

THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

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S.C. Supreme Court

APPEAL FROM THE SC COURT OF APPEALS
AND GREENVILLE COUNTY COURT OF COMMON PLEAS

The Honorable John Few, Circuit Court Judge

CASE NO.: 08-CP-23-6607

Louis P. Batson, Jr. Respondent.

v.

Northside Traders, LLC. Appellant.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

- I. Record on Appeal - dated 3/17/2010
- II. Final Brief of Respondent - dated 3/25/2010
- III. Final Brief of Appellant - dated 4/01/2010
- IV. Opinion of the South Carolina Court of Appeals – dated 3/01/2011
- V. Appellant's Petition for Rehearing and Memorandum – dated 7/11/2011
- VI. Order Denying Petition for Rehearing – dated 8/23/2011

I certify that this Appendix complies with SCACR 242(e)

Date

10/24/11


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

LOUIS P. BATSON, JR.....RESPONDENT,

v.

NORTHSIDE TRADERS, LLC.....APPELLANT.

RECORD ON APPEAL

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INDEX

I. ORDER

Order of the Honorable John C. Few dated October 1, 2009 03

II. PLEADINGS

Complaint dated August 29, 2008 11

Answer and Counterclaim dated October 8, 2008 18

Reply to Counterclaim dated November 5, 2008 21

III. TRANSCRIPT

Transcript of Record from Hearing dated September 1, 2009,
p. 6, 7, 12, 29, and 30 24

IV. PLAINTIFF'S EXHIBITS (to Memorandum in Support of Plaintiff's/Respondent's Motion for Summary Judgment)

Exhibit A 30

Exhibit B 31

Exhibit C 35

Exhibit D 39

Exhibit E 40

Exhibit F 41

Exhibit G 45

V. DEFENDANT'S EXHIBITS (to Memorandum in Support of Defendant's/Appellant's Motion for Summary Judgment)

Exhibit 1 46

Exhibit 2 47

Exhibit 3 48

Exhibit 4.....	49
Exhibit 5.....	50
Exhibit 6.....	51
Exhibit 7.....	52
Exhibit 8.....	53
Exhibit 9.....	54
Exhibit 10.....	55
Exhibit 11.....	62
Exhibit 12.....	63
Exhibit 13.....	64

VI. CERTIFICATE OF COUNSEL

Executed Certificate of Counsel	65
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

Louis P. Batson, Jr.,
Plaintiff,
v.
Northside Traders, LLC,
Defendant.

2009 OCT -2 A 10 27
C.A. No.: 2008-CP-23-6607

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on the parties' cross-motions for summary judgment in the above-captioned action. After reviewing the parties' respective motions, the memoranda filed in support of their respective motions, the Affidavit of Tad Mallory, and the evidence submitted to the Court in support of their respective motions, as well as hearing the argument of the parties' counsel at a hearing on September 1, 2009, the Court grants the Plaintiff's motion for summary judgment, and denies the Defendant's motion for summary judgment, for the reasons set forth below.

This action concerns a dispute as to whether a recorded instrument, which purports to grant Plaintiff, his heirs and his assigns a right-of-way over and through the Defendant's property for the purpose of ingress and egress, is valid and enforceable. The Plaintiff seeks a declaratory judgment and a permanent injunction, which declare and protect the Plaintiff's rights under the recorded instrument, and the Defendant asserts a counterclaim for a declaratory judgment. More specifically, the Plaintiff asks the Court to declare that the express easement is valid and enforceable, and that the easement terminates at View Point Drive. Plaintiff further requests that the Court enter a permanent injunction prohibiting the Defendant from interfering with the Plaintiff's installation, use and

enjoyment of the easement. The Defendant asks the Court to declare that the easement was void *ab initio* or has been extinguished or terminated.

Findings of Fact

The following facts are not in dispute. On July 21, 1965, Charles and Anne Bell (hereinafter referred to collectively as "Bells") granted Louis P. Batson, Jr. (hereinafter referred to as "Batson"), his heirs and assigns an express easement over and through the Bells' property for the stated purpose of ingress and egress. The easement instrument (hereinafter referred to as "Instrument") was properly recorded in the RMC Office for Greenville County, South Carolina, on July 22, 1965, at Deed Book 778, Page 209. A copy of the Instrument is attached to the Complaint as Exhibit A. The Defendant and its principals, Tad and Maureen Mallory (hereinafter referred to collectively as "Mallorys"), had actual and constructive notice of the recorded Instrument when the Mallorys, and subsequently the Defendant, acquired title to the Bells' property.¹ See Defendant's Response to Plaintiff's First Request for Admissions, at Request No. 3.

At the time the Instrument was executed and recorded, Batson owned real property adjacent to the Bells' property, including the real property described in the Instrument as Lot 4 (a/k/a 118 View Point Drive, Greenville, South Carolina). The Bells owned the real property described in the Instrument as Lots 1, 2 and 3, as well as the "strip of land" described in the Instrument. In fact, Batson sold the real property described as Lot 3 to the Bells on the same date that the Bells granted Batson the easement at issue. At the time the Instrument was executed and recorded and ever since that time, Batson has resided in the house located at 118 View Point Drive. The Bells' property was, and continues to be, vacant and undeveloped. The Instrument provides, in relevant part:

¹ The Mallorys acquired title to the Bells' property by a Deed executed on September 8, 2005, by Arthur L. Howson, Jr., as Personal Representative of the Estate of Charles W. Bell, which was recorded in the Greenville County Register of Deeds on September 9, 2005, at Deed Book 2164, Page 1467. The Defendant acquired title from the Mallorys by a Deed executed on January 12, 2007, which was recorded in the Greenville County Register of Deeds on January 16, 2007, at Deed Book 2247, Page 10.

"Know all men by these presents, that we, Charles W. Bell and Anne W. Bell, in consideration of One (\$1.00) Dollar, and as a part of the consideration for a deed executed simultaneously herewith by Louis P. Batson, Jr., to Charles W. Bell and Anne W. Bell, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto Louis P. Batson, Jr., his heirs and assigns:

A right-of-way twenty (20) feet in width, **for the purpose of ingress and egress**, leading from the rear portion of Lot 4, shown on a plat of property of J.E. Gilliam, Jr., recorded in the RMC Office for Greenville County, South Carolina, in Plat Book T at page 239, across the rear portions of Lots 3 and 2, and then in a Southeasterly direction through Lot 1, and through a strip of land described in a deed from Aleene L. Parham to Charles W. Bell and Anne W. Bell, dated August 19, 1964, and recorded in the RMC Office for Greenville County, South Carolina, in Deed Book 756 at page 521, into Dogwood Drive. Lots 1, 2, and 3 are all shown on the above-mentioned plat of Property of J.E. Gilliam, Jr.

The aforementioned **right-of-way shall be in such specific location (not inconsistent with the above general location) as shall least interfere with the use and development of said lots by the grantors**, and, at the election of the grantors, the use of said right-of-way by the grantee shall be in common with the grantors."

See Instrument, which is attached to the Complaint as Exhibit A (emphasis added).

At the time the Instrument was executed and recorded and ever since that time, View Point Drive has been the only public road in the vicinity of these properties that provides ingress and egress to and from the properties. See Defendant's Response to Plaintiff's First Request for Admissions, at Request Nos. 7-12 and 14-15. Also, at the time the Instrument was executed and recorded and ever since that time, Batson has had a private driveway, located entirely on his property, running from his house to View Point Drive. It is apparent that Batson acquired the easement granted in the Instrument as an alternate means of ingress and egress to his property, rather than as a matter of legal necessity. At the time the Instrument was executed and recorded and ever since that time, the road described in the Instrument as Dogwood Drive (a/k/a Dogwood Trail) has been a private road owned by a third party (first the Singletons, then Howell), and neither Batson, nor the Bells, nor the Bells' successors in interest, including Defendant, have had a legal

right of access to Dogwood Drive.² See Response to Defendant's Second Request to Admit, at Request Nos. 3, 4, 7 and 8. To the south, Dogwood Drive intersects with View Point Drive, and to the north, Dogwood Drive only provides access to the Singleton/Howell property. The western-most edge of Dogwood Drive comes to a point with both the Defendant's eastern-most property line and View Point Drive. The spatial relationship between the relevant property lines, lots, Dogwood Drive and View Point Drive is depicted in a Survey for Tad Mallory, dated July 15, 2005, which is attached to the Memorandum in Support of Defendant's Motion for Summary Judgment, as Exhibit 11.

Soon after the Mallorys acquired the Bells' property, Batson sought to reach an agreement with the Mallorys concerning the specific location of the right-of-way, as contemplated by the terms of the Instrument. Batson's attempts to reach agreement as to the specific location of the right-of-way continued after the Mallorys transferred title to the property to Defendant. The Mallorys and the Defendant refused to agree upon the specific location of the right-of-way, claiming that the easement was void.

Conclusions

Applying the applicable rules of construction, the Court concludes that the only reasonable interpretation of the Instrument, which gives effect to all parts of the document, is that Batson and the Defendant's predecessors, the Bells, intended that Batson have a 20-foot right-of-way over and through the Defendant's property, in the *general* location described in the Instrument, terminating at the public road, View Point Drive.

² Since 1954, the property to the east of the Bells' property, including Dogwood Drive, has been owned by C.E. Singleton and Julia Belle Singleton, and later Doris L. Howell. See Response to Defendant's Second Request to Admit, at Request No. 2. Dogwood Drive was transferred to Greenville County in 1952, but the County transferred it back to the Singletons in 1954 and it has been a private road ever since.

cf.

In a case such as this, the Court must give effect to the express intentions of the parties to the Instrument, where possible. It is axiomatic that "the character of an express easement is determined by the nature of the right and intention of the parties creating it." *Lighthouse Tennis Club Vill. Horizontal Prop. Regime LXVI v. South Island Pub. Serv. Dist.*, 355 S.C. 529, 534, 586 S.E.2d 146, 148 (Ct. App. 2003) (citations omitted). "Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense." *South Carolina Pub. Serv. Authority v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). "The intention of the grantor must be found within the four corners of the deed." *Gardner v. Mozingo*, 293 SC 23, 25, 358 S.E.2d 390, 392 (1987). In determining the grantor's intent, the instrument "must be construed as a whole and effect given to every part if it can be done consistently with the law." *Id.* at 25, 391-92. Further, "that interpretation which evolves the more reasonable and probable contract should be adopted, and a construction leading to an absurd result should be avoided. 'Instruments should receive a sensible and reasonable construction and not such a construction as will lead to absurd consequences or unjust results.'" *Charleston and Western Carolina Railway Co. v. Joyce*, 231 S.C. 493, 506-07, 99 S.E.2d 187, 194 (1957) (internal citations omitted).

In this case, the clear intent expressed in the Instrument was to give Batson an easement over and through the Bells' property "**for the purpose of ingress and egress.**" It is undisputed that View Point Drive is, and always has been, the only means of ingress/egress for the subject properties. It is also undisputed that, since before the Instrument was executed, the parties and their predecessors have not had access to Dogwood Drive, and so it was not and is not a means of ingress/egress for the subject properties. It is clear that the grantors' intent was to give Batson, his heirs and assigns a right-of-way through the grantors' property that ultimately

terminated at View Point Drive. The Instrument evidences this intent, and the grantors incorporated sufficient flexibility into the Instrument to allow the right-of-way to continue south through Lot 1 into View Point Drive. Defendant focuses almost exclusively on the inclusion of "into Dogwood Drive" in the description of the easement's location, and argues that Plaintiff's easement is void because the description ends with that phrase and Dogwood Drive is a private road to which Plaintiff does not have access. However, the Instrument expressly recognizes that it merely describes the "general location" of the easement, that the grantors and grantee (or their successors) are to determine the specific location "as shall least interfere with the use and development of said lots by grantors," and that the right-of-way was provided "for the purpose of ingress and egress." The express purpose of the easement can only be fulfilled by placing the terminus of the easement at View Point Drive. See Defendant's Response to Plaintiff's First Request for Admissions, at Request Nos. 7-12 and 14-15.

As for the flexibility that the grantors included in the Instrument, it is clear that, had the grantors erected a structure that occupied their "strip of land," Batson would be obligated to proceed around the structure, south through Lot 1 and into View Point Drive, rather than removing the structure to proceed through the "strip of land." It is only reasonable that this same flexibility in the location of the right-of-way was intended to allow Batson to proceed south through Lot 1 and into View Point Drive if, as here, Batson does not have access to View Point Drive via Dogwood Drive. Also, if the grantors had ultimately intended to provide Batson ingress and egress into Dogwood Drive, as the Defendant contends, there was no reason to direct the easement through the grantors' "strip of land," further encumbering the grantors' property. The more direct route from Batson's property into Dogwood Drive is to enter the adjacent owner's property north of the "strip of land." In other words, the direction of the right-of-way

through the grantors' "strip of land" further evidences the grantors' ultimate intent to give Batson access to View Point Drive, not Dogwood Drive.

At the hearing on the parties' motions, counsel for the Plaintiff and the Defendant agreed that there is no genuine issue as to any material fact, and it is appropriate for the Court to enter summary judgment for one of the parties at this time. The Court agrees and concludes that the Plaintiff is entitled to summary judgment, pursuant to Rule 56(c), SCRCP.

WHEREFORE, the Plaintiff's Motion for Summary Judgment is hereby GRANTED, and Defendant's Motion for Summary Judgment is hereby DENIED. The Court hereby declares that the Instrument is valid and enforceable, and that the Plaintiff, his heirs and assigns may install, use and enjoy the right-of-way in the general location described in the Instrument, with such right-of-way terminating at View Point Drive. As indicated in the Instrument, the Plaintiff and Defendant shall confer with one another and reach agreement as to the specific location of the right-of-way, not to be inconsistent with the general location described in the Instrument or this Court's Order, as shall least interfere with the Defendant's use and development of its property. If the parties are unable to agree as to the specific location, either party may inform the Court of the impasse and this Court will determine the specific location of the right-of-way. Further, the Defendant and its successors in interest, who receive actual or constructive notice of this Order, are hereby enjoined from interfering with the Plaintiff's (and his heirs' and assigns') installation, use and enjoyment of the right-of-way pursuant to the terms of the Instrument and this Order.

IT IS SO ORDERED

This ____ day of _____, 2009.

Greenville, South Carolina

s/ John C. Few
John C. Few, Circuit Court Judge

10/1/9

A Certified Copy
Paul B. Wiseman
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10/2/09

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

2008 AUG 29

P 2:11

Louis P. Batson, Jr.,)

C.A. No.: 2008-CP-23-10107

Plaintiff, FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JULIE WICKINS

v.)

COMPLAINT

Northside Traders, LLC,)

Defendant.)

Plaintiff, Louis P. Batson, Jr. ("Plaintiff" or "Batson"), complaining of the Defendant, Northside Traders, LLC ("Defendant" or "Northside"), would respectfully allege and show the Court as follows:

JURISDICTION AND VENUE

1. Batson is an individual residing in Greenville County, South Carolina.
2. Upon information and belief, Defendant is a limited liability company organized and existing under the laws of the State of South Carolina, having its principal place of business and its Registered Agent, Tad Mallory, in Greenville, South Carolina.
3. This Honorable Court has Jurisdiction over this matter and venue is proper, pursuant to S.C. Code Ann. §15-7-10, because this action relates to real property located in Greenville County, South Carolina.

THE FACTS

4. In 1958, Batson built a home on that certain real property located at 118 View Point Drive, Greenville, South Carolina, which is more fully described in that deed between and among Louis P. Batson, Jr. and C.E. Robinson and R.M. Gaffney, dated March 11, 1957, and recorded in the RMC Office for Greenville County in Deed Book

571 at page 514 (the "Batson Property").

5. In 1965, Charles W. Bell and Anne W. Bell (the "Bells") owned certain real property consisting of three lots and a strip of land in the vicinity and adjacent to the Batson Property (the "Bell Property"). The Bell Property is more fully described in that deed between and among Arthur L. Howson, as personal representative of the estate of Charles W. Bell, and Tad and Maureen Mallory (the "Mallorys"), dated September 9, 2005, and recorded in the RMC Office for Greenville County in Deed Book 2164 at page 1467.

6. By deed dated July 22, 1965 (the "Instrument"), the Bells granted Batson an express easement over and through the Bell Property for the installation and use of a road to provide ingress and egress to the Batson Property (the "Easement"). A copy of the Instrument is attached hereto as Exhibit A. The Instrument includes a description of the general location of the easement as follows:

[A] right-of-way twenty (20) feet in width, for the purpose of ingress and egress, leading from the rear portion of Lot 4, shown on a plat of property of J.E. Gilliam, Jr., recorded in the RMC office for Greenville County, South Carolina, in Plat Book T at page 239, across the rear portions of lots 3 and 2, and then in a southeasterly direction through Lot 1, and through a strip of land described in a deed from Aleene L. Parham to Charles W. Bell and Anne W. Bell, dated August 19, 1964, and recorded in the RMC office for Greenville County, South Carolina, in Deed Book 756 at page 521, into Dogwood Drive. Lots 1, 2, and 3 are all shown on the above mentioned plat of property of J.E. Gilliam, Jr.

7. In accordance with the express terms of the Instrument, the grantors and Batson were to agree on the specific location of the Easement, not to be inconsistent with the purpose (i.e. ingress and egress) and general location described above.

8. Defendant is the current owner of the Bell Property, having received title to the Bell Property from the Mallorys in a deed dated January 16, 2007 and recorded in

the RMC Office for Greenville County in Deed Book 2247 at page 10. Upon information and belief, the Mallorys are the principals of Northside.

9. Historically, the drive referred to in the Instrument as Dogwood Drive, which is also known as Dogwood Trail, was a private drive 30 feet in width, which was situated adjacent to the three lots owned by the Bells. A portion of the land that was known as Dogwood Drive was conveyed to the Bells, thus becoming a portion of the Bell Property and, subsequently, the Defendant's property.

10. The remaining portion of Dogwood Drive was, at the time the Easement was granted, a private drive owned by someone other than Bell. Currently, this private drive is owned by Doris Howell, who owns additional real property adjacent to the Bell Property (the "Howell Property").

11. The private drive currently owned by Doris Howell, which is now paved and commonly referred to as Dogwood Trail, and the real property that was formerly part of Dogwood Drive but is now part of Defendant's property, intersects with View Point Drive, which is the only road in the immediate vicinity that provides ingress and egress to the Batson Property, the Bell Property, and Howell Property or any other property in the vicinity that is situated on View Point Drive.

12. The private drive referred to as Dogwood Drive or Dogwood Trail, historically or currently, does not and cannot provide ingress or egress to the Batson Property, the Bell Property or the Howell Property. Rather, View Point Drive is the road that provides ingress and egress to these properties, and it is the only possible route of ingress and egress accessible to the general location of the Easement as it is described in the Instrument.

13. The Mallorys and Defendant took title to the Bell Property with actual and constructive knowledge of the Easement and Batson's right to install and use a road over and through the Bell Property for the purpose of ingress and egress.

14. Batson has repeatedly attempted to reach agreement with the Mallorys with respect to the specific location of the Easement, and has tendered to them specific plans for the service road, which are consistent with the general location of the Easement described in the Instrument.

15. Defendant, *vis a vis* the Mallorys, has stubbornly and unreasonably rejected Batson's efforts to reach agreement on the specific location of the Easement, including the specific proposals submitted by Batson, thereby preventing Batson from installing and using the Easement road despite his right and his demands to do so.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

16. Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 15 of this Complaint as fully as if said allegations were set forth herein verbatim.

17. The Bell Property, owned by Defendant, is subject to the Easement held by Batson by virtue of the Instrument.

18. The Mallorys and Defendant had actual and constructive notice of the Easement and Batson's rights under the Instrument when they acquired title to the Bell Property, and they are bound by the Easement and Instrument.

19. The Easement is for the purpose of ingress and egress to the Batson Property via View Point Drive, and Batson is entitled to install and use the Easement road over and through the Bell Property terminating at View Point Drive.

20. Defendant has prevented Batson from exercising his legal rights in

accordance with the Instrument and this action presents a real and substantial controversy which is appropriate for judicial determination.

21. Plaintiff seeks a declaratory judgment under the Uniform Declaratory Judgments Act, South Carolina Code §§ 15-53-10-to-140, that Defendant's conduct violates the Instrument and that the Easement includes Batson's right to ingress and egress over and through the Bell Property terminating at View Point Drive.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction)

22. Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 21 of this Complaint as fully as if said allegations were set forth herein verbatim.

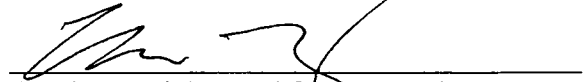
23. If the Court does not enjoin Defendant from interfering with Batson's right to install the Easement road over and through the Bell Property terminating at View Point Drive, Batson will have no adequate remedy at law for the loss of his right of ingress and egress afforded by the Easement, because these injuries cannot be compensated by money damages and/or such damages are exceedingly difficult to determine.

24. Batson further prays that the Court issue a permanent injunction on the merits of this action, prohibiting Defendant from interfering with, frustrating or disturbing Batson's right to install and use a road over and through the Bell Property, at a location not inconsistent with the general location described in the Instrument, terminating at View Point Drive.

WHEREFORE, Plaintiff prays (1) for a declaration of the Court that Plaintiff has a valid easement for a service road over and through the Bell Property, providing ingress and egress and terminating at View Point Drive, (2) for a declaration that Defendant is

prohibited from interfering with Batson's right to install and use such service road, (3) for a permanent injunction prohibiting Defendant from interfering with Batson's right to install and use such service road, and (4) for such other and further relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.



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Attorneys for Plaintiff

August 29, 2008

Greenville, South Carolina

JUL 22 12 15 PM 1965

BOOK 778 PAGE 209

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that WE, CHARLES W. BELL AND ANNE W. BELL,

in consideration of ONE (\$1.00) DOLLAR, AND AS A PART OF THE CONSIDERATION FOR THE DEED EXECUTED SIMULTANEOUSLY HERewith BY LOUIS P. BATSON, JR., TO CHARLES W. BELL AND ANNE W. BELL, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

LOUIS P. BATSON, JR., HIS HEIRS AND ASSIGNS:

A RIGHT-OF-WAY TWENTY (20) FEET IN WIDTH, FOR THE PURPOSE OF INGRESS AND EGRESS, LEADING FROM THE REAR PORTION OF LOT 4, SHOWN ON A PLAT OF PROPERTY OF J. E. GILLIAM, JR., RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN PLAT BOOK T AT PAGE 239, ACROSS THE REAR PORTIONS OF LOTS 3 AND 2, AND THEN IN A SOUTHEASTERLY DIRECTION THROUGH LOT 1, AND THROUGH A STRIP OF LAND DESCRIBED IN A DEED FROM ALEENE L. PARNHAM TO CHARLES W. BELL AND ANNE W. BELL, DATED AUGUST 19, 1964, AND RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN DEED BOOK 716 AT PAGE 521, INTO DOGWOOD DRIVE. LOTS 1, 2, AND 3 ARE ALL SHOWN ON THE ABOVE MENTIONED PLAT OF PROPERTY OF J. E. GILLIAM, JR.

THE AFOREMENTIONED RIGHT-OF-WAY SHALL BE IN SUCH SPECIFIC LOCATION (NOT INCONSISTENT WITH THE ABOVE GENERAL LOCATION) AS SHALL LEAST INTERFERE WITH THE USE AND DEVELOPMENT OF SAID LOTS BY THE GRANTORS, AND, AT THE ELECTION OF THE GRANTORS, THE USE OF SAID RIGHT-OF-WAY BY THE GRANTEE SHALL BE IN COMMON WITH THE GRANTORS.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)' heirs or successors and assigns forever. And, the grantor(s) hereby bind the grantor(s) and the grantor(s)' heirs or successors, executors and administrators, to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every person who may lawfully claim or to claim the same or any part thereof.

WITNESS the grantor(s)' hand(s) and seal(s) this 21st day of JULY 1965.

SIGNED, sealed and delivered in the presence of:

Roma K. Johnson
Lupina K. Bell

CHARLES W. BELL

ANNE W. BELL

(SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF GREENVILLE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor(s)' and did deliver the within deed and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 21st day of JULY 1965.

Roma K. Johnson
Notary Public for South Carolina

Lupina K. Bell

STATE OF SOUTH CAROLINA

RENUNCIATION OF DOWER

COUNTY OF

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, 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 whomsoever, renounce, release and forever relinquish unto the grantor(s) and the grantee(s)' heirs or successors and assigns, all her interest and estate, and all her right and claim of dower of, in and to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this

day of

19

17

(SEAL)

Notary Public for South Carolina

RECORDED this 22nd day of JULY 1965, at 11:14 AM, P. M. No. 2587

EXHIBIT

A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)
)
 Louis P. Batson, Jr.) C.A. No.: 2008-CP-23-6607
)
 Plaintiff,)
)
 v.)
)
 Northside Traders, LLC,)
)
 Defendant.)
)
)

2008 OCT 15 P 1:19

COPY

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 JAMES WICKENBARGER

ANSWER AND COUNTERCLAIM

Defendant hereby answers Plaintiff's Complaint as follows:

**FOR A FIRST DEFENSE
 (GENERAL DENIAL)**

1. Each and every allegation of the Complaint not specifically admitted, explained or modified is denied.
2. Defendant admits the allegations contained in Paragraphs 1 through 3.
3. Defendant admits the allegations contained in Paragraphs 4 through 8.
4. Defendant is currently without sufficient information to admit or deny the allegations contained in Paragraphs 9 through 12 except as allege that Doris Howell owns Dogwood Drive.
5. Defendant admits so much of Paragraph 13 as alleges that it and the Mallorys took title to the Bell property with actual and constructive knowledge of the easement, but Defendant would allege that the terms of the easement are set forth in the Instrument itself.
6. Defendant admits so much of Paragraphs 14 and 15 as allege that Plaintiff has attempted to reach agreement with Defendant on the easement and that no agreement

has been reached. Otherwise, the allegations contained in Paragraphs 14 and 15 are denied.

7. Paragraph 16 does not require a response.

8. Defendant admits the allegations contained in Paragraphs 17 and 18 but would specifically allege that the terms of the easement are set forth in the Instrument itself.

9. Defendant denies the allegations contained in Paragraph 19.

10. Defendant admits so much of Paragraph 20 as alleges that this action presents a real and substantial controversy which is appropriate for judicial determination. Otherwise, the allegations contained in Paragraph 20 are denied.

11. Paragraph 21 does not require a response.

12. Paragraph 22 does not require a response.

13. Defendant denies the allegations contained in Paragraphs 23 and 24.

**FOR A SECOND DEFENSE
AND BY WAY OF COUNTERCLAIM**

14. Defendant realleges each and every prior allegation not inconsistent herewith.

15. In the Instrument, Plaintiff received a "right of way...for the purpose of ingress and egress...into Dogwood Drive."

16. Dogwood Drive was either privately owned on the date of the Instrument or has since become privately owned.

17. Plaintiff has never had nor does it now have a right to use Dogwood Drive.

18. Accordingly, Plaintiff's easement was either void ab initio or has since been extinguished or terminated.

19. Plaintiff's easement, nonetheless, is a cloud on the title to Defendant's property, and Defendant is entitled to an order of this Court declaring that the easement was either void ab initio or has been extinguished or terminated.

WHEREFORE, Defendant prays that the Court deny the relief sought by Plaintiff and for a declaration by the Court that Plaintiff's easement was either void ab initio or has since been extinguished or terminated and for such other and further relief as the Court may deem just and proper.

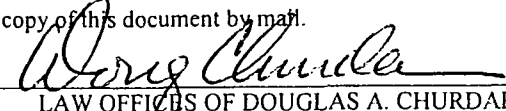
Date: 10/8/08



Douglas A. Churdar
S.C. Bar No. 11971
712 East Washington Street
Greenville, SC 29601
Phone: (864) 233-0203
Fax: (864) 233-3020

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day October, 2008,
I caused to be served on counsel of record a true and
correct copy of this document by mail.



LAW OFFICES OF DOUGLAS A. CHURDAR

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Louis P. Batson, Jr.,	)	C.A. No.: 2008-CP-23-6607
	)	
Plaintiff,	)	
	)	
v.	)	REPLY TO COUNTERCLAIM OF
	)	NORTHSIDE TRADERS, LLC
Northside Traders, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiff, Louis P. Batson, Jr. ("Plaintiff" or "Batson"), hereby sets forth the following as his Reply to the counterclaim of Defendant Northside Traders, LLC ("Defendant" or "Northside") as follows:

FOR A FIRST DEFENSE TO COUNTERCLAIM
(General Denials)

1. Each and every allegation and request for relief contained in the Defendant's answer and counterclaim that is not otherwise expressly admitted below is denied and strict proof thereof demanded.
2. Paragraph 14 of the counterclaim does not require a response as it is a procedural allegation, but to the extent it is factual, it is denied.
3. Paragraph 15 of the counterclaim is denied as worded. The instrument, which speaks for itself, provides for a right of way "for the purpose of ingress and egress" to and from the property of Plaintiff.
4. Paragraph 16 of the counterclaim is admitted.
5. Paragraph 17 of the counterclaim is denied as worded. A portion of what was once known as Dogwood Drive a/k/a Dogwood Trail is now part of Defendant's property and

Plaintiff, by virtue of the easement instrument at issue in this action, is entitled to use that property for the purposes stated in the easement instrument. Plaintiff does not have a legal right to use the portion of Dogwood Drive a/k/a Dogwood Trail that is currently owned by Doris Howell.

6. Paragraphs 18 and 19 of the counterclaim are denied.

7. Plaintiff denies that Defendant is entitled to any relief, including the relief sought in its Prayer for Relief.

FOR A SECOND DEFENSE TO COUNTERCLAIM
(Failure to State a Claim)

8. Plaintiff incorporates herein all of the forgoing responses that are relevant to and consistent with this defense.

9. Defendant's counterclaim fails to state facts sufficient to constitute a cause of action and Plaintiff reserves the right to file a motion to dismiss the counterclaim pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE TO COUNTERCLAIM
(Equitable Defenses)

10. Plaintiff incorporates herein all of the forgoing responses that are relevant to and consistent with this defense.

11. Defendant's counterclaim is barred by all other equitable doctrines available to Plaintiff, including, but not limited to, laches, waiver, release and estoppel.

WHEREFORE, having fully answered Defendant's counterclaim, Plaintiff respectfully requests that the counterclaim be dismissed with prejudice, and that an order be entered granting judgment to Plaintiff on the counterclaim. Plaintiff further requests that the Court grant him all relief requested by Plaintiff in his Complaint and any further relief that the Court deems just and

proper.

HAYNSWORTH SINKLER BOYD, P.A.



Calvin T. Vick, Jr., SC Bar No. 68187
Christopher B. Major, SC Bar No. 72872
75 Beattie Place
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200

November 5, 2008

Greenville, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 08-CP-23-6607
	)	
Louis P. Batson Jr.	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Northside Traders LLC	)	
	)	
Defendant.	)	

September 1, 2009
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

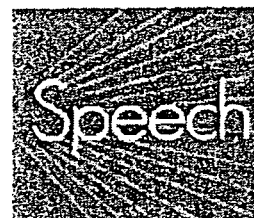
A P P E A R A N C E S:

CALVIN T. VICK, JR., Esquire
Attorney for Plaintiff

DOUGLAS A. CHURDAR, Esquire
Attorney for Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

1 a much more desirable drive going down the back
2 of Mr. Batson's property, around Mr. Bell's
3 property to access Viewpoint Drive.

4 Granted, this is in 1965. A lot of time has
5 passed. This is not a point of necessity. He
6 has made do today with a steep drive. He has not
7 cleared the 20-foot right-of-way. He still has a
8 contractual right to do so. Quite frankly, to
9 the extent his reasons for wanting to do it now
10 is significant, he is very elderly and not in
11 good health.

12 This easement goes to him and his heirs. He
13 is doing many things and putting his affairs in
14 order. He believes, as he did in 1965, that this
15 drive would improve his property and improve the
16 use of his property because the steep drive is
17 problematic and much less desirable than the
18 drive that would go through, around the perimeter
19 of the Bell property. That is the background.

20 As Your Honor looks at -- it basically comes
21 down to the construction of the easement
22 contract. The easement states that this
23 expressed easement is for the purpose of ingress
24 and egress. Again, the only road that provides
25 ingress and egress to this property is Viewpoint

1 Drive. And then it provides, quote, a general --
2 a description of, quote, the general location of
3 the 20-foot right-of-way going to the Bell
4 property which is -- excuse me. The specific
5 location to be agreed upon by the parties after
6 consultation so as to least interfere with the
7 grantor's use of his property. The grantor also
8 had used under the 20-foot right-of-way.

9 This is a vacant lot. These are vacant lots.
10 There is nothing on the former Bell property.
11 The Defendant purchased this property a few years
12 ago, I believe in 2005, with actual and
13 constructive notice of this easement. The
14 easement was properly recorded in 1965. None of
15 that is disputed.

16 What the Defendant seize upon, first, they
17 seize upon the fact that Mr. Batson has a drive,
18 the steep drive that goes to Viewpoint Drive.
19 They are saying he does not have a need for it.
20 This is not a matter of necessity. It is a
21 matter of contract. Second, they seize upon one
22 term in the entire easement which is a term
23 included within the general description,
24 description of the general location.

25 The general location according to easement is

1 be done, Your Honor. I am saying that I think it
2 is for the Court to construe whether the
3 expressed purpose of ingress and egress over this
4 property which would be Viewpoint Drive out of
5 necessity. I didn't mean it that way.

6 **THE COURT:** You have very carefully avoided
7 relying on the word "necessity" all through the
8 hearing. Now all of a sudden you use the word
9 "necessity".

10 **MR. VICK:** I would like to take that back.

11 **THE COURT:** You practiced it all night.

12 **MR. VICK:** That is true, Your Honor.

13 Viewpoint Drive is the only public thoroughfare
14 that would allow ingress and egress to any of
15 these properties. Everyone involved, the grantor
16 and the grantee in 1965 knew that. The Defendant
17 knew that when he bought the property from Bell
18 estate with actual and constructive notice of the
19 easement. Anyone who goes out there can plainly
20 see there is only one way in and out of here.
21 That is Viewpoint Drive. This Dogwood Trail goes
22 back, essentially, the Howell's have a house.

23 **MR. CHURDAR:** I submitted Exhibits 4, 5, and
24 6 in my memorandum.

25 **MR. VICK:** Actually, you gave me a copy.

1 **MR. VICK:** Okay, Your Honor.

2 **MR. CHURDAR:** All right.

3 **THE COURT:** These are cross motions for
4 summary judgment. So you both concede that the
5 interpretation of this easement is a matter of
6 law for the Court.

7 **MR. VICK:** Yes, Your Honor.

8 **MR. CHURDAR:** Yes, Your Honor.

9 **THE COURT:** I'm going to grant the
10 Plaintiff's motion for summary judgment. It is
11 clear to me that the ultimate purpose was in the
12 minds of these two folks when they drafted this
13 easement was to get a driveway that ultimately
14 made it to Viewpoint Drive. That is just
15 obvious. Dogwood Trail goes nowhere on its upper
16 end and it didn't back then. The only reason to
17 get to Dogwood Trail is ultimately to make it to
18 Viewpoint Drive.

19 The deed incorporates sufficient, I mean, the
20 easement incorporates sufficient flexibility that
21 I think is clear that the Plaintiff's motion
22 should be granted. By way of example, if Mr.
23 Bell or whoever owns that Lot 1 in the meantime
24 had come along and built something on the
25 property on Lot 1 that spilled over into the tiny

1 strip of land, maybe it was a barn, maybe it was
2 a dog pin, maybe it was a peach orchard, and then
3 that happened maybe in the late 60s. And then a
4 year or so later, Mr. Batson build a driveway.

5 It is very clear that Mr. Batson would not
6 have had the right to -- let's say that Dogwood
7 Trail is wide open. It is a public road. It is
8 very clear that Mr. Batson would not have had the
9 right to force Mr. Bell or whoever owned it to
10 turn down the dog pin or the barn or the peach
11 orchard. He would rather had been obligated to
12 come around to what I am looking at as the left,
13 stay on Lot 1 but avoid the barn until he got all
14 the way to Viewpoint Drive. That is the kind of,
15 that is what that flexibility shows in terms of
16 the intent of the parties. So I'm going to let
17 Mr. Vick draw me an order and that will be my
18 ruling.

19 **MR. CHURDAR:** Thank you, Your Honor.

20 **MR. VICK:** Thank you, Your Honor

21 (END OF PROCEEDING)

22

23

JUL 22 12 15 PM 1965

BOOK 778 PAGE 209

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that WE, CHARLES W. BELL AND ANNE W. BELL,

In consideration of ONE (\$1.00) DOLLAR, AND AS A PART OF THE CONSIDERATION FOR THE DEED EXECUTED SIMULTANEOUSLY HEREWITH BY LOUIS P. BATSON, JR., TO CHARLES W. BELL AND ANNE W. BELL, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

LOUIS P. BATSON, JR., HIS HEIRS AND ASSIGNS:

A RIGHT-OF-WAY TWENTY (20) FEET IN WIDTH, FOR THE PURPOSE OF INGRESS AND EGRESS, LEADING FROM THE REAR PORTION OF LOT 4, SHOWN ON A PLAT OF PROPERTY OF J. E. GILLIAM, JR., RECORDED IN THE REC. OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN PLAT BOOK T AT PAGE 239, ACROSS THE REAR PORTIONS OF LOTS 3 AND 2, AND THEN IN A SOUTHEASTERLY DIRECTION THROUGH LOT 1, AND THROUGH A STRIP OF LAND DESCRIBED IN A DEED FROM ALEENE L. PARNUM TO CHARLES W. BELL AND ANNE W. BELL, DATED AUGUST 19, 1964, AND RECORDED IN THE REC. OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN DEED BOOK 716 AT PAGE 521, INTO DOGWOOD DRIVE. LOTS 1, 2, AND 3 ARE ALL SHOWN ON THE ABOVE MENTIONED PLAT OF PROPERTY OF J. E. GILLIAM, JR.

THE AFOREMENTIONED RIGHT-OF-WAY SHALL BE IN SUCH SPECIFIC LOCATION (NOT INCONSISTENT WITH THE ABOVE GENERAL LOCATION) AS SHALL LEAST INTERFERE WITH THE USE AND DEVELOPMENT OF SAID LOTS BY THE GRANTORS, AND, AT THE ELECTION OF THE GRANTORS, THE USE OF SAID RIGHT-OF-WAY BY THE GRANTEE SHALL BE IN COMMON WITH THE GRANTORS.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s) and the grantee(s) heirs or successors and assigns forever. And the grantor(s) hereby bind the grantor(s) and the grantor(s) heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s) heirs or successors and against every person who may lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor(s) hand(s) and seal(s) this 21st day of JULY 1965.

SIGNED, sealed and delivered in the presence of:

Thomas K. Jones
Laporia Kille

CHARLES W. BELL

(SEAL)

(SEAL)

ANNE W. BELL

(SEAL)

(SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE

Personally appeared the undersigned witness and made oath that (she saw the within named grantor(s) sign, seal and as the grantor(s) hand and deed deliver the within deed and that (she, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 21st day of JULY 1965

Thomas K. Jones
Notary Public for South Carolina

Laporia Kille

STATE OF SOUTH CAROLINA
COUNTY OF

RENUNCIATION OF DOWER

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, 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 whatsoever, renounce, release and forever relinquish unto the grantor(s) and the grantee(s) heirs or successors and assigns, all her interest and estate, and all her right and claim of dower in, in and to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this

30

day of

19

Notary Public for South Carolina

(SEAL)

RECORDED this 21st day of JULY 1965 at 1:10 P. M. No. 5587

PLAINTIFF'S
EXHIBIT
A

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**TITLE TO REAL ESTATE
(LIMITED WARRANTY DEED)
(NO TITLE SEARCH)**

KNOW ALL MEN BY THESE PRESENTS, that TAD E. MALLORY & MAUREEN M. MALLORY,
in consideration of One Dollar & No/100 (\$1.00) Dollars, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents
do grant, bargain, sell and release unto NORTHSIDE TRADERS, L.L.C., its successors and assigns forever:

ALL that certain piece, parcel or tract of land, lying, being and situate on the northwestern side of View Point Drive, in Greenville County, South Carolina, containing 2.639 acres, more or less, being the northern portions of Lots 1, 2 and 3 of the property of J.E. Gilliam, Jr., as shown on a plat thereof, by W.J. Riddle, Surveyor, dated May, 1950, recorded in Plat Book T at Page 239 in the Office of the Register of Deeds for Greenville County, and having according to a more recent plat entitled "Survey for Tad Mallory", by Benchmark Surveying, Inc., dated July 15, 2005, revised September 2, 2005, and recorded in Plat Book 50I at Page 12 in the Office of the Register of Deeds for Greenville County, the following metes and bounds, to-wit:

BEGINNING at a nail located in the right of way of View Point Drive, joint corner of Lot 4 of the property of J.E. Gilliam, Jr., now or formerly of Batson, and running thence along said property, N 32-30-00 W. 486.60 feet to an iron pin; joint corner of property now or formerly of C. Rivers Stone Limited Partnership; thence along said property the following courses and distances: N 36-34-10 E 93.30 feet to an iron pin; thence N 36-53-00 E 93.41 feet to an iron pin; thence N 38-28-44 E. 94.21 feet to an iron pin, joint corner of Lot 3, Piney Mountain Subdivision; thence along said Lot 3 S 32-35-18 E 109.74 feet to an iron pin; thence S 32-24-23 E 143.86 feet to an iron pin on or near the northwestern side of View Point Drive; thence S 31-02-50 E 13.11 feet to an iron pin in the right of way of View Point Drive; thence continuing in the right of way of View Point Drive the following courses and distances: S 12-13-09 W 87.86 feet to an iron pin; thence S 23-17-31 E 171.98 feet to an iron pin; thence S 06-10-32 W 53.01 feet to an iron pin; thence S 25-26-03 W 64.02 feet to an iron pin; thence S 51-23-18 W 87.01 feet to an iron pin, the POINT OF BEGINNING.

ALSO: ALL that certain, piece parcel or lot of land, lying, being and situate on the northwestern side of View Point Drive, in Greenville County, South Carolina, containing 0.013 acres, more or less, and having according to a plat entitled "Survey for Tad Mallory", by Benchmark Surveying, Inc., dated July 15, 2005, revised September 2, 2005, and recorded in Plat Book 50I at Page 12 in the Office of the Register of Deeds for Greenville County, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the northwestern side of View Point Drive, joint corner of the northern part of Lot 1, owned now or formerly owned by Charles W. Bell and Annie W. Bell, and running thence along Lot 1 N 32-24-23 W 102.83 feet to an iron pin, thence leaving Lot 1 and running N 57-30-04 E 15.57 feet to an iron pin on the western edge of a private drive known as Dogwood Trail; thence along the western edge of Dogwood Trail the following courses and distances: S 10-50-20 E 19.93 feet to an iron pin; thence S 26-49-20 E 84.72 feet to an iron pin, the POINT OF BEGINNING

THESE are the same properties conveyed to the Tad E. Mallory and Maureen M. Mallory by deed of Arthur L. Howson, Jr., as Personal Representative of the Estate of Charles W. Bell, A/K/A Charles William Bell, Deceased, dated September 8, 2005, and recorded September 9, 2005, in the Register of Deeds Office for Greenville County, SC, in Deed Book 2164, Page 1467.

THIS conveyance is subject to all restrictions, set back lines, roadways, zoning ordinances, easements and rights of way, if any, affecting the above described property.

Tax Map Nos. P029.00-01-012.00, P029.00-01-013.00 and P029.00-01-014.01.

GRANTEE'S ADDRESS: 14 Primrose Lane, Greenville, SC 29607

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining to have and hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)' heirs, successors and assigns forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)' heirs, successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs, successors and assigns, against the grantor(s) and the grantor(s)' heirs, successors and assigns.



WITNESS the grantor's(s') hand(s) and seal(s) this 12th JANUARY, 2007 day of ~~December, 2006~~

SIGNED, sealed and delivered in the presence of:

Debbie B. Clark
CSA

Tad E. Mallory
Tad E. Mallory (SEAL)
Maureen M. Mallory (SEAL)
Maureen m. Mallory

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 12th JANUARY, 2007 day of ~~December, 2006~~

CSA (SEAL)

Notary Public for South Carolina

My Commission Expires: 2/10/08

Debbie B. Clark

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TAD E. MALLORY

&

MAUREEN M. MALLORY

To

NORTHSIDE TRADERS, LLC

TITLE TO
REAL ESTATE

32

I hereby certify that the within Deed has been recorded this _____

day of _____, 20____, at _____ M

Deed Book _____, Page _____

Register of Deeds, Greenville County

LAW OFFICES OF

CULBERTSON & CHRISTOPHILIS

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF GREENVILLE)

PERSONALLY appeared before me the undersigned, who being 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 View Point Drive, bearing Greenville County Tax Map Number P029.00-01-012.00, P029.00-01-013.00 & P029.00-01-014.01, was transferred by Tad E. Mallory & Maureen M. Mallory to Northside Traders, LLC on December 12, 2006.
- 3 Check one of the following: The deed is:
 - (a) ☐ 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.): Exemption #8 (grantor is owner of grantee).
(If exempt, please skip Items 4-7, and go to Item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

- 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) ☐ The fee is computed on the fair market value of the realty which is _____.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5 Check Yes ☐ 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: _____.

6 The deed recording fee is computed as follows:

- (a) Place the amount listed in Item 4 above here: _____
- (b) Place the amount listed in Item 5 above here: _____
(If no amount is listed, place "zero" here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____

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

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

9 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

Ted E. Mallory
Responsible Person Connected with the Transaction

Ted E. Mallory
Print or Type Name Here

SWORN to before me this 12th
day of December, 2008
January

Debra B. Clark
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 06/06/2010

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 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 the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (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 mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purposes of purchasing the realty; and,
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD

2007005749

Book: DE 2247

Page: 10-13

January 16, 2007 03:31:45 PM

Timothy P. Harrison

Prepared by Callivan, White & Boyd, P.A.

FILED
GREENVILLE, SC

2005 SEP -9 P 1:23

GRANTEE'S ADDRESS: 14 PRIMROSE LANE
GREENVILLE, SOUTH CAROLINA 29605

TIMOTHY L. HANNEY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) TITLE TO REAL ESTATE
(LIMITED WARRANTY DEED)

KNOW ALL MEN BY THESE PRESENTS, that ARTHUR L. HOWSON, JR., AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES W. BELL, A/K/A CHARLES WILLIAM BELL, DECEASED, in consideration of Two Hundred Sixty Thousand and No/100 (\$260,000.00) Dollars, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto, TAD E. MALLORY AND MAUREEN M. MALLORY, their heirs and assigns, forever:

SEE EXHIBIT A ATTACHED

235- P29-1-12, 13 & 14.1

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor does hereby bind itself and its successors to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs or successors and against the grantor and its successors and assigns.

IN WITNESS whereof the grantor has caused its seal to be affixed hereto and these presents to be subscribed by its duly authorized member, this 8th day of September, 2005.

SIGNED, sealed and delivered
in the presence of:

09/09/2005 01:13:00

Gayla Louder
Charles W. Bell

Arthur L. Howson, Jr.
ARTHUR L. HOWSON, JR.
AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
CHARLES W. BELL, A/K/A CHARLES WILLIAM BELL

RECORDING FEE 10.00

PLAINTIFF'S
EXHIBIT
C

STATE 676.00
SEP 09 2005
COUNTY 286.00

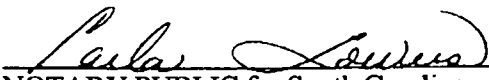
84148

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

ACKNOWLEDGEMENT

The undersigned, a Notary Public for the State of South Carolina, does hereby certify that the above named Arthur L. Howson, Jr., as Personal Representative of the Estate of Charles W. Bell, a/k/a Charles William Bell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 8th day of September, 2005.



NOTARY PUBLIC for South Carolina
My Commission Expires: 8-27-11

EXHIBIT A

All that certain piece, parcel or tract of land, lying, being and situate on the northwestern side of View Point Drive, in Greenville County, South Carolina, containing 2.639 acres, more or less, being the northern portions of Lots 1, 2, and 3 of the property of J.E. Gilliam, Jr., as shown on a plat thereof by W.J. Riddle, Surveyor, dated May, 1950, recorded in Plat Book T at Page 239 in the Office of the Register of Deeds for Greenville County, and having according to a more recent plat entitled "Survey for Tad Mallory", by Benchmark Surveying, Inc., dated July 15, 2005, revised September 2, 2005, and recorded in Plat Book 501 at Page 12 in the Office of the Register of Deeds for Greenville County, the following metes and bounds, to-wit:

BEGINNING at a nail located in the right of way of View Point Drive, joint corner of Lot 4 of the property of J.E. Gilliam, Jr., now or formerly of Batson, and running thence along said property, N 32-30-00 W 486.60 feet to an iron pin; joint corner of property now or formerly of C. Rivers Stone Limited Partnership; thence along said property the following courses and distances: N 36-34-10 E 93.30 feet to an iron pin; thence N 36-53-00 E 93.41 feet to an iron pin; thence N 38-28-44 E 94.21 feet to an iron pin, joint corner of Lot 3, Piney Mountain Subdivision; thence along said Lot 3 S 32-35-18 E 109.74 feet to an iron pin; thence S 32-24-23 E 143.86 feet to an iron pin on or near the northwestern side of View Point Drive; thence S 31-02-50 E 13.11 feet to an iron pin in the right of way of View Point Drive; thence continuing in the right of way of View Point Drive the following courses and distances: S 12-13-09 W 87.86 feet to an iron pin; thence S 23-17-31 E 171.98 feet to an iron pin; thence S 06-10-32 W 53.01 feet to an iron pin; thence S 25-26-03 W 64.02 feet to an iron pin; thence S 51-23-18 W 87.01 feet to an iron pin, the POINT OF BEGINNING.

The above described property was conveyed to Charles W. Bell and Anne W. Bell the following Deeds: Deed of the northern portion of Lot 1 from James J. Joseph dated May 7, 1955, recorded May 9, 1955 in Deed Book 525 at Page 35; Deed of Lot 2 from H.G. Phillips and Mattie Earle Phillips dated and recorded May 7, 1955 in Deed Book 524 at Page 535; Deed of Lot 3 from Louis P. Batson, Jr. dated July 21, 1965, recorded July 22, 1965 in Deed Book 778 at Page 211, all in the Office of the Register of Deeds for Greenville County.

ALSO: All that certain piece, parcel or lot of land, lying, being and situate on the northwestern side of View Point Drive, in Greenville County, South Carolina, containing 0.013 acres, more or less, and having according to a plat entitled "Survey for Tad Mallory", by Benchmark Surveying, Inc., dated July 15, 2005, revised September 2, 2005, and recorded in Plat Book 501 at Page 12 in the Office of the Register of Deeds for Greenville County, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the northwestern side of View Point Drive, joint corner of the northern part of Lot 1, owned now or formerly by Charles W. Bell and Anne W. Bell, and running thence along Lot 1 N 32-24-23 W 102.83 feet to an iron pin; thence leaving Lot 1 and running N 57-30-04 E 15.57 feet to an iron pin on the western edge of a private drive known as Dogwood Trail; thence along the western edge of Dogwood Trail the following courses and

distances: S 10-50-20 E 19.93 feet to an iron pin; thence S 26-49-20 E 84.72 feet to an iron pin, the POINT OF BEGINNING.

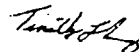
This is the identical property conveyed to Charles W. Bell and Anne W. Bell by H.E. Butler by Deed dated October 16, 1964, recorded November 3, 1964 in Deed Book 761 at Page 15 in the Office of the Register of Deeds for Greenville County.

The said Anne W. Bell died testate on May 20, 1993, and by her Last Will and Testament filed in File 93-ES-2301591 in the Office of the Judge of Probate for Greenville County, the said Anne W. Bell devised the above property to her husband, Charles W. Bell. The interest of Anne W. Bell in the above-described properties was conveyed to Charles W. Bell or his Estate by the following Deeds of Distribution: Deed from Charles W. Bell, Personal Representative, dated November 22, 1993, recorded November 22, 1993 in Deed Book 1590 at Page 855; Deed from Arthur L. Howson, Jr. as Personal Representative dated September 8, 2005, recorded contemporaneously herewith, all in the Office of the Register of Deeds for Greenville, County.

The said Charles W. Bell died on May 7, 2004. The Grantee is the duly appointed and acting Personal Representative of the Estate of Charles W. Bell, filed in File 04-ES-2301895, aforesaid records. This Deed is being executed pursuant to the power of sale granted in the Last Will and Testament of Charles W. Bell, deceased, dated December 22, 1999, filed in said estate file.

THIS conveyance is subject to all restrictions, set back lines, roadways, zoning ordinances, easements and rights of way, if any, affecting the above described property.

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 01:23 PM
09 09 05 RECORDED IN DEED
BOOK 2164 PAGE 1467 THRU 1470
DOC # 2005084148





BOOK 676 pg 350

TITLE TO REAL ESTATE Prepared by LOVE, THORNTON & RUTHER, Attorneys at Law, Greenville, S. C.

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

Know All Men by These Presents:

That Julia Bell Singleton in the State aforesaid,
in consideration of the sum of One and No/100 - - - (\$1.00) - - - DOLLARS,

to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (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 Aleene L. Parham, her heirs and assigns forever:

All that certain strip of land lying between Lot 3 and Dogwood Trail as shown on plat of the property of Julia Bell Singleton made by C. C. Jones, April 3, 1955, and having according to said plat the following metes and bounds, to-wit:

BEGINNING at an iron pin at the Northwestern corner of the intersection of Dogwood Trail and View Point Drive, and running thence with the Northwestern side of Dogwood Trail N. 26-48 W. 84.1 feet to pin; thence N. 10-51 W. 46.3 feet to pin; thence N. 16-45 E. 46 feet to pin; thence N. 30-55 E. 110 feet to pin at corner of Lot 3; thence with the South-eastern line of Lot 3 S. 36-13 W. 170 feet to pin; thence S. 32-30 E. 144.8 feet to iron pin, point of beginning.

The purpose of this deed is to give the grantee all the strip of land lying between her present property and Dogwood Trail.

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 grantee(s) hereinabove named, and her Heirs and Assigns forever.

And the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)'s Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and the grantee(s)'s Heirs and Assigns against the grantor(s) and the grantor(s)'s Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor(s)'s hand and seal this 16th day of April in the year of our Lord One Thousand Nine Hundred and Fifty-Five

Signed, Sealed and Delivered in the Presence of

Carol S. Gilliam
Wanda T. Harrison

Julia Bell Singleton (Seal)
(Seal)
(Seal)
(Seal)
(Seal)

STATE OF SOUTH CAROLINA,
Greenville County

Personally appeared before me Wanda T. Harrison

and made oath that he saw the within named grantor(s) Julia Bell Singleton sign, seal and as her act and deed deliver the within written deed, and that he, with Carol S. Gilliam witnessed the execution thereof.

Sworn to before me this 16th day of April, A. D. 1955
E. M. King (Seal)
Notary Public for South Carolina

Wanda T. Harrison

STATE OF SOUTH CAROLINA,
Greenville County

RENUNCIATION OF DOWER GRANTOR IS A WOMAN
Notary Public, do hereby certify

unto all whom it may concern, that Mrs. wife of the within named 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 Heirs and Assigns, all her interest and estate, and also 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 A. D. 19
(Seal)
Notary Public for South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Louis P. Batson, Jr.,)

C.A. No.: 2008-CP-23-6607

Plaintiff,)

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS**

v.)

Northside Traders, LLC,)

Defendant.)

TO: PLAINTIFF, LOUIS P. BATSON, AND HIS ATTORNEY, CALVIN T. VICK, JR:

Defendant, Northside Traders, LLC, ("Defendant") hereby responds to Plaintiff's First Request for Admissions as follows:

(1) The Mallorys are the sole owners, shareholders and managers of the Defendant, Northside Traders, LLC.

Admit.

(2) All knowledge of the Mallorys is imputed to the Defendant.

Admit.

(3) Prior to and at the time of the Mallorys' purchase of the Defendant's Property, the Mallorys were aware of and had actual knowledge of the Instrument.

Admit.

(4) Prior to and at the time of the Mallorys' purchase of the Defendant's Property, the Mallorys had no reason to believe that the Instrument was not valid or enforceable.

Deny.

(5) Prior to and at the time of the Mallorys' purchase of the Defendant's Property, the Mallorys believed the Instrument was valid and enforceable.

Deny.

(6) Prior to and at the time of the Mallorys' purchase of the Defendant's Property, the Mallorys believed that the Instrument provided Batson with the right to use an easement through and across the Defendant's Property for the purpose of ingress and egress to and from the Batson Property.

Deny.

(7) Prior to and at the time of the Mallorys' purchase of the Defendant's Property, the Mallorys observed that the only road that provides ingress and egress access to the Batson Property is View Point Drive.

Admit.

(8) Prior to and at the time of the Mallorys' purchase of the Defendant's Property, the Mallorys observed that the only road that provides ingress and egress access to the Defendant's Property is View Point Drive.

Admit.

(9) At the time the Instrument was executed and recorded, View Point Drive was the only means of ingress and egress to and from the Batson Property.

Admit.

(10) At the time the Instrument was executed and recorded, View Point Drive was the only means of ingress and egress to and from the Defendant's Property.

Defendant admits View Point Drive was the only formal/legal means of ingress and egress to and from Defendant's Property.

(11) View Point Drive is currently the only means of ingress and egress to and from the Batson Property.

Admit.

(12) View Point Drive is currently the only means of ingress and egress to and from the Defendant's Property.

Admit.

(13) At the time the Instrument was negotiated and executed, Batson had access to View Point Drive at a location other than that described in the Instrument.

Admit.

(14) Dogwood Drive a/k/a Dogwood Trail is not a means of ingress and egress to and from the Defendant's Property.

Admit.

(15) At the time the Instrument was executed and recorded, Dogwood Drive a/k/a Dogwood Trail was not a means of ingress and egress to and from the Defendant's Property.

Admit.

(16) Defendant has no knowledge of any evidence that the Bells intended to defraud or deceive Batson in the grant of an easement through the Instrument.

Defendant cannot truthfully admit or deny the matter in that the Mallorys have never met the Bells and cannot possibly determine the Bells' intent on a date over forty (40) years ago.

(17) Defendant has no knowledge of any evidence that the Bells intended to do anything other than grant Batson a valid and enforceable easement through and across the

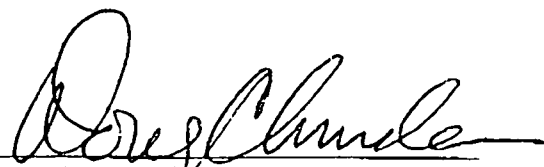
Defendant's Property for the express purpose of ingress and egress to and from the Batson Property through the Instrument.

Defendant cannot truthfully admit or deny the matter in that the Mallorys have never met the Bells and cannot possibly determine the Bells' intent on a date over forty (40) years ago.

(18) Defendant has refused to allow Batson to exercise his right of easement in order to gain an advantage with Batson in negotiating a release from or amendment of the restrictive covenant that forbids Defendant from subdividing Defendant's Property.

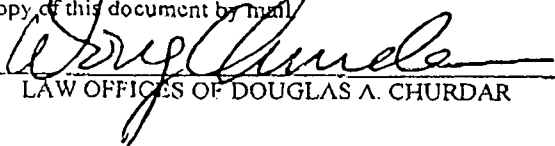
Deny.

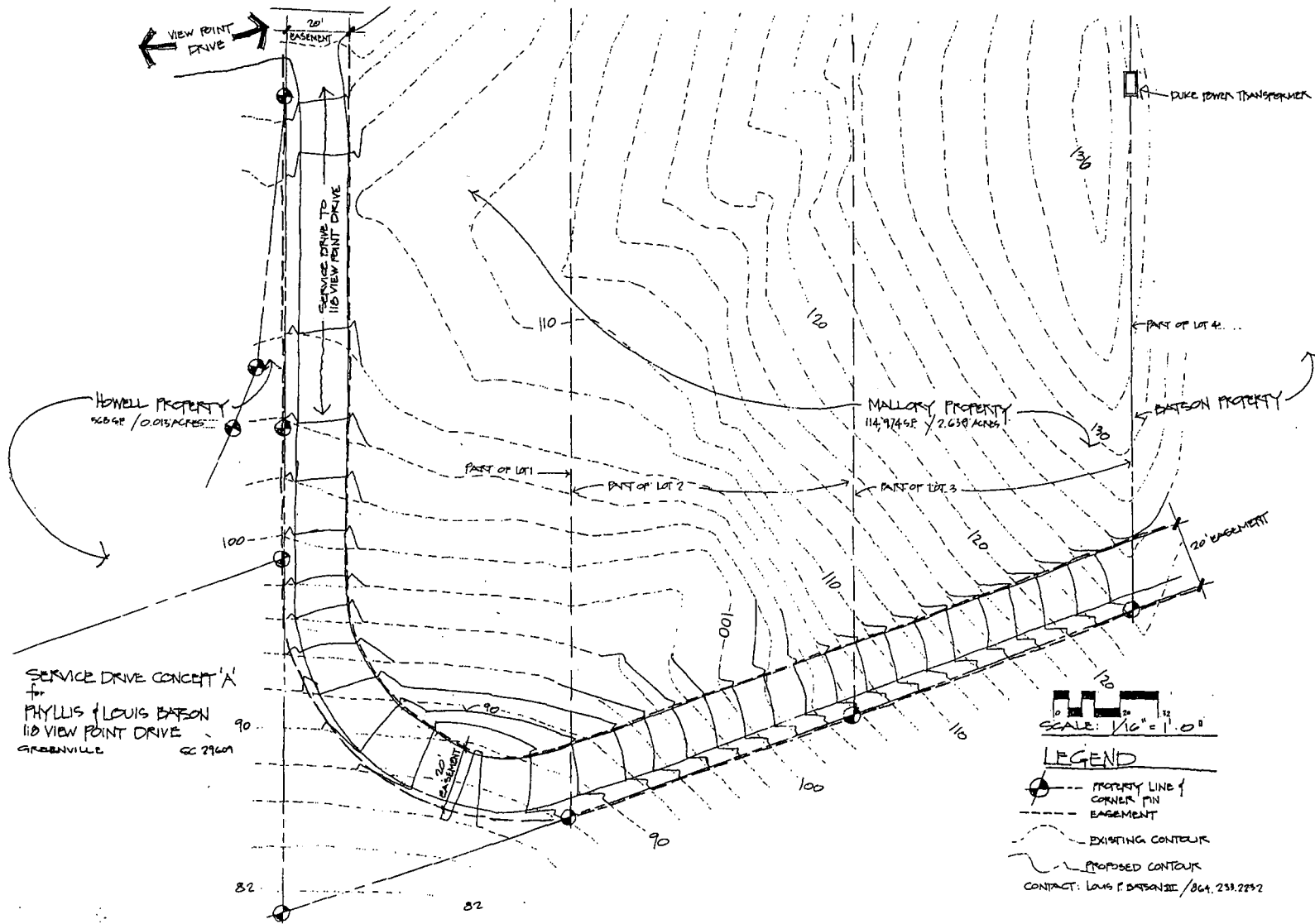
Date: 12/11/08


Douglas A. Churdar
S.C. Bar No. 11971
712 East Washington Street
Greenville, SC 29601
Phone: 864.233.0203
Fax: 864.233.3020

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day December, 2008,
I caused to be served on counsel of record a true and
correct copy of this document by mail.


LAW OFFICES OF DOUGLAS A. CHURDAR



STATE OF SOUTH CAROLINA,

GREENVILLE COUNTY

Know All Men by These Presents:

That We, C. E. Singleton and Julia B. Singleton in the State aforesaid, in consideration of the sum of One Dollar and other valuable consideration DOLLARS, same being use for road purposes, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (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

Greenville County, its successors and assigns:

That road designated on a plat of the property of C. E. Singleton as recorded in the H.C. Office for Greenville County, S. C. in Plat Book "A" at page 419, designated as an unnamed road, extending in a northerly direction from View Point Drive to the end of the Singleton property.

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 grantee(s) hereinabove named, and its ~~successors~~ Assigns forever.

And the grantor(s) do(es) hereby bind the grantor(s) and the grantee(s) Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and the grantee(s) Heirs and Assigns against the grantor(s) and the grantor(s) Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor's(s) hand and seal this 22nd day of April in the year of our Lord One Thousand Nine Hundred and Fifty-Two.

Signed, Sealed and Delivered in the Presence of

H. L. Hinson
Christine B. Giles

C. E. Singleton (Seal)
Julia B. Singleton (Seal)
(Seal)
(Seal)
(Seal)

State of South Carolina,
Greenville County

Personally appeared before me Christina T. Giles

and made oath that s he saw the within named grantor(s) C. E. Singleton and Julia B. Singleton, sign seal and as their act and deed deliver the within written deed, and that she, with H. L. Hinson witnessed the execution thereof.

Sworn to before me this 22nd day of April A. D. 19 52
H. L. Hinson (Seal)
Notary Public for South Carolina

Christine B. Giles

State of South Carolina,
Greenville County

RENUNCIATION OF DOWER

I, Christine B. Giles

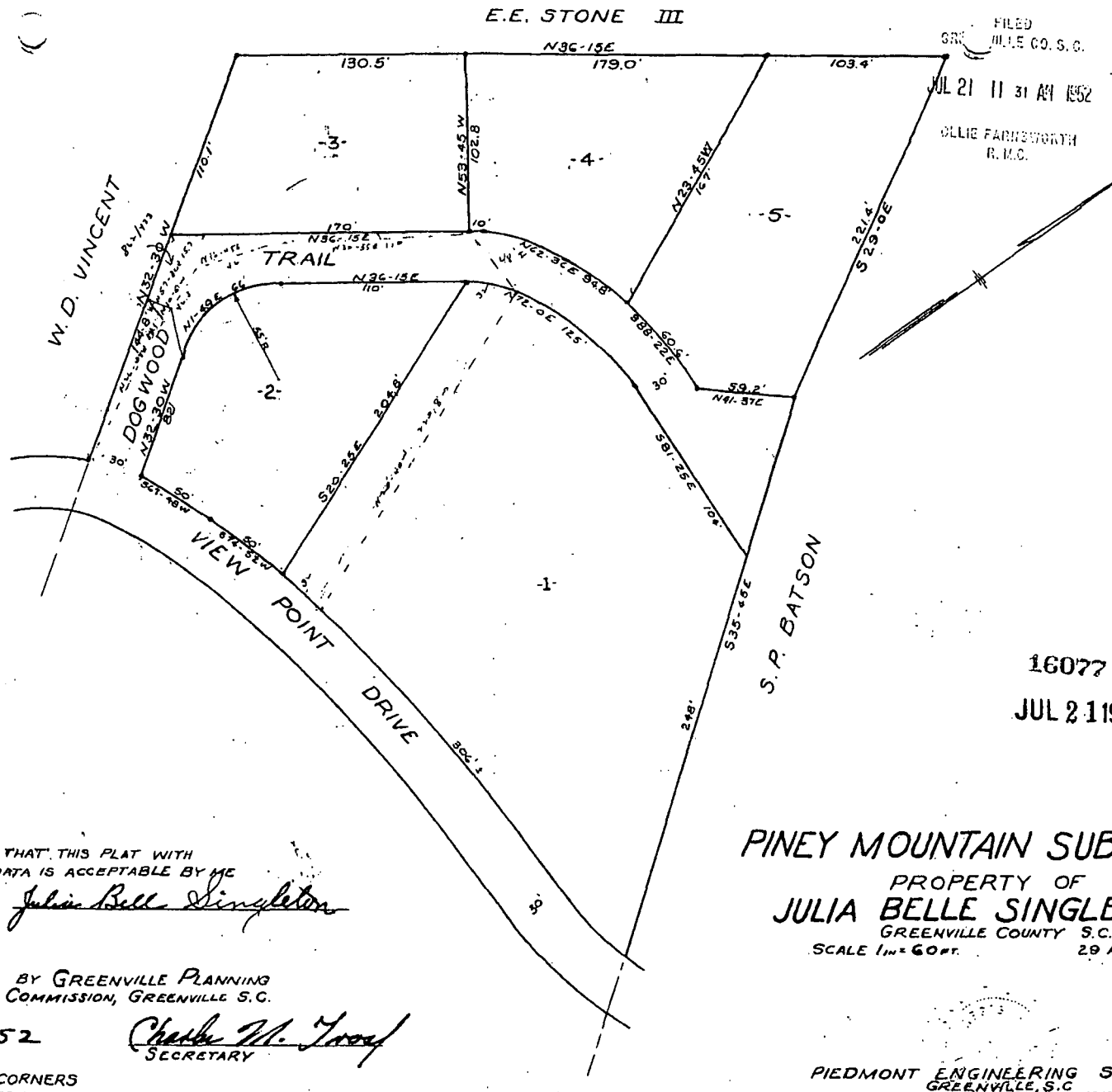
Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Julia B. Singleton, wife of the within named C. E. Singleton 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 Greenville County, its successors 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 22nd day of April A. D. 19 52
Christine B. Giles (Seal)
Notary Public for South Carolina

Julia B. Singleton

Canceled documentary stamps attached: S. C. \$ U. S. \$ 11:41 A.M.
Recorded this 16th day of September 19 52, at M. No. #20501



#16077 Filed This 21 day of July 1952
And Recorded in Vol. 109 Page 109 at _____
Ollie Farnsworth
Register Mesne Conveyance Greenville County, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

DEED

WHEREAS C. E. Singleton and Julia B. Singleton did by deed recorded in Deed Book 463 at Page 3, convey a certain strip of land to Greenville County, and whereas it has now been determined that said strip of land does not serve any public purpose, and that it would be a burden upon Greenville County if said strip of land was accepted for road purposes,

NOW, THEREFORE, Greenville County by its Board of Commissioners, for value received, does hereby grant and convey unto C. E. Singleton and Julia B. Singleton all that certain strip designated on Plat of C. E. Singleton recorded in Plat Book T at Page 419, and Plat Book 30 at Page 109, as an unnamed road extending in a northern direction from View Point Drive to the edge of Singleton property.

This being the same strip of land conveyed by deed recorded in Volume 463 at Page 3, and it is understood that Greenville County will have no interest in said strip of land in the future, and that the same will be used as a private way for the owners of the several lots shown on said plat.

TO HAVE and to hold unto the said C. E. Singleton and Julia B. Singleton, their heirs and assigns forever.

IN WITNESS WHEREOF, Greenville County, by Belton R. O'Neill, J. A. County Barry, and Ansel Hawkins, the duly elected Board of Commissioners, has hereunto set its hand and seal this 9 day of ^{July} June, 1954.

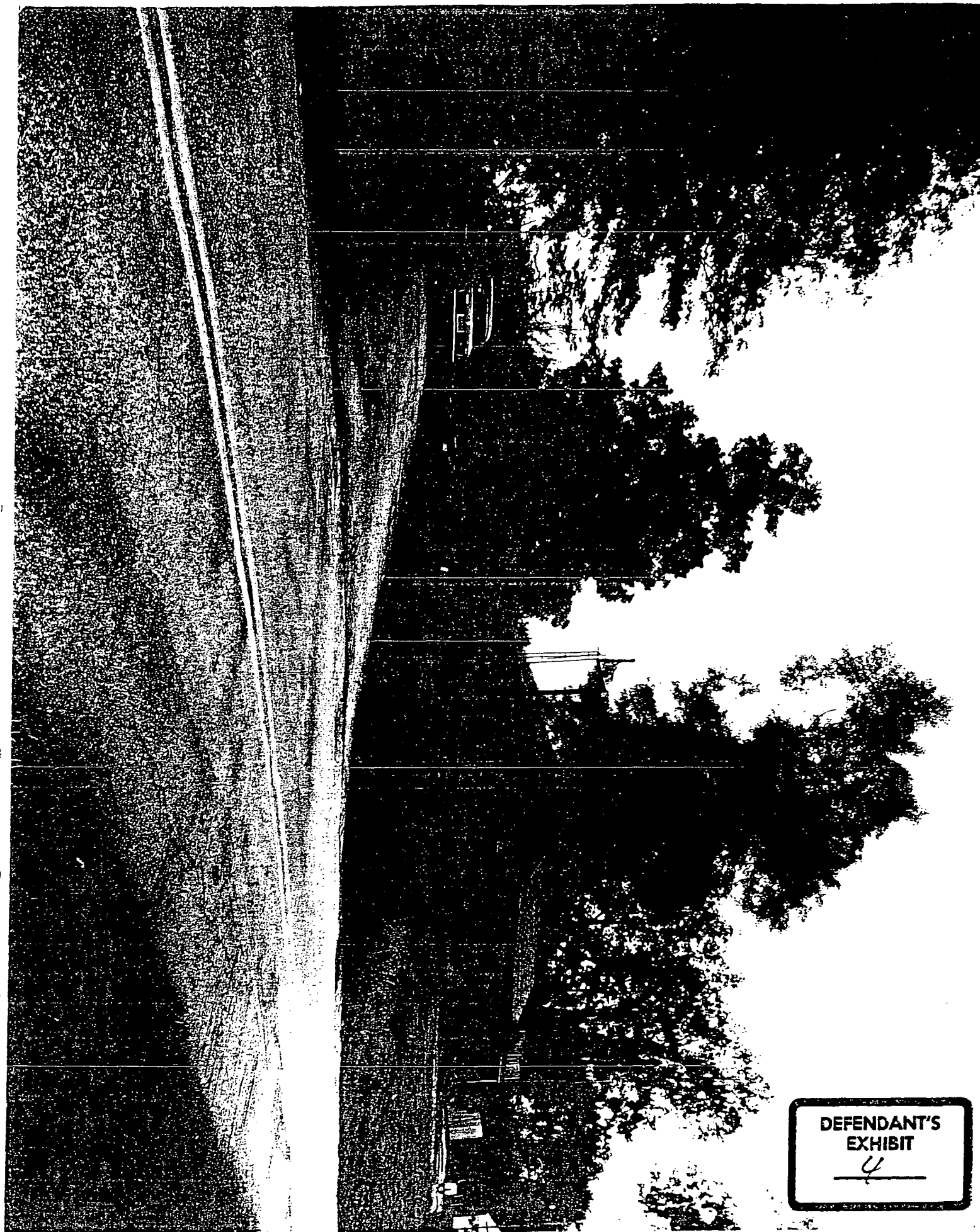
IN THE PRESENCE OF:

C. E. Jones
[Signature]

B. R. O'Neill
Ansel M. Hawkins
J. A. Barry

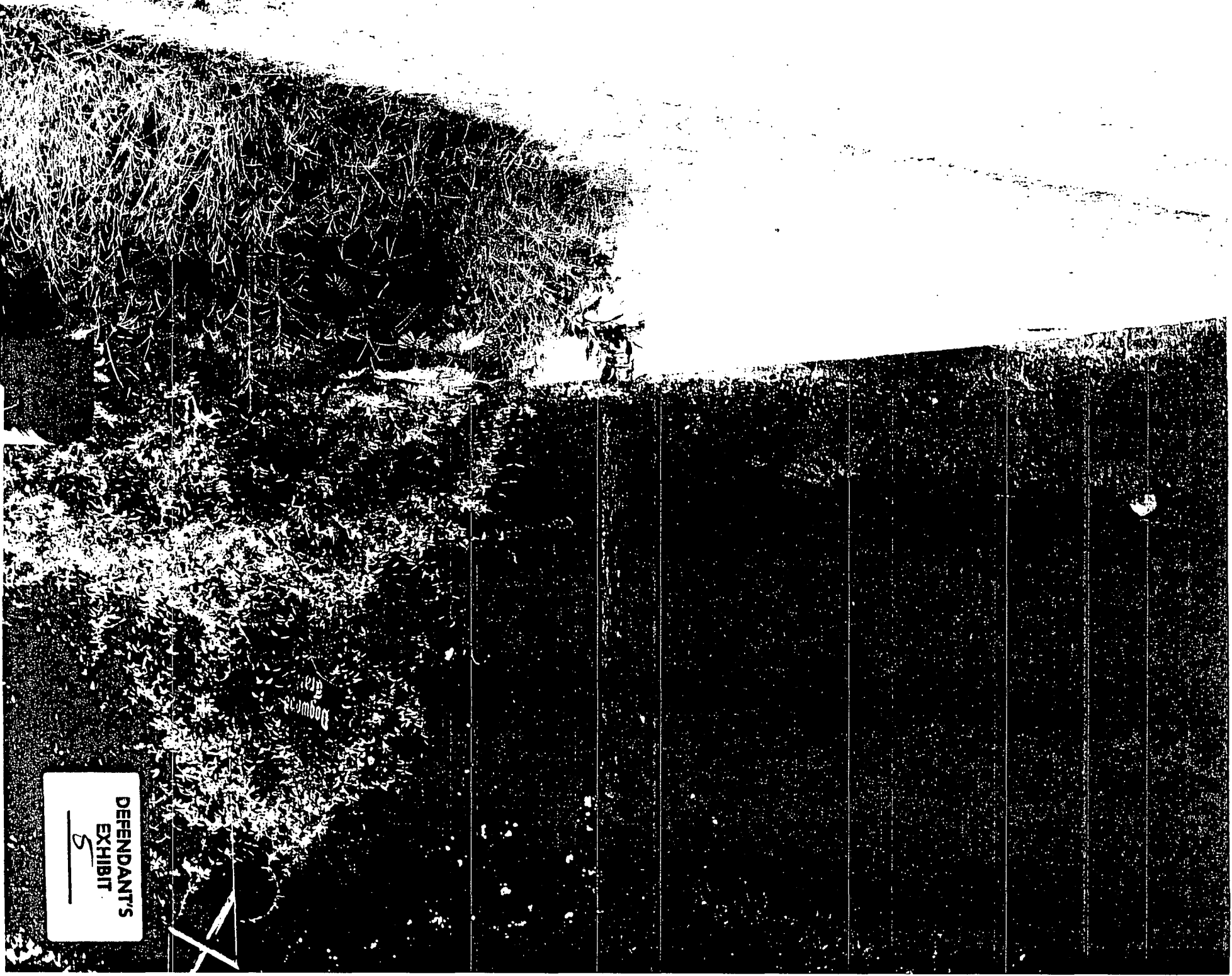
DEFENDANT'S
EXHIBIT

3



DEFENDANT'S
EXHIBIT

4



DEFENDANT'S
EXHIBIT

5



DEFENDANT'S
EXHIBIT

6

KNOW ALL MEN BY THESE PRESENTS That ALEENE L. PARHAM
H. M. C.

in the State aforesaid.

in consideration of the sum of Ten and No/100ths-----
(\$10.00)----- DOLLARS.

to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto CHARLES W. BELL AND ANNE W. BELL:

All that piece, parcel or lot of land situate, lying and being on the North-western side of View Point Drive, Greenville Township, Greenville County, State of South Carolina, and having according to a plat prepared by Piedmont Engineers and Architects, dated June 1, 1964, entitled "Property of Charles W. Bell", the following metes and bounds:

BEGINNING at an iron pin on the Northwestern side of View Point Drive at the joint corner of the premises herein described and property now or formerly of the grantees herein, and running thence with the said property now or formerly of the grantees herein N. 32-30 W. 102.3 feet to an iron pin; thence N. 57-30 E. 15.7 feet to an iron pin on the Western side of a 30 foot private road [Dogwood Trail]; thence with the Western side of a 30 foot private road [Dogwood Trail] S. 10-51 E. 20 feet to an iron pin; thence continuing with the Western side of said 30 foot private road [Dogwood Trail] S. 26-48 E. 84.1 feet to the point of beginning.

This is a portion of the property conveyed to the grantor herein by deed of Julia Bell Singleton, dated April 16, 1955, and recorded in the R.M.C. Office for Greenville County, South Carolina, in Deed Book 676 at page 350.

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 grantee(s) hereinabove named, their Heirs and Assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s) Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and the grantee's(s) Heirs and Assigns against the grantor(s) and grantor's(s) Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor's(s) hand and seal this 19th day of August in the year of our Lord One Thousand Nine Hundred and Sixty-four.

Signed, Sealed and Delivered in the Presence of

Betty E. Dendy
Fred D. Cox, Jr.

Aleene L. Parham (Seal)
Aleene L. Parham (Seal)
(Seal)

STATE OF SOUTH CAROLINA } Personally appeared before me Betty E. Dendy
County of GREENVILLE } and made oath that she saw the within named grantor(s) sign, seal and as her
act and deed deliver the within written deed, and that s he, with Fred D. Cox, Jr. witnessed the execution thereof.

Sworn to before me this 19th day of August, A. D. 1964
Fred D. Cox, Jr. (Seal)
Notary Public for South Carolina

Betty E. Dendy

STATE OF SOUTH CAROLINA

County of _____ I,

RENUNCIATION OF DOWER - NOT NECESSARY
GRANTOR WOMAN

do hereby certify unto all whom it may concern, that Mrs. wife of the within named

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 grantee(s). 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 _____

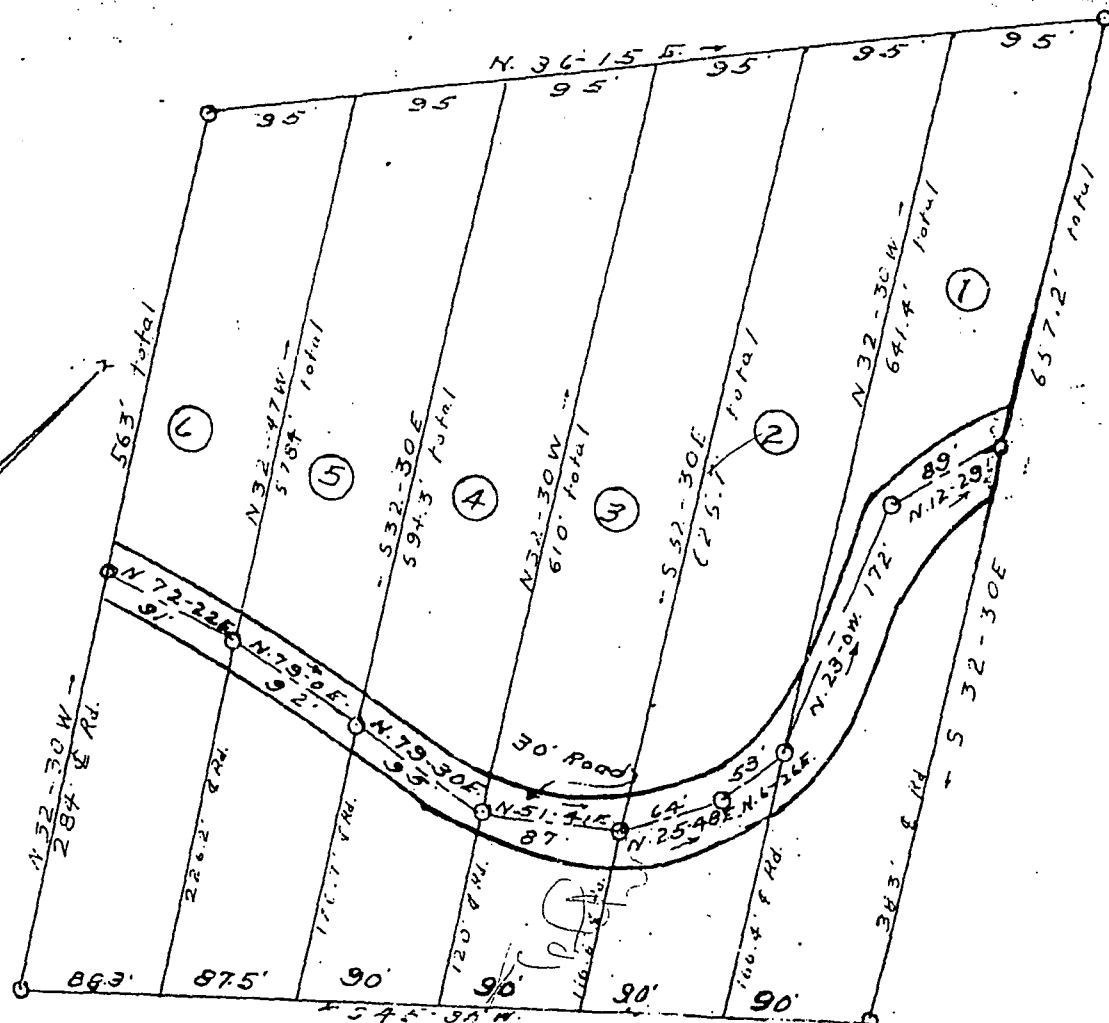
day of _____, A. D. 19 _____

Notary Public for South Carolina

Recorded May 29th. 1950 at 2:52 P. M. #13186

53

"ROAD NAME"
VIEW POINT DRIVE



MAY 29 1950

PROPERTY OF
J. E. GILLIAM, JR.
PINEY MOUNTAIN
GREENVILLE COUNTY-S-C-
SCALE 1" = 100' MAY-1950.

W. J. Riddle - Surveyor

FILED
GREENVILLE CO. S.C.
MAY 29 2 52 PM 1950
CLIFF FARMINGTON
R.P.C.

NOTE Iron Pins at
all corners

DEFENDANT'S
EXHIBIT
8

JUL 22 12 15 PM 1965

BOOK 778 PAGE 209

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLEOLIVER B. BARKER
N.C.

KNOW ALL MEN BY THESE PRESENTS, that WE, CHARLES W. BELL AND ANNE W. BELL,

In consideration of ONE (\$1.00) DOLLAR, AND AS A PART OF THE CONSIDERATION FOR DEED DEED EXECUTED SIMULTANEOUSLY HEREWITH BY LOUIS P. BATSON, JR., TO CHARLES W. BELL AND ANNE W. BELL, we hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

LOUIS P. BATSON, JR., HIS HEIRS AND ASSIGNS:

A RIGHT-OF-WAY TWENTY (20) FEET IN WIDTH, FOR THE PURPOSE OF INGRESS AND EGRESS, LEADING FROM THE REAR PORTION OF LOT 4, SHOWN ON A PLAT OF PROPERTY OF J. E. GILLIAM, JR., RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN PLAT BOOK T AT PAGE 239, ACROSS THE REAR PORTIONS OF LOTS 3 AND 2, AND THEN IN A SOUTHEASTERLY DIRECTION THROUGH LOT 1, AND THROUGH A STRIP OF LAND DESCRIBED IN A DEED FROM ALEENE L. PARKMAN TO CHARLES W. BELL AND ANNE W. BELL, DATED AUGUST 19, 1964, AND RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN DEED BOOK 716 AT PAGE 521, INTO DOGWOOD DRIVE. LOTS 1, 2, AND 3 ARE ALL SHOWN ON THE ABOVE MENTIONED PLAT OF PROPERTY OF J. E. GILLIAM, JR.

THE AFOREMENTIONED RIGHT-OF-WAY SHALL BE IN SUCH SPECIFIC LOCATION (NOT INCONSISTENT WITH THE ABOVE GENERAL LOCATION) AS SHALL LEAST INTERFERE WITH THE USE AND DEVELOPMENT OF SAID LOTS BY THE GRANTORS, AND, AT THE ELECTION OF THE GRANTORS, THE USE OF SAID RIGHT-OF-WAY BY THE GRANTEE SHALL BE IN COMMON WITH THE GRANTORS.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)' heirs or successors and assigns forever. And, the grantor(s) do hereby bind the grantor(s) and the grantor(s)' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor(s) hand(s) and seal(s) this 21st day of JULY 1965.

SIGNED, sealed and delivered in the presence of:

Roma K. Johnson
Lafayette Bell

CHARLES W. BELL

(SEAL)

(SEAL)

ANNE W. BELL

(SEAL)

(SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE

Personally appeared the undersigned witness and made oath that (she) saw the within named grantor(s) sign, seal and as the grantor(s)' act and deed deliver the within deed and that (she, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 21st day of JULY 1965.

Roma K. Johnson
Notary Public for South Carolina.

Lafayette Bell

STATE OF SOUTH CAROLINA
COUNTY OF

RENUNCIATION OF DOWER

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, 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 whomsoever, renounce, release and forever relinquish unto the grantor(s) and the grantor(s)' heirs or successors and assigns, all her interest and estate, and all her right and claim of dower of, in and in all and singular the premises within mentioned and released.

GIVEN under my hand and seal this

day of 10.

54

Notary Public for South Carolina.

RECORDED this 22nd day of July 1965 at 11:42 P. M. No. 1287

DEFENDANT'S
EXHIBIT

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IN THE COURT OF COMMON PLEAS

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responses contained herein.

The following responses (and any further responses to these requests for admission or their subject matter) are made expressly without acknowledging the materiality or relevance of the discovery requests, or that the requests are in any way reasonably calculated to lead to the discovery of admissible evidence.

GENERAL STATEMENT

The responses set forth below constitute the best information presently available to Plaintiff. However, Plaintiff has not completed discovery and/or investigation of the facts relevant to this lawsuit, nor has Plaintiff completed preparation of this case for trial. Accordingly, the responses set forth herein are provided without prejudice to Plaintiff's right to amend, supplement or change the responses if and when additional, different, or more accurate information becomes available.

GENERAL OBJECTIONS

1.

Plaintiff responds to Defendant's Request to Admit in accordance with SCRCP 26 and 36, giving all terms their usual and customary meaning. Plaintiff objects to each of Defendant's Requests to the extent they seek to impose obligations beyond those required by SCRCP 26 and 36.

2.

Plaintiff objects to Defendant's Requests to the extent said Requests would require Plaintiff to supply information which is irrelevant and immaterial to the subject matter of this action, and which is not admissible or reasonably calculated to lead to the discovery of

admissible evidence on the grounds that said Requests exceed the scope of permissible discovery under SCRCP 26 and 36.

3.

Plaintiff objects to Defendant's Requests that seek admissions of legal conclusions (as opposed to the application of law to specific facts) and/or central or ultimate facts in dispute on the grounds that such Requests are beyond the scope of permissible discovery under SCRCP 26 and 36.

PLAINTIFF'S RESPONSES

Subject to the General Statement and Objections stated above, which are hereby incorporated by reference into each of the following responses to Requests 1 through 14, and without waiving the same, Plaintiff responds to Defendant's Second Request to Admit as follows:

REQUEST NO. 1: From April 22, 1952 to July 5, 1954, Dogwood Drive was owned by Greenville County.

RESPONSE: It is admitted that at least a portion of what was commonly referred to as Dogwood Drive was owned by Greenville County during this time frame.

REQUEST NO. 2: Since July 5, 1954, Dogwood Drive has been a private driveway contained on property owned by C.E. Singleton and Julia Belle Singleton and later Doris L. Howell.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, it is admitted that Doris L. Howell owns much of what was

commonly known as Dogwood Drive and that C.E. Singleton and Julia Belle Singleton are her predecessors in interest.

REQUEST NO. 3: At the time the Instrument was executed, Plaintiff did not have an easement across or over Dogwood Drive, which was contained on the Singleton property.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, it is admitted that Batson did not possess an easement over the portion of what was commonly referred to as Dogwood Drive located on the Singleton property at the time the Instrument was executed.

REQUEST NO. 4: At the time the Instrument was executed, Plaintiff did not have an easement across or over Dogwood Drive, which is contained on the Howell property.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, it is denied as worded because, upon information and belief, Doris Howell did not own any portion of what is commonly known as Dogwood Drive at the time the Instrument was executed.

REQUEST NO. 5: Since the Instrument was executed, Plaintiff has attempted to obtain from C.E. Singleton and/or Julia Belle Singleton an easement across or over Dogwood Drive, which was contained on the Singleton property.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, the request is denied.

REQUEST NO. 6: Since the Instrument was executed, Plaintiff has attempted to obtain from Doris L. Howell an easement across or over Dogwood Drive, which is contained on the Howell property.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, it is admitted that Plaintiff has had discussions with Doris L. Howell regarding an easement over the property she owns on View Point Drive.

REQUEST NO. 7: Plaintiff has never obtained an easement across or over Dogwood Drive, which was contained on the Singleton property.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, it is admitted that Plaintiff has never obtained an easement over the portion of Dogwood Drive contained on the property owned by C.E. Singleton and/or Julia Belle Singleton on View Point Drive.

REQUEST NO. 8: Plaintiff has never obtained an easement across or over Dogwood Drive, which is contained on the Howell property.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without waiving the foregoing objection, it is admitted that Plaintiff has never obtained an easement over the portion of Dogwood Drive contained on the Howell property.

REQUEST NO. 9: At no time since the Instrument was executed has Plaintiff utilized the easement rights purportedly granted by the Instrument.

RESPONSE: Denied as written. Plaintiff has attempted to exercise his easement rights, but has been obstructed by Defendant and its predecessors in interest, Tad and Maureen Mallory.

REQUEST NO. 10: At no time since the Instrument was executed has Plaintiff been allowed to utilize the easement rights purportedly granted by the Instrument.

RESPONSE: Denied.

REQUEST NO. 11: Plaintiff is requesting that the court move the location of the easement purportedly granted by the Instrument.

RESPONSE: Denied.

REQUEST NO. 12: Plaintiff contends the easement purportedly granted by the Instrument is contained entirely on Defendant's property and does not require the use of Dogwood Drive.

RESPONSE: Plaintiff objects to this Request on the grounds that it is compound, requesting admission of multiple matters that are not separately set forth. Subject to and without

waiving the foregoing objection, it is admitted that the Instrument does not apply to property not owned by Defendant.

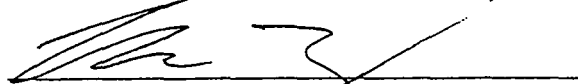
REQUEST NO. 13: The easement purportedly granted by the Instrument was intended to provide Plaintiff access to Dogwood Drive.

RESPONSE: Denied.

REQUEST NO. 14: The easement purportedly granted by the Instrument was intended to provide Plaintiff access to Viewpoint Drive.

RESPONSE: It is admitted that the Instrument provides "ingress and egress" from the property owned by Plaintiff at 118 View Point Drive, and that the only means of providing ingress and egress across the Defendant's property is to View Point Drive.

HAYNSWORTH SINKLER BOYD, P.A.



Calvin T. Vick, Jr., SC Bar No. 68187
Christopher B. Major, SC Bar No. 72872
75 Beattie Place
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200

Attorneys for Plaintiff

July 1, 2009
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Louis P. Batson, Jr.,

Plaintiff,

vs.

Northside Traders, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2008-CP-23-6607

**AFFIDAVIT OF
TAD MALLORY**

Personally appeared before me, Tad Mallory, who first being duly sworn stated as follows upon personal knowledge or upon information and belief:

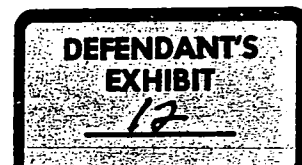
1. On September 8, 2005, I purchased lots number 1, 2, and 3 on the Gilliam plat; and that property and an alleged easement affecting that property is at issue in this case.
2. On January 12, 2007, I granted the same property to Northside Traders, LLC. I am the managing member of Northside Traders, LLC.
3. At the time of both transactions referenced above, I was informed and believed that the alleged easement at issue in this case was not enforceable and was void.
4. The fact that the alleged easement has not been declared unenforceable and void is a significant burden that dramatically affects the value and marketability of the property-far more than I understood or appreciated at the time I purchased the property.

7/17/09
Date

Tad Mallory
Tad Mallory

SWORN TO AND SUBSCRIBED before me this
17 day of July, 2008.

Wong Chunde
Notary Public for South Carolina
My Commission Expires: 4/27/19



1 inch = 30 ft

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

Louis P. Batson, Jr., ... Respondent,

v.

Northside Traders, LLC, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date

3/17/10



Douglas A. Churdar, Esq.
DOUGLAS A. CHURDAR, PC
712 East Washington Street
Greenville, SC 29601
(864) 233-0203

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

LOUIS P. BATSON, JR.

RESPONDENT

NORTHSIDE TRADERS, LLC

APPELLANT

FINAL BRIEF OF RESPONDENT

Calvin T. Vick, Jr., SC Bar No. 68187
Christopher B. Major, SC Bar No. 72872
HAYNSWORTH SINKLER BOYD, P.A.
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
FACTS	2
ARGUMENT	5
I. Trial Court Correctly Construed the Express Easement and Judgment for Respondent Should Be Affirmed.....	5
II. No Basis for Finding Respondent's Easement Was Void or Extinguished	10
III. Trial Court Did Not Relocate Respondent's Easement	11
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<u>American Oil Co. v. Leaman</u> , 101 S.E.2d 540 (Va. 1958)	11
<u>Atlantic and NCRR v. Way</u> , 90 S.E. 937 (N.C. 1916).....	11
<u>Charleston and Western Carolina Railway Co. v. Joyce</u> , 231 S.C. 493, 99 S.E.2d 187 (1957)	7
<u>Frances L. Austin Family Ltd. Part. v. City of Highpoint</u> , 630 S.E.2d 37 (N.C. App. 2006)	11
<u>Gardner v. Mozingo</u> , 293 S.C. 23, 358 S.E.2d 390 (1987).....	5-6
<u>Goodwin v. Johnson</u> , 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003).....	12
<u>Lighthouse Tennis Club Vill. Horizontal Prop. Regime LXVI v. South Island Pub. Serv. Dist.</u> , 355 S.C. 529, 586 S.E.2d 146 (Ct. App. 2003).....	6
<u>Pyramid Development, LLC v. D&J Assoc.</u> , 553 S.E.2d 725 (Va. 2001).....	11
<u>Sheppard v. Justin Enterprises</u> , 373 S.C. 518, 646 S.E.2d 177 (Ct. App. 2007) ...	12
<u>South Carolina Pub. Serv. Authority v. Ocean Forest, Inc.</u> , 275 S.C. 552, 273 S.E.2d 773 (1981)	6

Constitution, Statutes and Rules

Rule 56(c), SCRCP	6
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STATEMENT OF THE CASE

Except as clarified below, Respondent agrees with Appellant's Statement of the Case. In his Complaint, Respondent prayed for the following relief: (1) for an order declaring that he has a valid easement for a service road over and through the Appellant's property for the purpose of ingress and egress and ultimately terminating at View Point Drive (the public road); (2) for an order declaring that Appellant is prohibited from interfering with Respondent's right to install and use such service road; (3) for a permanent injunction prohibiting Appellant from interfering with Respondent's right to install and use such service road; and (4) for such other and further relief as the court deems just and proper.

FACTS

This action concerns a dispute as to whether a recorded instrument, which grants Respondent, his heirs and his assigns a right-of-way over and through the Appellant's property for the purpose of ingress and egress, is valid and enforceable. Respondent sought a declaration that the express easement is valid and enforceable, and that his right-of-way ultimately terminates at View Point Drive, the only public road in the area that provides ingress and egress to and from the subject properties.

On July 21, 1965, Charles and Anne Bell (the "Bells") granted Louis P. Batson, Jr. ("Respondent"), his heirs and assigns an express easement over and through the Bells' property for the stated purpose of ingress and egress. The easement instrument ("Instrument") was properly recorded in the RMC Office for Greenville County, South Carolina, on July 22, 1965, at Deed Book 778, Page 209. (R. p. 17) The Appellant and its principals, Tad and Maureen Mallory (the "Mallorys"), had actual and constructive notice of the recorded Instrument when the Mallorys, and subsequently the Appellant, acquired title to the Bells' property. (R. p. 41) (Response No. 3) Appellant is the current owner of the Bells' property, having received title from the Mallorys by a deed dated January 12, 2007. (R. pp. 31-34) The Mallorys obtained title to the property from Mr. Bell's estate by a deed dated September 8, 2005. (R. pp. 35-38)

As stated in the Instrument, the Bells' grant of the easement was "part of the consideration for a deed executed simultaneously" by Respondent, through which Respondent sold Lot 3 (part of the servient tenement) to the Bells. (R. p. 17) At the time the Instrument was executed and recorded (and upon the simultaneous sale of Lot 3 to the Bells), Respondent owned the real property described in the Instrument as Lot 4 (a/k/a 118

View Point Drive). The Bells owned the adjacent real property, which is described in the Instrument as Lots 1, 2 and 3, as well as the "strip of land" described in the Instrument. At the time the Instrument was executed and recorded and ever since that time, Respondent has resided in the house located at 118 View Point Drive, with a private driveway located on his property running from the house to View Point Drive. Respondent acquired the easement across the Bells' property as an alternate means of ingress and egress to his property, rather than as a matter of legal necessity. The Bells' property was, and continues to be, vacant and undeveloped. The Instrument provides, in relevant part:

"Know all men by these presents, that we, Charles W. Bell and Anne W. Bell, in consideration of One (\$1.00) Dollar, and as a part of the consideration for a deed executed simultaneously herewith by Louis P. Batson, Jr., to Charles W. Bell and Anne W. Bell, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto Louis P. Batson, Jr., his heirs and assigns:

A right-of-way twenty (20) feet in width, **for the purpose of ingress and egress**, leading from the rear portion of Lot 4, shown on a plat of property of J.E. Gilliam, Jr., recorded in the RMC Office for Greenville County, South Carolina, in Plat Book T at page 239, across the rear portions of Lots 3 and 2, and then in a Southeasterly direction through Lot 1, and through a strip of land described in a deed from Aleene L. Parham to Charles W. Bell and Anne W. Bell, dated August 19, 1964, and recorded in the RMC Office for Greenville County, South Carolina, in Deed Book 756 at page 521, into Dogwood Drive. Lots 1, 2, and 3 are all shown on the above-mentioned plat of Property of J.E. Gilliam, Jr.

The aforementioned right-of-way shall be in such specific location (not inconsistent with the above general location) as shall least interfere with the use and development of said lots by the grantors, and, at the election of the grantors, the use of said right-of-way by the grantee shall be in common with the grantors."

(R. p. 17) (emphasis added). Thus, the parties made it known that the general purpose of the easement was ingress and egress through the Bells' property, that the parties would have flexibility in determining the specific location of the right-of-way, and that the use of the

right-of-way would be in common with the grantor, if he so desired.

At the time the Instrument was executed and recorded and ever since that time, View Point Drive has been the only public road in the vicinity of the parties' properties that provides access for ingress and egress to and from the properties. (R. pp. 42-43) (Response Nos. 7-12, 14-15) At the time the Instrument was executed and recorded and ever since that time, the road described in the Instrument as Dogwood Drive (a/k/a Dogwood Trail) has been a private road owned by a third party, and neither Respondent, nor the Bells, nor the Bells' successors in interest, including Appellant, have had a legal right to use Dogwood Drive.¹ (R. pp. 58-60) (Response Nos. 3-4, 7-8) To the south, Dogwood Drive intersects with the public road, View Point Drive, and to the north, Dogwood Drive only provides access to private property owned by a third party (Singletons, then Parham, then Howell). The western-most edge of Dogwood Drive comes to a point with both the Appellant's eastern-most property line and View Point Drive. The spatial relationship between the relevant property lines, lots, Dogwood Drive and View Point Drive is depicted in a Survey for Tad Mallory, dated July 15, 2005.² (R. p. 62)

Soon after the Mallorys (principals of Appellant) acquired the Bells' property, Respondent sought to reach an agreement with the Mallorys concerning the *specific* location

¹ Since 1954, the property to the east of the Bells' property (opposite Respondent's property), including Dogwood Drive, has been owned by C.E. Singleton and Julia Belle Singleton, Aleene L. Parham or Doris L. Howell, who is the current owner of such property. (R. pp. 57-58) (Response No. 2) The Singletons transferred title to Dogwood Drive to Greenville County in 1952, but the County transferred it back to the Singletons in 1954 and it has been a private road ever since. (R. pp. 46, 48)

² This Survey depicts the following, from left to right (west to east): Respondent's property (northern portion of Lot 4); Appellant's property (northern portions of Lots 3, 2 and 1, plus the "strip of land" described in the easement Instrument, identified in the Survey as "568 sq. ft., 0.013 acres"); third party's property, including Dogwood Trail (private road). View Point Drive, the only public road in the area, is also shown.

of the right-of-way, as contemplated by the terms of the Instrument. Respondent's attempts to reach agreement as to the *specific* location of the right-of-way continued after the Mallorys transferred title to the property to Appellant. The Mallorys and the Appellant refused to agree upon a specific location for the right-of-way, claiming that the easement was void.

ARGUMENT

I. Trial Court Correctly Construed the Express Easement and Judgment for Respondent Should Be Affirmed

At the hearing on the parties' cross-motions for summary judgment, the parties' counsel agreed that there are no genuine issues of material fact, and the interpretation of the Instrument is a matter of law for the trial court. (R. p. 28, lines 3-8) See Gardner v. Mozingo, 293 SC 23, 25, 358 S.E.2d 390, 392 (1987) ("The construction of a clear and unambiguous deed is a question of law for the court."). When all is said and done, the material evidence in this case consists of (1) the terms of the Instrument (e.g. "for the purpose of ingress and egress") and (2) the fact that View Point Drive is, and at all relevant times has been, the only road in the vicinity of the properties that provides a means of ingress and egress to and from the properties, which is admitted by Appellant. In light of these undisputed facts, the trial court properly construed the Instrument, and properly granted summary judgment to the Respondent. "The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself. When intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it. The instrument is not thereby varied or contradicted

but is explained or corrected.” Id. at 392 (“Summary judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRC.” Id. at 391).

In determining the parties’ rights and obligations under the Instrument, the court must give effect to the express intentions of the parties to the Instrument, where possible. “The general rule is that the character of an express easement is determined by the nature of the right and intention of the parties creating it. To determine the purpose of the easement, we must evaluate the intention of the parties when the easement was granted.” Lighthouse Tennis Club Vill. Horizontal Prop. Regime LXVI v. South Island Pub. Serv. Dist., 355 S.C. 529, 534, 586 S.E.2d 146, 148 (Ct. App. 2003) (citations omitted). “Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense.” South Carolina Pub. Serv. Authority v. Ocean Forest, Inc., 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). “The intention of the grantor must be found within the four corners of the deed.” Gardner, 293 S.C. at 25, 358 S.E.2d at 392.

In determining the grantor’s intent, the instrument “**must be construed as a whole and effect given to every part** if it can be done consistently with the law.” Id. at 25, 391-92 (emphasis added). The trial court’s construction does just that, reading together the terms stating its general purpose (to provide ingress and egress), the description of the “general location” of the right-of-way, and the terms that clearly indicate the “specific location” of the easement is not fixed but the parties are afforded flexibility in determining the “specific location” of the right-of-way. In stark contrast, Appellant’s construction narrowly focuses on a few clauses taken out of context.

Appellant argues the Instrument only grants “a right of way...for the purpose of ingress and egress...through a strip of land...into Dogwood Drive.” (Initial Brief of Appellant p. 6) A plain reading of the full text of the Instrument clearly reveals that the phrase “for the purpose of ingress and egress” is not directly linked and limited to the phrases “through a strip of land” and “into Dogwood Drive.” The former phrase states the general purpose of the easement. The latter phrases are merely parts of the description of the “general location” of the right-of-way, “leading from the rear portion of Lot 4...” (R. p. 17) To suggest otherwise ignores the language and punctuation in the subject paragraph, as well as the terms in the subsequent paragraph, which show the “specific location” is not rigidly fixed but is flexible.

Construing the Instrument, **“that interpretation which evolves the more reasonable and probable contract should be adopted, and a construction leading to an absurd result should be avoided.** ‘Instruments should receive a sensible and reasonable construction and not such a construction as will lead to absurd consequences or unjust results.’” Charleston and Western Carolina Railway Co. v. Joyce, 231 S.C. 493, 506-07, 99 S.E.2d 187, 194 (1957) (internal citations omitted) (emphasis added). Appellant’s argument that the Instrument should be interpreted to mean the parties intended an “easement to nowhere” is the epitome of a construction leading to an absurd result.

Applying the rules of construction in this case, the clear intent expressed in the Instrument was to give Respondent an easement over and through the Bells’ property **“for the purpose of ingress and egress.”** It is undisputed that View Point Drive is, and at all relevant times has been, the only means of ingress/egress for the subject properties.

It is also undisputed that, at all relevant times (i.e., since before the easement was granted in 1965), the parties and their predecessors have not had access to Dogwood Drive. The grantors' clear intent to give Respondent an easement through their property, "for the purpose of ingress and egress," can only be fulfilled, then and now, if the easement ultimately leads to View Point Drive.

Importantly, the grantors also incorporated sufficient flexibility into the Instrument to allow the location of the right-of-way to be adjusted before it is installed and put to use. The Instrument makes it clear this flexibility was no accident. Appellant focuses almost exclusively on the phrase "into Dogwood Drive" within the description of the easement's location. However, the terms that follow expressly recognize that the Instrument only describes the "general location" of the right-of-way, and that the owners of the affected properties are to determine the "specific location ... as shall least interfere with the use and development of said lots by grantors." These terms must be read in conjunction with the stated purpose of the easement, for ingress and egress, which can only be achieved by ultimately providing access to the public road, View Point Drive. It is not reasonable to conclude the parties intended the rigid, narrow and fruitless interpretation proposed by Appellant if one construes the Instrument as a whole, giving effect to every part of it, and seeks to avoid a construction that leads to an absurd result (such as terminating the right-of-way mere feet away from the only public road).

As the trial court recognized during the hearing and in its Order, the flexibility the parties incorporated into the Instrument can not be ignored:

"[I]t is clear that, had the grantors erected a structure that occupied their 'strip of land,' Respondent would be obligated to proceed around the structure, south through Lot 1 and into View Point Drive, rather than removing the structure to proceed through the 'strip of land.' It is only

reasonable that this same flexibility in the location of the right-of-way was intended to allow Respondent to proceed south through Lot 1 and into View Point Drive if, as here, Respondent does not have access to View Point Drive via Dogwood Drive.”

(R. p. 8; p. 28, line 19 – p. 29, line 16)

Appellant makes clever use of mere allegations, speculation and innuendo in arguing that Respondent ultimately intended to obtain access to Dogwood Drive rather than View Point Drive. Discussing Respondent’s motivation for obtaining the easement, Appellant opines, “In all likelihood, Respondent was under the incorrect assumption that Dogwood Trail was a public road, as it had been previously.” (Initial Brief of Appellant p. 2) This is pure speculation and conjecture by the Appellant. The Respondent never gave testimony in this case, in deposition or otherwise, and there is no evidence that supports Appellant’s speculation. Similarly, Appellant argues that its construction of the Instrument, that the Respondent obtained an “easement to nowhere,” is not necessarily an illogical or unreasonable conclusion. Defending its construction as reasonable, Appellant speculates that Respondent “either incorrectly assumed that Dogwood Trail was still a public road, or he incorrectly assumed that he could eventually obtain an easement over Dogwood Trail at a later date.” (Initial Brief of Appellant p. 7) There is no evidentiary basis for such speculation. Moreover, there is no evidence that the grantors, the Bells, intended to dupe Respondent into accepting an “easement to nowhere” in exchange for the consideration they received.

Appellant also infers that the Respondent sought access to Dogwood Drive, and particularly its northern end, as a means of access to the Piney Mountain Subdivision that was contemplated by the Singletons in 1952. (R. p. 47) The Piney Mountain Subdivision was never developed, as evidenced by the entire property’s current status as the

residential property of Doris Howell. (R. p. 64) In fact, the evidence indicates that the plan for such a subdivision on Dogwood Drive had been abandoned by 1954, when the County deeded Dogwood Drive back to the Singletons (who sold the entire property to Parham, who sold it to Howell). (R. p. 48) The Bells did not grant the easement to Respondent until 1965, some 11 years after the plans for Piney Mountain Subdivision had been abandoned, so there is no evidentiary basis for assuming that Respondent's easement had anything to do with the long-defunct plans for a subdivision on the northern end of Dogwood Drive.

The trial court acknowledged another inconsistency between the terms of the Instrument and Appellant's proposed construction that the parties to the Instrument only intended to give Respondent access to Dogwood Drive:

"Also, if the grantors had ultimately intended to provide Batson ingress and egress into Dogwood Drive, ... there was no reason to direct the easement through the grantors' 'strip of land,' further encumbering the grantors' property. The more direct route from Batson's property into Dogwood Drive is to enter the adjacent owner's property north of the 'strip of land.' In other words, the direction of the right-of-way through the grantors' 'strip of land' further evidences the grantors' ultimate intent to give Batson access to View Point Drive, not Dogwood Drive."

(R. pp. 8-9)

II. No Basis for Finding Respondent's Easement Was Void or Extinguished

Appellant correctly points out that Respondent's easement is not one by necessity. Indeed, the parties to the Instrument clearly knew that Respondent already had one means of ingress and egress to and from his property, the driveway extending from his property to View Point Drive. Rather, the Instrument provides an express easement, an alternate

means of ingress and egress bargained for by Respondent and a matter of contract. Thus, the question of purpose must be answered by the terms of the Instrument, which states it is “for the purpose of ingress and egress,” and that the “specific location” is not fixed. In light of this flexibility, the statement of purpose, and the Appellant’s admission that, at all times relevant to this action, View Point Drive was the only means of access for ingress and egress to the properties, it is clear the easement’s contemplated purpose is ingress and egress through Appellant’s property. This general purpose of ingress and egress is still served today. View Point Drive is still a public road, accessible through Appellant’s property via a right-of-way in the *general* location described in the Instrument.

In light of the above, there is no basis for concluding the easement has been extinguished (or that it was void *ab initio*), and the cases cited by Appellant are clearly distinguishable from the present case. See Frances L. Austin Family Ltd. Part. v. City of Highpoint, 630 S.E.2d 37, 40 (N.C. App. 2006) (easement for sewer line, and maintenance and upkeep of same, abandoned when ceased to be used as sewer line); Atlantic and NCRR v. Way, 90 S.E. 937, 939-40 (N.C. 1916) (easement granted by statute, for building and use of wharves on shores of navigable water, extinguished when the bed of the sound changed to dry land); Pyramid Development, LLC v. D&J Assoc., 553 S.E.2d 725, 728 (Va. 2001) (easement to allow access to spur tracks and siding extinguished when rail service discontinued); American Oil Co. v. Leaman, 101 S.E.2d 540 (Va. 1958) (easement across defendant’s property for ingress/egress to public highway extinguished when public highway closed).

III. Trial Court Did Not Relocate Respondent’s Easement

Appellant also contends the trial court erred by relocating the Respondent’s right-

of-way, but that is not possible considering the “specific location” of the right-of-way has never been fixed to begin with. The terms of the Instrument clearly contemplate that the owners of the dominant and servient tenements will subsequently determine “such specific location (not inconsistent with the above general location) as shall least interfere with the use and development of said lots by the grantors...” (R. p. 17) Respondent attempted to reach an agreement with Appellant with respect to the specific location of the right-of-way, but Appellant refused, claiming the easement was void. Appellant’s refusal to agree to a specific location, which recognizes the stated “purpose of ingress and egress,” is not what the parties to the Instrument contemplated.

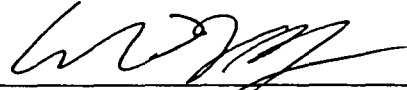
Appellants cite Goodwin v. Johnson, 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003) and Sheppard v. Justin Enterprises, 373 S.C. 518, 646 S.E.2d 177 (Ct. App. 2007) for the rule that “the location of an easement **once selected or fixed** cannot be changed by either the land owner or the easement owner without the other’s consent, which can be express or implied.” Goodwin, 591 S.E.2d at 35 (citation omitted) (emphasis added). This rule clearly contemplates that the location of the easement has, in fact, been **selected or fixed**. Here, that is not the case, because Appellant has refused to agree to a fixed location, contrary to the clear intention of the parties to the Instrument. Appellant, who purchased the property with actual and constructive notice of the Instrument, can not avoid the obligations of the servient tenement by simply refusing to agree to a location. He can not avoid the Respondent’s rights under the Instrument any more than the original grantor, the Bells, could have done. The Instrument clearly contemplates subsequent communication and agreement between the owners of the properties, to determine the specific location of the right-of-way consistent with the Instrument’s terms.

CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court affirm the trial court's Order granting Respondent summary judgment on his claims and causes of action, and denying Appellant's motion for summary judgment.

Respectfully Submitted,

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March 25, 2010

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

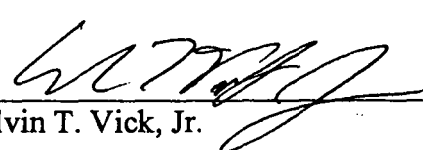
LOUIS P. BATSON, JR..... RESPONDENT,

v.

NORTHSIDE TRADERS, LLC APPELLANT,

CERTIFICATE OF COUNSEL

Counsel for Respondent hereby certifies that the Final Brief of Respondent
complies with Rule 211(b), SCACR.



Calvin T. Vick, Jr.

March 25, 2010
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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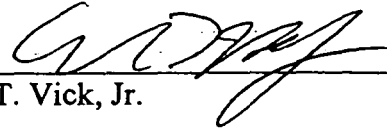
v.

NORTHSIDE TRADERS, LLC APPELLANT,

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Appellant with a copy of the Final Brief of Respondent by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

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Calvin T. Vick, Jr.

March 25, 2010
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

Louis P. Batson, Jr., ... Respondent,

v.

Northside Traders, LLC, ... Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	iii
Statement of the Case.....	1
Facts.....	2
Argument	
I. BECAUSE RESPONDENT’S EASEMENT COULD NEVER BE USED AND THEREFORE NEVER SERVED A PURPOSE, THE EASEMENT WAS VOID <i>AB INITIO</i> OR EXTINGUISHED.....	5
II. THE CIRCUIT COURT ERRED IN RELOCATING RESPONDENT’S EASEMENT.....	8
Conclusion.....	10

TABLE OF AUTHORITIES

CASES

<u>American Oil Co. v. Leaman,</u> 199 VA 637, 101 S.E. 2d 540 (Va. 1958).....	7
<u>Atlantic and NCRR v. Way,</u> 172 NC 774, 778, 90 S.E. 937, 939 (1916).....	7
<u>Binkley v. Rabon Creek Watershed Conservation Dist of Fountain Inn,</u> 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001).....	5
<u>Francis L. Austin Family Limited Partnership v. City of Highpoint,</u> 630 SE 2d 37, 40 (NC App. 2006).....	7
<u>Gardner v. Mozingo,</u> 293 S.C.23, 25,358 S.E.2d 390-392 (1987).....	5
<u>Pyramid Development, LLC v. D&J Associates,</u> 262 VA 750, 553 S.E. 2d 725, 728 (Va. 1958).....	7
<u>Wayburn v. Smith,</u> 270 S.C. 38, 41, 239 S.E. 2d 890, 892 (1977).....	5
<u>Goodwin v. Johnson</u> 357 SC 49, 591 S.E. 2d 34, (Ct App 2003).....	8
<u>Sheppard v. Justin Enterprises</u> 646 S.E. 2d 177 (Ct App 2007).....	9

OTHER AUTHORITIES

Black's Law Dictionary, 5 th ed (1979).....	6
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STATEMENT OF ISSUES ON APPEAL

- I. Whether Respondent's easement was void *ab initio* or extinguished in that it could never be used and, therefore, never served a purpose.
- II. Whether the circuit court erred in relocating Respondent's easement.

STATEMENT OF THE CASE

On August 29, 2008, Respondent filed a Complaint in the Circuit Court for Greenville County seeking: 1) an order declaring that he held a valid easement across Appellant's property; and 2) a permanent injunction prohibiting Appellant from interfering with, frustrating, or disturbing his right to install and use a road at a location consistent with the easement.

On October 15, 2008, Appellant filed an Answer and Counterclaim seeking: 1) denial of relief sought by Respondent; and 2) an order declaring that the easement was either void *ab initio* or extinguished.

On November 5, 2008, Respondent filed a Reply to Appellant's Counterclaim.

After full discovery, both parties agreed that no factual disputes exist. Accordingly, on May 5, 2009, Appellant filed a Motion for Summary Judgment. On May 7, 2009, Respondent filed a Motion for Summary Judgment.

The Motions for Summary Judgment were heard at the Circuit Court, on September 1, 2009. The Circuit Court denied Appellant's Motion and granted Respondent's Motion. The formal order was filed October 2, 2009.

On October 22, 2009, Appellant timely filed a Notice of Appeal to the South Carolina Court of Appeals.

FACTS

1. Factual Overview

In 1965, Respondent transferred one residential lot to his neighbors, Charles and Anne Bell. In exchange, he obtained a purported easement over and through three lots owned by the Bells, which are now owned by Appellant. The easement provided him “a right of way...for the purpose of ingress and egress...through a strip of land...into Dogwood Drive.” (The road is Dogwood Trail). However, Respondent had no legal right to use Dogwood Trail then, and he has no legal right to use Dogwood Trail today. In effect, Respondent obtained a “road to nowhere”. In all likelihood, Respondent was under the incorrect assumption that Dogwood Trail was a public road, as it had been previously. In any event, **Respondent has never constructed or used the easement.**

Respondent now takes the position that the easement was intended to provide him ingress and egress into View Point Drive, an unlikely construction since Respondent has always had ingress and egress into View Point Drive. Respondent resides at 118 View Point Drive, and his driveway is connected to View Point Drive. By insisting that the easement should provide ingress and egress into an entirely different road than the one named in the easement, Respondent asked the Circuit Court to do far more than apply the applicable rules of construction. He asked the Circuit Court to rewrite the easement and/or relocate the easement. The Circuit Court should have declared the easement void *ab initio* or extinguished, because it never served or no longer serves any purpose. Instead, the Circuit Court relocated the easement.

2. Full Factual Background

In 1952, Dogwood Trail was an unnamed road on property owned by Julia B. Singleton. (Dogwood Trail is not now nor has it ever been located on property owned by Appellant or its

predecessors -in- interest .) At that time, Ms. Singleton was in the process of developing the Piney Mountain Subdivision. (R. p. 47). On April, 22, 1952, Ms. Singleton deeded the unnamed road to Greenville County (R. p. 46). On July 8, 1952, the Greenville County Planning and Zoning Commission approved Ms. Singleton's plat for the Piney Mountain Subdivision. (R. p. 47) On July 22, 1952, Ms. Singleton recorded the plat. (R. p. 47) She designated the road "Dogwood Trail." As a public road, Dogwood Trail was intended to provide ingress and egress to five (5) lots in the Piney Mountain subdivision. (R. p. 47)

For unknown reasons, the Piney Mountain Subdivision was never successfully developed. On July 9, 1954, Greenville County deeded Dogwood Trail *back* to Ms. Singleton. (R. p. 48) Although Dogwood Trail is no longer a public road, the sign at its intersection with View Point Drive is a reminder that it once was public. (R. pp. 49-51)

On April 16, 1955, Ms. Singleton deeded her property to Aleene L. Parham. On August 19, 1964, less than a year before Respondent obtained his easement, Ms. Parham deeded a piece of her property – "a strip of land" - to Respondent's neighbors, Charles and Anne Bell. (R. p. 52). The "strip of land" was immediately west of Dogwood Trail. This is the "strip of land" identified in the easement and is best illustrated on a survey for Tad Mallory, a member of Appellant and its predecessor -in- interest. (R. p. 62).

Meanwhile, Respondent resided near the defunct Piney Mountain Subdivision. Specifically, Respondent resided on Lot 4 as shown on the Gilliam plat (R. p. 53). Lot 4 on the Gilliam plat has an address of 118 View Point Drive and provides ingress and egress into View Point Drive. Prior to July 21, 1965, Respondent also owned Lot 3 on the Gilliam plat. Respondent's neighbors, the Bells, owned Lots 1 and 2 on the Gilliam plat.

On July 21, 1965, Respondent transferred to the Bells Lot 3 on the Gilliam plat. After that, the Bells owned Lots 1, 2, and 3 on the Gilliam plat. These lots would eventually be purchased by Appellant. (R. p. 62) (Lot 1 on the Gilliam plat is directly adjacent to Ms. Singleton's/Ms. Parham's western most property line.) On that same date, Respondent obtained from the Bells an easement that provided him a "right of way...for the purpose of ingress and egress...through a strip of land...into Dogwood Drive." (R. p. 54)

Eventually, Doris Howell obtained the Piney Mountain Subdivision property, including Dogwood Trail. She owns it to this day.

No one who has owned the property containing Dogwood Trail has ever granted an easement allowing Respondent to use Dogwood Trail. (R. pp. 59-60, Response No. 7 and 8) This despite the fact that Respondent has had discussions with Ms. Howell even during the pendency of this litigation for the purpose of obtaining such an easement over Dogwood Trail. **For approximately 45 years, Respondent has not constructed or used his purported easement.** (R. p. 59, Response No. 6).

On September 8, 2005, Tad Mallory purchased Lots 1, 2, and 3 on the Gilliam plat. These lots are shown on a survey for Mr. Mallory, which also shows the location of the lots relative to the property owned by Respondent and Dogwood Trail (R. p. 62). Mr. Mallory is a member of Appellant. On January 12, 2007, Mr. Mallory granted Lots 1, 2, and 3 on the Gilliam plat to Appellant. Appellant was informed and believed that Respondent's purported easement was either void *ab initio* or extinguished and, thus, was not enforceable. (R. p. 63)

ARGUMENT

I. BECAUSE RESPONDENT'S EASEMENT COULD NEVER BE USED AND THEREFORE NEVER SERVED A PURPOSE, THE EASEMENT WAS VOID AB INITIO OR IS EXTINGUISHED

As a backdrop to both arguments, it is significant that Respondent does not contend his easement is one of necessity. (R. p. 25, lines 20-24; p. 26, lines 10-21; p. 27, lines 1-10) Rather, he contends he has a contract or express easement by deed.

“A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.” Binkley v Rabon Creek Watershed Conservation Dist of Fountain Inn, 348 S.C. 58, 71, 558 S.E. 2d 902, 909 (Ct. App. 2001) (quoting 28A CJS Easements Section 57 (1996)). In construing a deed, “the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well-settle rule of law or public policy.” Wayburn v Smith, 270 S.C., 38, 41, 239 S.E. 2d 890, 892 (1977). “In determining the grantor’s intent, the deed must be construed as a whole and effect given to every part of it that can be done consistently with the law.” Gardner v Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987). Most importantly here, “[t]he intention of the grantor must be found within the four corners of the deed.” *Id.* at 392.

It is clear from the four corners of Respondent’s easement that he obtained a “right of way...for the purpose of ingress and egress...through a strip of land...into Dogwood Drive.” Respondent contends, and the Circuit Court found, that the only reasonable construction of the easement is that he received a right of way into View Point Drive. However, there are at least two problems with that construction. First, the easement does not mention View Point Drive

anywhere within its “four corners”. The words cannot be found in the easement. Second, Respondent did not *need* direct access to View Point Drive. His residential address is 118 View Point Drive. He has a driveway running from his residence to View Point Drive, and he uses View Point Drive to depart from and return to his residence on a daily basis.

It is clear from the four corners of the easement that Respondent sought direct access to Dogwood Trail. The easement provides a general description of a 20 foot wide right of way leading from Lot 4 across the rear portions of Lots 3 and 2 and then running in a southeasterly direction through Lot 1. However, the easement becomes rather specific when it continues the easement “through a strip of land” and then “into Dogwood Drive”. It must run through the “strip of land” deeded by Aleene L. Parham to Charles and Anne Bell on August 19, 1964. Moreover, the easement is based upon the premise that Respondent either had or would in the future have an easement over Dogwood Drive. The words “into Dogwood Drive” require such an interpretation. Black’s Law Dictionary, 5th ed (1979) defines “into” as

“[a] preposition signifying to the inside of; within. It expresses entrance, or a passage from the outside of a thing to its interior, and follows verbs expressing motion. It has been held equivalent to, or synonymous with, ‘at,’ ‘inside of,’ and ‘to,’ and has been distinguished from the words ‘from’ and ‘through.’”

“Into” is not beside or against. The phrase “into Dogwood Trail” requires that Respondent be able to enter and have access to the internal boundaries of Dogwood Trail. He did not have that. He still does not have that.

Respondent contended to the Circuit Court that Appellant’s proposed construction of the easement makes no sense in that it assumes Respondent knowingly gave consideration so as to acquire “an easement to nowhere” or, alternatively, that the Bells knowingly duped Respondent into accepting an “easement to nowhere”. According to Respondent, Appellant’s construction defies logic. However, Appellant’s construction does not require these illogical and unreasonable

conclusions. Given the history outlined in the Full Factual Background, it is likely that Respondent made an incorrect assumption. He may have known Dogwood Trail was deeded by Julia Singleton to Greenville County before the Piney Mountain subdivision failed. Respondent either incorrectly assumed that Dogwood Trail was *still* a public road, or he incorrectly assumed that he could eventually obtain an easement over Dogwood Trail at a later date, which he has not been able to do.

An easement exists for a purpose. It is generally held that when the purpose for an easement ends, so does the easement. In Francis L. Austin Family Limited Partnership v. City of Highpoint, 630 SE2d 37, 40 (NC App. 2006), the Plaintiff's predecessor-in-interest granted an express sewer easement to the City of Highpoint "forever." However, the Court noted that the City of Highpoint was no longer using the easement in that it had abandoned the sewer lines. In finding that the easement was extinguished, the Court relied on reasoning from the Supreme Court of North Carolina in the case of Atlantic and NCRR v Way, 172 NC 774, 778, 90 S.E. 937, 939 (1916):

"When the purpose, reason, and necessity, for an easement cease, within the intent for which it was granted, the easement is extinguished. Hence, if an easement is not granted for all purposes, but for a particular purpose only, the right continues while the dominant tenement is used for that purpose, and ceases when the specified use ceases."

See also Pyramid Development, LLC v D&J Associates, 262 VA 750, 553 S.E. 2d 725, 728 (Va. 1958). ("If the particular purpose for which [an] easement is granted is fulfilled or otherwise ceases to exist...the easement falls to the ground.") (Citation omitted). American Oil Co. v Leaman, 199 VA 637, 101 S.E. 2d 540 (Va. 1958). ("When the purpose for which an easement is granted ceases, the easement is extinguished.")

Respondent's easement is not ambiguous on its face or its "four corners." It is clear that Respondent's easement was "through a strip of land... into Dogwood Drive" and not into View

Point Drive. Essentially, Respondent asked the Circuit Court to rewrite or relocate his easement so that he could obtain ingress and egress into View Point Drive through Appellant's property. However, he could point to no authority which would authorize such a relocation. What's more, he did not need a relocation. He already had access to View Point Drive. Because he could not use Dogwood Trail, the easement served no purpose. It was void *ab initio* or extinguished.

II. THE CIRCUIT COURT ERRED IN RELOCATING RESPONDENT'S EASEMENT

Rather than declare Respondent's easement void *ab initio* or extinguished, the Circuit Court relocated it. Essentially ignoring the requirements that the 20-foot wide easement run "through a strip of land...into Dogwood Drive", the Court found that the easement should terminate into View Point Drive. The result of the Order is best illustrated by Exhibit G (R. p. 45) (turned upside down) to Respondent's Memorandum in Support of Motion for Summary Judgment. The Circuit Court's Order requires the taking of Appellant's land near View Point Drive, including 20 feet of road frontage.

As noted previously, Respondent does not contend his easement is one of necessity. Respondent contends that he has an express easement by deed. Whether Respondent has an easement by necessity or an express easement by deed is a pivotal factor in determining whether it can be relocated.

In Goodwin v. Johnson, 357 SC 49, 591 S.E. 2d 34, (Ct App 2003), Goodwin had previously obtained an easement by necessity across Johnson's property. The easement was Goodwin's sole access to a public highway. Johnson sought to relocate the easement from its current location to another part of his property due to its proximity to his home and dangers it

created for his pets and children. *Id.* at 35. Goodwin opposed it. The issue was heard by a Master in Equity, who relocated the easement.

On appeal, this Court began its analysis by recognizing the traditional rule regarding relocation of easements, namely that “ ‘the location of an easement once selected or fixed cannot be changed by either the land owner or the easement owner without the other’s consent, which can be expressed or implied, 25 Am. Jur. 2d Easements and Licenses § 79 (1996).” *Id.* This Court cited numerous cases and other treatises supporting the proposition. *Id.*

This Court noted further, however, that the cases adopting the traditional rule dealt with express easements and not easements by necessity. *Id.* This Court found that the two types of easements should be treated differently. “We recognize that it should be more difficult to relocate an express easement, as it is akin to a contract and is bargained for by the parties.” *Id.* Accordingly, this Court held that “Courts of Equity have the power to relocate existing easements created by necessity.” *Id.*

Several years later, in Sheppard v. Justin Enterprises, 646 S.E. 2d 177 (Ct App 2007), this Court addressed the issue of whether an *express* easement can be relocated. There, Sheppard had an express easement by deed allowing him to use a dirt road across property owned by Justin Enterprises. Justin Enterprises took the liberty of blocking access to the dirt road and relocated Sheppard’s express easement. *Id.* Sheppard requested that the Circuit Court order Justin Enterprises to remove obstructions and restore the easement. The Circuit Court granted the relief sought by Sheppard, and an appeal followed.

This Court began its analysis by again recognizing the traditional rule that “the location of an easement, once selected or fixed, cannot be changed by the owner of the subservient estate without the expressed or implied consent of the owner of the dominant estate.” *Id.*, citing

Goodwin at 36. This Court went on to note that in Goodwin it had adopted the Restatement with respect to relocating easements created by necessity. *Id.* at 179. The Court restated the position it took in Goodwin, namely that “it *should be* more difficult to relocate an express easement, as it is akin to a contract and is bargained for by the parties.” *Id.* This Court stated that it could “find no indication by our Appellate Courts that South Carolina would adopt the Restatement with respect to easements acquired by express grant.” *Id.* In finding that Justin Enterprises had “increased the burden on the dominant estate”, i.e. Sheppard’s easement rights, this Court agreed that the Circuit Court was correct in refusing to apply the Restatement rule. *Id.*

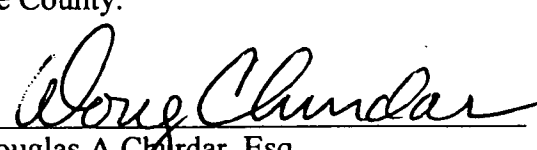
Here, the burden on Appellant has been increased by the relocation of Respondent’s easement. The easement is not an easement by necessity. It is an express easement by deed, and the Circuit Court erred in relocating it.

CONCLUSION

For the foregoing reasons stated, this Court should reverse the judgment of the Circuit Court and find that Respondent’s easement was void *ab initio* or is extinguished because the purpose for its existence has ended. Further, this Court should Order the easement stricken by the ROD for Greenville County or remand the case to the Circuit Court with instructions to Order the easement stricken by the ROD for Greenville County.

Date

4/1/10


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

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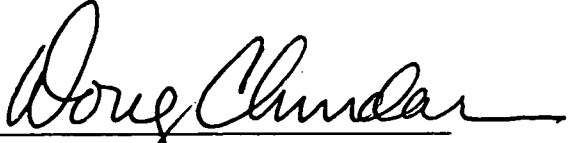
v.

Northside Traders, LLC,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this FINAL BRIEF OF APPELLANT complies with Rule
211(b), SCACR.

April 1, 2010



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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**

Louis P. Batson, Jr., Respondent,

v.

Northside Traders, LLC, Appellant.

Appeal From Greenville County
John C. Few, Circuit Court Judge

Unpublished Opinion No. 2011-UP-346
Submitted March 1, 2011 – Filed June 29, 2011

AFFIRMED

Douglas A. Churdar, of Greenville, for Appellant.

Calvin Theodore Vick, Jr., of Greenville, for
Respondent.

PER CURIAM: Northside Traders, LLC appeals the order of the trial court declaring an easement in favor of Louis P. Batson, Jr. was valid and enforceable. We affirm.¹

FACTS/PROCEDURAL HISTORY

Batson was an adjoining landowner with Charles and Anne Bell. He owned the property known as Lot 4 while the Bells owned Lots 1, 2, and 3, as well as a strip of land located between Lot 3 and Dogwood Trail, a private drive. On July 21, 1965, the Bells granted Batson an express easement across their property to his adjoining property (the Instrument). The Instrument granted Batson:

A right-of-way twenty (20) feet in width, for the purpose of ingress and egress, leading from the rear portion of Lot 4 . . . across the rear portions of Lots 3 and 2, and then in a Southeasterly direction through Lot 1, and through a strip of land described in a deed from Aleene L. Parham to Charles W. Bell and Anne W. Bell . . . into Dogwood Drive [also known as Dogwood Trail].

The aforementioned right-of-way shall be in such specific location (not inconsistent with the above general location) as shall least interfere with the use and development of said lots by the grantors, and at the election of the grantors, the use of said right-of-way by the grantee shall be in common with the grantors.

At the time of the execution of the Instrument, Dogwood Trail was a private road and remains that way today. The former owners of Dogwood Trail and the property east of the Bells' property had transferred the road to Greenville County in 1952. The County, however, transferred the road back to then-owners C.E. Singleton and Julia Belle Singleton in 1954. Doril L.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

Howell is the current owner of the property and has not granted Batson the right to use the road. Batson has yet to construct a roadway pursuant to the Instrument.

Tad Mallory purchased the Bells' property on September 8, 2005. He subsequently transferred the property to Northside Traders, LLC, of which he is the managing member. Soon after Mallory acquired the property, Batson contacted him about reaching an agreement as to the specific location of the easement. Mallory did not deny being aware of the easement. Instead, he stated he believed it was not enforceable and was void.

Batson brought this action seeking a declaration he has a valid and enforceable easement terminating at View Point Drive. He also requested an injunction prohibiting Northside from interfering with his right to construct a road terminating at View Point Drive.

The parties filed cross-motions for summary judgment. The trial court held, "[i]t is clear that the grantors' intent was to give Batson, his heirs and assigns a right-of-way through the grantor's property that ultimately terminated at View Point Drive. The Instrument evidences this intent, and the grantors incorporated sufficient flexibility into the Instrument to allow the right-of-way to continue south through Lot 1 into View Point Drive." Thus, the trial court declared the easement valid and enforceable and ruled Batson, his heirs and assigns could install and enjoy the right of way in the general location described in the Instrument, with such right-of-way terminating at View Point Drive. This appeal followed.

LAW/ANALYSIS

Northside argues that the easement was void ab initio or is extinguished. It asserts the purpose of the easement was to provide ingress and egress into Dogwood Trail and because Batson did not have the right to use Dogwood Trail, the easement could never be used. We disagree with this interpretation of the Instrument creating the easement.

"A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." K & A Acquisition Group,

LLC v. Island Pointe, LLC, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009) (internal quotation omitted). In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." Id.(internal quotation omitted.) "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." Id.(internal quotation omitted)

Reading the Instrument as a whole, we agree with the trial court the purpose of the Instrument was to give Batson an easement through the Bells' property "for the purpose of ingress and egress" to his property and not specifically to grant him access "into Dogwood Trail." According to a survey prepared for Mallory, Dogwood Trail intersects with View Point Drive slightly to the south of the "strip of land." It leads to no other public road. As the trial court noted, if the purpose of the Instrument was to give Batson ingress and egress into Dogwood Drive, there would have been no reason to direct the easement through the "strip of land" when the more direct route would have been north of the strip of land.

The Instrument clearly provided the specifications given were for a "general location" of the easement and provided for flexibility in locating the easement. The fact that Batson had other access to View Point Drive is immaterial as the easement is not one by necessity. We hold the parties intended for Batson to have additional access to his property through the Bells' property. We find the Instrument is valid and enforceable.

Northside also argues the trial court erred in relocating the easement to terminate at the public road, View Point Drive. See Sheppard v. Justin Enters., 373 S.C. 518, 521, 646 S.E.2d 177, 178 (Ct. App. 2007) (stating the location of an easement, once selected or fixed, cannot be changed by the owner of the servient estate without the express or implied consent of the owner of the dominant estate). This case, however, does not involve the relocation of an existing express easement. Instead, it involves the initial placement of the right-of-way pursuant to a grant that provided a "general location" for the right-of-way and called for flexibility in the placement. The trial court's order providing for the right-of-way to terminate at View Point

Drive effectuates the intent of the parties to the Instrument. We find no error in the trial court's ruling.

Accordingly, the order of the trial court is

AFFIRMED.

HUFF, SHORT, and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

RECEIVED
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SC Court of Appeals

LOUIS P. BATSON, JR.....RESPONDENT,

v.

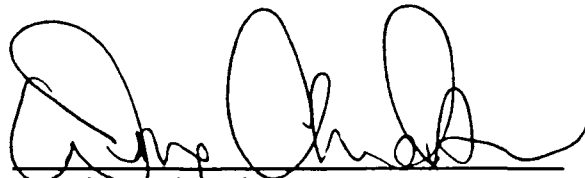
NORTHSIDE TRADERS, LLC.....APPELLANT.

PETITION FOR REHEARING AND MEMORANDUM

Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Appellant hereby petitions this court for rehearing on the grounds that the following points were overlooked or misapprehended by the court:

1. Respondent's purported easement is, in fact, an existing express easement, and accordingly relocation of the easement is improper. While much of the location was generally specified, the terminus of the easement is express or has been "selected or fixed". Relocating the terminus "increase[s] the burden on the dominant estate" in that it takes away 20 feet of road frontage and additional land in the southeast corner of one (1) of Appellant's lots. (See Plaintiff's Exhibit G-Tr. p. 45, and Defendant's Exhibit 9-Tr. p. 54) Sheppard v. Justin Enterprises, 646 SE2d 177 (Ct. App. 2007).
2. Without relocation of the easement, the easement cannot be used and is thus *void ab initio* or extinguished. Francis L. Austin Family Limited Partnership v. City of Highpoint, 630 SE2d 37, 40 (NC App. 2006); Atlantic and NCRR v. Way, 172 NC 774, 778, 90 SE 937, 939 (1916).

July 11, 2011

A handwritten signature in black ink, appearing to read 'Douglas A. Churdar', written over a horizontal line.

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Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Few, Circuit Court Judge

Case No. 08-CP-23-6607

Louis P. Batson, Jr.,.....Respondent,

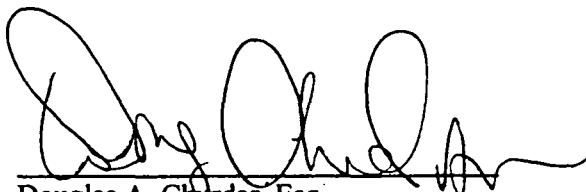
v.

Northside Traders, LLC,.....Appellant.

PROOF OF SERVICE

I hereby certify that I have this 11th day of July, 2011 served **PETITION FOR REHEARING AND MEMORANDUM** on Respondent, by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, Calvin Theodore Vick, Jr., Esq., Haynsworth Sinkler Boyd, P.A., P.O. Box 2048, Greenville, SC 29602.

7/11/11
Date



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Attorney for Appellant

The South Carolina Court of Appeals

Louis P. Batson, Jr.,

Respondent,

v.

Northside Traders, LLC,

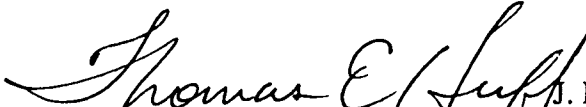
Appellant.

The Honorable John C. Few
Greenville County
Trial Court Case No. 2008-CP-23-06607

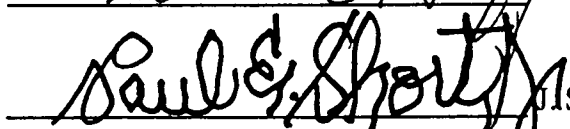
ORDER DENYING PETITION FOR REHEARING

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.

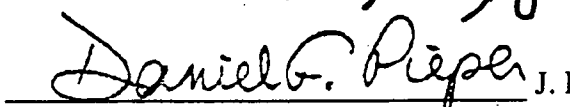
It is, therefore, ordered that the Petition for Rehearing be denied.



J. Huff



J. Short



J. Pieper

Columbia, South Carolina

cc: Douglas A. Churdar, Esquire
Calvin Theodore Vick, Jr, Esquire

FILED

AUG 23 2011