

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Doyet E. Early, III, Circuit Court Judge
Trial Court Case No. 2010-CP-15-00247

Appellate Case No.: 2016-000477

Ted A. Nettles and Janell B. Nettles,

Appellants,

v.

Sylvester Guess Drew, Jr., Debra Drew,
and Colleton County,

Respondents.

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

CIVIL ACTION NO.: 2010-CP-15-00247

TED A. NETTLES and JANELL B.
NETTLES,

Plaintiffs,

vs.

FINAL ORDER

SYLVESTER GUESS DREW, JR.,
DEBRA DREW and COLLETON COUNTY)

Defendants.

2015 SEP 21 AM 11:42

PATRICIA C. CRAIG
COLLETON COUNTY
COMMON PLEAS

This case came before the Court for a trial on the merits on June 29 and June 30, 2015. Present at trial were Plaintiffs Ted. A Nettles and Janell B. Nettles (the "*Plaintiffs*"); counsel for the Plaintiffs, Thomas C. Nelson; Sylvester Guess Drew, Jr. and Debra Drew (the "*Drews*"); counsel for the Drews, A. Parker Barnes, Jr.; Mitch Griffith, counsel for Colleton County (the "*County*"); and representatives for the County. All Parties received proper notice of the trial of the above-captioned case. The subject matter and all Parties were properly before this court on the trial date. From the pleadings, trial testimony, and the exhibits, the Court makes the following findings of fact and conclusions of law pursuant to South Carolina Rule of Civil Procedure (S.C.R.C.P.) 52.

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FINDINGS OF FACT

1. In 2009, Plaintiffs purchased a 21.07 acre parcel of property in Colleton County, referred to as the "Miller Tract"¹ (the "**Property**"), located adjacent to a dirt road (the "**Road**") which had been gated by the Drews for over 28 years. As a condition to closing, Plaintiffs required that the Miller family file a quiet title action because the property was heirs property. Plaintiffs did not, however, require that the Millers also sue for an easement to the property, which was landlocked, all of which was known to the Plaintiffs.
2. The Drews own two tracts adjacent to the Property, approximately 800 acres in total, and the Road runs through this land on the interior side of the Drews' locked gate. These tracts are referred to in the pleadings as the "North Drew Tract" and "East Drew Tract."²
3. A County-maintained road known as Camp Lane ends at the Drews' gate, and the Road continues on the other side of the gate and bisects Drews' property and ends on private lands also owned by the Drews.
4. The Plaintiffs have alleged that the Drews have improperly deprived them of access to the Property because of the Drews' locked gate on the Road.³
5. The Plaintiffs' Complaint alleges that the Road is a public or county road, a public neighborhood road, or if not, that they are entitled to an easement for access by necessity, prescription, or prior use.
6. Prior to the Plaintiffs' purchase of the Property, no one had lived on the Property for over 50 years. Both before and after the Plaintiffs' purchase of the Property, the Plaintiffs met with the Drews and requested access via the Road. The Drews owned the Road and the Drews

¹ Amd. Compl. ¶16.

² Amd. Compl. ¶¶7,8.

³ Amd. Compl. ¶10.

repeatedly advised Plaintiffs that Plaintiffs could not use the Road for access to Plaintiffs' property based upon multiple security concerns.

7. Before and after Plaintiffs bought the Property, the Drews had offered the Plaintiffs three separate alternate locations for access across other Drew property adjacent to Plaintiffs' property, but Plaintiffs rejected those offers when the Drews refused to pay for the road construction of any of those other routes.

8. At trial, the Plaintiffs were unable to provide any evidence that the Road has ever been used as a public road or a neighborhood road, and provided no evidence that the Road was ever dedicated to the County and accepted by the County. *

9. Testimony from several County employees indicated that the County does not claim, maintain, or have any other involvement with the Road inside the Drews' gate.

10. William Washington, the County public works director and a County employee for 39 years, testified at trial that the County performed no maintenance beyond the Drews' gate on the Road, and that the Road was private behind the gate.

11. Christopher "Frankie" Varnadoe also testified at trial. Mr. Varnadoe testified that he, too, had been with the County for 39 years, and that he is the supervisor for roads and bridges for the County. When he began his tenure at the County, he drove a motor grader. Mr. Varnadoe stated that the County was not responsible for grading the Road inside the gate because it was private. He further testified that the Road was not in the County system of roads and bridges, and that it was always known as a private road.

12. Donna Thomas, another County employee, whose job it is to coordinate addresses for the County's emergency services, testified that the Road beyond the gate was a private road.

13. Walter Gene Whetsell, a surveyor with 50 years of experience and also a member of Colleton County County Council, testified at trial as to his opinion that the Road inside the gate is owned by the Drews and is private, that the Drews never dedicated the Road to Colleton County, and that Colleton County never accepted any such alleged dedication. Mr. Whetsell testified that he had conducted many surveys of the entire property and was familiar with all of the Property. Mr. Whetsell also testified that the road was in the middle of lands originally owned by Drews' grandfather and was constructed by Scooter Drew's grandfather. Mr. Whetsell also testified that there were other gates on the Road that were erected by the grandfather and all lands owned by Drews' grandfather ultimately passed to the Defendant Drew and that he owns the road.

14. On March 19, 2010, the Plaintiffs filed a Motion for a Temporary Restraining Order to access their Property by use of the Road, which was heard on April 21, 2010. Employees of the Colleton County Public Works Department provided similar testimony at that hearing that the County does not claim or maintain the Road.⁴ On the basis of this testimony, Plaintiffs' motion was denied and the gate remained locked.

15. At trial, Herman Miller testified he recalled that the road was used by locals during the 20th century but did not say that any of that use was adverse. No witness testified that the Drews were ever put on notice that any use of the Road inside the gate was adverse. Mr. Miller could testify only to use in the first half of the 20th century, since he left the Property in 1953. Mr. Miller did recall that the County scrapers scraped the road prior to 1953, but this testimony was countered by that of Mr. Drew, who stated that at that time private landowners could pay the County a small fee to have their roads scraped. Miller could not point to any use at all since he

⁴ Def. Ex. 1.

left the property and the Drews thereafter erected the gate across the Road more than 28 years ago.

16. The Plaintiffs' contract to purchase the Property contained a contingency clause for access which stated as follows: "this sale is contingent upon the seller obtaining a signed and recorded statement from Sylvester G. Drew (owner of the lot TMS number 275-00-00-003) stating that the buyers will have unrestrained access to their lot through Camp Ave and any gate(s) erected now or in the future."⁵ No such document was ever written or signed by Mr. Drew.

17. The Plaintiffs sought legal advice when it became apparent that access to the Property would be problematic. A series of emails between the Plaintiffs and their attorneys demonstrate that the Plaintiffs were advised before closing on the Miller Property that the Drews owned the Road which was a private road and that the Plaintiffs would need to come to an agreement concerning an easement with the Drews.

18. On September 15, 2009, Janell Nettles wrote George Gardner of Carolina One, Plaintiffs' realtor, "We are not comfortable making a new offer until the access issue is addressed. . . . I would hate to make an offer only to have Mr. Drew want to charge for access or maintenance of his "supposed" private road or deny access and then end up with another court case."⁶

19. Also on September 15, 2009, George Gardner of Carolina One emailed Janell Nettles stating that "The contract is contingent on the seller having Mr. Drew grant permanent access. That has never changed and won't. If that contingency is not met we will not close."⁷

20. On September 24, 2009, Janell Nettles emailed her attorney Catherine LaFond to inform her that "Now Mr. Drew had erected a new (second gate)." . . . Mrs. Nettles also informed

⁵ Def. Ex. 12.

⁶ Def. Ex. 22.

⁷ Def. Ex. 23.



Ms. LaFond that "We are also told by the Miller's that years ago (maybe the 1950's or 60's) a Drew relative put up a gate at the current location and nobody minded because the Miller property was unoccupied and nobody ever accessed the property."⁸

21. Also, on October 14, 2009, Attorney Catherine LaFond informed Plaintiffs that "we need actual access to the [Property]... [an easement] is the safest way to go and what I have always contended we need..."⁹

22. Attorney Ashley Andrews of the LaFond law firm also emailed the Plaintiffs on October 14, 2009 stating that "[t]here is still a big hurdle [sic] to overcome with the access issue."¹⁰

23. In a subsequent email also sent on October 14, 2009 to Janell Nettles, Attorney Ashley Andrews informed Mrs. Nettles that "Part of our job at closing is to make sure that the property you are buying has marketable title. Marketable title means that the land you are purchasing is free of defects . . . A question over whether or not there is access to the property clouds the title and potentially makes it unmarketable."¹¹

24. On November 6, 2009, Attorney Ashley Andrews wrote to Janell Nettles "We have the search in and the search has concluded that Camp Ave. is county maintained from Hope Plantation Rd. up to where Polite Rd. intersects Camp Ave. From the intersection of Polite Road on, it is a private road. It cannot be determined from the Colleton County records when the road was put there."¹²

25. On November 10, 2009, Janell Nettles emailed George and Beth at Bova's Team at Carolina One, which in part stated as follows: ". . . Ted (Nettles) received a return call from Catherine stating that the road is private and that we need an easement....which we really don't

⁸ Def. Ex. 32.

⁹ Def. Ex. 25.

¹⁰ Def. Ex. 26.

¹¹ Def. Ex. 24; Def. Ex. 27.

¹² Def. Ex. 29.

believe." . . . "We are no longer confident that Edisto Title or Catherine LaFond's office are working in our best interest. Catherine has stated 3 separate (sic) times that we should find someone else to do the work....maybe we should have listened to her."¹³

26. On November 18, 2009, Janell Nettles wrote to Charlotte Bova's Team at Carolina One, "Beth, Tommy (Attorney Tommy Brush who represented Plaintiffs at the closing of the Property) assures me, as of last night, . . . we can still close by the 30th. The access issue, I don't think will be resolved. . . . I really would hate to ask for another extension but Ms. Miller has to realize that as of right now, she would not be able to sell the property as it is unless she had another cash buyer who is willing to make a purchase without access. . . ."¹⁴

27. Janell Nettles emailed George Gardner on November 20, 2009 "Ted and I are going to proceed with the purchase."¹⁵

28. Chicago Title Insurance Company issued the Plaintiffs a title insurance policy dated December 4, 2009 that specifically stated, "[r]ights of access to and from the lands insured hereby are neither insured nor guaranteed, notwithstanding any insuring provisions contained elsewhere in the commitment/policy."¹⁶

29. Chicago Title Insurance Company had issued an A.L.T.A. Commitment to the Plaintiffs which contained the same language quoted above in Paragraph 28.¹⁷

30. Despite the above representations from their counsel that Camp Road was private, the Plaintiffs purchased the Property with full knowledge that there was no access to the Property.

¹³ Def. Ex. 28

¹⁴ Def. Ex. 30

¹⁵ Def. Ex. 31

¹⁶ Def. Ex. 13.

¹⁷ Def. Ex. 14.

31. Thus, the Plaintiffs closed on the property with actual knowledge of both the lack of access to the Property and the absence of any recorded dedication or easement which would have provided a basis for them to claim such access.

32. Based on the evidence presented, and as further set forth below, the Court finds that the Plaintiffs have failed to prove that 1) the Road is public, 2) that Colleton County ever maintained the road inside Drews' gate, 3) that the Road inside Drews' gate was ever dedicated to the public, 4) that the public ever used the Road inside the gate, 5) that they have any easement rights in the Road entitling them to use the road for any purposes, and 6) that they have any legal access to the Property.

CONCLUSIONS OF LAW

I. The Road is a private road.

Roads in South Carolina are classified as public highways, neighborhood roads, and private ways. *Kirby v. Southern Railway*, 41 S.E. 765, 768 (S.C. 1902). Public highways and neighborhood roads are able to be used by members of the general public. A public highway is "a principal road leading to market, town, or some place of general resort, and is commonly traveled by all kinds of people." *State v. Harden*, 11 S.C. 360, 368-69 (1879). A neighborhood road is a road which runs between public roads or places. *Id.* at 767. For a road to be classified as a neighborhood road, both termini must be on a public highway or other public place. *Fanning v. Stroman*, 101 S.E. 861, 862 (S.C. 1920) (finding that a road which ends on the edge of a swamp several hundred yards from a landing is not public); *see also State v. Washington* 61 S.E. 896, 897 (S.C. 1908) (holding that a church or mill constitutes a public place). In certain situations, a road can become a neighborhood road by prescription. The test utilized to determine the existence of a neighborhood road by prescription is "general use by all persons, for



public purposes, for an uninterrupted period of twenty years or more." *State v. Sartor*, 33 S.C.L. (2 Strob.) 29, 32 (1847). A private way is a road through privately owned property and is not used by the public, though individuals may develop rights to use private ways (i.e., through prescriptive use). *See Kirby*, 41 S.E. at 767.

Plaintiffs failed to prove that the Road is a public highway or a neighborhood road. The Road is not a "principal road leading to a market, town, or some place of general resort," nor is it "commonly traveled by all types of people." *Harden*, 11 S.C. at 368-69. The Road does not qualify as a neighborhood road, because it does not terminate in another public road or public place as the Road ends on other Drew property. The Drews have had a locked gate in front of the Road for 28 years. The Road has not been used by the public nor maintained by the County during that time. As such, the Road is a private way.

II. The Road was never dedicated to the public.

A private road way may become public if its owner dedicates it to the public and the public then accepts the dedication. As discussed below, the Plaintiffs failed to prove that the Road has been dedicated to the public because Plaintiffs offered no evidence whatsoever that the Road had been dedicated nor accepted by the County. In fact Defendants proved that the Road had never been dedicated nor accepted by the County.

To prove a dedication of a road to the public, the party claiming dedication must show that "(i) the person who owned the land intended to dedicate it to a public use; and (ii) that the dedication was accepted by the public." *Hoogenboom v. City of Beaufort*, 433 S.E.2d 875, 883 (S.C. Ct. App. 1992). In order to show that an owner intended a piece of land to be dedicated, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. *Horry County v. Laychur*, 434 S.E.2d 259, 261 (S.C. 1993). In certain

situations, the intent to dedicate may be implied from allowing lengthy public use of the land. *Cleland v. Westvaco Corp.*, 431 S.E. 2d 264, 266 (S.C. Ct. App. 1993); *see also Cnty. Of Darlington v. Perkins*, 239 S.E. 2d 69, 71 (S.C. 1977) (finding that dedication was implied when the public used the dirt road continuously for fifty years without interference by the landowners). Absent an express grant, one who asserts a dedication must demonstrate clear and unequivocal conduct by the landowner indicating their intention to create a right in the public to use the property. *Derby Heights, Inc. v. Gantt Water & Sewer District*, 116 S.E.2d 13, 16 (S.C. 1960). "Dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing." *Hoogenboom*, 433 S.E.2d at 883.

Once a claimant has established that a landowner made a dedication of a road to the public, the claimant must also show that the public accepted the dedication. *Hoogenboom*, 433 S.E.2d at 883. Acceptance by a public authority can be expressed or implied, and must be made within a reasonable time. *Helsel v. City of N. Myrtle Beach*, 413 S.E.2d 821, 823 (S.C. 1992). Acceptance of an offer of dedication may be recognized through a public authority's using, repairing, or maintaining the streets. *Id.* (finding that acceptance by the City was implied when the public had used the road continuously, maintained the road, and policed the streets); *see also Boyd v. Hyatt*, 364 S.E.2d 478 (S.C. Ct. App. 1988) ("Public use of road for over thirteen years... is evidence of acceptance by the public of the dedication.").

Based on the foregoing, the Road has never been dedicated to the public. The Plaintiffs failed to show that either the Drews or their predecessors in title made an express or implied dedication of the Road.¹⁸ The Drews erected a gate across the Road to keep the public out, which is utterly inconsistent with an intention that the Road be dedicated to the public. This gate is

¹⁸ Even if it is argued that Mr. Drew is not the owner of the road past the gate, no one professing to be the owner of the road has expressed an intention to dedicate his property to public use in a positive and unmistakable manner.

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locked, and it is only unlocked for brief periods when Mr. Drew is entering or exiting his property. Mr. Drew does not provide any other individuals with regular access, except for his friends and family, all of which is permissive use, which cannot be construed as public use. A series of road licensing and permitting agreements indicate that Mr. Drew licensed the right to use the Road to specific persons along with such hunting rights, further showing his intent that the Road be used only with his permission and that no easement could arise from such use.¹⁹ This permission to certain people to use the Road on an occasional basis is a right specific to those certain individuals, and does not meet the standard required to show an intent to dedicate the Road to the public.

The Plaintiffs are similarly unable to demonstrate that any purported dedication of the Road was accepted by the public. The County's employees and Mr. Whetsell, a member of the Colleton County County Council, testified that the County explicitly denies ownership over the Road or any corresponding responsibility to maintain it. Mr. Drew, and his grandfather before him, maintains the Road and there is no use of the Road by the public. Therefore, the Plaintiffs' argument that the Road is a public road by virtue of dedication fails as a matter of law and fact.

III. The Plaintiffs do not have any easement rights to the Road.

The Plaintiffs attempted to advance other theories as to why they have, or are entitled to have, an easement over the Road. All of the Plaintiffs' legal theories as to easements fail because the Plaintiffs cannot satisfy the element necessary to establish an easement of any kind.

An easement is the right of one person to use the land of another for a specific purpose. *Windham v. Riddle*, 672 S.E.2d 578, 582 (S.C. 2009). An easement for a right of way over land can arise by grant, from necessity, or by prescription. *Frierson v. Watson*, 636 S.E.2d 872, 875 (S.C. Ct. App. 2006). In addition, the South Carolina Supreme Court recognized an easement

¹⁹ Def. Ex. 2; Def. Ex. 4; Def. Ex. 6 ; Def. Ex. 9.

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implied by prior use in *Boyd v. Bellsouth*, 369 S.C. 410, 633 S.E.2d 136 (2006), although up until that point an easement by prior use had never been explicitly recognized in South Carolina.

A. Plaintiffs do not have an easement by express grant or reservation.

An easement over land can arise from an express grant or reservation in a deed or other instrument. *Sandy Island Corp. v. Ragsdale*, 143 S.E.2d 803, 806 (S.C. 1965). In *Boyd*, 369 S.C. at 423, 633 S.E.2d at 143, and as is in this case, the South Carolina Supreme Court noted, “[t]he fact that there was not an easement allowing Boyd to cross BellSouth’s property was a matter of public record, which Boyd and her predecessors in title had knowledge of or at least the means to obtain the knowledge.” (citing *Carolina Land Co.*, 265 S.C. at 107, 217 S.E.2d at 20 for the proposition that, “[l]aw imputes to [a] purchaser who proposes to acquire title to real estate notice of recitals contained in any properly recorded instrument in writing which forms [a] link in [the] chain of title to property proposed to be acquired.”) The same is true in this case as regards the absence of a recorded easement.

Plaintiffs introduced no evidence showing that either the Plaintiffs or their predecessors in title were ever expressly granted any easement to the Road through deed or other instrument. No easement was sought in the quiet title action of the Miller property. As detailed above, the Plaintiffs had actual knowledge of the fact that there was no express easement by grant to the Road at the time the Plaintiffs purchased the Property. Both the title insurance company and two other attorneys informed the Plaintiffs that the Road was a private road and Plaintiffs needed to obtain an easement from the Drews, and the contract for purchase contained a contingency for access. The Plaintiffs have introduced nothing to contradict these assertions.

B. Plaintiffs do not have an easement by necessity.

An easement for a right of way over land can arise from necessity. An easement by necessity is:

based upon the presumption that the grantor intended the grantee of a landlocked parcel to have access to his property, a right recognized as essential to the enjoyment of land. Thus, [this] doctrine only provides reasonable access to the dominant estate when there is none; it does not provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available.

Morrow v. Dyches, 492 S.E.2d 420, 424 (S.C. Ct. App. 1997). A party claiming an easement by necessity must meet three elements: "(1) unity of title, (2) severance of the title, and (3) necessity of the easement." *Boyd*, at 140-41 (S.C. 2006).

To meet the first element of unity of title, the owner of the dominant estate must show that his land and that of the servient estate once belonged to the same person. *Brasington v. Williams*, 141 S.E. 375, 380 (S.C. 1927). In fact, there must have been absolute ownership of both tracts of land. At the end of Plaintiffs' case, Plaintiffs' counsel stated that he could not show unity of title to the Miller/Drew property, which ends the Plaintiffs' claim that they are entitled to an easement by necessity.

Plaintiffs have failed to meet the requirements of the three element test outlined in *Boyd*. Plaintiffs introduced no evidence to show unity of title and at trial, counsel for Plaintiffs admitted that Plaintiffs cannot prove unity of title.

C. Plaintiffs do not have an easement by prescription.

An easement for a right of way over land may arise by prescription. Prescriptive easements are similar to adverse possession in that they are established by the conduct of the owner of the dominant tenement. One claiming a prescriptive easement must establish (i) the continued and uninterrupted use or enjoyment of the right for twenty years; (ii) the identity of the

thing involved; and (iii) that the use was adverse under a claim of right. *Poole v. Edwards*, 15 S.E.2d 349, 350 (S.C. 1941).

On May 6, 2015, the *Bundy* case was issued by the South Carolina Supreme Court and is factually and legally on point with this case.

In *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 170 (2015), the South Carolina Supreme Court held that a party claiming rights to an easement by prescription has "the burden of proving all elements by clear and convincing evidence." Further, the Court held that "[g]iven that a prescriptive easement results in diminished rights of the property owner, we find that a claimant seeking a prescriptive easement must be held to a strict standard of proof, i.e., Plaintiffs must prove that the claimed use was adverse by clear and convincing evidence." *Id.* The burden on the Plaintiffs to prove they have easement rights over the Road is therefore a high one, and ultimately one which they were not able to overcome.

"Tacking", or adding together successive periods of time in order to meet the requirement of a longer time period, often seen in the context of acquisition of title by adverse possession, also applies to the acquisition of prescriptive easements. 72 A.L.R.3d 648 (originally published in 1976). A party may "tack" a period of use of prior owners in order to satisfy the 20-year requirement for a prescriptive easement. *Morrow*, 492 S.E.2d at 423. However, use by previous owners must also meet all requirements of a prescriptive easement in order for tacking to be used. *Id.* The Court of Appeals took up this issue in *Morrow* where property owners sought to establish their entitlement to an easement by prescription by tacking the period of use of their predecessors-in-interest in order to satisfy the 20-year requirement. *Id.* at 424. The Court held that the claimants failed to meet the burden of establishing entitlement to a prescriptive easement

because they failed to provide sufficient evidence that their predecessors-in-interest met all the requirements of a prescriptive easement. *Id.*

The Court in *Bundy* also found that “tacking” requires a claimant to show privity with predecessors in title. 412 S.C. 292, 313-14, 772 S.E.2d 163, 174-75. Merely referencing the length of ownership of the predecessor in title is insufficient to establish the 20-year period of prescription for the claimants. *Id.* “[The] claimant may not tack [its] adverse use to that of strangers, nor may a claimant tack the claimant's adverse use to that of a predecessor in title when the predecessor's usage terminated before claimant acquired the land.” *Id.* (quoting James W. Ely, Jr., and Jon W. Bruce, *The Law of Easements and Licenses in Land*, § 5:19 (Westlaw/Next 2015) (footnotes omitted)).

Herman Miller’s testimony and Norvia Miller’s statement to Janell Nettles in Exhibit 32 both indicated “that years ago (maybe the 1950’s or 60’s) a Drew relative put up a gate at the current location and nobody minded because the Miller property was unoccupied and nobody ever accessed the property . . .” Thus there was a failure to prove both a 20 year use of the Road by the ancestors and a failure to prove that such use was adverse.

The Plaintiffs owned the Property only for a year before instituting the present action, so they must “tack” onto previous adverse use by clear and convincing evidence, if any, by predecessors in title to show an easement by prescription. Plaintiffs have failed to carry their burden of proof as to this issue. The Drews have maintained a secure gate for 28 years, precluding adverse use for that time. Moreover, the Plaintiffs have introduced no evidence that the ancestors use was adverse and that they are in privity of estate with predecessors in title who meet all the requirements of a prescriptive easement. Plaintiffs also have not proved that anyone

Handwritten signature and initials, possibly "JAC" and "HS", in dark ink.

gave the Drews any notice at anytime of their claims before the Plaintiffs claimed that the Road was a public road.

D. Plaintiffs do not have an easement implied by prior use.

To establish an easement implied by prior use, the party claiming the easement must establish:

(i) unity of title (which Plaintiffs admit cannot be proved); (ii) severance of title; (iii) the prior use was in existence at the time of unity of title; (iv) the prior use was not merely temporary or casual; (v) the prior use was apparent or known to the parties; (vi) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without prior use; and (vii) the common grantor indicated an intent to continue the prior use after the severance of title.

Boyd, at 139 (S.C. 2006). The Plaintiffs do not meet their burden of satisfying any of the seven elements.

Similar to easements by necessity, easements by prior use are implied by law where "[t]he intent of the parties, as shown by all the facts and circumstances under which a conveyance was made may give rise to an easement by implication." *Boyd*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006) (citing *Hamilton v. CCM, Inc.*, 274 S.C. 152, 158, 263 S.E.2d 378, 381 (1980)). The claimant must prove the prior use was in existence at the time of unity of title, and whether an easement by implication was created "must be determined as of the time of the severance of the ownership of the tracts involved." *Boyd*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006) (citing *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973)). It is not sufficient for a claimant to show that there has been some prior use of the right of way; the use must be continuous, apparent, and necessary, have existed during unity of title, and the grantor must have demonstrated the intent to continue that prior use after the severance of title.



Plaintiffs offered no sufficient proof tending to show the intent of any parties or their predecessors in title that any prior use of the Road by owners of the Property ripen into an easement. Herman Miller's testimony indicates that his knowledge of any use of the Road by parties other than the Drews ended in 1953. Norvia Miller's statement in Exhibit 32 to Janell Nettles indicates that no one went to the Property after 1950 or 1960. Further, as stated above, Plaintiffs have failed to prove the requisite unity of title and counsel stated this in open court. As such, Plaintiffs' arguments for an easement implied by prior use must fail. Drews' locked gate has been in place for at least 28 years without objection by anyone.

CONCLUSION

Based on the foregoing, I find and conclude that the Plaintiffs have failed to meet their burden of proof on each and every proffered legal theory. Plaintiffs have failed to prove that (i) that Road is a public road, (ii) that Road was dedicated to the public or accepted by the County, and (iii) that the Plaintiffs have or are entitled to have an easement over the Road by express grant, prescription, necessity, prior use, or any other theory. Additionally, the record is abundantly clear that Plaintiffs bought the property with actual notice that no access whatsoever to the Property existed either before or after Plaintiffs closed on the property. *Bundy vs. Shirley, supra*, held that no access existed to Shirley's property. Likewise, Plaintiffs herein have no access to the property purchased from the Millers. Finally, the result of this action is a reminder of the consequence of failing to heed the advice of counsel on multiple occasions. Had the Nettles listened to their legal advisors and real estate professionals, a great amount of time and frustration would have been saved for all parties involved.

WAC
#17

Therefore, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

A. Plaintiffs have failed to prove, by a preponderance of the evidence, that the Road is a public road.

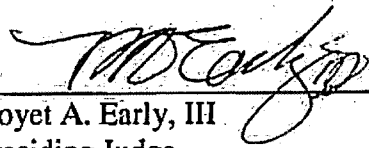
B. Plaintiffs have failed to prove, by a preponderance of the evidence, that the Road was ever dedicated to the public.

C. Plaintiff has failed to prove the elements necessary to show that Plaintiff has easement rights over the Road, either under the theory of express grant, prescription, necessity, prior use, or any other theory. That, accordingly, Plaintiffs have no access to the Property and have no right whatsoever to use Camp Road anywhere inside the Drews' gate.

D. That the Drews own fee simple title to the Road inside the gate.

Accordingly, let judgment be entered for the Defendants in all causes of action contained in Plaintiffs' Complaint.

AND IT IS SO ORDERED.


Doyet A. Early, III
Presiding Judge

September 18, 2015
Bamberg, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-15-00247

Ted A. Nettles and Janell B. Nettles,

Sylvester Guess Drew, Jr., Debra Drew and
Colleton County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Thomas C. Nelson, Esq.

Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(h), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After full consideration, Plaintiffs' Ted Nettles and Janell Nettles Motion to Reconsider is hereby DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

W. E. Carls
Circuit Court Judge

0136
Judge Code

11/20/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 23rd day of November, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 24th day of Nov., 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Patricia C. Grant
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

TED A. NETTLES, JR. and JANELL B.
NETTLES,

Plaintiff,

vs.

SYLVESTER GUESS DREW, JR.,
DEBRA DREW, COLLETON COUNTY,
and SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 10-CP-15-247

CONSENT ORDER

THIS MATTER CAME BEFORE ME by consent of the parties;

IT APPEARING TO THIS COURT that Plaintiffs and Defendants Sylvester Guess Drew, Jr. and Debra Drew desire to enter into an agreement enforceable by the contempt powers of this Court;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that Plaintiffs shall be restrained and enjoined from entering any lands owned by Defendant Sylvester Guess Drew, Jr., Defendant Debra Drew, or both, and Plaintiffs shall not direct anyone to do so, until further order of this Court or until the conclusion of this case;

IT IS FURTHER ORDERED that Plaintiffs shall be restrained and enjoined from travelling on the portion of Camp Road that extends West of Polite Road in Jacksonboro, South Carolina, County of Colleton, and Plaintiffs shall not direct anyone to do so, until further order of this Court or until the conclusion of this case;

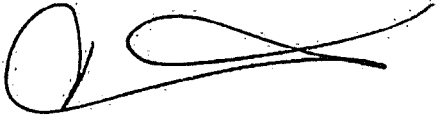
IT IS FURTHER ORDERED that these restrictions shall not prejudice the rights or claims of Plaintiffs or Defendants at any trial or any other hearings on the merits of this case, and

these restrictions shall not affect Plaintiffs' rights to enter the property with consent of Defendants Sylvester Guess Drew, Jr. and Debra Drew, by further Court Order, or by legitimate means related to this litigation such as pursuant to Rule 34, SCRCF;

IT IS FURTHER ORDERED that Defendants Sylvester Guess Drew, Jr. and Debra Drew shall be granted leave to amend their Answer and Counterclaim to assert a claim for negligence against Plaintiff Ted Nettles regarding the incident where he allegedly caused damage to the Drews' gate on or about February 19, 2012.

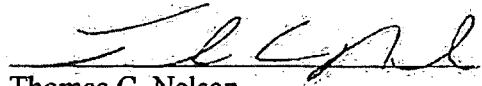
IT IS SO ORDERED.

Dated: 5-11-2012
Beaufort, South Carolina


Carmen T. Mullen
Circuit Court Judge, Fourteenth Judicial Circuit

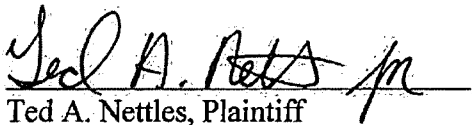
Attorney Consents in Counterparts on Following Pages.

WE CONSENT:

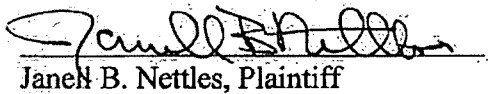


Thomas C. Nelson

Attorney for Ted A. Nettles and Janell B. Nettles

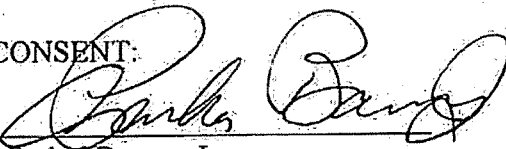


Ted A. Nettles, Plaintiff



Janell B. Nettles, Plaintiff

I CONSENT:


A. Parker Barnes, Jr.

Attorney for Sylvester Guess Drew, Jr. and Debra Drew

Order Re: Entry onto Drew Property

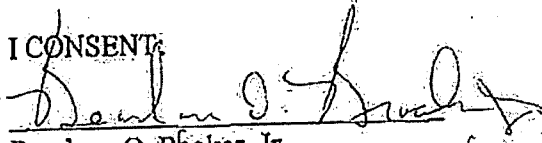
I CONSENT: - Case No. 10-CP-15-247

Marshall H. Waldron, Jr.

Marshall H. Waldron, Jr.

Attorney for Colleton County

I CONSENT:


Beacham O. Bpoker, Jr.
Attorney for South Carolina Department of Transportation

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

TED A. NETTLES, JR. and JANELL B.
NETTLES,

Plaintiff,

vs.

SYLVESTER GUESS DREW, JR.,
DEBRA DREW, COLLETON COUNTY,
and SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 10-CP-15-247

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

NORVIA MILLER,

Plaintiff,

vs.

MAMIE SIMMONS, ET AL.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 08-CP-15-662

ORDER

THIS MATTER CAME BEFORE ME upon Ted and Janell Nettles' (the "Nettles") motion for reconsideration pursuant to Rule 59, SCRPC, requesting this Court alter or amend its Order, dated October 19, 2011, which reopens the case captioned as Miller v. Simmons, et al., Case Number 2008-CP-15-662. After granting a hearing and allowing further argument regarding this matter, this Court issues its Order as follows:

BACKGROUND

The procedural history of this case is undisputed. On July 15, 2008, Norvia Miller (hereinafter "Miller"), by and through her counsel, Deborah Kane, Esquire, filed a Summons and Complaint with this Court captioned as Miller v. Simmons, et al., Case Number 2008-CP-15-662 (hereinafter the "quiet title action") seeking to quiet the title of property (hereinafter the "Miller Tract") described in the Summons and Complaint as follows:

All that certain piece, parcel or tract of land, together with buildings and improvements thereon, situate, lying and being near Jacksonboro, in Colleton County, South Carolina, containing 21.70 acres, more or less, and being apportion of the West Bank tract, near the Camp Settlement, and being bounded as follows: on the East by lands, now or formerly, of Washington, on the South by lands, now or formerly, of Charity Washington; on the West by lands, now or formerly, of Branham; and on the North by lands, now or formerly, of Drayton; and designated as TMS # 275-00-00-004 in the Colleton County Assessor's Office.

This being the same property conveyed to Amy Simmons by deed of C.M. Grace and E.A. Sanders in Deed Book 29 at Page 118 in the Colleton County RMC Office.

This action was referred to Harris L. Beach, Jr., Special Referee, by Order of Reference. The Special Referee issued his Final Decree establishing the heirs on July 13, 2009. On November 25, 2009, the Special Referee executed a Special Referee Deed conveying the Miller Tract to the Nettles.

On February 25, 2010, the Nettles filed a Summons and Complaint captioned as Nettles v. Drew et al., Case Number 10-CP-15-247 (hereinafter the "access action") against Sylvester Guess Drew, Jr. and others asserting claims for access to the Miller Tract. On June 24, 2011, the Nettles amended their complaint to add Debra Drew as a party and to bring causes of action for (1) declaratory judgment for public road/public easement, (2) declaratory judgment for easement by necessity, (3) declaratory judgment for easement implied by prior use, (4) declaratory

judgment for prescriptive easement, (5) injunctive relief, and various causes of action for damages.

At some point during this litigation, the Drews asserted that the Miller Tract only consists of 17.25 acres, obtained some form of an "Assignment" from an adjacent landowner, and asserted that the Drews own some portion of the Miller Tract. Further, the Drews claim that the acreage as specified in the Special Referee Deed (21.70 acres) is incorrect. On July 26, 2011, the Drews filed a motion to quash the final decree from the quiet title action and reopen the record and rehear the case.¹ It appears the primary basis for this motion was to correct the allegedly incorrect legal description in the Special Referee Deed. This Court granted the Drews' motion by Order, dated October 19, 2011. The Nettles' counsel first received notice of entry of this Order by email, dated October 24, 2011, and timely filed a motion to reconsider. This Court granted a hearing, which was held on November 18, 2011. Counsel for the Nettles and the Drews were present.

LAW/ANALYSIS

Rule 60(b), SCRCP requires a motion for relief from judgment to be made within one year after the judgment, order or proceeding was entered or taken. Here, the Final Decree for the quiet title action was entered on July 13, 2009. The Drews filed their motion on July 26, 2011, and it is therefore, untimely.

Even if the motion were timely, the Drews have not established any reason within Rule 60(b)'s enumerated list as to why the judgment should be vacated. In their motion, the Drews

¹ The Drews filed an identical motion under both of the captioned cases in an "abundance of caution." This Court issued its original Order on these motions under the caption for Miller v. Simmons et al., Case Number 2008-CP-15-662. Plaintiffs also filed their motion to reconsider under both captions in an "abundance of caution." Now, this Court issues its Order under both captions and directs the Clerk of Court to file this Order under both captions. Any further pleadings regarding these issues should be filed only under the caption Nettles v. Drew et al., Case Number 10-CP-15-247.

state that "Defendant Drew has . . . alleged that extrinsic fraud existed in the [quiet title] complaint." The Dews cite Yarbrough v. Collins, 301 S.C. 339, 391 S.E.2d 873 (Ct. App. 1990) in support of their argument. However, in Yarbrough, the party claiming fraud was a named defendant in the underlying quiet title action. Also, the Court in Yarbrough found that the party claiming fraud did not "present[] evidence in the record relating to the claim of fraud other than the allegations in her complaint." Accordingly, the Court affirmed the trial court's ruling that the party's claim was timely barred. Here, like Yarbrough, there is no evidence in the record to support a claim for fraud. The mere allegation of "fraud," without any evidentiary support, is not sufficient to afford the Dews any relief.

Finally, S.C. Code Ann. § 15-53-80 provides: "[N]o declaration shall prejudice the rights of persons not parties to the proceeding." Here, the Dews were not parties to the quiet title action, and the quiet title action does not grant any award or relief against the Dews. To the extent that the legal description used in the quiet title action is incorrect, which Plaintiffs assert it is not, this legal description does not prejudice the rights of the Dews who were not parties to that action. Therefore, the Dews do not have standing to reopen the quiet title action. Any argument that only the special referee may alter or amend his own order is inapplicable due to the Dews lack of standing.

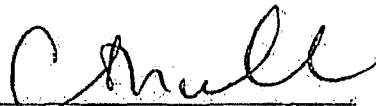
IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Nettles' motion for reconsideration is GRANTED, the order reopening the case of Miller v. Simmons, et al., Case Number 2008-CP-15-662, dated October 19, 2011 is VACATED, and the Dews' motion to reopen this case is now DENIED.

IT IS FURTHER ORDERED that the Dews be granted leave to amend their Answer in the case of Nettles v. Drew et al., Case Number 10-CP-15-247 for the purpose of adding a cause of

action for declaratory judgment regarding the acreage issue raised in the Drews' motion to reopen and to add any parties necessary for the resolution of the acreage issue.

IT IS SO ORDERED.

Dated: 11.30.11
Beaufort, South Carolina


Carmen T. Mullen
Circuit Court Judge, Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

TED A. NETTLES, JR and)
JANELL B. NETTLES)

Plaintiffs)

vs.)

SYLVESTER GUESS DREW, JR.,)
COLLETON COUNTY, and SOUTH)
CAROLINA DEPARTMENT OF)
TRANSPORTATION)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 10-CP-15-247

COMPLAINT

2010 FEB 25 PM 2:26

COLLETON COUNTY
COMMON PLEAS

TO: ABOVE NAMED DEFENDANTS:

The Plaintiffs above, complaining of the Defendants would show unto the court the following.

1. That the Plaintiffs bring this Action pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, Sections 15-53-10, et seq., Code of Laws of South Carolina, 1976, as Amended.
2. The Plaintiffs are residents of Charleston County, South Carolina.
3. The Defendant, Sylvester Guess Drew, Jr. (hereinafter "Drew"), is a resident of Colleton County, South Carolina.
4. The Defendant, Colleton County, is a government entity with its primary location in Walterboro, South Carolina.
5. The Defendant, South Carolina Department of Transportation (hereinafter "SCDOT"), is a government entity with its primary location in Columbia, South Carolina.

6. The Plaintiffs are owners of property located on Camp Avenue in Colleton County, South Carolina. Camp Avenue is the only egress and ingress to their property.

7. The Defendant, Drew, is the owner of property located on Camp Avenue in Colleton County, South Carolina.

8. Camp Avenue is a road recognized by the Defendants, Colleton County and SCDOT, as a public road. All plats and tax maps of property adjacent to Camp Avenue recognize it as a public road.

9. The Defendants, Colleton County and SCDOT, have an obligation and duty to maintain Camp Avenue.

10. The Defendant, Drew, has erected a locked gate across Camp Avenue.

11. The Plaintiffs' property is located beyond the gate and the Defendant, Drew, has prevented access to their property via Camp Avenue.

12. The Defendant, Drew, also erected cement fixtures on one side of the gate to prevent access around the gate.

13. The Defendant, Drew, also erected a second gate beside the gate that crosses Camp Avenue. The path through the second gate is not maintained by the Defendant, Drew, has become muddy with numerous traction marks, and has become impassable.

14. The Defendant, Drew, allows certain individuals, by his own choice, a pass code to use the gate on Camp Avenue. All other individuals are required to use the second gate that is highly difficult to traverse. The Plaintiffs do not have the pass code and are required to use the second gate to access their property.

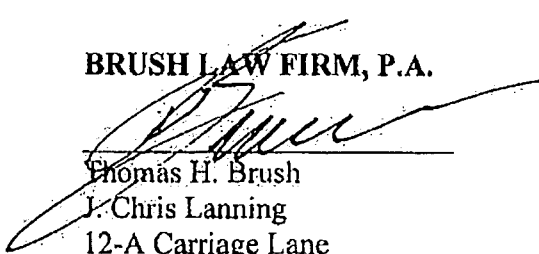
15. The Defendants, Colleton County and SCDOT, have maintained Camp Avenue up to the gate and have failed to maintain Camp Avenue beyond the gate.

16. The Plaintiffs are informed and believe that the Defendants, Colleton County and SCDOT, are at fault for not removing the gate across Camp Avenue or in the alternative not requiring the Defendant, Drew, to remove the gate.

17. The Plaintiffs are informed and believe that this Honorable Court shall enter its decree adjudging and declaring that the gate erected by the Defendant, Drew, across Camp Avenue should be removed at his expense and that the Defendants, Colleton County and SCDOT, should provide all maintenance for the entire length of Camp Avenue.

WHEREFORE, the Plaintiffs pray this Honorable Court, after making due inquiry into the matters and things alleged in the Compliant, adjudge and declare that the gate across Camp Avenue erected by the Defendant, Drew, be removed at his expense; that the Defendants, Colleton County and SCDOT maintain the entire length of Camp Avenue; and for such other and further relief as to this Honorable Court shall deem just, appropriate and proper.

BRUSH LAW FIRM, P.A.


Thomas H. Brush

J. Chris Lanning

12-A Carriage Lane

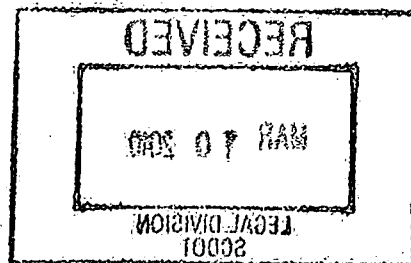
Post Office Box 31459

Charleston, SC 29417

(843) 766-5576

Attorney for Plaintiffs

2/17, 2010
Charleston, South Carolina



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON)

CIVIL ACTION NO.: 2010-CP-15-00247

TED A. NETTLES and JANELL B.
NETTLES,

Plaintiffs,

vs.

SYLVESTER GUESS DREW, JR.,
COLLETON COUNTY, and SOUTH
CAROLINA DEPARTMENT OF
TRANSPORTATION,

Defendants.

AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT
SYLVESTER GUESS DREW, JR.
(Jury Trial Demanded)

TO: J. CHRIS LANNING, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Defendant Sylvester Guess Drew, Jr. (hereinafter known as "Drew") specifically
reserving all rights pursuant to any and all motions previously served, and without waiving the
same, answers the Plaintiffs' Complaint, would allege and show the following unto this

Honorable Court:

FOR A FIRST DEFENSE

1. That upon information and belief, Drew denies each and every allegation of the
Plaintiffs' Complaint not specifically admitted hereinafter.

2. That Drew lacks sufficient information with which to form a belief as to the
allegations contained in Paragraphs 1, 2, 5, 6, 16 and 17 of the Plaintiffs' Complaint and
accordingly denies the same.

3. That Drew admits each and every allegation contained in Paragraphs 3, 4, 7 and 15 of the Plaintiffs' Complaint but further alleges that as to Paragraph 15, all county maintenance on Camp Road never reached the site of the original gate installed more than 25 years ago which location on Camp Road was on Plaintiffs' eastern most boundary of his property which is west of the intersection of Camp Road and Polite Road. That all county maintenance on Camp Road ends next to the western most edge of the intersection of Camp Road and Polite Road and not at Drew's eastern most boundary on Camp Road.

4. That answering Paragraphs 8 and 9 of the Plaintiffs' Complaint, that upon information and belief, Drew denies each and every allegation contained therein and further alleges that Drew has fee simple title to all portions of Camp Road up to the eastern most boundary of Defendant's property line which crosses Camp Road at a point west of Polite Road.

5. That Drew admits Paragraphs 10 and 12 contained in Plaintiffs' Complaint but further alleges that Drew has fee simple to all lands including Camp Road itself where he first put all gates and barriers over 25 years ago on the eastern most boundary of his land on Camp Road as defined in Paragraph 3 and no county maintenance has ever been done beyond the intersection of Camp Road and Polite Road nor on Camp Road inside the gate.

6. That answering Paragraph 11 of Plaintiffs' Complaint, Drew is informed and verily believes that Plaintiffs purchased property adjacent to lands owned in fee simple by Drew and further alleges, upon information and belief, that Drew does not owe a duty to provide access to Plaintiffs' lands over land owed by Drew.

7. That answering Paragraph 13 of Plaintiffs' Complaint, Drew alleges that Drew placed gates only on property owned in fee simple by Drew which lands include Camp Road

and further alleges that Plaintiff owes no duty to provide Plaintiffs with access to Plaintiffs' property across lands that Drew owns in fee simple because Camp Road at that location has never been a public road owned nor maintained by Colleton County or South Carolina Department of Transportation and has been blocked by his locked gate for over twenty five years.

8. That answering Paragraph 14 of Plaintiffs' Complaint, Drew alleges that Drew owns all of the property in fee simple that is referred to in Paragraph 14 of the Plaintiffs' Complaint and Camp Road at that location has never been a public road owned nor maintained by Colleton County or South Carolina Department of Transportation and has been blocked by his locked gate for over twenty five years.

FOR A SECOND DEFENSE

9. That answering Plaintiffs' Complaint, Defendant Drew states that the allegations contained in Paragraphs 1 through 8 above are realleged and adopted the same as if repeated verbatim herein.

10. That Drew has owned all of Camp Road up to that certain point or location of land on his eastern most boundary which is west of Polite Road and that gates erected by Drew have been in existence on Camp Road for over 25 years and of course, were so erected at all times when Plaintiffs' inspected the land before they purchased the land.

11. That before Plaintiffs purchased their property, Drew notified Plaintiffs of the location of all of Drew's lands including that of Camp Road and Drew's attorneys made a written offer of access for Plaintiffs to Plaintiffs' attorney that Plaintiffs refused.

12. That upon information and belief, Plaintiffs had the opportunity to check the public records regarding title to the property they purchased and the boundaries of the property

owned by Defendant Drew including such on Camp Road before they bought the property but failed to do so.

13. That before Plaintiffs purchased the property, Plaintiffs had the further opportunity to speak with officials in Colleton County to determine the status of county maintenance upon Camp Road from Hope Plantation Road to Plaintiffs gate and to its terminus at Deer Creek but failed to do so.

14. That because Plaintiffs failed to gather any available public information regarding the county maintenance of and the ownership of Camp Road from Drew's gate to Deer Creek before buying the property, Plaintiffs assumed the risk of not having a legal right to use Camp Road from Plaintiffs' boundary line to Deer Creek.

FOR A THIRD DEFENSE
Estoppel

15. That Drew's fee simple title to Camp Road has been recorded in the Colleton County real estate records from its terminus near Deer Creek to the eastern boundary of his property and crossing Camp Road at a point by a locked gate blocking Camp Road west of the intersection of Camp Road and Polite Road.

16. That Defendant has blocked Camp Road with the locked gate for over 25 continuous years west of the intersection of Polite Road and Camp Road.

17. That upon information and belief, Plaintiffs had the opportunity to check both the county maintenance of and the public real estate records of Camp Road and the boundaries of the property owned by Drew including such on Camp Road.

18. That before Plaintiffs purchased the property, Plaintiffs had the opportunity to speak with officials in Colleton County to determine the status of county maintenance of Camp

Road from Hope Plantation Road to Plaintiffs gate and to its terminus at Deer Creek.

19. That because Plaintiffs failed to gather any available public information or public records regarding the ownership of Camp Road from Drew's gate to Deer Creek before purchasing their property, Plaintiffs should be estopped from claiming any right to use any of the portion of Camp Road that Drew owns.

FOR A FOURTH DEFENSE
Counterclaim

20. That the parties hereto, the subject matter hereof and all the matters and facts alleged herein are within the jurisdiction of this Honorable Court.

21. That Defendant Drew's title in fee simple to all of Camp Road from near his gate to Deer Creek has been recorded for over 25 years in the public records of Colleton County.

22. That Defendant Drew's gates blocking the portion of Camp Road that he owns have been erected for over twenty-five years and are open and obvious and have been continuous.

23. That Plaintiffs and Plaintiffs' agents, servants, and employees have been trespassing and using portions of Camp Road inside of Defendant Drew's gate without Drew's permission and against Drew's stated instructions and all of such illegal use of Camp Road has been trespasses which have caused damage to Drew's road and to Drew himself.

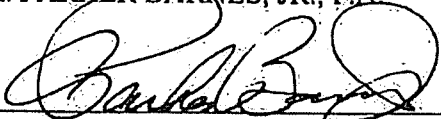
24. That as a result of these trespassers, Drew has incurred special damages in the form of attorney fees, costs, lost time from work, he has been sued by Plaintiffs who falsely and incorrectly alleged that the portion of Camp Road behind the gate is a public road when in fact and law it is not a public road and Drew's roads and property are being and will continue to be damaged from the Plaintiffs' blatant conduct in continuing to trespassing upon Drew's property after notice including but not limited to Camp Road.

25. That as a direct and proximate result of Plaintiffs' deliberate trespassing, Drew has been sued by Plaintiffs and has been forced to hire an attorney and has suffered special damages of attorney fees, court costs, damage to his property and road including but not limited to Camp Road and has lost considerable time from work in resisting the Plaintiffs frivolous allegations that Camp Road inside of Drew's gate is a public road.

26. That as a direct and proximate result of Plaintiffs' deliberate and intentional trespassing, Defendant Drew has suffered actual and punitive damages in an amount to be determined by the trier of the fact.

WHEREFORE, Defendant Drew, having fully answered Plaintiffs' Complaint, prays that he be dismissed from the Plaintiffs' action and be awarded actual and punitive damages, including attorneys' fees, all costs and expenses of litigation, lost time from work and such other relief as this Court may deem just and proper.

A. PARKER BARNES, JR., P.A.



A. Parker Barnes, Jr.

P.O. Drawer 1729

Beaufort, South Carolina 29901-1729

(843) 522-2600

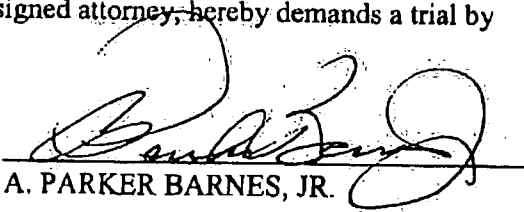
Attorney for Defendant Sylvester Guess
Drew, Jr.

Beaufort, South Carolina

April 22, 2010

JURY TRIAL DEMANDED

Pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure, Defendant
Sylvester Guess Drew, Jr. by and through his undersigned attorney, hereby demands a trial by
jury.


A. PARKER BARNES, JR.

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

TED A. NETTLES, JR and
JANELL B. NETTLES)

Plaintiffs)

vs.)

SYLVESTER GUESS DREW, JR.,
COLLETON COUNTY, and SOUTH
CAROLINA DEPARTMENT OF
TRANSPORTATION)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2010-CP-15-247

**PLAINTIFFS' REPLY TO DEFENDANT'S,
SYLVESTER GUESS DREW, JR.,
COUNTERCLAIM**

PATRICIA C. GIVENS
CLERK OF COURT
COMMON PLEAS
2010 MAY 26 AM 11:41

TO: THE DEFENDANT, SYLVESTER GUESS DREW, JR.:

The Plaintiffs reply to Defendant's Answer and Counterclaim as follows:

FOR A FIRST DEFENSE

1. The Plaintiffs deny each and every allegation made in Defendant's Answer and Counterclaim unless specifically admitted herein, and demand strict proof thereof.
2. The Plaintiffs deny the allegations contained in Paragraphs 21 and 22 of the Defendant's Answer and Counterclaim and demand strict proof thereof.
3. The Plaintiffs deny the allegations contained in Paragraph 23 of the Defendant's Answer and Counterclaim and demand strict proof thereof. The Defendant gave the Plaintiff's permission to use the gates and Camp Road. The Plaintiffs are informed and believe that the portion of Camp Road beyond the gates is a public road and they would have a legal authorization to use this portion of Camp Road.

4. The Plaintiffs deny the allegations contained in Paragraph 24 of the Defendant's Answer and Counterclaim and demand strict proof thereof. The Plaintiffs have not used the Defendant's gates or Camp Road since April 18, 2010, which is before the Defendant's Answer and Counterclaim was filed. The Plaintiffs deny that that have continued to use the gates and Camp Road since this date.

5. The Plaintiffs deny the allegations contained in Paragraphs 25 and 26 of the Defendant's Answer and Counterclaim and demand strict proof thereof

FOR A SECOND DEFENSE

(Waiver)

6. The Plaintiffs reallege Paragraphs 1 through 5 as if fully set forth and incorporated herein by reference.

7. The Defendant's claims are barred by the doctrine of waiver.

FOR A THIRD DEFENSE

(Estoppel)

8. The Plaintiffs reallege Paragraphs 1 through 7 as if fully set forth and incorporated herein by reference.

9. The Defendant's claims are barred by the doctrine of estoppel.

FOR A FOURTH DEFENSE

(Failure to State a Claim/Rule 12(b)(6))

10. The Plaintiffs reallege Paragraphs 1 through 9 as if fully set forth and incorporated herein by reference.

11. The Plaintiffs move for a dismissal of the Counterclaim under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

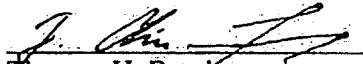
FOR A FIFTH DEFENSE
(Condonation)

12. The Plaintiffs reallege Paragraphs 1 through 11 as if fully set forth and incorporated herein by reference.

13. The Plaintiffs were given permission by the Defendant to use the gates and Camp Road and the Defendant knew the Plaintiffs were using the gates and Camp Road. Therefore, the Defendant's trespass action is barred by the doctrine of condonation

WHEREFORE, the Plaintiffs asks the Court to grant the relief requested in their Complaint and this Reply, and that it grant such other relief as may be just and proper.

BRUSH LAW FIRM, P.A.


Thomas H. Brush
J. Chris Lanning
12-A Carriage Lane
Post Office Box 31459
Charleston, SC 29417
(843) 766-5576
Attorney for Plaintiffs

May 21, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

TED A. NETTLES, JR. and JANELL B.
NETTLES,

Plaintiff,

vs.

SYLVESTER GUESS DREW, JR.,
DEBRA DREW, COLLETON COUNTY,
and SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 10-CP-15-247

AMENDED COMPLAINT

(Non-Jury)

2011 JUN 24 AM 11:27

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

Plaintiffs, by and through undersigned counsel, would show unto this Honorable Court:

1. Plaintiffs are citizens and residents of the County of Charleston, State of South Carolina.

2. Plaintiffs are informed and believe that Defendant Sylvester Guess Drew, Jr. (hereinafter "Defendant Drew") is a citizen and resident of the County of Colleton, State of South Carolina.

3. Plaintiffs are informed and believe that Defendant Debra Drew (hereinafter "Defendant Debra") is a citizen and resident of the County of Colleton, State of South Carolina.

4. Plaintiffs are informed and believe that Defendant Colleton County (hereinafter "Defendant Colleton") is governmental entity operating under the laws of South Carolina and possessing potential rights, interests, and obligations related to this action.

5. Plaintiffs are informed and believe that Defendant South Carolina Department of Transportation (hereinafter "Defendant DOT") is a governmental entity operating under the laws of South Carolina and possessing potential rights, interests, and obligations related to this action.

6. On or about November 30, 2009, Plaintiffs acquired title to real property (hereinafter "Miller Tract") located on Camp Road in the County of Colleton, State of South Carolina, such property being further described as follows:

All that certain piece parcel tract of land, together with buildings and improvements thereon situate lying and being near Jacksonboro being in Colleton County, South Carolina containing 21.70 acres more or less and being a portion of the West bank tract near the camp settlement and being bounded as follows: on the East now or formerly of Washington; South by land now or formerly of Charity Washington; on the West by lands now or formerly of Branham; and on the North by land now or formerly of Drayton and designated as TMS number 275-00-00-004 in the Colleton County Assessor's Office.

Being the same property subject to the suit to Quiet Title in Case Number 2008-CP-15-622 and the Court's Final Decree filed July 14, 2009.

7. Plaintiffs are informed and believe that Defendant Drew owns real property adjacent to the Miller Tract (hereinafter "North Drew Tract") located on Camp Road in the County of Colleton, State of South Carolina, such property being further described in EXHIBIT A, attached hereto and incorporated by reference.

8. Plaintiffs are informed and believe that Defendant Debra owns other real property adjacent to the Miller Tract (hereinafter "East Drew Tract") located on Camp Road in the County of Colleton, State of South Carolina, such property being further described in EXHIBIT B, attached hereto and incorporated by reference.

9. Plaintiffs are informed and believe that the portion of Camp Road extending West past its intersection with Polite Road (hereinafter "West Camp Road") has been the primary mode of access to the Miller Tract for over forty (40) years.

10. Defendant Drew and/or Defendant Debra have blocked access to Camp Road via a locked gate, which causes the Miller Tract to be landlocked.

11. Plaintiffs have no other way of accessing the Miller Tract except via West Camp Road.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment – Public Road/Public Easement)

12. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

13. Plaintiffs are informed and believe that West Camp Road is a public road dedicated under the laws of South Carolina and that such dedication is for the use of the public at large or that West Camp Road is an easement for the public at large.

14. Plaintiffs are informed and believe that Defendant Drew and/or Defendant Debra deny that West Camp Road is a public road and that Defendant Drew and/or Defendant Debra have illegally restricted or prevented access to West Camp Road.

15. Plaintiffs are informed and believe that they are entitled to a declaratory judgment, S.C. Code Ann. § 15-53-10, et seq., setting forth the status of the subject portion of West Camp Road, determining that such portion is a dedicated public road or is available for public use, and awarding Plaintiffs judgment for the costs of this action.

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment – Easement by Necessity)

16. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

17. Plaintiffs are informed and believe that the Miller Tract, North Drew Tract, and East Drew Tract were at one point owned by the same owner and thus, there was previously unity of title among these tracts.

18. Plaintiffs are informed and believe that severance of title occurred when the Miller Tract was conveyed to a separate owner.

19. To the extent West Camp Road is not a public road or otherwise available for access to the Miller Tract by the Plaintiffs or general public, the Miller Tract is landlocked.

20. West Camp Road provides the only means of access to the Miller Tract without trespassing over private land.

21. Access to property is necessary for enjoyment of that property.

22. Plaintiffs are informed and believe that they are entitled to a declaratory judgment, S.C. Code Ann. § 15-53-10, et seq., declaring that they, as owners of the Miller Tract, and their heirs and assigns, possess an easement by necessity over West Camp Road and awarding Plaintiffs judgment for the costs of this action.

FOR A THIRD CAUSE OF ACTION

(Declaratory Judgment –Easement Implied by Prior Use)

23. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

24. Plaintiffs are informed and believe that, as previously alleged, unity of title and severance of title existed regarding the subject tracts.

25. Plaintiffs are informed and believe that prior use of West Camp Road for access was not merely temporary or casual.

26. Plaintiffs are informed and believe that the prior use of West Camp Road was apparent or known to the parties at the time of severance.

27. Plaintiffs are informed and believe that the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use.

28. Plaintiffs are informed and believe that the common grantor indicated an intent to continue the prior use after severance of title.

29. Plaintiffs are informed and believe that they are entitled to a declaratory judgment, S.C. Code Ann. § 15-53-10, et seq., declaring that they, as owners of the Miller Tract, and their heirs and assigns, possess an easement implied by prior use over West Camp Road and awarding Plaintiffs judgment for the costs of this action.

FOR A FOURTH CAUSE OF ACTION

(Declaratory Judgment – Prescriptive Easement)

30. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

31. Plaintiffs are informed and believe that for a period of over twenty (20) years, Plaintiff's successors in title used West Camp Road to access the Miller Tract.

32. Plaintiffs are informed and believe that their use and/or their successor(s)' use was adverse to any claim of ownership by Defendant Drew and/or Defendant Debra and under a claim of right by Plaintiffs and/or their successors in title.

33. Plaintiffs are informed and believe that they are entitled to a declaratory judgment, S.C. Code Ann. § 15-53-10, et seq., declaring that they, as owners of the Miller Tract, and their heirs and assigns, possess a prescriptive easement over West Camp Road and awarding Plaintiffs judgment for the costs of this action.

FOR A FIFTH CAUSE OF ACTION

(Injunctive Relief)

34. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

35. Plaintiffs are informed and believe that a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to prevent irreparable harm because it is necessary for Plaintiffs to be able to access and upkeep their property.

36. Plaintiffs are informed and believe that the issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of Plaintiffs' rights during the course of this litigation, and Plaintiffs are likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

37. Plaintiffs are informed and believe they have a legal right of access over West Camp Road.

38. Plaintiff has no adequate remedy at law.

39. Plaintiffs are informed and believe that Defendant Drew and Defendant Debra should be restrained and enjoined from preventing access to West Camp Road or to the Miller Tract.

40. Due to the immediate and severe hardship imposed by Defendant Drew and/or Defendant Debra upon Plaintiffs, Plaintiffs respectfully request that this Court, within its discretion, impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction in the least amount possible.

FOR A SIXTH CAUSE OF ACTION

(Trespass)

41. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

42. Plaintiffs have legal possession or a legal right to an easement or public road, namely West Camp Road, in order to access the Miller Tract.

43. Plaintiffs are informed and believe that Defendant Drew and/or Defendant Debra have voluntarily interfered with this easement without Plaintiffs' permission.

44. Plaintiffs are informed and believe that Defendant Drew's and/or Defendant Debra's trespass is wanton, willful, intentional, malicious, and in reckless disregard of Plaintiffs' rights.

45. As a direct and proximate result of Defendant Drew's and/or Defendant Debra's trespass, Plaintiffs are entitled to actual, nominal, compensatory, and punitive damages.

FOR A SEVENTH CAUSE OF ACTION

(Slander of Title)

46. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

47. Plaintiffs are informed and believe that Defendant Drew and/or Defendant Debra, through words and actions, have published that West Camp Road is not a public road or an easement to the Miller Tract, and have therefore published that the Miller Tract is landlocked.

48. Defendant Drew's and/or Defendant Debra's publications are false and derogatory to Plaintiffs' title.

49. Defendant Drew's and/or Defendant Debra's publications are with malice and in reckless disregard of Plaintiffs' rights.

50. As a direct and proximate result of Defendant Drew's and/or Defendant Debra's publications, Plaintiffs are entitled to actual, nominal, compensatory, and punitive damages, and

special damages including but not limited to pecuniary loss, loss of vendibility of the property, and attorney's fees incurred in removing the cloud on title

FOR AN EIGHTH CAUSE OF ACTION

(Nuisance)

51. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

52. Defendant Drew and/or Defendant Debra has unreasonably interfered with Plaintiffs' use and enjoyment of their land, and such interference creates and unlawful nuisance.

53. As a direct and proximate result of Defendant Drew's and/or Defendant Debra's nuisance, Plaintiffs are entitled to actual, nominal, compensatory, and punitive damages.

FOR AN NINTH CAUSE OF ACTION

(Declaratory Judgment – Equitable Estoppel)

54. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

55. In the alternative, if Defendant Drew and/or Defendant Debra owned West Camp road and would normally be entitled to deny owners of the Miller Tract access the Miller Tract via West Camp Road, their words and actions, immediately prior to the Plaintiffs' purchase of the Miller Tract and over the course of many years, equitably estops them from now claiming said ownership and from otherwise claiming that Plaintiffs have no right to access the Miller Tract via West Camp Road.

56. Plaintiffs lacked knowledge and the means of knowledge of the truth as to the facts in question.

57. Plaintiffs relied upon the words and conduct of Defendant Drew and Defendant Debra when Plaintiffs purchased the Miller Tract.

58. Plaintiffs' purchase of the Miller Tract has prejudicially changed their position.

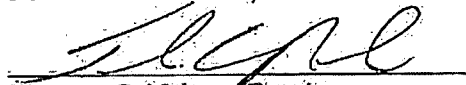
59. Plaintiffs are informed and believe that they are entitled to a declaratory judgment, S.C. Code Ann. § 15-53-10, et seq., declaring that they, as owners of the Miller Tract, and their heirs and assigns, possess an easement or other right of access over West Camp Road and awarding Plaintiffs judgment for the costs of this action.

WHEREFORE, Plaintiffs pray as follows:

- a) For judgment against Defendant Drew for actual, nominal, compensatory, punitive, and special damages, for prejudgment interest, and for the attorney's fees and the costs of this action, in an amount to be determined at trial;
- b) For an Order declaring the parties rights regarding the subject matter described above and finding that West Camp Road is a public road or that Plaintiffs, as owners of the Miller Tract, and their heirs and assigns, possess a lawful easement over West Camp Road, or that Plaintiffs and their heirs and assigns otherwise have right of access over West Camp Road, and for the costs of this action;
- c) For an Order requiring the parties to record an easement or other instrument evidencing Plaintiffs' ownership or right of access;
- d) For an order temporarily and permanently restraining and enjoining Defendant Drew from blocking access to the Miller Tract or otherwise interfering with any public roads or easements providing access to the Miller Tract.; and
- e) For such other and further relief as this Court deems just and proper.

Attorney Signature on Following Page.

FUTERAL & NELSON, LLC



Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543

Telephone (843) 284-5500 ext. 226

Facsimile (843) 284-5501 sub. 226

email to: tnelson@charlestonlaw.net

Dated: 6/23/11

Attorney for Plaintiffs

EXHIBIT "A"

All that certain piece, parcel or tract of land, lying, being and situate near the Town of Jacksonboro, County of Colleton, State of South Carolina containing one hundred seventy seven (177) acres, more or less, and being comprised of several tracts of land including the following or portions thereof:

All that certain piece, parcel or tract of land lying, being and situate near the Town of Jacksonboro, County of Colleton, State of South Carolina containing one hundred and twenty (120) acres, more or less, and designated as Parcel K on a plat of Deer Creek Ranch prepared by S. S. Snook, R.L.S. on June 18, 1959 and further revised by W. Gene Whetsell, R.L.S. No. 3131 in November, 1984, said plat being recorded April 17, 1986 in Plat Book 25 at Page 2 in the Office of the Clerk of Court for Colleton County, South Carolina.

Being the same property conveyed to Sylvester Drew, Jr. by deed of Mary M. Blasius, Anne Drew Mays and Beth Drew Hudson, dated March 16, 1985 and recorded April 17, 1986 in Book 345 at Page 183 and by deeds listed therein, all being recorded in the RMC Office for Colleton County, South Carolina.

Also,

All that certain piece, parcel or tract of land located in Jacksonboro School District, Colleton County, South Carolina, containing nineteen (19) acres, more or less, and bounded as follows to wit: On the North by lands of Della Frasier; on the East by County Road separating same from lands of Julian C. Poole and lands of Joe Washington; on the South by Camp Lane Road separating same from eleven (11) acre tract this date conveyed to Sylvester G. Drew; and on the West by lands of J. L. McMillan, lands of Mitchell Estate and lands of A. G. Kiser.

For a more specific description of the above described eleven (11) acre tract, reference may be had to plat prepared by S.S. Snook, Registered Land Surveyor dated January 25, 1965 and recorded in Plat Book 14 at Page 87, said tract is the southernmost portion of what 58.8 acre tract which was formerly owned by Julius W. Poole and devised to Julian C. Poole and Lorene R. Poole as evidenced by Will recorded in the Probate Judge's Office for Colleton County in Will Book 7, Page 519.

Being the same property conveyed to Sylvester G. Drew, Jr. by deed of Julian C. Poole and Lorene R. Poole, dated May 5, 1973 and recorded May 14, 1973 in Book 171 at Page 255 in the Office of the Clerk of Court for Colleton County, South Carolina.

TMS No. 264-00-00-079

EXHIBIT "B"

All that certain piece, parcel or tract of land, located in Jacksonboro School District, Colleton County, South Carolina, containing eleven (11) acres, more or less, and bounded as follows to wit: On the North by Camp Lane Road separating same from nineteen (19) acre tract this date being conveyed to Sylvester G. Drew, Jr.; on the East by lands of Ben Johnson and on the South by lands of Kaiser and Simmons; on the West by lands of Kaiser and Camp Lane Road separating same from lands of McMillan.

For a more specific description of the above described eleven (11) acre tract, reference may be had to plat prepared by S.S. Snook, Registered Land Surveyor dated January 25, 1965 and recorded in Plat Book 14 at Page 87, said tract is the southernmost portion of what 58.8 acre tract which was formerly owned by Julius W. Poole and devised to Julian C. Poole and Lorene R. Poole as evidenced by Will recorded in the Probate Judge's Office for Colleton County in Will Book 7, Page 519.

Being the same property conveyed to Debra P. Drew by deed of Sylvester Guess Drew, Jr., dated March 6, 2007 and recorded March 12, 2007 in Book 1481 at Page 96 in the Office of the Register of Deeds for Colleton County, South Carolina.

TMS No. 275-00-00-003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CIVIL ACTION NO.: 2010-CP-15-00247
	)	
TED A. NETTLES and JANELL B. NETTLES,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ANSWER AND COUNTERCLAIM
	)	OF DEFENDANTS SYLVESTER
SYLVESTER GUESS DREW, JR.,	)	GUESS DREW, JR. AND DEBRA
DEBRA DREW, COLLETON COUNTY,	)	DREW TO PLAINTIFFS' AMENDED
and SOUTH CAROLINA DEPARTMENT	)	COMPLAINT
OF TRANSPORTATION,	)	
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

TO: THOMAS C. NELSON, ESQUIRE, FUTERAL & NELSON, LLC, ATTORNEYS FOR PLAINTIFFS:

Defendants Sylvester Guess Drew, Jr. and Debra Drew (hereinafter known as "Defendants") specifically reserving all rights pursuant to any and all motions previously served, and without waiving the same, answer the Plaintiffs' Amended Complaint, would allege and show the following unto this Honorable Court:

FOR A FIRST DEFENSE

1. That upon information and belief, Defendants deny each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted hereinafter.
2. That Defendants lack sufficient information with which to form a belief as to the allegations contained in Paragraphs 1, 4, 5, 17, 18, 19, 20, 21, 22 and 24 of the Plaintiffs' Amended Complaint and accordingly deny the same.

3. That Defendants deny each and every allegation contained in Paragraphs 9, 10, 11, 13, 15, 25, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 47, 48, 49, 50, 52, 53, 55, 56, 57, 58, and 59 of the Plaintiffs' Amended Complaint and demand strict proof thereof.

4. That Defendants admit Paragraphs 2 and 3 of Plaintiffs' Amended Complaint.

5. That Defendants admit only so much of Paragraph 6 of Plaintiffs' Amended Complaint that alleges that Plaintiffs bought some amount of real property in Colleton County but deny that said property is located on Camp Road and deny that Plaintiffs properly acquired 21.70 acres more or less of land.

6. That answering Paragraphs 7 and 8 of Plaintiffs' Amended Complaint Defendants admit they both own land or certain property in Colleton County including Camp Road from its easternmost point of Defendants' boundary line to the end of Camp Road as well as other lands adjacent to both sides of Camp Road.

7. That answering Paragraph 10 of Plaintiffs' Amended Complaint Defendants admit that they erected a gate on or around which blocks Camp Road at or within the eastern boundary of Defendants' property which includes all of Camp Road from the easternmost boundary to its end and further allege that the Miller tract is not landlocked as such and further allege that if the property is landlocked, it is because Plaintiffs' grantors' abandoned all rights of the permissive use of ingress and egress existing by abandoning the property and by ceasing to use Camp Road since the 1950's and because Defendants' gate blocking all of Camp Road which Defendant Drew owns was erected in at least 1986 and has existed since then with no adverse use thereof by any third party AND BECAUSE Defendants refused an alternative route across land of Defendants.

8. That Defendants have previously answered Paragraph 12 of Plaintiffs' Amended Complaint.

9. That Defendants admit only so much of Paragraph 14 of Plaintiffs' Amended Complaint that alleges that Defendants deny that the portion of Camp Road on and within the easternmost boundary line of Defendants' property is a public road deny that Camp Road is owned by the county or the Department of Transportation and Defendants deny that Defendants have illegally restricted or prevented access on any portion of Camp Road which Defendants own and lies within the eastern boundary of Defendants' land.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' First Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO SECOND CAUSE OF ACTION

10. That Defendants have previously answered Paragraph 16 of Plaintiffs' Amended Complaint.

11. That Defendants lack sufficient information to answer Paragraphs 17, 18, 19, 20, 21, and 22 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Second Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO THIRD CAUSE OF ACTION

12. That Defendants have previously answered Paragraph 23 of Plaintiffs' Amended Complaint.

13. That Defendants deny each and every allegation contained in Paragraphs 24, 25, 26 and 27 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Third Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO FOURTH CAUSE OF ACTION

14. That Defendants have previously answered Paragraph 30 of Plaintiffs' Amended Complaint.

15. That Defendants deny each and every allegation contained in Paragraphs 31, 32 and 33 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Fourth Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO FIFTH CAUSE OF ACTION

16. That Defendants have previously answered Paragraph 34 of Plaintiffs' Amended Complaint.

17. That Defendants deny each and every allegation contained in Paragraphs 35, 36, 37, 38, 39 and 40 of Plaintiffs' Amended Complaint and demand strict proof thereof and further allege such is res judicata because this Honorable Court denied Plaintiffs' Petition at a previous hearing for the Injunction on April 21, 2010 as per Exhibit A to this Answer which is the transcript of that injunction hearing made a part hereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Fifth Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO SIXTH CAUSE OF ACTION

18. That Defendants have previously answered Paragraph 41 of Plaintiffs' Amended Complaint.

19. That Defendants deny each and every allegation contained in Paragraphs 42, 43, 44 and 45 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Sixth Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO SEVENTH CAUSE OF ACTION

20. That Defendants have previously answered Paragraph 46 of Plaintiffs' Amended Complaint.

21. That Defendants deny each and every allegation contained in Paragraphs 47, 48, 49 and 50 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Seventh Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO EIGHTH CAUSE OF ACTION

22. That Defendants have previously answered Paragraph 51 of Plaintiffs' Amended Complaint.

23. That Defendants deny each and every allegation contained in Paragraphs 52 and 53 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Eighth Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO NINTH CAUSE OF ACTION

24. That Defendants have previously answered Paragraph 54 of Plaintiffs' Amended Complaint.

25. That Defendants deny each and every allegation contained in Paragraphs 55, 56, 57, 58 and 59 of Plaintiffs' Amended Complaint and demand strict proof thereof.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Ninth Cause of Action and enter judgment for Defendants.

FIRST DEFENSE TO ALL CAUSES OF ACTION

26. That Defendants deny each and every allegation of Plaintiff's Amended Complaint not specifically admitted hereinafter.

27. That all of Plaintiffs' claims relating to Camp Road are subject to S.C. Code § 27-53-50 and S.C. Code § 32-3-20 et seq which states that no legal action shall be brought to charge any person upon any contract or sale or lease of lands or any interest in land unless such claim is in writing and signed by the party(ies) to be charged.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Causes of Action and enter judgment for Defendants.

SECOND DEFENSE TO ALL CAUSES OF ACTION

28. That upon information and belief, Plaintiffs hired lawyers to investigate the property and access thereto before Plaintiffs purchased said property and were advised that there was no access to said property and Plaintiffs assumed the risk that the property had no ingress or egress.

29. That Plaintiffs purchased title insurance for the property before purchasing said property and the title company refused to insure that Plaintiffs had access and so stated in writing to Plaintiff and/or Plaintiffs' attorney on both the binder and on the final title policy so that Plaintiffs were on notice of a problem with access to the property prior to the purchase and therefore assumed

all risks and consequences of not having access to the property so Plaintiffs again assumed the risk of no entry to the property.

30. That before purchasing said property, Defendants advised Plaintiffs that Defendants owned all of Camp Road from the easternmost property line and that Defendants would not allow Plaintiffs to use Camp Road on a permanent basis and offered Plaintiffs an alternate route at Plaintiffs' expense to Plaintiffs' property across other lands of Defendants but Plaintiffs refused, stating that Camp Road was a public road, county road and/or other state road, all of which was wrong, and that Plaintiffs further demanded that Defendants would have to pay for construction of the alternate route.

THIRD DEFENSE TO ALL CAUSES OF ACTION

31. That Defendants deny each and every allegation of Plaintiff's Amended Complaint not specifically admitted hereinafter.

32. That upon information and belief, on December 18, 1906 Amy Simmons was conveyed 17.25 acres of land, more or less, near Jacksonboro, South Carolina (the "Simmons Tract") by deed of C.M. Grace and E.A. Sanders as Guardians by deed recorded in Deed Book 29 at page 118 in the Colleton County Courthouse attached hereto and made a part hereof as Exhibit B (the "Simmons Tract").

33. That further upon information and belief, no other conveyances of land adjacent to the 17.25 acres of land or anywhere else in Colleton County have ever been made or recorded in the Colleton County Courthouse in Amy Simmons name.

34. That upon information and belief, the Estate of Amy Simmons was never probated so that the property was heirs property for the heirs of Amy Simmons until July 2009.

35. That on July 15, 2008, an action to quiet title to the Simmons Tract was commenced but extrinsic fraud was perpetrated on the court therein because the complaint alleged that the Simmons Tract contained 21.70 acres of land, more or less, and not 17.25 acres, more or less, as stated in the Simmons Deed.

36. That further upon information and belief, neither the Simmons Deed nor a copy thereof was ever introduced into evidence at the hearing in the quiet title action. Consequently, the Special Referee for Colleton County, Harris L. Beach, Jr., had no way to know that the Simmons' Deed only conveyed 17.25 acres of land, more or less, to Amy Simmons and not 21.70 acres of land, more or less, as the complaint falsely alleged.

37. That at all times herein, Attorney Deborah Kane ("Attorney Kane") acted for herself and as agent, servant, and employee of Norvia Miller so that all acts and omissions of Attorney Kane were imputed to Norvia Miller.

38. That the allegations in the complaint that the Simmons Deed conveyed 21.70 acres of land, more or less, was fraudulent on the court in that

- a. That a representation was made to the court by Attorney Kane that the property the subject of the lawsuit was

"All that certain piece, parcel or tract of land, together with buildings and improvements thereon, situate, lying and being near Jacksonboro, in Colleton County, South Carolina, containing 21.70 acres, more or less, and being a portion of the West Bank tract, near the Camp Settlement, and being bounded as follows: on the East by lands, now or formerly, of

Washington; on the South by lands, now or formerly, of Charity Washington; on the West by lands, now or formerly, of Branham; and on the North by lands, now or formerly, of Drayton; and designated as TMS#275-00-00-004 in the Colleton County Assessor's Office. This being the same property conveyed to Amy Simmons by deed of C. M. Grace and E.A. Sanders in Deed Book 29 at Page 118 in the Colleton County RMC Office”;

- b. That Attorney Kane either knew that the representation of 21.70 acres, more or less, was false or acted with a reckless disregard of truth or falsity thereof;
- c. That Attorney Kane knew that the amount of land was material to the outcome of the case and that the complaint was uncontested by all the defendant heirs of Amy Simmons, no answers having been filed;
- d. That Attorney Kane knew that all Defendants and the court would rely on the allegation that 21.70 was the acreage conveyed to Amy Simmons because that allegation would be unchallenged by any other party to the action and because Attorney Kane did not name Debra Drew, Sylvester Guess Drew, Jr., the heirs of A.G. Kiser (“Kiser”) or the Riedesel Forest, LTD, all of whom were indispensable and necessary parties as additional Defendants because each either owned property within the 21.70 acres or owned lands that bordered such land within the 21.70 acres;

- e. That Attorney Kane knew that the Simmons Deed specifically stated the tract of land contained seventeen and one fourth (17.25) acres of land, more or less, or that she had a reckless disregard of its truth or falsity;
- f. That Attorney Kane intended for the representation to be acted upon because on information and belief, she pled that the Simmons Deed conveyed 21.70 acres of land, more or less, and represented that to the court throughout the case without any opposition thereto;
- g. That Attorney Kane knew that the court would be ignorant of the true number of acres conveyed to Amy Simmons was 17.25 more or less acres because upon information and belief, the deed was never before the court and because Attorney Kane had not introduced it into evidence and no opposition existed;
- h. That Attorney Kane did not join third parties who she knew were necessary and indispensable parties to the case or recklessly disregarded the truth or falsity thereon by virtue of a deed recorded in Deed Book 108, at page 68 in the Colleton County Courthouse (Exhibit C) where J.L. McMillan deeded 1.5 acres of land, more or less, to A.G. Kiser, which property was bounded on the north by Camp Road and therefore said 1.5 acres of land, more or less, would have been located within the 21.70 acres claimed by Attorney Kane to be part of the property owned by the heirs of Amy Simmons and by virtue of another deed recorded in Book 215 at page 241 in the Colleton County Courthouse (Exhibit D) whereby the will of A.G. Kiser divided Exhibits C

& D to the Decedent's three daughters who subsequently deeded additional land to Riedesel south of Camp Lane and north of the Simmons Tract;

- i. That Attorney Kane knew that the court would rely on the representation of 21.70 acres as alleged in Simmons' complaint because such was the only reference to the size of the property, because all defendants were heirs of Amy Simmons and because all defendants were in default and no defendant had filed an answer with the court contesting the allegation in the complaint;
- j. That the court consequently issued its Decree and granted quiet title to the 21.70 acres of land instead of 17.25 acres as the Simmons Deed plainly states, thereby causing land properly belonging to Riedesel Forest, LTD to be decreased by 4.5 acres and which joined the boundary line of real property owned by Debra Drew and Sylvester Guess Drew, Jr. and extended the Plaintiffs' northern boundary to Camp Road owned by the Drews, instead of being bounded on the north by lands of Drayton all of which fraudulently increased the acreage from 17.25 to 21.70 acres more or less; and
- k. That Plaintiffs have no valid claim to any acreage in excess of 17.25 acres more or less bounded on the north by lands of Drayton and not bounded by Camp Road and Plaintiffs have no valid claim to any real property that borders on Camp Road.

WHEREFORE, Defendants pray that this court reopen the declaratory judgment for the addition of Riedesel Forest, LTD and Defendants Sylvester Guess Drew, Jr. and Debra Drew to contest the Special Referee's erroneous Decree and subsequent Deed that 21.70 acres were in the

Simmons Tract and ultimately rule that the 17.25 acres of land bounded as recited is the Simmons Tract.

FOURTH DEFENSE TO ALL CAUSES OF ACTION

39. That Defendants deny each and every allegation of Plaintiff's Amended Complaint not specifically admitted hereinafter.

40. That upon information and belief, on July 15, 2008, Norvia Miller commenced a declaratory judgment action to quiet title to the land conveyed to Amy Simmons by the Simmons Deed.

41. That upon information and belief, S.C. Code § 15-53-10 et seq authorizes declaratory judgments and establishes the statutory requirements for the same and provides in part in S.C. Code §§ 15-53-30 and 15-53-80 that all parties who have or claim any interest which would be affected by the declarations shall be made parties to the declaratory judgment action.

42. That upon information and belief, Defendants and Riedesel Forest, LTD have claims and interests in a portion of the land involved in the declaratory judgment and making them necessary and indispensable parties to the action.

43. That further upon information and belief, S.C. Code § 15-53-80 further provides in part that no declaration shall prejudice the rights of persons not made parties to the proceedings.

44. That upon information and belief, both Norvia Millers' complaint and the final decree of the Special Referee in the declaratory judgment action referenced the same boundaries of the Simmons Deed but both erroneously stated the total acreage to be 21.70 acres, more or less, when in fact the Amy Simmons deed conveyed only 17.25 acres of land, more or less.

45. That upon information and belief, the Defendants Riedesel Forest, LTD and Sylvester

Guess Drew, Jr. are indispensable and necessary parties because at least one or more of them make-up the owners of the northern boundary of the Amy Simmons 17.25 acre tract and Drew land borders on Riedesel's land.

46. That upon information and belief, both the complaint and the subsequent Special Referee's Deed to Norvia Miller erroneously conveyed 21.70 acres which acreage is in conflict with 17.25 acres, more or less, conveyed to Amy Simmons.

47. That the complaint in the declaratory judgment action references only the Amy Simmons Deed as conveying only 17.25 acres more or less to Amy Simmons and offers no allegations as to any increase of acreage in said property.

WHEREFORE, Defendants pray that this court reopen the declaratory judgment for the addition of Riedesel Forest, LTD and Defendants Sylvester Guess Drew, Jr. and Debra Drew to contest the Special Referee's erroneous Decree and subsequent Deed that 21.70 acres were in the Simmons Tract and ultimately rule that the 17.25 acres of land bounded as recited is the Simmons Tract.

FIFTH DEFENSE TO ALL CAUSES OF ACTION

48. That this Defendant denies each and every allegation of Plaintiff's Amended Complaint not specifically admitted hereinafter.

49. That upon information and belief, all aspects of the quiet title action are governed by S.C. Code § 15-53-10 et seq which authorizes actions for declaratory judgments.

50. That upon information and belief, S.C. Code § 15-53-80 requires that all persons shall be made parties who have or claim any interest which would be affected by the declaration and that no declaration shall prejudice the rights of persons not parties to the proceedings.

51. That by four deeds recorded in the Colleton County Courthouse, a piece of property measuring and containing five acres, more or less, near Jacksonboro, S.C. bordering the Simmons Tract on the South and including a portion of Camp Road in dispute (the "5 Acre Tract") was conveyed in whole or in part as follows:

1. Deed Book 82 at Page 125: Anner Curry conveyed five acres more or less near Jacksonboro, S.C. to J.S. McMillan and A.G. Kiser bounded as follows:
On the South by estate of Titus Simons;
On the West by Andrew Washington; and
On the East and North by J.W. Pool
2. Deed Book 102, at Page 463: A.G. Kiser conveyed a portion of the 5 Acre Tract, measuring and containing three (3) acres of land, more or less, (the "3 Acre Tract"), to J.L. McMillan bounded as follows:
North by lands of J.L. McMillan
East by lands of J.L. McMillan
South by Camp Lane
West by lands of J.L. McMillan
3. Deed Book 108 at Page 68: J.L. McMillan conveyed to A.G. Kiser a portion of the 5 Acre Tract, measuring and containing one and one half (1.5) acres, more or less, (the "1.5 Acre Tract") bounded as follows:
North by Camp Lane
East by lands of N.Z. Pool
South by Eamie Simmons

West by lands of A.G. Kiser

4. Deed Book 215 at Page 244: On September 29, 1980, the heirs of A.G. Kiser, deceased, deeded Riedesel Forest, LTD, its successors and assigns, the 5 Acre Tract deeded to A.G. Kiser by Anner Curry recorded in Deed Book 82 at Page 125 saving and excepting the 3 Acre Tract previously conveyed by Kiser to McMillan. Said deed also included other real property as appears on said deed to Riedesel Forest, LTD.

52. That the Simmons Deed is the only deed of record that conveyed any real property to Amy Simmons. That the Simmons Deed clearly reflects that 17.25 acres was conveyed to Amy Simmons and said property was bounded on the north by "lands of Drayton". That further, the deed did not say that the northern boundary was Camp Road.

53. That on July 15, 2008, Norvia Miller commenced a declaratory judgment to quiet title to the land deeded to Amy Simmons and only the alleged heirs of Amy Simmons were made parties to this suit to clear title, thus omitting the above parties which clearly have an interest in a portion of the 21.70 acre parcel.

ACCORDINGLY, Defendants pray that the court reopen the declaratory judgment and determine what acreage was deeded to Amy Simmons and what was deeded to Riedesel Forest, LTD.

FURTHER ANSWERING THE PLAINTIFFS' AMENDED COMPLAINT
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE AND SAY:
(Equitable Defenses)

54. The Plaintiffs' claims are barred by all equitable doctrines available to the Defendants, including, but not limited to, laches, ratification, waiver, consent, estoppel,

acquiescence, staleness and unjust enrichment.

FURTHER ANSWERING THE PLAINTIFFS' AMENDED COMPLAINT
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE AND SAY:
(Laches)

55. Plaintiffs, and/or Plaintiffs' predecessor in title had constructive notice as early as 1906 that the 17.25 acres conveyed by the Simmons Deed does not bound on the North by the Camp Road.

56. That Defendants and/or Defendants' predecessors in title have owned the portion of Camp Road extending from a point near the intersection of Polite Road and from this point in a westerly direction until the road ends into Deer Creek, (the "Drew Road"); and it has been determined by Order of the Court in this action that Colleton County does not now, and has never, maintained the Drew Road; and that except for express permission granted by the Defendants, no other parties have had any rights to use, or been allowed to use, the Drew Road.

57. Despite actual knowledge of the lack of access to the Simmons Tract by virtue of the Drew Road and the cloud on title that said lack of access placed on the Simmons Tract, Plaintiff, and/or Plaintiff's predecessors in title, consciously did not pursue any action against Defendants and/or their predecessors in title until 102 years after the Simmons Deed was recorded.

58. The conduct of the Plaintiffs, and/or Plaintiffs' predecessors in title, effectively bars any claims due to their neglect, for an unreasonable and unexplained amount of time, under circumstances permitting diligence, to assert access to the Simmons Tract by the Drew Road, and said conduct has caused prejudice and injury to the Defendants.

FURTHER ANSWERING THE PLAINTIFFS' AMENDED COMPLAINT
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE AND SAY:

(Waiver)

59. Plaintiffs, and/or Plaintiffs' predecessors in title, knew or should have know, and had constructive notice as early as 1906, that the 17.25 acres conveyed by the Simmons Deed does not bound on the North by Camp Road (known also for purposes of this action as the Drew Road.

60. Plaintiffs and/or Plaintiffs' predecessors in title were aware of, and by silence and inaction consented to, the ownership of the Drew Road by the Defendant's continuous, hostile, open, actual, notorious and exclusive possession of the Drew road to the exclusion of the entire world.

61. Plaintiffs purchased the Simmons Tract with full knowledge that it did not have access to Camp Road and by their action, plaintiffs have expressly waived any right to demand or establish a right of access over and across the Drew Road or to contest the ownership of the Drew Road by the Defendants.

FURTHER ANSWERING THE PLAINTIFFS' AMENDED COMPLAINT
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE AND SAY:

(Estoppel)

62. Plaintiffs, and/or Plaintiffs' predecessors in title, knew or should have known, and had constructive notice as early as 1906, that the 17.25 acres conveyed by the Simmons Deed does not bound on the North by Camp Road (known also for purposes of this action as the Drew Road).

63. Plaintiffs purchased the Simmons Tract with full knowledge that it did not have

access to Camp Road and by their action, Plaintiffs are now estopped from asserting, demanding or establishing a right of access over and across the Drew Road.

FURTHER ANSWERING THE PLAINTIFFS' AMENDED COMPLAINT
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION, THE DEFENDANTS ALLEGE AND SAY:

64. That this Defendant denies each and every allegation of Plaintiff's Amended Complaint not specifically admitted hereinafter.

65. That Plaintiffs predecessors had any permissive rights of ingress and egress, its prescriptive rights, or any other right to ingress and egress, Plaintiffs' predecessors in title abandoned all such rights some time in the 1950's by ceasing to live on, visit, enter or leave the property and use Camp Road thereafter and accordingly, Plaintiffs' have no rights to enter the premises because abandonment and because of the Defendants locked gate blocking access for over 26 years.

WHEREFORE, Defendants request that this court dismiss Plaintiffs' Causes of Action and enter judgment for Defendants.

SIXTH DEFENSE TO ALL CAUSES OF ACTION AND BY WAY OF COUNTERCLAIM

66. That Defendants have owned the portion of Camp Road extending from a point near the intersection of Polite Road and from this point in a westerly direction until the road ends into Deer Creek, (the "Drew Road"), and it has been determined by Order of the Court in this action that Colleton County does not now, and has never, maintained the Drew Road; and that except for express permission granted by the Defendants, no other parties have had any rights to use, or been allowed to use, the Drew Road.

67. The Defendants bring this Counterclaim against the above name Plaintiffs pursuant to the provisions of the South Carolina Code of Laws, 1976, as amended, Section 15-67-10, et seq.; Section 15-53-10, et seq. (known as the Uniform Declaratory Judgments Act); Section 15-67-210 et seq., for a quieting of title by adverse possession of ten (10) years; and for a quieting of the title because of adverse possession under color of title for a period of greater than twenty (20) years. The within Counterclaim has been brought for the purpose of obtaining a Decree:

- (a) establishing that the Defendants are seized of fee simple title to the Drew Road;
- and
- (b) establishing that neither the Plaintiffs nor any unknown defendants, or any persons claiming by, through or under them, or any of them, have any right, title or interest in and to the Drew Road;

68. The Defendants would further allege and show that for over 25 years and at all times since, the Defendants have been in continuous, hostile, open, actual, notorious and exclusive possession of the Drew Road to the exclusion of the entire world.

SEVENTH DEFENSE TO ALL CAUSES OF ACTION
AND BY WAY OF SECOND COUNTERCLAIM
(Slander of Title)

69. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

70. Defendants Sylvester Guess Drew, Jr. and Debra Drew are informed and believe that through words and actions, have published that West Camp Road is not a public road or an easement to the Miller Tract, and have therefore published that the Miller Tract is landlocked.

71. Plaintiffs' publications are false and derogatory to Defendants' title.

72. Plaintiffs' publications are with malice and in reckless disregard of Defendants' rights.

73. As a direct and proximate result of Plaintiffs' publications, Defendant Drews' are entitled to actual, nominal, compensatory, and punitive damages, and special damages including but not limited to pecuniary loss, loss of vendibility of the property, and attorney's fees incurred in removing the cloud of title.

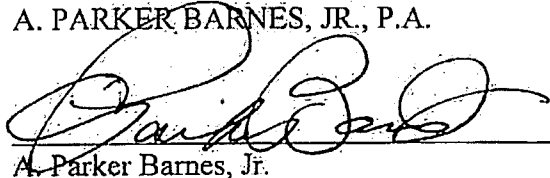
WHEREFORE, Defendants having fully answered Plaintiffs' Amended Complaint, pray as follows:

(a) that they be dismissed from the Plaintiffs' action and be awarded actual and punitive damages, including attorneys' fees, all costs and expenses of litigation, lost time from work;

(b) that with respect to the Defendants' Counterclaim asserted herein, for a judgment by the Court that fee simple title to Drew Road is vested in the Defendants by adverse possession;

(c) and such other and further relief as this Court may deem just and proper.

A. PARKER BARNES, JR., P.A.



A. Parker Barnes, Jr.

P.O. Drawer 1729

Beaufort, South Carolina 29901-1729

(843) 522-2600

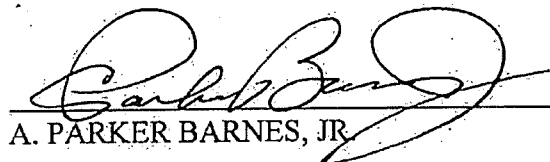
Attorney for Defendant Sylvester Guess
Drew, Jr. and Debra Drew

Beaufort, South Carolina

July 15, 2011

JURY TRIAL DEMANDED

Pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure, Defendants
Sylvester Guess Drew, Jr. and Debra Drew by and through their undersigned attorney, hereby
demands a trial by jury.



A. PARKER BARNES, JR.

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

)
) COURT OF COMMON PLEAS
) CASE NO.: 2010-CP-15-00247

TED A. NETTLES, JR., AND
JANELL B. NETTLES,

PLAINTIFFS,

vs.

TRANSCRIPT OF RECORD

SYLVESTER GUESS DREW, JR.;
COLLETON COUNTY; AND SOUTH
CAROLINA DEPARTMENT OF
TRANSPORTATION,

DEFENDANTS.

April 21, 2010

Walterboro, South Carolina

B E F O R E:

THE HONORABLE CARMEN TEVIS MULLEN, JUDGE.

A P P E A R A N C E S:

J. CHRISTOPHER LANNING, ESQ.
Attorney for the Plaintiffs

A. PARKER BARNES, JR., ESQ.
Attorney for the Defendant, Sylvester Guess Drew, Jr.

SEAN PAUL THORNTON, ESQ.
Attorney for the Defendants, Colleton County & SCDOT

RONDA T. CUMMINGS, CVR
Official Court Reporter
P.O. Box 2082
Walterboro, SC 29488



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BILL WASHINGTON

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DEFENDANT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
22	911 Map	13	
1	Photograph	16	
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(*Note: At the request of Mr. Barnes on the record, the Court returned all exhibits to him.)

1 THE COURT: Next we're doing Nettles versus Drew.

2 Okay, Mr. Lanning, is this your motion?

3 MR. LANNING: Yes, Your Honor.

4 THE COURT: All right, sir.

5 MR. LANNING: Your Honor, this is a motion for a
6 temporary restraining order, pursuant to Rule 65(b).

7 THE COURT: Uh-huh.

8 MR. LANNING: Just to kind of give you a quick
9 background on this, this is property off of Camp Avenue in
10 Jacksonboro. Mr. Drew owns property. Along with my
11 client's, the Nettles, they own property on Camp Avenue.

12 Mr. Drew has erected a gate across Camp Avenue, along
13 with another gate right beside it. There's a silver gate,
14 which goes over Camp Avenue, and an orange gate that goes
15 around it.

16 THE COURT: Uh-huh.

17 MR. LANNING: When my clients obtained this property,
18 they had access to the orange gate. It's a locked gate.
19 Mr. Drew gave them a key so they could ride through the
20 orange gate.

21 That area is really hard to get through. There's mud
22 and ruts. It's very difficult. You have to have a truck
23 to get through there.

24 THE COURT: Uh-huh.

25 MR. LANNING: When this lawsuit was filed, Mr. Drew

1 left a note saying that, you know, they're no longer
2 allowed to use the orange gate, no longer allowed to use
3 this road.

4 THE COURT: Uh-huh.

5 MR. LANNING: For my clients, this is the only way in
6 and out. And so they're trying to build a house down
7 there. They have a schedule with surveyors, appraisers,
8 Army Corps of Engineers are all coming down there, and
9 they don't have access to their property. So that's the
10 reason that we have this restraining order, to allow
11 access through the silver gate and the orange gate. And
12 there's a question as to whether or not this is considered
13 a public road or a private road.

14 THE COURT: Okay.

15 MR. LANNING: Now on the Department of
16 Transportation's website, which I've attached to my
17 motion, it actually shows Camp Avenue ---

18 MR. BARNES: Your Honor, anything on the website, I'm
19 going to object to hearsay. I know this is non-jury, but
20 I don't waive any objections.

21 THE COURT: Okay. Okay.

22 MR. LANNING: It shows that it's an unpaved county
23 road.

24 THE COURT: Okay.

25 MR. LANNING: So they've -- they've suffered

1 irreparable harm, and they just request immediate access
2 through the orange gate and the silver gate, because the
3 silver gate is very narrow, and some big trucks may not be
4 able to get through there, because they're going to clear
5 some property to put a house on.

6 THE COURT: Okay.

7 All right, and Mr. Thornton, your role in this?

8 MR. THORNTON: Judge, I don't really have a dog in
9 the fight of this motion, but the plaintiffs have also
10 sued the county asking that somehow the Court order the
11 county ---

12 THE COURT: To maintain the road.

13 MR. THORNTON: --- to start maintaining -- to
14 maintain a road that historically I will just tell the
15 Court now that they have, to my knowledge, never
16 maintained, certainly haven't for the last thirty years.
17 We don't own it, and we have no dog in the fight.

18 THE COURT: Uh-huh.

19 MR. THORNTON: Your Honor, I know, I've been in front
20 of Your Honor enough to know that when there's a dispute
21 in the law, you also look at the practical aspect of it.

22 THE COURT: Uh-huh.

23 MR. THORNTON: If you were to go out to the property,
24 because as soon as I got the lawsuit, the first thing I
25 did was go out there with Bill Washington, who is seated

1 in the courtroom, who is the head of roads and bridges who
2 worked here thirty years. If there is a road issue, I get
3 Bill, and we go out and look at it, and I talk to him
4 about it.

5 If you go out there and look at it, Judge, Camp
6 Avenue runs to a certain point, and it's Polite, and I
7 forget if it's Polite Street or Polite Road, and there's
8 about roughly a ninety degree turn.

9 THE COURT: Uh-huh.

10 MR. THORNTON: You can go out there and look at it,
11 and it's clear that the county maintains by prescriptive
12 easement, based on what I've found so far, Camp Avenue up
13 to the point that it gets to Polite, and then it turns.

14 THE COURT: Uh-huh.

15 MR. THORNTON: At that point, it's a gate up there.
16 And it's clear, you can look at it and tell, no offense to
17 the current landowner, but that's not really a road so
18 much as it is, you know, my daddy would have called it a
19 cattle trail. I mean, there's a road, but it's not
20 crowned, it's not built up, it's not maintained, and it's
21 clear, just by going out there and looking at it.

22 THE COURT: Uh-huh.

23 MR. THORNTON: So as far as the motion as to whether
24 he goes in the gate or not, that's between these two. I'm
25 only here, Judge, as an interested party since we were

1 named in the lawsuit.

2 THE COURT: Okay.

3 MR. BARNES: May I approach the bench, Your Honor?

4 THE COURT: Yes, sir.

5 MR. BARNES: And I would like to make a brief opening
6 statement. I have three witnesses we're going to put up,
7 but what counsel did not tell you is that Mr. Drew's gate
8 was put up over twenty-five years ago and has been there
9 for twenty-five years blocking this roadway and was
10 present at the time the defendant, or the plaintiffs
11 rather, bought this property.

12 THE COURT: Okay.

13 MR. BARNES: This is a blowup of what will be
14 testified to. This is Hope Plantation Road, and I have
15 this marked on the back as Plaintiff's Exhibit Twenty-two.

16 THE COURT: Okay.

17 MR. BARNES: And this is Camp Road where it comes
18 down, and notice it's in yellow and it stops here. The
19 blue line is our property line.

20 THE COURT: Okay.

21 MR. BARNES: Then it comes down to Camp Road and
22 turns right and comes all the way back around. And note
23 that both turn-outs out of this road are public road.

24 THE COURT: Uh-huh.

25 MR. BARNES: This goes up -- the road goes all the

1 way up here, and this is private property.

2 THE COURT: Okay.

3 MR. BARNES: And so -- as we go through the testimony

4 ---

5 THE COURT: Where is the Nettles' property?

6 MR. BARNES: The Nettles' property is here.

7 THE COURT: That's their property.

8 MR. BARNES: And what Nettles is doing -- our gates

9 are up here ---

10 THE COURT: Okay.

11 MR. BARNES: --- on our property line. And at one
12 time they were a little bit farther up, but because
13 someone came out of Polite Road and turned right on a
14 four-wheeler and hit the gate, Mr. Drew, pretty wisely,
15 moved the gate a little bit farther away from Polite Road.

16 THE COURT: Uh-huh.

17 MR. BARNES: But he owns fee simple title from here
18 down. The plaintiffs bought ---

19 THE COURT: So he owns everything that's in blue?

20 MR. BARNES: No.

21 THE COURT: No, no, no.

22 MR. BARNES: Those are just different tracts.

23 THE COURT: Okay.

24 MR. BARNES: But this is -- I want to make sure that
25 I'm correct, yeah, this is the plaintiffs' property I

1 think here, but Gene Whetsell is a surveyor. He's going
2 to be our first witness. He can tell.

3 And if you don't mind, I only have one set of
4 photographs, and as he testifies, I'm going to let him --
5 I already marked my exhibit numbers ---

6 THE COURT: You'll just hand them to me?

7 MR. BARNES: --- and I'm going to let him see them
8 and then hand them to you.

9 THE COURT: Okay.

10 MR. BARNES: So you can see.

11 THE COURT: So I'm still confused, Mr. Barnes, as to
12 whose property is whose, based upon what you just told me.
13 I thought you told me this was the Nettles' property right
14 here, and then you just said it was up here. Are you just
15 not quite sure?

16 Show me. You told me it was this, and then you said
17 it was this.

18 MR. BARNES: No, no, I'm mistaken.

19 THE COURT: Okay.

20 MR. BARNES: It's this.

21 THE COURT: Okay. This is the Nettles' property.

22 MR. BARNES: Yes, ma'am.

23 THE COURT: Okay.

24 MR. BARNES: I'm trying to find -- yeah, that would
25 be it right here.

1 THE COURT: This is it.

2 MR. BARNES: I would like Gene to confirm that.

3 THE COURT: Okay.

4 MR. BARNES: Mr. Whetsell.

5 THE COURT: Okay.

6 MR. BARNES: But I think that's it.

7 THE COURT: Okay.

8 MR. BARNES: And what he's doing is he's coming down.

9 We have these double gates that you'll see photographs of.

10 THE COURT: Uh-huh.

11 MR. BARNES: But he put -- he's got a tractor already
12 in the property.

13 THE COURT: Okay.

14 MR. BARNES: So he comes out of his property and
15 rides up our private road.

16 THE COURT: Uh-huh.

17 MR. BARNES: And unloads it and then comes back down
18 our road and goes in.

19 THE COURT: Uh-huh.

20 MR. BARNES: And at the beginning of this when he
21 bought it, Mr. Drew offered him an easement to come in on
22 the property line like this to come in.

23 THE COURT: Uh-huh.

24 MR. BARNES: And they refused it. Well, they said
25 they -- if the Drews paid for it, they would take it.

1 THE COURT: Uh-huh.

2 MR. BARNES: And then his wife said that -- Mrs.
3 Nettles said that if you don't, this is a county road and
4 we're going to take it and sue you and make you pay our
5 attorneys fees. And the negotiations, obviously, failed
6 at that point.

7 THE COURT: Okay.

8 MR. BARNES: I'd call Gene Whetsell, please.

9 THE COURT: Okay.

10 WALTER GENE WHETSELL, after being duly sworn,
11 testified as follows:

12 THE COURT: Thank you. Come on over.

13 Sir, can you give me your full name for the record
14 and spell your last name for me?

15 WITNESS: Yes, ma'am. My full name is Walter Gene
16 Whetsell, and the last name is spelled W-H-E-T-S-E-L-L.

17 THE COURT: Thank you, sir.

18 MR. BARNES: May I proceed, Your Honor?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. BARNES:

22 Q Mr. Whetsell, will you please tell Judge Mullen a
23 little bit about your background and what you've done in
24 Colleton County, and make it brief? I know you could go
25 on for a long time.

1 A Well, I came to Colleton County in 1957 with the
2 Highway Department. I was registered as a surveyor in
3 1965. I've been registered since that time, since '65.

4 THE COURT: Uh-huh.

5 A Through today. And from '69 to '89, I was the County
6 Tax Assessor, the first assessor that Colleton ever had.
7 And after I retired in '89, I've been on County Council
8 for the last eight years for some more punishment, and
9 that kind of brings us up-to-date to where we are now.

10 THE COURT: Okay.

11 Q Mr. Whetsell, have you ever surveyed this property,
12 Mr. Drew's property, that's in question in here,
13 particularly the part along Camp Road?

14 A I have surveyed a number of times down there stuff on
15 Camp Road that did not belong to Mr. Drew, and plus stuff
16 for Mr. Drew's grandfather, Mr. McMillan. I surveyed some
17 parcels of land within the larger tract, so I am familiar
18 with Camp Road from the beginning to the end.

19 (WHEREUPON, Defendant's Exhibit No. 22 was marked for
20 identification only.)

21 Q All right, so let me show you what I have marked as
22 Plaintiff's -- excuse me, as Defendant's Exhibit
23 Twenty-two and ask you if you could look at that and find
24 Camp Road and the intersection of Hope Plantation Road.

25 A The intersection of Camp Road and ---

1 Q Hope Plantation.

2 A --- Hope Road is at this point right here.

3 Q Now tell the judge what Plantation Road is at that
4 point. Is it -- what does the road consist of?

5 A Well, all of this is a dirt road. Camp Road ---

6 Q No, Plantation -- I mean, Hope Plantation Road is a
7 paved road ---

8 A This is what we refer to as a farm-to-market road, a
9 paved road being twenty foot in width and goes down to the
10 gate going into Hope Plantation.

11 Q Now, let's stop right there. I want to follow this
12 through. Do you know that once one enters the gate at
13 Hope Plantation who owns that land in fee simple?

14 A I certainly do. It's Hope Plantation's private road.
15 It's private property.

16 Q And -- and so far as these 911 maps that were
17 created, does that 911 map show -- show the dirt road as
18 it enters Hope Plantation going on beyond Hope?

19 A It certainly does. It shows this road going right on
20 through Hope Plantation, and as a matter of fact, making a
21 connection with the Bennett's Point Road, which is miles
22 away, and also labeled it as Road 30, which is in error.
23 This is Road 30. It's State Highway S-15-30.

24 Q And so does that dirt road, once it leaves Hope
25 Plantation going towards Bennett's Point, go across George

1 Dearf Johnson's private duck hunting club known as Pon Pon?

2 A It does.

3 Q And is that private land or public land?

4 A That's private land.

5 Q And so was the purpose, as you understand it, for
6 these 911 maps to show where roads were for emergency
7 vehicles, but not with regard to ownership or who could
8 use the roads?

9 A It's a directory for 911, which shows emergency
10 people how to get to those particular locations they might
11 be looking for. They could have an address of 681 Camp
12 Road. What that means is starting with zero at the
13 highway, if they go sixty-eight-hundredths of a mile, it
14 will stop them at that point, but they would only show --
15 and sometimes these road -- these maps will show something
16 being a county road. Sometimes it shows -- they don't
17 show anything, but it is not a directory of who owns the
18 roads in the county but how to get there in case of an
19 emergency.

20 Q So the fact that a road appears on these 911 books
21 means what about title to the roads?

22 A It means nothing about title. You cannot look at
23 that road and tell -- I mean at that map and tell who in
24 fact owns it, unless it's a state highway that's paved.

25

1 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
2 identification only.)

3 Q And let me show you this photograph, which is
4 Plaintiff's(sic.) One, and ask you if you can identify it.
5 And let the Judge see it.

6 A Yes, I can. This photograph is taken at the
7 intersection of Camp Lane and Hope Plantation.

8 Q All right. And that 00 at the top means what?

9 A That 00 there means for emergency purposes, that if
10 the ambulance were to come there, he sets his little
11 speedometer on his little zero point, and he measures. If
12 you would have a house and have an address of 235, it
13 means 2.35 miles on the left -- twenty-three hundredths of
14 a mile on the left would be that particular address.

15 Q So if EMS got a call to go down Camp Road, when they
16 got to Camp Road and saw 00, they would recognize that as
17 Camp Road and turn right?

18 A That's exactly right.

19 (WHEREUPON, Defendant's Exhibit No. 9 was marked for
20 identification only.)

21 Q And suppose they had been told to go to 662 Camp
22 Road, and I show you Plaintiff's(sic.) Nine.

23 A 662.

24 Q Look on that sign.

25 A 66 -- they would start zero there. That would be

1 sixty-six one hundredths of a mile, and the fact that it's
2 an even number, that would be on the right. That would be
3 located right there.

4 Q And please tell the Court what the significance of
5 those two roads are right there with regard to this
6 dispute.

7 A Well, they are -- the dispute is right adjacent to
8 the intersection of Polite and Camp.

9 THE COURT: Uh-huh.

10 A That line there is the original line of Mr. Drew's
11 grandfather, Mr. McMillan.

12 THE COURT: Uh-huh.

13 A Originally there was a gate right at this point, and
14 there's been testimony as to the gate being moved back.
15 The gate now is just within this limit right here. It's
16 actually two of them. One of them is numbered. One of
17 them is a locked gate, and one of them is a ---

18 Q We'll come back to that. I'm ---

19 THE COURT: When you say gates, are the gates going
20 this way, or are the gates going this way?

21 WITNESS: The gates go across this way. The old Camp

22 ---

23 THE COURT: Do you mind putting on this where the
24 gates are?

25 MR. BARNES: No, that's fine.

1 **THE COURT:** Will you just make a mark where the two
2 gates are?

3 **MR. BARNES:** Also, I have photographs that are going
4 to give light to the map.

5 **THE COURT:** Okay.

6 **WITNESS:** Okay.

7 **THE COURT:** Okay. Thank you.

8 **WITNESS:** Approximately right there.

9 **THE COURT:** Thank you. Okay.

10 **Q** All right, now going back to Exhibit One, if you
11 will?

12 **A** Yes, sir?

13 **Q** That's the beginning of Camp Road?

14 **A** Yes, sir.

15 **Q** Can you look at Defendant's Exhibit Two?

16 **A** Yes, sir.

17 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
18 identification only.)

19 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
20 identification only.)

21 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
22 identification only.)

23 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
24 identification only.)

25

1 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
2 identification only.)

3 (WHEREUPON, Defendant's Exhibit No. 7 was marked for
4 identification only.)

5 (WHEREUPON, Defendant's Exhibit No. 8 was marked for
6 identification only.)

7 Q And I'm going to take -- and I'm just going to give
8 you Two thru Eight, and would you please go through and
9 explain each photograph? I'm going to put them behind, so
10 they should be in order.

11 A This is looking -- this map in this direction is
12 north, so Camp Road is basically going in a westerly
13 direction.

14 THE COURT: Okay.

15 A And that's the first shot from -- from um ---

16 Q As you leave Hope Plantation Road?

17 THE COURT: Sort of like that.

18 WITNESS: That's exactly. That's where we're
19 looking.

20 THE COURT: Okay.

21 WITNESS: This is a little deeper in that same site.

22 THE COURT: Okay.

23 WITNESS: Right on down. That's up in this area.

24 THE COURT: Okay.

25 WITNESS: Here's one that's kind of fuzzy that's even

1 a little deeper.

2 THE COURT: Okay.

3 WITNESS: Now this is getting to the point where we
4 are seeing the intersection of Camp Road and Polite. This
5 is Camp. This is Polite right in here.

6 THE COURT: Okay.

7 WITNESS: And that's the gate fixtures and stuff.

8 THE COURT: This is Camp, and that is Polite?

9 WITNESS: That's right. Yes, ma'am.

10 THE COURT: Okay.

11 WITNESS: Yes, ma'am.

12 THE COURT: Okay. And then is this -- I see an
13 orange gate, and then I see a silver gate; is that what
14 we're talking about?

15 WITNESS: That's the two gates, yes, ma'am.

16 THE COURT: Okay.

17 WITNESS: And actually they would be sitting about
18 like this.

19 THE COURT: Okay.

20 WITNESS: Yes, ma'am, that's right.

21 THE COURT: Okay.

22 WITNESS: That's true.

23 THE COURT: Okay.

24 Q All right, and are we at the intersection of Camp and
25 Polite yet?

1 A Uh-huh.

2 THE COURT: Yes.

3 A Now this is taking a right on Camp. Camp is there,
4 taking a right and going on Polite.

5 THE COURT: Polite.

6 A And these two kind of take us on down. That's Polite
7 there.

8 THE COURT: Okay.

9 A And this is one in that same intersection. That's
10 the stop sign that we referenced at 66, and that's the
11 intersection, and Polite is going that way, and our gate
12 is there.

13 THE COURT: Okay.

14 WITNESS: Yes, ma'am.

15 (WHEREUPON, Defendant's Exhibit No. 10 was marked for
16 identification only.)

17 (WHEREUPON, Defendant's Exhibit No. 11 was marked for
18 identification only.)

19 Q If I may show you Exhibit Ten and Eleven, can you
20 tell the Judge what that is?

21 A This again is standing in the intersection of Camp
22 and Polite, going this direction.

23 THE COURT: Uh-huh.

24 A You're looking in the direction of the gate. It
25 appears to be a little deeper there. This is a much

1 better shot of that same intersection right there.

2 THE COURT: Uh-huh. Okay.

3 A That's -- that's by far the better shot.

4 THE COURT: Okay. And then I see the -- uh-huh, I
5 see where you can't get past it.

6 MR. BARNES: And may it please the Court? The main
7 gate on the road is a coded gate so that he and his guests
8 can come in. The gate on the left is one with a lock and
9 key so that other people that he lets come in, say he's
10 got a hunt, somebody that wants to come hunting, he can
11 give them a key and they can get in and out, but they
12 don't know his code.

13 THE COURT: Okay.

14 MR. BARNES: That's the purposes of the two gates.

15 THE COURT: Okay.

16 (WHEREUPON, Defendant's Exhibit No. 20 was marked for
17 identification only.)

18 (WHEREUPON, Defendant's Exhibit No. 21 was marked for
19 identification only.)

20 Q And then you may need your glasses for the next
21 picture, but I want to show you Exhibit Twenty-one and ask
22 you if you can read this number, and is that the same gate
23 we're talking about? And this may be a better picture.
24 Let me hand you Twenty.

25 A This is a better one.

1 Q Can you ---

2 A I can read -- I can read 680.

3 THE COURT: Right.

4 A Vertical.

5 Q So if the mileage is correct, does that mean that
6 that's six hundred and eighty feet from the stop sign,
7 this 00 back at Hope Plantation Road?

8 A That's -- that's sixty-eight one hundredths of a
9 mile.

10 Q Okay.

11 A From the beginning part.

12 Q And do you know when the county published these 911
13 books that they round those numbers off, and that may be
14 shown on the 911 map as .7?

15 A That's right.

16 Q So that they don't have to print all those numbers?

17 A That's right. Yes, sir. That's true.

18 Q And a while ago you said you were an assessor. Are
19 you familiar with who pays the taxes on this road from the
20 gate, or from his property line all the way in to Deer
21 Creek?

22 A I'm familiar with that. I've looked at it again.
23 All of that old -- this particular point ---

24 THE COURT: Uh-huh.

25 A --- Mr. Drew pays the taxes, everything within those

1 blue lines.

2 Q And what's the boundary? Tell the Court what the
3 boundary is on Camp Road as it relates to property on both
4 sides of the road.

5 A Well, these -- this is -- this is -- this is the
6 Nettles' piece of property right here ---

7 THE COURT: Uh-huh. Right.

8 A --- going down the road.

9 This is owned by a German outfit, I believe, and this
10 is another private property.

11 The road parallels this property line.

12 THE COURT: Uh-huh.

13 A The fence is on the south side of the road. All of
14 the road, Old Camp Road, is on Mr. Drew's, and it comes
15 there, and it would have gone right on down through in
16 there. They have a little fishing landing down here.
17 This is road that's been in place for a number of years.

18 THE COURT: Uh-huh.

19 A But I know of my own knowledge that this gate has
20 been up there in excess of twenty-five years right here.

21 THE COURT: When you say "this gate," are you talking
22 about both the orange gate and the metal gate?

23 MR. BARNES: Both of them.

24 WITNESS: Yes. It was one gate up there. At the
25 very beginning, it was one gate, but it was at that point.

1 THE COURT: It was in the middle where -- where the
2 ---

3 WITNESS: It was across the road, yes, ma'am.

4 THE COURT: Okay. So not the orange gate, but the
5 other one.

6 WITNESS: The orange gate hasn't been up there as
7 long of a time. It's in the same location as the -- as
8 the other gate.

9 Q But the orange gate, whose property is the orange
10 gate on, too?

11 A It's on Mr. Drew's property.

12 THE COURT: Okay.

13 Q So both gates are protecting Mr. Drew's property.

14 A Right. Yes, sir.

15 Q All right, now if you would ---

16 A He owns both sides of the road right there.

17 Q So is it a fair statement to say that Mr. Drew owns
18 all of Camp Road from the gate going backwards ---

19 A He does.

20 Q --- past the plaintiffs' property?

21 A He does. He does.

22 Q And are you on County Council?

23 A Yes.

24 Q For how long?

25 A This is my eighth year, sir.

1 Q Has any part of Camp Road from his property line
2 close to the gates going back towards Deer Creek ever been
3 dedicated to the county as a public road?

4 A No, sir, it has not.

5 Q Okay. And has at any time since -- in the last
6 twenty-five years, has any road maintenance been done
7 inside his property by the county?

8 A Not by the county, no, sir.

9 THE COURT: Inside Mr. Drew's property.

10 MR. BARNES: Pardon me?

11 THE COURT: Inside Mr. Drew's property.

12 WITNESS: That's true.

13 MR. BARNES: Yes, ma'am.

14 Q Now outside the gate, please tell the Judge what the
15 county does maintain.

16 A The county maintains Camp from the paved road to this
17 point and right on around ---

18 Q Polite Road.

19 A --- right on around there, and they've got a couple
20 of little old tiny roads. Well, this is a complete loop
21 right here that the county maintains that area.

22 Q And so both ends of Polite Road -- the one end of
23 Polite Road comes out back to Hope Plantation Road.

24 A It does.

25 Q And the other end of Camp Road, and they're

1 connected.

2 A That's true.

3 (WHEREUPON, Defendant's Exhibit No. 12 was marked for
4 identification only.)

5 (WHEREUPON, Defendant's Exhibit No. 13 was marked for
6 identification only.)

7 (WHEREUPON, Defendant's Exhibit No. 14 was marked for
8 identification only.)

9 (WHEREUPON, Defendant's Exhibit No. 15 was marked for
10 identification only.)

11 (WHEREUPON, Defendant's Exhibit No. 16 was marked for
12 identification only.)

13 (WHEREUPON, Defendant's Exhibit No. 17 was marked for
14 identification only.)

15 (WHEREUPON, Defendant's Exhibit No. 18 was marked for
16 identification only.)

17 (WHEREUPON, Defendant's Exhibit No. 19 was marked for
18 identification only.)

19 Q Now, going on in, will you look at Exhibits Twelve,
20 Thirteen, and if you will, flip them over and just read
21 the back so the court reporter can know which picture
22 you're talking about, and describe what those photographs
23 depict?

24 A This is -- this picture here is -- the gates are
25 right here.

1 THE COURT: Hang on a second. That's Defendant's
2 Number Twelve. Okay.

3 A And you're looking westerly into Camp.

4 THE COURT: Uh-huh.

5 A Into the Old Camp Road. And that was by the gate,
6 and we have a picture ---

7 THE COURT: This is after the gate, so the orange
8 gate would be like right here.

9 WITNESS: That's exactly right. Yes. Yes, ma'am.
10 Yes, ma'am.

11 THE COURT: Okay.

12 WITNESS: That's exactly right.

13 THE COURT: Okay.

14 A And this is farther down Camp, showing that it was an
15 old road.

16 THE COURT: Okay.

17 A And this is -- this one is beyond that curve there,
18 going right on down toward the river property.

19 THE COURT: Okay.

20 A This points along the road. That's along the road.
21 And this is one that was a little closer back, but that's
22 -- that's not too far from the gate, but it's looking in
23 that same westerly direction.

24 THE COURT: Okay.

25 A This is farther down Camp Road, and that's the fence

1 right over there, and that's the road -- that's the other
2 out-parcel of land that is one of these pieces over here,
3 but the fence along that southern side of that road is the
4 Drew's property line. All of the old road is within their
5 property.

6 THE COURT: Okay.

7 A And this is farther down. All of those are farther
8 on down Camp Road.

9 THE COURT: Okay.

10 A Over the years of cattle farm and ---

11 Q One final question, Gene. With regard to where the
12 gate is now after he moved it back after the four-wheeler
13 accident, how far back into Mr. Drew's property is the
14 gate, both gates, now located from his boundary line?

15 A Probably from here to that first table right there.

16 Q Okay.

17 A It's the length of a vehicle back in there.

18 Q Please answer any questions the other lawyer might
19 have.

20 WITNESS: Thank you, ma'am.

21 CROSS-EXAMINATION

22 BY MR. LANNING:

23 Q Mr. Whetsell, is this -- is Camp Avenue, is it --
24 what is it after it -- past the gate, where does it go?

25 A It does not, I mean, as far as county road. It's an

1 old road that went right on to the river.

2 Q Okay. So it just dead-ends into the river?

3 A Yes, sir.

4 Q Okay. There's no other way in and out of there.

5 A That particular road goes right on to the river, and
6 that's where the end of it is.

7 Q Okay. So past the gate, there's no other way to
8 access any property down there. You have to go through
9 that road.

10 A It comes back out that way. That's true, sir.

11 Q Okay.

12 MR. LANNING: That's all I have, Your Honor.

13 THE COURT: All right.

14 MR. BARNES: I call Bill Washington.

15 THE COURT: All right. Come on up, Mr. Washington.

16 MR. BARNES: May Mr. Whetsell be excused, Your Honor?

17 THE COURT: Sir?

18 MR. BARNES: May Mr. Whetsell be excused?

19 THE COURT: Any objections, Mr. Lanning?

20 MR. LANNING: No, Your Honor.

21 THE COURT: All right, you may be excused, Mr.
22 Whetsell.

23 BILL WASHINGTON, after being duly sworn,
24 testified as follows:

25 THE COURT: Come on and take a seat.

DIRECT EXAMINATION

BY MR. BARNES:

Q Mr. Washington, tell us what your background is and what you do now for a living.

A Public Road and Bridges Director for Colleton County.

Q And how long have you been in that position?

A I've been in that position over twelve years, but I've been working thirty-five years there.

Q For the county?

A For the county.

Q And for the last -- are you familiar with what part of Camp Road the county maintains and what part of Camp Road that the county does not maintain, and please tell the Court?

A We maintain that same, like Mr. Whetsell was saying, like from that road, the highway out from Hope Plantation Road up until to Mr. Drew's gate, turn right on Polite.

Q And follow Polite back out to Hope Plantation Road?

A Yes, sir.

Q To your knowledge, has anybody in the last twenty-five years on behalf of Colleton County done any road maintenance inside Mr. Drew's gate?

A None.

Q You sure?

A I'm sure.

1 Q No further questions. Please answer any questions
2 Mr. Lanning has.

3 THE COURT: Mr. Lanning?

4 MR. LANNING: Nothing, Your Honor.

5 THE COURT: You may step down, Mr. Washington.
6 Would you like to excuse him?

7 MR. BARNES: Yes, ma'am. Well, not yet, because he's
8 going to have to give Mr. Varnadoe a ride.

9 THE COURT: All right, come on up, Mr. Varn(sic.).

10 CHRISTOPHER "FRANKIE" VARNADOE, after being duly
11 sworn, testified as follows:

12 THE COURT: Mr. Varn, what's your first name, sir?

13 WITNESS: Christopher.

14 THE COURT: Thank you, sir. All right.

15 DIRECT EXAMINATION (

16 BY MR. BARNES:

17 Q Mr. Varnadoe, please tell the Court what your
18 occupation has been for the past twenty-five, thirty
19 years?

20 A Well, I was a motor-grader operator at first, and
21 then ---

22 THE COURT: A what? A what kind of operator?

23 WITNESS: A motor-grader.

24 THE COURT: Okay.

25 WITNESS: That maintains a dirt road.

1 MR. BARNES: You're in Colleton County, Your Honor.

2 WITNESS: Yeah.

3 A I'm a supervisor now. I have been for about ten
4 years.

5 Q Are you familiar with the -- with what the county
6 maintains ---

7 A Yes, I am.

8 Q --- on Camp Road and Polite Road?

9 A Right. We ---

10 Q Please tell the Court.

11 A We grade from Hope Plantation to up to the gate where
12 it intersects with Polite. They intersect together, and
13 right there, that's where we -- our maintenance stops.

14 Q Has the county done any maintenance, to your
15 knowledge, beyond Mr. Drew's gate going towards Deer Creek
16 ---

17 A Never.

18 Q --- in the last twenty-five years?

19 A Never. Never.

20 Q Okay. And has the appearance of Mr. Drew's gate, in
21 general, been the same for the last twenty-five years?

22 A Right, it has.

23 Q And when one leaves Hope Plantation Road, do you know
24 what the numbers are on the top of the stop sign by Polite
25 and Camp Road, the county numbers on the top of the sign?

1 A Yes. I believe it's 662.

2 Q All right, and what does that represent, so far as
3 you know?

4 A .662 miles.

5 Q From?

6 A From Hope Plantation.

7 Q Please answer any questions that Mr. Lanning will
8 have.

9 A All right.

10 THE COURT: Mr. Lanning?

11 MR. LANNING: No questions, Your Honor.

12 THE COURT: All right.

13 MR. BARNES: No further questions.

14 THE COURT: Would you like him to be excused?

15 MR. BARNES: Yes, ma'am, now he can go.

16 MR. LANNING: No objections.

17 THE COURT: All right, thank you, Mr. Lanning.

18 You may be excused, Mr. Varn.

19 WITNESS: Varnadoe.

20 THE COURT: Sir?

21 WITNESS: Varnadoe.

22 THE COURT: Varnadoe?

23 WITNESS: Right.

24 THE COURT: Oh, I apologize, sir. You're right,
25 we're in Colleton County. Spell Varnadoe for my court

1 reporter, if you don't mind.

2 WITNESS: V-A-R-N-A-D-O-E.

3 THE COURT: Thank you, sir. I appreciate that.

4 MR. BARNES: Your Honor, y'all worked me so hard with
5 that other case that I didn't have time to do a brief, but
6 I have five cases I want to submit.

7 THE COURT: Okay.

8 MR. BARNES: Thank you. And I don't know if I need
9 to argue anymore with this or not, but the plaintiff, if
10 you look at Paragraphs Eight, Nine, ---

11 THE COURT: Give me one second to get to it.

12 MR. BARNES: All right.

13 THE COURT: Okay. Eight.

14 MR. BARNES: Just read Eight, Nine, Ten and Eleven.
15 You'll satisfy yourself that the allegation is that Camp
16 Road is a public road that Mr. Drew has blocked.

17 THE COURT: I see that.

18 MR. BARNES: There is no testimony to support that.
19 It's a private road.

20 THE COURT: Uh-huh.

21 MR. BARNES: There's no question, there's no
22 testimony to suggest that there's ever been maintenance on
23 that road for twenty-five years.

24 And some of the cases that I've given you are old,
25 but even if there were something beyond or earlier than

1 that, the Bowen v. Team says that a continued and adverse
2 obstruction for ten years of a right-of-way by the owner
3 of the soil over which it passes, bars under the statute
4 of limitations a right to an easement.

5 THE COURT: Uh-huh.

6 MR. BARNES: And of course, they're not talking about
7 a public easement, because they haven't established one,
8 but any other easement, that gate has been up there for
9 twenty-five years.

10 THE COURT: Uh-huh.

11 MR. BARNES: And all of this was -- the plaintiff
12 bought the land about a year ago, and all of this was in
13 full sight of him. I don't know if he had closing
14 lawyers. I don't know if he talked with anybody at the
15 county. I know one thing, you just can't assume it's a
16 county road because this 911 map says so, because we've
17 covered that in the testimony.

18 THE COURT: Uh-huh.

19 MR. BARNES: If you look at the next case, Hutto
20 versus Tindall: Where a use of a way through unenclosed
21 woodland is relied under establish of right, it must be
22 shown it continues adversely for twenty years, which
23 there's been no testimony about that.

24 And with regard to the DuPont versus Charleston
25 Bridge, that case stands for the proposition that

1 basically that if use of a road is permissive and not
2 adverse, you cannot establish an easement, because to get
3 an easement by prescription or anything else, it's got to
4 be an adverse use.

5 **THE COURT:** Uh-huh.

6 **MR. BARNES:** And finally, the two cases, Hetsell and
7 North Myrtle Beach and Hollings v. Manning say that in
8 order to perfect a dedication to the county, there's got
9 to be an intent on the owner to dedicate it, and the
10 county has to accept it.

11 **THE COURT:** Uh-huh.

12 **MR. BARNES:** And I think it's clear from the
13 testimony and the comments of Council for Colleton County
14 that it's clear that there's been no dedication, and that
15 Mr. Drew has owned that property for more than twenty-five
16 years and nobody has a right to go through that gate. And
17 I certainly don't see where an injunction could be issued
18 against Mr. Drew.

19 **THE COURT:** Okay.

20 Mr. Lanning?

21 **MR. LANNING:** Your Honor, we weren't able to litigate
22 whether or not this was a private or public road. This is
23 a landlocked piece of property. This is the only way in
24 and out. That's the only way in or way out.

25 **THE COURT:** Uh-huh.

1 **MR. LANNING:** So we just -- until this case is heard,
2 we just want access through the gates to be able to go
3 down to the property.

4 **THE COURT:** Okay.

5 **MR. BARNES:** May it please the Court? I'm going to
6 be amending my Complaint. I'm within thirty days of
7 having filed it. I'm going to assert a cause of action
8 for trespass against Mr. Nettles, because he's using our
9 road illegally now.

10 **THE COURT:** Uh-huh.

11 **MR. BARNES:** What happened was when this first came
12 up, when Mr. Drew used to let him go through the gate
13 until they had an argument, which was permissive, he
14 wasn't giving up his right, ---

15 **THE COURT:** Right.

16 **MR. BARNES:** --- but then when Mrs. Nettles said that
17 Mr. Drew was going to have to pay for the easement he
18 offered them around the boundary of his property line, she
19 got mad and said, "No, you're going to have to pay for
20 building the road, too."

21 **THE COURT:** When you say "she," are you saying Mrs.
22 Nettles said that?

23 **MR. BARNES:** Mrs. Nettles said that, yes, ma'am,
24 before this started. So, recently, I told Scooter we'll
25 send a letter to counsel. As a matter of fact, I just got

1 in the case two or three weeks ago, but we sent a letter
2 to counsel saying that we were locking the gate, he
3 couldn't come and go, don't use our road.

4 And now what he's doing is he's coming down our road
5 up to the gate and he and his equipment has muddied up,
6 just as well as other permissive users who go through that
7 other gate, he's using our road to go from the gate
8 basically back to his property, and we're going to stop
9 that one way or the other.

10 But several weeks ago a deputy -- Mr. Nettles came up
11 after we had sent the letter to counsel. The gate was
12 locked, and Mr. Nettles called the sheriff's deputy.

13 The deputy -- Mr. Drew came up, and the deputy said,
14 improperly said, that Mr. Drew had no right to block the
15 road. And I was on the other phone and said to ask the
16 deputy what's his authority to say you can't keep people
17 out of your own property, and the deputy backed off.

18 And so -- and then they filed for the injunction.
19 And so we've waited until we've got to court to let the
20 Court hear the evidence about the fact that there is no
21 public easement. And although it's not the end of the
22 case, I'd say as a matter of law right now, that's the way
23 it's got to be.

24 And so that we want -- we want Mr. Nettles to stay
25 off of our road inside that gate, and we just want to make

1 that comment. I know that's not before the Court now, but
2 I want to say that's what's coming.

3 THE COURT: Okay.

4 All right, Mr. Lanning, what you're asking me for is
5 a TRO, which is only going to give you ten days of use
6 anyway. Where -- where are we going?

7 MR. LANNING: Um, well, I didn't know it was only ten
8 days. We were under the impression it would last
9 throughout the duration of the case.

10 THE COURT: I mean, you're asking for a TRO, is that
11 not correct?

12 What was pled for, Mr. ---

13 MR. LANNING: Pardon me?

14 THE COURT: What was pled? Was it for a TRO?

15 MR. LANNING: Yes, Your Honor, a temporary
16 restraining order.

17 THE COURT: Okay. Help me out here, Mr. Barnes.

18 MR. BARNES: Ma'am?

19 THE COURT: How are these people going to get to
20 their landlocked lot?

21 MR. BARNES: Well, I don't know. They had an offer
22 to go around the property, but here's the -- here's the
23 real problem in the case.

24 THE COURT: Yeah.

25 MR. BARNES: If you give the plaintiff access on our

1 road down to that, what they're doing -- may I approach
2 again?

3 THE COURT: Sure. Okay.

4 MR. BARNES: What they're doing when they come in --
5 where are we? Okay.

6 They come in here and get on our road and come all
7 the way down here, and they're actually building their
8 road on the very back end of their property. They're
9 going in here and then they're coming this way. Now, we
10 have not been on the property, I've just looked at it from
11 Camp Road.

12 THE COURT: Uh-huh.

13 MR. BARNES: But Mr. Drew had offered at one time to
14 let them come in this way the property line, down here and
15 come over here, and it was going to come in at the very
16 front of his land.

17 THE COURT: Uh-huh.

18 MR. BARNES: There are pastures down here, and
19 believe it or not, I know you've never ---

20 THE COURT: Mr. Drew's pastures are down here.

21 MR. BARNES: Cow pastures.

22 THE COURT: Gotcha.

23 MR. BARNES: And believe it or not, Mr. Drew has had
24 a horrendous problem with students from the College of
25 Charleston coming down and getting the mushrooms and

1 sitting out in the fields and eating mushrooms and getting
2 high. Now, I -- and so once Mr. Drew moves his gate down,
3 he's in the middle of a pasture, and see, they can't
4 secure the property. Now with the gate in the woods, it
5 blocks entry back there.

6 Plus, he doesn't want all these people coming up his
7 road. He doesn't know who they are, what they're doing,
8 and once they get there, he has a house down there with
9 valuables. And just letting him use our road is Pandora's
10 box for us, and we're not going to do it voluntarily.

11 THE COURT: Okay.

12 MR. BARNES: And we have a very good reason to.

13 THE COURT: But again, how are these people going to
14 access their road to get to their land?

15 MR. BARNES: I don't know. He needs to get the law
16 and check the title. I'm not saying he's entitled or not
17 entitled to one for necessity, but just because they can't
18 go in doesn't mean we've got to give them our property.
19 If so, that means I can drive across your front yard
20 anytime I wanted to.

21 THE COURT: I know. So he's just going to have to
22 get an easement of necessity.

23 MR. BARNES: He's going to have to figure out how
24 he's going to get in, which he should have done before it
25 started, before he bought the land.

1 **THE COURT:** I understand looking at the pleadings
2 that Mr. Lanning's clients have been clearing out the
3 property. Do they actually have a home there, or I saw
4 you said that surveyors and whomever was coming out. They
5 want to build on it? Is that what they're trying to do?

6 **MR. LANNING:** Yes, Your Honor. They're in the
7 process of clearing the land and having people come out
8 and find out exactly what they need to do to have a house
9 built out there.

10 **THE COURT:** Do they have a title policy on it?

11 **MR. LANNING:** I don't know. We can find out.

12 **THE COURT:** Okay.

13 Mr. Thornton?

14 **MR. THORNTON:** Your Honor, I apologize for delaying
15 any more further proceedings. I just want to put -- to
16 switch hats now and as Deputy Solicitor, if that's all
17 right with the Court, ---

18 **THE COURT:** Sure.

19 **MR. THORNTON:** --- and I wanted, because I just heard
20 recently about this issue with calling a deputy out there,
21 and certainly the sheriff, nor the sheriff's department,
22 doesn't work for me, but based on what I've seen today, I
23 just wanted the Court to know and I wanted counsel to know
24 that what I'm going to recommend to the sheriff is that
25 they not send deputies out there for a dispute as to

1 whether the gate is open or not. This is a matter that is
2 now in civil court.. It's before Your Honor or whatever
3 judge ends up with it.

4 And I just don't think it's appropriate to start
5 having sheriff's deputies come out there and trying to
6 force somebody to do something when you've got an action
7 filed in Circuit Court. So I just wanted to put counsel
8 on notice on the record, both counsel, that I'm going to
9 suggest to the sheriff that this matter is being litigated
10 in court.

11 And not that if the College of Charleston students
12 are out there doing mushrooms, I'll ask him to look into
13 that, but as far as somebody asking to either order the
14 gate be opened or order the gate be shut, depending on how
15 Your Honor rules, I'm just going to suggest to the sheriff
16 they not go out there, and I want counsel to be on notice.

17 MR. BARNES: And I consent to that.

18 MR. THORNTON: I don't think it's appropriate to call
19 the deputies out when you've got an active lawsuit and
20 there's a dispute involved, to try to use the sheriff's
21 department to force somebody to do something. And I just
22 wanted to put on the record for Your Honor's perspective
23 ---

24 THE COURT: Uh-huh.

25 MR. THORNTON: --- unless you feel differently, I'm

1 going to tell him this matter is being litigated, and I'm
2 going to suggest the sheriff not go out there for that
3 type of matter.

4 **THE COURT:** Unless there's a fist-fight or something.

5 **MR. THORNTON:** Unless there's a fist-fight, but
6 not -- not for somebody to say, "I want you to open the
7 gate," or "I want you to close the gate and prevent him
8 from coming in." They need to be subject to the Court's
9 order and not just going out there trying to use the
10 sheriff's department to do it for them.

11 **MR. BARNES:** And likewise, Your Honor, to try to
12 avoid just that, I'd politely ask Mr. Lanning to notify
13 his client, based on this testimony that it doesn't seem
14 to be a public road, then we're going to take whatever
15 action, and I don't mean fisticuffs, but we're going to
16 fix that road so he can't use it, and we're going to start
17 immediately, if not sooner.

18 We can't -- we're not going to let him have continued
19 use and continued use, because then how is he going -- how
20 is he going to get into his property if he doesn't come
21 down our road? That's the whole thing; see?

22 He -- he -- he was offered a way around, and he chose
23 not to accept what we offered him. He wanted us to pay
24 for building his road, because he said this was a county
25 road, and it is not a county road.

1 And he has no right to go down it, because his
2 friends -- what are all these trucks bringing in boards
3 and asphalt going to do to that dirt road when it rains?
4 They're going to tear Mr. Drew's road up, and then who is
5 going to be paying for the repairs? They'll be saying,
6 "You tore up my road."

7 It's just not going to work with him using that road,
8 and he has no right to.

9 **THE COURT:** Okay.

10 Mr. Lanning?

11 **MR. LANNING:** Just to let you know, we have told our
12 clients not to call the sheriff anymore. That's not going
13 to be an issue.

14 **THE COURT:** Okay. All right.

15 **MR. BARNES:** Excuse me, if I may, what I'm politely
16 asking Mr. Lanning to do is to advise them that the county
17 has testified this is not a public road.

18 **THE COURT:** All right. Well, I can tell you right
19 now I don't think you've met the requirements for a
20 temporary restraining order. I do think you need to
21 figure out how to bring a case based on easement by
22 necessity, because that appears where you're going with
23 this.

24 **MR. LANNING:** All right.

25 **THE COURT:** Additionally, I would suggest that you

1 tell your clients to go check and see if they have a title
2 policy, they need to be making a claim right now,
3 unfortunately.

4 Judge Buckner has not conflicted out of this case in
5 any way, has he?

6 MR. BARNES: I beg your pardon?

7 THE COURT: Judge Buckner has not conflicted out of
8 this case has he in any way? In other words, do I have to
9 keep it? I'm asking. No?

10 MR. BARNES: Who can hear it?

11 THE COURT: I said has Judge Buckner, this is just me
12 asking, he has not conflicted in any way, is he?

13 MR. BARNES: I'm not sure.

14 THE COURT: Okay.

15 MR. BARNES: I don't know. I think he has possibly
16 done work for Mr. Drew before, but I don't know when and
17 where and all that.

18 THE COURT: Well, gentlemen, what I'm telling you is
19 is that if in fact he is and you need to get some
20 resolution, Mr. Lanning, I'm telling you this for your
21 benefit probably more than anybody, ---

22 MR. LANNING: Right.

23 THE COURT: --- if that is the case, then we'll ask
24 Judge Buckner to enter an order saying he is conflicted
25 out. I don't know why I had a guess on that one, but I

1 just did, you call my office directly -- and don't call,
2 email Erin, my law clerk, and she'll set whatever we need
3 for a hearing, because in the Fourteenth Circuit, we only
4 have two judges that cover five counties. If he's
5 conflicted out, it's mine.

6 Judge Kinard is leaving, coming in July, so I just
7 say that. I don't want it sitting on a docket and sitting
8 on a docket and you're worried and waiting. Although we
9 do have non-jury term of court coming up, yes, with Judge
10 Kinard?

11 **CLERK:** Yes, the week of May 10th. I have not gotten
12 a solid date yet.

13 **THE COURT:** Okay.

14 Well, I will tell you this, if you have any other
15 motions or anything else you need to do, Judge Kinard is
16 going to be here May 10th, so I'd file it before May 1st,
17 if I were you so you can get ten days notice, if you've
18 got something to be heard. I ask that for my own benefit.

19 But if not, again, if there's a problem after that,
20 email Erin, Mr. Lanning, and we'll set it. Okay?

21 **MR. LANNING:** Thank you, Your Honor.

22 **THE COURT:** All right. I appreciate it.

23 Y'all want to take this back?

24 **MR. BARNES:** May I -- may it please the Court?

25 **THE COURT:** Yes.

1 **MR. BARNES:** May I take -- is it all right with Mr.
2 Lanning if I take these exhibits?

3 **THE COURT:** Sure. Have you got it?

4 **MR. BARNES:** Do you want -- are you going to do a
5 form order, or would you like for me to do an order?

6 **THE COURT:** I'm going to do a form order denying the
7 TRO.

8 **MR. BARNES:** Okay.

9 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**

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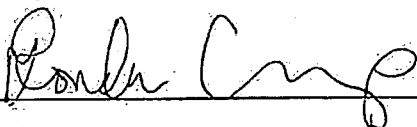
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Colleton County, South Carolina, on the 21st day of April,
2010.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 21, 2010



Ronda T. Cummings, CVR
Official Court Reporter

DEEDS

108

12/4/5

108/08

J.L. McMillan to A.G. Kiser.

THE STATE OF SOUTH CAROLINA,
COUNTY OF COLLETON.

KNOW ALL MEN BY THESE PRESENTS, THAT

J.L. McMillan,

In the State aforesaid
Five and no/100 (\$5.00) Dollars and Exchange of Bank-Deposits.
to \$5.00. In hand paid at and before the sealing of these presents by A.G. Kiser.

In the State aforesaid (the receipt thereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said A.G. Kiser, his heirs and assigns, the following described property:

All that Certain Piece, parcel or Tract of land lying and being in Fraser School District, Colleton County, South Carolina, measuring and containing One and One half (1 1/2) Acres, more or less, and bounded as follows: North by Camp Lane; on the East by lands of W.S. Pool; on the South by Emie Simmons; and on the West by lands of A.G. Kiser. The intention of this Title is to trade the above one and one half acres of land, South of Camp Lane to A.G. Kiser, for Three Acres of land north of Camp Lane, as shown by Title of even date from A.G. Kiser to J.L. McMillan. 102/103

TOGETHER with, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining, TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said

A.G. Kiser, his heirs and assigns, forever, and against every person whomsoever, lawfully claiming, or to claim thereafter, or any part thereof.

WITNESS my hand and seal, this 23 day of May, in the year of our Lord one thousand nine hundred and forty-nine, and in the one hundred and seventy-third year of the Independence of the United States of America.

THE STATE OF SOUTH CAROLINA,
Colleton County.

Notary Public for S.C. Stamp \$1.00

Personally appeared before me, Zola W. Campbell,

and made oath that she is the wife named Julia E. McMillan, and that she is the wife of the within-named A.G. Kiser, his heirs.

Given under my hand and seal, this 23 day of May 1949.

F.W. Campbell.

Notary Public for S.C.

Zola W. Campbell.

THE STATE OF SOUTH CAROLINA,
Colleton County.

Franklin W. Campbell.

Notary Public for S.C.

do hereby certify unto all whom it may concern, that Mrs. Julia E. McMillan, did this day appear before me and read before me and solemnly sworn by me, did declare that she does freely, voluntarily and without any compulsion, fraud or force of any person or persons whatsoever, purchase, release and have released unto the within-named A.G. Kiser, his heirs, all her interest and estate, and also her right and claim of dower, in, to and singular the premises within mentioned and released. Given under my hand and seal, this 23 day of May 1949.

F.W. Campbell.

Notary Public for S.C.

Julia E. McMillan.

Witnessed the above signatures this 23th day of December at 12 M. 1951.

CC & M.C.



State of South Carolina,

WHEREAS, A. G. Kiser was the owner of the below described parcels of land; and

WHEREAS, A. G. Kiser departed this life testate on September 15, 1976, leaving in full force and effect his Last Will and Testament dated February 27, 1967; and

WHEREAS, said Will was admitted to probate in the Probate Court of Colleton County on September 20, 1976 (File No. 36-136); and

WHEREAS, in said Will, A. G. Kiser devised the below described parcels of real property to his three children, Daisy Elizabeth Wilkerson, Martha Virginia Lee Beach, and Margaret (Marguerite) D. L. Bessenger,

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, THAT

Daisy Elizabeth Wilkerson, Martha Virginia Lee Beach and Margaret (Marguerite) D. L. Bessenger

In the State aforesaid _____ for and _____ in consideration of the sum of
Four Hundred Nine Thousand Five Hundred and no/100 (\$409,500.00) DOLLARS,
to us _____ in hand paid at and before the sealing of these presents by _____ Riedesel Forest,
Ltd.

In the State aforesaid _____ the receipt whereof is hereby
acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and
release unto the said _____ Riedesel Forest, Ltd. its successors and assigns, the
following described real property:

TMS No. 275-00-00-005

Grantee's Address: 2 William L. Reno & Associates, 130 West Bay Street,
Savannah, GA 31401

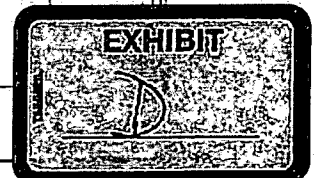
ALL that piece, parcel or tract of land, situate, lying and being in District 16, Fraser Township, near Jacksonboro, Colleton County, South Carolina and shown and designated as containing 605 acres on that certain plat prepared by S. S. Smoak, RLS dated August 27, 1956, said plat being duly recorded on December 11, 1958 in the Office of the Clerk of Court for Colleton County in Plat Book 10 at page 132. Said 605 acre parcel having such actual size, shape, dimensions, buttings and boundings as shown on said plat, reference to which is hereby made for a more complete description.

ALSO

ALL that piece, parcel or tract of land, situate, lying and being in District 16, Fraser Township, near Jacksonboro, Colleton County, South Carolina and shown and designated as the land of Patient Wilson (Patience Wilson) on that certain plat of S. S. Smoak, RLS dated August 27, 1956, said plat being duly recorded on December 11, 1958 in the Office of the Clerk of Court for Colleton County in Plat Book 10 at page 132, and said parcel measuring and containing .25 acres and being butted and bounded on the West, South and East by lands conveyed above to the Grantee herein, and on the North by lands of, now or formerly Adam Middleton and the Estate of Robert Gillon. Said .25 acre tract being clearly delineated on said plat, except for its Northernmost line running to East and West which may be formed by joining together the open points as shown on said plat.

RECORDED Sept 29 1980 - 9 AM

CLERK OF COURT COLLETON COUNTY



STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

TED A. NETTLES, JR. and JANELL B.
NETTLES,

Plaintiff,

vs.

SYLVESTER GUESS DREW, JR.,
DEBRA DREW, COLLETON COUNTY,
and SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 10-CP-15-247

**PLAINTIFFS' REPLY TO AMENDED
AND RESTATED ANSWER AND
COUNTERCLAIM OF DEFENDANTS
SYLVESTER GUESS DREW, JR. AND
DEBRA DREW**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

2012 APR 16 AM 9:14

TO A. PARKER BARNES, JR., ESQUIRE, ATTORNEY FOR DEFENDANTS SYLVESTER
GUESS DREW, JR. AND DEBRA DREW:

Plaintiffs, by and through undersigned counsel, submit this Reply to the Amended and
Restated Answer and Counterclaim of Defendants Sylvester Guess Drew, Jr. and Debra Drew:

1. Each and every allegation contained in the Amended and Restated Answer and
Counterclaim of Defendants Sylvester Guess Drew, Jr. and Debra Drew not specifically
admitted, modified, or qualified herein is expressly denied, and strict proof is demanded thereof.

2. Plaintiffs aver that many of the allegations in the Amended and Restated Answer
and Counterclaim of Defendants Sylvester Guess Drew, Jr. and Debra Drew are not simple,
concise, or direct and are therefore in violation of Rule 8(e), SCRCP.

3. Plaintiffs aver that many of the allegations in the Amended and Restated Answer
and Counterclaim of Defendants Sylvester Guess Drew, Jr. and Debra Drew do not limit the
contents of each paragraph as far as practicable to a single set of circumstances and are therefore
in violation of Rule 10(b), SCRCP.

4. Due to Defendants Drews' violations of Rule 8(e) and 10(b), SCRCF, Plaintiffs respectfully request that this Honorable Court construe any ambiguities in the Amended and Restated Answer and Counterclaim of Defendants Sylvester Guess Drew, Jr. and Debra Drew or in this responsive pleading in favor of Plaintiffs.

5. Plaintiffs admit the allegations contained in paragraph 28 to the extent it alleges that Plaintiffs investigated the property prior to purchasing it. The provisions in the contract speak for themselves. The remainder of paragraph 28 is denied and strict proof is demanded thereof.

6. Plaintiffs admit the allegations contained in paragraph 29 to the extent it alleges that Plaintiffs purchased title insurance for the property. The remainder of paragraph 29 is denied and strict proof is demanded thereof.

7. Plaintiffs admit the allegations contained in paragraph 30 to the extent it alleges that the Drews offered an alternate route be used at an unreasonable cost to Plaintiffs and that the offer was subsequently withdrawn. The remainder of paragraph 30 is denied and strict proof is demanded thereof.

8. Plaintiffs admit the allegations contained in paragraph 32 to the extent it alleges that a deed to Amy Simmons was recorded in the Colleton County RMC Office. The remainder of paragraph 32 is denied and strict proof is demanded thereof.

9. Plaintiffs are without knowledge and information sufficient to form a belief as to the allegations in paragraphs 33 and 34 and therefore deny the same and demand strict proof thereof.

10. Plaintiffs admit the allegations contained in paragraph 35 to the extent it alleges that a quiet title action was commenced by Norvia Miller. The remainder of paragraph 35 is denied and strict proof is demanded thereof.

11. Plaintiffs are without knowledge and information sufficient to form a belief as to the allegations in paragraphs 36, 37, and 38 and therefore deny the same and demand strict proof thereof.

12. Plaintiffs admit paragraph 40.

13. Paragraph 41 asserts a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, Plaintiffs deny the same and demand strict proof thereof.

14. Plaintiffs deny the allegations contained in paragraph 42 and demands strict proof thereof.

15. Paragraph 43 asserts a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, Plaintiffs deny the same and demand strict proof thereof.

16. Plaintiffs deny the allegations contained in paragraphs 44, 45, 46, and 47 and demand strict proof thereof.

17. Paragraphs 49 and 50 assert legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, Plaintiffs deny the same and demand strict proof thereof.

18. Plaintiffs deny the allegations contained in paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 2nd 67, 68, 69, 72, 73, 74, 75, and 77 and demand strict proof thereof.

19. Plaintiffs are without knowledge and information sufficient to form a belief as to the allegations in paragraphs 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87 and therefore deny the same and demand strict proof thereof.

20. Plaintiffs admit the allegations contained in paragraph 88 to the extent it alleges that Plaintiffs purchased the property for \$75,000. The remainder of paragraph 88 is denied and strict proof is demanded thereof.

21. Plaintiffs deny the allegations contained in paragraphs 89 and 2nd 89 and demand strict proof thereof.

FOR A FIRST DEFENSE

(Unclean Hands)

22. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

23. Defendants' claims should be barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

(Condonation/Acquiescence)

24. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

25. Defendants' claims should be barred because they condoned and/or acquiesced to Plaintiff's conduct.

FOR A THIRD DEFENSE

(Waiver, Estoppel, and Laches)

26. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

27. Defendants' claims should be barred by the doctrines of waiver, estoppel, and/or laches.

FOR A FOURTH DEFENSE

(Recklessness not Proven by Clear and Convincing Evidence)

28. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

29. The evidence of recklessness and/or any degree of fault alleged seeking punitive damages will not be, on information and belief, clear and convincing as required by S.C. Code Ann. § 15-33-135.

FOR A FIFTH DEFENSE

(Punitive Damages Unconstitutional)

30. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

31. The imposition of awarding punitive damages in this case is unconstitutional and a denial of Defendant Nissen's constitutional rights and is contrary to Article I, Section 10, the Fourteenth Amendment of the Constitution of the United States of America and Article I, Section 3 of the Constitution of the State of South Carolina.

FOR A SIXTH DEFENSE

(Adverse Possession)

32. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

33. To the extent Amy Simmons did not acquire 22 acres of property by her 1906 deed, Plaintiff, Amy Simmons' heirs, and any other persons in the chain of title adversely

possessed the property through open, notorious, exclusive, hostile, continuous, and actual possession for the requisite period.

FOR A SEVENTH DEFENSE

(Failure to Mitigate)

34. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

35. Defendants' claims should be barred or reduced because their conduct created this situation and because their continued conduct has not mitigated any damages.

WHEREFORE, Plaintiffs reaffirm their requests for relief in their amended complaint and pray this Court dismiss the claims made by Defendants, along with awarding attorney's fees and costs to Plaintiff, and granting such other and further relief as this Court deems just and proper.

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Dated: 4/13/12

Attorney for Plaintiffs

1 State of South Carolina

Court of Common Pleas

2 County of Colleton

3
4
5 Ted A. Nettles and
Janell B. Nettles,

6 Plaintiffs,

Transcript of Record
2010-CP-15-00247

7 v.

8 Sylvester Guess Drew, Jr.,
and Debra Drew
9 and Colleton County,

10 Defendants.

11
12 June 29 - 30, 2015
Bamberg, South Carolina

13
14
15 B E F O R E:

The Honorable Dayet A. Early, III, Judge.

16
17 A P P E A R A N C E S:

18 Thomas Nelson, Esquire
Attorney for the Plaintiffs

19 Parker A. Barnes, Esquire
20 Attorney for the Defendants Drew

21 Mitchell Griffith, Esquire
22 Attorney for Defendant Colleton County

23
24 Bethanie K. Creppon
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	<u>PLAINTIFF</u>		
1	1 Boundary Survey		
2	2 Colleton County 911 Memorandum 9/17/10		
3	3 Colleton County 911 Memorandum 4/19/10		
4	4 Parcel Map 9/17/10		
5	5 Special Referee Deed		
6	7 Land Deed, Will		
7	8 Land Deed, Will		
8	11 Plat 4/10/09		
9	12 Plat 9/17/10		
10	14 Land Deed 5/23/79		
11	16 Land Deed 10/7/49		
12	18 Land Deed 12/5/53		
13	19 Land Deed 5/31/79		
14	21 Title to Real Estate 3/6/07		
15	23 Estate of Amie Simmons 3/31/58		
16	24 Land Survey January 1965		
17	25 Plat		
18	27 Land Deed December 1991		
19	31 Boundary Survey Plat - Kennerty Surveying		
20	32 Boundary Survey Plat - Kennerty Surveying		
21	40 Land Deed 6/20/55		
22	46 Timber Deed 4/20/84		

1 47 J.L. McMillan Deer Creek Cattle Ranch Plantation
2 51 Plat 4/10/09
3 52 Color GIS Plat 2/4/08
4 53 Road Inventory, e-mail Chain: Donald McEleveen
5 and Janell Nettles
6 60 Deed
7 66-ID Plat 9/28/73
8 68-ID Deed 5/30/79
9 69-ID Deed 12/3/79
10 70-ID Deed 5/22/75
11 72-ID Colleton County Sheriff's Office 2008 Road
12 Atlas
13 84-ID Deed 5/10/41
14 85-ID Colleton County Highway Map 1975
15 90-ID Deed 6/20/55
16 91-ID Deed 4/30/38
17 92-ID Deed 11/17/44
18 94-ID Photo - Camp Ave. and Polite Road
19 95-ID Photo - Gate 680 Camp Ave.
20 96-ID Photo - Gate
21 97-ID Photo - Concrete Blocks
22 98-ID Photo - Gate
23 99-ID Photo - Gate
24 100-ID Photo - Concrete Blocks
25 101-ID Photo - Dirt Road

- 1 102-ID Photo - Barn
- 2 103-ID Photo - Dirt Road
- 3 106-ID Title to Real Estate 3/31/03
- 4 107-ID Boundary Survey 11/29/09
- 5 108-ID Plats 4/10/09
- 6 109-ID Map - War Dpt. Corps of Engineers
- 7 110-ID Map - Colleton County General Highway U.S.
- 8 Army System
- 9 111-ID Map of SC 2006 SCDOT
- 10 112-ID Plat - Deer Creek Ranch
- 11 113-ID Plats - 1958 for A.G. Kiser
- 12 116-ID Deed Records
- 13 117-ID Westbank Plantation Documents 3/18/1850
- 14 118-ID Plat of Dr. F.Y. Glover
- 15 119-ID Plat of Eleanor Glover
- 16
- 17 **DEFENDANT**
- 18 1-ID 2010 Transcript
- 19 1 Plat
- 20 2 Color Aerial
- 21 2-ID License Agreement
- 22 3 4/10/09 Plat
- 23 4-ID Permit Agreement
- 24 5 Photo-trees
- 25 6-ID Permit Agreement 8/28/98

1 9-ID Permit Agreement 11/15/03
2 10-ID Road Permit Agreement 11/12/08
3 11-ID Permit Agreement 1/1/14
4 11 Tax Map 2009
5 12-ID Real Estate Agreement 4/22/09
6 13-ID Chicago Title Insurance
7 14-ID Chicago Title Insurance Commitment
8 15-ID Chicago Title Insurance Homeowners Form
9 15 Easement Offer Map
10 18 Special Warranty Deed
11 20-ID 12/16/14 Letter to Plf. from A. Parker Barnes
12 22-ID e-mail Correspondence from Janell Nettles
13 23-ID e-mail Correspondence from Janell Nettles
14 24-ID e-mail Correspondence from Janell Nettles
15 25-ID e-mail Correspondence from Janell Nettles
16 26-ID e-mail Correspondence from Janell Nettles
17 27-ID e-mail Chain - Janell Nettles
18 28-ID e-mail Chain - Janell Nettles
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20 30-ID e-mail Chain - Janell Nettles
21 31-ID e-mail Chain - Janell Nettles
22 32-ID e-mail Cain - Janell Nettles
23
24
25

1 (The following proceedings were held June 29 -
2 30, 2015.)

3 THE COURT: Gentlemen, before we get started,
4 for the benefit of my court reporter, please stand
5 and identify yourself, tell us who you represent.

6 MR. NELSON: Thomas Nelson here for both
7 plaintiffs.

8 MR. BARNES: Parker Barnes of Beaufort for the
9 defendants Drew.

10 MR. GRIFFITH: Mitch Griffith with Colleton
11 County.

12 THE COURT: All right. Mr. Nelson, you want to
13 make a brief opening statement for me, please?

14 MR. NELSON: Yes, Your Honor. This case is
15 really about access to a piece of property. My
16 clients bought a piece of property that, except for
17 this Camp Road, would be landlocked, and Mr. Drew is
18 denying them access.

19 We believe that we can prevail on one of three
20 theories; we believe we can show this is a County
21 road.

22 THE COURT: County road, number one.

23 MR. NELSON: Yes, sir. Two, if not
24 County-maintained or dedicated, we believe that we
25 can show that it is a public road or has always been

1 a neighborhood road that is open to public use.

2 THE COURT: Public road or neighborhood road.

3 MR. NELSON: And then if we fail on both of
4 those, we believe we're entitled to an easement.

5 THE COURT: What kind of easement?

6 MR. NELSON: We believe we should get an
7 easement by necessity or an easement implied by
8 prior use.

9 THE COURT: Anything else you want to tell me?

10 MR. NELSON: I couldn't keep it brief, Your
11 Honor. We'll get it through in the evidence. We've
12 got a series of plats and deeds. We don't believe
13 that Mr. Drew can show that he's got title to this
14 property. We've got some very old maps that are
15 going to be admissible pursuant to the Rules of
16 Evidence on --

17 THE COURT: Title to what property; the road
18 itself?

19 MR. NELSON: Yes, Your Honor.

20 THE COURT: Does the road cut through property
21 that he owns; do you concede that?

22 MR. NELSON: He owns both sides of it.

23 THE COURT: Both sides?

24 MR. NELSON: Yes, sir.

25 THE COURT: But not the road, in your opinion?

1 MR. NELSON: Yes, sir. We, through a series of
2 maps that are going to be admissible through the
3 Rule of Evidence, Hearsay Exception on -- ancient
4 documents are going to come in, and they're going to
5 be able to show that this has always been a road
6 that was used by everybody, not just a couple of
7 properties that are back there now.

8 This started out as a 900-and-some-odd-acre
9 tract, and it was narrowed down piece by piece. And
10 then Mr. Drew started kind of eating them back up
11 one by one. He does not own the one piece that my
12 clients --

13 THE COURT: Eating them back up?

14 MR. NELSON: Just buying pieces here and there,
15 jut assembling his property into a larger piece of
16 property.

17 We have a series of deeds that are going to
18 show that Mr. Drew does not own this road. In fact,
19 the two that are most relevant, there was a
20 gentleman named Poole that owned both sides of the
21 road, and he sold to Mr. Drew's dad one side
22 Mr. Drew the other side in 1973. And then
23 Mr. Drew's dad conveyed to Mr. Drew in 2003, so
24 Mr. Drew owned them both.

25 But when you look at those deeds, the legal

1 description says: Bounded on the south by Camp
2 Avenue, is not inclusive of Camp Avenue. When you
3 look at the southern deed, it says: Bounded on the
4 north by Camp Avenue. It's not inclusive of Camp
5 Avenue. There is one plat that does suggest that --
6 a 1983 plat that suggests that the road is on that
7 northern tract, but the plat that that is derived
8 from does not show that; it shows it as a neutral
9 road. But, again, we've got evidence.

10 We also have Mr. Miller back there. His family
11 has grown up there, his parents used to live on that
12 property, and his grandparents used to live on that
13 property. They quieted the title in 2009 to sell it
14 to my clients. Mr. Miller is going to describe the
15 use of that road, how the County actually used to
16 maintain it, how people used to go back there and --

17 THE COURT: I assume you've got somebody here
18 from the County saying it's a county road.

19 MR. NELSON: I'm sorry?

20 THE COURT: I assume you've got somebody here
21 from the County saying it's been dedicated to the
22 County, it's a County road, County-maintained, they
23 scrape it, they maintain it?

24 MR. NELSON: No, sir. There was never a formal
25 dedication that we can find in the record.

1 THE COURT: Well, how about using it? They
2 come in and scrape it like they do our roads here?

3 MR. NELSON: Mr. Miller will testify that they
4 used to. Most of the people that are in his family
5 that are witnesses to that property are now
6 deceased.

7 Four of the county employees testified as to
8 the existence of certain records in their
9 deposition. When I asked for those records, the
10 County would say they don't exist. We also show
11 where, in the county records, they had shown -- such
12 as the GIS map. Up until 2009, they had shown it as
13 a county road that extends past the gate that
14 Mr. Drew put up. Then sometime after the first
15 hearing in this case, the County just changed it and
16 shows it as a private road now instead of a county
17 road.

18 THE COURT: They just changed it?

19 MR. NELSON: Yes, sir. So we believe we have
20 some spoliation issues here regarding the County
21 when four of their employees are testifying to the
22 existence of certain records, and then the --
23 through counsel, before Mr. Griffith was involved,
24 claims they do not exist.

25 THE COURT: These were road scrapers? People

1 who scrape the roads?

2 MR. NELSON: Two of the people are in the
3 process of -- or are in the department that scrapes
4 the roads, yes, sir.

5 THE COURT: Anything else you want to tell me?

6 MR. NELSON: No, Your Honor.

7 THE COURT: Okay. Mr. Parker Barnes?

8 MR. BARNES: Yes, sir. I'll try to make it
9 brief, Your Honor. We do claim that the Drews own
10 both sides of -- and own Camp Road as well. We have
11 deeds and plats that, towards the end of the road as
12 it gets closer to an island off of Deer Creek,
13 there's a deed to both Drews and it encompasses the
14 road.

15 The testimony from Herman Miller in his
16 deposition, and I trust in court today, will be that
17 Herman and his -- Herman's father helped Scooter's
18 grandfather built that part of the road.

19 THE COURT: Who is Scooter?

20 MR. BARNES: Mr. Drew. I'm sorry, Your Honor.

21 MR. NELSON: Sylvester Drew.

22 THE COURT: Thank you.

23 MR. BARNES: And, also, all of the deeds that
24 Mr. Nelson speaks of that say bounded by Camp Road
25 on these Poole deeds, if you will, if you go to the

1 body of the deed, it says all that piece, parcel,
2 and lot of land that he owns, and Poole -- and we
3 say Poole owned the road. And even if it said
4 bounded by it, the deed -- the words of the deed are
5 what was -- all that piece, parcel and lot of land
6 includes Camp Road. It is just a scrivener's error.

7 THE COURT: Deed interpretations, maybe, I'll
8 have to do?

9 MR. BARNES: Yes, sir.

10 And but as to the easements, the Bundy case has
11 just come out in May of 2015. It's a wonderful
12 discussion about all types of easements. And it was
13 a very similar situation like this where there
14 was -- and in this case, there's going to be -- I've
15 got some testimony that -- statements against
16 interest that Mrs. Nettles made saying that she knew
17 there was no access, but she brought the property
18 and then filed the suit. She was advised to buy the
19 property and then sue for the easement. And the
20 title property is excluded, a binder for -- or
21 coverage for access. And after the -- Mr. Drew put
22 a gate up in 1987, Your Honor. And there will be
23 testimony that there were other gates on that road
24 that were put up by his grandfather before 1987, and
25 if there was any type of easement, which we dispute,

1 it's been abandoned by nonuse.

2 So the original family -- Amie Simmons had a
3 house, and our exhibits will show, we think, where
4 that house was, and it had a little lane going out
5 to Camp Road. And we admit they used Camp Road
6 during that time, but it was with permission or
7 certainly was not adverse.

8 And then we have photographs of that little
9 lane. And it's got pine trees that are 55 inches
10 around and, you know, you could cut them and sell
11 logs out of them, and the whole road is grown up
12 from abandonment.

13 THE COURT: All right. Mr. Griffith?

14 MR. GRIFFITH: Judge, on behalf of the County,
15 we're involved with this because the plaintiff has
16 alleged that Camp Road is a county road. As you
17 know --

18 THE COURT: No -- go ahead.

19 MR. GRIFFITH: -- that the road, in order to be
20 public, there are two things that the plaintiff must
21 prove in this, and that is a dedication and
22 acceptance.

23 In opening, counsel admitted that there was no
24 formal dedication, so he would have to prove this
25 dedication probably by implication. As far as that

1 goes, the evidence, we believe, will show the County
2 has never maintained the road since the gate has
3 been up. There has been no use by the road, no
4 scraping of the road, no culverts maintained, and,
5 as a result, there's been no dedication of this
6 road, certainly by Mr. Drew who owns this property
7 on both sides of it. There is no obvious dedication
8 because he is disputing that.

9 Dedication must be in a positive and
10 unmistakable matter. Additionally, there must be
11 public acceptance of the road. And public
12 acceptance indicates that the property was offered
13 for dedication and the parties' actions must be
14 unequivocal that they accepted it, such as by
15 implication that they maintained it. And, again, as
16 I said, the evidence will show that there was no
17 maintenance by the County. Dedication, as the law
18 says, is an exceptional motive passing interest to
19 land, so it must be strict, cogent, and convincing.

20 In this case, we don't believe there would be
21 any evidence to show that the County ever owned the
22 road or maintained the road, nor has it been
23 dedicated or accepted by the County. As such, we
24 believe that, at best, it is a private road.

25 THE COURT: Thank you.

1 In somebody's pretrial brief they'd mentioned
2 that there had been a hearing in Colleton County at
3 one time for a restraining order. What was that? I
4 read it sometime last night or this morning.

5 MR. BARNES: If it pleases the Court. When the
6 Nettles closed on the property, they went to Drews'
7 and asked for an easement. And Mr. Drew showed them
8 the easement. And as part of that, the gate was
9 there. Mr. Drew has had a gate there since 1987.

10 And the -- at that time, the Nettles were
11 represented by Attorney Brush's firm, and I think
12 Attorney Lanning was an associate there who filed a
13 motion for a temporary injunction. And at that
14 time, I called people from the -- some of the same
15 witnesses that are here today, and they all
16 testified in that case -- or in that hearing that
17 Camp Road, that once in a while it was -- maybe back
18 in the old days, that you'd give the guy some money
19 and they'd scrape your road and that the County
20 didn't really care about it and it was infrequent.

21 But what's very important in that case is that
22 the Colleton County attorney was present and heard
23 about the fact that Mr. Nettles had called the
24 sheriff and the sheriff required Mr. Drew to open
25 the gate against his will, and the county attorney

1 said that was not -- you know, you're not supposed
2 to do that. And at that hearing, the county
3 attorney asked -- told --

4 THE COURT: Well, what happened -- what
5 happened in the hearing?

6 MR. BARNES: She denied it. She denied their
7 motion to open the gate.

8 THE COURT: Was there a written order?

9 MR. BARNES: I think so, Judge. I think it's
10 clear from the transcript, if I'm not mistaken.

11 THE COURT: All right. Thank --

12 MR. BARNES: But the bottom line was, Judge,
13 that Lanning acknowledged in that hearing that he
14 had told the Nettles not to call the sheriff anymore
15 to get in the gate, and Mr. Nettles did it, despite
16 that.

17 THE COURT: All right. Mr. Nelson, let's move
18 forward, please. Call your first witness.

19 MR. NELSON: And, Your Honor, would you like me
20 to hand you a map of the area, just for
21 demonstrative purposes?

22 THE COURT: That would be great. I assume
23 y'all agreed on it.

24 MR. NELSON: And I hate turning my back to the
25 Court. Is it okay if I do my exhibits like this?

1 THE COURT: Okay.

2 MR. NELSON: Your Honor, just to orient you,
3 Parcel A is my clients' parcel the one that is
4 landlocked without the use of this road, and
5 Mr. Drew is the title-owner to Parcel B, and his
6 wife is title-owner to Parcel C.

7 THE COURT: And if your clients prevail, how
8 will they get back to Parcel A along Camp Road?

9 MR. NELSON: Where you see Camp Avenue runs
10 into that gate and then keeps going, as looking on
11 this map, they would just follow it along the north
12 edge of Parcel C and along the north edge of their
13 property to the northwestern corner of their
14 property. And you'll hear me referring -- their
15 property is a square with a little panhandle on the
16 top, and I've gotten used to calling that the
17 panhandle in this case.

18 THE COURT: Parcel A is what you're going to be
19 talking about?

20 MR. NELSON: Parcel A, yes, sir.

21 THE COURT: Now, where it's designated as Camp
22 Avenue, who owns both sides of that?

23 MR. NELSON: East or west of the gate? There's
24 nothing disputed on the east side of the gate --

25 THE COURT: Okay.

1 MR. NELSON: -- so we're only talking about
2 west side of the gate.

3 THE COURT: So that would be from the gate to
4 the west --

5 MR. NELSON: Yes, sir.

6 THE COURT: -- along Parcel B, Parcel C and
7 Parcel A?

8 MR. NELSON: In between B and C until we get to
9 the -- actually, the northwestern corner of A,
10 because the northeastern corner of A, there's
11 wetlands there, so we wouldn't be able to access.
12 We'd need to go farther along on the edge of our
13 property.

14 THE COURT: Who has access along Camp Avenue?
15 Anybody?

16 MR. NELSON: On the east of the gate?

17 THE COURT: Yes, sir.

18 MR. NELSON: That's County-maintained; anybody
19 can drive down it.

20 THE COURT: That's undisputed?

21 MR. NELSON: And it's still a dirt road along
22 all of that, but it is County-maintained,
23 undisputed.

24 THE COURT: Camp Avenue runs and then takes a
25 north turn up Polite Road?

1 MR. NELSON: Yes, sir.

2 THE COURT: No question by anybody, that's a
3 County-maintained road?

4 MR. BARNES: No, sir. There's no -- we -- they
5 do own that and maintain it regularly, Polite and
6 Camp.

7 THE COURT: They being --

8 MR. BARNES: Camp to Polite and then they turn
9 right on Polite. But they do not come inside
10 Mr. Drew's gate.

11 THE COURT: Okay.

12 MR. NELSON: And this exhibit is for
13 demonstrative purposes. I'm going to put this in
14 without the notes on it later on.

15 THE COURT: That helps very much.

16 All right. You may begin. Call your first
17 witness.

18 MR. NELSON: I'd like to call Scooter Drew.

19 THE COURT: Mr. Drew, come around, please.

20 MR. NELSON: Sylvester Drew. I'm sorry.

21 SYLVESTER DREW

22 being first duly sworn, testified as follows:

23 THE WITNESS: I do.

24 THE COURT: Have a seat right here in that
25 chair. Give us your full name, spelling your last

1 for the record, please.

2 THE WITNESS: Sylvester Guess Drew, Jr.,
3 D-R-E-W.

4 THE COURT: Your witness.

5 MR. NELSON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. NELSON:

8 Q. Mr. Drew, do you agree that you own an 11-acre
9 parcel -- or that your wife owns an 11-acre parcel
10 just inside of the gate by Camp Road?

11 A. I do.

12 Q. And do you agree that --

13 THE COURT: Which parcel is that?

14 MR. NELSON: That would be Parcel C.

15 Q. And do you agree that you own a 19-acre parcel
16 which now has other properties with it on the north
17 side of Camp Road, just inside the gate?

18 A. I do.

19 THE COURT: Designated as Parcel B on your
20 exhibit form?

21 MR. NELSON: Yes, sir.

22 BY MR. NELSON:

23 Q. And do you agree that the Nettles, my clients,
24 own a 21.7-acre tract further inside of the gate?

25 A. I assume they do.

1 Q. Okay. And you've checked the title -- I mean,
2 you've looked at the title in this case; correct?
3 Seen title searches from abstractors, looked at
4 deeds, things of that nature?

5 A. Have I?

6 Q. Yes, sir.

7 A. I've seen them. But my wife has done the
8 looking with the deeds and titles and stuff.

9 THE COURT: Y'all will stipulate that your
10 clients own A, his wife owns C and he owns B?

11 MR. NELSON: I wasn't sure if they were
12 stipulating on the 21.7 acres of ours or not.

13 THE COURT: Go ahead.

14 MR. NELSON: Okay.

15 BY MR. NELSON:

16 Q. But you don't contest that my clients purchased
17 property?

18 A. Got no reason to.

19 Q. Okay. And you have a gate that blocks Camp
20 Road just west of Polite's intersection; correct?

21 A. Yes.

22 Q. Okay. Is there a street signal at that
23 intersection?

24 A. Out on the county road there is.

25 Q. And what is the -- which two roads are

- 1 identified on the street sign?
- 2 A. Polite and Camp.
- 3 Q. Okay. And what color are those street signs?
- 4 A. Green.
- 5 Q. And what does green suggest to you?
- 6 A. That it's a county road.
- 7 Q. Now, you claim that you own the road inside the
- 8 gate; correct?
- 9 A. I claim my wife and I own the road inside.
- 10 Q. Okay. Is the road included in your 19-acre
- 11 parcel or her 11-acre parcel?
- 12 A. Both parcels, I assume. If it's not in one,
- 13 it's in the other one --
- 14 Q. But you can't tell me --
- 15 A. No, because I don't study the deeds.
- 16 Q. Okay. Do you agree that you purchased your
- 17 property or that your grandfather paid a purchase
- 18 price on your behalf in 1973 for some of this
- 19 property?
- 20 A. I do.
- 21 Q. And which parcel is that?
- 22 A. On my behalf?
- 23 Q. Yes, sir.
- 24 A. The 19 acres.
- 25 Q. Okay. And that at the same time, did your

1 grandfather not buy for himself the 11-acre parcel?

2 A. He bought it for my father.

3 Q. Okay. So your father owned the 11 and you

4 owned the 19 in 1973?

5 A. Yes.

6 Q. And then your father transferred to you in 2003

7 the 11 acres; correct?

8 A. Or whenever, yes. At some point he did.

9 Q. Okay. Prior to 2003 or prior to the time that

10 that transfer was made from your father to you,

11 which one of you owned that road?

12 A. Prior to the time in '73?

13 Q. Yes, sir -- no, after 1973. Say in 1974, did

14 you or your father own the road?

15 A. One of us owned the road.

16 Q. Okay.

17 A. I told you I didn't know who owned the road.

18 One of us did.

19 Q. And the road has been there as far as you can

20 remember; correct?

21 A. It has.

22 Q. And you've lived in this area your entire life?

23 A. Well, basically. I lived in Hendersonville to

24 start with, but moved to Jacksonboro when I was

25 five.

1 Q. And what year was that?

2 A. Born in '54, so '59.

3 Q. Okay.

4 A. '60, I moved to Jacksonboro; been there ever
5 since.

6 Q. Okay. And the only other parcel that needed to
7 be accessed west of Polite Road is the 21.7 acres
8 that my clients own; correct?

9 A. The parcel that needs to be -- have that -- I'm
10 hard of hearing, so I'm having a hard time hearing
11 you.

12 Q. I'm sorry. Let me ask you a different
13 question. Who owned the property prior to the
14 Nettles, the 21.7 acres?

15 A. I really don't know. I assume the Millers did.

16 Q. The Millers?

17 A. Yes.

18 Q. Okay. Do you know any of the Millers
19 personally?

20 A. I do.

21 Q. Okay. Who do you know?

22 A. I know Herman and I knew his sister. I knew
23 Herman's daddy and mother, which have passed away,
24 all three of them.

25 Q. Do you believe that any of them used to live

1 back there?

2 A. I have no idea. Don't ever remember anybody on
3 the property.

4 Q. Okay. Do you know -- in your review of this
5 case, do you know how the Millers took title of the
6 property?

7 A. No.

8 Q. Are you familiar with a 1906 deed to Amie
9 Simmons?

10 A. Yes.

11 Q. Okay. Do you believe that's the property
12 granted to Amie Simmons in 1906 and then later --

13 A. I don't know.

14 Q. -- title was quieted?

15 A. I'll take -- I'll take the word on the deed, I
16 guess. I mean, I'm not up on deeds and all.

17 Q. Okay. Are you aware that the Millers have
18 cleared the timber off their own land before, off
19 the 21 acres?

20 A. Yes.

21 Q. Okay. So they were able to get to that
22 property, the 21 acres?

23 A. I don't know that the Millers were. But
24 somebody did, the logger did.

25 Q. There's no other road that goes to the 21 acres

1 though, is there?

2 A. Oh, yes.

3 THE COURT: What other roads go in there?

4 THE WITNESS: There's a private road on the
5 tract of land right next to ours. It's five guys
6 out of Charleston that own some property in there,
7 and they go down that road for their access. And
8 it's a dirt road that -- just like my road inside
9 the gate, it's a dirt road that's maintained by the
10 private people that own the property. And that's
11 their actual easement, and it goes right to the
12 Nettles' property.

13 BY MR. NELSON:

14 Q. Are you talking about a road or a fire lane?

15 A. I'm talking about a road --

16 Q. Okay. I've never seen --

17 A. -- just like mine.

18 Q. Okay. Do you have any photographs of this
19 road?

20 A. No. I think Mr. Miller referenced it in his
21 deposition, if I'm not mistaken.

22 Q. Okay. We'll get to Mr. Miller in a second.

23 And you put a gate up; is that correct?

24 A. That's correct.

25 Q. And what was the purpose of the gate?

1 A. People were going down inside the road and
2 stealing hay from out the barns and messing with
3 equipment that we had down on the farm.

4 Q. Okay. And approximately when did you do that?

5 A. It was somewhere around '85. I think
6 Mr. Barnes said about '87, but I believe it was
7 actually in '85.

8 Q. Okay. And it's been up since that time?

9 A. It's been up since that time. Nobody has ever
10 complained about it.

11 Q. Yet you've modified it or moved it a couple
12 times; right?

13 A. It moved it back. A guy hit it about three or
14 four years ago with a four-wheeler flying down the
15 road. And it was right on the property line at that
16 time. He hit the gate and it ended up flying him
17 out. I mean, he was seriously hurt. And I moved
18 the gate further in the property so --

19 THE COURT: Do you recall when that was?

20 THE WITNESS: I think it was about four years
21 ago.

22 THE COURT: So 2011, '10, somewhere in there?

23 THE WITNESS: Somewhere in there, yes, sir.

24 BY MR. NELSON:

25 Q. That was after this lawsuit was filed?

1 A. Pardon?

2 Q. After the lawsuit was filed?

3 THE COURT: Which lawsuit?

4 MR. NELSON: This lawsuit.

5 THE WITNESS: I believe it was.

6 THE COURT: How far back did you move it?

7 THE WITNESS: About 90 feet into the property.

8 I didn't want it right on the line. I wanted to

9 have, like, no-trespassing signs so people would

10 know what's coming, you know, just from a liability

11 standpoint.

12 BY MR. NELSON:

13 Q. Now, do you recall the first time you met the
14 Nettles?

15 A. I don't.

16 Q. Do you recall that you did meet the Nettles
17 prior to them purchasing their property?

18 A. I do.

19 Q. Okay. Do you recall any conversations that
20 y'all had?

21 A. A couple of conversations, yeah.

22 Q. What's the first one that you remember?

23 A. Pardon?

24 Q. What is the first one that you remember?

25 A. I think Ted and I talked a couple times just

1 about hunting and just about the property in
2 general. I can name a couple that we've had
3 specific conversations, you know, about the gate and
4 the road and the access and all.

5 Q. Okay. And did you know -- you met them prior
6 to them purchasing the property though; correct?

7 A. Oh, yeah.

8 Q. Okay. And did you know that they were looking
9 at the property and interested in buying it?

10 A. Yes.

11 Q. Was there any discussions about getting access
12 through the gate with you?

13 A. I'm sure there was, because they couldn't get
14 to their property unless they asked.

15 Q. Did you ever give them a key?

16 A. I did.

17 Q. Okay. And you would give them a key for more
18 than just an hour; correct?

19 A. I did that, but with a letter stating that we
20 could revoke that key at any time.

21 Q. Okay. How was that letter provided to them?

22 A. From my attorney, Tommy Howard.

23 THE COURT: Tommy who?

24 THE WITNESS: Tommy Howard.

25 Q. Who scrapes the road now?

1 A. I do.

2 Q. How long have you done it?

3 A. Ever since I've owned it and even before I've
4 owned it. I started out scraping it with my
5 grandfather; I did it for him some.

6 Q. Okay. Has there ever been a County vehicle on
7 it, to your knowledge?

8 A. I'm sure it has, yeah.

9 Q. You're sure it has?

10 A. Yeah.

11 Q. How many times?

12 A. I don't know.

13 Q. Okay. So County vehicles have scraped the road
14 west of the gate?

15 A. Correct.

16 Q. Okay.

17 THE COURT: How long ago was that?

18 THE WITNESS: Had to be 35, 40 years ago. Can
19 I clarify that?

20 THE COURT: You may.

21 THE WITNESS: Back then, you could pay the guy
22 that was on the grader -- not these guys today; they
23 won't do that. But you could pay these guys on the
24 grader \$25 and you can get whatever you wanted to
25 scraped. I mean, that was just common knowledge

1 back then.

2 BY MR. NELSON:

3 Q. Do you know who scraped the road prior to 1973?

4 A. No. I mean, I'm sure I did some because of my
5 grandfather and working with him all the time.

6 THE COURT: What kind of scraper do you have?

7 THE WITNESS: I've got a tractor and the little
8 scraper that goes on the back.

9 THE COURT: A little box grader.

10 THE WITNESS: Yeah -- well, something similar
11 to that. Yes, sir.

12 MR. NELSON: Okay. No further questions.

13 MR. BARNES: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. BARNES:

16 Q. Did the -- when -- did there come a time,
17 Mr. Drew, that the Nettles came to your house and
18 asked you for an easement?

19 A. Yes, sir. Before they bought the property,
20 they did.

21 Q. And did you offer them any sites for an
22 easement?

23 A. Yes, sir.

24 Q. And, in fact, did they accept one site that you
25 offered initially for the location?

1 A. They did.

2 Q. And why did -- why did that easement not get
3 done?

4 A. Because they wanted me to pay for it.

5 Q. Pay for what?

6 A. Pay for the easement, building the road.

7 THE COURT: From where to where.

8 THE WITNESS: From --

9 THE COURT: On this exhibit, sort of point it
10 out to me.

11 THE WITNESS: And I'm the world's worst map
12 reader, so it'll take me just a minute.

13 THE COURT: There's Camp Road right here,
14 there's you gate. (Indicating)

15 THE WITNESS: Right. The easement was going to
16 be around here on an open fire line, and then down a
17 bank that used to come down kind of right there.
18 It's a road that was built on -- and the map will
19 show that lane in there. (Indicating).

20 BY MR. BARNES:

21 Q. And had Ms. Miller been to see you about access
22 to the property?

23 A. They did when they tried to sell the property,
24 when they -- after they had quieted the title and
25 all, she wanted access.

1 Q. And did you make an offer of an easement to
2 Norvia [phonetic]?

3 A. I did.

4 Q. And where was that?

5 A. That was on the property line between -- on the
6 edge of my property line all the way around to her
7 property.

8 Q. And was that the -- you're talking about your
9 property or Debra's property?

10 A. Debra's property. I'm sorry.

11 Q. And would you tell the Judge what -- how that
12 shaped up? I've got an exhibit --

13 THE COURT: Show it to us.

14 BY MR. BARNES:

15 Q. Let me show you Exhibit 4. Familiarize
16 yourself with it and tell the Judge how that -- what
17 easement you offered that they agreed on.

18 A. That Norvia and I --

19 Q. Yes, sir.

20 THE COURT: Who is Norvia?

21 MR. BARNES: Norvia Miller. She was the
22 plaintiff in the quiet title action.

23 THE COURT: Okay.

24 THE WITNESS: It would be on this property line
25 here, into there, right on the property line.

1 (Indicating)

2 BY MR. BARNES:

3 Q. And, Mr. Drew, did that easement ever get
4 accepted?

5 A. It did not.

6 Q. Your Honor, I'm going to reference in --

7 MR. BARNES: We've agreed on this, haven't we?

8 MR. NELSON: Yes.

9 MR. BARNES: Your Honor, I want to -- we've
10 agreed -- counsel and I have agreed on Defendant's
11 Exhibit 1. It's as a map, I think, taken in 1952.

12 THE COURT: An aerial?

13 MR. BARNES: Yes, sir. And if I may
14 approach --

15 THE COURT: Before you ask him questions on
16 Defendant's Exhibit 1, is that a river down at the
17 bottom?

18 MR. BARNES: That's the Edisto River.

19 THE COURT: Okay. And --

20 MR. BARNES: If I may approach.

21 THE COURT: Tell me where we are. Where is
22 Jacksonboro.

23 MR. BARNES: Jacksonboro would be down here.
24 And this is the Hope Plantation Road, this is Camp
25 Road, and that's Polite Road. And the plaintiff's

1 property would be here. (Indicating)

2 THE COURT: So if I'm coming from Walterboro to
3 Jacksonboro --

4 MR. BARNES: You'd turn right at the restaurant
5 on the west -- what we used to call West Light Road
6 or Naz Hope Plantation Road. 17 would be --

7 THE COURT: Right by where the restaurant just
8 burned?

9 THE WITNESS: Correct.

10 MR. BARNES: Right. You'd turn right and you'd
11 go down through the houses and --

12 MR. NELSON: May I approach, Your Honor?

13 MR. BARNES: And as you go on, you get into
14 Hope Plantation.

15 THE COURT: I see. That's now owned by George
16 Dean Johnson?

17 MR. BARNES: Yes, sir. And he's bought Hope.
18 And it goes on through Hope to Pon Pon, which George
19 owns, and then it runs through Bear Island, which
20 the State owns. And this -- what we've --

21 THE COURT: So the restaurant would be back up
22 here?

23 MR. BARNES: Yes, sir.

24 THE COURT: You turn off the main highway, go
25 down, and then turn up Camp Avenue. And that's

1 Polite going there and the gate's right here?

2 (Indicating)

3 MR. BARNES: Yes. Correct. And we think this
4 is the similar --

5 MR. NELSON: I have a large county map, if that
6 helps.

7 THE COURT: That's okay. I just wanted to know
8 where we were.

9 MR. BARNES: And, Judge, this is where we feel
10 the old Miller house was. And this is the lane that
11 went out to Camp that they probably used.

12 (Indicating)

13 THE COURT: Well, that's -- you got to have
14 proof on that now.

15 MR. BARNES: We're coming.

16 (Defendant's Exhibit No. 1 admitted in to
17 evidence.)

18 THE COURT: All right. You're looking at
19 Defendant's Exhibit 1 which is in evidence without
20 objection. And that's the one that everybody looked
21 at up here at sidebar.

22 Your question is what now?

23 (Defendant's Exhibit No. 5 marked for
24 identification.)

25 BY MR. BARNES:

1 Q. This is Plaintiff's [sic] Exhibit 5 that's been
2 agreed upon. Can you identify this picture,
3 Scooter?

4 A. Yes.

5 Q. What is that?

6 A. I think that's where the Millers used to go to
7 their property. It's a bank that goes straight down
8 that's shown on that previous aerial map.

9 Q. And in the aerial map, this would be a lane, no
10 trees?

11 A. Yes, sir.

12 MR. BARNES: We'd offer this in to evidence
13 without objection.

14 (Defendant's Exhibit No. 5 admitted in to
15 evidence.)

16 MR. BARNES: And, Your Honor --

17 BY MR. BARNES:

18 Q. Showing you Exhibit 3 without objection, is
19 this line that's drawn around in blue that's got R
20 Road --

21 A. Yes, sir.

22 Q. The R stands for?

23 A. Rediesel [phonetic].

24 Q. And is that the route that the Thornhills were
25 going that you mentioned earlier in your testimony?

1 A. That is their legal easement.

2 Q. Okay. And going back to Plaintiff's Exhibit 4
3 now, which is counsel's map, can you tell -- do you
4 have personal knowledge that the Rediesel company
5 has offered the Nettles a fourth easement site?

6 A. Yes.

7 Q. And can you turn to Exhibit 4 and describe it
8 so the Judge and everybody else can know what you're
9 talking about where?

10 MR. NELSON: Objection to hearsay until he
11 establishes that personal knowledge.

12 THE COURT: Is that an objection?

13 MR. NELSON: Yes, sir.

14 THE COURT: How do you know it?

15 THE WITNESS: How do I know that?

16 THE COURT: Yes, sir.

17 THE WITNESS: Because we've discussed it.

18 THE COURT: Who is we?

19 THE WITNESS: My attorney and I.

20

21 BY MR. BARNES:

22 Q. Who works for Rediesel down on the --

23 A. A friend of mine, Pat Lee.

24 THE COURT: Pat Lee told you?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. That's inadmissible
2 unless Mr. Lee is here.

3 MR. BARNES: Your Honor, because there was --
4 I'd like to get --

5 BY MR. BARNES:

6 Q. At any time did you consult an attorney in
7 Walterboro to prepare licensing agreements for Camp
8 Road west of the gate?

9 A. I did.

10 Q. And who was the lawyer?

11 A. Perry Buckner.

12 MR. BARNES: And what I did, Your Honor,
13 there's several -- three -- I think three or four
14 licensing agreements. And we numbered each page
15 separately in case there was an objection to any of
16 it.

17 And I don't think you -- I think you objected
18 to it when we met.

19 THE COURT: Licensing agreement?

20 MR. BARNES: Yeah. In other words, what
21 Scooter did -- Scooter for the Thornhills and the
22 other people using a part of Camp Lane, Perry
23 Buckner prepared licensing agreements giving the
24 people the authority to use the road, but clearly
25 saying that they were not perfecting an easement.

1 THE COURT: That's -- he can testify about
2 where he went and then show the document, not what
3 the lawyer said though. As a result of meeting with
4 the lawyer, were certain documents prepared? Is
5 that correct?

6 THE WITNESS: Yes, sir.

7 MR. BARNES: Yes.

8 THE COURT: What number exhibits are they?

9 MR. BARNES: This is Exhibit 2. It's one
10 agreement. And --

11 THE COURT: Any objection?

12 MR. NELSON: I haven't seen it yet.

13 THE COURT: Show him a copy.

14 MR. NELSON: He's a party to them, so I'm sure
15 he's going to establish --

16 THE COURT: No objection, is that what you're
17 saying?

18 MR. NELSON: Probably not after his testimony.

19 THE COURT: Well, probably -- either yes or no.

20 MR. NELSON: Objection at this time, yes, sir.

21 THE COURT: For what grounds?

22 MR. NELSON: They haven't been authenticated at
23 all. I don't know anything about the foundation of
24 these.

25 THE COURT: Well, he just said he went to his

1 lawyer to give permission to people to use the road
2 and this is the agreement that resulted from it.

3 MR. NELSON: I don't know which agreements he's
4 talking about. There's several here. Some might
5 have been done by Judge Buckner, some might have
6 been done by somebody else. I don't know which is
7 which.

8 THE COURT: He just identified Exhibit 2.

9 BY MR. BARNES:

10 Q. Who prepared Exhibit 2?

11 MR. NELSON: No objection to 2.

12 THE COURT: Thank you.

13 A. Perry Buckner.

14 Q. Now I'm handing you Exhibit 4. What is --
15 excuse me. What is 2; is it a licensing agreement
16 from what year to what year, if you'll recall?

17 A. This was early on -- early '80s.

18 Q. Do you see a date?

19 A. I do not right now.

20 Q. On the last page of Exhibit 4, does it have --
21 the dates weren't filled in -- but 1987 as a year?

22 A. It does.

23 Q. Okay. Now let me show you Exhibit 4, please,
24 which is another licensing agreement. Do you
25 recognize that?

1 A. Yes, sir.

2 Q. And who prepared that?

3 A. Perry Buckner.

4 Q. And what years did that cover, if you can tell?
5 What was the date it was executed?

6 A. This agreement made 1st day of January, 1998.

7 Q. All right. And then I show you Exhibit 6,
8 which is what?

9 MR. BARNES: We offer all of these, Your Honor.

10 THE COURT: Any objection to 4? That's another
11 permit agreement. Sir, any objection?

12 MR. NELSON: (Shakes head.)

13 THE COURT: All right. Without objection.

14 Move along.

15 (Defendant's Exhibit No. 4 admitted in to
16 evidence.)

17 BY MR. NELSON:

18 Q. And the next one is exhibit what, Scooter?

19 A. Exhibit 6.

20 Q. And what date does that state?

21 A. This agreement made the 28th day of August,
22 1998.

23 Q. And is that -- are these agreements involving
24 the same people using the road in each agreement or
25 different people?

1 A. It's got some different people because they
2 sold their interest -- certain people sold their
3 interest in certain years.

4 Q. And that was for the -- what was the name of
5 the hunting club?

6 A. Tupelo Bay.

7 Q. Okay. And let me show you --

8 MR. BARNES: We offer that exhibit, Your Honor.

9 THE COURT: 6.

10 Any objection?

11 MR. NELSON: No objection.

12 (Defendant's Exhibit No. 6 admitted in to
13 evidence.)

14 BY MR. BARNES:

15 Q. And Exhibit 9 is a permit agreement --

16 THE COURT: You're saying permit not permanent;
17 right?

18 MR. BARNES: Yes, sir.

19 A. This agreement made this 15th day of November,
20 2003.

21 Q. All right. And is that involving the same
22 hunting club or --

23 A. Yes.

24 Q. Okay.

25 MR. BARNES: We offer that, Your Honor.

1 THE COURT: And that's a permit to use what's
2 designated on the exhibit as Cabin Road that comes
3 right near the gate on the road in question, Camp
4 Avenue?

5 MR. BARNES: It's on Camp -- all these are on
6 Camp --

7 THE WITNESS: All are --

8 BY MR. BARNES:

9 Q. All these are permit agreements on Camp
10 Avenue --

11 A. Correct.

12 Q. -- inside the gate?

13 A. Correct.

14 Q. And I show you Exhibit 10 --

15 MR. BARNES: We offer 9.

16 MR. NELSON: That's fine.

17 MR. BARNES: Without objection.

18 (Defendant's Exhibit No. 9 admitted in to
19 evidence.)

20 BY MR. BARNES:

21 Q. Let me show you Exhibit 10.

22 A. This is the 12th day of September, 2008.

23 Q. And what is -- please state briefly, what is it
24 for?

25 A. It's a road permit agreement for Camp Lane

1 inside the gate.

2 Q. And to the best of your recollection, who
3 prepared all these exhibits, including the one you
4 have in your hand that we've marked?

5 A. Perry Buckner.

6 MR. BARNES: And Exhibit 11.

7 MR. NELSON: No objection, Your Honor.

8 MR. BARNES: It's another permit agreement,
9 Your Honor.

10 BY MR. BARNES:

11 Q. And what's the date on it?

12 A. 1st day of January, 2014.

13 Q. And who prepared that?

14 A. Perry Buckner -- no. Correct me. No, I'm
15 wrong. Parker, you did this one.

16 Q. For the record, who prepared that?

17 A. Parker Barnes, my attorney.

18 MR. BARNES: We'd offer that, Your Honor.

19 THE COURT: Any objection?

20 MR. NELSON: No, Your Honor.

21 (Defendant's Exhibit No. 11 admitted in to
22 evidence.)

23 MR. BARNES: Your Honor, we have Exhibit 2,
24 which is an aerial photograph. And I've got one for
25 you. It may be a lot more helpful than what's in

1 the book.

2 BY MR. BARNES:

3 Q. Can you identify --

4 MR. NELSON: May I look over his shoulder, Your
5 Honor?

6 THE COURT: Sure. Absolutely.

7 MR. NELSON: Thank you.

8 BY MR. BARNES:

9 Q. All right. Mr. Drew, take that map. And can
10 you tell me what intersection that is?

11 A. It's the intersection at Polite and Camp.

12 Q. And that's the Edisto River in the
13 background --

14 A. Correct.

15 Q. -- in the top right corner?

16 A. Yes.

17 Q. And this is Camp Lane that comes down. Does
18 this photograph show your gate?

19 A. I think you can see the gate right there, right
20 inside the -- (Indicating)

21 Q. And as soon as you come inside on Camp Lane,
22 what is -- where I'm talking about, these two pieces
23 of property there are what?

24 A. This is the 19-acre Poole tract that I own, and
25 this is 11-acre Poole tract that my wife owns.

1 Q. And how come it doesn't have any green on it?

2 A. The timber has been cut off of it.

3 Q. All right. And what does that look like today?

4 A. It's got timber on it and -- basically the same
5 thing, except grown timber.

6 Q. And a while ago we were talking about this
7 other road that runs through.

8 A. Correct.

9 Q. Can you show the Judge where that is on this
10 map, where it would come out.

11 A. That would be this road here, but it would come
12 back out this way to Hope Plantation Lane. And I
13 think this is the road that we call Cabin Road on
14 the permit agreement. (Indicating)

15 Q. And would you familiarize the Court with
16 what -- where your boundary is to all of this -- all
17 of what you claim you own, woodwise and
18 propertywise.

19 A. All the property?

20 Q. Yes. Just run your finger around the
21 perimeter.

22 A. Okay. Pretty much like this, all the way down
23 here, around and up through this way to here.

24 (Indicating)

25 THE COURT: How many acres is that?

1 THE WITNESS: About 750.

2 BY MR. BARNES:

3 Q. Okay. And what is the property used for now?

4 A. The property now is used for hunting
5 activities.

6 THE COURT: You lease it out for hunting?

7 THE WITNESS: Yes. Well, I sell memberships in
8 the place for hunting. And, also, we've got cows on
9 it.

10 BY MR. BARNES:

11 Q. And what's the name of this tract of land?

12 A. Deer Creek Ranch.

13 Q. Cattle ranch?

14 A. Yes.

15 Q. And when you do have cows -- have a heard,
16 where are the cattle?

17 A. They're out toward the front now. I planted a
18 lot of the rest of the place with the pine trees, so
19 the cows moved out front.

20 Q. And would that -- show the Judge where that
21 would be now.

22 A. The cows now are out in this area here and
23 around to these woods and -- (Indicating)

24 Q. And that's the gate?

25 A. That's the gate right here. (Indicating)

1 Q. And what would happen if the gate were torn
2 down and it became a county road?

3 A. The cows would be out.

4 Q. And what would --

5 A. It would be a liability on me getting hit with
6 cars and stuff like that.

7 Q. And how many of these deer stands or hog stands
8 do you have in this area?

9 A. Right there in that direct vicinity is about
10 three stands. There's numerous stands out in the
11 field. The field is wide open and, you know, people
12 hunting with high-powered rifles and all...

13 THE COURT: How long have you used it for a
14 hunting operation?

15 THE WITNESS: Most probably about seven or
16 eight years now.

17 THE COURT: And you hunt hogs and deer.
18 Anything else?

19 THE WITNESS: Duck. Anything they want to
20 hunt. Turkeys.

21 THE COURT: Where is your duck hunting?

22 THE WITNESS: My duck hunting is down towards
23 the creek. And we also have a place within, most
24 probably, about 400 yards of the road or the gate, a
25 green-tree area that we hunt duck in; about a

1 15-acre green-tree area.

2 BY MR. BARNES:

3 Q. And have you ever had any experience where you
4 had trespassers?

5 A. Yes, sir.

6 Q. And can you give the Judge kind of a
7 description of what you've been having there before
8 you --

9 A. Well, of course we'd have night hunters down
10 there sometimes, you know, people driving in to
11 shoot deer at nighttime. But most recently, we
12 had -- this was kids usually coming out of College
13 of Charleston that would come to the place and pick
14 mushrooms to get high on. I had numerous events
15 with that, people coming in on the place. They'd
16 even get to where they would come in at midnight or
17 during the night to pick mushrooms.

18 Q. And when did you -- there's a gate on this
19 property, your gate?

20 A. The gate on the road?

21 Q. Yes, on Camp Road.

22 A. Yes.

23 Q. And what's the purpose of -- why did you put
24 the gate up?

25 A. To keep people from coming down and picking

1 mushrooms, stealing hay, messing with the equipment,
2 whatever.

3 Q. What kind of equipment do you have?

4 A. I have tractors, I've got pumps, I've got
5 four-wheelers. Also, my members have numerous
6 things down there. We have boats and their
7 four-wheelers, and I've got a big truck that stays
8 down there, a dump truck. And that's pretty much
9 it.

10 Q. All right.

11 MR. BARNES: Thank you, Your Honor. We have no
12 further questions.

13 THE COURT: Anything else you need to ask?

14 MR. NELSON: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. NELSON:

17 Q. The 11-acre tract we were just looking at
18 that's in your wife's name, are there wetlands
19 throughout that piece of property?

20 A. Yeah.

21 Q. Okay. And any road -- these easements that
22 you're talking about or these alternate accesses
23 that you're talking about that you offered my
24 clients, do they not go through the wetlands?

25 A. Some of them do, some of them don't. They go

1 through the wetlands, but that bank is already
2 built. It's -- it crosses the wetlands. So I
3 don't -- it goes through the wetlands, yeah.

4 Q. And you're talking about all these permit
5 agreements that you've entered into. The Nettles
6 were not a party to any of those; correct?

7 A. No.

8 Q. Okay. And then I want you to look at this
9 Defendant's Exhibit 2 and --

10 A. Uh-huh.

11 Q. I'll hold it up if you'd like me to. Do you
12 know when that was taken?

13 A. I think somewhere around '85.

14 Q. How did you find that map?

15 A. I paid a guy to -- he was flying an airplane
16 and I paid him to take the pictures for me.

17 Q. Okay. So you contracted to have that picture
18 taken yourself?

19 A. Correct.

20 Q. And then were you testifying a second ago that
21 if the gate -- if you were forced to take down the
22 gate or to open the gate that your cows could get
23 out?

24 A. Yeah.

25 Q. So the cows roam freely all the way up to the

- 1 gate?
- 2 A. Correct.
- 3 Q. Okay. So that's really the only way in or out
- 4 of there?
- 5 A. The only way in or out?
- 6 Q. Right, is through that gate.
- 7 A. Not -- no.
- 8 Q. Why couldn't the cows get out another way?
- 9 A. I've got it fenced.
- 10 Q. Okay. But you have cows on your property right
- 11 now?
- 12 A. I do.
- 13 Q. Are they're yours?
- 14 A. Yes.
- 15 Q. How many?
- 16 A. Six.
- 17 Q. Were they there three years ago?
- 18 A. No. I had more than that in there three years
- 19 ago.
- 20 Q. Okay. Is there any time in the last few years
- 21 that you've had no cows on the property?
- 22 A. Yeah.
- 23 Q. How long ago was that?
- 24 A. Most probably about six months.
- 25 Q. And then you know that there was another

1 lawsuit filed in relation to my clients' property?

2 A. Which one are you talking about?

3 THE COURT: Be specific.

4 Q. Are you aware of a woman named Ms. Bessenger
5 who filed a lawsuit against the my clients?

6 A. I am.

7 THE COURT: I'm sorry. Ms. Bessenger filed a
8 lawsuit against whom?

9 MR. NELSON: Against the Nettles. That's the
10 reason this case is so old, Your Honor, is this one
11 kind of got put on a stay until that one was
12 resolved.

13 THE COURT: So Ms. Bessenger sued your clients?

14 MR. NELSON: Yes, sir. I've got the final
15 order from that case, if you'd like to see it.

16 THE COURT: Okay.

17 BY MR. NELSON:

18 Q. If you'll look here at number 4, do you see the
19 notation that says Parcel A?

20 A. Yes.

21 Q. Would you agree with me that Parcel A is in the
22 shape of a square with a tiny panhandle on top?

23 A. According to this map?

24 Q. Yes.

25 A. Yes.

1 Q. Are you aware of what portion of property

2 Ms. Bessenger sued over?

3 A. I am.

4 Q. And which portion is that?

5 A. That would be the panhandle, I think, that
6 you're talking about. Not the square of the
7 property, but the one that actually touches the
8 road.

9 Q. Okay. And that lawsuit started before it
10 was -- before it was even started, there was a
11 survey done, are you aware of that, by Island
12 Surveying?

13 A. Yes.

14 Q. And you paid for that survey; correct?

15 A. Yes.

16 Q. Okay. And you were actually the one who
17 contacted Ms. Bessenger and told her that you
18 thought that she had title to this property; is that
19 correct?

20 A. I don't know that I did that.

21 Q. Okay. Did you contribute anything to that
22 lawsuit --

23 A. As far as --

24 Q. -- moneywise?

25 A. No, I did not.

1 Q. Okay. Did you contribute -- did you give any
2 information, witnesses, anything like that?

3 A. I wasn't called as a witness. No.

4 Q. Okay. You just paid for the survey that
5 Ms. Bessenger used?

6 A. Yes.

7 Q. Okay.

8 MR. NELSON: Nothing further.

9 THE COURT: All right. You may step down.

10 MR. GRIFFITH: Judge.

11 THE COURT: I'm sorry. I almost forgot about
12 you.

13 MR. GRIFFITH: I know it. I'm sitting over
14 here being very quiet.

15 RECROSS-EXAMINATION

16 BY MR. GRIFFITH:

17 Q. You mentioned a few minutes ago, Mr. Drew, that
18 the County maintained certain parts of Camp Road; is
19 that correct?

20 A. They maintained parts outside the gate, yes,
21 sir.

22 Q. All right. So the part that would be to the
23 east of the gate was maintained by the County; is
24 that correct?

25 A. Correct.

1 THE COURT: And is it maintained as of today?

2 THE WITNESS: East of the gate, yes, sir.

3 BY MR. GRIFFITH:

4 Q. And, also, Polite Road was maintained by the
5 County; is that correct?

6 A. Correct.

7 Q. Okay. And that would be on a regular basis; is
8 that correct?

9 A. Correct.

10 Q. Now, you testified, I believe, that they did
11 not maintain -- the County did not bring their
12 scrapers to the west of the gate; is that correct?

13 A. Correct.

14 Q. So where Camp Road came and then made a right
15 into Polite, that was maintained by the County;
16 correct?

17 A. Correct.

18 Q. The only part that was maintained west of the
19 gate or west of Polite Road would be that you
20 maintained since you owned it; correct?

21 A. Correct.

22 Q. And that you maintained it when your
23 grandfather owned it; is that correct?

24 A. Correct.

25 Q. And you said sometimes that the motor grader

1 from the County would come by; correct?

2 A. Yes, sir.

3 Q. And you'd have to flag him down though and get
4 him to come grade it; is that correct?

5 A. Correct.

6 Q. And you'd also have to pay him; correct?

7 A. Yes, sir.

8 Q. You were not paying the County; correct?

9 A. That's correct.

10 Q. And other than that, the County has not
11 regularly maintained or maintained Camp Road to
12 the west of the gate; is that correct?

13 A. That's correct.

14 MR. GRIFFITH: That's all. Thank you, Judge.

15 THE COURT: All right.

16 MR. BARNES: No further questions.

17 MR. NELSON: He just prompted one question,
18 Judge.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. NELSON:

21 Q. Today does the County scrape all the way up to
22 the gate?

23 A. No.

24 Q. Where do they scrape to?

25 A. To Polite Road.

1 MR. NELSON: No further questions.

2 THE COURT: All right. You may step down.

3 Next witness.

4 MR. NELSON: I'm going to call Mr. Herman
5 Miller.

6 THE COURT: Mr. Miller, come right up here for
7 me, please.

8 HERMAN MILLER

9 being first duly sworn, testified as follows:

10 THE WITNESS: I will.

11 THE COURT: Thank you. Have a seat for me,
12 please. Give us your full name and spell your last.

13 THE WITNESS: My name is Herman Miller,
14 M-I-L-L-E-R.

15 THE COURT: Welcome to Bamberg, Mr. Miller.

16 THE WITNESS: Thank you.

17 DIRECT EXAMINATION

18 BY MR. NELSON:

19 Q. Mr. Miller, I'm handing you exhibit --
20 Plaintiff's Exhibit 4. Do you recognize that
21 general layout?

22 A. Do I recognize? Yes, generally.

23 Q. And do you recognize a parcel on there that
24 your family used to own?

25 A. Yes. But --

1 Q. Who in your family -- I'm sorry.

2 THE COURT: Hold on. He's saying something.

3 A. It don't look like this. The property don't
4 look like this here.

5 THE COURT: Which one do you claim his family
6 owns?

7 MR. NELSON: A.

8 THE COURT: Let me show it to you.

9 THE WITNESS: A?

10 THE COURT: Right there. (Indicating)

11 THE WITNESS: Oh, right here. I can't hardly
12 see it. Okay. I see it now. I see it now, Parcel

13 A. Okay.

14 THE COURT: He's identified it.

15 BY MR. NELSON:

16 Q. Okay. So do you recognize the area,
17 Mr. Miller?

18 A. Right.

19 Q. And you see where Polite Road is and Camp Lane
20 is?

21 A. Right.

22 Q. Who in your family used to own that property?

23 A. Parcel A?

24 Q. Correct.

25 A. My great, great-grandmother.

1 Q. What was her name?

2 A. Amie Simmons.

3 Q. Okay. And do you recall when she passed away?

4 A. It was in the 1800s. Somewhere in the 1800s.

5 Q. So you never met her?

6 A. No.

7 Q. Yes, sir. And at some point -- she didn't have
8 a will. Are you aware she had a will when she died?

9 A. No.

10 Q. Did you inherit a piece of this property at
11 some point?

12 A. I -- only reason why I got involved in that
13 property because it was what you call an heirs
14 property. See, they set it up like that so no one
15 individual would own the property.

16 The property was in my father's name. But my
17 uncle was living in New York, and my father passed,
18 so my uncle decided he would come and take the
19 property out of my father's name and put it back in
20 my great-grandmother's name. That's why the
21 property was in Amie Simmons' name.

22 Q. What year were you born?

23 A. 1936.

24 Q. Do you have any recollection of any of your
25 family members ever living on that property?

1 A. I was born on that property.

2 Q. You were physically born on Parcel A?

3 A. Physically born on that property.

4 Q. Okay. Did you ever live there?

5 A. When I was -- yeah. Yes.

6 Q. For how long?

7 A. I went to school there. I was in the --

8 started in school there. And when I went in the

9 military, I left from there and went in the service.

10 That was in '53.

11 Q. Okay. So your entire childhood life, you lived

12 on Parcel A?

13 A. Right.

14 Q. And who else lived with you?

15 A. My sister, my father, my mother, my aunt, my

16 cousin, my grandmother.

17 Q. And how did y'all get to and from your house?

18 A. I mean, the -- it was no problem. The road was

19 right there. Camp Lane -- that was Camp Lane back

20 in the day. Camp Lane was right there. All you had

21 to do was access Camp Lane. (Indicating)

22 Q. Okay.

23 A. And this thing here about Polite Road, Polite

24 Road was never there. That was never a road. That

25 was a wagon road. Do you know what I mean? And

1 just later on in the years, they made it into a road
2 where you can access by car or something like that.
3 But that was just a wagon road.

4 Q. Do you recall if Polite Road was ever called
5 Higgins Lane?

6 A. No.

7 Q. Okay. So y'all just -- do you recall when the
8 gate went up?

9 A. I wasn't here when the gate went up. I wasn't
10 living in Jacksonboro.

11 Q. You live in this are now though; correct?

12 A. Right.

13 Q. Is your house on this map that you're holding?

14 A. My house? I don't think so. It's not marked
15 where my house would be on there unless -- all
16 right. This would be Mr. Nettles' property here,
17 this would be older sister's property there, and
18 that would be my property there. So it's not
19 marked. (Indicating)

20 Q. Okay. So these properties you're talking
21 about, are they the long rectangles just to the
22 right of Parcel C?

23 A. Right.

24 Q. And you say the Nettles, do they own more than
25 one property in this area?

1 A. Well, they bought this property here that --
2 this was my sister's property, Norvia. And this was
3 my other sister's property, and this was mine here.
4 (Indicating)

5 Q. Okay. Are you talking about the three
6 rectangles just to the right --

7 THE COURT: He is.

8 A. Right.

9 MR. NELSON: It's hard to get a record on this
10 one, Judge.

11 THE COURT: It is. But it's to the right of
12 275.00, acreage equals 7.

13 MR. NELSON: At 002.

14 THE COURT: Correct.

15 BY MR. NELSON:

16 Q. So you live in one of those three rectangles,
17 the Nettles live in one of those three rectangles?

18 A. Right.

19 Q. Okay. So after you turned 18 or became an
20 adult, have you kind of come and gone from this
21 property --

22 A. Not --

23 Q. -- or this area?

24 A. I would come to Jacksonboro on the weekend or
25 something like that or come to visit my father or

1 something like that. But as far as me staying on
2 the property, no, staying on this rectangular
3 property.

4 Q. Okay.

5 A. Because this property, this 26 or 27 acres down
6 here, that was stepped on so much. It was stepped
7 on by all kind of people. Stepped on by Kaiser,
8 Kaiser stole Pootie's [phonetic] from it. That
9 originated -- the land was something like 242 acres
10 or -44 acres. And bit by bit, they took it from
11 him, you know, because there wasn't nobody there to
12 protect the property, because my father, he wasn't
13 there, and the only people there was my grandmother
14 and great aunt. So they did what they want to do
15 with the property; they claim it when it wasn't
16 theirs. That's just how it was.

17 Q. Okay. Tell me how old you were when you moved
18 away permanently?

19 A. I was 17 when I went in the military.

20 Q. Okay.

21 A. That was 1953.

22 Q. When did you return permanently?

23 A. 1996.

24 Q. And then between those two years, you just
25 visited?

1 A. That's all.

2 Q. Okay. Do you recall whether the County ever
3 did any maintenance on the road west of where the
4 gate now is?

5 A. Yes. Yeah.

6 Q. How frequently did you see that?

7 A. Normally they show up when it's going to rain,
8 and that might be every two months, three months.
9 It all depends.

10 Q. And did you notice this being done when you
11 lived on the property up until you were 17?

12 A. Right.

13 Q. Did you ever notice it any time you were back
14 visiting?

15 A. No.

16 Q. Okay. And then when you -- by the time you
17 moved back in '96, the gate was up; correct?

18 A. It wasn't a gate up there now. All it was was
19 a chain across the road. You know what I mean?

20 Q. Okay.

21 A. It wasn't no gate, per se.

22 Q. Is there a gate now?

23 A. Yeah.

24 Q. Do you know how long that's been there?

25 A. A few years. I don't know, maybe three, four

1 years.

2 Q. Okay. And before that, you think it was a
3 chain?

4 A. It was a chain, yeah.

5 Q. Do you know how long that chain has been there?

6 A. No.

7 Q. Is there any other way to get to the Nettles'
8 property other than Camp Lane?

9 A. Yeah. Yeah. You can fly a helicopter, walk
10 through the woods. There ain't no road other than
11 Camp Lane. That's the only road.

12 The other road that comes up, that's on that's
13 on West Vego [phonetic] property that goes into West
14 Vego or West Virginia meets or something like that.
15 That's not -- that ain't got nothing to do with --
16 couldn't even get to that property because you got
17 to go through someone else property.

18 Q. Are you talking about the road that Mr. Drew
19 was just talking about?

20 A. Right.

21 Q. Okay.

22 A. You got to go through somebody else property to
23 get to that property. That property had belonged to
24 Kaiser. Now some guys bought it now and got it in
25 the swamp area where they got a little hunting club

1 or whatever you call it.

2 They go around the back part of it and come in,
3 because the road that they used to go to the Camp,
4 he blocked it off. You know, he stopped them from
5 going through the lane, Camp Lane, and now they have
6 to go around, you know. Yeah. That's how that was.

7 Q. And is there a barn near the Nettles' property
8 on that map?

9 A. Right, there is. Yes.

10 Q. Can you indicate to the Judge where that barn
11 is?

12 A. We just barely can see this property. But the
13 barn sits back here. And it sits right in the
14 middle of Camp Lane at the time because, like I
15 said, Scooter grandfather and Kaiser got into some
16 type of dispute, because they were land-grabbers;
17 that's all they was. And they put a barn right in
18 the middle of the road, so they had to go around the
19 barn in order to access their property.

20 Q. Okay. Do you see on this map where it says
21 Camp Avenue and has a circle around the words Camp
22 Avenue?

23 A. Right.

24 Q. Are you pointing that the barn is just to the
25 right of that circle?

1 A. The barn is just to the right of that circle.
2 There's two barns on that road now.

3 Q. Okay.

4 A. There's two of them; the first barn, that was
5 owned by Kaiser. And the both of them built the
6 same. The next one was built by Sylvester
7 grandfather. They all look the same.

8 Q. When you were a child, how did you get to
9 school?

10 A. School bus.

11 Q. Where did it pick you up?

12 A. At the barn -- not at the barn. Right there at
13 the barn, really, because they turn around at the
14 barn. That's where they turn around at.

15 Q. Okay. And, Mr. Miller, when you lived there,
16 can you describe the course that was used to get
17 from Camp Avenue to your actual house, not to the
18 property. But where on the property did you enter
19 and how did you get to the house?

20 A. All right. Coming from Hope Plantation Road to
21 the house?

22 Q. Yes, sir.

23 A. Okay. Well, you turn in the lane just like you
24 turn in the lane now, normally, a right-hand turn.
25 You drive through the lane and through -- well, the

1 gate wasn't there. The gate wasn't there at the
2 time.

3 So you drive and when you pass through the
4 gate, there's a curve. Right? And right on that
5 curve, they had two driveways; one driveway was
6 further up like on -- they say the slaves built that
7 bank. Called it a bank, you know. And that's the
8 way they used to drive to their house. Or when it
9 dries -- because they have a rainy season back then.
10 Back in the day it, used to flood. They'll come up
11 right by the barn where the barn at and access the
12 road.

13 Q. Okay. So it was -- you entered your property
14 along the western side, not the eastern side of Camp
15 Road, when you say near the barn?

16 A. Right. On the eastern side of -- on the -- no.
17 That would be on the south side of Camp Road.

18 Q. I'm sorry. On the northern side of the
19 property. You're talking about the northwest or the
20 northeast --

21 THE COURT: You've got me confused now and him.
22 Come on.

23 BY MR. NELSON:

24 Q. Let me try and ask it this way: Mr. Miller, as
25 you drive down Camp Avenue, if the gate was not

1 there and you went to the Nettles' property, that's
2 going to be on the left?

3 A. Right.

4 Q. So you're going to have the close left side and
5 the far left side. You're going to hit the first
6 corner of their property and then go along the edge
7 of their property and then hit the far left corner
8 of their property?

9 A. Right.

10 Q. Where did you turn in, in relation of that
11 strip?

12 A. At the first corner.

13 Q. The first corner?

14 A. Would be the east side of that property.

15 THE COURT: Would be down that bank?

16 THE WITNESS: That would be down that bank.

17 THE COURT: And when it was dry, you'd go down
18 a little further and go down a little lane in there?

19 THE WITNESS: Right.

20 THE COURT: Who told you the bank was built by
21 the slaves? That's interesting.

22 THE WITNESS: That's my -- that was the word my
23 grandmother says.

24 THE COURT: What did they build it for?

25 THE WITNESS: Access, I imagine. Because back

1 there -- back in the back, back there --

2 THE COURT: It's wet and all?

3 THE WITNESS: Wet. And they used to plant rice
4 and whatnot.

5 THE COURT: They went down that bank to get
6 back to the wetlands?

7 THE WITNESS: I imagine.

8 THE COURT: That's interesting.

9 BY MR. NELSON:

10 Q. And then -- I'm almost finished. Where the
11 Nettles live now, not the property that's the
12 subject of this lawsuit, but the one that's
13 neighboring with yours --

14 A. Correct.

15 Q. Is there a fire lane that goes along the back
16 side of y'all's properties?

17 A. Right.

18 Q. Okay. Is it anything more than the fire lane?

19 A. That's all it is.

20 Q. Okay. Could you drive vehicles down it or
21 anything?

22 A. No.

23 Q. What is the condition of it when it rains?

24 A. Get about two foot of water maybe.

25 MR. NELSON: No further questions.

1 THE COURT: So you haven't seen the County
2 scraper since you left in 1953 to go in the service.

3 THE WITNESS: Not beyond that gate now.

4 THE COURT: But they still scrape in front of
5 your house today though?

6 THE WITNESS: Right.

7 THE COURT: Then turn up Polite?

8 THE WITNESS: Well, see, they made Polite
9 Road -- they got a second lane now, a curve. And
10 Polite Road only comes out and tee into Camp Lane.
11 But now they make it like a curve-like, you know.

12 THE COURT: And they scrape Polite and Camp up
13 to the curve?

14 THE WITNESS: Right. Right.

15 THE COURT: Mr. Barnes.

16 MR. BARNES: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MR. BARNES:

19 Q. Mr. Miller, I want to show you Exhibit 3. And
20 you were asked a while ago, is this the other road
21 that the other people used to come back here?

22 A. No.

23 Q. Do you know of a road that goes through here
24 like that?

25 A. I know of a road that was used to haul log out

1 of there. Logs, not no access to nobody property.

2 Q. Let me show you Exhibit 2. Where does this
3 road go if, you know, this is the gate up here?

4 A. I got to know where I'm at. I don't even know
5 where I'm at now.

6 THE COURT: Show him where Camp Road and Polite
7 are.

8 Q. This is Camp and Polite right there.
9 (Indicating)

10 A. Camp and Polite Road right there?

11 Q. This is Camp and this is Polite. And that's
12 the gate right there. (Indicating)

13 A. Okay.

14 Q. And you come inside the gate and somewhere in
15 here is y'all's -- now the Nettles' property. And
16 this road -- doesn't this road go the all the way
17 around --

18 A. All that was logging road.

19 Q. Is this the same approximate route shown on
20 Exhibit 3?

21 A. Could be approximate route.

22 Q. Okay.

23 A. It comes out right by the barn.

24 Q. All right.

25 A. But it was a logging road; that wasn't not no

1 main road.

2 Q. Now, when did your family move --

3 A. Off of that property?

4 Q. Yes.

5 A. '52, '53.

6 Q. All right, sir.

7 THE COURT: That's when you left to go in the
8 service, in '53.

9 THE WITNESS: Right.

10 THE COURT: So they all left at the same time?

11 THE WITNESS: No. They moved up road where --
12 moved up the road to that 12 acres. That's 12
13 acres; right? And my mother and my sister, they
14 split it up three ways, four acres apiece.

15 THE COURT: All right, sir.

16 THE WITNESS: Four acres for me and four acres
17 for my two sisters.

18 BY MR. BARNES:

19 Q. And looking at Exhibit 3, these lots right here
20 is the 12 acres you're talking about?

21 A. The 12 acres.

22 Q. And today, isn't it true the Nettles own -- has
23 bought this from the Bank of America at a
24 foreclosure sale and the Nettles own that last strip
25 up there?

1 A. Yeah.

2 Q. And the fire line you're talking about runs
3 down here? (Indicating)

4 A. Right.

5 Q. And you said that you couldn't drive a vehicle
6 down it?

7 A. No.

8 Q. They drive a tractor with a disc cab behind it
9 up and down there, don't they?

10 A. Or a bulldozer.

11 Q. A bulldozer or tractor?

12 A. They got a tractor, a bulldozer; any one.
13 They'll get through there. But you can't drive no
14 car through there now.

15 Q. Right. But how wide is the -- on the --

16 A. On the tractor?

17 Q. On the tractor. Approximately.

18 A. Approximately about eight feet, seven feet.

19 Q. You sure?

20 A. I don't know.

21 Q. Okay.

22 THE COURT: How many discs? Eight or one of
23 those wide discs?

24 THE WITNESS: I don't know.

25 BY MR. BARNES:

1 Q. But the Rediesel Corporation maintains that,
2 correct, the fire line?

3 A. Yeah, I guess.

4 Q. And that's not your land, that's Rediesel land?

5 A. Right.

6 Q. And that come from Kaiser?

7 A. Right. Right. Right.

8 Q. Okay. And when -- didn't you and your father
9 help Mr. McMillan build Camp Road out to the island
10 close to Deer Creek?

11 A. Not me now; I was too small. My father did.
12 My father and another guy, you know, had drove a
13 truck while they were hauling -- going through the
14 swamp to finish up Deer Creek.

15 Q. Okay.

16 A. Yeah. But not me; I was too young for that
17 kind of activity.

18 Q. All right. And isn't it true now that it's
19 hard to find the ruins of Amie Simmons' house?
20 Isn't it just about rotted and gone?

21 A. It was never there.

22 Q. No. I'm talking about where it was when the
23 school bus used to come in there.

24 A. No. They still can find it, you know. It's
25 right there.

1 Q. Is it standing up? Got a roof on it?

2 A. Oh, ain't no house there now. But you can see
3 a pecan tree. All that was, you know --

4 THE COURT: You can see the home spot, but you
5 can't see the house.

6 THE WITNESS: Right. No.

7 BY MR. BARNES:

8 Q. And nobody has lived there since 1954?

9 A. I don't know.

10 THE COURT: You don't know or no they haven't?

11 THE WITNESS: I don't know really.

12 Q. Isn't it true, Mr. Miller, after Scooter --
13 Mr. Drew put the gate up, isn't it true that the
14 County never scraped the road again?

15 A. No. No. They never went back there because
16 the gate never was open.

17 Q. Let me --

18 MR. BARNES: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. BARNES:

22 Q. Remember when we took your -- Mr. Nettles [sic]
23 took your deposition?

24 A. Uh-huh.

25 Q. And on page 33 at lines 17 through 20, is what

1 I want --

2 A. Page 33?

3 Q. Yes, sir. You're going to have to look at it
4 right here for me, if you will, please.

5 A. I don't have 33. I only go to 22 on here.

6 Q. All right. Well, I've got the deposition.

7 A. I only go to 22. This was the first
8 deposition; right?

9 Q. Yes, sir.

10 A. This is the one you gave in --

11 Q. Yeah -- no. Mr. Nettles did it -- did the
12 deposition. I was there, but Mr. Nettles was the
13 one asking you questions to start with.

14 A. No.

15 MR. NELSON: Mr. Nelson.

16 MR. BARNES: Excuse me. I'm sorry.

17 THE COURT: Mr. Nelson was asking you
18 questions.

19 THE WITNESS: Okay. Okay. I'll go along with
20 that. But I thought he said Mr. Nettles.

21 THE COURT: He did.

22 MR. BARNES: I did. I apologize.

23 BY MR. BARNES:

24 Q. And looking at your deposition, this says:

25 Deposition of Herman Miller, June 7th, 2011,

1 10:18 a.m. And I'll read just to you, on line 33
2 you were asked:

3 What kind of maintenance were you aware of?

4 They used to scrape it. You know, they used to
5 come in and scrape the road.

6 Who did?

7 The County.

8 Where did you ever see that done?

9 It was done quite frequently. They used to say
10 every time the scraper come, it rains. They hate to
11 see the scraper come in there because they said it
12 rained every time the scraper would come in.

13 When you say scraping --

14 That's the motor graders. They come to work
15 the road.

16 Okay. Did you ever notice a time that was not
17 being done anymore?

18 Answer: After the gate was put up there, I
19 guess, they didn't go in there.

20 THE COURT: That's what he just said.

21 MR. BARNES: Okay.

22 THE COURT: Isn't that what you just said?

23 THE WITNESS: I --

24 MR. BARNES: I missed. I'm sorry, Your Honor.

25 No further questions.

1 THE COURT: They said he hadn't seen the
2 scraper since he left for the service in '53.

3 Isn't that what you told him?

4 THE WITNESS: That's right.

5 THE COURT: I heard it.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Griffith.

8 REDIRECT EXAMINATION

9 BY MR. GRIFFITH:

10 Q. And I heard you too, Mr. Miller. Since '53,
11 you've not seen it scraped because you've not been
12 back there; correct?

13 A. Yes.

14 Q. And before '53, you said you saw some scraping
15 going on; is that correct?

16 A. Right.

17 Q. You don't know what the arrangement was,
18 whether there was a payment made to scrape the road
19 or not, do you?

20 A. No, I don't know nothing about that.

21 Q. And you don't know -- if the County came in
22 there, you don't know if it was -- the County came
23 down there on a regular basis, they came after the
24 rain; correct?

25 A. It usually rain after they come.

1 Q. Oh, okay. I'm sorry. I thought you said they
2 came because of the rain.

3 THE COURT: You know why that is; because it
4 would rain and it's all pretty up. And as soon as
5 it gets pretty, it rains on them.

6 MR. GRIFFITH: Just like when I wash my car,
7 Judge; it's going to rain.

8 THE COURT: Sort of like that?

9 THE WITNESS: That's right.

10 BY MR. GRIFFITH:

11 Q. But, at any rate, you don't know what the
12 arrangement was, whether it was being paid --
13 somebody was paying the grader man to come out
14 there, do you?

15 A. Right.

16 MR. GRIFFITH: No further questions.

17 THE COURT: Anything else by anybody?

18 MR. NELSON: No, Your Honor.

19 THE COURT: You may step down.

20 May we release him from his subpoena?

21 MR. NELSON: Mr. Nettles gave him a ride, so --
22 but he is released, yes.

23 THE COURT: But you're welcome to go outside
24 and get warm.

25 THE WITNESS: Thank you, Judge.

1 THE COURT: And if you come back in, come right
2 back in that door. Thank you and nice having you in
3 my courtroom. Thank you for service to the country.

4 THE WITNESS: Yes, sir.

5 THE COURT: Next witness, please.

6 MR. NELSON: I'm going to call donna Thomas.

7 THE COURT: Everybody is shaking their head.
8 She's not here.

9 MR. NELSON: Heather Landry.

10 THE COURT: Ms. Heather Landry.

11 HEATHER LANDRY

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you. Please give us your
15 full name and spell your last.

16 THE WITNESS: Heather Renee Landry,
17 L-A-N-D-R-Y.

18 DIRECT EXAMINATION

19 BY MR. NELSON:

20 Q. Ms. Landry, do you recognize me?

21 A. I do. I remember you.

22 Q. You remember our deposition?

23 A. Yes, sir.

24 Q. And do you recall I had asked you some
25 questions about records that were kept and things

1 like that?

2 A. I recall something about the GIS maps.

3 Q. Okay. And --

4 THE COURT: Who do you work for, Ms. Landry?

5 THE WITNESS: I'm a freelance court reporter.
6 I no longer work for the County.

7 THE COURT: And what did you do for the County?

8 THE WITNESS: I was the IT director.

9 BY MR. NELSON:

10 Q. What were your general job duties?

11 A. As the IT director, it was basically to oversee
12 staff functions, development of policy and
13 procedures, budget and procurement. GIS was also
14 housed under the technology department, so I had
15 some oversight over that as well.

16 Q. Okay. And when you said GIS, you're talking
17 about County records to some extent?

18 A. County maps, geographic information systems.

19 Q. All right. And y'all had a lot of information
20 on the various roads and whatnot throughout the
21 county; correct?

22 A. We had a -- what we refer to as a shape file or
23 a line file that represented the roads in the
24 county.

25 Q. Okay. Do you recall using the term database

1 record or data layer?

2 A. Data layer would be a term that I would use.

3 Q. Would you describe a data layer to the Judge.

4 A. Well, in a geographic information system, you
5 have certain features called points, lines or
6 polygons that represent a real-world feature, such
7 as a road, and associate it with that. You have
8 something that's called an attribute table, and what
9 that attribute table contains is descriptive or
10 qualitative information about that line or that
11 point or that polygon.

12 Q. Okay. How far back would that information go?

13 A. Oh, I don't know. We didn't -- the County
14 didn't implement a GIS system until, I want to say,
15 2005, maybe. And as far as the -- it depends on
16 what layers you're talking about.

17 Parcel layers, I mean, they maintain it on
18 paper format for I don't know how far back. As far
19 as road files representing roads in the county, the
20 911 coordinator with the sheriff's department
21 actually maintains those files, and they just shared
22 it with us. So I don't know how far back those
23 files go.

24 Q. Okay. Can you describe the difference between
25 a road file and a data layer?

1 A. They're the same thing.

2 Q. Okay.

3 A. It's the same thing. I mean, if you're talking
4 in terms of a geographic information system, there's
5 various terms that can be used to describe it. Some
6 people call it a data layer, some people call it a
7 shape file, some people will call it a geodatabase.
8 They're used interchangeably sometimes. So...

9 Q. Do you recall using the term mylar?

10 A. Yes.

11 Q. Can you explain what a mylar is?

12 A. A mylar is -- I don't know what kind of
13 material it is. But that's how they -- before
14 implementing the geographic information system,
15 that's how the County maintained their tax parcel.
16 And it's basically a large sheet of paper. I don't
17 know how big it is, maybe 30 by 30 or something.
18 And it was hand-drawn for when a parcel would be
19 combined or a tax parcel would be combined or split
20 or what have you, it would be maintained on that
21 paper format.

22 Q. Okay. And how far back would mylars go?

23 A. I don't know. Before my time.

24 Q. Do you think it was --

25 THE COURT: She doesn't know.

1 MR. NELSON: Okay.

2 BY MR. NELSON:

3 Q. Do you --

4 THE COURT: She can't guess or speculate.

5 Q. Do you recall seeing mylars -- do you think it
6 was something that was fairly recent?

7 A. Regarding what?

8 Q. When the mylars started being used?

9 A. No. That predated the geographic information
10 system. The geographic information system
11 ultimately replaced the use of the mylars.

12 The Assessor's Office had the responsibility of
13 maintaining those mylars, and they go back I don't
14 know how many years. It was before my time, like I
15 said.

16 Q. And would every road have a mylar?

17 A. I'm not sure how to answer that question. I
18 mean, the purpose of the mylar was to maintain the
19 boundaries of the tax parcels that the Assessor's
20 Office used for assessment and taxing purposes. And
21 on those mylars, you'd have additional reference
22 information such as roads.

23 So I don't know if I'd say there would be a
24 mylar for every road. The purpose of the mylars was
25 to document the location and the boundaries of tax

1 parcels. And where they could, they would draw --
2 you would see roads on those mylars.

3 Q. Okay. Would every road have a, quote, road
4 file?

5 A. I don't know about that. I'm not sure what
6 you're asking regarding that.

7 Q. Well, you mentioned one of the main things that
8 y'all looked at was either called a data layer or a
9 road file.

10 A. Now, mylars I didn't handle, if you're talking
11 about a geographic information system. I think the
12 911 coordinator would have to answer that for you.
13 To my knowledge, they had a line segment that
14 represented all the roads that existed within
15 Colleton County, and they maintained that file and
16 shared it with us. I could only assume --

17 THE COURT: Please don't speculate. If you
18 know, you know; if you don't, you don't. Don't
19 speculate, please.

20 THE WITNESS: Okay.

21

22 BY MR. NELSON:

23 Q. Did you work with Donna Thomas?

24 A. We coordinated on some things on occasion.

25 She's the one who shared the road files with the GIS

1 department.

2 Q. Okay. And how would she transfer these road
3 files to you?

4 A. E-mail it.

5 Q. What was the type of file?

6 A. Shape file.

7 Q. And that could only be viewed using a certain
8 software?

9 A. Correct.

10 Q. And what were your dates of employment?

11 A. I first came on with the County in 2005 as a
12 GIS manager. I left for a little while, came back
13 in 2008 as the database administrator, and then in
14 2010 I was promoted up to the technology director.

15 Q. Okay. And do you recall when this lawsuit was
16 filed? Did you hear about it?

17 A. It's been a while ago. I didn't know of it
18 even when I did the deposition. No.

19 Q. Okay. So y'all got certain policies and
20 procedures in the case for maintaining all these
21 files?

22 A. Not really. There's nothing to document.

23 Q. It's just the way y'all did things?

24 A. General knowledge.

25 Q. Okay. There was nothing formal?

1 A. No.

2 MR. NELSON: No further questions.

3 MR. BARNES: May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. BARNES:

6 Q. Would you please -- let me first show you
7 what's been marked Defendant's Exhibit 11. And it
8 looks like a county map. Would you read that
9 language down to the right. It's in small print.

10 A. Oh, Lordy. Let me focus for a minute.
11 Disclaimer: County GIS data is made available to
12 the public as a service of the Colleton County
13 Technology Department. This information is intended
14 for general reference only. Colleton County does
15 not assume any liability from damages arising from
16 errors, omissions, or use of this information. This
17 information is offered to the public as is, without
18 warranty of any kind.

19 Q. And does Exhibit 4 have similar language over
20 here?

21 A. Yes, sir.

22 Q. And would that be on all of the maps and stuff
23 that you had, all of the GIS references?

24 A. Yes.

25 Q. Thank you.

1 A. In general, it should.

2 Q. Okay.

3 MR. GRIFFITH: No questions.

4 MR. NELSON: Actually, that leads me to one
5 more.

6 THE COURT: It has to be in reference to his
7 cross-examination now.

8 MR. NELSON: Yes, sir.

9 THE COURT: Which is the language on the tax
10 maps.

11 MR. NELSON: If I'm limited to just the
12 language on the tax map, then I don't have any
13 further questions.

14 THE COURT: Well, that's the rules. Redirect
15 is directed in response to cross.

16 MR. NELSON: Yes, sir. No further questions.

17 THE COURT: You may step down.

18 All right. Let's take a quick bathroom break.
19 There's bathrooms downstairs at the bottom of the
20 stairs, male and female. We'll take about a
21 ten-minute break.

22 MR. NELSON: And, Your Honor, can I give you an
23 update on my -- I was going to call these three --
24 Donna Thomas isn't here. I was going to call
25 Mr. Varnadoe and Mr. Washington, which I don't think

1 either will be terribly long.

2 THE COURT: What are you asking me?

3 MR. NELSON: I'm just letting you know where I
4 stand. Then my next witness is going to be very
5 long. So if you're considering when the next break
6 would be, it would probably be after these --

7 THE COURT: I'll decide when my breaks are.
8 Let me run my courtroom; you run your case.

9 MR. NELSON: Thank you.

10 (Short break.)

11 THE COURT: May Ms. Landry be released from her
12 subpoena?

13 MR. BARNES: Oh, yeah. That's fine.

14 MR. NELSON: That's fine.

15 MR. GRIFFITH: Absolutely. Yes, sir.

16 THE COURT: Thank you, Ms. Landry.

17 Next witness.

18 MR. NELSON: I'm going to call --

19 MR. BARNES: Excuse me just a second.

20 I've got a matter I must bring up to the Court.
21 I discussed it with Mr. Drew. I don't think he
22 understood Tom's question, but he was asked if he
23 paid for the Bessenger suit. And, actually, he said
24 no, but the answer should be yes. We want to put
25 that on the record for whatever it's worth. I just

1 don't --

2 THE COURT: You need to examine him on that?

3 MR. NELSON: I would like to ask a couple
4 questions on that, Your Honor.

5 THE COURT: All right. Come on back up here.
6 You're still under oath, Mr. Drew.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. As I was told by your
9 lawyer is when he asked -- when counsel asked you
10 had you paid for Ms. Bessenger's suit, you said, no,
11 you paid for the survey. But you did pay for it?

12 THE WITNESS: And I did pay for services. I
13 did pay the fees on it.

14 THE COURT: Tell us what you paid and who you
15 paid.

16 THE WITNESS: I paid --

17 THE COURT: The lawyer?

18 THE WITNESS: Yes, sir. Ladson Beach and --

19 MR. BARNES: Ladson Beach, Your Honor.

20 THE COURT: From Orangeburg.

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay.

23 You want to ask him any questions?

24 FURTHER RECROSS-EXAMINATION

25 BY MR. NELSON:

1 Q. You paid his attorney's fees?

2 A. Yes.

3 Q. Did you have some agreement with Ms. Bessenger
4 that if she prevailed on that, you were going to
5 purchase the property from her?

6 A. An agreement to that extent. Not necessarily
7 with her, but I think it was with her sisters and
8 all.

9 Q. Okay. So did you monitor that lawsuit as it
10 went through?

11 A. Did I monitor it?

12 THE COURT: Keep up with it.

13 THE WITNESS: No, sir.

14 BY MR. NELSON:

15 Q. Okay. So you didn't speak with Mr. Beach at
16 all?

17 A. Not about the lawsuit itself that I recall.

18 Q. Did you speak with Ms. Bessenger at all during
19 the lawsuit?

20 A. Not that I recall.

21 Q. How did you know -- how were you going to know
22 the result if you didn't keep up with anybody?

23 A. Well, I'm sure at the end -- we go to church --
24 Ms. Marguerite and I go to church together. And I'm
25 sure that the end of it...

1 Q. Okay. And you're aware that that lawsuit is
2 actually what led to this one being put on hold for
3 a little while?

4 A. Yes.

5 Q. Did you ever drive Ms. Bessenger to the
6 property to look at the property?

7 A. I don't know whether I drove her there, but she
8 rode down there at some point.

9 Q. And y'all inspected the property together?

10 A. Yeah.

11 Q. So were you the one that first contacted her
12 and said, ma'am, I think you may have a claim on
13 this portion of property here?

14 A. I don't know if I was the first one. But in
15 the -- I'm trying to think how that came about.
16 We're trying to get -- I'm trying to think of the
17 word, the term -- like, quitclaim deeds, I think it
18 was, to the property.

19 Q. And the piece of property that y'all were --
20 that Ms. Bessenger filed suit over, that would be
21 the panhandle that we discussed; right?

22 A. Correct.

23 Q. Okay. And if she had lost the panhandle -- or
24 if she was able to acquire the panhandle, then the
25 Nettles would not be adjacent to Camp Road anymore;

1 is that right?

2 A. Well, they weren't adjacent to Camp Road.

3 Q. With the panhandle -- I'm sorry. The western
4 portion of Camp Road. The panhandle is what is
5 needed to connect the rest of the property to the
6 western portion of Camp Road.

7 A. That's right.

8 MR. NELSON: Okay. No further questions.

9 MR. BARNES: No questions.

10 THE COURT: Thank you. You may step down.

11 Next witness, please. I think the lady you
12 called maybe -- well, someone just walked in.

13 MR. NELSON: Oh, Ms. Thomas. I'll call them in
14 the order of convenience for them.

15 THE COURT: Well, call somebody.

16 MR. NELSON: Mr. Bill Washington or
17 Mr. Varnadoe, either one.

18 THE COURT: Who?

19 MR. NELSON: Mr. Bill Washington.

20 THE COURT: Sir, I asked you a question.

21 MR. NELSON: I'm sorry. Bill Washington.

22 THE COURT: Mr. Washington, come up, please.

23 WILLIAM WASHINGTON

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE COURT: Have a seat. Give us your full
2 name and spell your last.

3 THE WITNESS: William Washington,
4 W-A-S-H-I-N-G-T-O-N.

5 DIRECT EXAMINATION

6 BY MR. NELSON:

7 Q. Mr. Washington, do you recall me taking your
8 deposition about three or four years ago?

9 A. Yeah. I did.

10 Q. Okay. And do you recall we discussed some
11 different files that were kept?

12 THE COURT: Now, wait a minute. Who does
13 Mr. Washington work for?

14 Q. What is your job, sir?

15 A. I'm the road and bridges director for Colleton
16 County.

17 Q. What does that entail? What is your job
18 description?

19 A. It's a group of guys that -- a group of
20 employees that works for me in the road and
21 bridges -- doing the roads, scraping the roads,
22 demolition, pipes, putting in driveways, stuff like
23 that.

24 Q. So a wide variety of road maintenance?

25 A. Yes, sir.

1 Q. Okay. Is there any other entities that
2 contribute to the road maintenance of Colleton
3 County?

4 A. Not that I know of.

5 Q. Maybe SCDOT at times, but --

6 A. No, sir. We operate on our own.

7 Q. Okay. Is that for paved roads and dirt roads?

8 A. Dirt roads, some paved roads that CTC -- we got
9 a grant fund that paves some roads for us; a handful
10 of it, there's not a lot.

11 Q. Okay.

12 A. But they're different from state roads. The
13 width of it and all that is different than state
14 roads.

15 THE COURT: You don't mess with state roads,
16 you handle the county roads?

17 THE WITNESS: Yes, sir.

18 Q. And do you operate a motor scraper or a motor
19 grader?

20 A. No, sir.

21 Q. Have you ever?

22 A. No, sir.

23 Q. How long have you been in your position?

24 A. October the 5th will be 39 years working for
25 the County. But in that position -- I was hired for

1 that position probably about 15 or 16 years ago,
2 something like that, in that spot.

3 Q. What did you do before that?

4 A. Operate heavy equipment.

5 THE COURT: For the County?

6 THE WITNESS: For the County.

7 Q. Okay. Having to do with roads?

8 A. Well, doing roads some, but it's -- never with
9 graders; it's put down culvert, a boom truck, lift
10 truck, backhoe, landfill, stuff like that.

11 Q. Okay. And do -- y'all have some centralized
12 system where y'all know what's going on with each of
13 the roads; correct?

14 A. Yeah, we do have -- we know which road to work.
15 The County -- the -- we work the -- we maintain a
16 certain amount of the roads, the dirt roads.
17 Sometimes it go a little further, but we don't go
18 but right at where -- when I took over, we went
19 through that same spot there that was supposed to be
20 done, you know.

21 Q. Okay. And do you know a lady named Helen
22 Bowers?

23 A. That's my secretary.

24 Q. Okay. And she works for roads and bridges?

25 A. Yes.

1 Q. Did she ever work for the 911 department?

2 A. No.

3 Q. Does she work with the 911 department?

4 A. She -- on naming roads. She does a little bit
5 of that. You know, if they want to find out
6 information about some roads, she give that to
7 them --

8 Q. Okay. And --

9 A. -- a little bit.

10 Q. And do you recall using the term, quote,
11 listings in your deposition?

12 A. It's a list of roads that we use.

13 Q. Okay. Can you describe how a listing is kept?

14 A. When -- the listing is kept when -- each guy
15 got a worksheet that goes out in the morning. And
16 every road or anything that it does, they return
17 that back to the office in the afternoon and we log
18 it into the computer.

19 Q. Okay. And that would be any time any sort of
20 maintenance is done or anything like that?

21 A. That's right.

22 Q. Okay. And is every road on a schedule?

23 A. Well, if it don't rain. It's a four- to
24 six-week period to get around. If you don't have
25 other stuff going on, like doing driveways and

1 cleaning out canals and stuff like that, it's four
2 to six weeks, if the weather permits.

3 Q. Okay.

4 A. You can say it's on schedule, but not really on
5 schedule.

6 Q. It's on schedule in your mind?

7 A. Yeah.

8 Q. Okay. But nothing is on paper saying, hey, on
9 June 4th we're going to do this road again?

10 A. Oh, yeah. It's on paper. I mean, we got
11 requests that comes in.

12 Q. Okay.

13 A. And we does it by request. Now, grading and --
14 for the graders, they know -- they got a route.
15 Each one of them got a route. We got six graders
16 and they got six different routes, and it's about 50
17 or 60 miles apiece. And they know they got to make
18 that cycle. That's why everybody say they think
19 it's going to rain when we coming. It's raining
20 some way.

21 Q. Okay. And is there any difference between the
22 term a road file or a road listing?

23 A. I know the road listing. It's like what I just
24 explained to you just then.

25 Q. Okay. Is that all of the records that you keep

1 on any given road?

2 A. That's it.

3 Q. It's just the listings. How do y'all keep

4 those?

5 A. On a computer.

6 Q. Okay. There's no hard file, such as in a

7 file --

8 A. Hard file too after -- you got a hard file too.

9 Q. Okay. How far back do your records go?

10 A. We get overloaded with it, so we -- we probably

11 keep it for about three years or two years or

12 something like that, because you got to create more

13 space for the two or three or four more years,

14 whatever that is.

15 Q. Okay. How long have you been keeping them

16 electronically as well?

17 A. Quite a few years.

18 Q. Do you know -- can you be more specific?

19 A. Maybe 15 years.

20 Q. Okay. And are they kept as -- are they like

21 Word documents or is it come type of special

22 software or are they Excel spreadsheets or do you

23 know what type of files?

24 A. Software.

25 Q. What's the name of the software?

1 A. I don't remember that. My secretary does all
2 that. I don't do none of that.

3 Q. Okay. Ms. Bowers?

4 A. Yes, Ms. Bowers.

5 Q. Okay. So it's more than just an e-mail;
6 there's actually a computer system that she
7 accesses?

8 A. That's right.

9 Q. So --

10 MR. NELSON: No further questions.

11 THE COURT: Mr. Barnes.

12 MR. BARNES: No questions.

13 THE COURT: Mr. Griffith.

14 CROSS-EXAMINATION

15 BY MR. GRIFFITH:

16 Q. Mr. Washington, you indicated you work with the
17 roads and bridges in Colleton County; correct?

18 A. Yes, sir.

19 Q. And how long have you been with Colleton
20 County?

21 A. October 5th will probably be 39 years.

22 Q. And what are your job duties there?

23 A. As a public works director.

24 Q. Director. So you have several people under you
25 that actually --

1 A. Yes.

2 Q. -- work the roads?

3 A. 30 -- 28 -- I mean, 23.

4 Q. Okay. About 23 people below you?

5 A. Yes, sir.

6 Q. Okay. And we're here about Camp Road; do you
7 understand that?

8 A. Yes, sir.

9 Q. And describe to the Court what parts of Camp
10 Road that the County maintains.

11 A. We maintain from the paved road coming in all
12 the way to -- you take a 90 at Camp Road and Polite
13 Road.

14 Q. All right. And it -- where Camp Road and
15 Polite Road come together, is there a gate?

16 A. Yes.

17 Q. Okay. Does the County maintain any of the
18 property inside that gate since you've been with
19 them?

20 A. No, sir.

21 THE COURT: Have you been working that road for
22 the last 39 years?

23 THE WITNESS: We've been working that --

24 THE COURT: No, sir. Have you, Mr. Bill
25 Washington, been working that road --

1 THE WITNESS: Yes, sir.

2 THE COURT: Have you ever been inside that
3 gate?

4 THE WITNESS: Never been inside that gate.

5 THE COURT: Why?

6 THE WITNESS: Because it's private.

7 THE COURT: Thank you.

8 MR. GRIFFITH: No further questions.

9 THE COURT: Anything?

10 MR. NELSON: No, Your Honor.

11 THE COURT: All right. You may step down. May
12 Mr. Washington go back and resume his duties?

13 MR. NELSON: Yes, sir.

14 THE WITNESS: Thank you.

15 THE COURT: Next witness, please, sir.

16 MR. NELSON: Franklin Varnadoe.

17 THE COURT: Place your left hand on the Bible
18 and please raise your right.

19 FRANKLIN VARNADOE

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22 THE COURT: Please have a seat and give us your
23 full name and spell your last on the record.

24 THE WITNESS: Okay. My name is Christopher F.
25 Varnadoe, V-A-R-N-A-D-O-E.

1 THE COURT: Mr. Varnadoe, I had a trial last
2 week in Kershaw-Camden, lasted five days, had a
3 witness named Varnadoe. And I said, are you from
4 the LowCountry? And she said, my family is from the
5 LowCountry. There's a lot of Varnadoes.

6 THE WITNESS: For years I was told there was a
7 lot of us around.

8 THE COURT: She was a doctor.

9 Okay. Your witness.

10 DIRECT EXAMINATION

11 BY MR. NELSON:

12 Q. Mr. Varnadoe, what is your job?

13 A. I'm a supervisor over at road and bridges.

14 Q. Where?

15 A. Colleton County.

16 Q. And what is your general job description?

17 A. Oversee guys who -- motor graders, bush
18 cutters, general laborers, you know, just county
19 maintenance.

20 Q. Okay. Do you work with Mr. Washington who just
21 testified?

22 A. Yes, I do.

23 Q. What is the relationship between y'all at work?

24 A. He is my supervisor, director. I work right
25 underneath him.

1 Q. How long have you been in your position?

2 A. 39 years of -- just of June, this month.

3 THE COURT: Y'all came on at the same time.

4 THE WITNESS: Just about.

5 Q. Okay. And you've been in that actual position
6 for 39 years?

7 A. No, 15.

8 Q. Okay.

9 A. You know, I just started as a laborer and then
10 I moved up to motor grader operator, equipment,
11 stuff like that, and then I became supervisor about
12 15 years ago.

13 Q. Do you recall giving your deposition in this
14 case about three or four years ago?

15 A. Some of it, I do.

16 Q. And I had asked you several questions about
17 recordkeeping.

18 A. Right.

19 Q. Do you remember that?

20 A. Right.

21 Q. Do you remember discussing Colleton County's
22 policies and procedures?

23 A. Yes.

24 Q. Can you describe what policies and procedures
25 exist?

- 1 A. As far as maintaining our roads?
- 2 Q. Yes, sir.
- 3 A. All right. Every day -- I mean, the operators
4 and anybody that works within the County
5 maintenance, they have records they keep. You know,
6 they write -- and we maintain county roads. Some of
7 them are paved, some of them -- most of them are
8 dirt or earth roads. And it's all filed into a
9 system.
- 10 Q. Okay. Can you describe how the records are
11 kept and what records exist?
- 12 A. Each operator, whomever, motor grader,
13 whatever, bush cutter, they write down a list of
14 what they do that day, and it's brought back in the
15 evenings and it's filed into a system.
- 16 Q. Okay. Is there a title for any of these
17 records?
- 18 A. I really don't know.
- 19 Q. Do you remember using the term daily route
20 sheets?
- 21 A. Right. That's what I'm talking about is daily
22 route sheets.
- 23 Q. Okay. And describe the daily route sheet,
24 please.
- 25 A. Okay. It's -- whatever work they do that day,

1 it's written down. They write it down and, you
2 know, keep a record of what they did that day.

3 Q. Okay. And --

4 A. We also have a GPS system now that follows
5 everything that we do, every action. We can tell
6 where operators are at and where everybody has been
7 during that day.

8 Q. That GPS is built into the vehicle?

9 A. Right.

10 Q. Okay. Where is that data saved?

11 A. That's on the computer.

12 Q. Does it automatically save off the vehicle --

13 A. It's --

14 Q. -- or do you have to --

15 A. It's automatically --

16 Q. -- download it?

17 A. Yeah. It automatically goes to the computer,
18 anything that we do.

19 Q. Okay. And then you've got the daily route
20 sheets. Is that something you fill out by hand?

21 A. Right.

22 Q. And then who do you turn it in to?

23 A. To Helen Bowers who is the secretary or system
24 administrator.

25 Q. What does she do with it?

- 1 A. She files it in the computer.
- 2 Q. Does she file the hard copy as well?
- 3 A. Yeah. I think she does. She -- you know, she
- 4 keeps the -- she has two files. I think she
- 5 files -- keeps the -- into the computer and she
- 6 keeps one in a file cabinet, you know, the
- 7 paperwork.
- 8 Q. Okay. Do you ever have to pull an old daily
- 9 route sheet to look at it?
- 10 A. Sometimes.
- 11 Q. Do you ask Ms. Bowers or do you go retrieve it
- 12 yourself?
- 13 A. I ask her or either I can go to the file and
- 14 pull it up, or she'll pull it up on the computer.
- 15 She keeps it in there for about three years, you
- 16 know, from past --
- 17 Q. Keeps the hard file in the drawer for three
- 18 years?
- 19 A. Yeah.
- 20 Q. Okay. And how about the computer?
- 21 A. I'm not sure. I mean --
- 22 Q. All right. Do you recall any -- discussing
- 23 with me culvert installation records?
- 24 A. Right.
- 25 Q. Is that different from a daily route sheet?

1 A. Right. We usually do that -- I actually do
2 that myself. Any time we put in a culvert or
3 anything in, I write it down and it's filed in the
4 computer too.

5 Q. Okay. But it's a -- you make it a handwritten
6 sheet?

7 A. Right. Right.

8 Q. Does that get turned in to Ms. Bowers as well?

9 A. Right -- well, I turn in -- I keep a -- I have
10 a notebook. I keep it myself in her office. I
11 mean, I go -- I put it in her office.

12 Q. Okay. About how many pieces of paper do you
13 generate a day from the stuff that you do?

14 A. Sometimes it varies, you know. It's all
15 according -- but I write down everything we do as
16 far as like putting in a pipe or, I don't know, any
17 amount of rock we may put down on the road, stuff
18 like that. I keep records of that. But it varies
19 from day to day.

20 Q. Okay.

21 MR. NELSON: One moment, Your Honor.

22 BY MR. NELSON:

23 Q. Are the culverts on any schedule?

24 A. Well, it should be. I mean, every time the
25 operator goes in, the laborer who follows the motor

1 grader, that's -- their job is to clean culverts
2 out.

3 Q. Is there a written schedule? Like, does it
4 happen every two months or every year or something
5 like that?

6 A. You mean as far as grading the road?

7 Q. No; the culverts.

8 A. No. It should be routine. Every time the
9 operator is there or there's -- we -- they're riding
10 in something, we check -- we might come back and
11 check one that's stopped up. You know, we'll have
12 them -- you know, something they may have missed.
13 But, yeah, generally, every time they're on the
14 roads, it should be cleaned out.

15 Q. And how do --

16 A. Now, some of the bigger pipes now, we've had
17 issues with beavers and stuff like that or, you
18 know, some canals might be stopped up. We may have
19 to do stuff like that. But, generally, the regular
20 culverts that cross the roads, that should be
21 general maintenance every time they're in.

22 Q. And are you still out on the field?

23 A. Yeah, I go out in the field. I operate a motor
24 grader sometimes, you know, special projects. I'll
25 still go out and do that.

1 Q. On any given day, how do you know which area
2 you're going to go to?

3 A. Well, we have -- you know, we have work orders
4 sometimes. We know what our schedule is. It
5 fluctuates, you know. We know what our general job
6 is, you know, and that's maintain roads, grading,
7 you know. And sometimes they're putting in
8 culverts, sometimes we rock roads, you know, put in
9 certain materials on roads. It -- you know, we
10 basically know, you know.

11 Sometimes we get it started in the mornings, me
12 and the other supervisor. We know we got general
13 work and we know things that's got to be done, you
14 know, during the week that we want to do. We have
15 by-request and work orders.

16 Q. Who places the work orders?

17 A. Well, Helen does it. Some people call in --
18 some people call in and say something about their
19 roads, you know, maybe it's got a washout or
20 something in it or they want a culvert put in,
21 they'll call and she'll write it down and she gives
22 us --

23 Q. Do you ever clean a culvert if there was not a
24 work order placed?

25 A. If it's on our route and if it's in our

1 maintenance, yes.

2 Q. Who sets your route?

3 A. They're not set. The routes are there. It's
4 just general work they do every day. They have a
5 process they go through from road to road to road.
6 If there's a call-in and someone has specifically
7 said my road is bad, could you please have someone
8 come out and work it, you know, sometimes we do
9 that. But it's a general schedule. Sometimes it's
10 broken up, you know. It's all according to -- it
11 may be that bad rain or something like that has
12 washed the roads.

13 Q. So if you get a call to a particular area,
14 you'll go to that area, but then you'll do some
15 other things while you're there?

16 A. Possibly.

17 Q. But if you don't get a call to a specific area,
18 is it possible that that area goes untreated for a
19 long period of time?

20 A. Right. If it's -- when it's on a -- not -- if
21 it's general maintenance that we continue to do, it
22 should be worked every so often, if it's in our
23 county maintenance.

24 Q. But there's no set schedule, there's no written
25 schedule?

1 A. Well, there's a set schedule that's routine.

2 It's a routine schedule, you know.

3 Q. And where is that kept?

4 A. I mean, that's a known fact. The operators,
5 they know their schedule. I mean, they go from one
6 road to the other; that's generally what they do.
7 They follow a pattern. It's like a cycle, you know.

8 Q. So if you ever go scrape Camp Road up to where
9 the gate is or up to where Polite Road is, how do
10 you know to go to Camp Road that day?

11 A. That's left up to the operator on his schedule.
12 He has a schedule that he goes around to each road,
13 and if -- when it comes up, you know, the next road
14 to grade, that's what he does.

15 Q. Okay. But nothing is in writing?

16 A. Nothing in writing --

17 Q. Okay.

18 A. -- you know. But it's roads in our system.

19 Q. When you say roads in your system, what system
20 are you referring to?

21 A. Our county maintenance. It's in our road
22 system. The roads that are in our system.

23 Q. You're not talking about a computer or a filing
24 system?

25 A. Well, yeah, they're in a filing system too. We

1 got -- in our computer, it's got all the roads that
2 we maintain, you know. I mean, that's the only way
3 I know how to explain it. It's roads in our system.
4 That's what we do.

5 Q. Do you ever have to access the computer
6 yourself?

7 A. Yeah.

8 Q. What's the name of the program that you use?

9 A. I forget the name. County road -- I don't
10 know. I --

11 MR. NELSON: No further questions.

12 MR. BARNES: No questions.

13 CROSS-EXAMINATION

14 BY MR. GRIFFITH:

15 Q. Mr. Varnadoe, you said you've been with the
16 County for 39 years; is that correct?

17 A. That's correct.

18 Q. Over that 39 years, you've been with roads and
19 bridges; is that correct?

20 A. That's correct.

21 Q. All right. And over that period of time, when
22 you started, you talked about the roads and people
23 just knew what were county roads, didn't they?

24 A. Right.

25 Q. And now you got a GPS system --

1 A. Right.

2 Q. -- so you track where they are?

3 A. That's right.

4 Q. So over that 39 years, we've had a little
5 technology come in through Colleton; is that
6 correct?

7 A. Right.

8 Q. Now, have you ever graded Polite Road?

9 A. Yes, I have.

10 Q. Have you ever graded Camp Road?

11 A. Yes, I have.

12 Q. Now, is there a gate at Camp Road near Polite?

13 A. That's right.

14 Q. Okay. Have you ever graded behind the gate on
15 Camp Road?

16 A. Never.

17 Q. Okay. And --

18 THE COURT: Why?

19 THE WITNESS: Because it's private.

20 THE COURT: Is that road behind the gate -- you
21 said roads in our system. Is that a road in your
22 system?

23 THE WITNESS: No, sir.

24 THE COURT: Ever done any culvert work behind
25 the gate?

1 THE WITNESS: No, sir. That's always been
2 known as private area in my 39 years.

3 MR. GRIFFITH: That's all the questions I have,
4 Judge.

5 THE COURT: Anything, Mr. Nelson, on redirect?

6 REDIRECT EXAMINATION

7 BY MR. NELSON:

8 Q. When you say it's a private road in your system
9 what road --

10 A. Right.

11 Q. -- what system are you --

12 THE COURT: No. He didn't say that. He said
13 it was a private road and it was not in his system.

14 THE WITNESS: Right. Right. Thank you, sir.

15 BY MR. NELSON:

16 Q. What system are you referring to?

17 A. Our maintenance system. That's -- you know,
18 that's been over the years, you know. That's why --
19 see, in my 39 years there, that's -- you know, like
20 the road -- Camp Road and behind that gate has
21 always been private. It's just that simple.

22 Q. Is there something you look at that tells you
23 it's private?

24 A. Well, I can -- only I can speak -- it's been
25 private is what I've known, and the generation

1 before me who taught me that's always been a private
2 road private area behind that gate.

3 Q. Okay. So that's just from your knowledge;
4 there's no map or computer or something that's
5 telling you it's private?

6 A. We have where -- up in our system, yeah, it's
7 behind -- it don't say private, I guess. That's
8 general knowledge, it's private. I think for 39
9 years -- I mean, that's -- never maintained behind
10 there. That's just my time being there now.

11 Q. Is there something physical that I could look
12 at that would tell me it's private?

13 THE COURT: Question is, are you aware of any
14 documents, records, computer files, anything that
15 says the west side of Camp Road on the other side of
16 the gate is designated as private?

17 THE WITNESS: I really don't know. I
18 couldn't --

19 MR. NELSON: Nothing further.

20 THE COURT: All right. You may step down and
21 you're free to go to work or back to Colleton or --

22 THE WITNESS: Thank you.

23 THE COURT: Next witness, please.

24 MR. NELSON: Donna Thomas.

25 THE COURT: Good morning, Ms. Thomas. Place

1 your left hand on the Bible and raise your right.

2 DONNA THOMAS

3 being first duly sworn, testified as follows:

4 THE WITNESS: Yes.

5 THE COURT: Have a seat and give us your full
6 name and spell your last.

7 THE WITNESS: Donna Driggers Thomas,
8 T-H-O-M-A-S.

9 DIRECT EXAMINATION

10 BY MR. NELSON:

11 Q. Ms. Thomas, can you explain to the Court what
12 your job is?

13 A. I am the 911 coordinator for Colleton County.

14 Q. What does that generally entail?

15 A. We maintain the roads -- addresses for the
16 county. We do the addressing for the County.

17 Q. What is the need for keeping the addresses in
18 the county?

19 A. For 911 purposes. We have to assign addresses
20 to each structure in Colleton County.

21 Q. Okay. And how long have you been in that
22 position?

23 A. With the County, 16 years; 911 coordinator for
24 about 10.

25 Q. Okay. Did you do things for 911 prior to those

1 10 years?

2 A. I did.

3 Q. What was your job then?

4 A. The administrative assistant.

5 Q. Basically, the assistant to what you do now?

6 A. Right.

7 Q. How many people work in your office?

8 A. There's four of us.

9 Q. And are you the --

10 A. I'm the supervisor.

11 Q. And what about the other three?

12 A. We have two field techs, one administrative

13 assistant, and myself.

14 Q. Do the field techs actually leave the office

15 and go inspect things?

16 A. They do.

17 Q. Do you recall giving your deposition about

18 three or four years ago?

19 A. I remember doing a deposition.

20 Q. Okay. And do you remember I was asking you

21 some questions about records that were kept?

22 A. Right.

23 Q. Do you recall using the term the hard copy

24 inventory sheets?

25 A. We do have a hard copy inventory sheet.

1 Q. Please tell the Court what that is.

2 A. It's information on each road that's in
3 Colleton County. It kind of gives us a history.
4 For this particular one, I looked it back up. This
5 road was named in '95 whenever they turned
6 everything over from routes to street names --

7 THE COURT: Camp Avenue was named in '95?

8 THE WITNESS: Camp Avenue, uh-huh.

9 BY MR. NELSON:

10 Q. Okay. How far back do the hard copy inventory
11 sheets go?

12 A. From -- I guess from the beginning when they
13 started the addressing, changing from routes to
14 street addresses. So I'm saying '95 because that's
15 basically as far back as I see. And that was before
16 my time, so...

17 Q. Okay. The system started back around '95?

18 A. Right.

19 Q. Okay. So there's really nothing that exists
20 prior to '95 from your department?

21 A. Right.

22 Q. Gotcha. And --

23 A. Well, that's not necessarily true. We used to
24 have a route binder that had the old routes, like --

25 THE COURT: Like Route One, Box 28?

1 THE WITNESS: Right. Big binders. We no
2 longer keep those.

3 BY MR. NELSON:

4 Q. Okay. Do you recall using a term listings?

5 A. Not listings. Not necessarily listings. No.

6 Q. Okay. Other than a hard copy inventory sheet,
7 are there any other records that exist on any
8 particular roads or addresses?

9 A. We keep that -- access data file is what we
10 have. We have a -- in the computer it's a Microsoft
11 Access and we also print copies. So we have a hard
12 copy in the file cabinet.

13 Q. Okay. And is this a Microsoft Access database
14 that somebody set up internally?

15 A. Right.

16 Q. Kind of like I can set up an Excel spreadsheet
17 at my office?

18 A. Right; same thing.

19 Q. Okay. And where is that all saved?

20 A. It's saved in our office. It's inhouse.

21 Q. Okay. Do you have a server?

22 A. We do have a server.

23 Q. Is this all saved on a server?

24 A. I'm not an IT person. I mean, it's there. I
25 save it on my hard drive, you know.

1 Q. Can more than one computer access this
2 information?

3 A. They can access but they can't change the data;
4 only in my office. That's the only people who have
5 access to it.

6 Q. Okay. You recall using the term database
7 record or data layer?

8 A. Uh-huh.

9 Q. Can you describe what --

10 A. A data layer is your GPS layer on the map. And
11 we also do mapping in our office. We maintain that
12 road file for dispatch. So that would be a layer
13 that goes on the map.

14 Q. Okay. And you can search something by the name
15 of the road; correct?

16 A. I can.

17 Q. Okay. And you just go to the access program
18 type in the name of the road in the field and it
19 will show you --

20 A. Right.

21 Q. -- any records relating to that road?

22 A. Right.

23 Q. What types of records would exist?

24 A. It's just the history of that road, who
25 suggested the name, you know, when it was

1 established, just that kind of data; when we changed
2 ESN numbers or any kind of history. We try to
3 document everything.

4 Q. What would lead to the history of a road to
5 change or the status of a road? When you say the
6 history and changes, what type of changes are we
7 talking about?

8 A. Well, if they -- if it's still maintained by
9 the County. I mean, it would notify us -- Ms. Helen
10 would notify us and say they no longer maintain this
11 road, so we'll change our data and reflect that date
12 that it comes back in. Just general information
13 like that.

14 Q. Okay. Do you recall the term Nightstar?

15 A. Yes.

16 Q. What is that?

17 A. Nightstar is the system that does the
18 addressing. It's a tool that measures your road.
19 It's inside the vehicle. That's what a Nightstar
20 is.

21 Q. Like a GPS?

22 A. It's like a GPS.

23 Q. Okay. And how often -- I mean, once the
24 information is initially put in the system, do y'all
25 have to update that from time to time?

1 A. Not generally, no. Once it's there, it's
2 there.

3 Q. Okay. Has every road in Colleton County had
4 the Nightstar GPS map it by this point?

5 A. It started before my time. And, yes, we still
6 keep it up the same way.

7 Q. Okay. But y'all don't -- do y'all regularly go
8 back and re-do that type of thing?

9 A. We do re-inventory the roads just because
10 things change, houses are gone, you know, just to
11 keep a current visual like house color. Sometimes
12 they take the mobile homes out and there's nothing
13 there, but the address is still established.

14 (Plaintiff's Exhibit No. 2 marked for
15 identification.)

16 Q. Okay. I'm going to hand you a document called
17 Plaintiff's Exhibit 2. Do you recognize this?

18 A. Uh-huh.

19 Q. Can you tell me what it is?

20 A. It's just a -- it's a physical address
21 verification letter.

22 Q. Okay. And did you prepare this?

23 A. It has my name on it, so I probably did or my
24 assistant did; one or the other.

25 Q. Is this something you regularly get, like

1 verification of address?

2 A. Sometimes people request these. And we do send
3 these out to the post office.

4 Q. Okay. And is this for an address of 677 Camp
5 Avenue?

6 A. It is.

7 Q. You don't recall doing this particular one?

8 A. I do so many. And, like I said, I don't
9 generally write them anymore. So this is from 2010.
10 So I know this says 677, so that address is prior to
11 the gate. The gate address is 681, is as high as
12 the road will go.

13 THE COURT: What does that mean? Does that --

14 THE WITNESS: That means we go -- it goes up to
15 the gate. It's listed County maintained to 681. So
16 I can't address beyond the gate because my techs
17 can't go behind the gate, so they --

18 THE COURT: Why is that?

19 THE WITNESS: The gate is locked.

20 THE COURT: And why can't you go behind the
21 gate?

22 THE WITNESS: It's not accessible. It's
23 private.

24 THE COURT: Thank you.

25 THE WITNESS: So we have to assign -- anything

1 behind the gate, we have to assign an address like
2 an access point --

3 THE COURT: Which is at the gate itself.

4 THE WITNESS: Yes.

5 THE COURT: Because you can't go beyond the
6 gate.

7 THE WITNESS: Right. You can't go beyond --
8 yeah.

9 BY MR. NELSON:

10 Q. Okay. Have you actually researched Camp Road
11 in relation to this lawsuit?

12 A. No, just looked it up to see why I was being
13 called here.

14 Q. Okay. So you glanced at it and you know where
15 it is on the map?

16 A. Right; on Hope Plantation.

17 Q. And when you say the range for this road is 1
18 through 681, would the 1 be closest to Hope
19 Plantation?

20 A. Right. That's correct.

21 Q. Well, how do you know it starts there?

22 A. That's just where it starts. It begins at Hope
23 Plantation and ends at the gate.

24 Q. It's not an east-west thing though, it could be
25 different on different roads?

1 A. Everything runs out of the county, so that's
2 just where it began. I don't have an answer for
3 you. I mean, it's where it began.

4 Q. Okay. And when it ends at 681, where do you
5 get that information?

6 A. It's a -- the Nightstar. The Nightstar will
7 run to the gate and will give you the number 681.
8 So it's a little over half a mile, about six-tenths
9 of a mile.

10 Q. Is that .681 miles?

11 A. Right.

12 Q. Okay. So when y'all assign addresses, y'all
13 try and get it --

14 A. It's --

15 Q. -- very close to --

16 A. -- the number that -- right.

17 Q. I gotcha.

18 Then you have a statement on here that says the
19 range given for this road is 1 through 681, but it
20 appears the road continues further beyond where it
21 is blocked?

22 A. Right, because you can see there's something
23 beyond there, but you can't go through. It's a
24 gate, so it's private.

25 Q. What were you looking at?

1 A. I have to ask my techs how it looks. I never
2 go in the field. I'm not a field tech. They give
3 me the information, they feed it back to me, they
4 say the road appears to go beyond the gate, can't go
5 beyond the gate. I look back on history, it says --
6 in the history file it says from 1 to 681. It
7 stops. It's County maintained to that point. You
8 can't go in any further.

9 THE COURT: County maintains to 681 --

10 THE WITNESS: 681.

11 THE COURT: -- which is up to the gate --

12 THE WITNESS: Which is up to the gate.

13 THE COURT: -- and nothing beyond the gate?

14 THE WITNESS: Nothing beyond the gate.

15 BY MR. NELSON:

16 Q. So, Ms. Thomas, when you said it appears the
17 road continues further than where it's blocked --

18 A. Right.

19 Q. -- that's not based on something you saw in
20 your computer system?

21 A. Not what I saw in my computer system.

22 Q. Okay.

23 A. Now, you can look in the map book and back from
24 where I can see, I mean, you still see a trail.

25 But, I mean, it's not -- there's nothing that's

1 saying that you can go any further than that. All
2 the data I have, and it was recorded before I was
3 there in '95, says that it stops at the gate.

4 THE COURT: Do you have a lot of private roads
5 in Colleton County?

6 THE WITNESS: We do have a lot of private
7 roads.

8 THE COURT: And you do not service them either,
9 do you?

10 THE WITNESS: We do not service them. We
11 address, that way they can be found in the event of
12 an emergency. They're maintained by whomever.

13 THE COURT: The landowner?

14 THE WITNESS: Right. All the blue signs in the
15 county -- if you ever ride through the county, all
16 the blue signs are private road.

17 BY MR. NELSON:

18 Q. What county information do you have access to?

19 A. As in?

20 Q. Obviously you can go -- anybody in the public
21 can look at the GIS map.

22 A. Right.

23 Q. Is there anything else you can look at
24 internally or something that I could also look at?

25 THE COURT: Mr. Nelson, you've taken her

1 deposition. I'm being very patient --

2 THE WITNESS: I --

3 THE COURT: Hold on a second.

4 If you wanted to do discovery, you should have
5 done it before today. But this case is relevant as
6 to whether or not -- as you told me earlier, whether
7 or not it's a public or private road, and if it's
8 not met, then your next position is if it's a county
9 road or a public road or a neighborhood road or an
10 easement by necessity. What records there are, that
11 should have been done before today. I've not said
12 anything over the last three witnesses, but that's
13 something you should have done in discovery. I
14 mean, how is that relevant to where we are today?

15 MR. NELSON: And, Your Honor, prior to the case
16 I mentioned we're going to ask for spoliation
17 charge, even though it's not a jury trial. So these
18 records --

19 THE COURT: What have they spoiled? What have
20 they disposed of?

21 MR. NELSON: There were several things
22 referenced throughout these depositions that just
23 don't exist. And I'm just trying to establish that
24 there are things that exist.

25 THE COURT: Fair enough. Move along.

1 MR. NELSON: Thank you. And I'll keep it
2 moving.

3 BY MR. NELSON:

4 Q. So, Ms. Thomas, that -- but it appears --

5 THE COURT: Ma'am, have y'all gotten rid of any
6 records?

7 THE WITNESS: No, sir.

8 THE COURT: Do y'all destroy records?

9 THE WITNESS: We don't.

10 THE COURT: Go ahead.

11 BY MR. NELSON:

12 Q. Where it says but it appears that the road
13 continues beyond where it was blocked, that was
14 based on someone doing a visual inspection and
15 telling you?

16 A. Somebody doing a visual inspection. Because
17 they had to assign this number. This number 677 had
18 to be assigned and assigned by my field techs. And
19 they can say, yeah, there's a gate there, looks like
20 we can't go past there, it's a locked gate, so you
21 have to have an access address.

22 Q. But wouldn't 677 Camp Avenue be --

23 A. Because I can go no further. 681 is the gate,
24 so I have to use numbers that are right there at the
25 end.

1 Q. Okay. So you just randomly selected 677?

2 A. It's at the end of the road.

3 Q. So this document was so you could put this
4 address -- the property didn't previously have an
5 address?

6 A. Right.

7 Q. Okay. And then every time you do that, do you
8 actually have someone go out and visually inspect it
9 before you assign the number?

10 A. Yes.

11 Q. Okay. A locked gate doesn't necessarily mean
12 the road is public or private, that just means you
13 couldn't get past --

14 A. My records show 1 to 681. I mean, the records
15 show 1 to 681. I can't go any further than that.

16 Q. Okay.

17 A. And it says that on the same letter that you're
18 visually looking at, 1 to 681.

19 THE COURT: Any objection to number 2 coming
20 in? I assume you're offering number 2.

21 MR. NELSON: Yes, sir.

22 THE COURT: Any objection, gentlemen?

23 MR. GRIFFITH: No objection.

24 MR. BARNES: No objection.

25 (Plaintiff's Exhibit No. 2 admitted in to

1 evidence.)

2 THE COURT: You got a copy for me, please?

3 MR. NELSON: Yes, sir.

4 THE COURT: All right.

5 This is Exhibit 3.

6 BY MR. NELSON:

7 Q. Ms. Thomas, do you recognize this document?

8 A. It's one from my office as well.

9 Q. And you notice it was done approximately five
10 months prior to the last one we were looking at?

11 A. Right.

12 Q. Can you tell me why there's differences in the
13 description of Camp between these two documents?

14 A. As in? This says 1 to 681, the same thing.
15 This address is for a power pole. It still comes
16 before the 681. It's basically the same; it ends at
17 the locked gate. I mean --

18 Q. Do you know why would one say it ends at a
19 locked gate but the other would say it appears the
20 road continues beyond where it is blocked?

21 A. No, I don't.

22 Q. Do you recall preparing this document, the
23 April 19th, 2010?

24 A. I'm sure that I did. My name is on here.

25 Q. And when you say it was entered in to our

1 system January of 2006, that means y'all have
2 records on this particular --

3 A. Just this letter. And we don't necessarily
4 keep all the letters. I do have a bunch of letters.
5 But, like I said, I don't type these any longer.

6 Q. But when you say this address was assigned for
7 power pole service and entered in to our system
8 January of 2006 --

9 A. Right.

10 Q. -- what was entered in your system in January
11 of 2006?

12 A. That address of 680.

13 Q. Having its own entry into the access database?

14 A. You have to have an address to acquire power.
15 So you need a physical address so they can have a
16 way of keeping up with the power pole, I mean,
17 whatever, their meter, so they can charge people.
18 Everything has to have a physical address for power.

19 Q. Okay. But when you say -- I'm just asking
20 about this January 2006.

21 A. That's when I entered it in to the system.

22 Q. Okay. Nothing existed for this address prior
23 to January of 2006?

24 A. Not to my knowledge.

25 Q. Okay. But if you put this in the statement,

1 then you probably -- it would have shown up, most
2 likely, when you were looking at this in the
3 computer; correct?

4 A. Right.

5 Q. Ma'am, I'm going to hand you --

6 THE COURT: You're moving 3 to come in?

7 MR. NELSON: Yes, sir.

8 MR. BARNES: No objection.

9 (Plaintiff's Exhibit No. 3 admitted in to
10 evidence.)

11 MR. NELSON: I only have one copy of this.

12 BY MR. NELSON:

13 Q. Ma'am, do you recognize this manual here?

14 A. I do.

15 THE COURT: What exhibit is it?

16 MR. NELSON: 72.

17 THE COURT: She does.

18 BY MR. NELSON:

19 Q. Can you please explain what it is?

20 A. My office generates these. This is your
21 Colleton County Map Book.

22 Q. Okay. So your office generates it?

23 A. We do.

24 Q. Where do you get your information?

25 A. Actually, this is a computer-generated one

1 from -- Esri product prints this, ArcView, ArcMap.

2 Q. Is that a company you contract with?

3 A. No. It's software.

4 Q. Okay. And where does the data in the software
5 come from?

6 A. We load it in there. It's the layers that we
7 were discussing earlier.

8 Q. Okay. Can you flip to where Camp Road is in
9 that book?

10 MR. GRIFFITH: If it would pick things up, it's
11 at 66.

12 THE WITNESS: Okay. Okay.

13 Q. And you see what Camp Lane does on that map;
14 correct?

15 A. Right.

16 Q. It goes beyond where that gate is; correct?

17 A. Right.

18 Q. Why would that -- why would y'all have
19 information that suggests the road goes beyond the
20 gate?

21 A. That original map layer file was done with
22 TIGER Files before my time. So it's visually -- I
23 don't know. I didn't create that particular road
24 file; it was already there existing. I just created
25 the book.

1 Q. Okay. And you've been there how long?

2 A. Sixteen years.

3 Q. Okay. So the road file that suggests that Camp
4 goes that far is greater than 16 years old?

5 A. It would have to be.

6 Q. Okay. And where do you get the road file from?

7 A. We have created some ourselves, and I got the
8 original file from the State.

9 Q. From the Department of Transportation?

10 A. No, from the State Budget and Control Board
11 office. They maintained a street file -- I think
12 they did it through TIGER Files with Barry McLeod,
13 because he was over this department, he headed up
14 this department.

15 Q. And how often do y'all put that manual out?

16 A. Every few years.

17 Q. Is that the most recent, 2008?

18 A. No.

19 MR. NELSON: If I could move that in evidence,
20 Your Honor.

21 (Plaintiff's Exhibit No. 3 admitted in to
22 evidence.)

23 MR. BARNES: No objection.

24 MR. GRIFFITH: None.

25 THE COURT: Without objection.

1 MR. NELSON: No further questions.

2 MR. BARNES: No questions.

3 CROSS-EXAMINATION

4 BY MR. GRIFFITH:

5 Q. Ms. Thomas, just looking at Plaintiff's
6 Exhibits 2 and 3, you were asked about those two
7 documents. On both of them, the road range is
8 listed as 1-681, isn't it?

9 A. Yes, sir.

10 Q. Thank you, ma'am.

11 MR. GRIFFITH: No further questions.

12 THE COURT: You may step down, ma'am.

13 May she be released from her subpoena?

14 MR. NELSON: Yes, Your Honor.

15 THE COURT: All right. You're released.

16 Next witness, please.

17 MR. NELSON: My next one is going to be
18 extremely lengthy --

19 THE COURT: We're going til 1:00, so --

20 MR. NELSON: I was going to squeeze in
21 Mr. Nettles. He just ran to the restroom. I can
22 start with --

23 THE COURT: Sir, however you want to do it.

24 MR. NELSON: Can we wait a few minutes for
25 Mr. Nettles? He ran to the restroom.

1 THE COURT: I'd be glad to.

2 (Mr. Nettles enters the courtroom.)

3 THE COURT: Mr. Nettles, I think he's going to
4 call you. Come on up and have a seat and place your
5 left hand on the Bible and raise your right.

6 TED NETTLES

7 being first duly sworn, testified as follows:

8 THE WITNESS: Yes, sir, I do.

9 THE COURT: Have a seat. State your full name
10 for the record and spell your last.

11 THE WITNESS: Ted A. Nettles, Jr.,
12 N-E-T-T-L-E-S.

13 THE COURT: All right, everybody. We're going
14 to go about 1:00 and then break til about 2:15.

15 You may proceed.

16 DIRECT EXAMINATION

17 BY MR. NELSON:

18 Q. Mr. Nettles, take 30 seconds, please, and tell
19 the Judge just who you are.

20 A. I'm Ted Nettles. Me and my wife bought some
21 property out in Colleton County several years ago.

22 THE COURT: Where are you from, Mr. Nettles?

23 THE WITNESS: Ridgeland.

24 THE COURT: Big city.

25 THE WITNESS: Well, I live in Charleston now.

1 So we have a problem with trying to get it solved
2 here.

3 THE COURT: I understand. That's why we're
4 taking testimony.

5 You may proceed.

6 BY MR. NELSON:

7 Q. When you and your wife were looking for a piece
8 of property, what specifically were you looking for?

9 A. A nice place to deer hunt close to Charleston.
10 I lived out in the country in Ridgeland for years,
11 and it's too far away to move for work.

12 THE COURT: So you were looking for deer
13 hunting land?

14 THE WITNESS: Yes, sir. I work and live in
15 Charleston and it's within 30 minutes of what we
16 were trying to find.

17 BY MR. NELSON:

18 Q. And you did some investigation prior to
19 purchasing this property?

20 A. Yes, sir. I would go to Colleton on Fridays,
21 my day off, and go to different agencies and talk to
22 the people about --

23 THE COURT: Agencies being real estate
24 agencies?

25 THE WITNESS: No, sir. I'd go to the RMC

1 office, I went to the 911 -- we was inquiring about
2 this road, the property and the road going to it.

3 So --

4 BY MR. NELSON:

5 Q. Okay. And what kind of information did you
6 receive?

7 A. Most agencies I went to, they said this is
8 basically an old county road.

9 MR. BARNES: Your Honor, Your Honor --

10 THE COURT: Sustained.

11 MR. BARNES: Thank you.

12 MR. NELSON: The County is a party of --

13 THE COURT: Well, you haven't identified what
14 agency, who, what, how.

15

16 BY MR. NELSON:

17 Q. Can you be more specific on a particular agency
18 that you contacted?

19 A. Yes, sir. The most important place I went to
20 was the 911 office. I talked to the lady that just
21 left out of here, Ms. Thomas. She went on her
22 computer and pulled up the map and --

23 Q. What did you ask her to prompt her to do this?

24 A. I asked her what information they had on Camp
25 Avenue beyond where that gate was at. She had some

1 big computer file she pulled up. She goes, we show
2 this as being an old county road. And I asked her
3 if she'd write me a letter verifying it. She did.
4 She wrote me a letter --

5 THE COURT: Where is it?

6 THE WITNESS: She never give it to me because
7 her boss, Major Haus [phonetic], was not there to
8 verify and sign it.

9 THE COURT: So you don't have it?

10 THE WITNESS: I don't have it, no, sir. She
11 kept the letter. She was supposed to send it to us,
12 but we never got it.

13 THE COURT: Wonder why. Boss wouldn't confirm
14 it?

15 THE WITNESS: I don't know, sir.

16 THE COURT: Don't know. All right.

17 BY MR. NELSON:

18 Q. If you look, there's two exhibits right in
19 front of you. One is marked Plaintiff's 2 and the
20 other is Plaintiff's 3.

21 A. Okay.

22 Q. Do you recognize -- let's start with 2. Do you
23 recognize Plaintiff's Exhibit 2?

24 A. Yes, I do.

25 Q. Please tell the Court your understanding of

1 what that document is.

2 MR. BARNES: Your Honor, I object. I'm sorry.

3 THE COURT: It speaks for itself. What's the
4 question?

5 BY MR. NELSON:

6 Q. When did you first see this document?

7 A. It was before we bought the property. We
8 were -- it was -- we had -- this property was in
9 probate court. And we had six months before it came
10 out of probate to do our investigation on whether we
11 wanted to close on this property or not. So that's
12 when I went in here and talked with them and found
13 out their information. And that's what -- this is
14 prior to November 2009.

15 THE COURT: When did y'all buy the property?

16 THE WITNESS: Our closing was November 30th,
17 2009.

18 THE COURT: 2009. So this was after you bought
19 the property. This is dated September 17, 2010 and
20 April 19, 2010.

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay.

23 THE WITNESS: I made several trips there, not
24 one. I'd say five different trips, at least.

25 THE COURT: I understand.

1 BY MR. NELSON:

2 Q. If you look at 2 and 3, you see one is dated
3 September 17th of 2010 and the other is dated April
4 19th of 2010.

5 A. Yes.

6 Q. Do you recall when you obtained one versus the
7 other or how you came into possession with both of
8 these documents?

9 A. The one of September 10th was sent to us -- the
10 day I went down there was -- I know it was the day
11 the shrimp season starts, which is September 11th.
12 It was approximately six to eight days later or
13 something --

14 Q. Okay.

15 A. -- is when we got this in the mail. That was
16 the day I -- she had written this letter for me that
17 I don't have.

18 Q. So Plaintiff's Exhibit 2 came to you in the
19 mail?

20 A. Yep, both of them did.

21 THE COURT: So you went down there on the
22 opening of shrimp season 2010 --

23 THE WITNESS: Yes. I had to --

24 THE COURT: Hold on. September 11th, 2010.

25 This was after you bought the property; correct?

1 THE WITNESS: Yes.

2 THE COURT: And that's the date she wrote the
3 letter yo never got?

4 THE WITNESS: Yes, sir.

5 THE COURT: So it was after you bought the
6 property?

7 THE WITNESS: We had done -- yes, sir.

8 THE COURT: Okay.

9 BY MR. NELSON:

10 Q. How about the April 19th letter, Plaintiff's
11 Exhibit 3? When did you first come into contact
12 with this document?

13 A. I'm really not sure.

14 Q. Okay.

15 A. I couldn't --

16 Q. And then do you recall shortly after this
17 lawsuit was filed there was an injunction hearing?

18 A. Yes.

19 Q. And you had -- your previous counsel, y'all had
20 asked for an injunction and Judge Mullen denied it?

21 A. Yes.

22 MR. BARNES: Your Honor, I'm patient with the
23 leading, but I don't want to leave it wide open.

24 THE COURT: You have to object. Sustained.

25 Ask direct questions.

1 BY MR. NELSON:

2 Q. Do you recall having any encounters with this
3 office after the injunction hearing?

4 THE COURT: When was the injunction hearing,
5 please, and the date of the order, please?

6 MR. BARNES: April 21st.

7 THE COURT: Mr. Nelson, we have it right here.
8 Oh, that's the transcript.

9 All right. There was a hearing April 21, 2010
10 before Judge Mullen. I don't know -- do we have an
11 order when the order was issued or did she rule from
12 the bench?

13 MR. BARNES: Yes, sir, she did. When you get
14 to the back portion of it is where the County
15 attorney stands up, as I said in openings, and said
16 that they called the sheriff and they're not
17 supposed to do that again. And Mr. Lanning said, my
18 clients understand that. And I'll get to that in
19 cross-examinations on this transcript.

20 THE COURT: Well, I'd ask you the date of the
21 order. And just like Judge Mullen says, I'd want to
22 do a form order denying the TRO.

23 MR. BARNES: Yes, she did.

24 THE COURT: That's all it was, was a form
25 order.

1 So the hearing was on April 21, 2010. So what
2 was your question?

3 BY MR. NELSON:

4 Q. Did you have any contact with the 911 office
5 shortly after that hearing?

6 A. I had went and talked to her -- I can't
7 remember exactly what day it was. But she had --
8 after she had told me she believed it was public
9 road beyond the gate, she says, I have to make a
10 phone call. She called Helen -- I don't recall her
11 last name -- with the road and bridges department
12 and asked her. And Ms. Helen -- they were on
13 speakerphone --

14 MR. GRIFFITH: Your Honor, I'm going to object
15 to what the conversation with Ms. --

16 MR. BARNES: I join in.

17 THE COURT: That's a --

18 MR. GRIFFITH: Ms. Thomas was here and --
19 that's okay. But --

20 THE COURT: He can talk about what he and
21 Ms. Thomas talked about, but the telephone call
22 between Ms. Thomas and someone else.

23 MR. NELSON: I think he overheard that end of
24 the conversation.

25 THE COURT: My ruling is he can't go into that.

1 That's hearsay. Go ahead.

2 BY MR. NELSON:

3 Q. What else happened during your encounter with
4 Ms. Thomas that day?

5 A. Beyond her starting to write that letter that
6 we never got, that was it. I had asked -- I was
7 trying to find out what kind of paperwork we had to
8 have to get an address on our property.

9 Q. So you were just there still trying to get an
10 address at that point?

11 A. Yes. To try to find out what paperwork I
12 needed and what all we had to have to get an
13 address.

14 THE COURT: The judge had already denied the
15 restraining order to open the road at that time?

16 THE WITNESS: This was before that.

17 THE COURT: It's --

18 THE WITNESS: We never went --

19 THE COURT: His question was, what did you do
20 after this hearing with Judge Mullen? So what did
21 you do? Did you have contact with them after Judge
22 Mullen's ruling that she wasn't going to open the
23 road?

24 THE WITNESS: No, sir.

25 THE COURT: Okay. And I'm not fussing, I'm

1 just trying to get --

2 THE WITNESS: No, sir. We never got to go to
3 that court hearing because we were told not to be
4 there. Me and my wife both were told --

5 THE COURT: You didn't attend this court
6 hearing?

7 THE WITNESS: No, sir. Our attorney told us we
8 did not need to be there.

9 THE COURT: Okay. Who was your lawyer?

10 THE WITNESS: Tommy Brooks out of Charleston.

11 THE COURT: It says Mr. Christopher Lanning
12 here.

13 THE WITNESS: He was his assistant. We assumed
14 Mr. Brush was going to be there. We were never told
15 he was going to send his assistant to do his job.

16 THE COURT: Go ahead.

17 BY MR. NELSON:

18 Q. Mr. Nettles, I'm handing you Plaintiff's
19 Exhibits 11 and 12. Do you recognize these?

20 A. Yes, sir.

21 Q. And number 11 is dated April 10th, 2009; next
22 one is dated September 17th, 2010. Do you see that?

23 A. Yes, sir.

24 Q. Do you notice -- is there anything different
25 between these two documents?

1 A. The lines have changed. It was a double line
2 going beyond the gate. And it changed in September,
3 six months.

4 Q. And where do these documents come from?

5 A. GIS office.

6 Q. Did you print them online or --

7 THE COURT: Any objection. He hasn't laid the
8 foundation.

9 MR. BARNES: Yes.

10 MR. NELSON: I'm working on the foundation.

11 MR. BARNES: I do object there's no foundation
12 laid.

13 THE COURT: His testimony is he got these from
14 the GIS office?

15 MR. NELSON: I was just starting to go there
16 with him. Yes, sir.

17 THE COURT: How did you get them?

18 THE WITNESS: I walk up to them inside and
19 asked them. They would ask me what part of the
20 county I was looking for. And I asked -- I said I
21 was specifically trying to find Camp Avenue in
22 Jacksonboro. That's the part they print out.

23 THE COURT: What happened after that?

24 THE WITNESS: After I noticed the road lines
25 being changed, I went back inside and asked them why

1 it was changed and --

2 THE COURT: Who were you talking to?

3 THE WITNESS: A guy named Phil Slater. I don't
4 know what his --

5 THE COURT: Hold on a second.

6 MR. GRIFFITH: I'm going to object, Your Honor.
7 Mr. Slater has not been listed as a witness.

8 MR. BARNES: I join in.

9 THE COURT: I'm not going to let him say what
10 Mr. Slater -- I don't even know who he is.

11 BY MR. NELSON:

12 Q. What office were you in when this conversation
13 was going on?

14 A. GIS office.

15 Q. The GIS office?

16 A. Yes. It's in the county building down by the
17 RMC office.

18 Q. This is a county building?

19 A. Yes.

20 Q. And when you walked in and you stated your
21 purpose --

22 THE COURT: He wanted the map for the road in
23 that area near Jacksonboro. He was given these two
24 maps.

25 BY MR. NELSON:

1 Q. Did you receive both of these maps on the same
2 day?

3 A. No.

4 Q. Okay.

5 A. No.

6 Q. The gentleman you said you were speaking to,
7 what was his name?

8 A. Phil Slater.

9 Q. And how did he identify his position when you
10 were in that office?

11 A. He works in different -- several different
12 offices. I would see him in different areas of the
13 building as I would go there to check on stuff.

14 THE COURT: The question was, how did he
15 identify himself to you?

16 THE WITNESS: My and my wife had went and
17 asked -- told them we were trying to build a house
18 and asked him what paperwork we needed from Colleton
19 County to build a house on the property first time
20 we met him. And that was in the planning office.

21 Second time was when I saw him when he was in
22 the GIS office. I don't know what his job position
23 really is. He never really explained it to me.

24 BY MR. NELSON:

25 Q. What was he wearing?

1 THE COURT: What was his name?

2 THE WITNESS: Phil Slater. I'm not sure how to
3 spell it.

4 What was he wearing? A white shirt the first
5 time. Very casual dressed.

6 BY MR. NELSON:

7 Q. I was trying to find out if he had some sort of
8 uniform.

9 Was he working behind a desk?

10 A. Yes. He had his own personal desk in the
11 planning office. In the GIS office, he was just --
12 when I walked in the door, he was, can I help you.

13 Q. He say the first person to greet you?

14 A. Yes.

15 Q. And what specifically did you ask for when
16 this -- I guess which one, 11 or 12, was given to
17 you at this time?

18 A. The first one would have been 11.

19 Q. That's April 10th, 2009.

20 A. Yes.

21 Q. When did you close on the property?

22 A. November 30th.

23 Q. How long had y'all been looking into this
24 property prior to purchasing it?

25 A. At least six to eight months.

1 Q. So on April 10th, 2009, y'all were looking at
2 the 21 acres?

3 A. We were looking at it. It was still in the
4 probate court.

5 Q. And then I want to make sure I'm clear here:
6 Are we talking about Exhibit 11 or 12, the last
7 meeting I was talking about?

8 A. The last -- 12.

9 Q. Okay. Why did you ask for that?

10 A. I can't recall offhand why I was in there.

11 Q. How did you come into possession with number
12 11?

13 A. That was the first time I -- I was down there
14 getting several documents. I was going to find
15 out -- get the paperwork for building the house
16 and --

17 THE COURT: I thought you were buying it to go
18 hunting.

19 THE WITNESS: I was going to build a little
20 hunting shack out here.

21 THE COURT: A little shack?

22 THE WITNESS: Or however you want to call it, a
23 hunting camp. I just went over to the office and
24 wanted to see what kind of stuff they had, maps they
25 had, because we were still having a problem with

1 getting beyond the gate. So I wanted to see the
2 County --

3 THE COURT: Well, when you're negotiating to
4 buy the property, do you have a realtor involved?

5 THE WITNESS: Yes, sir.

6 THE COURT: Did you go out and visit the
7 property?

8 THE WITNESS: Several times. Many times.

9 THE COURT: How did you get beyond the gate?

10 THE WITNESS: Before I bought the property, I
11 actually had a key. Scooter give me a key,
12 Mr. Drew.

13 THE COURT: So you knew it was locked?

14 THE WITNESS: I knew the gate was locked, yes,
15 sir. It wasn't always locked up. Sometimes it
16 would be open, sometimes it would be locked.

17 THE COURT: Well, did you know whether you had
18 access or not when you bought the property?

19 THE WITNESS: Yes, sir. The lady we bought it
20 from --

21 THE COURT: The lady you bought it from?

22 THE WITNESS: Ms. Norvia Miller said they had
23 always used that road, they were having an issue
24 with Mr. Drew over the gate. So me and my wife --

25 THE COURT: Bought it knowing you had an issue

1 with the gate?

2 THE WITNESS: It was part of our contract, sir.

3 THE COURT: That you'd have an issue with the
4 gate?

5 THE WITNESS: We'd have an issue -- we'd take
6 over the issue with the gate because she was not
7 able to --

8 THE COURT: Resolve it?

9 THE WITNESS: She was having real bad health
10 issues.

11 THE COURT: I just want to make sure, when you
12 bought the property, you'd been out there, you knew
13 the gate was there, you had to get a key from
14 Mr. Drew sometimes, sometimes it was open; the lady
15 you bought it from said that there was an issue with
16 the gate that hadn't been resolved, and you bought
17 it knowing all of that?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. That's a good place to
20 take a break. It's 1:00. We'll start back at 2:15.

21 Sir, you're right in the middle of your
22 testimony. The rule is, don't discuss it over the
23 lunch break. I'll ask you whether you did or didn't
24 when you get back. I ask every witness that. Don't
25 discuss it with your lawyer. You can talk about

1 anything else you want to.

2 We'll stand at ease until 2:15. Thank you very
3 much.

4 MR. NELSON: Your Honor, there's one other
5 matter. They've made a motion to exclude an expert
6 of mine, and I need to coordinate with him about
7 whether he's coming today or tomorrow morning or
8 whatnot.

9 THE COURT: I don't understand.

10 MR. NELSON: We identified an expert
11 fairly recently --

12 THE COURT: You can bring him this afternoon if
13 you want to.

14 MR. NELSON: He was in Charleston. And we were
15 wondering if we were going to bring him here or have
16 him excluded.

17 THE COURT: Excluded, you mean from testifying
18 all together?

19 MR. NELSON: Yes, sir.

20 THE COURT: Okay. When we get back that 2:15,
21 we'll address that.

22 MR. NELSON: Okay. Thank you.

23 (A luncheon recess transpired, 12:58 PM - 2:20
24 PM.)

25 THE COURT: All right. Mr. Nelson, you may

1 continue.

2 MR. NELSON: Thank you, Your Honor. I actually
3 have one question for him.

4 DIRECT EXAMINATION

5 (Continued)

6 BY MR. NELSON:

7 Q. Mr. Nettles, when you first had conversations
8 with the Drews about this property prior to y'all
9 purchasing it, did y'all ever ask them for an
10 easement or anything like that?

11 A. Nope, sure did not.

12 MR. NELSON: I have no further questions.

13 THE COURT: Why didn't you ask them for an
14 easement?

15 THE WITNESS: According to all of our -- how do
16 you say this?

17 THE COURT: Information?

18 THE WITNESS: Information. And from the owner
19 we bought it from, this road had always been used by
20 whoever.

21 THE COURT: The owner you bought it from said
22 there was a problem, there was a gate up there and
23 she couldn't get in and out. You didn't realize it
24 --

25 THE WITNESS: She moved to New York and came

1 back and the gate was up.

2 THE COURT: I see.

3 Okay. Mr. Barnes, cross?

4 CROSS-EXAMINATION

5 BY MR. BARNES:

6 Q. Mr. Nettles, isn't it true that the first time
7 you looked at the property, you saw Scooter's locked
8 gate, Mr. Drew's?

9 A. You say the first time I seen the property I
10 saw a locked gate?

11 Q. You saw it?

12 A. I saw a gate on the road. Yes, sir.

13 Q. Okay. And isn't it true that thereafter, at
14 your request, Scooter would leave a key for you to
15 you use or tell you when the key was there and when
16 to put it back, and that's you -- he would
17 cooperate --

18 A. The first couple times. But eventually he just
19 gave me a key.

20 Q. But with -- but he took the key back, didn't
21 he?

22 A. No. I give the key to the -- after we received
23 a letter from him saying we could no longer use the
24 road, I gave the key to the police officer that we
25 had called down to the road -- gate. And I assume

1 the police officer gave the key back to him. The
2 key didn't work in the gate anymore.

3 THE COURT: Now, at that point in time, had
4 y'all bought the property or were you trying to buy
5 the property, when you gave the key to the police
6 officer?

7 THE WITNESS: We had bought the property.

8 THE COURT: Had bought it?

9 THE WITNESS: Yes, sir.

10 BY MR. BARNES:

11 Q. But isn't it at all times Scooter said you were
12 not going down his road, which is Camp Road?

13 A. Not at first.

14 Q. I'm asking you questions from your deposition.

15 MR. BARNES: Your Honor, may I just read him
16 what he said in his deposition?

17 THE COURT: You can ask him if this is the
18 question and is this the answer, and he can agree or
19 not.

20 MR. BARNES: Thank you, sir.

21 BY MR. BARNES:

22 Q. Starting at the bottom of page 29:

23 It was on the 30th of November '09 and we had
24 called Scooter and Debra and asked to make
25 appointments with them in order to talk to them

1 about something. I'm pretty sure they knew it was
2 about. We would try to meet on Sunday afternoon.

3 After you closed?

4 Yes.

5 What happened?

6 We finally got to -- I met Scooter first.

7 Debra had choir practice. I went out and talked to
8 Scooter, you know. We bought the property. Now,
9 how do you propose that we access the property?

10 And what did he say?

11 He said, I don't know how you're going to your
12 property. You're not coming down my road. You're
13 not going to muddy my road up.

14 And the date of this conversation, please?

15 Was December of '09.

16 Do you remember that?

17 A. Yes, sir.

18 Q. And isn't it true that Mr. Brush was the lawyer
19 who closed your property, the sale?

20 A. Yes, sir.

21 Q. And isn't it true that both the title insurance
22 binder as well as the final policy that was issued
23 excluded access to the properties from its coverage?

24 A. Sir, we never brought property insurance until
25 after we closed. It was not offered to us. After

1 our closing date is when Mr. Brush asked if I needed
2 to buy title insurance.

3 Q. Didn't you buy the --- didn't Mr. Brush issue
4 the title policies?

5 A. Yes, but it was way after closing.

6 Q. And isn't it true that you did not look at all
7 the documents provided to you by Brush on or after
8 the closing?

9 A. Which documents are you referring to?

10 Q. I'll read it. This is on page 51 of your
11 deposition -- let's go to bottom of page 50:

12 Did you read all of the documents at closing
13 before you closed that the lawyers gave you or put
14 in front of you?

15 Your answer was, kind of, yes, sir.

16 Did you read any after closing that may have
17 come in the mail or had been delivered?

18 No, sir. I never did that.

19 So you looked at everything that came to you?

20 It was a little small envelope and it was
21 there.

22 Did you look at all of the documents provided
23 to you by the Brush Law Firm -- then you interrupted
24 and said, no, sir.

25 I finished the question: -- before closing or

1 after closing? So the question would be, did you
2 look at all the documents provided to you by the
3 Brush Law Firm before closing or after closing?

4 And what did you answer? You said, no, sir.
5 That's what this deposition says; is that correct?

6 A. I don't recall, Parker -- Mr. Barnes. I do
7 know that we did look at all of the papers. We had
8 to sign and initial all the papers at closing time.

9 Q. And then I asked you on line 16 on page 51:
10 What was the reason you did not look at them?
11 And your answer on 17: I just did not have
12 time.

13 Then on line 20: What did you pay them for the
14 closing costs, for their fees and title policies?

15 Somewhere around a thousand bucks. That was
16 everything.

17 And I want to tell you, Mr. --

18 (Defendant's Exhibit No. 14 marked for
19 identification.)

20 BY MR. BARNES:

21 Q. Let me show you -- I'm showing you 14 that
22 we've marked --

23 THE COURT: 14 agreed upon or not agreed upon?

24 MR. BARNES: Agreed upon. And I'm referring to
25 page 7 of 8 of that document, Your Honor.

1 BY MR. BARNES:

2 Q. Isn't it true that this --

3 THE COURT: Well, that's 14 not agreed on.

4 MR. BARNES: He agreed on it afterwards.

5 THE COURT: Okay.

6 MR. BARNES: I'm sorry.

7 THE COURT: That's the title?

8 MR. BARNES: This is a commitment.

9 BY MR. BARNES:

10 Q. And isn't it true that under Special Exceptions
11 No. 3, it reads: Right of access to the and from
12 the lands insured hereby are neither insured nor
13 guaranteed, notwithstanding any insuring provision
14 contained elsewhere in the commitment policy? Isn't
15 that what it says?

16 A. Like I said, Parker, we did not have -- at
17 closing there was no title insurance mentioned until
18 we were ready to leave his office.

19 Q. And, likewise, on Defendant's Exhibit 13, which
20 has been agreed upon by counsel, Schedule B
21 Exceptions, Chicago Title Policy: Right of access
22 to and from the lands insured hereby are neither
23 insured, nor guaranteed, notwithstanding any
24 insuring provisions contained elsewhere in the
25 commitment policy. Isn't that what this also says?

1 A. I haven't seen it. Let me see it. Let me ask
2 you something, Mr. Barnes --

3 THE COURT: No, sir. He asked a question.
4 Answer the question, please, sir. That's the way it
5 works.

6 THE WITNESS: Yes, sir. I'm sorry.

7 BY MR. BARNES:

8 Q. And Exhibit 15 up at the top, isn't it true
9 that this says: Policy amount, \$75,000; policy
10 date, December 4th, 2009, and it gives deductible
11 rates. And it says: Name of insured, Janell B.
12 Nettles, Ted A. Nettles. And it talks about a
13 mortgage as zero.

14 And then it says right in paragraph 3 on page
15 2: Right of access to and from the lands insured
16 hereby are neither insured nor guaranteed, not
17 withstanding any insuring provisions contained
18 elsewhere in the commitment of policy?

19 A. (Nonverbal response.)

20 Q. And isn't it true on page 31 of your deposition
21 that you testified that Mr. Brush was Ted's agent
22 for title insurance? That's what you said in your
23 deposition; correct?

24 A. He's the one -- his firm wrote the policy.

25 Q. I beg your pardon.

1 A. Mr. Brush's law firm wrote the policy after
2 closing.

3 THE COURT: Was he your lawyer? You hired him
4 to do the title work and the closing?

5 THE WITNESS: We just hired him for the
6 closing.

7 THE COURT: That included the titling policy,
8 didn't it?

9 THE WITNESS: Yes, sir, afterwards.

10 BY MR. BARNES:

11 Q. Now, page 45, number 7:

12 What was the purpose of these maps?

13 You answered on character lines 8 through 15:
14 I was trying to find out the deal with the road.
15 Scooter said it was his road and everybody -- every
16 map we looked at said it was a country [sic] road.
17 We did ten months of research before we bought this
18 property. I would not have bought the property if I
19 thought it was Scooter's road. Everything [sic] we
20 talked to, every map we went to, every person
21 clearly stated it was a country [sic] road beyond
22 the gate. Isn't that what you said?

23 A. Yes, sir.

24 Q. Oh, I'm sorry. It says county road.

25 And then on line 18 on page 50: Because you

1 were curious -- at any time, was all this being done
2 before closing or after?

3 Both.

4 Because you were curious about that? What
5 request did you make of the law firms that you used
6 to close this with to determine whether Camp Road
7 was a County- or State- or private-owned road?

8 Answer: I showed them the maps we had. And
9 the title inspector -- we didn't have but a few
10 maps. We had the Edisto title stuff. We had
11 surveyor maps and I had a few Colleton GIS. And
12 they character [phonetic] their title abstractor,
13 whoever he was, and came up with their decision.

14 What was their decision?

15 Answer: County road.

16 Is that what you said?

17 A. Yes, sir.

18 Q. And you're testifying right now under oath that
19 every person you talked to about the status of Camp
20 Road inside the gate said it was a county road?

21 A. Yes, sir.

22 THE COURT: What date was the closing?
23 December --

24 THE WITNESS: November --

25 MRS. NETTLES: November 30th, 2009.

1 THE COURT: November 30th, 2009. And the title
2 policy was written December 3rd or 4th?

3 MR. NELSON: She'll give an explanation on that
4 one.

5 BY MR. BARNES:

6 Q. Now, did y'all have anybody from Edisto Title
7 Services looking into the title about access?

8 A. I believe so.

9 Q. And did you also have a lady named Catherine
10 Lamond -- I'm trying to pronounce it right.

11 A. LaFond.

12 Q. Did she give you any opinions about access?

13 A. No, sir.

14 Q. She didn't?

15 A. No, sir.

16 Q. Did you ever talk to her on the telephone about
17 access?

18 A. She's a good friend of mine.

19 Q. Pardon?

20 A. She's a good friend of mine.

21 Q. Did you ever talk to her or get any
22 communication from her office that Camp Road was a
23 private road inside the gate?

24 THE COURT: Wait a minute.

25 Mr. Nettles, have you not seen all of the

1 e-mails between your wife and Ms. LaFond?

2 THE WITNESS: I seen a few of them.

3 THE COURT: And you didn't know about the
4 contents of those e-mails?

5 THE WITNESS: Well, she does most of the
6 paperwork.

7 THE COURT: Okay.

8 MR. BARNES: That's all we have, Your Honor.

9 MR. GRIFFITH: No questions, Your Honor.

10 THE COURT: Redirect, if any.

11 REDIRECT EXAMINATION

12 BY MR. NELSON:

13 Q. Mr. Nettles, who handles the family finances,
14 you or Janell?

15 A. She's the boss of the house. I pay my part of
16 the bills.

17 Q. Okay. And when it came to things like setting
18 up a closing, does she handle most of that or do you
19 handle that?

20 A. She just tells me when and where. She takes
21 care of all that kind of stuff.

22 Q. Okay. Is it -- do you often sign your name
23 just because she told you to?

24 A. If she asked me -- I mean, I look at the
25 paperwork she shows me before I sign it.

1 Q. Okay. Do you rely on her in making a lot of
2 the decisions?

3 A. Sure.

4 MR. NELSON: No further questions.

5 THE COURT: All right. You may step down.

6 Mr. Nelson, tell me about your witness you
7 deemed an expert and what -- tell me what he or
8 she -- who he or she is and what they're going to
9 testify about and what area of expertise that I
10 think and Mr. Barnes and Mr. Griffith have a motion
11 to exclude him.

12 MR. NELSON: His name is Elliot Quinn. He's a
13 registered licensed surveyor. He's been doing it
14 for a number of years.

15 THE COURT: Doing surveying?

16 MR. NELSON: Yes, sir.

17 Mr. Barnes had identified an expert, Mr. Gene
18 Whetsell.

19 THE COURT: Tell me what your expert is going
20 to testify to.

21 MR. NELSON: He's basically going to walk us
22 through the plats and the deeds.

23 THE COURT: Chain of title?

24 MR. NELSON: Yes, sir.

25 THE COURT: Why do we need an expert to do

1 that? Why can't you just introduce the chain of
2 title?

3 MR. NELSON: Looking at some of the plats,
4 sometimes there might be a discrepancy between two
5 of the plats, so it might be useful to have an
6 expert and explain why a discrepancy can occur,
7 things along those lines.

8 THE COURT: Well, an expert can only give an
9 opinion.

10 MR. NELSON: There are two, actually, main
11 plats. There were two in the 50s; I think one was
12 '52 and one was '59. And there's just an
13 unexplained change between those plats.

14 THE COURT: Did he do those plats?

15 MR. NELSON: No, sir.

16 THE COURT: How is he going to explain them?
17 Isn't that speculation?

18 MR. NELSON: He's going to explain how
19 surveying methods have advanced over the years and
20 how there were inaccuracies back in time and things
21 like that.

22 There's two other maps we're going to look at
23 where -- I think it was 520 acres on one map and 670
24 on the other. He would testify that's not uncommon.

25 THE COURT: How does that get us to where we

1 are -- how is that relevant to this 21 acres and
2 whether or not Camp Avenue, Camp Road is a public
3 road, private road, after it passes the gate,
4 heading in a westerly direction?

5 MR. NELSON: There's a -- I believe it's a 1982
6 plat, which -- that does make it look like -- if you
7 just -- a layperson looking at this plat would think
8 that Camp Road falls on Mr. Drew's side of the road
9 as opposed to it being a divider.

10 THE COURT: How could he testify to that, what
11 a layperson would think?

12 MR. NELSON: I think it would shed some light
13 as to how it's not uncommon or how, based on survey
14 methods, how something could change from '52 to '59
15 to '82.

16 THE COURT: I understand that. How can he
17 testify to what an ordinary layperson --

18 MR. NELSON: I'm just saying, based upon my
19 looking at it or just anybody looking at it, it
20 would look like that is on one side of the property
21 line.

22 THE COURT: Well, what opinions are you going
23 to try to elicit from him?

24 MR. NELSON: If he was allowed to give an
25 opinion, he'd testify he believes it's a public

1 road.

2 THE COURT: Isn't that a matter of question of
3 law? I'm asking you. Experts can't give an opinion
4 on a question of law.

5 MR. NELSON: Right.

6 THE COURT: You agree with that?

7 MR. NELSON: Yes, sir.

8 THE COURT: And is not whether or not it's a
9 public road a question of law?

10 MR. NELSON: I suppose it is. But I think that
11 some of the explanations and some of the data that
12 goes into making that conclusion can be assisted by
13 having it explained by a surveyor.

14 THE COURT: Well, every witness you've put up
15 this morning has said it's not a public road,
16 they've never maintained it. And the only witness
17 you've put up has said that he saw some County
18 employees on it in the '50s, Mr. Miller. So what --
19 1953 when he moved away from there.

20 MR. NELSON: There's a difference between a
21 public road versus a county road.

22 THE COURT: I agree with that.

23 MR. NELSON: He actually cannot say one way or
24 the other on the county aspect of it. But it is his
25 opinion this has always been a publically used road.

1 THE COURT: He bases that on what? You're
2 welcome to bring him up here. I'm going to listen
3 to why they don't want him to come. But you're
4 welcome to bring him. It may very well be that his
5 testimony is not admissible. I don't know what
6 his -- when do you want to have him; in the morning?
7 Why do you keep looking -- aren't you running this
8 show?

9 MR. NELSON: Not always.

10 MRS. NETTLES: I'm paying the guy.

11 THE COURT: I understand that. But if he's
12 going to come in and give me the chain of title and
13 the deeds and the plats, he can't give opinions on
14 any of that. If the one plat survey or something
15 says one thing and another one says another, it's
16 because of the more modern equipment. He can tell
17 me that may be his opinion as to why there's a
18 discrepancy on the acreage, but he can't look at it
19 and tell me what -- just looking at what something,
20 his opinion, what it is. You know the rules to
21 experts.

22 What's your objection to having him,
23 Mr. Barnes?

24 MR. BARNES: Your Honor, if I may approach the
25 bench. When I got the name -- my objection is on

1 multiple grounds. It's a motion first and then a
2 letter I had wrote him after I got the --

3 THE COURT: First of all, when did you learn
4 that Mr. Quinn was going to --

5 MR. BARNES: When I received supplemental
6 interrogatories from him that were dated June 5th,
7 2015. And I filed that motion, then thereafter I
8 wrote Mr. Nelson a letter saying, Tom, you know, I
9 sent you interrogatories about who your experts are,
10 what are their opinions, and you say that Nelson has
11 not rendered a written report. And so I said,
12 please tell me what the basis and summary of his
13 testimony is. And I never got an answer.

14 And you have a copy of that letter, it's the
15 last document attached. And I mailed that letter to
16 him on June 11th.

17 THE COURT: All right. He supplemented his
18 interrogatories on June 5, 2015, and he listed
19 Mr. Elliot Quinn. And he says: Mr. Quinn is a
20 licensed surveyor who will testify that the portion
21 of Camp Lane west -- Camp Lane west of the gate is a
22 public road. He's not issuing a formal opinion.

23 And you made a motion to exclude him, looks
24 like, about the same day you received it --

25 MR. BARNES: As quickly as I could, Your Honor.

1 THE COURT: -- the 13th. And this case has
2 been set for trial since when? We were back in
3 court --

4 MR. BARNES: Before this. Back in May.

5 THE COURT: And it's been pending since how
6 long?

7 MR. BARNES: Since 2010. It's a five-year-old
8 case, Your Honor.

9 And what his answer is, that he'll say that the
10 portion of Camp Road is a public road, is a matter
11 of law. He doesn't say anything about going through
12 deeds and plats. I don't have any basis of his
13 testimony.

14 THE COURT: And you'd served interrogatories
15 back when?

16 MR. BARNES: In 2010.

17 THE COURT: And your interrogatories were that
18 you state the name and addresses of any experts and
19 for them to set out what facts that they will rely
20 upon --

21 MR. BARNES: And five on the next page: Please
22 set forth an itemized statement of all facts that
23 you contend that give you the right to use Camp Road
24 beyond the locked gate on Camp Road.

25 THE COURT: So your motion is to exclude him

1 based on the timeliness of revealing him and,
2 further, the inadequacy of the response concerning
3 what his opinions will be.

4 MR. BARNES: And the lack of his capacity to
5 give an opinion of what is or what is not a public
6 road. Under D: That the status of Camp Road is a
7 legal question and the proposed surveyor witness is
8 not --

9 THE COURT: All right. We keep saying it's a
10 legal question. Do we have a case that says --

11 MR. BARNES: I have the Vick case, Your Honor.
12 It's under tab 15 in my -- in the cases you have in
13 the brief.

14 THE COURT: Hold on a second.

15 MR. BARNES: It reads: Determination --

16 THE COURT: Hold on one second, please. Tab
17 15?

18 MR. BARNES: Yes, sir. I think it's Vick vs.
19 DOT.

20 THE COURT: And please refer me to the --

21 MR. BARNES: It's on the bottom right of that
22 first page. But if I may refer to it briefly,
23 Judge. It says: The determination of whether a
24 road has been dedicated to public use is --

25 THE COURT: Tell me where you're reading from,

1 please. I've got the opinion here, Court of
2 Appeals, 2001.

3 MR. BARNES: If you look at the first page,
4 Your Honor, over to the right, it's LexisNexis
5 headlines and then Headnote 1: The determination of
6 whether a road has been designated for public use is
7 one in equity. Therefore, the reviewing Court may
8 find facts in accordance with its own view of the
9 preponderance of the evidence.

10 THE COURT: That talks about the reviewing
11 court. That doesn't necessarily talk about -- I'm
12 not sure it says that.

13 MR. BARNES: All right. One other realm, Your
14 Honor, is this: I think it would be -- that
15 question is answered by the preponderance of the
16 evidence. And you're the -- as far as this trial,
17 you're the jury and the judge. And I think -- I
18 don't know what he can add that you can't, that you
19 need added, to form your own opinion of that
20 evidence.

21 What I'm saying is, this isn't a question where
22 expert testimony is necessary or even called for.

23 THE COURT: Mr. Griffith, what's your position?

24 MR. GRIFFITH: Judge, I'd cite you to Dawkins
25 vs. Fields case, which is at 354 SC 58.

1 THE COURT: Dawkins versus what?

2 MR. GRIFFITH: Fields.

3 THE COURT: Have I got that up here?

4 MR. GRIFFITH: No, sir. That would be located
5 at 354 SC 58 ---

6 THE COURT: What's it say?

7 MR. GRIFFITH: In general, expert testimony on
8 issues of law is inadmissible.

9 THE COURT: Well, that's elementary law.

10 MR. GRIFFITH: I understand. And as a result,
11 I understand that Mr. Quinn's opinion is to say that
12 this is a county road.

13 THE COURT: County road?

14 MR. GRIFFITH: Well, I understand, as it
15 applies to me, it would be a county -- he had a
16 listing -- basically, when I subpoenaed his file, he
17 had, basically, his opinion written on a sheet. I
18 understood it -- I read it rather fast because it
19 was sort of short timing at that point -- that it
20 was, I believe, either a public or county road.

21 As a result, my opinion is, while this does
22 come late, Your Honor, more importantly, that the
23 Court, certainly of our public documents in Colleton
24 County, can take judicial notice of the title, and
25 we don't need an expert to give us a title opinion.

1 THE COURT: I agree with you. I agree with.
2 that.

3 MR. GRIFFITH: We also don't need an expert to
4 give a legal opinion.

5 THE COURT: I agree with that.

6 MR. GRIFFITH: So unless he's going to testify
7 to something other than that, I don't think he's
8 going to be relevant at all.

9 THE COURT: What else is he -- what other
10 opinion are you trying to elicit, Mr. Nelson, other
11 than he's going to opine, as you say in your answers
12 to interrogatories, that it is a public road or the
13 chain of title, both of which --

14 MR. NELSON: None of any real substance, Your
15 Honor. He was just going to be very useful, I
16 think, in walking us through all of the documents.

17 THE COURT: Well --

18 MR. NELSON: As Mr. Griffith brought up though,
19 they did issue a subpoena to him immediately. And
20 it's my understanding he timely replied to that. So
21 they did get to see some of his notes and all the
22 documents he --

23 THE COURT: Have you got the notes of his
24 opinion right there?

25 MR. GRIFFITH: I believe I gave it to

1 Mr. Barnes, Judge. I was with Mr. Barnes the day it
2 came in.

3 THE COURT: I understand. But if that's all
4 he's going to testify, I doubt I'll let him testify.
5 You're welcome to bring him, and we'll do a proffer.
6 If he's going to offer some other opinion, then I'll
7 consider it. But if he's just going to do the chain
8 of title and he's got an opinion that it is a public
9 road, that's a matter of -- that is obviously
10 elementary law that he can't give that opinion.

11 And the chain of title is public record, so all
12 of us can look at that. I checked titles for 30
13 years. I can look at that, if that becomes a
14 relevant issue.

15 But you're welcome to bring him and proffer
16 him. And there may be something there that you're
17 not telling me that might be relevant.

18 MR. NELSON: Okay. Thank you, Judge.

19 THE COURT: Next witness, please. You going to
20 do Mr. Whetsell so he can get out of here?

21 MR. NELSON: Yes, sir.

22 THE COURT: Mr. Whetsell.

23 WALTER WHETSELL

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, sir.

1 THE COURT: Have a seat, state your name for
2 the record, spelling your last.

3 THE WITNESS: Full name is Walter Gene
4 Whetsell, W-H-E-T-S-E-L-L.

5 DIRECT EXAMINATION

6 BY MR. NELSON:

7 Q. Mr. Whetsell, how did you first become involved
8 in this case?

9 A. Well, I guess it goes way back out. My work
10 record -- I was the County Assessor from 1969 to
11 1989. I've been a registered land surveyor for 50
12 years; starting in 1965 to the present day, which is
13 50 years. I'm a friend of the Drews and I've done
14 survey on that tract of land of Mr. McMillan's over
15 the years in two or three places. And knowing the
16 area very well, I think that's the reason I'm here,
17 and explanation of some of the 911 stuff, 911 maps.
18 And at present, I'm on County Counsel; this is my
19 13th year. That's my start.

20 Q. How long have you been a land surveyor?

21 A. Fifty years.

22 Q. And do you know Mr. and Mrs. Drew personally?

23 A. I do.

24 Q. How do you know them?

25 A. They're friends of mine. I was Scooter Drew's

1 Little League baseball coach when he was ten years
2 old.

3 Q. And your involvement in this case, have you
4 charged them anything?

5 A. No, sir, I have not.

6 Q. Now, what were you asked to do when you first
7 got involved?

8 A. To identify roads, identify maps, basically tax
9 mapping or how tax mapping began. When I became
10 Assessor, there was not a tax map available in
11 Colleton County. Nobody knew anything about where
12 the location of any piece of property was until I
13 was employed in '69.

14 We flew the county in 1975, got the basic maps,
15 about 360 maps, one-inch-to-400 scale. And the
16 municipalities, we flew them at a scale of
17 one-inch-to-100; would be Edisto Beach, city of
18 Walterboro, Cottageville, and a few little
19 municipalities. They were flown one-inch-to-100.
20 We took those maps -- I had five mappers. We set
21 those in the areas and -- to locate people's
22 property.

23 So tax maps is not really a survey of your
24 piece of property; it's there for approximation.
25 It's for tax purposes. It does not convey title.

1 We try -- in trying to map these things, you try to
2 map everything with a deed. You get a deed that
3 don't give you a measurement anywhere; it says
4 bounded on the north by a road, bounded on the west
5 by Camps and on the south by the run of Edisto River
6 and on the east by Smith, and you as a surveyor or a
7 mapper try to map that.

8 It takes more than a deed lots of times. Deed
9 is basically what you're trying to go; you try to
10 collect plats and put -- it was like a puzzle to put
11 the thing together.

12 Q. So what were you asked to do?

13 THE COURT: In this case.

14 A. I was asked to look at and try to determine
15 what the status of the road was going into the Drew
16 property.

17 Q. Okay. And what did you do to investigate
18 answering that question?

19 A. Well, I'm familiar with that problem since I'd
20 been down there for years prior to this thing coming
21 up. The gate was put on it around '85 -- '85 or
22 '86, the gates were there, two gates. One gate was
23 closer to the road, closer to the intersection of
24 Polite and Camp, probably from here to the door off
25 of there, and then later it's moved back, probably

1 from here to the back wall --

2 Q. The question was, what did you to investigate
3 answering the question of the status of the road?

4 A. I looked at the maps and stuff that was in that
5 area. And I determined that ownership of that road
6 was in the McMillans' perimeter of their survey of
7 their property, from the intersection of Polite and
8 Camp Road, from there to the island at Deer Creek,
9 within the perimeter of the Drew property.

10 Q. And what deed or plat do you base that opinion
11 on?

12 A. Any plats you pick up or deeds. It's my
13 opinion that it's within that property. I have
14 nothing to tell me that that's not true.

15 Q. Okay. Do you recall giving me your deposition
16 on --

17 A. 2012?

18 Q. -- April 5th, 2012?

19 A. Yes, sir.

20 Q. Okay. Do you recall, on that day I had asked
21 you: But just from the deeds and plats alone, can
22 you find an indication as to who's the owner of the
23 dirt road? And your answer was: No, I can't.

24 A. No, you can't. From reading those, you cannot
25 tell who owns the property. I said it's within the

1 perimeter of this Drew piece of property. I cannot
2 read from the deeds and the plats the ownership of
3 the road. The road is there.

4 Q. So when you say within the McMillan property,
5 which property are you referring to?

6 A. You have a big plat of 600 or 700 acres, that
7 plat, which now is in possession of the Drews.

8 Q. Was it 670 acres?

9 A. Well, it's a big tract; 6- or 700 acres.

10 Q. If I pulled out the plat, would you recognize
11 it?

12 A. I think so.

13 THE COURT: You're referring to the road west
14 of the gate?

15 THE WITNESS: Yes, sir; everything from Camp
16 Road up to that gate, up to Polite, is a county
17 road, it's in all the County records. From that
18 gate back to Deer Creek, back to the island at Deer
19 Creek, is a county road. There is no County record
20 whatsoever of any ownership by the County of that.

21 There was a big -- in the Roads and Bridges
22 Department, they had a big four-by-six map on the
23 wall, and they had all of the county roads outlined
24 in red. And from that map is how these books got
25 put together -- these 911 books were put together.

1 (Plaintiff's Exhibit No. 112 marked for
2 identification.)

3 BY MR. NELSON:

4 Q. I'll hand you a document marked Plaintiff's
5 Exhibit 112. Is this the plat that you're speaking
6 of?

7 A. This is one.

8 Q. Okay. So you -- and can you tell where the
9 intersection of Polite and Camp is on this map?

10 A. Can I tell? Yes, I can.

11 Q. Where would it be?

12 A. Off of the -- if you're looking at your map, on
13 the right edge, the first property line to come, you
14 see a little road coming in?

15 Q. Uh-huh.

16 A. Right there. Right there. Camp comes down and
17 Polite turns to the right, and that's the beginning
18 of what I refer to as the McMillan tract.

19 Q. Okay. So can you read any of the numbers or
20 letters?

21 A. Yes, sir.

22 Q. We blew it up trying to make it a little easier
23 to read.

24 A. There's one written right there on the corner,
25 south 42 degrees west, and one below that south 49.

1 degrees west, 2.11 changes and indicates there's a
2 post. And going up in another direction it reads:
3 South 15 degrees east, which you would be going in
4 opposite direction, going northwest. But that's on
5 that corner.

6 Q. So where would Polite Road be?

7 A. I can -- Polite Road is right there.

8 (Indicating)

9 Q. Is it -- do you see the -- there's two words,
10 post, very close to where it is.

11 THE COURT: Come up here and he can show you.

12 A. I can show you. It comes down here and turns
13 about right there and goes that -- Polite does. And
14 this is getting onto the McMillan property.

15 Q. And what is that word there?

16 A. Gum. Gum; means a tree.

17 Q. Okay. And just to the right of Gum Tree [sic]
18 is a post?

19 A. Yes, sir.

20 Q. And just below that is the word post again?

21 A. Yes, sir.

22 Q. And you're saying it's to the right of that
23 word post?

24 A. That's exactly right.

25 Q. Do you know how far?

1 A. Yes, sir. I can tell you it's approximately
2 from where I'm sitting to the back of this wall.

3 Q. Okay. Now, this plat was based on another
4 plat; is that correct?

5 A. I don't know what you've got. I don't know.

6 Q. Is there anything on here that indicate it was
7 based on another plat?

8 THE COURT: On the plat you're looking at.

9 A. Is there anything on here that it's based on
10 another plat? On Mr. Snook's plat here, he said
11 lines A, B, C, D, E and F are copied from a plat by
12 Lightsey Brothers, and that's the stuff up on the
13 north side of this property. So this was a
14 composite plat. Yes, it was other plats were used
15 to make this plat.

16 Q. Okay. Did you review those?

17 A. Yes, sir, I have. I've looked this -- and I've
18 also done another plat in this area.

19 Q. Okay. But you didn't do this plat?

20 A. No, sir. But I know where the gate is. I can
21 show you where the gate is on any of them, or the
22 gates.

23 Q. Okay. But you are positive -- so where -- I'm
24 sorry. Where -- and you understand Mrs. Drew is
25 title owner to an 11-acre tract in this vicinity and

1 Mr. Drew is title owner to a 19-acre tract?

2 A. And a bunch more other ones on there.

3 Q. Where is the 19-acre tract?

4 A. That's just where you come in -- my
5 understanding, those two tracts just as you come in
6 the gate on both sides of the road.

7 Q. Where is the 19-acre tract on this plat?

8 A. It's within the perimeter of this -- I don't
9 know if it's on this side or this side. But they
10 own the properties on both sides as you come through
11 the gate.

12 Q. So it's your testimony that the 19 acres is on
13 the left side of the word Gum?

14 A. I didn't. I just said my testimony is they
15 owned the two properties --

16 THE COURT: On the left side of the Gum.

17 MR. NELSON: Yeah. I'm sorry. I'm just trying
18 to say it out loud so the court reporter can see
19 what we're doing.

20 THE WITNESS: It's either there or here on both
21 sides of the -- one of them is 19 and one is 11 as
22 you come through the gate.

23 BY MR. NELSON:

24 Q. So there's no -- so you don't believe that to
25 the right of this line, next to the word Gum is the

1 19 acres?

2 A. No, sir.

3 Q. Okay. And you don't know exactly which piece
4 owns the road, you just -- but I had asked you, from
5 the deeds and plats alone, can you find an
6 indication as to who's the owner of the dirt road,
7 and you said no, you can't.

8 THE COURT: He just explained that.

9 THE WITNESS: That was the last question, I
10 thought.

11 THE COURT: You want him to re-explain it?

12 BY MR. NELSON:

13 Q. But can you tell whether it's in the 19-acre
14 tract or the 11-acre tract?

15 A. It goes between the two of them.

16 Q. Between the two?

17 A. Yes, sir.

18 Q. It's either in between the two or it's in one
19 or it's in the other; correct?

20 A. It goes between the two.

21 Q. You mean two plats -- or two parcels cannot
22 overlap, can they?

23 A. No, sir. The road is in between the 19 and the
24 11.

25 Q. So you're saying half the road is on the 19 --

1 A. No, sir. I didn't say half the road; you did.
2 I said the road is in between the 11 and 19.

3 THE COURT: But included within the perimeter
4 of the whole area.

5 Q. Who is the title owner to the road?

6 A. Can't tell you. I think it's in the tract of
7 land that's owned by Mr. McMillan, which is now the
8 Drew property.

9 Q. Okay. But you can't point to any specific deed
10 where --

11 A. No, sir. I'm not here to testify to the deeds.

12 Q. Okay. And I guess I -- I'm just trying to
13 figure out what you mean by the way you just
14 described it: It's on the 11 and the 19. I'm not
15 following you.

16 A. All right, sir.

17 Q. When you say it's on both, I kind of
18 interpreted that maybe the property line goes down
19 the middle of the --

20 A. I didn't say it's on both. I said, here's the
21 road. The 19 is one side of the road and the 11 is
22 on the other side.

23 Q. Okay. Do you -- so you can't say that Mr. Drew
24 owns the road?

25 A. You asked me whether I thought the road -- who

1 owned the road. I think it's within the perimeter
2 of the McMillan tract. That's my --

3 Q. And when you say the McMillan tract, you're
4 talking about 670 acres?

5 A. Excuse me. Yes, sir. That's this plat right
6 here. (Indicating)

7 Q. You can't get any more specific for me than
8 within that 670 acres?

9 A. No, sir, because I don't know the ownership on
10 the road --

11 Q. Okay.

12 A. -- except for it's private.

13 Q. And you've been a surveyor for a long time?

14 A. Fifty years.

15 Q. Do you have any knowledge about a fire at the
16 RMC courthouse in the 1800s?

17 A. No, sir. I wasn't -- I know it happened.

18 But I --

19 Q. Obviously --

20 A. Yes, sir.

21 MR. BARNES: No personal knowledge of it.

22 THE WITNESS: I don't have no knowledge of it.

23 I know it happened though. I mean, I've been told.

24 BY MR. NELSON:

25 Q. There's going to be nobody who can testify that

1 the fire --

2 A. '65. No, sir.

3 Q. But you're probably just as good as
4 anybody that can talk about the history --

5 A. We checked all of our -- we tried to check as
6 many records as we could coming through the
7 Assessor's Office. Used the courthouse every day.
8 And, yes, we had a lot of reference to stuff prior
9 to '65 that we weren't able to get ahold to.

10 We were able to reclaim some of this stuff from
11 the Department of Archives in Columbia. Some of
12 that stuff had been carried up there. And we do
13 have maps back in Walterboro that were reclaimed
14 from the Department of Archives.

15 Q. Okay.

16 A. On this one, we did not.

17 Q. Did you assist when Colleton County was kind of
18 getting together a lot of their information for
19 their sheriffs maps and 911 maps? Did you have a
20 hand in that?

21 A. 1999 I had already retired. I retired in '89.
22 I knew the name of every county road in Colleton
23 County. Prior to 911 coming in existence, I knew
24 where every one was and had been on every road in
25 Colleton County.

1 When 911 came along, they renamed a lot of --
2 we had a lot of roads with the same name. We had
3 three Pon Pon Roads in Colleton County, and the
4 addressing system came along and eliminated two of
5 them. We've got one Pon Pon Road now. So I've lost
6 identification of some of the roads that I knew
7 prior to that because they had been renamed.

8 But I had nothing to do with renaming them. I
9 left county road in '89, retired and came back on
10 County Council in 2002. So it was quite a few years
11 in there, 12 or 13 years in there, that I had no
12 connection with Colleton County, other than being a
13 surveyor.

14 Q. Did you ever have a hand when they were
15 gathering the data to make the 911 maps and things
16 like that?

17 A. I had something to do with preparing the first
18 county map that went on the wall. And that's long
19 time prior to these books being made. That's when
20 the book -- when the big thing was on the wall where
21 they outlined the county roads in red. I had
22 nothing to do --

23 Q. Was that in 1975?

24 A. I was with the County in '75.

25 Q. Was that when the map was made that you're

1 talking about?

2 A. I can't tell you year that we made it. But Sam
3 Byrd was the -- in charge of roads and bridges, the
4 same job that Bill Washington has now. And they had
5 no kind of inventory of their roads. And I sat down
6 with Sam Byrd and we put down every county road that
7 he had maintained through the years that he been
8 there, and that overlapped some of the time Bill
9 Washington testified. He was there with Sam Byrd
10 also. But Byrd was -- I helped put that original
11 map together.

12 Q. And that map was -- it eventually became a DOT
13 map; correct?

14 A. No, sir.

15 Q. Okay. It was only used by Colleton County?

16 A. It was a DOT map itself that we did county
17 roads on, but it did not become a DOT map. That was
18 the base map; was the Highway Department map that we
19 put county road roads on as a base.

20 Q. Okay. What was your role in that?

21 A. The fact that I was a surveyor and knew where
22 the roads was. And my -- and I was one of the few
23 people that knew how to draw a straight line around
24 there at the time. So that was my involvement. You
25 might be got something, brother.

1 (Plaintiff's Exhibit No. 85 marked for
2 identification.)

3 THE COURT: What number is that?

4 MR. NELSON: Plaintiff's 85.

5 BY MR. NELSON:

6 Q. Is the map you were talking about?

7 A. No, sir. That's the Highway Department map,
8 base map. But I don't see -- the ones we had were
9 drawn in there with a red line. I can't tell you
10 whether -- because I can't see what's on there. But
11 that's basically what the map looked like before we
12 got started with putting county roads on it.

13 MR. NELSON: Can I ask him to --

14 THE COURT: Sure.

15 MR. NELSON: Thank you.

16 THE COURT: What's the question now?

17 MR. NELSON: I wanted him to identify the map,
18 if he knows what it is.

19 THE WITNESS: Do I know what this map -- yes,
20 sir. This is the map by Highway Department that
21 shows all their farm-to-market roads, anything that
22 they have a number on, and some stuff that's in
23 error. You want to talk about that or not?

24 THE COURT: No. Just let him ask the
25 questions.

1 BY MR. NELSON:

2 Q. Do you know where they gather their data from?

3 A. Highway Department?

4 Q. Yes, sir.

5 A. No, sir. I certainly don't. They come -- they
6 been here a lot longer than we have.

7 Q. This information is not derived from anything
8 you do?

9 A. No, sir.

10 Q. Okay. They didn't work in conjunction with you
11 at all?

12 A. No, sir. No, sir.

13 Q. Have you ever used this map before?

14 A. Yes, sir. I've used these maps before for
15 location purposes, yes. I used one just like it.
16 Yes.

17 Q. But you're particular with the legend?

18 A. I am.

19 Q. And this was produced by the Department of
20 Transportation?

21 A. That's correct.

22 Q. Can you find Camp Avenue on this map?

23 A. I can. I can.

24 Q. Would you point to it for me?

25 THE COURT: You can mark on it.

1 A. (Witness complies).

2 Q. All right. And would that be -- Polite Road
3 and Camp Road are right next to each other; is that
4 correct?

5 A. This is Camp and that's Polite.

6 Q. Okay. And they wrap around the words on there
7 saying Calvary Church?

8 A. Calvary Church is in there. Yes, sir.

9 Q. And what does the legend say is that type of
10 road? And I have a blow-up of the legend if that's
11 more helpful.

12 A. I can see that one. It says unpaved county
13 road. It's got them in a bracket. Well, they got
14 brackets with county roads paved and unpaved.

15 Q. Yes, sir.

16 A. 1975, we did not have a paved road in Colleton
17 County. That was county only.

18 Q. On this map it looks like -- if you went by
19 this map, does it not say that Camp Road goes past
20 Polite Road?

21 A. It does. It does right now. And it goes right
22 on down to the island. It goes past that
23 intersection of those two roads, no doubt about
24 that.

25 Q. When you say it goes past the intersection,

1 what are you referring to?

2 A. The intersection of Camp and Polite. Camp
3 continues right on and goes to the island.

4 Q. The island near Deer Creek?

5 A. The island near Deer Creek.

6 THE COURT: What's the name of the island?
7 Does it have a name?

8 THE WITNESS: I don't think it's got a -- but
9 it goes in the vicinity of Deer Creek.

10 THE COURT: And Deer Creek runs into the
11 Ashepoo?

12 THE WITNESS: It does.

13 BY MR. NELSON:

14 Q. What's the significance of you saying it's a
15 county -- I'm sorry, you didn't say county road --
16 you saying Camp Road goes past the gate?

17 A. Uh-huh.

18 Q. What is your definition of Camp Road, I guess?

19 A. My definition of Camp Road -- you have -- you
20 have some maps that reference Camp Road, but you got
21 a section of it that's public and a section of it
22 that's private.

23 Q. Okay.

24 THE COURT: Is that unusual?

25 THE WITNESS: No, sir. We got it right there.

1 It's got the same thing right there by us going in
2 to Hope Plantation. It's a public road, Road 30.
3 It goes in, private road there on it, and this thing
4 here sticks it way on down there past the house.
5 And it's a private road. And this thing shows it
6 public.

7 MR. NELSON: Okay. No further questions.

8 CROSS-EXAMINATION

9 BY MR. BARNES:

10 Q. When you were on County Council, as far as you
11 know, based on your knowledge, has Camp or any part
12 of Camp Road been dedicated -- beyond the
13 intersection of Camp and Polite been dedicated or
14 accepted by Colleton County?

15 A. No, sir. And, matter of fact, the first old
16 portion of it has never been accepted. It comes
17 under the process of a road that had been graded
18 over the years, comes in on an easement of
19 prescription, meaning that the County never did have
20 a right-of-way, per se, but the fact that they've
21 been grading over the years, we got an opinion from
22 the Attorney General what portion of this road is
23 the county on. And they say from the back of the
24 slope this side to the back of the slope on this
25 side.

1 We as surveyors can claim that the County has
2 ownership on this much because they've been
3 maintaining this over the years. We have hundreds
4 of roads with no right-of-way. And that's the way
5 it is. All of the new roads now come in through an
6 engineering firm and all and they come in and have
7 to have a 50-foot right-of-way, it has to be -- have
8 engineered plans on drainage for sideline pipe,
9 cross line pipe, the right-of-way, and all of that
10 has to be taken into consideration.

11 So we're not going to have this kind of problem
12 from here on, but we're talking about what Grandpa
13 and them had in 1865 or something like that --

14 Q. And is it a fair statement to say that the
15 County never graded inside on the west side of the
16 gate; it was always on the east side of the gate?

17 A. There's no records that the County has ever
18 been within the property of the gate, within there.

19 Q. And were you in on the general McMillan
20 property all around when you were doing these
21 surveys?

22 A. I have. I've hunted in there before.

23 Q. Were there any other gates that -- besides
24 Scooter's gates?

25 A. There is. It's two or three other gates

1 further down that were used for division of cattle
2 and stuff. The cows could be in one section and he
3 was going to put them in another section, and it
4 would be gates along that road going to the creek,
5 going to the little island on Deer Creek. Yes, sir,
6 it's other gates on there too.

7 Q. Have -- before the Nettles came into the
8 picture, have you ever heard of, seen, or had any
9 claim where somebody else tried to tell Scooter this
10 was a public road?

11 A. No, sir.

12 MR. BARNES: No further questions.

13 MR. GRIFFITH: No questions, Judge.

14 MR. NELSON: Nothing else.

15 THE COURT: May Mr. Whetsell be excused?

16 MR. NELSON: Yes, sir.

17 MR. BARNES: Yes, sir.

18 MR. GRIFFITH: Yes, sir. No objection.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Thank you.

21 You may call your next witness.

22 MR. NELSON: I call Janell Nettles.

23 JANELL NETTLES

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, I do.

1 THE COURT: Give us your full name and spell
2 your last, please.

3 THE WITNESS: Janell Boyer Nettles,
4 N-E-T-T-L-E-S.

5 THE COURT: And the middle name is what?

6 THE WITNESS: It's actually a maiden name.
7 That's how it is on my Social Security card.

8 THE COURT: Boyer, B-O-Y-E-R?

9 THE WITNESS: Yes, sir. And when I married
10 Mr. Nettles, I dropped by middle name. I dropped
11 Loraine and took Boyer as my middle name.

12 DIRECT EXAMINATION

13 BY MR. NELSON:

14 Q. Ms. Nettles, could you take just 30 seconds and
15 give us a little about your background?

16 A. That's all I get?

17 THE COURT: No, ma'am. You can have as long as
18 you need.

19 THE WITNESS: Thank you.

20 Well, as I've said, I grew up in Indiana, went
21 to Indiana University. I have my Bachelor's Degree
22 in public administration. When I finished college,
23 I moved to Charleston, 1990.

24 Since then, went back to school again and got
25 an Associate's Degree in computers, networking. And

1 I currently work for Dell. I'm a -- my official
2 title is business systems analyst. I do remote
3 support of electronic medical records, and I'm also
4 an independent web designer.

5 My main website is an informational website
6 called LowCountry Fish Scales. I report on a lot of
7 the local fishing tournaments. So --

8 THE COURT: Like the Governor's Cup?

9 THE WITNESS: I'm more like the low end, like
10 the Carolina Anglers and the --

11 THE COURT: Do you know Brian Baxter?

12 THE WITNESS: Yes, I do.

13 THE COURT: He fishes in the King Mackerel --

14 THE WITNESS: He did very well a couple years
15 ago and won everything he fished in.

16 THE COURT: I'm trying to think of what --

17 THE WITNESS: I should know Brian's boat name.

18 I know he had a big wrap on it at one time.

19 MR. NELSON: Net Profit.

20 THE WITNESS: Thank you. Yes.

21 THE COURT: He runs the craft shows on King
22 Street.

23 Go ahead.

24 BY MR. NELSON:

25 Q. You grew up on a farm; correct?

1 A. I certainly did. My grandparents were farmers.
2 We did move to the city when I was about ten years
3 old, probably for economic reasons. But then, yeah,
4 I mean, I just -- my roots definitely go back to the
5 country.

6 Q. And at some point you and Mr. Nettles were
7 living in the Byrnes Downs in Charleston and decided
8 y'all wanted to move a little farther out?

9 A. Yes, sir. This is kind of our long-range plan.
10 This is what I call our 30-year plan, was, you know,
11 I wanted to get out of the city, back to the
12 country. My dream is to have a big country garden.
13 If anyone is familiar with Byrnes Downs, you know
14 there's no yard. And my husband loves to hunt.

15 So in our long-term plan, we started looking
16 for property in the country, because we just both
17 wanted to get back to our roots. We both grew up in
18 the country. We're comfortable in that surrounding
19 and, you know, tired of the neighbors right on top
20 of you.

21 Q. And then at some point you found this 21.7
22 acres that we've been talking about all day. How
23 did you find that piece?

24 A. Just through the website. You know, I don't
25 remember what particular website it was on, but it

1 was listed through Carolina One.

2 Q. Did you have an agent?

3 A. Not at the time we started looking for
4 property. I mean, we would literally -- every
5 Sunday afternoon -- we started probably in 2007,
6 2008. Every Sunday afternoon we'd just take our --
7 you know, the Sunday drive and go driving around and
8 try to find out, you know, what's in this area and
9 what's in this area and --

10 THE COURT: Hold on one second.

11 (Brief pause in the proceedings.)

12 Q. Okay. Y'all were doing the Sunday drives
13 and then --

14 A. Yeah. So we looked for probably a year and a
15 half before we found the 21.7 acres.

16 THE COURT: How did you find it?

17 THE WITNESS: Through a -- just an online
18 listing.

19 THE COURT: Online listing?

20 THE WITNESS: Uh-huh.

21 BY MR. NELSON:

22 Q. Did you have an agent at that time?

23 A. I don't believe so.

24 Q. Okay. Did you call -- I'm sorry. Did the
25 sellers have an agent?

1 A. Yes, because it was listed through Carolina
2 One, through their agent.

3 Q. Okay. Was the title clear at that time?

4 A. No.

5 Q. And did you contact the agent directly?

6 A. No. When we found a property that we were
7 interested in -- actually, we looked at another
8 property. It was in Charleston County. And at that
9 time I believe is when we hired Charlotte Bova --

10 THE COURT: Charlotte who?

11 THE WITNESS: Bova, B-O-V-A.

12 THE COURT: Who is she?

13 THE WITNESS: Carolina One.

14 So we had actually put a contract on a
15 different piece of property. And the more
16 investigating we did on the property, we just
17 decided it wasn't going to be for us. So, you know,
18 we got out of that contract. And then later on we
19 found the 21.7 acres. So, yeah, probably did have
20 an agent at that time.

21 BY MR. NELSON:

22 Q. Okay. And then what do you remember next in
23 terms of investigating, inspecting, and all of that
24 stuff?

25 A. Well, we knew the property was for sale because

1 there was a listing. And we were just not having a
2 whole lot of luck pursuing the purchase, because we
3 were told it was tied up in the courts because the
4 Millers were in the process of doing a quiet title
5 suit.

6 So, you know, that had to be accomplished
7 first, you know, before the property was even
8 legally available -- well, I don't know legally, but
9 before it was available for sale.

10 Q. Okay. And at what point did you -- tell me
11 what else y'all were doing.

12 A. Well, things weren't moving at all, so I did
13 contact Ms. Norvia Miller via e-mail.

14 THE COURT: That's the owner; right? Who is
15 Ms. Miller?

16 THE WITNESS: She was the one that was -- I
17 don't know if I'm going to use the right
18 terminology. She was the one who was in charge of
19 the quiet title suit for the property. The
20 property --

21 THE COURT: She was one of the heirs?

22 THE WITNESS: Yes, sir.

23 BY MR. NELSON:

24 Q. Would you consider her the family
25 representative?

1 A. Oh, yes. And Ms. Norvia Miller is Herman
2 Miller's sister. She has since passed away. I
3 don't know what time -- it's -- you know, the
4 property had been in the Miller family since 1906
5 with a deed originating in 1906 to Amie Simmons.

6 So over the years, you know, the heirs of Amie
7 Simmons, i.e., the Millers -- you know, nobody had
8 wills, nobody had paperwork, hence when Norvia
9 Miller started the process of getting the property
10 sold, that's when they had to go through the quiet
11 title process.

12 THE COURT: Which is not an unusual situation
13 in LowCountry property.

14 THE WITNESS: Right. I know there's a whole
15 agency or group that helps people --

16 THE COURT: Now. But that's just recently come
17 into effect. In fact, they got a nonprofit
18 organization that helps people with the property.
19 It's a real good service for those people. But they
20 have a hard time with the title.

21 THE WITNESS: Yes. So this --

22 THE COURT: So cleaning up and they finally got
23 it cleared up.

24 THE WITNESS: Yes. So this -- it took a -- you
25 know, this property has existed -- well, it's

1 probably existed for thousands of years. But, you
2 know, it's existed since 1906. So the Millers got
3 their quiet title suit figured out.

4 Like I said, it took a while, like court cases
5 do. So that was -- I think we did have a contract
6 on the property, and that was one of the
7 contingencies --

8 THE COURT: What?

9 THE WITNESS: Was to have the -- the quiet
10 title suit had to be, you know, free and clear.

11 THE COURT: Sure.

12 THE WITNESS: So they finally got that done.

13 THE COURT: Do you have a copy of the contract?
14 Do we have that in a document anywhere? I'm just
15 asking.

16 THE WITNESS: I might have --

17 MR. NELSON: It might be in one of those boxes.
18 I wasn't planning on putting it in.

19 THE COURT: Okay. Any other contingencies
20 other than title --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- such as the access?

23 THE WITNESS: Yes, sir.

24 THE COURT: What was that contingency?

25 THE WITNESS: There were three total; one was

1 quiet title, one was a perc test, which failed --

2 THE COURT: Perc?

3 THE WITNESS: Yes. If I can counterdict [sic]
4 my husband's statement --

5 THE COURT: You may.

6 THE WITNESS: We were planning to do a little
7 more than build a deer hunting shack. Okay? My
8 dream house -- my retirement house is going to be
9 out there someday.

10 THE COURT: So the third --

11 THE WITNESS: He'll start with a deer shack.

12 THE COURT: Quiet title, perc test, and what
13 else?

14 THE WITNESS: Access issue.

15 THE COURT: Tell me what the access issue said,
16 if you remember.

17 THE WITNESS: I -- you know, this was back in
18 2009. The wording -- I couldn't tell you what it
19 said.

20 THE COURT: But was it dealing with this road
21 that we're here for in court today and the gate?

22 THE WITNESS: Yes.

23 THE COURT: So this was before you owned the
24 property? This was in the contract?

25 THE WITNESS: Yes. And Ms. Miller did protest

1 the gate way before we knew her. At least in 2008,
2 she wrote a letter, signed by several cousins,
3 protesting Mr. Drew's placement of the gate blocking
4 their access.

5 THE COURT: Any legal action other than just a
6 letter protesting it?

7 THE WITNESS: I don't know.

8 THE COURT: But there was a protest that you
9 were aware of that Ms. Miller and her family has --
10 with Mr. Drew before she died and signed the
11 contract to you?

12 THE WITNESS: Yes. Actually, she passed away
13 three weeks after we closed on the property.

14 THE COURT: I'm sorry to interrupt you. Go
15 ahead.

16 BY MR. NELSON:

17 Q. So after you signed this contract that had
18 these contingencies, what happened next?

19 A. Eventually the Millers got their quiet title
20 suit settled. And our deed actually is a deed from
21 a special referee from a result of the quiet title
22 suit.

23 THE COURT: Mr. Harris Beach, if I recall.

24 THE WITNESS: Yes. What else? We were dealing
25 with the perc test because we wanted to move to the
\\

1 property. And there's nothing on the property
2 except woods; there's no electricity, there's no --
3 well, there's no modern wells that we -- you know,
4 there's no utilities. It's all woods.

5 So knowing the layout of land, it's very -- you
6 know, it's lowlands, lots of wetlands. But having a
7 perc test -- we knew about doing that because we had
8 purchased property in Jasper County, I think, in --
9 it was early 2000s. And we had to have a perc test,
10 so we knew to ask about a perc test.

11 The perc test failed, but we went on to find
12 out that you can still do -- you know, you just got
13 to spend more money and do an engineered system
14 versus a typical standard septic system. So we were
15 good with that. We were like, okay, if we got to
16 spend a little more money on a septic system, that
17 that wasn't going to be a holdup for us.

18 As far as the access issue, we knew that that
19 was going to be something we would have to take on.
20 And I don't know how to say this in a politically
21 correct manner, so I'm just going to say it. But
22 the Millers didn't have the means to hire lawyers
23 and do this sort of thing. So we knew that
24 Ms. Miller's health was failing, and we decided we
25 would deal with the access issue. But we didn't

1 just --

2 THE COURT: Did you ever realize you may not
3 get the access?

4 THE WITNESS: We did not do it on a whim. I
5 guess if you knew me, I'm very meticulous about
6 things. And we started looking at the property
7 probably in February of 2009. Of course we closed
8 the end of November 2009. So we had, you know, nine
9 months. And I did a lot of research.

10 My very first piece of research was going down
11 to Colleton County GIS. And the maps we've all seen
12 here dated April, I think, 9th -- April 29th, 2009,
13 that was Good Friday because I had Friday off work.
14 That was my first -- I went to the Colleton County
15 GIS department, said, pull me a map of this tax map
16 number, and this is what they gave me.

17 BY MR. NELSON:

18 Q. Which exhibit number are you looking at?

19 A. This is 11.

20 Q. Okay.

21 A. And I know we have a big color copy of it. But
22 when I looked at this, there was -- and I know maps
23 aren't legal documents. I'm just going from a
24 layperson's research.

25 But, I mean, there was nothing to indicate to

1 me that Camp Avenue was any different than Camp
2 Avenue down here. I'd looked at so -- I mean, I've
3 researched this so much, I don't even know where to
4 start.

5 Q. Let's start with --

6 THE COURT: Let me ask you one question.
7 Ultimately, you got Ms. LaFond involved in it. How
8 did she become involved? Is she a lawyer?

9 THE WITNESS: Yes, sir, she's an attorney.
10 She's a friend of my husband's. And she said she
11 would work for shrimp. That just -- she ended up
12 going out of state to do some training, and we just
13 felt like she was dropping the ball. She hired
14 Edisto Title. Edisto Title would not get down and
15 do the work. I actually tried to hire someone else,
16 and LaFond's office refused to let me use a
17 different title extractor. So we weren't real happy
18 with Ms. LaFond's work.

19 THE COURT: Okay. Did you hire anyone else to
20 provide legal assistance to you dealing with the
21 access issue? Because I know Ms. LaFond and the
22 e-mails -- there's a number of e-mails back and
23 forth between the two of you --

24 THE WITNESS: Right.

25 THE COURT: -- wherein she expressed her

1 concern about the access issue.

2 THE WITNESS: Right.

3 THE COURT: The question is, did you hire
4 anyone else to --

5 THE WITNESS: We hired the Brush Law Firm to be
6 our closing attorney.

7 THE COURT: The Brush -- and he actually closed
8 it?

9 THE WITNESS: Yes, sir. But, you know, based
10 on the history of the property, the history of the
11 road -- and I think we're prepared to present a lot
12 of deeds that contributed to the history of the
13 road. We've got deeds going back to the late 1800s
14 that mention Camp Avenue. We've got a deed that
15 describes Camp Avenue as going from Jacksonboro
16 Road, which is now Hope Plantation Road, to Deer
17 Creek. I mean, we've got all kinds of deeds that
18 mention Camp Avenue.

19 And I think the important -- or one of the
20 important things of this case is you can't go back
21 five years ago or to 2009. I mean, you've got to go
22 back to the '30s, the '40s, the '50s. This road has
23 been there a very long time. And I don't think any
24 one person has, you know -- I've researched back to
25 plantation days. And I found a plat that was to a

1 Mary E. Grace. She bought part of the Glover
2 Plantation, which is Westbank Plantation, and
3 there's a plat of hers back in the 1800s that's
4 marked road to settlement.

5 And just doing some of the historical research,
6 we know that there was -- back in the day, there
7 were slaves and there -- it was called camp
8 settlement. And it was where the slaves lived.
9 Anyways, on this Grace map, I mean, the shape of the
10 road is exactly as it is today, and it says road to
11 the settlement. Grace is the one that sold the
12 property to Amie Simmons -- or it was Grayson
13 Sanders to Amie Simmons.

14 So this goes beyond the last few years or the
15 last 20 years. The history of this road is back to
16 the 1800s and probably back to the 1700s.

17 BY MR. NELSON:

18 Q. What all did you do for research?

19 A. Of course our first place for research was the
20 County. I contacted SC DOT, their GIS manager. I'm
21 not sure if -- he's the one that keeps the maps.
22 And he sent me -- I said what -- tell me -- I've got
23 this -- and a copy of this map is actually laying
24 down in the Colleton County RMC Office. So we saw
25 all this too. And it was just like, wow, this is

1 sitting here in the County office, a 1975 map that
2 says Camp Avenue in the shape that we know it as
3 today. The entire --

4 MR. BARNES: May it please the Court. I've
5 been polite. But when she says the map says this,
6 the map says that, that's hearsay, I think,
7 unless --

8 THE WITNESS: It's right here, Mr. Barnes.

9 THE COURT: Hold on. Hold on.

10 She can refer to what the map shows. She
11 can't tell me what the DOT guy said --

12 MR. BARNES: Yes, sir.

13 THE COURT: She can keep on going.

14 Let me just set the groundwork: The
15 requirements under the rules of evidence say you can
16 only testify as to what you know personally. So I
17 can't accept what someone told you.

18 THE WITNESS: Okay. Yes, sir.

19 THE COURT: Bear that in mind. If I stop you,
20 that's what I'm doing.

21 THE WITNESS: Yes, sir.

22 Where was I? Okay. So we started at the
23 County office. We found this map laying on a
24 counter in the mapping room or the plat room of the
25 RMC Office, dated 1975. The legend says unpaved

1 county road. And if the whole -- it's the whole
2 road that's beyond the intersection of Camp Road.
3 And when I say the whole road, the documentation
4 that I did get from SC DOT --

5 MR. GRIFFITH: Your Honor, I'm going to object.

6 THE COURT: What's the objection?

7 MR. GRIFFITH: I'm not sure which map she is
8 referring to.

9 THE WITNESS: The one -- whatever exhibit this
10 is.

11 THE COURT: Exhibit number, please.

12 THE WITNESS: And the legend is blown up --

13 THE COURT: Exhibit number?

14 MR. NELSON: 85.

15 THE COURT: The one Mr. Whetsell was testifying
16 about, and the legend. And he read the legend just
17 like you just said it was.

18 THE WITNESS: Yes, sir, as unpaved county road,
19 the whole length of the road, not just up to the
20 corner or the intersection of Camp and Polite, but
21 the whole road.

22 So in addition to speaking to Donnie McElveen
23 at SC DOT, he sent me -- I said, what documentation
24 do you have on the road? And he sent me two pages
25 of a -- their documentation on the road. And they

1 had Camp --

2 THE COURT: Hold on. Wait a minute now. This
3 might be hearsay.

4 THE WITNESS: No, no, no. It's -- I've got
5 it --

6 THE COURT: Let me make that decision.

7 THE WITNESS: I've got e-mails --

8 THE COURT: I understand that. But that's --
9 he's not here to --

10 THE WITNESS: Okay. Okay.

11 THE COURT: Let me look at it first.

12 This is from Donald McElveen to
13 Janell03@comcast.net. So I assume y'all have got
14 objections on that.

15 MR. BARNES: Yes, sir.

16 MR. GRIFFITH: Yes, sir.

17 MR. NELSON: Your Honor, may I speak to that?

18 One, this is a public record; two, it's --
19 hearsay also has to be towards the truth of the
20 matter asserted. And one thing they've been making
21 a point of, Mr. Barnes was, is that she was on all
22 this notice of this problem. So whether this
23 information is true or not, it is something that she
24 relied on before signing this contract and closing
25 on this property.

1 MR. BARNES: And this --

2 THE WITNESS: And I don't remember --

3 THE COURT: Well, you're welcome to call
4 Mr. McElveen to come down here and testify.

5 MR. NELSON: Well, she's testifying that she
6 relied on this information.

7 THE COURT: And whether what she said to
8 Mr. McElveen she relied on -- but she can't put this
9 into evidence. That's hearsay.

10 THE WITNESS: He sent that --

11 THE COURT: Ma'am.

12 THE WITNESS: -- to me --

13 THE COURT: Ma'am, I have to rule on the
14 admissibility. You're welcome to call Mr. McElveen
15 down here to testify. I'll hold the record open for
16 that. He can come down and identify them.

17 BY MR. NELSON:

18 Q. Did you receive information from the Department
19 of Transportation?

20 A. Yes, sir.

21 Q. And did you rely on that information?

22 A. Yes.

23 MR. BARNES: Again, that's trying to go about
24 it a different way.

25 THE COURT: She can rely on anything she says

1 from the Department of Transportation.

2 MR. NELSON: You want me to change my line of
3 questioning or -- are you just not putting the
4 document in or you want me to stop this line of
5 questioning?

6 THE COURT: She can testify that she relied on
7 certain information, but she can't tell us what
8 Mr. McElveen told her --

9 MR. NELSON: Okay.

10 THE COURT: -- or sent to her. You're welcome
11 to bring Mr. McElveen down here and he can testify
12 to what he sent her.

13 BY MR. NELSON:

14 Q. Okay. So you contacted Department of
15 Transportation and got some information from them.
16 What else did you do in your investigation?

17 A. And you've got to understand, some of this was
18 before we closed on the property and some after.
19 And it's been a long time, so I can't be for
20 certain, you know, when I got what. But we -- let
21 me put it this way: We did -- we were comfortable
22 with the research done up to before closing. We
23 were comfortable enough to --

24 THE COURT: With whose research?

25 THE WITNESS: With my research.

1 THE COURT: You were comfortable enough with
2 your research to do what?

3 THE WITNESS: We were confident in the fact
4 that we thought this was a public road.

5 THE COURT: Did you ever get a legal opinion
6 from a lawyer or anybody that said it was a public
7 road?

8 THE WITNESS: I don't believe so.

9 THE COURT: Okay.

10 Go ahead.

11 BY MR. NELSON:

12 Q. Prior to closing you were represented by Thomas
13 Brush; correct?

14 A. Yes.

15 Q. Did you have any contact with Christopher
16 Lanning with that firm prior to the hearing?

17 A. No. Christopher Lanning was supposed to be
18 like an administrative assistant, never -- he was --
19 we never had an expectation that Mr. Lanning would
20 represent us.

21 Q. Okay. But I'm talking about prior to closing.
22 You never had contact with Mr. Lanning?

23 THE COURT: With who?

24 MR. NELSON: Thomas Brush's partner or
25 associate. I'm not sure what he was at the time.

1 Her closing attorney.

2 BY MR. NELSON:

3 Q. So all of your contact was with what people in
4 that firm, lawyers or non-lawyers?

5 A. Just Thomas Brush.

6 Q. You actually spoke with him direct?

7 A. Yes.

8 Q. Okay. Did you have any conversations with him
9 prior to the closing about the status of that road?

10 A. I know that we had turned in to him the
11 unfinished work of Edisto Title.

12 Q. Okay.

13 A. I know that Brush -- his office did some title
14 work. Did they give us an opinion? I don't -- I
15 just don't recall if they said, oh, absolutely this
16 is a public road or absolutely this is not public
17 road. I'm not sure that we had that discussion.
18 It's been a long time.

19 Q. Okay. Did you have any idea what you might
20 need to do after closing to get access down that
21 road?

22 A. Well, we had started on that before we closed.
23 I mean, we had conversations with the Drews. We
24 never had a problem with access to the property. We
25 would go down -- we would call Carolina One and say,

1 hey, we're going to look at the property, and they'd
2 be like, come on down. Because, again, Ms. Norvia
3 Miller, who was basically the person in charge of
4 selling the property, lived in either New York or
5 Atlanta at the time, so she wasn't physically here
6 to take us to the property.

7 So we went down there on numerous occasions and
8 never had a problem. Never -- it was never a
9 problem getting to the property. We had
10 conversations with the Drows prior to closing.

11 Q. Did you have any conversations with the Drows
12 prior to closing about what your access would be
13 after closing?

14 A. We hadn't got that far in the discussions. I
15 know that the Drows had proposed to Ms. Miller
16 and -- a buyer that was interested in the property
17 before we came along had Kennerty Surveying draw up
18 a survey, and the Drows' proposed easement was on
19 that. And that was something, I think -- I don't
20 know if there's an agreement between the --
21 Ms. Miller and the Drows and that buyer, but it was
22 not our -- it was not ever our agreement.

23 Q. Okay. So you hadn't discussed any easements
24 with the Drows prior to closing?

25 A. No.

1 Q. Okay.

2 A. Because we believed it was a -- you know, I
3 don't -- we believed at minimum it was public access
4 road. Because the Drews haven't always owned all
5 the property back there. They didn't start
6 buying -- or Mr. McMillan, Mr. Drew's grandfather,
7 didn't start buying property back there until the
8 '40s, which is way after the 1906 Amie Simmons date.

9 So over time, McMillan and Drew and so on, that
10 family, you know, has purchased many of the
11 properties. But at the time of the 1906 deed,
12 they didn't even --

13 THE COURT: This was all your interpretation,
14 ma'am?

15 THE WITNESS: Well, I've looked at enough deeds
16 to know the chain of title.

17 THE COURT: I understand. It's your
18 interpretation?

19 THE WITNESS: Yes, sir.

20 THE COURT: Did you ever think maybe I need to
21 get a legal opinion to see if I can use this road?

22 THE WITNESS: Ms. Miller was about to die and
23 they did not have the means --

24 THE COURT: Well, you had a contract done. Did
25 you try to decide, from a legal standpoint, whether

1 or not you were going to have access? Because you
2 knew it was a problem; there was a contingency.

3 THE WITNESS: I think we were confident in our
4 research enough to buy the -- if we knew we were
5 going to be tied up in the courts for five or six
6 years, we wouldn't have bought the property.

7 THE COURT: So your confidence has not, to this
8 date, paid off, has it?

9 THE WITNESS: No. But we didn't anticipate
10 Mr. and Mrs. Drews' legal games.

11 THE COURT: Legal games?

12 THE WITNESS: Getting Ms. Bessenger to sue us,
13 they challenged the Millers' quiet title search,
14 they took our -- there was this big -- I don't even
15 remember what it was all about, with depositions and
16 so on and so on with Tommy Brush, but they've kept
17 this thing kicked around for this long.

18 THE COURT: Well, you're the one that brought
19 this suit, didn't you?

20 THE WITNESS: We did.

21 BY MR. NELSON:

22 Q. I'm going to hand you three of the Defendant's
23 Exhibits that Mr. Barnes was asking your husband
24 about.

25 A. Uh-huh.

1 Q. Would you explain to Judge Early what your
2 understanding is of those documents, if any?

3 A. Oh, goodness. This is the title insurance
4 documents. Okay.

5 THE COURT: Well, doesn't parol evidence
6 preclude this? Title documents speak for
7 themselves.

8 Y'all got any objections to her explaining it?

9 MR. BARNES: No, sir.

10 MR. GRIFFITH: No, Your Honor.

11 THE COURT: Go ahead.

12 MR. NELSON: It's going to the timing of the
13 receipt of those documents, not what they mean.

14 THE WITNESS: First of all, I did check. There
15 is no requirement to get title insurance to buy
16 property in South Carolina. Okay? We did buy title
17 insurance. At the time of closing, we signed -- and
18 I apologize if I don't know the names of the
19 paperwork. But there was something that -- there
20 was something that we signed that said, yes, we
21 wanted to get insurance and insurance was available.

22 There was nothing on that document -- it was
23 three -- I believe it was three pages long. And we
24 signed it. We signed that document at closing. And
25 we paid for the title insurance at closing. It was

1 \$306 and some change. So we paid for title
2 insurance at closing. I recall signing a document
3 saying, title insurance is available, would you like
4 to purchase title insurance.

5 It wasn't until January that I received a
6 packet from the Brush Law Firm saying, here's your
7 official deed, here's your official title policy,
8 put it in a safe place. Prior to that, we had not
9 seen -- or to my knowledge, had not seen the actual
10 title policy.

11 And, honestly, I probably didn't even look
12 at -- I probably looked at the package. I took it
13 to the bank to put it in our safe-deposit box. And
14 the first time I recall actually reading the title
15 insurance policy was on the way to Walterboro to
16 take it -- we were dissatisfied with the Brush Law
17 Firm, so we hired Ben Sapp in Walterboro.

18 So we gathered up all of our paperwork from
19 Brush's office and was taking it to Walterboro. And
20 I'm flipping through the paperwork and was like, oh,
21 here's our title insurance policy.

22 So did we have it before then? Yes. Did he
23 read it? No. But the first time I think it was
24 physically in our hands was in January 5th of 2010.

25 THE COURT: But it reiterates that -- it has an

1 exception to access issues, does it not?

2 THE WITNESS: I don't believe that the
3 paperwork we signed at closing had those
4 stipulations. What we -- because we signed
5 documents. And none of -- I don't think any of
6 these have our signature on it. So these were not
7 at-closing documents. The actual policy was not a
8 document we received at closing.

9 BY MR. NELSON:

10 Q. Are there any dates on any of those documents?

11 A. This has a policy date of December 4th.

12 Q. And y'all closed on November 30th?

13 A. Correct.

14 Q. Okay.

15 A. This one, this is Exhibit 15, homeowners form.
16 That's dated December 4th, so that would have been a
17 few days after closing. The actual title policy --
18 I mean, I would have to, like -- actually, this
19 looks like it's part of what this is. I don't think
20 there's a date on the title policy.

21 Commitment for title insurance, maybe that's
22 what -- I know that we signed a document, I believe
23 it was three pages long, about the availability of
24 title insurance. I don't believe this is -- I don't
25 believe this is dated. It's got, like, a fax/copy

1 date. But --

2 Q. So is there any information you received prior
3 to or at closing that showed you that the title
4 insurance company was taking an exception to access?

5 A. I don't believe so. I don't think we have that
6 information from the title insurance company.

7 THE COURT: But at the time of closing, the
8 question of access was still up in the air, was it
9 not?

10 THE WITNESS: It was.

11 THE COURT: And you closed anyway? And it's
12 still up in the air today.

13 THE WITNESS: Yes, sir. But I don't think that
14 has -- having title insurance -- I mean, you're not
15 required to have title insurance.

16 THE COURT: No, ma'am. It's just --

17 THE WITNESS: Yeah.

18 BY MR. NELSON:

19 Q. After you closed, what happened next?

20 A. We went to the property right away and I took a
21 lot of pictures.

22 Q. Okay.

23 THE COURT: You getting ready to go into
24 another little issue? Where are you headed now?

25 MR. NELSON: I just wanted to see how the

1 access issue developed up until suit.

2 THE COURT: That's fair.

3 Let's take a quick break, come back in about 15
4 minutes. I got a quick little hearing at 4:00 and
5 we'll go to about 5:00.

6 Don't discuss your testimony, please, ma'am.

7 THE WITNESS: Yes, sir.

8 (Short break.)

9 BY MR. NETTLES:

10 Q. Mrs. Nettles, before we broke, I was just
11 starting to ask you what happened after y'all closed
12 with regards to the gate and the Drews and the
13 property.

14 A. There were several letters that went between
15 attorneys. At the time, Tommy Brush's law firm
16 was --

17 THE COURT: Who; Mr. Brush?

18 THE WITNESS: Yes, sir.

19 THE COURT: And who?

20 THE WITNESS: Mr. Brush was representing us.

21 And the Drews had an attorney; I believe his last
22 name was Howard. And there were four letters that
23 went back and forth. I think the first one was -- I
24 hate to guess on these. But I think the first one
25 was from Tommy Brush to Mr. Howard talking about

1 access and that we believe we were on a public road
2 and -- anyways, the Drews proposed an easement,
3 several easements, that really weren't acceptable to
4 us because they all involved crossing wetlands. And
5 our feeling -- our thoughts were, how are you going
6 to get permits to cross wetlands in the ACE Basin
7 when we believe there's a public road that goes to
8 our property?

9 So those negotiations fell apart, particularly,
10 I think, because we actually said we'd take one of
11 the easements proposed by the Drews, but that we
12 weren't going to pay for it. And I think when
13 Mr. Drew got an estimate of, I don't know, \$50,000,
14 if you can get the permitting to go through wetlands
15 in the ACE Basin -- it just wasn't acceptable to
16 them or to us at that point in time.

17 And then, consquently [sic], like I said, those
18 negotiations failed and we were advised to file a
19 lawsuit by Mr. Brush.

20 (Plaintiff's Exhibit No. 108 marked for
21 identification.)

22 BY MR. NELSON:

23 Q. I want to backtrack just for two seconds. We'd
24 seen a map similar to Plaintiff's Exhibit 108
25 before?

1 A. Yes.

2 Q. Is there any difference between this one and
3 the ones that -- Plaintiff's Exhibit 11?

4 A. Well, here, what you got paper-clipped together
5 as 108, is like an aerial view and then your base
6 map. Those are the same time, same area.

7 Q. Did you --

8 A. This is just a smaller version.

9 Q. Did you obtain the documents that comprise 108?

10 A. Yes. This was the first -- my first piece of
11 research.

12 THE COURT: Who put the red marks on it.

13 THE WITNESS: It came like that.

14 THE COURT: Let me see.

15 THE WITNESS: I believe when I went to the GIS
16 department, I said I wanted to get information and
17 gave them our tax map number -- well, it wasn't our
18 tax map number at the time, because that was April
19 before we purchased the property. And when I --
20 when we examined this document, we could see the
21 County made no distinction between -- no distinction
22 of Camp Avenue being different than the other.

23 MR. NELSON: Your Honor, I thought I had given
24 a copy to Mr. Barnes. May I show him?

25 THE COURT: You may.

1 MR. GRIFFITH: Your Honor, Colleton County has
2 no objection to Exhibit 108.

3 MR. BARNES: No objection.

4 THE COURT: Okay.

5 (Plaintiff's Exhibit No. 108 admitted in to
6 evidence.)

7 BY MR. NELSON:

8 Q. Mrs. Nettles, why don't I just go into the
9 description of the property? I know that you and
10 your husband have taken some photos around there.
11 Do you recognize that picture from our Plaintiff's
12 Exhibit 94?

13 A. Yes, sir.

14 THE COURT: That's the intersection of two
15 roads, right, Polite and Camp?

16 THE WITNESS: Right. And then Polite turns on
17 to the north.

18 THE COURT: And that's the gate in question?

19 THE WITNESS: Yes. Well, there's -- I think
20 we're getting ready to show there's been a -- that
21 gate configuration has changed quite a bit over the
22 years.

23 THE COURT: Okay.

24 BY MR. NELSON:

25 Q. Looking at 94, is that what the gate looked

1 like when you purchased the property?

2 A. I think it was -- the orange gate was up over
3 the culvert there, and the placement of the gate was
4 up towards the corner of Camp and Polite.

5 Q. You're saying the gate was closer to the
6 intersection when you first purchased it?

7 A. It's as it is shown here. It's not where it
8 currently -- the gate and the guardrails and
9 everything is today.

10 Q. Okay. Is that representative of the day that
11 you closed?

12 A. I would say so, yes.

13 Q. You see the street sign there. What color is
14 that street sign?

15 A. They're both green. Again, indicating county
16 roads.

17 Q. Okay. And this is --

18 MR. BARNES: Are you looking at color? My
19 photographs are black and white.

20 MR. NELSON: We made copies of the colored
21 ones.

22 MR. BARNES: You don't have colors?

23 MR. NELSON: Not extra ones.

24 BY MR. NELSON:

25 Q. I'm handing you Document No. 95.

1 A. Uh-huh. Let me step back. The last picture
2 you showed me, I think, was 94?

3 Q. Yes, ma'am.

4 A. Let me say that that's the gate was before we
5 purchased the property, not at the time of closing.
6 I know that the orange gate, which was not always
7 closed, not always locked, was at that location
8 before we closed.

9 MR. BARNES: Location what? I'm sorry.

10 Q. 94 -- when was 94 --

11 A. Sometime before we closed.

12 Q. Okay. What did it look like the day of
13 closing? 94 or 95 represent it?

14 A. I'd have to go back and look at my picture
15 files to get an exact -- because -- so part of my
16 website, I take a lot of photos. So I always have
17 my camera with me. So I've got lots of photos.
18 And, obviously, the photos are dated. I'm not sure
19 of the actual date of this photo, but this is when
20 Mr. Drew -- I think at the time they were proposing
21 an easement to go down the eastern side of the --
22 Mrs. Drew's 11 acres and then on the southern
23 boundary of that which, again, is wetlands.

24 So I think -- I believe he moved -- he was
25 starting to move the gate back thinking we'd be

1 going to the left. And our access -- he wanted us
2 to take an easement over the 11 acres, so that's
3 when he moved the gate back. And, of course, those
4 negotiations failed.

5 Q. So the gate moved right around the time of
6 closing?

7 A. I don't have a date. I could look at the dates
8 of my photographs and absolutely tell you when this
9 photograph was taken.

10 Q. Okay.

11 A. But I don't -- I believe that he started this
12 second configuration of the gates before we closed.

13 Q. Okay. Let's talk about 95. What does 95 show?

14 A. This is where he started -- the two poles in
15 the background are what became the two poles for his
16 electronic gate system.

17 Q. Okay.

18 A. And then, of course, the original orange gate
19 up near the corner of Camp and Polite, it's not
20 exactly on the corner of Camp and Polite because
21 there's another owner of property at the corner of
22 Camp and Polite. His property corner is not
23 actually at the intersection of Camp and Polite.

24 And I don't -- I can't read a tax number on
25 this. But there's another landowner who

1 actually has the northern corner of Camp and Polite.

2 (Plaintiff's Exhibit No. 96 marked for
3 identification.)

4 Q. Okay. And I'm going to hand you Plaintiff's
5 Exhibit 96.

6 A. Okay.

7 Q. Can you describe that one?

8 A. This is when Mr. Drew installed his electronic
9 gate. And then he moved the orange gate to the
10 left -- well, if you're looking -- if you're
11 standing at the corner of Camp and Polite trying to
12 look down towards our property, the orange gate
13 would be on your left. And I'm not sure at what
14 time -- what the timeframe was when the concrete
15 pillars went down.

16 (Plaintiff's Exhibit No. 97 marked for
17 identification.)

18 Q. Okay. And you say concrete pillars, are you
19 talking about what's shown here on 97?

20 A. Yes. You can see there's quite a barrage of a
21 statement of wanting to keep us out. There were
22 concrete pillars and logs, obviously not making a
23 very neighborly statement to us.

24 (Plaintiff's Exhibit No. 98 marked for
25 identification.)

1 Q. Okay. I'm going to hand you 98. What does
2 that signify?

3 A. This is the current arrangement of gates,
4 concrete pillars, and guardrails that now surround
5 the area. Again, I think Mr. Drew is a little
6 obsessed with keeping us off our property.
7 Obviously this is either a different gate or they've
8 changed it or have painted it a different color.
9 It's not an orange gate anymore. But this is the
10 way it's barricaded today.

11 (Plaintiff's Exhibit No. 99 marked for
12 identification.)

13 Q. 99 is just a wider view of the same thing?

14 A. It's just -- yeah. It's just a little more.
15 If you put these together, you know, you kind of see
16 the panoramic. And you can see the guardrails go --
17 encompass the whole little entrance or whatever.

18 (Plaintiff's Exhibit No. 100 marked for
19 identification.)

20 Q. I'll hand you what's marked as Plaintiff's 100.

21 A. Yes.

22 Q. Can you tell the Judge the significance of that
23 one?

24 A. I believe this picture was taken after the
25 negotiations of the easement fell through, because

1 the concrete -- this is -- if you were -- if I take
2 95 and I stand it up here at the corner of Camp and
3 Polite, they wanted us to come over here to the left
4 and go down the edge of -- through the 11-acre
5 property.

6 When those negotiations failed, he blocked that
7 proposed easement off with these concrete pillars.
8 The other significance is this is wetlands --
9 this --

10 THE COURT: Is it wetlands or just --

11 THE WITNESS: No, no, no. This is designated
12 by the Army Corps of Engineers as wetlands area.
13 BY MR. NELSON:

14 Q. And does some of that wetlands touch your
15 property?

16 A. Oh, yeah. There's a lot of wetlands out there.

17 (Plaintiff's Exhibit No. 101 marked for
18 identification.)

19 Q. Okay. I hand you 101.

20 A. That is probably standing -- we're standing
21 near the gate. And it's just a picture back down
22 Camp Avenue looking to the east. And, you know, if
23 you look at it, doesn't look any different than the
24 rest of the road. I mean, some of these things --

25 Q. Is that left turn Polite?

1 A. Yes.

2 Q. Okay. So y'all are just inside the
3 intersection of Polite and Camp?

4 A. Yes.

5 Q. Looking back towards the main road, Hope
6 Plantation?

7 A. Right. We're looking -- the direction of this
8 picture is just to the east -- looking to the east
9 down Camp Avenue.

10 (Plaintiff's Exhibit No. 102 marked for
11 identification.)

12 Q. Okay. Here's 102.

13 A. I don't think we've really talked a whole lot
14 about the barn. But this is a picture of the barn,
15 which is maybe 100 feet from the northwest corner of
16 our property. I think Herman touched on it.
17 McMillan owns -- this is Camp Avenue. Mr. McMillan,
18 Mr. Drew's grandfather, owned to the north of the
19 road, and Mr. Kaiser owned to the south of the road.
20 And word on the street is, there was a big fight
21 between McMillan and Kaiser, and Kaiser built his
22 barn in the middle of the road. But that was, you
23 know, way back when, back, you know, '40s, '50s. I
24 don't know.

25 But this is the same location where the

1 Millers, as children, caught the bus. When they
2 talked about -- Mr. Miller said the bus would come
3 all the way down Camp Avenue to the barn, i.e., the
4 northwest corner of our property to catch the school
5 bus.

6 THE COURT: Back in the '50s?

7 THE WITNESS: Yes, sir. I think Norvia
8 graduated from high school in '58 --

9 MR. NELSON: It was probably the '40s he was
10 taking the bus.

11 THE COURT: Sir?

12 MR. NELSON: If he left in '53, it was in the
13 '40s he was taking the bus.

14 THE WITNESS: Well, I don't think Mr. Miller --
15 I don't think he -- I'm not sure that he graduated
16 high school. But I know Ms. Miller graduated high
17 school, I believe, in '58. But that's the barn that
18 everyone talks about.

19 (Pleading's Exhibit No. 103 marked for
20 identification.)

21 Q. And the last one is 103. Can you tell the
22 Court the significance of that?

23 A. Yes, sir. This marker here -- and it's kind of
24 hard to see in the picture. But you can see it --
25 that's the north -- I always get my directions mixed

1 up.

2 That's the northwest corner of our property on
3 Camp Avenue. And if you go back up Camp Avenue, the
4 barn would be back here behind you --

5 Q. May I show Mr. Barnes the orange flag you're
6 talking about?

7 A. Yes. But when you get down here, you'll get to
8 the gate and -- yeah. That's our property marker.

9 MR. NELSON: I'd like to move all of the photos
10 in to evidence.

11 THE COURT: Any objections?

12 MR. BARNES: No, sir.

13 MR. GRIFFITH: No objection.

14 THE COURT: Thank you.

15 (Plaintiff's Exhibit Nos. 94 - 103 admitted in
16 to evidence.)

17 BY MR. NELSON:

18 Q. I'll hand you Plaintiff's 5. That's the deed
19 that you took title to the property with; right?

20 A. Yes. This is our -- the deed that came from
21 the -- it's the special referee deed.

22 MR. NELSON: May I have a moment, Your Honor,
23 to confer with counsel?

24 THE COURT: You may.

25 MR. BARNES: Your Honor, may it please the

1 Court. Counsel has shown me a list of deeds that he
2 wants to offer. And I can't agree to it as such --
3 I don't want to hold this up. If we want to put it
4 in and then match it up once 5:00 comes -- I hate
5 to -- I'm not trying to waste the Court's time by
6 not being able to agree to the list as opposed to
7 having the deeds.

8 THE COURT: What do you want to do?

9 MR. NELSON: I think I can put them in quickly.

10 THE COURT: You're just offering them to
11 establish the chains of title?

12 MR. NELSON: Yes, sir.

13 THE COURT: You don't need her to do that. I
14 mean, you -- they're public records, aren't they?

15 MR. BARNES: Yes, sir.

16 THE COURT: Let's do that after 5:00.

17 MR. BARNES: We've not -- I don't think either
18 one of us are going to object to deeds that recorded
19 in the courthouse, Your Honor, or any other thing.

20 MR. NELSON: Okay.

21 THE COURT: They say what they say.

22 BY MR. NELSON:

23 Q. There was a picture that was brought up
24 earlier -- in earlier testimony, Mrs. Nettles. I
25 believe it was during Mr. Drew's testimony.

1 Defendant's Exhibit 5.

2 A. Okay.

3 Q. Did you hear his description of that document?

4 A. If I did, I don't recall what he said about it.

5 Q. Okay. Do you recall if it had anything to do
6 with his property or his wife's property or your
7 property?

8 A. I really -- I don't -- I didn't get to see the
9 picture at the time, so I'm not acquainting with --

10 Q. Do you recognize that picture?

11 A. It's just some pine trees. If -- if that's
12 supposed to be the bank --

13 THE COURT: No, ma'am. Please don't guess.

14 THE WITNESS: Okay. All right. I just --

15 BY MR. NELSON:

16 Q. Let's go back to -- before and after you've
17 purchased this property, you've done research?

18 A. Yes.

19 Q. Can you -- and I know you described a couple
20 things. Can you try and tell everything you've done
21 in researching this land and your property and the
22 area?

23 A. Since April of 2009?

24 Q. Yes, ma'am.

25 A. I've done extensive research, a lot of it at

1 the RMC office. I was able to find, for instance --
2 what I did was I took the tax map, 275 -- the tax
3 maps that begin with the number 275, which is
4 generally on the south side of Camp Avenue, and then
5 the tax map numbers that are generally 264 on the
6 north side of the property -- or, I mean, the north
7 side of Camp Avenue.

8 And what I did was I took each tax map and I
9 went to the RMC office and I researched back. A lot
10 of it was data that I used off the Colleton County
11 website. I started that as the basis and then I
12 went down to the RMC office. I said, okay, you
13 know, this property goes back to this deed, goes
14 back to this deed, goes back to this deed.

15 And I found a lot of interesting deeds, a lot
16 of them recognizing Camp Avenue, two of which are
17 from the 1880s. Okay?

18 Q. So did you start researching properties, not
19 talking about the 19, 21 or 11 acres?

20 A. Correct. I wanted to know what's out there. I
21 wanted to know -- I wanted to further understand the
22 history of Camp Avenue. And when I can go back and
23 pull deeds based on current tax map numbers that are
24 on Camp Avenue back to the 1800s, I've got to infer
25 that Camp Avenue has existed since the 1800s or they

1 wouldn't be listed in these deeds that I can trace
2 to current tax --

3 MR. BARNES: Your Honor --

4 THE COURT: I don't think anybody disagrees
5 with that.

6 Do y'all?

7 MR. BARNES: His daddy built Camp Road. It
8 wasn't the 1880s.

9 THE WITNESS: I believe Mr. Miller testified --

10 THE COURT: Ma'am, we all agree Camp Avenue has
11 been there since --

12 THE WITNESS: Okay. Well, anyways, part of my
13 research was trying to understand the history of
14 Camp Avenue. So I found deeds that goes back to the
15 1800s.

16 THE COURT: Which shows Camp venue as a
17 boundary or at least in existence.

18 BY MR. NELSON:

19 Q. Did you ever cary your research outside of the
20 RMC office?

21 A. Yes. Can --

22 Q. What --

23 A. Can I finish my RMC office research --

24 THE COURT: Sure.

25 Q. Sure.

1 A. -- because I've done a lot; more than any one
2 person should ever have to do in their lifetime.

3 Not only did I find deeds to the 1800s -- there
4 was a deed, I believe, from somebody named Higgins
5 to Mr. Kaiser that actually describes Camp Avenue as
6 being a road from -- and I believe they didn't use
7 Hope Plantation back in the day.

8 Hope Plantation, the name of the road has
9 changed over the years. It used to be called
10 Jacksonboro Road. So there's a 1946 deed that
11 describes Camp Avenue as going from Hope
12 Plantation -- well, Jacksonboro Road to Deer Creek.
13 And that was in the '40s, and that was a Kaiser
14 deed.

15 I believe Mr. Drew's title abstractor presented
16 a deed, an SCE&G right-of-way deed, signed by
17 Mr. McMillan that says he's on a county road, on two
18 sides of a county road.

19 THE COURT: Show me that deed.

20 A. And there's chains of title that go with it.
21 So I can -- you know where it's at. There's a --
22 there was also -- besides the deed to -- that
23 McMillan signed with SCE&G, there's a deed to two
24 others in the same week. There was one to somebody
25 named Charles Reader, I believe, and another one to

1 Allen.

2 We've actually got a plat of these, and the
3 deeds -- the McMillan deed is very vague. But if
4 you put it together with the other -- the Reader
5 deed and the Allen deed, you can pinpoint exactly
6 where that is, and it's at the corner of Camp and
7 Polite.

8 Q. And I'm not sure if we got to this yet: Who is
9 Mr. McMillan?

10 A. Mr. Drew's grandfather.

11 Q. Okay.

12 THE COURT: Ma'am, I'm looking at the McMillan
13 SCE&G deed. And it says: The lines run generally
14 northerly direction parallel with, adjacent to, and
15 approximately one foot west of the western margin of
16 another unnamed and unpaved county road. Where does
17 it say Camp Avenue at all?

18 THE WITNESS: You have to use the other two
19 deeds to help you with the location.

20 MR. BARNES: May it please the Court. We
21 object because we think they're talking about Polite
22 Road that's a county road --

23 THE COURT: Well, she can't give an opinion as
24 to other than what the deeds say. The deeds say
25 what they say.

1 THE WITNESS: If -- I think that references
2 both the Reader and the Allen properties.

3 THE COURT: Well, ma'am, it doesn't say that.

4 THE WITNESS: Yeah. It's --

5 THE COURT: In all of your research did you
6 ever find where anybody in the chain of title had
7 dedicated the property to the County of Colleton for
8 public road?

9 THE WITNESS: I don't believe Colleton County
10 has such records, as Mr. Whetsell testified to.

11 THE COURT: That's what my question is. Did
12 you ever find where they dedicated it to the County?

13 THE WITNESS: I think maybe that would be a
14 question for my attorney. Because I believe we've
15 asked them for paperwork, and they said we don't
16 have any. I mean, they -- I think that was the
17 point of the county employees. The county employees
18 said, we've got this, we've got that, and then we
19 ask for it in discovery and then suddenly there's
20 nobody has paperwork.

21 THE COURT: Well, maybe they never did it and
22 that's why they don't have the paperwork.

23 THE WITNESS: I'm sure it probably never was
24 dedicated.

25 THE COURT: Well, if it was never dedicated,

1 then how does it become a public road?

2 THE WITNESS: Well, the rest of Camp Avenue
3 didn't become a public road until 1995. And I can
4 show deeds back to the 1800s.

5 THE COURT: And since 1995 the County has
6 accepted that dedication by implication and have
7 maintained it, they've maintained the culverts,
8 they've scraped it on a regular basis, as everybody
9 has said.

10 THE WITNESS: Right. And there are two pretty
11 large culverts on Camp Avenue.

12 THE COURT: Who put them in?

13 THE WITNESS: The County said they don't have
14 any records of it, mysteriously.

15 THE COURT: Do you have any proof of any
16 historical use of that by anyone other than --

17 THE WITNESS: Mr. Miller, who was born on the
18 property?

19 THE COURT: Yeah. People using it to go to the
20 church, go to graveyards, go to --

21 THE WITNESS: Yes, sir, I do.

22 THE COURT: Who?

23 THE WITNESS: Well, I don't have testimony, but
24 I've got -- we've got some more evidence --

25 MR. NELSON: Your Honor, part of the reason I

1 was asking about her research is I'm going to use
2 her to authenticate a couple things that will help
3 tie some of this in.

4 THE COURT: That's fine. But she can't explain
5 what's in the deed. If it's a written document, I
6 have to rely on the written document. She can't
7 interpret the deeds.

8 MR. NELSON: Well, my next question was what
9 research have you done outside of the RMC office.
10 There is historical maps, there's other things out
11 there.

12 THE COURT: Well, tell me. What have you done
13 outside the RMC office?

14 THE WITNESS: Well, I've talked to SC DOT --

15 MR. BARNES: May it please the Court. If it's
16 not recorded, I don't know that that serves as any
17 notice to anybody --

18 THE COURT: She can tell me what she did.
19 Talked to SC DOT. We've talked about that.

20 THE WITNESS: Yes.

21 THE COURT: Well, who else have you talked to?

22 THE WITNESS: I've been to the Charleston
23 County Library, I've been to the South Carolina
24 Historical Society. I've done, you know, just
25 historical research, as I said, from the county

1 library.

2 THE COURT: And I assume you have found that
3 Camp Avenue has been there for a long, long, long
4 time.

5 THE WITNESS: Yes, sir.

6 THE COURT: Anything else that you found?

7 THE WITNESS: I think at best, this Camp Avenue
8 is a public-use road --

9 MR. GRIFFITH: Your Honor --

10 THE COURT: Strike that. You cannot give that
11 opinion. I mean, all due respect --

12 THE WITNESS: Well, I'm trying to tell you why
13 we went and bought the property. And if I can't
14 justify --

15 THE COURT: Well --

16 THE WITNESS: I thought --

17 THE COURT: You thought it was a public road
18 and you bought it.

19 THE WITNESS: Yes, sir.

20 THE COURT: That's fair.

21 THE WITNESS: I mean, who's going to interpret
22 these if I can't, these SCE&G deeds? Because
23 there's two more deeds and there's a plat to put all
24 this --

25 THE COURT: So you relied on your research and

1 it's your opinion it was a public road and you were
2 comfortable in doing it.

3 THE WITNESS: There's a --

4 BY MR. NELSON:

5 Q. Mrs. Nettles.--

6 A. There's a deed signed by Mr. McMillan stating
7 he's on a -- two county roads.

8 Q. What else have you done for research?

9 A. Oh, brother. Like I said, I researched all of
10 the tax map numbers that touch Camp Avenue back as
11 far as the records go. And we know that there was a
12 fire back in the Civil War, so you can only go back
13 so far.

14 I did some historical research and found, you
15 know, who owned -- we know Grayson Sanders sold
16 McMillan and Kaiser 908 acres. Four years later,
17 McMillan took basically the north half, Kaiser took
18 the south half.

19 Q. We'll get into that.

20 A. Okay.

21 Q. What else have you done in terms of research?
22 Not what did your research produce, but what have
23 you done for research?

24 A. At the -- well, so I got interested in the
25 history of the area. So I went to the -- I knew

1 that there was -- at one time in the 1700s, there
2 was a Dr. Charles Glover who owned Westbank tract --
3 Westbank Plantation.

4 THE COURT: Where is that?

5 THE WITNESS: Where our property sits.

6 THE COURT: Okay.

7 THE WITNESS: Okay. So we've -- at one point
8 in time, our property was part of Dr. Glover's
9 Westbank Plantation. I think I started -- I found a
10 book at the Charleston County Library, and it was
11 all about plantations, something -- Rice Plantations
12 of the ACE Basin or something. I don't remember the
13 exact title of the book. But it had chapters --
14 each chapter was history on the plantations and the
15 ACE Basin.

16 So I found Westbank, you know. And they
17 pinpoint where it's at. I went to the Historical
18 Society, looked up Dr. Glover. There was --
19 Dr. Glover was very prominent and, supposedly, the
20 first surgeon in the whole country. Very prominent
21 physician.

22 So his -- this whole -- it was like 6,000 acres
23 in that area. Pretty much the southern boundary is
24 what we'd call our current-day Hook Plantation. And
25 it went up -- if you're familiar with the railroad

1 tracks that go in that --

2 THE COURT: Crosses the Edisto River on the
3 trestle right there at Jacksonboro.

4 THE WITNESS: Exactly. So the Glover property
5 went, you know, generally from the northern edge of
6 Hope Plantation to where the railroad tracks are
7 today. So it was a huge plantation.

8 MR. NELSON: Your Honor, I'm about to ask her
9 about these two -- two of these maps she's talking
10 about. But I don't have copies, so I'd ask counsel
11 to come look at them.

12 THE COURT: Are they SCDOT maps?

13 MR. NELSON: No, sir. They are old, old, old
14 maps, which --

15 MR. BARNES: Your Honor, I've never seen these
16 before.

17 THE COURT: What are you going to ask her?

18 MR. NELSON: Where she found these maps.

19 THE COURT: Those aren't maps. Those are
20 plats, aren't they?

21 THE WITNESS: They're plats.

22 (Plaintiff's Exhibit Nos. 118 and 119 marked
23 for identification.)

24 MR. NELSON: They're Plaintiff's Exhibit 118
25 and 119.

1 THE COURT: You can ask her where she found
2 them.

3 BY MR. NELSON:

4 Q. Mrs. Nettles, I'm going to hand you 118.

5 A. Uh-huh. This is in the plat room of the
6 Charleston County RMC Office.

7 Q. In the Charleston County --

8 A. I'm sorry. In the Colleton County RMC Office.

9 THE COURT: Identify it. Who made it? What is
10 it of? What year?

11 THE WITNESS: During my historical --

12 MR. BARNES: Your Honor, may --

13 THE WITNESS: I know this is a --

14 THE COURT: Hold on one second. Let me look at
15 it and then we'll talk.

16 It simply says this is a copy of a plat of
17 Dr. F.Y. Glover tract on Pon Pon. I don't see any
18 date. Is there a date on it?

19 THE WITNESS: It references -- and I don't know
20 if you can see it on this copy, but it references
21 Book P, I believe, page 241 in the RMC records
22 office.

23 THE COURT: It does.

24 All right. What's your objection?

25 MR. BARNES: Counsel said it was recorded in

1 Charleston County Courthouse, not the Colleton
2 County --

3 THE WITNESS: No, no, no. I -- it's Colleton
4 County.

5 THE COURT: Where is it recorded, sir?

6 MR. NELSON: Mrs. Nettles pulled it. So --

7 THE WITNESS: It's Colleton --

8 MR. NELSON: -- if she says --

9 THE WITNESS: It's Colleton County.

10 MR. NELSON: -- it's pulled from Colleton --

11 THE WITNESS: It's Colleton. I misspoke. I
12 apologize. It's not Charleston County. I found
13 this at the Colleton County RMC plat --

14 THE COURT: Okay. Any objection?

15 THE WITNESS: And I got --

16 THE COURT: It's got Deer Creek, it's got the
17 road to Jacksonboro, it's got the Edisto River. So
18 it's -- okay.

19 BY MR. NELSON:

20 Q. Mrs. Nettles, is there anything you find
21 notable on that plat?

22 A. Yes, there is. Well, if you were familiar with
23 the area or if we had a larger current-day tax map,
24 this line right here is marked -- and I don't know
25 if you can even read it. It's a canal line.

1 THE COURT: Canal line?

2 THE WITNESS: Canal, like a waterway.

3 THE COURT: I know what a canal is.

4 THE WITNESS: This is current-day southern
5 boundary of a Rediesel property. Okay? This looks,
6 to me, identical to Camp Avenue, and it's marked
7 road to settlement. And we know that there was a
8 slave camp back in this area. But, to me, this
9 mimics -- you know, dirt roads change over time, so
10 it's not exact 100 or 200 years ago.

11 But -- but I came to find this map because of
12 the research I was doing at the South Carolina
13 Historical Society.

14 THE COURT: Sir?

15 MR. BARNES: Your Honor --

16 THE WITNESS: There was -- there was a --

17 THE COURT: That's your interpretation of it.
18 And it could very well be. I don't think anybody is
19 arguing that the road has been there a very long
20 time.

21 THE WITNESS: Okay. So this is just -- in the
22 research I did at the Historical Society --

23 BY MR. NELSON:

24 Q. Where did you find this?

25 A. This is also in the Colleton County RMC Office.

1 THE COURT: Let me see it. This is the plat of
2 the lands of Miss Eleanor L. Glover, traced from
3 a -- traced from copy of plat by J. Wilson --

4 THE WITNESS: Which is the one --

5 THE COURT: -- surveyor in November of 1816,
6 with exception of the portion of the plat of January
7 1838 by O'Brien, Simmons-Mayrant County Engineers
8 and Contractors.

9 And what's significant about this plat, please,
10 ma'am? It shows the Edisto River, it shows a canal,
11 it shows a Westbank Settlement, it shows a road
12 between Jacksonboro and Pon Pon. Tell me what's
13 significant about it.

14 THE WITNESS: Right. This is -- again, this is
15 that canal line that's on the other map.

16 THE COURT: Yes, ma'am. It's sort of the
17 adjoining property, or is it?

18 THE WITNESS: I'm sorry?

19 THE COURT: Adjoining property or is it?

20 THE WITNESS: At this point, I think this plat
21 is -- you know, the Glovers used to own, you know,
22 from the south here all the way up north.

23 THE COURT: Sure.

24 THE WITNESS: I've ran into -- at the
25 Historical Society, the lady there pointed me to the

1 researcher -- and I believe her name was either
2 Alice or Agnes Baldwin -- and she had a grouping of
3 time abstracts from the Glovers. And I actually
4 went down to the RMC office, pulled the actual, you
5 know, deed work from back in the 1800s.

6 I just know at one time this was all owned by
7 the Glovers. Dr. Glover passed away. He deeded all
8 of his land -- and this is all in his will book. It
9 describes the property. He passed away. His son,
10 Francis Y. Glover, which I think you read his name,
11 inherited this whole massive amount of property. He
12 didn't pay taxes on it. Mary E. Grace steps in,
13 buys all the property. The Amie Simmons deed is
14 from Grace.

15 THE COURT: So she bought a portion of that
16 from the property that what's her name got from --

17 THE WITNESS: Amie Simmons, yeah.

18 THE COURT: All right. Well, you've done quite
19 an amount of work, an extensive amount of work I'm
20 impressed.

21 THE WITNESS: I feel like I know what I'm
22 talking about.

23 THE COURT: Well, because you do. The problem
24 is, the situation is, and I think everybody in this
25 room agrees, this road has been there since before

1 the Civil War. I mean --

2 THE WITNESS: And I think that the fact that --
3 I mean, there's no other road there. There's -- you
4 can look at any of these maps. None of them show
5 another way -- and we've got more. But none of them
6 show another way to our property, the Miller
7 property, the Amie Simmons property. It's all down
8 Camp Avenue. Historically, Camp Avenue has been the
9 access for the Amie Simmons property.

10 THE COURT: Well, I -- and that's what we're
11 here about today; whether or not it is a public --

12 THE WITNESS: I believe --

13 THE COURT: -- access -- I know you believe
14 that. But I've got a whole stack of cases here that
15 the law tells me what I have to consider to
16 determine whether or not it's been dedicated
17 formally or by implication, and whether or not the
18 governing authority has accepted it, whether or not
19 the landowners have let it be used for public
20 access, whether they haven't, what proof of historic
21 use have been, those are the things I have to look
22 at.

23 THE WITNESS: Okay.

24 THE COURT: I don't think anybody is
25 questioning your work in determining that land, that

1 road, has been there for a long time.

2 THE WITNESS: Okay.

3 THE COURT: I have to determine the legal
4 status of it.

5 THE WITNESS: Yes, sir.

6 THE COURT: I think everybody realized that was
7 a problem and that's why your contract had a
8 condition in it about the access.

9 THE WITNESS: Uh-huh.

10 THE COURT: And you think it's a public road.
11 And I appreciate that opinion, but I have to look at
12 what's in here. And I'll read all that to you in a
13 little while and tell you where we're going.

14 THE WITNESS: Yes, sir. And I think that --

15 THE COURT: I hope you understand that.

16 THE WITNESS: I do.

17 But the Drews, prior to that, the McMillans,
18 weren't even in the picture when the Amie Simmons'
19 deed came into being. So when Mr. Drew testifies in
20 his deposition he's always owned the road --

21 THE COURT: Well, no, he hasn't always owned
22 the road. The road was there before he was born.

23 THE WITNESS: That's what he testified to
24 though.

25 THE COURT: None of us have always owned any of

1 this property. We've just had it for a little
2 while.

3 THE WITNESS: Well, yeah. But there were a lot
4 of people -- you know, prior -- like I said, it
5 started off with the 908 acres that Mary E. Grace or
6 Grayson Sanders had. It got divided between
7 McMillan and -- or it was sold to McMillan, Kaiser,
8 then that was split up. And then over the years --
9 you know, both of the McMillan -- McMillan bought
10 properties, Kaiser bought properties. Not all --
11 you know, Kaiser bought property on the north side
12 of the road, McMillan bought -- I mean, you know,
13 they didn't just stick to I've got the top half of
14 the road, I'm going to buy property at the south
15 side.

16 But, I mean, this road and this property
17 predates the McMillans' or the Drews' interest in
18 the road.

19 THE COURT: There's no question about that.
20 That's not at issue, is it, Mr. Barnes?

21 MR. BARNES: Sir?

22 THE COURT: Whether the road predates your
23 client's ownership. It has to. It's been there
24 since before the Civil War.

25 MR. BARNES: No, Your Honor.

1 THE COURT: All right. I didn't mean to
2 interrupt you. We're over 5:00. Do y'all want to
3 go a little longer?

4 MR. NELSON: We need to, either this afternoon
5 or in the morning, go through some deeds and
6 stipulate --

7 THE COURT: I'll let y'all do that tonight and
8 y'all can stipulate in the morning.

9 MR. NELSON: If you'd rather us start that now,
10 now would be the time to stop the testimony.

11 THE COURT: How many more questions do you have
12 of this witness?

13 MR. NELSON: A little bit. More than five or
14 ten minutes.

15 THE COURT: What areas have you got to go?

16 MR. NELSON: I want to go back into her
17 research a little bit.

18 I think there's a stipulation between all
19 parties that the Nettles or their predecessors in
20 title have paid taxes on 21.7 acres since at least
21 1982.

22 THE COURT: All right. Let's stop right here
23 as a breaking point. Is 9:30 okay?

24 MR. NELSON: Yes, sir.

25 MR. BARNES: Yes, sir.

1 THE COURT: Lawyers, stick around. Let me just
2 close in saying this: I know there's been a lot
3 going on today. And I don't think there's any
4 disagreement, as I've been saying, that this road
5 has been there, shown on all of the plats and maps.
6 But the -- what my duty is or my job in this case
7 is, is that your lawyer and you have stated that
8 you're entitled to an access because it is either a
9 county road or public road, or there's an easement
10 by necessity. Correct?

11 And there's just a lot of guidance that I have
12 as to whether or not the road is a public road or a
13 county road. And I'll have to apply previous cases
14 and the rulings that they've made to determine
15 whether or not it's been actually dedicated -- and I
16 don't think there's anything in the evidence that
17 it's been dedicated, per se, as a public road.
18 There's a lot of cases that say you can dedicate it
19 by implication; that means allowing a long, lengthy
20 use of the land by the public. And it looks like
21 there was a period of time where maybe the public
22 used it and a long period of time where the public
23 didn't use it.

24 So we have to look at all of that, put it in
25 the hopper, and decide whether or not it's a public

1 road or county road, and if not, whether or not you
2 have an easement by necessity. So that's sort of
3 where we are. And if we can move it along in that
4 vein tomorrow, we'll try to complete all the
5 testimony.

6 I've got to quit tomorrow about 1:00 because
7 we've got an all-afternoon hearing in another
8 matter. If we don't get through with the testimony,
9 I will offer y'all Wednesday to come back. If y'all
10 can't do Wednesday, we'll look at all of our
11 calendars and find another date as quickly as
12 possible to complete the testimony. Is that fair to
13 you?

14 THE WITNESS: Yes, sir. We've waited a long
15 time.

16 THE COURT: I know you have, but I don't want
17 you to have to wait too much longer.

18 THE WITNESS: Thank you.

19 THE COURT: Fair with everybody?

20 MR. BARNES: Yes, sir.

21 THE COURT: All right. We'll stand at ease.
22 Y'all work on the stipulations.

23 Please don't discuss your testimony tonight.
24 You're right in the middle of that.

25 THE WITNESS: Yes, sir.

1 THE COURT: And we'll start bright and early in
2 the morning.

3 (Court in recess for the evening at 5:10 PM.)

4 THE COURT: Ma'am, you may come back up.

5 Mr. Nelson, you may proceed.

6 MR. NELSON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 (Continued)

9 BY MR. NELSON:

10 Q. Mrs. Nettles, how much did y'all purchase the
11 property for?

12 A. \$75,000.

13 Q. How did y'all come to that number?

14 A. We negotiated it down. I think the original
15 asking price was -- it was either like 138- or
16 132,000.

17 Q. Okay.

18 A. Our initial offer in the contract proceedings,
19 I think, was 117- or 118,000. That reduction came
20 as a result of the perc test failing.

21 Q. Okay.

22 A. Actually, no. Their original asking price was
23 in the 130- range. Our initial offer in the 118-
24 range. And then we negotiated it down to the 75-
25 after the perc test failed and after the -- you

1 know, we decided to waive those two -- two of the
2 three contingencies.

3 THE COURT: The perc test failed and you waived
4 the other two contingencies; is that right?

5 THE WITNESS: No. There were three
6 contingencies --

7 THE COURT: Waived the access --

8 THE WITNESS: Right. Waived the access and the
9 perc test. The third contingency was the quiet
10 title.

11 (Plaintiff's Exhibit Nos. 91 and 92 marked for
12 identification.)

13 BY MR. NELSON:

14 Q. I'm going to hand you a couple exhibits. We've
15 stipulated that all of the deeds come in, anything
16 that's recorded. But a there's a couple that have
17 writing, which has led to an objection. I'll hand
18 you Plaintiff's 91 and 92. If you'll look at 91 for
19 me.

20 A. Yes, sir.

21 Q. Do you see some writing on there that probably
22 was not on the originally recorded deed?

23 A. Yes.

24 Q. Do you know where that came from?

25 A. That's Cheryl Hatfield's writing. This was

1 used in her deposition. I mean, it's got the
2 sticker on it from her deposition. That's her
3 notes.

4 Q. Okay.

5 A. Cheryl Hatfield was Mr. Drew's title
6 abstractor.

7 Q. Okay. And which -- of this deed, which of the
8 writing is not part of the original deed?

9 A. At the top to the left where it's typed in,
10 Book 75, it looks like the word yes is written. And
11 anybody that looks at Cheryl's documentation, she'll
12 put yes and no as to the pertinence of whatever it
13 was that, you know, she was looking at. So I think
14 if you know Cheryl's work --

15 THE COURT: Ma'am, you can't give an opinion,
16 please.

17 Q. But for intents and purposes, can that word yes
18 be disregarded?

19 THE COURT: Disregarded for what?

20 MR. NELSON: I'm trying to get the deed in and
21 I don't have a clean copy.

22 THE COURT: Why didn't you go to the Clerk's
23 Office and get a certified copy? I'll allow it in
24 and I will disregard the handwritten portions on
25 both of them.

1 MR. NELSON: Thank you.

2 MR. BARNES: We withdraw our objection then.

3 THE COURT: Thank you.

4 MR. NELSON: And then there's the same issue
5 with 92.

6 THE COURT: Same situation.

7 MR. NELSON: Anything that's handwritten --

8 THE COURT: I'll disregard that and accept the
9 deed as recorded in the office of RMC of Colleton
10 County. The deed from Kaiser to McMillan and the
11 deed from McMillan to Poole. Which, by the way,
12 these are great descriptions: Bounded on the north
13 by the Salters, west by Poole, south by Simmons,
14 west by -- I don't think that would -- they would
15 allow that today. It's amazing. That was in, looks
16 like, 1938 perhaps -- '37.

17 THE WITNESS: '37.

18 MR. NELSON: Got the same issue with 70. It's
19 just the TNS number written at the bottom.

20 THE COURT: Any objection other than just
21 disregard the --

22 MR. BARNES: No objection if you disregard it.
23 And that goes to any other deeds he has with writing
24 on them, if you want to save time.

25 MR. NELSON: Okay. Then I think that might

1 have been the last one. But --

2 THE COURT: So as I understand it, there's a
3 stipulation that all the deeds in the chain of title
4 are all the deeds that you want me to consider.
5 They're being stipulated as being true and correct
6 copies from the RMC office with the exceptions of
7 70, 92 and 91, and we'll accept those, disregarding
8 the handwritten notes on those three. Is that
9 correct?

10 MR. BARNES: Yes, sir.

11 MR. GRIFFITH: Yes, sir.

12 THE COURT: That's easy. Thank you for doing
13 it in that manner.

14 BY MR. NELSON:

15 Q. Have y'all done any measurements regarding Camp
16 Road?

17 A. We haven't taken the little ruler thing and
18 walked down the road and measure it, if that's what
19 you mean.

20 Q. What have you done?

21 A. Looking at the tax maps -- well, actually, on
22 our deed -- or not on our deed. The plat that we
23 had made, I believe we have -- it's between -- I
24 don't remember the exact number. It's between 475
25 and 500 feet of frontage on the road. And so I

1 took that --

2 Q. I'm sorry. What is frontage of the road of 475
3 to 500 feet?

4 A. The front of our property.

5 Q. Okay. The top --

6 A. The northern part -- yeah. The panhandle part
7 that touches the property is -- I think it's like
8 486 feet or something. But, you know, it's between
9 475 and 500 feet.

10 Q. Okay.

11 A. So I took that and then, you know, just
12 measuring the distance between the 11 -- the 11
13 acres has pretty much a straight east-west line, and
14 then has a little dip. From my approximations, the
15 straight line, like the northern part --

16 MR. BARNES: Your Honor --

17 A. I mean, somebody else can do the math.

18 THE COURT: We will. I mean --

19 MR. NELSON: I'm trying to show how much road
20 we're talking about here.

21 THE COURT: Well, do you have a survey of it?
22 Has she waked it off? She hasn't walked it off, she
23 hasn't done anything but approximate it.

24 THE WITNESS: It's -- we're talking about --

25 THE COURT: Tell me what measurements you've

1 made and what the results are.

2 THE WITNESS: My measurements of the tax map,
3 I'm estimating that the 11 acres has approximately
4 900 feet of footage on the road. Our property has
5 approximately 500 feet on the road. So, all
6 together, to the western edge of our property, which
7 is the non-wetlands area, is less than a quarter of
8 a mile. I just wanted you to get an idea of --
9 we're not talking about some huge distance. It's
10 less -- it's about a 16th of a mile to the eastern
11 edge of our property from the gate or the corner or
12 whatever. It's a very short distance.

13 Q. Okay. And some of these deeds reference a ball
14 field. Have you done any research or seen anything
15 to --

16 MR. NELSON: Judge, you're going to see that
17 referenced in the deeds. And unless we establish
18 where the ball field is --

19 MR. BARNES: May it please the Court. I'll
20 stipulate the ball field is shown on Exhibit 1.
21 It's outside the gate, across Polite Road, in the
22 corner of Camp and Polite Road, but away from the
23 gate in there. And it shows on Exhibit 1, that
24 black and white -- can you see it on our plats?

25 THE COURT: Does that suit? Stipulation, that

1 means it's an undisputed fact as to where it's
2 located.

3 MR. NELSON: And that would be on the eastern
4 corner of Camp and Polite, Mr. Barnes?

5 MR. BARNES: If you were coming in from Hope
6 Plantation Road and came up to Polite, it would be
7 to your right before you cross Polite.

8 MR. NELSON: On the corner?

9 MR. BARNES: Yes.

10 MR. NELSON: Thank you.

11 THE COURT: I see it right here.

12 MR. NELSON: Thank you.

13 BY MR. NELSON:

14 Q. Have you done any research on your property
15 regarding whether it's affected by -- on your
16 property, whether it's affected by wetlands?

17 MR. BARNES: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. BARNES: We got into this yesterday. He
20 has not qualified her as she has no expertise in
21 surveying. I'm going to do that as soon as I get a
22 chance to talk to her. But he's not laid the
23 foundation for her to interpret real estate records.
24 I think that's a matter -- I think it's coming back
25 to you --

1 THE COURT: Well, if he asks for an opinion, I
2 may have to deal with that. But if she's done some
3 research and public record shows it's in the
4 wetlands, then --

5 MR. BARNES: I just want to protect the record
6 on this.

7 THE COURT: I understand.

8 BY MR. NELSON:

9 Q. Have you done any research on whether your
10 property has any wetlands impact?

11 A. Yes.

12 Q. What have you done?

13 A. Probably that first day in April of 2009, my
14 first visit to the Charleston County -- I keep
15 saying Charleston County because we're from
16 Charleston County. So I had gone to the GIS, I
17 stopped in the planning office, which I talked to a
18 lady there. I think her name was Karen, and she had
19 some really long --

20 THE COURT: Ma'am, you can't tell us what Karen
21 said. As a result of your research, is your
22 property in wetlands?

23 THE WITNESS: Yes. She gave me a map -- she
24 printed out a map for me and highlighted in yellow
25 the wetlands. And she also wrote on the bottom how

1 I could contact Army Corps and, I think, DHEC.

2 So --

3 THE COURT: How much of it is in wetlands?

4 THE WITNESS: The -- pretty much -- as we've
5 talked about, the panhandle. Pretty much all of the
6 panhandle. We also hired a wetlands expert,
7 Mr. John Thorp.

8 THE COURT: Certainly you can't tell me what he
9 said.

10 THE WITNESS: Okay.

11 THE COURT: Panhandle is in the wetlands?

12 THE WITNESS: Yes, sir. The majority of the
13 panhandle is in the wetlands. And then there's
14 another little corner -- do we not have that?

15 THE COURT: Do you have the map from the
16 wetlands lady?

17 THE WITNESS: So, yes, I knew far, you know,
18 far before we bought the property that there were
19 wetlands.

20 THE COURT: So the wetlands is right along the
21 Camp Road?

22 THE WITNESS: Yeah. There's a gray -- there's
23 a gray --

24 THE COURT: Move along, please.

25 MR. NELSON: Yeah. I just have a map from the

1 wetlands consultant.

2 BY MR. NELSON:

3 Q. Is there any portion of your panhandle that
4 does not -- that's along Camp Road that does not
5 have wetlands --

6 MR. BARNES: Your Honor --

7 THE COURT: Hold on.

8 MR. BARNES: -- that's an opinion, and she's
9 not qualified to give an opinion on wetlands. And,
10 to be frank, I just told counsel there are some
11 documents from the wetlands people, but they say
12 they can't make a judgment on this property until
13 there's an application for a house or a road or
14 whatever. So none of this is official from the
15 wetlands people.

16 MR. NELSON: I think she's allowed to testify
17 as to the condition of her property.

18 THE COURT: Wetlands is a determination made by
19 the Corps of Engineers, I assume.

20 MR. BARNES: Yes, sir.

21 THE COURT: And she's told me the majority of
22 the panhandle is in wetlands, so I'll accept that.
23 That's not --

24 MR. BARNES: I won't fuss about that, Your
25 Honor.

1 THE COURT: That's not a huge issue in this
2 case, I don't think. Y'all are asking me to
3 determine whether or not the road from on the
4 western side is a public or private or if she's
5 entitled to an easement. Whether or not it's in
6 wetlands, I don't know how that affects that.

7 MR. NELSON: One of the ways that they've
8 offered an alternate route -- and Mr. Drew admitted
9 that a good portion of the 11 acres is subject to
10 wetlands. And the route that they have offered goes
11 straight through several acres of wetlands.

12 THE COURT: I understand that. But if it turns
13 out to be that it's a private road, it doesn't make
14 any difference whether he's offered them an
15 alternate route. He doesn't have to give them an
16 easement.

17 MR. NELSON: That's an argument that they've
18 been making this entire time about all these
19 alternate routes that they've offered.

20 THE COURT: Very well.

21 MR. NELSON: So, I mean, if they'd stipulate
22 that there's no other routes --

23 THE COURT: They're not going to stipulate to
24 that.

25 MR. NELSON: Okay. Then I need to show that

1 all of the routes travel through wetlands through
2 Mrs. Drew's property.

3 THE COURT: You have.

4 MR. NELSON: Okay.

5 THE COURT: One of them, I assume, travels
6 through wetlands. Have y'all mediated this case and
7 tried to resolve it in any manner whatsoever?

8 (Plaintiff's Exhibit No. 109 marked for
9 identification.)

10 MR. NELSON: We did.

11 This is an objected-to document. Mrs. Nettles
12 may have to stand up to identify it.

13 THE COURT: What is it? What number is it,
14 please?

15 MR. NELSON: It's number 109.

16 THE COURT: Identify it, please.

17 MR. NELSON: That is a U.S. geological map from
18 the Army Corps of Engineers.

19 THE COURT: What do you want her to say about
20 that?

21 MR. NELSON: She's going to testify as to her
22 research as to all this land and where she pulled
23 this map and what this --

24 THE COURT: She can testify as to where she
25 pulled it. Now whether or not she can interpret the

1 map I --

2 MR. BARNES: Your Honor, may I say -- and I say
3 this with all due respect: She's proven that when
4 she went to research the public roads, she came back
5 with all these highway maps and county maps and
6 what -- that didn't have anything to do with
7 dedication. That's why I'm objecting so much.

8 I don't want to leave the record open without
9 any objections. She can't interpret this stuff.
10 She's -- he hasn't laid a foundation for her. She's
11 not an expert.

12 THE COURT: That's correct.

13 MR. BARNES: A map is a map.

14 THE COURT: That's a map.

15 MR. BARNES: But that's it, I would say.

16 THE WITNESS: Well, this --

17 THE COURT: Ma'am, just hold on.

18 MR. NELSON: There's another one that I pulled
19 out yesterday -- here it is. Your Honor, there's a
20 hearsay exception to ancient documents.

21 THE COURT: You just want to introduce those
22 maps into the record?

23 MR. NELSON: Well, there's something that needs
24 to be explained on these maps.

25 THE COURT: Well, just bring the people in here

1 to explain it. Is the explanation on the map? I'll
2 allow you to introduce the map, but I'm not going to
3 let her interpret the maps.

4 MR. NELSON: Can I let her explain it for you?

5 THE COURT: No, sir. I just said that. That
6 would be hearsay.

7 MR. NELSON: There is a hearsay -- this is a
8 1942 document --

9 THE COURT: I've ruled. Please move along.

10 MR. NELSON: Yes, sir.

11 THE COURT: Tell me what these two maps that
12 you want me to look at.

13 MR. NELSON: May I proffer her testimony on it?

14 THE COURT: You can tell me what the maps are.
15 We have to comply with the rules.

16 MR. NELSON: I understand, Your Honor. 109
17 is --

18 THE COURT: Date?

19 MR. NELSON: 1942.

20 THE COURT: And by whom?

21 MR. NELSON: It's a road classification.

22 THE COURT: By whom?

23 MR. NELSON: USGS War Department Corps of
24 Engineer, Corps of Army.

25 THE COURT: All right.

1 MR. NELSON: And it shows a portion of Colleton
2 County and Charleston County.

3 THE COURT: Okay. And does it show Polite Road
4 and Camp?

5 MR. NELSON: It does. It doesn't have them
6 listed by name, but if you match up the latitude and
7 longitude, you can figure out exactly where it is.
8 The road resembles the exact figures we've been
9 looking at this whole time.

10 THE COURT: Okay.

11 MR. NELSON: All of these squares represent
12 houses.

13 THE COURT: Very well.

14 MR. NELSON: This shows that in 1942 there were
15 a number of houses back behind the gate other
16 than --

17 THE COURT: Do you know what kind of houses
18 they were?

19 MR. NELSON: I do not.

20 THE COURT: Barns? Houses? Structures?

21 MR. NELSON: Structures, houses.

22 THE COURT: I'm not going to let you interpret
23 that. I'll note there was some type of structure
24 behind the gate. But I think we've all agreed that
25 the road has been there for as long as we've got

1 maps.

2 MR. NELSON: The public use of this road is at
3 issue in this case.

4 THE COURT: And that is correct. And the only
5 evidence you've established that the public has used
6 this road was a 1950- -- that before 1953, there
7 were some people that lived back there, the Miller
8 family, and they used it. That's the only evidence
9 in this record so far that there's been public use
10 of this road.

11 MR. NELSON: There's also a plat from the 1800s
12 that shows there was a road to a settlement.

13 THE COURT: Well, there's no testimony that
14 anything was done on it. And I'll take that for
15 what it's worth.

16 But all of the cases talk about continuous use
17 for the public. And the only evidence in this
18 record so far is from Mr. Miller about his family,
19 and he moved away to go in the Army in 1953 when he
20 was 17 years of age. And that's it. You're welcome
21 to put anybody that still goes back there and uses
22 it or used it whenever. I mean, that's -- I
23 can't --

24 MR. NELSON: That's the problem with a case
25 like this, Your Honor, when we've got -- every

1 witness is deceased.

2 THE COURT: That's the problem with buying
3 property that has an access problem to it and -- I
4 don't make the law. I have to look at the law as
5 interpreted by the Supreme Court and what all the
6 requirements for proving a public or private --
7 public or county road. And you've got these cases
8 as well as I do, and I have to have credible
9 evidence to rule one way or the other. That's just
10 the way the law works.

11 And I will very much take into consideration
12 that the old plats show that it was a road back
13 there. And it may have been used back then, I don't
14 know. But you haven't given me any testimony that
15 it's been used since 1953, which would be however
16 many years ago that was. 52 years ago, is that
17 right? Whatever the math is.

18 MR. NELSON: And I guess one of the other
19 arguments is going to be, to the extent Mr. Drew --
20 he cannot show title; that's my position here. And
21 to the extent he's going to argue adverse
22 possession, you can't adversely possess something
23 that's been used by the --

24 THE COURT: We're not in the argument stage,
25 we're in the testimony stage. You'll be able to

1 argue that.

2 MR. NELSON: Yes, sir.

3 THE COURT: But the only evidence in the record
4 on that is, you know, the Colleton County Tax
5 Assessor and a 50-year land surveyor who says that
6 the road is within the perimeter of the property
7 that Mr. Drew owns. These maps show a road through
8 there and I just got to make a determination on all
9 of that. My main emphasis is your position that
10 it's a public or county road, and we have to show
11 that the County accepted and also that there's been
12 some continuous use of it.

13 MR. NELSON: Yes, sir.

14 THE COURT: And I will accept those maps as
15 evidence in this case, over the objection of -- but
16 I think they just confirm what we established
17 yesterday that as far back as the research shows,
18 there's a road through it. And what if it was used
19 back then?

20 MR. NELSON: Once it's determined for public
21 use, whether the County has accepted it or not -- I
22 know you asked me not to argue, but --

23 THE COURT: What if it was used back then? A
24 road used by the public 50 years ago, a hundred
25 years ago, and hasn't been used in the last 60.

1 years, what effect does that have?

2 MR. NELSON: There's no law that you can
3 abandon a public use. And there's plenty of law
4 that says that you can't adversely possess a public
5 use.

6 THE COURT: I'll let you argue all that at the
7 appropriate time.

8 (Plaintiff's Exhibit No. 110 marked for
9 identification.)

10 MR. NELSON: Thank you. There was a map here
11 -- this is a map from 1975. This is just the 2005
12 version.

13 THE COURT: You've introduced it?

14 MR. NELSON: This is a different one. This one
15 is 110.

16 THE COURT: All right. Give me the
17 identification of it and what it is.

18 MR. NELSON: It's a -- prepared by the South
19 Carolina Department of Transportation in cooperation
20 with the U.S. Department of Transportation, Map of
21 Colleton County General Highway System.

22 THE COURT: Okay.

23 (Plaintiff's Exhibit No. 111 marked for
24 identification.)

25 MR. NELSON: Number 111, similar map.

1 Functional Classification Colleton County prepared
2 by the South Carolina Department of Transportation
3 in cooperation with the U.S. Department of
4 Transportation, June 2006.

5 THE COURT: 2006?

6 MR. NELSON: Yes, sir.

7 THE COURT: Similar to all the rest of them?

8 MR. NELSON: Not the first one, but these last
9 two are.

10 THE COURT: All right. I'll accept those.

11 BY MR. NELSON:

12 Q. Mrs. Nettles, is there anything from a
13 testimony standpoint that you'd like to add?

14 A. I just would like to say we would -- the
15 position that we're sitting here today, we'd never
16 even imagined or dreamed we'd be in, that we would
17 not have access to this property five, six years
18 later.

19 We were confident -- the research that I did
20 prior to buying the property, speaking to the owners
21 of the property, their historical access to the
22 property, their -- you know, their personal
23 conversations with them -- of course one of them is
24 deceased now. But we would have never bought this
25 property if we weren't confident that we would get

1 access to it. The deeds -- and I think that's going
2 to be shown -- show it as well.

3 For Heaven's sakes, we just wanted to buy a
4 place out in country and live in peace and quiet.
5 It's just my husband and I.

6 THE COURT: Well, let me ask you some questions
7 along those lines. And I sympathize with you.

8 THE WITNESS: Yes.

9 THE COURT: And, obviously, I have to make a
10 decision.

11 When you bought the property, there was no
12 question that you knew there was an access problem.
13 There was a condition of access in the contract.

14 THE WITNESS: Right. Prior to buying the
15 property, we had no -- there were no problems with
16 us getting to the property. And, you know, as time
17 progressed, negotiations failed and then
18 relationships worsened.

19 But when we first started this, we were looking
20 forward to having the Drews as neighbors because I
21 think we probably have a lot in common. I mean, it
22 just --

23 THE COURT: Well, who is George Gardener?

24 THE WITNESS: He was -- he's on the Charlotte
25 Bova's real estate team.

1 THE COURT: And there's an Exhibit 22 in here
2 about an e-mail that you wrote to George saying:
3 We're not comfortable making a new offer until the
4 access issue is addressed. I don't understand why
5 this would be considered a minor issue.

6 THE WITNESS: I don't know when that was dated.

7 THE COURT: It was dated September 15, 2009.

8 THE WITNESS: Okay. Well --

9 THE COURT: I would hate to make an offer only
10 to have Mr. Drew want to charge for access or
11 maintenance.

12 THE WITNESS: I guess --

13 THE COURT: This needs to be addressed. I
14 don't think they'll be able to sell the property
15 without a resolution to the access issue.

16 I mean, you knew there was a problem, did you
17 not?

18 THE WITNESS: We didn't know it was going to be
19 this big of a problem. I mean, it's less than a
20 quarter mile of a dirt road.

21 THE COURT: I understand that, ma'am. But if
22 it's his road and he's denying the people who you
23 purchased it from access, you knew there was an
24 access problem -- my point is that you bought it
25 with full awareness that the access could be a

1 problem.

2 THE WITNESS: And we did and we were confident
3 in our research that --

4 THE COURT: And I don't mean this flippant --

5 THE WITNESS: And I'm not an attorney, I'm not
6 a real estate person, I'm not a surveyor. I'm going
7 by on-the-ground common sense looking at things.
8 And that's what I based my opinion on.

9 THE COURT: And I appreciate that more than you
10 know.

11 Anything else?

12 MR. NELSON: I kind of just left her --

13 THE COURT: I think she told me exactly --
14 she's being very honest with me, which I appreciate.

15 THE WITNESS: I mean, we just wanted to move to
16 the country.

17 THE COURT: I understand.

18 BY MR. NELSON:

19 Q. Anything else?

20 A. Give me a minute. I'm sorry. This is very
21 emotional for us.

22 THE COURT: I appreciate that and I understand
23 it. And it's unfortunate that we're here.

24 MR. NELSON: Can she just take three to five
25 minutes?

1 THE WITNESS: I don't even need that. I
2 just -- all we wanted to do was move to the country
3 and be in peace. And that's not happened and it's
4 very unfortunate.

5 THE COURT: It is unfortunate.

6 THE WITNESS: But we did buy a little piece of
7 property right up the road. And thank goodness,
8 because that's been a great relief for us. But we
9 do own another little property over there. I don't
10 know if that's going to come up as far as -- if that
11 will come up again. But, yes, we do own a little
12 four-acre property up there.

13 THE COURT: On which side of -- on Camp Road?

14 THE WITNESS: Yes, sir.

15 THE COURT: Which side of the gate?

16 THE WITNESS: It's -- it's --

17 THE COURT: On the east side or west side of
18 the gate?

19 MR. NELSON: East.

20 THE WITNESS: East side. There are no other
21 properties on the west side of the gate. I mean,
22 there's the Rediesel property, but that's it.

23 THE COURT: Anything else you want to tell me?

24 THE WITNESS: Can't wait to get to our land. I
25 guess that's it.

1 THE COURT: All right.

2 Mr. Barnes, you want to ask her any questions?

3 MR. BARNES: Yes, sir. I have exhibits I need
4 to get into the record.

5 THE COURT: Certainly.

6 MR. BARNES: Your Honor, I'm going to lead a
7 little bit. I know I'm on cross-examination, but --

8 THE COURT: You can lead all you want to.

9 (Defendant's Exhibit No. 18 marked for
10 identification.)

11 CROSS-EXAMINATION

12 BY MR. BARNES:

13 Q. Mrs. Nettles, I want to show you a deed. It's
14 Defendant's Exhibit 18. It's an exhibit -- a deed
15 from Bank of America to Janell and Ted B. Nettles.

16 A. Yes, sir.

17 Q. And you're familiar with that deed, I trust,
18 and where that property is located?

19 A. This is the property -- the four-acre property
20 I was just telling the Judge about.

21 Q. Will you tell the Court what's on that
22 property?

23 A. What's on it?

24 Q. Yes, ma'am. What kind of structures?

25 A. There's a mobile home.

1 Q. And you and your husband are staying in that
2 some now, aren't you?

3 A. We stay there on the weekends.

4 Q. And isn't that true that that's outside the
5 gate, but you bought that from whom -- that used to
6 be property of the Miller family, did it not?

7 A. Before Bank of America it belonged to somebody
8 else. Prior to that, it was in Norvia Miller's
9 name. Prior to that, it was in Janey Miller's name.

10 Q. And the boundary line --

11 MR. BARNES: Your Honor, for purposes of --

12 BY MR. BARNES:

13 Q. I'll show you this Colleton technical map. And
14 I'm sure you recognize that as y'all's property in
15 blue?

16 A. Yes.

17 Q. And this is the gate right here that's shown on
18 this -- and that's Polite Road?

19 A. That gate is not shown on that map, sir.

20 Q. Okay. Well, Polite Road is here and Camp Road
21 is here. And the lot you bought is this one that's
22 got the 12 on it, isn't it?

23 A. 270- -- the tax map number is 275-00-00-012.

24 Q. Right. And hadn't -- has anybody told you that
25 the Rediesel people have a standing offer for you to

1 put an easement in at the --

2 A. I --

3 Q. -- back of this lot coming all the way up to.
4 your property?

5 A. I've not seen any such easement.

6 Q. Okay.

7 A. I -- I --

8 Q. An offer?

9 A. No. I've --

10 Q. Nobody --

11 A. -- not seen -- no.

12 Q. Your lawyer hasn't told you about an offer
13 we've made for y'all to put your easement out here
14 from the Rediesel company?

15 A. I think he told me about it, but I've not seen
16 anything in writing. And what I think you're
17 referring to is something from a Mr. Pat Lee who is
18 the overseer of the property. The owners of the
19 property are in Germany.

20 Q. And he --

21 A. Because --

22 Q. He's their agent, isn't he? Did you know he's
23 got a power of attorney?

24 A. I believe he does not, because we have to send
25 paperwork to Germany in the Bessenger case.

1 Q. And --

2 A. But I have not seen anything in writing.

3 Q. Okay. But isn't it true that there's a fire
4 line that runs down the -- on the Rediesel side of
5 that lot? It runs all the way down, and the
6 boundary line goes all the way to your property;
7 correct?

8 A. I assume so.

9 Q. And isn't there a fire line back there?

10 A. There's wetlands back there.

11 Q. Isn't there a fire line, was the question?

12 A. I believe that Mr. Drew maintains the fire line
13 around the whole Rediesel property.

14 MR. BARNES: Mark this for me, please.

15 A. The Rediesel fire line is also to the eastern
16 edge of this property. It's on the eastern and
17 southern side. The bottom acre of our four acres is
18 wetlands.

19 (Defendant's Exhibit No. 20 marked for
20 identification.)

21 BY MR. BARNES:

22 Q. Let me show you Defendant's Exhibit 12. Is
23 that your contract to purchase with an addendum on
24 this very land?

25 A. We had several contracts. This was not the

1 final one. It changed over time, as I've already
2 testified to.

3 THE COURT: Which one is this?

4 THE WITNESS: That looks like -- obviously it's
5 in April. So that was very early on in our
6 negotiations.

7 THE COURT: Did this one have the access
8 contingency in it?

9 THE WITNESS: You know, probably. Can I say
10 for sure? No. Because --

11 THE COURT: Well, we have to look at it and
12 see. There's an addendum. The addendum says that
13 this sale is contingent on the seller providing
14 clear title. Further, this sale is contingent upon
15 a satisfactory perc test which allows a home to be
16 erected on the land. Further, this sale is
17 contingent upon the seller obtaining a signed and
18 recorded statement from Sylvester G. Drew, owner of
19 certain properties, tax map number, stating that the
20 buyers will have unrestrained access to their lot
21 through Camp Avenue or in the gates erected now or
22 in the future.

23 Did that contingency remain through all of
24 the --

25 THE WITNESS: No. No. We probably --

1 THE COURT: Was that contingency in the final
2 contract for sale?

3 THE WITNESS: No.

4 THE COURT: Well, show me the final contract
5 for sale because, ma'am, you've been saying all
6 along that the contract for sale had the access
7 contingency in it.

8 THE WITNESS: I probably have it out in my car.

9 THE COURT: Well, I'm having a hard time with
10 that because all of your e-mails between your lawyer
11 and your real estate agent talk about contingencies
12 going all the way up until November of --

13 THE WITNESS: Well, I --

14 THE COURT: -- November 20th, where you decided
15 you were still going to go ahead and purchase it and
16 the contingency had not been resolved.

17 THE WITNESS: Well, I think if you would look
18 at these dates -- this was not our final contract.

19 THE COURT: Well, where is the final contract
20 so there won't be any question in this record? Do
21 you have it in the car?

22 THE WITNESS: I probably have a copy of it in
23 the car.

24 THE COURT: Do you have it, sir?

25 MR. NELSON: No, sir. It's not something that

1 I intended to put in. This is Mr. Parker's case.

2 THE COURT: Okay. So it's your testimony that
3 it is or isn't in the final contract?

4 THE WITNESS: It is --

5 THE COURT: It is?

6 THE WITNESS: It is not -- this -- the two
7 contingencies, the perc test and the access issue,
8 were not a part of our final contract signed in
9 November.

10 THE COURT: All right. I'm going to ask you to
11 go downstairs and get it for me, please.

12 THE WITNESS: Okay.

13 THE COURT: We'll take a short break.

14 THE WITNESS: Okay.

15 THE COURT: I'm going to step back in my
16 chambers. When she returns, y'all come get me.

17 (Short break.)

18 THE COURT: Ma'am, please have a seat. Have a
19 seat, ma'am. Let's go. All right. Did you locate
20 the final contract?

21 THE WITNESS: I did not have it in my file.

22 THE COURT: You've got everything else but
23 that?

24 THE WITNESS: Pretty much.

25 THE COURT: I'm going to ask you one more time.

1 Did the final contract have the contingency in it
2 for the access to the road?

3 THE WITNESS: No.

4 THE COURT: That's not what you told me
5 yesterday.

6 THE WITNESS: No. We dropped the access issue
7 and the perc issue. There were originally three
8 contingencies.

9 THE COURT: But those were contingencies were
10 never met; they were still out there.

11 THE WITNESS: No. The -- well, I mean, those
12 were dropped from our contract.

13 THE COURT: Well --

14 THE WITNESS: It became -- it may have --

15 THE COURT: Dropped because the price was
16 reduced, is that what you're saying, or waived? Is
17 that what you said earlier this morning? You said
18 the perc test failed and y'all waived the perc test
19 failure and waived being able to gain access.

20 THE WITNESS: Yes. That's correct.

21 THE COURT: Okay. We're on the same page.

22 MR. BARNES: Let me see Exhibit 12, Your Honor.

23 BY MR. BARNES:

24 Q. This contract, Exhibit 12, on the last page
25 reads as follows --

1 A. But that's not the --

2 Q. Excuse me. May I finish my question?

3 THE COURT: You may. Go ahead. Y'all don't
4 argue.

5 Q. This sale is contingent upon the seller
6 obtaining a signed and recorded statement from
7 Sylvester Drew, owner of lot, stating the buyers
8 will have unrestrained access to their lot through
9 Camp Avenue now or in the future.

10 Now, why would that disappear? You didn't get
11 that letter from Sylvester Drew, did you?

12 A. I think I've already testified that --

13 THE COURT: Ma'am, please answer the question.
14 I think you told me you waived that. You knew it
15 existed and you waived it; is that correct? Well,
16 you tell me --

17 THE WITNESS: Well, the -- I don't -- I guess
18 the legal definition of waived would be --

19 MR. BARNES: Gave it away.

20 THE COURT: That was your word.

21 THE WITNESS: I'm sorry. Can you ask your
22 question again?

23 BY MR. BARNES:

24 Q. Why -- if this contract required getting a
25 signed and sealed recorded statement from Mr. Drew

1 stating that you'll have unrestrained access, why
2 did you give that up?

3 A. Because -- I've already testified to this:
4 That we knew Ms. Miller was in poor health, we knew
5 the Millers didn't have the financial ability to
6 clear that contingency.

7 Q. And did you ask -- you knew Norvia Miller
8 pretty well, didn't you?

9 A. I never met her in person. We had telephone
10 conversations, we had e-mail exchanges but,
11 unfortunately, never got to meet her.

12 Q. Did you ever ask Ms. Miller to get you an
13 easement in the quiet title action -- to file a suit
14 in a quiet title action to get access?

15 A. We didn't have anything to do with the Millers'
16 quiet title action.

17 Q. That's my point. You knew access was a
18 problem, but you had nothing to do with the quiet
19 title. That's all they got; right?

20 A. I'm sorry. I don't understand.

21 (Defendant's Exhibit No. 22 marked for
22 identification.)

23 Q. I'll withdraw the question.

24 Let me show you what's been marked as Exhibit
25 22. That's a copy of an e-mail that you sent. I

1 believe at the top of the page it establishes that.

2 A. Okay.

3 Q. Would you read that one --

4 MR. BARNES: Well, Your Honor we offer that --

5 A. I think he just read --

6 MR. BARNES: I just want to make -- offer --

7 THE COURT: Any objection, sir?

8 MR. NELSON: May I see it?

9 THE COURT: It's '22.

10 THE WITNESS: Can I read this? I'm sorry.

11 MR. NELSON: I didn't get a copy of the

12 pretrial brief.

13 THE COURT: Yes, ma'am, you may.

14 THE WITNESS: May I read this?

15 THE COURT: Yes, ma'am.

16 MR. BARNES: Excuse me. I was going to give it

17 to your lawyer. I'm sorry.

18 THE COURT: All right. Mr. --

19 THE WITNESS: May I read this?

20 THE COURT: Ma'am, you just read it, didn't

21 you?

22 THE WITNESS: No -- I mean, the statement he's

23 referring to is not the --

24 THE COURT: He's just asking you, is that an

25 e-mail that you wrote to George Gardener on

1 September 15th, 2009 at 6:00 PM?

2 THE WITNESS: It is.

3 THE COURT: Ma'am?

4 THE WITNESS: This appears to be something from
5 my e-mail.

6 MR. BARNES: We'd offer it, Your Honor.

7 THE COURT: Any objection?

8 MR. NELSON: No, sir.

9 THE COURT: All right.

10 (Defendant's Exhibit No. 22 admitted in to
11 evidence.)

12 (Defendant's Exhibit No. 23 marked for
13 identification.)

14 BY MR. BARNES:

15 Q. And let me show you what's been marked Exhibit
16 23. And I think this is -- it says it's an e-mail
17 from George Gardener to you.

18 THE COURT: And the question is, do you
19 recognize it?

20 MR. BARNES: Yes, sir.

21 THE WITNESS: Okay.

22 BY MR. BARNES:

23 Q. Isn't it true that it's a letter from George
24 Gardener to you, and the first sentence says,
25 quote --

1 THE COURT: It's an e-mail, not a letter.

2 MR. BARNES: Excuse me.

3 BY MR. BARNES:

4 Q. An e-mail that reads: The contract is
5 contingent on the seller having Mr. Drew grant
6 permanent access. That has never changed and won't.

7 Isn't it true that he told you that?

8 A. Those are the words on the paper. Yes, sir.

9 MR. BARNES: We offer that, Your Honor.

10 THE COURT: Any objection?

11 MR. NELSON: If she testifies she received it.
12 I didn't know she was clear on that.

13 THE COURT: She did.

14 MR. NELSON: Okay. No objection.

15 THE COURT: Thank you.

16 (Defendant's Exhibit No. 23 admitted in to
17 evidence.)

18 (Defendant's Exhibit No. 24 marked for
19 identification.)

20 BY MR. BARNES:

21 Q. I'll hand you 24 and ask if this is the e-mail
22 from Ashley Richardson with copies to Mr. Gardener
23 and copies to Charlotte Bova that was written to
24 you?

25 A. Okay.

1 Q. And down in the body, I think it's the third
2 sentence, Mrs. Nettles, didn't this letter [sic]
3 say: I hope this helps explain why we're taking so
4 much time in trying to determine who owns the road
5 and whether or not Mr. Drew can later on deny you
6 access to your property. If we ignored this issue
7 and a few years from now Drew does not want you to
8 use the road anymore, we'll have breached our duty
9 to you and we'd be liable to you for this breach?
10 You received that, didn't you?

11 A. I assume so.

12 MR. BARNES: We offer it, Your Honor.

13 THE COURT: Any objection?

14 MR. NELSON: No objection.

15 THE COURT: Thank you.

16 (Defendant's Exhibit No. 24 admitted in to
17 evidence.)

18 (Defendant's Exhibit No. 25 marked for
19 identification.)

20 BY MR. BARNES:

21 Q. Now this is Exhibit 25, which is an e-mail from
22 Catherine LaFond to Janell with copies to Ashley
23 Andrews, Ashley Richardson, George at Charlotte
24 Bova. Exhibit 25.

25 A. This appears to be an e-mail that I received.

1 Yes.

2 Q. So you got that?

3 A. This was in October, 2009.

4 Q. And in that Ms. LaFond is saying: We need
5 actual access to the property.

6 A. That's what she stated.

7 Q. Okay.

8 THE COURT: Any objection?

9 MR. NELSON: No, sir.

10 (Defendant's Exhibit No. 25 admitted in to
11 evidence.)

12 (Defendant's Exhibit No. 26 marked for
13 identification.)

14 BY MR. BARNES:

15 Q. And Exhibit 26, which is from Ashley Andrews to
16 you and copies to Gardener and everybody else --

17 A. Are we reading the whole context of this --

18 Q. No. We're reading the bottom language.

19 A. So I should ignore the top part?

20 THE COURT: No, ma'am. You can read that too.

21 Let me ask you, did you write that top part to
22 Ashley?

23 THE WITNESS: It has thanks Janell underneath
24 it, so...

25 THE COURT: So what?

1 THE WITNESS: I would assume that it's
2 something I wrote. I'm just trying to read it
3 because I haven't seen these in six years. And
4 Ms. LaFond wasn't even our closing attorney.

5 THE COURT: And what?

6 THE WITNESS: Ms. LaFond was not our closing
7 attorney.

8 THE COURT: I know. But Ms. LaFond was helping
9 you with this prior to you getting a new attorney;
10 correct?

11 THE WITNESS: Yes. We originally hired her to
12 be our closing attorney and, as I stated, she went
13 out of town for some classes and it just -- she was
14 not able to give it attention we thought we needed.
15 I'm sorry. I'm still reading.

16 BY MR. BARNES:

17 Q. You sent that e-mail and -- or she sent it to
18 you and I think you replied. But is it true that
19 when Ashley sent it to you it said there's still a
20 big hurdle to overcome with the access issue? And
21 that's what prompted your response, was it not?

22 A. I guess -- apparently I wrote this to George
23 Gardener, who was our real estate -- one of our real
24 estate agents, and to Ashley, who was one of the
25 people who worked in LaFond's office, and my

1 question to them says: I'm leery of getting an
2 easement from Mr. Drew because to me that implies he
3 owns the road.

4 Q. The point is, you were being advised though
5 that there was a big hurdle to access?

6 A. I think we've all -- agree to that.

7 MR. BARNES: We offer it, Your Honor, Exhibit
8 26.

9 THE COURT: Any objection?

10 MR. NELSON: No, sir.

11 (Defendant's Exhibit No. 26 admitted in to
12 evidence.)

13 THE WITNESS: Can I finish reading this?

14 THE COURT: You need time to read more?

15 THE WITNESS: I'm kind of a slow reader,
16 especially with these glasses.

17 Okay. So Ashley responds to me and she says:
18 There's a big hurdle to overcome with the access
19 issue. We still have to get the okay from our title
20 insurance company to close on the property. I've
21 asked them to look at the road issue in light of the
22 fact that there's no record of who owns it, and I'm
23 waiting to hear back from them.

24 BY MR. BARNES:

25 Q. Okay.

1 A. Ashley goes on to say -- and I'm sorry. I'm
2 trying to be very careful. It says: While I was
3 encouraging that Mr. Drew seems cooperative, I don't
4 want us to get ahead of ourselves. Janell, I don't
5 want you to make a trip to our office if it isn't
6 necessary. I'll make sure I update you as soon as I
7 hear back from our title insurance company. Also,
8 I've not gotten the report from Edisto Title yet.

9 So as of October 2009, we hadn't even gotten
10 title work done.

11 (Defendant's Exhibit No. 27 marked for
12 identification.)

13 Q. I'll show you what's been marked as Defendant's
14 Exhibit 27 and ask if you can identify that, please.

15 A. I think this has already been looked at.

16 THE COURT: Did you receive it, is the
17 question.

18 Q. Have you read it completely? I don't want to
19 interrupt your reading.

20 A. No, I haven't. I'm just saying I think this is
21 a continuation of this and we've already --

22 Q. Right. But look at the top first.

23 A. Oh, I'm sorry. I wasn't looking at the
24 highlighted issue.

25 Q. Up at the very top of the page it goes down a

1 little bit and then it's -- you say Janell and Ted
2 as if you were writing this. Is that correct?

3 A. Yes. So it says --

4 Q. So now that --

5 A. You're missing the top part, so I can't say --

6 Q. Well -- so let's go --

7 THE COURT: Hold on, gentlemen and ladies. One
8 of you has got to talk at a time.

9 MR. BARNES: I'm sorry, Your Honor.

10 THE COURT: Ask the question.

11 BY MR. BARNES:

12 Q. Go down to the October 14th e-mail from Ashley
13 with copies to everybody. And it says: Janell,
14 part of our job at closing is to make sure the
15 property you're buying is/has marketable title.
16 Marketable title means that the land you're
17 purchasing is free of defect so that you in turn can
18 sell the property to someone else. A question over
19 whether or not there's access to the property clouds
20 the title and potentially makes it unmarketable. I
21 hope this will help explain why we're taking so much
22 time in trying to determine who owns the road and
23 whether or not Mr. Drew can later on deny you access
24 to your property. If we ignore this issue and a few
25 years from now Mr. Drew doesn't allow you the road,

1 we've breached our duty and we'll be liable.

2 Then below that it reads: Our title insurance
3 company has asked me to find out who owned the land
4 before there was a road. I have in turn asked
5 Edisto if their search shows this. I'm waiting to
6 hear back from them.

7 It says that, doesn't it?

8 A. I'm really going to question these e-mails --

9 THE COURT: Well, you've already admitted,
10 ma'am, that you've received them and --

11 THE WITNESS: Well, from a tech -- I'm a
12 tech -- I'm a computer technician. And usually when
13 you print out e-mails -- this one is -- I just --
14 they look -- I don't know where they came from.
15 They're different formats. But these are --

16 THE COURT: All right. Hold on a second.

17 THE WITNESS: These are the same -- these are
18 the same.

19 THE COURT: Mr. Nelson --

20 THE WITNESS: The wording on them --

21 THE COURT: Mr. Nelson, where did you get these
22 e-mails? I assume you provided them through
23 discovery.

24 MR. NELSON: He got them through a subpoena
25 with the agent.

1 MR. BARNES: And we deposed the agents, and all
2 these exhibits --

3 THE COURT: Off of the agent's computer?

4 MR. BARNES: Yes, sir. This is what they were
5 sending to everybody.

6 THE COURT: Okay.

7 So you still doubt them, ma'am?

8 THE WITNESS: I'm just saying, from a
9 technology standpoint, these were generated at
10 different times.

11 MR. BARNES: We still --

12 THE WITNESS: But we do -- they're the same --
13 they're the same context. I mean, the -- this is
14 identical to the wording on this.

15 THE COURT: Thank you.

16 Move along. 28.

17 MR. BARNES: 28.

18 (Defendant's Exhibit No. 27 admitted in to
19 evidence.)

20 (Defendant's Exhibit No. 28 marked for
21 identification.)

22 BY MR. BARNES:

23 Q. May I show you -- look at this one and see if
24 you can identify it, please, ma'am.

25 A. It starts off: Camp Avenue, lack of progress.

1 THE COURT: The question is, can you identify
2 it? Is that your e-mail address?

3 THE WITNESS: I don't know who this is from.

4 THE COURT: It's from you. From
5 Janel103@comcast.net.

6 THE WITNESS: But if you look at the ID above
7 it, it's kind of strange. Again, from a technology
8 standpoint, I'm just saying it's rather odd.

9 THE COURT: Well, I understand that. But is
10 that your e-mail to George and Beth?

11 THE WITNESS: It is an e-mail from me to George
12 and Beth at the Bova office.

13 BY MR. BARNES:

14 Q. And in the body of this e-mail, doesn't it say:
15 Ted received a return call from Catherine stating
16 that the road is private and that we need an
17 easement....which we really do not believe -- it
18 says don't, but I'm saying do not so the record is
19 clear -- I had the surveyor look at the paperwork
20 and he said the paperwork did not indicate that Camp
21 Road is private. We are no longer confident that
22 Edisto Title or Catherine LaFond's office are
23 working in our best interest. Catherine has stated
24 three separate times we should find someone else to
25 do the work. Maybe we should have listened to her.

1 So isn't it true, Mrs. Nettles, that when
2 Catherine told you that it's a private road and you
3 needed easement, you fired her?

4 A. I didn't speak with Catherine.

5 Q: Answer my question, please. When Catherine
6 LaFond told you that you would need access to this
7 road, you fired her?

8 A. I don't remember the date where we proceeded to
9 change closing attorneys.

10 THE COURT: Are you going to introduce 28, sir?

11 MR. BARNES: We offer that, sir.

12 THE COURT: Any objection?

13 MR. NELSON: No, sir.

14 (Defendant's Exhibit No. 28 admitted in to
15 evidence.)

16 (Defendant's Exhibit No. 29 marked for
17 identification.)

18 THE COURT: Move along.

19 MR. BARNES: Exhibit 29, Your Honor.

20 BY MR. BARNES:

21 Q. This is to you from Ashley and it's Exhibit 29.
22 Would you please read it and identify it, please?

23 THE COURT: Well, can you identify it?

24 A. Okay. This just predates the one that I -- 28.

25 THE COURT: Yes, ma'am. But can you identify

1 29 from Ashley to you at Janell103@comcast.net?

2 THE WITNESS: Yes.

3 BY MR. BARNES:

4 Q. And would you please read what it says where it
5 starts off at we have?

6 A. I'm sorry. So this is LaFond's office speaking
7 to me. You know, I hate to -- I hate to read things
8 that are messages in a thread of four. But --

9 THE COURT: Well, please read it at my
10 direction.

11 A. -- it says: We have the search in and the road
12 has --

13 THE COURT: No, ma'am. The search has.

14 THE WITNESS: I'm sorry. We have the search in
15 and the search has concluded that Camp Avenue is
16 County maintained from Hope Plantation Road up to
17 where Polite Road intersects with Camp Avenue. From
18 the intersection of Polite Road on, it is a private
19 road and it cannot be determined, from Colleton
20 County records, when the road was put there. We
21 have gone through the deeds and plats to find out
22 which landowner you will need an easement from, but
23 it is inevitable that you will need an easement.
24 And there was an attachment.

25 She said: We will e-mail you a breakdown of

1 deeds and plats once completed and reviewed by
2 Chicago Title.

3 BY MR. BARNES:

4 Q. Doesn't it say attached please find the title
5 search?

6 A. We picked up the title search in a brown
7 envelope left after hours at the back of LaFond's
8 office.

9 THE COURT: The question was, does the e-mail
10 say attached please find?

11 THE WITNESS: It does say that.

12 THE COURT: Thank you.

13 MR. BARNES: We offer that, Your Honor.

14 THE COURT: Any objection?

15 MR. NELSON: No, sir.

16 (Defendant's Exhibit No. 29 admitted in to
17 evidence.)

18 (Defendant's Exhibit No. 30 marked for
19 identification.)

20 THE COURT: I think 30 is next.

21 BY MR. BARNES:

22 Q. Let me show you Exhibit 30. And it's two
23 pages. Can you identify that, please?

24 A. This is from my e-mail address to Beth who
25 would have been at the Bova office.

1 THE COURT: And Charlotte Bova is who, ma'am?

2 THE WITNESS: Our real estate agent. It was a
3 team. It was Charlotte Bova, George Gardener, Beth
4 Hammel and John Stocker.

5 BY MR. BARNES:

6 Q. And this is a letter you wrote to Beth, is it
7 not -- an e-mail? Excuse me.

8 A. Yes.

9 Q. And Tommy -- where it says Tommy, that word
10 Tommy, is that Tommy Brush?

11 A. Give me a moment, please. Okay.

12 Q. And this was -- you sent that e-mail on
13 November 18th, 2009, did you not, according to what
14 this document says?

15 A. Yes, at 1510.

16 Q. And when you go down into the kind of six or
17 seven lines down, it indicates that you went to the
18 Drews?

19 A. Yes, sir.

20 Q. And you -- and doesn't it read: We met with
21 Mr. Drew and his wife on Sunday. It was not a good
22 meeting at all. He still insists that Camp Avenue
23 is his private road, and they even told us that they
24 pay taxes on the road, which is absolutely not true
25 because the surveyor would have found this in the

1 records. We met with Mr. Drew a couple weeks ago
2 and showed him a map I received from Colleton
3 Floodplain showing his proposal to provide an
4 easement.

5 And let me just stop right there with that
6 and --

7 THE COURT: First of all, you move 30 in to
8 evidence?

9 MR. BARNES: Yes, sir.

10 THE COURT: Any objection?

11 MR. NELSON: No, sir.

12 (Defendant's Exhibit No. 30 admitted in to
13 evidence.)

14 BY MR. BARNES:

15 Q. Let me show you Defendant's Exhibit 15 and ask
16 you if that's what you're speaking of.

17 A. There were several versions of this, so I can't
18 say with certainty that that's the one I'm referring
19 to.

20 Q. All right. But --

21 A. I mean, because there were, like, two or three
22 different versions --

23 Q. Up at the top it says: Ted gave this to me.
24 And at the bottom it says: Easement Nettles would
25 accept from Drew at 100 percent Drew expense.

1 A. Yeah.

2 Q. And isn't it true that Mr. Drew offered y'all
3 several different locations for an easement and you
4 were going to agree on it, but when the Drews said
5 you would have to pay for the road construction,
6 y'all walked out?

7 A. No, no, no.

8 Q. That's not --

9 A. That is absolutely not true.

10 Q. Okay.

11 A. There were four letters that went back and
12 forth between Tommy Brush's office and Mr. Howard,
13 who was the Drews' attorney at the time. The Drews
14 withdrew their offer of an easement. We did not
15 back out of it, they did.

16 Q. Let me refer to page 104 of your second
17 deposition -- remember we took your deposition,
18 ended one afternoon and had adjourn and continue it
19 the next morning?

20 A. Yes, sir.

21 Q. And this is -- that's what I'm calling Janell

22 2.

23 A. Okay.

24 Q. On page 104 of that deposition, I asked, did
25 you and your husband ever discuss among the two of

1 you -- or between the two of you who y'all thought
2 should pay for an alternate route going to your
3 property across any property of the Drews? And
4 wasn't your answer, we felt that that was not our
5 responsibility?

6 And whose responsibility did you feel it was?

7 Well, it wasn't ours.

8 Why?

9 Well, I guess whoever was proposing it, it was
10 their responsibility because there's a public road
11 that goes to our property.

12 Isn't that what you said and did?

13 A. If it's in the deposition from five years ago,
14 yes, I'm confident that's what I said. But that
15 does not say what the -- that was not the question
16 you asked me. We did not refuse an offer from the
17 Drews. They withdrew their offer.

18 Q. When you said he had to pay for it, that's when
19 they withdrew it, didn't they?

20 A. There were four letters that went back and
21 forth --

22 THE COURT: Please answer the question, ma'am,
23 and then you can explain.

24 THE WITNESS: Okay.

25 THE COURT: Did you withdraw it because they

1 said you would have to pay for it?

2 THE WITNESS: No.

3 THE COURT: Did he withdrew it because he said
4 you would have to pay for it?

5 THE WITNESS: They withdrew the offer when they
6 found out the extent of money that would have to be
7 spent to build this road over wetlands.

8 THE COURT: Who did your expect to pay for the
9 roads if he was giving an easement?

10 THE WITNESS: Them, because we feel our
11 property is on public road, as was just in my
12 deposition that you just read.

13 BY MR. BARNES:

14 Q. I want to go back to Exhibit 20. It's a letter
15 that I wrote to Mr. Nelson, their counsel, and
16 I'm -- have you ever seen that letter before?

17 A. This is dated December 16th, 2014. No, I've
18 never seen this.

19 Q. Will you read the letter, please.

20 A. I will read it. I can tell you I've never seen
21 it.

22 Please let this confirm the continuing offer an
23 easement from the Rediesel Company to your clients'
24 land purchase from the heirs of Amie Simmons. The
25 easement is offered on the Rediesel property

1 adjacent to the strip of land with the mobile home
2 purchased fairly recently by your clients from
3 Miller -- which we didn't buy it from Miller -- and
4 extending to the boundary line of your clients
5 purchased from the heirs of Amie Simmons, all of
6 which location is shown by the red line labeled
7 proposed easement. I made this offer to you
8 September 2014 and have had -- and have not had a
9 response. The width of the easement needs to be
10 determined by your clients. I'm advised by Ashley
11 Hammel [phonetic] that a permit from the Corps of
12 Engineers can be obtained. The offer will remain
13 until is accepted. With kindest regards.

14 THE COURT: But you never saw that? Your
15 lawyer never sent it to you?

16 THE WITNESS: This was never sent to us, no,
17 sir.

18 MR. BARNES: May I see it, please?

19 MR. NELSON: Judge, we spoke on the phone. I
20 don't know if I ever actually sent her the written
21 offer, but we discussed it and I knew she didn't
22 want to go that route.

23 THE COURT: Is that correct, ma'am? Y'all
24 discussed it on the phone even though you didn't get
25 the letter?

1 THE WITNESS: Yeah. We had a discussion about
2 it, but I never saw anything in writing. I never
3 saw this map --

4 THE COURT: Would that have made --

5 THE WITNESS: -- with the red line on the map.

6 THE COURT: -- any difference if you saw the
7 map?

8 THE WITNESS: Pardon?

9 THE COURT: Would it have made any difference
10 if you saw the map?

11 THE WITNESS: That we would have accepted this?

12 THE COURT: Yes, ma'am.

13 THE WITNESS: It would -- no. We wouldn't have
14 accepted it, because that whole --- the whole fire
15 line is -- it's wetlands. I mean, I don't think
16 anybody understands what that means. I mean,
17 physically on the ground, you can't even walk on it.

18 THE COURT: Move along.

19 MR. BARNES: Excuse me. May I confer a minute,
20 please?

21 THE WITNESS: Who authorized this from
22 Rediesel?

23 THE COURT: Ma'am? What?

24 THE WITNESS: I guess my question would be,
25 where was their authorization from Rediesel to even

1 make this offer? I mean --

2 THE COURT: Well, you want to know -- what
3 number was that? 22?

4 THE WITNESS: 20.

5 THE COURT: Mr. Barnes --

6 THE WITNESS: I mean, I don't --

7 THE COURT: -- she wants to know where Rediesel
8 gave you the right to make that offer.

9 MR. BARNES: I spoke with Mr. Lee over there.
10 He's got power of attorney.

11 THE COURT: Thank you.

12 MR. NELSON: That's not in evidence.

13 THE COURT: Okay. She asked a question. I
14 asked Mr. Barnes to answer it.

15 Move along.

16 (Defendant's Exhibit No. 31 marked for
17 identification.)

18 BY MR. BARNES:

19 Q. So Exhibit 31 --

20 THE COURT: Do you recognize that, ma'am?

21 THE WITNESS: Hold on. It appears to be a
22 letter from me to George Gardener at the Charlotte
23 Bova office.

24 BY MR. BARNES:

25 Q. Would you read the e-mail aloud, please.

1 A. Sure. This is dated November 20th, 2009 at
2 4:01 PM. It says: George, Ted and I are going to
3 proceed with the purchase. Please do what needs to
4 be done to adjust the contract. I will call Tommy
5 Brush when I get to my office this morning. Do you
6 need to coordinate anything with him? We are also
7 trying to get the boundary survey completed by next
8 week. Please let me know when the contract is ready
9 so that if Ted needs to provide his signature, I can
10 get it to him at work today.

11 Both you and Tommy have stated -- and you, I
12 guess, meaning George at the real estate company --
13 both you and Tommy have stated that South Carolina
14 law says you cannot be denied access to your
15 property. Can you please tell me where I might find
16 this statute? I'd just like to see it for myself.

17 Q. And you wrote that --

18 MR. BARNES: We offer it.

19 THE COURT: Any objection?

20 MR. NELSON: No, sir.

21 (Defendant's Exhibit No. 31 admitted in to
22 evidence.)

23 (Defendant's Exhibit No. 32 marked for
24 identification.)

25 BY MR. BARNES:

1 Q. I'll hand you Exhibit 32. It's two pages
2 maybe -- this is a three-page exhibit, 32.

3 MR. BARNES: Your Honor, if I may, I withdraw
4 the third page. She can leave it in if she wishes,
5 but it has no bearing on what my points are.

6 THE WITNESS: Well, for that fact, the second
7 page doesn't either.

8 THE COURT: Let him make that decision, ma'am.
9 BY MR. BARNES:

10 Q. Did you write that? You sent this to Catherine
11 and the rest of -- Bova -- Charlotte Bova -- the
12 team Charlotte Bova; correct?

13 A. I sent page 1.

14 Q. I beg your pardon?

15 A. I sent the first page.

16 Q. Right. And --

17 A. I cannot confirm whether I sent pages --

18 Q. Does it have your e-mail address at the top,
19 from Janell103@comcast.net?

20 A. No, sir.

21 Q. What?

22 A. No, sir.

23 THE COURT: Page 1 does. Is that your
24 question?

25 MR. BARNES: Yes, sir.

1 THE WITNESS: Page 1 does.

2 BY MR. BARNES:

3 Q. Page 1 does. So you sent this e-mail, is my
4 question?

5 A. Page 2 -- I'm confirming page 1.

6 Q. Well, excuse me --

7 MR. BARNES: I made a mistake, Your Honor,
8 because on the top of page 3 it's got Janell where
9 she signed it, so I do need page 3 in. I want to
10 offer all three pages.

11 THE COURT: All right. Let's make sure.

12 You agree page 1 was sent by you, ma'am?

13 THE WITNESS: Yes.

14 THE COURT: All right. As to page 2, that's
15 the e-mail to Catherine@LaFondLaw, cc'd to Ashley
16 Richardson and Andrews, and Team at Charlotte Bova:
17 All, Ted and I feel very strongly. And then at the
18 top of page 3 it says: Thanks, Janell.

19 Do you recall sending that e-mail talking about
20 what you were also told by the Millers years ago,
21 all that language?

22 THE WITNESS: From a technology standpoint,
23 these three don't -- you can't fit these together.

24 THE COURT: Ma'am, I'm not asking you from a
25 technology standpoint.

1 THE WITNESS: Okay. Then I can't confirm that
2 I did pages 2 and 3.

3 THE COURT: Where did you receive it from?

4 MR. BARNES: The Bova file, the closing file.

5 THE COURT: You move to introduce it?

6 MR. BARNES: Yes, sir.

7 THE COURT: Any objection?

8 MR. NELSON: Objection. There's no foundation
9 or authenticity.

10 THE COURT: I disagree. I'll allow it.

11 (Defendant's Exhibit No. 32 admitted in to
12 evidence.)

13 BY MR. BARNES:

14 Q. Now, on the second page, Mrs. Nettles, third
15 paragraph, the first sentence --

16 A. Can I at least read this?

17 Q. Page 2 --

18 A. I mean, if this going to be admitted against my
19 wishes --

20 THE COURT: Ma'am, let me make the decision on
21 what is admitted or not. I've been very patient
22 with you about trying to run this trial, but I'm not
23 going to let you do it. That's not your job, it's
24 my job. I rule according to the rules of evidence.
25 So, please, I've been very respectful and polite

1 and --

2 THE WITNESS: I appreciate it. But, you know,
3 things are being introduced that I haven't even
4 read.

5 THE COURT: You've had an opportunity to read
6 everything to this point. I'm giving you the
7 opportunity to read this page. And that's not
8 correct. I've given you every opportunity to read
9 whatever you've wanted to read.

10 BY MR. BARNES:

11 Q. On the second page, the first sentence of the
12 third paragraph, I assume this -- it reads as
13 follows: We're also told by the Millers that years
14 ago, maybe the 1950s or '60s, a Drew relative put up
15 a gate at the current location. And nobody minded
16 because the Miller property was unoccupied and
17 nobody ever accessed the property.

18 And you typed that sentence, did you not?

19 A. I can't confirm that. So --

20 THE COURT: That's very well. That's her
21 answer. Move along.

22 MR. BARNES: We offer it, Judge. That's it.

23 THE COURT: All right.

24 Now I'll ask you some questions. Read on down,
25 five paragraphs from the bottom.

1 THE WITNESS: On page 2?

2 THE COURT: Yes, ma'am.

3 THE WITNESS: Okay.

4 THE COURT: When I tried to research the status
5 of the road myself, I came up with no real
6 conclusions. Did you type that?

7 THE WITNESS: I don't -- I can't -- I probably
8 did. But can I affirm 100-percent? No.

9 THE COURT: Do you still have no real
10 conclusions or is your opinion different today?

11 THE WITNESS: My opinion is definitely
12 different today. But we haven't -- I don't think
13 we've gotten to the point where we've had that
14 discussion. I'm more convinced today than what I
15 was back then.

16 THE COURT: Any other questions?

17 MR. BARNES: Your Honor, I think that's enough.

18 REDIRECT EXAMINATION

19 BY MR. GRIFFITH:

20 Q. Mrs. Nettles, as I understand, you found this
21 piece of property in Colleton County and decided you
22 wanted it; correct?

23 A. Yes, sir.

24 Q. You first went to Ms. LaFond, an attorney, to
25 handle the closing; correct?

1 A. It is.

2 Q. Never closed?

3 A. Correct.

4 Q. Never got an opinion about the title, is that

5 correct, from Ms. LaFond?

6 A. I -- I honestly don't remember if they gave us

7 a conclusion or not.

8 Q. All right. In any event --

9 A. This is a -- you know, the timeframe is --

10 Q. That's fine. But you moved on to Mr. Brush's

11 law firm; correct?

12 A. Yes.

13 Q. All right. Then at some point in time when you

14 ended up with the contract, you had three

15 contingencies; correct?

16 A. We had three contingencies on the original

17 contract with the sellers.

18 Q. Correct. Right. Quiet title?

19 A. Yes, sir.

20 Q. Perc?

21 A. Yes.

22 Q. Access?

23 A. Yes.

24 Q. Quiet title was cleared up?

25 A. Yes.

1 Q. Perc test did not clear up, bad perc?

2 A. The property did not perc according to the
3 standard DHEC testing methods.

4 Q. Okay. Then you also never got access or an
5 opinion as to access; is that correct?

6 A. The Millers never got access.

7 Q. All right. So --

8 A. The access issue cleared up.

9 Q. But that was part of your contract, that they
10 had to get it; correct?

11 A. That was part of our first contract. There
12 were numerous versions of that contract.

13 Q. When you closed, that was taken out of the
14 contract; correct?

15 A. To my knowledge, yes.

16 Q. All right. And it was also the contract was
17 renegotiated because they could not meet two of your
18 three contingencies?

19 A. The contract price was renegotiated because it
20 would not perc.

21 Q. Yesterday you also said it was an access issue;
22 is that correct? That was another reason for the
23 reduction from 118,000 to 75,000; correct?

24 A. If -- I believe there were -- I did more
25 research on -- when the land did not perc, we were

1 buying property that I considered hunting land. If
2 you can't pass a standard DHEC test, then that
3 devalues the land.

4 Q. If you can't get access, that devalues the land
5 too, doesn't it?

6 A. The reduction in price was based upon the perc
7 test failing.

8 THE COURT: Well, you testified this morning,
9 according to my notes, the 75,000 was reduced
10 because the perc test failed and waiver of the
11 access. We can read that testimony back if you want
12 to.

13 THE WITNESS: Okay.

14 BY MR. GRIFFITH:

15 Q. Let's move on. You went -- originally you
16 intended to finance this property; is that correct?

17 A. Yes.

18 Q. All right. And when you reduced the price to
19 \$75,000, you did not finance, you went to a cash
20 closing; is that correct?

21 A. Yes.

22 Q. And that's because the bank wouldn't loan you
23 money without perc and access; correct?

24 A. The -- I -- I don't really recall. I -- I --

25 Q. So you couldn't get financing. Then when you

1 got your title policy, it accepted access by the
2 title company; is that correct?

3 A. If you're just going to ask me the straight-out
4 questions, I will have to answer yes.

5 Q. Okay.

6 THE COURT: Well, you can explain, ma'am.

7 THE WITNESS: Can I?

8 THE COURT: Sure.

9 THE WITNESS: All right.

10 Please ask me that again then.

11 BY MR. GRIFFITH:

12 Q. When you got your title policy, there was an
13 exception to access, was there not?

14 A. We received -- we did not --

15 THE COURT: Yes or no, then you can explain.

16 A. Yes. The policy excluded access. However, and
17 I'm going to state it again, title insurance is not
18 a requirement. So I'm not sure -- if we had not
19 gotten title insurance -- I'm not sure what the
20 title -- we weren't required to get title insurance.
21 So --

22 THE COURT: Nobody is disputing that.

23 A. But they excluded it seems to be a big deal
24 when we didn't have to have it to begin with. You
25 had, like, a part B to that question that I'd like

1 to address.

2 Q. I missed my part B. All I said was, you did
3 not have access in your title policy; correct?

4 A. You asked me something --

5 Q. Well, my next question was, in all the research
6 you did, did you ever go to the clerk, to the
7 counsel for Colleton County to see if there was a
8 dedication of this road?

9 A. I did not. I mean, I wouldn't have known to do
10 that.

11 Q. All right. And that's why you hire a lawyer to
12 go get these legal opinions; right?

13 A. Yes, apparently.

14 Q. And if you don't follow them, the old saying,
15 the client who has themselves for a lawyer has what
16 for a client?

17 A. I don't know any of those sayings. So
18 that's --

19 Q. Never mind. Thank you.

20 THE COURT: Anything else, Mr. Nelson?

21 MR. NELSON: No, Your Honor.

22 THE COURT: Ma'am, you may step down.

23 All right. Let's take a morning bathroom
24 break, about ten minutes. Let me see y'all in
25 chambers, the lawyers, please.

1 (Short break.)

2 THE COURT: Mr. Nelson, any additional
3 testimony or witnesses or anything?

4 MR. NELSON: Your Honor, a lot of these
5 exhibits were stipulated when Mr. Barnes and Mr.
6 Griffith and I had our pretrial meeting about a week
7 and a half ago. Some of these were left uncertain.
8 There's a handful here that were not on my
9 agreed-upon list from that day that I believe are
10 agreed upon now. I just want to read them into the
11 record. Plaintiff's 66 --

12 THE COURT: Is what?

13 MR. NELSON: A plat of Snook, 1973.
14 Plaintiff's 67, another plat of Snook dated '58;
15 Plaintiff's 47 -- actually already agreed upon. 68
16 is an easement granted by Douglas Allen, 1979; 69 is
17 a deed from Douglas Allen dated 1979; 84 is a deed
18 from Henderson dated 1941; 90 is a deed from Pool
19 dated 1955; 107 is a recorded plat by Charleston
20 Engineering, 2009; and 113 is a plat of Snook dated
21 1958. Okay. Thank you. That's a two-pager, that
22 last one.

23 THE COURT: Thank you. Is that correct,
24 Mr. Barnes, those are agreed upon?

25 MR. BARNES: Yes, sir.

1 MR. NELSON: And, I'm sorry, did I say 113?

2 THE COURT: I don't know. You can go ahead
3 and -- you can be redundant.

4 MR. NELSON: Thank you. And we close our case,
5 Your Honor.

6 THE COURT: Mr. Barnes?

7 MR. BARNES: May it please the Court. You want
8 us to -- we're through with our testimony.

9 THE COURT: All right. Any motions or anything
10 you need to make?

11 MR. BARNES: No, sir.

12 MR. GRIFFITH: Judge, I have no witnesses;
13 however, I would like to make a motion for a
14 directed verdict. And I would make the motion on
15 the grounds that the evidence taken in the light
16 most favorable to the plaintiffs in this case failed
17 to show that this road was ever a county road.
18 Whether it was a public or an easement by necessity
19 or prescription, that's not one of the issues we're
20 concerned about. The issue is about whether it was
21 a county road.

22 The plaintiffs never put up any evidence that
23 there was any dedication -- or at least, as you
24 know, there are two ways to prove a county road;
25 one, you can find a dedication and acceptance by,

1 those are the two elements. In this case, the
2 plaintiffs, in their opening, acknowledge that there
3 was no formal dedication in their opening statement
4 as an admission of counsel, as well as Mrs. Nettles
5 admitted there was no finding or she had no evidence
6 of a dedication in this case.

7 THE COURT: Was there any dedication by
8 implication?

9 MR. GRIFFITH: Well, I believe that would come
10 under the acceptance. But the dedication by
11 implication would be that Mr. Drew is the one that's
12 got to dedicate it --

13 THE COURT: That's correct.

14 MR. GRIFFITH: -- or the property owner. And I
15 saw no evidence that there was any dedication of
16 this.

17 On the acceptance issue, our testimony was, we
18 never graded, we took care of it. That was -- a lot
19 of that testimony was put up by the plaintiff.
20 While they were my witnesses, they were put up by
21 the County -- County witnesses that were put up by
22 the plaintiff. The only testimony of acceptance
23 came from Mr. Miller who said that he saw, as he was
24 growing up, sometime some 60 years ago, maybe a
25 county grader coming through there and he said it

1 was before it rained. That would be --

2 THE COURT: Well, the showing -- the showing
3 implied acceptance. Obviously there has to be
4 continuous use of the property and/or repair of the
5 property by the County or by the governmental --

6 MR. GRIFFITH: That's correct, Your Honor. I'm
7 sorry to interrupt.

8 THE COURT: I didn't see any evidence of that;
9 in fact, quite the contrary.

10 MR. GRIFFITH: Yes, sir. The only evidence was
11 that the grading of the land stopped at the corner
12 of Polite Road and Camp Road and never went beyond
13 this gate. And as such, I think that there is no
14 evidence in the record that would show that this is
15 a County-owned road. And as for that, I would move
16 for a directed verdict on the issue of this being a
17 county road.

18 THE COURT: Mr. Nelson, how about respond to
19 that on the directed verdict for the County.

20 MR. NELSON: Thank you, Your Honor.

21 THE COURT: What evidence is in the record that
22 it was either dedicated by express dedication or
23 implied dedication or whether or not if it were
24 implied dedication, whether or not there was ever
25 any acceptance by the County of Colleton.

1 MR. NELSON: Yes, sir. Regarding whether or
2 not Mr. Drew would need to dedicate it, I don't
3 believe that we've shown, clearly, that Mr. Drew had
4 title to that road. That's going to be addressed
5 when we talk about the deeds and whatnot.

6 Mr. Miller did testify that he lived there up
7 until 1953 when he was 17 years old. And he said
8 that the whole time, the County regularly maintained
9 that road. There was no -- Mr. Drew wasn't even
10 alive at that time. Mr. Washington and Mr. Varnadoe
11 did not work there at that time. That's actually
12 uncontradicted evidence that the County used to
13 scrape that road regularly.

14 Mr. Drew -- Mr. Miller also said that the bus
15 used to pick him up by the barn; they didn't make
16 him walk out to the road there, they came up Camp
17 Road.

18 There's a couple plats in evidence. One is
19 from the 1800s that shows that it used to lead to a
20 settlement --

21 THE COURT: Are you talking about a public road
22 or a county road.

23 MR. NELSON: Okay. So as to the County
24 accepting, just described their scraping of it.
25 There's also, the County, through their own

1 documents, show that they've always acknowledged
2 this as a county road. As Your Honor saw, there was
3 some GIS maps; a 2009 and everything before that the
4 County showed it as a double line. The Sheriff's
5 Atlas from 2008 showed that there was a county road
6 in that atlas. These are documents that were
7 prepared by the County, shows that the County, all
8 along, acknowledged this as county road. Then in
9 2010, for whatever reason, it changed, sometime
10 after our lawsuit was filed.

11 I believe that alone is enough of a scintilla
12 of evidence to survive a directed verdict. I
13 understand that Your Honor is still going to be the
14 factfinder in this case, but I think that's enough
15 to survive directed verdict.

16 THE COURT: Anything on your behalf?

17 MR. BARNES: No, sir. I'd join in that motion,
18 Your Honor. Thank you. There's just been no
19 showing that it was ever dedicated or accepted by
20 anyone. And just because the County scraped it, I
21 think use of a road doesn't mean that it's adverse.
22 And there's been no testimony on this issue about
23 any adversity, and that the scraping was so far away
24 it could be abandoned just like any kind of easement
25 can be abandoned, Your Honor.

1 And I know the gate went up in the '80s, but I
2 think the testimony was that before then there was
3 little, if any, if I'm not mistaken. But I know
4 from '87 til now is a pretty long time to not have a
5 scraper in there. And a municipality or county can
6 abandon a public road by ceasing to grade it or
7 scrape it or whatever you want to call it. And I
8 think the abandonment would come in as well.

9 MR. NELSON: May I address abandonment? It's a
10 statute on it 57-9-10 of the South Carolina Code.
11 It requires a formal court action and notice to all
12 of the people in the area before the County can
13 abandon a county road. So I don't believe that
14 would apply in this case.

15 THE COURT: Let me see that, please. Let me
16 see that statute.

17 MR. NELSON: This is just cut-and-pasted on
18 some notes, Your Honor.

19 THE COURT: No problem.

20 All right. I will take that under advisement
21 since I'm doing it nonjury. Mr. Nelson, tell me,
22 once again, in your opening statement you mentioned
23 that you had three theories.

24 MR. NELSON: Yes, sir.

25 THE COURT: County road, then you had a public

1 road or a neighborhood road. What cases do you rely
2 on public road or neighborhood road?

3 MR. NELSON: Looking at Woodside Mills, 160 F.
4 Supp. 356 --

5 THE COURT: Do you have that with you, perhaps?

6 MR. NELSON: Just cut-and-pasted in some notes.
7 I did not print the entire cases.

8 THE COURT: Woodside?

9 MR. NELSON: Woodside Mills v. United States.

10 THE COURT: Cite?

11 MR. NELSON: 160 F. Supp. 356. And that cites
12 to the South Carolina case of Outlaw v. Moise.

13 THE COURT: Which is what?

14 MR. NELSON: 222 S.C. 247.

15 THE COURT: What's the name of it?

16 MR. NELSON: Outlaw v. Moise. Cites to Chafee
17 v. Aiken, 57 S.C. 507.

18 THE COURT: South Carolina once again?

19 MR. NELSON: Yes, sir.

20 THE COURT: What's the name of that one?

21 MR. NELSON: Chafee v. Aiken.

22 THE COURT: Okay.

23 MR. NELSON: Corbin v. Cherokee Realty, 229
24 S.C. 16. I'm also looking at -- there's just two
25 more really towards that issue that hit it the

1 hardest. Huggin v. Gaffney Development, 229 S.C.
2 340.

3 THE COURT: And the last one?

4 MR. NELSON: Earle v. Poat, 63 S.C. 439.

5 THE COURT: S.C. 439?

6 MR. NELSON: As in South Carolina, yes, sir.

7 THE COURT: All right. That's all of your
8 cases dealing with public road?

9 MR. NELSON: Yes, sir.

10 THE COURT: Now, what easements are you
11 claiming in the event I find it not to be a county
12 road or a public road or a neighborhood road?

13 MR. NELSON: I'm going to need to get my
14 computer cranked to get the cite or I can submit it
15 later.

16 But, essentially, we're looking at easement --
17 easement by necessity, easement by prior use. I
18 know Your Honor has questioned our evidence on the
19 prior use, but I think it's clear there's going to
20 be a necessity here. The only issue that I would
21 have with that is, generally those easements
22 require -- easement by necessity, for example,
23 requires unity of title and severance of title.

24 ~~Due to the RMC burning down in 1865, we can't~~
25 ~~clearly show that unity of title and severance of~~

1 title. But we did put a couple really old plats
2 into the record where I think it can be inferred
3 that there was a common owner from all of these
4 things.

5 There's also a Connecticut case, which I will
6 get you that cite, that they have found -- all of
7 these cases for easement by necessity go way, way
8 back, you know, 1800s and beyond. You don't see
9 that stuff coming up in modern day. Connecticut has
10 taken the step to move forward in saying, we think
11 that the unity of title element is kind of silly.
12 If there's a necessity, there's a necessity. And
13 they've gone that far as to eliminate that element
14 all together.

15 THE COURT: All right. Let me stop you right
16 there. You've got easement by necessity.

17 MR. NELSON: Yes, sir.

18 THE COURT: And easement --

19 MR. NELSON: Easement by prior use, which is
20 the same first two elements; unity of title and
21 severance of title. But instead of showing a
22 necessity, you just have to show an established
23 prior use at the time of severance.

24 Since we can't show the severance, I don't
25 think we're going to be able to show that. So I

1 think easement by necessity is probably it.

2 THE COURT: Any other easements?

3 MR. NELSON: I believe this would fall under
4 easement by necessity --

5 THE COURT: I know that. You already mentioned
6 that one. But any other easements that you're going
7 on?

8 MR. NELSON: Well, this case is a little
9 unusual. I've not been able to find the exact fact
10 pattern anywhere. So I believe what I'm calling it
11 is easement by necessity, but just in case, I'm
12 going to delineate.

13 Mr. Drew, to the extent he's claiming he
14 adversely possessed this road -- because, again, we
15 don't think he can show the title to the road, so he
16 would have to adversely possess it -- it's our
17 argument that if you're going to adversely possess
18 the only ingress and egress to somebody's property,
19 the easement by necessity or the easement by
20 implication just comes.

21 THE COURT: Okay. When you -- please, when you
22 get back to the office today, just e-mail me the
23 cites on your easement by necessity and by prior use
24 or whatever on your easement cases so I can pull
25 those, and also send a copy to Mr. Barnes and

1 Mr. Griffith.

2 MR. NELSON: Will do.

3 THE COURT: And if you come up with any more
4 public road cases, please provide those to me. I
5 assume on the county road dedication there -- I've
6 got a number of cases on that particular case. But
7 you can send me this afternoon any of those that
8 you'd like me to look at.

9 Gentlemen, as to your prospective positions,
10 I'd ask for proposed orders. We got July 4th coming
11 up and I know it's the summer. Mr. Nelson, how long
12 do you think you would need to get me a proposed
13 order on all the issues? And don't tell me two days
14 if you need ten and don't tell me ten days if you
15 need a month.

16 MR. NELSON: I was debating between 10 and 30.

17 THE COURT: We'll say 30. Is 30 enough?

18 MR. NELSON: Yes, sir.

19 THE COURT: If you see that you need a few
20 extra days, that 30th day, you just e-mail me with
21 copies to everybody.

22 Mr. Barnes, 30 days okay with you?

23 MR. BARNES: Yes, sir. That's fine. Plus a
24 few extra in case. My daughter probably has --

25 THE COURT: 30 is not good? How long do you

1 need; 45?

2 MR. BARNES: Yes, sir, 45. My daughter is
3 getting ready to have a very serious surgery and --
4 35 days, how about that?

5 THE COURT: All right. I'll give everybody 45
6 days. Anything else by anyone?

7 For the parties, I asked the lawyers to come
8 back in chambers. I -- sometimes when you apply the
9 facts to the law, you can have some very harsh
10 results, either way. I don't know if there's any
11 movement or any chance of any kind of reconciliation
12 or any kind of settlement. You end up with a piece
13 of property you have no access to, I don't know how
14 good it's going to be to you. I asked the lawyers
15 maybe if Mr. Sylvester is interested in purchasing
16 it from you or if you want to explore another
17 easement around or if you want to wait until I
18 rule -- I got to rule one way or another.

19 If you don't like my ruling, you think I'm
20 incorrect, either one of you can appeal it to the
21 Court of Appeals or the Supreme Court, but we'll be
22 talking about another couple years. So it may be
23 that you need to be realistic in -- I don't know if
24 there's any room for settling or not.

25 I'll be glad to do whatever I can to try to

1 help resolve it. But, obviously, somebody is going
2 to be grieved with the order. All I can do is take
3 the facts and apply it to the law as I find it to
4 be.

5 Thank you all. I think the lawyers were very
6 prepared. I appreciate everybody being here. And
7 if I can help, I'm here. And I would encourage the
8 lawyers to explore any type of resolution short of
9 having to go to Columbia or anywhere else. All
10 that's going to do is cost everybody.

11 Thank you very much. Have a pleasant 4th of
12 July and remainder of the summer.

13 MR. BARNES: Thank you, Your Honor.

14 MR. NELSON: Thank you, Your Honor.

15 MR. GRIFFITH: Thank you.

16 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Circuit Court for Colleton County, South Carolina, on the 29th and 30th of June, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 23, 2015

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter