

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

On Appeal from Charleston County
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 08-CP-10-7245

RECEIVED

APR 03 2014

SC Court of Appeals

Larry S. Bowman.

RESPONDENT,

v.

M. Donald Alexander and Old Dominion, LLC

APPELLANTS.

SUPPLEMENTAL RECORD ON APPEAL

A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, LLP
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANTS

Michael S. Glenn
GLENN, HAIGLER, McCLAIN &
STATHAKIS, LLP
121 W. Benson Street
Anderson, South Carolina 29624
(864) 226-1885

ATTORNEY FOR RESPONDENT

Transcripts

Excerpts of Respondent’s Deposition (designated at trial by Appellant) 1

Certificate of Counsel 19

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 08-CP-10-7245

3

4 Larry S. Bowman,)
5 Plaintiff,)
6 vs.)
7 M. Donald Alexander and Old)
Dominion, LLC,)
8 Defendants.)
9 _____)

Deposition of
LARRY S. BOWMAN
August 20, 2010 .

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Deposition on oral examination of Larry S. Bowman reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure; said deposition taken at the offices of Lewis & Babcock, LLP, 1513 Hampton Street, Columbia, South Carolina, on Friday, August 20, 2010, commencing at the hour of 10:14 a.m.

1 Q. The last thing is if I interrupt you, then you
2 say, I'm not finished, and I'll apologize because I would
3 have thought you were finished. And sometimes I go fast.
4 So you need to make sure you get everything you want to
5 say out. Okay?

6 A. Yes.

7 Q. And as part of that, sometimes you won't like
8 the way I'm acting, maybe. I hope not, but some people
9 don't like the way I act. So if that's true, you need to
10 say, I don't like the way you act, and I will try to
11 change. I use the word "try" very importantly because I
12 sometimes can't, but I'll try. Is that fair?

13 A. Yes.

14 Q. Okay. So we'll go forward with that and ask
15 questions. What do you do?

16 A. I'm an orthopedic surgeon.

17 Q. Now, we're here over a piece of land.

18 MR. LEWIS: And would you mark this as an
19 exhibit?

20 (Defendant's Exhibit No. 1, Old Dominion
21 Plantation, Aerial Photographic Information from SCDNR,
22 1999, was marked for identification.)

23 BY MR. LEWIS:

24 Q. Okay. Looking at this, I want to make sure
25 that we understand. This is a piece of land that's --

1 around the yellow that you and Dr. Alexander owned and it
2 was a -- I call it a hunting preserve or some people use
3 different words; is that fair?

4 A. Yes.

5 Q. And there came a time where for some reason
6 you wanted to split it up into two separately owned
7 parcels. Is that fair to say?

8 A. Yes.

9 Q. Why did you want to split it into separately
10 owned parcels?

11 A. Well, it became increasingly obvious that we
12 had different ideas about the planned use and -- of the
13 property, and there was very little use of mine early on
14 because I was taking call. My family didn't live in
15 Charleston. As my daughter moved to Charleston and as I
16 had more time off with more partners and not taking call
17 as I got older, there was a problem with equitable use
18 and equitable division of managerial for game or -- and
19 input.

20 Q. Okay. Let's take those one at a time. You
21 said the idea is a planned use. What uses did you come
22 up with that -- when you wanted to break it apart that
23 were different than the uses you'd used before?

24 A. Well, we had -- because of Don's use of the
25 property, it became increasingly difficult for equitable

1 A. No. It made my -- I wasn't there, but it's
2 just not what you do if you have an agreement and you say
3 I will do this or that.

4 Q. This daughter that moved back, was she the one
5 that was there?

6 A. Yes.

7 Q. Is she kind of pushing you to do this?

8 A. No.

9 Q. All right.

10 A. Nor is my son, who's in the last year of law
11 school. So both kids -- neither of them are pushing me
12 to do this.

13 Q. Now, I just want to know one other thing. Are
14 you really insisting on breaking this property up? Is
15 that something you want to do?

16 A. What we had was a side mediated agreement in
17 2007, and at that point I thought that if we had this
18 agreement and Ducks Unlimited would allow it, even if
19 they said you didn't have to divide it legally, that we
20 would be, with an agreement, at least be able to use the
21 property and not interfere with each other.

22 Q. Okay. Let me ask you something again.

23 A. And that has not occurred. He has -- since
24 then nothing -- I have tried to follow the agreement to
25 the T and nothing has happened.

1 Ducks Unlimited Wetlands Trust by following the entire
2 agreement.

3 Q. All right. Now, we checked with Ducks
4 Unlimited and they said that we may have to give up as
5 much as six lots. Are you willing to give up five lots?

6 A. I'm willing to give up half, which is what our
7 agreement in the mediation was.

8 Q. Show me -- let's see this.

9 A. And if it's an uneven number, I have to give
10 up one more than Don. So if they say it's seven, I have
11 to give up four and Don gives up three. The mediation
12 says I give up the first, Don will give up the second.

13 Q. That's right. That's all it says. So where
14 does it say anything -- show me. There's Exhibit No. 2.
15 Show --

16 (Defendant's Exhibit No. 2, Settlement
17 Agreement, was marked for identification.)

18 BY MR. LEWIS:

19 Q. All right. Show me in there where it says
20 that you all give up half.

21 A. It says if Ducks Unlimited requires a
22 reduction of homesites, I will give up the first, Don
23 will give up the second.

24 Q. Okay. Where does it say anything after that?

25 A. Certainly it -- the assumption I had --

1 Q. Assumption. Okay.

2 A. -- was that we would -- it would be divide --
3 I would give up the first. He would give up the second.
4 If there were three, I'd give up the third. If there
5 were four, he'd give up the fourth. I just --

6 Q. It doesn't say that, though, does it?

7 A. Okay. Well, I'm fine to give up the first.

8 Q. I know. But if there's -- I'm just asking
9 you. If Ducks Unlimited wants six lots, how many are you
10 going to give up?

11 A. The same number that Don gives up.

12 Q. And if Don says, I'm not going to do that
13 because the agreement only requires me to give up one
14 lot, then I'm not going to go through with it, what's the
15 matter with that?

16 A. Well, we still are not participating with our
17 original agreement. We both own half the property. And
18 if he doesn't want to, I'm fine with taking the property
19 and -- take it and put it on the courthouse steps. He
20 can bid, I'll bid. I've offered to sell it to him. I've
21 offered to buy it. I've offered to divide it, put the
22 things in a hat and pick them out of a hat. That's
23 all -- we've been doing this now since 2002.

24 Q. Why wouldn't you just have a cooperation
25 agreement so that you'll be able to keep all your lots?

1 will participate in.

2 Q. But I'm asking you will you give up -- if Don
3 gives up one lot, how many lots are you willing to give
4 up?

5 A. One.

6 Q. Okay. And if they won't do it for that, then
7 we can't get the Ducks Unlimited?

8 A. Correct.

9 Q. And so the agreement can't be followed.

10 Okay. Now, I want to make sure I understand
11 this. I'm going to draw here. Okay? Now, if I draw
12 this line, this red line here, and I put A here, that
13 was -- who was this to go to?

14 A. That was to Don.

15 Q. Okay. Then we've got this -- some kind of
16 line here in the middle.

17 A. That's Picnic Point.

18 Q. And it goes all the way over to here. This is

19 B. Who has B?

20 A. I do.

21 Q. Huh?

22 A. In the agreement, I do.

23 Q. Okay. And then we have a little a piece of
24 property here that's fill land, I think, or something.

25 And I'll call --

1 lives in Charleston, has no desire to build a house at
2 the -- at OD. And my son is in law school and doesn't
3 much care for the bugs and stuff, but -- he likes riding
4 around on OD, but that's it.

5 Q. Okay. Well, are they such that they don't
6 want Dr. Alexander to build?

7 A. If there is a division of use, I don't think
8 there would be any problem with any of us. But the
9 problem is if you build a house in the middle, even if
10 it's every-other-week use, with what's been demonstrated,
11 you're going to continue to -- it's going to be yours all
12 the time.

13 Q. Well, you can sell a lot. You can sell up
14 to -- how many does that agreement say?

15 A. We're not talking about the lots. We're
16 talking about the use of Old Dominion.

17 Q. No, I'm talking about -- you can sell under
18 this --

19 A. Yes.

20 Q. -- Old -- the -- no, where is it? The one
21 with the --

22 A. Yeah, you can sell -- it's up to ten lots, and
23 which --

24 Q. Ten lots, yeah.

25 A. -- one is the -- house and barn is already

1 considered as one, the original. So I've got one site on
2 my side already.

3 Q. And you could transfer it to you?

4 A. No.

5 Q. You and Don could transfer it to you?

6 A. If there's a division, I will consider doing
7 that. I don't think I can -- I don't have the ability to
8 transfer anything to me that I'm aware of.

9 Q. Well, if Don wants to -- if the owners want to
10 transfer it, under the agreement they can transfer.

11 A. Under the original agreement, yes.

12 Q. Yeah, with Ducks Unlimited.

13 A. Yes.

14 Q. So you and Don can transfer to you?

15 A. Yes.

16 Q. And you could transfer Don his house site?

17 A. Yes.

18 Q. That would be his one?

19 A. Yes.

20 Q. Right. Are you willing to do that?

21 A. Not unless we have a division of the property
22 because he continues to use it as if all of it's his.

23 Q. Why do you have such dislike for Don?

24 A. Actually, I love Don to death and I love his
25 family. This is very, very difficult.

1 Q. Well, then, why don't you enter into an
2 agreement to cooperate rather than separate?

3 A. Because we tried that. We went through
4 mediation. We have a signed mediation agreement. I
5 thought that was going to take care of it and maybe
6 things would get back so we could be friends and, you
7 know, utilize the property together. That has not --
8 I've tried to do everything I can to follow the
9 agreement. Don has not followed the agreement at all.

10 Q. Well, he has tried. And we've talked to the
11 Ducks Unlimited, and they told us that it would be
12 multiple lots. And they insinuated it would be six --

13 MR. GLENN: Object to the --

14 BY MR. LEWIS:

15 Q. -- and we don't want --

16 MR. GLENN: Object to the form of the
17 question, if that's a question.

18 BY MR. LEWIS:

19 Q. Okay. We don't want to give up six lots. Is
20 that bad?

21 A. I don't want to give up six lots either, but
22 when this started there would have been none or just a
23 couple. It's still my understanding that as long as we
24 show that there's not an increase in value with the
25 division, that they will allow the division, showing that

1 there's no alteration in the biologic integrity of the
2 property. So that's what we've been trying to do now for
3 three years.

4 Q. I've never seen any -- a Ducks Unlimited
5 person give us a guarantee how many lots it would be.
6 They just --

7 A. Correct.

8 Q. They talk vaguely about it.

9 A. Correct.

10 Q. And now they're getting a little more specific
11 and it -- but they're saying multiple lots. Did they
12 tell you that?

13 A. All you have is what my -- my last discussion
14 was July 8th. The person that I spoke with is no longer
15 their counsel. Dave Marrone is no longer there. The
16 fellow who was the counsel before that who told Bubba
17 Unger there wouldn't be any problem is no longer there.
18 So there's been a change in the people of Ducks
19 Unlimited.

20 When we made the agreement and started this, I
21 was under the impression, no guarantees, that it would be
22 two lots and maybe just one. But that's -- again, no
23 guarantees. And you can see their correspondence.

24 Q. Is there a recent appraisal on Old Dominion?

25 A. We've had three appraisals. The last one was

1 A. I don't recall it being that flooded. I don't
2 know whether it rained. I have no idea what went on for
3 that picture.

4 Q. What were these? Now, tell me what these are.

5 A. This was the original survey that Larry
6 Kennerty did for Tom Wills for the -- for the division
7 for Chris Denada.

8 Q. But you just -- well, the pages are the
9 different segments --

10 A. I don't know. I just found these somewhere
11 and I looked at them.

12 Q. You haven't really studied them enough to know
13 what they are?

14 A. I know what this is because I drew these
15 yellow lines showing what --

16 Q. Yes, sir. But, I mean, like the next one
17 down, do you know what this is?

18 MR. LEWIS: Will you mark these?

19 (Defendant's Exhibit Nos. 5 - 8, Survey Plats,
20 were marked for identification.)

21 BY MR. LEWIS:

22 Q. Okay. So these are the surveys that were done
23 pursuant to the settlement agreement, Exhibit 2?

24 A. After Don had told the surveyor how to do it.

25 Q. Well, did you complain about how he did it?

1 A. (Witness shrugs shoulders.)

2 Q. Is that a copy of it? Did you get a copy of
3 it?

4 MR. GLENN: Do you have another copy, please?

5 MR. LEWIS: Oh, I'm sorry. Would you mark
6 that?

7 (Defendant's Exhibit No. 9, Letter from Ducks
8 Unlimited, dated 03/06/2008, was marked for
9 identification.)

10 BY MR. LEWIS:

11 Q. All right. Have you seen this letter?

12 A. Yes.

13 Q. What is the -- where is the water circulation
14 box?

15 A. That's the one between B and C that we've
16 talked about.

17 Q. Okay. And at least to -- that's that 48-inch
18 something you call it.

19 A. Yes, riser.

20 Q. And you act like it means nothing and I'm
21 reading here, "Significant negative impact result from a
22 division of the property, including management of the
23 levee, the water circulation box, and the use of fire as
24 a management tool." Do you see that?

25 A. Yeah.

1 Q. Let me ask it again and I want you to tell me.
2 It says in the agreement, If Ducks Unlimited requires a
3 reduction of homesites, then Bowman will give up the
4 first site and Alexander the second. That's all it says.
5 Okay?

6 A. Yes.

7 Q. Now, if they want more homesites than those
8 two, are you willing to give them your homesites up to
9 the five that you own?

10 A. I'm willing to give the third, and I will
11 consider anything else that they submit, but that's not
12 the fair and equitable way to do it, and -- it's a matter
13 of interpretation. But when it said I will give up the
14 first, Don will give up the second, my understanding at
15 the time of the mediation, I'd give up the third, he'd
16 give up the fourth if that was necessary. Fifth, sixth.

17 Q. Well, I mean, that hasn't been easy to say --

18 A. I understand what you said. So does that
19 answer the question?

20 Q. No.

21 A. I will give up the third, and I will consider
22 thinking else after that.

23 Q. Well, everybody will consider everything.

24 MR. GLENN: He's answered the question.

25 MR. LEWIS: I'm going to ask it again. I

1 they said we might have to give up some homesites. So
2 things have changed over the last six years and certainly
3 over the last eight years since we've been trying to get
4 divided use of the property.

5 Q. When did you bring this suit?

6 A. In two thousand -- after the -- after the
7 wedding. Sometime in the summer of 2009. Two years
8 after our mediated agreement which was not being
9 followed.

10 Q. Well, I thought that mediated agreement
11 required y'all to agree upon a biologist; is that right?

12 A. Yes.

13 Q. And you just couldn't agree on a biologist?

14 A. No. We had someone that had worked for DU for
15 17 years that the people at DU couldn't tell us who
16 recommended, but this fellow had been involved with the
17 original management plan. He was a consultant. That
18 wasn't okay for Don. Didn't know it. He actually
19 refused the FedEx, but refused even when we sent it to
20 him to -- with the agreement.

21 Then Don had recommended a forester that is
22 not -- at least in our background check was not an
23 accomplished wetlands management expert. So then
24 Mr. Glenn had submitted a letter to you all saying you
25 name four and I'll pick one.

1 Q. We name four and you'll --

2 A. I'll pick one.

3 Q. You'll pick one.

4 A. Or we each name two. I forget the wording of
5 the letter, but we had certainly said we would -- what we
6 would --

7 Q. Let me make sure --

8 A. He could pick --

9 Q. -- I understand it. You wanted one guy. Don
10 wanted another. You both disagreed. You disagreed on
11 Don's and he disagreed on yours; is that right?

12 A. Yes.

13 Q. And so now you have an impasse?

14 A. Yes.

15 Q. And in here what do you do when there's an
16 impasse? What does this agreement say when there's an
17 impasse?

18 A. I'm assuming binding mediation. I'm fine for
19 mediation. I'm fine for the judge to decide. I just
20 want someone with biological wildlife wetlands management
21 experience to do a biologic survey to see if it's
22 divisible, which I've been told is, but we can't agree
23 even on who to submit to Ducks Unlimited.

24 MR. LEWIS: I need to take a break.

25 (Off the record.)

1 (Defendant's Exhibit No. 10, Deed of
2 Conservation Easement for Old Dominion Plantation, was
3 marked for identification.)

4 (Defendant's Exhibit No. 11, Management Plan
5 for Wetlands and Forest Management for Old Dominion
6 Plantation, LLC, was marked for identification.)

7 BY MR. LEWIS:

8 Q. I am handing you Exhibit No. 11, and it is a
9 management plan that was submitted to y'all and see if
10 you would agree to it. And we -- I'd like to know if
11 you've seen it before.

12 A. Yes.

13 Q. All right. Can you tell me what you disagree
14 with in this management plan?

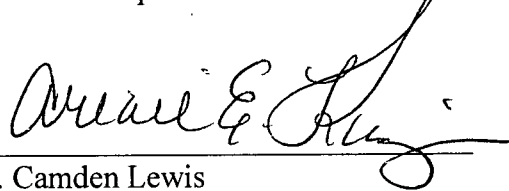
15 A. What -- my main disagreement is not having a
16 wildlife biologist being responsible to make sure that we
17 follow the agreement because, unfortunately, Don has not
18 followed the agreements that we've had and I have no
19 faith in this being followed.

20 Q. All right. You have no faith in it. So,
21 therefore, you just threw it aside and you didn't go over
22 it and see what you disagree with; is that fair?

23 A. You can draw up -- this is sort of a cookbook
24 management plan, and there's nothing -- you can have ten
25 different management plans. I don't have any problems

Certificate of Counsel

The undersigned certifies that the Record on Appeal contains all material proposed to included by any of the parties and not any other material, and that Appellant has complied with the August 13, 2007 Order of the Supreme Court on Personal Data Identifiers.



A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, LLP
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANTS

Columbia, SC
April 5, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

On Appeal from Charleston County
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 08-CP-10-7245

RECEIVED

APR 03 2014

SC Court of Appeals

Larry S. Bowman

RESPONDENT,

v.

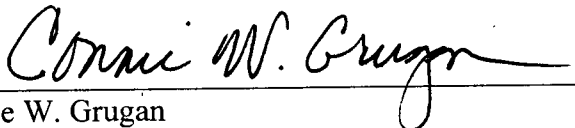
M. Donald Alexander and Old Dominion, LLC

APPELLANTS.

PROOF OF SERVICE

I, Connie W. Grugan, employee of the law firm of Lewis, Babcock & Griffin, L.L.P., do hereby certify that I have served the Supplemental Record on Appeal upon opposing counsel by mailing a copy of same, first-class postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624



Connie W. Grugan

This 3rd day of April, 2014.