

**EDWARD A. BERTELE
ATTORNEY AT LAW
1812 PIERCE STREET
CHARLESTON, SC 29492
Email: eberteale@msn.com**

Member: SC, NJ & NY bars

Ph: (843) 471-2082
Fax: (843) 471-2082

September 30, 2015

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SEP 30 2015

S.C. SUPREME COURT

VIA TELEFAX 803-734-1499

Clerk of the Supreme Court
Supreme Court Building
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211

ATTN: Debbie

**Re: Simmons v. Berkeley Electric Cooperative, Inc.
and St. John's Water Company, Inc.,
Case No. 2013-001477**

Dear Debbie:

I am enclosing the omitted page 5 of the Plaintiff's Motion for Reconsideration of the January 18th Decision and Order granting Summary Judgment to Berkeley Electric. It should be identified as R 177a in the Record on Appeal. I apologize for this oversight.

Thank you for your kind assistance.

Cordially,

Edward A. Bertele

CC: Jay Hulst, Esq.
Gaines Smith, Esq.



Finally, the Order refers to another document, an easement granted by the heirs of William Andersen in 1956 which was not identified in BEC's motion for summary judgment. Furthermore, BEC never stated in discovery that it intended to rely upon any other easement including the 1956 easement given by the heirs of William Andersen. Standard Interrogatory No 4 specifically requests all documents on which defendants intend to rely for their defense and BEC never provided or referred to the Andersen easement in any answer or supplement. Thus, plaintiff never had the opportunity to provide a response to BEC's last minute attempt to cure the defects in its motion for summary judgment. The Order should not contain any reference to it since it was not properly before the court and Simmons was not afforded the opportunity to respond.

In summary, the Court should reconsider its decision granting an express easement as to TMS 135 because the record contains documents not properly before the Court which were made part of its decision. The Order fails to consider that there were disputed issues of fact concerning TMS 135 and the reasonable interpretation of 1956 easement supports Simmons contention as to a trespass.

Also the Court should reconsider its decision granting a prescriptive easement across TMS 135 because BEC did not establish when its power line was first installed to the Andersen property across TMS 135 and when the statutory 20 period began to run. This was a disputed issue of fact. Accordingly, the Court should not have granted summary judgment as to any prescriptive rights across TMS 135 because there are no facts in the record to support this claim.

It would be an abuse of discretion for this Court to grant BEC's motion for summary judgment based upon a lack of competent evidence and without allowing Simmons an