FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

FILED

CASE NO. 2010 CP-32-0460

COPY

David R. Gooldy

2013 AUG -1 PM 4:24

The Storage Center-Platt Springs, LLC

PLAINTIFF(S)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

DEFENDANT(S)

Submitted by: James Randall Davis

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ 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

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)
David R. Gooldy	The Storage Center - Platt Springs, LLC	$10,000.00
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
Court Order establishes a non-exclusive easement for access for ingress and egress running from SC Highway No. 6 over a specific portion of Defendant's property having TMS#007600-03-234 for the benefit of Plaintiff's property which has TMS#007600-03-111. The deed derivation for the Plaintiff's property is Deed Book 6952 at Page 175 and the deed derivation for the Defendant's property is Deed Book 12365 at Page 277.

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.**

James O. Spence — 3068 — 7-31-13

~~Circuit~~ Court Judge — Judge Code — Date 7-31-13

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

James Randall Davis, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert E. Stepp, Esquire
Bess J. DuRant, Esquire

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Wanda K. Cecil

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 LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 10-CP-32-0460

David R. Gooldy,

Plaintiff,

-vs-

The Storage Center – Platt Springs, LLC,

Defendant.

ORDER

This easement dispute case was tried October 25, 2012 pursuant to April 23, 2010 Order of Reference signed by The Honorable William P. Keesley. James Randall Davis, Esquire represented Plaintiff. Robert E. Stepp, Esquire and Bess R. DuRant, Esquire represented Defendant. Plaintiff filed the action February 1, 2010 as a non-jury case seeking a declaratory judgment and injunction regarding certain easement rights of the Plaintiff in property owned by the Defendant and damages for negligence and/or intentional acts denying certain property rights of the Plaintiff. (Defendant purchased its property subsequent to the purchase by the Plaintiff of his property. Both Defendant's and Plaintiff's property came from a common grantor) Defendant's Answer and Counterclaim contained a general denial and certain defenses including laches, unclean hands, waiver, estoppel, contributory negligence, punitive damages limitation and counterclaim for encroaching and trespassing on the property of the Defendant.

An Order denying Plaintiff's Preliminary Injunction to stop Defendant from barricading the access was filed April 23, 2010. This trial occurred after discovery and mediation pursuant to Scheduling Order.

The various witnesses testified and exhibits were introduced into evidence. The court denied both Plaintiff's and Defendant's Motions for Non-suit and Directed Verdict. The court

makes the following findings of fact and conclusions of law based upon all the evidence, the credibility of the witnesses, and the applicable burden(s) of proof.

FACTS

January 24, 2002 Plaintiff purchased the subject property, with improvements thereon, located on S.C. Highway 6 in Lexington County. Plaintiff has used the property for his chiropractic practice. (Trial Tr. (Gooldy) 19:5-6, 10-13). The legal description for the Plaintiff's property read as follows (Trial Tr. (Gooldy) 21:1-2 and Exhibit 1):

> All those certain piece, parcel of lot of land, with all improvements thereon, situate, lying and being on the western side of S.C. Highway No. 6. approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 212G at page 204. The within described property contains 0.68 acre more or less.

A copy of the plat referenced in said deed is attached hereto as Exhibit "A".

The deed to the Plaintiff's property referenced a plat which showed a fifty (50') foot road abutting Plaintiff's property on the southern side and on the east by S.C. Highway 6. (Trial Tr. (Gooldy) 25:14-15). The seller's representative told Plaintiff at the time of purchase that this fifty (50') foot road was the access from S.C. Highway 6 to the purchaser's property. (Trial Tr. (Gooldy) 30:1-10). Plaintiff used this road as his only access to his property until the barricading of the access by the Defendant in July 2009. (Trial Tr. (Gooldy) 30:19-20). Plaintiff described the fifty (50') foot road area as having an asphalt apron coming off S.C. Highway 6 covering a culvert, followed by a gravel area on the fifty (50') foot road area, which was flat and had been maintained and went to the back of the Plaintiff's property. (Trial Tr. (Gooldy) 23:22-25; 24:1-

3) There was a small hedge of trees lying between the fifty (50') foot road area and an adjoining subdivision by the name of Westchester Estates. Trial Tr. (Gooldy) 27:14-18).

On September 27, 2007, Defendant purchased the abutting property (7.35 acres) to the Plaintiff's property (Defendant's property bordered the Plaintiff's property on the northern, western and southern sides. Both properties bordered S.C. Highway 6. Defendant's property wrapped like a horseshoe around three sides of the Plaintiff's property.). (Trial Exhibit Plat and Deed Exhibit).

Plaintiff's and Defendant's properties both have a common grantor, Congaree Associates, a South Carolina Limited Partnership (hereinafter referred to as "Congaree"). (Trial Exhibit Plaintiff's 11). Plaintiff's property was subdivided from a larger tract owned by Congaree. (Trial Tr. (Trial Exhibit 1 (See Derivation)). Congaree first conveyed the Plaintiff's property to James T. Loflin by deed dated September 15, 1986, and recorded in the Register of Deeds Office for Lexington County on September 23, 1986 in Book 837 at Page 36. (Trial Exhibit Defendant's Exhibit D) The legal description in the Loflin deed contains the identical description as the Plaintiff's deed's legal description, as does each deed in the chain-of-title to the Plaintiff's property - - all of the deeds in the chain-of-title reference the same plat referenced in Plaintiff's deed. (Trial Exhibit 11).

The Plaintiff's deed is in the chain-of-title of the Defendant's property. (Trial Exhibit Plaintiff's 11) After Defendant purchased the 7.35 acres tract, Defendant's representatives notified the Plaintiff of their belief that the Plaintiff did not have the right to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Plaintiff's deed, which the Plaintiff disputed. (Trial Tr. (Gooldy) 33:11-25).

After an attempted resolution of the access issue by the parties, Defendant installed two metal posts in the fifty (50') foot road connected by a wire cable with "No Trespassing" signs attached to the wire cable blocking Plaintiff's access over the fifty (50') foot road from S.C. Highway 6. (Trial Tr. (Gooldy) 41:1-12). After Defendant blocked his access, Plaintiff created a "makeshift" entrance on the northern side of his property, buying material and equipment, and doing the work himself to establish the alternate access for his patients. (Trial Tr. (Gooldy) 41:23-25; 49:1-19). Thereafter, this litigation ensued.

Easement Dispute

It is important to understand the time line or title chain of both properties. Carroll McGee, general partner of Congaree Associates, a South Carolina Limited Partnership, testified that he was an experienced real estate broker for a period of 50 years. (Trial Tr. (Gooldy) 120:16-18). Congaree had been formed by the McGee organization in the early 1980's. Congaree purchased the 500 acre tract of land that contained the Plaintiff and Defendant's properties and fifty (50') foot road in dispute. (Trial Tr. (Gooldy) 121:13-16; 122:1-12)

August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. This property is immediately adjacent to the fifty (50') foot road which borders the Plaintiff's property on the southern side. (Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat. (Trial Exhibit Defendant's Exhibit J).

January 27, 1984, Westchester Phase II, prepared for Congaree, which is a second portion of Westchester Subdivision and borders Phase I, shows the disputed fifty (50') foot road on the plat for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval. (Trial Exhibit

Defendant's Exhibit GG) The fifty (50') foot road abuts both Lot 13 of Westchester Phase I and what later becomes Plaintiff/predecessor's property. (Trial Exhibit Defendant's Exhibit J)

July 15, 1985, Mike Chris, Lexington County Planning Commission, sends a letter giving provisional County approval for the proposed platted Phase II of Westchester Subdivision prepared by Collingwood. The letter contained the standard county requirements for private road subdivisions. (Trial Exhibit Defendant's Exhibit KK).

December 10, 1985, Collingwood prepared a plat for conveyance to James T. Loflin (Plaintiff's predecessor-in-title), who was a McGee employee/agent, for the purpose of living on the corner lot, (Plaintiff's property) next to the fifty (50') foot road entrance to proposed subdivision in a model log cabin home. (Trial Exhibit Plaintiff's Exhibit 2).

April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field. (Trial Exhibit Plaintiff's Exhibit 2).

August 12, 1986, Collingwood again revises said plat to indicate a twenty (20') foot strip along the northern boundary of the lot. (Trial Exhibit Plaintiff's Exhibit 2).

September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the lot to Loflin, his employee agent, by deed prepared by the surveyor Collingwood. (Trial Exhibit Plaintiff's Exhibit 11).

McGee testifies he never discussed the road with Loflin or anyone else. (Trial Tr. (McGee) 125:14-18). McGee testified he never intended to build Phase II road shown on proposed plat given conditional approval by the Planning Commission because it costs too much. (Trial Tr. (McGee) 125:14-18). McGee also testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Mr. Loflin. (Trial Tr. (McGee) 152:21-25) McGee admits that Collingwood who prepared the plat for Westchester Phase II would have

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known when he prepared the plat for the Plaintiff's predecessor-in-title (Loflin) about the fifty (50') foot road area on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat. (Trial Tr. (McGee) 152:1-11). McGee admits Collingwood had something to go by to show the road area on the Loflin plat, that being the proposed, conditionally approved, road on the Westchester Phase II plat. (Trial Tr. (McGee) 152:1-11).

McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree. (Trial Tr. (McGee) 152:21-25). McGee confirms there was no affirmative action by anyone on behalf of Congaree that gave any information to the Plaintiff to not use that area that he had been using since the purchase of the property for his access. (Trial Tr. (McGee) 157:13-15).

Defendant's expert witness surveyors testified that there were surveys done by Surveyor Collingwood in the same area as the existing property which did not show the road in question. (Trial Tr. (Meeler) 166 -167). The same expert witness surveyors found no road name for the road in question and no evidence it had been dedicated to the County of Lexington or the State of South Carolina. (Trial Tr. (Meeler) 165:13-22).

Defendant's representative Puckett testified that the Defendant company had unfettered control over the property in question and that it barricaded the road for liability and legal reasons. (Trial Tr. (Puckett) 257:10-14; 260:20-25).

Damage Claim

Plaintiff seeks reimbursement for monies spent on constructing the "makeshift" entrance, as well as lost profits from patients not using his practice because of the barricading of his access road. Plaintiff testified he had a $90,000.00 loss profit caused by the barricading of

the fifty (50') foot access by the Defendant. (Trial Tr. (Gooldy) 55:1-4). The Plaintiff estimated his net loss to be fifty (50%) percent of said loss profit when he calculated his normal overhead for his professional practice. (Trial Tr. (Gooldy) 107:16-20). Plaintiff based his calculations on the number of patient days that he lost multiplied by Eighty-five and no/100 ($85.00) Dollars per visit for the average figure he received from a patient's visit for the period of time from July 2009 through May 2011. (Trial Exhibit Plaintiff's Exhibit 8). No patients testified on behalf of the Plaintiff about no longer using the Plaintiff's services after the barricading of the road by the Defendant. No expert testimony or market study was presented by the Plaintiff on the issue of the loss profits.

Plaintiff also seeks punitive damages.

LEGAL ANALYSIS

There are two legal issues in this matter: (1) Does Plaintiff have easement rights in the fifty (50') foot road which abuts the southern side of his property and (2) Is the Plaintiff entitled to actual and/or punitive damages allegedly suffered because Defendant intentionally barricaded Plaintiff's access?

EASEMENT ANALYSIS

Plaintiff argues that Subdivision Law/Plat, Deed and Public Record Law dictate that he has an easement since the plat showing the easement was incorporated into the deed executed by the parties' common grantor, Congaree. Defendant counters that the Subdivision Law as to this plat does not apply to this situation, argues the easement is too indefinite/vague, claims the grantor Congaree never intended to convey the easement, and finally, that the deed/plat was a mistake by the surveyor who placed the fifty (50') foot road designation on the plat that was referenced in the Plaintiff's deed.

Basic deed law states that if a deed describes land by referencing a plat, the plat becomes part of the deed. When streets, alleyways, parks or other open areas are displayed on plats in conjunction with sale of property, an easement is created in favor of the grantee. *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). Therefore, if an easement is recorded in a deed through a plat, it becomes part of the deed and is part of the chain-of-title. This rule was recognized and applied in *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950), as well as numerous other decisions of the Supreme Court and the Court and the Court of Appeals[1]. These cases hold that such an easement inures to the benefit of the grantee and his successors in title. The existence of the easement will be implied by law, unless it appears that the grantor specifically intended otherwise. See also 28 C.J.S. *Easements* §§ 39 and 40 (1941).

The Court also notes that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of intent to exclude the road on the face of the deed or plat. *Rushing v. Sellers*, 81 S.E.2d 281 (1954).

As described in this Order, the Plaintiff's legal description unambiguously and clearly described the conveyed property by referencing a plat which shows the property bordered on the southern side by a fifty (50') foot road. Plaintiff's deed conforms to the requirements of this rule of law cited here above.

While the Court finds that Plaintiff has an easement for access for ingress and egress over the fifty (50') foot road which borders on the southern side of Plaintiff's lot, Plaintiff must still establish that he has a good title for the easement. The way to determine good title is to establish

[1] Immanuel Baptist Church v. Barnes, 274 S.C. 125, 264 S.E.2d 142 (1980); Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975); Briarcliffe Acres v. Briarcliffe Realty Co., 262 S.V. 599, 206 S.E.2d 886 (1974); Epps v. Freeman, 261 S.C. 375, 200 S.E.2d 235 (1973); Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965); Corbin v. Cherokee Realty Co., 229 S.C. 16, 91 S.E.2d 542 (1956); Newton v. Batson, 223 S.C. 545, 77 S.E.2d 212 (1953); Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952); Billings v. McDaniel, 217 S.C. 261, 60 S.E.2d 592 (1950); Walker v. Guignard, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987).

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the chain-of-title for Plaintiff's and Defendant's properties. One way to establish chain-of-title is to track the title back to a common source. *Haithcock v. Haithcock*, 123 S.C. 61, 115 S.E. 727, 729 (1923).

If one party has shown good title through a proper chain-of-title, the burden is on the other party to disprove good title. *Lynch v. Lynch*, 236 S.C. 612, 619, 115 S.E.2d 301, 304 (1960).

The Court finds that Plaintiff's title change is superior to Defendant's title since Plaintiff's predecessor-in-title, Loflin, was conveyed the subject property in 1986 with his legal description referencing the plat showing the fifty (50') foot road, prior in time to Defendant's 2007 deed. Since the Loflin conveyance was in 1986, the easement created at that time would take priority over any subsequent conveyance of the same property to the Defendant.

Congaree was the common grantor of both Plaintiff and Defendant. The legal description is consistent in the chain of title. As shown by Plaintiff's Exhibit "11", each deed in the Plaintiff's chain-of-title utilized the same legal description referencing the same plat, including the deed into the Plaintiff. Defendant's source of title was in common with the Plaintiff's since it received its deed to the property in 2006 conveying 7.35 acres from the same grantor, Congaree. Since both parties had the same chain-of-title, obviously, Plaintiff's title would be superior to Defendant's in regards to the easement since Defendant should have discovered the deed from Congaree to Loflin. "Property owners are charged with constructive notice of instruments recorded in their chain of title," *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). Not only was the Defendant on constructive notice of the deed and plat of the Plaintiff and his predecessors-in-title which referenced the plat showing the fifty (50') foot road, but Defendant, prior to purchase,

obtained a survey which referenced on the face of its survey, the book and page number of the deed which would have referenced the plat. Based on the above facts, the Court finds that the Plaintiff has superior title to the easement area and the Defendant was on actual and constructive notice of the Plaintiff's easement.

Defendant's reliance upon *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209, to support that the fifty (50') foot road shown on the Plaintiff's plat was not in the chain-of-title of the Defendant's property is not persuasive since it is not the same legal principle argued. *Lancaster* holds that the easement shown on plat incorporated in a deed has no effect in the limited situation where a claimant is bringing an action for breach of a covenant of general warranty.

Defendant also argues that local county subdivision definitions, in effect, trump South Carolina case law. Defendants contend that standard subdivision plat incorporation law only applies to typical "big" subdivisions of properties where they have created many lots with restrictive covenants. Defendant improperly narrows the definition of "subdivision" in the line of cases dealing with Plaintiff's legal principle. A"subdivision" includes dividing a tract of land such as Congaree's 500 acres into two or more pieces, with the Loflin/Plaintiff's property being the second piece of the smaller subdivision. Black's Law Dictionary defines subdivision as "dividing a tract of land into smaller parcels". In this matter, Congaree subdivided its large tract and created a second smaller parcel. This is a subdivision. As part of that subdivision, a road area was described on the plat into Loflin (now Plaintiff's property) as a road. Furthermore, the case law is clear that Plaintiff's relied upon principle includes cases wherein the grantor conveys land abutting a street (not necessarily a subdivision), and the grantee is entitled to the use of the street which borders its property and the grantor of the deed is stopped from denying the street's

existence. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990); *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950).

Defendant further argues that the fifty (50') foot road area referred to on Plaintiff's plat was an error because it was not named nor was it part of the State of South Carolina, County of Lexington road system. In the case of *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452, the Court states the grantee receives a private easement at the time of conveyance in any streets referenced in the plat. *Carolina Land,* 265 S.C. at 105–106, 217 S.E.2d at 19; *Blue Ridge,* 247 S.C. at 119, 145 S.E.2d at 925; *Giles,* 304 S.C. at 73, 403 S.E.2d at 132.; *see Newington Plantation,* 318 S.C. at 365, 458 S.E.2d at 38 ("While dedication for public use is significant to the creation of a public easement, it is irrelevant to the determination whether a private easement exists."). " '[W]here lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance.' " *Vick v. S.C. Dep't of Transp.*, 347 S.C. 470, 478, 556 S.E.2d 693, 697 (Ct.App.2001) (quoting *Outlaw,* 222 S.C. at 31, 71 S.E.2d at 512). "Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use." *Newington Plantation,* 318 S.C. at 365, 458 S.E.2d at 38.

The fact that the road has not been dedicated, expressly or impliedly, to a governmental entity is irrelevant as to whether a private easement exists in the subject road which is what the Plaintiff is claiming in his action. The Court notes that the case of *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528, where case indicates that as between an owner who conveyed a lot,

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according to a plat, and the grantee, dedication is complete upon conveyance even though the street is not accepted by public authorities. The rights in the road after the conveyance of the grantee were created even though the street had never been used as a road and had been listed as an unopened road area.

Defendant also argues that the road is not a road because its description is too vague or undefined. This argument is not persuasive. First, it is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures given definite dimensions of the easement. 28 A C.J.S. *Easements* § 54 (1996). Second, Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

Finally, the court notes that a proper examination of the public records reveals that the road is defined to a great degree of certainty. The common grantor, Congaree, had already recorded the Westchester Phase I plat. The fifty (50') foot road shown on the Loflin/Plaintiff plat is located to the north of Phase I, Lot 13 of Westchester Subdivision. This lot of two hundred fifty (250') feet (the identical boundary footage length), of the Plaintiff's property on the southern side. The same surveyor, Collingwood, placed the pins in the ground along the road in question for both lots (Lot 13 of Phase I of Westchester Subdivision and the Loflin/Plaintiff's lot) so that the fifty (50') foot road is bounded by both lots. The eastern side of the fifty (50') foot road in question is bounded by S.C. Highway 6. The Loflin/Plaintiff's plat indicates a dotted line running west which gives indication that the road is question is to continue. These facts give the Court sufficient definiteness to establish the boundaries of the road in question; and therefore, does not find the road description vague or undefined.

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The evidence does not support defendant's argument that Congaree had no intention to convey an easement to Plaintiff's predecessor-in-title Loflin. The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement. 25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62; also *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

However, on the issue of intent of the parties in creating an easement, the Courts have, over time, developed certain presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets. This Court has recognized this presumption includes conveyance of properties referencing a road bordering the conveyed parcel. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990).

The recording of the plat expresses an intent to dedicate the road area for the use by the grantee in said conveyance. The Defendant must overcome this presumption. Furthermore, the *Murrells Inlet* case indicates the deed and the recorded plat can be controlling, notwithstanding an "intent analysis". This Court finds that the deed in question is clear as to the grantor's intent and contains no specific objective evidence of expressing any intent except referencing the plat described in the deed which shows the property bounded by the fifty (50') foot road on the southern side and creating an easement.

Even looking beyond the four corners of the deed as to intent, this intent is to dedicate the road in question for use by the grantee is based on the evidence that: (a) the grantor of the deed, Congaree, owned the road area in question at the time of the conveyance,(b) reviewed the deed in question prior to the execution, (c) the surveyor who prepared the plat was the surveyor

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who had done previous work for Congaree, knew the history on the road, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II, (d) that surveying standards required Collingwood to show the road on the plat when he had specific knowledge of the road history, (e) that Congaree was deeding the Loflin/Plaintiff lot to an employee/agent who was building a log cabin model home adjacent to the fifty (50') foot road in question (f), that it was clear as of the date of the Chris letter from the County of Lexington in 1985 showed that the proposed road area was still a viable road ,(g) and there is no specific objective evidence that Congaree intended to terminate the easement area after the Chris letter.

Although McGee testified that since the road for Westchester Phase II would be too costly, he never intended for there to be an easement, he never testified when he came to this conclusion or whom he told. McGee testified that he never talked to anyone-not Collingwood or Loflin-- about the easement. Loflin did not testify. Collingwood did not testify.

The Court has reconsidered its ruling regarding Defendant's proffer of a later recorded plat to indicate intent and has considered it as admitted into evidence, but gives little weight to this evidence due to the time between the disputed deed and the latter recorded plat. (See Transcript Pages136-140).

There is no evidence of any letter to the County that Phase II was terminated, no corporate minutes indicating as decision was made to stop the subdivision process, no testimony or correspondence informing Collingwood.

This Court concludes that when a grantor conveys, by an unambiguous deed referencing a plat, and the deed contains no specific evidence of any intent except to create the easement, the deed creates an easement that can be relied upon by subsequent purchasers acquiring the right to

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use the easement. It would be unfair to deny the subsequent purchasers, such as the Plaintiff, who purchased sixteen (16) years after the original conveyance, the right to the full use and enjoyment of the easement as indicated by the plat, regardless of what the common grantor now argues what its intentions were at the time the deed and plat were recorded. *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

This Court finds that further support of Plaintiff's position as to the legitimacy of his easement is that if there were any ambiguity in the deed (which the Court does not find) conveying the Loflin/Plaintiff's property the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the contract is not responsible for the ambiguity, and any ambiguity in a contract doubt, or uncertainty as to its meaning, should be resolved against the party who prepared the contract or is responsible for the verbiage. Congaree was the grantor; Collingwood was Congaree's surveyor, and the grantee was a Congaree employee/agent.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423. The above rule of law that an ambiguity created by a drafter of the document supports Plaintiff's easement grant.

Mistake

Defendant's expert witnesses/surveyors testified they thought the easement on the plat was a mistake.

The Court does not believe that there has been proof of a mutual mistake as to the easement on the plat. Ordinarily, "[b]efore equity will reform an instrument, it must be shown by clear and convincing evidence not simply that there was a mistake on the part of one of the parties, but that there was a mutual mistake. A mutual mistake is one whereby both parties intended a certain thing but because of a mistake in drafting did not get what they intended." *Timms v. Timms*, 290 S.C. 133, 137, 348 S.E.2d 386, 390 (Ct. App. 1986) (internal citation omitted). Such mutual mistake must be proven by clear and convincing evidence for reformation to be available. *See id.* At 136; accord *Sims v. Tyler*, 276 S.C. 640, 642, 281 S.E.2d 229, 230 (1981); *Belin v. Stikleather*, 232 S.C. 116, 122, 101 S.E.2d 185, 188 (1957); *So. Realty and Const. Co., Inc. v. Bryan*, 290 S.C. 302, 307, 350 S.E.2d 194, 197 (Ct. App. 1986).

The Court finds mutual mistake is not an option. It is difficult to conclude there was a mutual mistake in the absence of (a) Surveyor Collingwood's testimony; (b) Grantee Loflin testimony; (c) Grantor McGee's repeated testimony that he never talked to anyone about the road.

The elements of a unilateral mistake are (1) claiming party was induced by fraud, deceit, misrepresentation, concealment or (2) sever and extraordinary circumstances that make it wrong for the court to enforce (or allow in this case), the easement. One is bound by the deed who fails to read it when capable of doing so and when accompanied to the closing by persons who read the deed to them. *Hellams v. Hanist*, 248 S.C. 256, 325 S.E.2d 569 (Ct. App, 1985).

A unilateral mistake will not rescind an agreement if the party seeking it is negligent. *Truck v. Patel*, 528 S.E.2d 424 (2000). A party cannot seek to rescind an instrument if the party seeking rescission is negligent.

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There is simply no evidence supporting fraud, deceit, inequitable conduct, which would justify granting reformation by unilateral mistake.

DAMAGES/ACTUAL

Plaintiff seeks compensation for the costs of constructing the alternate driveway to his property after the fifty (50') foot road was barricaded, claiming entitlement to costs of equipment and materials, as well as lost income from Plaintiff personal constructing the alternate road. Plaintiff also sought compensation for lost profits in losing patients and punitive damages for Defendant's alleged willful act of barricading the access road.

Plaintiff's testimony about equipment and material purchases, including chainsaw, renting of trailer, purchasing gravel, etc. was not supported by any material evidence of records, receipts, or tax deductions. There is not persuasive evidence to support the Five Thousand and no/100 ($5,000.00) Dollar request.

However, Plaintiff testified that he spent forty (40) hours in one week constructing the alternate road and lost income from patients for that week on an average of Eighty-five and no/100 ($85.00) per patient for a total loss of Five Thousand and no/100 ($5,000.00) Dollars. The Court finds the sum of Two Thousand Five Hundred and no/100 ($2,500.00) Dollars would be appropriate for reimbursement to the Plaintiff for his lost income since one half (1/2) of the per patient visit amount is related to actual costs.

Plaintiff is entitled to this reimbursement since Defendant deliberately blocked the road after negotiations failed. The Court finds Defendant's argument that the road was blocked for security/insurance reasons without merit. Defendant blocked the road after negotiations failed.

DAMAGES/LOST PROFITS

While a plaintiff may recover lost profits resulting from tortious conduct when he/she can prove that it is reasonably certain that such profits would have been realized except for the tort, such lost profits need be ascertained and measured from the evidence produced with reasonable certainty. *Vortex Sports & Entertainment, Inc. v. Ware* 662 S.E.2d 444, 450 (S.C. Ct. App. 2008) (citing *Petty v. Weyerhaeuser Co.*, 342 S.E.2d 611, 615 (S.C. Ct. App. 1986). By certainty it is meant that the damages may not be left to mere speculation or conjecture. *Id.* "The law does not require absolute certainty of data upon which lost profits are to be *estimated,* but all that is required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy." *South Carolina Finance Corp. of Anderson v. West Side Finance Company*, 113 S.E.2d 329, 336 (S.C. 1960).

The Plaintiff's lost profit testimony was based on Plaintiff's calculation of claimed lost patient days running from July 2009 until May 2011, as well as a reduction in his gross income in 2010 as compared to 2009. Although there was no contradiction of this evidence of a change in income, the evidence did not prove that these losses were caused by the Defendant's action of blocking the fifty (50') foot road access. There was no testimony by any of Plaintiff's patients confirming the patient loss days were triggered by patient not continuing with Plaintiff's services because of the road barricade. No expert witnesses were presented nor market analysis to prove the lost profit. Too many variables were presented on cross examination, such as fluctuations on the gross figures on the Plaintiff's tax returns, the recession of the economy, and Plaintiff's issues with filing claims for reimbursement of chiropractic services. Plaintiff testified that his

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income had in fact increased after he changed marketing plans. The Plaintiff's unverified loss expectations do not meet the proof requirements to allow compensation for said loss profit.

DAMAGES/PUNITIVE

Viewing the totality of circumstances, the conduct of the parties, and action during this dispute, the Court awards Seven Thousand Five Hundred and no/100 ($7,500.00) Dollars in punitive damages. Case law allows for an award of punitive damages for the willful obstruction of a right-of-way or easement. *Poole v. Edwards*, 15 S.E.2d 349, 352 (S.C. 1941). The case reveals that Defendant objected to Plaintiff using the road through his yard for which there was a prescriptive easement (right-of-way). *Id.* He "forbade" her tenant from using the road, and thus prevented the gathering of the crop planted on the Plaintiff's property. *Id.* The road had been plowed up and made incapable of traveling, and the court concluded it was a fair inference that it was done by, or at the direction of Defendant, and was "actuated by willful and wanton motives" which would sustain a verdict for punitive damages. *Id.*

This award is based on the following *Gamble, et al* case law factors: (a) Plaintiff owned his lot, with the easement, prior to Defendant purchasing its lot,(b) Defendant's representative testified that the Defendant company owned multiple properties (c)was experienced in this area of development, (d) Defendant was on constructive and actual notice of the easement prior to purchase, and (e) after negotiations failed between the parties in regards to resolving their access issues, Defendant barricaded the road to the Plaintiff's existing business.

THEREFORE, this Court FINDS, CONCLUDES AND ORDERS that the Plaintiff has access for ingress and egress over the road that borders the Plaintiff's property on the southern side which would be fifty (50') feet in width on eastern and western sides and two hundred and fifty (250') feet in length on the northern side and southern side with the boundary on the

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southern side of the road being the northern boundary of Lot 13, Phase I of Westchester Subdivision and the northern boundary being the southern boundary of the 0.68 acre lot (Plaintiff's lot).

I FURTHER FIND, CONCLUDE AND ORDER that Plaintiff have a judgment against the Defendant in the sum of Two Thousand Five Hundred and no/100 ($2,500.00) Dollars for lost income while constructing the alternate road.

I FURTHER FIND, CONCLUDE and ORDER that Plaintiff have a judgment against the Defendant in the sum of Seven Thousand Five Hundred and no/100 ($7,500.00) Dollars punitive damages for barricading the Plaintiff's fifty (50') foot access road.

IT IS SO ORDERED.

James O. Spence
Lexington County Master-in-Equity

July 29, 2013

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