Cashman family in our opinion is seeking to go beyond the permission that was allowed to them or given

to them to use this dock and now they want an ownership interest in it and I think you will have to wait and see that the evidence about who used whose dock. And I think we are going to end up taking the position that none of that stuff is relevant what happened in the '30's and '40's and '50's, but be that as it may, you will have to see the evidence as to who maintained what. One thing I do think is worth noting now is to focus on the Causes of Action that the Cashmans have raised.

Number one I think that the request for the injunction is really no longer valid. You know if the Court finds in their favor through either adverse possession or through a prescriptive easement, there would be no need for the injunction and of course they have adequate remedies at law through those two claims and so there would be no need to even go to the equitable claims. Declaratory judgment is the same thing. I don't think there is any way the Court can allow or find that the Cashmans have any interest in this dock unless it -- those would have to flow

through the causes of action for prescriptive easement and adverse possession. Resulting trust deals when property is titled in the wrong name. Of course there is no issue here about any dock or property that was titled and so resulting trust is really not applicable. So in other words, there is really two causes of action. There is the prescriptive easement cause of action and an adverse possession cause of action. The sum and substance of it is Your Honor that when someone is allowing you to use their property permissibly, permissive use can never ripen into a prescriptive use or a hostile use. The case is crystal clear in South Carolina and in every other Court in every other jurisdiction that has ever looked at it. Every major treatise that's ever talked about property rights, easements, how you acquire them, is all universally accepted that a permissive use of a property can never ripen into a prescriptive use or adverse possession and we believe the evidence will show that the Cashmans' use of this dock was

permissibly throughout the history of the dock's existence. That's all we have Your Honor, thanks.

COURT: Have the parties attempted to mediate this?

MR. BERGLIND: Yes, Your Honor, we attempted to mediate this a year ago and it was unsuccessful.

COURT: All right. And the ownership changed, it is really just corporate only. I mean that's not really -- that wouldn't have changed anything that would create a better result in mediation, is that correct?

MR. BERGLIND: Yes, sir. The parties are --

COURT: Well call your first witness, Mr. Berglind.

MR. BERGLIND: Your Honor, the Plaintiff calls Gene Cashman.

EUGENE CASHMAN, called as a witness, after being duly sworn, testified as follows:

BY MR. BERGLIND:

Q. Please state your full name.

A. Eugene Keeney Cashman, Jr.

Q. What is your address?

A. 2976 Gardens Way, Memphis, Tennessee. Zip code 38111.

Q. Tell me Mr. Cashman, what do you do for a living?

A. I am President of Yerman Sign Institute formerly a holding company for Malone Children's Medical Center and Allied Businesses.

Q. I hate to ask this question but I have to ask it just for freedom of reference for the Judge and for the record, what is your birthdate?

A. 11/12/41.

Q. Can you explain to the Judge what Cashman Properties, LLC is?

A. It is a dwelling that is at address 35 Orchard Street that was originally built by my grandfather subsequently passed on to my father and in turn to my sister and myself and for estate planning purposes my portion of that property was designated to my wife in a revocable trust and in turn both my sister and my wife put the property into an LLC.

Q. Mr. Cashman if you could explain to Judge Dukes your knowledge of the pier and the property and the history of it.

A. The origin of the Brighton Beach area of which the three piers that had been previously mentioned, were perhaps

dated before actual construction. My grandfather J. O. Cashman along with his neighbor, Dr. Keo Waters constructed what we have referred to as dock number 1.

MR. TWOMBLEY: Your Honor, I am going to object to Mr. Cashman giving any testimony about what may or may not have happened in the past unless it is based on his personal knowledge and not on other statements that have been made to him by others. This came up in his deposition and I believe that the vast majority of what he is about to testify about was based on hearsay statements that have been made to him and so I don't know how you want to handle that. I don't know if you want me to object each time without the basis of the information that he has that he is testifying about or if you want to just give him a general instruction not to testify about anything unless it is based on his actual knowledge. But we think he shouldn't be allowed to testify about what other people have said or what other people have told him.

COURT: Mr. Berglind?

MR. BERGLIND: Your Honor if it is hearsay any statements made to him it comes under the

exception either as to family history or ownership of property which are if statements regarding those then they are an exception to the hearsay rule.

COURT: I am going to allow it, I mean, subject to your objection, which is noted. Clarify something for me and I think you both might have said the same thing in opening, the real estate that this dock is affixed to is not owned by either party, is that right? It is for a common area in the neighborhood, is that right or is that an issue also?

MR. BERGLIND: Your Honor it is owned - I don't believe it is an issue. It is owned -- there is a covenant stand -- covenant back in 1926 authored by or signed by Thomas Lawton who designated that property for the common use of the Brighton Beach subdivision property owners and we do not contend that we own that property. I don't know if the Defendants do or not but I don't believe they do either.

COURT: Do the Defendants contend they own the real estate?

MR. TWOMBLEY: We certainly don't contend that the legal title -- you know if you went and looked at the register of deeds it is owned by the Defendants, but we certainly contend that we have been using it for many, many years and so whether or not we have an ownership interest through some of the same causes of action that has been raised by the Plaintiffs, I don't think that is at issue here in this case and I think I know what you are thinking which is that if the Brighton Beach subdivision which really there isn't a subdivision, if they owned this property they should be a party and I think that would prohibit their cause of action for adverse possession but it wouldn't prohibit their cause of action for a prescriptive easement. There is case law that says that a prescriptive easement does not deal with title to property and that it just deals with the ability to use the property and so my opinion is that with respect to that cause of action we could proceed the way the case is currently framed.

COURT: All right. Anyway back to the objection, I will allow you to continue subject to

his objection and again it will be an overall objection, but feel free to make individual objections as they pertain. Go ahead.

BY MR. BERGLIND:

Q. Mr. Cashman where we left off, I believe you were talking about pier number 1. Can you continue from there?

A. Pier 1 was constructed as I said by my grandfather and Dr. T. R. Waters. I do have in that notebook that you have in front of you photographs that would depict family members who were actually on pier number 1 showing its existence which would be those parties of origin for the construction of and use of dock number 1. Dock number 2 as been referred to, was constructed in the -- I was knowledgeable of that dock from earliest childhood memories through its demise and that dock was constructed by my grandfather and by the Corp of Engineers to do same. Both of those docks in their origin and use spanning that period of time were participated in by the Lightsey family. They provided materials for construction. That is a matter of -- again verbal passage from my grandfather and my father. They also provided by what was then dock number 2 for the Lightseys a floating dock at the end of pier number 2. Number 3 its origin in the early 60's was constructed by the Lightsey family and was to be participated and financially by my

grandfather but the Lightsey family did not accept payment because they acknowledged the previous year's history in pier number 1 and pier number 2 as having perhaps --

MR. TWOMBLEY: I understand your ruling. I just want to make sure I protect the record and I -- you know he has already said that all these things came from verbal passages from other people telling him these things and that was -- you know he is testifying about an alleged conversation that took place that he was obviously not a part of. I understand that all of those things are hearsay; that they are not admissible. They are in violation of the best evidence rule and a number of other reasons and so

COURT: What are your thoughts on that Mr. Berglind and maybe he was a party to this conversation.

MR. BERGLIND: Same argument. Well were you a party to this conversation?

MR. CASHMAN: No, I was not a party to the conversation where there was a discussion to pay the Lightsey family.

MR. TWOMBLEY: Again, Your Honor, if he wasn't a part of it, how does he know what it

was about? In my opinion it is clearly inadmissible.

MR. BERGLIND: Your Honor, in my opinion the same argument as before. There is evidence regarding family history and ownership to property. I think it is exceptions to the hearsay rule.

MR. TWOMBLEY: And specifically which exceptions do you reference?

MR. BERGLIND: The family records - that's records and documents effecting the interest in properties I guess is documents.

MR. TWOMBLEY: Your Honor it is exceptions 15 and 13 to 801.3. I am sorry, 803.1, I am sorry 803 and it is subsections 13 and 15. 13 deals with family records and 15 deals with statements and documents and he is not testifying about either, so --

MR. BERGLIND: Family records is 13, statements of fact concerning personal or family history contained in bibles, genealogies, charts, engravings, inscriptions on family portraits and engravings on urns, crypts or tombstones for the life and I

believe he is discussing this is of the life.

It is family history as to the document.

COURT: Well it is not an inscription or anything like that. I think I am going to sustain that objection. Go ahead please.

BY MR. BERGLIND:

Q. Mr. Cashman as to pier number 3, go ahead and explain your personal knowledge of the history of how it came about and the ownership of it without discussing what anybody told you regarding that.

A. The dock was built and the participation by the Lightseys, Carrs and Cashmans continued as it had on dock number 1 and dock number 2. That participation was obviously what you do when you own a dock in the water. You are crabbing, you are fishing, you are boating and you are swimming. The amenities that were on dock number 3 included the floating docks that were subsequently attached after construction and to my knowledge those were not permitted until the second floating dock which the Cashman family obtained a permit and the maintenance of the pier and the floating docks on the Cashman side were maintained by the Cashmans when storms or other matters were seemed to be needing repair. The Cashman family has actively for the entire period of time on almost a steady basis used that

dock number 3 and floating dock and maintained it. It has provided electricity to the pier and metered at the principal residence that we previously discussed as was water supply. And that's docks 1, 2 and 3, but 3 specifically is what I have personally participated in.

Q. As to pier number 3 when did you -- or when did the Cashman family construct the floating dock? The first floating dock?

A. The first floating dock was put on the east side on or about the time the original time that the original dock was constructed.

Q. Was that 1961?

A. It would have been in the early 60's. I was in college.

Q. As to pier number 3 or dock number 3 as we are referring to it, when did the Cashman family use that dock and floating dock?

A. Sustained all during that period of time, mother, father, sister, friends, my family. There has not been a summer. There has not been a major holiday or special event and sustained periods of time where my family was in the residence and using the dock. My grandfather used the dock.

Q. Who was known to own that pier?

A. It was always referred to as the Cashman, Carter, Lightsey.

MR. TWOMBLEY: Objection, Your Honor as to how other people may have referred to this dock -- hearsay.

COURT: Try to be more specific with the questions if you can.

BY MR. BERGLIND:

Q. Mr. Cashman, how did you refer to pier number 1 or pier number 3, I am sorry?

A. I referred it to as the Cashman, Carter, Lightsey dock.

Q. You discussed using the dock number 3 of friends and family. Did you ever ask permission from the Lightseys to use pier number 3?

A. No.

Q. Did you ever ask permission from the Lightseys to use the floating dock located on the east side of pier number 3?

A. No.

Q. Did you ever exclude others from pier number 3?

A. Actually no. But I did have one occasion where there was vandalism on our floating dock and I told the sheriff to file a report anticipating there may be damage sufficient to require a police report for insurance purposes and the law enforcement official arrived and advised me that he knew it

was vandalism by teenagers and knew the teenagers. They had a reputation in the Brighton Beach area. He cautioned about taking charges to them by virtue of their retaliation to the known party for bringing the charges and to my knowledge I never signed a formal complaint or police report but that would have been the only exception to the period of time that we are talking about for any use of the dock by anyone who was not supposed to be using it by permission that we had granted.

Q. Who used the floating dock located on the east of the pier head?

A. The Cashman family.

Q. Did the Lightsey family use that floating dock?

A. Not to my knowledge but it wasn't like it was restricted if they had needed it for boat tie-ups or you know swimming or other recreation.

MR. BERGLIND: Your Honor if I may approach?
There is a series of pictures that is Exhibit 66.
I am going to ask Mr. Cashman to identify for you.
He also has a copy.

COURT: I have got them as well.

MR. BERGLIND: I will ask him to take you through them.

A. On the upper left hand corner there's a picture of my father -

COURT: Hold on one second. You've got a duplicate set of everything in this notebook, is that right?

MR. TWOMBLEY: Yes, Your Honor.

MR. BERGLIND: You all need it?

COURT: No, I just wanted to make sure before we went through it.

MR. TWOMBLEY: And we don't object to the pictures coming in. That's why we have the notebook, but there are a series of notes that are made in some of the margins and some notes that set dates as to the various photographs and note again if Mr. Cashman has personal knowledge that can tie these various photographs to these dates that have been written on them, I think that obviously he ought to be allowed to testify about that. But if he can't do that, he can testify about the document, but I don't think he should be allowed to testify about when it was taken or the date that it was taken.

COURT: All right we will just take you through as we go. What is the -- where did he

photographs themselves? Are these just -- these are too precious to put in the record, don't blame you there but sometimes on the back of them they say -- the old ones say when they are taken, but -

MR. BERGLIND: Well Your Honor if we can go through them, I think Mr. Cashman can -- he knows these people in the photographs and I think he can testify as to the time periods based on their ages and things like that.

COURT: All right, let's just --

MR. BERGLIND: Also Your Honor, I submitted these to counsel and there was no objection to it at that point. This is the first time this has been raised as to writings on the pictures but I believe Mr. Cashman can clear that up.

COURT: All right, well let's just move ahead and see what we can do.

A. All these photographs came out of family albums and those albums are significant in number and they document as you would expect from an album time periods on or about the same period of time.

Q. Where are those photographs located now?

A. In Bluffton, South Carolina.

Q. And do you have --

A. The first photograph is my father as a teenager. Behind him is the dock number 1. To the right of that photograph our group shot. That is dock number 1. Those individuals are members celebrating the engagement party of my father and my mother. The photographs below are again dock number 1 with families and friends. Page number 2 is the -- I am in those photographs at approximately six months of age with my mother and that is dock number 2 in the background. The next page are --

Q. Let me just stop you real quick. On the second page it says, "Second dock 1941". Is that your handwriting?

A. That's my handwriting. That's because I took these out of a photo album and I just identified them as such. The same thing with the next page. That's my mother and myself getting in a boat. That is my father on the far bottom right hand. The next page again more photographs of myself with my father. The third shot is where I in the background is what is referred to as the Lightsey's spare dock or Lightsey beach dock. In that period of time in front of that dock was a sandy beach. That's not the case anymore. Those photographs are again of my family in Bluffton and adjacent to that in the background dock number 2.

COURT: Now just so I am -- clarify -- did dock number 2 and dock number 1 co--exist or did dock number 2 replace dock number 1?

A. Dock number 2 replaced dock number 1. The next page is more of the same with photographs of myself standing in the first picture. That's the Lightsey home in the background and that was a Lightsey dock that was built to give access to the sandy beach area. The dock was also the first dock that you could walk down steps to the beach and to the water and it was during that period of time before floating docks that you can see in the foreground docks were up and down for access based on the tide and every six hours it would be on the mud, six hours later you would be on the high tide and you could walk out to your boat. The next photograph are people who are again using dock number 2 or family participation. That would be in the time period of the 50's. The next photograph is representative of same family participation and use. On the very bottom there is a photograph of a family and friends and again in the background you can see the Lightsey spare dock. Same thing for the next page. The page that says in 1962 you will see that there is pier number 2 and there is also the Lightsey pier that we refer to it, but you will see on the bottom that there is a floating dock on pier number 2 and the

Lightseys participated in the placement of that floating dock for access and use and I remember using that floating dock as well as maintaining that dock.

MR. TWOMBLEY: Again Your Honor --

COURT: Hold on there's an objection.

MR. TWOMBLEY: I would again testify about who participated in what as far as financially or any other way unless he has personal knowledge of it. If he's got personal knowledge about knowing that the Lightseys participated in one of the floating docks, I think he would be all right to testify about that, otherwise it would be hearsay.

COURT: All right just try to stick to what you know.

MR. CASHMAN: Can I ask you a question or is that my attorney's job?

COURT: That's your attorney's job, I am sorry.

MR. CASHMAN: Well the reason I am asking it is --

MR. TWOMBLEY: Your Honor, I would object to the witness asking the Court any questions.

COURT: Mr. Cashman just --

A. The floating dock at the end is a representation of a dock that was placed there for convenience and use precluding the necessity to walk out to muddy areas to get your boat and the Lightsey brothers enjoyed that privilege. The docks -- photographs that begin with the color photos, my father, my nephew and my sister and it is recognized on the very bottom right hand corner of that photograph where they are on the east side you will see a board protecting the open area is where a dock had been but because of a storm outage it had disappeared and that dock is the one that was to be replaced by the Corp of Engineer material.

COURT: You are in the color photos now?

A. Yes, sir. The bottom right hand corner you will see my sister and my nephew and at the top part of that you would see that there is a board across the opening that was where the ramp would have been for the floating dock and this is -

COURT: This is dock 3?

A. This is dock 3. Moving on these photos are again of dock 3 and the active use and participation. The same thing for the photos that followed. They are all family and friends participation. The photograph that has my father in a boat on the bottom, at the top of that is the representation of the lights on the dock that we constructed

and electricity to the dock that we installed. The photo that follows that showed the junction box of electricity and light control on the dock. That is on the east side but it was a control for all of the docks. The photos that follow that again are just active participation by family members representing just growing dates and time. The dock photos that follow show different ramps that were there or a ramp that was a metal ramp in time and at one point that ramp was put over on the Lightsey floating dock following a storm. The photos that follow that show the storm damage and demise of dock number 3 and my family did participate in the rehabilitation of that dock following a storm. The photos that follow that are repair work to the east side of floating dock and a diver in the water retrieving the ramp. Also in the bottom right hand portion of that you can see the ramp and the demolition of the floating pier on the Lightsey side which would have been the one side. The photo that is the single photograph is just representing the new ramp after the storm. You will see that that is a wood ramp and not a metal ramp and the photos that follow are again of a cottage that we have there and the dock and the two floating docks and the last photograph is just another family photograph -- a single shot of a family

representation. The photograph that shows the rolling of the dock are friends of mine whose boats were --

COURT: Mr. Cashman, can we just stop here.

I just want to make sure we are all on the same photograph. Is it the one with 1984 --

A. Right upper right hand corner. That photograph is someone jumping off the dock. The middle photograph is friends of mine who's boats were tied up on the Lightsey floating dock and those docks were rolled by toilet paper by family and friends after an afternoon spontaneity and the swimming was family and friends off the dock and what was and has been a classic way of participating by jumping off the dock is that the tide was coming in, you swam to the Lightsey dock, you climbed the ladder and you got off and you went back up on the dock. If the tide was going out you just jumped off the dock and you swam to the Cashman dock, climbed back up and went back to the dock. Again, additional photographs of family on the dock and you know its use in photographs that follow that. My mother and others who are bathing on the dock and again the changeover in some of this is to acknowledge how the ramps and things like that were replaced and improved. Moving into the landscape piece of this are to show that one photograph to show the remnants of dock number 2. That is in the bottom

right hand corner as well as on the top and it's -- you know demise. The photograph that follows that shows where the area that was a drainage actually it was a storm drain that was put into that road and where the water line was run, the Cashman family ran the first water line to the dock. That was -- when it malfunctioned and the Lightsey family wanted water, one of their members put the water line in from their well or their connection and it was T at the box from a line that was later run from the Cashman house to connect with a valve on it to include if either of our wells would run dry by somebody using the water excessively. It was also -- the electricity to the dock was run under the road but not in that vicinity. The next picture shows the drain where that was actually located. The next picture shows the switch on the side of the house that gave the Lightseys access to control the electricity on the dock for their usage. The picture at the bottom of that shows the pylons without a floating dock which is -- you know the way the condition is right now. The photos that follow that again are the drain box and the switch on the side of the house and the last photograph is a little of the top side of these pylons that were a part of dock number 2. There are, as I said, family albums that are large numbers that would depict a lot of the very same thing.

BY MR. BERGLIND:

Q. Mr. Cashman when did the Cashman family start or begin providing electricity to the dock, to your knowledge?

A. To my knowledge that would have been somewhere in the late 70's early 80's.

Q. And when did that stop?

A. I can't say specifically but I think it occurred in or after the time I was told that the key to the dock that I couldn't have access.

Q. When was that?

A. 2005 -- 2004--2005.

Q. And we will get into that in a minute. What about the water? To your knowledge when did the Cashman family start providing water to the dock?

A. In the late 70's.

Q. When did that stop?

A. At the same time, 2004--2005.

Q. When was the first time that you learned the Lightseys wanted exclusive use of the pier and floating docks?

A. That would have been 2005. I had about six months of trying to arrange someone to replace the floating dock on the east side and had individuals show up to provide that service or at least look at the conditions to make that service available and approached the dock in an unusual

manner and I found that the dock was locked. I have had a long-standing good relationship with Norris Lafitte and I called Norris. He was the only family member that I had seen using that property and I contacted Norris and he sent me a key in the mail. And that next day he called me and said -- he said, are you sitting down? And I said no, should I? And he said you got to send me the key back. I said well I just got it. I haven't opened it. And he said that I have been told that I have got to have the key back, that I did something I wasn't supposed to do. I sent him the key back. I didn't open the envelope.

Q. And did Mr. Lafitte send you a letter regarding that family's decision to as their exclusive use to the dock?

A. Yeah, a letter followed after our conversation and I also corresponded by letter.

Q. Please refer to Exhibit 45.

A. Yes.

Q. Is that the letter you are referencing?

A. It is.

Q. And what was your response to Mr. Lafitte?

A. Well I was shocked, but I had basically had the shock by phone conversation and in the questions that I have asked in the phone conversation, he was unable to answer them because he told me he couldn't comment and that was very

uncharacteristic but I respected that he was asked by his family not to comment.

Q. Why did you send the key back?

A. Because what's been previously objected to, but relationships were and had been and still are conducted in a manner that I have respect for and I had a genuine friendship and concern. I did not want Mr. Lafitte to be in any form or fashion looked negatively upon by any member of his family.

Q. And did you send a reply letter to Mr. Lafitte?

A. I did.

Q. Is that Exhibit 47?

A. It is.

Q. Is that an accurate copy of that letter?

A. It is. And in paragraph 2 of that letter I noted that and I will just read it "I know times change and people too but from our families' relationships of sharing, fellowship, faith, trust, and handshakes this is for sure what was intended by those who established and endeavored to pass on those virtues and beliefs to the succeeding generations. If that's been lost to a new day generation, then we have lost more than what's being addressed in this letter."

Q We discussed a lot about the Cashman's use of the pier number 3. Tell me about the Lightsey's use of pier number 3 and the two floating docks.

A. I don't recall any Lightsey use of pier number 3 except Norris Lafitte and one or two occasions in the early 2000 period being with Charlie Drawdy and also with Billy Ware and his family, but that was a very short almost like a weekend type of encounter in their use of the Lightsey dock.

Q. And what about the floating dock located to the east? Did the Lightseys --

A. The Lightseys never used that. They didn't have need for it. They didn't have fleets of boats that would overflow to the east side, but they obviously knew that if that was something that they needed, that they could use.

MR. TWOMBLEY: Just for the record, Your Honor, I would object to Mr. Cashman testifying about what the Lightseys may or may not have known.

COURT: Sustained as to that sole portion of his answer.

MR. TWOMBLEY: Thank you, Your Honor.

BY MR. BERGLIND:

Q. Mr. Cashman, did you maintain insurance on these docks?

A. Yes and that is -- has been something --

Q. To your knowledge when did the Cashman family begin maintaining insurance on pier number 3?

A. The day it was built.

Q. There is a -- we discussed a pier that was -- or I am sorry, the floating dock was replaced in the 1970's. Can you explain to the Judge your knowledge of that? What happened to the floating dock in the 1970's?

A. The floating docks in the 70's by comparison today, were constructed primarily of a wooden frame with styrofoam billets and the styrofoam billets were always in constant need of repair and replacement and storms were quite frequently making replacement and/or destruction of docks pretty common along with the bracketing that was securing docks during that period of time and we lost the initial dock that was attached to pier number 3 in the mid 70's and made application to the Corp to replace that dock.

MR. BERGLIND: Your Honor, can we and Mr.

Twombly approach?

COURT: Sure. Off the record.

(A Brief Discussion Ensued Off The Record.)

BY MR. BERGLIND:

Q. Mr. Cashman, are you ready?

A. I am ready.

Q. Okay, Mr. Cashman what is your understanding as to who Mr. Lawton granted permission to construct the pier?

A. Pier number 1?

Q. Yes.

A. Pier number 2, pier number 4?

Q. Pier number 1.

A. He granted permission to my grandfather.

Q. What do you base that on?

A. A document that is in this notebook that acknowledges that in that period of time he authorized the use of that land and then pier number 2 specifically an acknowledgment by the Corp. Permission had been received to use the property that was designated park property. And I have known from documents that that was the intended purpose from Mr. Lawton for the use of property along the front of May River.

Q. That document you just referenced, did that -- Exhibit 9 in the book?

A. Yes.

Q. And you stated that additionally that there was some documents from the Corp that stated Mr. Cashman had the permission from the Lightseys -- I am sorry from the Lawton's. We need to track that down. Is that a notice that is located as Exhibit 5?

A. Yes that's a public notice that brings that back to their attention, yes.

Q. Let me ask you -- from 1961 and 1962 when pier 3 was constructed, was your use ever interrupted by the Lightseys?

A. Never.

Q. Was it your understanding that the Cashmans owned that pier?

A. It was my understanding that the Cashman family owned and provided the plumbing to it and we had ownership in the pier by participation in the kinds of things that went on including maintenance as well as the utilities provided.

Q. Prior to 2005 when you received that letter or you saw there was a lock on the gate, did anyone ever stop you from using the pier or the floating dock?

A. No.

Q. Do you know what the Lightsey family is doing with the property that is located at 31 Oyster Street?

A. The last I went by it I acknowledged that it was for sale.

Q. Do you know -- when was that when you first noticed it was for sale?

A. About 2007-2008 somewhere in that vicinity. I don't recall a date. I just remember driving by and seeing a for sale sign.

Q. Go to Exhibit 67.

A. I've got it.

Q. And this -- it says dock on May River completed. It is your understanding -- is that a picture of the dock that is at issue today?

A. Yes.

Q. Do you know when this document was produced?

A. I don't have a date or a time stamp on it that I can see but I am assuming that it was a part of the sales acknowledgement or provision by the real estate company to provide notification.

Q. Mr. Cashman, there is an exhibit that has a list of documents that reference maintenance charges. Besides those documents, what other maintenance did the Cashman family do with regard to the dock and the pier and the floating dock? I'm at Pier 3 now.

A. Well, my father and grandfather were contractors and when anytime we went to use the dock if there were nails or boards that needed to be tied down, replaced or repaired, we did that. We did that because of our family's use and need in having a safe, secure place and so materials -- all materials weren't invoiced. A lot of materials were just taken out of the excess of supplies on hand and used to do the repair whether or not they were handrails or whether or

not they were -- also things that need to be tacked up, you know, made secure. It was also something that was part of the -- the women in our family that they would almost insist that the dock be in suitable shape for the younger children as well as for themselves. And a rule of my family has been and still is, is that we had to work before we play so the dock was a piece of the work that had to be done before we could play.

Q. Mr. Cashman, I have no further questions. Please answer any questions Mr. Twombly has.

A. Sure.

COURT: Before you begin Mr. Twombly, it is almost noon.

MR. TWOMBLY: That's fine we can break for lunch. I may need some time.

COURT: Would 1:15 or so is that enough time to get out, eat lunch and come back? Sometimes it is not. I would be happy to call it 1:15--1:30.

MR. TWOMBLY: Whatever works best for you Judge.

COURT: Let's try to make it back by 1:15. Mr. Cashman, please don't discuss your testimony with anyone during the break.

MR. BERGLIND: One question Your Honor. I plan to call Mr. Lafitte or enter his deposition. Actually I just want to enter his deposition transcript into the record - some excerpts and I didn't know if you would rather just read it yourself because there is no jury here or if you want me to put someone on the stand to kind of do the role play?

COURT: Well why don't we do this, why don't we eat lunch and then we will just sort of deal with that issue. I wasn't going to read it during lunch if you --

MR. BERGLIND: No, no, no, I don't mean that at all. I just didn't know what you --

COURT: No, we can deal with that when we get back and then --

MR. TWOMBLEY: I would just call them in my case.

COURT: Okay, you may just want to wait for that, but we will figure it out. Okay, we will be in recess until 1:15.

(A Recess Was Taken for Lunch.)

MR. TWOMBLEY: Your Honor, before we begin one housekeeping order if I may, Mr. Cashman try

not to put the microphone too close. You and I have the -- as we utter our -- we want to make sure the court reporter can pick that up. Sit back a little further in the chair.

MR. CASHMAN: Yes, sir.

BY MR. TWOMBLEY:

Q. You are Eugene Kenny Cashman, Jr., correct?

A. Correct.

Q. And your father is Eugene Kenny Cashman, Sr.?

A. Correct.

Q. And is your father still alive?

A. Yes.

Q. Mr. Cashman isn't it true that you got your first ownership interest in this house -- you personally, Eugene Kenny Cashman, Jr. in 1994 when your father transferred his interest to you and your sister?

A. That's correct.

Q. And so prior to 1994 you had been using the property as a guest of your father?

A. As his son.

Q. Right, but as his guest?

A. Your words.

Q. Well it wasn't your property, was it?

A. No.

Q. You didn't have a legal ownership interest, did you?

A. No.

Q. He could have excluded you from that property if he would have wanted to, couldn't he?

A. Yes.

Q. So therefore you were there with his permission and as his guest?

A. As his guest.

Q. Now if you would turn to me please to Exhibit 19. Are you there sir?

A. Yes.

Q. Okay, as established in your deposition, this was a letter that your father drafted and these edits are his handwriting, correct?

A. Yes.

Q. And your father was the Eugene K. Cashman referenced to this letter, correct?

A. That's correct.

Q. And if you would read for me the last line of the first full paragraph starting with "The dock". If you could read that out loud into the record?

A. "The dock is owned by the Lightsey brothers and have permission to construct this floating dock as per stated below by a licensed district engineer."

Q. Now Mr. Cashman just so I understand correctly, this is a letter that your father was writing to the Corp of Engineers, correct?

A. To the best of my knowledge that's the draft he wrote, yes.

Q. And it is addressed to the District Engineer, right?

A. That's what it says.

Q. And the date of this letter was May 9, 1977, correct?

A. That's when it says it was signed by Oswald Lightsey, yes.

Q. Okay, but if you turn over to Exhibit 21 I think the actual date didn't appear on Exhibit 19, but Exhibit 20 the actual date was May 5, 1977, correct?

A. Yes, the copy that I am reading would appear to be the date, yes.

Q. And the part at the top here this is your father writing to the Corp of Engineers saying that the dock is owned by the Lightsey brothers and I have their permission to construct this floating dock, right?

A. In that draft that's correct.

Q. Okay, now moving from the top portion of the letter down to the bottom, this is your understanding, isn't it, that this is a statement that was made by Oswald Lightsey, correct?

A. That's how I would interpret it, yes.

Q. And your father wrote that. He signed this statement, correct?

A. That's what it says.

Q. Well and that's what you believe, isn't it?

A. That's what that says.

Q. What do you -- do you believe your father wrote this down and it wasn't true?

A. I believe my father's intention.

Q. And Oswald Lightsey is saying that I, Oswald Lightsey, give permission to you, Eugene K. Cashman to build or to attach a floating dock and ramp as mentioned above, right?

A. Correct.

Q. And so in 1977 your father used the words that he had the permission of the Lightseys, right?

A. Yes, it was permission from the Lightseys to replace the floating dock that I previously testified to as --

Q. And Mr. Lightsey also used the word that he was giving permission to your father, Eugene K. Cashman, correct?

A. Yes, to the district engineer.

Q. Well Mr. Lightsey actually says he gives permission to Eugene K. Cashman. He is giving your father permission, right?

A. That's correct.

Q. Now if you will turn back over to Exhibit 20, this is what we believe is a more recent draft of this same letter that includes your father's handwritten comments that we took a look at on Exhibit 19, correct?

A. Yeah, the part that I can make out, yes.

Q. And again in this draft, the draft that appears to have been sent to the Corp your father used the same word again he had permission from the Lightseys to attach the floating dock, right?

A. That's what's in the letter, yes.

Q. And again Oswald said that he gave permission to your father to attach the dock there, correct?

A. That's what it says, yes.

Q. Now if you will turn to page -- Exhibit number 22, this is a letter from the Corp that has obviously received a copy of your father's letter, correct?

A. Yes.

Q. And it says here reference is made to your letter of May 5, 1977. That's the letter that we just looked at in Exhibit 20, correct?

A. Yes.

Q. Now this -- just so we are straight and to keep the timeline, your father -- I am just going to refer to him as Cashman, Sr. he would have owned this property from at least

1977 until 1994 when he transferred it to you and your sister, correct?

A. I don't know the origin date, but I would say, yes.

Q. Your father owned the property on Oyster Street from 1977 until 1994, correct?

A. Again, I make that assumption.

Q. Now if you would turn for me to Exhibit 26 now this is the public notice that was sent to the public so that this floating dock that you have referenced could be constructed, correct?

A. That's my interpretation of it, yes.

Q. Okay, well you were very knowledgeable about all these things in your deposition. That's what you testified to in your deposition. Do you remember that?

A. Yeah, I am not changing that.

Q. Okay, so this is the notice that was sent out so that your father could construct this --

A. I guess I am reacting because you were concerned earlier about my representation of something that I had personally not seen or touched, but yes I give acknowledgement that this is what was in the Bluffton file with my father's office and yes that this would be the letter that I would assume would be the public notice issued by the Department of Engineers.

Q. And again in this public notice it says that the applicant is the Lightsey brothers, is that correct?

A. Yes.

Q. Now if you would turn -- well let me just ask you a question. You testified earlier that you had maintained insurance on the dock.

A. Yes.

Q. Is that correct?

A. That's correct.

Q. And why do you think you had insurance on the dock? What's your basis for that statement.

A. My insurance agent.

Q. Did you ever read a copy of your policy?

A. No.

Q. Do you know whether or not the policy provides that you have insurance on the dock?

A. I asked the question to my agent and he answered yes.

Q. But my question to you is, have you ever read the policy to see whether or not the dock is covered?

A. No, I didn't read it for that specificity. I depend on other people to advise me.

Q. If you would turn to Exhibit 30 and if you turn in four -- four pages into Exhibit 30, at the top it says "General Exclusions".

A. All right.

Q. If you would read for me the General Exclusion to your insurance policy -- read it into the record as set forth in Item Number 8, Subsection E.

A. May I just ask, did you look for it?

Q. No sir, if you can answer that question.

A. All right, you want me to read E?

Q. Yes, sir.

A. "Submit to us within sixty days after we request --"

Q. I am sorry, under Item number 8 at the top.

A. 8B?

Q. 8E.

A. 8E. Structure including the property in or on the -- structure located on or in part in or over water. This is a document from Chubb Insurance, is that what you are referring to?

Q. Yes, the document you produced as evidence that you had provided insurance for the dock.

A. From my files; yes.

Q. Okay.

A. Just for the matter -- when you asked the question earlier about my involvement in insurance, there is a document a statement from my insurance --

Q. Mr. Cashman, your lawyer can ask you the questions --

A. I am just --

Q. -- for the issues that you want to talk about.

A. I just want to make sure I am answering it correctly then.

Q. Right. Now, Mr. Cashman have you or your father, or your sister or anyone else related to your family, have they ever paid one dime in taxes related to the pier, the dock or the gazebo located at Oyster Street?

A. Not to my knowledge of a tax specific on a bill that says dock tax, no.

Q. Well it is true though that it is specific on the Lightsey's bill, isn't it?

A. But what I am saying -- the answer to that is, yes.

Q. And in fact Exhibit 32 is a 1986 property card for the Lightsey's property on Oyster Street, which in the upper right-hand corner you will see it includes a pier, header, a float and a gazebo, correct?

A. That's what that looks like, yes.

MR. TWOMBLEY: And Your Honor, Mr. Berglind and I have stipulated that 1986 was the first year that Beaufort County assessed docks county wide; 1986 was the first year.

COURT: By the way I don't have a 32 in this notebook.

MR. TWOMBLEY: I will get you one. May I approach, Your Honor?

COURT: Yes.

MR. TWOMBLEY: Your Honor, I would ask that that be included in the notebook and marked as Exhibit 32 for the record.

COURT: Now just to keep track of this, we don't -- as I understand it, we have not been marking each of these. We have been relying on the pre--marked notebook, is that -- go off the record for a second. Is that correct? The idea being that at some point you all have already stipulated the entire notebook would go in subsections as the numbers, is that the understanding?

MR. TWOMBLEY: If it would help the court reporter and the Court, Mark and I can go through and actually put an Exhibit sticker on each one if that --

COURT: If the entire notebook is going in, I don't even know if that is required, is it?

MR. TWOMBLEY: I wouldn't think so, but I just want to make sure it is the way you know the way you and the court reporter would like it.

COURT: Okay, just want to make sure we didn't get ahead of ourselves, okay. All right, thank you.

BY MR. TWOMBLEY:

Q. Mr. Cashman, you don't contest the fact that the Lightseys built what you refer to as dock number 3 or pier number 3, correct?

A. I don't contest that.

Q. They used their money, right?

A. I would have to say I don't know if they used money of Lightseys brothers.

Q. I am sorry, you don't have any reason to believe that they didn't use their money to build it, do you?

A. No.

Q. Now Mr. Cashman isn't it true that at one point in time a lady by the name of Ms. Diane Reynolds asked you for permission to go down on that dock, right?

A. Yes.

Q. And you told her that she would have to check with the Lightseys before she went down on the dock, right?

A. She asked me and I told her it was fine with me.

Q. But she would have to ask the Lightseys?

A. Yes.

MR. TWOMBLEY: Your Honor and Mark I can go through every one or we can stipulate that in every year since 1986 until 2011 the Lightsey family has paid 100% of all taxes associated with the pier, floating dock and gazebo and the Cashman family has not paid any taxes associated with it. Can we stipulate to that?

MR. BERGLIND: I am not stipulating that they didn't pay any taxes on it. I don't know what was included tax wise. I don't have any evidence to the contrary, but I am not going to stipulate to it.

MR. TWOMBLEY: That will be fine.

BY MR. TWOMBLEY:

Q. Let me ask you this, Mr. Cashman, let's go back to Exhibit number 34. This is the property record card from the Lightsey property ten years later in 1996, correct?

A. Is that dated 5/6/96, yes.

Q. Right, and the pier, the header the float and the gazebo are all included on their property tax bill, correct?

A. Correct.

Q. And there was no property taxes that you paid on those, correct?

A. To the best of my knowledge, no.

Q. If you would turn to Exhibit 39 again this is the 2004 property card for the Lightseys' property on Oyster Street. You see there, you would agree with it, the Lightseys were charged on the pier, the header, the float and the gazebo, correct?

A. Correct.

Q. And again you never paid any taxes for that year, did you?

A. I said, no, to the best of my knowledge, never.

Q. And you don't remember ever paying any property taxes for this property associated with the pier, header, float or gazebo, right?

A. Nothing represented on any tax bill that I am aware of, no.

Q. Now let's go back a second to these photographs that are included in Exhibit 66.

A. Okay.

Q. Now before I ask you a question about the photographs, in your Complaint you assert that there have been a series of three docks at this location, correct? Or three piers?

A. Yes.

Q. And you refer to them in the Complaint as Pier Number 1, Pier Number 2 and then Pier Number 3?

A. That's correct.

Q. And your testimony in your deposition was that the Lightseys used Pier number 2 even though it was built by the Cashman family?

A. Yes.

Q. Now Mr. Cashman, isn't it true, that the Lightseys had their own dock during this time frame when you allege that there was only dock number 2 there. They had their own spare dock.

A. That's right they had a spare dock.

Q. Okay, and you didn't mention that in your Complaint, did you?

A. No, I don't recall mentioning that.

Q. Where does that fall into the dock 1, dock 2, dock 3?

A. What?

Q.. Where is this spare dock? Where's the Lightseys' dock come in?

A. The Lightsey dock was a spare dock as I indicated that they constructed to get down to the sandy beach. Dock 1, 2 and 3 did not give you access to that.

Q. Now you were born in 1941?

A. Yes, sir.

Q. Okay, and there's a picture in there you got 1942 on here that shows that spare dock -- about three pages in?

A. Yes.

Q. All right, now you weren't around when the Lightseys built that spare dock, were you. You don't know why they built that down there, do you?

A. I know why they built it, but I wasn't around.

Q. How do you know why they built it?

A. I guess it would not be admissible because of what you said earlier because I was told this.

Q. But the fact of the matter is that during this time frame of dock number 1 and 2 that you say the Cashmans built dock number 1 and built dock number 2 and nobody could use it, the truth of the matter is the Lightseys had their own spare dock at that point in time, right?

A. They did have a spare dock, yes.

Q. If you will turn to the photograph and it is written on page about 1954 --

A. Yes.

Q. One photograph on that page, do you see that?

A. Where the family is in the center?

Q. Right. Now you can see the Lightseys dock over to the left, right?

A. That's right.

Q. And there's some boats over there beside that dock, right?

A. Yes.

Q. Now Mr. Cashman you testified that the Cashman family participated in maintaining the dock that has been in that property since 1961 until the present time, right?

A. Yes.

Q. Now did the Cashmans participate -- let me rephrase that, did the Cashmans ever spend any money on the pier itself?

A. Yes.

Q. Do you have any evidence -- documentary evidence to show that the Cashmans ever spent money on the pier itself?

A. Yes.

Q. And your exhibits that you provided are organized behind the tab number 64 so if you are looking for those if you would please look there and show us -- if you will just turn to that tab, I am going to ask you some questions about the invoices that you provided, okay?

A. Sure.

Q. All right, let's start with the 1974 Herman Hubbard quote. Do you see that?

A. Yes.

Q. Now that's just a quote, is it not?

A. Yes.

Q. And you can't tell from this document whether or not that work actually even took place, can you?

A. Not from this quote, no.

Q. And this is a quote for replacing the old float which has been referred to as the Cashman float, right?

A. Yes.

Q. And this didn't include any work on the pier itself, did it?

A. Right. This particular quote to my knowledge the answer is, it did not.

Q. Okay. It included things like flotation and styrofoam for your floating docks --

A. Right.

Q. It included the hardware where the dock would be attached to the pier?

A. Right.

Q. It included dock cleats?

A. Correct.

Q. That's where you tied your boat up?

A. Right.

Q. Right?

A. Uh huh.

Q. And then of course the ramp? That would be the ramp leading from the pier down to the dock?

A. Correct.

Q. Now do you contend that any of this work was on the pier itself or --

A. No.

Q. Okay. If you will turn to the next one which is the April 11, 1977.

A. Okay.

Q. Now it appears to me that the work in August of '74 and the April of '77 is the same work? Do you have any reason to believe that that work actually took place in between those two time periods?

A. It is my understanding that that's when that document took place, yes.

Q. I guess my question is, was there a Cashman floating dock from 1974 to 1977?

A. Yes.

Q. There was?

A. Yes.

Q. You know what happened to that dock?

A. Yes. Probably gone to the wear of the weather.

Q. Now the April 11, 1977 would you agree with me that that document and that these costs are also for the floating dock and not for the pier?

A. Yes.

Q. The next page is some -- I don't know what this document is. Do you know what this document is?

A. Which one?

Q. The one that has miscellaneous calculations on it.

A. No.

Q. Okay, if you will turn into the next document, which is the May '77.

A. May 25?

Q. May 25th, 1977, yes sir.

A. Yes.

Q. Now this is a quote or an invoice for constructing a floating dock and a ramp down to the floating dock, right?

A. Correct.

Q. And this didn't involve any work on the pier did it?

A. No, sir.

Q. If you will turn to the next page. It is the June 18th, 1980 invoice.

A. Yes.

Q. This is \$12.22. Do you know whether or not any of these expenses were for the pier?

A. This was found in my father's file in what was labeled a dock file so I cannot specifically say that it was not for anything other than what these two items represent and that would be the gate on the pier.

Q. But as you testified, you don't know one way or another what it was for?

A. Only that it was in a file that was labeled dock.

Q. And that was for \$12.22, correct?

A. Yes.

Q. If you will turn to the next one of June 25, 1980.

A. Got it.

Q. Do you know -- do you have any personal knowledge about what these expenses were for?

A. Only what it says there. 2 x 8's treated, 2 x 4's treated.

Q. And you have some 2 x 8's and 2 x 4's down on the floating dock, right?

A. My associate has - again they were in a dock file and that size lumber would have been associated with both the floating dock and the main dock, yes.

Q. All I am asking is you have some 2 x 4's and 2 x 8's on the floating dock?

A. Absolutely.

Q. The next one is the June 25th, 1980. Again, this is for two boards, or actually this is the same one. We will move to the next one which is the June 27th, 1980.

A. Right, floating dock.

Q. These were all for the floating dock?

A. That's what those were for.

Q. The floating dock?

A. Yes.

Q. If you will turn to the next one, July 23, 1984. You see that?

A. Yes.

Q. One of the charges on here is duct tape.. Do you know if the duct tape was for the pier or the floating dock?

A. I don't know.

Q.. Okay, there is five pieces of wood listed on here. Do you know whether or not any of that wood was used on the pier or the floating dock? Do you know?

A. No I don't, but there - as a matter of fact there were more than five pieces.

Q. You will turn to the next one, it's got a ship date of July 24, 1984 styrofoam billets. That would have been for the floating dock?

A. Floating dock, that's right.

Q. If you will turn to the next one, July 25th, 1984 do you know whether or not these pieces of lumber were for the floating dock or the pier?

A. No, I don't.

Q. Okay, but you did have 2 x 6's and 2 x 4's on the floating dock?

A. And the pier.

Q. But you had them on the floating dock, correct?

A. They were in both places, yes.

Q. The next one is July -- actually that is for the same date. A few more 2 x 8's correct?

A. Yes.

Q. And you had 2 x 8's on the floating dock?

A. I did.

Q. The next one is July 31, 1984 styrofoam billets. That's clearly for the floating dock, right?

A. Yes.

Q. The next one is a return for credit and you got your money back. Let's skip that one and go to the next one. This is February 22, 1986. Now there's three charges in here, correct?

A. Yes.

Q. All right the first one furnish equipment, labor and material to drive 1 x 25 pilings. That would have been for your floating dock, correct?

A. Yes, I am assuming that.

Q. Now let's skip the second one. We will come back to it, but the third one install floating dock using owner's brackets for pilings. Do you see that?

A. Yes.

Q. Okay, \$120.00. Now the second one, furnish equipment, labor and materials to brace main dock using 2 x 8 bolted to pile. Now you would of course -- well what was that one for?

A. My assumption is what it says.

Q. Do you know if that was for the main pier or the floating dock?

A. No.

Q. The next one, July 7th, 1987 \$26.00 for a ladder. That would have been for the floating dock, right?

A. Yes.

Q. All right, now the next one \$1,591.00. This was for rewiring dock and feed from house. You see that?

A. Yes.

Q. Okay. New lights at the barbecue pit. That wouldn't have anything to do with the pier would it?

A. No, sir.

Q. Sweeping of the roof - that would have been the roof at your house?

A. Right.

Q. Check on smoke detector. No smoke detector on the pier, right?

A. No, sir.

Q. Okay, installation of dock ladder. That would have been for your dock?

A. Yes.

Q. New rope on floating dock and repair of water line. That would have been the water line that ran out to the pier and dock, correct?

A. Yes.

Q. Now you don't have any other documentary evidence, checks, receipts, invoices, work orders, anything of that nature to show that the Cashman family ever incurred any expenses associated with the pier, right?

A. Not in my possession, no.

Q. Well do you know if there's any that exist anywhere in anybody's possession?

A. Presently, no.

Q. Now for many years there was a lot in between the Cashman's house and the Lightsey house, correct?

A. Correct.

Q. Okay, and that was owned by the Ryans?

A. What time period?

Q. When you bought it from them?

A. Yes.

Q. And is -- Exhibit 35 is a copy of the deed where the Ryans deeded this property to you and is that your wife or your sister?

A. That's my wife.

Q. And if you will turn three pages in Exhibit A there is a description of what the property is being conveyed to the Ryans to the Cashmans, correct?

A. Yes.

Q. And no mention of any dock in Exhibit A is there?

A. No there's not except that -- no there's not.

Q. If you will turn to Exhibit 36, have you ever seen this document before?

A. Just as it was presented.

Q. Well let me just ask you this question. Have the Lightseys ever asked you or anyone in your family for any money associated with repairs and improvements that have been made to the dock?

A. Best to my knowledge no.

Q. And I will represent to you that Exhibit 36 is a diagram of some work that needed to be done to the main pier. Do you have any idea when this work was done?

A. No, I mean this document would have to reflect that or someone would have to tell me, no.

Q. Do you recall any period of time when -- you know when twenty of the main pilings in the main pier were replaced?

A. I can recall having discussions with Norris about pilings on the dock that needed to be repaired and replaced, but that was just an observation that one could make by just walking down to the dock.

Q. And no one ever asked you to contribute in any way to those repairs did they?

A. No, they didn't.

Q. No one asked you permission to make those repairs did they?

A. No they didn't.

Q. At some point in time there was a new roof that was put on the gazebo, do you recall that?

A. I remember an old roof and a new roof.

Q. You didn't take part in any part of the new roof, did you?

A. Nope.

Q. You didn't spend any of your money to build the new roof?

A. Nope, not to my knowledge.

Q. No one ever asked you to contribute to that endeavor, did they?

A. Nope.

Q. And no one asked you for your permission before they did it?

A. No.

Q. If you would turn for me to Exhibit 42.

A. All right.

Q. And Your Honor I would represent to you this is a report -- Wachovia was the trustee for one of the Lightsey family members who owned an interest in this property and they would go out and inspect the property each year. None of that is relevant really to the case, but there are some pictures that they took and I just want to ask you about those, Mr. Cashman, okay?

A. Yes.

Q. If you will turn in to the 5th page there are two pictures of the dock.

A. Yes.

Q. And you can see in that top picture that as of November 23, 2004 that the Cashman dock is not there?

A. That is correct.

Q. Okay, so all of the expenses that we went through related to the dock, related to the floating dock, those would have washed away at least by November 23, 2004, correct?

A. Yes. It would have washed away or that floating dock would have been on the bank. It needed repaired or replacement.

Q. Well do you know that that happened? Do you know if your floating dock actually washed up on the bank?

A. It didn't wash up there. You know the tide up there, but the answer is it did.

Q. It did?

A. It was there as was the ramp. Going to replace it.

Q. What happened to that floating dock and ramp?

A. That's the dock I destroyed and had carried away in anticipation of putting a replacement dock in.

Q. Okay, so the one you found on the bank though you had that one hauled off in anticipation of putting the new one in?

A. Correct.

Q. Gotcha. Now if you will turn to Exhibit 43, this is a copy of the envelope that Norris Lafitte sent you enclosing the key to the pier, correct?

A. I can't read the postmark but I can see the -- it was mailed to me at Box 2321, Bluffton.

Q. Well I have got the original here but if -- do you have any reason to believe that it wasn't on or about February 23rd --

A. It must have a postmark, but if it is not showing that date, I accept that.

Q. Now when you got this key -- well first of all I want to make sure I have the sequence of events straight. You go down to the dock or the pier and it's locked up, right?

A. Yes.

Q. Okay, now did anybody ask your permission to put a lock on it?

A. No.

Q. And you called Norris and asked him to send you a key?

A. Yes.

Q. And he sent you one and then he immediately called you and said send it back?

A. I don't exactly know how immediate it was, but enough time had passed that I had received it.

Q. A few days later?

A. Yes.

Q. And then when you -- after you talked to him and he said send it back, you sent it right back to him, right?

A. Absolutely.

Q. If you turn to Exhibit Number 47 this is a copy of the letter that you wrote to Norris after you mailed his key back -- after?

A. Yes.

Q. And in this letter in the third paragraph you stated, "If a more formal agreement is needed to make the dock a business relationship, then let's make it", right?

A. That's what it says.

Q. What did you mean by that?

A. That if there was a reason to have rejected or locked that dock because there had been an interest to have any expenses associated with the dock now or in the future paid for, but I thought it should be a contractual agreement to succeed in generations of heirs.

Q. So in other words, you were offering to pay some money if that was the need to make it a business relationship?

A. Yes.

Q. And now in an ultimate paragraph that starts on the matter of the lady you met on the dock, I have enclosed a letter she sent me this past summer and then you stated I called her and told her if she had the Lightsey's permission to use the dock, I had no objection, correct?

A. I told her that she should call -- I will just read it "I called her and told her that if she had the Lightsey's permission to use the dock, I had no objection".

Q. Correct, but of course, you would have objected if the Lightsey's didn't give her permission, correct?

A. I didn't object but I -- it's in the context of her letter.

Q. Well that's what your letter says.

A. I am referring to the fact that you know I am enclosing the letter that she sent to me. Do you have that?

Q. Right. We'll talk about that letter. I want to point your attention to this sentence where you say that you called her and you told her that if she had the Lightsey's permission to use the dock, you had no objection.

A. Correct.

Q. So she first had to go through the Lightseys and if they gave her permission, then you would give her permission?

MR. BERGLIND: Your Honor, objection. He is putting words into my client's mouth.

COURT: I don't even know if that was a question. All right, your objection is noted.

MR. BERGLIND: He is putting words into my client's mouth. I don't even know if that was a question and my client has already -- I mean he has asked and answered and my client has even explained it and read the -- you know a portion of the letter two or three times.

MR. TWOMBLEY: I will rephrase it.

COURT: Okay.

BY MR. TWOMBLEY:

Q. Mr. Cashman, will you read the sentence into the record that starts "I called her" and just read it all the way to the end of the period please.

A. Start "on the matter"?

Q. Just start at "I called".

A. The second time? "I called her and told her that if she had the Lightsey's permission to use the dock, I had no objection. As you can see her relationship dates back to 1965. Her permission to use the dock had been given by your grandfather and mine".

Q. And of course Mr. Cashman, you weren't present for any discussions that may or may not have taken place between Diane Reynolds, your grandfather and Oswald Lightsey, were you?

A. I wasn't present for those conversations, no.

Q. Mr. Cashman the lawsuit that we are here about today was filed in May -- on May 29, 2009, is that right?

A. I think that is correct, yes.

Q. Okay, and so we know that from November 24, 2004 until May 29th, 2009 that the Cashman's use of this pier and dock was interrupted by the Lightseys putting a lock on the gate?

A. Yes.

Q. And no one from your family that you know of -- no one used that dock in between November 24, 2004 and May 29, 2009?

A. Couldn't; locked.

Q. Mr. Cashman you testified that someone in your family had put the electricity and water down to the pier, correct?

A. Yes.

Q. Isn't it true though that at some point in time the Lightseys ran water -- trenched a water line and ran piping all the way down to the end of the pier?

A. They did, yes.

Q. Okay, and do you know how long of a period of time that there was water down at the dock that was from the efforts of the Lightseys as opposed to the Cashmans?

A. No, I don't have a time line on that, but I can --

Q. You have any reason to disbelief that the Lightseys ran water down there from 1984 until present day?

A. No, I wouldn't doubt that.

BY MR. TWOMBLEY:

Q. Now Mr. Cashman isn't it true that in your deposition that you testified that before your father would go do something to that pier, that he would have first checked with the Lightseys?

A. Yes.

Q. And when specifically talking about the electricity you said that he wouldn't have gone and just done that one day and have them come back and arrive and see lights on the end of the dock?

A. That's correct.

Q. And with respect to the water that your family may or may not have run down, you testified that you didn't think your father would have gone to the expense of contracting someone to do that without having you know at least a telephone conversation or a discussion with the Lightseys?

A. That's right.

MR. TWOMBLEY: Your Honor, I think that's all I have but I would like about a five minute recess if the Court's not opposed to that and talk with my client and look at my notes and then I would tender Mr. Cashman back over to Mr. Berglind.

COURT: Do you have a problem with that?

MR. BERGLIND: No problem.

COURT: All right, please don't discuss your testimony with anybody and feel free to wander about for five minutes or so.

BY MR. TWOMBLEY:

Q. I understand that at some point in time in 2002-2003 timeframe that you bought a separate piece of property on the May River. Is that correct?

A. You mean different than across the street?

Q. Yes.

A. Yes I did.

Q. And what is the address of that property?

A. 131 Bridge Street, but I also bought other property too.

Q. When did you buy the Bridge Street property?

A. About 1998-'99.

Q. And do you remember how much you paid for it?

A. Bridge Street?

MR. BERGLIND: Your Honor, this is irrelevant. I don't know why -

COURT: What is the relevance of this question?

MR. TWOMBLEY: Well I think it just goes to show that well -- let me try to get to it another way, if that's all right, Your Honor. I will withdraw that question.

COURT: All right, go ahead.

BY MR. TWOMBLEY:

Q. How many nights have you spent in the Oyster Street property since 1998?

A. In my case probably two dozen.

Q. You have been there 24 nights while you have had your place up on Bridge Street?

A. Yes.

Q. The place on Bridge Street does it have a dock?

A. Yes.

Q. Deep water?

A. Yes.

Q. About how many acres is it?

MR. BERGLIND: Your Honor, objection to the number of acres of his separate lots. I don't know why that is relevant.

COURT: I can sort of see the dock part, but acreage seems irrelevant but happy to hear argument to the contrary.

MR. TWOMBLEY: I am just trying to find out a little bit about this alternative piece of property he has purchased and --

MR. BERGLIND: And Your Honor, the whole line of questioning I think is irrelevant whether he has a second piece of property. He also has two properties in Tennessee, I don't know.

COURT: Those sound vaguely irrelevant. What else do you have?

MR. TWOMBLEY: Is it sustained?

COURT: Yes, it is sustained. Sorry.

MR. TWOMBLEY: That's all right, thank you, Your Honor. Just for the record.

BY MR. TWOMBLEY:

Q. Mr. Cashman, at any point in time since 1994 when the property on Oyster Street was deeded to you until 2005 when you discovered a lock on it, have you ever told anyone in the Lightsey family that you believe you have an ownership interest in the pier?

A. I haven't talked to anybody in the Lightsey family.

Q. So that would be no.

A. Yes.

Q. And you have never attempted to exclude anyone in the Lightsey family from that pier since 1994 to 2004?

A. Haven't seen them.

Q. So that would be no?

A. If I knew anybody from the Lightsey family other than the immediate family, but no.

Q. That's all I have got, Your Honor, thank you.

MR. BERGLIND: Your Honor, redirect.

BY MR. BERGLIND:

Q. Mr. Cashman, you were shown this exhibit here and I believe you testified or it was represented to you though in May of 1977, how old were you at that time?

A. Just about 35 - 36.

Q. So you were pretty familiar with the pier at that time, correct?

A. Yes.

Q. Prior to this 1977 letter to the district engineer, was there a floating dock on the east side of the pier there?

A. Yes.

Q. And how long had that floating dock been there?

A. Since the third pier was -- on or about the time the third pier was complete.

Q. Can you tell the Court your understanding as to why this document was sent to the district engineer?

MR. TWOMBLEY: Objection Your Honor. I don't think he is qualified to testify about why it was sent to the district engineer.

MR. BERGLIND: Your Honor, I think Mr. -- or the defendant clearly opened the door on this one. He asked what Mr. Oswald was thinking and wrote and other questions about this document, I think.

COURT: I will allow it; go ahead.

BY MR. BERGLIND:

Q. Do you know why this was -- well what is your understanding as to why this was sent to the district engineer?

A. My understanding is it was sent there for a permitting process that you call it and this was following the procedures of the permitting process.

Q. What if -- explain to us more details the permitting process as you understand it.

A. Well if replacing an existing dock and you had to make application to replace or to repair a floating dock and/or any activity that you would have on your dock and that the way you proceeded was to write the Corp and obtain a permit to replace or repair and in this particular case, because the permit was in the Lightsey name as per previous documents described, my father had to have permission from the permitted group to put the floating dock in place. No different than the permission that my grandfather had to have from the then designated property prevailed in this case Lawton for the use of the land.

Q. This is for the permit?

A. Yes.

MR. TWOMBLEY: Your Honor, I would object to -- I mean unless some foundation laid where Mr. Cashman has some type of expertise in obtaining a

dock permit or perhaps as even going through the process himself before. I would object to him testifying about what permitting process for the Army Corp of Engineer required in 1977 or what it didn't require at that time. I don't think he is qualified. It is expert testimony is what it is.

COURT: I would be happy to hear from you.

MR. BERGLIND: Your Honor, he is testifying as to how to get a permit to get a dock. I don't think that's --

COURT: Notice of that -- I have done it myself.

MR. TWOMBLEY: Well Your Honor, respectfully, I don't think what he is just saying is you have to have a permit to get a dock.

COURT: No, he's saying the purpose of this letter, as I understand it, is the permit itself was in the Lightsey name and therefore to do anything on it, it had to have the concurrence of the permittee or the Corp of Engineers would have denied it. I think I understand his testimony. And you're saying that he is not familiar enough with the process, the permitting process to

testify that that was the purpose of the letter so -- is that the nature of the objection?

MR. TWOMBLEY: Well I am objecting to him testifying about what the permitting process may or may not have required in 1977. Whether you know it may have required that, it may not have required that, but I just respectfully do not believe that this witness is qualified to testify about that. Now, he may have his own lay opinion, he may think this but I just don't think that that's admissible. I mean if he is going through the permitting process in 1977 and he knows from his own personal experience what it may or may not have taken to get a dock, I think that would be different, but he's not testified that he's even gone through the process himself not even one time. Contrary to Your Honor saying that you have been through it, I don't think that was in 1977 but -- and so that is just our objection and we would ask that any testimony he has given about what was required to get a document permit in 1977 would not be allowed.

COURT: All right, try to stay away from anything specifically with regard to the

requirements of the dock permit in 1977 if you would.

BY MR. BERGLIND:

Q. Mr. Cashman, if you could turn to Exhibit 12 this appears to be a drawing that was made by the Lightsey brothers for a dock permit. On this exhibit do you see anywhere where there are floating docks to the left -- to the right of the pier?

A. No.

Q. If you could now turn to -- what is the date of that document? It's on the bottom right-hand corner?

A. October 31, 1960.

Q. If you would turn to Exhibit 17 look at the second paragraph, could you read the last sentence of that paragraph report?

A. "Addition to the property owners' permit per on page 6 did not authorize floating docks".

Q. If you will look to -- and actually it looks like that that permit they are referencing is the 1941 permit, is that correct?

A. Yes.

Q. If you will look at paragraph -- I mean Exhibit 22, the letter from the Department of the Army.

A. Yes.

Q. Are you there?

A. Yes.

Q. If you will just read the first sentence of that letter.

A. "Reference is made to your letter of 5 May, 1977 requesting authorization to replace a floating dock and a ramp attached to the eastern end of an existing dock located on the northerly bank of the May River approximately 4.1 miles above this map near Bluffton, South Carolina."

Q. And on the third paragraph can you read that first sentence?

A. "A review of the files reveal that the permit authorizing the original structure was issued in 1961 without having been advertised by public notice. Therefore, before the work proposed in your letter finally can be authorized and public notice must be issued and circulated for a minimum of 15 days."

Q. Now reading those two letters, in 1977 did the Cashman family or the Lightsey family have a permit to construct a floating dock?

A. No.

Q. Mr. Twombly asked you the question regarding whether or not you contacted the Lightseys prior to doing any work

on the pier. Why did you contact the Lightseys prior to installing electricity or water or maintaining the dock?

A. That's the way we did business. I mean it was not something to be presumptuous on our part to do something out of a friendship or relationship with the Lightseys without at least acknowledging what we were going to do and I am, you know, suggesting that was just the way business was done in that way.

Q. Did you ever call them to ask them permission to do certain things?

A. I didn't but I am not saying that my father didn't talk to Oswald and Horace Lightsey.

Q. Mr. Twombly brought a letter that you wrote in 2005 to Norris Lafitte that is Exhibit -- look at Exhibit 47.

A. Yes.

Q. There's reference as to a business relationship and Mr. Twombly asked you whether or not that meant that you had paid money. Now when you say paid money was that for maintenance of the pier? What do you mean by pay money?

A. Well, I was talking about setting up a contractual relationship which would allow for all expenses to be commonly split or divided whatever that might be. A placement of new boards, you know the whole nine yards.

Q. You never went to the Lightseys and said I will pay you money for an ownership interest in this dock, did you?

A. No, I didn't.

Q. Now when -- in that letter you also referenced sending the key back. Why did you send that key back?

A. I -- again I have a trusted relationship and friendship with Norris Lightsey -- Lafitte and I was told I had to and he said that he had made a mistake or he was not authorized to send the key -- I need the key back and I could detect from his exacerbation and explanation that I wanted to do that to avoid him having to be in any kind of difficulty with his family so I did. It's just the way I did business.

Q. The item that we need to clear up, the water running from your property to the pier. Did that run concurrent with the water running from the Lightsey property?

A. There's a T bow in the cut off valve in that junction box or the draining that allowed it be -- so bowed to the Lightsey property versus over to the Cashmans and that was put in because at the time when Norris ran the line, we wanted to make sure that both pumps were not going to be operating and one pump run dry it wouldn't be dried up. We were running on pump water at the time.

Q. So what you are saying is both properties had water connected to the pier?

A. I mean there was -- in that box.

Q. And when did you --- the Cashman family begin providing water to the pier?

A. I can't give you a specific date, but it would have been in the -- you know the late '60's.

Q. And that continued even after the Lightseys connected their water, correct?

A. When they connected their water, my water line was damaged and then was subsequently repaired and that's what that little receipt is in there for.

Q. If you look to Exhibit 59, Mr. Twombly asked you some questions regarding the insurance and he said you spoke with your agent and in looking at your policy, is this letter that you received from your insurance agent?

A. Yes.

Q. And what does that letter say about the insurance?

A. It should --- it says that I am currently insured with Chubb for the property on 35 Washington Street. That Chubb has provided coverage for the property for more than twenty years. The policy not only provides coverage for the dwelling located on the property but also other structures including the dock structure as well as other outside buildings. Also included in the homeowner's policy personal

liability coverage and said also provides excess liability for myself which is included in the location.

Q. Going back to pier 1 and pier number 2 you were asked questions regarding a spare dock. That was known as the Lightsey's spare dock that went into the sandy beach area. During that time period to your knowledge, were the Lightseys despite having that dock, still using pier 1 and pier 2?

A. Yes.

Q. I remember them using pier -- I don't remember them using pier 1 because I wasn't aware that -- seriously I was not part of the world but I was not living at the time, but dock number 2, yeah, jumping off of it, swimming off of it, swimming to their boats off of it; individuals in that family using it to board their boats on the floating dock at the end of it. I remember.

Q. You were asked a series of questions about the maintenance done on the floating dock and pier. Besides the dock location in Exhibit -- you went over with Defendant's counsel, can you testify here today that the Cashman family to your knowledge maintained portions of the pier?

A. Yes.

Q. Not just the floating docks, but the pier?

A. Yes.

Q. Can you explain that?

A. Docks require constant maintenance. It's just -- they are exposed to the weather elements and they are in need of boards being tacked down; railings being replaced. Securing it for the safety of young children. I testified earlier that one of the things in my family was that you worked before you played and so those things need to be maintained before you actually -- before you started enjoying the property. So, hammers, nails, boards of variety that would complement the dock, replacement of floor boards on the pier, handrails on the pier, I actually remember doing all those things myself and I can attest to the fact that I think other members in my family including my father or anyone he may have had working on his own or something else would go out there and make those repairs. No, we didn't invoice everything we put into the dock.

Q. Why did you not invoice everything?

A. Well, my dad is a contractor. Contractors have materials that are in there lots of supplies and if you need a 1 x you know x number of thick long or 1 x 4 or a 2 x 4 or whatever you just took those down and you did your work.

MR. BERGLIND: Bear with me one moment, Your Honor.

BY MR. BERGLIND:

Q. Going back to our discussion earlier and I forgot to mention this exhibit, it is Exhibit 21 I asked you some questions about this document here and I also showed you an application that was dated 1960 that you testified had no floating docks. If you look to Exhibit 21 there is some handwritten writing that this floating dock and there is an arrow. Is it your understanding that that is what is known as the Cashman floating dock?

A. That is correct.

Q. If you will look to the bottom right hand corner -- well what is the date of that?

A. It was revised 5 May, 1977.

Q. Is it your understanding that was in response to the requirements of the Corp of Engineers or the district engineer?

A. Yes.

MR. BERGLIND: No further questions Your Honor.

BY MR. TWOMBLEY:

Q. Mr. Cashman, did the Corp of Engineers require your father to say that the dock is owned by the Lightsey brothers? Did the Corp of Engineers require your father to say that?

A. You just told me I didn't know anything about what the Corp --

Q. Well I am asking you. You testified about it and I am asking you, did the Corp of Engineers require your father -- did they require your --

MR. BERGLIND: Objection.

COURT: Hold on a moment.

MR. BERGLIND: Well we have danced around that issue that he wasn't around to testify as to what the Corp told him to do. His objection and I believe his objection was sustained and we need to address it.

COURT: Well the letter says what it says. The thing is what the letter is I am not going to get a whole lot of point there. I mean the letter speaks for itself more or less. Assuming that is the letter. I notice another one in here.

MR. TWOMBLEY: Well Your Honor I don't believe that the Court prevented him and struck from the record his opinion as about what the Corp would or would not have required in 1977. He answered several questions in response in that line of questions and then when I made the objection Your Honor asked Mr. Berglind to kind of

stay away from it and then he asked some other questions about it. Now, if the Court is going to strike from the record Mr. Cashman's testimony about what or what not the Corp may have required in 1977, then that is fine. But --

COURT: Well I am not going to strike it from the record. I am not going to give a whole lot of weight to certain parts of it that I listened to. I mean -- you know I can certainly take notice of how these things work. I have heard you know lots of testimony with regard to docks and permitting and that sort of thing. I am somewhat familiar with the process and you know I may give appropriate weight based on the fact that the witness didn't write this letter and it was found in his father's file, but I don't think I am going to strike anything from the record.

MR. TWOMBLEY: Well then I would like for Mr. Cashman to answer that question if that's all right?

COURT: Go ahead, sir.

A. Restate it?

BY MR. TWOMBLEY:

Q. Do you know if the Corp of Engineers required your father to say that this dock was owned by the Lightsey brothers?

A. I don't know what the Corp required in 1977.

Q. I mean for all you know your father could have written down that this dock is jointly owned by the Lightseys and the Cashmans, right?

MR. BERGLIND: Now he is asking for pure speculation.

COURT: Yeah, move on. I think we have got that issue covered.

BY MR. TWOMBLEY:

Q. Do you know of any reason why your father didn't write that the dock was owned by the Lightseys and the Cashmans as you testified here today?

A. My father would be following the directions of the 1977 requirement to get a dock permit.

Q. Mr. Cashman have you ever gone through the permitting process for a dock?

A. Yes, but not a full dock, but a repair and a replacement.

Q. Okay and what dock was that for?

A. 131 Bridge Street.

Q. And that would have been around what year?

A. About -- the last two years.

Q. Okay, prior to that you ever been through the dock permitting process?

A. Only to look into what was required to be permitted for a dock.

Q. You ever tried to get a dock permit for the location we are talking about today across from Oyster Street?

A. No.

Q. Never even called the Corp and asked them if you could get a dock there?

A. Yes.

Q. You have called them?

A. Yes.

Q. Tell me what did they say?

A. They said I would have to file a permit.

Q. Okay, and did you ever then try to go through the process to get a permit?

A. No, I just got the material to know what I had to do.

Q. So you don't know as of today as we sit here whether or not you can have a Cashman dock beside the one that is there?

A. I never asked for permission by the Corp.

Q. I believe you testified about document number 12 which is dated -- or Exhibit No. 12 which is dated October 31st of 1960.

A. Yes.

Q. And you testified that this was the permit that allowed -- I think you said that prior to that there had never been a permit for a floating dock?

A. Based on what I see right here there was not requested on this particular document permitting for floating docks.

Q. You know how the Cashmans would have had one if there had never been a permit granted for it?

A. Yeah, probably just built it and put it there without following the permit process.

Q. And that would have been the same thing the Lightseys would have done back in that day, right?

A. That would have been the way you did business back then, yes. Probably the same way the one on dock number two got installed.

Q. You were asked about the water that was run for this location and I believe you testified that you had had a T inserted into the line to go out --

A. I didn't insert the T, but a T was put in there.

Q. Who installed that? Someone you hired?

A. I don't recall who put it in, but I know it is there. It could have been ours, it could have been somebody in our family, I don't know who put the T.

Q. Isn't it true Mr. Cashman that the Lightseys had water run down there before you and you then went to tap into their line and put water?

A. No, we had the first water line down. The Lightseys used it and that line was in disrepair because in order for the water down there to clean boats and to fish was broken, he took it upon himself to have it put in.

Q. Mr. Cashman you would agree with me that there is an exclusion in your insurance policy for docks, right?

A. No, I wouldn't.

Q. You talked about the Lightseys' use of pier number 2, do you have any photos of the Lightseys using pier number 2?

A. I haven't looked for them, but I am not saying that they are not.

Q. Do you have any here today in the --

A. No, I don't.

Q. Do you have any pictures of the Lightseys' boat at dock number -- at what you referred to as pier number 2?

A. No.

Q. In fact the pictures that we looked at earlier, we saw boats that were pulled up along the -- alongside the Lightseys' spare dock, right?

A. But I wouldn't assume that those were the Lightseys only since they were carted back from the Cashman dock. The boats at the time were moored in the water beside dock number 2 until the floating dock at the end of dock number 2 was installed to preclude that you would have to walk out in the mud and to push your boat into the water.

Q. Now if I am understanding your testimony about these maintenance records, is that your father had a file for the dock, right?

A. Yeah.

Q. And there are records in there from 1974 to 1995, right?

A. Yes.

Q. I mean you are free to look at the first receipt.

A. I have looked at those. I know that that's what is in there.

MR. BERGLIND: Is this part of cross?

MR. TWOMBLEY: Well he was asked about his father's file. He was asked about the maintenance in his father's file, so --

COURT: Go ahead.

MR. TWOMBLEY: That's all I have got, Your Honor.

MR. BERGLIND: Nothing further, Your Honor.
May Mr. Cashman be seated?

COURT: Yes.

MR. BERGLIND: Thank you.

MR. CASHMAN: Thank you, Judge.

COURT: Thank you, sir.

DIANE REYNOLDS, called as a
witness, after being duly sworn,
testified as follows:

BY MR. BERGLIND:

Q. Can you state your whole name for the record, ma'am?

A. Diane C. Reynolds.

Q. Mrs. Reynolds where do you live?

A. I live at 25 Old River Road, Bluffton.

Q. Mrs. Reynolds, how long have you lived there?

A. In June it will be 50 years.

Q. Okay, we have been talking about a pier today and I know you have been sitting in here for some of it. Are you aware what dock we are discussing today?

A. I have been using that dock since 1976 with the permission of the Carter's, the Cashman's and the Lightsey's.

Q. Okay, so you are aware of what --

A. Oh, yeah. I haven't been by there in a couple of years, but I know exactly where it is.

Q. All right, I have a letter and it is Exhibit 38, Your Honor, may I grab this witness notebook?

COURT: Yes.

A. I have a bad ear so you have to talk where I can hear you.

Q. Yes, ma'am. I am going to show you what's been marked as Exhibit 38.

A. I put 1965 on there. My youngest son was born in 1965 so that meant 1975. That's a mistake, I am sorry.

Q. That's okay. Have you seen this letter before?

A. I am sorry?

Q. Have you --

A. Yes, I have a copy at home that I got, yep.

Q. And I gave you a copy of that recently?

A. Yeah, I remember writing it but I had forgotten. It's been what 7 or -- my grandson is 18 now, he was 11 so 7 years ago.

Q. Okay. Now, in this letter you write "To the Cashman Family. In 1965 the Cashman family, Mrs. Carter and the Lightseys gave me permission to use the dock." You mean 1975?

A. '75, yes I am sorry, that's my mistake.

Q. That's okay I just want to clear that up. Why are you writing this letter to the Cashman family?

A. Well my boys when they was little we used to go to the beach everyday but when they got to be ten and twelve they wanted to crab so I was a real good friend of Ms. Carter so it was next door to the Cashmans and one day I was down visiting her and I just saw the dock and I asked her if we could use it and she said sure and then sometime later Mr. Cashman came down when one afternoon and I introduced myself and told him she had gave me permission and he said that's fine and I have never met Mr. Lightsey but I did meet his wife one time. If I ever went -- I call it 2 Oyster Street it is diagonal in the front. If I ever went down there to fish and anybody was home in the house I would never stop. I wasn't going to a buttsinski and get in the way of people that owned the dock, but one day Mrs. Lightsey walked down to the dock and I made the comment that you don't come down here very often and she said her children played baseball in the summer and that's why they didn't come to Bluffton very often. Other than that, I have never talked to her again. But she said she told somebody I took care of their dock because I was down there quite frequently and I never saw anybody abuse the dock.

Q. To your knowledge was this dock and -- you mentioned Mrs. Carter -- do you know where her property was located?

A. She is right next to Mrs. Cashman. Her grandson when she died he tore the house down.

Q. Was that property between the Cashmans and the Lightseys?

A. Yeah, the Lightseys are all the way on the end when you go around Oyster Street and Ms. Carter was somewhat this way and then Mr. Cashman is right on -- right beside next on this corner.

Q. Since 1975 since you have been using this pier with permission as stated, was this dock known as the Cashman, Carter, Lightsey dock?

A. Yes, that's what all three families told me they owned the dock together and they all three said I could use it, so I presume they all owned it or they wouldn't have given me permission to use it. And I never saw anybody else down there.

Q. That's all the questions I have.

A. Huh?

Q. That's all the questions I have for you.

A. Okay.

Q. The defense attorney would like to ask you a few questions, though I am sure.

BY MR. TWOMBLEY:

Q. Ms. Reynolds when was the last time you spoke to Ms. Carter?

A. Oh my goodness, she has died years ago. I sat with her a lot when she got ill. I don't know what year she died. She's probably been dead maybe ten years now; I am not sure.

Q. Do you know when the last time the Carters lived in that property?

A. Until she passed away.

Q. And you believe that was about ten years ago?

A. I would think that. It was seven months ago my grandson moved back to Bluffton and I wanted to use the dock again, so it's probably been at least ten years since she died.

Q. You said you spoke to a Ms. Lightsey, who was that?

A. I don't know. It was the lady that was at the house one day and I don't even remember what she looked like. She just came down to the dock and I just made the comment joking said you know you guys don't ever come down here very much and she said her children played, I think she said baseball and they didn't get to come to Bluffton very often. Other than that I never met Mr. Lightsey before. If I did, I don't remember it.

Q. And when you said you never met Mr. Lightsey, who are you referring to?

A. I don't know. Whichever Mr. Lightsey owned the dock, I don't know the gentleman. If I met him like I am telling you, I don't know it. I thought there was a man -- I guess it was about six or seven years ago I went down there -- my son and I went down and my grandson and they were working on the right floating dock. The left floating dock had disappeared.

Q. Now let's --

A. I was going to tell you about the lock. That's when the lock got on the gate when that man was working on the dock.

Q. Let's just stick to the questions that I ask you.

A. Sorry.

Q. Do you know if there is more than one Lightsey member or Lightsey men that may or may not own that property?

A. I think they had two sons and a daughter -- the couple that I knew by then would be my age in their sixties.

Q. And do you know which ones own that property?

A. Oswald is the only name I remember.

Q. Okay.

A. Like I said I don't remember meeting one on one. If I did, I don't remember it because they were never down there very much.

Q. And just to clarify you had testified earlier that you presumed that since these people had given you permission that they had an ownership interest in the dock?

A. I had seen Mr. Cashman down there on his boat several times when I would be down there, but he wouldn't be on the dock.

Q. Right, but you testified that you presumed that the Carters, the Cashmans and the Lightseys --

A. That's what I was told, yeah.

Q. Right, but you don't know that for sure? That's just an assumption or presumption that you made?

A. Like I said there's three people that said it was okay if I crabbed down there, so it was my favorite place to go. Actually I would like to go back tomorrow but that's neither here nor there.

Q. Well I think that is here or there, let's talk about that. Do you know if the Cashmans are successful in this lawsuit, do you know whether or not you would be allowed to use that dock?

A. I would like to once in a while, not very often anymore. My husband died last year so I am not a fisherman

like I used to be, but I still like to go and enjoy the porpoises and the birds. A lot of memories to that dock after all these years and you get to crab there, so --

MR. TWOMBLEY: That's all I have Your Honor.

A. So you want it unlocked, huh? I presume the man that was fixing the dock was so rude that they put the lock on there. I have no idea and I haven't been by there in a couple of years now so I don't know if the lock is still there or not.

MR. BERGLIND: Your Honor, I have no redirect and I would ask that Mrs. Reynolds be able to be seated.

COURT: Thank you very much. You may call your next witness.

MR. BERGLIND: Your Honor, my next witness will be Ms. Betty Cashman Davis. Your Honor, just a moment if I may advise -- is Ms. Reynolds free to go at this point?

COURT: Yes, oh absolutely, yes thank you.

BETTY CASHMAN DAVIS, called as
a witness, after being duly sworn,
testified as follows:

BY MR. BERGLIND:

Q. Can you please state your full name for the record?

A. Betty Cashman Davis.

Q. And what is your address?

A. 2735 Five Highway 19, Lumber City, Georgia.

Q. And just again my apologies for frame of reference for the record and for the judge what is your birthdate?

A. April 2, 1947.

Q. What is your relationship with Gene K. Cashman, Sr. and J.O. Cashman?

A. Eugene K. Cashman, Sr. is my father and J.O. Cashman is my grandfather.

Q. You have heard a lot of discussion about the Cashman property located on Oyster Street and that is deeded by Cashman Properties, LLC. Do you have any ownership in that?

A. I do.

Q. Okay, what is that?

A. I am a half owner with my sister-in-law Kathy Cashman and it is an LLC for estate planning purposes.

Q. You have heard a lot of discussion about a pier, dock 1, dock 2 and dock 3. Are you familiar with the pier that we are talking about today?

A. Yes.

Q. Describe for me your first memories of dock 2 and dock 3.

A. Dock -- well was it dock 2 which is always there as I remember it as a young child we were on it all day with our friends and family. We swam off the dock, we fished, we rode the boat all around in that area. And it was there until I think I was about 15 years old when a storm destroyed it.

Q. Was that when dock 3 was constructed?

A. Dock 3 was constructed after that and I just made a smooth transition from dock 2 to dock 3.

Q. As to dock 2, who owned that dock?

A. My grandfather, J.O. Cashman.

Q. When you said you made a smooth transition from dock 2 to dock 3 what do you mean by that?

A. Full use of it for myself, as well as my family and friends.

Q. Describe for the Judge and the Court how did you use pier 3? Describe your use and enjoyment of it?

A. Well the enjoyment was fishing, crabbing. We had fitness, we had parties. In the late '70's and '80's and the early part of the '90's my -- I was older then and my activities actually increased over in that area. My friends were older so my friends and children came. I stayed many, many weekends and usually all summer which would be eight or ten weeks. We even spent -- after Christmas was over we would spend New Year's over there and watch the fireworks from Alljoy, from Hilton Head, Tybee and Savannah. So I was over there a great deal.

Q. You talk about Christmas and Thanksgiving and summers, was this continuous from the construction in 1961 or 1962 until the lock was placed in 2004 or 2005?

A. Yes.

Q. During that period was your father and grandfather also using the pier?

A. Well my grandfather had passed away, but my father and his entire family used the pier. There was never any reason we wouldn't use it?

Q. You have heard a lot of testimony about a floating dock that is located on the east side of the pier head, do you know what floating dock we are referencing?

A.. Yes.

Q. Okay. Do you know when the first floating dock was constructed?

A. When the pier 3 was completed a floating dock was there. I remember yes -- right after the pier was completed.

Q.. And is it your understanding that the Cashman family constructed or had somebody construct that floating dock?

A. Yes.

Q.. As to the floating dock on the east side, who used that dock?

A.. The Cashmans and their friends and family.

Q. Do you ever remember the Lightseys using that floating dock on the east side?

A. No, not unless they needed just to tie up a boat but they were seldom there.

Q. Was it your understanding that you owned that floating dock?

A. Yes.

Q. It was your understanding that you owned the pier with the Lightseys?

A. It is my understanding that the pier was owned by the Carters, the Lightseys and the Cashmans.

Q. You have heard a lot today about dock maintenance that word being thrown around. Can you describe to the Court what maintenance you observed while you were using the dock?

A. Maintenance -- we did maintenance on the dock as well as the floating dock. The ramp that went down, my son has actually sanded the rust off of that before it could be painted. We had replaced boards. We would use a crow bar and pry up boards that needed to be replaced; nailed down nails that were protruding. Those are basically the repairs and there were times that Daddy would just have a truck come and put lumber up on the bank and it was just -- it was already cut and we would just use some of those boards wherever they needed to be put.

Q. Was that for the pier or was that only for the floating dock?

A. Sometimes the pier, sometimes we made repairs on the floating dock.

Q. Now you testified that the first floating dock was there when pier 3 was completed. Did that floating dock need to be replaced throughout time?

A. Yes, the flotation on the bottom of it had eroded and new flotation had been put on it. A storm took another floating dock off and it was replaced. I remember two different ramps and I can remember two or either three different floating docks. I can't often you know at least -

-

Q. Who made those replacements and repairs?

A. My father, Eugene Cashman, Sr.

Q. When was the first time that you received notice that the Lightsey family asserted exclusive rights to the dock and floating docks?

A. February of 2005.

Q. And how did you become aware of that?

A. We were there. We had tried very hard -- we had lost the last floating dock and it seems to me

we had taken a long time to get everybody in place to build another one and it seems like we got there and we couldn't go down on the dock.

Q. Was the intent of the Cashman family at that time period 2004 was it to construct a new floating dock?

A. Yes.

Q. I have nothing further at this time. Please answer any questions that Defendant's attorney has, okay.

BY MR. TWOMBLEY:

Q. Ms. Cashman, you first received an ownership interest in this property in 1994, the same time your brother did, correct?

A. Correct.

Q. And just as with your brother prior to that technically you were there as a guest of your father?

A. I was never a guest. I was just a member of the family, a daughter.

Q. You would agree with me that if your father would have wanted to, he could have excluded you from that house if he wanted to, right?

A. Yes.

Q. I mean he could have sold the property to someone else for some money and just taken the money and then you wouldn't have an ownership interest in the house, right?

A. Well we were always told he wanted that to stay in our family.

MR. TWOMBLEY: I object to her testifying about what someone told her, Your Honor.

MR. BERGLIND: Your Honor, he -- He asked.

COURT: Yeah, that's fine. Go ahead, overruled.

BY MR. BERGLIND:

Q. You testified that dock number 2 was owned by J.O. Cashman, correct?

A. Correct.

Q. And that was your grandfather?

A. Yes.

Q. You told about the work that your son did on the rails found in the floating dock. He took the rails from the pier down to the floating dock that you had, right?

A. Yes, the ramp.

Q. But you hadn't used this floating dock from November of 2004 until May of 2009, correct?

A. 2000 -- you mean 2005?

Q. No, November of 2004 we have photographs that show that the dock washed away and was not there. I can direct you back to the photographs.

A. I remember that and we put up a board across it for safety.

Q. But obviously from that time until this lawsuit was filed in May of 2009 no one from the Cashman family used that floating dock?

A. Or the dock, correct.

Q. And their use had been interrupted during that time period?

A. Correct.

Q. Ms. Cashman a question I have is that you testified that dock 2 was owned by J.O. Cashman, right?

A. Yes.

Q. But that you believe dock 3 was owned by the Cashmans, the Carters and the Lightseys, right?

A. Yes.

Q. That's what you testified to, correct? Is that correct ma'am?

A. Yes.

Q. Why do you think J.O. Cashman owned dock number 2? Did he build it?

A. Yes.

Q. Did he maintain it?

A. Yes.

Q. No further questions, Your Honor.

COURT: Anything else?

MR. BERGLIND: Nothing further, Your Honor. I would just ask that Ms. Davis be allowed to be excused.

COURT: Absolutely. Thank you very much. Call your next witness.

MR. BERGLIND: Your Honor, my last witness I was going to do via deposition. The deposition of Norris Lafitte. I have --

COURT: This is the issue we talked about earlier. Do you want to do it that way or do you simply want to get it in through live testimony as I understand he is going to be a Defendant's witness.

MR. BERGLIND: Well I would like to put the deposition in. The deposition has already been submitted by the Defendants.

Both Mr. Cashman's deposition and Mr. Lafitte's deposition were submitted into evidence and it is up to Your Honor whether we read the deposition or --

COURT: Well by stipulation I can just take it in writing and you don't have to -- you got the Court copy of it and we can just make it an exhibit, but let me hear what the Defendant has to say about that.

MR. TWOMBLEY: I may not call Mr. Lafitte so I think if he wants to put that in, I think that is a good thing to do, but I agree with Your Honor it is in evidence and so if he wants to point to certain sections of it in his closing statement as opposed to actually reading it in, that I would prefer.

COURT: Reading it in, have you got the Court copy that we can make it an exhibit?

MR. TWOMBLEY: We would stipulate he can use that copy or the copy that is in the notebook or I can go in --

COURT: Yes, why don't we just leave it --

MR. BERGLIND: And I believe the Cashman deposition the Court's transcript we don't know where it is, but we are --

COURT: All right, as long as there are no issues with it, I am happy with it. All right, what else do you have.

MR. BERGLIND: Your Honor, the Plaintiff rests.

COURT: All right, we'll get into any Motions. It is only 4:00. What is your intent on the number of witnesses?

MR. TWOMBLEY: I think I am just going to call Mr. Lafitte. I may have one other witness that I have asked to be here first thing tomorrow morning. My guess is that the Motions are going to take a little bit of time to argue because I think that they are Motions that could potentially be granted. Of course, I think that or I wouldn't make them, but so I think that is going to take some time. I have got a lot of case law I want to provide to you and I want to read to you. I want to refer back to the testimony

that has been given. As I anticipate that will take the rest of the afternoon.

COURT: Okay, cause I was going to say if they are that long, I am not sure there's going to be a response. Do we want to start those first thing in the morning since we are only going to have two witnesses tomorrow it sounds like?

MR. TWOMBLEY: That's up to you, Your Honor. That would be fine, that would suit me fine.

COURT: What are your thoughts on that Mr. Berglind?

MR. BERGLIND: We can do them right now or tomorrow morning, whatever you would like.

COURT: I am just thinking if we have got lengthy motions and then you are going to want to respond late in the day we have pretty much all day tomorrow. We got to be there anyway tomorrow because one of your witnesses isn't coming until tomorrow, why don't we do it that way. You all remember what time we had scheduled. It seems like I have got something ahead of this at 8:00 or

8:30. I probably would have scheduled this for 9:30.

MR. TWOMBLEY: I am not sure but if you want to just let's say 9:30, that's fine.

COURT: Let's just say 9:30. Joanne, that work for you?

JOANNE: Yes.

MR. BERGLIND: Should we prepare to come back to this courtroom?

COURT: I don't know. Let's just meet down in my office because it seems like Judge Mullins wants this one tomorrow for something, but it will be this one or one of the others.

JOANNE: Do you want me to move all of this?

COURT: Let me find out. I am not sure what she is doing so I will find out. But yeah, just leave it here for now. I will tell you what, hold on one second let me find out.

COURT: All right good morning. Day two, I think we left off Mr. Twombley was going to make a few Motions with regard to

the Plaintiff's case. I would be happy to hear from you, sir.

MR. TWOMBLEY: Yes, Your Honor. We would ask that the Court direct a verdict in this case for a judgment because we believe that even if you take the -- even if you take what the Plaintiffs have said and submitted during this trial at face value, they still can't succeed in proving their claims. As I mentioned yesterday there are essentially two claims here that the court, we believe, should focus on and it is the claim for adverse possession and a claim for prescriptive easement and I want to first start off by letting you know what the South Carolina law says about the burden of proof in adverse possession cases and in prescriptive easement cases. In Fender vs. The Heirs of Smashum, South Carolina Court of Appeals 2003 case, the South Carolina Court of Appeals said that one claiming title to land by adverse possession has the burden of proving adverse possession by clear and convincing evidence. A 1997 case from the

Court of Appeals a party asserting possession -- a party asserting adverse possession must establish a claim by clear and convincing evidence. The burden of proof upon a party asserting adverse possession must do so by clear and convincing evidence. The South Carolina Juris Prudence talks about the burden of proof for prescriptive easements and it also talks about the similarity between adverse possession cases and prescriptive easement cases and it says "A prescriptive easement is analogous to adverse possession." It goes on to say that cases interpreting and discussing adverse possession are also applicable in discussing cases for a prescriptive easement. And your proof of facts says that there is no question but that the burden of proving a prescriptive right rests on the claimant and that such burden is satisfied only on a clear showing by the claimant of every element necessary to constitute a valid claim. Another section of Am Jur Proof of Facts which, as Your Honor knows is a well-recognized treatise, says

"although the Courts have articulated the elements of a prescriptive easement in different ways, a claimant basically must establish by clear and convincing evidence that the use of the land was open, notorious, adverse, exclusive and continuous for the prescriptive period." So the first thing is that -- I think Your Honor has to look at the testimony that has been offered by the Plaintiffs and the evidence that has been offered by the Plaintiffs and ask yourself, have the Plaintiffs established by clear and convincing evidence that they were using this dock adversely? Have they established by clear and convincing evidence that they were using this dock under a claim of right and the answer to that question we contend is clearly that they have not. It is well recognized in South Carolina as well as every other jurisdiction in the country that a permissive use can never ripen into an adverse use. Williams vs. Abbott, is the first South Carolina case to talk about this and in fact from 1917 and the law has been

the exact same until today. And it says it is well settled -- "It is the well-settled rule that use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, if permissive in its inception, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him."

Corpus Juris Secundum Section 45 "A . . . permissive use, exercised in subordination to the owner's claim and ownership as distinguished from acquiescence, cannot give rise to a prescriptive easement no matter how long continued." Another section of the same treatise says, "In other words use by expressed or implied permission or license no matter how long continued cannot ripen into an easement by prescription since adverse or hostile use is lacking". Am Jur Proof of

Facts "A use cannot be considered hostile if it is with permission expressed or implied. A permissive use may be implied in situations where a reasonable inference can be drawn that the use was permitted by neighborly sufferance or acquiescence. An adverse claimant makes use of an owner's property, it is by permission, expressed or implied, such use will never ripen into an easement by prescription no matter how long it continued." So in looking at the Plaintiffs' case, you have to ask yourself were the Plaintiffs using -- well what evidence is there? What evidence was submitted by the Plaintiffs that sheds light on whether or not they were using this dock, whether or not they attached their floating dock to what everybody admits is a dock that we built. Nobody is contending that we didn't build the dock in 1961. But were they using it in a hostile way and in a way adverse to our interest in the dock and have they proven that by clear and convincing evidence. Well let's look at the evidence and what was

submitted. In 1977 Gene Cashman drafted a letter. And this is why one of the things that is so remarkable about these cases. If you look at all of the prescriptive easement cases and adverse possession cases and the Courts are looking at this, was it with permission or was it not with permission and usually you have these folks who are coming in and saying well I am not really sure, well you know my great uncle said one day that this that and the other, it is really hard to determine whether or not it was with permission or whether it was not with permission. Those Courts usually come down and say well the claimant hasn't met their burden of proving that it was not with permission and the defendant usually succeeds, but what's so miraculous about this case is we have a letter. We have a document that the Plaintiffs admit Gene Cashman testified on that stand that this was a letter drafted by his father. He said it was in his father's handwriting and he uses the word "permission". He said the dock is owned

by the Lightsey brothers and I have their permission to attach this floating dock. I mean they actually used the operative word that both of these claims rest on -- permission. Oswald Lightsey says the same thing. That he owns the dock and that he is giving the Cashmans permission. Now as I pointed out in my re-cross of Mr. Cashman yesterday, you know we object to you know his testimony about what the Corp of Engineers may or may not have required in 1977. But clearly the Corp of Engineers didn't require his father to write down that this dock is owned by the Lightsey brothers. He could have written that this dock is a jointly owned dock and we have been using this dock for 30 or 40 years and a dock before that and a dock before that. He could have said a million different things other than saying this dock is owned by the Lightsey brothers and I have their permission to attach this dock. You know if you -- I guess you could -- I mean to find otherwise you would have to say that we know now in 2011 better than Mr.

Cashman knew in 1977 and Mr. Lightsey knew in 1997 when they both used the word "permission". I don't think that the Court can do that respectfully. So, we have evidence here that there was expressed written permission for this use. You don't even have to find that it is implied permission or that it was permission by a neighborly accommodation as the case law talks about. We have express written permission that they admit that their father signed, Mr. Gene Cashman, Jr. testified that's his father's handwriting and of course we know it was sent to the Corp because a week later the Corp sends a letter back and says I got the letter. So, it was a permissive use from the Cashman's perspective. It was a permissive use from the Lightsey's perspective and of course it was a permissive use from the Corp of Engineers' perspective because that's what they told them. So the three parties interested in this transaction in whether or not this float could be attached to this

dock, they all said the dock is owned by the Lightsey brothers and we have their permission to attach this floating dock to it. We believe that the Court need not analyze any other factor or any other evidence in this case whatsoever. We believe that you can end your analysis there and you can find that the claimants have not proved by clear and convincing evidence that they were using this dock as a matter of right, that they were using this dock adversely. That they were using this dock in a hostile manner and it is their burden. We don't have to show -- we don't have the burden to show that it was with permission. They have the burden to show that it was without permission and this document clearly shows in our opinion and it says it, it speaks for itself. Oswald Lightsey used the word permission, Gene Cashman used the word permission. Now, in the cases Your Honor that don't -- where you don't have these documents, where you don't have a document like we have here that says this is with permission, what the Courts

usually look to are the actions of the parties. They look at the conduct of the purported dominant tenement holder which in this instance would be the Cashmans who are trying to assert a dominant interest over our dock. And what the Court does is -- says well let's look and let's see what they did. I mean how did they act over these years. Did they act as if they had an absolute ownership interest in the pier or did they act and does their conduct show that they had a permissive use of the pier and let's look at what the evidence is: Gene Cashman testified. He testified on the stand and he also testified in his deposition. I am just going to read you what's in his deposition since I don't have the transcript from yesterday's testimony, but there was a discussion about when the Cashmans allegedly put the electricity down on to the dock and what did Mr. Cashman testify? He said that his father did that and he contracted with somebody to do that and he was asked this question "Do you know if he just did that or

was there discussion with the Lightseys or anybody else about that?" Answer: "I am sure that he didn't just do something. He probably had a discussion with Oswald. It may have been a phone call, but he wouldn't have gone and just one day have them come back and arrive and see lights on the dock." Now why wouldn't -- I mean if the Cashmans if they owned this dock, they have got an ownership interest in it. If they've got a right to use it, they wouldn't have had to ask the Lightseys for permission. They wouldn't have had to call them up and talk to them and tell them what they were going to do. Mr. Cashman was asked about this same transaction again with the electricity. He said "I don't think he -- that would be my Dad would have gone to the expense of contracting somebody to do that without having you know at least a telephone connection or discussion with the Lightseys." So, in looking at -- if you don't buy the expressed written permission argument, look at their conduct and the Cashmans' conduct is

what you would expect when someone had a permissive use of this dock. Now to the contrary, let's look at what the Lightseys did. Gene Cashman testified he came down there one day and found a sink on the dock. He said he was pleased to see it was down there; a fish cleaning station. He testified nobody ever called him and asked him if that was all right; if that was a good idea. Obviously he testified to all the different things that the Lightseys did to the dock. He said they never called him and asked him for permission; never called to discuss it with him. I mean never anything. That's the conduct that someone who owns property would do. If you had a dock and you owned it and you wanted to put a sink down there, you would go down and put you a sink on it. You wouldn't call up anybody else and you certainly wouldn't call up a person that you were allowing to use your dock. But if the person who was using your dock wanted to have a sink down there, they wouldn't go and do it without talking to you. They would ask you.

They would say Judge Dukes I would like to have a sink down there. I will pay for it all. If it's all right with you, I would like to put one down there and you would probably say sure. You know, I am letting you use it, it sounds like a good trade. You know, you put a sink in. I am not charging you anything to use it. It's perfectly logical.

If you go back to the testimony that Mr. Cashman gave about Mrs. Reynolds using the dock. He told Mrs. Reynolds you first have to check with the Lightseys. If the Lightseys don't object, then I don't mind if you use the dock. Well if the Cashmans own half the dock and they own half the pier and they believe they had a legal right to that pier like they are in this courtroom today asserting, why wouldn't they have told Ms. Reynolds yes you can go use that dock, I own half of it. You go down there and go over to the left hand side, that's ours and you can fish there. If they believe they had a legal right, they would have said go ahead and do

it and that's the conduct that you have to look at. That's the conduct of the dominant tenement holder and those are the things that the case law looks at. Did someone act, did someone conduct themselves consistent with the fact that they believed they had an ownership interest. Is there hostile -- is there adverse conduct or were they conducted themselves in a manner that was consistent with permissive conduct and we would submit that they had not met their burden to show by clear and convincing evidence that they were using the dock at any point in time adversely, hostilely or with anything other than the Lightseys' permission. So, you got the written permission which we have established with -- or we talked about with the May, 1977 letter. We have got the verbal permission and the conduct related to verbal permission with Gene Cashman's testimony that his father would have never gone and done things down on that dock. He wouldn't have wanted the Lightseys to come down there and see that these things have been done without

talking to them first and we have got the evidence about Diane Reynolds. Told her you need to talk to the Lightseys first and if they don't care, then obviously we don't care. The third characteristic of permission and the things you see the case law talk about is implied permission. You have to remember it goes back to the crucial part that they have the burden. They have the burden to prove that they didn't have permission that it was hostile and that it was adverse and so a lot of times you see these cases talk about well you know it's not really clear that they had permission or maybe they didn't have permission but let's kind of look at the circumstances under which the parties were interacting with each other and the Courts usually conclude well they haven't met their burden and then they call it implied permission. Give me one second Your Honor. This is a 2005 case from Indiana and it says "neighbors, predecessor and title testify that the two families spent holidays together and that their marriage ceremonies

were performed by landowner, predecessor in title thereby reflecting a cordial relationship between the neighbors." Well, I don't know if you have had a chance to observe the parties in the courtroom since the trial began, but they have an extremely cordial relationship with one another and they have had, as Mr. Cashman testified, an extremely cordial relationship with one another and in those situations Courts say well you know, you haven't shown, you haven't met your burden to show that that was adverse. You haven't met your burden to show that was hostile. That is a cordial relationship and that is implied permission. A 2006 case from New York rules on the same ground. It says that the owner's use of purported easement was not hostile but was permitted as a matter of neighborly accommodation. South Carolina case of McDaniel vs. Kendrick, SC Ct. of Appeals 2009, "There was sufficient evidence that stepmother's possession of stepdaughter's property was under stepdaughter's passive

permission rather than being hostile as required to support stepmother's claim. There is -- the Plaintiffs have not shown that their use of this dock was hostile in anything more than as a neighborly accommodation. Back to the CJS article, it says "A number of Courts have recognized that a use cannot be deemed hostile when it rests merely on a neighborly accommodation." A prescriptive easement cannot be established if permission to use the property can be inferred where the relationship between the parties is one of neighborly cooperation and accommodation. Where there is a community understanding or local custom of allowing a neighbor to cross another neighbor's land, the Courts have considered such use to be by permission thereby defeating a prescriptive easement claim. Your Honor, we think that all of those cases are directly on point for these cases and that the Plaintiffs have not met their burden of showing by clear and convincing evidence or by a preponderance of the evidence that they were using this dock

hostilely or adversely or if anything other than with expressed permission, implied permission or as a neighborly accommodation. Your Honor there are also a body of cases that talk about when a claimant who is trying to establish a prescriptive easement makes an offer to the property owner to purchase an easement or to enter into some type of business transaction to memorialize the easement and those cases say evidence that there have been negotiations between an adverse claimant and the record owner tends to indicate that any use or possession of the land by the claimant was permissive and not hostile under a claim of right on the part of the adverse claimant. Mr. Gene Cashman, Jr.'s letter is in evidence. The letter he wrote in 2005 and it was a very -- a very nice letter that was written and it was very well written by him, more concerned and interested in the substance of the letter and what he said. He said "I would respectfully like to ask your family to reconsider its decision. If a more formal agreement is

needed to make the dock a business relationship, then let's make it. I am willing to do whatever it takes to keep our families on smooth seas." Now back to looking at the conduct of the dominant tenement holder, this isn't conduct of someone who has an absolute legal right to use this dock. This is conduct of someone saying, look, we need to sit down and talk about this thing. We need to make this a business relationship. I am willing to do anything to make this work out and in addition of course Your Honor, he sent the keys. He admitted he had the key. He sent it right back to the -- he sent it right back to the Lightseys. Of course he sent it back to them because he knew that he didn't have a right to go down there and he honored what the Lightseys had said because he knew that it was their dock. Now Your Honor assume -- I am going to assume for purposes of the rest of the argument that you don't agree that it was written permission even though there is a document that both parties say "permission".

I am going to assume that you don't believe there was verbal permission even though Gene Cashman testified on the stand that before his father would do something to the dock he would call and talk about it with the Lightseys. I am going to assume that you don't believe there is implied permission or permission as a neighborly accommodation even though Mr. Cashman has testified on the stand that they were neighbors and friends and they had this great relationship with one another over years and years and years. I am going to assume that you don't believe that the letter where he says, let's make this a business relationship I am willing to do anything to keep use of that dock, I am going to assume that somehow you don't believe -- you don't think, you don't agree with the Defendants on that and you believe that they have proved by clear and convincing evidence that all those things aren't true. Well the next element that you have to get to is whether or not this use was continuous. Was the use continuous for a twenty-year period?

And the cases that talk about this talk about whether or not the use was interrupted. Now, Gene Cashman testified on this stand my use of this dock was interrupted in 2004, early 2005 when the Lightseys put a lock on the gate and prevented us from going down there. His sister testified on that stand yesterday, my use of this dock was interrupted when the Lightseys put a lock on that gate and wouldn't let us go down there. They both admitted that their use of this alleged easement was interrupted. Now there was not a South Carolina case to talk about the interruption of a prescriptive easement until 2005. In 2005 the Supreme Court in Pittman vs. Lowther, said as follows: "We conclude that actions are sufficient to interrupt the prescriptive period for where the servient landowner - the Lightseys - engages and overacts such as erecting physical barriers which caused a discontinuance of the dominant landowner's use of the property no matter how brief." No matter how brief. Well here the Lightseys erected a physical barrier in the

form of a chain and a lock. The Cashmans testified -- they both testified that interrupted our use of the easement and we couldn't use it and in Pittman vs. Lowther, it was a roadway and someone had put like a log in the road and it was there for a month or so and someone moved it and the question was well, is that enough? Is that enough to prevent the use and the Supreme Court said it was and they said no matter how brief. Well here we've got four and a half years, four and a half years from November to December timeframe of 2004 until late May of 2009 their use of this easement was interrupted and the Cashmans didn't do a thing about it. They didn't even try to get around it. They didn't even try to move the log out of the road like they did in Pittman vs. Lowther. They didn't do anything and it wasn't until May of 2009 --

MR. BERGLIND: Your Honor, I am going to object to that testimony. First of all there is no testimony that we did nothing. I believe that's -- anything that was done is

something that does not go into evidence and they should not be able to bring up that it wasn't done. There were settlement negotiations. There -- there were family --

COURT: Let me ask you this. Off the train of thought there and probably a good stopping point. The Plaintiffs' pleadings and case seem inconsistent with adverse possession. Is it the Plaintiffs' intent to pursue an adverse possession claim?

MR. BERGLIND: Your Honor, I agree with the Court that our other claims are stronger -- being prescriptive easement. However, I do believe adverse possession as to the floating dock applies in this case.

COURT: As to the floating dock only?

MR. BERGLIND: As to -- the exclusive element is missing as to the pier. We can't show as to the pier we acquired it by adverse possession and I agree with that.

COURT: I mean Mr. Cashman's testimony was basically this was a friendly, family, neighborly operation out there and so there is no hostility -- there's no exclusion of

others, there's no -- I mean as a matter of fact the case was quite contrary. It was -- this was a handshake deal all along that went back to the '40's or whenever it was. I mean -- and the pleadings indicate that as well and so -- I mean I think several of the essential elements of adverse possession are just not there. I will allow you to argue otherwise but I mean it's just -- let's think of the case, this is not an adverse possession case.

MR. BERGLIND: Then we will move forward with the prescriptive easement and the resulting trust claims. I just want to clean up the Complaint that way.

COURT: Again, I am not trying to strong arm you into dismissing something you think is viable. I will certainly give you the opportunity to argue it, but based on the case yesterday I just didn't want to waste a whole lot of time with, you know, dealing with that issue if in fact it wasn't what you were pursuing to begin with.

MR. BERGLIND: No and I understand and -
- we don't have a problem with the dismissal
of the adverse possession claim.

COURT: Okay, all right. I don't know
if that shortens your argument up at all, Mr.
Twombley?

MR. TWOMBLEY: Well and I know what the
standard is at this point in time, but I
really want to finish building this record
with these cases, but I am almost done Your
Honor so --

COURT: I am not trying to shorten it
up. I just -- there are certain things, I
mean the testimony yesterday didn't support
adverse possession. Your pleadings don't
support it. I understand why you put it in
there. Every good lawyer would have, but I
mean it's -- this isn't an adverse possession
case. Anyway, --

MR. TWOMBLEY: I understand, Your Honor.
Is the adverse possession claim gone? Can we
--

COURT: Yes.

MR. TWOMBLEY: And let me rephrase to deal with Mark's objection because I think he is right to an extent. What I meant to say is there's no evidence in the record before this Court that the Cashmans did anything between November of 2004 or December of 2004 -- we are not sure of the date exactly when the gate was locked in May of 2009 when the lawsuit was filed. Now what they may or may not have done I don't know. But I know there's no evidence in the record. There's no evidence in this book. There's no evidence offered from that witness stand that the Cashmans did anything between November of 2004 and May of 2009. And if I am wrong, Mark can point that out.

MR. BERGLIND: Your Honor, that's my point as there is no evidence. It was in anticipation of litigation. We negotiated --

COURT: Well that's sort of argument on the other side so you can wait until he finishes and then I will be happy to hear from you on that.

MR. BERGLIND: Yes, sir.

MR. TWOMBLEY: In Burlingame vs. Gay, Your Honor it is a Massachusetts a 2001 Massachusetts land court decision that dealt specifically with this issue. It was from the adverse possession argument but of course South Carolina law says that adverse possession is analogous to prescriptive easement and so I think this case even though it is a Massachusetts case it says "The Gays' claim an easement by prescription over Burlingame's property based on their use as well as the use of their predecessors entitle of the alleged right-of-way. This requires open adversely continuous use for twenty years or more prior to the commencement of the lawsuit. There is no use -- there is no evidence that they used it in 2009. There's no evidence that they used it in 2008. There's no evidence that they used it in 2007, in 2006, in 2005. None whatsoever and in fact they both testified they said our use was interrupted. That's the word that they used. That's what they said on the stand. They said their use was interrupted and South

Carolina law is clear as well as every other jurisdiction that talks about a prescriptive easement. Your use cannot be interrupted no matter how brief and here we have a four and a half year interruption. Now, the prescriptive easement of the use must be for twenty years and if you will recall that's why I asked the witnesses, I asked Mr. Cashman and his sister I said you all didn't even get this property from your father until 1994 and they both said yes and the deed where they got it, the first time they got it was in 1994. Well we put a lock on it in 2004, in November or December of 2004. Well between 1994 and 2004 is ten years. Ten years -- they gotta have twenty years from 1994 and back, Gene Cashman admitted on the stand he was a guest of his father. He says his father could have sold the land, which he could have. He could have given it to someone else. He could have done anything he wanted to with that land, but his father - it is undisputed that they didn't even have an ownership interest in the land until 1994

when their father deeded them the land and even if you accept everything they have said as true, from 1994 to 2004 is ten years. South Carolina law is crystal clear, it has got to be twenty years. They have not met it and they certainly haven't shown it by clear and convincing evidence.

It is undisputed that we built this dock. Mr. Cashman said on the stand. He said in his deposition everything on the 1961 dock was done by the Lightseys. Now there is some evidence that they replaced a board here and there. Quite frankly I don't believe any of it. The father had a file at the house. He put all of his invoices in there. I mean -- it would be one thing if they just rummaged through the desk and found a receipt here and a receipt there and you know kind of cobbled together something, but the father had a file, a file on the dock with all the expenses in it. I mean presumably he put all the expenses in it. I mean I can't imagine he would just put some expenses in there and then others he would just put somewhere else.

He had a file on it and I went through all of those expenses for the total of \$9,012.36 in total expenses by the Cashmans that they claim were either related to the dock or the pier. And after going through Mr. Cashman's testimony, his testimony is at the most it could have been \$920.45 that could have been spent on the pier. Now of that \$920.45 we know that that includes lights at the barbecue pit, which aren't for it. Sweeping the roof, which aren't for it. A smoke detector and a water line so some of that you know I guess the water line could have been for part of it, but there's no evidence that they maintained this dock. There is no documentary evidence. They just come in and say well I can remember we would replace a board here and there and we worked before we went out and swam but of course the father has you know -- it looks like every board he purchased -- every 2x4 it didn't matter if it was \$3.22 he put them all in that file and there's just no evidence -- there is certainly not any evidence by clear and

convincing evidence that they spent any money to repair this thing and the money they spent on their dock -- you know in their claim, you know the dock floated off. You know the thing drifted down the river. I don't know where it is now, but you know I am sorry that they lost those expenses. There is no evidence that he paid any taxes on it. Remember he didn't know of ever paying any taxes on it. The documents show that it has been in our name from the county's standpoint since the first time they ever started assessing docks. They have assessed it to the Lightsey property. The Corp of Engineers has it in our name because we permitted it. They admit that they wouldn't work on it. They wouldn't do things to it without our permission and so because it is -- because you cannot have a prescriptive easement if the use was permissive. Their claim for a prescriptive easement fails. It just absolutely fails. They have not shown by clear and convincing evidence or by any evidence that it was anything other than

permissive. The last thing I would like to say Your Honor is we would also move for a directed verdict on their claim for an injunction. We don't believe the Court can issue an injunction without first going through either an adverse possession or a prescriptive easement claim. I think if you found that there was such a claim then you could issue an injunction but of course you wouldn't need to have an injunction if you issued an order that said they had to use through -- you know through a prescriptive easement or adverse possession, so we would ask that you dismiss the claim for the injunction now; the same for the claim for a declaratory judgment. I don't think the Court can issue an order declaring that they had a right to use this property unless the Court first determined that that right, you know, flowed through a claim for either -- well now only a claim for a prescriptive easement so you gotta get the prescriptive easement first and then finally the claims for resulting trust. Resulting trust deals

when someone pays money or proves property but title is in someone else's name and of course you don't have a title for a dock and this case doesn't involve a legal documentary title to anything. It involves their allegation that they used it in a manner to result in a prescriptive easement and so that theory, and there's certainly not any evidence that they have submitted to the contrary either in the book or on the stand, so we would ask that you direct a judgment or verdict on all those claims. Thank you, Your Honor, sorry I took so long.

COURT: Go ahead.

MR. BERGLIND: Thank you, Your Honor. I appreciate the citation of South Carolina Juris Prudence and Am Jur and Indiana and New York, but I think we should just go back to South Carolina law and he -- first the standard for a directed verdict. It is well established that when considering a motion for a directed verdict the trial court must view the evidence in all reasonable inferences in the light most favorable to the

non-moving party. If evidence as a whole is acceptable in more than one reasonable inference, the case should be submitted to the jury. Now, Defendant's counsel has made a lot of differences including judgment the credibility of witnesses. I believe that is your job and not his and as to those inferences, those are for you to judge and not him. The burden of proof. I agree that burden of proof was clear and convincing for the adverse possession claim. That is dismissed so as to the prescriptive easement claim, there is no South Carolina case that outlined the burden of proof for that claim so it is our contention that it is a preponderance of evidence standard. Regardless whether it is preponderance of evidence or clear, convincing, we still believe the evidence produced and the testimony produced is enough to survive defendant's motion. I am just going to go through some of the points that Defendant's counsel makes. The first one talks about permissive use. The testimony all day

yesterday with Ms. Davis and Mr. Cashman. I asked them numerous times, did you request permission from the Lightseys to use the dock and every time it was no. I asked Mr. Lafitte the same question in his deposition and his answer was that he did not remember the Cashmans ever asking for permission. I also asked Mr. Lafitte in his deposition who -- I simply asked him who owned the dock and his answer was and this is the floating dock. I said who owns the floating dock? His reply was the Cashmans. So even Mr. Lafitte who is known as the ring leader of the Lightsey family, admitted that the floating dock was the Cashman's dock. Mr. Twombly next talked about this document here from the Corp. We went around this document and discussed it and beat it up and discussed the other documents from the Corp and it was pretty clear from Mr. Cashman's testimony that the reason for this document was not for permission to build a floating dock, but for permission to get a permit from the Corp of Engineers. It definitely was in 1961 or 1962

that the Cashman family put a floating dock on the east side. They did that without permission from the Lightseys. Mr. Twombly also stated that it was evidence of permission the fact that we or Mr. Cashman testified that he called the Lightseys prior to doing improvements. This relationship between the Lightseys and the Cashmans and the Carters dates back to the 1930's. I mean they did things together and when he went to go do something to the dock that he believed he jointly owned with the Lightseys out of common courtesy as he testified he would call him and let him know what he was doing. I don't think that was asking for permission at all.

The next item that was brought up by Mr. Twombly was the letter regarding Diane Reynolds and he states, I just want to correct what Mr. Twombly states. He states that Mr. Cashman told Diane Reynolds that you have to first go to the Lightseys and get their permission first. If they are okay with it, then I am okay with it. That's not

the case. He said, hey, it is fine with me. If you just want to check with the Lightseys because they are part owner. I mean that's what it says in the letter and that's pretty clear. He wasn't stating that you have to ask the Lightseys because they own the dock. There's no evidence of that.. Defendant's counsel brought up something about making an offer to enter into a business relationship and he cited some cases in New York or Indiana or something like that. There was no offer to purchase a right in the dock. In that letter it simply said if we need to enter into a business agreement, I will do it. I will do what it takes. Gene Cashman testified on the stand yesterday that this was not an offer to purchase an ownership interest. It was an offer to enter into some kind of maintenance agreement. South Carolina law is clear that and it's the case Morrow vs. Dyches, 328 SC 522 and this has got the tacking with regard to prescriptive easement cases and it states, "A party's use must meet all requirements throughout 20-year

period for there to be a prescriptive easement, and if tacking is used, use by previous owners must also meet requirements of prescriptive easement. Both Gene and Ms. Davis testified that the use was by the entire family. It was by Mr. Cashman and back with dock 1 and dock 2 was with Mr. J.O. Cashman. The documents produced clearly show that their use was consistent with the Plaintiff's use in the last - since 1994. So I believe tacking applies here. Your Honor, for prescriptive easement, the three elements are -- there must be continued and uninterrupted use or enjoyment of the right for a period of twenty years. They have been using this dock since 1961. Right after the pier was constructed by the Lightsey brothers which we admit they put on a floating dock. That was 1961 or 1962 whenever that dock was finished. They have been using that dock up until March of 2005 when they received a letter from the Lightseys stating we want exclusive use of the dock. Please give us the key back. That is the first time they

learned that the Lightseys asserted exclusive use of that dock. Up to that point they were using the property and trying to improve the pier. Their main goal of getting or contacting the Lightseys was to construct or replace or fix the floating docks. And that was clear in the testimony. The identity of the thing enjoyed must be proven. I don't think that is the intention here. And the use must have been adverse or under a claim of right. Like I already stated, Your Honor, the testimony is that they believe they owned that dock. The conduct of the parties was that they owned that dock. The deposition testimony which has been submitted into evidence is from the other side, from the Defendants is, they owned this dock, the floating dock. I think it is clear that they claimed a right to the pier and the floating dock. As to resulting trusts, according to Donnan v. Mariner, a resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property in whole or in part and that for a

different reason it is titled in the name of another. Now as to the floating dock, if we do not have a prescriptive easement, then someone has got to own it and the Lightseys are contending that they own it, that it is theirs. The intent as shown in the exhibits in the conduct of the parties, it is clear that the intent was you guys here's our application, you guys amend it so you can construct the floating dock. You guys pay for it and it is yours. That's what the testimony showed and that's what the document shows. That was the intent of the parties. So if the title is in the Lightsey names then they should be holding it in trust for the use of the Cashman family. And resulting trusts are not limited to real estate or title issues because South Carolina law is clear that a resulting trust arises, if at all, only at the time of the purchase of the land or goods and that's Larisey vs. Larisey, so it is land or goods. There is no requirement that there be a title. Your

Honor, that's all I have right now unless you have questions.

COURT: I don't have any questions. Particularly about this case so far anyway, is that the land under this dock I don't think it is any contention is owned by the State of South Carolina. It is not owned by either party. The point of land that this dock touches on the highlands is common property as I understand it. Based on what I have heard so far, not owned by either party and as I understand it so far, this goes back to a situation where we had docks 1 through now 3 where one party built the dock, it washed away or was destroyed in some form or fashion. A dock was built in its place and that one was gone and then in this spot where everyone had traditionally built the dock, dock 3 is built and now there is an ownership claim for it. So, I won't dismiss the adverse possession claim because I understand it has been withdrawn and as to the balance of the claims I will deny the Motion at this time. So you can call your first witness.

MR. TWOMBLEY: Your Honor we would call
Mr. Will McMaster.

WILLIAM McMASTER, called as a
witness, after being duly sworn,
testified as follows:

BY MR. TWOMBLEY:

Q. Mr. McMaster will you please introduce
yourself to the Court.

A. My name is William Gourdin McMaster. The
middle name is spelled G-O-U-R-D-I-N.

Q. Mr. McMaster, where do you live?

A. I live in Columbia, South Carolina.

Q. And what do you do for a living?

A. I work for Scott & Stringfell as a financial
advisor and Director of New Business Development
for South Carolina and Scott & Stringfell is a
wholly owned brokerage subsidiary of BB&T
Corporation.

Q. How long have you been in the investment
business or the financial business?

A. Since 1977.

Q. So that's 34 years?

A. Oh, I am sorry, 34 years.

Q. 34 years. What is your relationship or connection to what we refer to as the Lightsey family?

A. I am married to Doris and Mel Lightsey's granddaughter, Beth Lafitte McMaster.

Q. Now have you ever been to the property that the Lightseys own on Oyster Street?

A. Yes.

Q. Approximately when did you go to that property?

A. I went there three times in the late '80's and one time in the early '90's. Either '90 or '91.

Q. Now did you go there on your own or were you with some other member of the family?

A. My wife and I and children later on were guests of Norris and Mary Lightsey -- excuse me, Norris and Mary Lafitte, my brother-in-law.

Q. Okay, now when you were there during these visits, did you meet anyone from the Cashman family?

A. Yes, I did.

Q. And who did you meet?

A. Mr. Cashman.

Q. And that would be Gene Cashman's father?

A. That is Mr. Cashman's father, yes.

Q. Gene, Sr.?

A. Yes.

Q. Now did you and Mr. Cashman have any conversations about the dock?

A. Yes.

Q. Okay, tell us what was said.

A. It was two conversations. One was probably in the late '80's. We were out at the end of the pier and I was cleaning the fish and Mr. Cashman approached me and we had talked off and on because I had seen him around the property and he said that the Lightseys had given the Cashmans permission to use that pier and that he would like to get a document stating that they had permission in the past and would like to have permission in the future.

Q. Now did Mr. Cashman actually use the word permission?

A. Yes.

Q. And what did you tell him?

A. I told him that I was not a decision maker and that he would need to talk to someone who was a decision maker.

Q. And what do you mean by decision maker? Do you mean a decision maker for the Lightsey family?

A. Yes.

Q. In other words, you didn't control the property?

A. No, I had no -- I have no interest in the property actually. My wife may have some interest, but I can't describe in detail what that interest is.

Q. Now that was the first conversation you had with Mr. Cashman, right?

A. About the pier, yes.

Q. Okay, now was there a second conversation?

A. Yes.

Q. Tell us about that conversation.

A. I was -- we were standing in front of the gate which accesses entrance to the pier and he -- we were talking and he said --

Q. Now hold on one moment if you don't mind, I want to get you to open your book to Exhibit 56.

Turn to the fourth page in. In the bottom right hand corner it's got a little date stamp 035.

A. Yes.

Q. Now explain -- explain where with reference to these two photographs where you and Mr. Cashman were standing when the second conversation took place.

A. If you look at the top photograph, we were standing right in front of that gate leading out to the pier.

Q. Okay. And was there anybody else there with you?

A. No.

Q. And tell us about this second conversation.

A. The second conversation was very similar to the first conversation in that he was seeking a document that would establish that he had had permission, the Cashman family had permission to use the dock in the past and they wanted permission to use the dock in the future and during this conversation he said that I realize that we don't own the dock because it was built with Lightsey labor and material.

Q. . And were those the words that actually --
that Mr. Cashman used permission?

A. Yes.

Q. And ownership of the dock?

A. Yes.

Q. And how did you respond to him this time?

A. . I responded to him similar as the first time.

I said I am not a decision maker; I am just
married to one of the owner's granddaughters and
he would need to take that up with someone else.

Q. Now we refer to these as the first
conversation and the second conversation.

Approximately how long did the first conversation
take place, this exchange between you and Mr.
Cashmans?

A. About the permission specifically?

Q. Yes.

A. Thirty-forty seconds.

Q. And how about the second conversation, how
long did that one last?

A. That was a little bit longer, I would say
maybe a minute and a half, about that specific
permission and ownership.

Q. Now Mr. McMaster how did you remember these conversations?

A. I remember them because I was approached and I was a little bit taken aback and let me say Mr. Cashman was very cordial by the way. He would be very nice during all this but I was approached about giving permission for something that I didn't have any authority to give and that's why I recall those specific conversations.

Q. Now I know you were in the courtroom and you listened to motions for a directed verdict, but prior to today, did you know whether or not these conversations would be helpful or harmful to the Lightsey's position in this litigation?

A. No specifically the second conversation is the one that I remember in regards to the stamping in my memory because he actually turned to the pier and said that it wasn't made -- that it was made with Lightsey material and labor and I thought in my mind does continuous use over time in the past and the future establish ownership at some point and I still -- and I didn't know if it helped because I am not a lawyer so I don't know if that helped or hurt.

Q. And did you know whether or not his statement about having the permission of the Lightseys -- do you know whether or not that would be harmful or helpful to him?

A. I did not know.

Q. Now you mentioned this but I want to ask you about it directly. Do you know what, if any, financial interest that you or your wife may or may not have in this piece of property?

A. I know I do not have any financial interest. My wife may have financial interest. Probably has financial interest, but I cannot describe it in detail at all.

MR. TWOMBLEY: That's all we have for Mr. McMaster, Your Honor. Please answer any questions Mr. Berglind has.

MR. BERGLIND: Your Honor, could we get a five minute break for cross-examination so I can consult with Mr. Scheider?

COURT: Yes, no problem.

BY MR. BERGLIND:

Q. Correct me if I am wrong, you have been to the property three times?

A. I believe it is four times.

Q. Four times. Who were you there to see?

A. The host was my brother-in-law, Norris Lafitte and his wife and very small children.

Q. So you were there with Mr. Norris Lafitte?

A. Correct.

Q. Now the first meeting you said you met Mr. Cashman, Sr. when was this?

A. I would say the late '80's, probably '88.

Q. What condition was Mr. Cashman in?

A. He seemed in fairly good condition for a man my father's age.

Q. Did it seem his health was failing?

A. Not to me.

Q. What about his mind?

A. His mind seemed pretty sharp.

Q. Now you were there with Mr. Lafitte and where did you meet Mr. Cashman, Sr.?

A. Uh in --

Q. You said the dock, but where on the dock?

A. Near the -- I was cleaning the fish so I was near the sink.

Q. Is that on the pier head?

A. It is on the pier head, yes.

Q. Did you see -- you have been here today during the Motions, did you see what has been described as the Cashman floating dock there?

A. Yes.

Q. Did you use that dock at all?

A. No.

Q. Did anybody from the Lightsey family?

A. No, I did not see anybody on that dock. Well excuse me, other than Mr. Cashman and one of his friends.

Q. Now you were there with Mr. Lafitte and Mr. Cashman; Sr. comes and asks you this question that you have no ability to answer, correct?

A. Correct.

Q. Why didn't you just direct him to Mr. Lafitte?

A. I may have done that. I can't recall if I did or not. But I told him that I was not the person to talk to about that.

Q. And let's go to the second meeting. And when was this?

A. I believe it was in the early '90's and that's the last time I went down there.

Q. What were you doing on the property at that time?

A. Just going out to the dock. We had been around the house. We probably were going to go fishing or something like that. Just regular beach type activities.

Q. And again you were a guest of Mr. Lafitte?

A. Correct.

Q. And Mr. Cashman comes up to you and asks you this question. Again, why didn't you refer him to Mr. Lafitte?

A. Well I am not sure that Mr. Lafitte could answer the question as well and I told him that I could not make decisions on that and I couldn't help him. I didn't exactly know who could help him without talking to Norris Lightsey who died in '91 or possibly Mrs. Louise Lightsey.

Q. So your answer is you didn't know who could help him?

A. I didn't know.

Q. Now in the testimony that has been produced in this case and deposition testimony of Mr. Lafitte and the big notebook of exhibits, I don't know where it is, right here, there's no reference

to Mr. Cashman, Sr. ever requesting permission from anybody?

MR. TWOMBLEY: Object to the form and totally contradicts the evidence that he absolutely did ask for permission and was granted.

MR. BERGLIND: There's no evidence of any verbal permission.

MR. TWOMBLEY: Object, also. Gene Cashman testified on the stand that before his father would go do something to the dock he would call up Mr. Lightsey and talk to him.

COURT: Why don't you do this, see if you can rephrase the question around what we've heard or have heard.

BY MR. BERGLIND:

Q. Do you think it's odd that two of the four times you went to that dock, Mr. Cashman, Sr. happened to show up and ask you these questions?

A. No I don't think it is particularly odd in that I think he was seeking something and probably several other families went down and used the Lightsey's house and he couldn't recall that he

had asked me the question two or three years before.

Q. Have you heard of anybody else who Mr. Cashman went to and asked these questions?

A. No, I have not.

MR. BERGLIND: That's all I have. Thank you.

BY MR. TWOMBLEY:

Q. Mark just asked you or you testified that there were several other families that used the dock. You mean several other members of the Lightsey family?

A. Correct.

Q. Okay, were there members of any other family other than the Cashman family using the dock?

A. Not that I am aware of.

Q. Have you ever seen anyone other than members of the Lightsey family and the Cashman family using this dock?

A. I saw - the first time that first conversation I had with Mr. Cashman he had a friend down there, maybe two friends.

Q. Let me rephrase it. Other than the Lightsey family and the Cashman family or their guests, you never saw anyone else using the dock?

A. No, I did not.

Q. And that would include for every visit?

A. That would be every time I went down there.

MR. TWOMBLEY: That's all I have, Your Honor.

COURT: You don't have anything else?

MR. BERGLIND: No, sir.

MR. TWOMBLEY: Your Honor, the Defendants will rest their case. We -- you know, just so you will know there are some other documents in the case that have not been discussed heretofore and even though they haven't, they are admitted as evidence. We would like to be able to obviously point the Court's direction to those particularly about the expenses and costs to maintain the dock over the years some of the things the Lightsey family has spent also. Other than that, we will rest our case and then address those in closing statements.

COURT: All right, so just to be clear I have a notebook here that goes 1 through 68 and I understand you added a couple of them in the beginning, is that right?

MR. TWOMBLEY: Yes, Your Honor, there's three 69, 70 and 71 that were added and I had extra copies for you as well.

COURT: I just want to make sure 1 is the official record so one of these notebooks. So this is number 1, I am holding in my hand a full size plat that is going to be number 1, is that correct?

MR. TWOMBLEY: Yes, sir.

COURT: Which is the plat by J.O. Cashman dated 1926. That would be part of the official record and then we've got 1 through 68 and the notebook and then three more exhibits and by stipulation those are all admitted without objection, is that correct?

MR. BERGLIND: Yes, sir.

COURT: Mr. Twombley, same for you?

MR. TWOMBLEY: Sorry Your Honor, I was writing something down. I apologize.

COURT: Are those --

MR. TWOMBLEY: The plat comes in, yes.

COURT: The plat comes in and three other exhibits that are --

MR. TWOMBLEY: Yes, those are in evidence, yes, sir.

COURT: All admitted without objection.

MR. BERGLIND: Yes, Your Honor.

COURT: Exhibits 1 through whatever the number is.

MR. TWOMBLEY: Before you agree one of your clients need to --

MR. TWOMBLEY: Just so you know Your Honor the tabs starting at 69 the back was blank.

COURT: Okay, this notebook doesn't have a 69.

MR. TWOMBLEY: Gotcha. We added some extra tabs in our notebooks in case we came up with some additional exhibits that we could add in there for everyone. The only exhibits that have been added to my knowledge Mark and correct me if I am wrong, are the title searches that you just referenced.

COURT: So essentially we will have --
this goes to 68. There will be a 69, 70 and
71?

MR. TWOMBLEY: Yes. Is that right Mark?

MR. BERGLIND: That's correct.

COURT: All right, any motions for me to
decide or we can -- you all tell me.

MR. BERGLIND: I don't have any Motions.

MR. TWOMBLEY: We will just renew all of
our Motions on the same grounds.

MR. BERGLIND: Same rebuttal.

COURT: Would you all like to do any
closing, and if so, do you want to do it
before lunch or after lunch?

MR. BERGLIND: I was going to propose --
I haven't talked to Ashley about this yet
because there are so many exhibits, some that
have not been referenced that in lieu of a
closing, that we submit a brief to the Court
which outlines why we think our documents are
relevant.

COURT: Any objection to that?

MR. TWOMBLEY: Well Your Honor, I just
hate for my clients to have to go through the

expense of that. I mean we are all here today and got the Court's time and attention and are prepared to go through them and I would much prefer that we just go ahead and go through our argument now and I am certainly prepared to do so.

COURT: All right and I am happy to let you all get your thoughts together for a moment and start right now; however, you would like to do it.

MR. TWOMBLEY: Well I would have to have one sort of housekeeping thing before that if the Court will allow me to raise it. That in the early testimony of Mr. Cashman when he was discussing the events that took place before he was alive, we objected to him being able to do that and my memory is that Your Honor essentially took the objection under advisement, allowed him to continue to testify about some of those things and then indicated that he would address the objection later. I would prefer, if possible, for you to rule on that particular objection before we be required to give our closing arguments

because whether or not that testimony is admissible or not, would depend on how we, you know, somewhat how we structure it and frame our opening.

COURT: And I thought I had allowed it and said I would probably give it the weight that it should be afforded, maybe very little, but I could be mistaken because there has been a lot of testimony, but I thought I ruled on that.

MR. BERGLIND: Your Honor, that's my understanding. There was no objections entered that by the -- I remember you stating you would give it the weight you deemed appropriate.

COURT: I kind of thought that's what I did but if I didn't, I will do that now.

MR. TWOMBLEY: And I thought that that may be it, that's what you said, but I thought you said I will probably give it -- you know the weight that I deem or something to that effect. I didn't know you had made a final ruling so can we consider that you are allowing that testimony as admissible things

that -- transactions that took place and things that happened about a dock that were before even Mr. Cashman was born?

COURT: Yes, even though you put it that way, yes.

MR. TWOMBLEY: I mean that's just --

COURT: And I will give it very little weight based on the substance of the testimony.

MR. TWOMBLEY: Okay, thank you, Your Honor. May we take a short lunch recess?

COURT: Yeah, unfortunately it is only 11:00 or 11:15, but I know you all understand you have things to put together so I suppose we can do that and come back and -- what do you need time wise?

MR. BERGLIND: We are at your disposal, Your Honor.

COURT: I am happy to be back at 12:30 if that works?

MR. BERGLIND: Okay.

(A Recess Was Taken for Lunch.)

MR. TWOMBLEY: Judge, before Mark gets started, there is one issue I was just

wondering if -- I know Your Honor has already denied it, but the causes of action for injunction and declaratory judgment and resulting trust, I would just -- I just don't think there is any possible way those could go forward. You know they would have to flow through one of these other causes of action and just to save revenue in closing statements, I was wondering if we could -- I mean if you feel differently we can leave them, but you know I would like to go ahead and get those off of the pleadings. Unless Mark can articulate somehow where the Court could per se grant a declaratory judgment but find that the Cashmans don't have a prescriptive easement to use the property, I just don't think it is --

COURT: Well I don't know what he is going to say. You are saying he should be required to elect his remedies at this point because the two don't go together?

MR. TWOMBLEY: Well, I mean I think that is one way to put it, but I mean I just don't think you know maybe Mark can educate us, but

I just don't see how the Court could declare through a declaratory judgment that the Cashmans had the right to use this dock unless the Court were to find that they had succeeded in proving their cause of action for adverse possession which they have withdrawn that or succeed in proving their cause of action for a prescriptive easement. I mean otherwise there would be no basis for which the Court to declare that. I mean unless I am missing something.

COURT: The declaratory judgment action was for ownership of the dock.

MR. BERGLIND: That's right and the statute allows for it to be liberally construed and we are asking you to declare the relationship between the parties as to the ownership of the dock. I think that should --

COURT: Yeah, I think I will allow it to stay in now and if that makes it longer you know it makes it longer. If it goes over an hour and a half, I understand we only have an

hour and a half worth of tape so we can take a brief break at this point.

MR. TWOMBLEY: Thank you, Your Honor.

MR. BERGLIND: Your Honor, I am going to be very brief with my closing statement. We stand by the record and we stand by our witnesses that are here today and that testified yesterday. This case is about a long history between two families dating back to the 1930's. They used these three docks. I would reference dock number one, dock number two and dock number three and they have used these docks consistently since 1930 until this eighty year relationship abruptly ended in 2005 and you know the question is why -- what happened in 2005. What happened during that time period that caused this relationship to deteriorate. A relationship where Mr. Cashman, Sr. and J. O. Cashman and Oswald Lightsey and those folks were using these three docks, maintaining these three docks and hadn't basically a piece of property that they both believed they owned. What happened in 2005 and thereafter is the

Cashman family -- I am sorry the Lightsey family wanted to use this document, its Exhibit 67 and this is in evidence and it's a document and it states in bold type "dock on May River included". The Lightsey family wants to sell this property. They acknowledge that if they had exclusive right to this dock it is worth more money. So really what this case comes down to is a long family history that's really coming to a close because the Lightsey family wants to sell this property. Your Honor, my clients request you know respectfully request the right to preserve their heritage in this property and we would request that you issue an Order allowing our clients to do that. That's all I have.

MR. TWOMBLEY: Your Honor, thank you first of all for taking time and listening to the witnesses and all the evidence. I know I have never been accused of being too brief and so I acknowledge that and I appreciate your patience in listening to everything that we have to say.

To start off to address Mark's point you know he makes out what happened in 2005 to be some dirty act. You know the Lightseys who you know they are greedy and they are willing to take this long relationship that's allegedly been going on since the '30's and throw it all away over money. Well, what's wrong with that? What's wrong with the fact that they paid for this dock? They permitted this dock. They have graciously as good neighbors allowed the Cashmans to use it. The Cashmans have developed all of these -- allegedly developed all of these wonderful family memories on this dock allegedly but they clearly haven't -- they didn't pay any money to help construct it. They didn't pay any money when all of the major renovations had to be made. They didn't pay any money whenever the sink had to be put down there. The Lightsey family allowed them to use this dock because they were friends and because the Lightseys were good neighbors and so now both families have grown up. Mr. Cashman has bought a marvelous place up the river where

he now spends his time. The Lightseys don't use this property as much as they once did and now they have decided that it is in their family's best interest to sell the property. What is wrong with them telling the Cashmans you know you have been great neighbors and we have enjoyed spending time with you, but now it is time for us to sell this property and we built this dock? We paid every dime for it. We permitted it through the Corp of Engineers. We have been paying taxes on it every year since 1986. Gene Cashman testified that he has never offered the Lightseys a dime for those specific expenses. What's wrong with the Lightseys just telling Mr. Cashman look I am sorry but you are not going to be able to use this dock that we built forever. It is time for us to sell the property and you are just not going to be able to use it any more. I think -- I don't think that that's such a bad thing and to issue an Order in this case that essentially says anytime a good neighbor allows their other neighbor to use something, then if they

allow them to use it for twenty years, the neighbor who's borrowing something they can come into Court and assert an ownership interest in it. If Mr. Berglind lets me use his lawnmower for twenty years, at the end of the twenty year period I can come in and say Judge we have had a long history of using each other's lawnmower to cut the grass. I let Mr. Berglind use mine. He let me use his and now it just happens to be the time -- according to their theory which I don't agree with all the facts to support it, but according to their theory this just happens to be the time where Mark pays for the lawnmower, has done all the major work on it, and now I can come to Court and say I own half of that lawnmower even though Mark went down and paid for it. Mark's the one that had to put new tires on it. Mark's the one who had to pay property taxes on it and I have just been using it each year and I have never offered to give him a dime. That's not fair. That's not right. The first substantive issue that I want to address is

this ownership of the property and Your Honor has indicated that you had some trouble with that and I can see that when I first got involved with this case, I had the same problem, ownership of this common property. And I think the way that the Court should deal with that is to simply look at the claims that the Plaintiff has made against the Defendant. The -- resolving the claims that the Plaintiff has made against the Defendant in my opinion is not necessary for the Court to address the common property or to issue any type of Order affecting the common property. Their claim for a prescriptive easement has three distinct elements and I believe that the Court can address those elements and rule on them without delving into the alleged common property.

Second Your Honor I want to talk about this theory and of course we object. Our objections are on the record but you know Gene Cashman not only was born -- Jr. was born in 1941. In my opinion you know

anything he would have to say about what happened prior to that would not be admissible but Your Honor has allowed it in and so you have to decide how much weight to give it and we think that weight should be very little. In 1951 Mr. Cashman would have been ten years old. In 1961 he would have been twenty years old so at the time this pier three was built, Mr. Cashman would have been pretty much a teenager. Now you know maybe the Court believes and everybody in this room believes that Mr. Cashman, Sr. would have been having these conversations with his 19 year old son about ownership of this dock. I mean, I just don't think it happened and so I think you have to give all of that weight -- I mean I think you have to give all of that testimony very little weight unless he testified that he had personal knowledge about these things I do not think that that testimony holds much weight.

Now if you would, Your Honor, please turn to Exhibit No. 9 and this is something that we have referenced but we haven't shown

it to you and I want to show it to you and I would like to tell you what this document is. This is a document that was a letter, a memo that was written by Mr. Lawton one of the founding members of the Brighton Beach subdivision and he is writing a letter to a Mr. or Mrs. Sanders. Now Mr. Sanders used to own the property that is now owned by Ben Turner who is just down from the Lightsey's house but if you turn to the second page about half way down that paragraph, I want to read to you what Mr. Lawton said to Mr. Sanders and you will see that the date of this letter is February 18, 1946. This would be within the time period that according to Gene Cashman there was one dock number two and that both families were sharing in the use of this dock number two and this is what Mr. Lawton says. "I note your application for a dock which I think is a good idea. You did not tell me in your letter just where the boys plan to build it. Anywhere to the right of the Lightsey dock will be satisfactory to me. Do not build it to the left of the

Carter-Cashman dock." Anywhere to the right of the Lightsey dock, do not build it to the left of the Carter-Cashman dock. Well this tells us Your Honor that at least as of February, 1946 there was not a "dock two" there. There were two docks there and it was not a dock that everyone knew in the community was the Lightsey, Carter, Cashman dock. It was that there were two separate docks there and the gentleman who had dedicated this property to the common ownership of the lot owners in Brighton Beach and who presumably was most familiar with the dock situation and who was using which dock. He is telling us in 1946 that there's two docks there. There's one dock that is being shared by the Carters and the Cashmans and that's called the Carter-Cashman dock and there is another dock that is being used by the Lightseys and it is called the Lightsey dock. Now Your Honor may dispute -- the Plaintiffs may dispute, you know, well, that dock wasn't quite as long as the other folks dock or you know that was just a dock down to

the beach and not down to the water. There's some pictures -- you know there's pictures that show wherever the dock went to and you know however long it was, there's certainly a lot of boats around that short dock you know so whoever was using it they were certainly pulling their boats right up beside it and Mr. Lawton didn't see fit to make any distinction between the docks. He said anywhere to the right of the Lightsey dock will be satisfactory. Do not build it to the left of the Carter-Cashman dock. Again, I have raised that Your Honor because I think any weight that you could give Gene Cashman, Jr.'s testimony about things that took place when he was five years old in my opinion would be you know this documentary evidence by Mr. Lawton what was written in 1946 would clearly outweigh that. Your Honor, I am not going to go through all of the evidence that I went through in my Motion for a Directed Verdict, but I do want to restate and reaffirm all of those arguments and just as

they had been you know stated again verbatim in support of a judgment in our favor.

Just briefly want to address Mark's closing, he says he stands by the witnesses and he stands by the documents. I mean I don't know what witnesses and what documents he is standing by. Gene Cashman, Jr. he testified that his dad would have asked -- had talked to the Lightseys before he did something to the dock; asked for permission. The documentary evidence says the dock is owned by the Lightseys and I have their permission. You know Gene testified that he told Ms. Reynolds that you know you can read in the letter and you remember his testimony, but he said if it is all right with the Lightseys then it is all right with me. But it first has to be all right with the Lightseys and of course that's essentially permission. You got to have the permission of the Lightseys before you go down there and do this.

Your Honor if you would please turn to a moment to Exhibit 65 -- one second -- if you

will turn if you can Your Honor to Exhibit 36 and if you will just look at that briefly that is a picture of this dock or this pier and it is a drawing of some major renovations that had to be made to the pier and if after looking at that if you will turn to Exhibit 65 which is -- these are the repairs that the Lightseys made to the dock and I want to go through each and every one of them with you but if Your Honor is interested in those, we would point the Court's attention to them because you have some significant repairs that are being made and in August of 1992 there was some \$3,400.00 that was spent to replace some of these pilings. You have seen this, they have to bring a barge in or a crane and they have to remove the old pilings and install them in and install new ones. Now just practically speaking if the Lightseys thought that the Cashmans owned half the docks, wouldn't they have asked the Cashmans to pay for half of that money? I mean it is like owning a beach house with somebody and putting a new roof on it and

saying oh I got that and you own it jointly with your sister. No reasonable person is going to do that. They are going to ask the person whom they believe they are co-owners with and pay for half to do it; what's fair and reasonable. In 1994 there was almost two thousand dollars spent. In May of 2000 there was \$5,600.00 spent. Again, all these expenses Your Honor, you can go through each one of them. They never asked the Cashmans for a dime and the Cashmans never offered a dime. And Gene testified he was aware of those repairs being made. But if he really believed he owned half of that, wouldn't he have offered to pay for half of them? I just can't see how you -- understand how you wouldn't.

Before we began any closing I mentioned about the injunction that before a Judge and resulting trust, you said we will let Mark argue about them in his closing and he didn't mention declaratory judgment. He didn't mention the word injunction. He didn't mention the word resulting trust. In our

opinion those claims clearly have to be dismissed from this Complaint which leaves you with the only viable claim that could possibly be there which is a prescriptive easement. The law in South Carolina is crystal clear as well as in every other jurisdiction in this country, permission is fatal to a claim of a prescriptive easement. Permission is fatal to a claim of prescriptive easement and they have the burden and I disagree with Mark. I think the burden is clear and convincing. There's no case law that says the burden of proof in a prescriptive easement case is clear and convincing evidence but there's cases that say a prescriptive easement case is essentially the same in an adverse possession case and the only difference is -- your argument is instead of arguing about title of the property as you are in an adverse possession case, you are arguing about the use of property in a prescriptive easement case. But other than that minor distinction a cause of action for a prescriptive easement

and an adverse possession are the same. And clearly the adversity or using it under a claim of right element is the same and it fails, Your Honor. It fails because you have documentary evidence where the Plaintiff used the word "permission". They said they wanted to tack their prescriptive period only to Mr. Gene Cashman and his sister's prescriptive period that didn't even begin until 1994. They said they wanted to tack on their father. You can't tack on a permissive period onto a prescriptive period. You got to do it for twenty years. They didn't even own this property until 1994 and they were guests of their father. So again that legally as a matter of law, I think that legally defeats their claim. Even if you think they were using it as a matter of right, they didn't even own the property until 1994. They filed suit in 2004. That is ten years. They both testified unequivocally Your Honor that their use was interrupted. That's the words that they used. That's what they said from that

witness stand and it has to be continuous and uninterrupted use for the prescription period. They testified that their use was interrupted.

Your Honor, my final comment is that you know the Lightseys liked the Cashmans. They still consider themselves to be very good friends with the Cashmans and I commented earlier that if you have had a chance to observe them in the courtroom, they have been nothing but cordial and friendly with one another and that's because they all understand that that this is a matter about business. It is time when neither family are really using their properties and the reality is that both families are probably going to want to sell in the not too distant future. But the Lightseys built this dock and permitted it. They have been paying taxes on it and they have been allowing the Cashmans to use it permissively and we would respectfully submit the Cashmans have not met their burden to show otherwise and the burden is on them. Thank you, Your Honor.

COURT: All right.

MR. BERGLIND: Again, Your Honor, briefly. In response to Defendant's closing argument, I just want to incorporate my rebuttal to their Motion for a Directed Verdict. I don't believe I was asked to address the injunctive relief sought. I think we have determined that the declaratory judgment or you determined that the declaratory judgment action would go forward and as to the resulting trust, again I just incorporate my arguments made at the directed verdict with that regard unless you would like anything further.

COURT: None I can think of.

MR. BERGLIND: And lastly just my clients appreciate your time this week.

COURT: All right, thank you all very much. As you know, there's a lot of this that we didn't get through this. The court exhibits only to read it before I do anything. What I may do is get the attorneys to contact Heather on Monday because she is gone until Monday and see if you can schedule

within the next couple of weeks just a telephone conference or if you would like to come in we can set a conference and sort of discuss where we are and if I come up with something at that point. I will see if I can come up with some instructions for an Order for someone to prepare. So I appreciate that if you all could cooperate with Heather or coordinate with Heather rather on Monday and see if you can come up with something and give me about two weeks to get through it. All right, well, that will complete the hearing. Thank you.

(Whereupon the hearing
was concluded.)

CERTIFICATE

I, Joanne B. McDonald, Certified Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing Two Hundred Two Hundred Six (206) Pages of typewritten testimony were taken down by me, then reduced to transcript with computer-aided transcription; that the same is a true, correct and partial transcript of the proceedings as stated in the caption.

I further certify that I am not of kin nor counsel to any of the parties hereto and, further, that I have no interest whatsoever in the outcome of said proceedings.

SO WITNESS MY HAND AND SEAL this 22nd day of February, 2012.

Notary Public/Court Reporter

My Commission Expires 09/27/2012

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

CASHMAN PROPERTIES, LLC,
Plaintiff,

vs. CIVIL ACTION NUMBER
2009-CP-07-2573

WNL PROPERTIES, LLC, E. OSWALD
LIGHTSEY TRUST f/b/o LOUISE
LIGHTLSEY BAUGHMAN, THE TRUST
UNDER WILL OF E. OSWALD
LIGHTSEY DATED AUGUST 8, 1958,
AND CODICIL DATED MARCH 23,
1976, FOR THE BENEFIT OF LILLIAN
LIGHTSEY DRAWDY, AND THE
TRUST UNDER WILL OF E. OSWALD
LIGHTSEY FOR THE BENEFIT OF
CLAUDIA LIGHTSEY WARE,

Defendants.

-----/

The Hearing, in the above-entitled
cause, taken before the Honorable Judge Marvin
H. Dukes III, Master-in-Equity, taken by Ceil
Weser, Certified Court Reporter and Notary
Public, at the Beaufort County Courthouse, 102
Ribaut Road, Beaufort on the 28th day of
February, 2012, commencing at or about the hour
of 8:39 a.m.

1
2 APPEARANCES OF COUNSEL:

3
4 FOR THE PLAINTIFF:

5 MARK S. BERGLIND, ESQUIRE
6 JAMES P. SCHEIDER, JR., ESQUIRE
7 Vaux & Marscher, P.A.
8 1251 May River Road
9 Bluffton, South Carolina 29910
10 843-352-4435
11 mark.berglind@vaux-marscher.com

12 FOR THE DEFENDANTS:

13 ASHLEY TWOMBLEY, ESQUIRE
14 Twenge + Twombley
15 311 Carteret Street
16 Beaufort, South Carolina 29902
843-982-0100
twombley@twlawfirm.com

17
18
19
20
21
22
23
24
25
I N D E X

	PAGE
EXHIBIT INDEX -----	3
OPENING REMARKS AND STIPULATIONS -----	4
CERTIFICATE -----	40

1

2

DOCUMENTARY EVIDENCE

3

NUMBER	DESCRIPTION	PAGE

4

DX-A	Document	13

5

6

7

REPORTER'S NOTES: EXHIBIT WAS RETAINED BY

8

DEFENDANT'S COUNSEL.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2 THE JUDGE: Good morning. We are
3 here in 09-CP-07-2573. This is Cashman
4 versus WNL Properties, LLC. And this
5 is a continuation of an earlier hearing
6 pursuant to an Order previously
7 entered.

8 The purpose of today's hearing, I
9 believe, has to do with the issue of
10 dock expenses.

11 And I think you had not yet filed
12 a Reconsideration Motion, or have you,
13 because we are waiting on the final
14 order here, is that correct?

15 MR. TWOMBLEY: Right. We filed
16 one just out of an abundance of
17 caution, even though the Court told us
18 we didn't have to --

19 THE JUDGE: Right.

20 And just to make it clear for the
21 record I don't consider it -- for
22 purposes of the ten days I don't
23 consider the final order to have been
24 entered yet. I think I hopefully
25 expressed that clearly in the previous

1

2 Order.

3 MR. TWOMBLEY: Yes, sir.

4 THE JUDGE: Happy to hear from you
5 then.6 MR. TWOMBLEY: Your Honor, Ashley
7 Twombley for the Defendants. This is
8 as you said a continuation of a hearing
9 that was previously held. Following
10 that hearing you issued an Order
11 finding in favor of the Plaintiffs or
12 the Plaintiff with respect to their
13 claim for declaratory judgment, but not
14 for any of the other claims that were
15 raised in the Complaint.16 One of the things you asked us to
17 do is to submit a list of expenses that
18 have been incurred related to the dock
19 since the time the Summons and
20 Complaint was filed. In a subsequent
21 telephone conference you had indicated
22 that it would be appropriate for us to
23 submit any expenses that we felt we
24 should be entitled to recover. And so
25 we have submitted a list of those to

1
2 the Court back on January 12.

3 In addition to the list that we
4 filed, we also provided the written
5 documentation to support each one of
6 these expenses. There are only three
7 exceptions to those -- to that list and
8 that includes the actual initial
9 construction of a dock, which my client
10 has given a good faith estimate of what
11 he believes that cost back in 1961, and
12 the same with a water line that they
13 ran down to the dock, as well as a sink
14 that was installed on the dock. All of
15 the other expenses, there is written
16 documentation to support them.

17 With respect to the taxes, in
18 fairness I have listed the taxes that
19 the Lightsey's have paid since 2004,
20 but I also have a list of the taxes
21 that the Cashman's paid since the same
22 time; and I do believe that it would be
23 fair for the Cashman's to be able to
24 deduct the amount that they paid in
25 taxes, so that only the difference, the

1
2 increased taxes that my client was
3 responsible for, we do believe that
4 that would be appropriate for us to be
5 reimbursed for.

6 THE JUDGE: Were the houses
7 themselves and the real estate
8 themselves assessed at the same value
9 during that time?

10 MR. TWOMBLEY: Roughly. Roughly.
11 And we think that the difference in
12 those would be the appropriate amount
13 for us to be reimbursed for.

14 I think my client would take the
15 position that their house was a little
16 nicer, so it should be stronger than
17 what is in our filing. I think the
18 Cashman's would probably take the
19 opposite position. So roughly
20 speaking, though, they are same sized
21 lots and each has a house on it.

22 THE JUDGE: Okay.

23 Go ahead.

24 MR. TWOMBLEY: If the court would
25 like to hear from Mr. Laffitte, I am

1
2 happy to solicit testimony from him to
3 support any of these expenses, or if
4 there is one in particular that
5 Mr. Berglind has a problem with. I
6 understand he objects, you know, to
7 some of them based upon the timing
8 which they were incurred and the
9 Court's Order; but if there is an
10 actual substance objection, you know,
11 we don't believe you spent \$2,000 on
12 fixing the roof, et cetera, he can let
13 us know; and I can solicit testimony
14 from my client if the Court thinks that
15 is necessary.

16 Otherwise, I think everything is
17 pretty straightforward. All of the
18 documents to support these charges are
19 behind the filing, and if the court has
20 got any questions I would be happy to
21 answer them.

22 THE JUDGE: Okay. And -- I don't
23 have any questions right now.

24 I am happy to hear from you, sir.

25 MR. BERGLIND: Thank you, your

1

2 Honor.

3

4 As to the July '09 and August '09
5 expenses, we don't have a problem with
6 that.

7

8 Anything prior to the date of the
9 Order -- I mean, I'm sorry, the date of
10 the filing of the Complaint, which was
11 in May of '09, we object to that
12 pursuant to your Order, which states
13 that we shall split the cost going back
14 to the filing of the Summons and
15 Complaint.

16

17 As to the conference call, I
18 think -- I don't remember you saying it
19 was appropriate. I just remember you
20 saying letting Mr. Twombly know that
21 he can submit whatever he wants to
22 submit.

23

24 THE JUDGE: Well, and let me be
25 clear because I remember this issue.
26 Again, I guess I haven't issued a final
27 order yet; but my thinking on that is
28 there is probably a laches issue on
29 contribution going back. But if I am

1
2 wrong and if this ultimately is
3 appealed, I wanted to make sure that
4 the Defendants had proffered the
5 numbers that they believed went back as
6 far as they wanted to proffer them.

7 And so that is why --

8 MR. BERGLIND: You are exactly
9 right.

10 THE JUDGE: -- that is why I asked
11 for everything all the way back.

12 Because my current thinking is
13 that laches among other, stale demand,
14 that sort of thing, would prevent the
15 recapture of contribution prior to the
16 date of filing; although I am not
17 necessarily wedded to that position,
18 but that is my current thinking. But I
19 just wanted to make sure it was all in
20 the record, again, in case my position
21 is wrong.

22 So anyway, go ahead, sir.

23 MR. BERGLIND: Thank you, your
24 Honor. That is correct. There was a
25 laches issue and that is stated in the

1

2

Order, and it was stated in the E-mail

3

that you sent Mr. Twombly and me about

4

that.

5

As to the county taxes -- and I

6

don't -- the copy I received doesn't

7

have any supporting documentation of

8

Defendant's dock expenses. The taxes

9

are for the entire lot according to my

10

review of the assessor's office taxing

11

of the property, so I believe it should

12

be apportioned to allow for just the

13

taxes for the dock.

14

THE JUDGE: Is there any way to

15

carve out the taxes for the dock on --

16

I mean I thought there was a line for

17

improvements. There is building and

18

land.

19

MR. TWOMBLEY: I think, your

20

Honor, that if you take the amount of

21

taxes that they paid on their land in

22

their building, and then you take the

23

amount of taxes that we paid on our

24

land, building, and dock, if you

25

subtract what they paid from what we

1
2 paid, then logic would lead you -- that
3 would have to -- the increase would
4 have to be related to the dock, unless
5 we had a 6,000 square foot, 6 bedroom
6 house on the property, and they had a
7 two bedroom little shack.

8 But all other things being equal,
9 if we paid \$6,000 in taxes one year and
10 they paid \$2,000 in taxes one year, if
11 you subtract the two from the six, that
12 would leave you with four, and then
13 necessarily the difference would have
14 to be for the --

15 THE JUDGE: Now, what is the
16 difference? Because you have listed,
17 for instance, in 11, 6794. Is that the
18 difference?

19 MR. TWOMBLEY: Here, sir.

20 THE JUDGE: Or is that half the
21 difference?

22 Okay, good, thank you, all right.

23 You want to make this an exhibit
24 or is this is a part of something?

25 MR. TWOMBLEY: Yeah, I would like

1
2 to make it an exhibit.

3
4 THE JUDGE: Exhibit A.

5 (Whereupon, Defendant's Exhibit
6 A was marked for
7 identification.)

8 THE JUDGE: Do you have a copy of
9 this?

10 MR. BERGLIND: Yes, sir.

11 And without any supporting
12 documentation, I would object to it.

13 Do you have the printouts from the
14 Assessor's Office?

15 MR. TWOMBLEY: No, but this is
16 public record. I mean if you want to
17 go check it out.

18 THE JUDGE: Yeah, we can do that.
19 We open for that but --

20 MR. BERGLIND: That is fine.

21 MR. TWOMBLEY: I think we also had
22 those submitted with the original
23 exhibits that we provided to the Court,
24 and Mr. Cashman testified that --

25 MR. BERGLIND: And that is fine.

1

2 I can look at these numbers with those
3 exhibits.

4

5

6

7

THE JUDGE: So what you have got
on Cashman taxes paid, that is not the
difference? That is actual Cashman
taxes paid?

8

9

MR. TWOMBLEY: Yes.

10

THE JUDGE: I understand there are
two lots over there.

11

12

MR. TWOMBLEY: No, this is just
for the one lot.

13

14

THE JUDGE: Just for the one
improved lot.

15

16

Do you have those tax bill handy?
Wow, they seem so low.

17

18

19

20

21

MR. TWOMBLEY: I don't have them
handy. I can certainly get them. I
think they were included in the
original exhibits. I just didn't bring
a copy of them.

22

23

24

25

But by all means I would ask Mark
verify my numbers, but this is
something that is objective; and, you
know, I don't want to -- if I looked at

1
2 it wrong, but it was painstakingly put
3 together, and we did a comparison of
4 what they paid for their lot, and what
5 we paid for our lot.

6 MR. BERGLIND: Your Honor, you can
7 just drive around that cul de sac and
8 see the difference between their lot
9 and our lot, and the property on their
10 lot compared to the property -- I mean
11 the improvements on their lot compared
12 to ours, I don't think the 4 to \$5,000
13 difference is associated with the dock.

14 THE JUDGE: Well, and I think
15 there are ways to figure it out from
16 looking at the tax bill, at least I
17 thought there were. I thought it was
18 broken down a little better.

19 MR. BERGLIND: I believe the dock
20 is assessed at 170 square feet -- and I
21 am just throwing this out as a
22 suggestion -- you compare that with the
23 rest of the property and improvements.

24 THE JUDGE: For instance,
25 building, land, et cetera, I mean that

1
2 is all on the tax bill and fairly easy
3 to find.

4 I am still kind of amazed at how
5 inexpensive the Cashman's taxes are, if
6 these are the final taxes. I mean that
7 would relate to -- because this is no
8 one's primary residence, is it, or was
9 it someone's primary residence?

10 MR. BERGLIND: It is not at this
11 point.

12 But your Honor, I haven't looked
13 those up so --

14 THE JUDGE: Okay.

15 MR. BERGLIND: So I don't know if
16 these are --

17 THE JUDGE: Would you all have any
18 objection to me going off the record
19 briefly and let me look them up there
20 and see if I can figure out what this
21 is?

22 MR. BERGLIND: No objection.

23 MR. TWOMBLEY: No objection, your
24 Honor.

25 (Whereupon, an off-the-record

1

2

discussion was held.)

3

THE JUDGE: We are back on the

4

record after a brief break, during

5

which with consent of Counsel I got on

6

the Beaufort County computer and had a

7

quick look at the tax records for the

8

two properties at issue, and what it

9

appears from the Beaufort County

10

website is that the Cashman property --

11

first of all, both properties are taxed

12

at 6 percent. The Cashman property has

13

currently a \$75,600 land value and a

14

\$237,000 dollars improvement value;

15

compared with the Lightsey property,

16

which has a \$459,000 value and a

17

\$225,000, and these are more or less

18

dollar improvement value.

19

That appears to account for the

20

dramatic difference in taxes, where the

21

Lightsey taxes are more than double

22

apparently the -- and that is the

23

mathematical difference in the Cashman

24

and Lightsey taxes, let me say.

25

Further review of the website

1
2 under the land tab indicates that the
3 Lightsey property is what the tax
4 department or Assessor's Department
5 refers to as type 21, residential
6 waterfront; compared with the Cashman
7 property, which is referred to under
8 the land tab as type 10, residential
9 lot.

10 What I do with all that
11 information. I don't know. I don't
12 know if I have enough information to
13 specifically determine that the
14 complete difference in these values is
15 because of the type 10, type 21
16 comparison; or whether or not there are
17 other differences that cause the taxes
18 to be unequal.

19 I am happy to hear from counsel on
20 your thoughts on where we go from here.

21 MR. TWOMBLEY: Well, your Honor,
22 we would take the position that the
23 only difference is because one is
24 waterfront with a deep water dock, and
25 one is not. And you know, if that is

1
2 contested and the Court wants to hear
3 testimony from the Assessor's Office or
4 if we want to just agree to submit the
5 issue to them and have them write a
6 letter to the Court, you know -- my
7 opinion is unless they can point to
8 something that would otherwise account
9 for the difference, you know, I think
10 that is logically the only thing that
11 it could be, you know, based on the
12 evidence that has already been
13 submitted.

14 These are roughly the same sized
15 lots. The improvements are valued at
16 roughly the same thing. The only
17 difference is that one has got a dock
18 and deep water access attached to it
19 and one doesn't.

20 So whatever is the easiest way to
21 proceed on that and however the Court
22 would like for us to is fine with me.

23 MR. BERGLIND: Your Honor, my
24 argument is I don't know. I think we
25 are speculating here. I can't just

1
2 consent to that. I would have to have
3 something from the Assessor's Office as
4 an explanation.

5 THE JUDGE: Well, the goal or at
6 least my goal was to attempt to
7 recapture the actual cost of this dock
8 to the Lightsey's and come up with a
9 fair and equitable contribution
10 scenario. I am including the taxes,
11 maintenance, including insurance,
12 including everything; and it is going
13 to be hard to hit the nail on the head
14 on exactly what it is. But I don't
15 know -- I think I would be bringing a
16 lot of speculation into the water if I
17 simply compared these two tax bills
18 without more.

19 And so I kind of like the idea of
20 perhaps either getting from the Tax
21 Assessor either something in writing
22 that is an affidavit format or actually
23 bringing someone in from the Assessor's
24 Office to enlighten me and all of us as
25 to why these two properties are

1
2 different. And the answer may be it
3 has to do only with this dock; that may
4 be the answer. I don't know. I don't
5 know what the answer is, and perhaps it
6 might help you on your way to
7 settlement if you all jointly went down
8 and talked to the Assessor and see what
9 they say. If it has got nothing to do
10 but -- if it is only this dock, then
11 what the Lightsey's have proposed may
12 be the fair thing to do. I honestly
13 don't know until we know what the
14 difference is here.

15 I think what you are proposing
16 from the Lightsey's side is that one
17 would subtract the Cashman taxes from
18 the Lightsey taxes and one-half of the
19 difference would be the dock
20 contribution, is that correct?

21 MR. TWOMBLEY: Right.

22 THE JUDGE: So under the Lightsey
23 proposal -- I don't know if you have
24 done the math -- but, for instance, in
25 2011, what is that? \$4300, more or

1
2 less?

3 MR. TWOMBLEY: Yes.

4 THE JUDGE: So half of that would
5 be \$2,000 and some change?

6 MR. TWOMBLEY: The total
7 difference is \$32,154.93. And if you
8 deduct that --

9 THE JUDGE: Back to '04 would be
10 15,000 something?

11 MR. TWOMBLEY: Right, 16,873.10.

12 THE JUDGE: Okay.

13 MR. TWOMBLEY: Well, what I did is
14 took the total number and then deducted
15 out what the Cashman's paid and then
16 that leaves you \$72,677.56. And then I
17 think you would divide that in half,
18 half, the Lightsey's would pay half of
19 what the Cashman's would pay, which I
20 haven't done that math, that final
21 number; but I am happy to do it.

22 THE JUDGE: No, that is okay. I
23 just wanted to make sure I understood
24 the request, which I think I do.

25 MR. TWOMBLEY: If I could just

1
2 make one comment about the laches
3 argument. Number 1, they didn't even
4 plead or argue, I mean, and that issue
5 never came up with respect to, you
6 know -- it never been came up with
7 respect to any of the Plaintiff's
8 claims whatsoever.

9 My memory -- going off memory of
10 what laches is, is it is the failure to
11 exercise a right that you know you
12 have. Well, we take the position that
13 we have always owned this dock, and it
14 was ours and that they didn't owe us a
15 dime because it was our dock and we
16 never asked them for a dime.

17 So I don't understand how it makes
18 sense to say well, Lightsey's, you knew
19 you had a right to go to the Cashman's
20 and to seek reimbursement for all these
21 things and you failed to do it. Well,
22 I think the evidence is clear, at least
23 from our standpoint, that we never
24 thought we had a right to get
25 contribution from them. We always took

1
2 the position that it was our dock and
3 our dock only. The prior meeting
4 minutes, everything supports the fact
5 rightly or wrongly that is what we
6 believed.

7 So I just don't know how it makes
8 sense to say well, Lightsey's, you knew
9 you had a right to go seek contribution
10 from the Cashman's and you failed to
11 exercise that right for an unreasonable
12 length of time under circumstances
13 which make it unfair for you to now go
14 forward and seek that. Maybe I am just
15 missing something but --

16 THE JUDGE: I understand what you
17 are saying. You are saying you can't
18 waive an unknown right.

19 MR. TWOMBLEY: I mean if we
20 subjectively believed that we owned
21 this dock outright and all the evidence
22 supports that; I mean from the initial
23 construction down to paying of the
24 taxes, we have never asked the
25 Cashman's to pay one thing.

1
2 In my opinion it makes absolutely
3 no sense to say you are barred by
4 laches from going back and seeking
5 contribution. I mean until the Court
6 issues the Order saying they have a
7 right, an ownership right in the dock,
8 we would have no idea that we would
9 need to go to them and ask for
10 contribution.

11 So, you know, I just think it
12 makes sense and it is fair and
13 reasonable that since we always took
14 the position that this was our dock and
15 we didn't -- nobody owed us anything
16 because it was ours, now that the Court
17 is saying well, you are wrong, and I am
18 saying that they do own a right, that
19 we should definitely be able to go back
20 until the initial construction of the
21 dock to seek contribution from them;
22 and I think I mean I think that is
23 fair.

24 If you just take out all the
25 legalese in it. I mean if we paid for

1
2 everything, they have never paid for a
3 dime associated with it, you know, why
4 wouldn't it at least be fair for them
5 to have to pay for half of the
6 construction on it. I mean now they
7 are getting half ownership right and I
8 mean half of everything else so --

9 THE JUDGE: And your position is
10 exactly why I wanted you to proffer
11 every dollar because --

12 MR. TWOMBLEY: Okay.

13 THE JUDGE: -- if the ultimate
14 order is not as you have suggested, I
15 want those in Columbia to be able to
16 fix it right then and there and not
17 have to send it back for a re-trial.

18 MR. TWOMBLEY: Right.

19 THE JUDGE: Because I understand
20 what you are saying. I am still -- and
21 I can't remember whether or not
22 contribution was a cause of action in
23 the Lightsey Complaint. It wasn't
24 because the entire contribution would
25 have been contrary to your claim at

1

2 that point.

3 MR. TWOMBLEY: Yeah, we never --

4 THE JUDGE: But I don't know if

5 allowing -- so I have asserted

6 contribution essentially. But at the

7 same time it is unfair to assert

8 contribution and not also assert the

9 defense's contribution. And maybe I am

10 wrong but anyway --

11 MR. TWOMBLEY: And I think

12 contribution is for joint owners of

13 property, and until you issued this

14 Order, there were no joint owners of

15 property. And, you know, I mean I

16 guess we should have anticipated

17 what -- you know I don't know, it just

18 seems -- I don't know how logically

19 speaking we would have ever asserted

20 our rights more quickly than when you

21 say you all are joint owners of

22 property.

23 THE JUDGE: I understand your

24 argument exactly, and I have weighed it

25 in my mind; but I know exactly what you

1
2 are saying and I appreciate your
3 comments. It is one of those you can't
4 anticipate everything type scenarios.

5 MR. BERGLIND: Your Honor, do you
6 want me to respond or --

7 THE JUDGE: Yes.

8 MR. BERGLIND: Do you want a
9 response?

10 THE JUDGE: Yes, of course.

11 MR. BERGLIND: If you are going to
12 rule consistent with your Order, I
13 won't waste anybody's time but --

14 THE JUDGE: Well, I am happy to
15 hear your thoughts on it, so we have
16 got a record. Go ahead.

17 MR. BERGLIND: First, they didn't
18 ask for contribution in any of their
19 pleadings. There was no reason for us
20 to bring up the laches defense.

21 He said that there was no joint
22 ownership until you said there was in
23 your Order. Our argument is we were
24 joint owners back since in the 1930's.

25 MR. TWOMBLEY: Then why didn't you

1
2 all pay for everything?

3 MR. BERGLIND: As to the
4 contribution, the testimony at the
5 trial was that we were laying boards,
6 we were using our Cashman Construction
7 Company to do work on the dock, the
8 pier, so we were paying insurance.

9 The Cashman's were doing stuff
10 too. We weren't just sitting there
11 using somebody else's dock since 1961.

12 THE JUDGE: That reminds me, in
13 the record, and I will have to go dig
14 it up, maybe you all could summarize it
15 for me, but as I recall there were some
16 Cashman expenditures on insurance and
17 water something, I can't remember what
18 it was. Is that in the record already
19 somewhere?

20 MR. BERGLIND: Water, electricity,
21 insurance; and then the testimony was
22 that they replaced boards, did actual
23 construction maintenance on the pier or
24 the walkway. That is in the record,
25 yes, sir.

1

2

THE JUDGE: Okay.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. TWOMBLEY: And my memory is that I asked Mr. Cashman to essentially concede that all of his expenses were related to his small, or what he was alleging was his small floating dock. He said he would not do that. And so if the Court will recall I cross-examined him for the better part of 35 or 40 minutes on each one of the expenses that he was alleging was for the dock, that was not part of his -- and the record, we will have to go back and look at it; but my memory is that 99.9 percent of all the things that they said that they spent money on, they had a receipt for that he testified about was related to his floating dock, as opposed to the actual pier and the other part. That would --

THE JUDGE: And obviously what I was trying to do is figure out whether there is any setoff to some of these expenses. As I am calculating that, I

1
2 will just have to go back and look at
3 my notes and everything and try to
4 figure it out.

5 All right, did you have anything
6 else?

7 MR. BERGLIND: That is it, your
8 Honor.

9 THE JUDGE: Because here is what
10 my thought is to see if you can either
11 jointly or individually go down and see
12 whether or not -- we may have to have
13 live testimony on this. So I guess we
14 will leave it open for that purpose. I
15 would rather not, if perhaps the three
16 of you all can go down and speak with
17 the Assessor and they may say, oh yeah,
18 here is the book on how we do this, and
19 here is exactly why this property is
20 this way and if that is what it is, it
21 is; and then maybe we can get that in
22 affidavit format, and I can figure it
23 out, or it may be more confusing than
24 that as most things are.

25 MR. TWOMBLEY: I don't have any

1
2 problem, and I think we can at least be
3 able to come to an agreement on what
4 the Assessor says is the reason for the
5 difference.

6 THE JUDGE: Okay.

7 MR. BERGLIND: And that is fine.
8 And, your Honor, if you can rule on the
9 other expenses, not the taxes -- I
10 don't know if you were just planning on
11 doing an itemized numbering or just a
12 number.

13 THE JUDGE: I was going to by
14 posit --

15 MR. BERGLIND: Okay. Well, if we
16 can leave out the taxes, maybe we can
17 just come to a resolution on that.

18 THE JUDGE: Well, no, I mean I was
19 going to try to wrap it all up with one
20 Order. So I didn't want to issue
21 another Order and then another Order.

22 MR. BERGLIND: I understand, no,
23 sir.

24 THE JUDGE: Because in fairness to
25 the Lightsey side they need to know

1
2 when their date starts running, because
3 I understand they are not as happy as
4 they could be with maybe the final
5 Order. So in fairness to them they
6 need to know exactly what their
7 deadlines are, so I wanted to have one
8 final Order and maybe we can do it
9 after we get that issue with the
10 affidavits.

11 MR. SCHEIDER: Sir, may we go off
12 the record for a moment so I could put
13 a question to you?

14 THE JUDGE: Unless there is some
15 objection?

16 MR. TWOMBLEY: No objection, sir.

17 Before -- I mean I am happy to do
18 that.

19 I just want to ask one question, I
20 just want to make sure that there is
21 not any other specific objections to
22 any of the expenses we have listed. I
23 understand we had the tax issue which
24 we have agreed how we will resolve, and
25 then of course I think there is an

1
2 objection based on how far back in
3 time --

4 THE JUDGE: Sure.

5 MR. TWOMBLEY: -- which we talked
6 about, but other than that, that there
7 is no other specific objection, because
8 I have got Norris here if there is a
9 question about something, I want to
10 address it.

11 THE JUDGE: No, that is a fair
12 question.

13 Does the Plaintiff have any -- and
14 I understand there is the laches issue
15 that we have already discussed, but for
16 those issues either within or without
17 of that time period, is there any
18 specific objection to --

19 MR. BERGLIND: Yes, sir, I mean I
20 would object from 1961 until October of
21 2006.

22 MR. TWOMBLEY: We got that.

23 MR. BERGLIND: I don't know where
24 those numbers came from.

25 THE JUDGE: Okay.

1

2

MR. BERGLIND: I think I have to.

3

THE JUDGE: All right.

4

5

MR. BERGLIND: I don't think I
have a choice on that.

6

7

THE JUDGE: Let us take some
testimony on then. I will allow it.

8

9

MR. TWOMBLEY: If I can just
briefly try to -- I mean we had an

10

exhibit in our agreed-upon trial

11

notebook called "Lightsey Claimed

12

Expenses" and all of the information

13

that you have now was in that exhibit.

14

MR. BERGLIND: Well, I don't have
that on me.

15

16

MR. TWOMBLEY: You have a copy of

17

it there. I brought you a new one this

18

morning, and you do have it because it

19

was in the agreed-upon notebook that we

20

submitted to the Court.

21

MR. BERGLIND: I am saying I don't

22

have that notebook with me.

23

THE JUDGE: Go off the record for

24

a second.

25

(Whereupon, an off-the-record

1

2

discussion was held.)

3

THE JUDGE: We were off the record

4

discussing the Defendant's dock

5

expenses. I just wanted to get the

6

Cashman position on the document

7

entitled, "Defendant's Dock Expenses",

8

dated January 20, 2012.

9

Go ahead.

10

MR. BERGLIND: Do you want me to

11

go ahead and explain it?

12

THE JUDGE: Let me see if I can

13

summarize our off-the-record

14

conversation, which is many if not all

15

of the construction and maintenance

16

expenses set forth in this particular

17

document were the subject of the trial

18

notebook that we had in our lengthy

19

trial, and as I understand the Cashman

20

position the numbers themselves, the

21

invoices themselves and their various

22

amounts are not disputed.

23

What is disputed is the

24

contribution laches issue that we

25

previously discussed.

1

2

Is that a fair assessment of the
Cashman position?

3

4

MR. BERGLIND: Yes, sir.

5

6

THE JUDGE: Anything else from the
Lightsey side?

7

8

MR. TWOMBLEY: Other than that we
have agreed we will jointly go to the

9

Assessor's office and try to reach an

10

agreement as to A, the specific reason

11

why there is an increase in the taxes;

12

and that if we can't do that -- and

13

submit something to the Court either

14

through agreement or affidavit -- we

15

will come back for live testimony, but

16

we all hope that won't be necessary.

17

THE JUDGE: Yes, we do.

18

All right.

19

Well, anything else?

20

MR. BERGLIND: Your Honor, the

21

Order also points out that this hearing

22

is to set forth how the parties will

23

contribute to the dock moving forward?

24

THE JUDGE: Well, we may have to

25

move that part to part 2; that maybe we

1
2 will have either by telephone or on the
3 record, because until I know the number
4 it is kind of hard to come up with
5 that, because the tax issue is going to
6 be the largest issue.

7 And so in order to complete that,
8 you are right, thank you for reminding
9 me of that, but I guess we need to
10 figure out this tax issue and how the
11 taxes will be paid, whether it is paid
12 into a common fund and paid from that,
13 I don't know. We will come up with
14 something. I was kind of hoping that
15 once we have reached the numbers, you
16 all might be able to agree on something
17 better than what I might be able to
18 come up with.

19 MR. BERGLIND: Sounds good.

20 THE JUDGE: All right.

21 MR. BERGLIND: Thank you.

22 MR. SCHEIDER: Before we go, Your
23 Honor?

24 THE JUDGE: Yes.

25 MR. SCHEIDER: Gentlemen, one more

1

2 second to go off the record, just a
3 suggestion?

4 THE JUDGE: You want to go off?
5 Off the record.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 THE JUDGE: So today's hearing
9 will not conclude this record, but we
10 will hold it open to try to address the
11 tax issue and future payment issue as
12 previously discussed.

13 And if there is nothing further,
14 that will conclude at least today's
15 record.

16 All right, thank you.

17 MR. BERGLIND: Thank you.

18 (Whereupon, the Hearing was
19 concluded at 9:28 a.m.)

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Ceil Weser, CSR and Notary

Public in and for the above county and state, do

hereby certify that the foregoing testimony was

taken before me at the time and place

herein before set forth; that the witness was by

me first duly sworn to testify to the truth, the

whole truth, and nothing but the truth, that

thereupon the foregoing testimony was later

reduced by computer transcription; and I certify

that this is a true and correct transcript of my

stenographic notes so taken.

I further certify that I am not of

counsel to either party, nor interested in the

event of this cause.

Ceil Weser, CCR

Notary Public

Beaufort, South Carolina

Chuck T.
Nussbaum

Digitally signed by Chuck T. Nussbaum
DN: cn = Chuck T. Nussbaum, c = US, o =
cedar court reporting & video inc
Reason: I attested to the accuracy and integrity of
this document
Date: 2013.05.01 14:27:39 -0400

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CASHMAN PROPERTIES, LLC,

4 Plaintiff,

5 vs. CASE NO. 2009-CP-07-2573

6 WNL PROPERTIES, LLC, E. OSWALD
7 LIGHTSEY TRUST f/b/o LOUISE
8 LIGHTSEY BAUGHMAN, THE TRUST
9 UNDER WILL OF E. OSWALD LIGHTSEY
10 DATED AUGUST 8, 1958, AND CODICIL
11 DATED MARCH 23, 1976, FOR THE
12 BENEFIT OF LILLIAN LIGHTSEY DRAWDY,
13 AND THE TRUST UNDER WILL OF E. OSWALD
14 LIGHTSEY FOR THE BENEFIT OF CLAUDIA
15 LIGHTSEY WARE,

16 Defendants.

17 BEFORE THE
18 HONORABLE:

MARVIN H. DUKES, III

19 DATE: August 15, 2012

20 TIME: 1:31 PM

21 LOCATION: Beaufort County Courthouse
22 102 Ribaut Road
23 Beaufort, SC

24 REPORTED BY: KELLY A. BALL, Court Reporter

25 A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

26 Charleston, SC Hilton Head, SC Myrtle Beach, SC
27 (843) 722-8414 (843) 785-3263 (843) 839-3376

28 Columbia, SC Greenville, SC Charlotte, NC
29 (803) 731-5224 (864) 234-7030 (704) 573-3919

Page 2

1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR THE PLAINTIFF
3 CASHMAN PROPERTIES, LLC:
4 VAUX & MARSCHER, PA
5 BY: MARK S. BERGLIND
6 JAMES P. SCHEIDER, JR.
7 1251 May River Road
8 Bluffton, SC 29910
9 (843) 757-2888
10 Jim.scheider@vaux-marscher.com
11
12 ATTORNEYS FOR THE DEFENDANTS
13 WNL PROPERTIES, LLC, E. OSWALD LIGHTSEY
14 TRUST f/b/o LOUISE LIGHTSEY BAUGHMAN,
15 THE TRUST UNDER WILL OF E. OSWALD
16 LIGHTSEY DATED AUGUST 8, 1958, AND
17 CODICIL DATED MARCH 23, 1976, FOR THE
18 BENEFIT OF LILLIAN LIGHTSEY DRAWDY, AND
19 THE TRUST UNDER WILL OF E. OSWALD
20 LIGHTSEY FOR THE BENEFIT OF CLAUDIA
21 LIGHTSEY WARE:
22 TWENGE + TWOMBLEY LAW FIRM, LLC
23 BY: J. ASHLEY TWOMBLEY
24 311 Carteret Street
25 Beaufort, SC 29902
(843) 982-0100
Twombley@twlawfirm.com

26 ALSO PRESENT:
27 Brandon White
28 Norris Laffitte
29
30 (INDEX AT REAR OF TRANSCRIPT)

Page 3

1 THE COURT: All right. Good afternoon.
2 We're here in 09-CP-07-2573 which is Cashman versus
3 WNL Properties. The parties have previously been
4 before the Court for several matters including the
5 trial in this case. Today, we have on the docket
6 the defendant's motion to reconsider and motion to
7 amend.
8 I'm handy to hear from you, sir.
9 MR. TWOMBLEY: Thanks, Judge Dukes.
10 The first ground for our motion I hope is one of
11 the least controversial.
12 THE COURT: Okay.
13 MR. TWOMBLEY: Basically when the trial
14 began, there were several causes of action that had
15 been pled. The adverse possession cause of action
16 was withdrawn after the plaintiffs presented their
17 case. Which left a declaratory judgment,
18 prescriptive easement, resulting trust, and
19 injunction.
20 The order you issued just granted a
21 declaratory judgment and then a follow-up
22 correspondence, and then also at one of the
23 hearings I asked that the order be amended to state
24 that the other causes of action were being denied.
25 You had indicated in an e-mail specifically you

Page 4

1 were going to deny -- you were denying the
2 prescriptive easement cause of action.
3 THE COURT: Okay.
4 MR. TWOMBLEY: When that came up, my
5 memory is that you said, well, we'll address it on
6 a motion to consider and that essentially, by
7 implication, if you did not grant -- if the order
8 didn't grant the relief that was requested, that it
9 was, by implication, denied.
10 THE COURT: Uh-huh.
11 MR. TWOMBLEY: And so our first request
12 is that the order just reflect that those other
13 causes of action are being denied.
14 THE COURT: All right. Why don't we
15 take them one at the time. I think I do recall it
16 being that way. Is that the way you recall it as
17 well?
18 MR. BERGLIND: I recall the adverse
19 possession -- when -- we withdrew that.
20 THE COURT: Uh-huh.
21 MR. BERGLIND: And I'll be -- I mean,
22 that's fine if that's placed in the order. I do
23 not recall saying you were denying the prescriptive
24 easement.
25 MR. TWOMBLEY: Here's the e-mail,

Page 5

1 Judge.
2 THE COURT: You got the e-mail?
3 MR. TWOMBLEY: Yeah, it's right here.
4 THE COURT: All right. Okay.
5 MR. BERGLIND: Or -- or the resulting
6 trust.
7 THE COURT: Okay.
8 MR. TWOMBLEY: And I specifically
9 raised this issue with you and was asking and --
10 THE COURT: Uh-huh.
11 MR. TWOMBLEY: -- you said in response
12 you were not finding prescriptive --
13 THE COURT: Yeah, I remember. What was
14 the third cause of action, though? You said
15 there --
16 MR. TWOMBLEY: Resulting trust.
17 THE COURT: Okay. Yeah. Y'all sort
18 of -- y'all didn't even pursue that one, did you?
19 I don't even remember it.
20 MR. BERGLIND: We did, it's -- I --
21 I -- we feel it is applicable in this case as
22 equitable remedy, however we are fine with the DJ
23 action.
24 THE COURT: Okay. Yeah. Well, let
25 me -- let me do this, I -- I think it was my intent

Page 6

1 and as I probably did state if -- in one of our
2 phone conferences and certainly in the e-mail it
3 was my intent to find it on the DJ cause of action
4 and deny the other two.
5 What's next?
6 MR. SCHEIDER: For clarification, Your
7 Honor, that was resulting trust and prescriptive
8 easement that you were denying?
9 THE COURT: That's correct.
10 MR. SCHEIDER: All right, sir. All
11 right.
12 MR. TWOMBLEY: Of course, injunction is
13 moot.
14 THE COURT: Yeah.
15 MR. SCHEIDER: Right, that's tendered.
16 Yeah.
17 MR. TWOMBLEY: Okay. With respect to
18 the prescriptive easement, we would ask that The
19 Court include some specific findings as to why that
20 is being denied. And we have set forth several
21 grounds on which we think -- you know, there's
22 multiple reasons that we think prescriptive
23 easement was denied. But just -- just to go
24 through a couple.
25 First of all, to prove a prescriptive

Page 7

1 easement the plaintiffs have to show continuous use
2 for 20 years. In this instance the testimony, the
3 plaintiffs conceded that they did not use the dock
4 for almost four and a half years prior to the time
5 that they filed suit from March 21st to May --
6 March 21st, 2005 to May 21st, 2009. So Number 1,
7 we'd ask that you amend the order to say that the
8 use was not continuous.
9 Number 1, the use cannot be interrupted
10 no matter how brief the interruption is. And
11 both -- both of the Cashmans' witnesses testified
12 that their use was interrupted. They actually used
13 the word interrupted. And they testified that in
14 March of 2005 when the Lightseys put the lock on
15 the gate that their use was interrupted.
16 Number 2, the use by the plaintiffs
17 were not adverse or hostile. And at the close of
18 the plaintiffs' evidence, you know, this issue came
19 up when -- when the plaintiffs abandoned their
20 adverse possession cause of action and you actually
21 said that this was, quote, a family friendly
22 neighborly operation and there was no hostility.
23 And right after that the defendants --
24 or the plaintiffs withdrew their adverse possession
25 cause of action. And so because the use was not

Page 8

1 adverse, hostile, or under a claim of right, we
2 think that's another ground.
3 E, Your Honor, I think is particularly
4 important -- important. To prove a -- a claim for
5 a prescriptive easement, you have to show that the
6 use was adverse or under a claim of right and we
7 don't think they've done that as the Court -- as
8 the Court said at trial. But even if there was a
9 finding that the use was adverse or under a claim
10 or right, it would have to be by the owners of the
11 property for 20 years.
12 It's undisputed that the two witnesses
13 that testified at trial did not gain an ownership
14 interest in the property until 1994. And that even
15 if they used it adversely and hostilely which the
16 evidence has already -- or which you already said
17 you didn't think that they -- that they did, they'd
18 have to go back in time further and show that their
19 predecessor in interest also used it adversely.
20 And what's important is that they have
21 to show by clear and convincing evidence, it's the
22 highest evidentiary standard that's out there, that
23 the predecessor in interest was using it hostilely,
24 adversely, and under a claim of right.
25 I quoted the testimony regarding the

Page 9

1 two witnesses' father, he was their predecessor
2 in -- in -- predecessor in interest, Eugene
3 Cashman, Sr. He's alive. He did not come to trial
4 and testify about his prior use. And the witnesses
5 testified that it was their understanding that
6 their father owned an interest in the dock.
7 And, in fact, Eugene Cashman, Jr.
8 testified that while he may not have asked
9 permission to use the dock, he could not testify
10 that his father didn't talk to Oswald and Horace
11 Lightsey. And I quoted that testimony for you.
12 Again, Betty Cashman testified that it
13 was her, quote, understanding. And that's not
14 sufficient to show that the predecessor in interest
15 was using the property through clear and convincing
16 evidence as a matter of right.
17 This exact issue came up in -- in the
18 Morrow case, which I've cited here, and it was a --
19 (The proceedings were interrupted.)
20 (Mr. White entered the room.)
21 MR. WHITE: Excuse me, Judge.
22 MR. TWOMBLEY: There was a -- a very
23 similar issue when -- when basically the -- the
24 Supreme Court said -- or the Court of Appeals said,
25 look, even if the current owners and the parties to

Page 10

1 the litigation could prove that they used the
2 property adversely and under a claim of right, they
3 would have to show through clear and convincing
4 evidence that their predecessor in interest was
5 using it adversely and under claim of right.
6 And the Court said the only evidence
7 regarding Morrow's predecessor in interest was that
8 Morrow thought Raymond still had a right-of-way
9 across the property. And the Court said, this
10 evidence is insufficient to establish that Still,
11 who was the predecessor in interest, had a belief
12 amounting to a claim of right. And it says since
13 the Morrows had the burden of establishing their
14 entitlement to a prescriptive easement, they -- and
15 they've only owned the property since 1992. Same
16 instance here, the Cashman's have only owned it
17 since 1994. They could not meet their burden by
18 clear and convincing evidence to show that the
19 father was using it under a claim of right.
20 And, again, it's not our burden to show
21 that he wasn't. That's their burden to show
22 through clear and convincing evidence that he was.
23 In a totally separate argument and
24 notwithstanding the arguments that have been made
25 so far, the case law is clear that a permissive use

Page 11

1 can never ripen into a prescriptive use. And we
2 went through this at trial with -- with respect to,
3 you know, the document where the -- there was a --
4 there's actually a signed document where one party
5 said he had permission from the other party to --
6 to put the dock there.
7 But, anyway, Mr. Cashman testified that
8 his right to use the property and to also use the
9 dock emanated from permission that he got from the
10 Brighton Beach Subdivision owner, Mr. Lawton. And
11 a -- it's on the -- on the transcript, Page 42 and
12 43. He says and that's -- that's why we have the
13 right to be down there because we have permission
14 from Mr. Lawton to be down there.
15 Again, a permissive use can never ripen
16 into a prescriptive use. And so for those reasons
17 we'd ask that the Court amend its order not only
18 denying the prescriptive easement, but stating that
19 these are the grounds for denying it.
20 THE COURT: Okay. Do you want -- do
21 you have any response to that?
22 MR. BERGLIND: Sure. Your Honor,
23 20 years not being continuous because of the
24 interruption in 2005. Client testified that the
25 interruption occurred because the lock was placed

Page 12

1 on the gate. They never gave up their claim of
2 right to the dock. There had already been 80 plus
3 years where they had used the three docks at
4 that -- on that property. That dock specifically
5 was constructed in 1961. Between 1961 and 2005
6 there was no interruption. I believe the 20-year
7 period applies here.
8 The second issue was -- oh, with regard
9 to the 1994 transition of property. The case law
10 is clear as to tacking. A party's use must meet
11 all requirements throughout the 20-year period.
12 And if tacking is used, the use by the previous
13 owners must also meet the requirements of a
14 prescriptive easement.
15 We gave you, the Court, 60 plus
16 exhibits dating back to nineteen -- I believe 1931,
17 maybe earlier. Photographs, maintenance documents,
18 all sorts of things showing that the history and
19 the use of the dock -- let me use the right
20 words -- met the requirements for the prescriptive
21 easement with the previous owners. And that they
22 claimed the right.
23 Mr. Twombly says adverse possession
24 and claim of right is required. I don't believe
25 that is the standard. It's adverse possession or

Page 13

1 hostility or -- or claim of right. I'm not going
2 to rehash the whole trial here, but I've -- I've
3 cited a lot of it in our memorandum. And according
4 to the testimony and the exhibits, they claimed the
5 right, you know, starting back in the nineteen --
6 late 1920s; 1930s.
7 THE COURT: Okay. Now, I remember the
8 testimony, the testimony well. The -- it -- but on
9 a claim in which the defendant has prevailed, the
10 request is for me to fill in more facts justifying
11 the fact that you have -- the reason why you
12 prevailed on that claim? I mean, is that...
13 MR. TWOMBLY: Well, yeah, I'm -- I'm
14 just -- I mean, let's just assume we get to the
15 Court of Appeals and the Court of Appeals disagrees
16 with you and says, you know, I think there was a
17 prescriptive easement.
18 Well, you know, I think -- I think
19 you've neither explained -- in my opinion, it would
20 be best to explain why you're finding that there
21 was not a prescriptive easement. And particularly
22 since it's an evidentiary issue. And you -- and --
23 and -- and so, I mean, I -- and, absolutely, I
24 think you need to explain why the prescriptive
25 easement cause of action fails.

Page 14

1 THE COURT: I mean, I can see them
2 making that request if they were going to appeal my
3 denial of their claim of a prescriptive easement.
4 Again, I'm not saying it's a terrible idea to
5 always put every factual finding. I -- I guess I'm
6 just curious whether or not a complete set of
7 factual findings with regard to the denial of your
8 claim is even -- is required to begin with. I'm
9 not sure it is. But in order to have a whole
10 record in case I'm wrong and not have to send it
11 all back, you know, I'll -- I'll take a second look
12 at that.
13 The -- the -- I mean, the curious part
14 about this case in the great world of real estate
15 law is, you know, what is the dock? You know, is
16 it real estate? Is it personal property? I mean,
17 what -- what is it exactly? And, you know, that's
18 been sort of the tough part about this whole thing.
19 But anyway...
20 MR. TWOMBLEY: Your Honor, what -- what
21 we would suggest is that if you agree with the --
22 with the issues that we've set forth in the
23 motion --
24 THE COURT: Uh-huh.
25 MR. TWOMBLEY: -- I mean, if you -- if

Page 15

1 you don't agree with them, that's fine too. But
2 if -- but if you do agree with them, I don't --
3 certainly don't see no harm in putting them in the
4 motion. And I think, you know, certainly as
5 respect to E, the last one, you know, just to
6 simply find that they -- they had the burden to
7 show that the predecessor in interest was using it
8 under a claim or a right by clear and convincing
9 evidence. I mean, just respectfully to Mark's
10 testimony, he says, you know, they all claimed a
11 right back to 1930. Well, you know, they -- they
12 weren't alive in 1930. And --
13 THE COURT: I mean, there's clearly no
14 hostility. You didn't claim there was, so --
15 MR. BERGLIND: That's right.
16 THE COURT: Right. Or as I recall, I
17 mean, there's no such claim. I mean, that's an
18 easy factual finding. I think it's practically
19 stipulated.
20 MR. BERGLIND: And -- and we'll be -- I
21 mean, that's -- if that needs to be in the order
22 then -- that we withdraw -- we withdrew our claim
23 for adverse possession.
24 THE COURT: And -- and for purposes of
25 modification of the order, I would think that alone

Page 16

1 would be a deal killer as far as whether or not a
2 prescriptive easement was -- was possible. You
3 know, the --
4 MR. BERGLIND: But Your Honor --
5 THE COURT: -- of course, the claim of
6 right issue -- well, anyway, I'll look at it and
7 see what -- what we can do as far as -- what I can
8 do as far as filling something in.
9 MR. TWOMBLEY: Okay.
10 THE COURT: What -- what's next?
11 MR. TWOMBLEY: On the third issue is
12 that the order said that this matter was referred
13 to the Court with finality with a direct appeal to
14 the South Carolina Supreme Court. That's not what
15 Judge Mullen's order of reference says. And as
16 best as I can tell, the research that I've done,
17 that's what Rule 53 provides. And it's also not
18 what the statute that deals with references to a
19 master provides. They all provide --
20 THE COURT: Do you have the order of
21 reference?
22 MR. BERGLIND: It's -- Your Honor, it's
23 probably my typo.
24 THE COURT: Oh.
25 MR. BERGLIND: And we talked about this

Page 17

1 yesterday. The order clearly states with direct
2 appeal to the South Carolina Supreme Court or Court
3 of Appeals. So I have no problem -- I mean,
4 with -- I agree with him --
5 THE COURT: Okay.
6 MR. BERGLIND: -- on that one.
7 MR. TWOMBLEY: I mean, unless there's
8 some rule that you know of, because I've researched
9 it down to the hill and I can't find anything that
10 would -- that would suggest that it would go
11 straight from a master to the South Carolina
12 Supreme Court and totally bypass the Court of
13 Appeals.
14 THE COURT: No, it -- it -- it's --
15 it's -- well, of course, the appeal is, you know,
16 you fill out the -- the -- the various documents.
17 But, no, there's nothing that would take the
18 appeals court out of it. But you know how it
19 works. I mean, the Supreme Court may take it up,
20 assuming it goes that far.
21 But, no, this is like -- I think that
22 statute was designed -- as you know, masters used
23 to make orders that would then be reviewed by the
24 circuit court judge. Of course, that system is
25 long gone away.

Page 18

1 MR. TWOMBLEY: Right.
2 THE COURT: I mean, the idea is it's
3 appealed to the people in Columbia.
4 MR. TWOMBLEY: Right. Okay.
5 THE COURT: But, no, nothing -- no typo
6 there is going to change the standard appeal issue.
7 But, yeah, we can -- we can certainly change that.
8 That's...
9 MR. TWOMBLEY: Well, I'm just trying
10 to -- I mean, I had brought this up before and
11 there was not consensus that I was right, so I was
12 just trying to prevent, you know, having to file
13 stuff --
14 THE COURT: Yeah.
15 MR. TWOMBLEY: -- in different courts
16 and then filing stuff in the Supreme Court and then
17 getting kicked back down. So if we could just
18 change that, I'd appreciate it.
19 THE COURT: Yeah. And -- and, I mean,
20 we could certainly quote the -- the rule, you know,
21 as far as direct appeal, you know, however you'd
22 like to do it. But -- but, yeah, I don't think any
23 language in there was intended to limit you to --
24 not that they would allow themselves to be limited
25 by the language I put in the order any way but --

Page 19

1 MR. TWOMBLEY: Right. Well, I
2 didn't -- it was just save a bunch of hassle.
3 THE COURT: No, listen, I -- I applaud
4 your eye for detail.
5 MR. TWOMBLEY: The -- the fourth
6 ground, Your Honor, is that there was a point in
7 the trial where Eugene Cashman, Jr. was attempting
8 to testify about conversations that had taken place
9 for which he conceded that he was not a party to.
10 When -- when the objection was made, you said,
11 well, how do we know he was not a party to these
12 conversations. And then Mark asked him were you a
13 party to these conversations and he said no.
14 And so I said, well, that's my
15 objection and then you -- you -- you sustained it.
16 You said that you agreed. And that's on Page 25 of
17 the transcript if you'd like to see it.
18 And I would like that -- that any
19 testimony that Mr. Cashman gave at trial about
20 conversations that took place which he was not a
21 party to -- be stricken in accordance with your
22 ruling during trial.
23 THE COURT: All right. So I -- I
24 sustained your objection. So I assume at that
25 point we stopped hearing about anything other than

Page 20

1 that.
2 MR. TWOMBLEY: I think part of it had
3 already, you know, come in before I got it out of
4 my mouth, but he was in the middle of his sentence.
5 THE COURT: So it has to do with that
6 particular sentence that's on paragraph twenty --
7 Page 25 you said?
8 MR. TWOMBLEY: Well, it has to do with
9 that issue which is the, you know, conversations
10 that he -- and he conceded, he said something to
11 the effect that this was passed down from
12 generation to generation and I objected.
13 And there was the argument -- you know,
14 Mark argued that these were statements in -- you
15 know, inscribed in a family Bible and with respect
16 to family genealogy and stuff. And -- and then I'd
17 said, you know, that only applies to documents and
18 stuff.
19 And -- and so my opinion is, and what
20 we're requesting is that since you sustained that
21 objection that you strike any testimony that he
22 offered about conversations he had with people that
23 he was not a party to. It's classic hearsay.
24 MR. SCHEIDER: Question, Your Honor.
25 Mr. Twombley, would you want the objection to be

Page 21

1 noted in the -- or in the order -- or in the
2 transcript and the judge's ruling on the objection
3 to be sustained?
4 I would think you would need some frame
5 of reference in there if you want that to be
6 sustained.
7 THE COURT: I mean, I guess --
8 MR. TWOMBLEY: Well, it already was
9 sustained.
10 THE COURT: But -- but it sustained but
11 then -- are you suggesting that even after it was
12 sustained he continued on and that was --
13 MR. TWOMBLEY: Well, there were other
14 instances in the trial where it came back up and I,
15 again, got back up and I said I object. And you
16 already said he couldn't -- he couldn't testify
17 about that.
18 And so if this were a jury trial, you
19 would tell the jury, the finder of fact, you know,
20 you cannot consider the testimony that he gave
21 about conversations with other people which is not
22 admissible, jury, and it's not reliable and I'm
23 striking it from the record and you're not supposed
24 to consider it.
25 THE COURT: All right. So your

Page 22

1 position is that prior to that objection, there was
2 evidence that -- that apparently -- at that point
3 there was not an objection on the table that --
4 that -- that some of that evidence maybe couldn't
5 have been considered?

6 MR. TWOMBLEY: Well, in my opinion, it
7 doesn't matter if it came in immediately before or
8 immediately after. I mean --

9 THE COURT: Well, that's what I'm
10 saying, is it in the same sentence? I mean, I'm --
11 I'm trying to follow it, I'm just trying to figure
12 out what -- is this throughout the trial up until
13 the objection or was it just --

14 MR. TWOMBLEY: Well, I'll get you -- if
15 you would like, I'd be happy to highlight the
16 portions of the -- the specific portions of the
17 transcript at issue and you can look at each one
18 independently. But, basically, there were
19 discussions about --

20 THE COURT: Uh-huh.

21 MR. TWOMBLEY: -- who had participated
22 in building these prior docks and things that, you
23 know, his father had told him about these other
24 docks. And --

25 THE COURT: Let me -- let me ask you

Page 24

1 MR. LAFFITTE: We don't know.

2 THE COURT: Okay.

3 MR. TWOMBLEY: And -- and, in fact, the
4 testimony at trial was, in my opinion, totally
5 different than what they alleged in their
6 complaint. I mean, they alleged in their complaint
7 that Dock 1, Dock 2, Dock 3, then we get all these
8 photos and then we find out, no, there was -- there
9 was another dock. It was a dock that -- that the
10 Lightseys were using.

11 We see in the photographs that it was
12 actually being used. I mean, all -- all the -- the
13 stuff was pulled up beside this other dock.

14 You know, there's a letter from the
15 developer from -- from the '40s that was telling an
16 unrelated party, yeah, you can build a dock down
17 there. Build it to the right of the Cashman/Carter
18 dock and to the left of the Lightsey dock.

19 THE COURT: Uh-huh.

20 MR. TWOMBLEY: And so --

21 MR. BERGLIND: That's the spur dock,
22 right? I'm just trying to -- for clarification.

23 THE COURT: No, I remember the spur
24 dock --

25 MR. TWOMBLEY: I understand you may

Page 23

1 this, because I think I remember this. But --
2 there were certain -- a number of stipulations,
3 maybe there were -- agreements is probably more
4 accurate in this case, but we had a number of
5 things that were on the record as not disputed at
6 least. I think one of those things, and correct me
7 if I'm wrong, was that there were three docks
8 there. I'm going to mix some of this up because
9 it's been a while.

10 But there -- there -- there had been a
11 total of three docks within that -- and I noticed
12 in your memo you take issue with the term common
13 area on the property, but for purposes of this
14 question I'm going to call it the common area. But
15 the area generally in front of the -- the Lightsey
16 property and -- and also sort of on the seaward
17 side of the -- of the Cashman property.

18 That over the history of the two
19 families there had been three docks. That the
20 first dock was built by the Cashmans. I think that
21 was a -- was more or less an agreement.

22 MR. TWOMBLEY: I can save you some
23 time. I mean, we didn't agree to any of that.

24 THE COURT: Okay. All right.

25 MR. TWOMBLEY: We didn't --

Page 25

1 think it's a spur dock but the developer of the
2 property --

3 THE COURT: Well, I remember it being
4 called the spur dock, yeah.

5 MR. BERGLIND: Sorry.

6 MR. TWOMBLEY: -- the developer of the
7 property who wrote the letter, he didn't think it
8 was any less of a dock than anybody else's dock.
9 And so the point is though, that we absolutely take
10 issue with the finding, and that comes later, that
11 you found that there was an -- 80 years of a
12 continuous use and they had a dock and we were
13 using it and -- and we had a dock they were using.
14 We don't agree -- we don't agree with that at all.

15 THE COURT: Okay. All right. My --
16 again, my mistake. It's been a while since I heard
17 the testimony. I -- I thought maybe some of that
18 was -- was -- was not disputed. Obviously, it is
19 disputed.

20 MR. TWOMBLEY: And -- and if I could
21 just make one other point.

22 THE COURT: Sure. Sure.

23 MR. TWOMBLEY: Is that, you know, what
24 I found so interesting is going back and reading
25 the transcript is, you know, you asked Betty

Page 26

1 Cashman and Gene Cashman who owned Dock 2.
2 THE COURT: Uh-huh.
3 MR. TWOMBLEY: Well, they didn't say,
4 oh, that was the Lightseys' dock and the Cashmans'
5 dock. We all used it together. You know what they
6 say? That was the Cashmans' dock. You asked Betty
7 Cashman, who -- who owned Dock Number 2? Gene
8 Cashman, Sr. owned it. My -- my daddy owned it.
9 And my granddaddy built it.
10 Well, you know, boy, it's sure
11 convenient back when it's their dock, they own it,
12 but when they're trying to come and get our dock,
13 well now it's all 80 years of peace and harmony and
14 it's all jointly owned together. So we absolutely
15 take issue with that. We don't think the evidence
16 supports it and --
17 THE COURT: Okay.
18 MR. TWOMBLEY: -- so...
19 THE COURT: All right. Anyway, your
20 thoughts on the next point.
21 MR. BERGLIND: I mean, I think he's
22 misconstruing the testimony here. I mean, it says
23 what it says. I -- in the transcript --
24 THE COURT: Well, actually I was back
25 to the -- the objection of the --

Page 27

1 MR. BERGLIND: Okay.
2 THE COURT: -- the --
3 MR. BERGLIND: Yeah, I'm -- I'm not --
4 there was one instance here on --
5 THE COURT: And this may be --
6 MR. BERGLIND: -- Mr. Twombley says 25,
7 but I don't see --
8 THE COURT: Well, we may have to take
9 Mr. Twombley up on his offer to highlight --
10 MR. BERGLIND: Okay.
11 THE COURT: -- the provision --
12 MR. BERGLIND: Because I'm not quite
13 sure, but --
14 THE COURT: Unless you've already done
15 that and then --
16 MR. TWOMBLEY: No, I haven't done it
17 but I'd be happy to.
18 THE COURT: I mean, that's probably the
19 best way to deal with that and just send him a copy
20 first and then we'll, you know, look at that.
21 MR. BERGLIND: But, you know, I -- Mr.
22 Cashman started discussing conversations that
23 occurred that he was not party of.
24 THE COURT: Uh-huh.
25 MR. BERGLIND: The objection was made.

Page 28

1 It was sustained. I was very careful from there on
2 out to make sure that he only testified and that
3 Betty Davis only testified as to things they saw.
4 THE COURT: Uh-huh.
5 MR. BERGLIND: You know, the pictures
6 where they knew the people, you know, things like
7 that. Not, you know, what they -- what they heard.
8 So I'm not quite sure what Mr. Twombley is talking
9 about with that regard.
10 MR. TWOMBLEY: Just -- I'm sorry, go
11 ahead. I didn't want to interrupt you. I was just
12 going to say, I mean, it sounds like we agree on --
13 that you have sustained the objection. I think the
14 question is -- that may be disputed is what -- what
15 it applies to. What exactly is being --
16 MR. BERGLIND: And my argument --
17 MR. TWOMBLEY: -- excluded.
18 MR. BERGLIND: -- is that it applies to
19 the objection as made when it was made. But, you
20 know, there's no -- like Mr. Twombley said, there's
21 no jury here, so, you know, I -- the Judge, you
22 know, and in cases like this can place the weight
23 he feels appropriate. I don't think it needs to be
24 in the order --
25 THE COURT: I think what Mr. Twombley

Page 29

1 is saying is what I should have done, correct me if
2 I'm wrong, is searched my memory for those
3 statements prior to the objection that fell under
4 that objection and sort of stricken those from the
5 record and -- and my consideration, is that -- is
6 that --
7 MR. TWOMBLEY: Or -- right. And I
8 agree. Or I think alternatively what you could do
9 is say that the Court did not consider any of the
10 statements made by Gene Cashman. I think -- I
11 think you could just say that and you don't even
12 have to deal with -- with the issue, but if you --
13 THE COURT: Well, I may have considered
14 them. I don't know. I mean, the question is --
15 you know, I'd have to go back and look at the
16 record.
17 Why don't we do this: I may, hopefully
18 it's not a terrible burden, take you up on your
19 offer to mark those --
20 MR. TWOMBLEY: Okay.
21 THE COURT: -- passages. You know,
22 y'all share it before you send it to me. And
23 just -- if you don't mind, just throw a memo on it
24 before you send it to me just saying this is, you
25 know, just a summary of what that issue is.

Page 30

1 What -- what else do you have?
2 MR. TWOMBLEY: There was another
3 objection that we made at trial where we sought to
4 exclude any testimony that Mr. Cashman would offer
5 based on things he had no personal knowledge of.
6 And you overruled that objection. It started off
7 with him talking about things that had happened in
8 the 1930s and the 1940s which was, again, before he
9 was alive. We do not think that there's any basis
10 at all for allowing him to testify about those
11 things. And we are asking that you reconsider
12 overruling our objection as to those matters.
13 THE COURT: Okay. Do you -- y'all have
14 a transcript of this hearing? What's the volume of
15 it?
16 MR. BERGLIND: 200 plus pages.
17 THE COURT: Oh, I've seen worse.
18 MR. BERGLIND: But I have a copy.
19 MR. TWOMBLEY: This is not printed and
20 condensed, but Joanne, she sent it to us like this,
21 but we can get you a copy.
22 THE COURT: That might be helpful for
23 all of this, so, if -- if you could, that'd be
24 great. Probably can get Joanne to send me one
25 though she'll probably try to e-mail it to me,

Page 31

1 so...
2 Okay. I'm sorry. Go ahead.
3 MR. TWOMBLEY: When I highlight the
4 thing and send it in, I'll attach a copy of the
5 transcript for you.
6 THE COURT: Yeah, because I'm probably
7 going to need the whole thing --
8 MR. TWOMBLEY: Okay.
9 THE COURT: -- to do some of this.
10 MR. BERGLIND: I'm not -- I'm not sure
11 what objection or what page or...
12 MR. TWOMBLEY: It was right off from
13 the start and then I asked for it to be a
14 continuing objection.
15 THE COURT: What I may get you to do is
16 when you send the copy after you mark it, maybe is
17 just tab --
18 MR. TWOMBLEY: Sure.
19 THE COURT: -- Number 8, Number 9,
20 whatever in here it might be, which you may have
21 already done in the one that you've got. And
22 rather than send that entire copy, maybe nix -- I
23 don't know how to do it. I don't want you to have
24 to make two copies of everything you tab. But
25 maybe you could just mark what you're tabbing and

Page 32

1 make a summary of it so you wouldn't have to make
2 an entire copy of the one he's tabbed and marked.
3 MR. TWOMBLEY: I'll just e-mail it.
4 I'll just -- we'll -- we'll get it to him.
5 THE COURT: Figure out some method to
6 do --
7 MR. TWOMBLEY: It'll be easier.
8 THE COURT: Okay. All right. I just
9 don't want you to have to make a thousand pages of
10 copies, so...
11 MR. BERGLIND: Your Honor, I just --
12 maybe it's just gone over my head. I don't know
13 the purpose of that exercise. Is it so that we can
14 put it into the order or for you to reconsider?
15 I'm -- I'm confused.
16 THE COURT: Well, so I can -- so I can
17 properly look at his motion to reconsideration.
18 Because he's mentioning things that are --
19 MR. BERGLIND: Okay.
20 THE COURT: -- in the transcript that
21 it's difficult without the transcript --
22 MR. BERGLIND: I understand.
23 THE COURT: -- in front of me and those
24 passages marked to even consider.
25 MR. BERGLIND: Okay. Thank you.

Page 33

1 THE COURT: That -- that's really
2 what -- what it's about. Because it was a lot of
3 testimony as y'all recall and it was a long time
4 ago, so...
5 Anyway, did you have any thoughts on
6 that?
7 MR. BERGLIND: I'm not sure what
8 objection he's referring to, but...
9 THE COURT: This was --
10 MR. BERGLIND: Yeah.
11 THE COURT: -- essentially a --
12 MR. TWOMBLEY: I mean, I can point it
13 to you. It's in the first 20 pages of the
14 transcript. It was the first objection made. Page
15 23, 21 -- it starts on Page 19. I'm going to
16 object to Cashman giving any testimony about who or
17 what may have happened in the past unless it's
18 based on personal knowledge. This came up in the
19 deposition. I don't know if you want -- I said, I
20 don't know if you want me to object each time or
21 you can just give me a -- a standing objection.
22 But we think he shouldn't be allowed to testify
23 about that.
24 And in the end you said you disagreed
25 and you were allowing it. And so I'm asking you to

Page 34

1 reconsider that.
2 THE COURT: Okay.
3 MR. BERGLIND: Well, Your Honor, it was
4 between -- you allowed it on Page 20 and then on
5 Page 23 it was the same objection, I made the same
6 argument, and this time the argument was sustained.
7 On Page --
8 THE COURT: This is why I think I'm
9 going to need the transcript marked and tabbed.
10 MR. BERGLIND: -- Page 25 --
11 MR. TWOMBLEY: Yeah.
12 THE COURT: Yeah.
13 MR. BERGLIND: -- so I think it can be
14 limited -- I think it makes it pretty easy if we
15 can just limit it to --
16 THE COURT: Okay.
17 MR. BERGLIND: -- up to Page 25.
18 THE COURT: Well -- well -- well,
19 again, what I may do is just to get Ashley to take
20 a look at it and throw some tabs in there and some
21 remarks.
22 MR. TWOMBLEY: Sure.
23 THE COURT: And -- and, again, before
24 it comes to me if you wanted to mark something or
25 whatever that -- that has something to do with

Page 35

1 that, no problem.
2 MR. TWOMBLEY: Your Honor, the -- the
3 6th ground for our motion is that in the Court's
4 order you grant plaintiffs an ownership interest in
5 the dock. And this -- this related to other
6 grounds for our motion. We -- we take the position
7 that there was only one cause of action in our
8 opinion that could have possibly bestowed an
9 ownership interest in this dock to the plaintiffs,
10 and that was the adverse possession cause of
11 action.
12 THE COURT: What did the -- and refresh
13 my recollection probably about it too, but the
14 declaratory judgment action specifically; what was
15 the claim there?
16 MR. TWOMBLEY: As to ownership of the
17 dock. That's all it was. That's all it was, was
18 the ownership of the dock.
19 THE COURT: Okay.
20 MR. TWOMBLEY: But that's important for
21 the prescriptive easement part. But I -- I know
22 what you're thinking, that that's what we're
23 talking about.
24 THE COURT: Right.
25 MR. TWOMBLEY: But here's the thing:

Page 36

1 We don't think the Court has the authority to
2 declare that someone owns something. That -- the
3 ownership rights have to flow through some other
4 cause of action. In other words, if -- if that's
5 not the case, then why would they even need to show
6 or prove or why would the elements of adverse
7 possession even be at issue or even relevant if all
8 the Court's got to do is say, well, I -- I declare
9 that y'all own it.
10 How -- how did they get their ownership
11 interest? I mean, how -- how did they get that
12 ownership interest? They certainly didn't pay for
13 it. They certainly didn't build it. They have --
14 they don't have a prescriptive easement. You said
15 they don't have it through adverse possession.
16 Under what legal authority can the
17 Court say, well, you haven't proved adverse
18 possession, you haven't proved prescriptive
19 easement, you haven't proved resulting trust, but,
20 nevertheless, I hereby declare that you have an
21 ownership interest in it. I don't think you can do
22 that. It's an improper application of the
23 Declaratory Judgment Act.
24 It's the equivalent of me getting in a
25 car wreck with Mark and I sue Mark for two things.

Page 37

1 I sue him for negligence and I also sue him for
2 declaratory judgment for you to declare that he
3 owes me \$100,000. And at trial you say, well,
4 Mr. Twombley, you didn't -- you didn't prove
5 negligence. You didn't prove that he had a duty to
6 you or you didn't prove that he was unreasonable,
7 but, nevertheless, I hereby declare pursuant to the
8 Declaratory Judgment Act that Mr. Berglind owes you
9 \$100,000. Cannot -- absolutely cannot do that.
10 The Declaratory Judgment Act says you
11 can declare the rights of the parties. Well, the
12 right would be that they own the property because
13 they've proved adverse possession. Or it would be
14 that they have an easement to the dock because
15 they've proved prescriptive easement. But you
16 can't ignore all of the underlying causes of
17 action, find that they didn't meet the evidentiary
18 burden to prove those causes of action, but
19 nevertheless declare that they own the property.
20 We think it's a total -- totally
21 improper application of the declaratory judgment
22 action and it can't stand on itself. It can't --
23 you can't grant a declaratory judgment action or
24 you can't grant a declaratory judgment of vacuum
25 and ignore the underlying causes of action that --

Page 38

1 that had to be proved to succeed. And so that
2 really addresses 6.
3 THE COURT: All right.
4 MR. TWOMBLEY: Let me just tell you the
5 other ones.
6 THE COURT: Why did I only schedule
7 y'all for 30 minutes on this?
8 MR. TWOMBLEY: 6, 16, and I think
9 that's it. But that deals with 6 and 16.
10 THE COURT: 6 and 16. Okay. Happy to
11 hear from you on the DJ issue.
12 MR. BERGLIND: I could site ex parte
13 dibble, that the Court has the power and authority
14 to do all things just and equitable. Or I could
15 site just the Declaratory Judgment Action where you
16 can declare the rights of the parties and that that
17 is to be liberally construed. And, you know, we do
18 believe based on the order and the evidence
19 presented that there was a prescriptive right. And
20 I understand the Court's ruling as to the
21 prescriptive easement. But I -- I believe the
22 power -- I mean, the Court does not have authority
23 to declare a declaratory judgment just as it did in
24 its order.
25 THE COURT: Okay. All right. What

Page 39

1 else do you have?
2 MR. TWOMBLEY: The -- the -- the order
3 makes several references, Your Honor -- our 7th
4 ground is the order makes several references that
5 the high land portion of the dock adjoins common
6 property. The Court found that neither party makes
7 a claim or right to the land below the main high
8 water mark. That the Cashmans and the Lightseys
9 right to enjoy the river arose from deeds. That
10 the structure is constructed on common property and
11 that common property when it's used this way, by
12 co-owners -- or when property is used this way be
13 co-owners, it becomes common property.
14 Your Honor, this issue came up at the
15 beginning of the trial when you asked Mark and I if
16 we took the position that we owned the land that
17 the dock was attached to. And what we stated then,
18 and what we reiterate now, is that we do not think
19 that the Court can or -- or should or can decree
20 who owns this property or what that property is.
21 That -- that relief is not requested in the
22 complaint and we don't think it's necessary to
23 resolve the underlying causes of action.
24 To define -- to determine whether or
25 not a declaratory judgment should be entered, to

Page 40

1 determine whether or not adverse possession was
2 proper, to determine whether or not they meant
3 their burden under prescriptive easement, you don't
4 have to make a finding with respect to this
5 property and we do not and we contest the fact that
6 it is common property.
7 And so we would ask that the Court
8 remove from its order these judicial determinations
9 more or less quieting title to property when that
10 was not a cause of action, it was not properly
11 before the Court. I mean, there potentially needs
12 to be other parties involved before there's a
13 determination about who owns that property, who it
14 belongs to, etcetera and so on.
15 And, for those reasons, it's -- it's
16 outside the relief requested and it's not necessary
17 to resolve the plaintiffs claims and we would ask
18 that it be removed from the order.
19 THE COURT: All right. Happy to hear
20 from you on the common property issue.
21 MR. BERGLIND: We claim no stake in
22 that property. You can call it whatever you want
23 to.
24 Do you have anything to say, Jim?
25 MR. SCHEIDER: Well, it's on the plats.

Page 41

1 Everything of record is.
2 Are they claiming -- are you claiming,
3 Ashley -- are your clients claiming an interest in
4 the property?
5 MR. TWOMBLEY: We're not claiming
6 anything. We -- we're defending claims that were
7 brought against us.
8 MR. SCHEIDER: I don't think the
9 Court --
10 MR. TWOMBLEY: The claims --
11 THE COURT: Well, let him finish.
12 MR. TWOMBLEY: -- are declaratory
13 judgment, prescriptive easement, and adverse
14 possession. So are we asserting a legal right in
15 this litigation and asking the Court to quiet title
16 in that property in our favor? No. That's not --
17 nowhere in the complaint. It's totally not part of
18 the case. And --
19 THE COURT: That property though -- it
20 seems like the evidence, and, again, don't hold me
21 to my memory of something that happened so long
22 ago -- but I thought the plats in evidence showed
23 the high ground that this dock attached to as
24 common property or something --
25 MR. BERGLIND: It did.

Page 42

1 THE COURT: -- similar. I can't
2 remember what it was called on the plat, but
3 something like that.
4 MR. TWOMBLEY: But, Your Honor, that's
5 just the equivalent of let's just assume, you know,
6 Mark and I are litigating a case and we bring a
7 plat in and it shows that a part of the property
8 that, you know -- that you own but, you know, this
9 plat says it's owned by Norris and, you know, the
10 judge says, well, you know, the plat shows Norris
11 on it. Well, you're over there sitting saying wait
12 a minute, you know, I had a right to come and --
13 and to make these arguments and to argue that you
14 owned it, so it's -- it's not proper, in our
15 opinion, for the --
16 THE COURT: Okay. And I agree with you
17 to the extent that something in the order outside
18 of these parties dispute seeks to have some ruling
19 of ownership of that property. I mean, to the
20 exclusion of anyone else's rights outside of
21 this -- I mean, if the order says something like
22 that, you're right, it shouldn't.
23 MR. SCHEIDER: That was my -- and,
24 pardon me, Your Honor, that was my point, simply.
25 And I didn't mean to interrupt you or him.

Page 43

1 THE COURT: Yeah. I mean, I'll take a
2 look at it, but, I mean, certainly if the Jones
3 down the street actually own this or have some
4 ownership interest, the idea is not that this would
5 affect their rights at all in the property. Is...
6 that -- is that kind of where --
7 MR. TWOMBLEY: I understand what you're
8 saying, but I -- I don't think simply because we're
9 a party and they're a party that that gives you a
10 right to declare all these things that aren't at
11 issue in the litigation. I mean there's just no
12 cause of action. We had no notice. We presented
13 no evidence. We had no knowledge that the Court
14 was going to declare ownership of this property.
15 It just wasn't at issue.
16 So I don't think you can cast the net
17 to say this dispute between the parties. Well, I
18 think you can because what this dispute between the
19 parties is is have they proven the elements
20 necessary to show through adverse possession that
21 they owned this dock, have an ownership interest in
22 it? The dispute is have they prescriptive -- you
23 know, proved prescriptive easement.
24 The dispute is not who owns this --
25 this dirt that happens to have been mentioned

Page 44

1 during a trial and for which a plat was submitted.
2 And we -- and I just don't think you -- I just
3 don't think you have jurisdiction to decree -- and
4 I don't think it's necessary --
5 THE COURT: Well --
6 MR. TWOMBLEY: -- as a matter -- as a
7 matter of fact --
8 THE COURT: -- I agree to the extent
9 the declaratory judgment finds title in this piece
10 of property, because, you're right, there may be
11 other people in the neighborhood who have an
12 interest and that was not the intent of this. I
13 think the intent, and, again, taking me back to a
14 long time ago, but was that neither party, as I
15 recall in the testimony, claimed that the property
16 that -- the high land that this dock adjoins was
17 owned by either party. And it was -- and the
18 evidence was, on the plat at least, that it was
19 common property.
20 But -- but to the extent that the order
21 seeks to declare the title of that property to the
22 exclusion of all others is somehow common property,
23 yeah, it probably shouldn't say that. You know, I
24 don't know if it does or not. I'll take a look at
25 it, but...

Page 45

1 MR. BERGLIND: I can -- do you want me
2 to read, I guess, the relevant section?
3 THE COURT: Well, sure.
4 MR. BERGLIND: I mean, neither party
5 makes claim to the land below the mean high water
6 mark.
7 MR. TWOMBLEY: That's not true. We
8 were asked about that. You asked if we were
9 claiming the land, we said that's not at issue in
10 the litigation, you don't need to resolve it.
11 THE COURT: Now, you're talking about
12 below the mean high water mark?
13 MR. BERGLIND: Neither party makes
14 claim to the land below the mean high water mark.
15 THE COURT: All right. Now, that's
16 different --
17 MR. BERGLIND: Okay. That's --
18 THE COURT: -- than the high land.
19 MR. BERGLIND: Okay. Oh, yeah, I'm
20 sorry, I read the wrong -- wrong section.
21 MR. TWOMBLEY: The same applies to --
22 to the other part.
23 MR. BERGLIND: Well, I --
24 MR. TWOMBLEY: At -- at the beginning
25 of the -- I want you to go back and read the

Page 46

1 transcript and --
2 THE COURT: Okay. And I will and
3 that's why I'm probably going to need it, but...
4 MR. TWOMBLEY: You -- you brought it up
5 and it's even -- it's even more improper if it's
6 brought up. And you asked the parties, are y'all
7 claiming this, you know, ownership interest as
8 common property? And I say, that's not at issue in
9 the litigation, Judge. It's not -- and you don't
10 have to resolve that issue to resolve the causes of
11 action that they've pled. And we just had no
12 notice.
13 THE COURT: Well, it probably needs to
14 be -- be rewritten. But the portion of the dock
15 below the mean high water mark is on state
16 property, is that -- I mean, I'm sure we talked
17 about that. But you're saying you don't even agree
18 with that?
19 MR. TWOMBLEY: You did and we said we
20 don't -- we don't -- it's not a part of the
21 litigation.
22 THE COURT: Okay. All right.
23 MR. TWOMBLEY: And it would go above,
24 below, where, you know, you used that language the
25 property from where the dock emanates is common

Page 47

1 property.
2 I mean, it's just -- we just had no
3 notice of it. It's not -- it's just -- and I think
4 what's more important, you know, and I'm kind of
5 switching, you don't need it. You don't have to
6 make a finding that this is common property.
7 I mean, that's not a -- it's not like
8 if it is common property they win and if it's not
9 common property we -- we win. So, I mean, it's --
10 you know, it's -- but it's -- but it's clearly
11 improper, in our opinion.
12 THE COURT: All right. Well, I'll take
13 a look at it.
14 What do you got next?
15 MR. TWOMBLEY: Number 8 was, and I --
16 there may be an agreement on this. In 1999 the
17 Cashmans bought --
18 THE COURT: I thought y'all did reach
19 an agreement on that.
20 MR. TWOMBLEY: I -- I just want to make
21 sure, because I wanted to put it in the order and
22 Mark objected to it. And so if -- if they --
23 MR. BERGLIND: Well, I --
24 MR. TWOMBLEY: -- sell 19 Oyster Street
25 to somebody, whoever buys 19 Oyster Street needs to

Page 48

1 know that they're not going to get a right to use
2 this dock under this order, and clearly they can't
3 do that, you know.
4 THE COURT: What -- what are your
5 thoughts on that? I was thinking that was a --
6 something that had been discussed.
7 MR. BERGLIND: We -- we agreed with
8 that on the record at trial. I believe so. And I
9 just take objection to -- I tried to work with Mr.
10 Twombley on this order but I --
11 THE COURT: No, there's a lot in there.
12 MR. BERGLIND: -- and I spent many
13 hours working with him --
14 THE COURT: No, I can understand y'all
15 couldn't reach --
16 MR. BERGLIND: -- and I don't even
17 think we got that far.
18 MR. TWOMBLEY: Well --
19 THE COURT: All right. But that --
20 that definitely is something that --
21 MR. TWOMBLEY: And I -- just for the
22 record, if that's the case, I apologize, but it was
23 my understanding we couldn't come to an agreement
24 on that and that maybe my mistake so I -- I --
25 THE COURT: No worries. But anyways --

Page 49

1 MR. BERGLIND: Not a big deal.
2 THE COURT: -- we got that straightened
3 out.
4 MR. TWOMBLEY: Number 9, Your Honor, is
5 that you found that there was a consistent and
6 cooperative pattern and practice of joint use and
7 ownership of Docks 1, 2, and 3 for 80 years.
8 Again, that's not even supported by their own
9 testimony. They testified that they're -- they
10 owned Dock Number 2. Never said we had an
11 ownership interest in it.
12 I referred to this earlier, but the
13 February 18, 1946 letter from a disinterested party
14 who had no dog in the fight, he says there was a
15 Lightsey dock and there was a Carter/Cashman dock.
16 That supports the fact, you know, everybody wasn't
17 using the same dock in peace and harmony as -- as
18 the order finds.
19 The photographs show a spur dock or a
20 spare dock is what the transcript refers to it as.
21 And -- and so this idea that there was one dock and
22 everybody used it and then Dock 2 and everybody
23 used it and owned it and that now we're the big bad
24 wolf because we built Number 3 and now we won't let
25 them own it is just not simply supported by the

Page 50

1 record.
2 So we'd ask you that you remove that
3 provision from the order and include a provision
4 that says it's -- you know, there's conflicting
5 testimony on that.
6 THE COURT: Okay. And that's --
7 MR. BERGLIND: Your Honor --
8 THE COURT: -- sort of most of the
9 findings, so, I -- again, I'm going to need look at
10 the transcript.
11 MR. TWOMBLEY: Okay. Do you want me to
12 move to the next one? I just --
13 THE COURT: If you've got any response
14 to it.
15 MR. BERGLIND: I just -- you know, I
16 think there may be some confusion as to where my
17 client said we own this. I think my clients did
18 say that with regard to the floating dock located
19 on the east side of the pier head, just like they
20 said, the Lightseys own that -- the other floating
21 dock. But it's my understanding from the record,
22 and I did review this transcript, is that they said
23 it was a -- the Carter Lightsey Cashman Dock going
24 back to Dock 1. That's all I have to say.
25 THE COURT: Okay. And, again, this

Page 51

1 is -- takes me back to looking at that, so...
2 All right.
3 MR. TWOMBLEY: Number 10, Your Honor,
4 is that, as you will recall, there was a lot of
5 testimony to do about these documents. There was a
6 document that was drafted by Mr. Cashman that says
7 the Lightseys own the dock and we have their
8 permission to put a floating dock, attach a
9 floating dock to it.
10 Those were words that were selected by
11 Mr. Cashman. We didn't select those words. We
12 didn't draft that letter.
13 He also drafted a statement for
14 Mr. Oswald Lightsey to sign and it said the same
15 thing: I, Oswald Lightsey, own the dock and I'm
16 giving permission to the Cashmans.
17 Now, you found in your order that the
18 parties didn't mean what they said. That they
19 didn't mean that they had permission and that the
20 Lightseys owned it. We -- we don't think that's
21 proper. And we think that -- we think the letters
22 and statements as drafted by Mr. Cashman should
23 have the meaning of exactly what they say, which is
24 permission and ownership to the respective parties.
25 THE COURT: Okay.

Page 52

1 MR. BERGLIND: Your Honor, just as a
2 jury uses its common sense, I mean, that's what the
3 judge is supposed to do to find issues of fact
4 and conclusions of law, etcetera. You know, you
5 reviewed the totality of the circumstances and that
6 was what you found. I don't -- I don't see what
7 the problem is with that.
8 THE COURT: I've got to look back at
9 it. Wasn't there something about who had the
10 permit? Who -- in whose hand or name the permit
11 existed?
12 MR. BERGLIND: It was --
13 THE COURT: And I can't remember...
14 MR. TWOMBLEY: Well, we -- we --
15 MR. BERGLIND: In nineteen -- they
16 constructed Dock 3 in 1961. The Cashmans
17 constructed the floating dock in 1961 or 1962.
18 The -- in 1977, around that time period, a storm
19 took away --
20 THE COURT: Uh-huh.
21 MR. BERGLIND: -- the floating dock and
22 the Cashmans, at that point, needed to replace it
23 but the law had changed and they needed a permit.
24 So they used -- and it says that it was owned by
25 the Lightsey Brothers, which is their -- the

Page 53

1 Lightsey family's construction company, I believe.
2 And that's why they needed that document to get
3 that permit for the floating dock.
4 MR. TWOMBLEY: And I -- and we don't
5 contest that. But, I mean --
6 MR. BERGLIND: I'm just filling him
7 in -- filling him in.
8 THE COURT: Right.
9 MR. TWOMBLEY: But it says -- you know,
10 I mean, it's -- it's remarkable, you go back and
11 look at all of these prescriptive easement cases
12 throughout South Carolina juris prudence and -- and
13 beyond, and this -- you know, you -- you won't find
14 a case where you actually find a written document
15 that was drafted by the plaintiffs or the
16 plaintiffs' successor in interest that actually
17 says the magic word, they own it and we have their
18 permission. I mean, and it's --
19 THE COURT: Of course, I didn't find a
20 prescriptive easement. But to your point, how do I
21 get to the declaratory judgment --
22 MR. TWOMBLEY: Exactly.
23 THE COURT: -- I'll take a look at it.
24 MR. TWOMBLEY: Exactly.
25 THE COURT: But the -- but I agree with

Page 54

1 you, it's not a prescriptive easement, but...
2 MR. TWOMBLEY: And it's not because
3 it's permissive.
4 MR. BERGLIND: But it --
5 THE COURT: It's --
6 MR. BERGLIND: Again, I -- you know,
7 the testimony was that they used this permission in
8 order to get the permit. They weren't
9 relinquishing any rights to the dock.
10 MR. TWOMBLEY: Well, why didn't they
11 write on it that it's jointly owned?
12 MR. BERGLIND: They --
13 MR. TWOMBLEY: Why don't they write
14 there's a dock, the dock is jointly owned by Mr.
15 Cashman and Mr. Lightsey. The permit happens to be
16 in Mr. Lightsey's name, but I've got his
17 permission. Why did they say it's owned by Oswald
18 Lightsey and we have their permission?
19 THE COURT: Well, these are
20 unanswerable questions today, but...
21 MR. TWOMBLEY: We think they're
22 answerable.
23 THE COURT: Yeah.
24 MR. TWOMBLEY: And we think it was
25 because it was owned by Oswald Lightsey and they

Page 55

1 had his permission. But that's just our -- our
2 position.
3 THE COURT: No, I understand.
4 What about 11?
5 MR. TWOMBLEY: Number 11, Your Honor,
6 Will McMaster came down to testify in this case.
7 Will McMaster is a financial planner in Columbia.
8 He's married, he's got a wife and kids. He's
9 married to one of the members of the Lightsey
10 family and his interest is so far down the line he
11 didn't even know what interest he had in the
12 property.
13 He testified about two conversations
14 that he had with Gene Cashman, Sr. And those
15 conversations were such that Mr. Cashman
16 essentially indicated to him that he sure would
17 like to get something -- get a formal ownership
18 interest in this dock.
19 Mr. McMaster testified about these two
20 conversations. He testified about when they took
21 place. He testified about why he remembered these
22 conversations. You know, aside from the fact that
23 that's all consistent with all the documentary
24 evidence back from 1977, but -- and the letter from
25 1946 from the -- from the developer, you know, it

Page 56

1 all fits right into place.
2 But -- but aside from all that, you
3 found that Mr. McMaster's testimony, you said you
4 found -- put no weight on his inadmissible hearsay
5 testimony. Well, first of all, it's not hearsay
6 because it would be an admission by a party
7 opponent or a statement against interest, clearly.
8 Second -- or third, even if it was
9 hearsay, they didn't object to it. They didn't
10 object to it at all. He testified about all those
11 things. And -- and so the idea that this testimony
12 was not admissible and you find -- put no weight on
13 it because it's hearsay, I mean, I'm -- I don't
14 know -- when they don't even object and call it
15 hearsay, I don't see how you -- or why you found
16 that it was admissible hearsay.
17 And then second of all, you found his
18 testimony was unreliable and that the intent of
19 what Mr. Cashman said was not what -- not
20 consistent with what Mr. McMaster testified about.
21 I mean, as best I can tell, you basically just
22 thought our guy was lying through his teeth.
23 THE COURT: Well, that's -- that's
24 certainly not what I -- what I meant. You know, I
25 remember that testimony.

Page 57

1 MR. TWOMBLEY: Well --
2 THE COURT: They were out on the dock
3 and they were talking about --
4 MR. TWOMBLEY: -- tell us what you
5 meant. That's the --
6 THE COURT: Well, I'm trying to make
7 it --
8 MR. TWOMBLEY: That's what I've --
9 that's what I've asked. I've said for you to
10 reconsider it or the alternative, explain why
11 Mr. McMaster's testimony was unreliable. Because
12 the guy -- he's -- the guy is a 50-year old family
13 man with a family in Columbia and doesn't even know
14 what his financial interest is down in the
15 property.
16 THE COURT: Uh-huh.
17 MR. TWOMBLEY: He comes down here and
18 testifies about these two conversations and you say
19 it's hearsay. I give it no weight. And it's
20 unreliable.
21 THE COURT: Well --
22 MR. TWOMBLEY: -- and I'd like to --
23 we'd like to know why.
24 THE COURT: A different choice of words
25 might have been more prudent. It certainly wasn't

Page 58

1 meant to impugn Mr. McMaster's testimony or his
2 person, but, no, I remember that testimony.
3 MR. BERGLIND: I don't think you ever
4 called it unreliable, but I could be wrong. I'm
5 looking at the order. You didn't say unreliable.
6 THE COURT: I didn't say unreliable?
7 MR. BERGLIND: No.
8 THE COURT: All right. That's --
9 MR. BERGLIND: Well, the order does not
10 say unreliable.
11 THE COURT: Yeah. That's --
12 MR. TWOMBLEY: Well, I don't know
13 exactly what words you used.
14 THE COURT: All right. Well, I can
15 tell you, I didn't mean it in a negative fashion if
16 unreliable is in there from me for his personal
17 prospective.
18 MR. TWOMBLEY: Well, inadmissible,
19 unreliable, anything other than true --
20 THE COURT: Well, inadmissible is -- is
21 not necessarily. But, anyway, I'll look at it.
22 Again, this is another look at the transcript
23 issue, so...
24 MR. BERGLIND: Do you want me to
25 respond or...

Page 59

1 THE COURT: Yeah, go ahead.
2 MR. BERGLIND: I -- our response is I
3 think Mr. Twombley wants everybody to look at the
4 evidence just like he looks at the evidence, you
5 know, and I -- that makes sense because I want to
6 do that in every one of my cases.
7 THE COURT: Right.
8 MR. BERGLIND: It's how you view -- you
9 know, Your Honor views the evidence and I'm not
10 going to keep going on that because --
11 THE COURT: Okay.
12 MR. BERGLIND: -- you know the
13 standard.
14 THE COURT: All right..
15 MR. TWOMBLEY: So that's the -- the
16 12th ground.
17 THE COURT: Yeah.
18 MR. TWOMBLEY: Number 13, Your Honor,
19 is that -- and what this is going to address is
20 prior to this dispute coming up, prior to the gate
21 being locked, this was during the period of time
22 of -- of 80 years of family harmony and bliss, the
23 Lightseys actually have meetings and we -- all this
24 was put in the evidence about the property that
25 they jointly owned with other family members.

Page 60

1 THE COURT: Uh-huh.
2 MR. TWOMBLEY: And this property came
3 up in one of their meetings, again, prior to any
4 dispute with anybody, and the issue of who owned
5 that dock came up. And they said in that meeting
6 that they owned the dock and that they wanted to
7 continue to let the Cashmans use it.
8 Now I know they can't decree in a
9 family meeting that -- that they own the dock, and
10 I'm not suggesting that, but I think that is
11 incredibly powerful and persuasive testimony that
12 at a point in time when there was no dispute going
13 on, there was no litigation, they weren't trying to
14 sell the property, what had happened is some --
15 some -- the -- the -- the property -- the dock
16 needed some work done to it. They needed to put a
17 \$10,000 roof on it. And, of course, they -- they
18 went and did that, because they owned it. And they
19 never asked their co-owner, as you found, said,
20 hey, give us \$5,000.
21 And, of course, that goes to the -- the
22 conduct of the parties and it goes to the -- you
23 know, the -- well, the conduct of both parties as
24 to ownership and as to a claim of right.
25 THE COURT: Uh-huh.

Page 61

1 MR. TWOMBLEY: I mean, certainly if the
2 Lightseys would have thought that the Cashmans were
3 claiming a half ownership interest, we would have
4 called them up and said, hey, guys, we need a
5 \$10,000 roof, send us five grand. Or when they had
6 to replace 20 pylons back in the '90s, they would
7 have called the Cashmans up and said, hey, we had
8 to replace 20 pylons down at the Bluffton dock, old
9 neighbor, pal, 80 years of bliss, how about send us
10 a check for half of it.
11 There was tens of thousands of dollars
12 spent on this dock and this goes down to Number --
13 to Number 15. Both parties testified the Cashmans
14 never offered to pay a dime and the Lightseys never
15 asked them to pay a dime.
16 Now, how -- I mean, how can you believe
17 that you have an ownership interest in something.
18 I mean, think about this, Judge, you have an
19 ownership interest in something but another party
20 is doing all the work, paying all the taxes, making
21 all the movements, keeping up with all the
22 maintenance, and they're not asking you to chip in
23 and you're not offering to pitch in.
24 I mean, well, that's -- that's one heck
25 of a co-ownership relationship to have with another

Page 62

1 party where they have to do everything and pay
2 everything and you don't ever have to ask for it.
3 You don't ever have to offer any contribution. So
4 that's basis Number 13, Your Honor.
5 MR. BERGLIND: Your Honor, if I may
6 just point out a couple things about the family
7 minutes.
8 THE COURT: Uh-huh.
9 MR. BERGLIND: I don't remember reading
10 anything regarding constructing a new roof. I know
11 they did it because I saw the -- the invoices. So
12 I -- I could be wrong on that. But what I do
13 remember hearing is -- or seeing is, how is the
14 value of the house going to be decreased if they do
15 not have exclusive rights to the dock.
16 MR. TWOMBLEY: Show us where it says
17 that in the record.
18 MR. BERGLIND: I'll -- I'll look for
19 it; but that's -- that's my understanding.
20 MR. TWOMBLEY: Okay. I'd like -- I'd
21 like to see that.
22 MR. BERGLIND: Also -- I can pull it
23 out right now if you want me to or --
24 THE COURT: Well, any way --
25 MR. BERGLIND: -- I can supplement it

Page 63

1 with everything else.
2 THE COURT: -- y'all are going to get
3 me the transcript, so just try to delineate it
4 somewhere.
5 MR. TWOMBLEY: You can do it at -- at
6 any point in time.
7 MR. BERGLIND: And; also, in the family
8 minutes they at one point call it the Cashman dock.
9 Now, that's in my memo so I can site that wherever
10 that is. That's all I have for that issue --
11 THE COURT: Okay.
12 MR. BERGLIND: -- just pointing that
13 out.
14 THE COURT: Okay.
15 MR. TWOMBLEY: I know. I know. And my
16 client wants me to make the point is where I was
17 just reading is it says the Lightsey family has
18 allowed the Cashman family to attach their floating
19 dock on the left side of the pier. There was
20 agreement that the Lightseys would like to continue
21 to allow the Cashmans to attach their floating dock
22 but it does need to be repaired and there needs to
23 be discussion with them about not allowing others
24 outside the family to use the pier and dock.
25 So their floating dock. And, of

Page 64

1 course, what's important, Your Honor, is their
2 floating dock washed away and it was gone. And so,
3 you know, I think that's important because I don't
4 want you to think that if you were to reconsider
5 your -- your findings and rule in our favor that
6 somebody's got to go out there and rip off their
7 floating dock for -- and, you know, and they've got
8 to haul it off on a trailer somewhere. It's not
9 there. It hadn't been there since 2004, so it
10 hadn't been there -- it hadn't been there for nine
11 years.
12 THE COURT: I think the testimony was
13 Mr. Cashman moved around the corner or something,
14 right?
15 MR. TWOMBLEY: Right.
16 THE COURT: Is that what ultimately
17 happened? Okay. Anyway -- all right. Go ahead.
18 MR. TWOMBLEY: Number 14. I mean, the
19 Court speculated about what might happen if Dock 3
20 was destroyed by a storm and who could rebuild it.
21 I mean, that was just not a resolution. I just
22 wouldn't want somebody to come back and point to
23 that provision in the order and say that it
24 means -- you know, that it's important and so we
25 just ask that it be taken out.

Page 65

1 THE COURT: Uh-huh.
2 MR. TWOMBLEY: You know, and -- and
3 this one is perhaps the most perplexing for me.
4 Assuming you don't reconsider and you find in their
5 favor, we don't think there's any legal basis for
6 you to limit our right to recover the cost of the
7 dock based on the day they filed their complaint
8 against us. I mean, we just don't think there's
9 any legal basis for that whatsoever. If -- if the
10 Court finds they've owned the dock back since
11 the '60s, then why shouldn't they have to pay half
12 of the costs since the 1960s.
13 And you said our claim for the costs
14 would be barred by laches. Well, we didn't know
15 they had an ownership interest in the dock until
16 you issued this order. And so in my respectful
17 opinion, that is a logically unsolvable Rubik's
18 cube in that if you do find in their favor, then
19 they ought to half of pay every darn -- half of
20 everything we've ever spent on that dock and
21 interest.
22 THE COURT: Well, actually, that one
23 did worry me a little bit. And, as you know, maybe
24 I don't completely understand laches from the
25 Eldritch versus Eldritch case. The --

Page 66

1 MR. TWOMBLEY: I don't think anybody
2 does after that one.
3 THE COURT: -- the -- but, anyway, I'm
4 happy to hear from y'all on -- on that issue.
5 MR. BERGLIND: Talking about laches, I
6 guess we could go back and ask for half of the
7 expenses and -- and whatnot for Docks 1 and 2.
8 MR. TWOMBLEY: If we were claiming an
9 ownership interest in those, you could.
10 THE COURT: Yeah, that's probably a
11 fair point.
12 MR. BERGLIND: Well, they were using it
13 so --
14 THE COURT: Right.
15 MR. BERGLIND: -- we'll charge them
16 rent. And -- I had another point until I was
17 interrupted.
18 MR. TWOMBLEY: And I'm sorry to
19 interrupt you. I apologize.
20 MR. BERGLIND: Oh, I'll come back to
21 me.
22 THE COURT: All right. Well, feel free
23 to pipe up with it at some point and -- during a
24 break. But this one -- this one did -- you know,
25 that is an arbitrary date, the date of filing. I

Page 67

1 mean, you know, it seems logical when I wrote it on
2 further reflection there isn't a whole lot of logic
3 to it --
4 MR. BERGLIND: And --
5 THE COURT: -- because that's not the
6 date at which their asserted ownership begins.
7 Their asserted ownership begins far before --
8 before that filing date. And so the -- it doesn't
9 make a whole lot of sense to tie the ability to
10 recover costs back to that date.
11 MR. TWOMBLEY: And it would seem to be
12 the logical thing to do, if you were -- if you were
13 going to find that, is to say it was from the date
14 of filing the complaint back. Because at least on
15 the day they filed the complaint, at least we would
16 know, you know --
17 (The proceedings were interrupted.)
18 THE COURT: Oops, I'm sorry.
19 MR. TWOMBLEY: -- hey, they're claiming
20 an ownership interest so if we spend money on it,
21 you know, we might be doing it to our detriment.
22 Or -- or there could be some argument there. But
23 it would seem to me, there -- you know, everybody
24 is hopping along for 40 years, they think they've
25 got an ownership interest but are not paying, so, I

Page 68

1 think...
2 THE COURT: Well, that -- that date is
3 not -- it was -- it was probably arbitrary.
4 MR. BERGLIND: My other thought on
5 that, Your Honor, in which I was going to say --
6 state there was testimony that there -- they did
7 work on the dock. Electricity.
8 THE COURT: Oh, I remember.
9 MR. BERGLIND: Water.
10 THE COURT: Put in nails that came --
11 MR. BERGLIND: Maintenance.
12 THE COURT: -- out. Occasional board,
13 that sort of thing.
14 MR. BERGLIND: That's right.
15 THE COURT: I -- I remember that. But
16 I -- but I -- as I recall, and I think y'all could
17 probably agree, the dollar amount of -- of what the
18 Cashmans did paled in comparison of the dollar
19 amount of what the Lightseys did?
20 MR. BERGLIND: That's right.
21 THE COURT: I think it wasn't even
22 close.
23 MR. BERGLIND: Yes, sir. We don't
24 agree on the taxes, as you know.
25 THE COURT: Yeah, I -- I thought we'd

Page 69

1 come up with something with -- with the witness,
2 but that didn't seem to work very well, so. But
3 there were significant repairs that predated the
4 date of filing and those repairs and those
5 maintenance costs essentially preserved and
6 maintained the dock for the shared use assuming
7 that the -- in fact the order is correct on the
8 Cashmans' ownership of it.
9 So, I mean, that is one that -- that
10 has troubled me a little bit. And -- but, anyway,
11 it's all, again, part of my review of the
12 transcript. I'll take a look at that.
13 I think we had either offered or
14 entered as -- as a part of this record the cost
15 that went significantly far back as I recall,
16 right? I mean...
17 MR. TWOMBLEY: Here's -- here's what
18 happened: We have a chart and a list and
19 documentation to support each one of our changes --
20 THE COURT: Uh-huh.
21 MR. TWOMBLEY: -- with the exception of
22 a couple which we noted on our chart --
23 THE COURT: Right.
24 MR. TWOMBLEY: -- that we estimated
25 those in -- in good faith.

Page 70

1 THE COURT: Uh-huh.
2 MR. TWOMBLEY: They testified that Gene
3 Cashman, Sr. had a file for this dock. And they
4 testified that the file contained all these
5 documents including expenses they had incurred with
6 respect to the dock. I went through every single
7 one of those expenses because I asked Mark to
8 stipulate, I said, Mark, I've gone through all
9 these, they all relate to the floating dock, none
10 of them relate to the actual pier and pier head.
11 Mark said he wouldn't do that, so we spent 30 or 45
12 minutes, we went through every single --
13 THE COURT: I remember.
14 MR. TWOMBLEY: -- one of these and --
15 THE COURT: But -- but I'm talking
16 about your costs.
17 MR. TWOMBLEY: Yeah, our costs, right.
18 THE COURT: Yeah, you're in there --
19 they're in there. They're in the record.
20 MR. TWOMBLEY: Right.
21 THE COURT: Okay.
22 MR. TWOMBLEY: So their costs are like
23 less than \$100. I mean, it is --
24 THE COURT: No, I remember, it was not
25 a huge amount. It was a very small amount. But

Page 71

1 it's -- but it's in there. I was just curious
2 whether or not this record -- and I thought it --
3 and, again, it's hard for me to remember every
4 aspect of every trial, but I thought that y'all had
5 put in either by proffer or just by evidence the
6 costs going back pretty far. I mean, maybe --
7 MR. TWOMBLEY: Right.
8 THE COURT: -- even in the '60s.
9 MR. BERGLIND: They -- they did and
10 we --
11 THE COURT: Okay.
12 MR. BERGLIND: You know, we -- we take
13 issue with taxes. I believe that was the one thing
14 we took issue with.
15 THE COURT: Okay. So -- so those -- so
16 assume for the moment that the laches issue goes
17 back significantly further than the -- the date of
18 filing. I guess my question is: We've got those
19 numbers already in the records, is that an -- is
20 that an accurate statement?
21 MR. TWOMBLEY: (Nodding head up and
22 down.)
23 THE COURT: Okay. All right. Let's do
24 this --
25 MR. BERGLIND: I don't think there was

Page 72

1 a claim for costs either. Granted I -- I still
2 think you can rule on it but --
3 THE COURT: Well, I think it's like
4 your declaratory judgment argument, I think I --
5 MR. BERGLIND: I understand that.
6 THE COURT: Yeah. Let's do this. Let
7 me -- let's take a quick break and let me just tell
8 the people in the hallway that we're going to go a
9 little further. Maybe that will encourage them to
10 settle, but that's okay.
11 MR. TWOMBLEY: And I don't want to
12 ruin -- ruin your afternoon. I mean, I can go
13 through the rest of these quick and we can -- you
14 know, I'll do whatever you want --
15 THE COURT: No, no, no, it's not --
16 it's not ruining it. It's what I do.
17 MR. TWOMBLEY: Okay.
18 THE COURT: So it's --
19 MR. TWOMBLEY: Well, I mean, I know
20 you've got other people scheduled and if Heather
21 didn't schedule this longer --
22 THE COURT: No, no, no, I'll tell --
23 they'll be all right. Let me -- let me go just --
24 just tell them where we are real quick and I'll
25 be -- y'all probably want to walk around anyway.

Page 73

1 (A recess transpired.)
2 THE COURT: All right. Back on the
3 record. Sorry for the interruption. Y'all go
4 ahead.
5 MR. TWOMBLEY: Judge, on Number 16
6 we've already addressed it, but very briefly a
7 declaratory judgment is a remedy. It's not a
8 source of legal rights and obligations. And the
9 plaintiffs can only prevail by proving one of their
10 underlying cautions -- their underlying causes of
11 action. The Court cannot declare the rights of the
12 parties in a vacuum.
13 And -- and, again, you know, we think
14 that when the statute says that you can declare the
15 rights of the parties, well, the right would be
16 that you have an easement, a prescriptive easement,
17 or the right would be that you own the property
18 because you proved adverse possession. But, in our
19 opinion, the Court can't say no -- well, there's no
20 adverse possession. You specifically found that
21 there is no prescriptive easement. But yet you
22 declare the rights of the parties which was that
23 they own the property. We just don't think that's
24 possible.
25 THE COURT: All right.

Page 74	Page 76
1 MR. TWOMBLEY: 17 -- 2 THE COURT: I mean, you'd already 3 responded to that one so I assume -- 4 MR. BERGLIND: Yes, sir. Unless you -- 5 THE COURT: -- that is your standard 6 response. 7 MR. BERGLIND: -- want -- 8 THE COURT: No, that's -- 9 MR. BERGLIND: -- further response. 10 THE COURT: If it's going to be the 11 same response, it's okay. 12 MR. BERGLIND: Okay. 13 MR. TWOMBLEY: Number 17, we've already 14 addressed it, but it deals with the dock, repairing 15 it and putting money into it and never asking 16 anyone to pay for it and never offering any 17 contribution for it. 18 Again, we think that the conduct when 19 the Lightseys locked the gate they didn't ask any 20 permission to do that. And then when Gene Cashman 21 voluntarily returned the key back, I mean, these 22 are important things and these things come up in 23 cases. And, you know, usually when someone says 24 return the key back if they have an ownership 25 interest in the thing, they're going to say, I'm	1 what -- what they do. I mean, what would someone 2 who claims an ownership interest or claims a right 3 to that dock, would they have sent the key back and 4 not used it for four and a half years? 5 I mean, if you think that's what -- 6 consistent with what someone whose claiming an 7 ownership interest or claiming a right to go down 8 there, you know, we're asking -- we're asking you 9 to reconsider that. 10 THE COURT: All right. 11 MR. TWOMBLEY: 19, again, Mr. Cashman 12 testified -- if you want the specific reference to 13 the transcript I'll be happy to get it to you -- 14 testified he would not go down there and alter or 15 repair that dock or do anything to it without first 16 consulting the Lightseys. Again, conduct that 17 weighs in favor that we own the dock and that he 18 didn't have an ownership in it. 19 He's told Diane Reynolds, can't use the 20 dock unless it's okay with the Lightseys. Or it's 21 all right with him but you first have to ask the 22 Lightseys. If he had an ownership interest in it 23 he's just say, sure, you can use it. I own half of 24 it. 25 You know, I mean, if I own a half
Page 75	Page 77
1 not going to return the key back. I own half the 2 dock. I'm going down there. I'm asserting my 3 right to ownership of it. 4 No, Mr. Cashman returned the key, wrote 5 a letter, said he'd like to turn this into a 6 business relationship, and then they didn't use it 7 for four and a half years. That is not conduct 8 consistent with claiming an ownership interest or a 9 claim or right in the -- in the property, and 10 that's 18. 11 THE COURT: Okay. 12 MR. BERGLIND: I -- to respond to that. 13 Business relationship did not mean he wanted to 14 purchase ownership in the dock. 15 That's what his testimony was. And I 16 don't think there was any testimony to the 17 contrary. That's just the type of person Gene 18 Cashman is. He's going to return the key. And he 19 -- he stated clearly on the record at the hearing 20 why he did that. And that was for Norris' sake, so 21 whatever if you don't -- don't believe him, don't 22 believe him, but that was his testimony. 23 MR. TWOMBLEY: Well, and that -- we 24 would just respond by saying, you know, you have to 25 look at what an owner would do. I mean, that's	1 interest in a -- in a -- in a beach house, you 2 don't get to say you have to ask the co-owner for 3 permission. I mean, you get the right to it. 4 Number 20, we've already addressed 5 related to the expenses and it didn't show that 6 they spent any money even though there was 7 testimony. 8 Number 21, the Court -- there's this 9 reference in there that Dock 3 is appurtenant to 10 party's property and I -- I mean, I object because 11 I don't know why it's in there. I don't know what 12 significance that has. I mean, it's not -- 13 certainly not touching or tied to their property. 14 It's -- it's -- it's on, you know, what you found 15 earlier was common property and so -- 16 THE COURT: You didn't like that one 17 either. 18 MR. TWOMBLEY: -- I just don't think -- 19 I just don't think it needs to be in there. 20 THE COURT: All right. 21 MR. TWOMBLEY: And I think it should be 22 removed. I mean -- I mean, if that's -- you know, 23 I'm thinking -- I mean, is that an element that 24 they would need to show in order to succeed? No. 25 Well, you know, exactly why is it in there? I

Page 78

1 mean, I have thoroughly researched what
2 appurtenance is and I don't see the application
3 here.
4 THE COURT: All right. I'll take a
5 look at it. Any thoughts on 21?
6 MR. BERGLIND: No, Your Honor.
7 MR. SCHEIDER: Yeah, obviously it has
8 to be appurtenant, Your Honor, otherwise the use
9 rights of the dock are just up there floating
10 around for anybody in the neighborhood.
11 THE COURT: Well, that's what was so
12 strange about this case of course, as you know and
13 as we've discussed, is -- and -- and, of course,
14 Ashley mentioned, well, maybe they do have some
15 claim to the -- to the water below the high water
16 mark.
17 I don't know if it was part of the
18 case, but, I mean, generally that's owned by the
19 state. But, you know, there are king's grants and
20 exceptions and that kind of thing, but I don't
21 think I heard any of that in the case. But I -- I
22 think in order to get a dock permit it has to be
23 appurtenant to something. But -- but it might not
24 be important to this case, I don't know. I'll take
25 a look at it.

Page 79

1 MR. TWOMBLEY: And -- and we would
2 agree and if this were litigation about whether or
3 not you could get a dock permit, you know, then --
4 then maybe that'd be irrelevant. But, you know,
5 the issue is have they proved the necessary
6 elements to succeed on the causes of action, not
7 whether or not they could get a dock permit.
8 MR. BERGLIND: What paragraph is that?
9 THE COURT: 21.
10 MR. TWOMBLEY: 21.
11 THE COURT: Or you're asking in the
12 order?
13 MR. BERGLIND: In the order, yes, sir.
14 THE COURT: I don't know.
15 MR. TWOMBLEY: On Page 7 Paragraph 2.
16 MR. BERGLIND: I was way off.
17 MR. TWOMBLEY: The ownership of Dock 3
18 is appurtenant to the Lightsey property and Cashman
19 property.
20 THE COURT: That actually may be
21 inconsistent with the common property issue.
22 MR. TWOMBLEY: Yeah, I mean, I --
23 absolutely.
24 THE COURT: Okay. All right. What do
25 you have for 22?

Page 80

1 MR. TWOMBLEY: During the trial, we
2 objected to Mr. Cashman giving what we thought was
3 expert testimony as to the procedures -- excuse
4 me -- procedures that would have been in place in
5 1977 and the policies and procedures and steps
6 you'd need to file to actually get a dock permit.
7 He testified he'd -- he'd never gotten a dock
8 permit in his life. He tried to get one and that
9 was two years before he testified, so that would
10 have been in 2009.
11 There's no basis whatsoever for
12 allowing him to testify about the procedures
13 necessary to obtain a dock permit in 1977. You
14 overruled our objection and we're asking you to
15 reconsider that.
16 THE COURT: All right. And the part of
17 the transcript, you'll throw some tabs in there on
18 those.
19 MR. TWOMBLEY: Yeah, sure.
20 THE COURT: Okay. Great.
21 MR. BERGLIND: I believe you -- yeah,
22 you overruled it and said you'll give it little, if
23 any, weight. And just to point out for the Court's
24 benefit, I believe Ashley -- or Mr. Twombley opened
25 the door on that when he dissected that letter with

Page 81

1 Mr. Cashman. And you'll see that I was asking him
2 those questions only redirect examination.
3 THE COURT: This was the permission to
4 attach the float to the dock letter?
5 MR. BERGLIND: Yes, sir.
6 THE COURT: Got it. Okay.
7 MR. BERGLIND: Yes, sir.
8 THE COURT: I'll take a look at it.
9 MR. TWOMBLEY: 23, Your Honor, I just
10 think there should be a provision in the order
11 that -- that states consistent with the testimony
12 that the Cashmans floating dock has washed away.
13 It's been gone since 2004. I just don't want any
14 appellant court or -- or, Your Honor, to make sure
15 you understand that that dock is not there. It had
16 washed away before this dispute came up and --
17 THE COURT: I think I saw some pictures
18 of that somewhere.
19 MR. TWOMBLEY: There's pictures of it.
20 THE COURT: Yeah.
21 MR. TWOMBLEY: And everybody testified
22 about it, so...
23 THE COURT: That was -- that was not
24 disputed as I recall, right? It's not --
25 MR. BERGLIND: It's clearly in the

Page 82

1 record.
2 THE COURT: Yeah.
3 MR. BERGLIND: I don't know why it
4 needs to be in the order.
5 THE COURT: Okay.
6 MR. TWOMBLEY: Number 24, Your Honor --
7 MR. BERGLIND: If -- if --
8 MR. TWOMBLEY: Oh, I'm sorry. Go
9 ahead.
10 MR. BERGLIND: -- if that does need to
11 be in the order then the testimony was that they
12 didn't put the dock in because they were excluded
13 from the dock at that point.
14 MR. TWOMBLEY: That's correct.
15 MR. BERGLIND: It's not that they were
16 just sitting on their -- their rights.
17 THE COURT: All right.
18 MR. TWOMBLEY: 24, Your Honor, your
19 ordered the immediate enforcement of this order. I
20 think in the original order you said that we had to
21 open the thing and allow them to get on it within
22 five days. I mean, we think regardless of who
23 ultimately prevails or is successful that any order
24 should be withheld or the enforcement of it until
25 the Court of Appeals resolves who's right or wrong.

Page 83

1 I mean, if you allow them to go down
2 there in five days and they build a dock and then a
3 year later we succeed and then they've got to
4 remove their dock, I mean, it just seems like a big
5 mess. And we think regardless of who's ultimately
6 successful that the status quo ought to remain
7 until the issue is finally resolved.
8 THE COURT: Of course, the appellant
9 court rules are going to control on that, aren't
10 they?
11 MR. BERGLIND: Yes, sir. That's my
12 understanding is a bond has to be placed or they
13 have to go through the Court of Appeals.
14 THE COURT: Uh-huh..
15 MR. BERGLIND: But I've -- you know,
16 we've -- we've tried to be patient with this
17 process. No key has been delivered pursuant to the
18 order and they have not unlocked the gate.
19 MR. TWOMBLEY: And --
20 MR. BERGLIND: And out of common
21 courtesy, my clients have not cut the lock. But
22 that was one of the issues we were going to bring
23 up today, is that they do provide us with a key to
24 the dock.
25 THE COURT: Okay.

Page 84

1 MR. TWOMBLEY: And the reason we
2 haven't is because we've obviously filed a motion
3 asking the Court to reconsider --
4 THE COURT: Yeah.
5 MR. TWOMBLEY: -- its order.
6 THE COURT: Right. And so you don't
7 have to do anything.
8 MR. TWOMBLEY: Yeah.
9 THE COURT: Yeah, no, I think they're
10 within their rights to wait for the resolution of
11 this. But, anyway -- okay. What's next?
12 MR. TWOMBLEY: Okay. And then 25 is
13 just the taxes. I mean, I understand the assessors
14 testimony and Your Honor's ruling, I just thought
15 that I think it's --
16 THE COURT: I was kind of surprised at
17 this testimony, quite frankly, but it was what it
18 was, so...
19 MR. TWOMBLEY: Again, it makes no --
20 THE COURT: Yeah.
21 MR. TWOMBLEY: -- I mean, makes no
22 sense. I mean, if you -- it just would not bear
23 out in the real estate market that you could
24 take -- and -- and y'all know this, I mean, you --
25 you take a lot and tell somebody it's got an

Page 85

1 appurtenant easement, deeded deep water access and
2 commonly owned, that property is going to be worth
3 a ton more. And -- and that's going to naturally
4 increase the ownership interest, I mean, it's going
5 to increase the value of the dirt and it's going to
6 increase the tax liability irrespective of what Mr.
7 Hughes said.
8 THE COURT: The problem is that was the
9 only testimony there was, right? I mean, as --
10 with regard to that issue. I mean --
11 MR. BERGLIND: That was going to be my
12 exact response. I'm sorry to interrupt.
13 THE COURT: You know --
14 MR. BERGLIND: He is the assessor for
15 Beaufort County.
16 THE COURT: Yeah.
17 MR. TWOMBLEY: Well, again, you know,
18 I -- I can't put up --
19 THE COURT: I mean, in theory --
20 MR. TWOMBLEY: -- his boss --
21 THE COURT: -- I don't disagree with
22 you, but it's -- but I -- but there's zero
23 testimony in the record other than what we all
24 agreed would be the best testimony and -- and
25 that's just what he said. I -- I'm surprised as

Page 86

1 well, but -- but that's what it is, so...

2 MR. BERGLIND: This is not something we

3 surprised them with either.

4 MR. SCHEIDER: No.

5 MR. BERGLIND: I think they contacted

6 the assessor first --

7 THE COURT: Yeah.

8 MR. BERGLIND: -- got the answer --

9 THE COURT: Yeah.

10 MR. BERGLIND: -- didn't like it and

11 then -- I didn't even know they had contacted him

12 for -- at one point.

13 THE COURT: Well, anyway, he said what

14 he said, so --

15 MR. TWOMBLEY: And I agree --

16 THE COURT: -- I think I'm stuck with

17 that one.

18 MR. TWOMBLEY: -- but I'm just saying I

19 still don't agree with it and I just think it

20 doesn't make logical sense.

21 THE COURT: And -- and I'm saying I

22 don't disagree with you.

23 MR. TWOMBLEY: Right. So...

24 THE COURT: But his testimony was

25 crystal clear.

Page 87

1 MR. TWOMBLEY: Yeah.

2 THE COURT: Okay. All right. Well, I

3 think what we probably need to do then is get -- if

4 you don't mind, mark that and, you know, if you put

5 these numbers in the tab that'd be plenty helpful.

6 MR. TWOMBLEY: Sure.

7 THE COURT: I understand that some of

8 these will be spread throughout, but if you could

9 get that to me I'll try to take a look at it.

10 Anything else you want to put on the

11 record before we go off the record?

12 MR. BERGLIND: I think we already

13 discussed it, but I want to see a copy of whatever

14 is submitted --

15 THE COURT: Oh, sure. Yeah.

16 MR. BERGLIND: -- tab wise. However

17 you want to do it --

18 THE COURT: Yeah.

19 MR. BERGLIND: -- I'm sure we can

20 figure it out.

21 THE COURT: Yeah, come up with some way

22 where we don't have to make a thousand copies.

23 Okay. All right. Well, that will conclude the

24 record then.

25 (The hearing was concluded at 3:04 PM.)

Page 88

1 CERTIFICATE OF REPORTER

2

3 I, Kelly A. Ball, Court Reporter and

4 Notary Public for the State of South Carolina at

5 Large, do hereby certify that the foregoing

6 transcript is a true, accurate, and complete

7 record.

8 I further certify that I am neither

9 related to nor counsel for any party to the cause

10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto

12 affixed my official seal this 15th day of August,

13 2012 at Charleston, Charleston County, South

14 Carolina.

15

16

17

18

19

20

21

22

23

24 Kelly A. Ball
My Commission expires
November 19, 2017

25

Page 89

1 I N D E X

2 Page/Line

3 CERTIFICATE OF REPORTER 88 1

4

5

6

7 REQUESTED INFORMATION INDEX

8

9

10 (No Information Requested)

11

12

13

14 E X H I B I T S

15

16

17 (No Exhibits Proffered)

18

19

20

21

22

23

24

25

EXHIBIT 2

KNOW ALL MEN BY THESE PRESENTS, That We, Thos. O. Lawson and C.E. Ulmer

in the State of North Carolina County of Beaufort

A certificate of sale was made by One Dollar & other valuable considerations
to US in full paid and before the selling of these Premises by E. Fred Lightsey
in the Town of Beaufort County of Beaufort, S.C.
whereas said E. Fred Lightsey did grant, bargain, sell and convey unto the said ... Fred Lightsey, his heirs and assigns,
All that piece, parcel or tract of land situate, lying and being in Beaufort County, State of
South Carolina, near Bluffton on My River, known as Lot 3 Block A bounded South by Lot 7, East
by Cyster St., North by Lot 8, West by Lots 6 & 11, Site 90 ft fronting on Cyster St running
back 100 ft to lots 10 & 11, as will be seen by reference to plat made Jan'y 1, 1926 by Jas C.
Covington, Col., S.C. & recorded in Clerk of Courts Office, Beaufort S.C. as Brighton Ranch sub-
division. The grantee E. Fred W. Lightsey, is heire and assigns s'te by the acceptance of
this deed to the condition that in the event of a sale of the premises herein conveyed by him
his heire and assigns that he or they will first give the refusal of the property to the
grantors, Thos. O. Lawton and C.L. Ulmer at the same bona fide sale price offered and give
an opportunity to repurchase in the event of a sale y' said grantee also that this property
is to be used for residential purposes only and that the dwelling is to be placed as nearly
possible on a line with other cottages on adjoining lots.

[illegible]

"-AND- We, the undersigned, ourselves and our heirs, Executors and Administrators, do hereby defend, sell and transfer, the said premises unto the said Walter Lindsay Here and Assign against all U.S. _____ and GUR _____ Here, and any person or persons lawfully claiming or to claim the same, or any part thereof.

-WITH \$8 - our _____ Here & Seal - this 21st day of May, 19____ In the year of our Lord one thousand nine hundred and fifty four.

W. S. Raymond	Thos. G. Linton	(b 1)
W. F. Linn	G. E. Wiser	(b 2)

THE STATE OF SOUTH CAROLINA
 Beaufort County
 ss. that they was the wife named Thos. O Latta & C.E. Ulker
 their and said before the judge within legal; and that she with W. J. Fries
 day of
 May A.D. 1910
 (Seal) D.E. Heyward H.P.
 H. M. Heyward

[illegible]

EXHIBIT 3

54 p 227

Thomas O. Lawton & C.E. Ulmer
To: Government to stand seized.
Marie W. & Alma S. Farmer
Thereas We, Thos. O. Lawton of Hampton County, and C.E. Ulmer of Beaufort County, both in the State of South Carolina, have heretofore sold and conveyed (or executed our Bonds for Title to) certain parcels or lots of land at what is popularly known as "Brighton Beach", on May River, approximately two miles from the village of Bluffton, in Beaufort County, in the State aforesaid, unto (1) C.B. Ray (now deceased), (2) J.W. Obisole, (3) Florida C. Sexton, (4) William Colcock (who has recently conveyed his lot unto E.B. McGhee), (5) Mary C. Salley, (6) Percy H. All, (7) Marie W. Farmer, (8) Alma S. Farmer, (9) Fred H. All, (10) J. C. Richardson, (11) W.R. Davis, (12) Rosa H. Riley, (13) J.B. Bone (who has recently conveyed his lot unto Mrs. Arthur M. Kennedy), (14) J.H. Bookter, (15) William Colcock, (16) Miss Louise Prothro, (17) D. H. Busbee, (18) Kenneth Rausser, (19) C.W. Howard, (20) G.H. Hudson, (21) W. Fred Lightsey, (22) L.T. Waters, (23) J.G. Cashman, and (24) Jack Wertz, Kenneth Rausser, and Jeter Rhodes, as will more fully appear by reference to the records of the office of the Clerk of Court and Register of Mesne Conveyances of said Beaufort County;
And Whereas, between the High Water Mark of said May River and the Southern (front) property (or boundary) line of the lots now owned by the Estate of C.B. Ray, deceased (whose lot is unnumbered upon the Map or Plat hereinafter first referred to), and by the said J.W. Obisole, Florida C. Sexton, E.B. McGhee, Mary C. Salley, Percy H. All, Marie W. Farmer, Alma S. Farmer, Fred H. All and J.C. Richardson, (whose lots are numbered upon the Map hereinafter first referred to from 29 to 40, both inclusive), We, the said Thos. O. Lawton and C.E. Ulmer, are now, and were, at the times said lots were sold and conveyed by us, seized in fee and possessed of a strip of land approximately sixty (60) feet in depth, and approximately four hundred and sixty-seven and five-tenths (467.5) feet in length (the same beginning at a point approximately forty-five feet West of the extreme Western boundary line of Lorton Drive-- a street twenty-five feet in width-- and extending in an Eastern direction across the entire frontage of said lot of the Estate of C.B. Ray, across said Lorton Drive, across the entire frontage of said Lots Numbers 29 to 40, both inclusive, and across Mullet Street to its extreme Eastern boundary line, as will more fully appear by reference unto a Map of Property of Thos. O. Lawton & C.E. Ulmer on the May River near Bluffton, Beaufort County, S.C. surveyed and sub-divided by Tomlinson Engineering Company of Columbia, S.C. February 15th, 1923, L.A. Emerson, Engr;
And Whereas, all of the lots now owned by the persons and Estates named in the first paragraph of this instrument were sold and conveyed by us, the said Thos. O. Lawton and C.E. Ulmer, in accordance with, and by reference to, the Map or Plat mentioned in the concluding clause of the second paragraph of this instrument, (and a few of said lots were also sold and conveyed by us in accordance with, and by reference to, a later and additional Plat or Map of "Brighton Beach", made for us by Jas. O. Covington, C.E., of Columbia, S.C. on Jan. 2nd, 1925); and upon verbal assurances made by us at the times of the respective sales that it was the intention, purpose and design of us, the said Thos. O. Lawton and C.E. Ulmer, that We, and our heirs, should forever stand seized and possessed of, and that We, and our heirs, should forever hold, the said strip of land (approximately 60 feet in depth by approximately 467.5 feet in length) IN TRUST for the common use and benefit of all present and/or future owners of lots in our said sub-division at "Brighton Beach", upon the terms and conditions hereinafter set forth; and that we would dedicate to the common use and benefit of all said lot owners, present and future, all streets, ways and drives named and/or shown and delineated upon both of said Plats or Maps hereinabove mentioned and referred to, upon the terms and conditions hereinafter set forth;
And Whereas, at the time of the sale of each of the said lots heretofore conveyed by us unto the persons named in the first paragraph of this instrument, it was understood and agreed by and between said purchasers and us, the said Thos. O. Lawton and C.E. Ulmer, that no portion of said strip of land (approximately 60 feet in depth by approximately 467.5 feet in length), so situate and lying between the High Water Mark of May River and the front (Southern) property line of the lots now owned by the persons and Estates named in the second paragraph of this instrument, should ever be sold or conveyed by us, or by our heirs, EXCEPT to a Trustee IN TRUST for the common use and benefit of all present and/or future owners of lots in our said subdivisions; that said strip of land should always and forever remain open, unimproved and unobstructed in any manner whatsoever, EXCEPT as hereinafter provided for; that no houses, buildings, or structures (of any size or shape whatsoever) should ever be erected, constructed, built or placed upon said strip of land; that all present and/or future owners of lots in our said sub-divisions at "Brighton Beach" should have at all times, both now and in the future forever, SO LONG as any of said lots should be used for residential purposes, a full, free, complete, unobstructed and unimpeded access to and from said May River, and to and from its waters and beach, over, along and across the entire length (467.5 feet) and depth (60 feet) of said strip of land for the purpose of swimming, boating, fishing, hunting, and all other like pleasures and purposes; and particularly that all present and/or future owners of lots lying adjacent to, and fronting immediately upon, said strip of land should have at all times, both now and in the future forever, said strip of land should have at all times, both now and in the future forever, SO LONG as any of said lots should be used for residential purposes, a full, free, complete, unobstructed and unimpeded view of said May River, EXCEPT as hereinafter provided, and a full, free, complete, unobstructed and unimpeded flow of air, wind and breeze from said May River, over, across and along the entire length and depth of said strip of land;
And Whereas, although such has always been our intention, understanding, and agreement with the owners of lots in our said subdivisions, no instrument of writing so protecting said lot owners, or perpetually dedicating to them the rights and privileges hereinabove recited, has ever been executed by us;
And Whereas We, the said Thos. O. Lawton and C.E. Ulmer, are now desirous, by these Presents, so to protect all existing and/or future owners of lots in our said sub-divisions: as well as Thos. O. Lawton the present owner of a tract of land adjacent thereto containing 66 acres and any future lot owners in said 66 acre tract.
And Whereas We, the said Thos. O. Lawton and C.E. Ulmer, are also seized in fee and possessed of a narrow strip of land at the entrance to "Brighton Beach", lying between Oyster Street and the High Water Mark of May River, and opposite Lots Numbers 1-2-3 and 4 in Block 144 upon Map of said "Brighton Beach", made by Jas. O. Covington, C.E. and dated January 2nd, 1926, and extending in a North-Easterly direction in front of said lots and along said Oyster Street to a ditch (which said ditch is the property line between said strip of land and a larger tract of land owned individually by the said Thos. O. Lawton), and thence along said ditch (and between Oyster Street and such ditch) and along Oyster Street to a point where the latter intersects Lorton Drive, as to the common use of which for pleasure purposes by all present and/or future owners of lots in our said subdivisions as well as in the 66 acre tract owned by Thos. O. Lawton above mentioned we have always had the same understanding and agreement as that hereinabove recited, and as to which we have always had the same intention, purpose and design as that hereinbefore recited;
And Whereas We, the said Thos. O. Lawton and C.E. Ulmer, are likewise seized in fee and possessed of a third strip of land twenty-five (25) feet in width, lying between Mullet Street and the High Water Mark of May River, beginning at the extreme Southern terminus of said Mullet Street, where the same intersects what is popularly known as "May River Drive" (though the latter is not actually delineated or designated upon either of the Maps hereinbefore mentioned and referred to, at a point twenty-five (25) feet East of the South-Eastern corner of Lot Number 40 (as shown on Map of Tomlinson Engineering Company, dated February 15th, 1923, hereinabove first referred to) and extending along

and Mullett Street, across Dry Creek, to Lot 109 (shown on Map last referred to) thence along said Lot Number 109 in a southeasterly direction, across Croaker Street, to and along Lot Number 127 to its Southern, front corner, thence along the front of Lots Numbers 127, 128, 129, 130 across said Drum Street and along side of Lot Number 135 to its Southern, front corner, thence along the front of Lots Numbers 138, 139, 1940, across Drum Street, in a slightly Northwesterly direction, and along the front of Lots Numbers 136 and 137, and across Croaker Street to a point where the latter intersects Sailor's Choice Street, and thence along said Sailor's Choice Street, in an almost Westernly direction, to the extreme North-Eastern corner of Lot Number Sixty-One (61), to a point where said Sailor's Choice Street intersects Lawton Drive, as to the common use of which for pleasure purposes by all present and/or future owners of lots in our said sub-divisions (delineated upon the two Plans or Maps hereinbefore mentioned and referred to) at "Brighton Beach" in Beaufort County, South Carolina, as well as in the 64 acre tract of Thos. O. Lawton above mentioned, we have always had the same understanding and agreement as that hereinabove recited as to the first strip of land hereinbefore mentioned in the second paragraph of this instrument, and as to which we have always had the same intention, purpose and design as that hereinbefore recited;

And Whereas We, the said Thos. O. Lawton and O.E. Ulmer, do now desire, by these Presents, so to protect all present and/or future owners of lots in our said sub-divisions as well as in the 64 acre tract of Thos. O. Lawton above mentioned, in the exercise of the rights and privileges hereinbefore mentioned, and so to covenant and agree with them, in writing, that they may be perpetually assured of the enjoyment of such rights and privileges in all three (3) of the strips of land hereinabove mentioned and described;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That we, Thos. O. Lawton and O.E. Ulmer, upon the terms and conditions hereinafter named, and for and in consideration of the "Premises" hereinbefore recited, and for and in consideration of the sum of One (\$1.00) Dollar to each of us in hand paid, at and before the sealing of these Presents, by Marie W. Farmer and Alma S. Farmer, both of the town and county of Allendale, in the State aforesaid, (the payment and receipt whereof is hereby acknowledged by each of us to have been made for and on behalf of the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and for and on behalf of all other present and/or future owners of lots in our said sub-division at "Brighton Beach" their heirs and assigns), including the covenant and agree, with the said Marie W. Farmer and Alma S. Farmer, on behalf of themselves and their heirs and assigns, and on behalf of all other present and/or future owners of lots in our said sub-divisions, their heirs and assigns, including the said Thos. O. Lawton his heirs and assigns that we, the said Thos. O. Lawton and O.E. Ulmer, and our respective heirs after our deaths, respectively, shall forever stand seized and possessed of, and that we, and our heirs, shall forever hold, the said three (3) strips of land hereinbefore particularly mentioned and described in Paragraphs Two, Seven and Eight IN TRUST for the common use and benefit of the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and IN TRUST for the common use and benefit of all other present and/or future owners of lots in our said sub-divisions at "Brighton Beach", including the said Thos. O. Lawton his heirs and assigns, UPON THE TERMS AND CONDITIONS HEREINAFTER SET FORTH;

That we and our heirs, shall likewise forever hold all streets, ways and drives named and/or shown upon both of the Plans or Maps hereinbefore mentioned and referred to and lying South of Fourth Street and Sailor's Choice Street, IN TRUST for the common use and benefit of said Lot Owners, UPON THE TERMS AND CONDITIONS HEREINAFTER SET FORTH; that neither of us, nor any of our heirs, shall ever sell and/or convey unto any person, firm, association, or corporation whatsoever, either of said three (3) strips of land hereinabove mentioned, and particularly described in Paragraphs Two, Seven and Eight hereof, or any portion of either of said strips of land; that said three (3) strips of land shall always and forever remain open, unimproved and unobstructed in any manner whatsoever, EXCEPT as hereinafter provided for; that no houses, buildings, or structures, of any size or shape, or upon any portion of either of them; that the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and all other present and/or future owners of lots in the said sub-divisions hereinabove mentioned, their heirs and assigns, including the said Thos. O. Lawton his heirs and assigns shall have at all times, both now in the future, SO LONG AS any of said lots shall be used for vacation, residential purposes, full, free, complete, unobstructed and unimpeded access to and from said May River, and to and from its waters and beaches, over, along and across the entire length and depth of each and every of said three (3) strips of land for the purpose of swimming, boating, fishing, hunting, and all other like pleasures and purposes; and particularly that the said Marie W. Farmer and Alma S. Farmer, their heirs and assigns, and all other present and/or future owners of lots lying adjacent to, and fronting and abutting immediately upon, said three (3) strips of land hereinbefore particularly described in paragraphs Two, Seven and Eight including the said Thos. O. Lawton his heirs and assigns shall have at all times, both now and in the future forever, SO LONG AS any of said lots shall be used for vacation, residential purposes, a full, free, complete, unobstructed and unimpeded view of said May River, EXCEPT as hereinafter limited, and also a full, free, complete, unobstructed and unimpeded flow of air, wind and breeze from said May River over, across and along the entire length and depth of each and every of said three (3) strips of land.

TO ALL OF WHICH We, the said Thos. O. Lawton and O.E. Ulmer, do covenant and agree, and to the faithful performance of which We do hereby bind ourselves, and our heirs, Executors and Administrators forever, SUBJECT ONLY to the following terms, conditions and limitations, namely:

- (1) That no sewage shall ever be dumped, placed or discharged in any manner whatsoever into the waters of said May River by any of the present and/or future owners of lots in our said sub-divisions at "Brighton Beach", or by any agent, servant or employee of any of said Lot Owners; or by Thos. O. Lawton his heirs and assigns.
- (2) That, if so desired, shade and ornamental trees and shrubbery may be planted upon said three (3) strips of land;
- (3) That, should it ever become necessary or desirable to place water mains and/or sewer pipes in the streets, ways and drives of "Brighton Beach", the same may be done, PROVIDED, HOWEVER, that no sewage disposal shall ever be dumped, placed or discharged into said May River;
- (4) That, should it ever become necessary or desirable to erect telephone and/or telegraph lines at "Brighton Beach", the streets, ways and drives thereof may be subjected to a reasonable use for such purposes;
- (5) That, should it ever become necessary or desirable to erect electric light and/or power lines at "Brighton Beach", the streets, ways and drives of our subdivisions may be subjected to a reasonable use for such purposes;
- (6) That, should it ever become necessary or desirable to use either artificial or natural gas at "Brighton Beach", the streets, ways and drives of our said sub-divisions may be subjected to a reasonable use for such purposes;
- (7) That, should it ever become necessary or desirable, in the interest of a complete enjoyment and use of the strip of land first hereinabove described by the owners of lots in our said subdivisions, to close the drive-way commonly called May River Drive, from Lawton Drive, on the West, to Mullett Street, on the East, a distance of 372.5 feet, the same may be done, to the end that vehicular traffic shall not impair, impede or obstruct the free and common use of said strip of land by persons.

IN WITNESS WHEREOF, We, the said Thos. O. Lawton and O.E. Ulmer, have hereunto subscribed our names and affixed our seals at Bluffton, South Carolina, this 31 day of August, A.D. 1931.

Thos. O. Lawton (LS) C.E. Ulmer (LS) By Thos. O. Lawton Atty in fact IN THE PRESENCE OF: W. Jesse Davis F.C. Buckner
STATE OF SOUTH CAROLINA) PERSONALLY appeared before me F.C. Buckner and made oath that he saw the
COUNTY OF HAMPTON) within named Thos. O. Lawton and C.E. Ulmer sign, seal, and as their Act
and Deed, deliver the within written Declaration of Trust and Covenant to Stand Seized; and that
he with W. Jesse Davis witnessed the execution thereof. F.C. Buckner Notary Public for South Carolina.
day of August, A.D. 1931. (Seal) Jesse W. Chisolm, a Notary Public for South Carolina.
STATE OF SOUTH CAROLINA) I, Jesse W. Chisolm, a Notary Public for South Carolina, do hereby certify
COUNTY OF BEAUFORT) unto all whom it may concern that Mrs. Marjorie W. Lawton, the wife of the
within named Thos. O. Lawton, did this day appear before me, and, upon being privately and separat-
ly examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread o-
fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within
named Marie F. Farmer and Alma S. Farmer, their heirs and assigns, and unto all other present and
future owners of lots in the sub-divisions of Thos. O. Lawton and C.E. Ulmer at "Brighton Beach"
Beaufort/Beaufort County, South Carolina, the within described and assigned lots, from the common use and benefit
of all said lot owners, all her interest and estate, and also all her right and claim of dower, of
in and to all and singular the three (3) strips or parcels of land particularly mentioned and
described in Paragraphs Two, Seven and Eight of the within Declaration of Trust and Covenant to
Stand Seized, GIVEN under my Hand and seal this 31 day of August, 1931. (Seal) Jesse W. Chisolm
(LS) Notary Public for South Carolina.
Recorded & Certified October 25th, 1939. *Clara Q. Rodgers* Deputy C.C.C.P.

Z.B. Rodgers, C.C.C.P. THE STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT COUNTY OF COMMON PLEAS
To: Conveyance } I, Z.B. Rodgers, Clerk of the Court of Common Pleas and General Sessions
J.R. Godley } in and for the County aforesaid, send Greetings:
WHEREAS, Alfred Moore and others, on or about the day of May, 1939, exhibited their complaint
in the Court of Common Pleas for Beaufort County, against Jesse and H.M. Cleveland, Individually and
as Trustees, etc., and others, praying judgment in relation to the premises hereinafter mentioned
and described, and the same having come on to be heard on the day of , 1939, and to be
further heard on September 13th, 1939, and resulted in a decree of the said Court whereby it was
adjudged and decreed that the said premises hereinafter mentioned and described be sold by Z.B.
Rodgers, Clerk of said Court in and for said County, on the terms and for the purposes mentioned in
the said decree, as by reference thereto on file in said court will appear, to J.R. GODLEY for the
sum of SIXTY SEVEN HUNDRED & FIFTY-~~66~~, 750.00 DOLLARS, paid or secured to be paid by the said J.R.
GODLEY in accordance with the provisions of said decree, and the said J.R. GODLEY having complied
with the terms and provisions of the said decree by paying or securing to be paid the said purchase
price, NOW

KNOW ALL MEN BY THESE PRESENTS, that I, Z.B. RODGERS, Clerk of the Courts of Common Pleas and General
Sessions in and for Beaufort County, in consideration of the sum of SIXTY SEVEN HUNDRED AND FIFTY
DOLLARS paid and secured to be paid to me by the said J.R. GODLEY, (the receipt whereof is hereby
acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain,
sell and release unto the said J.R. GODLEY, his heirs and assigns forever:

All that tract or parcel of land situated on St. Helena Island, Beaufort County, S.C., and
known as the Oaks Plantation, and being the property conveyed to John B. Cleveland, and others by
separate deeds to separate tracts which will be found in the records of the Clerk of Court for
Beaufort County, as follows: In Deed Book 32 Page 267; Deed Book 49 Page 10; Deed Book 46 Page 68;
Deed Book 43 Page 587; Deed Book 41 Page 668; Deed Book 26 Page 541; Deed Book 29 Page 680. Said
deeds more fully describe the property as follows: That lot of land on said St. Helena Island,
bounded north by lands of McDonald, Wilkins & Company; south by Cuffie Chaplain; east by Johnston
River, west by lands of J.B. Cleveland; containing 10 acres, more or less, and being the same prop-
erty conveyed to J.P. & J.B. Cleveland & Alfred Moore by the Probate Judge of Beaufort County at a
sale in aid of assets of the Administrator of David Simmons to pay his debts, as shown in Deed Book
32 Page 267.

ALSO another parcel of land on said Island, being part of the Oaks Plantation; bounded north
and east by Robert Sumter; south by lands now or formerly of David Simmons, and west by J.P. & J.B.
Cleveland, et al; containing 5 ACRES, and being the southern half of a 10 acre lot bought from
Violet Armstrong by Robert Sumter, Jan'y. 16, 1908 by deed recorded in Book 26 Page 797. See Deed
Book 49 Page 10.

ALSO another tract, formerly known as part of the Oaks Plantation and sold April 7, 1924 for
delinquent taxes assessed in the name of Patrick Carruth by Jas. M. Bailey, then Sheriff; contain-
ing 5 ACRES, more or less; bounded north by Robert Sumter; east by the Cleveland; south by the Estate
of Ansel Chaplain and west by David Simmons. See Sheriff's Sales Book Page 287 and the deed of
J.E. Moore, Sheriff to Alfred Moore, et al, Book 46 Page 68.

ALSO another tract of said Island and being part of Oaks Plantation; containing 10 ACRES; bound-
ed on the north-west and west by the lands of Moore and the Cleveland; and on the south by lands
which they bought from the Christensen, and east by Hackless Hayward, and north-east by lands of
Quako Green. See deed of David Simmons in Book 31 Page 587.

ALSO another tract of land on said Island, being part of the old Oaks Plantation; bounded by
lands of Patrick Carruth, Pompey Simmons and George Barmwell; containing 5 ACRES, and being the
same conveyed to Cuffy Chaplain by N. Christensen Feb'y. 19, 1900, and by Chaplain to the Cleveland
and Moore by deed recorded in Book 41 Page 668.

ALSO, that tract of land on said Island, being part of the original tracts known as The Oaks,
and formerly the property of O.G.T. Pope, now measuring and containing 150 ACRES, more or less; be-
ing conveyed to Edward S. Waters by a Sheriff's deed under a decree of foreclosure dated August
1, 1874, by a deed of Sheriff William Wilson, recorded in Deed Book 10 Page 260. said tract bounded
north and south by rivers and marshes, and east by a line run by the U.S. Government dividing it
a tract which once formed a part of said plantation, and which was laid off under the direct Tax
Commissioners of the United States. The southern and northerly boundaries described as waters and
marshes are sometimes called Oomang Creek, Cowhead Creek, Johnston River and Wallace Creek. See
deed of Edward S. Waters to John B. and J.P. Cleveland and recorded in Book 26 Page 541, and deed
to a 1/3 interest therein from John B. and J.P. Cleveland to Thos. E. Moore, by deed recorded in
Book 29 Page 62.

ALSO two other tracts, each being a part of the former Oaks Plantation and containing 20 and
10 ACRES, respectively, and more fully described in a deed of N. Christensen, and Frederik H.
Christensen to J.P. & J.B. Cleveland and T.E. Moore, recorded in Deed Book 29 Page 680. The 20 acre
tract is composed of Lots 15, 16, 17 and 18 of Section 26 of Township 1, south of Beaufort base
line, and Range 1, west of St. Helena Meridian. The 10 acre tract is bounded on the north by land
now or formerly of Hackless Hayward; west by lands of the School farm, east by Patrick Carruth and
south by Robert Sumter. These two tracts were conveyed to N. Christensen, father of the grantors
above, by deeds recorded in Book 26 at Page 24 and Book 26 at Page 666, and by him willed to the
above grantors.

E.E. Moore died intestate in 1912, leaving his brothers, Alfred Moore, Andrew E. Moore and
Cashman et al v. Wachovia et al
Plaintiffs Response to Defendants RTP

EXHIBIT 4

Post Office Box 710.

September 9th. 1941.

To District Engineer,
Savannah, Ga.

Dear Sir:

We request a permit for the construction of a wharf,
as shown on the attached plan, to be built in the Savannah River, about
three miles below Murren B. Car.

Mr. T.O. Lawton owns the land in front of which this wharf
will be located, for which we have his permission to build same.

Yours very truly,

J.O. Cashman,
G. Ray Carter.

EXHIBIT 5

WAR DEPARTMENT
United States Engineer Office
Savannah, Georgia.

WW 1286/2
September 11, 1941.

N O T I C E

Mr. J. O. Cashman, P. O. Box 710, Savannah, Georgia, has made application for a War Department permit to construct a wharf in May River, 4.1 miles above its mouth, near Bluffton, South Carolina.

The proposed wharf is to be "L" shaped, having a head 12 feet wide, to face along the river for a distance of 15 feet; and an approach 4 feet wide and 173 feet long. The river end of the structure is to be located 185 feet channelward of the bluff line at the 4-foot contour line below mean low water.

Mr. T. O. Lawton owns the property in front of which this work is to be built and has given his permission for the erection of the wharf.

Plans of the work may be seen at this office, Second Floor, Post Office Building, Savannah, Georgia.

If you have any objection to the construction of the proposed wharf, from the standpoint of navigation, please notify this office on or before September 21, 1941.

F. W. Altstetter,
Colonel, Corps of Engineers,
District Engineer.

2-ohc

EXHIBIT 6

All Communications should be addressed to The District Engineer Office, U. S. Engineer Office, Post Office Building

WAR DEPARTMENT
UNITED STATES ENGINEER OFFICE
POST OFFICE BUILDING
SAVANNAH, GA.

FILE NO.

October 1, 1941.

Mr. J. O. Cashman,
P. O. Box 710,
Savannah, Georgia.

Dear Sir:

Referring to your request, dated September 9, 1941, there is an
enclosed permit for the construction of a wharf, in May River, near
the mouth of the Savannah River.

Your attention is invited to the fact that the permit is subject to the
permit, which states in part that this instrument does not obviate
the necessity of obtaining state assent to the work authorized, according
to a decision of the Supreme Court of the State of South Carolina, the
land lying between the high water and low water marks, of streams in
which the tide ebb and flow, belongs to the people of the State in
common and cannot be disposed of except by an Act of the General Assembly
of the State of South Carolina.

Please inform this office when the work is commenced and when it is
completed, so that arrangements can be made for the necessary inspections.

Care should be taken not to depart from the approved location or plans
of structure, without obtaining prior authority from the Department, as any
material variation would make the work illegal. If changes on account of
unforeseen or altered conditions, or otherwise, are necessary, revised plans
should be submitted promptly to the District Engineer, to the end that these
revised plans, if found unobjectionable from the standpoint of navigation,
may receive the approval required by law before construction begins.

This letter is being sent in duplicate. Please sign on one copy the
receipt below and return that copy to this office.

For the District Engineer:

2-24-41

Ralph F. Rhodes,
Principal Engineer.

Enclosures:

Permit NW 1286/2

Copy of this letter.

(Place)

(Date) Oct. 3, 1941

Receipt of the above permit is hereby acknowledged.

(Signed) J. O. Cashman

WAR DEPARTMENT

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings v. Chicago*, 188 U. S., 410.)

PERMIT

8-2/875

United States Engineer Office,
Division Engineer, South-Atlantic Division,
Richmond, Va., September 29, 1941.

Mr. J. O. Cashman,
P. O. Box 710,
Savannah, Georgia.

Dear Sir:

Referring to written request dated September 9, 1941,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of War, to construct a wharf,

(Here describe the proposed structure or work.)

in May River, northerly bank,

(Here to be named the river, harbor, or waterway concerned.)

at near Bluffton, South Carolina,

(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point to the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans shown on the drawing attached hereto marked "Proposed
(Or drawings; give file number or other definite identification marks.)

Wharf on May River, near Bluffton, S. C. Application by J. O. Cashman. Sept. 10, 1941,"

subject to the following conditions:

Cashman et al v. Wachovia et al
Plaintiffs' Response to Defendants' RTP

15 of 172

(a) That the work shall be subject to the supervision and approval of the District Engineer, Engineer Department at Large, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment, the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so proscribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Army Building, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of War, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of War, to remove or alter the structure or work, or to make such alterations as may be required, without expense to the United States, so as to render navigation reasonable. In the event of the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the waterway shall be removed, and the owners shall, without expense to the United States, remove all or any portion of the uncompleted work or structure or other modification of the waterway. No claim shall be made against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U. S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before the 31st day of December, 1911, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

By authority of the Secretary of War:


J. S. BRAGDON,
Colonel, Corps of Engineers,
Division Engineer.

WAR DEPARTMENT
O. O. of E.
Form No. 96
Revised Jan. 17, 1910

16-13165

U. S. GOVERNMENT PRINTING OFFICE

WW 1756/12

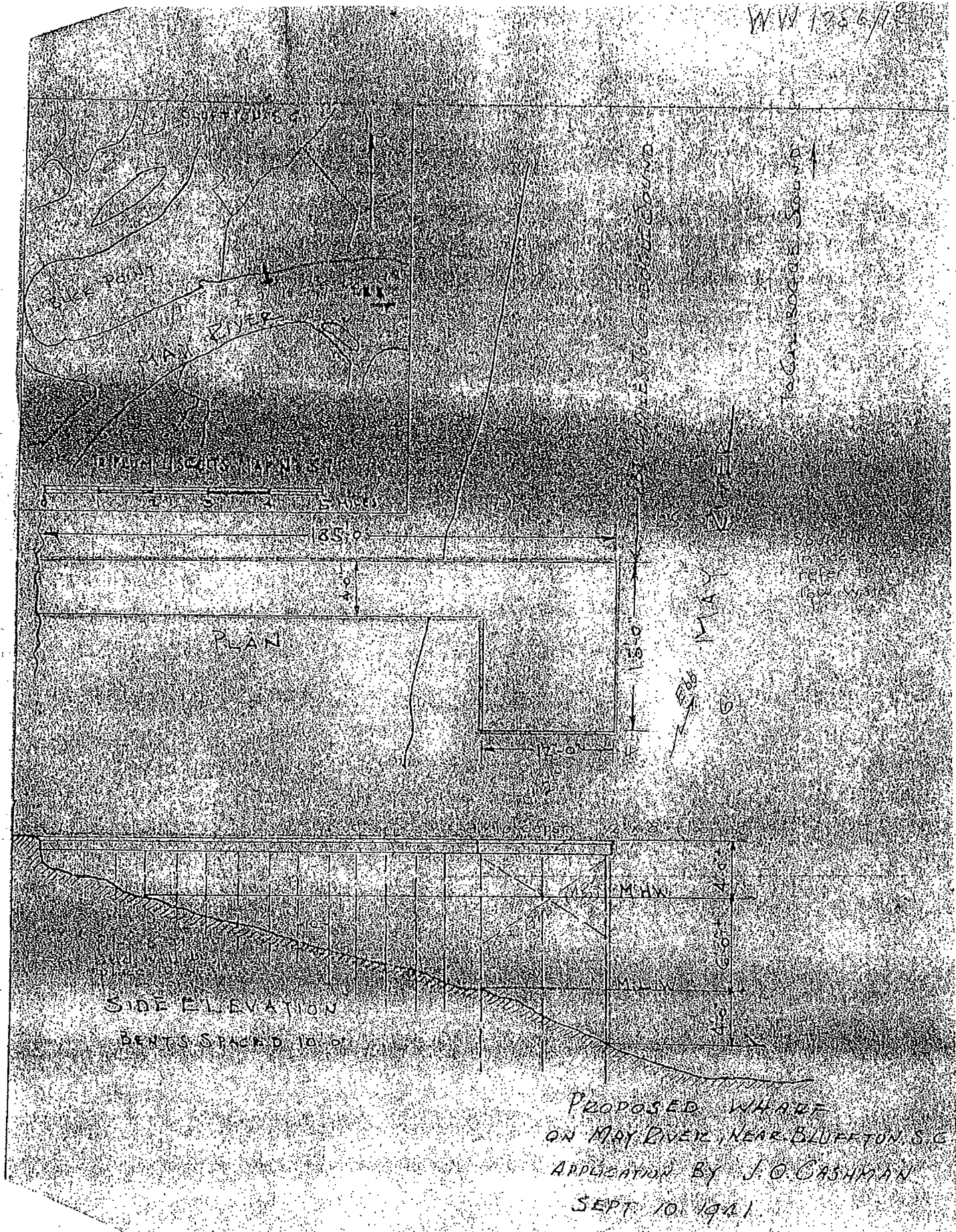


EXHIBIT 7

PRESS REPLY TO
DISTRICT ENGINEER
P. O. BOX 800
SAVANNAH, GA.

WAR DEPARTMENT
UNITED STATES ENGINEER OFFICE
POST OFFICE BUILDING
SAVANNAH, GA.

REFER TO FILE NO.
SADS-WN 800.6(1236)
SADSD-3

19 December 1944

Mr. J. O. Cashman,
P. O. Box 710,
Savannah, Georgia.

Dear Sir:

Reference is made to War Department permit dated 29 September 1941, granting you authority to construct a wharf in May River, northerly bank, near Bluffton, South Carolina.

Your attention is invited to condition (j) of this permit, which states that if the work therein authorized is not completed on or before the thirty-first day of December 1944, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

If you desire to continue construction on this wharf, please submit a formal application to this office requesting that the permit be extended for a period of 3 years. Unless such a request is made, no further work may be done under this instrument after December 31, 1944.

For the District Engineer:

Very truly yours,

Ralph F. Rhodes
Ralph F. Rhodes,
Principal Engineer.



EXHIBIT 9

MEMO 4/18/46

Dear Mrs. Sanders -
Mrs 15th inst. forwarded
to me here - We have
been here one week ago
last Fri most of this
time has been spent
in bed - I hope to
improve soon - Mrs
Lawton is feeling fine
but both of us are
all broken up over
the loss of our little
Rat Jerry - you saw

524-0755

her last summer in
Bluffton - she disap-
peared yesterday from
the house where we
are boarding here in
Aitken & hasn't been
heard of since - we fear
she was picked up by
some passer by -
I note your application
for a check - which I
think is a good idea -
you did not tell
me in your letter
just where the boys
plan to build it
anywhere to the left
of the registry dock

MEMO

will be satisfactory to
me - Do not build
it to the left of
Carter. Cashman
dock.

I think I have told
you that I have
decided to the lot
holders the street
in front of your house
(Apple St.) also the
strip of land between
this street & the ditch.

as far down as high
water mark on May
River - which rises & on
+ others the height of
measures & express the
the River.

³
MEMO

As to the payments on
your lots, I have checked
I double checked your
payments & still make
it \$600.00 - you have paid
me on your \$750.00
purchases - I can't catch
the \$25.00 you claim to
owe me. Suppose you
wash it all of your Re-
Capt. I.Cs. etc. & ask when
we get to Shippin, we can
check together - I stand
ready to refund the \$25.00
if you have overpaid -
Enclosed you will find

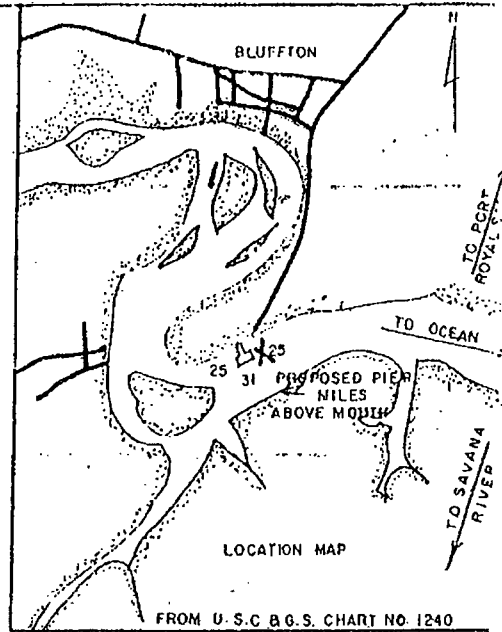
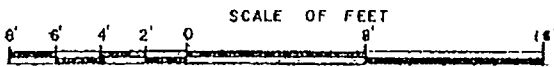
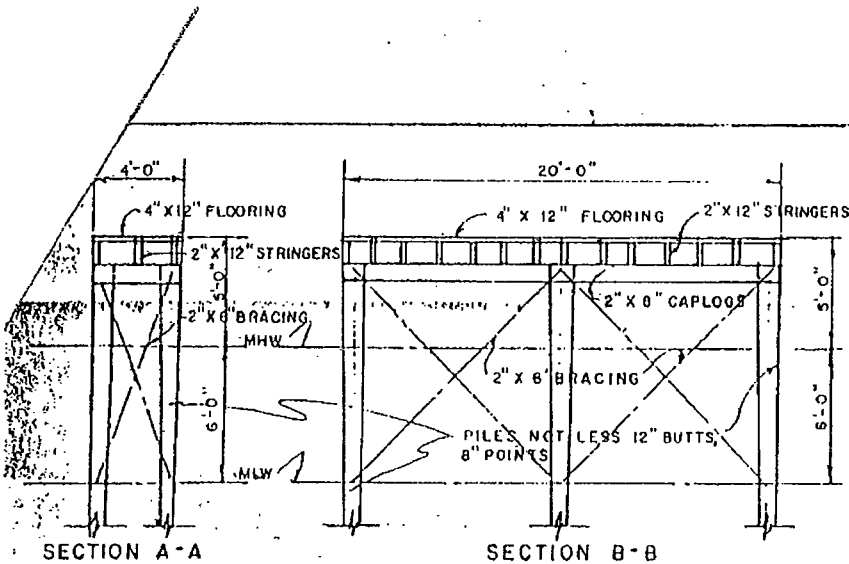
little made out in
Name Cassie Bazemore
Sanders which is cus-
tomary in widowhood
there are many Mrs
Geo. W. Sanders, any one
of whom might claim your
property.

With best wishes
to you all from Mrs. L
+ me
Yours very sincerely
Mrs. O. Lawton

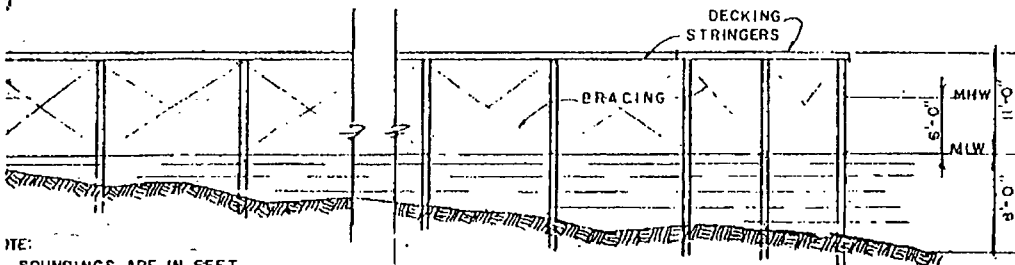
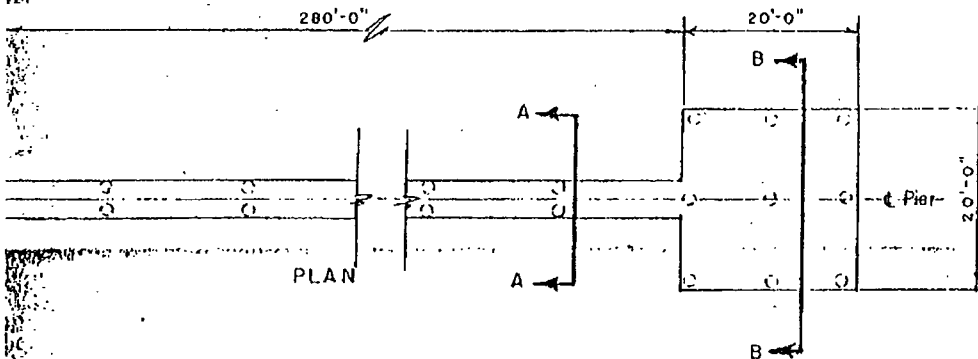
2/19/46
PS

We were unusually fortunate
in getting our little dog back -
Thank goodness! JH

EXHIBIT 12



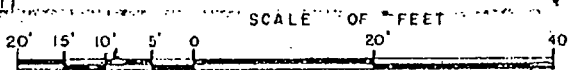
Property Owner
(Name) Lightsey Brothers
(Address) Brighton Beach, S.C.



NOTE:
SOUNDINGS ARE IN FEET
AND REFER TO MEAN LOW
WATER.

HARBOR LINES (ARE) ESTABLISHED
(ARE NOT)

SIDE ELEVATION



Proposed Pier
in South Carolina
at Brighton Beach, S.C.
County of Jasper of State S.C.
Application by Lightsey Brothers
October 31 Date 1960

EXHIBIT 14

DATE	POLICY OR CHECK NUMBER	DESCRIPTION	AMOUNT
7-25-81		BALANCE FORWARD	\$ 609.00
8-12-81		PAYMENT RECEIVED	609.00C
8-24-81	3965	HOMEOWNERS RENEWAL	800.00
		NEW BALANCE	800.00*
<i>Bluffton</i>			
PREMIUMS DUE AND PAYABLE ON EFFECTIVE DATE OF POLICY, A PERIODIC RATE OF 1 1/2% MONTHLY, AS A FINANCE CHARGE, WILL BE ADDED ON BALANCES OVER 60 DAYS, WHICH IS AN ANNUAL PERCENTAGE RATE OF 18%			PAY LAST AMOUNT SHOWN ABOVE
BALANCE	CURRENT	30 TO 60 DAYS	60 TO 90 DAYS
800.00	800.00		

Jones & Hill Insurance, 12 East Bay Street, P.O. Box, 9966, Savannah, Georgia 31412

PAYMENTS & CHARGES
NOT INCLUDED WILL
APPEAR NEXT MONTH.

INVOICE

JONES & HILL INSURANCE

SINCE 1885

12 East Bay Street P.O. Box 9966

Savannah, Georgia 31412

Telephone 236-1551



Mr. Eugene K. Cashman

CUSTOMER NO. 090 01401

NAMED INSURED		INVOICE DATE: 8/25/81		PLEASE DETACH AND RETURN WITH PAYMENT		AMOUNT REMITTED	
CO. NO.	POLICY PERIOD	CL & TR	POLICY NUMBER AND DESCRIPTION	CHARGE	PREMIUM	CREDIT	BALANCE
22	7/20/81- 7/10/82	255	4414-Homeowner Endorsement adding 1981 Johnson Motor 35 h.p. \$1,572.	61.00			

PREMIUMS DUE AND PAYABLE ON EFFECTIVE DATE OF POLICY

JONES & HILL INSURANCE



Royal-Globe Insurance

COMPANIES

EXECUTIVE OFFICE:
150 WILLIAM STREET
NEW YORK, NEW YORK 10038

HOMEOWNERS POLICY GENERAL PROVISIONS

It combined with the General Provisions and the Form and Endorsement(s) designated by

J. O. Cashman and Beale M. Cashman
Brighton Beach Road, 2 miles east of
Bluffton, South Carolina



JOHN D. CARSWELL CO.

Complete Insurance Service

AD. 6-1531

112 EAST BAY STREET

SAVANNAH, GA. 31402



CHANGE ENDORSEMENT

HO-45
(Ed. 10-68)

Attached to and Forming Part of:

Policy No. 49 54 of the Globe Indemnity Company

(Insurance Company)

Insured Bessie M. CashmanAddress (as shown on Policy) Brighton Beach Road, 2 miles east of Bluffton, South CarolinaEffective Date of Endorsement: 10-31-72 Term of Policy: three from: 10-15-70 to: 10-15-73Agency JOHN D. CARSWELL COMPANYBy: Carl G. Cashman

POLICY AMENDMENTS

1. Limit of Liability changes:

	A. Dwelling	B. Appurtenant Structures	C. Unscheduled Personal Property	D. Additional Living Expense	E. Personal Liability Each occurrence	F. Personal Medical Payments	
						Each person	Each accident
NEW LIMIT	\$	\$	\$	\$	\$	\$	\$
OLD LIMIT	\$	\$	\$	\$	\$	\$	\$

2. Forms, endorsement or other changes:

3. Location and description changes:

It is hereby agreed that the Named Insured is amended to read as follows:

Eugene K. Cashman

PREMIUM ADJUSTMENT

Due at Endorsement Effective Date:

Additional Premium

Return Premium

REVISED INSTALLMENT PAYMENTS

Dates Due	Original Installments	Increase	Decrease	Revised Installments
	\$	\$	\$	\$
	\$	\$	\$	\$
Total Premium to Policy Expiration		\$	\$	\$

Attach Endorsements Below This Line

Complete when the location of the dwelling is changed.

New Rating Information	
Dwelling occupied by ☐ 1 ☐ 2 ☐ 3 ☐ 4 families. ☐ Tenant	Deductibles: \$ All Perils \$
Construction ☐ Frame	Clause No. 1 \$
of dwelling: ☐ Frame with aluminum or plastic siding	Clause No. 2
Zone ☐ Prot. Cl. Not more than feet from Hydrant	Roof ☐ Approved ☐ Unapproved
Complete when Form HO-4 is made a part of this policy: Total Annual Fire and Extended Coverage Rate	Premium Group No.
Southern States: ☐ Inside City Limits ☐ Inside Protected Suburban Area ☐ Inside Fire District	Number of Apartments in building
(a) The described dwelling is not seasonal; (b) no business pursuits are conducted on the described premises; (c) the described premises is the only residence where the Named Insured or spouse maintains a residence other than business or farm properties; (d) the Insured has no full time residence employee(s); (e) the Insured has no outboard motor(s) or watercraft otherwise excluded under this policy for which coverage is desired. Exception, if any, to (a), (b), (c), (d) or (e)*	
*Absence of an entry means "no exceptions".	

Special State Provisions: South Carolina: Valuation Clause (Coverage A) \$

New York: Coinsurance Clause Applies ☐ Yes ☐ No

Old Rating Information	
Dwelling occupied by ☐ 1 ☐ 2 ☐ 3 ☐ 4 families. ☐ Tenant	Deductibles: \$ All Perils \$
Construction ☐ Frame	Clause No. 1 \$
of dwelling: ☐ Frame with aluminum or plastic siding	Clause No. 2
Zone ☐ Prot. Cl. Not more than feet from Hydrant	Roof ☐ Approved ☐ Unapproved
Complete when Form HO-4 is made a part of this policy: Total Annual Fire and Extended Coverage Rate	Premium Group No.
Southern States: ☐ Inside City Limits ☐ Inside Protected Suburban Area ☐ Inside Fire District	Number of Apartments in building

HO-45 (Ed. 10-68)

Plaintiffs' Response to Defendants' Bill

24 of 172

GLOBE INDEMNITY COMPANY

Stock Company—A New York Corporation

POLICY NUMBER

49 54



EXECUTIVE OFFICE:
180 WILLIAM STREET
NEW YORK, N. Y. 10038

Previous Policy Number

HOMEOWNERS POLICY

DECLARATION

This page, when combined with the General Provisions and the Form and Endorsement(s) designated herein, complete the contract of insurance numbered herein.

Named Insured
and P.O. Address
(No. Street,
Apt. No., Town,
or City, County,
State, Zip Code)

J. O. Cashman and Bessie M. Cashman
Brighton Beach Road, 2 miles east of
Bluffton, South Carolina

Policy Term	three	10-15-70	10-15-73
Described Premises	A detached single family dwelling with a full basement, located on Brighton Beach Road, 2 miles east of Bluffton, South Carolina.		
Coverages	A. Dwelling: \$40,000. B. Other Structures: \$1,500. C. Personal Property: \$7,500. D. Automobile: \$3,000. E. Liability: \$25,000. F. Medical Payments: \$500. G. Loss of Use: \$25,000.		
Limits of Liability	\$40,000.	\$1,500.	\$7,500.
Premium	\$522.	\$183.	\$183.
Form and Endorsements made part of this policy at time of issue	Form HO 9 Ed. (11-68) PHO-128 (10-68) 906-2 (10-62)		
Deductible Section	Deductible applicable only to loss caused by the peril of windstorm ☐ or hail (Clause No. 1) Deductible applicable to loss caused by other perils ☐ (Clause No. 2) Deductible not applicable ☐ Special Loss Deductible Clause (Amount) \$		
Section II	Assured		
Mortgage(s)	None		
Valuation Clause (Coverage A)	\$15,000.		
New York Coincidence Clause (Applies)	☐ Yes ☒ No		

of the Globe Indemnity Company

issued to J. O. Cashman and Bessie M. Cashman

Countersigned this 14th day of September 1970

CS25815-

Resident Agent

together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

G 12289H-STANDARD (EQT. 10-68)

Cashman et al v Wachovia et al
Plaintiffs' Response to Defendants' RTP

25 of 172

Stock Company—A New York Corporation

54

Previous Policy Number



EXECUTIVE OFFICE:
150 WILLIAM STREET
NEW YORK, N. Y. 10038

HOMEOWNERS POLICY

DECLARATIONS

This page, when combined with the General Provisions and the Form and Endorsement(s) designated herein, complete the contract of insurance numbered herein.

Named Insured
and P.O. Address
(No., Street,
Apt. No., Town,
or City, County,
State, Zip Code)

J. O. Cashman and Bessie M. Cashman
Brighton Beach Road, 2 miles east of
Bluffton, South Carolina

[illegible]

September 14, 1970

Countersignature Date

Savannah, Georgia

Agency At

New York: Coinurance Clause Applies ☐ Yes ☐ No

John D. Carswell Company

consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Above Specified (or specified in endorsement(s) made a part hereof), this Policy, for the term shown above from inception date shown above at noon (Standard Time) to Expiration date shown above at noon (Standard Time) at location of property involved, to an amount not exceeding the limit of liability above specified, does insure the Insured named in the Declarations above and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the actual cash value of the property at the time of loss, against all DIRECT LOSS BY FIRE, LIGHTNING AND OTHER PERILS INSURED AGAINST IN THIS POLICY INCLUDING REMOVAL FROM PREMISES IN THE EVENT OF LOSS BY FIRE, LIGHTNING OR OTHER PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as shown in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

It is hereby agreed that this policy shall not be valid except with the written consent of this Company. This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, and with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

4 12805H - STANDARD (EDT, 10-88)

Cashman et al. v. Wachovia et al
Plaintiffs' Response to Defendants' RTP

26 of 172

1 Concealment, This entire policy shall be void if, whether
2 fraud. before or after a loss, the insured has wil-
3 lfully concealed or misrepresented any ma-
4 terial fact or circumstance concerning this insurance or the
5 subject thereof, or the interest of the insured therein, or in case
6 of any fraud or false swearing by the insured relating thereto.
7 Uninsurable This policy shall not cover accounts, bills,
8 and currency, deeds, evidences of debt, money or
9 excepted property. securities; nor, unless specifically named
10 hereon in writing, bullion or manuscripts.
11 Perils not This Company shall not be liable for loss by
12 included. fire or other perils insured against in this
13 policy caused, directly or indirectly, by: (a)
14 enemy attack by armed forces, including action taken by mili-
15 tary, naval or air forces in resisting an actual or an immediately
16 impending enemy attack; (b) invasion; (c) insurrection; (d)
17 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)
18 order of any civil authority except acts of destruction at the time
19 of and for the purpose of preventing the spread of fire, provided
20 that such fire did not originate from any of the perils excluded
21 by this policy; (i) neglect of the insured to use all reasonable
22 means to save and preserve the property at and after a loss, or
23 when the property is endangered by fire in neighboring prem-
24 ises; (j) nor shall this Company be liable for loss by theft.
25 Other insurance. Other insurance may be prohibited or the
26 amount of insurance may be limited by en-
27 dorsement attached hereto.
28 Conditions suspending or restricting insurance. Unless other-
29 wise provided in writing added hereto this Company shall not
30 be liable for loss occurring
31 (a) while the hazard is increased by any means within the con-
32 trol or knowledge of the insured; or
33 (b) while a described building, whether intended for occupancy
34 by owner or tenant, is vacant or unoccupied beyond a period of
35 sixty consecutive days; or
36 (c) as a result of explosion or riot, unless fire ensue, and in
37 that event for loss by fire only.
38 Other perils. Any other peril to be insured against or sub-
39 ject of insurance to be covered in this policy
40 or sublimits. shall be by endorsement in writing hereon or
41 added hereto.
42 Added provisions. The extent of the application of insurance
43 under this policy and of the contribution to
44 be made by this Company in case of loss, and any other pro-
45 vision or agreement not inconsistent with the provisions of this
46 policy, may be provided for in writing added hereto, but no pro-
47 vision may be waived except such as by the terms of this policy
48 is subject to change.
49 Waiver. No permission affecting this insurance shall
50 provisions. exist, or waiver of any provision be valid,
51 unless granted herein or expressed in writing
52 added hereto. No provision, stipulation or forfeiture shall be
53 held to be waived by any requirement or proceeding on the part
54 of this Company relating to appraisal or to any examination
55 provided for herein.
56 Cancellation. This policy shall be cancelled at any time
57 of policy. at the request of the insured, in which case
58 this Company shall, upon demand and sur-
59 render of this policy, refund the excess of paid premium above
60 the customary short rates for the expired time. This pol-
61 icy may be cancelled at any time by this Company by giving
62 to the insured a five days' written notice of cancellation with-
63 or without tender of the excess of paid premium above the pro-
64 rata premium for the expired time, which excess, if not ten-
65 dered, shall be refunded on demand. Notice of cancellation shall
66 state that said excess premium (if not tendered) will be re-
67 funded on demand.
68 Mortgagee. If loss hereunder is made payable, in whole
69 interests and or in part, to a designated mortgagee not
70 obligations. named herein as the insured, such interest in
71 this policy may be cancelled by giving to such
72 mortgagee a ten days' written notice of can-
73 cellation.
74 If the insured fails to render proof of loss such mortgagee, upon
75 notice, shall render proof of loss in the form herein specified
76 within sixty (60) days thereafter and shall be subject to the pro-
77 visions hereof relating to appraisal and time of payment and of
78 bringing suit. If this Company shall claim that no liability ex-
79 isted as to the mortgagor or owner, it shall, to the extent of pay-
80 ment of loss to the mortgagee, be subrogated to all the mort-
81 gagee's rights of recovery, but without impairing mortgagee's
82 right to sue; or it may pay off the mortgage debt and require
83 an assignment thereof and of the mortgage. Other provisions

84 relating to the interests and obligations of such mortgagee may
85 be added hereto by agreement in writing.
86 Pro rata liability. This Company shall not be liable for a greater
87 proportion of any loss than the amount
88 hereby insured shall bear to the whole insurance covering the
89 property against the peril involved, whether collectible or not.
90 Requirements in The insured shall give immediate written
91 case loss occurs. notice to this Company of any loss, protect
92 the property from further damage, forthwith
93 separate the damaged and undamaged personal property, put
94 it in the best possible order, furnish a complete inventory of
95 the destroyed, damaged and undamaged property, showing in
96 detail quantities, costs, actual cash value and amount of loss
97 claimed; and within sixty days after the loss, unless such time
98 is extended in writing by this Company, the insured shall render
99 to this Company a proof of loss, signed and sworn to by the
100 insured, stating the knowledge and belief of the insured as to
101 the following: the time and origin of the loss, the interest of the
102 insured and of all others in the property, the actual cash value of
103 each item thereof and the amount of loss thereto, all encum-
104 brances thereon, all other contracts of insurance, whether valid
105 or not, covering any of said property, any changes in the title,
106 use, occupation, location, possession or exposures of said prop-
107 erty since the issuing of this policy, by whom and for what
108 purpose any building herein described and the several parts
109 thereof were occupied at the time of loss and whether or not it
110 then stood on leased ground, and shall furnish a copy of all the
111 descriptions and schedules in all policies and, if required, verified
112 plans and specifications of any building, fixtures or machinery
113 destroyed or damaged. The insured, as often as may be reason-
114 ably required, shall exhibit to any person designated by this
115 Company all that remains of any property herein described, and
116 submit to examinations under oath by any person named by this
117 Company, and subscribe the same; and, as often as may be
118 reasonably required, shall produce for examination all books of
119 account, bills, invoices and other vouchers, or certified copies
120 thereof if originals be lost, at such reasonable time and place as
121 may be designated by this Company or its representative, and
122 shall permit extracts and copies thereof to be made.
123 Appraisal. In case the insured and this Company shall
124 fail to agree as to the actual cash value or
125 the amount of loss, then, on the written demand of either, each
126 shall select a competent and disinterested appraiser and notify
127 the other of the appraiser selected within twenty days of such
128 demand. The appraisers shall first select a competent and dis-
129 interested umpire; and failing for fifteen days to agree upon
130 such umpire, then, on request of the insured or this Company,
131 such umpire shall be selected by a judge of a court of record in
132 the state in which the property covered is located. The ap-
133 praisers shall then appraise the loss, stating separately actual
134 cash value and loss to each item; and, failing to agree, shall
135 submit their differences, only, to the umpire. An award in writ-
136 ing, so itemized, of any two when filed with this Company shall
137 determine the amount of actual cash value and loss. Each
138 appraiser shall be paid by the party selecting him and the ex-
139 penses of appraisal and umpire shall be paid by the parties
140 equally.
141 Company's It shall be optional with this Company to
142 options. take all, or any part, of the property at the
143 agreed or appraised value, and also to re-
144 pair, rebuild or replace the property destroyed or damaged with
145 other of like kind and quality within a reasonable time, on giv-
146 ing notice of its intention so to do within thirty days after the
147 receipt of the proof of loss herein required.
148 Abandonment. There can be no abandonment to this Com-
149 pany of any property.
150 When loss The amount of loss for which this Company
151 payable. may be liable shall be payable sixty days
152 after proof of loss, as herein provided, is
153 received by this Company and ascertainment of the loss is made
154 either by agreement between the insured and this Company ex-
155 pressed in writing or by the filing with this Company of an
156 award as herein provided.
157 Suit. No suit or action on this policy for the recov-
158 ery of any claim shall be sustainable in any
159 court of law or equity unless all the requirements of this policy
160 shall have been complied with, and unless commenced within
161 twelve months next after inception of the loss.
162 Subrogation. This Company may require from the insured
163 an assignment of all right of recovery against
164 any party for loss to the extent that payment therefor is made
165 by this Company.

STATE EXERCISIONS

KANSAS — In the numbered line provisions, the words "demand and" in line 58 and "on demand" in lines 65 and 67 are deleted and the words "twelve months" in line 161 are changed to "sixty months".
NORTH DAKOTA — The words "twelve months" in line 161 of the numbered line provisions are changed to "thirty-six months".

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of the Company at the agency hereinbefore mentioned.

R. J. Bluech

Cashman et al v. Wachovia et al
Plaintiffs' Response to Defendants' RTE

27 of 172

President



MANDATORY ENDORSEMENT — SEACOAST INCLUDING BEACH AREA
LOSS DEDUCTIBLE CLAUSE

HO-128
(Ed. 10-68)

(Forms HO-1, HO-2, HO-3 or HO-4 Only — Section I)

The DEDUCTIBLE conditions in the Form made a part of this policy are amended with respect to loss by windstorm or hail as follows:

DEDUCTIBLE

With respect to loss by windstorm or hail, this Company shall be liable only when such loss in each occurrence exceeds \$100. When loss is between \$100 and \$500, this Company shall be liable for 125% of the loss in excess of \$100 and when loss is \$500 or more, this loss deductible shall not apply.

This loss deductible clause shall not apply to Coverage D — Additional Living Expense or Fire Department Service Charge.

HO-128
(Ed. 10-68)



HOMEOWNERS POLICY — SPECIAL FORM
SECTION I

HO-3
(Ed. 11-68)
-SW-

DESCRIPTION OF PROPERTY AND INTERESTS COVERED

COVERAGE A — DWELLING

This policy covers the described dwelling building, including additions in contact therewith, occupied principally as a private residence. This coverage also includes:

1. if the property of the Insured and when not otherwise covered, building equipment, fixtures and outdoor equipment all pertaining to the service of the premises and while located thereon or temporarily elsewhere; and
2. materials and supplies located on the premises or adjacent thereto, intended for use in construction, alteration or repair of such dwelling.

COVERAGE B — APPURTENANT STRUCTURES

This policy covers structures (other than the described dwelling building, including additions in contact therewith) appertaining to the premises and located thereon. This coverage also includes materials and supplies located on the premises or adjacent thereto, intended for use in construction, alteration or repair of such structures.

This coverage excludes:

1. structures used in whole or in part for business purposes; or
2. structures rented or leased in whole or in part or held for such rental or lease (except structures used exclusively for private garage purposes) to other than a tenant of the described dwelling.

COVERAGE C — UNSCHEDULED PERSONAL PROPERTY

This policy covers unscheduled personal property usual or incidental to the occupancy of the premises as a dwelling and owned or used by an Insured, while on the described premises and, at the option of the Named Insured, owned by others while on the portion of the premises occupied exclusively by the Insured.

This coverage also includes such unscheduled personal property while elsewhere than on the described premises, anywhere in the world:

1. owned or used by an Insured; or
2. at the option of the Named Insured,
 - a. owned by a guest while in a residence occupied by an Insured; or
 - b. owned by a residence employee while actually engaged in the service of an Insured and while such property is in the physical custody of such residence employee or in a residence occupied by an Insured.

The limit of this Company's liability for the unscheduled personal prop-

erty away from the premises shall be an additional amount of insurance equal to 10% of the amount specified for Coverage C, but in no event less than \$1,000.

This coverage excludes:

1. animals, birds or fish;
2. motorized vehicles, except such vehicles pertaining to the service of the premises and not licensed for road use;
3. aircraft;
4. property of roomers and boarders not related to the Insured;
5. property carried or held as samples or for sale or for delivery after sale;
6. property rented or held for rental to others by the Insured;
7. business property while away from the described premises; or
8. property which is separately described and specifically insured in whole or in part by this or any other insurance.

COVERAGE D — ADDITIONAL LIVING EXPENSE

If a property loss covered under this policy renders the premises untenable, this policy covers the necessary increase in living expense incurred by the Named Insured to continue as nearly as practicable the normal standard of living of the Named Insured's household for not exceeding the period of time required:

1. to repair or replace such damaged or destroyed property as soon as possible; or
2. for the Named Insured's household to become settled in permanent quarters; whichever is less.

This coverage also includes:

1. the fair rental value of any portion of the described dwelling or appurtenant structures covered under this policy, as furnished or equipped by the Named Insured, which is rented or held for rental by the Named Insured. The fair rental value shall not include charges and expenses that do not continue during the period of untenability. Coverage shall be limited to the period of time required to restore, as soon as possible, the rented portion to the same tenable condition;
2. the period of time, not exceeding two weeks, while access to the premises is prohibited by order of civil authority, as a direct result of damage to neighboring premises by a peril not otherwise excluded.

The periods described above shall not be limited by the expiration of this policy.

This coverage excludes expense due to cancellation of any lease, or any written or oral agreement.

SUPPLEMENTARY COVERAGES

The following supplementary coverages shall not increase the applicable limit of liability under this policy:

1. Automatic Removal: If, during the term of this policy, the Named Insured removes unscheduled personal property covered under Coverage C from the premises to another location within the Continental United States or the State of Hawaii, to be occupied as his principal residence, the limit of liability for Coverage C shall apply at each location in the proportion that the value at each location bears to the total value of all such property covered under Coverage C.

Property in transit shall be subject to the limit of liability for unscheduled personal property away from the premises.

This coverage shall apply only for a period of 30 days from the date removal commences and shall then cease.

2. Debris Removal: This policy covers expenses incurred in the removal of all debris of the property covered hereunder, occasioned by loss

thereto for which coverage is afforded.

3. Fire Department Service Charge: This policy covers for an amount not exceeding \$250 the Named Insured's liability, assumed by contract or agreement for fire department charges where fire department is called because of a fire in, on or exposing property insured hereunder, while located on the premises described. This coverage does not cover Named Insured's liability, by contract or otherwise, to indemnify either a city, municipality or fire protection district, or any other person, firm or corporation against loss, claim or liability arising by reasons of the movement or functioning of fire apparatus or members of a fire department; or by reason of any accident arising out of the performance of services by any fire department. Coverage afforded under this clause applies only if the property is not located within the limits of the city, municipality or fire protection district furnishing such fire department response.

DEDUCTIBLE

Loss Deductible Clause: With respect to loss covered under this policy, this Company shall be liable only when such loss in each occurrence exceeds \$50. When loss is between \$50 and \$500 this Company shall be liable for 111% of loss in excess of \$50 and when loss is \$500 or

more, this loss deductible clause shall not apply. This loss deductible clause shall not apply to Coverage D—Additional Living Expense or Fire Department Service Charge.

PERILS INSURED AGAINST

This policy insures under:

COVERAGE A—DWELLING and COVERAGE B—APPURTENANT STRUCTURES against all risks of physical loss to the property covered (and under COVERAGE D, ADDITIONAL LIVING EXPENSE resulting from such loss), except as otherwise excluded or limited.

COVERAGE C—UNSCHEDULED PERSONAL PROPERTY against direct loss to the property covered by the following perils as defined and limited, except as otherwise excluded.

1. Fire or Lightning.
2. Removal, meaning direct loss by removal of the property covered

Page 1 HO-3

6. caused by or resulting from power, heating or cooling failure, un-
 whether driven by wind or not;
 ing walls, bulwarks, piers, wharves or docks when such loss is caused
 5. to fences, pavements, patios, swimming pools, foundations, retain-
 specifically assumed by endorsement hereon;
 (tion of building(s) or structure(s) unless such liability is otherwise
 4. occasioned directly or indirectly by the construction, repair, or demoli-
 state or ordinance or law regulating the construction, repair, or demoli-
 supply shut off during such vacancy or unoccupancy;
 less such systems and appliances had been drained and the water
 due diligence with respect to maintaining heat in the building or un-
 covered is vacant or unoccupied unless the insured shall have exercised
 appliances, caused by or resulting from freezing while the building
 appliances, or by discharge, leakage or overflow from such systems or
 3. to plumbing, heating or air conditioning systems or domestic ap-
 loss, but this exclusion does not apply to loss by theft;
 ensues, and this Company shall then be liable only for such ensuing
 covered hereunder, including glass in storm doors and storm windows,
 fire, explosion or leakage of gas constituting a part of the building(s)

ADDITIONAL EXCLUSIONS

Under Coverages A, B and C and under Coverage D—Additional Living
 Expense resulting from such loss:
 1. caused by, resulting from, contributed to or aggravated by any of
 the following:
 a. flood, surface water, waves, tidal water or tidal waves, overflow
 of streams or other bodies of water, or spray from any of the fore-
 going, all whether driven by wind or not;
 c. water which backs up through sewers or drains; or
 pressure on or flows, seeps or leaks through sidewalks, driveways,
 foundations, walls, basement or other floors or through doors, windows
 or any other openings in such sidewalks, driveways, foundations,
 walls, or floors;
 unless loss by fire or explosion ensues, and this Company shall then
 be liable only for such ensuing loss, but these exclusions do not apply
 to loss by theft;
 2. caused by, resulting from, contributed to or aggravated by any
 earth movement, including but not limited to earthquake, volcanic erup-
 tion, landslide, mudflow, earth sinking, rising or shifting; unless loss by

This policy does not apply to loss from the described dwelling while the
 portion of the described dwelling occupied exclusively by an
 insured is rented to others:
 others:
 b. Theft Exclusions applicable while the described dwelling is rented to
 (4) of a precious or semi-precious stone from its setting;
 promise, order or direction to pay a sum certain in money, or
 check, draft, promissory note, bill of exchange or similar written
 (3) arising out of or resulting from the theft of any credit card, or any
 therefor until completed and occupied;
 (2) in or to a dwelling under construction or of materials or supplies
 (1) if committed by an insured;
 This policy does not apply to loss:
 a. General Theft Exclusions:
 notice to this Company or its authorized agents and also to the police.
 may give rise to a claim for such loss, the insured shall give immediate
 Upon knowledge of loss under this policy or of an occurrence which
 described premises.
 been placed for safekeeping shall be considered as being on the de-
 occupied by or rented to an insured in which the property covered has
 deposit company, public warehouse or occupied dwelling not owned or
 Unscheduled personal property contained in any bank, trust or safe
 of theft exists.
 10. Theft, meaning any act of stealing or attempt thereof, including loss
 of property from a known place under circumstances when a probability
 9. Vandalism or malicious mischief, meaning only the willful and mali-
 cious damage to or destruction of the property covered.
 8. Sudden and accidental damage from smoke, other than smoke from
 agricultural smudging or industrial operations.
 7. Vehicles.
 6. Aircraft, including self-propelled missiles and spacecraft.
 5. Riot or Civil Commotion, including direct loss from pilage and
 looting occurring during and at the immediate place of a riot or civil
 4. Explosion.
 property is not inside fully enclosed buildings.
 their trailers, furnishings, equipment and outboard motors while such
 c. to watercraft (except rowboats and canoes on premises) including
 wind or hail; or
 ing through openings in the roof or walls made by direct action of
 covered therein caused by rain, snow, sand or dust entering the build-
 or hail and then this Company shall be liable for loss to the property
 sustain an actual damage to roof or walls by the direct force of wind
 not, unless the building containing the property covered shall first
 b. caused by rain, snow, sand or dust, all whether driven by wind or
 (other than hail), snow or steel, all whether driven by wind or not;
 a. caused directly or indirectly by frost or cold weather or ice
 3. Windstorm or Hail, excluding loss:
 pair of damages caused by the perils insured against.
 property shall necessarily be removed for preservation from or for re-
 applies pro rata for 30 days at each proper place to which any of the
 The applicable limit of liability, had the property not been removed,
 hereunder from premises endangered by the perils insured against.

(1) of money, bullion, numismatic property or bank notes;
 (2) of securities, accounts, bills, deeds, evidences of debt, letters of
 credit, notes other than bank notes, passports, railroad and other
 tickets or stamps, including philatelic property;
 (3) of jewelry, watches, necklaces, bracelets, gems, precious and semi-
 precious stones, articles of gold and platinum, or any article of fur
 or article containing fur which represents its principal value, or
 (4) caused by a tenant, his employees or members of his household
 while renting the portion of the described dwelling customarily oc-
 cupied exclusively by an insured.
 c. Theft Exclusions applicable to property away from the described
 premises:
 This policy does not apply to loss away from the described premises of:
 (1) property at any location owned, rented or occupied by an insured,
 except while an insured is temporarily residing thereat;
 (2) property while unattended in or on any motor vehicle or trailer,
 forcible entry into such vehicle while all doors, windows or other
 openings thereof are closed and locked, provided there are visible
 marks of forcible entry upon the exterior of such vehicle or, the
 loss is the result of the theft of such vehicle which is not recovered
 within 30 days, but property shall not be considered unattended
 when the insured is required to surrender the keys of such vehicle to
 a bailee;
 (3) property while unattended in or on private watercraft unless the
 loss is the direct result of forcible entry into a securely locked com-
 partment and provided there are visible marks of forcible entry upon
 the exterior of such compartment;
 (4) watercraft, their furnishings, equipment and outboard motors; or
 (5) trailers, whether licensed or not.
 11. Falling objects, but excluding loss to property within a building,
 unless the building containing the property covered shall first sustain
 an actual damage to the exterior of the roof or walls by the falling
 object.
 12. Weight of ice, snow or steel, but only with respect to property con-
 tained in a building and then only if the weight of ice, snow or steel
 results in physical damage to such building.
 13. Collapse of buildings or any part thereof, but collapse does not
 include settling, cracking, shrinking, bulging or expansion.
 14. Sudden and accidental tearing, cracking, burning or building
 of a steam or hot water heating system or of appliances for heating
 water, but not including loss caused by or resulting from freezing.
 15. Accidental discharge, leakage or overflow of water or steam from
 within a plumbing, heating or air conditioning system or from within a
 domestic appliance but excluding loss to the appliance from which the
 water or steam escapes. This peril does not include loss caused by or
 resulting from freezing.
 16. Freezing of plumbing, heating and air conditioning systems and
 domestic appliances.
 17. Sudden and accidental injury from electrical currents artificially
 generated to electrical appliances, devices, fixtures and wiring, except
 tubes, transistors and similar electronic components.

less such failure results from physical damage to power, heating or cooling equipment situated on the premises, caused by a peril not otherwise excluded.

7. by windstorm or hail to the following property, unless liability therefor is assumed by endorsement hereon: (1) awnings including their supports; (2) fences; (3) seawall, property lines and similar walls; (4) greenhouses, hothouses, slathouses, trellises, pergolas, cabanas and outdoor equipment pertaining to the service of the premises; (5) wharves, docks, piers, boat houses, bulkheads or other structures located over or partially over water and the property therein or thereon;

Under Coverages A and B (and under Coverage D—Additional Living Expense resulting from such loss):

1. by wear and tear; marring or scratching; deterioration; inherent vice; latent defect; mechanical breakdown; rust; mold; wet or dry rot; contamination; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinkage, bulging or expansion of pave-

ments, patios, foundations, walls, floors, roofs or ceilings; birds, vermin, rodents, insects or domestic animals; unless loss by fire; smoke (other than smoke from agricultural smudging or industrial operations), explosion, collapse of a building, glass breakage or water not otherwise excluded ensues, then this policy shall cover only such ensuing loss. If loss by water not otherwise excluded ensues, this policy shall also cover the cost of tearing out and replacing of any part of the building covered required to effect repairs to the plumbing, heating or air conditioning system or domestic appliance but excluding loss to the system or appliance from which the water escapes;

2. by theft in or to a dwelling under construction or of materials or supplies therefor until completed and occupied;

3. by vandalism and malicious mischief or glass breakage, if the property covered hereunder had been vacant beyond a period of 30 consecutive days immediately preceding the loss.

ADDITIONAL CONDITIONS

1. Replacement Cost — Coverages A and B:

This condition shall be applicable only to a building structure covered hereunder excluding outdoor radio and television antennas and aerials, carpeting, awnings including their supports, domestic appliances and outdoor equipment, all whether attached to the building structure or not.

a. If at the time of loss the whole amount of insurance applicable to said building structure for the peril causing the loss is 80% or more of the full replacement cost of such building structure, the coverage of this policy applicable to such building structure is extended to include the full cost of repair or replacement (without deduction for depreciation).

b. If at the time of loss the whole amount of insurance applicable to said building structure for the peril causing the loss is less than 80% of the full replacement cost of such building structure, this Company's liability for loss under this policy shall not exceed the larger of the following amounts (1) or (2):

(1) the actual cash value of that part of the building structure damaged or destroyed; or

(2) that proportion of the full cost of repair or replacement without deduction for depreciation of that part of the building structure damaged or destroyed, which the whole amount of insurance applicable to said building structure for the peril causing the loss bears to 80% of the full replacement cost of such building structure.

c. This Company's liability for loss under this policy shall not exceed the smallest of the following amounts (1), (2), or (3):

(1) the limit of liability of this policy applicable to the damaged or destroyed building structure;

(2) the replacement cost of the building structure or any part thereof identical with such building structure on the same premises and intended for the same occupancy and use; or

(3) the amount actually and necessarily expended in repairing or replacing said building structure or any part thereof intended for the same occupancy and use.

d. When the full cost of repair or replacement is more than \$1,000 or more than 5% of the whole amount of insurance applicable to said building structure for the peril causing the loss, this Company shall not be liable for any loss under paragraph a. or sub-paragraph (2) of paragraph b. of this condition unless and until actual repair or replacement is completed.

e. In determining if the whole amount of insurance applicable to said building structure is 80% or more of the full replacement cost of such building structure, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

f. The Named Insured may elect to disregard this condition in making claim hereunder, but such election shall not prejudice the Named Insured's right to make further claim within 180 days after loss for any additional liability brought about by this policy condition.

2. Special Limits of Liability on Certain Property:

a. This Company shall be liable for loss to trees, shrubs, plants and lawns (except those grown for business purposes) only when the loss is caused by fire, lightning, explosion, riot, civil commotion, vandalism, malicious mischief, theft, aircraft, or vehicles not owned or operated by an occupant of the premises. This Company's liability

(3) \$1,000 on manuscripts;

(4) \$500 in the aggregate for loss by theft of jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, gold, platinum and furs including articles containing fur which represents its principal value;

(5) \$500 in the aggregate on watercraft, including their trailers (whether licensed or not), furnishings, equipment and outboard motors; or

(6) \$500 on trailers, not otherwise provided for, whether licensed or not.

3. Loss Clause: (Not applicable in Alabama and South Carolina)

Loss hereunder shall not reduce the applicable limit of liability under this policy.

4. Mortgage Clause — Coverages A and B only: (This entire clause is void unless name of mortgagee (or trustee) is inserted in the Declaration):

Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear, under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt; or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

5. ~~Under no circumstances shall this clause be applicable only in Alabama and South Carolina: If a loss is paid under this policy, the Named Insured shall be indemnified for loss of~~

bodily injury or property damage occurs away from the residence premises; but this subdivision (3) does not apply to property used for golfing purposes. This exclusion does not apply to loss of property from the insured's residence.

the insured has a policy providing workmen's compensation or disease benefits for such bodily injury or if benefits for such bodily injury are in whole or in part either payable or reimbursable by the insured under any workmen's compensation

hereunder from premises endangered by the perils insured against. The applicable limit of liability, had the property not been removed, applies pro rata for 30 days at each proper place to which any of the property shall necessarily be removed for preservation from or for repair of damages caused by the perils insured against.

3. Windstorm or Hail, excluding loss:

- a. caused directly or indirectly by frost or cold weather or ice (other than hail), snow or sleet, all whether driven by wind or not;
- b. caused by rain, snow, sand or dust, all whether driven by wind or not, unless the building containing the property covered shall first sustain an actual damage to roof or walls by the direct force of wind or hail and then this Company shall be liable for loss to the property covered therein caused by rain, snow, sand or dust entering the building through openings in the roof or walls made by direct action of wind or hail; or
- c. to watercraft (except rowboats and canoes on premises) including their trailers, furnishings, equipment and outboard motors while such property is not inside fully enclosed buildings.

4. Explosion.

5. Riot or Civil Commotion, including direct loss from pillage and looting occurring during and at the immediate place of a riot or civil commotion.

6. Aircraft, including self-propelled missiles and spacecraft.

7. Vehicles.

8. Sudden and accidental damage from smoke, other than smoke from agricultural, smuggling or industrial operations.

9. Vandalism or Malignant Mischief, meaning only the willful and malicious damage to or destruction of the property covered.

10. Theft, meaning any act of stealing or attempt thereat, including loss of property from a known place under circumstances when a probability of theft exists.

Unscheduled personal property contained in any bank, trust or safe deposit company, public warehouse or occupied dwelling not owned or occupied by or rented to an insured in which the property covered has been placed for safekeeping shall be considered as being on the described premises.

Upon knowledge of loss under this peril or of an occurrence which may give rise to a claim for such loss, the insured shall give immediate notice to this Company or its authorized agents and also to the police.

a. General Theft Exclusions:

This policy does not apply to loss:

- (1) if committed by an insured;
- (2) in or to a dwelling under construction or of materials or supplies therefor until completed and occupied;
- (3) arising out of or resulting from the theft of any credit card, or any check, draft, promissory note, bill of exchange or similar written promise, order or direction to pay a sum certain in money; or
- (4) of a precious or semi-precious stone from its setting.

b. Theft Exclusions applicable while the described dwelling is rented to others:

This policy does not apply to loss from the described dwelling while the portion of the described dwelling customarily occupied exclusively by an insured is rented to others:

- (1) of money, bullion, numismatic property or bank notes;
- (2) of securities, accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, passports, railroad and other tickets or stamps, including philatelic property;
- (3) of jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold and platinum; or any article of fur or article containing fur which represents its principal value; or
- (4) caused by a tenant, his employees or members of his household while renting the portion of the described dwelling customarily occupied exclusively by an insured.

c. Theft Exclusions applicable to property away from the described premises:

This policy does not apply to loss away from the described premises of:

- (1) property at any location owned, rented or occupied by an insured, except while an insured is temporarily residing thereat;
- (2) property while unattended in or on any motor vehicle or trailer, other than a public conveyance, unless the loss is the result of forcible entry into such vehicle while all doors, windows or other openings thereof are closed and locked, provided there are visible marks of forcible entry upon the exterior of such vehicle or the loss is the result of the theft of such vehicle which is not recovered within 30 days, but property shall not be considered unattended when the insured is required to surrender the keys of such vehicle to a bailee;
- (3) property while unattended in or on private watercraft unless the loss is the direct result of forcible entry into a securely locked compartment and provided there are visible marks of forcible entry upon the exterior of such compartment;
- (4) watercraft, their furnishings, equipment and outboard motors; or
- (5) trailers, whether licensed or not.

11. Falling objects, but excluding loss to property within a building, unless the building containing the property covered shall first sustain an actual damage to the exterior of the roof or walls by the falling object.

12. Weight of ice, snow or sleet, but only with respect to property contained in a building and then only if the weight of ice, snow or sleet results in physical damage to such building.

13. Collapse of buildings or any part thereof, but collapse does not include settling, cracking, shrinkage, bulging or expansion.

14. Sudden and accidental tearing asunder, cracking, burning or bulging of a steam or hot water heating system or of appliances for heating water, but not including loss caused by or resulting from freezing.

15. Accidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or from within a domestic appliance but excluding loss to the appliance from which the water or steam escapes. This peril does not include loss caused by or resulting from freezing.

16. Freezing of plumbing, heating and air conditioning systems and domestic appliances.

17. Sudden and accidental injury from electrical currents artificially generated to electrical appliances, devices, fixtures and wiring, except tubes, transistors and similar electronic components.

ADDITIONAL EXCLUSIONS

This policy does not insure against loss:

Under Coverages A, B and C (and under Coverage D—Additional Living Expense resulting from such loss):

1. caused by, resulting from, contributed to or aggravated by any of the following:

- a. flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
- b. water which backs up through sewers or drains; or
- c. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls, or floors.

unless loss by fire or explosion ensues, and this Company shall then be liable only for such ensuing loss, but these exclusions do not apply to loss by theft;

2. caused by, resulting from, contributed to or aggravated by any earth movement, including but not limited to earthquake, volcanic eruption, landslide, mudflow, earth sinking, rising or shifting, unless loss by

fire, explosion or breakage of glass constituting a part of the building(s) covered hereunder, including glass in storm doors and storm windows, ensues, and this Company shall then be liable only for such ensuing loss, but this exclusion does not apply to loss by theft;

3. to plumbing, heating or air conditioning systems or domestic appliances, or by discharge, leakage or overflow from such systems or appliances, caused by or resulting from freezing while the building covered is vacant or unoccupied unless the insured shall have exercised due diligence with respect to maintaining heat in the building or unless such systems and appliances had been drained and the water supply shut off during such vacancy or unoccupancy;

4. occasioned directly or indirectly by enforcement of any local or state ordinance or law regulating the construction, repair, or demolition of building(s) or structure(s) unless such liability is otherwise specifically assumed by endorsement hereon;

5. to fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves or docks when such loss is caused by freezing, thawing or by the pressure or weight of ice or water whether driven by wind or not;

6. caused by or resulting from power, heating or cooling failure, un-

EXHIBIT 15

Herman Hubbard
Box 38 J
Palmetto Bluff Road
Bluffton, S. C.
Phone 757-3149

Mr. E. K. Cashman
Savannah, Georgia

August 21, 1974

Dear Mr. Cashman:

I looked at the repair work needed at the dock on May River. The old float was a 10'x 16' and I believe a 24' long ramp would be best.

I can do this work for a cost of \$1,480.00, or \$1,710.00 if you decide to enlarge the float to a 12'x 16'. This will be with an all metal framing 42" wide ramp. Material specifications are as follows:

1. Floatation: Styrofoam 7"x 20"x 9" attached with galvanized 1/2 inch bolts. Solid floatation.
2. Lumber: Treated pine, by Osmose, Celcure, or Wolmanized, 2" thick. All framing and decking of 2" thick material.
3. Float will be attached with hoops bolted below deck, and have 4 dock cleats, and bumper stripping on both sides.
4. Ramp: Framing for ramp will be 5" channel iron, cross braced with 3" angle iron. Hand rail and post will be of 2" channel iron. Decking 2"x 6" treated pine attached with metal screws. Bottom roller solid, of 4" pipe. All metal primed with 2 coats of metal primer.

We need an O.K. from the Corps of Engineers to do this repair, and if I can be of any further help to you, please let me hear from you.

Sincerely,

Herman Hubbard

EXHIBIT 16

May 27, 1975.

District Engineer
Savannah District
U.S. Army Corps of Engineers
P.O. Box 889
Savannah, Georgia. 31402

Statistics

Att: Permits and Statics Branch.

Gentlemen:

I have a permit dated 29 September 1941 granting authority to construct a dock in May River, northerly bank, 4.1 miles above its mouth, near Bluffton, South Carolina.

The floating portion of the dock and ramp on the easterly side need to be replaced. Photograph "A" and "B" shows the easterly side or left hand view in picture.

Request authority to replace the floating dock and ramp, the original floating dock size being 10 Feet X 16 feet. It will be located in same position as before, where the three piling are standing in left hand view of photos.

Would appreciate any consideration you can give me at your earliest convenience.

Sincerely,

Eugene K. Cashman

Encl. -2.
EKC/c

EXHIBIT 17



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

SASKS

19 June 1975

Mr. Eugene K. Cashman
Cashman Construction Company
105 East Bay Street
Savannah, GA 31401

Dear Mr. Cashman:

Reference is made to your letter dated 27 May 1975 requesting authorization to replace a 10' x 16' floating dock and ramp to be attached to your existing dock in May River near Bluffton, South Carolina.

A review of our records indicates that the above dock was authorized by Department of the Army Permit WW(1286) issued to Mr. J. O. Cashman on 29 September 1941. The above permit authorized an "L" shaped wharf having an overall length of 185' with the head section to be 12' x 15'. However, in reviewing the photographs attached to your letter, the dock's configuration does not seem to be the same as that provided for in the permit. Additionally, Department of the Army Permit (1286) did not authorize any floating docks.

Therefore, before we can process your request, it is requested that you submit an "as built" drawing of your dock. This drawing should indicate the following information:

1. A plan view drawing of the dock showing all of its dimensions including distance to adjacent property lines.
2. Also show the location and dimensions of the float to be replaced.

Upon receipt of the above, your request to replace the float will be processed. If you have any questions, please contact Mr. David Coleman in the Permits and Statistics Branch at 233-8822, extension 347.

Sincerely yours,

STEVEN OSVALD
Chief, Permits & Statistics Branch



EXHIBIT 19

Gene Depo
p. 41

District Engineer

Request permission to replace floating dock, two ~~existing~~ piling and ramp which would be attached to the Eastern end of existing dock located on the Northerly bank of the May river, approximately 4.1 miles above its mouth, near Bluffton, S.C.

The size of the floating dock would be 10 ~~feet~~ feet wide and 16 feet long. *The floating dock would be located at (X) on enclosure map*

The present dock is approximately 261 feet from high land ~~with~~

~~5 foot wide walkway and is approximately 14 feet wide and 21~~

~~feet long.~~ The dock is owned by Lightsey Brothers and I have permission to construct this floating dock as per statement below of Oswald Lightsey.

Enclosure

Enclosure

I, Oswald Lightsey, do hereby give permission to Eugene K. Cashman, to attach floating dock and ramp to dock as mentioned in above application for permit .

Signed-

Signed by Oswald Lightsey

5/9/77

Relinquished
Cashman et al v. Wachovia et al
Plaintiffs' Response to Defendants' RFP

5/9/77
172

EXHIBIT 20

May 5, 1977.

District Engineer
Tampa Bay District
U.S. Army Corps of Engineers
1000 1st St.
Tampa, Fla. 33602

ATTN: Permits and Statistics Branch.

Re: Permit

Request for permission to replace floating dock, the piling and ramp which would be attached to the floating dock located on the northernly part of the city river, approximately 4.1 miles above its mouth, near the Ft. Little Collins.

The size of the floating dock shall be ten (10) feet wide and sixteen (16) feet long. The floating dock shall be located at () on the enclosed map. The present dock is approximately 20 feet from the land.

The dock is owned by Lightsey Brothers and I have permission to construct this floating dock as per attached plan of record platency.

Sincerely yours,

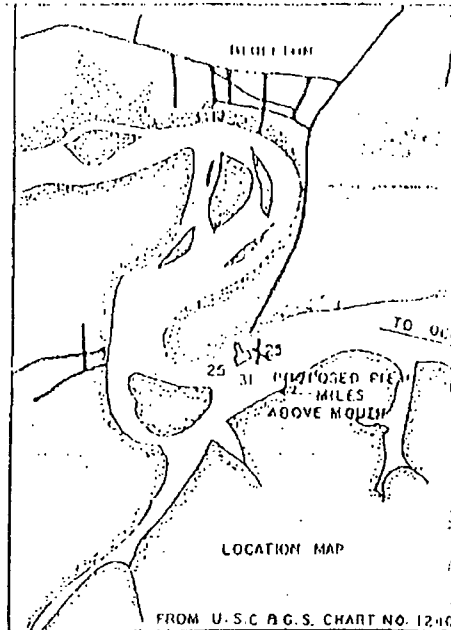
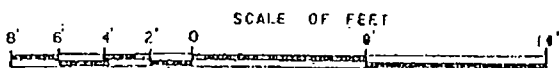
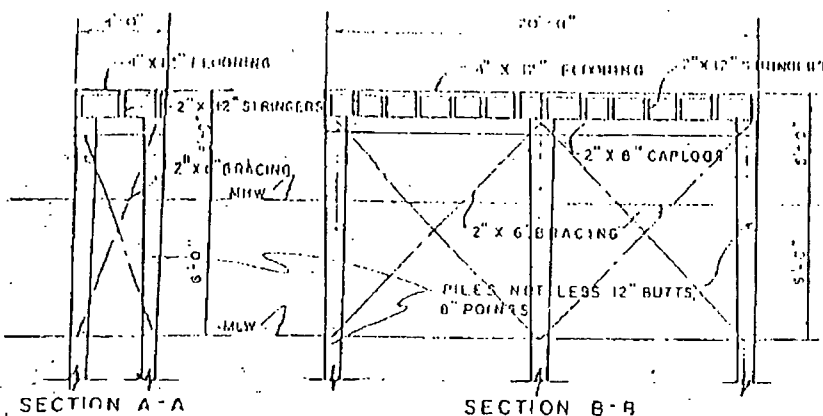
Eugene W. Cashman

cc: Mr. [unclear]
[unclear]

I, Oswald Lightsey, do hereby give permission to Eugene W. Cashman, to attach floating dock and ramp to dock as mentioned in above application for permit.

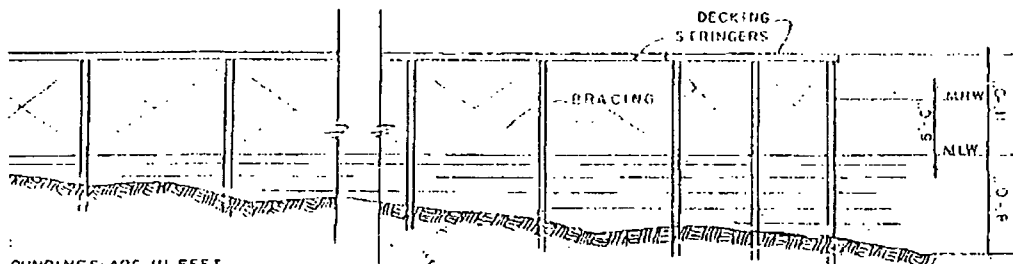
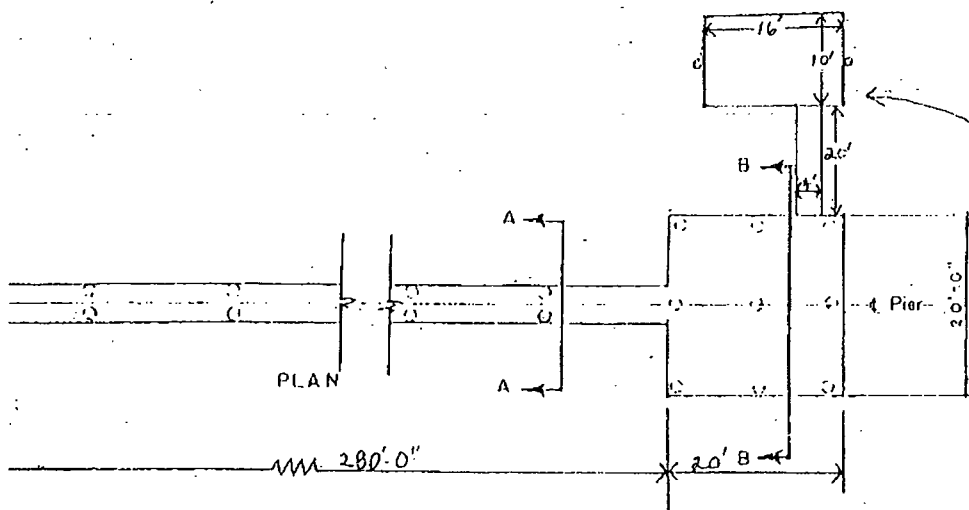
Oswald Lightsey.

EXHIBIT 21



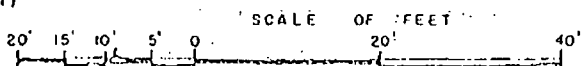
Property Owner
(Name) Lightsey Brothers
(Address) Brighton Beach

FLOATING DOCK



FOUNDINGS ARE IN FEET
NO REFER TO MEAN LOW
WATER.

ARBOR LINES (ARE) ESTABLISHED
(ARE NOT)



Proposed Pier
In South Carolina
at Brighton Beach, S.C.
County of Beaufort of State S.C.
Application by Lightsey Brothers
October 31, 1966 Date
Revised 5 May 1977

EX 7-9

EXHIBIT 22



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

SASOP-F
074 OYN 002354

MAY 18 1977

Cashman Construction Company
Attn: Mr. Eugene Cashman
105 E. Bay Street
Savannah, Georgia 31401

Dear Mr. Cashman:

Reference is made to your letter of 5 May 1977 requesting authorization to replace a floating dock, two piling and ramp attached to the eastern end of an existing dock located on the Northerly bank of the May River, approximately 4.1 miles above its mouth, near Bluffton, South Carolina. The existing dock was authorized by the Secretary of the Army in a permit to Lightsey Brothers, Miley S.C., dated 21 February 1961. The permit specifically stated that it did not authorize any infringement of Federal, State or local laws or regulations.

Since issuance of the original permit the State of South Carolina has instituted a permit program which requires a permit for any construction or alteration when the activity involves the use of any land below the mean high water line. The State further requires that all applications for a State Permit be initiated by issuance of a Public Notice.

A review of the files reveal that the permit authorizing the original structure was issued in 1961 without having been advertised by Public Notice. Therefore, before the work proposed in your letter of 5 May can be authorized, a Public Notice must be issued and circulated for a minimum of fifteen days.

In order to publish the required Public Notice, it will be necessary for you to provide a drawing on the proposed work. The drawing should specify dimensions and location in relationship to the existing structure.

If you have any further questions please contact Jack Moser of this office, telephone 912, 233-8822 extension 349.

Sincerely,

STEVEN OSVALD
Chief, Regulatory Functions Branch

EXHIBIT 23

1-803-757-3149

May 25, 1977

Mr. E. K. Cashman
105 East Bay Street
Savannah, Ga.

Construct a 10'x 16' floating dock, and a 3 1/2'x 24' ramp	@ \$7.50 per sq. ft.	\$1,830.00
Pull 3 old piling	@ \$50.00 each	150.00
		\$1,980.00

Paid 6/2/77

Handwritten notes, possibly a signature or initials, including "Wachovia" and "Cashman".

EXHIBIT 24

APPLICATION FOR A DEPARTMENT OF THE ARMY PERMIT

A set of original drawings and two copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and checklist).

1. Application number (To be assigned by Corps). 074 DYN 002354	2. Date. 05 31 77 Day Mo. Yr.	3. For official use only.
4. Name and address of applicant. ~~Lightsey Brothers~~ LIGHTSEY BROTHERS (Marine) cat (9:00 am.) MILEY, SC 29933		
Telephone number 864-2453 Social Security No. _____		
5. Name, address, and title of applicant's authorized agent for permit application coordination. EUGENE K. COSHMAN COSHMAN CONSTRUCTION COMPANY 105 E. OAK STREET SAVANNAH, GEORGIA 31401		
Telephone Number _____		
6. Describe the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and the type, composition and quantity of materials to be discharged or dumped and means of conveyance. CONSTRUCT & RAISE DOCK 16' X 10', TWO PILING 2nd RAMP 4' X 20'. THE DOCKING DOCK WILL BE ATTACHED TO THE EASTERN END OF AN EXISTING DOCK. THE DOCK DOCKING WILL EXTEND APPROXIMATELY 280' DOWNWARD OF THE MEAN LOW WATER MARK. THE STRUCTURE WILL BE LOCATED ON THE NORTHERN BANK OF THE MAY RIVER, APPROXIMATELY 4.1 MILES ABOVE ITS MOUTH, AT GRIFFIN BEACH, NEAR BLUFFTON, GEORGETOWN COUNTY, SOUTH CAROLINA. THE FACILITY WILL BE FOR PRIVATE NON COMMERCIAL, RECREATIONAL USE ONLY.		
7. Proposed use. Private ☒ Public ☐ Commercial ☐ Other ☐ (Explain in remarks)		
8. Name and addresses of adjoining property owners whose property also adjoins the waterway. LIGHTSEY BROTHERS MILEY S.C.		
9. Location where proposed activity exists or will occur. Sec. _____ Twp. _____ Rge. _____ (Where applicable) SOUTH CAROLINA GEORGETOWN GRIFFIN BEACH BLUFFTON State County In - City or Town Near - City or Town		
10. Name of waterway at location of the activity. MAY RIVER		

FORM 4345 REPLACES ENG FORMS 4345 AND 4345-1 (PART A), MAY 71
ENG 1 APR 74 AND 4345-1 (PART B), JUN 71, WHICH ARE OBSOLETE.

(ER 1145-2-303)
(EP 1145-2-1)

000182

The activity is proposed to commence. _____

Date activity is expected to be completed. _____

12. Is any portion of the activity for which authorization is sought now complete? Yes ☒ No ☐
If answer is "Yes" give reasons in the remarks section. Month and year the activity was completed _____ . Indicate the existing work on the drawings.

13. List all approvals or certifications required by other Federal, interstate, state or local agencies for any structures, construction, discharges, deposits or other activities described in this application.

Issuing Agency	Type Approval	Identification No.	Date of Application	Date of Approval

14. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein? Yes ☐ No ☒ (If "Yes" explain in remarks)

15. Remarks (see paragraph 3 of Permits Pamphlet for additional information required for certain activities).

The existing dock was authorized by the Secretary of the Army in a Permit to L. Shree Brothers, Pilot, SC, dated 21 February 1961 from the District Engineer, Savannah District.

16. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.

Signature of Applicant

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

The application must be signed by the person who desires to undertake the proposed activity; however, the application may be signed by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish upon request, supplemental information in support of the application.

If the activity includes the discharge of dredged or fill material in navigable waters or the transportation of dredged material for the purpose of dumping it in ocean waters, the application must be accompanied by a fee of \$100 for quantities exceeding 2500 cubic yards and \$10 for quantities of 2500 cubic yards or less. Federal, State and local governments are excluded from this requirement.

000183

EXHIBIT 25

HERMAN HUBBARD-Engineering & Dock Work
Box 22 R
Bluffton, S. C.

1-803-757-3149

May 25, 1977

Mr. E. K. Cashman
105 East Bay Street
Savannah, Ga.

Construct a 10'x 16' floating dock, and
a 3½'x 24' ramp

@ \$7.50 per sq. ft. \$1,830.00

Pull 3 old piling

@ \$50.00 each 150.00

\$1,980.00

Paid 6/2/77

EXHIBIT 26



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

Received
7/7/77

SASOP-F
074 OYN 002354

JUN 28 1977

PUBLIC NOTICE

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army Permit pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) as described below:

APPLICANT: Lightsey Brothers
Miley, South Carolina

WATERWAY: May River

WORK: The applicant proposes to construct a floating dock 16' x 10', two piling, and ramp 4' x 20'. The floating dock will be attached to the eastern end of an existing dock. The dock facility will extend approximately 280' channelward of the mean low water mark. The structure will be located on the northerly bank of the May River, approximately 4.1 miles above its mouth, at Brighton Beach, near Bluffton, Beaufort County, South Carolina. The facility will be for private, non-commercial, recreational use only.

The applicant will require assent from the State of South Carolina in the form of a permit from the South Carolina Budget and Control Board. Local governmental approval may also be required.

Preliminary review of this application indicates that an environmental impact statement will not be required.



SASOP-F 074 OYN 002354
PUBLIC NOTICE

Review of the latest published version of the National Register of Historic Places indicates that no registered properties listed as eligible for inclusion are located at the site of the proposed work.

Presently unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by the work to be accomplished under the requested permit.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which a decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision whether to issue a permit will be based on evaluation of the probable impact of proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are preservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use classification, navigation, recreation, water supply, water quality and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

Comments regarding this application should be submitted to the District Engineer, U.S. Army Engineer District, Savannah, Box 889, Savannah, GA 31402, in time to be received on or before JUL 15 1977

1 incl
Location map and drawings

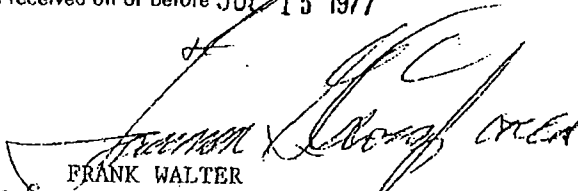

FRANK WALTER
Colonel, Corps of Engineers
District Engineer

EXHIBIT 27

State of South Carolina
Water Resources Commission



Clair P. Guess, Jr.
Executive Director

July 21, 1977

Lightsey Brothers
Miley, South Carolina 29933

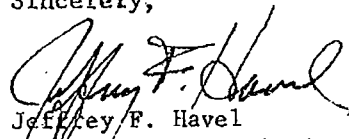
Dear Sirs:

With reference to your permit application (SASOP-F 074 OYN 002354) for a permit to construct a floating dock 16' x 10', two piling, and ramp 4' x 20' on the northerly bank of the May River, approximately 4.1 miles above its mouth, at Brighton Beach, near Bluffton, Beaufort County, South Carolina, dated June 28, 1977, the South Carolina Water Resources Commission is at this time prepared to recommend approval for the granting of a permit for the stated work.

For projects such as this, comments from various State agencies are requested to assist the Water Resources Commission in arriving at a recommendation which would be in the best interest of the State of South Carolina.

At this time no objectionable comments have been received, and as soon as you furnish the Water Resources Commission with proof that a description of the proposed work has been published in a local newspaper as requested in a letter which was sent to you the South Carolina Water Resources Commission will immediately recommend approval of this project.

Sincerely,


Jeffrey F. Havel
Environmental Biologist

JFH:sgt

EXHIBIT 28

DEALERS IN
GENERAL MERCHANDISE
GARAGE AND
AUTO ACCESSORIES



Miley, S.C. 29933
July 22, 1977

TELEPHONE: HAMPTON 943.3881

Mr. Eugene Cashmen
Cashmen Construction Company
105 East Bay Street
Savannah, Georgia

Dear Mr. ^{*Eugene*} Cashmen:

We received the enclosed letter in the mail today,
and since you are doing the work described therein, thought you
would be the one to comply with their request.

If we can help you further please contact us.

Very truly yours,

LIGHTSEY BROTHERS

Oswald
Oswald Lightsey

FCL/zmp
Letter attached.

EXHIBIT 30



CHUBB GROUP of Insurance Companies

100 William Street
New York, N.Y. 10038

3200 Wilshire Boulevard
Los Angeles, Calif. 90010

HOMEOWNERS POLICY INSURANCE CONTINUATION - PAGE 1

Issued **07/12/80** by The Stock Insurance Company Herein Called The Company
FEDERAL INSURANCE COMPANY

Policy Number
-39-65

INCORPORATED UNDER THE LAWS OF **NEW JERSEY**

Producer Number Sub-Agent Number

5-23812

Number, Street, Town, County, State, Zip		Policy Number		Standard Time at the residence premises To	
EUGENE CASHMAN		2:01 AM		08/24/80	
SAVANNAH		08/24/81		Old Policy Number	
GEORGIA		-39-65			

SECTION I				SECTION II	
A. Dwelling	B. Other Structures	C. Personal Property	D. Loss of Use	E. Personal Liability Each Occurrence	F. Medical Payments To Others-Each Person
\$88,500	\$8,850	\$44,250	\$17,700	\$100,000	\$1,000
Property Deductibles In case of a loss under Section I, we cover only that part of the loss over the deductible stated.				Policy number of other Chubb/Pacific Indemnity policy that provides Section II coverages, if any:	
ALL PERILS DEDUCTIBLE \$250					

SOUTH CAROLINA VERIFIED VALUE - \$88,500

Form Number	Edition Date	Identification	Limits of Liability (See limits shown above)	Premiums
H03	* 07/77	SPECIAL FORM		\$717.00
H0300	, 10/79	AMENDATORY ENDT		
H046	* 07/77	EXTENDED THEFT		\$3.00
02-02-55	* 04/76	CREDIT CARD	\$1,000	
02-02-71	* 01/77	INFLATION ENDT QUARTERLY INCREASE 1.25%		
02-01-01	, 09/78	YOUR HOME BROCHURE		

Sublimits (See reverse side for definitions)	Premium if paid in Installments	Payable at Inception	Payable at Each Installment	Sublimits (See reverse side for definitions)	Total
EXCEPTIONS: NONE	Homeowners			Homeowners	\$720.00
	Personal Articles			Personal Articles	
	Total			Total	\$720.00

AGENCY BILL PLAN: PREPAID

THIS IS A CONTINUABLE CONTRACT -- PLEASE ATTACH THIS TO THE ORIGINAL POLICY

Construction: FRAME	Premium Group: 017	Roof is: APPROVED	Year Dwelling Built: 1952
Protection: 7	Zone: 36	Within 3 miles from fire station, within 1000 feet from fire hydrant, in city, inland, number of families 1	

Producer Name and Address	Loan Number - If Applicable
JONES & HILL INSURANCE P O BOX 9966 SAVANNAH GA 31402	NONE

02-02-59 (Ed. 4-76)

SINAL

Cashman et al v. Wachovia et al
Plaintiffs' Response to Defendants' RTP

37 of 172 (25M) 03

**CHUBB GROUP
of Insurance Companies**100 William Street
New York, N.Y. 100383200 Wilshire Boulevard
Los Angeles, Calif. 90010**HOMEOWNERS POLICY**
INSURANCE CONTINUATION - PAGE 1Issued **07/12/80** by The Stock Insurance Company Herein Called The Company
FEDERAL INSURANCE COMPANYPolicy Number
-39-65INCORPORATED UNDER THE LAWS OF **NEW JERSEY**

Producer Number Sub-Agent Number

23812

Named Insured (Mailing Address) - Number, Street, Town, County, State, Zip		Policy Period 2:01 AM Standard Time at the residence premises To 08/24/81													
The residence premises covered by this policy is located at this address unless otherwise stated on page 2 EUGENE CASHMAN SAVANNAH GEORGIA		Policy History New Business ☐ Re-Write ☐ Re-Newal ☒ Old Policy Number -39-65													
Basis of Coverages and Limits of Liability		SECTION II													
SECTION I	<table border="1"><tr><td>A. Dwelling</td><td>B. Other Structures</td><td>C. Personal Property</td><td>D. Loss of Use</td></tr><tr><td>\$88,500</td><td>\$6,850</td><td>\$44,250</td><td>\$17,700</td></tr></table>	A. Dwelling	B. Other Structures	C. Personal Property	D. Loss of Use	\$88,500	\$6,850	\$44,250	\$17,700	<table border="1"><tr><td>E. Personal Liability Each Occurrence</td><td>F. Medical Payments To Others-Each Person</td></tr><tr><td>\$100,000</td><td>\$1,000</td></tr></table>		E. Personal Liability Each Occurrence	F. Medical Payments To Others-Each Person	\$100,000	\$1,000
A. Dwelling	B. Other Structures	C. Personal Property	D. Loss of Use												
\$88,500	\$6,850	\$44,250	\$17,700												
E. Personal Liability Each Occurrence	F. Medical Payments To Others-Each Person														
\$100,000	\$1,000														
Property Deductibles In case of a loss under Section I, we cover only that part of the loss over the deductible stated. ALL PERILS DEDUCTIBLE \$250		Policy number of other Chubb/Pacific Indemnity policy that provides Section II coverages, if any:													

SOUTH CAROLINA VERIFIED VALUE - \$88,500

Special State Provisions		Form Number		Edition Date	Identification	Limits of Liability (See limits shown above)	Premiums
EXCEPTIONS: NONE		H03		* 07/77	SPECIAL FORM		\$717.00
		H0300		* 10/79	AMENDATORY ENDT		
		H046		* 07/77	EXTENDED THEFT		\$3.00
		02-02-55		* 04/76	CREDIT CARD	\$1,000	
		02-02-71		* 01/77	INFLATION ENDT QUARTERLY INCREASE 1.25%		
		02-01-01		* 09/78	YOUR HOME BROCHURE		
Substitution (See reverse side for definitions)		Premium if paid in installments		Payable at inception	Payable at Each Installment	Premium	
Homeowners		Homeowners		Homeowners		\$720.00	
Personal Articles		Personal Articles		Personal Articles			
Total		Total		Total		\$720.00	

AGENCY BILL PLAN: PREPAID**THIS IS A CONTINUABLE CONTRACT -- PLEASE ATTACH THIS TO THE ORIGINAL POLICY**

Building Information		Construction: FRAME		Date: 07/10/80	
Protection: 7	Zone: 36	Premium Group: 017	Roof is: APPROVED	Year Dwelling Built: 1952	
WITHIN 3 MILES FROM FIRE STATION, WITHIN 1000 FEET FROM FIRE HYDRANT, IN CITY, INLAND, NUMBER OF FAMILIES 1					

Producer Name and Address		Plaintiff's Name and Address	
JONES & HILL INSURANCE P O BOX 9966 SAVANNAH GA 31402		Cashman et al v. Wachovia et al	

Plaintiffs' Response to Defendants' RTP

38 of 172



CHUBB GROUP of Insurance Companies

100 William Street
New York, N.Y. 10038

3200 Wilshire Boulevard 03 PAGE 2
Los Angeles, Calif. 90010
Producer Number
5-23812

HOMEOWNERS POLICY

Policy Number
-39-65

PREMISES LOCATION:
BRIGHTON BEACH ROAD-2 MI E OF
BLUFFTON BEAUFORT
SOUTH CAROLINA 29910



**SPECIAL
PROVISIONS**

HO-300
(Ed. 10-79)
South Carolina

GENERAL EXCLUSIONS

The following exclusion is added:

8. Windstorm or Hail

- a. structure, other than a building, including the supports and screens, with a rooflike covering of cloth, metal fiberglass or plastic, whether or not the structure is attached to a building;
- b. screens, including their supports, around a pool, patio or other areas;
- c. fences, property line and similar walls, including seawalls;
- d. greenhouse, hothouse, slathouse, trellis, pergola, cabana and outdoor equipment used to service the residence premises;
- e. structure, including the property in or on the structure, located in whole or in part in or over water.

SECTION I—CONDITIONS

2. Your Duties After Loss: Paragraphs d. and e. are deleted and the following substituted:

- d. as often as we reasonably require:
 - (1) exhibit the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies; and
 - (3) submit to examination under oath and subscribe the same.
- e. submit to us, within 60 days after we request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss;
 - (2) interest of the Insured and all others in the property involved and all encumbrances on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of the policy;
 - (5) specifications of any damaged building and detailed estimates for repair of the damage;
 - (6) an inventory of damaged personal property described in 2.c.;
 - (7) receipts for additional living expenses incurred and records supporting the fair rental value loss;
 - (8) evidence or affidavit supporting a claim under the Credit Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

10. Loss payment is deleted and the following substituted:

10. Loss Payment: We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

- a. reach agreement with you; or
- b. there is an entry of a final judgement; or
- c. there is a filing of an appraisal award with us.

The following paragraph is added:

15. Valuation Clause—With respect to the perils of fire and lightning, we agree that the limit of liability stated in Coverage A of the Declarations of this policy is the value of the building described. This valuation is established for insurance purposes only.

All other provisions of this policy apply.

EXHIBIT 32

PROPERTY ADDRESS

ZONING

USE

TAX CODE

SP-DISTS.

DATE PRINTED

CLASS

PCS

AREA

PARCEL NUMBER

KEY

LAND ADJUSTMENT		SP-DISTS.		DATE PRINTED		CLASS		PCS		AREA		PARCEL NUMBER		KEY	
RB 13/82		600		09/05/86		6116		11		6010		R600 039 000 0126 0000		507	
LIGHTSEY LOUISE CLELAND		MAP-		2-3A		S 1/2 LOT 4A									
COST		MARKET		INCOME		USE		APPRaised VALI		A		73,21		PARCEL SUMMAR	
LAND		1920		BLDGS		4790		O-IMPS		611		TOTAL		7324	
N CNST		5307		PRIOR YEAR VAL		LAND		1920		BLDGS		3405		TOTAL	
TOTAL		7325													

CARDS IN ACCO

01 OF 02

732

MARKET

INCOME

USE

APPRaised VALI

A

73,21

PARCEL SUMMAR

LAND

1920

BLDGS

4790

O-IMPS

611

TOTAL

7324

N CNST

5307

PRIOR YEAR VAL

LAND

1920

BLDGS

3405

TOTAL

7325

OFF RECORD	Type	DATE	FILE
03941272	SW	12/83	A
00000000		00/00	

Building Permit	Number	Date	Issued

Over Scale	Class	Comm. Units	Total Units	Base Rate	Adj. Rate	Year	Age	Normal	Over	Penalty	Scale	SP-DISTS.	Rep. Cost	Over	Rep. Cost	Shelter	Height	Assessment	Base Rate	Scale	SP-DISTS.	
RTE+ 005- 086 078				3.67	2.86	30	30	54	60	67	450	67	55157		36955	2.0						

Description		Rate	Square Feet	Per Sq. Foot	LIVING-AREA		1848 SINGLE-FAMILY		X--12--*--9--		N		*--12--*--8--		
BAS 100	25.74	924	23784		SP4 40		10.30		320		3296		15		
+2S 30	20.59	924	19025		SP4 40		10.30		320		3296		23		
SP4 40	10.30	208	2142		SP4 40		10.30		208		2142		*--9--*		
SP4 40	10.30	208	2142		SP4 8		10.30		208		2142		*--9--*		
Total Area		1056	924		SP4 8		10.30		208		2142		*--11--*		
BUILDING DIMENSIONS															
BAS 541	SP4	S10	E32	.1	BAS E32										
D20	+2S	E32	SP4	S10	W32	.1	+2S								
N26	W09	SP4	W03	N15	W03	S23	E11								
N08	..	+2S	S08	W11	N23	W12	S41								
..	BAS	N26	W09	SP4	W03	N15	W03								
S23	E11	N08	..	BAS	S08	W11	N23								
W12															

ELEMENTS	CODE	CONSTRUCTION DETAIL
CNST GP:00		
FOUNDATION	02	PIERS
EXT WALLS	06	WOOD FRAME LC
ROOF TYPE	02	HIP OR GABLE
ROOF COVER	02	ROLL COMPOSITI
FLOORS	04	CONC & ASPHALT
INTERIOR	30	PLYMD PREFIN W
ELECTRICAL	02	MINIMUM
PLUMBING	03	AVERAGE NO TIL
FRAMING	00	
APART EQUIV	00	
PARTITION	00	
SPECIAL USE	00	

PALMETTO BEACH - ALLJOY LANDING

LAND	19200	TOTAL	73246	MARKET
AREA	618		8785	
VARIANCE	+3305		+734	
STANDARD				

PROPERTY RECORD CARD - BEAUFORT COUNTY, SOUTH CAROLINA

EXHIBIT 33

DATE MAILED

JUL 28, 1988

REAL ESTATE ASSESSMENT NOTICE

BEAUFORT COUNTY ASSESSOR
POST OFFICE BOX 488
BEAUFORT, SOUTH CAROLINA 29902
PHONE (803-826-7288)

507507
R600 C39 000 0126 0000

ASSESSMENT RATIO

6 %

PCA 6116PCS 11

ACRES ON LOTS 4.00 VALUE
AGR. BLDGS. 2 VALUE
TOTAL

1987

19200

54050

73250

MARKET
VALUE

30080

77450

107450

1987

1152

3243

4395

ASSESSED
VALUE

1800

4647

6447

AGRICULTURE
USE VALUE

LIGHTSEY LOUISE CLELAND
X LIGHTSEY BROTHERS INC
NILEY SC 29933

LOTS 1-2-3A
S 1/2 LOT 4A

THIS IS NOT A TAX BILL - DO NOT PAY ANYTHING NOW.

YOUR PROPERTY HAS BEEN REVALUED FOR REASON OF

COUNTYWIDE REVALUATION AT FAIR MARKET VALUE AS OF JANUARY 1, 1988

IF YOU OBJECT TO THIS VALUATION YOU MUST SERVE WRITTEN NOTICE BY AUG 27, 1988 TO THE ASSESSOR.

507507

DIST. 600 MAP 39C PARCEL 126

PIER

HEADER

FLOAT

IMPROVEMENTS →

COMMENT

CLASS

A

A

A

SIZE

12x16

12x16

10 8x16 10 8x20

covered Header

CONDITION

Fair

Fair

Fair



R22#1.

2

242

EXHIBIT 34

**D
E
T
A
I
L**

[illegible]

ADJUSTMENTS

418

111

DETAIL

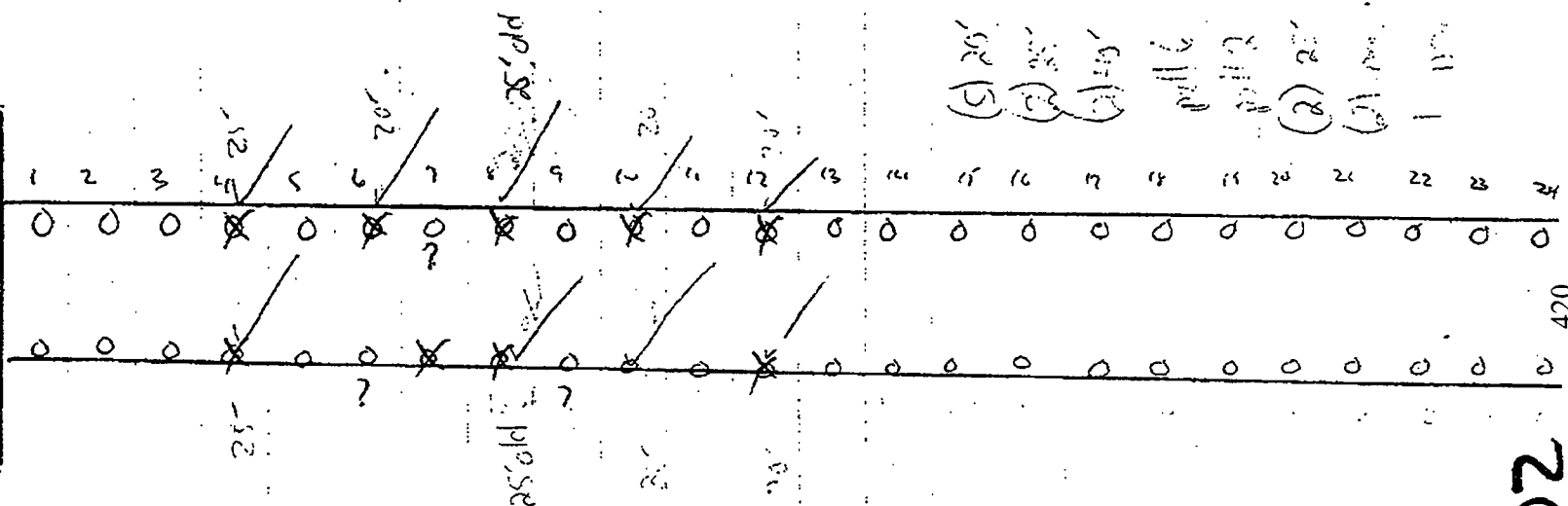
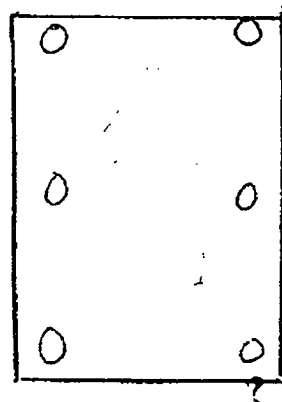
LAND		LAND-ADJ		INCOME		USE		SP-BLDGS		FEATURES		BLD-ADJS		UNITS	
600 600 05/06/94 6116 11 P011 600 039 000 0126 0000 RIGHTSEY LOUISE CLELAND 507507															
LOTS 1-2-3A S 1/2 LOT 4A MAP- CARDS IN ACCOUNT- 2 OF 2															
COST 107492 MARKET 107492 INCOME USE APPRAISED VALUE A 107492 PARCEL SUMMARY LAND 30000 BLDGS 71346 0-IMPS TOTAL 107492 N CNST 53077 PRIOR YR VALUE LAND 30000 BLDGS 71300 TOTAL 101300 39412726W 12/83 A															
BAS 100 504 AG4 45 504 CP6 60 63 LIVING-AREA 504 RESIDENTIAL CLASS E															
-7---24--* 9CP6BAS 1 1 2 1 *-7-1 2 1 1 1 1 X--24--* *--24--* AG4 1 2 1 1 2 1 1 1 1 1--24--*															
BAS E24 D20 AG4 E24 N21 .1 BAS N21 W24 CP6 W07 S09 .1 BAS S21 BRIGHTON BEACH AREA LAND 30000 PARCEL 107492 AREA VARIANCE 0 STANDARD 0															

PROPERTY RECORD CARD-BEAUFORT COUNTY, SOUTH CAROLINA

EXHIBIT 36

40'

40'



4102

(11)
(14)
(9)

Cashman -

Chapman -

Ansley

2 11

(4) 20' (10) 16' 43671

(2) 20' (10) 20' 200

(5) 20'
(2) 20'
(1) 20'
pull
pull
(2) 20' rebar
(2) 20' rebar
1 11' rebar

EXHIBIT 38

To the Cashman family:

¹⁹¹⁵
In 1965 the Cashman family, Mrs. Carter and the Lightseys gave me permission to use your dock. I used it until the early 1980's when my two sons grew up and no longer wanted to fish, crab and swim there. The Lightseys always said I was their custodian at the dock because we were there constanly. We never went there on the weekends however, that time was for the owners and their families.

Now I have an 11 year old grandson who just moved back here yesterday from Indiana. HE had been gone since he was 3. He loves to fish and crab and I wanted to just ask if I might take him on the dock a couple of times a month and let him fish. My boys and I always respected your family and left no trash, food or dead shrimp on the dock and I plan to continue to do so if you decide that I can take Joey there occasionally.

We would love to come down early in the morning/mornings and crab and just enjoy the quiet of fishing there where it is so beautiful.

I guess I am just asking your permission to again be able to use the dock once in a while. We will never be there when your family is there like weekends, holidays, etc. Please let me know and if you say no I can understand. Young Shelby used to come out and spend the time talking with me. He was about Joey's age then. Again if you say no, I will not feel bad about it.

Thanks, Dianne Reynolds

EXHIBIT 39

FEATL T004139SEP0904 >0409<

F E A T U R E

L I S T I N G

KEY: 7507 YR:2004

OWNER:LIGHTSEY LOUISE CLELAND

CT:R600 039 00C 0126 0000

LEGAL:LOTS 1-2-3A

OC:BL 31 OYSTER ST

S 1/2 LOT 4A

STRUC:> 0< AREA:P014

> < ADD FEATURE

FEATURE	CLASS	EFF	Q	CND	LC	WIDTH	LENGTH	UNITS	ADJ	PRICE	TOTAL	APPRAISD
> <RESPIER	G	1986				4.00	180.00	720.00	30		21960	5929
> <HEADER	G	1986				1.00	192.00	192.00	30		5856	1581
> <RESFLOAT	G	1986				1.00	288.00	288.00	33		9634	2601
> <GAZEBO	E	1986				1.00	192.00	192.00	21		4118	1853

1392

CONTINUE(X) :> <

TOTAL APPRAISED VALUE

FUNC:> < DATA:>

< SUB:>

< YEAR:>2004<

MESSAGE: * * * END OF LISTING * * *

>@<

09:20:55:55 INPUT REQUEST

0.00

Page 1

245

EXHIBIT 40

E. Oswald Lightsey Trusts and W. Norris Lightsey Estate
Jointly Owned Property Meeting - September 15, 2004

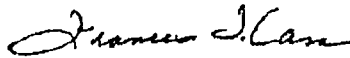
September 15, 2004
Page 2

There was agreement that the Lightseys would like to continue to allow the Cashmens to attach their floating dock, but it does need to be repaired and there needs to be discussion with them about not allowing others outside of their family to use the pier and dock. Billy Ware agreed to check on the cost of repairs to the dock. He also agreed to talk to Claudia Ware about what level of maintenance/improvement on the home she would be agreeable to considering. The other owners agreed that the house should be satisfactorily maintained and everyone wanted to know the extent and cost before approving any major improvements.

Randy Fisher distributed a letter from South Carolina Department of Transportation dated September 2, 2004 stating that US17 needs to be widened for safety reasons and solicited the support of the landowners along US17 in Beaufort and Colleton Counties. There was agreement that efforts need to be made to preserve the gate to Laurel Spring. Randy Fisher and Margaret Payne will coordinate efforts.

The meeting ended about 4:00 PM.

Respectfully submitted,



Frances T. Cass
Recording Secretary

000195

EXHIBIT 41

E. OSWALD LIGHTSEY TRUSTS AND W. NORRIS LIGHTSEY ESTATE
JOINTLY OWNED PROPERTY MEETING
OCTOBER 27, 2004

The E. Oswald Lightsey Trusts and W. Norris Lightsey Estate Jointly Owned Property meeting was held at 1:00 PM on October 27, 2004 in the 16th floor conference room of Wachovia Bank, N. A. at 1426 Main Street, Columbia, SC. Present were Lou and Pat Baughman, Lalla Lee Campsen, Lil and Charlie Drawdy, Charlie Drawdy, Jr., Melanie Glenn, Norris Laffitte, Tucker Laffitte, Jr., Tucker Laffitte, III, Beth McMaster, Margaret Payne, Billy Ware, Sanford Ware, John Swink, Randy Fisher and Fran Cass.

Margaret Payne requested that the minutes of the September 15, 2004 meeting reflect that the reference to Tucker Laffitte should be Tucker Laffitte, Jr. and that Tucker Laffitte, Jr. should be Tucker Laffitte, III. Also, it was noted that Cashmen should be Cashman. The minutes stand corrected on these two issues.

Norris Laffitte addressed several issues at Club House. The dog pens are currently being rebuilt. The fire alarm system is being replaced for a cost of \$990.51. The dining room wall is deteriorating and Norris Laffitte is trying to reach James Meadors to research the cause and have repairs made. Mr. Laffitte reported that the new government program beginning December 2005 for planting of long leaf pines should pay \$150 per acre which should cover seedlings, planting and one year spraying. The possibility of planting trees in the "90-acre field" on the Club House tract was discussed but it was decided to keep it as an agricultural field and have Ellis investigate planting Oak Point's "Long Field" for dove hunting next year.

Norris Laffitte reported activities at Oak Point. 4,000 quail were put out on October 14, 1,600 more to be put out on November 1 and more as time progresses. Mr. Laffitte reported that there has been no response from the family's letter offering to exchange property on the edge of Oak Point for the Griffin's property located within Oak Point.

Norris Laffitte stated a 130-acre Smithfield pine timber thinning contract has been signed with Elliott Sawmilling at the following prices: \$18.32 per cord pulpwood - outside mills; \$ 22.47 per cord pulpwood - Estill Mill and \$57.73 per cord chip and saw. The logging has not started and the loggers were asked to be respectful of the hunters.

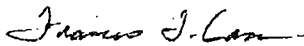
Margaret Payne reported that she along with Randy, Beth and Norris met with SCDOT and that SCDOT desires to widen Highway 17 to four lanes from Gardens Corner to Jacksonboro. She expressed the family's desire to preserve Laurel Spring entrance gate, have turn lanes at all Lightsey roads and no public park or viewing area. She also discussed SCDOT 's desire for an additional 100-foot buffer strip outside of the needed highway right-of-way.

Norris Laffitte reported activities at the Bluffton house. The floating dock and ramp have been repaired. The Cashman's floating dock ramp was hanging because their floating dock washed away and their ramp was removed to prevent possible damage to the pierhead. Billy Ware reported that he has not been able to get figures on the cost of upgrading the electrical and plumbing but should have those numbers soon. It was also reported that Direct TV has updated their boxes at the Clubhouse and the Board asked Charles H. Drawdy, Jr. to add the local channels to the Direct TV package when it becomes available.

The next meeting is scheduled for March 16, 2005 at 10:00 AM at Wachovia Bank, NA, 1426 Main Street, Columbia, SC.

There being no further business the meeting was adjourned.

Respectfully submitted



Frances T. Cass
Recording Secretary

EXHIBIT 42

WACHOVIA

**WEALTH MANAGEMENT REAL ESTATE SERVICES
INSPECTION FOR RESIDENTIAL PROPERTIES (1 - 4 UNITS)**

Account no. 0266
t no. 1672

Environmental Checklist

This form must be completed after an on-site inspection whenever Wachovia contemplates taking real estate as collateral, foreclosing on real estate, accepting a deed in lieu of foreclosure, accepting real estate or mortgages as trust assets, or whenever we lend to an industry on the suspect SIC list, regardless of whether real estate is a part of the collateral. Acknowledgment of the presence of a substance or property feature on the checklist may require further explanation. For example, if a facility has floor drains, explain where they are located, if any chemicals are stored or used nearby, and where the drains lead. This form is designed to raise "red flags" only. It is not a substitute for a Phase I environmental audit. A Phase I audit is recommended for most commercial transactions and should be obtained for all loan requests in which an industrial or manufacturing facility is to serve as collateral. A Phase I audit should nearly always be obtained prior to foreclosure or acceptance of a deed in lieu of foreclosure on any type of property (other than single family residences). Questions on environmental issues may be directed to an Environmental Risk Manager in the Risk Policy Division (704) 363-7746, NC-0866, Charlotte.

Purpose of Inspection:	Existing Asset / Collateral	Date: 11/23/2004
Inspector: Randy Fisher	Office: Midlands	Telephone: (803) 765 - 3110

ACCOUNT DATA

Account Name:	E. Oswald, Lightsey Estate, PR

PROPERTY DATA

Street: 50% Int. in River House & lot on Oyster St.				Plat Map Attached: Yes	
City: Bluffton		State: SC		Zip Code: 29910	
Contact Person:				Telephone: ()	
Improved / Unimproved Site		Improved		Type of Property: Single Family	
Other, please explain:					
Age of Improvements:		Condition of Improvements:			Insurance Reviewed?
Years: 50	Estimated	Exterior: Fair	Interior: Fair	Yes	
Comments:		This is older home with water front on the May River near Bluffton, SC. It is regarded as recreational home by the family.			

GENERAL

Neighborhood Trend:	Improving	Neighborhood Characteristics:	Residential Developments
Adjacent Property / Comments:	N/A		
This is residential neighborhood with some of homes on the May river.		City Water	
		City Sewer	

EXTERIOR INSPECTION OF PROPERTY (an on-site inspection revealed the condition of the following improvements)

	ADJACENT			SUBJECT		
	YES	NO	N/A	YES	NO	N/A
Discolored soil	☐	☒	☐	☐	☒	☐
Dumping / solid waste	☐	☒	☐	☐	☒	☐
Surface water bodies or wetlands	☒	☐	☐	☒	☐	☐
Storage tanks - Underground (look for vent pipes and fill ports) / Aboveground	(No Storage Tanks)			☐	☒	☐
Storage Drums				☐	☒	☐
Drinking water well / septic system				☐	☒	☐
Municipal water / sewer				☒	☐	☐
Driveway condition satisfactory				☒	☐	☐
Sidewalk condition satisfactory				☒	☐	☐
Trees / landscaping / flowers / shrubs adequate, weeded and pruned				☒	☐	☐
Lawn cut regularly				☒	☐	☐
Pool maintenance satisfactory				☐	☐	☒
Pool security adequate				☐	☐	☒
Lighting adequate				☒	☐	☐

000088

EXTERIOR INSPECTION OF PROPERTY (continued)

	SUBJECT		
	YES	NO	N/A
Exterior needs painting	☒	☐	☐
Roof needs replacing / repairs	☐	☒	☐
General appearance of the property is satisfactory	☒	☐	☐

INTERIOR INSPECTION OF PROPERTY (an Interior inspection revealed the condition of the following improvements)

	SUBJECT		
	YES	NO	N/A
Inspector has gained access to the property (if no, do not complete this section)	☐	☒	☐
Burglar / Fire Alarm system (monitored)	☐	☐	☐
Smoke Detectors	☐	☐	☐
Appliances need replacing	☐	☐	☐
Ceilings damaged	☐	☐	☐
Walls need repainting / resurfacing	☐	☐	☐
Floors / floor coverings damaged / need replacing or cleaning	☐	☐	☐
Electrical appears satisfactory	☐	☐	☐
Plumbing appears satisfactory	☐	☐	☐
Stairways appear structurally sound	☐	☐	☐

Comments:

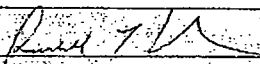
See comments above: Property is on the river and used for recreational purposes by the family. Needs more maintenance on house.

RECOMMENDATION (Check appropriate response)

- ☒ Based on known environmental factors and no evidence of environmental contamination being observed, no further action is recommended at this time.
- ☐ Based on known environmental factors and / or evidence of environmental contamination being observed, further investigation is recommended.

Remarks:

No environmental problems noted.

Inspected By: 	Title: Vice President	Date: 12-1-07
Reviewed By:	Title:	Date:
Reviewed By:	Title:	Date:

This checklist is for the confidential use of Wachovia Corporation and its subsidiaries and is for internal use only.

000089

PIC. RE OF SUBJECT PROPER,

000090



11/23/2004 2:12:12 PM



11/23/2004 2:10:07 PM

000091



11/23/2004 2:11:24 PM

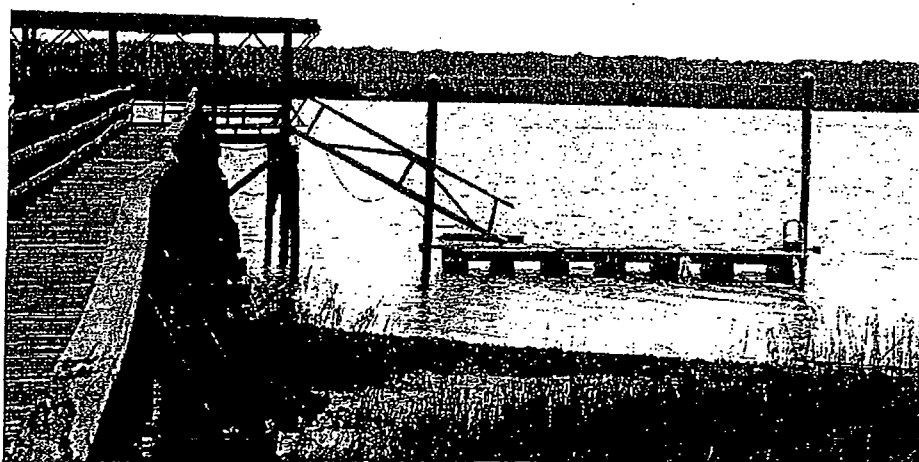


11/23/2004 2:11:22 PM

000092

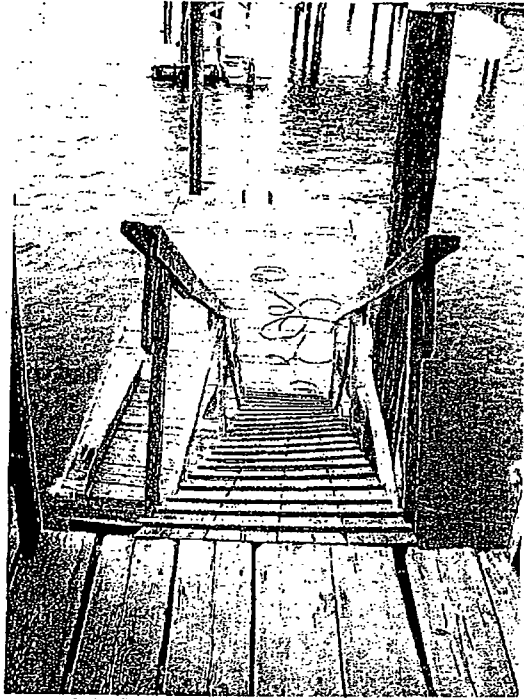


11/23/2004 2:13:15 PM

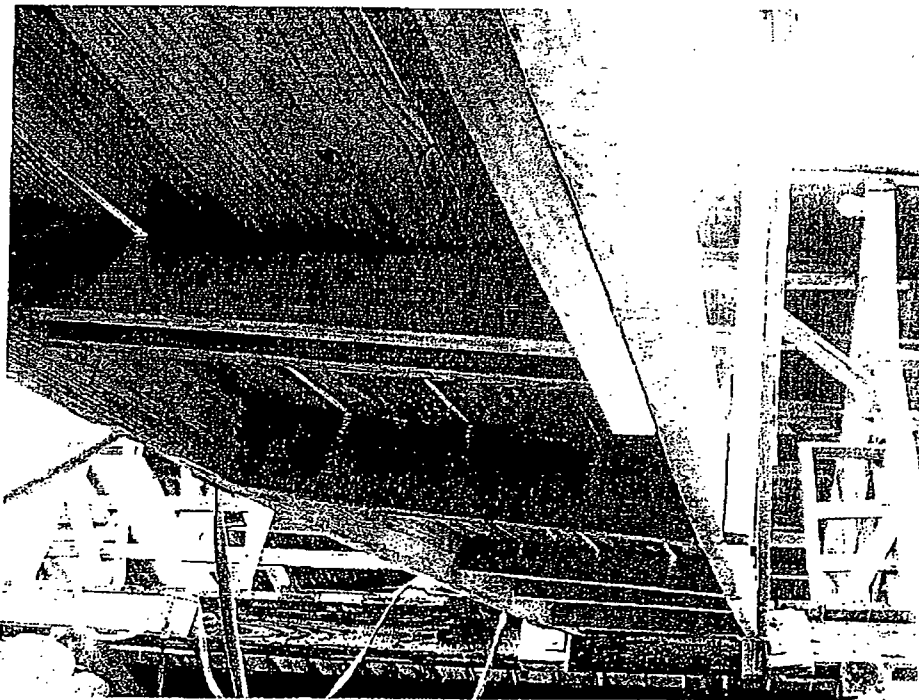


11/23/2004 2:13:15 PM

000093



11/23/2004 2:16:57 PM



11/23/2004 2:17:50 PM

000094



11/23/2004 2:18:12 PM

000095

EXHIBIT 43

After 5 days, return to:

Lightsey Brothers Inc.
P. O. Box 58
Hampton, SC 29924

0



Gene Cashman

Box 2321 *

Bluffton, SC 29910

2331040352 01

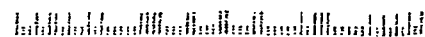


EXHIBIT 44

TENANT-IN-COMMON PROPERTY
MARCH 16, 2005

I. REVIEW OF THE LAST MEETING MINUTES

II. JOINT PROPERTY

A. Club House

1. Dining room wall and china hall wall deterioration -- when to do repair?
 2. Quote on removing two dead live oaks -- when to do it?
 3. Thinning completed
 4. Wood Brothers to repair small cornfield dike on island.
-

B. Oak Point

1. Ended up putting out 4,000 birds in Oct, 1,600 bird in Nov and 1,600 birds in Dec. Killed 1,367 through 2/24/05, which was nine trips around. Recommendations for next year?
2. Tom Davis's e-mail regarding the Griffin property -

C. Smithfield

1. Thinning completed

D. Bluffton

1. Gene Cashman called. He is interested in replacing his ramp and floating dock. He also mentioned replacing some cross bracing on the pier head. He asked for access through the locked gate and I mailed him a key. I have since asked him not to proceed until he gets the Lightsey families' direction. (Who owns it? Who pays for the repairs? Who is liable? How much value is taken away by allowing the Cashman's to use our dock? What are the benefits of allowing them to continue to use our dock?)
2. Plumbing and electrical work \$10,000 ~~2~~ \$10,000
3. To be cleaned up after leaf fall

III. OTHER BUSINESS

- A. Next meeting is scheduled for _____.

LIGHTSEY ESTATE JOINTLY OWNED PROPERTY MEETING

MARCH 16, 2005

The Tenants in Common Property meeting was held at 3:30 pm on Wednesday, March 16, 2005 in the 18th Floor Conference Room of Wachovia Bank, NA, 1426 Main Street, Columbia, SC. Present were: Lou and Pat Baughman, Lalla Lee Campsen, Lil and Charlie Drawdy, Charlie Drawdy, Jr., Melanie Glenn, Norris L. Laffitte, Tucker Laffitte, III, Tucker Laffitte, Jr., Thomas E. McCutchen, Beth McMaster, Hunt MacMillan, Margaret Payne, Billy Ware, Trip Welch, John Swink, Randy Fisher and Fran Cass.

The minutes of the meeting of October 27, 2004 were addressed and there were no corrections.

Norris Laffitte stated that the dining room wall and the china hall wall at Club House are deteriorating and need to be repaired. It was agreed that July would be a good month to repair. It was agreed that the removal of two dead live oaks will be removed from Club House next week. Mr. Laffitte reported that thinning has been completed and that Wood Brothers will repair the small corn field dyke on the island. Beth McMaster will have the rug that needs to be repaired reworked and purchase new sheets for the beds. Lou Baughman will remove the lamps from the bathroom to a safer location and have needed repairs made. She will locate other lamps to place in the bathroom.

Oak Point was discussed and it was reported that 4,000 birds were put out in October, 1,600 birds in November and 1,600 birds in December. Birds killed this past season were 1,367 through February 24, 2005, which was 9 trips around. Recommendations for next year were discussed and it was decided to put out all 7,200 birds in October.

Norris Laffitte reported that the Griffin property surrounded by the Lightsey property at Oak Point is being advertised on the market by owner as an attractive piece of property. The Griffins have rejected the Lightsey offer to exchange properties. The Griffins have expressed that they plan to sue for ingress/egress to their property. After much discussion, it was agreed that those interested in participating in a joint purchase of the property should contact Beth McMaster as her family is interested in purchasing and will be pleased to have other family members to participate. All agreed that it would be desirable to own the property within the Lightsey family rather than have outside ownership.

Norris Laffitte reported that the thinning at Smithfield had been completed.

Discussion moved to the Bluffton property and Norris Laffitte reported that Gene Cashman called and wanted access to the dock to replace his ramp and floating dock. He mentioned that he would replace some cross-bracing on the pier head. Mr. Laffitte mailed a key but then called him and asked him to hold off until he could discuss the matter with family members. After discussion, it was decided that the family wants exclusive use of their dock.

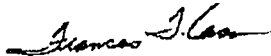
000200

Norris Laffitte will discuss with the attorney and then communicate the family's decision to Gene Cashman. There was discussion about the electrical and plumbing at Bluffton. Billy Ware reported that the plumbing and electrical need to be replaced. It was agreed that the electrical wiring should be upgraded at a cost of approximately \$10,000 and Billy Ware will oversee. Norris Laffitte reported that the yard will be cleaned after the leaves fall in the spring.

The next meeting is scheduled for September 14, 2005 at 10:00 am at Wachovia Bank, 1426 Main Street, Columbia, SC.

There being no further business, the meeting was adjourned.

Respectively submitted,



Frances T. Cass
Recording Secretary

EXHIBIT 45

NORRIS L. LAFFITTE
POST OFFICE BOX 81 HAMPTON, SOUTH CAROLINA 29924

March 21, 2005

Mr. Eugene K. Cashman, Jr.

Memphis, TN

RE: Bluffton dock

Dear Gene:

At the family meeting last week it was decided that the Lightsey family wants exclusive use of their dock.

Please return the key that I should not have mailed to you without permission from the family.

Sincerely,


Norris L. Laffitte

CC: Lou Baughman
Lil Drawdy
Claudia Ware
Margaret Payne
Beth McMaster

TELEPHONE 803-943-5757
FAX 803-943-5779

EXHIBIT 47

EUGENE K. CASHMAN, JR.
MEMPHIS, TENNESSEE

March 28, 2005

Dear Norris,

You were right, I was glad to be sitting down when I spoke with you Thursday and again Friday when I got the letter you had sent. As I said, I was taken aback by the action your family took regarding the dock, and even as I write this letter I am still in a state of disbelief. All my questions, that you were directed not to answer, are still not answered. There really has been a major disconnect if something of this order has been decided and communicated in this mode. This is obviously not the manner in which our families, for more than 75 years, have related to one another. For sure, if something has occurred that apologies are due, please accept my apology.

I know times change and people too. But from our families' relationship of sharing, fellowship, faith, trust, and handshakes to this, is, for sure, not what was intended by those who established and endeavored to pass on those virtues and beliefs to the succeeding generations. If that's been lost to a "new day" generation then we've lost more than what's being addressed in this letter.

I would respectfully like to ask your family to reconsider its decision. If there are issues to be resolved then let's resolve them. If a more formal agreement is needed to make the dock a business relationship then let's make it. I am willing to do whatever it takes to keep our families' friendship/relationship on smooth seas.

I am returning the key you sent without family permission. The envelope, as you can see, was never opened. Your call caused a stop to the completion of the dock repair to the main dock and floating dock. I had, as I told you, been in pursuit of a firm to repair the dock for more than 6 months and finally had secured the services of a company from Savannah. He was on site about to begin the work when I got your call.

On the matter of the lady you met on the dock - I've enclosed the letter she sent me this past summer. I called her and told her that if she had the Lightsey's permission to use the dock I had no objection. As you can see her relationship dates back to 1965. Her permission to use the dock would have been given by your grandfathers and mine.

I am not going to write more, although a lot is on my heart and mind. I would just ask for consideration by your family to reconsider their Bluffton dock decision.

Sincerely,


Eugene K. Cashman, Jr.

000189

EUGENE K. CASHMAN, JR.
MEMPHIS, TENNESSEE

March 28, 2005

Dear Norris,

You were right, I was glad to be sitting down when I spoke with you Thursday and again Friday when I got the letter you had sent. As I said, I was taken aback by the action your family took regarding the dock, and even as I write this letter I am still in a state of disbelief. All my questions, that you were directed not to answer, are still not answered. There really has been a major disconnect if something of this order has been decided and communicated in this mode. This is obviously not the manner in which our families, for more than 75 years, have related to one another. For sure, if something has occurred that apologies are due, please accept my apology.

I know times change and people too. But from our families' relationship of sharing, fellowship, faith, trust, and handshakes to this, is, for sure, not what was intended by those who established and endeavored to pass on those virtues and beliefs to the succeeding generations. If that's been lost to a "new day" generation then we've lost more than what's being addressed in this letter.

I would respectfully like to ask your family to reconsider its decision. If there are issues to be resolved then let's resolve them. If a more formal agreement is needed to make the dock a business relationship then let's make it. I am willing to do whatever it takes to keep our families' friendship/relationship on smooth seas.

I am returning the key you sent without family permission. The envelope, as you can see, was never opened. Your call caused a stop to the completion of the dock repair to the main dock and floating dock. I had, as I told you, been in pursuit of a firm to repair the dock for more than 6 months and finally had secured the services of a company from Savannah. He was on site about to begin the work when I got your call.

On the matter of the lady you met on the dock - I've enclosed the letter she sent me this past summer. I called her and told her that if she had the Lightsey's permission to use the dock I had no objection. As you can see her relationship dates back to 1965. Her permission to use the dock would have been given by your grandfathers and mine.

I am not going to write more, although a lot is on my heart and mind. I would just ask for consideration by your family to reconsider their Bluffton dock decision.

Sincerely,

Eugene K. Cashman, Jr.

EXHIBIT 52

VIEW 11/05/2007 11:00:00

REAL PROPERTY VIEW SCREEN

KEY: 7507 YEAR: 2007 OWNER: LIGHTSEY LOUISE CLELAND
ACCT: 4R600 039 000 0126 0000 WACHOVIA BANK N A ETAL
LOC: BL 31 OYSTER ST & TRUST REAL ESTATE DEPT
MAP: DIST: 600 PCA/PCS: 6116-11 1426 MAIN ST 16 FL
LE : LOTS 1-2-3A COLUMBIA SC 29226 0000
S 1/2 LOT 4A

VALUES:	ASSESSMENT	APPRAISAL	ACRES:	BUILDING INFO
LAND:	520000	520000	LOTS: 4.0	TYPE: RRS20WPH
BLDG:	123500	123500	BLDGS: 2	YRBLT: 1930 EFFYR: 1975
FEAT:	11960	12000	ACTIVITY: 2006/10/07	SQ-FT: 3975
MARKET:	655460	655500	LAST-SALE: 2005/09/07	EXEMPTS: APP
AG USE:			SALE-AMT: 1	"
INCOME:			DEED: DD V/I: I	SPASMT: SW 44.43
			BK/PG: 2234 - 494	"
TAXABLE:	655460	655500	RECORD-DTE: 2005/09/21	"
EXEMPT:			MORTGAGE: QUAL: E	"
ASSESSED:	39328		OWN %: 100	NET TAXES:
			ADJ#: DATE:	PAID-TAX:

FUNC: > < DATA : >

MESSAGE:

09:28:08:36 INPUT REQUEST

< SUB: > < YR: > 2007 <

> @ <

0.00 Page 1

2416

F E A T U R E L I S T I N G

KEY: 7507 YR:2007
 ACCT:R600 039 00C 0126 0000
 LOC:BL 31 OYSTER ST
 STRUC:> 0< AREA:P014

OWNER:LIGHTSEY LOUISE CLELAND
 LEGAL:LOTS 1-2-3A
 S 1/2 LOT 4A

> DD FEATURE

FEATURE	CLASS	EFF	Q	CND	LC	WIDTH	LENGTH	UNITS	ADJ	PRICE	TOTAL	APPRAISED
> <RESPIER	G	1986				4.00	180.00	720.00		30	21960	5929
> <HEADER	G	1986				1.00	192.00	192.00		30	5856	1581
> <RESFLOAT	G	1986				1.00	288.00	288.00		33	9634	2601
> <GAZEBO	E	1986				1.00	192.00	192.00		21	4118	1853

> <
 > <
 > <
 > <
 > <
 > <
 > <
 > <
 > <

CONTINUE(X):> <

TOTAL APPRAISED VALUE

FUNC:> < DATA:>

< SUB:> < YEAR:>2007<

MESSAGE: * * * END OF LISTING * * *

>@<

09:41:24:11 INPUT REQUEST

0.00 Page 1

247

EXHIBIT 54

THE LIGHTSEY TENANTS-IN-COMMON-PROPERTY MEETING

SEPTEMBER 12, 2007

The Lightsey Tenants-In-Common Property Meeting was held at 10:00 am, September 12, 2007 in the 18th floor conference room of Wachovia Bank, 1426 Main Street, Columbia, SC.

Present were: Lynn and Tim Asnip, Lou and Pat Baughman, Lee Baughman, Lalla Lee Campsen, Lil Drawdy, Charlie Drawdy, Jr., Oswald Drawdy, Melanie Glenn, Jan Hunter, Norris L. Laffitte, Tucker Laffitte, III, Tucker Laffitte, Jr., Beth McMaster, Hunt MacMillan, Margaret Payne, Keith Romano, Billy Ware, Randy Fisher, and Fran Cass. Wise Batten was present for his timber presentation only.

Wise Batten presented his timber outline of joint property and property owned by Lightsey Properties. After much discussion, it was agreed to conduct a shelter wood cut on tracts 19, 20, and 33 of the Club House property when the market is appropriate leaving good mass producing oak trees. It was also agreed to clear cut stands 37 and 38 when the market is appropriate leaving good mass producing oak trees.

Billy Ware presented the idea of purchasing a Promatic Huntsman (simulated wing shooting and water fowl hunting) skeet shoot at \$13,000 including a trailer. The skeet shoot would be controlled by Dennis for setup, storage, etc. It was agreed to make the purchase.

Lalla Lee Campsen recommended the purchase of new china to replace the cracked, chipped, and spotted china. It was agreed that 36 place settings in a creamy white would be purchased and a committee formed of Lynn Asnip, Lil Drawdy and Lalla Lee Campsen will make the selection and purchase.

There was discussion about adding an additional dishwasher at Club House. Norris Laffitte will review appliances and report back to the families.

The birds are to be put out the week of October 10 (4,000) and November 1 (3,200) at Oak Point.

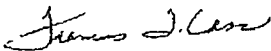
Lil Drawdy reported that she continues to be interested in purchasing the Bluffton property and is investigating dock usage going forward. Margaret Payne, Beth McMaster and Lou Baughman agreed that the personal property could pass with the house. Claudia Ware will need to be consulted. Lil said she could close at the end of November if the dock issue is resolved.

Norris Laffitte reported that the construction of the shop building at Miley is progressing smoothly.

The next meeting is scheduled for March 5, 2008 at 10:00 am at Wachovia Bank, 1426 Main Street, Columbia, SC.

There being no further business, the meeting was adjourned.

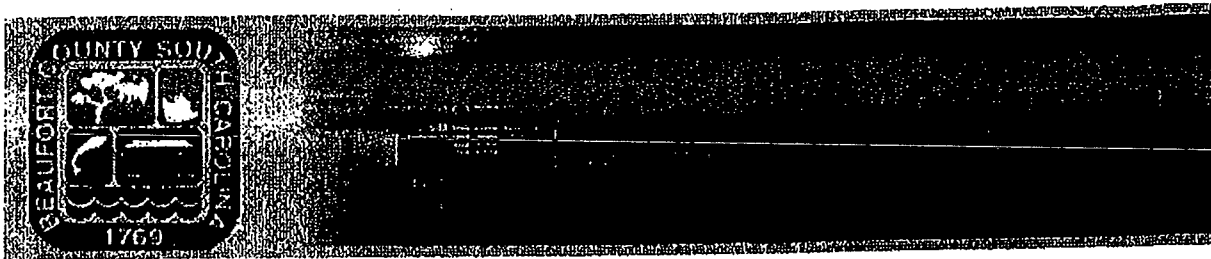
Respectfully submitted,



Frances T. Cass
Recording Secretary

000214

EXHIBIT 57



Overview

Property 1
1 of

Records

Overview

Bird's Eye View

Parcel

Land

Improvements

Sales Disclosure

Pay Taxes

Value History

GIS / Mapping

Property ID
(PIN)Alternate ID
(AIN)

Parcel Address

Da
ref
asR600 039 00C
0126 0000

00507507

31 OYSTER ST,

1/

Current Parcel Information

Owner	WNL PROPERTIES LLC	Property Class Code	ResImp SingleF
Owner Address	PO BOX 81 HAMPTON SC 29924	Acreage	.0000

Legal Description LOTS 1-2-3A S 1/2 LOT 4A

Historic Information

Search by

Property ID (PIN)

Street Address

Alternate ID (AIN)

Legal Description

Sales

Owner Name

Tax Year	Land	Building	Market	Taxes	
2010	\$459,000	\$225,927	\$684,927	\$6,733.90	\$
2009	\$459,000	\$225,927	\$684,927	\$6,607.24	\$
2008	\$416,000	\$110,000	\$526,000	\$6,526.11	\$
2007	\$416,000	\$110,000	\$526,000	\$6,252.28	\$
2006	\$416,000	\$110,000	\$526,000	\$5,687.35	\$
2005	\$416,000	\$110,000	\$526,000	\$5,292.85	\$
2004	\$416,000	\$110,000	\$526,000	\$5,133.80	\$
2003	\$63,000	\$71,360	\$134,360	\$1,817.71	\$
2002	\$63,000	\$71,360	\$134,360	\$1,751.60	\$
2001	\$63,000	\$71,360	\$134,360	\$1,640.33	\$

Functions

County Home →

Welcome

Real Property

Personal Property

Vehicle Tax

Shopping Cart

Help

Feedback

County Login

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	S
LIGHTSEY LOUISE CLELAND WACHOVIA BA	2923 752	12/16/2009	Fu		
LIGHTSEY LOUISE CLELAND WACHOVIA BA	2859 197	9/7/2005	Ad		
MACMILLAN PAYNE MARGARET L	2234 494	9/7/2005	Ex		
LIGHTSEY LOUISE CLELAND	1947 1026	4/29/2004	Ex		
LIGHTSEY LOUISE CLELAND	394 1272	12/1/1983	Fu		
		12/31/1776	Or		

248

Building	Type	Use Code Description	Improvements				Square Footage	Impr
			Constructed Year	Stories	Rooms			
R01	DWELL	Dwelling	1930	2.0	03		1,848	
R02	DWELL	Dwelling	1930	2.0	01		504	
R02	ATTGAR	Attached Garage	1930	0	0			
R02	PIER	Waterfront Pier	1986	0	0			
R02	GAZEBO	Residential Gazebo	1986	0	0			
R02	BOATD	Waterfront Boat Dock	1986	0	0			
R02	PIER	Waterfront Pier	1986	0	0			

Features & Exterior Features					
Building	Type	Feature Code	Description	No. / Sq.Ft.	
R01	DWELL	COOLING	None	1	
R01	DWELL	EXT. COVER	Hardboard	1	
R01	DWELL	FOUNDATION	Full Slab	1	
R01	DWELL	HEATING	Forced hot air	1	
R01	DWELL	OFF-S	Open Frame Porch	208	
R01	DWELL	OFF-S	Open Frame Porch	208	
R01	DWELL	OFF-S	Open Frame Porch	320	
R01	DWELL	OFF-S	Open Frame Porch	320	
R02	DWELL	COOLING	None	1	
R02	DWELL	EMP	Enclosed Masonry Porch	63	
R02	DWELL	EXT. COVER	Hardboard	1	
R02	DWELL	FOUNDATION	Full Slab	1	
R02	DWELL	HEATING	Forced hot air	1	

Beaufort County makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. is subject to change.

Print Print List First Previous Next Last

249

EXHIBIT 59



Terri Humpich
Vice President
901.684.3236 Phone
901.684.3260 Fax

November 23, 2009

Re: Eugene K. Cashman
Location Address: 35 Oyster Street
Bluffton, SC

To whom it may concern:

Mr. Eugene K. Cashman is currently insured with Chubb Insurance through our agency for his property location on 35 Oyster Street, Bluffton, South Carolina. Chubb Insurance has provided coverage for this property for more than twenty (20) years. The policy not only provides coverage for the dwelling located on this property but also for "other structures" including the dock structure as well as other "outside" buildings. Also included in the homeowner policy is personal liability coverage. Chubb Insurance also provides an excess liability policy for Mr. Cashman in which this location is included.

If you have any questions or need additional information, please feel free to call me.

Regards,

Terri Humpich
Vice President

6000 Poplar Avenue, Suite 300
Memphis, Tennessee 38119
(901) 684-3290
Fax (901) 684-3260