THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2011-CP-32-01010
Appellate Case No.: 2013-002056

Glenda Renee Couram

Appellant,

v

Mr. & Mrs. Christopher Hooker, Mr. & Mrs. Carl Reibold, Legal or Equitable Right, Title, state, Lien or interest in the Property Described in the Complaint Adverse to the Plaintiff's; Cox and Dinkins, Inc., Fair Builders/Developers, Inc., J. Donald "Don" Rawls & Steve Fair in their official and individual capacities, Carolina Water Svc., (CWS), Carolina Trace Utilities, Inc., & Utilities, Inc., Corporate Offices

Defendants,

Of whom Mr. & Mrs. Christopher Hooker, Mr. & Mrs. Carl Reibold, Cox & Dinkins, Inc., Fair Builders/Developers, Inc., J. Donald "Don" Rawls & Steve Fair in their official and individual capacities are

Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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A. PRO SE STANDARD OF REVIEW[3]

Because the Plaintiff is pro se, the Court has a higher standard when faced with a motion to dismiss, White v. Bloom, 621 F.2d 276, makes this point clear and states: A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, Haines Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972). The courts has ruled when it comes to a pro se plaintiff that the courts are obligated to "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)). Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of White v. Bloom. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.

B. THE CAUSES OF ACTION

This action that was before the Lexington Circuit Court was about continuing trespass, trespass criminal, civil conspiracy, continuing nuisance, slander of title, intentional infliction of emotional distress, etc., it was not a cause of action involving negligence

It was not a suit about the calculation of Draft Surveying, Inc., or Cox and Dinkins. The Property that the subject of this suit was the left side connecting the Appellants property with the "Neighbors" based on a survey done by Cox and Dinkins, Donald Rawls done for Steve Fair and

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[3] **Appellant did not want to hire an attorney she could not afford to hire one and she had no other option but to bring this action on her own to not do so would have allowed the defendants to continue their actions to take the land – the "Neighbors" claimed at one they had a right to the land because she "set on her rights for three years. Based on** Statute of Repose, **S.C. Code § 15-3-640**

Fair Builders, Inc., if so Appellant would have brought a claim of Negligence against the Defendants and she had not. The only duty the Defendants had to the Appellant was to respect her constitutional rights as a land owner, not trespass on her property interfering with her enjoyment of her property, not be a continuing nuisance to her and her property, not conspire to take her property, not engage in criminal acts on her property and not to cause her emotional harm because of their actions and not to set her land up to be taken at will.

C. DIRECTED VERDICT

"When reviewing the denial of a motion for directed verdict or JNOV, this Court applies the same standard as the trial court.'" Pridgen v. Ward, 391 S.C. 238, 243, 705 S.E.2d 58, 61 (Ct. App. 2010) (quoting Gibson v. Bank of America, N.A., 383 S.C. 399, 405, 680 S.E.2d 778, 781 (Ct. App. 2009)). "'The Court is required to view the evidence and inferences that reasonably can be drawn from the evidence in the light most favorable to the non-moving party.'" Id. (quoting Gibson, 383 S.C. at 405, 680 S.E.2d at 781). "'The motions should be denied when the evidence yields more than one inference or its inference is in doubt.'" Id. (quoting Gibson, 383 S.C. at 405, 680 S.E.2d at 781). "'An appellate court will only reverse the [trial] court's ruling when there is no evidence to support the ruling or when the ruling is controlled by an error of law.'" Id. (quoting Gibson, 383 S.C. at 405, 680 S.E.2d at 781).

The Appellant provided the lower court with an abundance of evidence that proved her ownership of her property (the only thing she did not mention was the sprinkler system installed by Hendricks Builder, Inc., as further proof of ownership and how she knew where her property lines were). She provided the court with Deeds of her property, deeds of CWS and the proof of ownership of the 15 feet that was between herself and a common owner Kohn and the additional 5 foot easement for other utility companies. The Defendants had no relationship with the

Appellant or CWS – which the defendant failed to indicated on the plat they registered with the Registered of Deeds Office where they clearly note on their plant the Current and former owner of property on the plat they failed to indicate the fact that Fair Builders, Inc. obtained the land or the park from a Mr. Hawkins (ROA pp 684-687).

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING DEFENDANTS DIRECTED VERDICT BASED ON RUNNING OF THE STATUTE OF LIMITATIONS (SOL)

Appellant's claims are not barred by the statute of limitations as declared by Judge McIntosh. Appellants had no reason whatsoever to bring a legal actions against Cox and Dinkins, Rawls or Fair and Fair Builders prior to 2010 because she had not suffered any injury to sue them over. It was not until the "Neighbors" made a full out grab for her land that she discovered the injury caused by the Defendants. As she testified to she did not see any of the defendants on her property in 2004 or during this development which goes to show she had no cause to believe that she had suffered an injury.

Her property was not part of the development of the park. It simply was not in her purview to even think the defendants would come 20 feet onto her property to discover a ½ rebar that was not on any plat prior the Cox and Dinkins plat recorded in 2004.

In fact, Appellant initially filed suit against the "Neighbors" until she met with Don Rawls in March 11, 2012, in an effort to figure out why the "Neighbors" would not stop where she learned the extent of the damage done to her. Rawls told the Appellant that he was aware the rebar did not belong that's why he did not include it in his calculations but that knowledge did not stop him from legalizing the ½ rebar and declaring it as o (ld) fraudulently implying it had been in place all time.

Therefore, the Appellant could not have brought any action against the Appellants prior to the date of this action March 11, 2011 and the SOL did not begin to run until December 2010 at which time the Appellant timely filed this action.

II. THE LOWER COURT ERRED IN GRANTING DIRECTED VERDICT BASED ON THE DISCOVER RULE

The Lower court granted defendants a directed verdict on all causes of actions except for trespass against the "Neighbors" citing the statute of limitations.

The Courts have explained that under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. See Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); S.C.Code Ann. § 15-3-535. See also Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct.App.1997). That the exercising of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.

SC Code § 15-3-535, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. True v. Monteith, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997).

The court erred when it stated that the statute of limitations had run on the Appellant's claims as stated above Appellant had not suffered any injury nor had any reason to believe that the defendants were on her property to cause her injury. As stated above in her testimony Appellant did not see them on the land, she was working three jobs, but it does not change the fact that they were on the property without her permission the trespass is on the survey/plat dated

on or about June 30, 2004 done for Fair Developers, Inc., by Cox and Dinkins, Inc., signed by Rawls and filed to the ROD Office. (ROA pp 435-48) and (Plaintiff Exhibit 2 ROA p 665)

Prior to 2010, Appellant had no facts, the continuing trespass and nuisance was underground, the defendants had placed above ground stakes that did not place Appellant on any notice of their trespass or that the Defendants had violated any of her constitutional rights. Any time she saw the "Neighbors" going over the property line she immediately corrected them and they stopped to her knowledge as was testified to. In December 2010, they refused to stop the trespass or destruction of her property. The reason was what was on their survey and apparently the statute of repose stating the appellant set on her rights to the property.

Appellant sent letters, called the police and they continued the destruction to establish a soccer field for one number and an area for grandchildren for the other neighbor. They refused to stop cutting down healthy shrubs and trees and continued the trespass despite. (ROA pp 652-665). When asked to leave they said no, the police (ROA p 670) refused to help and Appellant was told to sue them if she wanted them to cease their actions to her land, she was even told to stay away from her own property which she did to avoid the defendants.[4] (Exhibits ROA pp 658, 658, 660). At the time as Appellant testified to she had a blood clot in her leg. (ROA p 649) Appellant had no reason to believe there was a rebar on her property that did not belong that gave the "Neighbors" occurring to them the right to come on her property and start cutting down trees, digging holes, planting hoses, when they would not stop their behavior even when she called the police, so she begin to try and find out why by going to the Register of Deeds Office who recommended she go see the surveyor for the "Neighbors" and the Developer Fair Builders, Inc.

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[4] Appellant got up early in the morning to cut her grass, she stopped walking, she remained away from her home until after dark. When the defendant came outside she went inside

Appellant called Rawls to find out why the "Neighbors" was determined to claim her land and meet with him on March 11, 2011, in his office – and this is where she discovered what the last 10 years was all about, the taking of her land, in fact she did not know of the rebar until it was pointed out to her by Rawls and he also pointed out to her that the rebar was not on any other plat prior to his survey and plat in 2004. (Rawls Letter ROA p 182) (See Exhibits ROA pp 665, 667, 669, 676-7).

Prior to the meeting with Rawls Appellant had no reason to go to the Registered of Deeds office to pull the plat of the park's development, locate the deeds of CWS or the Survey/plats of Wrenwood Subdivision.

Appellant took Fair and Fair Builders/Developers to magistrate court for damages to the property in 2005, that damage she was in the back portion of her property above ground and she timely filed suit. (Exhibit 648). Therefore the Circuit was in err when it granted the Defendants Cox and Dinkins, Rawls, Fair and Fair Developers a directed verdict citing the Statute of Limitations has done on the Appellants claims.

The trial court and the court of appeals determined that the statute of limitations for appellants' claims expired prior to the filing of their suit because their claims were not based on a continuing trespass but on a permanent trespass that had been fully completed more than four years prior to the filing of the suit. A finding of a continuing trespass would have tolled the statute of limitations.

III. THE LOWER COURT ERRED WHEN IT GRANTED DEFENDANTS' MOTION FOR DECLARATORY JUDGMENT

Due to the actions of the "Neighbors" and their refusal to stop their actions the Appellant was forced to file suit against these individuals. Upon receipt of the complaint and summons the defendants filed a counter claim that requested a Declaratory Judgment which is an inappropriate

means to adjudicate the issues before the Court. Appellant had already suffered damages, humiliation and embarrassment, there had already been a trespass and damages there had already been a violation of the Appellant's rights and there was no controversy as the boundary or property lines[5] as evidence by the actions of the "Neighbors."

'Declaratory judgment actions provide a specialized form of relief in the judicial system. This unique cause of action is designed to allow a party threatened with *potential* legal liability to seek an adjudication of its rights without having to wait for or risk the commencement of legal action against that party. "Stated differently, declaratory judgment relief creates means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached a stage at which either party may seek a coercive remedy or in which a party entitled to a coercive remedy fails to sue." 12-57 Moore's Federal Practice - Civil § 57.04. Courts have held that a declaratory judgment action is not the appropriate procedural avenue to adjudicate past conduct, when damages have already accrued. See, e.g., Crown Cork & Seal Co., Inc. v. Borden, Inc., 779 F. Supp. 33 (E.D. Pa. 1991) (Declaratory Judgment Act is designed to settle legal rights before rights have been violated or relationships disturbed, not to prevent the burdens or costs of litigation after violations have occurred). Declaratory judgments actions are designed to allow parties to clarify legal rights and obligations before the matters at issue ripen into violations of law or a breach of duty, and thereby avoid incurring damages. United States v. Undetermined Quantities of an Article of Drug etc., 1987 U.S. Dist. LEXIS 15942 (D. Colo. 1987). Declaratory judgment actions also are appropriate in situations where such actions may promote judicial efficiency and fully resolve and terminate the controversy between the parties. See, e.g., Societe

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[5] The "Neighbors" requested and was granted an Order for a court ordered survey they never had the survey done to end what the deemed to be a controversy stating the two surveyors they contacted was afraid of being sued – a matter that was settle in the Order.

de Conditionnement en Aluminum v. Hunter Eng'g Co., Inc., 655 F.2d 938, 943 (9th Cir. 1981); Reynolds v. Stahr, 758 F. Supp. 1276, 1281 (W.D. Wis. 1991).'

The court's granting the declaratory judgment in the instant case, did not solve the issue that was before it.

The other primary purposes behind the Declaratory Judgment Act are absent here. Declaratory judgment actions are designed to fully resolve the controversies among parties or promote judicial economy. The relationships among the parties around the issues had already become strained, rights had already been violated. There was no promotion of judicial economy or resolution of the controversies among the parties. If there was it was one sided and prejudicial against the Appellant.

The portion of property that was at issues was testified to by the police Officer Creech and it was not the boundary line; the marking of the boundary lines was not the issue before the court.

The question was whether or the Defendant's trespassed onto the Appellant's property. The Defense Attorney misquoted Draft's testimony.

> The question was is there a rebar noted 15 feet inside my property line on the plat that you did in 1994?
>
> Mr. Draft's response was "no ma'ma.

That was the point of the case before the court. In 1994, there was no rebar on the property it did not show up until 2004 when the park was developed and that rebar is the reason the defendants' trespassed and destroyed the Appellant's property and planted a black hose to let the Appellant know the 20 feet based on their survey was not hers but theirs for the taking which they took.

The court was in clear error when he granted the declaratory judgment that leaves the Appellant open to continued trespass and nuisance.

VI. APPELLANT DID IN FACT FILE A TIMELY SUIT FOR CONTINUING NUISANCE AND CONTINUING TRESPASS AGANST COX AND DINKINS AND RAWLS

Continuing Nuisance

In Valley Ry. Co. v. Franz (1885), 43 Ohio St. 623, 4 N.E. 88 the court of appeals in the case sub judice applied the reasoning of *Valley Ry. Co.* to hold that " '[a] permanent trespass occurs when the defendant's tortuous act has been fully accomplished, but injury to the plaintiff's estate from that act persists in the absence of further conduct by the defendant. In contrast, a continuing trespass results when the defendant's tortious activity is ongoing, perpetually creating fresh violations of the plaintiff's property rights.' " 2007- Ohio-38, at ¶ 16, quoting Reith v. McGill Smith Punshon, Inc., 163 Ohio App.3d 709, 2005-Ohio-4852, 840 N.E.2d 226, ¶ 49.

According to the law or courts 'the traditional concept of a nuisance requires a landowner to demonstrate that the defendant unreasonably interfered with his ownership or possession of the land. See Ravan v. Greenville County, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct.App.1993). The distinction between trespass and nuisance is that *trespass* is any intentional invasion of the plaintiff's interest in the exclusive possession of his property, whereas *nuisance* is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his property. Id. A nuisance may be classified as permanent or continuing in nature.

A continuing nuisance is defined as a nuisance that is intermittent or periodical and is described as one which occurs so often that it is said to be continuing although it is not necessarily constant or unceasing. 58 Am.Jur.2d Nuisances § 28 (1989). When the nuisance is

continuing as in this cause to *this day* and the injury is abatable, the statute of limitations does not run merely from the original intrusion on the property and cannot be a complete bar. Id. Rather, a new statute of limitations begins to run after each separate invasion of the property. Id.; See Cutchin v. South Carolina Dep't of Highways & Pub. Transp., 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990) (citing Webb v. Greenwood County, 229 S.C. 267, 277, 92 S.E.2d 688, 692 (1956) (stating if the injury is permanent, the plaintiff has a single cause of action which cannot be split; however if the cause of the injury is abatable, each injury gives rise to a new cause of action)).

A nuisance is continuing if abatement is reasonably and practicably possible. 58 Am.Jur.2d Nuisances § 29 (1989).

In discussing the limitations period applicable in a continuing nuisance action, our supreme court has stated: "Since every continuance of a nuisance is a new nuisance, authorizing a fresh action, an action may be brought, for the recovery of all damages, resulting from the continuance of a nuisance, within the statutory period of the statute of limitations, for which no previous recovery has been had, even though the original cause of action is barred, unless the nuisance has been so long continued, as to raise the presumption of a grant, or in case of injury to real property, unless the plaintiff's right of entry is barred. But when the injury is of such a nature, that all the damages resulting therefrom, whether past or prospective, are recoverable in one action, the statute of limitations begins to run, from the time of the completed erection of the nuisance. See Sutton v. Catawba Power Co., 104 S.C. 405, 408, 89 S.E. 353, 353 (1916). In McCurley v. South Carolina Highway Dep't, the court stated that if the injury to neighboring lands is caused by negligence, or if the cause is abatable, then there arises a continuing cause of action. 256 S.C. 332, 335, 182 S.E.2d 299, 300 (1971).

Appellant alleged a continuing nuisance and trespass which would make the granting of the directed verdict inappropriate in this case.

The trial court summarily applied the three year statute of limitations to the continuing nuisance cause of action without considering the possibility of abatement. Viewing the evidence in the light most favorable to the Appellant. Appellant ask that this Court rule the lower court was in error in applying the statute of limitations to her continuing nuisance and trespass claims and reverse. Each time the "Neighbors" trespassed onto the Appellants land a new cause of action arose because the illegal rebars remains on her property.

There was no reason whatsoever for the appellant to have known the extent the defendants had gone to to claim her land. She had no contractual relationship, she was not contacted by the surveyor, her property was in an entirely different Phase that had been completed she purchased the last house in Phase IV. The surveying company has stakes above ground that showed were the property lines were until removed by the "Neighbors in December 2010. Appellant had a sprinkler system to attest to her property and property line and most importantly the Defendants had absolutely no reason to be on her land to complete the development of the park.

The fact that they came 20 feet on her property to plant and or locate and legalize a rebar that did exist much less belong and not needed for calculations of the boundary lines in fact distorted the calculation show the extent of the conspiracy to take the land or make the property vulnerable to being taken at any time in complete disregard for the Appellants rights.

The lower court abused its discretion and erred in ruling that the Appellant was a person of common knowledge and could not possibly understand the plat, survey, and calculations and could not "proffer" herself as an expert.

The appellant never "proffered" herself as an expert because her cause of actions did not require expert knowledge; she never challenged the expertise of the surveyors. She is however college educated enough to go to the ROD office locate the plat and survey of the Defendants, the survey of CWS, the plats of Wrenwood Subdivision, as a person of common knowledge she is capable as any other homeowner to know when someone has trespassed on their property caused damage to that property and cable of asking them to leave and know when they refuses to do so is against the law and interfering with her privacy and enjoyment of her property.

The Appellant did not bring a negligence claim against any of the defendants challenging the accuracy of the survey calculations her complaint was one of trespass continuing trespass, continuing nuisance, civil conspiracy, slander of title, and invasion of privacy, intentional infliction of emotion distress none of which required her to be an expert but a person of common knowledge.

The Appellant filed her suit under Section 15-36-100(C)(2) which does not require an affidavit where the alleged negligent act "lies within the ambit of common knowledge and experience."

The Supreme Court in Patricia Brouwer v Sisters of Charity Providence Hospitals, et. al. (S.C. Sup. Ct. filed August 6, 2014); stated that section 15-79-125(A) incorporates section 15-36-100 in its entirety, including the common-knowledge exception codified in 15-36-100(C)(2). Ranucci v. Crain, Op. No. 27422 (S.C. Sup. Ct. filed July 23, 2014) (Shearouse Adv. Sh. No. 29 at 49). ("Ranucci II") and concluded that the Appellant in this matter successfully invoked this exception and, thus, was not required to file an expert witness affidavit with her NOI. Also see Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 202, 723 S.E.2d 597, 602 (Ct. App. 2012).

The Appellant filed suit under the same vein as Bower and the lower court was in clear err or abuse of its discretion when it refused to allow the Appellant to fully develop her case ruling that she was not an expert.[6]

As the "Neighbors" Attorney has conceded in this Brief Rawls and Draft both surveyors Rawls whom he had declared an expert both stated there was no ½ rebar on the plats prior to 2004 which as he states was the "crux" of the Appellants case also proving malice.

Continuing Trespass

"[T]respass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property . . . ." Hedgepath v Am. Tel. & Tel. Co., 348 S.C. 340, 356, 559 S.E.2d 327, 337 (Ct. App. 2001) (quoting Silvester v. Spring Valley Country Club, 344 S.C. 280, 286, 543 S.E.2d 563, 566 (Ct. App. 2001), cert. denied (citing Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993))). "To constitute actionable trespass, however, there must be an affirmative act, invasion of land must be intentional, and harm caused must be the direct result of that invasion." Snow v. City of Columbia, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991); accord Mack v. Edens, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (Ct. App. 1995). The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass. Macedonia Baptist Church v. City of Columbia, 195 S.C. 59, 71, 10 S.E.2d 350, 355 (1940).

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[6] Recently, this Court overruled the decision of the Court of Appeals in *Ranucci I. Ranucci v. Crain*, Op. No. 27422 (S.C. Sup. Ct. filed July 23, 2014) (Shearouse Adv. Sh. No. 29 at 49). ("*Ranucci II*"). In so ruling, we specifically held that section 15-79-125 incorporates section 15-36-100 in its entirety. Thus, the common-knowledge exception of section 15-36-100(C)(2) may operate to eliminate the need to file an expert witness affidavit with the NOI under section 15-79-125(A). Consequently, we hold the circuit court erred in finding that Brouwer could not invoke the common-knowledge exception when she filed her NOI. This decision, however, does not end our analysis as we must consider whether Brouwer's case fell within this exception.

For a trespass action to lie, "the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion." Mack v Edens, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (Ct. App. 1995).

The Defendant intentional trespassed on the Appellant's property, they intentionally caused and continued to cause harm to the property after being asked to stop. There is no question that the trespass took place as the police reports testify to; there continues to be a trespass on the property because the abatement remains.

V. THE LOWER COURT ERRED WHEN IT GRANTED DEFENDANT'S DIRECTED VERDICT AS TO APPELLANT'S SLANDER OF TITLE CLAIM

See Silvester v. Spring Valley Country Club, (SC Ct of Appeals filed February 12, 2001)

The Defendants state that the Appellant did not prove her cause of action for Slander of Title. In South Carolina, slander of title has been recognized as a common law cause of action. See Huff v Jennings, 319 S.C. 142, 148, 459 S.E.2d 886, 890 (Ct. App. 1995) (holding that, although the court was directly addressing a claim for slander of title for the first time in South Carolina jurisprudence, "South Carolina law, through its incorporation of the common law of England, recognizes a cause of action for slander of title").

To maintain a claim for slander of title, our courts have held "the plaintiff must establish (1) the publication; (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value in the eyes of third parties." Id. at 149, 459 S.E.2d at 891 (adopting the elements of slander of title outlined in the Restatement (Second) of Torts § 623A (1977)). Appellant proved requisite malice when Cox and Dinkins, Rawls, Fair and Fair Builders, acted with the requisite malice when he recorded Fair Plat. This court held in Huff v Jennings that "[i]n slander of title actions, the malice requirement may be satisfied by showing the publication was made in reckless or wanton disregard of the

rights of another, or without legal justification." Huff, 319 S.C. at 150, 459 S.E.2d at 891. (ROA Letter 182 and plat). Rawls and his company along with Fair knew that the rebar did not belong but in total disregard for Appellant rights the legalized the bar anyway as well they knew the rebar was on no other surveys or plat with the ROD thus proof of malice, a false statement that was derogatory to Appellant's title.

The Defendant did not even bother to take the Appellant's ownership of the land into consideration as they did not even include it in their research. Sufficient evidence supports the finding that their actions were in reckless or wanton disregard of the Appellant's rights to the disputed strip and that they acted without legal justification. The Defendants had no right to the Appellants property but treated it if they had legal claim. The "Neighbors" refused to leave the property when asked they destroyed healthy trees, cut down trees, and had no problem as evidence by the police reports denying her ownership of the land publicly in front of her neighbors.

> As a surveyor Rawls had a responsibility according to the South Carolina Land Surveying Standards (2009) (S.C. Code Ann. Regs. §49-460(t)(v) to ensure all survey plats shall have a title and contain the following information:
>
> (t)Visible indications of easements and rights-of-way on the site (i.e. power lines, etc.), obvious and apparent at the time of the survey or known to the surveyor, shall be shown and shall include their widths, if known.
>
> (v) Lot and block numbers and/or the full names of adjoining land owners, and the names and/or numbers of principal highways, roads, streets or railroads, shall be shown, on the plat, with their rights-of-way. The plat book and page number of the subdivision as recorded by the Register of Mesne Conveyance, Register of Deeds or Clerk of Court of the county where the survey document is recorded should be included, if known.

Appellant produced evidence that the defendants did not comply with were responsibility as surveyors, their survey/plat clearly does not show the two easements running with the

appellants property; there is a 5 foot easements located outside the 15 foot easements that was for Carolina Water Service (CWS) to service their well suite.

Cox and Dinkins and Rawls failed to include the Appellant's plat, survey or the deed of CWS in their survey as if the Appellant was of nothing a complete disregard of her rights.

Special Damages[7] is proven by the fact that the Appellant will have to have her property resurveyed, have the cloud removed because her land remains (20 feet) remains under the control of the Cox and Dinkins, Rawls, Fair and Fair Builders Survey and damages of cost.

VI. THE LOWER COURT ERRED WHEN IT GRANTED THE DEFENDANTS DIRECTED VERDICT AS TO APPELLANT' S CIVIL CONSPRICY CLAIMS

Pye v Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006) Civil conspiracy as the court is aware is (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005); Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); see also Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 56-57 (2004) ("A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.") (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the

[7] Slander of title occurs when one entity or person falsely alleges an ownership interest in the property of another, or when one entity or person disparages the property interest of another. The elements of slander of title claims are: (1) Defendant communicated to a third person; (2) A statement disparaging plaintiff's title; (3) The statement is untrue; and (4) Defendant's communication caused plaintiff to suffer actual damages. Slander of title is also called "title disparagement of property," "slandered goods," "trade libel," and "injurious falsehood". See Collier County Publishing Co. v. Chapman, 318 So. 2d 492, 494 (Fla. 2d DCA 1975), cert. denied, 333 So. 2d 462 (1976). Though most slander of title actions are based on written, recorded instruments, slander of title may consist of a statement in writing or by word of mouth.

conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

"[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987); accord Cowburn, 366 S.C. at 49, 619 S.E.2d at 453. This Court has observed:

Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Island Car Wash, Inc. v Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987). "Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. . . ." Id. at 601, 358 S.E.2d at 153. An action for civil conspiracy is an action at law; the trial judge's findings will be upheld on appeal unless they are without evidentiary support. Gynecology Clinic v. Cloer, 334 S.C. 555, 514 S.E.2d 592 (1999). Peoples Federal, 358 S.C. at 470, 596 S.E.2d at 57.

The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se. Lee, 289 S.C. 6, 344 S.E.2d 379. "[A]n unlawful act is not a necessary element of the tort." Id. at 11, 344 S.E.2d at 382. Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989).

The "Neighbors" are two or more persons. Cox and Dinkins and J. Donald Rawls and Fair Builders, Inc., and Steve Fair are two or more persons who came together to cause harm to the Appellant that cause special damages.

The Defense state that the Appellant did not claim special damages which is simply not the case. Special Damages are the direct result to the actions of the defendants. The Appellant claimed special damages she listed lost pay, she claimed damages to property a direct result of the actions of the defendants, she listed legal cost that are special but for their actions she would not have incurred any of the costs but for, she incurred cost in researching the records office, time from work which is lost pay. (Special damages are one actually sustained, rather than implied by law). These are not damages mentioned elsewhere. If appellant does not prevail on the other claims she is entitle prevail under civil conspiracy as long as she is not compensated twice.

CONCLUSION

The Directed Verdict and Declaratory Judgment as well as other areas should be reversed and the case remanded.

Respectfully submitted,
By: _____
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2011-CP-32-01010
Appellate Case No.: 2013-002056

Glenda Renee Couram

Appellant,

v

Mr. & Mrs. Christopher Hooker, Mr. & Mrs. Carl Riebold, Legal or Equitable Right, Title, state, Lien or interest in the Property Described in the Complaint Adverse to the Plaintiff's; Cox & Dinkins, Inc., Fair Builders/Developers, Inc., J. Donald "Don" Rawls & Steve Fair in their official and individual capacities, Carolina Water Svc., (CWS), Carolina Trace Utilities, Inc., & Utilities, Inc., Corporate Offices

Defendants,

Of whom Mr. & Mrs. Christopher Hooker, Mr. & Mrs. Carl Riebold, Cox & Dinkins, Inc., Fair Builders/Developers, Inc., J. Donald "Don" Rawls & Steve Fair in their official and individual capacities are

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this INITIAL REPLY OF APPELLANT is in substantial compliance with SCACP 211(b).

Respectfully submitted by:

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Dated this 28st day of September 2014