

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joseph Crosby, Master in Equity

Case No 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC Petitioners

v.

Eleanor S. Stamper Respondent

APPENDIX

April 25, 2012

Robert J. Moran, Jr.
Robert J. Moran, P.A.
Post Office Box 370
Murrells Inlet, South Carolina 29576
843-237-4533
Attorney for Petitioners

Other Counsel of Record:
Jack M. Scoville, Jr.
P. O. Box 1228
Georgetown, SC 29442
843-546-1130
Attorney for Respondent

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Dona F. Ducker, Fred C.
Ducker, and Commercial
Refrigeration, LLC,

Appellants,

v.

Eleanor S. Stamper,

Respondent.

Appeal From Georgetown County
Joe M. Crosby, Master-in-Equity

Unpublished Opinion No. 2012-UP-067
Heard January 11, 2012 – Filed February 8, 2012

AFFIRMED

Robert J. Moran, of Murrells Inlet, for Appellants.

Jack M. Scoville, Jr., of Georgetown, for Respondent.

PER CURIAM: After Eleanor Stamper installed fencing enclosing a corner of her property, Dona F. Ducker, Fred C. Ducker, and Commercial Refrigeration, LLC, (collectively "the Duckers") filed suit, complaining Stamper's fence obstructed their existing easement. The master entered judgment in Stamper's favor. The Duckers appeal, arguing the master erred in finding they are bound by a 1997 road closure action, have no public or private right in the portion of the road that was closed, and have no easement implied by prior use. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the 1997 road closure action¹: S.C. Code Ann. § 57-9-10 (2006) (providing "[a]ny interested person" may initiate a road closure action and requiring notice thereof to be "sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change"); Rule 19(a), SCRCR (requiring a trial court to join a person as a party if "in his absence complete relief cannot be accorded among those already parties" or "he claims an interest relating to the subject of the action" and his absence from it might impair his ability to protect that interest).

2. As to a private easement by dedication: Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 91-92, 659 S.E.2d 151, 154 (2008) (recognizing an implied easement as an expression of a grantor's intent to convey along with transferred property "whatever is necessary for the property's use and enjoyment" but finding implied easements are not favored "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself" and recognizing easements by dedication are created "when an owner conveys

¹ We note the master erred in finding BancOhio National Bank v. Neville, 310 S.C. 323, 426 S.E.2d 773 (1993), stood for the proposition, "The only indispensable parties to a road closing are the public entities that may be charged with its maintenance." It does not. BancOhio indicates a public entity holding a "proprietary interest" in a road, including an easement or a right of way, is an indispensable party to a closure action, but not the only such party. Id. at 329, 426 S.E.2d at 777. However, this error does not affect the disposition of the Duckers' appeal.

subdivided lots and references the plat in the deed," thereby granting "the lot owners an easement over the streets appearing in the plat" (citations omitted)); Murrells Inlet Corp. v. Ward, 378 S.C. 225, 233, 235, 662 S.E.2d 452, 455-57 (Ct. App. 2008) (requiring judicial analysis of implied easements to focus on the intent of the parties to the transaction and noting, "The easement referenced in the plat is dedicated to the use of the owners of the lots, their successors in title, and to the public in general. As to the grantor, who conveyed the property with reference to the plat, and the grantee and his successors, the dedication of the easement is complete at the time the conveyance is made." (citations omitted)); McAllister v. Smiley, 301 S.C. 10, 11-12, 389 S.E.2d 857, 858-59 (1990) (holding an easement by dedication "inures to the benefit of the grantee and his successors in title"); Van Blarcum v. City of N. Myrtle Beach, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999) ("Proof of dedication must be strict, cogent, and convincing.").

3. As to a public easement by dedication: Outlaw v. Moise, 222 S.C. 24, 30-31, 71 S.E.2d 509, 511-12 (1952) (holding a public easement by dedication is not complete until some manifestation of public acceptance occurs and stating such public acceptance need not be given formally but may be manifested by public action within a reasonable time²); Baugus v. Wessinger, 303 S.C. 412, 416, 401 S.E.2d 169, 172 (1991) ("[W]here . . . acceptance of part of a street is clearly shown, the burden of proof shifts to the party . . . seeking to prove limited acceptance of the street."); § 57-9-10 (authorizing a court of competent jurisdiction to declare a street abandoned or closed upon the petition of "[a]ny interested person"); Hoogenboom v. City of Beaufort, 315 S.C. 306, 318 n.4, 433 S.E.2d 875, 884 n.4 (Ct. App. 1992) (recognizing abandonment of a street dedicated to public use extinguishes the public's right to use the street).

² See, e.g., Huxfield Cemetery Ass'n v. Elliott, 388 S.C. 565, 570-71, 698 S.E.2d 591, 594 (2010) (distinguishing statutory dedication from common law dedication, which "rests on public convenience and is based on public policy and good faith"); Tupper v. Dorchester Cnty., 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997) (recognizing acceptance by the "use, repair, and working of the streets by public authorities"); Boyd v. Hyatt, 294 S.C. 360, 365, 364 S.E.2d 478, 481 (Ct. App. 1988) (recognizing acceptance by the public's continuous use of the property).

4. As to an easement implied by prior use: Boyd v. Bellsouth Telephone Telegraph Co., 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006) (requiring a party asserting the right to an easement implied by prior use to establish (1) the title was unified in one owner; (2) the common owner severed title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary at the time of severance of title in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title (citations omitted)).

AFFIRMED.

HUFF and LOCKEMY, JJ., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joseph Crosby, Master in Equity

Case No 2006-CP-22-00196

RECEIVED
FEB 23 2012
SC Court of Appeals

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC Appellants

v.

Eleanor S. Stamper Respondent

PETITION FOR REHEARING

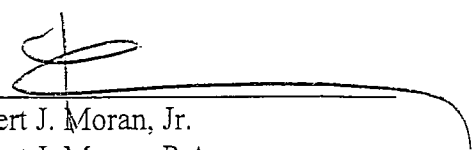
Robert J. Moran, attorney for Appellants, hereby Petitions this Court for a Rehearing on its Opinion dated February 8, 2012, on the following grounds:

1. Appellants were abutting property owners whose property was affected by the 1997 road closure action, were not joined in the action, did not receive notice by mail, return receipt requested, claim an interest in the subject of that action, and were necessary parties, the absence of which impaired their ability to protect their interest.
2. Appellants sole public access to their real property is over and across a roadway, which is either a public or private easement, created by James Eason, or his heirs, and must be either implied by facts and circumstances or specifically dedicated by the filing of a subdivision plat and the public's use and acceptance thereof for many years.

[Handwritten signature]

3. In the absence of Tenth Ave being either a public or private easement, by implication or dedication, Appellants own landlocked property, completely formerly surrounded by lands of a common grantor and have either an easement implied by prior use or an easement by necessity.

February 22, 2012



Robert J. Moran, Jr.
Robert J. Moran, P.A.
Post Office Box 370
Murrells Inlet, South Carolina 29576
843-237-4533
Attorney for Appellants

Other Counsel of Record:
Jack M. Scoville, Jr.
~~P. O. Box 1228~~
Georgetown, SC 29442
843-546-1130
Attorney for Respondent

Handwritten initials or marks at the bottom right of the page.

The South Carolina Court of Appeals

Dona F. Ducker, Fred C. Ducker, and
Commercial Refrigeration, LLC,

Appellants,

v.

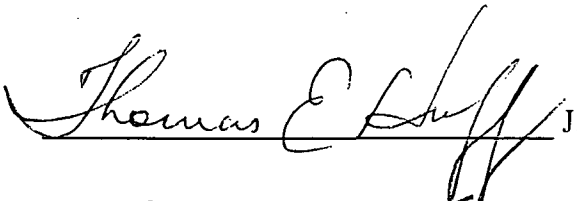
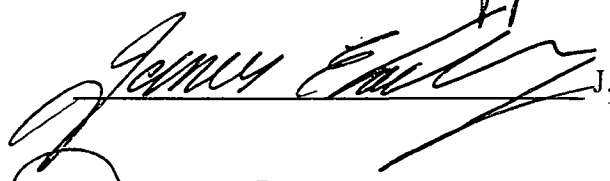
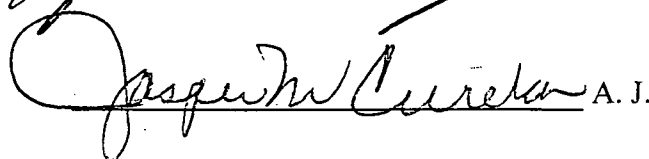
Eleanor S. Stamper,

Respondent.

The Honorable Joe M. Crosby
Georgetown County
Trial Court Case No. 2006-CP-22-01196

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.


Thomas E. Huff J.

James E. Huff J.

Joseph M. Curran A. J.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joseph Crosby, Master in Equity

Case No 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC Appellants

v.

Eleanor S. Stamper Respondent

RECORD ON APPEAL

Robert J. Moran, Jr.
Robert J. Moran, P.A.
Post Office Box 370
Murrells Inlet, South Carolina 29576
843-237-4533
Attorney for Appellants

Other Counsel of Record:
Jack M. Scoville, Jr.
P. O. Box 1228
Georgetown, SC 29442
843-546-1130
Attorney for Respondent

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

JOSEPH CROSBY, MASTER IN EQUITY

CASE NO.: 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC.....Appellants

vs.

Eleanor S Stamper.....Respondent

RECORD ON APPEAL

INDEX

Final Decree dated June 24, 2009.....	000001
Motion for Reconsideration	000018
Plaintiffs' Complaint.....	000023
Defendant's Answer.....	000029
Trial Transcript page 28, line 25 through Page 69, line 25.....	000032
Trial Transcript page 86, line 25 through Page 90, line25	000074
Plaintiffs' Exhibit 3, Representative deeds out of John A. Eason.....	000079
Plaintiffs' Exhibit 4, Road Closure Action 97-CP22-163	000095
Plaintiffs' Exhibit 5, §57-9-10, SC Code.....	000125
Defendant's Exhibit 1, Plaintiffs' chain of title.....	000126

Defendant's Exhibit 3, Map surveyed for Low Country Rope Hammock Shop.....	000170
Defendant's Exhibit 4, Plat of TMS 41-0124-003.01.01 Ducker Plat.....	000171
Defendant's Exhibit 5, Subdivision Map of 2.86 Acres for Edward Daugherty, Jr.....	000172
Defendant's Exhibit 6, Map of 4 tracts of land prepared for John A. Eason, Jr.	000173
Defendant's Exhibit 7, Map of two tracts of land prepared for Richard A. Eason.....	000175
Defendant's Exhibit 8, Subdivision plat for Edward James Daughtery.....	000176
Defendant's Exhibit 2, U.S. Geological Survey-Brookgreen, S.C.(Filed Separately).....	000177
Plaintiff's Exhibit 1, Subdivision Plat of Eason Acres (Filed Separately).....	000178
Plaintiff's Exhibit 2, Ducker Plat A (Filed Separately).....	000179
Certificate of Appellant.....	000180

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2006-CP-22-1196

Dona F. Ducker, Fred C. Ducker,
Commercial Refrigeration, LLC,

Plaintiffs,

vs.

Eleanor S. Stamper,

Defendant.

FINAL DECREE

FILED
GEORGETOWN COUNTY, S.C.
2009 JUN 24 PM 1:01
ALMA Y. WHITE
CLERK OF COURT

TRIAL COURT: JOE M. CROSBY, MASTER-IN-EQUITY
DATE OF TRIAL: MAY 28, 2009
COURT REPORTER: JAMES BRADY
PLAINTIFFS' ATTORNEY: ROBERT J. MORAN
DEFENDANT'S ATTORNEY: JACK M. SCOVILLE, JR.

BACKGROUND

This case involves a dispute between two neighbors over a driveway. For some period of time, the Plaintiffs accessed by vehicle the rear area of their property, by vehicle, adjacent to Defendant's property by crossing over a portion of Defendant's (hereinafter referred to as "Stamper") property. The parties' respective properties came out of a larger tract that was owned by John Eason in the 1950's. Mr. Eason recorded a plat in 1956 for a subdivision he called Eason Acres. This map shows the

various roads and lots that made up the subdivision. One road in the subdivision was named Tenth Avenue. Only lots in the eastern portion of the subdivision were sold by John Eason. No lots were sold west of an alley shown on the plat that bisects Tracts 11, 12, and 13. These parties' lots are located in the unsold area. Mr. Eason died sometime prior to 1973. After he died, his heirs partitioned his remaining property. The parties' properties were part of a tract given to Richard Eason designated as Tract D on a plat recorded in 1974 in Plat Book AA at Page 14. Both the Plaintiffs' and the Defendant's chains of title come down from Richard Eason and this 1974 plat. No road designated Tenth Avenue or otherwise is shown on this plat in the area in question.

Also in 1974, Richard Eason subdivided Tract D into two parcels called Tract 1 and Tract 2 on another plat recorded in Plat Book AA at Page 10. Stamper's chain comes down from Tract 1 and Plaintiffs' from Tract 2. This third plat is also devoid of any road designated Tenth Avenue, or otherwise, in the area in question.

Nowhere in the Duckers' chain of title is there any reference to the 1956 subdivision plat.

Edward James Daugherty, Jr., was Stamper's immediate predecessor in title. When he purchased the property, there was a dirt road running along the northern side

2/

of the property. According to a plat recorded by Daugherty in Slide Book 210 at Page 7B on September 18, 1996, no portion of this road was outside the property boundaries of Daugherty's land. There is no indication on this plat of any access, driveway, or use by the owners of Plaintiffs' property of the area in question. Daugherty brought an action in Circuit Court to close this road in 1997. Daugherty named Georgetown County, Edward Brunson, and Margaret Hill as defendants. The Complaint stated that Brunson and Hill were the only known persons who may have utilized or had any interest in the continued existence in that portion of the road he sought to close. Daugherty also named John Doe and Richard Roe to represent all unknown persons having any right in the property. Notice of Intent to Close the road was properly run in The Georgetown Times newspaper. The road was subsequently closed by order of the Georgetown County Master in Equity, Benjamin Culbertson. The order vested title in the closed road in Mr. Daugherty.

In about 2005, Stamper bought the property from Daugherty. Daugherty had fenced off the entire tract except a small "stump" approximately 50 feet by 50 feet in area that constituted the northeastern most part of the tract. This stump is the area in question in this litigation. The closed road had run through this stump. Stamper fenced off the stump in 2006. The Plaintiffs contend they have an easement through



the stump to access the back part of their property. Stamper cut off this access when she erected the fence around the stump. This suit followed.

STANDARD OF REVIEW

The determination of the existence of an easement is a question of fact in a law action and is subject to the any evidence standard of review when tried by a judge without a jury. *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998). While the determination of the existence of an easement is a question of fact in a law action, the question of the extent of an easement is an action in equity. *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997).

CAUSES OF ACTION

The Plaintiffs assert they have an easement for access implied by prior use, dedicated by the 1956 subdivision plat, created by prescriptive use, or created by necessity. The Defendant denied the specific allegations of the complaint, and raised waiver, estoppel, abandonment, and unclean hands as defenses.

After considering the evidence presented in light of the applicable legal principles, this Court makes the following findings of fact and conclusions of law:

1. The parties' properties came out of a larger tract that was owned

4/

by John Eason in the 1950's. Mr. Eason recorded a plat in 1956 for a subdivision he called Eason Acres. This map shows the various roads and lots that made up the subdivision. One road in the subdivision was named Tenth Avenue. Only lots in the eastern portion of the subdivision were sold by John Eason. No lots were sold in the area where the lots of the parties to this litigation are located. Mr. Eason died sometime prior to 1973. After he died, his heirs partitioned his remaining property. The area out of which the parties' properties are situated were given to Richard Eason in a parcel designated as Tract D on a plat recorded in 1974. Both the Plaintiffs' and the Defendant's chains of title come down from Richard Eason and this 1974 plat.

2. No road designated Tenth Avenue, or otherwise, is shown on this plat in the area in question.
3. Also in 1974, Richard Eason subdivided Tract D into two parcels called Tract 1 and Tract 2 on another plat (Plat Book AA at Page 10). Stamper's chain comes down from Tract 1 and Plaintiffs' from Tract 2. This third plat also does not show any road

57

designated Tenth Avenue or otherwise in the area in question.

4. The road in question is not shown on the 1973 U.S. Geological Survey Map of the Murrells Inlet area.
5. The portion of the road shown on the 1956 plat and designated as part of Tenth Avenue on that plat that would run along the northern boundary of Plaintiff's property was not in existence in 1974.
6. Nowhere in the Duckers' chain of title is there any reference to the 1956 subdivision plat.
7. Edward James Daugherty, Jr., was Stamper's immediate predecessor in title. When he purchased the property, there was a narrow dirt road running through this property. According to contemporaneous plats, no portion of this road was outside the property boundaries of Daugherty's land. No plat introduced into evidence shows any driveway or access off this road onto Plaintiffs' property.
8. Daugherty brought an action in Circuit Court to close this road in 1997. Daugherty named Georgetown County, Edward Brunson,



and Margaret Hill as defendants. The Complaint stated that Brunson and Hill were the only known persons who may have utilized or had any interest in the continued existence in that portion of the road he sought to close. Daugherty also named John Doe and Richard Roe to represent all unknown persons having any right in the property. Notice of Intent to Close the road was properly run in The Georgetown Times newspaper. The road was subsequently closed by order of the Georgetown County Master in Equity, Benjamin Culbertson. The order vested title in the closed road in Mr. Daugherty.

9. After closing the road, Daugherty fenced off his tract and built mini-storage warehouses on it. When he was constructing the fence, Plaintiff Fred C. Ducker asked Daugherty if he was going to fence the portion of the road where the Duckers accessed the back of their lot. Daugherty stated that he would not so that the Duckers could continue to have access there. It was also in this conversation that Mr. Ducker learned, if he did not know so already, that Daugherty had obtained a court order closing the

road, including the stump.

10. At some point in time, Tenth Avenue from U.S. Highway 17 Business up to the boundary of Defendant's property was renamed BelAir Avenue

11. In about 2005, Stamper bought the property from Daugherty. Stamper fenced off the stump in 2006.

12. The Plaintiffs have access to their property from BelAire Avenue regardless of whether the stump remains fenced or not.

13. In 2004, the Plaintiffs subdivided their lot into three parcels by recording a subdivision plat in Slide Book 520 at Page 10. This plat was approved by the Georgetown County Planning Commission and recorded in the Office of the Register of Deeds. This plat shows an access for both new lots off Belaire Avenue.

14. When Stamper erected the fence around the stump, she cut off Plaintiffs' vehicular access to the rear of their property from the stump. However, Plaintiffs have access to that portion of their property across the front of their lot.

15. That portion of the road running across Stamper's property was

5/1

never a public road. While there was testimony that the county road maintenance crews scraped the road up to and slightly beyond the edge of Stamper's easternmost boundary, such does not convince this Court that the County ever accepted the dedication of the entire length of the street, or even the area within the stump. The road plow had to turn around somewhere, and based on the record in this case, this court cannot conclude any acceptance occurred of the area in question by the public authorities. Likewise this Court cannot conclude there was acceptance by public use. The evidence presented merely showed there may have been the occasional and sporadic use of the road to access the rear of a night club called Sandpipers. The part of the road over Stamper's property was a private road, at most.

EASEMENT IMPLIED BY PRIOR USE

The party asserting the right to an easement implied by prior use must establish the following: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in

that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. *See Elliott v. Rhett*, 39 S.C.L. (5 Rich.) 405 (1852) (“Apart from all considerations of time, there is implied, upon the severance of a heritage, a grant of all those continuous and apparent easements, which have in fact been used by the owner during the unity, though they have had no legal existence as easements....”); *Crosland v. Rogers*, 32 S.C. at 133, 10 S.E. at 875 (1890) (implicitly recognizing an easement implied by prior use “where there has been a unity of possession and a subsequent sale of a portion of the land over which the easement is claimed, that said easement must have been apparent, continuous, and necessary at the time of said sale, the term ‘necessary’ meaning that there could be no other reasonable mode of enjoying the dominant tenement without this easement”).

In this case, the several elements are absent. The prior use was not in existence at the time of unity of title. The property was divided by Richard Eason by conveying Tract 2 to the South Carolina Low Country Rope Hammocks, Inc. The plat by which the property was severed, recorded in Plat Book AA at Page 10, does not show the existence of the road. Neither is the road shown on the Eason partition map nor the U.S. Geological Survey Map. Since the road was non-existent, it was not apparent or

known to the parties. The road was not necessary in that there was reasonable access to the dominant tenement (Parcel B) without the road. There is no indication that Richard Eason indicated any intent to continue the use of the road, it being non-existent, after severance of title.

Stamper is entitled to judgment on Plaintiffs' cause of action for the determination of an easement implied by prior use.

DEDICATION BY PLAT

In Plaintiffs' Second Cause of Action, they assert the subject road was dedicated by James Eason by the recording of a plat of Eason Acres in 1956. However, nowhere in Plaintiffs' chain of title is the Eason Acres map referenced. Therefore, it has no relevancy to this action. "Where land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a special property right in the roads shown on the plat. If the deed references the plat, the grantee acquires a private easement for the use of all streets on the map. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452, (Ct.App. 2008). (emphasis added)

The rule applied in the seminal case on this issue, *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965), is nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or other

11/1

ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage. *Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism*, 377 S.C. 86, 659 S.E.2d 151, (2008). (emphasis added).

None of the deeds in Plaintiffs' chain of title reference the Eason Acres map. To the contrary, the plats prepared for the partition of the lands of James Eason, and the ones prepared by Richard Eason show no road at the area in dispute here. It is clear that the Plaintiffs' predecessors' in interest intended no road to exist where they now claim one to be.

While other parties (for example, grantees of lots whose deeds incorporated the 1956 plat) might have claimed some right in the portion of Tenth Avenue shown running across Defendant's property, Plaintiffs had no such right. Their interest in the road, in so far as the 1956 plat is concerned, was merely that of a member of the public generally. Since the 1956 plat is not referenced in their chain of title, no private easement was granted to them.

Mr. Daugherty brought an action pursuant to S.C. Code Ann. §57-9-10 (1976), et seq., to close the road in 1997. Plaintiffs do not attack this judgment as being void. They contend that it has no effect on their rights to the road because they were not given notice of intent to close the road by certified mail as adjoining property owners.

12/1/16

The only indispensable parties to a road closing are the public entities that may be charged with its maintenance. *BancOhio Natl. Bank v. Neville*, 310 S.C. 323, 426 S.E.2d 773 (1993). In this case, that was Georgetown County, which was a party to the action.

The requirement that notice be given to the adjoining property owners is not jurisdictional. The record is uncontroverted that Mr. Ducker had actual notice of the judgment closing the road shortly after it was entered. No motion was made to set aside that judgment. A judgment regular upon its face is immune from attack in any action other than that in which it was rendered, except upon proof of fraud or want of jurisdiction. *Singleton v. Mullins Lumber Co.*, 34 S.C. 330, 108 S.E.2d 414 (1959).

In this case, that was Georgetown County, which was a party to the action. Therefore, the only indispensable party was joined. Since the Plaintiffs did not have a private easement by virtue of the 1956 plat, their right to use the road, if they had such a right, existed only as members of the general public. That right was terminated by the action to close the road.

PRESCRIPTIVE EASEMENT

Plaintiffs claim the existence of a prescriptive easement in their Third Cause of Action. That claim was dismissed at the end of Plaintiffs' case for their failure to prove all required elements.

EASEMENT BY NECESSITY

There are three elements for an implied easement by necessity: (1) unity of title, (2) severance of this title, and (3) necessity. *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375 (1927). Only reasonable necessity is required; thus, the easement must be more than merely convenient, but it does not need to be absolutely essential. *Jowers v. Hornsby*, 292 S.C. 549, 357 S.E.2d 710 (1987). However, the whole point of the easement by necessity doctrine is to ensure that landlocked parcels have access to a public road; thus, the doctrine presumes or implies that the grantor intended for the grantee of a landlocked parcel to have access, which is one of the rights essential to the enjoyment of land. *Brasington*, 143 S.C. at 238-39, 141 S.E. at 380. The doctrine only provides reasonable access to the dominant estate when there is none; it does not



provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available. *Cf. Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct.App.1985) (easement by necessity across adjoining land was upheld because a deep gully separated the dominant estate from a bordering public road). The necessity must exist at the time of severance, and a grantee cannot "so change the uses of land as to convert a way of convenience into a way of necessity." *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973).

In this case, it is undisputable that this property had and has access to the public portion of Bel Air Road. Plaintiffs have access to all their property. They complain merely about being limited in vehicular access to the rear of their lot. There is no necessity that would create an easement in their favor over the area fenced by Defendant.

WAIVER

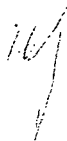
Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all material facts upon which those rights depended. *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992).

Waiver is an intentional relinquishment of a known right and the party claiming waiver has the burden of establishing it. *Frady v. Smith*, 247 S.C. 353, 147 S.E.2d 412 (1966).

In this case, the Plaintiffs were made aware of the suit to close the road by Daugherty back in 1997. They, therefore, had actual or constructive knowledge of their rights or of all material facts upon which those rights depended regarding the closing of the road. They took no action to protect those rights. They have waived whatever right they may have had to object to the closing of the road.

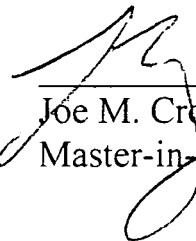
ABANDONMENT

“That an easement may be lost by abandonment is a principle too well established to admit of argument. The primary elements of abandonment are the intention to abandon and the external act by which the intention is carried into effect. The intention to abandon is considered the first and paramount inquiry. It is generally held that abandonment may arise from a single act or from a series of acts, and that time is not an essential element of abandonment, and is of no importance except as indicative of intention.” Citing 1 *Am.Jur. Abandonment*, Section 8; 1 *C.J.S., Abandonment*, § 3a.



When the road involved is a public, not private, road it is the responsibility of the County to defend any road closures. *Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (1989). The Duckers were served by publication as John Does. Upon learning of the judgment closing the road, they should have moved to reopen the judgment under Rule 60(b)(1). More than one year has passed since the entry of the order closing the road and more than one year has passed since they learned of the order and no such motion has been made.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the complaint be dismissed, judgment be granted in favor of Stamper, and that Stamper be awarded the costs and disbursements of this action.



Joe M. Crosby
Master-in-Equity

June 24, 2009
Georgetown, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NO: 2006-CP-22-00196
Dona F. Ducker, Fred C. Ducker,	)	
Commercial Refrigeration, LLC	)	
Plaintiffs	)	
	)	MOTION TO RECONSIDER
vs.	)	
	)	
Eleanor S. Stamper,	)	
Defendant	)	
_____	)	

Plaintiffs, by and through their undersigned attorney, hereby moves for reconsideration of the Final Decree dated and filed June 24, 2009, for the following:

These facts are uncontradicted and have been established in the record:

1. John A. Eason filed, in 1956, a subdivision plat of Eason Acres, containing many individual lots, streets, and avenues, specifically Tenth Avenue, now know as Bel-Air Drive.
2. Between 1956 and John Eason's death in approximatly 1973 he sold and conveyed **at least** 46 individual lots with reference to the 1956 plat of Eason Acres.
3. The streets and avenues in Eason Acres, including Tenth Avenue, have all been dedicated as public, as well as private, easements, and such dedication has been accepted by Georgetown County, as evidenced by the county historically maintaining the road to a point beyond Plaintiffs' driveway in question.
4. Both Plaintiffs' and Defendant's property was derived from the heirs of John Eason, after his death. Various survey plats in both parties' chains of title show the existence of some form of road in the location of Tenth Avenue.
5. Plaintiffs' property abuts and adjoins Tenth Avenue. Prior to the erection of the

#1
TCS

fence in question, by Defendant, Plaintiffs accessed a commercial warehouse on their property by a driveway directly onto Tenth Avenue.

6. In 1997 Defendant's immediate predecessor in title, Edward James Daugherty, commenced an action pursuant to SC Code Section 57-9-10 naming Georgetown County and two individuals as Defendants. Plaintiffs' here were neither named as parties nor was notice "sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change" (57-9-10), as required in the Statute. At the conclusion of this lawsuit a chain link fence was erected blocking off Tenth Avenue's access from Highway 17 Business to the Frontage Road adjacent to Highway 17 By-Pass. This fence did not interfere with Plaintiffs' access to their driveway from Tenth Avenue.

7. Tenth Avenue has been used by the general public, since at least 1972, as a public means of access from US Highway 17 Business to Frontage Road adjacent to US Highway 17 Bypass and was used in the early 1980s by Rebel Manufacturing, a prior owner in Plaintiffs' chain, in connection with its business, specifically including delivery trucks accessing the driveway which has now been cut off by Defendant's erection of a fence.

Based upon the preceding facts, the applicable law is as follows:

1. "An easement is a right of use over another's property. Easements can arise by both express creation and by implication" Inlet Harbor v SCPR, Opinion 26459, filed March 17, 2008.

2. "Where land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a special property right in the roads shown on the plat. If the deed references the plat, the grantee acquires a private easement for the use of all streets on the map (citations omitted). The easement referenced in the plat is dedicated to the use of the owners of the lots,

#2
TJR

their successors in title, and **to the public in general**”(citations omitted) Murrells Inlet Corporation v. Ward Opinion 4384, filed May 2, 2008.

3. “Recordation of a plat containing an easement may be sufficient to show that the owner intended to dedicate that easement” (Ibid), citing McAllister v. Smiley, 301 S.C. 10, 389 SE 2nd 857 (1990) (Toal, J. dissenting).

4. The intention of the parties in the overriding focus when examining implied easements. “It is reasonable that when an owner conveys property that has been subdivided for residential purposes, the grantor presumably intends for the grantees to have access to the abutting subdivision streets for normal residential purposes “ (Ibid).

5. Public easement rights emanating from private easement rights, created by the plotting and sale of lots, must contain some indicia of intent to dedicate the property to the public. No formal acceptance by the public is necessary, acceptance may be implied by the public’s or public authority’s utilizing or maintaining the property in some fashion. Vick v. SCDOT 397 SC 470, 556 SE2nd 693, (Ct. App. 2001).

6. “Dedication of a private road for public use is evidenced by an intent by the land owner to dedicate the land and an express or implied acceptance....in some instances a recorded plat may be all that is necessary to disclose the landowner’s intent” McAllister v. Smiley 301 SC 10, 389 SE 2nd 857 (1990) (Toal dissent).

7. Dedication for public use is a question of fact. “It has been recognized that the use, repair, and working of the streets by public authorities is a mode of acceptance” (Ibid).

8. Section 57-9-10 creates a formal procedure for terminating a public right of way over land ameliorating the rigor of strict proof of intent to abandon a public right of way. Notice must be given to the public by newspaper advertisement and **to abutting landowners by mail.**

#3
TJ

Without the inclusion of indispensable parties they would not be bound by the decision of the court. SCDOT v. Hinson 361 SC 649, 606 SE 2nd 781 (2004).

CONCLUSION

Plaintiffs own property located on Tenth Avenue (now Bel Air Drive). Tenth Avenue was originally established in 1956 by John A. Eason. It, and all other streets in Eason Acres, are undoubtedly public roads. Plaintiffs' only access to US Highway 17, or any other road outside of the boundaries of Eason Acres, is by Tenth Avenue. Eason's platting of Eason Acres in 1956 and the sale of many lots therein created not only a private easement on behalf of all lot owners whose chain of title specifically references this plat, but evidences a clear and specific intent to dedicate all the road in Eason Acres as public roads, for the benefit of all members of the general public, including Plaintiffs.

Tenth Avenue has been a thoroughfare, adjacent to Plaintiffs' property, for at least the last 25 years. Tenth Avenue was maintained by Georgetown County beyond Plaintiffs' driveway now blocked off, from at least the 1970's until the action commenced in 2006 by Daughtery to close the road. Plaintiffs, at the time Daughtery petitioned to close Tenth Avenue, were abutting property owners whose property would be affected by the closing. They were neither named as parties nor sent notice of the action by mailing requiring a return receipt. After the action to close Tenth Avenue by Daughtery, Plaintiffs' use and enjoyment of their driveway was not, in any fashion, interfered with or interrupted by the road closure and subsequent fencing of Daughtery's property.

If the deed out of John Eason's heirs to Plaintiffs' predecessor in title had contained a reference to the 1956 plat, or stated that it was bound by Tenth Avenue, this matter would have clearly and unequivocally fallen into the holding of the lone line of cases which state that the sale

#4
1252

of lots with reference to a plat of record creates a private easement. The simple fact of John Eason's heirs attempting to thwart John Eason's intent to dedicate a portion of one of the many public streets in Eason Acres should not act to defeat the clearly stated intent of the 1956 plat. Are Plaintiffs to assume, since no deed in their chain referenced the 1956 plat or Tenth Avenue, that they have no private right of access to Tenth Avenue? Such a result would be absurd.

Chief Justice Toal's holding, beginning as a dissent in the McAllister case and favorably cited by the court in the 2008 Murrells Inlet Corporation v. Ward decision, clearly recognized the fact that it is not an absolute necessity for a property owner to have to have a specific private easement over a road which, located in the property owners' surrounding subdivision, has been dedicate to public use.

If Tenth Avenue, as it passes through Defendant's property, was not a public street why would Defendant's predecessor in title have commenced a civil action to close a public road? If Defendant's predecessor in title had intended to acquire the legal right to cut off Plaintiffs' access to their property why did he not physically do so and why did he neither notice Plaintiffs or make them parties to the public road closure action?

Defendant was without legal authority to erect an additional 50' of fence effectively closing Plaintiffs' driveway access.

Respectfully submitted



July 1, 2009

Robert J. Moran, Jr.
Robert J. Moran, PA
Post Office Box 370
Murrells Inlet, SC 29576
(843) 237-4533
Attorney for Plaintiffs

HS

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2006-CP-22- 01196

Dona F. Ducker, Fred C. Ducker,)
Commercial Refrigeration, LLC)
Plaintiffs)

COMPLAINT

vs.)

Eleanor S. Stamper,)
Defendant)

2756 NOV - 1 PM 2:05
CLERK OF COURT

The Plaintiff would allege as follows:

JURISDICTION

1. Plaintiffs Dona F. Ducker and Fred C. Ducker are citizens and residents of Georgetown County. Plaintiff Commercial Refrigeration, LLC is a South Carolina Limited Liability Company, with it's principle place of business in Georgetown County.
2. Plaintiff Commercial Refrigeration, LLC is owned and controlled by the individual Plaintiffs, as Members.(Throughout this Complaint all Plaintiffs will be referred to collectively as Plaintiff)
3. Defendant is, on information and belief, a citizen and resident of Georgetown County.
4. This is an action affecting title to real property, more particularly described in the Lis Pendens filed herewith, located in Georgetown County.
5. Plaintiffs own certain real property, consisting of two separate tracts, which are adjacent and contiguous to the property described in the Lis Pendens.
6. Plaintiff is informed and believes that this Court has personal and subject matter jurisdiction.

#1

FOR A FIRST CAUSE OF ACTION
(EASEMENT BY IMPLICATION AND PRIOR USE)

7. Plaintiff repeats each and every allegation contained herein as if fully set forth verbatim.

8. At one time the property of both Plaintiff and Defendant were owned by John A. Eason, and members of his family.

9. Various parcels of Eason's land were sold to third parties over time.

10. A portion of Eason's property was designated as Tenth Ave (now BelAir Ave) which has been in use as a public or private roadway or right of way for many years. This roadway or right of way was in existence at the time of the sale of various parcels by the Eason family.

11. The prior use of Tenth Ave (BelAir Ave) was apparent and known to all parties.

12. The continued use of Tenth Ave (BelAir Ave) is necessary for Plaintiff's use and enjoyment of its property.

13. The use of this roadway or right of way was not merely temporary or casual, but has been in repeated and constant use for at least the past 25 years.

14. It was the intent of John Eason, or members of his family, that the use of this roadway or right of way continue after their sale of the various parcels.

15. Plaintiff is informed and believes it is entitled to the continued use of Tenth Ave (BelAir Ave) to its extent adjacent to Plaintiffs westernmost properly boundary, both permanently and pendente lite.

#2
TJL

FOR A SECOND CAUSE OF ACTION
(DEDICATION)

16. Plaintiff repeats each and every allegation contained herein as if fully set forth verbatim.

17. Plaintiff and Defendant's predecessor in title, James Eason, and members of the Eason family, expressed a positive and unmistakable intent to dedicate Tenth Ave (BelAir Ave) to public use.

18. The positive and unmistakable evidence of James Eason's dedication of Tenth Avenue (BelAir Ave) to public use is clearly and unequivocally demonstrated with reference to that certain plat entitled "Map of Eason Acres, Murrells Inlet, Georgetown County, S.C., owned by John A. Eason, Jr." dated April, 1956, prepared by S.D. Cox, RLS, and filed with the Clerk of Court for Georgetown County in Plat Book M at Page 18, wherein Tenth Avenue is shown as a continuous 50' public street beginning on US Highway 17 (now business 17) and terminating on Second Street (now Frontage Rd) on said plat.

19. Plaintiff's land is located as what is designated lots 1 & 2 of section 10, in this plat.

20. In addition to any dedication which may be contained in deeds, plats, or other documents of record, this dedication has been implied by long public use.

FOR A THIRD CAUSE OF ACTION
(PRESCRIPTIVE EASEMENT)

21. Plaintiff repeats each and every allegation contained herein as if fully set forth verbatim.

22. Tenth Avenue (BelAir Ave), to and beyond its location and the western boundary of Plaintiff's property, has been in continuous use for over 20 years.

#3

23. The nature, location, and identity of this easement has been open and obvious for over 20 years.

24. Plaintiff, and their predecessors in title have enjoyed the use of this easement in open, notorious, continuous, and uninterrupted use under claim of right for over 20 years.

FOR A FOURTH CAUSE OF ACTION
(NECESSITY)

25. Plaintiff repeats each and every allegation contained herein as if fully set forth verbatim.

26. Plaintiff owns two separate parcels of land, identified as parcel A and parcel B, as per that certain subdivision plat approved by Georgetown County Planning Commission on November 8, 2004, and filed with the Register of Deeds for Georgetown County on November 8, 2004 in plat slide 520 at page 10.

27. On information and belief Defendant's claim on ownership of Tenth Ave (Bel Air Ave), and her erection of a chain link fence thereupon on or about October 31, 2006, has effectively decreased parcel A's road frontage to 13', making parcel A both inaccessible by vehicular traffic and a substandard lot pursuant to Georgetown County Zoning Regulations.

28. The lots owned by Plaintiff and Defendant, together with the location and existence of Tenth Ave (Bel Air Ave) were all deeded out of a common grantor, James A. Eason, or members of the Eason family.

29. Plaintiff claims a right of way by necessity over the portion of Tenth Ave (Bel Air Ave) which extends to the western boundary of Plaintiff's land.

FOR A FIFTH CAUSE OF ACTION
(INJUNCTION)

30. Plaintiff repeats each and every allegation contained herein as if fully set forth

#4
11

verbatim.

31. Defendant has, on or about October 31, 2006, erected a chain link fence, with barbed wire on top, over and across the width of Tenth Ave (BelAir Ave).

32. The erection by Defendant of this fence has effectively prevented Plaintiff's access to Tenth Avenue (BelAir Ave).

33. Plaintiff has no adequate remedy at law. Money damages cannot compensate for this loss of use of access.

34. Plaintiff is informed and believes that it is entitled to an injunction, permanently and pendente lite, restraining and enjoining Defendant from blocking Tenth Ave (BelAir Ave) and interfering with Plaintiff's use and access thereto.

35. Plaintiff is further informed and believes it is entitled to a pendente lite Order requiring Defendant to remove the obstruction place thereupon on or about October 31, 2006.

WHEREFORE having fully set forth the grounds for relief Plaintiff prays for an Order of this Court as follows:

- A. Declaring that Plaintiff has a right of way or easement to the western edge of Plaintiff's lands, on to, over, and across Tenth Ave (BelAir Ave).
- B. Restraining and enjoining Defendant from blocking or erecting any barriers over Tenth Ave (BelAir Ave), permanently and pendente lite
- C. Requiring Defendants, pendente lite, to remove all fences, obstructions, or other impediments erected within the 50' right of way of Tenth Ave (BelAir Ave).
- D. Together with such other and further relief as this Honorable Court may deem

equitable and just.

November 1, 2006
Pawleys Island, SC



Robert J. Moran, Jr.
Robert J. Moran, PA
Post Office Box 370
Murrells Inlet, SC 29576
(843) 237-4533
Attorney for Plaintiff

#6

000028

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker,
Commercial Refrigeration, LLC,

Plaintiffs,

vs.

Eleanor S. Stamper,

Defendant.

ANSWER OF DEFENDANT

The Defendant, in response to the Complaint, would allege as follows:

FOR A FIRST DEFENSE

1. The Defendant denies all allegations of the Complaint not hereinafter specifically admitted.

FOR A SECOND DEFENSE

The Defendant realleges all prior allegations.

2. The Defendant admits the allegations of paragraphs one, two, three, four, six, eight, nine, and twenty-six. The Defendant admits so much of the allegations of paragraph five that the Plaintiffs Dona F. Ducker and Fred C. Ducker own property which is adjacent and contiguous to the property described in the Lis Pendens that the Plaintiff Commercial Refrigeration, LLC owns any such property.

3. The Defendant admits so much of the allegations of paragraph ten that allege that a portion of the Eason's property was designated as Tenth Avenue and that portions of Tenth

Avenue have been in use as a public right-of-way for many years. The Defendant denies so much of the allegations of paragraph ten that pertain to the property that is the subject of this lawsuit.

4. The Defendant denies the allegations of paragraph ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-seven, twenty-eight and twenty-nine that pertain to the property that is subject to this lawsuit, and described in the Lis Pendens.

FOR A THIRD DEFENSE
WAIVER

The Defendant realleges all prior allegations.

5. Plaintiffs have waived any claims they may have had to assert a right to traverse any property owned by Defendant to access their property.

FOR A FOURTH DEFENSE
ESTOPPEL

The Defendant realleges all prior allegations.

6. Plaintiffs are estopped from asserting a right to traverse Defendant's property by virtue of various acts, representations and positions taken by Plaintiffs over the years regarding their access.

FOR A FIFTH DEFENSE
ABANDONMENT

The Defendant realleges all prior allegations.

7. Plaintiffs abandoned any right they may have had to use the alleged easement by

the filing of subdivision plats showing the closing of such easement and the creation of alternative access to their properties.

FOR A SIXTH DEFENSE

The Defendant realleges all prior allegations.

8. Plaintiffs cannot claim the existence of a dedicated street known as Tenth Avenue by virtue of recorded subdivision plat because Plaintiffs' property was not subdivided based on that subdivision.

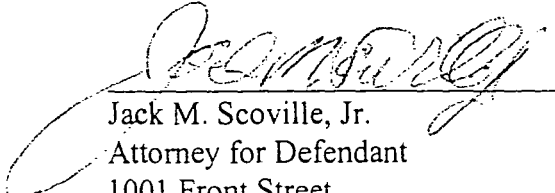
FOR A SEVENTH DEFENSE
UNCLEAN HANDS

The Defendant realleges all prior allegations.

9. Plaintiffs come into court with unclean hands, and therefore cannot be granted the relief they seek.

Wherefore, having fully answered the complaint, Defendant prays the this Court inquire into the matters alleged herein and grant its order:

- A. Dismissing the Complaint;
- B. Granting the Defendant the costs and disbursements of this action.


Jack M. Scoville, Jr.
Attorney for Defendant
1001 Front Street
Post Office Drawer 1228
Georgetown, SC 29442
(843) 546-1130 (telephone)
(843) 546-0726 (facsimile)

December 18, 2006

1 property would be affected by any such change.
2 They are -- what rights they may have had in
3 the road were rights as members of the general
4 public, not because they had any private
5 easement to use the road, and as such they were
6 properly served by John Doe proceedings not by
7 -- it was not necessarily required to make them
8 parties or to specifically notify them under
9 the statute.

10 So for all of those reasons, Judge, we
11 think that there is no easement there and that,
12 you know, we are entitled to judgments and the
13 Plaintiffs are not.

14 THE COURT: Okay. Mr. Moran, call
15 your first witness.

16 MR. MORAN: We would call Mr. John
17 Lewis, please.

18 JOHN LEWIS,
19 of lawful age, the Witness herein,
20 called for Direct-Examination by the
21 Plaintiffs, being first duly sworn, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MORAN:

25 Q. Your full name, sir, is?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 A. Johnny Cleveland Lewis.
- 2 Q. And Mr. Lewis, where do you live?
- 3 A. 642 Swale Avenue.
- 4 Q. Where is that?
- 5 A. Murrells Inlet, Eason Acres.
- 6 Q. I'm going to ask you, can you figure out where
- 7 in Eason Acres? If I can tell you, this is
- 8 Belair Avenue, this is Highway 17.
- 9 A. Lot 7 and 8.
- 10 Q. That would be Lots 7 and 8?
- 11 A. It's half of Block 7 and Block 8 this way.
- 12 Q. So it's on the corner of First Street and Ninth
- 13 Avenue?
- 14 A. Yes, sir.
- 15 Q. I'm just going to point that out to the Court,
- 16 the corner of First Street and Ninth Avenue.
- 17 A. Which is now Swale Avenue and South First
- 18 Street.
- 19 Q. And how long have you lived in Murrells Inlet?
- 20 A. All my life.
- 21 Q. How old are you?
- 22 A. 65.
- 23 Q. And do you have any particular familiarity with
- 24 the property that's owned by Mr. and Mrs.
- 25 Ducker?

- 1 A. I ran a plant there from '84 through '85 called
2 Rebel Manufacturing on the same property.
- 3 Q. On the exact same property?
- 4 A. Yes, sir.
- 5 Q. Okay. I'm going to show you interestingly
6 enough a survey that Mr. Daugherty had, who is
7 the gentleman that the Stampers bought in
8 property from. I'm going to show you
9 Defendant's Exhibit Number 8 and orient you.
10 This is Highway 17 Bypass. This would be
11 generally Rebel Manufacturing property. What's
12 the date on that survey?
- 13 A. July 10, 1997.
- 14 Q. Okay. And what does it show between L 14, and
15 I'll submit to you that's Belair Avenue, and
16 Frontage road?
- 17 A. Appears to be a dirt road through there.
- 18 Q. To your knowledge, direct personal knowledge,
19 Mr. Lewis, was there a dirt road that went all
20 the way through from Belair Avenue to the
21 Frontage road, or at least to the parking lot
22 of Sandpipers for as long as you knew?
- 23 A. Yes.
- 24 Q. All right. Who used that road?
- 25 A. The general public, my business.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 Q. Okay. I'm going to show you a document marked
2 as Plaintiff's Exhibit Number 2, and you have
3 seen this document before have you not?
- 4 A. Yes.
- 5 Q. Some of those markings on there are yours?
- 6 A. Yes.
- 7 Q. This was in your deposition a little while ago?
- 8 A. Yes.
- 9 Q. Let me ask to you hold that. Since your
10 deposition was taken by Mr. Scoville a few
11 weeks ago you have had the occasion to go back
12 out to the property, have you not?
- 13 A. Yes.
- 14 Q. To refamiliarize yourself?
- 15 A. Yes, sir.
- 16 Q. Okay. While I'm looking at this it says three
17 attached buildings over here on the left side
18 of Parcel A. Is that parcel -- are these
19 buildings now accessible by a vehicle through
20 Belair Avenue?
- 21 A. No, sir.
- 22 Q. That's because the fence is now -- I think we
23 have determined the fence is basically in line
24 with this two story dwelling right here?
- 25 A. Yes.

- 1 Q. Okay. What years were you operating Rebel
2 Manufacturing?
- 3 A. I believe it was in '84 and '85.
- 4 Q. I'm going to ask you just to stand for a minute
5 and kind of try to point this out to the Court.
6 What was Rebel Manufacturing, what did they do?
- 7 A. It was a fiberglass manufacturing for Jeep tops.
- 8 Q. And was there some use of this portion of
9 Parcel A being made by Rebel Manufacturing?
- 10 A. Let me get it straight. If I'm not mistaken,
11 the main building set in here. We had a paint
12 building here and there were some open sheds
13 and buildings in this area.
- 14 Q. Okay. What types of vehicles used to call on
15 Rebel Manufacturing from a business purpose?
- 16 A. I had a semi trucks coming in on a weekly or
17 daily basis bringing products in and taking
18 products out.
- 19 Q. And where -- go ahead and describe with your
20 finger, if you don't mind, the track that the
21 trucks would take to access this portion of the
22 property?
- 23 A. I went by this morning before coming here and
24 measured. Where the fence line goes to Santee
25 Cooper's back of their property it was a

1 approximately 21 feet from this fence back this
2 way. Coming in on Belair there is a fence
3 there now approximately 21 to 25 feet back
4 towards where the South Carolina Public Service
5 fence line is on this. The trucks would pull
6 in -- they had room to pull in this way and
7 back up to my front door which was
8 approximately in this area and turn around and
9 come back out. And we are speaking of anything
10 from a 45 to 53 foot semi.

11 Q. Now, Mr. Lewis, the County at some point was
12 maintaining this road, was it not?

13 A. All the way up to the corner where Santee
14 Cooper's power line is. There was an oak tree
15 here and an oak tree somewhere. I don't know
16 the distances but there's two oak trees. The
17 motor grader would come up through it, work the
18 road back out and come under the power line and
19 turn around and come back out this way.

20 Q. Did you see when you went there either this
21 morning or some other time the tire tracks that
22 evidence the driveway into this area right
23 here?

24 A. No, sir. I didn't look. I didn't notice.

25 Q. The original fence line -- and what you saw

1 when you were out there was basically a square?

2 MR. SCOVILLE: Object to the
3 leading.

4 Q. What you basically saw was a square boxed in
5 fenced area correct?

6 A. Yes, sir.

7 MR. SCOVILLE: Object to the leading.

8 THE COURT: You need to rephrase.

9 Q. The older of the two fences, where did it
10 extend?

11 A. I don't know.

12 Q. Okay.

13 A. The only fence until this was called to my
14 attention was the fence that Santee Cooper had
15 put up at this corner. That's how I knew how
16 far back the street went.

17 Q. Well, does the Santee Cooper -- the corner of
18 the Santee Cooper fence, does that fence extend
19 all the way through here?

20 A. No, sir. It comes to the side of what's Belair
21 Avenue.

22 Q. All right. So any question in your mind that
23 the County used to maintain the road at least
24 to basically the Number 3 right here, somewhere
25 in this area is where the motor grader used to

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 push and turn around?

2 MR. SCOVILLE: Object, Judge.

3 MR. MORAN: That's what he just
4 testified, Judge.

5 A. The motor grader came in this area here.

6 MR. SCOVILLE: Excuse me. He didn't
7 say is anything about Number 3. Your Honor,
8 direct him to ask a proper question.

9 THE COURT: Mr. Moran, that is
10 leading. He didn't say anything about Number
11 3. And I understand you are trying to clarify
12 but --

13 Q. Put your finger, Mr. Lewis, if you don't mind,
14 on the portion of this map -- better than that,
15 why don't you take my pen and put --

16 MR. SCOVILLE: Objection, your Honor.
17 There are already some marks in blue. Can we
18 have another colored pen so we don't get them
19 confused with the old marks.

20 MR. MORAN: Anybody have a pen
21 that's not blue?

22 THE COURT: This is Plaintiff's
23 Exhibit 2?

24 MR. MORAN: Number 2.

25 Q. And this is Plaintiff's Exhibit 2. Again, if

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 you can show me --

2 THE COURT: I'm sorry. It's marked
3 twice.

4 MR. MORAN: This is a deposition
5 exhibit.

6 THE COURT: And the previous blue
7 marks on here are from as you stated --

8 MR. MORAN: A prior deposition.

9 THE COURT: Whose deposition?

10 MR. MORAN: Mr. Lewis' deposition.

11 Q. If you would show me, Mr. Lewis, the
12 approximate extent of where the County motor
13 grader -- you've already testified where the
14 county motor grader came down this road?

15 A. Yes.

16 Q. If you would -- I guess we are looking at the
17 north, so let's call this west.

18 A. West.

19 Q. The western terminus, the extent of where the
20 motor grader went during the time that you were
21 involved in this property as Rebel
22 Manufacturing?

23 A. When it would come in, it stopped grading at
24 the area -- I'm anticipating this as the Santee
25 Cooper fence here. It graded down here and

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 came up into this area where it could back up
2 and turn around, but he would grade all the way
3 up to the corner of the Santee Cooper fence.

4 Q. If you don't mind, go ahead and just with that
5 black pen scribe the track that the motor
6 grader would take as it came in from Belair
7 Avenue and turn around?

8 A. You mean to the extreme distance he would go to
9 turn around and whatever.

10 Q. Yes, sir.

11 A. Somewhere in this area right here.

12 Q. All right.

13 A. That's judging approximately the distance of
14 the length of a motor grader.

15 THE COURT: Just so we are clear, you
16 just made a black line on Plaintiff's Exhibit 2
17 over to MG.

18 THE WITNESS: Correct.

19 Q. And the M G you put on there?

20 A. Motor grader.

21 Q. That's the extent basically of where the blade
22 was down?

23 A. Yes, sir. That's exactly what I was just
24 saying. This is the extreme distance that he
25 would go. He would grade to this area and

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 when he would stop, he would back out, turn
2 around under the power line just like the semi
3 trucks and go back out.

4 Q. And where do you believe the fence is that
5 dead-ends Belair Avenue now today when you were
6 out there this morning?

7 A. It's right here.

8 Q. Right there where that dotted line is?

9 A. Yes.

10 Q. That's the terminus of L 1, Parcel A on this
11 plat; correct?

12 A. Yes, sir.

13 Q. So to your knowledge, Mr. Lewis, up until the
14 time -- what used to be behind the end of
15 Belair Avenue as you went through, passed
16 through the Rebel Manufacturing property
17 heading towards Highway 17 Bypass?

18 A. Well, where the motor grader stopped there was
19 a dirt street that went through I say
20 approximately 75 yards. I don't know exactly.
21 Then it went into Sandpipers where the street
22 is and the motor grader would actually grade
23 that side of it.

24 Q. Okay.

25 A. But as far as in the middle of the area, the

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 motor grader never went through there to my
2 knowledge.

3 Q. But what was the frequency of vehicular use in
4 this roadway to your knowledge?

5 A. It was a daily use.

6 Q. Okay. And what size -- any size limitations on
7 the types of vehicles that could go in there?

8 A. It was generally cars and pickups in there.

9 MR. MORAN: Okay. I think that's all
10 the question I have of Mr. Lewis.

11 THE COURT: Okay. Mr. Scoville.

12 CROSS-EXAMINATION

13 BY MR. SCOVILLE:

14 Q. Mr. Lewis do you recall when you first became
15 aware of this road, how old you were?

16 A. When I became aware of?

17 Q. Belair Avenue.

18 A. I moved in the area in 1972. I built my house
19 in 1972, which then was Ninth Avenue.

20 Q. Okay. And what does that mean?

21 A. That means when I became aware of that
22 particular area as far as the streets go.

23 Q. At that point in time, though, the road didn't
24 go all the way through to 17, did it?

25 A. Yes, sir. When I moved in '72 the road went

- 1 from Business 17 to Bypass 17.
- 2 Q. And you're sure of that today?
- 3 A. Yes. I'm positive.
- 4 Q. Okay. And there is no question, is there, but
- 5 that the motor grader never graded the area
- 6 that's now claimed by or now owned by the
- 7 Stampers, is that correct, it stopped on the
- 8 west side of their property?
- 9 A. It stopped approximately 21 to 25 feet from
- 10 where the fence is today towards the west side.
- 11 Q. Okay. But it stopped at some point and turned
- 12 around and went back the other way?
- 13 A. Yes, sir.
- 14 Q. And you don't have any knowledge of why the
- 15 motor grader stopped where it stopped, do you?
- 16 A. Because he couldn't get through the rest of the
- 17 road I guess is why he never went through it.
- 18 Q. Well, I mean, you never saw anything that
- 19 County Counsel had done about the road, did
- 20 you?
- 21 A. No, sir.
- 22 Q. You never asked the motor grader why he was
- 23 stopping there?
- 24 A. No.
- 25 Q. You don't know what authority he had to go

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 further or stop where he stopped or go any
2 further up or stop and went back?

3 A. No, sir.

4 Q. It was just the natural turn around spot at
5 that point?

6 A. Yes.

7 MR. SCOVILLE: Okay. Thank you, your
8 Honor.

9 THE COURT: Any redirect?

10 REDIRECT-EXAMINATION

11 BY MR. MORAN:

12 Q. Any question in your mind, Mr. Lewis, that both
13 vehicular access and county maintenance
14 extended I think to your testimony some 20 to
15 25 feet beyond the present location of the
16 fence?

17 A. Yes, sir. Absolutely. 21 to 25 feet further
18 to the west.

19 Q. That's all the questions I have. Thank you,
20 Mr. Lewis.

21 THE COURT: Thank you, sir.

22 MR. MORAN: I would ask that Mr.
23 Lewis be excused.

24 THE COURT: Unless there is an
25 objection, Mr. Scoville?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 MR. SCOVILLE: No objection, Your
2 Honor.

3 THE COURT: Thank sir.

4 THE WITNESS: Thank sir, sir. Have a
5 good day.

6 MR. MORAN: I'm going to call Mr.
7 Fred Ducker, please.

8 FRED DUCKER,
9 of lawful age, the Witness herein,
10 called for Direct-Examination by the
11 Defendant, being first duly sworn, was
12 examined and testified as follows:

13 DIRECT-EXAMINATION

14 BY MR. MORAN:

15 Q. Mr. Ducker, you and your wife own this
16 property; correct.

17 A. Yes, sir.

18 Q. And you have owned it for some interesting back
19 and forth?

20 A. Since 1980, sir.

21 Q. But you bounced it back and forth through some
22 organizations that are owned by the family?

23 A. Yes, sir.

24 Q. Okay. Show me -- first of all, let me get you
25 to familiarize the judge with information

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 contained on Plaintiff's Exhibit Number 2.
2 That would be the plat of your property;
3 correct?

4 A. Yes, sir.

5 Q. Okay. First of all, this says concrete area.
6 What is the concrete area?

7 A. Yes, sir. That's where the old Rebel
8 Manufacturing building was. It's a 14 inch
9 thick concrete slab.

10 Q. But when you say 14 inch thick, is 14 inches
11 thick or 14 inches high off the ground?

12 A. 14 inches high off the ground.

13 Q. So it's --

14 A. Yes, sir.

15 Q. Is there anyway to drive a vehicle over this?

16 A. No, sir.

17 Q. All right. Prior to the Stampers putting a
18 fence up, if you can scribe with your finger
19 down Belair Avenue where you used to drive to
20 access these buildings here?

21 A. Right there.

22 Q. Okay. Is the location of your vehicular path
23 still visible today?

24 A. Yes, sir.

25 THE COURT: Just for the record,

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 could you describe that a little more clearly.
2 Where it was scribed.

3 Q. Go ahead and talk, Mr. Ducker, if you don't
4 mind?

5 A. It come down Belair. The power -- the
6 substation is right over here, and before this
7 fence was put up you drove in, there is an oak
8 tree here, there is an oak tree over here, and
9 we drove around the oak tree and drove in right
10 here to where the garage is right here.

11 THE COURT: And that's in Parcel A on
12 Plaintiff's Exhibit 2.

13 A. Yes, sir.

14 Q. Are there bays in this garage that face where
15 it says Parcel A?

16 A. Yes, sir.

17 Q. Can you access those under any means with any
18 kind of vehicle at present?

19 A. No, sir.

20 Q. What business are you in?

21 A. Commercial refrigeration.

22 Q. Is your business conducted out of this
23 location?

24 A. Yes, sir.

25 Q. Okay. Prior to the Stampers putting the fence

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 up where was the location of the fence that Mr.
2 Daugherty put up?

3 A. Somewhere right in there.

4 Q. Where it says service pole?

5 A. Yes, sir.

6 Q. Okay. You can sit back down.

7 Did you ever -- were you named as a party
8 in the civil action that Mr. Daugherty brought?

9 A. No, sir.

10 Q. Did you or your wife or any of your businesses
11 ever receive a certified mailing indicating
12 that there was an action pending to close your
13 road?

14 A. No, sir.

15 Q. Did you find out at standpoint that there had
16 been an action to close the road?

17 A. Yes, sir.

18 Q. And how did you find that out?

19 A. When Mr. Daugherty started putting his fence
20 up.

21 Q. And did Mr. Daugherty at any point attempt to
22 put his fence up in any fashion that would
23 impede your ability to access the building on
24 Parcel A?

25 A. No.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 Q. Was there ever a conversation about him
2 attempting to do that or wanting to do that?
- 3 A. No, sir. In fact, he told me that he was
4 putting it up there because he did not want to
5 block me, to block my access to there.
- 6 Q. Okay. Did you -- did anyone ever indicate to
7 you or did you ever have any indication that
8 your property did not exist on a public right
9 of way?
- 10 A. No, sir.
- 11 Q. Okay. Do you have any information as to what
12 the lack of access by the current fence does to
13 Parcel A on Plaintiff's Exhibit Number 2?
- 14 A. Yes. It's pretty much landlocked.
- 15 Q. Okay. Parcel A, describe, if you will, the
16 boundaries of Parcel A.
- 17 A. The boundaries of Parcel A go from here.
- 18 Q. You are looking at one half inch iron set?
- 19 A. Yes, sir. Down to another set right here, down
20 here.
- 21 Q. That's past L 1?
- 22 A. Yes, sir. And then up through here.
- 23 Q. So at this point show me if you will, or show
24 the Judge which section of Parcel A, if any,
25 now is not cut off from Belair Avenue?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 A. Right here.

2 Q. And what's -- and this is the fence right here,
3 this area where it says where the fence was put
4 up?

5 A. Yes. There is still a fence right there.

6 Q. What's in this fence?

7 A. Nothing.

8 Q. Nothing?

9 A. An oak tree.

10 Q. Okay. Did you feel any need or compulsion or
11 think that your rights to access your property
12 have ever been affected or threatened by Mr.
13 Daugherty or anyone prior to the erection of
14 the fence here?

15 A. No, sir.

16 Q. Okay. That's all the questions I have. Answer
17 any questions Mr. Scoville may have.

18 CROSS-EXAMINATION

19 BY MR. SCOVILLE:

20 Q. Mr. Ducker, let me show you another document
21 that's called final and construction plans for
22 Daugherty mini stores.

23 MR. MORAN: Your Honor, I'm going to
24 object do this. This document has not been
25 agreed to be introduced. I let Mr. Scoville

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 talk about it when he talked about it with you.
2 This is not a -- the document with the
3 exception of that colored document that you
4 have in front of you is a document that has
5 been filed with the Clerk of Court for
6 Georgetown County. This is not such a
7 document. I have no idea where this came from
8 or what it is. There is no authenticity to it.

9 MR. SCOVILLE: Okay. I was going to
10 ask him -- I wasn't going to introduce it in
11 evidence. I was just going to ask him some
12 questions about it.

13 THE COURT: On what basis?

14 MR. SCOVILLE: Just that it shows the
15 fence, the proposed fence on the property.

16 THE COURT: No.

17 Q. Mr. Ducker, at some point in time Mr. Daugherty
18 was putting his fence around his property, was
19 he not?

20 A. Yes.

21 Q. And before that time there wasn't a fence
22 around his property, there was a fence around
23 the substation across the road from you?

24 A. Right.

25 Q. Is that correct?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 And he was coming down the road in front
2 of your house with the fence at some point, was
3 he not?
- 4 A. No.
- 5 Q. Never indicated to you that he was going to put
6 any fence there in front of your property?
- 7 A. No, sir.
- 8 Q. But you said you asked him about it, didn't
9 you?
- 10 A. Only when he started putting it up.
- 11 Q. Asked him about the fence. Didn't you ask him,
12 well, how about this part where I use my
13 driveway, you know, and whatnot?
- 14 A. Yes, sir.
- 15 Q. Didn't you ask him that?
- 16 A. Yes, sir.
- 17 Q. And what did he say?
- 18 A. He said he had no intention of closing that
19 part off.
- 20 Q. Okay. And that's after you asked him about
21 your access, though, wasn't it?
- 22 A. What?
- 23 Q. Wasn't that after you asked him what was going
24 to -- how it was going to affect your access?
- 25 A. I mean, we were just talking about the access;

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 yes, sir.
- 2 Q. And he told you he had brought a lawsuit to
- 3 close the road, did he not?
- 4 A. After the fact, yes, sir.
- 5 Q. But he said, "I've closed the road"?
- 6 A. He said he closed the road.
- 7 Q. And he actually fenced it off from where he put
- 8 his gate all the way through to the other side
- 9 of his property; isn't that correct?
- 10 A. The original, yes, sir.
- 11 Q. Yes, sir. And you never contested that, did
- 12 you?
- 13 A. No, sir.
- 14 Q. So you were satisfied with the closing of that
- 15 portion of the road?
- 16 A. Yes, sir.
- 17 Q. Wasn't any question about that, you didn't go
- 18 to the Courthouse and say what's going on and
- 19 you didn't contest it with him?
- 20 A. Yes, sir.
- 21 Q. You understood he had a right to do that,
- 22 didn't you?
- 23 A. He said he did.
- 24 Q. Well, you didn't contest it, did you?
- 25 A. No, sir.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 Q. You didn't go see a lawyer about it, did you?
- 2 A. No, sir.
- 3 Q. You didn't bring a lawsuit or anything to
- 4 contest it, you were satisfied with the closing
- 5 of the road; isn't that correct?
- 6 A. Yes, sir.
- 7 Q. You didn't go and raise the issue about some
- 8 problem with the closing of road until the
- 9 Stampers raised that as an issue in this
- 10 lawsuit?
- 11 A. Well, it wasn't an issue until the Stampers put
- 12 up a spite fence to keep us from using our
- 13 driveway.
- 14 Q. Until that point in time you never contested
- 15 the closing of the road?
- 16 A. No, sir.
- 17 Q. But that at that point in time you had known
- 18 about it for about 10 years; isn't that
- 19 correct?
- 20 A. It had been up for a considerable amount of
- 21 time, yes.
- 22 Q. About 10 years. It was '97 when the Order was
- 23 issued and Mr. Daugherty put his fence up
- 24 shortly after that, didn't he?
- 25 A. Yes.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 Q. And the Stampers, they put their fence up in
2 early 2006?

3 A. I don't remember.

4 Q. During that whole period of time from about
5 1997 to 2006 you never disputed the closing of
6 the road?

7 A. There was no need to, sir. I still had access
8 to my property.

9 Q. Well, he cut off your use of the road all the
10 way through to 17, didn't he?

11 A. He cut off the use of the road for everybody
12 from 17.

13 Q. Yes, sir. And that included you as far as
14 everybody?

15 A. Yes. Uh-huh.

16 Q. And looking at Plaintiff's Exhibit 2, the
17 problem you have with access back in what you
18 describe as Parcel A is vehicular access, isn't
19 it?

20 A. Yes.

21 Q. You have no problem walking back there; right?

22 A. If I went to walk through my front porch, yeah.

23 Q. Yeah. Okay. Or through your back porch?

24 A. Or my back porch.

25 Q. You can come back around and walk through the

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 covered walk and get to -- all of that area is
2 easily accessible to you by foot; right?

3 A. Yes.

4 Q. And you can -- if you want to ride a bicycle
5 you could ride a bicycle; right?

6 A. I assume so.

7 Q. Actually you could drive a vehicle through the
8 front of your yard between where the fence is
9 and your front porch; isn't that correct?

10 A. It would be hard, sir.

11 Q. Well, there is plenty of room, there 20, 25
12 feet there, you can get a vehicle through there
13 if you wanted to?

14 A. Possibly, yes.

15 Q. I mean, I recall in your testimony in your
16 deposition y'all had landscaping and you didn't
17 want to affect the flowers and stuff you
18 planted there in your lawn; isn't that correct?

19 A. Well, it's nice to have a front yard rather
20 than a driveway.

21 Q. I understand that. But we are talking about
22 access and it's convenient access not true
23 access is your problem, isn't that right, sir?
24 You just don't want to drive through the front
25 of your yard to get back there?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 A. No, I don't want to drive through the front of
2 my yard.

3 Q. But you could if you had to?

4 A. If I had to.

5 Q. So you don't really have an access problem,
6 it's the convenience problem; isn't that right,
7 isn't that what you are really complaining
8 about?

9 MR. MORAN: You can't look to me.

10 A. Yeah.

11 Q. That's a true statement, you have to admit
12 that, don't you?

13 A. I would assume so.

14 Q. Okay. And now this plat, and I'm referring to
15 Plaintiff's Exhibit 2, it says prepared for
16 Parcel A owned by Dona Ducker but Dona Ducker
17 and you actually own this property, don't you?

18 A. Yes.

19 Q. And even though it says it was prepared for her
20 or in her name, it was really for both you,
21 isn't it?

22 A. We both live there.

23 Q. Yes, sir. I mean, I guess you don't dispute
24 the plat or anything on here?

25 A. No, I don't.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 Q. You concur with it.

2 Okay. And there is no question that when
3 you had the conversation with Mr. Daugherty
4 about the fence, that you understood that he
5 owned the property in front of your house,
6 whether he was putting a fence there or not,
7 you understood that was his property?

8 A. Yes, sir.

9 Q. Wasn't the State's or the County's property, it
10 was your property and the Ducker's property?

11 A. Yes, sir.

12 Q. And he gave you permission to continue
13 accessing your property over this property?

14 A. Yes.

15 Q. Okay. And from that point on you were
16 operating with his permission, he told you
17 that?

18 A. Yes, sir.

19 Q. And that would have been around 1997; is that
20 correct?

21 A. Well, yes.

22 Q. Okay. And you were a member of some
23 partnership or some partnership or group known
24 as BF & B, Inc; is that correct?

25 A. Yes.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 Q. That was a corporation in which you were one of
2 the stockholders?

3 A. Yes, sir.

4 Q. And B,F & B Inc. bought property that's the
5 subject of this in 1987?

6 A. Yes.

7 Q. And before that time you don't have any
8 knowledge of the property?

9 A. No, sir.

10 MR. SCOVILLE: Excuse me, your Honor.

11 - - - - -

12 (Thereupon, discussion was had
13 off the record)

14 - - - - -

15 Q. Let me ask you this: The oak tree, how far
16 does that oak tree stick out into what you
17 would describe as the right of way?

18 A. I wouldn't know.

19 Q. Is any of the oak tree on your property?

20 A. Only the limbs.

21 Q. The limbs come over on your property?

22 A. Yes.

23 Q. And is it a fairly old oak tree?

24 A. Yes.

25 Q. How big would the trunk be do you think?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 A. It's actually two trunks. I would say
2 approximately 18 to 24 inches in diameter.

3 Q. Do you think the tree is 100 years old, do you
4 think it's that old?

5 A. Probably, yes.

6 Q. And it's got a pretty extensive root system,
7 does it not?

8 A. I would assume so.

9 Q. And the roots go out into where you say they
10 used to scrape?

11 A. Yes.

12 Q. And it's pretty well developed out there,
13 pretty bumpy when you go through there with
14 those roots?

15 A. It's pretty level.

16 Q. The roots extend out into the right of way
17 pretty good, don't they?

18 A. Well, yeah, I guess. We never went down to the
19 roots.

20 Q. Okay. I have no more questions. Thank you.

21 THE COURT: Yes, sir.

22 REDIRECT-EXAMINATION

23 BY MR. MORAN:

24 Q. Mr. Scoville got you to admit that you were
25 using this area with the permission of Mr.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 Daugherty?

2 A. Yes.

3 Q. When you left Highway 17 Business to drive to
4 your buildings on the far end of your
5 property --

6 MR. SCOVILLE: Your Honor, obviously
7 this is going to be a leading question and I
8 object to it. I see where he is going with it.

9 MR. MORAN: Let me ask the question.

10 MR. SCOVILLE: I want you to caution
11 him not to ask a leading question.

12 THE COURT: Well, I'm going to
13 caution you not to ask a leading question.

14 Q. When you drove from Highway 17 Business to
15 access your buildings that are no longer
16 accessible vehicularly, what was the nature of
17 the road you drove? I'm not asking you what it
18 was made out of but who owned it, who had the
19 right to use that road?

20 A. Everybody used it.

21 Q. Okay. And whose road did you follow all the
22 way to access the three attached buildings on
23 Parcel A, whose road was that?

24 A. Everybody took it.

25 Q. Did you ever think that Mr. Daugherty had the

1 right to deny you access to those buildings in
2 the fashion that was denied your access by the
3 Stamper's fence?

4 A. No, sir.

5 Q. So you didn't think you were doing that with
6 his permission.

7 MR. SCOVILLE: Objection, your Honor.
8 He is testifying.

9 THE COURT: Mr. Moran, allow your
10 witness to testify. And I understand, of
11 course, Mr. Scoville, this is a Master in
12 Equity not a jury try and I can certainly take
13 that into consideration, as well.

14 Q. Was your access dependent on the goodwill of
15 Mr. Daugherty?

16 A. No. I mean, I just used it and he -- it was
17 never a question.

18 Q. If he had ever stopped you or attempted to stop
19 you from access the way the Stampers did, what
20 would you have done?

21 A. Same thing I did.

22 Q. Which is?

23 A. Brought a lawsuit.

24 Q. That's all the questions I have. Thank you,
25 sir.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 THE COURT: Any recross, any brief
2 recross Mr. Scoville?

3 MR. SCOVILLE: Yeah, just along those
4 lines, your Honor.

5 RECROSS-EXAMINATION

6 BY MR. SCOVILLE:

7 Q. Mr. Ducker, you had a discussion with Mr.
8 Daugherty and he said it was okay for you to
9 keep accessing your property off of his road;
10 isn't that right, sir?

11 A. I don't know that it was said exactly that way.
12 Mr. Daugherty never intended to keep me from
13 accessing my property, period.

14 MR. SCOVILLE: Objection, your Honor.
15 He can't say what he intended to do or didn't.
16 I move to strike that.

17 THE COURT: Rephrase your question.

18 Q. Let me ask you this: You understood that Mr.
19 Daugherty owned the road? Yes or no.

20 MR. MORAN: Your Honor, he's --

21 MR. SCOVILLE: I'm asking him what he
22 understood, Judge.

23 THE COURT: What's your objection?

24 MR. MORAN: Thank you, your Honor.

25 You can't craft a question even on

1 cross-examination and then not like the answer
2 that you got. Now, I understand exactly what
3 Mr. Scoville is attempting to do and I'm
4 assuming that if he tries it long enough he can
5 get Mr. Ducker to say what he wants Mr. Ducker
6 to say, but if Mr. Ducker says something like
7 he never intended to close the road --

8 MR. SCOVILLE: Judge, he is coaching
9 the witness right now as to what to say.

10 MR. MORAN: He just said that.

11 THE COURT: All right. Hold on.
12 Mr. Moran, I believe you actually are correct,
13 that you did ask the intent and you objected
14 about the intent, and that was when you asked
15 that his testimony be stricken because he
16 couldn't testify about what he intended at the
17 time.

18 MR. SCOVILLE: Yes.

19 THE COURT: And Mr. Moran I think is
20 basically saying I think through that question
21 that door was opened. Now I think there still
22 would be other objections or concerns or
23 qualifications about hearsay and things like
24 that.

25 MR. SCOVILLE: Yes, sir.

1 THE COURT: Okay.

2 MR. SCOVILLE: My question is as to
3 what Mr. Ducker knew.

4 THE COURT Right.

5 Q. So Mr. Ducker, in 1997 you knew that Mr.
6 Daugherty owned that road, did you not?

7 A. I knew that Mr. Daugherty had closed the road
8 from the fence he was putting up west.

9 Q. Yes, sir. And you also knew that he owned the
10 road in front of your house, did you not?

11 A. He owned the property.

12 Q. Well he owned the property where the road was,
13 right?

14 A. Yes, sir.

15 Q. And you also knew he closed the road?

16 A. He closed the road west of that.

17 Q. Well, you didn't know what portion he closed,
18 did you?

19 A. Yes, because he showed me.

20 Q. He showed you?

21 A. Yes.

22 Q. How did he show you?

23 A. When he but the fence up.

24 Q. Okay. So he put the fence up and that's what
25 you based your understanding on what he owned

1 and what he closed?

2 A. Yes.

3 Q. You actually had that discussion with him and
4 all of that?

5 You went out there and he said this is
6 where my property line is or are you saying
7 that's because you assumed that because that's
8 where the fence was?

9 MR. MORAN: Objection. I know this
10 is cross-examination but he is attempting to
11 create hearsay. He is saying a person who's
12 not here said this to you.

13 MR. SCOVILLE: He is saying the
14 hearsay, Judge, and I'm trying to get him
15 to --

16 THE COURT: Here's what we are going
17 to do. Mr. Scoville, I'm going to give you one
18 more opportunity to craft the question. I
19 mean, certainly there is plenty of leeway here
20 but we aren't going to sit here for 15 minutes
21 while you are trying to whittle it down.

22 Q. Let me go back. Well, you understand that
23 today that Mrs. Stamper bought the property
24 that Mr. Daugherty had; isn't that correct,
25 sir?

1 A. Sure.

2 Q. Okay. And when you and Ms. Ducker prepared
3 this plat, I'm referring to Plaintiff's Exhibit
4 1, did you not in fact show on this plat that
5 Mrs. Stamper's property line went down to where
6 her gate is now located?

7 A. That's -- yeah. That's the plat, yeah.

8 Q. So y'all -- you recorded a plat that indicates
9 Ms. Stamper owns the land in front of your
10 house; is that correct?

11 A. Yes.

12 MR. SCOVILLE: I don't have any
13 further questions, your Honor.

14 MR. MORAN: Nothing further.

15 THE COURT: Thank you, sir.

16 MR. MORAN: I would like to call Dona
17 Ducker ever so briefly for some limited
18 testimony.

19 DONNA DUCKER,
20 of lawful age, the Witness herein,
21 called for Direct-Examination by the
22 Defendant, being first duly sworn, was
23 examined and testified as follows:

24

25

DIRECT-EXAMINATION

BY MR. MORAN:

Q. And your full name is?

A. Dona Fulghum Ducker.

Q. He might want you to spell Fulghum.

A. F-U-L-G-H-U-M.

Q. Good thing. I would have gotten it wrong

And Mrs. Ducker, this is your husband;
correct?

A. Yes.

Q. And you are a Plaintiff in this action?

A. Yes.

Q. And where do you live, Mrs. Ducker? I'm going
to show you Plaintiff's Exhibit Number 2. Is
your residence located on this property?

A. Yes. Right here.

Q. Where it says two story framed dwelling?

A. Yes.

Q. Okay. And how long have you lived in this
house? This is your primary home?

A. Yes.

Q. How long have you lived there?

A. Since 2002. We've been married six years.

Q. Okay. In response to Mr. Scoville's line of
questioning about, well, you could drive a

1 vehicle across your front yard, tell the Judge,
2 if you don't mind, Mrs. Ducker, about your
3 house and your front yard?

4 A. Well, I went out at measured it myself. From
5 the front porch to the fence that they put up,
6 it's exactly 21 feet. And I have a three feet
7 of shrubbery that goes in front of the house,
8 which is very common. Most people like to have
9 a nice house. When you have a house that's
10 appraised for \$400,000 you don't want a fence,
11 a chain link fence on top of that going all the
12 way across your house.

13 Q. What's on the top of the chain link fence?

14 A. Barbed wire.

15 Q. All right. Go ahead.

16 A. And yes, I guess I could get a car through
17 there but I would have to take my shrubs out
18 and all I would have is a small access. I
19 mean, there would be nothing but a driveway and
20 a chain link fence and a \$400,000 house sitting
21 there.

22 Q. Who did the work to do your front yard?

23 A. I did. When Fred and I got married it was
24 pretty much a bachelor's pad and I fixed up the
25 house and planted shrubs and all of that.

- 1 Q. To your knowledge, and you have been there
2 everyday and you have seen this fence basically
3 everyday of your life since it's been there?
- 4 A. Yes.
- 5 Q. What use have the Stampers made of this small
6 fenced in area?
- 7 A. I saw Charley Stamper come out one time and
8 check the lock to make sure it still worked and
9 that has been it. And I also see people that
10 cut grass for them coming in and cutting a
11 little bit of the grass.
- 12 Q. Is it used in connection with their storage
13 facility; is there anything stored there?
- 14 A. No, sir.
- 15 Q. How big of an area is this fenced in area in
16 comparison to where we have here today?
- 17 A. Oh, let's see. Probably I would say as wide
18 from that corner to the second window, and
19 there is a big huge oak tree on this side and
20 then the gravel drive that we were using to go
21 into our property, and then an embankment up
22 here. There is an embankment on this side with
23 the fence of Santee Cooper, there is a gravel
24 road and then there is a big huge oak tree.
- 25 Q. So if I held my arms out and I'm standing by

1 the second window, do you mean approximately --

2 A. The end of the second window there I would say.

3 Q. Okay. Back here.

4 Is it any larger than the area between
5 myself and the Judge?

6 A. No.

7 Q. That's all. Thank you.

8 THE COURT: Mr. Scoville.

9 CROSS-EXAMINATION

10 BY MR. SCOVILLE:

11 Q. Ms. Ducker, who owns Lot A -- excuse me --
12 Parcel B?

13 A. Our company, Commercial Refrigeration.

14 Q. And y'all transferred it to the company. Did
15 they pay you for it or was that a voluntary
16 conveyance?

17 A. My husband did that, had it divided because he
18 was going to sell the back property. He had a
19 buyer and then something happened and it didn't
20 work out.

21 Q. But this subdivision between Parcel A Parcel B
22 back in 2004, that was voluntary on y'all's
23 part, wasn't it?

24 A. Yes.

25 Q. And where you landscaped and stuff, that's

- 1 voluntary also, is it not?
- 2 A. Oh, yes.
- 3 Q. And plenty of people have houses and have
- 4 driveways up alongside of their house, do they
- 5 not?
- 6 A. I don't know of any nice houses that do.
- 7 Q. All right. But that happens; right?
- 8 A. I guess if you lived in a trailer.
- 9 Q. Okay. And then right across the street on the
- 10 other side of the area that was fenced in by
- 11 the Stampers there is an electric power
- 12 substation there, is there is not?
- 13 A. Yes.
- 14 Q. So when you sit on your front porch what you
- 15 are looking at anyway is a fence just a little
- 16 further away, isn't it?
- 17 A. It's a lot further away.
- 18 Q. 50 feet or so, isn't it?
- 19 A. Probably more than 50 feet I would think.
- 20 Q. Doesn't it run along the line of the road?
- 21 A. Yes.
- 22 Q. So however wide what you contend is Belair is.
- 23 There is some barbed wire on top of that fence,
- 24 is there not?
- 25 A. I believe so.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 Yes, Mr. Moran?

2 MR. MORAN: Can I --

3 THE COURT: He will be available. If
4 you want him to try and explain the answers, he
5 will be available for you.

6 MR. MORAN: I really didn't think
7 this was the appropriate way to use a
8 deposition when the witness is here. You ask
9 him --

10 THE COURT: But he is entitled to
11 publish portions of the deposition provided
12 adequate notice is given.

13 MR. MORAN: Okay. If that's your
14 rule, I'm not going to argue.

15 THE COURT: Okay.

16 MR. SCOVILLE: Well, then what I
17 would like to do is just publish what he said
18 in his deposition, your Honor, if that's
19 permissible. If he is not going to object on
20 the grounds of notice I have a right to do it.

21 THE COURT: Well, I've got Mr. Ducker
22 here. He will go ahead and read his responses.

23 CROSS-EXAMINATION

24 BY MR. SCOVILLE:

25 Q. Look on page 15, Mr. Ducker, please, sir. Are

1 you on page 15?

2 A. Uh-huh.

3 Q. I'm going to read the question asked in your
4 deposition starting at Line 12, and if you
5 would just read your answer just like it's
6 printed, please.

7 "Question: Okay. Now, what, if anything
8 did -- tell me about your discussions with Mr.
9 Daugherty about using that road, starting with
10 the very earliest time you can recall talking
11 to him about it?" Please read your response.

12 A. "The earliest is when Jim -- he had already
13 started building some units. In fact, he had
14 some units built before he ever put a fence up.
15 And then he built the fence and he -- this
16 ditch was just really a -- he made a real ditch
17 along -- behind the Santee Cooper property
18 there and put --"

19 Q. "Is that across the street from your --"

20 A. "That's across the street from me, yeah."

21 Q. "Question: Across from Belair Avenue and 10th
22 Avenue?"

23 A. Right.

24 Q. Go on.

25 A. "And then he -- I had a fence that came just

1 like you see it right here." Whatever that
2 was. Okay?

3 Q. "Question: That would than along, what, the
4 western boundary of your lot?" What did you
5 say?

6 A. I said, "Right."

7 Q. Okay. Let me go back and make sure that's
8 clear. Excuse me. "Question: That would be
9 along, what, the western boundary of your lot?"

10 A. And I said, "Right."

11 Q. "Question: Okay."

12 A. "And Jim, you know, just told me -- he said
13 that he was going to fence, you know, this
14 property right here, (indicating) including
15 where the road would be used to go all the way
16 through.

17 "I asked him, 'Well, how about this part
18 where I use my driveway, you known, and
19 whatnot?' Because he had told me just in
20 conversation one day when he was over at the
21 house -- and he used to come over while he was
22 building -- he used to come over just about
23 everyday, and he was a very good neighbor.

24 "And he told me that the property actually
25 went beyond the big old oak tree, which is in

1 front of my house.

2 "And I said, 'Well, you know, that's what
3 I'm using for my driveway.'

4 "He said, 'Yeah. I see that.' He said,
5 'Well, don't worry about it.' He said, 'I'm
6 not going to --' he said, 'I'm going to stop
7 the fence right here and put a gate because --'
8 He said, 'I would like to have access, you
9 know, back access off the property as well as
10 front access on the frontage road.'

11 "And he had, 'But that gate is going to
12 stay locked.' He said, 'I'd only use it in an
13 emergency type situation.' But he said, 'I
14 don't have any problem with you using that as
15 your drive.' He said, 'I have no intention
16 whatsoever of closing that off.' And that was
17 pretty much the extent of the conversation."

18 Q. Okay. And if you would go to Page 19, Line 19.
19 My question: "Okay. Now, when he put the
20 fence up, did you object to it?"

21 A. "I didn't know anything about it until it was
22 done."

23 Q. "Question: Well, I mean, he was putting a
24 fence up there in front of your house?"

25 What was your answer?

1 A. I said, "Yeah." But it wasn't in front of my
2 house.

3 Q. Well, yes, sir. Let me go back and ask what
4 you said and what your answer was. "Question:
5 Well, I mean, he was putting a fence up there
6 in front of your house?"

7 A. "Yeah."

8 Q. "Question: You saw it when he started fencing
9 off the property?"

10 A. "Yes."

11 Q. Okay. Thank you. That's all I have.

12 THE COURT: Are there any portions
13 you would like to have published in this
14 process?

15 MR. MORAN: May I ask him a very few
16 questions in response to what he just said?

17 THE COURT: Having just reviewed the
18 rule, it is a publication in the case in chief.
19 You could have had a client, a law partner or
20 any one else publish them in his case in chief,
21 which this is. So I'm not going to allow you
22 to have additional cross at this point. It was
23 strictly a verbatim recitation of the
24 deposition.

25 MR. MORAN: Okay.

STATE OF SOUTH CAROLINA,

County of Georgetown



KNOW ALL MEN BY THESE PRESENTS, THAT

I, John A. Eason, Jr.

in the State aforesaid in consideration of the sum of Five Hundred (\$500.00)----- DOLLARS,

to me in hand paid at and before the sealing of these presents by J. G. K. Carr

in the State aforesaid 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. G. K. Carr

All that certain parcel or lot of land situate and lying at Murrells Inlet in the County of Georgetown, State of South Carolina, being shown and designated as lot number five (5) of block number twelve (12) on a certain map of Eason Acres made by S.D. Cox and to be recorded. Said lot hereby conveyed measuring and containing in front on First Street seventy (70) feet and the same on the rear line and running back along each side line a distance of two hundred (200) feet and butting and bounding as follows: to the Northeast on lot number six (6) of said block number twelve (12), to the Southeast on said First Street, to the Southwest on lot number four (4) of said block number twelve (12) and to the Northwest on a twenty (20) foot alley. All of which will more fully and at large appear, reference being made to the aforementioned map.

PLAINTIFF'S
EXHIBIT

3 5/28/09

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
J. E. K. Carr, his

Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said
J. E. K. Carr, his

Heirs and Assigns, against myself and my Heirs, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this day of March

in the year of our Lord one thousand nine hundred and fifty-six and in the one hundred and eightieth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Elaine Schenker
Louise Creel

John A. Eason, Jr. (L. S.)
(L. S.)

THE STATE OF SOUTH CAROLINA,

Georgetown County.

PERSONALLY appeared before me *Louise Creel*

and made oath that *she* saw the within named *John A. Eason, Jr.*

sign, seal, and as act and deed, deliver the within written Deed,

and the with *Elaine Schenker*

witnessed the execution thereof.

SWORN to before me, this

March

A. D. 1956

Notary Public of South Carolina

(SEAL)

Louise Creel

THE STATE OF SOUTH CAROLINA,

Georgetown County.

RENUNCIATION OF DOWER

I, *W. C. Hedgcock*, a Notary Public for South Carolina

do hereby certify unto all whom it may concern, that Mrs. Dorothy M. Eason

the wife of the within named *John A. Eason, Jr.*

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

J. E. K. Carr, his

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this

day of March

Anno Domini 1956

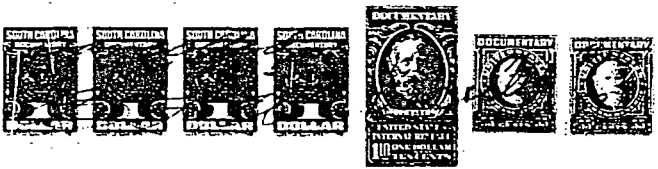
Notary Public of South Carolina

(SEAL)

Dorothy M. Eason

STATE OF SOUTH CAROLINA,

GEORGETOWN



KNOW ALL MEN BY THESE PRESENTS, THAT

I, JOHN A. EASON, of the County of Georgetown

in the State aforesaid _____ for and _____ in consideration of the sum of
TWO THOUSAND (\$2,000.00) - - - DOLLARS,

to me in hand paid at and before the sealing of these presents by K. W. SARTOR and JUANITA
ALLEN SARTOR, of Darlington

in the State aforesaid _____ 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 K. W. SARTOR and JUANITA ALLEN SARTOR, their Heirs and Assigns:

All those Two (2) certain pieces, parcels or lots of land
situate, lying and being at Murrell's Inlet in the County of Georgetown
and State of South Carolina, known and designated on a Map of Eason Acres
made by S. D. Cox, R.L.S., April 1956, as Lots Numbers FOUR (4) and FIVE
(5) of Block Number FIVE (5); said two lots, taken together, measuring and
containing in front on U. S. Highway 17 and on the rear line, each,
ONE HUNDRED TWENTY (120) feet, and extending back therefrom on each side
line ONE HUNDRED FIFTY (150) feet; Butting and Bounding to the Northeast
on Seventh Avenue shown on said Map, to the Southeast on U. S. Highway
17, to the Southwest on Lot Number Three (3) of said Block and to the
Northwest on a Twenty-foot alley shown on said Map; All of which will
fully appear by reference to the aforesaid Map, which is made part and
parcel hereof.

300K 30 PAUL 281
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
K. W. SARTOR and JUANITA ALLEN SARTOR, their Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said
K. W. SARTOR and JUANITA ALLEN SARTOR, their Heirs and Assigns, against myself and my Heirs, and all other persons lawfully claiming, or to claim the same or any part thereof.

WITNESS MY Hand and Seal, this 14th day of October
in the year of our Lord one thousand nine hundred and fifty nine (1959) and in the one hundred and Eighty-fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Elizabeth B. Cantor John A. Eason (I. S.)
Theo K. LaBruce (I. S.)

THE STATE OF SOUTH CAROLINA,
Georgetown County.

PERSONALLY appeared before me Theo K. LaBruce
and made oath that she saw the within named JOHN A. EASON
sign, seal, and as his act and deed, deliver the within written Deed,
and that she with Elizabeth B. Cantor
witnessed the execution thereof.

SWORN to before me, this 14th
day of October A. D. 19 59
Elizabeth B. Cantor (SEAL)
Notary Public of South Carolina

Theo K. LaBruce

THE STATE OF SOUTH CAROLINA,
Georgetown County.

RENUNCIATION OF DOWER

I, Elizabeth B. Cantor, a Notary Public for South Carolina
do hereby certify unto all whom it may concern, that Mrs. DOROTHY M. EASON
the wife of the within named JOHN A. EASON

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, re-
lease and forever relinquish unto the within named

K. W. SARTOR and JUANITA ALLEN SARTOR, their

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular
the premises within mentioned and released.

Given under my Hand and Seal, this 14th day of October Anno Domini 19 59
Elizabeth B. Cantor (SEAL)
Notary Public of South Carolina

Dorothy M. Eason

Recorded this 15 day of Oct. 1959
at 47
Auditor, Georgetown County, S. C.

Examined and found 15 day of Oct. 1959
Pessie J. Peterson

STATE OF SOUTH CAROLINA,

COUNTY OF GEORGETOWN



KNOW ALL MEN BY THESE PRESENTS, THAT

I, JOHN A. EASON, of the County of Georgetown

in the State aforesaid _____ for and _____ in consideration of the sum of
SEVEN HUNDRED FIFTY & NO/100 (\$750.00) _____ DOLLARS,

to _____ in hand paid at and before the sealing of these presents by RUTH LEE BRASSELL, of
said County of Georgetown

in the State aforesaid _____ 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 RUTH LEE BRASSELL, her heirs and assigns:

All that certain parcel or lot of land situate, lying and being
at Murrell's Inlet in the County of Georgetown, State of South Carolina,
being shown and designated as Lot Number FIVE (5) of Block Number TWELVE
(12) on a certain map of Eason Acres made by S. D. Cox, to be recorded.
Said lot measuring and containing in front on First Street SEVENTY (70)
feet and the same on the rear line, and running back along each side line
a distance of TWO HUNDRED (200) feet, and butting and bounding to the
Northeast on Lot No. 6 of said Block, to the Southeast on First Street,
to the Southwest on Lot No. 4 of said Block and to the Northwest on a
20-foot alley. All of which will more fully appear by reference to the
aforesaid map, which is made part hereof.

Being the same premises conveyed to John A. Eason by J. G. K.
Carr by deed dated October 14, 1959, recorded in the Office of the Clerk
of Court in Deed Book 36, page 88.

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

RUTH LEE BRASSELL, her Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said RUTH LEE BRASSELL, her Heirs and Assigns, against myself and my Heirs, and all other persons lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this 10th day of October in the year of our Lord one thousand nine hundred and sixty (1960) and in the one hundred and eighty fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Alice B. Myers
D.C. Myers

John A. Eason (L. S.)
John A. Eason (L. S.)

THE STATE OF SOUTH CAROLINA,
GEORGETOWN County.

PERSONALLY appeared before me Alice B. Myers and made oath that she saw the within named JOHN A. EASON sign, seal, and as his act and deed, deliver the within written Deed, and that she with D.C. Myers witnessed the execution thereof.

SWORN to before me, this 10 day of October A. D. 19 60
Matth C. Myers (SEAL)
Notary Public of South Carolina

Alice B. Myers

THE STATE OF SOUTH CAROLINA,
GEORGETOWN County.

RENUNCIATION OF DOWER

I, Matth C. Myers, a Notary Public for South Carolina do hereby certify unto all whom it may concern, that Mrs. DOROTHY M. EASON the wife of the within named JOHN A. EASON 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 RUTH LEE BRASSELL, her

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 10 day of October Anno Domini 19 60
Matth C. Myers (SEAL)
Notary Public of South Carolina

Dorothy M. Eason

examined and Certified this 11th day of Oct 19 60

CLERK OF COURT

Recorded this 11th day of Oct 19 60
in the year of our Lord one thousand nine hundred and sixty
and in the one hundred and eighty fifth year of the Sovereignty and Independence of the United States of America.
James H. Cate
Clerk of Court

IN THE COURT OF COMMON PLEAS

CASE NO. 97-CP22-163

Edward James Daugherty, Jr.

County of Georgetown et al

PLAINTIFF(S)

DEFENDANT(S)

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.
- ☐ **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; ☐ Other - _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgement by the Court:



4 5/28/09

FILED
RUBY ANN MOORE
CLERK & GS
97 SEP 25 11:10:40
GEORGETOWN COUNTY, S.C.

Dated at Georgetown, South Carolina, this 16th day of September, 19 97.

B. Benjamin H. Culbertson
JUDGE/CLERK OF COURT/MASTER IN EQUITY

This judgement was entered on the 17th day of September, 19 97, and a copy mailed first class this 25th day of September, 19 97 to attorneys of record or to parties (when appearing pro se) as follows:

Stacey L. Kraftchick

Dominic Starr

Jack M. Scoville

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Clair C. Elliott for
CLERK OF COURT

VC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97CP-22-163

EDWARD JAMES DAUGHERTY, JR.,)
Plaintiff,)
vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)
Defendants.)

ORDER CLOSING ROAD AND
VESTING TITLE IN
EDWARD JAMES DAUGHERTY, JR.

This matter is before me on Summons and Petition of Edward James Daugherty, Jr. to close a portion of a dirt road running from the eastern edge of Frontage Road adjacent to Highway 17 By-Pass in Murrells Inlet to an existing county road connecting to Belair Avenue, according to a plat thereof dated October 22, 1996, prepared by ETS Engineering and Technical Services, Inc. The Petitioner seeks to close the portion of the subject road which lies wholly on his property, pursuant to Section 57-9-10, Codes of Laws of South Carolina, 1976, and have title thereto vested in him.

After reviewing the pleadings and exhibits introduced without

[Signature]

objection, I FIND THAT:

1. Notice of intention to Close Road was published in The Georgetown Times once a week for three consecutive weeks pursuant to Affidavit of Publication;

2. Potential adjoining landowners were named Defendants and properly served, there being Answers filed by Defendants County of Georgetown and Edward Brunson. Defendant Margaret B. Hill is in default, Affidavit of same being made an Exhibit;

3. The provisions of Section 57-9-10, Code of Laws of South Carolina, 1976, have therefore been complied with;

4. It is in the best interest of all concerned that the subject portion of the dirt road be closed and that title thereto be vested in James Edward Daugherty, Jr. in fee simple in accordance with Section 57-9-20, Code of Laws of South Carolina, 1976;

5. Neither the Defendant Georgetown County nor any other adjoining landowner has raised objection to the closing of the road. The only response from adjoining landowners was an answer filed on behalf of Edward Brunson; however, Mr. Brunson did not appear after due notice of the hearing date. Now, therefore, it is

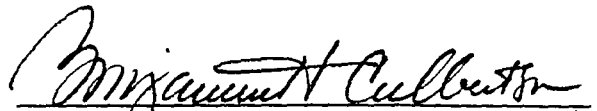
ORDERED, ADJUDGED AND DECREED that the portion of the subject dirt road which lies on Mr. Daugherty's property as appears on the referenced plat is hereby closed pursuant to Section 57-9-10, Code of Laws of South Carolina, 1976. It is further

ORDERED, ADJUDGED AND DECREED that title to the portion of the subject dirt road which is wholly on Mr. Daugherty's property is

hereby transferred to and vested in Edward James Daugherty, Jr., his heirs and assigns, in fee simple, pursuant to Section 57-9-20. It is further

ORDERED, ADJUDGED AND DECREED that this Order shall be recorded in the office of the Clerk of Court for Georgetown County and indexed in the Book of Deeds to Real Property in accordance with Section 57-9-30, Code of Laws of South Carolina, 1976, as amended.

AND IT IS SO ORDERED.


BENJAMIN H. CULBERTSON
MASTER IN EQUITY
GEORGETOWN COUNTY

Georgetown, South Carolina

September 16, 1997.

File with CP

00025046
RECORDED 09/17/1997 12:02P
Bk:807 Pg:35 Pages:4
Fee:10.00 State:0.00
County:0.00 Trans:0.00
Georgetown County, SC
Ruby Ann Moore, Clerk of Court
Mailene Shelby, Deputy cccp

Recorded this 19th day of
September A. D. 1997
in Book _____ Page _____
Earl W. Freeman
Auditor, Georgetown Co., S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97CP-22-163

EDWARD JAMES DAUGHERTY, JR.,)
Plaintiff,)
vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close.)

ORDER CLOSING ROAD AND
VESTING TITLE IN
EDWARD JAMES DAUGHERTY, JR.

00025046
RECORDED 09/17/1997 12:02P
Bk:807 Pg:35 Pages:4
Fee:10.00 State:0.00
County:0.00 Trans:0.00
Georgetown County, SC
Ruby Ann Moore, Clerk of Court

Rymc 97-163

ants.

Has Original

Put Inst.

on + copy
original - Rymc

Will send

original order

to CP File

after

Micro Filming

Book 22 Page 309

before me on Summons and Petition of Edward
to close a portion of a dirt road running from
ontage Road adjacent to Highway 17 By-Pass in
existing county road connecting to Belair
a plat thereof dated October 22, 1996,
neering and Technical Services, Inc. The
close the portion of the subject road which
property, pursuant to Section 57-9-10, Codes of
, 1976, and have title thereto vested in him.
the pleadings and exhibits introduced without

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97CP-22-163

EDWARD JAMES DAUGHERTY, JR.,)

Plaintiff,)

vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)

Defendants.)

ORDER CLOSING ROAD AND
VESTING TITLE IN
EDWARD JAMES DAUGHERTY, JR.

00025046
RECORDED 09/17/1997 12:02P
Bk:807 Pg:35 Pages:4
Fee:10.00 State:0.00
County:0.00 Trans:0.00
Georgetown County, SC
Ruby Ann Moore, Clerk of Court

This matter is before me on Summons and Petition of Edward James Daugherty, Jr. to close a portion of a dirt road running from the eastern edge of Frontage Road adjacent to Highway 17 By-Pass in Murrells Inlet to an existing county road connecting to Belair Avenue, according to a plat thereof dated October 22, 1996, prepared by ETS Engineering and Technical Services, Inc. The Petitioner seeks to close the portion of the subject road which lies wholly on his property, pursuant to Section 57-9-10, Codes of Laws of South Carolina, 1976, and have title thereto vested in him.

After reviewing the pleadings and exhibits introduced without

[Signature]

objection, I FIND THAT:

1. Notice of intention to Close Road was published in The Georgetown Times once a week for three consecutive weeks pursuant to Affidavit of Publication;

2. Potential adjoining landowners were named Defendants and properly served, there being Answers filed by Defendants County of Georgetown and Edward Brunson. Defendant Margaret B. Hill is in default, Affidavit of same being made an Exhibit;

3. The provisions of Section 57-9-10, Code of Laws of South Carolina, 1976, have therefore been complied with;

4. It is in the best interest of all concerned that the subject portion of the dirt road be closed and that title thereto be vested in James Edward Daugherty, Jr. in fee simple in accordance with Section 57-9-20, Code of Laws of South Carolina, 1976;

5. Neither the Defendant Georgetown County nor any other adjoining landowner has raised objection to the closing of the road. The only response from adjoining landowners was an answer filed on behalf of Edward Brunson; however, Mr. Brunson did not appear after due notice of the hearing date. Now, therefore, it is

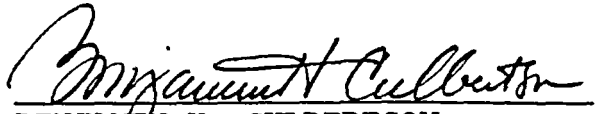
ORDERED, ADJUDGED AND DECREED that the portion of the subject dirt road which lies on Mr. Daugherty's property as appears on the referenced plat is hereby closed pursuant to Section 57-9-10, Code of Laws of South Carolina, 1976. It is further

ORDERED, ADJUDGED AND DECREED that title to the portion of the subject dirt road which is wholly on Mr. Daugherty's property is

hereby transferred to and vested in Edward James Daugherty, Jr.,
his heirs and assigns, in fee simple, pursuant to Section 57-9-20.
It is further

ORDERED, ADJUDGED AND DECREED that this Order shall be
recorded in the office of the Clerk of Court for Georgetown County
and indexed in the Book of Deeds to Real Property in accordance
with Section 57-9-30, Code of Laws of South Carolina, 1976, as
amended.

AND IT IS SO ORDERED.


BENJAMIN H. CULBERTSON
MASTER IN EQUITY
GEORGETOWN COUNTY

Georgetown, South Carolina

September 16, 1997.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97-CP-22-163

FILED
RUBY ANN MOORE
CCCP & GS
SEP -5 AM 10:28
GEORGETOWN COUNTY, S.C.

Edward James Daugherty,)
Plaintiff,)

vs)

County of Georgetown, Edward)
P. Brunson, Jr., Margaret B.)
Hill, John Doe, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
Richard Roe, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)
Defendants.)

CONSENT ORDER OF REFERENCE

Fee of \$ 50.00
Paid 9-4-97

GEORGETOWN COUNTY
MASTER IN EQUITY

By: Benjamin H. Culbertson

As the Plaintiff and Defendants, County of Georgetown and Edward P. Brunson, Jr., consent and agree that this is a proper matter to be heard by the Master-in-Equity, and as the Defendant Margaret B. Hill is in default as evidenced by Affidavit of Counsel for Plaintiff and Affidavit of Service and no response to the Notice to Close Road has been received,

IT IS ORDERED, that the captioned action be and the same is hereby referred to Benjamin H. Culbertson, Master-in-Equity for Georgetown County, to take testimony arising under the pleading and to make his finding of fact and conclusions of law with authority to enter a final judgment in the case, with any appeal directly to

the South Carolina Supreme Court. The Plaintiff shall pay the Master's fee and coordinate scheduling of the matter with his office.

A hearing in this matter is scheduled for Thursday, September 11, 1997, at 10:00 a.m., in the County Council Chambers, Georgetown County Courthouse, Georgetown, South Carolina.

Ruby Ann Mason

Georgetown, SC
~~August~~ 4th, 1997
~~Sept.~~

WE CONSENT TO THE FOREGOING:

Stacey L. Kraftchick
STACEY L. KRAFTCHICK
Attorney for Plaintiff

Jack M. Scoville, Jr.
JACK M. SCOVILLE, JR.
Attorney for Defendant
County of Georgetown



DOMINIC A. STARR
Attorney for Defendant
Edward P. Brunson

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
) THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CIVIL ACTION NO. 97-CP-22-163

EDWARD JAMES DAUGHERTY, JR.,

PLAINTIFF,

VS.

COUNTY OF GEORGETOWN, EDWARD P.
BRUNSON, JR., MARGARET B. HILL,
JOHN DOE, A FICTITIOUS NAME USED
TO REPRESENT AND DESIGNATE ALL
UNKNOWN PERSONS CLAIMING ANY RIGHT,
TITLE OR INTEREST IN THAT PORTION
OF THE UNIMPROVED DIRT ROAD WHICH
PLAINTIFF SEEKS TO CLOSE, AND
RICHARD ROE, A FICTITIOUS NAME
USED TO DESIGNATE AND REPRESENT
ANY AND ALL UNKNOWN INFANTS OR
PERSONS UNDER DISABILITY OR IN
MILITARY SERVICE CLAIMING ANY RIGHT,
TITLE, OR INTEREST IN THAT PORTION
OF THE UNIMPROVED DIRT ROAD WHICH
THE PLAINTIFF SEEKS TO CLOSE,

DEFENDANTS.

AFFIDAVIT OF MAILING

FILED
RUBY ANN HODGE
CLERK
97 JUN 10 AM 11:14
GEORGETOWN COUNTY, S.C.

I, Teresa M. Foxworth, as an employee of the Law Office of Jack M. Scoville, Jr., do hereby certify that I did this 10th day of June, 1997, postage prepaid, forward a clocked copy of the ANSWER OF DEFENDANT GEORGETOWN COUNTY to the attorney for the Defendant Edward P. Brunson, Jr. at the following address:

Dominic A. Starr
Post Office Box 3939
Myrtle Beach, S. C. 29578

Teresa M. Foxworth
Teresa M. Foxworth

Sworn to before me this
10th day of June, 1997.

Dennis M. Munn
Notary Public for South Carolina
My Commission Expires: 11/20/2003

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) IN THE COURT OF COMMON PLEAS FOR
) THE FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 97-CP-22-163

EDWARD JAMES DAUGHERTY, JR.,)

PLAINTIFF,)

VS.)

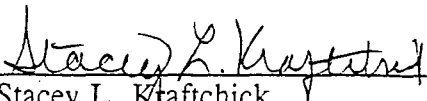
COUNTY OF GEORGETOWN, EDWARD P.)
BRUNSON, JR., MARGARET B. HILL,)
JOHN DOE, A FICTITIOUS NAME USED)
TO REPRESENT AND DESIGNATE ALL)
UNKNOWN PERSONS CLAIMING ANY RIGHT,)
TITLE OR INTEREST IN THAT PORTION)
OF THE UNIMPROVED DIRT ROAD WHICH)
PLAINTIFF SEEKS TO CLOSE, AND)
RICHARD ROE, A FICTITIOUS NAME)
USED TO DESIGNATE AND REPRESENT)
ANY AND ALL UNKNOWN INFANTS OR)
PERSONS UNDER DISABILITY OR IN)
MILITARY SERVICE CLAIMING ANY RIGHT,)
TITLE, OR INTEREST IN THAT PORTION)
OF THE UNIMPROVED DIRT ROAD WHICH)
THE PLAINTIFF SEEKS TO CLOSE,)

DEFENDANTS.)

ACCEPTANCE OF SERVICE

FILED
RUBY ANN HODGE
CLERK & C.S.
97 MAY 22 PM 2:
GEORGETOWN COUNTY, S.C.

The undersigned, as counsel for Edward James Daugherty, Jr., hereby accepts and acknowledges the due personal service of the Answer of Defendant Georgetown County dated May 22, 1997, in the above captioned case upon the undersigned at the McNair Law Firm located at 121 Screven Street, Georgetown, South Carolina, in the County and State aforesaid, this 22 day of May, 1997; and the receipt of a true copy is hereby acknowledged.


Stacey L. Kraftchick

Dated: May 22, 1997
county\daugherty\accept

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS FOR
THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97-CP-22-163

EDWARD JAMES DAUGHERTY, JR.,

PLAINTIFF,

VS.

COUNTY OF GEORGETOWN, EDWARD P.
BRUNSON, JR., MARGARET B. HILL,
JOHN DOE, A FICTITIOUS NAME USED
TO REPRESENT AND DESIGNATE ALL
UNKNOWN PERSONS CLAIMING ANY RIGHT,
TITLE OR INTEREST IN THAT PORTION
OF THE UNIMPROVED DIRT ROAD WHICH
PLAINTIFF SEEKS TO CLOSE, AND
RICHARD ROE, A FICTITIOUS NAME
USED TO DESIGNATE AND REPRESENT
ANY AND ALL UNKNOWN INFANTS OR
PERSONS UNDER DISABILITY OR IN
MILITARY SERVICE CLAIMING ANY RIGHT,
TITLE, OR INTEREST IN THAT PORTION
OF THE UNIMPROVED DIRT ROAD WHICH
THE PLAINTIFF SEEKS TO CLOSE,

DEFENDANTS.

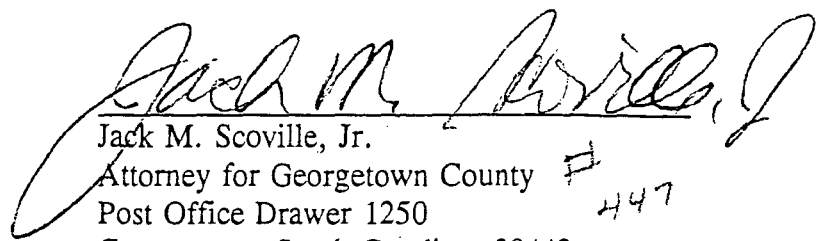
ANSWER OF DEFENDANT
GEORGETOWN COUNTY

FILED
RUBY ANN MOORE
CCCP 1-08
97 MAY 22 PM12:17
GEORGETOWN COUNTY, S.C.

The Defendant, Georgetown County, in answer to the Complaint of the Plaintiff would respectfully show upon this Honorable Court:

1. The Defendant admits the allegations of Paragraphs 1, 2, 3, and 7.
2. The Defendant denies the allegations of Paragraph 9.
3. This Defendant is without sufficient information to admit or deny the allegations of Paragraphs 4, 5, 6, and 8 of the Complaint and therefor denies same and demands strict proof thereof.

WHEREFORE, this Defendant prays that the Court inquire into the matters alleged herein and grant relief as it may deem necessary.


Jack M. Scoville, Jr.
Attorney for Georgetown County # 447
Post Office Drawer 1250

Georgetown, South Carolina 29442

(803) 546-1130

(803) 546-0726 (facsimile)

May 22, 1997

LAW OFFICES
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

DOMINIC A. STARR
(803) 946-5670

*INTERNET ADDRESS: DAS@NMRS.COM

*NOT FOR CONFIDENTIAL COMMUNICATION

FOUNDERS CENTRE, SUITE 301
2411 NORTH GAK STREET
POST OFFICE BOX 3939 (29578)

MYRTLE BEACH, SOUTH CAROLINA 29577

TELEPHONE (803) 448-3500
FACSIMILE (803) 448-3437

OTHER OFFICES:
Atlanta, Georgia
Charleston, South Carolina
Charlotte, North Carolina
Columbia, South Carolina
Florence, South Carolina
Greenville, South Carolina

May 1, 1997

The Honorable Ruby Ann Moore
Clerk of Court
Georgetown County Courthouse
Post Office Drawer 1270
Georgetown, SC 29440

RE: Edward James Daugherty, Jr. v. County of Georgetown
and Edward P. Brunson, Jr.; et al.
Civil Action No.: 97-CP-22-163
Our File No.: 7975/1501

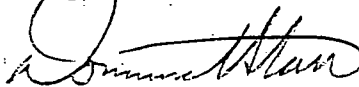
Dear Ms. Moore:

Enclosed please find an original and one copy of the Answer of Defendant Edward P. Brunson, Jr. to be filed in the above-referenced matter. I would appreciate if you would please file the original and return the clocked in copy to me in the envelope provided.

By way of this letter, a copy of the Answer is herewith served upon Stacey Kraftchick, counsel for plaintiff.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Dominic A. Starr

DAS:ms
Enclosure

cc: Stacey Kraftchick, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Edward James Daugherty, Jr.,)
Plaintiff,)

Civil Action No. 97-CP-22-163

vs.)

ANSWER OF DEFENDANT
EDWARD P. BRUNSON, JR.

County of Georgetown, Edward)
P. Brunson, Jr., Margaret B.)
Hill, John Doe, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
Richard Roe, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved dirt)
road which the plaintiff seeks)
to close,)

Defendants.)

FILED
RUBY ANN MOORE
CLERK
97 MAY -5 PM 1:37
GEORGETOWN COUNTY, S.C.

The defendant, Edward P. Brunson, Jr. (hereinafter "this defendant") answers the Complaint of the plaintiff above-named and would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted, denied, or explained, is denied.

FOR A SECOND DEFENSE

2. This defendant admits Paragraph 1 upon information and belief.

3. This defendant admits Paragraph 2.

4. This defendant admits Paragraph 3.

5. This defendant is without sufficient information to form a belief as to the truth of the allegations of Paragraph 4 and, therefore, denies the same and demands strict proof thereof.

6. This defendant is without sufficient information to form a belief as to the truth of the allegations of Paragraph 5 and, therefore, denies the same and demands strict proof thereof.

7. Answering Paragraph 6, this defendant admits that he and patrons of the Sandpiper Club (of which this defendant is Landlord) make use of the portion of the road which plaintiff seeks to close. Answering further, defendant is without sufficient information to admit or deny how many other persons make use of such road.

8. This defendant admits Paragraph 7 upon information and belief.

9. Answering Paragraph 8, this defendant admits that he and patrons of the Sandpiper Club use the unimproved dirt road. Answering further, this defendant is without sufficient information to form a belief as to whether defendant Hill and plaintiff are the only other persons who utilize the unimproved dirt road, and, as a result, denies that allegation.

10. This defendant denies Paragraph 9.

WHEREFORE, having fully answered the Complaint of the plaintiff herein, this defendant would request that this Honorable Court deny plaintiff's request that the road be closed; issue an Order allowing this defendant and patrons of the Sandpiper Club to

continue making use of the road; and, provide such other and further relief as this Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: Dominic A. Starr
Dominic A. Starr
Founders Centre, Suite 301
2411 Oak Street
Post Office Box 3939 (29578)
Myrtle Beach, SC 29577
(803) 448-3500

Attorneys for Defendant
Edward P. Brunson, Jr.

Myrtle Beach, South Carolina

May 1, 1997

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97CP-22-

EDWARD JAMES DAUGHERTY, JR.,)

Plaintiff,)

vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)

Defendants.)

LIS PENDENS

97 MAR 21 PM 3:16
GEORGETOWN COUNTY S.C.

TO THE ABOVE NAMED DEFENDANTS, THE PERSONS HAVING CARE AND CONTROL OF SUCH PERSONS, THE PERSONS WITH WHOM SAID DEFENDANTS RESIDE OR THE PERSONS IN WHOSE SERVICE SAID DEFENDANTS ARE EMPLOYED:

NOTICE IS HEREBY GIVEN, that an action has been commenced and is pending in the Court of Common Pleas for Georgetown County to close that continuous portion of road, running from the Eastern edge of the Frontage Road adjacent to Highway 17 By-Pass in Murrells Inlet, to an existing County road which connects to Belair Avenue and the portion of the dirt road to be closed shall terminate on the property of Edward James Daugherty, Jr., any portion of the road beyond this point being unaffected hereby.

This property is more fully described as:

All that certain piece, parcel or tract of land, situate, lying and being in Georgetown County, South Carolina, shown and designated as **2.53 acres** on a plat prepared by ETS-Engineering and Technical Services, Inc. entitled **Subdivision Map of 2.86 Acres Located In Georgetown County, South Carolina For Edward James Daugherty, Jr.**", recorded in the R.J.C. Office for Georgetown County, South Carolina, in Slide 210 at page 78. Said parcel having such size, shape, courses, distances, butting and bounding as will by reference to said plat more fully and at large appear.

Being a portion of the same premises conveyed to South Carolina Low Country Rope Hammocks, Inc. by deed of Richard A. Eason, dated October 30, 1975, recorded in the Office of the Clerk of Court for Georgetown County in Deed Book 133, page 686, recorded November 3, 1975.

TMS #41-124-03

ALSO:

All that certain piece, parcel or tract of land, situate, lying and being in Georgetown County, South Carolina, shown and designated as **0.33 acres** on a plat prepared by ETS-Engineering and Technical Services, Inc. entitled **"Subdivision Map of 2.86 Acres Located In Georgetown County, South Carolina for Edward James Daugherty, Jr."**, dated August 27, 1996, recorded in the R.M.C. Office for Georgetown County, South Carolina, in Slide 210 at page 78. Said parcel having such size, shape, courses, distances, butting and bounding as will by reference to said plat more fully and at large appear.

TMS #41-124--03

Being a portion of the same premises conveyed to South Carolina Low Country Rope Hammocks, Inc by deed of Richard A. Eason, dated October 30, 1975, recorded in the Office of the Clerk of court for Georgetown County in Deed Book 133, page 686, recorded November 3, 1975.

Dated March 11, 1997.

466

Stacey L. Kraftchick
STACEY L. KRAFTCHICK
MCNAIR LAW FIRM, P.A.
P. O. Box 418
Georgetown, SC 29442
(803) 546-6102
FAX (803) 546-0096
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CIVIL ACTION NO. 97CP-22-

EDWARD JAMES DAUGHERTY, JR.,)

Plaintiff,)

vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)

Defendants.)

SUMMONS

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to said Complaint on the attorney(s) listed below at their office at 121 Screven Street, Georgetown, South Carolina 29442, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action

will apply to the Court for default judgment and the relief demanded in the Complaint will be rendered against you.

Stacey L. Kraftchick
STACEY L. KRAFTCHICK
MCNAIR LAW FIRM, P.A.
Post Office Box 418
Georgetown, SC 29442
(803) 546-6102
FAX (803) 546-0096
Attorneys for Plaintiff

March 11, 1997.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CIVIL ACTION NO. 97CP-22-

EDWARD JAMES DAUGHERTY, JR.,)

Plaintiff,)

vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)

Defendants.)

COMPLAINT
(Road Closing)
(non-jury)

RECEIVED
JAN 10 1998

97112021 01515

FILED
JAN 10 1998

The Plaintiff, Edward James Daugherty, Jr. (hereinafter "Plaintiff") complaining of the Defendants named above, would respectfully show unto this Honorable Court as follows:

FACTUAL ALLEGATIONS

1. The Plaintiff is a resident and domiciliary of Murrells Inlet, South Carolina in Georgetown County.

2. The Defendant, Georgetown County, is a political subdivision of South Carolina. Upon information and belief, Defendants Edward P. Brunson, Jr. and Margaret B. Hill are citizens and residents of Georgetown County, South Carolina. The Defendants John Doe and Richard Roe are fictional names representing the

above-captioned interests.

3. These proceedings, concerning property located within Georgetown County, have been instituted pursuant to Section 57-9-10 et seq., of the Code of Laws of South Carolina, 1976, as amended, which provides a statutory technique for the closure of streets, roads, or highways. This Honorable Court has jurisdiction to decide all matters raised in this Complaint.

4. The Plaintiff acquired property upon which runs a dirt road, in fee simple absolute, by virtue of a deed from Peeples, Inc. dated September 17, 1996, recorded in the Office of the Clerk of Court for Georgetown County at Deed Book 772, page 101, on September 18, 1996. That certain real property (hereinafter "Subject Property") is described as follows:

All that certain piece, parcel or tract of land, situate, lying and being in Georgetown County, South Carolina, shown and designated as 2.53 acres on a plat prepared by ETS-Engineering and Technical Services, Inc. entitled **Subdivision Map of 2.86 Acres Located In Georgetown County, South Carolina For Edward James Daugherty, Jr.**", recorded in the R.J.C. Office for Georgetown County, South Carolina, in Slide 210 at page 78. Said parcel having such size, shape, courses, distances, butting and bounding as will by reference to said plat more fully and at large appear.

Being a portion of the same premises conveyed to South Carolina Low Country Rope Hammocks, Inc. by deed of Richard A. Eason, dated October 30, 1975, recorded in the Office of the Clerk of Court for Georgetown County in Deed Book 133, page 686, recorded November 3, 1975.
TMS #41-124-03

ALSO:

All that certain piece, parcel or tract of land, situate, lying and being in Georgetown County, South Carolina, shown and designated as 0.33 acres on a plat prepared by ETS-Engineering and Technical Services, Inc. entitled **"Subdivision Map of 2.86 Acres Located In**

Georgetown County, South Carolina for Edward James Daugherty, Jr.", dated August 27, 1996, recorded in the R.M.C. Office for Georgetown County, South Carolina, in Slide 210 at page 78. Said parcel having such size, shape, courses, distances, butting and bounding as will by reference to said plat more fully and at large appear. TMS #41-124--03

Being a portion of the same premises conveyed to South Carolina Low Country Rope Hammocks, Inc by deed of Richard A. Eason, dated October 30, 1975, recorded in the Office of the Clerk of court for Georgetown County in Deed Book 133, page 686, recorded November 3, 1975.

5. The Plaintiff is currently developing the subject property and intends to construct a mini-storage facility and operate a business from this location. A survey of the Subject Property is attached and incorporated herein by reference. The subject dirt road runs across the Plaintiff's Property in an easterly direction. Plaintiff seeks to close only that continuous portion of the road commencing at the eastern edge of the Frontage Road adjacent to Highway 17 By-Pass in Murrells Inlet to an existing County road which connects to Belair Avenue and the portion of the subject dirt road to be closed shall terminate on the property of Edward James Daugherty, Jr., any portion of the road beyond this point being unaffected.

6. Edward P. Brunson, Jr. and Margaret B. Hill are the only known persons or entities which may have utilized or have any interest in, the continued existence of the portion of the road which the Plaintiff seeks to close.

7. Plaintiff has published a "Notice of Intention to Close County Road" on: March 15, 1997, March 22, 1997, and March 29, 1997 in The Georgetown Times and one copy of the Affidavit of

Publication shall be filed and incorporated herein by reference.

8. The road is an unimproved or dirt road which has been used exclusively by the Plaintiff or Defendants Brunson and Hill.

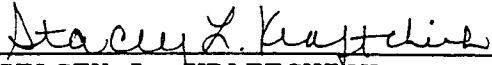
9. The Plaintiff asserts an entitlement to an Order closing the road as described above and further asserts his entitlement to an order reaffirming and vesting, in the Plaintiff, title to the road.

WHEREFORE, the Plaintiff prays that this Honorable Court issue an Order as follows:

- (a) Closing the road as shown on the above-referenced plat;
- (b) Extinguishing any and all easements on, over, across, and upon the road which may be implied by dedication or otherwise.
- (c) Enjoining the Defendants herein from instituting any future action relating to any claim or ownership to Subject Property or otherwise interfering with Plaintiff's exclusive use and possession and ownership of the Subject Property as more particularly described herein;
- (d) Confirming and vesting title to the closed portion of the road in the name of the Plaintiff; and
- (e) Providing such other and further relief as this Honorable Court may determine just and equitable.

The Plaintiff respectfully requests a non-jury trial.

Respectfully submitted.


STACEY L. KRAFTCHICK
MCNAIR LAW FIRM, P.A.
Post Office Box 418
Georgetown, SC 29442
(803) 546-6102
FAX (803) 546-0096

March 17, 1997.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 97CP-22-

EDWARD JAMES DAUGHERTY, JR.,)

Plaintiff,)

vs.)

COUNTY OF GEORGETOWN, EDWARD)
P. BRUNSON, JR., MARGARET B.)
HILL, JOHN DOE, a fictitious)
name used to represent and)
designate all unknown persons)
claiming any right, title or)
interest in that portion of)
the unimproved dirt road which)
plaintiff seeks to close, and)
RICHARD ROE, a fictitious name)
used to designate and)
represent any and all unknown)
infants or persons under)
disability or in military)
service claiming any right,)
title, or interest in that)
portion of the unimproved)
dirt road which the plaintiff)
seeks to close,)

Defendants.)

NOTICE OF PUBLICATION

TO THE ABOVE NAMED DEFENDANTS, THE PERSONS HAVING CARE AND CONTROL OF SUCH PERSONS, THE PERSONS WITH WHOM SAID DEFENDANTS RESIDE OR THE PERSONS IN WHOSE SERVICE SAID DEFENDANTS ARE EMPLOYED:

NOTICE IS HEREBY GIVEN, that an action has been or will be commenced and is or will be pending in the Court of Common Pleas for Georgetown County to close that continuous portion of road, running from the Eastern edge of the Frontage Road adjacent to Highway 17 By-Pass in Murrells Inlet to an existing County Road which connects to Belair Avenue and the portion of the dirt road to be closed shall terminate on the property of Edward James Daugherty, Jr., any portion of the road beyond this point being

unaffected. This property is more fully described as:

All that certain piece, parcel or tract of land, situate, lying and being in Georgetown County, South Carolina, shown and designated as **2.53 acres** on a plat prepared by ETS-Engineering and Technical Services, Inc. entitled **Subdivision Map of 2.86 Acres Located In Georgetown County, South Carolina For Edward James Daugherty, Jr.**", recorded in the R.J.C. Office for Georgetown County, South Carolina, in Slide 210 at page 78. Said parcel having such size, shape, courses, distances, butting and bounding as will by reference to said plat more fully and at large appear.

Being a portion of the same premises conveyed to South Carolina Low Country Rope Hammocks, Inc. by deed of Richard A. Eason, dated October 30, 1975, recorded in the Office of the Clerk of Court for Georgetown County in Deed Book 133, page 686, recorded November 3, 1975.

TMS #41-124-03

ALSO:

All that certain piece, parcel or tract of land, situate, lying and being in Georgetown County, South Carolina, shown and designated as **0.33 acres** on a plat prepared by ETS-Engineering and Technical Services, Inc. entitled **"Subdivision Map of 2.86 Acres Located In Georgetown County, South Carolina for Edward James Daugherty, Jr."**, dated August 27, 1996, recorded in the R.M.C. Office for Georgetown County, South Carolina, in Slide 210 at page 78. Said parcel having such size, shape, courses, distances, butting and bounding as will by reference to said plat more fully and at large appear.

TMS #41-124--03

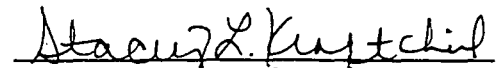
Being a portion of the same premises conveyed to South Carolina Low Country Rope Hammocks, Inc by deed of Richard A. Eason, dated October 30, 1975, recorded in the Office of the Clerk of court for Georgetown County in Deed Book 133, page 686, recorded November 3, 1975.

YOU ARE HEREBY REQUIRED to respond to this Notice by delivering your comments or objections to the Plaintiff or his attorneys, the McNair Law Firm, P.A., at their office, 121 Screven Street (P. O. Drawer 418) Georgetown, South Carolina 29442, within thirty (30) days after publication of this Notice exclusive of the day of such publication, and if you fail to respond to this Notice within the time aforesaid, the Plaintiff in this action will apply

to the Court for an entry of default and the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTE that this notice shall be deemed complete at and upon the date of the third publication in The Georgetown Times.

Dated at Georgetown, South Carolina, on this the 21 day of March, 1997.


Stacey L. Kraftchick
McNair Law firm, P.A.
Post Office Drawer 418
Georgetown, SC 29442
(803) 546-6102
FAX 546-0096

CHAPTER 9

Abandonment or Closing of Streets, Roads or Highways

SEC.

57-9-10. Petition to abandon or close street, road or highway; notice thereof.

57-9-20. Court shall make determination.

57-9-30. Recording of court order.

57-9-40. Chapter construed as cumulative to other laws.

§ 57-9-10. Petition to abandon or close street, road or highway; notice thereof.

Any interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not. Prior to filing the petition, notice of intention to file shall be published once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated. Notice shall also be sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change.

HISTORY: 1962 Code § 33-521; 1962 (52) 2183.

Cross References

Legal notices, generally, see §§ 15-29-10 et seq.

Library References

Highways ⇨ 79.1.

Westlaw Topic No. 200.

Research References

Encyclopedias

Specific Matters, S.C. Jur. Reference § 13.

Notes of Decisions

In general 1

Abandoned road 5

Notice 4

Parties 3

Standing 2

rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied.

By creating a formal judicial procedure for terminating a public right of way over land, § 57-9-10 removes the uncertainty attending the common law of dedication and abandonment and ameliorates the rigor of the common law rule requiring strict proof of intent to abandon a public right of way before that right can be extinguished. *Hoo-genboom v. City of Beaufort* (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, *Hoo-genboom v. City of Beaufort* (S.C.App.

**PLAINTIFF'S
EXHIBIT**

5 5/28/09

1. In general

Section 57-9-10, governing the abandonment or closing of streets, roads or highways, authorizes a court of competent jurisdiction to entertain a petition to abandon or close a street. *Hoogenboom v. City of Beaufort* (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875,

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS,

That **COMMERCIAL REFRIGERATION, LLC**, in the State aforesaid, for and in consideration of the sum of Five and No/100 (\$5.00) DOLLARS to it paid by **DONA F. DUCKER and FRED C. DUCKER, JR.**, in the State aforesaid, (receipt of which is hereby acknowledged), have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said **DONA F. DUCKER and FRED C. DUCKER, JR.**, as joint tenants, with the right of survivorship, and not as tenants-in-common, their heirs and assigns, forever, the following described property, to wit:

ALL AND SINGULAR, that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, South Carolina, being shown and described as Parcel "A" (containing 0.48 acres) on a plat entitled "Plat of TMS 41-0124-003.01.01, Subdivided into 2 Parcels, Located in Murrells Inlet, Off of Hwy 17 Business, Murrells Inlet, Georgetown County, South Carolina," prepared by Culler Land Surveying Co., Inc., dated November 4, 2004 and recorded November 8, 2004 in Plat Slide 520 at Page 10, records of Georgetown County, reference to which is craved as forming a part of this description.

THIS BEING a portion of the property conveyed unto the Grantor herein by Deed of Coastal Carolina Industrial Development, LLC by Deed dated January 3, 2003 and recorded January 6, 2003 in Deed Book 1342 at Page 222, Office of the Register of Deeds for Georgetown County.

TMS #

Grantees' Address: 652 Belair Avenue
Murrells Inlet, SC 29576

000022244 12:09:15PM
RECORDED 11/29/2004
Bk:01585 Pg:00124 Pages:6
Fee:12.00 State:0.00
County:0.00
Georgetown County, SC
Register of Deeds

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

Pt. 41-124-3.1.1

**DEFENDANT'S
EXHIBIT**

1 5/28/09

RICHARD L. FOLTZ, PA
ATTORNEY AT LAW
P.O. BOX 111
TITTLE BEACH, SC 29576-0111

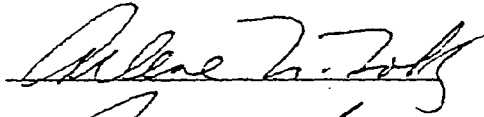
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said DONA F. DUCKER and FRED C. DUCKER, JR., as joint tenants, with the right of survivorship, and not as tenants-in-common, their heirs and assigns, forever.

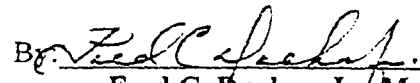
AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said DONA F. DUCKER and FRED C. DUCKER, JR., as hereinabove provided, against itself and its Successors and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

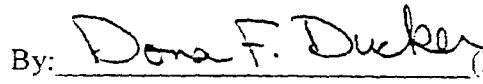
WITNESS the execution hereof by Grantor this 23rd day of November in the year of our Lord Two Thousand four (2004) and in the two hundred twenty-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

COMMERCIAL REFRIGERATION, LLC




By:  (L.S.)
Fred C. Ducker, Jr., Member

By:  (L.S.)
Dona F. Ducker, Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

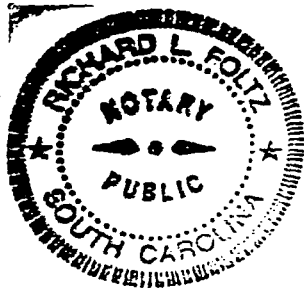
PROBATE

PERSONALLY appeared before me, the undersigned witness, and made oath that s/he saw the within named Commercial Refrigeration, LLC, by Fred C. Ducker, Jr. and Dona F. Ducker, its members, Sign, Seal and as its Act and Deed deliver the within written Deed: and that s/he with the other witness signing above witnessed the execution thereof.

Richard L. Foltz

SWORN to before me this 23rd
day of November, A.D. 2004

Richard L. Foltz (L.S.)
Notary Public for South Carolina
My Commission expires: 5-18-2014



HARD L. FOLTZ, PA
ATTORNEY AT LAW
PO BOX 322
LE BLANC SC 29920-0322

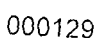
AFFIDAVIT FOR EXEMPT TRANSFERS

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 652 Bel Air Ave., Murrells Inlet, SC 29576, bearing Georgetown County Tax Map Number (Split From) 41-124-3.1.1, was transferred by Commercial Refrigeration, LLC to Dona F. Ducker and Fred C. Ducker, Jr. on November 23, 2004.
3. The deed is exempt from the deed recording fee because (See information section of affidavit):

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connection with the transaction as Grantee.
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Dona F. Ducker

My Commission Expires: 5-18-2014



INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value of such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust.
- (9) transferring realty from a family partnership or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to a continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN) **DEED TO REAL ESTATE**

KNOW ALL MEN BY THESE PRESENTS,

That **COASTAL CAROLINA INDUSTRIAL DEVELOPMENT, L.L.C.**, in the State aforesaid, for and in consideration of the sum of **Five and No/100 (\$5.00) DOLLARS** to it paid by **COMMERCIAL REFRIGERATION LLC**, in the State aforesaid, (receipt of which is hereby acknowledged), have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said

COMMERCIAL REFRIGERATION LLC, its successors and assigns forever, the following described property, to wit:

ALL AND SINGULAR, that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, South Carolina, being shown and designated as Parcel "B" on a map by McDowell Engineering Co., dated April 8, 1975, revised August 8, 1984, and recorded in Plat Book 4 at Page 349, records of Georgetown County, reference to which is craved as forming a part of this description. Said parcel is bounded generally on said map as follows: On the Northwest by Parcel "A"; on the Northeast by lands now or formerly of V. F. Platt; on the Southeast by Tract "E" and a South Carolina Public Service Authority easement; and on the Southwest by Tract "I" formerly of Richard A. Eason.

THIS BEING the identical property conveyed unto the Grantor herein by Deed of BF & B, Inc. dated December 30, 1997 and recorded January 5, 1998 in Deed Book 836 at Page 43, records of Georgetown County.

TMS #41-124-3.1.1

Grantee's Address: P.O. Box 1747
 Murrells Inlet, SC 29576

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

000000187 01/06/2003 01:34:51PM
 RECORDED 01/06/2003
 Bk:01342 Pg:00222 Pages:4
 Fee:10.00 State:520.00
 County:220.00
 Georgetown County, SC
 Register of Deeds

RICHARD L. FOLTZ, PA
 ATTORNEY AT LAW
 P.O. BOX 322
 MYRTLE BEACH, SC 29578-0322

2002-403

GEORGETOWN COUNTY PARCEL # 41-124-3.1.1 PTA

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **COMMERCIAL REFRIGERATION LLC**, its Successors and Assigns forever.

AND Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said **COMMERCIAL REFRIGERATION LLC**, its Successors and Assigns, against itself and its Successors and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by Grantor this 3rd day of January in the year of our Lord two thousand three (2003) and in the two hundred twenty-seventh year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

**COASTAL CAROLINA INDUSTRIAL
DEVELOPMENT, L.L.C.**

Richard L. Foltz
Witness #1

By: B. Fripp Ducker (L.S.)
B. Fripp Ducker, Manager

William A. Ducker
Notary Second Witness

And By: William A. Ducker (L.S.)
William A. Ducker, Manager

STATE OF SOUTH CAROLINA)
COUNTY OF ✓)

ACKNOWLEDGEMENT
(Under S.C. Code § 30-5-30(C))

I, Patricia M. Paramore, a Notary Public for South Carolina, do hereby certify that **Coastal Carolina Industrial Development, L.L.C.**, by **D. Fripp Ducker and William A. Ducker**, its Managers, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 3rd day of January, 2003.

Patricia M. Paramore
Notary Public for South Carolina
My Commission expires 1-1-2006

✓
RICHARD L. FOLTZ, PA
ATTORNEY AT LAW
P.O. BOX 322
MYRTLE BEACH, SC 29578-0322

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at 652 Belaire Avenue, Murrells Inlet, SC 29576 bearing Georgetown County Tax Map Number 41-124-3.1.1., was transferred by Coastal Carolina Industrial Development, LLC to Commercial Refrigeration, LLC on January 3, 2003.

The transaction was (Check one):

 an arm's length real property transaction and the sale price paid or to be paid in money or money's worth was \$ n/a *.

 X not an arm's length real property transaction and the fair market value of the property is \$200,000.00 *.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et seq. because the deed is (see back of affidavit):

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

Grantee

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

COMMERCIAL REFRIGERATION, LLC

By: Fred C. Ducker, Jr.
 Fred C. Ducker, Jr., Member

SWORN to before me this 3rd day of January, 2003.

[Signature]
 Notary Public for South Carolina
 My Commission Expires: 7/13/2004

*The fee is based on the real property's value. Value means the fair market value. In arm's length real property transactions, this value is the sale price to be paid in money or money's worth (e.g., stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on it after the transfer.



000000187 01/06/2003 801342 P00225

#30746 Richard L. Jaltz

000000187 01:34:33PM
 RECORDED 01/06/2003
 Bk:01342 Ps:00222 Pages:4
 Fee:10.00 State:520.00
 County:220.00
 Georgetown County, SC
 Register of Deeds

Wanda J. Grevette

Coastal Carolina Industrial
Development LLC

to

Commercial Refrigeration LLC

Parcel B Murrells Inlet

RECORDED ON THE 9th DAY

OF January A.D. 20 03

Edward J. Steeman
AUDITOR, GEORGETOWN CO., SC

Requested By: rcd 02/27/2009

STATE OF SOUTH CAROLINA,
COUNTY OF GEORGETOWN

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS,

That BF & B, INC., a South Carolina Corporation, in the State aforesaid, for and in consideration of the sum of Five (\$5.00) DOLLARS, plus the assumption of that Mortgage more fully set forth below, to it paid by COASTAL CAROLINA INDUSTRIAL DEVELOPMENT, L.L.C., a South Carolina Limited Liability Company, in the State aforesaid, (receipt of which is hereby acknowledged), have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said

COASTAL CAROLINA INDUSTRIAL DEVELOPMENT, L.L.C., a South Carolina Limited Liability Company, its successors and assigns forever, the following described property, to wit:

ALL AND SINGULAR, that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, South Carolina, being shown and designated as Parcel "B" on a map by McDowell Engineering Co., dated april 8, 1975, revised August 8, 1984, and recorded in Plat Book 4 at Page 349, records of Georgetown County, reference to which is craved as forming a part of this description. Said parcel is bounded generally on said map as follows: On the Northwest by Parcel "A"; on the Northeast by lands now or formerly of V. F. Platt; on the Southeast by Tract "E" and a South Carolina Public Service Authority easement; and on the Southwest by Tract "I" formerly of Richard A. Eason.

THIS BEING the identical property conveyed unto the Grantor herein by Deed of the Administrator, Small Business Administration, an Agency of the United States of America, dated October 5, 1987 and recorded December 22, 1987 in Deed Book 269 at Page 129, records of Georgetown County.

By acceptance of this Deed, Grantee expressly assumes that certain Mortgage given by BF & B, Inc. to the Administrator of the Small Business

RICHARD L. FOLTZ, PA
ATTORNEY AT LAW
P.O. BOX 321
MYRTLE BEACH, SC 29576-0321

COUNTY PARCEL # 44-124-3.1.1

00000083
RECORDED 01/05/1998 01:00P
Bk1836 Pg:43 Page:16
Fee:12.00 State:0.00
County:0.00 Trans:0.00
Georgetown County, SC
Ruby Ann Moore, Clerk of Court

Administration, dated December 18, 1987, and recorded December 22, 1987, in Mortgage Book 316 at Page 218; and assigned to Anderson Brothers Bank by assignment dated March 27, 1992, and recorded November 18, 1992, in Mortgage Book 576 at Page 250, records of Georgetown County, which said Mortgage has an outstanding principal balance of approximately \$ 78,777.70.

Grantee's Address: P.O. Box 4002
Florence, SC 29502-4002

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 premises before mentioned unto the said COASTAL CAROLINA INDUSTRIAL DEVELOPMENT, L.L.C., a South Carolina Limited Liability Company, its Successors and Assigns forever.

AND Grantor does hereby bind itself and its Successors and Assigns to warrant and forever defend all and singular the said premises unto the said COASTAL CAROLINA INDUSTRIAL DEVELOPMENT, L.L.C., a South Carolina Limited Liability Company, its Successors and Assigns, against itself and its Successors and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by Grantor this 30th day of December in the year of our Lord one thousand nine hundred and ninety-seven (1997) and in the two hundred twenty-second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

BF & B, INC., a South Carolina
Corporation

Judith M. Davis

By: *Frederick C. Ducker, Jr.*
Frederick C. Ducker, Jr.
Its: President

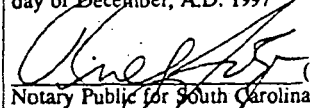
RICHARD L. FOLTZ, PA
ATTORNEY AT LAW
P.O. BOX 322
MYRTLE BEACH, SC 29578-0322

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me, the undersigned witness, and made oath that s/he saw the within named BF & B, Inc., by Frederick C. Ducker, Jr., its President, Sign, Seal and as its Corporate Act and Deed deliver the within written Deed; and that s/he with the other witness signing above witnessed the execution thereof.

SWORN to before me this 31st
day of December, A.D. 1997

 (L.S.)
Notary Public for South Carolina

My Commission expires: 7/13/2004

RICHARD L. FOLTZ, PA
ATTORNEY AT LAW
P.O. BOX 332
MYRTLE BEACH, SC 29578-0332

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at Parcel B of Tract 2, Murrells Inlet, SC bearing Georgetown County Tax Map Number 41-124-3,01,01, was transferred by BF & B, Inc. to Coastal Carolina Industrial Development, LLC on December 30, 1997

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
- (b) X The fee is computed on the fair market value of the realty which is \$78,000.00.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes X or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$78,777.70

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$78,000.00
- (b) Place the amount listed in item 5 above here: 78,777.70
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: -0-

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: -0-

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller

Page 51

Page 2 of 2

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

BF & B, INC.

By: Frederick C. Ducker, Jr.
Responsible Person Connected with the Transaction

SWORN to before me this 31st
day of December, 1997
Frederick C. Ducker, Jr.
Notary Public for South Carolina
My Commission Expires: 2/13/2004

Frederick C. Ducker, Jr., President
Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

Page 52

11586

BOOK 269 PAGE 129

Assessor's Data: Parcel B, TD-41
 Grantee's Address: BF & B, Inc.
 P.O. Box 1510
 Pawleys Island, SC 29575

"THIS IS A DEBT DUE THE UNITED STATES.
 NO DOCUMENTARY STAMPS REQUIRED"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

FILED
 BETTY L. WILLIAMS
 CLERK
 DEC 22 10 24 AM '87
 GEORGETOWN COUNTY, S.C.
 BOOK PAGE

SPECIAL WARRANTY DEED

THIS INDENTURE made and entered into this 5th day of October, 1987, between Administrator, Small Business Administration, an Agency of the United States of America, having a District Office at 1835 Assembly Street, Columbia, South Carolina 29201, ("Seller"), and BF & B, Inc., a South Carolina Corporation, ("Buyer");

WITNESSETH, that Seller, for and in consideration of the sum of One Eighty Hundred/Thousand (\$180,000.00) Dollars, to it in hand paid by Buyer, the receipt whereof is hereby acknowledged, does hereby grant, bargain and sell to Buyer, its successors and assigns, the following land, together with improvements thereon to wit:

ALL AND SINGULAR, that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, South Carolina and being shown and designated as Parcel "B" on a map by McDowell Engineering Co., dated April 8, 1975, and revised August 8, 1984, which map is recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 4, at page 349, and is made a part and parcel hereof by this reference. Said parcel is more particularly described on said map as follows: commencing at an iron on the southeast edge of the right-of-way of U. S. Highway 17 Bypass, which iron marks the northern most corner of Parcel "A" as shown

on said map and running thence South 55° 20' East 284 feet to an iron, which iron marks the point of beginning of the parcel herein described; thence, running South 55° 20' East 180 feet to a pipe; thence turning and running South 34° 34' West 303.2 feet to an iron; thence turning and running North 55° 20' West 50 feet to an iron; thence running North 55° 20' West 130 feet to an iron; thence turning and running North 34° 34' East 303.25 feet to the point of beginning. Said parcel contains 1.253 acres more or less.

Said parcel is bounded generally on said map as follows: On the Northwest by parcel "A"; on the Northeast by lands now or formerly of V. F. Platt; on the Southeast by Tract "E" and a South Carolina Public Service Authority Easement; and on the Southwest by Tract "I" formerly of Richard A. Eason.

This being the identical property conveyed to Anderson Brothers Bank by Betty L. Williams, Clerk of Court, by her certain deed dated June 7, 1985, which was duly recorded on June 7, 1985, in Deed Book 227, at Page 57, Office of the Clerk of Court for Georgetown County, and corrective deed dated January 21, 1987, which was duly recorded on January 23, 1987, in Deed Book 243 at Page 1206 Office of the Clerk of Court for Georgetown County.

Being the identical property conveyed to Administrator, Small Business Administration by deed of Anderson Brothers Bank, dated October 1, 1986, and recorded October 6, 1986 in Deed Book 240 at Page 367 in the Office of the Clerk of Court for Georgetown County, South Carolina and corrective deed dated January 30, 1987 which was duly recorded on February 19, 1987 in Deed Book 244, page 788, Office of Clerk of Court for Georgetown County.

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 mentioned unto the said BF & B, Inc., Successors and Assigns forever.

And the Seller does hereby covenant with the Buyer that at the time of the delivery of this deed the premises were free from any and all encumbrances made by Seller and that it will warrant and defend the same against the lawful claims and demands of all persons claiming by, through or under it, but against none other.

IN WITNESS WHEREOF, the Administrator, Small Business Administration, an Agency of the United States of America, has caused this instrument to be executed by Quinn Soles, Chief, Portfolio Management Division, (Liquidation), Columbia District Office, Columbia, South Carolina, pursuant to delegation of authority contained in 47 Federal Register 2305 e t s e q . as amended, the contents of which are to be judicially noted pursuant to 44 United States Code 1507.

SEAL

SMALL BUSINESS ADMINISTRATION

Witnesseth:

B. Dean Fox
Carol Leaty

By: *Quinn Soles*
Quinn Soles, Chief, Chief
Portfolio Management Division
(Liquidation)

PERSONALLY appeared before me B. Dean Lorens and made oath that he saw the within named Small Business Administration by Quinn Soles, its Chief, Portfolio Management Division, (Liquidation), sign, seal and as its act and deed deliver the above written instrument for the uses and purposes therein mentioned and that he with Carol Gentry witnessed the execution thereof.

B. Dean Lorens

SWORN to before me this 5th day
of October, 1957.

Calvin H. James
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 1-16-90

TO WHOM THESE PRESENTS SHALL COME, I GREET YOU.
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS THE SAME APPEARED TO ME.
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF OFFICE, AT CHARLOTTE, SOUTH CAROLINA, THIS 5th DAY OF OCTOBER, 1957.

4.00 P.M.

FILED
BETTY L. WILLIAMS
CCP&CS

Dec 22 10 24 AM '87

GEORGETOWN COUNTY, S.C.

BOOK 269 PAGE 133

Wanda S. Overath
Deputy

Small Business Administration

to

DE + B Inc

Paved 15
TD-41

Recorded this 23rd day of

Dec AD 1987

In Book 21 Page 485

Edward C. Williams, Deputy
Auditor, Georgetown Co., S.C.

EXHIBIT PAGE 41 - 134 - 3.1.1
PMS

The State of South Carolina,

This document, being a deed to an agency of the
United States, is exempt from taxes.

COUNTY OF GEORGETOWN.

KNOW ALL MEN BY THESE PRESENTS, That

ANDERSON BROTHERS BANK, of Mullins,

FILED
BETTY L. WILLIAMS
C.C.P.A.C.S.
JUN 6 9 27 AM '86
GEORGETOWN COUNTY, S.C.
BOOK — PAGE —

in the State aforesaid,

in consideration of the sum of

-No consideration, Grant or and Grantee having jointly participated in the
purchase price paid by Grantor-

Dollars

to it in hand paid at and before the sealing of these presents, by THE ADMINISTRATOR, U. S. SMALL
BUSINESS ADMINISTRATION, 1835 Assembly St., Columbia, S. C. 29202,
in the State aforesaid, (the receipt whereof is hereby acknowledged)

has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said

THE ADMINISTRATOR, U. S. SMALL BUSINESS ADMINISTRATION, his successor
and assigns:

All and singular, that certain piece, parcel or tract of land, with the improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, South Carolina, and being shown and designated as Parcel "B" on a map of McDowell Engineering Co., dated April 8, 1975 and revised August 8, 1984, which map is recorded in the office of the Clerk of Court for Georgetown County, in Plat Book 4, page 349 and is made a part and parcel hereof by this reference. Said parcel is more particularly described on said map as follows: Commencing at an iron on the Southeast edge of the right-of-way of U. S. Highway 17 Bypass, which iron marks the northernmost corner of Parcel "A" as shown on said map and running thence South 55° 20' East 180 feet to a pipe; thence turning and running South 34° 34' West 303.2 feet to an iron; thence turning and running 55° 20' West 50 feet to an iron; thence running North 55° 20' East 303.25 feet to the point of beginning. Said parcel contains 1.253 acres, more or less. Said parcel is bounded generally on said map as follows: On the Northwest by Parcel "A"; on the Northeast by lands now or formerly of V. F. Platt; On the Southeast by tract "E" and a South Carolina Public Service Authority Easement; and on the Southwest by Tract "I", formerly of Richard A. Eason.

This being the identical property conveyed to Anderson Brothers Bank by Betty L. Williams, by her certain deed dated June 7, 1985, which was duly recorded on June 7, 1985, in Deed Book 227, at page 57, Office of the Clerk of Court for Georgetown County.

TOGETHER with all and singular the Rights, Members, Incidents 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 THE ADMINISTRATOR, U. S. SMALL BUSINESS ADMINISTRATION, / his successor Heirs and Assigns forever.

And the said Grantor

does hereby bind itself

and its successors, to warrant and forever defend all and singular the said premises unto the said THE ADMINISTRATOR, U. S. / SMALL BUSINESS ADMINISTRATION, his successor and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF

ANDERSON BROTHERS BANK
(Insert name of Corporation)

has caused

these presents to be executed in its name by Bonar B. Anderson
(Insert name of President or Vice-President)

its

President, and by Hershel A. Eaker
(Insert name of Secretary or Treasurer)

its Executive Vice

and its corporate seal to be hereto affixed this 1st day of October

in the year of our Lord, one thousand nine hundred and
hundred and Eleventh

Seventy-Six, Eighty-Six and in the 82nd
year of the Sovereignty and Independence of the United

States of America.

Signed, Sealed and Delivered
in Presence of

ANDERSON BROTHERS BANK

By

Imar B. [Signature]
(Seal)
President.

Witness

Witness

Secretary or Treasurer.

[Signature]
[Signature]

The State of South Carolina,

BOOK 240 PAGE 369

COUNTY OF MARION.

PERSONALLY appeared before me Jane B. Moody

(Insert name of Witness)

who, in oath, says that he saw the within-named

ANDERSON BROTHERS BANK,
(Insert name of Corporation)

by Bonar B. Andersen

(Insert name of President or Vice-President)

President and

its Hershel A. Eaker its Executive Vice
(Insert name of Secretary or Treasurer)

President

sign the within Deed, and the said Corporation, by said officers, seal said Deed, and, as its act and deed, deliver the

same, and that he with

Betty D. Byrd
(Insert name of other Witness)

witnessed the

execution thereof.

Jane B. Moody

(Witness)

SWORN to before me, this 1st day of October

, A. D. 19 86

Clara E. Hardwick
Notary Public, S. C.

(Seal)

My Commission expires: 10-23-89



240 PAGE 370

N.C. U.S. Small Business Administration
P.O. Box 2786
Col. SC 29202

The State of South Carolina
COUNTY OF GEORGETOWN

ANDERSON BROTHERS BANK

Parcel B
TD-41

TO

THE ADMINISTRATOR, U. S.
SMALL BUSINESS ADMINISTRATION

TITLE TO REAL ESTATE

Filed this 6th day of
October, A.D. 1986,
at 9:27 o'clock, A. M.
and recorded Vol. 240 Page 367
Fee, \$

Wanda J. Chewath, Deputy
Register Mesne Conveyance.

Georgetown County, S. C.

Recorded this 8th day of
Oct, 1986,

in A-1 Page 115
Fee, \$

Auditor Georgetown County.

COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

COUNTY PARCEL # 44-124-3-01.01/msu

BOOK 243 PAGE 1206

TITLE TO REAL ESTATE — FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

The State of South Carolina, }

COUNTY OF GEORGETOWN

~~KNOW ALL MEN BY THESE PRESENTS, THAT~~

This corrective deed is issued in compliance with an Order of Hon. Sidney T. Floyd, Presiding Judge, Fifteen Judicial Circuit, dated December 30, 1986, and in order to correct the description in the deed previously made dated June 7, 1985 and recorded in Georgetown County in Deed Book 227, page 57, Records of Clerk of Court Georgetown, South Carolina,

KNOW ALL MEN BY THESE PRESENTS, That I, Betty L. Williams, Clerk of Court for Georgetown County

FILED
BETTY L. WILLIAMS
CLERK
JUN 23 1 34 PM '87
GEORGETOWN COUNTY, S.C.
BOOK _____ PAGE _____

in the State aforesaid, for and in consideration of the sum of Five (\$5.00) Dollars and

Correction

Dollars,

(\$ XXXXXXXX) to Me in hand paid at and before the sealing of these presents by

ANDERSON BROTHERS BANK, P. O. BOX 310, MULLINS, S. C. 29574

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto said _____

ANDERSON BROTHERS BANK, ITS SUCCESSORS AND ASSIGNS FOREVER:

ALL AND SINGULAR, that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, South Carolina and being shown and designated as Parcel "B" on a map by McDowell Engineering Co., dated April 8, 1975 and revised August 8, 1984, which map is recorded in the office of the Clerk of Court for Georgetown County in Plat Book 4, at page 349, and is made a part and parcel hereof by this reference. Said parcel is more particularly described on said map as follows: Commencing at an iron on the southeast edge of the right-of-way of U. S. Highway 17 Bypass, which iron marks the northern most corner of Parcel "A" as shown on said map and running thence South 55° 20' East 284 feet to an iron, which iron marks the point of beginning of the parcel herein described; thence, running South 55° 20' East 180 feet to a pipe; thence turning and running South 34° 34' West 303.2 feet to an iron; thence turning and running North 55° 20' West 50 feet to an iron; thence running North 55° 20' West 130 feet to an iron; thence turning and running North 34° 34' East 303.25 feet to the point of beginning. Said parcel contains 1.253 acres more or less. Said parcel is bounded generally on said map as follows: On the North-west by parcel "A"; on the Northeast by land now or formerly of V. F. Platt; on the Southeast by tract "E" and a South Carolina Public Service Authority Easement; and on the Southwest by Tract "1" formerly of Richard A. Eason.

This being the identical lot of land conveyed to Rebel Mfg. & Mkt. Corp. by deed of South Carolina Low Country Rope Hammocks, Inc. dated January 4, 1985, in the office of the Clerk of Court for Georgetown County, S. C., in Deed Book 223, at page 1053 on January 18, 1985.

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

ANDERSON BROTHERS BANK, ITS SUCCESSORS

Heirs and Assigns forever, and do hereby bind Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said

ANDERSON BROTHERS BANK, ITS SUCCESSORS

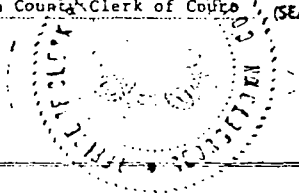
Heirs and Assigns, against and Heirs and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS Hand and Seal this 21st day of January in the year of our Lord one thousand nine hundred and Eighty-seven

Signed, Sealed and Delivered in the Presence of

Melissa J. Haynes
Elaine N. Roberts

Georgetown County Clerk of Courts (SEAL)



THE STATE OF SOUTH CAROLINA,
GEORGETOWN County.

243-1208

AFFIDAVIT OR PROBATE

PERSONALLY APPEARED before me Melissa J. Haynes
(Insert Name of Subscribing Witness Sworn)

and made oath that saw the within named Betty L. Williams, Clerk of Court
(He or She) (Insert Name of Grantor)

for Georgetown County sign, seal, and as her Act and Deed, deliver the within written Deed;
(His, Her or Their)

and that with Elaine H. Roberts
(He or She) (Insert Name of Other Witness)

witnessed the execution thereof.

SWORN TO before me this 21st

day of January, 1987

(SEAL) Elaine H. Roberts
(Signature of Officer)

Melissa J. Haynes
(Signature of Witness Sworn)

Notary Public for S. C.
(Official Title)

My Commission Expires: 9-24-94

THE STATE OF SOUTH CAROLINA,
County.

RENUNCIATION OF DOWER

I, the subscribing officer, do hereby certify unto all whom it may concern that Mrs.

(Insert Name of Wife, Using Given Name)

the wife of the within named
(Insert Name of Grantor)

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

(Insert Name of Grantee)

Heirs and Assigns, all her interest and estate, and also all her right and claim of dower of, in or to all and singular
the premises within mentioned and released.

GIVEN under my Hand and Seal, this day of , 19

(SEAL)
(Signature of Officer)

(Wife Sign Here)

(Official Title)

IMPORTANT: If the deed is to be executed outside of South Carolina, the Grantor or Grantors must sign in presence of two (2) witnesses; both witnesses must sign; then one witness must go before a Notary Public who has a seal, or before the Clerk of a Court of record, and make and sign the affidavit or probate, the blank for which follows the deed; then the officer must sign and seal the jurat.

In the Renunciation of Dower, the wife's name (not the husband's) must be inserted in the blank, and she must sign her own name—as Mary Smith, not Mrs. John Smith; then the officer must sign and seal the certificate. If taken outside of South Carolina, it must be by a Notary or Clerk of Court of record, with use of an impress seal.

If these directions be not strictly and literally followed, the deed will be valueless and cannot be recorded in South Carolina.

For deeds executed within the State, all these directions apply except that other officers can act and the impress seal is not essential.

242-1209

4.00 Bridger & Coles, Atty
209 N.E. Front Street
Mullins SC 29574
envelope

State of South Carolina

COUNTY OF GEORGETOWN

Betty L. Williams, Clerk of
Court for Georgetown County

1.253 acres
TD-41

TO

Anderson Brothers Bank

Title to Real Estate

Filed this 23rd day
of January A.D. 1981
at 1:34 o'clock P.M.
and recorded in Book 243

Page 1206 Fee, \$
Wanda J. Chewatt, Deputy
R. M. G. or Clerk Court C. P. & G. S.
Georgetown County, S. C.

Recorded this 26th day
of Jan 1981
in Book A-1 Page 199
Fee, \$

Auditor Georgetown County, S. C.

COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

COUNTY PARCEL # 41-129-3.1.1

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

85-CP-22-175

Anderson Brothers Bank,

Plaintiff,

—vs—

Rebel Mfg. & Mkt. Corp. and
Conway National Bank,

Defendant(s)

DEED PURSUANT TO COURT ORDER

Dates:

Complaint filed: April 8, 1985
Sale ordered: May 13, 1985
Property sold: June 3, 1985

Parties:

Grantor: Rebel Mfg. & Mkt. Corp.
(Title) _____
Grantee: Anderson Brothers Bank
(Address) P. O. Box 31
Mullins, S. C. 29578
Assignor: N/A
(if any)

Consideration:

Bid: \$ 323,038.00

WHEREAS, the provisions of this Deed refer to the dates, parties and action designated above; and

WHEREAS, plaintiff(s) filed the Complaint against defendant(s), and, after a full hearing, the Court ordered a sale of the real property upon the terms and conditions and for the purposes set forth in the Order(s); and

WHEREAS, the undersigned advertised the sale as required by law and openly and publicly sold it on the sales date to the highest bidder (being Grantee or Grantee's assignor if designated above) for the consideration cited:

KNOW ALL MEN BY THESE PRESENTS, That, for and in consideration of the sum set forth above, in hand paid by the above-named Grantee at and before the sealing of these presents (the receipt of the consideration is hereby acknowledged) the above-named Grantor has granted, bargained, sold and released and by these Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:

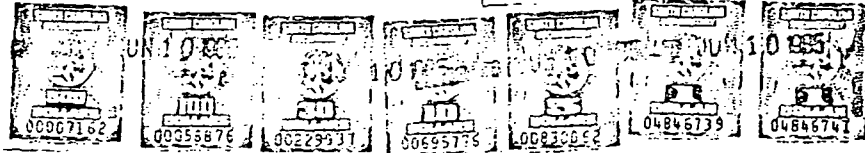
ANDERSON BROTHERS BANK, ITS SUCCESSORS
AND ASSIGNS FOREVER:

All and singular, that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being at Murrells Inlet, Georgetown County, S.C. and being shown and designated as Parcel "B" on a map of McDowell Engineering Co., dated April 8, 1975 and revised August 8, 1984, which map is recorded in the office of the Clerk of Court for Georgetown County in Plat Book 4, page 249 and is made a part and parcel hereof by this reference. Said parcel is more particularly described on said map as follows: Commencing at an iron on the Southeast edge of the right-of-way of U.S. Highway 17 Bypass, which iron marks the northern most corner of Parcel "A" as shown on said map and running thence South 55° 20' East 180 feet to a pipe; thence turning and running South 34° 34' West 303.2 feet to an iron; thence turning and running 55° 20' West 50 feet to an iron; thence running North 55° 20' East 303.25 feet to the point of beginning. Said parcel contains 1.253 acres, more or less. Said parcel is bounded generally on said map as follows: On the Northwest by Parcel "A"; On the Northeast bylands now or formerly of V. F. Platt; On the Southeast by tract "E" and a South Carolina Public Service Authority Easement; and on the Southwest by Tract "I" formerly of Richard A. Eason.

This being the identical lot of land conveyed to Rebel Mfg. & Mkt. Corp. by deed of South Carolina Low Country Rope Hammocks, Inc. dated January 4, 1985, in the office of the Clerk of Court for Georgetown County, S. C., in Deed Book 223, at page 1053 on January 18, 1985.

FILED
BETTY L. WILLIAMS
CCCP & C.S.
JUN 7 12 20 PM '85
GEORGETOWN COUNTY, S.C.
BOOK PAGE

PAID
GEORGETOWN
COUNTY
STAMPS
\$355.85



This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining; and the reversions, remainders, rents, issues and profits and any estate, right, title, interest, dower, possession, benefit, claim or demand of any and all parties to the suit and all persons claiming under or upon them.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

Any reference in this instrument to the plural shall include the singular, and any reference to the neuter shall include the male and/or female, any reference to the male shall include the female; and vice versa. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS THEREOF, the Grantor has executed this deed and affixed his seal thereto.
Date: June 7, 1985

IN THE PRESENCE OF:
Patricia C. Love
Elaine H. Roberts

Betty Williams (SEAL)
TITLE: Betty Williams, Clerk of Court
for Georgetown County

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me (date) June 7, 1985

Elaine H. Roberts (L.S.)
Notary Public for South Carolina
My Commission expires: 9-24-94

Patricia C. Love (Witness)

Robert W. Corley
BN 651
Mullins, SC.
1-23-85
1541

State of South Carolina
COUNTY OF GEORGETOWN

Rebel Mfg. & Mkt. Corp.
TO
Anderson Brothers Bank
P. O. Box 314, Mullins, S.C. 29574
(include mailing address) Grantee

DEED
PURSUANT TO COURT ORDER
Filed this 7th day of June, 1985.
at 12:20 o'clock, P. M.
and recorded in Deed Book 227 at page 57
Wanda J. Owelette, Deputy
R.M.C./Clerk of Court

Georgetown County, S.C.
Recorded this 10th day of June, 1985.
in Book 1241
Wanda J. Owelette, Deputy
Auditor
Georgetown County

COUNTY PARCEL 841-124-311 MOO

41.00
607.00
355.85

STATE OF SOUTH CAROLINA,

COUNTY OF GEORGETOWN

223 PAGE 1053

Timmarer Blank No. 7A-DEED TO REAL ESTATE
For (1) Corporation to Corporation, (2) Corporation to
Private Person, (3) Private Person to Corporation.
Timmarer Publishing Co., Conway, S. C.

PAID
GEORGETOWN
COUNTY
STAMPS
\$137.50



FILED
BITTIL WILLIAMS
COPACK
JAN 19 12 56 PM 85
CLERK OF COURT, S.C.
SOUTH CAROLINA

Know all Men by these Presents,

That It, South Carolina Low Country Rope Hammocks, Inc.

in the State aforesaid for and in consideration of the
sum of One Hundred Twenty-Five Thousand and 00/100 (\$125,000.00) DOLLARS

to It paid by Rebel Mfg. & Mkt. Corp.
P.O. Box 2838
Myrtle Beach, SC 29578

in the State aforesaid, (Receipt whereof is hereby acknowledged)

have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said
Rebel Mfg. & Mkt. Corp., its successors and assigns forever, the
following described property, to-wit:

ALL AND SINGULAR, that certain piece, parcel or tract of land, with
improvements thereon, situate, lying and being at Murrells Inlet,
Georgetown County, South Carolina and being shown and designated
as Parcel "B" on a map by McDowell Engineering Co., dated April 8,
1975 and revised August 8, 1984, which map is recorded in the office
of the Clerk of Court for Georgetown County in Plat Book 4 at
Page 349, and is made a part and parcel hereof by this reference.

Said parcel is more particularly described on said map as follows:
Commencing at an iron on the southeast edge of the right-of-way of
U. S. Highway 17 Bypass, which iron marks the northern most corner
of Parcel "A" as shown on said map and running thence South 55° 20'
East 284 feet to an iron, which iron marks the point of beginning
of the parcel herein described; thence, running South 55° 20' East
180 feet to a pipe; thence turning and running South 34° 34' West
303.2 feet to an iron; thence turning and running North 55° 20' West
50 feet to an iron; thence running North 55° 20' West 180 feet to
an iron; thence turning and running North 34° 34' East 303.25 feet
to the point of beginning. Said parcel contains 1.253 acres more
or less.

Said parcel is bounded generally on said map as follows: On the
Northwest by Parcel "A"; on the Northeast by lands now or formerly
of V. F. Platt; on the Southeast by tract "E" and a South Carolina
Public Service Authority Easement; and on the Southwest by Tract
"1" formerly of Richard A. Eason.

Subject to restrictions and easements of record and as shown on the
aforesaid map.

223-1054

This being a portion of the property conveyed unto the Grantor herein by deed of Richard A. Eason dated October 14, 1974 and recorded October 16, 1974 in Deed Book 126 at Page 29, in the Office of the Clerk of Court for Georgetown County, South Carolina.

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 premises before mentioned unto the said _____

Rebel Mfg. & Mkt. Corp., its
Successors and Assigns forever.

And the Grantor DOES herein hereby binds itself, themselves, its or their successors, or his, her, and their Heirs, Executors or Administrators, (as the case may be), to warrant and forever defend all and singular the said premises unto the said Rebel Mfg. & Mkt. Corp.

and its and their successors and assigns, or his, her and their Heirs and assigns, (as the case may be), against himself, themselves, and its or their successors, or his, her and their heirs, (as the case may be), and all persons whomsoever _____

lawfully claiming, or to claim the same, or any part thereof.

Witness the execution hereof by grantor this 4th day of JANUARY

in the year of our Lord one thousand nine hundred and eighty-four five

and in the two hundred ~~eighty~~ tenth year

of the Sovereignty and Independence of the United States of America.

SOUTH CAROLINA LOW COUNTRY
BORE HAMMOCKS, INC. (L. S.)

Signed, Sealed and Delivered
in the Presence of

By: John A. Wells (L. S.)

John A. Wells, Vice President

ATTEST: M. W. Peebles (L. S.)

M. W. Peebles, Secretary (L. S.)

[Signature]
(First witness signs here)

[Signature]
Notary Public signs here

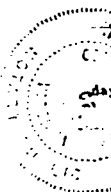
VIRGINIA
STATE OF ~~SOUTH CAROLINA~~
COUNTY OF _____

Probate for Corporate Grantor

Personally appeared before me, _____ the undersigned witness
and made oath that he saw the within named SOUTH CAROLINA LOW COUNTRY ROPE
HAMMOCKS, INC. by
John A. Wells its Vice President and
M. W. Peebles, Jr. its Secretary

Sign, Seal and as the Corporate Act and Deed deliver the within written Deed;
and that he with _____ the other witness subscribed above

witnessed the execution thereof and saw the corporate seal thereto affixed.



Sworn to before me this 4th
day of January A. D. 19 85
C. K. Black Notary Public for ~~South Carolina~~ Virginia
My Commission Expires January 19, 1986

Hamilton H. Hinkle
(First Witness signs here)

STATE OF SOUTH CAROLINA,
COUNTY OF _____

Probate for Individual
DOWER NOT REQUIRED - CORPORATE GRANTOR

Personally appeared before me, _____
and made oath that he saw the within named _____

Sign, Seal and as _____ Act and Deed deliver the
within written Deed; and that he with _____
witnessed the execution thereof.

Sworn to before me this _____
day of _____ A. D. 19 _____

Notary Public for S. C.
My Commission Expires _____

STATE OF SOUTH CAROLINA,
COUNTY OF _____

RENUNCIATION OF DOWER
(Not needed for corporate grantor)

I, _____ do hereby certify
unto all whom it may concern, that Mrs. _____
the wife of the within named grantor _____
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 grantee _____ Heirs and Assigns
or Successors, all her interest, and estate, and also all her right and claim of Dower, of, in or to, all and
singular the premises within mentioned and released.

GIVEN under my Hand and Seal this _____ day of _____
Anno Domini 19 _____ (L. S.)

Notary Public for S. C.
My Commission Expires _____

BOOK 223 PAGE 1056

4.00
250.00
137.50
391.50

Robert H. Corley
Box 651
Mullins, SC 29

Acres for \$

Township

Purchased

State of South Carolina

COUNTY OF GEORGETOWN

S. C. Low Country Rope
Hammocks, Inc.

TO

Rebel Mfg. & Mkt. Corp.

DEED TO REAL ESTATE

FOR CORPORATE USE

I hereby certify that the within deed has been

this 18th day of January

A. D. 1985 Recorded in Book 223

of Deeds, Page 1053 at 12:56 o'clock P. M.

Donald M. Wheeler, Deputy

Clerk of Court of Georgetown County

I hereby certify that the within deed has been

this 21st day of Jan

A. D. 1985 Transferred on Auditor's Book

Page 2 - 1207

Auditor of Georgetown County

TIMESAVER
62/53 R

NO. 7-A
Timesaver Pub. Co.
Conway, S. C.

COUNTY PARCEL # 41-12431.1

1980

Parcel B
7D-41

State of South Carolina

COUNTY OF GEORGETOWN

Know All Men by These Presents, That we, Dorothy Eason Hough, James R. Eason, and Brenda Eason Ayers, of Georgetown County,

in the State aforesaid, ----- for and ----- in consideration of the sum of partition of lands and the sum of Five (\$5.00) Dollars-----

to --US-- paid by Richard A. Eason, of Georgetown County,

in the State aforesaid, 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 Richard A. Eason, his Heirs and Assigns:

All that certain piece, parcel or tract of land situate, lying and being at Murrells Inlet, in Tax District No. 4, Georgetown County, South Carolina, shown and identified as Tract D upon a map of a division of lands formerly of John A. Eason, Jr., prepared by Kenneth L. McDowell, R. L. S., dated September 13, 1974, and recorded in the office of the Clerk of Court for Georgetown County in Plat Book AA, at page 14. Said Tract D is more fully and in detail described according to said map as follows: COMMENCING at an iron on the southeastern edge of the right-of-way of U. S. Highway No. 17 By-Pass, which iron marks the northernmost corner of the tract herein described, and running thence south 55°20' east 464 feet to an iron, thence south 34°34' west 353.2 feet to a pipe, thence south 34°34' west 294.6 feet to an iron, thence north 57°42' west 413.4 feet to an iron, thence north 32°18' east 656.9 feet to an iron, thence north 57°42' west 25 feet to an iron, and thence north 32°18' east 9.2 feet to the point of beginning, all of which more fully appears upon said map which by this reference is incorporated, pro tanto, as part of this description.

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 premises before mentioned unto the said RICHARD A. PASON, his

Heirs and Assigns forever.

And ~~we~~ do hereby bind ~~ourselves~~ and our ~~Heirs, Executors~~ and Administrators, in warrant and forever defend all and singular the said premises unto the said RICHARD A. PASON, his

Heirs and Assigns, against ~~us~~ and ~~our~~ Heirs and against every person whomsoever lawfully claiming or to claim the same in any part thereof.

WITNESS OUR HANDS this 15th day of October in the Year of our Lord one thousand nine hundred and seventy-four and in the one hundred and ninety-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered

[Handwritten signatures and seals]

STATE OF SOUTH CAROLINA

GEORGETOWN COUNTY

Presently appeared before me

and made oath that

sign seal and

tioned and that he with

execution thereof

Granita S. Lee
the within named *Dorothy Eason Hough, James R. Eason and Brenda Eason Ayers,*

did declare the within written Deed for the uses and purposes therein men-

Dwight Taylor

witnessed the

Granita S. Lee
Notary Public of S. C.
My Commission Expires *12-18-80*

(Deed Given in Partition
of Real Estate, No
Dower Required)

RENUNCIATION OF DOWER

STATE OF SOUTH CAROLINA
GEORGETOWN COUNTY

I, *Granita S. Lee*, Notary Public for South Carolina, do hereby certify,

unto all whom it may concern, that Mrs. *Alice P. Eason*

the wife of the within named *James R. Eason*

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 for-
ever relinquish unto the within named *Richard A. Eason, his*

heirs
and assigns, all her interest and estate, and also all her right and claim of Dower of; in or to all and singular the premises
within mentioned and released.

Given under my Hand and Seal, this

16 day of *October*
1974
Notary Public of S. C.
My Commission Expires *12-18-80*

Alice P. Eason
Alice P. Eason

Examined and Certified this *16* day of *Oct*

1974
Robert Davis Messer, Deputy
CLERK OF COURT

recorded this *16* day of

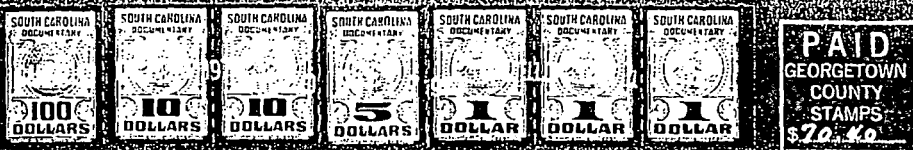
Oct A. D. 19*74*

in Book *7* Page *238*

L. H. S. Jr.
Georgetown County, S. C.

State of South Carolina
COUNTY OF GEORGETOWN

Kenneth A. Eason, Jr. presents to: J. Richard A. Eason, Jr.
Georgetown County



in the State aforesaid, for and in consideration of the sum of Sixty-four Thousand (\$64,000.00) Dollars

to me paid by South Carolina Low Country Rope Hammocks, Inc., a South Carolina corporation, in the State aforesaid, 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 South Carolina Low Country Rope Hammocks, Inc., its Successors and Assigns:

All that certain piece, parcel or tract of land situate, lying and being at Murrells Inlet, in Tax District No. 4, Georgetown County, South Carolina, shown and identified as Tract 2 on a map prepared for the Grantor herein by Kenneth L. McDowell, R. L. S., dated August 26, 1974, revised October 11, 1974 and recorded in the office of the Clerk of Court for Georgetown County in Plat Book AA, at page 10. Said Tract 2 is more fully and in detail described according to said map as follows: COMMENCING at an iron on the south-eastern edge of the right-of-way of U. S. Highway No. 17 By-Pass, which iron marks the northernmost corner of the tract herein described, and running thence south 55°20' east 464 feet to an iron, thence south 34°34' west 303.2 feet to a pipe, thence north 55°20' west 432 feet to a pipe, thence north 32°18' east 312.4 feet to an iron, thence north 57°42' west 25 feet to an iron, and thence north 32°18' east 9.2 feet to the point of beginning, all of which more fully appears upon said map which by this reference is incorporated, pro tanto, as part of this description.

Being a portion of the property conveyed to the Grantor herein by Dorothy Eason Hough, James R. Eason and Brenda Eason Ayers in partition of the lands of John A. Eason, Jr., Deceased, by deed dated October 15, 1974, recorded in the office of the Clerk of Court for Georgetown County in Deed Book 126, at page 23.

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 premises before mentioned unto the said South Carolina Low Country Rope Hammocks, Inc., its Successors and Assigns forever.

Hereunto signed and sealed:

And I, _____ do hereby bind _____ myself and my _____ heirs, Executors and Administrators, to warrant and forever defend all such premises (premises) unto the said South Carolina Low Country Rope Hammocks, Inc., its Successors and Assigns.

Hereunto signed and sealed _____ and _____ Having full power person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 14th day of October

in the year of our Lord One thousand nine hundred and _____ SEVENTY-FOUR

and in the one hundred and _____ year of the month _____

and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

[Signature]
[Signature]

[Signature]
[Signature]

Before me, the undersigned authority, on this day personally appeared

and acknowledged to me that she is the wife of Richard A. Eason

sign, seal and file this instrument as the same written deed for the uses and purposes therein mentioned and that she with Emily S. Collins witnessed the execution thereof.

SWORN to before me this 14th day of October 1974

Emily S. Collins
Notary Public for S.C.

My Commission Expires 4-1-75
STATE OF SOUTH CAROLINA

GEORGETOWN County

RENUNCIATION OF DOWER

I, F. H. Cannon, Notary Public for South Carolina do hereby certify unto all whom it may concern, that Mrs. Judith T. Eason the wife of the within named Richard A. Eason 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 South Carolina Low Country Rope Hammocks, Inc., its Successors and Assigns,

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

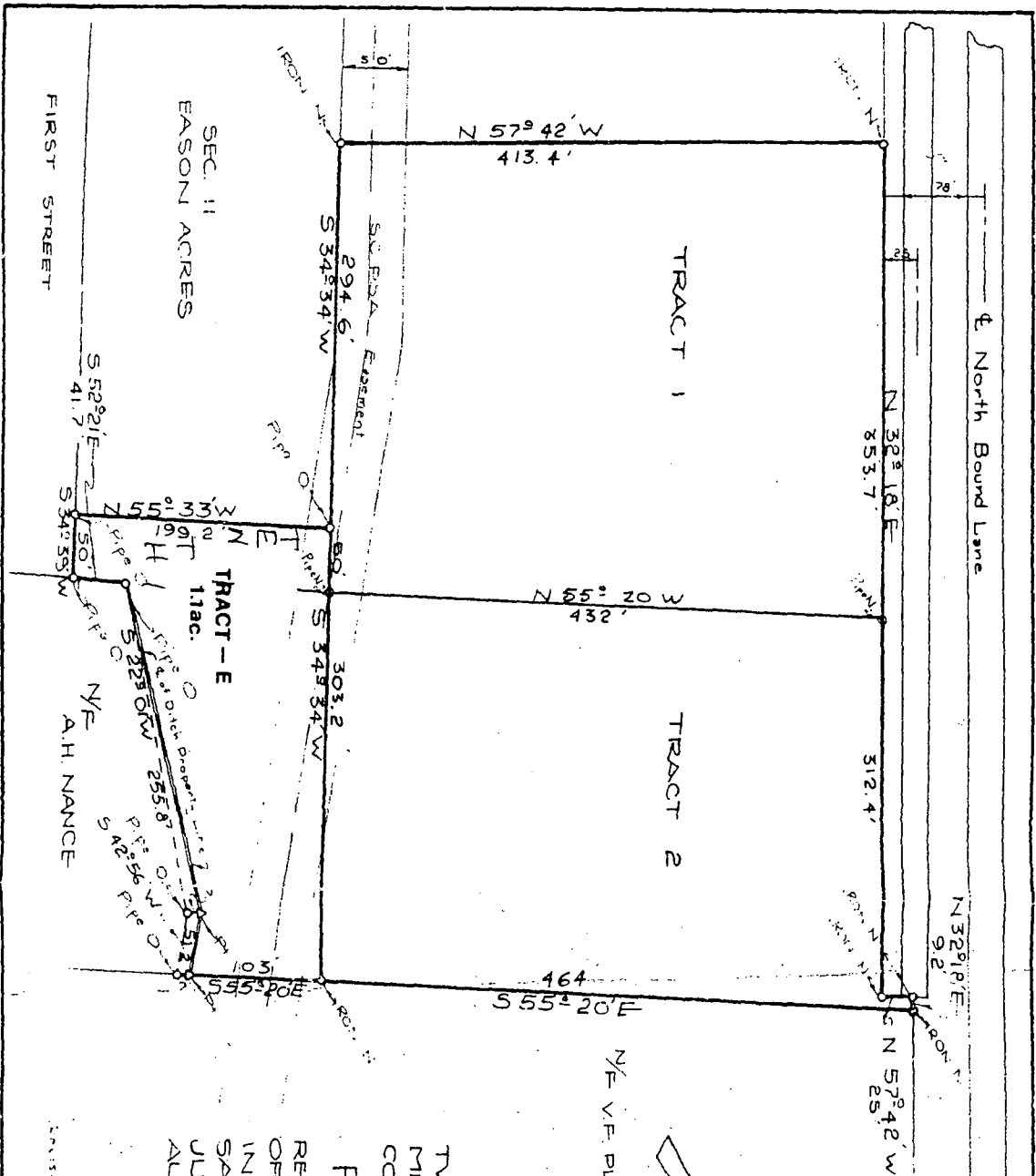
Given under my Hand and Seal, this 16th day of October 1974
F. H. Cannon (U.S.)
Notary Public for S.C.
My Commission Expires 4-1-75

Judith T. Eason
Judith T. Eason

Recorded this 16 day of Oct A. D. 1974
in Book 7 Page 238
L. H. Swan, Jr.
Georgetown County, S. C.

Examined and Certified this 16 day of Oct
19 74 Reuben Ross Moore, Deputy
CLERK OF COURT

000040



N/E V.F. PLATT

FILED
BETTY L. WILLIAMS
COPP & S.
OCT 14 1 14 PM '74
GEORGETOWN COUNTY, S.C.
BOOK A# PAGE 10

SMAP OF 2

TWO TRACTS OF LAND IN
MURRELLS INLET, GEORGETOWN
CO., S.C. SURVEYED FOR

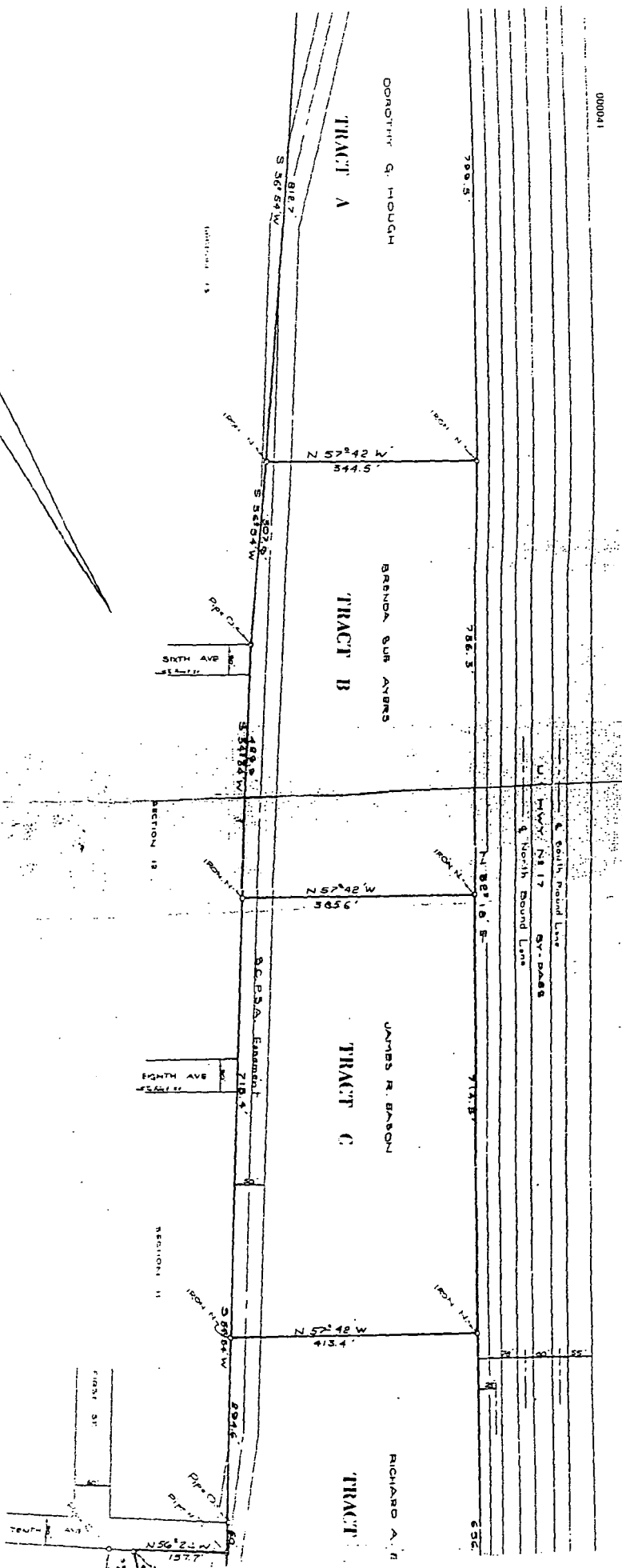
RICHARD A. EASON

RE MAP OF PROPERTY OF ESTATE
OF JOHN A. EASON, JR. MURRELLS
INLET, GEORGETOWN CO., S.C. BY,
SAMUEL M. HARPER, R.L.S. DATE
JULY 17, 1961
AUG 26, 1974
KENNETH L. MCDOWELL
P.E. & R.L.S.

SCALE: 1"=100'

Surveyed Oct 11, 1974

Note
Area included of 11.1 ac.
S.E. Easement

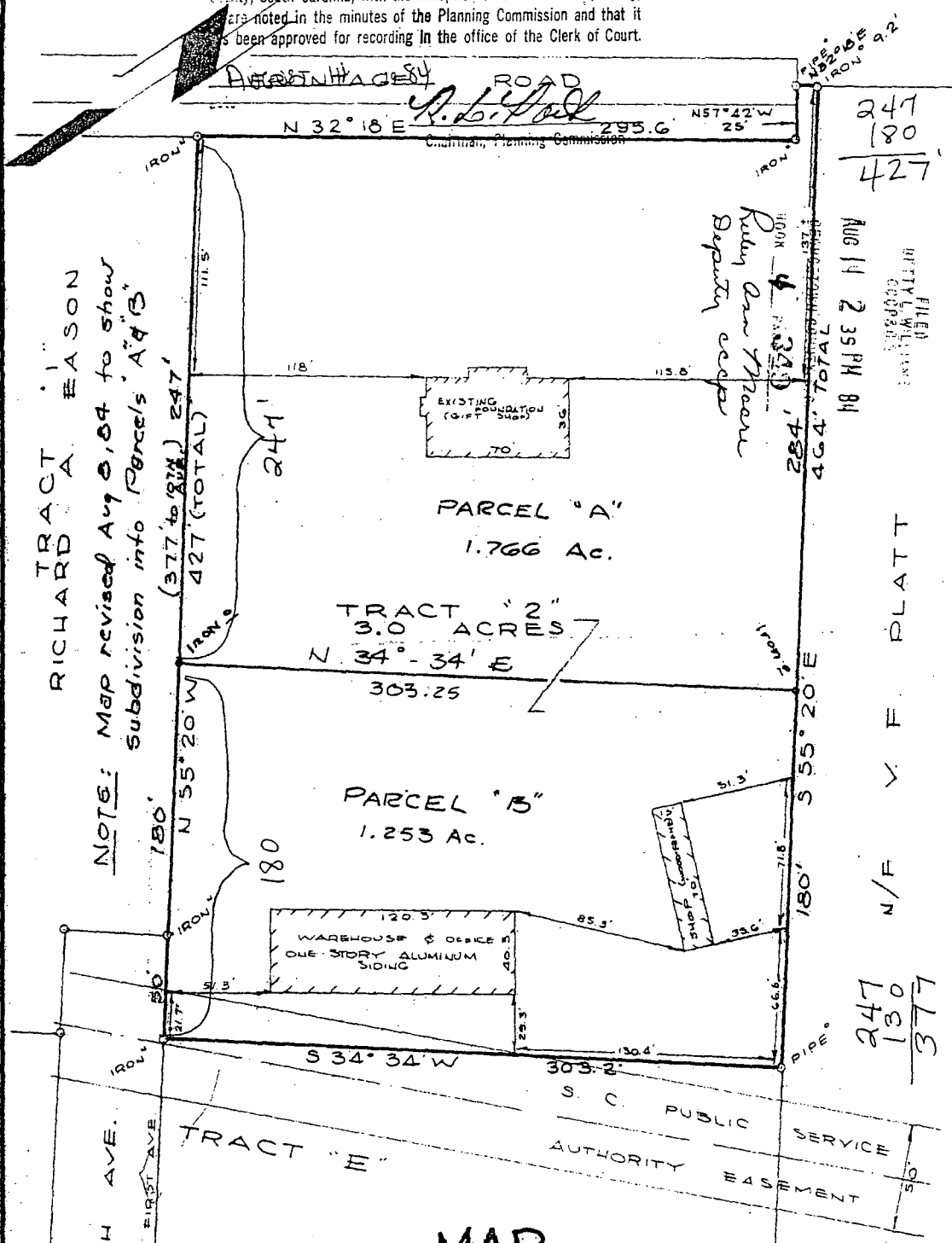


MAP OF-
 4 TRACTS OF LAND IN MURRELLS INLET GEORGETOWN CO., S.C. SURVEYED
 FOR
 THE HEIRS OF JOHN A. EASON, JR.

RE MAP OF PROPERTY OF ESTATE OF JOHN A. EASON, JR. MURRELLS
 INLET, GEORGETOWN CO., S.C. BY HANUEL M. HARPER, R.L.S. DATED JULY
 17, 1961
 SEPT. 13, 1974
 KENNETH L. MIDWELL
 S.C. S.A. SCALE: 1:500

NOTE:
 ACRES INCLUSIVE OF
 S.C.S.A. POSSESSION

I hereby certify that the subdivision plat shown here has been
 and to comply with the Subdivision Regulations for Georgetown
 County, South Carolina, with the exception of such variances, if any,
 as noted in the minutes of the Planning Commission and that it
 has been approved for recording in the office of the Clerk of Court.



MAP

OF A PARCEL OF LAND KNOWN AS TRACT "2"
 FORMERLY OWNED BY RICHARD A. EASON,
 MURRELLS INLET, S. C., GEORGETOWN CO.,
 SURVEYED FOR

SOUTH CAROLINA
 LOWCOUNTRY ROPE HAMMOCK SHOP

SCALE: 1" = 60'

APRIL 8, 1975

MCDOWELL ENGINEERING CO.
 KENNETH L. MCDOWELL, P.E., L.S.

RE: MAP OF TWO TRACTS OF LAND SURVEYED
 FOR RICHARD A. EASON, KENNETH L. MCDOWELL,
 P.E., L.S., DATED 20 FEB, 1975

REVISED: Aug 8, 84

Handwritten signature/initials

LINE	LENGTH	BEARING
L1	13.03	N58°16'40"W
L2	80.00	S50°28'08"W
L3	12.61	S50°23'54"W
L4	20.00	S30°56'06"W
L5	50.00	S50°03'54"E
L6	37.10	N58°12'55"W

TMS 41-0124-003.01.02
SCOTT D. LEE

TMS 41-0124-003.01.00
SANDRA C. LEE

TMS 41-0124-003.00.00
CLEANOR S. STAMPER

BEL-AIR AVENUE 50' R/W

41-124-3.13
Comm. Refrig.

PARCEL B
30,382 sq. ft.
0.70 acres

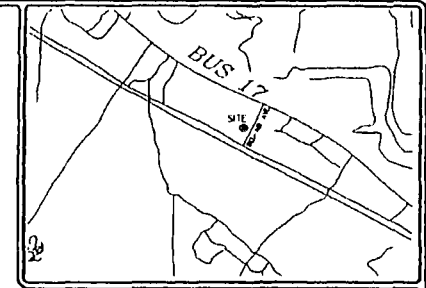
PARCEL A
20,852 sq. ft.
0.48 acres



Disclaimer of Accuracy.
I hereby state that to the best of my knowledge, information and belief, the survey was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements of the State of South Carolina.

11-4-04
1a

Michael S. Stammer
S.C. Registered Professional Surveyor
No. 11212



LOCATION MAP

NOTES:

1. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.
2. THIS PROPERTY IS LOCATED IN FLOOD ZONE X, ACCORDING TO F.I.R.M. No. 450085 0166 E, DATED OCTOBER 18, 1992.
3. REF. DETD FROM COASTAL CAROLINA INDUSTRIAL DEVELOPMENT, LLC TO COMMERCIAL REFRIGERATION LLC, RECORDED IN DEED BOOK 13472 AT PAGE 225.
4. REF. PLAT OF A PARCEL OF LAND KNOWN AS TRACT 2, BY KENNETH L. McDOWELL, P.E., L.S. DATED APRIL 8, 1975, REVISED AUG. 8, 1984, AND RECORDED IN PLAT BOOK 4 AT PAGE 348.
5. STATE PLANE COORDINATE TAKEN FROM USGS MON. 026-060 MADRS (2001)
6. OWNERS ADDRESS:
652 BEL-AIR AVENUE
MURRELLS INLET, S.C. 29576
(P.O. BOX 1747)

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish the minimum building restriction lines, and dedicate all streets, alleys, walks, parks and other open space to public or private use as noted.

DATE _____

OWNER(S) _____

OWNER(S) _____

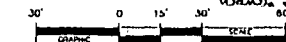
OWNER(S) _____

OWNER(S) _____

OWNER(S) _____

0100031240-0014613AH
Filed 11/08/2004
Fee: \$10.00
Register Georgetown Co SC

Wanda J. Cravette



CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the subdivision plat shown here has been found to comply with the Subdivision Regulations for Georgetown County, South Carolina, with the exception of such variances, if any, on the Plat and that it has been approved for recording in the office of the Clerk of Court.

DATE 11/08/04

CHURCH PLANNING COMMISSION

PLAT OF TMS 41-0124-003.01.01, SUBDIVIDED INTO 2 PARCELS, LOCATED IN MURRELLS INLET, OFF OF HWY 17 BUSINESS, MURRELLS INLET, GEORGETOWN COUNTY, SOUTH CAROLINA
PREPARED FOR

PARCEL A OWNED BY DONNA F. DUCKER
PARCEL B OWNED BY
COMMERCIAL REFRIGERATION, LLC
CULLER LAND SURVEYING CO., INC.



(843) 238-2333
P.O. BOX 14327
SURFSIDE BEACH S.C. 29578

DATE: 11-4-04

SCALE: 1"=30'

FD.No. SM-002804, ASO DWG No. 002-B-04

[illegible]

35/28/03

I hereby certify that the subdivision plat shown, here has been
 and to comply with the Subdivision Regulations for Georgetown
 County, South Carolina, with the exception of such variances, if any,
 as are noted in the minutes of the Planning Commission and that it
 has been approved for recording in the office of the Clerk of Court.

Date 11/22/15 11/22/15 N57°42'W

Continued on p. 10

RICHARD TRACT
EASONS

NOTE: Map revised Aug 2, 84 to show
subdivision into Parcels "A" & "B".

377 to 814	247'
<u>427' (TOTAL)</u>	

180' N 55° 20' W

RENTAL AVE.

11

TRACT "E"

MAP

OF A PARCEL OF LAND KNOWN AS TRACT '2'
FORMERLY OWNED BY RICHARD A. EASON,
MURRELLS INLET, S. C., GEORGETOWN CO.

SURVEYED FOR

SOUTH CAROLINA
LOWCOUNTRY ROPE HAMMOCK SHOP
SCALE: 1"=60' APRIL 8, 1975

MCDOWELL ENGINEERING CO.
KENNETH L. MCDOWELL, P.E., L.S.

RE: MAP OF RICHARD W. TRACTS OF LAND SURVEYED
FOOD RICHARD W. TRACTS OF LAND SURVEYED
P.E., U.S., DATED A. 20 FEB, 1975 L. MCDOWELL,

REVISED: Aug 8, 84

PB 4-349

2001700

CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER (S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THE PLAN OF SUBDIVISION WITH BY (OUR) FREE CONSENT, ESTABLISH THE NEIGHBORHOOD RESTRICTION LINES, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS AND OTHER OPEN SPACE TO PUBLIC OR PRIVATE USE AS NOTED.

Sept. 16, 1996

Edward James Daugherty, Jr.
OWNER

OTHER

CERTIFICATION OF APPROVAL OF PUBLIC SEWER SYSTEM

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HERE HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA WITH THE EXCEPTION OF SUCH VARIANCES, IF ANY, AS ARE NOTED IN THE MINUTES OF THE PLANNING COMMISSION AND THAT IT HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE CLERK OF COURT.

Aug. 29, 1996

William C. Brunson Jr.
OWNER

10656
FILED
BETTY L. WILLIAMS
CLERK & GS

96 SEP 10 AM 11:35

GEORGETOWN COUNTY, S.C.
PLAT BOOK 410, PAGE 7B

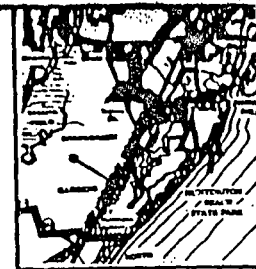
EDWARD P. BRUNSON JR.
P.B. 4, PG. 349
D.E. 221, PG. 670

CERTIFICATE OF APPROVAL FOR RECORDING

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HERE HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA WITH THE EXCEPTION OF SUCH VARIANCES, IF ANY, AS ARE NOTED IN THE MINUTES OF THE PLANNING COMMISSION AND THAT IT HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE CLERK OF COURT.

DATE 8-21-96

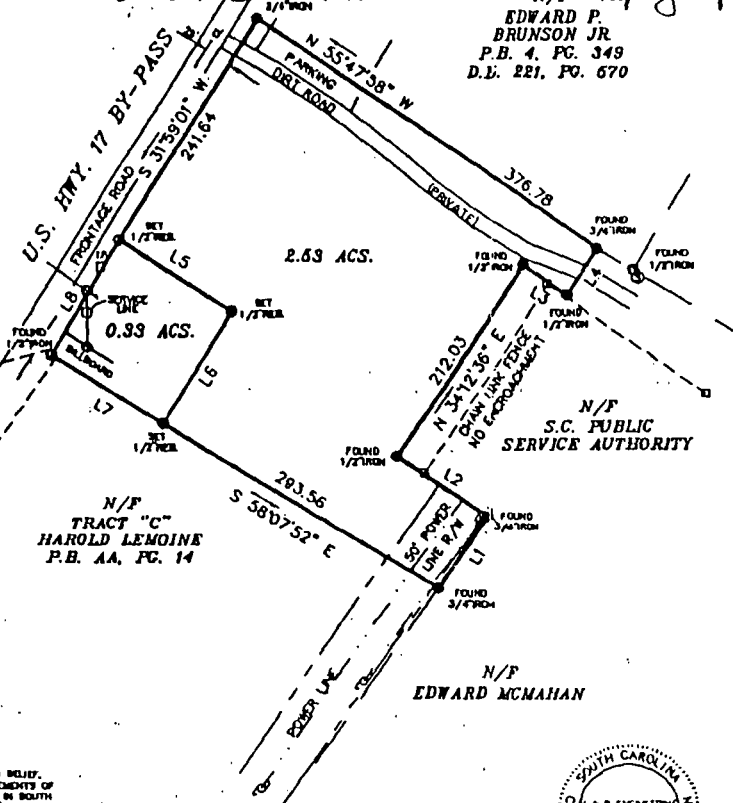
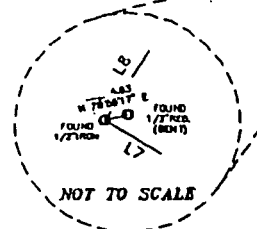
Robert K. Patterson
CHAIRMAN, PLANNING COMMISSION



VICINITY MAP
1" = 2 miles

LEGEND

- 1/2" IRON PIN SET
- POWER POLE
- SEWER MANHOLE
- WATER VALVE
- WATER METER
- HEAT PUMP
- TEL. PEDestal
- ELECTRICAL BOX
- TV PEDestal
- RIGHT OF WAY
- ADJOINING PROPERTY LINE
- PROPERTY LINE SURVEYED
- WATER LINE
- SPOT ELEVATION
- DITCH
- LANDMONT



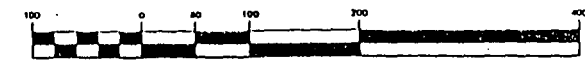
LINE	DIRECTION	DISTANCE
L1	N 34°13'21" E	82.31
L2	N 55°45'56" W	100.06
L3	S 35°33'47" E	49.77
L4	N 33°37'46" E	30.03
L5	N 58°07'52" W	120.00
L6	N 31°59'01" E	120.00
L7	S 58°07'52" E	120.00
L8	S 31°59'01" W	120.00

NOTES:

1. DATE OF FIELD SURVEY WAS AUGUST 22, 1996.
2. TAX MAP NO. 41-124-03.
3. REFERENCE TO PLAT BOOK AA, PAGES 14.
4. THIS PROPERTY IS LOCATED IN FLOOD ZONE "X", AS SHOWN ON FIRM PANEL #450085 0166 E, DATED OCTOBER 16, 1982.

SUBDIVISION MAP OF
2.86 ACRES
LOCATED IN GEORGETOWN COUNTY, SOUTH CAROLINA.

FOR
EDWARD JAMES DAUGHERTY, JR.
AUGUST 27, 1996
GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft

SURVEYED & MAPPED BY
ETS-ENGINEERING AND TECHNICAL SERVICES, INC.
58 CENTERMARSH LANE, PAWLEYS ISLAND, SOUTH CAROLINA
DRN. TOM JACKSON DAUGH JG: 96253-S

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND BEETS ON EXCEEDS THE REQUIREMENTS OF A CLASS "A" SURVEY. AS SHOWN THEREON, THIS PLAT SHOWS THE TRUE OWNERSHIP OF THE PROPERTY, THAT ALL NECESSARY HANGERS HAVE BEEN OBTAINED AND THERE ARE NO ENCUMBRANCES OTHER THAN SHOWN HEREON.

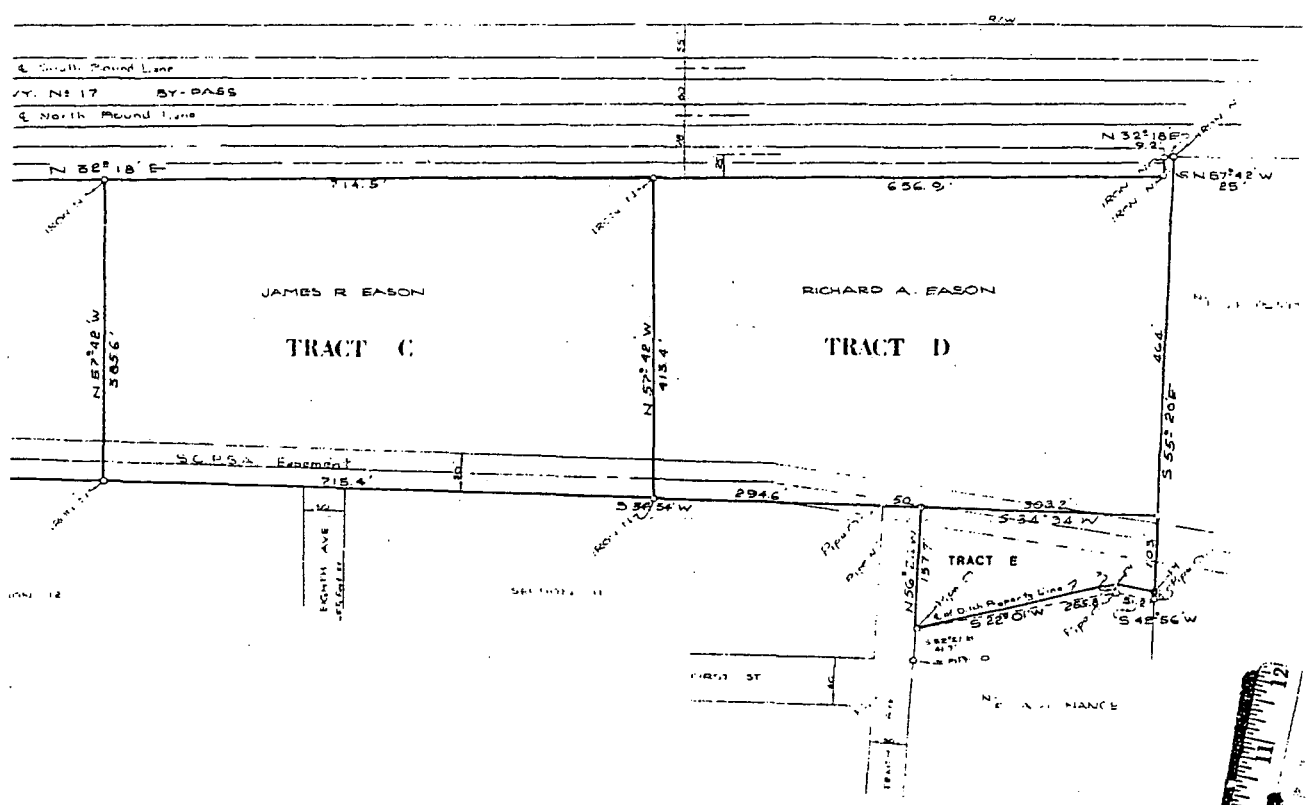
DEFENDANT'S
EXHIBIT



5 5/28/09

AD - 100

FILED
BETTY L. WILLIAMS
C.C.P.A. C.S.
Oct 14 1 14 PM '74
GEORGETOWN COUNTY, S.C.
BOOK 44 PAGE 14
Marion J. Burch
Deputy Clerk



OF
JULS INLET GEORGETOWN CO., S.C. SURVEYED
JOHN A. EASON, JR.

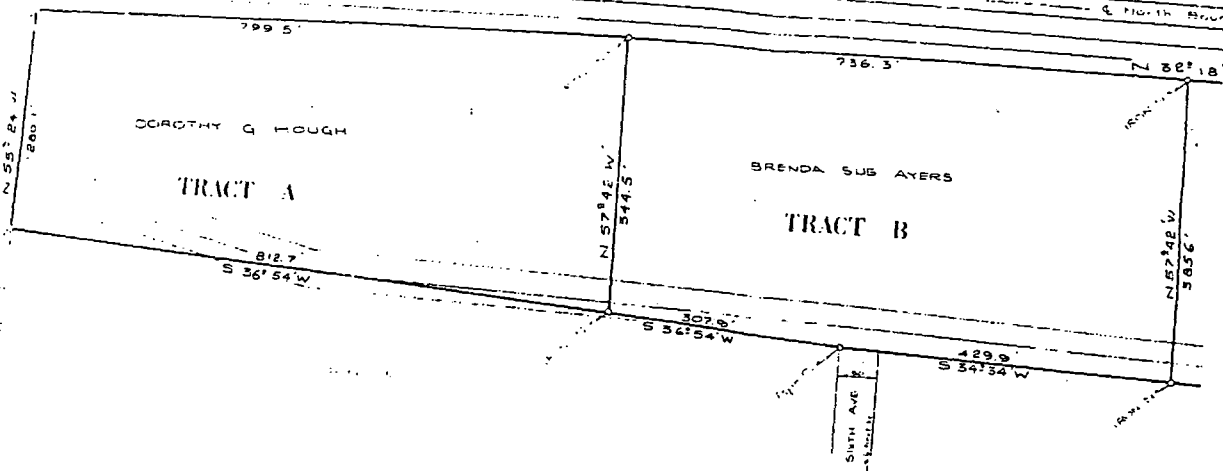
DATE OF JOHN A. EASON, JR. MURRELLS
Y SAMUEL M. HARPER, PLS. DATED JULY
SCALE: 1/2" = 100'
L. L. McDowell
C. P. R.L.S.

**DEFENDANT'S
EXHIBIT**

66 5/28/09

NOTE:
ACREAGE INCLUSIVE OF
S.C.P.S.A. 50' EASEMENT

-14



MAP OF
4 TRACTS OF LAND IN MURRELLS INLET
FOR
THE HEIRS OF JOHN A

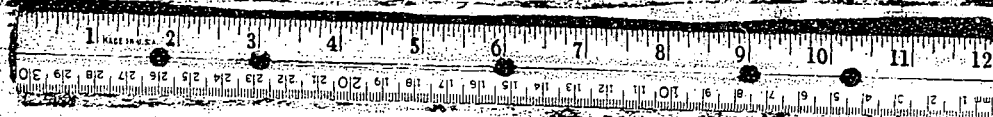
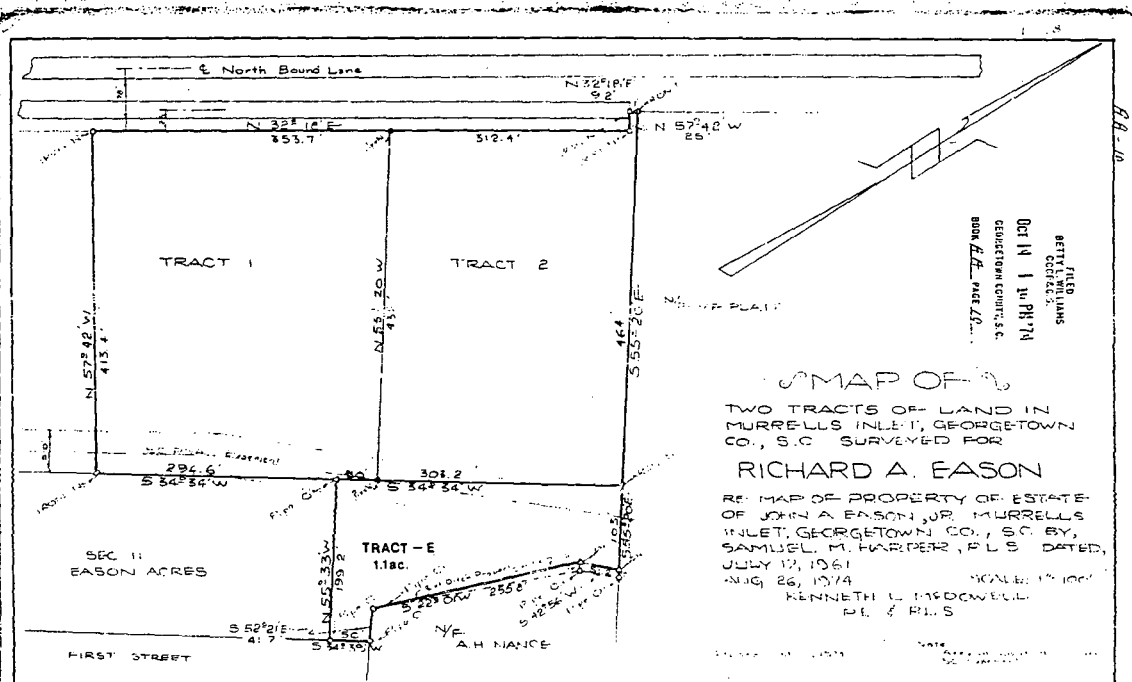
RE: MAP OF PROPERTY OF ESTATE OF
INLET, GEORGETOWN CO, SC BY SAMUEL
17, 1961
SEPT. 13, 1974

KENNETH L. MEDC
P.E. & P.L.S.

AA-14

DEFENDANT'S EXHIBIT

AA-10



CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER (S) OF THE PROPERTY AND I HAVE (WE HAVE) BEEN (WE HAVE BEEN) ADVISED BY THE PLANNING COMMISSION AND THE CLERK OF COURT THAT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT, ESTABLISHES THE MINIMUM BUILDING FOOTPRINT LINES, AND DEDICATES ALL STREETS, ALLEYS, WALKS, PARKS AND OTHER SPACE TO PUBLIC OR PRIVATE USE AS NOTED.

July 29, 1997

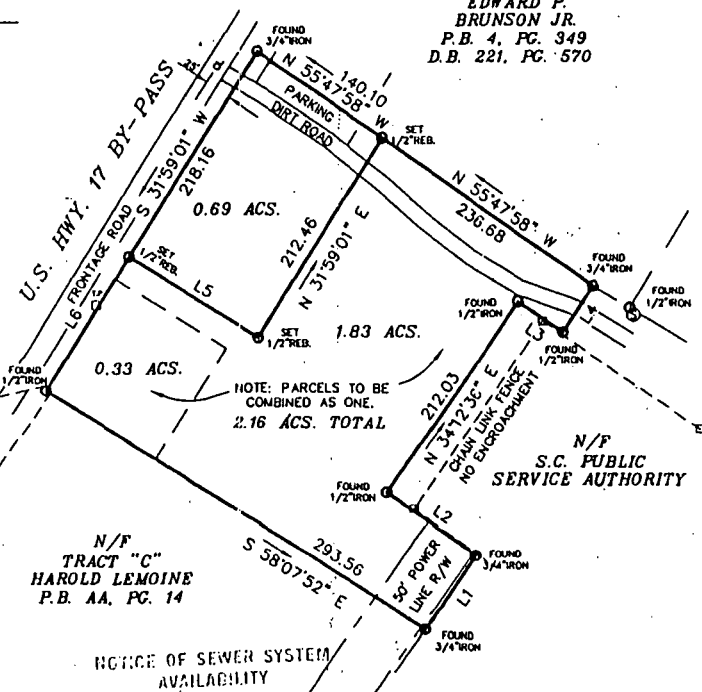
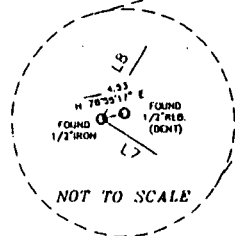
Edward J. Daugherty, Jr.
OWNER

000258290
RECORDED 10/06/1997 02:25P
SK:5250 Pg:1A Pages:1
Fee:10.00 State:0.00
County:0.00 Trans:0.00
Georgetown County, SC
Ruby Ann Moore, Clerk of Court
See J. Newton, Deputy cecp

N/F
EDWARD P.
BRUNSON JR.
P.B. 4, PG. 349
D.B. 221, PG. 570

LEGEND

- 1/2" IRON PIN SET
- POWER POLE
- SEWER MANHOLE
- WATER VALVE
- WATER METER
- HEAT PUMP
- TEL. PEDESTAL
- ELECTRICAL BOX
- TV PEDESTAL
- RIGHT OF WAY
- ADJOINING PROPERTY LINE
- PROPERTY LINE SURVEYED
- WATER LINE
- SPOT ELEVATION
- DITCH
- EASEMENT



N/F
TRACT "C"
HAROLD LEMOINE
P.B. AA, PG. 14

NOTICE OF SEWER SYSTEM
AVAILABILITY

N/F
EDWARD MCMAHAN

A public sewer system is available for the property shown on this map. The sewer system is located to the south of the property and is owned by the Georgetown County Sewer District. The sewer system is shown on the map as a dashed line with arrows indicating the direction of flow.

July 29, 1997
H. A. Williams
Author

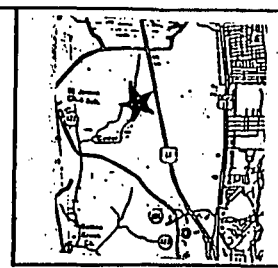


CERTIFICATE OF APPROVAL FOR RECORDING

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HERE HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA WITH THE EXCEPTION OF SUCH VARIANCES, IF ANY, AS ARE NOTED IN THE MINUTES OF THE PLANNING COMMISSION AND THAT IT HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE CLERK OF COURT.

DATE 7-29-97

Robert K. Brunson, Jr.
CHAIRMAN, PLANNING COMMISSION



VICINITY MAP
1" = 2 miles

LINE	DIRECTION	DISTANCE
L1	N 34°13'21" E	82.31
L2	N 55°45'56" W	100.06
L3	S 55°55'47" E	49.77
L4	N 33°57'46" E	50.03
L5	S 58°07'52" E	140.00
L6	N 31°59'01" E	143.48

NOTES:

- DATE OF FIELD SURVEY WAS JULY, 1997.
- TAX MAP NO. 41-124-03.
- REFERENCE TO PLAT BOOK AA, PAGES 14.
- THIS PROPERTY IS LOCATED IN FLOOD ZONE "X", AS SHOWN ON FIRM PANEL #450085 0186 E, DATED OCTOBER 16, 1992.
- REFERENCE TO DEED BOOK 722, PAGE 100 & SLIDE 210, PAGE 7B.
- THIS MAP SUPERSEDES A MAP RECORDED IN SLIDE 210, PAGE 7B, GEORGETOWN COUNTY RECORDS.

SUBDIVISION MAP OF
2.86 ACRES
LOCATED IN GEORGETOWN COUNTY, SOUTH CAROLINA.
FOR
EDWARD JAMES DAUGHERTY, JR.
JULY 10, 1997
GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

SURVEYED & MAPPED BY
ETS-ENGINEERING AND TECHNICAL SERVICES, INC.
58 CENTERMARSH LANE, PAWLEYS ISLAND, SOUTH CAROLINA.
DRN. TOM JACKSON DAUGH JB. # 98259-S

DEFENDANT'S
EXHIBIT

8/5/97

BUSINESS RECORDS

000176

ARRS, R.L.S. #11314

US GEOLOGICAL SURVEY-BROOKGREEN, SC
(FILED SEPARATELY)

SUBDIVISION PLAT OF EASON ACRES
(FILED SEPARATELY)

DUCKER PLAT
(FILED SEPARATELY)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

JOSEPH CROSBY, MASTER IN EQUITY

CASE NO.: 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC.....Appellants

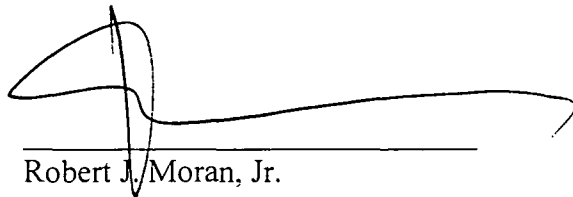
vs.

Eleanor S Stamper.....Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 5, 2010



Robert J. Moran, Jr.
Robert J. Moran PA
PO Box 370
Murrells Inlet, SC 29576
(843) 237-4533
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joseph Crosby, Master in Equity

Case No 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC Appellants

v.

Eleanor S. Stamper Respondent

APPELLANTS' FINAL BRIEF

May 10, 2010

Robert J. Moran, Jr.
Robert J. Moran, P.A.
Post Office Box 370
Murrells Inlet, South Carolina 29576
843-237-4533
Attorney for Appellants

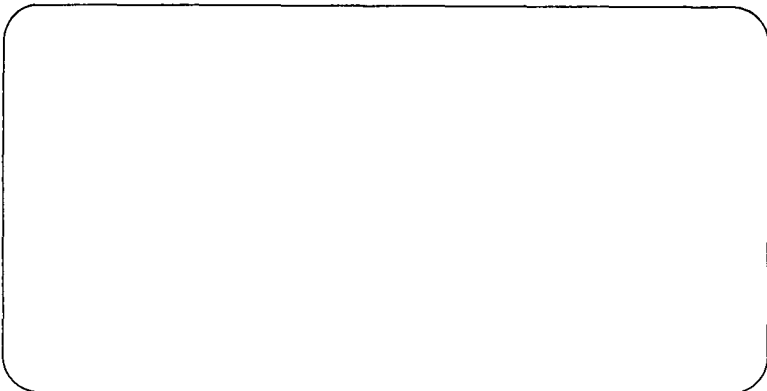


TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of Case	1
Standard of Review	3
Argument	
1. DUCKERS ARE NOT BOUND TO THE ORDER CLOSING TENTH AVE, PURSUANT TO §57-9-10, SC CODE, WHEN THEY WERE “ABUTTING PROPERTY OWNERS WHOSE PROPERTY WOULD BE AFFECTED...,” WERE NOT NAMED AS PARTIES TO THE ACTION, AND DID NOT RECEIVE NOTICE SENT BY MAIL REQUIRING A RETURN RECEIPT... 4	
2. A RIGHT OF WAY OR EASEMENT MAY BE CREATED BY THE FILING OF A SUBDIVISION PLAT, UNDER THESE PARTICULAR FACTS, WITHOUT THE PLAT BEING SPECIFICALLY REFERRED TO IN DUCKERS’ CHAIN OF TITLE.....	6
3. DUCKERS HAVE ESTABLISHED THEIR RIGHT TO AN EASEMENT BY PRIOR USE.....	8
Conclusion	9

TABLE OF AUTHORITIES

<u>BancOhio Natl. Bank vs. Neville</u> 310 SC 323, 426 SE 2d 773 (1993)	4
<u>Blue Ridge Realty vs. Williamson</u> , 247 SC 112, 145, SE2d 922 (1965).....	6
<u>Boyd v. Bell South</u> , 369 SC 410, 633 SE2136 (2006).....	8, 9
<u>Inlet Harbor vs. SCPRT</u> _, 377 SC 86, 659 SE 2d 151 (2008).....	3, 6
<u>Jahasik vs. Fairway Oaks</u> , 307 SC 339, 415 SE2d 384 (1992).....	5
<u>McAllister vs. Smiley</u> , 301 SC 10, SE 2d 857 (1990).....	6,7
<u>Murrells Inlet Corp. vs. Ward</u> 378 SC 225, 662 SE 2d 452 (Ct. App)(2008).....	3, 7
<u>Outlaw vs. Moise</u> 222SC 24, 71 SE2d 509 (1952).....	6

STATUTES

§57-9-10, S.C. Code of Law (1976).....	4,8,10
--	--------

RULES

Rule 19 (a) SCRCF.....	4, 10
------------------------	-------

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT DUCKERS ARE BOUND BY THE 1997 ROAD CLOSURE ACTION?
2. DID THE TRIAL COURT ERR BY FINDING THAT DUCKERS HAVE NO RIGHT, PRIVATE OR PUBLIC, IN THAT PORTION OF TENTH AVE WHICH ABUTS THEIR PROPERTY?
3. DID THE TRIAL COURT ERR BY FINDING THAT DUCKERS HAVE NO EASEMENT IMPLIED BY PRIOR USE?

STATEMENT OF THE CASE

On November 1, 2006 Duckers commenced this action seeking to require Stamper to remove a chain link fence which was being erected adjacent to Duckers' property and declaring that Duckers have a right of way or easement on Tenth Ave extending to the western most driveway to their property. Stamper answered by general denial and affirmatively plead Waiver, Estoppel, Abandonment, Unclean Hands, and that Duckers' property was not sold with reference to the subdivision plat which dedicated Tenth Ave as a road.

This matter was referred to the Master in Equity, with finality, and tried, non-jury, on May 28, 2009. A final decree was filed on June 24, 2009, denying Duckers' relief.

On July 23, 2009 Duckers filed a Motion to Reconsider, which was denied by the Court. On August 28, 2009 Ducker served a Notice of Appeal on Stamper.

FACTS

In 1956 a subdivision plat of Eason Acres was filed with the Clerk of Court for Georgetown County by John A. Eason.(R.p.000178-Filed Separately) This plat contained many

lots and a number of named streets, one of which was Tenth Ave, now known as Bel Air Drive. Between 1956 and his death in 1973 Eason sold many lots in Eason Acres, most of which were sold by reference to the 1956 plat.(R.p. 000079) In the 1956 plat Tenth Ave extended from US Highway 17 (now Hwy 17 business) on the east to a point well west of the location of the Ducker property. The Ducker property fronts on Tenth Ave, and no other public or private thoroughfare.

The Ducker property was not sold during John A. Eason's life. The Eason heirs subdivided some of the unsold property with both the Ducker and Stamper properties being acquired by Richard Eason. Nothing in the Ducker chain of title references the 1956 Eason Acres plat, nor is there any reference to Tenth Ave included in any conveyance. It is undisputed, however, that the only access to the Ducker property is by Tenth Ave.

The roads in Eason Acres were traditionally dirt, although most have been paved by Georgetown County within the past 20-30 years. Tenth Ave historically extended beyond the Ducker property and through the Stamper property affording access from US Hwy 17 Business to the frontage road which is now parallel to US Hwy 17, By-pass. By pass 17 did not exist when the 1956 Eason Acres plat was filed. Vehicular traffic regularly traveled the entire length of Tenth Ave at least as far back as 1972.(R.p.000043, line 4 to p. 000044, line 3)

In 1997 Stamper's predecessor in title, Edward James Daugherty, brought an action pursuant to 57-9-10, SC Code, to close a portion of Tenth Ave. He named, as party Defendants, Georgetown County, Edward Brunson, Margaret Hill, and John Doe and Richard Roe, representing unknown parties. Ducker, who owned the property in 1997 and who's property abutted Tenth Ave was not named as a party to this action. Georgetown County was named due to Tenth Ave's status, in 1997, as a public road.(Plaintiff's Exhibit 4)

Daughtery, at the successful conclusion of the road closing, erected a chain link fence near Duckers' western boundary, where it intersects with Tenth Ave, effectively blocking the road and creating a dead end. Daughtery's fence did not impeded Duckers' access in any fashion. The road closure Order did confirm Daughtery's ownership of that portion of Tenth Ave contained within his property boundaries, including the appropriate 50' x 50' stretch of Tenth Ave extending along Duckers' property. The area fenced in by Stamper is consistent with the relief granted in the road closure action.

Duckers own and operate a commercial refrigeration business from their property, and have their home there. Beginning at least as far back as 1974 this land was used for commercial purposes. Rebel Manufacturing, the owner in 1985, operated a fiberglass manufacturing business on the site. Large commercial vehicles accessed a building by way of a driveway which is now closed off by Stamper's fence. (R.p. 000036, line 1 to p. 000043, line 8)

Georgetown County historically scrapped Tenth Ave to at least a point up to the driveway now blocked off.(R.p. 000038, line 22 - p. 000042, line 23)

STANDARD OF REVIEW

The determination of the existence of an easement is a question of fact in an action at law. Appellant review of factual issues is highly deferential, with questions of fact generally reviewed under the "any evidence" standard.

While the determination of the existence of an easement is a question of fact, the question of the extent of an easement is an action in equity allowing review based upon Appellant Court's own view of the preponderance of the evidence. Inlet Harbor vs. SCPRT, 377 SC 86, 659 SE 2d 151 (2008), Murrells Inlet Corp. vs. Ward 378 SC 225, 662 SE 2d 452 (Ct. App)(2008).

ARGUMENTS

- I. DUCKERS ARE NOT BOUND TO THE ORDER CLOSING TENTH AVE, PURSUANT TO §57-9-10, SC CODE, WHEN THEY WERE “ABUTTING PROPERTY OWNERS WHOSE PROPERTY WOULD BE AFFECTED...,” WERE NOT NAMED AS PARTIES TO THE ACTION, AND DID NOT RECEIVE NOTICE SENT BY MAIL REQUIRING A RETURN RECEIPT.

The trial court incorrectly held that BancOhio Natl. Bank vs. Neville 310 SC 323, 426 SE 2d 773 (1993) stands for the proposition that, “the only indispensable parties to a road closing are the public entities that may be charged with its maintenance”. (Order p.13). This holding ignores the relevant portions of Rule 19, SCRCP, cited in BancOhio, requiring joinder of a person if, in his absence, complete relief cannot be accorded among those already parties or if he claims an interest related to the subject of the action and is so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect that interest. Rule 19 (a) SCRCP. The ruling also ignores the plain and literal language of the road closing statute which requires notice “sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change,” 57-9-10, SC Code of Laws. By placing the burden on the defendants to have either made an appearance in the road closing or to have filed a motion seeking relief from judgement the trial court’s ruling allows a plaintiff in road closing actions to completely circumvent the duties imposed under Rule 19.

Here is where the logic of the trial courts ruling begins to become tenuous. Assuming the theory relied upon by the trial court, that the Eason Acres plat is required to have been referenced in Duckers’ chain of title to create a private easement is correct, there is no private easement. Stamper, by succeeding to the rights of the prior title holder’s road closure action, acknowledges the existence of a public easement on Tenth Ave. In the absence of a private easement, if Tenth

Ave is not a public road, Duckers have no legal right of access to their property whatsoever. If Tenth Ave has been dedicated to the public, it follows that the public access extends the entire length of the road, as bolstered by the fact that it was sought to be closed only in that section lying beyond the Ducker property. The only evidence before the court established that Tenth Ave was a thoroughfare for its entire length continuously since at least 1973. It is both incredible and in blatant violation of Rule 19 and the road closing statute for a public road to be judicially closed without a property owner, owning frontage on the road to be closed, to not be made a party to the action.

The theories that Duckers have somehow waived their right to object to the road closing or have abandoned this right are equally misplaced. Waiver is a voluntary and intentional abandonment of a known right, with the burden of proving waiver, in this case, on Stamper. Jahasik vs. Fairway Oaks, 307 SC 339, 415 SE2d 384 (1992). The fact that Duckers had some degree of knowledge of the road closure order, as evidenced by a conversation between Ducker and Daughtery when the original fence was put up in 1997, ignores the fact that the 1997 fence did not, in any fashion, interfere with Duckers' access through the entire length of their property's road frontage. Duckers neither acquiesced or agreed to have their access diminished, nor did they abandon their access, plainly because their access was never threatened or curtailed. From 1997 until the erection of Stamper's fence in 2006 the Ducker property enjoyed the exact same access as had been in place since at least Rebel Manufacturing's ownership of the land in 1985. The "actual notice" found by the trial court, as a result of a conversation between Daughtery and Mr. Ducker in 1997 as the original fence was being installed, is not sufficient, as a matter of law, to bind Ducker to the order, especially when Daughtery's action after the road was closed did not, in any fashion, impede Duckers' traditional access to Tenth Ave.

II. A RIGHT OF WAY OR EASEMENT MAY BE CREATED BY THE FILING OF A SUBDIVISION PLAT, UNDER THESE PARTICULAR FACTS, WITHOUT THE PLAT BEING SPECIFICALLY REFERRED TO IN DUCKERS' CHAIN OF TITLE.

In all of the reported cases the issue of intent seems to be the primary factor in determining the nature and extent of roadway easements and rights of way. The inquiry begins in 1956 when Eason Acres was created by the recording of a master subdivision plat creating six (6) named avenues, two (2) named perpendicular streets, and well over 100 lots. (R.p. 000178 Filed Separately)

Did John Eason intend, in 1956, to create easements or rights of way in favor of all of the owners of land in Eason Acres? Did he intend these rights to create private easements or did he intend those named roads to be public? Were the roads in Eason Acres accepted by Georgetown County?

Easement law has generated considerable case law that recent past. Inlet Harbor, in 2008, is not particularly factually relevant to this action, but it does contain a detailed discussion of general easement law. Implied easements generally give substance of the intentions of the parties based upon the particular facts and circumstances of conveyances and transactions. Inlet Harbor Harbor v. SCPRT, 277 SC 86 659 SE 2d 151 (2008). The historic general rule has been that when one owner subdivides lots, records a plat, and references that plat in his conveyances a private easement is granted to lot owners in the subdivisions. Blue Ridge Realty vs. Williamson, 247 SC 112, 145, SE2d 922 (1965). This concept has evolved through the reported decisions, with the current law being as set forth in Justice Toal's dissent in McAllister vs. Smiley, 301 SC 10, SE 2d 857 (1990), again focusing on the intent of the landowner. "When land is divided into lots according to a plat thereof, showing streets, and lots are sold and conveyed with reference to said plat, the owner thereby dedicates the street to the public" Outlaw vs. Moise 222SC 24, 71

SE2d 509 (1952) “in some instances a recorded plat may be all that is necessary to disclose the landowner’s intent.” McAllister.

This development of the law of easements has continued in the 2008 Murrells Inlet Corp case, again stressing the intent of the subdividing owner and reiterating the presumption of creation of a public easement, in addition to private rights of owners within a subdivision, upon the recording of a plat and sale of lots thereby. Murrells Inlet Corp. vs. Ward, 378 SC 225 662 SE 2 452 (Ct. App 2008)

It is the position taken by Duckers, and incorrectly determined by the trial court despite abundant evidence to the contrary, that the streets contained in the 1956 Eason Acres plat are presumed to be, in addition to private easements in favor of the owners of lots therein, publicly dedicated streets. Tenth Ave is a public street, as was intended by John Eason in 1956.

Unfortunately John Eason died before he could sell Lots 1 and 2, Block 10, Eason Acres, the land now owned by Duckers, although Tenth Ave had been in existence almost 20 years. Eason’s heirs partitioned the property and son Richard Eason was granted the land on both sides of Tenth Ave., thereafter conveying them out without reference to his father’s 1956 plat. This fact seems to favor the basis of the trial courts determination that this easement either never existed or no longer exists. One fact, contained in the Order on appeal which is unsupported by any evidence, is the assertion “the portion of the road shown on the 1956 plat and designated as part of Tenth Ave on that plat that would run along the northern (actually southern) boundary of Plaintiffs’ property was not in existence in 1974”. (R.p. 000006, paragraph 5) The only evidence, the testimony of Johnny Lewis, was directly to the contrary. Further, if Tenth Ave did not exist, at least to the Duckers’ property, their home and business would be landlocked. There is also a mutually inconsistent finding in the Order, “where he (Daugherty,

Stamper's predecessor in title) purchased the property, there was a narrow dirt road running through this property" (R.p. 000006, paragraph 7)

The trial judge also held, "that portion of the road running across Stamper's property was never a public road" (R.p. 000008, paragraph 15) and "the part of the road over Stamper's property was a private road, at best" (R.p. 000007, paragraph 7). Apparently the trial judge now based his decision, not on the lack of any road, but on lack of acceptance by public use, again in disregard of the evidence. If there was no road, or if there was merely a private narrow dirt road running through the property it seems incredulous that Daughtery commenced an action under 57-9-10 to close the road, naming Georgetown County as a party defendant.

III. DUCKERS HAVE ESTABLISHED THEIR RIGHT TO AN EASEMENT BY PRIOR USE.

Duckers have also made out their claim under an easement implied by prior use. This theory was finally approved and discussed by our Supreme Court in Boyd v. Bell South, 369 SC 410, 633 SE2136 (2006), with the elements being: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. (Boyd, supra).

Both the Ducker and Stamper tracts were derived from John Eason to Richard Eason to Low Country Hammocks, and then to these two litigants, fulfilling items (1) and (2).

The trial court erred in its factual finding that Tenth Ave was not in existence in 1973, the only evidence at trial was to the contrary. This dirt road provided access over its entire length

until it was closed in 1997, satisfying item (3).

The evidence established that this access was consistent through the years, not merely a casual or temporary thoroughfare, well known to both parties and members of the general public, satisfying items (4) and (5).

Item (7), the common grantor's intent, seems to require some affirmative act on the part of a common grantor to terminate the easement, a fact not support by the evidence. John Eason clearly never intended to close Tenth Ave, his son Richard simply sold the property to Low Country Hammocks, which in turn subdivided a portion and sold it to two separate entities. No intent was manifested by any common owner.

The only real problem is the requirement of reasonable necessity. This is not the same standard as easement by necessity, it is possible for an owner to have access so as to not qualify under the doctrine of necessity, yet still be recognized based upon what is reasonable to enjoy the dominate estate. It "need not be absolute or irresistible...but must be more than a mere convenience" (Boyd, 369 SC at 421). The evidence was that commercial and delivery vehicles have traditionally used the now blocked driveway to access a large warehouse type building, that it is not accessible from the eastern boundary of Duckers' property due to existing structures, and that the only alternative is to remove the plantings from the Duckers' home and allow commercial vehicles to drive almost on the Duckers' front porch. (R.p. 69 line 1 to p. 70, line 25).

CONCLUSION

The roads contained in a subdivision consisting of over 100 lots, created and filed in 1956, evidences a clear and unequivocal intent to dedicate a perpetual easement or right of way in favor of the general public, as well as property owners within the subdivision. Once this

dedication is made, it would take, at a minimum, an equally clear and unequivocal act to alter or extinguish. The only other recognized method of closing a public road is by statute.

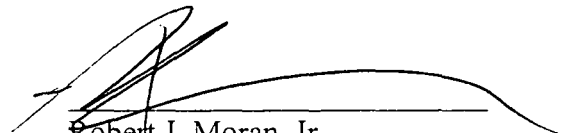
Due process, Rule 19 SCRPC and §57-9-10 of the SC Code all require that an owner whose abutting and existing access is being effected by the closure of a road by either named as a party to the action or received statutorily mandated notice. Simply telling someone that you have a court order which could result in blocking their driveway is woefully insufficient. Duckers are not bound by the 1997 road closure.

There is no strict rule holding that if one owns property, within a recognized 50 year old subdivision, he has no right of access over the subdivision roads if the subdivision plat is not referenced in the chain of title.

The Plaintiffs in this action have established, by the law and preponderance of the evidence, that their existing driveway on Tenth Ave should remain unobstructed.

Respectfully submitted,

May 10, 2010



Robert J. Moran, Jr.
PO Box 370
Murrells Inlet SC 29576
843-237-4533
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joseph Crosby, Master in Equity

Case No 2006-CP-22-00196

Dona F. Ducker, Fred C. Ducker, Commercial Refrigeration, LLC Appellants

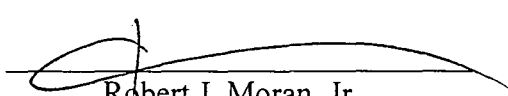
v.

Eleanor S. Stamper Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

May/6 2010



Robert J. Moran, Jr.
Robert J. Moran, P.A.
Post Office Box 370
Murrells Inlet, South Carolina 29576
843-237-4533
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Joe M. Crosby, Master In Equity

Case No.: 2006-CP-22-00 196

Dona F. Ducker, Fred C. Ducker, and Commercial
Refrigeration, LLC

Appellants,

V.

Eleanor S. Stamper

Respondent.

BRIEF OF RESPONDENT

Law Offices of Jack M. Scoville, Jr.,
P.A.
Jack M. Scoville, Jr.
Post Office Drawer 1228
Georgetown, South Carolina 29442
(843) 546-1130 (telephone)
(843) 546-0726 (facsimile)
Attorney for Respondent

TABLE OF CONTENTS

Table of Authorities	3
Statement of Issues on Appeal	4
Statement of the Case	4
Facts	4
Arguments	
1. The Trial Court correctly determined the Duckers were bound by the 1997 decree closing the road	8
2. The Trial Court correctly determined that the Duckers have no right, public or private, in the property that was fenced off by Respondent	12
3. The Trial Court correctly determined that the Duckers do not have an easement implied by prior use	14
4. Appellants have failed to appeal the Trial Court's ruling that Appellants waived their right to object to the closing of the road	17
5. The Trial Court correctly held that Appellants waived their right to object to the closing of the road	18
6. Appellants have failed to appeal the Trial Court's ruling that Appellants abandoned the easement, if one ever existed	19
Conclusion	21

TABLE OF AUTHORITIES

State Cases

<i>Boyd v. Bellsouth Telephone Telegraph Co., Inc.</i> , 369 S.C. 410, 633 S.E.2d 136, (2006).....	16,17
<i>Buckner v. Preferred Mutual Ins. Co.</i> , 255 S.C. 159, 177 S.E.2d 544 (1970)...	9
<i>Chaffee v. City of Aiken</i> , 57 S.C. 507, 35 S.E. 800 (1900).....	12
<i>Hodge v. Manning</i> , 274 S.C. 125, 264 S.E.2d 142, (1980).....	21
<i>Hynes Family Trust v. Spitz</i> , 384 S.C. 625, 682 S.E.2d 83 (Ct.App. 2009).....	14
<i>Immanuel Baptist Church of North Augusta v. Barnes</i> , 274 S.C. 125, 264 S.E. 2d 142 (1980).....	13
<i>Mosteller v. County of Lexington</i> , 336 S.C. 360, 520 S.E.2d 620 (1999).....	9
<i>Murrells Inlet Corp. v. Ward</i> , 378 S.C. 225, 662 S.E.2d 452, (Ct.App. 2008)...	11
<i>Slear v. Hanna</i> , 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998).....	8
<i>S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group</i> , 353 S.C. 249, 578 S.E.2d 8 (2003).....	10
<i>Thompson v. Hammond</i> , 299 S.C. 116, 382 S.E.2d 900 (1989).....	19

Statutes

S.C. Code Ann. §57-9-10, et seq.....	9.10
--------------------------------------	------

SCARC Rule

208(1)(B).....18,20

STATEMENT OF ISSUES ON APPEAL

- I. Is there any evidence to support the Trial Court's finding that the Duckers are bound by the 1997 decree closing the road?
- II. Is there any evidence to support the Trial Court's finding that the Duckers have no right, public or private, in the property that was fenced off by Respondent?
- III. Is there any evidence to support the Trial Court's finding that the Duckers do not have an easement implied by prior use?
- IV. Does Appellants' failure to appeal the Trial Court's ruling that Appellants waived their right to object to the closing of the road, require that the Trial Court be affirmed?
- V. Does Appellants' failure to appeal the Trial Court's ruling that Appellants abandoned the easement, if one ever existed, require that the Trial Court be affirmed?

STATEMENT OF THE CASE

The Respondents concur in the Statement of the Case contained in the Appellants' Initial Brief.

STATEMENT OF FACTS

It is important to note that Appellants have full access to all their property without using any of Stamper's property. They used Stamper's property for vehicular access to the southwest portion of their lot. They had erected structures on their property that prevent vehicular access to that corner of their lot from the rear of the lot.

Once Stamper erected her fence, they could only access that portion of their property with vehicles by driving across their front yard. There is nothing that impedes their accessing that corner of their property in anyway. They simply do not want to drive across their front yard to get there. [RA 56-16 to 58-10]

The parties' respective properties came out of a common tract that was owned by John Eason in the 1950's. Mr. Eason recorded a plat in 1956 for a subdivision he called Eason Acres. [Plaintiffs' Ex. 1, RA 178] This map shows the various roads and lots that made up the subdivision. One road in the subdivision was named Tenth Avenue. Lots in the eastern portion of the subdivision were sold by Mr. Eason. Mr. Eason never conveyed any lots in the western portion of the subdivision, including those that now comprise the Appellants' property or the Respondent's property. Mr. Eason died sometime prior to 1973. After he died, his heirs partitioned the western portion of the subdivision property. The parties' properties were part of a tract given to Richard Eason designated as Tract D on a plat recorded in 1974 in Plat Book AA at

Page 14. [Def. Ex. 6, RA 173] Both the Appellants' and the Respondent's chains of title come down through Richard Eason and this 1974 plat. [Def. Ex. 1, RA 178] No road designated Tenth Avenue or otherwise is shown on this plat in the area in question.

Also in 1974, Richard Eason subdivided Tract D into two parcels called Tract 1 and Tract 2 on another plat recorded in Plat Book AA at Page 10. [Def. Ex. 7, RA 175] Stamper's chain comes down from Tract 1 and Appellants' from Tract 2. This third plat also does not show any road in the area in question. (Both the second and third plats show various other roads)

Nowhere in the Duckers' chain of title is there any reference to the 1956 subdivision plat, which is what they claim is the source of a private easement in their favor. [Def. Ex. 1, RA 126]

Edward James Daugherty, Jr., was Stamper's immediate predecessor in title. When he purchased the property, there was a dirt road running through the northern side of the property. According to a plat recorded by Daugherty in Slide Book 210 at Page 7B [Def. Ex. 5, RA 172] on September 18, 1996, no portion of this road was outside the property boundaries of Daugherty's land. No portion of this road touched any portion of the Appellants' property. There is no indication on this plat of any access, driveway, or use of the area in question by Appellants' predecessors.

Daugherty brought an action in Circuit Court to close this road in 1997. He named Georgetown County, Edward Brunson, and Margaret Hill as Respondents. The Complaint stated that Brunson and Hill were the only known persons who may have utilized or had any interest in the continued existence in that portion of the road he sought to close. Daugherty also named John Doe and Richard Roe to represent all unknown persons having any right in the property. Notice of Intent to Close the road was properly run in The Georgetown Times newspaper. The road was subsequently closed by order of the Georgetown County Master in Equity, Benjamin Culbertson. The order vested title in the closed road in Mr. Daugherty. [Pl. Ex. 4, RA 95]

After closing the road, Daugherty fenced off his tract and built mini-storage warehouses on it. When he was constructing the fence, Appellant Fred C. Ducker asked Daugherty if he was going to fence the portion of the road where the Duckers accessed the back of their lot. Daugherty stated that he would not so that the Duckers could continue to have access there. This unfenced area, approximately 50 feet by 50 feet square, is what the parties refer to as "the stump." It was also in this conversation that Mr. Ducker learned, if he did not know already, that Daugherty had obtained a court order closing the road, including the stump. [RA 52-17 to 56-15]

It is important to note that at trial Mr. Ducker testified that he had no problem with Mr. Daugherty closing that portion of the road that runs from the area in question

here to Highway 17 Bypass. (RA 56, 4-15)

In 2005, Stamper bought the property from Daugherty. Stamper fenced off the stump in 2006. Appellants contend they have an easement through the stump to access the back part of their property. Stamper cut off this access when she erected the fence around the stump. This suit followed.

The Appellants have access to their property from the portion of Tenth Avenue, (now named BelAire Avenue) that is publicly maintained regardless of whether the stump remains fenced or not. [Pl. Ex. 2, RA 179] The access they complain of is merely vehicular access to the rear of their lot. Due to structures placed on their property they cannot drive cars to the rear of their lot without going across their front yard and messing up their landscaping unless they traverse the Stamper property. (RA 56-16 to 58-13) They have complete and total access to their property from Bel Air Avenue.

STANDARD OF REVIEW

The determination of the existence of an easement is a question of fact in a law action and is subject to the any evidence standard of review when tried by a judge without a jury. *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998).

ARGUMENTS

- 1. The Trial Court correctly determined the Duckers were bound by the 1997 decree closing the road.**

Appellants argue the Trial Court erred in finding the 1997 road closing action bound Appellants because they were not made parties to the action and were not sent notice by certified mail pursuant to S.C. Code Ann. §57-9-10, et seq. Appellants' argument fails for two reasons. First, they were not "abutting" property owners. Second, even if they were "abutting" property owners, they do not appeal the Trial Court's finding that the statute requiring notice be sent to "abutting" property owners is not jurisdictional.

- a. The Trial Court correctly found that Appellants were not "abutting" property owners.

The statute requires that notice of the road closing be sent by certified mail to the property owners whose land "abuts" the road. "'Abut' means to be contiguous, or border on; to bound upon; to end, end at, or terminate, to join at a border or boundary; to meet; to touch at the end or side." *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999).

Appellants have not appealed the Trial Court's finding that "no portion of [the] road [closed] was outside the boundaries of" what is now the Stamper property, or that "no plat introduced into evidence shows any driveway or access off this road to the [Appellants'] property." (Order, RA 6) This is now the law of this case. *Buckner v. Preferred Mutual Ins. Co.*, 255 S.C. 159, 177 S.E.2d 544 (1970).

Because the part of the road that was closed lay “wholly” on the Daughtery/Stamper land, it did not abut the Duckers’ land and therefore the statute did not require they get notice of the road closing by certified mail.

Regardless of the lack of the appeal of the issue, the undisputed evidence shows that the road that was closed lay wholly within Stamper’s property. Appellants were never abutting property owners to this road. The statute did not require they get notice of the road closing by certified mail or otherwise.

b. The Final Decree is not void.

The Trial Court, interpreting S.C. Code Ann. §57-9-10, et seq., (1976, as amended), further found that “The requirement that notice be given to the adjoining property owners is not jurisdictional.” This finding was not appealed. A ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling. *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 353 S.C. 249, 251, 578 S.E.2d 8, 9 n. 1 (2003). The order, therefore, is not void. Since the order closing the road is not void, it operated to close the road.

2. The Trial Court correctly determined that the Duckers have no right, public or private, in the property that was fenced off by Respondent.

The Trial Court determined that Appellants had no rights in the area shown as

Tenth Avenue on the original Eason subdivision plat because they did not buy any property in reference to that map and that no public rights accrued in the road because there was no public acceptance.

Appellants contend that they acquired a private easement in Tenth Avenue by virtue of the subdivision plat of Eason Acres, despite the fact this plat was never referenced in their chain of title. However they present no law in their brief to support this contention.

The rule is well settled that “[w]here land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a special property right in the roads shown on the plat. *If the deed references the plat*, the *grantee* acquires a private easement for the use of all streets on the map.” *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452, (Ct.App. 2008)(emphasis added). The rule about private easements only applies to grantees whose deeds reference the subdivision plat. It is undisputed in this case that no deed in the Appellants’ chain of title ever references the Eason Acres subdivision plat. They never acquired, therefore, any private rights in the road shown on that plat as Tenth Avenue.

Appellants’ right to use any portion of Tenth Avenue that may have run across Respondent’s property was, at best, as members of the general public. Since Georgetown County was named as a party to the original road closing action, and

notice to close the road was run in the newspaper in accordance with law, all rights of the public were foreclosed by the original road closing action.

Additionally, it is clear the Eason heirs abandoned the subdivision scheme as to the western portion of the subdivision in 1973, and no public acceptance had occurred by that time. The Trial Court found

“That portion of the road running across Stamper’s property was never a public road. While there was testimony that the county road maintenance crews scraped the road up to and slightly beyond the edge of Stamper’s easternmost boundary, such does not convince this Court that the County ever accepted the dedication of the entire length of the street, or even the area within the stump. The road plow had to turn around somewhere, and based on the record in this case, this court cannot conclude any acceptance occurred of the area in question by the public authorities. Likewise this Court cannot conclude there was acceptance by public use. The evidence presented merely showed there may have been the occasional and sporadic use of the road to access the rear of a night club called Sandpipers. The part of the road over Stamper’s property was a private road, at most.” (Final Decree, P. 8-9)

Appellants argue that a public right existed in that portion of 10th Avenue that abutted their property. They make the bizarre claim that “Stamper, by succeeding to the rights of the prior title holder’s road closing action, acknowledges the existence of a public easement on Tenth Avenue.” (Appellants’ Intial Brief, Page 4).

When the municipality shows acceptance by the use of a part, the burden of proof is on the opposite party to show that it did not extend to the entire street. *Chaffee v. City of Aiken*, 57 S.C. 507, 35 S.E. 800 (1900). No plats or the U.S. Geological

Survey map (Def. Exs. 2, 3, 5, 6, and 7; RA 177, 170, 172, 173, 175] show the existence of this road before the plat referenced in the road closing action (Plaintiffs' Exhibit 4, RA 95). The Decree of Judge Culbertson that closed the road (Plaintiffs' Ex. 4, RA 95) clearly states that the road lay wholly within what is now known as the Stamper tract.

Since the Appellants' rights, if any, in that portion of Tenth Avenue shown on the original Eason Acres plat next to their property arise merely as members of the general public, such rights were extinguished by the road closing action.

The children of a subdivider may abandon a subdivision plan and relinquish any private rights if done so before public acceptance of the streets shown on the subdivision plat. *Immanuel Baptist Church of North Augusta v. Barnes*, 274 S.C. 125, 264 S.E. 2d 142 (S.C. 1980). It is clear that the offer to dedicate that portion of Tenth Avenue that runs through the Stamper tract, if such was made by John Eason by the recording of the subdivision plat, was withdrawn by his heirs when they subsequently resubdivided the unsold property. This resubdivision was made without reference to the original subdivision plat and all sales thereafter did not mention it, and were done contrary to the scheme and plan of John Eason. (Def. Ex. 1; Plats AA at Page 10, AA at Page 14, Plat Book 4, Page 349; Plat Book 4 Page 18; RA 178, 165, 166, 167,

170).¹

Therefore, if there were an offer to dedicate that portion of Tenth Avenue that runs across Stamper's property made by John Eason by the 1956 plat, such was withdrawn by his heirs and has never been accepted by the public.

The Trial Court is correct that the Duckers have no private or public right in 'the stump.'

3. The Trial Court correctly determined that the Duckers do not have an easement implied by prior use.

The party asserting the right to an easement implied by prior use must establish the following: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. *Hynes Family Trust v. Spitz*, 384 S.C. 625, 682 S.E.2d 83 (Ct.App. 2009).

The Trial Court found that, in this case, several elements were absent: (a) the prior use was not in existence at the time of unity of title; (b) it was not apparent or known to the parties; (c) it was not necessary; (d) the common grantor did not indicate

¹ It should be noted that according to the original Eason Acres subdivision plat, it appears that platted roads run right

an intent that its use be continued after the severance.

(a.) The evidence amply supports the Trial Court's finding that the prior use was not in existence at the time of unity of title.

The property was divided by the common grantor Richard Eason by conveying Tract 2 to the South Carolina Low Country Rope Hammocks, Inc. (Def. Exhibit 1, RA 126) No mention was made of this road in that deed. The survey evidence introduced showed no road in 1973 (U.S. Geological Survey Map) or in 1974 (Plat AA, P. 10; Plat AA, P. 14). [Def. Ex. 2, 6, and 7; RA 177, 175, 174] The only evidence to the contrary was the testimony of Mr. John Lewis who said he recalled that the road went all the way through to Highway 17 Bypass in 1972. Mr. Lewis also testified that the county motor grader did not go across the part of the road on the Stamper property because "... he couldn't get through the rest of the road. ..." (RA 44, 16-17). Obviously, if there were some type of road there in 1973, it was not sufficiently developed to be noted on any map or plat and was not capable of being traversed by a piece of heavy equipment. The Trial Court had this disputed evidence before him and made the finding that at the time of the severance of title in 1974, the road did not exist. The evidence of the non-existence of this road in 1974 was overwhelming, even though the standard requires just the existence of evidence to support this finding.

(b.) The evidence amply supports the Trial Court's finding that it was not apparent or known to the parties.

The Trial Court held that since the road was non-existent, it was not apparent or known to the parties. No evidence was presented by Appellants that the parties to the severance in 1974 knew about the road. As noted above, it is not shown on any contemporaneous plat or referenced in the deed that severed the property. Mr. Lewis was not a party to that transaction.

(c.) The evidence amply supports the Trial Court's finding that it was not necessary for the enjoyment of the Appellants' property.

The Trial Court found that the road was not necessary in that there was reasonable access to the dominant tenement (Parcel B) without the road. For an easement implied by prior use, necessity means "there could be no other reasonable mode of enjoying the dominant tenement without this easement" *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410, 633 S.E.2d 136, (S.C., 2006) In this case the severance occurred in 1974 when Richard Eason divided Tract D into Parcels 1 and 2 and sold Parcel 2 to Low Country Hammock. (Deed Book 126, P. 29; Plat AA at P. 10). [Def. Ex. 1 and 7; RA 162, 175] At that point in time, Parcel 2 had access to U.S. Highway 17 Bypass. Parcel 2 had more than adequate access without the implied easement at that time. The necessity element of easement implied by prior use must be determined at the time of the severance. *Boyd v. Bellsouth Telephone Telegraph Co.*,

Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). There was no necessity for the use of Tenth Avenue for access to Parcel 2 when the severance occurred.

Parcel 2 was subsequently subdivided into Parcel A and Parcel B by South Carolina Low Country Rope Hammocks, Inc., in 1985, when it sold Parcel B to Rebel Mfg. & Mkt. Corp. [Def. Ex. 1, RA 155] This Parcel B is the property now owned by the Appellants. At the time of this severance, Parcel B had access to Tenth Avenue. At no time have Parcel 2 or Parcel B ever needed access across any of the lands of Respondent.

The Trial Court correctly held that the easement alleged to have existed by prior use was not necessary to the enjoyment of the Appellants' property.

(d.) The evidence amply supports the Trial Court's finding the common grantor did not indicate an intent that its use be continued after the severance.

Appellants failed to prove that Richard Eason indicated an intent to continue the use of the road after severance of title. As noted, all documentary evidence in the record establishes no such intent. No testimony was presented as to Mr. Richard Eason's intent. The record is devoid of anything that would support a finding that Richard Eason intended that the use of the alleged road continue after he sold Tract 2.

Appellants failed to prove at least four of the required seven elements to

establish an easement implied by prior use. The Trial Court must be affirmed on this issue.

4. The Appellants failed to appeal the Trial Court's rulings that the Appellants had waived their right to object to the road closing.

SCARC Rule 208(1)(B) states:

Statement of Issues on Appeal. A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. *Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.*

(emphasis added)

The Appellants do not mention the issue of waiver in their Statement of Issues on Appeal. Although they include reference to the issue of waiver in their brief under the section dealing with whether they are bound by the earlier court order closing the road, they only attack the “theory” of waiver in this case but not the evidence or the law as applied by the Trial Court to the evidence. They do not attack the Trial Court’s finding that they “had actual or constructive knowledge of their rights or of all material facts upon which those rights depended. . . .” [Final Decree, RA 16] They argue the “actual notice” found by the Trial Court was not sufficient “as a matter of law” to bind Appellants but cite no authority for this contention. They cite case law defining waiver

but no facts or evidence that show the Trial Court erred in finding they waived their right to contest the road closing. This is now the law of the case.

5. The Trial Court correctly found that Appellants had waived their right to object to the road closing.

The Trial Court found “the Plaintiffs were made aware of the suit to close the road by Daugherty back in 1997. They, therefore, had actual or constructive knowledge of their rights or of all material facts upon which those rights depended regarding the closing of the road. They took no action to protect those rights. They have waived whatever right they may have had to object to the closing of the road.” [Final Decree, RA 16]

The proper method to attack a decree closing a road by a party who did not appear in the action is by a Rule 60 motion. *Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (1989). Appellants do not contend the order closing the road is void. They had, therefore, one year after the entry of the judgment to move to set it aside. They failed to do so. Instead they sat back and let Mr. Daugherty fence off his property and build structures within what they now contend is a public right of way. Mr. Ducker testified that: (a) Daugherty told him about the lawsuit and road closing shortly after the decree was entered; (b) that he, Ducker had no problem with the road closing; (c) that Daugherty cut off all use of the road to the public from the stump to Highway 17

Bypass for everyone; and (d) Ducker made no objection. (RA 54-2 to 56-15). It is crystal clear from Mr. Ducker's own testimony that he was fully aware that the road had been closed and his continued use of the "stump" to access the back of his lot was purely permissive with Daugherty.

Appellants assert they never acquiesced or agreed to have their "access" diminished; however, the issue is not their access but their right to an easement over Respondent's property. Once the road was closed by Daugherty, any right to use the "stump" for access ended. After that, Appellants' use was purely permissive. That permission was withdrawn by Respondent when she extended the fence.

6. Appellants failed to appeal the Trial Court's finding that they had abandoned the easement in any case.

Appellants do not raise the issue of abandonment in their statement of Issues on Appeal. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B). They address the issue collaterally in their argument that they are not bound by the earlier road closing decree. There they assert they "neither acquiesced or agreed to have their access diminished, nor did they abandon their access, plainly because their access was never threatened or curtailed" (Appellants' Brief, P. 5). Again the issue is not their access but their right to an

easement. They cite no authority, evidence or facts to contest the Trial Court's finding they abandoned the easement.

7. The Trial Court correctly held Appellants abandoned the easement.

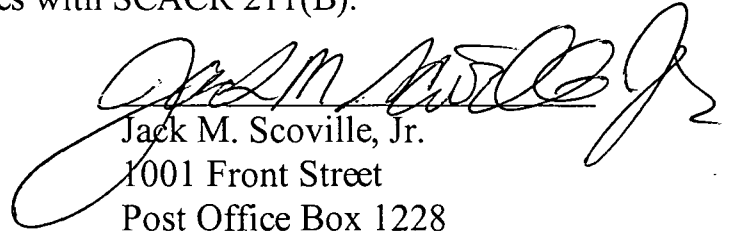
It is well-settled that an owner of an easement may relinquish that easement by abandonment, express or implied. *Hodge v. Manning*, 274 S.C. 125, 264 S.E.2d 142, (1980). The Trial Court held that the Appellants abandoned the easement because they did not timely move to set aside the judgment closing the road. The basis for this holding is essentially the same as for the waiver. By doing nothing for ten years after having actual knowledge of the road closing action and the physical closing of the road, the Appellants clearly abandoned the easement, if such ever existed in the first place.

CONCLUSION

The Trial court should be affirmed in all respects and this appeal dismissed.

CERTIFICATION

I hereby certify that this brief complies with SCACR 211(B).

A handwritten signature in black ink, appearing to read "Jack M. Scoville, Jr.", is written over the printed name and address.

Jack M. Scoville, Jr.

1001 Front Street

Post Office Box 1228

Georgetown, SC 29442

Telephone: (843) 546-1130

Facsimile: (843) 546-0726