

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 19 2017

APPEAL FROM LEXINGTON COUNTY

S.C. SUPREME COURT

James O. Spence, Master-in-Equity

Case No. 2016-000588

David R. GooldyPetitioner

vs.

The Storage Center – Platt Springs, LLCRespondent

BRIEF OF PETITIONER

James Randall Davis; SC Bar No. 1580
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for Petitioner

Other Counsel of Record:

Robert E. Stepp, Esquire
Bess J. DuRant, Esquire
Post Office Box 11449
Columbia, South Carolina 29211
Attorney for Respondent

TABLE OF CONTENTS

Table of Contents.....	i
Table of Cases	ii
Certificate of Counsel.....	1
Statement of the Case.....	1
Statement of the Facts.....	4
Arguments.....	8
I. By concluding that the Master erred in determining Gooldy was entitled to the presumption of an easement based on the deed’s reference to the Loflin plat based on the language in the Loflin deed <i>describing</i> the property as containing 0.68 acres, more or less, the South Carolina Court of Appeals contradicts and misapplies Supreme Court case law as to implied easements.....	9
II. By concluding that the Master erred in determining the evidence supporting the initial conveyance of the 0.68 acre tract demonstrated the party’s intent to create an easement, the South Carolina Court of Appeals misapplied the standard of review of an Appellant Court which in this case would be sustaining the decision of the Master unless there was no evidence to support the decision of the Master.....	12
Conclusion	16
Certificate of Counsel.....	17

TABLE OF CASES

<u>CASES</u>	<u>PAGE</u>
<i>28 A C.J.S. Easements §54 (1996)</i>	16
<i>Banks v. Evans, 347 Ark. 383, 64 S.W.3d 746 (2002)</i>	14
<i>Bennett v. Investors Title Ins. Co., 370 S.C. 561, 635 S.E.2d 660, 668 (Ct. App. 2006)</i>	9, 10
<i>Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975)</i>	16
<i>Dobson v. Abercrombie, 212 Ark. 918, 208 S.W.2d 433 (1948)</i>	14
<i>Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 153 (2008)</i>	12, 13
<i>Lancaster v. Smithco, Inc., 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965)</i>	9, 10
<i>McAllister v. Smiley, 301 S.C. 10, 389 S.E.2d 857 (1989)</i>	11, 12
<i>Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452, 457 (S.C. App. 2008)</i>	11, 16
<i>Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952)</i>	16
<i>Plott v. Justin Enterprises, 376 S.C. 504, 649 S.E.2d 95 (1987)</i>	16
<i>S.C. Code of State Regulations, Surveying Standards §49-460(j)</i>	11
<i>Walker v. Guignard, 293 S.C. 247, 359 S.E.2d 528 (S.C. App. 1987)</i>	16

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that there was a published opinion of the Court of Appeals in this matter filed December 9, 2015 and the Petition for Rehearing by Petitioner was denied by the Court of Appeals on February 19, 2016.

QUESTIONS PRESENTED

- I. BY CONCLUDING THAT THE MASTER ERRED IN DETERMINING GOOLDY WAS ENTITLED TO THE PRESUMPTION OF AN EASEMENT BASED ON THE DEED'S REFERENCE TO THE LOFLIN PLAT BASED ON THE LANGUAGE IN THE LOFLIN DEED *DESCRIBING* THE PROPERTY AS CONTAINING 0.68 ACRES, MORE OR LESS, THE SOUTH CAROLINA COURT OF APPEALS CONTRADICTS AND MISAPPLIES SUPREME COURT CASE LAW AS TO IMPLIED EASEMENTS.

- II. BY CONCLUDING THAT THE MASTER ERRED IN DETERMINING THE EVIDENCE SUPPORTING THE INITIAL CONVEYANCE OF THE 0.68 ACRE TRACT DEMONSTRATED THE PARTY'S INTENT TO CREATE AN EASEMENT, THE SOUTH CAROLINA COURT OF APPEALS MISAPPLIED THE STANDARD OF REVIEW OF AN APPELLANT COURT WHICH IN THIS CASE WOULD BE SUSTAINING THE DECISION OF THE MASTER UNLESS THERE WAS NO EVIDENCE TO SUPPORT THE DECISION OF THE MASTER

STATEMENT OF THE CASE

Petitioner David R. Goodly (or "Petitioner") and Respondent The Storage Center – Platt Springs, LLC ("The Storage Center" or "Respondent") are owners of adjacent property located on South Lake Drive also known as SC Highway No., 6 (hereinafter referred to as "South Lake Drive") in Lexington County, South Carolina.

On January 24, 2002 Petitioner purchased his Property with improvements thereon. R. p. 103, lines 10-16. The deed to the Petitioner's property referenced a plat which showed a fifty (50') foot road abutting Petitioner's property on the southern side. *Id.*, p. 25, lines 14-15.

On September 27, 2007, Respondent purchased the abutting property (7.35 acres) to the Petitioner's property. Respondent's property bordered the Petitioner's property on the northern, western and southern sides. Defendants Exhibits C & J, R. pp. 392; 396.

After Respondent purchased the 7.35 acres tract, a dispute arose between Petitioner and Respondent as to the right of the Petitioner to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Petitioner's deed. After an attempted resolution of the access issue by the parties, Respondent installed a metal post – wire cable barricade blocking Petitioner's access over the fifty (50') foot road. R. p. 350, Lines 17-19.

On February 1, 2010, Petitioner filed a lawsuit against The Storage Center. (Compl.) In his lawsuit, Petitioner asserted four causes of action: (1) Declaratory Judgment, Easement by Implication or Estoppel, (2) Declaratory Judgment, Easement by Prescription, (3) Estoppel – Temporary and Permanent Injunctive Relief, and (4) Negligence/Gross Negligence/Intentional Act, Denial of Property Rights. Petitioner argues that he is entitled to an easement over The Storage Center's property because his deed, along with the deeds of his predecessor-in-title, reference a plat which showed a fifty (50') foot road abutting Petitioner's property on the southern side. Complaint R. pp. 37-38.

On February 25, 2010, Petitioner filed a motion for preliminary injunction, seeking an order preventing The Storage Center from interfering with his access to the driveway. R. p. 49. On April 23, 2010, the circuit court denied Petitioner's request. *Id.*, p. 1. The circuit court also referred this matter to the Master-in-Equity ("Master"), upon the consent of both parties.

In response to Petitioner's Complaint, The Storage Center filed an answer, in which it asserted several affirmative defenses and pled a counterclaim against Petitioner for encroaching and trespassing on The Storage Center's property. *Id.*, p. 42. Specifically, The Storage Center denied that any road ever existed and also denied that Petitioner had any easement rights over property owned by The Storage Center. *Id.*

Petitioner and Respondent both filed motions for summary judgment. *See id.*, pp. 51-52. Notice of Mot. & Motion for Summ. J. of Plaintiff, dated February 1, 2011; *id.* pp. 54-57, Notice of Mot. & Motion for Summ. J. of Respondent dated January 31, 2011. The Master denied the cross motions for summary judgment because there were material issues of fact. *Id.*, p. 2.

On October 25, 2012, the case was tried before the Master. The Master granted a directed verdict to The Storage Center with respect to Petitioner's claim for easement by prescription because Petitioner failed to establish use that was adverse or under a claim of right for twenty years. *Id.*, p. 193, line 3 to p. 203, line 19. On July 29, 2013, the Master issued his order, in which he found and concluded (1) that Petitioner has access over the "road that borders the Petitioner's property on the southern side"; (2) that Petitioner is entitled to \$2,500 for lost income when he had to construct an alternate makeshift entrance; and (3) that Petitioner is entitled to \$7,500 in punitive damages because The Storage Center prevented Petitioner access to the strip of land. *Id.*, pp. 3-22.

The Storage Center timely filed its motion to alter or amend the judgment on August 12, 2013. *Id.*, pp. 74-83. In its motion, The Storage Center set out numerous grounds as to why the Master should reconsider the Trial Order. On November 15, 2013, the Master heard The Storage Center's motion. *Id.*, pp. 407-452. On March 13, 2014, the Master issued its Order denying The Storage Center's motion to reconsider. *Id.*, pp. 23-32.

Respondent filed its Notice of Appeal to the South Carolina Court of Appeals on April 9, 2014. Oral arguments were presented on November 4, 2015. By Order dated December 9, 2015, the South Carolina Court of Appeals reversed the decision of the Master indicating the following reasons:

“We find the Master erred in determining Gooldy was entitled to the presumption of an easement based on the deed’s reference to the Loflin plat.”

“We find the Master also erred in determining the evidence surrounding the initial conveyance of the .68 acre tract demonstrated the parties’ intent to create an easement.”

On January 11, 2016, Petition for Rehearing was filed by the Petitioner. By Order dated February 19, 2016, Petitioner’s Petition for Rehearing was denied.

On March 21, 2016, Petitioner filed its Petition for Writ of Certiorari. By Order dated May 20, 2017, Petitioner’s Petitioner for Writ of Certiorari was granted.

STATEMENT OF FACTS
(Facts Prior to Litigation)

January 24, 2002 Petitioner purchased the subject property, with improvements thereon, located on South Lake Drive (also known as S.C. Highway 6) in Lexington County. Petitioner has used the property for his chiropractic practice. R. p. 103, lines 5-11. The legal description for the Petitioner’s property read as follows:

All those certain piece, parcel of lot of land, with all improvements thereon, 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, and recorded in the Office of the RMC for Lexington County in Plat Book 212G at page 204. The within described property contains 0.68 acre more or less.

R. p. 375, Plaintiff’s Exhibit 1.

The deed to the Petitioner’s property referenced a plat which showed a fifty (50’) foot road abutting Petitioner’s property on the southern side and on the east by S.C. Highway 6. *Id.*, p. 109, lines 14-16; *id.*, p. 377, Plaintiff’s Exhibit 2. The seller’s representative told Petitioner at the time of purchase that this fifty (50’) foot road was the access from S.C. Highway 6 to the

purchaser's property. *Id.*, p. 114, lines 1-10. Petitioner used this access as his only access to his property until the barricading of the access by the Respondent in July 2009. *Id.*, p. 114, lines 19-21. Petitioner indicates that there were no other accesses to his property besides the road area in question. *Id.*, p. 114, lines 19-21. Petitioner described the fifty (50') foot road area as having an asphalt apron coming off S.C. Highway 6 covering a culvert, followed by a gravel area on the fifty (50') foot road area, which was flat and had been maintained and went to the back of the Petitioner's property. *Id.*, p. 107, line 22 to p. 108, line 3. There was a small hedge of trees lying between the fifty (50') foot road area and an adjoining subdivision by the name of Westchester Estates. *Id.*, p. 111, lines 10-18.

On September 27, 2007, Respondent purchased the abutting property (7.35 acres) to the Petitioner's property (Respondent's property bordered the Petitioner's property on the northern, western and southern sides. Both properties bordered S.C. Highway 6. Respondent's property wrapped like a horseshoe around three sides of the Petitioner's property.). *Id.*, pp. 392-393, 396-398, Defendant's Exhibits C & J.

Petitioner's and Respondent's properties both have a common grantor, Congaree Associates, a South Carolina Limited Partnership (hereinafter referred to as "Congaree"). *Id.*, pp. 379-391, Plaintiff's Exhibit 11. Petitioner's property was subdivided from a larger tract owned by Congaree. R. p. 375, Plaintiff's Exhibit 1 (See Derivation). Congaree first conveyed the Petitioner's property to James T. Loflin by deed dated September 15, 1986, and recorded in the Register of Deeds Office for Lexington County on September 23, 1986 in Book 837 at Page 36. *Id.*, p. 394, Defendant's Exhibit D. The legal description in the Loflin deed contains the identical description as the Petitioner's deed's legal description, as does each deed in the chain-of-title to

the Petitioner's property -- all of the deeds in the chain-of-title reference the same plat referenced in Petitioner's deed. *Id.*, pp. 379-391, Plaintiff's Exhibit 11.

The Petitioner's deed is in the chain-of-title of the Respondent's property. *Id.* After Respondent purchased the 7.35 acres tract, Respondent's representatives notified the Petitioner of their belief that the Petitioner did not have the right to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Petitioner's deed, which the Petitioner disputed. *Id.*, p. 117, lines 11-25.

After an attempted resolution of the access issue by the parties, Respondent installed two metal posts in the fifty (50') foot road connected by a wire cable with "No Trespassing" signs attached to the wire cable blocking Petitioner's access over the fifty (50') foot road from S.C. Highway 6. *Id.*, p. 124, line 25 to p. 125, line 16. After Respondent blocked his access, Petitioner created a "makeshift" entrance on the northern side of his property, buying material and equipment, and doing the work himself to establish the alternate access for his patients. *Id.*, p. 125, line 23-25; p. 133, lines 1-19.

Thereafter, this litigation ensued.

**Evidence as to Intent of Congaree Associates Deed to
James Loflin, Predecessor-in-Title to Petitioner**

Carroll McGee, general partner of Congaree Associates, a South Carolina Limited Partnership, testified that he was an experienced real estate broker for a period of 50 years. *Id.*, p. 204, lines 16-18. Congaree had been formed by the McGee organization in the early 1980's. Congaree purchased the 500 acre tract of land that contained the Petitioner and Respondent's properties and fifty (50') foot road in dispute. *Id.*, p. 205, lines 13-16; p. 206, lines 1-15.

In August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. This property is immediately adjacent to the fifty (50') foot road which borders the Petitioner's property on the southern side. (Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat. *Id.*, pp. 396-398, Defendant's Exhibit J.

On January 27, 1984, Westchester Phase II, prepared for Congaree, which is a second portion of Westchester Subdivision and borders Phase I, shows the disputed fifty (50') foot road on the plat for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval. *Id.*, p. 405, Defendant's Exhibit GG. The fifty (50') foot road abuts both Lot 13 of Westchester Phase I and what later becomes Petitioner/predecessor's property. *Id.*, pp. 396-398, Defendant's Exhibit J.

On July 15, 1985, Mike Chris, Lexington County Planning Commission, sends a letter giving provisional County approval for the proposed platted Phase II of Westchester Subdivision prepared by Collingwood. The letter contained the standard county requirements for private road subdivisions. *Id.*, p. 406, Defendant's Exhibit KK.

On December 10, 1985, James T. Loflin (Petitioner's predecessor-in-title), who was a McGee employee/agent, has a plat prepared for the purpose of living on the corner lot (Petitioner's property) next to the fifty (50') foot road entrance to proposed subdivision in a model log cabin home. Collingwood was the surveyor of the subject property. *Id.*, p. 377, Plaintiff's Exhibit 2.

On April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field. *Id.* Thereafter, on August 12, 1986, Collingwood again revises said plat to indicate a twenty (20') foot strip along the northern boundary of the lot. *Id.*

On September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the lot to Loflin, his employee agent, by deed incorporating the plat showing the fifty (50') foot road with plat prepared by the surveyor Collingwood. *Id.*, 379-391, Plaintiff's Exhibit 11.

McGee testified he never discussed the road with Loflin or Collingwood or anyone else. *Id.*, p. 209, lines 14-18. McGee testified he never intended to build Phase II road shown on proposed plat given conditional approval by the Planning Commission because it costs too much. *Id.* McGee also testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Mr. Loflin. *Id.*, p. 236, lines 21-25. McGee admits that Collingwood who prepared the plat for Westchester Phase II would have known when he prepared the plat for the Petitioner's predecessor-in-title (Loflin) about the fifty (50') foot road area on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat. *Id.*, p. 236, lines 1-11. McGee admits Collingwood had something to go by to show the road area on the Loflin plat, that being the proposed, conditionally approved, road on the Westchester Phase II plat. *Id.*

McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree. *Id.*, p. 236, lines 21-25. McGee confirms there was no affirmative action by anyone on behalf of Congaree that gave any information to the Petitioner to not use that area that he had been using since the purchase of the property for his access. *Id.*, p. 241, lines 13-19.

ARGUMENTS

Pursuant to Rule 242, SCAR, the Petitioner moved for a Writ of Certiorari and asked this Court to review and reverse the Court of Appeals' Opinion No. 5366, which reversed the Master's decision and ruling on several issues. Petitioner asked this Court to review because of the special and important issues raised by the Opinion's ruling below. Petitioner's contention was that the Court of Appeals' Ruling should be reviewed because the ruling was in direct

contraction with existing South Carolina Supreme Court case law as to implied easements and misapplied *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 575, 635 S.E.2d 660, 668 (Ct. App. 2006) and *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965) to implied easement case law. Lastly, the Opinion misapplies the standard of review of the Court of Appeals in that there was substantial evidence supporting the factual finding of the Master that the original grantor intended to create an implied easement in the original conveyance of the Petitioner's property.

On March 21, 2016, Petitioner filed its Petition for Writ of Certiorari. By Order dated May 20, 2017, Petitioner's Petitioner for Writ of Certiorari was granted.

I. By concluding that the Master erred in determining Gooldy was entitled to the presumption of an easement based on the deed's reference to the Loflin plat based on the language in the Loflin deed describing the property as containing 0.68 acres, more or less, the South Carolina Court of Appeals contradicts and misapplies Supreme Court case law as to implied easements.

The Master was correct in determining that Petitioner was entitled to the presumption of an easement based on the deed's reference to the Loflin plat. The Court of Appeals initially relied on the prior decisions of *Lancaster* and *Bennett* to indicate there was not a presumption. See *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 575, 635 S.E.2d 660, 668 (Ct. App. 2006). Those cases held that "a plat 'is not an index to encumbrances,' and a deed that references a plat 'for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that is so operate.'" *Lancaster*, at 469. The Court of Appeal's reliance on *Lancaster* is misplaced.

The fact situation in *Lancaster* and *Bennett* are not analogous to our set of facts. *Bennett* held that the grantor does not warrant or covenant the width of an existing highway right of way easement by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement. The right of way was a SCDOT right of way in the prior chain of title. *Bennett* did not hold that there was no easement as shown on the plat rather than the width as portrayed on the incorporated plat was wrong. Relying on *Bennett*, the Court of Appeals held that the Gooldy implied easement did not exist which is contrary to the *Bennett* ruling.

Furthermore, the Gooldy implied easement is not an encumbrance, as the SCDOT easement is in *Bennett*. The encumbrance in the *Bennett* case was a portion of the SCDOT right of way existed within the boundaries of the property purchased by the grantee. Our easement is contiguous to our property. Our easement is an easement created based on the conveyance by the grantor to the grantee in our case and instead of being an encumbrance on a property, it is a benefit to the property created by law.

Furthermore, our easement is not an easement held by a “third party” so as to exclude said easement created by the deed. SCDOT is the third party in the *Bennett* case. There is no third party in our case holding an easement, only the grantor and grantee.

The Court of Appeals did recognize in its Opinion the general rule “that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an easement over the streets appearing in the plat.” *Id.* at 92, 659 S.E.2d 154. Nonetheless, the Court opines “Gooldy’s deed references the Loflin plat in a paragraph describing the .68 acre tract. The paragraph does not provide the metes and bounds of the property. However, the sentence following the reference to the Loflin plat states, “The within described property contains .68 acre more or less.” We find this sentence refers to the property described in the

Loflin plat. In our view, the deed references the Loflin plat for descriptive purposes – to show the metes and bounds of the .68 acre tract – not for the purpose of granting an easement in favor of the .68 acre tract over an alleged road depicted outside the boundaries of the property.”

Petitioner contends the .68 acre reference in the Gooldy deed prepared by the surveyor, was not for the purpose of excluding an easement to Gooldy, but to comply with the land surveying standards §49-460(j) of the South Carolina Code of State Regulations. “The area of the parcel of tract surveyed will be shown consistent with the class of survey or at least to the nearest one-hundredth (0.01) of an acre.” This section is requiring the denotation of the amount of acreage (0.68 acre) involved in the conveyance for the purpose of being in compliance with the surveying standards, not for the purpose of excluding easement areas created by this denotation.

Also, this Court has recognized that the following cited case (*McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (S.C. 1989)) applies to easements created by plat references in deed descriptions. See *Murrells Inlet Cop v. Ward*, 378 S.C. 225, 662 S.E.2d 452, 457 (S.C. App., 2008). The Court of Appeals determination is inconsistent with the holding in *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (S.C. 1989). In *McAllister*, this Court explained that when a grantor conveys land abutting a street, he is stopped from denying the street’s existence and right of the grantee to it use. The deed description in *McAllister* is identical to our deed description. The Gooldy deed describes the property as a .68 acre parcel on the face of the Gooldy Plat, and the *McAllister* Plat references the conveyed parcel as “Tract 2” on the face of the plat. Both deeds reference the plat in question. In *McAllister*, the Supreme Court case held the following:

“Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks, or other common uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land

acquires an easement with respect to the street or the areas shown on the map.” *Id* at 857 (Emphasis added).

Petitioner argues that *McAllister* stands for the proposition that even though the property in *McAllister* showed the property being conveyed as Tract 2 (as was the .68 entry in the Gooldy Plat; Tract 2 denotation is describing the property within the property boundaries of Tract 2) that designation does not defeat the creation of the implied easement in the matter before this Court. *McAllister* states the implied easement is created even though the conveyances state nothing else about the creation of an easement or a dedication to public use.

The presumption of an easement based on the deed referencing the plat applies to this case as well as the standards set forth in *McAllister* in that grantee acquires an easement, with regards to the street or area shown on the map, even if the conveyance says nothing about creation of an easement.

II. By concluding that the Master erred in determining the evidence supporting the initial conveyance of the 0.68 acre tract demonstrated the party’s intent to create an easement, the South Carolina Court of Appeals misapplied the standard of review of an Appellant Court which in this case would be sustaining the decision of the Master unless there was no evidence to support the decision of the Master.

The Court of Appeals found that there was no evidence to support the Master’s conclusion that Congaree and Loflin intended to create an easement for the benefit of the Petitioner.

Petitioner respectfully argues that there is substantial evidence supporting the Master’s conclusion. Furthermore, “The determination of the existence of an easement is a question of fact in a law action, and this [c]ourt reviews factual issues relating to the existence of an

easement under a highly deferential standard.” *Inlet Harbour v. S.C. Dep’t of Parks, Recreation & Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 153 (2008).

“The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some of characteristic demonstrate that the objective intention of the parties was to create an easement.” *Inlet Harbour*, at 92. “In evaluating the parties’ intent, we note, ‘the best evidence of the parties’ intention are the facts and circumstances surrounding the conveyance.” *Id.*, at 93. The objective intention of the parties should be looked at, at the time of conveyance, not in present tense retrospection.

In the Master’s original Order and the Order denying Respondent’s Motion for Reconsideration, the Master chronologically outlined the factors showing the objective intent of the original grantor to create an easement. Order, P 6-8; and Order Denying Motion, P. 24 – 28. As the Master indicated, his chronological outline “illustrates how the trial evidence reveals McGee’s intent at the requisite time. The persuasive and critical evidence of McGee’s intent can be gleaned from what he did from when his company purchased the subject property, his development activities, the actions his surveyor took, and the deed he reviewed and signed.” Order dated March 13, 2014, P. 24.

Obviously, grantor (Congaree, through its representative McGee) and the grantee (originally Loflin) of the deed in question and the surveyor (Collingwood) are relevant in regards to issue of intent to create an implied easement. Collingwood, who prepared the plat in this case, was privy to the contiguous development efforts of Congaree which included a road identical in location to the road set forth in the Loflin plat. Collingwood was also the surveyor for Congaree on the contiguous development project. A surveyor is obligated to indicate a private road when there is physical evidence or recorded documents suggesting the existence of a road. (Paragraph 4 of Order to Appellant's Motion for Reconsideration). This surveyor was in the best position to

know whether a notation of a road was necessary. He demonstrates his knowledge of the road by creation of the January 1984 Plat included in the county approval process, in the Loflin Plat created December 10, 1985, in the revised version of the Loflin Plat dated August 12, 1986, and the recorded Loflin Plat dated September 11, 1986. The reasonable inference here, as is supported by evidence at trial, is that the surveyor showed the road because the surveyor knew the road to be part of the included plans of Congaree.

McGee testified that he did see the Plat, and the deed for Loflin, and it was executed by him on behalf of Congaree (*Id.* at Paragraph 22, page 27.) "The general rule is that if a person signs a document, he or she is bound under the law to know the contents of the document." *Banks v. Evans*, 347 Ark. 383, 64 S.W.3d 746 (2002). "Further, one who signs a contract, after an opportunity to examine it, cannot be heard to say that he or she did not know what it contained." *Dobson v. Abercrombie*, 212 Ark. 918, 208 S.W.2d 433 (1948).

McGee contends that Congaree changed its mind about the viability of the road based on the costs. However, there was no time specific objective testimony between July 15, 1985 (preliminary approval date of Westchester Phase II which showed the road in question) and September 11, 1986 (date of deed into original grantee Loflin) as to (a) **How** he knew/determined Phase II was too costly? (b) Most importantly, when did he come to this conclusion? And **to whom** did he convey this information to?

There is no time specific objective evidence to support Congaree's statement that it had terminated its road desires: (1) No letter to Chris/Planning commission that project was a no go since too expensive. (2) No correspondence from Congaree to Collingwood instructing him no Phase II entrance road. (3) No corporate minutes memorializing decision. (4) No testimony from Loflin (5) no testimony from Collingwood.

The Court of Appeals indicated in supporting its decision that Congaree testified that it never intended to create the easement. However, the Record indicates that when Congaree was asked that question, initially, in its direct testimony its answer was “the question never came up”. R. 224, lines 12-15. This initial answer to the intent question would indicate that there was no communication by Congaree to the grantee or to Collingwood of a desire not to create an easement. The Court of Appeals further indicates supporting its Order that McGee indicated he never gave permission to the grantee Loflin to use the road area. The Record indicates, by the response from McGee, that it was not discussed. R. p. 229, line 17-21. The Court of Appeals further supported its position based on an attestation on the grantee Loflin. Although Loflin gave an affidavit to support Respondent’s Motion for Summary Judgment, Loflin was not called as a witness in this case.

The Court of Appeals further supports its position stating “Third, although the master noted the unrecorded Westchester Phase II plat depicted a road in the same location as the Loflin plat, Congaree never developed Westchester Phase II, and McGee testified Congaree never installed the road depicted in the Westchester Phase II plat. Indeed, no recorded plat – other than the Loflin plat – depicts the road Gooldy was using as a driveway. Moreover, Meeler and Baxter – both surveyors who reviewed the properties, Loflin plat, and other public records – testified no road existed in the area Gooldy claimed an easement.”

As to the existence of the road itself, Respondent would denote the following: "It is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures given indefinite dimensions of the easement." 28 A *C.J.S. Easements* S 54 (1996). "Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable." *Plott v. Justin Enterprises*, 376 S.C. 504, 649 S.E.2d 95 (1987). In this case, the Master specifically found the boundaries of the road in question, based on surveys in evidence in this case. See

Order of Court dated March 13, 2014, p. 30. "[Grantees and any subsequent purchasers acquired the right to use [their] easement *to the full extent that it is indicated in the plat.* " *Murrells Inlet Corp v. Ward*, 378 S.C. 225, 662 S.E.2d 452, 457 (S.C. App., 2008) (emphasis added). The surveyors testified for the Respondent were never personally involved in the property transaction between Congaree and Loflin. The surveyor most familiar with whether there was a road there or not was Collingwood whose opinion was that a road existed and the land surveying regulations required its notation which he did. Furthermore, the uncontradicted evidence of the Petitioner indicates the area in question was his only access, was used as an access prior to his purchase, as indicated by the physical evidence testified to and that the area where the road was located was flat, open and open on the southern side of the property. The Supreme Court of South Carolina has also held that even if an easement for a road goes unused or opened as such, the easement endures an argument of abandonment. See *Walker v. Guignard*, 293 S.C. 247, 359 S.E. 2d 528 (S.C. App. 1987). Here, the road in question was set forth in the Plat and used accordingly for thirty years. It, too, should certainly endure.

Also, under the cases of *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (1952), and *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975), Petitioner obtained a valid easement in the property. As between the owner, who conveyed lots according to the plat, and the grantee, the dedication is complete upon conveyance, even though the street is not accepted by public authorities. Further, the meter nonuse of an easement created by a deed not amount to abandonment of that easement.

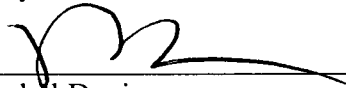
CONCLUSION

For the reasons stated, Petitioner was entitled to a presumption that the deed that was conveyed to Loflin referencing the plat in question, created an implied easement. The cases of *Bennett* and *Lancaster* are not applicable in that the easement belonging to the Petitioner was

created by the conveyance and was not an encumbrance on the subject property and was not given to a third party and the denotation of the 0.68 acre on the deed in question was for the purpose of the surveyor who prepared the plat to have him in compliance with surveying regulations.

Furthermore, there is an abundance of evidence supporting the Master's conclusion that Congaree created, by its conveyance, an implied easement for the benefit of the original grantee of the property as well as the subsequent purchasers: (1) chronological outline of the Master showing the indications of the intent of Congaree to create an easement; (2) the surveyor most familiar with the road in question showing the road on the plat in question; (3) the evidence that the representative of Congaree did not discuss the road in question with the grantee or the surveyor who prepared the plat; (4) no evidence as to when Congaree changed its mind as to proceeding with the road in question as a road; (5) evidence by the Petitioner that the road did exist at the time of the conveyance to him; (6) it being a flat open area and Petitioner's only access; (7) the Master making the determination as to the dimensions of the road area; and (8) the road area being at least a private easement although it had not been accepted and dedicated by any public entity.

Respectfully submitted,



James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for Petitioner

July 18, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM LEXINGTON COUNTY

JUL 20 2017

James O. Spence, Master-in-Equity

S.C. SUPREME COURT

Case No. 2016-000588

David R. GooldyPetitioner

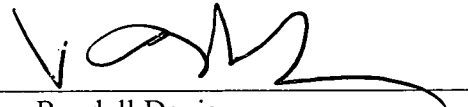
vs.

The Storage Center – Platt Springs, LLCRespondent

PROOF OF SERVICE

I hereby certify that I have served the **FILED BRIEF OF PETITIONER** on the Respondent, by hand delivering a copy of the same on the 19th day of July, 2017, to Robert E. Stepp, Esquire and Bess J. DuRant, Esquire, Sowell Gray Stepp & Laffitte, L.L.C., 1310 Gasden Street, Post Office Box 11449, Columbia, South Carolina 29211.

Counsel for the Petitioner:



James Randall Davis
DAVIS FRAWLEY, LLC
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512

July 19, 2017