

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity

Case No.: 2014-CP-40-1805

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SEP 14 2017

SC Court of Appeals

Country Properties, LLC.....Respondent,

vs.

Nancy Dunn Martin.....Appellant.

**APPELLANT’S REPLY TO RESPONDENT’S RETURN TO APPELLANT’S REQUEST
FOR LEAVE TO MAKE MOTION FOR RELIEF PURSUANT TO RULE 60(b), SCRPC**

Appellant, Nancy Dunn Martin (“Appellant” or “Martin”), hereby submits her Reply to Respondent’s Return to Appellant’s Request for Leave to Make Motion for Relief Pursuant to Rule 60(b), SCRPC.

Respondent argues that Appellant’s Motion should be denied because Appellant failed to present exhaustive evidence to this Court demonstrating that she will prevail on her Rule 60(b) motion. While Appellant firmly believes that she can prove all of the necessary elements under Rule 60(b), Appellant’s motion to this Court only seeks leave to file a motion with the lower court/trial court.

As to Rule 60(b)(2), given the emphasis that the Respondent, its counsel and the trial court placed on the alleged lack of access to a portion of Respondent’s property, there is a strong likelihood that evidence clearly demonstrating that Respondent can access all of its property

without traveling across Appellant's property will lead to a different result if a new trial is granted. *See Lanier v. Lanier*, 612 S.E.2d 456, 364 S.C. 211 (2005). Moreover, the newly discovered evidence was discovered following the trial, could not have been discovered before trial, is material to the issues in this case and is not cumulative or impeaching. *See id.* Appellant has demonstrated that, at the very least, there is a sufficient basis to make a motion to the trial court pursuant to Rule 60(b)(2).

As to Rule 60(b)(3), the trial transcript contains numerous instances of testimony where either the Respondents, its witnesses or its counsel represents that Raglin Creek (also referred to as Raglins Creek) acts as a natural barrier which prevents Respondent from gaining adequate access to certain portions of its property. *See Exhibit A.* At the very least, Respondent misrepresented or exaggerated the effect Raglin Creek has on its ability to access those portions of its property south of the creek.

As a Rule 60, SCRCP motion must be addressed by the lower court, Appellant did not intend to fully brief the issue for this Court. Rather, Appellant's motion with this Court was simply seeking leave to file a motion with the lower court. Appellant's motion was intended to provide this Court with a summary of what she intends to present to the lower court. In doing so, Appellant has provided this Court with sufficient information demonstrating there is a basis for a motion under Rule 60(b). Therefore, Martin respectfully requests that she be granted leave a file a motion for relief under Rule 60(b), SCRCP.

-Signature Page Follows-



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September 14, 2017

EXHIBIT A

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1 Defendant's Exhibit Number 10. 10
 (Richland County's FOIA response dated
 2 January 6, 2015, regarding copies of
 3 communications and records pertaining
 to the addressing of 1078 and 1080
 Shady Grove Road)
 4 Defendant's Exhibit Number 11. 10
 (Richland County's Policies and Procedures
 5 for assigning and addressing properties in
 6 Richland County (Addressing and Road Naming
 7 Guidelines, Richland County, SC)
 8 Defendant's Exhibit Number 12. 381
 9 (Notice of gate lock cleaning)
 10
 11
 12 Court's Exhibit Number 1 247
 13 (Original Sealed Video Deposition of Claude
 14 E. Campbell)
 15
 16
 17
 18
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 20
 21
 22
 23
 24
 25

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1 (Plaintiff's Exhibit Numbers 1 through 55 and
 2 Defendant's Exhibit Numbers 1 through 11 were marked
 3 for identification purposes prior to the hearing.)
 4 DAY ONE - Monday, March 21, 2016
 5 THE COURT: Good morning everyone. This is Civil
 6 Action Number 2014-CP-40-1805, Country
 7 Properties, LLC against Nancy Dunn Martin.
 8 Those of you who've never appeared in my
 9 court before, keep in mind, if you need a break
 10 for any reason just let us know, we're pretty
 11 flexible on things like that. And let me
 12 announce now that we're going to recess
 13 tomorrow at noon. One of the attorneys
 14 involved had a death in the family and wants to
 15 go to a funeral out of town, so we'll just plan
 16 a recess at noon tomorrow.
 17 Also I talked to the attorneys in chambers
 18 and I asked them if it was -- we've blocked out
 19 all week for this trial, five days. I asked if
 20 it were -- if it would be a good investment of
 21 time to talk settlement. And the attorneys
 22 seem to agree that y'all have been talking for
 23 awhile and that'll be -- that would not be a
 24 good use of time to try to talk settlement. Do
 25 y'all still feel that way, Mr. Floyd, Mr.

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1 Wells, y'all still feel that way? Your clients
 2 still feel that way?
 3 MR. WELLS: I think we're pretty far apart.
 4 THE COURT: Okay. All right. Please proceed with -
 5 - oh, and also you'll hear -- you'll see me
 6 stand up a lot of times in the trial. I was
 7 told by a World War II Veteran that that's how
 8 you keep from falling asleep, even though he
 9 remembered people falling asleep on their feet.
 10 And I don't want to imply, cast any aspersion
 11 on the attorneys that they put people to sleep
 12 or not but I -- if you see me standing up it's
 13 not -- doesn't mean you have to stand
 14 necessarily or that -- I appreciate the
 15 courtesy but that throws some people off that
 16 I'm standing. But no, it's just something,
 17 something that I do. You may proceed with
 18 opening statements.
 19 OPENING STATEMENT BY MR. WELLS:
 20 MR. WELLS: Judge, because this is a property case,
 21 I think I have to, sort of, engage in the art
 22 of the law -- the art of the law a little bit.
 23 This case involves a piece of property and I'm
 24 going to draw Highway 601. And on highway --
 25 let's put the Wateree River over here. The

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1 river's over here. The Richland and Kershaw
 2 County line is a creek that runs kind of in
 3 this direction called Raglin Creek. And the
 4 Plaintiff owns a piece of property that comes
 5 from 601, it's got kind of a little top knot
 6 here, comes down here, and it runs, sort of, in
 7 this direction. Raglin Creek cuts the
 8 Plaintiff's property. The Defendant has
 9 property, this is called the Lewis Tract, kind
 10 of a triangular piece, and then her main piece
 11 is down here. And her tract is below the
 12 Defendant's property-line. There is a road
 13 called Shady Grove Road that comes in like
 14 this, and it comes on up into the Plaintiff's
 15 property, and it goes back, this is the Guy
 16 property back here. You will hear from Mr. Guy
 17 probably this afternoon. And there is a gate
 18 across this road in here. And this is the gate
 19 that we're seeking to remove. ~~Mr. Rodell does~~
 20 ~~have frontage on -- Country Properties has~~
 21 ~~frontage on 601, but our access over here to~~
 22 ~~the part below Raglin's Creek is denied except~~
 23 ~~through this road coming through our property.~~
 24 ~~There is no bridge across Raglin Creek there.~~
 25 ~~was a dam. The dam was washed out actually in~~

1 ~~floods of October of 2015. But there was a dam~~
 2 ~~across this creek but it's -- it's -- we claim~~
 3 ~~it's an inadequate access to get to our~~
 4 ~~property down here. We have about 300 acres~~
 5 below the creek. And we're going to show that
 6 our -- our people and the Guy people have used
 7 this road to access this property. We're going
 8 to have use witnesses going back about 70
 9 years. I believe we can show that the road is
 10 a lot older than that. But we are going to
 11 claim on three theories. We are going to show
 12 that when this property came into the
 13 Defendant's granddaddy in 1939, her grandfather
 14 received the deed to this property that was
 15 subjected to a 20 foot easement going to people
 16 who own property back here, which is now part
 17 of our tract. So we're going to claim an
 18 easement by deed. We're going to show public
 19 maintenance over the years of Shady Grove Road,
 20 all the way to our property line. And we're
 21 going to rely on the prescriptive easement by
 22 showing use of this road, both adverse and
 23 under a claim of right, for a period of more
 24 than 20 years. And we're going to show the
 25 identity of the road. We're going to show

1 Road. It's not Shady Grove Road, it's
 2 Northeast Shady Grove Road. And on the
 3 Plaintiff's property, he mentioned a dam across
 4 Raglin's Creek. It's more than a dam actually,
 5 it was a road and a dam and he testified about
 6 that. And he also testified about how wide it
 7 was and about how much he spent in making
 8 repairs and upgrades so that it would be a
 9 passable road. So that gives you, kind of, an
 10 idea. And this gate that we're talking about
 11 is just beyond a sign that says end of county
 12 maintenance on Northeast Shady Grove Road.
 13 It's a couple of hundred feet just beyond that
 14 on this marked property. The county says it's
 15 a private road. My client says it's a private
 16 road. And everybody in the world knew it was
 17 a private road. There is no easement in my
 18 client's chain of title, we'll establish that.
 19 This property here that you see, of Nancy
 20 Martin's property, was leased to a hunting club
 21 in 1970, Dunn's Mountain Hunt Club. The
 22 hunting club used that property for hunting for
 23 right at 43 years up until about 2013. That
 24 gate's been locked since 1970. Anybody using
 25 that road has been -- use has been with

1 photographs going back to 1943, which shows
 2 this road on the photographs, probably about
 3 every ten years since that time. We're going
 4 to show old maps, and that's what we're going
 5 to rely on to prove that we have access to the
 6 Plaintiff's property through Shady Grove Road.
 7 Thank you.
 8 THE COURT: Yes, sir. Mr. Floyd?
 9 OPENING STATEMENT BY MR. FLOYD:
 10 MR. FLOYD: May it please the court, Your Honor?
 11 THE COURT: Yes, sir.
 12 MR. FLOYD: Joey Floyd on behalf of the Defendant,
 13 Nancy Martin. I'm not the artist that Mr.
 14 Wells is so I'm going to take a picture here
 15 and I'm going to do a little -- same
 16 demonstration. So this is, the blue part that
 17 you see here on this demonstrative exhibit here
 18 is Nancy Martin's property. And this green
 19 thing that you see here is a public road,
 20 Highway 601. This road that you see up here is
 21 also a public road called Old English Road.
 22 That property outlined in red is the
 23 Plaintiff's property in this case, Country
 24 Properties, LLC. This green road that you see
 25 here is actually called Northeast Shady Grove

1 permission of Mr. Martin or Nancy Martin when
 2 she became the owner. The Plaintiff has three
 3 points of access on his property. He has an
 4 access off of 601 and he testified he could get
 5 to anywhere on his property from any of these
 6 three points of access. 601 and off of Old
 7 English. This gate was locked when he bought
 8 it, he knew it was there. And there's a case
 9 in South Carolina, it's a pretty recent case,
 10 called Bundy v. Shirley. And that case is
 11 going to be talked about a lot because that
 12 establishes a lot of -- it cleared up a lot of
 13 easement law questions in South Carolina by the
 14 Supreme Court. And that gate, it doesn't
 15 matter if it's locked but I will tell you it
 16 has been locked. It's an obstruction across
 17 the road. The erection of a gate is a clear
 18 indication by the property owner, this is mine.
 19 If you want to use it, you're using it with my
 20 permission, period. In addition to that,
 21 there's going to be testimony of what we call
 22 -- the Wessingers, who were the hunting club
 23 folks that hunted there, they did what's called
 24 lock cleanings. They would go through the
 25 locks with the landlord and they would say, do

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1 Q: Okay. That makes sense. Do you know who owned
2 that gate between tracts 3 and 4?
3 A: Who owns the gate?
4 Q: Do you know who owns this gate?
5 A: No, I don't know that -- I didn't know it
6 belonged to anybody.
7 Q: Okay. Did you know at the time?
8 A: Did I know at the time?
9 Q: Who owned it?
10 A: No.
11 Q: You don't know who owns it today either, do you?
12 A: No, I don't.
13 Q: All right. What's the purpose of a locked gate
14 on a tract of land? To keep people out, right?
15 A: Yes, sir. Like my dad would say, locks will
16 keep thieves out. You can't do nothing about a
17 liar, but you can put a lock on something to
18 keep somebody out.
19 Q: Okay. You got permission to go on Mr. Podell's
20 property any time you want to?
21 A: I think so.
22 Q: You got the key to his gates, don't you?
23 A: I do.
24 Q: And you can go on his tract of land any time you
25 want to go there, right?

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1 A: As far as I know.
2 Q: And you've been on this big tract of land right
3 here?
4 A: Right.
5 Q: A number of times, right?
6 A: Uh-huh.
7 Q: And in fact, you've come in off of 601?
8 A: That's correct.
9 Q: ~~And you can drive all the way across this~~
10 ~~property and stay on that property to get back~~
11 ~~where can't you?~~
12 A: ~~No.~~
13 Q: ~~Now remember, there used to be a dam here and a~~
14 ~~road.~~
15 A: ~~Well, if that was a dam, I wouldn't have road~~
16 ~~it. If you had a four-wheeler. If you just~~
17 ~~want to take a chance, you could drive across it.~~
18 Q: Did you ever see the road after Mr. Podell did
19 some improvements to it?
20 A: On what road?
21 Q: On the road across the dam?
22 A: Yeah, uh-huh.
23 Q: You did?
24 A: Uh-huh.
25 Q: And you wouldn't have driven a four-wheeler

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1 across it?
2 A: Oh, no. No, no. Prior to that.
3 Q: Okay, prior to that. But after he did that, I
4 mean, you could easily drive across that,
5 couldn't you?
6 A: Yeah.
7 Q: And you could access all parts of this property,
8 right?
9 A: From my understanding you can't do it now.
10 Q: Could you before?
11 A: Could I before? Could I drive a four-wheeler
12 across it?
13 Q: No, sir. It's ---
14 A: ~~It was not a road, it was a dam. And the dam~~
15 ~~wasn't wide enough for you to drive a vehicle~~
16 ~~across it. If you choose to do that, but it was~~
17 ~~not made for that, to drive across, it's to hold~~
18 ~~water back.~~
19 Q: But ---
20 A: It restrains the water.
21 Q: --- across the dam, right?
22 A: It's to strand water. ~~It wasn't a road, the dam~~
23 ~~you spoke of.~~
24 Q: There are roads across dams, right?
25 A: (No response.)

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1 Q: They have roads across dams, right, yes or no?
2 A: If you want to cross it, yes, sir.
3 Q: And you could access all the parts of this
4 property coming off that Highway 601, right?
5 A: Yes, I bet you could.
6 Q: Mr. Podell's financing some spec homes for you
7 right now?
8 A: I'm hard of hearing, sir.
9 Q: He's financing some homes for you right now?
10 A: Has he financed some homes for me? I'm building
11 a house, yes, sir. I'm building two houses.
12 Q: And he's financing those for you, isn't he?
13 A: That's correct.
14 Q: Do you own any other tracts of land?
15 A: Do I?
16 Q: Do you, yes, sir.
17 A: Do I own any tracts of land?
18 Q: Uh-huh?
19 A: No, sir.
20 Q: Okay. Do you have a Santee Cooper key?
21 A: Excuse me?
22 Q: Do you have a Santee Cooper key?
23 A: I do not.
24 Q: Are you familiar with what a Santee Cooper key
25 is?

1 MR. BRAZELL: I had to put my glasses on, Your
 2 Honor.
 3 MR. WELLS: Let the record reflect that he had the
 4 wrong road at first and then he picked out the
 5 road that's labeled Shady Grove Road.
 6 MR. BRAZELL: That road right there.
 7 Q: Now, which part of the property is used to
 8 access that?
 9 A: I used it to come into this section in Richland
 10 County here, from there (indicating).
 11 Q: ~~Do you know the location of Raglin Creek?~~
 12 A: ~~It's this creek right here (indicating).~~
 13 Q: ~~And is it a barrier to breaching that side of~~
 14 ~~the property that you just pointed to from 601?~~
 15 A: ~~Yes, very much so.~~
 16 Q: Okay. Do you know when Pineridge Investments
 17 purchased this property?
 18 A: I looked back on some records to try to find
 19 that date and I could not find it before I
 20 came. I think it was in '08 or '09.
 21 Q: How long did it own the property?
 22 A: I do not know that.
 23 Q: Why did you go to the property?
 24 A: Carl asked me if I wanted to buy some of the
 25 land in there, 400 acres of it.

1 Q: Okay. Did you investigate buying that 400
 2 acres?
 3 A: He and I entered into a contract to buy it, for
 4 me to purchase that.
 5 Q: And where was the 400 acres of the property
 6 that you were going to buy?
 7 A: It was this section that's in Richland County.
 8 Q: Below Raglin Creek?
 9 A: Yes.
 10 Q: Did you hunt the property?
 11 A: Yes, I did.
 12 Q: What did Pineridge Investments do with the
 13 property? What was it's use?
 14 A: Recreation mostly and some hunting, but he had
 15 cleared off some land down there and made him
 16 a place so he could bring a camper down there.
 17 Q: And did you also hunt on the property?
 18 A: I did.
 19 Q: And when you accessed the Richland County side
 20 by going in through Shady Grove Road, is that
 21 the way you entered it?
 22 A: I did.
 23 Q: Was there a gate on the Martin property?
 24 A: I don't know if it was on the Martin property
 25 or not. There was a gate there that we had to

1 enter in and I was given a key when I went into
 2 a contract with my brother. And he said that's
 3 the way I got through that gate. I used it
 4 until we sold it.
 5 Q: Who gave you the key?
 6 A: My brother, Carl.
 7 Q: Did you ever ask permission to use that road
 8 from E.F. Martin?
 9 A: Never.
 10 Q: E.F. Martin, Jr.?
 11 A: I don't even know the Martins that you're
 12 speaking of.
 13 Q: Okay. Did you ask anybody for permission to
 14 use that road?
 15 A: No, I did not.
 16 Q: Did the gate pose any kind of obstacle or
 17 barrier to you to go in and out?
 18 A: No because we had a key. We could go and come
 19 as we wanted to.
 20 Q: Okay. And was your use of the road open and
 21 notorious?
 22 A: Yes.
 23 Q: And did you use this road, which we're
 24 referring to as Shady Grove Road, and there's
 25 some dispute as to the name, but did you use

1 Shady Grove Road to go in and out of whenever
 2 you needed to get back there?
 3 A: I did. That was the only road that I knew that
 4 entered in there.
 5 Q: Answer any questions that the defense might
 6 have.
 7 MR. FLOYD: May it please the court, Your Honor?
 8 THE COURT: Yes, sir.
 9 MR. BRAZELL - CROSS EXAMINATION BY MR. FLOYD:
 10 Q: Mr. Brazell, my name's Joey Floyd and I
 11 represent Nancy Martin here. Just so we're
 12 clear, we were talking about this, on this
 13 plat, the Gonzales plat, you pointed out on
 14 here, you said that you came in off 601?
 15 A: Yes, sir.
 16 Q: And you called it Shady Grove Road?
 17 A: That's correct.
 18 Q: There is a gate shown on this Gonzales plat.
 19 Do you see it?
 20 A: Uh-huh.
 21 Q: Remember that gate?
 22 A: Well, there's a gate at a pine tree there, but
 23 I don't know the location of your plat there.
 24 Q: Do you remember the county maintenance ended on
 25 this road?

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** Also Admitted in District of Columbia

September 14, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court -The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

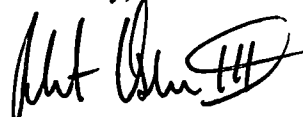
**RE: Country Properties, LLC v. Nancy Dunn Martin
Civil Action No.: 2014-CP-40-1805
BPWM File No.: 8-2376.102**

Dear Ms. Kitchings:

Enclosed herewith you will find an original and eight (8) copies of *Appellant's Reply to Respondent's Return to Appellant's Request for Leave to Make Motion for Relief Pursuant to Rule 60(b), SCRPC*. Also enclosed is a Proof of Service evidencing service of the same upon counsel for the Respondent. I kindly ask that your staff file the original and copies in accordance with your procedures. Thereafter, I ask that your staff return two (2) filed copies back to my runner who will be waiting. Feel free to call me if you, or a member of your staff, have any questions.

With my kindest regards, I am

Sincerely,



Robert C. Osborne III

/RCO

Enclosures

cc: John Wells, Esquire (Via U.S. Mail w/ Copy of Enclosures)
M. Brent McDonald (Via U.S. Mail w/ Copy of Enclosures)
Nancy D. Martin (Via E-Mail Only w/ Copy of Enclosures)

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SC Court of Appeals