

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Hon. S Jackson Kimball, III  
Master in Equity

Trial Court Case No. 2011-CP-46-03182  
Appellate Case No. 2014-000730

EARL DUKES, .....APPELLANT

vs.

KENNITH W. FARRELL, MARY C. FARRELL and  
MARTIN BROGDONOVICH, Defendants,

Of whom

KENNITH W. FARRELL and MARY C. FARRELL are the .....RESPONDENTS

AMENDED RECORD ON APPEAL

Other Counsel of Record:

John Martin Foster  
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Rock Hill, SC 29730  
803-324-8100  
Attorney for Respondents

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Halford Niemiec & Freeman, L.L.P.  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 (fax)

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STATE OF SOUTH CAROLINA ]

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK ]

SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]

Plaintiff, ]

v. ]

KENNITH W. FARRELL,  
MARY C. FARRELL, and  
MARTIN BOGDONOVITCH, ]

Defendants. ]

**ORDER**

(Rule 12(b)(6) S.C.R.C.P.)

Case No. 2011CP4603182

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CLERK OF COURT  
YORK COUNTY, SC

This matter came before me on December 8, 2011, upon Defendants' Motion to Dismiss pursuant to Rule 12(b)(6), S.C.R.C.P. The motion pertains to Plaintiff's First and Second causes of action. Representing the parties were: J. Cameron Halford for Plaintiff; and, John Martin Foster for Defendants. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

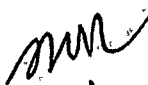
**STANDARD OF REVIEW**

When a pleading filed in an action fails "... to state facts sufficient to constitute a cause of action", it may be dismissed. (Rule 12(b)(6), SCRC.P.) The motion must be dealt with based solely on the allegations contained in the pleading. *FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct.App. 2002). In considering the motion, all allegations of the pleading, and all inferences reasonably deducible therefrom are deemed admitted. *Id.* "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

**DISCUSSION**

Based on the standard of review above, the following facts are deemed admitted for the purposes of ruling on this motion.

Plaintiff owns certain lots abutting Lake Wylie. Defendants own certain lots adjacent to Plaintiff's property and designated as "water access" lots. Defendants own piers and docks extending into Lake Wylie, but the piers and docks are attached to Plaintiff's property. Defendants use Plaintiff's property for "ingress and egress" to Lake Wylie.

  
b. 1



**A. First Cause of Action – Partition in Kind.**

Plaintiff's First Cause of Action in the Complaint, as set out in ¶ 9. of the general allegations, and ¶¶ 1. through 4. of the First Cause of Action, is characterized as an "action for partition in kind." The factual basis alleged in support of a partition is contained in ¶¶ 2. and 7. of the initial allegations. Specifically, Plaintiff alleges ownership of the land on or adjacent to which the Defendants maintain piers and docks to reach the waters of Lake Wylie. Plaintiff further alleges that such actions by Defendants interfere with his use of his own property.

"Partition" is defined as a cause of action for the division, between several persons, of property which belongs to them as co-owners, whether as tenants in common or joint tenants. 59A AM. JUR.2D *Partition* § 1 (2002). It is the "... division of real property held jointly or in common by two or more persons into individually owned interests." BLACK'S LAW DICTIONARY 1151 (8<sup>th</sup> Edition 2004). Concerning a claim for partition, our Supreme Court stated the following in *Cannon v. Lomax*, 29 S.C. 369, 7 S.E. 529 (1888):

But, as we understand it, partition is the right to a severance, when there is rightful unity not only of title but of possession. Unless the title of both parties is clear, equity cannot decree a partition. *Id.*, 7 S.E. at 530.

Under the facts alleged in the Complaint, there is no co-ownership, tenancy-in-common, joint tenancy, or unity of title between the parties. Thus, there is no basis for a "partition" of the real property at issue. It follows that Defendants are entitled to a dismissal of any claim, or prayer for relief, based on a cause of action for partition of realty.

**B. Second Cause of Action – Continuing Trespass and Injunctive Relief.**

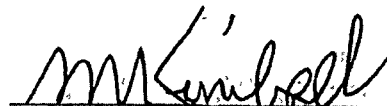
Applying the standard of review for a Rule 12(b)(6) motion recited above, Plaintiff's Second Cause of Action must be construed as stating a potential claim for the relief sought. The grant or denial of such relief is dependent on the facts as they may be developed in discovery or at trial. Thus, Defendants' motion as to the Second Cause of Action must be denied.

**ORDER**

Therefore, it is ordered that Defendants' motion to dismiss be granted as to Plaintiff's First Cause of Action for "partition in kind", and that the same be dismissed with prejudice. It is further ordered that Defendants motion to dismiss the Second Cause of Action be denied.

AND IT IS SO ORDERED.

February 7, 2012

  
S. Jackson Kimball, Special Circuit Judge  
York County

#2

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Earl C. Dukes,

Plaintiff,

vs.

Kenneth W. Farrell and Mary C. Farrell,

Defendants.

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DAVID HARTON  
C.C.P. & S.S.  
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

ORDER DENYING  
SUMMARY JUDGMENT  
AND  
COMPELLING MEDIATION

Case No. 2011CP4603182

This matter came before me on October 17, 2013, upon Plaintiff's Motion for Summary Judgment as to the counterclaims of Defendants. Present and representing the parties at the hearing were Plaintiff's counsel, J. Cameron Halford, and J. Martin Foster, Defendants' counsel. Based on the record presented, the applicable law, and the arguments of counsel, I make the following findings and conclusions.

#### STANDARD OF REVIEW

Summary judgment is appropriate only when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App. 1999); Rule 56(c), S.C.R.C.P. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997). The non-moving party need only submit a mere scintilla of evidence to withstand a summary judgment motion. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

#### DISCUSSION

Applying this standard of review, I find and conclude that Plaintiff is not entitled to judgment as a matter of law at this stage. This case involves questions pertaining to right of access to Lake Wylie in York County, and construction of improvements incident to access and use of the lake. The multiple legal issues presented on both sides turn on an unusual set of facts, which, in my judgment should be fully developed before a final determination is made. Under the facts of this case, it would be inappropriate to end this case with finality at this juncture without further clarification of the facts

*[Signature]*  
21

and circumstances surrounding the legal issues presented.

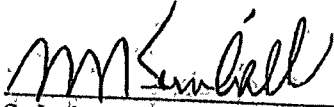
Because a court decision on the issues presented could result in a situation substantially affecting the use and value of the property of both Plaintiff and Defendants, this is a case where a mediated result would be particularly beneficial. Therefore, I find and conclude that, pursuant to the Court-Annexed Alternative Dispute Resolution Rules ("ADR"), the parties should be required to explore a resolution of this case through mediation by a neutral party.

Therefore, it is ordered as follows:

1. Plaintiff's motion for summary judgment as to Defendants' counterclaims is denied.
2. Plaintiff and Defendants are ordered to engage in the ADR process in accordance with the Court-Annexed Alternative Dispute Resolution Rules. The parties may choose a mediator by mutual agreement, but if they cannot agree, the court will select the mediator.
3. The parties shall complete mediation on or before January 2, 2013, unless the time for completion is extended by this court upon motion of the parties, and for good cause shown.

AND IT IS SO ORDERED. }

November 7, 2013

  
S. Jackson Kimball  
Special Circuit Court Judge  
York County



STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES,

Plaintiff;

v.

KENNETH W. FARRELL,  
MARY C. FARRELL, and  
MARTIN BOGDONOVITCH,

Defendants.

ORDER FOR

PARTIAL SUMMARY JUDGMENT

Pursuant to:

RULE 56(a), S.C.R.C.P.

MARTIN BOGDONOVITCH,

Third-Party Plaintiff,

v.

MARSHALL A. REYNOLDS,  
CHRISTINA A. REYNOLDS,  
FISHER-SHERER, INC.,  
ROBERT P. MEDFORD,  
LUTZEL, BROADWAY &  
ASSOCIATES, PC, and  
TINA PATRICK-BROADWAY,

Third-Party Defendants.

Case No. 2011-CP-46-03182

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DAVID HAMILTON  
C.C.P. & GS.  
YORK COUNTY SC

The Defendants KENNETH W. FARRELL and MARY C. FARRELL ("FARRELL") move for Summary Judgment as to the Complaint and causes of actions of the Plaintiff in this action. The Motion was heard by me on March 13th and 14th, 2014. John Martin Foster appeared for the Movants, and J. Cameron Halford appeared for the Plaintiff.

Having heard the arguments of counsel and reviewed the records of this action, I make the following Findings of Fact and Conclusions of Law.

#### STANDARD OF REVIEW

The standard of review applicable to a Motion for Summary Judgment is as follows:

"Under Rule 56, SCRPC, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." *Id.*, [citing *Boyd v. BellSouth Tel. & Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006).]

"In determining whether any triable issues of fact exist for summary

*mw*  
#1

judgment purposes, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id.*

[*Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 188-89, 717 S.E.2d 74, 77 (Ct.App. 2011); *paragraphing added.*]

### DISCUSSION

In this instance, it is undisputed that the FARRELLS are the owners of the real property and improvements located at 1631 Fieldbrook Drive in York County, having received title under the deed of Robert J. Edwards into them dated August 12, 2005, and recorded August 16, 2005 in Record Book 7331, Page 102 in the Office of the Clerk of Court for York County.

As owners under the referenced deed, the FARRELLS are successors in title under a deed of A. F. Fewell and Edward Fewell, Jr. to W. A. Bigham, dated March 2, 1965, and recorded the same date in Deed Book 334 at Page 414 in the Office of the Clerk of Court for York County. The deed from the Fewells to Bigham provides, in relevant part:

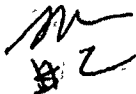
It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

Plaintiff is the owner of the real property identified by Tax Map No. 547-00-00-057. The tract is configured so that there is some thirty feet of Plaintiff's property between the boundary of the FARRELL'S property, and the waters of Lake Wylie. Plaintiff's tract also extends so that a portion of it lies beneath the waters of Lake Wylie, as shown by the Plat of Fisher-Sherer dated May 15, 2001, and the FARRELL'S pier and dock are situated on the water above Plaintiff's property. It is undisputed that Plaintiff is also a successor in title from the Fewells.

As successors in interest under the deed containing the above-quoted language, I find and conclude that the FARRELLS are the owners of an easement appurtenant to the property owned by them, which allows them to pass freely over the strip of land belonging to Plaintiff.

As owners of the easement, the FARRELLS are entitled to the rights and privileges granted in the easement set out in the deed of the Fewells, namely, access to Lake Wylie. The FARRELLS are therefore entitled to summary judgment on this issue, and the same is granted.

Because I find and conclude that there is an express easement, it is not necessary to rule on the FARRELL'S claim of an easement by prescription. However, if it is determined that there is not an express easement appurtenant, I find and conclude in the alternative that the FARRELLS have established the necessary elements to find and conclude that they have

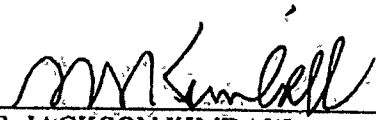


acquired an easement by prescription over Plaintiff's property for access to the waters of Lake Wylie. They are therefore entitled to summary judgment as that issue in so far as it relates to access to Lake Wylie, and the same is granted in the alternative.

The FARRELES also argue that they are entitled to summary judgment as to their Third, Alternative Defense and Counterclaim, which deals more specifically with the existing dock and pier, which is located upon the property of Plaintiff. As to this issue, I find and conclude that there are genuine issues of fact for trial concerning the extent and usage of the FARRELL'S easement. For this reason, summary judgment as to the Third, Alternative Defense and Counterclaim is denied.

ALL OF WHICH IS SO ORDERED.

April 3, 2014

  
S. JACKSON KIMBALL  
Special Circuit Court Judge  
York County

*JS*

STATE OF SOUTH CAROLINA

COUNTY OF YORK

EARL DUKES

Plaintiff(s)

vs.

KENNETH W. FARRELL, MARY C. FARRELL,  
and Martin Bogdonovich

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 46- 2182

(Please Print)

Submitted By: J. CAMERON HALFORD

Address: 238 ROCKMONT DRIVE, PORT MILL, SC 29708

SC Bar #: 17184

Telephone #: 803-547-6618

Fax #: 803-547-6638

Other:

E-mail: CAM@PORTMILLELAW.COM

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

**DOCKETING INFORMATION** (Check all that apply)

*\*If Action Is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION** (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20__-CP-_____<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                                                                             | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input checked="" type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br>Other (499) Trespass                                                                                                                                                                                                                       |
| <b>Innate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                       | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights<br><input type="checkbox"/> Other (799) | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899)                                          | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Administrative Law Judge (980)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                      | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (610)                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

Submitting Party Signature: \_\_\_\_\_

Date: August 17, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCR, Rule 1.1, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

**FOR MANDATED ADR COUNTIES ONLY**  
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,  
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**



STATE OF SOUTH CAROLINA

COUNTY OF YORK

Earl Dukes,

Plaintiff,

Kenneth W. Farrell, Mary C. Farrell,  
Martin Bogdonovich

Defendants.

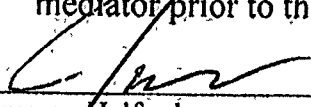
IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-46- 3182

**CERTIFICATE OF EXEMPTION  
FROM ADR  
(NON-JURY)**

I certify that this action [\_\_\_\_ is] /or/ [ X is not] exempt from ADR because:

- ☐ This action is subject to ADR.
- ☐ This is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☐ This action is appellate in nature;
- ☐ This is a post-conviction relief matter;
- ☐ This is a contempt of court proceeding;
- ☐ This is a forfeiture proceeding brought by the state;
- ☐ This is a case involving a mortgage foreclosure; or
- ☐ The parties submitted this case to voluntary mediation with a certified mediator prior to the filing of this action.

  
J. Cameron Halford  
Halford, Niemiec & Freeman, LLP  
238 Rookmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax  
August 17, 2011

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2011 AUG 19 AM 9:36  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl C. Dukes,

Plaintiff,

vs.

Kennith W. Farrell,  
Mary C. Farrell, and  
Martin Bogdonovich,  
Defendants.

CASE NO. 2011-CP-46-

3182

SUMMONS  
(NON-JURY)

DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

2011 AUG 19 AM 9:36

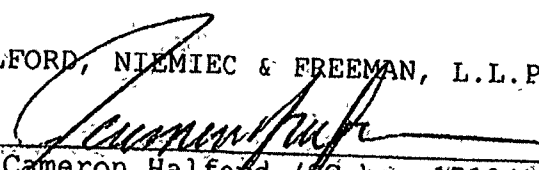
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TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the allegations of the Complaint in this action, a copy of which is hereby served upon you. You should Answer the Complaint with the court and by providing a copy of your Answer to the undersigned attorney for the Plaintiff within thirty (30) days of your receiving these documents, excluding the date of service.

YOU WILL PLEASE TAKE NOTICE that should you fail to Answer in the time set forth above the Plaintiff will by and through the undersigned subscriber petition the court of Common Pleas to render judgment against you in your absence and by default for the relief being demanded in the Complaint.

HALFORD, NIEMIEC & FREEMAN, L.L.P.

  
J. Cameron Halford (SC bar 17184)  
238 Rockmont Drive,  
Fort Mill, S.C. 29708  
803-547-6618  
803-547-6638 fax

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl C. Dukes, )  
 )  
Plaintiff, )

CASE NO. 2011-CP-46-

3182

vs. )

Kennith W. Farrell, )  
Mary C. Farrell, and )  
Martin Bogdonovich, )  
Defendants. )

COMPLAINT  
(NON-JURY ACTION)

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DAVID HAMILTON  
C.C.P. & C.S.  
YORK COUNTY, SC

Plaintiff, complaining of the Defendants named, would respectfully show and allege to the court the following:

1. The lands described in this Complaint all border Lake Wylie, as depicted in Exhibit #1, attached and incorporated by reference.
2. Plaintiff's owns Lake Wylie Property depicted in Exhibit A as TMS # 057-00-00-057. Defendants' lot are deeded as water access lots, but utilize Plaintiff's lands for egress and ingress to the waters of Lake Wylie by and through the above parcel number, depicted on Exhibit #1.
3. Plaintiff is owner of those certain lakefront parcels of real property known as 1657 Bowater Road, Rock Hill, S.C. 29732 bearing TMS NOS. 547-00-00-048, 547-00-00-049, AND 547-00-00-057, described herein as "Lot A".
4. Defendants Kennith W. Farrell and Mary C. Farrell are owners of an adjoining lot of land known as 1631 Fieldbrook Road, Rock Hill, S.C. 29732 bearing TMS# 547-00-00-050; hereinafter described as "Lot B".
5. Defendant Martin Bogdanovich is owner of an adjoining lot of land known as 1641 Fieldbrook Road, Rock Hill, S.C. 29732 bearing TMS # 547-00-00-052, hereinafter described as "Lot C".

6. Jurisdiction is proper in this court as this action is an action affecting title(s) to real properties in York County described above, all of which are adjoining lands and further depicted on the plat attached as Exhibit #1.
7. Plaintiff is informed and believes that the piers and docks attached to Plaintiff's property, (not Defendant's properties), and encroach upon Plaintiff's lands interfering with Plaintiffs exclusive use and quiet enjoyment of his property.
8. Plaintiff is informed and believes the encroachment interferes with the exclusive use and enjoyment of Plaintiff's property, which is being burdened by the docks of the adjoining owners, creating an involuntary servitude estate upon the lands of Plaintiff and rendering Plaintiff's title unmarketable.
9. Plaintiff seeks partition in kind of the docks and piers existing and attached to Plaintiff's real properties, or alternatively removal or relocation of same by Defendants under Order of the Court.

**FOR A FIRST CAUSE OF ACTION**  
**(ACTION FOR PARTITION IN KIND)**

1. Plaintiff is informed and believes that the docks and piers belonging to Lot B (Farrell Lot) and Lot C (Brogdonovich) described above and depicted on Exhibit #1 adjoins, attaches, and is permanently affixed in error to Plaintiff's real property, TMS # 547-00-00-057, Lot A.
2. Plaintiff is informed and believes that the pier should be severed by this court by an Order for Partition in Kind from the lands of the Defendants, severing the pier and properly adjoining it to Plaintiffs' real properties TMS 054-00-00-47 and 547-00-00-048.
3. Alternatively, Plaintiff is informed and believes that the court should order the piers/docks detached and removed and/or relocated at the expense of defendants.

4. Plaintiff is without an adequate remedy at law and seeks to enjoin further ingress and egress through Plaintiff's lands by Defendants in utilizing said docks and piers which attach to Plaintiffs land TMS 547-00-00-057 (Lot A).

**FOR A SECOND CAUSE OF ACTION**  
**(CONTINUING TRESPASS and ACTION FOR INJUNCTIVE RELIEF)**

1. The above allegations are set forth and incorporated by reference as if re-stated verbatim.
2. Plaintiff is informed and believes that the Defendant's water front docks and piers trespass upon and create an involuntary servitude and non-deeded easement across Plaintiffs' property with regard to Defendant's utilization of the piers, both of which attach to and are located upon Plaintiff's real property.
3. That Plaintiff is the fee simple owner of his real property, TMS 054-00-00-47 and 547-00-00-048, and 547-00-00-057, and Defendants have no right to the use, crossing, and enjoyment of Plaintiff's property for water access.
4. That Defendant's continued use, rebuilding, maintenance, and storage upon docks and piers attached to Plaintiff's property creates hostile and unwanted entry and access upon and through the property of the Plaintiff described above by Defendants on Plaintiffs Lot 547-00-00-057.
5. That said entry, use, maintenance, rebuild, and access of the docks through Plaintiff's property is without Plaintiff's permission or consent and is hostile in nature.
6. That the location of Defendants' docks and piers upon the property of the Plaintiff renders Plaintiff's title unmarketable due to the non-exclusive and involuntary servitude.

**FOR A THIRD CAUSE OF ACTION**  
**(NUISANCE)**

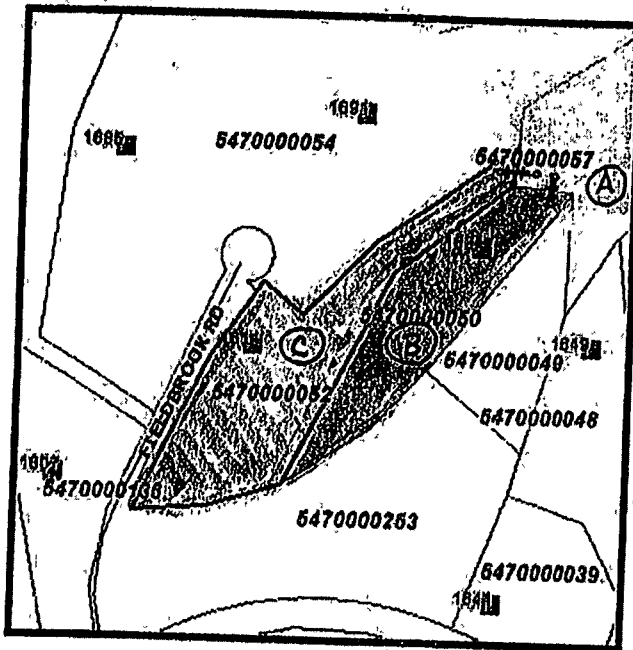
1. The above allegations are set forth and incorporated by reference as if re-stated verbatim.
2. Plaintiff is informed and believes that Defendants' dock and piers which attach to Plaintiff's Lot of Land create unnecessary and unreasonable interference with Plaintiff's exclusive use and enjoyment of his property TMS # 057-00-00-057.
3. Plaintiff is informed and believes that Defendants' continued maintenance and use of the piers and docks attaching to Plaintiffs' lands are the direct and proximate causation of interference by Defendants, who cross Plaintiff's property for water access and to use the piers and docks.
4. Plaintiff is informed and believes that Defendants have been willful, wanton, negligent and have acted in disregard of Plaintiff's rights as lawful owner of the property to which Defendants have attached and performed improvements; said docks attaching direct to the land of the Plaintiff by error.
5. Plaintiff is informed and believes that Defendants jointly and severally have and are assuming ownership, dominion, control, and use of Plaintiff's lands and are deliberately crossing Plaintiff's lands and using appurtenances, docks and piers, which do not attach to the lands of either Defendant, but rather Plaintiffs lands TMS 547-00-00-057.
5. That the interference with Plaintiff's fee simple use and enjoyment of his lands is foreseeable, and Defendants contemplate continued access and crossing of Plaintiff's lands for continued use of the docks and piers in disregard of Plaintiff's title and fee simple ownership of Plaintiff's properties TMS 054-00-00-47 and 547-00-00-048 and 547-00-00-057.

WHEREFORE, Plaintiff prays for the following relief:

1. For judgment as against Defendants, jointly and severally, on Plaintiffs First, Second, and Third Causes of Action.
2. For an ORDER of the court partitioning the docks and piers and properly attaching them to the lands of the

**Property Report for Parcel Number:**  
5470000052

Inquiry Date: 8/17/2011



**Owner**  
**Owner Name:** BOGDANOVICH MARIN  
**Address:** 1614 FIELDBROOK RD  
**City/State:** ROCK HILL SC  
**Zip Code:** 29732

Disclaimer: While every effort is made to keep information provided over the internet accurate and up-to-date, York County does not certify the authenticity or accuracy of such information. No warranties, express or implied, are provided for the records and/or mapping data herein, or for their use or interpretation by the User.

**Parcel Number:** 5470000052  
**Total Lots:** 1  
**Total Acres:** 0  
**Deed Book:** 11917  
**Deed Book Page:** 109  
**Platt Book:** 50  
**Platt Book Page:** 158  
**School District:** 3  
**Municipality:**  
**Fire Code:** NP-I  
**Property Location:** LOT 2 & LOT B

**Property**

**Land Value:** \$250000  
**AG Use:**  
**AG Use Value:**  
**Previous Grantor:** REYNOLDS MARSHALL A &  
**Tax Bill Information:**  
**Zoning:**  
**Sale Price:** \$130000  
**Sale Date:** 3/29/11  
**Census Tract:**  
**Voter District:**

**Prop. Classification:**  
**Heating Type:**  
**Living Area(Sq. Ft.):**  
**Basement:** NO  
**Bathrooms:**  
**Total Imp. Value:**

**Building/Structure**

**Number of Stories:**  
**Year Built:**  
**Garage Area:** NO  
**Fireplace:**  
**Bldg. Value:** \$100500

**Total Assessed Value:** \$15348  
**Total Tax Value:** \$255800

**Assessment**

**Total Market Value\*:** \$350500



\* - This property may have been re-valued due to an Assessable Transfer of Interest

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ] | IN THE COURT OF COMMON PLEAS |
|                         | ] |                              |
| COUNTY OF YORK          | ] | SIXTEENTH JUDICIAL CIRCUIT   |
|                         | ] |                              |
| EARL DUKES,             | ] |                              |
|                         | ] |                              |
| Plaintiff,              | ] | ANSWER AND COUNTERCLAIM      |
| v.                      | ] |                              |
|                         | ] |                              |
| KENNETH W. FARRELL,     | ] |                              |
| MARY C. FARRELL, and    | ] | CA No. 11-CP-46-03182        |
| MARTIN BOGDONOVITCH,    | ] |                              |
|                         | ] |                              |
| Defendants.             | ] |                              |

The Defendants KENNETH W. FARRELL and MARY C. FARRELL (hereafter also "the FARRELLS"), in answer to the Complaint of the Plaintiff (hereinafter also "DUKES"), allege as follows (all references to paragraphs, unless otherwise identified, are to the Paragraphs of the said Complaint):

**MOTION TO DISMISS CAUSES OF ACTION**  
**PURSUANT TO RULE 12(b)(6):**

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

Pursuant to Rule 12(b)(6), S.C.R.C.P., the Defendants FARRELL, by their counsel, move this Court to dismiss the Plaintiff's First Cause of Action for partition in kind, with prejudice, and to dismiss the Plaintiff's Second Cause of Action as to injunctive relief, with prejudice, or require its repleading, on the ground that the said causes of action do not state a cognizable claim.

This Motion is made on the grounds set out below:

- a. The First Cause of Action by Plaintiff, as specifically set out in Paragraphs 9. of the initial allegations, and Paragraphs 1. through 4. of the First Cause proper is characterized as an "action for partition in kind."



- b. The factual basis of the Plaintiff's Complaint is stated in Paragraphs 2. and 7. of the initial allegations. The Plaintiff alleges ownership of the land on or over which the Defendants FARRELL use or maintain piers and/or a dock to reach the waters of Lake Wylie.
- c. "Partition" is defined as a cause of action for the division between several persons of property which belongs to them as co-owners, whether as coparceners, tenants in common or joint tenants. 59A AM.JUR.2D *Partition* § 1 (2002). As our Supreme Court stated in *Cannon v. Lomax*, 29 S.C. 369, 7 S.E. 529 (1888):

But, as we understand it, partition is the right to a severance, when there is rightful unity not only of title but of possession. Unless the title of both parties is clear, equity cannot decree a partition.

[*Id.*, 7 S.E. at 530.]

- d. Under the facts as alleged, there is no unity of title. The Movants are entitled to a dismissal of any cause of action, or prayer for relief, based on a cause of action for partition.
- e. As to the Plaintiff's Second Cause of Action, he has not alleged the elements required to seek injunctive relief.
- f. Insofar as the Second Cause of Action seeks injunctive relief, it should be dismissed or required to be replead.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Movants hereby affirms that this motion is dispositive in nature, and, to that end, requires no communication with opposing counsel, or, in the alternative, certifies that such consultation would serve no useful purpose or could not be timely held.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rule, the records of this civil action, and any Supporting Memorandum which the Movants may submit herein.

#### **FOR A FIRST DEFENSE:**

- 1. Each allegation of the Complaint which is not admitted, denied or qualified in this Answer and Counterclaim is hereby denied.

2. The allegations of Paragraph 1. as to general location are admitted; insofar as the allegations reference Complaint Exhibit 1., the same is admitted insofar as the same is confirmed by all matters of public record.
3. The allegations of Paragraph 2. are admitted insofar as the same are matters of public record; on knowledge and information, the correct Tax Map No. for the Plaintiff's property is 547-00-00-057.
4. The allegations of Paragraphs 3., 4. and 5. are admitted, insofar as the same are matters of public record.
5. The allegations of Paragraph 6. are admitted insofar as it alleges the jurisdiction of this Court.
6. The allegations of Paragraph 7. as to the presence of a short portion of the FARRELLS' dock and pier apparently cross the Plaintiff's real property.
7. Insofar as the other allegations of Paragraph 7. and those of Paragraph 8. are other than legal conclusions requiring no response, the same are denied.
8. Insofar as the allegations of Paragraphs 9. and Paragraphs 1. through 4. of the First Cause of Action pray for relief under a legal theory of partition in kind, the FARRELLS deny the same as a matter of law, as set forth herein above.
9. In further response to the allegations of Paragraph 1. of the First Cause of Action as to the physical location of the real property in question, the same is admitted insofar as the same is a matter of public record.
10. Insofar as the allegations of Paragraphs 2., 3. and 4. of the First Cause of Action are other than legal conclusions or prayers for relief requiring no response, the same are denied.
11. Insofar as the allegations of Paragraphs 1. through 6. of the Second Cause of Action pray for injunctive or equitable relief, the FARRELLS deny the same as a matter of law, as set forth herein above.
12. Insofar as the allegations of Paragraph 1. of the Second Cause of Action are directional only, the same require no response.
13. Insofar as the allegations of Paragraph 2. of the Second Cause of Action are other than legal conclusions requiring no response, the same are denied.

14. The Defendants FARRELL admit the allegations of Paragraphs 3., 4., and 5. of the Second Cause of Action insofar as they allege or intend the apparent ownership of Tax Map No. 547-00-00-057 by the Plaintiff, and insofar as the same is a matter of public record; the remaining allegations of those Paragraphs, insofar as they deal with the rights of the FARRELLS and their ownership and/or use of Tax Map No. 547-00-00-050 and any wrongful use of the Plaintiff's real property, are denied.

15. The Defendants FARRELL deny the allegations of Paragraph 6. of the Second Cause of Action and demand strict proof thereof.

16. Insofar as the allegations of Paragraph 1. of the Third Cause of Action are directional only; the same require no response.

17. The Defendants FARRELL admit the allegations of Paragraphs 2., 3., 4., 5. and 5. [sic] of the Third Cause of Action insofar as they allege or intend the apparent ownership of Tax Map No. 547-00-00-057 by the Plaintiff, and insofar as the same is a matter of public record; the remaining allegations of those Paragraphs, insofar as they deal with the rights of the FARRELLS and their ownership and use of Tax Map No. 547-00-00-050 and any wrongful use of the Plaintiff's real property, are denied.

### FOR A SECOND DEFENSE AND COUNTERCLAIM

#### EXPRESS GRANT OF EASEMENT

18. All of the allegations herein and consistent with this defense are restated by this reference as fully as if set out herein.

19. The Defendants FARRELL are the owners of that real property and improvements located at 1631 Fieldbrook Drive, Rock Hill, South Carolina and bearing Tax Map No. 547-00-00-050; under the deed of Robert J. Edwards into them dated August 12, 2005 and recorded August 16, 2005 in Record Book 7331 at Page 102 in the Office of the Clerk of Court for York County, South Carolina. A copy of that deed is attached hereto and incorporated herein.

20. As owners under the above-referenced deed, the FARRELLS are successors in title under the deed of A. F. Fewell and Edward Fewell, Jr. to W. A. Bigham by the deed dated March 2, 1965 and recorded the same date in Deed Book 334 at Page 414 in the Office of the Clerk of

Court for York County, South Carolina. A copy of that deed is attached hereto and incorporated herein.

21. The said deed from Fewell to Bigham provides, in relevant part:

It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

22. On knowledge and information, as successors in interest and under the deed containing the above-cited language, the Defendants FARRELL are the owners of an easement appurtenant to the real property owned by them, a right-of-way allowing them to freely pass by all means of conveyance over any strip of land contained in Tax Map No. 547-00-00-057 to access the waters of Little Allison Creek (the Backwater and cove referenced in the above-cited deed), which is the portion of Lake Wylie on which the parties' real property is located.

23. As owner of the easement, the Defendants FARRELL are entitled to the rights and privileges over, through, and on the easement set out in the deed and quoted above.

24. On knowledge and information, and insofar as the Plaintiff DUKES is the owner of Tax Map No. 547-00-00-050 and therefore of some thirty (30) feet between the boundary of the Defendants FARRELL and the waters of Lake Wylie, as calculated by the Plat of Fisher-Shearer dated May 15, 2001, a copy of which is attached hereto and incorporated herein, his real property is subject to the said easement.

25. On knowledge and information, the Plaintiff, by this civil action and by the *Lis Pendens* filed herein, claims interests adverse to the FARRELLS' title to the easement. These claims are without any right and Plaintiff has no right, title, estate, lien, or interest superseding the FARRELLS' title to the easement.

26. On knowledge and information, the Defendant FARRELLS are entitled to the entry of a declaratory judgment as to the existence and extent of their rights in and to the said easement, should the Plaintiff prove his ownership of the real property claimed by him

**FOR A THIRD, ALTERNATIVE DEFENSE AND COUNTERCLAIM**

**IMPLIED EASEMENT**

27. All of the allegations herein and consistent with this defense are restated by this reference, as fully as if set out herein.
28. The disputed use and improvements are a pier and dock which (either in its present or former form and configuration) have existed and been used by the FARRELLS and their predecessors in title for a period in excess of twenty (20) years and have never been abandoned.
29. The pier and dock have always been clearly visible and the Plaintiff and his predecessors in title knew (or are chargeable with knowledge) of the existence and use of the same at the time Plaintiff acquired any interest in the property designated as Tax Map No. 547-00-00-057.
30. The FARRELLS and their predecessors in title have used and continued to use the pier and dock in dispute for a period in excess of twenty (20) years. Further, the pier and dock provide a means of ingress and egress to and from the FARRELLS' real property to Lake Wylie.
31. The FARRELLS and their predecessors in title have continuously used the dock and pier herein described (either in its present or former form and configuration), and such use was at all times open and notorious to the extent that the pier and dock were known to link the FARRELLS' real property to Lake Wylie, of which fact the Plaintiff and Plaintiff's predecessors in title were well aware (or with which knowledge they are chargeable).
32. In the alternative to the allegations of the Second Defense and Counterclaim, the use of the pier and dock was adverse to any rights of the Plaintiff in that such use was without the express permission or the necessity therefor, or license of the Plaintiff or of the Plaintiff's predecessors in title and was thus inconsistent and contrary to his claims of ownership.
33. The use of the dock and pier was exclusive to the extent that neither the Plaintiff nor Plaintiff's predecessors in title to the real property in dispute had used the dock and pier as a means of ingress and egress to and from the FARRELLS' property.
34. On knowledge and information, the Defendant FARRELLS are entitled to the entry of a declaratory judgment as to the existence and extent of their rights in and to the said easement, should the Plaintiff prove his ownership of the real property claimed by him.

WHEREFORE, the Defendants FARRELL pray that:

- a. That the Complaint of Plaintiff be dismissed;
- b. That this Court issue its declaratory judgment as to the existence and extent of the Defendant FARRELLS' rights in and to the said easement over the Plaintiff's real property, should the Plaintiff prove his ownership of that property;
- c. That the *Lis Pendens* placed on the Defendant FARRELLS' real property by Plaintiff be dissolved;
- d. That Defendants FARRELL be awarded their costs herein;
- e. That this Court include a prayer for any other relief to which the facts, either as plead or presented in evidence at trial, may allow; and
- f. For such other and further relief as this Court may deem just and proper.

  
John Martin Foster  
Attorney for Defendants FARRELL

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, S. C. 29730

Post Office Box 106  
Rock Hill, S. C. 29731-6106

803.324-8100  
803.324-8109: Fax  
jmfoster@comporium.net

Rock Hill, South Carolina

October 7, 2011

6-15-21  
20426

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CAYMAN ABIGAIL  
DAVID HAMILTON, Clerk of Court  
York County, SC

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7, and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20466, recorded in Plat Book D-18 at Page 9, as follows: BEGINNING at a pipe on edge of Private Drive (30' R/W), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31.59 E 170.53 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet; thence N 52 16 42 E 191.01 feet to #4 rebar, thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 39 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.58 feet to #5 rebar, thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 56 39 12 W 139.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1986 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 90ES48-60694, evidenced by Deed of Distribution recorded in Record Book 293 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 8-17-05

TAX MAP NO. 547-50

INITIALS AC / HM

BK107331 PG100102

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats

Grantees' Address: ~~1031 Fieldbrook Drive~~ 9860 Barberville Rd.  
~~Rock Hill, SC 29732~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00:050

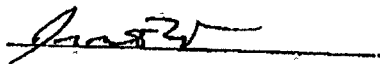
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

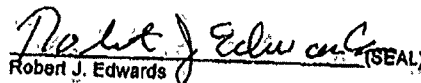
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2005.

Signed, Sealed and Delivered  
in the Presence of:



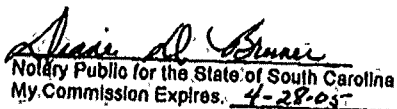
  
Robert J. Edwards (SEAL)

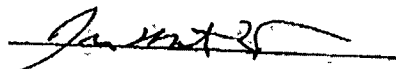


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned; and that he with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2005

  
Notary Public for the State of South Carolina  
My Commission Expires 4-28-05



UK07331 P00103



STATE OF SOUTH CAROLINA

YORK COUNTY

Know All Men by These Presents

That We, A. F. Fewell and Edward Fewell, Jr.

of the County of York,

In the State aforesaid,  
DOLLARS

In consideration of the sum of Five and no/100 --- (\$5.00) ---  
and other valuable consideration,  
to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold, aliened, released, and by these presents do grant, bargain, sell and release unto the said

Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property:  
All that certain piece, parcel or tract of land lying, being and situate in Edeneser Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. & Ed. Fewell, Jr., prepared by R. H. Maret, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at Page 7, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property is conveyed subject to the Water Rights granted to the Wateres Power Company by Madison Hill by Deeds recorded in Deed Book 54, at Page 617, and Deed Book 64, at Page 312, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of-Way.

It being understood that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to rights of the Wateres Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Fewell and Edward Fewell, Jr.

It being further understood that the Grantee herein, His Heirs and Assigns, shall have the right to use the Private Road shown on the above mentioned Plat as a means of ingress and egress from the County Road to said Lot herein conveyed.



FILED & RECORDED  
MAR 11 1965  
YORK COUNTY, S.C.

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinabove named, and His----- Heirs and Assigns forever.

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

Witness the grantor(s)' hand and seal this 2nd----- day of March, ----- in the year of our Lord One Thousand Nine Hundred and Sixty-five.

Signed, Sealed and Delivered in the Presence of

*Doris D. Bushue*  
*John Oates Woods*

*A. F. Fewell* (Seal)  
A. F. FEWELL (Seal)  
*Edward F. Fewell, Jr.* (Seal)  
EDWARD FEWELL, JR. (Seal)  
(Seal)  
(Seal)

State of South Carolina,

Personally appeared before me Doris D. Bushue -----

YORK County

and made oath that she saw the within named grantor(s), A. F. Fewell and Edward Fewell, Jr.,  
deliver the within written deed, and that she, with John Oates Woods ----- witnessed the execution thereof.

Sworn to before me this 20th day of March, A. D. 1965.  
*Doris D. Bushue* (Seal)  
Notary Public for South Carolina

*Doris D. Bushue*

State of South Carolina,

RENUNCIATION OF DOWER

YORK County

I, Doris D. Bushue, ----- Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Louise Peace Fewell and Mrs. Dora H. Fewell, wives  
of the within named A. F. Fewell and Edward Fewell, Jr., respectively,  
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely,  
voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever  
relinquish unto W. A. Bigham, His-----

Heirs and Assigns, all her interest and estate,  
and all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN Under my hand and seal this 2nd day of March, A. D. 1965.  
*Doris D. Bushue* (Seal)  
Notary Public for South Carolina  
Recorded this ----- day of -----

*Mrs. Louise Peace Fewell*  
MRS. LOUISE PEACE FEWELL  
*Mrs. Dora H. Fewell*  
MRS. DORA H. FEWELL

BK-334  
pg-414  
D-32/65  
R-3/11/65

STATE OF SOUTH CAROLINA,

( See Affidavit )

YORK COUNTY

Know All Men by These Presents:

That I, Charles J. Bailey,  
of the County of York, --- in the State aforesaid,  
In consideration of the sum of One and no/100 (\$1.00) --- DOLLARS,

to the grantor, in hand paid at and before the sealing of these presents by the grantees (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 Grantees herein, W. A. Bigham, His Heirs and Assigns, the following described property:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 Acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Powell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July 1963, recorded in Plat Book 24, at Page 173, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows:

BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-42 W. 291.5 feet to the beginning point.

This being the identical property conveyed to Charles J. Bailey, Grantor herein, by A. F. Powell and Edward Powell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing Easements and Rights-of-Way.

FILED & RECORDED  
MAR 11 2 1965  
YORK COUNTY, S.C.

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 grantees hereinabove named, and His Heirs and Assigns forever

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

Witness the grantor's hand and seal this 5th day of March, --- in the year of our Lord One Thousand Nine Hundred and Sixty-five.

Signed, Sealed and Delivered in the Presence of:

*[Signature]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Signature]*  
CHARLES J. BAILEY (Seal)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of South Carolina,

Personally appeared before me Doris D. Bushuo

YORK County

and made oath that she saw the within named grantor, Charles J. Bailey,  
deliver the within written deed, and that she, with John Oates Woods, --- witnessed the execution thereof.

Swoy to before me this 5th day of March, A. D. 1965.  
*[Signature]*  
Notary Public for South Carolina

*[Signature]*

State of South Carolina,

RENUNCIATION OF DOWER

YORK County

I, John Oates Woods, --- Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Evelyn B. Bailey, wife of the within named Charles J. Bailey, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto W. A. Bigham, His

Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 5th day of March, A. D. 1965.  
*[Signature]*  
Notary Public for South Carolina

*[Signature]*  
MRS. EVELYN B. BAILEY

Recorded this --- day of --- 19---, at --- M. No ---

BK-334  
pg-410  
D-3/5/65  
R-3/11/65



**VICINITY MAP**  
(NOT TO SCALE)

| LINE | LENGTH | BEARING       |
|------|--------|---------------|
| 1    | 85.50  | S 83°13'21" E |
| 2    | 70.10  | S 02°17'49" W |



**MARSHALL A. REYNOLDS  
AND  
CHRISTINA A. REYNOLDS**  
DB 4734 - PG 39  
PD 50 - PG 150  
TAX PARCEL  
547-00-00-052

0.823 ACRES

**EARL C. DUKES**  
DB 4388 - PG 159  
PD 78-318 - PG 9  
TAX PARCEL  
547-00-00-253

**ANNE G. OATES**  
DB 8772 - PG 228  
PD 33 - PG 7  
TAX PARCEL  
547-00-00-018

**LEGEND**  
PP - POWER POLE  
UT - UTILITY BUILDING  
OVERHEAD UTILITIES ——— OHU ———

THIS PROPERTY IS NOT WITHIN A FLOOD PRONE AREA. THE MAXIMUM WATER LEVEL ESTABLISHED BY THE EXISTING DAM FOR LAKE WYLIE IS 570.0'. THIS PROPERTY COULD BE SUBJECT TO DUKE POWER FLOOD RIGHTS EXTENDING TO ELEVATION 580.0'. (REF DB 397-PG 361)

NO NEW LOTS OR PROPERTY LINES ESTABLISHED.



NO. C01570



**FISHER - SHERER  
INC.**  
**ENGINEERING & SURVEYING**  
2051 EBENEZER ROAD  
ROCK HILL, S.C. 29732  
803-327-1232  
800-636-8920

PROPERTY SURVEYED FOR  
**KENNETH W. FARRELL  
and  
MARY C. FARRELL**

LOCATED AT 1831 FIELDBROOK DRIVE  
IN THE EBENEZER TOWNSHIP  
YORK COUNTY, SOUTH CAROLINA  
MAY 15, 2008

THIS PROPERTY IS DESIGNATED AS BEING TAX PARCEL # 547-00-00-050.

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS IS TO CERTIFY THAT I HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP AND FOUND THAT THE ABOVE DESCRIBED IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA."

*Robert R. Medford*  
**ROBERT R. MEDFORD** S.C. P.S. 11075

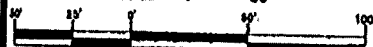
**REVISIONS**

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

**MONUMENTS LEGEND**

| FOUND     | SET |
|-----------|-----|
| IRON PIPE | ○   |
| IRON PIN  | ●   |

SCALE: 1" = 50'



STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]  
Plaintiff, ]  
v. ]  
KENNITH W. FARRELL, ]  
MARY C. FARRELL, and ]  
MARTIN BOGDONOVITCH, ]  
Defendants. ]

CERTIFICATE OF SERVICE

CA No. 11-CP-46-03182

The undersigned, counsel for Defendants FARRELL in the civil action above, hereby certifies that on October 7, 2011, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Answer and Counterclaim; and this Certificate of Service

the originals of which were sent to be filed with the Clerk of the Court for the Court named above,

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons; or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; or if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein:

J. Cameron Halford  
Halford, Niemiec & Freeman, L.L.P.  
239 Rockmont Drive  
Fort Mill, S. C. 29708

  
John Martin Foster  
Attorney for Defendants FARRELL

223 East Main Street, Suite 520  
Post Office Box 106  
Rock Hill, SC 29731-6106

803-324-8100  
803-324-8109: Fax  
jmfoster@comporium.net

October 7, 2011

Rock Hill, South Carolina

COPY

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl C. Dukes, )  
 )  
Plaintiff, )

CASE NO. 2011-CP-46-3182

vs. )

REPLY TO COUNTERCLAIMS  
OF FARRELL DEFENDANTS  
(NON-JURY)

Kennith W. Farrell, )  
Mary C. Farrell, and )  
Martin Bogdonovich, )  
Defendants. )

FILED-RECEIVED  
2011 OCT 28 PM 2:27  
DAVID HAMILTON  
C.C.P. & S.S.  
YORK COUNTY, SC

Plaintiff, in Reply to the Answer and Counterclaims of the Defendants Kenneth W. Farrell and Marcy C. Farrell, and in response to any dispositive motions pleaded, would show the following in reply:

**FOR A FIRST DEFENSE**

(Qualified General Denial)

1. All allegations not hereinafter expressly admitted or qualified are denied with strict proof being demanded.
2. The Plaintiffs deny the Answer prayer for entitlement of dismissal, and deny paragraphs (1) through (26), as stated, demanding strict proof of these allegations.

**FOR A SECOND DEFENSE**

(FAILURE TO STATE A CLAIM)

3. Defendants' Counterclaims fail to state a cause of action under which relief can be granted under applicable law.
4. Defendant's counterclaims should be dismissed pursuant to SCRCP 12(b)(6).

**FOR A THIRD DEFENSE AND**

**REPLY TO FIRST COUNTERCLAIMS - EXPRESS GRANT OF EASEMENT**

5. Any counterclaim allegations not hereinafter expressly admitted or qualified are expressly denied, and strict proof is demanded.
6. Plaintiff denies the allegations of paragraphs (18) through (26) as stated, and demand strict proof of these allegations.
7. Plaintiffs would admit the allegations of paragraph (19) only as to chain of title and the ownership by Defendants of TMS # 547-00-00-050, denying any remaining allegations pertinent to the deed as it relates to the lands of Plaintiff.
8. Plaintiff denies the allegations of paragraphs (19), (21), (22), and (23), demanding strict proof, as it is alleged to pertain to the title or ownership rights of the Plaintiff.
9. Plaintiff admits the allegations of paragraph (24), but deny Plaintiff's property is subject to any easement of the Defendants, express or implied, belonging to the Farrell Defendants pertaining to the lands or ownership rights of the Plaintiff's property.
- 10). Plaintiff admits Plaintiff claims are adverse to the Farrell Defendants' claimed easement and denies the remainder allegations of this paragraph demanding strict proof of said allegations.

**FOR A FOURTH DEFENSE**  
**AND REPLY TO SECOND COUNTERCLAIMS-IMPLIED EASEMENT**

- 11). Plaintiff denies any and all counterclaims allegations in paragraphs (27) through (34) not hereinafter expressly admitted, qualified or expressly denied and would demand strict proof of any such allegations.
- 12). Plaintiffs would show that Defendant's use of the dock and pier as described in paragraphs (27), (28), (29), (30), (31), (32), (33), and (34) was not continuous for twenty (20) years, was not open, notorious, hostile, adverse, or necessary and Plaintiff demands strict proof.
- 13). Further responding to paragraphs (28), (33) and (34), Plaintiff would show that Defendants have exceeded the scope of any past permissions granted for egress and

ingress to Lake Wylie, and that Defendants' deed conveys no such easement, express or implied, across the lands of the Plaintiff; and that their continued use of Plaintiffs' lands for egress and ingress to the waters of lake wylie is inconsistent and contrary to the ownership rights of the Plaintiff including, but not limited to, the exclusive use and enjoyment of Plaintiff's property, inclusive of the thirty 30' foot boundary described in paragraph (24).

14.) Further responding, Plaintiff would show that Defendants have exceeded the scope of any prior permissions or consents, express or implied, granted to Defendants, that no easement express or implied exists, and that Plaintiff is entitled to the exclusive use and enjoyment free of use by Defendants. Plaintiff incorporates by reference its Second (Trespass) and Third (Nuisance) causes of action in its Complaint.

WHEREFORE, having Answered and set forth its Reply to the the Counterclaims of the Farrell Defendants, Plaintiff prays for the following relief:

1. For Judgement as against Defendants as set forth in the prayer for relief in Plaintiff's Complaint.
2. That Defendants' counterclaims be dismissed under SCRCP 12(b)(6).
3. That the court deny the prayers for relief of the Defendants as set forth paragraphs (a) through (f) of the Answer and Counterclaims.
4. That the court ascertain and determine the rights of the parties in and to the properties that are the subject of this action, including the boundary between the parties described in paragraph (24) of the Answer.
5. That the court issue its declaratory judgment as to the existence and extent of any easement claimed by Defendants, and terminate the same in favor of Plaintiff.
6. That this court include a prayer for any other relief to which the facts, either as pleaded or presented in evidence prior to trial, may allow; and

7. For such other and further relief as the court deems just and proper under the circumstances.

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, L.L.P.

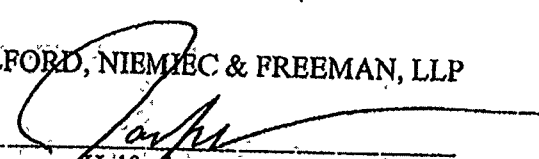
  
J. Cameron Halford (SC bar 17184)  
238 Rockmont Drive,  
Fort Mill, S.C. 29708  
803-547-6618  
803-547-6638 fax

**CERTIFICATE OF SERVICE**

I hereby certify that I am the attorney for the Plaintiff in the above captioned matter and that I did on October 25, 2011, serve a copy of the foregoing REPLY TO COUNTERCLAIMS OF FARRELL DEFENDANTS on the persons and entities listed below by United States mail, postage prepaid, and addressed as follows:

John Martin Foster  
P.O. Box 106  
Rock Hill, SC 29731

HALFORD, NIEMIEC & FREEMAN, LLP

  
J. Cameron Halford  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax

October 25, 2011  
Fort Mill, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF YORK

EARL C. DUKES,

Plaintiff,

vs.

KENNITH W. FARRELL, MARY C.  
FARRELL, and MARTIN  
BOGDANOVICH,

Defendants.

MARTIN BOGDANOVICH,

Third-Party Plaintiff,

vs.

MARSHALL A. REYNOLDS and  
CHRISTINA A. REYNOLDS; FISHER-  
SHERER, INC.; ROBERT R. MEDFORD;  
LUTZEL, BROADWAY &  
ASSOCIATES, PC and TINA PATRICK-  
BROADWAY.

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

ANSWER AND THIRD-PARTY  
COMPLAINT

Defendant Martin Bogdanovich ("Defendant" or "Bogdanovich"), though counsel, responds to Plaintiff's Complaint as follows:

**MOTION TO DISMISS**

Pursuant to S.C. R. Civ. P. 12(b)(6) Defendant moves to dismiss Plaintiff's First Cause of Action against this Defendant for failure to state a claim upon which relief can be granted for the reasons set forth in the Farrells' Motion to Dismiss and the Court's Order date February 7, 2012.

## FIRST DEFENSE AND ANSWER

1. Admitted.
2. It is admitted that the public records indicate that Plaintiff owns certain property adjacent to Lake Wylie. Except as expressly admitted, denied.
3. It is admitted that the public records indicate that Plaintiff owns certain property adjacent to Lake Wylie. Except as expressly admitted, denied.
4. It is admitted that Defendants Kenneth W. Farrell and Mary C. Farrell (the "Farrells") are the record owners of certain real property known as 1631 Fieldbrook Road, Rock Hill, SC. Except as expressly admitted, denied.
5. It is admitted that Defendant is the owner of certain real property commonly known as 1614 Fieldbrook Road, Rock Hill, South Carolina. Except as expressly admitted, denied.
6. It is admitted that this Court has jurisdiction over this action. Except as expressly admitted, denied.
7. This paragraph is confusing and does not define the referenced "piers" and "docks" or define the particular "property" referenced. Moreover, this paragraph is conjunctive and appears to state a legal conclusion to which no response is required. As such, the allegations of this paragraph are denied.
8. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
9. The allegations of this paragraph appear to state the legal relief sought to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.

**FOR A FIRST CAUSE OF ACTION**  
**(ACTION FOR PARTITION IN KIND)**

1. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
2. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
3. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
4. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.

**FOR A SECOND CAUSE OF ACTION**  
**(CONTINUING TRESPASS and ACTION FOR INJUNCTIVE RELIEF)**

1. Defendant's preceding responses are incorporated herein by reference.
2. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
3. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
4. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
5. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
6. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.

**FOR A THIRD CAUSE OF ACTION**  
**(NUISANCE)**

1. Defendant's preceding responses are incorporated herein by reference.
2. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
3. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
4. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
5. The allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.
6. The allegations of this paragraph (incorrectly numbered as 5) state a legal conclusion to which no response is required. To the extent a response is required, the allegations of this paragraph are denied.

**SECOND DEFENSE**

Plaintiff's claims, if he is able to prove title to the subject property, are barred as Defendant possesses an express easement, or alternatively, a prescriptive easement, as set forth in the Counterclaim below, which allows Defendant ingress and egress across Plaintiff's property for the purpose of accessing Lake Wylie and the dock and pier affixed upon said easement.

**THIRD DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, estoppel, and laches as Plaintiff had knowledge or should have known for a period of in excess of 20 years of Defendant's and

his predecessors' in title use, maintenance, and enjoyment of the path of ingress and egress to Lake Wylie and the use of the subject dock and pier extending into Lake Wylie.

#### **FOURTH DEFENSE AND COUNTERCLAIM**

#### **DECLARATORY JUDGMENT; EXPRESS EASEMENT OR, IN THE ALTERNATIVE, PRESCRIPTIVE EASEMENT**

1. Defendant Bogdanovich is the record owner of the real property located at 1614 Fieldbrook Road, Rock Hill, South Carolina which is further identified by Tax Map No. 542-00-00-052 (the "Bogdanovich Lot").
2. Upon information and belief, Bogdanovich possesses an express easement that was granted in the chain of title for and is appurtenant to the Bogdanovich Lot and which grants Defendant a right-of-way for ingress and egress across Plaintiff's property for access to Lake Wylie and, specifically, Little Allison Creek which forms the Backwater and cove on Lake Wylie abutting the subject lots.
3. As owner of said easement, Bogdanovich is entitled to the rights and privileges over, through, and on said easement.
4. Upon information and belief, Plaintiff claims interests adverse to Bogdanovich's title to said easement. Plaintiff's claims are without any right and Plaintiff has no right, title, estate, lien, or interest superseding Bogdanovich's title and rights in said easement.
5. Accordingly, Bogdanovich is entitled to a declaratory judgment as to the existence and extent of his rights in and to said easement, should Plaintiff prove his ownership of the subject real property over which the easement lies.
6. Alternatively, Bogdanovich possesses a prescriptive or implied easement on and across Plaintiff's property for ingress and egress to Lake Wylie.

7. The disputed use and improvements are a pier and dock (the "Improvements") which has existed in some form and been used by Bogdanovich and his predecessors in title for a period in excess of twenty (20) years and such improvement and use have never been abandoned.

8. Upon information and belief, the existence and use of the Improvements and the pathway to Lake Wylie have been clearly visible to and known by Plaintiff since he acquired title to the subject real property designated by Tax Map No. 547-00-00-057.

9. Bogdanovich and his predecessors in title have continuously used and maintained the Improvements and the pathway and such use and maintenance was at all time open and notorious to the extent that the Improvements were known to link the Bogdanovich lot to Lake Wylie.

10. Bogdanovich, at all times, believed that he had a right to use and enjoy the Improvements and pathway between the Bogdanovich Lot and Lake Wyle as the Improvements and pathway had been in continuous use by his predecessors in title and his immediate predecessor represented to him that the Bogdanovich Lot had water access and included the Improvements

11. The use and existence of the Improvements and pathway to Lake Wylie was adverse to any rights of Plaintiff in that such use was without the express permission or the necessity therefor, or license of Plaintiff of Plaintiff's predecessors in title and, therefore, was inconsistent and contrary to his claims of ownership.

12. The use of the Improvements and pathway was exclusive to the extent that neither the Plaintiff nor Plaintiff's predecessors in title to the subject property had used the Improvements and pathway as a means of ingress and egress to and from Lake Wylie and the Bogdanovich Lot.

13. Bogdanovich is entitled to a declaratory judgment as to the existence and extent of his rights in and to said easement.

### **THIRD-PARTY COMPLAINT**

Defendant and Third-Party Plaintiff Martin Bogdanovich complaining of Marshall A. Reynolds and Christina A. Reynolds (the "Reynolds"), Fisher-Sherer, Inc. ("FS"), Robert R. Medford ("Medford"), Lutzell, Broadway & Associates, PC ("LBA"), and Tina Patrick-Broadway ("Broadway"), alleges and says as follows:

1. In the event the Court finds, although such is denied, that Bogdanovich does not possess an easement, expresses or otherwise, running across Plaintiff's subject property between his property and Lake Wylie, Bogdanovich asserts the foregoing claims against the Reynolds, FS, and Medford.

### **Parties**

2. Martin Bogdanovich ("Bogdanovich") is a resident and citizen of California.
3. Upon information and belief, the Reynolds are residents of Texas.
4. FS is a South Carolina corporation with a principal place of business in Rock Hill, York County, South Carolina.
5. Upon information and belief, RS is a land surveying firm.
6. Upon information and belief, Medford is an adult citizen and resident of Rock Hill, York County, South Carolina.
7. Medford is a professional land surveyor licensed by the State of South Carolina (License # 11065). Medford is employed by FS.
8. LBA is a North Carolina professional corporation with a principal place of business in Charlotte, Mecklenburg County, North Carolina.

9. LBA is a law firm engaged in, among other things, representing buyers in real estate closing transactions.

10. Upon information and belief, Broadway is an adult citizen and resident of Charlotte, Mecklenburg County, North Carolina.

11. Upon information and belief, Broadway is an attorney licensed by the State of South Carolina and the State of North Carolina.

12. Upon information and belief, Broadway holds an ownership stake in LBA or otherwise is employed by LBA as an attorney.

### **FACTS**

#### **Reynolds**

13. Bogdanovich is the record owner of certain real property and improvements thereon located at 1614 Fieldbrook Road, Rock Hill, South Carolina and further identified by Tax Map Number: 542-00-00-052 (the "Property").

14. By deed dated March 24, 2011, the Reynolds for good and valuable consideration in the sum of One Hundred Thirty Thousand Dollars (\$130,000.00) conveyed in fee simple, with warranty covenants, the Property to Bogdanovich (the "Deed"). A copy of the Deed is attached hereto as Exhibit A.

15. The Reynolds, by the Deed, covenanted to "warrant and forever defend all and singular the said premises unto the said Martin Bogdanovich his heirs/successors assigns, against itself and its successors and again any person whomever lawfully claiming or to claim the same, or any part thereof."



16. The Reynolds represented to Bogdanovich both prior to and during his purchase of the Property and their execution of the Deed that the Property included direct access to Lake Wylie.

17. The Reynolds marketed and sold the Property as a lot with water access to Lake Wylie, thereby representing that the Property abutted Lake Wylie or included an easement providing ingress and egress thereto.

18. Moreover, the Reynolds represented that the adjoining dock and pier (the "Improvements") were attached to and part of the Property and were for the use and enjoyment of the owner of the Property and invitees.

19. Bogdanovich was desirous of and sought a lot abutting Lake Wylie with water access and this was the primary factor in his decision to purchase the Property.

20. Bogdanovich was induced into purchasing the Property based on the Reynolds' representations that the lot included the Improvements and water access to Lake Wylie.

21. At the time of the execution of the Deed to present, Plaintiff Dukes claims, as set forth in his Complaint, that he is the legal owner of the real property upon which the Improvements sit and that Bogdanovich and his predecessors in title do not and never had an easement across his property for ingress and egress to Lake Wylie that runs with the title of the Property.

22. If Plaintiff Dukes is successful in prosecution of his claims related to the Improvements and subject easement, although such claims are denied, the Reynolds misrepresented the status of the Property, appurtenant easements, and the Improvements.

23. Bogdanovich has been compelled to defend against Plaintiff Dukes' claims against the Property and its appurtenant easements.

### **FS and Medford**

24. Prior to his purchase of the Property, Bogdanovich engaged FS and Medford to conduct a land survey of the Property.

25. Medford and FS surveyed the Property in or around March, 2001 and issued a printed survey map bearing the FS seal and the signature of Medford (the "Survey"). A copy of the Survey is attached hereto as Exhibit B.

26. The Survey indicates that the Property is directly adjacent to Lake Wylie (Little Allison Creek) with water frontage.

27. At no time prior to the purchase of the Property did Medford or FS specifically inform Bogdanovich that the Improvements were not attached to the Property, accessible via an easement, or otherwise located on property owned by Dukes.

28. At no time did Medford or FS specifically inform Bogdanovich that the Property did not include water frontage or otherwise have direct water access to Lake Wylie via easement.

29. Upon information and belief, Medford and FS knew or should have known that Bogdanovich believed he was purchasing a lot with water frontage or direct access to Lake Wylie via an easement.

30. FS is vicariously liable for the acts and omissions of Medford as he was acting within his scope of duties in conducting the land survey and preparing the Survey of the Property.

### **LBA and Broadway**

31. Prior to his purchase of the Property, Bogdanovich engaged LBA and Broadway to represent him in the purchase of the Property and act as his attorneys at the closing of the sale and purchase of the Property.

32. Neither LBA nor Broadway ever indicated or informed Bogdanovich that the Property was not waterfront, did not have water access directly or via an easement, or that the Improvements were located on the real property of Dukes and without an easement.

33. Upon information and belief, LBA and Broadway knew or should have known that Bogdanovich believed that the Property had direct water access via water frontage or an easement and that the Improvements were attached to the Property or upon an easement allowing access to Lake Wyllie and that he would have the use and enjoyment thereof.

34. Upon information and belief, LBA and Broadway failed to notify Chicago Title Insurance Company ("Chicago Title"), the carrier who issued a Commitment to insure title to the Property, about any potential issues related to water access, easements, or the Improvements which may affect title to the Property and the purchase thereof by Bogdanovich.

35. Upon information and belief, LBA and Broadway failed to take all steps necessary and submit all necessary information and documents for Chicago Title to issue a title insurance policy covering the Property following its issuance of the Commitment.

36. LBA is vicariously liable for the aforementioned acts and omissions of Broadway as such acts and omissions were made while Broadway was acting within the scope of her duties as an attorney with LBA.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Warranty/Covenants - Reynolds)**

37. The allegations of the preceding paragraphs are incorporated herein by reference.

38. The warranties granted by the Deed are valid and enforceable.

39. If the Court finds in favor of Plaintiff Dukes, the representations of the Reynolds, as set forth above, are in breach of the warranties granted by the Deed, including the covenants of warranty, seisin, and quiet enjoyment.

40. The Reynolds' breaches directly and proximately caused damages to Bogdanovich in an amount to be determined at the trial of this matter.

**SECOND CLAIM FOR RELIEF**  
**(Negligent Misrepresentation - Reynolds)**

41. The allegations of the preceding paragraphs are incorporated herein by reference.

42. If the Court finds in favor of Plaintiff Dukes, the Reynolds made false representations, as set forth above, regarding the Property, its water access, and the Improvements.

43. Said false representations were material as to the status of the Property and in relation to Bogdanovich's decision to purchase the Property.

44. The Reynolds had a pecuniary interest in making the false statements in order to induce the sale of the Property.

45. The Reynolds owed a duty of care to see that they communicated truthful information regarding the Property to Bogdanovich.

46. The Reynolds knew or should have known in the exercise of reasonable care of the falsity of their statements.

47. The Reynolds intended that Bogdanovich rely on these representations.

48. Bogdanovich in purchasing the Property did, in fact, justifiable rely on the false representations without knowledge of the falsity thereof.

49. As a prospective purchaser of the Property, Bogdanovich had a right to rely on the Reynolds' representations.

50. The Reynolds' fraudulent representations directly and proximately caused damages to Bogdanovich in an amount to be determined at the trial of this matter.

67. The contract between Bogdanovich and LBA is a valid and enforceable contract.

68. If the Court finds in favor of Plaintiff Dukes, LBA breached the contract by failing to provide the legal services in a professional, proper, skillful, and careful manner for the reasons set forth above.

69. LBA's breaches directly and proximately caused damages to Bogdanovich in an amount to be determined at the trial of this matter.

**SEVENTH CLAIM FOR RELIEF**  
**(Negligence – LBA and Broadway)**

70. The allegations of the preceding paragraphs are incorporated herein by reference.

71. LBA and Broadway had a duty to Bogdanovich to provide legal representation and legal services related to the Property and closing thereon in a professional, proper, skillful, and careful manner.

72. If the Court finds in favor of Plaintiff Dukes, LBA and Broadway failed to meet their duties to Bogdanovich by, as set forth above, failing, among other things, to inform him of any issues or potential issues related to the Property, its title, water access, easements, and the Improvements and for further failing to take all steps necessary to ensure the issuance of a title insurance policy covering the title to the Property..

73. The negligence of LBA and Broadway directly and proximately caused damages to Bogdanovich in an amount to be determined at the trial of this matter.

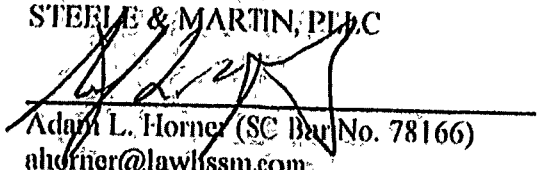
Wherefore, Bogdanovich prays the Court for the following relief:

I. That Plaintiff Dukes' Complaint be dismissed with prejudice and that he have and recover nothing from Bogdanovich;

2. That the Court enter an Order declaring that Bogdanovich does possess an easement across Plaintiff Duke's Property (Tax Map Number: 057-00-00-057) granting ingress and egress to Lake Wylie and for the Improvements;
3. That the *Lis Pendens* placed on Bogdanovich's real property be dissolved and stricken from the public record;
4. That Bogdanovich's Claims for Relief set forth in the Third-Party Complaint be granted;
5. That Bogdanovich be awarded his costs and attorney's fees as allowed by law from Plaintiff Dukes;
6. That Bogdanovich be awarded his costs and attorney's fees as allowed by law and the Deed from the Third-Party Defendants.
7. THAT ALL MATTERS HEREIN BE TRIED BY A JURY.
8. That the Court award Bogdanovich such other and further relief as it may deem just and proper.

This the 19<sup>th</sup> day of May, 2012.

HAMILTON STEPHENS  
STEELE & MARTIN, PLLC

  
Adam L. Horner (SC Bar No. 78166)

[ahorner@lawlssm.com](mailto:ahorner@lawlssm.com)

201 South College Street, Suite 2020

Charlotte, NC 28244-2020

Telephone: 704/344-1117

Facsimile: 704/344-1483

Attorneys for Marti Bogdanovich

**CERTIFICATE OF SERVICE**

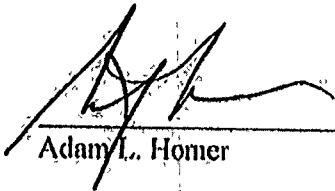
I hereby certify that a copy of the foregoing Answer and Third Party Complaint was served upon all counsel of record by depositing a copy thereof via Federal Express Overnight Delivery, addressed as follows:

J. Cameron Halford (SC Bar 17184)  
Halford, Niemiec & Freeman, LLP  
238 Rockmont Drive  
Fort Mill, SC 29708  
*Attorneys for Plaintiff*

John Martin Foster  
223 E Main Street # 520  
Rock Hill, SC 29730-4560  
*Attorneys for Kenneth and Mary Farrell*

This the 14<sup>th</sup> day of May, 2012.

By: \_\_\_\_\_

  
Adam L. Homer

HAMILTON STEPHENS  
STEELE & MARTIN, PLLC  
Charlotte Plaza - Suite 2020  
201 South College Street  
Charlotte, North Carolina 28244-2020  
Telephone: (704) 344-1117

18  
FILED RECEIVED  
STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
JUN 18 AM 10:22

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl C. Dukes, DAVID HAMILTON  
C.C.P. & L.S.  
YORK COUNTY ) SC.

Plaintiff, )

CASE NO. 2011-CP-46-3182

vs. )

Kennith W. Farrell, and )  
Mary C. Farrell, )

PLAINTIFF NOTICE OF MOTION  
AND MOTION FOR SUMMARY JUDGMENT  
AS TO DEFENDANT FARRELL  
COUNTERCLAIMS

Defendants. )

TO: JOHN MARTIN FOSTER, ESQ.

YOU WILL TAKE NOTICE that the undersigned counsel for Plaintiff will, within ten (10) days, or as soon thereafter as the court may schedule, move before the court of common pleas for an ORDER granting summary judgment and dismissing Defendants' Counterclaims of Express and/or Implied Easement, and/ or Adverse Possession, on the grounds the claims fail to state a cause of action for which relief can be granted under applicable law and there is no genuine material issue of fact for trial. Plaintiff's motion will be supported by memorandum of authorities and deposition excerpts.

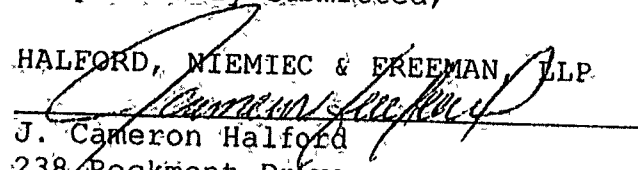
IN THE ALTERNATIVE, Plaintiff seeks an Order granting injunctive relief restraining and enjoining Defendants from further accessing the dock and pier situated on the lands



of Plaintiff, or alternatively compelling the removal of all Defendants' personal property consisting of the dock, boats, watercraft and any and all personal items from Plaintiff's property TMS 057-00-00-057.

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, LLP

  
J. Cameron Halford  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax

June 17 2013  
Fort Mill, South Carolina

**MEMORANDUM IN SUPPORT**

The following facts have been deemed admitted before prior rulings of this court in this case: Plaintiff owns certain lots abutting Lake Wylie, specifically TMS 057-00-00-057. Defendant owns certain lots adjacent to Plaintiff's property designated as "water access" lots, TMS 057-00-00-050. The Plaintiff and Defendant's lands lie adjacent to one another. Defendants own a pier and dock extending into Lake Wylie, but the piers and docks are physically attached to Plaintiff's property TMS 057-00-00-057. Defendants use Plaintiff's property for "ingress and egress" to Lake Wylie. Viewing all facts and inferences in a light most

favorable to Defendants, it is acknowledged by Defendants' pleadings that Plaintiff is the owner of some thirty (30') feet between the boundary of the Defendants Farrell and the waters of Lake Wylie. (Answer and Counterclaims, P. (5) at ¶24 ). The deed and survey under which Defendant Farrell acquired his lands are attached as Exhibit B.

**STANDARD OF REVIEW AS TO  
EXISTENCE AND SCOPE OF EASEMENT**

The determination of the existence of an easement is an action at law. Slear v. Hanna, 329 S.C. 407, 496 S.E.2d 633 (1998); *see also* Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998). "[T]he determination of the *scope of an easement* is a question in equity." Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006).

**SUMMARY JUDGMENT STANDARD OF REVIEW  
PURSUANT TO SCRCP 56 AND APPLICABLE CASE LAW**

Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. City of Columbia v. American Civil Liberties Union, etc., et al., 323 S.C. 384, 475 S.E.2d 747 (1996). SCRCP 56. In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in a light most favorable

to the nonmoving party. Id. Summary Judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Baughman v. American Tel. And Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). For summary judgment to be granted, it must be perfectly clear no genuine issue of fact is involved. Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 293 S.E.2d 706 (1982). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest upon mere allegations or denials contained in the pleadings. Baughman, supra. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Id.

### ARGUMENT

The Farrell Defendants claim, by way of 1965 grant an alleged express or implied easement, a right of way (sic) across Plaintiff's lands for access to the waters of Lake Wylie. The alleged right arises from grant under deed of Defendants' predecessors in title A.F. Fewell and Edward Fewell, Jr. to W.A. Bigham dated March 2, 1965 attached as Exhibit A. At no place in the 1965 conveyance is the Plaintiffs' property identified. The language of the grant is specifically as follows:

"It being understood, that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the cove (sic) on which the above referenced property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein A.F. Fewell and Edward Fewell, Jr. (sic)."

Alternatively, Defendants have pleaded adverse use of Plaintiff's property under a theory of adverse possession. However, Defendants fail the requirements of hostility, exclusivity, and cannot prove use of the land for the requisite period of (20) years. Farrell Defendants took title to their property in year 2005. See, August 17, 2005 deed Exhibit B.

In any claim under Adverse Possession, the claimant's possession must be such as to indicate *exclusive* possession. Gregg v. Moore, 226 S.C. 366, 85 S.E. 2d 279 (1954). The requirement of exclusive possession is not met if occupancy is shared with the owner or agents of the owner. Butler v. Lindsey, 293 S.C. 466, 361 S.E.2d 621 (Ct.App. 1987). It is undisputed that the dock attaches to the lands of the Plaintiff Earl C. Dukes.

In discussing hostility, South Carolina courts have held that possession must be without subserviency to, or recognition of, the true owners' title, and must be hostile to it *and the whole world*. Gregg, Supra at 366. Defendant's pleadings acknowledge Plaintiff's ownership and acknowledges that Defendant's dock attaches physically to the lands of the Plaintiff, failing the above listed legal requirements.

Viewing Defendants' claims in a light most favorable to Defendants, there likewise exists no genuine issue of fact for trial regarding express or implied easement :

1. Defendant's counterclaims fail necessarily as a matter of law because the grant of water access to Defendants' predecessors in title is a mere easement in gross and was not appurtenant.

Defendant's counterclaims fail necessarily as a matter of law because A.F. Fewell, in 1965, owned both the alleged

dominant and servient estates at the time of the creation of Defendants' alleged grant of "water access" as an easement, express or implied. It is a long settled principal of South Carolina common law that an easement cannot exist where both the purported servient and dominant estates are *owned by the same person*, Windham v. Riddle, 381 S.C. 192, 672 S.E.2d 578 (S.C. 2009). Relying on this long-standing common law rule, a majority of the South Carolina Supreme Court found in a similar case that an easement could not have been created. *Id.* (citing Haseldon v. Schein, 167 S.C. 534, 539, 166 S.E. 634, 635 (1932)). Similar to this case, *A.F. Fewell*, in 1965, held title to both tract TMS # 057-00-00-057 (Plaintiff's parcel) and TMS #057-00-00-050 (Defendant's parcel), represented by Exhibit A and Exhibit C, respectively. Viewing all facts and inferences in a lights most favorable to Defendants, no easement appurtenant thus could have been created by the Fewell conveyance to W.A. Bigham, Defendants' predecessor. Windham, 370 S.C. at 419, 635 S.E.2d at 560. Defendants claims of express or implied easement, therefore, fail necessarily as a matter of law and Plaintiff is entitled to Summary Judgment on Defendants' counterclaims.

Even if the 1965 conveyance to Defendant's predecessors in title could be construed as anything other

than an *easement in gross*, Defendants' claims fail nonetheless. The four corners of the deed relied upon by Defendants is absolutely devoid of any specific mention of Plaintiff's property, the alleged subservient estate. Nor does the 1965 conveyance reference improvements like a dock or pier for water access, or the ability to store personal properties. The deed relied upon by Defendant recites nothing more than *water access*. Exhibit A.

2. The Owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 650, 197 S.E. 2d 914, 919 (1973) (quoting 25 Am. Jur. 2d Easements and Licenses, §72 at 478).

It has been admitted as fact in this case that the dock physically attaches to lands of the Plaintiff, Earl Dukes. Assuming a valid easement under South Carolina law, the owner of an easement has all rights incident to or necessary to its proper enjoyment, *but nothing more*. Id. Although the rights of an easement owner are paramount to those of the landowner, the easement owners' rights are *not absolute but are limited*, so the owners of the easement and the servient tenement may have reasonable enjoyment. Clemson, Id.

Even assuming arguendo that the grant of easement Defendant relies upon is appurtenant, and not in gross, the

grant only provides Defendants' *water access*. It does not provide Defendants the ability to cross upon, build upon, extend docks, or store personal boats, watercraft, or other items of personal property. The grant does not speak to Plaintiff's parcel as the servient estate whatsoever. Yet, Defendant has testified that he continues to use the dock and continues to store boats, watercraft and personal property on the dock. Defendant likewise testified under oath that he permits visitors to utilize the dock that are not members of Defendants' household. (6/17/2013 Transcript p. \_\_ at line \_\_\_\_ ). Exhibit D.

A fundamental principal of easement law is that an easement for the benefit of a particular piece of land *cannot be enlarged and extended* to other parcels of land, whether adjoining or distinct tracts, to which the right *is not attached*. Adams v. Winnett, 25 Tenn. App. 276, 156 S.W. 2d 353, 357 (1941). "*If an easement is appurtenant to a particular parcel of land* (TMS # 057-00-00-050), *any extension thereof to other parcels* (TMS # 057-00-00-057) *is a misuse of the easement*. Id. (citing Wetmore v. Ladies of Loretto, Wheaton, 73 Ill. App. 2d 454, 220 N.E.2d 491 (1966)). Viewing all facts and inferences in a light most favorable to Defendants, Defendants could not enlarge or extend their "water access" to or across the lands of the

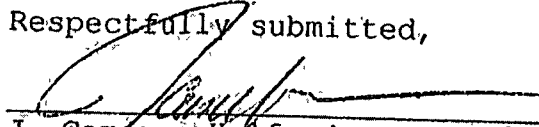


Plaintiff, to which their right was never attached. Assuming, *arguendo*, that Defendants have water by crossing Plaintiffs parcel, under South Carolina law they cannot extend their benefit nor increase the burden to Plaintiff's land. Id. Defendant has testified that he maintains two (2) boats and permits visitors upon the dock. (6/17/2013 Transc. P. \_\_\_ at line \_\_\_ ). Exhibit D.

### CONCLUSION

Defendants' claims fail as a matter of law and there is no genuine issue of material fact for trial. Legally, no express or implied easement could be established by a grantor who simultaneously owned both the dominant and alleged servient land parcels in 1965. See, Exhibit A and Exhibit C. Alternatively, even by "tacking onto" predecessors' titles, Defendants' claims thru predecessors in title could not be legally construed as anything other than an easement in gross. The rights likewise could not be enlarged or extended across Plaintiffs' lands by use of a dock that physically attaches to Plaintiff's property. At no place in the grant to the Defendants does the 1965 deed specifically reference Plaintiff's parcel TMS # 547-00-00-057. Defendants claims fail, therefore, necessarily as a matter of law and Plaintiff is entitled to summary judgment as to Defendant's counterclaims.

Respectfully submitted,

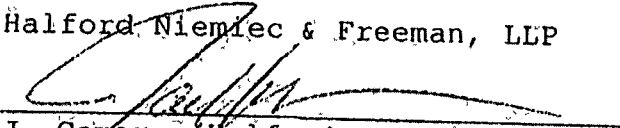
  
J. Cameron Halford  
S.C. Bar 17184  
238 Rockmont Drive,  
Fort Mill, S.C. 29708  
803-547-6618  
803-547-6638 fax  
cam@fortmilllaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that I am the attorney for the Plaintiff in the above captioned matter and that I did on June 17<sup>th</sup> 2013 serve a copy of the foregoing PLAINTIFF MOTION FOR SUMMARY JUDGMENT AS TO ALL DEFENDANT FARRELL CLAIMS by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

**John Martin Foster, Esq.**  
The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, South Carolina 29730  
Attorney for Defendants

Halford Niemiec & Freeman, LLP

  
J. Cameron Halford  
State Bar No. 17184  
238 Rockmont Drive  
Fort Mill, S.C. 29708  
803-547-6618  
803-547-6638 fax

DAVID H. HARRIS  
CLERK OF COURT  
JUN 18 2013

2013 JUN 18 AM 10:22

FILED-62000-000

# STATE OF SOUTH CAROLINA

YORK COUNTY

That We, A. F. Fewell and Edward Fewell, Jr.,

of the County of York,

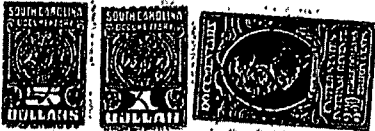
In consideration of the sum of Five and no/100 --- (\$5.00) --- in the State aforesaid, and other valuable consideration, to the grantor(s) in hand paid at and before the sealing of these presents, by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold, released, and by these presents do grant, bargain, sell, and release unto the said

Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. & Ed Fewell, Jr., prepared by R. H. Maretz, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at Page 7, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property is conveyed subject to the Water Rights granted to the Wateree Power Company by Madison Hill by Deeds recorded in Deed Book 54, at Page 617, and Deed Book 64, at Page 313, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of-Way.

It being understood that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the Cove on which the above described property is located, subject to rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Fewell and Edward Fewell, Jr.

It being further understood that the Grantee herein, His Heirs and Assigns, shall have the right to use the Private Road shown on the above mentioned Plat as a means of ingress and egress from the County Road to said Lot herein conveyed.



FILED & RECORDED  
MAR 11 2 1965  
THAS L. GARRO  
C. C. CLERK  
YORK COUNTY, S. C.

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinabove named, and His Heirs and Assigns forever.

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

Witness the grantor(s)' hand and seal this 2nd --- day of March, --- in the year of our Lord One Thousand Nine Hundred and Sixty-five.

Signed, Sealed and Delivered in the Presence of

*Doris D. Bushue*  
*John Oates Woods*

*A. F. Fewell* (Seal)  
*Edward Fewell, Jr.* (Seal)  
A. F. FEWELL (Seal)  
EDWARD FEWELL, JR. (Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris D. Bushue

and made oath that she saw the within named grantor(s), A. F. Fewell and Edward Fewell, Jr., sign, seal and as their act and deed, deliver the within written deed, and that she, with John Oates Woods --- witnessed the execution thereof.

Sworn to before me this 2nd day of March, A. D. 1965.  
*Doris D. Bushue* (Seal)  
Notary Public for South Carolina

State of South Carolina,

RENUNCIATION OF DOWER

YORK County

I, Doris D. Bushue, --- Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Louise Peace Fewell and Mrs. Dora H. Fewell, wives of the within named A. F. Fewell and Edward Fewell, Jr., respectively, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto W. A. Bigham, His ---

Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released

*Doris D. Bushue* (Seal)  
Notary Public for South Carolina

*Mrs. Louise Peace Fewell*  
*Mrs. Dora H. Fewell*  
MRS. LOUISE PEACE FEWELL  
MRS. DORA H. FEWELL

BK-334  
Pg 414  
D-32/65  
R-31 11/65

PLAINTIFFS  
EXHIBIT  
A

TITLE TO REAL ESTATE

## STATE OF SOUTH CAROLINA,

(See Affidavit)

YORK COUNTY

Know All Men by These Presents:

That I, Charles J. Bailey,

of the County of York,

in consideration of the sum of One and no/100 (\$1.00) - - - - - in the State aforesaid,

DOLLARS,

to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 Acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fewell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July 1963, recorded in Plat Book 24, at Page 173, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows:

BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-42 W. 291.5 feet to the beginning point.

This being the identical property conveyed to Charles J. Bailey, Grantor herein, by A. F. Fewell and Edward Fewell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing Easements and Rights-of-Way.

FILED & AT  
MAR 11 2  
YORK COUNTY, S.C.

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinabove named, and His - - - Heirs and Assigns forever.

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

Witness the grantor(s)'s hand and seal this 5th - - - - - day of March, - - - - - in the year of our Lord One Thousand Nine Hundred and Sixty-five.

Signed, Sealed and Delivered in the Presence of

*Doris D. Bushuo*  
*John Oates Woods*

*Charles J. Bailey*  
CHARLES J. BAILEY (Seal)  
(Seal)  
(Seal)  
(Seal)  
(Seal)  
(Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris D. Bushuo

and made oath that she saw the within named grantor(s), Charles J. Bailey, sign, seal and as his - - - act and deed deliver the within written deed, and that she, with John Oates Woods - - - witnessed the execution thereof.

Sworn to before me this 5th day of March, A. D. 1965.  
*Doris D. Bushuo* (Seal)  
Notary Public for South Carolina

State of South Carolina,

## RENUNCIATION OF DOWER

YORK County

I, John Oates Woods, - - - - - Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Evelyn B. Bailey, - - - - - wife of the within named Charles J. Bailey, - - - - - did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto W. A. Bigham, His - - - - -

Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 5th day of March, A. D. 1965.  
*John Oates Woods* (Seal)  
Notary Public for South Carolina

*Evelyn B. Bailey*  
MRS. EVELYN B. BAILEY  
EVELYN

Recorded this - - - - - day of - - - - - 1965, at - - - - - M. No. - - - - -

BK-334  
pg-410  
D-3/5/65  
R-3/11/65

455  
1-4-05

000250994  
RECORDED 08/16/2005 11:44:48AM  
Bk 07331 Pg 00102 Page 12  
Fee 10.00 State 955.50  
County 100.00  
York County, SC Clerk of Court

Space above this line for recording

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

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor, for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7, and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20466, recorded in Plat Book D-18 at Page 9 as follows: BEGINNING at a pipe on edge of Private Drive (30' R/W), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31 59 E 170.53 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet; thence N 52 16 42 E 191.01 feet to #4 rebar, thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 39 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.58 feet to #5 rebar, thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 56 39 12 W 139.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1986 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 90ES46-60694, evidenced by Deed of Distribution recorded in Record Book 293 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

RECORDED  
YORK COUNTY  
TAX ASSESSOR'S OFFICE

DATE 8-17-05  
TAX-MAP NO. 547-50  
INITIALS AC / JN

BK 07331 PG 0102



This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: ~~1031 Fieldbrook Drive~~ 9860 Barberville Rd.  
~~Rock Hill, SC 29732~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00-050

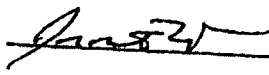
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

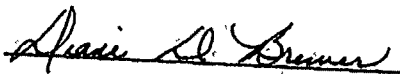
AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2005.

Signed, Sealed and Delivered  
in the Presence of:



  
Robert J. Edwards (SEAL)

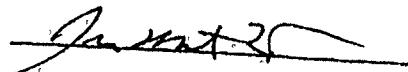


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

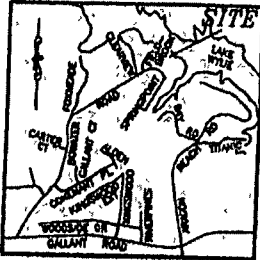
Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2005

  
Notary Public for the State of South Carolina  
My Commission Expires 4-28-05



BK07331 P00103



**VICINITY MAP**  
(NOT TO SCALE)

| LINE | LENGTH | BEARING    |
|------|--------|------------|
| 1    | 88.00  | S 83°21' E |
| 2    | 20.00  | S 02°18' W |



MARSHALL A. REYNOLDS  
AND  
CHRISTINA A. REYNOLDS  
DB 4734 - PG 35  
PB 00 - PG 158  
TAX PARCEL  
647-00-00-032

3/4" PIPE

0.823 ACRES

8/8" REBAR

EARL C. DUKES  
DB 4386 - PG 139  
PB 00 - PG 9  
TAX PARCEL  
647-00-00-253

ANNE B. OATES  
DB 8772 - PG 225  
PB 21 - PG 7  
TAX PARCEL  
647-00-00-048

**LEGEND:**  
PP - POWER, POLE  
UT - UTILITY BUILDING  
OVERHEAD UTILITIES — OHU —

THIS PROPERTY IS NOT WITHIN A FLOOD PRONE AREA. THE MAXIMUM WATER LEVEL ESTABLISHED BY THE EXISTING DAM FOR LAKE WYLIE IS 370.0'. THIS PROPERTY COULD BE SUBJECT TO DUKE POWER FLOOD RIGHTS EXTENDING TO ELEVATION 380.0'. (REF DB 397-PG 361)

NO NEW LOTS OR PROPERTY LINES ESTABLISHED.



NO. C01570



**FISHER - SHERER  
INC.**  
ENGINEERING & SURVEYING  
2051 EBENEZER ROAD  
ROCK HILL, S.C. 29732  
803-327-1232  
800-635-9820

PROPERTY SURVEYED FOR  
**KENNETH W. FARRELL**  
and  
**MARY C. FARRELL**  
LOCATED AT 1631 FIELDBROOK DRIVE  
IN THE EBENEZER TOWNSHIP  
YORK COUNTY, SOUTH CAROLINA  
MAY 15, 2008

THIS PROPERTY IS DESIGNATED AS BEING TAX PARCEL # 647-00-00-050

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS IS TO CERTIFY THAT I HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP AND FOUND THAT THE ABOVE DESCRIBED IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA."

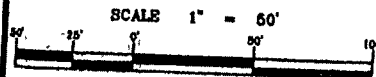
*Robert R. Medford*  
ROBERT R. MEDFORD S.C. REG. S. 11085

**REVISIONS**

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

**MONUMENTS LEGEND:**

|           |       |     |
|-----------|-------|-----|
| IRON PIPE | FOUND | SET |
| IRON PIN  | ○     | ⊙   |



THE STATE OF SOUTH CAROLINA,

YORK COUNTY.

TITLE TO REAL ESTATE, NO. 101

Printed and Sold by the White Printing Co.,  
Rock Hill, S. C.

(See Affidavit)



FILED & RECORDED  
BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
Nov 17 3 33 PM '50  
TOM L. WILSON  
C. C. & P. E. S.  
YORK COUNTY, S. C.



KNOW ALL MEN BY THESE PRESENTS, That

I, Eliza C. White, of Rock Hill, York County,

in the State aforesaid,

in consideration of the

sum of Five (\$5.00) Dollars and other valuable considerations - - - - - Dollars,

to me in hand paid and before the sealing of these presents, by A. F. Fewell and

Edward Fewell, Jr.

in the State aforesaid

(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 A. F. Fewell and Edward Fewell, Jr., their Heirs and Assigns, the following described property:

All that piece, parcel or tract of land lying, being and situated in Ebenezer Township, in the County of York, State of South Carolina, beginning at a stake on line of Southern Power Company; thence N. 59° W. 1100 feet to stake; thence N. 60° W. 947 feet to Locust; thence N. 23° E. 765 feet to stake on line of J. P. Glen; thence N. 75° E. 2125 feet across creek to Ash Stump; thence S. 18° E. 855 feet to rock; thence S. 9° W. 1463 feet to the beginning, containing 70 acres, more or less, according to plat made by H. H. White, January 1917, and being the same tract of land conveyed to Mary Jane Hill by Madison Hill by deed January 21, 1930 and recorded in the Office of R.H.C. for York County in Book 76, page 1; being the identical property conveyed to Eliza White by Mary Jane Hill by deed dated November 29, 1938, recorded January 4, 1939 in Deed Book 95, page 80, Office of R.H.C. for York County.

The above property is conveyed subject to the Water Rights granted to the Wateree Power Company by Madison Hill by deeds recorded in Deed Book 54, page 617 and Deed Book 64, page 313.

165/61



06718/19  
H.H.



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

A. F. Fewell and Edward Fewell, Jr., their Heirs and Assigns forever.

and I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said A. F. Fewell and Edward Fewell, Jr., their Heirs and Assigns against me and my Heirs and all others whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness my Hand and Seal this 14th day of November in the year of our Lord one thousand nine hundred and Fifty and in the one hundred and Seventy-Fifth year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered in the presence of

Margaret H. Woods  
John Gates Woods

Eliza C. White [Seal]  
Eliza C. White

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY.

PERSONALLY APPEARED before me Margaret W. Woods and made oath that she saw the within named Eliza C. White, sign, seal and as her Act and Deed, deliver the within Written Deed; and that she with John Gates Woods, witnessed the execution thereof.

Spoken to before me this 14th day of November A. D. 19 50  
[Seal] John Gates Woods  
Notary Public for S. C.

Margaret H. Woods

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY.

NO RENUNCIATION OF DOWER  
(GRANTOR WOMAN)  
Notary Public,

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
CASE NO. 2011-CP-46-3182

EARL C. DUKES,

Plaintiff,

vs.

KENNETH W. FARRELL, MARY C.  
FARRELL, and MARTIN  
BOGDANOVICH,

Defendants.

MARTIN BOGDANOVICH,

Third-Party Plaintiff,

vs.

MARSHALL A. REYNOLDS and  
CHRISTINA A. REYNOLDS; FISHER-  
SHERER, INC.; ROBERT R. MEDFORD;  
LUTZEL, BROADWAY &  
ASSOCIATES, PC and TINA PATRICK-  
BROADWAY.

**PLAINTIFF REQUEST FOR  
ADMISSION OF FACTS TO  
FARRELL DEFENDANTS  
SCRCP 36**

**TO: JOHN MARTIN FOSTER, ESQ., ATTORNEY FOR DEFENDANTS  
KENNETH W. FARRELL AND MARY C. FARRELL:**

Plaintiff here submits to Defendants Kenneth W. Farrell and Mary C. Farrell the following Request for Admission of Facts pursuant to SCRCP 36, to be answered within thirty (30) days of service. Defendants are requested to answer the following Request for Admission of Facts under oath and in writing pursuant to SCRCP 36 within thirty (30) days after service of these documents and as specified by requirements of SCRCP 36.

Such request for admissions, pursuant to the above rule, shall be deemed *admitted* unless within the above time frame you serve a written response. If any objection is made, the reasons for the objection should be clearly set forth and stated pursuant to the South Carolina Rules of Civil Procedure. *The purpose of this request is to render unnecessary proof of facts or genuineness of documents where there is no real legal dispute.*

The Plaintiff's response to each Request for Admission of Fact shall specifically ADMIT or DENY the matter set forth explicitly. Any such denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify an answer or deny only part of the matter which is requested to be admitted, you shall specify so much of the request as being true and qualify or deny the remainder with appropriate objection under the South Carolina Rules of Civil Procedure.

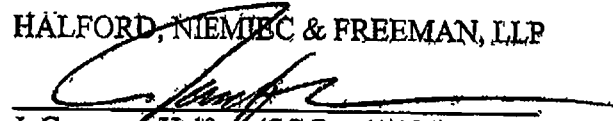
**YOU WILL TAKE NOTICE** that you may not give lack of information or knowledge as a reason for failure to admit or deny, unless you state that you have made reasonable inquiry into the information known or readily available and obtainable to you and it is insufficient to enable you to admit or deny. Defendants and their counsel are placed on notice that should you fail to admit these requests for admission or any part thereof, and if the undersigned thereafter proves the truth of the matter before the court, *you are noticed that the undersigned will petition the court for an order requiring the Defendants to pay the reasonable expenses incurred in making such proof, which shall specifically include reasonable attorney's fees.*

Defendants Request Plaintiff Admit The Truth of the Following:

1. John Martin Foster, Esq. is your trial attorney in this action.
2. John Martin Foster, Esq. filed your Answer and Counterclaims in this action for express or implied easement.
3. John Martin Foster, Esq. of the York County bar served as the closing attorney for Defendants' acquisition of 1631 Fieldbrook Drive, Rock Hill, South Carolina, 29732 (TMS# 547-00-00-050) on or about August 12, 2005.
4. The aforementioned deed on its face does not identify the document as prepared by the law offices of John Martin Foster, Esq. on August 12, 2005.
5. The aforementioned deed was, in fact, prepared by or under the supervision of John Martin Foster, Esq.
6. John Martin Foster, Esq. *actively supervised the closing* under which Defendants acquired title to 1631 Fieldbrook Drive, Rock Hill, South Carolina, 29732 (TMS# 547-00-00-050).
7. John Martin Foster, Esq. was the agent for issuance of title insurance as part of the Defendants closing for 1631 Fieldbrook Drive, Rock Hill, South Carolina, 29732 (TMS# 547-00-00-050).
8. Defendants did not purchase title insurance as part of their closing transaction and acquisition of 1631 Fieldbrook Drive, Rock Hill, South Carolina, 29732 (TMS# 547-00-00-050).
9. Plaintiffs have requested that Defendant, through counsel Martin Foster, place title insurance carriers on notice of title insurance claims implicated by virtue of the claims and defenses in this action.
10. The property lines, metes and bounds referenced by the deed of August 17, 2005 in Deed Book 7331 at Page 102 are true and accurate depiction of the real property conveyed to Defendants on August 12, 2005 by virtue of Deed recorded in Book 7331 at page 103.
11. The aforementioned deed references Plat Book D-18 at Page 9, a plat prepared by Dwayne J. Jordan, SCPLS #20466.
12. The aforementioned deed from Edwards to Farrell does not identify a waterfront dock as part of the legal description for the property acquired by the Farrell defendants.
13. The aforementioned plat at Book D-18 at Page 9, does not depict a waterfront dock attached to or appurtenant to Defendant Farrells' property 1631 Fieldbrook Road, Rock Hill.

14. No recorded plats within Defendants' chain of title evidence a water front improvement consisting of the dock or pier.
15. Defendants have never met nor communicated, ever, with A. F. Fewell or Edward Fewell, Jr.
16. Defendants rights and access to the waters of Lake Wylie are subject to the rights of Duke Power (formerly Wateree Power Company).
17. In year 1965, A.F. Fewell and Edward Fewell, Jr. owned the parcel of land now owned by Plaintiff Earl C. Dukes, identified as TMS 547-00-00-057.
18. In year 1956, A.F. Fewell and Edward Fewell, Jr. owned the parcel of land before, during and concurrently with the grant to Defendants' predecessor in title W.A. Bigham.

HALFORD, NIEMEYER & FREEMAN, LLP

  
J. Cameron Halford (SC Bar 17184)  
238 Rockmont Drive,  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Plaintiff in the above captioned matter and that I did on August 26, 2013 serve a copy of the foregoing **PLAINTIFF REQUEST FOR ADMISSION OF FACTS TO FARRELL DEFENDANTS** by electronic mail, and postage paid U.S. Mail, addressed as follows:

John Martin Foster, Esq.  
223 E. Main Street, Suite 520  
Rock Hill, South Carolina 29730-4560  
jmfooster@comperium.net

*Attorney for Defendants Kenneth and Mary Farrell*

(Electronic Copies Only)

Adam Horner, Esq.  
Hamilton Stephens Steele & Martin, PLLC  
201 S. College Street, Suite 2020  
Charlotte, North Carolina 28244-2020  
ahorner@lawhssm.com  
Attorney for Martin Brogdonovich

Bruce M. Poore, Esq.  
306 West Oakland Avenue,  
Rock Hill, South Carolina, 29730  
brmpoore@comporium.net  
*Attorney for Defendants Marshall A. Reynolds  
And Christina A. Reynolds*

Walter L. Heinsohn, Esq.  
1548 Ebenezer Road  
Post Office Box 4287  
Rock Hill, South Carolina 29732  
heinsohnlaw@comporium.net  
*Attorney for Third Party Defendants Fisher-Sherer, Inc.  
And Robert R. Medford*

Richard J. Lutz, Esq.  
Lutz, Broadway & Associates, PC  
542 Williamson Road, Suite - A  
Mooresville, North Carolina 28117  
rlutz@lutzgandy.com  
*Attorney for Third Party Defendants Lutz, Broadway  
& Associates, PC and Tina Patrick Broadway*

  
HALFORD, NIEMIEC & FREEMAN, LLP

J. Cameron Halford  
238 Rockmont Drive,  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax

STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]  
Plaintiff, ]

v. ]

KENNITH W. FARRELL, ]  
MARY C. FARRELL, and ]  
MARTIN BOGDONOVITCH, ]  
Defendants. ]

MEMORANDUM IN OPPOSITION  
TO MOTION FOR SUMMARY JUDGMENT

MARTIN BOGDONOVITCH, ]  
Third-Party Plaintiff, ]

v. ]

MARSHALL A. REYNOLDS, ]  
CHRISTINA A. REYNOLDS, ]  
FISHER-SHERER, INC., ]  
ROBERT P. MEDFORD, ]  
LUTZEL, BROADWAY & ]  
ASSOCIATES, PC, and ]  
TINA PATRICK-BROADWAY, ]  
Third-Party Defendants. ]

CA No. 11-CP-46-03182

PROCEDURAL OBJECTION

Counsel for the Defendants FARRELL has received a copy of the Motion for Summary Judgment on behalf of the Plaintiff, from Bruce Poore's Office on October 16<sup>th</sup>, 2013. While he has received e-mail discussion of the same, he had not previously received such document.

The Certificate of Service of the document received recites that he alone has been served. The Certificate of Service does not recite service on all counsel, there being five lawyers other than Mr. Halford, counsel for the Plaintiff in this case. Walter Heinsohn, counsel for FISHER-SHERER, INC. and MEDFORD, denies receipt of the Motion. Counsel for the FARRELLS has not canvassed other counsel.

Rule 5(b)(3), S.C.R.C.P., requires service of pleadings on all parties, and Rule 5(d), S.C.R.C.P., requiring proof of this fact to be filed within ten days of the service in question. The

only case on point discovered by counsel is in accord that this motion is improper in light of these deficiencies.

### EXISTENCE OF EASEMENT

Our Court of Appeals has held as follows:

In order to establish an easement by prescription, a party must show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under claim of right. *Horry County v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993); *Babb v. Harrison*, 220 S.C. 20, 24-25, 66 S.E.2d 457, 458 (1951); *Hartley v. John Wesley United Methodist Church of Johns Island*, 355 S.C. 145, 150, 584 S.E.2d 386, 388 (Ct.App. 2003)

[*Loftis v. S.C. Elec. and Gas Co.*, 361 S.C. 434, 604 S.E.2d 714 (Ct.App. 2004)]

As to the third element set out in *Loftis* above, the Defendants FARRELL are the owners of that real property and improvements located at 1631 Fieldbrook Drive, Rock Hill, South Carolina and bearing Tax Map No. 547-00-00-050, under the deed of Robert J. Edwards into them dated August 12, 2005 and recorded August 16, 2005 in Record Book 7331 at Page 102 in the Office of the Clerk of Court for York County, South Carolina.

As owners under the above-referenced deed, the FARRELLS are successors in title under the deed of A. F. Fewell and Edward Fewell, Jr. to W. A. Bigham by the deed dated March 2, 1965 and recorded the same date in Deed Book 334 at Page 414 in the Office of the Clerk of Court for York County, South Carolina. The said deed from Fewell to Bigham provides, in relevant part:

It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

As successors in interest and under the deed containing the above-cited language, the Defendants FARRELL are the owners of an easement appurtenant to the real property owned by them, a right-of-way allowing them to freely pass by all means of conveyance over any strip of land contained in Tax Map. No. 547-00-00-057 (now owned by the Plaintiff) to access the waters of Little Allison Creek (the Backwater and cove referenced in the above-cited deed), which is the



portion of Lake Wylie on which the parties' real property is located.

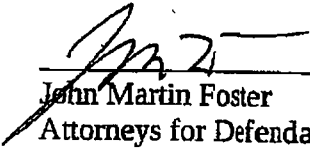
As owner of the easement, the Defendants FARRELL claim entitlement to the rights and privileges over, through, and on the easement set out in the deed and quoted above.

It is undisputed that the Plaintiff DUKES is the owner of Tax Map No. 547-00-00-050 and therefore of some thirty (30) feet between the boundary of the Defendants FARRELL and the waters of Lake Wylie, as calculated by the Plat of Fisher-Shearer dated May 15, 2001, a copy of which is attached to and incorporated in the FARRELLS' Answer.

The FARRELLS and their predecessors have held and used the existing pier and its older incarnations since 1976. If not mandated by the grant from the deed quoted above, such pier(s) and the use thereof has been continuous, hostile to any adverse claim, open, adverse to any opposing claimant, notorious (insofar as the pier is freely observable) and exclusive (i.e., unshared with other parties.) In short, their possession and use of the pier has been established by all the elements of adverse possession.

In the case at hand, we have uncontradicted Affidavits showing continued and uninterrupted use since (at least) 1976, a total of thirty-eight years. The use and nature of the thing enjoyed is clearly shown to be the pier, i.e., the landowner's access to the river.

By reason of all the elements for easement by prescription, his real property is subject to the said easement.

  
John Martin Foster

Attorneys for Defendants FARRELL

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
jmfoster@comporium.net

October 16, 2013

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]  
Plaintiff, ]  
v. ]

NOTICE AND MOTION

FOR SUMMARY JUDGMENT

KENNITH W. FARRELL, ]  
MARY C. FARRELL, and ]  
MARTIN BOGDONOVITCH, ]  
Defendants. ]

Pursuant to:

RULE 56(a), S.C.R.C.P.

MARTIN BOGDONOVITCH, ]  
Third-Party Plaintiff, ]  
v. ]

CA No. 11-CP-46-03182

MARSHALL A. REYNOLDS, ]  
CHRISTINA A. REYNOLDS, ]  
FISHER-SHERER, INC., ]  
ROBERT P. MEDFORD, ]  
LUTZEL, BROADWAY & ]  
ASSOCIATES, PC, and ]  
TINA PATRICK-BROADWAY, ]  
Third-Party Defendants. ]

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You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of Court,  
or as soon thereafter as counsel may be heard.

PLACE: Office of the Master in Equity for York County  
1 North Congress Street  
York, South Carolina 29745,  
or such other place as may be designated by the Judge or  
the Clerk of Court.

Pursuant to Rule 56(b), S.C.R.C.P., the Defendants KENNETH W. FARRELL and MARY C. FARRELL (hereafter also "the FARRELLS" and "the Movants" and "the Credit Union") move this Court for Summary Judgment as to the Complaint and causes of actions of the Plaintiff DUKES in the within civil action.

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

If you fail to appear, the Plaintiff will request the relief prayed for in said Motion.

The grounds for the motion above is as follows:

Our Court of Appeals has held as follows:

In order to establish an easement by prescription, a party must show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under claim of right. *Horry County v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993); *Babb v. Harrison*, 220 S.C. 20, 24-25, 66 S.E.2d 457, 458 (1951); *Hartley v. John Wesley United Methodist Church of Johns Island*, 355 S.C. 145, 150, 584 S.E.2d 386, 388 (Ct.App. 2003)

[*Loftis v. S.C. Elec. and Gas Co.*, 361 S.C. 434, 604 S.E.2d 714 (Ct.App. 2004)]

As to the third element set out in *Loftis* above, the Defendants FARRELL are the owners of that real property and improvements located at 1631 Fieldbrook Drive, Rock Hill, South Carolina and bearing Tax Map No. 547-00-00-050, under the deed of Robert J. Edwards into

them dated August 12, 2005 and recorded August 16, 2005 in Record Book 7331 at Page 102 in the Office of the Clerk of Court for York County, South Carolina. A copy of this deed is among the records of this action.

As owners under the above-referenced deed, the FARRELLS are successors in title under the deed of A. F. Fewell and Edward Fewell, Jr. to W. A. Bigham by the deed dated March 2, 1965 and recorded the same date in Deed Book 334 at Page 414 in the Office of the Clerk of Court for York County, South Carolina. The said deed from Fewell to Bigham provides, in relevant part:

It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

A copy of the Deed from Fewell to Bigham is among the records of this action.

As successors in interest and under the deed containing the above-cited language, the Defendants FARRELL are the owners of an easement appurtenant to the real property owned by them, a right-of-way allowing them to freely pass by all means of conveyance over any strip of land contained in Tax Map. No. 547-00-00-057 (now owned by the Plaintiff) to access the waters of Little Allison Creek (the Backwater and cove referenced in the above-cited deed), which is the portion of Lake Wylie on which the parties' real property is located.

As owner of the easement, the Defendants FARRELL claim entitlement to the rights and privileges over, through, and on the easement set out in the deed and quoted above.

It is undisputed that the Plaintiff DUKES is the owner of Tax Map No. 547-00-00-050 and therefore of some thirty (30) feet between the boundary of the Defendants FARRELL and the waters of Lake Wylie, as calculated by the Plat of Fisher-Shearer dated May 15, 2001, a copy of which is attached to and incorporated in the FARRELLS' Answer.

The FARRELLS and their predecessors have held and used the existing pier and its older incarnations since 1976. If not mandated by the grant from the deed quoted above, such pier(s) and the use thereof has been continuous, hostile to any adverse claim, open, adverse to any opposing claimant, notorious (insofar as the pier is freely observable) and exclusive (i.e., unshared with other parties.) In short, their possession and use of the pier has been established by all the elements of adverse possession.

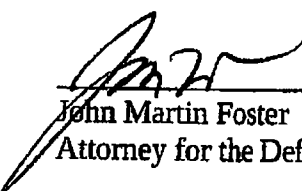
In the case at hand, Affidavits show continued and uninterrupted use since (at least) 1976, a total of thirty-eight years. The use and nature of the thing enjoyed is clearly shown to be the

pier, i.e., the landowner's access to the river.

By reason of all the elements for easement by prescription, his real property is subject to the said easement. The Movants are entitled to an Order of this Court dismissing the action of the Plaintiff and declaring their interest in the said easement.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Movants hereby affirms that this motion is dispositive in nature, and, to that end, requires no communication with opposing counsel, and, in the alternative, certifies that such consultation would serve no useful purpose or could not be timely held.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rule, the records of this civil action, any attachments hereto, and any Supporting Memorandum which the Movants may submit herein.



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Attorney for the Defendants FARRELL

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November 6, 2013

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA ]

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK ]

SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]

Plaintiff, ]

v. ]

KENNITH W. FARRELL, ]

MARY C. FARRELL, and ]

MARTIN BOGDONOVITCH, ]

Defendants. ]

CERTIFICATE OF SERVICE

MARTIN BOGDONOVITCH, ]

Third-Party Plaintiff, ]

v. ]

MARSHALL A. REYNOLDS, ]

CHRISTINA A. REYNOLDS, ]

FISHER-SHERER, INC., ]

ROBERT P. MEDFORD, ]

LUTZEL, BROADWAY & ]

ASSOCIATES, PC, and ]

TINA PATRICK-BROADWAY, ]

Third-Party Defendants. ]

CA No. 11-CP-46-03182

The undersigned certifies that he has served the following pleadings or documents in the above-captioned and numbered civil action:

Notice and Motion for Summary Judgment, pursuant to Rule 56(a), S.C.R.C.P., with attachments; and

This Certificate of Service

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; or if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 6(b), S.C.R.C.P.

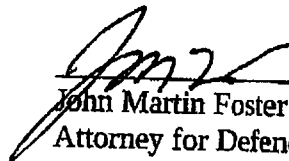
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November 6, 2013

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF YORK )

Earl Dukes,

Plaintiff,

v.

Kennith W. Farrell, Mary C.  
Farrell, and Martin Brogdonovich,

Defendants.

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-46-3182

PLAINTIFF MEMORANDUM IN  
OPPOSITION TO DEFENDANT FARRELLS'  
MOTION FOR SUMMARY JUDGMENT

FILED-RECEIVED  
2014 MAR 10 PM 12:27  
DAVID H. HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Plaintiff here submits its Memorandum in Opposition to the Farrell Defendants' Motion for Summary Judgment. This memorandum and plaintiff's arguments cite as support the deposition testimony of Kennith Farrell; the affidavit of Earl Dukes; the October 14, 2013 affidavits filed by Farrell Defendants; and the March 7, 2014 affidavit of Perry Johnston of Dock Masters Marine Construction, LLC; all evidencing genuine issues of material fact as to *continuous, uninterrupted* or *adverse* use of Plaintiff's land under Defendants' claims of express or implied easement.<sup>1</sup>

**FACTUAL BACKGROUND**

This action involves disputes between neighboring land owners pertaining to access to the waters of Lake Wylie. Plaintiff owns waterfront property at 1657 Bowater Road, Rock Hill, South Carolina 29732. (TMS# 547-00-00-57). Defendants Kennith

<sup>1</sup> All affidavits employed within Defendant Farrells' memorandum cite use of a "pier" or "dock". At no place does the affidavit of Dennis K. Edwards identify continuous use of Plaintiff's *real property* by his parents. Likewise, at no place does the affidavit of Kennith W. Farrell cite use of Plaintiff's real property, or the 30' foot strip of land between the boundary of the Defendants Farrell and the water, that being lands of the Plaintiff. (TMS# 547-00-00-057). The Defendants ask this court to factually *infer* use of land via permitted docks which are not real property. As cited by Defendants' memorandum, p.3 ¶(6) it is *undisputed* that the Plaintiff DUKES is the owner of Tax Map No. 547-00-00-050 and "therefore some thirty (30) feet between the boundary of the Defendants Farrell and the waters of Lake Wylie, as calculated by the Plat of Fisher-Shearer dated May 15, 2001.



Farrell and Marcy C. Farrell own *water view* property adjacent to Plaintiffs land at the physical address of 1631 Fieldbrook Road, Rock Hill, South Carolina 29731 (TMS#547-00-00-050). It is undisputed that some thirty feet (30') of real property belonging to Plaintiff lies adjacent to and between Farrell's property and the waters of the lake. *See, Defendants' November 6, 2013 memorandum*, p. 3 at ¶(6). At deposition, Defendant Farrell's sworn testimony is that the boundary lines of the property are true and accurate. Defendants' admissions under SCRCP 36 acknowledge the same. Defendant Farrell admits in sworn testimony that he has never used the lands, specifically, of the Plaintiff underneath the dock. Defendant merely alleges continuous and interrupted use of an *appurtenance*: a waterfront pier and dock extending into Lake Wylie from Plaintiff's property.

By and through Farrells' predecessors in title Defendants seek to "tack" use of a waterfront dock (and prior incarnations of the same) that physically exist on and attach to Dukes' property via privity of title. Defendants seek to satisfy the elements of adverse possession, or alternatively argue easement by prescription, through use of permitted personal property consisting of a wooden dock that extends into the water. It is not disputed that the dock physically attaches to Plaintiffs' land TMS # 547-00-00-057. It is not disputed that Dukes owns 30' feet of land between Farrell and the water.

Plaintiffs' remaining causes of action as against Defendants alleges (1) continuing trespass and rights to injunctive relief and (2) nuisance arising from Farrell's use of dock which physically attaches to Plaintiff's property. According to the affidavits filed by all parties, the dock has, over the years, been removed, damaged, improved and/or extended into the waters Lake Wylie. The Defendants, through affidavits of *non*-predecessors in

title to Defendant Farrell, allege elements of adverse possession. However, the claims relate only to use of personal property (*pilings and plank decking constituting a pair and dock*) in support of Defendants' proposition that the Defendants have easement rights as to Plaintiff's land. The claims ask this court to *infer* adverse use of land via an item of permitted personal property – a waterfront dock.

**SUMMARY JUDGMENT STANDARD OF REVIEW  
PURSUANT TO SCRCP 56 AND APPLICABLE CASE LAW CONCERNING  
ADVERSE POSSESSION AND EASEMENT BY PRESCRIPTION**

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., Inc., 673 S.E.2d 80, 803 (S.C. 2009). "Summary judgement is appropriate when it is clear that there is no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Toomer v. Norfolk S. Ry Co., 544 S.E.2d 634, 635 (S.C. Ct. App. 2001) (citing SCRCP 56(c); Mosteller v. County of Lexington, 520 S.E.2d 620 (S.C. 1999); Young v. South Carolina Dep't of Corrections, 511 S.E.2d 413 (S.C. Ct. App. 1999). "It is not appropriate, however, where further inquiry into the facts of the case is desirable to clarify the application of law." Id. (citing Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing & Regulation, 523 S.E.2d 795 (S.C. Ct. App. 1999). "*All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.*" Id. (citing Young, 511 S.E.2d at 415). The party relying on adverse possession has the burden of proof to establish the claim by *clear and convincing* evidence. Davis v. Monteith, 289 S.C. 176, 354 S.E.2d 724 (1986); Zimmerman v. Williams, 211 S.C. 382, 45 S.E.2d 597 (1947); Thomas v.

Dempsey, 53 S.C. 216, 31 S.E. 231 (1898). In order to establish an easement by prescription, a party must show: (1) the continued and *uninterrupted* use or enjoyment of a *right* for a period of twenty years; (2) the *identity of the thing* enjoyed; and (3) that the use or enjoyment was adverse under a claim of right. Lofis v. South Carolina Electric and Gas Company, 604 S.E.2d 716 (Ct. App. 2004).

To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use. Revis v. Barrett, 467 S.E.2d 460, 462, n.1 (Ct. App. 1996). However, in a boundary dispute, possession under the mistaken belief that one owns the property *without intent to claim against the true owner* does not constitute hostile possession. Perry v. Heirs at Law and Distributees of Gadsden, 316 S.C. 224, 449 S.E.2d 250 (1994). No affidavits by Defendants evidence or declare an intent to dispossess Plaintiff nor acquire title to his land, pier, plankwalk, or the dock. Defendants' claims fail, therefore, necessarily as a matter of law. E.g., Defendants' affidavits fail to demonstrate use or possession of the Plaintiff's *land*, specifically. Viewed most favorably to the non-movant, the Defendants' affidavits allege access to the water via *inferred crossing of land* to a dock, a permitted item of personal property. Defendants' allegations fail, likewise, to show the requisite *hostility, continuity, and exclusivity* required under either theory – whether adverse possession or easement.

1. **Genuine issues of material fact exist viewing the deeds and all inferences in a light most favorable to Plaintiff as the express "grant" fails to identify, specifically, Plaintiff's real property TMS # 547-00-00-050 as the "access" to the backwaters of the cove and Lake Wylie to which Defendants would be entitled as a matter of law.**

As successor in title under deeds of a common grantor to both Plaintiff and Defendant, grantors A.F. Fewell and Edward Fewell, Jr. conveyed to W. A. Bigham by a

deed dated March 2, 1965. The Defendant seeks to have this court extend language constituting merely an easement in gross to implicate Plaintiff's land TMS # 057-00-00-

057. The deed from Fewell to Bigham provides, in relevant part:

It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, [*emphasis*] subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

Defendant asks the court to factually infer that the grant implicates Plaintiff's land when, in fact, there is no such express grant or identification of Plaintiff's land as the thing enjoyed or claimed. *Loftis, supra*. Viewing all facts and inferences in a light most favorable to the Plaintiff, the grant is devoid of any language that identifies Plaintiff's parcel, specifically, as subject to Defendants' claims. Thus, even viewing the very deed upon which Defendant relies, there exists genuine issues of material fact making summary judgment improper. Other than reference to docks, Defendants' affidavits fail to identify, precisely, the thing being enjoyed – that being enjoyment of plaintiff's land. *Loftis, supra*. Defendant Farrell's sworn deposition testimony is attached as Exhibit #2, p. 53-54 as follows:

- Q.     *So what you're telling me is, the entire time you've accessed the waters by walking on the dock; is that correct?*
- A.     *Yes.*
- Q.     *Going on into the water where you see the boardwalk accessing the dock that's out there, have you ever walked around under those piers?*
- A.     *No.*
- Q.     *Why not?*
- A.     *You physically can't.*
- Q.     *So during the point that you have accessed this dock, your feet have never touched the land beneath the dock?*
- A.     *No.*

2. Defendants' arguments alleging prescriptive easement by way of adverse possession are unmeritorious because they fail specifically to cite *actual use of Plaintiff's land*, or acquisition of title to real property owned by Plaintiff, in hostile, continuous or *exclusive* form.

Hostility has been described by South Carolina courts as "*possession with intention to dispossess the owners*," Lusk v. Callaham, 287 S.C. 459, 339 S.E. 2d 156 (Ct. App. 1986). The affidavits filed by Defendants allege, inter alia, that incarnations of the dock and its improvements have been utilized. The allegations fail to show by *clear and convincing* evidence that use of the appurtenance (or land) was against the title owner's permission, consent or approval. They fail, entirely, to allege facts showing the requisite *hostility* – an intent to dispossess Plaintiff of the dock or - more specifically - his 30' foot strip of land lying between the Farrells' parcel and the water.

Noteworthy is that all affidavits filed in support of Defendants' motion for summary judgment allege use of a "*dock*" specifically implying – *or asking the court to infer* - use of Plaintiff's land, most of which lies beneath the waters of Lake Wylie. A permitted (or non-permitted) dock is not real property. Adverse possession is an action involving title to real property, not permitted items of personal property. Likewise, an easement across lands cannot be implied through use of permitted personal property. The Plaintiff's real property boundary lines to which the dock attaches extend below the waters of Lake Wylie, making said land impossible for Defendants to access or possess continuously or in un-interrupted fashion. Defendant's allegations, in fact, fail to allege acquisition of title to Plaintiff's land by possession for the required statutory period required for adverse possession. Exhibit #2, p. 55 lines 7-10.

Q. So you've not owned your property for 20 years out there ?  
A. No.

The allegations likewise fail three required elements of adverse possession claims: (a) hostile, (b) *continued*, and (c) *exclusive* use, evidencing genuine issue of material fact thus making summary judgment improper. The entire period of use alleged by Defendants is not only less than twenty years, it is twice interrupted.

3. Defendants' affidavits allege *interrupted* and non *exclusive* use of a pier (*not land*) by Defendants Kenneth W. Farrell and Mary C. Farrell and fail to identify Plaintiff's lands as the thing enjoyed creating genuine issue of material fact.

Further failing the continuous element under claim of easement by prescription, the affiant/defendant Kenneth Farrell goes on to cite that a rogue boat rendered the dock itself *unusable*. The affidavit of Perry Johnston of Dock Masters further illustrates that Farrell's use was not continuous and was interrupted by a boating accident that occurred Memorial Day Weekend in year 2006. Exhibit #1. Prior incarnations of the dock were removed entirely by Farrell's predecessor, Bobby Edwards, further illustrating lack of continuity and uninterrupted use. Exhibit #1, *Johnston affidavit*, Exhibit A.

Viewing the facts in a light most favorable to Plaintiff as the non-movant under Rule 56, genuine issues of fact exist likewise regarding continuity and un-interrupted use of the 30' strip of land lying between Defendants' parcel and the docks, the undisputed property of the Plaintiff Dukes. At no place in the Defendants' affidavits is the use of this land specifically identified.

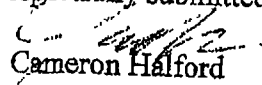
The requirement for *exclusive* possession is not met if occupancy (use of a dock) is *shared* with the owner or agents of the owner. Butler v. Lindsey, 293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987). At best, the Defendants' claims allege occupancy through sharing, and not *possession thru exclusive use*. Thus, Defendants' arguments fail

necessarily as a matter of law. Viewing all evidence and inferences in a light most favorable to the Plaintiff, genuine questions of fact exist whether the Defendants, even through privity of title, have exclusively and in requisite hostile manner utilized Plaintiff's land to establish easement rights, express or implied. Questions of fact exist regarding interrupted use, continuity, and all elements of adverse possession.

### CONCLUSION AND SUMMARY

Defendant Farrell, through affidavits alleging the bare elements of Adverse Possession, fail to demonstrate that no genuine issue of material fact exists entitling Farrel to judgment as a matter of law. Viewing all evidence and inferences in a light most favorable to Plaintiff, the claims fail the requisite hostile, continuous, un-interrupted and exclusive elements. Even if viewed as true on their face, the affidavits allege nothing more than mere use of permitted personal property in the form of docks, pilings and plank decking. The affidavits entirely fail to allege actual use of Plaintiff's land or real property, which lie underneath the water of Lake Wylie, save only the thirty 30' strip of land identified by Defendant Farrell's memorandum. The 30' foot strip of land is likewise not specifically identified as the thing enjoyed. At no place in the sworn statements do the affiants attest to the use of the 30' foot strip of land. At no place in the deeds cited by Defendants are Plaintiff's parcel (TMS # 547-00-00-057) specifically identified as the *"access to the backwaters of the cove"* mentioned in the 1965 conveyance. Viewing all evidence, facts and inferences in a light most favorable to the Plaintiff, the Defendants' motion should be respectfully denied.

Respectfully submitted,

  
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Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax  
[cam@fortmilllaw.com](mailto:cam@fortmilllaw.com)

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Plaintiff in the above captioned matter and that I did on March 10, 2014 serve a copy of the foregoing **PLAINTIFF MEMORANDUM OPPOSING DEFENDANTS FARRELL MOTION FOR SUMMARY JUDGMENT and AFFIDAVIT OF PERRY JOHNSTON** to counsel for Defendants as follows:

E-MAIL AND U.S. MAIL

John Martin Foster, Esq.  
223 E. Main Street, Suite 520  
Rock Hill, South Carolina 29730-4560  
*Attorney for Defendants Kenneth and Mary Farrell*

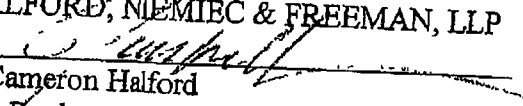
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Exhibit #1

Affidavit of Perry Johnston  
Dock Masters, Inc.

[ Plaintiff Memorandum Opposing  
Defendant Farrell Motion for Summary  
Judgment ]

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK, )  
Earl Dukes, )  
Plaintiff, )  
v. )  
Kenneth W. Farrell, Mary C. )  
Farrell, and Martin Brogdonovich, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-46-3182

AFFIDAVIT OF PERRY JOHNSTON  
DOCK MASTERS, LLC

FILED-RECEIVED  
2014 MAR 18 PM 12:27  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

My name is Perry Johnston, and I am the owner of Dock Master's Marine Construction of Lake Wylie, LLC. Our company is located at 5850 Charlotte Highway in Lake Wylie, South Carolina, 29710. We along with our predecessor company Dock Master Marine Construction and Supply have been in the business of constructing waterfront docks and piers in York County since 1987. Our company previously did work for both Mr. Earl Dukes and Mr. Kenneth Farrell. We have maintained detailed records concerning the docks at the subject property since year 1998.

I am over the age of eighteen, have never been convicted of a crime of dishonesty, and am providing this affidavit of my own personal knowledge and observations concerning the waterfront docks that exist on the property of Earl C. Dukes at 1657 Bowater Road in Rock Hill. The facts and circumstances described herein are true to the best of my knowledge and observations, except those things stated on information and belief, the same which I believe to be true and accurate.

Our company's business records show that Mr. Farrell's predecessor in title, Robert J. Edwards, tore down and replaced a U-Shape boat dock after October 1, 1998.

Duke Power ~~per~~<sup>my</sup> would have issued a permit for the construction. Dock Masters provided a quote to Mr. Edwards for this work. However, our records show that our company was not selected to construct the new dock. On information and belief, another builder was selected to do the construction by Edwards. Exhibit A. No contract was entered into between Dock Masters, Inc. and Edwards. We did not build the existing dock, extensions, pilings, or boat cover that currently exists at the property. We did, however, do work for Mr. Farrell to repair the dock after it was hit by a boat on Memorial Day weekend in year 2006, attached as Exhibit B. 

Before providing this affidavit, I have reviewed our file history concerning this dock. In February of this year 2014 Mr. Dukes selected our company to build an additional dock on his property. While doing this work, I observed the dock that is the subject of this case. The dock's pilings and boardwalk physically attach to the lands of Earl Dukes. There are boats and watercraft parked at the dock. I am aware from Mr. Dukes that there is a dispute over the adjoining owner, Mr. Farrell, utilizing this dock to access the waters. I make no opinions, and state no facts, as to the legal ownership of the dock being utilized by Kenneth Farrell, other than our company was engaged by Mr. Farrell to repair the dock in question when the dock was damaged by a boating accident.

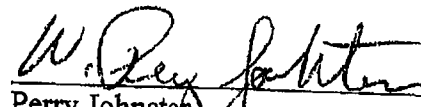
I have reviewed the affidavit of Kenneth Farrell filed with the court on October 14, 2013. I agree that the dock was rendered unusable and use of the boardwalk was interrupted when it was hit by the boat. My recollection is that the boat struck under the decking and inside the pilings of this dock nearest the lake shoreline. I recall that the boat was lodged underneath the structure. Our company was called to rework the dock per our quote of June, 2013 attached as Exhibit B to return the dock to a usable condition. The

  
094

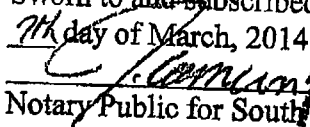
12/1/16  
-scf

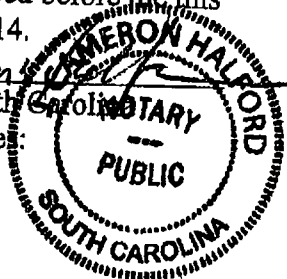
work lasted for approximately one week according to our file records. Mr. Farrell paid Dockmasters, Inc. \$ 6,234.00 for the work performed by our company. Exhibit B. This work was less than 25% of the total cost of the dock and considered minor maintenance, therefore it did not require a permit.

Further, affiant sayeth not.

  
Perry Johnston  
Dock Masters, LLC

Sworn to and subscribed before me this  
7th day of March, 2014.

  
Notary Public for South Carolina  
My commission expires:



  
095

13/19

# Dock Masters

## MARINE CONSTRUCTION AND SUPPLY

5850 Charlotte Highway  
Lake Wylie, SC 29710

Phone: (803) 831-1633

Fax: (803) 831-0967

### JOB QUOTE

October 1, 1998

To: Bobby Edwards  
1631 Fieldbrook Road  
Rock Hill, SC 29732

Job Location: 1631 Fieldbrook Road  
Rock Hill, SC 29732

Job Description: Remove existing ramp and "U"-shaped slip. Remove existing pilings that held "U"-slip in place. Add 10' to end of existing 6' wide pier. Build one ramp 4' wide X 16' long. Build one swimfloat 16' wide X 12' long. Beside pier and swimfloat, build one 6 pole covered boat lift structure with slip size of 11' wide X 24' deep. Install one 6,000 lb. HI-TIDE boathouse lift. Structure to have 4/12 pitch hip roof with 25-year straight tab shingles, color of homeowner's choice. Boat lift to have 2' catwalks off of pier, across back and down outside edge. Pier and ramp to have new standard wooden handrails. Roof system to be spruce. All framing materials to be .40 treated lumber or better. All framing galvanized or zinc-coated. Decking to be gray Sheerline vinyl. Swim float to have black Formex flotation, white dock bumper and four 8" cleats. Job price includes removal of any debris caused by job.

Job Price: \$ 16,450.00 To be paid as follows.

\$ 8,225.00 To be paid when contract is signed or work is started.  
\$ 8,225.00 To be paid when work is completed.

Accepted by: Bobby Edwards

Ron Montgomery

Exhibit A

WY  
0920  
11/19/98

# Dock Masters

MARINE CONSTRUCTION AND SUPPLY

5850 Charlotte Highway

Lake Wylie, SC 29710

www.dockmastersonline.com

Phone: (803) 831-1633

Fax: (803) 831-0967

## JOB QUOTE

Repairs caused by boat damage to existing pier & ramp. Boating accident on Memorial Day weekend.

June 13, 2006

To: Kenneth Ferrell  
1631 Fieldbrook Rd.  
York, SC 29745

Job Location: 1631 Fieldbrook Rd.

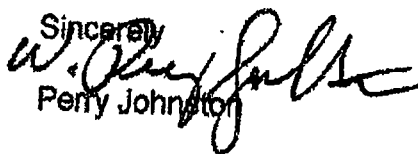
|                  |                                                                                     |                   |
|------------------|-------------------------------------------------------------------------------------|-------------------|
| Job Description: | 1. Remove & dispose of decking, framing and handrail system for 6' x 41' long pier. | \$ 770.00         |
|                  | 2. Straighten and brace existing 12 piles                                           | \$ 820.00         |
|                  | 3. Rework ramp hinge points- fascia boards stressed from impact of accident.        | \$ 840.00         |
|                  | 4. Replace pier framing                                                             | \$1100.00         |
|                  | 5. Redeck & replace handrail system                                                 | <u>\$ 2704.00</u> |
|                  | Job Price:                                                                          | \$ 6,234.00       |

This scope of work will bring your pier and ramp back to its original condition prior to the boat accident.

We look forward to assisting you with this replacement.

Sincerely

Perry Johnston



Pd CK # 3034.00  
4006



THANK YOU FOR THE OPPORTUNITY TO QUOTE YOU ON THIS WORK!

CONTRACT CONTINGENT ON APPROVAL BY DUKE POWER

The above price is good for thirty days. DOCK MASTERS is not responsible for any permanent electrical work, for any painting or staining, or for any work that is not expressly stated above.

Exhibit B



15/19

Exhibit #2

Deposition Testimony Excerpts

Defendant Kenneth W. Farrell

pp. 53-55

[ Plaintiff Memorandum Opposing  
Defendant Farrell Motion for Summary  
Judgment ]

Deposition of Kenneth W. Farrell

53

1 A. No.

2 Q. Have you ever walked around it or up under this  
3 place where there appears to be a roofed place to  
4 store your boat, a shed? Have you ever walked up  
5 under the land whatsoever?

6 A. I can't.

7 Q. What do you mean you can't?

8 A. It's too deep.

9 Q. But up near the shoreline, have you ever walked --

10 A. You can't walk under it either, because it's too low  
11 to the ground.

12 Q. So what you're telling me is, the entire time you've  
13 accessed the waters by walking on the dock; is that  
14 correct?

15 A. Yes.

16 Q. Okay. You never walked upon my client's land?

17 A. Maybe out -- not under the dock, on the outside,  
18 yes.

19 Q. Okay. I'm not disputing you can use the waters of  
20 Lake Wylie, but I'm talking about the disputed  
21 parcel, where you have mentioned, by the way, in  
22 your pleadings, that my client owns that land. So  
23 let's assume for a minute there's 30 feet plus of  
24 land dividing my client's property from your  
25 property. Have you ever walked on that parcel?



Deposition of Kenneth W. Farrell

54

- 1 A. Yes.
- 2 Q. Going on into the water where you see the boardwalk  
3 accessing the dock that's out there, have you ever  
4 walked around under those piers?
- 5 A. No.
- 6 Q. Why not?
- 7 A. You physically can't.
- 8 Q. So during the point that you have accessed this  
9 dock, your feet have never touched the land beneath  
10 the dock?
- 11 A. No.
- 12 Q. I ask that just to kind of flush out some issues  
13 about the use of my client's property, okay? I'm  
14 not holding you to a lawyer's standard, because I  
15 see your attorney over here kind of grimacing. But  
16 do you understand what adverse possession is?
- 17 A. No.
- 18 Q. You never heard the term before?
- 19 A. I've heard it.
- 20 Q. You have a layman's understanding of what it might  
21 mean?
- 22 A. A little bit.
- 23 Q. Tell me what your understanding of adverse  
24 possession is.
- 25 A. Using someone else's land with their knowledge for a

1 period of time.

2 Q. That's fairly accurate, by the way. Do you know  
3 what the period of time is?

4 A. No.

5 Q. If it's 20 years, would that strike you as odd?

6 A. I have no idea.

7 Q. You would agree with me that you've only owned your  
8 property since year 2005, I think it is?

9 A. Yes.

10 Q. So you've not owned your property for 20 years out  
11 there?

12 A. No.

13 Q. All right, thank you. Just going back to your deed,  
14 and we're going to wrap up much shorter than I  
15 anticipated; but, again, looking at the survey here  
16 (indicating), you don't know whether, in fact, that  
17 was the survey that was performed when you bought  
18 your property?

19 A. I do not know.

20 Q. But you would agree with me that it does reference a  
21 Mr. Edwards who sold your property to you; is that  
22 correct?

23 A. It references him, yes.

24 Q. Okay. In fact, the date on it appears to be, and  
25 I'm pointing you to the portion of the survey that's

STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

AFFIDAVIT

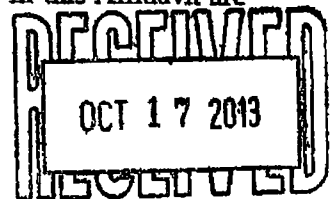
FILED  
RECEIVED  
2013 OCT 14 PM 4:28  
DAVID HAMILTON  
C.C.P. & S.  
YORK COUNTY, SC

Personally appeared before me DENNIS K. EDWARDS, Sr., who, being duly sworn, deposes and states as follows:

1. My name is DENNIS K. EDWARDS, Sr. I am the son of the late ROBERT J. EDWARDS, Sr. and NANCY DAVIS EDWARDS. I live at 1404 Bowater Road, Rock Hill, South Carolina. I am now 55 years of age.
2. According to the Court records of York County, and in line with my memory, in 1976 my parents bought the land described as Lots 16 and 16A of the Fewell Tract on Little Allison Creek, which is now Tax Parcel 547-00-00-050. I was alive at the time and remember the property and its appearance.
3. According to the Court records of York County, and in line with my memory, in 1991 my father became the sole owner of the above land after my mother's death in 1990, through a Deed of Distribution from her Estate.
4. According to the Court records of York County, and in line with my memory, in 2005 my father sold the land to KENNETH W. FARRELL and MARY C. FARRELL.
5. I remember this property from the period when my parents bought it. At the time of their purchase, a pier existed and was in use, in the place where the present pier is now located.
6. In the period from 1983 to 1985, my father had the present pier (or its predecessor) built, in its present size and location. I remember that, due to complaints from our neighbors, that pier had to be examined and passed by representatives of Duke Power. The reason for the complaint was the width of the pier; it had to be wider than normal because of my mother's disability. On learning the reason for the width, the Duke Power representatives approved the pier.
7. To my knowledge, based upon my observations, a pier existed and was in continuous use from at least the time of my parents' purchase of the property in 1976 until it was sold in 2005.
8. I travel as part of my job. I am not available to be in Court to confirm the facts above in person.

I understand this is a sworn statement. I do swear or affirm that the facts in this Affidavit are

*[Handwritten signature]*

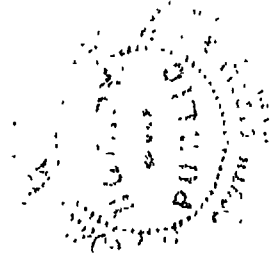


true of my own knowledge, except those based on the Court records recited above: as to those latter matters, I believe them to be true.

DE  
DENNIS K. EDWARDS, Sr.

SWORN TO AND SUBSCRIBED before  
me this 12 day of October, 2013.

[Signature]  
Notary Public for South Carolina  
My commission expires: 07/20/2019



STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

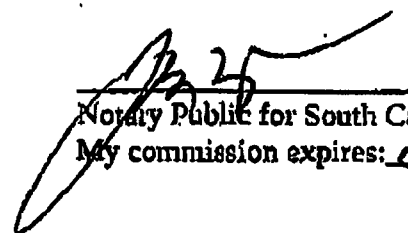
## AFFIDAVIT

Personally appeared before me KENNITH W. FARRELL, who, being duly sworn, deposes and states as follows:

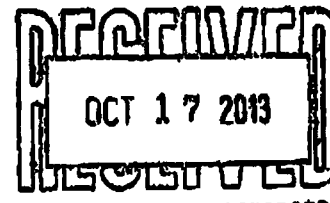
1. My name is KENNITH W. FARRELL. (This is the accurate spelling of my name.) According to the Court records of York County, and in line with my memory, on August 12, 2005, my wife, MARY C. FARRELL and I bought the land described as Lots 16 and 16A of the Fewell Tract on Little Allison Creek, which is now Tax Parcel 547-00-00-050. I remember the property and its appearance from that time.
2. At the time of our purchase, a pier existed and was in use, in the place where the present pier is now located. We made use of the pier from the time of our purchase.
3. In or about 2006, a rogue boat hit the pier at the shoreline and rendered the pier unusable. I had the pier rebuilt within six to eight weeks.
4. After completion of the rebuilt pier, it was, and has been, in continuous use since that time.
5. Our house is on Little Allison Creek. One of the main amenities of the property, and one of the main sources of its value is its access to the water. Our property will be decreased in value if our pier is destroyed. I do swear or affirm that the facts in this Affidavit are true of my own knowledge, except those based on the Court records: as to those latter matters, I believe them to be true.

  
KENNITH W. FARRELL

SWORN TO AND SUBSCRIBED before  
me this 12 day of October, 2013.

  
Notary Public for South Carolina

My commission expires: 02/20/2019



STATE OF SOUTH CAROLINA ]  
 ]  
 COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]  
 Plaintiff, ]  
 v. ]

KENNITH W. FARRELL, ]  
 MARY C. FARRELL, and ]  
 MARTIN BOGDONOVITCH, ]  
 Defendants. ]

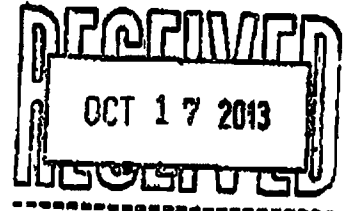
CERTIFICATE OF SERVICE

MARTIN BOGDONOVITCH, ]  
 Third-Party Plaintiff, ]  
 v. ]

MARSHALL A. REYNOLDS, ]  
 CHRISTINA A. REYNOLDS, ]  
 FISHER-SHERER, INC., ]  
 ROBERT P. MEDFORD, ]  
 LUTZEL, BROADWAY & ]  
 ASSOCIATES, PC, and ]  
 TINA PATRICK-BROADWAY, ]  
 Third-Party Defendants. ]

CA No. 11-CP-46-03182

FILED-RECEIVED  
 2013 OCT 14 PM 4:22  
 DAVID HAMILTON  
 CLERK, C.P. & S.  
 YORK COUNTY, SC



The undersigned, counsel for the Defendants FARRELL in the civil action above, hereby certifies that on October 14, 2013 he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Affidavits in Opposition to Motion for Summary Judgment, executed by Dennis K. Edwards and Kenneth W. Farrell; and  
 This Certificate of Service

the originals of which were sent to be filed with the Clerk of the Court for the Court named above,

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, or

by hand delivering copies of the same to the following persons, or by leaving the same at

that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; and

by delivering the same to those persons below at their indicated e-mail address:

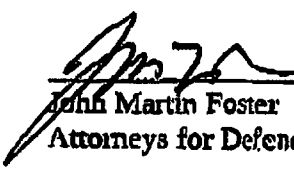
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Attorney for Third-Party Defendants Reynolds  
306 West Oakland Avenue  
Post Office Box 11808  
Rock Hill, SC 29731  
bmpoore@comporium.net

Walter L. Heinsohn  
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John Martin Foster  
Attorneys for Defendants FARRELL

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
jmfoster@comporium.net

October 14, 2013

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

EARL DUKES,

PLAINTIFF,

-VS-

CA NO. 2010-46-5432

KENNETH W. FARRELL, MARY  
C. FARRELL AND MARTIN  
BROGDONOVICH,

DEFENDANTS.

MARTIN BROGDONOVICH,

PLAINTIFF,

-VS-

MARSHAL A. REYNOLDS AND  
CHRISTINA A. REYNOLDS;  
FISHER-SHERER, INC.;  
ROBERT R. MEDFORD;  
LUTZEL BROADWAY AND  
ASSOCIATES, PC; AND TINA  
PATRICK BROADWAY,

DEFENDANTS.

**COPY**

DEPOSITION OF KENNETH W. FARRELL

FORT MILL, SOUTH CAROLINA

JUNE 17, 2013

REPORTED BY: CATHY L. YOUNG, CVR

**DALLAS REPORTING**  
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS  
ROCK HILL, SOUTH CAROLINA  
803-328-9640/TOLL FREE 1-877-871-6363



Deposition of Kenneth W. Farrell

2

1 APPEARANCES: For the Plaintiff -

2 J. Cameron Halford, Esquire  
3 Halford, Niemiec & Freeman, LLP  
4 238 Rockmont Drive  
Fort Mill, South Carolina 29708

5 For the Defendant -

6 John Martin Foster, Esquire  
7 Attorney At Law  
8 223 East Main Street, Suite 520  
Rock Hill, South Carolina 29730-4560

9 INDEX

10

11 Examination by Mr. Halford..... Page 4

12 Examination by Mr. Foster..... Page 70

13

14 INDEX TO EXHIBITS

15

16 Plaintiff's Exhibit Number 1, Notice of

17 Deposition attached hereto..... Page 6

18

19 Plaintiff's Exhibit Number 2, Title to Real

20 Estate, attached hereto..... Page 9

21

22 Plaintiff's Exhibit Number 3, Property Report for

23 Parcel Number 5470000050, attached hereto.....Page 15

24

25

Deposition of Kenneth W. Farrell

3

|    |                                                 |         |
|----|-------------------------------------------------|---------|
| 1  | Plaintiff's Exhibit Number 4, Title of Real     |         |
| 2  | Estate .....                                    | Page 19 |
| 3  | Plaintiff's Exhibit Number 5, Answer and        |         |
| 4  | Counterclaim, attached hereto.....              | Page 20 |
| 5  | Plaintiff's Exhibit Number 6, Title to Real     |         |
| 6  | Estate, attached hereto.....                    | Page 25 |
| 7  | Plaintiff's Exhibit Number 7, Title to Real     |         |
| 8  | Estate, attached hereto.....                    | Page 28 |
| 9  | Plaintiff's Exhibit Number 8, Aerial View,      |         |
| 10 | attached hereto.....                            | Page 34 |
| 11 | Plaintiff's Exhibit Number 9, Survey, attached  |         |
| 12 | hereto.....                                     | Page 37 |
| 13 | Plaintiff's Exhibit Number 10, Title to Real    |         |
| 14 | Estate, attached hereto.....                    | Page 41 |
| 15 | Plaintiff's Exhibit Number 11, Chain of Title,  |         |
| 16 | attached hereto.....                            | Page 44 |
| 17 | Plaintiff's Exhibit Number 12, Title to Real    |         |
| 18 | Estate, attached hereto.....                    | Page 44 |
| 19 | Plaintiff's Exhibit Number 13, Survey, attached |         |
| 20 | hereto.....                                     | Page 46 |

21

22

23

24 Deposition of Kenneth W. Farrell

25

Deposition of Kenneth W. Farrell

4

1 Pursuant to notice and/or agreement of the parties, the  
2 deposition of Kenneth W. Farrell was taken commencing at  
3 the hour of 8:57 a.m. on the 17th day of June, 2013, at  
4 the offices of Halford, Niemiec & Freeman, LLP, 238  
5 Rockmont Drive, Fort Mill, South Carolina, in accordance  
6 with the South Carolina Rules of Civil Procedure.

7 It was stipulated by Counsel for the Plaintiff and  
8 Defendant that this deposition is taken for any purpose  
9 allowed under the South Carolina Rules of Civil  
10 Procedure;

11 That the signing of the transcript of deposition by  
12 the witness is reserved.

13 \* \* \* \* \*

14 Kenneth W. Farrell, first being duly sworn, deposes and  
15 says as follows:

16 EXAMINATION BY MR. HALFORD:

17 Q. Mr. Farrell, good morning.

18 A. Good morning.

19 Q. My name is Cam Halford, and I represent your  
20 neighbor Mr. Dukes with regard to this lawsuit. We  
21 met before going on record, but what the court  
22 reporter has told you is we're going to be taking  
23 your deposition today under the South Carolina Rules  
24 of Civil Procedure. So before we get rolling, what  
25

Deposition of Kenneth W. Farrell

5

1       that means is I'm going to be asking you a series of  
2       questions and if any time that you don't understand  
3       me, ask me to rephrase the question. If you don't  
4       ask me, I'm going to understand you understand what  
5       I've asked you and I'm going to ask you to give a  
6       verbal response. It's very important that you not  
7       shake your head or mumble or gesture. If you do,  
8       I'm going to ask you to back up and repeat your  
9       response so it can be transcribed for trial in this  
10      case. Okay?

11    A.   Yeah.

12    Q.   All right. Mr. Farrell, where do you currently  
13       reside?

14    A.   1631 Fieldbrook Road.

15    Q.   Is that your only residence in York County?

16    A.   Yes.

17    Q.   Are you from York County originally?

18    A.   No.

19    Q.   Where are you from originally?

20    A.   Raised in Jacksonville, Florida.

21    Q.   Okay. What brought you here to South Carolina?

22    A.   Work.

23    Q.   Where are you employed?

24    A.   I'm self-employed.

25    Q.   What do you do in terms of being self-employed?

Deposition of Kenneth W. Farrell

6

1 A. Mechanic.

2 Q. And I'm going to show you what I'm going to have the  
3 court reporter mark as Exhibit Number 1.

4 (Court Reporter marks Plaintiff's Exhibit Number 1,  
5 Notice of Deposition, attached hereto.)

6 EXAMINATION CONTINUES BY MR. HALFORD:

7 Q. I'd represent to you, Mr. Farrell, that this is your  
8 deposition notice that we noticed through your  
9 attorney's office. Are you responding to that here  
10 today?

11 A. Yes.

12 Q. Mr. Farrell, do you understand the claims that have  
13 been brought in this lawsuit by the Plaintiff?

14 A. Yes.

15 MR. FOSTER:

16 I think at this point I need to say something  
17 without trying to interrupt Counsel.

18 MR. HALFORD:

19 Go ahead.

20 MR. FOSTER:

21 Though the question only implies it, my assumption  
22 is that at some point in the manner of lawyers,  
23 there will be questions that will effectively ask  
24 Mr. Farrell his legal knowledge. Mr. Farrell, of  
25 course, is a layperson. He, of course, can give his

Deposition of Kenneth W. Farrell

7

1       opinions, but I would like to register continuing  
2       objection to asking him to give legal opinions which  
3       he is not capable of giving. With that caveat and  
4       with that continuing objection, of course he can  
5       answer as best he can.

6       MR. HALFORD:

7       Understood.

8       EXAMINATION CONTINUES BY MR. HALFORD:

9       Q.   Do you understand that the Plaintiff has brought a  
10       lawsuit involving a claim of trespass?

11      A.   Yes.

12      Q.   And as part of that lawsuit, he alleges that you're  
13       using certain pieces or sections of his property?

14      A.   I understand that, yes.

15      Q.   And what I'm doing just basically is going over the  
16       lawsuit and your answers to the lawsuit, so do you  
17       in fact have a waterfront dock?

18      A.   Yes.

19      Q.   Does that dock in fact attach to my client's  
20       property?

21      A.   No.

22      Q.   Where is it your position that dock attaches to?

23      A.   It attaches to my property.

24      Q.   We're going to go over some plats and things as we  
25       go through the deposition this morning, but when did

Deposition of Kenneth W. Farrell

8

1           you acquire your property?

2     A.    2006.

3     Q.    And who did you acquire your property from?

4     A.    Robert Edwards.

5     MR. FOSTER;

6           No objection.

7     EXAMINATION CONTINUES BY MR. HALFORD:

8     Q.    I pulled this, this is a property card from the York  
9           County website, but can you identify whether or not  
10          the parcel marked in green is your property?

11    A.    Yes.

12    Q.    And I've also outlined yellow property which I'd  
13           represent to you is my Plaintiff's property. Does  
14           that fairly and accurately represent his property?

15    MR. FOSTER:

16           Again, continuing objection. This time I think my  
17           client's being asked to give a surveyor's opinion.

18    MR. HALFORD:

19           I understand your objection. I'm just asking if he  
20           recognizes the two properties.

21    MR. FOSTER:

22           You can answer if you can, yes, sir.

23    WITNESS CONTINUES:

24    A.    I don't know if it's his property or not.

25    Q.    Okay. Now what I've done is gone through the

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1 record, both of us have, and just pulled the deed,  
2 but I'm going to pass to you what I'm now going to  
3 mark as Plaintiff's Exhibit Number 2.

4 (Court Reporter marks Plaintiff's Exhibit Number 2, Title  
5 to Real Estate, attached hereto.)

6 EXAMINATION CONTINUES BY MR. HALFORD:

7 Q. Can you identify this document?

8 A. (Reviews document.) I don't know that I've seen  
9 this one.

10 Q. Okay. If I told you that was the deed conveying the  
11 property to you, do you have any reason to dispute  
12 that would be the deed?

13 A. I have no idea.

14 Q. If you'll pass it back, and we're just going to go  
15 through it. It appears to be a grant from Robert  
16 Edwards to Kenneth W. Farrell and Mary C. Farrell.  
17 You would be Kenneth W. Farrell?

18 A. Yes.

19 Q. Okay. And this looks to be a deed that was dated  
20 August the 17th, 2005. Is that approximately when  
21 you would have closed your property?

22 A. Yeah, that's correct. We moved in in 2006.

23 Q. And did you close this with an attorney in York  
24 County?

25 A. Yes.



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1 Q. Who was your attorney at that time?

2 A. Mr. Foster.

3 Q. And looking at it, your legal description references  
4 a plat here in the center. It says D-18 at Page 9,  
5 I believe it is. So going to that, I'll represent  
6 that I've attached it to the back, and I recognize  
7 your Counsel's objections that you're not a  
8 surveyor, but is that in fact a depiction of your  
9 property that you acquired in the year 2005?

10 A. Yes.

11 Q. And what I'm focusing on on the survey, which, in  
12 referencing Exhibit Number 2, it appears to be a  
13 boundary survey prepared for a Mr. Edwards. That's  
14 the person that gave you the property?

15 MR. FOSTER:

16 For the record, what is your exhibit to?

17 MR. HALFORD:

18 The deed and the attached survey which is referenced  
19 in the four corners of the deed.

20 MR. FOSTER:

21 Okay. Now it's been announced. Thank you.

22 EXAMINATION CONTINUES BY MR. HALFORD:

23 Q. Well, for the record, what we're looking at is the  
24 survey, and I've asked you to identify the property,  
25 and what we're going to focus on is this part in

1 yellow. Were you aware of this survey when you  
2 acquired your property?

3 A. Aware of a survey? I know a survey was done. I  
4 don't know if it was that one or another one.

5 Q. But you don't have any reason to dispute this might  
6 be the survey that was in fact referencing your  
7 deed?

8 A. I'm not sure.

9 Q. Again, taking you back to page 1, it references at  
10 Plat Book D-18 at Page 9, a survey.

11 MR. FOSTER:

12 From this point forward, I'm quite sure that  
13 anything that is of record we can admit it is of  
14 record.

15 MR. HALFORD:

16 Okay. Agree, Mr. Foster.

17 EXAMINATION CONTINUES BY MR. HALFORD:

18 Q. So what we're focusing on is the yellow portion that  
19 I've highlighted up here for you. Do you see where  
20 your lot lines attach here?

21 A. Yes.

22 Q. Okay. Would you agree with me that there seems to  
23 be a gap between your property line and the dock?

24 A. In that picture, yes.

25 Q. Okay. And at any time in the past, have you done

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1 anything to enlarge or lengthen this dock into the  
2 water?

3 A. No.

4 Q. Have you ever built on to the dock?

5 A. No.

6 Q. Have you ever added a plank walk from your property  
7 to the dock?

8 A. No.

9 Q. So for all intents and purposes, this is the  
10 property that you would have taken here by way of  
11 the deed from Mr. Edwards; is that correct?

12 A. Yes.

13 Q. Okay. And do you have any reason to dispute this  
14 dock attaches to the land of Mr. Dukes, my client?

15 A. I don't know if it does or not.

16 Q. If I told you that it does by virtue of this survey,  
17 would you have any reason to dispute that?

18 A. I guess that's your opinion.

19 Q. Okay. But I'm asking you if it's your opinion. If  
20 this --

21 A. I have -- I have no opinion. I don't know. I'm not  
22 a surveyor.

23 Q. I understand, but this is your deed; is that  
24 correct?

25 A. Sure.

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1 Q. Okay.

2 A. Yes, it is.

3 Q. We've been over this, and Mr. Foster and I have  
4 stipulated it does reference a plat at D-18 at page  
5 9.

6 A. Yes.

7 Q. So as you acquired the property, did you ever engage  
8 a surveyor?

9 A. Yes, we had a survey done when we bought the house.

10 Q. Okay. Is this the survey that was done?

11 A. I don't know.

12 Q. Okay. But it would have been done the same year  
13 that you acquired the house; is that correct?

14 A. Yes.

15 Q. All right. Moving on, I've noticed in your answer  
16 to the lawsuit that you're claiming that you have a  
17 right to cross my client's property.

18 MR. HALFORD:

19 Here, Mr. Foster, if you want to look at it.

20 MR. FOSTER:

21 Is this the answer?

22 MR. HALFORD:

23 Yes, it is.

24 EXAMINATION CONTINUES BY MR. HALFORD:

25 Q. What I want to do is, go through the Answer, and I'm

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1 going to bring you to the second Defense and  
2 Counterclaim, and I'm not going to hold you to the  
3 standard of a lawyer, but what is the basis by which  
4 you feel that you can access my client's property?

5 MR. FOSTER:

6 My objection is continuing as acknowledged by  
7 Counsel.

8 WITNESS CONTINUES:

9 A. (Reviews document.)

10 Q. Have you seen that document before, Mr. Farrell?

11 A. I've seen so many documents, I -- all I can say is I  
12 -- I think so. I don't know, but I've got a pile of  
13 them, so I think so.

14 Q. Give the lawyer your copy back, I'm going to let him  
15 look at it as we go.

16 MR. FOSTER:

17 Certainly.

18 EXAMINATION CONTINUES BY MR. HALFORD:

19 Q. All right, Mr. Farrell, you're on page four there.

20 A. Uh-huh.

21 Q. We're just going to go through it. I told you my  
22 client had made claims for trespass and nuisance.  
23 Do you recall getting a letter from my office  
24 stating that my client wanted the use of the  
25 property to cease; specifically, your use of the

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1 property to cease?

2 A. No, I don't.

3 Q. As a Defense and Counterclaim, you've brought a  
4 Counterclaim against my clients.

5 A. Uh-huh.

6 Q. You knowledge in paragraph 19, that you're the owner  
7 of what's called Tax Map Number 5470000050; is that  
8 correct?

9 A. (Reviews document.) Yes.

10 Q. Okay.

11 MR. HALFORD:

12 If we can go ahead and mark this, Madam Court  
13 Reporter.

14 (Court Reporter marks Plaintiff's Exhibit Number 3,  
15 Property Report for Parcel Number 5470000050, attached  
16 hereto.)

17 EXAMINATION CONTINUES BY MR. HALFORD:

18 Q. I notice that you just looked over what we've now  
19 marked Number 3; is that, in fact, the shaded area  
20 in green?

21 A. (Reviews document.) That's my property.

22 Q. You would agree with me that this parcel number is  
23 not your property?

24 A. It's not mine.

25 Q. Okay. Do you know whose that is?

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1 A. No.

2 MR. FOSTER:

3 For the record, I believe Counsel is pointing at his  
4 client's property?

5 MR. HALFORD:

6 That is correct. For the record, we're pointing at  
7 5470000057, and I'm asking Mr. Farrell if he  
8 understands that that is not his property?

9 WITNESS CONTINUES:

10 A. It's not my property.

11 Q. Okay. But you acknowledge your ownership of the  
12 green parcel; is that correct?

13 A. Yes.

14 Q. Okay. It states that you got that deed that I've  
15 shown you of Mr. Edwards, is that correct --

16 A. Yeah.

17 Q. -- on or about August 12th, 2005?

18 A. Yes.

19 Q. Okay. Now, your answer goes on to state that you  
20 are a successor in title. Again, I'm not going to  
21 hold you to the standard of a surveyor and/or an  
22 attorney, but you understand somebody held this  
23 property before you, don't you?

24 A. Yes, Bobby Edwards owned it before I did.

25 Q. All right. Do you understand that an A. F. Fewell

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1 and an Edward Fewell, Jr., once owned your property?

2 A. Yes.

3 Q. I don't want to know anything you said between you  
4 and your lawyer, but have you looked at your chain  
5 of title at any time?

6 A. Yes.

7 Q. So you understand that in 1965 there was a deed that  
8 conveyed, I believe, what is described as water  
9 access?

10 A. Yes.

11 Q. That's referenced in paragraph 20 of your complaint.  
12 Paragraph 21, excuse me, of your Answer and  
13 Counterclaim. Paragraph 21 cites that language, and  
14 we're going to take a minute and just review it.  
15 Can you read the language that your attorney has  
16 cited there in paragraph 21?

17 A. "Said deed from Fewell to Bigham provides in  
18 relevant part: It is being understood that the  
19 grantee herein, his heirs and assigns, shall have  
20 access to the back water in the cove on which the  
21 above described property is located, subject to the  
22 rights of the Wateree Power Company, or its  
23 successors, and other grantees from the grantors  
24 herein, A. F. Fewell and Edward Fewell, Jr."

25 Q. Okay. What about that language -- do you understand



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1           what an easement is? Again, I'm not holding you to  
2           the standard of an attorney, but do you understand  
3           what an easement is?

4    A.   No.

5    Q.   What is the claim upon which you say you have the  
6           right to access my property, in layman's terms, if  
7           you can describe it?

8    MR. FOSTER:

9           Same objection.

10   WITNESS CONTINUES:

11   A.   How do I feel that that's my right; is that what  
12           you're asking?

13   Q.   That would be a fair way for me to rephrase it. How  
14           do you feel you have the right to access my  
15           property?

16   A.   I purchased the right.

17   Q.   When you purchased the right in 2005, where is that  
18           referenced in your deed?

19   A.   It's referenced in the deed that you showed me, this  
20           (indicating).

21   Q.   We've marked it as Number 2.

22   A.   Okay.

23   Q.   But can you tell me where in that deed it references  
24           that right?

25   A.   (Reviews document.) On this deed, no. The previous

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1 deed from '65 or '62 does.

2 Q. All right.

3 (Court Reporter marks Plaintiff's Exhibit Number 4, Title  
4 of Real Estate, attached hereto.)

5 EXAMINATION CONTINUES BY MR. HALFORD:

6 You've cited something in your chain of title that  
7 we just discussed, and you said a 1965 date. I'm  
8 going to show you what I've marked as Number 4, and  
9 Mr. Foster, I'll pass you a copy, you know what it  
10 is. Is that the deed that you're saying gives you  
11 access to cross my client's property?

12 A. (Reviews document.)

13 MR. FOSTER:

14 For the record, what's been handed to me is two  
15 deeds.

16 MR. HALFORD:

17 Oh, I'm sorry, I thought I had handed the '65.

18 MR. FOSTER:

19 I don't know what you gave him.

20 MR. HALFORD:

21 Yes, I did pass him two deeds.

22 EXAMINATION CONTINUES BY MR. HALFORD.

23 Q. In Exhibit Number 4, I'll just limit it to the one  
24 page for now. Sorry, Mr. Farrell, my paralegal  
25 likes staples. But we're looking at a deed that

1 I'll represent to you is pulled from public records  
2 in York County, and it's from your chain of title.  
3 Can you tell me who that deed was from?

4 A. (Reviews document.) It looks like it was from A. J.  
5 -- A. F. Fewell, and then to Mr. Bigham.

6 Q. Okay. Mr. Bigham would have been a predecessor or  
7 somebody that came along before you on this land; is  
8 that correct?

9 A. That's right.

10 Q. What language in that deed references my client's  
11 property?

12 A. (Reviews document.) I don't know that it refers --  
13 ref -- references your client's property per se as  
14 it does say that it's subject to the water rights  
15 granted by Wateree, Deed Book 54, at page 617, Deed  
16 Book 64, at page 313, and also Clerk, York County,  
17 South Carolina, and to existing easements and right-  
18 of-way.

19 Q. Going back to your answer.

20 MR. HALFORD:

21 Let's go ahead and mark this too.

22 (Court Reporter marks Plaintiff's Exhibit Number 5,  
23 Answer and Counterclaim, attached hereto.)

24 EXAMINATION CONTINUES BY MR. HALFORD:

25 Q. I've marked as Number 5 your Answer and your

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1 Counterclaim because you understand you answered by  
2 client's lawsuit, and then you brought your lawsuit  
3 against my client; do you understand that?

4 A. Yes.

5 Q. In looking at the language cited in number 21, do  
6 you see that language in the deed that you just  
7 looked at, which we've marked Number 4?

8 A. (Reviews document.) As far as the back water? I  
9 mean what -- what I'm reading is -- is pretty much  
10 the same. It may have -- may have some different  
11 words in it, but it's -- it's saying the same thing  
12 in my eyes.

13 Q. But this is where you trace your grant of permission  
14 to use the --

15 A. Yes.

16 Q. -- waters of right -- okay. Now, looking at the  
17 language in number 21, if you'll read that into the  
18 record for me, because I want to be precise about  
19 your understanding of your claims in this lawsuit.  
20 What does it say?

21 A. "This said deed from Fewell to Bigham provides, in  
22 relevant part: It being understood that the grantee  
23 herein, his heirs and assigns, have -- shall have  
24 access to the back water in the cove on which the  
25 above-described property is located, subject to the

1 rights of Wateree Power Company, and its successors,  
2 and other grantees from the grantor's of A. F.  
3 Fewell and Edward Fewell, Jr."

4 Q. I've taken the liberty of marking the deed with some  
5 stars, but do you see that same language in the  
6 deed?

7 A. (Reviews document.) I have read this in one of the  
8 papers. I don't know if it's in the -- on this one,  
9 but one of our papers does have that language in it.

10 Q. Just looking at the language that's cited here in  
11 Number 21 on the answer, do you see the word  
12 easement anywhere in that language?

13 A. Let's see (reviews document.) Yes, sir, "Existing  
14 easements and right-of-ways," (indicating).

15 Q. You're pointing to Number 4 at this time?

16 A. I'm pointing to this (indicating).

17 Q. We'll get to Number 4, but I've pointed your  
18 attention to Number 5, and, specifically, paragraph  
19 21 of the language.

20 A. Where are you getting Number 4 and 5 from?

21 Q. This is Number 4, the deed.

22 A. Okay.

23 Q. Okay?

24 A. Okay.

25 Q. This is Number 5, which is your Answer to the

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- 1 lawsuit, and your Counterclaims. So I'm bringing  
2 you specifically to the language under paragraph 21.  
3 A. But you're asking me if -- if this language is on  
4 here (indicating).  
5 Q. Yes. What I'm asking you --  
6 A. And that's what I answered.  
7 Q. -- is, do you see the word easement in this language  
8 (indicating)? Not Number 4 and Number 5.  
9 A. (Reviews document.)  
10 MR. FOSTER:  
11 You're pointing at the answer.  
12 EXAMINATION CONTINUES BY MR. HALFORD:  
13 Q. I'm pointing at your Answer and Counterclaims, yes,  
14 sir.  
15 A. I don't understand what you're asking me.  
16 Q. I'm asking you, do you see the word easement?  
17 A. I do not see the easement -- a word easement under  
18 21.  
19 Q. That's fair enough, that's all I was asking.  
20 A. Okay.  
21 Q. Do you see the word right-of-way under 21?  
22 A. (Reviews document.) No.  
23 Q. Out of fairness, we've looked at this deed from  
24 1965, which, again, was a deed from an A. F. Fewell  
25 and an Edward Fewell, Jr., to a Mr. W. A. Bigham?

1 A. Yes.

2 Q. Your predecessor in title.

3 A. No. Well, mine was a --

4 Q. I'm going to let you retract. Okay.

5 A. I wasn't involved back then, I don't know.

6 Q. I understand. But you understand you trace your  
7 claims to access of my client's property from this  
8 deed?

9 A. Yes.

10 Q. Okay. I'm just going to quote more language in  
11 Number 4, and I'll start it for you, but it says in  
12 Plaintiff's Exhibit Number 4, which is that deed,  
13 "It being understood that the grantee herein, his  
14 heirs and assigns," which I would represent to you,  
15 you came along later, you would be an assign.

16 A. Yes.

17 Q. "Shall have access to the back water in the cove, on  
18 which the above-described property is located." Do  
19 you have knowledge of whether or not the property  
20 was actually touching the water at one point?

21 A. Do I have personal knowledge? No.

22 Q. Do you believe that it may have been touching the  
23 water at one point?

24 A. Yes.

25 Q. Do you believe it's possible that the water could

1        have raised or lowered under the direction of, for  
2        example --

3    A.    It's possible.

4    Q.    Okay. You would agree with me that this language  
5        that you've cited, it says, "Subject to the rights  
6        of Wateree Power Company, or its heirs or assigns,  
7        from the grantors A. F. Fewell and Edward Fewell,  
8        Jr."

9    A.    Yes.

10   Q.    So if A. F. Fewell and Edward Fewell, Jr., granted  
11        rights to the Wateree Power Company, which I would  
12        tell you is now Duke Power, you would be taking your  
13        property subject to the rights; do you understand  
14        that?

15   A.    Yes.

16   Q.    Okay. Have you referenced the grants of authority  
17        from them to Duke Power? Have you ever looked at  
18        those?

19   A.    I'm not sure.

20   Q.    Well, the reference is at Deed Book 54 at page 617.  
21        This is some old stuff that we pulled from public  
22        record.

23   MR. HALFORD:

24        I want to go ahead and mark this.

25   (Court Reporter marks Plaintiff's Exhibit Number 6, Title



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1 to Real Estate, attached hereto.)

2 EXAMINATION CONTINUES BY MR. HALFORD:

3 Q. But somebody that held your land before you did  
4 granted Watery Power Company some rights, and I want  
5 to go over these. Just take a look at Number 6, and  
6 if you've never seen it, you can say you've never  
7 seen it, but I want to review the language in it.

8 MR. FOSTER:

9 Do you have another copy?

10 MR. HALFORD:

11 Yes, sir. Actually, that's my only one. I'll let  
12 him pass it over to you, Martin, I'm sorry.

13 WITNESS CONTINUES:

14 A. (Reviews document.)

15 Q. Mr. Farrell, if you've never seen it before --

16 A. I haven't seen it.

17 Q. That's fine. Take a moment to review it, and then  
18 I'm going to let your lawyer review it.

19 A. (Reviews document.)

20 MR. FOSTER:

21 Thank you, sir. Do you have questions to ask him?

22 MR. HALFORD:

23 Yes, it's public record, but --

24 MR. FOSTER:

25 Indeed.

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1 MR. HALFORD:

2 All right.

3 EXAMINATION CONTINUES BY MR. HALFORD:

4 Q. Mr. Farrell, this appears to be Madison Hill to  
5 Wateree Power Company, and these were some rights  
6 that were granted to the company that became Duke  
7 Power, but it included the right to raise or lower  
8 the water; do you understand that?

9 A. Yes.

10 Q. To pond the water. To divert the water. That would  
11 have been across the parcel of property that you now  
12 own.

13 A. Yeah.

14 Q. So you understand that you would have taken subject  
15 to those rights?

16 A. Yes.

17 Q. Okay. Then in yet another deed book and page number  
18 that's cited by the deeds in your chain of title.

19 MR. HALFORD:

20 Same thing, Martin, it's public record.

21 MR. FOSTER:

22 Whatever, go ahead.

23 MR. HALFORD:

24 Okay.

25 EXAMINATION CONTINUES BY MR. HALFORD:

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1 Q. There's another grant, again, appears 'Madison Hill  
2 to Wateree Power Company but it says on this one, in  
3 Plat Book 64/313 that it grants to Wateree Power  
4 Company, again, the right to raise the water. You  
5 don't have any reason to dispute that, do you?

6 MR. FOSTER:

7 I don't have it in front of me, and he doesn't have  
8 the thing in front of him.

9 MR. HALFORD:

10 Okay.

11 MR. FOSTER:

12 But we will stipulate to whatever the document says  
13 it says.

14 MR. HALFORD:

15 Fair enough.

16 MR. FOSTER:

17 Since I understand it to be a copy of what is in the  
18 record office of the Clerk of Court.

19 MR. HALFORD:

20 Correct.

21 EXAMINATION CONTINUES BY MR. HALFORD:

22 Q. So we've marked as Number 6, for the record, Deed  
23 Book 54, Page 617.

24 (Court Reporter marks Plaintiff's Exhibit Number 7, Title  
25 to Real Estate, attached hereto.)

1 EXAMINATION CONTINUES BY MR. HALFORD:

2 Q. Then we're going to mark as Number 7 another record  
3 that's identified by your chain of title. You can  
4 take all the time in the world you want to review  
5 it, but do you understand what it means when your  
6 lawyer and I stipulate to something?

7 A. Yes.

8 Q. So if this is in the record, and it came before your  
9 ownership of the land, you understand that you would  
10 be bound by the rights granted to Wateree Power  
11 Company?

12 A. Yes.

13 Q. Okay. Fair enough. So let's go back to your deed  
14 of '05. I believe it's specifically dated August  
15 17th, 2005, and the language that I pointed out for  
16 you in your Answer in your lawsuit against my  
17 client. What in this language identifies my  
18 client's parcel, Mr. Duke's land?

19 A. (Reviews document.) "The above-described property  
20 is located," I don't know, it's lawyer -- lawyer  
21 terms. I don't know.

22 Q. Those lawyers can be verbose at times, can't they?  
23 But you would agree with me in what we've looked at  
24 previously that I had somewhat color-coded, do you  
25 see the part that I've color-coded in yellow?

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- 1 A. (Reviews document.) Yes.
- 2 Q. I'll tell you that's my client's property. It's
- 3 identified again by Tax Map Number 5470000057. You
- 4 would agree with me that that property number, you
- 5 don't see that in this language, do you?
- 6 A. No.
- 7 Q. okay. Taking you back to the deed, Number 4, do you
- 8 see that property number in this language?
- 9 A. (Reviews document.) No.
- 10 Q. Let's go back for a moment, and talk about this
- 11 grant that you rely upon. We've talked earlier, and
- 12 you've testified earlier, you didn't see the word
- 13 easement in the language.
- 14 A. (Indicates affirmative response.)
- 15 Q. Is that correct?
- 16 A. Correct.
- 17 Q. okay. I don't mean to be rude, when you shake your
- 18 head, I have to ask for a verbal response.
- 19 A. Right.
- 20 Q. You don't see the term right-of-way in that
- 21 language; is that correct?
- 22 A. That's right.
- 23 Q. In fact, you don't even see it identifying by name
- 24 or number this parcel number which I'm pointing to
- 25 on Exhibit Number 3 as my client's property.

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1 A. Right.

2 Q. So what is it about your deed that gives you the  
3 right to cross my client's property?

4 MR. FOSTER:

5 At the risk of being endless, continuing objection.

6 MR. HALFORD:

7 I understand your objection.

8 WITNESS CONTINUES:

9 A. The way I read it, in layman's terms, it gives me  
10 the right.

11 Q. How so?

12 A. By passing on the right to the back water. Does  
13 that -- does that mean his property or any other  
14 property? Common sense would tell me my shoreline  
15 is this much, and I can't cross over anybody else's,  
16 so this is what I've got for access.

17 Q. You say you can't cross over anybody else's, why is  
18 that?

19 A. Well, it's -- the two to the side of me, it's --  
20 it's land, there ain't no -- I -- I don't have any  
21 access to get to it.

22 Q. Okay.

23 A. Right in front of me I do.

24 Q. Right in front of you would be at least a view or  
25 access to the water; is that correct?

1 A. That's right.

2 Q. Okay. If the water had been lowered over time, is  
3 it possible that you became blocked from the water?

4 A. If -- if the lake dried up? Yes.

5 Q. In fact, in your answer, you have stated that Mr.  
6 Dukes owns some 30 feet between your land and the  
7 water; are you aware of that?

8 A. I didn't state that.

9 Q. I will represent to you, and, again, this is drafted  
10 by your lawyer I understand, but you have basically  
11 admitted that my client owns 30 feet between your  
12 land and the water. You don't have a reason to  
13 dispute that, do you?

14 A. No.

15 Q. So you got your property in, again, it looks like  
16 the year 2005, August of 2005. We've looked at  
17 Exhibit Number 2, which is your deed.

18 A. Yeah.

19 Q. Okay. So today is year 2013?

20 A. Yes.

21 Q. How long, therefore, have you held your property?  
22 How many years?

23 A. Seven -- eight years.

24 Q. Eight years, okay. Let's talk about some of the  
25 other claims in your Answer and Counterclaims. You

1        said that you've used my client's property openly.  
2        Do you understand what that means? I'm not holding  
3        you to the standard of a lawyer --

4    A.    I've used it since I bought it.

5    Q.    Okay. You've also alleged that it's been adverse to  
6        my client. Does anybody else know about this?

7    A.    That me, using my property, has been adverse to the  
8        client -- to your client?

9    Q.    Well, let --

10   A.    Has he ever -- what he's doing, he's bringing --  
11        he's got me in a lawsuit.

12   Q.    Have you ever had a discussion anytime in the past  
13        with my client about whether or not your property  
14        touched the water?

15   A.    No.

16   Q.    This Fieldbrook Drive that you live on; is that  
17        right?

18   A.    Uh-huh. Yes.

19   Q.    Is that a public road?

20   A.    Yes.

21   Q.    It is a public road?

22   A.    Yes.

23   Q.    How many people live on the cove with you and Mr.  
24        Dukes?

25   A.    I couldn't an -- I couldn't answer that.



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1 Q. Okay.

2 A. I don't know. There's multiple houses.

3 Q. All right. I just want to make sure to ask, but you  
4 don't dispute that my client owns 30 feet of  
5 property thereabouts approximately between your land  
6 and the dock?

7 A. From what you're telling me, he owns a whole -- he  
8 owns a whole lot more than 30 feet. I don't know.  
9 I don't know what he owns.

10 MR. HALFORD:

11 Let's go ahead and mark this one.

12 COURT REPORTER:

13 Okay.

14 (Court Reporter marks Plaintiff's Exhibit Number 8,  
15 Aerial View, attached hereto.)

16 EXAMINATION CONTINUES BY MR. HALFORD:

17 Q. This is just a picture that I took from the  
18 Internet.

19 A. Okay.

20 Q. Okay?

21 MR. HALFORD:

22 That just comes off Google. I'm just going to ask  
23 him about it.

24 EXAMINATION CONTINUES BY MR. HALFORD:

25 Q. All right, I used a computer program to kind of get

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- 1 a snapshot of the property from above so that we  
2 could talk about it here today. But I want you to  
3 look at it, and see if you can determine where your  
4 house is.
- 5 A. (Reviews document.) Right here (indicating).
- 6 Q. Okay. Is this the dock?
- 7 A. Yes.
- 8 Q. So is there a boardwalk of some sort between the  
9 dock and your home here (indicating) on the beach?
- 10 A. A boardwalk? What do you mean?
- 11 Q. Plankwalk, method by which you can cross the land.
- 12 A. Yes, there's a sidewalk and a pier.
- 13 Q. All right. So where the pier starts there on your  
14 land, have you ever used that to access the dock?
- 15 A. Yes.
- 16 Q. It's got a boat in the picture, is that your boat?
- 17 A. Yes.
- 18 Q. Do you also store personal property like jet skis or  
19 watercraft --
- 20 A. Yes.
- 21 Q. Okay. How many boats do you have?
- 22 A. Two boats.
- 23 Q. One appears to be a pontoon boat, it appears to be  
24 very nice. What other type of boat do you have?
- 25 A. A ski boat.

- 1 Q. Is it possible that you maintain that under the  
2 covered portion of the dock?
- 3 A. Yes.
- 4 Q. When did that come about? Was that covered portion,  
5 the roof portion of that, was that there when you  
6 acquired your property?
- 7 A. Yes.
- 8 Q. Do you permit neighbors or friends to also use your  
9 dock?
- 10 A. Yes.
- 11 Q. Okay. Do you think this is Mr. Dukes' property here  
12 (indicating)? I'm pointing to Exhibit Number 8.
- 13 A. (Reviews document.) I don't know if that's his, or  
14 the other one is. I'm not sure.
- 15 Q. Apparently the land between yours and Mr. Dukes was  
16 once owned by somebody by the last name of Oates.  
17 Were you familiar with those folks?
- 18 A. Yes.
- 19 Q. Were you around when they conveyed that property to  
20 Mr. Dukes?
- 21 A. No.
- 22 Q. Okay. But you wouldn't dispute that at this time  
23 Mr. Dukes owns the property which is adjacent to  
24 yours, we've been discussing that all morning here?
- 25 A. (Reviews document.) I suppose so.

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1 MR. HALFORD:

2 Let me go ahead and mark this.

3 (Court Reporter marks Plaintiff's Exhibit Number 9,  
4 Survey, attached hereto.)

5 EXAMINATION CONTINUES BY MR. HALFORD:

6 Q. I'm showing you what's been marked as Number 9, it's  
7 just a survey that was done on my client's property,  
8 but I've got it color-coded in several different  
9 colors. Can you point out which is your property?

10 A. (Reviews document.) The pink.

11 Q. Okay. Referencing, again, the yellow, that is not  
12 your property?

13 A. No.

14 Q. Mr. Farrell, I've gone back and looked at the  
15 records as has your lawyer, and we've traced it back  
16 to a deed of, I believe, 1965 from a Fewell to a Mr.  
17 Bigham. Is that primarily what you rely upon for  
18 claiming that you have access to use my client's  
19 land?

20 MR. FOSTER:

21 Continuing objection.

22 MR. HALFORD:

23 I understand your objection, but I get to ask the  
24 question what he understands.

25 MR. FOSTER:

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1 No one's suggesting that.

2 WITNESS CONTINUES:

3 A. I don't know that I'm referencing to Mr. Bigham, but  
4 I'm referencing to the Fewells.

5 Q. Okay. But the Fewells back in the '60s gave it to  
6 a --

7 A. Bigham.

8 Q. -- Mr. Bigham.

9 A. That's right.

10 Q. Have you ever seen this border language in any other  
11 deed that you have looked at ever?

12 A. I've never owned lakefront property before, so, no.

13 Q. This is your first lakefront property that you've  
14 owned?

15 A. Yes.

16 Q. Okay. When you purchased it, was it, in fact,  
17 lakefront, or was it --

18 A. Yes.

19 Q. -- waterfront, or water view? How would you  
20 describe the property view?

21 A. Waterfront.

22 Q. Okay. Did somebody tell you that, or --

23 A. Yes.

24 Q. Who told you that?

25 A. The realtors, the Edwards, Mr. Bigham.

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- 1 Q. Mr. Bigham told you this?
- 2 A. Yes, he did.
- 3 Q. Is Mr. Bigham living now; do you know?
- 4 A. No, he's not.
- 5 Q. Do you know what year Mr. Bigham died?
- 6 A. I would -- I'm thinking last year.
- 7 Q. Again, I'm not holding you to the standard of a
- 8 lawyer, or an abstractor, or otherwise, but I'm
- 9 showing you Number 10. It kind of shows how your
- 10 land came to you from prior owners, and you appear
- 11 to be claiming grant from Fewell, see Mr. Fewell's
- 12 name here (indicating)?
- 13 A. Uh-huh.
- 14 Q. To Mr. Bigham, and it references a deed which we've
- 15 gone over since, but that's the deed from a long
- 16 time ago, 1965.
- 17 A. Okay.
- 18 Q. Okay. We've talked just briefly about the language
- 19 in that deed, and in your answer. You would agree
- 20 with me that that doesn't cite the property of
- 21 Oates; it doesn't say Oates property, does it?
- 22 A. (Reviews document.) Are you talking about Bill
- 23 Oates property here (indicating), or are we talking
- 24 about mine?
- 25 Q. Well, we're talking about this deed (indicating).

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- 1 I'm pointing your attention to Plaintiff's Exhibit  
2 Number 4.
- 3 A. Okay.
- 4 Q. Which is, I would represent to you is the property  
5 that you bought some years later.
- 6 A. Okay.
- 7 Q. You've identified that as the pink parcel here  
8 (indicating).
- 9 A. Right.
- 10 Q. This is your tax book, and it references your deed.  
11 So what I'm saying is, do you see the name Oates?
- 12 A. I didn't buy anything from Oates.
- 13 Q. Do you see the name --
- 14 A. No, Oates is not in there.
- 15 Q. I would agree with you. Do you see the name Dukes  
16 anywhere in here?
- 17 A. Nope.
- 18 Q. Do you see this little property tax number that's  
19 right here (indicating)?
- 20 A. (Reviews document.) Yes.
- 21 Q. Okay. Do you see that referenced anywhere in the  
22 language?
- 23 A. No.
- 24 Q. That's fair enough. You testified earlier you don't  
25 see the word easement? I'm not asking you to define

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- 1           easement, but you don't see that word, correct?
- 2    A.    No.
- 3    Q.    You don't see the word right-of-way, do you?
- 4    A.    (Reviews document.) Not on this one.
- 5    Q.    Okay. Fair enough, so --
- 6    A.    Well, no, I do see easement, it's right there
- 7           (indicating).
- 8    Q.    All right.
- 9    A.    And I do see right-of-way. Sorry.
- 10   Q.    All right. So you've pointed out the word easement
- 11           and right-of-way, and this that you've pointed it
- 12           out to is a 1965 deed that appears to be, again,
- 13           Plaintiff's Exhibit Number 4 from A. F. Fewell and
- 14           Edward Fewell, Jr., to a Mr. W. A. Bigham?
- 15   A.    Yes.
- 16   Q.    All right.
- 17   MR. HALFORD:
- 18           I'm going to go ahead and mark Number 10.
- 19   (Court Reporter marks Plaintiff's Exhibit Number 10,
- 20   Title to Real Estate, attached hereto.)
- 21   EXAMINATION CONTINUES BY MR. HALFORD:
- 22   Q.    I'm going to take you back now to -- I'll tell you
- 23           that my client acquired the property, I believe, in
- 24           the year 2005. I wasn't expecting you to know that,
- 25           I'm just representing that to you of record. But



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1 I've traced my client's chain of title back. You're  
2 aware at one point this was one big parcel on the  
3 cove?

4 A. I don't know.

5 Q. Okay. In looking back, it appears that Mr. Fewell  
6 also deeded the land that my client owns.

7 A. Okay.

8 Q. Okay? I'm not referring to the color-coded, the  
9 pink version here, but the land that my client owns  
10 one was owned by Mr. A. F. Fewell. You don't have a  
11 reason to dispute that, do you?

12 A. No.

13 Q. So at some point in the past, the same person would  
14 have owned your property and our property. Do you  
15 have any reason to dispute that?

16 A. No.

17 MR. HALFORD:

18 If you'll go ahead, and mark this please.

19 MR. FOSTER:

20 For the record, this is what?

21 MR. HALFORD:

22 These are title searches done by the abstractor,  
23 just shows the chain of title. Everything --

24 MR. FOSTER:

25 You've represented that fact, so --

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1 MR. HALFORD:

2 Well, what I'm just doing is walking over his chain  
3 and walking over our chain.

4 MR. FOSTER:

5 I understand, but that is not of record, that is a  
6 product through your property search.

7 MR. HALFORD:

8 That is correct. But the deeds would be of record  
9 though.

10 MR. FOSTER:

11 Absolutely.

12 MR. HALFORD:

13 All right, very good.

14 EXAMINATION CONTINUES BY MR. HALFORD:

15 Q. So just coming back with you, and just like in your  
16 chain of title, what I've done is trace my guy's  
17 title back as far as I could. In fact, I went back  
18 to about 1950s on this. I'm showing you, a long  
19 time ago that a Mr. Fewell conveyed to Mr. Bailey;  
20 and if I told you that was in the year 1965, that  
21 would have been the same year that they conveyed  
22 your property to Mr. Bigham. Would you agree with  
23 me?

24 A. If you say so.

25 Q. Okay.

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1 A. I don't have any knowledge of it.

2 Q. So you would have no reason to dispute that your  
3 property and my property had, what we call, a common  
4 grantor at one point?

5 A. Yes.

6 Q. Okay. So if the first time this water access  
7 language appears of title is in the deed that you've  
8 referenced?

9 A. (Reviews document.) If this is the one from '62.

10 Q. I believe it's from '65, but you can take your -- I  
11 don't mean to interrupt. I want you to read it, and  
12 understand what the chain says before we testify to  
13 it.

14 A. (Reviews document.) The chain for this, yes, from  
15 the Fewells to the Bighams.

16 Q. Okay. Going back in my client's chain, it appears  
17 that the Fewells are in his chain too.

18 A. Okay.

19 Q. Okay. So if I showed you a deed, for example --

20 MR. HALFORD:

21 Let me go ahead and mark this one.

22 (Court Reporter marks Plaintiff's Exhibit Number 11,  
23 Chain of Title, attached hereto.)

24 (Court Reporter marks Plaintiff's Exhibit Number 12,  
25 Title to Real Estate, attached hereto.)

1 EXAMINATION CONTINUES BY MR. HALFORD:

2 Q. It appears there were some deaths and some estates  
3 involved, but what I'm going to show you is what  
4 I've marked as Number 12, and if you've never seen  
5 it, you can say you've never seen it, but I'll tell  
6 you, that's my client's deed, where he got his  
7 property.

8 A. (Reviews document.) I've never seen it.

9 Q. Okay. Can you tell me who is conveying the  
10 property? Who is the deed from?

11 A. From the Fewell -- or from Benjamin Fewell and  
12 Alexander Fewell.

13 Q. Who is it to?

14 A. Carl C. Dukes.

15 Q. Okay. Does it say Carl? I thought it said Earl C.  
16 Dukes.

17 A. Oh.

18 Q. That's okay. But it appears that this Fewell family  
19 also granted to my client. So now that we've looked  
20 at that, again, you don't have any reason to dispute  
21 that you had a common person that owned your  
22 property at one time, and the same family would have  
23 owned our property at one time?

24 A. Yes.

25 Q. Okay. All right, well, moving forward, now that

1 we've established that. You're aware that Martin  
2 Brogdonovich, who I know you've never met, was in  
3 this lawsuit at one point?

4 A. Yes.

5 Q. There was a settlement with Mr. Brogdonovich, and  
6 I'm going to go ahead and mark this. I know you're  
7 probably not aware of the terms of that settlement.

8 A. No.

9 (Court Reporter marks Plaintiff's Exhibit Number 13,  
10 Survey, attached hereto.)

11 EXAMINATION CONTINUES BY MR. HALFORD:

12 Q. In looking at Number 13, what I've marked, and this  
13 is a survey of the properties, the boundary line of  
14 the lake, and the two docks. Are you familiar with  
15 the two docks that exist out there? Does this  
16 appear to be your dock?

17 A. (Reviews document.) Yes.

18 Q. Okay. Does that appear to be a dock that's to the  
19 left of you?

20 A. Yes.

21 Q. That would be on the other parcel of property. You  
22 stated that you can't access the water any other  
23 way. Why can you not access that dock?

24 A. I mean I would -- I, you know, I don't -- I don't --  
25 I'm not going to cross over his property to go get

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- 1           it unless I'm invited.
- 2    Q.    I understand. You're crossing my client's --
- 3    A.    I don't have --
- 4    Q.    If you're crossing my client's property, why is it
- 5           okay to do that on the Dukes?
- 6    A.    'Cause I have access.
- 7    Q.    But you're basing your access on this 1965 deed?
- 8    MR. FOSTER:
- 9           Continuing objection.
- 10   MR. HALFORD:
- 11          I understand your objection.
- 12   WITNESS CONTINUES:
- 13   A.    I'm basing mine off of what I bought.
- 14   Q.    Okay, and --
- 15   A.    And what I was told.
- 16   Q.    We'll stop there for a minute, back up, what were
- 17          you told, by whom?
- 18   A.    I was told that I had waterfront property, including
- 19          the dock, and a pier.
- 20   Q.    Who told you this?
- 21   A.    Bobby Edwards, the realtor.
- 22   Q.    Was Bobby Edwards the realtor --
- 23   A.    Bobby Edwards.
- 24   Q.    -- or that was the prior owner?
- 25   A.    No, the prior owner.

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1 Q. Who was the realtor?

2 A. Gladys Russell.

3 Q. Anybody else tell you this?

4 A. No.

5 Q. Okay. Fair enough. Let's look at Number 13 then.  
6 I want to make sure we're talking about it. Do you  
7 see your property referenced on this Number 13?

8 A. Yes.

9 Q. Can you point it out for me?

10 A. Right here (indicating).

11 Q. In fact, just place an "X" on it with my pen for me,  
12 or you may use yours.

13 A. (Marks document.)

14 Q. All right. Now, it appears to be a shoreline  
15 survey. Do you have any reason to dispute that this  
16 is the shoreline on the property? I'm not saying  
17 that you're a surveyor, but --

18 A. (Reviews document.) It doesn't look correct to me,  
19 but I'm not a surveyor.

20 Q. If, in fact --

21 A. When I look at these two points here (indicating),  
22 they run right through here (indicating).

23 Q. Okay.

24 A. So I don't know.

25 Q. When you look at it, do you mean when you look at

1       this piece of paper, or when you look at it  
2       physically while you're on your property?

3    A.   When I physically look at this point to this point  
4       (indicating) that are marked on the property, it  
5       runs across the concrete.

6    Q.   Okay. So the concrete, did you add the concrete  
7       after you bought the home?

8    A.   No.

9    Q.   It was there when you acquired it?

10   A.   Yeah.

11   Q.   If the concrete in the boardwalk, I'm going to refer  
12       to it as a boardwalk, but the planks that go down to  
13       the dock, if that's, in fact, on my client's  
14       property, you're stating that you would not have had  
15       reason to know that?

16   A.   I didn't know it was on his property, no.

17   Q.   What if it is, in fact, on his property?

18   A.   What if? What do you mean?

19   Q.   Well, what if it is, in fact, on my property, what  
20       gives you the right to cross my client's property to  
21       use the waters?

22   A.   I guess this document here (indicating) does.

23   Q.   Again, you've not pointed out any language in that  
24       that says right-of-way, correct?

25   A.   Yes, I did. Right-of-way and easement.



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- 1 Q. Okay. You're pointing to some star language on this  
2 where it says, "It being understood that the grantee  
3 herein," you are not the grantee in this deed, were  
4 you?
- 5 A. No.
- 6 Q. So going to your deed, which we've marked as --
- 7 A. Sorry.
- 8 Q. That's okay. Sorry, Mr. Farrell, we've marked it as  
9 Number 2.
- 10 MR. FOSTER:
- 11 I may have messed you up, I apologize.
- 12 MR. HALFORD:
- 13 That's okay.
- 14 MR. FOSTER:
- 15 I was reaching for something.
- 16 EXAMINATION CONTINUES BY MR. HALFORD:
- 17 Q. Where is this language in your deed?
- 18 A. (Reviews document.) "This conveyance is made  
19 subject to easements, restrictions, covenants,  
20 conditions of record, including matters shown on  
21 recorded plats."
- 22 Q. Okay. I just have a question, it's an aside. Do  
23 you also have a Fort Mill address?
- 24 A. Not anymore.
- 25 Q. You used to live here?

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1 A. Yes.

2 Q. You live at this property full-time now?

3 A. Yeah.

4 Q. All right. Now, you just discussed recorded plats,  
5 and that sort of thing that you took subject to in  
6 your deed. Again, do you have any reason to dispute  
7 that this plat is not correct? It's referenced in  
8 your deed.

9 MR. FOSTER:

10 This plat references which?

11 MR. HALFORD:

12 This is, for the record, thank you, Martin, this is  
13 the plat referenced in Mr. Farrell's deed, at D-18,  
14 page 9.

15 EXAMINATION CONTINUES BY MR. HALFORD:

16 Q. If we pulled this off the public record, it's  
17 actually cited that you took subject to this plat  
18 and this survey. Do you have any reason to dispute  
19 that that's not correct?

20 A. No.

21 Q. Okay. So, again, if it shows that your boundary  
22 line stops here (indicating), do you, in fact, have  
23 water access?

24 A. Yes.

25 Q. Do you see where it says --

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1 A. Because if I had -- if there was water up here  
2 (indicating), I'd have water access.

3 Q. Okay.

4 A. And just like you said, if they raise or lower the  
5 -- the lake, I have water access. If it goes to the  
6 570 line, it's halfway up on my pier -- I mean my  
7 dock -- deck.

8 Q. Okay.

9 A. So --

10 Q. You say a dock now, by virtue, have you ever walked,  
11 and I'm just asking some questions for factual  
12 background. This dock that extends into the  
13 waters --

14 A. Uh-huh.

15 Q. -- does it have piers or pilings that attach it to  
16 the land?

17 A. Yes.

18 Q. Whose land does it attach to?

19 A. I guess your client's.

20 Q. I understand that you've used this dock for some  
21 time, and you claim --

22 A. Yes.

23 Q. -- the right to use it. Can you walk underneath the  
24 plank walk or the peer? Can you walk underneath it  
25 in the water?

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1 A. No.

2 Q. Have you ever walked around it or up under this  
3 place where there appears to be a roofed place to  
4 store your boat, a shed? Have you ever walked up  
5 under the land whatsoever?

6 A. I can't.

7 Q. What do you mean you can't?

8 A. It's too deep.

9 Q. But up near the shoreline, have you ever walked --

10 A. You can't walk under it either, because it's too low  
11 to the ground.

12 Q. So what you're telling me is, the entire time you've  
13 accessed the waters by walking on the dock; is that  
14 correct?

15 A. Yes.

16 Q. Okay. You never walked upon my client's land?

17 A. Maybe out -- not under the dock, on the outside,  
18 yes.

19 Q. Okay. I'm not disputing you can use the waters of  
20 Lake Wylie, but I'm talking about the disputed  
21 parcel, where you have mentioned, by the way, in  
22 your pleadings, that my client owns that land. So  
23 let's assume for a minute there's 30 feet plus of  
24 land dividing my client's property from your  
25 property. Have you ever walked on that parcel?

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1 A. Yes.

2 Q. Going on into the water where you see the boardwalk  
3 accessing the dock that's out there, have you ever  
4 walked around under those piers?

5 A. No.

6 Q. Why not?

7 A. You physically can't.

8 Q. So during the point that you have accessed this  
9 dock, your feet have never touched the land beneath  
10 the dock?

11 A. No.

12 Q. I ask that just to kind of flush out some issues  
13 about the use of my client's property, okay? I'm  
14 not holding you to a lawyer's standard, because I  
15 see your attorney over here kind of grimacing. But  
16 do you understand what adverse possession is?

17 A. No.

18 Q. You never heard the term before?

19 A. I've heard it.

20 Q. You have a layman's understanding of what it might  
21 mean?

22 A. A little bit.

23 Q. Tell me what your understanding of adverse  
24 possession is.

25 A. Using someone else's land with their knowledge for a

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1 period of time.

2 Q. That's fairly accurate, by the way. Do you know  
3 what the period of time is?

4 A. No.

5 Q. If it's 20 years, would that strike you as odd?

6 A. I have no idea.

7 Q. You would agree with me that you've only owned your  
8 property since year 2005, I think it is?

9 A. Yes.

10 Q. So you've not owned your property for 20 years out  
11 there?

12 A. No.

13 Q. All right, thank you. Just going back to your deed,  
14 and we're going to wrap up much shorter than I  
15 anticipated; but, again, looking at the survey here  
16 (indicating), you don't know whether, in fact, that  
17 was the survey that was performed when you bought  
18 your property?

19 A. I do not know.

20 Q. But you would agree with me that it does reference a  
21 Mr. Edwards who sold your property to you; is that  
22 correct?

23 A. It references him, yes.

24 Q. Okay. In fact, the date on it appears to be, and  
25 I'm pointing you to the portion of the survey that's

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1 attached under Exhibit Number 2, it appears to be  
2 August the 4th, 2005.

3 A. Yes.

4 Q. Your deed was conveyed, I believe, on August the  
5 17th, 2005.

6 A. Yes.

7 Q. So, in fact, that could be the survey that's  
8 referenced; could it not?

9 A. Could be.

10 Q. Okay. In looking at the survey again, it does show  
11 that your property doesn't quite reach the water,  
12 doesn't it?

13 A. (Reviews document.) Yes.

14 Q. You don't have any reason to dispute that this is  
15 your house, correct?

16 A. No.

17 Q. That these lines represent your boundary; do you  
18 have any reason to dispute that?

19 A. No.

20 Q. In fact, we've been talking about the color-coded  
21 version I did for us, and it appears here that the  
22 same exists on this survey. That, in fact, your  
23 land stops at my client's land.

24 A. (Reviews document.) Yes.

25 Q. All right. During the time that you've lived there,

Deposition of Kenneth W. Farrell

57

1 have you ever had any disputes with my client? Have  
2 y'all ever met one another? Had a verbal  
3 conversation with one another?

4 A. We've never had any discussions. We've -- we've had  
5 -- I have spoke with him, yes.

6 Q. Do you recall approximately when that was, and what  
7 the subject of that conversation was?

8 A. Yes, it was Memorial Day 2006.

9 Q. Okay. That's a very precise day, how do you know it  
10 was Memorial Day 2006?

11 A. It was actually about 5:30 in the evening.

12 Q. That's very precise.

13 A. Yes, it is.

14 Q. 5:30 p.m. in the evening?

15 A. Yup.

16 Q. What makes you remember that day?

17 A. My dock got destroyed.

18 Q. When you say your dock got destroyed, what do you  
19 mean?

20 A. My pier got destroyed by a row boat.

21 Q. Really?

22 A. Yes.

23 Q. Not the fault of my client, somebody hit --

24 A. No.

25 Q. -- your --



Deposition of Kenneth W. Farrell

58

1 A. That's right.

2 Q. I'm sorry to hear that. When you say it got  
3 destroyed, did it literally knock it down or --

4 A. Oh yeah, it had to be totally rebuilt.

5 Q. Your dock had to be completely reconstructed?

6 A. Yes, sir.

7 Q. Did you reconstruct it the same, or did you --

8 A. Exactly the same.

9 Q. Exactly the same?

10 A. Yes.

11 Q. Okay. What was the conversation that you had with  
12 Mr. Dukes at that time?

13 A. Nothing. He come over to check to see if the kids  
14 were okay. A lot of family was in the water around  
15 at the time. And him and his wife come over, and  
16 were very nice, and real sorry that things happened,  
17 and whatnot. And if they could do anything, let us  
18 know.

19 Q. So this appears to have been a very pleasant  
20 conversation?

21 A. Yes.

22 Q. So when were you first aware that Mr. Dukes objected  
23 to you continuing to use that dock? When was the  
24 very first time you found out?

25 A. With the lawsuit.

Deposition of Kenneth W. Farrell

59

1 Q. So you got served with this lawsuit from my offices,  
2 and that's the first time you ever understood that  
3 he objected at all?

4 A. That's right.

5 Q. Did you ever make any attempt to talk with him after  
6 that?

7 A. No.

8 Q. Okay. Prior to this lawsuit, he had never made you  
9 aware that he objected to your use of the dock?

10 A. No.

11 Q. This case is appearing for trial, it's number one,  
12 on July 15th week, I believe it is. Have you ever  
13 been asked to participate in what's called a  
14 mediation?

15 A. No.

16 Q. Would you consider participating in a mediation?

17 A. I don't know.

18 Q. If it's, in fact, the case that my client owns the  
19 land that your dock attaches to, are you willing to  
20 discuss resolution of this with my client by  
21 purchasing the land?

22 A. No.

23 Q. So you're not willing to purchase the land?

24 A. No.

25 Q. Are you willing to remove the dock?

Deposition of Kenneth W. Farrell

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1 A. If I lose, yes.

2 Q. Okay.

3 A. Or, wait, I -- I will move --

4 Q. I'm --

5 A. I'll remove the pilings, yes, I'm not going to  
6 remove the dock.

7 Q. Okay. I don't ever mean to interrupt you, but I'm  
8 just exploring possibilities. Because we've  
9 discussed what's called ADR on this case, and I want  
10 to make sure what your understanding is.

11 A. Right.

12 Q. So you're not willing to go to a mediation and talk  
13 to Mr. Dukes?

14 A. No.

15 MR. FOSTER:

16 For the record, if the court order requires us to go  
17 to mediation, we, of course, will do so.

18 MR. HALFORD:

19 I believe that's what the court order requires us to  
20 do.

21 MR. FOSTER:

22 I believe indeed.

23 MR. HALFORD:

24 We'll go into a conversation we had last week.

25 EXAMINATION CONTINUES BY MR. HALFORD:

- 1 Q. I'm trying to explore how this has been discussed  
2 with you, and if there's anything that can be done.  
3 So you're --
- 4 A. Right.
- 5 Q. -- willing to remove the pilings --
- 6 A. Yes.
- 7 Q. -- if you lose this case?
- 8 A. That's right.
- 9 Q. You're not willing to purchase the property?
- 10 A. No.
- 11 Q. You're not willing to lease the property?
- 12 A. No.
- 13 Q. So it's really a matter of whether or not you're  
14 right or wrong, whether you have a deeded right, in  
15 fact, to access this property?
- 16 A. Right.
- 17 Q. Under any other circumstances, is there anything  
18 that you would be willing to propose for possibly,  
19 you know, resolving this case?
- 20 A. Not until we go to court.
- 21 Q. Okay. Your position is, you are relying upon a  
22 court of law to tell you what is right or wrong in  
23 this case?
- 24 A. Yes.
- 25 Q. But nonetheless you have reviewed these deeds that

Deposition of Kenneth W. Farrell

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- 1           we've discussed, right?
- 2    A.    Yes.
- 3    Q.    You've reviewed the grant going back as far as '1965?
- 4    A.    Yes.
- 5    Q.    All right. You don't have any reason to dispute the
- 6           survey that's attached to your deed, do you?
- 7    A.    No.
- 8    Q.    What I'm getting at, and I'm not trying to trick
- 9           you, Mr. Farrell, but I'm getting at notice, actual
- 10          or constructive notice, who was your closing
- 11          attorney, when you bought this?
- 12   A.    Mr. Foster.
- 13   Q.    Okay. If this survey actually showed that you were
- 14          blocked from the water, you don't have a reason to
- 15          dispute that you've held the property since August
- 16          17th, 2005, do you?
- 17   A.    No.
- 18   Q.    You weren't using it prior to August 17th, 2005,
- 19          were you?
- 20   A.    No.
- 21   Q.    So prior to the date you acquired the property, you
- 22          hadn't been out there, and met with any of your
- 23          predecessors and title, Edwards, had you?
- 24   A.    Prior to purchasing it, yes.
- 25   Q.    Did you ever go, for example, visit Mr. Edwards, and

Deposition of Kenneth W. Farrell

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1 use the property?

2 A. No.

3 Q. Okay. Let me ask you, were you a member of his  
4 family?

5 A. No.

6 Q. Were you a friend?

7 A. No.

8 Q. Just an acquaintance?

9 A. No.

10 Q. So this was just basically an arm's length  
11 transaction where you believed you were buying a  
12 waterfront --

13 A. Yeah.

14 Q. -- parcel? Okay.

15 A. That's right.

16 Q. If the people who sold you this, whether  
17 accidentally or not, but they had misrepresented to  
18 you that you had water access, would that make you  
19 angry?

20 A. No, it wouldn't make me angry.

21 Q. If, in fact, your property is water view, that would  
22 not disturb you at all?

23 A. Yeah, it would -- it wouldn't make me angry, but,  
24 you know, I would have to -- I would probably seek  
25 some other retribution for it, yes.

1 Q. In what way?

2 A. I don't know. I couldn't say right now. I'd have  
3 to look at my options.

4 Q. But that's what you're relying upon, frankly, is  
5 that you wish either a jury or a court to declare  
6 you to have the right to continue to use my client's  
7 parcel?

8 A. Yes.

9 Q. You've not disputed once here today that my client  
10 owns this Tax Map Number?

11 A. No.

12 Q. You've not, in fact, disputed once that your  
13 property lines are not, in fact, correct?

14 A. We never said my property lines were incorrect.

15 Q. You're correct, I'm going to rephrase the question,  
16 because I'm not trying to trick you; but you've  
17 never once failed to identify this property on  
18 Plaintiff's Exhibit Number 9 as your parcel?

19 A. That's right, that's my parcel.

20 Q. Okay. We've looked at an overhead of the lake,  
21 which you've identified your home on, I'm referring  
22 to Plaintiff's Exhibit 8, you've identified your  
23 house, correct?

24 A. Yes.

25 Q. You've identified the dock?

1 A. Yes.

2 Q. All right. You've shown me a concrete walkway, I  
3 believe, that extends to the water?

4 A. Yes.

5 Q. Okay. You've told me that you always use the dock  
6 to access the water?

7 A. Yes.

8 Q. That's been since the time you acquired the  
9 property?

10 A. Yup.

11 Q. That was in the year 2005?

12 A. Yes.

13 Q. All right. You've never walked up under the dock,  
14 because you say it's impossible.

15 A. That's right.

16 Q. Did I understand you correctly?

17 A. That's right.

18 Q. You may have walked in the waters, but you've never  
19 walked underneath the dock?

20 A. That's right.

21 Q. I've asked you several other questions to see if you  
22 understood, but if I'm understanding your claims  
23 against my client, you understand we filed a lawsuit  
24 against you, and our client's lawsuit were trespass,  
25 that you're using our property?



Deposition of Kenneth W. Farrell

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1 A. Uh-huh.

2 Q. We've also brought something called nuisance, that  
3 you're interfering with our use of the property.  
4 You answered back, and you said all that's untrue.

5 A. Yes.

6 Q. Then you brought your own lawsuit against us; do you  
7 remember that?

8 A. Yes.

9 Q. Okay. As part of the lawsuit, even though we've  
10 discussed, and I'm honoring your Counsel's  
11 objections, you claim that you have an easement. Is  
12 that personal to you? Does anybody else get to use  
13 the water?

14 A. Anybody else as far as my family does, yes.

15 Q. Okay.

16 A. Friends.

17 Q. Anybody else?

18 A. Yeah, friends do.

19 Q. Friends, acquaintances?

20 A. Yes.

21 Q. The point is, short of me, or Madam Court Reporter,  
22 or Mr. Foster driving down Fieldbrook Drive to come  
23 to your house, does that right to use the water  
24 extend to anybody else?

25 A. As far as without permission, or permission, or --

Deposition of Kenneth W. Farrell

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- 1 Q. Well --
- 2 A. Is it public use; is that what you're asking?
- 3 Q. Well, let's go there first. Is it public use?
- 4 A. No.
- 5 Q. Okay. Could my client use it?
- 6 A. Yeah.
- 7 Q. Have you ever seen him use it?
- 8 A. No.
- 9 Q. Have you ever seen him walk out there by it or walk
- 10 on it?
- 11 A. No.
- 12 Q. You don't dispute it attaches to his land though?
- 13 A. No, I don't dispute it.
- 14 Q. Okay. How about anybody else? General public. If
- 15 I drove my car down Fieldbrook Road, could I come
- 16 upon your property, and use this?
- 17 A. You could. I would ask you why. I have a lot --
- 18 Q. You probably wouldn't take --
- 19 A. -- of people --
- 20 Q. I'm sorry, I don't mean to interrupt. You probably
- 21 wouldn't take kindly to that, would you?
- 22 A. I've had people down there, yes, that I didn't know
- 23 who they were.
- 24 Q. Oh, people just came down, and --
- 25 A. Yes.

Deposition of Kenneth W. Farrell

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- 1 Q. Really? What happened?
- 2 A. I just asked them who they were, and what -- what
- 3 they were doing out on the dock, and they said they
- 4 were fishing, so --
- 5 Q. They came upon your dock, and they were fishing?
- 6 A. Yeah.
- 7 Q. Why didn't you ask them to leave?
- 8 A. They were friends of Bobby Edwards, so I said,
- 9 "okay."
- 10 Q. The prior grantee?
- 11 A. Yes.
- 12 Q. The prior grantor that gave you the property?
- 13 A. Right.
- 14 Q. Okay. Well, what did you tell them?
- 15 A. I said, "Sure, stay."
- 16 Q. So you let them stay, because they were friends of
- 17 the person that gave you the property?
- 18 A. That's right.
- 19 Q. So they had your permission to stay?
- 20 A. Yes.
- 21 Q. I understand that. Martin and I might want to come
- 22 use your dock for fishing, if you don't mind.
- 23 A. Come on.
- 24 Q. All right, so in going through these, and I've
- 25 probably beat a dead horse, and I apologize if I

1 MR. FOSTER:

2 You said the raising of the property.

3 MR. HALFORD:

4 Yeah, that's kind of hard to do. My apologies.

5 EXAMINATION CONTINUES BY MR. HALFORD:

6 Q. In the raising or the lowering of the waters, you  
7 understand that Duke Power can do that at any time?

8 A. Yes.

9 Q. If they did lower the water, and it separated the  
10 water from your property, that's a condition that  
11 you took subject to; do you understand that?

12 A. Yes.

13 Q. All right.

14 MR. HALFORD:

15 Mr. Farrell, it's nice to meet you. I don't think I  
16 have anything more. Mr. Foster may have some  
17 follow-up on what I've asked, but thank you for your  
18 time here this morning.

19 MR. FOSTER:

20 Briefly.

21 EXAMINATION BY MR. FOSTER:

22 Q. Sir, I want to hear a little more about this  
23 incident in 2006, you say there was a boat that  
24 rammed into your dock or pier?

25 A. Yes.

Deposition of Kenneth W. Farrell

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1 Q. Did I understand you to say that Mr. Dukes came over  
2 and was apologetic about this?

3 A. Yes.

4 Q. Why was he apologetic?

5 A. I guess he felt bad for us, seeing what happened.

6 Q. Well, let me be clear, was he, in some fashion  
7 connected with the people who ran into the dock?

8 A. No.

9 Q. Okay.

10 A. There is a police report.

11 Q. Okay. Do you have that, sir?

12 A. No.

13 MR. FOSTER:

14 I haven't anything further.

15 (There being no further questions, the deposition was  
16 concluded at 10:05 a.m.)  
17  
18  
19  
20  
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22  
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25

Deposition of Kenneth W. Farrell

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CERTIFICATE

1  
2 I, the undersigned, Cathy L. Young, CVR-M, Notary Public  
3 in and for the State of South Carolina, do hereby certify  
4 that the foregoing deposition was taken on the 17th day  
5 of June, 2013;

6 That the within deponent was sworn to tell the truth and  
7 that the foregoing is an accurate transcription of the  
8 testimony taken under oath;

9 I further certify that I am neither Counsel nor Solicitor  
10 to any of the parties in said suit, nor interested in the  
11 event of the cause.

12 IN WITNESS WHEREOF, I have hereunto set my hand and seal  
13 this 20th day of June, 2013.

14

15

16

\_\_\_\_\_  
CATHY L. YOUNG, CVR-M

17

NOTARY PUBLIC FOR SOUTH CAROLINA

18

MY COMMISSION EXPIRES FEBRUARY 19, 2019.

19

20

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22

23

24

25

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK, )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl Dukes,

Plaintiff,

CASE NO. 2011-CP-46-3182

v.

Kenneth W. Farrell, Mary C.  
Farrell, and Martin Brogdonovich,  
Defendants.

NOTICE OF TAKING DEPOSITION  
(KENNETH W. FARRELL)  
SCRCP 30

Martin Brogdonovich,

Third-Party Plaintiff

vs.

Marshal A. Reynolds and Christina  
A. Reynolds; Fisher-Sherer, Inc.;  
Robert R. Medford; Lutzel Broadway  
& Associates, PC and Tina Patrick  
Broadway.

TO: JOHN M. FOSTER, ESQ., ATTORNEY FOR DEFENDANTS  
KENNETH W. FARRELL and MARY C. FARRELL

YOU WILL PLEASE TAKE NOTICE that Plaintiff will cause to be taken the deposition upon oral examination of Defendant Kenneth W. Farrell before a notary public or some other person duly authorized to administer oaths, commencing at the date and time set forth below, said deposition to be stenographically transcribed for trial pursuant to Rule 30, SCRCP and taken for such purposes as are authorized under the South Carolina Rules of Civil Procedure.

Date: Monday June 17, 2013  
Time: 9:00 a.m.  
Location: Offices of Halford, Ntemiec & Freeman, LLP  
238 Rockmont Drive,  
Fort Mill, South Carolina 29708



Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, L.L.P.

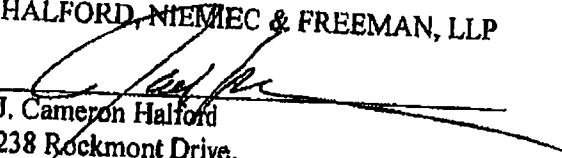
  
J. Cameron Halford  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Plaintiff in the above captioned matter and that I did on May 9, 2013 serve a copy of the foregoing NOTICE OF TAKING DEPOSITION OF KENNETH FARRELL on the attorney for Defendant by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

John Martin Foster, Esq.  
223 E. Main Street, Suite 520  
Rock Hill, South Carolina 29730-4560  
*Attorney for Defendants Kenneth W. Farrell  
and Mary C. Farrell*

HALFORD, NIEMIEC & FREEMAN, LLP

  
J. Cameron Halford  
238 Rockmont Drive,  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax  
cam@fortmilllaw.com



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RECORDED 08/14/2005 11:44:48AM  
Bk:07331 Ps:00102 Pages:2  
Fee:18.00 State:788.50  
County:York  
York County, SC

Space above this line for recording

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 29, page 7; and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20466, recorded in Plat Book 31 at Page 9, as follows: BEGINNING at a pipe on edge of Private Drive (30' RW), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31 59 E 170.63 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet, thence N 52 16 42 E 181.01 feet to #4 rebar, thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 39 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.58 feet to #5 rebar; thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 56 39 12 W 139.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1986 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 80ES46-80894, evidenced by Deed of Distribution recorded in Record Book 293 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 8-17-05

TAX MAP NO. 547-50

INITIALS AC / dln

BK 07331 P00102



This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: ~~1834 Flatbush Drive~~ 9840 Barberville Rd.  
~~Fort Mill, SC 29715~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00-050

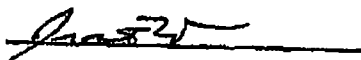
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

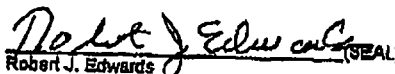
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2005.

Signed, Sealed and Delivered  
In the Presence of:



 (SEAL)  
Robert J. Edwards

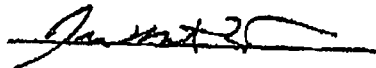


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

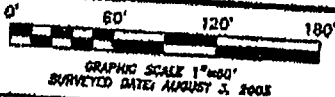
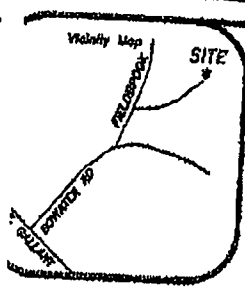
Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2005.

  
Notary Public for the State of South Carolina  
My Commission Expires: 4-28-05



BK 97331 PG 103



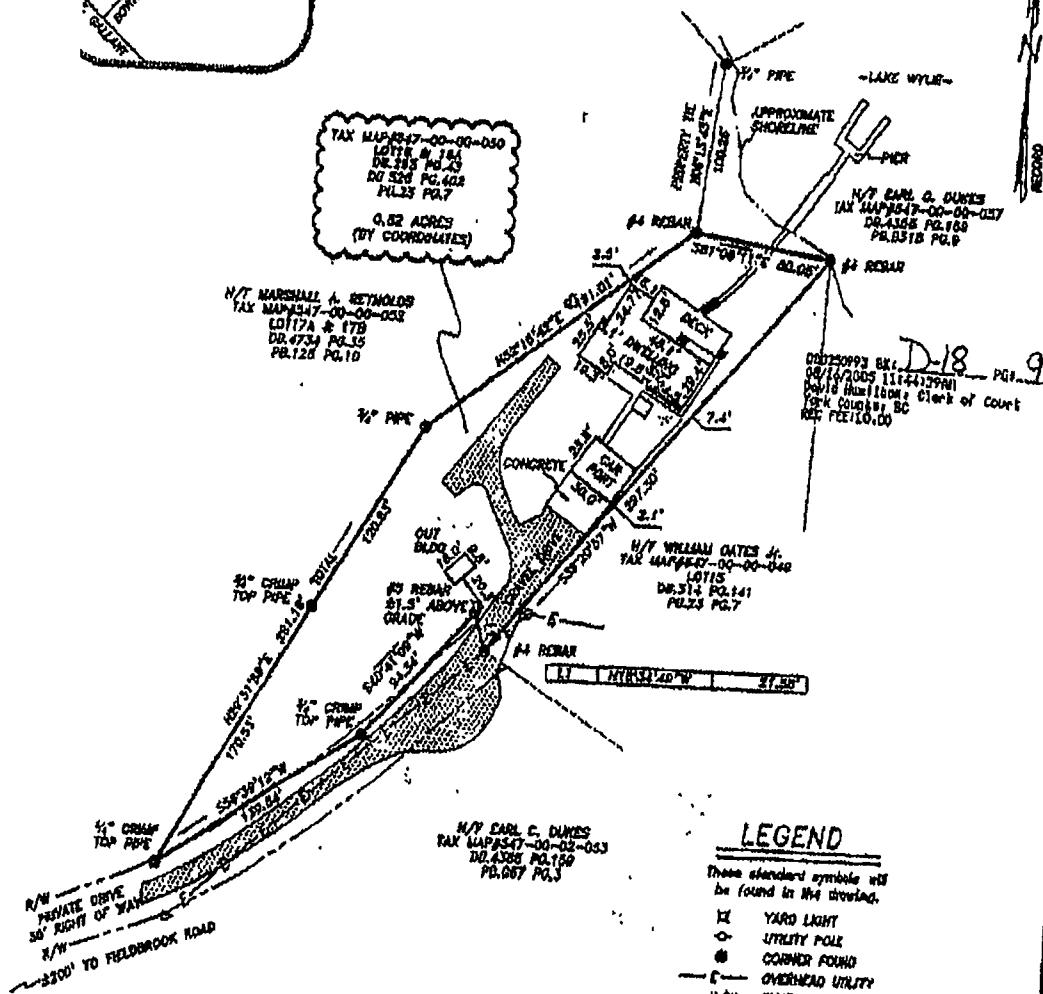
**Clock of Court**  
No new lots or  
property lines created.

TAX MAP 84-47-00-00-030  
LOT 15 & 16  
DR. 325 PG. 23  
DL 325 PG. 428  
PL 33 PG. 7  
0.52 ACRES  
(BY COORDINATES)

N/T MARSHALL A. REYNOLDS  
TAX MAP 84-47-00-00-032  
LOT 17A & 17B  
DR. 473A PG. 35  
DL 125 PG. 10

N/T EARL C. DUNES  
TAX MAP 84-47-00-00-037  
DL 435 PG. 150  
PL 35 PG. 6

001230993 BK 1  
08/14/2005 11:44:39AM  
Davis Hamilton, Clerk of Court  
YORK COUNTY, SC  
REC FEE \$10.00



**LEGEND**

- These standard symbols will  
be found in the drawing.
- Y YARD LIGHT
  - U UTILITY POLE
  - C CORNER FOUND
  - OVERHEAD UTILITY
  - R/W RIGHT OF WAY

**NOTES**

PROPERTY SUBJECT TO ALL VALID AND  
ENFORCEABLE RESTRICTIONS, RIGHTS OF  
WAY, AND EASEMENTS OF RECORD.



I hereby state to the best of my knowledge, information,  
and belief, the survey shown herein was made in  
accordance with the requirements of the Minimum  
Standards Manual for the Practice of Land Surveying in  
South Carolina, and meets or exceeds the requirements for  
a Class "A" survey as specified therein; also there are no  
visible encroachments or projections other than shown.

*Jordan*  
Dwight J. Jordan PL100406

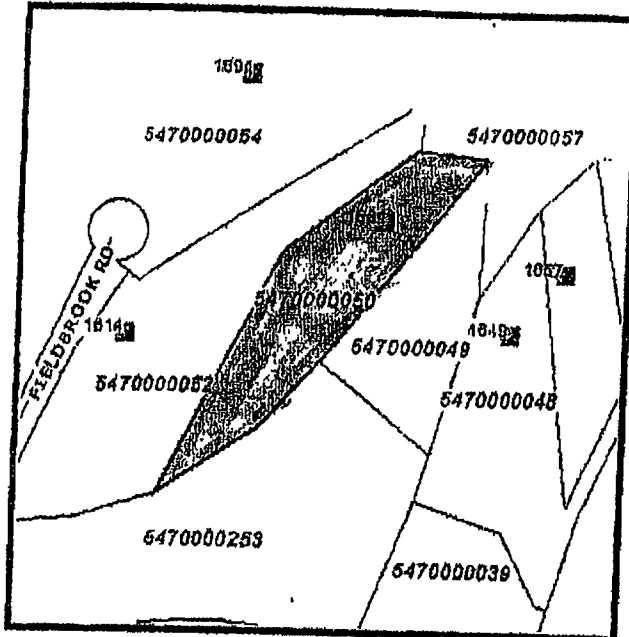
**BOUNDARY SURVEY**  
PREPARED FOR  
**ROBERT J. EDWARDS**  
PROPERTY IS LOCATED AT  
**1831 FIELDBROOK ROAD**  
YORK COUNTY ~ SOUTH CAROLINA

**Jordan Land Surveying, LLC**  
P.O. Box 10062  
Rte. 180 S.C. 29731  
Phone: 324-3842 Fax: 324-3846  
Email: jordan@jordanlandsurvey.com

FILED 0015

**Property Report for Parcel Number:**  
**5470000050**

Inquiry Date



**Owner**  
**Owner Name:** FARRELL KENNITH W & C  
**Address:** 9860 BARBERVILLE RD  
**City/State:** FORT MILL S C  
**Zip Code:** 29715

Disclaimer: While every effort is made to keep information provided accurate and up-to-date, York County does not certify the authenticity or accuracy of such information. No warranties, express or implied, are provided for the use of mapping data herein, or for their use or interpretation by the User.

**Parcel Number:** 5470000050  
**Total Lots:** 1  
**Total Acres:** 0  
**Deed Book:** 7331  
**Deed Book Page:** 102  
**Platt Book:** D18  
**Platt Book Page:** 9  
**School District:** 3  
**Municipality:**  
**Fire Code:** NP-I  
**Property Location:** LOTS 16 & 16-A LAKE WYLIE

**Property**

**Land Value:** \$200000  
**AG Use:**  
**AG Use Value:**  
**Previous Owner:** EDWARDS ROBERT J  
**Tax Bill Information:**  
**Zoning:**  
**Sale Price:** \$367500  
**Sale Date:** 8/16/5  
**Census Tract:**  
**Voter District:**

**Prop. Classification:**  
**Heating Type:**  
**Living Area(Sq. Ft.):**  
**Basement:** NO  
**Bathrooms:**  
**Total Imp. Value:**

**Building/Structure**

**Number of Stories:**  
**Year Built:**  
**Garage Area:** NO  
**Fireplace:**  
**Bldg. Value:** \$138000

**Assessment**

[http://maps.yorkcountygov.com/gisonline/Reports/property\\_report.asp?tmid=5470000050&...](http://maps.yorkcountygov.com/gisonline/Reports/property_report.asp?tmid=5470000050&...) 8/4/2006



STATE OF SOUTH CAROLINA

YORK COUNTY

That We, A. F. Fowell and Edward Fowell, Jr.,

of the County of York, in the State of South Carolina, for and in consideration of the sum of Five and no/100 (\$5.00) Dollars, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property: All that certain piece, parcel or tract of land lying, being and situate in Danvers Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A. F. & Ed Fowell, Jr., prepared by R. H. Harrell, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at Page 7, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property is conveyed subject to the Water Rights granted to the Waters Power Company by Madison Hill by Deeds recorded in Deed Book 54, at Page 617, and Deed Book 54, at Page 319, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of-Way.

It being understood that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to rights of the Waters Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Fowell and Edward Fowell, Jr.

It being further understood that the Grantee herein, His Heirs and Assigns, shall have the right to use the Private Road shown on the above mentioned Plat as a means of ingress and egress from the County Road to said Lot herein conveyed.



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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinabove named, and His Heirs and Assigns forever.

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

Witness the grantor(s) hand and seal on this 2nd day of March, in the year of our Lord One Thousand Nine Hundred and Sixty-Five.

Signed, Sealed and Delivered in the Presence of

*David D. Bushue*  
*John Oatman Woods*

*A. F. Fowell* (Seal)  
*Edward Fowell, Jr.* (Seal)  
 EDWARD FOWELL, JR. (Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris D. Bushue

and she being duly sworn, she saw the within named grantor(s), A. F. Fowell and Edward Fowell, Jr., sign, seal and as their act and deed deliver the within written deed, and that she, with John Oatman Woods, witnessed the execution thereof.

Sworn to before me this 2nd day of March, A. D. 1965.  
*Doris D. Bushue* (Seal)  
 Notary Public for South Carolina

State of South Carolina,

YORK County

RENUNCIATION OF DOWER

I, Doris D. Bushue, Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Louise Peace Fowell and Mrs. Doris H. Fowell, wives of A. F. Fowell and Edward Fowell, Jr., respectively, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons, whomsoever, renounce, release, and forever relinquish unto W. A. Bigham, His

Heirs and Assigns, all her interest and estate in and unto all the right and claim of Dower of, in or to all and singular the premises within mentioned and referred.

GIVEN UNDER my hand and seal this 2nd day of March, A. D. 1965.  
*Doris D. Bushue* (Seal)  
 Notary Public for South Carolina

*Mrs. Louise Peace Fowell*  
*Mrs. Doris H. Fowell*  
 MRS. DORIS H. FOWELL

PLAINTIFF'S EXHIBIT  
 334/414  
 Fowell

STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]  
EARL DUKES, ]  
Plaintiff, ]  
v. ]  
KENNETH W. FARRELL, ]  
MARY C. FARRELL, and ]  
MARTIN BOGDONOVITCH, ]  
Defendants. ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

ANSWER AND COUNTERCLAIM

CA No. 11-CP-46-03182

The Defendants KENNETH W. FARRELL and MARY C. FARRELL (hereafter also "the FARRELLS"), in answer to the Complaint of the Plaintiff (hereinafter also "DUKES"), allege as follows (all references to paragraphs, unless otherwise identified, are to the Paragraphs of the said Complaint):

**MOTION TO DISMISS CAUSES OF ACTION**  
**PURSUANT TO RULE 12(b)(6):**

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

Pursuant to Rule 12(b)(6), S.C.R.C.P., the Defendants FARRELL, by their counsel, move this Court to dismiss the Plaintiff's First Cause of Action for partition in kind, with prejudice, and to dismiss the Plaintiff's Second Cause of Action as to injunctive relief, with prejudice, or require its repleading, on the ground that the said causes of action do not state a cognizable claim.

This Motion is made on the grounds set out below:

- a. The First Cause of Action by Plaintiff, as specifically set out in Paragraphs 9. of the initial allegations, and Paragraphs 1. through 4. of the First Cause proper is characterized as an "action for partition in kind."



- b. The factual basis of the Plaintiff's Complaint is stated in Paragraphs 2. and 7. of the initial allegations. The Plaintiff alleges ownership of the land on or over which the Defendants FARRELL use or maintain piers and/or a dock to reach the waters of Lake Wylie.
- c. "Partition" is defined as a cause of action for the division between several persons of property which belongs to them as co-owners, whether as coparceners, tenants in common or joint tenants. 59A AM.JUR.2D *Partition* § 1 (2002). As our Supreme Court stated in *Cannon v. Lomax*, 29 S.C. 369, 7 S.E. 529 (1888):

But, as we understand it, partition is the right to a severance, when there is rightful unity not only of title but of possession. Unless the title of both parties is clear, equity cannot decree a partition.

[*Id.*, 7 S.E. at 530.]

- d. Under the facts as alleged, there is no unity of title. The Movants are entitled to a dismissal of any cause of action, or prayer for relief, based on a cause of action for partition.
- e. As to the Plaintiff's Second Cause of Action, he has not alleged the elements required to seek injunctive relief.
- f. Insofar as the Second Cause of Action seeks injunctive relief, it should be dismissed or required to be replead.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Movants hereby affirms that this motion is dispositive in nature, and, to that end, requires no communication with opposing counsel, or, in the alternative, certifies that such consultation would serve no useful purpose or could not be timely held.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rule, the records of this civil action, and any Supporting Memorandum which the Movants may submit herein.

**FOR A FIRST DEFENSE:**

- 1. Each allegation of the Complaint which is not admitted, denied or qualified in this Answer and Counterclaim is hereby denied.

2. The allegations of Paragraph 1. as to general location are admitted; insofar as the allegations reference Complaint Exhibit 1., the same is admitted insofar as the same is confirmed by all matters of public record.
3. The allegations of Paragraph 2. are admitted insofar as the same are matters of public record; on knowledge and information, the correct Tax Map No. for the Plaintiff's property is 547-00-00-057.
4. The allegations of Paragraphs 3., 4. and 5. are admitted, insofar as the same are matters of public record.
5. The allegations of Paragraph 6. are admitted insofar as it alleges the jurisdiction of this Court.
6. The allegations of Paragraph 7. as to the presence of a short portion of the FARRELLS' dock and pier apparently cross the Plaintiff's real property.
7. Insofar as the other allegations of Paragraph 7. and those of Paragraph 8. are other than legal conclusions requiring no response, the same are denied.
8. Insofar as the allegations of Paragraphs 9. and Paragraphs 1. through 4. of the First Cause of Action pray for relief under a legal theory of partition in kind, the FARRELLS deny the same as a matter of law, as set forth herein above.
9. In further response to the allegations of Paragraph 1. of the First Cause of Action as to the physical location of the real property in question, the same is admitted insofar as the same is a matter of public record.
10. Insofar as the allegations of Paragraphs 2., 3. and 4. of the First Cause of Action are other than legal conclusions or prayers for relief requiring no response, the same are denied.
11. Insofar as the allegations of Paragraphs 1. through 6. of the Second Cause of Action pray for injunctive or equitable relief, the FARRELLS deny the same as a matter of law, as set forth herein above.
12. Insofar as the allegations of Paragraph 1. of the Second Cause of Action are directional only, the same require no response.
13. Insofar as the allegations of Paragraph 2. of the Second Cause of Action are other than legal conclusions requiring no response, the same are denied.



14. The Defendants FARRELL admit the allegations of Paragraphs 3., 4., and 5. of the Second Cause of Action insofar as they allege or intend the apparent ownership of Tax Map No. 547-00-00-057 by the Plaintiff, and insofar as the same is a matter of public record; the remaining allegations of those Paragraphs, insofar as they deal with the rights of the FARRELLS and their ownership and/or use of Tax Map No. 547-00-00-050 and any wrongful use of the Plaintiff's real property, are denied.
15. The Defendants FARRELL deny the allegations of Paragraph 6. of the Second Cause of Action and demand strict proof thereof.
16. Insofar as the allegations of Paragraph 1. of the Third Cause of Action are directional only, the same require no response.
17. The Defendants FARRELL admit the allegations of Paragraphs 2., 3., 4., 5. and 5. [sic] of the Third Cause of Action insofar as they allege or intend the apparent ownership of Tax Map No. 547-00-00-057 by the Plaintiff, and insofar as the same is a matter of public record; the remaining allegations of those Paragraphs, insofar as they deal with the rights of the FARRELLS and their ownership and use of Tax Map No. 547-00-00-050 and any wrongful use of the Plaintiff's real property, are denied.

#### **FOR A SECOND DEFENSE AND COUNTERCLAIM**

##### **EXPRESS GRANT OF EASEMENT**

18. All of the allegations herein and consistent with this defense are restated by this reference as fully as if set out herein.
19. The Defendants FARRELL are the owners of that real property and improvements located at 1631 Fieldbrook Drive, Rock Hill, South Carolina and bearing Tax Map No. 547-00-00-050, under the deed of Robert J. Edwards into them dated August 12, 2005 and recorded August 16, 2005 in Record Book 7331 at Page 102 in the Office of the Clerk of Court for York County, South Carolina. A copy of that deed is attached hereto and incorporated herein.
20. As owners under the above-referenced deed, the FARRELLS are successors in title under the deed of A. F. Fewell and Edward Fewell, Jr. to W. A. Bigham by the deed dated March 2, 1965 and recorded the same date in Deed Book 334 at Page 414 in the Office of the Clerk of

Court for York County, South Carolina. A copy of that deed is attached hereto and incorporated herein.

21. The said deed from Fewell to Bigham provides, in relevant part:

It being understood that the Grantee herein, His heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to the rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A.F. Fewell and Edward Fewell, Jr.

22. On knowledge and information, as successors in interest and under the deed containing the above-cited language, the Defendants FARRELL are the owners of an easement appurtenant to the real property owned by them, a right-of-way allowing them to freely pass by all means of conveyance over any strip of land contained in Tax Map. No. 547-00-00-057 to access the waters of Little Allison Creek (the Backwater and cove referenced in the above-cited deed), which is the portion of Lake Wylie on which the parties' real property is located.

23. As owner of the easement, the Defendants FARRELL are entitled to the rights and privileges over, through, and on the easement set out in the deed and quoted above.

24. On knowledge and information, and insofar as the Plaintiff DUKES is the owner of Tax Map No. 547-00-00-050 and therefore of some thirty (30) feet between the boundary of the Defendants FARRELL and the waters of Lake Wylie, as calculated by the Plat of Fisher-Shearer dated May 15, 2001, a copy of which is attached hereto and incorporated herein, his real property is subject to the said easement.

25. On knowledge and information, the Plaintiff, by this civil action and by the *Lis Pendens* filed herein, claims interests adverse to the FARRELLS' title to the easement. These claims are without any right and Plaintiff has no right, title, estate, lien, or interest superseding the FARRELLS' title to the easement.

26. On knowledge and information, the Defendant FARRELLS are entitled to the entry of a declaratory judgment as to the existence and extent of their rights in and to the said easement, should the Plaintiff prove his ownership of the real property claimed by him.

**FOR A THIRD, ALTERNATIVE DEFENSE AND COUNTERCLAIM**  
**IMPLIED EASEMENT**

27. All of the allegations herein and consistent with this defense are restated by this reference, as fully as if set out herein.
28. The disputed use and improvements are a pier and dock which (either in its present or former form and configuration) have existed and been used by the FARRELLS and their predecessors in title for a period in excess of twenty (20) years and have never been abandoned.
29. The pier and dock have always been clearly visible and the Plaintiff and his predecessors in title knew (or are chargeable with knowledge) of the existence and use of the same at the time Plaintiff acquired any interest in the property designated as Tax Map No. 547-00-00-057.
30. The FARRELLS and their predecessors in title have used and continued to use the pier and dock in dispute for a period in excess of twenty (20) years. Further, the pier and dock provide a means of ingress and egress to and from the FARRELLS' real property to Lake Wylie.
31. The FARRELLS and their predecessors in title have continuously used the dock and pier herein described (either in its present or former form and configuration), and such use was at all times open and notorious to the extent that the pier and dock were known to link the FARRELLS' real property to Lake Wylie, of which fact the Plaintiff and Plaintiff's predecessors in title were well aware (or with which knowledge they are chargeable).
32. In the alternative to the allegations of the Second Defense and Counterclaim, the use of the pier and dock was adverse to any rights of the Plaintiff in that such use was without the express permission or the necessity therefor, or license of the Plaintiff or of the Plaintiff's predecessors in title and was thus inconsistent and contrary to his claims of ownership.
33. The use of the dock and pier was exclusive to the extent that neither the Plaintiff nor Plaintiff's predecessors in title to the real property in dispute had used the dock and pier as a means of ingress and egress to and from the FARRELLS' property.
34. On knowledge and information, the Defendant FARRELLS are entitled to the entry of a declaratory judgment as to the existence and extent of their rights in and to the said easement, should the Plaintiff prove his ownership of the real property claimed by him.

WHEREFORE, the Defendants FARRELL pray that:

- a. That the Complaint of Plaintiff be dismissed;
- b. That this Court issue its declaratory judgment as to the existence and extent of the Defendant FARRELLS' rights in and to the said easement over the Plaintiff's real property, should the Plaintiff prove his ownership of that property;
- c. That the *Lis Pendens* placed on the Defendant FARRELLS' real property by Plaintiff be dissolved;
- d. That Defendants FARRELL be awarded their costs herein;
- e. That this Court include a prayer for any other relief to which the facts, either as plead or presented in evidence at trial, may allow; and
- f. For such other and further relief as this Court may deem just and proper.

  
John Martin Foster  
Attorney for Defendants FARRELL

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, S. C. 29730

Post Office Box 106  
Rock Hill, S. C. 29731-6106

803 324-8100  
803 324-8109: Fax  
jmfoster@comporium.net

Rock Hill, South Carolina

October 7, 2011

6/25/05  
1044C

000250994  
RECORDED 08/16/2005 11:44:48AM  
BK:07331 Ps:00102 Pages:2  
Fee:10.00 State:1953.50  
County: York  
David Hamilton, Clerk of Court

Space above this line for recording

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever;

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1982, addition 10 September, 1982, addition 12 July, 1983, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1982, recorded in Plat Book 23, page 7; and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20468, recorded in Plat Book D-18 at Page 9, as follows: BEGINNING at a pipe on edge of Private Drive (30' R/W), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31 59 E 170.63 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet; thence N 52 16 42 E 191 01 feet to #4 rebar; thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 39 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.68 feet to #5 rebar; thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 56 39 12 W 139.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1986 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 90ES46-80694, evidenced by Deed of Distribution recorded in Record Book 293 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

RECORDED  
YORK COUNTY  
TAX ASSESSOR'S OFFICE

DATE 8-17-05  
TAX MAP NO. 547-50  
INITIALS AC / dcl

BK 07331 PBO 102

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address:

~~4331 Fieldbrook Drive~~ 9860 Barberville Rd.  
~~Rock Hill, SC 29733~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00-050

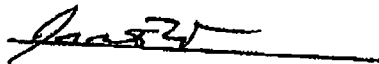
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

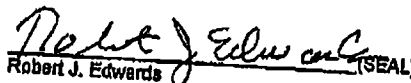
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2005.

Signed, Sealed and Delivered  
in the Presence of:



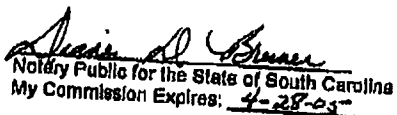
 (SEAL)  
Robert J. Edwards

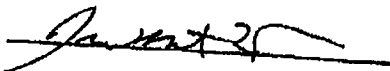


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2005.

  
Notary Public for the State of South Carolina  
My Commission Expires: 4-28-05



SK 07331 P00103

BL-334  
pg 414  
D-32/65  
R-3/11/65

STATE OF SOUTH CAROLINA  
YORK COUNTY

That We, A. F. Fowell and Edward Fowell, of the County of York, in consideration of the sum of Five and no/100 (\$5.00) DOLLARS, and other valuable consideration, to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold, aliened, released, and by these presents do grant, bargain, sell and release unto the said Grantee herein, W. A. Biglum, His Heirs and Assigns, the following described property:

All that certain piece, parcel or tract of land lying, being and situate in Ebnesezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. & Ed Fowell, Jr., prepared by R. H. Barrett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at Page 7, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property is conveyed subject to the Water Rights granted to the Wateree Power Company by Madison Hill by Deeds recorded in Deed Book 54, at Page 617, and Deed Book 64, at Page 313, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of-Way.

It being understood that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the bays on which the above described property is located, subject to rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Fowell and Edward Fowell, Jr.

It being further understood that the Grantee herein, His Heirs and Assigns, shall have the right to use the Private Road shown on the above mentioned Plat as a means of ingress and egress from the County Road to said Lot herein conveyed.



FILED 3 11 65  
MAR 11 2 34 PM '65  
THAT L. L. BUSHUE  
C. E. C. 1 A G 3  
YORK COUNTY, S.C.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, unto any who incident or appertaining.  
TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinafter named, and His Heirs and Assigns forever.  
And the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)'s Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the grantee(s) hereinafter named, and the grantee(s)'s Heirs and Assigns against the grantor(s) and the grantor(s)'s Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.  
Witness the grantor(s)'s hand and seal this 2nd day of March, 1965, to the year of our Lord One Thousand Nine Hundred and Sixty-Five.

Signed, Sealed and Delivered in the Presence of  
David D. Bushue  
A. F. FOWELL  
Edward Fowell, Jr.  
EDWARD FOWELL, JR.  
(Seal)  
(Seal)  
(Seal)  
(Seal)  
(Seal)

State of South Carolina, York County  
Personally appeared before me Doris D. Bushue  
and made oath that he saw the within named grantor(s), A. F. Fowell and Edward Fowell, Jr., sign, seal and as their act and deed deliver the within written deed, and that he, with John Gates Woods, witnessed the execution thereof.  
Given to him for the this 2nd day of March, A. D. 1965.  
David D. Bushue (Seal)  
Notary Public for South Carolina

State of South Carolina, YORK County  
I, Doris D. Bushue, Notary Public, do hereby certify unto all whom it may concern, that Mrs. Louise Pounce Fowell and Mrs. Dora H. Fowell, wives of the within named A. F. Fowell and Edward Fowell, Jr., respectively, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto W. A. Biglum, His Heirs and Assigns, all her interest and estate, and all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.  
GIVEN under my hand and seal this 2nd day of March, A. D. 1965.  
David D. Bushue (Seal)  
Notary Public for South Carolina  
Mrs. Louise Pounce Fowell  
Mrs. Dora H. Fowell  
MRS. LOUISE POUNCE FOWELL  
MRS. DORA H. FOWELL

BK-334  
pg-410  
D-3/5/65  
R-3/11/65

410

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA,  
YORK COUNTY

(See Affidavit)

Known All Men by These Instruments

That I, Charles J. Bailey,

of the County of York, - - - - - in the State aforesaid,  
in consideration of the sum of One and no/100 (\$1.00) - - - - - DOLLARS,

to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 Acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fowell, Jr., prepared by R. H. Marrett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July 1963, recorded in Plat Book 24, at Page 173, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows:

BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-60 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-42 W. 291.5 feet to the beginning point.

This being the identical property conveyed to Charles J. Bailey, Grantor herein, by A. F. Fowell and Edward Fowell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing Easements and Rights-of-Way.

FILED BY  
JACK  
MAR 11 1965  
CLERK OF COURT  
YORK COUNTY, S.C.

TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the above premises belonging, or in anywise incident or appertaining,  
TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinabove named, and His - - - Heirs and Assigns forever.

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

Witness the grantor(s)'s hand and seal this 5th - - - - - day of March, - - - - - in the year of our Lord One Thousand Nine Hundred and Sixty-five.

Signed, Sealed and Delivered in the Presence of

*[Signature]*  
*[Signature]*

*[Signature]*  
CHARLES J. BAILEY  
- - - - - (Seal)  
- - - - - (Seal)  
- - - - - (Seal)  
- - - - - (Seal)  
- - - - - (Seal)

State of South Carolina,  
YORK County

Personally appeared before me Doris D. Bushue

and made oath that she saw the within named grantor(s), Charles J. Bailey, deliver the within written deed, and that she, with John Oates Woods - - - sign, seal and as his - - - act and deed, hereby to before me this 5th - - - day of March, 1965.

*[Signature]*  
Notary Public for South Carolina

*[Signature]*  
DORIS D. BUSHUE

State of South Carolina,  
YORK County

RENUNCIATION OF DOWER

I, John Oates Woods, - - - - - Notary Public, do hereby certify

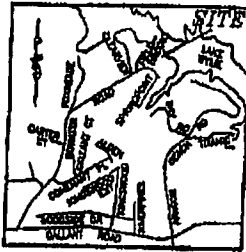
unto all whom it may concern, that Mrs. Evelyn B. Bailey, - - - - - wife of the within named Charles J. Bailey, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, duress or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto W. A. Bigham, His - - - - - Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 5th - - - - - day of March, 1965.

*[Signature]*  
Notary Public for South Carolina

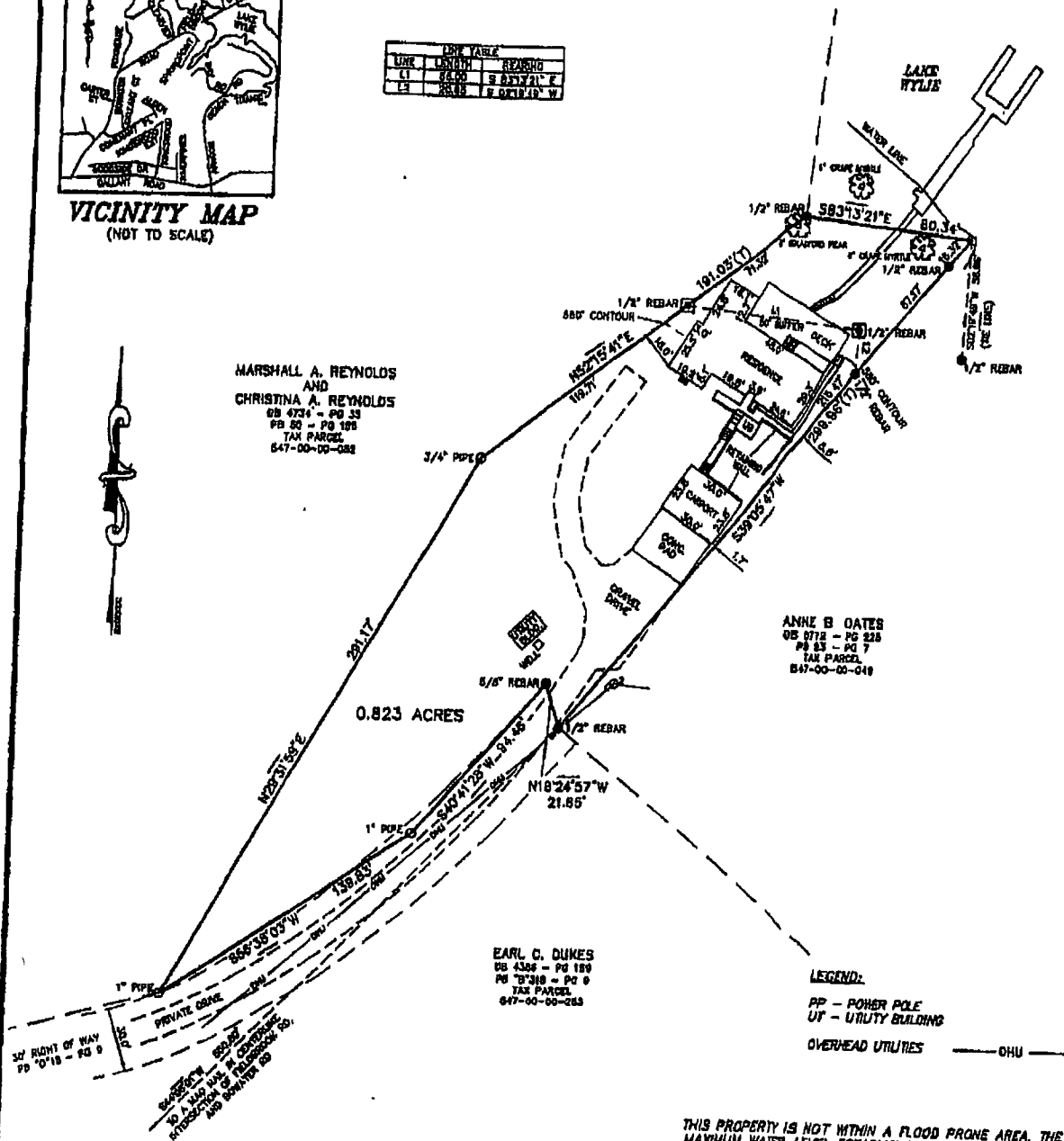
*[Signature]*  
MRS. EVELYN B. BAILEY  
EVELYN





**VICINITY MAP**  
(NOT TO SCALE)

| LINE | LENGTH | BEARING         |
|------|--------|-----------------|
| 1    | 28.00  | S 89° 51' 21" E |
| 2    | 28.00  | E 0° 00' 00" W  |



NO NEW LOTS OR PROPERTY LINES ESTABLISHED.



NO. C01570



**FISHER - SHERER**  
INC.  
ENGINEERING & SURVEYING  
2051 EBENEZER ROAD  
ROCK HILL, S.C. 29732  
803-327-1252  
800-635-9920

PROPERTY SURVEYED FOR  
**KENNETH W. FARRELL**  
and  
**MARY C. FARRELL**

LOCATED AT 1831 FIELDBROOK DRIVE  
IN THE EBENEZER TOWNSHIP  
YORK COUNTY, SOUTH CAROLINA  
MAY 15, 2008

THIS PROPERTY IS DESIGNATED AS BEING TAX PARCEL # 547-00-00-080

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS IS TO CERTIFY THAT I HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP AND FOUND THAT THE ABOVE DESCRIBED IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA."

*Robert R. Medford*  
ROBERT R. MEDFORD S.C.S.S. #1083

**REVISIONS**

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

**MONUMENTS LEGEND**

|           |        |     |
|-----------|--------|-----|
| IRON PIPE | FOLDED | SET |
| IRON PIN  | ○      | ⊗   |
|           | ●      | ⊙   |

SCALE 1" = 50'



STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

EARL DUKES, ]  
Plaintiff, ]  
v. ]  
KENNITH W. FARRELL, ]  
MARY C. FARRELL, and ]  
MARTIN BOGDONOVITCH, ]  
Defendants. ]

CERTIFICATE OF SERVICE

CA No. 11-CP-46-03182

The undersigned, counsel for Defendants FARRELL in the civil action above, hereby certifies that on October 7, 2011, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

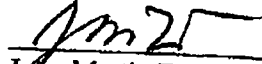
Answer and Counterclaim; and this Certificate of Service

the originals of which were sent to be filed with the Clerk of the Court for the Court named above,

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; or if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein:

J. Cameron Halford  
Halford, Niemiec & Freeman, L.L.P.  
239 Rockmont Drive  
Fort Mill, S. C. 29708

  
John Martin Foster  
Attorney for Defendants FARRELL

223 East Main Street, Suite 520  
Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
jmfoster@comporium.net

October 7, 2011

Rock Hill, South Carolina

Madison Hill

Title to Real Estate.

to  
Wateres Power Co.

KNOW ALL MEN by these presents that I, Madison Hill, of the County and State aforesaid for and in consideration of the sum of one hundred (\$100.00) Dollars, and other valuable considerations to me in hand paid at and before the sealing of these presents, by Wateres Power Company, a corporation organized under the laws of the State of South Carolina in the state aforesaid (the receipt of which is hereby acknowledged) have granted, bargained, sold, sold and released, and by these presents do hereby grant, bargain, sell and release unto the said Wateres Power Company, its successors and assigns all the water privilege and riparian rights, privileges and easements in, to, upon and over, including the right to back, raise, pond or flood the waters of the Catawba river and its tributaries, and to divert the same in, upon and over the tract, piece or parcel of land hereinafter described whenever, and in any manner, and to whatever extent deemed desirable or advisable by the said Wateres Power Company, its successors or assigns, also the right to cut away, remove and keep clear of said land all trees, brush, bushes, under-growth and other obstructions which may in any wise interfere with the use and enjoyment of the rights hereby granted; said tract, piece or parcel of land being situate and lying in Ebonozzer Township, York County, State of South Carolina, and more particularly described as follows:

BEGINNING at a stake about 100 ft. north of the north bank of Little Allison Creek, a corner between the Setzer Land, and Stuart land (now Wateres Power Company), and the land of Madison Hill, and running thence with the line of the Setzer Land N. 74-30 W. 312 ft. crossing Little Allison Creek to a stake; thence S. 65-12 E. 154.7 ft. to a stake; thence S. 18-12 W. 97 ft. to a stake; thence N. 84-24 E. 64 ft. to a stake; thence S. 82-27 E. 127 ft. to a stake; thence N. 35-14 E. 109 ft. to a stake; thence N. 50-11 E. 60 ft. to a stake; thence S. 89-43 E. 81.4 ft. to a stake in the line of the Stuart land (now Wateres Power Company); thence with said line N. 19-38 W. 260 ft. to the beginning, containing 1.47 acres, more or less as shown by a map and survey dated August, 1924, reference to which is hereby made.

AND I, the said Madison Hill, for myself, my heirs, executors, administrators and assigns, do hereby forever release and discharge the said Wateres Power Company, its successors and assigns, from any and all claims, demands or damages arising from or growing out of the rights, privileges and easements above mentioned and described.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easements unto the said Wateres Power Company, its successors, and assigns, to its and their heirs and assigns forever.

I, the said Madison Hill, for myself, my heirs, executors, and administrators do hereby covenant with the said Wateres Power Company, its successors and assigns, that I am seized of said rights, privileges and easements in fee and have the right to convey the same in fee simple, that the same are free and clear from all encumbrances, and that I will warrant and defend the said title to the same against the lawful claims of all persons, whomsoever.

Witness my hand and seal, this 8th day of September, 1924.  
Signed, sealed and Delivered  
in the presence of  
E. R. Goodwyn,  
J. M. Taylor,  
States of South Carolina,  
County of York.

Madison Hill (seal)

Personally appeared before me, E. R. Goodwyn and made oath that he saw the within named Madison Hill sign, seal, and as his act and deed deliver the within written deed, and that he, with Joe M. Taylor witnessed the execution thereof.  
Sworn to before me this 8th day of September, A. D. 1924.  
Joe M. Taylor (seal) E. R. Goodwyn,  
Notary Public for S. C.,  
State of South Carolina,  
York County.

I, Joe M. Taylor, Notary Public do hereby certify unto all whom it may come, that Catherine Hill, wife of the within named Madison Hill, did this day appear before me, and upon being privately and separately examined by me, did declare that she does, freely, voluntarily, and without any compulsion, dread, or fear of any person or persons, whomsoever, renounce, release and forever relinquish unto the within named Wateres Power Company, its successors and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released.

Given under my hand and seal, this 8th day of September, 1924.  
Joe M. Taylor (seal) Catherine Hill  
Notary Public for S. C. Wife

AND I, MARY HILL, the mortgagee named in, and the owner and holder of the note secured by that certain mortgage deed executed by Madison Hill on the 8th day of March 1920, and recorded in the office of the Clerk of Court of Common Pleas in Book 39, page 368, in consideration of the sum of fifty eight and 60/100 Dollars to me in hand paid, the receipt of which is hereby acknowledged, join in the execution of this instrument for the purpose of releasing, and I do hereby release, discharge and forever quitclaim unto the said Wateres Power Company, its successors and assigns, the rights, privileges and easements described in and conveyed by the foregoing deed of easement, freed and discharged from the lien and operation of said mortgage deed, recorded as aforesaid, reserving however, all rights and liens held by me under said mortgage deed, subject only to this release.

Witness my hand and seal this 8th day of September, 1924.  
Witnesses: W. J. Cunningham, Mary Jane Hill (seal)  
Joe M. Taylor,  
State of South Carolina,  
County of York.

Personally appeared before me W. J. Cunningham and made oath that he saw the within named Mary Jane Hill sign, seal and as her act and deed deliver the within written instrument, and that he, with Joe M. Taylor witnessed the execution thereof.  
Sworn to before me this 8th day of September, A. D. 1924.  
Joe M. Taylor (seal) W. J. Cunningham,  
Notary Public for S. C.



Madison Hill

To Waterco Power Co.

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

S. Rev. Att. \$2.00  
F. " " \$1.00

KNOW ALL MEN BY THESE PRESENTS, That I, Madison Hill,

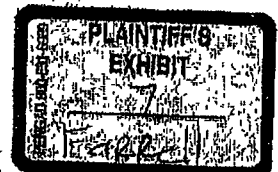
for and in consideration of the sum of one hundred (\$100.00) dollars and other good and valuable considerations, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said Waterco Power Company, its successors and assigns, all riparian rights appurtenant with the following described tracts of land, including the right, privilege and easement to back, pond or raise the waters of the Catawba river and its tributaries over, upon or away from the following described property, situate, lying and being in Pennington township, York county, State of South Carolina:

Adjoining the lands of Waterco Power Co., formerly Bangla, Stewart, Simril and others; FIRST TRACT: Adjoining a former Water Right conveyance by the said Madison Hill & bound as and described as follows:

Beginning at a point on Madison Hill's line, corner of said former conveyance, and running thence with seven lines of the said former conveyance as follows: S 55-16 E 148 ft; S 18-20 W 97 ft; N 48-32 E 64 ft; S 22-19 W 187 ft; N 16-22 E 109 ft; N 60-19 E 80 ft; and S 77-30 E 70 ft; to a stake in line of Waterco Power Co., formerly Stewart; thence with said line S 13-20 E 10 ft; thence S 60-09 W 82 ft; S 27-39 W 251 ft; N 32-32 W 198 ft; S 75-04 W 9 ft; N 8-24 E 124 ft; N 46-35 W 141 ft; to a stake in the Waterco Power Co.'s line; thence with said line 10 ft. to the beginning, containing .69 of an acre, more or less.

SECOND TRACT: Beginning at a point on the Waterco Power Co., formerly Simril line, said point being 75 ft. 87-83 W from a branch and running thence S 45-55 W 156 ft; S 38-26 W 82 ft; N 43-39 W 135 ft; E 21-41 W 168 ft; N 64-58 W 80 ft; S 25-12 W 297 ft; S 41-20 W 430 ft; to a stake in Madison Hill's line on or near a branch; thence with said line N 74-08 W 16.2 ft; thence N 20-43 E 595 ft; N 14-54 E 100 ft; N 0-23 E 116 ft; N 12-20 W 49 ft; N 44-42 W 146 ft; S 68-20 E 235 ft; N 45-17 E 98 ft; N 19-30 E 118 ft; N 22-01 E 100 ft; N 56-09 E 184 ft; S 69-27 E 102.5 ft; N 43-26 E 20 ft; to a stake in Waterco Power Co., formerly Simril line; thence with said line S 7-38 W 159 ft. to the beginning, containing .54 acres, more or less. The above two tracts were surveyed and plotted October 16, 1935, and are parts of that tract of land conveyed to the said Madison Hill by Mary Jane Hill by deed dated Feb 10, 1932, and recorded in Book 56, page 120, in the office of the S.M.C. for said York county, to which said deed and deed reference is hereby made.

Together with the right and easement to remove all trees and other obstructions from said above-described premises, and do whatever may be necessary to make use of the rights and easements hereby granted.



DEED BOOK 64

TO HAVE AND TO HOLD, all and singular, the said premises unto the said ~~Watares Power Company~~ Watares Power Company, its successors and assigns forever.

Held and Assigned forever.

And I hereby forever release and discharge the party of the second part, its successors and assigns, from any and all claims, demands or damages growing out of the exercise of the rights, privileges and easements above mentioned and described and by this instrument conveyed.

AND I do hereby bind myself, my Watares Power Company, its successors and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 15 day of November in the year of our Lord one thousand nine hundred and twenty-five and in the one hundred and forty year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of  
E. O. White Madison Hill  
E. R. Goodwyn

THE STATE OF SOUTH CAROLINA,  
 York County

PERSONALLY appeared before me E. R. Goodwyn and made oath that he saw the within named Madison Hill sign, seal, and as his agent and deed, deliver the within written Deed; and that E. O. White witnessed the execution thereof.

SWORN to before me, this 20 day of November, A. D. 1925.  
J. M. Taylor (M. Seal)  
 Notary Public, S. C.

THE STATE OF SOUTH CAROLINA,  
 York County

J. M. Taylor do hereby certify unto all whom it may concern that Mrs. Catherine Hill the wife of the within named Madison Hill did this day appear before me and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, release and forever relinquish unto the within named Watares Power Company, its successors and assigns

Held and Assigned, all her interest and estate, and also her right and claim of dower of, in or to, all and singular, the premises within mentioned and released.  
Catherine Hill

Given under my Hand and Seal, this 20 day of November, A. D. 1925.  
J. M. Taylor (M. Seal)  
 Notary Public, S. C.  
 My commission expires at will of Governor.

Filed Nov 25, 1925, 11:30 A.M.  
 Recorded this 25 day of Nov, 1925.



Google earth

Google earth

feet: 100  
meters: 40



FIELD BROOK

TRACT 5  
1.01 Acs  
5470000253

TRACT 4  
1.39 Acs  
5470000253

TRACT 3  
1.31 Acs  
5470000039

Tax Map Number 5470000045  
CATAWBA TIMBER COMPANY  
Deed Book 279, Deed Page 106

| CURVE TABLE |        |        |         |             |
|-------------|--------|--------|---------|-------------|
| CURVE       | LENGTH | RADIUS | CRD     | BEARING     |
| C1          | 192.29 | 254.33 | 187.76' | N02°36'39"W |
| C2          | 265.90 | 469.83 | 262.36' | N56°21'07"W |
| C3          | 155.13 | 469.83 | 154.43' | N82°01'28"W |
| C4          | 123.20 | 469.83 | 122.77' | S81°00'35"W |
| C5          | 110.58 | 469.83 | 110.40' | S64°25'36"W |

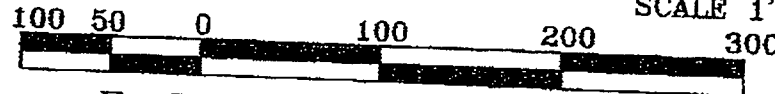
| LINE TABLE |        |             |
|------------|--------|-------------|
| LINE       | LENGTH | BEARING     |
| L1         | 21.65  | S16°50'54"E |
| L2         | 41.66  | N03°01'39"W |
| L3         | 18.01  | S71°11'09"E |
| L4         | 6.55   | S47°23'06"W |

PLAT OF PROPERTY OF  
TRACT 1, 2, 4, 5  
PROPERTY OF EARL DUKES

TRACT 3  
PROPERTY OF TAMMY HANSFORD  
EBENEZER TOWNSHIP, YORK COUNTY, S.C.

MARCH 30, 2011

SCALE 1" = 100'



E. Burnett Jenkins, PLS

208 KINGS MOUNTAIN ST.  
CLOVER, S.C. 29710  
(803)242-8219



NO. C01460



E. BURNETT JENKINS, P.L.S. # 16811

THIS PROPERTY BEING SHOWN AS TX#S  
5470000049, 547-263, 547-39, 547-48,  
547-58. REFERENCES: PB 0329, PGB, PB  
B318, PG 9, PB C 213, PG 7  
PB 35, PG 267, PB B 319, PG 9.

Tax Map Number 04200005  
Deed Book 4734 Deed Page 35  
Plat Book 502 Plat Page 130

Tax Map Number 5470000047  
DUKES, EARL C  
Deed Book 1217, Deed Page 103  
Plot Book 30, Plot Page 84





REPORT CONTINUED:

NAME:

Farren

ADDRESS: 547-080

CHAIN OF TITLE

GRANTEE:

GRANTOR:

DEED BOOK:

MORTGAGE

ASSIGNMENT

PAGE:

CANCELLATION

DATED:

MORTGAGE

RECORDED:

ASSIGNMENT

CANCELLATION

GRANTEE:

GRANTOR:

DEED BOOK:

MORTGAGE

ASSIGNMENT

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DATED:

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GRANTEE:

GRANTOR:

DEED BOOK:

MORTGAGE

ASSIGNMENT

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DEED BOOK:

MORTGAGE

ASSIGNMENT

PAGE:

CANCELLATION

DATED:

MORTGAGE

RECORDED:

ASSIGNMENT

CANCELLATION

PAGE

1

OF

2



REPORT CONTINUED:

NAME:

W. A. Bigham

ADDRESS:

547-50

CHAIN OF TITLE

GRANTEE:

W. A. Bigham

GRANTOR:

W. A. Bigham

DEED BOOK:

334

PAGE:

414

DATED:

3/5/65

RECORDED:

3/11/65

MORTGAGE

ASSIGNMENT

CANCELLATION

MORTGAGE

ASSIGNMENT

CANCELLATION

GRANTEE:

W. A. Bigham

GRANTOR:

W. A. Bigham

DEED BOOK:

334

PAGE:

414

DATED:

3/5/65

RECORDED:

3/11/65

MORTGAGE

ASSIGNMENT

CANCELLATION

MORTGAGE

ASSIGNMENT

CANCELLATION

GRANTEE:

Charles J. Bailey

GRANTOR:

W. A. Bigham

DEED BOOK:

314

PAGE:

349

DATED:

7/8/65

RECORDED:

7/15/65

MORTGAGE

ASSIGNMENT

CANCELLATION

MORTGAGE

ASSIGNMENT

CANCELLATION

GRANTEE:

GRANTOR:

DEED BOOK:

PAGE:

DATED:

RECORDED:

MORTGAGE

ASSIGNMENT

CANCELLATION

MORTGAGE

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CANCELLATION

GRANTEE:

GRANTOR:

DEED BOOK:

PAGE:

DATED:

RECORDED:

MORTGAGE

ASSIGNMENT

CANCELLATION

MORTGAGE

ASSIGNMENT

CANCELLATION

PAGE

2

OF

2


[GIS Home](#)
[GIS Change Blog](#)
[Data Download](#)
[Online Mapping Applications](#)
[Launch Map](#)

 Easy Search by:  

## York County Government, SC Parcel Report

☐ Parcel Map ☐ Zoning Map

### Property Information:

|                    |                            |                       |                 |                  |           |
|--------------------|----------------------------|-----------------------|-----------------|------------------|-----------|
| Parcel Number:     | 5470000050                 | Land Value:           | \$300,000       | Heating Type:    |           |
| Tax ID Number:     | 5470000050                 | Sales Price:          | \$367,500       | Year Built:      |           |
| Lot #:             | 16 & 16A                   | Sales Date:           | August 16, 2005 | Building Value:  | \$146,000 |
| Deeded Acres:      |                            | Total Assessed Value: | \$15,548        | School District: | 3         |
| Deed Book/Page:    | 7331 / 102                 | Total Tax Value:      | \$388,700       | Municipality:    |           |
| Plat Book/Page:    | D18 / 9                    | Total Market Value:   | \$446,000       | Fire Code:       | NP-I      |
| Owner(s):          | FARRELL KENNITH W & MARY C |                       |                 |                  |           |
| Previous Grantor:  | EDWARDS ROBERT J           |                       |                 |                  |           |
| Property Location: | LOTS 16 & 16-A LAKE WYLIE  |                       |                 |                  |           |
| Subdivision:       |                            |                       |                 |                  |           |

### Geographic Information:

Longitude (decimal degrees): -81.0818149620    Latitude (decimal degrees): 35.0249820620    USNG: 9253 7581  
 Northing: 1161311.63912    Easting: 1975495.33993

### Report and Application Links:

|                      |                                    |                                           |                                           |
|----------------------|------------------------------------|-------------------------------------------|-------------------------------------------|
| View/Print:          | <a href="#">Storm Water Report</a> | <a href="#">Zoning Report</a>             | <a href="#">Assessor Report</a>           |
| Tax Information:     | <a href="#">Online Taxes</a>       |                                           |                                           |
| Dynamic GIS maps:    | <a href="#">Parcel Viewer</a>      | <a href="#">Zoning Viewer</a>             | <a href="#">Historical Imagery Viewer</a> |
| Legacy Viewer:       | <a href="#">Interactive Map</a>    |                                           |                                           |
| View Oblique Images: | <a href="#">Pictometry</a>         | <a href="#">Pictometry Online (Login)</a> |                                           |

File 62  
11-4-05

000280994  
RECORDED 08/16/2009 11:44:48AM  
BK07331 P0102 Pages 23  
Fee: 10.00 State: 95.50  
County: York  
Clerk of Court

Space above this line for recording

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

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain place, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marrett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marrett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7; and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20466, recorded in Plat Book 218 at Page 9, as follows: BEGINNING at a pipe on edge of Private Drive (30' R/W), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31 59 E 170.63 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet; thence N 52 16 42 E 181.01 feet to #4 rebar; thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 38 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.58 feet to #5 rebar; thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 66 39 12 W 138.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1988 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 80ES48-80694, evidenced by Deed of Distribution recorded in Record Book 283 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 8-17-05  
TAX MAP NO. 547-50  
INITIALS AC / dM

BK07331 P0102

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: ~~1634 Fiddlers Cove~~ 7860 Barberville Rd.  
~~Fort Mill, SC 29732~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00-050

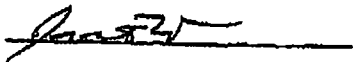
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

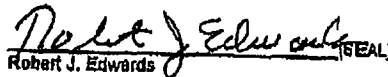
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2006.

Signed, Sealed and Delivered  
In the Presence of:



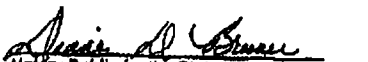
  
Robert J. Edwards (SEAL)

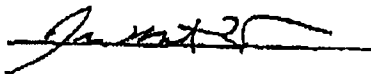


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2006.

  
Notary Public for the State of South Carolina  
My Commission Expires: 4-28-08



BK07331 P00103

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE MATTER OF Estate of Nancy Davis Edwards  
CASE NUMBER 80 ES 46 00694

FILED-RECEIVED  
BOOK PAGE  
Aug 22 10 08 AM '91  
M.H. CARROLL, JR.  
C.O.C.P. & S.S.  
YORK COUNTY, S.C.

PROBATE COURT

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 6th day of December 1991; and,

WHEREAS, The estate of the decedent is being administered in the Probate Court for York County, South Carolina in File # 80 ES 46 00694; and,

WHEREAS, The grantee herein is either a beneficiary of title at law, as appropriate, of the decedent; and,

WHEREAS, The undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to the County

Name: Robert J. Edwards  
Address: 1631 Fieldbrook Drive  
Rock Hill, South Carolina 29732

RECORDED  
DATE 8/23/91  
TAX 211  
INITIALS [Signature]

an undivided one-half (1/2) interest in  
the following described property.

PARCEL 1: All that certain piece, parcel or tract of land lying, being and situated in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16A on Map of Portion of Property of A. F. and Ed Powell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1952, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lots 16A and 17A, and running thence with Private Road N 56 43 E 140 feet and N 41 40 E 102.2 feet to stake; thence N 19 04 W 111.8 feet to stake; thence S 29 42 W 291.5 feet to the beginning point.

PARCEL 2: All that certain piece, parcel or tract of land lying, being and situated in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of a Portion of Property of A. F. and Ed Powell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1952, recorded in Plat Book 23, page 7, Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by deed of Nellie A. Horace Boone (Formerly Nellie A. Horace) dated February 20, 1976, recorded February 23, 1976 in Deed Book 326, page 482, Office of the Clerk of Court for York County, South Carolina.

FORM 100-1 (1977)  
100-1-107-1-107

243

RECORDED  
VOL 292 pg 243  
YORK COUNTY S.C.

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Robert J. Edwards, his  
heirs and assigns forever

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 19th day of August, 1991

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Signature

Estate of Nancy Davis Edwards

Robert J. Edwards  
Personal Representative

Witness

Witness

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

PROBATE

PERSONALLY appeared before me Robert J. Edwards

and made oath that he/she saw the within named

Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with

Ann D. Williams

Witnessed the execution thereof.

SWORN to before me this 19th day of  
August, 1991

Witness Signature

Ann D. Williams

Notary Public for South Carolina  
My Commission Expires 01-02-00



State of South Carolina,  
COUNTY OF YORK

(SEE AFFIDAVIT)

FILE TO BEAL, 1974

The R. L. Wain Company, Columbia, S. C.

HACK & HACK, ATTORNEYS AT LAW  
FORT MILL, SOUTH CAROLINA

FEB 23 8 47 AM '76  
THAD L. GARNETT  
C. C. P. & S. C.  
YORK COUNTY, S. C.

Know All Men by These Presents, That



COUNTY  
CONVEYANCE  
TAX  
\$ 22.<sup>00</sup>  
PAID

I, NELLIE A. HORACE BOONE, (FORMERLY NELLIE A. HORACE)

In the State aforesaid, For and

sum of ----- FULL VALUE -----

to me paid by ROBERT J. EDWARDS AND NANCY D. EDWARDS

In the State aforesaid,

I have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Robert J. Edwards and Nancy D. Edwards, their heirs and assigns forever the following described property, to-wit:

NO. 1: ALL that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fowell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July, 1963, recorded in Plat Book 24, at page 173, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N 56 43 E 140 feet and N 41 40 E 102.2 feet to a stake; running thence N 19 04 W 111.8 feet to a stake; running thence S 29 42 W 291.5 feet to the beginning point. This being the identical property conveyed to Charles J. Bailey, by A. F. Fowell and Edward Fowell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at page 348, in the office of the Clerk of Court for York County, South Carolina.

NO. 2: ALL that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. and Ed Fowell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at page 7, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description. The above described property being the identical property conveyed from W. A. Bigham to William L. Horace and Nellie A. Horace by Deed dated April 15, 1971, and recorded April 26, 1971, in Deed Book 417, page 504. And, the interest of William L. Horace thereafter conveyed to Nellie A. Horace by deed recorded in Deed Book 481, page 277, on March 28, 1974, in the office of the Clerk of Court for York County, South Carolina.

526/482

526/482

187



75 AT 12  
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FEB 21 8 27 AM '76  
FBI CARROLL

FEB 21 1976

HORACE

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TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Robert J. Edwards and Nancy D. Edwards, their

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Robert J. Edwards and Nancy D. Edwards, their

Heirs and Assigns, against me and my Heirs and against every

person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 20th day of February

In the year of our Lord one thousand nine hundred and seventy-six

and in the second hundredth

and Independence of the United States of America. year of the Sovereignty

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

*[Signature]*

*Nellie A. Horace Boone* (Seal)  
(Nellie A. Horace Boone) (Formerly)  
(Nellie A. Horace) (Seal)

STATE OF SOUTH CAROLINA,  
YORK COUNTY.

PERSONALLY appeared before me Paye E. Boling

and made oath that she saw the within-named Nellie A. Horace Boone  
sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein men-  
tioned and that he, with B. Bayles Mack  
execution thereof.

*S. B. Boling*  
Notary Public of S. C.  
WITNESSED by

STATE OF SOUTH CAROLINA,  
COUNTY.

NO RENUNCIATION OF DOWER  
GRANTOR A WOMAN

unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely,  
voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and for-  
ever relinquish unto the within-named

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises  
within mentioned and released.

Given under my Hand and Seal, this

day of

Amos Dumind 19

Notary Public of S. C. (L. S.)

here

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محکمہ اعلیٰ تعلیم

State of South Carolina,

County of YORK

NELLIE B. HORACE BOONE

**TO**

ROBERT J. EDWARDS AND  
NANCY D. EDWARDS

**TITLE TO REAL ESTATE**

I hereby certify that the within Deed was filed for record in my office at 8 47 A. M. o'clock on the 11th day of Feb. 19 76, and was immediately entered upon the proper indexes and duly recorded in Book 526

of Deeds, page 282  
Ward & Brewer  
 Clerk of Court of Common Pleas and General Sessions  
 for Essex County, S. C.

I hereby certify that the within Deed has been  
this \_\_\_\_\_ day of \_\_\_\_\_

, A. D. 19      , Recorded  
 in Book      of Deeds, page

For \_\_\_\_\_ Auditor  
County \_\_\_\_\_

The J. L. Doyle Company, Dubuque, Ia. U.S.A.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 12-23-76

TAX MAP NO. 547-50 & 51

INITIALS L. L. Pater, Jr.

3  
277  
FILED & RECORDED  
THE STATE OF SOUTH CAROLINA

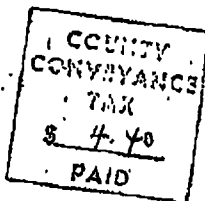
TITLE TO REAL ESTATE, NO. 101

YORK

COUNTY MAY 28 9 10 AM '74

PRINTED BY WHITE PRINTING COMPANY,  
ROCK HILL, S. C.

THAD L. CARROLL  
C. C. P. & O. S.  
YORK COUNTY, S. C.



I, William T. Horace,

KNOW ALL MEN BY THESE PRESENTS, That

In the State aforesaid, for and in consideration of the sum of Three Thousand, Six Hundred and no/100 ( \$3,600.00)

Dollars,

to me in hand paid at and before the sealing of these presents, by Nellie A. Horace

In the State aforesaid

(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 Nellie A. Horace, her heirs and assigns the following described property to wit:

No. 1. All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fewell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July, 1963, recorded in Plat Book 24, at page 173, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-42 W. 291.5 feet to the beginning point. This being the identical property conveyed to Charles J. Bailey, by A. F. Fewell and Edward Fewell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the office of the Clerk of Court for York County, South Carolina.

No. 2. All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. Fewell and Ed Fewell, Jr. Prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at page 7, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more

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complete description.

The above described property being the identical property conveyed from W. A. Bigham to William L. Horace and Nellie A. Horace by Deed dated April 15, 1971, and recorded April 26, 1971, in Deed Book 417, page 504.

It is agreed by the parties hereto that the mortgagors will pay with each installment an amount equal to one-twelfth (1/12) of the annual real estate tax and hazard insurance premium along with and in addition to payments of principal and interest.

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

Nellie A. Horace, her

Heirs and Assigns Forever.

And I do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said Nellie A. Horace, her Heirs and Assigns against me and my Heirs and all other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness my Hand and Seal this 2nd day of March in the year of our Lord one thousand nine hundred and seventy-four and in the one hundred and year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered in the presence of

*William L. Horace* (SEAL)

*Kathleen B. Lytle*  
*John G. Lytle*

(SEAL)

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

PERSONALLY APPEARED before me Kaghene B. Lytle, a witness, and  
made oath that s/he saw the within named William L. Horace

sign, seal and as his act and deed, deliver the within Written Deed; and that s/he with  
Steve A. Lytle, the other witness, was present and witnessed the execution thereof.

Sworn to before me this 2nd day of  
March A.D. 19 74  
[SEAL] Notary Public for S.C.  
My Commission Expires: December 30, 1980

Kaghene B. Lytle  
Deposing Witness

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

GRANTEE IS WIFE OF GRANTOR  
RENUNCIATION OF DOWER

Notary Public  
do hereby certify unto all whom

it may concern, that Mrs.  
the wife of the within named  
did this day appear before me, and upon being privately and separately examined by me, did declare  
that she does freely, voluntarily, and without compulsion, dread or fear of any person or persons  
whomsoever, renounce, release, and forever relinquish unto the within named

Here and Assigns, all her interest and estate, and also her  
right and claim of Dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this

day of A.D. 19

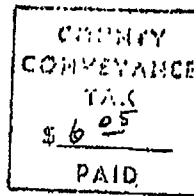
[SEAL] Notary Public for S.C.

(See Affidavit)

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

(See Affidavit)

TITLE TO REAL ESTATE, NO. 101  
PRINTED BY WHITE PRINTING COMPANY,  
ROCK HILL, S. C.



FILED & RECORDED  
Aug 26 7 52 AM '71  
THAD L. CARROLL  
C. C. P. & S. S.  
YORK COUNTY, S. C.

KNOW ALL MEN BY THESE PRESENTS, That

I, W. A. Bigham

in the State aforesaid, for and in consideration of the sum of

----- FULL VALUE -----

to me in hand paid at and before the sealing of these presents, by

William L. Horace and Nellie A. Horace

In the State aforesaid

(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 William L. Horace and Nellie A. Horace, their heirs and assigns, the following described real estate, to-wit:

No. 1: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.38 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Powell, Jr., prepared by E. H. Maret, Reg. Surveyor, June 28, 1882, Addition 10 Sept. 1882, Addition 12 July 1883, recorded in Plat Book 24, at Page 173, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: Beginning at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 68-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; thence N. 10-04 W. 111.8 feet to a stake; running thence S. 29-42 W. 291.5 feet to the beginning point. This being the identical property conveyed to Charles J. Bailey, by A. F. Powell and Edward Powell, Jr., by Deed dated the 18th day of July, 1882, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing easements and rights of way.

No. 2: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. & Ed Powell, Jr., prepared by E. H. Maret, Reg. Surveyor, June 28, 1882, recorded in Plat Book 23, at Page 7, in the office of the Clerk of Court for

York County, South Carolina, to which Plat reference is hereby made for a more complete description.



The above described property is conveyed subject to the Water Rights granted to the Wateree Power Company by Madison Bill by Deeds recorded in Deed Book 54 at Page 617, and Deed Book 64, at Page 313, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of Way.

It being understood that the Grantees herein, their heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Powell and Edward Powell, Jr.

It being further understood that the Grantees herein, their heirs and assigns, shall have the right to use the private road shown on the above mentioned plat as a means of ingress and egress from the County Road to said lot herein conveyed.

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 William L. Horace and Nellie A. Horace, their Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said William L. Horace and Nellie A. Horace, their Heirs and Assigns against me and my Heirs and all other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness my Hand and Seal this 15th day of April in the year of our Lord one thousand nine hundred and Seventy-one and in the one hundred and 95th year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered in the presence of

Handwritten signatures of witnesses.

W. L. Horace [SEAL]

Nellie A. Horace [SEAL]



THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

PERSONALLY APPEARED before me Martha P. Adams, a witness, and made oath that s/he saw the within named W. A. Bigham

sign, seal and as his act and deed, deliver the within Written Deed; and that s/he with Richard O. Lewis, the other witness, was present and witnessed the execution thereof.

Given to before me this 18th day of April, A.D. 19 71.

[Signature]  
Notary Public for S.C.  
My Commission Expires: 12-23-79

[Signature]  
Deposing Witness

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

RENUNCIATION OF DOWER

I, Richard O. Lewis

Notary Public

do hereby certify unto all whom

it may concern, that Mrs. Mary A. Bigham the wife of the within named W. A. Bigham did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named William L. Horace and Nellie A. Horace, their Heirs and Assigns, all her interest and estate, and also her right and claim of Dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this 18th day of April, A.D. 19 71.

[Signature]  
Notary Public for S.C.  
My Commission Expires: 12-23-79

[Signature]  
Mary A. Bigham

STATE OF SOUTH CAROLINA,

YORK COUNTY

Know All Men by These Presents

That We, A. F. Fowell and Edward Fowell, Jr.,

of the County of York, in the State of South Carolina, for and in consideration of the sum of Five and no/100 (\$5.00) Dollars, and other valuable consideration, to the grantor(s) in hand paid at and before the sealing of these presents by the grantees (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 Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property: All that certain piece, parcel or tract of land lying, being and situate in Beaufort Township, County of York, State of South Carolina, on the Backwater of Little Allium Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. & Ed Fowell, Jr., prepared by H. H. Muratt, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at Page 7, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property is conveyed subject to the Water Rights granted to the Water Power Company by Madison Mill by Deeds recorded in Deed Book 54, at Page 617, and Deed Book 64, at Page 373, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of-Way.

It being understood that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to rights of the Water Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Fowell and Edward Fowell, Jr.,

It being further understood that the Grantee herein, His Heirs and Assigns, shall have the right to use the Private Road shown on the above mentioned Plat as a means of ingress and egress from the County Road to said Lot herein conveyed.



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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantees hereinabove named, and His Heirs and Assigns forever.

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

Witness the grantor(s) hand and seal of this 2nd day of March, 1963, in the year of our Lord One Thousand Nine Hundred and Sixty-Three.

Signed, Sealed and Delivered in the Presence of

*David D. Bushue*  
*John Oates Woods*

*A. F. Fowell* (Seal)  
*Edward Fowell, Jr.* (Seal)  
*Edward Fowell, Jr.* (Seal)  
*Edward Fowell, Jr.* (Seal)  
*Edward Fowell, Jr.* (Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris D. Bushue

and qualified that she saw the within named grantor(s), A. F. Fowell and Edward Fowell, Jr., deliver the within written deed, and that she, with John Oates Woods, sign, seal and as their act and deed witness the execution thereof.

Subscribed to before me this 2nd day of March, 1963.

*David D. Bushue* (Seal)  
Notary Public for South Carolina

State of South Carolina,

YORK County

RENUNCIATION OF DOWER

I, Doris D. Bushue, Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Louise Peace Fowell and Mrs. Doris M. Fowell, wives of A. F. Fowell and Edward Fowell, Jr., respectively, did this day appear before me, and upon being privately and separately examined by me, did declare that she cheerfully, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto W. A. Bigham, His Heirs and Assigns, all her interest and estate, and all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Witness my hand and seal this 2nd day of March, 1963.

*David D. Bushue* (Seal)

Notary Public for South Carolina

Recorded this 2nd day of March, 1963.

*Mrs. Louise Peace Fowell*  
*Mrs. Doris M. Fowell*  
*Mrs. Doris M. Fowell*

110

TITLE TO REAL ESTATE Short Form No. 10-1-1962

STATE OF SOUTH CAROLINA,

(See Affidavit)

YORK COUNTY

This Charles J. Bailey,

Known All Men by These Presents,

of the County of York, in the State aforesaid, in consideration of the sum of One and no/100 (\$1.00) DOLLARS,

to the grantor in hand sold at and before the sealing of these presents by the grantor (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 Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property:

All that certain place, parcel or tract of land lying, being and situate in Ebanzer Township, County of York, State of South Carolina, on the Backstar of Little Allison Creek, containing 0.32 Acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. E. & Ed Fowell, Jr., prepared by R. H. Morris, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July 1963, recorded in Plat Book 24, at Page 173, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows:

BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 49-42 W. 291.5 feet to the beginning point.

This being the identical property conveyed to Charles J. Bailey, Grantor herein, by A. F. Fowell and Edward Fowell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing Easements and Rights-of-Way.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the premises belonging, or in anywise incident or appertaining. TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantor hereinafter named, and His Heirs and Assigns forever.

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

Witness the grantor's hand and seal this 5th day of March, in the year of our Lord One Thousand Nine Hundred and Sixty-five.

Signed, Sealed and Delivered in the Presence of

David A. Bushue (Seal) John Oates Woods (Seal)

Charles J. Bailey (Seal) CHARLES J. BAILEY (Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris D. Ewing

and made oath that she saw the within named grantor, Charles J. Bailey, sign and seal and as his agent and deed deliver the within written deed, and that she, with John Oates Woods, witnessed the execution thereof.

Subscribed before me this 5th day of March, A. D. 1965. David A. Bushue (Seal) Notary Public for South Carolina

State of South Carolina,

YORK County

RENUNCIATION OF DOWER

I, John Oates Woods, Notary Public, do hereby certify

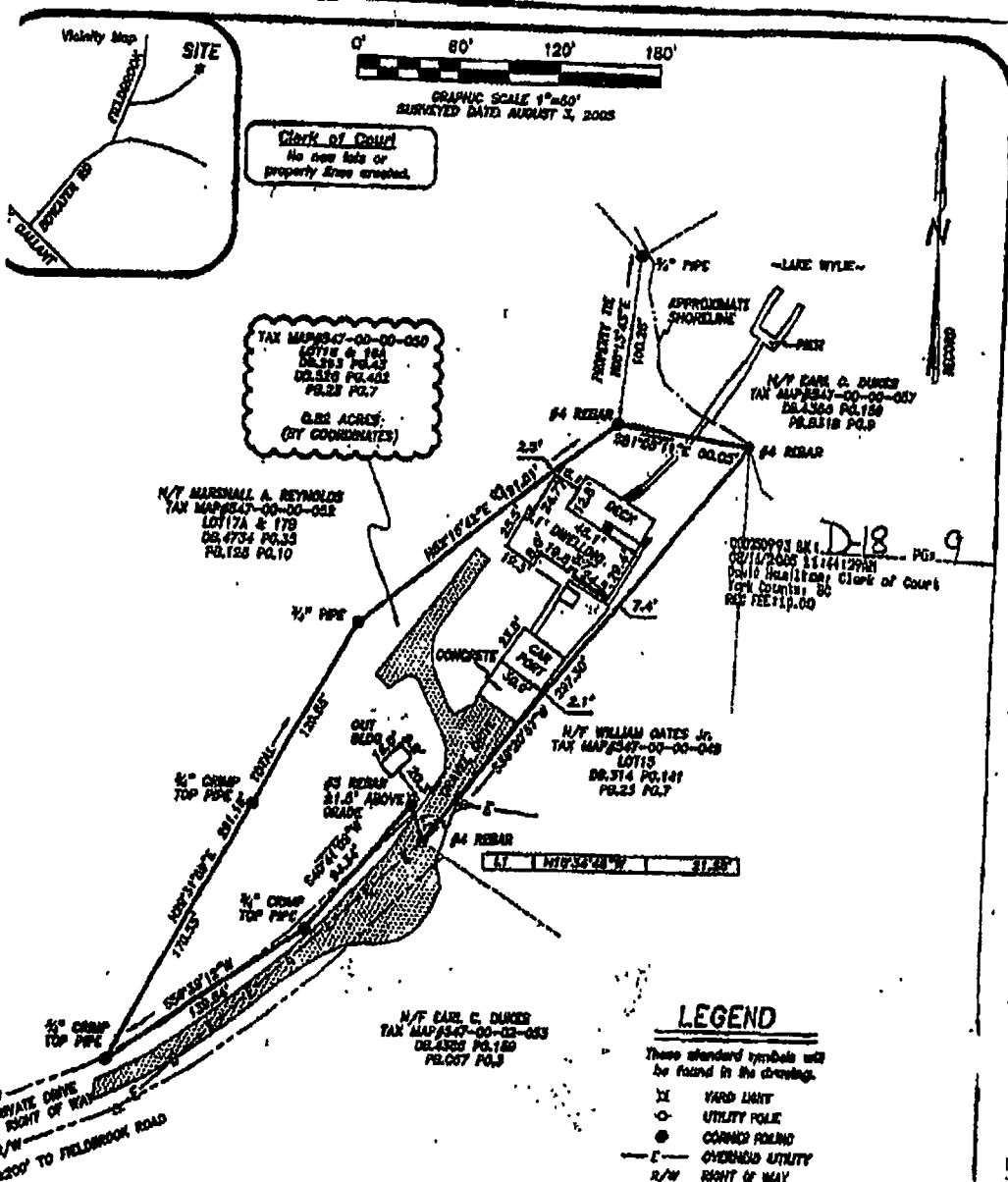
unto all whom it may concern, that Mrs. Evelyn B. Bailey, wife of the within named Charles J. Bailey, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release, and forever relinquish unto W. A. Bigham, His Heirs and Assigns, all her interest and estate, and also all her Right and Claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 5th day of March, A. D. 1965. David A. Bushue (Seal) Notary Public for South Carolina

Evelyn B. Bailey (Seal) JOHN OATES WOODS (Seal)

334/46





# **LEGEND**

These standard symbols will be found in the drawing.

- XX YARD LIGHT
- UTILITY POLE
- CORNER PILING
- OVERHEAD UTILITY
- R/W RIGHT OF WAY

## **NOTES**

PROPERTY SUBJECT TO ALL VALID AND ENFORCEABLE RESTRICTIONS, EIGHTS OF WAY, AND EASEMENTS OF RECORD.



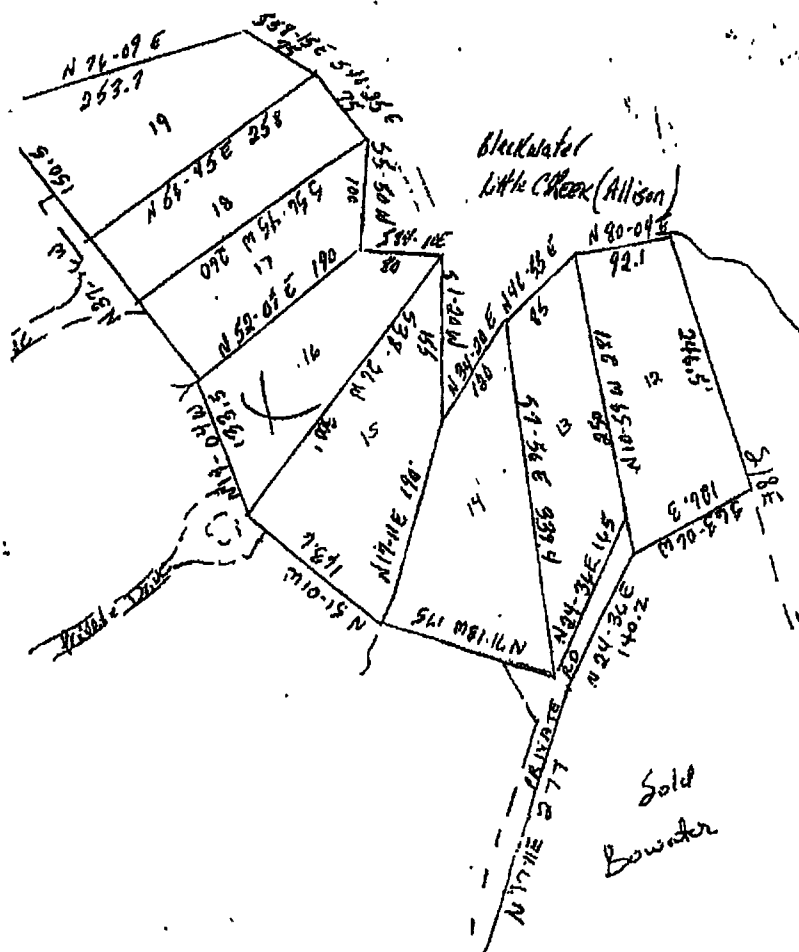
I hereby state to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the National Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class "A" survey as specified therein; also there are no visible encroachments or projections other than shown.

*Signature*  
 Dwayne J. Jordan, FLS 35065

**BOUNDARY SURVEY**  
 PREPARED FOR  
**ROBERT J. EDWARDS**  
 PROPERTY IS LOCATED AT  
**1631 FIELDBROOK ROAD**  
 YORK COUNTY ~ SOUTH CAROLINA

**Jordan Land Surveying, LLC**  
 P.O. Box 10052  
 Rock Hill, S.C. 29731  
 Phone: 324-3252 Fax: 324-3255  
 Email: jordanl@southcarolina.net

FILED CONT



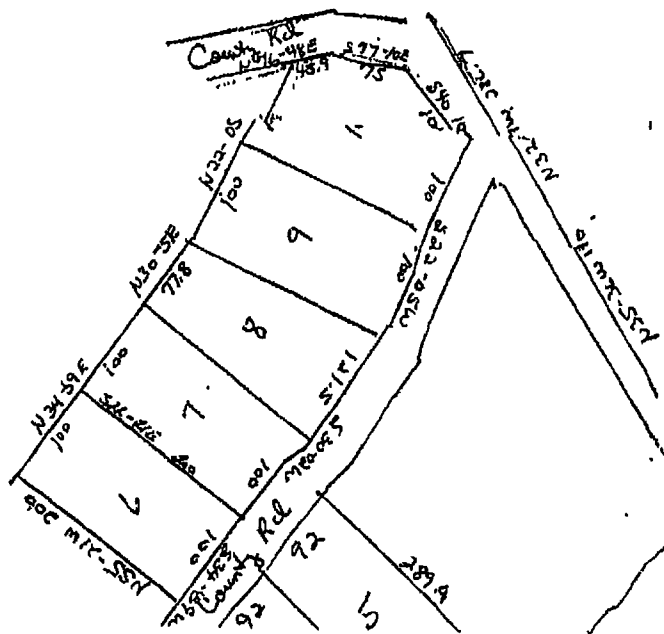
plat 23 @ 7  
rec.  
8-20-62

Portion Prop  
of AFJ  
Sd  
12/100  
6-28-62  
RH Marsh

Portion of Prop  
of A.F. & Ed Marsh  
York County, SC  
R.H. Marsh 6-28-62

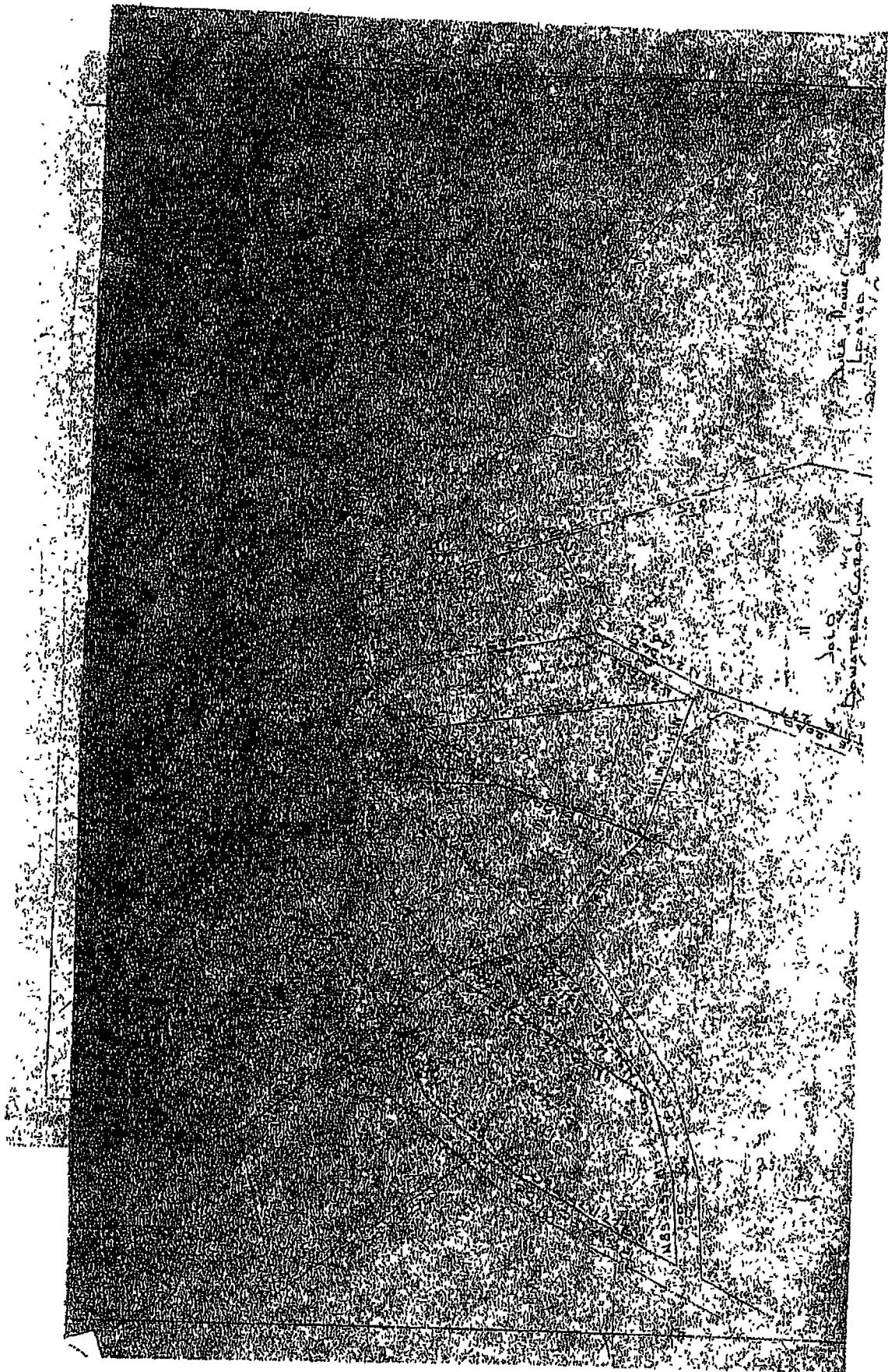
Sold  
Bowater

Duke  
Leased  
By  
Bowater



2317

Allison



24/172-173

REPORT CONTINUED:

NAME:

Fallen

ADDRESS: 547-050

CHAIN OF TITLE

GRANTEE: Kenneth W. Fallon: Mary C. Fallon  
 GRANTOR: W. J. Fallon  
 DEED BOOK: 7331 PAGE: 192 DATED: 8/16/68 RECORDED: 8/16/68  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

X

01/19

GRANTEE: Robert J. Edwards  
 GRANTOR: EST.  
 DEED BOOK: 293 PAGE: 293 DATED: 8/19/69 RECORDED: 8/22/69  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

X

2/1/78 2/3/78

GRANTEE: Robert J. Edwards: Mary D. Edwards  
 GRANTOR: Bone/Holice  
 DEED BOOK: 526 PAGE: 487 DATED: 2/2/76 RECORDED: 2/23/76  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

X

2/1/78 FOR ACCESS  
534/414, 514/548

GRANTEE: Nellie A. Holice  
 GRANTOR: Holice  
 DEED BOOK: 481 PAGE: 277 DATED: 3/2/74 RECORDED: 3/28/74  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

X

GRANTEE: William L. Holice: Nellie A. Holice  
 GRANTOR: BIGAN  
 DEED BOOK: 417 PAGE: 524 DATED: 4/15/71 RECORDED: 4/26/71  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

X





REPORT CONTINUED:

NAME:

Allen

ADDRESS:

547-70

CHAIN OF TITLE

GRANTEE: W A BIGNON 16  
 GRANTOR: Allen  
 DEED BOOK: 334 PAGE: 414 DATED: 3/2/65 RECORDED: 3/11/65  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

GRANTEE: W A BIGNON 16A  
 GRANTOR: Allen  
 DEED BOOK: 334 PAGE: 414 DATED: 3/15/65 RECORDED: 3/11/65  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

GRANTEE: Charles J. Bailey 16A  
 GRANTOR: Allen  
 DEED BOOK: 334 PAGE: 344 DATED: 7/17/65 RECORDED: 7/13/65  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

GRANTEE: \_\_\_\_\_  
 GRANTOR: \_\_\_\_\_  
 DEED BOOK: \_\_\_\_\_ PAGE: \_\_\_\_\_ DATED: \_\_\_\_\_ RECORDED: \_\_\_\_\_  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION

GRANTEE: \_\_\_\_\_  
 GRANTOR: \_\_\_\_\_  
 DEED BOOK: \_\_\_\_\_ PAGE: \_\_\_\_\_ DATED: \_\_\_\_\_ RECORDED: \_\_\_\_\_  
 MORTGAGE ASSIGNMENT CANCELLATION MORTGAGE ASSIGNMENT CANCELLATION


[GIS Home](#)
[GIS Chapter Blog](#)
[Data Download](#)
[Online Mapping Applications](#)
[Launch Map](#)
Easy Search by:  

## York County Government, SC Parcel Report

☐ Parcel Map ☐ Zoning Map

### Property Information:

|                    |                            |                       |                 |                  |           |
|--------------------|----------------------------|-----------------------|-----------------|------------------|-----------|
| Parcel Number:     | 5470000050                 | Land Value:           | \$300,000       | Heating Type:    |           |
| Tax ID Number:     | 5470000050                 | Sales Price:          | \$367,500       | Year Built:      |           |
| Lot #:             | 16 & 16A                   | Sales Date:           | August 16, 2005 | Building Value:  | \$146,000 |
| Deeded Acres:      |                            | Total Assessed Value: | \$15,548        | School District: | 3         |
| Deed Book/Page:    | 7331 / 102                 | Total Tax Value:      | \$388,700       | Municipality:    |           |
| Plat Book/Page:    | D18 / 9                    | Total Market Value:   | \$446,000       | Fire Code:       | NP-I      |
| Owner(s):          | FARRELL KENNITH W & MARY C |                       |                 |                  |           |
| Previous Grantor:  | EDWARDS ROBERT J           |                       |                 |                  |           |
| Property Location: | LOTS 16 & 16-A LAKE WYLIE  |                       |                 |                  |           |
| Subdivision:       |                            |                       |                 |                  |           |

### Geographic Information:

Longitude (decimal degrees): -81.0818149620    Latitude (decimal degrees): 35.0249820620    USNG: 9253 7581  
 Northing: 1161311.63912    Easting: 1975495.33993

### Report and Application Links:

|                      |                                    |                                           |                                           |
|----------------------|------------------------------------|-------------------------------------------|-------------------------------------------|
| View/Print:          | <a href="#">Storm Water Report</a> | <a href="#">Zoning Report</a>             | <a href="#">Assessor Report</a>           |
| Tax Information:     | <a href="#">Online Taxes</a>       |                                           |                                           |
| Dynamic GIS maps:    | <a href="#">Parcel Viewer</a>      | <a href="#">Zoning Viewer</a>             | <a href="#">Historical Imagery Viewer</a> |
| Legacy Viewer:       | <a href="#">Interactive Map</a>    |                                           |                                           |
| View Oblique Images: | <a href="#">Pictometry</a>         | <a href="#">Pictometry Online [Login]</a> |                                           |

6256  
1044

000250994  
RECORDED 08/16/2005 11:44:48AM  
8407331 P#00102 Pages: 2  
Fee: 10.00 State: 955.30  
County: York, SC  
David Hamilton, Clerk of Court  
York County, SC

Space above this line for recording

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marrett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marrett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7; and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20466, recorded in Plat Book D-18 at Page 9, as follows: BEGINNING at a pipe on edge of Private Drive (30' R/W), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31 59 E 170.53 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet; thence N 52 16 42 E 191.01 feet to #4 rebar; thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 38 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.58 feet to #5 rebar; thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 56 39 12 W 139.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1988 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 90ES46-60694, evidenced by Deed of Distribution recorded in Record Book 293 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 8-17-05  
TAX MAP NO. 547-50  
INITIALS AC / dff

8407331 P00102

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: ~~1031 Fieldbrook Drive~~ 9860 Barberville Rd.  
~~Rock Hill, SC 29733~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00-050

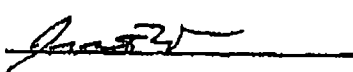
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

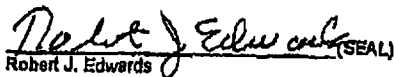
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

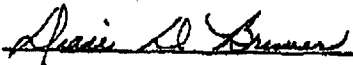
AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2005.

Signed, Sealed and Delivered  
in the Presence of:



 (SEAL)  
Robert J. Edwards

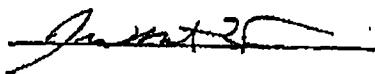


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2005.

  
Notary Public for the State of South Carolina  
My Commission Expires: 4-28-05



BN 07331 PQ0103

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE MATTER OF Estate of Nancy Davis Edwards

CASE NUMBER 50 ES 46 00594

FILED-RECEIVED  
BOOK PAGE  
Aug 22 10 05 AM '91

PROBATE COURT

M.H. CARNOLL, JR.  
C.C.P. & C.S.  
YORK COUNTY, S.C.

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 6th day of December, 1991, and,

WHEREAS, The estate of the decedent is being administered in the Probate Court for York County, South Carolina in File # 50 ES 46 00594 and,

WHEREAS, The grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, The undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to

Name: Robert J. Edwards  
Address: 1831 Fieldbrook Drive  
Rock Hill, South Carolina 29732

RECORDED  
YORK COUNTY  
ASSESSOR'S OFFICE  
DATE 8-23-91  
TAX M. NO. 244-00  
INITIALS RJE/jaw

an undivided one-half (1/2) interest in  
the following described property

**PARCEL 1:** All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16A on Map of Portion of Property of A. F. and Ed Sewell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lots 16A and 17A, and running thence with Private Road N 56 41 E 140 feet and N 41 40 E 102.2 feet to stake; thence N 19 04 W 111.8 feet to stake; thence S 29 42 W 291.5 feet to the beginning point.

**PARCEL 2:** All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of a Portion of Property of A. F. and Ed Sewell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7, Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by deed of Nellie A. Horace Boone (Formerly Nellie A. Horace) dated February 20, 1976, recorded February 23, 1976 in Deed Book 528, page 482, Office of the Clerk of Court for York County, South Carolina.

YORK COUNTY (7-77)  
COPY 2-207, 5-201

243

RECORDED  
YORK COUNTY, S.C.  
VOL. 244-00  
PAGE 1 OF 1

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Robert J. Edwards, his  
heirs and assigns forever

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 19th day of August, 1991

Estate of Nancy Davis Edwards

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Signature

Robert J. Edwards  
Robert J. Edwards  
Personal Representative

Witness: Cliff P. Lussen

Witness: Sharon R. Currence

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

PROBATE

PERSONALLY appeared before me Robert J. Edwards

and made oath that he/she saw the within named

Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with

Adm. D. Williams

witnessed the execution thereof.

SWORN to before me this 19th day of  
August, 1991

Witness Signature:

Adm. D. Williams

Cliff P. Lussen

Notary Public for South Carolina  
My Commission Expires 03-02-00



244

State of South Carolina,  
COUNTY OF YORK

(SEE AFFIDAVIT)

TITLE TO REAL ESTATE

The H. L. BROWN COMPANY, CHARLOTTE, N. C.

MACK & MACK, ATTORNEYS AT LAW  
FORT MILL, SOUTH CAROLINA

FILED  
JUL 21 8 47 AM '75  
J. L. CARROLL  
C. C. P. & S.  
YORK COUNTY, S. C.

Know All Men by These Presents, That



COUNTY  
CONVEYANCE  
TAX  
\$ 22.00  
PAID

I, NELLIE A. HORACE BOONE, (FORMERLY NELLIE A. HORACE

In the State aforesaid, for and

In consideration

sum of ----- FULL VALUE -----

to me paid by ROBERT J. EDWARDS AND NANCY D. EDWARDS

in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Robert J. Edwards and Nancy D. Edwards, their heirs and assigns forever the following described property, to-wit:

NO. 1: ALL that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fawell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July, 1963, recorded in Plat Book 24, at page 173, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N 56 43 E 140 feet and W 41 40 E 102.2 feet to a stake; running thence N 19 04 W 111.8 feet to a stake; running thence S 29 42 W 291.5 feet to the beginning point. This being the identical property conveyed to Charles J. Bailey, by A. F. Fawell and Edward Fawell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at page 348, in the office of the Clerk of Court for York County, South Carolina.

NO. 2: ALL that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. & Ed Fawell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at page 7, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description. The above described property being the identical property conveyed from W. A. Bigham to William L. Horace and Nellie A. Horace by Deed dated April 15, 1971, and recorded April 26, 1971, in Deed Book 417, page 504. And, the interest of William L. Horace thereafter conveyed to Nellie A. Horace by deed recorded in Deed Book 481, page 277, on March 28, 1974, in the office of the Clerk of Court for York County, South Carolina.

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TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Robert J. Edwards and Nancy D. Edwards, their

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Robert J. Edwards and Nancy D. Edwards, their

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 20th day of February in the year of our Lord one thousand nine hundred and seventy-six and in the two hundredth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

*[Signature]* } *Nellie A. Horace Boche* (SEAL)  
*[Signature]* } *Nellie A. Horace Boche* (Formerly)  
*[Signature]* } *Nellie A. Horace* (Seal)



STATE OF SOUTH CAROLINA,

YORK COUNTY,

PERSONALLY appeared before me Faye E. Boling

and made oath that he saw the within-named Nellie A. Horace Boone  
sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein men-  
tioned and that he, with B. Bayles Mack witnessed the  
execution thereof.

SWORN to before me this 20th

day of February, 1976

[Signature] (L.S.)  
Notary Public of S.C.

[Signature]

STATE OF SOUTH CAROLINA,

COUNTY,

NO RENUNCIATION OF DOWER  
GRANTOR A WOMAN

I,  
do hereby certify  
unto all whom it may concern, that Mrs.  
the wife of the within-named  
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely,  
voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and fore-  
ever relinquish unto the within-named

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises  
within mentioned and released.

Given under my Hand and Seal, this

day of

Anno Domini 19

[Signature] (L.S.)  
Notary Public of S.C.

AR4

1870

State of South Carolina

County of YORK

NEILLIE S. HORACE BOONE

TO

ROBERT J. EDWARDS AND  
NANCY D. EDWARDS

## TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for  
record in my office at 3:47 P. M. o'clock on  
the 15th day of Feb  
19 76, and was immediately entered upon the proper  
indexes and duly recorded in Book 536

of Deeds, page 422  
John S. Bessie  
Clerk of Court of Common Pleas and General Sessions  
for York County, S. C.

I hereby certify that the within Deed has been  
this \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 19 \_\_\_\_\_, Recorded  
in Book \_\_\_\_\_ of Deeds, page \_\_\_\_\_

\_\_\_\_\_  
for \_\_\_\_\_ Auditor  
County \_\_\_\_\_

The R. L. Bryan Company, Charleston, S. C.

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 2-23-76

TAX MAP NO. 547-50 & 51

INITIALS L. L. Oates, Jr.

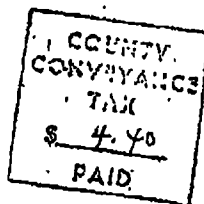
3  
277  
FILED & RECORDED  
THE STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE NO. 101

YORK COUNTY 9 15 AM '74

PRINTED BY WHITE PRINTING COMPANY,  
ROCK HILL, S. C.

THAD L. CARROLL  
C.C.P. & G.S.  
YORK COUNTY, S. C.



I, William F. Horace,

KNOW ALL MEN BY THESE PRESENTS, That

In the State aforesaid, for and in consideration of the sum of Three Thousand, Six Hundred and no/100 ( \$3,600.00)

Dollars,

to me in hand paid at and before the sealing of these presents, by Nellie A. Horace

In the State aforesaid

(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 Nellie A. Horace, her heirs and assigns the following described property to wit:

No. 1. All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fewell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 13 July, 1963, recorded in Plat Book 24, at page 173, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake running thence S. 29-42W. 291.5 feet to the beginning point. This being the identical property conveyed to Charles J. Bailey, by A. F. Fewell and Edward Fewell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the office of the Clerk of Court for York County, South Carolina.

No. 2. All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Portion of Property of A. F. Fewell and Ed Fewell, Jr., Prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, at page 7, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more

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complete description.

The above described property being the identical property conveyed from W. A. Bigham to William L. Horace and Nellie A. Horace by Deed dated April 15, 1971, and recorded April 26, 1971, in Deed Book 417, page 504.

It is agreed by the parties hereto that the mortgagors will pay with each installment an amount equal to one-twelfth (1/12) of the annual real estate tax and hazard insurance premium along with and in addition to payments of principal and interest.

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 Nellie A. Horace, her

Heirs and Assigns forever.

And I do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said Nellie A. Horace, her Heirs and Assigns against me and my Heirs and all other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness my Hand and Seal this 2nd day of March in the year of our Lord one thousand nine hundred and seventy-four and in the one hundred and year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered in the presence of

*William L. Horace* (SEAL)

*William B. Lytle*  
*Charles G. Lytle*

\_\_\_\_\_ (SEAL)

THE STATE OF SOUTH CAROLINA.  
YORK COUNTY.

PERSONALLY APPEARED before me Kathleen B. Lytle, a witness, and  
made oath that s/he saw the within named William L. Horace

sign, seal and as his act and deed, deliver the within Written Deed; and that s/he with  
Oliver A. Lytle, the other witness, was present and witnessed the execution thereof.

Sworn to before me this 2nd day of March A.D. 19 74  
[SEAL] [Signature]  
Notary Public for S.C.  
My Commission Expires: December 30, 1980

[Signature]  
Depositing Witness

THE STATE OF SOUTH CAROLINA.  
YORK COUNTY

GRANTEE IS WIFE OF GRANTOR  
**RENUNCIATION OF DOWER**

I,

Notary Public  
do hereby certify unto all whom

it may concern, that Mrs.

the wife of the within named

did this day appear before me, and upon being privately and separately examined by me, did declare  
that she does freely, voluntarily, and without compulsion, dread or fear of any person or persons  
whomever, renounce, release, and forever relinquish unto the within named

Haire and Assigns, all her interest and estate, and also her  
right and claim of Dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this

day of A.D. 19

[SEAL] [Signature]  
Notary Public for S.C.

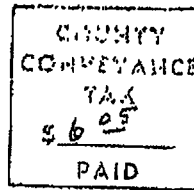
(See Affidavit)

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

(See Affidavit)

TITLE TO REAL ESTATE NO. 101

PRINTED BY WHITE PRINTING COMPANY,  
ROCK HILL, S. C.



FILED & RECORDED  
BOOK 26 7 52 AM '71  
THAD L. CARROLL  
C. C. F. & S.  
YORK COUNTY, S. C.

KNOW ALL MEN BY THESE PRESENTS, That

I, W. A. Bigham

in the State aforesaid, for and in consideration of the sum of

----- FULL VALUE -----

to me in hand paid at and before the sealing of these presents, by

William L. Horace and Nellie A. Horace

in the State aforesaid

(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 William L. Horace and Nellie A. Horace, their heirs and assigns, the following described real estate, to-wit:

No. 1: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fowell, Jr., prepared by E. H. Maret, Reg. Surveyor, June 28, 1932, Addition 10 Sept. 1932, Addition 12 July 1933, recorded in Plat Book 24, at Page 173, in the office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: Beginning at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 50-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-43 W. 201.5 feet to the beginning point. This being the identical property conveyed to Charles J. Bailey, by A. F. Fowell and Edward Fowell, Jr., by Deed dated the 18th day of July, 1932, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing easements and rights of way.

No. 2: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 18 on Map of A Portion of Property of A. F. & Ed Fowell, Jr., prepared by E. H. Maret, Reg. Surveyor, June 28, 1932, recorded in Plat Book 23, at Page 7, in the office of the Clerk of Court for

514

York County, South Carolina, to which Plat reference is hereby made for a more complete description.



The above described property is conveyed subject to the Water Rights granted to the Wateree Power Company by Madison Hill by Deeds recorded in Deed Book 84 at Page 617, and Deed Book 84, at Page 313, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of Way.

It being understood that the Grantees herein, their heirs and assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantors herein, A. F. Fowell and Edward Fowell, Jr.

It being further understood that the Grantees herein, their heirs and assigns, shall have the right to use the private road shown on the above mentioned plat as a means of ingress and egress from the County Road to said lot herein conveyed.

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 William L. Horace and Nellie A. Horace, their Heirs and Assigns forever,

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said William L. Horace and Nellie A. Horace, their Heirs and Assigns against me and my Heirs and all other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness my Hand and Seal this 15th day of April in the year of our Lord one thousand nine hundred and Seventy-one and in the one hundred and 95th year of the Sovereignty and Independence of the United States of America,

Signed, sealed and delivered in the presence of

*W. A. Pugh* [SEAL]

*[Signature]*  
*[Signature]*

..... [SEAL]

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

PERSONALLY APPEARED before me Martha P. Adams, a witness, and  
made oath that she saw the within named W. A. Bigham

sign, seal and as his act and deed, deliver the within Written Deed; and that she with  
Richard O. Lewis, the other witness, was present and witnessed the execution thereof.

Sworn to before me this 15th day of  
April, A. D. 19 71.

[Signature]  
Notary Public for S. C.  
My Commission Expires: 12-23-70

[Signature]  
Deposing Witness

THE STATE OF SOUTH CAROLINA,  
YORK COUNTY

RENUNCIATION OF DOWER

I, Richard O. Lewis

Notary Public

do hereby certify unto all whom

it may concern, that Mrs. Mary A. Bigham  
the wife of the within named W. A. Bigham  
did this day appear before me, and upon being privately and separately examined by me, did declare  
that she does freely, voluntarily, and without compulsion, dread or fear of any person or persons  
whomsoever, renounce, release, and forever relinquish unto the within named William L. Horace  
and Nellie A. Horace, their Heirs and Assigns, all her interest and estate, and also her  
right and claim of Dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this 15th  
day of April, A. D. 19 71.

[Signature]  
Notary Public for S. C.  
My Commission Expires: 12-23-70

[Signature]  
Mary A. Bigham



STATE OF SOUTH CAROLINA,

YORK COUNTY

Known All Men by These Instruments

That We, A. F. Fowell and Edward Fowell, Jr.,

of the County of York,

in consideration of the sum of Five and no/100 (\$5.00) in the State of South Carolina, and other valuable consideration,

to the grantor(s) in hand paid at and before the sealing of these presents by the grantee (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 Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property: ALL that certain piece, parcel or tract of land lying, being and situate in Summerville Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of A Partition of Property of A. F. & Ed Fowell, Jr., prepared by R. H. Moritt, Notary, June 28, 1962, recorded in Plat Book 23, at Page 7, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property is conveyed subject to the Water Rights granted to the Wateree Power Company by Madison Hill by Deeds recorded in Deed Book 54, at Page 617, and Deed Book 64, at Page 313, in the Office of the Clerk of Court for York County, South Carolina, and to existing Easements and Rights-of-Way.

It being understood that the Grantee herein, His Heirs and Assigns, shall have access to the Backwater in the cove on which the above described property is located, subject to rights of the Wateree Power Company, or its Successors, and other Grantees from the Grantee herein, A. F. Fowell and Edward Fowell, Jr.,

It being further understood that the Grantee herein, His Heirs and Assigns, shall have the right to use the Private Road shown on the above mentioned Plat as a means of ingress and egress from the County Road to said Lot herein conveyed.



FILED & RECORDED  
MAR 11 2 1963  
S. C. A. S. S.  
YORK COUNTY, S.C.

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinabove named, and His Heirs and Assigns forever.

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

Witness the grantor(s)'s hand and seal of this 2nd day of March, in the year of our Lord One Thousand Nine Hundred and Sixty-Five.

Signed, Sealed and Delivered in the Presence of

*[Signature]*  
*[Signature]*

*[Signature]* (Seal)  
A. F. FOWELL (Seal)  
*[Signature]* (Seal)  
EDWARD FOWELL, JR. (Seal)  
(Seal)  
(Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris H. Bushua

and made oath that she saw the within named grantor(s), A. F. Fowell and Edward Fowell, Jr., sign, seal and do their act and deed before the within written deed, and that she, with John Gates Woods, witnessed the execution thereof.

Subscribed to before me this 2nd day of March, A. D. 1965.

*[Signature]* (Seal)  
Notary Public for South Carolina

*[Signature]*

State of South Carolina,

YORK County

RENUNCIATION OF DOWER

I, Doris D. Bushua, Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Louise Peace Fowell and Mrs. Doris H. Fowell, wives of the within named A. F. Fowell and Edward Fowell, Jr., respectively, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, threat or fear of any person or persons whatsoever, renounce, release, and forever relinquish unto W. A. Bigham, His Heirs and Assigns, all her future and estate.

and all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

*[Signature]* (Seal)  
Notary Public for South Carolina

*[Signature]*  
MRS. LOUISE FOWELL  
*[Signature]*  
MRS. DORIS H. FOWELL

334/414

## STATE OF SOUTH CAROLINA,

(See Affidavit)

YORK COUNTY

Known All Men by Their Presents

That I, Charles J. Bailey,

of the County of York, -----

in the State aforesaid,

in consideration of the sum of One and no/100 (\$1.00)----- DOLLARS,

to the grantor(s) in hand paid at and before the sealing of these presents by the grantor(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee herein, W. A. Bigham, His Heirs and Assigns, the following described property:

All that certain piece, parcel or tract of Land, lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 Acres, more or less, and being designated as Lot No. 16a on Map of A Partition of Property of A. F. & Ed Fowall, Jr., prepared by R. H. Marrett, Reg. Surveyor, June 24, 1962, Addition 10 Sept. 1962, Addition 12 July 1963, recorded in Plat Book 24, at Page 173, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows:

BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-42 W. 291.5 feet to the beginning point.

This being the identical property conveyed to Charles J. Bailey, Grantor herein, by A. F. Fowall and Edward Fowall, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing Easements and Rights-of-Way.

TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the premises hereabove described, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantor(s) hereabove named, and His----- Heirs and Assigns forever.

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

Witness the grantor(s)'s hand and seal this 5th ----- day of March, ----- to the year of our Lord One Thousand Nine Hundred and Sixty-Elve.

Signed, Sealed and Delivered in the Presence of

*David A. Bigham*  
*Charles J. Bailey*  
 -----  
 -----  
 -----

*Charles J. Bailey* (Seal)  
 CHARLES J. BAILEY (Seal)  
 ----- (Seal)  
 ----- (Seal)  
 ----- (Seal)  
 ----- (Seal)

State of South Carolina,

Personally appeared before me Doris D. Rustine

YORK County

and made oath that she saw the within named grantor(s), Charles J. Bailey, sign, seal and as his----- and deed deliver the within written deed, and that she, with John Cates Woods ----- witnessed the execution thereof.

Given to before me this 5th  
 day of March, A. D. 1965.  
*David A. Bigham* (Seal)  
 Notary Public for South Carolina

State of South Carolina,

RENUNCIATION OF DOWRY

YORK County

I, John Cates Woods, ----- Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Evelyn B. Bailey, ----- wife of the within named Charles J. Bailey, ----- did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release, and forever relinquish unto W. A. Bigham, His-----

Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 5th  
 day of March, A. D. 1965.  
*David A. Bigham* (Seal)  
 Notary Public for South Carolina

*Mrs. Evelyn B. Bailey*  
 MRS. EVELYN B. BAILEY  
 -----  
 -----

334/410

STATE OF SOUTH CAROLINA,

YORK COUNTY

Know All Men by These Presents:

That We, A. P. Fennell and Edward Fennell, Jr.,

of the County of York, in the State aforesaid  
in consideration of the sum of Five and no/100 (\$5.00) ----- DOLLARS,  
and other valuable consideration,  
to the grantor(s) in hand paid at and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said  
grantee(s), Charles J. Bailey, His Heirs and Assigns, the following described property:  
All that certain piece, parcel or tract of land lying, being and situate in Everses  
Community, County of York, State of South Carolina, on the backwater of Little Addison Creek,  
containing 0.37 acres, more or less, and being designated as Lot 10, 16a on Map of A Portion  
of the County of York, prepared by R. H. Barrett, Reg. Surveyor, June 28, 1962,  
dated 30 Sept. 1962, addition 12 July 1963, to be recorded in the Office of the Clerk of  
Court for York County, South Carolina, to which that reference is hereby made, and being more  
particularly described as follows:  
BEING 1/2 of a block on edge of Private Road, joint corner of Lot Nos. 16a and 17a,  
surrounding thence with the Private Road N. 35-43 E. 140 feet and N. 41-40 E. 102.2 feet to a  
stake; thence thence N. 19-04 W. 117.8 feet to a stake; running thence S. 29-42 W. 291.5  
feet to the beginning point.

The above described property is conveyed subject to existing Easements and Rights-  
of-way.



FILED & RECORDED  
JUN 31 4 51 PM '63  
C. C. R. & S. C.  
YORK COUNTY, S. C.

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 grantor(s) hereinabove named,  
and His ----- Heirs and Assigns forever.

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

Witness the grantor(s) hand and seal this ----- day of July, ----- in the year  
of our Lord One thousand Nine hundred and 63.

Signed, Sealed and Delivered in the Presence of

*[Signature]*  
-----  
-----  
-----  
-----

*[Signature]* (Seal)  
*[Signature]* (Seal)  
----- (Seal)  
----- (Seal)  
----- (Seal)

State of South Carolina, /

County, /

Personally appeared before me Notary Public, J. H. King -----

and made with that she saw the within named grantor(s), A. P. Fennell and Edward Fennell, Jr., -----  
deliver the within written deed, and that she, with -----  
Sworn to before me this ----- day of ----- A. D. 1963.  
Notary Public for South Carolina

*[Signature]* (Seal)  
-----

State of South Carolina,

County

RENUNCIATION OF DOWER

I, Jean Doran Fennell,

Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Louise Peace Fennell and Mrs. Doran Fennell, wives  
of the within named A. P. Fennell and Edward Fennell, Jr., respectively,  
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely  
voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever  
relinquish unto Charles J. Bailey, His -----  
Heirs and Assigns, all her interest and estate

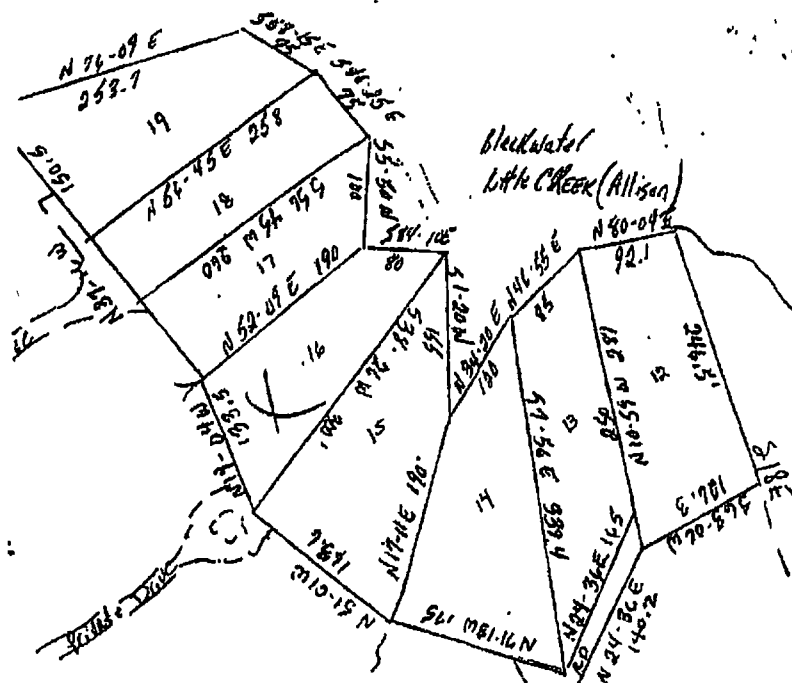
and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released

under my hand and seal this ----- day of ----- A. D. 1963.  
*[Signature]* (Seal)  
Notary Public for South Carolina

*[Signature]*  
-----  
*[Signature]*  
-----

314/348





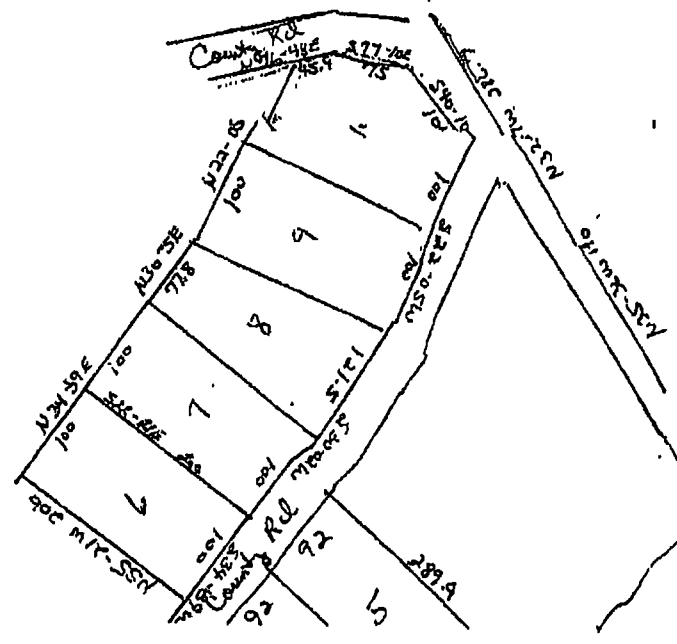
Atk 23 10 7  
Rec.  
8-20-62

Portion of Prop  
of AF + Ed Marshall  
2d  
1-100  
6-28-62  
RH Marshall

Portion of Prop  
of A.F + Ed Marshall  
York County, SC  
RH Marshall 6-28-62

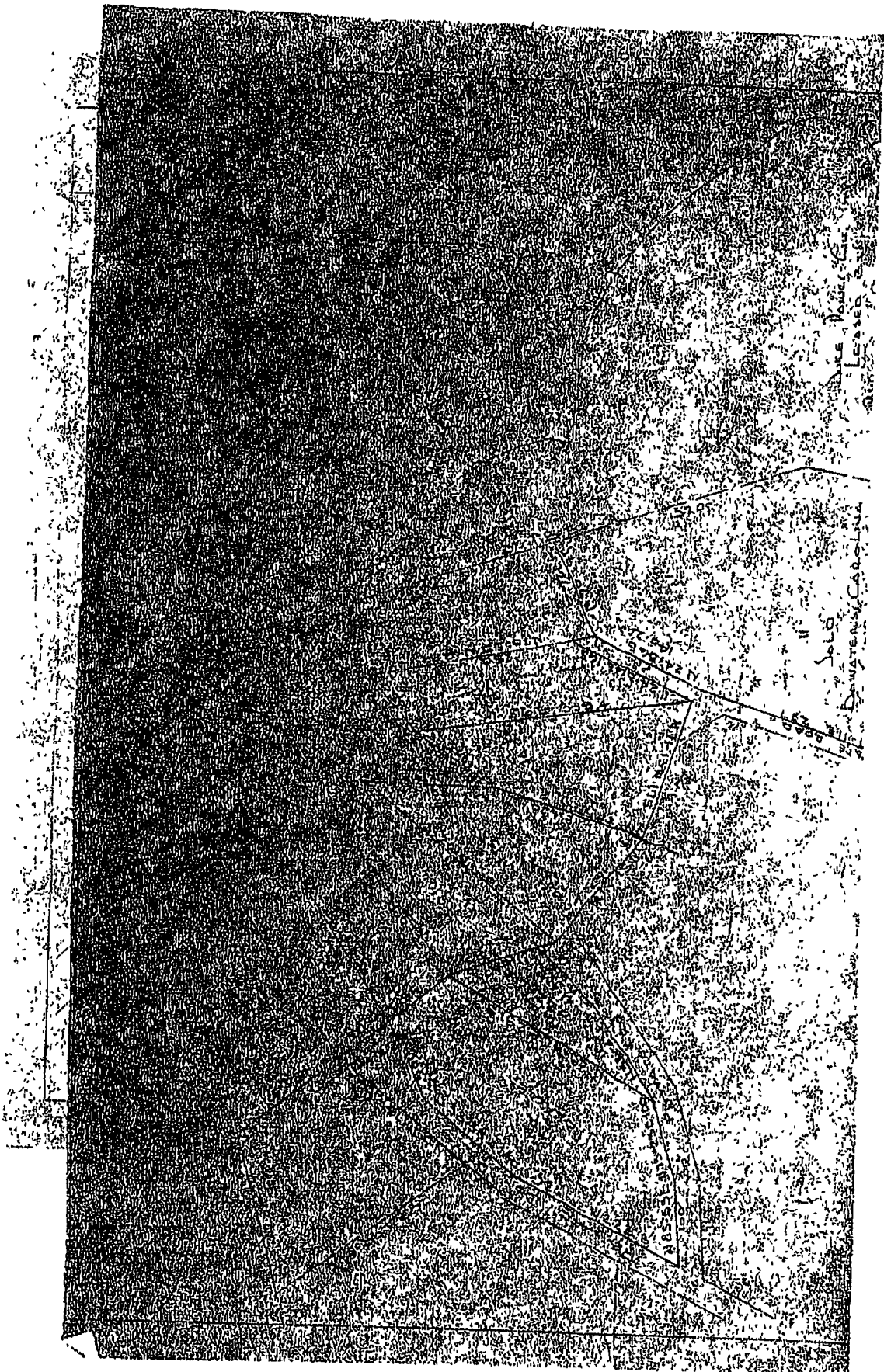
Sold  
Bowder

Duke  
Leased  
By  
Bowder



2317

Allison



24/172-173

110

TITLE TO REAL ESTATE, State of South Carolina, York County

STATE OF SOUTH CAROLINA,

YORK COUNTY

(See Affidavit)

Known All Men by These Presents:

That Charles J. Bailey, of the County of York, in consideration of the sum of One and no/100 (\$1.00) in the State aforesaid, DOLLARS,

to the grantor in hand paid at and before the sealing of these presents by the grantee (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 Grantor herein, W. A. Bigham, His Heirs and Assigns, the following described property:

All that certain piece, parcel or tract of land lying, being and situate in Phoenix Township, County of York, State of South Carolina, on the Backwater of Little Allison Creek, containing 0.32 Acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of A. F. & Ed Fawell, Jr., prepared by R. H. Marrett, Reg. Surveyor, June 28, 1962, Addition 10 Sept. 1962, Addition 12 July 1963, recorded in Plat Book 24, at Page 173, in the Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made; and being more particularly described as follows:

BEING/BEING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 56-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-04 W. 111.8 feet to a stake; running thence S. 29-44 W. 291.5 feet to the beginning point.

This being the identical property conveyed to Charles J. Bailey, Grantor herein, by A. F. Fawell and Edward Fawell, Jr., by Deed dated the 18th day of July, 1963, recorded in Deed Book 314, at Page 348, in the Office of the Clerk of Court for York County, South Carolina.

The above described property is conveyed subject to existing Easements and Rights-of-Way.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the premises belonging, or in anywise incident or appertaining TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee hereinabove named, and His - - - Heirs and Assigns forever.

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

Witness the grantor(s) hand and seal this 5th day of March, in the year of our Lord One Thousand Nine Hundred and Sixty-Five.

Signed, Sealed and Delivered in the Presence of

David A. Bushua  
David A. Bushua

Charles J. Bailey (Seal)  
CHARLES J. BAILEY (Seal)  
(Seal)  
(Seal)  
(Seal)  
(Seal)

State of South Carolina,

YORK County

Personally appeared before me David D. Bushua

and made oath that she saw the within named grantor(s), Charles J. Bailey, sign, seal and as his - - - not and deed deliver the within written deed, and that she, with John Carter Woods - - - witnessed the execution thereof.

Sworn to before me this 5th day of March, A. D. 1965.  
David A. Bushua (Seal)  
Notary Public for South Carolina

State of South Carolina,

YORK County

RENUNCIATION OF DOWER

I, John Carter Woods, Notary Public, do hereby certify

unto all whom it may concern, that Mrs. Evelyn B. Bailey, wife of the within named Charles J. Bailey, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release, and forever relinquish unto W. A. Bigham, His Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 5th day of March, A. D. 1965.  
John Carter Woods (Seal)  
Notary Public for South Carolina

Evelyn B. Bailey  
EVELYN B. BAILEY

334/46

3

TITLE TO REAL ESTATE, Short Form V C 9728  
Official Use Only - Not to be used in the preparation of a deed.

(See Appendix 16)

STATE OF SOUTH CAROLINA,

YORK COUNTY

Know All Men by These Presents:

That We, A. F. Fowell and Edward Sewell, Jr.,

of the County of York, in the State aforesaid, in consideration of the sum of Five and no/100 (\$5.00) and other valuable consideration, to the grantor(s) in and unto the sealing of these presents by the grantor(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee herein, Charles J. Bailey, His Heirs and Assigns, the following described property: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Alderson Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16a on Map of A Portion of Property of L. F. A. Fowell, Jr., prepared by R. H. Karuff, Reg. Surveyor, June 28, 1962, Addition 10 Sunc, 1962, Addition 12 July 1962, to be recorded in the Office of the Clerk of Court for York County, South Carolina, to which said reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lot Nos. 16a and 17a, running thence with the Private Road N. 30-43 E. 140 feet and N. 41-40 E. 102.2 feet to a stake; running thence N. 19-34 W. 112.8 feet to a stake; running thence S. 79-42 E. 291.5 feet to the beginning point.

The above described property is conveyed subject to existing Easements and Rights-of-way.



FILED & RECORDED  
JUL 31 4 01 PM '63  
C.C.F. & S.  
YORK COUNTY, S.C.

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantee(s) hereinafter named, and His Heirs and Assigns forever.

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

Witness the grantor(s)'s hand and seals this 28th day of July, 1963, in the year of our Lord One Thousand Nine Hundred and Sixty-three.

Signed, Sealed and Delivered in the Presence of

David A. Bussie  
Notary Public for South Carolina

A. F. Fowell (Seal)  
Edward Sewell, Jr. (Seal)  
Charles J. Bailey (Seal)

State of South Carolina,

YORK County

Personally appeared before me Doris H. Fowell

and made oath that she is the within named grantor(s), A. F. Fowell and Edward Sewell, Jr., and that she, with her husband, do(es) hereby sign, seal and as witnesses act and deed, sworn to before me this 28th day of July, 1963, A.D. 1963.

Notary Public for South Carolina

David A. Bussie  
Notary Public for South Carolina

State of South Carolina,

YORK County

RENUNCIATION OF DOWER

I, Doris H. Fowell,

Notary Public do hereby certify

unto all whom it may concern, that Mrs. Louise Fowell Fowell and Mrs. Doris H. Fowell, wives of the within named A. F. Fowell and Edward Sewell, Jr., respectively, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto Charles J. Bailey, His Heirs and Assigns, all her dower and estate.

and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Witness my hand and seal this 28th day of July, 1963, A.D. 1963.  
David A. Bussie  
Notary Public for South Carolina

Mrs. Louise Fowell Fowell  
Mrs. Doris H. Fowell  
Doris H. Fowell

314/318



D2-392

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Benjamin M. Fewell and Alexander P. Fewell, Jr. (hereinafter whether singular or plural the "Grantors") in the State aforesaid, for and in consideration of the sum of Thirty-Five Thousand Dollars and No/100 Dollars (\$35,000.00) to the Grantor in hand paid at and before the sealing of these presents by Earl C. Dukes P.O. Box 4587, Rock Hill, SC 29732 (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee their heirs and assigns the following described real property:

RECORDED  
YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 5-22-07  
TAX MAP NO.           
INITIALS AC / d/n

000070011  
RECORDED 05/22/2007 07:21:30AM  
Bk104386 Pg100159 Pages 44  
Fee: 10.00 State: 191.00  
County: 30.50 Exempt:           
David Hamilton, Clerk of Court  
York County, SC

SEE ATTACHED EXHIBIT A

This conveyance is made subject to all easements, restrictions, and rights of way, if any, appearing of record in the chain of title of the subject property or visible upon an actual, physical inspection of the subject property.

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto said Grantee, Earl C. Dukes his heirs and assigns forever.

BK104386 PG0159



And the Grantors do hereby bind themselves and their Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said Grantee and the Grantee's Heirs and Assigns against the Grantor and Grantors' heirs and assigns and all other persons whomsoever lawfully claiming, or to claim, the same, or any part thereof.

WITNESS the HAND AND SEAL OF THE GRANTOR this 1st day of March in the year of our Lord two thousand two.

Signed, sealed and delivered in the presence of:

Jan I. Hunt

Benjamin M. Fewell  
Benjamin M. Fewell

M. H. [Signature]

Alexander F. Fewell, Jr.  
Alexander F. Fewell, Jr.

STATE OF South Carolina

PROBATE

COUNTY OF York

PERSONALLY APPEARED before me the undersigned witness and made oath that he saw the within named Benjamin M. Fewell and Alexander F. Fewell, Jr. sign, seals and as his act and deed, deliver the within written deed; and that he with the other witness above named witnessed the execution thereof.

Sworn to before me this 1st day of March, 2002.

Jan I. Hunt

M. H. [Signature]  
NOTARY PUBLIC FOR South Carolina  
My commission expires: 6-6-07

2K04338 PDU160

EXHIBIT A

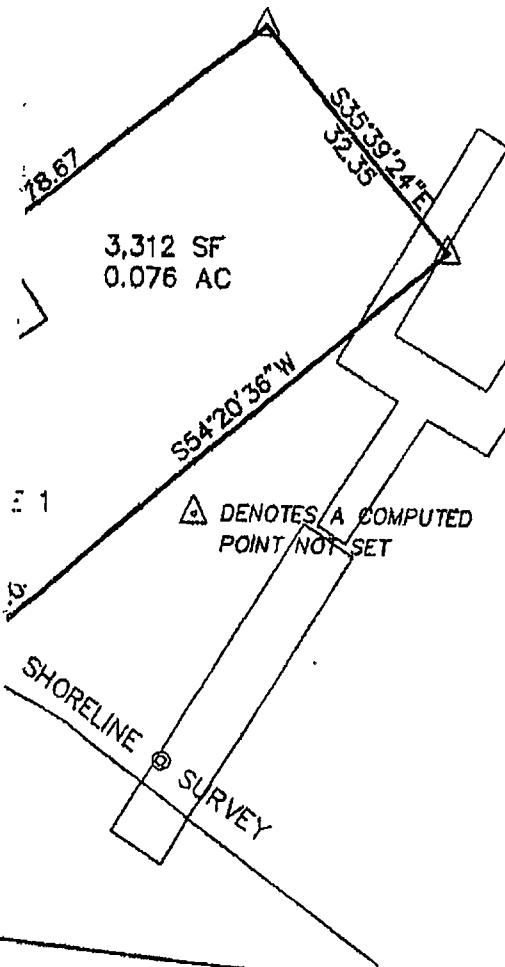
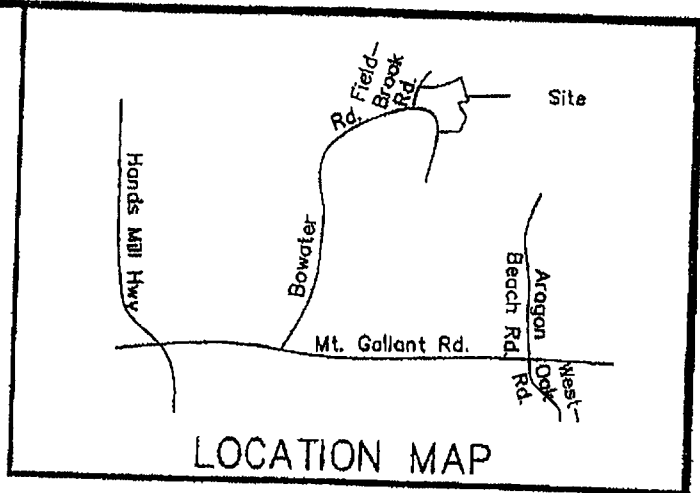
All that certain piece, parcel or lot of land lying, being and situate in Ebenezer Township, York County, South Carolina, and being shown and designated as a 1.28 acre tract of land in Lake Wylie, Allison Creek, as shown on Plat of Property of A. F. Fewell, prepared by J. B. Fisher, SCRLS, dated April 3, 1992 and recorded in the Office of the Clerk of Court for York County in Plat Book B-318, Page 9. Reference is hereby made to said plat for a more complete description.

ALSO: All that certain piece, parcel or lot of land lying, being and situate in Ebenezer Township, York County, South Carolina, and being shown and designated as 3.81 acres, being a Plat of Property Surveyed for Earl C. Dukes and dated February 22, 2002 drawn by Hucks and Associates, PC recorded in Plat Book C-67, Page 3. And being more particularly described according to said plat as follows: Beginning at a point on Bowater Road and running with the curve of Bowater Road (R=469.83) for a distance of 544.22 feet to a point; thence curving (R=469.83) for a distance of 110.58 feet; thence turning and running N. 03-01-39 W. 41.66 feet to a point; thence running with the curve of Fieldbrook Road (R=255.37) for a distance of 192.38 feet to a point; thence turning and running N. 86-34-55 E. 100.15 feet to a point; thence running N. 74-07-54 E. 99.86 feet to a point; thence running N. 58-09-18 E. 139.84 feet to a point; thence turning and running N. 42-12-24 E. 94.39 feet to a point; thence turning and running S. 16-54-24 E. 21.59 feet to a point; thence running S. 49-07-43 E. 162.71 feet to a point; thence turning and running S. 18-32-50 W. 50.05 feet to a point; thence turning and running S. 69-29-58 E. 108.39 feet to a point; thence turning and running S. 25-16-46 E. 93.10 feet to a point; thence turning and running N. 18-53-11 E. 114.97 feet to a point; thence running N. 26-28-06 E. 165.01 feet to a point; thence turning and running N. 08-59-40 W. 31.02 feet; thence turning and running S. 26-19-01 W. 140.26 feet to a point; thence running S. 18-56-01 W. 276.94 feet to a point; thence running N. 12-35-37 E. 48.84 feet to the point of beginning.

DERIVATION: This property conveyed to Benjamin M. Fewell, Alexander F. Fewell, Jr. Margaret Fewell Kemp, and Peace Fewell Gaston by deed of distribution of the Estate of Alexander Faulkner Fewell, Sr. recorded March 9, 2001 in Book 3489, Page 35 in the Office of the Clerk of Court for York County. This being a portion of the property conveyed to Benjamin F. Fewell and Alexander F. Fewell, Jr. by deed from Margaret Fewell Kemp and Peace Fewell Gaston dated December 9, 2001 and recorded 5-22, 2001 in Book 436 At Page 47 In the Office of the Clerk of Court for York County, South Carolina.

SK04033 P00161

EARL DUKES  
 TM 547-00-00-057  
 DB 4386 PG 159  
 PB B139 PG 9



LAKE WYLIE

This property lies within a Zone AE area as designated on Federal Insurance Rate Map, Community Panel:45091C0189E dated Sept 26, 2008.

NEW lot lines or parcels have been created.

See Reference plat Recorded in Plat Book B319 on Page 9.

I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.

TERRY J. HUCKS PLS  
 SC 11061B

|                                                                                                                                                                  |                       |                   |                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------|----------------|
| RECOMBINATION SURVEY FOR<br><b>MARTIN BOGDANOVICH</b><br>A PORTION OF TM 547-57 TO BE COMBINED WITH TM 547-52<br>EBENEZER TOWNSHIP<br>YORK COUNTY SOUTH CAROLINA |                       |                   |                |
| <b>HUCKS and ASSOCIATES, PC</b><br>Land Surveyors and Land Planner<br>5212 Hampton Ridge Road<br>Rock Hill, South Carolina<br>803-366-4677 803-366-4128          |                       |                   |                |
| SCALE:<br>1" = 20'                                                                                                                                               | DATE:<br>FEB. 8, 2013 | FILE NO:<br>13012 | CHK BY:<br>TWH |





SANDRA MCDANIEL  
TM 547-00-00-054  
DB 12594 PG 75  
PB 126 PG 10

NOTES  
1. THIS PORTION OF TAX PARCEL  
457-57 TO BE COMBINED WITH AND  
MADE PART OF TM 457-52.

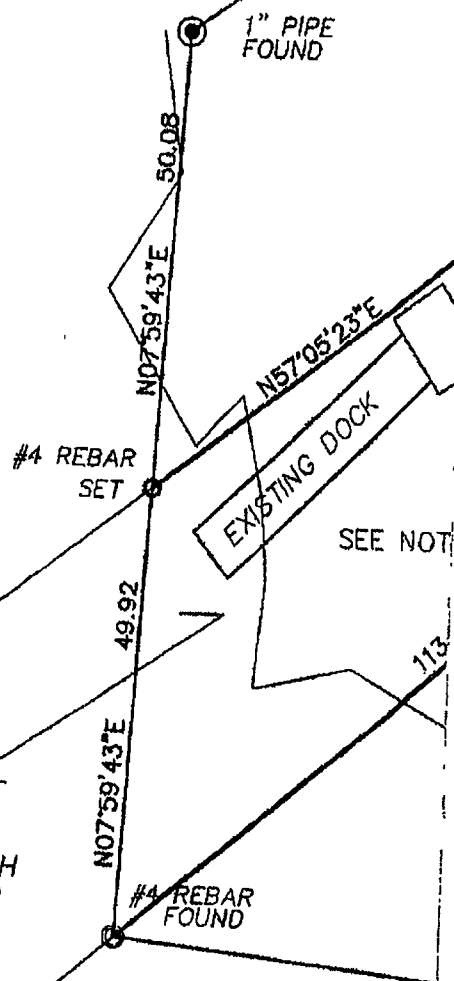
MARTIN BOGDANOVICH  
TM 547-00-00-052  
DB 11917 PG 109  
PB 50 PG 158

KENNETH FARREL  
TM 547-00-00-  
DB 7331 PG 102  
PB D18 PG 9

GRAPHIC SCALE



( IN FEET )  
1 inch = 20 ft.



1 STATE OF SOUTH CAROLINA

2 COUNTY OF YORK

COURT OF COMMON PLEAS

3  
4 Earl C. Dukes,

5 Plaintiff,

6 vs.

CASE NO. 2011-CP-46-03182

7 Kenneth W. Farrell,

8 Mary C. Farrell, et al

9 Defendants.

10  
11  
12 October 17, 2013  
13 York, South Carolina

14 BEFORE: Honorable Jackson Kimball, III

15 APPEARANCES:

16 J. Cameron Halford Esq.,  
17 Attorney for Plaintiff.

18 John Martin Foster, Esq.,  
19 Attorney for Defendant.

20 Walter L. Heinsohn, Esq.,  
21 Attorney for Defendant.

22  
23  
24 (NO EXHIBITS INTRODUCED)  
25

1 THE JUDGE: This is the case of Earl Dukes  
2 against Farrell and others.

3 If I am correct, the only motion I have  
4 here today is the one, if we hear it at all, is  
5 the one against Farrell's. The Farrell's  
6 counterclaim.

7 Mr. Foster, do you want to put something  
8 on the record about hearing this motion without  
9 notice?

10 MR. FOSTER: Yes.

11 THE JUDGE: Let me say this before we  
12 start. Upon receiving the e-mails that raised  
13 that question, I went through the file and there  
14 is an original certificate of service by mail  
15 only upon Mr. Foster as counsel for the  
16 Farrell's that is in the Clerk of Court's file  
17 and it indicates mailing to Mr. Foster's  
18 address.

19 MR. FOSTER: Assuming that your pause  
20 there is implying something that I should be  
21 adding to that.

22 THE JUDGE: No.

23 MR. FOSTER: I didn't mean that in a  
24 negative sense. I wish to go forward and say  
25 that to my knowledge we do not have a copy.

1 THE JUDGE: I don't doubt you.

2 MR. FOSTER: I have gone through the  
3 e-mails. I have hoped carefully enough. I do  
4 not dispute we knew of a motion because  
5 Mr. Halford properly and professionally sent me  
6 notice that said one was going to be filed. It  
7 is my understanding, your Honor, and the only  
8 case which I can find on this matter, and I hope  
9 I am handing up the right one.

10 THE JUDGE: Mr. Foster, here is what I am  
11 looking at. I am looking at the original filed,  
12 Plaintiff's Notice of Motion and Motion for  
13 Summary Judgment as to Defendant Farrell  
14 Counterclaims addressed to John Martin Foster,  
15 Esquire.

16 MR. FOSTER: Yes, sir.

17 THE JUDGE: At the end of the memo in  
18 support of that motion is a certificate of  
19 service that says -- I am not going to read it  
20 in the record but to serve a copy of the motion  
21 for summary judgment deposited in United States  
22 mail, postage prepaid, address as follows: John  
23 Martin Foster, Esquire, the Guardian Building,  
24 223 East Main Street, Suite 520.

25 MR. FOSTER: Which is my address, yes,



1           sir.

2           THE JUDGE: I certainly don't doubt your  
3 word that you do not have in your file a copy of  
4 motion, but the rule calls for service by mail  
5 to be effective upon mailing.

6           MR. FOSTER: Yes, sir. My argument, sir,  
7 over and above the fact that I can only assert,  
8 which I did not have until yesterday, is that  
9 the rule also requires under 53(b) a motion to  
10 be served upon all parties, and we have no proof  
11 that occurred. Not only do we not have any  
12 proof, no proof of that, but as I understand of  
13 5(e), there is a requirement of proof of service  
14 on that fact be served on all parties.

15           THE JUDGE: I am willing to assume, based  
16 on what I am looking at, that it was not served  
17 on all parties.

18           MR. FOSTER: Mr. Heinsohn was here today,  
19 being perhaps more careful than I would be in  
20 the situation, told me yesterday that he had not  
21 been. In fact, that's how this arose.

22           THE JUDGE: Let me repeat. I am assuming  
23 that the motion was not served on all parties.

24           MR. FOSTER: Okay. So that is my basis  
25 for saying I do not believe we are properly here

1 on this motion.

2 THE JUDGE: Mr. Halford.

3 MR. HALFORD: May it please the Court,  
4 Madam Court Reporter.

5 THE JUDGE: About that, about the time  
6 limits of notice and hearing of the motion.

7 MR. HALFORD: Yes, sir. A lot of this  
8 was drafted outside of my office due to reasons  
9 I had to travel. I have an e-mail serving all  
10 attorneys in this case including Mr. Heinsohn  
11 and Mr. Foster on June 19th. I point out to the  
12 Court that this case reached number one with the  
13 trial roster during the month of July and  
14 shortly after that time we requested --

15 THE JUDGE: Was it a jury trial?

16 MR. HALFORD: No.

17 THE JUDGE: Is it here?

18 MR. HALFORD: No, and I will get to that  
19 in just a minute. I think the Court is  
20 presented with a pure question of law today.  
21 Going back to the service issues and his  
22 arguments under 5(b)(3) and 5(b). Your Honor, I  
23 do have an e-mail where we sent this to  
24 Mr. Homer, who I spoke to yesterday in e-mail,  
25 Mr. Heinsohn who is here, and Mr. Poore also and

1 Mr. Foster. So he not only got it by or failed  
2 to get it by mail, he apparently didn't get the  
3 e-mail either. But I did serve it.

4 To the extent the Court calls it a strike  
5 and I neglected to place on the certificate of  
6 service, these gentlemen I am not directly  
7 adverse to them, but there is on the certificate  
8 of service that you have seen, and I only named  
9 Mr. Foster. My motion is only directly adverse  
10 to him and I did serve all the parties and they  
11 have had it since June 19th.

12 THE JUDGE: Mr. Foster, what you would  
13 have me say is that an uninterested party  
14 nevertheless needs to be served.

15 MR. FOSTER: That is the rule which I  
16 heard, your Honor.

17 THE JUDGE: Are there cases saying that?  
18 The rule says all parties must to be served.  
19 One can construe that a number of ways I  
20 understand the logic of what you say. It says  
21 all parties.

22 MR. FOSTER: The only case that I was able  
23 to find, and I will pass it up, is the United  
24 States Circuit out of the Ninth Circuit, which  
25 was faced with the issue similar, if I may, your

1 Honor. In that case, as I understand it, they  
2 hold a couple things. First of all, as I  
3 believe in that case, I believe they were  
4 dealing also with an e-mail which while I firmly  
5 agree with Mr. Halford, that that ought to be  
6 the rule, is not the rule, e-mail.

7 THE JUDGE: I don't think e-mail is  
8 sufficient.

9 MR. FOSTER: Well, then I have nothing  
10 more to say.

11 THE JUDGE: I don't disagree with that.  
12 Not yet anyway.

13 MR. FOSTER: Not yet. Although, every  
14 time I talk to the Clerk, I urge them to call  
15 Justice Toal and do what they can do.

16 My understanding is of Magnuson (phonetic  
17 spelling), I trust I am handing you up the right  
18 case. It is not a matter of showing prejudice.  
19 It is a matter of saying simply, here is the  
20 rule. It has not been followed.

21 THE JUDGE: What are the facts of this  
22 case?

23 MR. FOSTER: Would you like Mr. Halford --

24 THE JUDGE: No, of the case you handed me,  
25 Magnuson.

1           MR. FOSTER:   My understanding, sir, they  
2           involve a situation which like this the  
3           defending party said that they had not  
4           received -- that the matter had not been served  
5           upon them properly.

6           THE JUDGE:   Were they the object of the  
7           motion?

8           MR. FOSTER:   Yes. I believe, if I am  
9           correct, that in this case it involved Fed Ex,  
10          Federal Express for example.

11          THE JUDGE:   Some states permit that, and  
12          we don't.

13          MR. FOSTER:   Again, I will summarize. My  
14          understanding is that the holding in this case  
15          is --

16          THE JUDGE:   Here is what is important  
17          about this case. Does this case involve parties  
18          unaffected by the motion that was served?

19          MR. FOSTER:   I do not recall, sir.

20          THE JUDGE:   That's critical.

21          MR. FOSTER:   It may be. I am not  
22          disputing that, sir. This is the only case on  
23          point that I have been able to find.

24          THE JUDGE:   All right.

25          MR. FOSTER:   It does not get into the

1 question of the other parties.

2 THE JUDGE: I am going to hear the  
3 motion. I am going to hear the motion. Again,  
4 I accept what you say as true, but you have  
5 known as this issue has developed, you have been  
6 aware of the filing and service of the motion  
7 and I trust that they received a copy of it.

8 MR. FOSTER: Yesterday.

9 THE JUDGE: Not until yesterday?

10 MR. FOSTER: Yes, sir. The only one I can  
11 find is yesterday.

12 THE JUDGE: I am going to hear it. Go  
13 ahead, Mr. Halford.

14 MR. HALFORD: Thank you. May it please  
15 the Court. This was previously before your  
16 Honor probably well over a year ago. I don't  
17 recall the exact date. What we have is a cove  
18 on Bowater Road, and we have adjacent  
19 landowners. My client, the Plaintiff, owns  
20 property whose property lines were well marked  
21 and defined run under and into the waters of  
22 Lake Wylie. Mr. Foster's client acquired his  
23 estate.

24 THE JUDGE: So these are properties that  
25 were never acquired by -- what was the power

1 company, Southern Power?

2 MR. FOSTER: Wateree Power.

3 THE JUDGE: Wateree Power.

4 MR. HALFORD: Now Duke Power.

5 THE JUDGE: Are you telling me these are  
6 properties that never acquired?

7 MR. HALFORD: Yes, sir. They were never  
8 acquired by Duke Power or Wateree Power Company.  
9 These are parcels. What I am arguing today is  
10 the pure question of law.

11 THE JUDGE: I understand you are arguing  
12 that. I just want to be sure about the -- it is  
13 a pure question of law only if there is no  
14 dispute about the facts.

15 MR. HALFORD: That is correct, your  
16 Honor.

17 THE JUDGE: I am asking as a fact what the  
18 status of this property is since it has been  
19 flooded.

20 MR. HALFORD: I would point out that you  
21 are correct. I think the waters have been  
22 raised and lowered. The deed that Mr. Foster's  
23 client was conveyed if you trace it back, this  
24 is one of the first points I would bring up  
25 before your Honor. Both these gentleman who own

1 adjacent properties trace back to a common  
2 grantor.

3 I brought a case which I will be glad to  
4 deliver to the Court. It is recited in my  
5 brief. At the point that the property is  
6 conveyed, and Mr. Foster's client has held the  
7 property since the year 2005. I understand they  
8 are arguing adverse possession elements. What  
9 we have done, your Honor, is trace the property  
10 back, and in fact, both parcels, the cove, in  
11 fact, sprained from common grantors, A.F. Fuel  
12 (phonetic spelling), I believe it was in 1965.  
13 So under Exhibit A to our memorandum, which I  
14 forwarded up to your Honor, is the deed that  
15 conveys to Mr. Foster's client in the year 2005.  
16 I argue first and foremost, your Honor, they  
17 have not held title for the requisite period of  
18 time. What has occurred in this case --

19 THE JUDGE: What about tacking?

20 MR. HALFORD: I was about to go there.  
21 What has occurred in this case is you heard the  
22 term morpheme in the last oral argument before  
23 the Court. There is a dock, a pier, and it has  
24 become enlarged over time and changed over time.  
25 This dock attaches physically to the lands of my



1 client, Earl Dukes. It has been in use, and we  
2 don't deny it has been in use by Mr. Foster's  
3 client for some time. In fact, if you are going  
4 to consider the affidavits that were passed into  
5 the Court or filed with the Court Monday, the  
6 dock actually has been hit by a rogue boat and  
7 rebuilt.

8 None of that changes<sup>1</sup> my argument today,  
9 your Honor, on tacking. And to address exactly  
10 what the Court just asked me about, it would be  
11 impossible under South Carolina law under the  
12 case which I have cited, your Honor, which is  
13 the Windham case from the Supreme Court, that an  
14 easement which runs with the land or which would  
15 be appurtenant could have been created in 1965  
16 because the person creating that conveyance in  
17 the very first deed, and in their answer, your  
18 Honor, they allege either expressed easement or  
19 implied easement based on the grant in that  
20 deed, and that is attached, I believe, in  
21 Exhibit Number 1, your Honor, if you want to  
22 look at the language. I believe the language is  
23 actually starred for the Court.

24 At the time of the conveyance to a  
25 Mr. Bingham, which again is a predecessor in

1 title to Mr. Foster's client, or so they claim,  
2 the grantor owns both pieces of land. So A.F.  
3 Fuel and Eva Fuel own both the dominant and  
4 alleged servient. My clients would be alleged  
5 servient of the estate simultaneously.

6 THE JUDGE: Say that again.

7 MR. HALFORD: What I am saying, your  
8 Honor, is at the time of the grant of the deed  
9 to the predecessor in title, we are discussing  
10 the tacking of title, which is how their claims  
11 of express or implied easement arise under this  
12 lawsuit, there is a common grantor. That deed,  
13 and I will get into the specifics of the deed in  
14 just a moment, arises out of the conveyance by a  
15 person who also own the code in my client's  
16 property. So I argue under the Windham  
17 decision --

18 THE JUDGE: So you are saying that the  
19 deed, and I didn't understand that, the deed  
20 from A.F. Fuel --

21 MR. HALFORD: To W.F. Bingham.

22 THE JUDGE: To Bingham, which granted  
23 something.

24 MR. HALFORD: And I will address that.

25 THE JUDGE: Let me finish.

1 MR. HALFORD: Yes, sir.

2 THE JUDGE: Which granted something was  
3 granted to a person that already owned the  
4 property. That didn't make any sense. I am  
5 misunderstanding that somehow.

6 MR. HALFORD: The grantor owned both the  
7 alleged dominant and the servient estate.

8 THE JUDGE: That's what happens when you  
9 split an estate, isn't it? If you grant it and  
10 you give somebody right-of-way to get to their  
11 property, that's the way it works, is it not?  
12 Am I missing something?

13 MR. HALFORD: Well, what I would argue,  
14 your Honor, and this is what you will be  
15 deciding as an issue of law today under the  
16 Windham decision, it could not have possibly  
17 created an appurtenant easement. It created  
18 only an easement in gross.

19 THE JUDGE: You said it could not create  
20 one at all I thought I understood you to say.

21 MR. HALFORD: My apologies. We were  
22 arguing it could not have created an easement  
23 appurtenant which would pass down with the  
24 property. We are arguing it could only create  
25 an easement gross which would be pertinent to

1 the predecessor in title.

2 THE JUDGE: To be sure I am not confused  
3 about the facts.

4 Mr. Foster, tell me about the -- looking  
5 at what I looked at yesterday I saw a deed from  
6 Fuel to Bingham and through Bingham onto --

7 MR. FOSTER: Onto my folks.

8 THE JUDGE: To your client.

9 MR. FOSTER: Yes, sir.

10 THE JUDGE: Bingham didn't own the  
11 plaintiff's property.

12 MR. FOSTER: No, sir. The plaintiff's  
13 property was at that point largely or completely  
14 under water.

15 THE JUDGE: But it was granted to him by  
16 Fuel.

17 MR. FOSTER: What Bingham got, he got from  
18 Fuel.

19 THE JUDGE: What he got he got from Fuel.

20 MR. FOSTER: Right.

21 THE JUDGE: Go ahead, Mr. Halford.

22 MR. HALFORD: The second issue, and you  
23 are construing, your Honor, today that if it is  
24 alleged to be an easement, a pertinent easement,  
25 it nowhere references anything in the form of

1 waterfront dock, that does not reference the  
2 adjoining parcel who was at that time owned by  
3 A.F. Fuel and Edward Fuel, I believe. It  
4 doesn't even describe terminus, and your Honor  
5 is probably aware of this, that most people --  
6 that there is an easement created which is a  
7 pertinence that is going to pass with the land  
8 which is going to burden my client's estate, it  
9 has to have a terminus on it. It has to be very  
10 well defined. What this defines is pertinent  
11 right to access waters. It doesn't even mention  
12 a dock much less the subservient estate parcel  
13 which is owned by my client. I don't think it  
14 created a pertinent easement. I argue that it  
15 created an easement of gross which is personal  
16 to the owner at that time which to date have not  
17 passed.

18 THE JUDGE: How would you deal with the  
19 language that says it being understood with the  
20 grantee herein, his heirs and assigns shall  
21 have.

22 MR. HALFORD: I am sorry. Could you  
23 repeat that?

24 THE JUDGE: The grant, if it is one, says  
25 that it is for the benefit of the grantee who

1 was Bingham at that time and his heirs and  
2 assignors.

3 MR. HALFORD: You are correct. If it is  
4 an easement, your Honor, it would be an easement  
5 in gross which is the personal right for them to  
6 use waters of Lake Wylie. At the same time, the  
7 deed that you are construing right now nowhere  
8 references my client's parcel, which was by the  
9 way owned by a common grantor.

10 THE JUDGE: Keep going.

11 MR. HALFORD: Your Honor, the Windham case  
12 decided this and this was construed by the  
13 Supreme Court out of a similar case out of  
14 Orangeburg County. I will preface the case.  
15 The longstanding common law rule that easement  
16 cannot exist for both the purported servient  
17 estate, that would my client, and the dominant  
18 estates that are owned by the same person.

19 Your Honor, until the conveyance to  
20 Mr. Foster's client, the same persons owned  
21 both parcels that are adjacent to each other. I  
22 would argue they only could have created  
23 easement in gross.

24 THE JUDGE: Mr. Foster.

25 MR. FOSTER: May I hand up a brief?

1 THE JUDGE: Yes.

2 MR. FOSTER: And with the Court's  
3 permission, I will hand that over to opposing  
4 counsel as well as Mr. Heinsohn.

5 First of all, if I may ask the Court, it  
6 made a reference that I wish to be sure. We did  
7 serve and we did file some opposing affidavits.  
8 I hope those are in the Court's possession.

9 THE JUDGE: They are, and I have read  
10 them.

11 MR. FOSTER: They have not been returned  
12 to me or at least stamped returned to me. My  
13 understanding would be as follows: The language  
14 in question which counsel just talked about, we  
15 will deal with that first as the Court remarks.  
16 Is from the owner of both pieces of property, it  
17 says, it is understood that the grantor herein,  
18 his heirs and assigns, shall have access to the  
19 back water and cove on above-described property  
20 pursuant to the property being conveyed is  
21 located subject to rights of Wateree Power  
22 Company. I think the rest is probably  
23 irrelevant. This is, as I understand it, the  
24 reservation of rights in Mr. Fuel as your Honor  
25 points out, his heirs and assigns.

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1 THE JUDGE: Meaning Mr. Bingham.

2 MR. FOSTER: Well, in this case, Mr. Fuel  
3 because the deed is from Fuel to Bingham. Later  
4 Mr. Fuel, as I believe has acknowledged, deeded  
5 the property which was the source or the same  
6 property now owned by my client. So Mr. Fuel  
7 reserved to himself and these folks generic the  
8 right to get to the water.

9 THE JUDGE: No. The deed says that Fuel  
10 gives to Bingham the right to get to water.

11 MR. FOSTER: Let me look at it. I may be  
12 incorrect. That's not how I read it at the  
13 time. I apologize for that. Your Honor is  
14 correct. It is the grantee which would make it  
15 clearer.

16 THE JUDGE: Yes. That's the only way it  
17 would work.

18 MR. FOSTER: It depends on who is  
19 reserving access to the water.

20 THE JUDGE: I would not say he is  
21 reserving anything. It appears to me to be a  
22 grant.

23 MR. FOSTER: A grant. He is saying in  
24 effect you have access to the water to the  
25 extent he is able to give that.



1 THE JUDGE: Yes, sir.

2 MR. FOSTER: My understanding, again,  
3 from Mr. Halford is that for both this property  
4 and the property his client bought now under  
5 water say for a strip of about 30 feet between  
6 my client and the water is from the common  
7 person, the common people, Mr. Fuel. Let me  
8 acknowledge the fact that this deed says you  
9 have access to the water. It doesn't say you  
10 have the right to get a pier. On that we have  
11 to rely upon what I have tried to set out in the  
12 affidavits. The affidavits from Mr. Edwards and  
13 as supplemented from Mr. Farrell, which I will  
14 be happy to hand up to the Court if the Court  
15 can't immediately put his finger upon them.

16 Same effect look from my language, from at  
17 least 1976 when Mr. Edward's father, Robert,  
18 bought the property in continuous form to date  
19 there has been a pier and that pier has been in  
20 use. Mr. Halford effectively says --

21 THE JUDGE: All right. Edwards was your  
22 grantor.

23 MR. FOSTER: Robert Edwards gave it to us.  
24 He is dead. He died shortly thereafter. His  
25 son, Dennis gave us this affidavit saying --

1           THE JUDGE: I understand. Edwards owned  
2 it how long?

3           MR. FOSTER: From '76 to 2005.

4           THE JUDGE: All right.

5           MR. FOSTER: And that is in the affidavit.

6           THE JUDGE: Go ahead.

7           MR. FOSTER: The only thing to interrupt  
8 the continuous use from that date is, first, a  
9 different owner, which I believe your Honor has  
10 already indicated is tacking.

11          THE JUDGE: There is certain quirks to  
12 tacking for the purposes of adverse possession  
13 and, I don't have them in my head right now.

14          MR. FOSTER: I don't claim to have them in  
15 mine either.

16          THE JUDGE: It was important in the  
17 Catawba Indian claim.

18          MR. FOSTER: I believe that all of the  
19 elements would effectively be taken care of by  
20 these affidavits, at least I trust so. The only  
21 other exception which Mr. Halford has taken care  
22 of is that we acknowledge that, A, Mr.  
23 Edwards --

24          THE JUDGE: Can I clarify something. I am  
25 sorry. Your argument concerning the deed and

1           what not is limited to asserting that you have a  
2           legal right to access.

3           MR. FOSTER: We have a legal right to  
4           access.

5           THE JUDGE: Your argument concerning a  
6           pier or dock is premised upon the existence of a  
7           pier or dock there covering upon the property of  
8           the plaintiff for a period that would grant you  
9           that right by adverse possession?

10          MR. FOSTER: Yes, sir.

11          THE JUDGE: All right. Go ahead.

12          MR. FOSTER: And I believe that has to be  
13          the case because I fully acknowledge the fact  
14          that giving us access to the water may give us  
15          the right to walk across his 30 feet. It does  
16          not necessarily say we can build a pier.

17          THE JUDGE: I want to be sure that is  
18          what -- understood.

19          MR. FOSTER: I can see that point. We  
20          understand that the time limits are tacked  
21          together. The other point Mr. Halford raises is  
22          the dock was rebuilt. It was actually rebuilt  
23          twice as we acknowledge. First of all, after  
24          Mr. Edwards purchased in '76, and about '83 to  
25          '85 we have an affidavit saying we rebuilt the

1 dock. It would still give us more than 20 years  
2 required. We acknowledge the fact that in this  
3 document according to Mr. Edwards Duke Power  
4 representatives came out and approved the dock  
5 because apparently Mrs. Edwards, your Honor may  
6 know these people, I do not, apparently had a  
7 disability that required her to have a broader  
8 dock. Then my client has acknowledged I believe  
9 also in his deposition, when he had the dock  
10 approximately six months in, a rogue boat  
11 apparently unmanned slammed into it and it had  
12 to be rebuilt. My understanding of the law is  
13 that a temporary obsignation, shall we say,  
14 interruption, something that could not be helped  
15 in that fashion will not affect the claim. I  
16 will be happy to produce documentation to that  
17 effect to this Court.

18 THE JUDGE: Let me ask you two questions:  
19 One is, the paperwork that I have read couches  
20 the dock, the claim of a right to continue to  
21 have a dock in more or less in adverse  
22 possession terms.

23 MR. FOSTER: Yes, sir.

24 THE JUDGE: I need to expand my horizon  
25 here. Adverse possession typically would relate

1           to ground, the ground. You would own it. I can  
2           see if you acquired property, dry land, by  
3           adverse possession, if a structure was built  
4           upon it and it was destroyed, you could rebuild  
5           it because you have title of the property. How  
6           does that apply to a dock over the water?

7           MR. FOSTER: I can only repeat that I  
8           understand that the easement in question -- if I  
9           am being obvious or repeating things that may  
10          not answer the Court, I apologize. Our right,  
11          first of all, under the deed is to get to the  
12          water. There is a dock of undetermined  
13          ancientness, if that's the word, at least since  
14          1976 in place. That obviously has the effect of  
15          giving us access to the water. The fact of it  
16          being a dock as I understand it, since we cannot  
17          establish beyond 1976, we cannot establish it  
18          existed at the time of the deed between Bingham  
19          and Edwards -- pardon, Bingham and Fuel, we  
20          would need to rely upon the elements of adverse  
21          possession or we would have to prove it. What  
22          we have cited in our memorandum, and I hope this  
23          will help, is the elements of easement by  
24          prescription under Loftus (phonetic spelling),  
25          which I have.

1 THE JUDGE: All right.

2 MR. FOSTER: They are identified as  
3 continued to uninterrupted use of a full period  
4 for 20 years which we maintain we have. A minor  
5 interruption will not matter. There was no  
6 abandonment. There was no waiver. The identity  
7 of the thing enjoyed was the dock.

8 Third, the use or enjoyment was adverse  
9 under claim of right. Well, perhaps pulling back  
10 from what I said, I suppose we can claim the  
11 right was under the deed but since the deed does  
12 not say pier, it does not say dock, it says  
13 access to the water, that I will admit to this  
14 court is tenuous, and therefore, we would be  
15 required to look to the elements of adverse  
16 possession.

17 THE JUDGE: In the form of that  
18 prescriptive easement.

19 MR. FOSTER: Precisely.

20 THE JUDGE: For the dock?

21 MR. FOSTER: My understanding is they  
22 would be present, and I can run through them if  
23 the Court wishes, and hopefully, I am doing so  
24 correctly. It has been continuous with one  
25 exception that possibly we have a dispute about.

1 THE JUDGE: That would be a fact in any  
2 event?

3 MR. FOSTER: It certainly would. Hostile  
4 to the extent it is certainly adverse to  
5 Mr. Halford's claimant, open, I don't see any  
6 way that a pier dock can not be open. It is  
7 clear there to everybody who is being seen, it  
8 is known to the whole world. Adverse to any  
9 opposing claimant, was adverse to anyone  
10 claiming the 30 feet assuming the gain which  
11 Mr. Halford and I are apparently to talk of the  
12 height of water over the last 40 or 50 years.

13 Notorious. Once again, there is the dock.  
14 What more can we say.

15 Exclusive, I am not aware -- what we have  
16 here is an affidavit showing it was used by the  
17 families. There is no claim and there is no  
18 evidence to show it was ever shared with anyone  
19 else. So as I recall, I believe it was Choane  
20 C-H-O-A-N-E, all of the elements have evidence  
21 in their favor, and we have a factual dispute at  
22 worst in this matter.

23 THE JUDGE: Refresh my memory here again.  
24 How long has the plaintiff owned his property?

25 MR. FOSTER: I don't know.

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1 THE JUDGE: There would be a derivation  
2 clause in his deed.

3 MR. HALFORD: I believe since 2008.

4 THE JUDGE: Who owned it prior to claim?  
5 Mr. Heinsohn.

6 MR. HEINSOHN: Mr. Dukes acquired his lot  
7 in 2002.

8 THE JUDGE: 2002. Who was his grantor?

9 MR. HEINSOHN: Benjamin and Alexander  
10 Fuel.

11 THE JUDGE: Then they owned it from the  
12 time it became dirt until 2002?

13 MR. FOSTER: Effectively, yes, sir.

14 THE JUDGE: The same people that did this  
15 deed owned it until 2002?

16 MR. FOSTER: It is not the same name, but  
17 I assume it to be the same family.

18 THE JUDGE: You said Benjamin, didn't  
19 you? Is this Ben Fuel an heir as I understand?

20 MR. HEINSOHN: I think that is correct,  
21 your Honor. I believe their father may be the  
22 Fuel in the Martin's chain of title.

23 THE JUDGE: Do you know how long he owned  
24 it?

25 MR. HEINSOHN: You know, I am a



1 disinterested party as far as today goes. My  
2 interest lies more in a piece of property that  
3 is not the Farrell's so I don't have the  
4 Farrell's chain of title. It wasn't necessary  
5 for me to get it.

6 THE JUDGE: I am interested in the  
7 plaintiff's chain of title.

8 MR. HEINSOHN: That I have.

9 THE JUDGE: So it goes back from 2002 to  
10 plaintiff and by Ben Fuel, Benjamin Fuel. How  
11 long did he own it?

12 MR. HEINSOHN: He owned it a matter of a  
13 couple months. He got it from Margaret Fuel  
14 Kemp and -- your Honor, I believe they were  
15 partitioning some inherited property between  
16 them. Alexander Faulkner Fuel, Sr., deed of  
17 distribution.

18 THE JUDGE: When was that?

19 MR. HEINSOHN: That was in 2001. Then  
20 they seemed to divide up the property and  
21 Benjamin and Alexander sold it to Mr. Dukes in  
22 2002.

23 THE JUDGE: Okay. That is public record.

24 MR. HEINSOHN: Yes, sir.

25 THE JUDGE: So Fuel, Sr., which has to be

1 Alexander Fuel, Sr., which has to be the  
2 Alexander Fuel here or he would not be Senior,  
3 owned it from at least 1965 until his death in  
4 2001.

5 MR. HEINSOHN: Your Honor, oddly,  
6 Alexander Fuel, Sr. Acquired the property in  
7 1992 through -- well, deed of distribution of  
8 Edward Fuel, Jr., but it looks like he and  
9 Edward Fuel both acquired that property in 1950  
10 from Aliza White.

11 THE JUDGE: Okay. I apologize. I digress  
12 to my tacking concern. Whether the tacking must  
13 occur against the grantor's line or the  
14 grantee's line. Go ahead. We can deal with  
15 that.

16 MR. FOSTER: Your Honor, I believe that's  
17 essentially our argument.

18 THE JUDGE: Mr. Halford.

19 MR. HALFORD: Thank you. May it please  
20 the Court. Again, I think when you are  
21 construing the deed before you reach these  
22 factual issues, you have an issue of law before  
23 you, was that grant conveying easement in gross  
24 which did not pass with the land. As your Honor  
25 also points out was it binding on the grantee's

1 line, not grantor's line because we have a  
2 common grantor back in the scheme.

3 Secondly, did it convey something that would  
4 arguably bind my client's property a servient  
5 and estate. If you look in the language and the  
6 intentions of the four corners of that deed, it  
7 never references my property or references a  
8 deed. It never describes terminus. All  
9 Mr. Foster points out is all it gives them is  
10 the rights to access the back orders in the  
11 covenant.

12 THE JUDGE: That means something.

13 MR. HALFORD: It does, your Honor. And  
14 to address the arguments over the dock, which  
15 perhaps has existed over time and more, we do  
16 know it was destroyed at one point and rebuilt.

17 Your Honor, these affidavits that were  
18 filed with the Court on Monday come 15 or 20  
19 days after we sent to Mr. Foster request for  
20 admission of fact. At this point, we argue that  
21 they are deemed admitted. I have a copy of  
22 them, and one of the things --

23 THE JUDGE: They are not admitted in 15 or  
24 20 days.

25 MR. HALFORD: It was well over 30. They

1        were served August 26th I believe it is. But  
2        the point I am making, the property lines, metes  
3        and bounds, reference more accurate, if I am  
4        correct, they have admitted to this, the deed  
5        that was referenced which, again, Mr. Foster  
6        told the Court in his answer, there is an  
7        approximate 30 feet strip of land between his  
8        client's property and the waters. That has been  
9        admitted. By the way, Mr. Foster was the  
10       closing attorney on this and did he the deed.  
11       So all these items --

12                THE JUDGE: Did which deed? He didn't do  
13       Alexander Fuel's deed in 1965?

14                MR. FOSTER: I did the deed in the closing  
15       into Mr. and Mrs. Farrell.

16                MR. HALFORD: They have admitted that in  
17       1965 that the Fuels were the common grantors for  
18       both these parcels.

19                I think what you are looking at is a pure  
20       question of law, what did that deed create? And  
21       I argued under, again, the Windham decision it  
22       could create an easement and gross. It could  
23       not create something that bound my client's  
24       parcel as servient estate because it does not --  
25       as easement language describes a terminus. It

1 doesn't even describe my client's land. It  
2 includes the reference of no pier or dock.

3 We have two adjacent properties, and I  
4 have no doubt with raising and lowering of the  
5 waters of the lake, the water touched  
6 Mr. Foster's client's property sometime in the  
7 past, but as the surveys were met, they admitted  
8 the accuracy of it.

9 It is his deed. He is landlocked from the  
10 water, and at this point, there is a crossing of  
11 my property to access the dock and pier, which  
12 arguably has existed for sometime which we  
13 permitted, improved now expanded and he admitted  
14 -- I have the depositions here. His client  
15 admitted in deposition testimony that other  
16 people are now using the dock and that he stores  
17 multiple boats or jet skis or watercraft on that  
18 dock.

19 There has been a morpheme -- I will go  
20 back to that term -- of the use of this dock.  
21 Even if he was using this separate land, you  
22 cannot increase the burden on the servient  
23 estate.

24 THE JUDGE: Well, that becomes a question  
25 of fact.

1           MR. HALFORD: Yes, and I believe that  
2 becomes a question of fact if you rule against  
3 us on the issue of law.

4           The only other thing I point out, your  
5 Honor, is if we are talking prescriptive  
6 easements and the elements of adverse  
7 possession, this is a private road.

8           Secondly, there is no building to approve  
9 the exclusive element of adverse. It has been  
10 attached to my client's property the entire time  
11 and that has not been denied.

12           The notorious, I think they failed the  
13 dominance. To sum the entire argument up, we  
14 are claiming descriptive rights to easement  
15 under adverse terms utilizing a permitted item  
16 of personal property which your Honor is well  
17 aware is a removable item of tangible personal  
18 property. It is not dirt. It is not land. The  
19 elements of adverse possession clearly go to the  
20 claims against real property, your Honor.

21           We have attempted to, I believe, more that  
22 the use of a dock, which again, has been  
23 interrupted at some point, if I understood his  
24 argument correctly, is the use of my client's  
25 land. My client's land is actually under water.

1 I don't know that they would even survive.  
2 Assuming the Court costs and strike against my  
3 client on the issue of law we discussed under  
4 Windham, I don't even think we get to the  
5 elements because, A, we believe it is an  
6 easement in gross, which is what Mr. Bingham  
7 would have got, which means it would not have  
8 passed, and it certainly even if it did pass, it  
9 would have attached my client's property of the  
10 servient estate.

11 Secondly, you cannot claim adverse  
12 possession through an item of personal removable  
13 personal property which a dock is. It is not  
14 real property.

15 THE JUDGE: No, but if it sits on real  
16 property that you have acquired, you can change  
17 it out every day if you want to if you acquired  
18 title to it by adverse possession.

19 MR. HALFORD: If you acquired title, yes,  
20 sir. That would be my argument.

21 THE JUDGE: There is a case, and I thought  
22 I made a copy of it but I can't find it. There  
23 is a case relatively recent that, and I say I  
24 use that term intentionally because I lose track  
25 of the time, but it has to do with the

1 prescriptive easement that to use a particular  
2 access path, path of access, to a warehouse or a  
3 building across property I think -- I want to  
4 say the parties were AT & T on one side and the  
5 other party was Boyd or something like that. I  
6 may be wrong about that. I think it something  
7 like AT & T on one side. It extended the right  
8 to a prescriptive easement pretty far. I looked  
9 at it yesterday and I thought I made a copy of  
10 it, but I didn't apparently.

11 I am going to deny the motion. I think  
12 that there are questions, first of all, about  
13 what this is, and further, the extent of it. In  
14 part, your argument is premised on this notion  
15 of the grantors to Mr. Bingham owning the  
16 property, and therefore, not being able to grant  
17 a right away or easement, and I frankly don't  
18 understand that. We are further dealing with  
19 access to water. I think the facts need to be  
20 flushed out so I am going to deny the motion.  
21 Thank you.

22 (Whereupon, the above-entitled matter was  
23 concluded.)  
24  
25



C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

I, Phyllis M. Campo, Official Court  
Reporter for the Sixteenth Judicial District of  
the State of South Carolina, do hereby certify  
that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings  
at the time and place herein in the  
above-entitled matter.

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

June 10, 2014

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Phyllis M. Campo  
Official Court Reporter

STATE OF SOUTH CAROLINA )

COURT OF COMMON PLEAS

County of York )

2011-CP-46-3182

Earl Dukes, )

Plaintiff, )

vs. )

TRANSCRIPT OF RECORD

Kennith W. Farrell, Mary C. )  
Farrell, and Martin )  
Bogdonovich, / )

Defendant. )

March 13, 2014  
York, South Carolina

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, JUDGE.

APPEARANCES:

J. CAMERON HALFORD, ESQ.  
Attorney for the Plaintiff

J. MARTIN FOSTER, ESQ.  
Attorney for the Defendant

AMINAH R. HARDY, RPR, CVR-CM  
Official Court Reporter

EXHIBITS

No.

Description

Page

(No exhibits were marked.)

P R O C E E D I N G S

THE COURT: All right. Case number 2011-3182, Earl Dukes against Kennith with a I, W. Farrell. This is the Farrells' motion for summary judgment?

MR. FOSTER: Yes.

THE COURT: Now, what I had -- I told you I had it spread out all over my desk. What I wasn't able to dig out yet were the plats. Does anybody have a handy plat?

MR. FOSTER: I assume Cam does.

THE COURT: Cam is shaking his head. There was a larger plat that surveyed the property and the water and I can't --

MR. FOSTER: I believe that to be the case.

MR. HALFORD: Your Honor, there have been two docks at issue. I want to make sure you're looking at -- I hope you have one because my file is being put into a PowerPoint.

THE COURT: That's why I'm asking. Here's one plat.

MR. FOSTER: You have no objection -- does this Court have this? I believe --

THE COURT: I probably have it somewhere. Let's go off the record a minute.

(A discussion was held off the record.)

THE COURT: Back on the record. Mr. Foster, it's your motion.

1 MR. FOSTER: Your Honor, for the record you've asked  
2 for various plats. We handed up the ones we can find in  
3 our files. For the record if I may, I would hand up a  
4 copy of the deed that we're going -- I'm -- I referenced  
5 in my motion from the Fewell (phonetic) family to my  
6 client's predecessor in title.

7 THE COURT: I've seen that before, too.

8 MR. FOSTER: I believe you have.

9 Your Honor, briefly this is the background. Prior to  
10 1965, this property was owned by the Fewell family, and  
11 whenever it was acquired it had a description that went  
12 from what is still -- what I would call the high or dry  
13 land into what is now the lake bottom of Little Allison  
14 creek. Of course, when that was flooded, dammed up by  
15 Wateree Power Company, now Duke Power, now Duke Energy,  
16 that land was flooded and became a high rising creek.

17 In 1965, as we said in our summary judgment motion,  
18 the Fewells conveyed to my client predecessor in title  
19 with the magic language -- well, we consider it magic --  
20 it being understood the grantee herein, his heirs and  
21 assigns shall have access to the back water and the cove  
22 in which the above-described property is located -- on  
23 which the above-described property is located, subject to  
24 the rights of Wateree Power Company or its successors and  
25 other grantor and grantors herein, the Fewells.

1           There's no question that -- in my -- I'll stop and  
2   add to my knowledge there isn't -- there are no factual  
3   questions in this case. That, of course, has to be by  
4   standard for summary judgment, but it's my understanding  
5   that nothing that has been submitted by opposing counsel  
6   that constitutes a factual question.

7           THE COURT: Well, as I noted when we looked at the  
8   plats and from my reading, the defendants admit and the  
9   plaintiff claims and defense admit that the -- their  
10   pathway of access to the lake -- now the lake -- runs  
11   across property belonging -- approximately 30 feet? Isn't  
12   something --

13          MR. FOSTER: I believe that's correct.

14          THE COURT: -- 30 feet across the property of the  
15   plaintiff to the lake, the level of which varies.

16          MR. FOSTER: Yes, sir.

17          THE COURT: And that the pier dock now situated  
18   serving the Farrells' property also lies upon property  
19   still titled -- property in the lake still titled in the  
20   name of the plaintiffs?

21          MR. FOSTER: The Dukes. That became the case --

22          THE COURT: Those are the only facts, I think, plus  
23   the deed, the change of title and all that, none of which  
24   is contested?

25          MR. FOSTER: Yes, sir. None of that is contested.

1 It's my understanding also that this came about, just to  
2 clarify slightly, that when Mr. Dukes bought what I would  
3 call the remaining Fewell property, he bought -- in  
4 addition to what I call the high or dry land -- the  
5 remaining description which gave him the ownership of the  
6 lake bottom.

7 THE COURT: Yes.

8 MR. FOSTER: We have submitted to the Court -- and I  
9 trust it's in the Court's records -- the affidavit of  
10 Mr. Dennis Edwards --

11 THE COURT: Yes.

12 MR. FOSTER: -- the son of the former owner --

13 THE COURT: Yes.

14 MR. FOSTER: -- indicating that there has been a dock  
15 there which has been maintained since his knowledge -- I  
16 want to be sure I'm correct -- 1976.

17 THE COURT: Yes.

18 MR. FOSTER: To my knowledge, some 38 years. Your  
19 Honor, if I could approach with some other documents? And  
20 I will hand a copy to counsel.

21 THE COURT: He said a pier.

22 MR. FOSTER: A pier, yes, sir.

23 THE COURT: Not the pier.

24 MR. FOSTER: No, sir. It's been replaced, but it's  
25 there.

1 THE COURT: Right.

2 MR. FOSTER: A good bit of what I handed up, sir, is  
3 fairly standard stuff for the Court, but just to go  
4 through it. There are -- it's my understanding two  
5 methods by which this matter can be approached. But  
6 generally speaking, we have handed up the case of Marrow  
7 versus Dyches, which on the second page sets out the basis  
8 for establishing a prescriptive easement. Continued use  
9 for 20 years and identity of the thing enjoyed, use which  
10 is either adverse or under a claim of right. We maintain  
11 we meet all standards.

12 THE COURT: Does it matter that this is not an  
13 easement to one place -- from one place to -- across  
14 one -- another place to a third place, but rather is --  
15 the whole thing is related to a use upon the plaintiff's  
16 property. It's not like an access easement, in other  
17 words. It is a use by easement -- claimed to be by  
18 easement upon the plaintiff's property.

19 MR. FOSTER: Yes, sir, "access" is the term used in  
20 the Fewell detail.

21 THE COURT: That's access to the water.

22 MR. FOSTER: Access to the water. That's correct.  
23 What that --

24 THE COURT: Which was not the same water that's there  
25 now, I think?



1           MR. FOSTER: As in Heraclitus, one cannot step into  
2 the same river twice. Well, to the extent necessary, I  
3 think it is the same water. But I believe the two methods  
4 that you would use to look at this thing is I don't think  
5 there's any question of continued use for 20 years. Now,  
6 I may be incorrect about that. Counsel may wish to argue  
7 about continuity, and I'll address that. That I presume  
8 would be based upon the fact the pier of the dock has been  
9 replaced. I don't there's any question about the identity  
10 of the thing we're enjoying, and therefore I presume the  
11 only thing for me to discuss would be, Well, do we claim  
12 it under the deed, or do we claim it under usage.

13           Well, if I go by the deed, as I believe I said in  
14 argument of Mr. Halford's summary judgment motion, I allow  
15 that we what are allowed is access to the water, not  
16 necessarily a method by which to get there. If I am more  
17 generous and we go to the question of an implied easement  
18 or easement by implication, we attach Am. Jur. about the  
19 definition of that. We've attached also the upholding of  
20 the Supreme Court in Inlet Harbour versus SC Parks and  
21 Tourism. In that they define how they're going to deal  
22 with implied easements and state, "The creation of implied  
23 easement generally requires the facts and circumstances  
24 surrounding conveyance, the property of the parties or  
25 some other characteristic demonstrate the objective

1 intentions of the parties to create an easement."

2 I believe and I argue to the Court the existence of a  
3 dock for 38 years does all of those items. It produces a  
4 factual background sufficient to indicate an implied  
5 easement for that end. I'm frankly at a loss to  
6 understand --

7 THE COURT: So -- now, wait. Are you separating the  
8 dock from the prescriptive easement to get to the water?

9 MR. FOSTER: I'm discussing the necessary evidence  
10 for an implied easement.

11 THE COURT: I know. But you start --

12 MR. FOSTER: Go ahead, sir.

13 THE COURT: You start out by talking about an  
14 easement by prescription.

15 MR. FOSTER: Yes, sir.

16 THE COURT: Which clearly -- which is based on --  
17 under a claim of right.

18 MR. FOSTER: Yes, sir.

19 THE COURT: Namely the deed, the Fewell deed.

20 MR. FOSTER: Yes, sir. That would be one way of  
21 looking at it.

22 THE COURT: And that -- I understand that claim to  
23 get to the water.

24 MR. FOSTER: Yes, sir.

25 THE COURT: Wherever the water may be at any given

1 time.

2 MR. FOSTER: And may I add I think that is backed up  
3 by the fact that when these property lines were drawn  
4 prior to Mr. Dukes' acquisition of the property, they  
5 rather obviously drew along what they regarded as the  
6 discernible line of the creek. There's no other reason  
7 for the property lines to exist where they are.

8 THE COURT: You're also, though, asking me to impose  
9 also -- and in addition, an additional implied easement.

10 MR. FOSTER: No, sir, if I can respond. If you want  
11 me to stop, I will.

12 THE COURT: Well, the easement by prescription is not  
13 an implied easement.

14 MR. FOSTER: Excuse me, sir?

15 THE COURT: The easement by prescription is not an  
16 implied easement. It's an acquired --

17 MR. FOSTER: Okay. It may be the way I'm saying it  
18 is confusing or improper. I read the description of  
19 easement by prescription, which could be either a right or  
20 by adverse possession.

21 THE COURT: Yes, sir.

22 MR. FOSTER: And what I'm saying is that if I make it  
23 clear, if it can be presume from the usage and from the  
24 language of the Fewell deed that we have it by right, so  
25 be it, end of story. It is an easement by right. It is

1 an express easement. If, on the other hand, we are  
2 talking about an implied easement because it is not clear  
3 from the Fewell deed that a pier is intended.

4 THE COURT: We're talking about two different things.

5 MR. FOSTER: I agree.

6 THE COURT: Now we're talking about the pier.

7 MR. FOSTER: Yes, sir.

8 THE COURT: Go ahead.

9 MR. FOSTER: Well, yes, sir. Let me try to --

10 THE COURT: That's an element of the easement that  
11 you otherwise have by prescription or claim you have by  
12 prescription.

13 MR. FOSTER: Yes, sir, what I'm trying to say is  
14 this -- I'm simply saying it poorly. On one hand, our  
15 argument is that based upon the language of the Fewell  
16 deed and the facts on the ground, we have an easement of  
17 right. The intent was allow what's there now. In the  
18 alternative if that cannot be allowed, then we have  
19 effectively an easement by implication by reason of a  
20 38-year use without interruption and meeting all the  
21 standards we have to meet. So pick road A; pick road B,  
22 be Robert Frost if you wish, we get to where we have to  
23 be. In either event, the fact remains here is the  
24 situation: A 38-year-old dock.

25 The only other argument that I'm aware of and counsel

1 may surprise me based upon his brief is he questions -- as  
2 I gather it, he questions either the continuity of the  
3 dock or he questions the extent of the easement. I may be  
4 supplying him with arguments here. We've attached  
5 documents on that point indicating the continuity has to  
6 go to each point to each case. In this case, we have  
7 Mr. Edwards' statement, "Yeah, we replaced it one time.  
8 It was '83, '85. we took it down; we put another one  
9 there." We have my client's affidavit to the fact, "Yeah,  
10 we had a boat run into it," and, in fact, Mr. Halford was  
11 good enough to supply the affidavit from the man who built  
12 the thing, and say, "Yes, that's right. We built it  
13 back."

14 Now if -- and I may be throwing away a point here by  
15 getting into this -- if the intent -- I'm going now by  
16 contact I've had with Mr. Halford rather than what I'm  
17 reading in his brief. If the intent of supplying these  
18 items from the builder is to say that we built back more  
19 majestically or larger than we did before --

20 THE COURT: Larger will serve.

21 MR. FOSTER: -- so what? I don't think that's the  
22 case. I don't think that's backed up by what I've been  
23 given. But if that's the case, that's an interesting  
24 point. That's another lawsuit. That would go to the  
25 question of the extent of the easement.

1 THE COURT: Which would be a factual determination.

2 MR. FOSTER: Yes, sir. I think it would -- did we  
3 violate the determine of the easement if there was a  
4 taking of more? We don't think we did. We don't think  
5 there's anything in here. The lawsuit as it stands says:  
6 You're on our land. Our response is: We don't care; we  
7 have an easement, either express or implied. And our  
8 basis for that is that we have met all the standards of  
9 either an express grant as interpreted by the facts and  
10 implied grant as interpreted by the facts, the 38-year  
11 usage.

12 THE COURT: Tacking isn't an issue here?

13 MR. FOSTER: Not that I'm aware of.

14 THE COURT: Okay. That's a question.

15 MR. FOSTER: Mr. Edward says I owned it. He says  
16 this is what I got, and he sold it in 2005. My client, as  
17 I recall, says we bought it.

18 THE COURT: How long did Mr. Edwards own it?

19 MR. FOSTER: I believe 2005 on.

20 THE COURT: I'm sorry. How long --

21 MR. FOSTER: Mr. Edwards' parents bought it in '76.  
22 In '91, his father became the sole owner on his mother's  
23 death. According to the records of York County and in  
24 line with my memory, in 2005 they sold it to the Farrells.

25 THE COURT: '76 to 2005?

1 MR. FOSTER: Yes, sir.

2 THE COURT: So one owner owned it for --

3 MR. FOSTER: Well, the Edwards family.

4 THE COURT: Mr. and Mrs. but one title.

5 MR. FOSTER: Yes, sir.

6 THE COURT: For '76 to 2005.

7 MR. FOSTER: Well, one title and us. Yes, sir.

8 THE COURT: Okay. All right.

9 MR. FOSTER: I'm not aware of any other objections --  
10 if we had to prove it by adverse possession -- and we have  
11 argued that in the brief -- I'm not aware of any element  
12 we have failed to prove -- I'm not aware except possibly  
13 continuity.

14 THE COURT: Let me hear from Mr. Halford.

15 MR. HALFORD: Thank you. Your Honor, I know I need  
16 not recite the summary judgment standard in your court to  
17 protect the record. The party resisting the summary  
18 judgment need only show a scintilla of evidence to  
19 withstand the motion. You described it earlier today as a  
20 mustard seed. We got two big mustard seeds here, Judge.  
21 First of all, the express grant upon which he relies never  
22 references my client's property whatsoever. There is a  
23 reference to access to the water --

24 THE COURT: Hold on a second. But I thought all  
25 of your client's -- by whom was your client's property

1 owned originally? Did it all come out of Fewell?

2 MR. HALFORD: I lost this point in summary judgment  
3 before, but this was common grantor for both these people.

4 THE COURT: Right.

5 MR. HALFORD: And I argued at that time -- and,  
6 again, I lost that was the most his client could have  
7 received or even a predecessor could receive would be an  
8 easement in gross, Judge, not an easement in pertinent.  
9 However, to address with regard --

10 THE COURT: But wait a minute.

11 MR. HALFORD: Yes, sir.

12 THE COURT: I infer from what you're trying to tell  
13 me that your client's property is not affected by the  
14 apparent grant in the deed, the Fewell deed. I thought  
15 that was admitted. Am I wrong?

16 MR. HALFORD: Admitted as to my property? No, sir,  
17 that's not correct.

18 MR. FOSTER: I understand the Fewells to be  
19 Mr. Dukes' predecessor in title. I do not have --

20 THE COURT: Is Mr. -- that's what I'm trying to say  
21 is that Mr. Dukes' property was once upon a time Fewell  
22 property and was a part of the property -- let me see.  
23 Let me get it right. And that -- say it this way: That  
24 Mr. Dukes' property was once upon a time the servient  
25 estate which would be referenced in the Fewell deed to



1 Bigham.

2 MR. HALFORD: No, sir.

3 THE COURT: The servient estate.

4 MR. HALFORD: I think that's the inference they're  
5 asking this Court to make, but that's not the language --

6 THE COURT: That ought to be able to be established.  
7 Isn't that -- without equivocation, shouldn't it?

8 MR. FOSTER: It comes as news to me, which may only  
9 indicate my lack of knowledge.

10 THE COURT: I mean, I grant you if the Dukes'  
11 property was not part of some servient estate between  
12 1976 -- at least 1976 and 2005 that all this may not  
13 apply, although you'd be back into the adverse possession  
14 part. Because its always gone over now what is the Dukes'  
15 property, right?

16 MR. HALFORD: I don't know factually that it has.  
17 You pointed out earlier that the waters have risen and  
18 lowered. The point that I made to the Court is nothing  
19 about the grant cites my clients Dukes property. And  
20 furthermore, the affidavit that we filed Monday and served  
21 on Mr. Foster -- I don't mind telling you we've done  
22 discovery on this dock long enough to know it's been  
23 removed twice.

24 THE COURT: I'm not near to the point of dealing with  
25 how much dock is permitted. And that may be, sure enough,

1 a remaining factual issue. In fact, based on my review  
2 before and what I've been able to do now, I think it  
3 probably is, the extent of the dock. There may be a  
4 question about how -- you can't expand a prescriptive  
5 easement.

6 MR. FOSTER: I would agree, Your Honor, in general  
7 principle, and I would say that would be an interesting  
8 question in another lawsuit.

9 THE COURT: Well, but it's a question of fact and  
10 whether or not it's been expanded in the lawsuit.

11 MR. FOSTER: It's not alleged in the lawsuit. This  
12 lawsuit is: Is there an easement? They say no; we say  
13 yes.

14 THE COURT: So -- well, then what you're saying is  
15 there's going to have to be a subsequent proceeding to  
16 determine the extent of the easement?

17 MR. FOSTER: If the Court agrees with us and if they  
18 then maintain we have expanded the easement, they would  
19 have the right to say, "You have take it back to what it  
20 was." There would then be factual issue about what was  
21 the extent of the matter before, but it's not in this  
22 lawsuit.

23 THE COURT: I didn't go back and read the complaint,  
24 I must admit, not for this motion.

25 All right. Back where we were. Mr. Foster, in order

1 for me to grant your motion, there would have to be no  
2 genuine issue of fact about whether Mr. Dukes' property is  
3 the alleged or is the -- a servient estate, right?

4 MR. FOSTER: That is essentially correct.

5 MR. HALFORD: In fact, I think you just articulated  
6 it better than anyone else has.

7 MR. FOSTER: It is, however, not my understanding  
8 that is the case. It's my understanding that the plat  
9 Your Honor referenced, which we have neither of us  
10 produced, which was of the old Dukes property was the  
11 property out of which my client's predecessor was carved,  
12 and the remainder of which was sold to Mr. Dukes. Now, if  
13 that is not the case, if that is alleged here not to be  
14 the case, I'd like to hear that putting counsel on the  
15 stand.

16 MR. HALFORD: Counsel should know. It's his deed.

17 MR. FOSTER: That's not an answer, sir.

18 THE COURT: Hold on. Here's my take. It would  
19 appear thus far that the Farrells have -- and I say thus  
20 far, that's qualified -- that the Farrells have and  
21 easement over somebody's property, to some servient estate  
22 for access to the water. That is dependent -- that  
23 conclusion is dependent upon -- and only objecting party  
24 is Mr. Dukes. That conclusion is dependent upon a  
25 compiling of records to demonstrate what is the dominant

1 and what is the servient estate. I thought I understood  
2 there wasn't any question about that, that Mr. Dukes'  
3 property was a part of what was originally a servient  
4 estate, that -- to which this reservation or grant --  
5 grant. It's a grant in the Fewell deed -- to which this  
6 grant applied. In other words, that the -- what is now  
7 the Farrells and -- now the Farrells was the dominant  
8 estate.

9 Now maybe what we need to do since we've all had some  
10 difficulty with plats and thing here, if it's not  
11 admitted, if that's so, maybe what we need to do is  
12 adjourn or recess, get together the deeds and stuff to  
13 demonstrate that, that there's no genuine issue of fact.

14 MR. FOSTER: Might I ask a question?

15 THE COURT: Yes, sir.

16 MR. FOSTER: We have filed in the case an answer and  
17 counterclaim. I'm not able to find the answer and  
18 counterclaim. The counterclaim lays out what Your Honor  
19 just articulated. Here is a deed. You are the estate out  
20 of which we come, et cetera, et cetera. Can counsel point  
21 me to a response to this answer and counterclaim?

22 MR. HALFORD: Yes. There's a filed response. It was  
23 denied.

24 MR. FOSTER: A filed response to our claim?

25 THE COURT: Let me go back where I was. Let's deal

1 with it in the context of summary judgment. Wouldn't it  
2 be the appropriate thing to do if I have miscalculated  
3 what the admitted facts are to -- before we rule on this  
4 motion, to ferret out the public record deeds and surveys  
5 that would either confirm what I said about  
6 dominant/servient estate or refute that?

7 MR. FOSTER: It would be more than generous on your  
8 part, sir, and we would be happy to supply that.

9 THE COURT: Well, I think -- that's what I think I  
10 need to do.

11 MR. HALFORD: I believe they're in the Court's file.

12 THE COURT: Because I thought that had been  
13 established, and we don't have it in front of us now, and  
14 it would -- I've got to decide it -- is a motion for  
15 summary judgment. It would be helpful to me to have  
16 counsel dig up -- because it's in here. I think I've seen  
17 it. I thought I had. Dig up the relevant surveys and  
18 deeds that demonstrate the dominant/servient relationship.

19 MR. FOSTER: Or lack thereof.

20 THE COURT: Or lack thereof, yes, sir.

21 MR. HALFORD: The records are actually in the last  
22 summary judgment we brought. The deeds and...

23 THE COURT: Since you've raised that as an issue, I  
24 think Mr. Foster -- I think the proper thing for me to do  
25 is to permit that to be established from the record.

1 Frankly, I've went into this thinking there wasn't an  
2 issue of whether there was any problem with the Dukes  
3 property being the -- at least a portion of any servient  
4 estate in this case. I thought that wasn't an issue. But  
5 no point in me ruling without being satisfied on that.

6 MR. FOSTER: Out of fairness to Mr. Halford, he's  
7 raised one issue. Your Honor may be satisfied of that  
8 issue, and if I could -- I don't wish to make this a  
9 three-party conversation because, of course, we're in  
10 court. But I don't wish to preclude Mr. Halford if he has  
11 another objection. Perhaps he needs to state that now  
12 over and above the one we've heard.

13 THE COURT: Well, that's fair. We're going to hear  
14 it again. So yeah, let's do that. I'll say that --

15 MR. HALFORD: Judge, this is now number 1 for trial  
16 next week. That's unconfirmed. We have one case ahead of  
17 us, but I did get a text message during lunch.

18 THE COURT: That's right. That's why we're hearing  
19 it today. That's why I couldn't postpone it.

20 MR. FOSTER: Well, it was number 2 next week.  
21 Apparently Winthrop College and their roofer have settled.

22 THE COURT: Well, Mr. Foster, under your  
23 characterization of the case -- the motion, rather, the  
24 only thing I would rule on today would be whether or not  
25 as a matter of law there is an easement over the Dukes'

1 property.

2 MR. FOSTER: Right.

3 THE COURT: I do believe based on what I've read  
4 prior and what we've heard today that there is a factual  
5 issue concerning the extent of that easement or size of  
6 that easement, if you will, based on the docks. Before  
7 when we heard this, there were representations that the  
8 dock had been enlarged.

9 MR. FOSTER: No, sir, not last time that I recall.  
10 Counsel can correct me if I'm wrong. This is something  
11 that came up in the last two weeks.

12 THE COURT: No, I haven't heard you in the last two  
13 weeks.

14 MR. FOSTER: No, sir, I'm referring to my knowledge  
15 of it.

16 MR. HALFORD: Not a lot of discovery has been done,  
17 Your Honor. I went to the problem of pulling the person  
18 who is the dockmaster. That's the affidavit we filed on  
19 Monday who did the subsequent removal of the dock for  
20 Edwards -- that's his predecessor in title -- and then  
21 there's the affidavit, which I again submit creates the  
22 question of fact itself from his client, Mr. Farrell, that  
23 says the boat dock was rendered unusable when it was  
24 struck by a boat. We went and found the person that did  
25 the work. He agrees it was rendered unusable. There's

1 your question of fact. It's been noncontinuous.

2 MR. FOSTER: That goes to continuity --

3 THE COURT: It was continuous over 20 years if your  
4 estate is the servient estate. The easement is there.

5 MR. FOSTER: We've attached documents in what we  
6 handed up to you and to counsel that a timely and  
7 intentional repair continues continuity. I don't regard  
8 that as an issue.

9 THE COURT: All right. Let's go off the record here  
10 a minute.

11 (Whereupon, the proceedings were concluded.)

12

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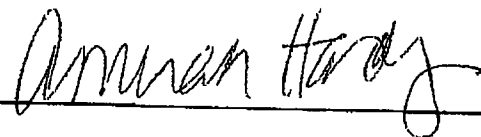


CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

I, Aminah R. Hardy, RPR, Official Court Reporter  
for the 16th Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the hearing of  
the captioned case, relative to appeal, in the Court of  
Common Pleas for York County, South Carolina, on the 4 day  
of March, 2014.

April 2nd, 2014



Aminah R. Hardy, RPR, CVR-CM

STATE OF SOUTH CAROLINA }  
COUNTY OF YORK }

IN THE COURT OF COMMON PLEAS

EARL DUKES

PLAINTIFF,

-VS-

KENNITH W. FARRELL, MARY C.  
FARRELL AND MARTIN  
BROGDONOVICH,

DEFENDANTS.

2011-CP-46-3182

SUMMARY JUDGMENT MOTION HEARING

MASTER IN EQUITY COURT

YORK, SOUTH CAROLINA

MARCH 14, 2013

REPORTER - CATHY L. YOUNG, CVR-M

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1 Pursuant to notice of hearing in the above-entitled case,  
2 a hearing was held on the 14th day of March, 2014, before  
3 the Honorable S. Jackson Kimball, III, in the Master in  
4 Equity Court, 1 North Congress Street, York, South  
5 Carolina, commencing at 12:35 p.m..

6 APPEARANCES: For the Plaintiff -

7 J. Cameron Halford, Esquire  
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10

11

For the Defendant -

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13

14

520

29730-4560

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16

17

#### INDEX TO EXHIBITS

18

No exhibits were introduced in this hearing.

19

20

21

22

23

24

25

## SUMMARY JUDGMENT MOTION HEARING

1

2 THE COURT:

3

Mr. Foster, we were continuing the motion.

4

MR. FOSTER:

5

Thank you, sir. Your Honor, I have been called by  
6 Mr. Halford this morning to indicate that both his  
7 title people and mine are of the same opinion that  
8 there is a common grantor in the Fewell family. To  
9 the extent that needs to be documented, I have a  
10 copy of the plat, and you've seen this, Counsel. It  
11 has various parts.

12

THE COURT:

13

Okay.

14

MR. FOSTER:

15

This is the part -- this is the plat referenced in  
16 the deed into Mr. Dukes. He got the remaining  
17 Fewell property. Here is -- here's the Edwards  
18 property which is now ours. Then property next door  
19 I believe was Mr. Brogdonovich.

20

MR. HALFORD:

21

It is now Brogdonovich.

22

MR. FOSTER:

23

It is now Mr. Brogdonovich, and of course whatever  
24 is left of the Fewell property, which was both this  
25 and most importantly --

1 THE COURT:

2 Hang on a second, hang on a second. Well, some not  
3 precisely the -- oh, here we go, here we go. All  
4 right. Okay. You say all this is the Fewell  
5 property?

6 MR. FOSTER:

7 Whatever was left over from the original Fewell  
8 property, including most importantly the land under  
9 the water.

10 THE COURT:

11 So this point at what would be the -- actually it's  
12 the northern -- northern point of the former  
13 property, --

14 MR. FOSTER:

15 Yes, sir.

16 THE COURT:

17 -- is Fewell property in Lake wylie?

18 MR. FOSTER:

19 Yes, sir.

20 THE COURT:

21 What is now Lake wylie?

22 MR. FOSTER:

23 What is now Lake wylie.

24 THE COURT:

25 Okay. Now this --

1 MR. FOSTER:

2 This is us.

3 THE COURT:

4 And it says Edwards, and that's Edwards?

5 MR. FOSTER:

6 Yes, sir.

7 THE COURT:

8 And that's your grantor?

9 MR. FOSTER:

10 Yes, sir.

11 THE COURT:

12 All right. And we're looking for Mr. --

13 MR. FOSTER:

14 Mr. Dukes --

15 THE COURT:

16 -- Dukes.

17 MR. FOSTER:

18 -- owns whatever is left of the --

19 MR. HALFORD:

20 It's over here, Your Honor. This point cuts into  
21 his property, so we're right beside --

22 MR. FOSTER:

23 He owns this and whatever was left of the --

24 THE COURT:

25 You mean all he owns is what's in the lake?

1 MR. FOSTER:

2 Oh, no, sir, there was a part of the land up here  
3 too.

4 THE COURT:

5 No, but what I mean is insofar as the lots that  
6 front on the --

7 MR. FOSTER:

8 He has bought one of them since then.

9 THE COURT:

10 Hold on.

11 MR. HALFORD:

12 This may be of assistance.

13 MR. FOSTER:

14 I have no reason to doubt this.

15 MR. HALFORD:

16 Excuse the coloring, that would be me.

17 THE COURT:

18 You don't have any tape on you, do you?

19 COURT REPORTER:

20 No, sir.

21 THE COURT:

22 That's all right.

23 MR. FOSTER:

24 I know we're upside down. I'll locate it so you can  
25 see it. Cam indicates that this is the portion

1           owned by Mr. Dukes. I know that part of this --

2   THE COURT:

3           It would be like this?

4   MR. FOSTER:

5           Yes, sir. Does he not own part of the property back  
6           up here on the islands too?

7   MR. HALFORD:

8           I've outlined in yellow his property.

9   MR. FOSTER:

10          Oh, okay. I thought it was more than that.

11   MR. HALFORD:

12          Where the Judge's finger is right now is your  
13          property.

14   MR. FOSTER:

15          Yes, I agree.

16   THE COURT:

17          All right. And all of this was Fewell property and  
18          the grant in the Fewell Deed was made to Bigham --

19   MR. FOSTER:

20          My client's predecessor.

21   THE COURT:

22          And Bigham owned --

23   MR. FOSTER:

24          Well, what was my client's predecessor. I don't  
25          know whether we've tried to trace my client's client



1 title so much, but -- Cam has handed me that.

2 MR. HALFORD:

3 Your Honor, if it will assist, I've had our abstract  
4 run a complete chain of title on both parcels.

5 THE COURT:

6 Well, just answer this question then. Is the  
7 Edwards property property formerly owned by Bigham  
8 conveyed to Bigham by Fewell?

9 MR. HALFORD:

10 Yes, it is.

11 MR. FOSTER:

12 Yes. That's on your deed. Now I understand Mr.  
13 Halford wishes to argue some of the elements of  
14 adverse possession; am I -- I'm not speaking for  
15 you, sir, but am I saying it right?

16 THE COURT:

17 Well, I'll let him do that, but the point is the  
18 issue that got us stopped yesterday is not an issue.

19 MR. FOSTER:

20 That's my understanding.

21 THE COURT:

22 All right. And so in summary your position, Mr.  
23 Foster, is that your clients have established an  
24 easement by prescription through the continued non-  
25 interrupted use of this access for more than 20

1           years, --

2       MR. FOSTER:

3           Yes, sir.

4       THE COURT:

5           -- and in part -- and at least a 20+ year period of  
6           that time it was in one grantee, one owner?

7       MR. FOSTER:

8           Yes, sir.

9       THE COURT:

10          Well, the dominant estate was in the one owner?

11       MR. FOSTER:

12          Yes, sir.

13       THE COURT:

14          The identity of the thing enjoyed, that's not an  
15          issue, I know that -- well, it is an issue, and in  
16          the sense of the size of the -- in my view, the size  
17          and configuration of the easement. Then number  
18          three, that the use in general was adverse or under  
19          claim of right. It seems to me that there is  
20          patently a claim of right.

21       MR. FOSTER:

22          We believe so.

23       THE COURT:

24          Or if not that, it was adverse for 20 years or  
25          better.

1 MR. FOSTER:

2 One or the other.

3 THE COURT:

4 Okay. Now Mr. Halford, you want to challenge the  
5 compliance with these elements, right?

6 MR. HALFORD:

7 That's correct, Your Honor. I need to ask so I can  
8 tether my arguments, are we under Rule 56?

9 THE COURT:

10 summary judgment motion.

11 MR. FOSTER:

12 It's a summary judgment motion, yes, sir.

13 THE COURT:

14 Yes, sir.

15 MR. HALFORD:

16 I understand. Your Honor, the reason I ask the  
17 question, I think if he's claiming adverse, that has  
18 to be proved by clear and convincing evidence.

19 THE COURT:

20 Adverse possession?

21 MR. HALFORD:

22 Yes, Your Honor. I think rights to implied or  
23 expressed easement have to be proved under clear and  
24 convincing evidence too, so under Rule 56, Your  
25 Honor, the elements of adverse as the Court is well

1       aware is -- there are five, and Mr. Foster's client  
2       can't make three of those. Open being the first,  
3       this is on a private road --

4       THE COURT:

5       What now?

6       MR. HALFORD:

7       The elements of adverse or hostile use of the  
8       property, Your Honor, I'm merely mentioning there  
9       are five elements to adverse possession if that --  
10      that was one of his arguments in his motion, I  
11      believe.

12     MR. FOSTER:

13      Yes, sir.

14     MR. HALFORD:

15      Out of the five, he can't make three. If these  
16      factors are viewed most favorably to the non-  
17      movement, the Plaintiff, then we can start with the  
18      continuous -- I think the affidavit's in the file,  
19      including their own affidavit, have demonstrated  
20      that there has been interruption and use at least  
21      twice, but even if that's only slight, the exclusive  
22      element is the big one that they can't make because  
23      the express grant they rely upon in 1965, Your  
24      Honor, says that the rights that were given to Mr.  
25      Bigham by the Fewells are subject to the rights of

1 the Wateree Power Company and also subject to the  
2 rights of any further grantee of the Fewells, and  
3 that would be my client. So it's been shared the  
4 entire time. It's not been an exclusive.

5 THE COURT:

6 Hold on a second.

7 MR. HALFORD:

8 Yes, sir.

9 THE COURT:

10 The grant says the property -- described property is  
11 conveyed subject to the water rights granted to the  
12 Wateree Power Company and to existing easements and  
13 rights of way. It being understood that the  
14 grantee, his heirs and assigns, shall have access to  
15 the back water in the cove on which the above  
16 described property is located subject to rights of  
17 the Wateree Power Company, its successors, or other  
18 grantees and grantors herein.

19 MR. HALFORD:

20 Yes, sir, which would have been A.F. Fewell or  
21 Edward Fewell, Jr., of which we've identified for  
22 the Court, and again I will make an exhibit if the  
23 Court will permit of the title searches, my client  
24 as a further grantee of the Fewells.

25 THE COURT:

1 Now what do you mean by using -- how are you using  
2 the word "exclusive"?

3 MR. HALFORD:

4 Under -- claims being asserted under adverse  
5 possession, Your Honor, it has to be exclusive as  
6 against the owner and the whole world, the adverse  
7 element of that has to be adverse or hostile, and  
8 not only to my client, but to the whole world, and  
9 they are -- of the five elements, they must prove, I  
10 respectfully submit, that --

11 THE COURT:

12 Do you mean by that that nobody else has -- what do  
13 you mean by exclusive?

14 MR. HALFORD:

15 Not shared. In this instance, the grant that he  
16 relies upon is an express grant is likewise subject  
17 to my client who became an assignee of the Fewells in  
18 2002.

19 THE COURT:

20 Right, subject to their rights.

21 MR. HALFORD:

22 Correct. That is a shared usage, Your Honor, and  
23 it's not exclusive. So if I'm being obtuse, I'll  
24 try to narrow it. Out of the five elements that  
25 they must prove, which I would argue them as proved

1 by clear and convincing evidence, there are five,  
2 they failed to prove three, that being continuous  
3 use, exclusive use, or hostile use. It has to be  
4 hostile to everybody, not just my client. Here  
5 you've got shared use. Lastly, Your Honor, and the  
6 argument that I do want to make a record is this  
7 conveyance in 1965 from Fewell to Bigham unless he  
8 was an heir at law would have been an easement in  
9 gross, a personal right to use the water. It would  
10 not have been an appurtenant easement that would  
11 track or run with the land, Your Honor.

12 THE COURT:

13 Well, it says -- I don't -- it being understood that  
14 the grantee, herein his heirs and assigns, shall  
15 have access. How is that personal?

16 MR. HALFORD:

17 I believe Mr. Foster's client would be an assign.

18 THE COURT:

19 Well, he is.

20 MR. HALFORD:

21 Correct.

22 THE COURT:

23 Well, here's -- maybe I'm -- I feel like we're  
24 talking about three different things. A) There is a  
25 grant of a right of way for access to the "back

1 water" in the cove. In my mind, and it runs to  
2 Bigham, his heirs and assigns. In my mind, that's  
3 an express grant of a right of way, not -- it had  
4 nothing to do with prescription or adverse  
5 possession or anything. That's one thing that's in  
6 my mind. Number 2 is the difference between an  
7 easement by prescription and title to gaining title  
8 to property by adverse possession. Seems to me  
9 those are two different things, because necessarily  
10 acquiring an easement especially, and in particular,  
11 I'm thinking about that major case that had to do  
12 with an easement by necessity through property owned  
13 by some utility company. I've forgotten which one  
14 now. But in any event, a difference between  
15 acquiring title by adverse possession, which has the  
16 five elements you're talking about, and acquiring a  
17 prescriptive easement, which necessarily means that  
18 it does not involve title, just a right of use. So  
19 help me there. I mean tell me first, I guess, about  
20 why is this -- and Mr. Foster, if you have knowledge  
21 of this, please let me know, do you claim that this  
22 is an express easement based on this grant?

23 MR. FOSTER:

24 It can be depending on the interpretation of the  
25 Court. What I think I said in order to be



1 consistent is it is express easement of access.

2 THE COURT:

3 Yes.

4 MR. FOSTER:

5 It does not specifically state obviously you have  
6 the right to build a dock.

7 THE COURT:

8 Absolutely.

9 MR. FOSTER:

10 But we built a dock.

11 THE COURT:

12 I understand.

13 MR. FOSTER:

14 And it's been there 38 years.

15 THE COURT:

16 So -- and I tried to make that point yesterday.

17 There's a distinction in my mind between the right  
18 granted in the old deed and the creation and  
19 maintenance of a dock, which goes not just -- which  
20 goes out in the water, not just to the water.

21 MR. FOSTER:

22 And sits on his property.

23 THE COURT:

24 And sits on his property, yes. That is what you  
25 claim is the prescriptive part of this easement; is

1           that right? That they've acquired the right to that  
2           by prescription?

3       MR. FOSTER:

4           Yes, sir.

5       THE COURT:

6           On top of the easement for access.

7       MR. FOSTER:

8           Or in clarification of it, but, yes, sir, I won't  
9           argue.

10      THE COURT:

11           All right. Now, Mr. Halford, what is your comment  
12           about whether these -- my sort of bifurcation of the  
13           issue here, I would -- bifurcate may not be exactly  
14           the right word, but, you know, there are two issues,  
15           one is whether they have a right of access to the  
16           water. I read that to be an -- not something they  
17           have to prove anything except that they were granted  
18           it. Just hold up the right of way and say we have a  
19           right of access to the water. Now you get into  
20           things about what's reasonably necessary to exercise  
21           that right, and that's different, but then on top of  
22           that, there's the question of putting a dock out in  
23           the water and acquiring some prescriptive right to  
24           place -- to have and maintain the dock. Do you  
25           agree with my sort of bifurcation?

1 MR. HALFORD:

2 Not completely, Judge.

3 THE COURT:

4 Well, tell me why not.

5 MR. HALFORD:

6 The grant that you refer to as an express grant  
7 doesn't mention our parcel whatsoever. It doesn't.

8 THE COURT:

9 It mentions all the remaining Fewell property, and  
10 you've told me that the Fewell property, that your  
11 property is a remnant of the Fewell property. I  
12 find that there is an express grant, and I grant  
13 summary judgment to the effect that there is an  
14 express grant of an easement of access to the water.  
15 It appears that there was a common grantor, that the  
16 dominant estate was carved out and with it conveyed  
17 an easement to the servient -- over the servient  
18 estate -- I'm sorry, yeah, the servient estate to  
19 gain access to the water that is now Lake Wylie.  
20 Since it was in '65, there hasn't been any change in  
21 the dam since 1965, so it would be the present  
22 iteration of Lake Wylie, which I think runs to the  
23 569.9 contour level elevation if my memory is  
24 correct, 570 we'll say, 570 contour line. So I find  
25 and conclude that the Plaintiff is entitled to the

1 unobstructed access to the lake across and on the  
2 property of the Plaintiff as a matter of law. Now,

3 --

4 MR. HALFORD:

5 And you're finding that under Rule 56, Your Honor?

6 THE COURT:

7 Yes, sir.

8 MR. HALFORD:

9 Thank you.

10 THE COURT:

11 It's a matter of interpretation of the deed, which  
12 is a thing that is a matter of law. It doesn't have  
13 anything -- I find that the deed is not ambiguous,  
14 clear, and simply needs to be construed according to  
15 general principles. Now, I believe, Mr. Halford,  
16 that you -- or I guess I should ask you, are you  
17 citing to me the law of adverse possession with  
18 respect to acquiring title to property as opposed to  
19 acquiring an easement or right of way? Sounds like  
20 you are citing to me the law that applies to  
21 acquiring title to property, which would -- title to  
22 property, which would exclude the use of the subject  
23 property everybody. That's not what this is. It's  
24 an easement. And it doesn't claim to be an  
25 exclusive easement. And the Plaintiff still holds

1 title to the property. So isn't that different from  
2 what you're telling me? It couldn't exist at all  
3 according to what you're telling me unless it was a  
4 grant.

5 MR. HALFORD:

6 I would agree the Plaintiff still holds title to the  
7 property.

8 THE COURT:

9 Pardon me?

10 MR. HALFORD:

11 I would agree that --

12 THE COURT:

13 All right. No one has cited me to a case that  
14 deals specifically with the question of improvement  
15 of an easement.

16 MR. FOSTER:

17 Improvements on an easement, sir, or --

18 THE COURT:

19 Well, or both. In other words, you could expand an  
20 easement, I think in general, where -- I think that  
21 an easement that isn't specific is construed to be  
22 sufficient for its purpose. Go ahead.

23 MR. FOSTER:

24 Just for the record, I understand the Court's  
25 concern. I assume from Mr. Halford standing he has

1 a concern too, I merely want to make a point again,  
2 that issue is not pled in this case. There is  
3 nothing in the -- in either the Answer -- or in the  
4 Complaint or in the Answer dealing with the limits  
5 of the easement. Once again, they say you don't  
6 have one. We say we do. My position is -- I am not  
7 the judge here, nor do I pretend to be. My position  
8 is that they wish to argue the question of the  
9 extent of the easement. That is another cause of  
10 action. I just wish to make that point.

11 MR. HALFORD:

12 Respectfully disagree, Your Honor.

13 THE COURT:

14 Well, a reply was mentioned yesterday. Tell me  
15 about what it says.

16 MR. FOSTER:

17 Well, I could not find it. Perhaps Counsel has it  
18 today.

19 MR. HALFORD:

20 No, I do not have it with me. It's clocked of  
21 record.

22 MR. FOSTER:

23 Hold on, I do have it, sir.

24 THE COURT:

25 Let me see it.

1 MR. FOSTER:

2 I beg your pardon, because I should have seen it.  
3 Actually I believe it includes an admission on the  
4 part of the history of the land.

5 THE COURT:

6 Have a seat, Cam, let me just look at this. Martin,  
7 it would be helpful if you let me have your  
8 counterclaim, I could find it in this stack of  
9 stuff, but I hope you can find it easier than I can.

10 MR. FOSTER:

11 Yes, sir, because it responds to -- this is not  
12 stapled.

13 THE COURT:

14 Yes, sir. We'll be off the record a minute.

15 (OFF RECORD)

16 THE COURT:

17 I see no specific response to paragraph 20, but I  
18 think that is just what we've all admitted, and that  
19 is that the Farrells are successors in title under  
20 the deed of Fewell to Bigham. Okay, Mr. Foster, you  
21 say in paragraph 22 comes with an easement  
22 appurtenant to the real property owned by them a  
23 right of way allowing them to freely pass -- or if  
24 we don't want to split the infinitive, to pass  
25 freely -- by all means conveyance over any strip of

1 land contained in the tax map to access the waters  
2 on Little Allison Creek. Okay. He denies that, but  
3 I've already ruled that as a matter of law. I'm  
4 sorry, when did Mr. Dukes buy this property?

5 MR. FOSTER:

6 2000 --

7 MR. HALFORD:

8 Year 2002. Mr. Farrell acquired it in 2006, Your  
9 Honor.

10 THE COURT:

11 okay. The way you've pleaded it, Mr. Foster, is you  
12 do bifurcate it seems to me in the pleading the  
13 issues that I said. One is the express -- keep your  
14 seat, just keep your seat, the issue that I said  
15 about the express grant, and then in paragraph -- in  
16 the third counterclaim, and that's the second  
17 counterclaim -- I mean first counterclaim, second  
18 defense in counterclaim. In the third defense in  
19 counterclaim then you deal with the nature and  
20 extent of the easement. I think that -- that is  
21 still in my mind a fact issue based on -- based on  
22 use, I would say the size and configuration of the  
23 access which we know is a dock, so I think I'm  
24 obliged to deny summary judgment on that. I grant  
25 it on the first counterclaim. I deny it on the



1 second counterclaim. I think there's enough --  
2 well, all right, that's what I'm saying right now.  
3 Now you say that that's never been pled. What has  
4 never been pled?

5 MR. FOSTER:

6 I did not understand anything in his Complaint to  
7 allege that we have taken more of an easement than  
8 we were allowed to take. My understanding of the  
9 Complaint, I'm not speaking for Mr. Halford, but my  
10 understanding is that they've said basically you're  
11 on our land, we want you off, hearing various causes  
12 of action, trespass, nuisance, so forth and so on.

13 THE COURT:

14 Let me see the Complaint if somebody has it handy.

15 MR. FOSTER:

16 Again, sir, overlook that it's not stapled.

17 THE COURT:

18 Thank you. He says in responding to the second  
19 counterclaim, in reply I'm looking at now,  
20 Plaintiffs would show that Defendants' use of the  
21 dock and pier was not continuous, was not open,  
22 notorious, hostile, adverse, and so on. And then  
23 paragraph -- must be 13 of that defense to the  
24 second counterclaim, further responding to  
25 paragraphs 28, 33, and 34, Plaintiff would show that

1 Defendants have exceeded the scope of any past  
2 permissions granted for egress and ingress. Okay,  
3 let me look at the Complaint. Okay, obviously all  
4 these causes of action don't apply to the Farrells -  
5 - I mean, yeah, the Farrells. He says in the second  
6 cause of action which is styled as partition in  
7 kind, --

8 MR. FOSTER:

9 Your Honor dismissed that.

10 THE COURT:

11 That was dismissed?

12 MR. FOSTER:

13 Yes, sir, by you.

14 THE COURT:

15 All right. Now I haven't read all my prior orders.  
16 Did I dismiss trespass?

17 MR. FOSTER:

18 No, sir, I don't think you did.

19 THE COURT:

20 I didn't think so. The trespass action creates an  
21 issue of utilization of the piers as thus the term  
22 used, and further, I think the reply fairly says  
23 that -- or pleads that the Defendants have exceeded  
24 the scope of any right they have. So I believe that  
25 does leave a factual issue as to the scope of their

1 right. The right is there, but I think I would be  
2 remiss in granting summary judgment on the scope of  
3 the right. So that's my ruling. That is my ruling.

4 MR. FOSTER:

5 I understand, sir.

6 THE COURT:

7 Now that is not going to get reduced to an Order  
8 prepared by me by Monday. So you all -- I will be  
9 here Monday if the trial judge wants to call me and  
10 say what did you rule.

11 MR. FOSTER:

12 My understanding from Mr. Halford and from Linda  
13 Strait\* is that the first trial is still on.

14 THE COURT:

15 Well, I'm only going to be here Monday.

16 MR. FOSTER:

17 I understand, sir. I understand.

18 MR. HALFORD:

19 It's our anticipation it'd be April, Judge, before -  
20 - unless this -- and it is a construction case ahead  
21 of us, unless that case settles before time.

22 THE COURT:

23 So Mr. Foster, let's do this. You then, if you  
24 would, please, prepare me an order granting you  
25 summary judgment on your first cause of action,

1           which relates as I understand it to -- not your  
2           first -- your first counterclaim as it relates to  
3           the express easement.

4       MR. FOSTER:

5           Grant.

6       THE COURT:

7           The grant. And just put in there that as to the  
8           second counterclaim, summary judgment is denied,  
9           facts to be -- factual issues concerning the scope  
10          of the easement. okay?

11      MR. FOSTER:

12          Yes, sir.

13      THE COURT:

14          If you'll send that to me, and of course I'm not  
15          going to get to it, so -- it'll be on the -- okay,  
16          anything else?

17      MR. FOSTER:

18          I think that takes care of it.

19      MR. HALFORD:

20          I believe that covers it, Your Honor.

21          (There being no further questions, the deposition was  
22          concluded at 2:30 p.m.)

23

24

25

1

2

## CERTIFICATE

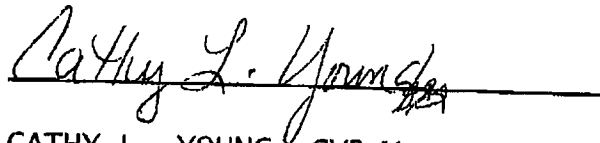
3 I, the undersigned, Cathy L. Young, CVR-M, Notary Public  
4 in and for the State of South Carolina, do hereby certify  
5 that the foregoing hearing was taken on the 14th day of  
6 March, 2014;

7 I further certify that I am neither Counsel nor Solicitor  
8 to any of the parties in said suit, nor interested in the  
9 event of the cause.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal  
11 this 19th day of March, 2014.

12

13



14

CATHY L. YOUNG, CVR-M

15

NOTARY PUBLIC FOR SOUTH CAROLINA

16

MY COMMISSION EXPIRES FEBRUARY 19, 2019.

17

18

19

20

21

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS

EARL DUKES,

PLAINTIFF,

-VS-

KENNETH W. FARRELL, MARY  
C. FARRELL AND MARTIN  
BROGONOVICK,

DEFENDANTS.

2011-cp-46-3182

DEPOSITION OF DENNIS K. EDWARDS

ROCK HILL, SOUTH CAROLINA

MARCH 31, 2014

**COPY**

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

---

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## Appearances:

For the Plaintiff -

J. Cameron Halford, Esquire  
 Halford Niemiec and Freeman  
 238 Rockmont Drive  
 Fort Mill, South Carolina 29708

For the Defendants -

John Martin Foster, Esquire  
 Attorney at Law  
 223 E. Main Street  
 Rock Hill, South Carolina 29730

Also Present -

Kenneth W. Farrell

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## EXHIBITS

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| Deposition Exhibit 2 Deed of Distribution              | Page 5  |
| Deposition Exhibit 3 Title to Real Estate              | Page 7  |
| Deposition Exhibit 4 Property Value<br>Analysis Report | Page 11 |
| Deposition Exhibit 5 Affidavit                         | Page 17 |

1 Deposition of Dennis Edwards, taken before me,  
2 Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the  
3 State of South Carolina, in the law offices of Martin  
4 Foster, Rock Hill, South Carolina, commencing at 10:00  
5 A.M., on March 31, 2014, in accordance with the South  
6 Carolina Rules of Civil Procedure.

7 It was stipulated by and between Counsel for the  
8 Plaintiff(s) and Counsel for the Defendant(s) that this  
9 deposition is taken for any purpose allowed under the  
10 South Carolina Rules of Civil Procedure.

11 That the signing of the transcript of deposition  
12 by the witness is waived.

13 \* \* \* \* \*

14 Dennis Edwards, first being duly sworn, deposes and says  
15 as follows:

16 Examination: (By Mr. Foster)

17 Q Would you state your name for the record, sir?

18 A Dennis K. Edwards, Sr.

19 Mr. Foster - I want to mark this as  
20 an exhibit, I assume without objection.

21 Mr. Halford - Okay.

22 Whereupon - Document marked as Deposition  
23 Exhibit 1.

24 Q Mr. Edwards, have you ever given a deposition  
25 before?

Deposition of Dennis Edwards



1 A No. I've been involved in one, but I haven't  
2 actually given one.

3 Q There are some things lawyers usually go through to  
4 begin so I'll go through those. This is taking  
5 a statement from you under oath. You've been  
6 sworn. It is just as much under oath as if you  
7 were in court. It's being taken down or will be by  
8 the court reporter. It will be available at trial.  
9 Should you be available at trial, which we doubt at  
10 this point because of your schedule, and there was  
11 a difference between what you said today and said  
12 at that time, you would be expected to explain  
13 the difference.

14 If you need to go the restroom or have any  
15 need to stop, please let us know. This is not  
16 an endurance contest.

17 A (Indicating yes)

18 Q You're nodding. I do need to warn you, sir, as the  
19 lady will, you need to say yes or no. She has to  
20 take it down. If you don't understand my question  
21 or Mr. Halford's, please let us know.

22 A Okay.

23 Q Neither of us are here to represent you in that  
24 sense, but neither of us are here to badger you.  
25 We're going to explain anything if you need to.

Deposition of Dennis Edwards

1 Do you have any questions, sir?

2 A No, I don't.

3 Q I understand from what I've been dealing with  
4 you on that you are the son of Robert J. Edwards,  
5 Sr.

6 A Correct.

7 Q Your mother, I believe, was Nancy Davis Edwards.

8 A Correct.

9 Q Both of them, I believe, are now deceased.

10 A Correct.

11 Q On record in York we have -- well, we do not have  
12 it, but I believe we have a reference to it. I  
13 believe your mother passed away in 1991.

14 A That sounds correct.

15 Q She left her interest, at least specifically in the  
16 river front we're talking about, to your father.

17 A Correct.

18 Q Of record, we have this deed of distribution which  
19 I would propose to put in as our Exhibit 2.

20 Mr. Halford - No objection.

21 Whereupon - Document marked as

22 Deposition Exhibit 2.

23 Q This recites that in 1976, February, your parents,  
24 both of them, got a deed from Ms. Nellie A. Horace  
25 Boon, if I'm reading this correctly. This was

Deposition of Dennis Edwards

1 to lots 16 and 16-A of the Fewell property on  
2 Little Allison Creek. Do you recall that property,  
3 sir?

4 A Yes, I do.

5 Q How old were you at that time, sir?

6 A I was in high school. I can't say exactly.

7 In '76, I would have probably been 18, I guess.

8 Q Do you remember the property and what it looked  
9 like at that time?

10 A Yes, I do.

11 Q Were you ever present there or stay on the  
12 property?

13 A Yes, I did.

14 Q We've already put in the deed of distribution,  
15 how this came from your mother's estate to your  
16 father alone. At that point, I believe he was  
17 the sole heir after your mother passed on.

18 A Correct.

19 Q To the extent you're able to say. Then, sir, in  
20 I believe 2005, your father called on this deed,  
21 Robert J. Edwards, sold to Mr. and Mrs. Farrell.  
22 Do you recognize that, sir, or do you acknowledge --  
23 --

24 A I acknowledge it, yes.

25 Mr. Foster - We would move that as

Deposition of Dennis Edwards

1 Exhibit 3.

2 Mr. Halford - No objection.

3 whereupon - Document marked as

4 Deposition Exhibit 3.

5 Q Here is a copy. In 1976, do you recall seeing  
6 the property in that year?

7 A Yes, sir.

8 Q Was there a pier there or a dock, call it what you  
9 will?

10 A Yes, sir.

11 Q Was that pier or dock built by your father or was  
12 it already in place?

13 A It was already in place.

14 Q Did it give any signs, sir, of its age at that time  
15 or how old it was?

16 A I can't remember. It was just there. I couldn't  
17 say how old it was.

18 Q Were you ever informed or have you any knowledge,  
19 sir, of how it came to be there or who put it  
20 there?

21 A I just took for granted the original owner of the  
22 house put it there.

23 Q Who do you understand the original owner of the  
24 house to be?

25 A You just called her name ---

Deposition of Dennis Edwards

1 Q Ms. Boon?

2 A Correct.

3 Q Would you call it a dock or a pier, sir?

4 A It was a floating pier. A walkway out and then it  
5 had a float on the end.

6 Q What kind of shape did it appear to be in, if you  
7 recall?

8 A I don't recall. We used it for several years  
9 before we ever did any work on it.

10 Q Was it, at some point, replaced, sir?

11 A Yes. This is talking to my family members since  
12 you contacted me or subpoena. This is a  
13 guesstimate. This is not fact.

14 Q That's all I'm asking.

15 A I'm going to guess around 1981 to '82, based on  
16 when I got married, it was redone at that time  
17 because my mom was handicapped with blindness,  
18 and they had put an extra wide float on it. That's  
19 why I'm able to remember it because there was a  
20 dispute with Duke Power of it being too big.

21 Q When you say there was a dispute, was there a  
22 complaint, to your knowledge, or your information  
23 made by someone about that?

24 A Yes, sir, there was complaint made.

25 Q Who was that by, if you know?

Deposition of Dennis Edwards

1 A It was a neighbor on the opposite side of, I think,  
2 where these people are. It was Terry -- I can't  
3 remember. He run a carpet cleaning service in  
4 town.

5 Q On the same side of Little Allison Creek as  
6 yourself, sir, or across the creek?

7 A It's the property adjoining. If you were facing  
8 the water, to the left up on the hill.

9 Q Do you have any knowledge, sir, of what the  
10 result of that complaint was?

11 A Duke Power okayed the float because of my mom's  
12 handicap and if she ever needed a see and eye  
13 dog.

14 Q Were there any other changes to the pier or dock  
15 during the time it was owned by your father?

16 A Yes, talking to my son, in -- He thinks in 1997,  
17 '98 when he was in junior high school -- I had  
18 forgot about it. My dad took out the original  
19 float that was so wide because they wouldn't  
20 allow him to put a lift and boat cover over it  
21 because it was too wide square footage. He took  
22 that float out and put a new float in. The  
23 pier still stayed where it's always been. The  
24 walkway to the float was replaced right before  
25 1990 we think.

1 Q I want to quote you correctly so don't let me do it  
2 wrong. You say they allowed him or they would not  
3 allow him. Who is they?

4 A That would be Duke Power.

5 Q So he did consult them about --

6 A Yes.

7 Q -- what he did?

8 A You have to do that.

9 Q Again, sir, at the risk of being obvious, could  
10 you repeat what you understand he did around that  
11 time with the property or with the dock or the  
12 pier?

13 A He just replaced the float part, that I know of.  
14 That was so he could get a boat lift to put in out  
15 there.

16 Q Are you aware of your father ever having gotten an  
17 appraisal of the property?

18 A No.

19 Q I've been provided by opposing counsel with an  
20 appraisal, which I understand to be and I don't  
21 quite understand that the borrower is listed as  
22 LeHardy and Medlin. The property address is  
23 Lot 14, Bowater Road.

24 Mr. Foster - I do understand this to be  
25 a proposed appraisal of the property we're

Deposition of Dennis Edwards

1 talking about.

2 Mr. Halford - Yes.

3 Mr. Foster - I would note for the record  
4 that my understanding is that the  
5 property in question is Lot 16 and 16-A  
6 of Fewell, but let's go forward.

7 Mr. Foster - Resuming

8 Q On the assumption that this is the property in  
9 question, there are some pictures here - this is  
10 the way they came to me - of what appears to be  
11 a dock or a float and several houses or perhaps  
12 the same one from different sides. Do those seem  
13 to be of your parents' property?

14 A No, this seems to be property -- the properties  
15 that were beside him when I was growing up.

16 Q That clarifies that. Thank you.

17 Mr. Foster - For the record, we can  
18 make that an exhibit. I presume  
19 without objection.

20 Mr. Foster - No objection.

21 Whereupon - Document marked as Deposition  
22 Exhibit 4.

23 Mr. Foster - Resuming

24 Q Sir, after this work which you said would be  
25 roughly '91, I believe you said, '91, '92 ---

Deposition of Dennis Edwards



1 A No, I think I said the first work done  
2 approximately '81 to '83. We're thinking it was  
3 19 -- My son was just telling me this this morning.  
4 We think it was '97, '98, I believe. That  
5 was just told to me this morning.

6 Q Thank you for clarifying that. Did that leave  
7 the pier in the state it was in when it was  
8 conveyed to Mr. and Ms. Farrell?

9 A To my knowledge, yes.'

10 Q I assume, being a family member, you'd see this  
11 dock or this pier, I presume, every year?

12 A I'd see it on a regular basis, not just every year.

13 Q It was your parents' house.

14 A Correct.

15 Q First both of them and then your father's?

16 A Correct.

17 Q Sir, did any part of the dock touch the bottom of  
18 the lake? I say the dock, or the pier.

19 A Of course, the posts that hold it in the water  
20 would touch the lake. Theoretically, the rest of  
21 of it didn't.

22 Q And, it was widened, you say, in '97, '98 or was  
23 that earlier in '81, '82.

24 A It would have been '81 to '83, somewhere in that  
25 range.

Deposition of Dennis Edwards

1 Q That is was widened?

2 A Right.

3 Q I know that I'm endless about this, and I  
4 apologize. I apologize to the court reporter. Say  
5 again to me what happened in '97, '98 as to the  
6 appearance of the dock or the pier?

7 A That would have been when he took the original  
8 float down, and he put the new float in with a  
9 boat lift and a cover over it.

10 Q Did this expand vertically, shall we say, the  
11 dock or the pier?

12 A Actually, the float part of what you would call a  
13 dock, the float part was actually smaller than what  
14 it originally was the prior years.

15 Q Did I understand you to say that work in '97, '98,  
16 to your knowledge, was approved by Duke?

17 A Yes.

18 Q Sir, do you know Mr. Perry Johnson of Dockmasters,  
19 LLC?

20 A I do not.

21 Q You've never had any dealings with that company?

22 A Unless that's who built his dock. I've never had  
23 any dealings with him. I don't know who built  
24 the dock for him.

25 Q Have you had any dealings with the people who

Deposition of Dennis Edwards

1 rebuilt his dock?

2 A No, sir.

3 Q Sir, when the dock was changed in '97, '98, was it  
4 completely taken apart and rebuilt or was it added  
5 on to, if you know?

6 A The only thing I know the float part was redone  
7 because, like I say, he wanted to get his boat  
8 lift in there. I can't say for sure if the whole  
9 part was done or just the float. I can't say.

10 Q The other thing you mentioned about the top of  
11 the lift. That was changed?

12 A That was changed, yes.

13 Q Sir, did your parents -- Did your father treat this  
14 as their dock?

15 A Correct. Yes.

16 Q Did they treat it as open to the whole neighborhood  
17 for use?

18 A I couldn't say that necessarily, no.

19 Q Did they make it available to other people upon  
20 request, if you know?

21 A I don't know.

22 Q You're not aware that it was made available to the  
23 whole neighborhood?

24 A No. It was made available to our family. I'm sure  
25 anyone was welcome to come out there if they

Deposition of Dennis Edwards

1           wanted.

2   Q       I assume, to be obvious, this dock was out in the  
3           open?

4   A       Correct.

5   Q       It could be seen from the neighboring ---

6   A       Yes.

7   Q       Let me finish. The neighboring properties. To  
8           go on, the property could be observed -- Let me say  
9           that again. I assume that the dock or the pier  
10          could be observed from Little Allison?

11  A       Correct.

12  Q       I assume it could be observed from across Little  
13          Allison?

14  A       Correct.

15  Q       We have referenced this several times, but I  
16          understand that you will not be available next  
17          week.

18  A       Next week I'll definitely be gone.

19  Q       Where will you be gone, sir?

20  A       I'll be at -- I have a home at North Myrtle Beach.  
21          I'll be working out of my home at North Myrtle  
22          Beach. I'll be in Georgetown and Summerville and  
23          throughout the coast area next week.

24  Q       This is by long arrangement as I understand, sir?

25  A       Yes. It's our scheduled vacation. We're down

Deposition of Dennis Edwards

1       there for about ten days.

2   Q   During the time that your father and your mother,  
3       or your father alone, owned this property on Little  
4       Allison Creek, are you aware of anyone coming  
5       forward with a claim against this dock or pier  
6       being present?

7   A   No, I do not. I remember there being a claim years  
8       ago, by him telling me about it, that the  
9       neighbor's dock was in question. There used to be  
10      a little cabin. I think it was in one of those  
11      pictures. There was a little cabin next door ---

12   Q   The neighbors to the left of you?

13   A   If you're facing from the water, it would have  
14      been to the left. There was a little cabin up  
15      there. Mr. Oates, I think, owned it originally,  
16      a lumber company. There was a claim by someone  
17      that their pier was on somebody else's property.  
18      But, to my knowledge, there was never any question  
19      about my dad's pier.

20   Q   So to identify things, you had given an affidavit  
21      earlier in this case at our request?

22   A   Yes.

23   Q   Sir, can you identify this as being the Affidavit  
24      you signed?

25   A   Yes, I signed it. Of course, the dates there may

1 be off because, like I said, that's just a  
2 guesstimation.

3 Q You've supplied other information today which I  
4 assume you believe to be accurate?

5 A Yes, to my knowledge.

6 Mr. Foster - Without objection, I  
7 trust, I would like to make that an  
8 exhibit.

9 Whereupon - Document marked as  
10 Deposition Exhibit 5.

11 Mr. Foster - Resuming

12 Q We've assumed this throughout, but I need to be  
13 sure. Was this dock or pier in use from 1976  
14 forward while your father and your mother owned it?

15 A Yes.

16 Q And while he owned it alone?

17 A Yes.

18 Q Other than what you've narrated about Duke Power,  
19 the question of the width and the question about  
20 the neighbor's complaint, were there any other  
21 dealings with Duke Power about this dock or pier?

22 A None that I know of.

23 Q Just to clarify, other than your neighbor getting  
24 into some dispute about their dock or pier, there  
25 was, to your knowledge, no challenge to this dock

Deposition of Dennis Edwards

1 or pier during the time ---

2 A No, there was not.

3 Q Both when your mother and father, and when your  
4 father had it?

5 A No, I've never heard any challenges.

6 Q Again, sir, being obvious, the dock or the  
7 pier was in place when your father sold the  
8 property to the Farrells?

9 A That's correct.

10 Mr. Foster - Sir, I don't have any  
11 other questions. Mr. Halford may have  
12 some.

13 Examination: (By Mr. Halford)

14 Q Mr. Edwards, good morning. My name is Cameron  
15 Halford. I represent Earl Dukes, who is the  
16 adjoining landowner. I just want to go over some  
17 of the things you testified to this morning.  
18 From your Affidavit, you now live at 1404 Bowater  
19 Road?

20 A That's correct.

21 Q Are you still familiar with the property? Have  
22 you been back there since this lawsuit started?

23 A No, I'll be honest. I think I went when they  
24 were closing helping him move some stuff out. I  
25 haven't been back to the property since.

Deposition of Dennis Edwards

1 Q Are you familiar with Fieldbrook Drive?

2 A Very. I live right up the road from it, yes.

3 Q Are you familiar with the roadway?

4 A Yes.

5 Q Is that a public or private road?

6 A Public road.

7 Q During the time that your parents owned the  
8 property, I believe you testified that anybody  
9 was welcome. Did you ever see anybody else use  
10 that dock during the time that you were growing  
11 up?

12 A Oh, yeah. I mean we had friends over all the  
13 time.

14 Q When you say you had friends over, would that  
15 extend also to the adjoining landowner? Did  
16 you ever see the adjoining landowner or their  
17 family use the dock?

18 A I have no recollection of them using it. They  
19 probably did, but I can't say for sure they did  
20 or didn't.

21 Q So was it used exclusively by your family or was  
22 it permitted that other people could use it?

23 A Repeat that again because I'm not sure what you're  
24 getting at.

25 Q Was your family the only people to use this dock?

Deposition of Dennis Edwards



1 A No. I'm sure that -- Like I said, neighbors pulled  
2 up there all the time. When we were kids, we  
3 played out there. My kids, which is his grandkids,  
4 played out there. So, yeah, there was other  
5 people using the dock.

6 Q You said -- I believe you said the year 1997 or  
7 1998. You said the floating part of this dock was  
8 replaced by your father; is that correct?

9 A That's correct.

10 Q And that would be the U shaped portion of the  
11 dock where you would park a boat?

12 A That's true.

13 Q During that work that was done that year, did the  
14 dock become extended into the water any?

15 A No. As far as I remember, the original walkway  
16 has always been the same. I'm sure they replaced  
17 the boards on it or something. I'm just guessing  
18 this. The float seemed to be what they were always  
19 changing, which was twice.

20 Q You said that was changed out twice?

21 A Right.

22 Q What about the roofing structure that is there?  
23 Did your father add that, too?

24 A That was when they built it -- After my mom  
25 passed away, there was no need for the wide

1 walkway. They would not allow him to put the roof  
2 on it unless he reduced the size of the pier, due  
3 to their standards.

4 Q I presume at some point when you were growing up  
5 that your family used this dock, for fishing or  
6 swimming or both ---

7 A Yes.

8 Q Did you ever walk around on the land under the  
9 dock?

10 A I've been all around that, yes.

11 Q Can you, in fact, walk up under the dock where the  
12 pilings are?

13 A If the water is not up you could.

14 Q During the time you were out there, did you ever  
15 see the water rise to a level that was against  
16 the property ---

17 A Absolutely. I've seen it up on the property even  
18 though it's a raised wall.

19 Q You're saying it's a raised wall. You're ---

20 A Sea wall. I've seen it so high it would actually  
21 get up on the sea wall.

22 Q At some point have you seen the water abutting the  
23 property other than where the pier attaches?

24 Did the water actually rise to the level where  
25 it touched your parents' land?

Deposition of Dennis Edwards

1 A Yes.

2 Q Has that pier or the dock that you've testified  
3 to, has that been the exclusive means of access  
4 to the waters of Lake Wylie? I mean, tell me how  
5 your family used this. Was it for swimming?  
6 Was it for access for a boat? How was the access  
7 to the water used by your family?

8 A We swam -- We swam off the dock. We swam off the  
9 shoreline. I mean every aspect of the lake.

10 Q When you mentioned earlier that anybody was  
11 welcome, at any time do you recall your family  
12 telling people to get off that dock or to not  
13 use that dock?

14 A No.

15 Q Did they ever get direct with people and nasty with  
16 people saying you can't use this?

17 A Not to my knowledge.

18 Q When we talk about hostility and adverse  
19 possessions and things like that in the law, I'm  
20 not holding you to the standard of a lawyer but  
21 do you understand what the term open means?

22 Mr. Foster - Let me just a note here.  
23 The gentleman is not a lawyer. I know  
24 that that's been said. With that  
25 caveat, I need to file an objection

Deposition of Dennis Edwards

1                   about this line of questioning. Go ahead  
2                   and answer as far as you can.

3 Mr. Halford - Resuming

4 Q     Do you understand what the term open refers to?

5 A     No, not exactly.

6 Q     Mr. Foster asked if you could see the dock or the  
7           property from the water. Can you also see it  
8           from the road, from Bowater road?

9 A     No.

10 Q    Why not?

11 A    Because there's trees and stuff in the way.  
12       It's a distance from Bowater Road.

13 Q    Do you know approximately how much distance from  
14       Bowater Road?

15 A    A guess would be a quarter mile.

16 Q    So you would actually have to travel back on  
17       Fieldbrook Drive to see the property from the  
18       road?

19 A    To see the property, you would have to be on  
20       Fieldbrook Drive.

21 Q    Again, we're not holding you to the standard of  
22       the law, but do you know what the term adverse  
23       means, in terms of the law?

24               Mr. Foster - Same objection. Go ahead,  
25               sir.

Deposition of Dennis Edwards

1 A Explain that to me.

2 Q You testified earlier that the family never got  
3 direct or nasty with anybody and told them  
4 they couldn't use the dock; is that correct?

5 A Not to my knowledge, no.

6 Q Did you have any instance when you were growing up  
7 out there to see your family stop an adjoining  
8 owner from using the dock?

9 A Not that I know of. The only dispute they ever  
10 had was with the guy to the left hand side of  
11 them when he built the dock so wide. That was  
12 the dispute there.

13 Q Do you remember a family by the last name of  
14 Oates that lived next door?

15 A Yes, I do.

16 Q Did they ever use that dock?

17 A I don't know if they did or not. Like I say, we  
18 didn't feud too much people. We let people use  
19 our stuff.

20 Q I understand. I appreciate that. Let me go to  
21 what we marked earlier as an exhibit, which is  
22 your Affidavit. This is an Affidavit, and it  
23 appears you signed it about the 12th of October  
24 of 2013. Where were you when this affidavit was  
25 signed?

Deposition of Dennis Edwards

1 A I signed that at my office.

2 Q Where is your office?

3 A It's at 1433 Dave Lyle Boulevard.

4 Q Did you write this?

5 A I did not write it. I signed it.

6 Q Let's just go over a few things. I'm going to  
7 skip paragraph number 1 about your name and where  
8 your property is.

9 Paragraph 2 says, according to the records of  
10 York County, and in line with my memory. Are those  
11 your words?

12 A Yeah, that sounds like my words, my memory. I  
13 wouldn't say in line, but yeah my memory, just  
14 like I said today.

15 Q I'm specifically referencing where it says, comma  
16 and in line with my memory. Did you write that?

17 A I did not write it, no.

18 Q Do you know who did?

19 A I'm sure the lawyer wrote that.

20 Q Tell me how this Affidavit came about. Did Mr.  
21 Foster talk to you by phone to construct this or  
22 did he write it and show up at your office ---

23 A No, he originally talked to me by phone and asked  
24 me could I meet with him. It's like I told you  
25 before. I travel for a living. If I remember

Deposition of Dennis Edwards

1       correctly, I had to meet him on a Saturday. We  
2       discussed whatever, he typed it, I read it, and  
3       I signed it.

4   Q    Let's go to Paragraph Number 4. According to the  
5       records of York County, and in line with memory,  
6       again, you said that is your language?

7   A    I did not write the affidavit.

8   Q    In 2005, my father sold the land to Kenneth W.  
9       Farrell and Mary C. Farrell. Have you been to the  
10      property since it was conveyed to the Farrells?

11   A    During the closing or right after it closed,  
12      I went out with my dad. As far as I know, that's  
13      the only time I've ever met his gentleman until  
14      today.

15   Q    Paragraph Number 5, I remember this property from  
16      the period when my parents bought it. What year  
17      did your parents buy the property?

18   A    Undoubtedly it was 1976, based on what I've seen  
19      here today.

20   Q    The pier that existed that was in use at that  
21      time didn't include this boathouse; is that  
22      correct, this ---

23   A    No, it did not.

24   Q    Did it have boats housed on the pier at that time  
25      or did ---

Deposition of Dennis Edwards

1 A No, it did not.

2 Q Was it a swim platform, a fishing pier, what was  
3 it at that time?

4 A At that time, it was nothing but a square float.  
5 It was used for fishing, you could tie a boat,  
6 fishing, swimming, whatever you want to use it  
7 for. We didn't have our boat in those days.

8 Q And you're familiar with the property that is  
9 adjacent. Let's say to the left, which is now  
10 owned by Mr. Brogdonovich. There's a little  
11 square pier or dock that sits up there. Is that  
12 similar in nature to what you recall was on ---

13 A When you say the left, would that be me facing  
14 the water?

15 Q Yes, sir, you facing the water?

16 A I could not say. I haven't seen the property in  
17 years. I don't know what's there now. I don't  
18 think there was -- In my recollection, I don't  
19 remember an actual pier being there. It seems  
20 like there was a little walkway or something  
21 out, but there again, I haven't been to the  
22 property in years.

23 Q A few other questions and, again, I'm not holding  
24 you the standard of a lawyer. Who all knew of  
25 this dock? Your family treated it as theirs?

Deposition of Dennis Edwards



1 A That's correct, yes.

2 Q The adjoining neighbors would have known?

3 A The adjoining neighbors, yeah. The dock's always  
4 been there. The neighbors have come and gone.  
5 They've changed. The dock's never changed other  
6 than ---

7 Q In line with your memory, again, did your parents  
8 ever seek to exclude anybody else from using that  
9 dock?

10 A I will say this. The guy he had the dispute with,  
11 the name just came to me. It was Terry Bailey.

12 Q Terry Bailey?

13 A I don't have a clue where he lives. I couldn't  
14 think of that name. That's the only dispute  
15 they ever had that I know of. Like I said, Duke  
16 Power settled that dispute.

17 Mr. Halford - I don't believe I have any  
18 other questions. Nice meeting you, Mr.  
19 Edwards.

20 The witness - Is that it?

21 Mr. Foster - Not quite.

22 Further Examination: (By Mr. Foster)

23 Q Mr. Edwards, this was your parents' dock?

24 A Correct.

25 Q And then your father's.

Deposition of Dennis Edwards

1 Mr. Halford - Object to the form.

2 Mr. Foster - Excuse me.

3 Mr. Halford - Object to the form.

4 Mr. Foster - Resuming

5 Q Did they treat this, sir, as a public dock?

6 A No.

7 Q It was their dock?

8 A Their dock.

9 Q Mr. Halford asked you about -- Maybe it's the  
10 terms, but I didn't understand it. A boathouse?  
11 Is there anything that was there, sir, during  
12 your parents' time ---

13 A There was never a boathouse there per se, with  
14 sides on it or nothing.

15 Q Was there a top to this pier?

16 A That was added in the last change.

17 Q It was there when he sold to the Farrell's?

18 A Correct.

19 Q Was it any wider than the previously existing  
20 dock or pier?

21 A No.

22 Q Sir, the dispute you talked about with Terry  
23 Bailey, that was back in, I believe you said,  
24 the '80s?

25 A Yes, sir, it would have been somewhere in there.

Deposition of Dennis Edwards

1 Q And it had to do with widening the pier because  
2 of, I believe, your mother's ---

3 A Mother's handicap. He said it was too wide for  
4 Duke Power's standards.

5 Q And they resolved that?

6 A That's correct.

7 Q They being Duke Power?

8 A Correct.

9 Mr. Foster - I have nothing further.

10 Mr. Halford - That's all I have.

11 Whereupon - Deposition was concluded at

12 10:30 a.m.

Signing of Transcript      Shirley Dallas-Gerrald, CVR-CM  
of Deposition By      Notary Public/Court Reporter

Witness Waived

(Recorded deposition tapes retained fifteen days from  
date of certification or until transcript has been  
signed in cases when signature is not waived.)

Deposition of Dennis Edwards

CERTIFICATE OF REPORTER

State of South Carolina    }  
County of York                }

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 3rd day of April, 2014, in the City of Rock Hill, County of York, State of South Carolina.

---

Shirley Dallas-Gerrald, CVR-CM  
Court Reporter/Notary Public

My Commission Expires:  
8-18-20214

Deposition of Dennis Edwards

STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl Dukes, ]

Plaintiff, ]

v. ]

Kennith W. Farrell, Mary C., ]  
Farrell, and Martin Brogdonovich, ]

Defendants. ]

NOTICE OF TAKING DEPOSITION

C.A. No. 11-CP-46-3182

DEPOSITION  
EXHIBIT

TO: J. Cameron Halford  
Attorney for Plaintiff  
Halford Niemiec & Freeman, LLP  
238 Rockmont Drive  
Fort Mill, S.C. 29708

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 of the Rules of Civil Procedure, the undersigned, as Attorney for the Defendants FARRELL, will take the oral deposition of the following witness(es):

Dennis K. Edwards

on the following date:

Monday, March 31, 2014

at the following time:

10:00 A.M.

at the following location:

Office of John Martin Foster  
223 E. Main Street, Suite 520  
Rock Hill, S.C. 29730

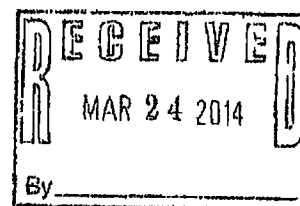
before a Notary Public, continuing from day to day, if necessary, until completed or at such other time thereafter as may be agreeable to counsel.

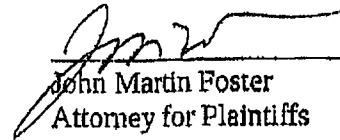
If attached hereto, Supoena(s) *duces tecum* will be served on the witness(es) named above and will direct the production of those materials indicated thereon.

This deposition is for the purpose of discovery or for use as evidence in the above action.

You are invited to be present and participate in accordance with Rule 30, S.C.R.C.P.

FILED-RECEIVED  
2014 MAR 21 PM 12:57  
CLERK OF COURT  
JUDICIAL CIRCUIT  
SIXTEENTH JUDICIAL CIRCUIT  
SOUTH CAROLINA





---

John Martin Foster  
Attorney for Plaintiffs

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, S.C. 29730

Post Office Box 106  
Rock Hill, S.C. 29731-6106

803 324-8100  
803 324-8109: Fax  
[jmfoster@comporium.net](mailto:jmfoster@comporium.net)

Rock Hill, South Carolina

March 20, 2014

STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Earl Dukes, ]

Plaintiff, ]

v. ]

Kennith W. Farrell, Mary C., ]  
Farrell, and Martin Brogdonovich ]

Defendants. ]

CERTIFICATE OF MAILING

C.A. No. 11-CP-46-3182

FILED-RECEIVED  
2014 MAR 21 PM 12:58  
DAVID H. FARRELL, JR.  
CLERK OF COURT

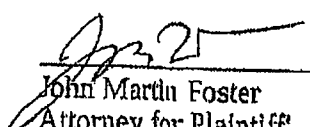
The undersigned, as counsel for the Defendants Farrell herein, hereby certifies that on March 20, 2014, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Notice of Taking Deposition: Edwards;  
This Certificate of Service

the original of which were sent to be filed with the Clerk of the Court for the Court named above, by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

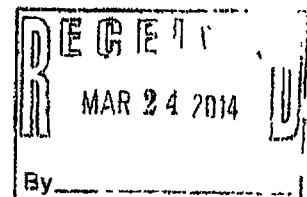
by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R., as follows:

J. Cameron Halford  
Attorney for Plaintiff  
Halford Niemiec & Freeman, LLP  
238 Rockmont Drive  
Fort Mill, S.C. 29708

  
John Martin Foster  
Attorney for Plaintiff  
223 East Main Street, Suite 520  
Post Office Box 106  
Rock Hill, S.C. 29731-6106  
803 324-8100  
803 324-8109: Fax  
[jmfoster@comporium.net](mailto:jmfoster@comporium.net)

Rock Hill, South Carolina

March 20, 2014



STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE MATTER OF Estate of Nancy Davis Edwards  
CASE NUMBER 90 ES 46 00694

FILED-RECEIVED  
BOOK PAGE  
AUG 22 10 05 AM '91  
M.H. GARROLL, JR.  
C.G.O.P. & C.S.  
YORK COUNTY, S.C.

PROBATE COURT

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 6th day of December, 1991; and,

WHEREAS, The estate of the decedent is being administered in the Probate Court for York  
County, South Carolina in File # 90 ES 46 00694 and,

WHEREAS, The grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent, and,

WHEREAS, The undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter, and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to YORK COUNTY

Name: Robert J. Edwards  
Address: 1631 Fieldbrook Drive  
Rock Hill, South Carolina 29732

RECORDED  
DATE 8-23-91  
TAX # NO. 34720  
INITIALS RJE

an undivided one-half (1/2) interest in  
the following described property

PARCEL 1: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.32 acres, more or less, and being designated as Lot No. 16A on Map of Portion of Property of A. F. and Ed Fowell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, addition to September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made, and being more particularly described as follows: BEGINNING at a stake on edge of Private Road, joint corner of Lots 16A and 17A, and running thence with Private Road N 56 43 E 140 feet and N 41 40 E 102.2 feet to stake; thence N 19 04 W 111.0 feet to stake; thence S 29 42 W 291.5 feet to the beginning point.

PARCEL 2: All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, and being designated as Lot No. 16 on Map of a Portion of Property of A. F. and Ed Fowell, Jr., prepared by R. H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7, Office of the Clerk of Court for York County, South Carolina, to which Plat reference is hereby made for a more complete description.

The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by deed of Nellie A. Horace Boone (Formerly Nellie A. Horace) dated February 20, 1976, recorded February 23, 1976 in Deed Book 525, page 402, Office of the Clerk of Court for York County, South Carolina.

FORM 200-2 (7/87)  
10245 1-207, 2-001

243

RECORDED  
RECORD  
VOL. 295 PG. 243  
YORK COUNTY, S.C.

DEPOSITION  
EXHIBIT

2 3-31-14  
Edwards



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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Robert J. Edwards, his heirs and assigns forever

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 19th day of August 1921

Estate of Nancy Davis Edwards

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Signature:

Robert J. Edwards  
Personal Representative

Witness: Clayton P. Turner

Witness: Marion R. Currence

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

PROBATE

PERSONALLY appeared before me Robert J. Edwards

and made oath that he/she saw the within named

Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with

Ann D. Williams

witnessed the execution thereof.

SWORN to before me this 19 day of  
August 1921

Witness Signature:

Clayton P. Turner

Ann D. Williams  
Notary Public for South Carolina  
My Commission Expires 01-02-00



000250994  
RECORDED 08/16/2005 11:44:48AM  
BK:07331 Pg:00102 Pages:2  
Fee:10.00 State:955.50  
County: York, SC Exempt  
David Hamilton, Clerk of Court  
York County, SC

Space above this line for recording information

STATE OF SOUTH CAROLINA )

COUNTY OF YORK )

TITLE TO REAL ESTATE )

KNOW ALL MEN BY THESE PRESENTS THAT, ROBERT J. EDWARDS herein referred to as Grantor for and in consideration of the sum of THREE HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$367,500.00) Dollars to me paid by KENNITH W. FARRELL AND MARY C. FARRELL, hereinafter referred to as Grantees in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain piece, parcel or tract of land lying, being and situate in Ebenezer Township, County of York, State of South Carolina, on the backwater of Little Allison Creek, containing 0.82 acres, more or less, being designated as Lot No. 16A on Map of Portion of Property of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, addition 10 September, 1962, addition 12 July, 1963, recorded in Plat Book 24, page 173, and Lot No. 16 on Map of a Portion of A.F. and Ed Fewell, Jr., prepared by R.H. Marett, Reg. Surveyor, June 28, 1962, recorded in Plat Book 23, page 7; and being more recently shown on and described according to Boundary Survey For Robert J. Edwards prepared August 3, 2005, by Dwayne J. Jordan, SCPLS #20466, recorded in Plat Book D-18 at Page 9, as follows: BEGINNING at a pipe on edge of Private Drive (30' R/W), which pipe is located approximately 200 feet northeast of Fieldbrook Road, joint corner of the within property and property of Marshall A. Reynolds, and running N 29 31 59 E 170.53 feet to 3/4" crimp top pipe, and continuing 120.63 feet to a 3/4" pipe, for a total distance of 291.16 feet; thence N 52 16 42 E 191 01 feet to #4 rebar, thence running S 81 08 11 E 80.05 feet to a #4 rebar, joint corner of the within property and properties of Dukes and Oates as shown on the aforesaid plat; thence turning and running S 39 20 57 W 297.30 feet to a #4 rebar; thence turning and running N 18 34 49 W 21.58 feet to #5 rebar; thence turning and running S 40 41 09 W 94.34 feet to a 3/4" crimp top pipe; and running S 56 39 12 W 139.84 feet to the point of beginning.

DERIVATION: The above described property was acquired by Robert J. Edwards and Nancy D. Edwards by Deed of Nellie A. Horace Boon dated 2-20-1976, recorded 2-23-1986 in Deed Book 526, page 482. Robert J. Edwards acquired the interest of Nancy D. Edwards under Probate Court date 90ES46-60694, evidenced by Deed of Distribution recorded in Record Book 293 at page 243. Right-of-Way for access along Private Road is granted in Deeds recorded in Deed Book 334, page 414 and Deed Book 314, page 348.

DEPOSITION  
EXHIBIT

3 8-31-14  
Edwards

BK 07331 PG 0102

RECORDED

YORK COUNTY

TAX ASSESSOR'S OFFICE

DATE 8-17-05

TAX MAP NO. 547-50

INITIALS AC / JN

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: ~~1881 Fieldbrook Drive~~ 9860 Barberville Rd.  
~~Rock Hill, SC 29732~~ Fort Mill, SC 29715

Tax/Map No. 547-00-00-050

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

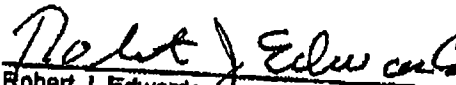
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 12 day of August, 2005.

Signed, Sealed and Delivered  
in the Presence of:



  
Robert J. Edwards (SEAL)

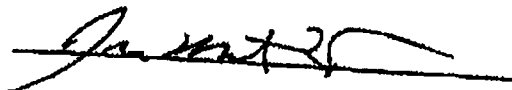


STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
12 day of August, 2005.

  
Notary Public for the State of South Carolina  
My Commission Expires: 4-28-05



RK 07331 PB0103

# THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA

JULY 1990

gains 29333.00 per year

## PROPERTY VALUE ANALYSIS REPORT

Borrower: Lellardy and Medlin  
 Property Address: Lot #14 Bowater Road  
 City: Rock Hill County: York State: SC Zip Code: 29730  
 Consensus Tract: 9-02 Map Reference: 547.48  
 Check one: ☒ SF ☐ PUD ☐ CONDO ☐ 2-4 Units  
 No. of Rooms: 4 No. of Bedrooms: 2 No. of Baths: 1 Family room or den: ☒ Yes ☐ No  
 Gross Living Area: 775 sq. ft. (Specify Vols & no.)  
 Mos. Owner's Estimate of Value: None (Specify Vols & no.)  
 Screen Por: ☐ Yes ☒ No

### NEIGHBORHOOD

### FIELD REPORT

Location: ☐ Urban ☒ Suburban ☐ Rural  
 Soil: ☐ Over 75% ☒ 25% to 75% ☐ Under 25%  
 Growth Rate: ☐ Fully Dev ☒ Rapid ☐ Slow  
 Property Values: ☒ Increasing ☐ Steady ☐ Declining  
 Demand/Supply: ☒ Shortage ☐ In Balance ☐ Over Supply  
 Marketing Time: ☒ Under 3 Mos. ☐ 4-6 Mos. ☐ Over 6 Mos.  
 Present Land Use: 50% 1 Family 2-4 Family % Apts. % Condo % Commercial % Industrial % Vacant 50%  
 Change in Present Land Use: ☒ Not Likely ☐ Likely or ☐ Taking Place From \_\_\_\_\_ To \_\_\_\_\_  
 Predominant Occupancy: ☒ Owner ☐ Tenant ☐ Vacant  
 Single Family Price Range: \$90,000 to \$300,000 Predominant Value: \$150,000  
 Single Family Age: 0 yrs. to 50 yrs. Predominant Age: 30 yrs.  
 Note: C&S does not consider race or the racial composition of the neighborhood to be reliable appraisal factors.  
 Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): Lake Wylie is an attractive Duke Power Lake lying in both South Carolina and North Carolina consisting of inexpensive summer cabins and expensive year round homes.

### SUBJECT PROPERTY

Prox. Year Built: 1960 No. Units: 1 No. Stories: 1  
 Type (detached, duplex, semi/det, etc.): Det.  
 Sign (rambler, split level, etc.): Cabin  
 Exterior Walls Material: Hardboard Roof Material: Fiberglass  
 Is the property located in HUD Identified Special Flood Hazard Area? ☒ No ☐ Yes Map No. \_\_\_\_\_  
 Total Energy Efficient Items: Storm windows

Comments (favorable or unfavorable including any deferred maintenance): Improvement on the inside is in good condition. However, the exterior will need painting soon.

### MARKET DATA ANALYSIS

| ITEM            | Subject Property  | COMPARABLE NO. 1  | COMPARABLE NO. 2    | COMPARABLE NO. 3    |
|-----------------|-------------------|-------------------|---------------------|---------------------|
| Address         | Bowater Road      | 4874 Spratt Road  | 62 Ciamatia Trail   | Marlin Drive        |
| Distance to Sub |                   | 1 mile via water  | 1 mile via water    | 2 miles via water   |
| Price           | \$125,000         | \$140,000         | \$188,000           | \$135,200           |
| Year Built      | 7-90              | 2-90              | 6-90                | 6-89                |
| Adjustment      |                   |                   | -25,000             |                     |
| View            | Lake Wylie        | Lake Wylie        | Lake Wylie          | Lake Wylie          |
| Age             | 25-30 yr. E-10    | 25-30 yr. E-10    | 25-30 yr. E-10      | 1 yr.               |
| Condition       | Average           | Average           | Average             | Average             |
| Living Area     | Total 775 sq. ft. | Total 904 sq. ft. | Total 1,000 sq. ft. | Total 1,344 sq. ft. |
| Condition       | No                | Central           | No                  | Central             |
| Car Port        | No                | No                | No                  | No                  |
| Screen Porch    | Screen Porch      | Deck              | Pier & Dock         | Deck                |
| Pier & Dock     | Pier & Dock       | Pier & Dock       | Boathouse           | Deck                |
| Conc.           | No Conc.          | No Conc.          | No Conc.            | No Conc.            |
| Foundation      | Bungalow          | Bungalow          | Bungalow            | Mobile Home         |
| Adjusted Value  |                   | \$138,400         | \$157,000           | \$138,200           |

Information on this Report is derived from an inspection of neighborhood and interior-exterior of the Subject Property Market Comparables. Probable Sales Price is based upon information and the knowledge of the undersigned.

Estimated Probable Sales Price: \$138,000 as of July 6 1990

Listed By: O. Richard Williams, Jr.

Title: Appraiser

Date: 7-6- 1990

ATTACH CURRENT DESCRIPTIVE PHOTOGRAPHS OF SUBJECT PROPERTY AND STREET SCENE

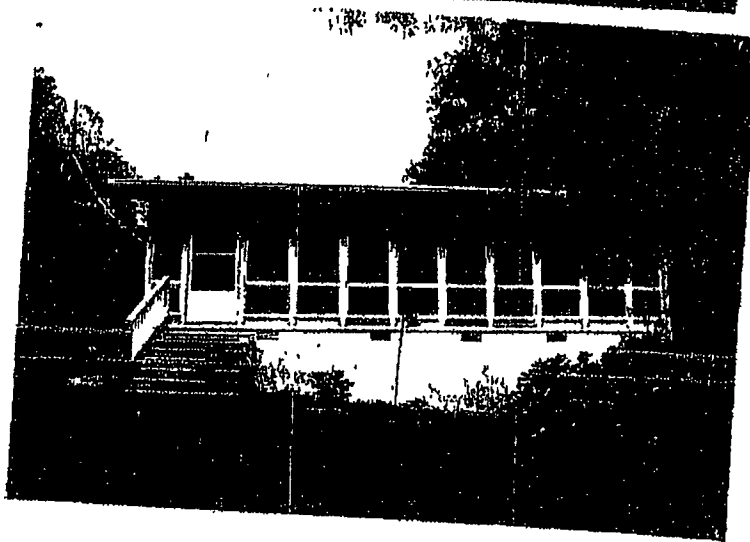
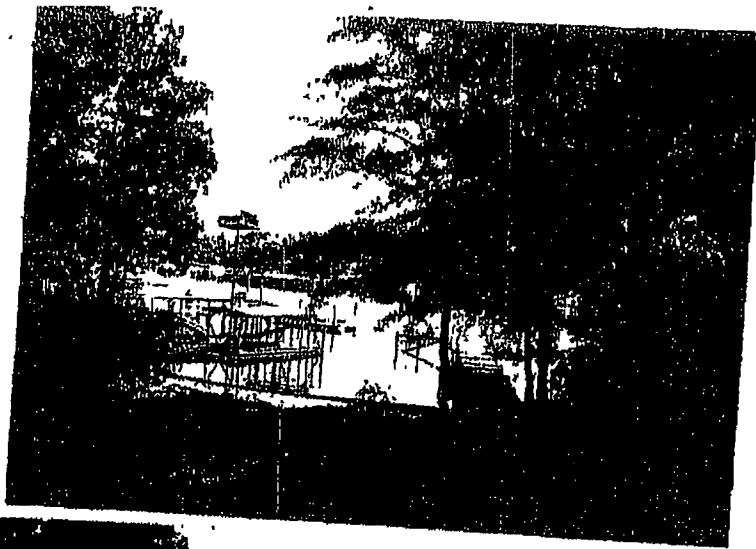
# VALUATION SECTION

THIS SECTION MAY BE USED WHEN THE COST APPROACH IS DEEMED TO BE MORE RELIABLE THAN THE MARKET DATA APPROACH.

| Measurements | No. Stories | Sq. Ft. | ESTIMATED REPRODUCTION COST - NEW - OF IMPROVEMENTS: |
|--------------|-------------|---------|------------------------------------------------------|
| 24 x 32 x 3  | 1           | 775     | Dwelling 775 Sq. Ft. @ \$ 35 = \$ 27,125             |
|              |             | 362     | Screen Porch 362 Sq. Ft. @ \$ 10 = 3,620             |
|              |             | 1131    | Extras Well & Septic = 2,500                         |
|              |             |         | Pier & Dock = 1,500                                  |
|              |             |         | Special Energy Efficient Items Inc. in showa =       |
|              |             |         | Porches, Patios, etc. Stoop = 250                    |
|              |             |         | Garage/Car Port Sq. Ft. @ \$ =                       |
|              |             |         | Site Improvements (driveway, landscaping, etc.) =    |
|              |             |         | Total Estimated Cost New = \$ 34,995                 |
|              |             |         | Less 20% Physical Functional Economic                |
|              |             |         | Depreciation \$ 6,999 = \$ 6,999                     |
|              |             |         | Depreciated value of improvements = \$ 27,996        |
|              |             |         | ESTIMATED LAND VALUE = \$ 125,000                    |
|              |             |         | (If leasehold, show only leasehold value)            |
|              |             |         | INDICATED VALUE BY COST APPROACH = \$ 152,996        |

APPRaiser(S) *C. J. Johnson*

DATE 7-6-90



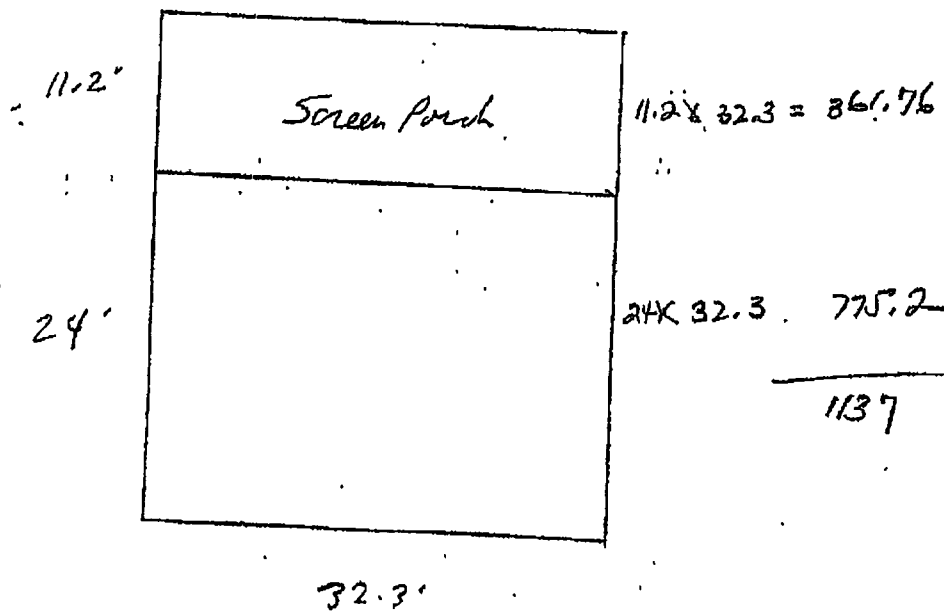
|                            |                                  |
|----------------------------|----------------------------------|
| Date: 7-6-90               |                                  |
| FOR Appraisal Lowater Road | \$ 200.00                        |
| Lehardy - Medlin           | <i>To Be Paid<br/>AT CLOSING</i> |

TO C & S Bank  
Rock Hill

L

Village Square

TAX IDENTIFICATION #57-0809007  
**C. RICHARD WILLIAMS, JR. & ASSOCIATES**  
*Real Estate Consultants*  
*Sales — Appraisals*  
 P. O. BOX 646 ROCK HILL, S. C. 29731  
 PHONE: (803) 324-4664



$$35.2 \times 32.3 = 1136.96$$

$$\begin{array}{r} 832 \\ 361 \\ \hline 1193 \end{array}$$



STATE OF SOUTH CAROLINA ]  
COUNTY OF YORK ]

AFFIDAVIT

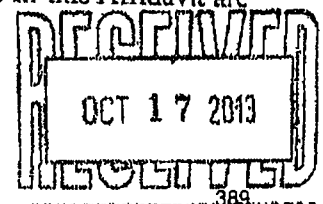
Personally appeared before me DENNIS K. EDWARDS, Sr., who, being duly sworn, deposes and states as follows:

1. My name is DENNIS K. EDWARDS, Sr. I am the son of the late ROBERT J. EDWARDS, Sr. and NANCY DAVIS EDWARDS. I live at 1404 Bowater Road, Rock Hill, South Carolina. I am now 55 years of age.
2. According to the Court records of York County, and in line with my memory, in 1976 my parents bought the land described as Lots 16 and 16A of the Fewell Tract on Little Allison Creek, which is now Tax Parcel 547-00-00-050. I was alive at the time and remember the property and its appearance.
3. According to the Court records of York County, and in line with my memory, in 1991 my father became the sole owner of the above land after my mother's death in 1990, through a Deed of Distribution from her Estate.
4. According to the Court records of York County, and in line with my memory, in 2005 my father sold the land to KENNETH W. FARRELL and MARY C. FARRELL.
5. I remember this property from the period when my parents bought it. At the time of their purchase, a pier existed and was in use, in the place where the present pier is now located.
6. In the period from 1983 to 1985, my father had the present pier (or its predecessor) built, in its present size and location. I remember that, due to complaints from our neighbors, that pier had to be examined and passed by representatives of Duke Power. The reason for the complaint was the width of the pier; it had to be wider than normal because of my mother's disability. On learning the reason for the width, the Duke Power representatives approved the pier.
7. To my knowledge, based upon my observations, a pier existed and was in continuous use from at least the time of my parents' purchase of the property in 1976 until it was sold in 2005.
8. I travel as part of my job. I am not available to be in Court to confirm the facts above in person.

I understand this is a sworn statement. I do swear or affirm that the facts in this Affidavit are



*5 3-31-14  
Edwards*

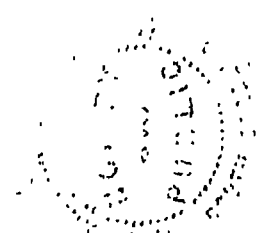


true of my own knowledge, except those based on the Court records recited above: as to those latter matters, I believe them to be true.

*DE*  
DENNIS K. EDWARDS, Sr.

SWORN TO AND SUBSCRIBED before  
me this 12 day of October, 2013.

*[Signature]*  
Notary Public for South Carolina  
My commission expires: 07/20/2019



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APR 10 2015

APPEAL FROM YORK COUNTY  
Court of Common Pleas

SC Court of Appeals

Hon. S. Jackson Kimball, III  
Master in Equity

Trial Court Case No. 2011-CP-46-03182  
Appellate Case No. 2014-000730

EARL DUKES, .....APPELLANT

vs.

KENNITH W. FARRELL, MARY C. FARRELL and  
MARTIN BROGDONOVICH, Defendants,

Of whom

KENNITH W. FARRELL and MARY C. FARRELL are the .....RESPONDENTS

CERTIFICATION OF APPELLANT COUNSEL

Pursuant to SCACR 201(g), the undersigned here certifies that the Record on Appeal contains all material proposed to be included by any of the parties and no other materials.

J. Cameron Halford  
Halford Niemiec & Freeman, L.L.P.  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 (fax)

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In The Court of Appeals

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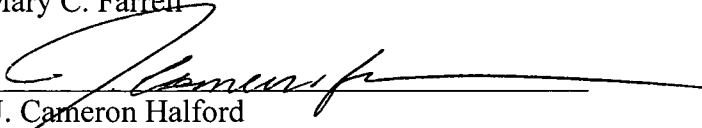
Of whom

KENNITH W. FARRELL and MARY C. FARRELL are the .....RESPONDENTS

PROOF OF SERVICE

I hereby certify that I am the attorney for the Appellant in the above-captioned matter and that I did on April 9, 2015 serve one copy of the AMENDED RECORD ON APPEAL and SCACR 201(g) CERTIFICATION OF APPELLANT COUNSEL on counsel for the party listed below by US mail, postage pre-paid, and addressed as follows:

J. Martin Foster, Esquire  
223 East Main Street  
Rock Hill, SC 29730  
Attorney for Kenneth W. Farrell and Mary C. Farrell

  
J. Cameron Halford  
Halford, Niemiec & Freeman, L.L.P.  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 (fax)