THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity

Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy, Respondent,

vs.

The Storage Center – Platt Springs, LLC, Appellant.

FINAL REPLY BRIEF OF APPELLANT

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OVERVIEW OF RESPONDENT'S ARGUMENT

Respondent David R. Gooldy ("Respondent" or "Gooldy") argues that the plat at issue ("Loflin Plat") created an easement and that by incorporating the plat into the deed's legal description, the common grantor conveyed an easement to Gooldy's predecessor-in-title, James Loflin. (Initial Br. of Resp't 13-14.) This premise is incorrect for two reasons. First, the Loflin Plat does not create an easement. It merely contains a notation of "50' ROAD" that has no dimensions. Second, the incorporation of the Loflin Plat into the legal description served solely to convey the 0.68 acres within the boundary lines under *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

Second, Gooldy argues that the deed from the common grantor Congaree Associates establishes Congaree Associates' intent to create an easement and that Appellant The Storage Center – Platt Springs, LLC ("Appellant" or "The Storage Center") did not rebut any presumption to the contrary. (*Id.* 15-18.) This argument is flawed because the deed itself reflects the intent of Congaree Associates not to convey any easement rights under *Lancaster*. Moreover, the uncontroverted testimony of Carroll McGee of Congaree Associates, along the fact that no road ever existed and that no subsequent plats show any road, underscores Congaree Associates' lack of intent to create any easement rights in Loflin.

Third, Gooldy contends that it is irrelevant to the easement analysis whether the purported road (1) had a name, (2) was part of the Lexington County road system, or (3) was vague and undefined on the Loflin Plat. (*Id.* 19-22.) While Gooldy's position might be persuasive if a road existed; it is unconvincing since, ***no road has ever existed***. That

fact, along with other uncontradicted evidence, reflects the common grantor's lack of intent to create an easement. Gooldy's argument therefore fails.

Finally, Gooldy states that the Master-in-Equity ("Master") adequately considered the punitive damage factors. (*Id.* 22-24.) However, punitive damages must be based on the existence of an actual damages award. Here, actual damages should not have been awarded because no easement arose as a matter of law. Even if actual damages were proper, the punitive damages factors were not satisfied because The Storage Center's conduct was not reprehensible and it could have had only an economic effect on Gooldy. Both actual and punitive damage awards were improper and should be reversed by this Court.

ARGUMENT

I. Only 0.68 Acres Was Conveyed as a Matter of Law.

The deed from Congaree Associates to Loflin reflects Congaree Associates' intent to convey only the 0.68 acres within the boundary lines on the Loflin Plat. South Carolina's established jurisprudence provides that "[w]hen a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006). Accordingly, references to easements on a plat do not create easement rights in the grantee as a matter of law when the plat is incorporated for descriptive purposes. *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211.

Here, the plat was incorporated for descriptive purposes, and therefore, no easements (whether sufficiently identified or not) were conveyed. Moreover, the legal

description, itself, confirms that the common grantor did not intend to create any easement rights in favor of the grantee. The legal description in the deed from Congaree Associates to Loflin states as follows:

> All that certain piece, parcel, or lot of land, with improvements thereon, if any, situate, lying and being on the western side of S.C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the Town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, revised August 12, 1986, and recorded in the Lexington County RMC office in Plat Book 212G at Page 204. ***The within described property contains 0.68 acre.***

(R. pp. 394-395 (emphasis added).) The legal description specifically states that the property conveyed "contains 0.68 acre," which is the land within the boundary lines on the Loflin Plat. It says nothing about easements, other encumbrances, or access to a 50' road[1] because there was no intent to create any rights regarding same. The final sentence of the legal description reiterates Congaree Associates' intent of granting solely the 0.68 acre – nothing more and nothing less. The strict construction of implied easements requires a finding that no easement ever arose in favor of Gooldy or his predecessors.[2]

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[1] Similarly, the legal description does not identify the purported 50' road as a boundary. Gooldy argues "that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of an intent to exclude the road of the face of the deed or plat." (Initial Br. of Resp't 14.) Implicit in this argument is that Gooldy's tract extends to the center of the purported 50' road. However, "the road" is not used as a boundary. Moreover, "the road" does not become part of the deed under *Lancaster* and the legal description does not reference or incorporate "the road." The deed and the Loflin Plat reflect the common grantor's intent to exclude "the road."

[2] Gooldy argues that the Court should strictly construe the deed against The Storage Center because the common grantor was the drafter of the deed. (Initial Br. of Resp't 18.) However, the strict construction at play is with respect to the implied easement, not the deed. As a matter of law, the purported easement never became part of the deed. Even if the deed were ambiguous, it should not be strictly construed against The Storage Center because it had nothing to do with the drafting of the deed.

See Inlet Harbour v. S.C. Dep't of Parks, Recreation, and Tourism, 377 S.C. 86, 91-92, 659 S.E.2d 151, 154 (2008) (stating "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself, implied easements are not favored.")

A. ***Bennett*** **Is Not Limited to Cases Involving Breach of Warranty Claims.**

Gooldy attempts to limit the holding of *Bennett* by arguing that the "case held that the Grantor in a deed does not warrant or covenant the width of an existing highway right of way easement (easement given to a third party) by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement. *Bennett* did hold that the right of way did exist." (Initial Br. of Resp't 13.) Undeniably, the *Bennett* Court held that the easement existed, but it did so ***because it was an expressed easement shown on a recorded document*** unlike the claimed implied easement in the present matter. *Bennett*, 370 S.C. at 585, 635 S.E.2d at 652 (stating the right of way easement was recorded at South Carolina Department of Transportation). The *Bennett* Court cited numerous cases for the proposition that the incorporation of a plat becomes part of the deed to show "the boundaries, metes, courses, and distances of the property conveyed." *Id.* at 594, 635 S.E.2d at 657. It then used this universal principle to conclude that the parties incorporated the plat to show the boundary lines of the property conveyed, not to warrant the width of the right of way. *Id.* at 594-95, 635 S.E.2d at 657-58. There is nothing in the opinion (or in the *Lancaster* opinion) to suggest that this general principle may only be applied in cases involving the warranty of an easement's width.

B. *McAllister* and *Cason* Are Distinguishable and Inapplicable.

Gooldy's reliance on *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990) and *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950) is misguided. Gooldy states these cases espouse the principle "wherein the grantor conveys land ***abutting a street*** (not necessarily a subdivision), and the grantee is entitled to the use of the street which borders its property and the grantor of the deed is estopped from denying the street's existence." (Initial Br. of Resp't 14 (emphasis added).) First and foremost, no road has ever existed, thwarting the underpinning of Gooldy's "argument." Moreover, *Cason* and *McAllister* are distinguishable because in both cases (1) the deeds referred to the lots being bounded by the roads in question; (2) the roads had width (and length, in *McAllister*) dimensions in the plat; (3) the plats were prepared for the common grantors; and (4) the plats were of more than one parcel. *Cason*, 217 S.C. at 502-03, 61 S.E.2d at 59; *McAllister*, 217 S.C. at 10-12, 389 S.E.2d at 858-59. Here, the deed to Loflin does not refer to the "50' road," much less the lot being bounded by the "50' road." The road never existed, and therefore, the road had no width or length dimensions in the Loflin Plat. The Loflin Plat was prepared for Loflin, not Congaree Associates, and the Loflin Plat was only a plat of one parcel. (R. p. 377.) Any claim for estoppel fails.

II. There Is No Evidence of Any Intent to Create an Easement

The deed, Carroll McGee's testimony, subsequent plats,[3] and the fact that no road has ever existed establish that there was no intent to create an easement over the alleged

[3] Contrary to Gooldy's position, the subsequent plats are ample evidence of Congaree Associates' intent not to convey any easement rights. (*See* Initial Br. of Resp't 17.) They were properly before the court as the determination of the existence of an implied

"50' road" to Loflin and his successors. To the extent that the reference to the Loflin Plat could be considered evidence of intent to create an easement, it was rebutted by McGee's uncontroverted testimony, subsequent plats, and lack of road.

Gooldy contends that the recording of the Loflin Plat exhibits Congaree Associates' intent to create an easement in favor of Loflin. (Initial Br. of Resp't 15.) However, the plat was not prepared for Congaree Associates. It was prepared for Loflin. There is no evidence that Congaree Associates recorded the Loflin Plat. Moreover, the incorporation of the plat into the deed to Loflin does not reflect any intent to create any easement rights as a matter of law under *Lancaster*.

The other purported indicia of intent to create an easement are rebutted as follows:

(a) "the grantor of the deed, Congaree, owned the road area in question at the time of the conveyance (*id.* 16);

REBUTTAL: There was no road at the time of conveyance, and there has never been a road. Moreover, the reference to "50' road" on the Loflin Plat did not become part of the deed, as a matter of law.

(b) "[Congaree Associates] reviewed the deed in question prior to the execution" (*id.* 16);

REBUTTAL: This is true; however, Congaree Associates did not intend to convey any easement rights by virtue of the deed. (R. p. 228:8 – 229:13.)

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easement "'generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement.'" *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 234, 662 S.E.2d 452, 456 (Ct. App. 2008) (quoting *Inlet Harbour*, 377 S.C. at 92, 659 S.E.2d at 154.) The *Murrells Inlet* Court did not hold that the existence of an implied easement is controlled solely by the four corners of the deed. To the contrary, the court explicitly stated "[t]he existence of an easement is ***NOT*** an issue in this case. Only, the extent and scope of the easement is contested." *Id.* at 235, 662 S.E.2d at 457 (emphasis in original).

(c) "the surveyor who prepared the plat was the surveyor who had done previous work for Congaree knew the history *on [sic] the road*, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II" (Initial Br. of Resp't 16 (emphasis added));

REBUTTAL: Again, no road was ever constructed so it is faulty logic to state that the surveyor "knew the history of the road." Westchester Phase I had nothing to do with the purported road. (R. p. 242:3-15.) Moreover, Westchester Phase II was never constructed (R. pp. 216:11 – 217:14) so it is also false to state that the surveyor had any knowledge regarding the "creation" of Westchester Phase II. Finally, there was no testimony from the surveyor so there is no support for what the surveyor knew or did not know.

(d) "that surveying standards required Collingwood to show the road on the plat when he had specific knowledge of the road history" (Initial Br. of Resp't 16);

REBUTTAL: No road has ever existed so there could be no requirement for Collingwood to show a road. A surveyor cannot show was does not exist. Again, there was no testimony from Collingwood so there is no support that he had "specific knowledge" of anything.

(e) "that Congaree was deeding the Loflin/Respondent lot to an employee/agent who was building a log cabin model home adjacent to the fifty (50') foot road in question" (*id.*);

REBUTTAL: There was never a road, and the fact that Loflin may have been an agent of Congaree Associates is of no legal moment. There was no evidence that the sale of the lot was not an arm's length transaction, and Loflin's acts cannot bind Congaree Associates with respect to the sale.

(f) "that it was clear as of the date of the Criss letter from the County of Lexington in 1985 showed that the proposed road area was still a viable road" (*id.*); and,

REBUTTAL: It was never a road. Congaree Associates was simply thinking about developing a subdivision. However, it never happened because after Congaree Associates received the "Criss letter," it realized the project was too costly. (R. p. 216:3-17.) Moreover, the lot was not conveyed to Loflin until September 1986 – over a year after the "Criss letter." (R. pp. 394-395; R. p. 406). The intent analysis must be focused at the time of severance so it is of no moment what Congaree Associates thought it might have done in 1985 when McGee testified that at the time of severance in September of 1986, Congaree Associates had no intent to convey any easement rights.

(g) "there is no specific objective evidence that Congaree intended to terminate the easement area after the Criss letter." (Initial Br. of Resp't 16.)

REBUTTAL: There was no easement at the time of the Criss letter in 1985 because the only time that an easement could have arisen would have been at the time of severance in September of 1986. Therefore, there was no easement to terminate before the property was conveyed to Loflin. Thinking about developing a subdivision does not bestow future purchasers with any easement rights, ***especially when no subdivision was ever developed***. It defies all logic for McGee or Congaree Associates to have an affirmative duty to disavow actions that Congaree Associates never took.

This purported evidence fails to show that Congaree Associates had any intent to create any easement rights in favor of Loflin and his successors. Most of it is based on the faulty premise that the road actually existed. On the other hand, the record is filled with evidence of Congaree Associates' lack of intent to create an easement. McGee stated Congaree Associates never had any intent to create any easement rights. (R. pp. 227:25 – 229:13.) No easement ever arose, and therefore, the Master erred in finding one.

III. The Absence of a Road Establishes the Lack of Intent to Create Any Easement Rights with Respect to the "Road."

No evidence reasonably supports the Master's finding of an easement, especially in light of the fact that no road has ever existed. Gooldy mischaracterizes The Storage Center's argument when he states that "Appellant further argues that the fifty (50') foot road area referred to on Respondent's plat was an error because it was not named nor was it part of the State of South Carolina, County of Lexington road system." (Initial Br. of Resp't 19.) The Storage Center's argument is that no road has ever existed. The surveyor should not have included the "50' road" notation on the Loflin Plat, but even

though he did, it has no legal import, considering the notation did not become part of the deed as a matter of law.

Contrary to Gooldy's position, the Loflin Plat is not a subdivision plat, and it does not depict a surveyed road.[4] This case is not a case where "the owner of land has it subdivided and platted into lots and streets and sells and conveys the lots with reference to the plat, [and] thereby dedicates said streets to the use of such lot owners, their successors in title, and the use of such lot owners, their successors in title, and the public." *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 924-25 (1965). But even if it were, The Storage Center has rebutted any presumption that Congaree Associates intended to create any easement rights. *See Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 154 (stating "[t]he rule applied in *Blue Ridge* is nothing more than a presumption . . . ."). The Master committed an error when he found an easement in favor of Gooldy.

IV. The Record Does Not Support an Actual or Punitive Damages Award Because There is No Easement as a Matter of Law.

The Master erred in finding and concluding that an easement existed, and likewise, erred in awarding damages to Gooldy. Without a basis to award actual damages, the Master also lacked a basis to award punitive damages. This Court should reverse both the actual damages and punitive damages awards.

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[4] The Storage Center does not dispute Gooldy's argument that a road does not need to be dedicated for a person to have easement rights with respect to the road. (*See* Initial Br. of Resp't 20.) However, a road must exist, and the common grantor must have intended to create easement rights. Additionally, The Storage Center does not dispute the argument that a master in equity can locate the width and length of an easement. (*Id.* 21.) But again, there must be an intent to create an easement and a modicum of substance with respect to the proposed easement and its dimensions. Here, there is nothing more than a "50' ROAD" notation next to an approximately two inch line. This vague and undefined reference is further evidence of the uncertainty with respect to the purported road.

Even if a basis for an actual damages award existed, the Master did not properly consider three-factor test adopted in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) – (1) the degree of reprehensibility of the wrongdoer's conduct, (2) the ratio of actual to punitive damages, and (3) comparative jury or civil penalties to the present matter. With respect to reprehensibility, any harm was purely economic. Contrary to Gooldy's position, the barricading of access was not akin to a continuing nuisance. There is no evidence in the record that the barricade interfered with Gooldy's and his patients' access on a daily basis. In fact, the only evidence regarding this issue is that Gooldy and his patients had access to the property. With respect to the ratio of damages, larger ratios may have been awarded, but there is no evidence to support the reprehensibility factor. Finally, the Master cited no cases that reflect comparable penalties. This Court should reverse the Master's award of both actual and punitive damages.

CONCLUSION

For the reasons stated above, this Court should reverse the findings and conclusions of the Master relating to the implied easement and actual and punitive damages, hold that an implied easement in favor of Gooldy does not exist as a matter of law, and enter judgment for Appellant.

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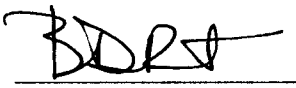
By: 

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The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

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