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IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Opinion No. 2013-UP-125 (S.C. Ct. App. filed March 27, 2013)

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Petitioners,

vs.

South Carolina Electric & Gas Company, ... Respondent.

APPENDIX

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The South Carolina Court of Appeals

Caroline LeGrande, H. Paul LeGrande, Jr., and Marion
Mancini, Appellants,

v.

South Carolina Electric & Gas Company, Respondent.

Appellate Case No. 2011-204148

ORDER

After 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. Accordingly, the petition for rehearing is denied.

Thomas C. Luff J.

H. B. Wan J.

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Columbia, South Carolina

cc:

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FILED

May 21, 2013

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

South Carolina Electric & Gas Company, ... Respondent.

APPELLANTS' PETITION FOR REHEARING

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The Appellants hereby Petition the Court for rehearing pursuant to Rule 221(a), SCACR, setting forth the following grounds.

ARGUMENT

1. S.C. Code Ann. §58-9-2020

In its March 27, 2013 opinion, this Court defers deciding the issue of whether the 1967 SCDOT right-of-way conveys an easement or fee simple title and rules that in either event S.C. Code Ann. §58-9-2020 (1976) grants SCE&G the right to erect utility poles and power lines in any SCDOT right-of-way.¹ This ruling overlooks the principle that an easement is only a limited right to use land for a specific purpose. If the 1967 right-of-way is merely an easement for the limited purpose of constructing, operating and maintaining a public highway, then SCE&G needs to show how that limited purpose was served by clear-cutting the LeGrandes' trees and destroying their fence in 2005. Because if the 1967 right-of-way is merely an easement granting a privilege to construct and maintain a public highway, then §58-9-2020 cannot enlarge its scope by authorizing activity not reasonably necessary to that limited use. *See, Leppard v. Central Carolina Telephone*, 205 S.C. 1, 30 S.E.2d 755, 757 (1944)(“[T]he acquisition by the public of an easement in land for the construction of a public highway, gives no right to another and different easement subversive of its proper use.”)

Section 58-9-2020 only grants SCE&G the right to “construct, maintain and operate its line . . . under, over, along and upon any of the highways or public roads of the State, . . . *provided* that such line . . . [does not] . . . interfere with the use of such highways or public roads . . . and that just

¹ Because this statute did not serve as the basis for the trial court's decision of the case, its applicability was not analyzed in any detail either by the lower court or in the parties' briefs on appeal.

compensation is first paid such landowners . . .” (emphasis in original.) First, SCE&G has never paid any “just compensation” to the LeGrandes, as putative owners of the fee underlying the right-of-way, for the destruction of their trees and fence. In this sense, the statutory language itself supports rather than defeats the LeGrandes’ underlying claims against SCE&G. *See also, Leppard, supra*, (recognizing a claim for damage to vegetation resulting from the upgrading of utility poles and lines.)

Second, SCE&G’s challenged conduct does not strictly involve constructing, maintaining or operating a power line but rather clearing an SCDOT right-of-way. There is no evidence in the record that clearing the right-of-way by destroying the LeGrandes’ trees and fence was reasonably necessary for SCE&G to construct, maintain or operate its power line in 2005. The power line in question had been constructed, maintained and operated for years without the trees and fence being destroyed. Likewise, there is no evidence in the record that the right-of-way clearing was performed to promote the construction, maintenance or operation of Turkey Farm Road in 2005.

Third, to the extent clearing a right-of-way can be considered synonymous with maintaining a power line, the following observation by Justice Blease of the South Carolina Supreme Court, in a case construing Civ. Code 1922 §5015 (the predecessor statute to §58-9-2020), seems particularly pertinent:

At this time, I may properly say this much: That beautiful, stately, and protecting shade trees, around and about the home of a citizen, should not be wantonly destroyed for even the great object of building a power line, *unless it appears that the law of “reasonable necessity” demands such destruction* (emphasis added.)

Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 4, 56 S.E. 1 (1930). Indeed, the Supreme Court has recognized that the rights granted by §58-9-2020 are not absolute. *See, e.g., BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 522 S.E.2d 804 (1999)(recognizing a municipality’s ability to impose a franchise fee on a utility’s activities under §58-9-2020).

Finally, even if there were any evidence of “reasonable necessity” in the trial court’s record to support SCE&G’s conduct, given the long-standing state of affairs along Turkey Farm Road prior to 2005, it would be for a fact finder to determine the issue of reasonable necessity in the first instance. That issue should not be decided for the first time by an appellate court reviewing a trial court’s action on a Rule 56 motion.

2. The 1936 easement to Broad River Power Company

This Court’s opinion further observes that a 1936 easement granted to the Broad River Power Company by a Mrs. F. J. Howell includes the “right to cut or trim trees along said line.”² In truth, the 1936 easement only grants Broad River Power Company the right to cut or trim trees along its line as “necessary to keep the wires clear at least ten (10’) feet.” (R.A. at pp. 97- 98) There certainly is no evidence in the record that clear-cutting the trees to stumps was necessary for SCE&G to maintain a ten foot clearance for its lines along Turkey Farm Road in 2005. Indeed, Caroline LeGrandes’ testimony supports a reasonable inference to the contrary. (R.A. at pp. 140 - 141)

Significantly, the 1936 easement expressly states, “PROVIDED, however, any damage (other than tree damage) to the property of the undersigned, caused by the said company in maintaining or repairing said electrical transmission line, shall be borne by said company . . .” (emphasis in original.) This language in no way permits SCE&G to destroy the LeGrandes’ fence without compensation.

Furthermore, there is no evidence in the record that SCE&G is actually the successor in

² Because this easement did not serve as the basis for the trial court’s decision of the case, its applicability was not analyzed in any detail either by the lower court or in the parties’ briefs on appeal.

interest to Broad River Power Company;³ that the LeGrandes are the successors in interest to a Mrs. F. J. Howell; that “the County Road from the Columbia-Blythwood Paved Road to my property” (R.A. at p. 97) is what is now known as Turkey Farm Road; or that the 1936 easement relates to the south side of the County Road as opposed to the north side.

Instead, the record contains a 1953 deed to Hazel P. LeGrande (the Appellants’ father) from A. T. Moore (R.A. at pp. 216 - 217) in which the subject property is described by reference to lands owned by the Estate of Rebecca J. Smith; the Estate of Rabon; Mrs. W. C. Derrick; and R. H. Lynch. No reference is made to lands previously owned by a Mrs. F. J. Howell. None of the various deeds, plats or surveys in the record of this case make any mention of, or purport to locate, any property owned by a Mrs. F. J. Howell.

Also of note, there is no language in the 1936 easement to suggest it was intended to be appurtenant to the land as opposed to merely an easement in gross. *See, Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2008)(distinguishing an appurtenant easement from an easement in gross).

Yet despite this evidentiary void, SCE&G apparently asserts – and the Court apparently accepts – that this 1936 easement relates to the very place where the LeGrandes’ trees and fence were located in 2005 and gives SCE&G an unlimited right to clear-cut those trees and destroy that fence. These unsupported factual assertions are contrary to the unambiguous language of the 1936 easement. Such unsupported assertions do not and cannot satisfy SCE&G’s burden under Rule 56 to affirmatively establish the absence of any genuine issue of material fact as to the 1936 easement.

³ If SCE&G actually is the successor in interest to Broad River Power Company, and thus had a pre-existing easement along Turkey Farm Road, why is there no evidence – in the trial court record or otherwise – that SCE&G was amongst the parties notified of the 1967 condemnation proceeding?

3. The 1967 easement to SCDOT

Lastly, this Court's opinion observes that the 1967 SCDOT easement prohibits the LeGrandes from erecting any "buildings, fences, signs or other obstructions" in the right-of-way. There is no evidence the LeGrandes violated this prohibition as the subject trees and fence were already existing in 1967. In fact, the 1967 easement states that "such buildings and fences as are now within the limits of the right-of-way herein conveyed will be moved from the right-of-way and restored in as good condition as before moving at the expense of the State Highway Department of the State of South Carolina." (R.A. at p. 210) The entirety of this language cannot be understood to grant SCE&G an unlimited right to destroy the trees and fence in 2005. Nor is this language – restricting certain uses within the right-of-way – in any way inconsistent with the LeGrandes' continued fee simple ownership of the land where the trees and fence were located.

CONCLUSION

This Court's opinion appears to decide this case on the basis of issues which were not expressly ruled upon by the trial court nor addressed squarely, if at all, in the parties' briefs on appeal. The Appellants therefore petition the Court for a rehearing so that the points and authorities recited herein – which were apparently either overlooked or misapprehended in the March 27, 2013 opinion – can be fully argued and properly considered.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

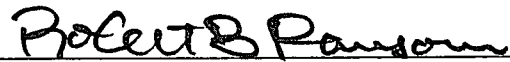
South Carolina Electric & Gas Company, ... Respondent,

CERTIFICATE OF SERVICE

I certify that I have served the Appellants' Petition for Rehearing on South Carolina Electric & Gas Company by depositing a copy of it in the United States Mail, postage prepaid, on April 11, 2013, addressed to its attorney of record, Steven J. Pugh, Post Office Drawer 7788, Columbia, South Carolina 29202.

April 11, 2013

By:



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Civil Action No. 08-CP-40-8425

Caroline LeGrande, H. Paul LeGrande, Jr.,
and Marion Mancini, ...Appellants,

v.

South Carolina Electric & Gas Company, ...Respondent.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

Respondent South Carolina Electric and Gas Company (SCE&G) respectfully submits its Return in Opposition to the Petition for Rehearing ("Petition") filed by the Appellants, Caroline LeGrande, H. Paul LeGrande, Jr., and Marion Mancini (collectively, "LeGrande"). LeGrande's Petition incorrectly asserts this Court overlooked or misapprehended an issue, and therefore, should be denied.

LeGrande argues that the Court's "opinion appears to decide this case on the basis of issues which were not expressly ruled upon by the trial court nor addressed squarely, if at all, in the parties' briefs on appeal." [Petition, p. 5] LeGrande asserts that the Court should not have considered the application of S.C. Code Ann. § 58-9-2020, a 1936 easement to Broad River Power

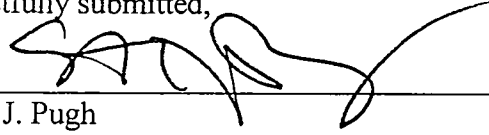
Company and that the Court's opinion somehow misconstrues the 1967 activities between the Plaintiff's predecessor in interest, H.P. LeGrande, and the South Carolina Highway Department, as predecessor to the South Carolina Department of Transportation ("SCDOT"). LeGrande's argument is unfounded and should be rejected.

SCE&G addressed all facts and law stated in this Court's opinion in its Final Brief. Specifically, S.C. Code Ann. §§ 58-9-2020 and 58-27-130 were cited and discussed on pp. 21-23 of SCE&G's Final Brief. The 1936 easement to Broad River Power Company was attached as Tab A to SCE&G's Memorandum in Support of its Motion for Summary Judgment, which is in the Record on Appeal and forms the basis for this appeal. The trial judge specifically considered this easement in her ruling [Tr. pp. 32 and 40] and this easement was cited and discussed in SCE&G's Final Brief, pp. 4-5. The 1967 SCDOT right of way was the basis for LeGrande's declaratory judgment action against the SCDOT which resulted in Master in Equity Joseph M. Strickland's Final Order.

Because this Court's grounds for affirming the trial judge are either in the record on appeal or properly raised in SCE&G's Final Brief, this Court properly affirmed the trial court. See I'On L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (stating an appellate court may affirm for any reason appearing in the record); Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995) (same); R. 220(c), SCACR. Further, to the extent LeGrande contends SCE&G did not present certain arguments to the trial judge and thus it was improper for this Court to consider them in its decision, SCE&G respectfully submits such an argument is specious and likewise, should be rejected. See I'On at 338 S.C. at 420 ("Consequently, it is not always necessary for a *respondent*—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review.").

This Court affirmed the trial judge's grant of summary judgment based on facts, issues, and arguments in the record; therefore, this Court did not overlook or misapprehend any issue. Accordingly, SCE&G respectfully requests that the Petition for Rehearing be denied.

Respectfully submitted,



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May 7, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Civil Action No. 08-CP-40-8425

Caroline LeGrande, H. Paul LeGrande, Jr.,
and Marion Mancini, ...Appellants,

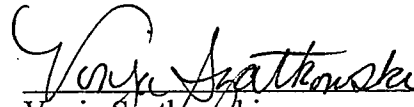
v.

South Carolina Electric & Gas Company, ...Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent SCE&G, do hereby certify that I have this date served the foregoing Respondent's Return to Appellant's Petition for Rehearing by hand delivery to the following:

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Vonja Szatkowski

May 7, 2013

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

South Carolina Electric & Gas Company, ... Respondent.

**APPELLANTS' REPLY TO RESPONDENT'S RETURN TO
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SC Court of Appeals

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ATTORNEY FOR APPELLANTS

In its Return, SCE&G merely observes that the issues raised in the Petition for Rehearing were preserved for appeal. But the Return does not dispute the Appellants' argument on the merits of those issues. That issues are mentioned in passing by the trial court or minimally preserved for review does not mean the Court's March 27, 2013 opinion adequately addresses or correctly decides those issues on their merits. The presumed 1936 easement is perhaps the best example. Although that document was briefly mentioned by the trial court and is included in the Record on Appeal, neither SCE&G, the trial court nor this Court have yet addressed the very serious problems with that document which are identified in the Petition.

S.C. Code Ann. §58-9-2020 cannot enlarge the scope of the 1967 SCDOT right-of-way. SCE&G's Return does not contend otherwise. The Record on Appeal in no way supports SCE&G's claim that the 1936 easement controls this case. SCE&G's Return does not dispute this point. The provisions of the 1967 SCDOT right-of-way recited in the Court's March 27, 2013 opinion are not outcome determinative. SCE&G's Return does not claim that they are. In short, SCE&G concedes the merits of the Appellants' argument, but nevertheless asks the Court to ignore them simply because the issues raised were preserved for appeal.

The Court should grant the Petition and squarely address the issues raised therein.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

South Carolina Electric & Gas Company, ... Respondent,

CERTIFICATE OF SERVICE

I certify that I have served the Appellants' Reply to the Respondent's Return to Appellant's Petition for Rehearing on South Carolina Electric & Gas Company by depositing a copy of it in the United States Mail, postage prepaid, on May 9, 2013, 2013, addressed to its attorney of record, Steven J. Pugh, Post Office Drawer 7788, Columbia, South Carolina 29202.

May 9, 2013

By:

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SC Court of Appeals

**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**

Caroline LeGrande, H. Paul LeGrande, Jr., and Marion
Mancini, Appellants,

v.

South Carolina Electric & Gas Company, Respondent.

Appellate Case No. 2011-204148

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2013-UP-125
Heard March 6, 2013 – Filed March 27, 2013

AFFIRMED

Robert B. Ransom, of Leventis & Ransom, of Columbia,
for Appellants.

Steven James Pugh and Mason A. Summers, both of
Richardson Plowden & Robinson, PA, of Columbia, and
John M. Mahon, Jr., of Cayce, for Respondent.

PER CURIAM: Caroline LeGrande, H. Paul LeGrande, Jr., and Marion Mancini
(LeGrandes) appeal the order of the trial judge granting summary judgment to

South Carolina Electric and Gas Company (SCE&G) in an action over destruction of cedar trees and a fence along Turkey Farm Road near Blythewood. We affirmed.

The LeGrandes argue the circuit court erred in finding as a matter of law that in 2005 they did not own the cedar trees and fence along Turkey Farm Road that SCE&G destroyed. Regardless of whether the South Carolina Department of Transportation (SCDOT) owned the right of way in fee, SCE&G had the right to use SCDOT's right of way to cut trees under South Carolina Code sections 58-9-2020 (1976) and 58-27-130 (Supp. 2012) (granting telephone and power companies the right to use public roads for their lines). In addition, pursuant to the 1936 electric power easement to SCE&G's predecessor, the power company had the "right to cut or trim trees along said line." The 1967 easement for SCDOT on Turkey Farm Road stated that the LeGrandes were not to erect any "buildings, fences, signs or other obstructions" in the right of way. Accordingly, the LeGrandes' claims for trespass, destruction of trees, destruction of fence, and conversion fail as a matter of law.

AFFIRMED.

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

South Carolina Electric & Gas Company, ... Respondent.

BRIEF OF THE APPELLANTS

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in finding as a matter of law that in 2005 the LeGrandes did not own the cedar trees and the fence along Turkey Farm Road?

STATEMENT OF THE CASE

This case was commenced by the filing of a Summons and Complaint on November 26, 2008. The Complaint alleges common law claims for: (1) trespass and (2) conversion, along with statutory claims for (3) destruction of trees and (4) destruction of a fence. [R.A. pp. 68 - 72] SCE&G served an Answer on February 27, 2009 in which it pleads nine defenses: (1) failure to state a claim; (2) permission to cut down the trees; (3) estoppel; (4) waiver; (5) parol evidence; (6) the statute of limitations; (8) the reasonable nature of its own conduct; and (9) the unconstitutionality of punitive damages. [R.A. pp. 74 - 78]

By Order of Appointment dated June 24, 2010, issues in the case relating to a 66-foot wide right-of-way easement on Turkey Farm Road were referred to the Richland County Master-in-Equity. A non-jury trial of these issues was held by the Master on August 8 and 9, 2010. The Master issued a Final Order on March 30, 2011. The Final Order confirms the existence of a 1967 right-of-way in favor of the South Carolina Department of Transportation.

On October 4, 2011, SCE&G filed a Motion for Summary Judgment in the circuit court identifying five grounds for relief, including the following: "SCE&G's utility poles and the subject trees and fence are located within the South Carolina Department of Transportation's right of way." [R.A. pp. 79 - 80]

The circuit court called the case for trial on Monday October 31, 2011. Prior to jury selection, the circuit court took up SCE&G's motion for summary judgment. After receiving evidence and hearing argument, the circuit court took the motion under advisement overnight. The circuit court announced its ruling from the bench the following day, November 1, 2011 [R.A. pp. 33 - 40], after which a Form 4 Order was entered granting SCE&G's motion. [R.A. pp. 1 - 2] The Notice of Appeal was filed and served on November 22, 2011.

STATEMENT OF FACTS

In the mid-1930s, a long row of some 50 cedar trees was planted along the northern border of a farm in rural northern Richland County. Over the span of the next 70 years, these trees grew to maturity, providing great beauty and a pastoral setting to the farm. The attraction of the majestic trees captured the heart of Hazel P. LeGrande, Sr., who purchased the farm in 1953 [R.A. p. 216] and named it Cedar Lane Farm in honor of the cedar trees which created a living corridor of peaceful solitude. At some point, a wire fence was built to run along the base of the cedar trees.

Through a condemnation process initiated in March of 1967,¹ the South Carolina Department of Highways (hereinafter referred to as South Carolina Department of Transportation or “SCDOT”) obtained a 66-foot wide “right-of-way for the construction of a section of the State Highway” along a two-track dirt farm road running adjacent to the long row of cedar trees. The road was later named Turkey Farm Road because at one time turkeys had been raised on Cedar Lane Farm.

As originally constructed in the late 1960s, Turkey Farm Road was paved with just two lanes occupying only about 25 feet (each lane is approximately 12 feet wide) of the total 66-foot wide right-of-way. Thus, although the cedar trees and the fence were located within the 66-foot wide right-of-way, they were spared any harm when the two lanes were originally paved.

¹ A Notice of Condemnation was served on Hazel P. LeGrande, Sr. on March 6, 1967. [R.A. pp. 206 - 207] The Notice states in pertinent part, “the South Carolina State Highway Department requires a right-of-way for a public highway The above described property will be condemned and a right-of-way established by the State Highway Department” There followed a March 22, 1967 Resolution of Board of Condemnation which states, “[a]fter due notice . . . that a right-of-way would be condemned . . .” the Board determined no monetary compensation should be paid because “the benefit exceeds the damage.” [R.A. pp. 208 - 209] Mr. LeGrande, Sr. subsequently negotiated a March 29, 1967 Right of Way Easement which refers to a “right of way for the construction of the State highway” and in nine separate places refers to the conveyance as nothing more than a “right-of-way.” [R.A. pp. 210 - 211] As a result of this process a 66-foot wide right-of-way easement was obtained for the purpose of constructing a state highway. Mr. LeGrande, Sr. received no monetary compensation for the right-of-way easement thus obtained.

Pursuant to S.C. Code Ann. §58-9-2020 (Code 1976, as amended) and its predecessor statutes, SCE&G held the right to “construct, maintain and operate” utility poles and power lines “under, over, along and upon” the right-of-way obtained by SCDOT in 1967. Although no exact date for the erection of SCE&G’s poles and lines along Turkey Farm Road was ever determined by the lower courts,² it is undisputed that by 2005 such poles and lines had been in place for many years. Through periodic trimming of branches and limbs the cedar trees, poles and lines were able to peacefully co-exist for decades.

But the march of progress was steadily bearing down on once-rural Blythewood, South Carolina. Interstate 77 came through the area and real estate developers were not far behind. In the early 2000s, several residential subdivisions were built on Turkey Farm Road to the west of Cedar Lane Farm. With those subdivisions came the opportunity to sell electricity. In 2005, the existing utility poles along Turkey Farm Road were removed and replaced with taller ones. [R.A. p. 139, line 24 to R.A. p. 141, line 4] Then in late November 2005 – the exact dates are very much in dispute – a contractor working for SCE&G clear-cut all of the cedar trees down to stumps and in the process destroyed the fence, thus eliminating once and for all the profit-reducing need for periodic trimming of branches and limbs. [R.A. p. 202, line 3 to R.A. p. 203, line 20] In the process, a number of other trees located in and near the right-of-way were also destroyed.

With the new subdivisions came a new Blythewood High School built by Richland County School District Two in 2009, located across Turkey Farm Road from Cedar Lane Farm. State law required the further widening and improvement of Turkey Farm Road in order to safely accommodate the increased motor vehicle traffic expected to result from the new school. So in the

² SCE&G has been unable to provide a date(s) when its poles and lines were first erected on Turkey Farm Road.

spring of 2010, a project commenced to expand the pavement on Turkey Farm Road to occupy the full extent of the 66-foot wide right-of-way which had been acquired in 1967.

As these events were unfolding, Hazel P. LeGrande, Sr. grew aged and ultimately moved on to be with the Lord, bequeathing Cedar Lane Farm to his widow in 1988. [R.A. pp. 218 - 219] As her own health began to falter, Mrs. LeGrande sold Cedar Lane Farm to her three children, the Appellants Marion LeGrande Mancini, H. Paul LeGrande, Jr. and Caroline H. LeGrande (hereinafter referred to collectively as the LeGrandes) in 1995. [R.A. pp. 2201 - 221]

On November 26, 2008, the LeGrandes filed suit against SCE&G seeking compensation for the 2005 destruction of their cedar trees and fence. [R.A. pp. 68 - 73] As the tree case proceeded towards trial, construction of the new high school was completed and the LeGrandes learned of the planned ground breaking for the Turkey Farm Road widening project. On May 13, 2010, the LeGrandes commenced a second action, against SCDOT, seeking to enjoin the roadway project from paving over any portion of Cedar Lane Farm. [R.A. pp. 123 - 127] As part of this second action, the LeGrandes sought a declaratory judgment regarding “the nature, scope and extent of the parties’ interests in the subject property.” [R.A. p. 125 at ¶16]³

All of the parties to the two actions – the tree case and the road project case – perceived the presence of common legal and factual issues relating to the scope of the right-of-way. Seeking to avoid duplication and potentially inconsistent results, the parties all consented to a consolidated reference to the Richland County Master-in-Equity for final determination of these common issues. Orders effectuating this reference were entered by the Master on June 24, 2010. [R.A. pp. 66 - 67]

³ SCE&G was not joined as a party to the second action. SCDOT brought a Third-Party Complaint against the School District, which was thus joined as a party. *See*, R.A. pp. 128 - 137.

The Master held an evidentiary hearing on August 8 and 9, 2010. A Final Order was filed on March 30, 2011. In his Final Order, the Master ruled as follows:

Pursuant to its statutory powers of eminent domain, in March 1967, the South Carolina Highway Department, SCDOT's predecessor in interest, condemned a 66 wide right of way for Turkey Farm Road. . . . SCDOT owns a 66 foot wide right of way for Turkey Farm Road SCDOT acquired a 66 foot wide right of way for Turkey Farm Road.

See, R.A. p. 58 at ¶1; p. 59 at ¶3; and p. 64 at ¶¶ 10 and 11. The LeGrandes initially appealed the Master's Final Order but they soon entered into a settlement agreement with the School District ending the road project case before the appeal was perfected. The Master's Final Order therefore constitutes a bar to any redetermination of the issues it decides among the LeGrandes, SCDOT and the School District.⁴

When the tree case was called for trial and SCE&G's motion for summary judgment was heard, the power company urged the circuit court to find the Master's Final Order was *res judicata* of the LeGrandes' ownership of the cedar trees and the fence. In announcing its ruling, the circuit court adopted SCE&G's position:

After reviewing all that information the question that's before me is whether or not the plaintiffs have the right to with [sic] able to go forward with their action based upon the fact that they believe that South Carolina Electric and Gas destroyed trees located on their property, and having read the order of Judge Strickland I have concluded that Judge Strickland's order basically establishes ownership of that strip of property, and while the right-of-way that was created was a 66 foot right-of-way extending 33 feet on each side of the center line of the road, I think that his order very clearly talks about ownership of that strip and who it belongs to. . . . **[W]hen the property was condemned I believe that the ownership and I think the law supports that the ownership of that property no longer became that belonging to the LeGrande family, but it became property in the ownership to the**

⁴ The Master determined SCDOT had a 66-foot wide right-of-way which had not been abandoned through decades of non-use. The Master also determined the LeGrandes had notice of the right-of-way when they purchased Cedar Lane Farm in 1995. Lastly, the Master determined the cedar trees and the fence were located within the right-of-way. The Master did not, however, decide whether SCE&G's conduct in clear-cutting the trees and destroying the fence was actionable.

Highway Department and South Carolina Department of Transportation. . .

So, I think there is language all throughout the order that talks about the ownership by the Department of Transportation of that strip of land . . . I think in the 2010 declaratory judgment action any issue related to ownership was finally determined . . . so to the extent that the current lawsuit relates to damages against or seeking to recover damages against SCE&G for those things that were within the 66-foot strip I think they are precluded from going forward on that particular portion.

See, R.A. p. 34, lines 13 - 25; R.A. p. 35, lines 20 - 25; R.A. p. 38, lines 3 - 5; R.A. p. 40, lines 1 - 3 and 13 - 17 (emphasis added). The circuit court thus construed the Master's Final Order as holding the LeGrandes did not own the 66-foot wide strip of land or the cedar trees and fence located on it. Since the LeGrandes did not own the cedar trees or the fence, the circuit court reasoned they could not recover damages from SCE&G for destroying them.

ARGUMENT

The circuit court granted summary judgment to SCE&G because it erroneously believed the Master had already decided the LeGrandes did not own, and had no legally protectable interest in, the cedar trees and the fence. This was error because it is almost universally recognized that a right-of-way or other easement gives no title to the land upon which the servitude is imposed. Morris v. Townsend, 253 S.C. 628, 635, 172 S.E.2d 819, 822 (1970). The Master's Final Order makes no finding to the contrary.⁵

1. SCDOT did not own the cedar trees or the fence

The circuit court concluded that because the Master's Final Order confirms SCDOT's 1967 acquisition of a 66-foot wide right-of-way where the cedar trees and fence were located, *res judicata* compelled it to rule the LeGrandes did not own the cedar trees or the fence in 2005. This was error. While the location of the cedar trees and the fence within SCDOT's right-of-way is indeed established by the Master's Final Order, the trial court mistakenly found SCDOT's interest in the 66-foot wide strip in question went beyond a mere easement or right-of-way and blossomed into something utterly antagonistic to and inconsistent with the LeGrandes' ownership of the cedar trees and the fence. In effect, the trial court ruled that following the events of 1967, the LeGrandes no longer had any legally protectable interest in the cedar trees or the fence.

The circuit court's ruling fails to recognize the limited nature of the interest acquired by SCDOT in 1967. That interest is clearly and unmistakably circumscribed by the requirement that SCDOT use the 66-foot wide strip only to build, operate and maintain a public roadway the existence and accessibility of which would confer a benefit upon Hazel P. LeGrande, Sr. and his heirs. *See*,

⁵ Nowhere does the Master's Final Order hold that in 2005 SCE&G had the right to destroy the cedar trees and the fence. *See, e.g.*, R.A. p. 51 at ¶12.

Taylor v. Hampton, 15 S.C.L. (4 McCord) 96 (1827)(every privilege which one man claims in derogation of the rights of another is viewed with jealousy by the law and it will require it to be confined to the prescribed limits and specific objects of the grant.)

There is virtually no distinction in the law between an “easement” and a “right-of-way.” 28A C.J.S. Easements, §10 (terms “easement” and “right-of-way” are synonymous). In the case of Lawton v. Rivers, 13 S.C.L. (2 McCord) 445 (1823) the South Carolina Supreme Court explained the ways in which a “right-of-way” might be established, describing what in modern parlance would simply be referred to as an “easement.” *See also*, Ballington v. Paxton, 327 S.C. 372, 488 S.E.2d 882 (Ct. App. 1997)(involving an easement which provided for a right-of-way). In its most general sense, an easement or right-of-way is a right which one person has to use the land of another for a specific purpose; it gives no title to the land on which the servitude is imposed. Windham v. Riddle, 381 S.C. 192, 672 S.E.2d 578 (2009). A right-of-way is simply a particular species of easement involving the right to pass over or traverse another’s land. In every sense in which the terms are commonly understood, the owner of the servient estate retains every incident of ownership not inconsistent with the easement and the enjoyment of the same. 28A C.J.S. Easements §192.

The South Carolina Supreme Court has explicitly ruled that the laying out of a road over another man’s soil does not divest the owner of the soil, it only operates as a suspension of his use as long as it is required for public purposes. Witter v. Harvey, 12 S.C.L. (1 McCord) 67 (1821). By way of illustration, in Rushing v. Sellers, 225 S.C. 173, 175, 81 S.E.2d 281, 283 (1954) the South Carolina Supreme Court noted the “long established rule” that “in a conveyance of land calling for a highway as the boundary, it is presumed that the grantor intends to convey to the center of such highway, subject to the easement of the public way.” This rule implicitly recognizes that an easement for a public highway does not destroy the estate of the servient owner over whose land the

highway runs. Otherwise, why would a servient owner be said to own all the way to the center line of the roadway, subject only to the easement? If the circuit court's ruling in the instant case were correct, then the servient owner in Rushing would own – and thus be able to convey – nothing.

2. SCDOT's use of the right-of-way is not unlimited

If there is any question about the restriction on SCDOT's right to use the 66-foot wide strip of land, consider the following. Under the Takings Clause of the Fifth Amendment to the United States Constitution⁶ and pursuant to Article I, Section 13(A) of the South Carolina Constitution,⁷ Mr. LeGrande, Sr. was entitled to just and fair compensation for the loss of the right-of-way the Highway Department acquired in 1967. Tellingly, the Board of Condemnation determined that Mr. LeGrande, Sr. should receive no monetary compensation for the loss of his unfettered right to use his land because it concluded the benefit conferred upon him by the building of a public road adjoining his property would equal or exceed any burden imposed upon his farm by the taking itself. [Board Resolution] In other words, being able to access Cedar Lane Farm by paved road was considered a benefit which exceeded the burden being imposed by the right-of-way.

But in order for Mr. LeGrande, Sr. to receive that intended benefit, the right-of-way thus acquired had to actually be used as a paved public road. Any other use would deprive Mr. LeGrande, Sr. of the very benefit which the Board intended for him to receive in exchange for the public burden being imposed upon him.

The point here is a simple one: If by virtue of the events of 1967, SCDOT acquired outright ownership of the 66-foot wide strip of land – as opposed to a mere right-of-way for a public highway

⁶ “[N]or shall private property be taken for public use without just compensation.”

⁷ “[P]rivate property shall not be taken . . . for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain . . . unless the condemnation is for public use.”

– then there would be no restriction on SCDOT’s use of the strip of land. It could have been put to myriad uses none of which would have conferred any benefit on Mr. LeGrande, Sr. For example, if SCDOT just owns the strip and the cedar trees and the fence – as the circuit court found – then in March 1967, SCDOT could have clear cut the cedar trees and sold the timber without ever building any paved road at all. *See, Mason v. Finley*, 129 S.C. 367, 124 S.E. 780 (1924)(absolute owner may dispose of land upon such conditions as she sees fit). SCDOT could have conveyed the 66-foot wide strip to a developer who then could have built whatever it liked, e.g., an adult entertainment club, a video poker outlet, or a toxic waste dump.

But none of those uses would have conferred any benefit on either Mr. LeGrande, Sr. or the servient estate. Such uses would therefore have deprived him of his property without just compensation in violation of his state and federal constitutional rights.

In short, the non-monetary nature of the compensation awarded to Mr. LeGrande, Sr. in 1967 by the Board of Condemnation necessarily implied a restriction on SCDOT’s interest in the 66-foot wide strip. It carried with it a very real and legally significant limitation on SCDOT’s ability to use the strip. The circuit court failed to account for this when it construed the Master’s Final Order as holding SCDOT simply owns the strip of land and the cedar trees and the fence.

3. There are “reasonable and necessary” limitations on use of the right-of-way

In truth, SCDOT does not *own* the 66-foot wide strip of land or the cedar trees or the fence. Rather, SCDOT owns the limited right to *use the strip for a public highway*, along with the correlative right to remove the cedar trees or the fence if and only if doing so is reasonably necessary to putting the 66-foot wide strip to its permissible use as a public highway. *See, Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545 (1943)(the unrestricted grant of an easement conveys such rights as are incident or are necessary to its reasonable enjoyment, but the right to use the land

and the space overhead remains in the owner of the fee so far as such right is consistent with the purpose and character of the easement.) As of 2005, cutting the cedar trees down to stumps and removing the fence were not reasonably necessary for the purpose of maintaining Turkey Farm Road as a two-lane paved roadway.

It is significant that when the trees were destroyed in 2005, the entire 66-foot wide strip in question was not being used by SCDOT as a public roadway. About 20 feet of the overall right-of-way just south of the pavement edge consisted of an unimproved shoulder covered with grass, brush, the cedar trees and the fence. [R.A. pp. 235 - 236] In no way were the cedar trees and the fence – or the LeGrandes’ use and enjoyment of them – interfering with SCDOT’s existing maintenance or use of the two paved lanes on Turkey Farm Road in 2005. Nor were the cedar trees or the fence interfering with SCE&G’s ability to transmit electrical power in 2005, especially after new, taller utility poles were erected a few months prior to the clear-cutting. [R.A. p. 139, line 24 to R.A. p. 141, line 4]

SCE&G’s position – adopted by the circuit court in error – is that SCDOT had an unlimited right to cut the cedar trees down to stumps and to completely remove the fence. According to SCE&G, S.C. Code Ann. §58-9-2020 granted that same unlimited right to the power company as well. But this argument fails to recognize the important limitation imposed on SCDOT’s interest in the 66-foot wide strip: the use of that strip has to be reasonably necessary to the operation of a public highway that benefits the servient estate. Likewise, SCE&G’s use of the 66-foot wide strip has to be reasonably necessary to the erection and maintenance of utility poles and power lines. SCE&G cannot simply decimate any and every living thing within the right-of-way whether or not it interferes with its poles and lines. *See, Leppard v. Central Carolina Telephone Co.*, 205 S.C. 1, 30 S.E.2d 755 (1944)(addressing destruction of shrubbery located within a right-of-way). There

simply was no evidence presented to the circuit court to show that cutting the cedar trees and destroying the fence in 2005 were reasonably necessary to achieve any permissible use of the right-of-way. Nor did the circuit court or the Master so find.

According to SCE&G's own company policy, even if it has an easement or right-of-way to place its poles and lines in a particular place, nevertheless it will not cut down ornamental or amenity trees without first obtaining permission from the servient property owner. [R.A. p. 142] This company policy simply recognizes the fact that an easement or right-of-way does not divest the servient estate of all ownership, use and enjoyment of the burdened property.

Why would SCE&G have a company policy of asking for permission from people who do not own the trees it seeks to cut down? If SCE&G (or SCDOT) really does just *own* the trees within any particular power line easement or highway right-of-way, then SCE&G can do as it pleases with those trees without the need to first obtain permission from anyone.⁸

SCE&G's own company policy stands in stark contrast to the position it ultimately took with the circuit court. Before the LeGrandes brought their lawsuit, SCE&G acknowledged and believed the LeGrandes had a legally protectable interest in the cedar trees and the fence. That belief informed its effort to obtain the LeGrandes' permission prior to cutting the trees down. That belief also stood as the basis for the Third Defense SCE&G plead in its Answer to the LeGrandes' Complaint ("SCE&G would show that it had . . . permission . . . to conduct the actions alleged by the Plaintiffs.") [R.A. p. 77 at ¶27] Yet once the Master's Final Order was issued, SCE&G executed a complete about-face so that it now contends the LeGrandes had no interest whatsoever in the cedar trees or the fence, making their permission utterly irrelevant.

⁸ There is no evidence in this case that SCE&G ever sought permission to cut down the cedar trees from SCDOT, as one might expect if SCDOT in fact owned the cedar trees. Instead, SCE&G sought permission from the LeGrandes.

SCE&G's post-reference pirouette on the permission issue simply underscores the implicit legal basis for its company policy: an easement or right-of-way does not constitute *ownership* of the servient estate. Indeed, the owner of an easement cannot interfere with the use and enjoyment of the servient estate. 28A C.J.S. Easements §231. Yet SCE&G successfully convinced the circuit court to adopt a position completely contrary to the legal basis for its own company policy, arguing that an easement or right-of-way is not merely a burden imposed by a dominant estate on a servient estate but rather is *ownership* itself.

4. The LeGrandes had a legally protectable interest in the cedar trees and fence

In the end, ownership of property consists not merely in having title and possession but also includes an unrestricted right of use and enjoyment. Painter v. Town of Forest Acres, 231 S.C. 56, 97 S.E.2d (1957). *See also*, The "Bundle of Rights" Picture of Property, 43 UCLA L. Rev. 711 (1996)(noting the currently prevailing understanding of property as a "bundle of rights.") Anything which destroys the unrestricted right of use and enjoyment of property destroys the ownership itself. Painter, supra. In 2005, the LeGrandes were legally entitled to use and enjoy the wonderful security, shade and serenity provided to their farm by the cedar trees and the fence which they owned subject only to SCDOT's right-of-way. Any act which unreasonably impaired, injured or destroyed their right of peaceable use and enjoyment was actionable in damages. *See, Charleston Joint Venture v. McPherson*, 308 S.C. 145, 417 S.E.2d 544 (1992)(one in peaceable possession may maintain an action against another who interferes with his quiet and exclusive enjoyment of property.) The only exception would be those acts reasonably necessary in order to carry into effect the purpose and intent of the 1967 right-of-way. 28A C.J.S. Easements §213 (the use of an easement must be reasonable and as little burdensome to the servient estate as the nature of the easement and its purpose will permit.)

CONCLUSION

The Master's Final Order does not hold, either expressly or implicitly, that in 2005 the LeGrandes had no ownership or other legally protectable interest in the peaceful use and quiet enjoyment of the cedar trees and the fence. The circuit court erred in giving the Master's Final Order such an expansive reading. SCE&G did not present any evidence that its conduct in clear-cutting the cedar trees and destroying the fence was reasonably necessary to accomplish the permissible use of the 66-foot wide strip of land as a public roadway in 2005; or to accomplish the statutorily permitted use of constructing, maintaining and operating utility poles and power lines within a highway right-of-way. The undisputed fact that the two-lane road, utility poles, power lines, cedar trees and fence had all co-existed for decades before the 2005 clear-cutting took place should serve to negate any claim of reasonable necessity by SCE&G.

SCDOT did not own the cedar trees or the fence in 2005. The cedar trees and the fence were instead owned by the LeGrandes. Unless SCE&G is able to convince a jury that the clear-cutting was either authorized by the LeGrandes or reasonably necessary to the maintenance of its overhead power lines, the LeGrandes are entitled to recover damages from SCE&G for its intentional interference with their right of peaceable use and quiet enjoyment.

The circuit court's order granting summary judgment should be reversed and this case should be remanded to the Richland County Court of Common Pleas for trial.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Civil Action No. 08-CP-40-8425

Caroline LeGrande, et Paul LeGrande, Jr.
and Marion Mancini

Appellants

South Carolina Electric & Gas Company

Respondent

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Statement of Issues on Appeal

- I. The trial judge correctly granted summary judgment to SCE&G because the Master's Final Order established that the trees and fence were located on land owned by SCDOT.**
- II. The trial judge correctly concluded that SCDOT has actual ownership of the 66 foot wide parcel, rather than merely having an easement.**
- III. SCE&G had lawful authority to cut the trees that were within the 66 foot wide strip of land.**

Statement of the Case

This action arises out of the cutting of certain trees along Turkey Farm Road in November 2005 by a subcontractor working for South Carolina Electric and Gas Company (“SCE&G”). On November 26, 2008, the Plaintiffs, Caroline H. LeGrande, Paul LeGrande, Jr., and Marion LeGrande Mancini, initiated this action by filing a Complaint against SCE&G in the Richland County Court of Common Pleas, asserting causes of action for trespass, conversion, and two separate statutory claims for destruction of trees and for destruction of a fence. [Complaint, R. pp. 68-73.] The statutory claim for destruction of a fence was later stricken by order of the circuit court. [Order, R. p. 45.]

Plaintiffs’ Complaint alleges that in connection with a project to upgrade overhead electrical power lines along Turkey Farm Road, SCE&G’s contractor damaged a fence and cut down certain trees, which Plaintiffs believed to be on their property. [Complaint, R. pp. 68-73.] SCE&G filed an Answer setting forth various defenses including estoppel, statute of limitations, and also the defense that it had the legal authority to cut the trees at issue. [Answer, R. pp. 74-78.]

On May 13, 2010, the Plaintiffs filed a separate lawsuit against the South Carolina Department of Transportation (“SCDOT”), seeking to enjoin SCDOT from widening Turkey Farm Road. [Complaint, LeGrande v. SCDOT, 2010-CP-40-3108, R. pp. 123-27.] Richland School District Two was subsequently brought into the case as a third party defendant. [SCDOT Answer, R. pp. 128-34.] At this time, SCDOT was widening the roadway to accommodate increased vehicle traffic resulting from the construction of a new school, Westwood High School, located across the road from the Plaintiffs’ property. In their lawsuit against SCDOT, Plaintiffs alleged that the widening of Turkey Farm Road would

cause the road to extend onto their property. [Id.] SCDOT countered that it owned a 66 foot wide strip of land along Turkey Farm Road (33 feet wide on each side of the road measured from the existing center line) and that any improvements to Turkey Farm Road would take place within this 66 foot wide strip. [Master's Final Order, R. p. 47.] By Order of Appointment dated June 24, 2010, the matters in dispute were referred to the Richland County Master-in-Equity, Joseph M. Strickland. [R. p. 67.] The reference to the Master occurred with the consent of all parties to the two actions (i.e., LeGrande v. SCDOT and LeGrande v. SCE&G) and with the recognition by all parties that there were common factual and legal issues involved in both cases regarding the existence of SCDOT's right of way and whether the trees that were cut were in the right of way. [See Brief of the Appellants, p. 8.] Circuit Judge Alison Renee Lee issued an Order staying the trial of Plaintiffs' case against SCE&G until the Master issued a decision in the action brought by Plaintiffs against SCDOT.

Following a non-jury trial on August 8-9, 2010, the Master issued a Final Order on March 30, 2011, in which he concluded that SCDOT owns a 66 foot wide right of way on Turkey Farm Road adjacent to the Plaintiffs' property. [Final Order, pp. 46-65.] The Master ruled that SCDOT was not barred from asserting its title to the right of way. [Final Order, R. pp. 62, 64.] The Master found that SCDOT's predecessor in interest, the South Carolina State Highway Department ("Department"), through its eminent domain powers, condemned and took ownership of a 66 foot wide right of way through the property then owned by the Plaintiffs' father, Hazel P. Legrande. [Final Order, R. p. 58.] He also found that the cut trees and fence at issue were located within SCDOT's right-of-way. [R. p. 12.] The Plaintiffs did not perfect an appeal as to the Master's Final Order.

Thereafter, in the present case, SCE&G filed a Motion for Summary Judgment on the grounds, among others, that the cut trees and fence were located within the 66 foot wide right of way owned by SCDOT, and therefore, Plaintiffs cannot recover for trespass, destruction of trees or conversion as to land and trees that were on land they never owned. A hearing on the summary judgment motion was held before Judge Lee on October 31, 2011, and the matter was taken under advisement. The following day, with counsel present, Judge Lee announced her decision on the record, granting summary judgment in favor of SCE&G. Judge Lee noted that Judge Strickland's Final Order had determined that SCDOT owns the 66 foot wide strip of land along Turkey Farm Road and that the trees cut and fence allegedly damaged by SCE&G's contractor were within this strip of land owned by SCDOT. [Hearing Transcript, R. p. 34, lines 18-25.] Accordingly, she concluded summary judgment was appropriate on Plaintiffs' claims against SCE&G because Plaintiffs sought to recover damages for the cutting of trees and alleged damage to a fence within a 66 foot wide strip that they do not own. [Hearing Transcript, R. p. 38 line 25- p. 39, line 5.] A "Form 4" Order granting SCE&G's motion for summary judgment was subsequently entered. [Form 4 Order, R. p. 1.]

Plaintiffs filed a Notice of Appeal on November 22, 2011, and the instant appeal ensued.

Statement of Facts

On September 22, 1936, SCE&G's predecessor in interest, Broad River Power Company, obtained an Easement for construction of utility poles and power lines along Turkey Farm Road. [Easement dated 9/22/1936, R. pp. 97-98.] Thereafter, utility poles were erected along Turkey Farm Road. Pursuant to this Easement, SCE&G has "the right, privilege and authority to cut or trim trees along said line necessary to keep the wires thereof

clear at least ten (10') feet." [Id.] The Easement also states: "PROVIDED, however, any damage (other than tree damage) to the property of the undersigned, caused by the said company in maintaining or repairing said electric transmission line, shall be borne by said company, its successors and assigns." [Id.]

On May 30, 1953, the Plaintiffs' father, Hazel P. LeGrande, purchased 95.5 acres along Turkey Farm Road in Blythewood, South Carolina. [5/30/53 Deed, R. p. 216-17.] At that time, Turkey Farm Road was a two lane dirt road. [Final Order, R. p. 53.] A number of years later, on March 6, 1967, the Department issued a "Notice of Condemnation" to Hazel P. LeGrande, notifying him of the Department's acquisition of a 66 foot right of way through his property for the construction and improvement of Turkey Farm Road.¹ [Final Order, R. p. 53; Notice of Condemnation dated 3/22/1967, R. p. 206-07.] The Department also provided notice of the condemnation to Farmers Home Administration as mortgagee of Mr. LeGrande's property. [R. p. 206-07.] The Notice of Condemnation describes the property being condemned as:

All that parcel or strip of land within 33 feet of the centerline of the survey on the left between approximate survey stations 47+85 and 74+45 and being bounded on the north by other lands of Mrs. [sic] Hazel P. Legrand, and on the east and west by lands of Lessie L. Smith Martin, and on the south by Road S-1694.

Also condemned is all that parcel or strip of land within 33 feet of the centerline of the survey on the right between approximate survey stations 52+50 and 85+69, being bounded on the north by Road S-1694, on the east by lands of Ruth W. Morrfield, on the south by lands of Mrs. [sic] Hazel P. Legrand, on the west by lands of Mary W. Davis.

All right of way herein condemned is shown more particularly on sheets 11, 12 and 13 of plans for this project.

¹ The Department sent condemnation notices to the other property owners along Turkey Farm Road as well.

(Emphasis added) [R. p. 206-07.] The Department's repeated use of the phrase "all that parcel or strip of land" indicates its intention to acquire a fee simple ownership interest.²

After receiving notice of the condemnation, Mr. LeGrande attended a Condemnation Proceedings hearing held before the Condemnation Board on March 22, 1967. Immediately following the hearing, the Condemnation Board issued a "Resolution of the Board of Condemnation," in which the Board concluded that no cash consideration was due to Mr. LeGrande because the benefits to him of having a paved road abutting his property exceeded the value of the strip of land being taken. [Final Order- Finding of Fact 17(d), R. p. 54; "Resolution of the Board of Condemnation," R. p. 208-09.] The Resolution states, "Be it Resolved by this Board of Condemnation that, after taking into consideration the benefits accruing to the landowner by the construction or improvement of the highway, the **value of the lands being taken** together with any special damages occasioned by the construction or improvement of the highway and deducting the total value of the benefits from the total value of the damages in accordance with the statutes, the members of this Board find that the benefit exceeds the damage and we therefore make an award of No Cash Consideration." (Emphasis added) [R. p. 208-09.] No appeal was taken from the Board's decision. [Final Order, R. p. 54.]

During the hearing before the Condemnation Board, Mr. LeGrande had objected to the location of the road improvement project because he thought it would require certain cedar trees on his property to be cut down. [Final Order- Finding of Fact 17(b), R. p. 53.] The Condemnation Board's presiding member advised Mr. LeGrande that the Board had no

² "The basic question where an interest in land was acquired by eminent domain is what interest the taking authority intended to acquire, as shown by the relevant documents." 27 Am. Jur. 2d Eminent Domain § 841 (2012).

authority to make any changes in the engineering features of the road and suggested that he “take that up with the highway department.” [R. p. 53-54.]

Mr. LeGrande raised this issue with the Department as evidenced by the fact that on March 29, 1967, he executed a “Right of Way Easement” that included a special provision stating that the right of way would be relocated as shown on the Department’s plans “by a heavy dashed line between approximate survey stations 49+17.4 and 76+36.5.” [“Right of Way Easement” dated 3/29/67, R. p. 210-11.] The Department’s Official Plan Sheets indicate that the Department’s engineers revised the plans on March 31, 1967, to relocate the right of way approximately 9 feet north only along the area where Mr. LeGrande owned property on both sides of Turkey Farm Road. [Final Order- Finding of Fact 17(e), R. p. 55; Highway Department’s Official Plan Sheets, R. p. 212-15.] The right of way was not relocated where Mr. LeGrande did not own property on both sides of the road. [Final Order- Finding of Fact 17(e), R. p. 55.]

The relocation was specifically made as an accommodation to Mr. LeGrande to try to avoid having some of his cedar trees cut during road construction. [R. p. 55.] The sole purpose of the “Right of Way Easement” signed by Mr. LeGrande on March 29, 1967, was to move the existing boundaries of the 66 foot wide strip of land 9 feet northward along a certain section of Turkey Farm Road where he owned property on both sides of the road. By the time that the Right of Way Easement was executed, the Department had already acquired title to the strip of land through its issuance of the Notice of Condemnation on March 6 and through the Board of Condemnation’s issuance of the Resolution on March 22.³

³ “Title to land taken by condemnation generally passes to the condemnor upon the determination and payment of just compensation, and when payment is made the title relates back to the date of the filing of the condemnation petition.” 29A C.J.S. Eminent Domain § 65 (2012). The Board of Condemnation issued its Resolution on March 22, 1967, determining that no compensation was owed to Hazel P. LeGrande, Plaintiffs’ predecessor in title. Mr.

Significantly, Judge Strickland found in his Final Order that the cedar trees cut by SCE&G's contractor in 2005 were within the 66 foot right of way, while uncut cedar trees remained in an area adjacent to the right of way, which is where the relocation had taken place. [Final Order- Finding of Fact 20, R. p. 57.]

During the 1980s, Mr. LeGrande subdivided and sold various portions of his property along Turkey Farm Road. [Final Order- Finding of Fact 3, R. p. 48.] In 1988, Mr. LeGrande passed away and left the remaining acreage of the Turkey Farm Road property to his wife. In 1995, Mr. LeGrande's widow sold the property, which consisted of 68.74 acres at that time, to their three children, the Plaintiffs Marion LeGrande Mancini, H. Paul LeGrande, Jr., and Caroline LeGrande. [1995 Deed, R. p. 220-21; Final Order- Finding of Fact 6, R. p. 49.]

Thereafter, the Plaintiffs carved and sold various parcels from this property to others. Incident to these sales, the Plaintiffs executed deeds which referenced plats reflecting SCDOT's 66-foot wide right-of-way [Final Order, R. p. 60-61.]

For example, in 2002, the three Plaintiffs sold a 4.06 acre tract carved from the property to Keith Didyoung and other grantees. [Deed from Plaintiffs to Didyoung recorded 1/24/2002, R. p. 222-23; Final Order- Finding of Fact 8, R. pp. 49-50.] The deed referenced a Plat prepared for H.P. LeGrande by Registered Land Surveyor Daniel Ballentine in 1984. [Id.] The 1984 Ballentine Plat shows Turkey Farm Road as a 66 foot wide right of way, and it also shows that this right of way serves as a property line for Plaintiffs' property. [1984 Ballentine Plat recorded at Bk 50 Page 1043, R. p. 232.]

LeGrande did not appeal the Resolution of the Board of Condemnation, and accordingly, the taking and correlative passing of title to the Department became complete. See Timmons v. The South Carolina Tricentennial Commission, 254 S.C. 378, 390, 175 S.E.2d 805, 811 (1970) ("The title being acquired in a condemnation proceeding is determined by the pleadings; the Petition and Declaration of Taking in this case contemplate a fee simple title being acquired from the landowner.")

In 2003, Plaintiff Caroline LeGrande had a survey performed and plat prepared of the remaining farm property by Registered Land Surveyor Richard Yongue. The Yongue Plat, which was recorded by Caroline LeGrande in the Richland County Register of Mesne Conveyances on April 4, 2003, shows Turkey Farm Road as a 66 foot wide right of way and also shows that this right of way is the property line for Plaintiffs' property. [Yongue Survey recorded at Bk 823 Page 572, R. p. 233.]

In 2004, the three Plaintiffs sold a 3.978 acre tract carved from the farm property to Richland School District Two for the construction of the new Westwood High School to be built, in part, upon this tract. Incident to this construction, Turkey Farm Road was widened to accommodate additional traffic, including the addition of a requisite turning lane for school buses. [Final Order ¶ 13, R. p. 51-52.] These road improvements are within the existing 66 foot wide right of way. [Id.]

Plaintiffs' deed conveying the 3.978 acre tract to the school district references a plat prepared for Turkey Farm, LLC, by Civil Engineering of Columbia, Inc., dated September 5, 2003, and recorded in Plat Book 50, page 1043. [Deed to RSD2 recorded 6/7/2004, R. p. 224-25.] The plat shows Turkey Farm Road as a 66 foot wide right of way. The plat expressly states that "R.O.W. is property line" for properties abutting Turkey Farm Road. [Civil Engineering of Columbia Inc. Plat recorded Bk 851 Page 615, R. p. 234.]

Over the course of several days in November 2005, Asplundh Tree Expert Co. ("Asplundh"), a subcontractor for SCE&G, cut a number of trees along Turkey Farm Road. These trees were located within SCDOT's 66 foot wide right of way. [Final Order- Finding of Fact 20, R. p. 57.] Thereafter, in order to widen Turkey Farm Road to accommodate traffic in connection with the new school, including the construction of a new turning lane for

school buses, this same area where the trees and fence had been was subsequently paved over. [Court's Exhibits 1-4 from Summary Judgment hearing; SJ Transcript 10/31/11, R. p. 14, lines 2 – 18.]

After bringing the present lawsuit against SCE&G in 2008, the Plaintiffs then filed the previously referenced action against SCDOT in 2010. Judge Strickland ruled that SCDOT owns the strip of land that comprises the right of way, and he further ruled that SCDOT is not barred from asserting title to the 66 foot wide parcel. He made specific statements, findings and conclusions of law in his Final Order concerning SCDOT's ownership of, and right to assert title to, the right of way including the following:

- “This case involves a dispute about the scope and extent of SCDOT's **ownership** of a right of way for Turkey Farm Road (State Road S-1694) **adjacent to Plaintiffs' property** located near Blythewood in Richland County.” [Final Order, R. p. 46.]
- “**SCDOT claims title** to a 66 foot wide right of way for Turkey Farm Road by virtue of a 1967 condemnation action brought against Plaintiffs' father and predecessor in title Hazel P. LeGrande, also known as H.P. LeGrande and Hazel P. Legrand, and a Right of Way Easement he granted to the S.C. State Highway Department in 1967.” [Final Order, R. p. 47.]
- “**SCDOT is not prevented** by laches **from asserting its title** to the 66 foot wide right of way for Turkey Farm Road along the Plaintiffs property.” [Final Order- Conclusion 8, R. p. 62.]
- “Plaintiffs' contention that SCDOT is barred from **asserting title** to the right of way by the 20 year statute of limitations in S.C. Code Section 15-3-310 must also be denied.” [Final Order- Conclusion 12, R. p. 64.]
- “There was adequate evidence to put Plaintiffs upon a duty of inquiry as to the width of the right of way acquired by SCDOT from their father. **Had Plaintiffs inquired with SCDOT they would have been provided the documents evidencing ownership.**” [Final Order- Conclusion 7, R. p. 62.]
- “Plaintiffs knew or should have known of **SCDOT's ownership** of the 66 [foot] wide right of way easement for Turkey Farm Road ...” [Final Order- Conclusion 5, R. p. 60.]

- “Based upon not only the 1967 condemnation action, but also, the 1967 Right of Way Easement, **SCDOT owns** a 66 foot wide right of way for Turkey Farm Road (S-1694) **adjacent to Plaintiffs property.**” [Final Order- Conclusion 3, R. p. 59.]
- “Tony A. Magwood, SCDOT’s Resident Maintenance Engineer, testified that according to plans submitted by the School District, the improvements to Turkey Farm Road will take place within the existing 66 foot wide right of way that **SCDOT owns** according to records on file in his office.” [Final Order- Finding 13, R. pp. 51-52.]
- “Luther A. Lown, a registered land surveyor, testified that he has been practicing land surveying since 1974. He reviewed the right of way documents for Turkey Farm Road on file at SCDOT, including the Official Plan Sheets. He testified that the documents show that **SCDOT owns a 66 foot wide right of way through and along Plaintiffs’ property.** He conducted a field survey adjacent to the Plaintiffs’ property to determine the location of the as built road in reference to the 1967 documents and plans. His findings are summarized and delineated on a “Sketch Plan of Turkey Farm Road, S-1694, as built for the South Carolina Department of Transportation,” dated June 22, 2010, a copy of which was admitted into evidence as Defendant’s Exhibit 24. **He concluded that the cedar stumps adjacent to the Plaintiffs’ property between approximate survey stations 75 and 86 are located within the 66 foot wide right of way.** There are uncut cedar trees still standing along a fence which is located within the 66 foot wide right of way between approximate survey stations 49 and 76. This is the area of the right of way was relocated in 1967.” [Final Order- Finding 20, R. p. 57.]
- “Plaintiffs are **estopped** from claiming that Turkey Farm Road is not a 66-foot wide right-of-way by reason of their execution of deeds which referenced plats showing the road as a 66-foot wide right-of-way.” [Final Order- Conclusion 6, R. p. 61.]
- “Because SCDOT acquired a 66-foot wide right-of-way for Turkey Farm Road from Plaintiffs’ father, and they are in privity of estate with him, they are **estopped** to deny this conveyance.” [Final Order- Conclusion 10, R. p. 64.]

[Final Order, R. pp. 46-65.] (Emphasis added).

Following the issuance of Judge Strickland’s Order, Judge Lee held a hearing on SCE&G’s motion for summary judgment, and the motion was granted. [Form Order granting summary judgment, R. pp. 1-2.] Judge Lee noted on the record that Judge Strickland’s Final

Order referred to SCDOT's "title" to the 66 foot wide strip of land as well as its "ownership" of the land. [Hearing Transcript, p. 33.] She stated:

Specifically in [Judge Strickland's] order he states that what he was required to do under the 2010 action was determine the scope and the extent and ownership of that strip, and in going through all of the documents that he reviewed and then through his findings of fact he made certain findings that South Carolina Department of Transportation owns that 66-foot right-of-way, and I understand that the language that's used in the order seems to place qualifiers on the ownership of the property because it talks about title, it talks about deeding, it talks about ownership, and then it refers to a right-of-way. I think the words right-of-way are only designed to assign – to place a name on a particular strip of property; so instead of saying a strip of land that was 66-foot wide, he just referred to it as the right-of-way.

[Hearing Transcript, R. p. 35, lines 1-15.]

Judge Lee noted that the cut trees at issue were within the 66 foot strip of land owned by SCDOT. [Hearing Transcript, R. p. 39.] Judge Lee concluded that as a matter of law Plaintiffs are not entitled to recover damages from SCE&G for the removal of trees that were located within the right of way owned by SCDOT. [R. p. 40.]

Summary Judgment Standard

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRCPP; Moore v. Weinberg, 383 S.C. 583, 681 S.E.2d 875 (2009). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine. Durkin v. Hansen, 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct. App. 1993).

Argument

Introduction

Plaintiffs argue in their brief that SCDOT does not have outright ownership of the strip of land where the trees and fence were located and that SCDOT merely holds an easement over this land. Plaintiffs suggest that they are the fee owners of this property. However, the Master's Final Order, which is binding on Plaintiffs under the doctrine of collateral estoppel, addressed the ownership issue and determined that SCDOT owns the land in question. In fact, the Master's Final Order found that Plaintiffs "knew or should have known" of SCDOT's ownership. Additionally, there are no fewer than eight (8) findings and conclusions in the Final Order that reference SCDOT's ownership or title to the strip of land. Accordingly, the Circuit Court judge correctly held that the issue of ownership had already been resolved in the prior proceedings before the Master, and she properly granted summary judgment to SCE&G.

Plaintiffs nevertheless maintain that the Master's Final Order is binding only as between themselves and the parties to the prior proceeding— SCDOT and Richland School District Two. Plaintiff's position is contrary to the well established principle, recognized in South Carolina appellate court decisions, that a non-party may use a prior judgment against a party who previously litigated and lost an issue. Moreover, Plaintiffs' position that the Master's ruling does not have a preclusive effect in the present case is undercut by an admission in their brief that "all of the parties to the two actions ... perceived the presence of common legal and factual issues" and consented to a consolidated reference to the Richland County Master-in-Equity in order "to avoid duplication and potentially inconsistent results." [Brief of the Appellants, p. 8.] Therefore, Plaintiffs' argument that collateral estoppel does

not apply is without merit, and the Circuit Court's summary judgment ruling in favor of SCE&G should be affirmed.

I. The trial judge correctly granted summary judgment to SCE&G because the Master's Final Order established that the trees and fence were located on land owned by SCDOT.

"Collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." Stone v. Roadway Express, et al., 367 S.C. 575, 580, 627 S.E.2d 695, 700 (2006); Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003). The Master's Final Order established that in March 1967, SCDOT's predecessor, the South Carolina State Highway Department, acquired by eminent domain a 66-foot wide parcel, which included a portion of the land once owned by the Plaintiffs' father, their predecessor in interest. The Final Order also established that this land acquired by the Department encompassed the area where the subject trees and fence were located. The Master found that SCDOT owns, and is entitled to assert its title to, the 66 foot wide strip of land within which the fence and trees were located.⁴

The Plaintiffs are collaterally estopped from relitigating issues regarding ownership and title to the right of way because those issues were ruled upon in the Master's Final Order. Judge Lee correctly found that the Final Order conclusively established that Plaintiffs do not own the strip of land where the trees and fence were located. The trees and fence allegedly damaged by SCE&G's contractor, Asplundh, never belonged to the Plaintiffs. The Final Order is dispositive of the Plaintiffs' claims in the present matter because the Plaintiffs

⁴ The Master's Final Order states: "SCDOT claims title to a 66 foot wide right of way for Turkey Farm Road by virtue of a 1967 condemnation action ... [Final Order, R. p. 47]; "SCDOT is not prevented by laches from asserting its title to the 66 foot wide right of way ..." [Final Order- Conclusion 8, R. p. 62]; "Plaintiffs' contention that SCDOT is barred from asserting title to the right of way by the 20 year statute of limitations in S.C. Code Section 15-3-310 must also be denied." [Final Order- Conclusion 12, R. p. 64.]

cannot recover for trespass, destruction of trees, or conversion as to land and trees which the Plaintiffs never owned.

In 1995, the Plaintiffs bought 68.74 acres from their mother which was adjacent to land and trees that had been owned by SCDOT since March of 1967. The Master found that ownership of the 66 foot wide strip of land rests with SCDOT, not the Plaintiffs. [Final Order, pp. 46-65.] Therefore, Plaintiffs' claims in the instant case must fail as a matter of law.

The Master's Final Order has a binding effect in the present action, and as Judge Lee properly held, there is no genuine issue of material fact as to ownership or title to the 66 foot wide right of way. Under the doctrine of collateral estoppel, the unchallenged ruling of Judge Strickland as to SCDOT's ownership of, and right to assert title to, the 66 foot wide strip of land is dispositive on the issue of whether Plaintiffs own this parcel. If Plaintiffs did not agree with Judge Strickland's ruling, they could have perfected an appeal of his Final Order to challenge his conclusions; however, Plaintiffs chose not to do so. See Johnson v. Board of Com'rs of Police Ins. & Annuity Fund of State, 221 S.C. 23, 68 S.E.2d 629 (1952) (The rulings in a case, whether they are right or wrong, become the law of the case and res judicata).

A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

Here, all of these required elements for applying collateral estoppel are met. First, Plaintiffs filed the declaratory judgment action against SCDOT seeking a determination as to

the ownership of the property along Turkey Farm Road where the subject trees were cut. Plaintiffs had a full and fair opportunity to litigate all issues in their action against SCDOT. Ownership of the parcel was a central issue during the trial before the Master. The Final Order states, "Plaintiffs have asked this court to construe the terms of the 1967 Easement and issue a Declaratory Judgment determining the rights of the parties in regard to the right of way." [Final Order, R. p. 47.] Second, the Master directly determined the issue of ownership by ruling that SCDOT owns, and may assert its title to, the right of way. Third, the Master's determination as to ownership of the right of way was necessary to support the prior judgment since practically all of the claims and defenses asserted by the parties therein hinged on whether SCDOT owns the right of way.⁵

Any assertion or inference made by Plaintiffs that Judge Strickland's Order does not have preclusive effect on them should be rejected. The Plaintiffs contend in their brief that the Master's Final Order constitutes a bar to any redetermination of the issues decided therein only as to the Plaintiffs, SCDOT, and the School District. [Brief of the Appellants, p. 9.] This is incorrect. Relitigation of any issues decided in the Master's Final Order is also barred as between Plaintiffs and SCE&G. The trial court's consolidated reference to the Master of common issues involved in both the Plaintiffs' action against SCDOT and the action against SCE&G occurred with the consent of all parties and was designed to avoid duplication and inconsistent verdicts. On this point, Plaintiffs' brief includes the following admission:

All of the parties to the two actions – the tree case and the road project case – perceived the presence of common legal and factual issues relating to the scope of the right-of-way. Seeking to avoid duplication and potentially inconsistent results, the parties all consented to a consolidated reference to the

⁵ Under a standard issue preclusion analysis, "even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it." Carolina Renewal, 385 S.C. at 555, 684 S.E.2d at 782. Here, there are no considerations of equity, efficiency, or public policy that weigh against the use of collateral estoppel.

Richland County Master-in-Equity for final determination of these common issues.

[Brief of the Appellants, p. 8.] In light of the foregoing admission by Plaintiffs, their position that the Master's Final Order has no binding effect on them in the present case lacks merit.

It appears that Plaintiffs are arguing that the Master's Final Order has no binding effect against them in the present action because SCE&G was not a party to the SCDOT action. This position is based upon an outdated view of collateral estoppel. Decades ago, the prevailing law allowed only those who were parties in a prior case to assert collateral estoppel in a subsequent action (i.e., the doctrine of mutuality); however, more recent South Carolina decisions have abandoned the doctrine of mutuality altogether because in many instances it permitted continued relitigation of the same issue by the same party. Accordingly, a non-party may now use a prior judgment against a party who previously litigated and lost an issue. This topic was discussed in detail by the Court of Appeals in Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009):

Carolina Renewal's absence from the previous slander lawsuit does not insulate it from issue preclusion. As far back as 1982, our supreme court held the doctrine of collateral estoppel barred the plaintiff from relitigating an issue even though the defendant was not a party, or in privity with a party, to the initial action. *Graham v. State Farm Fire & Cas. Ins. Co.*, 277 S.C. 389, 391, 287 S.E.2d 495, 496 (1982); *Irby v. Richardson*, 278 S.C. 484, 487, 298 S.E.2d 452, 454 (1982). In subsequent cases, our appellate courts have applied collateral estoppel against a defendant in actions in which the plaintiff was not a party, or in privity with a party, to the initial action. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991); *Beall*, 281 S.C. at 372, 315 S.E.2d at 191. More recently, our supreme court has noted "mutuality is no longer a requirement of collateral estoppel." *Doe v. Doe*, 346 S.C. 145, 149, 551 S.E.2d 257, 259 (2001). As these decisions make clear, the identity of the parties, and their relationships to one another, is

simply not a concern when deciding whether to apply the doctrine of collateral estoppel. Accordingly, the trial court did not err in applying collateral estoppel against Carolina Renewal even though it was not a party to the initial slander lawsuit between Smith and SCDOT.

Carolina Renewal, 385 S.C. at 556, 684 S.E.2d at 783.

In light of the foregoing, the Plaintiffs are collaterally estopped from attempting to relitigate issues concerning ownership and title to the right of way.

II. The trial judge correctly concluded that SCDOT has actual ownership of the 66 foot wide parcel, rather than merely having an easement.

Plaintiffs contend SCDOT's interest in the 66 foot wide parcel is impliedly restricted to using the property only for the construction of a paved public road. [Brief of Appellants, p. 14.] In this regard, Plaintiffs argue that SCDOT does not have outright ownership of the 66 foot wide parcel because "the non-monetary nature of the compensation awarded to Mr. Legrande, Sr., in 1967 by the Board of Condemnation necessarily implied a restriction on SCDOT's interest in the 66- foot wide strip." [Id.] Plaintiffs' argument is flawed.

Restrictions on a party's interest in real property ordinarily do not arise by implication, but rather must be expressly set forth in a written instrument. See e.g., 28 Am. Jur.2d Estates § 156 (2012) ("A condition will not be raised by implication from a declaration in a deed that the grant is made for a special and particular purpose without being coupled with words appropriate to make such a condition.") Here, none of the relevant documents pursuant to which the highway department took the strip of land by eminent domain (i.e., the Notice of Condemnation and the Condemnation Board's Resolution) placed any restrictions on how the condemned property could be used. Although the Notice of Condemnation and the Condemnation Board's Resolution both state that the land is being

taken for the construction of a state highway, there is no language in either document indicating the Department's taking of the property was limited to, or contingent upon, using the strip of property for a highway.

Nor was a reversionary interest ever reserved in Hazel P. LeGrande and his heirs in the event that the Department did not construct or maintain a highway over the strip of property. Furthermore, references to the construction of a state highway that appear in the Notice of Condemnation and the Condemnation Board's Resolution merely describe the Department's intention of appropriating the strip of land for a "public purpose", which is a requirement for any governmental taking of privately owned land. Kelo v. City of New London, 125 S.Ct. 2655, 2661, 545 U.S. 469, 477 (2005) (the government's taking of property must satisfy the "public use" requirement of the Fifth Amendment).

Plaintiffs also contend that Judge Lee "mistakenly found SCDOT's interest in the 66 foot wide strip in question went beyond a mere easement." [Brief of Appellants, p. 11.] Plaintiffs maintain that the Master's use of the term "right of way" in the Final Order should have been interpreted by Judge Lee to mean that SCDOT merely holds an easement over the strip of land. Plaintiffs' brief states "an easement or right-of-way is a right which one person has to use the land of another for a specific purpose; it gives no title to the land on which the servitude is imposed." [Brief of the Appellants, p. 12.]

Plaintiffs' argument ignores the reality that the term "right-of-way" often carries dual meanings. The U.S. Supreme Court has noted that the term, "right-of-way," has two distinct meanings: 1) it sometimes is used to describe merely a right of passage over any tract; and 2) it is also used to describe ownership of a strip of land. Joy v. City of St. Louis, 138 U.S. 1, 44, 11 S.Ct. 243, 256, 34 L.Ed. 843 (1890) (The term "right-of-way" has a two fold

signification. It is sometimes used to describe a right belonging to a party, a right of passage over any tract; and it is also used to describe that strip of land actually acquired to construct a road-bed or rail line). Here, Judge Lee correctly found that the Master's usage of the term "right-of-way" in the Final Order employed the latter meaning. See Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998) (noting the dual meaning of the term "right of way"); McCotter v. Barnes, 247 N.C. 480, 101 S.E.2d 330 (1958) ("Here, we think the term 'right of way' was used as merely descriptive of the purpose to which the land was to be put, and was not intended to cut down to an easement the fee conveyed in the granting clause"); Frink v. North Carolina Bd. of Transp., 41 N.C. App. 751, 255 S.E.2d 746 (Ct. App. 1979) (in determining the specific interest obtained by the State of North Carolina through condemnation, the court held the term "right of way" meant fee simple ownership, rather than a mere easement).

Judge Lee's ruling that SCDOT owns the subject strip of land is supported by the fact that the Master's Final Order concluded SCDOT is entitled to assert its title to the land. The term "title" means the formal right of fee ownership of property. Black's Law Dictionary has defined "title" as:

The formal right of ownership of property. Title is the means whereby the owner of lands has the just possession of his property. The union of all the elements which constitute ownership. Full independent and fee ownership. The right to or ownership in land; also the evidence of such ownership. Such ownership may be held individually, jointly, in common, or in cooperate or partnership form.

Black's Law Dictionary 1485 (6th ed. 1990). Black's has also similarly defined "title" as:

1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself ... 2. Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence ...

Black's Law Dictionary (9th ed. 2009).

Consequently, Judge Lee did not err in concluding that SCDOT owns the 66 foot wide strip of land.

III. SCE&G had lawful authority to cut the trees that were within the 66 foot wide strip of land.

The Master's Final Order conclusively established that SCDOT is the owner of the 66 foot wide strip of land where the trees and fence were located. However, even if, as Plaintiffs contend, SCDOT is not the fee owner of the 66 foot wide strip of land, SCE&G nonetheless had authority to remove the trees pursuant to S.C. Code Ann. §§ 58-9-2020 (1977) and 58-27-130 (1987).⁶ Code sections 58-9-2020 and 58-27-130 provide a broad grant of authority to electric utilities to construct, maintain, and operate lines upon any of the highways or public roads of the State.

S.C. Code Ann. § 58-9-2020 (1977) provides: "Any telegraph or telephone company ... may construct, maintain and operate its line ... under, over, along and upon any of the highways or public roads of the State..."

Section 58-27-130 grants to electric utilities the "same rights, powers and privileges" that are conferred upon telegraph and telephone companies under S.C. Code Ann. § 58-9-2020.⁷

⁶ Furthermore, SCE&G holds an easement dated September 22, 1936, which was granted to SCE&G's predecessor in interest, Broad River Power Company. The easement was for the construction of utility poles and power lines along Turkey Farm Road, and pursuant to this easement, SCE&G has "the right, privilege and authority to cut or trim trees along said line necessary to keep the wires thereof clear at least ten (10') feet." [Easement dated 9/22/1936, R. pp. 97-98.]

⁷ Section 58-27-130 provides: "Subject to the same duties and liabilities, all the rights, powers, and privileges conferred upon telegraph and telephone companies to acquire rights-of-way for the construction, maintenance, and operation of lines under §§ 58-9-2020 to 58-9-2030 are granted unto electric lighting and power companies incorporated under the laws of this State ..."

The expansive grant of authority provided by sections 58-9-2020 and 58-27-130 governing a utility's maintenance of power lines gives SCE&G the lawful right to trim and cut trees standing within SCDOT's right of way on Turkey Farm Road. There is no limiting language within the relevant statutory provisions that would indicate otherwise.

Plaintiffs cite to Leppard v. Central Carolina Telephone Company, 205 S.C. 1, 30 S.E.2d 755 (1944), in support of their position that SCE&G did not have statutory authority to cut the cedar trees within the right of way. In Leppard, the plaintiff sought to recover damages against a telephone company for injuries to her "lawn and shrubbery." 30 S.E.2d at 759. The lower court granted judgment in favor of the telephone company, but the Supreme Court remanded for consideration of special damages, if any. Id. Plaintiffs assert that Leppard "address[es] destruction of shrubbery located within a right-of-way." [Brief of the Appellants, p. 15.] However, a reading of the Supreme Court's opinion reveals that it is likely that the damaged shrubbery in Leppard was located on the plaintiff's residential property, and not within a right-of-way. In describing the special damages claimed by the plaintiff, the opinion states that there was evidence that "certain hedge bushes on her property were broken down or pulled up ..." Id. (emphasis added). Consequently, any reliance on Leppard by Plaintiffs in the present appeal is misplaced.

Plaintiffs also argue that they must have been the owners of the cedar trees because SCE&G initially sought their permission to cut the trees pursuant to an SCE&G company policy. [Brief of Appellants, pp. 16-17.] This argument is baseless. Whether SCE&G contacted the Plaintiffs prior to cutting the trees to seek permission to cut the trees is entirely irrelevant and has no bearing on the legal issue of who owns title to the strip of land where the trees and fence were located. The Master has already decided this issue, concluding that

SCDOT, not Plaintiffs, has ownership of the strip of land, and as previously discussed, this conclusion is now binding on Plaintiffs.

Conclusion

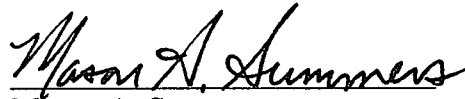
The Master found in his Final Order that in March 1967, SCDOT acquired by eminent domain a 66-foot wide parcel, which included a portion of the land once owned by the Plaintiffs' father, their predecessor in interest. The strip of land acquired by SCDOT through eminent domain in 1967 encompasses the area where the cedar trees and fence at issue were located. The Master concluded that SCDOT owns the 66 foot wide right of way and that SCDOT is not barred from asserting its title.

The Circuit Court, in granting summary judgment in favor of SCE&G, correctly found that Plaintiffs are collaterally estopped from relitigating the issue of ownership and title to the right of way because that issue was decided in the Master's Final Order. The Court properly found that the Master's Final Order conclusively established that Plaintiffs do not own the strip of land where the trees and fence were located, and accordingly, the Court ruled that Plaintiffs were not entitled to recover damages against SCE&G for the cutting of trees located within the right of way owned by SCDOT.

The Circuit Court's grant of summary judgment in favor of SCE&G is also supported by South Carolina Code sections 58-9-2020 (1977) and 58-27-130 (1987), which provide a broad grant of authority to electric utilities to construct, maintain, and operate lines upon any of the highways or public roads of the State.

Because Plaintiffs have no factual or legal basis to impose liability upon SCE&G, the Circuit Court properly granted summary judgment. For the foregoing reasons, SCE&G respectfully urges the Court of Appeals to affirm the Circuit Court's ruling.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mason A. Summers".

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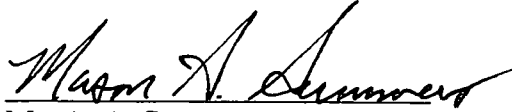
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Columbia, South Carolina
October 13, 2012

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Respondent's Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

South Carolina Electric & Gas Company, ... Respondent.

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ARGUMENT

In its brief, SCE&G argues ownership of the trees and fence at issue between the LeGrandes and SCE&G was finally determined by the Master's Final Order, so that the circuit court correctly gave preclusive effect to that prior determination. This argument mistakenly assumes that the Master was ever asked to decide who owned the trees and fence.

SCE&G further argues the Master's repeated and consistent use of the phrase "right of way" to describe SCDOT's interest should be construed to mean something analogous to "highway corridor" as opposed to "easement," even though nothing in the Master's Final Order indicates an awareness of any potential dual meaning for that phrase, let alone an intention to use the phrase in the sense suggested by SCE&G. In essence, SCE&G argues that the Master's use of the phrase is ambiguous and the ambiguity should be resolved in favor of taking the greatest estate possible, i.e., a fee simple interest. This argument runs directly counter to the rule that an intent to condemn a fee simple interest will not be presumed. Kunkle v. South Carolina Electric & Gas Co., 251 S.C. 138, 161 S.E.2d 163 (1968); *see also*, Windham v. Riddle, 370 S.C. 415, 635 S.E.2d 558 (Ct. App. 2006)(in case of ambiguity, that construction which least restricts the property will be adopted).

SCE&G correctly notes that the LeGrandes did not perfect their appeal of the Master's Final Order.¹ This is easily explained by the LeGrandes' belief that the Master's Final Order did not determine ownership of the trees and fence, or SCE&G's right to destroy them. The case before the Master was tried on the theory that SCDOT had lost whatever interest it may otherwise have had through non-use and lack of notice. Thus, the LeGrandes understood the Master's Final Order as deciding only that SCDOT retained ownership of its March 1967 easement. Had the LeGrandes

¹ See, Respondent's Brief at pages 3 and 15.

understood the Master's Final Order to include the rulings now urged by SCE&G, they would not have allowed their appeal of the Master's Final Order to lapse.

A careful analysis of the issues before the Master and the rulings in the Master's Final Order reveals the fallacy in SCE&G's position.

1. Issue Preclusion Does Not Apply to Ownership of the Trees

In its brief, SCE&G correctly notes that, as a general rule, collateral estoppel applies to those issues which were actually litigated and necessarily decided by the Master's Final Order.² However, the pleadings in the LeGrandes' case against SCDOT nowhere mention the trees or the fence. [R.A. pp. 123 - 127; pp. 128 - 136]³ Likewise, nowhere does the Master's Final Order say anything about who owned the trees and the fence in 2005. SCE&G nevertheless argues the Master necessarily determined that issue.

It was quite simply unnecessary for the Master to determine who owned the trees and fence because they had already been destroyed in 2005 and thus posed no impediment to the 2010 road widening project. The only issues the Master was required to determine – and which he actually determined – were: (1) the location of the easement acquired by SCDOT in March 1967; (2) whether that easement had been abandoned following almost 40 years of non-use;⁴ and (3) whether the

² See, Respondent's Brief at page 14.

³ Significantly, throughout its Answer to the LeGrandes' Complaint, the SCDOT refers to its interest along Turkey Farm Road as "the 1967 Easement," never once describing that interest as the entire fee. See, R.A. p. 129 at ¶5; p. 130 at ¶7 and ¶8; p. 131 at ¶10 and ¶16; p. 132 at ¶23 and ¶24. Obviously, SCDOT's own learned counsel believed its interest amounted to a mere easement. At no time did SCDOT ever contend before the Master that its interest was anything more than the easement described by its own pleadings.

⁴ The LeGrandes argued to the Master that the doctrines of estoppel, laches and acquiescence applied to prevent SCDOT from asserting its right-of-way easement.

LeGrandes had actual or constructive notice of the easement when they bought Cedar Lane Farm from their mother in 1995.

The Master was not asked to decide whether SCDOT (or SCE&G) owned the trees and fence. Nor did the Master actually decide that issue. Instead, the Master's Final Order explicitly notes that SCE&G's right to cut the trees was the subject of another pending action, leaving the determination of that issue to the trial of that separate action. [R.A. p. 51 at ¶12] Accordingly, the LeGrandes were not collaterally estopped from further litigating ownership of the trees and fence, or SCE&G's right to destroy them, in the circuit court.⁵

2. "Right-of-Way" Is Not Synonymous with Fee Simple Ownership

In its brief, SCE&G argues that because the trees and fence were located on land owned by SCDOT, it was alright for SCE&G to destroy them. In support of its position, SCE&G presents for the first time on appeal the argument that the phrase "right-of-way" has a latent, dual meaning which in this case should be translated as something like "highway corridor" as opposed to "easement," as the phrase is most commonly understood.

Throughout his Final Order, the Master consistently uses the phrase "right of way" to describe the property interest at issue.⁶ But nowhere does the Master define or ascribe any particular meaning to his use of the phrase "right of way." Indeed, nothing in the Master's Final Order even

⁵ It bears noting that the case against SCDOT principally involved a declaratory judgment. A declaratory judgment is not *res judicata* as to matters not at issue and not passed upon. *Res judicata* is only a bar to matters which were actually litigated, not those that might have been litigated. Robison v. Asbill, 328 S.C. 450, 492 S.E.2d 400 (Ct. App. 1997).

⁶ By way of illustration, on Pages 10 and 11 of the Respondent's Brief, eleven paragraphs from the Master's Order are bullet-pointed. Each of the those paragraphs contains the descriptor "right of way." None of those paragraphs contain the phrase "fee simple."

remotely suggests the Master's awareness of a dual meaning, let alone an intention to use the phrase in one sense as opposed to the other.

Accordingly, the entire record must be reviewed to determine whether SCDOT obtained an easement or the entire fee in March 1967. *See, Eldridge v. City of Greenwood*, 331 S.C. 398, 425, 503 S.E.2d 191, 205 (Ct. App. 1998) (“We must therefore review the trial court’s conclusion that the Railroad condemned only an easement . . . or if not an easement, then a fee simple determinable.”)

The March 1967 condemnation proceeding against Hazel P. LeGrande, Sr. was initiated pursuant to S.C. Code Ann. §33-121 *et seq.* (Code 1962, as amended), which governed condemnations by the Highway Department for construction of the state highway system. Section 33-122, in effect at that time, provided in pertinent part:

The Department may acquire an easement or fee simple title to real property by gift, purchase, condemnation or otherwise as may be necessary.

Whether the March 1967 condemnation proceeding sought an easement or fee simple title is thus a key issue raised by SCE&G’s position.⁷

Statutes authorizing the acquisition of a fee simple title by condemnation do not mean that in every instance of the exercise of such power the fee is acquired. *Kunkle, supra*. Where a condemnor has the optional ability to condemn a fee simple interest, the condemnation proceeding must clearly show the interest or estate sought to be acquired, otherwise the condemnee has inadequate notice of the extent of the taking. *Ibid*. The fact that the property to be taken is described generically, e.g., as “lands,” does not mean the entire fee is being acquired. *Id.*, 251 S.C. at 148, 161

⁷ As SCE&G correctly notes, the basic question where an interest in land was acquired by eminent domain is what interest the taking authority intended to acquire, as shown by the relevant documents. *See*, Respondent’s Brief at page 6, footnote 2.

S.E.2d at 166. In construing condemnation proceedings to determine whether the entire fee was acquired, it will not be assumed in case of doubt that more was taken than was reasonably necessary to accomplish the public purpose. Id. Where a condemnation proceeding does not specify the interest or estate to be taken, and it is optional whether the fee or an easement will be taken, only an easement will be held to have been acquired if an easement will adequately serve the proposed use. Id.⁸

Importantly, it has been held that when a condemnation takes place without any cash compensation being paid to the condemnee, only an easement is acquired. Lewis v. Wilmington & Manchester R.R. Co., 45 S.C.L. (11 Rich.) 91, 95 (1857); Eldridge, *supra*, 331 S.C. at 424, 503 S.E.2d at 204. The March 1967 condemnation process did not result in any cash compensation being paid to Mr. LeGrande. [R.A. p. 208]

The 1967 Notice of Condemnation [R.A. p. 206] states in part as follows (emphasis added):

PLEASE TAKE NOTICE That the South Carolina State Highway Department . . . requires a **right-of-way** for a public highway through and across lands in which the above-named person . . . claims title All **right of way** herein condemned is shown more particularly on sheets 11, 12 and 13 of plans for this project.

The above-described property will be condemned and a **right-of-way** established by the State Highway Department, and

YOU WILL TAKE FURTHER NOTICE That a public hearing will be held at 11:30 a.m. on the 22nd day of March, 1967 . . . to ascertain the amount of damages in excess of benefits as a result of **using said lands for the proposed highway improvement.**

The Notice of Condemnation refers only to a “right of way” to be “use[d]” for “highway improvement.” There is no explicit reference to fee simple title and no clear indication a fee simple

⁸ That no roadway was actually constructed to occupy the disputed portion of the right-of-way easement for almost 40 years speaks volumes as to the necessity of acquiring the entire fee.

interest is being sought. Following the referenced March 22, 1967 hearing, a Resolution of Board of Condemnation was issued [R.A. p. 208], holding as follows (emphasis added):

After due notice served upon the above-named person . . . that a **right-of-way** would be condemned . . . and compensation fixed and damages assessed. . . .

The Resolution mentions only a “right-of-way” rather than fee simple title.

Following the issuance of the Resolution, Mr. LeGrande negotiated with the Highway Department to relocate a portion of the planned roadway. Mr. LeGrande thereafter executed a “Right of Way Easement” [R.A. p. 210] containing the following language (emphasis added):

KNOW ALL ME BY THESE PRESENTS that I Hazel P. Legrande . . . have bargained, sold and released . . . unto said South Carolina Highway Department and its successors and assigns, a **right-of-way** for the construction of a section of the State Highway . . . for the purpose of locating, constructing, improving and maintaining the above described highway. . . . Said **right-of-way** to have a width of 66 feet, . . .

“Special Provision:” **Right of way** herein granted is along a relocation as shown on plans

It is agreed that buildings, fences, signs or other obstructions will not be erected . . . within the limits of the **right-of-way** herein conveyed and that such buildings and fences as are now within the limits of the **right-of-way** herein conveyed will be moved from the **right-of-way** . . . at the expense of the State Highway Department

TO HAVE AND TO HOLD, all and singular, the said **right-of-way** and the rights herein before granted, unto the said South Carolina State Highway Department, its successors and assigns forever.

This “Right of Way Easement” repeatedly describes the interest being acquired as only a “right of way.” The language relating to “successors and assigns” simply indicates the intention to convey an appurtenant easement (which runs with the land) as opposed to an easement in gross.

One can certainly ask the rhetorical questions, Why would SCDOT negotiate with Mr.

LeGrande for a “Right of Way Easement” if the condemnation already granted SCDOT the entire fee? Why would Mr. LeGrande sign a “Right of Way Easement” instead of a “Deed” if the entire fee were being conveyed? Why would SCDOT itself repeatedly refer to its interest as “the 1967 Easement” if instead it owned the entire fee?⁹ The implication here is that only an easement was condemned and only an easement was conveyed. There certainly is no clear indication the entire fee was being condemned or conveyed.

In summary, the Notice of Condemnation does not clearly identify fee simple title. Instead, it refers only to a “right of way.” The Resolution of Board of Condemnation does not clearly identify fee simple title, but rather only a “right of way.” The Right of Way Easement does not clearly identify fee simple title, but rather only a “right of way.” The pleadings before the Master refer only to an “easement.” The Master’s Final Order nowhere mentions fee simple title but instead repeatedly uses the phrase “right of way” to qualify SCDOT’s ownership interest. Neither the condemnation documents themselves, nor the Master’s Final Order, clearly indicate that a fee simple interest was at stake.

It is interesting to note several reported South Carolina cases in which a “right of way” or “right of way easement” has been involved. For example, in Byrd v. Livingston, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012) a “right of way easement” was treated as a mere easement, not a fee simple conveyance. The case of Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006) referred to an SCDOT “right of way” as merely an easement. In Creative Displays, Inc. v. South Carolina Highway Dept., 272 S.C. 68, 248 S.E.2d 916 (1978) a “right of way easement” conveyed to SCDOT was treated as a mere easement. Wilson v. South Carolina State Highway

⁹ See, footnote 3, *supra*.

Department, 264 S.C. 22, 212 S.E.2d 61 (1975) also treated a “right of way easement” granted to the South Carolina Highway Department as merely an easement. These cases strongly suggest the phrases “right of way” and “right of way easement” typically mean an easement, not the entire fee.

None of the cases cited by SCE&G require a finding that “right of way” should be translated to mean “fee simple” or “highway corridor.” For example, Joy v. City of St. Louis, 138 U.S. 1, 44, 11 S.Ct. 243, 256 (1891) contained the following comments:

Now the term ‘right of way’ has a two-fold signification. It sometimes is used to describe a right belonging to a party, a right of passage over any tract; and it is also used to describe that strip of land which railroad companies take upon which to construct their road-bed. **Obviously in this paragraph it is used in the latter sense.** Through both of these contract the terms “‘right of way,’ ‘track,’ and ‘road bed’ frequently appear, and in all cases the term ‘right of way’ is used as descriptive of the strip above referred to (emphasis added).

The LeGrandes respectfully suggest it is hardly clear let alone “obvious” that the March 1967 condemnation documents and the Master’s Final Order use the phrase “right of way” as a synonym for “fee simple” or “highway corridor.” Additionally, McCotter v. Barnes, 247 N.C. 480, 101 S.E.2d 330 (NC 1958) did not involve condemnation but rather “a regular form deed of bargain and sale,” 101 S.E.2d at 334 (emphasis added) which is clearly different from the form “Right of Way Easement” used in this case. Lastly, Frink v. North Carolina Board of Transportation, 41 N.C.App. 751, 255 S.E.2d 746 (1979) construed the statutory phrase “right of way” to mean fee simple only in light of other language in the same statute indicating that any condemnation proceeding thereunder would “divest the owner of the land condemned of all right, title, interest and possession,” this being incompatible with a mere easement.

In summary, the LeGrandes’ case against SCDOT involved a trial over whether SCDOT’s 1967 easement had been lost by almost 40 years of non-use, or defeated by a lack of actual or

constructive notice to the LeGrandes. Ownership of the trees and fence was not an issue because the trees and fence were already gone. SCDOT did not believe it owned the entire fee, but SCE&G cleverly seized upon the language in the Master's Final Order to convince the circuit court that ownership of the trees and fence had already been litigated and decided. It was error for the circuit court to take this bait and misconstrue the proceedings before the Master by applying issue preclusion to issues of ownership which had not, in fact, been heard let alone decided.

3. The Trees Were Never Owned by SCE&G

In its brief, SCE&G fails to rebut the indisputable fact that whatever the result of the 1967 condemnation process may have been, ownership of the trees and fence was most certainly not conveyed to SCE&G. Since SCE&G clearly did not itself own the trees, SCE&G was constrained to deal with someone else's trees (owned either by the LeGrandes or SCDOT) only in such a way as was reasonably necessary to maintain its utility poles and power lines. *See, Atkinson v. Carolina Power & Light Co.*, 239 S.C. 150, 121 S.E.2d 743 (1961)(noting the exercise of statutory power must be restricted to the reasonable necessities of the case and discussing the evidence of such necessity set forth in the record.) There is no evidence in the record to suggest that clear-cutting the trees in November 2005 was reasonably necessary to SCE&G's maintenance of the poles and lines along Turkey Farm Road. Neither the Master nor the circuit court made any such factual inquiry or finding. The undisputed fact that the trees, fence, utility poles and power lines were all able to peacefully co-exist for many decades belies any suggestion the November 2005 clear-cutting was reasonably necessary.

4. The 1936 Easement to Broad River Power Company Was Not Raised or Ruled Upon

In its brief, SCE&G suggests that an easement granted to the Broad River Power Company

in 1936 gave it the right to destroy the trees and fence in November 2005.¹⁰ A review of the transcript of the hearing held before the circuit court [R.A. pp. 7 - 16] reveals this issue was not raised by SCE&G. A review of the circuit court's oral bench ruling [R.A. pp. 33 - 39] reveals this issue was not ruled upon, either. An issue which has not been raised and ruled upon in the trial court cannot be presented for the first time on appeal. Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011); Proctor v. Steedley, Op. No. 4999 (S.C.Ct.App. filed July 11, 2012)(Shearhouse Adv.Sh. No. 23 at 121).

Had SCE&G argued this issue in the circuit court, the LeGrandes were prepared to present testimony about the history of power lines along Turkey Farm Road, including testimony that prior to the 1970s any such lines were located across Turkey Farm Road from Cedar Lane Farm and that the 1936 easement was not located in the area of the cedar trees and fence at issue. Because SCE&G did not present any evidence or argument to the circuit court in reliance upon the 1936 easement, the LeGrandes made no effort to respond. This Court should therefore decline SCE&G's invitation to decide the instant appeal on the basis of an argument which does not appear anywhere in the record of the proceedings before the lower court. *See*, SCACR 220(c).

CONCLUSION

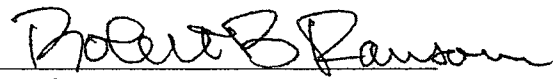
Nothing appears anywhere in the Master's Final Order to suggest an awareness of any proposed dual meaning for the phrase "right of way," let alone an intention to use that phrase to generically refer to a "highway corridor" as opposed to the legal extent of the property interest condemned by SCDOT. It is therefore a mistake to accept SCE&G's suggestion that the phrase was used with a meaning other than that ascribed to it by multiple South Carolina cases construing a

¹⁰ *See*, Respondent's Brief at pages 4 - 5; and at page 21, footnote 6.

“right of way” or “right of way easement” as nothing more than an easement.

If the circuit court perceived a dual meaning in the Master’s Final Order, it was error to resolve that ambiguity in favor of SCE&G when the condemnation documents do not evince a clear intent to condemn the entire fee as opposed to a mere right-of-way easement.

It was error for the circuit court to construe the Master’s Final Order as determinative of the issue of ownership of the trees and fence. That issue was neither presented to the Master, ruled upon by the Master, nor necessary for the Master’s decision on the issues he was presented for decision. The circuit court’s entry of summary judgment for SCE&G should therefore be reversed and this case remanded to the circuit court for trial.

BY: 
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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-8425

Caroline LeGrande, H. Paul Legrande, Jr., and
Marion Mancini, ... Appellants,

vs.

South Carolina Electric & Gas Company, ... Respondent.

RECORD ON APPEAL

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

JUDGMENT IN A CIVIL CASE

CASE NO. 08 CP-8425

Caroline Legrande, et al

SCEIG

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: *Defendants' motion for summary judgment is granted. Decision placed on the record.*

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Al Shae Lee
Circuit Court Judge

2118
Judge Code

11/1/2011
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 1st day of Nov., 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Robert B. Ransom

ATTORNEY(S) FOR THE PLAINTIFF(S)

Steven James Pugh

ATTORNEY(S) FOR THE DEFENDANT(S)

Shanelle W. H. Brude
CLERK OF COURT

Court Reporter:

State of South Carolina)
County of Richland)

Court of Common Pleas
2008-CP-40-08425

Caroline LeGrande, et al.)
Plaintiffs)
vs.)
South Carolina Electric & Gas)
Company)
Defendant)

Transcript of Record

October 31, 2011
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge.

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

Robert B. Ransom, Esq.
Attorney for the Plaintiff

Steven J. Pugh, Esq.
Jocelyn Newman, Esq.
Attorneys for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
C-1	Final Order	13	
C-2	Sketch Plan/Plat	13	
C-3	Photo (Powerlines)	13	
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1 (Whereupon, on October 31, 2011 the following
2 proceedings were held:)

3 THE COURT: Good morning, everyone. This is docket
4 number 2008-CP-40-08425, Carolina LeGrande, H. Paul
5 LeGrande, Jr., and Mary Mancini, Plaintiffs, versus South
6 Carolina Electric and Gas Company. The plaintiffs are
7 represented by Robert Ransom. The defendants are
8 represented by Steven Pugh and ---

9 MS. NEWMAN: Jocelyn.

10 THE COURT: Thank you, ma'am. I'm sorry. I just
11 went blank. I understand that there is some -- there is a
12 motion pending -- motion for summary judgment as well as
13 some other motions in limine. Let's take up the motion
14 for summary judgment. I did receive a copy of a
15 memorandum with attachments that I did have the
16 opportunity to review before today. I did not see a
17 response -- a written response -- from the plaintiffs and
18 didn't know whether you had one.

19 MR. RANSOM: Your Honor, I had filed a couple of
20 affidavits on Friday.

21 THE COURT: Okay.

22 MR. RANSOM: This is captioned a notice of filing
23 affidavits, Judy Shelley and so forth. This is part of
24 our response to the motion. We haven't filed a
25 memorandum.

1 THE COURT: Okay.

2 MR. RANSOM: But I do have argument that I'd like to
3 present.

4 THE COURT: Sure. Can you tell me -- I'm not sure
5 that those affidavits made it to the file; so if you tell
6 me the names and then I can have Mr. Viez (phonetic) go
7 down and check on it.

8 MR. RANSOM: May it please the court, Your Honor.

9 THE COURT: Unless you have extra copies.

10 MR. RANSOM: Pardon me. I don't have an extra copy,
11 but I can show it to you so you can see what it looks
12 like.

13 THE COURT: If we're ready, Mr. Pugh, I'll be happy
14 to hear your argument.

15 MR. PUGH: Thank you, Your Honor.

16 THE COURT: And I understand that you did raise an
17 issue about a statute of limitations as well, but I am
18 more concerned with the other substantive portions.

19 MR. PUGH: Understood, Your Honor. Before I really
20 get started I wanted to thank Your Honor personally for
21 granting me that order of protection this past summer.

22 THE COURT: No problem.

23 MR. PUGH: I took some time off -- 90 days -- and it
24 was wonderful.

25 THE COURT: How nice.

1 MR. PUGH: Thank you, Your Honor. Your Honor may
2 recall we were here almost a year ago to the day. The
3 case was up on the trial roster and we were ready to try
4 it with the exception of the fact that the plaintiffs had
5 filed a separate action against the South Carolina
6 Department of Transportation who in turn brought in
7 Richland County School District Number Two and that case
8 was actually tried before Judge Strickland or
9 Master-in-equity Strickland.

10 THE COURT: And I did read his order.

11 MR. PUGH: And just so we're clear, I have -- If I
12 may approach, I have a certified copy of that order just
13 in case we need that.

14 THE COURT: Okay.

15 MR. PUGH: And so as we sought to go forward in this
16 case about a year ago Your Honor consulted, I believe,
17 with Judge Strickland and it was decided that this case
18 would not go forward unless and until Judge Strickland had
19 issued a final order in the parallel case. Judge
20 Strickland did that end of March of 2011 and here we are
21 today.

22 Your Honor, focusing on the issue of applicability
23 and the dispositive nature of the final order, it is
24 uncontroverted that the plaintiffs' father bought a tract
25 of land out in Blythewood along Turkey Farm Road in 1953.

1 In 1967 the Department of Transportation -- at that point
2 the Highway Department, predecessor in interest -- had
3 decided they were going to pave Turkey Farm Road and gave
4 notice to all of the landowners along Turkey Farm Road of
5 their intention to come down a 66-foot wide right-of-way.
6 Notice was given to the plaintiffs' father who, in fact,
7 appeared at that condemnation hearing on March 22, 1967.

8 It is uncontroverted that as a result of that
9 proceeding a condemnation order was entered and the South
10 Carolina Department of Transportation by its eminent
11 domain powers condemned a 66-foot wide strip of land
12 through the plaintiffs' father's property. Now, the
13 plaintiffs' father subsequently passes away. The
14 property goes to their mother and ultimately in 1995
15 these three plaintiffs -- the siblings -- purchased the
16 property -- the remaining property -- from their mother
17 and as referenced in our brief as found by Judge
18 Strickland that was done without a title search or any
19 title.

20 In 2005 SCE&G through a contractor Asplundh Tree
21 Expert Company went out and removed a number of trees. I
22 don't know what the number is -- 150, 170, whatever the
23 number may be. There was a question at that time about
24 SCE&G via Asplundh's ability to remove those trees. We
25 were sued which brings us here today.

1 During the course of discovery of this case we did
2 some title searches. We looked at the courthouse records
3 and at some point met with the plaintiffs' counsel
4 informally and said, Look here; here is what we found.
5 There are plats and deeds recorded by your clients
6 demonstrating that there is a 66-foot wide right-of-way in
7 the very area where this tree cutting took place.

8 That started to gain some momentum. Of course,
9 Mr. Ransom looked into it and that momentum was sped up a
10 bit because the plaintiffs had sold a piece of property
11 across the street from where this cutting took place to
12 Richland County School District Number Two which is
13 building a new high school in Blythewood on that very
14 property. So, knowing that the high school is being
15 built, knowing that Turkey Farm Road to accommodate school
16 bus traffic was about to be widened, knowing that SCE&G's
17 poles were being moved farther back from the roadway
18 approximately 7 feet still within that DOT right-of-way,
19 the plaintiffs filed suit against the DOT for a
20 declaratory judgment action seeking to obtain a ruling
21 that there was no 66-foot wide right-of-way; that that
22 right-of-way for various reasons was not valid.

23 As I stated earlier August 9 and 10, 2010 that
24 declaratory judgment action is tried before
25 Master-in-equity Strickland -- briefing, testimony, a lot

1 of exhibits. Judge Strickland then requested the parties
2 to submit proposed orders and he took it under advisement
3 and he issued his ruling about seven months later in March
4 of this year. Judge Strickland -- Oh, and let me just
5 make this clear. That order was a final order from which
6 no appeal has been taken.

7 Judge Strickland found among many things as cited in
8 my brief on page four that the plaintiffs are estopped
9 from claiming that Turkey Farm Road is not a 66-foot wide
10 right-of-way for several reasons: One, they executed
11 deeds and recorded plats that showed it; number two, they
12 are in remote privity of estate with their father. They
13 are estopped to deny this conveyance, but perhaps most
14 importantly and to the heart of the issue before Your
15 Honor today the plaintiffs have three remaining causes of
16 action against South Carolina Electric and Gas: One,
17 trespass; two, conversion; three, destruction of trees and
18 damage to a fence that ran directly within those trees.

19 As part of the proceeding in front of
20 Master-in-equity Strickland the DOT put on several
21 witnesses, one of whom is a gentleman named Luther Lown.
22 He is a registered surveyor and employee of the South
23 Carolina Department of Transportation. Mr. Lown
24 physically went out on the ground to Turkey Farm Road
25 after having done research in DOT and the courthouse to

1 obtain whatever plats, rights-of-way, deeds he could find.

2 Mr. Lown goes out on the ground, performs his own
3 survey to determine the breadth and extent of that 66-foot
4 wide right-of-way that has been attained by eminent domain
5 all of the way back in 1967. Mr. Lown generated a survey
6 which is marked as exhibit -- I believe Defense
7 Exhibit 24. It's referenced in Tab E of Judge
8 Strickland's order, page two. It is covered under 20. If
9 I may approach, Your Honor, I have a copy of that and
10 Mr. Ransom has seen this numerous times.

11 As a result of that DOT Exhibit No. 24 Judge
12 Strickland concluded that the DOT not only owns a 66-foot
13 wide right-of-way through and along plaintiffs' property,
14 but he further references and accepts as a matter of law
15 Mr. Lown's conclusion -- This is paragraph 20 of the final
16 order -- he being Mr. Lown concluded that the cedar
17 stumps -- that's what this case is about; trees being
18 cut -- and Judge Strickland, I must say, was very careful
19 in his language and very contemplative in this order and
20 he says in part and paragraph 20, He being Mr. Lown
21 concluded that the cedar stumps adjacent to the
22 plaintiffs' property between approximate survey station 75
23 and 86 are located within the 66-foot wide right-of-way --
24 the same right of way that Judge Strickland found that DOT
25 owned as a matter of law.

1 The DOT has owned this strip of land. The DOT has
2 owned the trees and the fence upon this strip of land
3 since March 22, 1967. That is as a matter of law. Judge
4 Strickland made that finding in his final order and no
5 appeal was taken of that final order. As I stated earlier
6 the plaintiffs did not buy the property until 1995 without
7 a title search being done. As Judge Strickland referenced
8 using the term twice plaintiffs are estopped.

9 As Your Honor is well aware collateral estoppel
10 prevents a party from re-litigating in a subsequent suit
11 an issue actually and necessarily litigated and determined
12 in a prior action. These same plaintiffs filed a
13 declaratory judgment action against SCDOT regarding the
14 very right-of-way. These same plaintiffs, Your Honor, we
15 would respectfully submit are now collaterally estopped as
16 a matter of law pursuant to Judge Strickland's final
17 ruling.

18 In short, to the extent addressed in that order that
19 is the law of this case and the order unequivocally found
20 SCDOT owned the property since 1967. The trees that were
21 cut were on the property owned by the DOT since 1967 and
22 the fence ran among those trees. No appeal taken from
23 that.

24 In short, Your Honor, these plaintiffs in 1995 bought
25 a piece of property adjacent to a DOT-owned right-of-way.

1 The plaintiffs never owned the strip of land, never owned
2 the trees, and never owned the fence about which they
3 complain in this case for causes of action of trespass,
4 conversion, destruction of trees, and damage to a fence.

5 THE COURT: Tell me about -- I noticed in the order
6 there was some discussion and some evidence about the road
7 being relocated or redesigned or moved in order to
8 accommodate the trees.

9 MR. PUGH: That's correct. I'll address that
10 specifically, Your Honor. When Mr. LeGrande -- the
11 plaintiffs' father -- went to the DOT on March 22, 1967 he
12 asked the condemnation board to move the road; don't
13 condemn this piece of property. They directed him to the
14 Highway Department engineering section. They said there
15 is nothing we can do for you about that. The condemnation
16 order is a 66-foot right-of-way that ran through the
17 plaintiffs' entire -- or plaintiffs' father's entire
18 property.

19 Now, seven days later plaintiffs' father met with the
20 folks in the engineering department and they agreed to
21 shift the road 9 feet to the north, but this is the key,
22 Your Honor -- where Mr. LeGrande owned both sides of the
23 road, number one, and as referenced on Mr. Lown's survey
24 as found by Judge Strickland in the area where the road
25 was shifted and Mr. LeGrande gave an easement additionally

1 Farm Road.

2 This is a photograph -- I am not much of a
3 photographer -- that I shot on Saturday of the same
4 essential view and as Your Honor can see the area where
5 these poles used to be, the area where the tree stumps
6 were, the area where the fence was is now pavement because
7 SCDOT ---

8 MR. RANSOM: Objection.

9 MR. PUGH: -- is widening Turkey Farm Road to
10 accommodate school bus traffic and they're doing so in
11 accordance with the rights they've had since 1967 and
12 certainly in accordance with the final order of Judge
13 Strickland that's the law in this case. Thank you, Your
14 Honor, unless you have a question of me.

15 THE COURT: If you can have these marked as Court's
16 Exhibit, please.

17 MR. PUGH: I shall, along with the final order, Your
18 Honor.

19 (WHEREUPON, Court's Exhibit Nos. 1 - 4 were marked
20 for identification only.)

21 THE COURT: Just to make sure that I'm clear and I
22 understand the plat which is now Court's Exhibit No. 2, on
23 the plat there is a red line which is to be, I guess, the
24 center line along Turkey Road.

25 MR. PUGH: Yes, Your Honor.

1 THE COURT: And as the road curves coming to the left
2 side of the plat there's also a dashed black line as well.
3 I assume that the black line was the original Highway
4 Department center line.

5 MR. PUGH: I believe that's correct.

6 THE COURT: And the red one is the current one --

7 MR. PUGH: That's correct.

8 THE COURT: -- that shows that it was moved --

9 MR. PUGH: In that area alone, yes, Your Honor.

10 THE COURT: -- in that area alone per Mr. LeGrande,
11 the father's request.

12 MR. PUGH: That's correct and the trees in that area
13 are still standing.

14 THE COURT: And those would be --

15 MR. PUGH: It is between --

16 THE COURT: -- along -- it looks like there are some
17 extra little dotted lines along the fence line with the
18 markers.

19 MR. PUGH: That's correct, and just so we're clear
20 that's referenced in paragraph 20 of Judge Strickland's
21 final order. He says, There are uncut cedar trees still
22 standing along the fence which is located within the
23 66 foot right-of-way between survey stations 49 and 76.
24 This is the area of the right-of-way relocated in 1967.

25 Those trees and that fence are not at issue in this

1 case. There is no damage to them. They weren't cut. I
2 don't think there is any argument about those.

3 As I referenced earlier the reason in that area the
4 DOT or Highway Department was willing to accommodate
5 plaintiff's father is because that was the only area that
6 he owned both sides of what was to be paved on Turkey Farm
7 Road.

8 THE COURT: But in 1966 he owned -- did he not own
9 the property that the school district, also?

10 MR. PUGH: No, ma'am. It is further down to the
11 right.

12 THE COURT: So you're saying only this area from 70
13 beyond is where he owned both sides?

14 MR. PUGH: Yes, Your Honor.

15 THE COURT: So he never owned up here?

16 MR. PUGH: Further down this way, but not here. That
17 was owned by a lady, I believe, Ms. Moore.

18 THE COURT: And at some particular point after 1967
19 or either after or perhaps even after Mr. LeGrande's death
20 there was a portion of the property that was deeded to --
21 the portion of the property that was part of the LeGrande
22 property that was, in fact, given to the school district?
23 Am I correct on that?

24 MR. PUGH: These plaintiffs sold a portion of the
25 property to the school district. If I may have a second I

1 will tell you -- May 28, 2004, Your Honor.

2 THE COURT: Anything further, Mr. Pugh?

3 MR. PUGH: Not as to that issue, Your Honor. Thank
4 you.

5 THE COURT: Mr. Ransom?

6 MR. RANSOM: Thank you, Your Honor. May it please
7 the court. Just as a matter of procedure I think I ought
8 to object to the use of the photograph and the map through
9 the unsworn testimony of counsel from the defendant.
10 That's a little bit unusual -- also, as to the photograph
11 of the cones that are shown out there. The usual
12 procedure if you are going to inspect another party's
13 property is to issue a Rule 34 request rather than to just
14 go out and take pictures, but I'll not stand too much on
15 those procedural issues.

16 What I want to say though is ---

17 THE COURT: But you don't have any objection about
18 this particular photograph because ---

19 MR. RANSOM: Well, it is certainly true I think that
20 this was submitted during the course of the trial over
21 which Judge Strickland presided and I don't want to trifle
22 too much with, you know, in terms of trying to understand
23 exactly what those lines show. Again, I think it's a
24 little inappropriate the way this has been demonstrated,
25 but suffice it to say my real position, Judge, is that

1 first off there are a couple of things Mr. Pugh has told
2 you that unfortunately he's mistaken about.

3 Number one, there was an appeal. I've got the notice
4 of appeal right here in my hand. What happened was that
5 we reached an agreement with the Department of
6 Transportation that settled the case while the appeal was
7 still in its formative stages. Secondly, and perhaps most
8 importantly in all this is if you will look at Judge
9 Strickland's ruling you will see as Mr. Pugh has said he
10 was very careful in the use of his verbiage. He talks
11 repeatedly about a right-of-way, but nowhere in his order
12 does he say anything that can be construed to mean that
13 the Department of Transportation simply owns that strip of
14 property or that the Department of Transportation ever
15 owned these trees, and, Judge, I've got to go back -- I'd
16 like to ask you to go back with me to the first year of
17 law school here for just a second.

18 You'll recall that we were taught in property class
19 that the ownership in real estate involves a bundle of
20 rights. It involves the right to use the property, the
21 right to sell the property, the right to encumber the
22 property, the right to lease the property, the right to
23 convey the property, the right to enter upon the property,
24 and the right to exclude others from the property, and
25 when Judge Strickland found that the DOT had a

1 right-of-way all that he found was that they had a right
2 to use that property, and, again, it's very important no
3 where did he rule that the Department of Transportation
4 owns that property in fee simple. My clients own that
5 property in fee simple. They've been paying taxes on it
6 for the better part of 50 years. So the right-of-way
7 doesn't equal ownership.

8 Importantly, there is a case that I'd like to cite to
9 the court and I'm happy to hand up a copy of it. It is
10 captioned Leppard versus Central Carolina Telephone
11 Company. For the Court Reporter's benefit it is
12 30 S.E.2d 755 from the South Carolina Supreme Court.

13 May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 MR. RANSOM: The Leppard case involves an instance in
16 which I believe a power company was coming along and
17 erecting poles and lines along a publicly-dedicated street
18 and the adjoining property owners objected and the ruling
19 of the court was two things: Number one, that the Highway
20 Department's right-of-way gave the power company -- and it
21 may have been a phone company. It's not particularly
22 important, but the utility company had the right to erect
23 poles and lines within the street right-of-way, if you
24 will, but the important holding in that case is that the
25 lady also claimed as they were erecting these poles and

1 lines that they damaged some of her shrubs that were
2 within that right-of-way, and the court says, well, you
3 can't stop them from putting their poles and their lines
4 up in the Highway Department's right-of-way, but if they
5 damage your trees and your shrubs, well, you do have a
6 claim for that, and so I think this Leppard case stands
7 for the proposition that while SCE&G may have had a right
8 to erect its poles and lines within the parameters of the
9 Department of Transportation right-of-way that didn't give
10 them the right to cut down any trees or otherwise destroy
11 any vegetation that wasn't necessary to be destroyed in
12 order for these poles and lines to do their job, and
13 you'll find that there is going to be testimony in this
14 case, Judge, that a couple of months before these trees
15 were clear-cut the folks from the power company came out
16 and they took down some short poles and lines -- and when
17 I say short I mean, let's say, perhaps 20 or 30 feet --
18 and they put up much taller poles and lines that were now
19 50 or 60 feet high and when they did that these lines were
20 no longer anywhere near the tops of these trees. The
21 point simply being that once the power lines are moved 10
22 or 15 feet above the tops of these trees, there is no
23 necessity for these trees to be cut down.

24 Judge, you'll see I have submitted a pretrial brief
25 and also a motion in limine and I wanted to direct your

1 attention and I think perhaps the best place to find this
2 is on page four and five of the motion in limine. I have
3 recited some testimony that's directly relevant to this
4 issue.

5 THE COURT: Which issue?

6 MR. RANSOM: The issue of this right-of-way business
7 and the contention that it gives the power company in
8 essence ownership of these trees. You know it's true that
9 as Mr. Pugh said that early on in this case there was a
10 lot of floundering around trying to find the right-of-way
11 or an easement and it's confusing and it resulted in the
12 second lawsuit that he's told you about. What I did,
13 Judge, to try to get some certainty to that issue was I
14 took the Rule 30(b)(6) deposition of South Carolina
15 Electric and Gas Company and we asked them to designate a
16 witness who could speak on behalf of the company in
17 response to a number of issues.

18 They designated a fellow by the name of Eddie
19 McWhirter. Mr. McWhirter is a mid-level manager who works
20 for the tree department, if I can be permitted to call it
21 that, and I asked Mr. McWhirter several different times in
22 several different ways what the company's policy was with
23 respect to cutting down trees and these trees are what are
24 referred to as amenity trees meaning they have some
25 special significance to the property. They are referred

1 to in his deposition as either yard or amenity trees.

2 Interestingly enough, what Mr. McWhirter ended up
3 testifying to and that is on page five of the motion in
4 limine -- I have set forth this excerpt from his
5 deposition -- he says, Well, I think that the situation
6 with the LeGrande case is the perfect example, a perfect
7 example of the kind of trees we contact the customer
8 before we cut them down, and if they say no, then we don't
9 cut them down. Now, the point to this is over and over
10 again at his deposition on behalf of the company
11 Mr. McWhirter said if we're talking about special trees,
12 amenity trees, yard trees, the company's policy is we must
13 meet with the customer and we must obtain their permission
14 before we cut any such trees down, and I asked him and
15 you'll see I've excerpted this on page five -- This comes
16 from page 19, lines 11 through 15, of his deposition and
17 I'm happy to put the transcript in evidence if necessary,
18 but I asked him, I said, Would this rule that you got to
19 meet with the customer and get permission, would this be
20 true even if there were a right-of-way or an easement, and
21 he said, Either way.

22 Now, what that means, Judge, is the authorized
23 representative of SCE&G has testified in his 30(b)(6)
24 deposition that it doesn't matter if there is an easement.
25 It doesn't matter if there is a right-of-way. We will not

1 cut down and we cannot cut down yard or amenity type trees
2 without first meeting with the property owner and getting
3 their express permission. Interestingly enough, it goes
4 on to describe the type of permission, and he says, It
5 must be decisive and unmistakable permission. He actually
6 said if there is any hesitancy or indecision on behalf of
7 the property owner, then we will not cut these trees down.

8 THE COURT: Well, Mr. Ransom, let's get back to the
9 issue as to who owns the property because I'm not sure
10 based upon what you told me that that issue has been
11 resolved one way or the other. It sounds like -- I always
12 thought that under eminent domain when property was
13 condemned it belonged to the entity that condemns the
14 property.

15 MR. RANSOM: Well, that would be true other than the
16 fact it is a right-of-way that they condemned and I've got
17 the document that resulted from all of this that Mr. --
18 that my client's father negotiated and, you know, and this
19 was an exhibit at the trial before Judge Strickland as
20 well and it says it's a right-of-way easement. All right?
21 Again, this gets back to this idea, Your Honor, that no
22 where does Judge Strickland ever use any language other
23 than right-of-way which again is limited to the right to
24 use or occupy the property.

25 It doesn't mean fee simple title and it certainly

1 doesn't mean actual ownership of the dirt and the things
2 that are on it. It simply grants them the limited right
3 to use it for the forbearance of the purpose of which the
4 easement is granted, and I think, Judge, given the
5 testimony of their corporate representative the doctrine
6 of judicial estoppel applies in this case; that they
7 shouldn't be permitted to testify under oath that it
8 doesn't matter whether they have right-of-way or it
9 doesn't matter that there is some easement; they first
10 have to have permission, and now they come into court and
11 take the position it's 180 degrees directly contrary.

12 THE COURT: That's not judicial estoppel.

13 MR. RANSOM: Well, I would call it judicial estoppel,
14 but my point, Judge, is I think there's a doctrine in the
15 law that recognizes that once you made certain admissions
16 in the course of litigation then you don't get to turn
17 around and change your mind, especially when we're talking
18 about a 30(b)(6) deposition. The corporate
19 representative's testimony basically stands as an
20 admission by the company.

21 Lastly, Judge, I would argue as well that even though
22 the vast majority of our argument relates to the cedar
23 trees, it is also the case that the folks who were out
24 there doing this cutting trespassed on portions of my
25 client's property that no one would tell you were within

1 this 66-foot right-of-way. They opened a gate and entered
2 on to my folks' pasture in order to park their trucks and
3 other equipment and used that as a staging or lay-down
4 area and I don't think even Mr. Lown could testify that
5 the places where they put that equipment and did that
6 staging were within this 66-foot right-of-way.

7 Again, fundamentally, Judge, I don't think it's
8 accurate to suggest that Judge Strickland made any ruling
9 about the ownership of these trees and he certainly didn't
10 rule that the Department of Transportation owns the fee
11 simple to this property -- this strip that's in question.
12 All he ruled was that they had a right-of-way which is but
13 one of the many bundles of rights that constitutes actual
14 ownership of property. We think that the Leppard case
15 pretty much addresses the idea that the right-of-way
16 doesn't give you the authority to cut down trees and other
17 vegetation.

18 MR. PUGH: May I briefly respond, Your Honor?

19 THE COURT: Yes, sir.

20 MR. PUGH: The plaintiffs' action against the DOT
21 that resulted in Judge Strickland's final order had five
22 causes of action. One was a recovery of real property;
23 two, declaratory judgment; three, trespass; four,
24 uncompensated taking; and five, injunction. Judge
25 Strickland's order specifically cites on page two,

1 Plaintiffs have asked this court to construe the terms of
2 the 1967 easement, issue a declaratory judgment
3 determining the rights of the parties in regard to the
4 right owner. Counsel suggested to you that Judge
5 Strickland didn't construe or find any ownership rights.
6 Page seven of Judge Strickland's final order, paragraph
7 15, Plaintiffs -- they further claim that they believe
8 they owned the land where the trees were cut down and that
9 trees are not within the SCDOT right-of-way.

10 Judge Strickland found on page nine the resolution of
11 the award of condemnation dated March 22, 1967 wherein the
12 board of condemnation made a finding that no cash
13 consideration was due to Mr. LeGrande for the acquisition
14 of the 66-foot wide right-of-way because of benefits
15 paving the road exceeded the damages.

16 Also, Your Honor, if you look at exhibit B to my
17 moving -- to my memo, as Your Honor can imagine with
18 eminent domain powers you don't just give notice of the
19 condemnation to to the occupier. You give it to the
20 mortgage company FHA who had a mortgage because that part
21 of the property would presumably have to be released at
22 some point. Back in Judge Strickland's order paragraph
23 20, page 12, Luther Lown -- he testified that the
24 documents show that SCDOT owns a 66-foot wide right-of-way
25 through and along plaintiffs' property.

1 Page 14, paragraph three, Based upon not only the
2 1967 condemnation action but also the 1967 right-of-way
3 easement, SCDOT owns the 66-foot wide right-of-way to
4 Turkey Farm Road adjacent to plaintiffs' property.
5 Paragraph 15 -- Excuse me. Page 15, paragraph five,
6 Plaintiffs' knew or should have known of SCDOT's ownership
7 of the 66-foot wide right-of-way easement for Turkey Farm
8 Road because and it talks about the execution of plats and
9 deeds. Paragraph eight, page 17, SCDOT is not prevented
10 by laches from asserting it's title to the 66-foot wide
11 right-of-way to Turkey Farm Road along the plaintiffs'
12 property, and continuing on on page 18, SCDOT's failure to
13 physically use the entire width of the right-of-way does
14 not constitute in and of itself failure to assert title.
15 SCDOT -- continuing at the bottom of the page -- had
16 no duty to object the the existence of plaintiffs' fence
17 or trees growing within the SCDOT right-of-way until the
18 fence or trees interfered with the safe operation,
19 maintenance, or improvement of the road. There are many
20 encroachments on SCDOT rights of way throughout the state.
21 Page 19, paragraph 10, Because SCDOT acquired a 66-foot
22 wide right-of-way from plaintiffs' father, they are
23 privity in state with him. They are estopped to deny this
24 conveyance. Paragraph 11, Not entitled to the defense of
25 bonafide purchaser without notice. Last sentence here:

1 The plaintiffs' action for recovery of real property
2 trespass, uncompensated taking, and injunction are denied.

3 Next paragraph, plaintiffs' contention that SCDOT is
4 barred from asserting title to the right-of-way must also
5 be denied. Ownership, title, acquisition used throughout
6 Judge Strickland's final order. Thank you, Your Honor.

7 MR. RANSOM: And, Your Honor, at each turn qualified
8 by the words right-of-way.

9 THE COURT: I have not had the opportunity to read
10 the Leppard case; so I'd like the chance to do that.
11 Let's talk for a moment about -- I'll just be honest with
12 you. I'm inclined to grant the motion certainly based
13 upon my reading primarily of Judge Strickland's order. I
14 would like to read the Leppard case to read through it in
15 light of the arguments that have been made.

16 Let's talk about where we will be and what would be
17 left if I were to grant the motion as it relates to that
18 portion -- at least to the trees. What I heard from
19 Mr. Ransom is that there's more to the trespass claim than
20 just the trees and so if I were -- if the trees were, in
21 fact, eliminated from our discussion in the trial, what
22 would be left?

23 MR. RANSOM: Your Honor, one last comment. I do have
24 one other case I'd like to hand up to you on the
25 right-of-way issue. It is simply defines what an easement

1 is -- Morris versus Townsend -- but what would be left if
2 the trees are out of the case, Your Honor, I think would
3 be the destruction of the fence which arguably falls with
4 the trees. It also ---

5 THE COURT: Well, if the trees and the fence are
6 within the 66-foot, for lack of a better word,
7 right-of-way and if I were to find that based upon Judge
8 Strickland's order that that property all belonged to the
9 Department of Transportation which would give the
10 Department of Transportation the right to allow others on
11 its property for purposes such as SCE&G had at the time,
12 what would be left in the plaintiffs' claims?

13 MR. RANSOM: We'd be left with the equipment and
14 staging that took place there in the areas outside of the
15 right-of-way.

16 THE COURT: Anything else? In terms of claims.

17 MR. RANSOM: I think that would be it. I'm sorry,
18 Your Honor. I think there may also be some evidence that
19 a few of the trees that were cut were themselves outside
20 of the right-of-way. One of the witnesses prepared what
21 we refer to in the case as a tree survey -- a listing of
22 all the trees that had been cut or otherwise destroyed --
23 and she also made some measurements that would indicate
24 that some number of those trees were 8, 10, 15 feet behind
25 the power lines.

1 THE COURT: Behind the power lines or behind the
2 right-of-way?

3 MR. RANSOM: Well, regrettably, Judge, I can't tell
4 you exactly.

5 THE COURT: Is there any additional information that
6 I need in order to make a final decision on the summary
7 judgment motion?

8 MR. PUGH: None from the defendants other than -- the
9 defendant other than, Your Honor, I have if you're
10 interested and I know you got enough up there to read, but
11 I have a copy of the transcript of the trial before Judge
12 Strickland if you'd like to see it.

13 MR. RANSOM: Judge, the only other thing that I would
14 offer on behalf of my clients are the admissions that
15 SCE&G made and was quoted by The State Newspaper where
16 their authorized media relations man in response to an
17 inquiry about the incident to the newspaper admitted that
18 SCE&G had made a mistake and there wasn't any right-of-way
19 and that they felt obliged to make it right and I've got a
20 copy of that newspaper article that I can hand up if you
21 want to see that.

22 THE COURT: It is attached to one of the affidavits,
23 is it not?

24 MR. RANSOM: Yes, ma'am, that's correct.

25 THE COURT: Sunday, January 15, 2006.

1 MR. RANSOM: That's correct.

2 MR. PUGH: Obviously, Your Honor, we object to
3 newspaper articles being classic hearsay.

4 THE COURT: Well, and I understand the basis for
5 that, but it seems to me that at a point in time when
6 there's been a judicial decision regarding who owns the
7 property and where the property lines are I think that the
8 information that may be contained in the newspaper
9 articles might be somewhat relevant, but they don't
10 determine ultimately where the ownership lies.

11 MR. PUGH: Yes, Your Honor.

12 THE COURT: And as I recall that was the whole reason
13 for the declaratory judgment action was to specifically
14 decide that issue and to the extent that Judge
15 Strickland's order decides that issue I think that that
16 would be one that would be more dispositive than the
17 newspaper articles or the testimony and affidavits of the
18 witnesses; so I will -- What I'd like to do is to say
19 let's come back tomorrow morning. That will give me more
20 than enough time to read and make a decision. I could
21 tell you to come back this afternoon, but I just want to
22 make sure that I have enough time to be able to do some
23 independent research as well and let's come back at
24 9 o'clock tomorrow morning.

25 MR. PUGH: Yes, Your Honor. Your Honor, would you

1 like this transcript from the prior trial with Judge
2 Strickland?

3 THE COURT: No. Thank you for offering it.

4 MR. RANSOM: Do you need the transcripts from
5 Mr. McWhirter's deposition? I hope the excerpts are
6 acceptable we cited in our papers.

7 THE COURT: I'm not sure that that helps me either,
8 but I do have your pretrial brief.

9 MR. RANSOM: Yes, ma'am.

10 THE COURT: If I have any additional questions I may
11 very well shoot you all an e-mail. Thank you.

12 MR. PUGH: Your Honor, may I ask a question? I am
13 seeing those cases for the first time. I don't know
14 what's in there and I don't know if I am going to need to
15 submit any brief ---

16 THE COURT: If you read them this afternoon and you
17 think there is something that needs something else, let me
18 know --

19 MR. PUGH: Yes.

20 THE COURT: -- as soon as possible.

21 MR. PUGH: Thank you.

22 THE COURT: E-mail me and just make sure both sides
23 are copied.

24 MR. PUGH: I will do it. Thank you, Judge.

25 THE COURT: But what I don't want to get into is a

1 battle of e-mails --

2 MR. PUGH: No.

3 THE COURT: -- because that's not how I want to spend
4 all of my afternoon reading e-mails and I won't get done
5 what I need to get done.

6 MR. PUGH: I understand.

7 THE COURT: To the extent that there is something in
8 either one of these that really needs a response and if
9 your response is just we disagree I'll just take that as
10 granted you disagree.

11 MR. PUGH: Yes, ma'am.

12 THE COURT: So unless you can point to me something
13 specific.

14 MR. PUGH: I'll be judicious in my e-mail.

15 MR. RANSOM: Thank you, Your Honor.

16 (WHEREUPON, the proceedings were concluded for the
17 day and were reconvened on November 1, 2011 as
18 follows:)

19 THE COURT: Good morning, everyone. I've had the
20 opportunity to review all the documents again. For the
21 record what I've reviewed was the memorandum in support of
22 the defendant's motion for summary judgment including the
23 attachments which were easement to the telephone company
24 from 1936, the notice of condemnation in 1967, the summons
25 and complaint from the current action, the summons and

1 complaint from the 2010 action against the Department of
2 Transportation, the final order issued by Judge
3 Strickland, and various deeds from 1953, 1995, as well as
4 the right-of-way easement executed by H. P. LeGrande in
5 1967.

6 I also reviewed the statutory provisions related to
7 eminent domain. I reviewed information related to
8 easements. I reviewed the cases of Morris versus Townsend
9 and Leppard versus Central Carolina, and I reviewed all of
10 the affidavits and the attachments that were submitted by
11 the plaintiff in opposition to the motion for summary
12 judgment and I also read a few additional cases.

13 After reviewing all that information the question
14 that's before me is whether or not the plaintiffs have the
15 right to with able to go forward with their action based
16 upon the fact that they believe that South Carolina
17 Electric and Gas destroyed trees located on their
18 property, and having read the order of Judge Strickland I
19 have concluded that Judge Strickland's order basically
20 establishes ownership of that strip of property, and while
21 the right-of-way that was created was a 66-foot
22 right-of-way extending 33 feet on each side of the center
23 line of the road, I think that his order very clearly
24 talks about the ownership of that strip and who it belongs
25 to.

1 Specifically in his order he states that what he was
2 required to do under the 2010 action was determine the
3 scope and the extent and ownership of that strip, and in
4 going through all of the documents that he reviewed and
5 then through his findings of fact he made certain findings
6 that South Carolina Department of Transportation owns that
7 66-foot right-of-way, and I understand that the language
8 that's used in the order seems to place qualifiers on the
9 ownership of the property because it talks about title, it
10 talks about deeding, it talks about ownership, and then it
11 refers to a right-of-way. I think the words right-of-way
12 are only designed to assign -- to place a name on a
13 particular strip of property; so instead of saying a strip
14 of land that was 66-foot wide, he just referred to it as
15 the right-of-way.

16 I have reviewed that and I think based upon the
17 eminent domain statutes and the law that exists is that
18 certainly the Department of Transportation or its
19 predecessor had the right to condemn that property and
20 when the property was condemned I believe that the
21 ownership and I think the law supports that the ownership
22 of that property no longer became that belonging to the
23 LeGrande family, but it became property in the ownership
24 to the Highway Department and South Carolina Department of
25 Transportation, and while the condemnation board

1 determined what compensation, if any, should have been
2 paid, it was found that the benefits of -- and considered
3 all of the information, the benefits from having the road
4 paved offset whatever would have been the just
5 compensation for the taking of the property.

6 So, I read with interest Morris versus Townsend and
7 Leppard versus Central Carolina. I think both of these
8 cases can be distinguished primarily on the basis that it
9 refers to an easement that was granted and not based upon
10 condemnation proceedings. I think when -- Of course, you
11 can have an easement which is granted or easement by
12 necessity. There are all different types of easements.
13 In this particular case there are easements that were
14 given for certain reasons.

15 In the one -- I think it was the Leppard case versus
16 Central Carolina Telephone where it talks about that there
17 were damages sustained to the homeowner's property in the
18 erecting of the telephone poles. I read that case very
19 carefully. It talked about the abutting land. It talked
20 about the public easement. The first part of the order
21 talks about whether or not additional compensation should
22 have been provided because of the use of the easement by
23 another entity for the telephone lines and the court came
24 to the conclusion that there was no additional
25 compensation that was needed, but in terms of the damages

1 to the property to the lawn and the shrubs the order was
2 not clear as to where that damage occurred. In fact, the
3 case was remanded for the purposes of being able to
4 conduct a trial with that particular issue.

5 It appeared that the erection of the pole -- the
6 telephone poles -- were within the easement and whether or
7 not there was damage on the homeowner's property beyond
8 the easement and that's where the damage occurred or
9 whether there was shrubs and lawn on the easement the
10 order is not clear. I would -- It appears, however, that
11 based upon the location of the pole that there was
12 probably some damage in erecting that would have occurred
13 to the homeowner's personal property, to the real
14 property, and the shrubs and not property that was on the
15 easement.

16 I also note that the language of the right-of-way
17 that is given by H. P. LeGrande in 1967 indicated that he
18 had granted, bargained, sold, and released unto the
19 Department of Transportation or its predecessor that strip
20 of land and I think they that certainly creates full title
21 in the Department of Transportation. I also notice that
22 in the findings of fact by Judge Strickland he talked
23 about there were plans submitted to include Turkey Farm
24 Road because of the school district -- the construction by
25 the school district -- and that those improvements were to

1 take place within the 66-foot right-of-way that the
2 Department of Transportation owned.

3 So, I think there is language all throughout the
4 order that talks about the ownership by the Department of
5 Transportation of that strip of land and I would also note
6 that in the easement the easement language that was given
7 by H. P. LeGrande talked about the personal property and
8 other defenses and other structures or buildings within
9 that 66-foot strip of land.

10 It also indicated that -- It says it is as agreed
11 that buildings, fence, or signs or other obstructions will
12 not be erected by me, my heirs, assigns, or administrators
13 within the limits of the right-of-way herein conveyed and
14 that such buildings and fences as of now within the
15 limited right-of-way will be moved from the right-of-way
16 and restored in as good condition as before moving at the
17 expense of the Highway Department, and I understand that
18 Mr. LeGrande took -- wanted to protect at least some of
19 those trees and certainly had conversations with the
20 Highway Department about where to erect the road and how
21 to redesign and engineer the roadway so that some of those
22 trees would not be affected.

23 Unfortunately, on the other portion of the
24 right-of-way that was not done in this particular case and
25 I think based upon the law and the resolution of the

1 issues before the Master-in-equity declaratory judgment
2 that it was declared that the Department of Transportation
3 owned that 66-foot strip of land 33 feet from the center
4 of the roadway on each side and that those trees therefore
5 were within the right-of-way. I understand that they may
6 have been planted and erected prior to the acquisition of
7 that easement or the acquisition of the property by
8 eminent domain. Certainly, they appeared to have been
9 there at the time Mr. LeGrande purchased that property and
10 so I think in 1967 when the eminent domain took place and
11 the property was condemned that it no longer became the
12 property of Mr. LeGrande.

13 I also note that there's been a lot of discussion
14 about the things that were said immediate -- by SCE&G
15 immediately after or the first year or couple of months
16 after the trees were cut down. In particular, I note that
17 there was some -- there were statements made that SCE&G
18 did not have the right to be on that property, that area,
19 and I think that that certainly gave some comfort to the
20 plaintiffs in their position that the property belonged to
21 them. However, that does not change the ultimate
22 ownership of the property. While I think there was
23 certainly some confusion as to who owned the property and
24 whether or not the plaintiffs had the right to exercise
25 control over those trees and exercise control over that

1 portion of the property, I think in the 2010 declaratory
2 judgment action any issues related to ownership were
3 finally determined in statements whether they were
4 correctly or incorrectly made about what occurred in
5 2005 -- in the fall of 2005 -- would not change the
6 ownership issue.

7 It certainly may change any concern about liability
8 or whether SCE&G had the right to be on that property and
9 to do what they did, but certainly once ownership of that
10 66-foot strip of land was determined I think that at least
11 as to that portion and things that occurred within that
12 66-foot strip that that issue has been settled and so to
13 the extent that the current lawsuit relates to damages
14 against or seeking to recover damages against SCE&G for
15 those things that were within the 66-foot strip I think
16 they are precluded from going forward on that particular
17 portion.

18 I understand from our conversation yesterday that
19 there are other portions or other claims that are still
20 viable, and, certainly, we can go forward with those
21 claims at this particular point. There is a jury coming
22 in at 9:30 if the parties wish to go forward at this
23 particular time. Are there any questions?

24 MR. PUGH: One point of clarification, Your Honor.

25 THE COURT: Yes, sir.

1 MR. PUGH: Exhibit A to which Your Honor referred to
2 our memorandum was actually a document executed in favor
3 of Broad River Power Company.

4 THE COURT: Yes, it was, and I just happened to see
5 in that particular -- You're absolutely correct. It also
6 gave Southern Bell Telephone Company the right to be able
7 to use the poles that were being erected. You are correct
8 that it was a 1936 right-of-way that was given by Mrs. --
9 is it F. J. Howell or T. J. Howell?

10 MR. PUGH: F. J. Howell, Your Honor..

11 THE COURT: Who was the owner of the property in 1936
12 and it allowed the power company to erect poles and it
13 also gave the opportunity for Southern Bell Telephone to
14 use the same poles. I stand corrected on that.

15 MR. PUGH: Thank you, Your Honor.

16 MR. RANSOM: May it please the court, Your Honor. In
17 light of your ruling and just in in order to protect my
18 clients on the record I think during yesterday's hearing I
19 had forecast to the court that there would be testimony
20 relating to the replacement of small poles with taller
21 poles and I think you were kind enough to simply accept
22 that on my say-so and I'd like at this point in time I've
23 got about three pages from a deposition of Carolyn
24 LeGrande that I would like to have marked and submitted so
25 that we're protected on that in the record.

1 THE COURT: Yes, sir.

2 MR. RANSOM: And, also, Judge, again, in terms of the
3 testimony that we had proffered from Eddie McWhirter, the
4 30(b)(6) designee of SCE&G, I'd also like to submit that.

5 THE COURT: And that -- I'm sorry. That is in the
6 motion in limine, I believe, that -- your pretrial brief
7 and I did review that information and to the extent that
8 you want to make it part of the record you're certainly
9 allowed to do so.

10 MR. RANSOM: Thank you, Your Honor.

11 THE COURT: I had read that yesterday before we began
12 our discussion; so I was familiar with it when you brought
13 it to my attention.

14 MR. RANSOM: And I don't know what the -- whether I
15 should just hand those materials to the Court Reporter and
16 have her mark them.

17 THE COURT: If you would please --

18 MR. RANSOM: Yes, ma'am.

19 THE COURT: -- just to make sure that the record is
20 complete. I have four Court's Exhibits. I'll be happy to
21 accept those additionally and we'll add those to the list
22 if you want to do that now.

23 (WHEREUPON, Court's Exhibit Nos. 5 & 6 were marked
24 for identification only.)

25 THE COURT: Counsel, I do have a strike list for you

1 and I'll need to gather some information about witnesses.
2 I understand that there are some additional motions in
3 limine that we can take up. If you want I can give you
4 about five minutes or so to regroup and then we can go
5 forward.

6 MR. RANSOM: Your Honor, my request would be to allow
7 me to refer to with my clients for just a moment and speak
8 with Mr. Pugh and then if we could meet with Your Honor in
9 chambers.

10 THE COURT: Certainly. Certainly. And I recognize
11 that you might need to have that opportunity to do that.
12 We'll do that. We'll take a break. I'll just have Pat
13 give me the strike list in case you need them. Then we'll
14 talk about it. Thank you.

15 (End of Transcript of Record.)
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CERTIFICATE OF REPORTER

State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 31st day of October, 20011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 20, 2012

Lisa H. Davenport, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2008-CP-40-8425

CAROLINA LEGRANDE,
H. PAUL LEGRANDE, JR., and
MARION MANCINI,

Plaintiffs,

vs.

SOUTH CAROLINA ELECTRIC
AND GAS COMPANY,

Defendant.

ORDER

RICHLAND COUNTY
FILED
2010 JUL 16 AM 11:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

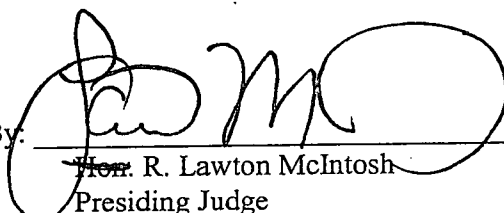
This matter came before the Court on June 30, 2010 to hear the Defendant's Motion to Strike the Plaintiffs' Third Cause of Action made pursuant to S.C. Code Ann. §16-11-650 (Code 1976, as amended.) The basis for the Defendant's motion is its contention the statute, relating to fences, is criminal in nature and does not provide a private cause of action to the Plaintiffs. The Plaintiffs counter that the statute is intended to identify and protect a specific class of persons – those having property enclosed by a fence – and that they are members of the protected class, so they should be entitled to bring a cause of action for the Defendant's alleged violation of the statute.

The Court agrees with the Defendant that §16-11-650 is penal in nature and gives rise to no private cause of action. The Defendant's motion to strike is therefore granted.

IT IS SO ORDERED.

Dated: 7-6-10
Columbia, South Carolina

By:


Hon. R. Lawton McIntosh
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-40-3108

Caroline LeGrande,
H. Paul LeGrande, Jr., and
Marion Mancini,
Plaintiffs,

v.

South Carolina Department of
Transportation,
Defendant and
Third Party Plaintiff,

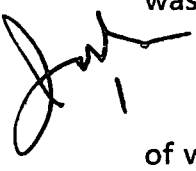
v.

Richland School District Two,
Third Party Defendant.

Final Order

RICHLAND COUNTY
FILED
2011 MAR 30 AM 8:50
JEANETTE W. HERRIDGE
C.C.P. & G.S.

This case came to be heard before me on August 8 and 9, 2010. Plaintiffs were represented by Robert B. Ransom, Esquire. Defendant and Third Party Plaintiff South Carolina Department of Transportation (hereinafter, "SCDOT") was represented by Linda C. McDonald, Esquire. Third Party Defendant Richland School District Two (hereinafter, "School District") was represented by Allen D. Smith, Esquire.

 This case involves a dispute about the scope and extent of SCDOT's ownership of a right of way for Turkey Farm Road (State Road S-1694) adjacent to Plaintiffs' property located near Blythewood in Richland County. Plaintiffs deny that SCDOT has any right, title or interest in or to the right of way for Turkey Farm Road adjacent to their property. They contend that activities being undertaken by the School District, under SCDOT's grant of authority, to improve Turkey Farm Road for a new high school are in derogation of their property rights.

SCDOT claims title to a 66 foot wide right of way for Turkey Farm Road by virtue of a 1967 condemnation action brought against Plaintiffs' father and predecessor in title Hazel P. LeGrande, also known as H. P. LeGrande and Hazel P. Legrand, and a Right of Way Easement he granted to the S. C. State Highway Department in 1967. Plaintiffs contend they had no record notice of the condemnation action or the Right of Way Easement and as bona fide purchasers for value without notice their property is not subject to SCDOT's right of way. Plaintiffs additionally allege that SCDOT cannot claim the right of way due to laches, acquiescence, and S. C. Code Section 15-3-310's statute of limitations.

Plaintiffs have pled five causes of action: 1) Recovery of Real Property; 2) Declaratory Judgment declaring the nature scope and extent of the parties' interests in the subject property; 3) Trespass; 4) Uncompensated Taking; and 5) Injunction. Plaintiffs have asked this court to construe the terms of the 1967 Easement and issue a Declaratory Judgment determining the rights of the parties in regard to the right of way.

FINDINGS OF FACT

Based on the pleadings, the testimony and documentary evidence presented at the hearing, I make the following findings of fact:

1. In 1953 Hazel P. LeGrande purchased a tract of land in Richland County in fee simple containing approximately 95.5 acres, more or less (hereinafter referred to as "the Farm Property"). (Deed attached to Plaintiffs' Complaint as "Exhibit A").
2. The Farm Property was bisected by an existing road when Mr. LeGrande purchased it in 1953. (See Defendant's Exhibit 3 - Plat of property of F. J. Howell surveyed for Johnnie L. Davis by Tomlinson Engineering Co., dated January 8, 1943 and recorded

in Richland County Plat Book J at page 66, hereinafter referred to as "1943 Tomlinson Plat.")

3. During the 1980's Mr. LeGrande subdivided and sold portions of the Farm Property with reference to plats he had prepared by Daniel B. Ballentine, a registered land surveyor. These plats show Turkey Farm Road as a 66-foot wide right of way. The plats are recorded in the Office of the Register of Mesne Conveyances for Richland County as follows:

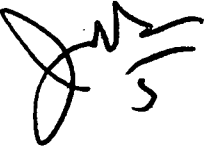
- 
- a. Plat prepared for H. P. LeGrande by Daniel B. Ballentine dated August 24, 1984 and recorded in Plat Book 50 at page 1043, showing subdivision of the Farm Property north of Turkey Farm Road into eight lots and indicating Turkey Farm Road as a "66' R/W." (See Defendant's Exhibit 5, hereinafter referred to as "the 1984 Ballentine Plat.")
 - b. Plat prepared for H. P. LeGrande by Daniel B. Ballentine dated October 15, 1985 and recorded in Plat Book 50 at page 6972, showing a 5.0 acre lot south of Turkey Farm Road and indicating Turkey Farm Road (Rd. S-1694) as a "66' R/W." (See portion of Defendant's Exhibit 6, hereinafter referred to as "the 1985 Ballentine Plat.")

4. In February 1988 Mr. LeGrande conveyed to Plaintiff Marion Mancini and her husband Joseph L. Mancini a 4.07 acre tract fronting on the north side of Turkey Farm Road, with reference to the 1984 Ballentine Plat, which shows Turkey Farm Road as a 66 foot right of way. (See Defendant's Exhibit 22 - Deed dated February 22, 1988 is recorded in the Richland County Office of the Register of Mesne

Conveyances in Deed Book 0877 at page 661.)

5. When Mr. LeGrande died in 1988, he left the remaining acreage of the Farm Property, consisting then of approximately 68.74 acres, to his wife Caroline T. LeGrande. (See Defendant's Exhibit 4 - Deed from Caroline T. LeGrande to Plaintiffs dated January 7, 1995, and recorded January 16, 1995, in Richland County in the Office of the Register of Mesne Conveyances in Deed Book 1238 at page 430. The derivation clause recites the fact that the property was inherited by the Grantor from the Estate of Hazel Paul LeGrande, Sr.)
6. In 1995 the Plaintiffs, who are Mr. LeGrande's three children, bought the remaining 68.74 acres of the Farm Property from their mother Caroline T. LeGrande for the sum of Forty Thousand (\$40,000) Dollars. The Deed has the following statement typed on its face: "No Title Search or Title Opinion Rendered." (See Defendant's Exhibit 4.)
7. In 1996 Plaintiff Marion Mancini and her husband Joseph Mancini sold a five (5.0) acre tract fronting on the south side of Turkey Farm Road, with reference to the 1985 Ballentine Plat, which shows Turkey Farm Road as a 66 foot wide right of way. (See Defendant's Exhibit 6 - "Title to Real Estate" from Joseph L. Mancini and Marion L. Mancini to Francis Marion Floyd and Sarah A. Floyd, dated March 4, 1996 and recorded in the Richland County Office of the Register of Mesne Conveyances in Deed Book 1305 at page 142.)
8. In 2002 the three Plaintiffs sold a 4.06 acre tract carved from the Farm Property to Keith E. Didyoung, et al., referencing the 1984 Ballentine Plat, which shows Turkey

Farm Road as a 66 foot wide right of way. (See Defendant's Exhibit 8 – Deed from Marion L. Mancini, Hazel P. LeGrande, Jr. and Caroline Harriett LeGrande to Keith E. Didyoung, et al., dated January 23, 2002 and recorded January 24, 2002 in Deed Book R617 at page 2927.)

- 
9. In 2003 Plaintiff Caroline P. LeGrande had a survey performed and plat prepared of the remaining Farm Property by Registered Land Surveyor Richard Yongue and recorded the plat in Richland County. The plat, entitled "Boundary Survey for Caroline H. Legrande," is dated March 3, 2003 and shows the property fronting on Turkey Farm Road, which is indicated on the plat as "66' R/W." The plat was recorded April 4, 2003, in the Office of the Register of Mesne Conveyances for Richland County as Plat No. 823-1572. (See Defendant's Exhibit 7, hereinafter referred to as "the 2003 Yongue Plat.") Caroline LeGrande testified that she recorded this plat because "that is what you do."

10. In 2004 the three Plaintiffs sold a 3.798 acre tract carved from the Farm Property to Richland School District Two, referencing a plat prepared by B. P. Barber & Associates, Inc. dated May 17, 2004, which shows Turkey Farm Road as a 66 foot wide right of way. (See Defendant's Exhibit 9, "Title to Real Estate" from Marion L. Mancini, Hazel P. LeGrande, Jr. and Carolina Harriett LeGrande to Richland School District Two, dated May 28, 2004 and recorded June 7, 2004 in the Office of the Register of Mesne Conveyances for Richland County in Deed Book R 943 at page 2257 and Defendants Exhibit 10, "Subdivision Plat," dated May 17, 2004, prepared for Richland School District Two by B. P. Barber & Associates recorded in the Office

of the Register of Mesne Conveyances for Richland County as Plat No. 0953-0595, hereinafter, "2004 B. P. Barber Plat.")

- 
11. In 2004 the three Plaintiffs sold a 1.432 acre tract carved from the Farm Property to Turkey Farm, LLC, referencing again the 2004 B. P. Barber Plat. (See Defendant's Exhibit 12 – "Title to Real Estate" from Marion L. Mancini, Hazel P. LeGrande, Jr. and Carolina Harriett LeGrande to Turkey Farm, LLC, dated May 28, 2004 and recorded June 7, 2004 in the Office of the Register of Mesne Conveyances for Richland County in Deed Book R 943 at page 2265.
 12. In November and December 2005 a subcontractor for the South Carolina Electric and Gas Company (SCE&G) cut numerous trees along Turkey Farm Road, including cedar trees, adjacent to the Plaintiffs' property in connection with improvements being made to the electric lines. The Plaintiffs contend that these trees are on their property and that SCE&G had no right to cut them. In November 2008 Plaintiffs instituted an action against SCE&G for trespass and conversion. This action, entitled "Caroline Legrande, H. Paul Legrande, Jr. and Marion Mancini v. South Carolina Electric and Gas Company" is now pending as Civil Action No. 2008-CP-40-8425.
 13. In September 2009 SCDOT issued a permit to the School District to construct improvements to Turkey Farm Road within the existing right of way. The School District is building a new high school on Turkey Farm Road. The road improvements are needed to construct the entrance to the school and make safety improvements to accommodate the expected increase in traffic. (Defendant's Exhibit 19.) Tony A. Magwood, SCDOT's Resident Maintenance Engineer, testified that according to the

plans submitted by the School District, the improvements to Turkey Farm Road will take place within the existing 66 wide right of way that SCDOT owns according to records on file with his office.

14. In May 2010 when School District contractors began the work preparatory to its road improvements, Plaintiffs instituted the within action against SCDOT, claiming that such actions were in derogation of their property rights.

15. Plaintiffs claim that SCDOT has never condemned their property nor asked permission to undertake its current activities. They say they had no notice that the Highway Department had condemned a 66 foot wide right of way for Turkey Farm Road, nor were they aware that their father had conveyed the Department a Right of Way Easement for Turkey Farm Road. They further claim that they believed they owned the land where the trees were cut down and that trees are not within the SCDOT right of way.



16. Kenneth C. Feaster, SCDOT's Director of Rights of Way, is responsible for managing SCDOT's acquisition of property for highway purposes and maintaining its documents of title to highway rights of way. The original deeds or other instruments conveying rights of way and the original papers in all condemnation proceedings for highways that SCDOT owns are filed in his office at the SCDOT headquarters office at 955 Park Street in Columbia. The records are open and available to the public. Mr. Feaster's staff regularly provides information as to the property interests that SCDOT owns.

17. According to the records on file in Mr. Feaster's office, SCDOT's predecessor, the

South Carolina State Highway Department ("Highway Department"), in 1967 acquired a 66 foot wide right of way (33 feet on either side of the centerline of the road) for the improvement of Road S-1694 (known as "Turkey Farm Road") from Road S-1352 to U. S. Highway 21. One of the property owners from whom the Highway Department acquired right of way was Plaintiffs father Hazel P. Legrande. The records on file in Mr. Feaster's office regarding the acquisition of right of way from Mr. Legrande are as follows:

a. A "Notice of Condemnation," dated March 6, 1967, issued by South Carolina State Highway Department to Hazel P. Legrand (sic.), notifying him of the acquisition of a 66 foot wide right of way (33 feet on either side of the centerline of the road) through his property for the construction and improvement of Turkey Farm Road (Rd. S-1694) as delineated by the official plan sheets for the project. The plan sheets show that the road improvements included paving the then existing two lane dirt road. (Defendant's Exhibit 13 - "Notice of Condemnation" and Defendant's Exhibit 17 - "Plan and Profile of Proposed State Highways Rd. S-1694, et al. dated November 28, 1966," hereinafter referred to as "the Official Plan Sheets.")

b. Transcript of the "Condemnation Proceedings" before the Board of Condemnation, dated March 22, 1967, at which Mr. Legrande and his son appeared. According to the transcript Mr. Legrande objected to location of the road improvement project because he thought it would require his cedar trees to be cut down. The presiding member of the Board advised Mr.

Legrande that the Board had no authority to make any changes in the engineering features of the road and suggested that Mr. Legrande "take that up with the highway department." (See Defendant's Exhibit 15 - "Condemnation Proceedings" in the matter of S. C. State Highway Department v. Hazel P. Legrande, dated March 22, 1967.)

- c. A "Resolution of the Board of Condemnation," dated March 22, 1967, wherein the Board of Condemnation made a finding that no cash consideration was due to Mr. Legrande for the acquisition of the 66 foot wide right of way because the benefits of paving the road exceeded the damages. (See Defendant's Exhibit 14 - "Resolution of Board of Condemnation," dated March 22, 1967.) There is nothing in the file that indicates this action was ever appealed.

- d. A "Right of Way Easement," dated March 29, 1967, from Hazel P. Legrande to the South Carolina State Highway Department conveying the following right of way:

.....a right of way for the construction of (Turkey Farm Road)... *as shown by plans prepared by the State Highway Department*, on and over all lands which I may own in whole or in part, for the purpose of locating, constructing, improving and maintaining the above described highway....

Bounded by lands of 1) Mrs. Lessie L. Smith Martin on the East and West, (2) Mrs. Ruth W. Moorefield on (the) East and Mary W. Davis on the West, and others.

Said right of way to have a width of 66 feet, that is 33 feet on each side of the centerline of the Highway....

"Special Provisions:" Right of way herein granted is along a

relocation as shown on plans by a heavy dashed line between approximate survey stations 49+17.4 and 76+36.5.

(Emphasis added.) (Defendant's Exhibit 16.)

- e. The Official Plan Sheets (Defendant's Exhibit 17) referenced in the Right of Way Easement, which show a 66 foot wide right of way (33 feet on either side of the centerline) through Mr. Legrande's property. On Sheet No. 12, the following note appears:

Note: During construction relocate this alignment approximately as shown by dashed line from sta. 49+17.4+/- to sta. 76+32.5+/- by paralleling tangent 9' lt. from P. I. sta. 54+95.6 to P. I. sta. 76+36.8. Use degree of curves as shown on plans.

This note and the plan sheets indicate that the Highway Department engineers revised the plans on March 31, 1967 to relocate the right of way approximately 9 feet north along the area where Mr. Legrande owned property on both sides of the road. The road was not relocated where Mr. Legrande did not own property on both sides of the road. It appears that the relocation was made as an accommodation to Mr. Legrande to try to avoid having to cut some of his cedar trees to construct the road improvements.

18. SCDOT's right of way documents involving Mr. LeGrande's property are not filed in the Richland County deed offices. Prior to 1987, SCDOT was not required to file its right of way documents and condemnation papers in the county offices. S. C. Code Section 57-5-500 mandated that these documents be filed in the SCDOT headquarters office in Columbia and former Section 57-5-560 further provided that such filing had the same force and effect as if the documents were recorded in the

county offices. (See Defendant's Exhibit 18.) When the Eminent Domain Procedures Act was enacted in 1987, it established a uniform procedure for condemnation of property by the State, its political subdivisions and all other entities with the power of eminent domain. (See Preamble to Act 173 of 1987.) Among these uniform procedures was the requirement that condemnation notices would be filed with the clerk of court in the county in which the property to be condemned was situated. (See Section 1 of Act No. 173 of 1987, specifically the provisions now codified as S. C. Code Sections 28-2-90 and 28-2-230.) The Eminent Domain Procedures Act also repealed numerous statutory provisions applicable to former agency-specific condemnation procedures. (See Act No. 173 of 1987, Section 55.) Among these agency-specific provisions was Section 57-5-560. However, when it repealed Section 57-5-560, the General Assembly did not state that SCDOT file in the county offices the pre-1987 right of way instruments and condemnation notices it had filed between 1917 and 1987 in its headquarters office. Mr. Feaster estimated that if there had been such a requirement, SCDOT would have had to file approximately 18,000 pre-1987 documents in the county deed offices. Since 1987 SCDOT has filed its post-Eminent Domain Procedures Act condemnation notices and right of way instruments in the county offices.

- 11
19. Tony A. Magwood, SCDOT's Richland County Resident Maintenance Engineer, testified that information on the width and location of SCDOT right of ways in Richland County are available to the public at his office on Fairfield Road in Columbia and that his office regularly supplies this information to members of the public,

including surveyors and property owners.

20. Luther A. Lown, a registered land surveyor, testified that he has been practicing land surveying since 1974. He reviewed the right of way documents for Turkey Farm Road on file at SCDOT, including the Official Plan Sheets. He testified that the documents show that SCDOT owns a 66 foot wide right of way through and along Plaintiffs' property. He conducted a field survey adjacent to the Plaintiffs' property to determine the location of the as built road in reference to the 1967 documents and plans. His findings are summarized and delineated on a "Sketch Plan of Turkey Farm Road, S-1694, as built for the South Carolina Department of Transportation," dated June 22, 2010, a copy of which was admitted into evidence as Defendant's Exhibit 24. He concluded that the cedar stumps adjacent to the Plaintiffs property between approximate survey stations 75 and 86 are located within the 66 foot wide right of way. There are uncut cedar trees still standing along a fence which is located within the 66 foot wide right of way between approximate survey stations 49 and 76. This is the area of the right of way was relocated in 1967.

21. Plaintiff Marion L. Mancini lived on the Farm Property from 1953-57 and again in 1961. She was living in Boston in 1967. She has been a real estate agent for 27 years. She has considerable knowledge of real estate matters. She could not estimate how many real estate closings she has been involved with during her career, but she recalled that in one particular month alone she was involved in more than 20 real estate closings. Although she acknowledged the importance of obtaining a title search of a piece of property prior to buying it, she admitted that

the Plaintiffs did not obtain a title search of the Farm Property when they purchased it from their mother in 1995. She has never performed a title search herself. She also acknowledged the importance of a buyer obtaining surveys and making inquiries to ascertain the existence of easements and rights of way that might impact the property being purchased. She said she understood the edge of the Farm Property to be the edge of the pavement on Turkey Farm Road. The first she knew of SCDOT's claim of a 66 foot right of way was in 2008.

22. Plaintiff Caroline LeGrande has lived on the Farm Property continuously since 1990, and on and off since 1953. She thought because the fence and cedar trees were not located on the road, that they were not within area that SCDOT claimed as right of way. She said no one from SCDOT had ever raised an issue about the fence or the trees being on the right of way or asked her to remove them. She first became aware of SCDOT's claim to a 66 foot right of way in 2008.



CONCLUSIONS OF LAW

Based on the facts, I make the following conclusions of law:

1. Pursuant its statutory powers of eminent domain, in March 1967, the South Carolina State Highway Department, SCDOT's predecessor in interest, condemned a 66 wide right of way for Turkey Farm Road through Mr. Hazel P. LeGrande's Farm Property for purposes of paving a two lane dirt road.
2. In March 1967, the South Carolina State Highway Department accommodated Mr. LeGrande's request to move the planned two lane road away from his cedar trees between survey stations 49+17.4 and 76+36.5, but it did not reduce the width of the

right of way that it acquired. Mr. LeGrande conveyed the relocated portion of the 66 foot wide right of way, in addition to the unrelocated portion of the 66 foot right of way, to the South Carolina State Highway Department by Right of Way Easement dated March 29, 1967.

3. Based upon not only the 1967 condemnation action, but also, the 1967 Right of Way Easement, SCDOT owns a 66 foot wide right of way for Turkey Farm Road (S-1694) adjacent to Plaintiffs property.
4. Plaintiffs had record notice of SCDOT's 66 foot wide right of way by virtue of the filing of the 1967 condemnation proceedings and the Right of Way Easement at the SCDOT headquarters office in Columbia. Filing of SCDOT right of way documents at SCDOT's headquarters office in Columbia is required by S. C. Code Section 57-5-500. See Bennett v. Investors Title Insurance Company, 370 SC 578, 585, 635 S.E.2d 649, 652 (2006) (where the court acknowledged that all rights of way for state highways be filed at SCDOT). The repeal by the Eminent Domain Procedures Act of former Section 57-5-560, which provided that filing of such documents at the SCDOT headquarters office has the same effect as if filed in the county deed offices, did not remove the legitimacy or effectiveness of the filing of such documents at SCDOT offices prior to the date of the repeal. Statutory enactments are to be considered prospective rather than retroactive in their operation unless there is specific provision or clear legislative intent to the contrary; no statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt. Hyder v. Jones, 245 S. E. 2d 123, 271 S.C. 85 (S. C. 1978); Carolina

Chemicals, Inc. v. South Carolina Department of Health and Environmental Control,

351 S.E.2d 575, 290 S.C. 498 (S. C. App. 1986). When the General Assembly repealed Section 57-5-560 with its passage of the Eminent Domain Procedures Act, it did not mandate that SCDOT file pre-1987 documents in the county offices.

5. Plaintiffs knew or should have known of SCDOT's ownership of the 66 wide right of way easement for Turkey Farm Road because:

a. In 2004 all three of the Plaintiffs sold portions of the Farm Property by deeds to the School District and to Turkey Farm, LLC, referencing the 2004 B. P. Barber plat, which indicated that Turkey Farm Road was a 66 foot wide right of way. (See Defendant's Exhibits 9, 10, and 12.)

b. In 2002 all three of the Plaintiffs sold a portion of the Farm Property to Keith E. Didyoung, et al. referencing the 1984 Ballentine Plat, which showed Turkey Farm Road as a 66 foot wide right of way. (See Defendant's Exhibit 8.)

c. In 2003 Caroline P. LeGrande hired registered land surveyor Richard Yongue to survey the Farm Property boundary and prepare a plat. The 2003 Yongue plat shows Turkey Farm Road as a 66 foot wide right of way. (See Defendant's Exhibit 7.) Ms. Legrande recorded the plat after it was prepared.

d. In 1988 Plaintiff Marion Mancini accepted a deed from her father Hazel P. LeGrande conveying to her and her husband a lot carved from the Farm Property referencing the 1984 Ballentine Plat which showed Turkey Farm Road as a 66 foot wide right of way. (See Defendant's Exhibits 5 and 22.)

e. In 1996, Mrs. Mancini and her husband conveyed another lot carved from

the Farm Property to Francis and Sarah Floyd, referencing the 1985 Ballentine Plat which showed Turkey Farm Road as a 66 foot wide right of way. (See Defendants Exhibit 6.)

6. Plaintiffs are estopped from claiming that Turkey Farm Road is not a 66 foot wide right of way by reason of their execution of deeds which referenced plats showing the road as a 66 wide right of way. No man can make an averment against his own deed. See Stoney v. McNeil, 12 S. C. L. (1 McCord) 85 (1821). See also Miller v. Bagwell, 3 McCord 429, 14 S. C. L. 429 (S. C. App.), 1826 WL 682 (S. C. App.) (a recital in a sheriff's deed of his authority to sell estops him to later deny his authority.)
7. By virtue of the documents of record, the plats of which they were aware or should have been aware, and even the road itself, Plaintiffs were on constructive or inquiry notice of SCDOT's claim to a 66 foot right of way for Turkey Farm Road and its location in relation to their property. See Spence v. Spence, 368 S. C. 106, 628 S.E.2d 869 (2006), where the court explained:

Constructive or inquiry notice in the context of a real estate transaction may arise when a party becomes aware or should have become aware of certain facts which, if investigated, would reveal the claim of another. The party will be charged by operation of law with all knowledge that an investigation by a reasonably cautious and prudent purchaser would have revealed.

See also S. C. Tax Comn. v. Belk, 266 S.C. 539, 225 S.E.2d 177 (1976), where the S. C. Supreme Court stated, "This Court has been most exacting in determining what actions satisfy the requirements of inquiry notice. We have denied subsequent purchasers comfort under the umbrella of a bona fide purchaser when the exercise of prudence would have avoided the difficulty." Belk, 266 S.C. at 544, 225 S.E.2d at

179 (claim of bona fide purchaser for value will be defeated when "sufficient record notice is available to charge the purchaser with a duty to inquire which, if pursued with due diligence would have supplied him with knowledge of the rights of other parties.") There was adequate evidence to put Plaintiffs upon a duty of inquiry as to the width of the right of way acquired by SCDOT from their father. Had Plaintiffs inquired with SCDOT they would have been provided the documents evidencing ownership. Had Plaintiffs examined the plats they referenced in their own deeds of conveyance, they would have seen that the right of way was 66 foot wide. Finally, the Plaintiffs could have hired a land surveyor, as Caroline LeGrande actually did in 2003, to determine the boundaries of the highway right of way in relation to their property.

8. SCDOT is not prevented by laches from asserting its title to the 66 foot wide right of way for Turkey Farm Road along the Plaintiffs property. Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. Chambers of S. C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 SE 2d 279, 280 (1993). The doctrine of laches is inapplicable to the circumstances of this case for several reasons. First, SCDOT did assert its right to the 66 foot wide right of way. After acquiring the right of way from Plaintiff's father, SCDOT filed and kept the records of conveyance and condemnation on file at the SCDOT headquarters office as required by law. SCDOT maintained the road and

right of way as necessary for its operations. Further, SCDOT asserted its rights when it issued a permit to the School District in 2009 to construct road improvements within the 66 foot wide right of way. SCDOT's failure to physically use the entire width of the right of way does not constitute, in and of itself, failure to assert title or abandonment of the full extent of the right of way. It is well settled that no rights in a public street or highway can be acquired against the State or municipality by adverse possession. City of Myrtle Beach v. Parker, 260 S.C. 475, 197 S.E.2d 290 (1973). Second, Plaintiffs incurred no expenses nor changed their position detrimentally as a result of their perceived failure of SCDOT to assert its title. In fact, on several occasions Plaintiffs conveyed property to others for value, in reference to plats showing the existence of the 66 foot wide right of way for Turkey Farm Road.

9. SCDOT is not prevented by acquiescence from asserting its claim to the 66 foot wide right of way for Turkey Farm Road. The doctrine of acquiescence has been stated by the South Carolina Court of Appeals as follows:

Acquiescence is a question of fact determined by the intent of the parties in a boundary dispute. If a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief, because his silence permits or encourages others to part with their money or property, and he cannot complain that his interests are affected; his silence is acquiescence and it estops him. Recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line. Coker v. Cummings, 671 S.E.2d 383 (S.C. Ct. App. 2008).

SCDOT had no duty to object to the existence of Plaintiffs' fence or the trees growing within the SCDOT right of way until the fence or trees interfered with the safe

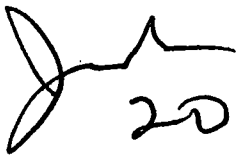
operation, maintenance or improvement of the road. There are many encroachments on SCDOT rights of way throughout the State, but this does not constitute acquiescence to new boundaries of the rights of way. In the case of South Carolina State Highway Department v. Metts, 270 S. C. 73, 240 S. E. 2d 816 (SC 1978), the Highway Department had allowed a concrete island and gasoline pumps to encroach on a portion of the highway right of way for 40 years. However, the Court rejected the landowners claim that the Department's failure to object to the location and use of the island and pumps on the right of way for such a long period of time prevented the Department from asserting any right to the portion of the right of way occupied by the landowner's improvements. The Court, citing City of Myrtle Beach v. Parker, 260 S.C. 475, 197 S.E.2d 290 (1973), said that the landowners could not acquire rights in a public street or highway by adverse possession.

- 19
10. Because SCDOT acquired a 66 foot wide right of way for Turkey Farm Road from Plaintiffs' father, and they are in privity of estate with him, they are estopped to deny this conveyance.
 11. Because SCDOT acquired a 66 foot wide right of way from Plaintiffs' father and they are not entitled to the defense of a bona fide purchaser for value without notice, Plaintiffs actions for recovery of real property, trespass, uncompensated taking and injunction are denied.
 12. Plaintiffs' contention that SCDOT is barred from asserting title to the right of way by the 20 year statute of limitations in S. C. Code Section 15-3-310 must also be denied.

Section 15-3-310 controls actions brought by the State. This action was brought by the Plaintiffs, not SCDOT.

13. Because the Court has determined that Plaintiffs have not prevailed on any of their causes of action, SCDOT's third party complaint against the School District for indemnification is rendered moot.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be "J. 20".A handwritten signature in black ink, appearing to be "Joseph M. Strickland".

Joseph M. Strickland, Master in Equity
Richland County

Columbia, South Carolina

March 29, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Carolina LeGrande, et al.)
)
Plaintiff(s),)
)
vs.)
)
South Carolina Electric)
& Gas Company,)
Defendant(s))

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2008-CP-40-8425
JUDGMENT ROLL NO:

SUMMONS AND ORDER
OF
APPOINTMENT

Hearing on the Merits
Declaratory Judgment

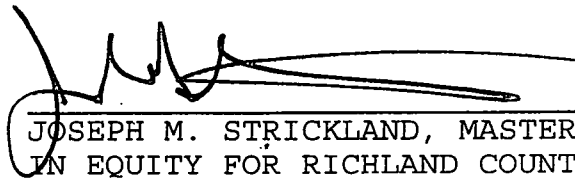
2010 JUN 24 AM 8:58
FILED
JEANE L. W. MORRIS
C.C.P. & G.S.

BY VIRTUE of the Order of Reference filed in the above entitled case, I have appointed August 9, 2010 at 2:15 o'clock pm to Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, S.C., as the time and place for holding a hearing at which time and place all interested parties will appear. Continuance of this hearing will be granted only upon strict compliance with Rule 40(c), SCRCP.

Upon receipt of this Summons and Order, the Plaintiff(s) or moving party will notify this office immediately of any persons entitled to notice who have not been mailed a copy of this Summons and Order. All parties will please take notice of Rule 5(d), SCRCP.

If unliquidated damages are sought against a Defendant in Default, Plaintiff must give notice of time and place of this hearing pursuant to Rule 55, SCRCP. Additionally, it shall be the responsibility of the Plaintiff or moving party to comply with Rule 6, SCRCP. A copy of this notice must be filed with the Court by the date of the hearing.

AND IT IS SO ORDERED.


JOSEPH M. STRICKLAND, MASTER
IN EQUITY FOR RICHLAND COUNTY

CC: Robert B. Ransom, Esq.
Michael G. Sullivan, Esq.
Linda C. McDonald, Esq.
Allen D. Smith, Esq.
Steven J. Pugh, Esq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Carolina LeGrande, et al.)
)
Plaintiff(s),)
)
vs.)
)
South Carolina Department)
of Transportation,)
Defendant(s))

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2010-CP-40-3108
JUDGMENT ROLL NO:

SUMMONS AND ORDER
OF
APPOINTMENT

2010 JUN 24 AM 8:58
JANETTE W. McBRIDE
C.P. & G.S.

FILED
RICHLAND COUNTY

Hearing on the Merits
Declaratory Judgment

BY VIRTUE of the Order of Reference filed in the above entitled case, **I have appointed August 9, 2010 at 2:15 o'clock pm** to Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, S.C., as the time and place for holding a hearing at which time and place all interested parties will appear. Continuance of this hearing will be granted only upon strict compliance with Rule 40(c), SCRCP.

Upon receipt of this Summons and Order, the Plaintiff(s) or moving party will notify this office immediately of any persons entitled to notice who have not been mailed a copy of this Summons and Order. All parties will please take notice of Rule 5(d), SCRCP.

If unliquidated damages are sought against a Defendant in Default, Plaintiff must give notice of time and place of this hearing pursuant to Rule 55, SCRCP. Additionally, it shall be the responsibility of the Plaintiff or moving party to comply with Rule 6, SCRCP. A copy of this notice must be filed with the Court by the date of the hearing.

AND IT IS SO ORDERED.


JOSEPH M. STRICKLAND, MASTER
IN EQUITY FOR RICHLAND COUNTY

CC: Robert B. Ransom, Esq.
Michael G. Sullivan, Esq.
Linda C. McDonald, Esq.
Allen D. Smith, Esq.
Steven J. Pugh, Esq.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND) CIVIL ACTION NO.: _____

CAROLINE LEGRANDE,
H. PAUL LEGRANDE, JR., and
MARION MANCINI,

Plaintiffs,

vs.

SOUTH CAROLINA ELECTRIC
AND GAS COMPANY,

Defendant.

COMPLAINT

(Trespass)

(Conversion)

C.C.C. & G.S.

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FILED

The Plaintiffs, complaining of the Defendant, allege and state as follows:

1. The Plaintiffs Caroline LeGrande and Marion Mancini are citizens and residents of Richland County, South Carolina.
2. The Plaintiff H. Paul LeGrande, Jr. is a citizen and resident of the State of Florida.
3. The Defendant South Carolina Electric & Gas Company ("SCE&G") is a business corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in Richland County, South Carolina.
4. At all times relevant to the matters alleged herein, the Defendant SCE&G was acting by and through its actual and apparent agents, employees, servants and contractors for whose conduct it is legally responsible because all such conduct was undertaken at the specific request and for the benefit of the Defendant SCE&G and because all such conduct was later accepted, ratified and approved by the Defendant SCE&G.
5. Venue of this action is proper in Richland County in that the Defendant SCE&G maintains

its principal place of business in Richland County and the actions and conduct giving rise to the Plaintiffs' claims all took place in Richland County.

6. The Plaintiffs are the joint owners of a tract of real property located in Richland County, South Carolina and commonly known as Cedar Lane Farm.
7. Cedar Lane Farm is situated near the town of Blythewood, South Carolina and is bordered along the north by Turkey Farm Road.
8. At some point prior to the incident in question, the Defendant SCE&G had placed small poles along Turkey Farm Road on the northern perimeter of Cedar Lane Farm for the purpose of carrying overhead electrical power lines.
9. Upon information and belief, these small poles and overhead power lines were originally placed on the Plaintiffs' property with the express permission of the Plaintiffs' predecessor in title, their father, H. Paul LeGrande, Sr., who likewise permitted the Defendant SCE&G to periodically trim the branches of certain trees beneath and near the small poles and power lines.
10. Mr. LeGrande, Sr. passed away in or about 1986 and after that time the Defendant continued to periodically trim the trees around its small poles and lines with the permission of the Plaintiffs.
11. In late November or early December of 2005, the Defendant SCE&G determined to upgrade the overhead electrical power lines on Turkey Farm Road in order to facilitate the provision of electrical power to new developments of homes and schools which were being planned for real property located on Turkey Farm Road to the west of Cedar Lane Farm.
12. In the process of upgrading the electrical service for these new future developments, the

Defendant SCE&G removed the small power poles extant on Cedar Lane Farm's property, replaced those poles with large ones, erected new power lines with greater electrical conduction capacity, and then clear cut a large number of mature ornamental trees which were located along Turkey Farm Road on Cedar Lane Farm's property.

13. The conduct of the Defendant SCE&G more or less denuded a tract of land several yards wide and several hundred yards long on property owned by the Plaintiffs abutting Turkey Farm Road.
14. This upgrading of poles and power lines and clear cutting of trees was undertaken without the Plaintiffs' knowledge or permission, in violation of their right to the exclusive use, possession and enjoyment of the land and trees on Cedar Lane Farm.
15. Many of the trees in question had been planted decades ago and had reached a state of beautiful maturity so that they provided a wonderfully aesthetic and peaceful border and buffer for Cedar Lane Farm from Turkey Farm Road. Indeed, a large number of the cut trees were age old cedars whence Cedar Lane Farm had derived its name.

FOR A FIRST CAUSE OF ACTION
(Trespass)

16. Paragraphs 1 through 15 above are realleged as fully as if restated herein.
17. The Plaintiffs were at all times in legal possession of the property at issue.
18. The Defendant voluntarily entered onto the property of the Plaintiffs.
19. While on the Plaintiffs' property, the Defendant greatly expanded the scope and nature of its power lines by installing new poles and new lines, cutting mature ornamental trees and other natural growth which lent security and privacy to the Plaintiffs' property, and also damaging

their fence, all without the Plaintiffs' consent or permission.

20. The Defendant knew or should have known the Plaintiff would not approve or permit its activities on their property had their permission been asked.
21. The Plaintiff have been injured by the Defendant's conduct.
22. The Plaintiffs are entitled recover actual and punitive damages from the defendant in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Destruction of Trees)

23. Paragraphs 1 through 22 above are realleged as fully as if restated herein.
24. South Carolina Code Ann. §16-11-520 prohibits the willful cutting of a tree located upon real property of another.
25. South Carolina Code Ann. §16-11-580 prohibits the knowing or willful cutting or destruction or removal of any trees of any kind standing upon privately owned land without the consent of the owner.
26. South Carolina Code Ann. §16-11-610 prohibits entering upon the lands of another for cutting timber on such land without the consent of the owner.
27. Pursuant to South Carolina Code Ann. §16-11-615, the Plaintiffs have a civil action against the Defendant for violation of any of these statutes.
28. The Defendant knowingly and willfully violated each of the aforementioned statutes.
29. The Plaintiff have been injured by the Defendant's conduct.
30. The Plaintiffs are entitled recover actual, treble and punitive damages from the Defendant in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Destruction of Fence)

- 31. Paragraphs 1 through 30 above are realleged as fully as if restated herein.
- 32. South Carolina Code Ann. §16-11-660 prohibits the willful removal or destruction of any fence intended to enclose uncultivated land in this State.
- 33. The Defendant knowingly and willfully violated this statute.
- 34. The Plaintiff have been injured by the Defendant's conduct.
- 35. The Plaintiffs are entitled recover actual, treble and punitive damages from the Defendant in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

- 36. Paragraphs 1 through 35 above are realleged as fully as if restated herein.
- 37. The Plaintiffs had a legal interest in the trees along their property.
- 38. The Defendant willfully and intentionally altered the condition of the Plaintiffs' trees for its own use.
- 39. The Defendant's conduct with respect to the Plaintiffs' trees was without their permission.
- 40. The Plaintiffs have been harmed by the Defendant's conduct.
- 41. The Plaintiffs are entitled to recover actual and punitive damages from the Defendant in an amount to be determined by the trier of fact.

WHEREFORE the Plaintiff prays for judgment against the Defendant in an amount of actual and punitive damages to be determined by the trier of fact, trebled pursuant to statute; and for such further legal and equitable relief as the Court deems just and proper.

BY: 

Robert B. Ransom
LEVENTIS & RANSOM
Post Office Box 11067
Columbia, SC 29211
(803) 765-2383

ATTORNEYS FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Caroline LeGrande, H. Paul
LeGrande, Jr. and Marion Mancini,

Plaintiffs,

vs

South Carolina Electric and
Gas Company,

Defendant.

C/A No. 08-CP-40-8425

ANSWER OF DEFENDANT

JEANETTE W. McBRIDE
C.C.P. & G.S.

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RICHLAND COUNTY
FILED

Defendant South Carolina Electric and Gas Company ("SCE&G") files this
Answer to Plaintiffs' Complaint and would respectfully show unto the Court:

FOR A FIRST DEFENSE

1. SCE&G denies each and every allegation of the Complaint not specifically admitted or explained herein.
2. Upon information and belief, SCE&G admits the allegations in paragraphs 1 and 2 of the Complaint.
3. SCE&G admits the allegations in paragraph 3 of the Complaint.
4. As to paragraphs 4 and 5 of the Complaint, SCE&G submits that the Plaintiffs' averments therein are legal conclusions, requiring no response of SCE&G. If a response to these averments is required of SCE&G, they are denied.
5. As to paragraph 6 of the Complaint, SCE&G is without sufficient information to determine the truth of the allegations therein and, therefore, denies the same.

6. Upon information and belief, SCE&G admits the allegations in paragraph 7 of the Complaint.

7. As to paragraph 8 of the Complaint, SCE&G admits that it had overhead power lines and poles supporting same along Turkey Farm Road. The remaining allegations of Paragraph 8 are denied.

8. As to paragraph 9 of the Complaint, SCE&G submits that its equipment was erected lawfully and its maintenance of said equipment was conducted in accordance with SCE&G's lawful authority. Any remaining, or contrary, allegations in Paragraph 9 are denied.

9. SCE&G is without information as to the date "Mr. Legrande, Sr." died. SCE&G admits that since 1986 it has periodically and appropriately maintained its equipment in this area. Any remaining, or contrary, allegations in paragraph 10 are denied.

10. SCE&G denies the allegations in paragraphs 11 and 12 of the Complaint, as written.

11. As to paragraph 13, SCE&G admits that certain tree trimming activities were conducted. The remaining allegations of paragraph 13 are denied.

12. As to paragraph 14, SCE&G is without information as to "the Plaintiffs' knowledge" of SCE&G's operational plans. As to the remaining allegations of paragraph 14, SCE&G denies that it violated any rights of the Plaintiffs or that the tree trimming activities were conducted without Plaintiffs' knowledge.

13. As to paragraph 15, SCE&G is without information of the precise age of the trees referred to by the Plaintiffs or the genesis of the name "Cedar Lane Farm."

14. As to paragraph 16 of the Complaint, SCE&G realleges and reiterates its answers and defenses as to paragraphs 1 through 15 above.

15. Upon information and belief, SCE&G admits the allegations in paragraph 17 of the Complaint.

16. As to paragraph 18, SCE&G submits that it entered into the area of its recorded easements.

17. SCE&G denies the allegations in paragraphs 19 through and including 22 of the Complaint.

18. As to paragraph 23 of the Complaint, SCE&G realleges and reiterates its answers and defenses as to paragraphs 1 through 22 above.

19. SCE&G submits that Plaintiffs' averments in paragraphs 24 through and including 27 of the Complaint are legal conclusions, requiring no response of SCE&G. If a response to these averments is required of SCE&G, they are denied.

20. SCE&G denies the allegations in paragraphs 28 through and including 30 of the Complaint.

21. As to paragraph 31 of the Complaint, SCE&G realleges and reiterates its answers and defenses as to paragraphs 1 through 30 above.

22. SCE&G submits that Plaintiffs' averment in paragraph 32 of the Complaint is a legal conclusion, requiring no response of SCE&G. If a response to this averment is required of SCE&G, it is denied.

23. SCE&G denies the allegations in paragraphs 33 through and including 35 of the Complaint.

24. As to paragraph 36 of the Complaint, SCE&G realleges and reiterates its answers and defenses as to paragraphs 1 through 35 above.

25. SCE&G denies the allegations in paragraphs 37 through and including 40 and the Plaintiffs' prayer for damages.

FOR A SECOND DEFENSE

26. SCE&G asserts that the Complaint, in whole or in part, fails to state a claim upon which relief may be granted against SCE&G and should therefore be dismissed.

FOR A THIRD DEFENSE

27. SCE&G would show that it had the legal authority, privilege, permission, justification, excuse and/or consent to conduct the actions alleged by the Plaintiffs in their Complaint; therefore, the Plaintiffs' claims are without basis in law or fact.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims are barred, in whole or in part, by the operation of the Doctrine of Estoppel.

FOR A FIFTH DEFENSE

29. Plaintiffs' claims are barred, in whole or in part, by the operation of the Doctrine of Waiver.

FOR A SIXTH DEFENSE

30. Plaintiffs' claims are barred, in whole or in part, by the parol evidence rule.

FOR A SEVENTH DEFENSE

31. The Plaintiffs' claims are barred by the Statute of Limitations.

FOR AN EIGHTH DEFENSE

32. SCE&G would show that its conduct was reasonable and prudent, without malice, and neither wanton or willful.

FOR A NINTH DEFENSE

33. SCE&G would show that the Plaintiffs' claim for punitive damages are violative of both the United States Constitution and the South Carolina Constitution and are, therefore, barred.

WHEREFORE, having fully answered the Plaintiffs' Complaint, Defendant South Carolina Electric and Gas Company prays that Plaintiffs take nothing by this cause and that it recover its costs. South Carolina Electric and Gas Company prays for such other and further relief, both general and special, legal and equitable, to which it may be justly entitled.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street, P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

By: _____

Steven J. Pugh

ATTORNEYS FOR DEFENDANT

February 27, 2009

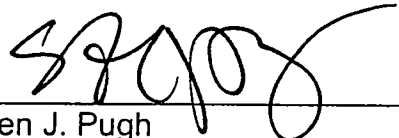
SCE&G submits that it is entitled to summary judgment on all of these grounds; however, this Court need only concur as to one of these grounds in granting SCE&G's Motion for Summary Judgment as to all of the Plaintiffs' claims in this case.

This Motion is based upon the pleadings, affidavits, depositions, South Carolina Rules of Civil Procedure, statutes, applicable law, and such other evidence as may be accepted by the Court.

Defendant South Carolina Electric and Gas Company requests that this Motion be granted, that this Court render judgment in its favor and that it recover its costs incurred herein. Defendant further prays for such other relief, both general and special, legal or equitable to which it may be justly entitled.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

By: _____


Steven J. Pugh
Joseph E. Thoensen

ATTORNEYS FOR DEFENDANT

October 4, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Caroline LeGrande, H. Paul)
LeGrande, Jr., and Marion Mancini,)
)
Plaintiffs,)

Civil Action No. 08-CP-40-8425

v.)

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

South Carolina Electric and Gas)
Company,)
)
Defendant.)

Defendant South Carolina Electric and Gas Company ("SCE&G") hereby submits this Memorandum in support of its Motion for Summary Judgment pursuant to Rule 56(c), SCRCP, and would show unto the Court as follows:

BACKGROUND

Plaintiffs filed this lawsuit against SCE&G on November 26, 2008, for damages allegedly sustained by Plaintiffs when SCE&G caused the removal of certain trees along Turkey Farm Road in November 2005. Plaintiffs allege that these trees were located on their property and SCE&G had no right to cause them to be removed. SCE&G submits that it is uncontroverted that the trees were located on property owned by the South Carolina Department of Transportation ("SCDOT") and that these Plaintiffs never owned the subject land or trees.

During the pendency of this case, the Plaintiffs filed a declaratory judgment action against the SCDOT, C/A No. 2010-CP-40-3108 ("SCDOT Action"), challenging the existence of the 66-foot wide right-of-way claimed by SCDOT along Turkey Farm Road. The SCDOT Action was tried before Judge Joseph M. Strickland in August 2010

and Judge Strickland entered a Final Order in March 2011. SCE&G proffers the following chronology and attachments to assist the Court:

- 09/22/1936 - Easement granted by previous owner of subject property to Broad River Power Company (SCE&G's predecessor in interest) for installation of utility poles and power lines (Tab A)
- 05/30/1953 - Plaintiffs' father purchased 95.5 acres along Turkey Farm Road
- 03/22/1967 - SCDOT acquired 66' right-of-way along Turkey Farm Road by eminent domain (Tab B)
- 12/07/1995 - Plaintiffs purchased the remaining property from their mother
- 11/26/2008 - Plaintiffs' lawsuit filed herein (Tab C)
- 05/13/2010 - Plaintiffs' filed SCDOT Action (Tab D)
- 03/30/2011 - Final Order entered by Judge Strickland in SCDOT Action (Tab E)

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRPC; Moore v. Weinberg, 383 S.C. 583, 681 S.E.2d 875 (2009). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004). It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine. Durkin v. Hansen, 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct.App.1993).

Even giving the Plaintiffs every reasonable inference from the voluminous record developed in this litigation, Plaintiffs cannot meet their burden to prove their claims. Summary judgment is therefore appropriate to dispose of the claims in this case.

SCE&G has asserted five alternative grounds for summary judgment which are addressed below.

ARGUMENT AND AUTHORITIES

I. Plaintiffs' Claims are Barred by Collateral Estoppel/Failure to State a Claim

Plaintiffs have three remaining causes of action: (1) trespass; (2) destruction of trees; and (3) conversion (Tab C)¹. In 1953, Plaintiffs' father purchased a 95.5 acre tract along Turkey Farm Road. Subsequently, Plaintiffs' father sold to others, or conveyed to the Plaintiffs, various parcels from the 95.5 acres. Plaintiffs' father died in 1988 and left the remaining 68.74 acres to the Plaintiffs' mother. In 1995, the Plaintiffs purchased the remaining 68.74 acres from their mother. The deed from Plaintiffs' mother to the Plaintiffs has the following statement typed on its face: "No Title Search or Title Opinion Rendered" (Tab E, Final Order, p. 4, ¶¶ 5 and 6). Thereafter, the Plaintiffs sold various parcels from this property. Incident to these sales, the Plaintiffs executed deeds which referenced plats reflecting the SCDOT 66-foot wide right-of-way (Tab E, Final Order, p. 16, ¶ 6). Plaintiff Caroline LeGrande had a boundary survey of the property prepared and recorded in 2003, which also reflected the 66-foot wide right-of-way (Tab E, Final Order, p. 5, ¶ 9).

In 2004, Plaintiffs sold a 3.798 acre tract to Richland County School District No. 2 (Tab E, Final Order, pp. 5-6, ¶ 10). A new high school is being built, in part, upon this tract sold by the Plaintiffs. Incident to this construction, Turkey Farm Road is being widened to accommodate additional traffic, including a turning lane for school buses (Tab E, Final Order, pp. 6-7, ¶ 13).

¹ Plaintiffs' third cause of action was stricken by Order entered by Judge McIntosh on July 16, 2010.

As referenced above, on May 13, 2010, the Plaintiffs filed the SCDOT Action, wherein the Plaintiffs sought a declaratory judgment as to "the nature, scope and extent of the parties' interests in the subject property" and sought damages and a permanent injunction with regard to "the road widening project as the same relates to the subject property . . . "(Tab D, ¶¶ 16 and 32). The SCDOT Action was tried before Judge Strickland on August 8-9, 2010. On March 30, 2011, Judge Strickland issued his Final Order (Tab E). No appeal was taken by Plaintiffs as to this Final Order.

Judge Strickland made specific findings of fact and conclusions of law in his Final Order. Among them, the Court ruled that:

6. Plaintiffs are **estopped** from claiming that Turkey Farm Road is not a 66-foot wide right-of-way by reason of their execution of deeds which referenced plats showing the road as a 66-foot wide right-of-way (Tab E, p. 16).

10. Because SCDOT acquired a 66-foot wide right-of-way for Turkey Farm Road from Plaintiffs' father, and they are in privity of estate with him, they are **estopped** to deny this conveyance (Tab E, p. 19).

20. Luther A. Lown, a registered land surveyor, testified that he has been practicing land surveying since 1974. He reviewed the right of way documents for Turkey Farm Road on file at SCDOT, including the Official Plan Sheets. He testified that the documents show that **SCDOT owns a 66 foot wide right of way through and along Plaintiffs' property**. He conducted a field survey adjacent to the Plaintiffs' property to determine the location of the as built road in reference to the 1967 documents and plans. His findings are summarized and delineated on a "Sketch Plan of Turkey Farm Road, S-1694, as built for the South Carolina Department of Transportation," dated June 22, 2010, a copy of which was admitted into evidence as Defendant's Exhibit 24. **He concluded that the cedar stumps adjacent to the Plaintiffs' property between approximate survey stations 75 and 86 are located within the 66 foot wide right of way.** There are uncut cedar trees still standing along a fence which is located within the 66 foot wide right of way between approximate survey stations 49 and 76. This is the area of the right of way was relocated in 1967. (Tab E, p. 12)

(Emphasis added). “Collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action.” Stone v. Roadway Express, et al.; 367 S.C. 575, 580, 627 S.E.2d 695, 700 (2006); Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003). These same Plaintiffs filed the SCDOT Action seeking a determination as to the 66-foot wide right-of-way along Turkey Farm Road. These Plaintiffs are collaterally estopped from relitigating the findings of fact and conclusions of law as determined in Judge Strickland’s Final Order. To the extent addressed therein, the Final Order is dispositive of the Plaintiffs’ claims.

Based upon the record before this Court, the following dispositive matters are uncontroverted as a matter of law:

1. On March 22, 1967, the SCDOT acquired by eminent domain a 66-foot wide right-of-way, which included a portion of the land owned by the Plaintiffs’ father, their predecessor in interest.
2. The land acquired by the SCDOT by eminent domain on March 22, 1967 encompassed the area where SCE&G’s poles, the subject trees and fence are located. In other words, the trees cut and fence allegedly damaged by SCE&G’s contractor, Asplundh, in 2005, **never** belonged to the Plaintiffs. As of March 22, 1967, the trees, fence and strip of land about which Plaintiffs complain were owned by SCDOT.

The Plaintiffs cannot recover for trespass, destruction of trees or conversion as to land and trees which the Plaintiffs **never** owned. In 1995, the Plaintiffs bought 68.74 acres from their mother which was **adjacent** to land and trees which had been owned by the

SCDOT since March 22, 1967. Therefore, Plaintiffs' claims herein fail to state a cause of action as a matter of law.

II. Plaintiffs' Claims are Barred by the Statute of Limitations

Plaintiffs' causes of action are subject to a three-year statute of limitations. See South Carolina Code, §§ 15-3-530(2) and (3). Plaintiffs' claims are all premised upon the Plaintiffs' allegation that Asplundh, at the direction of SCE&G, ". . . clear cut a large number of mature ornamental trees which were located along Turkey Farm Road on Cedar Lane Farms property." (Tab C, Plaintiffs' Complaint, ¶ 12.)

The tree removal work, of which Plaintiffs complain, was done by Asplundh for SCE&G as hourly work. As such, Asplundh was required to keep and submit to SCE&G meticulous, weekly time records of the work performed, including a listing of the Asplundh personnel and equipment involved. The depositions of several Asplundh employees, including Doug Newton and Jeffrey Porter, were taken on August 4, 2010. The following deposition excerpts describe the hourly work done and records kept/submitted by Asplundh with regard to the subject location and trees.

Doug Newton Dep.

Q. All right, sir. And because it's hourly work, to get paid, Asplundh has to keep records of the number of employees and equipment utilized to do this hourly work; correct?

A. That's Correct.

Q. All right. Let me show you what I'm marking as Defendant's Exhibit 2.

(Exhibit 2 marked for identification.)

Q. This is a collection, three pages. Mr. Newton, these documents are all – they have a heading, "SCE&G Weekly Line Clearance Time Sheet." What are these documents?

A. These are how the hourly crews get paid. This is what we have to fill out in order to get our money from SCE&G.

(Newton Dep. p. 28, l. 17 – p. 29, l. 8.)

Jeffrey A. Porter Dep.

Q. Okay. When you were working in November of 2005 for Asplundh, were you working with an hourly crew?

A. Yeah. Yeah. It was all hourly.

Q. Okay. And so as part of your foreman duties, for example, would you be required to fill out the SCE&G Weekly Line Clearance Time Sheets like this that we have marked as Exhibit 7?

A. Yes, I would.

Q. Okay. So you were the foreman of a crew – or as a foreman of an Asplundh crew, you knew how to fill these forms out?

A. Yes.

Q. Okay. What is in your – it's my understanding the purpose of these forms is to keep track of the hours and equipment that Asplundh uses so that Asplundh can ultimately be paid for that work by SCE&G –

A. Yes.

Q. – is that your understanding?

A. Yes.

(Porter Dep. p. 12, l. 13 – p. 13, l. 9.)

Not only do the Asplundh records reflect the employees and equipment involved, they also specifically detail the location of work performed by numbers which correspond to an SCE&G circuit map. There is no plausible argument in opposition to the evidence and sworn testimony that this tree removal began on November 10, 2005 and continued over the course of nine work days: November 10, 2005, November 14-

17, 2005, November 21, 2005, November 23, 2005, November 28-29, 2005. (Newton Dep., Exhibit 7).²

Doug Newton Dep.

Q. So Thursday, November 10, 2005, you had a crew working on No. 38 as referenced on Exhibit 1 [SCE&G circuit 102 map]; correct?

A. That's correct.

Q. Any doubt in your mind that's the date that that work commenced?

A. No, sir.

(Newton Dep. p. 32, ll. 1-9.)

Jeffrey A. Porter Dep.

Q. So you would be starting at the end closest to Wilson Boulevard and working west?

A. Right.

Q. Okay. While you were out there those nine days that we've identified, you had a couple of folks who stopped and asked about the wood?

A. I don't know how many people, but yeah, some did.

Q. Okay. So there were at least some number of folks who saw the cutting that took place and asked you about the wood?

A. Right.

Q. From the time sheets that are collectively marked as Exhibit No. 7, I'll make the representation to you that there are seven workdays prior to Thanksgiving in 2005 that are marked circuit 102, No. 38, and there are the Monday and Tuesday following Thanksgiving. Let me make sure I'm right about that. Yes. Monday and Tuesday following Thanksgiving that's marked the same way, circuit 102, Turkey Farm Road, No. 38. Okay?

A. Okay.

² See Tab F – Exhibit 7 to Newton Dep. This exhibit was also utilized in the Porter deposition.

Q. So you've got seven workdays before Thanksgiving, and you've got two workdays after Thanksgiving. Now, sitting here today, your recollection, because that's all we can ask for, do you think that y'all cut all the cedar trees in two days after Thanksgiving, or do you think you were cutting them leading up to Thanksgiving?

A. No. No, not in two days. It was before and after.

Q. Okay.

A. There were too many to cut in two days.

Q. There were too many and too big –

A. Yeah.

Q. -- to knock them all down in two days?

A. Correct.

(Porter Dep., p. 50, l. 10 – p. 52, l. 1.)

Even Plaintiff Caroline LeGrande acknowledged that she saw the trees being cut over the course of several days and further claims that she spoke to SCE&G employee Don Boggs “on the first day” of cutting and “told them to stop.”

Caroline LeGrande Dep.

Q. When did you make that phone call?

A. When I got to work.

Q. And what is your work phone number?

A. I have a lot of work phone numbers. I have (as spoken) seven four, four one two; seven eight nine, zero zero five; seven eight nine, zero eight seven; 789-4186 and 736-2202.

Q. So when did that phone call – we know that – that at least two days of cutting is going on by the time you make that phone call.

A. I called the first day.

Q. Okay. You called the first day.

A. Right.

(Caroline LeGrande Dep. p. 38, l. 25 – p. 39, l. 6 and p. 39, ll. 10-15.)

It has long been the law in South Carolina that, “the clock starts running when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist.” Gibson v. Bank of America, 383 S.C. 399, 404, 680 S.E.2d 778, 783 (Ct. App. 2009). See also, Burgess v. Am. Cancer Society S.C. Div., Inc., 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989).

The standard as to when the limitations period begins to run is objective rather than subjective. Burgess, 300 S.C. at 186, 386 S.E.2d at 800. Therefore, the limitations period “begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.” *Id.*

“The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.” Gibson, 383 S.C. at 404, 680 S.E.2d at 783.

A key element in the reasonable diligence test is “notice.” The fact that an injured party may not comprehend the full extent of the damage is immaterial.... *Id.* See also, Grillo v. Speedrite Products, Inc., 340 S.C. 498, 503, 532 S.E. 2d 1, 3 (Ct.

App. 2000). Plaintiff Caroline LeGrande has testified that she witnessed the trees being removed over the course of several days. Clearly, she had the requisite "notice" when she observed the first tree being cut.

Mr. Boggs' mobile telephone records from Alltel for November 2005 reflect two incoming calls from Plaintiff Caroline LeGrande at her work telephone, 803-788-9087: November 21, 2010, at 9:26 a.m. and November 30, 2005 at 10:50 a.m. (Tab G – Affidavit of Pam Johansson.) Boggs' also kept a job diary which reflected these calls:

Don Boggs Dep.

(PLF. EXH. 3, Handwritten Document Titled Complaints, Bates Stamped SCE&G/LeGrande 0025, was marked for identification.)

EXAMINATION BY MR. RANSOM:

Q. Mr. Boggs, is this your handwriting on this Exhibit 3?

A. That's correct.

Q. Okay. So up at the top of Exhibit 3, it's got the word complaints written in?

A. Uh-huh.

Q. And you got Turkey Farm Road, Carroll and a phone number; correct?

A. That's correct.

Q. And then there's a second phone number and it says: Wants hardwood, cedar wood and cedar chips; correct?

A. That's correct.

Q. All right. And the date is November 21st of 2005?

A. That's when I received the phone call.

Q. Okay. And what you're saying is that Carroll called you on November 21st of 2005?

A. Yes.

Q. Was this before or after you had had the conversation where she gave you permission?

A. Oh, this was after.

Q. Okay. And then right below that, it says: Gave Doug complaint about fence. Am I reading that correctly?

A. That's correct.

Q. And there's a date, November 30th of 2005?

A. That's when I was called back about the damage to the fence.

(Boggs Dep. p. 72, l. 7 – p. 73, l. 22.)

EXAMINATION BY MR. PUGH:

Q. Let me just ask you one thing about this Plaintiffs' Exhibit Number 3. As you told Mr. Ransom, this is a spiral bound notebook that you keep with you?

A. That's correct.

Q. Okay. And you make notations of when people are contacting you?

A. Right.

Q. Is that the purpose of this?

A. Yes.

Q. And this lady you have written as Carroll contacted you on November 21, 2005?

A. Yes.

Q. Okay. Do you know how she knew how to get a hold of you?

A. I don't know if she had my number or if she received it from the crews working on the site.

Q. Is there any question in your mind that she called you?

A. No. She called me.

Q. Okay. And then she called you back again –

A. Yes.

Q. – on November 30, 2005?

A. Yes.

(Boggs Dep. p. 74, l. 12 – p. 75, l. 11.)

The Asplundh weekly time records, testimony by Asplundh employees Newton and Porter, testimony of Don Boggs and the Alltel records refute Plaintiff Caroline LeGrande's testimony; however, while SCE&G respectfully submits that Plaintiff Caroline LeGrande is mistaken as to the date this tree removal began, even in the light most favorable to the Plaintiffs, her telephone call to Mr. Boggs on November 21, 2005 (the "first day of cutting," according to Plaintiff Caroline LeGrande) is three years and five days prior to the Plaintiffs' filing of this lawsuit on November 26, 2008. "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." Nelson v. Piggly Wiggly, 390 S.C. 382, 701 S.E.2d 776 (2010); David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1 (2006). "A plaintiff cannot create a genuine issue of material fact with the argument that the jury does not have to believe a witness." Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 694 S.E.2d 1 (2010). Thus, the Plaintiffs' claims herein are time barred as a matter of law.

III. SCE&G Easement

On September 22, 1936, SCE&G's predecessor in interest, Broad River Power Company, obtained an Easement for construction of utility poles and power lines along Turkey Farm Road (Tab A). Thereafter, utility poles were erected in accordance with this Easement. Pursuant to this Easement, SCE&G also had "the right, privilege and authority to cut or trim trees along said line necessary to keep the wires thereof clear at least ten (10') feet." As testified to by SCE&G employee Jeff Holley, these utility poles were present when SCDOT acquired the 66-foot wide right-of-way on March 22, 1967.

Holley Dep.

Q. On Page 129, document control number 129, again, the statement is, "This line was already existing when the SCDOT acquired the 66-foot right-of-way in 1967." Now, can you recall for me, Mr. Holley, what the source of that information was?

A. A set of highway plans that we have that shows when they acquired the right-of-way and did the -- I guess the paving of the road. It already had our pole locations surveyed on that drawing as being existing.

Q. All right. So you were actually able to look at some plans --

A. Yes.

Q. -- that showed that overhead line on Turkey Farm Road on the south side of the road --

A. That's correct.

Q. -- that's out there today --

A. That's correct.

Q. -- that that line was already in place when the DOT paved the road?

A. That's correct.

(Holley Dep., p. 21, l. 6 -- p. 22, l. 2.)

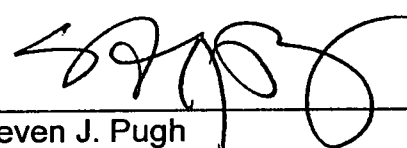
Therefore, SCE&G's utility poles were located within the SCDOT owned right-of-way, for decades before Plaintiffs purchased the property adjacent to this right-of-way in 1995.

CONCLUSION

For the foregoing reasons, SCE&G submits that Plaintiffs have no factual or legal basis to impose liability upon the Defendant, and the claims must be dismissed. SCE&G prays that this Court grant its Motion for Summary Judgment and prays for such further relief, both general and special, legal or equitable, to which it may be justly entitled.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street, P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

By: _____


Steven J. Pugh
Jocelyn T. Newman

ATTORNEYS FOR DEFENDANT

October 21, 2011

Exhibit A
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

C-02357

2357
2126

THE UNDERSIGNED, being the owner of a piece of land in the Level School District
the county of Richland
State of S.C., fronting on the street or highway known as Blythwood Paved Road
and bounded on the South by the land of Holland on the
North by the land of Tom Moore

In consideration of the sum of One Dollar (\$1.00) received from the BROAD RIVER POWER COMPANY, a corporation, hereby gives and grants unto said Company, its successors and assigns, the right, privilege and authority to construct, erect, operate and perpetually maintain a pole line with the necessary wires, cross arms, guy wires and other usual fixtures and appurtenances used or adopted for the transmission of electric current for light, heat, power or any other purpose, on the said street or highway known as _____ or on my land

described as follows:

Pole line to be erected on my property
parallel to the County Road from the Columbia-
Blythwood Paved Road to my present residence
Southern Bell Telephone Co. may use poles also.

\$1.00
A. NOBLEY, Co. Treas.

Also the right, privilege and authority to cut or trim trees along said line necessary to keep the wires thereof clear at least

Ten (10') feet.

PROVIDED, however, any damage (other than tree damage) to the property of the undersigned, caused by the said company in maintaining or repairing said electric transmission line, shall be borne by said company, its successors and assigns.

Witness My hand and seal, this 22nd day of September, A.D. 1938

WITNESSES

W. H. Chain
Attorney

(Seal)
Mrs. J. J. Howell (Seal)
(Seal)

Accepted

BROAD RIVER POWER COMPANY,
By J. L. Coit
Vice-President and General Manager.

Route 3
Blythwood, S.C.

STATE OF SOUTH CAROLINA,

County of Richland

Personally appeared before me G. B. Adair

and made oath that he saw the within named

Mrs F. J. Howell

sign, seal and as his act and deed

deliver the within Right-of-Way for the uses and purposes therein mentioned, and that he with

A. H. Fritner

in the presence of each other, witnessed the due execution thereof.

Sworn to before me, this 22 day of September, 1936.

J. M. Johnston
Notary Public for S. C.

STATE OF SOUTH CAROLINA,

County of

I,

, do hereby certify

unto all whom it may concern that

, the 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 within named BROAD RIVER POWER CO., its successors and assigns, all her interests and estate, and all her right and claim of dower of, in, or to, all and singular the premises within mentioned and released.

Given under my hand and seal this _____ day of _____, 19____

Notary Public for S. C.

2357

STATE OF SOUTH CAROLINA

County of

C-02357

TO

RIGHT-OF-WAY

Recorded this 13 Oct 1936
at 9:50 a.m. 1936
In Book 98 Page 394
Per G. B. Adair
Notary Public for S. C.

Exhibit B
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

[1967 Notice of Condemnation]

See, Record on Appeal at page 206

Exhibit C
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

[LeGrande v. SCE&G Complaint]

See, Record on Appeal at page 68

Exhibit D
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

[LeGrande v. SCDOT Complaint]

See, Record on Appeal at page 123

Exhibit E
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

[Master's Final Order in
LeGrande v. SCDOT]

See, Record on Appeal at page 46

Exhibit F
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

0006/100

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

CONTRACTOR		DAY	MON	TUE	WED	THUR	FRI	SAT/SUN
CONTRACT SUPERVISOR	LOCAL OFFICE NO.	ACTIVITY	ACTIVITY	ACTIVITY	ACTIVITY	ACTIVITY	ACTIVITY	ACTIVITY
SCE&G CREW NUMBER	PROJECT/ROUT NO.	TIME CODE (R.O.B)	TIME CODE (R.O.B)	TIME CODE (R.O.B)	TIME CODE (R.O.B)	TIME CODE (R.O.B)	TIME CODE (R.O.B)	TIME CODE (R.O.B)
SCE&G DISTRICT NAME	ACTIVITY CODE	QUANTITY	QUANTITY	QUANTITY	QUANTITY	QUANTITY	QUANTITY	QUANTITY
SCE&G APPROVAL (SIGNATURE)	LENGTH	WIDTH	LENGTH	WIDTH	LENGTH	WIDTH	LENGTH	WIDTH
ENTER LENGTH IN FEET FOR EDGE TRIMMING	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH	ENTER LENGTH IN FEET FOR BRUSH
EMP. NO.	EMPLOYEE NAME	CODE	EMP. NO.	EMPLOYEE NAME	CODE	EMP. NO.	EMPLOYEE NAME	CODE
4970	JOE L. BROWN	FR	10	10	10	10	10	10
9964	SPORTER	TT	10	10	10	10	10	10
3658	LOPEZ	TT	10	10	10	10	10	10
EQUIP. NO.	EQUIPMENT TYPE	CODE	EQUIP. NO.	EQUIPMENT TYPE	CODE	EQUIP. NO.	EQUIPMENT TYPE	CODE
	TRUCK	E4	10	10	10	10	10	10
	CHIPPER	E11	10	10	10	10	10	10
	SAW	E14	10	10	10	10	10	10
	SAW	E15	10	10	10	10	10	10
CHEMICAL TYPE			ENTER GALLONS OF CHEMICAL REQUIRED INTO A SPRAYER (1/4, 1/2, 1, ETC.)			ENTER GALLONS OF CHEMICAL REQUIRED INTO A SPRAYER (1/4, 1/2, 1, ETC.)		
TOTAL			TOTAL			TOTAL		

DEPOSITION EXHIBIT

Newton?

mwh 8/4/70

DEPOSITION EXHIBIT

Newton?

mwh 8/4/70

104

0516/100

Dead trees & stumps

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

CONTRACTOR A T E		DAY THUR	HRLY UNIT BID PAGE 2 OF 2	
CONTRACT SUPERVISOR JANFETON		LOCAL OFFICE NO.	PERIOD ENDING (SATURDAY) 10/29/05	
SCE&G CREW NUMBER 56700		ACTIVITY NO.	CREW HEADQUARTERS:	
SCE&G DISTRICT NAME RADER		PROJECT/CIRCUIT NO. 03	RADER	
SCE&G APPROVAL (SIGNATURE)		TIME CODE (R.O.B.) 92A	TOTAL MAN-HOURS 10	
ENTER LENGTH IN FEET FOR EDGE TRIMMING ENTER LENGTH & WIDTH IN FEET FOR BRUSH ACTIVITIES		ACTIVITY CODE T A L	NON-BILLABLE PAYROLL HOURS 10	
EMP. NO. EMPLOYEE NAME		QUANTITY	TOTAL MAN-HOURS 10	
4970 JOE BROWN	FA	10	10	
9964 JPORTER	TT	10	10	
365P ALOPEZ	TT	10	10	
EQUIP. NO. EQUIPMENT TYPE		ENTER NUMBER OF HOURS FOR EQUIPMENT USED	TOTAL MISC. CONTRACTOR CODES: 0 A T E 56700	
TRUCK 0775077	E4	10	10	
CHIPPER 420-5064	E11	10	10	
SAW	E14	10	10	
SAW	E6	10	10	
CHEMICAL TYPE		ENTER GALLONS OF CHEMICAL POURED INTO A SPRAYER (1/4, 1/2, 1, ETC.)	TOTAL 10	
MON.		WED.	FRI.	
TUE.		THUR.	SAT/SUN.	

TURKEY ARM RD Ckt 102

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - Contractor Pink - Contractor Goldenrod - Contractor

REVISED: 11/08/02

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

[illegible]

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - Contractor Pink - Contractor Goldenrod - Contractor

REVISÉ: 11/08/02

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

56-100

CONTRACTOR: ATE		DAY Thur	HRLY UNIT BID PAGE 2 OF 2	
CONTRACT SUPERVISOR: D. Newton		LOCAL OFFICE NO. Rader	PERIOD ENDING (SATURDAY) 11:05:05	
SCE&G CREW NUMBER: 56700		PROJECT/CIRCUIT NO. 0.3/102	CREW HEADQUARTERS: Rader	
SCE&G DISTRICT NAME: Rader		TIME CODE (R.O.B.) R	BILLABLE	
SCE&G APPROVAL (SIGNATURE):		ACTIVITY CODE 924	PAYROLL HOURS	
ENTER LENGTH IN FEET FOR EDGE TRIMMING: ENTER LENGTH & WIDTH IN FEET FOR BRUSH ACTIVITIES:		QUANTITY 9	NON-BILLABLE	
EMP. NO. EMPLOYEE NAME CODE		LENGTH 1	PAYROLL HOURS	
4970 Joe L. Brown FA		WIDTH 10	TOTAL	
9964 J. Porter TT		ENTER NUMBER OF HOURS FOR LABOR USED	MAN- HOURS	
3658 C. Lopez TT		ENTER NUMBER OF HOURS FOR EQUIPMENT USED	10	
EQUIP. NO. EQUIPMENT TYPE CODE		ENTER GALLONS OF CHEMICAL POURED INTO A SPRAYER (1/4, 1/2, 1, ETC.)	MISC. CONTRACTOR CODES:	
TRUCK 5070-5077 E4		10	ATE 56700	
CHIPPER 5020-5024 E11		10	10	
L. Saw E14		10	10	
S. Saw E5		10	10	
CHEMICAL TYPE CODE		10	10	
MON. Tackles forward.		WED.	FRI.	
DAILY WORK LOCAL TIONS & REMARKS		THUR. TURKE FARM RD.	SAT. SUN.	

401

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - Contractor Pink - Contractor Goldenrod - Contractor

REVISED: 11/08/02

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

[illegible]

56001

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

[illegible]

100950

SC&G WEEKLY LINE CLEARANCE TIME SHEET[illegible]

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - Contractor Pink - Contractor Goldenrod - Contractor

REVISÉ: 11/08/02

056026

SCIENCE & GEEK WEEKLY LINE CLUB

CONTRACTOR		DATE		Monday		Tuesday		Wednesday		Period Ending (Saturday)		11/16/05		HRLY		UNIT		BID		PAGE		OF			
CONTRACT SUPERVISOR		LOCAL OFFICE		ACTIVITY		PROJECTOR/COUNTING		TIME CODE (R.O.B)		ACTIVITY CODE		QUANTITY		LENGTH		WIDTH		EMP. NO.		EMPLOYEE NAME		EQUIPMENT TYPE		EQUIP. NO.	
SCE&G CREW NUMBER		SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long		8444		STEVEN B. Ricks		TRUCK		7974		7974		7974		7974		7974		7974	
SCE&G DISTRICT NAME		SCE&G APPROVAL (SIGNATURE)		7974		William Long																			

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - Contractor Pink - Contractor Goldenrod - Contractor

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SCE&G WEEKLY LINE CLEARANCE TIME SHEET

CONTRACT SUPERVISOR A+E Douglas L. 7974 Metro		DAY MON	HRLY UNIT BID PAGE 1 OF 2	
PERIOD ENDING (SATURDAY) 11/26/05		CREW HEADQUARTERS: Metro		
EMP. NO. 7974		NON-BILLABLE PAYROLL HOURS		
LOCAL OFFICE NO. ACTIVITY CODE		BILLABLE PAYROLL HOURS		
PROJECT CIRCUIT NO. TIME CODE (R.O.B.)		TOTAL MAN-HOURS		
ACTIVITY CODE QUANTITY		R O T T O T		
LENGTH WIDTH		5 5 5 5 5 5		
ENTER LENGTH IN FEET FOR EDGE TRIMMING ENTER LENGTH & WIDTH IN FEET FOR BRUSH		ENTER NUMBER OF HOURS FOR LABOR USED		
EMPLOYEE NAME William Long		ENTER NUMBER OF HOURS FOR EQUIPMENT USED		
EQUIP. NO. EQUIPMENT TYPE		ENTER GALLONS OF CHEMICAL POURED INTO A SPRAYER (1/4, 1/2, 1, ETC.)		
85 229 TRUCK		5 5 5 5 5 5		
434 7128 CHIPPER		5 5 5 5 5 5		
5 Saw		5 5 5 5 5 5		
1 Saw		5 5 5 5 5 5		
CHEMICAL TYPE		TOTAL		
MON. 50 Hectares & Sub		WED.		
TUE. 27319		THUR.		
DAILY WORK LOCAL TONS & REMARKS		FRI.		
SAFETY		SAT/SUN.		

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - SCE&G Office Pink - Contractor Canary - Contractor Goldenrod - Contractor

REVISED: 11/08/02

056007

518.2

012 r-c

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

CONTRACTOR Asplundh		DAY Mon	Tue	Wed	← FRLY UNIT BID PAGE 1 OF 3	
LOCAL OFFICE NO. D. Newton		Rader	Rader	Rader	PERIOD ENDING (SATURDAY) 12/3/05	
SCE&G CREW NUMBER 056007		5930001	5930001	5930001	CREW HEADQUARTERS: Rader	
SCE&G DISTRICT NAME Rader		5930001	5930001	5930001		
SCE&G APPROVAL (SIGNATURE) Rader		5930001	5930001	5930001		
ENTER LENGTH IN FEET FOR EDGE TRIMMING ENTER LENGTH & WIDTH IN FEET FOR BRUSH ACTIVITIES		92A	92A	92A		
EMP. NO.		9964	9964	9964		
EMPLOYEE NAME		Jeffrey A. Porter	Jeffrey A. Porter	Jeffrey A. Porter		
EQUIP. NO.		705077	705077	705077		
EQUIPMENT TYPE		Truck Split Dump	Truck Split Dump	Truck Split Dump		
CHIPPING		Chipper Disk	Chipper Disk	Chipper Disk		
Saw		162329995	162329995	162329995		
Saw		264163128	264163128	264163128		
CHEMICAL TYPE						
CODE						
ENTER NUMBER OF HOURS FOR LABOR USED						
ENTER NUMBER OF HOURS FOR EQUIPMENT USED						
ENTER GALLONS OF CHEMICAL POURED INTO A SPRAYER (1/4, 1/2, 1, ETC.)						
DAILY WORK LOG		MON. Turkey Farm Rd, Cir. 102 #38 cut R/W				FRI.
TUES. Turkey Farm Rd, Cir. 102 #38 cut R/W #33		THUR.				SAT/SUN.
REMARKS		WED. Wilson Rd, Cir. 102 #16 cut 3 dead				

MISC. CONTRACTOR CODES:
ATE #056007
map 3 of 3

056007

SCE&G WEEKLY LINE CLEARANCE TIME SHEET

CONTRACTOR Agalunah		DAY Wed	THUR	EARLY UNIT BID PAGE 2 OF 3	
LOCAL OFFICE NO. D. Newton		Pineywood		PERIOD ENDING (SATURDAY) 12/3/05	
SCE&G CREW NUMBER 056007		0.3		FOREW HEADQUARTERS: Pineywoods	
SCE&G DISTRICT NAME Pineywood		0.3			
SCE&G APPROVAL (SIGNATURE)		R		BILLABLE	
ENTER LENGTH IN FEET FOR EDGE TRIMMING ENTER LENGTH & WIDTH IN FEET FOR BRUSH ACTIVITIES		0.3		NON-BILLABLE	
EMP. NO.		R		PAYROLL HOURS	
EMPLOYEE NAME		0.3		TOTAL	
CODE		0.3		MAN-HOURS	
9964 Jeffery A. Porter		0.3		7	
3658 Carlos M. Lopez		0.3		7	
6119 James H. Mobley		0.3		7	
EQUIP. NO.		0.3		TOTAL	
EQUIPMENT TYPE		0.3		MISC. CONTRACTOR CODES:	
TRUCK Split Dump		0.3		ATE#056007	
CHIPPER Disk		0.3			
162329995		0.3			
26416312B		0.3			
CHEMICAL TYPE		0.3			
CODE		0.3			
ENTER GALLONS OF CHEMICAL POURED INTO A SPRAYER (1/4, 1/2, 1, ETC.)		0.3			
MON.		WED. 5117 Holmes Ave. Dead Tree by Trans. pole		FRI.	
TUE.		THUR. 5117 Holmes Ave. Dead Tree by Trans. pole		SAT/SUN.	
DAILY WORK LOCATIONS & REMARKS					
REVISED: 11/08/02					

Distribution: White - SCE&G Forester Blue - SCE&G Office Green - Contractor Pink - Contractor Canary - Contractor Goldenrod - Contractor

SCE&G WEEKLY LINE CLEARANCE TIME SHEET116

Exhibit G
to
Memorandum in Support of
Defendant's Motion for Summary Judgment

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Carolina LeGrande, H. Paul
LeGrande, Jr., and Marion Mancini,

Plaintiffs,

vs.

South Carolina Electric and Gas
Company,

Defendant.

Civil Action No. 2008-CP-40-8425

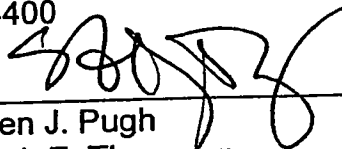
**NOTICE OF FILING OF AFFIDAVIT OF
CUSTODIAN OF BUSINESS RECORDS**

FILED
2010 SEP 20 AM 10:15
JENNIFER W. GOSWORTHY
C.C.P. & G.S.

TO: ROBERT B. RANSOM, ESQ. AND MICHAEL G. SULLIVAN, ESQ.,
ATTORNEYS FOR PLAINTIFFS:

Please take notice of the filing by the Defendant, South Carolina Electric and Gas Company ("SCE&G") of the attached Affidavit of Pam Johansson, a custodian of business records for Verizon Wireless, as successor in interest to Alltel Wireless. The Affidavit and its exhibits are collectively attached as Exhibit A and are incorporated by reference for all purposes.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street, P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

By: 

Steven J. Pugh
Joseph E. Thoensen

ATTORNEYS FOR DEFENDANT

September 16, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Caroline LeGrande, H. Paul LeGrande,
Jr., and Marion Mancini,

Plaintiffs,

v.

South Carolina Electric and Gas
Company,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2008-CP-40-8425

AFFIDAVIT OF Pam Johansson

PERSONALLY APPEARED before me, Pam Johansson, who first being duly sworn deposes and says:

1. My name is Pam Johansson. I am over the age of eighteen (18) and I am competent to make this Affidavit. I have personal knowledge of the facts stated herein and they are true and correct.

2. I am employed by Verizon Wireless which is the successor in interest to Alltel Wireless.

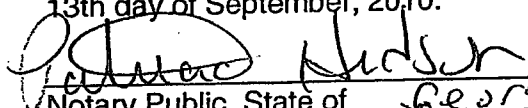
3. Verizon Wireless maintains call detail records of each mobile telephone number registered to its customers in the normal course of its business, including former Alltel customers.

4. As a Manager of Sales Operations for Verizon Wireless, I verify that the attached reproductions are a true, accurate, and complete copy of the cellular telephone records that Verizon Wireless maintains for the mobile telephone number (803) 331-8139 covering the period of November 3, 2005 through November 30, 2005.

FURTHER AFFIANT SAYETH NAUGHT.


(name of Affiant)

SWORN to before me this
13th day of September, 2010.


Notary Public, State of Georgia

My Commission expires: _____

PATRICIA HUDSON
NOTARY PUBLIC
DeKalb County, State of Georgia
My Comm. Expires Jan. 30, 2013

BILL DATE December 02, 2005
ACCOUNT NUMBER 8201561601-281



WIRELESS
Piney Woods Four
(803)331-8139

Dec 03 - Jan 02

Current Charges for (803)331-8139 \$36.21

Monthly Service Charges

Charges

Your Features:

\$0.05 M2M Calling \$.00
1000 M2M-Greater Freedom \$.00
1000 OP-Greater Freedom \$.00

(Includes 1000 off-peak minutes of local airtime)

TOTAL MONTHLY SERVICE CHARGES \$.00

Other Charges and Credits

Charges

Federal USF \$1.01

TOTAL OTHER CHARGES AND CREDITS \$1.01

Taxes

Charges

County Tax \$.35

TOTAL TAXES \$.35

Current Usage Summary

	Included	Used	Overage	Rate	Charge
SCE&G PLAN (11/03/05 - 11/30/05)					
Mobile-To-Mobile	1000	202.00	193.00	.05	\$9.65
Anytime	--	358.00	358.00	.07	\$25.06
Night/Weekend	30	2.00	2.00	.07	\$.14
Free Calls	--	3	--	--	\$.00
TOTAL USAGE CHARGES					\$34.85

Airtime Usage Detail

Date	Time	City/State	Number	Min	Type	Rate	Charge
1 11/03	7:07A	MOBILE	803-350-3261	1.0	P MM	.05	0.05
2 11/03	7:24A	INCOMING	803-350-9248	1.0	P MM	.05	0.05
3 11/03	8:39A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
4 11/03	8:55A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
5 11/03	8:56A	MOBILE	803-206-7907	1.0	P MM	.05	0.05
6 11/03	9:15A	INCOMING	803-206-7907	1.0	P MM	.05	0.05
7 11/03	9:54A	INCOMING	803-240-9549	3.0	P	.07	0.21
8 11/03	10:52A	MOBILE	803-630-3016	3.0	P MM	.05	0.15
9 11/03	11:16A	MOBILE	803-206-9340	2.0	P MM	.05	0.10
10 11/03	11:24A	MOBILE	803-350-4365	7.0	P MM	.05	0.35
11 11/03	11:34A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
12 11/03	3:00P	MOBILE	803-630-3016	4.0	P MM	.05	0.20
13 11/03	3:07P	MOBILE	803-350-9248	8.0	P MM	.05	0.40
14 11/03	3:20P	MOBILE	803-350-9248	2.0	P MM	.05	0.10
15 11/04	7:10A	MOBILE	803-350-3261	2.0	P MM	.05	0.10
16 11/04	7:13A	MOBILE	803-350-3261	2.0	P MM	.05	0.10
17 11/04	7:54A	COLUMBIA, SC	803-217-7659	2.0	P	.07	0.14
18 11/04	8:08A	INCOMING	803-217-7659	2.0	P	.07	0.14
19 11/04	9:01A	INCOMING	803-309-2914	5.0	P	.07	0.35

Date	Time	City/State	Number	Min	Type	Rate	Charge
20 11/04	9:39A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
21 11/04	9:49A	INCOMING	803-240-9649	5.0	P	.07	0.35
22 11/04	11:27A	INCOMING	803-925-8212	4.0	P	.07	0.28
23 11/04	11:29A	COLUMBIA, SC	803-737-4992	3.0	P	.07	0.21
24 11/04	1:08P	COLUMBIA, SC	803-217-7658	1.0	P	.07	0.07
25 11/04	1:10P	MOBILE	803-630-7513	2.0	P MM	.05	0.10
26 11/04	4:24P	INCOMING	803-786-9172	3.0	P	.07	0.21
27 11/04	6:14P	COLUMBIA, SC	803-786-9172	1.0	P	.07	0.07
28 11/07	8:51A	INCOMING	803-794-4585	3.0	P	.07	0.21
29 11/07	8:58A	COLUMBIA, SC	803-737-4992	3.0	P	.07	0.21
30 11/07	9:08A	888 SERV	888-347-7443	3.0	P	.07	0.21
31 11/07	9:23A	COLUMBIA, SC	803-619-1603	2.0	P	.07	0.14
32 11/07	9:46A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
33 11/07	9:47A	COLUMBIA, SC	803-782-2272	2.0	P	.07	0.14
34 11/07	9:52A	MOBILE	803-609-8661	1.0	P MM	.05	0.05
35 11/07	10:21A	MOBILE	803-609-8661	3.0	P MM	.05	0.15
36 11/07	10:25A	MOBILE	803-260-1199	3.0	P MM	.05	0.15
37 11/07	10:27A	MOBILE	803-360-9248	3.0	P MM	.05	0.15
38 11/07	1:13P	INCOMING	803-360-6489	2.0	P MM	.05	0.10
39 11/07	2:04P	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
40 11/07	2:14P	INCOMING	803-360-9248	2.0	P MM	.05	0.10
41 11/07	2:24P	COLUMBIA, SC	803-217-2690	2.0	P	.07	0.14
42 11/07	2:25P	COLUMBIA, SC	803-776-5593	2.0	P	.07	0.14
43 11/07	2:34P	COLUMBIA, SC	803-925-0418	1.0	P	.07	0.07
44 11/09	7:19A	MOBILE	803-360-3261	4.0	P MM	.05	0.20
45 11/09	8:28A	INCOMING	888-347-7443	1.0	P	.07	0.07
46 11/09	8:42A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
47 11/09	9:00A	INCOMING	803-309-2914	2.0	P	.07	0.14
48 11/09	9:04A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
49 11/09	9:06A	COLUMBIA, SC	803-309-2914	1.0	P	.07	0.07
50 11/09	9:11A	INCOMING	803-309-2914	2.0	P	.07	0.14
51 11/09	9:21A	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
52 11/09	9:22A	INCOMING	803-737-4992	2.0	P	.07	0.14
53 11/09	9:33A	INCOMING	NO CALL ID	5.0	P MM	.05	0.25
54 11/09	9:41A	INCOMING	803-737-4992	2.0	P	.07	0.14
55 11/09	9:44A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
56 11/09	9:47A	INCOMING	803-737-4992	4.0	P	.07	0.28
57 11/09	9:57A	COLUMBIA, SC	803-309-2914	6.0	P	.07	0.42
58 11/09	10:04A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
59 11/09	10:08A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
60 11/09	10:14A	INCOMING	803-925-0418	5.0	P	.07	0.35
61 11/09	10:20A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
62 11/09	10:28A	COLUMBIA, SC	803-794-1399	2.0	P	.07	0.14
63 11/09	10:51A	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
64 11/09	3:20P	COLUMBIA, SC	803-794-1399	2.0	P	.07	0.14
65 11/09	3:26P	COLUMBIA, SC	803-240-9649	5.0	P	.07	0.35
66 11/09	3:30P	MOBILE	803-206-9340	1.0	P MM	.05	0.05
67 11/09	5:52P	INCOMING	803-360-3261	1.0	P MM	.05	0.05
68 11/10	8:18A	INCOMING	803-260-1199	1.0	P MM	.05	0.05
69 11/10	8:38A	INCOMING	803-350-9248	3.0	P MM	.05	0.15
70 11/10	8:52A	MOBILE	803-206-9340	3.0	P MM	.05	0.15
71 11/10	9:14A	INCOMING	803-794-1399	4.0	P	.07	0.28
72 11/10	9:45A	MOBILE	803-260-1199	1.0	P MM	.05	0.05
73 11/10	9:46A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
74 11/10	9:48A	COLUMBIA, SC	803-920-6543	2.0	P	.07	0.14
75 11/10	9:52A	COLUMBIA, SC	803-240-9649	4.0	P	.07	0.28
76 11/10	9:56A	MOBILE	803-206-0700	2.0	P MM	.05	0.10
77 11/10	11:08A	COLUMBIA, SC	803-240-9649	2.0	P	.07	0.14
78 11/10	11:21A	COLUMBIA, SC	803-312-6584	3.0	P	.07	0.21
79 11/10	11:34A	COLUMBIA, SC	803-240-9649	1.0	P	.07	0.07
80 11/10	12:29P	INCOMING	803-929-3521	3.0	P	.07	0.21
81 11/10	1:17P	COLUMBIA, SC	803-258-6287	2.0	P	.07	0.14

Please see last page of bill for explanation of call codes.

BILL DATE December 02, 2005
ACCOUNT NUMBER 8201561601-281

Date	Time	City/State	Number	Min	Type	Rate	Charge	
82	11/10	1:20P	COLUMBIA, SC	803-258-8287	2.0	P	.07	0.14
83	11/10	1:22P	COLUMBIA, SC	803-600-4082	1.0	P	.07	0.07
84	11/10	1:35P	MOBILE	803-360-9248	3.0	P MM	.05	0.15
85	11/10	2:31P	MOBILE	803-360-9248	2.0	P MM	.05	0.10
86	11/10	3:04P	INCOMING	803-217-8443	3.0	P	.07	0.21
87	11/10	3:14P	COLUMBIA, SC	803-782-3270	1.0	P	.07	0.07
88	11/10	3:35P	INCOMING	803-360-3261	1.0	P MM	.05	0.05
89	11/12	6:40P	INCOMING	803-360-3261	1.0	OP MM	.05	0.05
90	11/14	7:09A	COLUMBIA, SC	803-794-1399	4.0	P	.07	0.28
91	11/14	7:16A	MOBILE	803-360-3261	2.0	P MM	.05	0.10
92	11/14	8:42A	MOBILE	803-260-1199	1.0	P MM	.05	0.05
93	11/14	8:46A	COLUMBIA, SC	803-929-3521	1.0	P	.07	0.07
94	11/14	8:59A	INCOMING	803-360-9248	2.0	P MM	.05	0.10
95	11/14	9:02A	MOBILE	803-609-8661	1.0	P MM	.05	0.05
96	11/14	9:13A	INCOMING	803-691-6720	2.0	P	.07	0.14
97	11/14	9:22A	INCOMING	803-609-8660	1.0	P MM	.05	0.05
98	11/14	9:33A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
99	11/14	9:54A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
100	11/14	10:45A	COLUMBIA, SC	803-860-8607	1.0	P	.07	0.07
101	11/14	11:45A	INCOMING	803-360-9248	1.0	P MM	.05	0.05
102	11/14	11:47A	MOBILE	803-360-9248	3.0	P MM	.05	0.15
103	11/14	11:51A	COLUMBIA, SC	803-799-1960	5.0	P	.07	0.35
104	11/14	12:23P	COLUMBIA, SC	803-240-9649	1.0	P	.07	0.07
105	11/14	12:23P	INCOMING	803-240-9649	11.0	P	.07	0.77
106	11/14	12:36P	MOBILE	803-603-2209	3.0	P MM	.05	0.15
107	11/14	12:40P	SUMTER, SC	803-840-1157	2.0	P	.07	0.14
108	11/14	12:41P	MOBILE	803-360-9248	4.0	P MM	.05	0.20
109	11/14	12:45P	SUMTER, SC	803-840-1157	2.0	P	.07	0.14
110	11/14	12:49P	COLUMBIA, SC	803-860-8607	6.0	P	.07	0.42
111	11/14	12:56P	COLUMBIA, SC	803-860-8607	5.0	P	.07	0.35
112	11/14	1:02P	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
113	11/14	1:52P	COLUMBIA, SC	803-217-9499	2.0	P	.07	0.14
114	11/14	2:56P	INCOMING	803-360-9248	2.0	P MM	.05	0.10
115	11/14	3:20P	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
116	11/14	3:22P	INCOMING	803-787-9558	2.0	P	.07	0.14
117	11/14	3:30P	MOBILE	803-360-9248	2.0	P MM	.05	0.10
118	11/14	3:32P	INCOMING	803-929-3523	5.0	P	.07	0.35
119	11/14	3:38P	COLUMBIA, SC	803-240-9649	4.0	P	.07	0.28
120	11/14	4:41P	COLUMBIA, SC	803-794-1399	2.0	P	.07	0.14
121	11/14	4:43P	MOBILE	803-360-3261	1.0	P MM	.05	0.05
122	11/14	4:54P	INCOMING	803-788-9172	3.0	P	.07	0.21
123	11/14	4:58P	COLUMBIA, SC	803-788-9172	1.0	P	.07	0.07
124	11/14	5:23P	COLUMBIA, SC	803-788-9172	1.0	P	.07	0.07
125	11/15	7:19A	MOBILE	803-360-3261	1.0	P MM	.05	0.05
126	11/15	9:00A	INCOMING	803-360-9248	2.0	P MM	.05	0.10
127	11/15	9:22A	MOBILE	803-360-9248	1.0	P MM	.05	0.05
128	11/15	9:26A	INCOMING	803-794-4585	1.0	P	.07	0.07
129	11/15	10:01A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
130	11/15	10:41A	COLUMBIA, SC	803-240-9649	1.0	P	.07	0.07
131	11/15	10:44A	COLUMBIA, SC	803-312-5584	1.0	P	.07	0.07
132	11/15	10:48A	MOBILE	803-360-9248	2.0	P MM	.05	0.10
133	11/15	11:20A	COLUMBIA, SC	803-312-5584	1.0	P	.07	0.07
134	11/15	11:28A	INCOMING	803-771-0923	2.0	P	.07	0.14
135	11/15	11:29A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
136	11/15	11:31A	MOBILE	803-360-9248	1.0	P MM	.05	0.05
137	11/15	11:35A	COLUMBIA, SC	803-240-9649	4.0	P	.07	0.28
138	11/15	11:43A	INCOMING	803-771-0923	1.0	P	.07	0.07
139	11/15	11:49A	INCOMING	803-360-9248	2.0	P MM	.05	0.10
140	11/15	12:18P	COLUMBIA, SC	803-240-9649	2.0	P	.07	0.14
141	11/15	12:20P	COLUMBIA, SC	803-776-5593	1.0	P	.07	0.07
142	11/15	12:22P	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
143	11/15	12:34P	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07

Date	Time	City/State	Number	Min	Type	Rate	Charge	
144	11/15	12:35P	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
145	11/15	3:28P	INCOMING	803-606-3378	2.0	P MM	.05	0.10
146	11/15	4:24P	MOBILE	803-206-0700	2.0	P MM	.05	0.10
147	11/16	9:33A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
148	11/16	9:49A	COLUMBIA, SC	803-794-1399	2.0	P	.07	0.14
149	11/16	9:53A	INCOMING	803-739-6941	11.0	P	.07	0.77
150	11/16	10:04A	COLUMBIA, SC	803-737-4992	7.0	P	.07	0.49
151	11/16	10:11A	MOBILE	803-206-0700	4.0	P MM	.05	0.20
152	11/16	10:15A	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
153	11/16	10:24A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
154	11/16	3:40P	MOBILE	803-360-9248	2.0	P MM	.05	0.10
155	11/16	6:10P	COLUMBIA, SC	803-788-9172	1.0	P	.07	0.07
156	11/17	10:54A	INCOMING	803-360-9248	1.0	P MM	.05	0.05
157	11/17	11:12A	COLUMBIA, SC	803-261-6159	3.0	P	.07	0.21
158	11/17	12:59P	INCOMING	803-360-9248	1.0	P MM	.05	0.05
159	11/17	1:10P	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
160	11/17	1:37P	INCOMING	803-360-9248	2.0	P MM	.05	0.10
161	11/17	1:50P	INCOMING	803-360-9248	1.0	P MM	.05	0.05
162	11/18	8:29A	MOBILE	803-360-9248	3.0	P MM	.05	0.15
163	11/18	8:40A	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
164	11/18	9:29A	MOBILE	803-606-3378	3.0	P MM	.05	0.15
165	11/18	9:58A	MOBILE	803-206-9340	5.0	P MM	.05	0.25
166	11/18	12:25P	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
167	11/18	12:28P	COLUMBIA, SC	803-600-1101	2.0	P	.07	0.14
168	11/18	12:42P	MOBILE	803-606-3378	2.0	P MM	.05	0.10
169	11/18	2:17P	COLUMBIA, SC	803-776-5593	2.0	P	.07	0.14
170	11/20	2:53P	COLUMBIA, SC	803-691-6720	1.0	OP	.07	0.07
171	11/20	3:04P	COLUMBIA, SC	803-479-0048	1.0	OP	.07	0.07
172	11/21	8:04A	INCOMING	803-256-6300	3.0	P	.07	0.21
173	11/21	9:26A	INCOMING	803-788-9087	4.0	P	.07	0.28
174	11/21	9:29A	COLUMBIA, SC	803-240-9649	3.0	P	.07	0.21
175	11/21	9:32A	MOBILE	803-609-8661	1.0	P MM	.05	0.05
176	11/21	1:02P	COLUMBIA, SC	803-600-1101	2.0	P	.07	0.14
177	11/21	1:04P	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
178	11/21	4:43P	INCOMING	803-315-6366	1.0	P	.07	0.07
179	11/21	4:49P	MOBILE	803-360-3261	1.0	P MM	.05	0.05
180	11/21	4:54P	INCOMING	803-315-6366	1.0	P	.07	0.07
181	11/22	7:18A	MOBILE	803-360-3261	1.0	P MM	.05	0.05
182	11/22	7:43A	INCOMING	803-240-9649	1.0	P	.07	0.07
183	11/22	8:54A	COLUMBIA, SC	803-790-9723	3.0	P	.07	0.21
184	11/22	8:57A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
185	11/22	9:35A	INCOMING	803-737-4992	2.0	P	.07	0.14
186	11/22	9:39A	MOBILE	803-360-9248	2.0	P MM	.05	0.10
187	11/22	10:42A	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
188	11/22	10:44A	COLUMBIA, SC	803-737-4992	1.0	P	.07	0.07
189	11/22	1:27P	MOBILE	803-206-9340	2.0	P MM	.05	0.10
190	11/22	4:58P	INCOMING	803-206-9340	1.0	P MM	.05	0.05
191	11/22	8:17P	COLUMBIA, SC	803-788-9172	2.0	P	.07	0.14
192	11/23	8:30A	MOBILE	803-360-9248	1.0	P MM	.05	0.05
193	11/23	9:06A	MOBILE	803-609-8661	2.0	P MM	.05	0.10
194	11/23	9:12A	COLUMBIA, SC	803-217-2690	2.0	P	.07	0.14
195	11/23	9:20A	INCOMING	803-264-0000	3.0	P	.07	0.21
196	11/23	9:51A	INCOMING	803-609-8660	1.0	P MM	.05	0.05
197	11/23	11:01A	MOBILE	803-609-8660	1.0	P MM	.05	0.05
198	11/23	11:06A	MOBILE	803-360-9248	1.0	P MM	.05	0.05
199	11/23	11:07A	COLUMBIA, SC	803-737-4992	3.0	P	.07	0.21
200	11/23	11:40A	INCOMING	803-960-8607	1.0	P	.07	0.07
201	11/23	12:36P	INCOMING	803-737-4992	2.0	P	.07	0.14
202	11/23	1:21P	COLUMBIA, SC	803-737-4992	2.0	P	.07	0.14
203	11/28	9:46A	INCOMING	803-360-9248	3.0	P MM	.05	0.15
204	11/28	9:52A	MOBILE	803-360-9248	2.0	P MM	.05	0.10
205	11/28	9:59A	INCOMING	803-360-9248	4.0	P MM	.05	0.20

Please see last page of bill for explanation of call codes.

Date	Time	City, State	Number	Min	Type	Rate	Charge
206	11/28	10:11A	MOBILE	803-603-2208	2.0	P MM	.05 0.10
207	11/28	10:13A	COLUMBIA, SC	803-737-4992	1.0	P	.07 0.07
208	11/28	11:29A	MOBILE	803-360-9248	2.0	P MM	.05 0.10
209	11/28	1:57P	MOBILE	803-360-9248	4.0	P MM	.05 0.20
210	11/28	2:01P	COLUMBIA, SC	803-600-1181	2.0	P	.07 0.14
211	11/28	2:03P	SUMTER, SC	803-840-1157	1.0	P	.07 0.07
212	11/28	2:08P	MOBILE	803-603-2208	2.0	P MM	.05 0.10
213	11/28	2:11P	SUMTER, SC	803-840-1157	1.0	P	.07 0.07
214	11/28	2:15P	COLUMBIA, SC	803-737-4992	2.0	P	.07 0.14
215	11/28	2:16P	SUMTER, SC	803-840-1157	1.0	P	.07 0.07
216	11/28	2:26P	SUMTER, SC	803-840-1157	6.0	P	.07 0.42
217	11/28	3:46P	MOBILE	803-360-3251	2.0	P MM	.05 0.10
218	11/28	3:55P	INCOMING	NO CALL ID	3.0	P	.07 0.21
219	11/28	3:55P	INCOMING	NO CALL ID	3.0	P D	0.00 0.00
220	11/28	3:59P	COLUMBIA, SC	803-603-2208	2.0	P MM	.05 0.10
221	11/29	8:12A	INCOMING	803-360-9248	2.0	P MM	.05 0.10
222	11/29	9:10A	COLUMBIA, SC	803-737-4992	3.0	P	.07 0.21
223	11/29	9:30A	INCOMING	803-240-9649	4.0	P	.07 0.28
224	11/29	10:17A	MOBILE	803-606-3378	3.0	P MM	.05 0.15
225	11/29	3:44P	MOBILE	803-331-2373	1.0	P MM	.05 0.05
226	11/29	4:43P	INCOMING	803-217-8551	1.0	P	.07 0.07
227	11/29	5:14P	COLUMBIA, SC	803-786-9172	1.0	P	.07 0.07
228	11/30	9:28A	INCOMING	803-808-7784	3.0	P	.07 0.21
229	11/30	9:30A	COLUMBIA, SC	803-479-0048	2.0	P	.07 0.14
230	11/30	9:32A	COLUMBIA, SC	803-312-5584	1.0	P	.07 0.07
231	11/30	9:33A	COLUMBIA, SC	803-737-4992	1.0	P	.07 0.07
232	11/30	9:34A	COLUMBIA, SC	803-479-0048	2.0	P	.07 0.14
233	11/30	9:34A	INCOMING	803-479-0048	2.0	P W	.07 0.14
234	11/30	9:41A	COLUMBIA, SC	803-776-5593	2.0	P	.07 0.14
235	11/30	9:44A	MOBILE	803-360-9248	2.0	P MM	0.00 0.00
236	11/30	9:46A	MOBILE	803-360-9248	2.0	P MM	0.00 0.00
237	11/30	9:48A	COLUMBIA, SC	803-240-9649	3.0	P	.07 0.21
238	11/30	9:51A	MOBILE	803-360-9248	2.0	P MM	0.00 0.00
239	11/30	9:56A	COLUMBIA, SC	803-737-4992	1.0	P	.07 0.07
240	11/30	9:57A	INCOMING	803-312-5584	3.0	P W	.07 0.21
241	11/30	10:50A	INCOMING	803-788-9087	3.0	P	.07 0.21
242	11/30	10:53A	COLUMBIA, SC	803-240-9649	3.0	P	.07 0.21
243	11/30	10:56A	COLUMBIA, SC	803-737-4992	1.0	P	.07 0.07
244	11/30	10:57A	INCOMING	803-737-4992	2.0	P	.07 0.14
245	11/30	11:02A	INCOMING	803-808-7784	3.0	P	.07 0.21
246	11/30	11:05A	INCOMING	803-360-9248	3.0	P MM	0.00 0.00
247	11/30	11:08A	COLUMBIA, SC	803-240-9649	3.0	P	.07 0.21
248	11/30	11:17A	COLUMBIA, SC	803-737-4992	1.0	P	.07 0.07
249	11/30	4:02P	INCOMING	803-957-1299	2.0	P	.07 0.14
250	11/30	4:59P	COLUMBIA, SC	803-786-9172	1.0	P	.07 0.07
TOTAL LONG DISTANCE CHARGES							\$.00
TOTAL AIRTIME & DIRECTORY ASSISTANCE CHARGES							\$34.85

Please see last page of bill for explanation of call codes.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.:

CAROLINE LEGRANDE,)
H. PAUL LEGRANDE, JR., and)
MARION MANCINI,)
)
Plaintiffs,)

vs.)

SOUTH CAROLINA)
DEPARTMENT OF)
TRANSPORTATION)
)
Defendant.)

COMPLAINT

(Recovery of Real Property)
(Declaratory Judgement)
(Trespass)
(Taking Without Compensation)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 MAY 13 PM 1:12

RICHLAND COUNTY
FILED

The Plaintiffs, complaining of the Defendant, allege and state as follows:

1. The Plaintiffs are the joint owners of real property located in the Town of Blythewood, County of Richland, State of South Carolina commonly known as Cedar Lane Farm and located along Turkey Farm Road. Attached as Exhibit A to this Complaint is a deed dated May 29, 1953 through which the Plaintiffs' father, Hazel P. LeGrande, Sr., obtained fee simple title to the subject property.
2. In January 1995, the Plaintiffs purchased the subject property from their late mother, Caroline T. LeGrande, pursuant to a deed Attached as Exhibit B to this Complaint.
3. The Plaintiffs' are in actual possession of the subject property, with the Plaintiff Caroline LeGrande and her nephew, Greg Mancini, currently residing thereon.
4. The Defendant is an agency of the State of South Carolina which is currently engaged in a road widening project on Turkey Farm Road in the Town of Blythewood, County of

Richland, South Carolina.

5. The Defendant claims a right to enter upon, physically occupy and convert to its use a portion of the subject property. Upon information and belief, the basis of the Defendant's claim of right is a March 29, 1967 Right-of-Way Easement which is attached to this Complaint as Exhibit C.
6. The Defendant, along with various contractor's and commercial entities all of whom are acting under color of the Defendant's claimed right, are entering upon, physically occupying, and converting to their permanent use, the subject property including but not limited to placing utility poles, power lines, and permanent pavement, all in derogation of the Plaintiffs' quiet use and exclusive enjoyment of the subject property.
7. Upon information and belief, all of this activity is being undertaken with the knowledge and acquiescence of the Defendant, which has purported to authorize and ratify all such activities pursuant to its claimed right to the subject property.
8. The Plaintiffs deny the Defendant has any right, title or interest in or to the subject property whereupon the Defendant's road widening project is currently being undertaken.
9. The Plaintiffs have suffered and are continuing to suffer actual harm as a result of the activities of the Defendant and those acting under its claimed right to the subject property.

FOR A FIRST CAUSE OF ACTION
(Recovery of Real Property)

10. The allegations in Paragraphs 1 through 9 above are realleged as fully as if restated herein.
11. The Plaintiffs are in possession of the property at issue in this case and claim title to the same.

12. The Defendant claims an interest in the property adverse to that of the Plaintiffs.
13. Pursuant to S.C. Code Ann. §15-67-10 *et seq.* (Code 1976, as amended), the Plaintiffs are entitled to a judgment of the Court determining the nature, scope and extent of the parties' interests in the subject property.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

14. The allegations in Paragraphs 1 through 13 above are realleged as fully as it restated herein.
15. A current controversy exists between the parties as to the extent of the Defendant's alleged right to enter upon, occupy and use the subject property.
16. Pursuant to S.C. Code Ann. §15-53-10 *et seq.* (Code 1976, as amended) the Plaintiffs are entitled to a judgment of the Court declaring the nature, scope and extent of the parties' interests in the subject property.

FOR A THIRD CAUSE OF ACTION
(Trespass)

17. The allegations in Paragraphs 1 through 16 above are realleged as fully as if restated herein.
18. The Plaintiffs' are in peaceable and legal possession of the subject property.
19. The Defendant, acting by and through its actual and apparent agents, servants, employees and contractors, has voluntarily and intentionally entered upon the subject property.
20. Said entry is without the Plaintiffs' permission.
21. The Plaintiffs are entitled to recover actual damages against the Defendant in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Uncompensated Taking)

22. The allegations in Paragraphs 1 through 21 above are realleged as fully as if restated herein.
23. The Defendant, acting by and through its actual and apparent agents, servants, employees and contractors, has effected a governmental taking of the subject property for public purposes.
24. The Plaintiffs have not been compensated for the taking of the subject property.
25. The actions and conduct of the Defendant are in violation of the Plaintiffs' civil rights as secured to them by the Constitution of the United States of America.
26. The actions and conduct of the Defendant are in violation of the Plaintiffs' civil rights as secured to them by the Constitution of the State of South Carolina.
26. The Plaintiffs are entitled to recover actual damages and interest from the Defendant in an amount to be determined by the trier of fact.
27. The Plaintiffs are entitled to recover attorneys fees from the Defendant for the effort undertaken to vindicate their constitutional rights.

FOR A FIFTH CAUSE OF ACTION
(Injunction)

28. The allegations in Paragraphs 1 through 27 are realleged as fully as if restated herein.
29. The actions and conduct of the Defendant constitute a continuing trespass upon the subject property.
30. Unless the Defendant's road widening project is enjoined, the Plaintiffs will suffer irreparable harm from the permanent alteration of the subject property.
31. The Plaintiffs have no adequate remedy at law for the Defendant's permanent alteration and destruction of the subject property.

32. The Plaintiffs are entitled to a mandatory injunction prohibiting and preventing the Defendant from moving forward with the road widening project as the same relates to the subject property, both *pendente lite* and permanently upon a finding in favor of the Plaintiffs on the merits of the claims alleged herein.

WHEREFORE the Plaintiffs pray for an Order determining and declaring the nature, scope and extent of the parties' interests in the subject property; awarding actual damages and attorneys fees to the Plaintiffs in accordance with the averments hereof; and for such further legal and equitable relief as the Court deems just and proper.

BY: _____



Robert B. Ransom
LEVENTIS & RANSOM
Post Office Box 11067
Columbia, SC 29211
(803) 765-2383

ATTORNEY FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-40-3108

**Caroline Legrande,
H. Paul Legrande, Jr., and
Marion Mancini,
Plaintiffs,**

V.

**South Carolina Department of
Transportation,
Defendant and
Third Party Plaintiff,**

V.

**Richland School District Two,
Third Party Defendant.**

Answer and Third Party Complaint

TO: ROBERT B. RANSOM, ESQ., ATTORNEY FOR PLAINTIFFS AND RICHLAND COUNTY SCHOOL DISTRICT TWO

The Defendant South Carolina Department of Transportation (hereinafter “Defendant SCDOT”) answers the Plaintiffs complaint as follows:

FOR A FIRST DEFENSE

1. Answering Paragraphs 1-2, Defendant SCDOT admits matters of record.
2. Defendant SCDOT has insufficient information to either admit or deny the allegations of Paragraph 3, and therefore denies same and demands strict proof thereof.
3. Defendant SCDOT denies the allegations of Paragraph 4. Third Party Defendant Richland School District Two (hereinafter "School District"), not Defendant SCDOT, is engaged in the road widening project in connection with the construction of a new

high school. On September 2, 2009, Defendant SCDOT issued an encroachment permit to the School District for the purpose of planning and constructing its project, a copy of which is attached hereto and made a part hereof as "Exhibit A" (referred to hereinafter as "Encroachment Permit"). The Encroachment Permit grants permission to the School District to work within Defendant SCDOT's existing right of way for Turkey Farm Road. The School District is not acting as Defendant SCDOT's agent in connection with this project, but on its own behalf.

4. Defendant SCDOT admits the allegations of Paragraph 5, insofar as its use of the right of way is for the location, construction, improvement and maintenance of Turkey Farm Road (Road S-1694) as stated in the Right of Way Easement its predecessor in interest, the South Carolina Highway Department, obtained from Mr. Hazel P. Legrande on March 29, 1967, a copy of which Right of Way Easement is attached to the Complaint as "Exhibit C" (hereinafter referred to as "1967 Easement").
5. Answering Paragraph 6, Defendant SCDOT admits that its employees and agents since 1967 have entered upon, physically occupied and converted to highway purposes the area designated in the 1967 Easement and further alleges that it, through its employees and agents, has a valid, legal and continuing right to do so. However, Defendant SCDOT reiterates that it is the School District, not Defendant SCDOT, that is planning and constructing the current road project, and the various contractors and commercial entities now working on the project are doing so for the purpose of the School District's project, and at their direction, not Defendant

SCDOT's direction. Further answering Paragraph 6, Defendant SCDOT denies that it, or its agents or employees or contractors, are in the process of placing utility poles or power lines. Any such activity would be of necessity be undertaken by the owner of the utilities, which on information and belief is South Carolina Electric and Gas Company, Inc. (hereinafter, "SCE&G"). SCE&G is not acting under Defendant SCDOT's authority, but pursuant to SCE&G's own independent easement or the statutory authority of S. C. Code Section 58-27-130, which grants electric companies the right to locate their lines within existing public highway rights of way.

6. Answering Paragraph 7, Defendant SCDOT admits that the alleged activity is being undertaken with its knowledge. Defendant SCDOT denies that it has acquiesced in such activity or that it has any duty to act. Defendant SCDOT denies any knowledge or ratification of activities that are not within Defendant SCDOT's validly held easement rights or pursuant to statutory authority.
7. Answering Paragraph 8, Defendant SCDOT asserts its rights pursuant to the 1967 Easement.
8. Answering Paragraph 9, Defendant SCDOT denies that Plaintiff has suffered any harm as a result of its activities or the activities of persons acting within the limits of the 1967 Easement.
9. Answering Paragraph 10, Defendant SCDOT reiterates the responses set forth above.
10. Answering Paragraphs 10-12, Defendant SCDOT admits that the Plaintiffs may own the underlying fee interest on the south side of the centerline of Turkey Farm Road, but such interest is subject to Defendant SCDOT's rights pursuant to the 1967

Easement; therefore, Defendant SCDOT denies that Plaintiff has any unencumbered right to the easement area.

11. Defendant SCDOT admits the allegations of Paragraph 13 of the Complaint.
12. Answering Paragraph 14, Defendant SCDOT restates and reiterates the responses set forth above.
13. Defendant SCDOT admits the allegations of Paragraphs 15 and 16.
14. Answering Paragraph 17, Defendant SCDOT restates and reiterates the responses set forth above.
15. Defendant SCDOT has insufficient information to either admit or deny the allegations of Paragraph 18, and therefore denies same and demands strict proof thereof.
16. Answering Paragraph 19, Defendant SCDOT admits that some of its employees may have entered the subject property within the limits of the 1967 Easement, but denies that any of its activities are in derogation of the rights of the Plaintiff or outside the limits of that easement. Defendant SCDOT affirmatively alleges that the only actions that Defendant has permitted are actions by the School District, or its employees, or agents or contractors, within the limits of the 1967 Easement, and only as set forth in the Encroachment Permit.
17. Defendant SCDOT denies the allegations of Paragraph 20 and 21.
18. Answering Paragraph 22, Defendant SCDOT restates and reiterates the responses set forth above.

19. Defendant SCDOT denies the allegations of Paragraphs 23-27. Defendant SCDOT has taken no positive, affirmative aggressive act sufficient to constitute a taking of Plaintiff's property.
20. Answering Paragraph 28, Defendant SCDOT restates and reiterates the responses set forth above.
21. Defendant SCDOT denies the allegations of Paragraphs 29-31.
22. Defendant SCDOT denies the allegations of Paragraph 32. Plaintiffs are not entitled to an injunction because even if they are correct in their claims, which Defendant SCDOT denies, Plaintiffs have an adequate remedy at law, in the form of monetary damages.

FOR A SECOND DEFENSE

23. Plaintiffs' claim is barred by estoppel by deed. Plaintiffs are estopped from asserting that Defendant SCDOT does not have a 66-foot wide right of way for Turkey Farm Road through their property by reason of the 1967 Easement given to Defendant SCDOT's successor in title. Plaintiffs are also estopped based upon deeds and plats of record indicating the existence of a 66- foot wide right of way for Turkey Farm Road through their property.

FOR A THIRD DEFENSE

24. Plaintiffs' claim is barred by acquiescence to the boundaries of the 1967 Easement. Plaintiffs have acquiesced in the 66-foot wide right of way for Turkey Farm Road by virtue of their recording and referencing plats of their property showing such right of way.

FOR A FOURTH DEFENSE

25. Plaintiffs' claims are barred by the three year statute of limitations (S. C. Code Section 15-3-530). Defendant SCDOT's predecessor in title, the South Carolina Highway Department, constructed the current pavement for Turkey Farm Road in 1967 and Defendant SCDOT, and/or its predecessor's in interest, have been maintaining the 66 foot right of way around the relocated centerline since that time. If Plaintiffs had a claim, that claim should have been asserted long ago, i.e. within three years of Defendant's first use of the easement.

FOR A FIFTH DEFENSE

26. If the Plaintiffs have been damaged, which Defendant SCDOT denies, those damages have been caused by the actions of a third party: either SCE&G, the School District or both. Therefore, Defendant SCDOT pleads the acts of such third party or parties as a complete bar to Plaintiffs' action against Defendant SCDOT.

BY WAY OF THIRD PARTY COMPLAINT
AGAINST THE SCHOOL DISTRICT

27. Defendant SCDOT realleges all the allegations stated hereinabove.

28. Pursuant to the Encroachment Permit Defendant SCDOT issued to the School District, a copy of which is attached as "Exhibit A," the School District agreed to bear the costs of all work in connection with its project, obtain the grant or release of rights of abutting property owners if such rights are necessary, and indemnify and hold harmless SCDOT from and against all claims for property damage arising from the School District's project.

29. To the extent that costs are incurred by Defendant SCDOT or judgment rendered against Defendant SCDOT the School District's project, Defendant SCDOT is entitled to be reimbursed or indemnified by the School District for such costs and judgment pursuant to the terms of the Encroachment Permit.

Wherefore, Defendant SCDOT requests that the Court issue its order dismissing this action; or, in the alternative, if the Court rules that Plaintiffs are entitled to judgment, protecting Defendant SCDOT's rights of indemnification and reimbursement of costs; and for such other relief as this Court deems just and proper.



By: Linda C. McDonald
SCDOT Chief Counsel
P. O. Box 191
Columbia, SC 29202
(803) 737-1255 (tel)
(803) 737-2071 (fax)

June 8th 2010

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Caroline Legrande, H. Paul Legrande, Jr.,)
and Marion Mancini,)

C.A. No. 2010-CP-40-3108

Plaintiffs,)

**THIRD PARTY DEFENDANT'S
ANSWER AND AFFIRMATIVE
DEFENSES**

vs.)

South Carolina Department of)
Transportation,)

Defendant and Third-Party)
Plaintiff,)

vs.)

Richland School District Two,)

Third Party Defendant.)

2010 JUL -8 AM 11:08
FILED
CLERK OF COURT
C.C.P. & G.S.

Third Party Defendant, Richland School District Two ("District"), hereby responds to the Third Party Complaint of the South Carolina Department of Transportation ("SCDOT") as follows:

1. Paragraphs 1 through 26 are not directed to the District, so no response is required. To the extent that any of these paragraphs can be construed to allege any claims or actionable conduct as to the District, those allegations are denied.
2. Paragraph 27 does not allege any facts as to the District, so no response is required. To the extent that this paragraph can be construed to allege any claim or actionable conduct as to the District, those allegations are denied.
3. Answering paragraph 28, the District admits only that SCDOT issued the District an Encroachment Permit and that the Permit speaks for itself. The District denies any allegations inconsistent with the Permit.

4. The District denies the allegations of paragraph 29.
5. The District denies that SCDOT is entitled to any of the relief requested in the Third Party Complaint or any other recovery whatsoever.
6. The District denies each and every other allegation of the Third Party Complaint, except those allegations admitted herein.

FIRST AFFIRMATIVE DEFENSE

The Third Party Complaint fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

SECOND AFFIRMATIVE DEFENSE

SCDOT's reliance upon the indemnity language set forth in the Encroachment Permit is misplaced because that provision does not contemplate claims based on the location of the SCDOT right-of-way.

THIRD AFFIRMATIVE DEFENSE

Defendant SCDOT's claims against the District are barred by the doctrines of estoppel and waiver.

FOURTH AFFIRMATIVE DEFENSE

Defendant SCDOT's claims against the District are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

Defendant SCDOT's claims against the District are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Defendant SCDOT's claims against the District are barred by SCDOT's own contributory negligence in its requirements imposed upon the District regarding the road widening project and its identification of the location of the right-of-way.

WHEREFORE, having fully answered SCDOT's complaint, and also having set forth its

affirmative defenses, the District respectfully prays that the Court dismiss Plaintiff's action with prejudice and award it attorney's fees and costs as permitted by law.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: Allen D. Smith /s/
Allen D. Smith, S.C. Bar No. 15065
asmith@childs-halligan.net

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Third Party Defendant Richland
School District Two

July 8, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) CASE NO.: 2008-CP-40-8425

COPY

Caroline LeGrande, H. Paul)
LeGrande, Jr., and Marion Mancini,)
Plaintiffs,) DEPOSITION OF
vs.) CAROLINE LEGRANDE
South Carolina Electric and Gas) APRIL 13, 2010
Company,)
Defendant.)
_____)

Deposition on oral examination of Caroline LeGrande, reported by Patricia G. Bachand, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure; said deposition was taken at the law offices of Leventis & Ransom, 1913 Bull Street, Columbia, South Carolina, on Tuesday, the 13th day of April, 2010, and commencing at the hour of 1:07 o'clock p.m.

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DIRECT EXAMINATION BY MR. PUGH

1 Q. Turkey Farm Road comes off of Highway 21; is that
2 correct?

3 A. That's correct.

4 Q. And do you know when the first SCE&G utility
5 poles were installed, bringing power along Turkey Farm Road
6 off of Highway 21?

7 A. No, I don't.

8 Q. When you-all moved -- or when your dad bought the
9 property -- and when I say "the trees," I mean the trees
10 that we're here talking about, the trees that were cut
11 down. Did your dad plant those trees? Or were they
12 already there?

13 A. They were already there.

14 Q. How big were they when -- your furthest memory
15 back, how big were they?

16 A. I was three when we moved there.

17 Q. I understand. And I'm not expecting you to
18 remember when you were three.

19 A. Right. They've always been to me, big, pretty
20 trees.

21 Q. Okay. Did you-all add any? Or were they just
22 there?

23 A. They were planted there. And we didn't add any.

24 Q. All right. Look at Paragraph 12 that starts at
25 the bottom of that same page. It says, "In the process of

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139

1 upgrading electrical service for these new future
2 developments, the Defendant SCE&G removed the small power
3 poles extant on Cedar Lane Farm's property, replaced those
4 poles with large ones." Did you see that happening?

5 A. Yes.

6 Q. Did you speak to anyone when that was occurring?

7 A. No.

8 Q. When did that occur?

9 A. The best I can remember, it was around October.

10 Q. Of 2005?

11 A. 2005, right.

12 Q. Okay. Do you recall -- did you see workers doing
13 -- doing -- I mean, you saw trucks and people doing that
14 work?

15 A. No.

16 Q. What did you see?

17 A. When I left for work, when I came home they had
18 different poles.

19 Q. Okay. So there were one-size pole there when you
20 left for work, and when you came home they were different.

21 A. Different-size pole.

22 Q. Okay. Were there more poles? Or just different-
23 size poles in the same position?

24 A. I'm not really sure. They're just -- they were
25 bigger poles.

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140

1 Q. When you say "bigger," were they bigger around?
2 Were they taller?

3 A. Taller.

4 Q. Taller. And at that time, October 2005, you were
5 working for AT&T.

6 A. Correct.

7 Q. What time would you leave for work?

8 A. It depended. Normally, a quarter till nine.
9 Unless I had to be there early, then I'd leave at eight, or
10 whatever time I had to be there. Sometimes you had special
11 projects you have to go in early for.

12 Q. Where is your place of work --

13 A. Two Notch Road.

14 Q. -- the physical location? Two Notch Road.

15 A. Uh-huh.

16 Q. How long does it take you to drive Two Notch Road
17 from your property?

18 A. Ten/fifteen minutes, depending on which way I go.

19 Q. And what time would -- assuming it was -- let's
20 assume for a second that you were to be at work at nine.

21 A. Right.

22 Q. What time would your workday end?

23 A. Six.

24 Q. And if you went in at eight, it would be five; is
25 that correct?

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EDDIE McWHIRTER
DIRECT EXAMINATION BY MR. RANSOM

Excerpts from Testimony of SCE&G's Rule 30(b)(6) designee, Eddie McWhirter

A. Well, . . . we don't cut anything down until we have met with the customer. . . . [I]f the customer says do not cut anything down that we consider a yard tree or amenity tree or a tree that the customer might be attached to in some way, we don't cut it down. [page 8, lines 11 thru 18]

* * *

A . . . on the cutting part, if the customer doesn't agree to the cutting, we just don't cut. [page 12, lines 17 and 18]

* * *

A We go to the customer and talk to them and find out if they are okay with us cutting. If they say no, we don't cut. [page 17, lines 5 thru 7]

* * *

A Well, again, if they say no, flat out no, we don't cut the trees. It's that simple.

Q Under any circumstances?

A I can't think of any. [page 17, lines 14 thru 17]

* * *

Q Okay. All right. And just so that I'm clear about this, is that the company's position that if my clients had told Mr. Boggs not to cut down the cedar trees, that request would have been honored?

A Absolutely.

* * *

Q All right. And that would be true, even if there were a right-of-way or easement?

A Either way.

Q Okay.

A Either way. [page 19, lines 11 thru 15]

* * *

Q But generally speaking, the rule is, if there's no permission, there's no cutting?

A For yard type trees, amenity type trees, trees the customer thinks are important to the value of their property, yes. [page 20, line 25 to page 21, line 4]

* * *

A Well, I think that the situation with the LeGrande case is a perfect example of what we do. We looked at these trees as the kinds of trees that, if we were going to cut down, we would contact the customer. A perfect example of the kind of trees we contact the customer before we cut them down. And we follow the procedure that says contact the customer and see what they think. And if they think no, then we don't cut them down. [page 23 line 20 to page 24, line 4]

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CAROLINA LEGRANDE, ET AL.,

Plaintiffs,

vs. CASE NO. 08-CP-40-8425

SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Defendant.

30(b)6

DEPOSITION OF: EDDIE MCWHIRTER

DATE: March 24, 2010

TIME: 10:10 A.M.

LOCATION: Law Offices of
Richardson, Plowden & Robinson
1900 Barnwell Street
Columbia, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Leslie T. Stanley,
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 CAROLINA LEGRANDE, ET AL.:

4 LEVENTIS & RANSOM

5 BY: ROBERT B. RANSOM

6 1913 Bull Street

7 Columbia, SC 29201

8 (803) 708-7347

9 Bertcone@aol.com

10

11 ATTORNEYS FOR THE DEFENDANT

12 SCE&G:

13 RICHARDSON, PLOWDEN & ROBINSON

14 BY: STEVE PUGH

15 1900 Barnwell Street

16 Columbia, SC 29201

17 (803) 771-4400

18 SPugh@RichardsonPlowden.com

19

20 SOUTH CAROLINA ELECTRIC & GAS COMPANY

21 BY: JOHN M. MAHON, JR.

22 (In-house Counsel.)

23 100 Scana Parkway, C222

24 Cayce, SC 29033

25 (803) 217-9732

JMahon@scana.com

1

2 (INDEX AT REAR OF TRANSCRIPT)

3

4

5

6

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8

9

DIRECT EXAMINATION BY MR. RANSOM

Page 3

1 STIPULATION

2 It is stipulated by and between Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.

10 * * * * * * * * *

11 EDDIE MCWHIRTER,

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. RANSOM:

15 Q. Good morning, Mr. McWhirter. My name's
16 Rob Ransom. We've met before. I've taken your
17 deposition individually in this case previous to
18 today, but now you understand that you are here
19 today not to speak as Eddie McWhirter, but rather
20 to testify on behalf of SCE&G?

21 A. I do.

22 Q. Are you still living at the same
23 residence address that you were when I took your
24 deposition previously?

25 A. Yes, I am.

1 (PLF. EXH. 1, Amended Notice of
2 Deposition Duces Tecum, was marked
3 for identification.)

4 BY MR. RANSOM:

5 Q. Let me show you what I've marked as
6 exhibit 1 to your deposition. And that's actually
7 the amended Notice of Taking Deposition Duces Tecum
8 that brings us here today. Have you had an
9 opportunity to review that document before now?

10 A. I think I have. Have I looked at this?
11 Is this something that we had last time?

12 Q. No.

13 A. Well, I'm prepared to answer all the
14 questions that are on here. I've looked at some
15 things that are similar to this.

16 Q. Okay. Well, the first area that I
17 wanted to inquire of you about was what, if
18 anything, you have done to familiarize yourself
19 with the areas of testimony that are listed on
20 exhibit 1?

21 A. Well, I met with these fellows here a
22 week or so ago.

23 Q. Mr. Pugh and Mr. Mahon --

24 A. Yes, a week, a week and a half ago.

25 Q. All right. Anything else?

1 A. No, these two guys right here, about --
2 a Friday for a couple of hours.

3 Q. Okay. Did you review any documents?

4 A. We may have looked at this. We looked
5 at some that were a whole lot like that. We just
6 talked in general about questions that could be
7 talked about.

8 Q. Well, look, I don't need you to tell me
9 anything -- about anything of substance in your
10 conversations.

11 MR. PUGH: Is there anybody on there?
12 Let me get that out of the way.

13 (Pause.)

14 BY MR. RANSOM:

15 Q. Okay, I'm sorry.

16 A. We looked at -- Holley, Jeff Holley was
17 there. We looked at some maps. I sat in on that.
18 I wasn't really part of the discussion, but I got
19 there early.

20 Q. All right. Other than Mr. Holley, have
21 you spoken with anybody at the company in order to
22 obtain information necessary for you to answer the
23 questions listed in exhibit 1?

24 A. Well, Jeff Holley and I were there with
25 Eric McDowell, and Eric was at that meeting. Randy

1 Morris, our purchasing agent, wasn't at the
2 meeting, but he was down the hall, and I spoke with
3 him on the way out about a -- we call it a blanket
4 purchase order.

5 Q. All right.

6 A. Randy wasn't in this meeting, but he
7 was convenient on the way out.

8 Q. All right.

9 A. But that's been it.

10 Q. Okay.

11 A. It was all confined to that Friday.

12 Q. Have you spoken to a gentleman named
13 Paul Thompson?

14 A. Not about this, no.

15 Q. What about a gentleman named Josh
16 Jackson?

17 A. Not about this.

18 Q. Okay.

19 A. Those are co-workers in different
20 departments. I speak to them a lot, but not about
21 this.

22 Q. Okay, and that's what I'm trying to
23 find out, what you have done to prepare yourself to
24 be able to testify about issues identified in
25 exhibit 1.

1 A. Right.

2 Q. So you met with your attorneys,
3 correct?

4 A. Correct.

5 Q. You attended a meeting where Jeff
6 Holley had some maps, correct?

7 A. Correct.

8 Q. You've also spoken with Eric McDowell
9 and Randy Morris, correct?

10 A. That's correct, Eric at this meeting
11 and Randy on the way out.

12 Q. Okay. Anything else that you did in
13 order to prepare yourself to testify as the
14 designee of the company here this morning?

15 A. No, the company sent me the last
16 deposition to look over, to review.

17 Q. Whose deposition was that?

18 A. That was my deposition.

19 Q. Any other materials that were provided
20 to you for your review?

21 A. No, just that deposition.

22 Q. All right. Do you feel as though you
23 are fully informed and able to speak on the
24 company's behalf here this morning?

25 A. I think so.

1 Q. Okay.

2 A. I do.

3 Q. Let's start, then, with a fairly simple
4 process. You've got exhibit 1 in front of you.
5 We've all got copies, except for Mr. Mahon, and he
6 can look on Mr. Pugh's copy. Item number one in
7 the deposition notice is all policies and
8 procedures to insure trees are not cut or trimmed
9 by mistake. Tell me what the company's position is
10 in regard to that issue.

11 A. Well, we did touch on it some in the
12 last deposition, but we don't cut anything down
13 until we have met with the customer. We can also
14 make a phone call to the customer as well.

15 But if the customer says do not cut
16 anything down that we consider a yard tree or
17 amenity tree or a tree that the customer might be
18 attached to in some way, we don't cut it down.

19 Trimming, actually, the trimming is
20 handled differently. We look at our trimming as
21 something that must be performed in order to
22 provide at least a minimum service of reliability,
23 and if the customer says, you cannot trim those
24 trees, then we will have to work through our
25 policies, working with John, if that's necessary,

1 working with our claims department, if that's
2 necessary, to trim the trees.

3 Q. Okay. So it is possible that there
4 could be a dispute with a landowner over SCE&G's
5 right to cut or trim, correct?

6 A. Right, it is possible.

7 Q. Tell me, then, again, what is the
8 company policy, in terms of dealing with those
9 disputes?

10 A. Well, if a customer says, you cannot
11 trim the trees, then that's normally said first to
12 the vendor. And the vendor, then, will contact, in
13 this case, in Columbia, me. And I will contact the
14 customer.

15 If I cannot get it worked out -- most
16 of the time I can, but if I cannot, then the next
17 procedure calls for claims to be contacted by me,
18 and claims sends a standard letter, which reviews
19 the rights of SCE&G and why we need to trim the
20 trees. And that letter is sent to the customer.

21 The customer has the opportunity to
22 talk to claims. There's normally a claim contact
23 person and a phone number on there, so they know
24 who to call, and they'll speak to claims. And
25 again, most of the time, it gets worked out at that

1 point.

2 Q. All right.

3 A. If, for some reason, it cannot get
4 worked out, the next procedure generally would be
5 to tell the customer the date we're going to come,
6 and then we would show up on that date and trim the
7 trees.

8 Q. All right.

9 A. Now, that's for trimming.

10 Q. Let me make sure I understand that
11 then. When you say claims, this would be someone,
12 for example, in Eric McDowell's capacity?

13 A. It would be. Eric is a claim agent.
14 There's actually a clerk we would contact. There's
15 three or four or five claim agents. I'm not sure
16 how many. So the clerk disperses the work from the
17 field, from someone like me.

18 Q. I understand. If the claims
19 department, if we can call it that --

20 A. Yes.

21 Q. If the claims department is unable to
22 reach an agreement with the property owner, you say
23 that you just send somebody out and start cutting?

24 A. Yes, and the claims agent will tell the
25 customer when, it won't be a surprise. And

1 normally, that's on the letter anyway, but
2 sometimes the customer will not agree with claims,
3 and I've always been under the assumption -- it's
4 not really an assumption, it's based on things I've
5 seen too, that claims is working with legal as need
6 be, to make sure that things are as they should be
7 when we return or when we go out to the site.
8 Sometimes we are returning to the site, because a
9 customer first told the vendor, no, don't trim.

10 Q. Right.

11 A. There is another form of contact,
12 though, that could take place that -- where the
13 vendor would not be the first point of contact. We
14 send a postcard out, and sometimes, a customer will
15 get that postcard and call me direct and say,
16 Eddie, I don't want you to trim or Eddie, before
17 you trim, we need to talk. But regardless,
18 eventually, it will go to claims if I can't get it
19 worked out.

20 Q. Would the claims department work in
21 conjunction, for example, with the right-of-way
22 department to try to determine whether there were
23 any easements or other rights-of-way?

24 A. They would. That's another support
25 group that claims would use in addition to the

1 legal group, the right-of-way group. The
2 right-of-way group could come into play as well.

3 Q. Now, what would happen, for example, if
4 the right-of-way department conducted an
5 investigation and determined that, in fact, the
6 property owner was justified in rejecting the
7 cutting or the trimming?

8 A. You know, I don't know if that's ever
9 come up on the trimming side.

10 Q. Okay. Would it be fair to say that the
11 company wouldn't go out there and just start
12 cutting or trimming until that issue was resolved
13 to the company's satisfaction?

14 A. Well, definitely not cutting, but
15 trimming -- I think at some point in time, the
16 trimming would have to take place. But as I said,
17 on the cutting part, if the customer doesn't agree
18 to the cutting, we just don't cut.

19 Q. All right. This is the process that
20 takes place when there's a dispute with a property
21 owner. What is done, if anything, by the company
22 in the first instance before, for example, the
23 vendor is sent out, to make sure that the company
24 has the necessary right-of-way, if we can call it
25 that?

1 A. Well, the first thing that's done in
2 the process for trimming is that a card is sent
3 out.

4 Q. Uh-huh.

5 A. A postcard. And so that's sent out to
6 notify, obviously, the customer that we are going
7 to be in their neighborhood or going to be on the
8 street. That's the first piece of work that's
9 done. And then following that, the contractor
10 begins the work.

11 Q. All right. Once the -- and you and I
12 talked a little bit in your previous deposition
13 about the process of notifying the contractor about
14 the work that you all wanted to do.

15 A. Uh-huh.

16 Q. Before the -- well, let's try to get
17 some terminology first. I mean, it would be -- the
18 vendor, rather, is given a notice to proceed, more
19 or less; is that a fair --

20 A. Sure. They have a list of jobs that
21 they know they will be working for their stay at
22 SCE&G, whether it's three months or twelve months
23 out of the year. We would look at that list, they
24 would look at that list, we would send out
25 notification.

1 Generally, we say we want about two
2 weeks to let the cards have a chance to filter
3 through the homes and have a chance to make calls
4 back to SCE&G. And then we tell the vendor, okay,
5 we've had about two weeks with cards out, let's go
6 ahead and start.

7 Q. All right. But how is it determined
8 that the power company has a right-of-way before a
9 list of work is given to a vendor?

10 A. We don't do anything to check.

11 Q. So it's assumed, then -- and look, I
12 mean, obviously, people are sent out to do cutting
13 and trimming around lines that are already in
14 place, correct?

15 A. Right.

16 Q. Nobody is ever sent out to cut trees
17 that there isn't a line implicated; is that right?

18 A. Exactly. And again, it's trimming.
19 It's just trimming. If we are going to cut, we are
20 going to notify the customer. But you're exactly
21 right on the trimming. We begin the work because
22 we assume the line's been there forever, that we
23 can trim.

24 Q. All right. What about --

25 MR. RANSOM: Well, let me mark as

1 exhibit 2 a document that's been provided by SCE&G.

2 (PLF. EXH. 2, Notes about Turkey
3 Farm Road, was marked for
4 identification.)

5 BY MR. RANSOM:

6 Q. You see down at the bottom it's got a
7 document control number, 0139. Am I reading that
8 correctly?

9 A. That's correct.

10 Q. Up at the very top, it says, Turkey
11 Farm Road. Am I reading that correctly?

12 A. That's right.

13 Q. It's my understanding -- and I'll
14 represent to you that this was a memorandum that
15 was prepared by Paulette Ritter of the right-of-way
16 department, concerning the dispute with my clients
17 over the cutting of the trees on Turkey Farm Road.

18 She makes reference in her memorandum
19 -- let's see, where is this? Bear with me. Well,
20 the letters PTO. Do you know what that stands for?

21 A. Generally, yeah, PTO at our company
22 means paid time off.

23 Q. Oh, I'm sorry, here's what I was
24 looking for. Down here, in this paragraph that
25 begins, initially, I printed property owner

1 information and went to the RMC office and
2 researched chain of ownership, etcetera. Then it
3 says in the next sentence, Paul Thompson and I
4 researched on filenet for existing easements and
5 found none that fit that particular line. Did I
6 read that correctly?

7 A. Yes.

8 Q. What is filenet?

9 A. I don't know, not familiar with that
10 term. First time I've ever seen it.

11 Q. Does the company have, to your
12 knowledge, some sort of database into which
13 information is entered at that time an easement or
14 other right-of-way is first obtained from a
15 property owner?

16 A. I'm sure we must, but I couldn't say we
17 do one way or the other. I just don't get into
18 that part of the work, the right-of-way searches.
19 We look at our right-of-way department for that
20 kind of information.

21 Q. Well, and in terms of policies and
22 procedures to insure that trees are not cut or
23 trimmed by mistake, is there any requirement that,
24 before a list of work to be done by a vendor is
25 sent out, that some search is done on filenet?

1 A. Not for trimming, not from our
2 standpoint in the field. Not for trimming.

3 Q. What about cutting?

4 A. Well, again, for cutting, we don't
5 search for right-of-way. We go to the customer and
6 talk to them and find out if they are okay with us
7 cutting. If they say no, we don't cut it. If they
8 say yes, we do.

9 Q. All right. Let's talk, then, about the
10 circumstance where you want to cut trees, and you
11 go and meet with the customer, and they say no,
12 don't do it. So now you have a disagreement, if
13 you will. How is that handled?

14 A. Well, again, if they say no, flat out
15 no, we don't cut the trees. It's that simple.

16 Q. Under any circumstances?

17 A. I can't think of any. Let me just
18 think for a moment. Let me think back on my years
19 of doing this work. When we approach a customer
20 about cutting trees -- an exception would be dead
21 trees, something that we think is going to fall on
22 the line. That would be an exception.

23 If the customer said no -- we've
24 approached a customer about cutting a dead tree
25 because we think it would hit our facilities. And

1 at that point, we would have to -- we would have to
2 go the route that I described to you earlier, but
3 again, I can't remember that happening on dead
4 trees.

5 Q. Would it be fair to say, Mr. McWhirter,
6 that the only time that the company would
7 coordinate this process with the right-of-way
8 department would be in the event that the customer
9 either refused to allow the cutting or trimming or
10 otherwise disputed the company's right-of-way?

11 A. Yes, I think that's fair to say.

12 Q. Okay. So that some consultation of
13 records or this filenet, whatever that may be,
14 going down to the RMC office, for example, this
15 would not normally be undertaken in the absence of
16 a dispute?

17 A. Searching for right-of-ways, yes, you
18 need a dispute.

19 Q. Okay. All right. And just so that I'm
20 clear about this, is that the company's position
21 that if my clients had told Mr. Boggs not to cut
22 down the cedar trees, that request would have been
23 honored?

24 A. Absolutely.

25 Q. And that -- would that, then, have

1 resulted in the right of -- rather, the -- well,
2 the right-of-way department and the claims
3 department getting involved?

4 A. No.

5 Q. They would have just left those trees
6 and all the subsequent work that's gone out there
7 would have been abandoned?

8 A. Well, I don't know what other work's
9 taken place, but we would not have cut those trees
10 down.

11 Q. All right. And that would be true,
12 even if there were a right-of-way or an easement?

13 A. Either way.

14 Q. Okay.

15 A. Either way.

16 Q. So in terms of policies and procedures
17 to insure that trees are not cut or trimmed by
18 mistake, the fundamental procedure is to ask the
19 property owner for permission?

20 A. For cutting only. For cutting only.

21 Q. Okay.

22 A. We don't ask permission for trimming.

23 Q. Okay. Item number two is all policies
24 and procedures to insure trees are not cut or
25 trimmed without permission; I think we just covered

1 that.

2 A. To me, it sounds redundant. It's
3 almost as if it's the same question, but if you've
4 got some questions, I'll give it a shot.

5 Q. Well, I want to make sure the record is
6 clear. The policy there at SCE&G is that if the
7 property owner doesn't give permission, the trees
8 will never be cut?

9 A. Well, never's a big word. We talked
10 about dead trees.

11 Q. With that exception?

12 A. A dead tree's going to come down. If
13 there was a tree on fire, a live tree, that's --
14 maybe in the middle of the night, and the only way
15 we can get to the pole is to cut it down, that
16 would be another exception. I'm sure there's some
17 exceptions. You know where I'm coming from.

18 Q. I think I understand. An example is,
19 an emergency would be an exception?

20 A. I think that's a good example.

21 Q. Some threat to life or limb would be an
22 exception, correct?

23 A. Uh-huh. Exactly, yes, those are good
24 exceptions.

25 Q. But generally speaking, the rule is, if

1 there's no permission, there's no cutting?

2 A. For yard type trees, amenity type
3 trees, trees the customer thinks are important to
4 the value of their property, yes.

5 Q. Okay. Now, what is the policy with
6 respect to trimming without permission?

7 A. Well, again, we are going to trim the
8 trees. And we are going to depend on our support
9 group, like our legal group and our right-of-way
10 group and our claims group, to help us through the
11 process in the field.

12 Q. Has the company ever been involved in a
13 situation where a dispute with a property owner
14 resulted in someone filing a lawsuit and asking the
15 court to decide whether the company has the right
16 to do trimming?

17 A. Well, I'm sure it has, without a doubt.
18 Yes, you hear of those from time to time.

19 Q. Well, what I'm trying to figure out is
20 if there's any policy of -- what I would call sort
21 of self help where, as you described the process,
22 first you ask for permission, and if that's denied,
23 then you get right-of-way, claims and the legal
24 department involved. But if the company knows that
25 there is an existing dispute, they don't just go

1 out and start trimming anyway, do they?

2 A. Sometimes. And I would back up and say
3 we -- again, there's a clear distinction between
4 the word permission with cutting versus with
5 trimming. We are not seeking any permission with
6 trimming. It's more of a notification.

7 Q. Okay.

8 A. But to answer your last question, we --
9 there have been times we've had to trim trees that
10 a customer didn't want trimmed.

11 Q. Have there ever been times when the
12 authorities have been called? And when I say
13 authorities, meaning the police, the Sheriff, the
14 highway patrol?

15 A. Yes. I thought that's what you meant.
16 Yes, there have.

17 Q. How do those sorts of situations get
18 resolved?

19 A. Well, you follow the same process. At
20 some point in that process, though, the decision is
21 made that if we return to that property, we may
22 need the help of a security group for reasons that
23 we all can probably guess. The customer is going
24 to become upset or angry to the point where the
25 work force could be threatened or the work may have

1 to stop, because the customer being in a position
2 where it wouldn't be safe to perform the work.

3 Q. Okay. Have we fully covered item
4 number one, as far as you can say?

5 A. I think so.

6 Q. What about item number two?

7 A. The same.

8 Q. Let's move to item number three, then,
9 and that's all policies and procedures to insure
10 authorization or right exists to enter land and cut
11 trees or trim before the trees are actually cut or
12 trimmed. Have we covered that?

13 A. I really think we have.

14 Q. Okay. Item number four is all actions
15 taken to insure that the policies and procedures
16 identified in items one, two and three above are
17 fully and completely complied with before the trees
18 at issue in this case were actually cut. Tell me
19 about that.

20 A. Well, I think that the situation with
21 the Legrande case is a perfect example of what we
22 do. We looked at these trees as the kinds of trees
23 that, if we were going to cut down, we would
24 contact the customer.

25 A perfect example of the kind of trees

1 we contact the customer on before we cut them down.
2 And we follow the procedure that says contact the
3 customer and see what they think. And if they
4 think no, then we won't cut them down.

5 Q. Is there any requirement that
6 permission be obtained in any particular form?

7 A. We don't require a written statement or
8 form from the customer saying no, I don't want the
9 trees cut or yes, I want the trees cut or yes, it's
10 okay. We don't require that.

11 Q. Why not?

12 A. I suppose we've gotten along without
13 it, and it -- at some point, it might be an awkward
14 situation for a customer, maybe even for us, maybe
15 if the situation becomes somewhat heated, it would
16 be difficult to take out a form letter and say,
17 would you mind signing this? It may appear awkward
18 and difficult to do, from the customer's standpoint
19 and from our standpoint.

20 Q. Well, now, you are aware that in this
21 case, the Legrandes dispute the contention that
22 they actually gave permission, correct?

23 A. I am aware of that?

24 MR. PUGH: Object to the form.

25 BY MR. RANSOM:

1 Q. So in that circumstance, I mean,
2 wouldn't it make sense for the power company that
3 the best way to show that permission has actually
4 been given would be to memorialize the giving of
5 the permission, correct?

6 A. I think in this case, it would have
7 been good to have had.

8 Q. But the company has never developed any
9 policy or procedure to make sure that permission is
10 actually memorialized?

11 A. For situations like this, no, we have
12 not.

13 Q. Well, are there any other situations
14 where written permission is obtained?

15 A. No, there aren't, but I can think of
16 right-of-way, procurement and right-of-way,
17 obviously, you get that document, but no, no, there
18 aren't any situations.

19 Q. Now, is this something, Mr. McWhirter,
20 where the company, at one point in time, considered
21 creating a policy or procedure that would require
22 the obtaining of written permission and decided not
23 to go that way?

24 A. Yes, there is a form that's called a
25 refusal form. It's meant more for tree trimming,

1 but it does include cutting down brush, doing
2 herbicide work, trying to think of some of the
3 other aspects of right-of-way work. Herbicide
4 work, cutting trees down, trimming trees.

5 There is a form, it's called a refusal
6 form. But we found that form difficult and awkward
7 to use for the reasons I explained awhile ago.
8 Sometimes it's almost an insult to the customer,
9 saying, okay, you've told us not to do this. And
10 this, again, is primarily toward trimming.

11 We just had a heated discussion with a
12 customer about not being able to trim the trees,
13 and then we are going to take out a form and ask
14 them to sign it.

15 Q. Right.

16 A. It became very awkward to do.

17 Q. And I understand what you are telling
18 me, but what I'm trying to figure out is, was there
19 ever a time when the company sat down and gathered
20 a group of people together and said, okay, we need
21 to figure out how we are going to go about
22 obtaining permission to cut trees. How do we want
23 to do that? Did that kind of meeting or discussion
24 ever take place, to your knowledge?

25 A. No, we never had that kind of meeting

1 to discuss cutting down these yard trees and
2 amenity trees, trees that are non-urban trees,
3 commercial type setting. No, we haven't had that
4 meeting.

5 Q. You've talked about the refusal form?

6 A. Yes.

7 Q. How did it come about that a refusal
8 form was developed?

9 A. That's a good question. It primarily
10 came about for the trimming of trees. Again, the
11 example I described earlier, where the contractor
12 is told to go start the job to trim trees and they
13 run into a customer that says, I don't want my
14 trees trimmed. At that point, the refusal form was
15 to be filled out by the contractor, and primarily
16 given to us, so we would have an address and a
17 phone number, so we could go back and contact that
18 customer.

19 On that same refusal form, there was a
20 place, and there is a place, for the customer to
21 sign it. Again, that part of that form became
22 difficult to do.

23 Q. All right.

24 A. You take an upset customer, you've
25 already taken a lot of their time and maybe have

1 inconvenienced them, because they want to get to
2 work, or they want to attend to other matters, and
3 say, can you sign this saying you don't want us to
4 cut the trees? That was awkward. Or actually, to
5 trim the trees. That was awkward.

6 And that was developed, primarily,
7 again, so we, SCE&G, would have a phone number and
8 an address to contact the customer.

9 Q. Well, now, you've said that the company
10 policy is to obtain permission before doing the
11 cutting. At what point in time was that policy
12 developed?

13 A. I don't know if there's a date.

14 Q. I mean, has it been a year ago, 20
15 years ago, 50 years ago?

16 A. I'd say it's been -- it's been about as
17 long as I've been here, which is about 20 years,
18 and maybe longer.

19 Q. I mean, did you ever participate in any
20 -- I keep calling it meeting or discussion, because
21 I don't know what form these types of decisions are
22 made by the company, but were you ever involved in
23 any company process to decide whether it was going
24 to be a refusal form or consent form or exactly how
25 this permission business was to be handled?

1 A. No. Again, I have not been involved in
2 those kinds of meetings to talk about the removal
3 of amenity, yard, commercial setting type trees. I
4 have not.

5 Q. Now, what you have said is that the
6 refusal form can be awkward, because if a dispute
7 has arisen, and people's emotions have gotten into
8 play, it's the company's perception that it can be
9 non-constructive, if you will, to then put a form
10 for someone to sign saying they won't give
11 permission --

12 A. Primarily for trimming.

13 Q. Right.

14 A. I didn't mean to interrupt you, but
15 primarily for trimming.

16 Q. Why is this primarily for trimming?
17 Why not cutting as well?

18 A. We look at trimming as minimal. It's
19 got to be done. Has to be done. You can't have
20 the limbs growing into the lines. So if we trim
21 the limbs, we've at least obtained some clearance.

22 It's short-term, and it provides very
23 little reliability in the long run. In many, many
24 cases, wind, ice, snow, rain, increased development
25 on that line, new subdivisions, new neighborhoods,

1 trimming is short-term.

2 Q. Okay.

3 A. It's minimal.

4 Q. Well, let's come about it this way. I
5 mean, we can agree that there is a policy of no
6 cutting without permission, correct?

7 A. That's correct.

8 Q. Okay. And just speaking logically, at
9 some point in time, someone would have had to have
10 actually developed that policy, correct?

11 A. Correct.

12 Q. And in the context of the development
13 of that policy, was there any consideration of
14 using some written form?

15 A. Well, again, we haven't had that
16 conversation or those meetings, so it never came
17 up.

18 Q. Well, the decision was made that
19 permission had to be obtained, correct?

20 A. Correct.

21 Q. And the decision was made that the way
22 to go about getting the permission was by sending
23 an SCE&G representative to the door, correct?

24 A. It could be SCE&G, and it could be a
25 contractor. If the contractor goes, and the

1 customer says, I like all that cut down, which they
2 do every routinely, we keep a crew busy cutting
3 down that kind of vegetation. It could be the
4 vendor as well.

5 Q. How is it differentiated as between
6 vendor or SCE&G employees, as to who is going to go
7 obtain permission?

8 A. That's a good question. The vendor is
9 out on the site every day, and sometimes the vendor
10 is the first contact in the field, and oftentimes
11 the customer says, you know what, if you are going
12 to trim them, just go ahead and cut them down.
13 Because you'll have to come back and trim them
14 again.

15 Q. Well, you are misunderstanding my
16 question, I think. Because my understanding is,
17 from Mr. Boggs' testimony, that before Asplundh was
18 given the notice to proceed on the work that
19 resulted in these trees being cut, he went out to
20 obtain permission. Now, is that the company's
21 policy?

22 A. That's absolutely correct in that
23 situation. This circuit had already been trimmed.
24 The trim work had been completed on it. And the
25 next phase of work was to go in and cut down things

1 like dead trees or trees like on Legrande -- the
2 Legrande property, if the customer was willing to
3 have that done.

4 So there were two phases of work there.
5 The first phase, the one I described earlier. The
6 second phase, the one that Don was involved in.

7 Q. So the company policy was that before
8 the cutting took place, an SCE&G employee would go
9 and get permission?

10 A. Exactly. Now, when those trees were
11 initially trimmed, if the customer would have
12 walked outside and said, you know what, I don't
13 like the way they're going to look, I don't like
14 the way they've looked in the past when you've
15 trimmed them, go ahead and cut them down, they are
16 talking to a vendor, and the vendor would call us
17 up and say, this customer wants these trees cut
18 down instead of trimmed, we'd say fine, go ahead
19 and cut them down.

20 Q. Do you know when it was that the
21 trimming had last been done before these trees were
22 cut down?

23 A. Approximately. I think it was done
24 that same year, '05. It could have finished up in
25 '04. I would have to go back and look at the

1 records, but generally, the kind of work that Don
2 was doing precedes or follows the initial trim
3 work, anywhere from thirty days to six months,
4 roughly.

5 Q. Okay.

6 A. Pretty certain that job was worked in
7 '05, the trim work.

8 Q. Let's get back to this area that I'm
9 not sure I still yet understand. The trimming --
10 let's just assume that the trimming had been done,
11 and now the time has come for the trees to be cut,
12 to the extent that the company determines that's
13 what needs to be done. How is it decided whether
14 it's going to be an SCE&G employee as opposed to an
15 Asplundh employee that goes to obtain the
16 permission from the Legrandes?

17 A. Well, on the second phase of work, it's
18 always going to be the SCE&G employee.

19 Q. All right. All right. So we are
20 coming at this in a somewhat disperse fashion, but
21 we have established, then, that the policy is
22 always to obtain permission before trees like this
23 are cut, correct?

24 A. Correct.

25 Q. And that the permission is to always be

1 obtained by an SCE&G employee, correct?

2 A. Generally. Generally.

3 Q. Well, it sounds like we are hedging our
4 bets then. Tell me --

5 A. If Don's on vacation, and I can utilize
6 a vendor to do some of Don's work while he's on
7 vacation, and the workload's high, I may get a
8 vendor to go knock on doors, but he's doing the
9 same thing Don would do.

10 Q. Okay.

11 A. But generally speaking, it's always a
12 company person.

13 Q. We can agree that there may be
14 exceptions to any policy?

15 A. Exactly.

16 Q. But the policy is for it to be an SCE&G
17 employee?

18 A. Yes, I can agree on that.

19 Q. Tell me about this refusal form and how
20 that integrates into this policy we're talking
21 about.

22 A. Okay, well, the refusal form has been
23 in existence for a number of years. I think that's
24 actually the title of it. SCE&G Refusal Form.
25 Part of the form is devoted to the address of the

1 customer that has, quote, refused to allow the
2 work, and there's a part of the form that you can
3 check off to describe what kind of work has been
4 refused, whether it's tree trimming, use of
5 herbicides, cutting trees down, access to the
6 property. Couple of different ways you can be
7 refused to do work.

8 And again, the contractor is generally
9 the first one that would use that form, if it was
10 in use routinely. And the original purpose of that
11 form was not so much to get the customer to sign
12 off on it, but to give SCE&G an address and phone
13 number and a name.

14 So the contractor would -- would be on
15 the customer's property, the customer would say no,
16 don't do this work, the contractor would take that
17 form out and fill it out and then turn that form
18 into SCE&G. SCE&G would then have that form to
19 call or to visit the customer and say, you know --
20 discuss the work that they are refusing to allow us
21 to do.

22 Q. And I think I understand this. So the
23 company would know those customers as to whom some
24 further effort was required?

25 A. That's the purpose of the form.

1 Q. Okay.

2 A. Really, to give us the information that
3 we need to go find that customer.

4 Q. Okay. If what the employee took when
5 he went to seek permission was a consent form, this
6 would be a way to avoid the emotional issue that
7 you've discussed, about the refusal and the
8 dispute, right?

9 A. I agree with you.

10 Q. Okay. So just thinking about it
11 objectively, taking a consent form wouldn't be a
12 bad idea, would it?

13 A. No.

14 Q. It wouldn't be unreasonable, would it?

15 A. It would be a bad idea. Unreasonable,
16 I'll tell you, again, in the heat of the moment,
17 the customer's upset, the last thing you want to do
18 is make them more upset. On the trimming work.

19 Q. Well, let's talk about the cutting
20 work. If they are giving permission, they are not
21 upset, are they?

22 A. Exactly.

23 Q. I mean, if what they did was, when they
24 wanted permission to cut trees, they carried a
25 consent form, none of these problems that you are

1 describing on the refusal form for trimming would
2 come into play, would they?

3 A. They should not come into play at all.

4 Q. So carrying a consent form wouldn't be
5 unreasonable?

6 A. No.

7 Q. Wouldn't be a bad idea?

8 A. No.

9 Q. Would be a good idea?

10 A. I think it has a lot of merit in some
11 situations. Obviously, though, if you have a
12 customer who has wholeheartedly agreed to it, you
13 feel like you've got a go. I would have to say
14 that -- gosh, practically all the time, we have a
15 good, solid go.

16 Q. Well, they make you sign a consent form
17 before you go into surgery, right?

18 A. I don't know about that.

19 Q. Okay. And they don't take you into
20 surgery against your will?

21 A. I haven't had the luxury of a surgery
22 lately. Hopefully I won't have to know about that.

23 Q. But the idea of obtaining consent,
24 that's not an unreasonable idea, though?

25 A. It's not unreasonable. It's obviously

1 not very necessary, because we very rarely run into
2 an issue with this kind of work.

3 Q. Would it be fair to say that the
4 company has considered the option of using a
5 written consent form for obtaining permission to
6 cut trees and exercising its best judgment, decided
7 no, we are not going to do that?

8 A. Well, again, I've not been involved in
9 any meetings like that, and I don't know of any
10 meetings that have taken place with this subject of
11 cutting down trees in yards or commercial areas
12 that are amenity type trees.

13 Q. That's all I'm trying to find out right
14 now, Mr. McWhirter, was were there options placed
15 on the table and an affirmative decision through
16 the exercise of discretion was made that no, we are
17 not going to do this?

18 A. It wasn't made one way or the other,
19 no, we are not going to do it, or yes, we are going
20 to do it. We never dealt with that.

21 Q. So the situation, as its exists today,
22 is one that came about, more or less, just by
23 default?

24 MR. PUGH: Object to the form.

25 THE WITNESS: I don't know if default's

1 the right word. It may be the right word, but it
2 came about because we didn't see it necessary.
3 Again, nine out of ten, if not more, customers we
4 contact about cutting trees down, we have no issues
5 with them.

6 BY MR. RANSOM:

7 Q. And we may be talking past one another.
8 Because when you say, we didn't see it as
9 necessary, that suggests to me that it was
10 considered and rejected. That's what I'm trying to
11 find out from you. Can you testify today, in your
12 role as designee for the company, that the option
13 of obtaining written consent before any trees were
14 cut was actually considered and rejected?

15 A. I don't think it was. I don't think it
16 was.

17 Q. Okay. Item five in the notice, which
18 is exhibit 1, talks about all complaints of tree
19 cutting or tree trimming. Let's start on that
20 issue by having me ask you, does the company have
21 any department or office that it asks the consumer
22 or the public to direct any complaints about
23 trimming or cutting to?

24 A. That would be the operations group,
25 which I'm a part of here in Columbia.

1 Q. Okay.

2 A. It's the operations group across the
3 company that would first take the calls. I should
4 back up. Of course, we have a call center. The
5 call center would first take any calls, unless the
6 customer knows the operations personnel's phone
7 number correctly.

8 Q. Okay. The call center is the first
9 line?

10 A. It would be the first line, again,
11 unless the customer knows, in this case, me or my
12 phone number directly. They would call it. It's
13 not uncommon for me to get phone calls.

14 Q. We know, for example, that on occasion,
15 the company will put these door hangers, advising
16 folks that certain work is about to be performed,
17 correct?

18 A. That's correct.

19 Q. Is there a phone number for the call
20 center?

21 A. Well, not for the call center. For
22 door hanger placements, it would be the person
23 hanging the door hanger, me in Columbia, me, Don
24 Boggs, that's the number we would put on that door
25 hanger.

1 Q. Well, you mean if Mr. Boggs is going to
2 be the one hanging the hangers, then he would write
3 his name and number in there?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. That's a yes.

7 Q. All right. What about if somebody
8 hasn't gotten a door hanger, and they have a
9 complaint? How would they know who to call?

10 A. Well, I think most of the time,
11 customers are going to call our call center by
12 going to the phone book and starting with that
13 number.

14 Q. I mean, is it listed, like complaints
15 under SCE&G?

16 A. I haven't looked at it. It may very
17 well be. But there's a general number in the phone
18 book for general information.

19 Q. All right, so if someone's disgruntled,
20 they can go to the phone book, call SCE&G
21 information, and be directed to the appropriate
22 department, correct?

23 A. That's correct.

24 Q. Okay. Is there a sufficient number of
25 complaints about cutting and trimming that a call

1 center is necessary?

2 A. Yes, I think so.

3 Q. Okay. Other than the call center, you
4 also mentioned the operations group?

5 A. Uh-huh.

6 Q. Once the complaints come in to the call
7 center, how are they handled by the company?

8 A. Well, the call center knows how to
9 route them to the appropriate operations area
10 throughout the company.

11 Q. Now, at the point that a complaint is
12 made through the call center, is any record made of
13 that?

14 A. Yes.

15 Q. What kind of --

16 A. We call that an order, service order.
17 I think abbreviated, it's SO.

18 Q. Is this a written record? When I say
19 written, I mean like somebody's on the phone with
20 one hand and a pen in the other hand?

21 A. Well, yeah, on the phone with one hand
22 and maybe typing with the other.

23 Q. So it would be an electronic record,
24 correct?

25 A. Correct.

1 Q. Information is entered into a computer?

2 A. Uh-huh, correct.

3 Q. Do we know what information this would
4 include?

5 A. Well, if the call center is the one
6 that enters it, it's going to be obvious things
7 like name, phone number, address, and then the
8 nature of the complaint.

9 Q. Okay. And then if I'm -- I'm kind of
10 moving ahead of you, but it strikes me at some
11 point in time, there's someone in the operations
12 group who would have access to that data, and they
13 would follow up on the complaints?

14 A. They would, that's right. That's
15 right.

16 Q. Now, does it ever happen that
17 disgruntled consumers or members of the public
18 contact the Public Service Commission or the --
19 what do they call it, Office of Regulatory Staff?

20 A. Yes.

21 Q. And how are those types of complaints
22 routed to the company, if at all?

23 A. Yeah, well, sure, they are routed,
24 again, to the operations group. And once they are
25 routed to us, then we deal with them.

1 Q. Okay. So if I want to know how many
2 complaints there had been in a particular time
3 period about tree cutting or trimming, I would need
4 to speak with someone in the operations group?

5 A. Yes, or someone in a position, a
6 managerial position, in the call center.

7 Q. Okay.

8 A. There may be some way to pull that up
9 electronically by some code.

10 Q. Do you know how many such complaints
11 were received in the year preceding the cutting of
12 my client's trees?

13 A. No. I do not.

14 Q. If we wanted to know the answer to
15 that, what would we need to do?

16 A. Give me that question again. Let me
17 see if I can give you the answer. If you wanted to
18 know the number of complaints from the Legrande --

19 Q. No, if we wanted to know the number of
20 complaints that the company had received from any
21 source, related to cutting or trimming of trees, in
22 the year before my client's trees were actually
23 cut?

24 A. 2004?

25 Q. 2004, 2005.

1 A. The year before?

2 Q. Since -- yes.

3 A. I think you could probably get that
4 number.

5 Q. There would be someone in the
6 operations group or the manager of the call center?

7 A. I think it would be more of a call
8 center task to pull that up.

9 Q. Okay. Let's turn, then, to item number
10 six in this notice, which is exhibit 1, and it's
11 all authorization, instructions, directives and
12 requests issued for the trees at issue in this case
13 to be cut down.

14 I think we have covered, at your
15 individual deposition, that ultimately, you would
16 have been the one that would have issued the
17 authorization for these trees to be cut?

18 A. That's right.

19 Q. At the point in time where you did
20 that, Mr. McWhirter, had you already been informed
21 by Mr. Boggs that he had been out to the Legrande
22 property and spoken with someone to get permission?

23 A. No, I had not. Procedure didn't work
24 quite that way.

25 Q. And I also wanted to ask you, do you

1 know whether any equipment or materials were placed
2 anywhere on my client's property during the process
3 of this cutting?

4 A. Well, I don't know precisely whether
5 any equipment was placed, but there should have
6 been a truck and a chipper, at least, along the
7 edge of the road.

8 Q. Okay. And when Mr. Boggs asked my
9 clients if it was all right to cut the trees down,
10 do you know whether he also asked if it was all
11 right for equipment and materials to be placed on
12 their property?

13 MR. PUGH: Object to the form.

14 THE WITNESS: I don't know the answer
15 to that.

16 BY MR. RANSOM:

17 Q. How is that -- what's the company
18 policy about that?

19 A. Well, we would routinely ask if it's
20 okay to bring equipment on the property if it's in
21 a yard, if it's next to a pool, if it's next to a
22 flower garden. And we look at access as part of
23 the discussion, if we think it's pertinent, to put
24 that along the edge of a DOT highway right-of-way,
25 but it's probably not going to come up.

1 Q. I used to do a good bit of construction
2 work in another life, and they had what was called
3 the laydown area. This would be the place where
4 the contractor that was performing the work would
5 -- for example, if they were building a house, they
6 would need somewhere to lay their lumber. If they
7 were building a parking garage, they would need
8 somewhere to put their machinery?

9 A. Yes.

10 Q. You are familiar with this concept?

11 A. Yes.

12 Q. Okay. What is the company policy about
13 obtaining permission from the property owner to use
14 part of their premises -- to use part of their
15 property for the laydown area or staging of the
16 work?

17 A. Well, certainly, we need a spot to do
18 our work, but the analogy doesn't fit perfectly
19 with tree trimming, if you are along a roadside,
20 because you are simply going to set up on the DOT
21 right-of-way, or you couldn't possibly be on the
22 edge of the customer's property.

23 But that's opposed to being set up in
24 the middle of the yard, next to the porch, or next
25 to the garage, or having to take the truck from the

1 front of the yard to the rear of the property,
2 which wasn't necessary in this case to do.

3 Q. Okay.

4 A. But again, if we see an awkward access
5 issue, and we need that layout yard area to set
6 that truck up or to chip the brush, we are going to
7 discuss that with the customer.

8 Generally, roadside work doesn't
9 require a really bonafide, set layout area to work
10 on the property itself, because you are along the
11 edge of the roadway.

12 Q. Okay. Well, can we agree in general,
13 though, if a private property owner's property was
14 to be used as the laydown or staging area, that the
15 company would need to obtain permission to do that?

16 A. Quite frankly, I don't know if we would
17 need to obtain permission, but we would certainly
18 discuss it. And generally, it's not been an issue.
19 But I don't know the answer to your question. I'm
20 not sure if we would need to obtain permission.
21 But I do know we would need to discuss it.

22 Q. Can you, as a representative of the
23 company here today, affirmatively tell me that one
24 of the Legrandes, in fact, gave Mr. Boggs
25 permission to use part of their farm as the laydown

1 or the staging area for this cutting operation?

2 A. Yes, I don't know what the details were
3 behind where we could put our equipment in this
4 situation.

5 Q. Now, do you know, Mr. McWhirter -- can
6 you tell me specifically the dates on which this
7 tree-cutting work was performed?

8 A. No, I don't know the specific dates.

9 Q. When I ask you that question, I mean,
10 I'm not just asking Eddie McWhirter; I'm asking
11 SCE&G. Is it your testimony that SCE&G doesn't
12 know when this work was done?

13 A. Oh, SCE&G doesn't know when this work
14 was done -- I think SCE&G knows when this work was
15 done, generally, but I'm not sure SCE&G knows the
16 exact dates.

17 Q. Okay, was it all --

18 A. SCE&G may know the exact dates, but I
19 cannot say that we know the exact dates for
20 certain.

21 Q. Okay. Do we know whether or not all of
22 the trees on Turkey Farm Road were cut on the same
23 day?

24 A. Well --

25 MR. PUGH: Object to the form.

1 THE WITNESS: Well, I think SCE&G knows
2 that all the work was not performed on one day.

3 BY MR. RANSOM:

4 Q. Okay. Do we know whether or not -- and
5 I'm not trying to be tricky with you here, I mean,
6 Turkey Farm Road encompasses a number of property
7 owners, correct?

8 A. I'm with you.

9 Q. And so all of the trees that were cut
10 on Turkey Farm Road, they would not necessarily
11 have been all located on the Legrandes' property;
12 do you follow me?

13 A. Uh-huh, yes, I do.

14 Q. Do we know whether or not all of the
15 trees that were cut on Turkey Farm Road were all
16 cut on the same day?

17 A. They were not all cut on the same day.

18 Q. Okay. Mr. McWhirter, directing your
19 attention to item ten in this note, which says the
20 reason why the trees at issue in this case were cut
21 down and the dates upon which this work was
22 performed. Am I reading that correctly?

23 A. That's correct.

24 Q. Can you provide me here today any
25 specific dates upon which any of my client's trees

1 were cut down?

2 A. I cannot provide you specific dates.

3 Q. Okay. The first sentence there in item
4 ten, the reason why the trees at issue in this case
5 were cut down, I realize, sitting here this
6 morning, that's perhaps an imprecise question, and
7 I'm interested -- it sort of segues into item 11,
8 which is the reason why new, larger power poles
9 were erected and so forth.

10 I can't remember if you and I discussed
11 this at your earlier deposition, but let me just
12 represent to you my understanding of how this
13 process took place, was that first somebody came
14 out and placed -- well, removed existing poles and
15 placed new poles.

16 And then it was after that was done
17 that the trees were cut down. All right? Do you
18 have any information that would suggest that that
19 isn't the way this particular work was sequenced?

20 A. Well, I'm not up to snuff on the line
21 construction or the pole maintenance or pole
22 replacement.

23 Q. Okay.

24 A. I don't know the sequence. I don't
25 know if there was some of that work that took place

1 before or after the tree trim.

2 Q. All right. You know, there's a couple
3 of unanswered questions that I've been trying to
4 get figured out in this case, and one of them is
5 why new, larger poles with a three-phase line were
6 being erected along Turkey Farm Road, and what was
7 driving that project, if you will. Do you know the
8 answer to that?

9 A. No, I'm afraid I don't, simply because
10 that's outside my area of expertise.

11 Q. And the second part of what I'm trying
12 to figure out is, understanding that there was some
13 project to upgrade the electrical service on those
14 lines, if that's a fair characterization. Or why
15 that work would have been done before the trees
16 were cut. Do you know the answer to that?

17 A. Again, I really don't. I don't know
18 the sequence that took place.

19 Q. Who would we need to speak with at the
20 company in order to answer a question like that,
21 about why the sequencing was the way that it was?

22 A. Well, my first response would be the
23 engineers or technicians or managers that were in
24 that area, that crew quarter area, which at one
25 time was called Raider. Now it's called

1 Blythewood. The folks who would plan and schedule
2 the addition of wire, the removal of poles, that
3 would be my response to you.

4 Q. Who are those people? I'm sorry?

5 A. Again, it was called the Raider crew
6 quarter area. But we since relocated our office.
7 It's the same group of personnel, out of the
8 Blythewood crew quarter office.

9 Q. What does Raider stand for?

10 A. Just the name of a past employee, I
11 believe, and we named a crew quarter after that
12 past employee.

13 Q. Is that an honor, to have a circuit
14 named after you?

15 A. Yes.

16 Q. Not a dishonor, is it?

17 A. Not at all. It's actually the name of
18 an operations office.

19 Q. All right. But I'm still not sure I'm
20 understanding who I would want to ask at the
21 company, you know, either a particular department
22 or the name of a particular person who could answer
23 the question as to why the work was sequenced the
24 way it was.

25 A. Well, you spoke with Jeff, and Jeff was

1 hands on with that job, from my understanding.
2 Again, I was in a meeting with him a couple weeks
3 ago. I sat in on part of the meeting. I got there
4 early. Jeff may be the right person to go to. If
5 Jeff can't answer the question, he has a manager
6 out of Blythewood crew quarter, and he may have
7 some more insight into that.

8 Q. Okay. Let's turn our attention to item
9 nine on exhibit 1, Mr. McWhirter. I'm not going to
10 read that out loud, but take a moment and look at
11 that.

12 A. (Witness reading.) Okay.

13 Q. And we've obviously had some
14 discussions here this morning about the process by
15 which the various policies and procedures about
16 cutting and trimming and permission and refusal
17 forms and so forth came about. And I think, for
18 example, you had testified earlier this morning
19 that the refusal form was already in existence when
20 you first started with the company about 20 years
21 ago?

22 A. Well, the refusal form itself, I'm not
23 sure how long that form has been around.

24 Q. Okay.

25 A. But a long time.

1 Q. Okay.

2 A. A long time.

3 Q. Okay. And I'm sorry if I'm reploting
4 ground that we've already covered.

5 A. Quite all right.

6 Q. I'm still trying to come to an
7 understanding of how this refusal form was
8 developed and in response to what.

9 A. I think it was in response, again, to
10 the trimming, because even though we have a small,
11 small percentage of our customers who refuse to
12 allow trimming to take place, still, the number is
13 large enough to require us to know, so that we
14 could go deal with the customer.

15 Q. Okay.

16 A. And talk to the customer. It was put
17 together primarily because of trimming. Trimming's
18 most of what we do, in terms of maintaining
19 vegetation. That accounts for most of what we do,
20 so it's very easy -- well, it's not easy, but it's
21 logical to assume that the most -- the function
22 that would take up the most of our time would be
23 the reason for producing that piece of paper.

24 Q. Well, it's also logical to assume that
25 this refusal form would have developed as a result

1 of some sort of thought process involving the
2 company, right?

3 A. Yes, it would.

4 MR. PUGH: Object to the form.

5 BY MR. RANSOM:

6 Q. I supposed I better ask you directly as
7 to item ten, Mr. McWhirter, the reason why the
8 trees at issue in this case were cut down. What's
9 the answer to that?

10 A. Well, we touched on that a little bit
11 in the last deposition. We talked about resources
12 being available. We all have budgets, but the
13 reason why you primarily cut trees down is because
14 you know it's going to provide some long-term
15 reliability. Continued trimming eventually results
16 in rotting of a tree, and the tree eventually shows
17 rot. I've got some very nice specimens in my truck
18 from the job we're doing today.

19 If you continue to trim, you are going
20 to continue to introduce rot. The trees are going
21 to continue to die back. The limbs will continue
22 to grow into the lines. So removing a tree
23 provides more long-term reliability.

24 Q. Okay. And to ask -- to ask directly,
25 did the cutting of my client's trees have anything

1 to do with the development that's going on out
2 there in the Blythewood area? And when I say
3 development, let me give you some examples. The
4 school being built across the street, the various
5 Mungo residential developments that are down the
6 road.

7 A. Well, not directly. I didn't know a
8 school was going to go in there. I didn't know the
9 subdivisions were going to go in there. But I can
10 certainly tell you that whenever we see a single
11 phase line next to -- close to an interstate
12 exchange, we are always thinking future growth.

13 We are always thinking, if we don't get
14 these trees down now, we are going to have outages,
15 and we're going to have issues with our customers.
16 And that is one of the things we think about every
17 day, when we do decide to knock on a customer's
18 door.

19 Q. Let's explore that a little bit,
20 because again, we've agreed that you were the one
21 who ultimately made the decision that these trees
22 on Turkey Farm Road were going to be cut, correct?

23 A. Well, I know what you're getting at.
24 Yes, I was the one who told Don to go talk to the
25 customer and see if we could get it cut back,

1 right, correct.

2 Q. And you were the one who issued the
3 notice to proceed to the Asplundh folks?

4 A. That's correct.

5 Q. Okay. And you were also involved in
6 the development of the -- oh, gosh, what do we call
7 it? The listing of circuits that were to be
8 trimmed and cut, right?

9 A. Trimmed and cut, yes.

10 Q. So you were the -- the buck stops at
11 your desk, in terms of the one who made the
12 decision?

13 A. That's correct.

14 Q. So was the -- and you've just said that
15 one of the things that entered into the equation
16 was the interstate highway is not far from -- maybe
17 a kilometer from where my client's farm is?

18 A. Long-term development is going to take
19 place, and even short-term, what can we continue to
20 guarantee by continuing to trim trees that we know
21 are just going to keep growing into the line.

22 Q. So while you may not have known about
23 specific projects with the school district or the
24 Mungo folks, future development on that road was
25 certainly part of your thought process?

1 A. It's inherent in every operations
2 employee's thought process, that -- what's going to
3 happen down the road? That's what we think.

4 Q. And you may not be the right person to
5 ask this question, and in fairness, it's not really
6 identified specifically in this notice, other than
7 the general rubric of why the trees were cut down,
8 but had there been a problem with outages on this
9 single phase line on Turkey Farm Road?

10 A. Yes, and really, I'm not the person to
11 ask. But --

12 Q. Well, let me stop you, then, and just
13 ask this question. Were recurrent power outages on
14 this particular line something that entered into
15 your thought process as you were making the
16 decision to do the cutting?

17 A. Well, it was certainly in my thought
18 process that these were the kinds of trees that
19 would produce outages.

20 Q. Right. So you were looking to prevent
21 future outages, but you weren't necessarily
22 responding to past outages?

23 A. No, I was not responding to past
24 outages, although I knew that these were the kinds
25 of trees on that road that could have easily caused

1 outages in the past, but I do not know of outages
2 that took place in the past.

3 Q. And again, I think we touched upon this
4 next question during your earlier testimony. I
5 want to -- I'm still searching for understanding.
6 And I'll ask you to assume that these lines and
7 these trees had peacefully co-existed together out
8 there for many, many years without the trees
9 actually being cut.

10 What was it that -- what circumstance
11 was it that existed in late 2005 that led to the
12 trees being cut down to the ground, whereas that
13 had never been necessary before?

14 A. All right, well, it's a great question.
15 It's one we get asked a lot by customers, why you
16 want to trim these trees, and why you never trimmed
17 them this way in the past.

18 But again, I would refer back to my
19 last deposition; I clearly said that resources and
20 budgets are important, and at this stage, in 2005,
21 I made the decision that I had the resources and
22 the budget to do something that would improve the
23 long-term liability of this line, if indeed the
24 customer was acceptable with it. And I look at
25 both of those hand in hand, when it comes to

1 removing trees.

2 Q. So it was more of a -- a financial
3 consideration, as opposed to an environmental
4 consideration?

5 MR. PUGH: Object to the form.

6 THE WITNESS: Environmental in what
7 way?

8 BY MR. RANSOM:

9 Q. Well, meaning something that had to do
10 with the trees themselves. I mean, I think I
11 understand what you're saying, if we don't cut
12 them, we have to come back and trim them all the
13 time. Right? But it wasn't, uh-oh, I see the tree
14 is now 27 feet, as opposed to 26 feet, we have to
15 cut it down now?

16 A. Well, it was a combination of resources
17 and future outages, and what we're going to
18 continue to do to that tree. Continuing to trim
19 the cedar trees is just going to continue to hurt
20 the health of the tree.

21 We haven't talked too much about
22 trimming technique. We can get into it, if you
23 want to. But if you continue to trim the same tree
24 over and over again, you introduce rot to it. It
25 dies back in places. It rots. Those are important

1 issues too. We run into that every day.

2 Q. And that's what I'm talking about. I
3 mean, you haven't, for example, been provided any
4 specific information about the health of these
5 particular trees?

6 A. No, but I did know they had been
7 routinely trimmed.

8 Q. Okay. Now, I understand that items
9 seven, eight, eleven and twelve, these are items
10 that you are not prepared to speak on, on behalf of
11 the company here this morning?

12 A. Let me take a quick look at them.

13 Q. Okay.

14 A. I didn't do anything with seven or
15 eight. That was the next one, any and all
16 investigation conducted at cutting down trees at
17 issue in this case. No, I didn't perform any
18 investigation afterwards. What was the other one,
19 please?

20 Q. Seven, eight, eleven and twelve.

21 A. The reason why -- we talked about that
22 one, I don't have any information on eleven. And
23 then twelve, the Mungo Homes subdivision and school
24 and the DOT work, I'm not really able to address
25 those issues with you.

1 Q. Okay.

2 MR. RANSOM: All right. Thank you,
3 Mr. McWhirter. That's all the questions I have.

4 MR. PUGH: Hold on one minute.

5 (A recess transpired.)

6 MR. PUGH: We'll reserve. We're done.

7 (The deposition was concluded at 11:20
8 a.m.)

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The State of South Carolina

COUNTY OF Richland
Road
ROUTE NO. S-1694

NOTICE OF CONDEMNATION

TO: Mrs. Hazel P. LeGrand
Route 1 Box 144B
Blythewood, South Carolina

Farmers Home Administration
U. S. Department of Agriculture
901 Sumter Street
Columbia, South Carolina

(Mortgagee)

PLEASE TAKE NOTICE,

That the South Carolina State Highway Department and
requires a right-of-way for a public highway through and across lands in which the above-named person, firm
or corporation claims title or some interest. Said lands being located in the County and State aforesaid as shown

by plans of the State Highway Department for the construction of a section of Road S-1694
between Road S-1352 and U. S. Route 21

known as ~~Docket~~ File No. 40.653 - Project S-1941(2)

All that parcel or strip of land within 33 feet of the centerline of the survey on the left
between approximate survey stations 47+85 and 74+45 and being bounded on the north by other
lands of Mrs. Hazel P. LeGrand, and on the east and west by lands of Lessie L. Smith Martin,
and on the south by Road S-1694.

Also condemned is all that parcel or strip of land within 33 feet of the centerline of
the survey on the right between approximate survey stations 52+50 and 85+69, being bounded
on the north by Road S-1694, on the east by lands of Ruth W. Morrfield, on the south by lands
of Mrs. Hazel P. LeGrand, on the west by lands of Mary W. Davis.

All right of way herein condemned is shown more particularly on sheets 11, 12 and 13
of plans for this project.

The above described property will be condemned and a right-of-way established by the State Highway
Department, and

YOU WILL TAKE FURTHER NOTICE, That a public hearing will be held at 11:30 (A.M.) (P.M.)
on the 22nd day of March, 1967, at Court Room, 2nd Floor, Richland
County Court House. in the Town of

Columbia, S.C. to ascertain the amount of damages in excess of benefits as a result of
using said lands for the proposed highway improvement.

Columbia, S. C.

Date 6th March, 1967

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT

By 
Right-of-Way Engineer

THE STATE OF SOUTH CAROLINA

COUNTY OF: RICHLAND

A. W. Church Jr being duly sworn deposes and says that he served the Notice of Condemnation on the obverse side of this paper on the Defendant (s) in the manner hereinafter stated and on the dates given after the name of the said Defendant (s) by delivering to and leaving with said Defendant (s) a copy of this Notice of Condemnation and, where service has been made by mail, by posting a copy of the Notice to the last known address.

Sworn to before me this

6th day of mar 19 67.

[Signature]

[Signature]
Notary Public for South Carolina

<u>Defendant (s) Served</u>	<u>Date</u>	<u>Method</u>	<u>Place</u>
<u>Hazel P Le Grande</u>	<u>6 March 67</u>	<u>Cert. Mail</u>	<u>Box 144B</u>
			<u>Bluffton SC</u>
<u>FHA</u>	<u>6 March 67</u>	<u>Cert Mail</u>	<u>Gar. Seintrest</u>
			<u>Cola SC.</u>

The State of South Carolina

COUNTY OF Richland
Road
~~ROUTE~~ NO. S-1694

RESOLUTION
OF
BOARD OF CONDEMNATION

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT

vs.

Mr. Hazel P. Legrand
Route 1 Box 144B
Blythewood, South Carolina

Farmers Home Administration
U. S. Department of Agriculture
901 Sumter Street
Columbia, South Carolina (Mortgagee)

After due notice served upon the above-named person, firm or corporation that a right-of-way would be condemned for the construction of ^{File}~~Docket~~ No. 40.653 - Project S-1941(2) between Survey Stations 47+85 and 74+45 left, *52+50 up 85+69 Right*

and compensation fixed and damages assessed therefor and after full hearing of all testimony and arguments and careful consideration of all questions involved.

Be it Resolved by this Board of Condemnation that, after taking into consideration the benefits accruing to the landowner by the construction or improvement of the highway, the value of the lands being taken together with any special damages occasioned by the construction or improvement of the highway and deducting the total value of the benefits from the total value of the damages in accordance with the statutes, the members

of this Board find that the benefit exceeds the damage and we therefore make an award of

No Cash Consideration.

Any appeal by the landowner from this Award shall be served by mail or otherwise upon the Department within twenty days after the receipt of this Resolution in accordance with the provisions of Section 33-139.

Signed by the Board of Condemnation at Richland County Court House, Columbia, S. C.,
this 22nd day of March, 19 67

R. C. Faulkner
Chairman
J. M. Kelley
Member
J. W. [illegible]
Member

THE STATE OF SOUTH CAROLINA

COUNTY OF: Richland

L. P. Daniels being duly sworn, deposes and says that he served the Resolution of Board of Condemnation on the obverse side of this paper on the Defendant (s) in the manner hereinafter stated and on the dates given after the name of the said Defendant (s) by delivering to and leaving with said Defendant (s) a copy of this Resolution of Board of Condemnation and, where service has been made by mail, by posting a copy of the Resolution to the last known address.

Sworn to before me this

22 day of March 19 67.

Le Charles E. Beard
Notary Public for South Carolina

<u>Defendant (s) Served</u>	<u>Date</u>	<u>Method</u>	<u>Place</u>
<u>Mr. Hazel P. LeGrand</u>	<u>3-22-67</u>	<u>Cert. Mail</u>	<u>Route 1, Box 144B</u>
<u>Farmers Home Administration</u>	<u>3-22-67</u>	<u>Cert. Mail</u>	<u>Blythewood, S. C.</u>
<u>Mortgagee</u>			<u>U. S. Department of Agricul</u>
			<u>901 Sumter St.</u>
			<u>Columbia, S. C.</u>

Form 801 (Rev. 3-21-56)

The State of South Carolina

COUNTY OF Richland
Road File
Box No. S-1694 Sheet No. 40.653
(1) 47+85 74+45 Lt.
Approx. survey station, from (2) 52+50 to 85+69 Rt.

Right of Way Easement

Mr. Hazel P. LeGrand
Route 1, Box 144-B
Blythewood, S. C.

KNOW ALL MEN BY THESE PRESENTS, That I (or we)

in consideration of the sum of One Dollar, to me (or us) in hand paid, and other valuable consideration at and before sealing and delivering thereof, by the South Carolina Highway Department, receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said South Carolina Highway Department, its successors and assigns, a right-of-way for the

construction of a section of the State Highway from U. S. Route 21
 to Road S-1352 on Road No. S-1694 State and
 Name of Place.

County aforesaid, as shown by plans prepared by the State Highway Department, on and over all lands which I (or we) may own in whole or in part, for the purpose of locating, constructing, improving, and maintaining the above described highway with the bridges and causeways thereon, and the right to construct and maintain controlled access facilities to said highway.

Bounded by lands of (1) Wm. H. Moorefield on the north & south and (2) Ruth W. Moorefield on the north & south and other

Said right-of-way to have a width of 66 feet, that is 33 feet on each side of the center line of the Highway except where a greater width is necessary for short distances on account of large cuts or fills and drainage structures.

"Special Provisions:" Right of way herein in granted is along a relocation as shown on plans by a heavy dashed line between approximate survey stations 49+17.4 and 76+32.5.

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining. It is agreed that buildings, fences, signs or other obstructions will not be erected by me (or us), my heirs, assigns or administrators within the limits of the right-of-way herein conveyed and that such buildings and fences as are now within the limits of the right-of-way herein conveyed will be moved from the right-of-way and restored in as good condition as before moving at the expense of the State Highway Department of the State of South Carolina.

TO HAVE AND TO HOLD, all and singular, the said right-of-way and the rights hereinbefore granted, unto the said South Carolina State Highway Department, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand and seal this 29 th day of March in the year of our Lord, One Thousand Nine Hundred and sixty-seven.

Signed, sealed and delivered in the presence of:

Mary Cassin
Chall
Donner

Hayden R. Edwards D. S.

NOTE: All Right-of-Way Agreements must be in writing and are subject to rejection by the South Carolina State Highway Department.

The State of South Carolina

COUNTY OF Richland
Personally appeared Mary Carmichael

and made oath that she saw the within named Hazel P. LeGrande
Print or Typewrite Name.

sign, seal and, as his act and deed, deliver the within written easement; and that she with L.P. Daniels witnessed the execution thereof.

Sworn to before me this 29 th
day of March A. D., 19 67

day of March A. D., 19 67
Ernest (L. S.)
 Notary Public for S. C.

Mary Cornichal
 Witness sign here.

Notary Public for S. C.

Witness sign here

TRACT
No. 11

The State of South Carolina

COUNTY OF _____

I, _____

Notary Public for S. C.

do hereby certify unto whom it may concern, that Mrs. _____

the 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 within named South Carolina State Highway Department, its successors and assigns, all her interest and estate, and also 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 _____

Anno Domini, 19____

Signature of Wife.

Sworn to before me this _____ day of _____ A. D., 19____

Notary Public for S. C.

The State of South Carolina

MORTGAGE RELEASE

COUNTY OF Richland

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Farmers Home Administration, Columbia, S. C., do for certain valuable consideration release from the lien and operation of my (or our) mortgage the right-of-way conveyed by the within easement so that the said right-of-way shall be free and unaffected by said mortgage.

Witness our hand and seal this 29th day of March, 1967

In the presence of:

Cecil L. Smith
Notary Public

Sam W. O'Dell
SAM W. O'DELL
Chief, Real Estate Loans

RESOLUTION

WHEREAS, This easement contains certain special provisions which are subject to rejection by the State Highway Department, and

WHEREAS, It is recommended to this Board that the special provisions be investigated and approved, therefore

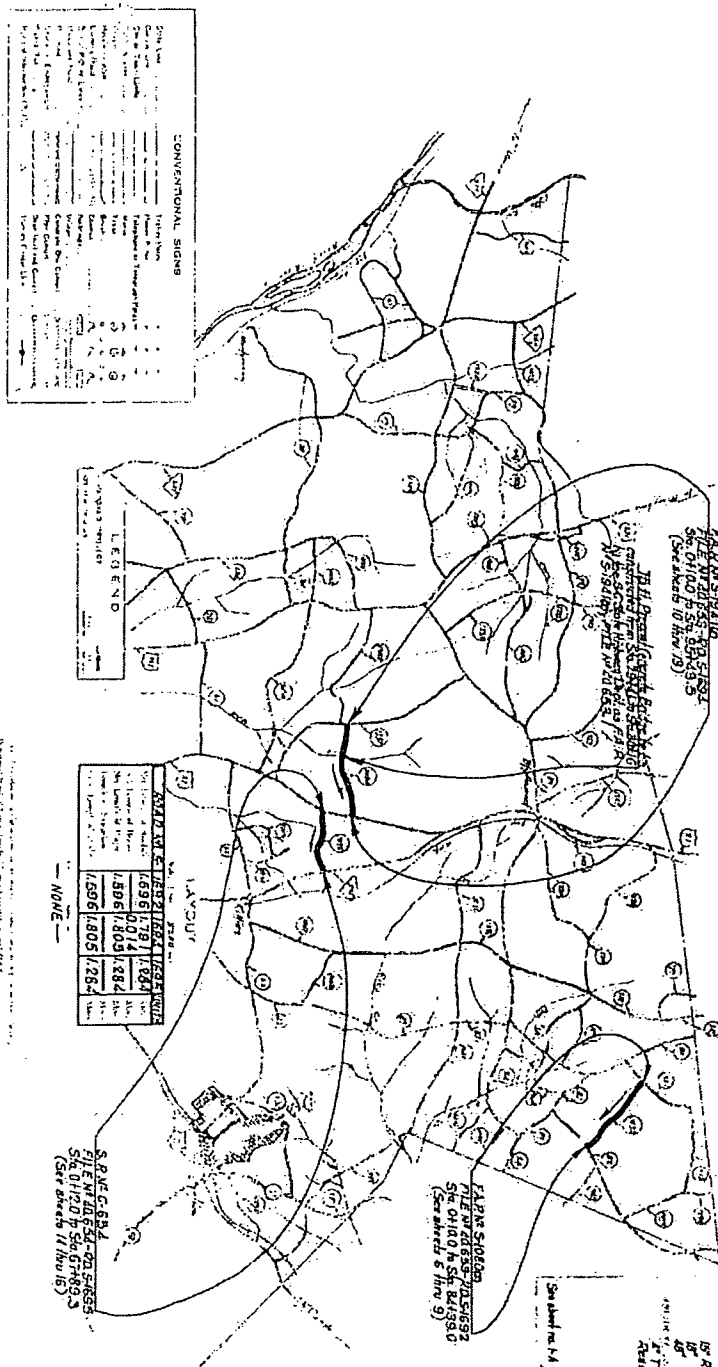
BE IT RESOLVED by this Board of Condemnation that after its investigation it is satisfied that the easement with the special provisions should be accepted by the State Highway Department and the easement is approved for acceptance by the

State Highway Department this _____ day of _____, 19____

SECRET
EXCLUDED FROM AUTOMATIC DOWNGRADING AND DECLASSIFICATION

PLAN AND POINTS OF PROPOSED

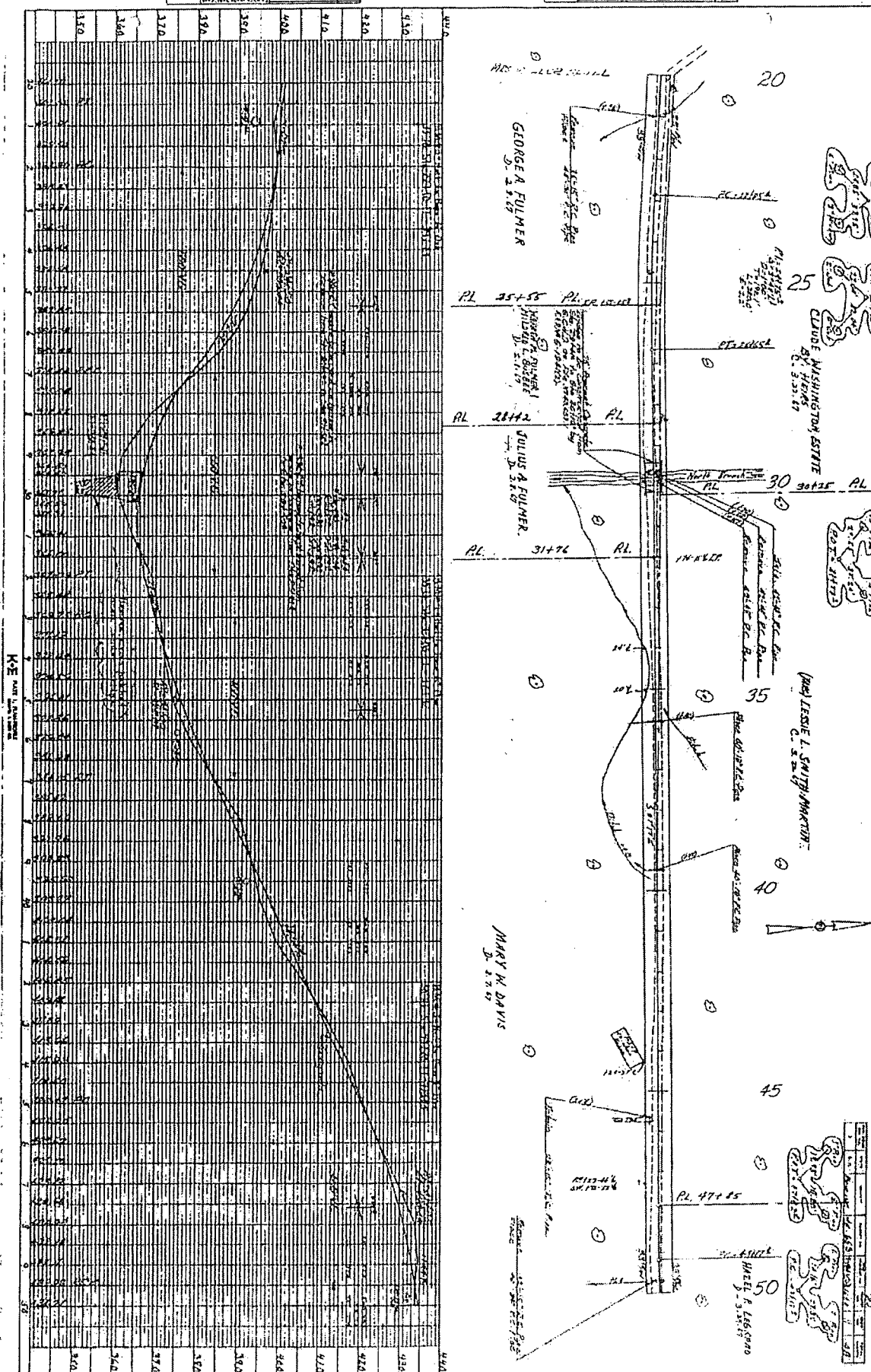
RD S-1692 F.A.P. N^o S-10800 FILE N^o 40.6533 from Rd S-221 to Rd S-382
RD S-1694 F.A.P. N^o S-194 (a) FILE N^o 40.6533 from Rd S-3352 to Rte 21
RD S-1695 S.P.N^o C-654 FILE N^o 40.6544 from Rte 21 to Rte 5555

[illegible]

21111 C
 12 16 14

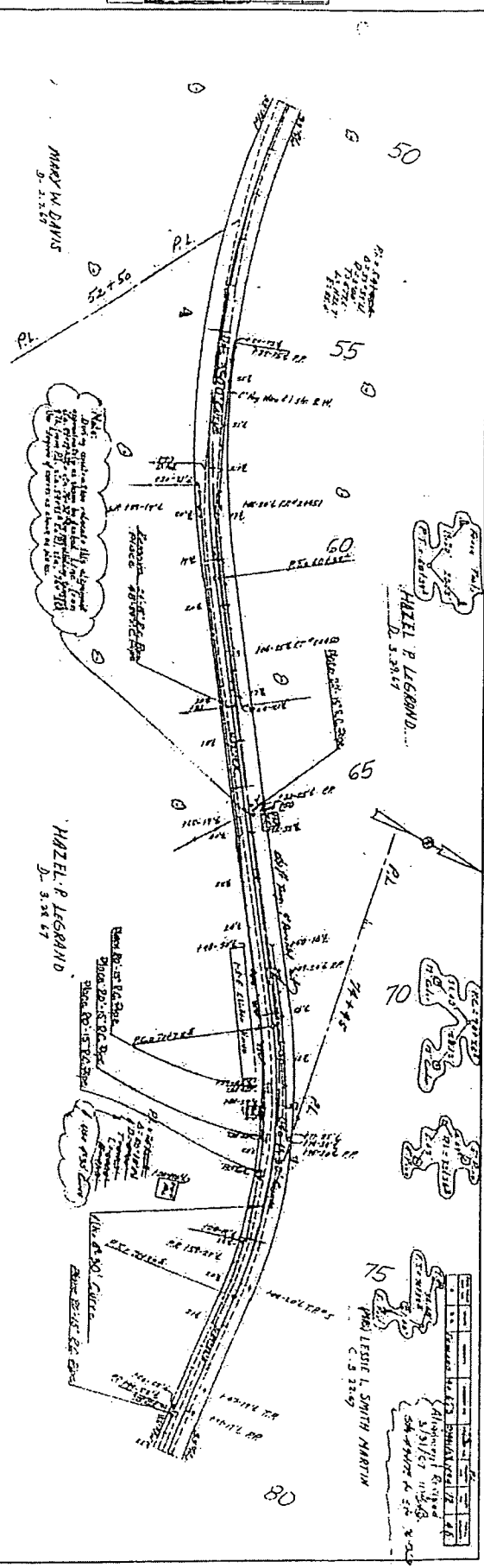
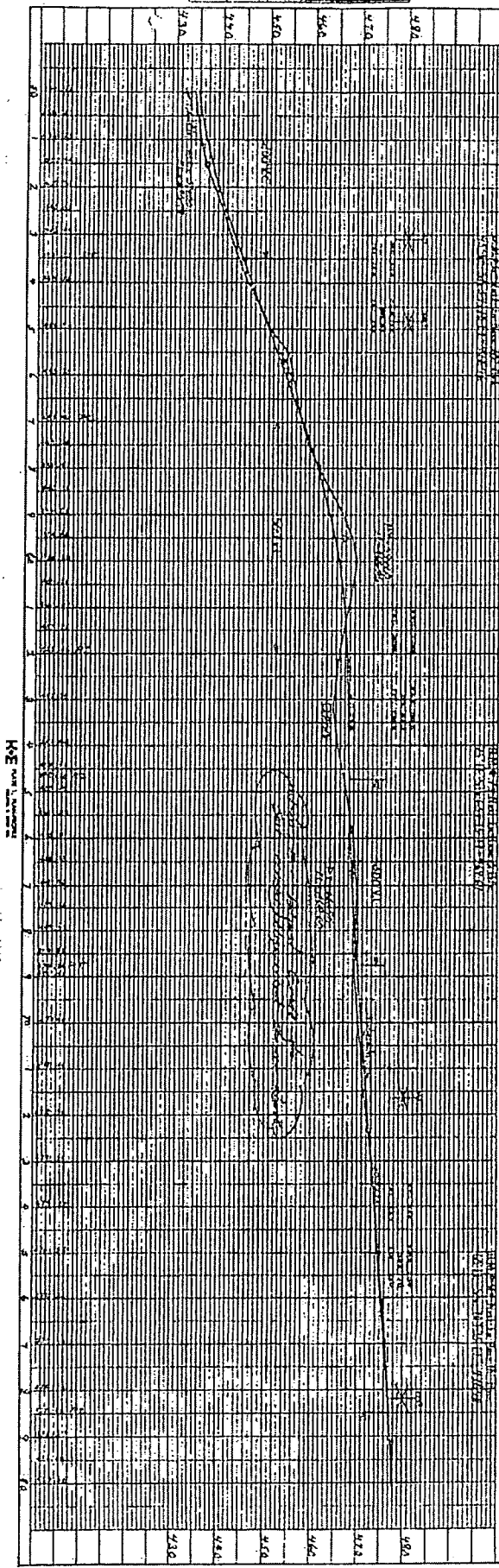
PROFILE	DATE	BY
1. PROFILE	12/16/14	21111 C
2. PLAN		
3. ELEVATION		
4. DISTANCE		
5. AREA		
6. VOLUME		
7. PERCENT		
8. TOTAL		

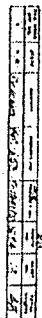
PLAN	DATE	BY
1. PLAN	12/16/14	21111 C
2. ELEVATION		
3. DISTANCE		
4. AREA		
5. VOLUME		
6. PERCENT		
7. TOTAL		



2.11 = 1.132

PROPRE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

[illegible]



State of South Carolina,

COUNTY OF RICHLAND

MAY 30 12 34 PM '53

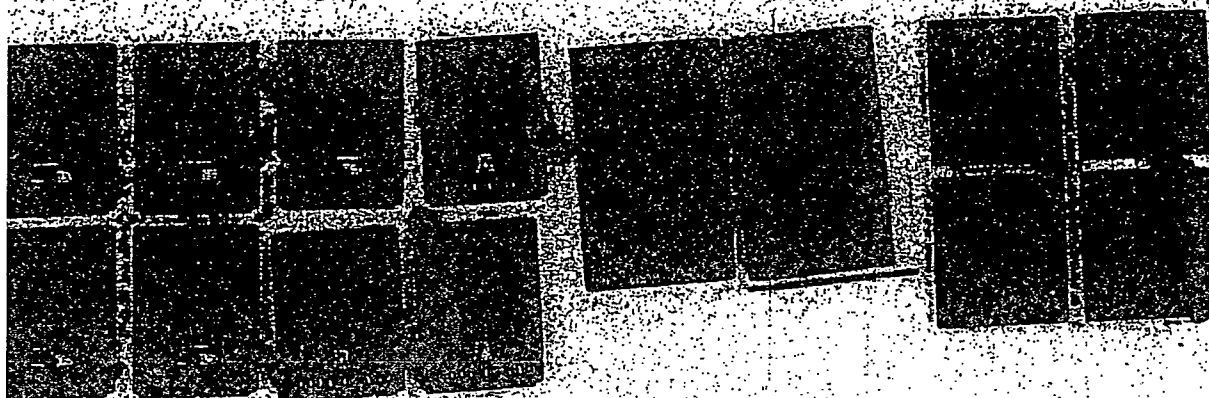
C. E. HINDIANT
C. L. C. P. & G. S.
RICHLAND COUNTY, S. C.

KNOW ALL MEN BY THESE PRESENTS, That I, A. T. Moore,

in the State aforesaid, for and in consideration of the sum of Fourteen Thousand (\$14,000.00) Dollars and assumption of mortgage to me paid by Hazel P. LeGrande, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Hazel P. LeGrande,

All that piece, parcel or tract of land lying and being near the Winnsboro Road about twelve miles north of the City of Columbia, in the County of Richland, State of South Carolina, measuring and containing ninety-five and five-tenths (95.5) acres, more or less, and being known as tract 3, as shown on a survey of lands of the estate of Rebecca J. Smith made by E. T. Rauch, Surveyor, and dated October 3, 1913, and bounded on the north by tract 4, as shown on said survey; on the east by tract 1, as shown on said survey; on the south by lands now or formerly of the estate of Rabon and by lands now or formerly of Mrs. W. C. Derrick, and on the west by tract 4, as shown on said survey, being the same property heretofore conveyed to the grantor herein by A. H. Lynch by deed dated June 16, 1949 and recorded in the office of the Clerk of Court for Richland County in Deed Book 37, at page 593.



TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Hazel P. LeGrande, his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Hazel P. LeGrande, his

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

Heirs and against every

WITNESS my Hand and Seal this 29th day of May

in the year of Lord one thousand nine hundred and fifty-three

and in the one hundred and seventy-seventh

and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Henry F. Serrill

James D. McDaniel

[Signature]

(SEAL)

STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

PERSONALLY appeared before me HIRSH P. MARVEL and made oath that he saw the within-named A. T. Moore sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he, with HENRY F. SERRILL witnessed the execution thereof.

SWORN to before me this 29th day of May

Henry F. Serrill (I. S.)
Notary Public of S. C.

James D. McDaniel

STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

RENUNCIATION OF DOWER

I, HENRY F. SERRILL, do hereby certify unto all whom it may concern, that Mrs. A. T. MOORE (MARY FRANCES WALKER MOORE) the wife of the within-named A. T. Moore 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 whatsoever, renounce, release and forever relinquish unto the within-named

Hazel P. LeGrande, his

heirs

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

Given under my Hand and Seal, this 29th day of May, 1953

Henry F. Serrill (I. S.)
Notary Public of S. C.

Mary Frances Walker Moore

SCE&G / LeGrande 0004

Carolina
Grande
LESLIE
217
SCE&G / LeGrande 0004

00961 PAGE 576

PROBATE COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MATTER OF Hazel Paul LeGrande, Sr.

CASE NUMBER

88ES4001277

Dec 22 11 58 AM '88

FILED
MESHE CONVEYANCE
CLARA L. GARDNER



DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 16th day of November, 1988, and,
Richland

WHEREAS, the estate of the decedent is being administered in the Probate Court for
County, South Carolina in File # 88ES4001277; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted
bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: Caroline T. LeGrande
Address: 181 Turkey Farm Road
Blythewood, South Carolina 29016

the following described property: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being on both sides of South Carolina Road 40-1694 in School District No. 2, about twelve (12) miles North of Columbia, near the Winnsboro Road, County, South Carolina, containing 95.5 acres, more or less, and being shown and designated as Tract 3 on Plat of Lands of the Estate of Rebecca J. Smith by E.T. Rauch dated October 3, 1913 and being more fully shown on plat of property of F.J. Howell surveyed for Johnnie L. Davis by Tomlinson Engineering Company dated January 8, 1943, and recorded in the office of the Clerk of Court for Richland County in Plat Book 9 at page 66 and bounding thereon as follows: on the North by Tract No. 4; on the East by Tract No. 1; on the South by property now or formerly of the Estate of Dave Rabon and property now or formerly of Mrs. W. L. Dennick and on the West by property now or formerly of Mrs. W. D. Dennick and by Tract No. 4. Reference is had to the above referred to plat for a more complete description.

Being the same property conveyed by deed of Austin T. Moore to Hazel P. LeGrande dated May 29, 1953 and recorded in the office of the Clerk of Court for Richland County in Deed Book 113 at page 45 on May 30, 1953
TMS#14800-05-10

00961 PAGE 576

PAGE 1 OF 2

218

093 0350

TOGETHER with all and singular, the Rights, Members, Appurtenances and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Caroline T. LeGrande

their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 14th day of November

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

by signature Caroline T. LeGrande

Witness: Marion L. Mancini

Witness: Jane L. Smith

STATE OF SOUTH CAROLINA
COUNTY OF

PROBATE

PERSONALLY appeared before me Marion L. Mancini

and made oath that he/she saw the within named
Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with Jane L. Smith witness of the execution thereof.

(SWORN to before me this 14th day of November, 1997)

Witness Signature: Marion L. Mancini

Jane L. Smith
Notary Public for South Carolina
My Commission Expires: 11/19/99

11/19/99
Dec 89
22
5716
0961
093 035

DC961 PAGE 577

PAGE 2 OF 2

219

State of South Carolina
COUNTY OF RICHLAND

DEED
(Individual)

CENTRAL OFFICE PRODUCTS
Columbia, S. C.
Form No. 731
Rev. 1977

JAN 16 10 08 51

JAN 16 3 33 PM '95

RECORDED PAID

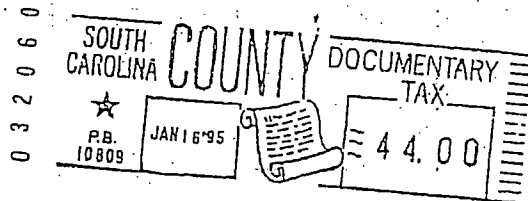
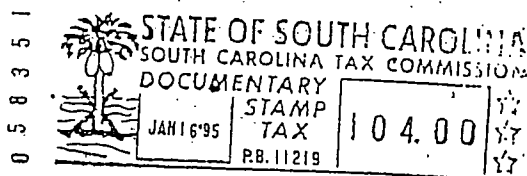
WESNE CONVEYANCES
CLARA L. BARTLETT

KNOW ALL MEN BY THESE PRESENTS, That Caroline T. LeGrande
(hereinafter called "Grantor"), for and in consideration of the sum of Forty Thousand and
no/100 (\$40,000.00) _____ Dollars

to the Grantor in hand paid at and before the sealing of these presents, by Marion L. Mancini,
Hazel P. LeGrande, Jr. and _____ of
Caroline Harriett LeGrande
(hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged)
has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release,
unto the Grantee, his heirs, successors and assigns:

SEE ATTACHED FOR RESERVATION OF LIFE ESTATE AND LEGAL DESCRIPTION

Grantee's address: 181 Turkey Farm Road, Blythewood, S.C. 29016



This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

D BK 1238 PAGE 430

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: January 17, 19 95

Signed, Sealed and Delivered

in Presence of:

2) Mrs. Clark
3) Mary W. Clark

Caroline T. LeGrande (Seal)
Caroline T. LeGrande (Seal)

State of South Carolina }
COUNTY OF RICHLAND } PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me (date) January 17, 1995

4) Mrs. Clark (Witness)
5) Mary W. Clark (Seal)

Notary Public for South Carolina

My Commission expires: 5-3-2000

D BK 1238 PAGE 432

MEMORIAL L. MENDLIN
201 Turkey Farm Road
Blythewood, S.C. 29016

State of South Carolina
COUNTY OF

Grantor

TO

Grantee

(include mailing address)

DEED

(Individual)

Filed this 16th day of Jan, 19 95,
at 3:33 o'clock, P M.
and recorded in Deed Book 1238 at page 436

R.M.C./Clerk of Court

Charles L. Bartlett R.M.C.

Recorded this 24th day of Jan, 19 95.

in Mary W. Clark
Auditor RICHLAND COUNTY

Instrument: 2002006478

Book/Page: R 617 : 2927

Date/Time: 01/24/2002 12:36:04:053

Document: 03

State of South Carolina }
COUNTY OF RICHLAND }

DEED
(Individual)

CENTRAL OFFICE PRODUCTS
Columbia, S. C.
Form No. 721
Rev. 1/77

KNOW ALL MEN BY THESE PRESENTS, That Marion L. Mancini, Hazel P. LeGrande, Jr. and Caroline Harriett LeGrande (hereinafter called "Grantors"), for and in consideration of the sum of Sixty Thousand Nine Hundred and 00/100 (\$60,900.00) Dollars

to the Grantors in hand paid at and before the sealing of these presents, by Keith E. Didyoung and D. Ellen Didyoung, and Michael B. Baker and Luan D. Baker of 252 Turkey Farm Road & 240 Turkey Farm Road, Blythewood, Richland County, South Carolina, respectively. (hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, ^{his} heirs, successors and assigns: ALL THEIR RIGHTS AND INTERESTS:

All that certain piece, parcel or tract of land situate, lying and being near the Town of Blythewood, in the County of Richland, State of South Carolina; the same being shown as Lot E containing 4.06 acres on a plat prepared for H.P. LeGrande by Daniel B. Ballentine dated August 24, 1984 and recorded in the Office of The Register of deeds for Richland County in Plat Book 50 at Page 1043. Said Lot therein described as having the following boundaries and measurements, to wit: On the South bounded by Road S-40-1694, also known as Turkey Farm Road, whereon it measures 235.0 feet; on the West by Lot D, whereon it measures 834.5 feet; on the North by undesignated property, whereon it measures 210.0 feet; and on the East by Lot F, whereon it measures 776.7 feet; be all measurements a little more or less.

This being a portion of the property heretofore conveyed to the Grantors herein by Deed recorded in the Office of the Register of Deeds for Richland County in Deed Book D1238 Page 430 dated January 7, 1995 and recorded on January 16, 1995.

THE PROPERTY IS SUBJECT TO THE FOLLOWING RESTRICTIONS:

1. There will be only single family dwelling on each lot, not less than 1750 square feet of heated space.
2. There will not be any mobile homes or manufactured homes, whether permanent or otherwise at any time placed on said lots.
3. No hogs or chickens.

TMS# 14800-05-10 (Portion of)

Book 00617-2927

Deed

2002006478 01/24/2002 12:36:04:05

Fee: \$10.00 County Tax: \$97.10 State Tax: \$150.00



2002006478 John G. Naults

Richland County R00

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: January 23, 2002

Signed, Sealed and Delivered
in Presence of:

Eva Wolff
Mac Miller

Marion J. Kaucini (Seal)
Sam N. [unclear] (Seal)

Hazel P. [unclear] to [unclear] his
attorney-in-fact

State of South Carolina }
COUNTY OF _____

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s) he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s) he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me (date) January 23, 2002 Eva Wolff

[Signature] (Seal)

(Witness)

Notary Public for South Carolina

My Commission expires: 3-30-04

Richard County Register of Deeds

Audited by Paul Brimley 2007

State of South Carolina

COUNTY OF _____

Grantor

TO

(include mailing address)

Grantee

DEED

(Individual)

Filed this _____ day of _____

at _____, 19____ M.

and recorded in Deed Book _____ at page _____

R.M.C./Clerk of Court

County, S.C.

Recorded this _____ day of _____

in _____ Page _____

Auditor _____ County _____

This document not to scale

Instrument: 2004045465

Book/Page: R 943 . 2257

DateTime: 06/07/2004 16:45:18:270

Document: 01

ORIGINAL

Book 00943-2257

20040454 5 06/07/2004 16:45:18:27

Deed

Fee: \$12.00 County Tax: \$0.00 State Tax: \$0.00 EXEMPT



2004045465 John G. Norris

Richland County ROD

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS, that MARION L. MANCINI, HAZEL P. LEGRANDE, JR. AND CAROLINA HARRIETT LEGRANDE, for and in consideration of ONE HUNDRED FORTY-EIGHT THOUSAND ONE HUNDRED TWENTY-TWO AND NO/100 (\$148,122.00) DOLLARS, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto:

RICHLAND SCHOOL DISTRICT TWO, ITS SUCCESSORS AND ASSIGNS:

See attached SCHEDULE for legal description.

DERIVATION: Book D1238 at Page 430

TMS#: 14800-05-10 (PORTION)

GRANTEE'S ADDRESS: 6831 BROOKFIELD ROAD, COLUMBIA, SC 29206

PROPERTY ADDRESS: PARCEL "2", 3.798 ACRES, MORE OR LESS, TURKEY FARM ROAD, BLYTHEWOOD, SC 29016

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

This conveyance of property is subject to all easements, restrictions, regulations, reservations and covenants as filed of record.

WITNESS the grantor(s) hand(s) and seal(s) this 28 day of May, 2004.

WITNESSES AS TO MARION L. MANCINI
AND CAROLINA HARRIETT LEGRANDE

[Handwritten signature of Marion L. Mancini]
[Handwritten signature of Caroline Harriett Legrande]

[Handwritten signature of Marion L. Mancini] (LS)
MARION L. MANCINI

[Handwritten signature of Hazel P. Legrande, Jr.] (LS)
HAZEL P. LEGRANDE, JR.

[Handwritten signature of Caroline Harriett Legrande] (LS)
CAROLINA HARRIETT LEGRANDE

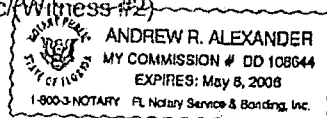
[Handwritten signature of Andrew R. Alexander] (LS)
ANDREW R. ALEXANDER

WITNESSES AS TO HAZEL P. LEGRANDE

SIGNED, sealed and delivered
in the presence of:

[Handwritten signature of Witness #1]
Witness #1

[Handwritten signature of Andrew R. Alexander]
Notary Public/Witness #2



Richland County Register of Deeds

Audited by Paul Braxley 2007

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE AS TO MARION L. MANCINI

PERSONALLY appeared the undersigned witness who made oath that s/he saw the within named Grantor(s) sign, seal, and as his/her/their act and deed, deliver the within Deed; and that s/he with the other witness subscribed above witnessed the execution thereof.

Witness #1

SWORN to before me this
day of June, 2004.

(LS)
Notary Public for SC (Witness #2)
My Commission Expires: 12/31/05

Richland County Register of Deeds

Audited by Paul Brawley 2007

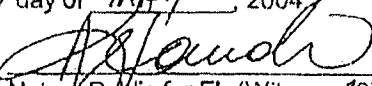
STATE OF FLORIDA)

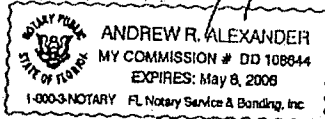
COUNTY OF BROWARD)

PROBATE AS TO HAZEL P. LEGRANDE, JR.

PERSONALLY appeared the undersigned witness who made oath that s/he saw the within named Grantor(s) sign, seal, and as his/her/their act and deed, deliver the within Deed; and that s/he with the other witness subscribed above witnessed the execution thereof.


Witness #1

SWORN to before me this 28
day of MAY, 2004
 (LS)
Notary Public for FL (Witness #2)
My Commission Expires: 5/8/06



Richland County Register of Deeds

Audited by Paul Brawley 2007

STATE OF SOUTH CAROLINA)
) PROBATE AS TO CAROLINE HARRIETT LEGRANDE
COUNTY OF RICHLAND)

PERSONALLY appeared the undersigned witness who made oath that s/he saw the within named Grantor(s) sign, seal, and as his/her/their 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
day of July, 2004.

(LS)
Notary Public for SC (Witness #2)
My Commission Expires: 12/24/07

Witness #1

ALVIN NELSON BERRY

Richland County, Register of Deeds

Audited by Paul Bowler 2/07

SCHEDULE

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as Parcel 2, containing 3.798 acres, more or less, as shown on a plat of property survey for Richland County School District Two by Civil Engineering of Columbia, Inc., dated February 24, 2004; also reference boundary and topographic survey prepared for Richland County School District Two by B. P. Barber & Associates, Inc. dated January 5, 2004; also reference a plat of property surveyed for Turkey Farm, LLC by Civil Engineering of Columbia, Inc., dated September 5, 2003, and recorded in Plat Book 50, page 1043. Said property being more particularly described and delineated on a plat prepared for Richland County School District Two by B. P. Barber & Associates, Inc., dated May 17, 2004. Reference to said latter plat is craved for a more complete and accurate property description. Be all said measurements a little more or less.

TMS#14800-05-10 (PORTION)

Richland County Register of Deeds

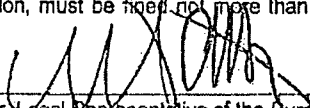
Audited by Paul Brawley 2007

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

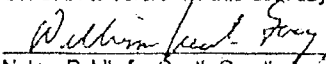
AFFIDAVIT

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

1. I have read the information on this Affidavit and understand such information.
2. The Property is Parcel 2, 3.798 acres, more or less, Turkey Farm Road, Blythewood, SC 29016, bearing Richland County Tax Map Number 14800-05-10 (portion), and is being transferred by Marion L. Mancini, Hazel P. LeGrande, Jr. and Caroline Harriett LeGrande to Richland County School District Two on this 28th day of May, 2004.
3. Check one of the following - The Deed is:
 - (a) _____ Subject to the deed recording fees as a transfer for Consideration paid or to be paid in money or money's worth.
 - (b) _____ Subject to the deed recording fees as a transfer between a Corporation, a partnership, or another entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording because (exemption # _____)
 (Explanation if required) PURCHASER IS A PUBLIC SCHOOL DISTRICT AND EXEMPTED
 (If exempt, please skip items 4-6, and go to item 7 of this Affidavit.) Price was \$148,122.00
4. Check one of the following if either item 3(a) or item 3(b) above has been checked:
 - (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 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 _____ NO X 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) NA The amount listed in item 4 above.
 - (b) _____ The amount listed in item 5 above (no amount place zero).
 - (c) _____ Subtract line 6(b) from line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Attorney.
8. 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.


 Purchaser, Legal Representative of the Purchaser, or
 other Responsible Person connected with the Transaction

SWORN to before me this 28th day of May, 2004.

 (LS)
 Notary Public for South Carolina
 My Commission Expires: 02/12/14

Caroline Subdivision

Reference is made to Agency of F. J. Howell Surveyed A. J. Johnson L. D. H. by Thompson and Co., dated Jan 9, 1943. Taken by D.W.D. MEMPH.

Had Appraisal for
H. P. Le Grande
to Highland County, near Blytheville, Mo.
Aug. 24, 1944.

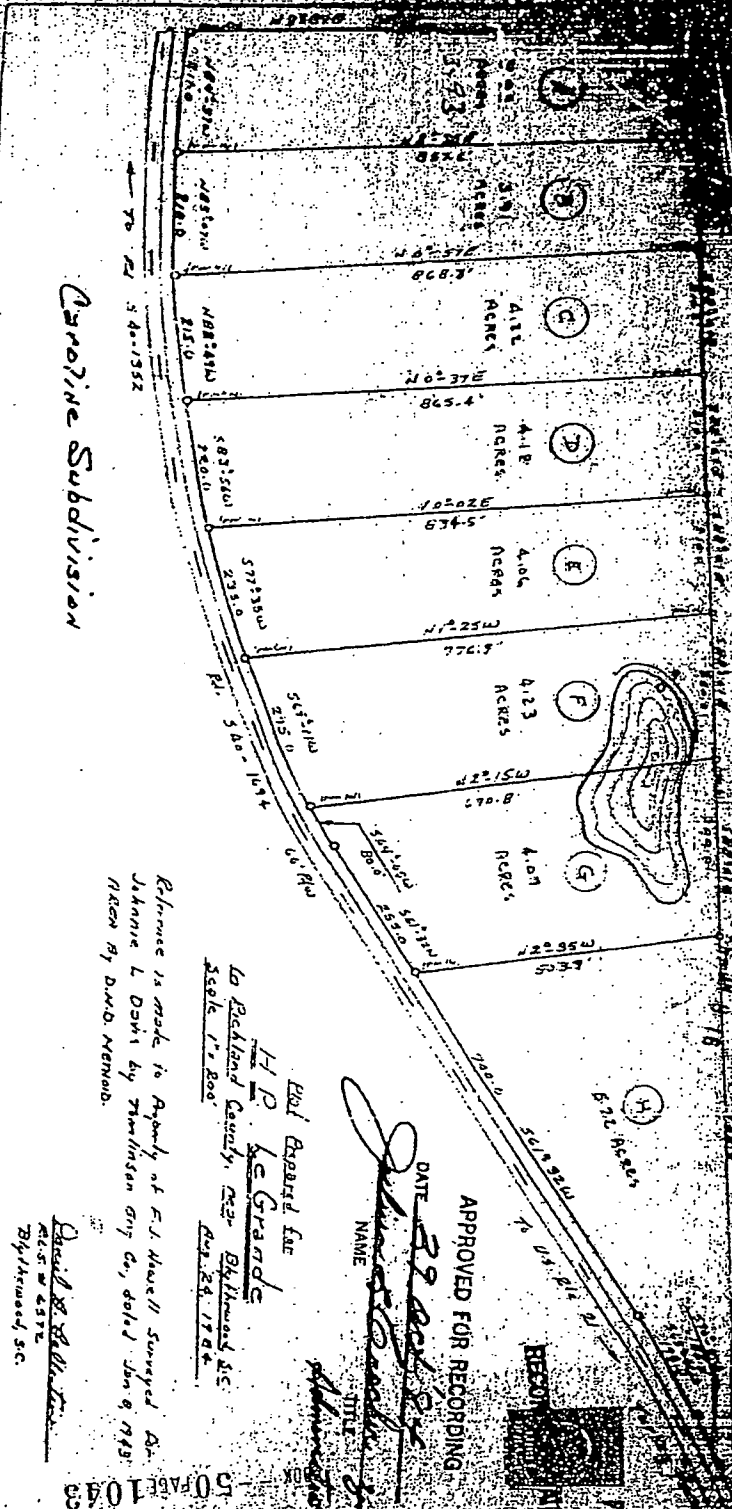
David B. McAllister
Rt. 5 W 437E
Blytheville, Mo.

APPROVED FOR RECORDING
DATE 28 Oct 44
NAME James C. Adams
TITLE Minister

50 PAGE 1043

TMS. 489-1-30 R

1. 21



March 3, 2003
Richard C. Yonauy
RCS # 0111

1811

BOUNDARY SURVEY PREPARED FOR:
CAROLINE H. JERARD SD-03-258

LOCATED NEAR BATH TOWN, BRISTOL AND COLUMBIA, SC
ADJACENT TO FEDERAL HIGHWAY 170A.

REF ID: A66584

APR 01 2015

N/T ENHANCED LETTERING CHARGES
PAT BOOK 12 PAGE 0011

PLAT OF PROPERTY OF F.L. HOWELL SUBMITTED FOR JOHNNIE L. DAVIS BY TOLMASON D.D., CO., JANUARY 2, 1941, AND RECORDED IN THE REGISTER OF DEEDS OFFICE FOR HOWLAND COUNTY PLAT PAGE 366.

BOUNDARY SURVEY ONLY. INTERIOR IMPROVEMENTS NOT SURVEYED.

O - 100% PM
 PS - 100% PM (ST (PM 100%))
 MT - 100% PM (100%)
 - 100% PM
 - 100% PM

7 MONROE COUNTY TRAIL BLAZE COMPLETED THE FULL
FLOOD INSURANCE RATE MAP AND, TO THE BEST OF M
FLOODING AND RISK, THE QUALITY PROPERTY IS
LOCATED IN THE N. AS SHOWN HEREON.

DATE JUNE 18, 1965

Richard County, South Carolina
Approved for recording
Date 5/16/03 SD-03-252
Debra L. Smith Clerk
TWO 11, 2011, A127 Delaplane, Atlanta.

GRAPHIC SCALE
(in feet)
4 sheets = 200 ft.

GRAPHIC SCALE

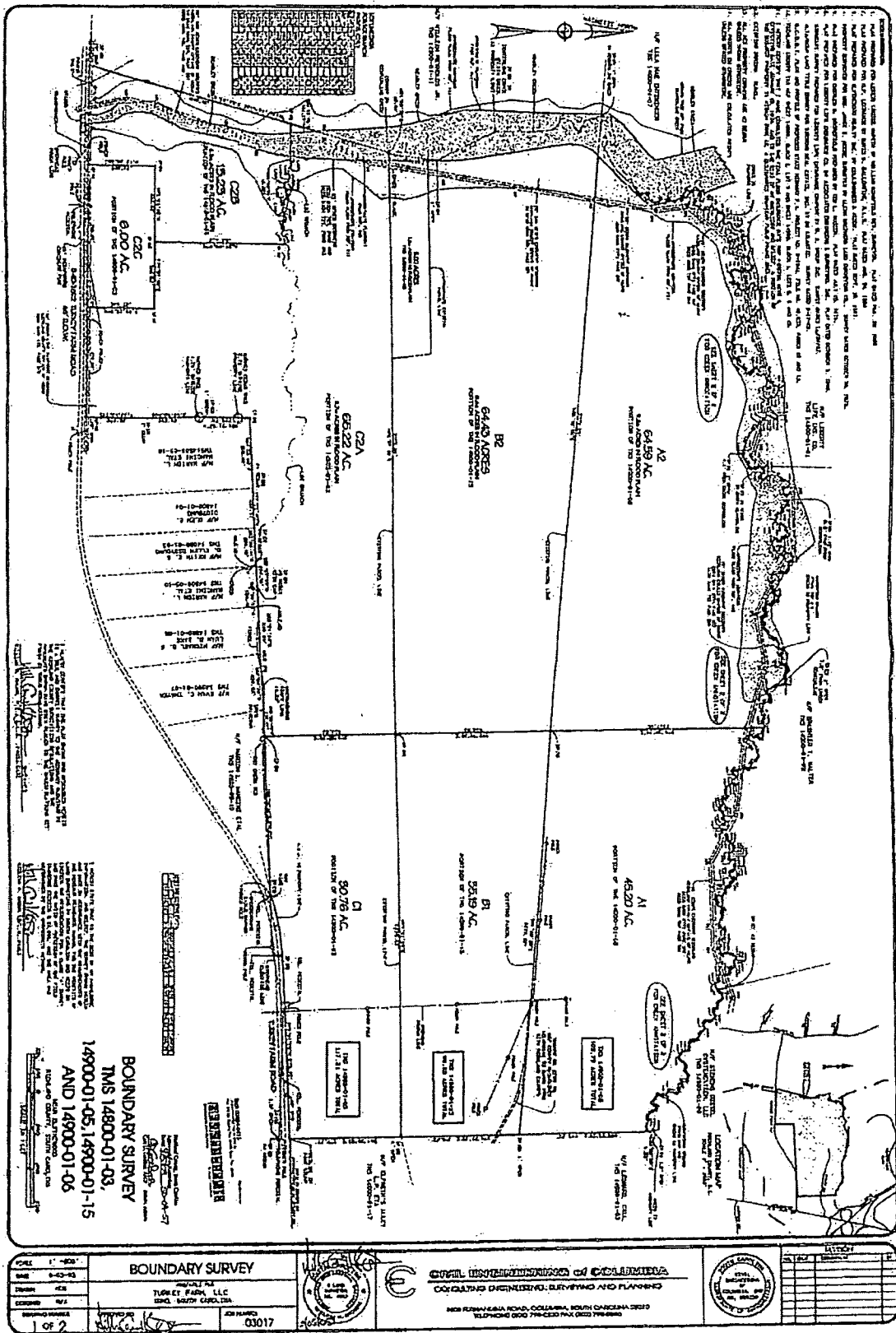
[illegible][illegible]

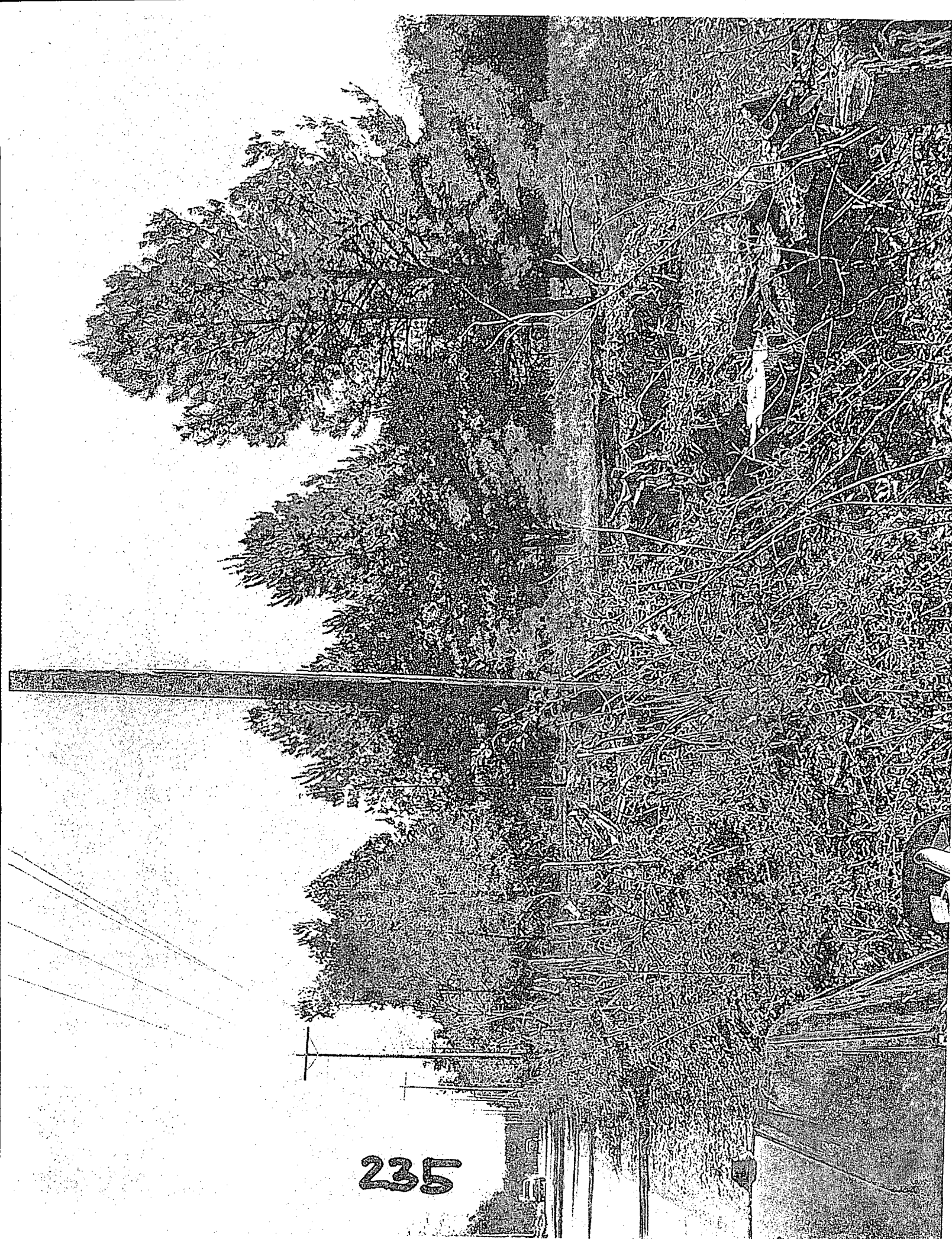
1000 WESTBURY HILL ROAD
FARM, SOUTH CAROLINA 29003-6771
803-348-1174

602-544-187

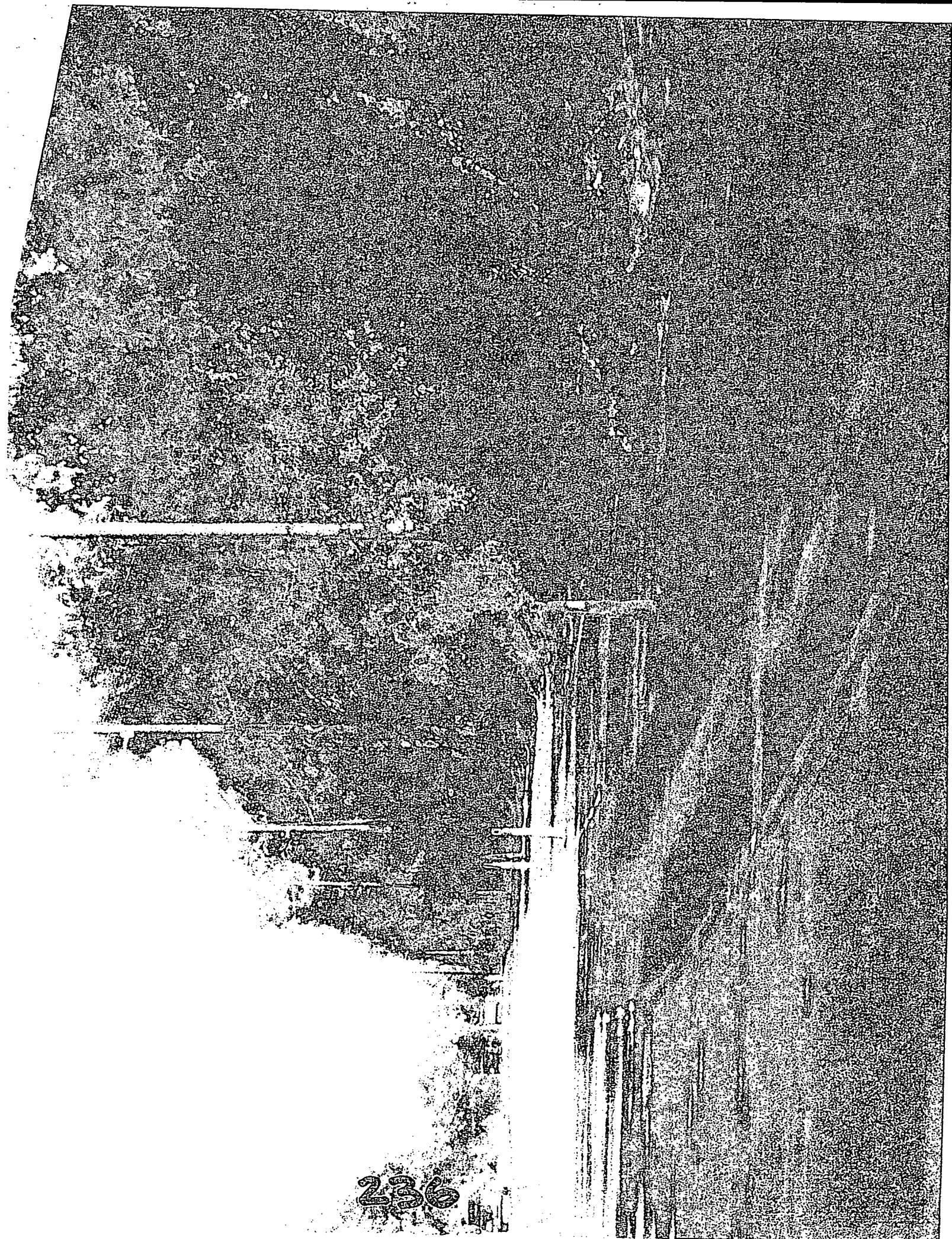
.....

233





235



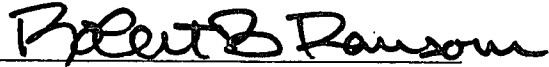
236

Certificate of Counsel

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

September 20, 2012

By:



Robert B. Ransom
LEVENTIS & RANSOM
Post Office Box 11067
Columbia, SC 29211
(803) 765-2383
Bertcone@aol.com

ATTORNEY FOR THE APPELLANT