FORM 4

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

RECEIVED
MAR 13 2018
SC Court of Appeals

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4001373

Trehnolm Building Company
PLAINTIFF(S)

Rajarathnam S Aluri
Aluri Family Trust
DEFENDANT(S)

Submitted by: _____	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(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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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:

_____

_____

_____

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
		$
		$
		$
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.**

Circuit Court Judge _____ **Judge Code** 2098 **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the 13 day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Mar, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Carlos W. Gibbons Jr.

Allen Jackson Barnes

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. Gilbride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CA#: 2016-CP-40-1373
	)	
Trenholm Building Company,	)	
	)	
Plaintiff,	)	
v.	)	**REVISED ORDER**
	)	
Rajarathnam S. Aluri, Trustee, The Aluri Family Trust, UTD May 3, 2012,	)	
	)	
Defendants.	)	

DATE OF HEARING: September 29, 2017

SPECIAL REFEREE: Brian L. Boger

PLAINTIFF'S ATTORNEY: Carlos W. Gibbons, Jr

DEFENDANT'S ATTORNEY: Allen Jackson Barnes

This action for a declaratory judgment was commenced in the Richland County Court of Common Pleas on March 1, 2016 by Trenholm Building Company. On April 18, 2016, Defendant Trust filed its Answer and Counterclaims. On May 11, 2016, Plaintiff filed a Reply to Counterclaims in opposition to the Defendant's counterclaims. On September 29, 2017 this Court held a final hearing on the matter.

The issue before the court is to determine whether Rajarathnam S. Aluri, Trustee, The Aluri Family Trust, UTD May 3, 2012 (hereinafter "Defendant") has the right to use the driveway owned by Trenholm Building Company (hereinafter "Plaintiff") by virtue of an easement, license, prior use or necessity. Defendant, in its counterclaims, posits that an easement was created by prior use of the driveway. In the alternative, Defendant claims that an easement was created by necessity, prescription, or that Defendant has a license to use that driveway.

STATEMENT OF FACTS

Defendant owns residential property at 616 Pickens Street, Columbia, SC. Defendant's Trustee, Dr. Aluri, purchased the property from Shandon Development Company in 2003, and he subsequently transferred the property to Defendant trust in 2012. Plaintiff owns the adjacent residential property at 618 Pickens Street. Plaintiff purchased the property from Shandon Rental Group in 1999. The properties were commonly owned by Shandon Development Company from 1984 to 1998, and in 1998, Defendant's property was conveyed to EW&M Limited Partnership. A driveway between the two properties has existed since at least 1976, and it is undisputed that the driveway is owned by the Plaintiff.

Defendant's property is situated in such a way that Defendant lacks easy vehicular access to a section of his property without the use of Plaintiff's driveway. Defendant has relied upon Plaintiff's driveway to some degree for some period of time to access the otherwise rather difficult portion of his property for parking purposes. Nevertheless, Defendant's property includes a driveway that grants Defendant access to the road and the remainder of his property. Importantly, there is no easement of record granting Defendant the right to use Plaintiff's driveway.

At the hearing on September 29, 2017, the parties introduced testimony as to the frequency of Defendant's use of the driveway; the amount of time Defendant has used the driveway; whether Defendant was explicitly or implicitly permitted to use the driveway, and; whether Defendant's predecessors-in-title were permitted to use or actually used Plaintiff's driveway. Additionally, expert testimony, surveys of the properties, and photographs of the property were introduced at trial. In consideration of the evidence introduced at trial, the court finds the following facts: Defendant and Dr. Aluri's predecessors-in-title, Shandon Development

Company and EW&M Limited Partnership, were not explicitly or implicitly permitted to use Plaintiff's driveway. Defendant's predecessors-in-title did not regularly use Plaintiff's driveway, and Defendant's predecessors-in-title did not use Plaintiff's driveway at the time title to the properties was severed. Plaintiff did not grant a license to use its driveway to any titleholder in the chain-of-title to Defendant's property. Defendant, and its predecessors-in-title, have not used Plaintiff's driveway without interruption since 1998.

DISCUSSION

A. Easement by Prior Use

Defendant claims to have a right to use Plaintiff's driveway due to an easement implied by prior use. There is a dearth of case law in South Carolina on easements of this nature, but the seminal case of *Boyd v. Bellsouth Telephone Telegraph Co., Inc* clearly directs this Court to its proper conclusion. An easement implied by prior use has not been created, and Defendant does not have the right to use Plaintiff's driveway.

In South Carolina, an easement implied by prior use is created when the claimant establishes the following: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and; (6) the common grantor indicated an intent to continue the prior use after severance of title. *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006). These requirements are not unique to South Carolina. In fact, every state east of the Mississippi River has similar or identical requirements. Adam Leitman Bailey and Israel Katz, *Analyzing Easement Laws and Cases in the States East of*

the Mississippi River, 31-FEB Prob. & Prop. 1, 5-7 (2017). The failure to establish any of these elements would defeat Defendant's claim.

It is undisputed that Shandon Development Company owned Plaintiff's and Defendant's property between 1984 and 1998. *See* Def.'s Exhibits 3-4. Further, the parties acknowledge that common ownership of their properties ceased in 1998 when Shandon Development Company sold Defendant's parcel to EW&M Limited Partnership. *See* Def.'s Exhibit 4. Therefore, Defendant has established the first two elements of an easement implied by prior use.

In contrast, Defendant has failed to establish the third element, that the prior use asserted was in existence at the time of unity of title. The only evidence proffered by Defendant to establish this element was testimony from Dr. Aluri that the previous owner of Defendant's property didn't tell him that he *couldn't* use Plaintiff's driveway, and that he saw the driveway being used as early as 1988 when he owned a neighboring property. Transcript, p. 83, ll. 13-16; transcript, pp. 81-82, ll. 19-25. Defendant did not proffer testimony from his predecessor-in-title or others who would have first-hand knowledge of the prior use Defendant asserts. The absence of direct evidence or disinterested testimony demonstrating that Plaintiff's driveway was used for the purpose Defendant asserts at the time of unity of title compels this Court to conclude that the prior use Defendant claims was not in existence at the time of unity of title.

Importantly, the third element is a gatekeeper for the remaining elements. If Defendant cannot prove the prior use asserted was in existence at the time of unity of title, it logically follows that Defendant cannot prove that the parties were aware of such use. Likewise, Defendant is unable to show that the prior use asserted was necessary for his enjoyment of the property, or that the common grantor intended to continue such use after severance of title.

Accordingly, Defendant has failed to establish four of the six elements necessary to prevail on this claim.

B. Easement by Necessity

Defendant claims that an easement by necessity exists because he is unable to access a portion of his property without use of Plaintiff's driveway. Unfortunately, Defendant has not demonstrated the degree of necessity needed to prevail on this claim.

An easement by necessity is created when the proponent can establish three elements: (1) unity of title; (2) severance of title, and; (3) necessity. *Jowers v. Hornsby,* 292 S.C. 549, 550, 357 S.E.2d 710, 710-11 (1987). As discussed in the preceding subsection, Defendant has established the first two elements. Therefore, this inquiry will focus on the third element.

In South Carolina, "the degree of necessity which is required is 'reasonable necessity.' The party claiming an easement must prove more than convenience, but he need not show that the easement is absolutely essential." *Id.* "The necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible." *Id.* The language describing the standard appears to grant significant leeway to an individual claiming an easement by necessity, but the policy behind the doctrine of easement by necessity is to ensure that landlocked parcels have access to a public road. *Morrow v. Dyches*, 328 S.C. 522, 529, 492 S.E.2d 420,424 (1997). Fortunately, the facts in *Morrow* are similar to the case at bar.

In *Morrow*, the party seeking an easement by necessity owned property with access to a public road. *Id.* Nevertheless, that party sought an easement by necessity on the adjacent property because tractor-trailers could not access the rear portion of the proponent's property without using the driveway of the adjacent property. *Id.* In this case, Defendant's property has access to a public road, but it has difficulty conveniently accessing the rear portion of its

property without using Plaintiff's driveway. Convenience does not mean necessity. There is little variance between the facts in this case and the case in *Morrow*. The court in *Morrow* was clear that the proponent's dilemma did not establish necessity. This Court must rule based on the precedent set in *Morrow*. It is not necessary for Defendant to use Plaintiff's driveway, and Defendant does not own an easement by necessity.

C. Easement by Prescription

Defendant claims an easement has been created by prescription. For reasons similar to those discussed in Subsection "A," Defendant does not own a prescriptive easement.

A party claiming a prescriptive easement must show by clear and convincing evidence (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; (3) use or enjoyment which is either adverse or under claim of right. *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-170 (2015). This court only need inquire into the first element to reach the proper conclusion.

Dr. Aluri acquired the property he claims owns an easement on Plaintiff's property in 2003. *See* Def.'s Exhibit 4. The law requires continued and uninterrupted use for a period of twenty years. Assuming, *arguendo,* Defendant has not enjoyed continued and uninterrupted use of Plaintiff's driveway for the entirety of the time it has owned the relevant property, and he has not proven by clear and convincing evidence that his predecessor-in-title enjoyed the same use for the eight years preceding his acquisition of the property. As discussed in Subsection "A," Defendant offered *de minimis* evidence showing that his predecessor-in-title made continued and uninterrupted use for the eight years necessary to satisfy the requirement. This Court further finds that the Defendant itself has not enjoyed continued and uninterrupted use of Plaintiff's driveway during the time it has owned the property. The evidentiary standard to prevail on this

D. License

Defendant claims to possess a license to use Plaintiff's driveway. This court disagrees. A license to enter the premises of another's property for an agreed purpose is a contractual right personal to the licensee. *Hilton Head Air Service, Inc. v. Beaufort County,* 308 S.C. 450, 456-457, 418 S.E.2d 849, 853 (Ct.App. 1992). A license does not vest in the licensee any estate or interest in the land, as it only conveys the temporary privilege of being on the premises for an agreed purpose. *Id.*

The foundation of contract law is the concept of mutual assent. Defendant did not present any evidence at trial indicating that it and Plaintiff mutually assented to an agreement whereby Defendant could use Plaintiff's driveway. In fact, Defendant presented evidence to the contrary. At trial, Dr. Aluri testified that in all of his interactions with the former property manager of Plaintiff's property, "[he] never had a discussion [with her] or an issue about [Defendant] not being able to use the driveway. . ." Transcript, p. 83, ll. 13-16. Dr. Aluri further testified that Plaintiff's former property manager never told him that he *didn't* have permission to use that driveway. Transcript, p.84 ll. 1-3. Problematically for the Defendant, unilateral assumptions can never amount to mutual assent. Plaintiff did not grant Defendant a license to use its driveway.

CONCLUSIONS OF LAW

Defendant does not own an easement implied by prior use on Plaintiff's driveway because Defendant did not demonstrate that the identified use of the driveway existed at the time common ownership of the properties was severed.

Defendant does not own an easement by necessity on Plaintiff's driveway because Defendant has direct access to the road from its property via a separate driveway located on the Defendant's property, and the Defendant has not demonstrated an actual, real, and reasonable need to use Plaintiff's driveway.

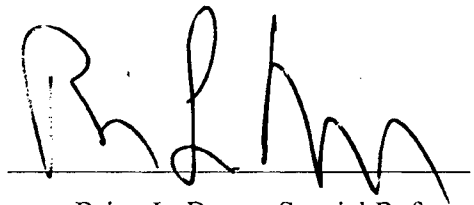
Defendant does not own a prescriptive easement on Plaintiff's driveway because Defendant failed to prove that it and its predecessors-in-title have enjoyed continuous and uninterrupted use of Plaintiff's driveway for 20 years.

Defendant does not have a license to use Plaintiff's driveway. Plaintiff has never granted Defendant a license, and any license Defendant believes it may have had terminated upon the commencement of this action by Plaintiff.

RULING

This Court rules that Defendant has no right to use Plaintiff's driveway for access to the rear of its property by virtue of an easement or a license. Plaintiff's ownership and use of its property is not subject to any such right by Defendant or any third party.

AND IT IS SO ORDERED.



Brian L. Boger, Special Referee

Columbia, South Carolina
February 1, 2018