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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge

Appellate Case No.: 2012-213579
Unpublished Opinion No. 2014-UP-430

Cashman Properties, LLC

Respondent,

vs.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust under Will of E.
Oswald Lightsey dated August 8, 1958, and Codicil
dated March 23, 1976, for the Benefit of Lilian Lightsey
Drawdy; and the Trust Under Will of E. Oswald Lightsey
for the Benefit of Claudia Lightsey Ware

Petitioners.

PETITIONERS' APPENDIX - VOLUME II of II

Robert E. Stepp
Roland M. Franklin, Jr.
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

—and—

J. Ashley Twombly
TWENGE + TWOMBLY LAW FIRM
311 Carteret Street
Beaufort, South Carolina 29902
(843) 982-0100
Attorneys for Petitioners

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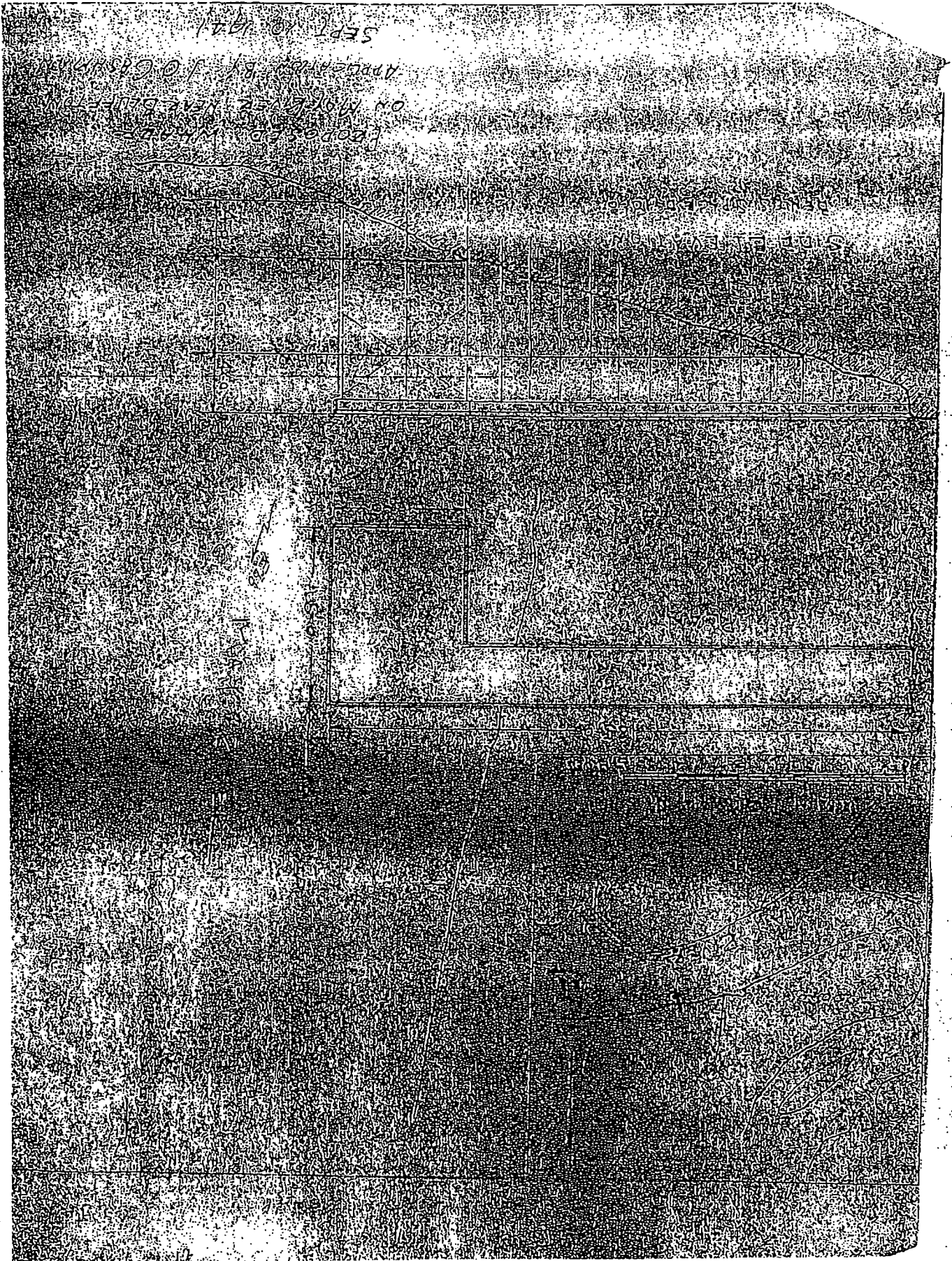
J. Ashley Twombly
TWENGE + TWOMBLY LAW FIRM
311 Carteret Street
Beaufort, South Carolina 29902
(843) 982-0100
Attorneys for Petitioners

Other Counsel of Record:

John S. Nichols
BLUESTEIN NICHOLS THOMPSON & DELGADO, LLC
1614 Taylor Street
Post Office Box 7965
Columbia, South Carolina 29201
(803) 779-7599
Attorney for Respondent

INDEX TO APPENDIX

I.	Record on Appeal	1
II.	Briefs	
	Final Brief of Appellants	705
	Final Brief of Respondent	746
	Final Reply Brief of Appellant	795
III.	Opinion of the Court of Appeals.....	816
IV.	Petitions for Rehearing	
	Appellants' Petition	822
V.	Order Denying Petition for Rehearing	838



62/119

THE STATE OF SOUTH CAROLINA.
County of Beaufort.

KNOW ALL MEN BY THESE PRESENTS, That Ye, J.C. and Beaulé H. Cashman, of the County of Chatham, State of Georgia

in consideration of the sum of Seven Hundred and No/100(\$700.00) Dollars, to have and to hold unto the said San E. Buckner, of the County of Jasper, Georgia, his heirs and assigns forever, all that certain piece, parcel or lot of land lying situate and being near the Town of Bluffton, County of Beaufort, Bluffton Township, State of South Carolina, described and bounded as follows: Said tract of parcel of land beginning at a distance of fifty feet from the North East corner of lots belonging to Grantors herein known as lots #1 and 2 in Block K, as shown by plat of the Bluffton Real Estate Company made by Jas. O. Covington, and revised by W. H. Miller, Jr., 22nd, 1936, said property conveyed herein beginning at a point fifty feet from the North East corner of said lots on the Eastern boundary line of said lots 1 and 2 in said Block K, as shown by said Plat and running along said boundary line for a distance of One Hundred feet on a course of N. 05 degrees East to a corner on said boundary line and from thence for a distance of One Hundred and Forty feet parallel to the Northern boundary line of lots 1 and 2 in Block K, as shown by Plat referred to herein and from thence on a course S. 05 degrees West for a distance of One Hundred Feet (100) and from thence for a distance of One Hundred and Forty feet back to starting point, said lot being bounded as follows: On the North by property of Cashman, South by driveway, East by line separating lot from C. J. Einar and street unnamed, this property being, portions of property conveyed to J.C. and Mrs. J.O. Cashman by C.M. Jeters by his deed dated Oct. 29th, 1936 and recorded in Clerk of Courts Office for Beaufort County in Book 8 page 319 and being purchased by the said Masters from Elizabeth B. Colcock, by her deed dated Feb. 27th, 1937 and recorded in the Clerk of Courts Office for Beaufort County in Book 93 at page 19 and day of March 1937.

TO HAVE AND TO HOLD unto the said San E. Buckner, his heirs and assigns forever, the said premises together with all and singular the rights and appurtenances thereto in any way by any person lawfully claiming the same.

IN WITNESS WHEREOF, the said Grantors, their heirs and assigns, have hereunto set their hands and seals, this 18th day of August, 1937.

Witness my hand and seal this 18th day of August, 1937.

THE STATE OF SOUTH CAROLINA,
Beaufort County.
I, Beaulé H. Cashman and J.C. Cashman, do hereby certify that the within named San E. Buckner, his heirs and assigns, have hereunto set their hands and seals, this 18th day of August, 1937.

THE STATE OF SOUTH CAROLINA,
Beaufort County.
I, Beaulé H. Cashman and J.C. Cashman, do hereby certify that the within named San E. Buckner, his heirs and assigns, have hereunto set their hands and seals, this 18th day of August, 1937.

PLAINTIFF'S
EXHIBIT.
A
Laffitte Do.

63/392

The State of South Carolina,
COUNTY OF BEAUFORT.

KNOW ALL MEN BY THESE PRESENTS, That J.O. and Bessie M. Cashman, of the City of Savannah, Georgia,

for and

Three hundred fifty & 00/100 (\$350.00)

Helen J. Carter, of Walterboro, South Carolina,

Helen J. Carter, her heirs and assigns:

All that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, County of Beaufort, and State of South Carolina, being a parallelogram in shape, measuring one hundred and forty (140) feet each on its northern and southern boundaries, and fifty (50) feet each on its eastern and western boundaries, and more particularly described as follows: Bounded on the north by other property of Grantors herein; on the south by lot heretofore sold by Grantors herein to S.M. Morrison; on the east by Road or street running from State Highway 45 to riverfront; and on the west by property of Charles Harper - as will more fully appear by reference to Plat of Bluffton Real Estate Company made by J.O. Covington and recorded in the office of Clerk of Court for Beaufort County; Said lot being a part or portion of property conveyed to Grantors herein by Deed of O.M. Masters dated October 29, 1935 and recorded in the office of Clerk of Court for Beaufort County, in Book 56, at Page 63, November 7, 1935.

IT IS UNDERSTOOD AND AGREED that Grantors herein shall have access to and use of dock or wharf erected, or to be erected, at the foot of street or road herein referred to by Grantors herein.

IT IS FURTHER UNDERSTOOD AND AGREED that at no time shall the property herein conveyed be sold to anyone of African descent; and should such sale be consummated, the fee herein shall revert to Grantors herein.

THEY HEREBY certify, all and singular, the facts, matters, conditions and circumstances in the said premises foregoing, in as full and true a manner as they appear and to HAVE AND TO HOLD all and singular, the said premises to and for the use and behoof of Helen J. Carter, her

AND we, the undersigned, certify that ourselves and our Helen J. Carter, her heirs and assigns against every person whomsoever

Witness Our Hand and Seal this 30th day of November in the year of our Lord one thousand nine hundred and forty-five and of the Independence of the United States of America the

Henrietta M. Colcock (L.S.) (\$1.00 S.C. Stps.) J.O. Cashman (L.S.)
Chas. J. Colcock (L.S.) (\$0.55 U.S. Stps.) Bessie M. Cashman (L.S.)

THE STATE OF SOUTH CAROLINA

Beaufort

(s)he

their

SWORN to before me this 30th

November

(Seal) Chas. J. Colcock (L.S.)

Notary Public of S.C.

Personally appeared before me

J.O. and Bessie M. Cashman

she

as Chas. J. Colcock

(L.S.)

Henrietta M. Colcock (L.S.)

(L.S.)

THE STATE OF SOUTH CAROLINA

Beaufort

Chas. J. Colcock, a Notary Public for South Carolina

do hereby certify that all and singular, the facts, matters, conditions and circumstances in the said premises foregoing, in as full and true a manner as they appear and to HAVE AND TO HOLD all and singular, the said premises to and for the use and behoof of Helen J. Carter, her

AND we, the undersigned, certify that ourselves and our Helen J. Carter, her heirs and assigns against every person whomsoever

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Chas. J. Colcock (L.S.) (\$0.55 U.S. Stps.) Bessie M. Cashman (L.S.)

THE STATE OF SOUTH CAROLINA

Beaufort

Chas. J. Colcock, a Notary Public for South Carolina

do hereby certify that all and singular, the facts, matters, conditions and circumstances in the said premises foregoing, in as full and true a manner as they appear and to HAVE AND TO HOLD all and singular, the said premises to and for the use and behoof of Helen J. Carter, her

AND we, the undersigned, certify that ourselves and our Helen J. Carter, her heirs and assigns against every person whomsoever

Witness Our Hand and Seal this 30th day of November in the year of our Lord one thousand nine hundred and forty-five and of the Independence of the United States of America the

Henrietta M. Colcock (L.S.) (\$1.00 S.C. Stps.) J.O. Cashman (L.S.)

Chas. J. Colcock (L.S.) (\$0.55 U.S. Stps.) Bessie M. Cashman (L.S.)

The State of South Carolina,
COUNTY OF BEAUFORT,

KNOW ALL MEN BY THESE PRESENTS That we, J.O. and Beattie M. Cashman, of Savannah, Georgia,

for and
in presence of the sum of Three Hundred and fifty & 00/100 (\$350.00)
to Eugene V. Fontaine, of Beaufort, Georgia

Witnesseth, that we, J.O. and Beattie M. Cashman, of Savannah, Georgia, do hereby convey unto Eugene V. Fontaine, of Beaufort, Georgia, all that certain piece, parcel or lot of land situate, lying and being at Brighton Beach, in Bluffton Township, County of Beaufort, and State of South Carolina, containing approximately one-sixth (1/6) acres, in shape a parallelogram, and more particularly bounded and described as follows: Bounded on the North by other property of Grantors herein, separating the lot hereby conveyed from the Brighton Beach-Bluffton Road, along which property of Grantors herein it extends for a distance of One hundred and forty (140) feet; on the South by property of Helen J. Carter, along which it extends for a distance of one hundred and forty (140) feet; on the East by an unnamed road or street, separating the lot hereby conveyed from property now or formerly of G.L. Oliver, along which unnamed road or street it extends for a distance of fifty (50) feet; and on the West by property of Charles Harper, along which it extends for a distance of fifty (50) feet; and being a portion of the same property conveyed to Grantors herein by Deed of G.M. Masters dated October 29, 1916 and recorded November 7, 1916 in the office of Clerk of Court for Beaufort County, S.C., in Book 56, at Page 83. PROVIDED, HOWEVER, that it is understood and agreed by and between Grantors and Grantee herein that person or persons except of the white or Caucasian race; and PROVIDED, FURTHER, that it is understood and agreed by and between Grantors and Grantee herein that Grantee herein shall be given full access to, and free use of, a proposed dock to be created on the riverfront south, more or less, of the property hereby conveyed.

IN WITNESS WHEREOF, we, the said J.O. and Beattie M. Cashman, have hereunto set our hands and seals, this 23rd day of March, A.D. 1946.

Eugene V. Fontaine, his

AND we, ourselves and our
Eugene V. Fontaine, his
our
and against every person whomsoever

WITNESSES: our 23rd day of March, A.D. 1946, at Beaufort, South Carolina, the said Eugene V. Fontaine, his

Mrs. C.L. Jeffers (L.S.) (\$1.00 S.C. Stps.)
Luke Peoples (L.S.) (\$0.55 U.S. Stps.)

THE STATE OF SOUTH CAROLINA,
Beaufort County, I, Eugene V. Fontaine, his
she
I.O. Cashman and Beattie M. Cashman
their
23rd day of March, A.D. 1946
(Seal) Luke Peoples (L.S.)
Notary Public of S.C.

THE STATE OF SOUTH CAROLINA,
Beaufort County, I, Eugene V. Fontaine, his
she
I.O. Cashman and Beattie M. Cashman
their
23rd day of March, A.D. 1946
(Seal) Luke Peoples (L.S.)
Notary Public of S.C.

Beaufort, South Carolina, this 23rd day of March, A.D. 1946, at Beaufort, South Carolina, the said Eugene V. Fontaine, his
she
I.O. Cashman and Beattie M. Cashman
their
23rd day of March, A.D. 1946
(Seal) Luke Peoples (L.S.)
Notary Public of S.C.

Chris A. Rodriguez
Deputy

May 27, 1978.

District Engineer
Savannah District
U.S. Army Corps of Engineers
P.O. Box 889
Savannah, Georgia. 31402

Att: Permits and Statistics Branch.

Gentlemen:

I have a permit dated 29 September 1941 granting authority to construct a dock in May River, northerly bank, 4.1 miles above its mouth, near Bluffton, South Carolina.

The floating portion of the dock and ramp on the easterly side need to be replaced. Photograph "A" and "B" show the easterly side on left hand view in picture.

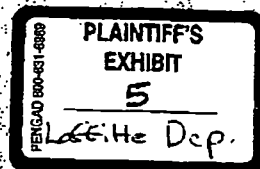
Request authority to replace the floating dock and ramp, the original floating dock size being 10 feet x 16 feet. It will be located in same position as before, where the three piling are standing in left hand view of photos.

Would appreciate any consideration you can give me at your earliest convenience.

Sincerely,

Eugene R. Cashman

Encl. - 2.
RKC/s





Dock on May River Included



Randall L. Fisher, CPM
Vice President
Real Estate Advisor

WACHOVIA TRUST

Wachovia Bank, N.A.
SC9346
1426 Main Street, 16th Floor
Columbia, SC 29226
Tel 803 765-3110
Fax 803 765-3099
randy.fisher@wachovia.com



SITE SIZE CALCULATIONS

- 1) $109.5' \times 87' = 9527 \text{ sq ft}$
- 2) $109.5' \times 12.6' = 1380 \text{ sq ft}$
- 3) $53' \times 70' = 3710 \text{ sq ft}$
- 4) $74' \times 70' = 5180 \text{ sq ft}$

$$\begin{aligned} &15,352 \text{ sq ft} \\ &\div 43,560 \\ &= .35 \text{ ACRE} \end{aligned}$$

OYSTER ST

33'

131' x .97' = 127'

72'

113' x .97' = 109.5'

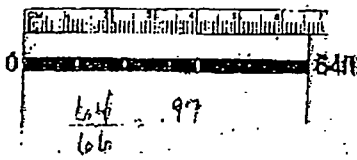
90' x .97' = 87'

12.6'

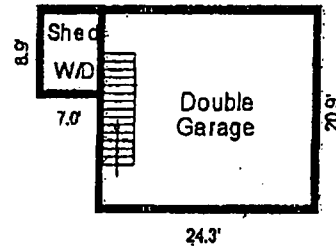
60' x .97' = 58'

113' x .97' = 109.5'

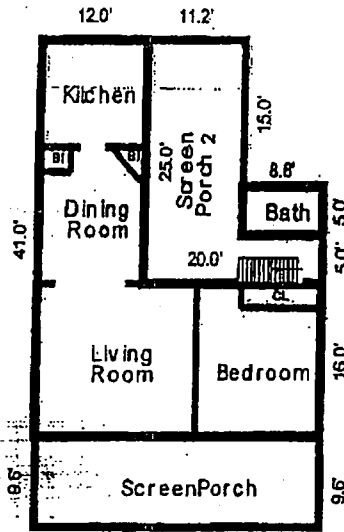
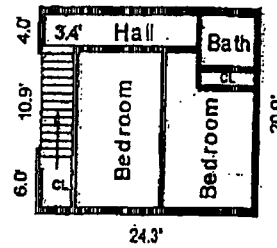
157' x .97' = 152.2'



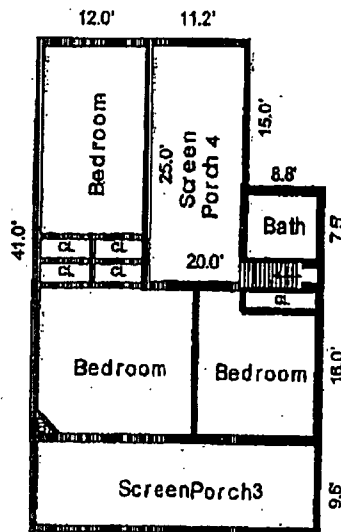
Garage



Level Above Garage



Level One



Level Two

Scale: 1/4" = 1'-0"

Comments:

AREA CALCULATIONS SUMMARY				Scale: 1 = 16		
Code	Description	Size	Totals	LIVING AREA BREAKDOWN		
GLA1	First Floor	812.00	812.00	Breakdown		
GLA2	Second Floor	812.00	812.00	Subtotals		
GLA3	First Floor Bath	44.00	44.00	First Floor		
GLA4	Second Floor Bath	66.00	66.00	12.0 x 41.0		
GLA5	Living Above Garage	470.81	470.81	16.0 x 20.0		
R/P	Screen Porch	307.20		Second Floor		
	Screen Porch 2	324.00		12.0 x 41.0		
	Screen Porch 3	307.20		16.0 x 20.0		
	Screen Porch 4	302.00	1240.40	First Floor Bath		
GAR	Double Garage	507.87	507.87	5.0 x 8.8		
OTS	Shed/Laundry	62.30	62.30	Second Floor Bath		
				7.9 x 8.8		
				Living Above Garage		
				20.9 x 20.9		
				3.4 x 4.0		
				3.4 x 6.0		
TOTAL LIVABLE (rounded)			2205	9 Areas Total (rounded)		

TENANT-IN-COMMON PROPERTY
MARCH 16, 2005

I. REVIEW OF THE LAST MEETING MINUTES

II. JOINT PROPERTY

A. Club House

1. Dining room wall and china hall wall deterioration - when to do repair?
2. Quote on removing two dead live oaks - when to do it?
3. Thinning completed
4. Wood Brothers to repair small cornfield dike on island.

B. Oak Point

1. Ended up putting out 4,000 birds in Oct, 1,600 bird in Nov and 1,600 birds in Dec. Killed 1,367 through 2/24/05, which was nine trips around. Recommendations for next year?
2. Tom Davis's e-mail regarding the Griffin property -

C. Smithfield

1. Thinning completed.

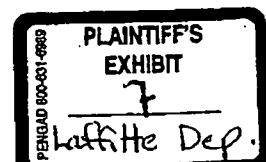
D. Bluffton

1. Gene Cashman called. He is interested in replacing his ramp and floating dock. He also mentioned replacing some cross bracing on the pier head. He asked for access through the locked gate and I mailed him a key. I have since asked him not to proceed until he gets the Lightsey families' direction. (Who owns it? Who pays for the repairs? Who is liable? How much value is taken away by allowing the Cashman's to use our dock? What are the benefits of allowing them to continue to use our dock?)
2. Plumbing and electrical work \$10,000. 2/10/05
3. To be cleaned up after leaf fall

III. OTHER BUSINESS

- A. Next meeting is scheduled for _____.

000143





DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

SASOP-F
074 OYN 002354

MAY 18 1977

Cashman Construction Company
Attn: Mr. Eugene Cashman
105 E. Bay Street
Savannah, Georgia 31401

Dear Mr. Cashman:

Reference is made to your letter of 5 May 1977 requesting authorization to replace a floating dock, two piling and ramp attached to the eastern end of an existing dock located on the Northerly bank of the May River, approximately 4.1 miles above its mouth, near Bluffton, South Carolina. The existing dock was authorized by the Secretary of the Army in a permit to Lightsey Brothers, Miley S.C., dated 21 February 1961. The permit specifically stated that it did not authorize any infringement of Federal, State or local laws or regulations.

Since issuance of the original permit the State of South Carolina has instituted a permit program which requires a permit for any construction or alteration when the activity involves the use of any land below the mean high water line. The State further requires that all applications for a State Permit be initiated by issuance of a Public Notice.

A review of the files reveal that the permit authorizing the original structure was issued in 1961 without having been advertised by Public Notice. Therefore, before the work proposed in your letter of 5 May can be authorized, a Public Notice must be issued and circulated for a minimum of fifteen days.

In order to publish the required Public Notice, it will be necessary for you to provide a drawing on the proposed work. The drawing should specify dimensions and location in relationship to the existing structure.

If you have any further questions please contact Jack Moser of this office, telephone 912, 233-8822 extension 349.

Sincerely,

STEVEN OSVALD
Chief, Regulatory Functions Branch



District Engineer

Request permission to replace floating dock, two ~~existing~~ piling and ramp which would be attached to the Eastern end of existing dock located on the Northerly bank of the May river, approximately 4.1 miles above its mouth, near Bluffton, S.C.

The size of the floating dock would be 10 ~~feet~~ feet wide and 16 feet long. *The floating dock would be located at (X) on enclosed map*

The present dock is approximately 261 feet from high land, with a ~~5 foot wide walkway and is approximately 14 feet wide and 21~~

~~feet long.~~ The dock is owned by Lightsey Brothers and I have permission to construct this floating dock as per statement below of Oswald Lightsey.

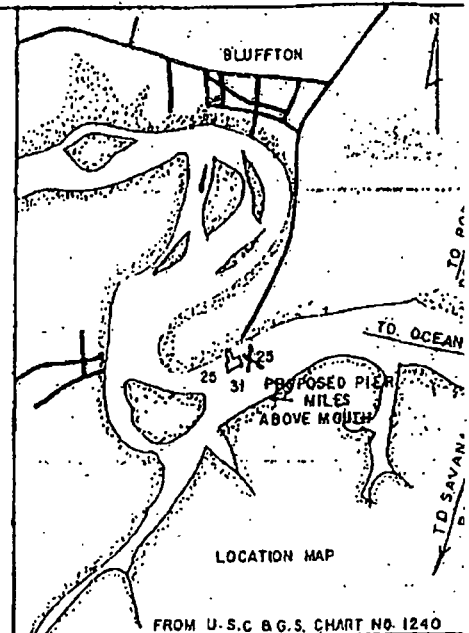
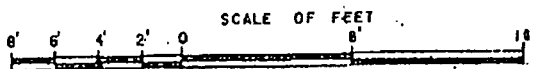
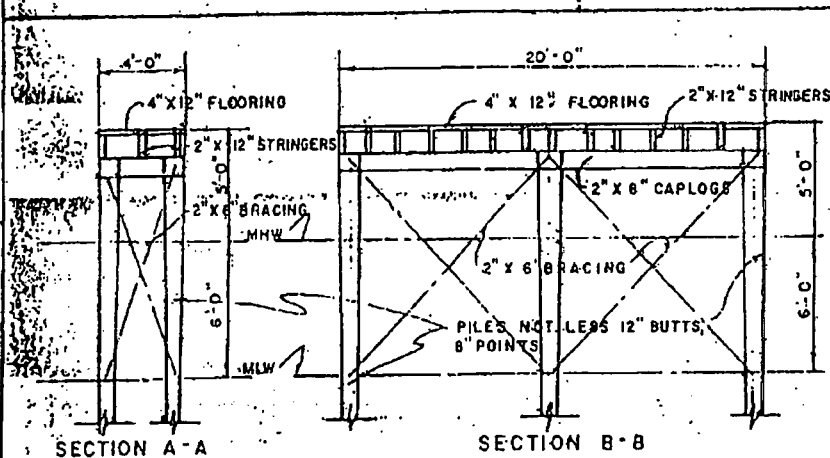
Sincerely —

Enclosure

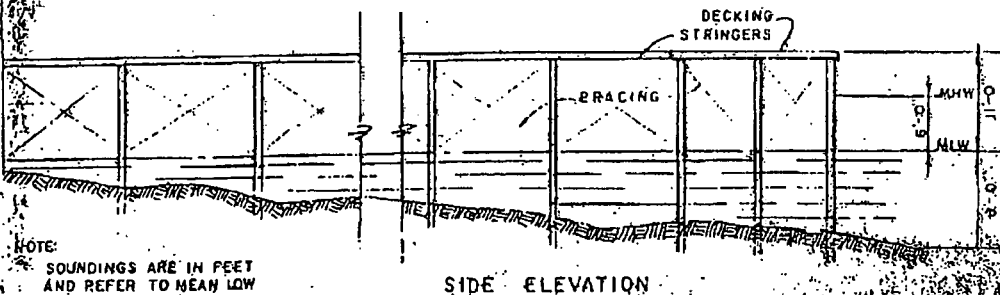
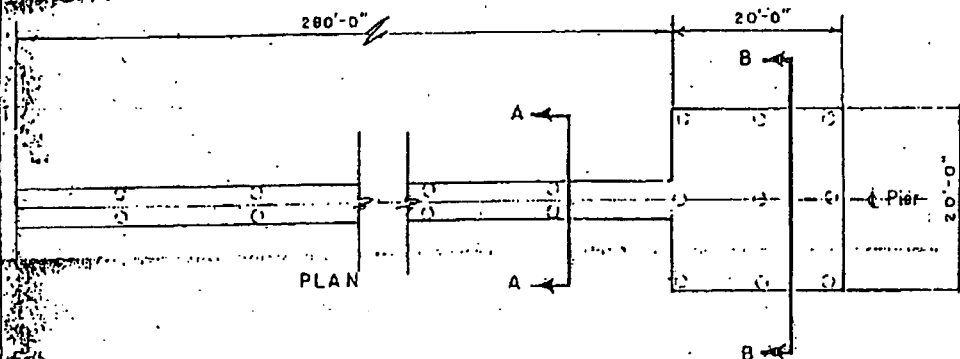
I, Oswald Lightsey, do hereby give permission to Eugene K. Cashman, to attach floating dock and ramp to dock as mentioned in above application for permit.

Signed-

Signed by Oswald Lightsey 5/9/27
Relinquished to Engineer 5/26/27



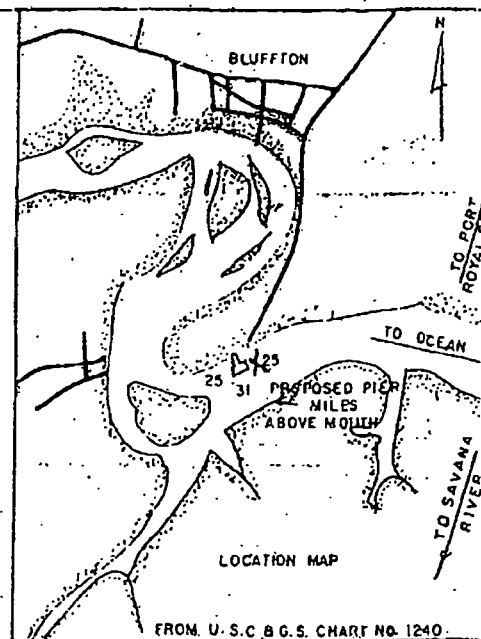
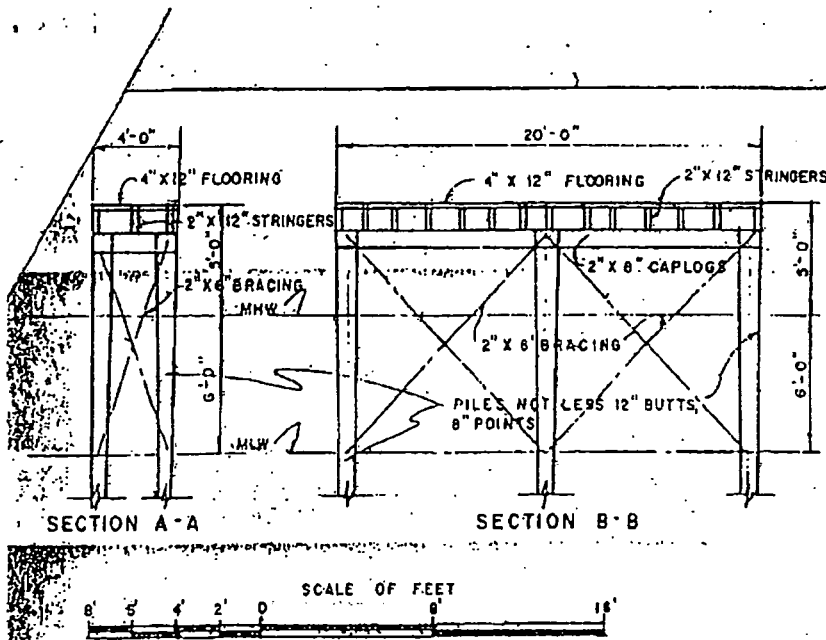
Properly Owner
(Name) Lightsey Brothers
(Address) Brighton Beach, S



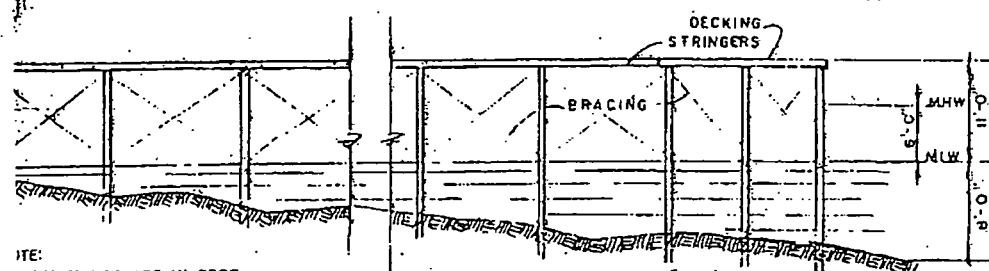
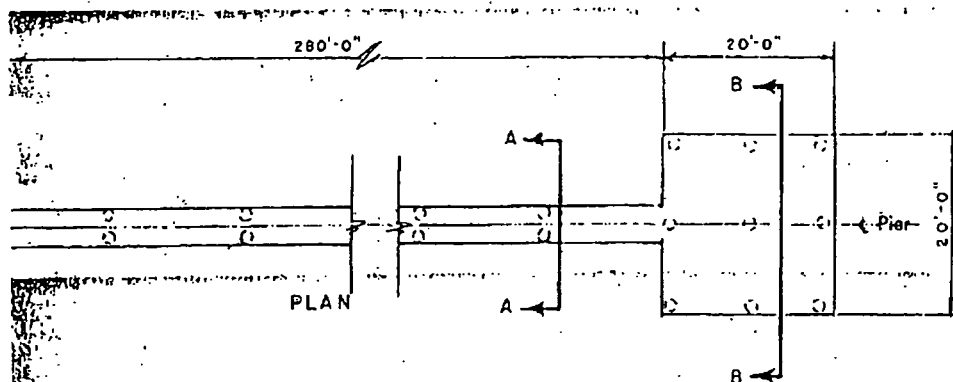
NOTE:
SOUNDINGS ARE IN FEET
AND REFER TO MEAN LOW
WATER.

HARBOR LINES (ARE) ESTABLISHED
(ARE NOT)

SCALE OF FEET



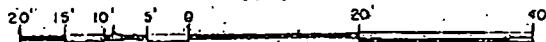
Property Owner
(Name) Lightsey Brothers
(Address) Brighton Beach, S.C.



NOTE:
SOUNDINGS ARE IN FEET
AND REFER TO MEAN LOW
WATER.

HARBOR LINES (ARE) ESTABLISHED
(ARE NOT)

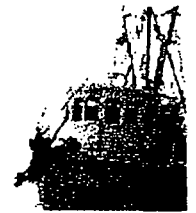
SCALE OF FEET



Proposed Pier
in South Carolina
at Brighton Beach, S.C.
County of Jasper of State S.C.
Application by Lightsey Brothers
October 31 1960 Date



Beaufort County



Overview

Owner Name
2 of 4Data
refreshed
as of

5/26/2009

Records

Overview

Bird's Eye View

Parcel

Land

Improvements

Sales Disclosure

Pay Taxes

Value History

GIS / Mapping

Shopping Cart

Property ID (PIN) Alternate ID (AIN) Parcel Address

R600 039 00C 0126
0000

00507507

31 OYSTER ST,



Current Parcel Information

Owner LIGHTSEY LOUISE CLELAND
WACHOVIA BAN Property Class Code ResImp SingleFamily
Acreage .0000Owner Address PO BOX 56
HAMPTON SC 29924

Legal Description LOTS 1-2-3A S 1/2 LOT 4A

Historic Information

Search by

Owner Name

Property ID (PIN)

Street Address

Alternate ID (AIN)

Legal Description

Sales

Tax Year	Effective Year	Land	Building	Market	Taxes	Payment
2008	2007	\$416,000	\$110,000	\$526,000	\$6,526.11	\$6,526.11
2007	2006	\$416,000	\$110,000	\$526,000	\$6,252.28	\$6,252.28
2006	2005	\$416,000	\$110,000		\$5,687.35	\$19,839.91
2005	2004	\$416,000	\$110,000		\$5,292.85	\$18,462.19
2004	2003	\$416,000	\$110,000		\$5,133.80	\$17,908.92

Functions

Homepage

Real Property

Personal Property

Help

Feedback

County Login

Sales Disclosure

Grantor	Book & Page	Date	Deed Vacant	Sale Price
LIGHTSEY LOUISE CLELAND WACHOVIA BA	2234 494	9/7/2005	E	\$1
LIGHTSEY LOUISE CLELAND	1947 1026	4/29/2004	E	\$1
LIGHTSEY LOUISE CLELAND	394 1272	12/1/1983	F	\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size
R01	DWELL	Dwelling	1930	2.0	03	1,848	
R02	DWELL	Dwelling	1930	2.0	01	504	
R02	ATTGAR	Attached Garage	1930	0	0		504
R02	PIER	Waterfront Pier	1986	0	0		720
R02	GAZEBO	Residential Gazebo	1986	0	0		192
R02	BOATD	Waterfront Boat Dock	1986	0	0		288
R02	PIER	Waterfront Pier	1986	0	0		192

Features & Exterior Features

Building	Type	Feature Code	Description	No. / Sq. Ft.	Value
R01	DWELL	COOLING	None	1	\$0
R01	DWELL	EXT. COVER	Hardboard	1	\$0
R01	DWELL	FOUNDATION	Full Slab	1	\$0
R01	DWELL	HEATING	Forced hot air	1	\$0
R01	DWELL	OFF-S	Open Frame Porch	208	\$5,710
R01	DWELL	OFF-S	Open Frame Porch	208	\$5,710
R01	DWELL	OFF-S	Open Frame Porch	320	\$7,040
R01	DWELL	OFF-S	Open Frame Porch	320	\$7,040
R02	DWELL	COOLING	None	1	\$0
R02	DWELL	EMP	Enclosed Masonry Porch	63	\$2,790
R02	DWELL	EXT. COVER	Hardboard	1	\$0
R02	DWELL	FOUNDATION	Full Slab	1	\$0
R02	DWELL	HEATING	Forced hot air	1	\$0

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Print Print List First Previous Next Last

NORRIS L. LAFFITTE
POST OFFICE BOX 81 HAMPTON, SOUTH CAROLINA 29924

March 21, 2005

Mr. Eugene K. Cashman, Jr.

Memphis, TN

RE: Bluffton dock

Dear Gene:

At the family meeting last week it was decided that the Lightsey family wants exclusive use of their dock.

Please return the key that I should not have mailed to you without permission from the family.

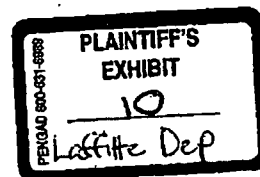
Sincerely,


Norris L. Laffitte

CC: Lou Baughman
Lil Drawdy
Claudia Ware
Margaret Payne
Beth McMaster

*I am not at liberty
to comment*

TELEPHONE 803-943-5757
FAX 803-943-5779



000188

EUGENE K. CASHMAN, JR.
MEMPHIS, TENNESSEE

March 28, 2005

Dear Norris,

You were right, I was glad to be sitting down when I spoke with you Thursday and again Friday when I got the letter you had sent. As I said, I was taken aback by the action your family took regarding the dock, and even as I write this letter I am still in a state of disbelief. All my questions, that you were directed not to answer, are still not answered. There really has been a major disconnect if something of this order has been decided and communicated in this mode. This is obviously not the manner in which our families, for more than 75 years, have related to one another. For sure, if something has occurred that apologies are due, please accept my apology.

I know times change and people too. But from our families' relationship of sharing, fellowship, faith, trust, and handshakes to this, is, for sure, not what was intended by those who established and endeavored to pass on those virtues and beliefs to the succeeding generations. If that's been lost to a "new day" generation then we've lost more than what's being addressed in this letter.

I would respectfully like to ask your family to reconsider its decision. If there are issues to be resolved then let's resolve them. If a more formal agreement is needed to make the dock a business relationship then let's make it. I am willing to do whatever it takes to keep our families' friendship/relationship on smooth seas.

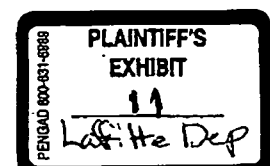
I am returning the key you sent without family permission. The envelope, as you can see, was never opened. Your call caused a stop to the completion of the dock repair to the main dock and floating dock. I had, as I told you, been in pursuit of a firm to repair the dock for more than 6 months and finally had secured the services of a company from Savannah. He was on site about to begin the work when I got your call.

On the matter of the lady you met on the dock - I've enclosed the letter she sent me this past summer. I called her and told her that if she had the Lightsey's permission to use the dock I had no objection. As you can see her relationship dates back to 1965. Her permission to use the dock would have been given by your grandfathers and mine.

I am not going to write more, although a lot is on my heart and mind. I would just ask for consideration by your family to reconsider their Bluffton dock decision.

Sincerely,

Eugene K. Cashman, Jr.



To the Cashman family:

In 1965 the Cashman family, Mrs. Carter and the Lightseys gave me permission to use your dock. I used it until the early 1980's when my two sons grew up and no longer wanted to fish, crab and swim there. The Lightseys always said I was their custodian at the dock because we were there constantly. We never went there on the weekends however, that time was for the owners and their families.

Now I have an 11 year old grandson who just moved back here yesterday from Indiana. HE had been gone since he was 3. He loves to fish and crab and I wanted to just ask if I might take him on the dock a couple of times a month and let him fish. My boys and I always respected your family and left no trash, food or dead shrimp on the dock and I plan to continue to do so if you decide that I can take Joey there occasionally.

We would love to come down early in the morning/mornings and crab and just enjoy the quiet of fishing there where it is so beautiful.

I guess I am just asking your permission to again be able to use the dock once in a while. We will never be there when your family is there like weekends, holidays, etc. Please let me know and if you say no I can understand. Young Shelby used to come out and spend the time talking with me. He was about Joey's age then. Again if you say no, I will not feel bad about it.

Thanks, Dianne Reynolds

Environmental Checklist

1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029	2029-2030	2030-2031	2031-2032	2032-2033	2033-2034	2034-2035	2035-2036	2036-2037	2037-2038	2038-2039	2039-2040	2040-2041	2041-2042	2042-2043	2043-2044	2044-2045	2045-2046	2046-2047	2047-2048	2048-2049	2049-2050	2050-2051	2051-2052	2052-2053	2053-2054	2054-2055	2055-2056	2056-2057	2057-2058	2058-2059	2059-2060	2060-2061	2061-2062	2062-2063	2063-2064	2064-2065	2065-2066	2066-2067	2067-2068	2068-2069	2069-2070	2070-2071	2071-2072	2072-2073	2073-2074	2074-2075	2075-2076	2076-2077	2077-2078	2078-2079	2079-2080	2080-2081	2081-2082	2082-2083	2083-2084	2084-2085	2085-2086	2086-2087	2087-2088	2088-2089	2089-2090	2090-2091	2091-2092	2092-2093	2093-2094	2094-2095	2095-2096	2096-2097	2097-2098	2098-2099	2099-2100	2100-2101	2101-2102	2102-2103	2103-2104	2104-2105	2105-2106	2106-2107	2107-2108	2108-2109	2109-2110	2110-2111	2111-2112	2112-2113	2113-2114	2114-2115	2115-2116	2116-2117	2117-2118	2118-2119	2119-2120	2120-2121	2121-2122	2122-2123	2123-2124	2124-2125	2125-2126	2126-2127	2127-2128	2128-2129	2129-2130	2130-2131	2131-2132	2132-2133	2133-2134	2134-2135	2135-2136	2136-2137	2137-2138	2138-2139	2139-2140	2140-2141	2141-2142	2142-2143	2143-2144	2144-2145	2145-2146	2146-2147	2147-2148	2148-2149	2149-2150	2150-2151	2151-2152	2152-2153	2153-2154	2154-2155	2155-2156	2156-2157	2157-2158	2158-2159	2159-2160	2160-2161	2161-2162	2162-2163	2163-2164	2164-2165	2165-2166	2166-2167	2167-2168	2168-2169	2169-2170	2170-2171	2171-2172	2172-2173	2173-2174	2174-2175	2175-2176	2176-2177	2177-2178	2178-2179	2179-2180	2180-2181	2181-2182	2182-2183	2183-2184	2184-2185	2185-2186	2186-2187	2187-2188	2188-2189	2189-2190	2190-2191	2191-2192	2192-2193	2193-2194	2194-2195	2195-2196	2196-2197	2197-2198	2198-2199	2199-2200	2200-2201	2201-2202	2202-2203	2203-2204	2204-2205	2205-2206	2206-2207	2207-2208	2208-2209	2209-2210	2210-2211	2211-2212	2212-2213	2213-2214	2214-2215	2215-2216	2216-2217	2217-2218	2218-2219	2219-2220	2220-2221	2221-2222	2222-2223	2223-2224	2224-2225	2225-2226	2226-2227	2227-2228	2228-2229	2229-2230	2230-2231	2231-2232	2232-2233	2233-2234	2234-2235	2235-2236	2236-2237	2237-2238	2238-2239	2239-2240	2240-2241	2241-2242	2242-2243	2243-2244	2244-2245	2245-2246	2246-2247	2247-2248	2248-2249	2249-2250	2250-2251	2251-2252	2252-2253	2253-2254	2254-2255	2255-2256	2256-2257	2257-2258	2258-2259	2259-2260	2260-2261	2261-2262	2262-2263	2263-2264	2264-2265	2265-2266	2266-2267	2267-2268	2268-2269	2269-

Acopari Name: James E. O'Leary Trust (Wife of Baughman)

Street Address and Power House Address (if different)	Plot Map Attached: Yes ☒ No ☐	
City/Town/Village	PSID No.	Photo Date: 209/0/00
Contact Person	Telephone (C/F)	
Improved/Unimproved Site	Improved ☐ Unimproved ☐	Single Family ☐ Other (please explain)
Approved/Not Approved	Conditional Improvement ☐	Insurance Reviewed ☐
Access to Access Easement	Easement ☐ No Easement ☐	Interior Structural ☐
Comments: This trailer home will be water front on the Yavapai National Shuntin. SC has regarded a technical problem by the		

1. ชื่อสถาบันการศึกษา 2. ชื่ออาจารย์ผู้สอน 3. ชื่อผู้เรียน 4. ชื่อวิชา	5. ชื่อสถาบันการศึกษา 6. ชื่ออาจารย์ผู้สอน 7. ชื่อผู้เรียน 8. ชื่อวิชา

Item	Asap	2 Weeks	1 Month	3 Months	6 Months	1 Year	Never	Not Applicable
Color of gutters								
Guttering could work better								
Guttering works but could be better								
Storage tanks - Underground look for vent pipes and the ports. Above ground - No Storage tanks								
Storage Drums								
Drinking water well - saps system								
Municipal water / sewer								
Driveway condition satisfactory								
Sidewalk condition satisfactory								
Trees / landscape / flowers / shrubs adequate, weeded and pruned								
Lawn cut frequently								
Pool maintenance satisfactory								
Pool security adequate								
Lighting adequate								

512

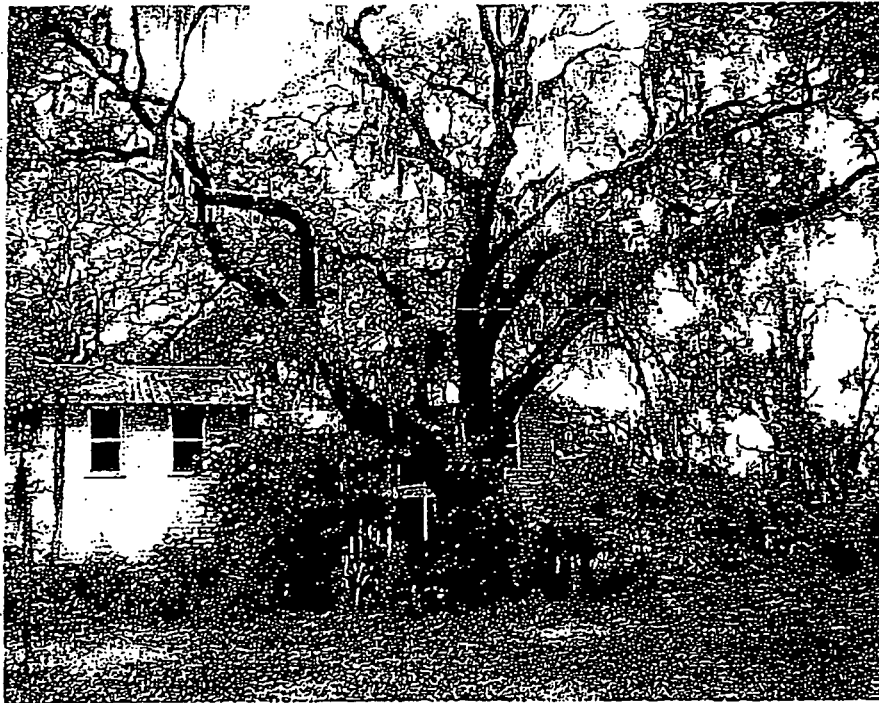
PICTURE OF SUBJECT PROPERTY

000059



9/11/2007 1:15:10 PM

000060



9/11/2007 1:14:06 PM



000061

2/3



9/11/2007 1:14:52 PM



9/11/2007 1:15:01 PM

000062

ALLJOY BEACH PRESERVATION COMMITTEE
Bluffton, South Carolina

To: Brighton Beach Subdivision Property Owners

During the past nine months ownership of the Alljoy Beach property and other open spaces in the Brighton Beach Subdivision was researched. The question of ownership was raised after concerns were expressed about patrol and enforcement of laws and ordinances at the Alljoy Beach. After discussion with the Beaufort County Sheriff, the Beaufort County Council, and members of the Alljoy Beach Preservation Committee, legal documents were found that determined the ownership of the property. These open spaces belong to the owners of the 305 pieces of property in the Brighton Beach Subdivision.

Two open meetings have been held to bring information to the public concerning the legal status of the open spaces in the Brighton Beach Subdivision as designated by T. O. Lawton. It has been recommended that a property owners association be formed to provide a venue for legal management of these properties.

There is much involved in forming a property owners association and input is needed from all property owners. A meeting is scheduled for members of the Brighton Beach Subdivision to begin this process. The agenda will include a brief overview of ownership and Brighton Beach Subdivision boundaries and focusing on the actual work for the development of the Property Owners Association. The meeting will be held

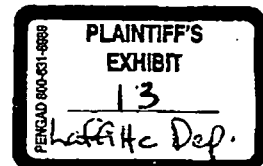
Monday, October 9, 2006
6:30 pm at the
Marine Rescue Squad Hut at
51 Confederate Avenue
Bluffton, SC

If you have questions before the meeting please contact Carolyn Smith with the Alljoy Beach Preservation Committee at CARAMAR@HARGRAY.COM.

This is an opportunity to help make the Property Owners Association a viable organization in our community. Please join us for this important meeting.

Carolyn Smith

Carolyn Smith
Alljoy Beach Preservation Committee Member



000191

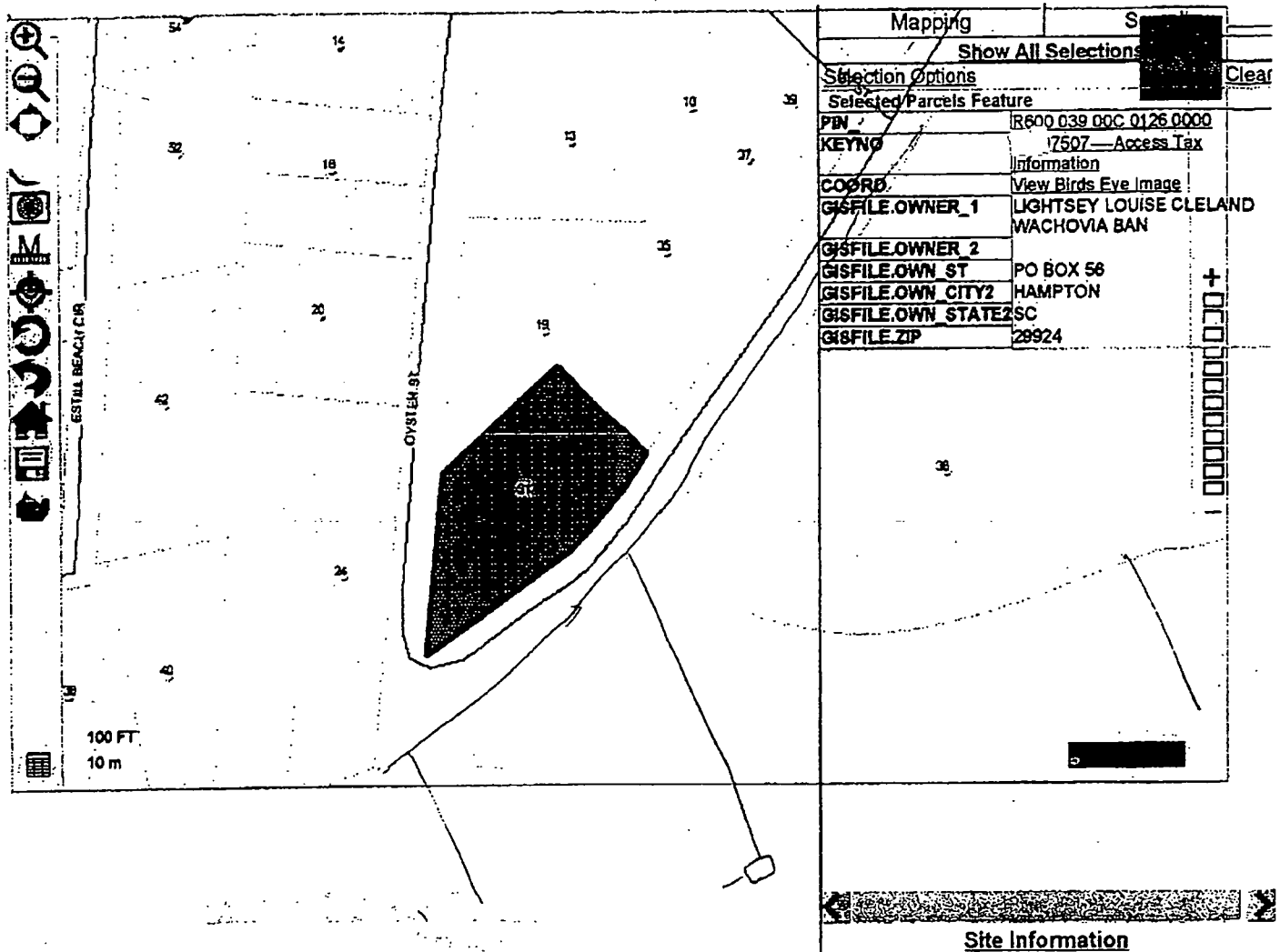
Bluffton Dock Repair Summary

Mar-86 Ansley Marine	715.00
Nov-87 Crew	208.80
Jun-88 Crew	766.75
Jul-88 Crew	188.40
Mar-91 Crew	117.70
Aug-92 Lowsouth Holdings	391.18
Aug-92 Lowsouth Holdings	44.35
Aug-92 Lowsouth Holdings	853.01
Aug-92 Ansley Marine	3,400.00
Apr-93 Chapman	720.00
Mar-94 Randy West	1,750.00
Mar-99 Norris	379.36
Mar-00 Nell Lax	731.77
May-00 Atlantic Marine	5,600.00
Sep-04 Norris	278.85
Nov-05 Norris	689.33
Oct-06 Knox Roofing	1,000.00
Jul-09 Norris	384.47
Aug-09 Dennis	63.88

18,022.63

000146

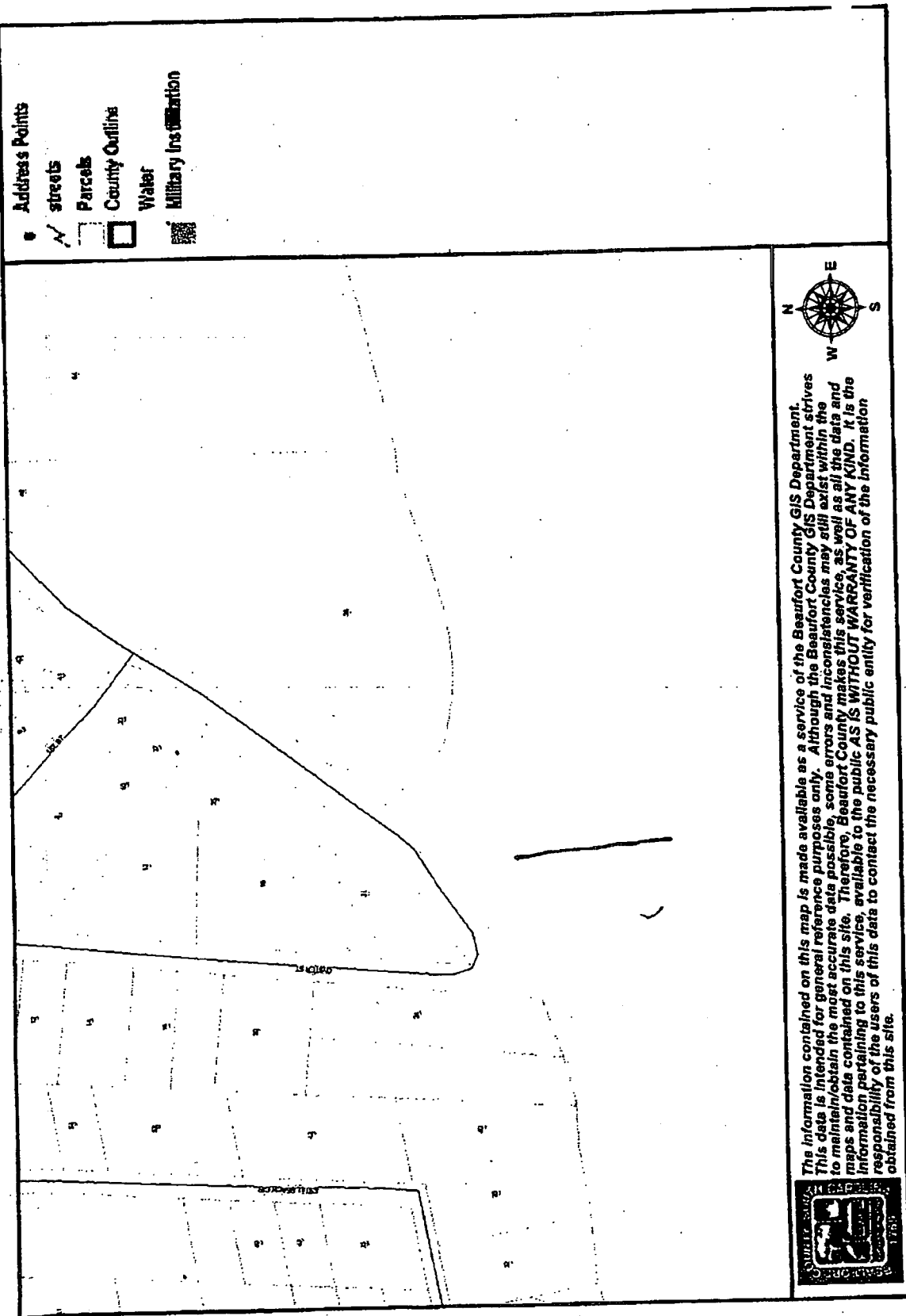




Map Tool Options

Active Tool: Zoom Out

The current cursor mode is set to 'Zoom Out'. Clicking on the map directly will zoom out on the map centered at the point clicked.





Beaufort County



Overview

Owner Name
2 of 2

Records

Overview

Bird's Eye View

Parcel

Land

Improvements

Sales Disclosure

Pay Taxes

Value History

GIS / Mapping

Shopping Cart

Property ID (PIN) Alternate ID (AIN) Parcel Address

R600 039 00C 0134
0000

00507570

13 OYSTER ST,

NO
DICKData
refreshed
as of

5/26/2009

Current Parcel Information

Owner

DAVIS ELIZABETH CASHMAN
CASHMAN EUGE

Property Class Code

ResVac Platted&Unplatted

Acreage

.0000

Owner Address

MEMPHIS TN

Legal Description PAR 134 135 136 BLK A LOT 13-15

Historic Information

Search by

Owner Name

Property ID (PIN)

Street Address

Alternate ID (AIN)

Legal Description

Sales

Tax Year	Effective Year	Land	Building	Market	Taxes	Payment
2008	2007	\$50,000		\$50,000	\$623.59	\$623.59
2007	2006	\$50,000		\$50,000	\$597.20	\$597.20
2006	2005	\$50,000			\$543.50	\$543.50
2005	2004	\$50,000			\$506.00	\$506.00
2004	2003	\$50,000			\$489.43	\$489.43

Functions

Homepage

Real Property

Personal Property

Help

Feedback

County Login

Sales Disclosure

Grantor

CASHMAN EUGENE K JR DAVID
ELIZABETH

Book & Page

1597 323

Date

6/11/2002

Deed

Q

Vacant

Sale Price

\$10

CASHMAN EUGENE K SR

742 103

8/12/1994

F

\$10

CASHMAN EUGENE K SR

200 938

1/1/1980

F

\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size

Features & Exterior Features

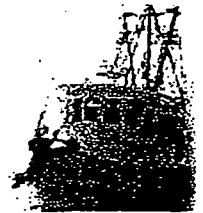
Building	Type	Feature Code	Description	No. / Sq.Ft.	Value

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Print Print List First Previous Next Last



Beaufort County



Overview



Owner Name
1 of 2

Records

Overview

Bird's Eye View

Parcel

Land

Improvements

Sales Disclosure

Pay Taxes

Value History

GIS / Mapping

Shopping Cart

Property ID (PIN) Alternate ID (AIN) Parcel Address

0000 0128 7525

35 OYSTER ST,

No
DOCK

Data
refreshed
as of

5/26/2009

Current Parcel Information

Owner DAVIS ELIZABETH CASHMAN Property Class Code ResImp SingleFamily
CASHMAN EUGE Acreage .0000

Owner Address MEMPHIS TN

Legal Description LOTS 6 7 POR LOT 12 BLK A BRIGHTON BEACH

Historic Information

Search by

	Tax Year	Effective Year	Land	Building	Market	Taxes	Payment
Owner Name	2008	2007	\$50,000	\$126,600	\$176,600	\$2,249.29	\$2,249.29
Property ID (PIN)	2007	2006	\$50,000	\$126,600	\$176,600	\$2,150.88	\$2,150.88
Street Address	2006	2005	\$50,000	\$126,600		\$1,961.20	\$1,961.20
Alternate ID (AIN)	2005	2004	\$50,000	\$126,600		\$1,828.75	\$1,828.75
Legal Description	2004	2003	\$50,000	\$126,600		\$1,750.22	\$1,750.22
Sales							

Functions

Homepage

Real Property

Personal Property

Help

Feedback

County Login

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
CASHMAN EUGENE K JR DAVIS ELIZABETH	1597 323	6/11/2002	Q		\$10
CASHMAN EUGENE K SR	742 103	8/12/1994	F		\$10
CASHMAN EUGENE K SR	200 938	1/1/1980	F		\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size
R01	DWELL	Dwelling	1930	1.0	01	2,750	
R01	ATTGAR	Attached Garage	1930	0	0		529

Features & Exterior Features

Building	Type	Feature Code	Description	No. / Sq.Ft.	Value
R01	DWELL	1CHMMASO	1s Outside masonry chimney	1	\$560
R01	DWELL	COOLING	Central air	1	\$5,640
R01	DWELL	EXT. COVER	Wood siding-cedar	1	\$0
R01	DWELL	FOUNDATION	Full Slab	1	\$0

http://sc-beaufort-county.governmax.com/svc/agency/sc-beaufort-county/tab_summary_report.asp?t_nm=s... 6/4/2009

(6)

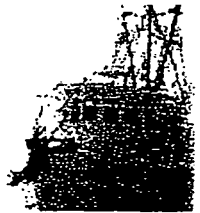
R01	DWELL	HEATING	Heat pump	1	\$6,600
R01	DWELL	MAS	Masonry fireplace	1	\$2,200
R01	DWELL	OFF	Open Frame Porch	470	\$8,170
R01	DWELL	OFF-S	Open Frame Porch	460	\$10,120

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Print Print List First Previous Next Last



Beaufort County



Overview



Owner Name
1 of 2

Records

Overview

Bird's Eye View

Parcel

Land

Improvements

Sales Disclosure

Pay Taxes

Value History

GIS / Mapping

Shopping Cart

Property ID (PIN) Alternate ID (AIN) Parcel Address

0000 0127 7516

19 OYSTER ST.

No
Duck

Data
refreshed as
of

5/26/2009

Current Parcel Information

Owner CASHMAN EUGENE KEENE JR
TRUSTEE KATH

Property Class Code ResImp SingleFamily

Acreage .0000

Owner Address
MEMPHIS TN

Legal Description LT5 N 1/2 LT 4A LTS10-11-12-13

Historic Information

Search by	Tax Year	Effective Year	Land	Building	Market	Taxes	Payment
Owner Name	2008	2007	\$50,000	\$680	\$50,680	\$649.01	\$649.01
Property ID (PIN)	2007	2006	\$50,000	\$680	\$50,680	\$620.38	\$620.38
Street Address	2006	2005	\$50,000	\$680		\$565.93	\$565.93
Alternate ID (AIN)	2005	2004	\$50,000	\$680		\$527.91	\$527.91
Legal Description	2004	2003	\$50,000	\$680		\$530.84	\$530.84
Sales							

Functions

Homepage

Real Property

Personal Property

Help

Feedback

County Login

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
CASHMAN EUGENE K JR KATHLEEN G JTRO	1592 1617	5/29/2002	Q		\$10
RYAN ANTHONY V JR TAWANA P JTROS	1159 906	4/7/1999	F		\$212,000
CARTER C RAY III	875 1667	3/20/1996	F		\$5,000
CARTER C RAY III RTE1	590 1326	10/14/1991	E		\$0
CARTER LOUISE B	523 748	2/1/1989	F		\$0
CARTER C RAY LOUISE	6933 3142	11/1/1983	E		\$0
CARTER C RAY LOUISE	66 326	1/1/1980	F		\$0

Improvements

Building	Type	Use Code	Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size
R01	UTLSHED	Residential Shed - Small Util		1930	0	0		20C

Features & Exterior Features

Building	Type	Feature Code	Description	No. / Sq.Ft.	Value

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BK 3 Pg 36

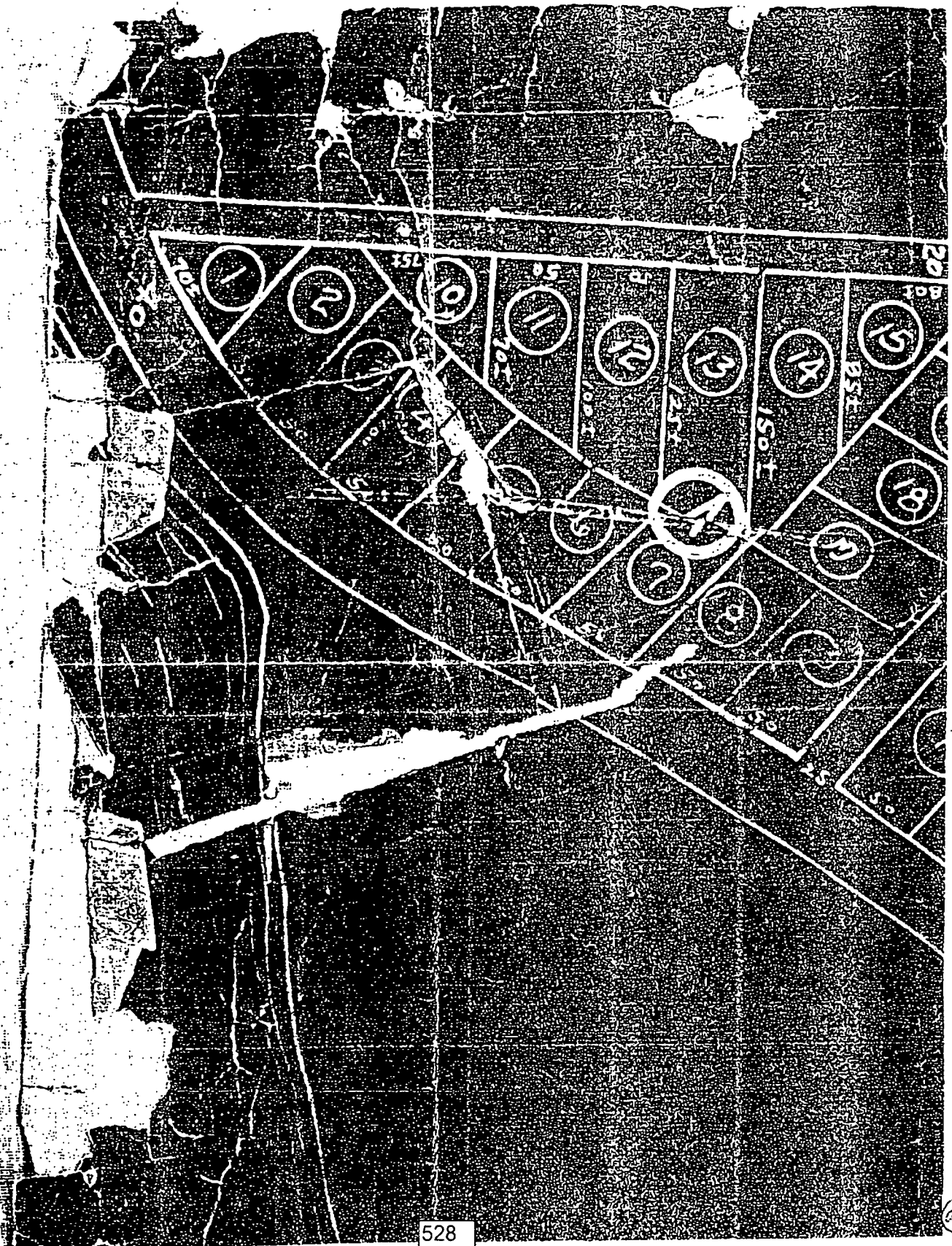


EXHIBIT 61

DEPOSITION OF
EUGENE KEENY CASHMAN, JR.

taken
March 12, 2010

in the matter of

Cashman & Cashman

-vs-

Lightsey Trust, Wachovia, et al.
[2009-CP-07-2573]

**COMPRESSED TRANSCRIPT
AND WORD INDEXING**

Bettye Anderson & Associates

Beaufort, South Carolina
843.525.0791 800.543.5506
www.anderson-reporting.com

Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 1 PAGE 1

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

Eugene Keeny Cashman, Jr.,)
 as Trustee of the Eugene)
 Keeny Cashman, Jr. Revocable)
 Trust, and Kathleen Gilmore)
 Cashman, as Trustee of the)
 Kathleen Gilmore Cashman)
 Revocable Trust,)
 Plaintiffs,)
 -versus-) Civil Action Number
 2009-CP-07-2573
 E. Oswald Lightsey Trust,)
 Wachovia Bank, N.A., as)
 Trustee Under the Last Will)
 and Testament of E. Oswald)
 Lightsey, and Margaret L.)
 McMillan (sic) Payne and)
 Elizabeth L. McHester, as)
 Trustees of the Residuary)
 Trust Pursuant to the Last)
 Will and Testament of E.)
 Oswald Lightsey (sic),)
 Defendants.)

Deposition of EUGENE KEENY CASHMAN, JR., taken by
 Counsel for the Defendants on the 12th day of March, 2010,
 at the Law Offices of Laughlin & Bowen, P.C., 92-A Main
 Street, Hilton Head Island, South Carolina, commencing at
 approximately 9:08 a.m.

PAGE 2

APPEARANCES

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Reported by: Matthew Hazen Anderson
 Notary Public/Court Reporter

Also present: Norris Lightsey Laffitte
 Randall L. Fisher

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INDEX TO DEPOSITION

Index to Defendant's Exhibits 3
 Direct Examination by Mr. Laughlin. 4
 Cross-Examination by Mr. Berglund 62
 Certificate of Reporter 64

---o0o---

PAGE 3

REPORTER'S INDEX TO DEFENDANT'S EXHIBITS

Number	Description	Page
1	1-page letter dated May 27, 1975, to District Engineer, U.S. Army Corps of Engineers, from Eugene K. Cashman	38
2	1-page letter dated 19 June 1975 to Eugene K. Cashman from Steven Oswald	39
3	4-page exhibit consisting of a letter dated May 5, 1977, to District Engineer, U.S. Army Corps of Engineers, from Eugene K. Cashman with attachments	40
4	1-page letter dated May 18, 1977, to Cashman Construction Company from Steven Oswald, Savannah District, Corps of Engineers	43
5	2-page document entitled "Application for a Department of the Army Permit," dated 05/31/77	44
6	2-page exhibit consisting of a letter dated July 22, 1977, to Eugene Cashman from Oswald Lightsey and a letter dated July 21, 1977, to Lightsey Brothers from Jeffrey F. Havel, Environmental Biologist, State of South Carolina Water Resources Commission	45
7	3-page document dated June 28, 1977, entitled "Public Notice," with attachments	48
8	1-page letter dated March 21, 2005, to Eugene K. Cashman, Jr., from Norris L. Laffitte	56
9	2-page exhibit consisting of a letter dated March 28, 2005, addressed to "Dear Norris" from Eugene K. Cashman, Jr., with an undated letter addressed "To the Cashman family" from Dianne Reynolds	57

PAGE 4

EUGENE KEENY CASHMAN, JR., called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAUGHLIN:

Q Mr. Cashman, could you give me your full name and current address, please?

A Eugene Keeny Cashman, Jr., 2976 Gardens Way, Memphis, Tennessee 38111.

Q We met. I'm Drew Laughlin, of course. I represent the defendants in this action. We met very briefly in passing just a minute ago.

The rules -- our rules of civil procedure require that at the beginning of a deposition I shall instruct you to ask me, rather than your lawyer, for any clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition, so I have now complied with my obligation in that regard.

I try, not always successfully, to make my questions reasonably clear. When I fail, let me know, and I'll try to rephrase them so that they are clear, so that we can communicate effectively.

A Okay.

Q The rules do not permit you to discuss the case or the deposition with your counsel during the course of

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 2 PAGE 5

1 the deposition, so if we take a break, or something of that
2 nature, you can go out with Mark in the hall and talk about
3 spring training in baseball, or fishing, or things like
4 that, but the rules do not permit you to discuss the case
5 or your testimony or the deposition until the deposition is
6 concluded, and the rules permit me to ask you after a break
7 if any such conversation has occurred. All right?
8 A (Witness nods head; no verbal response.)
9 Q This is not intended to be an exercise in
10 torture. If you need a break for any reason, let me know,
11 and we'll take one. All right?
12 A (Witness nods head; no verbal response.)
13 Q Now, that said, you are, according to the amended
14 complaint, the trustee of the Eugene Keeny Cashman, Jr.
15 Revocable Trust, and there is a Kathleen Gilmore Cashman,
16 who is the trustee of a Kathleen Gilmore Cashman Revocable
17 Trust; is that correct?
18 A Yes, but that is -- since that filing, that
19 has been amended, and Kathleen Gilmore Cashman and her
20 revocable trust is the owner of the property described in
21 the document. Both the --
22 Q All right. So -- I'm sorry.
23 A Yeah. Both the Oyster Street properties that are
24 described in the document.
25 Q Okay. So the Eugene Keeny Cashman, Jr. Revocable

PAGE 6

1 Trust no longer owns any interest in the properties?
2 A Kathleen Gilmore Cashman owns the properties.
3 Q All right. And so the Eugene Keeny Cashman, Jr.
4 Revocable Trust no longer owns any?
5 A That's correct.
6 Q All right. And what properties are we talking
7 about, insofar as it relates to your complaint in this
8 action?
9 A The property that's adjacent to the Lightsey
10 property, once upon a time referred to as Waters, then
11 Carter, which I purchased in 1999; and the property next
12 to that, which is a home on that property that was
13 originally my grandfather, J.O. Cashman, then my father,
14 Eugene K. Cashman, Sr., and then my sister, Bette Cashman
15 Davis, and myself from my father. Those are the properties.
16 Q And the second property you described was
17 originally purchased by your father?
18 A The second property was purchased by my
19 grandfather --
20 Q Your grandfather?
21 A -- from Mr. Lawton.
22 Q And when was that?
23 A In about 1923, '26.
24 Q All right. And the first property you described
25 was acquired in 1999?

PAGE 7

1 A Correct. From a Tony Ryan, who had acquired it
2 from Ray Carter, who had received it by will from his
3 grandmother, Louise Carter, who had, with her husband Ray,
4 purchased it from a Dr. Waters.
5 Q All right. And what use have you or your family
6 made of these properties?
7 A Are you describing from 1923, '26 forward or --
8 Q Yes, sir. Just in general.
9 A Oh. It's been a home, a permanent residence for
10 my grandparents. Initially, it was used as a hunting and
11 fishing spot by my grandfather. My grandfather worked at
12 the Savannah Sugar Refinery and was a frequent, you know,
13 visitor to and user of the house. Later, when my father
14 came along, he was there. As I came along, there are
15 photographs of me in the May River at, you know, months
16 old. And we have been there ever since.
17 I have been a heavy user, most recently with my
18 family, usually during the summertime because of schools
19 and children, and during major holidays and vacations,
20 because that's where we've always, you know, frequented.
21 My family the same way. And my sister and her child doing
22 the same thing. My parents lived in Savannah, Georgia, so,
23 you know, 35 minutes to Bluffton was not a challenge.
24 Q During what period of time, as best as you can
25 recall, did your grandparents make their permanent home

PAGE 8

1 there?
2 A Off and on -- more permanent after his retirement
3 from the Savannah Sugar Refinery, which would have been in
4 the -- probably somewhere in the '50s. And they had
5 another home in Eustis, Florida. But my grandfather would
6 take my grandmother to Florida and he would come back to
7 Bluffton and fish and hunt. My recollection would be
8 that they had sort of both residences in use, Florida and
9 Bluffton. And then they sold their property in Eustis and
10 moved to the Drayton Towers in Savannah, and then he would
11 still make his sojourns to Bluffton.
12 Q And apart from your grandparents, other members
13 of the family have used it as a vacation place, basically,
14 and --
15 A Right. I've never had, nor had my father,
16 permanent South Carolina residency.
17 Q And how -- it sounds like you have had the
18 opportunity to spend a fair amount of time there; is that
19 accurate?
20 A Yeah. I would say a lot of time over the years.
21 Q And in an average year, how much time do you
22 think you get to spend actually on the site?
23 A It's varied over the years, but spanning about 68
24 years, and some periods more actively than others. During
25 college years, for example, very little. But during the

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Deposition of EUGENE KEENE CASHMAN, JR., taken March 12, 2010

SHEET 3 PAGE 9

1 period of time when I was in the service and in Washington,
2 probably visits were anywhere from two to four times a
3 year.

4 And in the summertime, from about the '70s
5 forward, my wife would come to Bluffton and spend the
6 entire summer and I'd fly back and forth to my locale in
7 Memphis. So I would say she would be spending anywhere
8 from, you know, six to eight weeks, ten weeks, in the
9 summertime.

10 Q And in your experience, the Lightsey family has
11 owned the property there -- their property there on Oyster
12 Street --

13 A The same amount of time.

14 Q -- throughout the period of time that --

15 A I never met the father of Norris and Oswald
16 Lightsey, but I think his name was Fred, and he would have
17 been a contemporary of my grandfather. And the Oswald,
18 Norris brothers would have been contemporaries of my
19 father, and I had met with or known the Oswald and Norris
20 Lightsey as a youth.

21 Q And what was -- how would you characterize the
22 relationship between the families over that period of time?

23 A Just like what was discussed earlier, before
24 this deposition started, there were family meals and
25 celebrations. And one looked after the other; a lot of

PAGE 10

1 caring, compassion and concern expressed frequently. I
2 don't think that there was ever conflict or concern on
3 anybody's part, at least not from anything that I have
4 recollection of. That little community was pretty intact.
5 They fished together. They hunted together. They shared
6 most everything they had together, in terms of how things
7 were done in that era.

8 Q And over the years, if I understand your
9 complaint that was filed on your behalf in this action,
10 there have been a series of piers or docks in front of the
11 Lightsey property providing access to the May River?

12 A There have been a series, to my knowledge, of
13 three piers. Pier number one, as I've referred to it, was
14 erected sometime in the '20s, and the only base that I have
15 for that are some photographs which would show individuals,
16 who I could almost come close to approximating their age,
17 to show where they were standing, or what they were doing
18 at that point in time on pier number one.

19 On pier number two, that was built by my
20 grandfather in about 1946, approximately. And pier number
21 three was built in about the early '60s. I don't have a
22 date, but I'm going to surmise from photographs and the
23 like it was in the early '60s.

24 Pier number one was heavily participated in, from
25 what I have been told, by Dr. Waters, who was the owner of

PAGE 11

1 the property, and materials were secured and provided for
2 that dock by Lightsey brothers. The same thing held true
3 with pier number two, to wit, there was a floating dock
4 that I'm told that the Lightsey brothers participated in
5 actually having at the end of that particular pier.

6 And pier number three was built by the Lightseys,
7 and when the offer for payment by my grandfather for his
8 share, the Lightseys indicated that they had used and
9 participated in the first two piers and that payment was
10 not necessary for the third pier.

11 There had been on the third pier, subsequently, a
12 floating dock that was permitted; that my father had
13 permitted because -- I'm assuming, and I don't have any,
14 you know, regulation in front of me -- that it was about or
15 on that period of time that regulations started applying to
16 what you could maintain, repair, or build in the river.
17 The only reference that I've got to dock permits was the
18 dock permit that my grandfather secured in the forties to
19 build the second pier, which was filed with and granted by
20 the Corps of Engineers.

21 I should point out, I think in reference to pier
22 number two, that that also required in that documentation a
23 permission for the use of the land of what I have learned
24 to be "a park" originally in the development of the
25 Lawtons, and that park is of public use. And Mr. Lawton

PAGE 12

1 gave permission to use that to my grandfather, and that
2 was in sort of the documentation that was submitted and
3 acknowledged by the Corps of Engineers.

4 Q All right. Now, this land that you were just
5 referring to, as I understand it, the lots, for lack of a
6 better descriptive phrase for them, about Oyster Street; and
7 then, on the other side of Oyster Street, there is a strip
8 of land between Oyster Street and the May River in the area
9 in front of the Lightsey property; is that correct?

10 A Yes. There is a map that is showing the Brighton
11 Beach layout. And on the front part of the May River,
12 there were sections designated to be a public park for the
13 benefit of all of the Brighton Beach participants. That
14 land, to wit, these docks have abutted, were part of that
15 park. The most visible piece of that park property now is
16 what you would see down at what's referred to as Alljoy
17 Landing.

18 Q All right, sir. Now, let's talk about the --
19 what you referred to as pier number one for a moment.

20 A Okay.

21 Q Who is Dr. Waters?

22 A I never knew him. All I know is he was an
23 individual who was the purchaser of that particular parcel
24 of land from, as I understand it, the original developer;
25 you know, Lawton. The chronology I don't know, or the

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Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 4 PAGE 13

1 times, but I'm assuming that it was -- coming down that row
2 of lots, it was Fred Lightsey, Waters, and Cashman.
3 Q All right. And did Waters own the property that
4 was acquired in 1999 by your family?
5 A No.
6 Q No?
7 A That property went from Waters -- my
8 understanding, in terms of the chain of events, it was
9 Waters to Carter, to a grandson of Louise Carter, to then
10 a Tony Ryan, and then I purchased it from Ryan.
11 Q And now the strip of land between the road and
12 the river -- and just for sake of convenience, I think, you
13 referred to it as a "park area," so let's just use that
14 terminology just for the sake of this discussion. Who
15 owned that land when pier number one was constructed?
16 A I would say that the same Brighton Beach
17 landowners, as I understood the original plot to have
18 described or given use for the benefit of those
19 individuals. However, it may be important to note that
20 part of that park area, which is now where a home of Stiles
21 Harper resides, was taken back in by the Lawtons for the
22 purpose of the then granting use of that to Mr. Lawton's
23 sister, who would have been Stiles Harper's mother. And,
24 therefore, that portion of what was originally the
25 dedicated, quote, as we're referring to it "the park," was

PAGE 14

1 taken back by Mr. Lawton for that use.
2 Q All right. And the properties that are currently
3 owned by my client, who owned those properties at the time
4 that pier number one was constructed?
5 A I'm assuming that it was Mr. Fred Lightsey.
6 Q And what is your understanding about who built
7 pier number one, or who participated in causing pier number
8 one to be built?
9 A I know, from my father that it was Dr. Waters
10 and my grandfather, Joe Cashman, and that they had
11 materials from Lightsey Brothers. I think as a point of
12 reference back to the earlier beginning of this discussion
13 about how people got along, I think that it was probably
14 pretty well known that those guys did most of the work
15 themselves, and/or, in the case of the Lightseys, they may
16 have seen the lumber needs to be something that they could
17 provide. Docks were not built the way they are today.
18 But my understanding is, is that they all participated.
19 Q And do you know whether or not they had
20 permission from anyone to extend that pier from the park
21 area?
22 A Dock number one?
23 Q Yes, sir.
24 A I don't have any record of anything with regard
25 to that. My assumption would be, again back to the manner

PAGE 35

1 of business, is that if there was permission of any type,
2 it would have been verbal, and they would have all accepted
3 that. I can't imagine that Mr. Lawton would have permitted
4 something that he was not in concert with.
5 Q You have no information that suggests that Lawton
6 objected to the pier being --
7 A None whatsoever. As a matter of fact, pier
8 number two, he gave permission.
9 Q All right. And what is the source of your
10 information or understanding about when and how the pier
11 number one was put there?
12 A Just over years, a lot of dinner table. My
13 grandfather, father. People who had memory recall of those
14 times. People who have lived in that neighborhood for, you
15 know, long numbers of years. The -- sort of the so-called
16 fishing buddies that my granddad had, and sort of what I
17 think of as people when they went down memory lane and
18 talked about things.
19 Q All right. Now, let's talk about pier number
20 two. And what do you know about how that came to be there?
21 Well, let's back up a minute. What do we know about what
22 happened to pier number one?
23 A My assumption is a storm, which has been the
24 nemesis, I think, of all the docks along the years. But I
25 know that pier number two was described in engineered, or

PAGE 16

1 at least drawings, and on file with the Corps of Engineers
2 in Savannah and had attendant permission letters from Mr.
3 Lawton to build the second pier. And I think that was a
4 Corps of Engineer requirement.
5 And it was built, and, to my knowledge it was
6 also gain lumber and materials of that sort were
7 participated in by the Lightseys. I don't have any record
8 of that, but again, it was just conversation that that was
9 the case, and that the Lightseys used that dock. And that
10 I can remember, as a child, distinctly with the swimming
11 and the fishing and things that took place on the dock back
12 in those days.
13 And before a floating dock was on that dock, all
14 those boats were beached, and you got in and out of your
15 boat based on the high tide. And again, by word, the
16 Lightseys participated in the floating dock because they
17 often came over and wanted to fish and didn't want to wait
18 on the tide to push their boat in or out of the water and
19 it would be docked at the floating dock.
20 Q When did -- when was the floating dock attached
21 to pier number two?
22 A I don't know, but it would have to have been --
23 again, back to a recollection of usage, it would have been
24 back in the fifties.
25 Q And was that the -- was it just the one floating

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.

Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 5 PAGE 17

1 dock?

2 A That's my understanding, yes.

3 Q And was the same floating dock there from the
4 time it was originally put there until the end of pier
5 number two?

6 A I think -- to my recollection, the answer's yes.

7 Q And who all used pier number one and pier number
8 two?

9 A Well, besides the Lightseys and the Carters and
10 the Cashmans, it would have been the Pitts, the Boones, and
11 the -- some individuals who were in the neighborhood at the
12 time, and the individuals who were in the -- what's
13 referred to as the "sugar beach" area, who were sugar
14 refinery employees, who were friends or colleagues of my
15 grandfather, who at the time did not have a pier, which
16 would have been Hacketts, Gabriels, people that -- a
17 recollection in my own mind, because I can remember seeing
18 them or them being down there and using the dock for those
19 purposes.

20 Q To the best of your knowledge, was anyone denied
21 the use of pier number one or pier number two?

22 A No. I don't recall anything. I can't say that
23 for pier number three, but I can for the pier number one
24 and two. There was not a population density problem, and
25 there was not a frequent large number of people who were,

PAGE 18

1 you know, sort of gathered for any recreation of that sort
2 in that area. We don't have that today, but they were very
3 few in number.

4 Q And what happened to pier number two?

5 A A storm, to my knowledge.

6 Q And do you know approximately when that was?

7 A I'm just going to make a speculative guess that
8 it was in the late fifties. '58, '59. Somewhere in that
9 vicinity. We could probably go back and find the storm of
10 record that would have been a wipe out.

11 Q And was pier number two completely destroyed?

12 A I don't think so. I've seen photos of the --
13 typically, the high water was just going to pop the boards
14 up. You know, pilings had probably been scabbed once or
15 twice; you know, in their lives, so they started looking
16 like little tripods. There's actually today -- at low
17 water, you can still see remnants of the piling out in the
18 -- at the far end, and some mounted oyster rakes where it
19 used to, you know, reside.

20 And I should point out, I think, that if, upon
21 examination of pier one, it had no railings. It was just
22 a planked dock and a pierhead with a floating dock. No
23 cover. And I think that, you know, by the time that pier
24 number three came along, you know, hand railings and
25 coverings, and things of that nature, were improvements and

PAGE 19

1 better features for the, you know, benefit and use of the
2 dock.

3 Q Now, was there any specific agreement amongst
4 anybody about the use of pier number one or pier number
5 two?

6 A My assumption is just come on down and use it. A
7 handshake. I don't -- again, just the way people did
8 business and related to one another, there was not a --
9 it's like, "Come on down." I mean, when the tide comes up,
10 you go out and play, or you go crab, or you go do whatever
11 you're going to do.

12 Q Was it a situation of everybody sort of knew who
13 was using it and everybody was pretty much okay with that?

14 A The dock, I am told, was originally referred to
15 in the context of the public as -- pier number one was
16 referred to as the Cashman-Waters pier. Pier number two
17 was referred to as the Cashman-Carter pier. Pier number
18 three was referred to as the Lightsey-Cashman-Carter pier.

19 Q And referred to as that by who?

20 A Well, the individuals who I have reference to
21 were people who were asking a Cashman or a Carter or a
22 Lightsey for permission to use the dock, and they would
23 have, in their nomenclature, understood it to be pier
24 number three owned by those three families. I can't say
25 I have any knowledge of anybody ever asking for or being

PAGE 20

1 denied, one way or the other, one or two.

2 Q I'm sorry. Denied one way or the other, one or
3 two?

4 A Use.

5 Q Use of --

6 A Use of --

7 Q -- pier numbers one or two?

8 A Yeah, use of pier numbers one or two.

9 Q All right. And was that also the case, at least
10 for a time, with pier number three?

11 A To my knowledge, pier number three had -- as the
12 population density grew, it had issues of people who were
13 using it or had used it and were not permitted and were
14 asked to not use the dock, at which time signs were posted
15 on the dock, as a "no-trespassing" sign.

16 Q And when was that?

17 A I'm going to just recollect that it was probably
18 back in the late sixties, early seventies.

19 Q And who put those signs up?

20 A I think both the Lightseys and the Cashmans.
21 They were often ripped down in protest by someone or some
22 thing -- to come down. And I know that -- on a couple of
23 occasions, I know that there were property damages to boats
24 at the dock by teenagers. I can recall calling the sheriff
25 on one occasion for vandalism.

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENEY CASHMAN, JR., taken March 12, 2010

SHEET 6 PAGE 21

1 I can recall, in conversation with Norris
2 Laffitte, the interest that he had, to give someone
3 permission to use the dock as a way in which you could show
4 activity and could also serve as an overseer, custodian, to
5 keep people from improperly using the dock.

6 And I think as the population in the area grew,
7 there became a frequent, you know, group of young teenagers
8 who frequently used the dock and were potentially, you
9 know, going to perhaps be libelous -- or the families would
10 have a liability associated with their use.

11 Q Was that, as far as you know, a concern of the
12 Lightseys and the Cashmans?

13 A Absolutely.

14 Q Now, pier number three, I think you said, was
15 built by the Lightseys. What do you know about how that
16 was accomplished and who all participated in it?

17 A My understanding is, is that the Lightseys built
18 it as a result of the pier number two demise, and that my
19 grandfather was in concert with that, and when he made
20 offer for payment for his half, that the Lightseys said,
21 "Well, we've used one and two all these years. We'll
22 provide and pay for dock number three."

23 I don't think that there's -- to my knowledge,
24 there's not agreements or anything written on one, two, or
25 three. I think that back in that day, handshakes and

PAGE 22

1 acknowledgments of where they'd all been over time were,
2 you know, the rule of the day.

3 Q Is it your understanding that the Lightseys
4 provided or paid for all for all of the labor and material
5 for the construction of pier number three?

6 A To the best of my knowledge, everything that
7 was at pier number three was by the Lightseys, with the
8 exception of the electricity and the water. And in the
9 course of the years, I, along with my father and his crew
10 -- he was a contractor -- did repairs on the dock, and
11 those consisted of the replacing of a two-by-four, or, you
12 know, fixing a -- nailing something together, or whatever
13 the course would require to keep it safe.

14 Q Would those have been things that were undertaken
15 without any conversation with anybody, just as it appeared
16 something needed to be done?

17 A Yeah, routine course of keeping the dock
18 maintained.

19 Q Now, you indicated earlier that the Lightseys had
20 declined an offer by your grandfather to make some payment
21 in relation to the --

22 A Cost associated --

23 Q -- cost associated with building pier number
24 three?

25 A Yes.

PAGE 23

1 Q What is the source of your information about
2 that?

3 A My father.

4 Q And when did he tell you that?

5 A Numerous occasions.

6 Q Well, can you recall the first occasion?

7 A Probably when I was -- I'm going to say 1977,
8 just because that was the year that a major renovation on
9 the property that is there now was completed or activated.
10 And the subject of the dock came up and he told me -- he
11 sat down for the first time that I can recall to tell me
12 the history of the docks. And, you know, he -- that's when
13 I first started learning about the Carters and Waters, and
14 et al. I knew Lightseys, but I never knew -- I never knew
15 business. I just knew, you know, what I think of as just
16 the family relationships that ran up and down that street.

17 Q What were the major renovations that you are
18 referring to that were taking place in that time frame?
19 Around 1977?

20 A Our house was just originally a cottage that my
21 father, at one point, air conditioned. A big oak tree fell
22 on it. I had a son that was born. My wife wanted the
23 amenities of something that was cool in the summer. And so
24 he took the oak tree down that had fallen on the back part
25 of the house, with my son in the crib underneath the oak

PAGE 24

1 tree when it occurred, and he erected a new structure,
2 which was then heated and air conditioned and added to. But
3 as that was going on, this house that was owned by Louise
4 Carter was next door, and it had become overrun, I guess,
5 and under maintained, even though she lived in it. She
6 later died and it was abandoned and became -- you know,
7 trees had fallen in and it had basically been ruined. And
8 I was making an attempt with asserting, you know, some
9 thought of where I was going to be in the future, to trying
10 to acquire that property, which I found out that it was
11 willed to her grandson and her grandson was not predisposed
12 to selling the property.

13 And then, when Mr. Ryan had the property, he just
14 appeared one day to -- having cleared it, dressed it up,
15 made it look as though he was going to build on it -- had
16 some stakes out for that purpose -- put it up for sale, and
17 I was notified of the sale and acquired it.

18 I can recall one conversation with Norris
19 Laffitte that one of the other families would like to get
20 access to that property to have a buffer and/or to prevent
21 someone coming in to build on that property if we could.
22 And, of course, back during that time, that wasn't a
23 possibility.

24 Q And what out of all -- what about all this caused
25 your father to talk about the history of pier number three?

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENEY CASHMAN, JR., taken March 12, 2010

SHEET 7 PAGE 25

1 A I think it's just like what happens when you get
2 to his age at that time. There are things that they start
3 revealing to you. I mean, that's just -- I didn't know
4 about his finances until later in life. I didn't know
5 about, you know, a lot of the things that were part of his
6 boyhood.

7 I started hearing the stories of things like him
8 romancing a young lady and not tying the motor down on the
9 boat and using a broom handle to squire her in the front
10 and the motor being in the May River and he and Rex Gable
11 diving for hours and hours. I mean, I don't think a father
12 was going to tell his son in his teenage or early twenties
13 those kinds of stories.

14 And, you know, I have -- again, I've seen
15 photographs, and those photographs have also prompted, you
16 know, storytelling. I do remember family gatherings. I
17 remember, you know, young children. I remember things like
18 that. But it was the first time I can recall he sat down
19 and started telling other kinds of in-fill in terms of
20 stories.

21 Q And was this in the nature of just general
22 reminiscing?

23 A Oh, I think he had -- he had some very definite
24 reminiscing moments, but I think he also had some clarity
25 and understanding of the, you know, things that had taken

PAGE 26

1 place because, by that particular time, he was managing,
2 you know, the affairs of my grandmother and grandfather,
3 and he had, you know, access to and knowledge of, through
4 them, of all these initiatives. But, there again, I don't
5 recall, you know, records or contracts for agreements, and
6 nothing like that was ever referenced in terms of something
7 that was, as today, put on a piece of paper and signed and
8 notarized, and the like.

9 Q Was there anything in particular going on that
10 would have prompted your father to tell you that your
11 grandfather had offered to pay for part of the cost of pier
12 number three?

13 A No. No, just the course of conversation.

14 Q Do you know what the source of his information
15 for that is? I mean, how did he know that that offer was
16 made, if you know?

17 A I don't know, but I'm certain that he wouldn't
18 have, you know, manufactured it. I mean, he obviously knew
19 of something. And again, in the sixties, he'd have been in
20 his fifties, so I don't think he was without, you know,
21 frame of reference.

22 And I should point out that, you know, in dock
23 number three, there's electricity that was run to the dock.
24 Lights were put on the dock at the far end, at the -- you
25 know, at the gate area. That electricity was tied into the

PAGE 27

1 meter and the box on our house. There was a switch put on
2 the outside so that it could be turned off and on by the
3 Lightseys.

4 There was water. Later, because of just, you
5 know -- as I recall, when the waterline broke, it was a
6 during a period when Morris Laffitte had just started using
7 the house actively with this family, and he, on his own,
8 worked to run a waterline from a pump area in the back of
9 their property underneath the road to replace the water
10 supply.

11 I can recall arriving once and finding that there
12 had been a sink put down on the dock, which was welcomed
13 because of fish cleanings and things of that nature, which
14 were always sort of modern enhancements, but -- admittedly,
15 you know, those were the kind of things that people just
16 did.

17 Q Approximately when was the electricity run out
18 there?

19 A I'm going to -- I'm just going to have to take a
20 guess, or an approximation of time, but it would have been
21 in the -- probably the late sixties, early seventies,
22 initially. It's been -- it was repaired a couple of times,
23 again because of storm damage.

24 Q And do you know who put that there?

25 A Yeah, my dad. Let me say this. He contracted to

PAGE 28

1 somebody to put it there. He didn't do it.

2 Q Do you know if he just did that, or was there any
3 discussion with the Lightseys or anybody else about that?

4 A I'm sure that he didn't just go do something.
5 I'm sure they all had probably said, you know, "It'd be
6 nice if we had lights," or something to that effect, and
7 he contracted with somebody to put them out there. But he
8 probably had a discussion with Oswald or Morris. It may
9 have been a phone call. I'm not sure. But he wouldn't
10 have gone and just one day have them come back and arrive
11 and see lights on the dock.

12 Q Do you have any specific knowledge of that, or is
13 that an assumption that you're making?

14 A With reference to the conversations?

15 Q Yeah. In reference to whether or not your father
16 had any discussions with anybody about running the
17 electricity out to the dock.

18 A My assumption is that he would have had the
19 discussion before he did it. I don't think he would have
20 gone to the expense of contracting somebody to do that
21 without having, you know, at least a telephonic connection
22 or discussion with the Lightseys and/or possibly the
23 Carters.

24 Q And approximately when was water run out there?

25 A On or about the same time.

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water since 84
by Norris Laffitte

Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 8 PAGE 29

1 Q And --
2 A But I can't -- I'm not as firm about that in my
3 recollection. I know that the water initially was tied to
4 our house. And our house at that time was all on well
5 water, and I know that there was a valve for cutoff
6 purposes, and that that was run down the street through a
7 main that went under the street, connecting a drainage
8 ditch, and then on to the dock. That line was -- I don't
9 know. I can't put a date on it. I just know that probably
10 back in the eighties I can recall, or early nineties -- I
11 can remember that it was not working and that it was
12 supplemented by the effort that Norris Laffitte had to run
13 water down there.
14 Q Do you know who originally ran the water down
15 there or caused it to be run down there?
16 A I would say that that was my family initially,
17 but I -- and I don't think that there was water prior to
18 that, but I don't have any specific other knowledge.
19 Q All right. Now, these "no trespassing" signs
20 that you talked about, I think you said were posted
21 probably sometime around the late sixties, early seventies;
22 is that correct?
23 A That's the first recollection. And the only --
24 the tie-in that I've got to it is I can see the -- I can
25 see the signs and I can see the posted little yard signs

PAGE 30

1 that we put up there on the front part of the dock
2 indicating the same. And there were -- there were no
3 attempts to lock it. There were little rope, gate-latch
4 type things on the dock to prevent younger kids and/or dogs
5 from, you know, going through it. That part I can, you
6 know, recall that.
7 Q And do you know who physically put these things
8 up; or had them put up?
9 A Well, I'm going to assume that they were probably
10 both Lightsey, because I know I put some up. But that was
11 in recognition that there were people who would be on the
12 dock and there would be, you know, at challenge, no reason
13 or authorization from anyone of the immediate Cashman,
14 Carter, Lightsey group that -- as a matter of fact, most of
15 the time, they wouldn't even know the reference or have the
16 name of Cashman, Carter, or Lightsey to have been -- when
17 they were approached.
18 Q And was the intent of posting these signs to
19 restrict the use of pier number three to the Lightsey,
20 Cashman, Carter families? Was that --
21 A Unless otherwise --
22 Q Unless otherwise authorized by somebody within
23 one of those families?
24 A That's correct. And it would -- I think that it
25 would have been safe to say that when those signs were put

PAGE 31

1 up, it was intended that people back then would still obey
2 what they said. And I would also reference that in the --
3 one personal case in my recollection where there was
4 vandalism, that I was told by the sheriff that because
5 these were teenagers, that even if he staked it out, caught
6 them in the act, that they would be in and out of and
7 remanded back to their parents, and that if I persisted,
8 that the damage both to docks and/or property would likely
9 be the next course.
10 Q In other words, people -- kids being offended at
11 being excluded and hauled in by the sheriff would retaliate
12 by inflicting more damage on the property?
13 A Yeah. And the sheriff indicated to me that these
14 were kids who were known to be mischievous. He referenced
15 the fact that they'd stolen a golf cart and driven the golf
16 cart off the Alljoy ramp into the river, and he did not
17 suggest at all that we be advised to take or press any
18 action.
19 I did have one story related to me that was an
20 outcome of Norris Laffitte's efforts to have an individual
21 on our street, a gentleman by the name of Neil Lax, serve
22 as the protector/overseer in exchange for being able to tie
23 his boat up at the dock -- that he saw this same group of
24 children, young adults, go by his house. He was suspicious
25 of where they were going and what they were going to do.

PAGE 32

1 He let them go by his house. He circled around behind our
2 homes and surprised them out on the end of the dock,
3 confronted them.
4 And if you knew Mr. Lax, you would know that he's
5 intimidating. He secured their names and home locations
6 and -- because he was motivated (a) for protection of the
7 dock or the property, but also because they had stolen one
8 of his bikes. And he went to their homes to put their
9 parents on notice and to reclaim or to have his bikes
10 returned; to wit, my understanding is not the exact bikes
11 came back, but he got bikes back. So I think that
12 firsthand security was in the form of Mr. Lax, but other
13 than that, the signs were being, I think, ignored by that
14 element.
15 I've only got one evidence on an individual who
16 called on one occasion to me for use of the dock, which was
17 a lady by the name of Reynolds. And I told her that if
18 there were no objections by the Lightseys, I didn't have an
19 objection, but that she had secured permission for the use
20 of the dock from the Cashmans, the Carters, and the
21 Lightseys in years past, in the sixties, for her son to --
22 and her family to use the dock, which she later revealed in
23 a letter, which was the second time she was making the
24 request to use the dock some years later, which would have
25 been in the early 2000s.

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENEY CASHMAN, JR., taken March 12, 2010

SHEET 9 PAGE 33

1 Q Now, is it -- was it your understanding that
2 rightful use of pier number three required permission from
3 someone in the Lightsey, Cashman, or Carter families?

4 A I'm going to say it was implied. I don't think
5 there was ever anything that was written down, but I think
6 the families were rightly concerned about anybody using it,
7 if for no other reason, just the liability associated with
8 it. And I know that, in my family's case, we had, you
9 know, insurance both for the benefit of, you know, damage
10 or property, but also for liability.

11 Q Was it your understanding that the three families
12 -- the Lightseys, Cashmans and Carters -- believed that
13 they had the right to restrict access to the pier?

14 A Whether they believed it or not, back in that
15 day, that's what they exercised.

16 Q All right, sir. Fair enough.

17 A I should point out -- that brings back an earlier
18 moment. I've thought about "the park." Again, something I
19 didn't learn until later is that that park being owned by
20 all of the Brighton Beach property owners, and where that
21 separation may have taken place with respect to the pier
22 one, two and three, would have been the permission that had
23 been given in the correspondence between my grandfather and
24 Mr. Lawton; and that, therefore, the remaining property
25 owners of Brighton Beach were not entitled.

PAGE 34

1 Now, I don't know at any point that I can recall
2 of that being challenged. I do know that there is a pier
3 that is at the head of the 90-degree turn on Oyster Street.
4 That is owned by a community group in the Brighton Beach
5 area. And I'm not sure how or what the details of that
6 represent, except I know that it went through a long,
7 arduous process before it actually became, you know, the
8 real deal, in terms of the dock.

9 Q So we do have a community dock out there today?

10 A My understanding, it is not, quote, all of
11 Brighton Beach. It's by membership of three or four
12 people.

13 Q And do we know who those people are?

14 A The only named person that I'm familiar with is a
15 gentleman by the name of Turner, and I don't know if he is
16 the -- I think he may have been the -- he may have been the
17 person who organized or put all of it together. But what I
18 recall is that they had -- for the longest time, they had
19 palmetto pylons that didn't have anything else attached to
20 it; that they were just there. And then they later scabbed
21 some boards and things together, and the next thing emerged
22 was a dock. And back in that period of time, and even
23 today, I've never, you know, thought to inquire or
24 investigate it.

25 I mean, there are docks along the May River that

PAGE 35

1 have just sprung up. I do know from some of these family
2 discussions that the first pier one that I referenced, that
3 was like the second dock on the May River. And I think the
4 only other dock, the second or the third, the only other
5 docks being the one down at Alljoy and the one that's
6 referred to as the Mingledorff dock, which is on the tip
7 end of Myrtle Island.

8 Q Now, pier number three as originally constructed,
9 how was it configured? What was included? You had a pier
10 and what else?

11 A Had a pier and a head and a floating docks.

12 Q Two or one?

13 A To my knowledge, there was one, and it was to the
14 -- it'd be on the south side, I guess. I'd call it south,
15 or west, whatever that was, and -- but I -- that was my
16 recollection.

17 Q And who used that floating dock?

18 A Cashmans, Carters, and Lightseys.

19 Q And was that floating dock part of what the
20 Lightsey family had originally built there?

21 A Yeah, to my knowledge.

22 Q Now, at some point in time -- well, let me ask
23 you this. Is there any doubt that pier number three --
24 there was an application submitted to the Corps of
25 Engineers to be able to build pier number three; is that

PAGE 36

1 correct?

2 A I've never seen it, but I'm assuming that because
3 my grandfather had to have a permit and permission, that
4 the Lightseys secured the same, so if -- I mean, I would
5 say that the permit would have been the evidence to answer
6 the previous questions about what was permitted, because I
7 know that, at a later point, a permit was required for the
8 dock that went on the eastern end -- the floating dock that
9 went onto the other pier, and that -- I know that the
10 correspondence with respect to that referenced the pierhead
11 and that the drawings had to be submitted to apply to the
12 approval of the -- by the Corps of the floating dock.

13 But I would not -- I can't imagine that there
14 wouldn't have been a permit for the pier number three, and
15 I can't imagine that there wouldn't have been permission
16 granted by somebody for pier number three. Now, that
17 permission could have been back to gentlemen in the street.
18 It could have been as simple as, "Well, this dock is gone
19 and we'll build another dock, and, you know, we'll just use
20 the permission that Mr. Lawton has already granted to you,
21 Joe. Let's go ahead and do that." I mean, that --

22 Q Well, let me put it this way. Is it your
23 understanding that the Lightsey family applied for and
24 received a permit to construct pier number three?

25 A That'd be my assumption.

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 10 PAGE 37

1 Q All right. You don't have any information that
2 suggests otherwise?
3 A The only thing I have is I have a reference to
4 the fact that when my father applied for the permit for
5 the floating dock, that it was responded to by the Corps
6 as a requirement, because his initial application was
7 rejected because the only thing they had on record was dock
8 number two. I don't have any knowledge of any permit for
9 dock number three. I do have knowledge that the Lightsey
10 brothers gave a document that had come to them to my father
11 for compliance for the permit of the dock, or the floating
12 dock, which is why I've said I've made the assumption that
13 there was a permit.
14 Q When was the first time a second floating dock
15 was attached to pier number three?
16 A To the best of my knowledge, probably in the
17 seventies. Now, there could have been something -- again,
18 back in that day, anything could have been scabbed on. I
19 mean, I can remember, you know, on more than two or three
20 occasions chasing down a floating dock, re-strapping a
21 floating dock, putting styrofoam, you know, stanchions
22 under the floating dock, replacing rampways, have divers
23 retrieve, you know, ramp -- and I can remember just
24 litanies of things like that on both sides. And I'm
25 referencing the fact that the storms weren't, you know,

PAGE 38

1 treating one side different than the other.
2 As a matter of fact, I think on one occasion, one
3 of the lost -- or recovered rampways, we flip-flopped and
4 put over to the other floating dock. And in the meantime,
5 that floating dock had been destroyed, and they came back
6 with another floating dock, which I was admiring because it
7 was much larger and sleeker.
8 MR. LAUGHLIN: Mark that for me, if you
9 would.
10 (WHEREUPON, a document was marked as
11 Defendant's Exhibit Number 1 for Identification to
12 the Cashman Deposition.)
13 BY MR. LAUGHLIN:
14 Q Mr. Cashman, I've handed you what has been marked
15 as Defendant's Exhibit 1 to this deposition and ask if you
16 recognize that.
17 A (Witness peruses document.) Yeah, and this is
18 what I was saying earlier, that the Corps --
19 Q Well, before that, if you'd --
20 A Yeah. What I was referencing is that my father
21 referenced a permit dated September '41, which would be for
22 pier number two, and I think that what they responded to in
23 this particular piece of correspondence was that they only
24 had this permitted, and that they were, in fact, calling
25 attention to the fact that his application was for the

PAGE 39

1 floating dock to be on pier three.
2 Q Okay. Is Exhibit 1 a copy of a letter written by
3 your father to the Corps of Engineers dated May 27, 1975?
4 A To the best of my knowledge, yes.
5 Q And that was because he wanted to put a second
6 floating -- another floating dock on this pier number
7 three; is that correct?
8 A That's my understanding, yes.
9 MR. LAUGHLIN: Mark this for me, please.
10 (WHEREUPON, a document was marked as
11 Defendant's Exhibit Number 2 for Identification to
12 the Cashman Deposition.)
13 BY MR. LAUGHLIN:
14 Q Mr. Cashman, I've now handed you what has been
15 marked as Defendant's Exhibit 2 to the deposition and ask
16 if you recognize that and can tell me what it is.
17 A (Witness peruses document.) Yeah, this is what I
18 mentioned earlier. I think they brought to his attention
19 that the dock permit that he was asking for was not in
20 conjunction with the permitted dock of September '41, and
21 they were asking him to get a plan view or drawing of the
22 dock that was to be used, which, to my understanding, would
23 have been dock number three.
24 Q And Defendant's Exhibit Number 2 was the Corps'
25 response to your father's letter, Exhibit Number 1; is that

PAGE 40

1 right?
2 A Yeah, because it references or calls attention to
3 the May 27th letter.
4 Q Now, when your father wrote Exhibit Number 1, did
5 he not know that the 1941 pier wasn't there anymore and had
6 been replaced by another pier in the early sixties?
7 A I'm certain that he probably knew that pier
8 number three was there.
9 Q I mean, do you have any idea why, in Exhibit
10 Number 1, he refers to a permit that he obtained in
11 September of 1941?
12 A That would have been my grandfather obtained a
13 permit in 1941.
14 Q I have a permit. I'm sorry. He does say "I have
15 a permit." Why would he refer to that one instead of the
16 19 -- the permit for the pier number three, which was the
17 only one actually existing at that time?
18 A I have no idea.
19 MR. LAUGHLIN: Excuse me one moment.
20 (Brief recess.)
21 MR. LAUGHLIN: All right. Let's go back on.
22 Mark this, please.
23 (WHEREUPON, a document was marked as
24 Defendant's Exhibit Number 3 for Identification to
25 the Cashman Deposition.)

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 11 PAGE 41

1 BY MR. LAUGHLIN:
2 Q Okay. Mr. Cashman, I'm going to hand you what's
3 been marked as Defendant's Exhibit 3 to this deposition.
4 This is a copy, which consists of four pages, that were
5 provided to us in response to our request for production of
6 documents, and this was Exhibit "I" to the response to that
7 request. And I apologize. Page 1 of it is difficult to
8 read. Do you recognize Exhibit 3?
9 A Yes. And I think that, in my reference earlier,
10 that this is what he was originally referring to in the May
11 -- in the May letter.
12 Q In Exhibit 1, the May 27, '75 letter?
13 A That's where I believe that was an origin.
14 Q Now, this, page 1, appears to be a copy of a
15 letter from Eugene K. Cashman. That would be your father;
16 is that correct?
17 A That's correct.
18 Q To the Corps of Engineers dated May 5, 1977,
19 and he appears to again be requesting permission to -- he
20 appears to be requesting permission to replace a floating
21 dock, two pilings, and a ramp, which would be attached to
22 an existing dock located on the May River, and this would
23 be dock number -- this would be pier number three that he's
24 referring to?
25 A My assumption is that's what this would refer to,

PAGE 42

1 and I'm only making that assumption or drawing that from
2 the realization that there's an enclosure or note at the
3 bottom that Oswald Lightsey gave permission to attach the
4 floating dock. And the structure of the drawing would
5 indicate that that's what the dock number three structure
6 looks like.
7 Q And was the May 5, 1977, letter -- is that a copy
8 of a May 5, 1977, letter written by your father and sent to
9 the Corps?
10 A My assumption, it is. I don't have anything
11 other than what you see as Exhibit 3.
12 Q And in that letter, he tells them that the dock
13 is owned by Lightsey Brothers and he has permission to
14 construct the floating dock as per statement below of
15 Oswald Lightsey; is that correct?
16 A That's what I -- how I would interpret it.
17 Q Now, page 3 of Exhibit 3 appears to be, to me,
18 perhaps a draft -- an earlier draft of the May 5, '77
19 letter; is that correct? Or is it something else?
20 A No, I would -- I would say that's a draft.
21 Q And whose handwriting is that?
22 A That's my father's handwriting. That's why I
23 said it'd be a draft.
24 Q And that's his handwriting below where it says
25 "Signed by Oswald Lightsey" --

PAGE 43

1 A Yes.
2 Q -- "5/9/77. Delivered to engineers 5/9/77"?
3 A That's correct.
4 Q All right. And pages 3 and 4, what are those? I
5 know page 1, the actual May 5, '77 letter, refers to -- it
6 says it has an enclosure. Do you know what that enclosure
7 was? Do you know whether it was the third and fourth pages
8 of Exhibit 3?
9 A I'm going to make an assumption that it's an
10 enclosed -- you know, those references were to these two
11 enclosures. And I'm looking at it in reference now, down
12 in the legend, that what this references is the proposed
13 pier by the Lightseys on October 31, 1960, which would
14 coincide with the earlier discussion about the time period
15 of when that dock was constructed.
16 MR. LAUGHLIN: Excuse me one moment.
17 (Brief recess.)
18 MR. LAUGHLIN: Let me have this marked,
19 please.
20 (WHEREUPON, a document was marked as
21 Defendant's Exhibit Number 4 for Identification to
22 the Cashman Deposition.)
23 BY MR. LAUGHLIN:
24 Q Okay. Mr. Cashman, you now have in front of you
25 what's been marked as Deposition Exhibit 4, or Defendant's

PAGE 44

1 Exhibit 4 to this deposition, which appears to be a letter
2 from the Savannah District Corps of Engineers to your
3 father. It's got a stamped date on it of May 18, 1977;
4 is that correct?
5 A Yes.
6 Q And it starts out, "Reference is made to your
7 letter of 5 May 1977," and do we understand this to be a
8 response from the Corps to your father's letter, which is
9 -- a copy of which is Exhibit 3?
10 A Yes. This also just looking at it -- Exhibit 4
11 clarifies an earlier point about the -- since issuance of
12 the original permit, the State of Carolina (sic) has
13 instituted a permit program, so there is a -- somewhere in
14 the lapse of time, because it also brings out that the
15 original structure issued in '61 did so without having
16 advertised public notice, for which it appears, in this
17 letter, that that had to be done in order to get the permit
18 for the proposed work that was being requested.
19 MR. LAUGHLIN: Let's mark this as an
20 exhibit.
21 (WHEREUPON, a document was marked as
22 Defendant's Exhibit Number 5 for Identification to
23 the Cashman Deposition.)
24 BY MR. LAUGHLIN:
25 Q All right, sir. And next we have what's been

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 12 PAGE 45

1 marked as Defendant's Exhibit 5 to this deposition. Take a
2 look at that, and I ask you if you recognize that and know
3 what that is.

4 A (Witness peruses document.) It looks like an
5 application. It is not in my father's writing. And it
6 indicates that the name and address of the applicant was
7 Lightsey Brothers, and the name and address and title of
8 applicant's authorized agent for permit application
9 coordination was Cashman, and it appears that this is also
10 describing the dock that was previously identified for --
11 or discussed in Exhibits 3 and 4.

12 Q And is that something you've seen before?

13 A I've seen this, but just not recently. And as I
14 said, I don't know whose handwriting this is, and it's not
15 been signed, but I accept it as accurate.

16 Q I'll represent to you that that was -- that
17 document was -- well, never mind.

18 MR. LAUGHLIN: Mark this, please.

19 (WHEREUPON, a document was marked as
20 Defendant's Exhibit Number 6 for Identification to
21 the Cashman Deposition.)

22 BY MR. LAUGHLIN:

23 Q You have in front of you what I believe has been
24 marked as Defendant's Exhibit 6 to the deposition; is that
25 correct?

PAGE 47

1 Q When you say "this," just so --

2 A Oh, excuse me.

3 Q -- that when we read the transcript later, we
4 know what "this is," if you could identify them for me.

5 A Yeah. As a point of clarification, Exhibit 5
6 was the application for the Department of the Army permit,
7 and the name and address of the applicant was Lightsey
8 Brothers, but the applicant -- authorized agent for permit
9 application coordination is Cashman.

10 The response from the State of South Carolina
11 Water Resources was the date of July 21, 1977, and the
12 transmittal of that letter, July 22nd, 1977, marked as
13 Exhibit 6, would indicate that Oswald Lightsey sent that
14 enclosure to Eugene K. Cashman.

15 Q Thank you.

16 A Do you want to flip that, in terms of keeping the
17 date sequence correct?

18 Q Well, we'll just put it the way it is. They've
19 both got dates on them, so I think --

20 A I was looking at the chronology.

21 Q Yeah. It certainly appears that the second page
22 was --

23 A A response to the permit application.

24 Q And that the first page is dated a day later.

25 A Right, which would have been a transmission of

PAGE 46

1 A Um-hum.

2 Q And that's two pages, and I ask if you recognize
3 that.

4 A (Witness peruses document.) Yeah, I do now.

5 Q And I will represent to you that those were --
6 those two pages were part of Exhibit "M" to your response
7 to our request to produce.

8 A Yeah. You know, I gathered a lot of information,
9 but I recognize these, and it seems that these would follow
10 in sequence with the previous exhibits if dates mean
11 anything.

12 Q All right. And Exhibit 6 appears to consist of a
13 letter, a copy of a letter from the State of South Carolina
14 Water Resources Commission dated July 21, 1977, addressed
15 to Lightsey Brothers, Miley, South Carolina, and the second
16 -- the other page appears to be a copy of a letter from
17 Oswald Lightsey to your father, dated July 22, 1977, in
18 which he is saying he received the July 21, '77 letter and
19 he's sending it on to your father. Is that --

20 A Yeah.

21 Q -- generally correct?

22 A My assumption is, is that, you know, six follows
23 five, and that the permit application is what -- in the
24 order in which they were received, this would be first and
25 this would be second. This is an acknowledgment of --

PAGE 48

1 that, which is basically saying, "It's your deal. You've
2 got to do whatever they said to do."

3 MR. LAUGHLIN: Mark that for me, please.

4 (WHEREUPON, a document was marked as
5 Defendant's Exhibit Number 7 for Identification to
6 the Cashman Deposition.)

7 BY MR. LAUGHLIN:

8 Q Let me -- you now have in front of you what's
9 been marked Defendant's Exhibit 7. I ask you to take a
10 look at that and tell me if you recognize and can tell me
11 what it is. And I'll tell you that the yellow highlighting
12 on those documents is mine, so that was not part of what
13 was there when I got it.

14 A (Witness peruses document.) Exhibit 7 is the
15 public notice, and it indicates that the applicant was
16 Lightsey Brothers. It appears to be the same descriptive
17 work that has been previously referenced in earlier
18 exhibits. I'm not really sure how to interpret the one
19 paragraph that follows: The applicant will require assent
20 from the State of South Carolina in the form of a permit
21 from the South Carolina Budget & Control Board. Local
22 governmental approval may also be required. Environmental
23 impact statement will not be required." But the attachment
24 would indicate it's similar to the attachment on the
25 previous drawing, with the one exception, that it shows the

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 14 PAGE 53

1 been in the eighties, early eighties.
2 Q Did that replacement require a permit?
3 A I don't have any idea if a permit was secured for
4 replacing it or not -- or replacing and repairing. The
5 part I recall were the -- the original had no extenders on
6 the piling, and the floating dock actually floated off the
7 piling. And the extenders, or metal rods or bars, were put
8 up at the top to give it a higher state of buoyancy. And
9 that's the part I'm talking about that I recall. And when
10 that was floated off, that -- when I say "replaced," it was
11 probably found and repaired and then put back with two
12 instead of one piling -- three piling.
13 Q And remind me again, which side of the pierhead
14 is --
15 A It's -- I refer to it as the east. But if you
16 look at that document, you'll see that it had plans that
17 did not locate the pierhead. But it's the exact same
18 drawing. It's just what's been added is the pier to the
19 east.
20 Q If I am standing --
21 A What I'm also not seeing on here is that, to the
22 best of my knowledge, there was also a pier on the west.
23 It's not shown there, but there was a pier on the west.
24 Q A pier or a floating dock?
25 A Excuse me. Floating dock. I'm sorry. Floating

PAGE 54

1 dock.
2 Q All right. Now, the one we're talking about
3 here, the one that your father put in there in the
4 seventies, if I were standing on the pier facing the river,
5 that would be to my left?
6 A Yes.
7 Q And is there a floating dock there today?
8 A No. The piling are there.
9 Q And what happened to the floating dock, the last
10 floating dock, that was there at that location?
11 A It needed to be replaced. It was beached. And
12 that's the one I was saying that I disassembled and had
13 carted off.
14 Q All right. And why was that one not replaced?
15 A Because when it came time to replace it, I was
16 denied access to the end of the dock, because the gate was
17 locked, the first time I had known it to be locked.
18 Q Did you just -- I mean, did you have any prior
19 knowledge of the lock being put in place, or did you just
20 discover it one day when you were out there?
21 A I discovered it when I went out there to actually
22 take people to give me the estimate for the replacement.
23 Q And who were you taking out there to estimate the
24 cost to replace the floating dock?
25 A An individual who represented a company who was

PAGE 55

1 going to do the work.
2 Q Do you remember who that was?
3 A No. It was probably -- it was either Ansley or
4 Nanny Roberts, who were the people who were building
5 floating docks and doing that kind of work, but I don't
6 recall the name. I just know that I had them in hand after
7 a long search to try to get somebody to meet me in Bluffton
8 to go out there, and when I got there with them, the gate
9 was locked.
10 Q And what did you do?
11 A I called Morris Laffitte.
12 Q And do you know when that was?
13 A 2005.
14 Q And did you speak with Mr. Laffitte?
15 A Un-hum. Yes, I did.
16 Q And what did he say?
17 A He said, "Oh, we've got a lock on there. I'll
18 send you the keys."
19 Q And did he send you a key?
20 A Yes.
21 Q And then what happened next?
22 A He called me and said, "I've been told that I
23 can't do what I just did," and that, "You don't have
24 permission to go out on the dock." We talked for a few
25 minutes. I had not opened the envelope that he sent me.

PAGE 56

1 I wrote him a letter. And he had indicated in the phone
2 call that he needed the key back, and I sent it back to
3 him.
4 Q When he requested that you send the key back to
5 him, was that in -- by letter, or by phone call, or
6 conversation? How was that request communicated to you?
7 A He told me on the telephone. And he was upset
8 and without explanation, because he had none. He made the
9 request and I trusted our relationship. And I realized
10 that he could have put himself in a bind with his family,
11 and I was not going to, you know, put him at any greater
12 risk, and I sent the letter and the envelope.
13 Q How long did you have the key before he requested
14 that you return it?
15 A Well, I got it one day and he called me that day,
16 and it was returned, you know, in the next mail.
17 MR. LAUGHLIN: Mark this, please.
18 (WHEREUPON, a document was marked as
19 Defendant's Exhibit Number 8 for identification to
20 the Cashman Deposition.)
21 BY MR. LAUGHLIN:
22 Q You have in front of you Defendant's Exhibit 8.
23 What is that, sir?
24 A March 21, 2005. It's a letter from Morris to me.
25 "At the family meeting, it was decided that the Lightseys

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 15 PAGE 57

1 wanted exclusive use of the dock. Please return the key
2 that I should not have mailed you without permission from
3 the family." This letter came after I had sent the key
4 back. They crossed in the mail. That was responding to
5 the phone conversation.

6 MR. LAUGHLIN: Bear with me one minute. I
7 think we're getting real close to being done.

8 (Brief recess.)

9 MR. LAUGHLIN: Mark this, please.
10 (WHEREUPON, a document was marked as
11 Defendant's Exhibit Number 9 for Identification to
12 the Cashman Deposition.)

13 WITNESS: This is the letter I was referring
14 to.

15 BY MR. LAUGHLIN:

16 Q All right. And that is Exhibit 9; is that right?

17 A Um-hum.

18 Q And that is a copy of a letter from you to --

19 A -- Morris Laffitte.

20 Q -- Morris Laffitte dated March 28, 2005; is that
21 correct?

22 A Right.

23 Q Actually, it refers to an enclosure that I did
24 not attach to it. Give me one second.

25 (Brief recess.)

PAGE 59

1 tenants in common, of the fixture (i.e., the walkway and
2 pierhead) located on and emanating from the common
3 property." And this refers to what we've been calling pier
4 number three?

5 A Yes.

6 Q And you're certainly welcome to refer to the
7 amended complaint, if you wish. Tell me why or explain to
8 me the reasons why you believe that the plaintiffs or
9 plaintiff, if there's only one now, are half owners of pier
10 number three.

11 MR. BERGLIND: I object to the form, but go
12 ahead and answer.

13 BY MR. LAUGHLIN:

14 Q I mean, what facts do you base that conclusion
15 on?

16 A Over 60 years of relationships where they -- the
17 families, and the generations that have been a part of
18 those, have mutually shared in and used docks one, two, and
19 three; that for participation in maintenance, upkeep and
20 additions to, as in the case of electricity -- and that
21 there was no basis at any time anywhere in the past that
22 would suggest that entitlement and use was not, you know,
23 ever going to be an issue.

24 Q All right, sir. Now, did anyone in the Lightsey
25 family ever ask anyone in your family to do any maintenance

PAGE 58

1 BY MR. LAUGHLIN:

2 Q Let me show you a one-page document. It starts
3 out "To the Cashman Family." It looks like it's undated,
4 but it ends, "Thanks, Dianne Reynolds, 25 Alljoy Road,
5 757-3882."

6 A Um-hum.

7 Q Is that the attachment to Exhibit 9?

8 A Yes.

9 Q I'm going to go ahead and just staple them
10 together.

11 A And that's the letter, incidentally, that I
12 referenced earlier from someone who had brought attention
13 to dock usage.

14 Q Now, what I'd like to do is ask you a few
15 questions about the amended complaint in this action that
16 was filed, at least originally, on behalf of the -- of you,
17 as Trustee of the Eugene Keeny Cashman, Jr., Trust, and
18 Kathleen Gilmore Cashman, as Trustee of the Kathleen
19 Gilmore Cashman Revocable Trust. Are you familiar with
20 that, the amended complaint?

21 A Yes. Yeah, I've read it. Yes.

22 Q Now, the first cause of action says it's for a
23 declaratory judgment, and paragraph 31 says that, "The
24 plaintiffs and the estate are, by virtue of the facts set
25 forth in the preceding paragraphs, the joint owners, as

PAGE 60

1 on the pier?

2 A Ask us to do any maintenance?

3 Q Yes, sir.

4 A To my knowledge, there was never anyone being
5 asked to do any maintenance. I would say that it goes back
6 to earlier discussions in this deposition, that if you saw
7 something that needed to be done, you did whatever it took
8 to make it, you know, corrected or improved, and that was a
9 voluntary action, which was again a condition of what you
10 think of as today responsibility for someone who owns
11 something. You don't let it fall apart.

12 Q And the electricity and the water, did anybody
13 ask your family to run electricity or water --

14 A Ask us to do it?

15 Q -- to the docks?

16 A I think it was probably, again, one of those
17 street conversations, that we thought it would be a very
18 good idea, and they were just agreed to, and my father, who
19 was a contractor, said, "I'll take care of it." Put it
20 this way: There was no opposition and there's been no, you
21 know, reason to believe that there wasn't enjoyed use on
22 our parts.

23 Q And to the best of your knowledge, has your
24 family always considered that it had an ownership interest
25 in pier number three?

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 16 PAGE 61

1 A I would say ownership responsibility for, you
2 know, liability. I'd say that, you know, the whole topic
3 of ownership was something that was really not something
4 that was talked about, in terms of "I own this or you own
5 that." I think it was just sort of implied that that's
6 what that was.

7 Q All right. Was there ever a period of time when
8 your family had or asserted the right to exclusive use of
9 pier number three to the exclusion of the Lightsey family?

10 A Never, to my knowledge.

11 Q Is electricity or water being run out there from
12 your property today?

13 A I haven't checked the electricity recently, in
14 terms of whether or not it's operating, but the water had,
15 you know, ceased, as I had indicated earlier, when it was
16 cheved up by some repair work that was being done to the
17 property that's the vacant lot next to the -- between the
18 two houses now.

19 Q Do you know if your family has ever paid Beaufort
20 County real property tax on pier number three?

21 A It's paid taxes based on how they're submitted.
22 I don't -- they don't have a -- to my knowledge, they don't
23 have a dock or a pier designation on the tax form.

24 MR. LAUGHLIN: Let's take five minutes. I
25 may be done. If I'm not, I really am pretty close.

PAGE 63

1 A The most significant percentage of it, 96
2 percent, was owned -- or, I mean, was operated by or
3 participated in by members of the Cashman family.

4 Q And the other two percent, was that Lightsey
5 family or strangers, or who was that?

6 A It'd just be people who would be coming for
7 visits to our -- who would be -- and I would put that in
8 the category of Cashman, but others who would be over there
9 would just need a dockhead space. I mean, you know,
10 wherever you can tie up.

11 But no, there weren't any signals out there
12 saying -- waving people off, or you can't tie up here, you
13 can't do this or that, or the other thing, if they were
14 coming to the dock. But most of the time that eastern side
15 would have been used by the Cashmans and the western side
16 would have been used by the Lightseys, but there was never
17 a conflict or use of one versus the other.

18 MR. BERGLIND: That's all I have.

19 MR. LAUGHLIN: Nothing more for me.

20 (WHEREUPON, this deposition was concluded at
21 approximately 11:16 a.m.)

PAGE 62

(Brief recess.)

MR. LAUGHLIN: Thank you. I'm finished.

CROSS-EXAMINATION

BY MR. BERGLIND:

Q I think I have a couple follow-ups. With regard
to what's been referred to as dock 3, have you ever seen a
permit for that dock, the actual permit?

A No.

Q Do you know how the Lightsey Brothers obtained
permission to construct that dock?

A No, but I would -- again, I would make an
assumption, which I realize is not any more than that, is
that these gentlemen of that era were just handshakes
and/or -- you know, would sit and speculate on what they
were going to do, and that's what they, you know, sort of
went ahead and did. So my assumption is, is that their
permission was a piggyback of the permission that Mr.
Lawton had given my grandfather. I don't know of any other
explanation, other than -- without having seen anything
that would be a permission document from Lawton to
Lightsey.

Q Okay. You talked about the floating dock that's
located on the east side of the pier that was constructed
by your father. Clarify for me who used that dock, that
floating dock?

PAGE 64

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CERTIFICATE OF COURT REPORTER

I, Matthew Hazen Anderson, Court Reporter and Notary
Public in and for the State of South Carolina, do hereby
certify that the foregoing sixty-three (63) pages of
typewritten testimony were taken down by me, and then
transcribed by me; that the same is a true, correct and
complete transcript of the proceedings as stated in the
caption.

I further certify that I am not of kin nor counsel to
any of the parties hereto, and, further, that I have no
interest whatsoever in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 19th day of March 2010.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires

April 26, 2011

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

0 05/31/77 (1)3:25	41 (1)38:21 39:20 43 (1)3:18 44 (1)3:23 45 (1)3:27 48 (1)3:35	acquired (1)6:25 7:1 13:4 24: 17 act (1)31:6 action (1)4:11 6:8 10:9 31:18 58:15,22 60:9	3 51:10 applied (1)36:23 37:4 apply (1)36:11 applying (1)11:15
1 1 (1)3:6 38:11,15 39:2,25 40:4,10 41:7,12,14 43:5 11:16 (1)63:21 12th (1)1:38 18 (1)3:18 44:3 19 (1)3:10 40:16 1923 (1)6:23 7:7 1941 (1)40:5,11,13 1946 (1)10:20 1960 (1)43:13 1975 (1)3:6,10 39:3 1977 (1)3:14,18,28,30,35 23:7, 19 41:18 42:7,8 44:3,7 46:14,17 47:11,12 49:3 51:10 1999 (1)6:11,25 13:4 19th (1)64:19 1-page (1)3:6,10,18,39	5 5 (1)3:14,23 41:18 42:7,8,18 43:5 44:7,22 45:1 47:5 5/9/77 (1)43:2,2 50s (1)8:4 56 (1)3:39 57 (1)3:43 58 (1)18:8 59 (1)18:8	activated (1)23:9 actively (1)8:24 27:7 activity (1)21:4 actual (1)43:5 62:7 actually (1)8:22 11:5 18:16 34: 7 40:17 52:18 53:6 54:21 57:23 added (1)24:2 49:2 53:18 additions (1)59:20 address (1)4:7 45:6,7 47:7 addressed (1)3:44,46 46:14 adjacent (1)6:9 admiring (1)38:6 admittedly (1)27:14 adults (1)31:24 advertised (1)44:16 advised (1)31:17 affairs (1)26:2 age (1)10:16 25:2 41:7 agent (1)45:8 47:8 ago (1)4:12	approached (1)30:17 approval (1)36:12 48:22 approximately (1)1:41 10:20 18:6 27:17 28:24 63:21 approximating (1)10:16 approximation (1)27:20 arduous (1)34:7 area (1)12:8 13:13,20 14:21 17: 13 18:2 21:6 26:25 27:8 34:5 army (1)3:7,15,24 47:6 around (1)23:19 29:21 32:1 arrive (1)28:10 arriving (1)27:11 assent (1)48:19 asserted (1)61:8 asserting (1)24:8 associated (1)21:10 22:22,23 33:7 52:23 assume (1)30:9 assuming (1)11:13 13:1 14:5 36: 2
2 2 (1)3:10 39:11,15,24 2000s (1)32:25 2005 (1)3:39,44 55:13 56:24 57: 20 2010 (1)1:38 64:19 20s (1)10:14 21 (1)3:30,39 46:14,18 47:11 56: 24 21119 (1)2:14 22 (1)46:17 22nd (1)47:12 25 (1)58:4 26 (1)6:23 7:7 27th (1)40:3 2976 (1)4:8 2-page (1)3:23,27,43 22 (1)3:28 27 (1)3:6 39:3 41:12 28 (1)3:35,44 57:20 29910 (1)2:10 29925 (1)2:15	6 6 (1)3:27 45:20,24 46:12 47:13 60s (1)10:21,23 61 (1)44:15 62 (1)2:36 63 (1)64:10 64 (1)2:38 68 (1)8:23	7 7 (1)3:35 48:5,9,14 70s (1)9:4 75 (1)41:12 757-3882 (1)58:5 769 (1)2:9 77 (1)42:18 43:5 46:16 51:13	assumption (1)14:25 15:23 19: 6 28:13,18 36:25 37:12 41:25 42: 1,10 43:9 46:22 62:12,16 attach (1)42:3 57:24 attached (1)16:20 34:19 37:15 41:21 49:4 50:3,10 attachment (1)48:23,24 58:7 attachments (1)3:16,37 attempt (1)24:8 attempts (1)30:3 attendant (1)16:2 attention (1)38:25 39:18 40:2 58:12 authorization (1)30:13 authorized (1)30:22 45:8 47:8 average (1)8:21
3 3 (1)2:32 3:13 40:24 41:3,8 42: 11,17,17 43:4,8 44:9 45:11 62:6 30-year (1)52:16 31 (1)43:13 58:23 35 (1)7:23 38111 (1)4:9 3-page (1)3:35 38 (1)3:6 39 (1)3:10	8 8 (1)3:39 56:19,22 80 (1)59:16	9 9 (1)3:43 57:11,16 58:7 9:08 (1)1:41 90-degree (1)34:3 92-a (1)1:39 98 (1)63:1	B back (1)8:6 9:6 13:21 14:1,12, 25 15:21 16:1,11,23,24 18:9 20:18 21:25 23:24 24:22 27:8 28:10 29: 10 31:1,7 32:11,11 33:14,17 34: 22 36:17 37:18 38:5 40:21 51:16 52:11,11 53:11 56:2,2,4 57:4 60:5
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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

beaufort [1]1:3 61:19 64:2 became [1]21:7 24:6 34:7 become [1]24:4 beginning [1]4:14 14:12 behalf [1]10:9 58:16 behind [1]32:1 believe [1]41:13 45:23 49:20 59:8 60:21 believed [1]33:12,14 below [1]42:14,24 benefit [1]12:13 13:18 19:1 33:9 berglind [1]2:7,36 59:11 62:4 63:18 besides [1]17:9 best [1]7:24 17:20 22:6 37:16 39:4 49:6,25 52:20 53:22 60:23 bette [1]6:14 better [1]12:6 19:1 between [1]9:22 12:8 13:11 33:23 61:17 big [1]23:21 bikes [1]32:8,9,10,11 bind [1]56:10 biologist [1]3:32 bluffton [1]2:10 7:23 8:7,9,11 8:5 55:7 board [1]48:21 boards [1]18:13 34:21 boat [1]16:15,18 25:9 31:23 50:14 boats [1]16:14 20:23 49:19,20 50:15,21 25:51:6 boones [1]17:10 born [1]23:22 both [1]5:21,23 8:8 20:20 30:10 31:8 33:9 37:24 47:19 50:6 bottom [1]42:3 bowen [1]1:39 2:13 box [1]2:9,14 27:1 boyhood [1]25:6 break [1]5:1,6,10 brief [1]40:20 43:17 57:8,25 62:1 briefly [1]4:11 brighton [1]12:10,13 13:16 33:20,25 34:4,11 brings [1]33:17 44:14 broke [1]27:5 51:18 52:10 broom [1]25:9 brothers [1]3:30 9:18 11:2,4 14:11 37:10 42:13 45:7 46:15 47:8 48:16 62:9 brought [1]38:18 58:12 buddies [1]15:16 budget [1]48:21 buffer [1]24:20 build [1]11:16,19 16:3 24:15,21 35:25 36:19 building [1]22:23 55:4 built [1]10:19,21 11:6 14:6,8, 17 16:5 21:15,17 35:20 51:17	buoyancy [1]53:8 business [1]15:1 19:8 23:15 C call [1]26:9 35:14 49:7 56:2,5 called [1]4:1 32:16 55:11,22 56:15 calling [1]20:24 38:24 59:3 calls [1]40:2 came [1]17:14,14 15:20 16:17 18:24 23:10 32:11 38:5 50:15 54:15 57:3 caption [1]64:14 care [1]60:19 caring [1]10:1 carolina [1]5:11,40 2:10,15 3:32 8:16 44:12 46:13,15 47:10 48:20,21 64:1,9,23 cart [1]31:15,16 carted [1]54:13 carter [1]16:11 7:2,3 13:9,9 19:21 24:4 30:14,16,20 33:3 carter's [1]17:9 23:13 28:23 32:20 33:12 35:18 case [1]4:24 5:4 14:15 16:9 20:9 31:3 33:8 59:20 cashman [1]7:9,11,12,37 3:8, 11,16,19,28,40,45,47 4:1,6,8 5:14, 15,16,19,25 6:2,3,13,14,14 13:2 14:10 19:21 30:13,16,20 33:3 38:12,14 39:12,14 40:25 41:2,15 43:22,24 44:23 45:9,21 47:9,14 48:6 50:10 51:2 56:20 57:12 58:3,17, 18,19 63:3,8 cashman-carter [1]19:17 cashman-waters [1]19:16 cashmans [1]17:10 20:20 21:12 32:20 33:12 35:18 50:19 63:15 category [1]63:8 caught [1]31:5 cause [1]58:22 caused [1]24:24 29:15 causing [1]14:7 ceased [1]61:15 celebrations [1]9:25 certain [1]26:17 40:7 certainly [1]47:21 59:6 certificate [1]2:38 64:5 certify [1]64:10,15 chain [1]13:8 challenge [1]7:23 30:12 challenged [1]34:2 characterize [1]9:21 chasing [1]37:20 checked [1]61:13 chewed [1]61:16 child [1]7:21 16:10 children [1]7:19 25:17 31:24 chronology [1]12:25 47:20 circled [1]32:1 civil [1]14:13 clarification [1]47:5	clarifications [1]4:15 clarifies [1]44:11 clarify [1]62:24 clarity [1]25:24 cleanings [1]27:13 clear [1]4:20,21 cleared [1]24:14 client [1]14:3 close [1]10:16 57:7 61:25 coincide [1]43:14 colleagues [1]17:14 college [1]8:25 come [1]8:6 9:5 10:16 19:6,9 20:22 28:10 37:10 comes [1]19:9 coming [1]13:1 24:21 63:6,14 commencing [1]1:40 commission [1]3:33 46:14 64:24 common [1]59:1,2 communicate [1]4:22 communicated [1]56:6 community [1]10:4 34:4,9 company [1]3:19 54:25 compassion [1]10:1 complaint [1]5:14 6:7 10:9 58:15,20 59:7 complete [1]51:25 64:13 completed [1]23:9 completely [1]18:11 51:24 compliance [1]37:11 complied [1]4:18 concern [1]10:1,2 21:11 concerned [1]33:6 concert [1]15:4 21:19 concluded [1]5:6 63:20 conclusion [1]59:14 condition [1]60:9 conditioned [1]23:21 24:2 configured [1]35:9 conflict [1]10:2 63:17 confronted [1]32:3 conjunction [1]39:20 conjure [1]52:23 connecting [1]29:7 connection [1]28:21 considered [1]60:24 consist [1]46:12 consisted [1]22:11 consisting [1]3:13,27,43 consists [1]41:4 constant [1]51:21 construct [1]36:24 42:14 62:10 constructed [1]13:15 14:4 35:8 43:15 62:23 construction [1]3:19 22:5 contemporaries [1]19:18 contemporary [1]9:17 context [1]19:15 contracted [1]27:25 28:7 contracting [1]28:20	contractor [1]22:10 60:19 contracts [1]26:5 control [1]48:21 convenience [1]13:12 49:15 conversation [1]5:7 16:8 21:1 22:15 24:18 26:13 56:6 57:5 conversations [1]28:14 60:17 cool [1]23:23 coordination [1]45:9 47:9 copy [1]39:2 41:4,14 42:7 44:9 46:13,16 57:18 corps [1]9:3,7,15,21 11:20 12:3 16:1,4 35:24 36:12 37:5 38:18 39:3 41:18 42:9 44:2,8 corpsa [1]39:24 correct [1]5:17 6:5 7:1 12:9 29:22 30:24 36:1 39:7 41:16,17 42:15,19 43:3 44:4 45:25 46:21 47:17 49:5 50:4 57:21 64:12 corrected [1]60:8 correspondence [1]33:23 38:10 38:23 cost [1]22:22,23 26:11 54:24 cottage [1]23:20 couldn't [1]50:20 51:6 counsel [1]1:38 4:25 64:15 county [1]1:3 61:20 64:2 couple [1]20:22 27:22 62:5 course [1]4:10,17,25 22:9,13,17 24:22 26:13 31:9 court [1]64:5,8 cover [1]18:23 coverings [1]18:25 crab [1]19:10 51:4 craft [1]50:10,13 51:7,8 crew [1]22:9 crib [1]23:25 cross-examination [1]2:36 62:3 crossed [1]57:4 current [1]4:7 currently [1]14:2 custodian [1]21:4 cutoff [1]29:5 D dad [1]27:25 damage [1]27:23 31:8,12 33:9 damages [1]20:23 date [1]10:22 29:9 44:3 47:11,17 52:3,23 dated [1]7:3,6,10,14,18,25,28,29, 35,39,44 38:21 39:3 41:18 46:14, 17 47:24 57:20 dates [1]46:10 47:19 50:24 davis [1]16:15 day [1]1:38 21:25 22:2 24:14 28:10 33:15 37:18 47:24 50:22 54:20 56:15,15 64:19 days [1]16:12 deal [1]34:8 48:1

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

dealt (1)51:1	9,22 35:3,4,6,17,19 36:8,12,18,	element (1)32:14	exhibits (9)2:32 3:2 45:11 48:
dear (1)3:45	19 37:5,7,9,11,12,14,20,21,22 38:	elizabeth (1)14:25	10 48:18
decided (1)56:25	4,5,6 39:1,6,19,20,22,23 41:21,22,	else's (1)51:21	existing (2)40:17 41:22
declaratory (1)58:23	23 42:4,5,12,14 43:15 45:10 49:1,	emanating (1)59:2	expense (1)28:20
declined (1)22:20	4,12,14,16,17,23 50:10,12,18 51:2,	emerged (1)34:21	experience (1)9:10
dedicated (1)13:25	6,9,13,17 52:6,17 53:6,24,25 54:1,	employees (1)17:14	expires (1)64:24
defendant (1)2:12	7,9,10,16,24 55:24 57:1 58:13 61:	enclosed (1)43:10	explain (1)59:7
defendant's (2)2:32 3:2 38:	23 62:6,7,10,22,24,25 63:14	enclosure (5)42:2 43:6,6 47:14	explanation (2)56:8 62:19
11,15 39:11,15,24 40:24 41:3 43:	dockage (1)49:21	57:23	explanations (1)4:16
21,25 44:22 45:1,20,24 48:5,9 56:	docked (1)16:19	enclosures (1)43:11	expressed (1)10:1
19,22 57:11	dockhead (1)63:9	end (1)11:5 17:4 18:18 26:24 32:	extend (1)14:20
defendants (3)1:31,38 4:11	docks (15)10:10 12:14 14:17 15:	2 35:7 36:8 54:16	extenders (2)53:5,7
definite (1)25:23	24 23:12 31:8 34:25 35:5,11 50:2,	ends (1)58:4	extent (1)49:17
definitions (1)4:16	5,17 55:5 59:18 60:15	engineer (3)3:7,14 16:4	
delivered (1)43:2	document (2)3:23,35 5:21,24	engineered (1)15:25	F
demise (1)21:18	37:10 38:10,17 39:10,17 40:23 43:	engineers (1)3:8,15,21 11:20	facing (1)54:4
denied (1)17:20 20:1,2 54:16	20 44:21 45:4,17,19 46:4 48:4,14	12:3 16:1 35:25 39:3 41:18 43:2	fact (8)15:7 30:14 31:15 37:4,25
density (1)17:24 20:12	53:16 56:18 57:10 58:2 62:20	44:2	38:2,24,25
department (2)3:24 47:6	documentation (2)11:22 12:2	enhancements (1)27:14	facts (2)58:24 59:14
deposition (2)1:37 2:29 4:14,	documents (3)4:17 41:6 48:12	enjoyed (1)60:21	fail (1)4:20
17,25 5:1,5,5 9:24 38:12,15 39:12,	dogs (1)30:4	enough (1)33:16	fair (2)8:18 33:16
15 40:25 41:3 43:22,25 44:1,23	doing (3)7:21 10:17 55:5	entire (1)9:6	fall (1)60:11
45:1,21,24 48:6 56:20 57:12 60:6	done (7)10:7 22:16 44:17 57:7 60:	entitled (3)3:23,36 33:25	fallen (2)23:24 24:7
63:20	7 61:16,25	entitlement (1)58:22	familiar (2)34:14 58:19
described (1)5:20,24 6:16,24	door (1)24:4	envelope (2)55:25 56:12	families (1)9:22 19:24 21:9
13:18 15:25	doubt (1)35:23	environmental (2)3:31 48:22	24:19 30:20,23 33:3,6,11 59:17
describing (2)7:7 45:10	down (2)12:16 13:1 15:17 17:18	era (1)10:7 62:13	family (4)3:47 7:5,18,21 8:13
description (1)3:4	19:6,9 20:21,22 23:11,16,24 25:8,	erected (1)10:14 24:1 51:17	9:10,24 13:4 23:16 25:16 27:7 29:
descriptive (1)12:6 48:16	18 27:12 28:6,13,14,15 33:5 35:5	esquire (2)2:7,12	16 32:22 35:1,20 36:23 50:6,6 56:
designated (1)12:12	37:20 43:11 51:19 64:11	estate (1)58:24	10,25 57:3 58:3 59:25,25 60:13,
designation (1)61:23	draft (1)42:18,18,20,23	estimate (2)52:20 54:22,23	24 61:8,9,19 63:3,5
destroyed (5)18:11 38:5 51:23	drainage (1)29:7	et (1)23:14	family's (1)33:8
52:1,24	drawing (3)39:21 42:1,4 48:25	eugene (1)1:7,8,37 3:8,11,16,28,	far (1)18:18 21:11 26:24 50:7
details (1)34:5	49:1 53:18	40,45 4:1,8 5:14,25 6:3,14 41:15	father (3)6:13,15,17 7:13 8:15
developer (1)12:24	drawings (2)16:1 36:11	47:14 58:17	9:15,19 11:12 14:9 15:13 22:9 23:
development (1)11:24	drayton (1)8:10	eustis (2)8:5,9	3,21 24:25 25:11 26:10 28:15 37:
dianne (1)3:47 58:4	dressed (1)24:14	even (1)24:5 30:15 31:5 34:22	4,10 38:20 39:3 40:4 41:15 42:8
died (1)24:6	drew (2)2:12 4:10	events (1)13:8	44:3 46:17,19 49:13 51:11,13 54:
different (1)38:1	drift (1)51:4	everybody (5)19:12,13 49:21	3 60:18 62:24
difficult (1)41:7	driven (1)31:15	50:5 51:21	father's (1)39:25 42:22 44:8
dinner (1)15:12	duly (1)4:2	everything (2)10:6 22:6	45:5
direct (2)2:34 4:4	during (1)4:17,25 7:18,19,24 8:	evidence (1)32:15 36:5	features (1)19:1
disassembled (1)54:12	24,25 24:22 27:6	exact (2)32:10 53:17	fell (1)23:21
discover (1)54:20	E	examination (1)2:34 4:4 18:21	few (1)18:3 55:24 58:14
discovered (1)54:21	earlier (1)49:23 14:12 22:19	examined (1)4:2	fifties (1)16:24 18:8 26:20
discuss (1)4:24 5:4	33:17 38:18 39:18 41:9 42:18 43:	example (1)18:25	file (1)16:1
discussed (2)9:23 45:11	14 44:11 48:17 58:12 60:6 61:15	except (1)34:6	filed (3)10:9 11:19 58:16
discussion (7)13:14 14:12 28:	early (1)10:21,23 20:18 25:12	exception (2)22:8 48:25	filing (1)5:18
3,8,19,22 43:14	27:21 29:10,21 32:25 40:6 53:1	exchange (1)31:22	finances (1)25:4
discussions (1)28:16 35:2 51:	east (1)49:8 53:15,19 62:23	excluded (1)31:11	find (1)18:9
1 60:6	eastern (2)38:8 63:14	exclusion (1)61:9	finding (1)27:11
distinctly (1)16:10	effect (1)28:6	exclusive (2)57:1 61:8	finished (1)62:2
district (1)3:7,14,20 44:2	effectively (1)4:22	excuse (1)40:19 43:16 47:2 53:	firm (1)29:2
ditch (1)29:8	effort (1)29:12	25	first (1)4:2 6:24 11:9 23:6,11,
divers (1)37:22	efforts (1)31:20	exercise (1)5:9	13 25:18 29:23 35:2 37:14 46:24
diving (1)25:11	eight (1)9:8	exercised (1)33:15	47:24 54:17 58:22
dock (1)11:2,3,12,17,18 14:22	eighties (1)29:10 52:15 53:1,1	exhibit (4)13:13,27,43 38:11,	firsthand (1)32:12
16,9,11,13,13,16,19,20 17:1,3,18	either (1)50:16 55:3	15 39:2,11,15,24,25 40:4,9,24 41:	fish (1)8:7 16:17 27:13
18:22,22 19:2,14,22 20:14,15,24	electricity (1)22:8 26:23,25	3,6,8,12 42:11,17 43:8,21,25 44:1,	fished (1)10:5
21:3,5,8,22 22:10,17 23:10 26:22,	27:17 28:17 59:20 60:12,13 61:11,	9,10,20,22 45:1,20,24 46:6,12 47:	fisher (1)2:21
23,24 27:12 28:11,17 29:8 30:1,4,	13	5,13 48:5,9,14 49:12 50:11 56:19,	fishing (1)5:3 7:11 15:16 16:11
12 31:23 32:2,7,16,20,22,24 34:8,		22 57:11,16 58:7	five (2)46:23 61:24

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

fixing (11)22:12 fixture (11)59:1 fleets (11)49:21 flip (11)47:16 flip-flopped (11)38:3 float (11)51:4 floated (11)53:6,10 floating (11)11:3,12,16:13,16, 19,20,25 17:3 18:22 35:11,17,19 36:8,12 37:5,11,14,20,21,22 38:4, 5,6 39:1,6,6 41:20 42:4,14 49:1,4, 12,14,16,23 50:2,10,12,17,18 51:2, 9,13,16 52:17 53:6,24,25,25 54:7, 9,10,24 55:5 62:22,25 Florida (11)8:5,6,8 fly (11)9:6 follow (11)46:9 follow-ups (11)62:5 follows (11)4:3 46:22 48:19 foregoing (11)64:10 form (11)32:12 48:20 59:11 61:23 forth (11)9:6 58:25 forties (11)11:18 forward (11)7:7 9:5 found (11)24:10 53:11 four (11)9:2 34:11 41:4 fourth (11)43:7 frame (11)23:18 26:21 fred (11)9:16 13:2 14:5 frequent (11)7:12 17:25 21:7 frequented (11)7:20 frequently (11)10:1 21:8 friends (11)17:14 front (11)10:10 11:14 12:9,11, 25:9 30:1 43:24 45:23 48:8 56:22 full (11)4:6 further (11)64:15,16 future (11)24:9	got (11)11:17 14:13 16:14 29:24 32:11,15 44:3 47:19 48:2,13 52: 22 55:8,17 56:15 governmental (11)48:22 granddad (11)15:16 grandfather (11)6:13,19,20:7 11,11 8:5 9:17 10:20 11:7,18 12:1 14:10 15:13 17:15 21:19 22:20 26: 2,11 33:23 36:3 40:12 62:18 grandmother (11)7:3 8:6 26:2 grandparents (11)7:10,25 8:12 grandson (11)13:9 24:11,11 granted (11)11:19 36:16,20 granting (11)13:22 greater (11)56:11 grew (11)20:12 21:6 group (11)21:7 30:14 31:23 34:4 guess (11)18:7 24:4 27:20 35:14 49:7 guesstimate (11)52:21 guys (11)14:14	hours (11)25:11,11 house (11)7:13 23:20,25 24:3 27: 1,7 29:4,4 31:24 32:1 houses (11)61:18 however (11)13:19 hunt (11)8:7 hunted (11)10:5 hunting (11)7:10 husband (11)7:3	island (11)1:40 35:7 issuance (11)44:11 issue (11)59:23 issued (11)44:15 issues (11)20:12 it'd (11)28:5 35:14 42:23 63:6
J			
j.o (11)6:13 jeffrey (11)3:31 joe (11)14:10 36:21 joint (11)58:25 jr (11)1:7,9,37 3:40,46 4:1,8 5:14, 25 6:3 58:17 judgment (11)58:23 july (11)3:28,30 46:14,17,18 47: 11,12 june (11)3:10,35			
K			
kathleen (11)1:10,12 5:15,16,19 6:2 58:18,18 keeney (11)1:7,9,37 4:1,8 5:14,25 6:3 58:17 keep (11)21:5 22:13 keeping (11)22:17 47:16 key (11)55:19 56:2,4,13 57:1,3 keys (11)55:18 kids (11)30:4 31:10,14 kin (11)64:15 kind (11)27:15 55:5 kinds (11)25:13,19 knowledge (11)10:12 16:5 17: 20 18:5 19:25 20:11 21:23 22:6 26:3 28:12 29:18 35:13,21 37:8,9, 16 39:4 49:6,25 53:22 54:19 60:4, 23 61:10,22 known (11)9:19 14:14 31:14 54:17			
L			
labor (11)22:4 lack (11)12:5 lady (11)25:8 32:17 laffitte (11)2:20 3:41 21:2 24: 19 27:6 29:12 55:11,14 57:19,20 laffitte's (11)31:20 land (11)11:23 12:4,8,14,24 13:11, 15 landing (11)12:17 landowners (11)13:17 lane (11)15:17 lapse (11)44:14 large (11)17:25 larger (11)38:7 last (11)1:21,27 54:8 late (11)18:8 20:18 27:21 29:21 later (11)7:13 24:6 25:4 27:4 32: 22,24 33:19 34:20 36:7 47:3,24 latter (11)39:25 laughlin (11)1:39 2:12,13,34 4: 5,10 38:8,13 39:9,13 40:19,21 41: 1 43:16,18,23 44:19,24 45:18,22			

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.

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Deposition of EUGENE KEENEY CASHMAN, JR., taken March 12, 2010

organized M134:17 origin M141:13 original M12:24 13:17 44:12, 15 53:5 originally M16:13,17 11:24 13:24 17:4 19:14 23:20 29:14 35: 8,20 41:10 58:16 oswald M13:11,20 oswald M11:19,22,29 3:29 9:15, 17,19 28:8 42:3,15,25 46:17 47: 13 other M78:12 9:25 12:7 20:1,2 24:19 25:19 29:18 31:10 32:12 33: 7 35:4,4 36:9 38:1,4 42:11 46:16 49:11 50:7,11 52:7 62:18,19 63:4, 13,17 others M18:24 50:20 63:8 otherwise M30:21,22 37:2 out M15:2 11:21 16:14,18 18:10, 17,20 19:10 24:10,16,24 26:22 27: 17 28:7,17,24 31:5,6 32:2 33:17 34:9 44:6,14 54:20,21,23 55:8,24 58:3 61:11 63:11 outcome M31:20 64:17 outside M127:2 over M118:20,23 9:22 10:8 15:12, 16:17 22:1 38:4 52:15 59:16 63:8 overrun M124:4 overseer M121:4 own M13:3 17:17 27:7 61:4,4 owned M19:11 13:15 14:3,3 19: 24 24:3 33:19 34:4 42:13 63:2 owner M5:20 10:25 owners M33:20,25 58:25 59:9 ownership M160:24 61:1,3 owns M16:1,2,4 60:10 oyster M5:23 9:11 12:6,7,8 18: 18 34:3 P p.a M12:8 p.c M11:39 2:13 page M73:4 41:14 42:17 43:5 46: 16 47:21,24 pages M141:4 43:4 47:4 46:2,6 64: 10 paid M122:4 51:9 61:19,21 palmetto M134:19 paper M126:7 paragraph M148:19 58:23 paragraphs M158:25 parcel M12:23 parents M7:22 31:7 32:9 park M11:11,24,25 12:12,15,15 13: 13,20,25 14:20 33:18,19 part M7:10 13:12,11,14 13:20 23: 24 25:5 26:11 30:1,5 35:19 46:6 48:12 50:11,16 53:5,9 59:17 participants M12:13 participated M10:24 11:4,9 14:7,18 16:7,16 21:16 63:3 participation M159:19	particular M11:5 12:23 26:1, 9 38:23 parties M164:16 parts M160:22 party M151:3 party's M150:16 passing M14:12 past M132:21 59:21 pay M121:22 26:11 payment M11:7,9 21:20 22:20 payne M11:24 people M14:13 15:13,14,17 17: 16,25 19:7,21 20:12 21:5 27:15 30:11 31:1,10 34:12,13 54:22 55: 4 63:6,12 per M142:14 percent M150:9 63:2,4 percentage M163:1 perhaps M121:9 42:18 period M17:24 9:1,14,22 11:15 27:6 34:22 43:14 50:23,25 52:6, 14,16 61:7 periods M18:24 permanent M17:9,25 8:2,16 50: 21 permanently M151:3,5 permission M111:23 12:1 14: 20 15:1,8 16:2 19:22 21:3 32:19 33:2,22 36:3,15,17,20 41:19,20 42:3,13 55:24 57:2 62:10,17,17, 20 permit M13:24 4:24 5:4,6 11: 18 36:3,5,7,14,24 37:4,8,11,13 38: 21 39:19 40:10,13,14,15,16 44:12, 13,17 45:8 46:23 47:6,8,23 48:20 49:1 53:2,3 62:7,7 permits M11:17 permitted M11:12,13 15:3 20: 13 36:6 38:24 39:20 49:24 persisted M131:7 person M134:14,17 personal M131:3 peruses M138:17 39:17 45:4 46: 4 48:14 phone M128:9 56:1,5 57:5 photographs M17:15 10:15,22 25:15,15 52:22 photos M118:12 phrase M112:6 physically M130:7 piece M12:15 26:7 38:23 pier M10:13,18,19,20,24 11:3, 5,6,10,11,19,21 12:19 13:15 14:4, 7,7,20 15:6,7,10,19,22,25 16:3,21 17:4,7,7,15,21,21,23,23 18:4,11, 21,23 19:4,4,15,16,16,17,17,18,23 20:7,8,10,11 21:14,18 22:5,7,23 24:25 26:11 30:19 33:2,13,21 34: 2 35:2,8,9,11,23,25 36:9,14,16,24 37:15 38:22 39:1,6 40:5,6,7,16 41: 23 43:13 49:2,4 50:3 53:18,22,23, 24 54:4 59:3,9 60:1,25 61:9,20,23	62:23 pierhead M18:22 36:10 53:13, 17 59:2 piers M10:10,13 11:9 piggyback M162:17 piling M18:17 53:6,7,12,12 54: 8 pilings M118:14 41:21 52:12, 13 pitts M117:10 place M118:13 16:11 23:18 26:1 33:21 49:24,25 52:7,11,11 54:19 plaintiff M12:7 59:9 plaintiffs M11:15 58:24 59:8 plan M139:21 planked M118:22 plans M153:16 play M119:10 please M19:4 7 39:9 40:22 43:19 45:18 48:3 56:17 57:1,9 plot M113:17 point M110:18 11:21 14:11 18: 20 23:21 26:22 33:17 34:1 35:22 36:7 44:11 47:5 51:7,12 pop M118:13 population M17:24 20:12 21: 6 portion M113:24 possibility M124:23 possibly M128:22 post M12:9,14 posted M120:14 29:20,25 posting M130:18 potentially M121:8 preceding M158:25 preclude M150:19 51:6 predisposed M124:11 present M12:20 presented M14:17 press M131:17 pretty M110:4 14:14 19:13 61: 25 prevent M124:20 30:4 previous M136:6 46:10 48:25 51:1 previously M145:10 48:17 primarily M150:18 prior M129:17 54:18 probably M118:4 9:2 14:13 18:9, 14 20:17 23:7 27:21 28:5,8 29:9, 21 30:9 37:16 40:7 52:25 53:11 55:3 60:16 problem M117:24 procedure M14:13 proceedings M164:13,17 process M134:7 produce M146:7 production M141:5 program M144:13 prompted M125:15 26:10 properties M15:23 6:1,2,6,15 7:6 14:2,3	property M15:20 6:9,10,11,12, 16,18,24 8:9 9:11,11 10:11 11:1 12:9,15 13:3,7 20:23 23:9 24:10, 12,13,20,21 27:9 31:8,12 32:7 33: 10,20,24 59:3 61:12,17,20 proposed M143:12 44:18 protection M132:6 protector/overseer M131: 22 protest M120:21 provide M14:17 21:22 provided M11:1 22:4 41:5 providing M110:11 public M13:36 11:25 12:12 19: 15 44:16 48:15 64:9,23 public/court M12:18 pump M127:8 purchased M16:11,17,18 7:4 13: 10 purchaser M112:23 purpose M113:22 24:16 purposes M117:19 29:6 pursuant M11:27 push M116:18 put M15:11 17:4 20:19 24:16 26:7,24 27:1,12,24 28:1,7 29:9 30: 1,7,8,10,25 32:8 34:17 36:22 38:4 39:5 47:18 49:14,24 51:13 52:11, 11 53:7,11 54:3,19 56:10,11 60: 19 63:7 putting M137:21 52:5 pylons M134:19 Q questions M14:16,20 36:6 58: 15 quote M113:25 34:10 R railings M118:21,24 rakes M118:18 ramp M131:16 37:23 41:21 rampways M137:22 38:3 ran M123:16 29:14 randall M12:21 rather M14:15 ray M17:2,3 read M141:8 47:3 58:21 real M134:8 57:7 61:20 realization M142:2 realize M162:12 realized M156:9 really M148:18 61:3,25 reason M15:10 30:12 33:7 49:20 60:21 reasonably M14:20 reasons M159:8 recall M17:25 15:13 17:22 20: 24 21:1 23:6,11 24:18 25:18 26:5 27:5,11 29:10 30:6 34:1,18 52:19, 24 53:5,9 55:6 received M17:2 36:24 46:18,24

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.

Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

recently [17:17 45:13 61:13 recess [14:20 43:17 57:8,25 62:1 reclaim [132:9 recognition [130:11 recognize [17:38 16 39:16 41:8 45:2 46:2,9 48:10 recollect [120:17 recollection [18:7 10:4 16: 23 17:6,17 29:3,23 31:3 35:16 record [14:24 16:7 18:10 37:7 records [126:5 recovered [138:3 recreation [118:1 refer [14:40 15 41:25 51:2 53:15 59:6 reference [14:11 17:21 14:12 19:20 26:21 28:14 15 30:15 31:2 37:3 41:9 43:11 44:6 50:25 referenced [126:6 31:14 35:2 36:10 38:21 48:17 50:11,18 58:12 references [140:2 43:10,12 referencing [127:25 38:20 referred [136:10 10:13 12:16, 19 13:13 17:13 19:14,16,17,18,19 35:6 62:6 referring [12:5 13:25 23:18 41:10,24 57:13 refers [14:40 10 43:5 57:23 59:3 refinery [17:12 8:3 17:14 regard [14:18 14:24 62:5 regulation [111:14 regulations [111:15 rejected [137:7 related [19:8 31:19 relates [116:7 relation [122:21 relationship [19:22 56:9 relationships [123:16 59: 16 remaining [133:24 remanded [131:7 remember [10:16 10 17:17 25:16, 17,17 29:11 37:19 23 52:3 55:2 remind [153:13 reminiscing [125:22,24 remnants [118:17 renovation [123:8 renovations [123:17 repair [11:16 51:21,22 61:16 repaired [127:22 52:10,18 53: 11 repairing [153:4 repairs [122:10 rephrase [114:21 replace [127:9 41:20 52:8 54: 15,24 replaced [140:6 51:18,24 52: 18 53:10 54:11,14 replacement [151:25 53:2 54: 22 replacing [122:11 37:22 53:4,	4 reported [112:17 reporter [12:18,38 64:5,8 reporter's [113:2 represent [14:10 34:6 45:16 46:5 represented [154:25 request [132:24 41:5,7 46:7 52: 6 56:6,9 requested [144:18 56:4,13 requesting [141:19,20 require [14:13 22:13 48:19 53: 2 required [111:22 33:2 36:7 48: 22,23 49:17 requirement [116:4 37:6 reside [118:19 residence [117:9 residences [118:8 residency [118:16 resides [113:21 residuary [111:26 resources [113:33 46:14 47:11 respect [133:21 36:10 responded [137:5 38:22 responding [1157:4 response [115:8,12 39:25 41:5, 6 44:8 46:6 47:10,23 responsibility [160:10 61: 1 re-strapping [1137:20 restrict [130:19 33:13 restriction [150:16 result [121:18 retaliate [131:11 retirement [118:2 retrieval [151:22 retrieve [137:23 51:19 return [156:14 57:1 returned [132:10 56:16 revealed [132:22 revealing [125:3 revocable [119:13 5:15,16,20, 25 6:4 58:19 rex [125:10 reynolds [13:48 32:17 58:4 rightful [133:2 rightly [133:6 ripped [120:21 risk [156:12 river [137:15 10:11 11:16 12:8, 11 13:12 25:10 31:16 34:25 35:3 41:22 51:20 54:4 road [113:11 27:9 68:4 roberts [155:4 rods [153:7 romancing [125:8 rope [130:3 routine [122:17 row [113:1 ruined [124:7 rule [122:2	rules [14:13,13,24 5:4,6 run [126:23 27:8,17 28:24 28:6, 12,15 60:13 61:11 running [128:16 ryan [17:1 13:10,10 24:13 S safe [122:13 30:25 sake [113:12,14 sale [124:16,17 same [137:21,22 9:13 11:2 13:16 17:3 28:25 30:2 31:23 36:4 48:16 53:17 64:12 sat [123:11 25:18 savannah [13:20 7:12,22 8:3, 10 16:2 44:2 saw [131:23 60:6 saying [138:18 46:18 48:1 50: 17 54:12 63:12 says [142:24 43:6 58:22,23 scabbed [118:14 34:20 37:18 schools [117:18 seal [1164:19 search [1155:7 second [116:16,18 11:19 16:3 32:23 35:3,4 37:14 39:5 46:15,25 47:21 49:14,17,23 57:24 sections [112:12 secure [1152:12 secured [111:1,18 32:5,19 36:4 53:3 security [132:12 51:1 see [112:16 18:17 28:11 29:24, 25,25 42:11 53:16 seeing [117:17 53:21 seems [1146:9 seen [114:16 18:12 25:14 36:2 45:12,13 62:6,19 selling [124:12 send [155:18,19 56:4 sending [1146:19 sent [142:8 47:13 55:25 56:2,12 57:3 separation [1133:21 september [138:21 39:20 40: 11 sequence [146:10 47:17 series [110:10,12 serve [121:4 31:21 service [119:1 set [158:24 64:18 seventies [120:18 27:21 29: 21 37:17 52:15 54:4 several [149:19,20 51:14 shall [114:14 share [111:8 shared [110:5 59:18 sheriff [120:24 31:4,11,13 show [110:15,17 21:3 58:2 showing [112:10 shown [153:23 shows [148:25	sic [1124:29 44:12 side [1127:35 14 38:1 49:9 50: 23 53:13 62:23 63:14,15 sides [1137:24 sign [1120:15 signals [1163:11 signed [126:7 42:25 45:15 significant [1163:1 signs [120:14,19 29:19,25,25 30:18,25 32:13 similar [1148:24 simple [1136:18 since [115:18 7:16 44:11 sink [1127:12 sir [117:8 12:18 14:23 33:16 44: 25 49:13 56:23 59:24 60:3 sister [116:14 7:21 13:23 sit [1162:14 site [118:22 situation [1119:12 six [119:8 46:22 sixties [120:18 26:19 27:21 29:21 32:21 40:6 sixty-three [1164:10 sleeper [1138:7 so-called [115:15 sojourns [118:11 sold [118:9 somebody [128:1,7,20 30:22 36: 16 55:7 someone [120:21 21:2 24:21 33: 3 50:13 58:12 60:10 sometime [110:14 29:21 somewhere [118:4 18:8 44:13 son [123:22,25 25:12 32:21 sorry [115:22 20:2 40:14 53:25 sort [1118:8 12:2 15:15,16 18:6 18:1,1 19:12 27:14 61:5 62:15 sounds [118:17 source [115:9 23:1 26:14 south [118:1,1 40:2 10:15 3:32 8: 16 35:14,14 46:13,15 47:10 48:20, 21 49:7,8 64:1,8,23 space [1163:9 spanning [118:23 specific [119:3 28:12 29:18 50:24 52:3 speculate [1162:14 speculative [1118:7 spend [118:18,22 9:5 spending [119:7 spot [117:11 spring [115:3 sprung [1135:1 squire [1125:9 sr [116:14 staked [1131:5 stakes [1124:16 stamped [1144:3 stanchions [1137:21 standing [110:17 53:20 54:4 staple [1158:9

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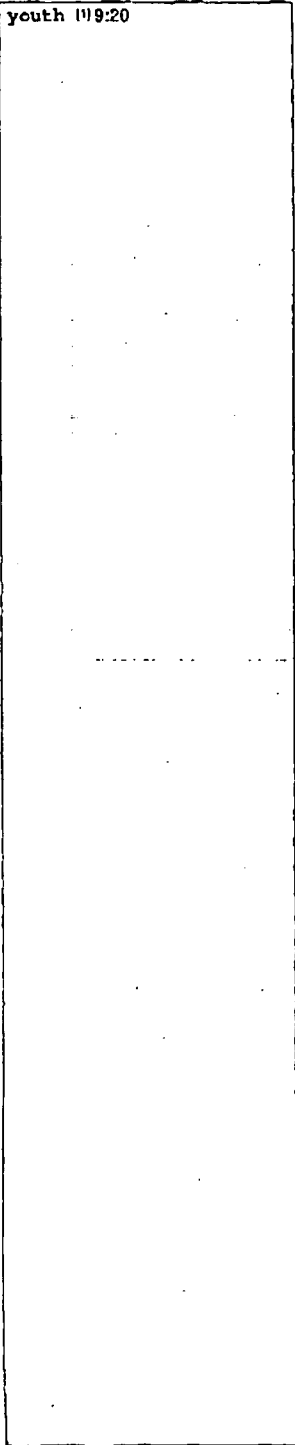
Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

start [1]25:2 started [7]9:24 11:15 18:15 23:13 25:7,19 27:6 starts [1]44:6 58:2 state [1]1:1 3:32 44:12 46:13 47:10 48:20 53:8 64:1.9 stated [1]64:13 statement [1]42:14 48:23 steven [2]3:11,20 stiles [2]13:20,23 still [1]8:11 18:17 31:1 stolen [2]31:15 32:7 stories [2]25:7,13,20 storm [7]15:23 18:5,9 27:23 52:9,23,24 storms [2]37:25 51:16 story [1]31:19 storytelling [1]25:16 strangers [1]63:5 street [1]1:40 5:23 9:12 12:6,7,8 23:16 29:6,7 31:21 34:3 36:17 60:17 strip [2]12:7 13:11 structure [1]24:1 42:4,5 44:15 styrofoam [2]37:21 51:17 subject [2]23:10 51:10 submitted [1]12:2 35:24 36:11 61:21 subsequently [1]11:11 successfully [1]4:19 sugar [1]7:12 8:3 17:13,13 suggest [2]31:17 59:22 suggests [2]15:5 37:2 summer [2]8:6 23:23 summertime [1]7:18 9:4,9 supplemented [1]29:12 supply [1]27:10 surmise [1]10:22 surprised [1]32:2 suspicious [1]31:24 swimming [1]16:10 switch [1]27:1 sworn [1]4:2 T table [1]15:12 talked [1]15:18 29:20 55:24 61:4 62:22 tax [2]61:20,23 taxes [1]61:21 tearing [1]52:4 teenage [1]25:12 teenagers [1]20:24 21:7 31:5 telephone [1]56:7 telephonic [1]28:21 tells [1]42:12 ten [1]9:8 tenants [1]59:1 tennessee [1]4:9 terminology [1]13:14 terms [1]10:6 13:8 25:19 26:6 34:8 47:16 61:4,14	testament [1]1:22,28 testified [1]4:3 testimony [2]5:5 64:11 thanks [1]58:4 that'd [1]36:25 themselves [1]14:15 therefore [2]13:24 33:24 there's [7]18:16 21:23,24 26:23 42:2 59:9 60:20 they've [1]47:18 third [1]11:10,11 35:4 43:7 though [2]24:5,15 three [1]10:13,21 11:6 17:23 18:24 19:18,24,24 20:10,11 21:14,22,25 22:5,7,24 24:25 26:12,23 30:19 33:2,11,22 34:11 35:8,23,25 36:14,16,24 37:9,15,19 39:1,7,23 40:8,16 41:23 42:5 52:12 53:12 59:4,10,19 60:25 61:9,20 throughout [1]9:14 tide [1]16:15,18 19:9 tie [2]31:22 63:10,12 tie-in [1]29:24 tied [2]26:25 29:3 50:14,21 51:3,5,6 tip [1]35:6 title [1]45:7 today [1]14:17 18:2,16 26:7 34:9,23 54:7 60:10 61:12 together [7]10:5,5,6 22:12 34:17,21 58:10 tony [2]7:1 13:10 took [1]16:11 23:24 52:7 60:7 top [1]53:8 topic [1]61:2 torture [1]5:10 totally [2]51:23,25 towers [1]8:10 training [1]5:3 transcribed [1]64:12 transcript [2]47:3 64:13 transmission [1]47:25 transmittal [1]47:12 treating [1]38:1 tree [2]23:21,24 24:1 trees [1]24:7 trespassing [1]29:19 tripods [1]18:16 true [2]11:2 64:12 trust [1]1:10,13,19,27 5:15,17,20 6:1,4 58:17,19 trusted [1]56:9 trustee [7]1:8,11,21 5:14,16 58:17,18 trustees [1]1:26 try [2]4:19,21 55:7 trying [1]24:9 turn [1]34:3 turned [1]27:2 turner [1]34:15 twenties [1]25:12 twice [1]18:15	two [9]9:2 10:19 11:3,9,22 15:8,20,25 16:21 17:5,8,21,24 18:4,11 19:5,16 20:1,3,7,8 21:18,21,24 33:22 35:12 37:8,19 38:22 41:21 43:10 46:2,6 50:2 52:12 53:11 59:18 61:18 63:4 two-by-four [1]22:11 tying [1]25:8 type [2]15:1 30:4 typewritten [1]64:11 typically [1]18:13 U u.s. [2]3:7,15 ultimately [1]49:23 um-hum [1]46:1 55:15 57:17 58:6 undated [2]3:46 58:3 under [1]1:21 24:5 29:7 37:22 51:21 underbellies [1]51:17 underneath [2]23:25 27:9 understand [1]10:8 12:5,24 44:7 understanding [1]13:8 14:6,18 15:10 17:2 21:17 22:3 25:25 32:10 33:1,11 34:10 36:23 39:8,22 understood [2]13:17 19:23 undertaken [1]22:14 unless [2]30:21,22 until [1]5:5 17:4 25:4 33:19 up [2]15:21 18:14 19:9 20:19 23:10,16 24:14,16 30:1,8,8,10 31:1,23 35:1 50:14,21 51:3,7 52:10,23 53:8 61:16 63:10,12 upkeep [1]59:19 upset [1]56:7 usage [2]16:23 58:13 user [2]7:13,17 using [7]17:18 19:13 20:13 21:5 25:9 27:6 33:6 V vacant [1]61:17 vacation [1]8:13 vacations [1]7:19 valve [1]29:5 vandalism [2]20:25 31:4 varied [1]8:23 vaux [1]2:8 verbal [2]5:8,12 15:2 versus [2]1:17 63:17 vicinity [1]18:9 view [1]39:21 virtue [1]58:24 visible [1]12:15 visitor [1]7:13 visits [2]9:2 63:7 voluntary [1]60:9 W wachovia [1]1:20	wait [1]16:17 walkway [1]59:1 wanted [1]16:17 23:22 39:5 57:1 wanting [1]49:14 washington [1]9:1 water [1]3:33 16:18 18:13,17 22:8 27:4,9 28:24 29:3,5,13,14,17 46:14 47:11 60:12,13 61:11,14 waterline [2]27:5,8 waters [1]6:10 7:4 10:25 12:21 13:2,3,7,9 14:9 23:13 waverunners [1]51:7 waving [1]63:12 way [1]4:8 7:21 14:17 19:7 20:1,2 21:3 36:22 47:18 60:20 weeks [2]9:8,8 welcome [1]59:6 welcomed [1]27:12 west [1]35:15 49:7,8,9 53:22,23 western [1]63:15 whatever [1]19:10 22:12 35:15 48:2 60:7 whatsoever [2]15:7 64:17 whereof [1]64:18 whereupon [1]38:10 39:10 40:23 43:20 44:21 45:19 48:4 56:18 57:10 63:20 wherever [1]63:10 whether [1]14:19 28:15 33:14 43:7 61:14 whole [1]61:2 wife [1]9:5 23:22 will [1]1:21,28 7:2 46:5 48:19,23 willed [1]24:11 wipe [1]18:10 wish [1]59:7 wit [1]11:3 12:14 32:10 within [1]30:22 without [7]22:15 26:20 28:21 44:15 56:8 57:2 62:19 witness [1]4:2 5:8,12 38:17 39:17 45:4 46:4 48:14 57:13 64:18 word [1]16:15 words [2]4:16 31:10 49:11 work [1]14:14 44:18 48:17 50:7,22 55:1,5 61:16 worked [2]7:11 27:8 working [1]29:11 writing [1]45:5 written [1]21:24 33:5 39:2 42:8 wrote [2]40:4 56:1 Y yard [1]29:25 year [2]8:21 9:3 23:8 years [1]8:20,23,24,25 10:8 15:12,15,24 21:21 22:9 32:21,24 59:16 yellow [1]48:11 young [1]21:7 25:8,17 31:24 younger [1]30:4

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Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

youth 019:20



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Sheet 9

youth - youth

May 27, 1975.

District Engineer
Savannah District
U.S. Army Corps of Engineers
P.O. Box 889
Savannah, Georgia. 31402

Att: Permits and *Statistics* Statics Branch.

Gentlemen:

I have a permit dated 29 September 1941 granting authority to construct a dock in May River, northerly bank, 4.1 miles above its mouth, near Bluffton, South Carolina.

The floating portion of the dock and ramp on the easterly side need to be replaced. Photograph "A" and "B" shows the easterly side or left hand view in picture.

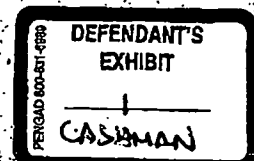
Request authority to replace the floating dock and ramp, the original floating dock size being 10 Feet X 16 feet. It will be located in same position as before, where the three piling are standing in left hand view of photos.

Would appreciate any consideration you can give me at your earliest convenience.

Sincerely,

Eugene K. Cashman

Encl. -2.
EKC/c





DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

SASKS

19 June 1975

Mr. Eugene K. Cashman
Cashman Construction Company
105 East Bay Street
Savannah, GA 31401

Dear Mr. Cashman:

Reference is made to your letter dated 27 May 1975 requesting authorization to replace a 10' x 16' floating dock and ramp to be attached to your existing dock in May River near Bluffton, South Carolina.

A review of our records indicates that the above dock was authorized by Department of the Army Permit WW(1286) issued to Mr. J. O. Cashman on 29 September 1941. The above permit authorized an "L" shaped wharf having an overall length of 185' with the head section to be 12' x 15'. However, in reviewing the photographs attached to your letter, the dock's configuration does not seem to be the same as that provided for in the permit. Additionally, Department of the Army Permit (1286) did not authorize any floating docks.

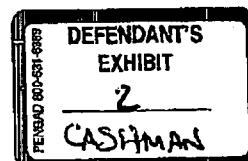
Therefore, before we can process your request, it is requested that you submit an "as built" drawing of your dock. This drawing should indicate the following information:

1. A plan view drawing of the dock showing all of its dimensions including distance to adjacent property lines.
2. Also show the location and dimensions of the float to be replaced.

Upon receipt of the above, your request to replace the float will be processed. If you have any questions, please contact Mr. David Coleman in the Permits and Statistics Branch at 233-8822, extension 347.

Sincerely yours,

STEVEN OSVALD
Chief, Permits & Statistics Branch



May 5, 1957.

District Engineer
Savannah District
U.S. Army Corps of Engineers
1101 North
Savannah, Georgia 31406

ATTN: Permits and Statistics Branch

Re: Permit

Request permission to replace floating dock, two piling and ramp which could be attached to the Western end of existing dock located on the Northern bank of the Savannah River, approximately 4.1 miles above its mouth, near Bluffton, South Carolina.

The size of the floating dock could be ten (10) feet wide and sixteen (16) feet long. The floating dock would be located at (1) on the enclosed map. The present dock is approximately 261 feet from high land.

The dock is owned by Lightsey Brothers and I have permission to construct this floating dock as per statement below of Oswald Lightsey.

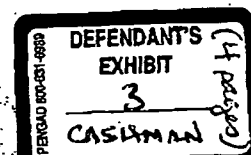
Sincerely yours,

Eugene L. Cashman

Enclosure
E/LC

I, Oswald Lightsey, do hereby give permission to Eugene L. Cashman, to attach floating dock and ramp to dock as mentioned in above application for permit.

Oswald Lightsey.



District Engineer

Request permission to replace floating dock, two ~~piling~~ piling and ramp which would be attached to the Eastern end of existing dock located on the Northerly bank of the May river, approximately 4.1 miles above its mouth, near Bluffton, S.C.

The size of the floating dock would be 10 ~~feet~~ feet wide and 16 feet long. *The floating dock would be located at (X) on enclose map*
The present dock is approximately 261 feet from high land ~~with a~~

~~5 foot wide walkway and is approximately 14 feet wide and 21~~

~~feet long.~~ The dock is owned by Lightsey Brothers and I have permission to construct this floating dock as per statement below of Oswald Lightsey.

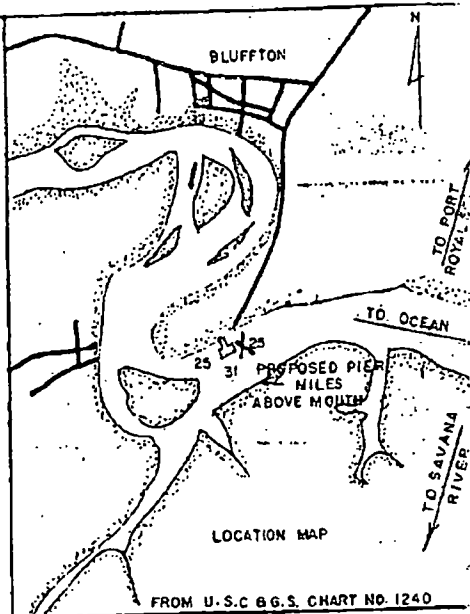
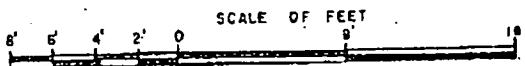
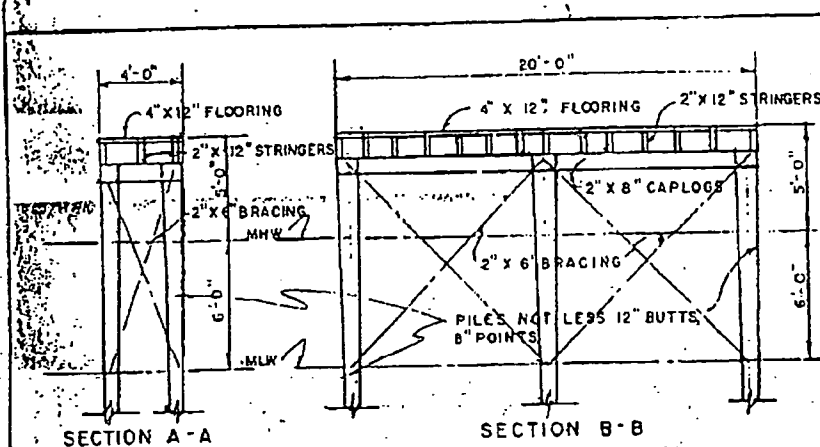
Sincerely —

Enclosure

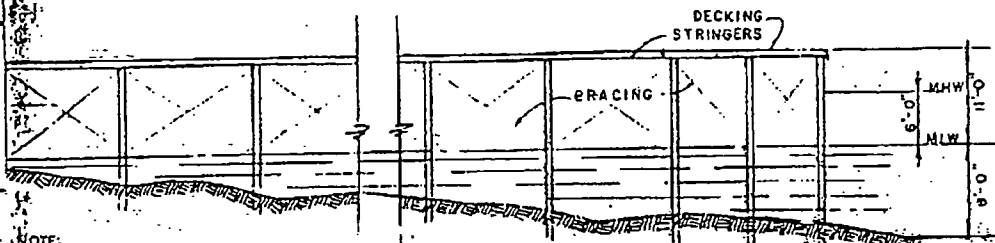
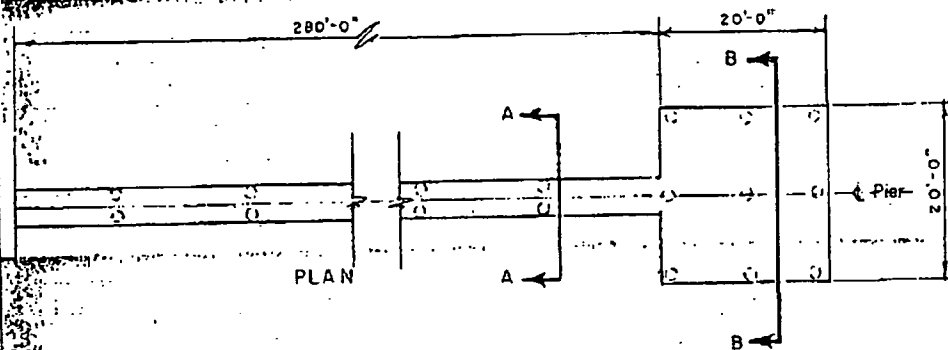
I, Oswald Lightsey, do hereby give permission to Eugene K. Cashman, to attach floating dock and ramp to dock as mentioned in above application for permit .

Signed-

Signed by Oswald Lightsey 5/9/77
Relinquished to Engineer - 5/9/77 (2)



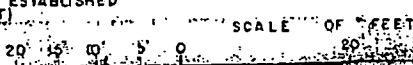
Property Owner
(Name) Lightsey Brothers
(Address) Brighton Beach, S.C.



NOTE:
SOUNDINGS ARE IN FEET
AND REFER TO MEAN LOW
WATER.

SIDE ELEVATION

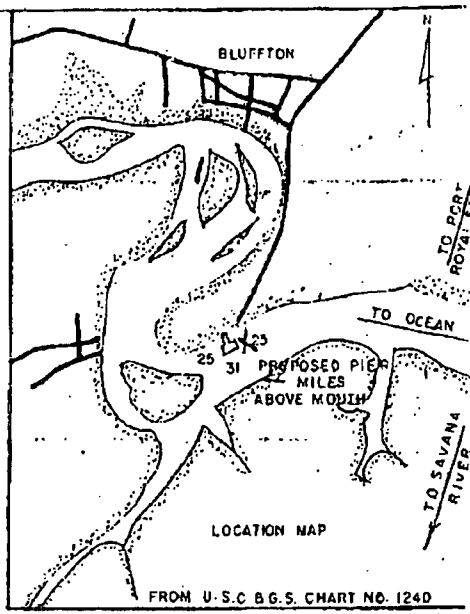
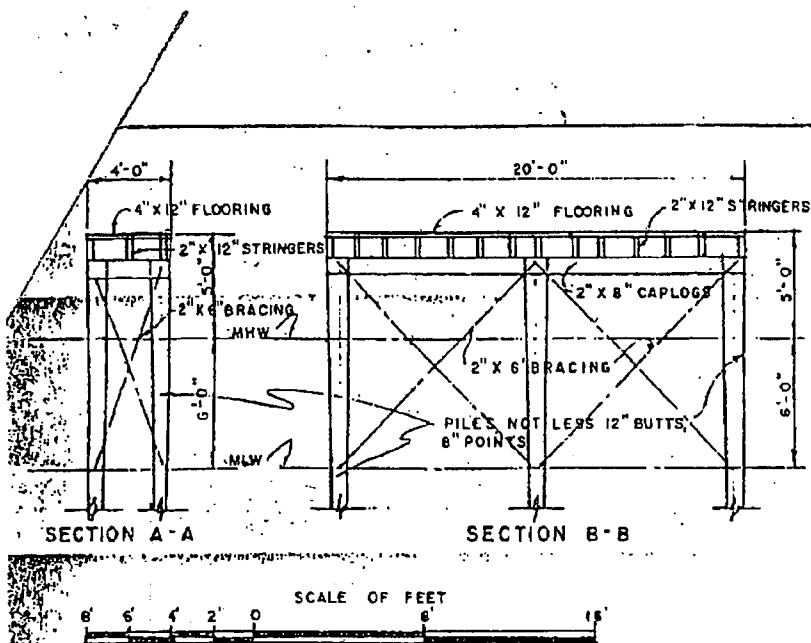
HARBOR LINES (ARE) ESTABLISHED
(ARE NOT)



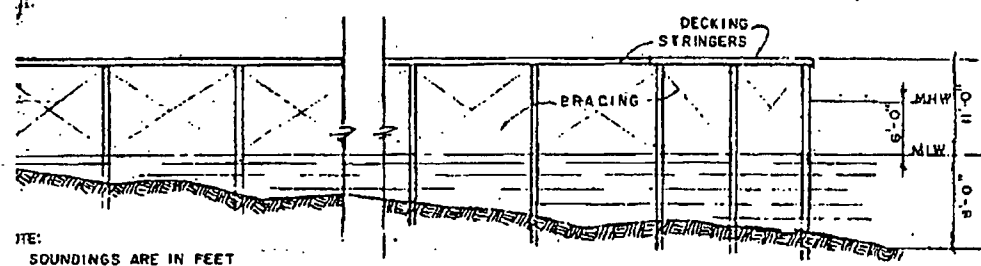
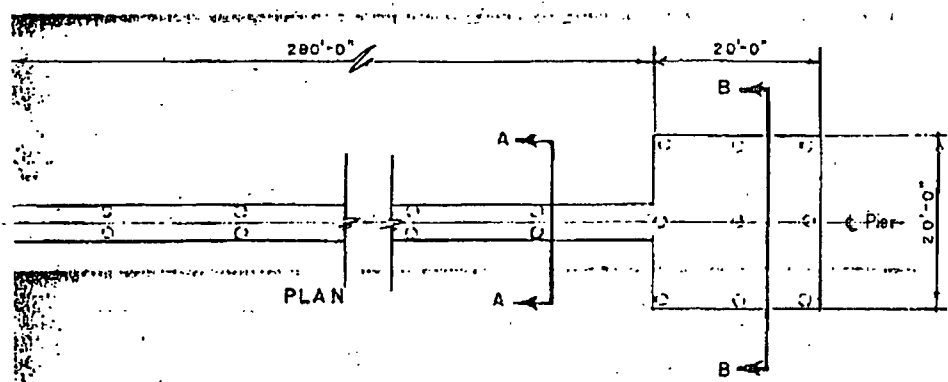
Proposed Pier
South Carolina
Brighton Beach, S.C.

(3)

State, S.C.
Lightsey Brothers
Date 1960

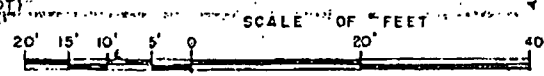


Property Owner
(Name) Lightsey Brothers
(Address) Brighton Beach, S.C.



NOTE:
SOUNDINGS ARE IN FEET
AND REFER TO MEAN LOW
WATER.

HARBOR LINES (ARE) ESTABLISHED
(ARE NOT)



Proposed Pier
in South Carolina
at Brighton Beach, S.C.
County of Jasper of State S.C.
Application by Lightsey Brothers
October 31 Date 1960



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

SASOP-F
074 OYN 002354

MAY 18 1977

Cashman Construction Company
Attn: Mr. Eugene Cashman
105 E. Bay Street
Savannah, Georgia 31401

Dear Mr. Cashman:

Reference is made to your letter of 5 May 1977 requesting authorization to replace a floating dock, two piling and ramp attached to the eastern end of an existing dock located on the Northerly bank of the May River, approximately 4.1 miles above its mouth, near Bluffton, South Carolina. The existing dock was authorized by the Secretary of the Army in a permit to Lightsey Brothers, Miley S.C., dated 21 February 1961. The permit specifically stated that it did not authorize any infringement of Federal, State or local laws or regulations.

Since issuance of the original permit the State of South Carolina has instituted a permit program which requires a permit for any construction or alteration when the activity involves the use of any land below the mean high water line. The State further requires that all applications for a State Permit be initiated by issuance of a Public Notice.

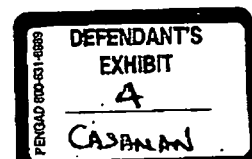
A review of the files reveal that the permit authorizing the original structure was issued in 1961 without having been advertised by Public Notice. Therefore, before the work proposed in your letter of 5 May can be authorized, a Public Notice must be issued and circulated for a minimum of fifteen days.

In order to publish the required Public Notice, it will be necessary for you to provide a drawing on the proposed work. The drawing should specify dimensions and location in relationship to the existing structure.

If you have any further questions please contact Jack Moser of this office, telephone 912, 233-8822 extension 349.

Sincerely,

STEVEN OSVALD
Chief, Regulatory Functions Branch



APPLICATION FOR A DEPARTMENT OF THE ARMY PERMIT

A set of original drawings and two copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and checklist).

1. Application number (To be assigned by Corps). 074 DYN 002354	2. Date. 05 31 77 Day Mo. Yr.	3. For official use only.
4. Name and address of applicant. ~~THE LIGHTSEY BROTHERS~~ LIGHTSEY BROTHERS (MARINE) call (9:00 am) MILEY, SC 29933 Telephone number 866-2453 Social Security No. _____		
5. Name, address, and title of applicant's authorized agent for permit application coordination. EUGENE K. CASHMAN Cashman Construction Company 105 E. BAY STREET SAVANNAH, GEORGIA 31401 Telephone Number _____		
6. Describe the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and the type, composition and quantity of materials to be discharged or dumped and means of conveyance. CONSTRUCT & FLOATING DOCK 16' X 10', TWO PILING 2ND RAMP 4' X 20'. THE FLOATING DOCK WILL BE ATTACHED TO THE DOWN END OF AN EXISTING DOCK. THE DOCK FACILITY WILL EXTEND APPROXIMATELY 280' CHANNELWARD OF THE MEAN LOW WATER MARK. THE STRUCTURE WILL BE LOCATED ON THE NORTHEAST BANK OF THE MAY RIVER, APPROXIMATELY 4.1 MILES ABOVE ITS MOUTH, OF GIBSON BEACH, NEAR BLUFFTON, BEaufort COUNTY, SOUTH CAROLINA. THE FACILITY WILL BE FOR PRIVATE NON COMMERCIAL, RECREATIONAL USE ONLY.		
7. Proposed use. Private ☒ Public ☐ Commercial ☐ Other ☐ (Explain in remarks)		
8. Name and addresses of adjoining property owners whose property also adjoins the waterway. LIGHTSEY BROTHERS MILEY S.C. DEFENDANT'S EXHIBIT 5 Cashman		
9. Location where proposed activity exists or will occur. Sec. _____ Twp _____ Rge _____ (Where applicable) SOUTH CAROLINA Beaufort Gibson Beach BLUFFTON State County In - City or Town Near - City or Town		
10. Name of waterway at location of the activity. MAY RIVER		

ENG FORM 4345 REPLACES ENG FORMS 4345 AND 4345-1 (PART A), MAY 71
1 APR 74 AND 4345-1 (PART B), JUN 71, WHICH ARE OBSOLETE.

(ER 1145-2-303)
(EP 1145-2-1)

the activity is proposed to commence. _____

Date activity is expected to be completed. _____

12. Is any portion of the activity for which authorization is sought now complete? Yes ☒ No ☐
If answer is "Yes" give reasons in the remarks section. Month and year the activity was completed _____. Indicate the existing work on the drawings.

13. List all approvals or certifications required by other Federal, interstate, state or local agencies for any structures, construction, discharges, deposits or other activities described in this application.
- | Issuing Agency | Type Approval | Identification No. | Date of Application | Date of Approval |
|----------------|---------------|--------------------|---------------------|------------------|
|----------------|---------------|--------------------|---------------------|------------------|

14. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein? Yes ☐ No ☒ (If "Yes" explain in remarks)

15. Remarks (see paragraph 3 of Permits Pamphlet for additional information required for certain activities).
The existing dock was authorized by the Secretary of the Army in a Permit to Lightsey Brothers, Miley, SC, dated 21 February 1961 from the District Engineer, Savannah District.

16. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.

Signature of Applicant

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

The application must be signed by the person who desires to undertake the proposed activity; however, the application may be signed by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish upon request, supplemental information in support of the application.

If the activity includes the discharge of dredged or fill material in navigable waters or the transportation of dredged material for the purpose of dumping it in ocean waters, the application must be accompanied by a fee of \$100 for quantities exceeding 2500 cubic yards and \$10 for quantities of 2500 cubic yards or less. Federal, State and local governments are excluded from this requirement.

DEALERS IN
GENERAL MERCHANDISE
GARAGE AND
AUTO ACCESSORIES



Miley, S.C. 29933
July 22, 1977

TELEPHONE: HAMPTON 943-3881

Mr. Eugene Cashmen
Cashmen Construction Company
105 East Bay Street
Savannah, Georgia

Dear Mr. ~~Cashmen~~ *Eugene*:

We received the enclosed letter in the mail today,
and since you are doing the work described therein, thought you
would be the one to comply with their request.

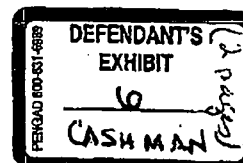
If we can help you further please contact us.

Very truly yours,

LIGHTSEY BROTHERS

Oswald
Oswald Lightsey

EGL/zmp
Letter attached.



State of South Carolina
Water Resources Commission



Clair P. Guess, Jr.
Executive Director

July 21, 1977

Lightsey Brothers
Miley, South Carolina 29933

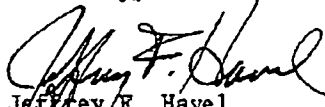
Dear Sirs:

With reference to your permit application (SASOP-F 074 OYN 002354) for a permit to construct a floating dock 16' x 10', two piling, and ramp 4' x 20' on the northerly bank of the May River, approximately 4.1 miles above its mouth, at Brighton Beach, near Bluffton, Beaufort County, South Carolina, dated June 28, 1977, the South Carolina Water Resources Commission is at this time prepared to recommend approval for the granting of a permit for the stated work.

For projects such as this, comments from various State agencies are requested to assist the Water Resources Commission in arriving at a recommendation which would be in the best interest of the State of South Carolina.

At this time no objectionable comments have been received, and as soon as you furnish the Water Resources Commission with proof that a description of the proposed work has been published in a local newspaper as requested in a letter which was sent to you the South Carolina Water Resources Commission will immediately recommend approval of this project.

Sincerely,


Jeffrey F. Havel
Environmental Biologist

JFR:sgt



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1109
SAVANNAH, GEORGIA 31402

Received
7/7/77

SASOP-F
074 OYN 002354

JUN 28 1977

PUBLIC NOTICE

TO WHOM IT MAY CONCERN:

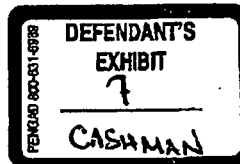
This District has received an application for a Department of the Army Permit pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) as described below:

APPLICANT: Lightsey Brothers
Miley, South Carolina

WATERWAY: May River

WORK:

The applicant proposes to construct a floating dock 16' x 10', two piling, and ramp 4' x 20'. The floating dock will be attached to the eastern end of an existing dock. The dock facility will extend approximately 280' channelward of the mean low water mark. The structure will be located on the northerly bank of the May River, approximately 4.1 miles above its mouth, at Brighton Beach, near Bluffton, Beaufort County, South Carolina. The facility will be for private, non-commercial, recreational use only.



The applicant will require assent from the State of South Carolina in the form of a permit from the South Carolina Budget and Control Board. Local governmental approval may also be required.

Preliminary review of this application indicates that an environmental impact statement will not be required.



SASOP-F 074 OYN 002354
PUBLIC NOTICE

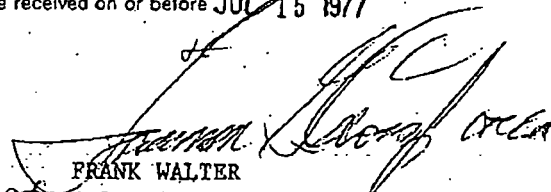
Review of the latest published version of the National Register of Historic Places indicates that no registered properties listed as eligible for inclusion are located at the site of the proposed work.

Presently unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by the work to be accomplished under the requested permit.

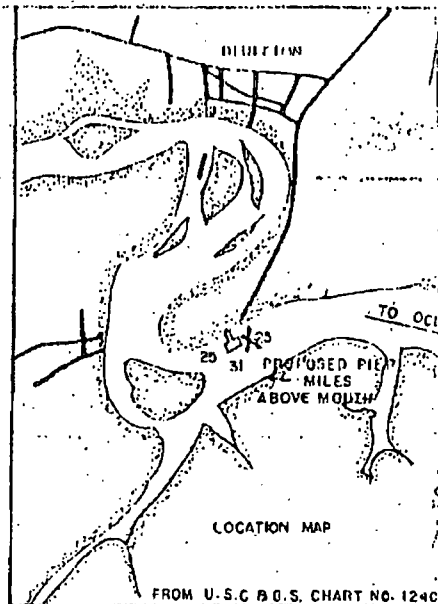
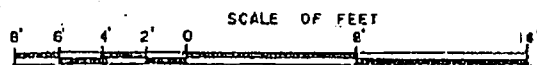
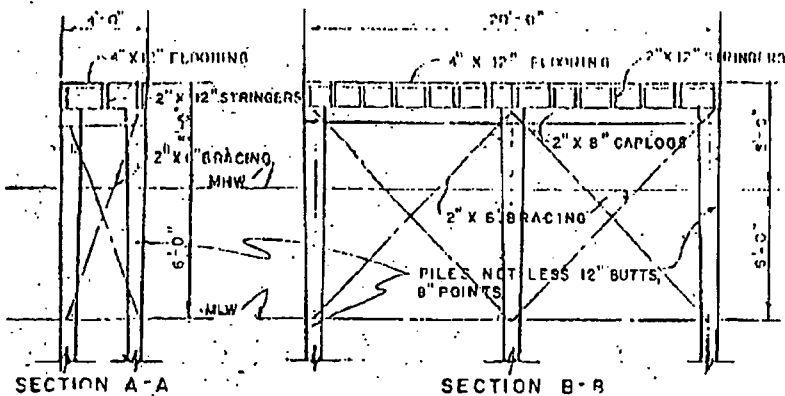
This public notice is being distributed to all known interested persons in order to assist in developing facts on which a decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision whether to issue a permit will be based on evaluation of the probable impact of proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are preservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use classification, navigation, recreation, water supply, water quality and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

Comments regarding this application should be submitted to the District Engineer, U.S. Army Engineer District, Savannah, Box 889, Savannah, GA 31402, in time to be received on or before JUL 15 1977

1 incl
Location map and drawings

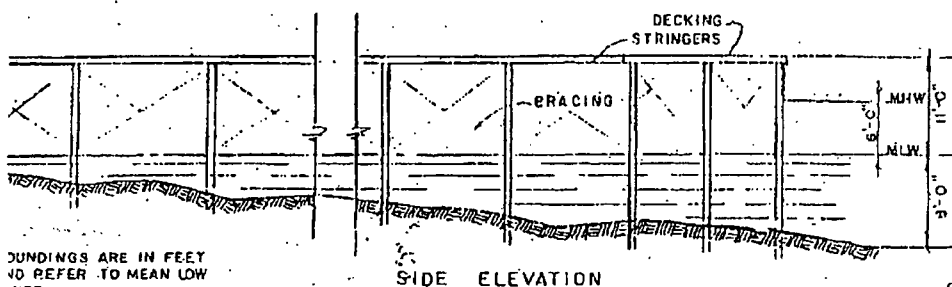
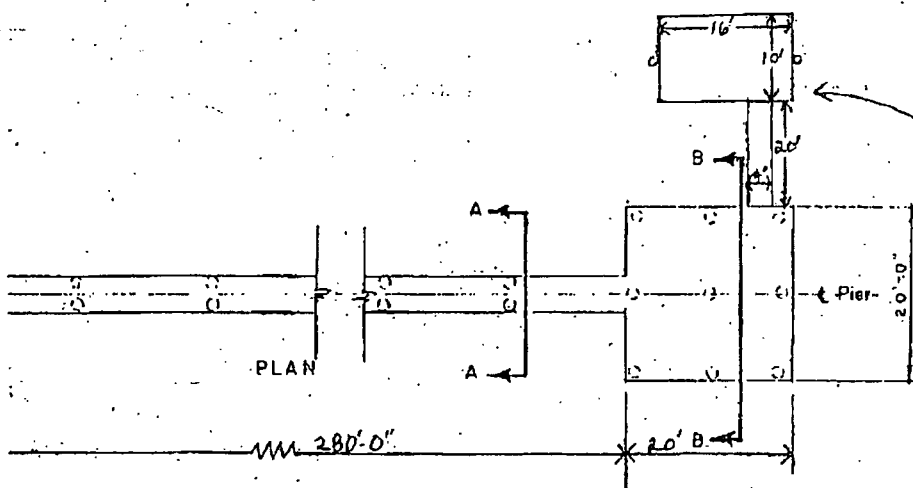

FRANK WALTER

Colonel, Corps of Engineers
District Engineer



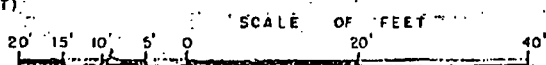
Property Owner
(Name) Lightsey Brothers
(Address) Brighton Beach,

FLOATING DOCK



OUNDINGS ARE IN FEET
DO REFER TO MEAN LOW
WATER.

ANCHOR LINES (ARE) ESTABLISHED
(ARE NOT)



Proposed Pier
in South Carolina
of Brighton Beach, S.C.
County of Beaufort, of State S.C.
Application by Lightsey Brothers
October 31 Date 196
Revised 5 May 1977

NORRIS L. LAFFITTE
POST OFFICE BOX 81 HAMPTON, SOUTH CAROLINA 29924

March 21, 2005

Mr. Eugene K. Cashman, Jr.

Memphis, TN

RE: Bluffton dock

Dear Gene:

At the family meeting last week it was decided that the Lightsey family wants exclusive use of their dock.

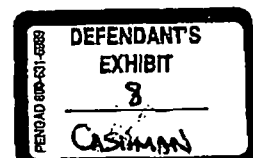
Please return the key that I should not have mailed to you without permission from the family.

Sincerely,


Norris L. Laffitte

CC: Lou Baughman
Lil Drawdy
Claudia Ware
Margaret Payne
Beth McMaster

TELEPHONE 803-943-5757
FAX 803-943-5779



EUGENE K. CASHMAN, JR.
MEMPHIS, TENNESSEE

March 28, 2005

Dear Norris,

You were right, I was glad to be sitting down when I spoke with you Thursday and again Friday when I got the letter you had sent. As I said, I was taken aback by the action your family took regarding the dock, and even as I write this letter I am still in a state of disbelief. All my questions, that you were directed not to answer, are still not answered. There really has been a major disconnect if something of this order has been decided and communicated in this mode. This is obviously not the manner in which our families, for more than 75 years, have related to one another. For sure, if something has occurred that apologies are due, please accept my apology.

I know times change and people too. But from our families' relationship of sharing, fellowship, faith, trust, and handshakes to this, is, for sure, not what was intended by those who established and endeavored to pass on those virtues and beliefs to the succeeding generations. If that's been lost to a "new day" generation then we've lost more than what's being addressed in this letter.

I would respectfully like to ask your family to reconsider its decision. If there are issues to be resolved then let's resolve them. If a more formal agreement is needed to make the dock a business relationship then let's make it. I am willing to do whatever it takes to keep our families' friendship/relationship on smooth seas.

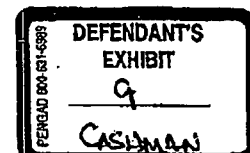
I am returning the key you sent without family permission. The envelope, as you can see, was never opened. Your call caused a stop to the completion of the dock repair to the main dock and floating dock. I had, as I told you, been in pursuit of a firm to repair the dock for more than 6 months and finally had secured the services of a company from Savannah. He was on site about to begin the work when I got your call.

On the matter of the lady you met on the dock - I've enclosed the letter she sent me this past summer. I called her and told her that if she had the Lightsey's permission to use the dock I had no objection. As you can see her relationship dates back to 1965. Her permission to use the dock would have been given by your grandfathers and mine.

I am not going to write more, although a lot is on my heart and mind. I would just ask for consideration by your family to reconsider their Bluffton dock decision.

Sincerely,

Eugene K. Cashman, Jr.



To the Cashman family:

In 1965 the Cashman family, Mrs. Carter and the Lightseys gave me permission to use your dock. I used it until the early 1980's when my two sons grew up and no longer wanted to fish, crab and swim there. The Lightseys always said I was their custodian at the dock because we were there constantly. We never went there on the weekends however, that time was for the owners and their families.

Now I have an 11 year old grandson who just moved back here yesterday from Indiana. HE had been gone since he was 3. He loves to fish and crab and I wanted to just ask if I might take him on the dock a couple of times a month and let him fish. My boys and I always respected your family and left no trash, food or dead shrimp on the dock and I plan to continue to do so if you decide that I can take Joey there occasionally.

We would love to come down early in the morning/mornings and crab and just enjoy the quiet of fishing there where it is so beautiful.

I guess I am just asking your permission to again be able to use the dock once in a while. We will never be there when your family is there like weekends, holidays, etc. Please let me know and if you say no I can understand. Young Shelby used to come out and spend the time talking with me. He was about Joey's age then. Again if you say no, I will not feel bad about it.

Thanks, Dianne Reynolds

EXHIBIT 63



Beaufort County, South Carolina

generated on 10/26/2011 10:22:04 AM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R600 039 00C 0127 0000	00507516	19 OYSTER ST,	10/22/2011

Current Parcel Information

Owner	KATHLEEN GILMORE CASHMAN	Property Class Code	ResImp SingleFamily
	REVOCABLE	Acreage	.4600
Owner Address	MEMPHIS TN.		

Legal Description LTS N 1/2 LT 4ALTS10-11-12-13~1/11 BOUNDARY RECONFIGURATION PB130 P123

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2010	\$75,600	\$590	\$76,190	\$669.64	\$669.64
2009	\$75,600	\$590	\$76,190	\$657.43	\$657.43
2008	\$50,000	\$680	\$50,680	\$649.01	\$649.01
2007	\$50,000	\$680	\$50,680	\$620.38	\$620.38
2006	\$50,000	\$680	\$50,680	\$565.93	\$565.93
2005	\$50,000	\$680	\$50,680	\$527.91	\$527.91
2004	\$50,000	\$680	\$50,680	\$530.84	\$530.84
2003	\$48,000	\$620	\$48,620	\$683.22	\$683.22
2002	\$48,000	\$620	\$48,620	\$659.30	\$659.30
2001	\$48,000	\$620	\$48,620	\$619.06	\$619.06

Sales Disclosure

Grantor	Book & Page	Date	deed	Vacant	Sale Price
CASHMAN EUGENE KEENY JR TRUSTEE KAT	2853 2394	4/29/2009	Qu		\$10
CASHMAN EUGENE K JR KATHLEEN G JTRO	1592 1617	5/29/2002	QC		\$10
RYAN ANTHONY V JR TAWANA P JTROS	1159 906	4/7/1999	Fu		\$212,000
CARTER C RAY III	875 1667	3/20/1996	Fu		\$5,000
CARTER C RAY III RTE1	590 1326	10/14/1991	Ex		\$0
CARTER LOUISE B	523 748	2/1/1989	Fu		\$0
CARTER C RAY LOUISE	6933 3142	11/1/1983	Ex		\$0
CARTER C RAY LOUISE	66 326	1/1/1980	Fu		\$0
		12/31/1776	Or		\$0

Building	Type	Use Code Description	Improvements		Stories	Rooms	Square Footage	Improvement Size
			Constructed Year					
R01	UTLSHED	Residential Shed - Small Util	1930		0	0		200

Building	Type	Feature Code	Features & Exterior Features		No. / Sq.Ft.	Value
			Description			



Beaufort County, South Carolina

generated on 10/26/2011 10:20:52 AM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R600 039 00C 0128 0000	00507525	35 OYSTER ST,	10/22/2011

Current Parcel Information

Owner	DAVIS ELIZABETH CASHMAN CASHMAN PROPERTY LLC	Property Class Code	ResImp SingleFamily
Owner Address	MEMPHIS TN	Acreage	.6200
Legal Description	POR LOT 12 BLK A BRIGHTON BEACH~ LOT CONSOLIDATED FM 39C/134 PB130 P123		

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2010	\$75,600	\$244,918	\$320,518	\$2,318.31	\$2,318.31
2009	\$75,600	\$244,918	\$320,518	\$2,275.80	\$2,275.80
2008	\$50,000	\$126,600	\$176,600	\$2,249.29	\$2,249.29
2007	\$50,000	\$126,600	\$176,600	\$2,150.88	\$2,150.88
2006	\$50,000	\$126,600	\$176,600	\$1,961.20	\$1,961.20
2005	\$50,000	\$126,600	\$176,600	\$1,828.75	\$1,828.75
2004	\$50,000	\$126,600	\$176,600	\$1,750.22	\$1,750.22
2003	\$21,000	\$94,100	\$115,100	\$1,562.79	\$1,562.79
2002	\$21,000	\$94,100	\$115,100	\$1,506.16	\$1,506.16
2001	\$21,000	\$94,100	\$115,100	\$1,410.85	\$1,410.85

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
DAVIS ELIZABETH CASHMAN	2961 497	5/12/2010	Qu		\$10
DAVIS ELIZABETH CASHMAN CASHMAN EUG	2853 2400	4/29/2009	Qu		\$10
CASHMAN EUGENE K JR DAVIS ELIZABETH	1597 323	6/11/2002	QC		\$10
CASHMAN EUGENE K SR	742 103	8/12/1994	Fu		\$10
CASHMAN EUGENE K SR	200 938	1/1/1980	Fu		\$0
		12/31/1776	Or		\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size

R01	DWELL	Dwelling	1930	1.0	01	2,750	
R01	ATTGAR	Attached Garage	1930	0	0		529

Features & Exterior Features						
Building	Type	Feature Code	Description	No. / Sq.Ft.	Value	
R01	DWELL	1CHMMASO	1s Outside masonry chimney	1	\$560	
R01	DWELL	COOLING	Central air	1	\$5,640	
R01	DWELL	EXT. COVER	Wood siding-cedar	1	\$0	
R01	DWELL	FOUNDATION	Full Slab	1	\$0	
R01	DWELL	HEATING	Heat pump	1	\$6,600	
R01	DWELL	MAS	Masonry fireplace	1	\$2,200	
R01	DWELL	OFFP	Open Frame Porch	470	\$8,170	
R01	DWELL	OFFP-S	Open Frame Porch	460	\$10,120	

EXHIBIT 64

Herman Hubbard
Box 38 J
Palmetto Bluff Road
Bluffton, S. C.
Phone 757-3149

Mr. E. K. Cashman
105 East Bay Street
Savannah, Georgia

August 21, 1974

Dear Mr. Cashman:

I looked at the repair work needed at the dock on May River. The old float was a 10'x 16' and I believe a 24' long ramp would be best.

I can do this work for a cost of \$1,480.00, or \$1,710.00 if you decide to enlarge the float to a 12'x 16'. This will be with an all metal framing 42" wide ramp. Material specifications are as follows:

1. Floatation: Styrofoam 7"x 20"x 9' attached with galvanized 1/2 inch bolts. Solid floatation.
2. Lumber: Treated pine, by Osmose, Celcure, or Wolmanized, 2" thick. All framing and decking of 2" thick material.
3. Float will be attached with hoops bolted below deck, and have 4 dock cleats, and bumper stripping on both sides.
4. Ramp: Framing for ramp will be 5" channel iron, cross braced with 3" angle iron. Hand rail and post will be of 2" channel iron. Decking 2"x 6" treated pine attached with metal screws. Bottom roller solid, of 4" pipe. All metal primed with 2 coats of metal primer.

We need an O.K. from the Corps of Engineers to do this repair, and if I can be of any further help to you, please let me hear from you.

Sincerely,

Herman Hubbard

1-803-957 214

Herman Hubbard Piledriving & Dock Work
Box 22 B
Bluffton, S. C. 29910

April 11, 1977

Mr. R. E. Cashman
105 East Bay Street
Savannah, Ga.

Dear Mr. Cashman:

I can build you a 10'x 16' floating dock, and a 3 1/2'x 24' ramp, for a cost of \$1,830.00. This is \$7.50 a sq. ft. for floating dock and ramp, and includes 2 floating dock piling.

Also, to pull up the 3 old piling will be \$50.00 each, or if they cannot be pulled, I can locate the floating dock between the old piling.

Sincerely,

Herman Hubbard

Herman Hubbard

$$\begin{array}{r} 104 \\ 48 \\ \hline 152 \end{array}$$

$$\begin{array}{r} 104 \\ 48 \\ \hline 152 \end{array}$$

$$\begin{array}{r} 104 \\ 48 \\ \hline 152 \end{array}$$

Herman Hubbard-Piledriving & Dock Work
Box 22 B
Bluffton, S. C.

1-803-757-3179

May 25, 1977

Mr. E. K. Cashman
105 East Bay Street
Savannah, Ga.

Construct a 10'x 16' floating dock, and
a 3½'x 24' ramp

@ \$7.50 per sq. ft. \$1,830.00

Pull 3 old piling

@ \$50.00 each 150.00

\$1,980.00

Paid 6/7/77

L-1

Phone 233-3071

Cashman Const. Co.

PENN WALLER, INC.

INVOICE No. 43746

TERMS: DUE 10TH OF MONTH FOLLOWING PURCHASE



			TAX				
			TOTAL				
DRIVER							
No.		RECEIVED BY					

BASIC BUSINESS FORMS, SAVANNAH, GEORGIA 31405

CUSTOMER'S ORIGINAL INVOICE

in accordance with Section 226.7,
Regulation Z, TRUTH IN LENDING, our
Open Charge Account Terms are:
Billing date: Last day of each month.
All accounts due 10th of month following purchase.
A Service Charge computed by a "periodic
rate" of 1 1/2% per month (Annual Rate 18%)
will be applied to the unpaid "Previous
Balance" on the last day of month
following purchase.

PENN WALLER, Inc.
ROUGH AND DRESSED LUMBER
Office and Yard — Randolph & President Sts.
P.O. BOX 10111 — SAVANNAH, GA.
Phones 233-3071
233-3072

BUILDERS SUPPLIES
PAINT
VARNISHES
ETC.

CHARGE ✓	CREDIT

JOB NO.		DATE		6/25/1980	
SOLD TO		Cashman Co. Inc.			
ADDRESS					
DELIVER TO		Bluffton		ORDERED BY	
NO. PCS.	SIZE	DESCRIPTION	FEET	PRICE	AMOUNT
2x8-	1/10	Treated	10	54	540
2x4-	1/14	✓	14	.28	392
					932
					39
					969
TAX					
TOTAL					
DRIVER		LOADED BY			
No. 41746		RECEIVED BY			

BASIC BUSINESS FORMS, SAVANNAH, GEORGIA 31405

PHONE
912-233-5777

White Hardware Company

DISTRIBUTORS
P. O. BOX 10005
CONGRESS AND WHITAKER STREETS
Savannah, Georgia 31412

TERMS
2% 10 DAYS
30 DAYS NET

SOLD TO CASHMAN CONST. CO.
105 E. BAY ST.
SAVANNAH, GA. 31401

Past Due Balances Are Subject to a
Service Charge of 1 1/2% Per Month.

CUSTOMER ORDER NO.		FOR	SHIPPED VIA	INVOICE DATE & NUMBER	
		<i>Cash</i>	W.A. MILLER	6-27-80	49139
QUAN.	UNIT	DESCRIPTION		PRICE	EXTENSION
2		8 GALV. CLEATS		4.68	9.36
4		5/16 X 4 GALV. LAGS		.21	.84
6		3/8 X 6 DITTO		.40	2.40
					12.60
				TAX	.51
					13.11

ORIGINAL

PHONE
912-233-5777

White Hardware Company

DISTRIBUTORS

P. O. BOX 10005

CONGRESS AND WHITAKER STREETS

Savannah, Georgia 31412

TERMS
2% 10 DAYS
30 DAYS NET

SOLD TO CASHMAN CONST. CO.

105 E. BAY ST.

SAVANNAH, GA. 31401

Past Due Balances Are Subject to a
Service Charge of 1½% Per Month.

CUSTOMER ORDER NO.		FOR	SHIPPED VIA	INVOICE DATE & NUMBER	
			W. A. MILLER	52184 7/29/80	
QUAN.	UNIT	DESCRIPTION		PRICE	EXTENSION
4		8" GALV CLEATS 4.16EA			16.64
2		1/2 X 5 1/2 PLT BOLTS			1.00
2		1/2 N C PLTD LOCK WASHERS NUTS			.62
8		5/16 X 3 GALV LAGS,18EA			1.44
					19.70
				TAX	.80
					20.50

ORIGINAL

INVOICE NO. 02644

BUILDING MATERIALS — HARDWARE — LUMBER — MILLWORK
615 STILES AVENUE
SAVANNAH, GEORGIA 31403

REMIT TO:
P.O. BOX 22068
PHONE (912) 232-6104

SOLD TO

CASHMAN CONSTRUCTION COMPANY
105 EAST BAY STREET
SAVANNAH, GEORGIA 31401

DRIVER: _____
TIME OF _____
DELIVERY: _____
YOUR NO. _____
DATE JULY 23 1984
PERSONAL
JOB _____
SHIP VIA YOUR TRUCK
DEL. TO _____

STATUS	QUANTITY ORDERED	QUANTITY SHIPPED	DESCRIPTION	UNIT PRICE	TOTAL
			1 X 8 TREATED 3/10'	30'	35 10 50
			1 X 6 TREATED- 3/10'	30	25 7 50
			2 X 4 TREATED- 5/10'	50	24 12 00
			4 X 4 TREATED- 3/5'	4 64	13 92
			2 X 6 TREATED- 4/10'	3 28	13 12
			1 ROLL 2" DUCK TAPE		5 00
					62 04
					2 48
					64 52

RECEIVED IN
ORDER BY:

ENTERED:

ACCOUNTS DUE 10th OF MONTH FOLLOWING PURCHASE. After 30 Days, Accounts are subject to 1 1/2% FINANCE CHARGE — ANNUAL PERCENTAGE RATE 18% — on the closing balance.

W. J. BREMER, INC.

READY MIXED CONCRETE
P. O. BOX 1605 753 WI

ESTAB. 1914

BUILDING SUPPLIES
SAVANNAH, GA. 31402

CUSTOMER NO.

DATE 7-24-84	CUST. ORDER NO.	WHEN SHIP 7-24-84	SHIP FROM: SAVANNAH, GA.	SHIP VIA CPU	PPD.
SOLD BY Cw	BACK ORDERED ON INVOICE NO.		F.O.B. SAVANNAH, GA.		COL

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Cashman Construction Co.
Rm. 11, Arcade Bldg.
105 E. Bay St.
Savannah, GA 31401
8775

SHIP TOW

Cashman Job

[illegible]

PLEASE EXAMINE MATERIAL SHIPPED ON THIS DELIVERY. IF THERE IS ANY DAMAGE OR IF IT IS NOT CORRECT, PLEASE ADVISE US IMMEDIATELY. MATERIAL USED CONSTITUTES ACCEPTANCE. PLACEMENT WITHIN CONFINES OF PROPERTY OF JOBSITE AND REASONABLY CLOSE TO BUILDING THEREIN CONSTITUTES DELIVERY. W. J. BREMER INC. WILL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED BY TRUCKS AFTER LEAVING ROADWAY. JOBSITE MUST BE ACCESSIBLE BY TRANSPORTING. CUSTOMER WILL BE RESPONSIBLE FOR ALL WRECKER BILLS INCURRED FOR INACCESSIBLE LOTS.

362202

RECEIVED
BY

FILLED BY

CHECKED BY

DATE _____

PCS!

CTNS

BNDLS

SUB TOTAL	1640.50

TAX	256

TOTAL	6665.12

NO RETURNS UNLESS AUTHORIZED BY W. J. BREMER, INC. SUBJECT TO HANDLING CHARGES.

INVOICE



SAVANNAH LUMBER & SUPPLY CO.

P.O. Box 22008

Savannah, Ga. 31403

Bull St. at 44th St.

Phone 234-8833

CUST. ORDER NO.

SOLD TO

ADDRESS

DELIVER TO

ADDRESS

SOLD BY

QUANT.

CASH

G.O.D.

CHARGE

Maso. Reid.

CK. BY

DRIVER

TERMS

10TH PROX.

PRICE

AMOUNT

13 50

8 60

22 10

88

22 98

TAX

TOTAL

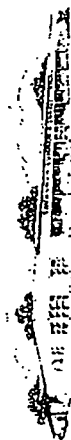
No. 32275

RECD BY

ITEMS RETURNED BY OUR PERMISSION WITHIN 30 DAYS IN GOOD CONDITION WILL BE CREDITED LESS 15%.

BUILDING MATERIALS EXCHANGE ASSN. - PENNY CA 31028 28352

INVOICE



SAVANNAH LUMBER & SUPPLY CO.

P.O. Box 22008

Savannah, Ga. 31403

Bull St. at 44th St.

Phone 234-8833

CUST. ORDER NO.

SOLD TO

ADDRESS

DELIVER TO

ADDRESS

SOLD BY

QUANT.

CASH

G.O.D.

CHARGE

Maso. Reid.

CK. BY

DRIVER

TERMS

10TH PROX.

PRICE

AMOUNT

13 50

8 60

22 10

88

22 98

TAX

TOTAL

No. 32275

RECD BY

ITEMS RETURNED BY OUR PERMISSION WITHIN 30 DAYS IN GOOD CONDITION WILL BE CREDITED LESS 15%.

BUILDING MATERIALS EXCHANGE ASSN. - PENNY CA 31028 28352

INVOICE NO. 02668

HUGHES-BALL COMPANY

BUILDING MATERIALS — HARDWARE — LUMBER — MILLWORK
615 STILES AVENUE
SAVANNAH, GEORGIA 31403

REMIT TO:
P.O. BOX 22068
PHONE (912) 232-6104

SOLD TO

CASHMAN CONSTRUCTION COMPANY
105 EAST BAY STREET
SAVANNAH, GEORGIA 31401

DRIVER:
TIME OF
DELIVERY:

YOUR NO.

DATE _____

JOB

SHIP VIA

DEL. TO

STATUS	QUANTITY ORDERED	QUANTITY SHIPPED	DESCRIPTION	UNIT PRICE	TOTAL
			2x8 TR 54P	4.98	14.94
			3/10	Tax	60
					15.54
			Bluffton		
			H young		

RECEIVED IN
D ORDER BY:

ENTERED:

ACCOUNTS DUE 10th OF MONTH FOLLOWING PURCHASE. After 30 Days, Accounts are subject to 1½% FINANCE CHARGE — ANNUAL PERCENTAGE RATE 18% — on the closing balance.

RADIO DISPATCHED

W. J. BREMER, INC

CUSTOMER NO.

READY MIXED CONCRETE
P.O. BOX 1605 753 WHEATON ST.

ESTAB. 1914
PHONE 232-6154

BUILDING SUPPLIES
SAVANNAH, GA. 31402

DATE	CUST. ORDER NO.	WHEN SHIP	SHIP FROM: SAVANNAH, GA.	SHIP VIA	PPD.
7-31-84		7-31-84		Customer	COL
SOLD BY	BACK ORDERED ON INVOICE	F.O.B. SAVANNAH, GA.			
83	No.				

C
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R

Cashman Construction Co.
Rm. 111, Arcade Bldg.
105 E. Bay St.
Savannah, GA 31401
8775

SHIP
TO

Bluffton S.C.

[illegible]

NO RETURNS UNLESS AUTHORIZED BY W. J. BREMER, INC. SUBJECT TO HANDLING CHARGES.

ANSLEY MARINE
CONSTRUCTION CO., INC.
1218 Shannon Avenue
SAVANNAH, GEORGIA 31406

Phone 355-8681

JOB ESTIMATE

PHONE _____ DATE 2-22-86
JOB NAME/LOCATION _____

TO Mr. Gene Cashman
P.O. Box 3752
Savannah, Ga 31414

JOB DESCRIPTION:

1. Furnish equipment, labor and material to drive 1-25' pile

\$250.00

2. Furnish equipment, labor and material to X" brace main dock
using 8" x 8" bolted to pile. 2.5 Ret. CCA \$345.00

3. Install floating dock using owners brackets for pile.
\$120.00

THIS ESTIMATE IS FOR COMPLETING THE JOB AS DESCRIBED
ABOVE. IT IS BASED ON OUR EVALUATION AND DOES NOT IN-
CLUDE MATERIAL PRICE INCREASES OR ADDITIONAL LABOR AND
MATERIALS WHICH MAY BE REQUIRED SHOULD UNFORESEEN
PROBLEMS OR ADVERSE WEATHER CONDITIONS ARISE AFTER
THE WORK HAS STARTED.

ESTIMATED
JOB COST _____

ESTIMATED
BY Steve Qualey

OWENS & SON IRON WORKS
2106 EAST LIVING ST.
P.O. BOX 5782
SAVANNAH, GA. 31414-5782
(912) 236-4758

INVOICE

Cashman Const.

DATE:

7/7/86

INVOICE NO.:

01145

P.O. NO.:

DELIVERED TO:

Repair ladder

\$26.00

Electric Equipment & Repair Co.

BOX 15822
SAVANNAH, GEORGIA 31416
PHONE & FAX (912) 352-8225

0250 SERVICE INVOICE

Customer's Order No.		Phone	Mechanic	Helper	Date of Order Date 6/9/95
Bill To Mr. Cashman					Order Taken By
Address					☐
City Savannah, Ga.					☐
Job Name and Location					
Work Ordered By				Job Phone	

DESCRIPTION OF WORK

~~Billing for installation of one fan and moving another,~~ rewiring dock and feed from house, new lights at Bar-B-Q pit, sweeping of roof, check on smoke detector, installation of dock ladder, new rope on floating dock and repair of water line.

Paid 7/5/95

	TOTAL MATERIALS	\$ 471.00
32 @ \$35.00	TOTAL LABOR	1120.00
	TAX	
☐ No One Home	Date Completed	TOTAL AMOUNT \$ 1591.00

Signature _____
I hereby acknowledge the satisfactory completion of the above described work.

☐ Total amount due for above work: or ☐ Total billing to be mailed after completion of work

EXHIBIT 65

LIGHTSEY CLAIMED EXPENSES

Bluffton Dock Repair
(Lightsey)

1961 Initial Constiruction (est)	\$20,000.00
1983 Waterline 300 feet	\$1,000.00
1983 Sink	\$500.00
Mar-86 Ansley Marine	\$715.00
Nov-87 Crew	\$208.80
Jun-88 Crew	\$766.75
Jul-88 Crew	\$168.40
Mar-91 Crew	\$117.70
Aug-92 Lowsouth Holdings	\$391.16
Aug-92 Lowsouth Holdings	\$44.35
Aug-92 Lowsouth Holdings	\$653.01
Aug-92 Ansley Marine	\$3,400.00
Apr-93 Chapman	\$720.00
Mar-94 Randy West	\$1,750.00
Mar-99 Norris	\$379.36
Mar-00 Neil Lax	\$731.77
May-00 Atlantic Marine	\$5,600.00
Sep-04 Norris	\$278.65
Nov-05 Norris	\$669.33
Oct-06 Knox Roofing	\$2,000.00
Jul-09 Norris	\$364.47
Aug-09 Dennis	\$63.88

\$40,522.63

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(Lightsey)

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Oct-06 Knox Roofing	\$2,000.00
Jul-09 Norris	\$364.47
Aug-09 Dennis	\$63.88

\$40,522.63

March 1986

606

November 1987

607

Charges to Laurel Spring

June 1988

[illegible]

charges to Laurel Spring

July 1988

[illegible]

March 1991

610

LOWSOUTH HOLDINGS, INC.
PO BOX 218
403 RENTZ STREET
VARNVILLE, SC 29944

SOLD TO

LIGHTSEY BROTHERS

MILEY, SC 29933

SHIP TO

LIGHTSEY BROTHERS

MILEY, SC 29933

ACCOUNT #	CUSTOMER P.O. #	TERMS	ORDER #	ORDER DATE	SLSMN	INVOICE #	INVOICE DATE
L0400		NET DUE 5TH	73406	08/05/92	4	66342	08/05/92

ORDERED	BACK ORDERED	SHIPPED	U/M	DESCRIPTION	PRICE	AMOUNT
	0			SLB NAILS 2X4X16 TREATED	5.000	10.00
1	0			100-005E		
	0			1 SLB NAILS SLB BX 0 EG COMMON	4.000	4.00
	0			0EGC50		
X 30	0	30		EAC 2X6X10 TREATED	3.799	113.97
	0			2810T		
30	0	30		EAC 2X4X16 TREATED	4.836	145.08
	0			2416T		
30	0	30		EAC 1X4X16 TREATED	3.199	95.97
	0			1416T		

(2 126x14)
(1 126x8)
for Bluffton dock
Nomin L. Lightsey

FILED BY	CHG BY	DRIVER	MERCHANDISE	AMOUNT
				10.00
			OTHER	0.00
			TAX	5.0000%
			FREIGHT	5.0000
			TOTAL	155.15

* INVOICE *

SHIP VIA

PAGE 1 OF 1

NOT RESPONSIBLE FOR DAMAGES OR SHORTAGES AFTER
24 HOURS OF THE SALE. THANKS! (803)943-4766

LOWSOUTH HOLDINGS, INC.
PO BOX 218
403 RENTZ STREET
VARNVILLE, SC 29944

SOLD TO
LIGHTSEY BROTHERS

MILEY, SC 29933

SHIP TO

LIGHTSEY BROTHERS

MILEY, SC 29933

ACCOUNT #	CUSTOMER P.O. #	TERMS	ORDER #	ORDER DATE	SLSMN	INVOICE #	INVOICE DATE
L0400		NET DUE 5TH	73383	08/05/92	8	66318	08/05/92
ORDERED	BACK ORDERED	SHIPPED	U/M	DESCRIPTION	PRICE	AMOUNT	
2	0			EAC 5/16 S BRN 10000	14.690		
3	0			SLB NAILS SLB BOX 7/8 LG ROOF	4.154		
<i>B. H. F. D. G. K.</i> <i>Alvin Riley</i>							
DATE 5, 1992 14:36:43				SHIP VIA		PAGE 1 OF 1	
***** * INVOICE * *****				NOT RESPONSIBLE FOR DAMAGES OR SHORTAGES AFTER 24 HOURS OF THE SALE. THANKS! (803) 943-4766		MERCHANDISE	
				OTHER		19.84	
				TAX		0.0000	
				FREIGHT			
				TOTAL		44.35	

DORNBOUTH HOLDINGS, INC.
 PO BOX 218
 400 KENTZ STREET
 WORTHVILLE, SC 29944

SOLD TO

LIBERTY BROTHERS

WILEY, SC 29933

SHIP TO

LIBERTY BROTHERS

WILEY, SC 29933

ACCOUNT #	CUSTOMER P.O. #	TERMS	ORDER #	ORDER DATE	SLSMN	INVOICE #	INVOICE DATE
00400		NET DUE 5TH	73526	08/06/92	6	68436	08/06/92
ORDERED	BACK ORDERED	SHIPPED	U/M	DESCRIPTION	PRICE	AMOUNT	
96	0	96	EAC	3/4" X 1/2" TREATED	3.799	364.70	
10	0	10	EAC	2X4 TREATED	5.119	92.14	
12	0	12	EAC	2X4 TREATED	4.636	106.32	
11	0	11	EAC	1X4 TREATED	3.150	78.15	
2	0	2	BOX	TN10 1/2" X 1/2" WIRE GALV	0.750		
2	0	2	SLB	NAILS 8D 20 CO LOMMON	6.000		
3	0	3	LHC	MOULDING W/4 FIR LATTICE 14'		8.05	
				WFLM14			
				Bluffton Dock			
				Alvin Riley			
				ALLIED	CREDIT	DRAW	
				MERCHANDISE		616.05	
				OTHER		11.30	
				TAX			
				FREIGHT			
				TOTAL		627.35	
***** INVOICE *****				SHIP VIA PAGE 1 OF 1			
NOT RESPONSIBLE FOR DAMAGES OR SHORTAGES AFTER 24 HOURS OF THE SALE. THANKS! (803) 943-4766							



ANSLEY MARINE CONSTRUCTION CO. INC.

Route 3 Box 172 Pinpoint Rd.
SAVANNAH, GEORGIA 31406
(912) 355-8681

8-10-92

Mr. Norris LaFitte
The Lightsey Brothers Inc.
Main Street
Mauli, SC 29933

Ansley Marine Construction Co., Inc. furnished
material, labor and equipment to:

- A. Drive 5/20', 2/25', and 2/40' 2.5cca
pile.
- B. Pulled 2/25' old float pile and
re-drove under walkway.
- C. Removed six old pile from under dock.
- D. Placed new boards around to floating
dock pile.
- E. New roller to be placed under ramp.

\$3,400

PAID IN FULL! Mr. Norris Lafitte 8-12-92

THANK YOU! Please let us know if we can help you
out in the future.

Sincerely,

Stephen C. Ansley

*1/2 WNL
1/2 E. of EOL*

CHAPMAN CONSTRUCTION

Route 1 Box 49D
BLUFFTON, SC 29910

1127

TO

(803) 757-3944

LIGHTS BROS.
P.O. Box 77
MULKEY, SC 29933

DATE	4/28/93
CUSTOMER ORDER NO.	
SALESPERSON	
VIA	

TERMS:

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	REPAIR TO DOCK IN BLUFFTON, SC.		
	DAMAGE FROM STORM ON 3/13/93		
	INSTALLATION OF ONE 40' PILE		
	RETRIEVE FLOATING DOCK AND		
	REPLACE TO PILES		
	REHANG RAMP		
	TRAVEL CHARGE		
	NEW RAMP ROLLERS BILLED TO		
	ANSLEY MARINE		
	TOTAL DUE		870.00
	travel charge	1.00	
	material - 40' piling	180	
	labor to drive 8 1/2 ft	240	
	retrieve floating dock		
	re-hang ramp		
	del. piling		
	del. ramp		
	del. rollers	100	
		720.00	

FOREST
AND
LAND MANAGEMENT



LAUREL SPRING

Mar. '99

FARM & FORESTRY

PLANTATION

Old Small Engine	9358.72	Margray Brown	17.89
Repairs to Axle	30.00	Loe Rayman	125.51
Old Tire Center	921.72	SCF & G	270.96
Wood Barn	948.82	Palmetto Rural Tel.	35.83
Walter's Rental	6.92	Novice Laffette (B. Laffette)	379.36
Tram Bldg. Exp.	22.53	SCF & G	11.39
Yard. Welding	15.91	Ruth M. Motes	1039.80
Farm Plan	625.85	Margaret Payne	84.29
Tramway AP	41.89	" "	27.56
Cummins & Co	1240.31	DIRECTV	50.98
James Langston	342.53	Allen H. Laffette	2033.57
Bentley's Feed	34.50	Plunkett's Feed	6.36
Walter's Auto & Elec.	11,328.50	Walter's Auto & Elec.	126.54
	12,148.14	Mack's Refrigeration	32.94
		Cummins' Oil	78.85
			367.14
			3675.46

O.C.

+ + S + +
11,909.64
238.50
12,148.14
3,675.46
15,823.60

Lightning House

Material for Dark House
+ Rescreen parts of
Powerd.

Tickets	107.84
	23.82
	15.11
	146.77
	585.00
	\$ 731.77

Labor

NEIL LAY
43 Oyster St
Bluffton, S.
29910

FAI
MAR. 28 2000
BY: 25238

Flake
Nestor

ATLANTIC MARINE CONSTRUCTION CO., INC.
 372 COUNTY SHED ROAD
 BEAUFORT, SC 29906
 (803) 846-8114

Invoice

DATE	INVOICE NO.
5/15/2000	20064-1

BILL TO

Mr. Norris Laffitte
 P.O. Box 56
 Hampton, SC 29924

JOB NO.	TERMS
20064	NET 10

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Marine Constr	W.O.A., Dated May 9, 2000: 11 Oyster St., Bluffton: Sister Pile and Header Work	1	6,300.00	6,300.00
<i>did not pay \$700</i> <i>2 20</i> <i>2 11'</i> <i>need (1) 25' piling on Boat 21</i> <i>he used (2) 16' piling</i> <i>" did not include (2) 20' piling</i>				
Thank you for your business.			Total	\$6,300.00

700
\$5,600

hd	9/13/04 1/2" wood bit			10.97
	5# nails			10.34 decking
	3 1/2 nut	20	0.22	4.40 stringer
	5 1/2 wash	34	0.33	7.48 stringer
	1/2 x 5	16	1.48	23.68 stringer bolts
	1/2 x 5	16	1.48	-23.68 not enough threads
greens	13-Sep	8	1.30	10.40
		8	0.33	2.64
		8	0.30	2.40
		60	0.23	11.50
bds	13-Sep 1/2 x 4 1/2 hex.	16	0.45	7.20 inside stringers
bds	22-Sep angle bracket	24	1.29	30.96 stringer to float
	1/2 x 1 1/2 lag	24	0.30	7.20 stringer to float
	3/8 x 2 1/2	50	0.15	7.50 stringer to float
	3/8 flat	50	0.05	2.50 stringer to float
	3/8 lock	60	0.03	1.50 stringer to float
	3/8 nut	0	0.00	0.00
	3 1/2 x 4 1/2 hex	4	0.45	1.80
	4 1/2 x 5 hex	4	0.50	2.00
	1/2 x 6 hex	16	0.60	9.60 ***
	1/2 flat	16	0.10	1.60
	16 1/2 lock	16	0.06	0.96
	1/2 nut	16	0.10	1.60
	3 1/2 x 5 lag	4	0.50	2.00
	1 1/2 x 6 lag	4	0.65	2.60
	3/8 bit	1	7.48	7.48
	1/2 bit	1	12.71	12.71
bds	23-Sep 3/8 nut	50	0.05	2.50 stringer to float
	6 1/2 x 6 carriage	16	0.60	9.60
	1/2 x 6 hex	16	0.60	-9.60 ***
bds	28-Sep			
	2 1/2 x 4 carriage	12	0.40	4.80
	1/2 flat	12	0.10	1.20
	1/2 lock	12	0.06	0.72
	1/2 nut	12	0.10	1.20
	2 1/2 x 5 carriage	4	0.52	2.08
	1/2 x 8 carriage	16	0.72	11.52 corner post
lowes	28-Sep 4 x 4 post	1	5.97	5.97 corner post
	1 x 2 steps	7	1.57	10.99 steps
greens	28-Sep angle bracket	4	1.99	7.96 stringer to float
	1/2 x 1 1/2 lag	4	0.70	2.80 stringer to float
	3/8 x 2 1/2	8	0.50	4.00 stringer to float
	3/8 flat	8	0.16	1.28 stringer to float
	3/8 lock	8	0.15	1.20 stringer to float
	3/8 nut	8	0.14	1.12 stringer to float
	1/2 nut	5	0.33	1.65
lowes	29-Sep 1 x 8 x 8 wood	4	5.97	23.88 ramp walk
	2 x 6 x 10 wood	2	7.29	14.58 ramp side
greens	29-Sep nails			12.89 decking
	nails			6.87 decking
				278.65

Norris Laffitte
Post Office Box 81 Hampton, SC 29924

Listed below are my expenses.

09/23/05 Lowe's	wrong entry above 208.78-28.78	180.00	
09/29/05 Winelectric	sun room bulbs	212.77	
10/07/05 Wendy's	Bluffton	20.00	
10/07/05 Home Depot	Bluffton	343.44	
10/07/05 Bft Fasteners	Bluffton	99.05	
10/10/05 Bft Fasteners	Bluffton	49.43	
10/10/05 Lowe's	Bluffton	101.46	
10/10/05 grayco	Bluffton	88.61	
10/10/05 Wendy's	Bluffton	23.76	
10/11/05 Bft Fasteners	Bluffton	-36.42	
10/11/05 Lowe's	sheetrock	1,303.09	
10/11/05 Lowe's	tarp	73.47	
10/11/05 Home Depot	greenboard	237.70	
10/17/05 Lowe's	dehumidifier, hose	325.32	
10/18/05 Lowe's	return hose reel	-24.13	
10/18/05 Lowe's	hose reel	20.97	
10/18/05 Lowe's	return sheetrock	-210.64	
10/18/05 Jeff Godley	repair nice bdrm ac unit	90.00	
10/20/05 Bargain Blder	flooring and tile	2,480.71	
10/21/05 Chapman Elec		2,500.00	
10/24/05 Lord & Evan	paint	841.84	
10/26/05 Ace	faucets	-222.57	
10/31/05 Bargain Blder	tile	29.61	
11/03/05 Ferguson	faucet	48.21	
11/03/05 Scott Tromblee	wood floor installer	1,021.25	
11/03/05 Wilfred Rivers	tile installer	875.00	
11/03/05 Home Depot	tile grout/leveler	200.00	10,671.93

PAID
 NOV 04 2005
 BY 21577

KNOX ROOFING 843 717 2157

Invoice

RICK KNOX

114 Carson Road

Ridgeland, S.C. 29936

Make Checks Payable to Rick Knox

DATE

10/30/2006

INVOICE #

6

BILL TO

Norris Lafitte

P.O. NO.

TERMS

PROJECT

QUANTITY

DESCRIPTION

RATE

AMOUNT

Labor to install metal roofing over existing roof. Including installing new drip edge on house and garage. No drip edge on dock roof.

3,500.00

3,500.00

Material - 26 gauge Tuff Rib (color to be decided by customer) paid to Eagle Metals.
Labor to tear off and clean up. Includes 30 lb felt installed

0.00

4,602.65

4,602.65

2,000.00

2,000.00

*pd 200 cash
RHK*

*PAID
NOV 13*

BY: #32

re-roof dock

10,102.65

- 200.00 NL pd

9,902.65

800.00 LB pd ck # 30649

9,102.65

- 4,602.65 LB pd ck # 30642

\$ 4,500.00 bal due

Total

\$10,102.65

NORRIS L. LAFFITTE
POST OFFICE BOX 81 HAMPTON, SOUTH CAROLINA 29924

7/1/2009

Listed below are expenses incurred.

					CAR 17	OFFICE	SHOP
		196,834					
06/02/09	19.6	388	197,222	44.94	44.94		
06/04/09	18.3	334	197,555	43.57	43.57		
06/08/09	16.8	306	197,862	40.76	40.76		
06/09/09	Staple's	printer		504.78		504.78	
06/11/09	20.3	408	198,270	49.64	49.64		
06/15/09	17.8	358	198,628	44.92	44.92		
06/17/09	Oquinn Supply	material		80.00			80.00
06/17/09	Home Depot	material		179.08			179.08
06/17/09	Beaufort Supply	bolts		68.09			68.09
06/17/09	Lowe's	tools		22.40			~~22.40~~
06/17/09	Beaufort Supply	bolts		63.69			63.69
06/18/09	24.9	426	199,054	62.33	62.33		
06/19/09	Beaufort Supply	material		25.72			25.72
06/20/09	Beaufort Supply	return		-52.11			-52.11
06/25/09	18.9	364	199,418	45.90	45.90		
06/26/09	17.1	328	199,746	41.05	41.05		
06/30/09	Petal Palace	Connie Beach		75.00		75.00	
06/30/09	21.6	420	200,166	51.53	51.53		
					424.64	579.78	~~386.87~~
		200,166		1,391.29		1,391.29	364.47

PAID
JUN 2009
BY: 5180 WJA

pd
Dennis
Craven
reimbursement

ck
32133

THE HOME DEPOT 1115
20 GATEWAY VILLAGE ROAD
BLUFFTON, SC 29910 (843)815-7000

SALE 7096 08/04/09
71 JBU6EX 11:10 AM

material
used on
bluffton
dock



098168231329 2X6-10 #2 PT <A>
1005.97

	59.70
SALES TAX	4.18
TOTAL	\$63.88
CASH	100.00
CHANGE DUE	36.12



1115 01 87096 08/04/2009 9573

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 11/02/2009

THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

GUARANTEED LOW PRICES
LOOK FOR THOUSANDS OF
LOWER PRICES STOREWIDE

ENTER FOR A CHANCE
TO WIN A \$5,000
HOME DEPOT GIFT
CARD!

Share Your Opinion With Us! Complete
the brief survey about your store visit
and enter for a chance to win at:

www.homedepot.com/opinion

¡PARTICIPE EN UNA
OPORTUNIDAD DE GANAR
UNA TARJETA DE
REGALO DE THD
DE \$5,000!

¡Comparta Su Opinión! Complete la breve
encuesta sobre su visita a la tienda y
tenga la oportunidad de ganar en:

www.homedepot.com/opinion

User ID:
175596 174482

Password:
9404 174481

Entries must be entered by 09/03/2009.
Entrants must be 18 or older to enter.
See complete rules on website. No
purchase necessary.

EXHIBIT 66



Dock 1

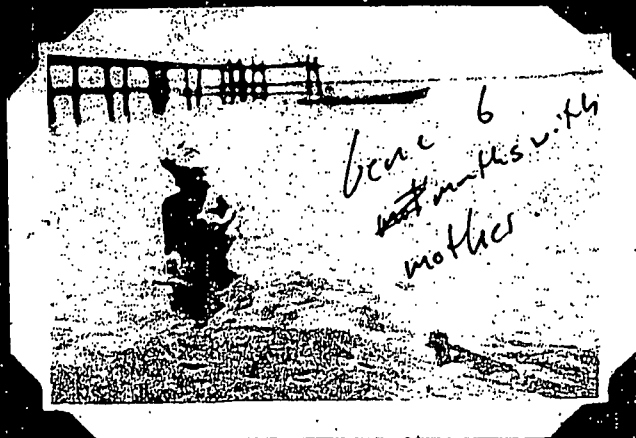


Dock 1

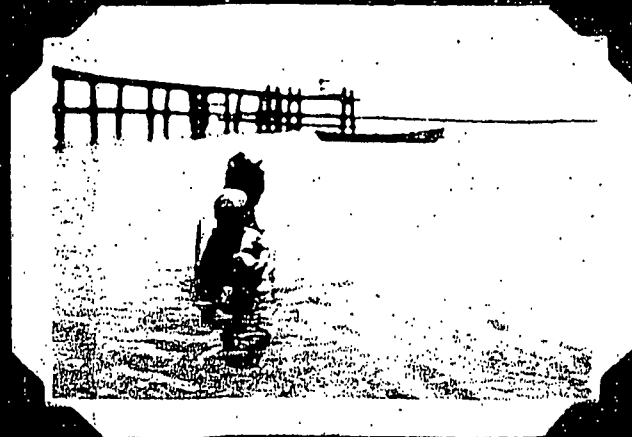
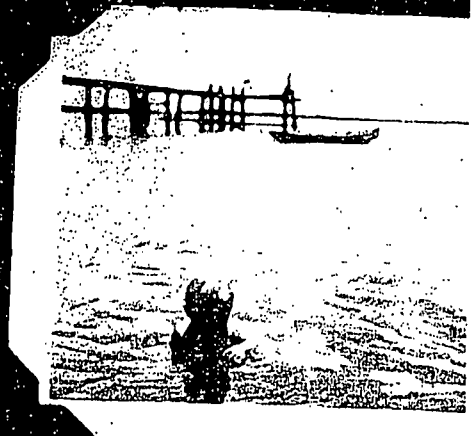


Dock 1

626
CASHMAN/MAARS
CAS 1006 1930
1920



June 6
~~with mother~~
 mother

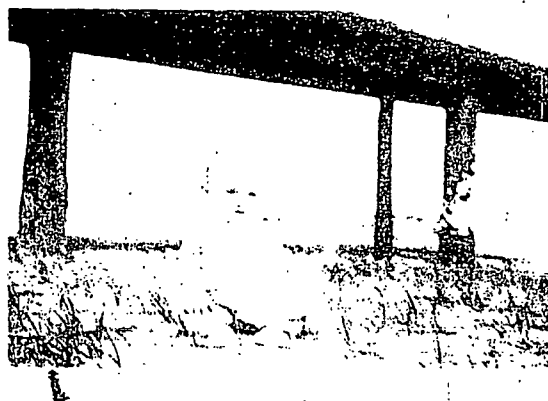


June's hard writing.

SECOND DECK
 1941 —

St

1941



Mother +
Gene



Gene Sr.

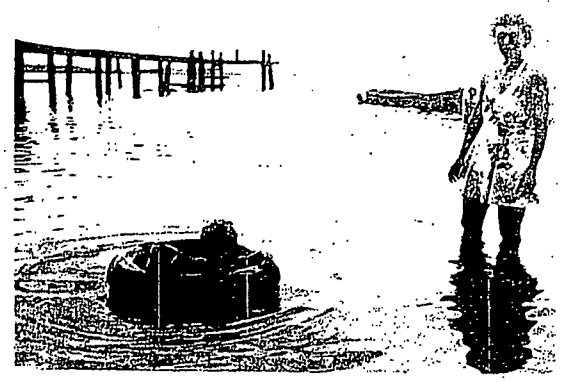
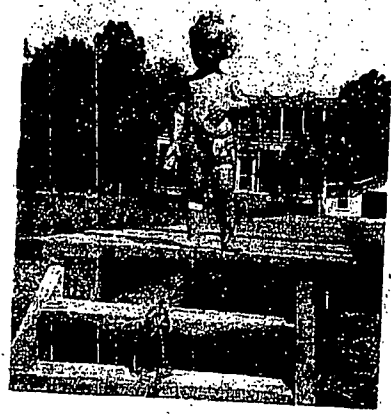
(*)

1944-1945
↓
Slits
↓
1946



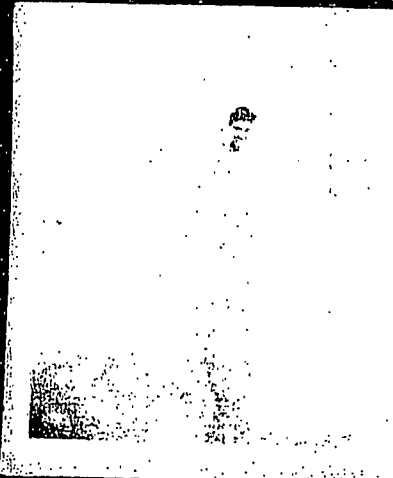
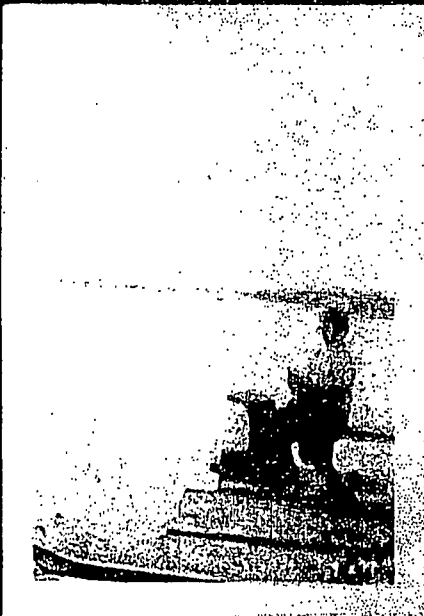
1945年12月12日

Gene

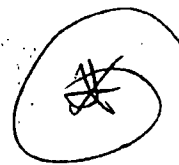




*Charm
D. 3/21/51*



About 1954



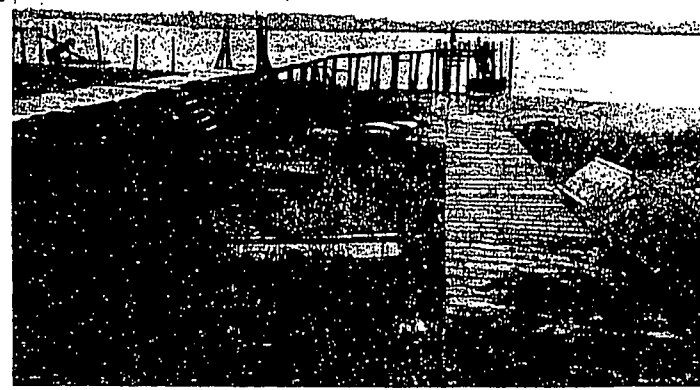


1962



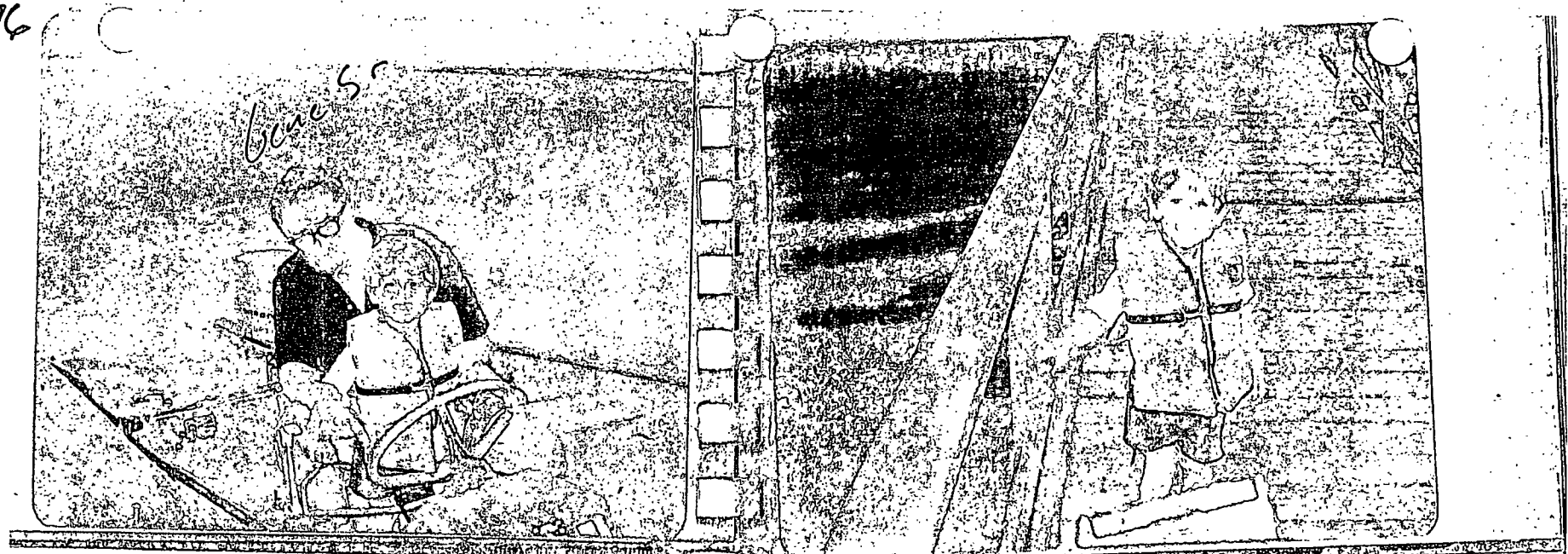
1920's-1930's
DOCK
PILING

FLATING
DOCK
LIGHTHOUSE
PACIFIC



976

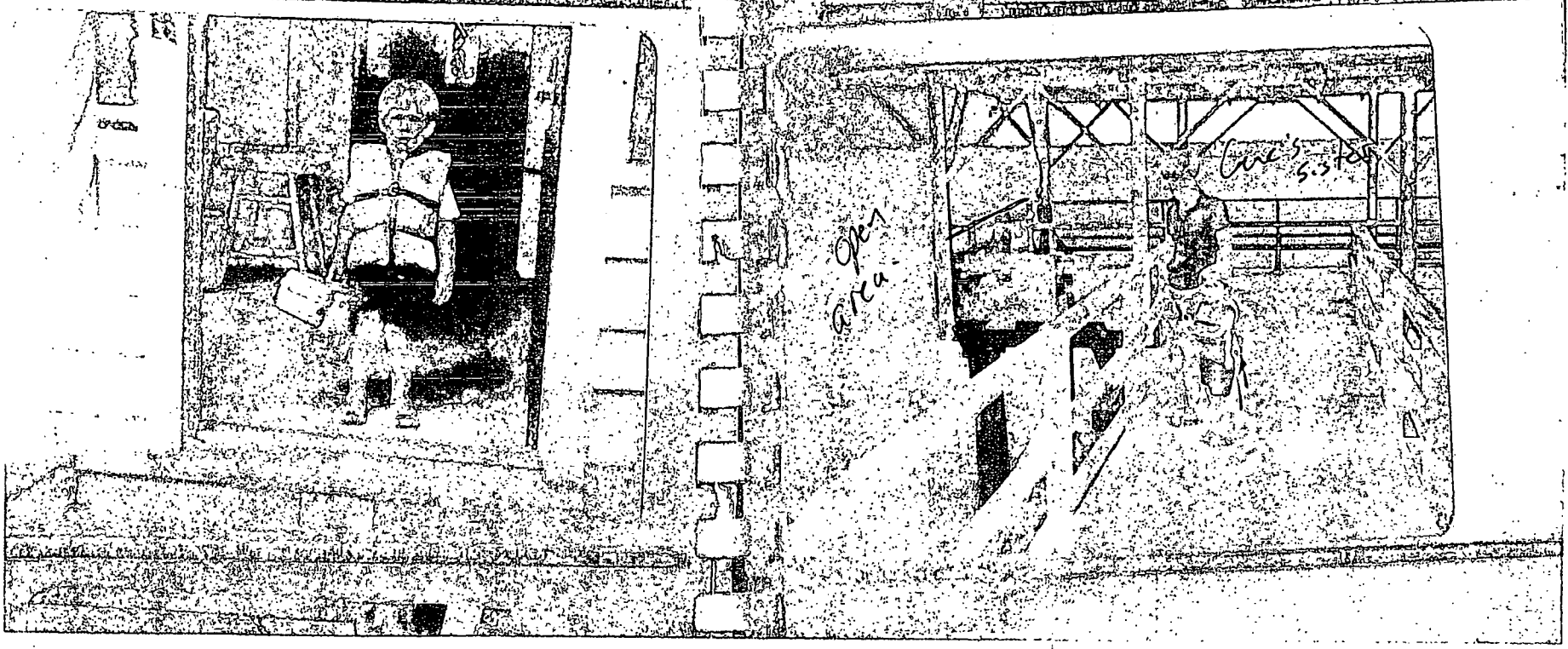
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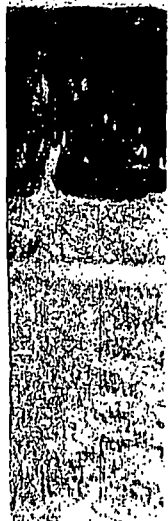


634

Open
area

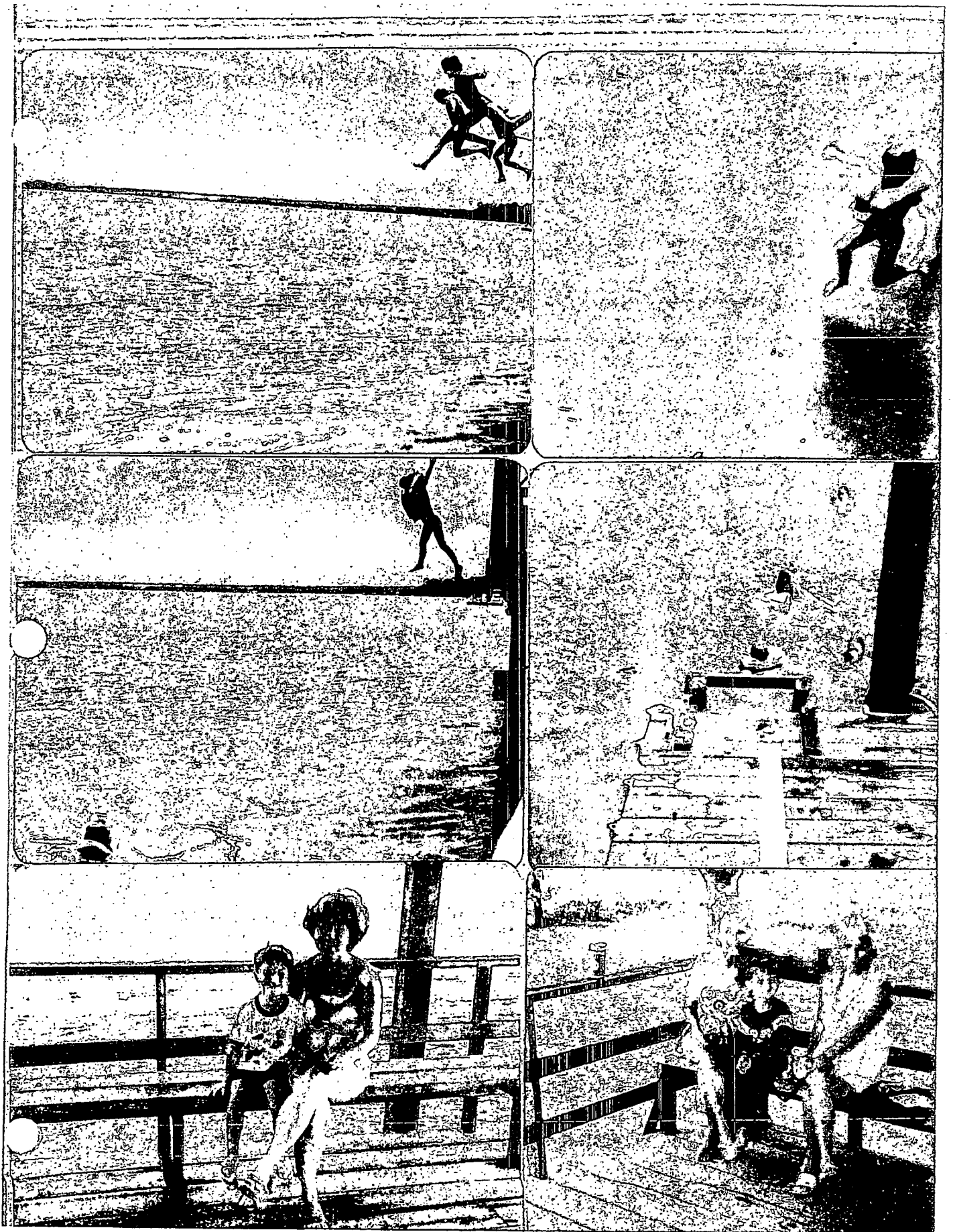
Gene's
5.3.20





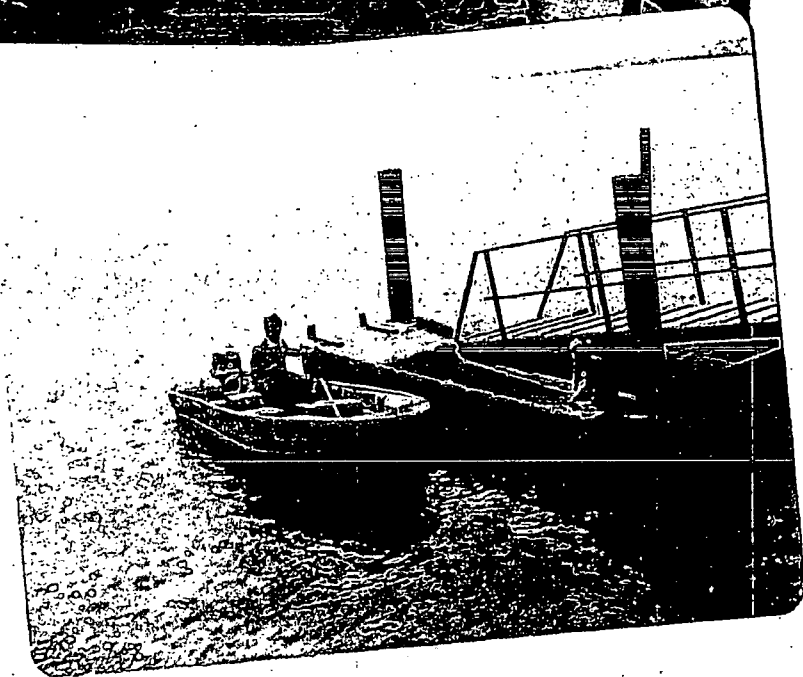
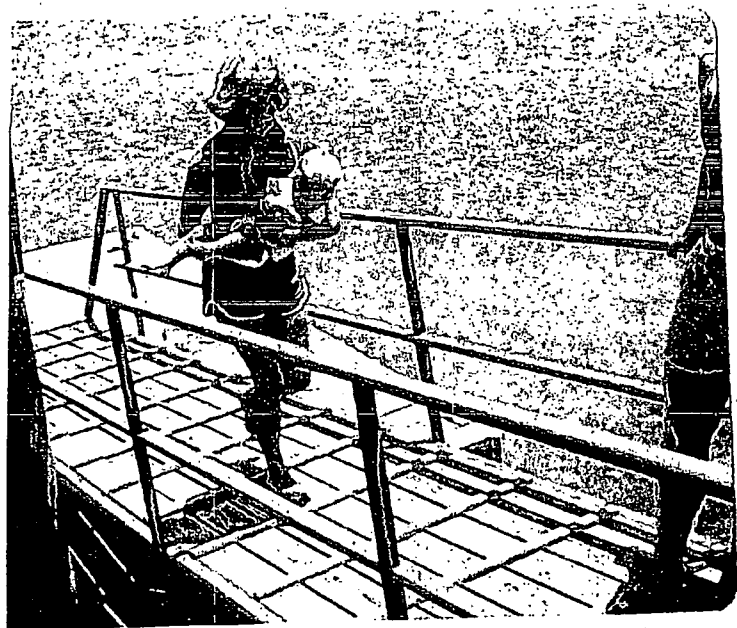
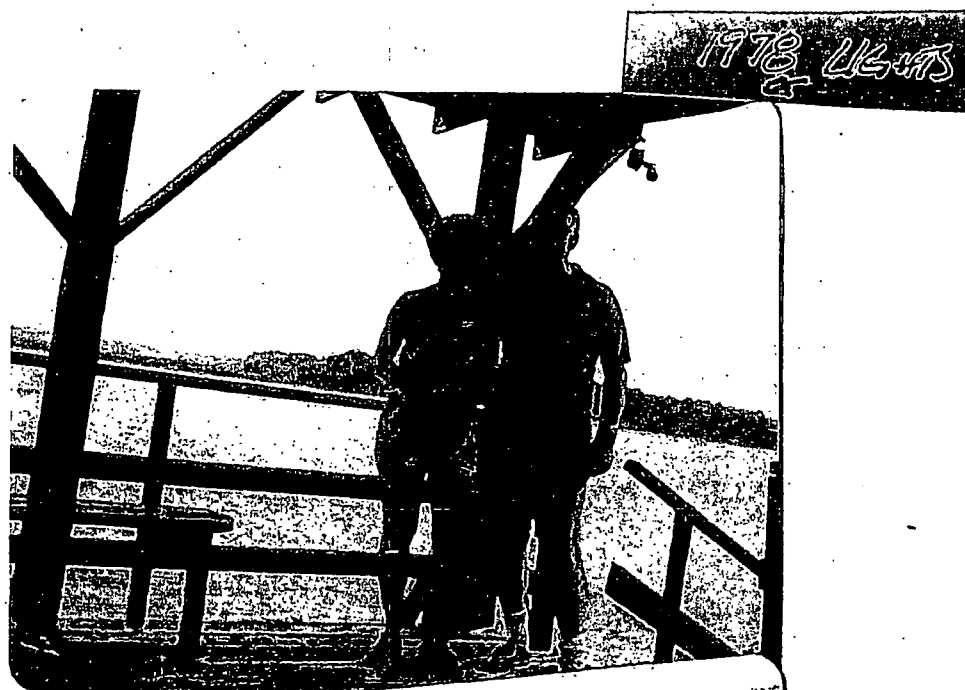
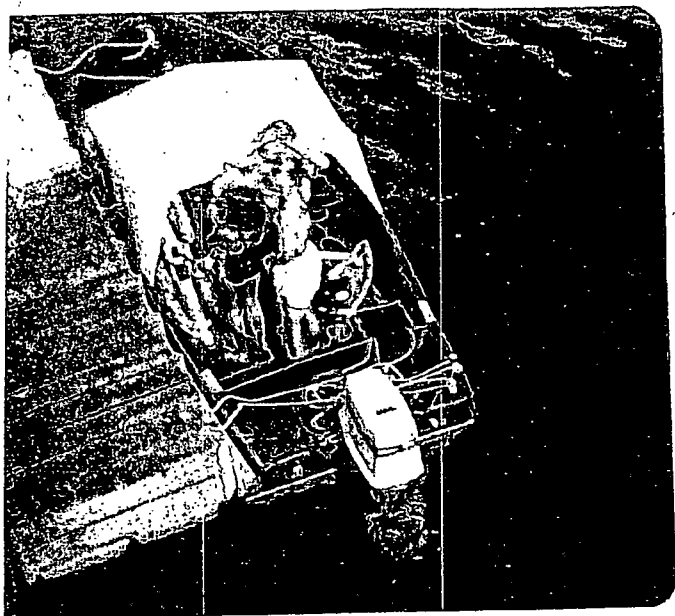
1954 Cherry
Duck





1478







1968
electric
A



1978

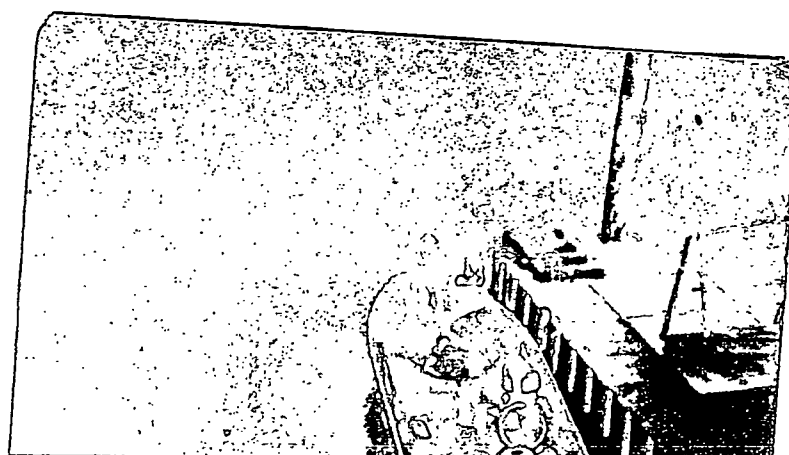
0171

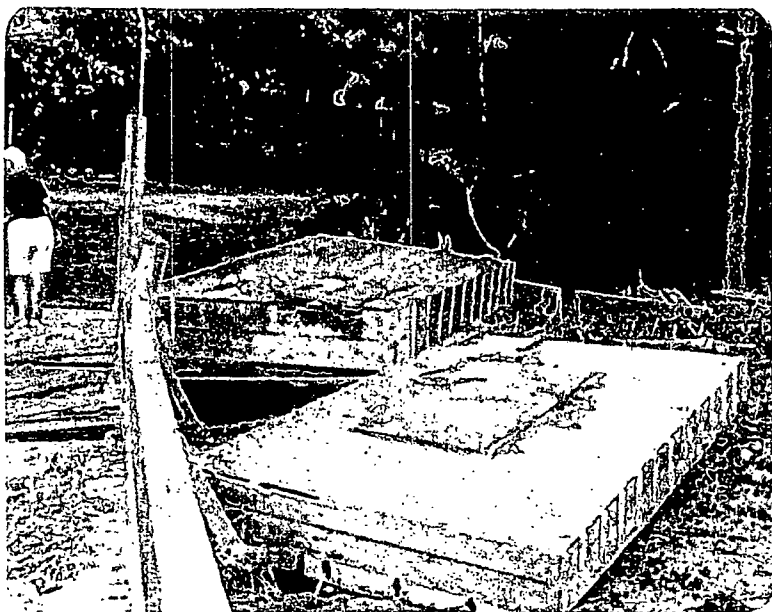


1979

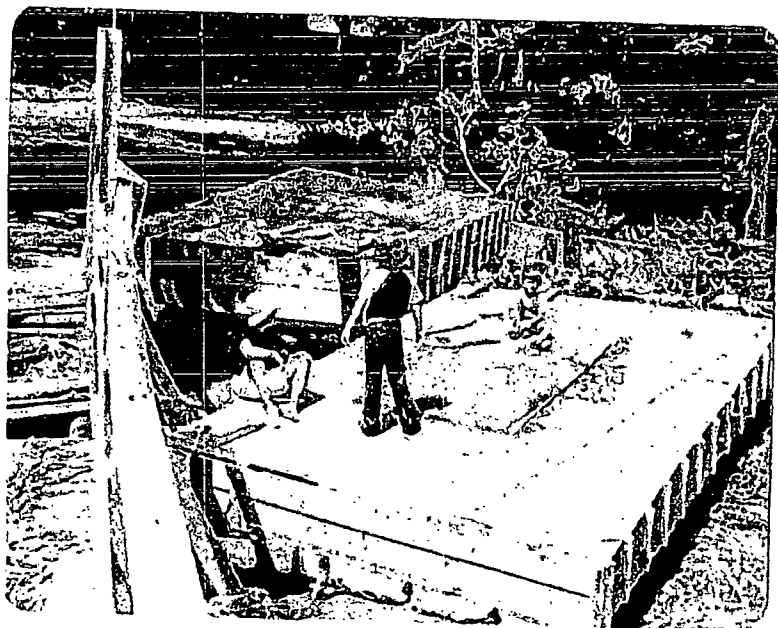


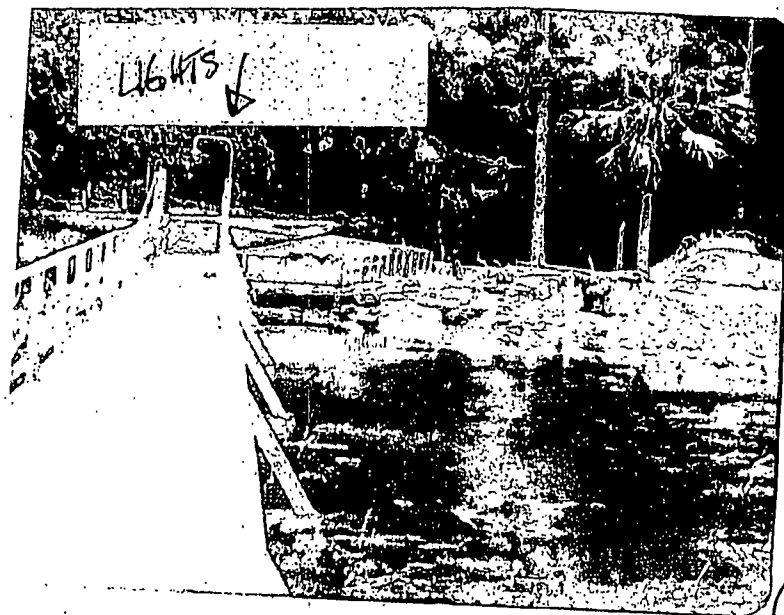
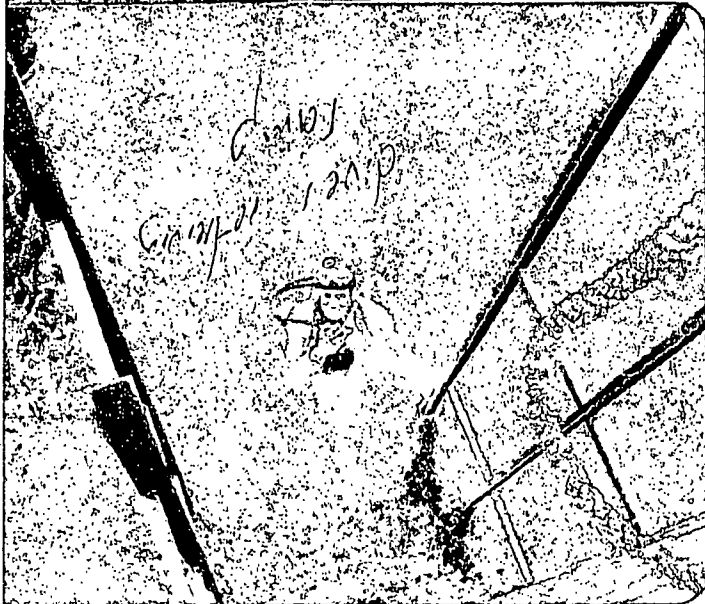
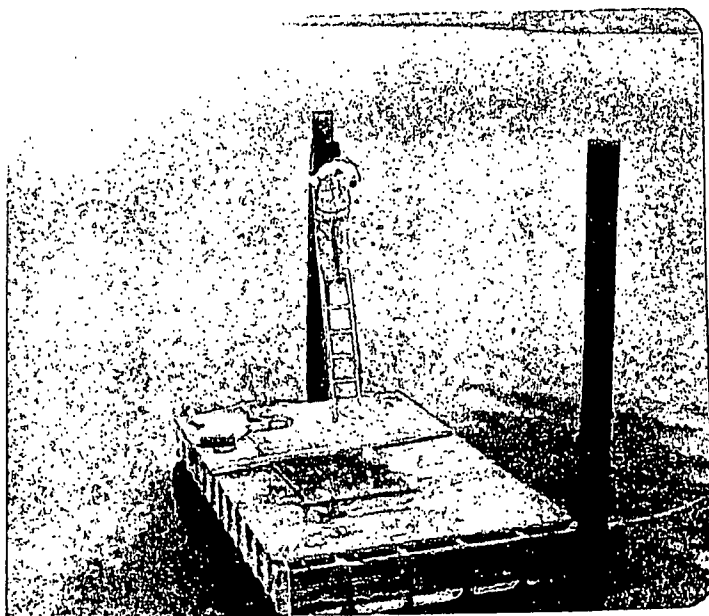
→ Ramp
GIVEN TO
LIGHTSEE'S
APRIL STRUM
ites uses
by TURNER





SPR 1979





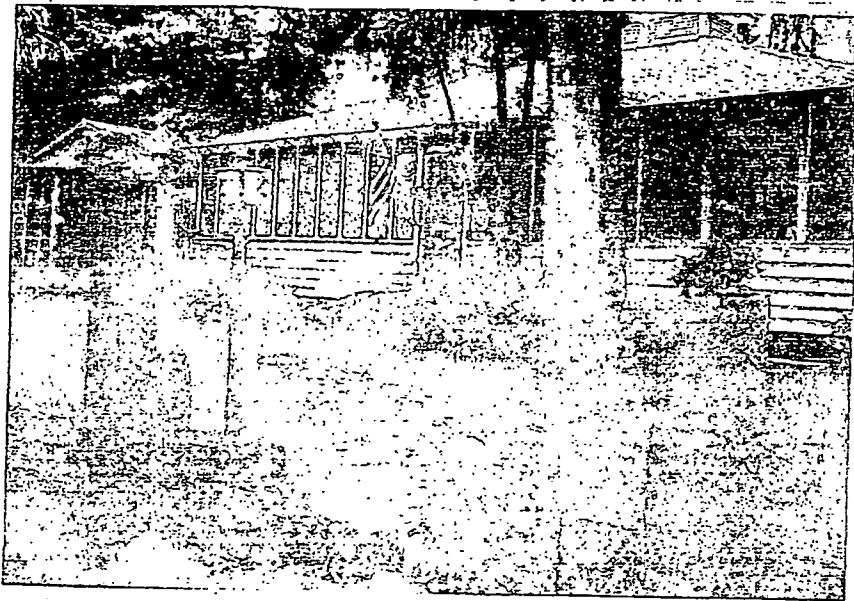
STAIR PLANE



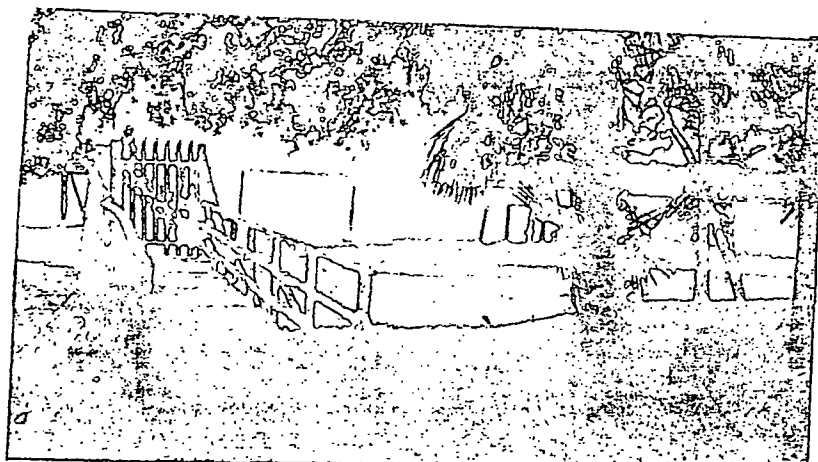
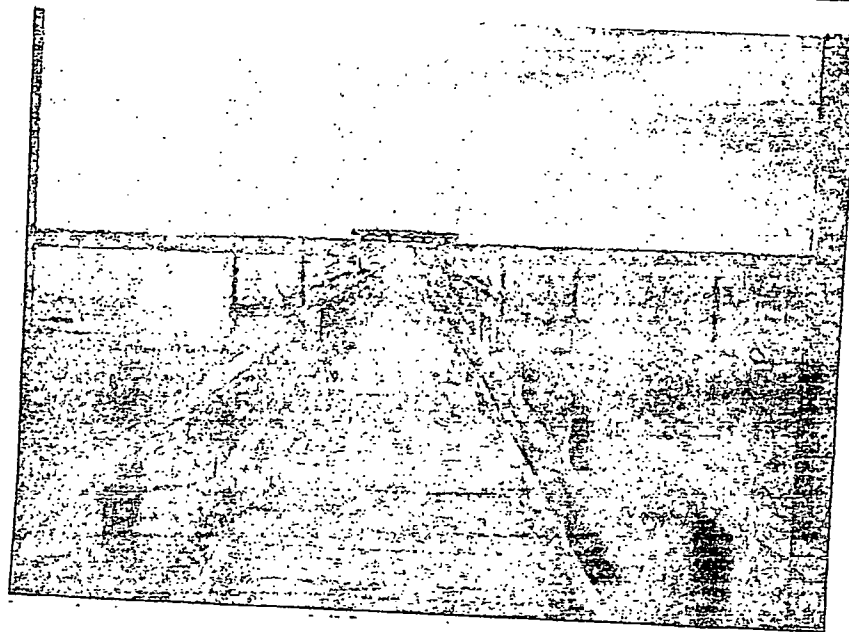
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Newland
Dec 5, 1900



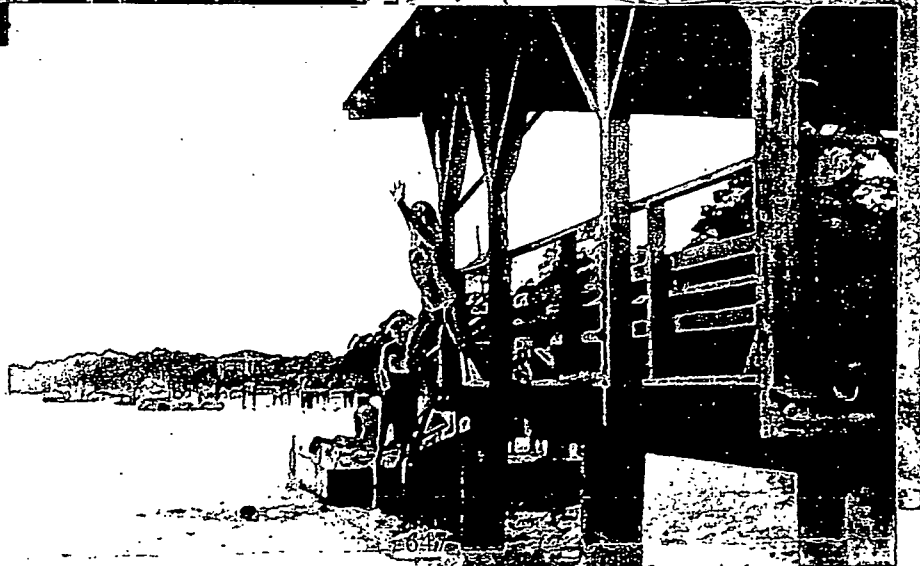
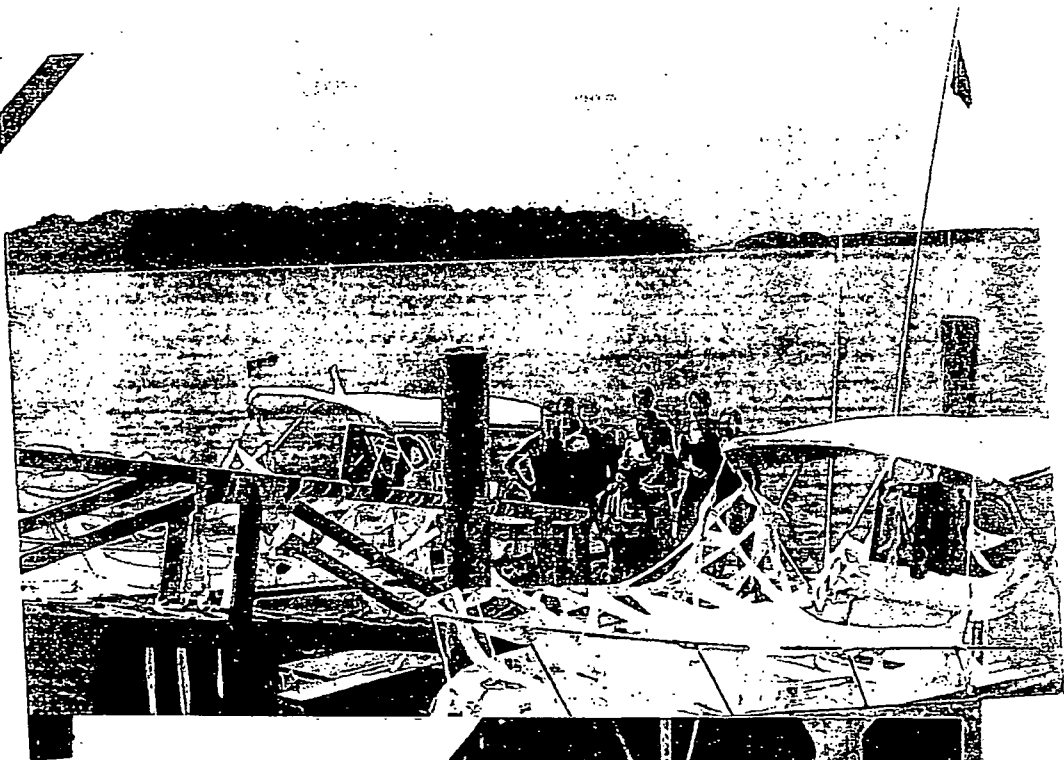
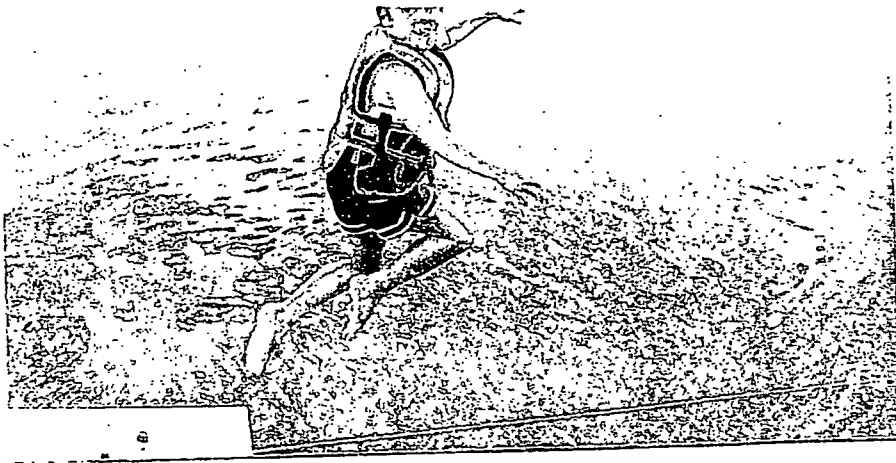
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1980

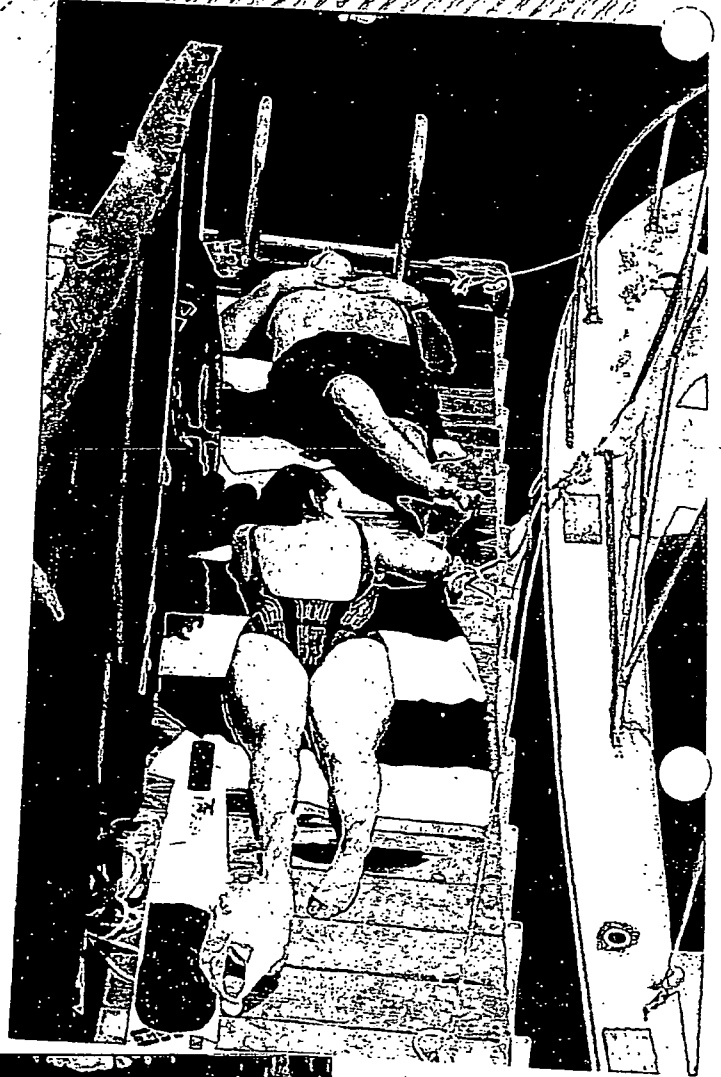
1984



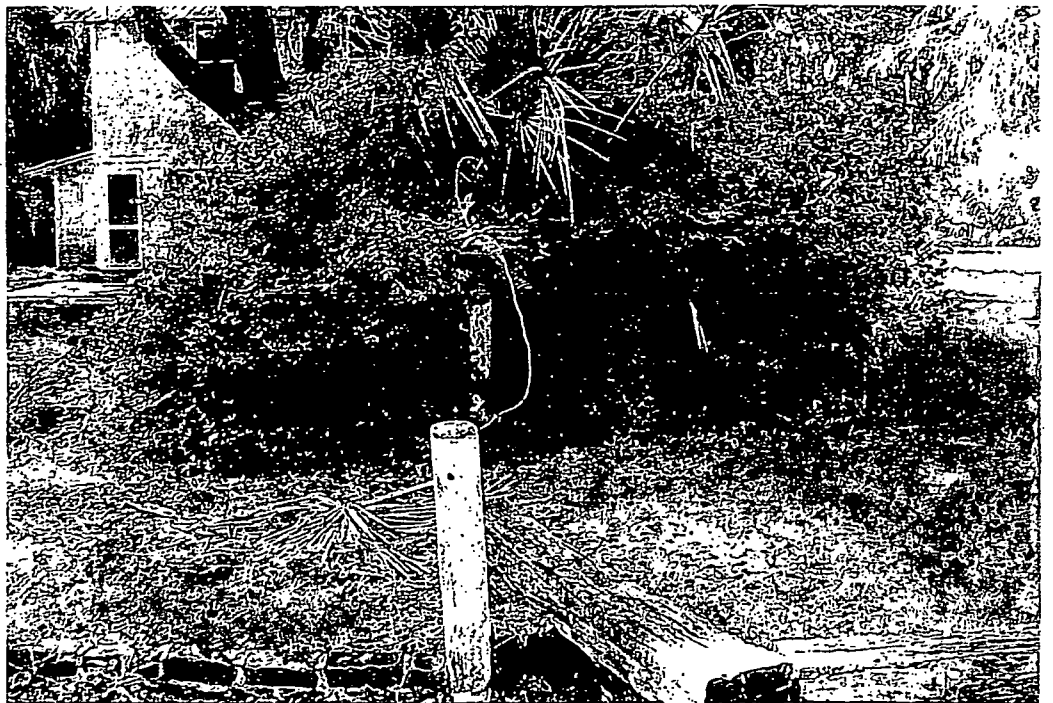
1988



1996

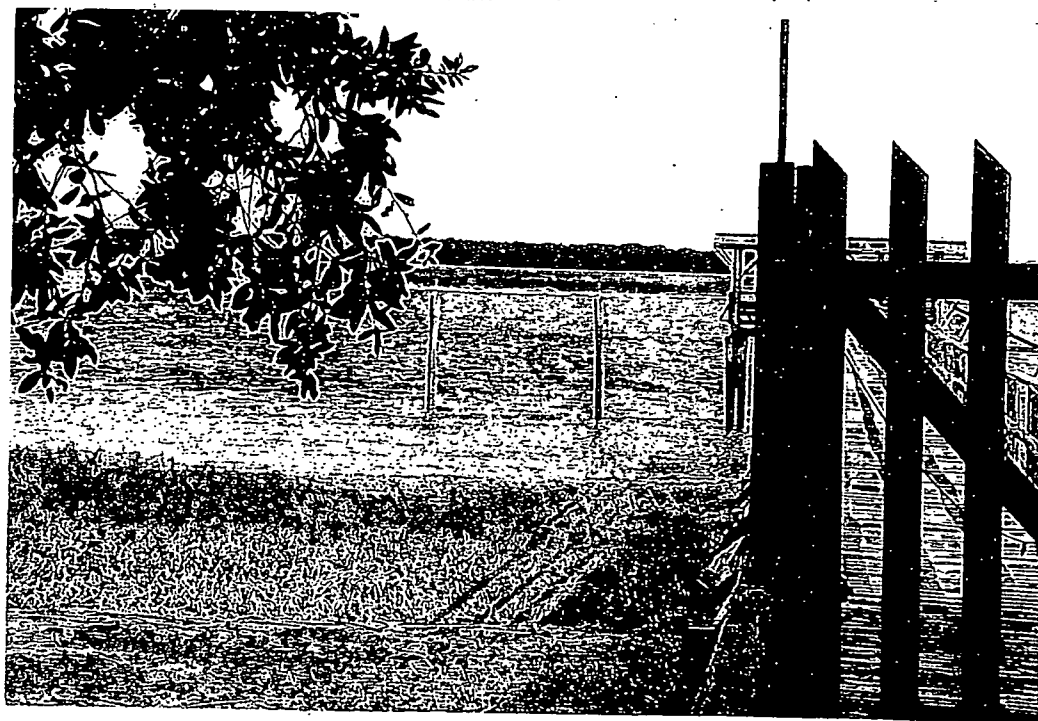
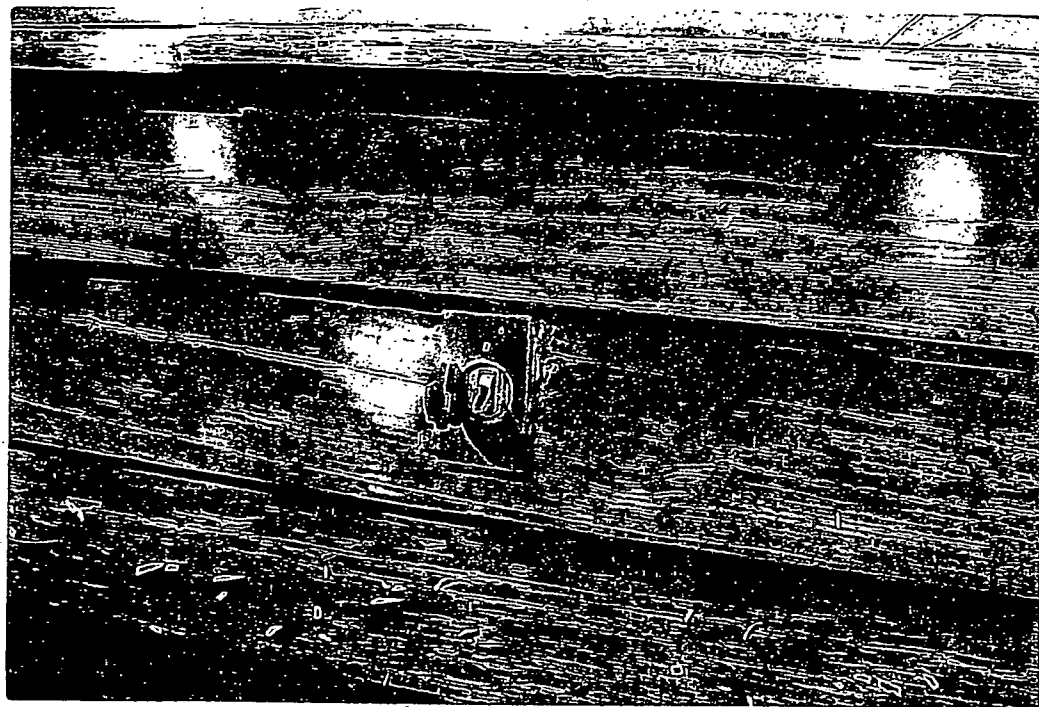








* light access





Dock #2



EXHIBIT 67



Dock on May River Included



Randall L. Fisher, CPM
Vice President
Real Estate Advisor

WACHOVIA TRUST

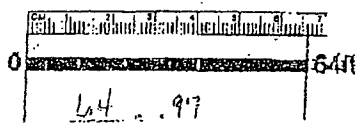
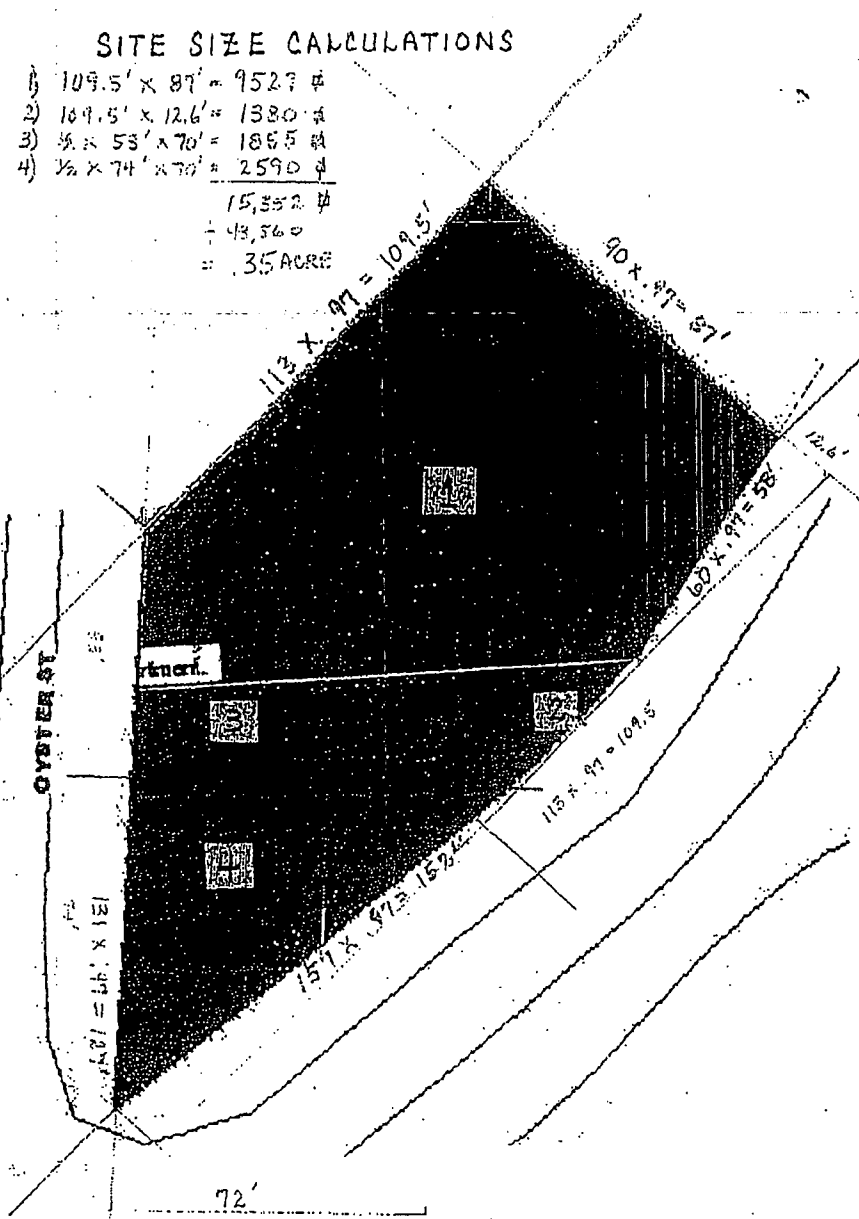
Wachovia Bank, N.A.
SC9346
1426 Main Street, 16th Floor
Columbia, SC 29226
Tel 803.765.3110
Fax 803.765.4099

Cashman et al v Wachovia et al
Plaintiffs' Response to Defendants' RTP

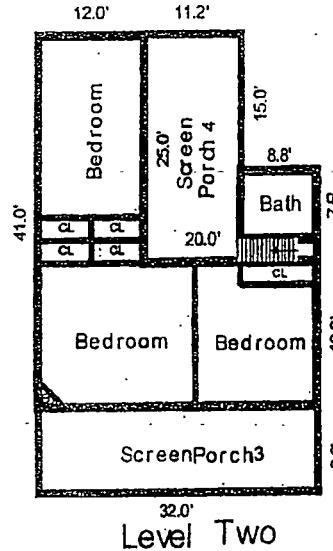
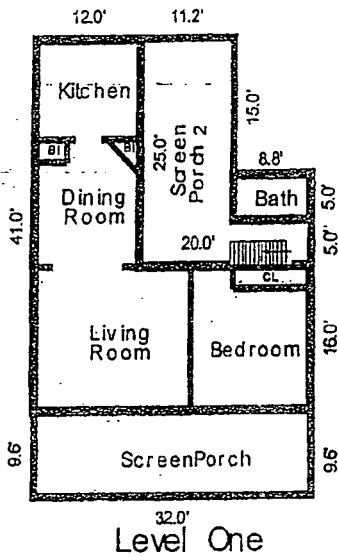
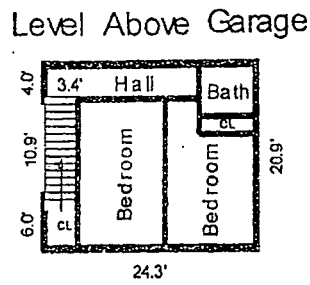
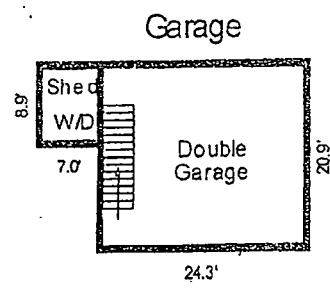
128 of 172

SITE SIZE CALCULATIONS

- 1) $109.5' \times 87' = 9527 \text{ sq ft}$
 - 2) $109.5' \times 12.6' = 1380 \text{ sq ft}$
 - 3) $58' \times 53' \times 70' = 1855 \text{ sq ft}$
 - 4) $1/2 \times 74' \times 70' = 2590 \text{ sq ft}$
- $15,352 \text{ sq ft}$
 $\div 43,560$
 $= .35 \text{ ACRE}$



Cashman et al v. Wachovia et al
 Plaintiffs' Response to Defendants' RTP



Scale: 1/4" = 1'-0"

Comments:

AREA CALCULATIONS SUMMARY				LIVING AREA BREAKDOWN		
Code	Description	Size	Totals	Breakdown		Subtotals
GLA1	First Floor	812.00	812.00	First Floor		
GLA2	Second Floor	812.00	812.00	12.0 x 41.0		492.00
GLA3	First Floor Bath	44.00	44.00	16.0 x 20.0		320.00
GLA4	Second Floor Bath	66.00	66.00	Second Floor		
GLA5	Living Above Garage	470.81	470.81	12.0 x 41.0		492.00
P/P	Screen Porch	307.20		16.0 x 20.0		320.00
	Screen Porch 2	324.00		First Floor Bath		
	Screen Porch 3	307.20		5.0 x 8.8		44.00
	Screen Porch 4	302.00	1240.40	Second Floor Bath		
GAR	Double Garage	507.87	507.87	7.5 x 8.8		66.00
OTS	Shed/Laundry	62.30	62.30	Living Above Garage		
				20.9 x 20.9		436.81
				3.4 x 4.0		13.60
				3.4 x 6.0		20.40
TOTAL LIVABLE (rounded)			2205	9 Areas Total (rounded)		2205

Cashman et al v. Wachovia et al
Plaintiffs' Response to Defendants' RTP

130 of 172

EXHIBIT 68



Beaufort County, South Carolina

generated on 10/26/2011 10:55:07 AM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R600 039 00C 0126 0000	00507507	31 OYSTER ST,	10/22/2011

Current Parcel Information

Owner	LIGHTSEY LOUISE CLELAND WACHOVIA BAN	Property Class Code	ResImp SingleFamily
Owner Address	PO BOX 56 HAMPTON SC 29924	Acreage	.0000
Legal Description	LOTS 1-2-3A S 1/2 LOT 4A		

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2010	\$459,000	\$225,927	\$684,927	\$6,733.90	\$6,733.90
2009	\$459,000	\$225,927	\$684,927	\$6,607.24	\$6,607.24
2008	\$416,000	\$110,000	\$526,000	\$6,526.11	\$6,526.11
2007	\$416,000	\$110,000	\$526,000	\$6,252.28	\$6,252.28
2006	\$416,000	\$110,000	\$526,000	\$5,687.35	\$5,687.35
2005	\$416,000	\$110,000	\$526,000	\$5,292.85	\$5,292.85
2004	\$416,000	\$110,000	\$526,000	\$5,133.80	\$5,133.80
2003	\$63,000	\$71,360	\$134,360	\$1,817.71	\$1,817.71
2002	\$63,000	\$71,360	\$134,360	\$1,751.60	\$1,751.60
2001	\$63,000	\$71,360	\$134,360	\$1,640.33	\$1,640.33

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
LIGHTSEY LOUISE CLELAND WACHOVIA BA	2859XX 197	9/7/2005	Ad		\$0
LIGHTSEY LOUISE CLELAND WACHOVIA BA	2859XX 197	9/7/2005	Ad		\$0
MACMILLAN PAYNE MARGARET L	2234 494	9/7/2005	Ex		\$1
LIGHTSEY LOUISE CLELAND	1947 1026	4/29/2004	Ex		\$1
LIGHTSEY LOUISE CLELAND	394 1272	12/1/1983	Fu		\$0
		12/31/1776	Or		\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size

R01	DWELL	Dwelling	1930	2.0	03	1,848	
R02	DWELL	Dwelling	1930	2.0	01	504	
R02	ATTGAR	Attached Garage	1930	0	0		504
R02	PIER	Waterfront Pier	1986	0	0		720
R02	GAZEBO	Residential Gazebo	1986	0	0		192
R02	BOATD	Waterfront Boat Dock	1986	0	0		288
R02	PIER	Waterfront Pier	1986	0	0		192

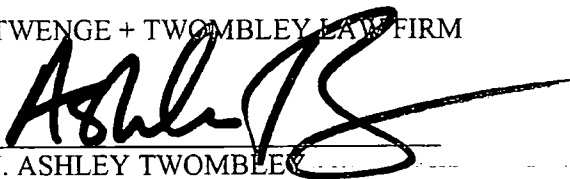
Features & Exterior Features						
Building	Type	Feature Code	Description	No. / Sq.Ft.		Value
R01	DWELL	COOLING	None	1		\$0
R01	DWELL	EXT. COVER	Hardboard	1		\$0
R01	DWELL	FOUNDATION	Full Slab	1		\$0
R01	DWELL	HEATING	Forced hot air	1		\$0
R01	DWELL	OFF-S	Open Frame Porch	208		\$5,710
R01	DWELL	OFF-S	Open Frame Porch	208		\$5,710
R01	DWELL	OFF-S	Open Frame Porch	320		\$7,040
R01	DWELL	OFF-S	Open Frame Porch	320		\$7,040
R02	DWELL	COOLING	None	1		\$0
R02	DWELL	EMP	Enclosed Masonry Porch	63		\$2,790
R02	DWELL	EXT. COVER	Hardboard	1		\$0
R02	DWELL	FOUNDATION	Full Slab	1		\$0
R02	DWELL	HEATING	Forced hot air	1		\$0

CERTIFICATE OF COUNSEL

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

TWENGE + TWOMBLY LAW FIRM

BY:



J. ASHLEY TWOMBLY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
twombly@twlawfirm.com
Attorney for Appellant
www.twlawfirm.com

Beaufort, South Carolina
January 13, 2014

RECEIVED

JAN 17 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-2573
Appellant Case No.: 2012-213579

Cashman Properties, LLC, ... Respondent,

v.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust Under Will of
E. Oswald Lightsey dated August 8, 1958, and codicil dated
March 23, 1976, for the Benefit of Lillian Lightsey Drawdy;
and the Trust Under Will of E. Oswald Lightsey for the Benefit
of Claudia Lightsey Ware, ... Appellants.

SUPPLEMENTAL RECORD ON APPEAL

J. Ashley Twombly
Karl D. Twenge
TWENGE + TWOMBLY LAW FIRM
311 Carteret St.
Beaufort, SC 29902
(843) 982-0100

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BLUESTEIN NICHOLS
THOMPSON DELGADO, LLC
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599

Attorneys for Respondent

Roberts Vaux
James P. Scheider, Jr.
Mark S. Berglind
VAUX & MARSCHER, P.A.
Post Office Box 769
Bluffton, SC 29910
(843) 757-2888

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FEB 03 2014
SC Court of Appeals

INDEX

Orders

Order of July 10, 2012	1

Pleadings

Complaint of May 21, 2009	11

Exhibits

Exhibit 18	30
Exhibit 35	32
Exhibit 61 (excerpt)	37
Certificate of Counsel	39

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-07-2573

Cashman Properties, LLC

Plaintiff,

v.

WNL Properties, LLC; E. Oswald Lightsey
Trust f/b/o Louise Lightsey Baughman; the
Trust Under Will of E. Oswald Lightsey Dated
August 8, 1958, and Codicil Dated March 23,
1976, for the Benefit of Lillian Lightsey
Drawdy, and the Trust Under Will of E.
Oswald Lightsey for the Benefit of Claudia
Lightsey Ware,

Defendants.

ORDER ON COSTS

2012 JUL 10 PM 4:02
CLERK OF COURT
BEAUFORT COUNTY S.C.

This matter is before the Court for a determination of the expenses that Plaintiffs shall be required to pay Defendants. After hearing from the parties and witnesses, and further considering the evidence before the Court, I find as follows:

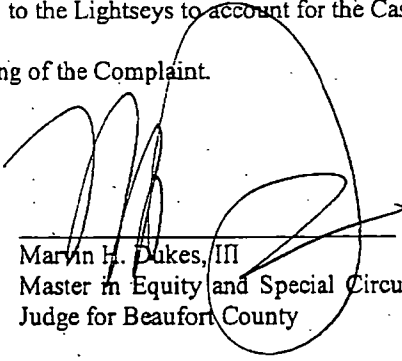
1. Although the Cashmans presented evidence that they provided some maintenance for the pier and pier head, the majority of all maintenance related to the pier and pier head were paid by the Lightseys for which they never requested reimbursement from the Cashmans, and consequently, the Cashmans never offered reimbursement. The Lightseys listed the expenses incurred in Defendants' Dock Expenses, which is attached hereto as Exhibit A. In my order dated December 19, 2011 and filed on December 22, 2011 I ruled that the Cashmans shall be responsible for their share of expenses since the filing of the Complaint. Therefore, the Cashmans shall be required

to pay the Lightseys one half of all maintenance expenses incurred since the filing of the Complaint (May 29, 2009) for a total of \$214.18.

2. With respect to property taxes, I find that it is difficult to resolve this issue with mathematical certainty. However, I find the testimony provided by Ed Hughes, Beaufort County Assessor, instructive. Mr. Hughes determined the property taxes associated with the dock. Mr. Hughes' calculations are attached to the email correspondence to the Parties, which is attached hereto as exhibit A. In my order dated December 19, 2011 and filed on December 22, 2011 I ruled that the Cashmans shall be responsible for their share of expenses since the filing of the Complaint. After considering all of these factors and the arguments of the parties, I find that the Cashmans should pay for one-half the property taxes since the filing of the Complaint (May 29, 2009) for a total of \$247.83.

Therefore, the Cashmans shall pay \$462.01 to the Lightseys to account for the Cashmans' share of expenses related to the Dock since the filing of the Complaint.

AND IT IS SO ORDERED.


Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

7/10, 2012
Beaufort, South Carolina

2 J 2
2

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2009-CP-07-2573
CASHMAN PROPERTIES, LLC,	)	
Plaintiff,	)	
vs.	)	
WNL PROPERTIES, LLC, E. OSWALD	)	DEFENDANTS' DOCK EXPENSES
LIGHTSEY TRUST f/b/o LOUISE	)	
LIGHTSEY BAUGHMAN, THE TRUST	)	
UNDER WILL OF E. OSWALD	)	
LIGHTSEY DATED AUGUST 8, 1958,	)	
AND CODICIL DATED MARCH 23,	)	
1976, FOR THE BENEFIT OF LILLIAN	)	
LIGHTSEY DRAWDY, AND THE	)	
TRUST UNDER WILL OF E. OSWALD	)	
LIGHTSEY FOR THE BENEFIT OF	)	
CLAUDIA LIGHTSEY WARE,	)	
Defendants.	)	

TO: MARK S. BERGLIND, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Without waiving any objection and reserving all rights, Defendants' submit the following expenses related to the dock at issue in the captioned action, pursuant to the December 22, 2011

Order of The Honorable Marvin H. Dukes, III:

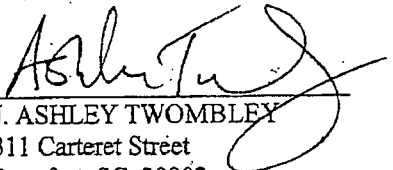
1961	Initial Construction (est)	\$20,000.00
1985	Waterline 300 feet	\$1,000.00
1985	Sink	\$500.00
Mar-86	Ansley Marine	\$715.00
Nov-87	Crew	\$208.80
Jun-88	Crew	\$766.75
Jul-88	Crew	\$168.40
Mar-91	Crew	\$117.70
Aug-92	Lowsouth Holdings	\$391.16
Aug-92	Lowsouth Holdings	\$44.35

Aug-92	Lowsouth Holdings	\$653.01
Aug-92	Ansley Marine	\$3,400.00
Apr-93	Chapman	\$720.00
Mar-94	Randy West	\$1,750.00
Mar-99	Norris	\$379.36
Mar-00	Neil Lax	\$731.77
May-00	Atlantic Marine	\$5,600.00
Sep-04	Norris	\$278.65
Nov-05	Norris	\$669.33
Oct-06	Knox Roofing	\$2,000.00
Jul-09	Norris	\$364.47
Aug-09	Dennis	\$63.88
TY 2011	Beaufort County taxes	\$6,794.50
TY 2010	Beaufort County taxes	\$6,733.90
TY 2009	Beaufort County taxes	\$6,607.24
TY 2008	Beaufort County taxes	\$6,526.11
TY 2007	Beaufort County taxes	\$6,252.28
TY 2006	Beaufort County taxes	\$5,687.35
TY 2005	Beaufort County taxes	\$5,292.85
TY 2004	Beaufort County taxes	\$5,133.80

TOTAL: \$89,550.66

TWENG + TWOMBLY LAW FIRM

BY:



J. ASHLEY TWOMBLY
 311 Carteret Street
 Beaufort, SC 29902
 Telephone: (843) 982-0100
 Facsimile: (843) 982-0103
www.twlawfirm.com
 Attorney for Defendants

Beaufort, South Carolina

January 18, 2012

Exhibit B

Mark Berglind

From: Hughes, Ed <ehughes@bcgov.net>
Sent: Thursday, April 12, 2012 11:21 AM
To: Mark Berglind
Cc: Rumsey, Clifford
Subject: RE: Pier on Parcel 0126

Mr. Berglind:

Below is the email I sent to Ashley Twombly on April 5, 2012 regarding the dock property taxes associated with parcel 126 for the tax year period 2001-2011.

Ashley,

Below are the dock property taxes associated with the subject property.

Ed

TAX YEAR	LAND VALUE	IMP VALUE	TOTAL VALUE	DOCK VALUE ONLY	ASSESS. RATIO	DOCK ASSESSED VALUE (rounded)	MILLAGE	DOCK T, \$
2001	63,000	71,360	134,360	13,360	6%	800	198.50	158.8
2002	63,000	71,360	134,360	13,360	6%	800	212.30	169.8
2003	63,000	71,360	134,360	13,360	6%	800	220.50	176.4
2004	416,000	110,000	526,000	12,000	6%	720	161.40	116.7
2005	416,000	110,000	526,000	12,000	6%	720	166.30	119.7
2006	416,000	110,000	526,000	12,000	6%	720	178.80	128.7
2007	416,000	110,000	526,000	12,000	6%	720	196.70	141.6
2008	416,000	110,000	526,000	12,000	6%	720	205.20	147.7
2009	459,000	225,927	684,927	14,723	6%	900	180.69	162.6
2010	459,000	225,927	684,927	14,723	6%	900	184.18	165.7
2011	459,000	225,927	684,927	14,723	6%	900	185.85	167.7

Tax Years 2009-2011 Dock value is capped for tax purposes

Ed Hughes
Beaufort County Assessor

PO Box 458
Beaufort, SC 29902
843-255-2400 Voice
843-255-9404 Fax
Ehughes@bcgov.net

Ed Hughes
Beaufort County Assessor
PO Box 458
Beaufort, SC 29902
843-255-2400 Voice
843-255-9404 Fax
Ehughes@bcgov.net

From: Mark Berglind [<mailto:mark.berglind@vaux-marscher.com>]

Sent: Thursday, April 12, 2012 11:13 AM

To: Hughes, Ed

Cc: Roberts Vaux; 'Jim Scheider'

Subject: Pler on Parcel 0126

Mr. Hughes,

I spoke with Mr. Rumsey on the telephone today regarding this matter and he requested that I send you an email request. As you know we are trying to determine the taxes for a pler located across the street from parcel 0126 in Bluffton. I am in receipt of your letter dated March 16, 2012 to Mr. Twombly, but learned that another valuation was done subsequent to that letter. Could you please forward me the valuation and any correspondence you sent to Mr. Twombly?

Thank you for your time in this matter.

Sincerely,

Mark Berglind

Mark S. Berglind, Esq.

Vaux & Marscher
ATTORNEYS

1251 May River Road
PO Box 769
Bluffton, SC 29910
(843) 757-2888
(843) 757-2889 Fax

CONFIDENTIALITY NOTICE: This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you have received this communication in error, please notify the sender immediately by email and delete the message and any file attachments from your computer.

TAX YEAR	LAND VALUE	IMP VALUE	TOTAL VALUE	DOCK VALUE ONLY	ASSESS. RATIO	DOCK ASSESSED VALUE (rounded)	MILLAGE	DOCK TAXES \$
2001	63,000	71,360	134,360	13,360	6%	800	198.50	158.80
2002	63,000	71,360	134,360	13,360	6%	800	212.30	169.84
2003	63,000	71,360	134,360	13,360	6%	800	220.50	176.40
2004	416,000	110,000	526,000	12,000	6%	720	161.40	116.21
2005	416,000	110,000	526,000	12,000	6%	720	166.30	119.74
2006	416,000	110,000	526,000	12,000	6%	720	178.80	128.74
2007	416,000	110,000	526,000	12,000	6%	720	196.70	141.62
2008	416,000	110,000	526,000	12,000	6%	720	205.20	147.74
2009	459,000	225,927	684,927	14,723	6%	900	180.69	162.62
2010	459,000	225,927	684,927	14,723	6%	900	184.18	165.76
2011	459,000	225,927	684,927	14,723	6%	900	185.85	167.27

Tax Years 2009-2011 Dock value is capped for tax purposes

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.:

Eugene Keeny Cashman, Jr., as Trustee)
of the Eugene Keeny Cashman, Jr.,)
Revocable Trust, and Kathleen Gilmore)
Cashman, as Trustee of the Kathleen)
Gilmore Cashman Revocable Trust)

Plaintiffs,)

v.)

E.O. Lightsey Trust and Wachovia)
Bank, N.A., as Personal Representative)
and/or Trustee of the Estate of the E.O.)
Lightsey Trust,)

Defendants.)

VERIFIED COMPLAINT

ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

2009 MAY 29 PM 4:46

The Plaintiffs Eugene Keeny Cashman, Jr., as Trustee of the Eugene Keeny Cashman, Jr., Revocable Trust, and Kathleen Gilmore Cashman, as Trustee of the Kathleen Gilmore Cashman Revocable Trust, (hereinafter "Plaintiffs") complaining of the Defendants E.O. Lightsey Trust (hereinafter "Estate") and Wachovia Bank, N.A., (hereinafter "Wachovia"), respectfully allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiffs own property in Beaufort County, South Carolina.
2. Upon information and belief, the Defendant Estate owns property in Beaufort County, South Carolina, located at 31 Oyster Street, Bluffton, SC, 29226 and/or the Defendant Wachovia Bank, N.A., holds title to property located at 31 Oyster Street, Bluffton, SC, 29226, for the benefit of Defendant Estate (see Exhibit "A").
3. This Court has jurisdiction of the parties and the subject matter alleged herein.

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INTRODUCTION AS TO THE FACTS AND BACKGROUND

4. The Plaintiffs incorporate all allegations and statements contained in this Complaint by reference as if fully set forth herein verbatim.
5. The Plaintiffs and Defendants own real property adjacent to one another located on Oyster Street, Beaufort County, South Carolina.
6. The real property pertinent to this Complaint was originally deeded from Thomas O. Lawton and C.E. Ulmer to: (i) W. Fred Lightsey ("Lot 1"); (ii) L.T. Waters ("Lot 2"); and, (iii) J.O. Cashman ("Lot 3") on August 31, 1931 (see deed recorded in the Beaufort County Register of Deeds Office in Book 54, Page 227, attached as Exhibit "B").
7. W. Fred Lightsey conveyed Lot 1 to Louise Cleland Lightsey pursuant to that certain deed recorded in the Beaufort County Register of Deeds Office in Book 394, Page 1272.
8. The Plaintiffs acquired Lot 3 by deed recorded in the Beaufort County Register of Deeds Office in Book 01592, Page 1617.
9. The Plaintiffs acquired Lot 2 by deed from Anthony Ryan, Jr., and Tawana Ryan dated April 7, 1999 recorded in the Beaufort County Register of Deeds Office in Book 54, Page 227 (attached as Exhibit "C"). Upon information and belief, the Ryan family purchased the property from the Carter family who purchased the property from the Waters family.
10. The Defendant Estate and Plaintiffs' families have owned Lots 1 and 3 for close to eighty (80) years.
11. Across Oyster Street from the Defendant and Plaintiffs' property is a small plot of land, roughly one-tenth (1/10) an acre in size (hereinafter described as the "Common Area"), which, upon information and belief, the Plaintiffs are entitled to use (see Exhibit "B"). The Common Area provides deep water access to Lots 1, 2, & 3.

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12. In the early 1930s Eugene Cashman's grandfather and Dr. Waters constructed a dock (hereinafter referred to as "Dock 1"), which extended from the Common Area into the May River.
13. The Cashman and Waters families allowed the neighboring family, the Lightseys, to use Dock 1.
14. Upon information and belief, Dock 1 was destroyed in a storm in or about 1944.
15. In or about 1946, the Cashman family constructed Dock 2 in the same vicinity as the now destroyed Dock 1 having gained permission to use the land from Mr. Lawton. The Lightsey family assisted in providing building material for the dock.
16. The Cashman family permitted the Lightsey and Carter families' use of Dock 2.
17. The Cashman, Lightsey and Carter families maintained Dock 2 until the 1960s when Dock 2 was destroyed beyond repair by a storm.
18. The Lightsey family constructed a new dock (Dock 3) in the same vicinity as Dock 2 following the storm. Dock 3 consisted of a gate and walkway that lead to a pier head with two attached floating docks.
19. The families continued joint use of the walkway and pier head.
20. The Plaintiffs' and their family constructed, maintained and regularly used the floating dock located to the east of the walkway and pier head.
21. That, upon information and belief, the Defendants constructed, maintained and regularly used the floating dock located to the west of the walkway and pier head.
22. The two families used the walkway and pier head jointly without the permission of the other to access the floating docks.

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3

23. The Plaintiffs' and their family provided electricity and water to Dock 3; the electricity ran from the Plaintiffs' property under Oyster Street to the dock; the water line was connected to the Plaintiffs' property and ran through a drain under Oyster Street to the Dock 3.
24. In about 2004 or 2005 the floating dock located on the east side and maintained by the Plaintiffs and their families was damaged by a storm.
25. The Plaintiffs intended to repair the damaged floating dock and engaged the services of a firm to do so; however, prior to commencement of the repairs the Defendant placed a lock on the gate to Dock 3.
26. After more than seventy-five (75) years of using the Common Area and adjoining docks, in March of 2005 a member of the Lightsey family notified the Plaintiffs that they were no longer allowed to use the walkway that led to the floating docks.
27. The Plaintiffs continue to maintain the electricity to the dock.
28. Upon information and belief, the Defendants do not own exclusive rights to Dock 3, and therefore, cannot exclude the Plaintiffs from using Dock 3.
29. Upon information and belief, the Defendant Wachovia is attempting to sell the property and include Dock 3 in the sale of the property (see Exhibit "D").

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

30. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Complaint by reference thereto as if fully set forth herein verbatim.

WV
#4

31. That the Plaintiff and the estate are, by virtue of the facts set forth in the preceding paragraphs, the joint owners, as tenants in common, of the fixture (i.e. the walkway and pier head) located on and emanating from the Common Property.

WHEREFORE, the Plaintiffs pray that this Honorable Court issue an Order finding the Plaintiffs and Estate are joint owners of the fixture affixed to the Common Area as tenants in common and for such other relief as this Court may find just and proper.

FOR A SECOND CAUSE OF ACTION
(Prescriptive Easement)

32. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Complaint by reference thereto as if fully set forth herein verbatim.
33. The Plaintiffs and their family claimed ownership of Dock 1 and Dock 2 and joint ownership of Dock 3 with the Lightsey family.
34. The Plaintiffs maintained Dock 3 and constructed the floating dock and its ramp located on the east side of the walkway.
35. The Plaintiffs and their family used the walkway to access their floating dock without interruption from the Defendant or the Defendant's family until March of 2005.
36. The Plaintiffs and their family's use of the dock is under a claim of right based on the agreement entered into between the two families.
37. The Plaintiffs and the Cashman family's use of the Common Area is under claim of right for close to eighty (80) years.
38. The Plaintiffs have acquired a prescriptive easement over the Common Area, the walkway, pier head and floating dock, and therefore, joint legal ownership with the Defendants.

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#5

39. Due to the Defendants actions, the Plaintiffs have incurred damages from loss of use and enjoyment of property rightfully owned.

WHEREFORE, the Plaintiffs pray that this Honorable Court determine ownership rights of the dock at issue; grant the Plaintiffs actual and punitive damages for loss of use and enjoyment of their property; grant the Plaintiffs costs incurred, including but not limited to attorneys' fees, for bringing this action and for such other relief as this Court may find just and proper.

FOR A THIRD CAUSE OF ACTION
(Resulting Trust)

40. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Complaint by reference thereto as if fully set forth herein verbatim.
41. The Plaintiffs, Estate, and their families used, maintained and enjoyed the walkway and pier head.
42. The Plaintiffs, among other things, maintained the electricity and water to the walkway and pier head, and thence to both floating docks.
43. The Lightsey family enjoyed and benefited from the maintenance and use of the dock.
44. Even if the Defendants held legal title to the dock, they hold such title in trust for the benefit of the Plaintiffs because of the continuing improvements the Plaintiffs made to the dock in question.
45. It is inequitable for the Defendants to impede the Plaintiffs' access to the walkway and floating dock after benefiting from the Plaintiffs' improvements.

WHEREFORE, the Plaintiffs pray that this Honorable Court determine ownership rights of the dock at issue; grant the Plaintiffs actual and punitive damages for loss of use and

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enjoyment of the their property; grant the Plaintiffs costs incurred, including but not limited to attorneys' fees, for bringing this action; and for such other relief as this Court may find just and proper.

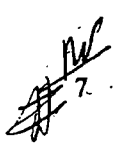
FOR A FOURTH CAUSE OF ACTION
(Temporary and Permanent Injunction)
(as to the use of the dock)

46. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Complaint by reference thereto as if fully set forth herein verbatim.
47. The Defendants refuse to allow the Plaintiffs access to what is rightfully theirs.
48. The Defendants, by locking the gate to the dock, is depriving the Plaintiffs of the use and enjoyment of their property.
49. The Plaintiffs are in need of a temporary injunction enjoining the Defendants from prohibiting Plaintiffs' access to the walkway and pier head until the Court can determine ownership rights to the property.

WHEREFORE, the Plaintiff prays that this Honorable Court issue a temporary and permanent injunction enjoining the Defendants from prohibiting, in any way, the Plaintiffs use and enjoyment of the dock at issue; and such further relief this Court deems just and proper.

FOR A FIFTH CAUSE OF ACTION
Adverse Possession (as to the walkway, pier head, and floating dock)

50. The Plaintiffs incorporate into this Cause of Action all of the allegations and statements contained in this Complaint by reference thereto as if fully set forth herein verbatim.
51. The Plaintiffs constructed the floating dock located east of the walkway and pier head; the Plaintiffs used the walkway and pier head to access their floating dock.

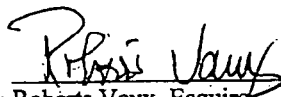

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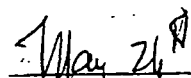
52. The Plaintiffs and the Plaintiffs' family have used and enjoyed the walkway, pier head and floating dock continuously and exclusively for more than forty (40) years, and therefore, own title to the walkway, pier head and floating dock through adverse possession.

53. The Plaintiffs' have used and enjoyed the floating dock located to the east of the walkway and pier head continuously and exclusively for more than forty (40) years, until it was destroyed and Plaintiffs could not repair the dock due to the Defendants' actions.

WHEREFORE, the Plaintiffs pray that this Honorable Court determine ownership rights of the land at issue in the Plaintiffs' Fifth Cause of Action; determine that the Plaintiffs' own an undivided interest in and to the walkway, pier head, and floating dock through adverse possession; and for such other relief as this Court may find just and proper.

VAUX & MARSCHER, P.A.


Robert Vaux, Esquire
Mark S. Berglind, Esquire
Attorneys for the Plaintiffs
Post Office Box 769
Bluffton, South Carolina 29910
(843) 757-2888


May 24th, 2009
Bluffton, South Carolina

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.:

Eugene Keeny Cashman, Jr., as Trustee
 of the Eugene Keeny Cashman, Jr.,
 Revocable Trust, and Kathleen Gilmore
 Cashman, as Trustee of the Kathleen
 Gilmore Cashman Revocable Trust)

Verification of Eugene K. Cashman, Jr.

Plaintiffs,)

v.)

Estate of Louise Cleland Lightsey and
 Wachovia Bank, N.A., as Personal
 Representative and/or Trustee of the Estate
 of Louise Cleland Lightsey,)

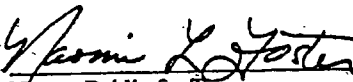
Defendants.)

PERSONALLY appeared before me, Eugene K. Cashman, Jr. who being duly sworn, deposes and says that he has read the foregoing Verified Complaint, and all of the allegations contained therein are true of his own knowledge, and as to those things alleged upon information and belief, he believes the same to be true.


 Eugene K. Cashman, Jr.

SWORN TO and subscribed before me

This 23rd day of April, 2009



Notary Public for Tennessee

My Commission Expires:

My Commission Expires on

September 15, 2012

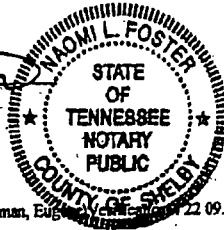


Exhibit "A"



The Beaufort County Assessor's office makes every effort to produce the most accurate information possible.
No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

PID #: R600 039 00C 0126 0000

Key #: 507507

Owner Info

LIGHTSEY LOUISE CLELAND
WACHOVIA BANK N A ETAL
% TRUST REAL ESTATE DEPT 1426 MAIN ST 16 FL
COLUMBIA, SC 29226
Location: 31 OYSTER ST

Legal Info

LOTS 1-2-3A S 1/2 LOT 4A

Land Data

Year: 2009
Neighborhood Code: P014
Acres: 0.00
Agriculture Use: 0
Income Value: 0
PCS: 11

PCA: 6116

Historic Info

Year	Land	Building	Features	Market*	Assessed	Taxes	Payment
2008	\$416,000	\$98,000	\$12,000	\$526,000	\$31,560	\$6,526.11	\$0.00
2007	\$416,000	\$98,000	\$12,000	\$526,000	\$31,560	\$6,252.28	\$6,252.28
2006	\$416,000	\$98,000	\$12,000	\$655,460	\$31,560	\$5,687.35	\$5,687.35
2005	\$416,000	\$98,000	\$12,000	\$655,460	\$31,560	\$5,292.85	\$5,292.85
2004	\$416,000	\$98,000	\$12,000	\$655,460	\$31,560	\$5,133.80	\$5,133.80
2003	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,817.71	\$1,817.71
2002	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,751.60	\$1,751.60
2001	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,640.33	\$1,640.33
2000	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,604.33	\$1,604.33
1999	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,523.72	\$1,523.72
1998	\$63,000	\$58,000	\$13,360	\$134,360	\$8,062	\$1,378.59	\$1,378.59
1997	\$30,000	\$71,300	\$6,150	\$107,450	\$6,447	\$1,438.67	\$1,438.67
1996	\$30,000	\$71,300	\$6,150	\$107,450	\$6,447	\$1,427.09	\$1,427.09

Sales Info

Owner	Book	Page	Date	Inst.	Qualif	Vacant/Impr	Sale Price
LIGHTSEY LOUISE CLELAND	2234	494	20050907	DD	E	1	\$1.00
LIGHTSEY LOUISE CLELAND	1947	1026	20040429	DD	E	1	\$1.00
LIGHTSEY LOUISE CLELAND	394	1272	19831201	GW	A	1	\$0.00

Building Characteristics

Number	Improvement Type	Year Built	Stories	Rooms	SQFT	Living Area
1	RRS20WPH	1930	2.0	8	2904	1848
2	RRS20WPH	1930	2.0	0	1071	504

Building Area

Number	Description	SQFT
1	SCR POR ROOF POST SCR TO FLR	208
1	BASE	924
2	BASE	504

Exemptions

Year	Amount
	\$0.00

*Market: This is either the assessor's market value as of the last countywide reappraisal, value effective 12/31/2002 or the Assessable Transfer of Interest (ATI) market value as per SC Code section 12-37-3150, value effective 12/31/2007.

12-13
Wachovia
2909

2319.1

RECORDED
2004 May 25 03:37 PM
Sharon Q. Bunn
BEAUFORT COUNTY AUDITOR

[Brighton Beach House and Oak Point Lots]
[BEAUFORT COUNTY, SOUTH CAROLINA]

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF HAMPTON

IN THE MATTER OF THE ESTATE OF E. OSWALD LIGHTSEY

CASE NUMBER: PACKAGE 5598

BEAUFORT COUNTY SC- ROD

BK 01947 PGS 1028-1031

DATE: 04/30/2004 02:11:11 PM

INST # 2004027898 RCPT# 240292

DEED OF DISTRIBUTION

WHEREAS, the decedent, E. Oswald Lightsey, died on the 15th day of August, 1979; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Hampton County, South Carolina, in Package #5598; and,

WHEREAS, each Grantee hereinafter named is a beneficiary 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, Wachovia Bank, N.A., as Successor to the South Carolina National Bank as Personal Representative of the Estate of E. Oswald Lightsey has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release to the following (hereinafter referred to collectively as "Grantee"), in equal shares as tenants-in-common:

1. Wachovia Bank, N.A., as Trustee under the Last Will and Testament of E. Oswald Lightsey for the benefit of Louise Lightsey Baughman;
2. Wachovia Bank, N.A., as Trustee under the Last Will and Testament of E. Oswald Lightsey for the benefit of Lillian Lightsey Drawdy; and
3. Wachovia Bank, N.A., as Trustee under the Last Will and Testament of E. Oswald Lightsey for the benefit of Claudia Lightsey Ware.

Grantee's Address: c/o Trust Real Estate Department
1426 Main Street, 16th Floor
Columbia, South Carolina 29226

the real properties described on Exhibit "A" attached hereto and made a part hereof.

After this conveyance, each Grantee will own an undivided one-sixth (1/6) interest in and to the properties on Exhibit "A".

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the Properties belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the Properties unto Grantee, its heirs, successors and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed of Distribution, this 29th day of April, 2004.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

ESTATE OF E. OSWALD LIGHTSEY
BY WACHOVIA BANK, N.A., AS
SUCCESSOR TO THE SOUTH CAROLINA
NATIONAL BANK AS PERSONAL
REPRESENTATIVE (SEAL)

Witness: Elizabeth A. Kuvshin

Witness: Cynthia S. Edwards

By: Russell L. Fisher

Name: Russell L. Fisher
Its: Vice President

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-named Personal Representative sign, seal, and as its act and deed, deliver the within written Deed of Distribution, and that (s)he with the other witness who signature appears above witnessed the execution thereof.

Elizabeth A. Kuvshin
[Witness]

SWORN to before me this 29th
day of April, 2004.

Cynthia S. Edwards (L.S.)
Notary Public for South Carolina

My Commission Expires: March 2, 2014

THIS INSTRUMENT WAS PREPARED BY SHERRILL & ROOF, LLP.
NO TITLE EXAMINATION WAS ACCOMPLISHED, AND
NO REPRESENTATIONS WERE MADE AS TO THE QUALITY OF TITLE.

EXHIBIT "A"
BEAUFORT COUNTY

AN UNDIVIDED ONE-HALF (½) INTEREST IN AND TO:

ALL those certain lots, tracts or parcels of land situate, lying and being in Beaufort County, South Carolina, near Bluffton, known as Lots One (1), Two (2), Three (3) and the Southern half of Lot Four (4), Block A, Brighton Beach Subdivision, as shown on a plat or survey of said subdivision made by James C. Covington dated January 2, 1926, recorded in the Office of the Clerk of Court for Beaufort County, South Carolina.

TMS# 600-039-06C-126

ALSO

TMS# R700-030-000-004; R700-039-000-0009; R700-040-000-0001.

ALL that certain piece, parcel or tract of land situate, lying and being on Keans Neck, in the County of Beaufort and State of South Carolina, and being a portion of what is known as Oak Point, bounded on the North by Wimby Creek; on the East and South by lands now or formerly of Charleston Mining and Manufacturing Company, and on the West by lands now or formerly of the Estate of Richard Jenkins, containing One Hundred and Fifty (150) acres, more or less, being better known as the Barnes Tract, and being the same property conveyed to Francis Howell McSweeney, by Miles P. McSweeney by deed dated August 12, 1935, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Book 52 of Deeds, at Page 185.

The aforesaid property having been conveyed to W. N. Lightsey and E. O. Lightsey by deed from Francis Howell McSweeney dated May 13, 1946, recorded in Book 64, Page 125, in the Office of the Clerk of Court of Beaufort County, South Carolina.

AND ALSO:

ALL that certain piece, parcel or tract of land situate, lying and being in Sheldon Township, Beaufort County, South Carolina, containing Forty-Two (42) acres, more or less, and more fully bounded as follows: On the North by North Wimbee Creek; on the East by North Wimbee Creek; on the South by lands of W. Morris Lightsey and Oswald Lightsey, formerly lands of Miles P. McSweeney; and on the East by Salt Water Creek.

This being the same tract of land conveyed by Von Etta E. Rainey by deed recorded in the Clerk's Office for Beaufort County, South Carolina, on May 30, 1942, in 590-234, and by deed of J. E. McTeer, Sheriff of Beaufort County, South Carolina, to Von Etta E. Rainey by deed recorded in the Clerk's Office on November 15, 1929, in 460-170; and by deed from Jenkins to George Miles recorded in Clerk's Office on November 30, 1908, in 290-145; and by deed from Daniel Goodson to Jenkins recorded in Clerk's Office on January 15, 1879, in 110-124, 125. The deed from Mrs. Spann to Daniel Goodson was recorded in the Clerk's Office on December 30, 1874, in 90-616.

The above is the chain of title of deeds to the tract of land herein conveyed. All deeds being of record in the Office of the Clerk of Court for Beaufort County, South Carolina.

The aforesaid property having been conveyed to W. Morris Lightsey and E. Oswald Lightsey by deed from Leslie H. Hanna and J. Harry Hanna, executors and trustees of the Will of Leslie E. Hanna, deceased, Maude P. Hanna and Hugh O. Hanna, a widower, dated January 17, 1961, recorded in Book 108, Page 224, in the Office of the Clerk of Court of Beaufort County, South Carolina.

EXHIBIT "A"
BEAUFORT COUNTY

AN UNDIVIDED ONE-HALF (1/2) INTEREST IN AND TO:

AND ALSO:

All that certain tract or plantation of land situate near Dale, in Sheldon Township, Beaufort County, South Carolina, described, according to the survey and plat of same made by C. B. Pinckney, Surveyor, dated September 12, 1914, as commencing at a live oak tree on the edge of the marsh of Wimbee Creek, and running thence North 79° 35' West 1391.6 feet, to a stake, thence North 10° 25' East 354 feet, to a dam, thence North 12° 45' West 152 feet, to a creek, thence North 86° 35' West 1165.6 feet, to a live oak stump, thence South 10° 35' East 743 feet, thence South 64° 25' West 1282 feet to an iron axle, thence South 80° 10' West 290 feet, to an iron axle, thence South 1215 feet to a live oak tree on the edge of the marsh of Wimbee Creek, said plantation containing Two Hundred Thirty-Four (234) acres of high land and, according to said plat, is bounded: On the Northwest by lands of Elsie Simmons, formerly estate of J. L. Spann and land of Pattie White; on the North by lands of Edward Barnwell and Cato Brooks and the Oak Point Mines Plantation; on the South and East by salt water marsh of Wimbee Creek; and, on the West by lands of Jacob Simmons, formerly estate of C. B. Spann.

Being the unsold portion of that tract of land originally containing Two Hundred Eighty-Eight (288) acres conveyed to J. Lawrence Spann by Caroline B. Spann by deed dated December 3, 1875, recorded September 22, 1876, in the Clerk of Court and R. M. C. Office for Beaufort County, South Carolina, in Book 10 at Page 336.

AND ALSO:

All that certain plantation or tract of land known as "Oak Point" Plantation, situate, lying and being at the confluence of the North Wimbee and South Wimbee Creeks on the neck of land known as Kean's Neck, in said County and State, measuring and containing One Thousand Fifty (1,050) acres, more or less, of high land and Three Hundred Forty-Three (343) acres, more or less, of marsh land, said land having the following boundaries, to-wit: A small portion of the North is bounded by lands of the estate of Richard Jenkins, Parris Glover and the estate of Daniel Gadsden, formerly lands of the estate of T. H. Spann, deceased, and generally North and Northeast on North Wimbee Creek; South and Southwest on South Wimbee Creek and lands of the estate of T. H. Spann, deceased; West on lands, now or formerly, of the estate of Edward Barnwell, deceased; and, on the East coming to a point at the confluence of the North Wimbee and South Wimbee Creeks. The said tract of land having been conveyed to the Charleston, South Carolina Mining and Manufacturing Company by Charles E. Steele by deed dated January 24, 1906, and recorded in the Office of the Clerk of Court for Beaufort County in Book No. 27 at Page 166, the said land being sold by the parcel and not by the acre, the acreage stated in the description being estimated only.

Being lands described as "Oak Point" Plantation and conveyed to Henry Legare Sanders by Charleston South Carolina Mining & Manufacturing Company by deed dated November 4, 1926, recorded November 16, 1926, in the Clerk of Court and R. M. C. Office for Beaufort County, South Carolina, in Book 45 at Page 2.

This deed is made subject to the exceptions and reservations contained in the aforesaid deed from Charleston South Carolina Mining & Manufacturing Company to Henry Legare Sanders.

EXHIBIT "A"
BEAUFORT COUNTY

AN UNDIVIDED ONE-HALF (½) INTEREST IN AND TO:

AND ALSO:

Tract No. 1: All that certain piece, parcel or tract of land containing Three Hundred Fifty-Four and One-Half (354-1/2) acres, more or less situate, lying and being on Chisolms Island Road about Nineteen (19) miles from the City of Beaufort, in Sheldon Township, County of Beaufort, State of South Carolina, having such shapes, metes, courses and distances as will more fully appear by reference to a plat thereof made by McCrady Bros. and Cheves, Surveyors, on September 17, 1917, which is recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 2 at Page 36, said plat being of the entire Keans Neck Plantation, of which said tract is the Eastern half, this Eastern half of Keans Neck Plantation, now known as Barnwell Pecan Farm, bounded: On the North by Barnwell Creek; on the East by Point Island Creek, which separates it from the Oak Plantation and Oak Point Plantation; on the South by lands of the estate of Spann, from which it is separated by the Chisolms Island Public Road; and, on the West by the Western half of said Kean's Neck Plantation, now belonging to Rivers L. Varn, all of which is fully shown by a copy of said map attached to the abstract now on file with the Federal Land Bank of Columbia, and reference to which is hereby made. Being the same lands conveyed by E. B. Rodgers, Clerk of Court for Beaufort County, to Federal Intermediate Credit Bank of Columbia by deed dated November 18, 1927, recorded November 21, 1927, in the Office of the Clerk of the Court and R. M. C. for Beaufort County, South Carolina in Book 45 at page 96.

Tract No. 2: All that certain piece, parcel or tract of land containing Three Hundred Ten (310) acres, more or less, and being the Western half of the tract formerly known as Kean's Neck Plantation, but now as Barnwell Pecan Farm, situate, lying and being on Chisolms Island Road about Nineteen (19) miles from the City of Beaufort, in Sheldon Township, County of Beaufort, and State of South Carolina, having such shapes, metes, courses and distances as will more fully appear by reference to a plat or map thereof made by McCrady Brothers and Cheves, Surveyors, on September 17, 1917, which is recorded in the Office of the Clerk of the Court for Beaufort County in Plat Book 2 at Page 36, bounded: On the North by Barnwell Creek, which separates it from the Indian Hill Tract; on the East by the Eastern half of Barnwell Pecan Farm, now owned by John W. Varn; on the South by lands of the estate of Spann, from which it is separated by Chisolms Island Public Road; and, on the West by the Indian Hill Tract. Being the same lands conveyed by E. B. Rodgers, Clerk of Court for Beaufort County, to Federal Intermediate Credit Bank of Columbia by deed dated November 18, 1927, recorded November 21, 1927, in the Office of Clerk of Court and R. M. C. for Beaufort County, South Carolina in Book 45 at Page 97.

AND ALSO:

Tract No. 1: All that certain piece, parcel or tract of land situate, lying and being in Sheldon Township, in the County of Beaufort and State of South Carolina, containing Eight (8) acres, more or less, and bounded as follows: On the North by lands of Flora Walker; on the East by lands of Dan Williams; on the South by lands of Renty Pinckney; and, on the West by a dam separating Keans Neck Plantation from Spann Plantation, said tract being a part of what is commonly known as the Keans Neck Plantation and being the same premises described in deed to R. L. Varn by J. E. McTeer, Sheriff of Beaufort County, South Carolina, dated December 23, 1932, recorded December 29, 1932, in the Office of the Clerk of Court for Beaufort County, South Carolina in Book 50 at Page 54.

EXHIBIT "A"
BEAUFORT COUNTY

AN UNDIVIDED ONE-HALF (%) INTEREST IN AND TO:

Tract No. 2: All that certain piece, parcel or tract of land, and the buildings thereon, situate, lying and being in Sheldon Township, Dale Section, County of Beaufort and State of South Carolina, containing Fourteen (14) acres, more or less, being the same lands as were conveyed by William Middleton, et al., to Jane Phoenix on October 17, 1931, recorded and certified on January 22, 1932, in Book 48 at Page 143 in the Office of the Clerk of Court, City of Beaufort, County of Beaufort, State of South Carolina, (Register of Conveyances) being more particularly described and designated as follows, to-wit: - Quote from above named record: -

"That certain portion of land aforesaid containing Thirteen and Eight-Tenths (13.8) acres, beginning at stake on the County Road between Dale and Oak Point and a road, running thence along the road South Four (4) degrees East Fifteen Hundred and Eighty-Four (1584) feet to iron axle, thence North Eight-Three (83) degrees Forty-Five (45) minutes East Three Hundred and Sixty-One and Thirty-Five Hundredths (361.35) feet to stake; thence North Two (2) degrees Ten (10) minutes West Fifteen Hundred and Twenty (1520) feet to stake; thence South Eighty-Seven (87) degrees West Four Hundred and Twenty-Three and Twenty-Five Hundredths (423.25) feet to point of beginning, all of which will appear from a plat made by H. K. McGee, November 1, 1930."

Being the same premises as described in a deed to R. L. Varn, Agt., by J. E. McTeer, Sheriff of Beaufort County, South Carolina, dated May 26, 1937, recorded May 27, 1937, in the Office of the Clerk of Court for Beaufort County, South Carolina in Book 50 at Page 425.

Tract No. 3: All that certain piece, parcel or tract of land situate, lying and being in Sheldon Township, Dale Section, County of Beaufort and State of South Carolina, containing Twelve (12) acres, more or less, being the same lands as were conveyed by William Middleton, et al., to Marie Butler by deed dated April 17, 1931, and recorded and certified on May 6, 1932, in Book 48 at Page 157. Register of Conveyance, in the Office of the Clerk of Court, City of Beaufort, County of Beaufort, State of South Carolina, being more particularly designated and described as follows; to-wit: - Quote from above named record: -

"That certain portion of the land aforesaid containing Twelve and Thirty-Two Hundredths (12.32) acres, beginning at a stake on the County road between Dale and Oak Point and running thence South Three (3) degrees Fifteen (15) minutes West Thirteen Hundred and Eighty (1380) feet to a stake, thence North Eighty-Three (83) degrees, Forty-Five (45) minutes East Three Hundred and Sixty-One and Thirty-Five Hundredths (361.35) feet to iron axle, thence North Six (6) degrees Thirty (30) minutes East Thirteen Hundred and Twenty (1320) feet to iron axle on County road, thence South Eighty-Seven (87) degrees West Four Hundred and Twenty-Three and Twenty-Five Hundredths (423.25) feet to point of beginning, all of which will appear from a plat made by H. K. McGee, November 1, 1930."

Being the same premises described in a deed to R. L. Varn, Agt. by J. E. McTeer, Sheriff of Beaufort County, South Carolina, dated May 26, 1937, recorded May 27, 1937, in the Office of the Clerk of Court for Beaufort County, South Carolina, in Book 50 at Page 424.

Being the same lands conveyed to Dorothy D. Hutton by R. L. Varn, et al., by deed of March 11, 1940, recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Book 54 at Page 256.

Said property being a portion of that property conveyed to W. Norris Lightsey and E. Oswald Lightsey by deed from Dorothy D. Hutton dated August 28, 1942, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina, in Book 83, Page S-279 to 287.

ADD DMP Record 5/25/2004 10:27:00
 -> Book/Page O BK 1947 PG 1032A
 BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	030	000	0004	0000	00

ADD DMP Record 5/25/2004 10:27:00
 -> Book/Page O BK 1947 PG 1032A
 BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	039	00C	0126	0000	00

ADD DMP Record 5/25/2004 10:27:00
 -> Book/Page O BK 1947 PG 1032A
 BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	030	000	0004	0000	00

ADD DMP Record 5/25/2004 10:27:00
 -> Book/Page O BK 1947 PG 1032A
 BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	039	000	0009	0000	00

ADD DMP Record 5/25/2004 10:27:00
 -> Book/Page O BK 1947 PG 1032A
 BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	040	000	0001	0000	00

Exhibit 18

1-803-7573177

Herman Hubbard Piledriving & Dock Work
Box 22 B
Bluffton, S. C. 29910

April 11, 1977

Mr. E. K. Cashman

Savannah, Ga.

Dear Mr. Cashman:

I can build you a 10'x 16' floating dock, and a 31/2'x 24' ramp, for a cost of \$1,830.00. This is \$7.50 a sq. ft. for floating dock and ramp, and includes 2 floating dock piling.

Also, to pull up the 3 old piling will be \$50.00 each, or if they cannot be pulled, I can locate the floating dock between the old piling.

Sincerely,

Herman Hubbard

Herman Hubbard

Exhibit 35

9/10/00
19874

BEAUFORT COUNTY, S.C.
RECORDING FEES COLLECTED
TRANSFER FEES \$ 0
COUNTY \$ 33.00 STATE \$ 55.00

906

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT

We, ANTHONY V. RYAN, JR. and TAWANA P. RYAN, in the State aforesaid, for and in consideration of the sum of TWO HUNDRED TWELVE THOUSAND and No/100ths (\$212,000.00) DOLLARS, and other valuable consideration to us in hand paid at and before the sealing of these presents by EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN whose mailing address is Memphis, TN the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns, forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" INCORPORATED HEREIN.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns, forever.

AND we do hereby bind ourselves and our Heirs, Assigns and Personal Representatives, to warrant and forever defend all and singular the said Premises unto the said EUGENE K. CASHMAN, JR. and KATHLEEN G. CASHMAN as hereinabove provided against ourselves and our Heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

BEAUFORT COUNTY TAX MAP: 600/039/00C/0127/0000 55

[Handwritten signature]

WITNESS our Hands and Seals this 20 day of April, 1999.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
(Witness)
[Signature]
(Notary)

[Signature]
ANTHONY V. RYAN, JR.
[Signature]
TAWANA P. RYAN

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned notary public, do hereby certify that ANTHONY V. RYAN, JR. and TAWANA P. RYAN, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 20 day of April, 1999

[Signature]
Notary Public for South Carolina
My commission expires: 12-21-02

EXHIBIT "A"

PARCEL 1: ALL that certain piece, parcel or lot of land situate, lying and being at Brighton Beach, in Bluffton Township, Beaufort County, South Carolina, triangular in shape, containing all of Lots 10 and 11 and portions of Lots 12 and 13 and more particularly described as follows: Beginning at a point where the line separating Lots 13 and 14 touches an unnamed road, then extending in a southerly direction along said road for a distance of two hundred fifteen (215') feet, more or less, to the southernmost tip of Lot 2 on said road; thence northeasterly direction for a distance of one hundred seventy-five and one-half (175.5') feet, more or less, to the northernmost point of the line separating Lots 4 and 6; and thence in a northwesterly direction for a distance of one hundred thirty-one (131') feet, more or less to the point of beginning; bounded on the North, East and South by the lands of Lightsey and that of Louise Boyd Carter, a/k/a Louise B. Carter, and on the West by an unnamed road, as will more fully appear by reference to a Map of Brighton Beach made for T.O. Lawton and C. E. Ulmer, January 2, 1926 by Jas. C. Covington, as recorded in the Beaufort County Registry of Deeds, Beaufort, South Carolina.

PARCEL 2: AND ALSO that certain piece, parcel or lot of land situate, lying and being in said Township of Bluffton, County of Beaufort, known as the North half of Lot Number Four (4) in Block A of said Brighton Beach, measuring twenty-five (25') feet on Oyster Street and running back one hundred (100') feet, and bounded on the North by Lot Number Five (5), on the East by Oyster Street, on the South by the remaining portion of Lot Four (4) property of W. Fred Lightsey, and on the West by Lot Number Eleven (11) (as contained in "Parcel 1" above). For a more detailed description, reference is hereby craved to the above noted plat of survey, of record, made by Jas. C. Covington, January 2, 1926, in said Beaufort County Registry of Deeds, Beaufort, South Carolina.

ALSO, ALL of that certain parcel, lot or tract of land, known as Lot Number Five (5) in Block A (with a three (3) room cottage thereon), situate, lying and being in said Brighton Beach Subdivision and being bounded as follows: On the North by Lot Number Six (6) of said subdivision, on the East by Oyster Street, on the South by Lot Number 4 of same, and on the West by Lots Number Eleven (11) and Twelve (12), of same. Said Lot being rectangular in shape and fronting on Oyster Street a distance of fifty (50') feet, more or less, and running back in a southern direction a distance of one hundred (100') feet to said Lots 11 and 12 as will more fully appear by reference to the above and within noted plat made by Jas. C. Covington, January 2, 1926.

This being the same property conveyed to the within Grantors, Anthony V. Ryan, Jr. and Tawana P. Ryan by deed dated June 20, 1996 and recorded in the Beaufort County Registry of Deeds, Beaufort, South Carolina, in Book 875 at Page 667.

This Deed was prepared in the Law Office of Vaux & Marscher, P.A., Post Office Box 769, Bluffton, South Carolina; by William F. Marscher, III.

Original Notarized

Vant
FILED 1507
SULLIVAN, IN.
99 APR 13 AM 11:23
BK 1159
FOLDER# PG 906

909

RECORDED THIS 17 DAY
OF May 19 99
IN BOOK AF PAGE 532
Sharon A. Burns
AUDITOR, BEAUFORT COUNTY, S.C.

Exhibit 61
(excerpt)

Cashman & Cashman vs. Lightsey Trust, Wachovia, et al.
Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 13 PAGE 49
1 permit for the -- or the drawing of the floating dock being
2 added to the pier.
3 Q Now, at the time of this application in 1977,
4 there was one floating dock already attached to this pier;
5 is that correct?
6 A To the best of my knowledge, yes, and it was on
7 the -- what I call the south. I guess it would be the west
8 if you were going north, east, south and west, but it was
9 on the west side.
10 Q All right. And --
11 A In other words, if I were looking at this
12 exhibit, there was a floating dock here.
13 Q Yes, sir. And do you know why your father was
14 wanting to put a second floating dock there?
15 A Sure. Just for the convenience and use.
16 Q And was the floating dock that was there -- was
17 it being used to the extent that a second dock was required
18 or --
19 A Yeah. We had several boats. The Lightseys had
20 several boats. There wasn't any reason to believe that you
21 wouldn't have dockage for all the fleets that everybody
22 had.
23 Q And the second floating dock was ultimately
24 permitted and put in place?
25 A To the best of my knowledge, it's in place, or

PAGE 50
1 was.
2 Q And so for a time, we had two floating docks
3 attached to the pier?
4 A Correct.
5 Q And how were those docks used? Did everybody use
6 both of them, or did one family use one and one family use
7 the other? Or how did that work, as far as you know, if
8 you know?
9 A Well, I do. Ninety-eight percent of the time,
10 the Cashman craft would be attached to the floating dock
11 that's referenced in this exhibit, and the other part of
12 the time, the Lightsey floating dock was used by the
13 Lightsey craft, and/or someone like Neil Lax, who had a
14 boat tied up there. And that's, you know -- and if you
15 came in and there were boats there -- I mean, it wasn't
16 like there was a restriction on either party's part to the
17 use of the floating docks. But, I mean, I'm just saying
18 that the floating dock referenced here was used primarily
19 by the Cashmans, but didn't preclude that the Lightseys or
20 others couldn't use it.
21 Q Were boats tied up there on a permanent basis, or
22 on a day basis, or how did that work?
23 A I'd say that on the Lightsey side, for a period
24 of time -- I can't give you specific dates, but for a
25 period of time there were boats of Neil Lax, for reference

PAGE 51
1 to previous discussions, that dealt with some security.
2 On the Cashman floating dock, there was a -- what I refer
3 to as a "party barge," that was permanently tied up to it.
4 It was used to, you know, float, drift, or crab, or what
5 have you, but it was permanently tied. But it didn't
6 preclude the dock -- or that boats couldn't be tied to that
7 craft, as well as -- at one point, I had WaveRunners up on
8 that barge craft.
9 Q And who paid for the floating dock that was the
10 subject of the 1977 application?
11 A My father.
12 Q Now, at some point in time, did something happen
13 to the floating dock that your father put on there in '77?
14 A Several times.
15 Q Tell me about that.
16 A Well, storms would -- back then, those floating
17 dock were erected or built with styrofoam underbellies, and
18 those would need to be replaced. They broke loose and
19 would go into the marsh, or you could retrieve them down
20 the river. And they were just, you know, I would think,
21 like everybody else's. They were under constant repair --
22 retrieval and repair.
23 Q Was it ever totally destroyed so that it had to
24 be completely replaced?
25 A One complete replacement, and, yes, totally

PAGE 52
1 destroyed.
2 Q And when was that?
3 A I can't give you a specific date. I can remember
4 tearing one apart and having it hauled off by beaching it
5 and -- you know, putting it on the beach, which was the
6 period of time before the request to have the dock -- that
7 we were making for this other incident that took place --
8 to replace it.
9 And another time was when a, you know, storm
10 broke it up and it was beached before it could be repaired
11 and put back in place. When it was put back in place,
12 instead of having three pilings secure it, there were two
13 pilings.
14 But all of that would have been in the period of
15 the, you know, seventies, eighties, nineties, over a
16 30-year period of time.
17 Q Do you know how many times that the floating dock
18 had to be actually replaced as opposed to repaired?
19 A Just once, as I recall.
20 Q And what's your best estimate of when --
21 guesstimate of when that was?
22 A I don't know. I've got some photographs that
23 might conjure up a date or a time associated with a storm.
24 I can recall one major storm which destroyed a lot of
25 things. But I'm going to say that that would have probably

Bettye Anderson & Associates
Beaufort, South Carolina
843.525.0791 800.543.5506

Deposition of EUGENE KEENY CASHMAN, JR., taken March 12, 2010

SHEET 14 PAGE 53
1 been in the eighties, early eighties.
2 Q Did that replacement require a permit?
3 A I don't have any idea if a permit was secured for
4 replacing it or not -- or replacing and repairing. The
5 part I recall were the -- the original had no extenders on
6 the piling, and the floating dock actually floated off the
7 piling. And the extenders, or metal rods or bars, were put
8 up at the top to give it a higher state of buoyancy. And
9 that's the part I'm talking about that I recall. And when
10 that was floated off, that -- when I say "replaced," it was
11 probably found and repaired and then put back with two
12 instead of one piling -- three piling.
13 Q And remind me again, which side of the pierhead
14 is --
15 A It's -- I refer to it as the east. But if you
16 look at that document, you'll see that it had plans that
17 did not locate the pierhead. But it's the exact same
18 drawing. It's just what's been added is the pier to the
19 east.
20 Q If I am standing --
21 A What I'm also not seeing on here is that, to the
22 best of my knowledge, there was also a pier on the west.
23 It's not shown there, but there was a pier on the west.
24 Q A pier or a floating dock?
25 A Excuse me. Floating dock. I'm sorry. Floating

PAGE 54
1 dock.
2 Q All right. Now, the one we're talking about
3 here, the one that your father put in there in the
4 seventies, if I were standing on the pier facing the river,
5 that would be to my left?
6 A Yes.
7 Q And is there a floating dock there today?
8 A No. The piling are there.
9 Q And what happened to the floating dock, the last
10 floating dock, that was there at that location?
11 A It needed to be replaced. It was beached. And
12 that's the one I was saying that I disassembled and had
13 carted off.
14 Q All right. And why was that one not replaced?
15 A Because when it came time to replace it, I was
16 denied access to the end of the dock, because the gate was
17 locked, the first time I had known it to be locked.
18 Q Did you just -- I mean, did you have any prior
19 knowledge of the lock being put in place, or did you just
20 discover it one day when you were out there?
21 A I discovered it when I went out there to actually
22 take people to give me the estimate for the replacement.
23 Q And who were you taking out there to estimate the
24 cost to replace the floating dock?
25 A An individual who represented a company who was

PAGE 55
1 going to do the work.
2 Q Do you remember who that was?
3 A No. It was probably -- it was either Ansley or
4 Nanny Roberts, who were the people who were building
5 floating docks and doing that kind of work, but I don't
6 recall the name. I just know that I had them in hand after
7 a long search to try to get somebody to meet me in Bluffton
8 to go out there, and when I got there with them, the gate
9 was locked.
10 Q And what did you do?
11 A I called Norris Laffitte.
12 Q And do you know when that was?
13 A 2005.
14 Q And did you speak with Mr. Laffitte?
15 A Um-hum. Yes, I did.
16 Q And what did he say?
17 A He said, "Oh, we've got a lock on there. I'll
18 send you the keys."
19 Q And did he send you a key?
20 A Yes.
21 Q And then what happened next?
22 A He called me and said, "I've been told that I
23 can't do what I just did," and that, "You don't have
24 permission to go out on the dock." We talked for a few
25 minutes. I had not opened the envelope that he sent me.

PAGE 56
1 I wrote him a letter. And he had indicated in the phone
2 call that he needed the key back, and I sent it back to
3 him.
4 Q When he requested that you send the key back to
5 him, was that in -- by letter, or by phone call, or
6 conversation? How was that request communicated to you?
7 A He told me on the telephone. And he was upset
8 and without explanation, because he had none. He made the
9 request and I trusted our relationship. And I realized
10 that he could have put himself in a bind with his family,
11 and I was not going to, you know, put him at any greater
12 risk, and I sent the letter and the envelope.
13 Q How long did you have the key before he requested
14 that you return it?
15 A Well, I got it one day and he called me that day,
16 and it was returned, you know, in the next mail.
17 MR. LAUGHLIN: Mark this, please.
18 (WHEREUPON, a document was marked as
19 Defendant's Exhibit Number 8 for identification to
20 the Cashman Deposition.)
21 BY MR. LAUGHLIN:
22 Q You have in front of you Defendant's Exhibit 8.
23 What is that, sir?
24 A March 21, 2005. It's a letter from Norris to me.
25 "At the family meeting, it was decided that the Lightseys

Bettye Anderson & Associates
Beaufort, South Carolina
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Duker, III, Circuit Court Judge

Case No. 2009-CP-07-2573
Appellant Case No.: 2012-213579

Cashman Properties, LLC, ... Respondent,

v.

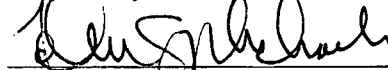
WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust Under Will of
E. Oswald Lightsey dated August 8, 1958, and codicil dated
March 23, 1976, for the Benefit of Lillian Lightsey Drawdy;
and the Trust Under Will of E. Oswald Lightsey for the Benefit
of Claudia Lightsey Ware, ... Appellants.

CERTIFICATE OF COUNSEL

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

February 3, 2014

Respectfully submitted,



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BLUESTEIN, NICHOLS,
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Attorney for Respondent

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge for Beaufort County

Case No.: 2009-CP-07-2573

CASHMAN PROPERTIES, LLC Respondent

-vs.-

WNL PROPERTIES, LLC; E. OSWALD LIGHTSEY TRUST f/b/o LOUISE
LIGHTSEY BAUGHMAN; THE TRUST UNDER WILL OF E. OSWALD LIGHTSEY
DATED AUGUST 8, 1958, AND CODICIL DATED MARCH 23, 1976, FOR THE
BENEFIT OF LILLIAN LIGHTSEY DRAWDY; AND THE TRUST UNDER THE
WILL OF E. OSWALD LIGHTSEY FOR THE BENEFIT OF CLAUDIA LIGHTSEY
WARE..... Appellants

FINAL BRIEF OF APPELLANTS

RECEIVED

FEB 04 2014

SC Court of Appeals

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TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of Issues on Appeal	1
Statement of the Case	2
Facts	3
Standard of Review	6
Summary of Argument	6
Arguments.....	7
I. The trial court erred in granting a declaratory judgment to Cashman Properties ..	7
a) The trial court erred in granting a declaratory judgment to Cashman Properties because the Declaratory Judgment Act is procedural in nature and does not create any substantive rights and the substantive actions raised by Cashman Properties were either voluntarily withdrawn or decided in favor of the Lightsey Trusts	9
b) The trial court erred in granting a declaratory judgment to Cashman Properties because the purpose of the Declaratory Judgment Act is to declare rights before a breach of existing rights and Cashman Properties alleged a breach of rights.....	12
c) The trial court erred in granting a declaratory judgment to Cashman Properties because the trial court breached the general rule that declaratory judgment actions should be dismissed if the issues can be adjudicated in a pending action.....	14
II. Assuming <i>arguendo</i> that a declaratory judgment could properly be granted in the case, the trial court erred in making factual findings and conclusions of law that were not supported by the evidence in the case or the law in South Carolina.....	15
a) The trial court erred when it found that there has been a consistent and cooperative pattern and practice of “use and ownership” of Docks 1, 2, and 3 for eighty (80) years when such finding is not supported by the evidence	15

b)	The trial court erred when it found that Cashman Properties demonstrated by clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use Docks 1, 2 and 3 for eighty years.....	18
c)	The trial court erred when it found that the parties used Dock 3 without permission from each other when the evidence establishes that the Lightsey family gave both express and implied permission to the Cashman family	20
III.	The trial court erred in making <i>ex mero motu</i> holdings.....	30
a)	The trial court erred in <i>ex mero motu</i> holding that the base of the pier is attached to land designated as common property, that the common right of access to the river arises from deeds, that neither party claims a right to land below the mean high water mark, and that a structure on common property and used by alleged co-owners becomes common property.....	30
b)	The trial court erred in <i>ex mero motu</i> holding that laches prevents the Lightsey Trusts from seeking reimbursement from Cashman Properties for any and all expenses related to the dock incurred prior to the filing of the Summons and Complaint.....	30
Conclusion		32
Certificate of Counsel		33

TABLE OF AUTHORITIES

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<u>Baker v. Port City Steel Erectors, Inc.</u> , 261 S.C. 469, 200 S.E.2d 681 (1973)	20
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<u>Southern Railway Company v. Coltex</u> , 285 S.C. 213, 329 S.E.2d 736 (1985)	31
<u>Sunset Cay LLC v. The City of Folly Beach</u> , 357 S.C. 414, 593 S.E.2d 462 (2004)	12

<u>Watts v. Metro Security Agency,</u> 346 S.C. 235, 550 S.E.2d 869 (Ct. App. 2001)	30, 31
<u>Wessinger v. Rauch,</u> 288 S.C. 157, 341 S.E.2d 643 (Ct. App. 1986)	10, 14
<u>Williams Furniture Corporation v. Southern Coatings & Chemical Co.,</u> 216 S.C. 1, 56 S.E.2d 576 (1949)	13
<u>Williamson v. Abbott,</u> 107 S.C. 397, 93 S.E. 15 (1917)	29
<u>Young v. Nix,</u> 286 S.C. 134, 332 S.E.2d 773 (Ct.App. 1985)	29

Statutes

S.C. Code § 15-53-20	9

Other Authorities

Rule 8, SCRCF	31

STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in granting a declaratory judgment to Cashman

Properties because

- a) the Declaratory Judgment Act is procedural in nature and does not create any substantive rights and the substantive actions raised by Cashman Properties were either voluntarily withdrawn or decided in favor of the Lightsey Trusts;
- b) the purpose of the Declaratory Judgment Act is to declare rights before a breach of existing rights and Cashman Properties alleged a breach of rights; and
- c) the trial court breached the general rule that declaratory judgment actions should be dismissed if the underlying issues can be adjudicated in a pending action.

II. Assuming *arguendo* that a declaratory judgment properly could be issued in the instant case, whether the trial court erred in making the following findings and conclusions:

- a) that there has been a consistent and cooperative pattern and practice of use and ownership of Docks 1, 2, and 3 for eighty (80) years when such finding is not supported by the evidence;
- b) that Cashman Properties demonstrated by clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use Docks 1, 2 and 3 for eighty (80) years; and
- c) that the parties used Dock 3 without permission from each other when the evidence establishes that the Lightsey family gave both express written permission and implied permission to the Cashman family.

III. Whether the trial court erred in making the following *ex mero motu* holdings

- a) that the base of the pier is attached to land designated as common property, that the common right of access to the river arises from deeds, that neither party claims a right to land below the mean high water mark, and that a structure on common property and used by alleged co-owners becomes common property;

- b) laches prevents the Lightsey Trusts from seeking reimbursement from Cashman Properties for any and all expenses related to the dock incurred prior to the filing of the Summons and Complaint.

STATEMENT OF CASE

This appeal arises from a civil action filed by Appellant/Respondent Cashman Properties, LLC, (hereinafter Cashman Properties) against Appellant/Respondent WNL Properties, LLC, E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman, the Trust Under Will of E. Oswald Lightsey Dated August 8, 1958, and Codicil Dated March 23, 1976, for the Benefit of Lillian Lightsey Drawdy, and the Trust under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware (hereinafter Lightsey Trusts).

The Summons and Complaint was filed on May 29, 2009, and the Lightsey Trusts filed their Answer on August 10, 2009. Plaintiff's Amended Complaint was filed September 8, 2009. Lightsey Trusts filed their Third Amended Answer to Amended Complaint on September 10, 2010. The case was transferred to the Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge for Beaufort County by order dated July 27, 2011.

Trial was held on October 31 – November 1, 2011. The trial court issued an Order entitled Declaratory Judgment Not Ending Case on December 22, 2011, and in the Order ordered that a supplemental hearing was to be held. The Lightsey Trusts filed a Motion to Reconsider and a Motion to Amend on January 15, 2012. The supplemental hearing was held on April 19, 2012, and the trial court issued an Order entitled Order on Costs on July 10, 2012. Following this hearing, on August 3, 2012, Lightsey Trusts filed a supplement to their Motion to Reconsider and Amend.

A hearing on the Lightsey Trust's Motion to Reconsider and Amend was held on August 15, 2012. Following the hearing, the trial court issued an Order entitled Amended Declaratory Judgment on November 5, 2012. The trial court then issued an Order entitled Supplement to Amended Declaratory Judgment on November 15, 2012.

The Lightsey Trusts filed a Notice of Appeal on December 5, 2012, and Cashman Properties filed a Notice of Appeal on December 10, 2012.

FACTS

In 1930, Fred Lightsey purchased property on Oyster Street in Beaufort County, South Carolina in the area known as the Brighton Beach development. (R. p. 339; R. pp. 341-343). Ownership of the property ultimately passed to the Lightsey Trusts. (R. pp. 22-45; R. p. 32; R. p. 426; R. pp. 428-429).

By 1931, J.O. Cashman had also purchased property on Oyster Street in the Brighton Beach development. (R. pp. 341-343). By 1977, ownership of the property purchased by J.O. Cashman had passed to his son, Eugene K. Cashman, Sr. (R. pp. 119-120; R. p. 179). In 1994, Eugene K. Cashman, Sr., transferred the property to his children, Eugene K. Cashman, Jr., and Betty Cashman Davis. (R. pp. 119-120; R. p. 185). The property was subsequently deeded to Cashman Properties. (R. p. 179).

Neither the Lightsey property nor the Cashman property abuts the May River. Oyster Street itself and a strip of property separate the two properties from the May River. Ownership of the strip of property that abuts the May River was not an issue in this case. (R. pp. 22-45; R. pp. 46-53; R. pp. 626-655).

At least four (4) different docks were alleged to have been built by the parties on the May River. In the 1930s, the Cashmans built a dock (Dock 1) on the May River in

front of the parties' Oyster Street Properties. (R. pp. 85-86; R. p. 89). Dock 1 was replaced by a second dock (Dock 2), which was also claimed to have been built by the Cashmans in 1941. (R. p. 89). At some point in time prior to 1942, the Lightsey family built a dock beside Dock 2 (the "spare dock"). For at least 10 years, the Lightsey's "spare dock" existed alongside Dock 2. (R. pp. 626-655).

On February 18, 1946, Thomas O. Lawton, the original developer of Brighton Beach, gave written permission to a Mr. Sanders to build a dock in the area of Dock 2. The note instructed Mr. Sanders to build his dock "any where [sic] to the right of the Lightsey dock will be satisfactory to me. Do not build it to the left of the Carter-Cashman dock." (R. pp. 357-362).

On February 21, 1961, the Lightsey family received a permit to build another dock (Dock 3) on the May River in front of the Oyster Street properties. (R. p. 391). The Lightsey family permitted, built and paid for Dock 3. (R. p. 89; R. p. 125). After Dock 3 was built, the Lightsey family gave the Cashman family permission to use Dock 3. (R. p. 426). The permission to use Dock 3 included written permission from Oswald Lightsey for J.O. Cashman to add a floating dock to Dock 3 owned by the Lightsey Brothers. (R. p. 385; R. p. 542, Dep. p.42, lines 12-16).

Since 1961, the Lightsey family has spent \$89,550.66 to build and maintain Dock 3 and to pay property taxes associated with Dock 3. (R. pp. 599-624). The Cashman family could not identify any receipts solely for Dock 3. (R. pp. 134-138).

On September 15, 2004, the Lightsey Family held a regularly scheduled meeting to discuss their jointly owned property. During the meeting, which occurred before there

was any dispute over Dock 3, the Lightsey family acknowledged that it had allowed the Cashman family to attach a floating dock to the left side of Dock 3's pier. (R. p. 426).

By November of 2004, the small floating dock that the Cashman family was given permission to add to Dock 3 had blown away, was beached and thus was not in usable condition. (R. p. 426; R. p. 476, Dep. p. 53, lines 6-12; R. p. 544, Dep. p. 54, lines 7-13). Photographs taken of Dock 3 on November 23, 2004, as part of a routine appraisal of the Lightsey Trusts' property, show that the floating dock installed by the Cashman family was no longer attached to Dock 3. (R. pp. 431-438).

Between November 2004 and February 2005, the Lightsey family placed a lock on the gate at Dock 3. The lock was placed on the gate to keep trespassers off of Dock 3. (R. p. 469, Dep. p. 26, lines 16-22). In February 2005, Eugene K. Cashman, Jr., asked a member of the Lightsey family for a key so that the Cashman family could continue to use Dock 3, and a member of the Lightsey family sent the key without consulting with the rest of the Lightsey Family. (R. p. 472, Dep. p. 38, lines 8-11; R. p. 544, Dep. p. 55, lines 3-20). However, as of March 16, 2005, the Lightsey family asked the Cashman family to return the key and stop using Dock 3. (R. pp. 442-444; R. p. 446; R. p. 472, Dep. p. 37, lines 3-5). Mr. Cashman, Jr. voluntarily returned the key on March 28, 2005 with a note that stated that if he needed to make the Cashman family's use of Dock 3 a "business relationship," he was willing to do so. (R. p. 106; R. pp. 448-449; R. p. 544, Dep. p. 55, line 21-R. 545, Dep. p. 56, line 3).

From 2005 through May 2009, Dock 3 was exclusively used by the Lightsey family, and the Cashmans did not have a key, and did not otherwise object to being

excluded from Dock 3. Id. Four (4) years and two (2) months later, on May 29, 2009, the within complaint was filed.

STANDARD OF REVIEW

Whether a declaratory judgment arises in equity or in law, and thus which standard of review should be followed, is completely dependent on the underlying issue supporting the declaratory judgment. See, e.g., South Carolina Farm Bureau Mut'l Ins. Co. v. Kennedy, 398 S.C. 604, 730 S.E.2d 862 (2012); Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991) (hereinafter Felts II); Ballenger v. City of Inman, 336 S.C. 126, 518 S.E.2d 824 (Ct. App. 1999). In the instant case and as discussed in depth in Section I of the Argument, there is no underlying issue supporting this declaratory judgment.

Since the trial court crafted a result not recognized by statutory or case law, the result is more akin to an action in equity and should thus be reviewed under that standard. In an action at equity, tried by a judge, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. See, e.g., Inlet Harbour v. S.C. Dep't of Parks, Rec. & Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008).

SUMMARY OF ARGUMENT

For the reasons set forth herein, the trial court erred in granting a declaratory judgment to Cashman Properties, erred in making factual findings and conclusions, and erred in making *ex mero motu* holdings.

ARGUMENTS

I. The trial court erred in granting a declaratory judgment to Cashman Properties.

Cashman Properties' Complaint set forth the following causes of action: prescriptive easement, resulting trust, and adverse possession. Cashman Properties sought the remedies of declaratory judgment and injunction in its Complaint. (R. pp. 25-29). The remedies of declaratory judgment and injunction were improperly couched as causes of action. *Id.*

Nevertheless, Cashman Properties' theory of the case was that their historical use of Dock 3, and participation in maintenance of Dock 3, entitled it to either an ownership interest in Dock 3 "through" deed and/or adverse possession or resulting trust, or in the alternative, the right to use Dock 3 through a prescriptive easement.

Regarding adverse possession, Cashman Properties alleged that "Plaintiffs and Plaintiffs' family have used and enjoyed the walkway, pier head and floating dock continuously and exclusively for more than forty (40) years, and therefore, own title to the walkway, pier head and floating dock through deed and/or adverse possession." (R. p. 29). (emphasis added). Cashman Properties requested that the court "determine that Plaintiffs' own an undivided interest in and to the walkway, pier head, and floating dock through deed and/or adverse possession" *Id.* (emphasis added). At the trial of the case, Cashman Properties voluntarily withdrew its claim for adverse possession. Counsel for Cashman Properties conceded that it could not establish the element of exclusive use and thus could not establish adverse possession. (R. pp. 215-218, 233). Thus, there is no claim for adverse possession in this case.

Cashman Properties never argued, or presented any evidence to support, the allegation that they owned Dock 3 through a deed.

Regarding resulting trust, Cashman Properties alleged that it “maintained and enjoyed the walkway and pier head” and “if Defendants held legal title to [Dock 3], they hold such title in trust for the benefit of the Plaintiffs because of the continuing improvements the Plaintiffs made to [Dock 3.]” (R. p. 27). The trial court did not find that a resulting trust had been established in any of the Orders issued. At the hearing on the Motion to Reconsider, the following colloquy took place:

The Court: [A]s I probably did state if – in one of our phone conferences and certainly in the email it was my intent to find it on the DJ cause of action and deny the other two. What’s next?

Counsel for Cashman Properties: For clarification Your Honor, that was the resulting trust and the prescriptive easement that you were denying?

The Court: That’s correct.

(R. pp. 4-11; R. pp. 12-20; R. p. 21; R. p. 317, Trans. p. 6, lines 1-9). Accordingly, the trial court did not order that a resulting trust was established in this case.

Regarding prescriptive easement, Cashman Properties alleged that “Plaintiffs and their family used the walkway to access their floating dock without interruption from Defendant . . .”, that the “use of the dock is under a claim of right . . .” and that therefore “Plaintiffs have acquired a prescriptive easement . . .” (R. p. 26). The trial court expressly denied Cashman Properties’ claim for a prescriptive easement in the Supplement to the Amended Declaratory Judgment. (R. p. 21). Thus, the prescriptive easement issue was decided in favor of the Lightsey Trusts.

Finally, the trial court did not issue any temporary or permanent injunctions in any of the Orders issued in this case. (R. pp. 4-11; R. pp. 12-20; and R. p. 21). Further,

at the hearing on the Motion to Reconsider, the trial judge, counsel for Cashman Properties, and counsel for the Lightsey Trust agreed the request for the injunctions were moot. (R. 317, Trans. p. 6, lines 12-16).

This left only the remedy of a declaratory judgment, which was erroneously granted by the trial court.

- a) **The trial court erred in granting a declaratory judgment to Cashman Properties because the Declaratory Judgment Act is procedural in nature and does not create any substantive rights and the substantive actions raised by Cashman Properties were either voluntarily withdrawn or decided in favor of the Lightsey Trusts.**

Under the Uniform Declaratory Judgment Act, “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.” S.C. Code Ann. § 15-53-20.

The Uniform Declaratory Judgment Act grants a trial court broad powers; however, these powers are not without limits. For example, the Uniform Declaratory Judgment Act has been limited by a justiciable controversy requirement. See, e.g., Pee Dee Electric Cooperative, Inc., v. Carolina Power and Light Company, 279 S.C. 64, 301 S.E.2d 761 (1983). In addition, a declaratory judgment will ordinarily be refused if a special statutory remedy has been provided or where another remedy will be more effective or appropriate under the circumstances. E.g., Bank of Augusta v. Satcher Motor Company, 249 S.C. 53, 152 S.E.2d 676 (1967). Moreover, “courts will not entertain an

action for declaratory judgment if there is pending, at the time the action is commenced, another action between the same parties in which the same issues presented in the action for declaratory judgment can be adjudicated.” Wessinger v. Rauch, 288 S.C. 157, 160, 341 S.E.2d 643, 644 (Ct. App. 1986).

Another limitation of “[t]he Uniform Declaratory Judgments Act [is that it] ‘does not create substantive rights or duties.’” Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000) *quoting* Felts v. Richland County, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989) (hereinafter Felts I) *aff’d* 303 S.C. at 354, 400 S.E.2d at 781 (Felts II). Indeed, Felts I found that the Uniform Declaratory Judgments Act is “remedial and procedural in nature and does not create substantive rights or duties.” Felts I, 299 S.C. at 216, 383 S.E.2d at 262-63. Rather than creating substantive rights or duties, the Uniform Declaratory Judgments Act instead authorizes an action to “establish a party’s entitlement to a pre-existing right.” Harvey, 338 S.C. at 506, 527 S.E.2d at 768. See also Noisette v. Ismail, 299 S.C. 243, 384 S.E.2d 310 (Ct. App. 1989) *rev’d in part by* 304 S.C. 56, 403 S.E.2d 122 (1991).

Thus, there must be a pre-existing legal on which the declaratory judgment is dependent. For example, whether a declaratory judgment arises in equity or in law is completely dependent on the underlying issue. See, e.g., Kennedy, 398 S.C. at 604, 730 S.E.2d at 862; Felts II, 303 S.C. at 254, 400 S.E.2d at 781; Ballenger, 336 S.C. at 126, 518 S.E.2d at 824. In other words, a court’s authority to issue a declaratory judgment must fall within the parameters of an established legal theory. If this were not the case, then the Declaratory Judgment Act would subsume all substantive causes of action, and each judge could establish his or her individual elements for granting or denying a

declaratory judgment in each individual case. Therefore, success on a declaratory judgment action is necessarily dependent on success of an underlying claim. See, e.g., Becker v. Kroll, 340 F. Supp.2d 1230 (D. Utah 2004) *aff'd in part, rev'd in part (on other grounds) and remanded* (holding that "Plaintiff's causes of action for declaratory judgment and injunction are, of course, dependent on the success of the underlying claims"); Days Inn Worldwide, Inc. v. Sai Baba, 300 F. Supp.2d 583 (N.D. Ohio 2004) (holding that a "request for declaratory judgment must accompany the substantive claim for which declaratory judgment is sought" and the Defendants "failed to state a claim on which relief can be granted by failing to link their request for declaratory judgment to an underlying substantive claim for relief"); Economic Opportunity Comm'n of Nassau County, Inc. v. County of Nassau, 106 F. Supp.2d 433 (E.D.N.Y 2000) (stating that "a court may only enter a declaratory judgment in favor of a party who has a substantive claim of right to such relief"); Matos v. First Nat. Bank, 092681B, 2010 WL 3327725 (Mass. Super. June 16, 2010) (finding that because plaintiff's declaratory judgment claim is "dependent on the success" of plaintiff's underlying claims, the "failure of the Plaintiff's previous claims" means that the declaratory judgment claim "must also fail."); Repwest Ins. Co. v. Praetorian Ins. Co., 890 F. Supp. 2d 1168, 1183-84 (D. Ariz. 2012) (finding that "[d]eclaratory judgment is a remedy that is dependent on Plaintiff's success on an underlying cause of action. Because the Court has dismissed Plaintiff's only cause of action against Defendant Aon, its claim for declaratory relief must also be dismissed.").

In his opening statement, counsel for Cashman Properties recognized that the declaratory judgment action was dependent on underlying legal theories. Counsel stated,

“we filed a Complaint asking for a declaratory judgment as to who has rights to this dock and the floating dock. The legal theories that we have filed are prescriptive easements, resulting trust and adverse possession.” (R. p. 80). Counsel for Lightsey Trust made the same recognition in his opening statement. Counsel stated, “Declaratory judgment is the same thing. I don’t think there is any way the Court can allow or find that the Cashmans have any interest in this dock unless it -- those [rights] would have to flow through the causes of action” (R. pp. 82-83).

All of the substantive legal theories raised by Cashman Properties that could possibly result in an ownership interest in Dock 3, or the right to use Dock 3, were either withdrawn or decided in favor of the Lightsey Trusts. Accordingly, all underlying claims upon which the remedy of a declaratory judgment could be based were withdrawn or decided in favor of the Lightsey Trusts. Since there is no substantive basis for a declaratory judgment, the trial court erred in entering a declaratory judgment that Cashman Properties has an ownership interest in the Lightsey Trusts’ Dock 3.

- b) **The trial court erred in granting a declaratory judgment to Cashman Properties because the purpose of the Declaratory Judgment Act is to declare rights before a breach of existing rights and Cashman Properties alleged a breach of rights.**

A declaratory judgment is not proper in this case because Cashman Properties alleged that a breach of existing rights had already occurred. The intended and basic purpose of the Declaratory Judgments Act is “to provide for declaratory judgments **without awaiting a breach of existing rights.**” Sunset Cay LLC v. The City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (emphasis added). Sunset Cay acknowledged that the “intended purpose” of the Act is to afford “a speedy and inexpensive method of deciding legal disputes and of settling legal rights and

relationships, without awaiting a violation of the rights or a disturbance of the relationship.” Id. See also Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970) (noting that intended purpose of the Declaratory Judgment Act is to provide “a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships”); Williams Furniture Corporation v. Southern Coatings & Chemical Co., 216 S.C. 1, 56 S.E.2d 576 (1949) (stating that the intended purpose of the declaratory judgment statute is “to afford a speedy and inexpensive method of adjudicating legal disputes without invoking the coercive remedies of the old procedure, and to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships”).

In its Amended Complaint, Cashman Properties alleged that a breach of its rights occurred when the Lightsey Trusts placed a lock on the gate to Dock 3. (R. p. 25, Paragraph 25). In Paragraph 26, Cashman Properties alleged that a member of the Lightsey family told them over four (4) years before suit was filed that the Cashman family was no longer allowed to use the dock. (R. p. 25). Cashman Properties then alleged in Paragraph 28 that the Lightsey Trusts cannot exclude the Cashman family from the dock. (R. p. 25).

Because the intended purpose of the Declaratory Judgment Act is to settle legal rights without awaiting a violation of the rights, and since Cashman Properties clearly alleged a violation of rights in its Amended Complaint, a declaratory judgment is simply not proper in this case, and the trial court should not have issued a declaratory judgment.

- c) **The trial court erred in granting a declaratory judgment to Cashman Properties because the trial court breached the general rule that declaratory judgment actions should be dismissed if the issues can be adjudicated in a pending action.**

The trial court's granting of a declaratory judgment in this case violates the general rule that "courts will not entertain an action for declaratory judgment if there is pending, at the time the action is commenced, another action between the same parties in which the same issues presented in the action for declaratory judgment can be adjudicated." Wessinger, 288 S.C. at 160, 341 S.E.2d at 644 (emphasis added). Thus, where there is an action pending that adjudicates the claims on which the declaratory judgment is based, the declaratory judgment should be dismissed. Id.; Medical University of South Carolina v. Taylor, 294 S.C. 99, 103, 362 S.E.2d 881, 883 (Ct. App. 1987). *See also* Camofi Master LDC v. College P'ship, Inc., 452 F.Supp.2d 462 (S.D.N.Y. 2006) (dismissing a declaratory judgment action because the declaratory judgment served no useful purpose since it was duplicative of the adjudication of the breach of contract claim); Fleisher v. Phoenix Life Ins. Co., 858 F. Supp. 2d 290, 302 (S.D.N.Y. 2012) (finding that "Plaintiffs' declaratory judgment claim seeks resolution of legal issues that will, of necessity, be resolved in the course of the litigation of the other causes of action. Therefore, the claim is duplicative in that it seeks no relief that is not implicitly sought in the other causes of action."); Sofi Classic S.A. de C.V. v. Hurowitz, 444 F.Supp.2d 231, 249 (S.D.N.Y. 2006) (dismissing declaratory judgment claim since it sought "resolution of legal issues that will, of necessity, be resolved in the course of the litigation of the other causes of action" and holding that "the claim is duplicative in that it seeks no relief that is not implicitly sought in the other causes of action").

While Wessinger dealt with two separate actions, the logic of the general rule applies here. At the start of the case, there was a prescriptive easement, a resulting trust, and an adverse possession claim pending between Cashman Properties and the Lightsey Trusts at the same time the declaratory judgment claim was pending. The underlying issues (ownership of Dock 3 through deed and/or adverse possession or resulting trust and the right to use Dock 3 through prescriptive easement) were the same. Since the pending prescriptive easement, resulting trust, and adverse possession claims were duplicative with the declaratory judgment, a declaratory judgment was improper. Therefore, the trial court erred in granting Cashman Properties a declaratory judgment.

For the forgoing reasons, the trial court erred in issuing a declaratory judgment in this matter.

II. Assuming *arguendo* that a declaratory judgment could properly be granted in the case, the trial court erred in making factual findings and conclusions of law that were not supported by the evidence in the case or the law in South Carolina.

- a) **The trial court erred when it found that there has been a consistent and cooperative pattern and practice of “use and ownership” of Docks 1, 2, and 3 for eighty (80) years when such finding is not supported by the evidence.**

The trial court found that the parties have established a consistent and cooperative pattern of “use” and “ownership” of “Docks 1, 2 and 3 for 80 years.” This was not supported by the evidence offered at trial.

Since the 1930s, at least 4 different docks were built on the May River by the parties. Prior to 1941, Mr. J.O. Cashman, the grandfather of Eugene K. Cashman, Jr., and Betty Cashman Davis, allegedly built a dock (Dock 1). (R. p. 89; R. pp. 345-346; R. p. 534, Dep. p. 10, lines 8-18). In 1941, J.O. Cashman applied for a permit to build a second dock along the May River. (R. pp. 345-346). Dock 2 was built, and the

Cashman family said that it was the owner of Dock 2. Betty Cashman Davis testified that her grandfather, J.O. Cashman, was the owner of Dock 2. (R. p. 180; R. p. 186). Ms. Davis testified that her grandfather owned Dock 2 because he built it. (R. pp. 187-188). Significantly, she did not testify that Dock 2 was jointly owned by the Cashmans and the Lightseys.

Eugene K. Cashman, Jr. testified that photographs from 1942 showed the "Lightseys' spare dock" and Dock 2. (R. p. 99; R. pp. 626-656). Mr. Cashman, Jr. testified that the Lightsey's "spare dock" could be used to access the sandy beach area and, at high tide, could be used to get into a boat. (R. p. 99). In fact, the photographs admitted into evidence shows the "spare dock" was in use by the Lightseys and that numerous boats were parked by and tied to the "spare dock." (R. pp. 626-655).

On February 18, 1946, Thomas O. Lawton, an original developer and owner of the Brighton Beach development, gave written permission to a Mr. Sanders to build a dock. Mr. Lawton gave Mr. Sanders permission to build the dock and stated that the Sanders' dock could be built "any where [sic] to the right of the Lightsey dock will be satisfactory to me. Do not build it to the left of the Carter-Cashman dock." (R. pp. 357-362). Mr. Lawton did not write that that the second dock was jointly owned by the Cashman and the Lightseys. Therefore, in 1946, the Lightsey family had its own dock, and the Cashman family had a dock with the Carter family.

Cashman Properties' own testimony and photographic evidence shows that there was not an eighty-year pattern of joint "use" and "ownership" for "Docks 1, 2 and 3." First, for at least twenty years of this time period (1942-1962), the Lightsey family had a dock and the Cashman family had a dock. These two docks are established by the

testimony of Mr. Cashman, Jr., the 1946 letter from Mr. Lawton, and the photographs showing both docks existing and in use by the families at the same time.

Second, the Cashman family claimed that it owned the second dock. They did not claim Dock 2 was jointly owned with the Lightsey family. As Ms. Davis testified, her grandfather owned Dock 2 because he built it. (R. pp. 187-188).

Third, the Lightsey family's conduct since obtaining a dock permit in 1961 establishes that the Lightsey family believed it was the sole owner of Dock 3. The Lightsey family built Dock 3 and paid all taxes and expenses associated with building and maintaining Dock 3.

Fourth, in 1977, Eugene Cashman Sr. drafted a letter to the permitting authority stating that Dock 3 was "owned by the Lightsey Brothers" and that he had their "permission to construct" a small floating dock to the side of Dock 3. (R. p. 385). He too did not say that Dock 2 was jointly owned by the Cashmans and the Lightseys.

Finally, the Cashman family's failure to pay any of the expenses associated with taxes and maintenance on Dock 3 also mitigates against a finding of an eighty-year pattern of joint use and ownership relating to the docks. (R. p. 123; R. pp. 126-127; R. p. 474, Dep. p. 46, lines 3-9). If the Cashman family believed it was a co-owner of Dock 3, it seems logical that someone from that family would have offered to pay at least some of the more than \$80,000 of taxes and expenses associated with Dock 3.

Based on the evidence presented at trial, as discussed above, the trial court erred in finding that there was an eighty-year pattern of cooperation between the Lightsey family and the Cashman family relating to use and ownership of "Docks 1, 2 and 3."

- b) **The trial court erred when it found that Cashman Properties demonstrated by clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use Docks 1, 2 and 3 for eighty (80) years.**

Eugene K. Cashman, Jr. and Betty Cashman Davis were the only two members of the Cashman family that testified at trial. Mr. Cashman, Jr. testified that prior to 1994, he used the Oyster Street property as a guest of his father and that he did not obtain a legal ownership interest in the property until 1994 when his father, Eugene K. Cashman, Sr., transferred legal ownership to Mr. Cashman, Jr. and his sister Betty Cashman Davis. (R. pp. 115-116). By November 2004, the Cashman's small floating dock had blown away from the pier, was beached, and was not in a usable condition. (R. p. 426; R. pp. 428-429; R. p. 476, Dep. p. 53, lines 6-12; R. 544, Dep. p. 54, lines 7-13). Mr. Cashman was locked out of the pier in 2005, voluntarily returned the key, and, therefore, did not have access to Dock 3 after 2005. (R. p. 105). Therefore, Eugene K. Cashman, Jr., based on his own testimony, could only have used Dock 3 as a matter of right from 1994 through 2005 (11 years).

Betty Cashman Davis testified that she obtained a legal ownership interest in the Oyster Street property in 1994, at the same time as her brother. She also stated that prior to 1994, she used the Oyster Street property as the guest of her father. (R. p. 185). Betty Cashman Davis testified that the Cashman family use of the pier was interrupted as of November 2004, by which time the floating dock had been washed away. (R. p. 187). In addition, Ms. Davis testified that in February 2005, "we couldn't go down on the dock" and that the Lightsey family had asserted exclusive rights to Dock 3. (R. pp. 184-185). Therefore, Betty Cashman Davis, based on her own testimony, could only have used Dock 3 as a matter of right from 1994 through 2005 (11 years).

Eugene K. Cashman, Sr. was the predecessor-in-interest of Eugene K. Cashman, Jr. and Betty Cashman Davis. Significantly, Eugene K. Cashman, Jr. testified that “it was my understanding that the Cashman family owned and provided the plumbing to [Dock 3] and we had ownership in the pier by participation” (R. p. 111). Similarly, Betty Cashman Davis testified that “it is my understanding that [Dock 3] was owned by the Carters, the Lightseys, and the Cashmans.” (R. p. 183). The testimony of Mr. Cashman, Jr. and Ms. Davis relating to what their understanding of the ownership of Dock 3 prior to 1994 is not sufficient to establish that the usage of Eugene K. Cashman, Sr., their predecessor-in-interest, was under a “claim of right” as the trial court concluded. See Morrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997) (holding that a claimant’s testimony that he thought his predecessor-in-interest had a right of way was insufficient to establish a belief amounting to a claim of right and that “evidence establishing the mere fact of use does not necessarily equate with evidence establishing the character of such use.”)

Further, as discussed in detail in below, there is ample evidence that establishes that Mr. Cashman, Sr.’s use of Dock 3 was by both the express and implied permission of the Lightsey family. This includes a statement that the Lightsey family owns Dock 3 and permitted Mr. Cashman, Sr. to use Dock 3 in a document written by Mr. Cashman, Sr., as well as Mr. Cashman, Sr.’s verbal acknowledgement of the express permission. (R. p. 116; R. pp. 236, 238; R. p. 385; R. p. 542, Dep. p.41, line 14-Dep. p. 42, line 23).

In addition, Mr. Cashman, Jr., testified that his father, Eugene K. Cashman, Sr., is still alive. (R. p. 115). Specifically, the first question asked of Mr. Cashman, Jr. during cross examination is whether his father “was still alive.” Thus, in order to carry its

burden of proof, Cashman Properties could have called Mr. Cashman, Sr., and questioned him about these matters. However, Mr. Cashman, Sr., was not called as a witness at trial. There is a general rule in civil cases that when a party "fails to produce the testimony of an available, material witness who is within some degree of control of the party, it may be inferred that the testimony of such witness, if presented, would be adverse to the party who failed to call the witness." Baker v. Port City Steel Erectors, Inc., 261 S.C. 469, 475, 200 S.E.2d 681, 683 (1973). This general rule is "applied when the uncalled witness is a relative of the party failing to call such witness, or within some degree of control of said party." Matthews v. Porter, 239 S.C. 620, 633 124 S.E.2d 321, 328 (1962). This general rule certainly applies in the instant case, since Mr. Cashman, Sr. is the father of Mr. Cashman, Jr. and Ms. Davis. Most significantly, Cashman Properties did not submit any evidence into the record as to why Cashman, Sr. did not testify at trial, nor did they offer any testimony at trial regarding this subject.

Based on the above, the trial court erred when it found that Cashman Properties demonstrated by clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use Docks 1, 2 and 3 for eighty (80) years.

- c) **The trial court erred when it found that the parties used Dock 3 without permission from each other when the evidence establishes that the Lightsey family gave both express and implied permission to the Cashman family.**

i. *Expressed written permission.*

The Lightsey family gave express written permission for the Cashman family to use Dock 3. In 1977, Oswald Lightsey gave express written permission for Eugene K. Cashman, Sr. to use Dock 3 by attaching a small floating dock for use by the Cashman family. In a document drafted by Eugene K. Cashman, Sr. that was sent to the dock

permitting authority, Mr. Cashman, Sr. wrote in his own words that Dock 3 was "owned by Lightsey Brothers" and that he had "permission to construct" a floating dock on the side of Dock 3. (R. p. 385). When asked about this document at trial, Eugene K. Cashman, Jr. conceded that it was a letter drafted by his father, that the handwriting on the letter was that of his father, and that the letter was signed by his father, Eugene K. Cashman, Sr. (R. p. 116; R. p. 542, Dep. p.4 1, line 14-Dep. p.42, line 23). It was also established that a member of the Lightsey family signed the following section of the document: "I, Oswald Lightsey, do hereby give permission to Eugene K. Cashman to attach a floating dock and ramp to dock as mentioned in above application for permit." (R. pp. 385-386). Eugene Cashman, Jr. acknowledged that this document, drafted by his father and signed by a member of the Lightsey family, constituted his father requesting, and Oswald Lightsey granting, permission for Eugene Cashman Sr. to use Dock 3.

Q. And so in 1977 your father used the words that he had the permission of the Lightseys, right?

A. Yes, it was permission from the Lightseys to replace the floating dock that I previously testified to as -

Q. And Mr. Lightsey also used the word that he was giving permission to your father, Eugene K. Cashman, correct?

A. Yes, to the district engineer.

Q. Well Mr. Lightsey actually says he gives permission to Eugene K. Cashman. He is giving your father permission, right?

A. That's correct.

(R. p. 118).

The floating dock described above was the second floating dock attached to Dock 3 by the Cashman family. The first floating dock was not attached pursuant to a permit

from the Army Corps of Engineers, and the trial court correctly noted that in his Amended Declaratory Judgment. However, the trial court incorrectly noted that the first floating dock was without the permission of the Lightsey family when, in fact, there was no evidence at all presented by Cashman Properties to support a finding that the first floating dock was not built with the permission of the Lightsey family.

Eugene K. Cashman, Jr. testified, “[t]he amenities that were on [Dock 3] included the floating docks that were subsequently attached after construction and **to my knowledge those were not permitted until the second floating dock which the Cashman family obtained a permit** and the maintenance of the pier and the floating docks on the Cashman side were maintained by the Cashmans when storms or other matters were seemed to be needing repair.” (R. p. 92) (emphasis added).

Mr. Cashman, Jr. also stated that in 1977, neither the Cashman family nor the Lightsey family had a permit for a floating dock. (R. p. 168). The following colloquy addressed how the first floating dock without a government permit was built:

- Q. And you testified that this was the permit that allowed -- I think you said that prior to that there had never been a permit for a floating dock?
- A. Based on what I see right here there was not requested on this particular document permitting for floating docks.
- Q. You know how the Cashmans would have had one if there had never been a permit granted for it?
- A. Yeah, probably just built it and put it there without following the permit process.
- Q. And that would have been the same thing the Lightseys would have done back in that day, right?

- A. That would have been the way you did business back then, yes.
Probably the same way the one on dock number two got installed.

(R. p. 168).

While this testimony established that the first floating dock on Dock 3 was built without a permit from the Army Corps of Engineers, neither it nor the other evidence addresses whether the first floating dock was built with the permission of the Lightsey family. Indeed, Mr. Cashman, Jr. testified that his family checked with the Lightsey family before adding a water line and an electrical line to the pier. (R. pp. 147-148; R. p. 538, Dep. p.28, lines 2-11). As Mr. Cashman, Jr. stated in his deposition, his father "wouldn't have gone and just one day have [the Lightsey Family] come back and arrive and see lights on the dock." (R. p. 538, Dep. p.28, lines 9-11). Accordingly, it strains credibility that the Cashman family would have added a floating dock without permission from the Lightsey family. Nevertheless, even if they did, the use became permissive in 1977 with the written permission of the Lightsey family.

ii. Implied permission through conduct

In addition, the conduct of the parties supports the documentary evidence related to permission. For example, before making any improvements or modifications to Dock 3, Eugene K. Cashman, Sr. contacted the Lightsey family and made certain that he had the Lightsey family's approval before modifying Dock 3. Eugene K. Cashman, Jr., testified that his father, Eugene K. Cashman, Sr., first checked with the Lightsey family before adding a water line and an electrical line to Dock 3. (R. pp. 147-148; R. p. 538, Dep. p.28, lines 2-11). Again, as Mr. Cashman, Jr. testified, his father "wouldn't have gone and just one day have [the Lightsey family] come back and arrive and see lights on the dock." (R. p. 538, Dep. p.28, lines 9-11).

Mr. Cashman Jr. also testified that he would only allow others to use Dock 3 if there was no objection made by the Lightseys, which is also consistent with a permissive use. Specifically, Mr. Cashman, Jr. testified that a neighbor named Diane Reynolds asked if she could use the Dock 3. Mr. Cashman, Jr.'s response was that she could only use Dock 3 "if there were no objections by the Lightseys." (R. p. 539, Dep. p.32, lines 15-18).

In contrast, Mr. Cashman, Jr. testified that no one from the Lightsey family ever asked his permission prior to modifying or repairing Dock 3. (R. pp. 140-141). Significantly, modifications and repairs made by the Lightsey family included replacing twenty (20) of the main pilings on Dock 3, and installing a new roof over the gazebo. (R. pp. 139-140). Mr. Cashman Jr. also testified that no one from the Lightsey family asked the Cashman family for permission to add a sink to the pier. He just went to the pier one day and found a sink had been installed. (R. p. 538, Dep. p. 27, lines 11-13).

Norris Laffitte, a member of the Lightsey family, ejected non-permissive users from Dock 3 with no question about the Cashmans. Mr. Laffitte testified that he told a woman who claimed she had permission to be on Dock 3 that she needed to get off of the dock. (R. p. 472, Dep. p.38, line 18-Dep. p.39, line 2). Mr. Laffitte also testified that he installed and then replaced the "No Trespassing" signs on Dock 3 without consulting the Cashmans. (R. 472, Dep. p.40, line 23-R. p. 473, Dep. p. 41, line 4). Mr. Cashman, Jr. also testified that no one from the Lightsey family asked his permission before placing a lock on the gate to Dock 3. (R. p. 140).

The conduct of the parties related to the costs of repairing Dock 3 also supports permissive use. The Lightsey family offered documentary evidence to support

\$89,550.66 of expenses to build, maintain and pay tax associated with Dock 3. (R. pp. 599-624). Mr. Laffitte testified that the Lightsey family took care of the pier, pierhead, gazebo, west side ramp, and west side floating dock and that he had no knowledge of the Cashman family performing any repairs on the pier, pierhead, gazebo, west side ramp, or west side floating dock. (R. p. 474, Dep. p. 46, lines 3-9). Mr. Cashman, Jr. testified that no one from the Lightsey family asked him to contribute to repairs such as piling replacements and a new roof on the gazebo for Dock 3. (R. p. 140).

Despite maintaining a file specifically dedicated to Dock 3, and despite the fact that the file included receipts from 1974 - 1995, the Cashman family could not identify a single receipt solely for expenses incurred on the pier, pier head and gazebo. (R. pp. 580-597). Specifically, Eugene K. Cashman, Jr., testified regarding the following receipts:

- the August 21, 1974 estimate and the April 11, 1977 estimate related solely to the floating dock. (R. p. 132; R. pp. 580-597).
- the May 25, 1977, document was for the floating dock only and did not involve any work on the pier. (R. p. 133; R. pp. 580-597).
- the June 18, 1980, receipt for \$12.22 was for unknown items. (R. pp. 133-134; R. pp. 580-597).
- receipts dated June 25, 1980, June 25, 1980, July 23, 1984, and July 26, 1984 for 2x8's and 2x4's for lumber of the size used on the floating dock and duct tape. (R. pp. 134-136; R. pp. 580-597).
- the July 29, 1980 receipt was for cleats, bolts and nuts for the floating dock. (R. p. 134; R. pp. 580-597).

- the receipts from June 27, 1980, July 24, 1984, July 25, 1984, July 31, 1984, July 7, 1984 and July 7, 1987 were exclusively for the floating dock. (R. pp. 134-137).
- the February 22, 1986 document, two of the three services listed were solely for the floating dock and no one knew if the other listed service was for the floating dock or the pier. (R. pp. 136-137; R. pp. 580-597).
- the June 9, 1995, receipt contained (1) charges unrelated to the dock such as putting new lights at the BBQ pit; (2) charges related exclusively to the floating dock such as installing a dock ladder and putting new rope on the floating dock; and (3) charges related to services to the floating dock. (R. pp. 137-138; R. pp. 580-597).

Mr. Cashman, Jr. stated that the above constituted all of the documentary evidence of expenses incurred by the Cashman family related to the pier. (R. p. 138). Specifically, he testified at trial as follows:

Q. Now you don't have any other documentary evidence, checks, receipts, invoices, work orders, anything of that nature to show that the Cashman family ever incurred any expenses associated with the pier, right?

A. Not in my possession, no.

Q. Well do you know if there's any that exist anywhere in anybody's possession?

A. Presently, no.

Id. Accordingly, Mr. Cashman, Jr. did not testify any expenditures were for the pier, pierhead, or gazebo of Dock 3. All of the expenses incurred by the Cashman family were

related to their small floating dock, which they were responsible for the maintaining **until it washed away in 2004**. (R. 474, Dep. p. 46, lines 10-14).

The testimony from Eugene K. Cashman, Jr. and Betty Cashman Davis that they and their children would nail down protruding nails, occasionally replace boards, and temporarily ran water to Dock 3 does not alter the fact that their use was permissive. (R. pp. 112, 162, 183). Indeed, such actions by permissive users recognize the neighborly accommodation of the Lightsey family in allowing the Cashman family to use Dock 3 free of charge for more than 50 years.

The Cashman family never paid any taxes associated with Dock 3. (R. p. 123, 126-127; R. pp. 575-578). Eugene Cashman, Jr. testified that neither he nor his father nor his sister nor anyone associated with the Cashman family has paid any taxes associated with the pier, gazebo, and dock. (R. p. 123, 126-127). The Lightsey family paid all of the taxes associated with the Dock 3 since 1986 when Beaufort County began taxing docks. (R. pp. 413, 415, 417-418; p. 424; pp. 451-452; pp. 456-457; pp. 575-578; pp. 657-659; and pp. 661-662).

In addition, Eugene K. Cashman, Jr.'s, letter to Norris Laffitte, dated March 28, 2005, also evidences that the Cashman family had permission to use the Lightsey family dock. First, he voluntarily returned the key to Dock 3 and did not say he had a right to use Dock 3. Second, he stated that if he needed to make the Cashman families' use of Dock 3 a "business relationship" he was willing to do so. (R. pp. 448-449). He closed by asking the Lightsey family to reconsider its decision to have exclusive use of the pier. *Id.* The language used in this letter is consistent with a permissive use and a neighborly accommodation.

The Lightsey family has acknowledged in writing that express permission had been given to the Cashman family to use Dock 3. The minutes of the Lightsey Trusts Jointly Owned Property Meeting of September 2004 (which were taken down before any dispute arose over Dock 3 and five (5) years before this lawsuit was filed) stated that “the Lightsey family has allowed the Cashman family” to use Dock 3. (R. p. 426).

Finally, Eugene K. Cashman, Sr. verbally acknowledged that he was a permissive user of the Lightsey dock in two separate conversations with Will McMaster. Mr. McMaster is married to Beth McMaster, a Lightsey granddaughter, and has visited the Bluffton property as a guest. (R. pp. 235-238). Mr. McMaster testified that Mr. Cashman, Sr., told him that “the Lightseys had given the Cashmans permission to use that pier and that [Cashman, Sr.] would like to get a document stating that they had permission in the past and would like to have permission in the future.” When asked if “Mr. Cashman actually use[d] the word permission,” Mr. McMaster stated “Yes.” (R. p. 236). Regarding the second conversation, Mr. McMaster testified as follows:

The second conversation was very similar to the first conversation in that he was seeking a document that would establish that he had had permission, the Cashman family had permission to use the dock in the past and they wanted permission to use the dock in the future and during this conversation he said that I realize that we don't own the dock because it was built with Lightsey labor and material.

(R. p. 238). This testimony is consistent with the Cashmans' own testimony and the other documentary evidence.

Accordingly, Cashman Properties failed to establish that the use of Dock 3 by the Cashman family was **not** with the express and/or implied permission of the Lightsey family.

iii. *No distinct and positive assertion of a right hostile to the owner, and brought home to him*

A long standing tenant of South Carolina law is that a permissive user of another's property can never ripen into an adverse or prescriptive use. As the South Carolina Supreme Court held in the 1917 case of Williamson v. Abbott, 107 S.C. 397, 93 S.E. 15 (1917), "it is the well-settled rule that use by express or implied permission or license, no matter how long continued, cannot ripen into" a prescriptive right "until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him." Williamson, 107 S.C. at 400-401, 93 S.E. at 16. This rule, that was established in 1917, still applies in South Carolina. "Where one enters land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party." Young v. Nix, 286 S.C. 134, 135, 332 S.E.2d 773, 774 (Ct.App. 1985). Indeed, the asking and obtaining of permission "stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription." Paine Gayle Properties, LLC, v. CSX Transportation Inc., 400 S.C. 568, 584, 735 S.E.2d 528, 537 (Ct. App. 2012) (emphasis in original and quoting Williamson, 107 S.C. at 400-01, 93 S.E. at 16).

There is simply no evidence that the Cashmans engaged in conduct that would amount to a distinct and positive assertion of a right hostile to the Lightseys. Indeed, Mr. Cashman, Jr. testified that between 1994-2005 he never told anyone in the Lightsey family that he believed he had an ownership interest in Dock 3. (Trial Trans. p.84).

III. The trial court erred in making the following *ex mero motu* holdings

- a) **The trial court erred in *ex mero motu* holding that the base of the pier is attached to land designated as common property, that the common right of access to the river arises from deeds, that neither party claims a right to land below the mean high water mark, and that a structure on common property and used by alleged co-owners becomes common property**

Neither the Amended Complaint nor the Third Amended Answer in the instant case raises issues related to the ownership of the land where the base of Dock 3 is located, the source of the right of access to the river, ownership of the land below the mean high water mark, or allegations that a structure on common property becomes common property. (Amended Complaint; Third Amended Answer). Further, the parties did not present evidence on or litigate these issues. Accordingly, it was error for the trial court to rule on issues that were not raised to it. See Southern Railway Company v. Coltex, 285 S.C. 213, 329 S.E.2d 736 (1985) (holding it is improper for the trial court to raise and rule, *ex mero motu*, upon an issue not raised by the parties); Watts v. Metro Security Agency, 346 S.C. 235, 550 S.E.2d 869 (Ct. App. 2001) (stating the purpose of a pleading is to provide fair notice to the parties of the issues to be raised in the course of litigation). Rule 8, SCRCP.

- b) **The trial court erred in *ex mero motu* holding that laches prevents the Lightsey Trusts from seeking reimbursement from Cashman Properties for any and all expenses related to the dock incurred prior to the filing of the Summons and Complaint.**

In its Amended Complaint, Cashman Properties did not raise the issue of laches. Laches was only mentioned in the Lightsey's Fourth Amended Answer as a defense to the Cashman's claims. Laches, as a defense to a potential Lightsey claim, was not addressed through discovery. During the trial, the parties did not present any evidence of

laches, address laches in arguments to the trial court or request that the court make any findings related to laches. Despite these facts, the trial court gratuitously ruled in its Amended Declaratory Judgment that “any claim for costs borne by the Defendants prior to the filing of the Summons and Complaint is barred by laches.” This ruling was in error.

First and as discussed above, it was improper for the trial court to raise and rule, *ex mero motu*, upon an issue not raised by the parties. Southern Railway Company, 285 S.C. at 213, 329 S.E.2d at 736. The purpose of a pleading is to provide fair notice to the parties of the issues to be raised in the course of litigation. See Watts, 346 S.C. at 235, 550 S.E.2d at 869; Rule 8, SCRPC.

Second, even if laches were properly before the trial court, laches would not bar the Lightsey Trusts from receiving reimbursement for its costs and expenses relating to the pier and pierhead. Laches is “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). “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 Cty., 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Accordingly, laches requires an unreasonable and unexplained delay. Eldridge v. Eldridge, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (S.C. 2012).

In the instant case, there is no unreasonable and unexplained delay by the Lightsey Trusts. The Lightsey Trusts believed and continues to believe that they are the sole owner of Dock 3 as acknowledged in writing by Cashman Properties predecessor in interest years before this dispute began. "The dock is owned by Lightsey Brothers and I have permission to construct this floating dock." (R. p. 385).

CONCLUSION

For the reasons contained herein and as may be raised in any Reply Briefs or Supplemental Briefs and at oral arguments, the Orders of the trial court should be reversed as stated herein and judgment entered on behalf of the Lightsey Trusts.

Respectfully submitted,

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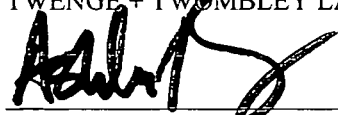
February 3, 2014

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, certifies that the herein Final Brief of Appellants complies with Rule 211(b) the South Carolina Appellate Court Rules.

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BY:

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

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THE STATE OF SOUTH CAROLINA
Beaufort County of Common Pleas

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge for Beaufort County

Case No.: 2009-CP-07-2573

CASHMAN PROPERTIES, LLC Respondent

-vs.-

WNL PROPERTIES, LLC; E. OSWALD LIGHTSEY TRUST f/b/o LOUISE
LIGHTSEY BAUGHMAN; THE TRUST UNDER WILL OF E. OSWALD LIGHTSEY
DATED AUGUST 8, 1958, AND CODICIL DATED MARCH 23, 1976, FOR THE
BENEFIT OF LILLIAN LIGHTSEY DRAWDY; AND THE TRUST UNDER THE
WILL OF E. OSWALD LIGHTSEY FOR THE BENEFIT OF CLAUDIA LIGHTSEY
WARE..... Appellants

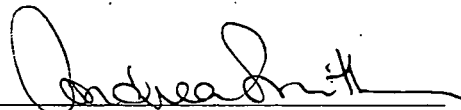
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The undersigned, Andrea Smith, hereby avers that she is a Paralegal with
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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-2573
Appellant Case No.: 2012-213579

Cashman Properties, LLC, ... Respondent,

v.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust Under Will of
E. Oswald Lightsey dated August 8, 1958, and codicil dated
March 23, 1976, for the Benefit of Lillian Lightsey Drawdy;
and the Trust Under Will of E. Oswald Lightsey for the Benefit
of Claudia Lightsey Ware, ... Appellants.

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	ii
Counter-Statement of the Issues on Appeal	1
Counter-Statement of the Case	2
Facts	6
Arguments	24
I. The Master Correctly Granted Declaratory Relief to the Cashmans	24
(A) The Action is Permissible under the Declaratory Judgment Act	24
(B) The Purpose of the Declaratory Judgment Act is Served by the Order	31
(C) The Master Did Not Breach any rules requiring dismissal	32
II. The Master in Equity's Findings of Fact and Conclusions of Law are supported by the evidence	35
(A) There is evidence to support the finding that there has been a consistent and cooperative pattern and practice of use and ownership of all three docks for eighty (80) years	35
(B) There is clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use all three docks for eighty (80) years	35
(C) There is evidence to support the finding that all of the parties used Dock 3 without permission from each other	37
The Master in Equity did not make any improper holdings <i>ex mero motu</i>	38
(A) The Master appropriately addressed the ownership and access to the land upon which the dock is attached	38
(B) The Master appropriately addressed whether the Defendants were prevented by laches from seeking reimbursement from the Cashmans for expenses related to the docks prior to the filing of the lawsuit	39
Conclusion	42

TABLE OF AUTHORITIES

Cases

South Carolina

<i>All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South,</i> 385 S.C. 428, 685 S.E.2d 163 (2009)	27
<i>Campbell v. Robinson</i> , 398 S.C. 12, 726 S.E.2d 221 (Ct. App. 2012)	32
<i>Chambers of S.C., Inc. v. County Council for Lee Cty.</i> , 315 S.C. 418, 434 S.E.2d 279 (1993)	40
<i>City of Columbia v. Sanders</i> , 231 S.C. 61, 97 S.E.2d 210 (1957)	26, 27
<i>Cumbie v. Cumbie</i> , 245 S.C. 107, 139 S.E.2d 477 (1964)	38
<i>Eldridge v. Eldridge</i> , 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012)	40
<i>Estate of Revis v. Revis</i> , 326 S.C. 470, 484 S.E.2d 112 (Ct. App. 1997)	28
<i>Felts v. Richland County</i> , 299 S.C. 214, 383 S.E.2d 261 (Ct. App. 1989)	28
<i>Felts v. Richland County</i> , 303 S.C. 354, 400 S.E.2d 781 (1991)	28
<i>Graham v. State Farm Mutual Automobile Ins. Co.</i> , 319 S.C. 69, 459 S.E.2d 844 (1995)	26, 27
<i>Hallums v. Hallums</i> , 296 S.C. 195, 371 S.E.2d 525 (1988)	40
<i>Harvey v. SC Dept. of Corrections</i> , 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) ...	28
<i>Hemingway v. Mention</i> , 228 S.C. 211, 89 S.E.2d 369 (1955)	40
<i>Holden v. Cribb</i> , 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002)	26, 27
<i>In re Estate of Rider</i> , 394 S.C. 84, 713 S.E.2d 643 (Ct. App. 2011)	27
<i>Jennings v. Jennings</i> , 401 S.C. 1, 6, 736 S.E.2d 242, 244 (2012)	39
<i>Leggett v. Smith</i> , 386 S.C. 63, 686 S.E.2d 699 (Ct. App. 2009)	32
<i>Lowcountry Open Land Trust v. State</i> , 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) ..	29

<i>Medical University of South Carolina v. Taylor</i> , 294 S.C. 99, 362 S.E.2d 881 (Ct. App. 1987)	34
<i>Pond Place Partners, Inc. v. Poole</i> , 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) ..	26, 27
<i>Power v. McNair</i> , 255 S.C. 150, 177 S.E.2d 551 (1970)	26
<i>Query v. Burgess</i> , 371 S.C. 407, 639 S.E.2d 455 (Ct. App. 2006)	27
<i>Southeast Toyota Distributors, LLC v. Jim Hudson Superstore, Inc.</i> , 387 S.C. 508, 693 S.E.2d 33 (Ct. App. 2010)	27
<i>Stecker v. TALX Corp.</i> , 384 S.C. 224, 681 S.E.2d 890 (Ct. App. 2009)	32
<i>Sunset Cay, LLC v. City of Folly Beach</i> , 357 S.C. 414, 593 S.E.2d 462 (2004)	24, 26, 27, 31
<i>Waller v. Waller</i> , 220 S.C. 212, 66 S.E.2d 876 (1951)	26, 27
<i>Wessinger v. Rauch</i> , 288 S.C. 157, 341 S.E.2d 643 (Ct. App. 1986)	32, 33, 34, 35
<i>Williams Furniture Corp. v. Southern Coating & Chemical Co.</i> , 216 S.C. 1, 56 S.E.2d 576 (1949)	33

Other Jurisdictions

<i>Becker v. Kroll</i> , 340 F. Supp.2d 1230 (D. Utah 2004)	29
<i>Becker v. Kroll</i> , 494 F.3d 904 (10 th Cir. 2007)	29
<i>Days Inn Worldwide, Inc. v. Sai Baba, Inc.</i> , 300 F. Supp.2d 583 (N.D. Ohio 2004) ...	29
<i>Economic Opportunity Com'n of Nassau County, Inc. v. County of Nassau</i> , 106 F. Supp.2d 433 (E.D. N.Y. 2000)	29
<i>Int'l Ass'n of Machinists and Aerospace Workers v. Tennessee Valley Authority</i> , 108 F.3d 658 (6th Cir.1997)	29
<i>Matos v. First Nat. Bank</i> , 27 Mass. L. Rptr., 2010 WL 3327725 (Mass. Super. 2010) .	30
<i>Repwest Ins. Co. v. Praetorian Ins. Co.</i> , 890 F. Supp.2d 1168 (D. Ariz. 2012)	30

<i>State ex rel. Edmisten v. Tucker</i> , 312 N.C. 326, 323 S.E.2d 294 (1984)	33

Statutes

28 U.S.C. § 2201	29
S.C. Code Ann. § 15-53-10 (1976)	25
S.C. Code Ann. § 15-53-20 (1976)	24, 31
S.C. Code Ann. § 15-53-30 (1976)	24
S.C. Code Ann. § 56-15-46(C) (Supp. 2012)	27

Rules

Rule 57, SCRCP	24, 28, 30

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Master in Equity Correctly Grant Declaratory Relief to the Cashmans as a matter of law?
- II. Was there sufficient evidence to support the Master in Equity's Findings of Fact and Conclusions of Law that:
 - (A) There is evidence to support the finding that there has been a consistent and cooperative pattern and practice of use and ownership of all three docks for eighty (80) years?
 - (B) There is clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use all three docks for eighty (80) years?
 - (C) There is evidence to support the finding that all of the parties used Dock 3 without permission from each other?
- III. Did the Master in Equity make any improper holdings *ex mero motu* as to:
 - (A) The ownership and access to the land upon which the dock is attached?
 - (B) Whether the Defendants were prevented by laches from seeking reimbursement from the Cashmans for expenses related to the docks prior to the filing of the lawsuit?

COUNTER-STATEMENT OF THE CASE

This is a dispute over the ownership interests of a pier and two floating docks in Beaufort County, South Carolina. On May 21, 2009, Cashman¹ brought an action against the Defendants² seeking a declaratory judgment that Cashman was the owner of the walkway and pier head on "the Common Area into the May River" near Bluffton, South Carolina. (Supp. R. p. 11). Cashman also stated causes of action for: (1) prescriptive easement; (2) resulting trust; (3) injunctive relief related to the dock; and (4) adverse possession of the walkway, pier head and floating dock. Cashman also filed a lis pendens that same date.

Wachovia Bank, as trustee under the E.Oswald Lightsey Will, filed an answer on August 6, 2009, raising a number of defenses.

On September 3, 2009, Cashman filed an Amended Complaint which sought the same relief as the initial complaint. On October 15, 2009, all Defendants filed a joint answer to the Amended Complaint and on November 4, 2009, the Defendants filed an Amended Answer. On December 4, 2009, the court entered a consent order to correct misidentified parties in the caption.

¹ The plaintiffs were initially Eugene Keeny Cashman, Jr., as Trustee of the Eugene Keeny Cashman, Jr., Revocable Trust, and Kathleen Gilmore Cashman, as Trustee of the Kathleen Gilmore Cashman Revocable Trust. The court substituted Cashman Properties, LLC as the real party in interest at a later date. For simplicity, plaintiff is simply referred to as "Cashman."

² The initial defendants were E.O. Lightsey Trust and Wachovia Bank, N.A., as Personal Representative and/or Trustee of the Estate of the E.O. Lightsey Trust. The defendants were later changed to the parties who are appellants before the court. For ease they are referred to collectively as "Defendants" and separately identified where necessary.

The parties engaged in discovery and on May 18, 2010, Defendants moved for summary judgment. On July 29, 2010, Cashman filed a memorandum in opposition to Defendants' motion. The circuit court heard the motion on August 2, 2010, and on August 12, 2010, entered an order denying Defendants' motion.

On August 17, 2010, Defendants moved to file a Third Amended Answer so as to raise the Statute of Frauds as a defense.

On July 18, 2011, the court entered a consent order transferring the matter to the Master in Equity to hear the matter and enter a final judgment.

The case was tried on October 31 and November 1, 2011.³ On December 22, 2011, the master in equity entered an order finding:

1. Cashman and Defendants were co-owners as tenants in common of the entire pier and pierhead;
2. The ownership of "Dock 3" is appurtenant to the Defendants' property and the Cashman property;
3. Cashman was entitled to immediate access to the pier and pierhead and shall not be barred from such by Defendants or their agents;
4. Defendants had five (5) days to unlock the gate they had located on the pier or deliver a key to Cashman;
5. Cashman and the Defendants were to split equally the expenses directly related to the pier and pierhead that Defendants incurred from September 8, 2009 to the date

³ At a pretrial hearing the parties moved to substitute the named parties as they appear currently. (R. pp. 4-5).

of the order;

6. The Defendants had thirty (30) days to submit the amount of those expenses to the court;
7. The court would determine the amount of those expenses to be paid by Cashman;
8. All future costs for necessary maintenance and upkeep of the pier and pierhead would be divided equally between the parties or their successors in interest;
9. The dock costs included, but were not limited to, insurance, taxes, maintenance, and upkeep for the pier and pierhead;
10. The court would hold a supplemental hearing to determine how the parties would proceed in the future regarding payment of costs for maintenance and upkeep;
11. That only the order for the supplemental hearing to determine costs should be considered the "final order" in the case for purposes of appeal.

(R. pp. 10-11). The order was filed on December 22, 2011.

The Defendants filed a motion for reconsideration on January 3, 2012. No specific grounds were stated therein. On July 10, 2012, the court entered its Order on Costs. On August 1, 2012, the Defendants filed a "Supplement" to the Motion to Reconsider or in the Alternative Alter Judgment on Behalf of Plaintiff. The supplement was directed at the July 10, 2012, order on costs, and did not state any specific grounds for relief.

On August 15, 2012, Defendants filed a Memorandum in Support of the Motion to Reconsider and the Motion to Amend. The Memorandum asserted numerous challenges to the court's orders. Cashman filed a Memorandum of Law in opposition to the Defendants' motions.

On November 5, 2012, the court entered an Amended Declaratory Judgment. On November 15, 2012, the court held a hearing and issued a supplemental order noting the court denied Cashman's claim for prescriptive easement.

On December 5, 2012, Defendants filed and served a notice of appeal from all orders entered in the case. On December 10, 2012, Cashman filed and served a notice of cross-appeal, but later withdrew the cross-appeal.

FACTS

A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue. *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011). The action in this case was to declare the ownership of the pier, pierhead and two floating docks. Thus, while Defendants contend the case should be treated in equity (App. Br. p. 6), the claims are actually at law. *See Millvale Plantation, LLC v. Carrison Family Ltd. Partnership*, 401 S.C. 166, 736 S.E.2d 286 (Ct. App. 2012) (an adverse possession claim is an action at law); *Kelley v. Snyder*, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012) (determination of the existence of a prescriptive easement is a question of fact in a law action). This action is more akin to an action to declare an interest in real property, which is an action at law. *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (1988) (determination of title to real property is an action at law). *But see Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (Ct. App. 2002) (action to determine resulting trusts sound in equity).

If the Court agrees with Defendants, however, then the Court would review the factual findings and legal conclusions *de novo*. *Lewis v. Lewis*, 392 S.C. 381, 388–89, 709 S.E.2d 650, 653–54 (2011). However, this *de novo* review does not require an appellate court to disregard the findings of the trial court or to ignore the fact that the trial court is in the better position to assess the credibility of the witnesses. *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). Moreover, the appellant is not relieved of the burden of convincing the appellate court that the trial court committed

error in its findings. *Id.* at 387–88, 544 S.E.2d at 623. Consequently, this Court will affirm the findings of the trial court in an equity case unless the appellant satisfies the Court that the preponderance of the evidence is against the findings of the trial court. *Lewis*, 392 S.C. at 388–89, 709 S.E.2d at 653–54.

With this broad scope of review in mind, the testimony and evidence below was as follows.

Eugene Keeny Cashman, Jr. (Eugene)

Both the Lightseys and the Cashmans own property on Oyster Road on the May River near Bluffton, South Carolina. For many years the Ryans owned a lot between the Cashmans and the Lightseys. (R. p.138). Eugene and his wife bought the lot from the Ryans. (R. pp.138-139; Supp. R. p. 32). Since 1998 Eugene has spent about 24 nights in the Oyster Street property. (R. p.150).

Eugene's grandfather, J.O. Cashman, and J.O.'s neighbor, Dr. T.R. Waters, constructed Dock No. 1. (R. pp. 85, 89). J.O. received permission to construct the pier from Mr. Lawton. (R. p. 110).

Dock No. 2 was built by J.O. Cashman in 1941 with permission from the U.S. Army Corps of Engineers. (R. p. 89; R. pp. 345, 348, 350, 355). Dock No. 2 replaced Dock No. 1. (R. p. 99). The Lightsey family used Dock No. 2 even though they had their own spare dock. (R. pp.128-129, 161).

The Lightsey Family provided materials for construction of Docks 1 and 2. (R. p. 89). The Lightseys also had a floating dock at the end of Dock No. 2. (R. p. 89).

The Lightsey Family built Dock No. 3 in the early 1960s. (R. pp. 89, 125). J.O.

Cashman was to participate financially, but the Lightsey Family did not accept payment because they acknowledged the previous years history in No. 1 and No. 2. (R. p. 89).

Dock No. 3 was built and participated in by the Lightseys, Carrs and Cashmans as it had for Dock No. 1 and Dock No. 2. (R. p. 92). Floating docks were subsequently attached after construction. (R. p. 92).

In the early 1960s the first floating dock was put on the east side, about the time that the original dock was constructed. (R. p. 93). Eugene always referred to Dock No. 3 as the "Cashman, Carter, Lightsey" Dock. (R. p. 93, 94).

The Cashman Family used the floating dock on the east side of the pier head. (R. p. 95). The Lightsey Family did not use the floating dock, but could have done so had they needed it for boat tie-ups, swimming or other recreation. (R. p. 95).

Eugene never asked permission from the Lightseys to use Dock No. 3 or the floating docks on either side of Dock No. 3. (R. p. 94). He could not recall any member of the Lightsey family using Dock No. 3, other than Norris Laffitte once or twice in early 2000 with Charlie Drawdy and Billy Ware. (R. p. 108). Eugene never excluded others from Dock No. 3, although he did file a police report once regarding vandalism, and thought this was necessary to make an insurance claim. (R. pp. 94-95). Dock No. 3 was constructed in 1961 or 1962, and from that date through 2005 his use was never interrupted by the Lightseys. (R. p. 111).

Eugene identified a number of photographs of the area. (R. p. 97; R. p. 626). These photographs established long-term use of each of the Docks by the Cashman family. (R. pp. 98-104).

The Cashman Family actively used Dock No. 3 and the floating dock and maintained it. (R. pp. 92, 93). They provided electricity and water to all three of the Docks beginning in the late 1960s. (R. p. 92-93, 105, 160). At some point in 1984 the Lightseys ran water all the way down to the end of the pier. (R. p. 147). Water ran concurrently from pumps on both properties through a "T" connector. (R. pp. 159-160, 168-169). Eugene was adamant that the Cashmans were the first to supply water to the dock. (R. p. 169). The Cashman's use of the pier and dock from November 24, 2004 through May 29, 2009, was interrupted by the Lightseys putting a lock on the gate. (R. pp. 146-147).

Some time in 2005 Eugene was told that he could not have access to the Dock. (R. pp. 105, 106). For about six months Eugene was trying to arrange someone to replace the floating dock on the east side. (R. p. 105). Eugene discovered that the Dock was locked. (R. pp. 106, 143). Because he had a longstanding good relationship with Norris Lafitte, he called Norris, who sent him a key. (R. pp. 106, 142, 143; R. p. 440). The following day Norris called Eugene and said "you got to send me the key back." (R. pp. 106, 143). Eugene had not opened the envelope, so he simply sent it back to Norris. (R. pp. 106-107, 159).

Norris followed the conversation up with a letter. (R. p. 106; R. p. 446). Eugene sent a letter in reply. (R. pp. 107, 143; R. p. 448). In the letter, Eugene offered to pay money and create a written agreement if that was what was required. (R. pp. 144, 158-159; R. p. 448). He never offered to pay money for an ownership interest in the dock. (R. p. 159).

Eugene maintained insurance on the docks, and began buying insurance on Dock No. 3 from the day it was built. (R. pp. 108-109, 121; R. p. 379). He read an exclusion in the policy for "structure located on or in part in or over water." (R. p. 121-123; R. p. 408). Eugene identified a letter from the insurer, Chubb, that said the policy had provided coverage for more than twenty years for the dwelling and other structures, including the dock. (R. p. 160; R. p. 408, 454, 459).

The floating dock was replaced in the 1970s. (R. p. 109). The Cashmans applied to the Corps of Engineers to replace the dock. (R. p. 109; R. p. 381, 383). Oswald Lightsey wrote a letter to Eugene on July 22, 1977, stating "We received the enclosed letter in the mail today, and since you are doing the work described therein, thought you would be the one to comply with their request." (R. p. 406). The request was from the Water Resources Commission regarding the permit application, and requested proof of publication of the proposed work in a local newspaper. (R. p. 404).

When asked his understanding about ownership of Dock No. 3, Eugene stated:

It was my understanding that the Cashman family owned and provided the plumbing to it and we had ownership in the pier by participation in the kinds of things that went on including maintenance as well as the utilities provided.

(R. p. 111). He testified the Cashmans spent money on maintenance from 1961 until the present. (R. pp. 130-138, 161-162; R. p. 580). He agreed some of the items were not related to the pier, but the majority of items were related to the pier or the floating dock. (R. p. 137-138). He had records his father kept in file from 1974 through 1995. (R. p. 168; R. pp. 379, 381, 383, 393, 399).

Eugene stated the Lightsey property located at 31 Oyster Street had been for sale since 2007 or 2008. (R. p. 111). He identified a document that was part of the real estate sales information that said "dock on May River completed." (R. p. 112).

Eugene testified his father and grandfather were contractors and they would perform any routine maintenance that needed to be done. (R. p. 112). They would use excess of supplies on hand. (R. pp. 112-113). This explains why there are no invoices. (R. p. 161).

Eugene's father, Eugene, Sr., owned the property on Oyster Street from 1977 until 1994. (R. p. 120). Eugene obtained an ownership interest in the home in 1994 when his father transferred his interest to Eugene and Eugene's sister. (R. p. 115). Prior to 1994 he did not have a legal ownership interest. (R. p. 116). His father could have excluded him from the property if he had wanted to do so. (R. p. 116).

Eugene also identified the draft of a letter his father wrote to the Corps of Engineers on May 5, 1977, concerning the dock. (R. pp. 116-118; R. pp. 385, 387, 396). The first full paragraph stated, "the dock is owned by the Lightsey brothers and have permission to construct this floating dock as per stated below by a licensed district engineer." (R. p. 116; R. p. 385). Eugene agreed the letter states Oswald Lightsey gave Eugene's father permission to build or attach a floating dock and ramp. (R. pp. 118-119). Eugene also identified a letter the Corps sent in response. (R. p. 119; R. p. 391). Prior to that letter there was a floating dock on the east side of the pier which had been there since the pier was completed. (R. p. 152). An arrow on the letter pointed to a floating dock known as "the Cashman floating dock." (R. p. 163; R. p. 389).

The letter was sent for purposes of permitting to replace or repair the floating dock. (R. p. 153). Because the permit was in the Lightsey name under previous documents, Eugene's father had to have permission from the permitted group to put the floating dock in place. (R. pp. 153-155). Eugene's father was "following the directions of the 1977 requirement to get a dock permit." (R. p. 166).

Eugene identified a drawing from October 31, 1960 made by the Lightsey brothers for a dock permit; it did not contain a floating dock to the right of the pier. (R. pp. 156, 168; R. p. 364). He also read from an exhibit that stated, "Addition to the property owners' permit per on page 6 did not authorize floating docks," which appeared to reference a 1941 permit. (R. p. 156; R. p. 383). The Department of the Army wrote a letter stating:

Reference is made to your letter of 5 May, 1977 requesting authorization to replace a floating dock and a ramp attached to the eastern end of an existing dock located on the northerly bank of the May River approximately 4.1 miles above this map near Bluffton, South Carolina. * *

* A review of the files reveal that the permit authorizing the original structure was issued in 1961 without having been advertised by public notice. Therefore, before the work proposed in your letter finally can be authorized, ... public notice must be issued and circulated for a minimum of 15 days.

(R. pp. 156-157; R. p. 391). Eugene stated that reading the two letters together neither the Cashman family nor the Lightsey family had a permit to construct a floating dock in 1977. (R. p. 157). Apparently both the Lightseys and the Cashmans "just built it and put it in there without following the permit process." (R. p. 168).

Eugene identified a public notice the Corps of Engineers issued regarding the floating dock. (R. p. 120; R. p. 401). The notice states that the applicant is "the Lightsey

brothers.” (R. p. 121).

Eugene agreed that no one in his family ever paid any taxes related to the pier. (R. p. 123). He agreed that 1986 property card (the first year Beaufort County assessed docks county wide) stated the Lightseys’ property on Oyster Street included a pier, header, a float and a gazebo. (R. p. 123; R. p. 413). The property card for 1996 also included those items and Eugene paid no property taxes on those things. (R. p. 126; R. p. 417). He agreed the Lightseys were charged for the taxes in 2004. (R. p. 127; R. p. 424). He did not remember ever paying any property taxes for the property associated with the pier, header, float or gazebo. (R. p. 127).

Eugene agreed that Diane Reynolds asked for his permission to go down to the dock, and he told her it was fine with him but she would have to ask the Lightseys. (R. pp. 125, 144-146).

The Lightseys never asked anyone in the Cashman family for any money associated with repairs and improvements made to the dock or repairs to the gazebo. (R. p. 139). This included repairs to the pilings and replacement of the main pier. (R. pp. 139-140; R. p. 420). No one asked Eugene’s permission to make those repairs or to repairs to the gazebo. (R. p. 140).

Eugene identified a photograph from November 2004 which revealed the Cashman dock had washed away and was on the river bank. (R. pp. 141-142; R. p. 431). Eugene had removed the damaged dock in anticipation of replacing it. (R. p. 142).

Eugene agreed that before his father would do something to the pier he would have first checked with the Lightseys. (R. p. 147). This included putting electricity and

water on the pier and the dock. (R. p. 148). When asked why, Eugene said:

That's the way we did business. I mean it was not something to be presumptuous on our part to do something out of a friendship or relationship with the Lightseys without at least acknowledging what we were going to do and I am, you know, suggesting that was just the way business was done in that way.

(R. p. 158). Eugene did not call to ask permission to do certain things. (R. p. 158).

From 1994 until 2005, when he discovered the lock on the gate, Eugene never told anyone in the Lightsey family that he believed he had an ownership interest in the pier.

(R. p. 151). He also never attempted to exclude anyone from the Lightsey family from the pier during that time. (R. p. 151).

Diane Reynolds

Ms. Reynolds has lived in Bluffton for 50 years. (R. p. 171). She has been using the subject dock since 1976 with the permission of the Carters, the Cashmans, and the Lightseys. (R pp. 171, 177). Mrs. Carter lived next to the Cashmans on Oyster Street, and after she died her grandson tore the home down. (R. p. 174). This lot was between the Cashmans and the Lightseys. (R. p. 174).

Ms. Reynolds identified a letter she wrote the Cashman in 2004 (i.e., seven years before the hearing). (R. p. 172; R. p. 422). The letter states "To the Cashman Family. In 1965 the Cashman family, Mrs. Carter and the Lightseys gave me permission to use your dock." (R. p. 172; R. p. 422). Ms. Reynolds stated the date was a scrivener's error and should have said "1975." (R. pp. 172-173).

Since 1975, the dock was known as "the Cashman, Carter, Lightsey dock." (R. p. 174). All three families told her they owned the dock together and they all three said she

could use it. (R. p. 174).

Ms. Carter died about ten years prior to the hearing, and this was the last time the Carters lived on the property. (R. p. 175).

Betty Cashman Davis

Eugene Cashman, Sr. is her father and J.O. Cashman is her grandfather. (R. pp. 179, 186). She is a half owner with her sister-in-law, Kathy Cashman, of the property on Oyster Street that is deeded to Cashman Properties, LLC. (R. p. 179). She first received an interest in the property in 1994 at the same time her brother received an interest. (R. p. 185). Prior to that time her father allowed her to use the dock. (R. p. 185). Her father told her he wanted the property to stay in the family. (R. p. 186).

J.O. Cashman owned Dock 2. (R. pp. 180, 186, 187). Betty used Dock 2 with her family and friends. (R. p. 180). They swam and fished off the dock and rode their boat in the area. (R. p. 180).

Dock 2 was destroyed by a storm when Betty was about 15 years old. (R. p. 180). Dock 3 was then built and she "just made a smooth transition from dock 2 to dock 3," meaning "full use of it for myself, as well as my family and friends." (R. p. 180). They used Dock 3 for fishing, crabbing and parties. (R. p. 181). She was there "a great deal" and they used the dock all year. (R. p. 181). They would spend Christmas and Thanksgiving at the area from 1961 or 1962 until 2004 or 2005. (R. p. 181). Her father and entire family used the pier. (R. p. 182).

The first floating dock was constructed right after Dock 3 was built. (R. p. 182). The Cashman family had the floating dock built on the east side, and it was used by their

family and friends. (R. p. 182). The Lightseys did not use it "unless they needed just to tie up a boat...." (R. p. 182). It was Betty's understanding that the pier was owned by the Carters, the Lightseys and the Cashmans, and that the Cashmans owned the floating dock. (R. p. 183, 187-188). J.O. Cashman built and maintained the dock. (R. p. 188).

The Cashmans did maintenance on the pier and the floating dock. (R. p. 183, 184). Her son sanded the rust off of the ramp that went to the dock before it could be painted. (R. p. 183). He also took the fails from the pier down to the floating dock that Betty had. (R. p. 186). The Cashmans replaced boards from lumber her father would provide. (R. p. 183). They replaced the floatation for the floating dock, and replaced the floating dock when it was taken off by a storm. (R. p. 184). She remembered "two different ramps and I can remember two or either three different floating docks." (R. p. 184). These replacements and repairs were made by her father, Eugene Cashman. (R. p. 184).

Betty first received notice that the Lightsey family asserted exclusive rights to the pier and floating docks In February 2005. (R. p. 184). A floating dock had been lost and by the time the Cashmans were prepared to replace it they could not go down on the dock. (R. pp. 184-185, 187). The Cashmans intended on constructing a new floating dock. (R. p. 185).

The deposition of Norris Laffitte and Eugene Cashman were entered into evidence by agreement. (R. pp. 188-190; R. p. 461, 530). Their testimony was as follows.

Norris Laffitte (Deposition)

The Lightseys owned parcel no. 31 on the plat along the May River. (R. p. 464,

Dep. p. 7, ll. 9-22). Mr. Laffitte's great-grandfather, W. Fred Lightsey, acquired the property. (R. p. 464, Dep. p. 8, ll. 1-2). Mr. Laffitte is the grandson of W. Norris Lightsey. (R. p. 464, Dep. p. 8, ll. 10-13). The home located on the parcel was a vacation home and was never used as a permanent residence. (R. p. 468, Dep. p. 24, ll. 13-20). Mr. Laffitte is the person who is more "in tune with this property than anybody else in the family." (R. p. 473, Dep. p. 41, ll. 5-13).

The subject dock is located on the other side of Oyster Street from the Lightsey property. (R. p. 464, Dep. p. 8, ll. 14-19). Mr. Laffitte was aware of documents related to the permitting of Dock No. 3 dated February 21, 1961 from the Corps of Engineers. (R. p. 465, Dep. p. 9, ll. 4-8; R. p. 467, Dep. p. 18, ll. 20-23). "Lightsey Brothers" obtained that permit and built the dock, which Mr. Laffitte referred to as "dock three," in the early 1960s. (R. p. 467, Dep. p. 18, l. 25 - p. 19, l. 6; R. p. 471, Dep. p. 35, ll. 15-17). Lightsey Brothers was a business owned by Norris and Oswald Lightsey that ran a sawmill in Miley, South Carolina and that also owned land. (R. p. 467, Dep. p. 19, ll. 7-15). Mr. Laffitte did not have a copy of the permit, nor did he know of anyone who could provide a copy. (R. p. 467, Dep. p. 20, ll. 9-16).

The Dock is attached to property under a "covenant to stand seized" dated August 31, 1931, that gives permissive use to "all present and/or future owners of lots" in the subdivision as well as a 6.25 acre tract owned by Thomas O. Lawton. (R. p. 465, Dep. p. 9, l. 17 - p. 12, l. 3).

Mr. Laffitte identified a letter from J.O. Cashman dated September 9, 1941. (R. p. 465, Dep. p. 12, l. 21 - R. p. 466, Dep. p. 13, l. 7). The letter stated, "Mr. T.O. Lawton

owns the land in front of which the wharf will be located, for which we have permission to build same.” (R. p. 466, Dep. p. 13, ll. 8 -13). Mr. Laffitte knew of no other documents regarding Mr. Cashman’s permission. (R. p. 466, Dep. p. 14, ll. 1-2). Mr. Laffitte also had no reason to doubt the authenticity of a permit dated September 29, 2941, from the War Department and addressed to C.O. Cashman. (R. p. 466, Dep. p. 4, ll. 12-20).

There were also three deeds. The first one was a deed of land in 1946 from Sam Buckner to J.O. and Bessie Cashman for \$700. (R. p. 466, Dep. p. 15, l. 18 - p. 16, l. 6). The second deed was riverfront property the Cashmans sold to Ms. Carter in 1946 – that deed provided “the grantees shall have access to or use of the wharf erected, or to be erected, at the foot of street and road conveyed by the grantors herein.” (R. p. 466, Dep. p. 16, l. 20 - R. p. 467, Dep. p. 17, l. 9).

On May 27, 1975, Eugene Cashman, Sr., applied for a permit to build a floating dock. (R. p. 468, Dep. p. 21, l. 12 - p. 22, l. 9).

Mr. Laffitte used the dock frequently as a youth from 1965 through 1973, and again after college from 1983 until 1998. (R. p. 468, Dep. p. 22, l. 23 - p. 23, l. 16). He saw the Cashmans there as well and said, “they were like us. When we were at the river, we were at the river. We didn’t stay at the house. We stayed out on the water.” (R. p. 468, Dep. p. 23, l. 25 - p. 24, l. 2). He also saw the Cashmans used the dock. (R. p. 468, Dep. p. 24, ll. 3-9; R. p. 474, Dep. p. 48, l. 21 - R. p. 475, Dep. p. 49, l. 1). He was unaware of the Cashmans ever asking permission to use the dock. (R. p. 472, Dep. p. 39, ll. 18-24; R. p. 475, Dep. p. 49, ll. 2-9). When he started using the dock in 1983 there was an electrical line running from the Cashmans’ house to the dock. (R. p. 473, Dep. p. 44, ll. 15-23). He

agreed Mr. Cashman ran water to the dock, but Mr. Laffitte ran a water line sometime after 1983, and put a sink at the end of the dock. (R. p. 474, Dep. p. 45, ll. 2-11). In the fall of 2007 Billy Ware (Oswald Lightsey's son-in-law) severed the electrical line from the Cashman property and installed a new line from the Lightsey property down to the pier. (R. p. 475, Dep. p. 50, ll. 9-23).

Mr. Laffitte placed the lock on the gate between November 2004 and February 2005 to keep trespassers off the dock. (R. p. 469, Dep. p. 26, ll. 19-22). He sent a key to Mr. Cashman. (R. p. 469, Dep. p. 26, ll. 23-24). He then retrieved the key, and when Mr. Cashman called about the letter Mr. Laffitte said "I am not at liberty to comment." (R. p. 472, Dep. p. 37, l. 3 - p. 38, l. 1). This prevented Mr. Cashman from repairing the Cashman floating dock. (R. p. 476, Dep. p. 53, ll. 16-25).

The Lightsey family held meetings twice a year. (R. p. 469, Dep. p. 27, ll. 15-19; R. p. 470, Dep. p. 30, ll. 6-7). Participants included his side of the family: Margaret Lightsey McMillan Payne (Norris's daughter), Morris Laffitte, Tuck Laffitte (Mr. Laffitte's brother), Beth McMaster and Lalla Lee Campsen (Mr. Laffitte's sisters). (R. p. 469, Dep. p. 28, ll. 2-10). The other side of the family included Oswald Lightsey's daughters: (1) Louise Lightsey (Lou) Bowman, her husband Pat, their son Lee, their daughters Jan Hunter and Lynn Asnip; (2) Lil Lightsey Drawdy, her husband Charlie, Sr., and her sons Charlie, Jr., and Oswald; (3) Claudia Lightsey Ware, her husband Billy, their son Sanford, and her son-in-law Trip Welsh. (R. p. 469, Dep. p. 28, ll. 17-25; R. p. 470, Dep. p. 29, ll. 10-12). The bank representative was Fran Cass, Randy Fisher or John Swink. (R. p. 469, Dep. p. 28, ll. 12-16).

Mr. Laffitte explained the entry for March 16, 2005 in which he described send the key to Mr. Cashman and then retrieving it. (R. p. 470, Dep. p. 29, l. 7; R. p. 470, Dep. p. 30, l. 18 - p. 31, l. 3). On that agenda Mr. Laffitte raised the topic of "who owns" the pier. (R. p. 470, Dep. p. 31, ll. 6-22). This included a review of documents Mr. Laffitte had regarding the 1961 permit and the taxes Lightsey Brothers paid on the property. (R. p. 470, Dep. p. 31, l. 25 - R. p. 471, Dep. p. 35, l. 13). The documents did not demonstrate payment of taxes prior to 1986. (R. p. 471, Dep. p. 35, ll. 18-24).

Mr. Laffitte agreed that Mr. Cashman's father built a floating dock on the east side of the pier in the 1970s, and it was known as the "Cashmans' floating dock." (R. p. 472, Dep. p. 40, ll. 6-15; R. p. 476, Dep. p. 53, ll. 10-13). The floating dock on the west side was known as the Lightseys' floating dock. (R. p. 472, Dep. p. 40, ll. 16-17; R. p. 476, Dep. p. 53, ll. 14-15). The docks were not for general use, and there was always a "no trespassing" sign on the gate. (R. p. 472, Dep. p. 40, l. 18 - R. p. 473, Dep. p. 41, l. 4). The Cashmans did all repairs to the floating dock, and they used the Lightsey pier and pierhead to get to their ramp and the floating dock. (R. p. 474, Dep. p. 46, ll. 10-21).

Mr. Laffitte identified a document that demonstrated that Lil Drawdy wanted to buy the property for \$1.8 million but also wanted assurances regarding use of the dock. (R. p. 473, Dep. p. 42, ll. 13-19). Mr. Laffitte advised her that he could not get her clear title to the common property and the pier and she withdrew her offer. (R. p. 473, Dep. p. 43, ll. 21-23).

Eugene Cashman (Deposition)

The properties at issue were two lots; one Mr. Cashman bought in 1999 and the

other his grandfather bought from Mr. Lawton in the 1920s. (R. p. 533, Dep. p. 6, l. 9 - p. 7, l. 4). The properties are now owned by Kathleen Gilmore Cashman and her revocable trust. (R. p. 533, Dep. p. 5, l. 13 - p. 6, l. 5).

Mr. Cashman described the long-term use of the property by his family. (R. p. 533, Dep. p. 7, l. 5 - p. 8, l. 16) Mr. Cashman's time there spanned 68 years. (R. p. 533, Dep. p. 8, l. 17 - R. p. 534, Dep. p. 9, l. 9). The Lightseys family has been there throughout the same time. (R. p. 534, Dep. p. 9, ll. 10-20). The two families have always been very close. (R. p. 534, Dep. p. 9, l. 21 - p. 10, l. 7).

Mr. Cashman described the construction of the various piers, adding that Dock 1 and Dock 2 were used by the Lightseys, Carters, Cashmans, Pitts, Boones and other individuals in the neighborhood. (R. p. 535, Dep. p. 14, l. 6 - R. p. 536, Dep. p. 17, l. 19). No one was denied use of the pier, and use was based on a "handshake." (R. p. 536, Dep. p. 17, l. 20 - p. 18, l. 3; R. p. 536, Dep. p. 19, ll. 3-11). Dock 1 was known as the "Cashman-Waters Pier," Dock 2 was known as the "Cashman-Carter Pier," and Dock 3 was known as the "Lightsey-Cashman-Carter Pier." (R. p. 536, Dep. p. 19, l. 14 - p. 20, l. 8). Eventually the Lightseys and the Cashmans had to put a "no trespassing" sign on Dock 3. (R. p. 536, Dep. p. 20, l. 11 - R. p. 537, Dep. p. 21, l. 13; R. p. 539, Dep. p. 29, l. 19 - p. 32, l. 25).

Lightsey Brothers built Dock 3 and refused an offer from Mr. Cashman's father to pay half. (R. p. 534, Dep. p. 11, ll. 6-10; R. p. 537, Dep. p. 21, ll. 17-22; R. p. 537, Dep. p. 22, l. 19 - p. 23, l. 16). The permit was a "piggyback" on the permission Mr. Lawton had given Mr. Cashman's grandfather. (R. p. 546, Dep. p. 62, ll. 9-21).

The Cashmans provided water and electricity to Dock 3. (R. p. 538, Dep. p. 26, l. 22 - p. 29, l. 18). It was Mr. Cashman's understanding that the three families - the Lightseys, Cashmans and Carters - believed they had the right to restrict access to the pier. (R. p. 540, Dep. p. 33, ll. 1-16). Dock 3 was originally a pier with one floating dock that was used by the Cashmans, Carters and Lightseys. (R. p. 540, Dep. p. 35, ll. 8-18). The second floating dock was added in the 1970s for convenience. (R. p. 541, Dep. p. 37, l. 14 - p. 39, l. 8; Supp. R. p. 37, Dep. 49, ll. 3-15). Mr. Cashman identified a letter his father sent to the Corps of Engineers in May 1977 seeking permission to replace the floating dock and make other repairs, and stating "that Oswald Lightsey gave permission to attach the floating dock." (R. p. 542, Dep. p. 41, l. 18 - p. 43, l. 3). Mr. Cashman also identified the letter from the South Carolina Water Resources Commission of July 21, 1975, to Lightsey Brothers and the subsequent letter from Norris Laffitte to Mr. Cashman forwarding the letter. (R. p. 543, Dep. p. 45, l. 23 - p. 48, l. 2). Mr. Cashman's father paid for the second floating dock. (Supp. R. p. 37, Dep. p. 51, ll. 9-11). The majority of use was by the Cashman family. (R. p. 546, Dep. p. 62, l. 22 - p. 63, l. 17).

The floating dock had to be repaired a number of times and was completely replaced once. (Supp. R. p. 37, Dep. p. 51, l. 12 - Supp. R. p. 38, Dep. p. 53, l. 19). The dock is no longer there - it was beached and Mr. Cashman disassembled it and carried it off. (R. p. 544, Dep. p. 54, ll. 7-13). When it came time to replace it in 2005 Mr. Cashman was denied access to the pier. (R. p. 544, Dep. p. 54, ll. 14-17; R. p. 544, Dep. p. 55, ll. 12-13). He discovered the lock on the gate when he was taking someone down to the pier to give him an estimate for the cost of replacing the floating dock. (R. p. 544,

Dep. p. 54, l. 18 - p. 55, l. 9). Mr. Cashman contacted Mr. Laffitte and he agreed to send a key, which he did. (R. p. 544, Dep. p. 55, ll. 10-20). Mr. Laffitte then called back and asked Mr. Cashman to send the key back because "you don't have permission to go out on the dock." (R. p. 544, Dep. p. 55, l. 21 - p. 56, l. 3). Mr. Cashman had not opened the envelop and he returned it to Mr. Laffitte. (R. p. 544, Dep. p. 56, ll. 1-16). Mr. Laffitte followed up with a letter explaining that at the family meeting it was decided that the Lightseys wanted exclusive use of the dock. (R. p. 544, Dep. p. 56, l. 24 - R. p. 545, Dep. p. 57, l. 5).

Ms. Cashman was asked why he believed the Cashmans were tenants in common with the Lightseys for the pier, and he responded:

Over 80 years of relationships where they - - the families, and the generations that have been a part of those, have mutually shared in and used docks one, two, and three; that for participation in maintenance, upkeep and additions to, as in the case of electricity - - and that there was no basis at any time anywhere in the past that would support that entitlement and use was not, you know, ever going to be an issue.

(R. p. 545, Dep. p. 59, ll. 14-23). No one in the Lightsey family asked the Cashmans to do maintenance, but the Cashmans did it out of their responsibility of ownership. (R. p. 545, Dep. p. 60, ll. 2-11). They installed the water and electricity because "we thought it would be a very good idea, and they were just agreed to" and his father took care of it. (R. p. 545, Dep. p. 60, ll. 12-22). It was implied that the Cashman family had an ownership interest in Dock 3. (R. p. 545, Dep. p. 60, l. 23 - R. p. 546, Dep. p. 61, l. 6). The Cashman family never asserted exclusive use to Dock 3 to the exclusion of the Lightsey family. (R. p. 546, Dep. p. 61, ll. 7-10).

ARGUMENTS

I The Master in Equity Correctly Granted Declaratory Relief to the Cashmans

Defendants contend that because Cashman sought relief under the theories of adverse possession, resulting trust or prescriptive easement, and neither theory survived to the final order, then the Master in Equity had no authority to enter a declaratory judgment. (App. Br. pp. 7-15). The Court should affirm the Master's order.

(A) The Action is Permissible under the Declaratory Judgment Act

Defendants first argue that this action fails because there is no "underlying claim" upon which the declaratory action can arise. (App. Br. pp. 9-12). The Court should not be persuaded by this argument.

The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (1976); *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004). "Any person ... whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance ... may have determined any question of construction or validity arising under the ... statute [or] ordinance ... and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30 (1976); *Sunset Cay*. See also Rule 57, SCRCP ("The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.").

In this case, Cashman brought an action for a declaration that the parties are "the

joint owners, as tenants in common, of the fixture (i.e. the walkway and pier head) located on and emanating from the Common Property.” (Supp. R. p. 15, ¶ 31). Cashman requested the court “issue an Order finding the [parties] are joint owners of the fixture affixed to the Common Area as tenants in common and for such other relief as this Court may find just and proper.” (Supp. R. p. 15, prayer). Cashman also stated causes of action for prescriptive easement (Supp. R. 15, Second Cause of Action), Resulting Trust (Supp. R. p. 16, Third Cause of Action), Injunctive Relief (Supp. R. p. 17, Fourth Cause of Action), and Adverse Possession (Supp. R. p. 17, Fifth Cause of Action).

At trial, Cashman withdrew the claim for Adverse Possession, and the Master found Cashman failed to prove a prescriptive easement. (R. p. 21; ¶ 1). Cashman also prayed, however, that the Court “determine ownership rights of the land at issue in the Plaintiffs’ Fifth Cause of Action; determine that the Plaintiffs own an undivided interest in and to the walkway, pier head, and floating dock through adverse possession; and for such other relief as this Court may find just and proper.” (Supp. R. p. 18, prayer).

In the order, the Master held the case involved “ownership of a pier, pierhead and two floating docks....” (R. p. 5, ¶ 2). The Master also found the case presented “a justiciable controversy, and a Declaratory Judgment pursuant to the Declaratory Judgments Act, S.C. Code 15-53-10, *et. seq.* is necessary to determine the rights and relationship of the Parties to this action.” (R. p. 9, ¶ 1). The Master declared the parties are “co-owners as tenants in common of the entire pier and pierhead.” (R. p. 9, ¶ 5). The Master also found “in the absence of an agreement or contract, a fixed and permanent structure constructed on common property and used by co-owners in a manner such as

this becomes common property.” (R. p. 10, ¶ 7). This Court should affirm.

The Supreme Court in *Sunset Cay* noted that despite the Declaratory Judgment Act’s broad language, it has its limits. The Court stated:

An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970); *City of Columbia v. Sanders*, 231 S.C. 61, 68, 97 S.E.2d 210, 213 (1957). A declaratory judgment should not address moot or abstract matters. *Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951).

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Power v. McNair*, 255 S.C. at 154, 177 S.E.2d at 553. “A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” *Power v. McNair*, 255 S.C. at 154, 177 S.E.2d at 553; *Graham v. State Farm Mutual Automobile Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (same); *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) (same).

The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy. *Waller*, 220 S.C. at 223, 66 S.E.2d at 882. The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship. *Graham*, 319 S.C. at 71, 459 S.E.2d at 845; *Power*, 255 S.C. at 154, 177 S.E.2d at 553; *Waller*, 220 S.C. at 223, 66 S.E.2d at 882; *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 888-89 (Ct. App. 2002).

Our courts have found the existence of a justiciable controversy, for example, in determining whether a vehicle insurance policy should be reformed to include underinsured motorist coverage, *Graham, supra*; in determining whether the consolidation of two municipalities resulted in the merger of municipally owned utility systems, *City of Columbia, supra*; in the determination of heirs’ contingent or vested interest under a will,

Waller, supra; in deciding whether the court should issue a writ of mandamus directing the sheriff to accept a non-cash bid at a judicial sale, *Holden, supra*; and in a dispute involving homeowners' challenge to amendments of their subdivision's restrictive covenants, *Pond Place Partners, supra*.

Sunset Cay, 357 S.C. at 423-424, 593 S.E.2d at 466-467 (underline added). Thus, courts entertain declaratory judgment actions in all kinds of cases to answer questions so as to resolve various kinds of disputes. *See, also, All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South*, 385 S.C. 428, 685 S.E.2d 163 (2009) (church congregation filed a declaratory judgment action against the national church and local Diocese seeking an order declaring that the congregation held title to its property or, in the alternative, held its property in trust for the benefit of the inhabitants of the Waccamaw Neck pursuant to a Trust Deed); *In re Estate of Rider*, 394 S.C. 84, 713 S.E.2d 643 (Ct. App. 2011) (personal representative of decedent's estate filed petition for declaratory judgment in probate court, naming Wife and ten others as respondents to the petition, and seeking a determination of whether decedent's execution of the letter completed the transfer of all the securities such that they are not part of decedent's estate); *Southeast Toyota Distributors, LLC v. Jim Hudson Superstore, Inc.*, 387 S.C. 508, 693 S.E.2d 33 (Ct. App. 2010) (Southeast Toyota brought a declaratory judgment action against Jim Hudson to determine whether Hudson's relocation of his dealership was exempt from protect pursuant to S.C. Code Ann. § 56-15-46(C)); *Query v. Burgess*, 371 S.C. 407, 639 S.E.2d 455 (Ct. App. 2006) (Query brought a declaratory judgment against Burgess and the State of South Carolina seeking to establish ownership over certain marshlands abutting his Folly Beach property).

There is no question that there is a justiciable controversy in this case, namely, whether the Cashmans have an ownership interest in Dock 3. That is all that is required under the Act and under Rule 57.

Defendants point to *Harvey v. SC Dept. of Corrections* for the rule that the Act “does not create substantive rights or duties.” 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (App. Br. pp. 10-11). Lightsey also point to the case upon which *Harvey* relied, *Felts v. Richland County*, 299 S.C. 214, 383 S.E.2d 261 (Ct. App. 1989), *aff’d* 303 S.C. 354, 400 S.E.2d 781 (1991). (App. Br. p. 10). These cases, however, do not prevent the Master from entering the order in this case.

The discussion lifted from *Harvey* and from *Felts* involved the appellate court’s discussion of its scope of appellate review. The Courts were explaining that an action brought under the Act is “neither legal nor equitable, but is determined by the nature of the underlying issue.” *Felts*, 303 S.C. at 356, 400 S.E.2d at 782. That is, a declaratory judgment action is simply that, an action to declare rights, and whether the action is legal or equitable depends on the nature of the underlying issue and the main purpose of the complaint. *See Estate of Revis v. Revis*, 326 S.C. 470, 476, 484 S.E.2d 112, 115 (Ct. App. 1997) (“To make this determination the court looks to the main purpose of the action as determined by the complaint.”).

Here, the main purpose of the complaint is the determination of the ownership of property affixed to a common area. This is akin to an action at law to determine title to real property. *Cf. Lowcountry Open Land Trust v. State*, 347 S.C. 96, 101, 552 S.E.2d 778, 781 (Ct. App. 2001) (where main purpose of complaint concerns determination of

title to real property, it is an action at law). That purpose did not change where the claims for adverse possession or prescriptive easement failed.

Defendants also point to cases from other jurisdictions in support of the argument that “success on a declaratory judgment action is necessarily dependent on success of an underlying claim.” (App. Br. pp. 11-12). These cases, however, are meaningfully distinct from this case, and do not control the procedure in South Carolina. *See Becker v. Kroll*, 340 F. Supp.2d 1230 (D. Utah 2004), *aff’d in part and rev’d in part*, 494 F.3d 904 (10 th Cir. 2007) (district court did not describe the nature of the declaratory relief, just that plaintiff brought a claim for “declaratory judgment” and stated, without citation to authority, the language quoted in the brief; the Tenth Circuit Court of Appeals reversed without addressing this portion of the district court’s order); *Days Inn Worldwide, Inc. v. Sai Baba, Inc.*, 300 F. Supp.2d 583 (N.D. Ohio 2004) (noting defendants failed to link their counterclaim for declaratory judgment to an underlying substantive claim for relief, without citation to any authority for the specific rule; the case relied upon *Int’l Ass’n of Machinists and Aerospace Workers v. Tennessee Valley Authority*, 108 F.3d 658, 668 (6th Cir.1997) that held a declaratory judgment action is barred if the underlying claim is time-barred by the statute of limitations); *Economic Opportunity Com’n of Nassau County, Inc. v. County of Nassau*, 106 F. Supp.2d 433 (E.D. N.Y. 2000) (the federal Declaratory Judgment Act, 28 U.S.C. § 2201, merely provides a remedy where none previously existed, and does not supply an independent cause of action; a court may only enter a declaratory judgment in favor of a party who has a substantive claim of right to such relief; district court stated it was “at a loss to discern the underlying substantive

claim alleged by the Plaintiffs in the particular causes of action); *Matos v. First Nat. Bank*, 27 Mass. L. Rptr., 2010 WL 3327725, slip at 4 (Mass. Super. 2010) (in a memorandum opinion the superior court of Massachusetts stated, without citation to authority, that the “Plaintiff has requested that this court invalidate Defendant Mokedem’s claim to legal title to the property. However, this claim is dependent on the success of the Plaintiff’s claims under Chapter 93A and Chapter 183C. Due to the failure of the Plaintiffs previous claims, the claim must also fail”; the Chapter 93A claim failed due to the expiration of the applicable statute of limitations, and the Chapter 183C claim failed due to Plaintiff’s contrary admissions on a tax return, that is, under a rule akin to judicial estoppel); *Repwest Ins. Co. v. Praetorian Ins. Co.*, 890 F. Supp.2d 1168 (D. Ariz. 2012) (court noted plaintiff sought “a declaration that [defendant’s] conduct constituted a breach of contract that existed between [plaintiff and defendant]” under Arizona’s reinsurance statute governing brokers, and dismissing the claim for declaratory relief because the court had already dismissed plaintiff’s only cause of action against defendant for breach of contract).

As can be seen, none of these cases inform the Court on how to apply the South Carolina Declaratory Judgment Act or Rule 57. Each case is limited to the distinct facts and none of them arise under a procedure akin to the Act or South Carolina’s Rule.

The Court should therefore reject Defendants’ argument that the Master in Equity had no authority to enter a declaratory judgment.

(B) The Purpose of the Declaratory Judgment Act is Served by the Order

Defendants contend that because Cashman alleged an existing violation of rights by the placement of the lock on the gate, a declaratory judgment was not proper and should not have been issued. (App. Br. pp. 12-14). The Court should not be persuaded by this argument.

Defendants rely principally on *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004). Defendants point to the language that the “basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship.” (App. Br. Pp. 12-13). Defendants contend this language precludes a court from entering a declaratory judgment where there is an allegation that rights have already been violated. The Court should not adopt this view.

First, Defendants cite to no authority that says that a declaratory judgment action is available *only* when other rights have not been invaded. This is because the Act permits a declaratory judgment action “whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20 (1976).

Second, the conclusion Defendants suggest does not flow from the premise. That is, simply because a plaintiff does not *need* to wait for a breach of an existing rights does not mean the plaintiff may not bring a declaratory judgment action where that breach has

already occurred. Cases are legion where a party brought an action for declaratory judgment *after* the party has suffered some violation of rights. *See, e.g., Campbell v. Robinson*, 398 S.C. 12, 726 S.E.2d 221 (Ct. App. 2012) (Court of Appeals reversed and remanded plaintiff's actions for declaratory judgment and claim and delivery in a dispute over ownership of an engagement ring after the engagement was called off); *Leggett v. Smith*, 386 S.C. 63, 686 S.E.2d 699 (Ct. App. 2009) (claim for declaratory judgment as to insurance coverage permitted to proceed while underlying tort claim stayed; plaintiff's rights had already been violated); *Stecker v. TALX Corp.*, 384 S.C. 224, 681 S.E.2d 890 (Ct. App. 2009) (plaintiff permitted to bring declaratory judgment action for interpretation of an agreement following assertion of indemnification rights by the defendant). In fact, any declaratory judgment action regarding the existence of coverage for a claim would necessarily occur *after* the party seeking coverage has suffered a violation of rights.

The Court should reject this argument and find declaratory relief was appropriate.

(C) The Master Did Not Breach any rules requiring dismissal

Defendants contend that the Master in equity "breached the general rule that declaratory judgment actions should be dismissed if the issues can be adjudicated in a pending action." (App. Br. pp. 14-15). This Court should reject this argument.

Defendants rely primarily upon *Wessinger v. Rauch*, 288 S.C. 157, 341 S.E.2d 643 (Ct. App. 1986). That case, however, is distinguishable from this case in a meaningful way.

In *Wessinger*, defendant was the plaintiff in a prior lawsuit against Wessinger seeking an order establishing plaintiff's title to real property. The jury found against plaintiff. She then brought a second action against the same parties, seeking the same relief, and claimed the ability to do so under statutory law. Wessinger moved for summary judgment on a number of grounds, including a claim that the statute upon which plaintiff relied was unconstitutional. The trial judge denied the motion and allowed plaintiff to relitigate the question of her title to the property. Wessinger then brought a separate action against plaintiff, seeking a declaratory judgment that the statute upon which plaintiff relied was unconstitutional. The trial court dismissed the action for declaratory judgment on the ground it was barred by res judicata because the issue presented was the same as had been adjudicated by the prior denial of summary judgment in the pending action between the same parties. Wessinger appealed the second order.

This Court affirmed. First, the Court held res judicata did not apply because the denial of summary judgment in the prior action was not a final determination. However, the Court affirmed on an additional sustaining ground, that is, "a declaratory judgment action is not a substitute for a new trial or an appeal, nor can it operate to supersede former adjudications or proceedings already pending." 288 S.C. at 160, 341 S.E.2d at 644. The Court stated:

As a general rule, courts will not entertain an action for declaratory judgment if there is pending, at the time the action is commenced, another action between the same parties in which the same issues presented in the action for declaratory judgment can be adjudicated. *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 323 S.E.2d 294 (1984). Cf. *Williams Furniture Corp. v. Southern Coating & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949) (court may refuse to render declaratory judgment where the remedy

is invoked to try issues or determine the validity of defenses in pending cases).

The reason for this rule is obvious. A subsequent case deciding an issue in a prior case would be a classic example of a tail wagging a dog.

The action by [plaintiff] was pending at the time the Wessingers, Swain and Koon commenced their action for declaratory judgment. The issues presented by the action for declaratory judgment can be adjudicated in the pending action by [plaintiff] .

We hold the action for declaratory judgment should have been dismissed for these reasons.

288 S.C. at 160, 341 S.E.2d at 644-645. Thus, it was the existence of another pending action that drove the decision to dismiss the declaratory judgment action. *See also Medical University of South Carolina v. Taylor*, 294 S.C. 99, 362 S.E.2d 881 (Ct. App. 1987) (describing the dispositive issue as whether the circuit court erred in granting MUSC a declaratory judgment and injunctive relief where there were pending administrative proceedings to which Taylor and MUSC were parties and in which the same identical issues involved in the instant action could have been adjudicated; Court reversed refusal to dismiss declaratory judgment action because the other action was pending and the remedy in that other action would be more appropriate under the circumstances).

Here, there was no other action pending between the same parties involving the identical issues being adjudicated in the declaratory judgment action. Defendants realize this, but contends this rule should apply where claims for other relief are brought in the same action as the claim for declaratory judgment. This is simply not the law and, as noted above, litigants often seek declaratory relief along with claims for damages or

claims for injunctive relief. This is a settled rule in South Carolina, and this Court should not expand the rule of *Wessinger* to multiple claims brought in one action.

Accordingly, the Court should affirm the Master's decision to grant the declaratory relief in this case.

II. The Master in Equity's Findings of Fact and Conclusions of Law Are Supported by the Evidence

Defendants challenge several factual findings in the order, claiming there is no evidence to support those findings. This Court should affirm.

(A, B) There Is Clear and Convincing Evidence to Support the Findings That There Has Been a Consistent and Cooperative Pattern and Practice of Use and Ownership of All Three Docks for Eighty (80) Years and That the Cashmans Had the Substantial Belief That They Had the Right to Use All Three Docks for Eighty (80) Years

Contrary to Defendants' contention in the Brief, there is abundant evidence to support the Master's finding that the parties had cooperatively used the common area and Docks 1, 2, and 3 to access the water for over eighty (80) years. (R. p. 14, ¶ 6; p. 17, ¶ 16). There is also sufficient evidence to support the Master's conclusion that the Cashmans "demonstrated by clear and convincing evidence a substantial belief that Cashmans had the right to use the aforementioned docks to access the River and that their use and enjoyment continued uninterrupted for at least eighty (80) years." (R. p. 18, ¶ 4).

Eugene Cashman testified the family used and enjoyed Dock 3 from the date it was built (1961-1962) until 2005. (R. p. 95). He testified to their use dating back to the 1920s. (R. pp. 95-104; R. p. 626). When Dock 3 was completed the Cashman family constructed a floating dock for which they obtained a permit in the 1970s. (R. pp. 92-94,

156-157). The Cashman family provided electricity from the late 1970s or early 1980s and water from the 1970s, and provided maintenance and insurance. (R. pp. 101-105, 108, 112-113; R. p. 459). He also directly testified the relationship and cooperation had gone on for over eighty years. (R. p. 545, Dep. p. 59, ll. 14-23).

Betty Cashman Davis also testified to the family's continued use and enjoyment of all three piers. (R. pp. 180-184). She stated that from 1961 until 2004 the Cashmans spent Christmas, Thanksgiving and summer vacations at the Oyster Street home, and they used the pier on those occasions. (R. p. 181). The Cashmans replaced two ramps and two or three floating docks since 1961. (R. p. 184).

Diane Reynolds testified she had been using the dock with permission from the Cashmans, Lightseys and Carter families since 1975, and she observed the Cashmans using the dock during that time. (R. pp. 171-174).

Even Norris Laffitte acknowledged that at the times he visited the property from 1965 to 1972 and 1983 through 1998, the Cashman family frequently used the dock. (R. p. 468, Dep. p. 23, l. 22 -p. 24, l. 9).

Documents and photographs also support the Master's finding. This includes correspondence from the Corps of Engineers and letter regarding replacing the pier. (R. pp. 379-406; Supp. R. p. 30). The repair documents also demonstrate the Cashmans family continued to use and maintain the pier. (R. p. 580). The minutes from the Lightsey Family meeting of October 27, 2004, refers to the Cashman floating dock. (R. p. 428). The minutes from the March 2005 meeting note for the first time that the Lightsey family wanted exclusive use. (R. p. 442).

This evidence is sufficient to support the Master's findings that the parties had a cooperative and consistent pattern and practice of joint use and the conclusion that the Cashmans had a substantial belief that they had the right to use all three docks.

(C) There Is Evidence to Support the Finding That All of the Parties Used Dock 3 Without Permission from Each Other

Defendants point to evidence they contend belies the Master's finding that the parties used Dock 3 without seeking permission from each other. (App. Br. pp. 21-30). This argument should not be persuasive.

The Master found that the Cashmans built the floating dock onto Dock 3 in 1961 "without a permit and without permission from the Lightseys." (R. p. 15, ¶ 11). This finding is supported by the trial testimony of Eugene Cashman, who said he never asked permission from the Lightseys to use Dock No. 3 or the floating docks on either side of Dock No. 3. (R. p. 94). Eugene also did not call to ask permission to do certain things. (R. p. 158). Mr. Laffitte also stated he was unaware of the Cashmans ever asking permission to use the dock. (R. p. 472, Dep. p. 39, ll. 18-24; R. p. 475, Dep. p. 49, ll. 2-9).

The evidence demonstrates that these parties used all three docks in cooperation and without seeking each other's permission. Although there may be evidence of permissive use or cooperation to obtain permits, the overwhelming evidence is that both parties were involved in the construction of Dock 3, both parties made improvements and repairs to the pier, ramps and the floating docks, and all parties had free access to the Dock until the Defendants locked the gate.

Accordingly, the Court should uphold the Mater's finding that there is evidence

that the parties used Dock 3 without permission from each other.

III. The Master in Equity Did Not Make Any Improper Holdings *ex Mero Motu*

Defendants argue the Master erred in making certain rulings *ex mero motu*. (App. Br. pp. 30-31). The Court should reject these arguments.

(A) The Master Appropriately Addressed the Ownership and Access to the Land upon Which the Dock Is Attached

The Master found that the land to which the base of the pier was attached was “common property for the benefit of all Brighton Beach Subdivision property owners to access the May River (‘River’).” (R. p. 14, ¶ 7). The Master added that the common right to access the River is granted to both parties through prior deeds, and that the parties acknowledge that the highland portion of the dock adjoins common property. (R. p. 14, ¶ 7). Defendants contend these findings are in error because the issue of the ownership of the property at the base of the pier was not raised in the pleadings. (App. Br. pp. 30-31). The Court should affirm.

First, while Defendants contend it was error for the Master to make these findings, Defendants do not assert any prejudice from any error. *Cumbe v. Cumbe*, 245 S.C. 107, 139 S.E.2d 477 (1964) (burden is on appellant not only to show error, but resulting prejudice).

Second, at the hearing, the Master stated, “Clarify something for me and I think you both might have said the same thing in opening; the real estate that this dock is affixed to is not owned by either party, is that right? It is for a common area in the neighborhood, is that right or is that an issue?” (R. p. 87). Neither party objected to the

Master's comments but both attempted to answer the question. (R. pp. 87-88).

Third, this finding makes no difference to the issues that are on appeal. See *Jennings v. Jennings*, 401 S.C. 1, 6, 736 S.E.2d 242, 244 (2012) (“[W]hatever doesn’t make any difference, doesn’t matter.”).

Accordingly, the Court should reject Defendants’ argument that this finding is in error.

(B) The Master Appropriately Addressed Whether the Defendants Were Prevented by *Laches* from Seeking Reimbursement from the Cashmans for Expenses Related to the Docks Prior to the Filing of the Lawsuit

Defendants contend the Master erroneously raised *laches* on his own, and that the record does not support such a ruling. (App. Br. pp. 31-32). The Court should affirm.

At the hearing on costs, the Master stated, “my thinking on that is there is probably a *laches* issue on contribution going back.” (R. pp. 283-248). The Master also noted that Defendants did not plead in the alternative for any contribution towards costs. (R. pp. 301-303, 310-311).

In the subsequent order, the Master found that although the majority of costs over the years have been borne by the Defendants, they never requested contribution from the Cashmans for these expenses. (R. p. 17, ¶ 15). The Master concluded the parties were jointly responsible for the expenses from the date the Complaint was filed. (R. p. 18, ¶ 8; p. 19, ¶¶ 5-10). The Master subsequently issued an order that the Cashmans pay the Defendants \$462.01 reflecting one-half of the cost of maintenance and taxes from May 29, 2009. (Supp. R. p. 1).

Mr. Cashman testified that Defendants never asked anyone in the Cashman family for money associated with repairs and improvements made to the dock or repairs to the gazebo. (R. p. 139). This included repairs to the pilings and replacement of the main pier. (R. pp. 139-140; R. p. 420). In his deposition, Mr. Cashman stated that Lightsey Brothers built Dock 3 and refused an offer from Mr. Cashman's father to pay half. (R. p. 534, Dep. p. 11, ll. 6-10; R. p. 537, Dep. p. 21, ll. 17-22; R. p. 537, Dep. p. 22, l. 19 - p. 23, l. 16).

As the Supreme Court recently stated, the equitable defense of laches follows the equitable maxim: "Equity aids the vigilant, not those who slumber on their rights." *Eldridge v. Eldridge*, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012), citing *Hemingway v. Mention*, 228 S.C. 211, 89 S.E.2d 369 (1955). Laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Eldridge*, citing *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "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." *Eldridge*, 398 S.C. at 121-122, 728 S.E.2d at 28, citing *Chambers of S.C., Inc. v. County Council for Lee Cty.*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Thus, the predicate for laches is an unreasonable and unexplained delay. *Eldridge*.

Defendants contend that there's no unreasonable and unexplained delay because they always believed they owned Dock 3. (App. Br. p. 32). The Court should not be persuaded by this argument.

To begin with, there is no challenge to the Master's holding that the Defendants never requested contribution for these expenses. Further, Defendants never requested contribution in the alternative in their responsive pleadings. In addition, there is abundant evidence that the Cashmans expended sums to maintain and improve the pier, and to replace the floating docks and the ramps, without contribution from the Defendants.

Under these circumstances, the Court should affirm the Master's decision to limit the recovery of past costs to the date of filing of the Complaint.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

Respectfully Submitted,



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February 3, 2014

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-2573
Appellant Case No.: 2012-213579

Cashman Properties, LLC, ... Respondent,

v.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust Under Will of
E. Oswald Lightsey dated August 8, 1958, and codicil dated
March 23, 1976, for the Benefit of Lillian Lightsey Drawdy;
and the Trust Under Will of E. Oswald Lightsey for the Benefit
of Claudia Lightsey Ware, ... Appellants.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the *Brief of Respondent* complies
with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme
Court Order regarding personal data identifiers.

/Signature page attached

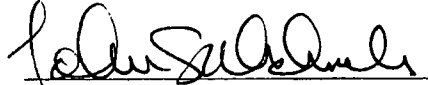
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Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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FEB 04 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge for Beaufort County
Trial Court Case No.: 2009-CP-07-02573

Appellate Case No.: 2012-213579

CASHMAN PROPERTIES, LLC Respondent

-vs.-

WNL PROPERTIES, LLC; E. OSWALD LIGHTSEY TRUST f/b/o LOUISE
LIGHTSEY BAUGHMAN; THE TRUST UNDER WILL OF E. OSWALD LIGHTSEY
DATED AUGUST 8, 1958, AND CODICIL DATED March 23, 1976, FOR THE
BENEFIT OF LILLIAN LIGHTSEY DRAWDY; AND THE TRUST UNDER THE
WILL OF E. OSWALD LIGHTSEY FOR THE BENEFIT OF CLAUDIA LIGHTSEY
WARE Appellants

FINAL REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Table of Authorities	ii
Reply Arguments	1
I. The trial court erred as a matter of law in declaring that Cashman Properties now has an ownership interest in Dock 3	1
II. Cases from other jurisdictions are applicable and relevant	5
III. Lightsey Properties has shown that the trial court's factual findings were manifestly in error	7
Conclusion	10
Attachment	11
Certificate of Counsel	15

TABLE OF AUTHORITIES

Cases

<u>Becker v. Kroll</u> , 340 F. Supp.2d 1230 (D. Utah 2004) aff'd in part, rev'd in part (on other grounds) and remanded)	6
<u>Days Inn Worldwide, Inc., v. Sai Baba</u> , 300 F. Supp.2d 583 (N.D. Ohio 2004)	6
<u>Economic Opportunity Comm'n of Nassau County, Inc., v. County of Nassau</u> , 106 F. Supp.2d 433 (E.D.N.Y 2000)	6
<u>Harvey v. S.C. Dep't of Corrections</u> , 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000)	3
<u>Matos v. First Nat. Bank</u> , 092681B, 2010 WL 3327725 (Mass. Super. June 16, 2010)	6
<u>Morrow v. Dyches</u> , 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997)	7, 8
<u>Paine Gayle Properties, LLC, v. CSX Transportation Inc.</u> , 400 S.C. 568, 584, 735 S.E.2d 528, 537 (Ct. App. 2012)	8
<u>Repwest Ins. Co. v. Praetorian Ins. Co.</u> , 890 F. Supp. 2d 1168, 1183-84 (D. Ariz. 2012)	6
<u>Young v. Nix</u> , 286 S.C. 134, 135, 332 S.E.2d 773, 774 (Ct.App. 1985)	9

Statutes

Ariz. Rev. Stat. § 12-1831	12
Mass. Gen. Laws. ch. 231A § 1	12
NY Civil Practice Law and Rules § 3001	12
Ohio Rev. Stat. § 2721.02(A)	11
S.C. Code Ann. § 15-53-20	11

Utah Code § 78B-6-401(1)	11
28 USC § 2201(a)	11

Other Authorities

Rule 57, ARCP	14
Rule 57, FRCP	13
Rule 57, MRCP	13
Rule 57, ORCP	13
Rule 57, SCRCP	5, 12
Rule 57, URCP	13

REPLY ARGUMENTS

I. The trial court erred as a matter of law in declaring that Cashman Properties now has an ownership interest in Dock 3.

The trial court concluded as a matter of law as follows:

ACCORDINGLY . . . I make the following conclusions of law:

....

3. Based on the totality of the circumstances, [Cashman Properties] demonstrated by clear and convincing evidence that Cashmans claimed a right to the aforementioned docks for approximately eighty (80) years.
4. Based on the totality of the circumstances, [Cashman Properties] demonstrated by clear and convincing evidence a substantial belief that Cashmans had the right to use the aforementioned docks to access the River [sic] and that their use and enjoyment continued uninterrupted for at least eighty (80) years.
5. [Cashman Properties and Lightsey Trusts] are co-owners as tenants in common of the entire pier and pierhead;[sic]
6. There has been no effective ouster. (R. pp. 4-11).

These conclusions, namely (1) Cashman Properties claimed a right to the docks for 80 years, (2) Cashman Properties had a substantial belief that it had the right to use the docks for 80 years, and (3) Cashman Properties had uninterrupted use of the docks for at 80 years, do not support a finding of ownership as a matter of law. Claiming a right to use property and holding a belief that you have a right to use property are only relevant to a claim for adverse possession or prescriptive easement. The trial court found no prescriptive easement, and Cashman Properties does not appeal that ruling. The adverse possession claim was withdrawn by Cashman Properties. (R. pp. 215-218, 233).

Therefore, use under a claim of right for any period of time is simply irrelevant and certainly does not equate to ownership.

Ownership of a property (real or personal) can be obtained in several ways:

- Construction/Creation: A person can build or create something and thus own it. In this case, the undisputed evidence establishes that the Lightsey family built Dock 3. Eugene Cashman, Jr., testified that the Lightsey family built Dock 3 and that he did not have any reason to believe the Lightsey family did not use its money to do so. (R. p. 125).

- Inheritance/Bequest: A person can inherit an ownership interest in property. However, Cashman Properties never made such an argument in this case.

- Gift: A person can be given an ownership interest. Cashman Properties did not allege, argue or offer evidence to support a gift.

- Adverse Possession: A person can obtain an ownership interest through adverse possession. Cashman Properties withdrew its adverse possession claim.

- Purchase: A person can buy an ownership interest in property. However, Cashman Properties never alleged, argued or offered evidence to support that it purchased an ownership interest.¹

- Resulting Trust: A resulting trust can be found to effectuate the intention of the parties to a transaction. The trial court found no resulting trust, and Cashman Properties does not appeal that ruling.

Despite the above, the trial court declared that Cashman Properties was a co-owner of the dock based on the "totality of the circumstances," even though there is no

¹ Cashman Properties did purchase a small float and attached it to the side of Dock 3 with the written permission of Lightsey Trust. (R. p. 385). However the float washed away by no later than 2004, five (5) years before this suit was filed.

substantive legal theory to support such a finding. A review of the record reveals that the trial court did not cite a single case to support his declaration of co-ownership. The only statute cited was the Uniform Declaratory Judgment Act generally. However, “[t]he Uniform Declaratory Judgments Act does not create substantive rights or duties,” and instead authorizes an action to “establish a party’s entitlement to a pre-existing right.” Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000) quoting Felts v. Richland County, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989) aff’d 303 S.C. 354, 400 S.E.2d 781 (1991). Therefore, the trial court’s declaration that Cashman Properties was a co-owner of Dock 3 was in error.

Allowing the trial court’s order to stand would create significant confusion within declaratory judgment law and turn the Uniform Declaratory Act into a panacea. For example, with respect to this case, future litigants would be faced with many questions:

1. What “circumstances” must the court evaluate to determine that, based upon the totality of the circumstances, one party is a co-owner of property?
2. How can a defendant know what circumstances it must be prepared to defend against?
3. Other than requesting that a court “declare” that one party is a co-owner, what must be alleged in a pleading to establish co-ownership?
4. What conduct must be proved to establish co-ownership?
5. Who must engage in the conduct, the named plaintiff, a relative of a plaintiff, a relative’s children?

6. How long must the conduct have occurred? Five years? Six months? Seventy years?
7. How long can a party wait before seeking to establish a co-ownership interest? Twenty years? More than eighty years? Ten years?
8. How does a defendant defend against a requested declaration of co-ownership when the request is not tied to an underlying legal theory for which a defendant has notice? What defenses would defeat such a declaration?

Of course, these questions can only be answered by tying a requested declaration of ownership to a known legal principle or claim such as adverse possession, prescriptive easement, or resulting trust. However, when these claims fail, the court cannot simply say, "I still declare you are a co-owner."

Ownership must come from somewhere. There must be a legal or equitable theory, standard, test or hurdle to establish ownership. Otherwise, a court could simply declare that a party owns something *ex nihilo*. Both parties recognized this basic concept in their opening statements:

Counsel for Cashman Properties

"we filed a Complaint asking for a declaratory judgment as to who has rights to this dock and the floating dock. The legal theories that we have filed are prescriptive easements, resulting trust and adverse possession." (R. p. 80).

Counsel for Lightsey Trust

a "[d]eclaratory judgment is the same thing. I don't think there is any way the Court can allow or find that the Cashmans have any interest in this dock unless it -- those [rights] would have to flow through" a legal theory pled in the complaint. (R. pp. 82-83).

The fallacy of the trial court's ruling can also be seen by examining how affirming this ruling might affect other types of cases. For example, in a car wreck case, a court could simply declare that a defendant owed a plaintiff money, even though negligence was alleged in the complaint, but not proven. In a dispute over a contract, a court could declare that a defendant was liable to a plaintiff for consequential damages, even though plaintiff alleged in the complaint, but failed to prove, breach of contract. Or as occurred here, a court could simply declare that a party is a co-owner of something, despite the fact that plaintiff alleged and failed to prove adverse possession or resulting trust. This cannot be the law in South Carolina.

II. Cases from other jurisdictions are applicable and relevant.

Cashman Properties asserts that the cases cited by Appellants from other jurisdictions do not "inform the Court how to apply the South Carolina Declaratory Judge Act" and "none arise under a procedure akin to the Act or South Carolina's Rule." This contention is incorrect.

A comparison of the South Carolina Uniform Declaratory Judgment Act with the federal declaratory judgment statute and the declaratory judgment statutes and/or rules of Utah, Ohio, New York, Massachusetts, and Arizona, as included in the Attachment hereto, establishes that the declaratory judgment statutes are substantively identical. Further, Rule 57 of the Rules of Civil Procedures for these jurisdictions, which are also included in the Attachment hereto, are substantively identical to Rule 57, SCRCP. Since the statutes and rules of these other jurisdictions and of South Carolina are substantively identical, the cases cited by the Lightsey Trusts in their brief are not only informative but persuasive.

Other jurisdictions expressly recognize that success on a declaratory judgment action is necessarily dependent on success of an underlying legal theory/claim. See Becker v. Kroll, 340 F. Supp.2d 1230 (D. Utah 2004) *aff'd in part, rev'd in part (on other grounds) and remanded* (holding that "Plaintiff's causes of action for declaratory judgment and injunction are, of course, dependent on the success of the underlying claims"); Days Inn Worldwide, Inc., v. Sai Baba, 300 F. Supp.2d 583 (N.D. Ohio 2004) (holding that a "request for declaratory judgment must accompany the substantive claim for which declaratory judgment is sought" and the Defendants "failed to state a claim on which relief can be granted by failing to link their request for declaratory judgment to an underlying substantive claim for relief"); Economic Opportunity Comm'n of Nassau County, Inc., v. County of Nassau, 106 F. Supp.2d 433 (E.D.N.Y. 2000) (stating that "a court may only enter a declaratory judgment in favor of a party who has a substantive claim of right to such relief"); Matos v. First Nat. Bank, 092681B, 2010 WL 3327725 (Mass. Super. June 16, 2010) (finding that because plaintiff's declaratory judgment claim is "dependent on the success" of plaintiff's underlying claims, the "failure of the Plaintiff's previous claims" means that the declaratory judgment claim "must also fail."); Repwest Ins. Co. v. Praetorian Ins. Co., 890 F. Supp. 2d 1168, 1183-84 (D. Ariz. 2012) (finding that "[d]eclaratory judgment is a remedy that is dependent on Plaintiff's success on an underlying cause of action. Because the Court has dismissed Plaintiff's only cause of action against Defendant Aon, its claim for declaratory relief must also be dismissed."). Because the declaratory judgment law in other states is substantively identical to the law in South Carolina, the Court should find the cases persuasive.

The Court can and should end its analysis here and reverse the trial court's Order based on this error of law.

III. Lightsey Properties has shown that the trial court's factual findings were manifestly in error.

It is not necessary for Lightsey Trusts to show that the trial court's factual findings were in error because the trial court drew an improper legal conclusion from its factual findings. Nevertheless, Lightsey Trusts have shown that the trial court erred in finding that Cashman Properties used the docks for 80 years under a claim of right and that there was an 80 year pattern of joint use and ownership.

a) Use under a claim of right.

Eugene K. Cashman, Jr., and Betty Cashman Davis, based on their own testimony, could only have used Dock 3 as a matter of right from 1994 through 2005 (11 years), the time period they owned the Oyster Street property. (R. pp. 115-116 and 185; R. 544, Dep. p. 54, lines 7-13).

The Cashman children could have potentially attempted to "tack" their historical use onto the historical use of their father Eugene K. Cashman, Sr., who was their predecessor-in-interest. However, Eugene K. Cashman, Sr., did not testify at trial, and both Cashman children testified that it was their "understanding" that their father used the dock under a claim of right. (R. p. 111 and 183). This precise situation was addressed in Morrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997). There, this Court concluded that "the only evidence regarding Morrow's predecessor-in-interest was that Morrow 'thought' [his predecessor in interest] had a right-of-way across the property. This evidence is insufficient to establish that [the predecessor in interest] had a belief amounting to a claim of right." Id.

Just as in Morrow, simply because the Cashman children had an “understanding” their father used Dock 3 under a claim of right, this evidence is insufficient to establish that Mr. Cashman, Sr. had a belief amounting to a claim of right, especially since tacking requires proof of sufficient use for predecessors-in-interest as well. This failure of evidence is even more significant when you consider that although he is still alive, Mr. Cashman, Sr., was not called as a witness at trial.

Based on the above, the trial court erred when it found that Cashman Properties demonstrated by clear and convincing evidence that the Cashmans had the substantial belief that they had the right to use Docks 1, 2 and 3 for eighty (80) years.

b) Use was with permission.

The Lightsey family gave express written permission for the Cashman family to use Dock 3. “I, Oswald Lightsey, do hereby give permission to Eugene K. Cashman to attach a floating dock and ramp to dock as mentioned in above application for permit.” (R. p. 385). Importantly, Eugene Cashman, Jr. acknowledged that this document, drafted by his father and signed by a member of the Lightsey family, constituted his father requesting, and Oswald Lightsey granting, permission for Eugene Cashman Sr. to use Dock 3:

Q. Well Mr. Lightsey actually says he gives permission to Eugene K. Cashman. He is giving your father permission, right?

A. That’s correct.

(R. p. 118).

Importantly, permissive use can never ripen into an ownership interest. See Paine Gayle Properties, LLC, v. CSX Transportation Inc., 400 S.C. 568, 584, 735 S.E.2d 528,

537 (Ct. App. 2012) (finding that obtaining permission “stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription.”) (internal citations omitted); Young v. Nix, 286 S.C. 134, 135, 332 S.E.2d 773, 774 (Ct.App. 1985) (holding that “[w]here one enters land under permission . . . the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party.”). Accordingly, the trial court erred in finding Cashman Properties used Dock 3 without permission from Lightsey Trust.

c) *No cooperative pattern of ownership.*

The trial court’s finding that there was a consistent and cooperative pattern of ownership relating to all three docks for eighty years is not supported by the evidence. First, the evidence presented establishes that Cashman Properties was a permissive user of Dock 3. Second, Cashman Properties contended at trial that it was the owner of Dock 2. Betty Cashman Davis testified that her grandfather was the owner of Dock 2 because he built Dock 2. (R. pp. 180, 186-188). Significantly, she did not testify that Dock 2 was jointly owned by the Cashmans and the Lightseys. Third, the evidence established that in the 1940’s, the Lightsey family had its own dock and the Cashmans had a dock. Mr. Cashman, Jr., testified about photographs that showed the “Lightseys’ spare dock” and Dock 2. (R. p. 99; R. pp. 626-655). In 1946, Thomas O. Lawton, an original developer and owner of the Brighton Beach development, gave written permission to a Mr. Sanders to build the dock “any where [sic] to the right of the Lightsey dock will be satisfactory to me. Do not build it to the left of the Carter-Cashman dock.” (R. pp. 357-362). Thus, the

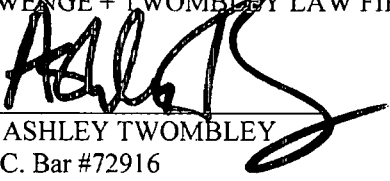
evidence presented does not support a finding of cooperative use and ownership for eighty years.

CONCLUSION

For the reasons contained herein and in Appellants' Brief, the Order of the trial court should be reversed.

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February 3, 2014

ATTACHMENT

Declaratory Judgment Statutes

- S.C. Code Ann. § 15-53-20: “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.”
- 28 USC § 2201(a): “[i]n a case of actual controversy within its jurisdiction . . . , any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”
- Utah Code § 78B-6-401(1): “[e]ach district court has the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction. An action or proceeding may not be open to objection on the ground that a declaratory judgment or decree is prayed for.”
- Ohio Rev. Stat. § 2721.02(A): “courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for under this chapter. The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree.”

- NY Civil Practice Law and Rules § 3001: “the supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.”
- Mass. Gen. Laws. ch. 231A § 1: Massachusetts courts “may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such. . . .”
- Ariz. Rev. Stat. § 12-1831: “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.”

Rules of Civil Procedure

- Rule 57, SCRCP: “[t]he procedure for obtaining a declaratory judgment pursuant to Code §§ 15-53-10 through 15-53-140, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner

provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.”

- Rule 57, FRCP: “[t]hese rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.”

- Rule 57, URCP: “[t]he procedure for obtaining a declaratory judgment pursuant to Utah Code Title 78B, Chapter 6, Part 4, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.”

- Rule 57, ORCP: “[t]he procedure for obtaining a declaratory judgment pursuant to Sections 2721.01 to 2721.15, inclusive, of the Revised Code, shall be in accordance with these rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may advance on the trial list the hearing of an action for a declaratory judgment.”

- Rule 57, MRCP: “[t]he procedure for obtaining a declaratory judgment pursuant to General Laws c231A shall be in accordance with these rules, and the right to trial by jury

may be demanded under the circumstances and in the manner provided in Rules 38 and 29. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.”

- Rule 57, ARCP: “[t]he procedure for obtaining a declaratory judgment shall be in accordance with these Rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rule 38 and subdivisions (a), (h), and (k) of Rule 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.”

CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombly, certifies that the herein Final Reply Brief of Appellants complies with Rule 211(b) the South Carolina Appellate Court Rules.

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THE STATE OF SOUTH CAROLINA
Beaufort County of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge for Beaufort County
Trial Court Case No.: 2009-CP-07-02573

Appellate Case No.: 2012-213579

CASHMAN PROPERTIES, LLC Respondent

-vs.-

WNL PROPERTIES, LLC; E. OSWALD LIGHTSEY TRUST f/b/o LOUISE
LIGHTSEY BAUGHMAN; THE TRUST UNDER WILL OF E. OSWALD LIGHTSEY
DATED AUGUST 8, 1958, AND CODICIL DATED MARCH 23, 1976, FOR THE
BENEFIT OF LILLIAN LIGHTSEY DRAWDY; AND THE TRUST UNDER THE
WILL OF E. OSWALD LIGHTSEY FOR THE BENEFIT OF CLAUDIA LIGHTSEY
WARE..... Appellants

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is a Paralegal with
TWENGE + TWOMBLEY LAW FIRM, Attorneys for Appellants, and that on the 3rd
day of February 2014, a true and accurate copy of the attached of Final Reply Brief of
Appellants was placed in an envelope with first class postage thereon prepaid through the
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BY:



Andrea Smith, Paralegal to
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Cashman Properties, LLC, Respondent,

v.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust under Will of E.
Oswald Lightsey dated August 8, 1958, and Codicil
dated March 23, 1976, for the Benefit of Lillian Lightsey
Drawdy; and the Trust Under Will of E. Oswald Lightsey
for the Benefit of Claudia Lightsey Ware, Appellants.

Appellate Case No. 2012-213579

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity and Special
Circuit Court Judge

Unpublished Opinion No. 2014-UP-430
Heard October 8, 2014 – Filed November 26, 2014

AFFIRMED

James Ashley Twombly, of Twenge & Twombly,
LLC, of Beaufort, for Appellants.

John S. Nichols, of Bluestein Nichols Thompson &
Delgado, LLC, of Columbia; and James P. Scheider, Jr.,

Roberts Vaux, and Mark S. Berglind, all of Vaux & Marscher, PA, of Bluffton, for Respondent.

CURETON, A.J.: In this declaratory judgment action filed by Cashman Properties, LLC (the Cashmans) against WNL Properties, LLC, E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman, the Trust under Will of E. Oswald Lightsey dated August 8, 1958, and Codicil dated March 23, 1976, for the Benefit of Lillian Lightsey Drawdy, and the Trust Under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware (collectively the Lightseys),¹ the Lightseys appeal the trial court's decision declaring the Cashmans and the Lightseys were joint owners of a pier. The Lightseys argue the trial court erred in: (1) granting a declaratory judgment to the Cashmans; (2) making findings of fact and conclusions of law that were not supported by the evidence or South Carolina case law; and (3) making *ex mero motu* findings. We affirm.

FACTS

For nearly eighty years, the Cashmans and the Lightseys owned neighboring plots of land on Oyster Street in Beaufort County, South Carolina. The two properties do not abut May River (the river); instead, they are located across Oyster Street from the river. In the early 1900s, with the Lightseys' assistance, the Cashmans built a pier (Pier 1) on the commonly-owned neighborhood property (common property) across Oyster Street abutting the river. Pier 1 was affixed to the common property and extended out into the river. In 1946, after a storm destroyed Pier 1, the Cashmans constructed a second pier (Pier 2) in the same vicinity, replacing Pier 1. The Lightseys also assisted with constructing Pier 2, and both parties used the two piers. After a storm destroyed Pier 2, the Lightseys constructed a new pier (Pier 3) in the same vicinity as Piers 1 and 2, replacing Pier 2. The parties agreed the Cashmans constructed, maintained, and regularly used a floating dock on the east side of Pier 3's pier head. In 2005, after a storm destroyed the floating dock, the Cashmans engaged a construction firm to replace it. However, the Lightseys had placed a lock on Pier 3's entry gate and notified the Cashmans that they were no longer allowed to use Pier 3.

¹ Although corporate in name, the litigants are descendants of the Cashman and Lightsey families.

In 2009, the Cashmans brought a declaratory judgment action against the Lightseys seeking a determination that the families were joint owners of Pier 3. The Cashmans also sought injunctive relief, alleging prescriptive easement, resulting trust, and adverse possession. The trial court issued a declaratory judgment, finding the parties were tenants in common with respect to Pier 3, ordering the Lightseys to unlock the gate on Pier 3, and requiring the parties to equally split the expenses directly related to Pier 3 that the Lightseys incurred since the date of filing and all costs for future maintenance and upkeep. The trial court found laches barred the Lightseys from recovering costs paid for constructing and maintaining Pier 3 prior to the date of filing. The trial court stated the supplemental hearing order determining costs would be considered the final order for appeal purposes. Prior to the final order, the Cashmans withdrew their adverse possession claim and the trial court denied the Cashmans' claims for prescriptive easement and resulting trust. Following a costs hearing, the trial court ordered the Cashmans pay the Lightseys \$214.18 for half of all maintenance expenses and \$247.83 for half of the property taxes the Lightseys paid since the filing of the complaint. This appeal followed.

STANDARD OF REVIEW

"A suit for declaratory judgment may be legal or equitable, and is characterized as such by the nature of the underlying issue outlined in the complaint." *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 101, 552 S.E.2d 778, 781 (Ct. App. 2001). We must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of relief sought to determine whether the claim is legal or equitable. *Gordon v. Drews*, 358 S.C. 598, 604, 595 S.E.2d 864, 867 (Ct. App. 2004).

Here, the pleadings and evidence indicate the Cashmans' primary purpose in asserting their claims was to require the Lightseys to remove the lock from Pier 3 to enable the Cashmans to continue to use the pier. Because their primary purpose in asserting these claims was to obtain injunctive relief, we find the action is equitable in nature. See *Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006) ("The character of an action as legal or equitable depends on the relief sought."). Therefore, on appeal of such a determination, this court may find facts in accordance with its own view of the preponderance of the evidence. *Felts v. Richland Cnty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial [court] is in the better position to assess the credibility of the witnesses." *Pinckney*

v. *Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). "Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial [court] committed error in his findings." *Id.* at 387-88, 544 S.E.2d at 623.

LAW/ANALYSIS

I. Declaratory Judgment

The Lightseys maintain the trial court erred in issuing a declaratory judgment. We disagree.

The Declaratory Judgment Act (the Act) provides: "Courts of record within their respective jurisdictions shall have power to declare rights, status[,] and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. §15-53-20 (2005). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the [Act]." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). "To state a cause of action under the [Act], a party must demonstrate a justiciable controversy." *Id.* "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.* (citations omitted). "The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights." *Id.* "The [Act] should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995).

The Lightseys argue the Cashmans are not entitled to a declaratory judgment because their claims for adverse possession, prescriptive easement, and resulting trust were withdrawn or dismissed. However, the Act provides trial courts are authorized to declare rights, status, and other legal relations whether any further relief is or could be claimed. § 15-53-20; *Sunset Cay*, 357 S.C. at 423, 593 S.E.2d at 466. We find the declaratory judgment issued here is in full conformity with the true intent and meaning of the Act. *Graham*, 319 S.C. at 71, 459 S.E.2d at 845.

Here, the presence of an actual controversy is sufficiently demonstrated by the pleadings. In their amended complaint, the Cashmans sought a declaratory judgment declaring that the parties are "by virtue of the facts set forth in the preceding paragraphs, the joint owners, as tenants in common, of [Pier 3] located

on and emanating from the [c]ommon [p]roperty." Further, the amended complaint states, "**WHEREFORE**, the Plaintiffs pray that this Honorable Court issue an Order finding the Plaintiffs and Defendants are joint owners of the fixture affixed to the [c]ommon [p]roperty as tenants in common and for such relief as this [c]ourt may find just and proper." Therefore, from the pleadings and proceedings below, it is abundantly clear that the parties were in an "actual controversy" over their respective rights to Pier 3. *See Sunset Cay*, 357 S.C. at 423, 593 S.E.2d at 466 ("To state a cause of action under the [Act], a party must demonstrate a justiciable controversy.").

During oral arguments before this court, the Lightseys contended the pleadings did not put them on notice that the Cashmans were claiming ownership of the pier as an appurtenant structure to commonly-owned property. We disagree. The complaint clearly asserts the pier is attached to a 1/10 acre strip of land, to which the Lightseys concede in their answer is common property. Further, we are not persuaded by the Lightseys' remaining arguments on this issue and find there is substantial evidence in the record to support the trial court's decision that the Lightseys and the Cashmans are tenants in common with respect to Pier 3. Finally, we observe that the Lightseys have not appealed the trial court's finding that there has been "no effective ouster" of the Cashmans as tenants in common. Accordingly, the trial court properly granted the declaratory judgment.

II. Trial Court's Findings of Fact

The Lightseys argue the evidence does not support the trial court's findings that the parties: (1) participated in a consistent and cooperative pattern and practice of use and ownership of Piers 1, 2, and 3 for eighty years; (2) had the substantial belief that they had the right to use the piers for eighty years; and (3) used Pier 3 without permission from each other. Inasmuch as we have concluded Pier 3 is an appurtenant structure to common property co-owned by the Cashmans and Lightseys, we conclude these findings, though unnecessary to sustain the trial court's decision, do not amount to reversible error because the Lightseys suffered no prejudice as a result of the findings. *See McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("Appellate courts recognize—or at least they should recognize—an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter.").

The Lightseys also argue the trial court erred in finding, *ex mero motu*: the base of Pier 3 is attached to land designated as common property; the common right of access to the river arises from deeds; neither party claims a right to land below the

mean high water mark; and a structure on common property and used by co-owners becomes common property. In view of the undisputed fact that the 1/10 acre tract of land to which the pier is attached abuts the river and documentary evidence presented to the trial court reflects the tract was dedicated to the common use of the parties and others in the subdivision, we find no reversible error.

Additionally, the Lightseys maintain the trial court erred in finding, *ex mero motu*, laches prevented the Lightseys from seeking reimbursement from the Cashmans for pier expenses incurred prior to the filing of the summons and complaint. We agree the trial court erred in applying laches as a defense to preclude the Lightseys from recovering costs incurred prior to the date of filing because that defense has no application here as it is an affirmative defense which must have been specifically pled by the Cashmans. See Rule 8(c), SCRPC; *Collins Entm't, Inc. v. White*, 363 S.C. 546, 563, 611 S.E.2d 262, 270 (Ct. App. 2005) ("[T]he failure to plead an affirmative defense is deemed a waiver of the right to assert it."). Nevertheless, while laches was not asserted, the Lightseys are not entitled to recover costs associated with building and maintaining Pier 3 prior to the date of filing of the summons and complaint because they never requested that relief from the trial court. See *Loftis v. Loftis*, 286 S.C. 12, 13, 331 S.E.2d 372, 373 (Ct. App. 1985) ("The appellate courts of this state have said many times that ordinarily a party may not receive relief not contemplated in his pleadings.").²

CONCLUSION

For the foregoing reasons, the trial court's order is

AFFIRMED.

WILLIAMS and GEATHERS, JJ., concur.

² We recognize that under the posture of this case, the Lightseys may have found it incongruous to claim complete ownership of the pier on the one hand, but request reimbursement for building and maintaining it on the other. Nevertheless, nothing precluded them from alleging alternatively that should the trial court find the Cashmans entitled to use the pier, they should be reimbursed for costs in constructing and maintaining the pier.

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge

Appellate Case No.: 2012-213579
Unpublished Opinion No. 2014-UP-430
Heard October 8, 2014—Filed November 26, 2014

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SC Court of Appeals

Cashman Properties, LLC

Respondent,

vs.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust under Will of E.
Oswald Lightsey dated August 8, 1958, and Codicil
dated March 23, 1976, for the Benefit of Lilian Lightsey
Drawdy; and the Trust Under Will of E. Oswald Lightsey
for the Benefit of Claudia Lightsey Ware

Appellants.

Appellants' Petition for Rehearing

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Pursuant to Rule 221(a), SCACR, the Lightseys¹ petition this Court for a rehearing, respectfully submitting that the Court has misapprehended the law and overlooked important evidence related to ownership in reaching its decision in this case.

The Amended Complaint sets forth three substantive legal theories upon which Plaintiff based its claim for a declaratory judgment that it was a co-owner of the Dock 3. Each of these theories was either decided in favor of the Lightseys or withdrawn by Plaintiff. That should have ended the case, and the trial court erred in failing to dismiss the case with prejudice upon the failure of Plaintiff to prevail on at least one of these theories. This must be the case because the Uniform Declaratory Judgments Act is not the source of any substantive ownership rights. Ownership rights must come from some other place in the law—e.g., adverse possession, resulting trust, constructive trust, gift, bequest. In the absence of a finding in favor of Plaintiff on at least one of these theories, a declaratory judgment was inappropriate, and a reversal of the lower court was required. Finally, the record does not contain any evidence that establishes co-ownership of the dock.

I. The Denial of Plaintiff's Substantive Legal Theories Required Judgment in Favor of the Lightseys.

The Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (2005), “is remedial and procedural in nature and does not create substantive rights and duties.” *Felts v. Richland Cnty.*, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989), *aff'd* 303 S.C. 354, 400 S.E.2d 781 (1991). *See also State ex rel. Edmisten v. Tucker*, 323 S.E.2d 294, 308 (1984) (“[T]he Act creates a new remedy, not a new source of legal rights and obligations.”). Rather,

¹ WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman; the Trust under Will of E. Oswald Lightsey dated August 8, 1958, and Codicil dated March 23, 1976, for the Benefit of Lilian Lightsey Drawdy; and the Trust Under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware.

the Act “authorizes an action to establish a party’s entitlement to a preexisting right.” *Harvey v. S.C. Dep’t of Corr.*, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 1999) (citing *Noisette v. Ismail*, 299 S.C. 243, 247 n.1, 384 S.E.2d 310, 312, n.1 (Ct. App. 1989), *rev’d in part by* 304 S.C. 56, 403 S.E.2d 122 (1991)). Thus, a court’s authority to issue a declaratory judgment must fall within the parameters of an established legal theory,² and the rights a court can declare in a declaratory judgment action must be found in some other place in the law.

In the present case, the only basis that could support a declaration that the Cashmans had ownership rights in Dock 3 were the three legal theories pled and argued by the Cashmans. The first is prescriptive easement, (*see* R. pp. 26-27), which was denied by the trial court. (R. p. 21 (“To the extent not stated, the Court denies Plaintiff’s claim for prescriptive easement.”)). The second is resulting trust (*see* R. pp. 27-28), which was also denied by the trial court. (R. pp. 316-17). The third is adverse possession (*see* R. pp. 29-30), which was withdrawn by Plaintiff and as to which the trial court concluded, “this is not an adverse possession case.” (R. pp. 215-218.)

² Success on a declaratory judgment action is necessarily dependent on success of an underlying claim. *See Becker v. Kroll*, 340 F. Supp. 2d 1230 (D. Utah 2004), *aff’d in part, rev’d in part by* 494 F.3d 904 (10th Cir. 2007) (observing that “Plaintiff’s causes of action for declaratory judgment and injunction are, of course, dependent on the success of the underlying claims”); *Days Inn Worldwide, Inc. v. Sai Baba*, 300 F. Supp. 2d 583 (N.D. Ohio 2004) (holding that a “request for declaratory judgment must accompany the substantive claim for which declaratory judgment is sought” and defendants “failed to state a claim on which relief can be granted by failing to link their request for declaratory judgment to an underlying substantive claim for relief”); *Econ. Opportunity Comm’n of Nassau Cnty., Inc. v. Cnty. of Nassau*, 106 F. Supp. 2d 433 (E.D.N.Y. 2000) (stating that “a court may only enter a declaratory judgment on favor of a party who has a substantive claim of right to such relief”); *Matos v. First Nat’l Bank*, No. 092681B, 2010 WL 3327725, at *4 (Mass. Super. June 16, 2010) (finding that because plaintiff’s declaratory judgment claim is “dependent on the success” of plaintiff’s underlying claims, the “failure of the Plaintiff’s previous claims” means that the declaratory judgment claim “must also fail”); *Repwest Ins. Co. v. Praetorian Ins. Co.*, 890 F. Supp. 2d 1168, 1183-84 (D. Ariz. 2012) (finding that “[d]eclaratory judgment is a remedy that is dependent on Plaintiff’s success on an underlying cause of action. Because the Court has dismissed Plaintiff’s only cause of action against Defendant Aon, its claim for declaratory relief must also be dismissed”).

Prescriptive easement, resulting trust, and adverse possession are the only substantive theories upon which the Cashmans contended they had ownership rights in, or gave them the right to use, Dock 3. In fact, during the Cashman's opening statement, counsel stated, "we filed a Complaint asking for a declaratory judgment as to who has rights to this dock and the floating dock. The legal theories that we have filed are prescriptive easements, resulting trust and adverse possession." (R. p. 80.) These were the theories the Cashmans argued, the Lightseys defended, and the trial court resolved in favor of the Lightseys. The Cashmans did not plead or argue any other method that could possibly result in co-ownership of a dock under South Carolina law. It was therefore error for the trial court to declare that the Cashmans had ownership rights in Dock 3 when the only theories that could result in ownership were either withdrawn or denied by the trial court. Because no ownership rights in Dock 3 were obtained by the Cashmans through prescriptive easement, resulting trust, or adverse possession, and further because the Cashmans did not plead or argue that they obtained an ownership interest in any other legally recognized way, it was error for this Court to affirm the decision of the trial court. This Court should grant the Petition for Rehearing and reverse the decision of the trial court.

II. An Appurtenant Structure to Commonly Owned Property is not Common Property Under South Carolina Law.

This Court's opinion affirming the trial court states that the Lightseys were not put on notice that the Cashmans "were claiming ownership of the pier as an appurtenant structure to commonly-owned property." *Cashman Props., LLC v. WNL Props., LLC*, No. 2014-UP-430, 2014 WL 6682469, at *3. This may or may not be correct. However, whether or not a pier is an appurtenant structure to commonly-owned property is irrelevant to determining ownership of the pier. If authority exists that allows a litigant to establish ownership of a pier by establishing

ownership of the land it emanates from, it was never advanced or argued by the Cashmans, and never relied upon by the trial court.

Significantly, even if South Carolina law did provide that an owner of real property also owns any appurtenant piers, the real property at issue here is not “co-owned by the Cashmans and Lightseys” as this Court incorrectly concluded. The property at issue is common property held in trust for the benefit of all Brighton Beach property owners. (R. pp. 46—55.) Several privately owned docks emanate from this property. (See R. pp. 127—129.) As the Cashmans’ counsel stated during opening statements, “[W]e do not contend that we own that property.” (R. p. 87.)

Because South Carolina law does not recognize that ownership of a pier can be established by showing ownership of the property it emanates from, and further because the property here is not co-owned by the Cashmans and the Lightseys, the Court should grant the Petition for Rehearing and reverse the decision of the trial court.

The Court should end its analysis here, grant the Petition for Rehearing, and reverse the decision of the trial court. An evaluation of the evidence as it may relate to the ownership of Dock 3 is not necessary. Nevertheless, the Lightseys can show that the evidence presented at trial does not support co-ownership of the pier.

III. This Court Erred in Finding that Plaintiff is a Tenant in Common with Respect to the Dock.

“At the outset of any action for a declaratory judgment it must be determined whether the pleadings state a cause of action.” *West v. West*, 263 S.C. 146, 148, 208 S.E.2d 530, 532 (1974); *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970) (same). This Court correctly observed that “[t]o state a cause of action under the [Act], a party must demonstrate a justiciable controversy.” *Cashman Props.*, 2014 WL at *2 (quoting *Sunset Cay, LLC v. City of Folly*

Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004)). While it is true that “the parties were in an ‘actual controversy’ over their respective rights to Pier 3[.]” *id.* at *3, the record is devoid of evidence establishing a legitimate claim to ownership by Plaintiff. Therefore, even if the declaratory judgment act was properly applied to this case, Plaintiff was not entitled to a declaration that it is a tenant in common because there is no evidence that establishes ownership in Plaintiff.

Despite the resolution of each of the substantive theories in favor of the Lightseys, this Court found that “the declaratory judgment issued [by the trial court] is in full conformity with the true intent and meaning of the Act[.]” because “the presence of an actual controversy is sufficiently demonstrated by the pleadings.” *Id.* Specifically, this Court found that “[i]n their amended complaint, the Cashmans sought a declaratory judgment declaring that the parties are ‘by virtue of the facts set forth in the preceding paragraphs, the joint owners, as tenants on common, of [Pier 3] located on and emanating from the [c]ommon [p]roperty.’” *Id.* According to the Court, “there is substantial evidence in the record to support the trial court’s decision that the Lightseys and the Cashmans are tenants in common with respect to Pier 3.” *Id.* at *3. Most significantly, neither the trial court nor this Court identified (a) what “substantial evidence” it was relying on, or (b) how the evidence supported a declaration that the Cashmans were “tenants in common with respect to Dock 3.” No amount of evidence can support a legal theory that is not recognized under South Carolina law. Nevertheless, the record overwhelmingly shows that no such evidence exists.

The facts set out in the Amended Complaint do not establish that the parties are joint owners, as tenants in common or otherwise, of Pier 3. Indeed, the only undisputed fact in the

Amended Complaint is that the Lightsey family constructed Dock 3. (R. p. 24 ¶ 19.) There are no facts that support Plaintiff's claim to be a tenant in common with respect to the dock

A. Permissive use of the dock by the Cashmans cannot establish ownership.

The evidence in this case overwhelmingly establishes that the Cashmans' use of Dock 3 was by permission of the Lightseys. Permissive use, even when of long duration, is by its very nature inconsistent with ownership and does not create ownership rights. "[U]se by express or implied permission or license, no matter how long continued, cannot ripen into" a prescriptive right "until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him." *Williamson v. Abbott*, 107 S.C. 397, 400-01, 93 S.E. 15, 16 (1917); *Young v. Nix*, 286 S.C. 134, 135, 332 S.E.2d 773, 774 (Ct. App. 1985) ("Where one enters land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party.") Indeed, as this Court recently observed, the asking and obtaining of permission "stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription." *Paine Gayle Props. LLC v. CSX Transp. Inc.*, 400 S.C. 568, 584, 735 S.E.2d 528, 537 (Ct. App. 2012) (quoting *Williamson*, 107 S.C. at 400-01, 93 S.E. at 16).

In the present case, the evidence establishes that the Lightseys, as owners, gave the Cashmans express written permission to use Dock 3. This was confirmed when in 1977, Eugene K. Cashman, Sr. ("Cashman Sr.") wrote a letter to the dock permitting authority stating that Dock 3 was "owned by Lightsey Brothers" and that he had "*permission to construct*" a floating dock on the side of Dock 3. (R. p. 385 (emphasis added).) When asked about this letter at trial, Cashman Sr.'s son, Eugene K. Cashman, Jr. ("Cashman Jr."), testified that it was a letter drafted

by his father, that the handwriting on the letter was that of his father, and that the letter was signed by his father. (R. p. 116; R. p. 542; Dep. p. 41, line 14-Dep. p.42, line 23.) The testimony further establishes that a member of the Lightsey family signed the following section of the document: "I, Oswald Lightsey, do hereby give *permission* to Eugene K. Cashman to attach a floating dock and ramp to dock as mentioned in above application for permit." (R. pp. 385-386 (emphasis added).) Cashman Jr. acknowledged that this document, drafted by his father and signed by a member of the Lightsey family, constituted his father requesting, and Oswald Lightsey granting, permission for Eugene Cashman Sr. to use Dock 3:

Q: And so in 1977 your father used the words that he had the permission of the Lightseys, right?

A: Yes, it was permission from the Lightseys to replace the floating dock that I previously testified to as-

Q: And Mr. Lightsey also used the word that he was giving permission to your father, Eugene K. Cashman, correct?

A: Yes, to the district engineer.

Q: Well Mr. Lightsey actually says he gives permission to Eugene K. Cashman. He is giving your father permission, right?

A: That's correct.

(R. p. 118.)

Further, Cashman Jr. testified that his family sought approval from the Lightsey family before adding a water line and an electrical line to the pier. (R. pp. 147-148; R. p. 538; Dep. p. 28, lines 2-11.) As Cashman Jr. stated in his deposition, his father "wouldn't have gone and just one day have [the Lightsey Family] come back and arrive and see lights on the dock." (R. p.

538, Dep. p. 28, lines 9-11.) Thus, the Lightseys gave express permission to the Cashmans to add and use a floating dock that was attached to Dock 3.³

In addition, the conduct of the parties over a long period of time is inconsistent with any purported ownership in the Cashmans. First, as noted above, before making any improvements or modifications to Dock 3, Cashman Sr. contacted the Lightsey family and made certain that he had the Lightsey family's approval. Cashman Jr. testified that Cashman Sr. sought the approval of the Lightsey family before adding a water line and an electrical line to Dock 3. (R. pp. 147-148; R. p. 538; Dep. p. 28, lines 2-11; R. p. 538, Dep. p. 28, lines 9-11.)

Second, Cashman Jr. testified that he allowed others to use Dock 3 only if there was no objection by the Lightseys, an action that is irreconcilable with ownership, yet consistent with permissive use. Specifically, Cashman Jr. testified that a neighbor, Diane Reynolds, asked him if she could use the Dock 3. Cashman, Jr. responded that she could use Dock 3 only "if there were no objections by the Lightseys." (R. p. 539, Dep. p.32, lines 15-18.)

Third, Cashman Jr. testified that no one from the Lightsey family ever asked his permission prior to modifying or repairing Dock 3. (R. pp. 140-141.) Significantly, modifications and repairs made by the Lightsey family included replacing twenty of the main pilings on Dock 3, and installing a new roof over the gazebo. (R. pp. 139-140.) Cashman Jr. also testified that no one from the Lightsey family asked the Cashman family for permission to add a sink to the pier. (R. p. 538, Dep. p. 27, lines 11-13.) On the other hand, Norris Laffitte, a member of the Lightsey family, ejected non-permissive users from Dock 3 without asking the

³ There was testimony relating to whether the U.S. Army Corps of Engineers had issued a permit to allow a floating dock to be attached to Dock 3. Cashman Jr. testified that the first floating dock did not have a permit from the U.S. Army Corps of Engineers. (R. p. 92, p. 168.) While this testimony established that the first floating dock on Dock 3 was built without a permit from the Army Corps of Engineers, neither it nor other evidence addresses whether the first floating dock was built with the permission of the Lightsey family.

Cashmans. Laffitte testified that he told a woman who claimed to have permission to be on Dock 3 to leave. (R. p. 472, Dep. p.38, line 18-Dep. p. 39, line 2.) Laffitte also testified that he installed and subsequently replaced the “No Trespassing” signs on Dock 3 without consulting the Cashmans. (R. p. 472, Dep. p.40, line 23-R. p. 473, Dep. p. 41, line 4.) Cashman Jr. also testified that no one from the Lightsey family asked his permission before placing a lock on the gate to Dock 3. (R. p. 140.)

Fourth, the conduct of the parties relating to the costs of repairing Dock 3 also supports the conclusion that the Lightseys were the sole owners. At trial, the Lightseys offered documentary evidence to support \$89,550.66 of expenses used to maintain and pay taxes associated with Dock 3. (R. pp. 599—624.) Laffitte testified that the Lightsey family took care of the pier, pierhead, gazebo, west side ramp, and west side floating dock, and that he had no knowledge of the Cashman family performing any repairs on the pier, pierhead, gazebo, west side ramp, or west side floating dock. (R. p. 474, Dep. p. 46, lines 3-9.) Further, Cashman Jr. testified that no one from the Lightsey family asked him to contribute to repairs such as piling replacements and a new roof on the gazebo for Dock 3. (R. p. 140.)

Despite maintaining a file specifically dedicated to Dock 3, and despite the fact that the file included receipts from 1974—1995, the Cashman family could not identify a *single receipt* relating to expenses incurred on the pier, pier head and gazebo. (R. pp. 580-597.) Specifically, Cashman Jr. testified regarding the following receipts as follows:

- the August 21, 1974 estimate and the April 11, 1977 estimate related solely to the floating dock. (R. p. 132; R. pp. 580-597);
- the May 25, 1977, document was for the floating dock only and did not involve any work on the pier. (R. p. 133; R. pp. 580-597);

- the June 18, 1980 receipt for \$12.22 was for unknown items. (R. pp. 133-134; R. pp. 580-597);
- receipts dated June 25, 1980, June 25, 1980, July 23, 1984, and July 26, 1984 for 2x8's and 2x4's for lumber of the size used on the floating dock and duct tape. (R. pp. 134-136; R. pp. 580-597);
- the July 29, 1980 receipt was for cleats, bolts and nuts for the floating dock. (R. p. 134; R. pp. 580-597);
- the receipts from June 27, 1980, July 24, 1984, July 25, 1984, July 31, 1984, July 7, 1984 and July 7, 1987 were exclusively for the floating dock. (R. pp. 134-137);
- the February 22, 1986 document, two of the three services listed were solely for the floating dock and no one knew if the other listed service was for the floating dock or the pier. (R. pp. 136-137; R. pp. 580-597);
- the June 9, 1995, receipt contained (1) charges unrelated to the dock such as putting new lights at the BBQ pit; (2) charges related exclusively to the floating dock such as installing a dock ladder and putting new rope on the floating dock; and (3) charges related to services to the floating dock. (R. pp. 137-138; R. pp. 580-597);

Cashman Jr. stated that these documents constituted all of the evidence of expenses incurred by the Cashman family related to the pier.

Q: Now you don't have any other documentary evidence, checks, receipts, invoices, work orders, anything of that nature to show that the Cashman family ever incurred any expenses associated with the pier, right?

A: Not in my possession, no.

Q: Well do you know if there's any that exist anywhere in anybody's possession?

A: Presently, no.

(R. p. 138.) It is telling that Cashman Jr. could not testify that any expenditures were for the pier, pierhead, or gazebo of Dock 3. Instead, all of the expenses incurred by the Cashman family were related to their small floating dock, which they were responsible for the maintaining until it washed away in 2004, almost 5 years before suit was filed in 2009. (R. p. 474, Dep. p. 46, lines 10-14.)

Cashman Jr. and Betty Cashman Davis testified that they and their children occasionally would nail down protruding nails, replace boards, and temporarily run water to Dock 3. However, these actions do not alter the fact that their use was permissive. (R. pp. 112, 162, 183.) Indeed, such actions by permissive users recognize the neighborly accommodation of the Lightsey family in allowing the Cashman family to use Dock 3 free of charge for more than fifty years.

Fifth, the evidence establishes that the Cashman family never paid any taxes associated with Dock 3. (R. pp. 123, 126-127; R. pp. 575-578.) Cashman Jr. testified that neither he nor his father nor his sister nor anyone associated with the Cashman family has ever paid any taxes associated with the pier, gazebo, and dock. (R. pp. 123, 126-127.) Instead, the Lightseys have paid all of the taxes associated with Dock 3 since 1986, the year that Beaufort County began taxing docks. (R. pp. 413, 415, 417-418; p. 424; pp. 451-452; pp. 456-457; pp. 575-578; pp. 657-659; pp. 661-662.)

Sixth, Cashman Jr.'s letter to Laffitte, dated March 28, 2005, also evidences that the Cashman family only had permissive use of the Lightsey family dock. Cashman Jr. voluntarily returned the key to Dock 3 without objection. Moreover, Cashman Jr. stated that if he needed to

make the Cashman families' use of Dock 3 a "business relationship" he was willing to do so. (R. pp. 448-449.) Cashman Jr. ended the letter by asking the Lightsey family to reconsider its decision regarding exclusive ownership of the pier. *Id.* The language used by Cashman Jr. in this letter is inconsistent with any ownership interest in the Cashmans, and is further evidence that their use of the pier was with the permission of the Lightseys.

Seventh, the Lightsey family acknowledged in writing that express permission had been given to the Cashman family to use Dock 3. The minutes of the Lightsey Trusts Jointly Owned Property Meeting of September 2004 (which were taken down before any dispute arose over Dock 3 and five years before this lawsuit was filed) state that "the Lightsey family has *allowed* the Cashman family" to use Dock 3. (R. p. 426 (emphasis added).)

Finally, on two separate occasions, Cashman Sr. verbally acknowledged that he was a permissive user of the Lightsey dock in two separate conversations with Will McMaster. McMaster is married to a Lightsey granddaughter, and has visited the Bluffton property as a guest. (R. pp. 235-238.) McMaster testified that Cashman Sr. told him that "the Lightseys had given the Cashmans permission to use that pier and that [Cashman Sr.] would like to get a document stating that they had permission in the past and would like to have permission in the future." When asked if Cashman Sr. "actually use[d] the word permission," McMaster responded, "Yes." (R. p. 236.) Regarding the second conversation, Mr. McMaster testified as follows:

The second conversation was very similar to the first conversation in that he was seeking a document that would establish that he had had permission, the Cashman family had permission to use the dock in the past and they wanted permission to use the dock in the future and during this conversation he said that I realize that we don't own the dock because it was built with Lightsey labor and material.

(R. p. 238.) This testimony is consistent with the Cashmans' own testimony and the other documentary evidence.

Under South Carolina law, a party's permissive use can never ripen into a prescriptive right unless there is a "distinct and positive assertion of a right hostile to the owner, and brought home to him." *Williamson*, 107 S.C. at 400-401, 93 S.E. at 16. In the present case, there is simply no evidence that the Cashmans engaged in conduct that would amount to a distinct and positive assertion of a right hostile to the Lightseys. Moreover, the Cashmans never pled or argued that the assertion of such a right took place, and even if they had, the trial court specifically found no prescriptive easement, and the Cashmans did not appeal that ruling. Indeed, Cashman Jr. testified that between 1994 and 2005, he never told anyone in the Lightsey family that he believed he had an ownership interest in Dock 3. (R. p. 151.)

The evidence overwhelmingly establishes that the Lightseys are the sole owners of Dock 3. The Cashmans failed to establish that their use of Dock 3 was anything other than with the express or implied permission of the Lightseys. Because permissive use can never ripen into an ownership interest, the Cashmans are not tenants in common of Dock 3, and there is no evidence in the record to suggest otherwise. In light of the overwhelming evidence overlooked by this Court supporting sole ownership by the Lightseys, this Court should reverse the trial court and remand the case for entry of judgment in favor of the Lightseys.

B. No other facts support a finding of joint ownership.

There are several legally recognized pathways in which an ownership interest in (or right to use) Dock 3 could have been acquired by the Cashmans from the Lightseys. The Cashmans chose to advance adverse possession, prescriptive easement, and resulting trust. These failed. There is no evidence to support other methods by which a transfer of an interest from the

Lightseys to the Cashmans. There is no evidence in the record that the Lightseys sold an ownership interest in Dock 3 to the Cashmans and the Cashmans did not allege that they purchased an ownership interest in Dock 3. (*See* R. pp. 23-30.) There is no evidence in the record that the Lightseys gave an ownership interest in Dock 3 to the Cashmans and the Cashmans did not allege that the Lightsey's gave them an ownership interest in Dock 3. (*See* R. pp. 1—21; 23—30.) There is no evidence in the record that the Cashmans inherited an ownership interest in Dock 3 from the Lightseys and the Cashmans did not allege that they inherited an ownership interest in Dock 3. *See id.* Finally, there is no evidence in the record that the Cashmans acquired an ownership interest in Dock 3 as a result of a constructive trust, and the Cashmans did not allege a constructive trust cause of action in their Amended Complaint. *Id.*

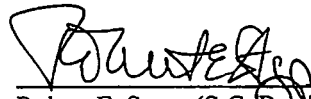
Neither the Amended Complaint nor the record intimates any of these theories as a basis for declaratory relief. In order to declare under the Declaratory Judgment Act that the Lightseys and the Cashmans jointly own Dock 3, there must exist a substantive legal basis to support that declaration. The record establishes that no such basis exists under a joint ownership theory or any of the above theories.

Conclusion

For the reasons set forth above, Appellants respectfully request this Court grant a rehearing in this matter or reconsider this matter and reverse the decision of the trial court.

[Signature page follows]

By:



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February 9, 2015

The South Carolina Court of Appeals

Cashman Properties, LLC, Respondent,

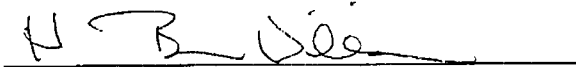
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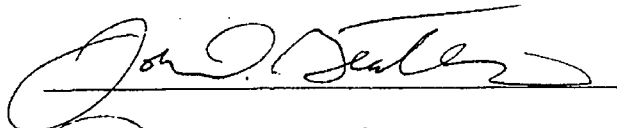
WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman; the Trust under Will of E. Oswald Lightsey dated August 8, 1958, and Codicil dated March 23, 1976, for the Benefit of Lillian Lightsey Drawdy; and the Trust Under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware, Appellants.

Appellate Case No. 2012-213579

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.

 J.

 J.

 A.J.

Columbia, South Carolina

FILED

3-10-15

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