

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4603182**

Earl C Dukes	Kenneth W Farrell	Mary C Farrell
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

ORDER FOR PARTIAL SUMMARY JUDGMENT

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

S/S. Jackson Kimball
Special Circuit Court Judge

3063
Judge Code

4/3/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on April 4, 2014, and a copy mailed first class or placed in the appropriate attorney's box on April 4, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

J. Cameron Halford 238 Rockmont Drive 238 Rockmont
Drive Fort Mill, SC 29708. *(Hand Delivered)*

John Martin Foster PO Box 106 Rock Hill, SC 29731-6106

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES,]
Plaintiff,]

ORDER FOR

v.]

PARTIAL SUMMARY JUDGMENT

KENNETH W. FARRELL,]
MARY C. FARRELL, and]
MARTIN BOGDONOVITCH,]

Pursuant to:

Defendants.]

RULE 56(a), S.C.R.C.P.

MARTIN BOGDONOVITCH,]
Third-Party Plaintiff,]

v.]

MARSHALL A. REYNOLDS,]
CHRISTINA A. REYNOLDS,]
FISHER-SHERER, INC.,]
ROBERT P. MEDFORD,]
LUTZEL, BROADWAY &]
ASSOCIATES, PC, and]
TINA PATRICK-BROADWAY,]

Third-Party Defendants.]

Case No. 2011-CP-46-03183

FILED-RECEIVED
2014 APR -4 AM 11:48
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

The Defendants KENNETH W. FARRELL and MARY C. FARRELL ("FARRELL") move for Summary Judgment as to the Complaint and causes of actions of the Plaintiff in this action. The Motion was heard by me on March 13th and 14th, 2014. John Martin Foster appeared for the Movants, and J. Cameron Halford appeared for the Plaintiff.

Having heard the arguments of counsel and reviewed the records of this action, I make the following Findings of Fact and Conclusions of Law.

STANDARD OF REVIEW

The standard of review applicable to a Motion for Summary Judgment is as follows:

"Under Rule 56, SCRPC, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." *Id.*, [citing *Boyd v. BellSouth Tel. & Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006).]

"In determining whether any triable issues of fact exist for summary

judgment purposes, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id.*

[*Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 188-89, 717 S.E.2d 74, 77 (Ct.App. 2011); *paragraphing added.*]

DISCUSSION

In this instance, it is undisputed that the FARRELLS are the owners of the real property and improvements located at 1631 Fieldbrook Drive in York County, having received title under the deed of Robert J. Edwards into them dated August 12, 2005, and recorded August 16, 2005 in Record Book 7331, Page 102 in the Office of the Clerk of Court for York County.

As owners under the referenced deed, the FARRELLS are successors in title under a deed of A. F. Fewell and Edward Fewell, Jr. to W. A. Bigham, dated March 2, 1965, and recorded the same date in Deed Book 334 at Page 414 in the Office of the Clerk of Court for York County. The deed from the Fewells to Bigham provides, in relevant part:

It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

Plaintiff is the owner of the real property identified by Tax Map No. 547-00-00-057. The tract is configured so that there is some thirty feet of Plaintiff's property between the boundary of the FARRELL'S property, and the waters of Lake Wylie. Plaintiff's tract also extends so that a portion of it lies beneath the waters of Lake Wylie, as shown by the Plat of Fisher-Sherer dated May 15, 2001, and the FARRELL'S pier and dock are situated on the water above Plaintiff's property. It is undisputed that Plaintiff is also a successor in title from the Fewells.

As successors in interest under the deed containing the above-quoted language, I find and conclude that the FARRELLS are the owners of an easement appurtenant to the property owned by them, which allows them to pass freely over the strip of land belonging to Plaintiff.

As owners of the easement, the FARRELLS are entitled to the rights and privileges granted in the easement set out in the deed of the Fewells, namely, access to Lake Wylie. The FARRELLS are therefore entitled to summary judgment on this issue, and the same is granted.

Because I find and conclude that there is an express easement, it is not necessary to rule on the FARRELL'S claim of an easement by prescription. However, if it is determined that there is not an express easement appurtenant, I find and conclude in the alternative that the FARRELLS have established the necessary elements to find and conclude that they have

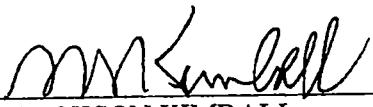
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acquired an easement by prescription over Plaintiff's property for access to the waters of Lake Wylie. They are therefore entitled to summary judgment as that issue in so far as it relates to access to Lake Wylie, and the same is granted in the alternative.

The FARRELLS also argue that they are entitled to summary judgment as to their Third, Alternative Defense and Counterclaim, which deals more specifically with the existing dock and pier, which is located upon the property of Plaintiff. As to this issue, I find and conclude that there are genuine issues of fact for trial concerning the extent and usage of the FARRELL'S easement. For this reason, summary judgment as to the Third, Alternative Defense and Counterclaim is denied.

ALL OF WHICH IS SO ORDERED.

April 3, 2014


S. JACKSON KIMBALL
Special Circuit Court Judge
York County

1/3