THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity

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

David R. Gooldy, Respondent,

vs.

The Storage Center – Platt Springs, LLC, Appellant.

RETURN TO PETITION FOR REHEARING

Robert E. Stepp
S.C. Bar No.: 5335
rstepp@sowellgray.com
Bess J. DuRant
S.C. Bar No.: 77920
bdurant@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel No.: (803) 929-1400

Attorneys for Appellant, The Storage Center – Platt Springs, LLC

Appellant The Storage Center – Platt Springs, LLC ("Appellant" or "The Storage Center") hereby responds to the Petition for Rehearing ("Petition") filed by Respondent David R. Gooldy ("Respondent" or "Gooldy"). This Court applied well-established principles of law to this implied easement dispute, and no material fact was overlooked or disregarded. As detailed in the reasons below, the Petition should be denied.

I. NO EASEMENT (OR PRESUMPTION OF EASEMENT) EXISTS AS A MATTER OF LAW.

Because the Loflin Plat[1] was incorporated solely for descriptive purposes, only the 0.68 acres contained within the boundary lines were conveyed to Loflin, as a matter of law. "When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006); *see also Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965) (holding "the reference to the recorded plat made it a part of deed for the purpose of showing the boundaries, metes, courses, and distances of the property conveyed"). Therefore, while the deed incorporates the plat for the purpose of showing the boundaries of the property, it does ***not*** incorporate the plat for any other purpose such as conveying rights in the area outside of the property boundaries.

A. *Bennett* and *Lancaster* Squarely Control This Matter.

Gooldy tries to avoid this principle of law by claiming that *Bennett* and *Lancaster* are not analogous because an implied easement is not an encumbrance. That assertion is incorrect, however, because an implied easement is an encumbrance. *See Martin v. Floyd*, 282 S.C. 47, 51,

[1] The "Loflin Plat" is the plat at issue. (R. p. 391.) It was incorporated for descriptive purposes into the deed from the common grantor, Congaree Associates, to Gooldy's predecessor in title, James Loflin. (R. pp. 394-95.)

317 S.E.2d 133, 136 (Ct. App. 1984) ("The covenant of freedom from encumbrances simply refers to freedom from various liens, easements and other claims."); *Black's Law Dictionary* 449 (8th ed. 2005) (Encumbrance is "[a] claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest."). If the purported easement existed, it would be a burden that would be attached to The Storage Center's property that would lessen the value. It would therefore be an encumbrance.

Gooldy also tries to draw factual distinctions between the present matter and *Lancaster*, but the factual distinctions further highlight the flaws in Gooldy's argument. In *Lancaster*, a deed referenced a plat that depicted a publicly recorded gas pipeline easement that ran across the owner's property. *Id.* at 466-67, 144 S.E.2d at 210. The issue was whether the depiction of the easement on the plat that was incorporated into the deed was sufficient to give notice to the purchaser of the existence of the easement. *Id.* at 466, 144 S.E.2d at 210. The supreme court held that while "the reference to the recorded plat made it a part of deed ***for the purpose of showing the boundaries, metes, courses, and distances of the property conveyed***," *id.* at 469, 144 S.E.2d at 211 (emphasis added), it did not make the easement shown on the plat part of the deed. Stated differently, the plat did not become part of the deed to reflect the easement even when the easement existed within the boundary lines on the plat. *Id.* This is true even though (1) the easement was properly recorded in the public records, (2) ran across the owner's property, and (3) was depicted on a recorded subdivision plat which was incorporated into the deed's legal description. *Id.*

In contrast, Gooldy's alleged easement is implied, and therefore, not recorded in the Lexington County records. His alleged easement does not run across or burden his property. Rather, it runs outside of the boundary lines of his property as depicted on the Loflin Plat and burdens The Storage Center's property. Finally, Gooldy's alleged easement was depicted on an

individual lot plat, not a recorded subdivision plat. These factual differences underscore the fact that if an implied easement was not found in *Lancaster*, it surely does not exist in the present matter.

The reference on the Loflin Plat to the "road" did not convey any rights regarding the "road" to Loflin or to any subsequent purchaser. Like the deed in *Lancaster*, the deed to Loflin (and the deed to Gooldy) incorporates the plat solely for descriptive purposes. Thus, Congaree Associates cannot as a matter of law be deemed to have created a right in a non-existent road because it signed a deed that incorporated a plat that showed a "road" that was not part of the description of the property being conveyed. The incorporation of the Loflin Plat only serves to show that the parties intended to convey the 0.68 acres within the boundary lines on the plat. This Court correctly concluded that no easement exists.

B. *Bennett* and *Lancaster* Are Not Limited to Breach of Warranty Matters.

Gooldy tries to differentiate the present case from *Bennett* and *Lancaster* by claiming those cases are limited solely to breach of warranty matters. However, there is nothing in the *Lancaster* or *Bennett* opinions to suggest that their holdings are limited in such a manner. *Lancaster* and *Bennett* did involve warranty issues, but the law applied in these cases is more universal than breach of warranty claims. For example, the *Bennett* Court cites numerous cases for support of the principle that referencing a plat for descriptive purposes only incorporates the property within the boundary lines. Specifically, *Bennett* states as follows:

> 'The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.' *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979); *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); *see*

> *also Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) ("'As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land. . . .'") (citation omitted).

Bennett, 370 S.C. at 594, 635 S.E.2d at 657. The principle of law espoused by *Bennett* and *Lancaster* are not limited to cases involving breach of warranty claims, and nothing in their opinions suggest otherwise.[2]

C. *McAllister* Does Not Change the Analysis that Only 0.68 Acres Was Conveyed.

Gooldy argues that *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990) prevents this Court from holding that only 0.68 acres was conveyed to Gooldy's predecessor in title. Specifically, he argues that "*McAllister* says the implied easement is created even though the conveyance says nothing else about the creation of an easement or a dedication to public use." (Pet. for Reh'g 4.) This analysis of *McAllister* is superficial and fails to address two of the most salient facts in this case – there is no road; and, the Loflin Plat is not a subdivision plat.

McAllister has no application in the present matter because the deed in that case refers to the tracts (plural) that are bounded by the road in question. *Id.* at 12, 389 S.E.2d at 860. Second, the road had width and length dimensions in the *McAllister* plat. *Id.* Third, the plat was prepared for the common grantor. *Id.* at 10-12, 389 S.E.2d at 858-59. Fourth, the plats were of more than one parcel. Here, the deed to Loflin does not refer to the "50' road," much less the lot being bounded by the "50' road." The road never existed, and therefore, the road had no width or length dimensions in the Loflin Plat. The Loflin Plat was prepared for Loflin, not Congaree Associates,

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[2] Similarly nothing in the *Lancaster* opinion suggests that its holding is limited to "circumstances where one document incorporated an encumbrance against the ***express*** intention to the contrary set forth by separate document." (Pet. for Reh'g 3 (emphasis in original).) Gooldy's reading of *Lancaster* is unclear and unsupported, and does not undermine the Court's application of *Lancaster* to the facts of this case.

and the Loflin Plat was only a plat of one parcel. (R. p. 377.) *McAllister* does not provide that the alleged implied easement was conveyed to Loflin (and Gooldy). Rather, the legal description of the deed confirms that only 0.68 acres was conveyed.

II. NO EVIDENCE EXISTS THAT THE COMMON GRANTOR CREATED AN EASEMENT.

The record is devoid of any evidence that Congaree Associates, the common grantor, intended to create an easement. To the contrary, the uncontroverted evidence is that Congaree Associates ***did not*** intend to create an easement. That unchallenged evidence is (1) the deed itself, which incorporates only the 0.68 acres, as a matter of law; (2) the uncontroverted testimony of Congaree Associates' principal that the common grantor had no intent to create an easement; (3) the fact that no road existed; and (4) the fact that subsequent plats show no road or easement. Moreover, even if the Court could glean a glimmer of intent, the presumption of an easement was robustly rebutted by the clear, uncontradicted testimony of Congaree Associates' principal.

"'The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.'" *Bennett*, 370 S.C. at 574, 635 S.E.2d at 667 (quoting *Lancaster*, 246 S.C at 468, 144 S.E.2d at 211). A review of the evidence *in toto* reveals that there was never an intent to create an easement. First, the *Lancaster* rule provides that because the parties referenced the Loflin Plat solely for descriptive purposes, the parties intended to convey solely the property within the boundary lines and not the alleged "road."[3] Second, Carroll McGee,

[3] Gooldy argues that McGee, on behalf of Congaree Associates, was obliged to know the contents of a document he signed. (Pet. for Reh'g 6.) The Storage Center does not disagree. The deed signed by McGee shows that Congaree Associates had no intent to convey any easement rights because the Loflin Plat was incorporated solely for descriptive purposes under the *Lancaster* rule.

the principal of Congaree Associates, unequivocally testified that there was never any intent to establish any easement rights when Congaree Associates conveyed the Gooldy Parcel to Loflin. It did not intend to create or convey any rights in the alleged 50' road to Loflin. (R. pp. 228:13 – 229:6.) By referencing the Loflin Plat, Congaree Associates only intended to convey the property within the boundary lines, *i.e.* the Gooldy Parcel. (R. pp. 228:8 – 229:12.) By allowing the deed that referenced the Loflin Plat to be recorded, Congaree Associates did not intend to create an easement. (R. pp. 228:13 – 229:13.) There is no evidence to the contrary.

Third, the lack of intent is most starkly evidenced by the fact that no road has ever existed. (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19; *see also* R. p. 404.) Finally, subsequent plats do not show a road. Robert Collingwood, who drafted the Loflin Plat, drafted subsequent plats that show no road.[4] (R. pp. 399-401, 403.) The plat relied upon by The Storage Center includes no reference to the alleged 50' road or any associated easement. (R. pp. 396-398.) Similarly, Lexington County's TMS map, which was drafted in the 2000s, shows no road abutting the southern side of the Gooldy Parcel. (R. p. 402.) In sum, the deed's execution and subsequent actions support McGee's clear testimony that Congaree Associates never intended to create or convey any easements in favor of Loflin and his successors.

Similarly, Gooldy argues that a court can locate the width and location of a road. (Pet. for Reh'g 6.) Again, The Storage Center does not necessarily disagree. However, the parties must have an intent to create an implied easement over a road. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 235, 662 S.E.2d 452, 456-57 (Ct. App. 2008) (providing "the intentions of the parties to the transaction are the overriding focus when examining implied easements."). Here, the overwhelming weight of the evidence shows that there was never an intent to create an implied easement.

[4] Gooldy contends that "[Collingwood] was in the best position to know whether a notation of a road was necessary." (Pet. for Reh'g 5.) Yet, Collingwood's own subsequent plats show no road. (R. pp. 399-401, 403.)

To the extent that the reference to the Loflin Plat is evidence of intent, it at best creates only ***a rebuttable presumption*** of intent, which can be overcome by evidence that the developer did not intend to create such an easement. *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965); *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 233, 662 S.E.2d 452, 455-56 (Ct. App. 2008). Any such presumption was easily overcome by Carroll McGee's uncontradicted testimony that Congaree Associates did not intend to create or convey any easement rights to Loflin and his successors. This Court correctly concluded that there is no evidence to support a conclusion that Congaree Associates and Loflin intended to create an implied easement.

III. ESTOPPEL CANNOT CREATE AN EASEMENT IN FAVOR OF GOOLDY.

Gooldy argues that The Storage Center should be estopped from denying Gooldy access over The Storage Center's property because (1) Loflin, his predecessor in title, used the abutting property and because (2) Gooldy believed that he could use it because it was a flat area and the chain of title used the same legal description.[5] First, Loflin states that he may have used the property, but he continues with the following:

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[5] Gooldy also cites to the fact that a plat relied on by The Storage Center contains a driveway encroachment. (Pet. for Reh'g 7.) But this plat shows no easement or road. (R. pp 396-98.) In fact, Charles Meeler, a registered surveyor who drafted this plat, testified as follows:

> I didn't feel like there was a road there. In my professional opinion, there was no road. Lexington County required road names. I couldn't find a – I couldn't find a name for that alleged road, so, you know, to my knowledge and all the research work I did, there was no road existed there. South Carolina DOT had no record of a road there. Lexington County had no record of a road there. So I just felt like that was a part of [Congaree Associates'] property.

(R. p. 249:13-22.) Moreover, Gooldy cannot rely on this plat to establish a claim for estoppel as the plat was drafted in 2006 – four years after Gooldy acquired his lot in 2002. (*See* R. pp 375-76.)

> 5. This "50' Road" shown on the plat did not exist and is not part of the property I owned. The "50' Road" was not referenced for my benefit to use. I had no agreement with my neighbor, Congaree Associates, that a road would be built there. The "50' Road" reference in the plat was not intended to create an easement.
>
> 6. At all times, the strip of land I used to access my property was the property of Congaree Associates.
>
> 7. I never believed that I owned the southern strip of land referenced as the "50' Road" or acquired an easement to use it. I never used it with the intent of dispossessing Congaree Associates of its property. No express or implied easement was ever given to me, and I did not give one to anyone else.

(R. 64, ¶¶ 5-7.) Loflin's testimony unequivocally establishes that he did not intend to acquire an easement from Congaree Associates. Similarly, McGee's testimony unambiguously provides that Congaree Associates never intended to convey an easement. (R. pp. 228:13 – 229:6.) No easement ever arose.

Also, Gooldy's position that an open area exists next to his property and that his chain of title included the same legal description, incorporating the Loflin Plat, is of no moment. First, a picture of an open area is just that – a picture of an open area. Because Gooldy erroneously thought he could use an open area as a driveway does not provide him with any legal or equitable basis to claim ownership over the area. Second, his own chain of title should have caused him to discover that he had no claim over The Storage Center's property. The legal description in the deed from Congaree Associates to Loflin provides as follows:

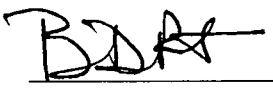
> All that certain piece, parcel, or lot of land, with improvements thereon, if any, situate, lying and being on the western side of S.C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the Town of Lexington, in the County of Lexington,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

(R. pp. 394-395 (emphasis added).) The legal description specifically states that the property conveyed "contains 0.68 acre," which is the land within the boundary lines on the Loflin Plat. It says nothing about easements, other encumbrances, or access to a 50' road because there was no intent to create any rights regarding same. The final sentence explicitly states and reinforces that Congaree Associates only intended to convey (and Loflin only intended to receive) the 0.68 acres. Gooldy's chain of title should have informed him that he only has 0.68 acres, not 0.68 acres plus an implied easement.

CONCLUSION

For the reasons set forth above, The Storage Center respectfully requests this Court deny Gooldy's Petition for a Rehearing.

SOWELL GRAY STEPP & LAFFITTE LLC

By: 

Robert E. Stepp
SC Bar # 5335
Bess J. DuRant
SC Bar # 77920
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Appellant, The Storage Center – Platt Springs, LLC

Columbia, South Carolina
January 22, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity

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

David R. Gooldy, Respondent,

vs.

The Storage Center – Platt Springs, LLC, Appellant.

PROOF OF SERVICE

I certify that I have caused the service of the Return to Petition for Rehearing on Respondent David R. Gooldy by hand delivery on January 22, 2016, to his attorney of record, James Randall Davis, Esquire, Nicholson, Davis, Frawley, Anderson and Ayer, LLC, 140 East Main Street, P.O. Box 489, Lexington, South Carolina 29701.

Robert E. Stepp
S.C. Bar No.: 5335
rstepp@sowellgray.com
Bess J. DuRant
S.C. Bar No.: 77920
bdurant@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel No.: (803) 929-1400

Attorneys for Appellant

SOWELL SG GRAY

BESS J. DuRANT
Direct Dial 803 231.7832
Direct Fax 803 231.7882
Email bdurant@sowellgray.com

January 22, 2016

BY HAND-DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: David R. Gooldy v. The Storage Center – Platt Springs, LLC
SC Court of Appeals Case No.: 2014-000741
Civil Action No.: 10-CP-32-0460
SGS&L File No.: 6252/1501

Dear Ms. Kitchings:

Enclosed herewith please find the original and six (6) copies of Appellant's Return to Petition for Rehearing in the above referenced matter. Kindly file the original and return the clocked-in copy to our office via our courier.

Thank you for your assistance in this matter and please contact me if you have any questions.

Sincerely,

Bess J. DuRant

Enclosures

cc: James Randall Davis, Esquire