STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE # 2010-CP-32-0460

DAVID R. GOOLDY, PLAINTIFF)
VERUS)
THE STORAGE CENTER-PLATT)
SPRINGS ROAD, DEFENDANT)

FILED 2014 MAR 13 A
BETH A. CARRIGG
CLERK OF COURT

ORDER

COPY

The Court filed an Order in this easement dispute case on August 1, 2013. Thereafter, Defendant filed and argued its Rule 59 motion claiming that the court erred in finding that (1) an easement exists and (2) that the award of actual and punitive damages was improper.

EASMENT ISSUE

In essence, Defendant argues that South Carolina law states that a road shown on a plat incorporated into a deed conveys only the physical dimensions of the conveyed lot and not an easement to the road unless the lot is a standard subdivision lot. Bennett v Investor Titles Inc. 635 S.E 2d 649 (Ct. App. 2006) and 635 S.E. 2d 660 (Ct. App. 2006).

Defendant further claims that the grantor, McGee, never intended to convey an easement, and the easement was vague and appeared by mistake.

Defendant's argument is unpersuasive for the following reasons:

(1) Bennett held that the grantor does not warrant or covenant the width of an existing highway right of way easement by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement.(Other holdings /discussion regarding habendum clause etc not addressed because not necessary for this decision).

(2) Bennett did not hold that the right of way did not exist. The Right of way was a SCDOT right of way in the prior chain of title. Bennett did not hold that there was no easement as shown on the plat rather that the width as portrayed on the incorporated plat was wrong.

(3) Defendant incorrectly argues that Bennett stands for the proposition the plat incorporated by a deed only conveys that portion of the physical outline of the property conveyed.

(4) As opposed to the pre-existing SCDOT easement in the Bennett case, here the plat in question in this case incorporated the easement that was created by the grantor as he deeded the property to the grantee.

INTENT PROOF

The Bennett cases do, as both Defendant and Plaintiff agree and argue, hold that the controlling South Carolina easement law regards the grantor's intention at the date of conveyance as crucial. The following chronology illustrates how the trial evidence reveals McGee's intent at the requisite time. The persuasive and critical evidence of McGee's intent can be gleaned from what he did from when his company purchased the subject property, his development activities, the actions his surveyor took, and the deed he reviewed and signed.

McGee's later recollections of what his intent was is not compelling, nor are plats of the same property prepared after he conveyed the subject property persuasive proof of his intent at the critical moment—when he reviewed and executed the deed conveying the property to Loflin.

The basic facts drawn from the testimonial and documentary evidence, together with the inferred facts follow:

(1) 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.

(2) In 1974, Congaree purchased the 500 acre tract of land that contained the Plaintiff and Defendant's properties and fifty (50') foot road in dispute.

(3) August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. Lot 13 is immediately adjacent to the fifty (50') foot road which borders the Plaintiff's property on the southern side. Collingwood signed as

surveyor and indicated that "Iron pins placed on all corner." The survey also noted the distance from the Northern boundary of Lot 13 to Platt Springs Road.

(4) This plat shows the subject road located to the north of Lot 13, not as a road at that time but is shown as "N/F Congaree Assoc." This designation is clear evidence that Collingwood understood at that time, there was no indication, either on the ground or on a pre-existing plat or from the grantor that would indicate a road was intended there. A surveyor has to reflect any indication of a road. "Observable evidence of private roads shall be indicated. Streets abutting the premises, which have been described in Record documents, but not physically opened, shall be shown and so noted." Rosser W. Baxter, Jr. in South Carolina Survey Issues: Recognition and Remediation (page 47) NBI, Inc. 05M2002 (1995). The Court notes that the Defendant's surveyor followed this principle when his surveyor noted the Plaintiff's plat recorded 212G at PG 204 and showed the subject road as a Parking and Gravel Driveway Encroachment on the October 15, 2008 survey prepared for The Storage Center-Platt Springs LLC.

(5) Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat.

(6) January 27, 1984, Congaree does preliminary plat work for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval.

(7) The subject area, previously described as "N/F Congaree Assoc." is now shown as an access road leading from Highway #6 to proposed Westchester Phase II. The only logical inference for Collingwood to have changed the designation of this area is that McGee now intended for this area to be a road or had created a road on the ground.

(8) The subject road is located between Lot 13 of Westchester Phase I and what later becomes Plaintiff/predecessor's property.

(9) 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.

(10) The letter contained the standard county requirements for private road subdivisions.

(11) December 10, 1985, James T. Loflin (Plaintiff's predecessor-in-title), who was a McGee employee/agent, has a plat prepared for the purpose of living on the corner lot (Plaintiff's property) next to the fifty (50') foot road entrance to proposed Phase II in a model log cabin home. (Consistent with designation in (5) above.)

(12) Collingwood has now changed the designation from (i) August 18, 1983 "N/F Congaree Assoc." on Phase I Plat to (ii) January 27, 1984 an access road shown on the proposed Plat for Phase II which also contains distance to Platt Springs Road to (iii) December 10, 1985 50' Road on Loflin Plat.

(13) Collingwood was the surveyor of the Loflin plat and the surveys notes "I.N." at each corner which reference new iron pins at each corner.

(14) April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field.

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

(16) September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the 0.68 acre lot to Loflin, his employee agent, by deed incorporating survey prepared by Collingwood. This plat shows area as 50 foot road.

(17) At trial, McGee testifies he never discussed the road with Loflin or Collingwood, his surveyor. McGee never testified about WHEN or WHY or HOW or to WHOM he communicated his purported change of mind about the road. He simply stated that after he realized project was too costly, then Phase II was never developed.

(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.

(19) McGee testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Loflin.

(20) McGee admits that Collingwood who prepared the plat for Westchester Phase II would have known when he prepared the plat for the Plaintiff's predecessor-in-title (Loflin) about the fifty (50') foot road on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat.

(21) 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.

(22) McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree.

(23) 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.

(24) Defendant's expert witness surveyors testified that there were later surveys prepared by Collingwood in the same area as the existing property which did not show the road in question.

(25) Defendant's surveyor/ witness 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. Such evidence only reveals that the road has not been accepted into the State or County road system, not that a road does not exist.

(26) 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.

(27) The trial evidence revealed that (1) McGee never talked to anyone about the road (2) No Loflin/grantee testimony or evidence offered at trial. (3) Defendant surveyors state belief that Loflin survey was a mistake. If a mistake, whose mistake? A mistake has to be mutual or unilateral. As discussed in trial order, no persuasive

evidence to indicate any conclusion other than if it was a mistake, it was a unilateral mistake by grantor McGee, who is/was an experience real estate developer charged with obligation to read and understand a document before he signs and executes it.

(28) The Defendant argues that certain survey acts taken on or behalf of McGee after he had conveyed the property to Loflin should be construed as proof of his intent at the time of the Loflin conveyance that McGee never intended for a road to exists. While in certain contexts, later actions can be proof of a prior intent, in this case, with this chronology of events, actions, and documents, such an argument fails scrutiny. Such an argument is based on the incorrect argument that since McGee at a later point in time did not indicate the area was a road, then it must be concluded that he must have never(or at least at the time of the conveyance to Loflin) intended for it to be a road.

SUBDVISION /EASEMENT LAW

Plaintiff argues that the body of standard subdivision plat law is applicable since the grantor subdivided the property when he conveyed the 0.68 acre tract to Loflin. Defendant argues that deeding a single tract in this does not constitute a subdivision and as such this line of cases is inapplicable.

The Court does not believe a legal determination of what exactly a subdivision is, is required, but will for purposes of explanation, address the issue.

Clearly the land was subdivided when it was conveyed to Loflin. But does that make it a subdivision?

<u>Black</u>'s states that subdivision is "Division into smaller parts of the same thing or subject matter. The division of a lot , tract of land into two or more lots, tracts, parcels or other divisions of land for sale or development."

The court takes notes that county governments have various ordinances relating to plat approval, road maintenance regarding subdivisions, private road subdivisions, and what divisions of land are exempt from county subdivision regulations. It does not seem logical then that the county designation should

control since counties can have different regulations and the law should not vary due to a county's regulations.

More issues arise if the classic Blackacre questions are asked. What if owner of Blackacre has a 68 acre tract fronting on a state highway and

(1) Owner sells a .68 acre tract. Is this a subdivision?
(2) What if owner calls it Lot 1?
(3) What if owner attaches restrictions to it?
(4) What if owner doesn't?
(5) Does it become a subdivision if he conveys a second 0.68 acre tract?
(6) What about a third one?
(7) What if there is a road bisecting the tract that leads to owner's house and he sells lot on other side of road. Do lots on other side of road have easement in road?

These questions illustrate the multitude of questions that arise when analyzing the issue as argued by Plaintiff and Defendant.

The court does not believe it is necessary to make a determination of when subdividing land equals a subdivision since prior South Carolina easement law provides the answer to the question in this case. Landowners conveyed lots or tracts of land long before formal subdivisions with unit plats, restrictions; HOA's, common areas etc became common.

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

[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

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 an intent to exclude the road on the face of the deed or plat. *Rushing v. Sellers*, 81 S.E.2d 281 (1954).

> These cases illustrate the common sense logic of road and easement law. If the easement is shown on the plat incorporated into the deed, then there is a presumption that there is an easement in the property, or ownership to the center of the road, unless there is contrary evidence on deed or plat.

<u>VAGUENESS ARGUMENT</u>

Defendant argues that the 50'road shown on the Loflin plat is too vague.

This argument does not withstand scrutiny.

A title search is like putting a puzzle together. An abstractor or attorney doing the title search would have reviewed the deed and plat establishing ownership by Congaree against all conveyances or plats out of Congaree.

This search would have revealed the Phase I plat. The Phase I plat, in conjunction with the Loflin plat, both containing corner pins, and measurements to the intersection of Plat Springs road etc, would have revealed the fact that the 50 foot road is located between Lot 13 of Phase 1 and the 0.68 acre Loflin tract.

The road and both lots are bounded on the east by SC HWY #6. The 50 foot road is bounded on the south by the 250 northern side of Lot 13 and the 250 foot southern side of Loflin's 0.68 acre tract.

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).

DAMAGES:

(1) Actual damages were based on defendant's testimony that he did not treat patients during the 40 hour week spent constructing the alternate road. The lost net income was $2,500.00 (See August 1, 2014 Order page 17).

(2) Both South Carolina and United States Supreme Court cases state purpose of punitive damages is to deter and punish.

(3) All Gamble v Stevenson factors were considered. The Order stated most obvious since case law states that court is not required to make a finding on each factor. Welch v Epstein, 536 S.E.2d 408 (ct. App. 2000)

(4) Case law does not require a finding that the defendant has the ability to pay. Frazier v Badger, 603 S.E. 2d 587 (S.C. 2004)

(5) Defendant argues that the court should focus on the three factor test of BMW of North America v Gore as adopted/explained by South Carolina in the Mitchell v Fortis Ins. Co., 686 S.E. 2d 176 (2009)

(6) Here both Courts focus on (a) degree of reprehensibility of the defendants' conduct. The defendant barricaded a road after failing to arrive at a negotiated agreement. The Defendant was not barricading a road against an unknown trespasser; rather Defendant choice this tactic, physically erecting a barricade across an platted road, rather than taking (i) no steps---what purpose did barricading the road serve? It did nothing for the Defendant. It did physically prevent patients from entering the defendant's property at that point.(ii) filing a legal action such as a declaratory judgment or a statutory road closing action, designed to close open or unopened roads, now longer in use (b) Obstructing the road was a physical act that impacted the Plaintiff's land every single day since it stopped traffic every single day. It was not an isolated physical event whose damage or effect was limited to the act of erecting the gate or to the single day erected. This obstruction was more in the nature of a continuing nuisance. It was a physical act that was repeated every single day. This physical act's effect did not stop the day it was erected, but continued to act as a barricade every single day it remained standing.

Poole v Edwards, 15 S.E. 2d 349 (SC 1941) allows for an award of punitive damages for a willful obstruction of a right of way or easement. Defendant's action (1) impeding access was a physical harm to the land that was(2) repeated each day the obstruction remained and was the (3) result of intentional malice, rather than a mere accident or directed against an unknown trespasser.

(7) The ratio of damages was 3 to 1. The court will not cite the numerous cases with larger rations that have been upheld. See 11 S.C. Jur. Damages Sec 43 (Dec. 2013)

(8) The conduct (barricading the road) led to a week's lost work, the $2500 award, which the court believes, falls within similar ratio of reported decisions.

MOTION DENIED.

Lexington, South Carolina
March 13, 2014

S/JOS

James O. Spence
Lexington Master-in-Equity

NOTE: A Clocked copy of this Order scanned and emailed to both Attorneys this 13th day of March, 2014. The Court takes full responsibility for the unorthodox formatting of this Order due to our inability to decipher WORD.