

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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 2013 CP-23-3989

**RECEIVED**

JAN 20 2015

SC GREENVILLE HWY 146, LLC

**SC Court of Appeals**

WOODRUFF ROAD SC, LLC

PLAINTIFF(S)

DEFENDANT(S)

|               |  |                                    |
|---------------|--|------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff  | <input type="checkbox"/> Defendant |
|               | or   |                                    |
|               | <input type="checkbox"/> 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.  See Page 2 for additional information.
  - ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
  - ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  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

FILED-CLERK OF COURT  
 GREENVILLE, SC  
 PAUL B. ...  
 2015 JAN 12 PM 2:50

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: This matter came before the Court on Plaintiff's Motion to Alter or Amend Judgment. Plaintiff's Motion is hereby DENIED.

**ORDER INFORMATION**

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

| INFORMATION FOR THE JUDGMENT 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<br>(List name(s) below)   | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(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.

*[Signature]*  
 Circuit Court Judge

*[Signature]*  
 Judge Code

*1/5/15*  
 Date

For Clerk of Court Office Use Only

RECEIVED

JAN 20 2015

SC Court of Appeals

This judgment was entered on the 12<sup>th</sup> day of JAN, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 12<sup>th</sup> day of JAN, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

BERNIE ELLIS

\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

JAMES H. CASSIDY  
JOSHUA J. HUDSON

\_\_\_\_\_

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lined area for additional information regarding the decision.

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

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
JUDGMENT IN A CIVIL  
CASE NO: 2013CP2303989  
2014 DEC 16 PM 3 10

**RECEIVED**  
JAN 20 2015  
SC Court of Appeals

**Woodruff Road SC LLC vs. SC Greenville Hwy 146 LLC**

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - 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;  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: \_\_\_\_\_

\_\_\_\_\_  
**PRESIDING JUDGE -**

This judgment was entered on the 16th day of December, 2014, and a copy mailed first class this 16th day of December, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

**Bernie W. Ellis McNair Law Firm, P.A.** P.O. Box 447 Greenville, SC 29602

**James H. Cassidy Roe Cassidy Coates & Price, P.A.**  
P.O. Box 10529 Greenville, SC 29603  
**Joshua Jennings Hudson** PO Box 10529  
Greenville, SC 29603

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

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

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL D. WICKENSIMMER

C.A. No. 2013-CP-23-3989

Woodruff Road SC, LLC )  
Plaintiff, )  
 )  
v. )  
 )  
SC Greenville Hwy 146, LLC. )  
Defendant. )  
\_\_\_\_\_ )

ORDER

**RECEIVED**  
JAN 20 2015  
**SC Court of Appeals**

This matter came before the Court for a non-jury trial on November 4, 2014.

**BACKGROUND**

This case involves two tracts of land located at the intersection of I-85 and Woodruff Road in Greenville, South Carolina. Tract A is owned by the Defendant in this action, who currently leases its premises to three tenants (Zoe's Kitchen, Mattress King, and Starbucks). Tract B is owned by the Plaintiff and currently is leased to two tenants (Trader Joe's and Academy Sports).

An easement is located over Tract B in favor of the owners, lessees, and invitees of Tract A for the purpose of ingress and egress to their businesses. (Pl. Ex. 1.) This easement is comprised of a 45 ft. wide portion which connects directly to Woodruff Road and a 25 ft. wide portion which abuts the back of Tract A. The 25 ft. portion of the easement is directly adjacent to the rear of the building located on Tract A. The building has rear doors for all three of the businesses which open to the easement. (Pl. Ex. 4, 5.) Recently, the Defendants repaved the portion of the 25 ft. wide easement that is directly adjacent to the building; the repaving appears to provide a distinct lane for traffic. This newly-paved area is used by business invitees to access a drive-through window installed by Starbucks. The drive-through window is located on the side



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of the building, squarely on Tract A. (Pl. Ex. 3.) Testimony at trial demonstrated that motor vehicles queue and idle on the newly-paved portion of the easement to access the drive-through.

The parties do not dispute the existence of the easement in question. Their only dispute concerns the scope of the easement. Particularly, the parties desire the Court to determine whether the construction of a paved portion of the easement, for the purpose of accessing the Starbucks drive-through window, falls within the scope of the easement's intended use.

### ANALYSIS

The determination of the existence of an easement is a legal question. Murrels Inlet Corp. v. Ward, 378 S.C. 225, 231, 662 S.E.2d 452, 454 (Ct. App. 2008). However, the determination of the extent or scope of an easement is a question in equity. Id. at 231, 662 S.E.2d at 455; see also Lighthouse Tennis Club Village Horizontal Prop. Regime LXVI v. S. Island Pub. Serv. Dist., 355 S.C. 529, 532, 586 S.E.2d 146, 147 (Ct. App. 2003).

An easement is a right to use certain property owned by another for a specific purpose. Steele v. Williams, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944). Easements may arise by express grant, implication, necessity, prior use, or prescription. Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006). Easements for ingress and egress are frequently granted by an adjoining property owner, for the purpose of accessing the grantee's real property. Ingress is defined as the act of entering, or the right or ability to enter or access. Black's Law Dictionary 9th Ed. (2009). Egress is the act of going out of leaving, or the right or ability to leave, or a way of exit. Id.

To identify the scope of an easement, courts look first to the plain language of the grant. Id. at 534, 586 S.E.2d at 148. The character of an express easement is determined by the nature of the right and the intention of the parties creating it. Plott v. Justin Enterprises, 374 S.C. 504,



513–14, 649 S.E.2d 92, 96 (Ct. App. 2007). Then, if necessary, courts may look to the demonstrated intentions of the parties for further clarify the scope of the easement. Lighthouse Tennis Club, at 534, 586 S.E.2d at 148.

The determination of whether an easement is appurtenant or in gross is a question in equity. Windham v. Riddle, 370 S.C. 415, 418, 635 S.E.2d 558, 559 (Ct. App. 2006), aff'd, 381 S.C. 192, 672 S.E.2d 578 (2009). Once an easement is referenced in a plat, the easement is considered appurtenant and is dedicated to the use of the owners of the lots, their successors in interest, and to the public. Ward v. Evans, 387 S.C. 401, 409–10, 693 S.E.2d 7, 11 (Ct. App. 2010). When recorded, easements are valid to subsequent purchasers without notice. Id.

The owner of an easement cannot materially increase the burden of the servient estate, as established by an express easement. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973). Nor can the owner of the easement impose a new and additional burden onto the servient estate. Id. Rather, an easement can be used “only for the purposes of that tenement . . . [it] cannot be used, even by the dominant owner, for any purpose unconnected with the enjoyment of his estate.” Rhett v. Gray, 401 S.C. 478, 493, 736 S.E.2d 873, 881 (Ct. App. 2012). Where such activities occur, the owner of the servient estate is entitled to equitable relief. Clemson Univ., 269 S.C. at 651, 197 S.E.2d at 919.

South Carolina law provides several examples of inappropriate overburdening of appurtenant easements. For instance, an easement created to enable its holder to access one piece of property could not unilaterally be enlarged to also enable access to other adjoining tracts of land. Cf. Rhett v. Gray, 401 S.C. at 493, 736 S.E.2d at 881. Similarly, an easement created for the operation of water and sewer systems could not also be used for the installation and maintenance of telecommunications equipment without the servient estate owner’s approval.



Lighthouse Tennis Club, 355 S.C. at 534–35, 586 S.E.2d at 148. Finally, the construction of parking spaces on a portion of an easement, where the easement was established for ingress and egress, was beyond the easement’s scope and constituted overburdening. Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 172, 410 S.E.2d 580, 581 (Ct. App. 1991).

The owner of an easement may make reasonable improvements to it, for the purposes of increasing its utility and benefit. See 28A C.J.S. Easements § 231 (West 2014). Such improvements certainly include an improvement of the surface of the easement, so long as the improvement is reasonably related to the original purpose of the easement. E.g., Hayes v. Aquia Marina, Inc., 414 S.E.2d 820, 823 (Va. 1992).

The Plaintiff orally moved for a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 (2014). This Court makes findings of fact and finds as follows.

The parties agree that an easement exists in favor of the owners, lessees, invitees and occupants of Tract A for the purpose of ingress and egress. The parties also agree that the easement is recorded in the Register of Deeds at Book 1268, Page 152–63. (Pl. Ex. 1.) The parties only disagree as to the scope of the easement.

The easement has been recorded in the County’s public records and referenced in plats, as contemplated in Ward v. Evans, 387 S.C. at 409–10, 693 S.E.2d at 11. Accordingly, this Court finds that easement in question is an appurtenant easement, because it is designed to run with the land and to benefit all subsequent owners, lessees, invitees and occupants of the dominant estate.

This court further finds that the scope of the easement, as articulated in the original conveyance, is to provide a right of way for motor vehicles to travel onto or over the designated



portion of Tract B, for the purpose of accessing Tract A from Woodruff Road. The granting document explicitly states, “[s]aid right of way shall be for the benefit of the fee owner, any tenant, or licensee of Tract A or any part thereof.” (Pl. Ex. 1, ¶1.) In the realm of commercial properties, the principal benefit of such an easement is clearly to provide access to the businesses located upon the property in question.

At trial, the parties focused their arguments on the question of whether the above-referenced language supported the maintenance of a drive-through window on the Tract A buildings, where business invitees used the easement to access the window. The easement was created for the purpose of enabling the owners and tenants of Tract A to access the property. The representation of the easement in County records and on plats further enables the public, as business invitees, to use the easement to access the businesses located on Tract A. Therefore, this Court finds that the operation of a drive-through window using a portion of the easement in question falls within the scope of the easement’s intended use.

This Court also finds, based on the evidence presented at trial, that the current tenants of Tract A have not overburdened the easement through their operations because there does not appear to be any obstruction to the business operations of the tenants of Tract B. Prior cases that have found an easement’s scope to be exceeded all involve physical barriers or permanent structures. In this case, the owners and tenants of Tract A have merely improved the property by leveling and paving it. There is no physical obstruction, such as a gate, which prevents the owners or tenants of Tract B from accessing that portion of the property in question. Furthermore, the fact that vehicles may sit idling for a period up to ten minutes does not constitute such a permanent obstruction that overburdens the easement, or too far removes the easement from its intended use.



In equity, this Court notes that there may be times where the operation of the drive-through extends beyond the parameters of the 25 ft. portion of the easement and into the 45 ft. portion. In order to avoid the possibility of future overburdening, this Court orders that the owners or tenants of Tract A may not use this easement to impede the flow of traffic on the 45 ft. portion of the easement. However, nothing in this Order should be construed to affect the right of the tenants of Tract A to use the easement to access their properties.

Therefore, based on the foregoing, it is ordered that:

- (1) The easement in question is appurtenant, and runs with the land;
- (2) The easement in question is designed to provide access to the businesses located on Tract A by way of ingress and egress;
- (3) The tenants of the Defendant, the owner of Tract A, are permitted to operate a drive-through lane on the paved portion of the 25 ft. easement; and
- (4) The Defendant may not increase the use of its easement to such an extent that traffic is impeded on the 45 ft. portion.

**IT IS SO ORDERED.**

December 8, 2014



\_\_\_\_\_  
Letitia H. Verdin  
Circuit Court Judge  
Thirteenth Judicial Circuit

A Certified Copy  
Paul B. Wickens  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 12/16/14

