THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Trial Court Case Nos.
2011CP-10-7065 and 2015-CP-10-3550

Appellate Case No. 2017-000866

Richard Ralph and Eugenia Ralph, Appellants,

v.

Paul Dennis McLaughlin
and Susan Rode McLaughlin, Respondents.

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rhode McLaughlin, Defendants and Paul Dennis McLaughlin and Susan Rhode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2011-CP-10-7065 **CONSENT ORDER PURSUANT TO RULE 40(j) SCRCP**

FILED
2014 JUN 24 PM 3:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me upon Motion of the Plaintiffs with the consent of the Defendant/Third-Party Planitiffs and Third-Party Plaintiffs, by and through their respective undersigned counsel, to strike the referenced matter from the docket pursuant to Rule 40(j), SCRCP, and

RPW
1

IT BEING STIPULATED between the parties that discovery, settlement discussions, and any alternative dispute resolution may continue while the case has been stricken pursuant to Rule 40(j) SCRCP.

NOW, THEREFORE,

IT IS HEREBY ORDERED that the above-captioned case shall be stricken from the docket by agreement pursuant to Rule 40(j), SCRCP; and

IT IS SO ORDERED!

June 19, 2014
Charleston, South Carolina

Chief Administrative Judge
Ninth Judicial Circuit

WE SO MOVE AND CONSENT:

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Counsel for the Plaintiffs

June 2, 2014

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June 2, 2014

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June 2, 2014

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. ~~2011-CP-10-7085~~ 2015-CP-10-3550 CONSENT ORDER TO RESTORE CASE TO DOCKET
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	

FILED
2015 JUN 23 PM 3:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIS MATTER came before me upon Motion of the Plaintiffs with the consent of the Defendant/Third-Party Plaintiffs and Third-Party Defendants, by and through their respective undersigned counsel, to restore the above-referenced matter, which had been stricken from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure by a Consent Order dated June 19, 2014.

NOW, THEREFORE,

RMDOT/1

IT IS HEREBY ORDERED that the above-captioned case shall be restored to the General Docket by agreement pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED!

Chief Administrative Judge
Ninth Judicial Circuit

June 17, 2015
Charleston, South Carolina

WE SO MOVE AND CONSENT:

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June 16, 2015

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June 16, 2015

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June 16, 2015

RMD/2

IN THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Ralph and Eugenia Ralph,

Plaintiffs,

vs.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Defendants.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Third-Party Plaintiffs,

vs.

Seabrook Island Property Owners Association,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-10-03550

ORDER GRANTING THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

The parties to this matter, represented by counsel, came before this Court on May 11, 2016, for a hearing on the Motion for Summary Judgment of Third-Party Defendant Seabrook Island Property Owners Association ("SIPOA").

Following review of the motions, exhibits, and oral arguments of counsel, and for the reasons stated below, I hereby GRANT the Motion for Summary Judgment of SIPOA.

THE PARTIES

Plaintiffs Richard Ralph and Eugenia Ralph have lived at 3055 Baywood Drive ("Lot 23") on Seabrook Island since 1997. Their neighbors, the McLaughlins, purchased 3061 Baywood Drive ("Lot 22") in 2002, and eventually built a home on the lot in December 2008. Both the Ralphs and the McLaughlins belong to SIPOA, which operates as the Property Owners' Association related to the properties in question.

CLAIMS AT ISSUE

The Ralphs are suing the McLaughlins for a "trespass." At oral argument, counsel for the Ralphs stated that the "trespass" arises from the McLaughlins' removal of a drainage pipe on Lot 22 on December 9, 2008, during construction of McLaughlins' home. To the extent the McLaughlins are found liable to the Ralphs, they claim that SIPOA should bear the cost of such finding, because the McLaughlins claim they "reasonably relied" on purported representations of SIPOA in 2002 and 2008.

FACTUAL RECORD

I. THE EASEMENT AND DRAINAGE PIPE.

When the properties at issue in this lawsuit where being developed, an underground pipe, designed to provide drainage from Baywood Drive, ran under lots 21 to 28 and emptied into a nearby lagoon. The underground pipe was in a "drainage easement" that ran under these lots. The drainage easement also specified that it constituted a "no-build" zone. As the years passed, the underground pipe became somewhat porous. For that reason, although the pipe was not originally designed to provide additional drainage to the lots through which it passed, it actually began to do so.

In March 2002, the owner of lot 22 – the lot now owned by the McLaughlins -- requested that SIPOA's Board of Directors relinquish its interest in the easement to the individual property owners whose lots through which the easement passed. SIPOA did so, with the explicit provision that the property owners would pay "all costs necessary" to remove the easement. In September 2002, the owner of lot 22 recorded a plat of the property that excluded the easement.

Shortly thereafter, in late 2002, the McLaughlins purchased lot 22. The realtor who sold the property to the McLaughlins told them that SIPOA had abandoned the easement and that the McLaughlins had the obligation to "take care of the removal of the pipe." In any event, the

McLaughlins admitted that they had no discussions with SIPOA concerning the property prior to purchasing the lot.

II. THE MCLAUGHLINS' CONSTRUCTION PLANS AND THE DISPUTE OVER THE PIPE.

Several years passed, and in 2005, the McLaughlins submitted building plans to SIPOA's Architectural Review Board ("ARB") for approval. In response, on August 18, 2006, the ARB gave preliminary plan approval to the McLaughlins, but specifically stated to the McLaughlins that: "The owner is to assume **all responsibility** for the underground drainage line at the 20-foot drainage easement/driveway," and "the owner is to assume **all responsibility** for the abandoned drainage easement that may contain a pipe." Thus, before going forward with their plans, SIPOA expressly put the McLaughlins on notice that they bore all responsibility for their actions related to the pipe.

Although there is no written record of the conversation, Mr. McLaughlin testified that when he received the letter in 2006, two SIPOA employees – a Mr. Foster and a Mr. Wells – told him that, despite the letter, the McLaughlins were only responsible for paying to remove the pipe, and had no other duty regarding the pipe. Other than Mr. McLaughlin's testimony, there is no other evidence that this hearsay conversation ever took place.

In June 2007, the McLaughlins received a letter from SIPOA informing them that SIPOA was developing a plan to address the "abandoned storm water drainage system" on their property, and that SIPOA would "welcome the opportunity to discuss this planned project with you at any time and will keep you informed as the project proceeds." According to Mr. McLaughlin, he received the letter "out of the blue."

The Ralphs also received this same letter from SIPOA, and within a week or two of receiving the letter, they sent a letter to SIPOA protesting the McLaughlins' plans to remove the

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pipe. The Ralphs stated that the pipe was still working, and argued against the McLaughlins' plan to "tear the thing apart or filling in or whatever they wanted to do with it."

In any event, between 2006 and 2008, the McLaughlins did no work on the property, but continued to pursue financing for the construction.

III. THE DISPUTE OVER THE PIPE ESCALATES IN 2008.

Mr. McLaughlin testified that, in the summer of 2008, his attorney contacted a member of SIPOA's legal committee, Ron Ciancio, who allegedly gave "verbal approval" to continue obtaining a construction loan and eventual construction as approved by the ARB. There is no other evidence in the record of this hearsay conversation.

In any event, the McLaughlins' neighbors – including the Ralphs – continued to express concern about the McLaughlins' construction plans. As a consequence, on September 22, 2008, SIPOA's Executive Director John Thompson sent an e-mail regarding the easement to the property owners of lots 21 through 28 on Baywood Drive, including the Ralphs and McLaughlins. The e-mail included this language:

> The Owner of Lot 22 is interested in building a new home, and wishes to remove the drain pipe from the old easement. The Owners of Lots 21 and 23 are concerned about potential adverse impacts this may have on the drainage characteristics of their lots.
> ...
> The SIPOA would like to discuss the possibility of re-establishing the easement and providing for the long-term care of the pipe, which is presently still in very good condition, but doing so will require the cooperation of all parties.

Following this e-mail, the interested parties met on September 29, 2008 to review an engineering study of the issue and to explore potential solutions to the problem. At the meeting, the parties agreed that they would attempt to find an engineering solution to the problem that would require receiving an easement from a nearby golf course. Unfortunately, the golf course did not grant such permission.

Thereafter, the McLaughlins sent out their own e-mail on October 3, 2008. In it, the McLaughlins made the following admissions. First, The McLaughlins' offer to the previous owner of Lot 22 (not SIPOA) was contingent upon the easement being removed. Second, the McLaughlins closed on a construction loan after their lawyer allegedly spoke with SIPOA and "received assurances from the POA that a resolution of this matter was in the works."

However, because the neighbors could not agree on a course of action, on October 7, 2008, Sam Reed, a SIPOA property owner who had been working to try to mediate this issues between the McLaughlins and the Ralphs, told the McLaughlins that he was no longer mediating the issue because it was an "impossible situation." According to Mr. McLaughlin, the position of SIPOA "left him in limbo."

IV. THE MCLAUGHLINS REJECT SIPOA'S FINAL EFFORT TO REACH AGREEMENT ON THE EVE OF CONSTRUCTION IN LATE 2008.

Between the meetings in early October 2008 and the date that the McLaughlins removed the pipe – December 9, 2008 – SIPOA never indicated to the McLaughlins that a resolution to the issue had been reached. According to Mr. McLaughlin, he "had repeated conversations" with Mr. Ciancio during that time period. During these conversations, Mr. Ciancio made no commitments to Mr. McLaughlin, even though he was pressing Mr. Ciancio "for some direction as to what [a resolution of the matter] was going to look like because it wasn't clear to me where they were going to come out."

Prior to the removal of the pipe, the McLaughlins received one last proposal from SIPOA in late November. According to Mr. McLaughlin, Mr. Ciancio delivered the proposal, which included a statement that "it was the [McLaughlin's] responsibility to negotiate with the club about the easement out to the pipe out in the golf course."

The McLaughlins rejected the proposal as unacceptable. Mr. McLaughlin opined that "[w]hen we received the proposal back from Ciancio and expressed that it was unreasonable, we had had our – my feeling was our chains yanked from July to then without any resolution and we had been trying to act in good faith to try to reach some resolution."

After consulting with their own legal counsel, the McLaughlins decided to move forward with construction, including removal of the pipe. The McLaughlins removed the pipe on or about December 9, 2008, although SIPOA, the McLaughlins, and their neighbors had not come to an agreement on whether or not the McLaughlins could remove the pipe, or the consequences they would bear for doing so.

OPINION

I. THE RALPHS' UNDERLYING CLAIM AGAINST THE MCLAUGHLINS IS NOT BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

A cause of action accrues at the moment a plaintiff has a legal right to sue on it. At that point, the law presumes at least nominal damages. *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 397, 596 S.E.2d 42, 46 (2004); *Stephens v. Draffin*, 327 S.C. 1, 4-5, 488 S.E.2d 307, 308-309 (1997). A statute of limitations will begin to run on the date that an action accrues. "A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 230, 599 S.E.2d 462, 464 (S.C. App. 2004).

The date on which discovery should have been made – and on which the statute of limitations begins to run – is an objective, not subjective, question. *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (S.C. App. 1999). "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and

GL ✓ 6

experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Id.* The fact that an injured party may not comprehend the full extent of the damage is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996).

The statute of limitations for an action for trespass upon or damage to real property is three (3) years. S.C. Code Ann. § 15-3-530(3). On December 9, 2008, the McLaughlins removed the drainage pipe. At this time, the statute of limitations began to run of Plaintiffs' trespass claim. Plaintiffs filed their initial Complaint in this action on September 30, 2011. Therefore, the statute of limitations had not expired at the time of filing.

II. THE MCLAUGHLINS' THIRD-PARTY CLAIM AGAINST SIPOA MUST BE DISMISSED WITH PREJUDICE, BECAUSE THEY CANNOT SHOW ANY EVIDENCE OF "REASONABLE RELIANCE" ON A SIPOA REPRESENTATION.

SIPOA was brought into this suit via the McLaughlins allegation that they "reasonably relied" on "representations" of SIPOA in 2002 and 2008 that "authorized" them to remove the pipe from their property in December 2008.[1] The McLaughlins claim is derivative of the Ralph's claim against them. However, regardless of the disposition of the Ralphs' claim against the McLaughlins, because the McLaughlins cannot produce evidence of an unambiguous promise or representation of SIPOA authorizing them to remove the pipe in December 2008, their third-party claim against SIPOA must be dismissed.

The elements of promissory estoppel are: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made;

[1] In the McLaughlin's Motion for Summary Judgment, they argued that they brought a claim of indemnification and not promissory estoppel against SIPOA. However, the Third-Party Complaint does not include any reference to a claim for "indemnification." If the McLaughlins had brought an equitable indemnity claim, they would have to show that SIPOA was at fault for causing damages to the Ralphs, and that the McLaughlins had no fault for damages allegedly suffered by the Ralphs. *Inglese v. Beal*, 403 S.C. 290, 299, 742 S.E.2d 687, 692 (S.C. App. 2013). Because the McLaughlins removed the pipe over the objections of SIPOA, there is no evidence in the record to support this theory of recovery.

(3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (S.C. App. 1993).

As a practical matter, there is no evidence to show that SIPOA has ever made any promises to the McLaughlins. Accordingly, as a matter of law, there is simply no genuine issue of material fact that the McLaughlins reasonably relied on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by Plaintiffs.

In fact, the record is completely clear that there was absolutely no "unambiguous representation" from SIPOA that the McLaughlins' only responsibility regarding the pipe was that it had to pay to remove the pipe. Rather, the entire history of the interactions between SIPOA indicate the opposite – that the McLaughlins had to assume all responsibility for the disposition of the pipe. Indeed, by their own admission, (1) the McLaughlins blamed SIPOA for leaving them in "limbo" in 2008 prior to their removal of the pipe, (2) rejected SIPOA's proposals to resolve the matter prior to the McLaughlins' unilateral decision to remove the pipe, and (3) were defendants in a lawsuit filed by SIPOA to stop them from removing the pipe. For these reasons, the McLaughlins simply cannot prevail in their third-party claim against SIPOA as a matter of law.

CONCLUSION

For the reasons stated above, I hereby GRANT the Motion for Summary Judgment of the Seabrook Island Property Owners Association.

AND IT IS SO ORDERED.

May 26, 2016
Charleston, South Carolina

The Honorable G. Thomas Cooper, Jr.
Presiding Judge

IN THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Ralph and Eugenia Ralph,

Plaintiffs,

vs.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Defendants.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Third-Party Plaintiffs,

vs.

Seabrook Island Property Owners Association,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-10-03550

ORDER DENYING DEFENDANTS AND THIRD PARTY PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The parties to this matter, represented by counsel, came before this Court on May 11, 2016, for a hearing on Defendants and Third Party Plaintiffs, Paul Dennis McLaughlin and Susan Rode McLaughlins' Motion for Summary Judgment. Counsel for all parties was present at the hearing.

The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Having heard the arguments of counsel and considered the parties' pleadings, memoranda of law, and related documentation, this Court determines there are disputed issues of fact

regarding Plaintiffs' claims. Therefore, Defendants and Third Party Plaintiffs' Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable G. Thomas Cooper, Jr.
Presiding Judge

May 26, 2016

Charleston, South Carolina.

IN THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Ralph and Eugenia Ralph,

Plaintiffs,

vs.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Defendants.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Third-Party Plaintiffs,

vs.

Seabrook Island Property Owners Association,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-10-03550

ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The parties to this matter, represented by counsel, came before this Court on May 11, 2016, for a hearing on Plaintiffs Richard Ralph and Eugenia Ralph's Motion for Summary Judgment. Counsel for all parties was present at the hearing.

The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Having heard the arguments of counsel and considered the parties' pleadings, memoranda of law, and related documentation, this Court determines there are disputed issues of fact

regarding Defendants' claims. Therefore, Plaintiffs' Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable G. Thomas Cooper, Jr.
Presiding Judge

May 26, 2016

Charleston, South Carolina.

State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
Judge

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May 31, 2016

The Hon. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., #106
Charleston, SC 29401

RE: Richard Ralph and Eugenia Ralph v. Paul Dennis McLaughlin, et al., C/A No. 2015-CP-10-3550

Dear Ms. Armstrong:

Please find enclosed for filing three Orders in the above captioned case. I have enclosed copies, and if possible, please timestamp and return to Judge Cooper's chambers for our records.

Very truly yours,

Lauren Patterson
Law Clerk to the Honorable G. Thomas Cooper, Jr.

GTCJr.:lep

Enclosures

FORM 4

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

FILED
2016 MAY 12 AM 10:45
JULIE J. ARMSTRONG
CLERK OF COURT

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP1003550

Richard Ralph, et al.
PLAINTIFF(S)

Paul Dennis McLaughlin, et al.
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 _Dismissed without prejudice_____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

ORDER INFORMATION

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT IS UNDER ADVISEMENT. PROPOSED ORDERS IN 10 DAYS.

DEFENDANT MCLAUGHLINS' MOTION FOR SUMMARY JUDGEMENT IS UNDER ADVISEMENT. PROPOSED ORDERS IN 10 DAYS.

DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGEMENT IS UNDER ADVISEMENT. PROPOSED ORDERS IN 10 DAYS.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk.: _____

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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** 2126 **Date** 5-11-16

For Clerk of Court Office Use Only

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

G. Dana Sinkler
ATTORNEY(S) FOR THE PLAINTIFF(S)

Maria Kiehling Brees; Eugene Hamilton Matthews; George Hamlin O'Kelley III
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

SCRCP Form 4C (10/2011)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-3550

FILED
2017 FEB -6 A 9:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Richard Ralph and Eugenia Ralph

PLAINTIFF(S)

Paul Dennis McLaughlin and Susan Rode McLaughlin

DEFENDANT(S)

Submitted by: The Court.	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. ☐ See Page 2 for additional information.

☐ **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

☐ **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: Jury Verdict in favor of the plaintiffs against the defendants in the amount of $1,000.00 actual damages. Parties have Ten (10) days to submit any post trial motions.

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)
Richard Ralph and Eugenia Ralph	Paul Dennis McLaughlin and Susan Rode McLaughlin	$1,000.00
		$
		$

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

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 | 2134 **Judge Code** | 1/26/17 **Date**

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

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

Ainsley Tillman

ATTORNEY(S) FOR THE PLAINTIFF(S)

George O'Kelly

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Amanda Haffenden

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDCIAL CIRCUIT
	)	2015-CP-10-3550
Richard Ralph and Eugenia Ralph,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	**VERDICT FORM**
Paul Dennis McLaughlin and Susan Rode McLaughlin,	)	
	)	
Defendants.	)	

VERDICT

☒ We, the Jury, find for the **Plaintiff** against the Defendant in the amount of $ 1000.~ Nominal **actual** damages.

#147

FOREPERSON

26 JAN 2017

DATE

☐ We, the Jury, find for the **Defendant.**

FOREPERSON

DATE

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	2015-CP-10-3550
Richard Ralph and Eugenia Ralph,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL**
	)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,	)	
	)	
Defendants.	)	

FILED
2017 MAR -2 AM 11:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

BACKGROUND

This trespass case came before this Court for a jury trial beginning January 23, 2017. The jury was charged and began deliberations on Thursday, January, 26, 2017. The jury deliberated over five hours and returned a verdict in the amount of one thousand dollars ($1,000.00) in favor of the plaintiffs. On February 3, 2017, the plaintiffs filed a motion for a new trial *nisi additur*, or in the alternative, a new trial as to damages only, or in the alternative, a new trial absolute. Defendants provided this Court with a Reply to plaintiffs' motion. After thorough consideration of the plaintiffs' arguments and the defendants' arguments, this Court does not find compelling reasons to invade the jury's province. Therefore, plaintiffs' Motion for a New Trial is denied.

STATEMENT OF FACTS

This trespass case involved a drainage easement and a no build area that extended across several lots located on Seabrook Island including lots twenty two through twenty six illustrated on the "E.M. Seabrook Jr." plats. (Pls.' Ex. 2 & 4). Plaintiffs are the owners of Lot 23. (Pls.' Ex. 1). Defendants are owners of Lot 22. (Pls.' Ex. 3). Defendants asserted that the drainage easement and the no build area had been abandoned as illustrated on the "Forsberg" plat. (Pls.' Ex. 5).

At trial the plaintiffs presented evidence, including the above referenced deeds and plats, indicating that plaintiffs had an ownership interest in the drainage easement and no build area ("easement"). Howard Yates, qualified as an expert in the law of real property, testified that he examined the chain of title on the subject properties and found that all deeds in the chain of title were subject to the easement. Mr. Yates testified that any abandonment of interest in the easement by the Seabrook Island Property Owners' Association (SIPOA) would not have extinguished the easement. Rather, abandonment of the easement would require at least the agreement of all the owners of any property that had an interest in the easement. Additionally, Mr. Yates testified that the recording of the Forsberg plat indicating the easement is "to be abandoned" does not result in the abandonment of the easement. (Pls.' Ex. 5). However, Mr. Yates also testified on cross examination that recorded plats become part of the deed to a property and that the Forsberg plat did become part of the defendants' deed. Mr. Yates also testified that the easement was originally in favor of SIPOA.

Testimony was received regarding alleged damage caused to plaintiffs' property by defendants' removal of a portion of the drainage pipe (part of the easement) that was located on defendants' property. Plaintiffs asserted that the drainage pipe removal increased the volume of surface water on plaintiffs' property after rainfall and increased length of time required for that surface water to dissipate. Mrs. Ralph testified that prior to the drainage pipe removal, the surface water after rain fall would take approximately one to one and one half days to dissipate, and subsequent to the drainage pipe removal, it takes several days for the surface water to dissipate. Mrs. Ralph also testified that although there was a surface water problem prior to removal of the drainage pipe, the removal of the drainage pipe exacerbated the surface water problem. Robert George was qualified as an expert in civil engineering, registered land surveying, and storm water drainage, and testified that the removal of the drainage pipe directly caused the poor drainage and flooding on the plaintiffs' property.

However, Mr. George also testified that he was not aware of the surface drains that the defendants had installed on their own property to alleviate problems that may have resulted from the removal of the drainage pipe. Additionally, the defendant, Mr. McLaughlin, testified that he visited his property at least three times prior to removal of the drainage pipe, and observed standing water on the plaintiffs' property after rain fall. Mr. McLaughlin also testified that the standing water was in an amount that it reached the steps of the plaintiffs' property.

Finally, this Court received testimony regarding the value of plaintiffs' property. Mrs. Ralph testified that the exacerbated surface water problem would have to be disclosed if the property were sold, and that it has decreased the value of the property. Mrs. Ralph testified that based on comparable homes in the neighborhood, she believed the value of her property to be seven hundred seventy five thousand dollars ($775,000.00) if the exacerbated surface water problem did not exist. Mr. Ralph testified that he believed the diminution of value to his home was approximately two hundred thousand dollars ($200,000.00). Testimony was also received from Nick Thompson regarding the value of the plaintiffs' property. Mr. Thompson was qualified as an expert in commercial and residential real property appraisal. Mr. Thompson testified that the plaintiffs' valuation of their property was likely accurate, and that plaintiffs' property could be depreciated by between forty and sixty percent (40-60%) based on the surface water problem.

At the close of plaintiffs' case-in-chief, the plaintiffs moved for a directed verdict on their cause of action for trespass and this Court denied that motion. Defendants also moved for a directed verdict on plaintiffs' cause of action for trespass, intentional infliction of emotional distress, and punitive damages. This Court denied defendants' motion for directed verdict on trespass, but granted a directed verdict on the intentional infliction of emotional distress and punitive damages. At the close of all the evidence, this Court ruled there was sufficient evidence for the jury to determine issues

of trespass and abandonment regarding the easement, and denied both parties' motions for directed verdict.

After closing arguments, the jury was charged on the law including the law of easements, trespass, and nominal and actual damages. Neither the plaintiffs, nor the defendants, objected to the charges given by this Court. During deliberation, the jury requested to rehear the testimony of Howard Yates. The jury deliberated over five hours before indicating that it was deadlocked. This Court gave the jury an Allen[1] charge, after which the jury continued deliberation for an additional hour before returning a verdict. Neither party objected to this Court giving the jury an Allen charge. The jury's verdict was in the amount of one thousand dollars ($1,000.00) in favor of the plaintiffs. The word "nominal" was hand written on the verdict form by the jury.

DISCUSSION

I. Nominal Damages

The jury was given the following instruction on nominal damages: "The plaintiff is entitled to at least nominal damages if you find the defendant committed trespass. Nominal damages may be a token sum such as one cent or one dollar."[2] The jury returned a verdict in the amount of $1,000.00 and wrote "nominal" on the verdict form. Plaintiff asserts that $1,000.00 is not a nominal award, but rather a substantial award, relying upon Hinson v. A.T. Sistare Const. Co., 236 S.C. 125; 113 S.E.2d 341 (1960) (overruled on other grounds by McCall v. Batson, 285 S.C. 243; 329 S.E.2d 741 (1985)). The facts in Hinson, however, are distinguishable from the case before this Court.

Hinson involved a condemnation action which was appealed resulting in the condemnee receiving an award of twenty three hundred fifty dollars ($2,350.00) as opposed to the condemnation

[1] Allen v. United States, 164 U.S. 492 (1896).
[2] See Snow v. City of Columbia, 305 S.C. 544, 553; 409 S.E.2d 797, 802 (Ct. App. 1991) ("mere entry entitles the party in possession at least to nominal damages.").

board's proposed tender of seven hundred dollars ($700.00). Id. at 130; 113 S.E.2d at 343. At the end of the trespass case,[3] the jury's verdict read "We find for the plaintiff the sum of nominal dollars actual damages and two thousand dollars punitive damages." Id. at 133; 113 S.E.2d at 345. The jury was instructed to put "some token amount or some trifling sum in lieu of the word 'nominal[,]'" and the jury returned a sum of two hundred dollars ($200). Id. at 134; 113 S.E.2d at 345. The Hinson court found that "$200 is a verdict for substantial, not nominal, damages[,]" and reversed the judgment "as to actual damages and affirmed as to punitive damages." Id. The Court further explained that "[w]here there has been a wilful (sic) invasion of a legal right but no substantial damage has been shown to have resulted therefrom, a verdict for punitive damages alone will stand, since it will be presumed that nominal damages, incapable of admeasurement, have been merged in the punitive damages." The Court's decision was based on the fact that the "verdict in the condemnation proceeding included just compensation for its loss [condemnee's shrubbery] as well as for all other loss sustained by him as the result of the taking. Id. at 133; 113 S.E.2d at 344.

In the case before this Court, at the close of the plaintiffs' case-in-chief, this Court directed a verdict in favor of the defendants against plaintiffs' assertion of punitive damages and therefore there was not the possibility of nominal damages being "merged into" punitive damages. Additionally, unlike the plaintiff in Hinson, plaintiffs had not received compensation in any manner prior to trial, a factor that influenced the Hinson Court's decision. Finally, the award of two hundred dollars in nominal damages in Hinson, represents approximately eight and one half percent (8.5%) of Hinson's actual damages represented by the award in the condemnation proceeding. Here, the award of one thousand dollars ($1,000.00) in nominal damages represents one half of one percent (0.5%) of the

[3] The plaintiff maintained a suit against the contractor who performed work on that part of the plaintiff's property which was condemned on the basis that such work began prior to tender of any money from the State and prior to a decision in plaintiff's appeal of the condemnation board's award.

lowest estimate of plaintiffs' alleged actual damages.[4] Therefore, this Court finds that it was the jury's intention to award nominal damages, not actual damages, by writing "nominal" on the verdict form, and based on the facts before this Court, the jury's award of one thousand dollars ($1,000.00) is nominal.

II. New Trial

Rule 59 of the South Carolina Rules of Civil Procedure authorizes the granting of a new trial "on all or part of the issues [] in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State;" Rule 59, SCRCP. "The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88–89; 610 S.E.2d 852, 856 (Ct. App.2005)).

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice." Waring v. Johnson, 341 S.C. 248, 257; 533 S.E.2d 906, 911 (Ct. App. 2000). In the case of the former, the trial judge may order a new trial *nisi additur* or new trial *nisi remittitur*; in the case of the later, "the trial judge is required to grant a new trial absolute." Id. "In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or *nisi* in a law case upon his disapproval of the

[4] If this Court uses the estimate of 40%-60% of property value loss presented at trial, the $1,000.00 in nominal damages would represent a range between three thousandths of one percent (0.003%) and two thousandths of one percent (0.002%) of the alleged actual damages.

verdict on factual grounds . . . ." Vinson v. Hartley, 324 S.C. 389, 404; 477 S.E.2d 715, 723 (Ct. App. 1996).

Our appellate courts have held that in reviewing a jury's verdict "the jury does not have to believe uncontradicted testimony" because "[t]he fact that testimony is not contradicted directly does not render it undisputed." Vinson, 324 S.C. at 409-410. It remains in the jury's province to determine "the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation." Id. at 410. Furthermore, "[i]f there is any evidence to sustain the factual findings implicit in the jury's verdict, this court must affirm." Id. (quoting Hobgood v. Pennington, 300 S.C. 309, 313; 387 S.E.2d 690, 692 (Ct. App. 1989)).

A. New Trial Absolute

Under the thirteenth juror doctrine, the fact that "the trial judge is compelled to submit the issues to the jury" does not prevent the trial judge from granting a new trial absolute. Howard v. Roberson, 376 S.C. 143, 152; 654 S.E.2d 877, 881 (Ct. App. 2007). The South Carolina Supreme Court has explained the thirteenth juror doctrine as

> a vehicle by which the trial court may grant a new trial absolute when [it] finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Folkens v. Hunt, 300 S.C. 251, 254; 387 S.E.2d 265, 267 (1990) (internal citations omitted).

Several reasons have been held to provide a basis for a trial judge granting a new trial absolute including: "that justice has not prevailed," "the verdict is inconsistent and reflects the jury's confusion," or "[the] verdict is unsupported by evidence." Vinson, 324 S.C. at 404. (internal citations omitted). Additionally, "[a] trial court may grant a new trial absolute on the ground that the verdict

is excessive or inadequate[,]" however, "[t]he jury's determination of damages . . . is entitled to substantial deference." Id. "If the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trial absolute." Waring v. Johnson, 341 S.C. 248, 257; 533 S.E.2d 906, 911 (Ct. App. 2000).

South Carolina's Supreme Court has found a jury verdict in the amount of $6,000.00 "irreconcilably inconsistent with the unchallenged evidence presented at trial []" that included medical bills and lost wages totaling "$30,026 in undisputed damages." Dillon v. Frazer, 383 S.C. 59, 64; 678 S.E.2d 251, 253 (2009). The Court found such an award "grossly inadequate" demonstrating "that the verdict was actuated by improper motivation." Id. at 65. In reaching this decision, the Court found the jury's questions during deliberation (including whether any insurance had paid the plaintiff's medical bills and whether the plaintiff had been paid while he was not working), and the trial court's instructions that "those matters 'are not for your concern[,]'" in light of the verdict indicate that "that the jury failed to follow the court's instruction." Id. at 64.

In contrast, the Vinson court affirmed the trial court's denial of plaintiff's "motions for reformation of the verdict, new trial *nisi additur*, and new trial absolute." Vinson, 324 S.C. at 412. The court found that based on the plaintiff's testimony, the jury could have found that the injuries were not a result of the accident. Id. Additionally, the plaintiff's "credibility may have been seriously weakened by his first claiming lost wages, then withdrawing that claim when confronted with deposition testimony which indicated he had no lost wages and was not making such a claim." Id. Finally, the court found that "certain inconsistencies came out during Dr. Carlson's [the plaintiff's doctor] testimony which may have brought his credibility into question." Id. Based on a review of the trial court's record, the appellate court determined that "the trial court's ruling is not 'wholly

unsupported by the evidence' nor is it 'controlled by an error of law[,]'" concluding "the trial judge did not abuse his discretion . . . ." Id.

In the case before this Court, although there was testimony that the surface water problem on the plaintiffs' property was exacerbated by the defendants' trespass, i.e., the removal of the drainage pipe, Mrs. Ralph also testified that her property always had some type of surface water problem. Defendants also testified that on various trips to their property, prior to the removal of the drainage pipe, they observed flooding of the plaintiffs' property after rain fall. Based on testimony from the plaintiffs, the alleged diminution in property value could have been in an amount of two hundred thousand dollars ($200,000.00). However, the plaintiffs also presented testimony of a forty to sixty percent decrease in the property value. Based on that percentage range and Mrs. Ralph's testimony on the estimated value of the property, the resulting loss in property value could have been in an amount between three hundred ten thousand dollars ($310,000.00) and four hundred sixty five thousand dollars ($465,000.00).

The jury's verdict in favor of the plaintiffs indicates that the jury found that the defendants committed trespass by removing the drainage pipe. The award of nominal damages in the amount of one thousand dollars ($1,000.00) indicates that the jury did not find that the defendants' trespass caused the damage alleged by the plaintiffs but understood that the law requires at least nominal damages to vindicate the plaintiffs' rights.

This Court finds there exists evidence to sustain the factual findings implicit in the jury's verdict. Additionally, the length of deliberation coupled with the request to rehear testimony indicates the jury's thoughtfulness and thoroughness in its deliberation and reaching its verdict. There is no indication to this Court that the jury was confused or that the verdict was unsupported by the evidence. Finally, this Court finds that the amount of the verdict is consistent with the instructions given to the

jury, and as such, does not shock the conscience of this Court. Plaintiffs' motion for a new trial absolute is denied.

B. New Trial Nisi Additur

"The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Waring v. Johnson, 341 S.C. 248, 256; 533 S.E.2d 906, 910 (Ct. App. 2000). "The consideration of a motion for a new trial *nisi additur* requires the court to consider the adequacy of the verdict in light of the evidence presented." Id. at 257. "A new trial *nisi additur* may be ordered when the verdict is merely insufficient based on the evidence." Id. However, a trial judge is required to "offer compelling reasons for invading the jury's province by granting a motion for *additur*." Luchok v. Vena, 391 S.C. 262, 264; 705 S.E.2d 71, 72 (Ct. App. 2010) (quoting Green v. Fritz, 356 S.C. 566, 570; 590 S.E.2d 39, 41 (Ct. App. 2003) (noting that the trial judge's "mere listing of [plaintiff's] claimed damages . . . in [its] order does not constitute compelling reasons for invading the jury's province. Green, 356 S.C. at 570)).

The Waring court affirmed the trial court's granting of a new trial *nisi additur*, finding the trial court "articulated compelling reasons in [its] order justifying the grant of the *nisi additur*." Waring, 341 S.C. at 261. The jury in Waring returned a verdict in "the exact amount of Waring's medical bills." Id. at 255. The trial court reasoned the jury had failed to consider pain and suffering based on the facts that Waring had received years of medical treatment, "underwent surgery for a condition which numerous doctors testified was aggravated by the wreck[,] . . . took advantage of every recommendation of her physicians[,] . . . will most likely suffer pain for the remainder of her life[, and] . . . [is] unable to continue her previous active lifestyle." Id. at 260.

In contrast, the Luchok court found that the trial court improperly granted a new trial *nisi additur* because it failed to provide compelling reasons for invading the jury's province. Luchok, 391 S.C. at 265. During trial Ms. Luchok was the only witness to testify in her case in chief. Id. at 264. Ms. Luchok's testimony indicated that she did not require an ambulance or seek immediate treatment, but rather "drove herself home after the accident." Id. While she went to her family doctor the next day, she did not begin chiropractic treatment until "more than three weeks after the accident[,]" and that treatment included "massages she received from a massage therapist who worked for the chiropractor." Id. The trial judge granted a new trial *nisi additur* because the jury award failed to cover all the chiropractic bills and the chiropractic bills were "reasonable and necessary." Id. at 265. However, the Luchok court found the trial court's findings were not compelling reasons and therefore overruled the trial court. Id.

For the reasons stated in Part II. A., supra, this Court does not find any compelling reasons to invade the province of the jury. Therefore, plaintiffs' motion for a new trial *nisi additur* is denied.

C. New Trial as to Damages Only

"The law in South Carolina is clear that when a verdict in favor of a plaintiff is fully supported by the evidence on the issue of liability but the damages awarded are inadequate, a new trial *may* be ordered on the issue of damages alone. S.C.R.C.P. 59(a). (Emphasis added.) (sic)" Cartin v. Keller Bldg. Products of Charleston, 299 S.C. 152, 153; 382 S.E.2d 922, 923 (1989). However, "[a] new trial on damages alone is not warranted unless the evidence presented indicated that a directed verdict on the issue of liability would have been proper." Pelican Building Centers of Horry – Georgetown, Inc. v. Dutton, 311 S.C. 56, 61; 427 S.E.2d 673, 676 (1993).

This Court denied both plaintiffs' and defendants' motions for a directed verdict on the trespass cause of action which were made at the end of the plaintiffs' case-in-chief. Additionally, at

the close of all evidence, this Court ruled there was sufficient evidence for the jury to determine issues of trespass and abandonment regarding the easement, and denied both parties' motions for directed verdict. For these reasons and the reasons stated in Part II. A., supra, plaintiffs' motion for a new trial as to damages only is denied.

CONCLUSION

IT IS THEREFORE ORDERED that Plaintiffs' Motion for a New Trial Absolute, New Trial *Nisi Additur*, and New Trial as to Damages Only is DENIED.

IT IS SO ORDERED!

February 28, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-7065
RICHARD RALPH AND EUGENIA RALPH,	)	
Plaintiffs,	)	
vs.	)	SUMMONS JURY TRIAL DEMANDED
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,	)	
Defendants.	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscribers, at their offices located at 171 Church Street, Suite 340, Post Office Box 1254, Charleston, South Carolina 29402, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: _____
G. DANA SINKLER

Attorney for Plaintiffs

Charleston, South Carolina
September 30, 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 2011-CP-10-7065
RICHARD RALPH AND EUGENIA RALPH,)	
Plaintiffs,)	
vs.)	COMPLAINT JURY TRIAL DEMANDED
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,)	
Defendants.)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiffs, Richard Ralph and Eugenia Ralph ("the Ralphs"), complaining of the Defendants, Paul Dennis McLaughlin and Susan Rode McLaughlin ("the McLaughlins"), allege and say:

1. The Ralphs are residents of the County of Charleston, State of South Carolina, living in their home on Seabrook Island located at 3055 Baywood Drive.

2. The McLaughlins are residents of Winston Salem, North Carolina, owning the lot adjacent to the Ralphs' home on the east, which is identified as 3061 Baywood Drive.

3. The Ralphs' lot bears the legal description of Lot 22, Block 32, Seabrook Island, as shown on the original approved development plat by E. M. Seabrook, Jr., Inc., dated April 29, 1987, revised May 8, 1987, and recorded in the RMC Office for Charleston County on May 26, 1987 in Plat Book BN, page 49.

4. The McLaughlins' lot bears the legal description of Lot 23, Block 32, Seabrook Island, as shown on an earlier plat by E. M. Seabrook, Jr., Inc., dated September 6, 1984, and recorded in the RMC Office for Charleston County in Plat Book

BD, page 23. This plat is identical to the plat by which the Ralphs acquired title, but is designated as having been "submitted for pre-selling under irrevocable letter of credit provision" and its approval by the County of Charleston did not "permit or authorize occupancy."

5. The McLaughlins' lot was initially conveyed by Seabrook Island Company to D.P. Boothe, Jr. by deed dated August 28, 1985 and recorded in the RMC Office for Charleston County on August 29, 1985 in Book T 147 at page 212. The legal description described the lot as: "Having the size, shape, dimensions, buttings and boundings, more or less, as are shown on said Plat, which is specifically incorporated herein by reference." The plat depicts a 20' Drainage Easement crossing the northern end of the lot and a "NO BUILD AREA" extending from the Drainage Easement to the end of the property line. The fee simple title to the lot, including the area occupied by the Drainage Easement and the NO BUILD AREA, was thereby granted to Mr. Boothe. The legal description also specifically provided that the conveyance was:

> SUBJECT to the twenty (20') foot easement for drainage and the ten (10') foot easement for drainage as shown on the Plat by E. M. Seabrook, Jr., Inc., dated September 6, 1984 recorded in Plat Book BD at page 23.
>
> SUBJECT FURTHER to the area designated as 'NO BUILD AREA' shown on Plat by E. M. Seabrook, Jr., Inc., dated September 6, 1984 recorded in Plat Book BD at page 23.

6. The chain of title for the lot acquired by the McLaughlins from the time of its creation and first conveyance is set forth as Exhibit A to this complaint.

7. The chain of title to the Ralphs' property is set forth as Exhibit B to this complaint.

8. The following deeds in the chain of title to the McLaughlins' lot contained the same description of the lot and the easements to which it was subject as set forth in paragraph 5 above: P-291, page 245, F-302, page 107, and O-352, page 700.

9. Both the plat by which the McLaughlins' property was sold and the language of the deeds by which it was sold established the existence of a 20' Drainage Easement across their land and the land of the Ralphs and a No Build Area.

10. It is well established by law in South Carolina that, where a deed describes land as shown on a specified plat, such plat becomes a part of the deed and purchasers of lots with reference to such plats acquire every easement, privilege and advantage shown on such plat. Blue Ridge Company v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (S.C. 1965).

11. It is also well established by South Carolina law that the McLaughlins had, at the very least, constructive notice of the Ralphs' easement based upon the recorded instruments in their chain of title. The law imputes to a purchaser who proposes to acquire title to real estate, notice of the recitals contained in any properly recorded instrument or writing which forms a link in a chain of title to the property proposed to be acquired. Carolina Land Company, Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (S.C. 1975).

12. On May 20, 2002, at a meeting of the Officers of Seabrook Island Property Owners Association ("SIPOA"), a motion was passed to "give the easement shown on the plats of EM. Seabrook," by which both the Ralphs' lot and the McLaughlins' lot were originally conveyed, "back to the property owner with the understanding that the

property owner pay all cost necessary to remove the easement." To the Ralphs' knowledge, no notice of this action was ever conveyed to them or any other lot owners subject to the easements. Furthermore, at this time, the only interest the SIPOA had in these easements was a duty to maintain them as set forth on the E. M. Seabrook plats.

13. At the time that this action was taken by the SIPOA, the Ralphs' lot and the McLaughlins' lot had already been conveyed by the original developer and the fee simple title to the portion of the easement on each lot and the No Build Area became vested in their predecessors in title by virtue of the fact that each lot had been originally conveyed according to plats which clearly depicted the Drainage Easement and the No Build Area on their lots.

14. When the McLaughlins were preparing to take title to their lot, in October of 2002, they or their counsel used a plat created by Forsberg Engineering and Surveying, Inc. entitled "Plat Showing Abandonment of an Existing 20' Drainage Easement Lot 22 Block 32 Town of Seabrook Island Charleston South Carolina" dated January 17, 2002. The Forsberg Plat specifically references the E. M. Seabrook Plat recorded in Plat Book BD at page 23, by which the McLaughlins' lot was previously conveyed.

15. The McLaughlins then took title to their lot according to that plat and Mr. McLaughlin took the position that their lot was not subject to the Drainage Easement or the No Build Area, notwithstanding the fact that the SIPOA did not own the Easement and had no legal authority to purport to have abandoned it. Furthermore, the McLaughlins' deed specifically conveyed the property "subject to any and all Restrictive

Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property. . ." (emphasis added).

16. Notwithstanding the McLaughlins' efforts to avoid taking title to their lot subject to the 20' Drainage Easement and the No Build Area shown on earlier plats by which the lot previously had been conveyed, as a matter of law, they took title to their lot subject to the benefits and obligations of those easements.

17. More than six years passed from the time of the SIPOA's unlawful attempt to abandon the easement it never owned before notice of that action was communicated to the Ralphs and other owners of Lots 21-28, Block 32, by an email from the SIPOA, dated September 22, 2008, advising of a meeting to be held on Monday, September 29th.

18. The email advised that the SIPOA had hired an expert to evaluate the condition and usefulness of the 20' Drainage Easement and that the expert had recommended that the easement be "reestablished." A copy of the expert's Executive Summary was attached to the email. (Exhibit C)

19. As a matter of law, the easement was never lawfully abandoned and did not require reestablishment because the owners of Lots 21-28 owned the fee simple title to the easement and the No Build Area and were entitled to the benefits and subject to the reciprocal rights, obligations and burdens appurtenant to their lots.

20. The meeting on September 29, 2008 was attended by Mr. McLaughlin and the Ralphs and several other lot owners. At this meeting, Robert George, an engineer with significant experience and expertise in the subject of drainage of real property,

presented a report of his findings as to the condition of the drainage system across the lots owned by the Ralphs and McLaughlins and others, and recommended that the system be retained and protected. He specifically warned that the destruction of the culvert on the McLaughlins' property "will exacerbate high ground water table concerns and surface water ponding." He also warned against obstructing the easement as "the existing facilities . . . will be difficult to maintain without access provided by the existing easement."

21. Mr. McLaughlin attended with legal counsel, an architect and two builders and asserted their right to consider the easement abandoned, destroy the culvert on their lot and construct their house over the No Build Area. By this point it should have been patently obvious to Mr. McLaughlin and/or his counsel, that the 2002 action of the SIPOA was unlawful and did not, as a matter of law, effect an abandonment of the easement and No Build Area, vis-à-vis the owners of Lots 21-28, Block 32.

22. Following the meeting, Mr. McLaughlin persisted in the position that: "As you know, we have no easement on our lot" and again expressed his intention to take up the portion of the drainage pipe on their lot and build on the No Build Area. (Exhibit D)

23. Notwithstanding the fact that the Ralphs had every legal right to the protection and maintenance of the easement as it existed on the McLaughlins' lot and to the protection of the No Build Area, the McLaughlins dismissed conditions imposed by the SIPOA and proceeded with their building plans. They had the section of culvert on their property dug up and destroyed and raised the elevation of their lot, all leading to

the increase of surface water flow and destruction of the drainage across the Ralphs' property and subjected the Ralphs to excessive accumulation of water on their property ever since.

24. As a result of the McLaughlins' unlawful and arrogant acts, the Ralphs have been deprived of their legal property rights, and subjected to anguish and emotional discomfort and deprived of use of a substantial portion of their yard due to intervals of flooding. The value of their property has been substantially diminished and they are entitled to actual and punitive damages in such amount as may be found by the trier of fact.

Wherefore, the Ralphs pray for actual and punitive damages against the McLaughlins for the emotional anguish and discomfort they have endured; for the expense they must incur in an effort to remediate the drainage problems associated with the destruction of the drainage easement and usurpation of the No Build Area; for diminution in value of their property due to the destruction of the existing drainage easement and the requirement that other drainage must now be constructed and maintained; and for punitive damages that are due them as a matter of right to redress the ordeal that they have had to endure, including this litigation, because they refused to

abandon their rights to the easement and No Build Area, together with the costs and expenses of this action including attorney fees.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: _____
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina

September 30, 2011

CHAIN OF TITLE FOR MCLAUGHLINS LOT 22

TITLE OF OWNERSHIP	DATE OF: MONTH DAY YEAR	DEED BOOK	PAGE
Seabrook Island Company			
D.P. Boothe, Jr.	7-23-85	T147	212
Catherine C. Boothe and Barry P. Boothe, Co-Personal Representatives of Estate of D.P. Boothe, Jr.			
Cecil Stricklin	9-29-97	P291	245
Carroll M. Gantz and Lorraine Gantz, as Joint Tenants with Right of Survivorship	4-30-98		
Carroll M. Gantz and Lorraine Gantz, as Tenants in Common without right of survivorship	8-2-00	0352	700
Minutes of SIPOA Meeting to "give the easement back to the property owner"	5-20-02		
Paul Dennis McLaughlin and Susan Rode McLaughlin, as Joint Tenants with right of survivorship	10-1-02	L421	820

CHAIN OF TITLE FOR RALPHS LOT 23

TITLE OF OWNERSHIP	DATE OF: MONTH DAY YEAR	DEED BOOK	PAGE
Seabrook Development Corporation	3-13-72	T98	315
Seabrook Island Company	9-29-72	E100	242
Seabrook Island Ocean Club Incorporated	10-28-85	E149	10
NCNB South Carolina (Masters Deed)	11-16-91	D209	462
NationsBank of South Carolina, Successor by Merger to NCNB			
Starwood Capital Partners	7-14-93	M229	850
Seabrook Ventures, Ltd.	8-12-93	K231	394
Richard Ralph & Eugenia Ralph	3-19-97	K282	846
Minutes of SIPOA Purporting to "give the easement back to the property owner"	5-20-02		

EXHIBIT C

——Original Message——
From: John Thompson <jthompson@sipoa.org>
To: 'Paul McLaughlin' <paul@mmfa.info>; valencoacv@aol.com; vanheerden.jon@mayo.edu; billo@promarktech.com; jbovette@carolinarr.com; jlight1@comcast.net; 'Bill Crater' <billcrater@bellsouth.net>
Cc: Slreed729@aol.com; 'Scott Wallenger' <rswalli@bellsouth.net>; ronaldciancio@bellsouth.net
Sent: Mon, 22 Sep 2008 5:02 pm
Subject: Old Easement on your Baywood Lot - IMPORTANT

Dear Owners of Lots 21-28, Block 32,

We would like to invite you to a meeting in the SIPOA office on September 29th at 10:00am to discuss the matter described below. If you are unable to attend in person, but would like to participate via conference phone, please let me know.

In brief, many years ago, the Board of Directors of the SIPOA voted to give a drainage easement, on your Baywood Lot back to the property owners with the understanding that the property owners pay all costs necessary to document the removal of the easement. Two of you (or prior owners of your lots) chose to take the formal action to remove the easement from the recorded documents at the County record's office, and the rest did not. Now we have a complicated matter.

The drainage pipe that is in the old easement is still in place, is in good condition, and functions, although a new drainage pipe was installed on the golf course, providing the capacity to meet storm conditions for which all the drains on the island are designed to handle. The presence of this additional pipe, on your lots provides increased capacity, above and beyond that for which other storm water drainage systems on the island are desinged, and also provides continual service to reduce the ground water level on your lots.

The Owner of Lot 22 is interested in building a new home, and wishes to remove the drain pipe from the old easement. The Owners of Lots 21 and 23 are concerned about potential adverse impacts this may have on the drainage charact eristics of their lots.

The SIPOA hired an engineer skilled in these types of issues to evaluate the situation... Robert George, and Mr. George will be at the meeting on the 29th.

The attached document is Bob George's summary, in which he points out that keeping the existing pipe in place and functioning is the best option, and to the extent that any portion is removed, installing an additional pipe, connecting to the new golf course drain, will maintain the overall functionality of the present system.

The SIPOA would like to discuss the possibility of re-establishing the easement and providing for the long-term care of the pipe, which is presently still in very good condition, but doing so will require the cooperation of all property owners.

Please let us know if you will be able to attend the Sept. 29th, 10:00am meeting, at the SIPOA office.

If you have any questions I would be glad to attempt to answer them prior to the meeting.

Sincerely Yours,

John Thompson

SEABROOK ISLAND
Property Owners Association

John G. Thompson,PCAM
Executive Director
jthompson@sipoa.org
www.sipoa.org

Natural Oceanfront Living near Historic Charleston, SC

G. ROBERT GEORGE & ASSOCIATES, INC.
CONSULTING ENGINEERS, PLANNERS AND LAND SURVEYORS
2411 SAVANNAH HWY. • CHARLESTON, SOUTH CAROLINA 29414 • (843) 556-4261
P.O. BOX 32158 • CHARLESTON, SOUTH CAROLINA 29417 • FAX (843) 571-0276

September 16, 2008

Mr. John B. Wells
Director of Operations & Maintenance
Seabrook Island Property Owners Association
1202 Landfall Way
Seabrook Island, South Carolina 29455

Re: Executive Summary for
Drainage Facilities Evaluation Report
Baywood Drive – Lots 21-28, Block B
Seabrook Island, South Carolina

Dear Mr. Wells:

Pursuant to your request of September 15th, please accept the following **Executive Summary of the Evaluation and Report** dated September 4, 2008.

FINDINGS AND RECOMMENDATIONS

1. The existing parallel drainage facilities within Lots 21 through 28 and the newer ten-year old conduits within the 11th Fairway together provide sufficient transport capacity to accommodate major storm events exceeding a ten-year return frequency.

2. The thirty plus year-old culverts within Lots 21 through 28 are in surprisingly good condition, but the moderately infiltrating pipe joints contribute to beneficial control and lowering of the ground water table within the topographical evident dune trough within which these facilities were originally constructed.

3. The existing drop inlet structures within the drainage easement provide beneficial control of surface water. Removal of conduits within Lots 21 through 28 will exacerbate high ground water table concerns and surface water ponding.

4. The existing facilities within Lots 21 through 28 will be difficult to maintain without access provided by the existing easement. Unless periodically inspected and adequately maintained, the existing culverts may develop latent defects and/or reduced functional capacity.

5. Residential construction over existing storm drainage facilities abandoned in place is not advisable.

6. Maintaining significant segments of the existing facilities in service will continue to provide surface and subsurface drainage benefits within the shallow dune trough within Lots 21 through 28.

7. Removal of culverts within Lots 22 and 24 may contribute to an elevated shallow ground water table and increased surface ponding..

8. Notwithstanding loss of portions of the existing drainage facilities, remaining facilities should be kept in service to the greatest extent practical to provide continued control of shallow ground water and surface water within the natural dune trough.

9. Existing facilities retained in service can be modified to provide enhanced shallow groundwater and surface water control benefits.

10. If portions of the existing facilities are removed from service, lot owners within these impacted areas should be encouraged to install privately maintained subsurface drainage control facilities to prevent elevation of the groundwater table.

11. Removing any portion of the existing system within Lots 21 through 28 will increase the likelihood of roadway and area flooding for storm events exceeding a ten-year frequency.

Please advise if additional information or clarification is required at this time.

Sincerely,

G. ROBERT GEORGE & ASSOCIATES, INC.

SOUTH CAROLINA PROFESSIONAL ENGINEER & LAND SURVEYOR GLENN ROBERT GEORGE No. 6517

SOUTH CAROLINA G. ROBERT GEORGE & ASSOCIATES, INC. No. C00570 CERTIFICATE OF AUTHORIZATION

G. Robert George, P.L.S., P.E.
GRGA PN 1562-9

GRG/mao

EXHIBIT D

From: "Paul McLaughlin" <paul@mmfa.info>
Date: Fri Dec 05, 2008 12:11:43 PM US/Eastern
To: "'Robin Foster'" <robinfoster@verizon.net>, <jboyette@carolina.rr.com>, <dlight1@comcast.net>, "'C.R. & DEENA RALPH'" <crdeenaralph@earthlink.net>, "'Dale Foster'" <dalef@promarktech.com>, "'Tony Valencourt'" <valencoacv@aol.com>
Cc: "'Eric Davidson'" <edavidson@davidson-bradshaw.com>, "'Linda Easterlin'" <linda@easterlincompany.com>, "'Billy Easterlin'" <bill@easterlincompany.com>, "'Ashley Easterlin'" <Ashley@easterlincompany.com>
Subject: Baywood Easement

Dear Baywood Neighbors,

I am sure you may be wondering: What is the status of the pipe issue on our property? I want to provide you with an update.

In November, we made a written proposal to the POA that includes granting the POA an easement in the 15 foot no-build zone - as we talked about before - and installing a new pipe to the current pipe that crosses your properties to the existing pipe on the golf course - on our property. This proposal keeps the POA system whole and operating on your properties. We proposed using our contractor, but the system's design would be Mr. George's, and the new connection - along with the easement across your properties - would remain the POA's to own and maintain. In our view, this proposal is in all our interests, because it keeps the POA in the loop and assures us and future owners of our properties that if there are problems and maintenance needs with the system - we and they will know who to turn to.

We also said that we would move forward with removing the pipe that crosses our lot, so we can proceed with building our home. As you know, we have no easement on our lot. The letter prepared by the previous owner of our property, approved and signed off by the former Executive Vice President of the POA, and duly recorded at the Court House makes very clear that the easement on our property was abandoned by the POA in 2002, before we purchased the lot, and we are authorized to remove it at any time. These is an irrefutable fact.

Because we want to move the process forward, we offered to share some of the cost of implementing our proposal. This does not include the additional costs we have already paid in associated with dealing with this four month delay and the negotiations - and I can assure you: These have not been insignificant!

While we could have proceeded with construction of our home, we choose to wait and work out an agreement. Nonetheless, we will not wait any longer and will not be forced to do anything more than we proposed. In fact, we are now proceeding with construction. And, while we are certainly open to tweaking our proposal around the margins - our proposal to the POA is essentially final.

For the record: We will not assume any financial responsibility for the new pipe and nor should you! In addition, we are not liable for the POA's decision to install or not install the new connection, or the impact of removing the abandoned pipe from our property. The drainage easement and maintaining the drainage system's integrity are the responsibilities of the POA - not any single property-owner and that includes each of you and us.

Frankly, the POA's history in dealing with this situation (see attached chronology, which I prepared and forwarded to Ron) is rather disturbing. For example, when the Board took action to abandon the easement in May 2002, months before we purchased the lot, the POA failed to consult an engineering professional like Mr. George. Furthermore, the copy of the letter I previously sent you from Mr. Gantz (a second copy is enclosed) is just the tip of the iceberg. I have also included a copy (third attachment) of an email from Mr. Gantz that he prepared in response to a remarkable request by the POA in 2006 (at the bottom of Mr. Gantz's email). As you read it, I am sure you will agree the POA's admission of "lost files" about such an important matter that affects OUR properties is a very unsettling thought.

One unfortunate result of this confusion has been the rise of frustration amongst us. I think it is very important that we shift the focus away from each other and look at the real source - the POA. The POA can now choose to do the right thing, or not - but it is their call. My wife and I have acted in good faith throughout this unfortunate ordeal. We want and will be good neighbors, and hope to enjoy many years together on Seabrook Island.

In the end, we all share the same goal - a quiet spot in paradise where we can kick back and relax.

If you should have any questions, please direct them towards me, not our builder or sub-contractors.

Thank you,

Paul and Susan McLaughlin

winmail.dat (4.8MB)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-10-7065

RICHARD RALPH AND EUGENIA RALPH,

Plaintiffs,

v.

PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,

Defendants.

PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,

Third-Party Plaintiffs,

v.

SEABROOK ISLAND PROPERTY OWNER'S ASSOCIATION,

Third-Party Defendant.

WRIT OF SUMMONS
(JURY TRIAL DEMANDED)

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Third Party Complaint in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to said Third Party Complaint on the subscribers at their offices, DUFFY & YOUNG, LLC, 96 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Third Party Complaint within the time aforesaid, the Third Party Plaintiffs in this action will apply to the Court for judgment by default to be rendered against you for the relief demanded in the Third Party Complaint.

DIY

[*signature on following page*]

J. Rutledge Young, Jr.
jry@duffyandyoung.com
J. Rutledge Young, III
ryoung@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Defendants and Third-Party Plaintiffs Paul Dennis McLaughlin and Susan Rode McLaughlin

December 6, 2011
Charleston, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-10-7065

RICHARD RALPH AND EUGENIA RALPH,

Plaintiffs,

v.

PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,

Defendants.

PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,

Third-Party Plaintiffs,

v.

SEABROOK ISLAND PROPERTY OWNER'S ASSOCIATION,

Third-Party Defendant.

PAUL DENNIS MCLAUGHLIN'S AND SUSAN RODE MCLAUGHLIN'S ANSWER AND THIRD-PARTY COMPLAINT

(JURY TRIAL DEMANDED)

The Defendants, Paul Dennis McLaughlin and Susan Rode McLaughlin (The McLaughlins), answering the Complaint of the Plaintiffs and bringing an action against the Third Party Defendant, allege and say:

1. The McLaughlins deny each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted.

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2. The McLaughlins admit the allegations of Paragraph 1 of the Plaintiffs' Complaint.

3. The McLaughlins deny the allegations of Paragraphs 2 and 3 of the Plaintiffs' Complaint, and affirmatively state that the McLaughlin's legal residence is 3061 Baywood Drive, Johns Island, South Carolina 29455 and that the Ralph's lot is Lot 23, Block 32, not Lot 22, Block 32 as alleged.

4. The McLaughlins state that their lot bears the legal description of Lot 22, Block 32, not Lot 23, Block 32 as alleged in Paragraph 4 of Plaintiffs' Complaint, but do not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 4, 5, 6, 7, 8, and 9 of the Plaintiffs' Complaint and therefore deny the same and demand strict proof thereof.

5. The McLaughlins, in responding to the allegations in Paragraphs 10 and 11 of the Plaintiffs' Complaint, state that these paragraphs contain conclusion of law which do not need to be admitted or denied, but they are denied as stated.

6. The McLaughlins admit so much of the allegations of Paragraph 12 of the Plaintiffs' Complaint as allege that the Seabrook Island Property Owners Association (SIPOA), which claims to own the 20' drainage easement and NO BUIILD ZONE which is the subject of Plaintiffs' Complaint, by its duly appointed officers and Board of Directors, voted to abandon the easement and NO BUILD AREA previously placed on Block 32, Lots 21 through Lot 28 and the SIPOA, cloaked with the actual and apparent authority to do so, abandoned the Easements and No Build Area set forth in the original deeds from the Seabrook Island Company to the first purchasers of Lots 22 through 28, Block 32 and delineated on the Plat of E.M. Seabrook dated September 6, 1984 and recorded in Plat book BD at page 23. The McLaughlins are without knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12 and therefore deny the same and demand strict proof thereof.

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7. The McLaughlins deny the allegations of Paragraph 13 of Plaintiffs' Complaint.

8. The McLaughlins admit the allegations of Paragraph 14 of Plaintiffs' Complaint.

9. The McLaughlins admit so much of the allegations of Paragraph 15 of the Plaintiffs' Complaint as allege they took title to Lot 22 according to the Forsberg Engineering and

Surveying, Inc. Plat dated January 17, 2001, which became a part of their deed to Lot 22. Their deed to Lot 22 and the attached Forsberg Plat, when recorded in the RMC office for Charleston County at Book EF, Page 883, put the world in general and the Plaintiffs in particular on actual and constructive notice that the McLaughlins had purchased and closed on Lot 22 without the Easements and NO BUILD AREA originally placed on that lot, both of which had been abandoned by the actions of the SIPOA on May 20, 2002.

10. The McLaughlins deny the allegations of Paragraphs 16, 17, 18, 19, and 20 of Plaintiffs' Complaint.

11. The McLaughlins admit so much of allegations of Paragraph 21 of the Plaintiffs' Complaint as allege that Paul McLaughlin attended the September 29, 2008 SIPOA meeting. The McLaughlins deny the remaining allegations of Paragraph 21 of the Plaintiffs' Complaint and assert that the 20' drainage easement and NO BUILD AREA had been abandoned and extinguished 6 years earlier.

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12. The McLaughlins admit the allegations of Paragraph 22 of the Plaintiffs' Complaint.

13. The McLaughlins deny the allegations of Paragraphs 23 and assert they had every legal right to dig up the culvert on their property. Further, their construction plans were approved by the Town of Seabrook Island, the SIPOA and the County of Charleston and their administrative boards and built in strict compliance with those approvals.

14. The McLaughlins deny the allegations of Paragraph 24 of Plaintiffs' Complaint, said Paragraph been the remaining paragraph of Plaintiffs' Compliant.

FURTHER ANSWERING SAID COMPLAINT AND FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations # 1)

15. A letter dated September 9, 2002 from the then owner of Lot 22 - Carroll Gantz - requesting that the SIPOA authorize the removal of the 20' drainage easement and NO BUILD ZONE on Lot 22 - which was signed by the Executive VP of the SIPOA - constitutes actual and constructive written notice of the abandonment of the 20' drainage easement. (Attached as Exhibit A and incorporated herein by reference.)

16. The actual notice to the public in general and the Plaintiffs in particular of the abandonment of the 20' drainage easement and NO BUILD ZONE on Lot 22 was a plat by Forsberg Engineering and Surveying plat dated January 17, 2001 labeled PLAT SHOWING ABANDONMENT OF AN EXISTING 20' DRAINAGE EASEMENT and recorded in the Charleston County RMC at Book EF P 883 on September 11, 2002. (Attached as Exhibit B and incorporated herein by reference.)

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17. As a result of Plaintiffs' failure to commence their action within 6 years of notice of the abandonment of the 20' drainage easement and NO BUILD ZONE on Lot 22, SC Code Ann. 15-3-530 bars the Plaintiffs' claim.

FURTHER ANSWERING SAID COMPLAINT AND FOR A SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations # 2)

18. The McLaughlin's deed prepared by Eric Davidson - dated October 1, 2002 - has express language in it stating that the 20' Easement and NO BUILD AREA had been abandoned and referenced the Forsberg plat described in Paragraph 16 above and attached as Exhibit B. This deed showed only a 10' "new" easement drawn by Forsberg Engineering on Exhibit B, putting the Plaintiffs on actual and constructive notice that the 20' drainage easement had been

abandoned. This deed was recorded in the RMC at BK L 421 PG 820 on October 1, 2002. (Attached as Exhibit C and incorporated herein by reference.)

19. The actual notice to the public in general and the Plaintiffs in particular of the abandonment of the 20' drainage easement and NO BUILD ZONE on Lot 22 was set forth specifically in the McLaughlin's deed recorded in the RMC for Charleston county at BK L 421 PG 820 on October 1, 2002.

20. As a result of Plaintiffs' failure to commence their action within 6 years of notice of the abandonment of the 20' drainage easement and NO BUILD ZONE on Lot 22, the Plaintiffs' claim is barred by SC Code Ann. 15-3-530.

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FURTHER ANSWERING SAID COMPLAINT AND FOR A THIRD AFFIRMATIVE DEFENSE
(Estoppel by Judgment)

21. On December 9, 2008, the SIPOA, which claims ownership of the 20' drainage easement and NO BUILD ZONE on Lot 22, instituted an action against the Defendants in the Court of Common Pleas, Civil Action No. 08-CP-10-6975, seeking Injunctive Relief on behalf of all Seabrook Island Property owners, including the Plaintiffs herein, and seeking to stop the Defendants from building their home on the abandoned 20' drainage easement or NO BUILD ZONE unless Defendants reworked the drainage plans by installing an alternative or substitute drainage system. That lawsuit was dismissed on December 11, 2008 and such dismissal bars Plaintiffs from proceeding with this action.

FURTHER ANSWERING SAID COMPLAINT AND AS A FOURTH AFFIRMATIVE DEFENSE
(Advice of counsel)

22. The Defendants relied on advice of counsel that the 20' drainage easement and NO BUILD ZONE had been abandoned by the actions of the SIPOA, the filing of the plat and deed

in the RMC office of Charleston County, and the dismissal of the lawsuit brought by the SIPOA in 2008.

FURTHER ANSWERING SAID COMPLAINT AND FIFTH AFFIRMATIVE DFENSE
(Reliance on Third-Party Actions)

23. The SIPOA ARB, the Town of Seabrook Island and the County of Charleston issued approvals and building permits to the McLaughlins, lulling the McLaughlins into believing they had the right to build over the old "abandoned" easement.

FURTHER ANSWERING SAID COMPLAINT AND AS A SIXTH AFFIRMATIVE
(Failure to Mitigate Damages)

24. Plaintiffs failed to mitigate damages by not taking adequate steps to put an alternative drainage system on their own property in a timely fashion, or by requesting that the SIPOA address and correct any drainage issues.

FURTHER ANSWERING SAID COMPLAINT AND AS A SEVENTH AFFIRMATIVE DEFENSE
(Acceptance)

25. The Plaintiffs have accepted the fact that the 20' drainage easement and NO BUILD ZONE had been abandoned by not moving to intervene individually in the 2008 lawsuit brought by the SIPOA or bringing a separate action to stop the McLaughlins from building their home on the abandoned easement area until after the McLaughlin's house was built.

FURTHER ANSWERING SAID COMPLAINT AND AS AN EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

26. The Ralphs have "unclean hands" and are therefore equitably barred from the relief they seek in this action.

FURTHER ANSWERING SAID COMPLAINT AND FOR A NINTH AFFIRMATIVE DEFENSE
(Waiver, Laches and Estoppel)

27. The McLaughlins allege that Plaintiffs have waived and are estopped from claiming the relief requested. If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence and it estopps him from later seeking relief. *McClintic v. Davis*, 228 S.C. 378, 90 S.E.2d 364 (1955).

FURTHER ANSWERING SAID COMPLAINT AND FOR A TENTH AFFIRMATIVE DEFENSE
(Natural Surface of the Land)

28. The natural surface of the land on the land on Plaintiffs' lot is such that there is a depression near the golf course on Plaintiffs' Lot 23 that holds water and does not drain as rapidly as adjacent lots. As a result, the natural surface of the Plaintiffs lot, which has not in any way been disturbed by the McLaughlins, is the cause of the Plaintiffs' lot failure to drain.

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FURTHER ANSWERING SAID COMPLAINT AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Reservation and non-waiver of Additional Affirmative Defenses)

29. The Defendants reserve and do not waive any additional affirmative defenses that may be discovered as this case progresses.

FURTHER ANSWERING SAID COMPLAINT AND AS A THIRD PARTY COMPLAINT AGAINST THE SEABROOK ISLAND PROPERTY OWNER'S ASSOCIATION (SIPOA)

30. The Seabrook Island Property Owner's Association is a non-profit corporation organized under the laws of South Carolina. Its membership is composed of all property owners on Seabrook Island. Its principal place of business is located in Charleston County and the SIPOA is subject to the jurisdiction of this Court.

31. The Defendants herein own lot 22, Block 32, Seabrook Island, having purchased Lot 22, Block 32, which is identified as 3061 Baywood Drive, from Carroll M. Gantz and Lorraine Gantz on October 1, 2002.

32. SIPOA is the former owner of a 20' Drainage Easement crossing the northern end of Lot 22, Block 32 and the former owner of a NO BUILD AREA extending from the drainage easement to the end of the property line.

33. As set forth below, SIPOA has abandoned the 20' drainage easement and NO BUILD AREA so that the 20' drainage easement and NO BUILD ZONE no longer exist.

34. The SIPOA, as a Third Party Defendant, is or may be liable to Defendants for all or part of the claim against Defendants.

35. Additionally, Third Party Plaintiffs demand, pursuant to SCRCP 14 (c) (2), judgment against the Third Party Defendant in the Plaintiffs' favor.

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36. The original deed from the Developer to the first owner of Lot 22, Block 32, had a 20' Drainage Easement crossing the northern end of the lot and a NO BUILD AREA extending from the drainage easement to the end of the property line on the golf course.

37. On May 20, 2002 the Board of Directors of SIPOA took a vote, recorded in its minutes, abandoning the 20' drainage easement and NO BUILD ZONE and directing the 7 affected property owners (Lots 22-28, Block 32) that removal of the pipe would be the financial responsibility of the individual property owners. (Attached as Exhibit D and incorporated here by reference.)

38. On September 9, 2002, Carroll Gantz obtained written approval from the Executive Vice President of the SIPOA and the Town Administrator of the Town of Seabrook to record the

abandoned easement. From that date forward, the Plaintiffs were on actual and constructive notice that the 20' Drainage Easement and NO BUILD ZONE had been abandoned.

39. The Plaintiffs and other property owners in Block 32, whose lots were burdened by the 20' Drainage Easement and NO BUILD ZONE were aware of the SIPOA's decision to abandon the easements in 2002.

40. The actual notice to the public in general and the Plaintiffs in particular of the abandonment of the 20' drainage easement and NO BUILD ZONE on Lot 22 was a plat by Forsberg Engineering and Surveying plat dated January 17, 2001 labeled PLAT SHOWING ABANDONMENT OF AN EXISTING 20' DRAINANGE EASEMENT and recorded in the Charleston County RMC at Book EF P 883 on September 11, 2002. (Attached as Exhibit B and incorporated herein by reference.)

D;Y
11

41. On October 1, 2002 the McLaughlins purchased Lot 22, Block 32 from Carroll M. and Lorraine D. Gantz for the sum of $170,000. Their deed, which referenced the Forsberg Plat of January 17, 2001, clearly showed that the 20' Drainage Easement and NO BUILD ZONE had been abandoned.

42. The McLaughlins were represented at the October 1, 2002 closing by attorney Eric Davidson, Esq. and their deed and the reference to the January 17, 2001 Forsberg plat were recorded in the RMC office for Charleston County in book L421, Page 820. From that date forward, the Plaintiffs were on actual and constructive notice that the 20' Drainage Easement and NO BUILD ZONE had been abandoned.

43. In the spring 2006 the McLaughlins submitted a plan to the SIPOA Architectural Review Board (ARB) to build a home at 3061 Baywood Drive on Seabrook Island and were verbally

advised by Coy Foster, Director of the SIPOA ARB, of their financial responsibility to remove the pipe on the abandoned 20' Drainage Easement at their expense.

44. During their subsequent presentation of their building plans for their house and landscape plan to the SIPOA ARB by Whitney Powers AIA, the McLaughlin's' architect, SIPOA Director Coy Foster again publicly stated that the McLaughlins were financially responsible for removing the pipe from the abandoned 20' Drainage Easement.

45. On at least two occasions, while Paul McLaughlin was at meetings at the SIPOA offices regarding the planning of their house, John Wells, SIPOA's senior staff person in charge of roads and infrastructure, advised Paul McLaughlin of the McLaughlins responsibility to remove the pipe at the McLaughlin's expense.

46. On August 18, 2006 the McLaughlins received written approval from the SIPOA ARB to build their home as sited on the lot and assume all responsibility for the abandoned drainage easement. (Attached as Exhibit E and incorporated herein by reference.)

D.Y 12

47. In June 2008 the McLaughlins obtained construction financing to build their home as approved by the SIPOA ARB, which was obtained as a result of their reliance on the representations made to the McLaughlins by the SIPOA.

48. Thereafter, later in June 2008, the McLaughlins were informed by the SIPOA that there were objections from the neighbors about building their home as sited because of the abandoned drainage pipe, but received verbal assurances from the Chair of the SIPOA Legal Committee, Ron Ciancio, that the neighbors' concerns would be resolved shortly.

49. In September 2008 Sam Reed, President of the SIPOA, convened a meeting with the McLaughlins and their adjacent neighbors. The McLaughlins brought Eric Davidson, Esq., Whitney Powers, AIA, and representatives from Easterlin Construction to the meeting to review

the matter of the abandoned drainage pipe located on the abandoned 20' drainage easement and to hear engineer Robert George's report on removing the pipe and a proposed remedy to deal with its removal.

50. On the same date of the above meeting, the McLaughlins agreed to give the SIPOA a new easement in the set back area between the Ralphs and the McLaughlins properties for the SIPOA to install engineer George's proposed remedy. There was a tentative verbal agreement reached among all parties present, including the Plaintiffs, and a meeting was scheduled to formalize the agreement among the neighbors one week later. This was a voluntary gesture of goodwill by the McLaughlins and was intended to resolve the concerns of neighbors.

B:4
13

51. Immediately after the meeting, the SIPOA staff person who reports to John Wells, along with Richard Ralph, Paul McLaughlin, Robert George, Whitney Powers, Mr. B. Easterlin. Mr. A. Easterlin and Mr. Crater (property-owner of Block 32. Lot 21) went to the McLaughlins' property to review the decision. Mr. Wells' assistant was asked by Paul McLaughlin, in the presence of Richard Ralph, to ask Mr. Reed and Mr. Thompson to draw up the paperwork to finalize the details of the tentative agreement to install Robert George's proposal and for the McLaughlins to grant a new easement along the McLaughlins' property line adjacent to the Ralphs' property.

52. By the time of the next meeting, the Ralphs withdrew their support for the proposal, despite the fact they were not asked to grant an easement on their property or incur any expenses.

53. Between September and December, after repeated calls and emails to Ron Ciancio of the SIPOA and verbal assurance that resolution would be forthcoming and after the McLaughlins provided an estimate of the cost of installing engineer George's proposal on their property, the SIPOA stated for the first time that it would not bear the full cost of the remedy and expected the

McLaughlins to pay some of the cost and to bear financial responsibility of negotiating and paying the Seabrook Island Club all costs for granting an easement for the installation portion of engineer George's remedy on the golf course.

54. On advice of counsel, the McLaughlins asserted they were under no obligation to pay for anything relating to installation of the proposed remedy. It was not a condition of purchase. It was not a condition of SIPOA approval to build. The agreement to grant a new easement, without cost to the SIPOA, was sufficient economic consideration.

55. In November 2008, on advice of counsel, the McLaughlins removed the drainage pipe and began construction of their home as sited and approved by the SIPOA

D:E 14

56. On December 9, 2008, the SIPOA instituted an action against the Defendants in the Court of Common Pleas, Civil Action No. 08-CP-10-6975, seeking Injunctive Relief on behalf of all Seabrook Island Property owners, including the Plaintiffs herein, and seeking to stop the Defendants from building their home on the abandoned 20' drainage easement or NO BUILD ZONE unless Defendants reworked the drainage plans by installing an alternative or substitute drainage system. That lawsuit was voluntarily dismissed on December 11, 2008.

57. On June 4, 2009 the McLaughlins were contacted by Barbara Measter, Chair of the SIPOA Legal Committee about whether they would consider amending their landscape plan to add two drains on the Ralph's side of their property. The McLaughlins agreed and submitted a revised plan and correspondence. The SIPOA granted the McLaughlins the right to connect the surface drains to the portion of the remaining pipe that exists on their property, and the two drains have been installed.

58. On October 5, 2009 the McLaughlins were again contacted by the SIPOA (John Thompson, CEO and Scott Wallinger, President) about agreeing to let equipment cross the rear

portion of their property to install a junction box on the ending of the pipe and to grant the Ralphs and all other property-owners the right to install surface drains to the pipe. The McLaughlins agreed to the SIPOA request but indicated they were near completion of their landscape plan. The McLaughlins indicated that there was a short window to install the junction box without delaying the completion of their home. They indicated that once the rear landscaping was installed, the SIPOA would have to assume responsibility for repairing any damage that occurred to the landscaping. The Plaintiffs requested a delay and the SIPOA subsequently withdrew its offer to install a junction box.

59. But for the representations, actions and writings of the SIPOA in 2002 and 2008, which the Defendants relied on and materially changed their position as a result of, this dispute and Plaintiffs' subsequent lawsuit instituted on September 30, 2011 concerning the validity of the SIPOA's abandonment of the 20' Draingage Easement and NO BUILD ZONE would not have been commenced.

D.Y 15

60. As a result of the claims set forth above, the Third Party Plaintiffs demand judgment in the Plaintiffs' favor against the Third Party Defendant pursuant to SCRCP 14 (c) (2), or in the alternative, if the Plaintiffs should prevail in their action against the Defendants, that the Third Party Defendant be held liable for all or part of those claims against them

WHEREFORE, Defendants and Third Party Plaintiffs pray as follows;

1. That the Plainitffs' Complaint be dismissed as to them;
2. The Third Party Plaintiffs demand judgment in the Plaintiffs' favor against the Third Party Defendant pursuant to SCRCP 14(c)(2);
3. That the Third Party Defendant be held liable for all or part of the Plaintiffs' claims against the Defendants;

4. That the Defendants and Third Party Plaintiffs be awarded their costs, expenses and reasonable attorneys' fees for having to defend this action and prosecute their third party action; and

5. For such other relief as this Court deems just and proper.

D:4
16

J. Rutledge Young, Jr.
jry@duffyandyoung.com
J. Rutledge Young, III
ryoung@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Defendants and Third-Party Plaintiffs Paul Dennis McLaughlin and Susan Rode McLaughlin

December 6th, 2011
Charleston, South Carolina

11-7065

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PAUL DENNIS MCLAUGHLIN'S AND SUSAN RODE MCLAUGHLIN'S ANSWER AND THIRD-PARTY COMPLAINT** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
PO Box 1254
Charleston, SC 29402
Attorneys for Plaintiffs

FILED
2011 DEC -6 AM 10:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This 6th day of December, 2011

DUFFY & YOUNG, LLC

EXHIBIT A

(2)

carroll gantz design

Recorded in Charleston Co.
File EF 19.883

September 9, 2002

Mr. Randy Pierce
Seabrook Island Town Hall

Dear Randy,

As owner of subject lot, am hereby submitting a request for you to record a new plat for lot 22, Block 32, 3061 Baywood Drive, TMS No. 147-03-00-114, removing the drainage easement parallel to the golf fairway and the "no build" zone thereon. Application, revised mylars, and prints are enclosed.

In a meeting on February 12, 2002, I met with Messrs Doug Smith, John Wells (SIPOA), and Daniel Forsberg (surveyor) with these same revised plats to request recording the revised plat, (just completed by the surveyor)for which Mr. Wells assured us that the POA had granted their permission to proceed. It was agreed that Mr. Smith needed a letter from the POA to confirm this, and Mr. Wells agreed to send such a letter to Mr. Gantz.

On March 20, 2002 Mr. Wells notified me that the POA Roads and Storm Drainage Committee met on March 18, and agreed that there was no further need for the subject easement. Mr. Wells said that paperwork was to be initiated.

On May 3, 2002, Mr. Wells notified me that the R&D Committee had approved the change, and that I could "prepare any documentation that is required to remove the easement." I assumed he meant the survey of the lot, already completed. He said he would be able to give me a "letter of agreement" by the end of May.

817 Treeloft Trace, Seabrook Island, SC 29455
Phone 843-768-3780 Fax 843-768-3739
e-mail : carrgantz@worldnet.att.net

On May 21, 2002, Mr. Wells advised me that the POA Board of Directors had approved the abandonment of the subject easement, as well as for lots 23 through 28, and that the process was now to submit the changes to the POA lawyers for their review and comments.

On June 14, 2002, Mr. Wells advised me that the letter was with the lawyers, and that it was to be back within the next 7-10 days.

On August 25, 2002, I advised Mr. Wells that we had a potential buyer for the lot. Mr. Wells advised me on August 28 that the lawyers agreed that the easement could be released. No mention of when the expected letter would be available.

On September 5, 2002, Mr. Wells advised me that the letter was still being reviewed, and advised me not to wait for it, but to go to the Town hall to request recording of the revised plat. I met with you on this day, and you said you needed POA assurance of the change. You suggested I write this letter, review it with Mr. Wells, and submit it to Mr. Giuffreda for his seal on behalf of the POA, so that you could proceed.

This has now been done and I herewith submit this letter, along with the required fees, mylars, application and prints. I now have a purchase agreement for the lot from a buyer, but do not know the closing date as yet.

Sincerely,

Carroll Gantz 9/10/02

Carroll Gantz date

Authorization by POA that the proposed changes of removal of drainage easement and "no build" zone on the subject lot have been reviewed and approved.

POA officer 10 Sept 2002

By its Executive Vice President date

Cc: POA

817 Treeloft Trace. Seabrook Island, SC 29455
Phone 843-768-3780 Fax 843-768-3739
e-mail : carrgantz@worldnet.att.net

(2)

Town Of Seabrook Island

Zoning Permit Application

Phone 768-9121

Please Print

Fee Schedule

Permit for construction	$25.00
Permit for repairs, alteration and additions	$15.00
Application fees for recording of plats varies	

paid $50

Date 5 SEPT 2002 TMS NO: 147 03 00 114

APPLICANT NAME: CARROLL GANTZ PHONE: 768-3780
(PRINT NAME LISTED IN TOWN'S BUSINESS LICENSE IF APPLICANT IS A BUSINESS)

NAME OF BUSINESS CONTACT: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE _____

PROPERTY OWNERS NAME: CARROLL + LORRAINE GANTZ PHONE: 768-3780

OWNERS MAILING ADDRESS: 817 TREELOFT TRACE

CITY: JOHNS ISLAND STATE: SC ZIP CODE: 29455

PROPERTY LOCATION: STREET ADDRESS 3061 BAYWOOD DRIVE LOT 22 Block 32

PURPOSE OF PERMIT: RECORDING OF PLAT

TOTAL VALUE OF CONSTRUCTION: _____ BASE FLOOD ELEVATION: _____ ZONE: _____

CONSTRUCTION COST: _____ DATE OF SIPOA APPROVAL: _____ (When applicable)

APPLICANTS SIGNATURE: Carroll Gantz DATE: 5 SEPT 2002

THIS IS AN APPLICATION ONLY:
PERMIT WILL BE ISSUED UPON APPROVAL BY THE TOWN OF SEABROOK ISLAND

January 14, 2002 Amended 5/17/2001 to remove reference to VAQ from fee schedule

EXHIBIT B

BK Z4(PG351

TOWN OF SEABROOK ISLAND
DATE: 2/19/2002
APPROVED BY: Carol M. Pierce

MAGNETIC

ELEVENTH FAIRWAY GOLF COURSE NO 2

CURRENT "NO BUILD AREA" TO BE ABANDONED

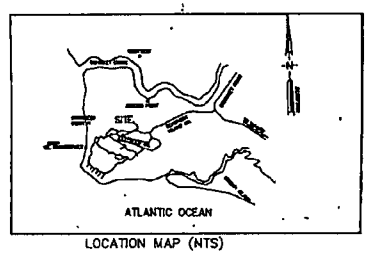
LINE	LENGTH	BEARING
L1	7.78'	N16°25'43"W
L2	27.15'	N39°15'29"E
L3	43.04'	N13°16'35"W
L4	23.16'	N32°15'05"E
L5	16.73'	N08°25'30"W
L6	17.46'	N09°54'19"W
L7	23.51'	S77°29'19"E

LOT 21 BLOCK 32
TMS NO. 147-03-00-115
CARTER, WILLIAM FRANKLIN JR & ROSALIE A.

LOT 22
BLOCK 32

LOT 23 BLOCK 32
TMS NO. 147-03-00-113
RICHARD & EUGENIA RALPH

BAYWOOD DRIVE (60' R/W)



LOCATION MAP (NTS)

NOTES

1) THE TMS NO. IS 147-03-00-114

2) THE PROPERTY IS OWNED BY CARROLL M. AND LORRAINE D GANTZ

3) THE TOTAL AREA IS 0.698 AC (28,180 SQ FT).

4) REFERENCE PLAT BY E.M. SEABROOK, JR. DATED SEPTEMBER 6, 1991 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK EO PAGE 23.

5) ACCORDING TO FLOOD INSURANCE RATE MAP 455413 0440 H DATED SEPTEMBER 2, 1983 THIS PROPERTY LIES IN ZONE AE ELEVATION 13.

6) BY THE APPROVAL AND RECORDING OF THIS PLAT THE EXISTING "NO BUILD AREA" IS HEREBY REMOVED AS A LIMITATION TO LOCATION OF ANY STRUCTURE ON LOT 22.

LEGEND

RF = REBAR FOUND
RBS = 5/8" REBAR SET
▨ = CURRENT NO BUILD AREA

PLAT SHOWING ABANDONMENT OF AN EXISTING
20' DRAINAGE EASEMENT
LOT 22 BLOCK 32
TOWN OF SEABROOK ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
SCALE 1"=30' JANUARY 17, 2001

GRAPHIC SCALE
(IF FEET)
1 inch = 30 ft.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

LEVIS SMITH MOORE, R.L.S. No. 15491

FORSBERG ENGINEERING AND SURVEYING, INC.
1037 SAVANNAH HIGHWAY SUITE B
P.O. BOX 30672
CHARLESTON, SOUTH CAROLINA 29417
(843) 571-6328 FAX (843) 571-6799
CIVIL ENGINEERING, SURVEYING AND LAND PLANNING

EXHIBIT C

BK L 421P6820

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that WE, CARROLL M. GANTZ AND LORRAINE D. GANTZ, Trustees of Carroll M. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245, and AND LORRAINE D. GANTZ AND CARROLL M. GANTZ, Trustees of Lorraine D. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249, (the "Grantors"), for and in consideration of the sum of ONE HUNDRED SEVENTY THOUSAND AND 00/100 ($170,000.00) DOLLARS, to TAX FREE EXCHANGE SERVICES, INC., in hand paid, before the sealing of these presents by PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, in the State aforesaid, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, (the "Grantees"), as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns, the following described property, to wit:

See Attached Exhibit "A" for Legal Description

Grantee's Mailing Address:
110 Sugar Maple Court
Winston-Salem, NC 27106

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 Grantees, as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns,, forever.

AND subject to any and all Restrictive Covenants, Easements, Rights-of-Way and Conditions, the said Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against themselves and their heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

The singular number as used herein shall include the plural. Wherever there is reference in the covenants and agreements herein contained to any of the parties hereto, the same shall be construed to mean the parties hereto, as well as the heirs, representatives successors, and assigns of the same.

IN WITNESS WHEREOF, the Grantors have caused these presents to be executed in their names this 1st day of October, 2002.

WITNESSES:

CARROLL M. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

LORRAINE D. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

WITNESSES:

LORRAINE D. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

CARROLL M.. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned Witness and made oath that (s)he saw the within named Grantors sign, seal and as their act and deed, deliver the within written instrument, and that (s)he along with the other subscribing witness herein, witnessed the execution hereof.

signature / Witness #1

SWORN to before me this
21st day of October, 2002.

Notary Public for South Carolina
My commission expires:

"EXHIBIT A"
LEGAL DESCRIPTION

ALL that certain piece, parcel or lot of land, situate, lying and being on Seabrook Island, County of Charleston, State of South Carolina, as shown and designated as LOT 22, BLOCK 32, on a Plat entitled, "Plat Showing the Abandonment of an Existing Twenty (20') Foot Easement on Lot 22, Block 32, Town of Seabrook Island, County of Charleston, SC" prepared by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully and at large appear.

TMS # 147-03-00-114

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the following matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

SUBJECT to a ten (10') foot easement for drainage as shown on a Plat made by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883.

This being the same property conveyed to Carroll M. Gantz and Lorraine D. Gantz, Trustees, Carroll M. Gantz Revocable Trust a Memorandum of which Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245 by Deed of Carroll M. Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 557, and by Deed of Lorraine Gantz to Carroll M. Gantz and Lorraine D. Gantz, Trustees Lorraine D. Revocable Trust a Memorandum of Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249 by Deed of Lorraine Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 567.

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
) (Closing Date) October 1, 2002
COUNTY OF CHARLESTON)

AFFIDAVIT

BK L 421PG824

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY Carroll M. Gantz and Lorraine D. Gantz, Trustees of Carroll M. Gantz Revocable Trust, a Memorandum of which trust is dated August 2, 2000, and BY Lorraine D. Gantz and Carroll M. Gantz, Trustees of Lorraine D. Gantz Revocable Trust, a Memorandum of which is dated August 2, 2000, TO Paul Dennis McLaughlin and Susan Rode McLaughlin ON October 1, 2002.

3. Check one of the following: The deed is:

(a)__x__subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b)_____subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c)_____EXEMPT from the deed recording fee because (Exemption #___) (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item #7 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a)__x__The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $170,000.00.

(b) The fee is computed on the fair market value of the realty which is n/a

(c)___The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a

5. Check YES_____ or NO___x___ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is n/a.

6. The DEED Recording Fee is computed as follows:

(a)	$170,000.00	the amount listed in item 4 above
(b)	00.00	the amount listed on Item #5 above (no amount, please zero)
(c)	$170,000.00	subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as closing attorney.

8. Check if Property other than Real Property is being transferred on this Deed.

(A) _____Mobile Home

(B) _____Other (Furniture, Furnishings and Fixtures)

9. DEED OF DISTRIBUTION – ATTORNEY'S AFFIDAVIT: Estate of _____ deceased Case Number _____, personally appeared before me the undersigned attorney who, being duly swom, certified that (s)he is licensed to practice law in the State of South Carolina; that (s) he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____, deceased, and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

_____
Grantor, Grantee or Legal Representative
Connected with this Transaction
Eric J. Davidson
(Printed Name)

SWORN to before me this 1st day of October 2002.

_____
Notary Public for State of: _____
My Commission expires:

RECORDER'S PAGE
This page must remain with the Original Document

DAVIDSON
BENNETT &
WIGGER

BK L 421PG825

Recording Fee 11.00
State Fee 412.00
County Fee 187.00

Postage

Total 640.00

C

FILED

L421-820
2002 OCT -9 PM 3:27

CHARLESTON COUNTY SC

PID VERIFIED BY ASSESSOR
REP LMG
DATE 10/17/02

RECEIVED FROM RMC

OCT 17 2002

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

EXHIBIT D

May 20, 2002 SIPOA Board Motion to abandon the easement – from minutes

Mr. Giuffreda clarified Mr. Muenow is talking about Block 32 Lot 22 to Lot 28. A no build zone is currently implied. Mr. Giuffreda would recommend the Board vote favorably on Mr. Muenow's proposal. Discussion followed. Various questions/comments were asked and answered. Mr. Muenow made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote.

EXHIBIT E

(4)

August 18, 2006

Mr. & Mrs. McLaughlin
455 South Church Street
Winston Salem, NC., 27101

Dear Paul & Susan,

The Architectural Review Board has approved the Preliminary Plans submitted for Block 32 Lot 22, Seabrook Island, SC. Please address the following comments of the ARB and re-submit plans for Conditional Review.

1. Owner is to assume all responsibility for the underground drainage line at the 20' drainage easement / driveway.
2. Owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe.
3. Property lines must be located prior to any grading because of the Right-Of-Way for the SIPOA 20' drainage easement.

Please submit Conditional Plans using CADD software (including colors for entry doors, garage doors, and window framing, as well as window frame cladding) by November 20, 2006 to avoid additional review fees. Before releasing the Conditional Plan with the ARB stamp of approval, the ARB is requiring that you submit an updated CD with the following information:

Site Plan
All elevations and design detail
Floor plans
All finishes and colors noted on the plans

Please note that the SIPOA uses AutoCadd LT 2005 software.

Please call me at 843-243-8522 if you have any questions.

Sincerely,

Coy Foster, ARB Administrator
ARB Admin / Block 32 Lot 22 McLaughlin 8 18 06
CC: Whitney Powers
184 East Bay Street, Suite 201
Charleston, SC., 29401

ORIGINAL

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Richard Ralph and Eugenia Ralph,)	C/A No.: 2011-CP-10-07065
Plaintiffs,)	
vs.)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,)	ANSWER OF THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION
Defendants.)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,)	
Third-Party Plaintiffs,)	
vs.)	
Seabrook Island Property Owners Association,)	
Third-Party Defendant.)	

NOW COMES Third-Party Defendant Seabrook Island Property Owners Association (hereinafter "SIPOA"), by and through counsel, and responds to the Third-Party Complaint of Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin (hereinafter the "McLaughlins"), denying all allegations not specifically admitted, as follows:

1. SIPOA admits that it is a non-profit corporation organized under the laws of South Carolina, and that its members own property on Seabrook Island. SIPOA also admits that its principal place of business in Charleston County and that SIPOA is subject to the jurisdiction of this Court. SIPOA denies and demands strict proof of the all other allegations of the McLaughlins in Paragraph 30 of their Third-Party Complaint.

2. SIPOA admits that the McLaughlins own Lot 22, Block 32, on Seabrook Island. SIPOA denies and demands strict proof of the all other allegations of the McLaughlins in Paragraph 31 of their Third-Party Complaint.

3. SIPOA is without sufficient information at this point to admit or deny the allegations of the McLaughlins in Paragraph 32 of their Third-Party Complaint, and therefore denies and demands strict proof of the all other allegations.

4. SIPOA is without sufficient information at this point to admit or deny the allegations of the McLaughlins in Paragraph 33 of their Third-Party Complaint, and therefore denies and demands strict proof of the all other allegations.

5. SIPOA denies that it is liable to the McLaughlins or any other party to this action and denies all other allegations of the McLaughlins in Paragraph 34 of their Third-Party Complaint.

6. SIPOA denies all allegations of the McLaughlins in Paragraph 35 of their Third-Party Complaint.

7. The original deed referenced by McLaughlins in Paragraph 36 of their Third-Party Complaint speaks for itself. SIPOA denies and demands strict proof of the all other allegations of the McLaughlins in Paragraph 36 of their Third-Party Complaint.

8. SIPOA is without sufficient information at this point to admit or deny the allegations of the McLaughlins in Paragraphs 37 through 60 of their Third-Party Complaint, and therefore denies and demands strict proof of the same.

HAVING FULLY responded to the allegations of the McLaughlins in their Third-Party Complaint, SIPOA now sets forth its AFFIRMATIVE DEFENSES as follows:

FOR A FIRST DEFENSE

1. SIPOA is not liable to any party to this action on grounds that any action for which damages could be awarded were caused by the intervening acts of others.

FOR A SECOND DEFENSE

2. SIPOA is not liable to any party to this action under the doctrines of "unclean hands," estoppel, laches, and waiver.

FOR A THIRD DEFENSE

3. SIPOA is not liable to any party to this action because no party can show that it has suffered damages, or that it mitigated its damages.

FOR A FOURTH DEFENSE

4. SIPOA is not liable to any party to this action because the claims are barred by the applicable statutes of limitations.

FOR A FIFTH DEFENSE

5. SIPOA is not liable to any party to this action for a claim of for any damages, including punitive damages, as no party has sufficiently alleged such a claim, and SIPOA is not subject to such a claim under S.C. Code Ann. § 33-56-180.

WHEREFORE, having fully answered the Third-Party Complaint herein and stated its affirmative defenses, Third-Party Defendant SIPOA demands a jury trial on all matters so triable and requests:

1. that the claims and relief sought by the Third-Party Plaintiffs against SIPOA be denied in each and every respect; and

2. that the Court grant SIPOA such other and further relief as this Court may deem just and proper.

Dated this the 5th day of January, 2012.

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400
803-779-0016 (fax)
gmatthews@richardsonplowden.com

ATTORNEY FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

IN THE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rode McLaughlin, Defendants. Paul Dennis McLaughlin and Susan Rode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owner's Association, Third-Party Defendant.	)	C/A No.: 2011-CP-10-07065 CERTIFICATE OF SERVICE

I, the undersigned employee of Richardson Plowden & Robinson, P.A., counsel for Seabrook Island Property Owner's Association, do hereby certify that I have served a copy of the *ANSWER OF THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCATION* in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to counsel of record as indicated below on this 5th day of January, 2012:

G. Dana Sinkler, Esquire
Warren & Sinkler, LLP
PO Box 1254
Charleston, SC 29402

COUNSEL FOR PLAINTIFFS

J. Rutledge Young, Jr., Esquire
J. Rutledge Young, III, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

COUNSEL FOR PAUL DENNIS McLAUGHLIN AND SUSAN RODE McLAUGHLIN

JENNIFER M. ADAMS
Legal Assistant to Eugene H. Matthews

January 5, 2012
Columbia, South Carolina.

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

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1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

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REPLY TO COLUMBIA
E-mail address for Eugene H. Matthews
gmatthews@richardsonplowden.com

Certified Specialist in Employment & Labor Law
by the Supreme Court of South Carolina

Licensed in South Carolina and North Carolina

January 5, 2012

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Richard Ralph and Eugenia Ralph v. Paul Dennis Mclaughlin and Susan Rode Mclaughlin v. Seabrook Island Property Owner's Association
C/A No.: 2011-CP-10-07065
Our File No.: 101-2494

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of the *Answer of Third-Party Defendant Seabrook Island Property Owners Association* in the above matter.

I would appreciate your filing the same and returning the extra clocked copy to my office in the self-addressed stamped envelope provided.

By copy of this letter, I am hereby serving the same on all counsel of record.

With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/ Eugene H. Matthews

Eugene H. Matthews

/jma
Enclosures as Stated

cc: All Counsel of Record

ORIGINAL

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Richard Ralph and Eugenia Ralph,)	C/A No.: 2011-CP-10-07065
Plaintiffs,)	
vs.)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,)	ANSWER OF THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION
Defendants.)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,)	
Third-Party Plaintiffs,)	
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FOR A SECOND DEFENSE

2. SIPOA is not liable to any party to this action under the doctrines of "unclean hands," estoppel, laches, and waiver.

FOR A THIRD DEFENSE

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FOR A FOURTH DEFENSE

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FOR A FIFTH DEFENSE

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WHEREFORE, having fully answered the Third-Party Complaint herein and stated its affirmative defenses, Third-Party Defendant SIPOA demands a jury trial on all matters so triable and requests:

1. that the claims and relief sought by the Third-Party Plaintiffs against SIPOA be denied in each and every respect; and

2. that the Court grant SIPOA such other and further relief as this Court may deem just and proper.

Dated this the 5th day of January, 2012.

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400
803-779-0016 (fax)
gmatthews@richardsonplowden.com

ATTORNEY FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-7065
RICHARD RALPH AND EUGENIA RALPH,	)	
Plaintiffs,	)	
vs.	)	MOTION TO AMEND COMPLAINT
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,	)	
Defendants.	)	
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,	)	
Third-Party Plaintiffs,	)	
vs.	)	
SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION,	)	
Third-Party Defendant.	)	

Pursuant to SCRCP 15, Plaintiffs do hereby move this Court for an order permitting them to amend their complaint to more clearly define the nature of the cause of action being asserted against the Defendants as articulated in paragraph 24 of the amended complaint and in the prayer for relief, and to correct paragraphs 3 and 4 to identify Plaintiffs' ownership of Lot 23 and the McLaughlins' ownership of Lot 22. A

copy of the proposed amended complaint is attached hereto.

Respectfully submitted,

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: _____
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina

January 30, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-7065
RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	AMENDED COMPLAINT JURY TRIAL DEMANDED
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	

Plaintiffs, Richard Ralph and Eugenia Ralph ("the Ralphs"), complaining of the Defendants, Paul Dennis McLaughlin and Susan Rode McLaughlin ("the McLaughlins"), allege and say:

1. The Ralphs are residents of the County of Charleston, State of South Carolina, living in their home on Seabrook Island located at 3055 Baywood Drive.

2. The McLaughlins are residents of Winston Salem, North Carolina, owning the lot adjacent to the Ralphs' home on the east, which is identified as 3061 Baywood Drive.

3. The Ralphs' lot bears the legal description of Lot 23, Block 32, Seabrook Island, as shown on the original approved development plat by E. M. Seabrook, Jr., Inc., dated April 29, 1987, revised May 8, 1987, and recorded in the RMC Office for Charleston County on May 26, 1987 in Plat Book BN, page 49.

4. The McLaughlins' lot bears the legal description of Lot 22, Block 32, Seabrook Island, as shown on an earlier plat by E. M. Seabrook, Jr., Inc., dated September 6, 1984, and recorded in the RMC Office for Charleston County in Plat Book BD, page 23. This plat is identical to the plat by which the Ralphs acquired title, but is designated as having been "submitted for pre-selling under irrevocable letter of credit provision" and its approval by the County of Charleston did not "permit or authorize occupancy."

5. The McLaughlins' lot was initially conveyed by Seabrook Island Company to D.P. Boothe, Jr. by deed dated August 28, 1985 and recorded in the RMC Office for Charleston County on August 29, 1985 in Book T 147 at page 212. The legal description described the lot as: "Having the size, shape, dimensions, buttings and boundings, more or less, as are shown on said Plat, which is specifically incorporated herein by reference." The plat depicts a 20' Drainage Easement crossing the northern end of the lot and a "NO BUILD AREA" extending from the Drainage Easement to the end of the property line. The fee simple title to the lot, including the area occupied by the Drainage Easement and the NO BUILD AREA, was thereby granted to Mr. Boothe. The legal description also specifically provided that the conveyance was:

> SUBJECT to the twenty (20') foot easement for drainage and the ten (10') foot easement for drainage as shown on the

Plat by E. M. Seabrook, Jr., Inc., dated September 6, 1984 recorded in Plat Book BD at page 23.

SUBJECT FURTHER to the area designated as 'NO BUILD AREA' shown on Plat by E. M. Seabrook, Jr., Inc., dated September 6, 1984 recorded in Plat Book BD at page 23.

6. The chain of title for the lot acquired by the McLaughlins from the time of its creation and first conveyance is set forth as Exhibit A to this complaint.

7. The chain of title to the Ralphs' property is set forth as Exhibit B to this complaint.

8. The following deeds in the chain of title to the McLaughlins' lot contained the same description of the lot and the easements to which it was subject as set forth in paragraph 5 above: P-291, page 245, F-302, page 107, and O-352, page 700.

9. Both the plat by which the McLaughlins' property was sold and the language of the deeds by which it was sold established the existence of a 20' Drainage Easement across their land and the land of the Ralphs and a No Build Area.

10. It is well established by law in South Carolina that, where a deed describes land as shown on a specified plat, such plat becomes a part of the deed and purchasers of lots with reference to such plats acquire every easement, privilege and advantage shown on such plat. Blue Ridge Company v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (S.C. 1965).

11. It is also well established by South Carolina law that the McLaughlins had, at the very least, constructive notice of the Ralphs' easement based upon the recorded instruments in their chain of title. The law imputes to a purchaser who proposes to acquire title to real estate, notice of the recitals contained in any properly recorded

instrument or writing which forms a link in a chain of title to the property proposed to be acquired. Carolina Land Company, Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (S.C. 1975).

12. On May 20, 2002, at a meeting of the Officers of Seabrook Island Property Owners Association ("SIPOA"), a motion was passed to "give the easement shown on the plats of EM. Seabrook," by which both the Ralphs' lot and the McLaughlins' lot were originally conveyed, "back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement." To the Ralphs' knowledge, no notice of this action was ever conveyed to them or any other lot owners subject to the easements. Furthermore, at this time, the only interest the SIPOA had in these easements was a duty to maintain them as set forth on the E. M. Seabrook plats.

13. At the time that this action was taken by the SIPOA, the Ralphs' lot and the McLaughlins' lot had already been conveyed by the original developer and the fee simple title to the portion of the easement on each lot and the No Build Area became vested in their predecessors in title by virtue of the fact that each lot had been originally conveyed according to plats which clearly depicted the Drainage Easement and the No Build Area on their lots.

14. When the McLaughlins were preparing to take title to their lot, in October of 2002, they or their counsel used a plat created by Forsberg Engineering and Surveying, Inc. entitled "Plat Showing Abandonment of an Existing 20' Drainage Easement Lot 22 Block 32 Town of Seabrook Island Charleston South Carolina" dated January 17, 2002. The Forsberg Plat specifically references the E. M. Seabrook Plat

recorded in Plat Book BD at page 23, by which the McLaughlins' lot was previously conveyed.

15. The McLaughlins then took title to their lot according to that plat and Mr. McLaughlin took the position that their lot was not subject to the Drainage Easement or the No Build Area, notwithstanding the fact that the SIPOA did not own the Easement and had no legal authority to purport to have abandoned it. Furthermore, the McLaughlins' deed specifically conveyed the property "subject to any and all Restrictive Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property. . ." (emphasis added).

16. Notwithstanding the McLaughlins' efforts to avoid taking title to their lot subject to the 20' Drainage Easement and the No Build Area shown on earlier plats by which the lot previously had been conveyed, as a matter of law, they took title to their lot subject to the benefits and obligations of those easements.

17. More than six years passed from the time of the SIPOA's unlawful attempt to abandon the easement it never owned before notice of that action was communicated to the Ralphs and other owners of Lots 21-28, Block 32, by an email from the SIPOA, dated September 22, 2008, advising of a meeting to be held on Monday, September 29th.

18. The email advised that the SIPOA had hired an expert to evaluate the condition and usefulness of the 20' Drainage Easement and that the expert had recommended that the easement be "reestablished." A copy of the expert's Executive Summary was attached to the email. (Exhibit C)

19. As a matter of law, the easement was never lawfully abandoned and did not require reestablishment because the owners of Lots 21-28 owned the fee simple title to the easement and the No Build Area and were entitled to the benefits and subject to the reciprocal rights, obligations and burdens appurtenant to their lots.

20. The meeting on September 29, 2008 was attended by Mr. McLaughlin and the Ralphs and several other lot owners. At this meeting, Robert George, an engineer with significant experience and expertise in the subject of drainage of real property, presented a report of his findings as to the condition of the drainage system across the lots owned by the Ralphs and McLaughlins and others, and recommended that the system be retained and protected. He specifically warned that the destruction of the culvert on the McLaughlins' property "will exacerbate high ground water table concerns and surface water ponding." He also warned against obstructing the easement as "the existing facilities . . . will be difficult to maintain without access provided by the existing easement."

21. Mr. McLaughlin attended with legal counsel, an architect and two builders and asserted their right to consider the easement abandoned, destroy the culvert on their lot and construct their house over the No Build Area. By this point it should have been patently obvious to Mr. McLaughlin and/or his counsel, that the 2002 action of the SIPOA was unlawful and did not, as a matter of law, effect an abandonment of the easement and No Build Area, vis-à-vis the owners of Lots 21-28, Block 32.

22. Following the meeting, Mr. McLaughlin persisted in the position that: "As you know, we have no easement on our lot" and again expressed his intention to take

up the portion of the drainage pipe on their lot and build on the No Build Area. (Exhibit D)

23. Notwithstanding the fact that the Ralphs had every legal right to the protection and maintenance of their easement as it existed on the McLaughlins' lot and to the protection of the No Build Area, the McLaughlins dismissed conditions imposed by the SIPOA and proceeded with their building plans. They had the section of culvert on their property dug up and destroyed and raised the elevation of their lot, and built their house over the No Build Area, all leading to the increase of surface water flow and destruction of the drainage across the Ralphs' property and subjected the Ralphs to excessive accumulation of water on their property ever since.

24. The actions of the McLaughlins constituted a trespass on the servient estates acquired by the Ralphs and, as a result of the McLaughlins' willful, reckless, unlawful and arrogant acts, the Ralphs have been deprived of their drainage easement over lots 23 through 28 and the No Build Area required for their service and maintenance, and subjected to anguish and emotional discomfort and deprived of use of a substantial portion of their yard due to intervals of flooding. The value of their property has been substantially diminished and they are entitled to actual and punitive damages in such amount as may be found by the trier of fact.

Wherefore, the Ralphs pray for actual and punitive damages against the McLaughlins for the emotional anguish and stress they have endured; for the expense they must incur in an effort to remediate the drainage problems associated with the destruction of the drainage easement and usurpation of the No Build Area; for

diminution in the value of their property due to the destruction of the existing drainage easement and No Build Area on Lot 23 and the requirement that other drainage must now be constructed and maintained; and for punitive damages that are due them as a matter of right to redress the ordeal that they have had to endure, including the expenses of this litigation and attorney's fees.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina

July 17, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 **CP-**10-7065

Richard Ralph and Eugenia Ralph

PLAINTIFF(S)

Paul Dennis McLaughlin and Susan Rode McLaughlin

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. ☐ See Page 2 for additional information.

☐ **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

☐ **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.

FILED
2013 JUL 17 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on July 16, 2013. Plaintiffs' Motion to Amend Complaint is hereby GRANTED.

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.**

Circuit Court Judge | 2151 **Judge Code** | 7/16/13 **Date**

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 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)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rhode McLaughlin, Defendants and Paul Dennis McLaughlin and Susan Rhode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2011-CP-10-7065 **PAUL DENNIS MCLAUGHLIN'S AND SUSAN RODE MCLAUGHLIN'S ANSWER TO THE PLANITIFF'S AMENDED COMPLAINT AND THIRD-PARTY COMPLAINT**

TO: G. DANA SINKLER, ESQ.
WARREN & SINKLER, LLP
ATTORNEYS FOR THE PLAINTIFFS
and
EUGENE H. MATTHEWS, ESQ.
RICHARDSON, PLOWDEN & ROBINSON, PA
ATTORNEYS FOR THE THIRD-PARTY DEFENDANT

The Defendants, Paul Dennis McLaughlin and Susan Rode McLaughlin (the "Defendants") answer the Amended Complaint of the Plaintiffs and as and for their

Counterclaims and Third-Party Complaint against the Third-Party Defendant, allege and state as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not admitted, denied, or qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.

2. The Defendants admit the allegations of Paragraphs 1 and 2 of the Plaintiffs' Amended Complaint.

3. The Defendants admit the allegations of Paragraph 3 of the Plaintiffs' Amended Complaint.

4. The Defendants are without sufficient information to form a belief as to the allegations of Paragraphs 4, 5, 6, 7, 8, and 9 of the Plaintiffs' Amended Complaint, and, therefore, deny same and demand strict proof thereof.

5. The Defendants are not required to answer the allegations of Paragraphs 10 and 11 of the Plaintiffs' Amended Complaint as said allegations constitute legal conclusions.

6. The Defendants admit only so much of the allegations of Paragraph 12 of the Plaintiffs' Amended Complaint that alleges the Seabrook Island Property Owners Association ("SIPOA") abandoned the easement and NO BUILD AREA described in Paragraph 12 and abandoned the easement and NO BUILD AREA. The Defendants are without sufficient information to form a belief as to the remaining allegations of said Paragraph, and, therefore, deny same and demand strict proof thereof.

7. The Defendants deny the allegations of Paragraph 13 of the Plaintiffs' Amended Complaint.

8. The Defendants admit the allegations of Paragraph 14 of the Plaintiffs' Complaint.

9. The Defendants admit only so much of the allegations of Paragraph 15 of the Plaintiff's Amended Complaint that alleges the Defendants took title to Lot 22 according to a plat showing that easement and NO BUILD AREA had been abandoned by the SIPOA on May 20, 2002.

10. The Defendants deny the allegations of Paragraphs 16, 17, 18, 18, 19, and 20 of the Plaintiffs' Amended Complaint and demand strict proof thereof.

11. The Defendants admit only so much of the allegations Paragraph 21 of the Plaintiff's Amended Complaint that alleges that Mr. McLaughlin attended a meeting on of the SIPOA on September 29, 2008. The Defendants deny the remaining allegations of said Paragraph and demand strict proof thereof.

12. The Defendants admit the allegations of Paragraph 22 of the Plaintiff's Amended Complaint.

13. The Defendants deny the allegations of Paragraph 23 of the Plaintiff's Amended Complaint and would allege and show that they have every legal right to dig up and remove the culvert located on their property, that their construction plans were approved by the SIPOA and the Town of Seabrook Island, and the County of Charleston, and that their residence was built in compliance with the approved plans.

14. The Defendants deny the allegations of Paragraph 24 of the Plaintiff's Amended Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER AND
FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)

15. The Defendants would allege and show that by letter dated September 9, 2002, from the lent owner of Lot 22, Carroll Gantz, requesting that the SIPOA remove the drainage easement and NO BUILD AREA on Lot 22, which was signed by the Executive Vice President of the

SIPOA, the Plaintiffs had actual and constructive notice of the abandonment of the easement. (Attached hereto as Exhibit "A" and incorporated by reference herein).

16. The actual and constructive notice to the public in general and to the Plaintiffs, specifically, of the abandonment of the easement and NO BUILD AREA was by way the plat by Forsberg Engineering and Surveying dated January 17, 2001, labeled "PLAT SHOWING ABANDONMENT OF AN EXISTING 20' DRAINAGE EASEMENT" and recorded in the Office of the RMC for Charleston County in Plat Book EF at Page 883 on September 11, 2002 (Attached hereto as Exhibit "B" and incorporated by reference herein)

17. As a result of the Plaintiffs' failure to commence this action within time allowed by the applicable statutes of limitation after receiving notice, this matter should be dismissed. . *See* S.C. Code Ann. §15-3-530.

FOR A FURTHER ANSWER AND
FOR A SECOND AFFIRMATIVE DEFENSE
(Additional Statute of Limitations)

18. The McLaughlins took title to their property by deed dated October 1, 2002, which did contains express language stating that the 20' easement and NO BUILD AREA had been abandoned referring the Forsberg Engineering plat attached hereto as Exhibit "B". The deed to the McLauglins clearly showed a 10' new easement putting the Plaintiffs on actual and constructive notice of the abandonment of the 20' easement and NO BUILD AREA. The deed to the McLaughlins was recorded in the Office of the RMC for Charleston County in Book L421 at Page 820 on October 1, 2002. (Attached hereto as Exhibit "C" and incorporated by reference herein).

19. The actual notice to the public in general and to the Plaintiffs, specifically, of the abandonment of the easement and NO BUILD AREA was by way of the deed to the

McLaughlins recorded in the Office of the RMC for Charleston County in Book L421 at Page 820 on October 1, 2002. (Attached hereto as Exhibit "C" and incorporated by reference herein).

20. As a result of the Plaintiffs' failure to commence this action within time allowed by the applicable statutes of limitation after receiving notice, this matter should be dismissed. . *See* S.C. Code Ann. §15-3-530.

FOR A FURTHER ANSWER AND
FOR A THIRD AFFIRMATIVE DEFENSE
(Estoppel by Judgment and Collateral Estoppel)

21. On December 9, 2008, the SIPOA which claimed ownership of the 20' drainage easement and NO BUILD AREA instituted an action against the Defendants in the Court of Common Pleas for Charleston County, Case Number 2008-CP-10-6975. That case sought injunctive relief against the Defendants on behalf of all of the property owners of Seabrook Island, including the Plaintiffs, to enjoin the Plaintiffs from building their home on the 20' drainage easement and NO BUILD AREA. The SIPOA dismissed that action on December 11, 2008, and, as such, the dismissal acts as a bar to the Plaintiffs under the doctrines of both estoppel by judgment and collateral estoppel. (A copy of the dismissal is attached hereto as Exhibit "D" and incorporated by reference herein).

FOR A FURTHER ANSWER AND
FOR A FOURTH AFFIRMATIVE DEFENSE
(Advice of Counsel)

22. At all times relevant hereto, the Defendants relied on advice of counsel that the 20' drainage easement and NO BUILD AREA had been abandoned by the SIPOA through its direct actions and by the filing of the plat and deed described in Paragraphs 15 through 21 herein and in the dismissal of the lawsuit described in Paragraph 22 herein.

FOR A FURTHER ANSWER AND
FOR A FIFTH AFFIRMATIVE DEFENSE
(Reliance on Third-Party Actions)

23. The SIPOA, its Architectural Review Board, the Town of Seabrook Island, and the County of Charleston all issued approvals and building permits to the Defendants, which actions lulled the Defendants into believing they had to right to build over the abandoned easement and former NO BUILD AREA so that the Defendants should be dismissed from this matter.

FOR A FURTHER ANSWER AND
FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

24. The Plaintiffs have known about the abandonment of the easement and NO BUILD AREA since 2002 and have not taken any steps to put in any alternative drainage system or protect their property in a timely fashion, or, in the alternative, asking the SIPOA to protect their interests, if any, and none of which are admitted, in any drainage easement.

FOR A FURTHER ANSWER AND
FOR A SEVENTH AFFIRMATIVE DEFENSE
(Acceptance)

25. The Plaintiffs have accepted the abandonment of the 20' drainage easement and NO BUILD AREA by not moving to intervene in the 2008 lawsuit by the SIPOA against the Defendants and by not bringing any separate action to stop the Defendants from building their home on the abandoned easement and NO BUILD AREA until years after the Defendants' home was completed.

FOR A FURTHER ANSWER AND
FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

26. The Plaintiffs have unclean hands in this action and are barred in equity from the relief they seek in that they harass, disturb, and menace the Plaintiffs in the use and enjoyment of their property.

FOR A FURTHER ANSWER AND
FOR A NINTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, and Laches)

27. The Defendants would allege and show that the Plaintiffs have waived and are estopped from claiming the relief requested. The Plaintiffs stood idly by while the Defendants commenced and finished the construction of their residence and made no objection while the Defendants changed their position regarding the construction, so as to have acquiesced in the process estopping them from bringing this action and seeking relief. *McClintic v. Davis*, 228 S.C. 378, 90 S.E.2d 364 (1955).

FOR A FURTHER ANSWER AND
FOR A TENTH AFFIRMATIVE DEFENSE
(Natural Surface of the Land)

28. The Defendants would allege and show that there is a natural depression on the Plaintiffs' property so that the water holds and does not drain through no fault of the Defendants and which the Defendants have in no way disturbed so that the Plaintiffs' case should be dismissed.

FOR A FURTHER ANSWER AND
FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Reservation and Non-waiver of Additional Defenses)

29. The Defendants reserve and do not waive any additional defenses that may be discovered as this case progresses.

FOR A FURTHER ANSWER AND
FOR A TWELFTH AFFIRMATIVE DEFENSE
AND THIRD-PARTY COMPLAINT
(As to the Seabrook Island Property Owners Association ("SIPOA"))

30. The Defendants repeat and reallege Paragraphs 1 through 30 above as though repeated herein verbatim.

31. The Defendants are the owners of property located at 3061 Baywood Drive on Seabrook Island, South Carolina, and are members of the Seabrook Island Property Owners Association.

32. The Third-Party Defendant Seabrook Island Property Owners Association ("SIPOA") is a non-profit corporation organized and existing under the laws of the State of South Carolina which has a membership composed of all property owners on Seabrook Island. Its principal place of business in in Charleston County, South Carolina, and it is subject to the jurisdiction of this Court.

33. The Defendants property at 3061 Baywood Drive is also known as Lot 22, Block 32, Seabrook Island, and was purchased by the Defendants from Carroll M. Gantz and Lorraine Gantz on October 1, 2002.

34. SIPOA is the former owner of a 20' drainage easement crossing the northern boundary of Lot 22, Block 32 and the former owner of a NO BUILD AREA extending from the easement to the property line.

35. As set forth more fully above and below, the SIPOA abandoned the 20' drainage easement and NO BUILD AREA so that neither the 20' drainage easement nor the NO BUILD AREA exist on the Defendants' property.

36. The SIPOA, as the Third-Party Defendant, is liable to the Defendants for all or part of the Plaintiffs' claim for the actions brought against the Defendants.

37. Additionally, the Defendants demand pursuant to Rule 14 (c) SCRCP that the Plaintiffs be awarded any judgment against the Third-Party Defendants as well as the Defendants due to the actions of the SIPOA more fully set forth herein.

38. The deed from the developer to the first owner of Lot 22, Block 32 has a 20' drainage easement crossing the northern boundary of the lot and a NO BUILD AREA extending from the drainage easement to the end of the property line along the golf course.

39. On May 20, 2002, the Board of Directors of SIPOA took a vote, recorded in the minutes, abandoning the 20' drainage easement and NO BUILD ZONE and directing the seven (7) affected property owners of Lot 22, 23, 24, 25, 26, 27, and 28, Block 32, that the removal of the drainage pipe would be the responsibility of the property owners. (See SIPOA Board motion to abandon easement as set forth in the minutes of the SIPOA attached hereto as Exhibit "E" and incorporated by reference herein.

40. On September 9, 2002, Carroll Gantz, the predecessor in interest to Lot 22, Block 32 obtained written approval from the Executive Vice President of SIPOA and the Town Administrator for the Town of Seabrook Island to record the abandonment of easement. From that date forward, the Plaintiffs were on actual and constructive notice that the 20' drainage easement and NO BUILD ZONE had been abandoned.

41. The Plaintiffs and the other owners of lots at Block 32 whose lots were burdened by the 20' drainage easement and NO BUILD ZONE were aware of the SIPOA's decision to abandon the easement in 2002.

42. The actual notice to the public in general and to the Plaintiffs, specifically, of the abandonment of the 20' drainage easement and NO BUILD ZONE on Lot 22 was memorialized by the plat of Forsberg Engineering and Surveying dated January 17, 2001, labeled "PLAT SHOWING THE ABADONMENT OF AN EXISTING 20' DRAINAGE EASEMENT' and recorded in the Office of the RMC for Charleston County in Book EF at Page 883 on September 11, 2002. (Attached hereto as Exhibit "B" and incorporated by reference herein).

43. On October 1, 2002, the Defendants purchased Lot 22, Block 32 from Carroll M. Gantz and Lorraine D. Gantz for the sum of $170,000.00. The deed to the Defendants from the Gantzes references the Forsberg Plat of January 17, 2001, which plat clearly showed the abandonment of the 20' drainage easement and NO BUILD ZONE.

44. At the October 1, 2002, closing the Defendants were represented by Eric Davidson, Esq., who referenced the Forsberg Plat in the deed and which deed was recorded in the Office of the RMC for Charleston County in Deed Book L421 at Page 820. From that date forward, the Plaintiffs knew or should have known by way of actual and constructive notice that the 20' drainage easement and NO BUILD ZONE had been abandoned by the SIPOA.

45. In the Spring of 2006, the McLaughlins submitted a plat to the SIPOA Architectural Review Board (the "ARB") to build their home at 3061 Baywood Drive. They were verbally advised by Coy Foster, Director of the SIPOA ARB of their financial obligation to remove the pipe of the abandoned 20' drainage easement at their own expense.

46. During the subsequent presentation of their building plans for their house and landscaping to the SIPOA ARB by architect Whitney Powers, the SIPOA Director Coy Foster again reminded the Defendants that they were financially responsible for removing the pipe from the abandoned 20' drainage easement.

47. On two other occasions, while the Defendant Paul McLaughlin was at meetings at the SIPOA offices regarding the planning of the Defendants' home, John Wells, SIPOA senior staffer in charge of roads and infrastructure, advised Paul McLaughlin of the Defendants' responsibility to remove the pipe at their expense.

48. On August 18, 2006, the Defendants received written approval from the SIPOA ARB to build their home as sited on their lot and assume all responsibility for the abandoned drainage easement. (See letter attached hereto as Exhibit "F" and incorporated by reference herein).

49. In June 2008, the Defendants obtained construction financing to build their home as approved by the SIPOA ARB, which was obtained as a result of their reliance on the representations made to the Defendants by the SIPOA.

50. Thereafter, later in June, 2008, the Defendants were informed by the SIPOA that there were objections from some neighbors about building their home as situated because of the abandoned drainage pipe. The Defendants received verbal assurances from the Chair of the SIPOA Legal Committee, Ron Ciancio, that the neighbors' concerns would be resolved shortly.

51. In September 2008, Sam Reed, President of the SIPOA, convened a meeting with the Defendants and their adjacent neighbors. The Defendants were represented by counsel at the meeting. Also in attendance were their architect, Whitney Powers, and a representative from Easterlin Construction who were there to review the matter of the abandoned drainage pipe

located in the abandoned 20' drainage easement and to hear a report from the engineer, Robert George, about removing the pipe and a proposed remedy to deal with its removal.

52. On the same day as the meeting in 2008, the Defendants agreed to give the SIPOA a new easement in the setback area between their property and the Plaintiffs' property for the SIPOA to install the remedy proposed by Robert George. There was a tentative agreement reached and a meeting was scheduled to formalize the agreement with the Plaintiffs, the Defendants, and the other neighbors a week letter. This was a voluntary gesture of good will and good faith by the Defendants and was intended to resolve the concerns of all involved.

53. Immediately after that meeting, the SIPOA staff person who reported to John Wells, along with the Plaintiff Richard Ralph, the Defendant Paul McLaughlin, Robert George, Whitney Powers, Mr. B. Easterlin, Mr. A. Easterlin, and Mr. Crater, owner of Lot 21, went to the Defendants' property review the decision and solution. Mr. Wells' assistant was asked by Mr. McLaughlin in the presence of Mr. Ralph to ask Mr. Reed and Mr. Thompson to draw up paperwork to finalize the details of the agreement to implement Mr. George's proposal and for the McLaughlins to grant a new easement along the property line adjacent to the Ralphs property.

54 . By the time of the next meeting, the Ralphs backed out of their support of the proposal, despite the fact that were not going to incur any expenses or have any easement on their property.

55. Between September and December, after repeated calls and emails to Ron Ciancio of the SIPOA and verbal assurances that the resolution would be forthcoming and after the McLaughlins provided an estimate of the costs of installing Robert George's proposed solution, the SIPOA stated that it would not bear the full costs of the remedy and expected the Defendants

to pay some of the costs and to bear the financial responsibility of negotiating and paying the Seabrook Island Club for all costs for granting any easement for the installation portion of Robert George's proposed solution on the golf course.

56. On advice of counsel, the Defendants asserted that they were under no obligation whatsoever to pay for anything related to the installation of the proposed remedy. It was not a condition of purchase. It was not a condition of the SIPOA approval to build. The agreement to grant a new easement, without costs to the SIPOA, was sufficient economic consideration.

57. In November 2008, upon advice of counsel, the Defendants removed the drainage pipe and began construction of their home as approved by the SIPOA.

58. On December 9, 2008, the SIPOA instituted a case against the Defendants in the Court of Common Pleas for Charleston County, Case Number 08-CP-10-6975, seeking injunctive relief on behalf of ALL Seabrook Island property owners, including the Plaintiffs, and seeking to stop the Defendants from building their home on the abandoned 20' drainage easement and NO BUILD AREA unless the Defendants re-worked drainage plans by installing an alternative or substitute drainage system. That lawsuit was dismissed two days later on December 11, 2008.

59. On June 4, 2009, the Defendants were contacted by Barbara Measter, Chair of the SIPOA Legal Committee about whether they would consider amending their landscape plan to add two drains on the Plaintiffs' side of the Defendants' property. The Defendants agreed and submitted a revised plan and correspondence. The SIPOA granted the Defendants the right to connect the surface drains to the remaining portion of the pipe that exists on their property, and the two drains have been installed.

60. On October 5, 2009, the SIPOA contacted the Defendants though John Thompson, the CEO, and Scott Wallinger, the President) about agreeing to let equipment cross the rear portion

of their property to install a junction box on the ending of the pipe and to grant the Defendants and all other property owners the right to install surface drains to the pipe. The Defendants agreed to the SIPOA request but informed the SIPOA that they were near completion of their landscaping plan. The Defendants indicated that there was a short timeframe to install the junction box without delaying the completion of their home. They indicated that once the rear landscaping was installed, the SIPOA would have to assume responsibility for repairing any damage to the landscaping. The Plaintiffs requested a delay and the SIPOA subsequently withdrew their offer to install a junction box.

61. But for the representations, actions, and writings of the SIPOA in 2002 and 2008, upon which the Defendants relied, materially changed their positions, and were entitled to rely, this dispute and the Plaintiffs' subsequent lawsuit concerning the validity of the SIPOA's abandonment of the 20' drainage easement and NO BUILD AREA would not have been commenced.

62. As a direct and proximate result of the claims set forth above, the Defendants as Third-Party Plaintiff demand judgment against the Third-Party Defendants by the Plaintiffs and themselves pursuant to Rule 14 SCRCP, on in the alternative, should the Plaintiffs prevail in their action against the Defendants, the Third-Party Defendant be held liable for all or part of those claims against them

WHEREFORE, having fully answered the Plaintiffs' Amended Complaint and having set forth their Third-Party Complaint, the Defendants and Third-Party Plaintiffs pray that this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding a judgment against the Third-Party Defendant in the Plaintiffs' favor pursuant to Rule 14 SCRCP.
3. Holding the Third-Party Defendant liable for all or part of the Plaintiffs' claims, if any, against the Defendants.
4. Awarding the Defendants' costs, expenses, and reasonable attorneys' fees for having to defend this action and prosecute their third-party claims; and
5. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

G. Hamlin O'Kelley, III
SC Bar No. 15491
Maria E. Kiehling
S.C. Bar No. 76799
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Mt. Pleasant, South Carolina
July 19, 2013

Attorneys for the Defendants/Third-Party Plaintiffs Paul Dennis McLaughlin and Susan Rode McLaughlin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PAUL DENNIS MCLAUGHLIN'S AND SUSAN RODE MCLAUGHLIN'S ANSWER TO THE PLANITIFF'S AMENDED COMPLAINT AND THIRD-PARTY COMPLAINT** has been served upon counsel as stated below this 19th Day of July, 2013, by depositing same in the United States mail, postage pre-paid, addressed as follows:

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402

Eugene H. Matthews, Esq.
Richardson, Plowden & Robinson, PA
1900 Barnwell Street
Columbia, SC 29201

G. Hamlin O'Kelley, III

FILED
2013 JUL 22 PM 1:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

EXHIBIT "A"

(2)

carroll gantz design

Recorded in Charleston Co.
File EF 9.883

September 9, 2002

Mr. Randy Pierce
Seabrook Island Town Hall

Dear Randy,

As owner of subject lot, am hereby submitting a request for you to record a new plat for lot 22, Block 32, 3061 Baywood Drive, TMS No. 147-03-00-114, removing the drainage easement parallel to the golf fairway and the "no build" zone thereon. Application, revised mylars, and prints are enclosed.

In a meeting on February 12, 2002, I met with Messrs Doug Smith, John Wells (SIPOA), and Daniel Forsberg (surveyor) with these same revised plats to request recording the revised plat, (just completed by the surveyor)for which Mr. Wells assured us that the POA had granted their permission to proceed. It was agreed that Mr. Smith needed a letter from the POA to confirm this, and Mr. Wells agreed to send such a letter to Mr. Gantz.

On March 20, 2002 Mr. Wells notified me that the POA Roads and Storm Drainage Committee met on March 18, and agreed that there was no further need for the subject easement. Mr. Wells said that paperwork was to be initiated.

On May 3, 2002, Mr. Wells notified me that the R&D Committee had approved the change, and that I could "prepare any documentation that is required to remove the easement." I assumed he meant the survey of the lot, already completed. He said he would be able to give me a "letter of agreement" by the end of May.

817 Treeloft Trace, Seabrook Island, SC 29455
Phone 843-768-3780 Fax 843-768-3739
e-mail : carrgantz@worldnet.att.net

On May 21, 2002, Mr. Wells advised me that the POA Board of Directors had approved the abandonment of the subject easement, as well as for lots 23 through 28, and that the process was now to submit the changes to the POA lawyers for their review and comments.

On June 14, 2002, Mr. Wells advised me that the letter was with the lawyers, and that it was to be back within the next 7-10 days.

On August 25, 2002, I advised Mr. Wells that we had a potential buyer for the lot. Mr. Wells advised me on August 28 that the lawyers agreed that the easement could be released. No mention of when the expected letter would be available.

On September 5, 2002, Mr. Wells advised me that the letter was still being reviewed, and advised me not to wait for it, but to go to the Town hall to request recording of the revised plat. I met with you on this day, and you said you needed POA assurance of the change. You suggested I write this letter, review it with Mr. Wells, and submit it to Mr. Giuffreda for his seal on behalf of the POA, so that you could proceed.

This has now been done and I herewith submit this letter, along with the required fees, mylars, application and prints. I now have a purchase agreement for the lot from a buyer, but do not know the closing date as yet.

Sincerely,

Carroll Gantz 9/10/02

Carroll Gantz date

Authorization by POA that the proposed changes of removal of drainage easement and "no build" zone on the subject lot have been reviewed and approved.

POA officer c. Sept 2002 date

By its Executive Vice President

Cc: POA

817 Treeloft Trace. Seabrook Island, SC 29455
Phone 843-768-3780 Fax 843-768-3739
e-mail : carrgantz@worldnet.att.net

(2)

Town Of Seabrook Island

Zoning Permit Application

Phone 768-9121

Please Print

Fee Schedule

Permit for construction	$25.00
Permit for repairs, alteration and additions	$15.00
Application fees for recording of plats varies	

Paid $50

Date 5 SEPT 2002 TMS NO: 147 03 00 114

APPLICANT NAME: CARROLL GANTZ PHONE: 768-3780
(PRINT NAME LISTED IN TOWN'S BUSINESS LICENSE IF APPLICANT IS A BUSINESS)

NAME OF BUSINESS CONTACT: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE _____

PROPERTY OWNERS NAME: CARROLL + LORRAINE GANTZ PHONE: 768-3780

OWNERS MAILING ADDRESS: 817 TREE LOFT TRACE

CITY: JOHNS ISLAND STATE: SC ZIP CODE: 29455

PROPERTY LOCATION: STREET ADDRESS 3061 BAYWOOD DRIVE LOT 22 Block 32

PURPOSE OF PERMIT: RECORDING OF PLAT

TOTAL VALUE OF CONSTRUCTION: _____ BASE FLOOD ELEVATION: _____ ZONE: _____

CONSTRUCTION COST: _____ DATE OF SIPOA APPROVAL: _____ (When applicable)

APPLICANTS SIGNATURE: Carroll Gantz DATE: 5 SEPT 2002

THIS IS AN APPLICATION ONLY:
PERMIT WILL BE ISSUED UPON APPROVAL BY THE TOWN OF SEABROOK ISLAND

January 14, 2002 Amended 5/17/2001 to remove reference to VAQ from fee schedule

EXHIBIT "B"

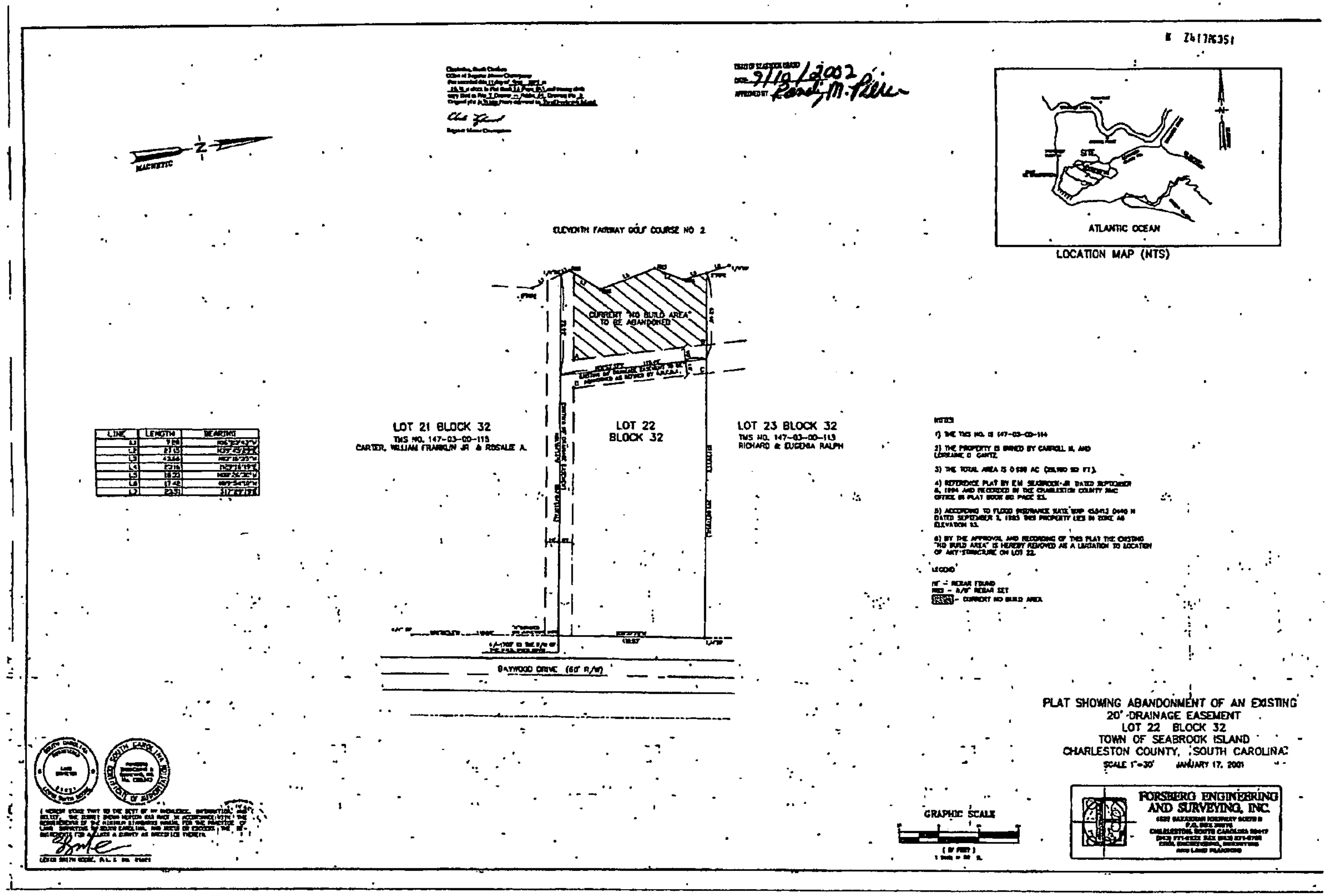
LOCATION MAP (NTS)
ATLANTIC OCEAN
SITE
MAGNETIC
ELEVENTH FAIRWAY GOLF COURSE NO 2
CURRENT "NO BUILD AREA" TO BE ABANDONED
LOT 21 BLOCK 32
TMS NO. 147-03-00-115
CARTER, WILLIAM FRANKLIN JR & ROSALIE A.
LOT 22
BLOCK 32
LOT 23 BLOCK 32
TMS NO. 147-03-00-113
RICHARD & EUGENIA RALPH
BAYWOOD DRIVE (60' R/W)
LEGEND
CURRENT NO BUILD AREA
PLAT SHOWING ABANDONMENT OF AN EXISTING
20' DRAINAGE EASEMENT
LOT 22 BLOCK 32
TOWN OF SEABROOK ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
SCALE 1"=30' JANUARY 17, 2001
GRAPHIC SCALE
FORSBERG ENGINEERING AND SURVEYING, INC.

EXHIBIT "C"

BK L 421PG820

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that WE, CARROLL M. GANTZ AND LORRAINE D. GANTZ, Trustees of Carroll M. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245, and AND LORRAINE D. GANTZ AND CARROLL M. GANTZ, Trustees of Lorraine D. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249, (the "Grantors"), for and in consideration of the sum of ONE HUNDRED SEVENTY THOUSAND AND 00/100 ($170,000.00) DOLLARS, to TAX FREE EXCHANGE SERVICES, INC., in hand paid, before the sealing of these presents by PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, in the State aforesaid, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, (the "Grantees"), as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns, the following described property, to wit:

See Attached Exhibit "A" for Legal Description

Grantee's Mailing Address:
110 Sugar Maple Court
Winston-Salem, NC 27106

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 Grantees, as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns,, forever.

AND subject to any and all Restrictive Covenants, Easements, Rights-of-Way and Conditions, the said Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against themselves and their heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

The singular number as used herein shall include the plural. Wherever there is reference in the covenants and agreements herein contained to any of the parties hereto, the same shall be construed to mean the parties hereto, as well as the heirs, representatives successors, and assigns of the same.

IN WITNESS WHEREOF, the Grantors have caused these presents to be executed in their names this 1st day of October, 2002.

WITNESSES:

CARROLL M. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

LORRAINE D. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

WITNESSES:

LORRAINE D. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

CARROLL M.. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned Witness and made oath that (s)he saw the within named Grantors sign, seal and as their act and deed, deliver the within written instrument, and that (s)he along with the other subscribing witness herein, witnessed the execution hereof.

signature / Witness #1

SWORN to before me this
1st day of October, 2002.

Notary Public for South Carolina
My commission expires:

"EXHIBIT A"
LEGAL DESCRIPTION

ALL that certain piece, parcel or lot of land, situate, lying and being on Seabrook Island, County of Charleston, State of South Carolina, as shown and designated as LOT 22, BLOCK 32, on a Plat entitled, "Plat Showing the Abandonment of an Existing Twenty (20') Foot Easement on Lot 22, Block 32, Town of Seabrook Island, County of Charleston, SC" prepared by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully and at large appear.

TMS # 147-03-00-114

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the following matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

SUBJECT to a ten (10') foot easement for drainage as shown on a Plat made by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883.

This being the same property conveyed to Carroll M. Gantz and Lorraine D. Gantz, Trustees, Carroll M. Gantz Revocable Trust a Memorandum of which Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245 by Deed of Carroll M. Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 557, and by Deed of Lorraine Gantz to Carroll M. Gantz and Lorraine D. Gantz, Trustees Lorraine D. Revocable Trust a Memorandum of Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249 by Deed of Lorraine Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 567.

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
) (Closing Date) October 1, 2002
COUNTY OF CHARLESTON)

AFFIDAVIT

BK L 421PG824

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY Carroll M. Gantz and Lorraine D. Gantz, Trustees of Carroll M. Gantz Revocable Trust, a Memorandum of which trust is dated August 2, 2000, and BY Lorraine D. Gantz and Carroll M. Gantz, Trustees of Lorraine D. Gantz Revocable Trust, a Memorandum of which is dated August 2, 2000, TO Paul Dennis McLaughlin and Susan Rode McLaughlin ON October 1, 2002.

3. Check one of the following: The deed is:

(a) __x__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b)_____subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c)_____EXEMPT from the deed recording fee because (Exemption #___) (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item #7 of this affidavit.

4. Check one of the following if either item 3(a) or Item 3(b) above has been checked.

(a) __x__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $170,000.00.

(b) The fee is computed on the fair market value of the realty which is n/a

(c) __The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a

5. Check YES_____ or NO___x__ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is n/a.

6. The DEED Recording Fee is computed as follows:

(a)	$170,000.00	the amount listed in Item 4 above
(b)	00.00	the amount listed on Item #5 above (no amount, please zero)
(c)	$170,000.00	subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as closing attorney.

8. Check if Property other than Real Property is being transferred on this Deed.

(A) _____Mobile Home

(B) _____Other (Furniture, Furnishings and Fixtures)

9. DEED OF DISTRIBUTION – ATTORNEY'S AFFIDAVIT: Estate of _____ deceased Case Number _____, personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s) he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____, deceased, and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

_____
Grantor, Grantee or Legal Representative
Connected with this Transaction
Eric J. Davidson
(Printed Name)

SWORN to before me this 1st day of October 2002.

_____
Notary Public for State of: _____
My Commission expires: _____

BK L 421PG825

RECORDER'S PAGE
This page must remain with the Original Document

DAVIDSON
BENNETT &
WIGGER

Recording Fee	11.00
State Fee	442.00
County Fee	187.00
Postage	
Total	640.00

C

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L421-820

2002 OCT -9 PM 3:27

CHARLESTON COUNTY SC

PID VERIFIED BY ASSESSOR
REP LMG
DATE 10/17/02

RECEIVED FROM RMC

OCT 17 2002

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

EXHIBIT "D"

FORM 4
STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS Case No.: **2008-CP-10-6975**
SEABROOK ISLAND POA versus PAUL DENNIS MCLAUGHLIN

PLAINTIFF(S) DEFENDANT(S)

CHECK ONE:

[ ] **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

[ ] **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[X] **ACTION DISMISSED (CHECK REASON):** [ ] Rule 12(b), SCRCP; [X] 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_____

[ ] **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
[ ] Affirmed; [ ] Reversed; [ ] Remanded; [ ] Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2011 JAN 27 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY_____

IT IS ORDERED AND ADJUDGED: [ ] See attached order. (Formal order to follow)
[X] Statement of Judgment by the Court:

Court advised case dismissed per Attorney Fowler.

Dated at Charleston, South Carolina, this 7th day of January , 2011.

PRESIDING JUDGE

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____, 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)**

Elaine Fowler

SCCA SCRP Form 4Revised 6/2008 Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2008-CP-10-6975
SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION,	)	
Plaintiff,	)	**WITHDRAWAL OF MOTION FOR TEMPORARY RESTRAINING ORDER**
v.	)	
PAUL DENNIS MCLAUGHLIN and SUSAN RODE MCLAUGHLIN,	)	
Defendants,	)	

FILED
2008 DEC 11 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Now comes the Plaintiff, the Seabrook Island Property Owners Association, by and through its undersigned attorneys, pursuant to Rule 65, South Carolina Rule of Civil Procedure, and hereby withdraws the motion for an immediate, temporary restraining order against Defendant's further action regarding removal or disruption of a drainage line.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

Respectfully submitted,

David B. Wheeler (#6055)
Trudy H. Robertson (#64856)
Robert E. Sumner, IV (#71728)
MOORE & VAN ALLEN, PLLC
40 Calhoun Street, Suite 300
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: 843-579-7000
Facsimile: 843-579-7099

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

December 11, 2008

CHARLESTON\353095v1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2008-CP-10-6975
SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION,	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
PAUL DENNIS MCLAUGHLIN and SUSAN RODE MCLAUGHLIN,	)	
Defendants,	)	

This is to certify that I have this date served a copy of the foregoing ***Withdrawal of Motion for Temporary Restraining Order*** via U.S. Mail and e-mail, with proper postage affixed thereon, to:

Eric J. Davidson, Esquire
Davidson & Bradshaw, LLC
125-H Wappoo Creek Dr.
Charleston, SC 29412

Kathy M. Gulick

Kathy M. Gulick

CHARLESTON, SC

December 11, 2008

EXHIBIT "E"

May 20, 2002 SIPOA Board Motion to abandon the easement – from minutes

Mr. Giuffreda clarified Mr. Muenow is talking about Block 32 Lot 22 to Lot 28. A no build zone is currently implied. Mr. Giuffreda would recommend the Board vote favorably on Mr. Muenow's proposal. Discussion followed. Various questions/comments were asked and answered. Mr. Muenow made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote.

EXHIBIT "F"

(K)

August 18, 2006

Mr. & Mrs. McLaughlin
455 South Church Street
Winston Salem, NC., 27101

Dear Paul & Susan,

The Architectural Review Board has approved the Preliminary Plans submitted for Block 32 Lot 22, Seabrook Island, SC. Please address the following comments of the ARB and re-submit plans for Conditional Review.

1. Owner is to assume all responsibility for the underground drainage line at the 20' drainage easement / driveway.
2. Owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe.
3. Property lines must be located prior to any grading because of the Right-Of-Way for the SIPOA 20' drainage easement.

Please submit Conditional Plans using CADD software (including colors for entry doors, garage doors, and window framing, as well as window frame cladding) by November 20, 2006 to avoid additional review fees. Before releasing the Conditional Plan with the ARB stamp of approval, the ARB is requiring that you submit an updated CD with the following information:

Site Plan
All elevations and design detail
Floor plans
All finishes and colors noted on the plans

Please note that the SIPOA uses AutoCadd LT 2005 software.

Please call me at 843-243-8522 if you have any questions.

Sincerely,

Coy Foster, ARB Administrator
ARB Admin / Block 32 Lot 22 McLaughlin 8 18 06
CC: Whitney Powers
184 East Bay Street, Suite 201
Charleston, SC., 29401

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

July 19, 2013

NANCY KELLER
LEGAL ASSISTANT
nancy.keller@buistbyars.com

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad St., Suite 106
Charleston, SC 29401

Re: Richard Ralph and Eugenia Ralph v. Paul Dennis McLaughlin and Susan Rhose McLaughlin, et al.
Case No. 2011-CP-10-7065
File No.: 2012010118

Dear Ms. Armstrong:

Enclosed please find an original and one (1) copy of:

(1) Summons for the Third-Party Complaint; and

(2) Paul Dennis McLaughlin's and Susan Rhode McLaughlin's Answer to the Plaintiff's Amended Complaint and Third-Party Complaint in the above-referenced matter.

Please file the original and return a file-stamped copy to me in the enclosed pre-paid envelope. By copy of this letter, I am serving same upon all counsel of record as set forth below herein. Should you have any questions, please feel free to contact me. With kind regards, I remain

Yours very truly,

Nancy Keller

Enclosures
cc. (w/enc.) G. Dana Sinkler, Esq.
Eugene H. Matthews, Esq.

{00362192.DOCX}

ORIGINAL

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Richard Ralph and Eugenia Ralph,)	C/A No.: 2011-CP-10-07065
Plaintiffs,)	
vs.)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,)	**ANSWER OF THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION TO AMENDED THIRD-PARTY COMPLAINT**
Defendants.)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,)	
Third-Party Plaintiffs,)	
vs.)	
Seabrook Island Property Owners Association,)	
Third-Party Defendant.)	

FILED
2013 AUG 23 PM 12: 16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOW COMES Third-Party Defendant Seabrook Island Property Owners Association (hereinafter "SIPOA"), by and through counsel, and responds to the Amended Third-Party Complaint of Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin (hereinafter the "McLaughlins"), designated as the "Twelfth Affirmative Defense and Third-Party Complaint" starting at Paragraph 30 of their pleading. SIPOA denies all allegations not specifically admitted, and otherwise responds as follows.

ANSWER TO DEFENDANT'S THIRD-PARTY AMENDED COMPLAINT

30. With regard to Paragraphs 1 through 30 of the Amended Third-Party Complaint, SIPOA refers all parties to the documents that it has already produced, and denies and demands strict proof of any allegation made by either the Plaintiffs (the "Ralphs") or Defendants/Third-

Party Plaintiffs (the "McLaughlins"), especially including the Ralphs' allegations that they did not know of, or could not have reasonably discovered, the actions in related to the abandonment of the easements in 2002 and thereafter, of which they now belatedly complain.

31. SIPOA admits that the McLaughlins own property at Baywood Drive on Seabrook Island and are members of SIPOA.

32. SIPOA admits that it is a non-profit corporation organized under the laws of South Carolina, and that its members own property on Seabrook Island. SIPOA also admits that its principal place of business in Charleston County and that SIPOA is subject to the jurisdiction of this Court. SIPOA denies and demands strict proof of the all other allegations of the McLaughlins in Paragraph 32 of the Amended Third-Party Complaint.

33. SIPOA admits that the McLaughlins own Lot 22, Block 32, on Seabrook Island. SIPOA denies and demands strict proof of the all other allegations of the McLaughlins in Paragraph 33 of the Amended Third-Party Complaint.

34. SIPOA admits that there was a drainage easement that existed in the Baywood Drive area on Seabrook Island, and that the purpose of the easement was to drain common areas around Baywood Drive, not individual lots. There was originally a "NO BUILD" area around the easement. SIPOA denies and demands strict proof of the all other allegations in Paragraph 34 of the Amended Third-Party Complaint.

35. It is admitted that SIPOA abandoned its interest in the drainage easement mentioned above, pursuant to certain conditions taken as a part of its abandonment of its interest in the easement. SIPOA denies and demands strict proof of the all other allegations in Paragraph 35 of the Amended Third-Party Complaint.

36. SIPOA denies that it is liable to the McLaughlins or any other party to this action and denies all other allegations of the McLaughlins in Paragraph 36 of the Amended Third-Party Complaint.

37. SIPOA denies that it is liable to the McLaughlins or any other party to this action and denies all other allegations of the McLaughlins in Paragraph 37 of the Amended Third-Party Complaint.

38. The original deed referenced by McLaughlins in Paragraph 38 of their Amended Third-Party Complaint speaks for itself. SIPOA denies and demands strict proof of the all other allegations of the McLaughlins in Paragraph 38 of the Amended Third-Party Complaint.

39. SIPOA denies any allegation of the McLaughlins in Paragraphs 39 through 62 of their Amended Third-Party Complaint that SIPOA is liable to any party in any manner in this lawsuit, and denies and demands strict proof of any allegation that is inconsistent with SIPOA's denial of liability to any party in this case.

HAVING FULLY responded to the allegations of the McLaughlins in their Amended Third-Party Complaint, SIPOA now sets forth its DEFENSES AND AFFIRMATIVE DEFENSES as follows:

FOR A FIRST DEFENSE

1. SIPOA is not liable to any party to this action on grounds that any action for which damages could be awarded were caused by the intervening acts of others, or the contributory negligence of other parties to this action.

FOR A SECOND DEFENSE

2. SIPOA is not liable to any party to this action under the doctrines of "unclean hands," estoppel, laches, and waiver.

FOR A THIRD DEFENSE

3. SIPOA is not liable to any party to this action because no party can show that it has suffered damages, or that it mitigated its damages.

FOR A FOURTH DEFENSE

4. SIPOA is not liable to any party to this action because the underlying claims are barred by the applicable statutes of limitations.

FOR A FIFTH DEFENSE

5. SIPOA is not liable to any party to this action for a claim for any damages, including punitive damages, as no party has sufficiently plead such a claim, and SIPOA is not subject to such a claim under S.C. Code Ann. § 33-56-180.

FOR A SIXTH DEFENSE

6. SIPOA is not liable to any party to this action for a claim under the doctrine of avoidable consequences.

FOR A SEVENTH DEFENSE

7. SIPOA is not liable to any party to this action for a claim because the Plaintiffs have failed to state, and cannot prove, the necessary elements for a cause of action for trespass.

WHEREFORE, having fully answered the Amended Third-Party Complaint herein and stated its defenses and affirmative defenses, Third-Party Defendant SIPOA demands a jury trial on all matters so triable and requests:

1. that the claims and relief sought by any party, including the Third-Party Plaintiffs, against SIPOA be denied in each and every respect; and

2. that the Court grant SIPOA such other and further relief as this Court may deem just and proper.

Dated this the 22nd day of August, 2013.

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews
PO Drawer 7788
Columbia, South Carolina 29202
803-771-4400
Facsimile 803-779-0016
Email: gmatthews@richardsonplowden.com

COUNSEL FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-7065 MOTION FOR PARTIAL SUMMARY JUDGMENT WITH AFFIDAVIT ATTACHED
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to the provisions of SCRCP 56, the Plaintiffs do hereby move for partial Summary Judgment against the Defendants as to the following issues:

1. That the Court declare, as the law of this case, that the two plats by which the original developer, Seabrook Island Company, first conveyed lots 21 through 28, Block 32, Seabrook Island, to wit: Plat of E.M. Seabrook dated September 6, 1984 and recorded in the RMC Office for Charleston County in Plat Book BD, page 23 and Plat of E.M. Seabrook dated April 29, 1987, revised May 8, 1987

and recorded in the RMC Office for Charleston County in Plat Book BN, page 49, established a plan for a 20' drainage easement and access for its maintenance by creation of a no build area on such lots.

2. That by virtue of that plan and conveyance of each of lots 21 through 28, Block 32, Seabrook Island, each owner of such lots acquired the fee simple ownership of the land occupied by the easement and no build area.

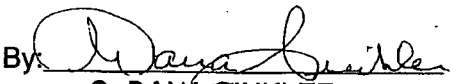
3. That by virtue of the conveyance of each lot subject to the 20' easement and no build area for the common use or benefit of each lot owner, as a matter of law a servitude was created as to each lot restricting the use of the land to that purpose. Restatement of Law – Property Restatement (Third) of Property, Chapter 2. Creation of Servitudes.

4. That by virtue of the conveyance according to the plats identified in paragraph 1 above, the Plaintiffs acquired an easement appurtenant to their lot over the lot owned by the Defendants which was unaffected by the action taken by the Seabrook Island Property Owners Association to abandon the easement and no build area.

5. That the action taken by the Defendants in destroying the drainage pipe leading to the Plaintiffs' property and building their dwelling on the no build area amounted to an unauthorized act of continuing trespass and the Defendants are liable as a matter of law for such damages thereby caused to Plaintiffs' property.

Respectfully submitted,

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina

February 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2014, I served the foregoing Motion for Partial Summary Judgment with Affidavit Attached on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelley, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
Attorneys for Defendants

Eugene H. Matthews, Esquire
Richardson Plowden
PO Drawer 7788
Columbia, SC 29202
Attorneys for Third-Party Defendant

FILED
2014 FEB 14 PM 4:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Laura D. Huthmacher

Laura D. Huthmacher

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT

AFFIDAVIT OF J. HOWARD YATES, JR., ESQ.

Upon first being duly sworn, I, J. Howard Yates, Jr., Esq., of 42 Broad Street, Charleston, S.C. 29401, depose and say as follows:

I am an attorney and have been licensed to practice law in South Carolina since 1985. Prior to attending law school, I was a real estate title examiner for nine years. Since 1987, I have been the Continuing Legal Education coordinator for the Real Estate Practice Section of the Charleston County Bar. My practice is limited to real property and probate matters. As a real estate title examiner and as an attorney, I have examined titles to real property in Berkeley, Dorchester, Colleton, Charleston and Florence Counties. In addition to the practice of law, I am an adjunct professor at the Charleston School of Law and teach a skills course on Title Examinations.

I have conducted an examination of title to real property owned by Richard Ralph and Eugenia Ralph. Their property is identified as Lot 23, Block 32, Seabrook Island and is shown on the plat recorded in Plat Book BN at Page 49. It was acquired by deed recorded April 10, 1997 in Book K-282 at Page 846, see attached Exhibit "A". The Ralph's property is more fully shown on two subdivision plats of Lots 7-25, Block 32 and Lots 2-20, Block 33, Seabrook Island recorded in the Charleston County RMC Office in Plat Book BN at Page 49, see attached Exhibit "B" and in Plat Book BD at Page 23, see Exhibit "C". On their face, these plats establish a common plan or scheme of development for the location of building lots, roads and easements. The plat found in Plat Book BN at Page 49 was recorded on May 26, 1987 and is found in the Ralph's chain of title. The plat found in Plat Book BD at Page 23 was recorded on February 25, 1985 and is found in the McLaughlin's chain of title.

A chain of title refers to the sequence of property transfers from the current owner to a root or source of title. It includes a record of deeds, plats, liens and encumbrances that affect a property.

These subdivision plats also show Lot 22, Block 32, Seabrook Island. This lot is owned by Paul and Susan McLaughlin. It lies adjacent to and to the Northwest of the Lot 23, Block 32. Both plats clearly show the existence of a 20 foot wide drainage easement, which runs in a generally north-south direction, and a *No-Build Area* on the West side of Lot 22. The No Build Area extends from Lots 22 through 25 in Block 32.

By purchasing pursuant to the plat recorded in Plat Book BN at Page 49, Richard and Eugenia Ralph have both a special property interest and a beneficial interest in the continued use of the 20 foot wide drainage easement on Lot 23 and in the No Build Area on that lot.

A plat showing the abandonment of the 20 foot wide drainage easement and of the No Build Area, which burdened Lot 22, Block 32 and benefited Lot 23, Block 32, was recorded on September 11, 2001 in Plat Book EF at Page 883, see attached Exhibit "D". This plat was incorporated by reference in the deed of conveyance to Paul and Susan McLaughlin which was recorded on October 9, 2002 Deed Book L-421 at Page 820, see attached Exhibit "E". The plat recorded in Plat Book EF at Page 883 modified the common plan of development established by the two senior plats.

No recorded document exists which indicates that Richard and Eugenia Ralph consented to or joined in any agreement to: 1). abandon the 20 foot wide drainage easement on Lot 22, Block 32, 2). abandon the No Build Area on Lot 22, Block 32 or 3). or modify the common plan of development for the lots subject to the No Build Area.

The plat reflecting this abandonment which was recorded in Plat Book EF at Page 883 is only found in the McLauglin's chain of title. It does not appear in the Ralph's title chain. It was recorded after the Ralphs acquired title pursuant to the subdivision plat recorded

on April 10, 1985 in Plat Book BN at Page 49. The plat recorded in Plat Book EF at Page 883 did not provide the Ralphs with constructive notice of abandonment, neither did the Ralphs provide recorded written consent or a release of their special property interest in the 20 foot wide easement and in the No Build Area. It is my conclusion that: 1). the plat recorded in Plat Book EF at Page 883 is not binding on the Ralphs and 2). the drainage easement and No Build rights acquired by the recording of plats recorded in Plat Books BN at Page 49 and BD at Page 23 remain in effect for the benefit of Richard Ralph and Eugenia Ralph.

FURTHER THE DEPONENT SAYETH NOT.

J. Howard Yates, Jr.
J. Howard Yates, Jr., Esq.

SWORN to and subscribed before me on
February 14, 2014 at Charleston, S.C.

Laura D. Huthmacher
Notary Public for South Carolina
My Commission Expires: 6-18-19.

BK K 282PG846

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

WHEREAS, at a meeting of the Board of Directors of Seabrook Ventures, Ltd., held on March 19, 1997, 1997, it was resolved to convey the property hereinafter described unto the Grantee for the consideration hereinafter expressed, and the undersigned officer was authorized on behalf of the Corporation to execute and deliver this Deed of Conveyance; NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS that SEABROOK VENTURES, LTD., (hereinafter referred to as "GRANTOR") in the State aforesaid, for/and in consideration of the sum of TWO HUNDRED EIGHTY-FOUR THOUSAND AND NO/100 DOLLARS ($284,000.00), to it in hand paid at and before the sealing of these presents by RICHARD RALPH AND EUGENIA RALPH, (hereinafter referred to as "GRANTEES") in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said GRANTEES, the following described real property, to-wit:

THE PROPERTY HEREBY CONVEYED IS DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY EXPRESS REFERENCE.

THE PROPERTY HEREBY CONVEYED BEING a portion of the property conveyed to the Grantor herein by deed of Starwood Capital Partners, L. P., dated August 12, 1993, and recorded in Book K-231, Page 394, Charleston County RMC Office.

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 GRANTEES, their Successors and Assigns, forever.

TMS NO. 147-03-00-113

GRANTEE'S ADDRESS:

Post Office Box 1472

Blue Bell, PA 19422

AND it does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said GRANTEES, their heirs and assigns, against it and its Successors, and all persons whomsoever lawfully claiming, or to claim, the same or any part hereof.

PLAINTIFF'S EXHIBIT A

WITNESS its Hand and Seal this 19th day of MARCH, in the year of our Lord, one thousand nine hundred and ninety-seven, and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SEABROOK VENTURES, LTD.:

/s/ J. R. Dill

/s/ Susan Craig Pond

By: /s/ Ralph H. Falls, III (SEAL)
RALPH H. FALLS, III

ITS: SECRETARY

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

The foregoing instrument was acknowledged before me this 19th day of March, 1997, by Seabrook Ventures, Ltd., by Ralph H. Falls, III, its Secretary.

/s/ Susan Craig Pond (SEAL)
NOTARY PUBLIC FOR NORTH CAROLINA

MY COMMISSION EXPIRES: 9/13/98

EXHIBIT "A"

ALL that certain lot, piece or parcel of land, situate, lying and being on Seabrook Island, Charleston County, State of South Carolina, and known and designated as LOT 23, BLOCK 32, on a plat by E.M. Seabrook, Jr., CE & LS, recorded in Plat Book BN, Page 49, in the Charleston County RMC Office.

Said lot having the size, shape, dimensions, buttings and boundings more or less as are shown on said plat, which is specifically incorporated herein by reference.

THIS CONVEYANCE IS SUBJECT TO the Covenants, Conditions, Restrictions, Limitations, Affirmative Obligations and Easements of record and more particularly set forth in instruments duly recorded in the RMC Office for Charleston County, as follows: Book N-100, at Page 296; as amended by instrument recorded in Book Y-110, at Page 143; and Second Modification thereto dated March 26, 1985 and recorded in Book J-144, at Page 67; Third Modifications of Protective Covenants dated April 24, 1987 and recorded in Book J-164, at Page 487; Also, Second restated and amended By Laws dated October 18, 1984 and recorded in Book B-141, at Page 267; as amended by instrument dated March 26, 1985 and recorded Book J-144, at Page 59; Third Restated and Amended By-Laws of the Seabrook Island Property Owners Association, dated August 1, 1989, and recorded in the RMC Office for Charleston County in Book L-186, Page 718; and Amendment filed in Book K-215, Page 001; Restatement and Fourth Modification of Protective Covenants for Seabrook Island Development, dated August 1, 1989, and recorded in the Charleston County RMC Office in Book L-186, Page 697; Restatement and Fifth Modification recorded in Book K-215, Page 23.

BK K 282PG849

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) AFFIDAVIT

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says that the property located at 3055 Baywood Drive, Seabrook Island, South Carolina 29455 bearing Charleston County Tax Map Number 147-03-00-113 was transferred by Seabrook Ventures, Ltd., to Richard W. Ralph on April 4, 1997.* and Eugenia Ralph

The transaction was:

XX

____ An arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $284,000.00.

____ Not an arm's length real property transaction and the fair market value of the property is n/a.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10, et. seq., because the deed is: n/a

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the closing attorney.

I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than one year, or both.

Purchaser, Legal Representative of the Purchaser or other Responsible Person Connected with the Transaction.

SWORN to before me this 4th day of April 1997.

Zan Suren Deitz
Notary Public, State of South Carolina
Qualified in Charleston County
Commission Expires: June 21, 2005

Notary Public for South Carolina
My Commission expires:

*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g., stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

(Seabrook/Ralph - 97-0396)

BK K 282PG850

DROSE, DAVIDSON & BENNETT
125 WAPPOO CREEK DRIVE

FILED

K282-846
97 APR 10 PM 3:27

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording Fee	10.00
State Fee	738.40
County Fee	312.40
Postage	
TOTAL	1060.80

TAS VERIFIED
BAC MOM
DTD 4/14/97

BKJ 165PG057

Filed for record in the Clerk's Office of Charleston County, South Carolina
Robert N. King
Register Mesne Conveyance

CURVE DATA					
CURVE	Δ	D	T	L	R
A-A	10°58'06"	6 860°	97 93	178 22	848 38
B-B	11°58'06"	6 896°	92 12	183 74	858 38
C-C	09°39'59"	4 839°	98 26	118 84	1184 37
D-D	07°38'59"	4 804°	61 48	122 96	1246 37
E-E	04°47'59"	6 009°	41 30	82 00	853 44
F-F	04°07'39"	6 413°	28 70	177 39	893 44
G-G	10° 19 30"	6 889°	77 89	161 18	868 20
H-H	10° 19 30"	6 889°	82 71	164 97	819 59
J-J	30°07' 40	15 618°	118 06	230 29	366 98
K-K	32°27' 40	13 433°	136 84	267 92	426 88
L-L	52°46 02	22 739°	184 86	321 85	251 78

SEVENTH FAIRWAY GOLF COURSE NO 2

SIXTH FAIRWAY GOLF COURSE NO 2

THE MAUL 24' R/W OVER 60' R/W

BAYWOOD DRIVE 60' R/W

BLOCK 33

BLOCK 32

NO BUILD AREA

PREVIOUSLY RECORDED

ELEVENTH FAIRWAY GOLF COURSE NO 2

TWELFTH FAIRWAY GOLF COURSE NO 2

APPROVED FINAL PLA
CHARLESTON COUNTY COUNCIL
CHAIRMAN
SECRETARY
CHARLESTON COUNTY PLANNING BOARD
DATE MAY 19, 1987
#9900-NN

CHORD	CHORD BEARING	CHORD DISTANCE
a	N 18°45' 23" E	46 58
b	N 30° 23' 40" E	140 00
c	N 44° 48' 13" E	46 36
d	N 59° 58' 01" E	58 96
e	N 72° 56' 35" E	63 86
f	N 86° 07' 07" E	8 88
g	S 78° 38' 48" E	79 63
h	S 64° 27' 32" E	68 33
i	N 87° 47' 18" E	81 60
j	S 88° 40' 02" E	72 25
k	N 81° 21' 20" E	88 89
l	N 68° 29' 32" E	78 78
m		
n		
o		
p		
q		
r		
s	S 83° 08' 11" W	80 82
t	S 85° 54' 14" W	105 39
u	S 86° 52' 53" W	82 84
v	S 84° 24' 10" W	80 00
w	S 81° 28' 08" W	81 86
x	S 77° 50' 45" W	78 36
y	S 74° 56' 22" W	72 77
z	S 70° 07' 07" W	191 72
aa	S 67° 29' 20" W	7 81
bb	S 49° 33' 28" W	84 80
cc	S 29° 30' 38" W	72 00
dd	S 9° 88' 28" W	62 90
ee	S 12° 08' 47" W	29 98

NOTES
1 ALL PROPERTY CORNERS MARKED WITH IRON PIPES UNLESS SHOWN OTHERWISE
2 ALL CORNER RADII ARE 20.00 UNLESS NOTED OTHERWISE
3 TOTAL ACREAGE 93.902 ACRES
4 OWNER OF THIS PROPERTY IS SEABROOK ISLAND COMPANY
5 ALL LOTS SHOWN ON THIS PLAT ARE ABOVE ELEVATION 9.0 M.S.L.

SEABROOK ISLAND

CHARLESTON COUNTY, SOUTH CAROLINA

PLAT OF LOTS 7-25 BLOCK 32
AND LOTS 2-20 BLOCK 33

SCALE: 1" = 100'

APRIL 29, 1987
REVISED MAY 8, 1987

I, E. M. SEABROOK JR. a Registered Surveyor of the State of South Carolina, hereby certify that I have surveyed the property shown hereon, that this plat shows the true dimensions of the property that all necessary markers have been installed and the practices in 1/7500

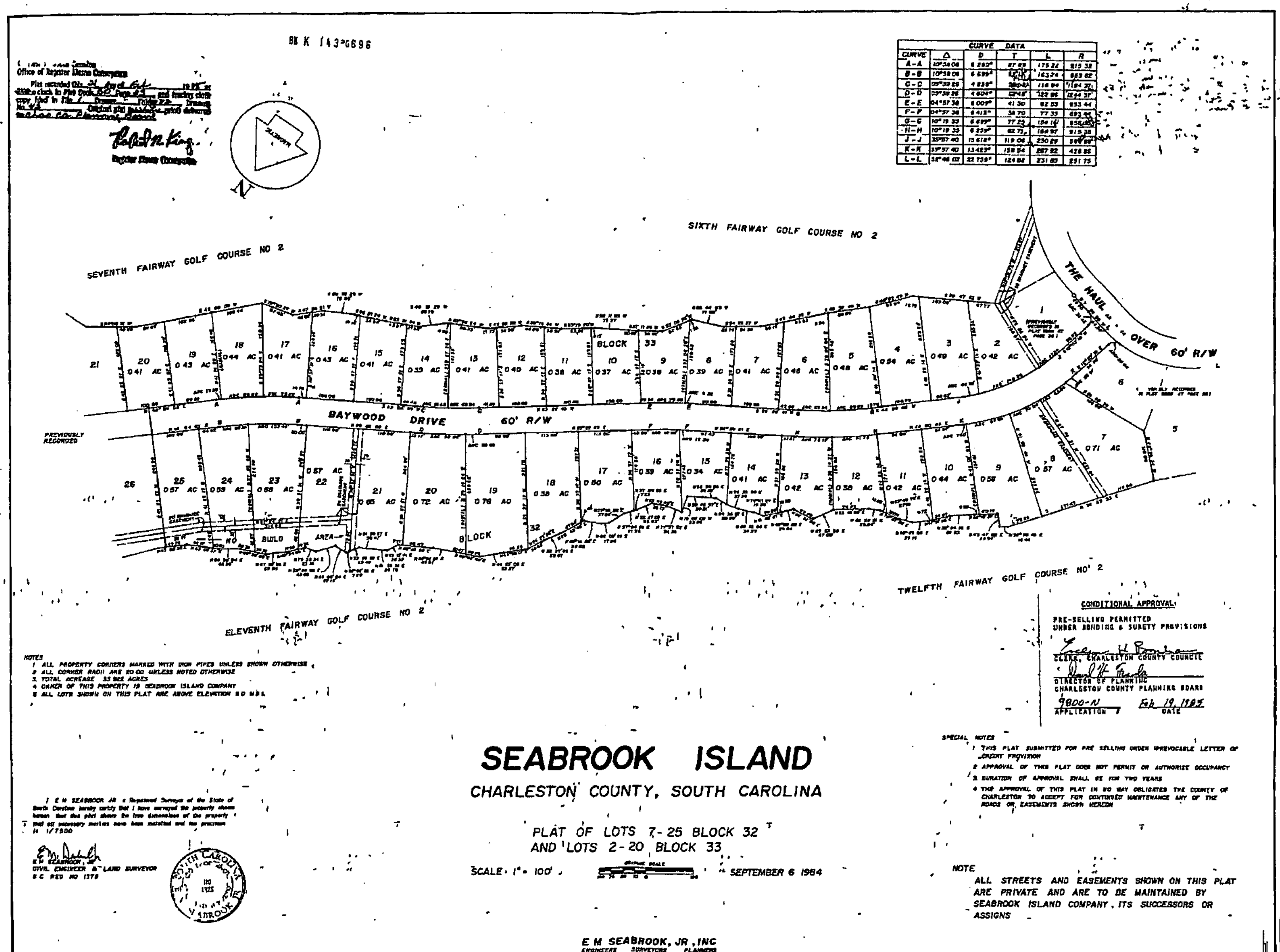
E. M. SEABROOK, JR.
CIVIL ENGINEER & LAND SURVEYOR
S.C. REG. NO. 1979

SOUTH CAROLINA REG. NO. 1979 E. M. SEABROOK JR. REGISTERED LAND SURVEYOR

E M SEABROOK, JR., INC
ENGINEERS SURVEYORS PLANNERS

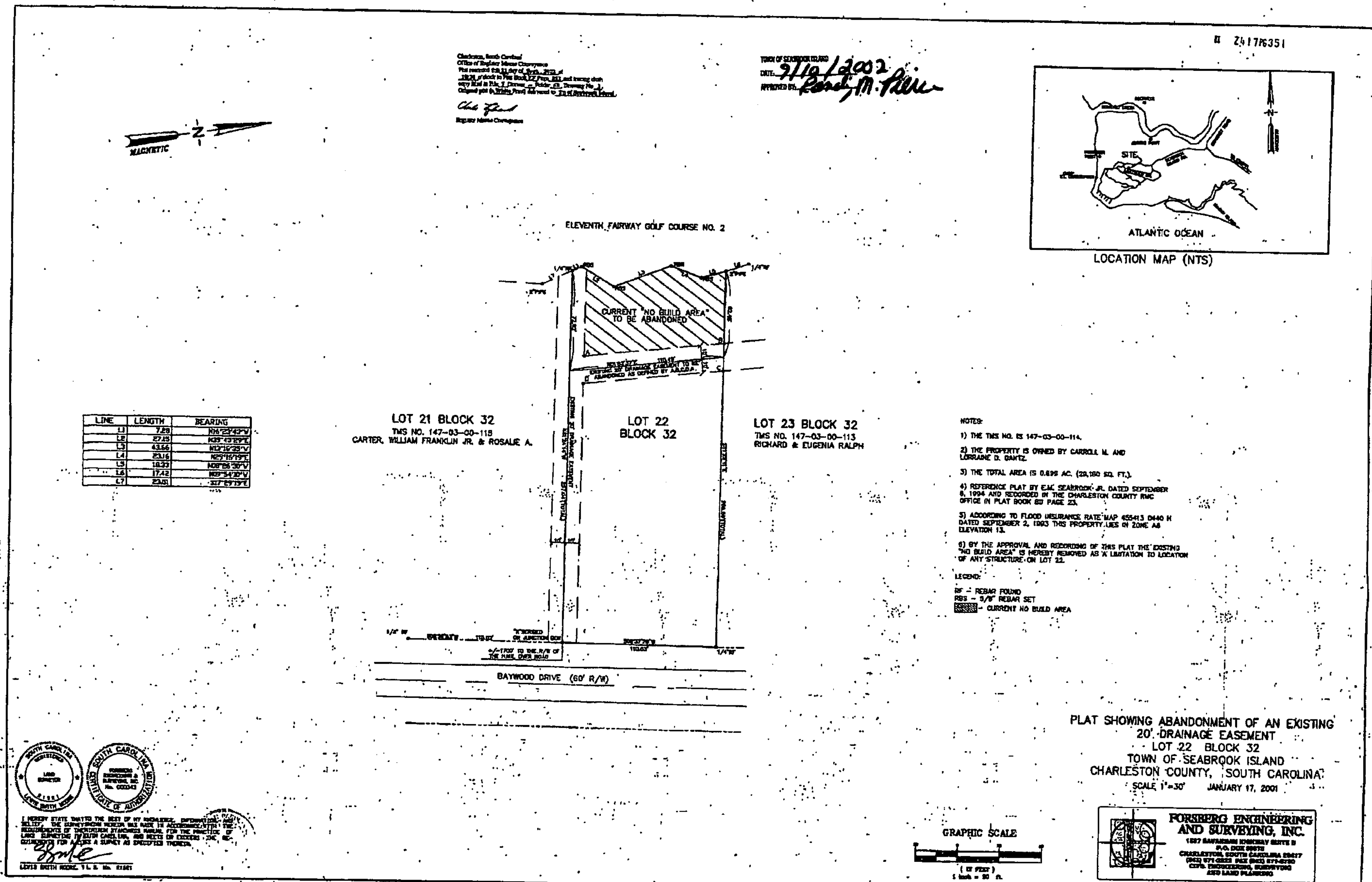
NOTE:
ALL STREETS AND EASEMENTS SHOWN ON THIS PLAT ARE PRIVATE AND ARE TO BE MAINTAINED BY SEABROOK ISLAND COMPANY, ITS SUCCESSORS OR ASSIGNS

PLAINTIFF'S EXHIBIT B



PLAINTIFF'S EXHIBIT
C

ROA 164



PLAINTIFF'S EXHIBIT
D

BK L 421PG820

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that **WE, CARROLL M. GANTZ AND LORRAINE D. GANTZ, Trustees of Carroll M. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245, and AND LORRAINE D. GANTZ AND CARROLL M. GANTZ, Trustees of Lorraine D. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249,** (the "Grantors"), for and in consideration of the sum of ONE HUNDRED SEVENTY THOUSAND AND 00/100 ($170,000.00) DOLLARS, to TAX FREE EXCHANGE SERVICES, INC., in hand paid, before the sealing of these presents by **PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN**, in the State aforesaid, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said **PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN**, (the "Grantees"), **as Joint Tenants with right of survivorship, and not as tenants in common,** their heirs and assigns, the following described property, to wit:

See Attached Exhibit "A" for Legal Description

Grantee's Mailing Address:
110 Sugar Maple Court
Winston-Salem, NC 27106

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 Grantees, as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns,, forever.

PLAINTIFF'S EXHIBIT E

AND subject to any and all Restrictive Covenants, Easements, Rights-of-Way and Conditions, the said Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against themselves and their heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

The singular number as used herein shall include the plural. Wherever there is reference in the covenants and agreements herein contained to any of the parties hereto, the same shall be construed to mean the parties hereto, as well as the heirs, representatives successors, and assigns of the same.

IN WITNESS WHEREOF, the Grantors have caused these presents to be executed in their names this 1st day of October, 2002.

WITNESSES:

CARROLL M. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

LORRAINE D. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

BK L 421PG822

WITNESSES:

LORRAINE D. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

CARROLL M.. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned Witness and made oath that (s)he saw the within named Grantors sign, seal and as their act and deed, deliver the within written instrument, and that (s)he along with the other subscribing witness herein, witnessed the execution hereof.

signature / Witness #1

SWORN to before me this
1st day of October, 2002.

Notary Public for South Carolina
My commission expires:

ANN SINGER DEITZ
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
QUALIFIED IN CHARLESTON COUNTY
COMMISSION EXPIRES JUNE 21, 2005

"EXHIBIT A"
LEGAL DESCRIPTION

ALL that certain piece, parcel or lot of land, situate, lying and being on Seabrook Island, County of Charleston, State of South Carolina, as shown and designated as LOT 22, BLOCK 32, on a Plat entitled, "Plat Showing the Abandonment of an Existing Twenty (20') Foot Easement on Lot 22, Block 32, Town of Seabrook Island, County of Charleston, SC" prepared by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully and at large appear.

TMS # 147-03-00-114

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the following matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

SUBJECT to a ten (10') foot easement for drainage as shown on a Plat made by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883.

This being the same property conveyed to Carroll M. Gantz and Lorraine D. Gantz, Trustees, Carroll M. Gantz Revocable Trust a Memorandum of which Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245 by Deed of Carroll M. Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 557, and by Deed of Lorraine Gantz to Carroll M. Gantz and Lorraine D. Gantz, Trustees Lorraine D. Revocable Trust a Memorandum of Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249 by Deed of Lorraine Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 567.

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
) (Closing Date) October 1, 2002
COUNTY OF CHARLESTON)

AFFIDAVIT

BK L 421 PG 824

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY Carroll M. Gantz and Lorraine D. Gantz, Trustees of Carroll M. Gantz Revocable Trust, a Memorandum of which trust is dated August 2, 2000, and BY Lorraine D. Gantz and Carroll M. Gantz, Trustees of Lorraine D. Gantz Revocable Trust, a Memorandum of which is dated August 2, 2000, TO Paul Dennis McLaughlin and Susan Rode McLaughlin ON October 1, 2002.

3. Check one of the following: The deed is:

(a) x subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ EXEMPT from the deed recording fee because (Exemption #___) (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item #7 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) x The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $170,000.00.

(b) The fee is computed on the fair market value of the realty which is n/a

(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a

5. Check YES _____ or NO x to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is n/a.

6. The DEED Recording Fee is computed as follows:

(a) $170,000.00 the amount listed in Item 4 above
(b) 00.00 the amount listed on Item #5 above (no amount, please zero)
(c) $170,000.00 subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as closing attorney.

8. Check if Property other than Real Property is being transferred on this Deed.

(A) _____ Mobile Home
(B) _____ Other (Furniture, Furnishings and Fixtures)

9. DEED OF DISTRIBUTION – ATTORNEY'S AFFIDAVIT: Estate of _____ deceased Case Number _____, personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s) he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____, deceased, and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

_____
Grantor, Grantee or Legal Representative
Connected with this Transaction
Eric J. Davidson
(Printed Name)

SWORN to before me this 1st day of October 2002.

_____
Notary Public for State of: _____
My Commission expires:

ZAN SUREN DEITZ
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
QUALIFIED IN CHARLESTON COUNTY
COMMISSION EXPIRES JUNE 21, 2005

RECORDER'S PAGE
This page must remain with the Original Document

DAVIDSON
BENNETT &
WIGGER

BK L 421 PG 825

Recording Fee 11.00
State Fee 442.00
County Fee 187.00
Postage
Total 640.00
C

FILED
L421-820
2002 OCT -9 PM 3:27
CHARLES E. GRAND
REGISTER
CHARLESTON COUNTY SC

PID VERIFIED
BY ASSESSOR
REP LMG
DATE 10/17/02

RECEIVED FROM RMC
OCT 17 2002
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rhode McLaughlin, Defendants and Paul Dennis McLaughlin and Susan Rhode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2011-CP-10-7065 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: THE ABOVE-NAMED PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the Defendants, Paul Dennis McLaughlin and Susan Rhode McLaughlin, by and through their undersigned counsel, will move on the tenth (10th) day after service hereof or as soon as counsel may be heard before the Presiding Judge of the Ninth Judicial Circuit for an order granting the Defendants judgment as a matter of law

against the Plaintiffs pursuant to Rule 56(c) SCRCP. This motion is based upon those matters deemed admitted by the Plaintiffs in their Responses to the Defendants' Request for Admission dated August 19, 2013 pursuant to Rule 36 SCRCP. The Defendants' Requests for Admission and the Plaintiffs' Responses to the Defendants' Request for Admission are attached hereto as Exhibit "A" and Exhibit "B" respectively and incorporated by reference herein. The Plaintiffs admitted that the Board of the Seabrook Island Property Owners Association abandoned the 20' drainage easement and "NO BUILD AREA" by plat but deny that the Board's actions affected the rights they retained in their own property. This Motion is further based on the Plaintiff's failure to commence their action within six (6) years of notice of the abandonment of the 20' drainage easement and NO BUILD ZONE. A Plat was recorded on September 11, 2002 in Book EF at Page 883 in the RMC Office for Charleston County that provided actual notice to the public in general and the Plaintiffs in particular of the abandonment of the 20' drainage easement and the NO BUILD ZONE on Lot 22. The Defendants obtained title to the subject property by deed dated October 1, 2002 and recorded in Book L421 at Page 820 in the RMC Office for Charleston County. The McLaughlin's Deed provided actual notice to the public and to the Plaintiffs in particular of the abandonment of the 20' drainage easement and NO BUILD ZONE. S.C. Code Ann. §15-3-530 bars them from bringing this action after six (6) years. The Plaintiffs did not bring any action against the McLaughlins until after the McLaughlin's house was completed. The Plaintiffs also did not attempt to intervene in the 2008 lawsuit brought by the Seabrook Island Property Owners Association relating to the same. Accordingly, the Defendants should be granted judgment as a matter of law as to their rights in the subject property.

Pursuant to Rule 11 SCRCP, counsel certifies that there is no duty of consultation connected with the filing of this motion.

Please be present to defend if so minded.

Mt. Pleasant, South Carolina

2/17, 2014

BUIST, BYARS & TAYLOR, LLC

By: _____

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Maria Kiehling Brees
S.C. Bar No. 76799
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
Phone: (843) 856-4488
Fax: (843) 856-0613
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of February, 2014, mailed a true and accurate copy of the foregoing Defendants' Motion for Summary Judgment through the United States Postal Service, postage prepaid, addressed as follows:

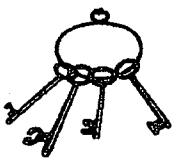
G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402

Eugene H. Matthews, Esq.
Richardson Plowden
P.O. Drawer 7788
Columbia, SC 29202

Maria Kiehling Brees

FILED
2014 FEB 19 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Exhibit "A"



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

August 22, 2012

MARIA E. KIEHLING
ATTORNEY AT LAW
maria.kiehling@buistbyars.com

Eugene H. Matthews, Esq.
Richardson Plowden Robinson, PA
P.O. Drawer 7788
Columbia, SC 29202

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402

Re: Richard Ralph and Eugenia Ralph v. Paul Dennis McLaughlin and Susan Rode McLaughlin v. Seabrook Island Property Owners Association
Case No. 2011-CP-10-7065
File No.: 2012010118

Dear Messrs. Matthews and Sinkler:

Please find enclosed for service upon you in the above-referenced matter the Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin's First Requests for Admission to the Plaintiffs and to the Third-Party Defendants.

Should you have any questions, please feel free to contact me. With kind regards, I remain

Yours very truly,

Maria E. Kiehling

Encls

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rode McLaughlin, Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendants	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-7065 **THE DEFENDANTS PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN'S FIRST REQUESTS FOR ADMISSION TO THE PLAINTIFFS AND TO THE THIRD-PARTY DEFENDANTS**

TO: G. DANA SINKLER, ESQ.
WARREN & SINKLER, LLP
ATTORNEYS FOR THE PLAINIFF AND
EUGENE H. MATTHEWS, ESQ.
RICHARDSON PLOWDEN ROBINSON, P.A.

The Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin (the "Defendants"), by and through their undersigned counsel, requests that the Plaintiffs and Third-Party Defendants answer the following Requests for Admission pursuant to Rule 36 SCRCP. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny as his or her answer unless he or she states that he has made reasonable inquiry

and that the information known or readily obtainable by him is insufficient to enable him or her to admit or deny. If a party fails to admit the genuineness of any document or the truth of any mater and if the Defendants prove the genuineness or truth of the matter, then the Defendants shall move for costs and fees pursuant to Rule 37(c) SCRCP.

REQUESTS FOR ADMISSION

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of a plat entitled "Plat Showing Abandonment of an Existing 20' Drainage Easement Lot 22 Block 32 town of Seabrook Island Charleston County South Carolina."

2. Admit that the document attached hereto as Exhibit "A" is dated January 17, 2001.

3. Admit that the document attached hereto as Exhibit "A" was prepared by Forsberg Engineering and Surveying, Inc.

4. Admit that the document attached hereto as Exhibit "A" shows Lot 22, Block 32.

5. Admit that the document attached hereto as Exhibit "A" shows "Current "No Build Area" to be Abandoned" on the western end of Lot 22, Block 32 abutting Eleventh Fairway Golf Course No. 2 as described on Exhibit "A".

6. Admit that the document attached hereto as Exhibit "A" shows "Existing 20' Drainage Easement to be Abandoned as Defined by A,B,C,D, A."

7. Admit that the document attached hereto as Exhibit "A" shows an approval by the Town of Seabrook Island.

8. Admit that the document attached hereto as Exhibit "A" is recorded in Book EF at Page 883 in the Office of the Register of Mesne Conveyance for Charleston County South Carolina.

9. Admit that the document attached hereto as Exhibit "A" shows Lot 23 Block 32 TMS No. 147-03-00-113 Richard & Eugenia Ralph.

10. Admit that the document attached hereto as Exhibit "A" shows that the Existing 20' Drainage Easement was abandoned.

BUIST, BYARS, & TAYLOR, LLC

Mt. Pleasant, South Carolina

By: _____

aug. 22, 2012

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Maria E. Kiehling
S.C. Bar No. 76799
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
hamlin.okelley@buistbyars.com
maria.kiehling@buistbyars.com

CERTIFICATE OF MAILING

The undersigned hereby certifies that on Aug 22, 2012, a copy of the foregoing was placed in an envelope with first-class postage pre-paid, and mailed to:

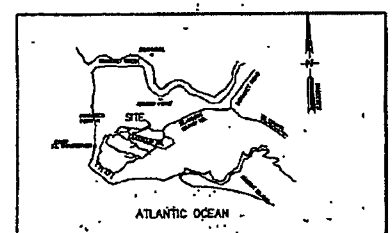
G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
171 Church Street
Charleston, SC 29402

Eugene H. Matthews, Esq.
Richardson Plowden Robinson, P.A.
P.O. Drawer 7788
Columbia, SC 29202

G. Hamlin O'Kelley, III

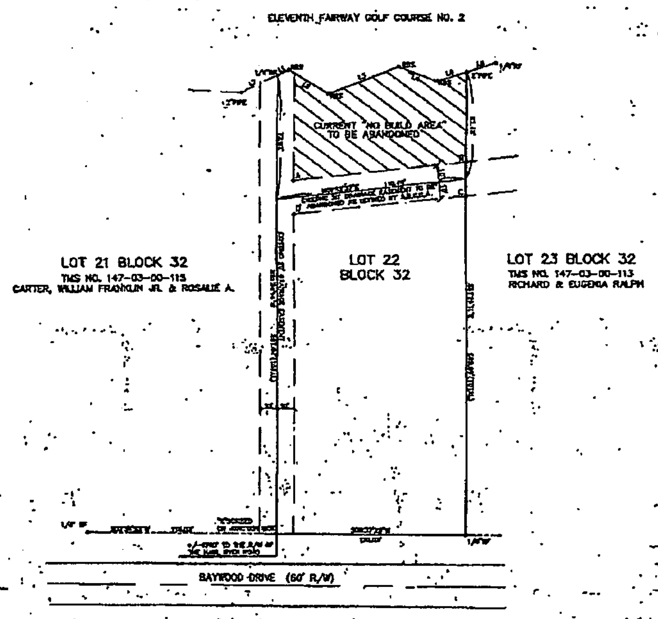
EXHIBIT "A"

R Z417P351



LOCATION MAP (NTS)

TOWN OF SEABROOK ISLAND
DATE: 2/19/2002
APPROVED BY: [signature]



LINE	LENGTH	BEARING
L1	7.28	[illegible]
L2	[illegible]	[illegible]
L3	43.66	[illegible]
L4	23.18	[illegible]
L5	[illegible]	[illegible]
L6	17.42	[illegible]
L7	[illegible]	[illegible]

NOTES:

1) THE TMS NO. IS 147-03-00-114.

2) THE PROPERTY IS OWNED BY CARROLL M. AND LORRAINE D. GANTZ.

3) THE TOTAL AREA IS [illegible] AC. (23,180 SQ. FT.).

4) REFERENCE PLAT BY E.M. SEABROOK JR. DATED SEPTEMBER 8, 1994 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK 80 PAGE 23.

5) ACCORDING TO FLOOD INSURANCE RATE MAP 455413 0440 H DATED SEPTEMBER 2, 1993 THIS PROPERTY LIES IN ZONE AE ELEVATION 13.

6) BY THE APPROVAL AND RECORDING OF THIS PLAT THE EXISTING "NO BUILD AREA" IS HEREBY REMOVED AS A LIMITATION TO LOCATION OF ANY STRUCTURE ON LOT 22.

LEGEND:

RF – REBAR FOUND
RBS – 5/8" REBAR SET
– CURRENT NO BUILD AREA

GRAPHIC SCALE

PLAT SHOWING ABANDONMENT OF AN EXISTING 20' DRAINAGE EASEMENT
LOT 22 BLOCK 32
TOWN OF SEABROOK ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
SCALE 1"=30' JANUARY 17, 2001

FORSBERG ENGINEERING AND SURVEYING, INC.

Exhibit "B"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-7065
RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	)	PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST REQUESTS FOR ADMISSION
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	)	

The Plaintiffs, through counsel, answers the First Requests for Admission to the Plaintiffs pursuant to SCRCP 33.

1. Admit that the letter attached hereto as Exhibit "A" is a true and accurate copy of correspondence transmitted to Mr. Randy Pierce at Seabrook Island Town Hall dated September 9, 2002.

ANSWER: The Defendants admit the genuineness of the letter attached as Exhibit "A", but deny that they were privy to or had any knowledge of the events described therein.

2. Admit that the letter attached hereto as Exhibit "A" is from Carroll Gantz and references Lot 22, Block 32, 3061 Baywood Drive, Seabrook Island, SC.

ANSWER: The Defendants admit that the letter attached hereto as Exhibit "A" appears to be from Carroll Gantz and references Lot 22, Block 32, 3061 Baywood Drive, Seabrook Island, SC, but they deny that they were privy to or had any knowledge of the events described herein.

3. Admit that the letter attached hereto as Exhibit "A" contains the following language "On March 20, 2002, Mr. Wells notified me that the POA Roads and storm drainage Committee met on March 18, and agreed there was no further need for the subject easement."

ANSWER: The Defendants admit that the letter attached hereto as Exhibit "A" contains the quoted language, but deny that they were privy to or had any knowledge of the events described therein and further deny such language had the legal effect or eviscerating their rights to the drainage easement and "no build" zone.

4. Admit that the letter attached hereto as Exhibit "A" is signed by both Carroll Gantz and the Seabrook Island Property Owners Association.

ANSWER: The Defendants admit that the letter attached as Exhibit "A" appears to bear the signatures of Carroll Gantz and someone designated as an officer on behalf of the POA, but deny that they were privy to or had any knowledge of the events described therein and further deny that any action taken by the POA officer had the legal effect of eviscerating their rights to the drainage easement and "no build" zone.

5. Admit that between the signatures of Carroll Gantz and the Seabrook Island Property Owners Association officer, the letter attached hereto as Exhibit "A" contains the following language "Authorization by POA that the proposed changes of removal of drainage easement and "no build zone" on the subject lot have been reviewed and approved.

ANSWER: The Defendants admit that the quoted language appears in the letter attached as Exhibit "A", but deny that such action by the POA had any affect on their rights to the drainage easement and "no build" zone.

3. Admit that there is a Town of Seabrook Island Zoning Permit Application attached as part of Exhibit "A" hereto seeking a record a plat for 3061 Baywood Drive, Lot 22, Block 32, Seabrook Island.

ANSWER: The Defendants admit the genuineness of the document described in Request to Admit Number 3, but deny that it had any legal affect on their rights to the drainage easement and "no build" zone.

4. Admit that the plat attached hereto as Exhibit "B" is a true and accurate copy of a "Plat Showing Abandonment of Existing 20' Drainage Easement, lot 22, Block 32 Town of Seabrook Island, Charleston County, South Carolina."

ANSWER: The Defendants admit the genuineness of the Plat attached as Exhibit "B" and that it contains the language quoted in Request to Admit Number 4, but deny that the Plat had any legal effect on their rights to the drainage easement and "no build" zone.

5. Admit that the plat attached hereto as Exhibit "B" is dated January 17, 2001.

ANSWER: Admitted.

6. Admit that the plat attached hereto as Exhibit "B" was by Forsberg Engineering and Surveying, Inc.

ANSWER: Admitted.

7. Admit that the plat attached hereto as Exhibit "B" was recorded in plat Book EF at Page 883 in the Office of the RMC for Charleston County on September 11, 2002.

ANSWER: Even with the aid of a magnifying glass, the recording information is not legible and Defendants cannot admit or deny the same.

8. Admit that the plat attached hereto as Exhibit "B" shows "Current "No Build Area" To Be Abandoned".

ANSWER: Admitted.

9. Admit that the plat attached hereto as Exhibit "B" shows "Existing 20' Drainage Easement to Be Abandoned".

ANSWER: Admitted.

10. Admit that the deed attached hereto as Exhibit "C" is a true and accurate copy of the deed from Carroll M. Gantz and Lorraine D. Gantz to Paul Dennis McLaughlin and Susan Rode McLaughlin.

ANSWER: Admitted.

11. Admit that the deed attached hereto as Exhibit "C" transferred the real property known as Lot 22, Block 32, Seabrook Island to Paul Dennis McLaughlin and Susan Rode McLaughlin.

ANSWER: Admitted.

12. Admit that the deed attached hereto as Exhibit "C" makes reference to a ten (10') foot easement for drainage as shown on a plat made by Forsberg Engineering and Surveying, Inc., dated January 17, 2001, record September 11, 202, in Plat Book EF at Page 883.

ANSWER: Admitted, but in the paragraph before the one referenced in Request to Admit Number 12, it is provided that "the conveyance is subject to any and all "Easements" of record affecting said property" and the drainage easement and "no build" zone is and was still an easement of record affecting said property.

13. Admit that the deed attached hereto as Exhibit "C" was recorded on October 9, 2002, in Book L421 at Page 820 in the Office of the RMC for Charleston County.

ANSWER: Admitted.

14. Admit that the Order attached here to as Exhibit "D" is a true accurate copy of a Form 4 Order entered case of *Seabrook Island Property Owners Association v. Paul Dennis McLaughlin*, Case No. 2008-CP-10-6975.

ANSWER: Admitted, but denies that the Plaintiffs were privy to or had any knowledge of the suit until well after their institution of the within action.

15. Admit that the Order attached hereto as Exhibit "D" was filed was signed by the honorable J.C. Nicholson on January 7, 2011.

ANSWER: Admitted.

16. Admit that the Order attached hereto as Exhibit "D" was filed January 7, 2011.

ANSWER: Admitted.

17. Admit that the Withdrawal of Motion for Temporary Restraining Order attached hereto as Exhibit "D" was filed on December 11, 2008.

ANSWER: Admitted.

18. Admit that the Withdrawal of Motion for Temporary Restraining Order attached hereto as Exhibit "D" was entered in the case of *Seabrook Island Property Owners Association v. Paul Dennis McLaughlin*, Case No. 2008-CP-10-6975.

ANSWER: Admitted.

19. Admit that the document attached hereto as Exhibit "E" is a true and accurate copy of the minutes of the Seabrook Island Property Owners Association.

ANSWER: Denied. Admitted that Exhibit "E" appears to have been taken "from minutes" of the SIPOA Board Members present at the meeting and not from a meeting of the Seabrook Island Property Owners Association. Admit the quoted portion, but Exhibit "E" contains other language as well.

20. Admit that the document attached hereto as Exhibit "E" states "Mr. Muenow made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote."

ANSWER: Admitted, but there is additional language in Exhibit "E".

21. Admit that the document attached hereto as Exhibit "F" is a true and accurate copy of correspondence from Coy Foster to Paul and Susan McLaughlin.

ANSWER: The Defendants admit the genuineness of the letter, but deny that they were privy to or had any knowledge of the letter or its contents.

22. Admit that the document attached hereto as Exhibit "F" is dated August 18, 2006.

ANSWER: Admitted.

23. Admit that the document attached hereto as Exhibit "F" states as follows:

> 1. Owners is to assume all responsibility for the underground drainage line at the 20' drainage easement/driveway.
> 2. Owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe.
> 3. Property lines must be located prior to any grading because of the Right-of-Way for the SIPOA 20' drainage easement.

ANSWER: admitted.

24. Admit that the Seabrook Island Property Owners Association, Inc., abandoned the 20' drainage easement and "NO BUILD AREA" by plat, by intent and by vote.

ANSWER: Denied. Admitted that members present at a meeting or the Board of SIPOA purported to abandon drainage easement and "NO BUILD AREA", but denied that their action affected the vested rights of the property owners who were expressly deeded the fee simple title to the drainage easement and "NO BUILD AREA".

25. Admit that the Plaintiffs knew of the abandonment of the 20' drainage easement and "NO BUILD AREA" at the time the Defendants were building their residence on Seabrook Island.

ANSWER: Denied.

26. Admit that the Plaintiff filed this lawsuit on September 30, 2011.

ANSWER: Admitted.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: _____
G. DANA SINKLER

Attorney for Plaintiffs

Charleston, South Carolina

August 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2013, I served the foregoing Plaintiffs' Answers to Defendants First Requests for Admission on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelley, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
Attorneys for Defendants

Eugene H. Matthews, Esquire
Richardson Plowden
PO Drawer 7788
Columbia, SC 29202
Attorneys for Third-Party Defendant

G. Dana Sinkler

IN THE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rode McLaughlin, Defendants. Paul Dennis McLaughlin and Susan Rode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	C/A No.: 2011-CP-10-07065 **MOTION FOR SUMMARY JUDGMENT OF THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION**

NOW COMES the Third-Party Defendant Seabrook Island Property Owners Association (SIPOA), by and through counsel, and moves for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to all claims brought against it. In support of this Motion for Summary Judgment, SIPOA states as follows:

1. While SIPOA has not been sued directly by Plaintiffs Richard Ralph and Eugenia Ralph, the Defendants and Third-Party Plaintiffs Paul Dennis McLaughlin and Susan Rode McLaughlin have demanded judgment against SIPOA "for all or part of those claims against them" brought by the Plaintiffs. (McLaughlin's Answer to Amended Complaint and Third-Party Complaint, ¶ 62).

2. Third-Party Plaintiffs base their claim for relief against SIPOA on "reliance." Specifically, Third-Party Plaintiffs allege that "[b]ut for the representations, actions, and writings of SIPOA in 2002 and 2008, upon which Defendants relied, materially changed their positions, and were entitled to rely, this dispute and the Plaintiffs' subsequent lawsuit concerning the validity of SIPOA's abandonment of the 20' drainage easement and NO BUILD AREA would not have been commenced." (McLaughlin's Answer to Amended Complaint and Third-Party Complaint, ¶ 61).

3. As a matter of law, there is no genuine issue of material fact that Third-Party Plaintiffs reasonably "relied" on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decisions to remove the pipe or take any other actions that has prompted the lawsuit brought by Plaintiffs. As indicated in their pleadings and in their deposition testimony, Third-Party Plaintiffs did not, and could not, rely on any unambiguous promises or representations on SIPOA prior to purchasing their property and/or removing the pipe and beginning construction. For that reason, they cannot prevail in their third-party claim against SIPOA as a matter of law. *Davis v. Greenwood School Dist. 50*, 3654 S.C. 629, 634-635, 620 S.E.2d 65, 68 (2005); *Craft v. South Carolina Commission for the Blind*, 385 S.C. 560, 567, 685 S.E.2d 625, 629 (S.C. App. 2009); *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (S.C.App. 1993).

4. Furthermore, SIPOA also asserts that the underlying claims brought by Plaintiffs are barred by the applicable statute of limitations, and that there is no legal basis for their claims for attorney's fees and costs. Attorney fees in South Carolina are not recoverable unless they are authorized by contract or by statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). Because there is no right under the common law to attorney fees, a plaintiff must plead

either a contract or a statute to receive attorney's fees. *Prevatte v. Asbury Arms,* 302 S.C. 413, 396 S.E.2d 642 (S.C. App. 1990).

5. At argument on this motion, SIPOA will rely on the pleadings filed in this case; deposition testimony of Richard Ralph, Eugenia Ralph Paul, Dennis McLaughlin and Susan Rode McLaughlin, and any other witness; the documents that have been the subject of discovery in this case; citations to applicable law; and a memorandum of law to be presented at argument.

THEREFORE, Third-Party Defendant Seabrook Island Property Owners Association respectfully requests that this Court GRANT its Motion for Summary Judgment and DISMISS with prejudice the claim brought against it by the McLaughlins. In the alternative, Third-Party Defendant Seabrook Island Property Owners Association respectfully requests that this Court GRANT its Motion for Summary Judgment and DISMISS with prejudice the underlying claim brought against the McLaughlins by the Ralphs.

PLEASE TAKE NOTE THAT Third-Party Defendant Seabrook Island Property Owners Association requests that this Court convene a hearing on this motion at its earliest opportunity, but not sooner than ten (10) days prior to the filing of this motion, pursuant to Rule 6(d) of the South Carolina Rules of Civil Procedure.

Dated this the 15th day of February, 2014.

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400
803-779-0016 (fax)
gmatthews@richardsonplowden.com

ATTORNEY FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-7065 **PLAINTIFFS' MOTION TO RESTORE CASE STRICKEN FROM DOCKET**
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	

Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, the Plaintiff hereby moves that this claim be restored to the General Docket.

By: _____

G. DANA SINKLER
Attorney for Plaintiffs
171 Church Street
Suite 110
Charleston, SC 29401

Charleston, South Carolina
May 11, 2015

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2015-CP-10-3550 MOTION FOR PARTIAL SUMMARY JUDGMENT WITH AFFIDAVIT ATTACHED
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	

Pursuant to the provisions of SCRCP 56, the Plaintiffs do hereby move for partial summary judgment as to the following issues:

1. That this Court declare, as the law of this case, that the two plats by which the original developer, Seabrook Island Company, first conveyed lots 21 through 28, Block 32, Seabrook Island, to wit: Plat of E.M. Seabrook dated September 6, 1984 and recorded in the RMC Office for Charleston County in Plat Book BD, page 23 and Plat of E.M. Seabrook dated April 29, 1987, revised May 8, 1987, and recorded in the RMC Office for Charleston County in Plat Book BN, page 49, established a plan for a 20'

drainage easement and access for its maintenance by creation of a no build area on such lots.

2. That by virtue of that plan and conveyance of each of the lots 21 through 28, Block 32, Seabrook Island, each owner of such lots acquired the fee simple ownership of the land occupied by the easement and no build area.

3. That by virtue of the conveyance of each lot subject to the 20' easement and no build area for the common use or benefit of each lot owner, as a matter of law a servitude was created as to each lot restricting the use of the land to that purpose. *Restatement of Law- Property Restatement (Third) of Property, Chapter 2. Creation of Servitudes.*

4. That by virtue of the conveyance according to the plats identified in paragraph 1 above, the Plaintiffs acquired an easement appurtenant to their lot over the lot owned by the Defendants, which was unaffected by the action taken by the Seabrook Island Property Owners Association to abandon the easement and no build area.

5. That the action taken by the Defendants in destroying the drainage pipe leading to the Plaintiffs' property and building their dwelling on the no build area amounted to an unauthorized act of continuing trespass and the Defendants are liable as a matter of law for such damages thereby caused to Plaintiffs' property.

THEREFORE, Plaintiffs respectfully request that this Court grant their Motion for Partial Summary Judgment as to the forgoing issues.

G. Dana Sinkler
Attorney for Plaintiffs
2180 Rosebank Plantation Road
Wadmalaw Island, SC 29487
(843) 224-1758

Charleston, South Carolina
March 17th, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT

AFFIDAVIT OF J. HOWARD YATES, JR., ESQ.

Upon first being duly sworn, I, J. Howard Yates, Jr., Esq., of 42 Broad Street, Charleston, S.C. 29401, depose and say as follows:

I am an attorney and have been licensed to practice law in South Carolina since 1985. Prior to attending law school, I was a real estate title examiner for nine years. Since 1987, I have been the Continuing Legal Education coordinator for the Real Estate Practice Section of the Charleston County Bar. My practice is limited to real property and probate matters. As a real estate title examiner and as an attorney, I have examined titles to real property in Berkeley, Dorchester, Colleton, Charleston and Florence Counties. In addition to the practice of law, I am an adjunct professor at the Charleston School of Law and teach a skills course on Title Examinations.

I have conducted an examination of title to real property owned by Richard Ralph and Eugenia Ralph. Their property is identified as Lot 23, Block 32, Seabrook Island and is shown on the plat recorded in Plat Book BN at Page 49. It was acquired by deed recorded April 10, 1997 in Book K-282 at Page 846, see attached Exhibit "A". The Ralph's property is more fully shown on two subdivision plats of Lots 7-25, Block 32 and Lots 2-20, Block 33, Seabrook Island recorded in the Charleston County RMC Office in Plat Book BN at Page 49, see attached Exhibit "B" and in Plat Book BD at Page 23, see Exhibit "C". On their face, these plats establish a common plan or scheme of development for the location of building lots, roads and easements. The plat found in Plat Book BN at Page 49 was recorded on May 26, 1987 and is found in the Ralph's chain of title. The plat found in Plat Book BD at Page 23 was recorded on February 25, 1985 and is found in the McLaughlin's chain of title.

A chain of title refers to the sequence of property transfers from the current owner to a root or source of title. It includes a record of deeds, plats, liens and encumbrances that affect a property.

These subdivision plats also show Lot 22, Block 32, Seabrook Island. This lot is owned by Paul and Susan McLaughlin. It lies adjacent to and to the Northwest of the Lot 23, Block 32. Both plats clearly show the existence of a 20 foot wide drainage easement, which runs in a generally north-south direction, and a *No-Build Area* on the West side of Lot 22. The No Build Area extends from Lots 22 through 25 in Block 32.

By purchasing pursuant to the plat recorded in Plat Book BN at Page 49, Richard and Eugenia Ralph have both a special property interest and a beneficial interest in the continued use of the 20 foot wide drainage easement on Lot 23 and in the No Build Area on that lot.

A plat showing the abandonment of the 20 foot wide drainage easement and of the No Build Area, which burdened Lot 22, Block 32 and benefited Lot 23, Block 32, was recorded on September 11, 2001 in Plat Book EF at Page 883, see attached Exhibit "D". This plat was incorporated by reference in the deed of conveyance to Paul and Susan McLaughlin which was recorded on October 9, 2002 Deed Book L-421 at Page 820, see attached Exhibit "E". The plat recorded in Plat Book EF at Page 883 modified the common plan of development established by the two senior plats.

No recorded document exists which indicates that Richard and Eugenia Ralph consented to or joined in any agreement to: 1). abandon the 20 foot wide drainage easement on Lot 22, Block 32, 2). abandon the No Build Area on Lot 22, Block 32 or 3). or modify the common plan of development for the lots subject to the No Build Area.

The plat reflecting this abandonment which was recorded in Plat Book EF at Page 883 is only found in the McLauglin's chain of title. It does not appear in the Ralph's title chain. It was recorded after the Ralphs acquired title pursuant to the subdivision plat recorded

on April 10, 1985 in Plat Book BN at Page 49. The plat recorded in Plat Book EF at Page 883 did not provide the Ralphs with constructive notice of abandonment, neither did the Ralphs provide recorded written consent or a release of their special property interest in the 20 foot wide easement and in the No Build Area. It is my conclusion that: 1). the plat recorded in Plat Book EF at Page 883 is not binding on the Ralphs and 2). the drainage easement and No Build rights acquired by the recording of plats recorded in Plat Books BN at Page 49 and BD at Page 23 remain in effect for the benefit of Richard Ralph and Eugenia Ralph.

FURTHER THE DEPONENT SAYETH NOT.

J. Howard Yates, Jr.
J. Howard Yates, Jr., Esq.

SWORN to and subscribed before me on
February 14, 2014 at Charleston, S.C.

Notary Public for South Carolina
My Commission Expires: 6-18-19.

BK K 282PG846

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

WHEREAS, at a meeting of the Board of Directors of Seabrook Ventures, Ltd., held on March 19, 1997, 1997, it was resolved to convey the property hereinafter described unto the Grantee for the consideration hereinafter expressed, and the undersigned officer was authorized on behalf of the Corporation to execute and deliver this Deed of Conveyance; NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS that SEABROOK VENTURES, LTD., (hereinafter referred to as "GRANTOR") in the State aforesaid, for/and in consideration of the sum of TWO HUNDRED EIGHTY-FOUR THOUSAND AND NO/100 DOLLARS ($284,000.00), to it in hand paid at and before the sealing of these presents by RICHARD RALPH AND EUGENIA RALPH, (hereinafter referred to as "GRANTEES") in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said GRANTEES, the following described real property, to-wit:

THE PROPERTY HEREBY CONVEYED IS DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY EXPRESS REFERENCE.

THE PROPERTY HEREBY CONVEYED BEING a portion of the property conveyed to the Grantor herein by deed of Starwood Capital Partners, L. P., dated August 12, 1993, and recorded in Book K-231, Page 394, Charleston County RMC Office.

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 GRANTEES, their Successors and Assigns, forever.

TMS NO. 147-03-00-113

GRANTEE'S ADDRESS:

Post Office Box 1472

Blue Bell, PA 19422

AND it does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said GRANTEES, their heirs and assigns, against it and its Successors, and all persons whomsoever lawfully claiming, or to claim, the same or any part hereof.

Seabrook/Ralph - 97-0396

PLAINTIFF'S EXHIBIT A

BK K 282PG847

WITNESS its Hand and Seal this 19th day of MARCH, in the year of our Lord, one thousand nine hundred and ninety-seven, and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SEABROOK VENTURES, LTD.:

/s/ J. R Dir

/s/ Susan Craig Pond

By: /s/ Ralph H. Falls (SEAL)
RALPH H. FALLS, III
ITS: SECRETARY

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

The foregoing instrument was acknowledged before me this 19th day of March, 1997, by Seabrook Ventures, Ltd., by Ralph H. Falls, III, its Secretary.

/s/ Susan Craig Pond (SEAL)
NOTARY PUBLIC FOR NORTH CAROLINA

MY COMMISSION EXPIRES: 9/13/98

EXHIBIT "A"

ALL that certain lot, piece or parcel of land, situate, lying and being on Seabrook Island, Charleston County, State of South Carolina, and known and designated as LOT 23, BLOCK 32, on a plat by B.M. Seabrook, Jr., CE & LS, recorded in Plat Book BN, Page 49, in the Charleston County RMC Office.

Said lot having the size, shape, dimensions, buttings and boundings more or less as are shown on said plat, which is specifically incorporated herein by reference.

THIS CONVEYANCE IS SUBJECT TO the Covenants, Conditions, Restrictions, Limitations, Affirmative Obligations and Easements of record and more particularly set forth in instruments duly recorded in the RMC Office for Charleston County, as follows: Book N-100, at Page 296; as amended by instrument recorded in Book Y-110, at Page 143; and Second Modification thereto dated March 26, 1985 and recorded in Book J-144, at Page 67; Third Modifications of Protective Covenants dated April 24, 1987 and recorded in Book J-164, at Page 487; Also, Second restated and amended By Laws dated October 18, 1984 and recorded in Book B-141, at Page 267; as amended by instrument dated March 26, 1985 and recorded Book J-144, at Page 59; Third Restated and Amended By-Laws of the Seabrook Island Property Owners Association, dated August 1, 1989, and recorded in the RMC Office for Charleston County in Book L-186, Page 718; and Amendment filed in Book K-215, Page 001; Restatement and Fourth Modification of Protective Covenants for Seabrook Island Development, dated August 1, 1989, and recorded in the Charleston County RMC Office in Book L-186, Page 697; Restatement and Fifth Modification recorded in Book K-215, Page 23.

BK K 282PG849

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) AFFIDAVIT

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says that the property located at 3055 Baywood Drive, Seabrook Island, South Carolina 29455 bearing Charleston County Tax Map Number 147-03-00-113 was transferred by Seabrook Ventures, Ltd., to Richard W. Ralph on April 4, 1997.* and Eugenia Ralph

The transaction was:

xx An arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $284,000.00.

____ Not an arm's length real property transaction and the fair market value of the property is n/a.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10, et. seq., because the deed is: n/a

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the closing attorney.

I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than one year, or both.

Purchaser, Legal Representative of the Purchaser or other Responsible Person Connected with the Transaction.

SWORN to before me this 4th day of April 1997.

Zan Suren Deitz
Notary Public, State of South Carolina
Qualified in Charleston County
Commission Expires: June 21, 2005

Notary Public for South Carolina
My Commission expires:

*The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g., stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.
(Seabrook/Ralph - 97-0396)

BK K 282PG850

DROSE, DAVIDSON & BENNETT
125 WAPPOO CREEK DRIVE

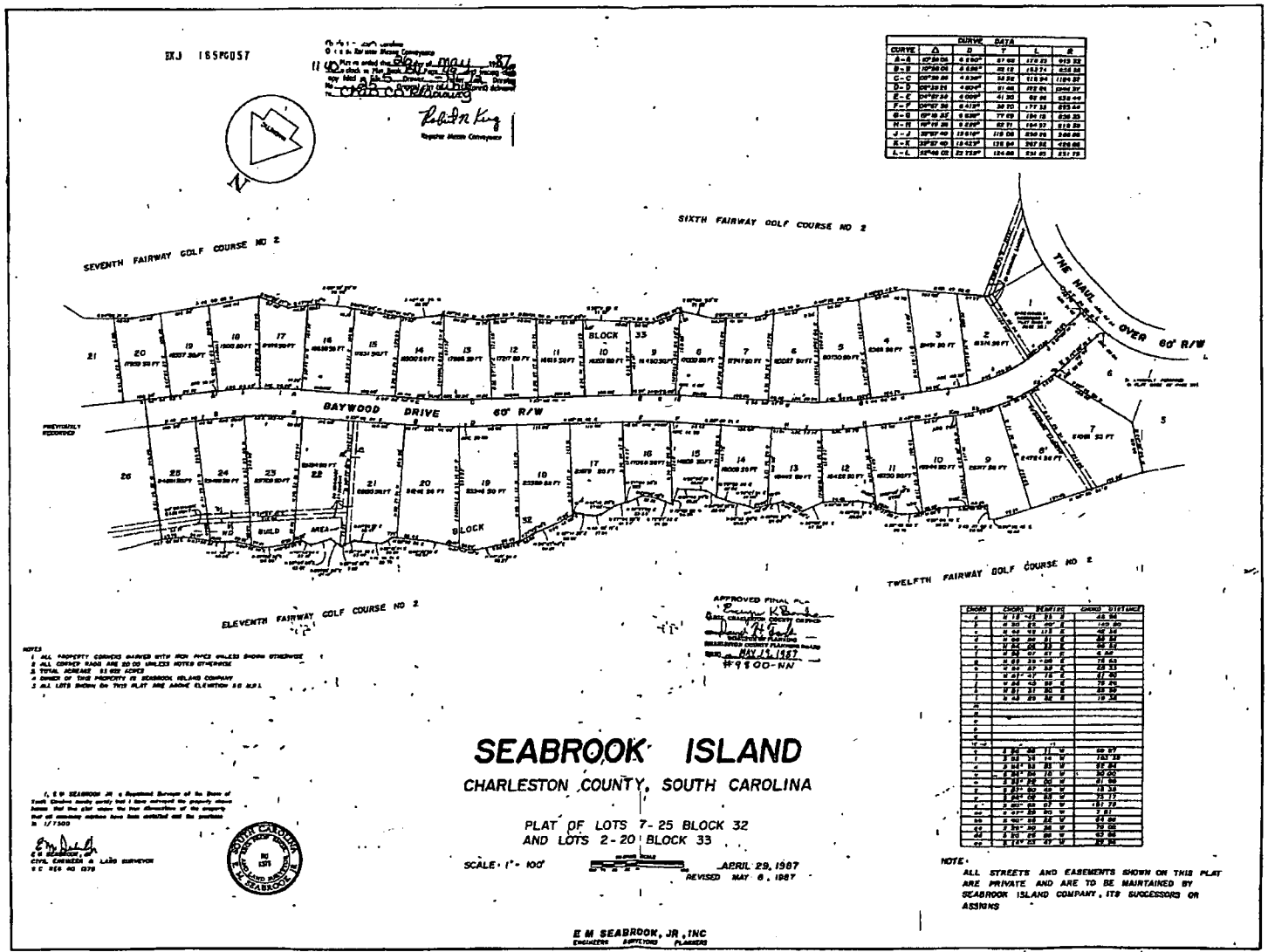
Chrgd
CHS

FILED

K282-846
97 APR 10 PM 3:27
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

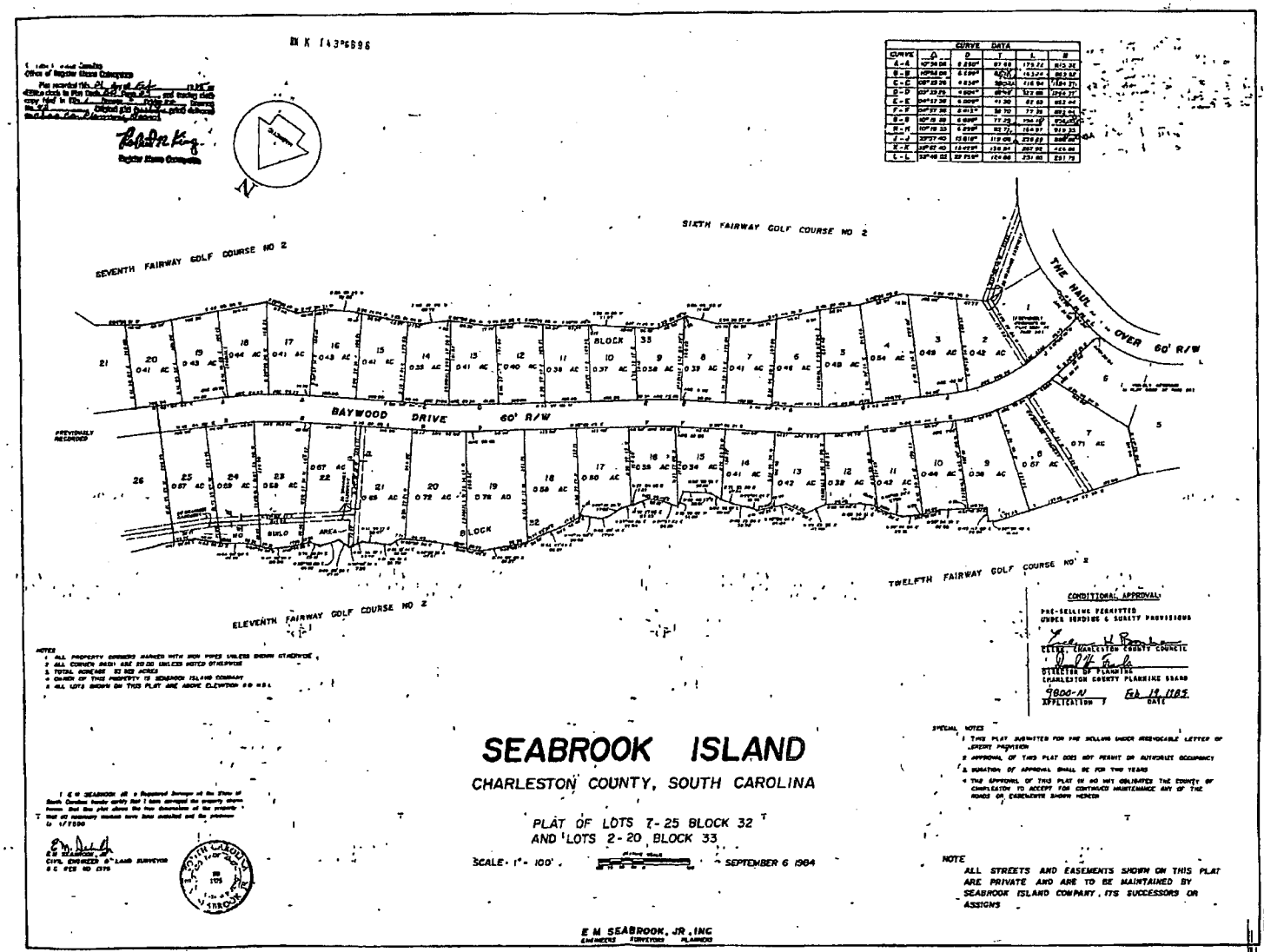
Recording Fee	10.00
State Fee	732.40
County Fee	319.40
Postage	
TOTAL	1060.80

TIAS VERIFIED
BAC MOM
DTD 4/14/97



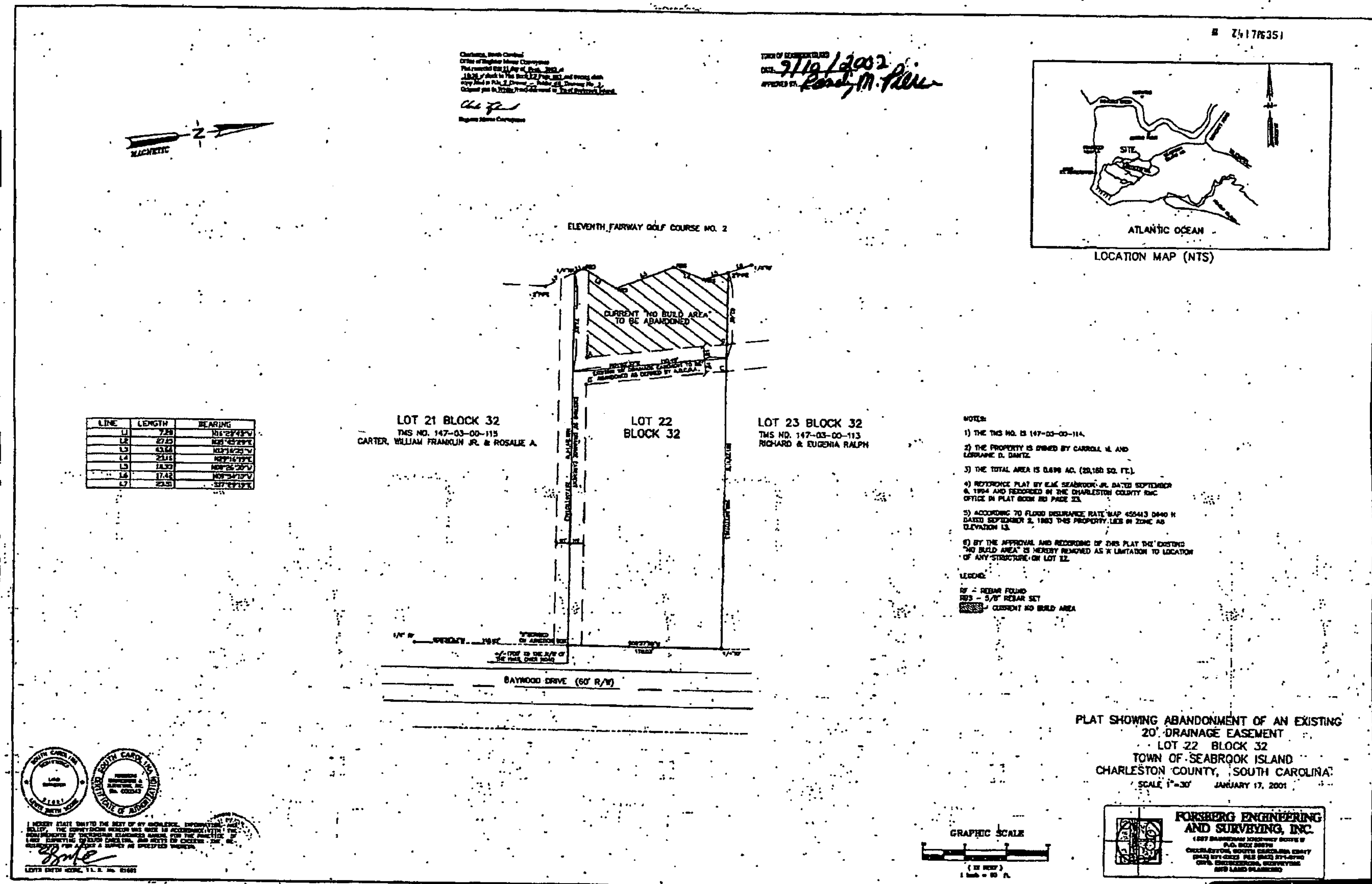
ROA 208

PLAINTIFF'S EXHIBIT B



ROA 209

PLAINTIFF'S EXHIBIT C



BK L 421PG820

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that WE, CARROLL M. GANTZ AND LORRAINE D. GANTZ, Trustees of Carroll M. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245, and AND LORRAINE D. GANTZ AND CARROLL M. GANTZ, Trustees of Lorraine D. Gantz Revocable Trust a Memorandum of which trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249, (the "Grantors"), for and in consideration of the sum of ONE HUNDRED SEVENTY THOUSAND AND 00/100 ($170,000.00) DOLLARS, to TAX FREE EXCHANGE SERVICES, INC., in hand paid, before the sealing of these presents by PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, in the State aforesaid, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, (the "Grantees"), as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns, the following described property, to wit:

See Attached Exhibit "A" for Legal Description

Grantee's Mailing Address:
110 Sugar Maple Court
Winston-Salem, NC 27106

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 Grantees, as Joint Tenants with right of survivorship, and not as tenants in common, their heirs and assigns,, forever.

PLAINTIFF'S EXHIBIT E

AND subject to any and all Restrictive Covenants, Easements, Rights-of-Way and Conditions, the said Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against themselves and their heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

The singular number as used herein shall include the plural. Wherever there is reference in the covenants and agreements herein contained to any of the parties hereto, the same shall be construed to mean the parties hereto, as well as the heirs, representatives successors, and assigns of the same.

IN WITNESS WHEREOF, the Grantors have caused these presents to be executed in their names this 1st day of October, 2002.

WITNESSES:

CARROLL M. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

LORRAINE D. GANTZ, TRUSTEE OF CARROLL M. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 245.

BK L 421PG822

WITNESSES:

LORRAINE D. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

CARROLL M.. GANTZ, TRUSTEE OF LORRAINE D. GANTZ REVOCABLE TRUST, A MEMORANDUM OF TRUST DATED AUGUST 2, 2000, IS RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY, SC IN BOOK R-352, AT PAGE 249.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned Witness and made oath that (s)he saw the within named Grantors sign, seal and as their act and deed, deliver the within written instrument, and that (s)he along with the other subscribing witness herein, witnessed the execution hereof.

signature / Witness #1

SWORN to before me this
1st day of October, 2002.

Notary Public for South Carolina
My commission expires:

ZAN SHIRER DEITZ
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
QUALIFIED IN CHARLESTON COUNTY
COMMISSION EXPIRES JUNE 21, 2005

"EXHIBIT A"
LEGAL DESCRIPTION

ALL that certain piece, parcel or lot of land, situate, lying and being on Seabrook Island, County of Charleston, State of South Carolina, as shown and designated as LOT 22, BLOCK 32, on a Plat entitled, "Plat Showing the Abandonment of an Existing Twenty (20') Foot Easement on Lot 22, Block 32, Town of Seabrook Island, County of Charleston, SC" prepared by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully and at large appear.

TMS # 147-03-00-114

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the following matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

SUBJECT to a ten (10') foot easement for drainage as shown on a Plat made by Forsberg Engineering and Surveying, Inc. dated January 17, 2001, recorded September 11, 2002, in Plat Book EF, at Page 883.

This being the same property conveyed to Carroll M. Gantz and Lorraine D. Gantz, Trustees, Carroll M. Gantz Revocable Trust a Memorandum of which Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 245 by Deed of Carroll M. Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 557, and by Deed of Lorraine Gantz to Carroll M. Gantz and Lorraine D. Gantz, Trustees Lorraine D. Revocable Trust a Memorandum of Trust dated August 2, 2000, is recorded in the RMC Office for Charleston County, SC in Book R-352, at Page 249 by Deed of Lorraine Gantz dated August 2, 2000, recorded in the RMC Office for Charleston County, SC in Book M-354, at Page 567.

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
) (Closing Date) October 1, 2002
COUNTY OF CHARLESTON)

AFFIDAVIT BK L 421PG824

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY Carroll M. Gantz and Lorraine D. Gantz, Trustees of Carroll M. Gantz Revocable Trust, a Memorandum of which trust is dated August 2, 2000, and BY Lorraine D. Gantz and Carroll M. Gantz, Trustees of Lorraine D. Gantz Revocable Trust, a Memorandum of which is dated August 2, 2000, TO Paul Dennis McLaughlin and Susan Rode McLaughlin ON October 1, 2002.

3. Check one of the following: The deed is:

(a)__x__subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b)_____subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c)_____EXEMPT from the deed recording fee because (Exemption #___) (Explanation, if required: n/a If exempt, please skip items 4-6 and go to item #7 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a)__x__The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $170,000.00.

(b) The fee is computed on the fair market value of the realty which is n/a

(c)__The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a

5. Check YES_____ or NO___x___ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is n/a.

6. The DEED Recording Fee is computed as follows:

(a)$170,000.00 the amount listed in item 4 above
(b) 00.00 the amount listed on item #5 above (no amount, please zero)
(c)$170,000.00 subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as closing attorney.

8. Check if Property other than Real Property is being transferred on this Deed.

(A) _____Mobile Home
(B) _____Other (Furniture, Furnishings and Fixtures)

9. DEED OF DISTRIBUTION – ATTORNEY'S AFFIDAVIT: Estate of _____ deceased Case Number _____, personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s) he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____, deceased, and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Grantor, Grantee or Legal Representative
Connected with this Transaction
Eric J. Davidson
(Printed Name)

SWORN to before me this 1st day of October 2002.

ZAN SUREN DEITZ
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
QUALIFIED IN CHARLESTON COUNTY
COMMISSION EXPIRES JUNE 21, 2005

Notary Public for State of: _____
My Commission expires:

BK L 421PG825

RECORDER'S PAGE
This page must remain with the Original Document

DAVIDSON
BENNETT &
WIGGER

Recording Fee 11.00
State Fee 442.00
County Fee 187.00
Postage
Total 640.00
C

FILED
L421-820
2002 OCT -9 PM 3:27
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

PID VERIFIED
BY ASSESSOR
REP LMG
DATE 10/17/02

RECEIVED FROM RMC
OCT 17 2002
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

THE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rode McLaughlin, Defendants. Paul Dennis McLaughlin and Susan Rode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	)	C/A No.: 2015-CP-10-03550 **MOTION FOR SUMMARY JUDGMENT OF THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION**

NOW COMES the Third-Party Defendant Seabrook Island Property Owners Association (hereinafter "SIPOA"), by and through counsel, and moves for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to all claims brought against it. In support of this Motion for Summary Judgment, SIPOA states as follows:

1. While SIPOA has not been sued directly by Plaintiffs Richard Ralph and Eugenia Ralph, the Defendants and Third-Party Plaintiffs Paul Dennis McLaughlin and Susan Rode McLaughlin have demanded judgment against SIPOA "for all or part of those claims against them" brought by the Plaintiffs. (McLaughlin's Answer to Amended Complaint and Third-Party Complaint, ¶ 62).

2. Third-Party Plaintiffs base their claim for relief against SIPOA on "reliance." Specifically, Third-Party Plaintiffs allege that "[b]ut for the representations, actions, and writings

of SIPOA in 2002 and 2008, upon which Defendants relied, materially changed their positions, and were entitled to rely, this dispute and the Plaintiffs' subsequent lawsuit concerning the validity of SIPOA's abandonment of the 20' drainage easement and NO BUILD AREA would not have been commenced." (McLaughlin's Answer to Amended Complaint and Third-Party Complaint, ¶ 61).

3. As a matter of law, there is no genuine issue of material fact that Third-Party Plaintiffs reasonably "relied" on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decisions to remove the pipe or take any other actions that has prompted the lawsuit brought by Plaintiffs. As indicated in their pleadings and in their deposition testimony, Third-Party Plaintiffs did not, and could not, rely on any unambiguous promises or representations on SIPOA prior to purchasing their property and/or removing the pipe and beginning construction. For that reason, they cannot prevail in their third-party claim against SIPOA as a matter of law. *Davis v. Greenwood School Dist. 50*, 3654 S.C. 629, 634-635, 620 S.E.2d 65, 68 (2005); *Craft v. South Carolina Commission for the Blind*, 385 S.C. 560, 567, 685 S.E.2d 625, 629 (S.C. App. 2009); *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (S.C.App. 1993).

4. Furthermore, SIPOA also asserts that the underlying claims brought by Plaintiffs are barred by the applicable statute of limitations, and that there is no legal basis for their claims for attorney's fees and costs. Attorney fees in South Carolina are not recoverable unless they are authorized by contract or by statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). Because there is no right under the common law to attorney fees, a plaintiff must plead either a contract or a statute to receive attorney's fees. *Prevatte v. Asbury Arms,* 302 S.C. 413, 396 S.E.2d 642 (S.C. App. 1990).

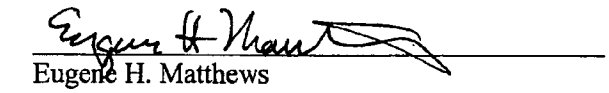
5. At argument on this motion, SIPOA will rely on the pleadings filed in this case; deposition testimony of Richard Ralph, Eugenia Ralph Paul, Dennis McLaughlin and Susan Rode McLaughlin, and any other witness; the documents that have been the subject of discovery in this case; citations to applicable law; and a memorandum of law to be presented at argument.

THEREFORE, Third-Party Defendant Seabrook Island Property Owners Association respectfully requests that this Court GRANT its Motion for Summary Judgment and DISMISS with prejudice the claim brought against it by the McLaughlins. In the alternative, Third-Party Defendant Seabrook Island Property Owners Association respectfully requests that this Court GRANT its Motion for Summary Judgment and DISMISS with prejudice the underlying claim brought against the McLaughlins by the Ralphs.

PLEASE TAKE NOTE THAT Third-Party Defendant Seabrook Island Property Owners Association requests that this Court convene a hearing on this motion at its earliest opportunity, but not sooner than ten (10) days prior to the filing of this motion, pursuant to Rule 6(d) of the South Carolina Rules of Civil Procedure.

Dated this the 23rd day of March, 2016.

RICHARDSON PLOWDEN & ROBINSON, P.A.



Eugene H. Matthews
Post Office Drawer 7788
Columbia, South Carolina 29202
T: 803-771-4400
F: 803-779-0016
Email: gmatthews@RichardsonPlowden.com

ATTORNEY FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2015-CP-10-3550
Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rhode McLaughlin, Defendants and Paul Dennis McLaughlin and Susan Rhode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: THE ABOVE-NAMED PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the Defendants, Paul Dennis McLaughlin and Susan Rhode McLaughlin, by and through their undersigned counsel, will move on the tenth (10th) day after service hereof or as soon as counsel may be heard before the Presiding Judge of the Ninth Judicial Circuit for an order granting the Defendants judgment as a matter of law

against the Plaintiffs pursuant to Rule 56(c) SCRCP. This motion is based upon those matters deemed admitted by the Plaintiffs in their Responses to the Defendants' Request for Admission dated August 19, 2013 pursuant to Rule 36 SCRCP. The Defendants' Requests for Admission and the Plaintiffs' Responses to the Defendants' Request for Admission are attached hereto as Exhibit "A" and Exhibit "B" respectively and incorporated by reference herein. The Plaintiffs admitted that the Board of the Seabrook Island Property Owners Association abandoned the 20' drainage easement and "NO BUILD AREA" by plat but deny that the Board's actions affected the rights they retained in their own property. This Motion is further based on the Plaintiff's failure to commence their action within six (6) years of notice of the abandonment of the 20' drainage easement and NO BUILD ZONE. A Plat was recorded on September 11, 2002 in Book EF at Page 883 in the RMC Office for Charleston County that provided actual notice to the public in general and the Plaintiffs in particular of the abandonment of the 20' drainage easement and the NO BUILD ZONE on Lot 22. The Defendants obtained title to the subject property by deed dated October 1, 2002 and recorded in Book L421 at Page 820 in the RMC Office for Charleston County. The McLaughlin's Deed provided actual notice to the public and to the Plaintiffs in particular of the abandonment of the 20' drainage easement and NO BUILD ZONE. S.C. Code Ann. §15-3-530 bars them from bringing this action after six (6) years. The Plaintiffs did not bring any action against the McLaughlins until after the McLaughlin's house was completed. The Plaintiffs also did not attempt to intervene in the 2008 lawsuit brought by the Seabrook Island Property Owners Association relating to the same. Accordingly, the Defendants should be granted judgment as a matter of law as to their rights in the subject property.

Pursuant to Rule 11 SCRCP, counsel certifies that there is no duty of consultation connected with the filing of this motion.

Please be present to defend if so minded.

Mt. Pleasant, South Carolina

March 23, 2016

BUIST, BYARS & TAYLOR, LLC

By: _____

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
Phone: (843) 856-4488
Fax: (843) 856-0613

BUIST
BYARS &
TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

March 30, 2016

AMANDA C. TAYLOR
PARALEGAL
Amanda.taylor@buistbyars.com

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad St., Suite 106
Charleston, SC 29401

FILED
2016 APR -1 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Re: Richard Ralph and Eugenia Ralph v. Paul Dennis McLaughlin and Susan Rhode McLaughlin, et al.
Case No. 2015-CP-10-3550
File No.: 1219.0003

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of Exhibit A and Exhibit B to Defendants Paul Dennis McLaughlin and Susan Rhode McLaughlin's Motion for Summary Judgment that was submitted to the Court for filing on March 23, 2016.

Kindly file the originals and return the file-stamped copies to our office in the enclosed envelope. Should you have any questions or concerns, please feel free to contact me directly at 843.284.1461.

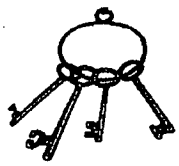
Sincerely,

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

/act
Enclosures
cc. (w/enc.) G. Dana Sinkler, Esq.
Eugene H. Matthews, Esq.

{00748203.DOCX}

EXHIBIT "A"



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

August 22, 2012

MARIA E. KIEHLING
ATTORNEY AT LAW
maria.kiehling@buistbyars.com

Eugene H. Matthews, Esq.
Richardson Plowden Robinson, PA
P.O. Drawer 7788
Columbia, SC 29202

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402

Re: Richard Ralph and Eugenia Ralph v. Paul Dennis McLaughlin and Susan Rode McLaughlin v. Seabrook Island Property Owners Association
Case No. 2011-CP-10-7065
File No.: 2012010118

Dear Messrs. Matthews and Sinkler:

Please find enclosed for service upon you in the above-referenced matter the Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin's First Requests for Admission to the Plaintiffs and to the Third-Party Defendants.

Should you have any questions, please feel free to contact me. With kind regards, I remain

Yours very truly,

Maria E. Kiehling

Encls

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rode McLaughlin, Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendants	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-7065 **THE DEFENDANTS PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN'S FIRST REQUESTS FOR ADMISSION TO THE PLAINTIFFS AND TO THE THIRD-PARTY DEFENDANTS**

TO: G. DANA SINKLER, ESQ.
WARREN & SINKLER, LLP
ATTORNEYS FOR THE PLAINIFF AND
EUGENE H. MATTHEWS, ESQ.
RICHARDSON PLOWDEN ROBINSON, P.A.

The Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin (the "Defendants"), by and through their undersigned counsel, requests that the Plaintiffs and Third-Party Defendants answer the following Requests for Admission pursuant to Rule 36 SCRCP. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny as his or her answer unless he or she states that he has made reasonable inquiry

and that the information known or readily obtainable by him is insufficient to enable him or her to admit or deny. If a party fails to admit the genuineness of any document or the truth of any mater and if the Defendants prove the genuineness or truth of the matter, then the Defendants shall move for costs and fees pursuant to Rule 37(c) SCRCP.

REQUESTS FOR ADMISSION

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of a plat entitled "Plat Showing Abandonment of an Existing 20' Drainage Easement Lot 22 Block 32 town of Seabrook Island Charleston County South Carolina."

2. Admit that the document attached hereto as Exhibit "A" is dated January 17, 2001.

3. Admit that the document attached hereto as Exhibit "A" was prepared by Forsberg Engineering and Surveying, Inc.

4. Admit that the document attached hereto as Exhibit "A" shows Lot 22, Block 32.

5. Admit that the document attached hereto as Exhibit "A" shows "Current "No Build Area" to be Abandoned" on the western end of Lot 22, Block 32 abutting Eleventh Fairway Golf Course No. 2 as described on Exhibit "A".

6. Admit that the document attached hereto as Exhibit "A" shows "Existing 20' Drainage Easement to be Abandoned as Defined by A,B,C,D, A."

7. Admit that the document attached hereto as Exhibit "A" shows an approval by the Town of Seabrook Island.

8. Admit that the document attached hereto as Exhibit "A" is recorded in Book EF at Page 883 in the Office of the Register of Mesne Conveyance for Charleston County South Carolina.

9. Admit that the document attached hereto as Exhibit "A" shows Lot 23 Block 32 TMS No. 147-03-00-113 Richard & Eugenia Ralph.

10. Admit that the document attached hereto as Exhibit "A" shows that the Existing 20' Drainage Easement was abandoned.

BUIST, BYARS, & TAYLOR, LLC

Mt. Pleasant, South Carolina

By: _____

aug. 22, 2012

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Maria E. Kiehling
S.C. Bar No. 76799
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
hamlin.okelley@buistbyars.com
maria.kiehling@buistbyars.com

CERTIFICATE OF MAILING

The undersigned hereby certifies that on Aug 22, 2012, a copy of the foregoing was placed in an envelope with first-class postage pre-paid, and mailed to:

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
171 Church Street
Charleston, SC 29402

Eugene H. Matthews, Esq.
Richardson Plowden Robinson, P.A.
P.O. Drawer 7788
Columbia, SC 29202

G. Hamlin O'Kelley, III

EXHIBIT "A"

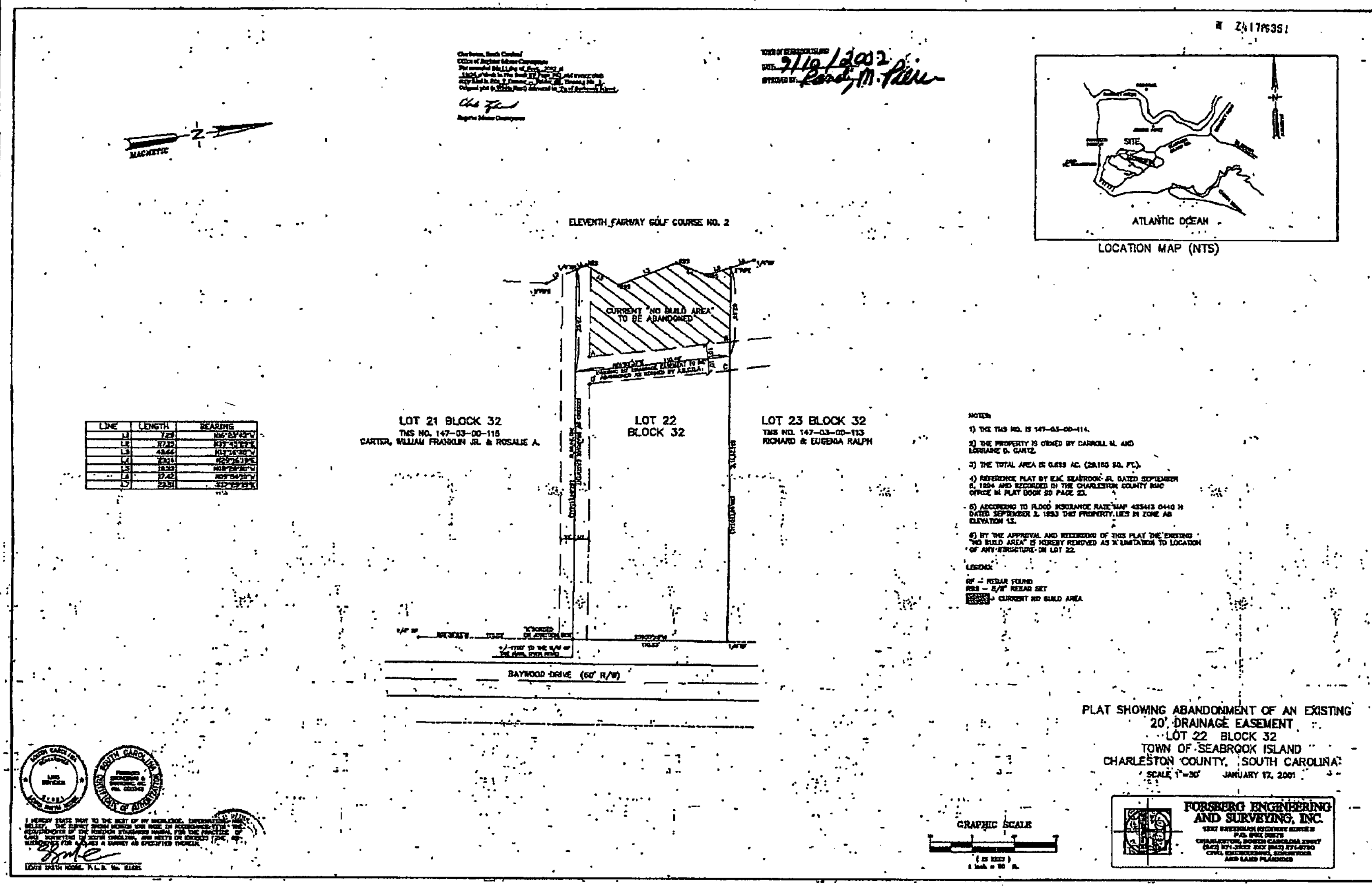

ELEVENTH FAIRWAY GOLF COURSE NO. 2
CURRENT "NO BUILD AREA" TO BE ABANDONED
LOT 21 BLOCK 32
TMS NO. 147-03-00-115
CARTER, WILLIAM FRANKLIN JR. & ROSALIE A.
LOT 22
BLOCK 32
LOT 23 BLOCK 32
TMS NO. 147-03-00-113
RICHARD & EUGENIA RALPH
BAYWOOD DRIVE (60' R/W)
LOCATION MAP (NTS)
ATLANTIC OCEAN
SITE
MAGNETIC
LINE LENGTH BEARING
NOTES:
1) THE TMS NO. IS 147-03-00-114.
2) THE PROPERTY IS OWNED BY CARROLL M. AND LORRAINE D. GANTZ.
3) THE TOTAL AREA IS 0.639 AC. (28,100 SQ. FT.).
4) REFERENCE PLAT BY E.M. SEABROOK JR. DATED SEPTEMBER 6, 1994 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK 20 PAGE 23.
5) ACCORDING TO FLOOD INSURANCE RATE MAP 455413 0440 H DATED SEPTEMBER 2, 1993 THE PROPERTY LIES IN ZONE AE ELEVATION 13.
6) BY THE APPROVAL AND RECORDING OF THIS PLAT THE EXISTING "NO BUILD AREA" IS HEREBY REMOVED AS A LIMITATION TO LOCATION OF ANY STRUCTURE ON LOT 22.
LEGEND:
RF - REBAR FOUND
RBS - 5/8" REBAR SET
CURRENT NO BUILD AREA
PLAT SHOWING ABANDONMENT OF AN EXISTING
20' DRAINAGE EASEMENT
LOT 22 BLOCK 32
TOWN OF SEABROOK ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
SCALE 1"=30' JANUARY 17, 2001
GRAPHIC SCALE
FORSBERG ENGINEERING AND SURVEYING, INC.
Z417P6351
9/19/2002

Exhibit "B"

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-7065
RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST REQUESTS FOR ADMISSION
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	

The Plaintiffs, through counsel, answers the First Requests for Admission to the Plaintiffs pursuant to SCRCP 33.

1. Admit that the letter attached hereto as Exhibit "A" is a true and accurate copy of correspondence transmitted to Mr. Randy Pierce at Seabrook Island Town Hall dated September 9, 2002.

ANSWER: The Defendants admit the genuineness of the letter attached as Exhibit "A", but deny that they were privy to or had any knowledge of the events described therein.

2. Admit that the letter attached hereto as Exhibit "A" is from Carroll Gantz and references Lot 22, Block 32, 3061 Baywood Drive, Seabrook Island, SC.

ANSWER: The Defendants admit that the letter attached hereto as Exhibit "A" appears to be from Carroll Gantz and references Lot 22, Block 32, 3061 Baywood Drive, Seabrook Island, SC, but they deny that they were privy to or had any knowledge of the events described herein.

3. Admit that the letter attached hereto as Exhibit "A" contains the following language "On March 20, 2002, Mr. Wells notified me that the POA Roads and storm drainage Committee met on March 18, and agreed there was no further need for the subject easement."

ANSWER: The Defendants admit that the letter attached hereto as Exhibit "A" contains the quoted language, but deny that they were privy to or had any knowledge of the events described therein and further deny such language had the legal effect or eviscerating their rights to the drainage easement and "no build" zone.

4. Admit that the letter attached hereto as Exhibit "A" is signed by both Carroll Gantz and the Seabrook Island Property Owners Association.

ANSWER: The Defendants admit that the letter attached as Exhibit "A" appears to bear the signatures of Carroll Gantz and someone designated as an officer on behalf of the POA, but deny that they were privy to or had any knowledge of the events described therein and further deny that any action taken by the POA officer had the legal effect of eviscerating their rights to the drainage easement and "no build" zone.

5. Admit that between the signatures of Carroll Gantz and the Seabrook Island Property Owners Association officer, the letter attached hereto as Exhibit "A" contains the following language "Authorization by POA that the proposed changes of removal of drainage easement and "no build zone" on the subject lot have been reviewed and approved.

ANSWER: The Defendants admit that the quoted language appears in the letter attached as Exhibit "A", but deny that such action by the POA had any affect on their rights to the drainage easement and "no build" zone.

3. Admit that there is a Town of Seabrook Island Zoning Permit Application attached as part of Exhibit "A" hereto seeking a record a plat for 3061 Baywood Drive, Lot 22, Block 32, Seabrook Island.

ANSWER: The Defendants admit the genuineness of the document described in Request to Admit Number 3, but deny that it had any legal affect on their rights to the drainage easement and "no build" zone.

4. Admit that the plat attached hereto as Exhibit "B" is a true and accurate copy of a "Plat Showing Abandonment of Existing 20' Drainage Easement, lot 22, Block 32 Town of Seabrook Island, Charleston County, South Carolina."

ANSWER: The Defendants admit the genuineness of the Plat attached as Exhibit "B" and that it contains the language quoted in Request to Admit Number 4, but deny that the Plat had any legal effect on their rights to the drainage easement and "no build" zone.

5. Admit that the plat attached hereto as Exhibit "B" is dated January 17, 2001.

ANSWER: Admitted.

6. Admit that the plat attached hereto as Exhibit "B" was by Forsberg Engineering and Surveying, Inc.

ANSWER: Admitted.

7. Admit that the plat attached hereto as Exhibit "B" was recorded in plat Book EF at Page 883 in the Office of the RMC for Charleston County on September 11, 2002.

ANSWER: Even with the aid of a magnifying glass, the recording information is not legible and Defendants cannot admit or deny the same.

8. Admit that the plat attached hereto as Exhibit "B" shows "Current "No Build Area" To Be Abandoned".

ANSWER: Admitted.

9. Admit that the plat attached hereto as Exhibit "B" shows "Existing 20' Drainage Easement to Be Abandoned".

ANSWER: Admitted.

10. Admit that the deed attached hereto as Exhibit "C" is a true and accurate copy of the deed from Carroll M. Gantz and Lorraine D. Gantz to Paul Dennis McLaughlin and Susan Rode McLaughlin.

ANSWER: Admitted.

11. Admit that the deed attached hereto as Exhibit "C" transferred the real property known as Lot 22, Block 32, Seabrook Island to Paul Dennis McLaughlin and Susan Rode McLaughlin.

ANSWER: Admitted.

12. Admit that the deed attached hereto as Exhibit "C" makes reference to a ten (10') foot easement for drainage as shown on a plat made by Forsberg Engineering and Surveying, Inc., dated January 17, 2001, record September 11, 202, in Plat Book EF at Page 883.

ANSWER: Admitted, but in the paragraph before the one referenced in Request to Admit Number 12, it is provided that "the conveyance is subject to any and all "Easements" of record affecting said property" and the drainage easement and "no build" zone is and was still an easement of record affecting said property.

13. Admit that the deed attached hereto as Exhibit "C" was recorded on October 9, 2002, in Book L421 at Page 820 in the Office of the RMC for Charleston County.

ANSWER: Admitted.

14. Admit that the Order attached here to as Exhibit "D" is a true accurate copy of a Form 4 Order entered case of *Seabrook Island Property Owners Association v. Paul Dennis McLaughlin*, Case No. 2008-CP-10-6975.

ANSWER: Admitted, but denies that the Plaintiffs were privy to or had any knowledge of the suit until well after their institution of the within action.

15. Admit that the Order attached hereto as Exhibit "D" was filed was signed by the honorable J.C. Nicholson on January 7, 2011.

ANSWER: Admitted.

16. Admit that the Order attached hereto as Exhibit "D" was filed January 7, 2011.

ANSWER: Admitted.

17. Admit that the Withdrawal of Motion for Temporary Restraining Order attached hereto as Exhibit "D" was filed on December 11, 2008.

ANSWER: Admitted.

18. Admit that the Withdrawal of Motion for Temporary Restraining Order attached hereto as Exhibit "D" was entered in the case of *Seabrook Island Property Owners Association v. Paul Dennis McLaughlin*, Case No. 2008-CP-10-6975.

ANSWER: Admitted.

19. Admit that the document attached hereto as Exhibit "E" is a true and accurate copy of the minutes of the Seabrook Island Property Owners Association.

ANSWER: Denied. Admitted that Exhibit "E" appears to have been taken "from minutes" of the SIPOA Board Members present at the meeting and not from a meeting of the Seabrook Island Property Owners Association. Admit the quoted portion, but Exhibit "E" contains other language as well.

20. Admit that the document attached hereto as Exhibit "E" states "Mr. Muenow made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote."

ANSWER: Admitted, but there is additional language in Exhibit "E".

21. Admit that the document attached hereto as Exhibit "F" is a true and accurate copy of correspondence from Coy Foster to Paul and Susan McLaughlin.

ANSWER: The Defendants admit the genuineness of the letter, but deny that they were privy to or had any knowledge of the letter or its contents.

22. Admit that the document attached hereto as Exhibit "F" is dated August 18, 2006.

ANSWER: Admitted.

23. Admit that the document attached hereto as Exhibit "F" states as follows:

> 1. Owners is to assume all responsibility for the underground drainage line at the 20' drainage easement/driveway.
> 2. Owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe.
> 3. Property lines must be located prior to any grading because of the Right-of-Way for the SIPOA 20' drainage easement.

ANSWER: admitted.

24. Admit that the Seabrook Island Property Owners Association, Inc., abandoned the 20' drainage easement and "NO BUILD AREA" by plat, by intent and by vote.

ANSWER: Denied. Admitted that members present at a meeting or the Board of SIPOA purported to abandon drainage easement and "NO BUILD AREA", but denied that their action affected the vested rights of the property owners who were expressly deeded the fee simple title to the drainage easement and "NO BUILD AREA".

25. Admit that the Plaintiffs knew of the abandonment of the 20' drainage easement and "NO BUILD AREA" at the time the Defendants were building their residence on Seabrook Island.

ANSWER: Denied.

26. Admit that the Plaintiff filed this lawsuit on September 30, 2011.

ANSWER: Admitted.

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By: G. DANA SINKLER

Attorney for Plaintiffs

Charleston, South Carolina

August 19, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Third-Party Plaintiffs, vs. SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2015-CP-10-3550 MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs Richard and Eugenia Ralph ("Plaintiffs") hereby request that the Court grant their Motion for Partial Summary Judgment and respond to Defendants' and Third-Party Defendant's Motions for Summary Judgment. The Plaintiffs did not have actual or constructive notice of, nor are they bound by, the abandonment of the drainage easement and "No Build Area" by a Board of the Seabrook Island Property Owners Association (the "SIPOA"). The drainage easement and No Build Area, as depicted on the plat referenced in the deed by which Plaintiffs took possession of their property, remain enforceable. The Defendants' destruction of the drainage easement and construction of their house in the No-Build Area amounted to an act of continuing trespass and damage to the real property of the Plaintiffs.

1. **The Purported Abandonment of the Drainage Easement and No Build Area Did Not Give Rise to a Cause of Action.**

In South Carolina, the statute of limitations for trespass or damage to real property is three years from when a person knew or by the exercise of reasonable diligence should have known that he or she had a cause of action. See S.C. Code Ann. §§ 15-3-530(3). It is obvious that a cause of action must actually exist before the limitations period begins to accrue. The Plaintiffs had no cause of action against the Defendants upon recordation of the SIPOA's purported abandonment.

As set forth in the Plaintiffs' Motion for Summary Judgment, the original developer of the subject lots conveyed the lots subject to the Plat of E.M. Seabrook dated September 6, 1984 and recorded in the Charleston County RMC/ROD Office in Plat Book BD, page 23 and the revised plat dated May 8, 1987 and recorded in the Charleston County RMC/ROD Office in Plat Book BN, page 49. These plats established a plan for a 20' drainage easement and No Build Area. These plats are referenced in the subsequent deeds in the Plaintiffs' chain of title, as evidenced by the deed to the Plaintiffs recorded in the Charleston County RMC/ROD Office on April 10, 1997 and indexed in Book K282, Page 846. It is uncontroverted that the drainage easement and No Build Area is therefore an appurtenant easement benefitting the Plaintiffs as of the date on which they acquired ownership of Lot 23. There is an established principle of South Carolina law:

> The Florenza Company by subdividing and platting this property into lots and streets and selling and conveying lots with reference to the plat, thereby manifested an intent to dedicate said streets to the use of the public, and is estopped to deny the rights of such purchasers and those claiming under them, to an easement in all the streets represented and as represented on the plat. ***Such purchasers acquired every easement, privilege and advantage which the plat represented as belonging to them.***

Corbin v. Cherokee Realty Co., 229 S.C. 16, 24, 91 S.E.2d 542, 546 (1956); see also *Blue Ridge Realty Co. v. Williamson*, 27 S.C. 112 at 121, 145 S.E.2d 922 (1965) ("Where lots in a subdivision are sold by reference to a map or plat upon which roads are shown which are or become public

highways, the *private easement which arises upon such a sale survives the vacation, abandonment, or closing* of the road or highway by the public.") (emphasis added).

The Defendants contend that the purported abandonment recorded by the SIPOA in 2001 – four years after the Plaintiffs' acquired Lot 23 and the appurtenant drainage and No Build Area easements running with title to that Lot – commenced the running of the statute of limitations for Plaintiff's claim. This contention is absurd. A third party can no more abandon an appurtenant easement than it can sell real property belonging to another entity. The purported abandonment did not in any way impact the enforceability of Plaintiffs' drainage and No Build Area easements, and there was no cause of action to assert. Therefore, Defendants' Motion for Summary Judgment must be denied.

2. The Plaintiffs' Cause of Action for Trespass to Real Property did not Accrue Until the Defendants Actually Encroached Upon and Destroyed the Drainage Easement and No Build Area.

Even assuming for the sake of argument that the purported 2001 abandonment of the drainage and No Build Area easements, or the 2008 lawsuit filed by the SIPOA to which the Plaintiffs were not made a party, triggered a cause of action for the Plaintiffs, the Plaintiffs were not charged with knowledge of the cause of action.

In South Carolina, the "discovery rule" tolls the statute of limitations until a person knows, or by the exercise of reasonable diligence should know, that he has a cause of action. S.C. Code Ann. §15-3-535; *Barr v. City of Rock Hill*, 330 S.C. 640, 645 (S.C.Ct.App. 1958). Per the discovery rule, the statute runs from the date that the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Republic Contr. Corp. v. S.C. Department of Highways and Pub. Transp.*, 332 S.C. 197, 207 (S.C.Ct.App. 1998). The exercise of reasonable diligence means simply that an injured party must act with the same

promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been involved or that some claim against another party might exist. *Id.* at 207.

The Defendants assert that the purported 2001 abandonment and 2008 lawsuit served as actual notice to the public and the Plaintiffs that there may be a cause of action. This contention hardly warrants a response. There is absolutely no evidence in the record that the SIPOA provided notice of the purported abandonment or the 2008 lawsuit to the Plaintiffs or any other property owners impacted by the easements. Property owners are not charged with a constant duty to make themselves aware of documents filed in the RMC/ROD Office or the Clerk of Court's Office. To suggest otherwise would require property owners to conduct a title search on their own property every three years. Stated differently, any person could simply record an abandonment of an easement that does not benefit them and then wait for the statute of limitations to run. This is not a scenario contemplated in the South Carolina Code and is certainly not an example of the "reasonable diligence" expected of a property owner.

The Plaintiffs became aware of Defendants' trespass when there were actual physical signs of the destruction of the drainage and No Build Area easements. Plaintiffs then brought this lawsuit within three years of observing the easement destruction. As such, the period of limitations did not run, and the Defendants' motions must be denied.

3. The Plaintiffs are entitled to Judgment as a matter of law as to their claims of Damage to Real Property and Continuing Trespass.

The Defendants have not denied, and there is no genuine question of material fact as to whether the Defendants destroyed the drainage pipe in the easement leading to the Plaintiffs' property and then built their dwelling on the No Build Area. As set forth in Plaintiffs' Complaint, Motion for Partial Summary Judgement, and in the Supporting Affidavit of J. Howard Yates, Jr.,

Esq., by virtue of the conveyance of each lot subject to the 20' easement and No Build Area for the common use or benefit of each lot owner, as a matter of law a servitude was created as to each lot restricting the use of the land to that purpose. *Restatement of Law- Property Restatement (Third) of Property, Chapter 2. Creation of Servitudes* (attached hereto as Exhibit A). Thus, such destruction of the drainage easement and encroachment on the No Build Area by the Defendants amounts to an unauthorized act of continuing trespass, and the Plaintiffs are entitled to Judgement as a Matter of Law.

For the reasons set forth above, the Plaintiffs hereby request this Honorable Court to Grant their Motion for Partial Summary and hold that the Defendants are liable for such damages caused to Plaintiffs' property by Defendants' actions. The Plaintiffs further request that this Court deny the Defendants' Motions for Summary Judgment.

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Charleston, South Carolina

May 9, 2016

EXHIBIT A

Restatement of the Law — Property
Restatement (Third) of Property: Servitudes
Current through April 2012

Chapter 2. Creation Of Servitudes

§ 2.14 Servitudes Implied From General Plan

Link to Case Citations

Unless the facts or circumstances indicate a contrary intent, conveyance of land pursuant to a general plan of development implies the creation of servitudes as follows:

(1) Implied Benefits: Each lot included within the general plan is the implied beneficiary of all express and implied servitudes imposed to carry out the general plan.

(2) Implied Burdens:

(a) Language of condition that creates a restriction or other obligation, in order to implement the general plan, creates an implied servitude imposing the same restriction or other obligation.

(b) A conveyance by a developer that imposes a servitude on the land conveyed to implement a general plan creates an implied reciprocal servitude burdening all the developer's remaining land included in the general plan, if injustice can be avoided only by implying the reciprocal servitude.

Cross-References:

Section 1.7, General Plan Development Defined; § 1.8, Common-Interest Community Defined; § 2.1, Creation of a Servitude; § 2.5, Estates or Servitudes Burdened and Benefited by a Servitude; § 2.6, Creation of Benefits in Gross and Third-Party Beneficiaries; § 2.9, Exception to Statute of Frauds; § 2.10, Servitudes Created by Estoppel; Chapter 6, Common-Interest Communities; § 7.10, Modification and Termination of a Servitude Because of Changed Conditions; § 8.1, Right to Enforce a Servitude; § 8.3, Availability and Selection of Remedies for Enforcement of Servitudes; § 8.4, Remedy for Condition Broken by Violation of General-Plan Restrictions.

Comment:

a. Rationale. Land developers in the 20th century have increasingly used private land-use controls to enhance the marketability of projects by establishing a particular character for the development. The practice, which began with relatively simple building and use restrictions in residential subdivisions, has spread to a wide variety of common-interest developments that include design controls, property owners' associations, or other community-governance structures, and assessments for maintenance of community facilities and provision of services. Developers of commercial and mixed-use projects also rely extensively on private land-use controls and other servitudes to package and market their developments. Developments that utilize land-use controls and other servitudes to establish and maintain a particular character for the development are described as developments according to a general plan.

A common feature of all these modern land developments is their use of reciprocal servitudes to

establish the desired character and governance of the project and to assure its continuance. Even when a property owners' association, or other body, is assigned primary responsibility for enforcing the servitudes undergirding the project, the lot owners are given the ultimate right to require continued adherence by the other lot owners to the general plan. In modern practice, the developer normally files a declaration that sets forth the servitudes that will be imposed to implement the general plan. That declaration normally includes a description of the land covered by the plan, a description of the servitudes binding each lot, and a statement that the servitudes run with the land and run to the benefit of every lot in the plan. The declaration becomes effective to create the reciprocal servitudes for the entire development when the first lot is conveyed subject to its terms. See § 2.1, Comment *c*. This practice has become so common that it justifies the assumption that the developer and the purchasers of land conveyed pursuant to a general plan of development intended to include the usual reciprocal servitudes necessary to carry out the plan. Under the rules stated in this section, the reciprocal servitudes may be implied if they have not been expressly created.

b. Historical note: uses of the general-plan doctrine. The general-plan doctrine, under which reciprocal servitudes may be implied to effectuate the parties' intent to establish a plan of land-use controls for a real-estate development, originated as a method of circumventing the limitations on creating servitude benefits in third parties. Early developers of residential subdivisions often relied on land-use restrictions in the deeds to individual lots, rather than using a declaration of restrictions applicable to the entire subdivision. The deeds usually stated restrictions without stating that the benefit of the restrictions ran to other lots in the subdivision. Although courts were willing to infer that the developer and the developer's remaining land were the intended beneficiaries of the servitude, benefits to lots previously sold by the developer could not be implied because they were owned by strangers. Even if the deed stated expressly that the restrictions were for the benefit of all other lots in the subdivision, the old rule prohibiting creation of servitudes for the benefit of strangers would have made the attempt ineffective as to lots previously sold.

Courts solved the problem of permitting all subdivision lot owners to hold the benefit of the servitudes imposed on all other lots in the subdivision by the general-plan doctrine. Under the general-plan doctrine, all lots developed according to a general plan were entitled to the benefit of the servitudes imposed on all the other lots in the plan, regardless of the order in which they were conveyed by the developer. Mechanically, the result was reached by holding that, on conveyance of the first lot subject to restrictions, the developer imposed an implied reciprocal servitude on the remainder of the lots for the benefit of the first lot. Thus, the owner of the first lot held the benefit of a servitude that permitted him to enforce the restrictions against all the other lots. The same theory operated to give each subsequent purchaser rights against all those who purchased later than they did.

The result of using the general-plan doctrine in this fashion was to create additional servitude benefits by implication. In effect, it permitted the lot owners to enforce servitudes that were expressly imposed on other lots in the same subdivision. Used for this purpose, the doctrine facilitated effectuation of the parties' intent to create a viable method of maintaining the restricted character of a residential subdivision. Modern acceptance of the third-party-beneficiary doctrine has rendered the general-plan doctrine unnecessary for the express creation of servitude benefits in all lots included in a general plan of development. See § 2.6. However, it remains useful in cases where the developer neglects to include an express statement in the declaration, or deeds, that the other lot owners are intended beneficiaries. Where there is a general plan, it is implied that all the other lot owners are intended beneficiaries, unless the facts or circumstances indicate a contrary intent. This rule is set forth in subsection (1) of this section.

Although the general-plan doctrine was originally developed to facilitate the creation of servitude benefits, the mechanics of the doctrine involved the creation of an implied servitude burden. Courts began to use this aspect of the doctrine to solve the problems presented in two other kinds of cases. When developers rely on inclusion of servitudes in the individual deeds, rather than recording a declaration applicable to the entire subdivision, they may attempt to convey a few lots for purposes different from those authorized by the plan, or to change the character of the development midstream to adapt to changing market conditions. If a court finds that the developer has marketed the project as a development pursuant to a general plan, the implied reciprocal servitude prevents the developer from conveying lots free of the restrictions imposed on the earlier purchasers, and from developing

the remaining lots in ways that would violate those restrictions.

The other cases in which courts have used the implied reciprocal servitude to burden otherwise unrestricted land involve situations in which the developer included restrictions in most of the original deeds, but apparently conveyed some lots without restrictions. After the lots have passed beyond the developer's control, the owner of an unrestricted lot attempts to use the lot for a purpose prohibited to the other lot owners. If the court finds that there was a general plan, and that the lots in question were intended to be subject to the same restrictions as the others, and that the owner of the unrestricted lot purchased with notice of the existence of the general plan, the implied reciprocal servitude will prevent uses of the lot that are not permitted to the others. This application of the general-plan doctrine, sometimes called the doctrine of *Sanborn v. McLean,* FN1 should be relatively rare because of the difficulties involved in establishing that the unrestricted lot should have been restricted according to the plan, and that the owner took with notice of the plan. The advent of near universal zoning in urban and suburban areas has substantially lessened the importance of the doctrine of *Sanborn v. McLean,* which was decided in 1925, the year before *Village of Euclid v. Ambler Realty Co.* FN2 established the constitutionality of comprehensive zoning ordinances.

c. Historical note: use of conditions to create land-use restrictions. Conditions creating defeasible fees were widely used to create private land-use controls in the first half of the 20th century for reasons described in Comment *e* to § 2.2. The developer conveyed to the purchaser a fee simple subject to a condition subsequent, reserving a right to re-enter and terminate the estate granted if the land was used for a purpose violating the restriction. In occasional variations, developers used a fee simple determinable with a possibility of reverter on use for a prohibited purpose, or they created enforcement rights in third parties by creating executory interests. The defeasible fees are not very satisfactory vehicles for imposing subdivision land-use controls, and were displaced by servitudes as soon as the doctrinal difficulties abated. For reasons explained in Comment *e* to § 2.2, courts modern give effect to the intent of the parties who used conditions to create land-use controls, either by construing the language to create a covenant, or by finding that the conveyance also creates servitudes by implication. When conveyances pursuant to a general plan of development use language of condition to impose restrictions or other obligations in order to implement the general plan, under the rule stated in subsection (2)(a) of this section, a servitude imposing the same restriction on the land for the benefit of all other lots in the general plan will be implied.

Illustration:

1. The original deeds to lots in Black Acres, a 120-lot residential subdivision, stated that the conveyances were made on condition that the land not be used for other than residential purposes and that, on violation of the condition, the grantor had the right to re-enter and terminate the estate granted. The deeds created implied servitudes restricting use of the land to residential purposes for the benefit of all lots in the subdivision.

d. Relation to Statute of Frauds: difference between implying servitudes under subsections (1) and (2)(a) and under subsection (2)(b). Establishment of servitude benefits by implication does not contravene the Statute of Frauds, which does not require that the benefited estate be identified in writing. It is sufficient if the facts or circumstances of the transaction clearly identify the benefited estate. See § 2.7, Comment *f.* By contrast, the implication of servitude burdens directly contravenes the Statute of Frauds, which requires that the nature and essential terms of the servitude appear in writing. Benefits will be implied under the rule stated in subsection (1) if the general plan is established. Burdens will be implied under the rule stated in subsection (2)(b), however, only if, in addition to the general plan, it is established that injustice can be avoided only by establishment of the servitude. This is the same standard as that required to establish an exception to the Statute of Frauds under § 2.9 and a servitude by estoppel under § 2.10.

Implication of a servitude under subsection (2)(a) is subjected to the lesser standard of subsection (1), rather than the injustice standard of subsection (2)(b), because the circumstances giving rise to the implication of a servitude under subsection (2)(a) clearly establish that the parties intended to burden the land with a restriction. Like the cases covered by subsection (1), the impact of the permitted implication is to grant additional parties the right to enforce the restrictions. Unlike the cases covered by subsection (2)(b), the result is not to create restrictions where the parties may not

have intended any.

e. Effect of servitude implied under subsection (2)(b)-successors without notice. Even though justice may require implication of a reciprocal servitude burdening the developer's remaining land under subsection (2)(b), the implied servitude may not be enforceable against successors without notice. See § 7.14, Extinguishment of Servitude Benefits Under Recording Act.

f. General plan. The determination whether the conveyance of land was pursuant to a general plan of development is critical to implication of servitudes under the rules stated in this section. Existence of a general plan is a question of fact to be determined from the circumstances. In most cases, the existence of the general plan is clear. If land is subdivided according to a recorded plat and servitudes are imposed on each lot, whether by declaration, restrictions in the plat, or substantially similar restrictions in each deed, the conclusion that the development occurred pursuant to a general plan is easily reached. The difficult cases involve subdivisions without a recorded plat, or without substantially uniform deed restrictions.

In difficult cases, resolution of the question whether development occurred pursuant to a general plan may depend on the question whether the court is asked to imply a reciprocal servitude under subsection (1), (2)(a), or (2)(b). When the court is asked to imply a servitude under subsection (1) or subsection (2)(a), the creation of the restriction, or other servitude, has already been established. The only question is whether the benefit runs to the neighbors. When the court is asked to imply a servitude under subsection (2)(b), however, the creation of the restriction, or other servitude, is in question. Since the consequences of finding a general plan under subsections (1) and (2)(a) are not as severe, the standard of proof required to establish a general plan may be somewhat less strict than under subsection (2)(b).

In the cases covered by the rule stated in subsection (2)(b), however, the question is whether a servitude should be established burdening land when there is not only no written instrument burdening that land with a servitude, but is not even an oral promise to burden it, or any express representation that it will be burdened with a servitude. If the existence of a general plan is established, the reciprocal servitude burdening all the land included in the plan area will be implied on the basis of implied representations by the developer. Since the consequences of finding the general plan will undercut the policies underlying the Statute of Frauds, and significantly reduce the value of the land in relation to its unrestricted state, clear and convincing evidence of the existence of the general plan is required to imply a reciprocal servitude under subsection (2)(b).

Representations by the developer normally provide the basis for finding that land was conveyed pursuant to a general plan of development. The representations may take the form of direct expressions that the project is a planned development, a restricted community, a quality residential subdivision, or the like. Representations may be found in advertisements, brochures, or statements made by sales personnel. Indirect representations may be found in maps, or pictures displayed to prospective purchasers. Representations may also be found in the language or nature of the servitudes imposed on the lots conveyed.

The existence of a general plan may be inferred from the inclusion of similar restrictions in the deeds from a common grantor, even when the restrictions were omitted from a few of the original deeds. The inference is strengthened by the fact that all the original buildings in the tract, including those on apparently unrestricted lots, conformed to the restrictions included in most of the deeds. The inference of a general plan from these facts, without any evidence of other representations by the common grantor, is probably justified when the question is whether the neighbors can enforce restrictions against the lots whose deeds did include a restriction, but would only rarely be justified when the neighbors seek to enforce restrictions against the owner of a lot whose original deed did not include a restriction.

Factors that tend to show that express servitudes were not imposed pursuant to a general plan are the absence of any plat or map of the area, substantial differences in restrictions included in deeds from the common grantor, and omission of restrictions from deeds in extensive areas of the claimed general plan. Retention by the developer of power to consent to variations from restrictions or to

exempt particular lots from restrictions does not, alone, negate the existence of a general plan. To the extent that the power is exercised with respect to any particular lot, however, that lot may be freed from **implied reciprocal servitudes**.

Illustrations:

2. D, the owner and developer of Black Acres Subdivision, recorded a declaration of protective covenants that imposed building restrictions on all lots in Black Acres. D subsequently conveyed all lots in Black Acres subject to the declaration. The declaration states that all covenants run with the land, and that each lot shall have the right to enforce the restrictions against every other lot. Black Acres was developed according to a general plan.

3. D developed Green Acres as a residential subdivision with detached single-family dwellings. The subdivision plat contained no restrictions and no declaration was filed. The initial deed to each lot in Green Acres states that no structure other than one detached single-family dwelling shall be placed on the lot, and that the restriction is a covenant running with the land. The conclusion is justified that Green Acres was developed according to a general plan.

4. D subdivided a tract of land into 24 lots, and then conveyed six lots by deeds that included covenants requiring the grantees and their successors to contribute one twenty-fourth each to the expenses of maintaining the roads in the subdivision. The conclusion is justified that the six lots were conveyed pursuant to a general plan of development.

5. D subdivided a tract of land into 200 lots. Restrictions limiting use of the lots to residential purposes were included in deeds to 150 of the 200 lots. The original deeds to 50 lots, scattered randomly throughout the subdivision, contained no restrictions. In the absence of other evidence that the unrestricted lots were intended to be burdened by the restrictions, the conclusion would be justified that a general plan existed for the purpose of implying that all of the lots in the subdivision were intended beneficiaries of the restrictions expressly imposed on the 150 lots, but it would not be justified for the purpose of implying reciprocal servitudes burdening the 50 lots whose deeds included no restrictions.

6. G owned a large tract of rural land. Over a period of 20 years, G conveyed five small parcels to others. The deed to one parcel prohibited location of any mobile home on the lot. The deed to another prohibited subdivision of the parcel. The deed to a third provided that it should be used for residential purposes only. The deeds to the last two parcels contained no restrictions. The conclusion is justified that the five lots were not conveyed pursuant to a general plan of development.

g. Land included in general plan. The usual case in which a general plan is found involves a platted subdivision. However, land may be subject to a general plan of development even though it has not been formally subdivided or platted. The extent of the land included in the general plan is a question of fact. In the absence of other evidence, the inference is normally justified that all of the land within a platted subdivision is subject to the general plan, and that land outside the subdivision is not included.

When a tract of land is to be developed over a period of time, the development normally proceeds in phases so that no more land is restricted to a particular type of development than current economic forecasts justify. When a tract is developed in phases, with separate units or subdivisions, the imposition of servitudes in one phase should not give rise to the implication of reciprocal servitudes burdening the remaining units or subdivisions, unless the developer clearly represented to purchasers that the remaining units would be subject to the same restrictions as the earlier ones, under circumstances that would justify enforcement of an express oral promise to impose restrictions on the remaining land under § 2.9.

Illustrations:

7. D subdivided a tract of land into 24 lots, and then conveyed six lots by deeds that included covenants requiring the grantees and their successors to contribute one twenty-fourth each to the expenses of maintaining the roads in the subdivision. The conclusion is justified that all 24 lots are included in the general plan.

8. D subdivided a tract of land into 200 lots. Restrictions limiting use of the lots to residential purposes were included in deeds to 150 of the 200 lots. The original deeds to the other 50 lots contained no restrictions. The 50 unrestricted lots fronted on a major arterial bounding the

subdivision. The 150 restricted lots were interior lots in the subdivision. The conclusion would be justified that a general plan existed as to the 150 lots, restricting them to residential uses, but that the 50 unrestricted lots were not included in the plan.

9. D subdivided a 10-acre parcel adjoining his farm, and conveyed the lots subject to restrictions requiring that they be used for residential purposes and prohibiting location of mobile homes on the lots. The conclusion would be justified that the subdivided lots were conveyed pursuant to a general plan, but that D's farm was not included in the plan.

10. D subdivided a 40-acre tract and filed a subdivision plat showing 100 lots. The recorded plat map contained a list of restrictions imposing set-back requirements and height limits, and prohibiting construction of structures other than single-family residences. D conveyed the lots by reference to the plat. The conclusion is justified that there is a general plan which includes all 100 lots.

11. D developed a large tract of land into subdivisions A, B, and C. For each subdivision D filed a separate plat and declaration of covenants restricting use to detached single-family dwellings. Each declaration states that the burden of the covenants runs with the land for the benefit of all lots within the particular subdivision. The conclusion is justified that subdivisions A, B, and C are not part of one general plan, but the lots included in each subdivision are part of separate general plans.

h. Subsection (1): each lot is the implied beneficiary of servitudes imposed on other lots. Purchasers of lots developed according to a general plan usually have the strongest interest in maintaining the plan's viability. Before the development is complete, their interests may coincide with that of the developer, but after the development is completed, their interests in maintaining the plan are usually far stronger. If the lot owners do not have the right to enforce the servitudes, individually and through their property owners' association, they may lose part or all of the value of their investment made on the basis that the general plan will be maintained.

Because of the importance of the interests of the lot owners, and the almost universal practice of granting reciprocal enforcement rights to purchasers in subdivisions and other general-plan developments, the inference that the lot owners are intended beneficiaries of the servitudes imposed to carry out the general plan is justified unless the facts or circumstances clearly indicate a contrary intent. The cautionary concerns appropriate in determining whether benefits should be implied in third parties absent a general plan, see Comments *c* and *g* to § 2.11, do not apply in determining whether a benefit should be implied pursuant to the general plan. A developer who intends to withhold enforcement rights from the purchasers should do so explicitly in a manner calculated to bring this departure from the norm to the attention of purchasers.

Retention of enforcement rights by the developer, whether in the form of a right of entry, power of termination, or otherwise, does not negate the intent to create benefits in all the lot owners included in the general plan. The enforcement rights are presumed to be concurrent and supplementary. Nor does retention of a power by the developer to vary or waive the servitudes imposed negate the existence of enforcement rights in the lot owners. Older cases holding that retention of such powers negates the existence of a general plan were decided when the use of general-development plans was less common, and the plans were less complex. Today, developers seek to retain flexibility through the retention of such powers, but without destroying the power of the lot owners to enforce the general plan as it finally takes form. Under the rule stated in this subsection, the retention of such powers does not indicate that the lot owners are to be denied enforcement powers, although it does indicate that their enforcement rights are subject to the exercise of the developer's power.

The express grant of enforcement rights to a property owners' association, or other body vested with authority to enforce adherence to the plan, does not negate the intent to create benefits in all the lot owners. The rights of the lot owners depend on the nature of the servitudes, but include the right to insist that others subject to the plan comply with the obligations imposed by the plan, and that the property owners' association carry out its duty to enforce the plan.

Illustrations:

12. D developed Green Acres as a residential subdivision with detached single-family dwellings. The subdivision plat contained no restrictions and no declaration was filed. The initial deed to each

lot in Green Acres states that no structure other than one detached single-family dwelling shall be placed on the lot, and that the restriction is a covenant running with the land. The conclusion is justified that Green Acres was developed according to a general plan, and that all lots in the subdivision are intended beneficiaries of the servitudes imposed on each lot.
13. Same facts as Illustration 12. Each initial deed also states that the restriction is a condition and, in the event of breach, the grantor shall have the right to re-enter and terminate the estate granted. Retention of enforcement rights by the developer does not negate the implied intent that the lot owners are intended beneficiaries of the servitudes.
14. D, the owner and developer of Black Acres Subdivision, recorded a declaration of protective covenants that imposed building restrictions. D subsequently conveyed all lots in Black Acres subject to the declaration. The declaration stated that all covenants ran with the land but did not specify the intended beneficiaries of the covenants. The conclusion is justified that Black Acres was developed according to a general plan and that all lot owners in the subdivision are the intended beneficiaries of the servitudes imposed on each lot.
15. Same facts as Illustration 14. In addition, the declaration provided for creation of a property owners' association and imposed servitudes requiring the payment of assessments for maintenance of common areas and operation of the association. The property owners' association was charged with responsibility for enforcing the servitudes. The provision for creation of a property owners' association does not negate the implied intent that the lot owners are intended beneficiaries of the servitudes. As beneficiaries of the servitudes, they are entitled to seek compliance by other lot owners with the obligation to pay assessments to the property owners' association and to adhere to the building restrictions in the general plan.
16. D, the developer of Green Acres, filed a declaration of covenants that imposed building restrictions and required each lot owner to pay dues to a homeowners' association. The restrictions included a provision that no structure other than a single-family detached dwelling should be built on any lot, except that D retained the right to permit attached townhouse dwellings on up to 20 per cent of the lots. D subsequently conveyed lots subject to the recorded declaration and built townhouses on 20 per cent of the lots. The conclusion is justified that Green Acres was developed according to a general plan and that all lot owners and the homeowners' association are beneficiaries of the servitudes imposed on each lot.
17. Developer entered into an agreement with the Local Planning Authority that developer would impose a servitude restricting the number of automobiles that could be garaged or parked by residents in the area, as a condition to receiving planning approval for Green Acres. Developer imposed the servitude by including it in the declaration filed for Green Acres. The declaration stated that the restriction on automobiles was imposed for the benefit of the Local Planning Authority only and was not imposed for the benefit of the lots in Green Acres. The language clearly indicates that the lot owners are not intended beneficiaries of the servitudes.

l. Subsection (2)(b): implied-reciprocal-servitude burdens. This subsection states the doctrine traditionally known as the implied-reciprocal-servitude doctrine. The idea underlying the doctrine is that when a purchaser buys land subject to restrictions imposed to carry out a general plan of development, the purchaser is entitled to assume that all the land in the development is, or will be, similarly restricted to carry out the general plan. By selling land with restrictions designed to put into effect a general plan of development, the developer impliedly represents to the purchasers that the rest of the land included in the plan is, or will be, similarly restricted. That representation is enforced, on the grounds of estoppel, by imposing an implied reciprocal servitude on the developer's remaining land included in the plan. Because the implied-reciprocal-servitude doctrine undercuts the Statute of Frauds and creates uncertainty in land titles, it should be applied only when the existence of a general plan is clear and establishment of the servitude is necessary to avoid injustice.

The implied-reciprocal-servitude doctrine comes into play only when the developer does not follow the practice of recording a declaration of servitudes applicable to the entire subdivision or other general-plan area. The doctrine protects the interests of purchasers who relied on continued effectiveness of the general plan when the developer decides to deviate from the general plan of development before all lots have been sold. If the purchasers have reasonably relied on the implied representations that all lots will be sold subject to the general-plan restrictions, and injustice can only be avoided by establishment of the implied servitude, the purchasers are entitled to the protection of an implied reciprocal servitude burdening the lots remaining in the developer's hands.

When the existence of the general plan is clear, the purchasers' reliance on the developer's obligation to convey all lots subject to the general-plan restrictions is reasonable, unless the developer has expressly retained the right to deviate from the plan, or the facts or circumstances otherwise establish that the purchasers did not reasonably rely on effectuation of the general plan when they bought their lots. When the purchasers have relied on effectuation of the general plan, implication of the implied reciprocal servitude will normally be required to prevent injustice either because monetary compensation is not available or is not adequate to compensate the prior purchasers for the change in character of the neighborhood that will be caused by the deviation from the general plan. However, in appropriate cases, the availability of monetary compensation may render implication of the servitude unnecessary to avoid injustice.

Illustrations:

18. D subdivided a tract of land into 24 lots, and then conveyed six lots by deeds that included covenants requiring the grantees and their successors to contribute one twenty-fourth each to the expenses of maintaining the roads in the subdivision. Then D attempted to sell the remaining 18 lots free of any servitudes. Establishment of an implied reciprocal servitude burdening the remaining 18 lots would be justified.

19. The developer of an 800-lot subdivision conveyed 650 lots by a printed deed form that included a covenant restricting use of the lots to single-family residences. The development was advertised as a strictly residential neighborhood. Then the developer conveyed a lot to a church free of restrictions. The church indemnified the developer against claims for failure to include restrictions in its deed. Establishment of a reciprocal servitude burdening the lot conveyed to the church would be justified.

REPORTER'S NOTE

This section is, in substance, similar to § 527, Comments *b* and *c*, of the first Restatement, although it gives less emphasis to the doctrine of Sanborn v. McLean, 233 Mich. 227, 206 N.W. 496 (1925), on the ground that modern zoning practices, generally validated by Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), have substantially lessened the importance of the doctrine. The section states generally accepted law. See 2 American Law of Property § 9.33 (Casner ed. 1952); R. Cunningham, W. Stoebuck & D. Whitman, Property § 8.32 (1984). Only a few states refuse to recognize implied-reciprocal-servitude burdens on the ground that they violate the Statute of Frauds. Treatment of land-use conditions as servitudes is new, but reflects modern case law and recent commentary.

Rationale, Comment a. In Scheuer v. Britt, 218 Ala. 270, 118 So. 658, 659-660 (1928), the court stated: "In such cases the equitable right to enforce such mutual covenants is rested on the fact that the building scheme forms an inducement to buy, and becomes a part of the consideration. The buyer submits to a burden upon his lot because of the fact that a like burden is imposed on his neighbor's lot, operating to the benefit of both, and carries a mutual burden resting on the seller and the purchasers."

Cook v. Bandeen, 356 Mich. 328, 96 N.W.2d 743 (1959), recognizes that fairness and estoppel are the grounds for enforcing **implied reciprocal servitudes** against a developer who plats land and sells lots with residential restrictions, and then attempts to use his retained lots in the same block for business purposes.

Historical note: uses of conditions to create land-use restrictions, Comment c. For the history of using defeasible fees for land-use controls, see Jost, The Defeasible Fee and the Birth of the Modern Residential Subdivision, 49 Mo. L. Rev. 695 (1984). The case for assimilating land-use arrangements created by defeasible fees with those created by servitudes is made in "Korngold, For Unifying Servitudes and Defeasible Fees: Property Law's Functional Equivalents, 66 Tex. L. Rev. 533 (1988)."

Relation to Statute of Frauds: difference between implying servitudes under subsections (1) and (2) (a) and under subsection (2)(b), Comment d. A minority of states refuse to recognize implied reciprocal servitude burdens, altogether, on the ground that they violate the Statute of Frauds and

ORIGINAL

IN THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Ralph and Eugenia Ralph,

Plaintiffs,

vs.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Defendants.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Third-Party Plaintiffs,

vs.

Seabrook Island Property Owners Association,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-10-03550

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

Third-Party Defendant Seabrook Island Property Owners Association ("SIPOA"), by and through counsel, submits this Memorandum of Law in support of its Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to all claims brought against it.

THE PARTIES

Plaintiffs Richard Ralph and Eugenia Ralph ("Plaintiffs" or the "Ralphs") have lived at 3055 Baywood Drive on Seabrook Island. (Richard Ralph Deposition, p. 5, lines 19-23). They purchased the lot in 1997. The Ralphs' property is listed as "lot 23" on Exhibit A, and is situated in a low-lying area near a lagoon and golf course.

Defendants and Third-Party Plaintiffs Paul Dennis McLaughlin and Susan Rode McLaughlin ("Third-Party Plaintiffs" or the "McLaughlins") are neighbors of the Ralphs. They live in lot 22 on Exhibit A, with an address of 3160 Baywood Drive. (Richard Ralph Deposition, p. 15, lines 21-25; p. 16, lines 1-6). The McLaughlins bought lot 22 in 2002, and eventually built a home on the lot in 2009.

They both belong to SIPOA, which operates as the Property Owners' Association related to the properties in question.

CLAIMS AT ISSUE

The Ralphs are suing the McLaughlins for a "trespass" related to a drainage easement that ran across their neighboring properties. The McLaughlins removed a section of drainage pipe in the easement, and the Ralphs claim they have been damaged due to the pipe's removal. (Amended Complaint, ¶ 24). The McLaughlins claim that they had every right to remove the pipe, because the previous owner of their lot had removed the easement from the property before they purchased it.

To the extent they are found liable to the Ralphs, the McLaughlins also claim that SIPOA should bear the cost of such finding, because they "reasonably relied" on purported representations of SIPOA regarding the easement in 2002 and 2008. (McLaughlin's Answer to Amended Complaint and Third-Party Complaint, ¶ 61).

SIPOA now moves for summary judgment as to the McLaughlin's third-party claim brought against it.

FACTUAL RECORD

When the properties at issue in this lawsuit where being developed, an underground pipe designed to provide drainage to Baywood Drive ran under lots 21 to 28 and emptied into the nearby lagoon. (John Thompson Deposition, p. 111, lines 1-8). The underground pipe was in a "drainage easement" that ran under these lots, and a "no-build" zone existed on the drainage easement. (Exhibit A).

As the years passed, the underground pipe became somewhat porous. For that reason, although the pipe was not originally designed to provide additional drainage to these lots, it actually began to do so. (John Thompson Deposition, p. 50, lines 14-25; p. 51, lines 1-3).

In March 2002, the owner of lot 22 – the lot now owned by the McLaughlins – requested that SIPOA's Board of Directors relinquish its interest in the easement to the property owners. SIPOA did so, with the explicit provision that the property owners would pay all costs necessary to remove the easement. (John Thompson Deposition, p. 18, lines 11-25; p. 19, lines 1-10; Exhibit B). In September 2002, the owner of lot 22 recorded a plat of the property that excluded the easement. (Exhibit C).

Shortly thereafter, the McLaughlins purchased lot 22. (Paul McLaughlin Deposition, p. 14, lines 1-19; p. 15, lines 16-18). The realtor who sold the property to the McLaughlins told them that SIPOA had abandoned the easement and that the McLaughlins had the obligation to "take care of the removal of the pipe." (Paul McLaughlin Deposition, p. 14, lines 16-19). In any event, the McLaughlins have admitted that they had no discussions with SIPOA concerning the property prior to purchasing it. (Paul McLaughlin Deposition, p. 15, lines 16-18).[1]

[1] Paul McLaughlin has also admitted that SIPOA could only abandon the rights that SIPOA had in the easement, but could not do so regarding any other parties claiming an interest in the easement. He testified as follows:

Several years passed, and in 2005, the McLaughlins submitted building plans to SIPOA's Architectural Review Board ("ARB") for approval. In response, on August 18, 2006, the ARB gave "preliminary" plan approval to the McLaughlins, but specifically stated that the McLaughlins that:

- "the owner is to assume **all responsibility** for the underground drainage line at the 20-foot drainage easement/driveway," and
- "the owner is to assume **all responsibility** for the abandoned drainage easement that may contain a pipe."

(John Thompson Deposition, p. 31, lines 13-25; p. 32, lines 1-14; Exhibit D, emphasis added; McLaughlin's Answer and Third-Party Complaint, ¶ 48). Thus, before going forward with their plans, SIPOA put the McLaughlins on notice that they bore all responsibility for their actions related to the pipe. (John Thompson Deposition, p. 33, lines 5-7).[2]

Although there is no written record of the conversation, Mr. McLaughlin testified that when he received the letter in 2006, two SIPOA employees – a Mr. Foster and a Mr. Wells – told him that, despite the letter, the McLaughlins were only responsible for paying to remove the

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Q. (Matthews): Well, now tell me this. I think you would agree with me that [SIPOA] could only abandon what they had – what was theirs, right?

A. (Paul McLaughlin): That's correct.

Q. So if someone else also had an interest in the easement, SIPOA could not abandon what anyone else had, it could only abandon what it had, right?

A. That's correct.

Q. So did SIPOA ever represent that it had the authority to abandon someone else's interest in any type of property to you ever?

A. No.

(Paul McLaughlin Deposition, p. 126, lines 22-25; p. 127, lines 1-8) (emphasis added).

[2] In his own deposition, Paul McLaughlin admitted that his own legal counsel told him, in 2007, that it was the McLaughlin's responsibility "to deal with all aspects relating to the pipe and you remove it if you wished." (Paul McLaughlin Deposition, p. 21, lines 13-25; p. 22, lines 1-20). Later, Mr. McLaughlin stated that his lawyer told him that "all responsibility" meant only that the McLaughlins were responsible for removing the pipe from his property. (Paul McLaughlin Deposition, p. 55, lines 5-22).

pipe, and had no other duty regarding the pipe. (Paul McLaughlin Deposition, p. 81, lines 6-23). Other than Mr. McLaughlin's testimony, there is no other evidence that this hearsay conversation ever took place.

In June 2007, the McLaughlins received a letter from SIPOA informing them that SIPOA was developing plan to address the "abandoned storm water drainage system" on their property, and that SIPOA would "welcome the opportunity to discuss this planned project with you at any time and will keep you informed as the project proceeds." (Exhibit E). According to Mr. McLaughlin, he received the letter "out of the blue." (Paul McLaughlin Deposition, p. 35, lines 14-25; p. 36, lines 1-10).

The Ralphs also received this letter, and within a week or two of receiving the letter, they sent a letter to SIPOA protesting the McLaughlins' plans to remove the pipe. (Richard Ralph Deposition, p. 54, lines 20-25; p. 55, lines 1-8; p. 58, lines 19-25; p. 59, lines 1-10). The Ralphs stated that the pipe was still working, and argued against the McLaughlins' plan to "tear the thing apart or filling in or whatever they wanted to do with it." (Richard Ralph Deposition, p. 60, lines 1-11).

In any event, between 2006 and 2008, the McLaughlins did no work on the property, but continued to pursue financing for the construction. (Paul McLaughlin Deposition, p. 34, lines 10-25; p. 35; p. 36, lines 1-23). Mr. McLaughlin testified that, in the summer of 2008, his attorney contacted a member of SIPOA's legal committee, Ron Ciancio, who allegedly gave "verbal approval" to continue obtaining a construction loan and eventual construction as approved by the ARB. (Paul McLaughlin Deposition, p. 65, lines 6-19).

Neighbors – including the Ralphs – continued to express concern about these plans, and on September 22, 2008, SIPOA's Executive Director John Thompson sent an e-mail regarding

the easement to the property owners of Lots 21 through 28 on Baywood Drive, including the Ralphs and McLaughlins. The e-mail included this language:

> The Owner of Lot 22 is interested in building a new home, and wishes to remove the drain pipe from the old easement. The Owners of Lots 21 and 23 are concerned about potential adverse impacts this may have on the drainage characteristics of their lots.
> ...
>
> The SIPOA would like to discuss the possibility of re-establishing the easement and providing for the long-term care of the pipe, which is presently still in very good condition, but doing so will require the cooperation of all parties.

(Exhibit F).

Following this e-mail, the interested parties met on September 29, 2008 to review an engineering study of the issue and to explore potential solutions to the problem. At the meeting, the parties agreed that they would attempt to find an engineering solution to the problem that would require receiving an easement from a nearby golf course. Unfortunately, the golf course did not grant such permission. (Paul McLaughlin Deposition, p. 48, lines 1-25; p. 49, lines 1-5).

Thereafter, the McLaughlins sent out their own e-mail on October 3, 2008. In it, the McLaughlins made the following admissions:

- The McLaughlins' offer to the previous owner (not SIPOA) was contingent upon the easement being removed.
- The McLaughlins closed on a construction loan after their lawyer allegedly spoke with SIPOA and "received assurances from the POA that a resolution of this matter was in the works."

(Exhibit G) (Emphasis added).

Because the neighbors could not agree on a course of action, on October 7, 2008, SIPOA's Sam Reed told the McLaughlins that he was no longer mediating the issue because it was an "impossible situation." (Paul McLaughlin Deposition, p. 59, lines 5-21). According to

Paul McLaughlin, the position of SIPOA "left him in limbo." (Paul McLaughlin Deposition, p. 62, lines 20-25; p. 63, lines 1-2).

Between the meetings in early October 2008 and the date that the McLaughlins removed in the pipe in December 2008, SIPOA never indicated to the McLaughlins that a resolution to the issue had been reached. According to Paul McLaughlin, he "had repeated conversations" with Ralph Ciancio, a member of the SIPOA Board of Directors, during that time period. (Paul McLaughlin Deposition, p. 85, lines 15-25; p. 86, lines 1-25; p. 88, lines 4-11). During these conversations, Mr. Ciancio made no commitments to Mr. McLaughlin, even though he was pressing Mr. Ciancio "for some direction as to what [a resolution of the matter] was going to look like because it wasn't clear to me where they were going to come out." (Paul McLaughlin Deposition, p. 87, lines 10-17).

During this period, the McLaughlins received one last proposal from SIPOA in late November, prior to the removal of the pipe. According to Paul McLaughlin, Mr. Ciancio delivered the proposal, which included a statement that "it was the [McLaughlin's] responsibility to negotiate with the club about the easement out to the pipe out in the golf course." (Paul McLaughlin Deposition, p. 91, lines 1-25; p. 92, lines 1-24). The McLaughlins rejected the proposal as unacceptable, and without an agreement with SIPOA concerning the pipe in place, they began construction. (Paul McLaughlin Deposition, p. 92, lines 4-9; p. 93, lines 4-20). Mr. McLaughlin opined that "[w]hen we received the proposal back from Ciancio and expressed that it was unreasonable, we had had our – my feeling was our chains yanked from July to then without any resolution and we had been trying to act in good faith to try to reach some resolution." (Paul McLaughlin Deposition, p. 96, lines 3-8). After consulting with their own legal counsel, the McLaughlins decided to move forward with construction, including removal of

the pipe. (Paul McLaughlin Deposition, p. 96, lines 10-22).[3] The McLaughlins removed the pipe on or about December 9, 2008, although SIPOA, the McLaughlins, and their neighbors had not come to an agreement on whether or not the McLaughlins could remove the pipe. (John Thompson Deposition, p. 107, lines 7-14).

On the same date, SIPOA filed a complaint and Motion for a Temporary Restraining Order ("TRO") against the McLaughlins captioned *Seabrook Island Property Owners Association v. Paul Dennis McLaughlin and Susan Rode McLaughlin*, C/A No. 2008-CP-10-06975, Court of Common Pleas for Charleston County. At that time, SIPOA did not know that the McLaughlins were contemporaneously removing the pipe. (John Thompson Deposition, p. 106, lines 10-23). In its Complaint, SIPOA alleged that the McLaughlins "have refused to acknowledge any duty or obligation on their part to re-work the drainage in a manner that maintains the existing system for related downstream lots." (SIPOA Complaint, ¶ 17). John Thompson also provided as affidavit to support SIPOA's Motion for a TRO to restrain the McLaughlins from "further action regarding removal or disruption of a drainage line." (SIPOA's Motion for TRO). In his affidavit, he notes that the McLaughlins' building plans were approved "subject to the conditions that the [McLaughlins] would assume all responsibility for 'the underground drainage line at the 20' drainage easement/driveway...'" (Thompson Affidavit, ¶ 11). Thompson explained that "the reason for filing the complaint was that we weren't fully satisfied that all the drainage issue has been addressed and wanted the pipe to remain until plans were as to how it would be handled." (John Thompson Deposition, p. 96, lines 19-25; p. 97, lines 1-3). After finding out the McLaughlins had removed the pipe, SIPOA withdrew its

[3] The McLaughlins alleged in their pleadings that they removed the pipe "upon advice of counsel." McLaughlin's Answer to Amended Complaint and Third-Party Complaint, ¶ 57).

Motion for a TRO as moot, and eventually withdrew the lawsuit. (John Thompson Deposition, p. 108, lines 11-15).

LEGAL ARGUMENT

I. THE RALPHS' UNDERLYING CLAIM AGAINST THE MCLAUGHLINS MUST BE DISMISSED BECAUSE IT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

By their own admission, the Ralphs knew in the summer of 2007 that the McLaughlins intended to remove the pipe. Specifically, Richard Ralph testified that he knew, in the summer of 2007, that the McLaughlins were "going to tear the thing apart or filling it in or whatever they wanted to do with it. And that is when I argued against it." (Richard Ralph Deposition, p. 60, lines 7-11).

A cause of action "accrues" at the moment a plaintiff has a legal right to sue on it. At that point, the law presumes at least nominal damages. *Stephens v. Draffin*, 327 S.C. 1, 4-5, 488 S.E.2d 307, 308-309 (1997); *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 397, 596 S.E.2d 42, 46 (2004). A statute of limitations will begin to "run" on the date that an action accrues. "A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 230, 599 S.E.2d 462, 464 (S.C. App. 2004).

The date on which discovery should have been made – and on which the statute of limitations begins to run – is an objective, not subjective, question. *Young v. South Carolina Dep't of Corrections,* 333 S.C. 714, 719, 511 S.E.2d 413, 416 (S.C. App. 1999). "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another

party might exist." *Id.* The fact that an injured party may not comprehend the full extent of the damage is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996).

By Mr. Ralphs' own admission, Plaintiffs believed that "some right of [theirs had] been invaded" with regard to the easement and pipe no later than the summer of 2007, if not before. The Plaintiffs filed their initial Complaint in this action on September 30, 2011. The statute of limitations for an action for trespass upon or damage to real property is three (3) years. S.C. Code Ann. § 15-3-530(3). As a matter of law, the underlying claim of the Ralphs must be dismissed.[4]

II. THE MCLAUGHLINS' THIRD-PARTY CLAIM AGAINST SIPOA MUST FAIL, BECAUSE THEY CANNOT SHOW ANY EVIDENCE OF "REASONABLE RELIANCE" ON A SIPOA REPRESENTATION.

While the Ralphs' Amended Complaint does not contain an identified "cause of action," it alleges that McLaughlins' removal of the pipe "constituted a trespass" on the drainage easement on their property, which in turn has caused damage to their property.

The McLaughlins' claim against SIPOA is derivative of the Ralphs' claim against them. At its essence, the McLaughlins allege that they "reasonably relied" on "representations" of SIPOA in 2002 and 2008 that authorized them to remove the pipe from their property in December 2008. However, because the McLaughlins cannot produce evidence of an unambiguous promise or representation of SIPOA authorizing them to remove the pipe in December 2008, their third-party claim against SIPOA must fail.

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[4] Plaintiffs have also requested an award of attorney fees and costs in this action. In South Carolina, attorney fees and costs are not recoverable unless they are authorized by contract or by statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). No such exception exists in this case. Because there is no right under the common law to attorney fees, a plaintiff must plead either a contract or a statute to receive attorney's fees. *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (S.C. App. 1990).

The elements of promissory estoppel are: (1) the presence of a promise **unambiguous in its terms**; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (S.C. App. 1993) (emphasis in the original).

As a practical matter, SIPOA has never made any "promises" to the McLaughlins. The following evidence is either admitted by the McLaughlins or otherwise uncontroverted:

- The McLaughlins have admitted the **realtor** who sold the property to them – not SIPOA – told them that SIPOA had abandoned the easement and that the McLaughlins had the obligation to "take care of the removal of the pipe." (Paul McLaughlin Deposition, p. 14, lines 16-19).

- The McLaughlins have admitted that **they had no discussions with SIPOA concerning the property prior to purchasing it**. (Paul McLaughlin Deposition, p. 15, lines 16-18).

- The 2002 minutes indicated that SIPOA passed a motion regarding lots 22 through 28 "to give the easement back to the property owner with the understanding that the property owner pay **all costs necessary** to remove the easement." (Exhibit B).

- The document of September 10, 2002, prepared by the previous owner, states simply that "the proposed changes of removal of drainage easement and 'no build' zone on the subject lot have been reviewed and approved" by SIPOA. (Exhibit H). It is not addressed to the McLaughlins and **does not reference removal of the drainage pipe or any duties – or lack thereof – to other property owners**.

- On August 18, 2006, the ARB gave "preliminary" plan approval to the McLaughlins, but specifically stated that the McLaughlins that "the owner is to assume **all responsibility** for the underground drainage line at the 20-foot drainage easement/driveway," and "the owner is to assume **all responsibility** for the abandoned drainage easement that may contain a pipe." (John Thompson Deposition, p. 31, lines 13-25; p. 32, lines 1-14; Exhibit D, emphasis added; McLaughlin's Answer and Third-Party Complaint, ¶ 48).

- Although Mr. McLaughlin testified that two SIPOA employees – a Mr. Foster and a Mr. Wells – stated in 2006 the McLaughlins were only responsible for paying to remove the pipe, and had no other duty regarding the pipe, there is no other evidence that this hearsay conversation ever actually took place. (Paul McLaughlin Deposition, p. 81, lines 6-23).

- According to Mr. McLaughlin, in the summer of 2008, his attorney contacted a member of SIPOA's legal committee, Ron Ciancio, who allegedly gave "verbal approval" to continue obtaining a construction loan and eventual construction as approved by the ARB. (Paul McLaughlin Deposition, p. 65, lines 6-19). Again, there is no other evidence that this hearsay conversation ever actually took place.[5]

- In September and October 2008, SIPOA attempted to work out an agreement among the parties, because the neighbors could not agree on a course of action, SIPOA's Sam Reed told the McLaughlins that he was no longer mediating the issue because it was an "impossible situation." (Paul McLaughlin Deposition, p. 59, lines 5-21). According to Paul McLaughlin, **the position of SIPOA "left him in limbo."** (Paul McLaughlin Deposition, p. 62, liens 20-25; p. 63, lines 1-2).

- Following that Paul McLaughlin "had repeated conversations" with Ralph Ciancio, a member of the SIPOA Board of Directors, but Mr. Ciancio made no commitments to Mr. McLaughlin, even though he was pressing Mr. Ciancio "for some direction as to what [a resolution of the matter] was going to look like because **it wasn't clear to me where they were going to come out**." (Paul McLaughlin Deposition, p. 85, lines 15-25; p. 86, lines 1-25; p. 87, lines 10-17, p. 88, lines 4-11).

- Prior to their removal of the pipe, the McLaughlins received one last proposal from SIPOA, which **they rejected as unacceptable**. There was no agreement with SIPOA concerning the pipe in place when the McLaughlins began construction. (Paul McLaughlin Deposition, p. 91, lines 1-25; p. 92, lines 1-24; p. 93, lines 4-20).

- The McLaughlins consulted with their own legal counsel, and not SIPOA, before taking up the pipe. (Paul McLaughlin Deposition, p. 96, lines 10-22).

- SIPOA actually filed a lawsuit to keep the McLaughlins from taking up the pipe prior to reaching an agreement, because SIPOA was not "fully satisfied that all the drainage issue [had] been addressed and **wanted the pipe to remain** until plans were as to how it would be handled." (John Thompson Deposition, p. 96, lines 19-25; p. 97, lines 1-3).

As a matter of law, there is simply no genuine issue of material fact that the McLaughlins reasonably "relied" on the **unambiguous** acts, representations, and writings of SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by Plaintiffs.

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[5] Indeed, by their own admission, the McLaughlins closed on a construction loan after their lawyer allegedly spoke with SIPOA and "received assurances from the POA that a resolution of this matter was in the works," **not** that the issue had been resolved. (Exhibit G).

In fact, the record is completely clear that there was absolutely no "unambiguous representation" from SIPOA that the McLaughlins' only responsibility regarding the pipe was that it had to pay to take the pipe up. Rather, the entire history of the interactions between SIPOA indicated the opposite – that the McLaughlins had to assume all responsibility for the disposition of the pipe. Indeed, by their own admission, (1) the McLaughlins blamed SIPOA for leaving them in "limbo" in 2008 prior to their removal of the pipe, (2) actually rejected SIPOA's proposals to resolve the matter prior to the McLaughlins' unilateral decision to remove the pipe, and (3) were defendants in a lawsuit filed by SIPOA to stop them from removing the pipe. For that reason, they cannot prevail in their third-party claim against SIPOA as a matter of law.

On this point, South Carolina law is clear. For instance, in *Davis v. Greenwood School Dist. 50*, 365 S.C. 629, 634-635, 620 S.E.2d 65, 68 (2005), teachers sued the local school district over an incentive program. The parties disputed how the program was portrayed, but the written documentation indicated that the District Superintendent represented to them – orally and in writing – that they would receive a 10% salary increase if they obtained a national board certification, subject to the Board's approval each year. 365 S.C. at 633, 620 S.E.2d at 67. Following a budget shortfall three years later, the District changed the incentive to a flat-rate of $3,000. Our Supreme Court ruled that any "reliance" on the District Superintendent's comments was unreasonable, since the District also informed them on several occasions that the incentive was subject to the Board's approval. 365 S.C. at 634-635, 620 S.E.2d at 67-68.

Similarly, although the McLaughlins have referenced a few hearsay statements, the record is clear that SIPOA made no unambiguous representation that the McLaughlins could remove the pipe regardless of the consequences to their neighbors. Paul McLaughlin's own testimony is rife with references to the disagreements between the McLaughlins and SIPOA that arose prior to their removal of the pipe. Even SIPOA's ARB approval from 2006 stated that the

McLaughlins would bear "all responsibility" for such an act. *See also Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6, 12 (S.C. App. 2013) ("the presence of either an ambiguous promise or an injury not arising out of the inconsistent disposition precludes promissory estoppel's application, though perceived inequities may exist.").

For these reasons, the McLaughlins cannot show reasonable reliance on an unambiguous promise, and their third-party claim against SIPOA must fail.

CONCLUSION

For the reasons stated above, SIPOA respectfully requests that this Court GRANT its Motion for Summary Judgment and DISMISS WITH PREJUDICE the Ralphs' claim(s) brought against the McLaughlins, and any derivative third-party claims brought against SIPOA.

Further, SIPOA respectfully requests that this Court GRANT its Motion for Summary Judgment and DISMISS WITH PREJUDICE the claim brought against it by the McLaughlins.

Dated this the 9th day of May, 2016.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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Columbia, South Carolina 29202
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COUNSEL FOR THIRD-PARTY DEFENDANT SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION

EXHIBIT A

Plat with Drainage Easement

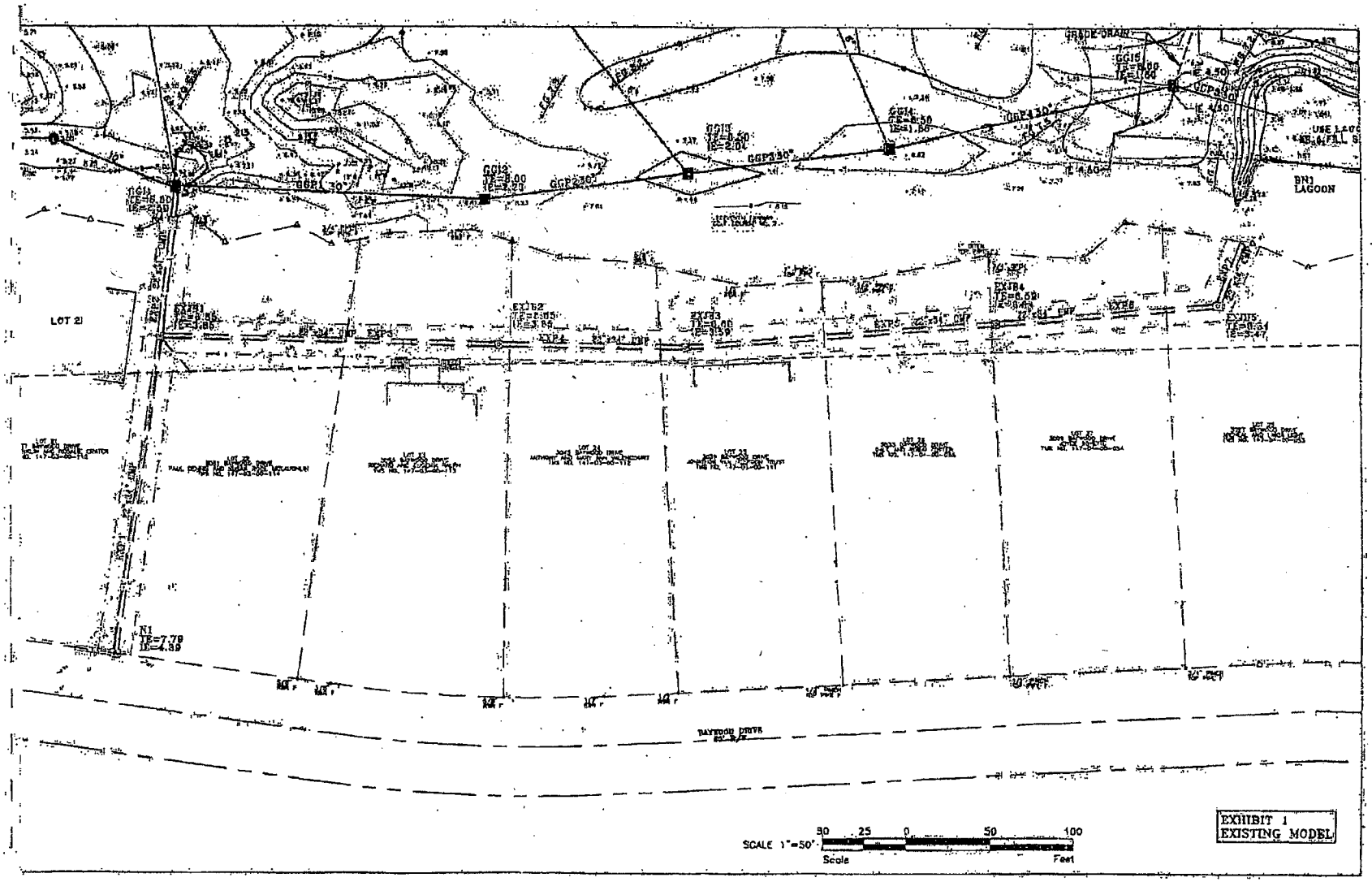

LOT 21
BNJ LAGOON
SCALE 1"=50'
30 25 0 50 100
Scale
Feet
EXHIBIT 1
EXISTING MODEL

EXHIBIT B

SIPOA Board of Director's Meeting Minutes
in re interest in easement relinquished to property owners

Seabrook Island Property Owners Association
Board of Directors Meeting

MINUTES

Monday, May 20, 2002, 1:00 p.m.
SIPOA Community Center

Members Present:

Mr. Thomas L. Flynn, President
Mr. Dick Muenow, Vice President
Mr. Fred Kreusch, Treasurer
Mr. Paul Poggi, Director
Mr. Larry Blasch, Director
Mrs. Beverly L. Hoover, Director
Mrs. Cynthia W. Cornwell, Director
Mrs. Pat Parsons, Director
Mr. Paul Giardino, Director
Mr. Jim Schaeffer, Director

Absent/Excused:

Mr. Edmund C. Puckhaber, Secretary

Staff Present:

Mr. Robert N. Giuffreda, Executive Vice President
Ms. Linda D. Wall, Administrative Assistant

Mr. Flynn called the meeting to order at 1:00 p.m. A quorum was present.

Mr. Flynn moved approval of the Executive Committee Minutes of March 28, 2002, approval of the Working Board Meeting minutes of April 15, 2002, approval of the Executive Committee Meeting minutes of April 15, 2002, and approval of the Regular Board Meeting minutes of April 15, 2002. Mrs. Hoover had a correction on the March 28, 2002 Executive Committee Meeting Minutes regarding the spelling of the word waved (instead of waived). Mr. Kreusch also had a correction on the April 15, 2002 Executive Committee Meeting Minutes. Mr. Coy Foster was not in attendance. Mrs. Hoover moved approval of the meeting minutes with the noted correction. Mr. Blasch seconded. The motion passed by unanimous vote.

Mr. Flynn reported on his injury and how nice it was to be back to Seabrook Island. Mr. Flynn thanked the property owners for attending the meeting and encouraged them to tell their neighbors and friends to attend the monthly Board meetings.

Mr. Flynn asked for Board approval of the nomination of Mr. Jim Schaeffer to serve as the Director of the Community Center & Pool Committee for the rest of the year in place of Mr. Wayne Palkovitz. Mrs. Cornwell moved approval. Mrs. Hoover seconded and the motion passed by unanimous vote.

Finance Committee

Mr. Fred Kreusch reviewed the financial statement for the first four months. Mr. Kreusch reported that the percent of annual assessments collected in 2002 is 95.1% versus 98.6 % in 2001. Home resales are up to 69 versus 49 in 2001. Contribution to capital revenue is up to $106, 200 in 2002 versus $71,800 in 2001. Commercial access fee is up to $311, 800 compared to $283,600 in 2001.

Looking at the first four months financial results versus budget, operating revenues of $2.5 million were right on budget. However, there were significant variances both favorable and unfavorable in getting there. On the unfavorable side, there is a timing issue on receipt of certain villa and unimproved lot assessments at Charles Towne Place and at the Village of Seabrook project ($33,800) together with lower interest income ($9,500). Favorable variances are found in commercial access fees ($28,800) and delinquent fees generated on late assessments ($6, 200). ARB income is also favorable to budget by $4, 600.

On the expense side, expenditures of $994, 400 were $13,700 or 1% below budget. Major favorable budget variances have been generated in garbage collection due to the status of the Bennett-Hofford project ($13, 200), taxes ($6,400) and in the overall environmental budget ($7,000). Health and general insurance costs continue unfavorable to budget ($15, 000).

Safety & Security Committee

Mr. Giardino reported 6, 865 miles were covered patrolling the island. 35,597 vehicles were logged at the Security gate this month, in addition to the vehicles that have permanent passes/decals. 66 speeding citations were issued this month (2 times the amount issued last month). Most of the violators were guests of property owners. The security gate is functioning properly, however, plans to begin Bay Point gate are on hold until computerized system is fully functional at the main gate.

Mr. Giardino also reported the Deputy Sheriff's contract begins next week. Mr. Giardino also reported on the recent vandalism that occurred on Seabrook Island. Evidence is being collected and the Sheriffs Department is investigating the situation. A suspect may have been identified.

Mrs. Hoover asked Mr. Giardino a question about wether the gate is notified when a Club or a POA employment has been terminated. Mr. Giardino and Mr. Norman Laird, Director of Safety & Security, addressed the question. When employment is terminated, security is notified and will deactivate or pick up the pass.

Mr. Giardino also reported on the Fourth of July fireworks that are scheduled for Friday, July 5 at North Beach.

Operations & Maintenance Committee

Mr. Muenow reported on the status of the road re-paving project. Remedial paving will continue until the end of the month. The original construction of the roads do not allow for all of the bird baths to be fixed. The acceptance criteria for bird baths is after a rain, if the water is still standing there after 36 hours Hinkle will attempt to fix them. If not, the road will be accepted.

Mr. Muenow reported that during original construction of the Baywood Drive drainage easements were added. Drainage pipes were subsequently installed on Crooked Oaks with laterals running into each lots. Mr. Muenow proposed giving the easements back to the property owners. This will allow them to build their house closer to the golf course. Any improvement they make to the lot to improve drainage will be at their expense, as will any subsequent surveys.

Mr. Giuffreda clarified Mr. Muenow is talking about Block 32 Lot 22 to Lot 28. A no build zone is currently implied. Mr. Giuffreda would recommend the Board vote favorably on Mr. Muenow's proposal. Discussion followed. Various questions/comments were asked and answered. Mr. Muenow made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote.

Environmental Committee

Mrs. Hoover reported on the success of the beach sweep on May 18. 19 property owner volunteers, 7 bags of trash were collected. The next beach sweep will be in September.

The recent study conducted on the lakes on Seabrook reveal the fish are safe for human consumption. The board walks to the beach are being repaired. Plantings are around the POA Community Center and Pool fence. The 14 acres of wildflowers have been planted. The overgrown vines by the Security gate have been eliminated. As of May 16th four turtle nests have been found on the beach. The most recent nest contained 170 eggs. Heavy winds and the Kiawah river migration is moving the sand. This will be an ongoing process.

Mr. Flynn added a comment about how beautiful the beach looks.

Mrs. Hoover presented a resolution to the Board. The Environmental Committee recently voted to make the beautification of the 2 islands before the gate and 2 islands after the gate a high priority.

Community Center & Pool Committee

Mr. Schaeffer reported the contract for the lifeguards have been signed.

Governmental & Community Relations Committee

Mr. Poggi reported the Town has made no decision yet regarding the property tax cap. The proposed allocation of the ½ cent tax raise is under discussion and no decision has been made.

Legal Committee

Mr. Poggi reported no change in status with regards the lawsuits the SIPOA is involved with.

Communications Committee

Mrs. Parsons reported that the Hospitality Committee will be hosting a beach party for newcomers on May 21, 2002. 25 newcomers are expected to attend.

Mrs. Parsons asked the Boards opinion on the "sandwich" board. The Board provided Mrs. Parsons with suggestions on making the board more legible.

The Website Launch party will be Wednesday, May 22, 2002 at 7:00 until 8:15 at the POA Community Center Building. Mrs. Parsons urged the Board to attend. Mrs. Parsons also reported on the Newsletter seminar she attended with Linda Wall.

Mrs. Parsons reported on the Fourth of July parade. Information about the parade will be posted on the website, the newsletter, the Seabrooker, the pylon, the sandwich board and press releases will be sent to the local TV stations. Discussion followed.

Long Range Planning Committee

Mr. Blasch reported the Long Range Planning Committee met last Monday. The Committee will be asking architects and/or builders to submit pro bono ideas for Palmetto Lake and the Deveau property. The sub-committee reports should be out by September.

ARB

Mrs. Cornwell reported this month there have been no conceptual reviews, 5 preliminary reviews and 1 conditional review. Currently, we have 5 single family remodeling plans submitted and 2 multi- family remodel. 38 homes are under construction and 13 remodels.

Executive Vice President's Report

Mr. Giuffreda reviewed the following:

1. Traffic safety study. The report from G. Robert George & Company is in and each board member has a copy. There will be a Working Board meeting in June to discuss the study. Engineer, Mike White will be invited to attend the meeting.
2. Courtesy Passes: Mr. Giuffreda reported on a request from Karl Bergman extended the property owner courtesy passes to larger 2 axle vehicles (Fed Ex, UPS). He recommended that Safety and Security Committee revisit this matter.
3. Lights: ARB is looking into the moratorium on lights.
4. Motorcycles: Mr. Giuffreda reported that he received a call from a property owner because the Rules and Regulations currently state no golf cart like vehicles will be permitted and was requesting motorcycles be permitted on the island. Discussion followed. An amendment to the Rules and Regulations will be made specifically stating information about the electric car and the exclusion of motorcycles and scooters.
5. Traffic Circle/Commercial Development: Nothing new to report on the commercial development. The Town of Kiawah signed the agreement with the state to develop the traffic circle.
6. Defibrillator Program: Mr. Giuffreda provided the Board with a copy of the proposed agreement that Joe Stevenot gave him. The Club and The Town have approved it. Mr. Giuffreda has sent a copy of it to the POA attorney for consideration. Mr. Giuffreda asked the Board review it and be prepared to discuss it at the next Working Board meeting.
7. Marsh Docks: Mr. Giuffreda provided a copy of the report from Jack Hostutler and Tom Kent to the Board, proposing certain restrictions on the ability to build docks on Seabrook Island.

Mr. Hostutler presented his proposal to the Board of Directors. Discussion followed. Several questions were asked and answered. Mr. Flynn asked that the proposal be brought to the ARB for recommendations.

Mr. Giuffreda asked Mr. Bergman to present his thoughts about the courtesy passes for 2 axile vehicles. Discussion followed. Mr. Plati also expressed his thoughts and concerns about the courtesy pass.

Mr. Giuffreda asked for the Board's approval to allow the Conex box located in the security parking lot to be removed at no cost to the POA. Mr. Blasch moved approval. Mr. Muenow seconded and the motion passed by unanimous decision.

Old Business

Mr. Flynn asked for any old business to discuss.

Mr. Kreusch reported the Finance Committee requested a change in the budget of funds of $1,800 in order to move a gate and installation of a new road way at the entrance of the property owners garden. The Finance Committee voted to recommend against any approval of funds at this time. Mr. Wells was asked to investigate an alternative solution for an entrance other than Seabrook Island Road. The Finance Committee agreed to reconsider this when all other alternatives have been considered. The Environmental Committee also asked to expend $250.00 for a microscope by moving the money from one budget to another. Mr. Kreusch moved approval of $250.00 for a microscope to look at the water in the lakes. Mrs. Hoover seconded and the motion passed by unanimous vote.

New Business

Mr. Flynn asked for any new business to discuss. There was no new business to discuss.

Questions & Answers

An audience member asked Safety and Security about the recent vandalism on Seabrook Island and the breach in security and requested spot checks when cars come into the gate. Mr. Giardino responded to this question. At this time the vandalism is still under investigation. Mr. Giardino will look into the legality of checking people's cars when coming through the gate.

A woman in the audience asked the question regarding the emergency phone at Pelican Watch always being inoperable. Mr. Giardino and Mr. Laird responded to her question/concerns. The Security Committee is currently looking into new 911 emergency phones similar to the phones The Club owns.

Mr. Prupis asked a question regarding the increase in the deficiencies in assessments and the delinquent payments by developers. Discussion followed. Mr. Kreusch responded to Mr. Prupis's question/comment.

Mr. Flynn asked for any further questions. With no further questions Mr. Flynn requested a motion of adjournment.

Mr. Blasch moved adjournment. Mrs. Hoover seconded. The meeting was adjourned at 2:15 p.m.

Robert N. Giuffreda
Executive Vice President

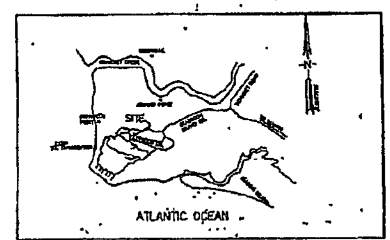
RNG/ldw

EXHIBIT C

Plat Showing Abandonment of Existing Drainage Easement
Lot 22, Block 32

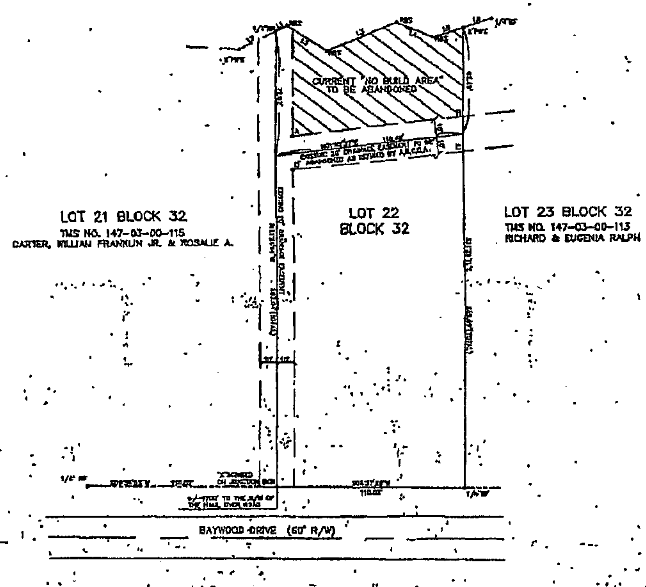
R 2417PG351

TOWN OF SEABROOK ISLAND
DATE 9/10/2002
APPROVED BY Randy M. Pierce



LOCATION MAP (NTS)

ELEVENTH FAIRWAY GOLF COURSE NO. 2



LINE	LENGTH	BEARING
L1	7.28	N15°22'43"W
L2	87.15	N19°45'29"E
L3	41.66	N13°16'23"W
L4	23.16	N29°16'19"E
L5	16.30	N49°25'30"W
L6	17.42	N03°21'10"W
L7	22.58	S17°29'19"E

NOTES:

1) THE TMS NO. IS 147-03-00-114.

2) THE PROPERTY IS OWNED BY CARROLL M. AND LORRAINE D. GANTZ.

3) THE TOTAL AREA IS 0.698 AC. (29,160 SQ. FT.).

4) REFERENCE PLAT BY E.M. SEABROOK JR. DATED SEPTEMBER 6, 1994 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK 80 PAGE 23.

5) ACCORDING TO FLOOD INSURANCE RATE MAP 455413 0440 H DATED SEPTEMBER 2, 1993 THIS PROPERTY LIES IN ZONE AE ELEVATION 13.

6) BY THE APPROVAL AND RECORDING OF THIS PLAT THE EXISTING "NO BUILD AREA" IS HEREBY REMOVED AS A LIMITATION TO LOCATION OF ANY STRUCTURE ON LOT 22.

LEGEND:

RF = REBAR FOUND
RBS = 5/8" REBAR SET
▨ = CURRENT NO BUILD AREA

PLAT SHOWING ABANDONMENT OF AN EXISTING 20' DRAINAGE EASEMENT
LOT 22 BLOCK 32
TOWN OF SEABROOK ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
SCALE 1"=30' JANUARY 17, 2001

GRAPHIC SCALE
(IN FEET)
1 inch = 30 ft.

FORSBERG ENGINEERING AND SURVEYING, INC.
CHARLESTON, SOUTH CAROLINA
CIVIL ENGINEERING, SURVEYING AND LAND PLANNING

EXHIBIT D

ARB Grant of Preliminary Plan Approval
Lot 22, Block 32

SEABROOK ISLAND
Property Owners Association

August 18, 2006

Mr. & Mrs. McLaughlin
455 South Church Street
Winston Salem, NC., 27101

Dear Paul & Susan,

The Architectural Review Board has approved the Preliminary Plans submitted for Block 32 Lot 22, Seabrook Island, SC. Please address the following comments of the ARB and re-submit plans for Conditional Review.

1. Owner is to assume all responsibility for the underground drainage line at the 20' drainage easement / driveway.
2. Owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe.
3. Property lines must be located prior to any grading because of the Right-Of-Way for the SIPOA 20' drainage easement.

Please submit Conditional Plans using CADD software (including colors for entry doors, garage doors, and window framing, as well as window frame cladding) by November 20, 2006 to avoid additional review fees. Before releasing the Conditional Plan with the ARB stamp of approval, the ARB is requiring that you submit an updated CD with the following information:

Site Plan
All elevations and design detail
Floor plans
All finishes and colors noted on the plans

Please note that the SIPOA uses AutoCadd LT 2005 software.

Please call me at 843-243-8522 if you have any questions.

Sincerely,

Coy Foster, ARB Administrator
ARB Admin / Block 32 Lot 22 McLaughlin 8 18 06
CC: Whitney Powers
188 East Bay Street, Suite 201
Charleston, SC., 29401

Ex. 1

1202 Landfall Way

McLaughlin 0341

EXHIBIT E

Letter to McLaughlins from SIPOA in re Abandoned Storm Water Drainage System d. June 19, 2007

SEABROOK ISLAND
Property Owners Association

June 19, 2007

Paul and Susan McLaughlin
309 North Green Street
Winston Salem, NC 27101

Re: Abandoned Storm Water Drainage System

Dear Mr. and Mrs. McLaughlin:

The purpose of this letter is to inform you of a plan being developed by the Seabrook Island Property Owners Association (SIPOA) to address an abandoned storm water drainage system on your property at Lot 22, Block 32, 3061 Baywood Drive. This older, corrugated metal pipe drainage system was abandoned in 1992 because a parallel drainage system of high-density plastic piping was installed on the Crooked Oaks Golf Course. Our goals in developing this project are as follows:

1. To eliminate a 20-foot wide drainage easement across your property held by the SIPOA. Eliminating the easement will provide you with more freedom to build or expand on your property in the future.

2. To determine the best way to eliminate any future problems associated with the inevitable degradation of the old metal pipe.

3. To minimize any inconvenience to you during the project.

We will begin planning for this project by surveying the affected area of your lot to determine the exact location of the drainage pipe. We will also identify significant trees and landscaping shrubs on your lot that might be affected by future work to stabilize or remove the drainage pipe.

We welcome the opportunity to discuss this planned project with you at any time and will keep you informed as project planning proceeds. If you have any questions, comments or suggestions regarding it, please call John Wells or Henry Fellers at 843 768 0061.

Sincerely,

John G. Thompson
Executive Vice President

JGT:hf

PENGAD 800-631-6989 DEPOSITION EXHIBIT 8 10-8-13 R. RALPH

1202 Landfall Way Johns Island, SC 29455 p. 843.768.0061 f. 843.768.4317

EXHIBIT F

Email from SIPOA's Executive Director John Thompson
d. September 22, 2008

From John Thompson 22 Sept '08

-----Original Message-----
From: John Thompson <jthompson@sipoa.org>
To: 'Paul McLaughlin' <paul@mmife.info>; valencoacv@aol.com; vanheerden.jon@mayo.edu; billo@promarktech.com; jboyette@carolinarr.com; llight1@comcast.net; 'Bill Crater' <billcrater@bellsouth.net>
Cc: Slreed729@aol.com; 'Scott Wallenger' <rswalli@bellsouth.net>; ronaldcjuncio@bellsouth.net
Sent: Mon, 22 Sep 2008 5:02 pm
Subject: Old Easement on your Baywood Lot - IMPORTANT

Dear Owners of Lots 21-28, Block 32,

We would like to invite you to a meeting in the SIPOA office on September 29th at 10:00am to discuss the matter described below. If you are unable to attend in person, but would like to participate via conference phone, please let me know.

In brief, many years ago, the Board of Directors of the SIPOA voted to give a drainage easement, on your Baywood Lot back to the property owners with the understanding that the property owners pay all costs necessary to document the removal of the easement. Two of you (or prior owners of your lots) chose to take the formal action to remove the easement from the recorded documents at the County record's office, and the rest did not. Now we have a complicated matter.

The drainage pipe that is in the old easement is still in place, is in good condition, and functions, although a new drainage pipe was installed on the golf course, providing the capacity to meet storm conditions for which all the drains on the island are designed to handle. The presence of this additional pipe, on your lots provides increased capacity, above and beyond that for which other storm water drainage systems on the island are desinged, and also provides continual service to reduce the ground water level on your lots.

The Owner of Lot 22 is interested in building a new home, and wishes to remove the drain pipe from the old easement. The Owners of Lots 21 and 23 are concerned about potential adverse impacts this may have on the drainage charact eristics of their lots.

The SIPOA hired an engineer skilled in these types of issues to evaluate the situation... Robert George, and Mr. George will be at the meeting on the 29th.

The attached document is Bob George's summary, in which he points out that keeping the existing pipe in place and functioning is the best option, and to the extent that any portion is removed, installing an additional pipe, connecting to the new golf course drain, will maintain the overall functionality of the present system.

The SIPOA would like to discuss the possibility of re-establishing the easement and providing for the long-term care of the pipe, which is presently still in very good condition, but doing so will require the cooperation of all property owners.

Please let us know if you will be able to attend the Sept. 29th, 10:00am meeting, at the SIPOA office.

If you have any questions I would be glad to attempt to answer them prior to the meeting.

Sincerely Yours,

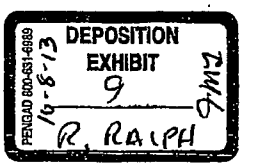
John Thompson

SEABROOK ISLAND
Property Owners Association

John G Thompson,PCAM
Executive Director
jthompson@sipoa.org
www.sipoa.org

Natural Oceanfront Living near Historic Charleston, SC

Robert George
"Preservation"
Monday, 29 Sept. 2008.



Plaintiffs' Docs. 006

EXHIBIT G

Email from McLaughlins to John Thompson
d. October 3, 2008

3 Oct. 2008

Easement Removal

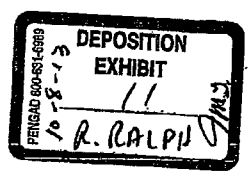
From: "Paul McLaughlin" <paul@mmfa.info>
Date: Fri Oct 03, 2008 01:02:01 PM US/Eastern
To: "'John Thompson'" <jthompson@sipoa.org>, "'Dale Foster'" <dalef@promarktech.com>
Cc: "'Robin Foster'" <robinfoster@verizon.net>, <Sireed729@aol.com>, <ronaldciancio@bellsouth.net>, <rswalli@bellsouth.net>, <jwells@sipoa.org>, "'Whitney Powers'" <studio_a@bellsouth.net>, "'Ashley Easterlin'" <Ashley@easterlincompany.com>, "'Linda Easterlin'" <linda@easterlincompany.com>, <edavidson@davidson-bradshaw.com>, <valencoacv@aol.com>, <rswalli@bellsouth.net>, <vanheerden.jon@mayo.edu>, <jboyette@carolina.rr.com>, <dlight1@comcast.net>, <billcrater@bellsouth.net>, "'C.R. & DEENA RALPH'" <crdeenaralph@earthlink.net>, <RCrater@sipoa.org>
Subject: RE: Baywood Drainage

Dear John,

The matter before us is a mess. What is important to say – very clearly – it has nothing to do with the actions of any individual property-owners. Three of us own our lots with the same understandings, which are reflected in documents on record with the County of Charleston. How this occurred is beyond my knowledge or understanding. Speaking for myself, (and I am repeating myself) our offer to the previous owner was contingent upon the easement being removed. How that easement was removed is beyond my knowledge. Neither my wife or I were involved in that matter. Nevertheless, we were delivered a property that no longer has an easement recorded. This is a fact.

The POA has known of this situation for well over two years and left it unresolved until we decided to move forward with construction of our ARC approved house plans. Never during the course of the approval process was there any written or verbal concern expressed by the POA or the ARC about the location of our house on the lot. We proceeded, in good faith, to closing on our construction loan only after our lawyer spoke with the POA and received assurances from the POA that a resolution of this matter was in the works. Today, almost three months after closing on our loan and additional personal expense to my wife and I, nothing is resolved.

I would suggest that the POA going to court to try to have the easement on our properties reinstituted is not a wise strategy. If that is the case, only the lawyers win. There must be another ' engineering option' and it must be forthcoming immediately.



Plaintiffs' Docs. 017

EXHIBIT H

Letter from previous owner in re "proposed changes of removal of drainage easement and 'no build' zone" for Lot 22, Block 32 d. September 9, 2002

(2)

carroll gantz design

Recorded in Charleston Co.
File EF 9.883

September 9, 2002

Mr. Randy Pierce
Seabrook Island Town Hall

Dear Randy,

As owner of subject lot, am hereby submitting a request for you to record a new plat for lot 22, Block 32, 3061 Baywood Drive, TMS No. 147-03-00-114, removing the drainage easement parallel to the golf fairway and the "no build" zone thereon. Application, revised mylars, and prints are enclosed.

In a meeting on February 12, 2002, I met with Messrs Doug Smith, John Wells (SIPOA), and Daniel Forsberg (surveyor) with these same revised plats to request recording the revised plat, (just completed by the surveyor)for which Mr. Wells assured us that the POA had granted their permission to proceed. It was agreed that Mr. Smith needed a letter from the POA to confirm this, and Mr. Wells agreed to send such a letter to Mr. Gantz.

On March 20, 2002 Mr. Wells notified me that the POA Roads and Storm Drainage Committee met on March 18, and agreed that there was no further need for the subject easement. Mr. Wells said that paperwork was to be initiated.

On May 3, 2002, Mr. Wells notified me that the R&D Committee had approved the change, and that I could "prepare any documentation that is required to remove the easement." I assumed he meant the survey of the lot, already completed. He said he would be able to give me a "letter of agreement" by the end of May.

817 Treeloft Trace, Seabrook Island, SC 29455
Phone 843-768-3780 Fax 843-768-3739
e-mail : carrgantz@worldnet.att.net

On May 21, 2002, Mr. Wells advised me that the POA Board of Directors had approved the abandonment of the subject easement, as well as for lots 23 through 28, and that the process was now to submit the changes to the POA lawyers for their review and comments.

On June 14, 2002, Mr. Wells advised me that the letter was with the lawyers, and that it was to be back within the next 7-10 days.

On August 25, 2002, I advised Mr. Wells that we had a potential buyer for the lot. Mr. Wells advised me on August 28 that the lawyers agreed that the easement could be released. No mention of when the expected letter would be available.

On September 5, 2002, Mr. Wells advised me that the letter was still being reviewed, and advised me not to wait for it, but to go to the Town hall to request recording of the revised plat. I met with you on this day, and you said you needed POA assurance of the change. You suggested I write this letter, review it with Mr. Wells, and submit it to Mr. Giuffreda for his seal on behalf of the POA, so that you could proceed.

This has now been done and I herewith submit this letter, along with the required fees, mylars, application and prints. I now have a purchase agreement for the lot from a buyer, but do not know the closing date as yet.

Sincerely,

Carroll Gantz 9/10/02

Carroll Gantz date

Authorization by POA that the proposed changes of removal of drainage easement and "no build" zone on the subject lot have been reviewed and approved.

POA officer 10 Sept 2002

By its Executive Vice President date

Cc: POA

817 Treeloft Trace, Seabrook Island, SC 29455
Phone 843-768-3780 Fax 843-768-3739
e-mail : carrgantz@worldnet.att.net

Deposition Excerpts of Plaintiff
Richard Ralph

State of South Carolina) Court of Common Pleas
) Ninth Judicial Circuit
County of Charleston) No.: 2011-CP-10-07065

Richard Ralph and Eugenia Ralph,

Plaintiffs,

vs.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Defendants.

Deposition of RICHARD RALPH

October 8, 2013

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Third-Party Plaintiffs,

vs.

Seabrook Island Property Owner's Association,

Third-Party Defendant.

Deposition on oral examination of Richard Ralph, reported by Jeffrey M. Thomas, Registered Professional Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure, at the Offices of Warren & Sinkler, LLP, 171 Church Street, Suite 340, Charleston, South Carolina, on October 8, 2013, at the hour of 10:00 a.m.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211
(803) 256-4500

This deposition is taken in accordance with the South Carolina Rules of Civil Procedure.

It is agreed and stipulated by the Deponent and respective counsel that the reading and signing of the deposition by the Deponent is expressly not waived.

(Deposition Exhibit 1 marked for identification.)

WHEREUPON:

RICHARD RALPH, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

EXAMINATION

BY MR. MATTHEWS:

Q. Sir, would you please state your full name for the record.

A. Richard Weatherly Ralph.

Q. And your current home address?

A. 3055 Baywood Drive, Seabrook Island, South Carolina 29455.

Q. How long have you lived at that address?

A. Since '97. Sixteen years.

Q. Where did you live before that?

A. I lived outside of Philadelphia.

never -- I don't know her. And he sat in on a meeting the 29th of September, 2008, and again one October 2008 discussing the pipe issue. And that is really the only time that I've met him.

Q. Okay. Well, speaking of the pipe, let me direct your attention --

MR. MATTHEWS: Let's mark this as 2.

(Deposition Exhibit 2 marked for identification.)

BY MR. MATTHEWS:

Q. Sir, what I've marked as Exhibit 2 is what is apparently a report by a Mr. Robert George sent to a Mr. John B. Wells. I received this report, among other places, from your attorney. I'll ask you to take just one second to review it. Do you recognize this report?

A. Yes.

Q. I'm going to ask you to turn a few pages in, I think a few pages in, it appears to be a map.

A. Yes.

Q. And those appear to be Lots 21 through 28.

A. Yes.

Q. Okay. Now, I believe your lot is 23?

A. Yes.

Q. And Mr. McLaughlin's lot is 22; is that

correct?

A. Yes.

Q. So is it fair to say that Mr. McLaughlin is, I'm going to use the term, upstream on a pipe from you which goes down into a lagoon at Lot 28?

A. Yes.

MR. O'KELLEY: Object to the form.

BY MR. MATTHEWS:

Q. And, Mr. Ralph, from time to time you may hear an attorney, either Mr. Sinkler or Mr. O'Kelley object to the form. It's absolutely appropriate for them to do so. Simply let them do so and then continue with your answer. Okay?

A. Okay.

Q. Now, there is a road, Baywood Drive, at the bottom of the map, correct?

A. Yes.

Q. And at the top of the map, I presume this is north, would be the golf course?

A. Yes.

Q. And then there is a lagoon at the top right of the map, correct?

A. Yes.

Q. And that is where the pipe spills into; is that correct?

Q. How do you know it was closed?

A. Because only the open meetings are announced, and this was never announced.

Q. How do you know that, sir?

A. Huh?

Q. How do you know that?

A. Because I never got any word of it, this meeting.

Q. Okay. How would you normally get word of the meetings?

A. It would be mailed.

Q. Okay. And your testimony --

A. Mailed. And also coming through the gate on the board they would put up when there is an open meeting.

Q. And you received no flyer, no --

A. Nothing.

Q. -- schedule of meetings?

A. This never came to us, no.

Q. When did you first learn about this action?

A. The first time that anything was ever mentioned about the pipe being abandoned was I think 2007 at which time I went and delivered a letter to SIPOA.

Q. Okay. And what did your letter say?

A. I said -- basically I said, you shouldn't touch the pipe. It functions. They were claiming it's old. It's decrepit, falling down. And I went over and left a letter with John Thompson saying, no, that is not the case. It's still functioning. It's been our saving grace for the years that we've been here.

Q. Did you keep a copy of that letter?

A. Yes.

Q. Has it been produced to us?

A. I don't know. I don't know. I have a copy somewhere. He should -- John Thompson should probably have a copy. It's not dated though, but I do have a copy, yes.

MR. MATTHEWS: Okay. Let's go off the record for a moment.

(Discussion off the record.)

BY MR. MATTHEWS:

Q. Let's go back on the record. Mr. Ralph, we've just discussed a letter that you said that you had given to Mr. Thompson in 2007. I'll state that I've not -- I don't think I've seen that letter.

A. Well, I don't know if Mr. Thompson even saw it. I had to drop it off. As I remember, he

BY MR. MATTHEWS:

Q. Sir, I'm going to hand you what I've marked as Exhibit 8.

A. Yeah.

Q. Can you identify that for the record, sir?

A. Yes. I know this.

Q. And can you tell us what it is?

A. Yes. It's a letter to the McLaughlins from John Thompson expressing the -- expressing what should be done with the easement across the properties claiming that the corrugated metal pipe was abandoned in 1992.

Q. Which we -- I think we can both agree was at least 10 years off?

A. Ten years off, yes.

Q. I believe the minutes that we just reviewed were from 2002; is that correct?

A. Yeah.

Q. And that is where at least it appears that SIPOA's Board of Directors passed a measure to --

A. To abandon the pipe.

Q. -- abandon the pipe and the easement. Sir, is that the letter that you just told us that you responded to in writing to Mr. Thompson?

A. Yes. Uh-huh.

Q. Did you respond immediately or within the week?

A. No. I responded pretty quickly as I remember.

Q. All right. So within the next -- within a week or two of receiving that?

A. Yes. Uh-huh.

Q. Okay. Did you receive it at about the same time it was written, do you recall?

A. I have no idea, but I would say so, yes.

Q. All right. May I see that one moment?

A. (Witness complied.)

Q. Do you recall taking issue with any particular, other than the wrong date in here, the abandonment being in 1999 versus 2002, do you recall taking issue with anything about what he's saying? For instance, about the -- for instance, he talks about to determine the best way to eliminate future problems associated with the inevitable degradation of the old metal pipe. Did you believe that that was a big issue?

A. Yeah. I'll find that letter. And I said, listen, the system still works. The pipe is not falling apart.

Q. Right.

A. The abandonment issue, that hadn't really come up yet. They claimed it was abandoned.

Q. Right.

A. And I basically -- I'm the only one that was living on that pipe at the time.

Q. All right.

A. And I realized it was still working, and here they are going to teat the thing apart or filling in or whatever they wanted to do with it. And that is when I argued against it. And I went over, and he was not there. I left a letter.

Q. All right.

A. Whether he received it from the secretary, I have no idea. They never corresponded with us very well.

Q. But you at the very least wanted to be heard --

A. Yes.

Q. After receiving Exhibit 8?

A. Right.

Q. That you thought that the pipe should be left alone?

A. Yes.

Q. Is that correct?

A. Or refurbished or maintained as they are

Deposition Excerpts of Defendant/Third-Party Plaintiff Paul Dennis McLaughlin

State of South Carolina) Court of Common Pleas
)
County of Charleston) No.: 2011-CP-10-07065

Richard Ralph and Eugenia Ralph,

Plaintiffs,

vs.

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Defendants.

Deposition of
PAUL DENNIS MCLAUGHLIN

October 11, 2013

Paul Dennis McLaughlin and Susan Rode McLaughlin,

Third-Party Plaintiffs,

vs.

Seabrook Island Property Owner's Association,

Third-Party Defendant.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211
(803) 256-4500

Q. Did you have any discussions with Mr. Ganz or Ms. Ganz about the no build zone or the drainage easement that was on the property?

A. No, sir.

Q. So when you purchased the property were you aware that there was an easement on the property?

A. We were aware that an easement had been abandoned and we were told that by the realtor.

Q. The realtor told you that it had been abandoned?

A. Yes, sir.

Q. Did he show you any documents one way or another about it or did he just tell you?

A. No. He just told me, told us.

Q. Did he say anything other than the fact it had been abandoned?

A. That it was our obligation to take care of the removal of the pipe.

Q. Did he say anything about your duties as a member of SIPOA?

A. No.

Q. Were you aware that in purchasing the property you had become a member of SIPOA?

A. Yes.

Q. When I say SIPOA, just for the record I mean the Seabrook Island Property Owner's Association.

A. Yes, sir.

Q. Okay. So you you've been a member of SIPOA since 2002?

A. Yes.

Q. Do you pay annual dues?

A. Yes, sir.

Q. Do you know how much they are?

A. About $1,980 a year.

Q. Do you know how those dues are assessed?

A. They are on a flat -- every pays the same amount unless you have an improved -- if you have an unimproved lot, I think you get a discount.

Q. Did you speak with anybody at SIPOA before you purchased the property about the easement?

A. No, sir.

Q. Do you know who closed your property?

A. Eric Davidson.

Q. Did he give you any advice one way or another about the status of the easement or the --

A. Well, he told us -- he told us that it had been abandoned, were we aware that it was abandoned, that there was one that had been across our

removing it was ours.

Q. When you say it, you mean the pipe?

A. The pipe, yes, sir. Because the easement had already been abandoned.

Q. Okay. Then it says, "Owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe." Do you see where it says that?

A. Yes, sir.

Q. What did you understand that to mean?

A. That we bore the financial responsibility of taking care of removing that if we wanted to.

Q. I'm sorry. You notice it says all responsibility?

A. Uh-huh.

Q. Did you seek legal counsel as to what that might mean at the time?

A. No, I did not.

Q. Have you since?

A. During the following -- I guess, later on the issue around the -- in 2007 we talked -- I had talked with an attorney, our attorney about that, and that was Davidson because he had familiarity with it.

Q. That was Eric Davidson?

A. Eric Davidson, yes, sir.

Q. Did you -- so you were speaking with Mr. Davidson or seeking his legal advice?

A. In 2007 after things began to percolate around the pipe issue.

Q. Did you refer this letter to him?

A. I sent him everything.

Q. Including this letter?

A. Yes, sir.

Q. Did he produce any type of legal opinion to you?

A. No, he didn't produce any written legal opinion. We talked on the phone.

Q. Did he opine at all about what the meaning of that the owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe?

A. Yeah. He said to us that, "It was your responsibility to deal with all aspects relating to the pipe and you could remove it if you wished."

Q. Did he also talk about the consequences of your removal of the pipe?

A. No, he did not.

Q. Did you seek that advice?

A. I never asked him.

A. No, sir.

Q. I'm also going to hand you what's been marked at a previous deposition as Exhibit 8 and ask you to take a look at that.

A. Yes, sir.

Q. Take your time.

A. Uh-huh. Yes, sir.

(Off-the-record discussion.)

BY MR. MATTHEWS:

Q. Now, was this communication, this Exhibit 8, was that the only, I guess I could call it, major communication between your letter of August 18, 2006, and June 19, 2011?

A. Yes, sir.

Q. Or 2007?

A. Yes, sir.

Q. Okay. In that time, in the intervening time period, what was going on on the property? Was any building taking place?

A. We were designing our house and going through that ARC process, ARB process.

Q. Okay.

A. And we had received approval on it and we were -- we just had a minor holdup on our end before proceeding with construction.

Q. What was that?

A. Just trying to sort through some insurance issues, you know, the flood and hurricane insurance, particularly the hurricane insurance, getting coverage and what the cost would be, stuff like that.

Q. Now, at this time the August 18, 2006, letter asks you to address certain issues concerning the property. How did you do that or had you done that formally by the time the June 19, 2011, letter had been issued?

A. Well, as part of our architectural submission plan, it was all in that.

Q. Now, previously in looking at what was last on Monday marked as Exhibit 8 --

A. Yes, sir.

Q. -- it states among other things that this older corrugated metal pipe drainage system was abandoned in 1992. And I think we universally agreed that was an error. It should have been 2002. Because of a parallel drainage system of high density plastic piping was installed on the Crooked Oaks Golf Course. Our goals in developing this project are as follows. To eliminate a 20-foot wide drainage easement across your property held by

SIPOA. Eliminating the easement would provide you with more freedom to build or expand on your property in the future. Two, to determine the best way to eliminate any future problems associated with the level of degradation of the old metal pipe. And, three, to minimize any inconvenience to you during the project. Is this an issue that you brought to the attention of SIPOA or did you receive this letter?

A. I just received it out of the blue.

Q. By the time you had received this letter you had not removed the pipe from the property; is that correct?

A. No, sir.

Q. At the time of this letter had you discussed the status of the pipe with either of your neighbors?

A. No, sir.

Q. Now, between the summer of 2007 and the summer of 2008 was any other work done on the property?

A. No. We were still working on the insurance issue.

Q. Okay. I'd like you to look at what's marked as Exhibit 9 in Monday's deposition.

Q. Did they question your ability to remove the pipe?

A. Did they question my ability to remove this pipe? I think they did raise some questions about the pipe.

Q. Do you remember what they were?

A. I think about the consequences of moving the pipe on their property, I think. I'm just trying to think through all that. I mean, I was most concerned about my issues obviously.

Q. What did you take away from the meeting?

A. What I took away from the meeting was that we -- during the course of the conversation as Mr. George presented issues there was a proposed solution that was available and that would have required installing a new pipe to connect to the pipe out in the golf course. We at that meeting agreed to grant the POA a new easement to connect out to that pipe as a means of resolving the issues that the neighbors had.

Q. Would that have required an easement from the golf course as well?

A. Yes, sir.

Q. Do you know if that easement was ever granted?

A. Not that I'm aware of.

Q. Is it fair to say that if that easement had not been granted, that that proposed fix would not be workable?

A. That's correct. I think that's reasonable. So, for the record, we had agreed at that meeting and then we went out to the property, back of our property, with Mr. Fellers and other -- Mr. George to review the site. And after that meeting I shook hands with Mr. Ralph agreeing that we had reached an accommodation on the matter.

Q. So Mr. Ralph was present when you went back to your property to --

A. And with Mr. Fellers. And in Mr. Fellers' presence we shook hands out there and said that, you know, we had a deal. And I asked Mr. Fellers to communicate that to the POA leadership that we were prepared to do whatever was necessary to move forward with that, bearing no additional economic costs except the granting of the easement on the no build zone, on our end of the no build zone.

Q. And who was Mr. Fellers?

A. Mr. Fellers was the person representing the POA buildings and grounds position.

Q. Was he an employee of the POA?

neighbors, wasn't our doing, but was there doing. We had no responsibility to deal with the neighbors on the -- our only responsibility was to our property.

Q. Okay. I'm going to read this to you again and I want to make sure I understand your answer. Where it says, "The owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe," you interpreted that to mean your only responsibility was to how to get the pipe out of the ground?

A. On our property.

Q. Okay. Did any lawyer tell you that that was the case?

A. Yes.

Q. A lawyer told you that that meant -- that's what that meant?

A. Yes, sir.

Q. Okay. What lawyer told you that?

A. Davidson.

Q. Okay. Have you brought a malpractice action against Mr. Davidson?

MR. O'KELLEY: Object to the form.

BY MR. MATTHEWS:

Q. You may answer.

really. I've told all of the interested parties that I am no longer trying to mediate what appears to be an impossible situation. I've turned it over to Legal and outside counsel, if necessary."

Did Mr. Reed tell you that he had finished trying to mediate what appeared to be an impossible situation?

A. Yes, he did.

Q. Tell me how that occurred. What prompted that?

A. It was a meeting following the week meeting of, I guess, whatever that meeting was in September when we had reached agreement out on our lot to install whatever was being proposed by the POA and Mr. George. Apparently the neighbors objected and Mr. Reed just threw up his hands and said, "I'm not going to deal with this anymore."

Q. That was a meeting on October 1?

A. If it was -- it was a week afterwards, after that September meeting. I'm just working on some notes here. Bear with me for a second.

Q. Go right ahead.

A. I'm looking for the date. It was the week following the meeting that we agreed, whatever that was, because we agreed at that meeting to have

asserting privilege on two grounds, work product and attorney/client, and will make the appropriate motion for a protective order after the deposition so that everyone can let a judge tell us whether or not it's indeed privileged.

MR. MATTHEWS: Fair. Fair. Fair.

MR. SINKLER: 11-1?

MR. O'KELLEY: 11-1-11, two months after this suit was originally filed.

MR. MATTHEWS: Got it. Well stated.

MR. O'KELLEY: Thank you.

MR. MATTHEWS: Without disclosing those to me why don't we have a chat after the deposition is done today and just see if it's worth fussing over.

MR. O'KELLEY: Okay.

MR. MATTHEWS: Off the record.

(Off-the-record discussion.)

BY MR. MATTHEWS:

Q. So when Mr. Reed told you that he was -- that this was an impossible situation what did you mean that to -- what did you take that to mean?

A. He just was throwing up his hands. And I was left with a house approved by the POA as cited on the POA to build accordingly. And we had had

construction loans and I was sort of left -- we were left in limbo.

Q. Well, the impossible situation was between what? I mean, in your words when he said this is an impossible situation, what did you take that to mean?

A. I didn't -- at that time I didn't know what my options were because we had already received assurance from Ron Ciancio in the summer that it was resolvable and that we could move forward with construction finances. We had an improved house. And I just didn't know where this left us at the time I wrote this.

Q. Was there a -- was there a time limit on your loan?

A. It was subject to renewal, I think, annually. It was a construction loan. It wasn't permanent financing. And nothing had happened because we had received conversation with them back in the summer.

Q. Was there anything in writing from Mr. Ciancio?

A. No. It was conversation between the attorney I can't remember, Eric -- I can't remember his last name.

Q. The construction loan?

A. Yes. With moving forward then with construction.

Q. Eventual construction?

A. I'm sorry?

Q. Well, let me repeat that just so we're not talking over each other. Your testimony was that an attorney named Eric Bradshaw, who was representing you at the time, spoke with a Ron Ciancio, who was some type of committee member with SIPOA, and Mr. Ciancio told Mr. Bradshaw that he was giving verbal approval for you to continue obtaining your construction loan and to eventually construct a house as approved by the ARB?

A. That's correct.

Q. And he did that sometime in the summer of 2008?

A. In July when we got construction financing.

Q. Okay. In July of 2008?

A. Yes, sir.

Q. And your construction loan was subject to annual approval, you would have -- for instance, if you had not constructed in 2008 and I presume into July of 2009, you would need to get the construction

A. Okay.

Q. So I want you to make sure you understand and I want the record to be clear to make sure that someone reading your answer will understand it.

A. Okay.

Q. The beginning and end of my question is this. On or about August 18, 2006, I understand your testimony to be that Mr. Foster and Mr. Wells told you, A, that you are responsible for paying for the removal of the pipe and, B, that affirmatively you had no other duty to anyone else regarding your removal of the pipe; is that correct?

A. That is correct.

Q. Okay. But they never told you that in writing, they told you that verbally?

A. That's correct.

Q. Okay. Did Mr. Thompson ever tell you that, A, your only duty was to pay for the removal of the pipe and, B, that you had no other duty with regard to anyone else, any other property owner or SIPOA, regarding removal of the pipe? Did Mr. Thompson ever tell you that?

A. No, I don't recall that.

Q. So did you believe that the resolution that Mr. Ciancio moved and was apparently passed by

A. Oh, I'm sorry.

Q. Were the minutes that this request asks for?

A. I presume so. The October 20 minutes?

Q. Right. So that -- those minutes would have come from the October 20, 2008, board meeting?

A. Yeah, I guess. I presume so.

MR. MATTHEWS: Let's go off the record for a minute.

(Off-the-record discussion.)

BY MR. MATTHEWS:

Q. Now, as of October 2008 the pipe was still in place, wasn't it?

A. Yes, it was.

Q. Okay. Between the time that you had had your meetings in October and the time the pipe was removed -- I believe it was removed in December; is that right?

A. That's correct. Yes, sir.

Q. Do you recall any other discussions with either the Ralphs or John Thompson about whether or not you could remove the pipe?

A. I had conversations -- repeated conversations with Mr. Ciancio in that period of time.

Q. With Mr. Ciancio?

A. As a member of the POA board.

Q. Okay. Did Mr. Ciancio tell you about the resolution that he passed or that he introduced?

A. No, he did not.

Q. Did Mr. Ciancio tell you that he thought -- well, I think I know the answer to this question. Mr. Ciancio didn't suggest that that resolution may apply to you?

A. It had never been forwarded to me directly. So he never said that, no, to answer your question.

Q. So between your meeting in September of 2008, September 29, 2008, and the time you took the pipe up in December -- was it the 3rd?

A. Somewhere around there, yes, sir.

Q. Of 2008 when the pipe came up you had -- did you have verbal meetings with Mr. Ciancio or did you engage in an E-mail correspondence with him about the pipe?

A. He and I were talking about trying to resolve the issue and I was asking the POA to, you know, give me some sense of what was going on because I wanted to work with the POA to try to resolve the issue.

Q. Well, what did Mr. Ciancio tell you between October 3 -- I'm sorry -- between September 29 and December 3 about the pipe? Did he say, "Go ahead and remove it," or did he say, "We don't know what to do," or, "This is a big mess," or, Gee, I don't know what to do"? According to you apparently he didn't mention the resolution that was passed October 20 that had to do with the pipe. So --

A. That's correct.

Q. Was there any -- given your testimony in that regard, did he mention anything else?

A. Well, he said that they were -- the legal committee of the POA was working on some resolution of the matter. And I was pressing him for some direction as to what that was going to look like because it wasn't clear to me where they were going to come out.

Q. Okay. When you say -- and I want to get your opinion about this.

A. Yes, sir.

Q. When you say resolution of the matter, are you talking about the drainage easement specifically or was there something more afoot?

A. Not having to do with the drain -- our drainage easement, having to do with the

installation of George's proposed remedy that he had presented at the September meeting. There was never any talk about the easement per se.

Q. Did you speak with anyone else from SIPOA from September 29, 2008, to early December -- until the pipe was removed in early December 2008?

A. He was the only person we spoke with as the chair of the legal committee on the board and a member of the board.

Q. How many times would you say you spoke?

A. Weekly.

Q. Is this something you would do weekly?

A. Weekly.

Q. Now, were you still living in Winston-Salem at the time?

A. Yes, sir.

Q. So those conversations would be with you on the phone to you in Winston-Salem?

A. Yes. Mostly my initiation to him.

Q. Okay. Did Mr. Ciancio live at Seabrook Island?

A. I believe he did, yes, sir.

Q. Do you know if he's still alive?

A. Yes, sir.

Q. Do you know if he's still in any way

A. Mr. Ciancio proposed back very similar to what we had agreed to in September, to grant the POA a new easement, that we would bear the responsibility of installing that, that they would only contribute a limited amount of dollars to that effort, and that it was our obligation to negotiate with the club about the easement out to the pipe out in the golf course.

Q. So that's the last thing -- is that the last proposal you received from the POA?

A. That's correct.

Q. Okay. Do you remember about the date that you received that proposal?

A. It was probably in late November.

MR. MATTHEWS: Let's go off the record for a minute.

(Off-the-record discussion.)

BY MR. MATTHEWS:

Q. Do you recall -- I understand you can't do it by the date, but was this proposal from Mr. Ciancio, was this a week before the pipe was removed or --

A. A week or ten days or so before the pipe.

Q. Did you get any clarification from Mr. Thompson or anyone else on behalf of the POA

about their position on your ability to remove the pipe or was that the last communication you had from the POA about the pipe removal?

A. The last -- the communication to him was that it was an unacceptable proposal because we had no authority to negotiate any easement with the club about extending a pipe out there. We had no authority. We had no adjudicatory control over that matter and it was an undue burden on us.

Q. I understand in early December the POA actually brought suit against you; is that correct?

A. That's correct.

Q. What is your recollection of that?

A. They went -- we began construction on our property.

Q. And without trying to break your train of thought, but keep the -- keep the chronology clear.

A. Okay.

Q. When did you begin the actual like putting stakes in the ground, that sort of thing? Would that have been --

A. Shortly after the Ciancio thing.

Q. Well, the Ciancio thing would have been --

A. In late November or so.

Q. Okay. Late November 2008 is when you

actually began putting stakes in the ground?

A. Yeah, after that.

Q. Okay.

A. Because we communicated that his proposal was unacceptable to us.

Q. Did he respond by saying, "Go ahead and do what you want," or --

A. No.

Q. Did he respond at all?

A. No.

Q. He didn't respond at all?

A. No.

Q. So the last word you got from the SIPOA on whether or not you could remove the pipe was a proposal that you rejected; is that correct?

A. That's correct.

Q. Now, in late 2008 you were putting stakes in the ground. And I understand that's when the SIPOA brought suit against you; is that right?

A. That's correct.

Q. Okay. What do you recall -- do you recall being served with a lawsuit?

A. Papers were served with Eric Davidson.

Q. They were served to Eric Davidson?

A. Yes.

A. Yes, I did.

Q. Tell me what that was.

A. When we received the proposal back from Ciancio and expressed that it was unreasonable, we had had our -- my feeling was our chains yanked from July to then without any resolution and we had been trying to act in good faith to try to reach some resolution.

Q. Okay.

A. So I contacted -- and so I'm speaking with Mr. Davidson. I asked him, "Can we proceed with construction?"

He said, "Well, you've received approval from the POA under the ARC to move forward with construction and that you should be able to do that, that you've done everything you possibly can to work with the POA to reach a resolution, but you're authorized to move forward." So on advice of counsel and talking with counsel we moved forward.

Q. So you asked Mr. Davidson if you could go forward?

A. Yes, sir.

Q. Were you aware when you asked Mr. Davidson -- was that the day that this case was filed, Exhibit 7?

whole -- the approval of our lot.

Q. Was that back in 2006?

A. Yes.

Q. All right. Go ahead.

A. And that all this action has result -- is a result of POA's poorly handling the entire matter, not communicating to the Ralphs about -- and the other property owners about their May 2002 action and what it meant for them, and that all this is simply a result of POA's continuing to mislead people at the September meeting where they misled people, our neighbors, about what actions they had or had not taken.

Q. What -- the September 2008 meeting?

A. That September 2008 meeting where they denied --

Q. How did they mislead anybody?

A. Because they said the easement had not been -- had not been abandoned and hadn't disclosed that they had taken action in May of 2002 to abandoned the easement.

Q. Well, now tell me this. I think you would agree with me that they could only abandon what they had -- what was theirs, right?

A. That's correct.

Q. So if someone else also had an interest in the easement, SIPOA could not abandon what anybody else had, it could only abandon what it had, right?

A. That's correct.

Q. So did SIPOA ever represent that it had the authority to abandon someone else's interest in any type of property to you ever?

A. No.

MR. MATTHEWS: Okay. I'm done.

EXAMINATION

BY MR. SINKLER:

Q. Dana Sinkler.

A. Yes, sir.

Q. I won't be very long. Do you know that the drainage pipes you put down going towards the golf course go across the Ralphs' easement?

MR. O'KELLEY: Object to the form.

THE WITNESS: The pipes do not go into the Ralphs' property.

BY MR. SINKLER:

Q. You say they do not cross the easement?

A. That's correct. They do not cross the property line.

Q. Talking about the 20-foot easement?

A. They don't -- what easement?

Deposition Excerpts of
John G. Thompson

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON

RICHARD RALPH AND EUGENIA RALPH,
Plaintiffs,

vs. CASE NO. 2011-CP-10-7065

PAUL DENNIS MCLAUGHLIN AND SUSAN RHODE MCLAUGHLIN,
Defendants,

and

PAUL DENNIS MCLAUGHLIN AND SUSAN RHODE MCLAUGHLIN,
Third-Party Plaintiffs,

vs.

SEABROOK ISLAND PROPERTY OWNERS ASSOCIATION,
Third-Party Defendant.

DEPOSITION OF: JOHN G. THOMPSON

DATE: May 28, 2014

TIME: 10:04 AM

LOCATION: Law Offices of
Buist, Byars & Taylor
652 Coleman Boulevard, Suite 200
Mount Pleasant, SC

TAKEN BY: Counsel for the Defendants/
Third-Party Plaintiffs

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

MR. O'KELLEY: And Dana, if you look where it says staff present, you can see the spelling.

MR. SINKLER: Oh, thank you.

BY MR. O'KELLEY:

Q. I show you what's been marked as Exhibit 2 and I'll represent to you that those are minutes from May of 2002. Have you ever seen this document before?

A. I may have. I've seen lots of minutes.

Q. I'm sure. And specifically I want to ask you about the second page of this document. Right above where it says environmental committee there's a paragraph that begins, Mr. Giuffreda clarified Mr. Muenow, that paragraph, and I'll ask you if you could just read that paragraph for me.

A. Mr. Giuffreda --

Q. I mean not read it into the record, just read it for yourself.

A. Okay.

Q. Unless you remember this document wholesale I just would ask you to read it to refresh your memory.

A. Okay.

Q. It states that there were some -- a

motion made to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by a unanimous vote. And it's referencing Block 32, Lots 22 to 28. Is that your understanding that you just told me about a few minutes ago about the returning of the easement to the property owners?

A. That's correct.

Q. And do you know after this meeting in May of 2002 what SIPOA did to implement giving the easement back to the property owners?

A. I wasn't there so I can't tell you what exactly happened.

Q. So we would have to ask Mr. Giuffreda I would guess? Would he be the best person to know what happened about implementation?

A. He may be.

Q. Okay. Do you know where Mr. Giuffreda is these days?

A. He stills owns property on Seabrook Island.

Q. So you all have his address and contact information somewhere, correct? And you all, I

that that easement might have crossed, yeah.

Q. All right.

(DFT. EXH. 7, Letter dated 8/18/06 to Mr. And Mrs. McLaughlin from Coy Foster, ARB Administrator, was marked for identification.)

BY MR. O'KELLEY:

Q. And moving right along, let me show you what's been marked as Exhibit 7. And let's just go off the record for just one second.

(Off-the-record conference.)

MR. O'KELLEY: Back on.

BY MR. O'KELLEY:

Q. Looking at Exhibit Number 7, this is a letter from Coy Foster, the ARB administrator, to my clients dated August 18, 2006. Have you seen this letter before? I know you've probably seen lots of letters from Mr. Foster over time but have you seen this one?

A. I believe I have.

Q. Okay. This letter states that the Seabrook Island ARB had given preliminary plan approval for Lot 22 and then it says that there were comments of the ARB which our clients had to resubmit plans for conditional review regarding Items Number 1, 2 and 3. What do you know about

Items 1, 2 and 3 that are listed on this letter from Mr. Foster?

A. I mean, what is stated here?

Q. Yes, sir, just -- well, for example, Number 1 states the owner is to assume all responsibility for the underground drainage line at the 20-foot drainage easement/driveway. And Number 2 says, owner is to assume all responsibility for the abandoned drainage easement that may contain a pipe. And then Number 3, property lines must be located prior to any grading because of the right-of-way for the SIPOA 20-foot drainage easement.

Is it normal for the ARB administrator to list conditions or things that need to be addressed after preliminary approval is given?

A. Sure.

Q. And to your knowledge these were things that had to be done before final approval or review could be given by the ARB, correct, for the McLaughlins' house plans? In other words, McLaughlins had to address these issues and then move on to the next stage of approval, correct?

MR. MATTHEWS: Object to the form. Please answer.

THE WITNESS: I mean, 1 and 2 appear to not require an action, a physical action.

BY MR. O'KELLEY:

Q. Sure.

A. It's saying, you know, if you're going to proceed, you assume all responsibility. Number 3 requires property lines to be located.

Q. And to your knowledge did the McLaughlins comply with Request 1, 2 and 3?

A. I don't have knowledge about what's in the McLaughlins' heart about 1 and 2. I don't have specific knowledge about location of property lines but I would imagine that was done.

Q. But they were eventually allowed to build their house, correct?

A. Correct.

Q. Okay.

(DFT. EXH. 8, Letter dated 6/19/07 to Paul and Susan McLaughlin from John G. Thompson, Executive Vice-President, was marked for identification.)

BY MR. O'KELLEY:

Q. Now, this Number 8 is a letter from you and it says Deposition 8. It's also this Deposition 8.

and Mr. George had kind of decided to --

A. Not specifically, but I know we had a couple of different meetings with owners in the area and --

Q. And do you recall when those meetings took place?

A. I do not.

Q. Okay. If I represented to you they were in the fall of 2008, does that sound reasonable, sometime in the fall --

A. Sounds reasonable.

MR. MATTHEWS: Let him finish.

BY MR. O'KELLEY:

Q. Do you recall -- can you tell me what your recollection is of those meetings that you had with the Baywood owners and Mr. George?

A. I don't remember details of specifics in the meeting. I think the -- I think the -- you know, the main point Mr. George wanted to make is that the existing pipe had some features. It was leaking so it was not by design but by defacto it was acting as a French drain allowing water to enter the pipe and discharge into the pond so... So that was not the purpose for which it was installed but that is how it was functioning and

wanted everybody to know that there was benefit to that and take that benefit away it could have some impact.

Q. And my understanding, the POA prior to some of the complaints by the neighbors had said and as you testified to, McLaughlins, feel free to remove it, it's your responsibility after you do so, correct?

MR. MATTHEWS: Objection.

BY MR. O'KELLEY:

Q. And when I say it, the pipe, sorry.

MR. MATTHEWS: Object to the form. Please answer.

THE WITNESS: Yes, that's -- I believe that was the intent all along is, you know, if the owners want to do something and not have that pipe cross the property, they're -- guys, you're on your own if you want to do something, it's up you.

(DFT. EXH. 14, E-mail dated 10/2/08 to Mr. Foster from John Thompson, was marked for identification.)

BY MR. O'KELLEY:

Q. Number 14 which I'll give to you and to your attorney and Mr. Sinkler. This is an e-mail from you dated October 2nd, 2008 and it's addressed

signed by David Wheeler, Trudy Robertson and Robert Sumner all at Moore & Van Allen. Do you recall that the motion for a temporary restraining order was withdrawn?

A. Yes.

Q. And then the case was dismissed according to Exhibit 47 on January 27th of 2011, is that your recollection?

A. Yes, it is.

Q. Do you know why the POA withdrew its complaint?

A. As I recall, the complaint as it was prepared and executed, simultaneously the McLaughlins were removing the pipe so once the complaint was delivered, the pipe was then moved.

Q. And the McLaughlins were removing the pipe with the permission of the POA, correct?

MR. MATTHEWS: Object to the form.

THE WITNESS: I think depends which -- at what time and what permission. Certainly if you go back to 2002 and say the easement was giving the property owners and all of that through the RAC process of approval for construction, approval of plans, there is the reason for the filing of the complaint was that we weren't fully satisfied that

all the drainage issue has been addressed and wanted the pipe to remain until plans were submitted as to how it would be handled.

(DFT. EXH. 48, Letter dated 4/21/09 to Baywood Property Owners, et al. from John Thompson, with attachments, was marked for identification.)

BY MR. O'KELLEY:

Q. You mentioned earlier -- and maybe we should have done this in a different sequence. This is Exhibit Number 48. Was this a document that you were discussing earlier about the reaffirmation of the easement that you said was --

A. That's correct.

Q. -- sent to some of the property owners? And it says that the owners of Lots 23, 24 and 25, the Ralphs, the Scobees and the van Heerdens, who have already executed this agreement. Do you know if the other owners other than the McLaughlins or anyone else, including the Fosters or anyone else signed this agreement beside the Ralphs, the Scobees and the van Heerdens?

A. I believe we had others execute the agreement. As I recall there was one holdout and I don't recall sitting here who was the holdout.

Q. Could that have been the same Fosters

find out that the pipe had been destroyed?

A. I think we found out about it the day that it was removed, either the day or the day after.

Q. The day that you signed the affidavit and filed the complaint?

A. There's a couple day window there. I don't recall -- I don't recall if I signed it on the day it was removed or the day before.

Q. The documents would indicate that both of those appear on December 9th.

A. Okay. If that's what it is, that's what it is.

Q. Do you recall receiving a telephone call from Mrs. Ralph on the morning of December the 9th asking if the pipe was coming up that day?

A. I don't recall that but it certainly could have happened to that extent, got a phone call.

Q. Would you have told her that it was not or did you know it was going to be coming up?

A. No, I didn't know that it was coming up before it happened.

MR. SINKLER: I don't think I have anything further.

EXAMINATION

BY MR. MATTHEWS:

Q. Mr. Thompson, we've met.

A. Yes, we have.

Q. I'm the lawyer for SIPOA, Gene Matthews. When the drainage system -- strike that.

When the section of pipe that was taken up on the McLaughlins' property in December 2009 -- strike that, December 2008, at that time is it fair to say that SIPOA and Mr. McLaughlin and Mr. McLaughlin's neighbors had not come to an agreement on whether or not Mr. McLaughlin could take the pipe up?

A. That's correct.

Q. Did Ralph Ciancio (sic), was he involved in trying to create such an agreement prior to the pipe being lifted?

A. I don't recall Mr. Ralph's involvement in trying to create an agreement.

Q. I'm sorry, Ron Ciancio.

A. Oh.

Q. I'm sure I'm mispronouncing his name.

A. Ciancio.

Q. Ciancio.

A. Yes.

Q. Was he involved in an effort to speak to the McLaughlins about some solution prior to the pipe being lifted up?

A. He very well may have been. I wasn't privy to those conversations if they happened.

Q. Okay. Was the SIPOA's decision to file the lawsuit that's Exhibit 46, was that because there was no meeting of the minds as to whether or not Mr. McLaughlin could take the pipe up?

A. Correct.

Q. Okay. I believe you said after SIPOA found out that the pipe had in fact been taken up regardless, at that point at some later date the lawsuit was withdrawn as moot?

A. Correct.

Q. I want to turn your attention to what's been marked by my colleague as Exhibit 7. Just refer to the stack over there. It's a letter dated August 18, 2006.

A. Okay.

Q. Were you copied on that letter if you recall?

A. I don't recall.

Q. Do you recall whether or not -- I think you said at the time Mr. Foster was the ARB

What was it supposed to drain?

A. It collects water from the roadway out of -- on Baywood Drive and the pipe across the lots was simply a transmission pipe.

Q. So the -- as originally intended, the easement was to drain a common area along a roadway, not surface water on individual lots?

A. That's correct.

Q. And I believe that Mr. George's report indicated that perhaps over time the pipe had deteriorated such that to the extent that it could provide some incidental effect on surface water, it was just that incidental?

A. That was his report.

Q. Okay. But he did not opine as to whether or not the original intent of the easement, which was to provide drainage for a common area not on the properties in question but under the -- but would be a transmission pipe through the property is the question. He had no opinion about whether or not -- what legal effect that easement would have because he's not a lawyer?

A. I don't -- I don't believe he addressed legal effects.

Q. Okay. Now, the affidavit that's

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2015-CP-10-3550
Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rhode McLaughlin, Defendants and Paul Dennis McLaughlin and Susan Rhode McLaughlin, Third-Party Plaintiffs, vs. Seabrook Island Property Owners Association, Third-Party Defendant.	**THE DEFENDANTS AND THIRD-PARTY PLAINTIFFS PAUL DENNIS MCLAUGHLIN AND SUSAN RHODE MCLAUGHLIN'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT**

TO: THE HONORABLE G. THOMAS COOPER, JR.
PRESIDING JUDGE FOR CHARLESTON COUNTY

The Plaintiffs, Paul Dennis McLaughlin and Susan Rhode McLaughlin, by and through their undersigned counsel, submit this Memorandum of Law in support of their Motion for Summary Judgment to be heard by this Court. For the reasons stated herein, the Motion should be GRANTED.

FACTUAL BACKGROUND

The Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin (the "McLaughlins") are the owners of Lot 22, Block 32, 3016 Baywood Drive on Seabrook Island. (Title to Real Estate, Ex. C to Answer and Third Party Complaint). The McLaughlins purchased this property on October 1, 2002, from Carroll M. Gantz and Lorraine Gantz. *Id.* The Plaintiffs Richard and Eugenia Ralph (the "Ralphs") are the McLaughlins' next door neighbors and own Lot 23, 3055 Baywood Drive. (Ralph Deposition, p. 5, ll. 19-23). The Ralphs have owned their property since 1997. *Id.* The Seabrook Island Property Owners Association ("SIPOA") is the property owners association for Seabrook Island and the former owner of a 20' Drainage Easement cross the north end of the McLaughlins' property. (Forsberg Engineering Plat, Ex. B to Answer and Third Party Complaint).

On May 20, 2002, the SIPOA Board of Directors took a vote, recorded in their minutes, to abandon the easement on Lot 22, Block 32. SIPOA's Directors

> made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote.

(Minutes, Ex. D to Answer and Third Party Complaint). Part of the easement was a drainage pipe that ran under Lots 21 to 28 on Baywood Drive. (John Thompson Depo). The area with the pipe shows as a "NO BUILD" zone on the Forsberg plat.

The Plaintiffs' predecessor in title obtained approval from the Executive Vice President of SIPOA as well as from the Town Administrator to record a new plat showing the abandonment of the easement and the "no build area" in that easement. (Signed Letter, Ex. A. to Answer and Third Party Complaint). There was no objection from the Plaintiffs or anyone else on Seabrook Island as to the abandonment of the easement in 2002.

On September 22, 2002, a new plat was recorded in the Office of the RMC for Charleston County in Book EF at Page 883 of that January 17, 2001, plat from Forsberg Engineering and Surveying entitled "PLAT SHOWING ABANDONMENT OF AN EXISTING 20' DRAINAGE EASEMENT." (Ex. B to Answer and Third Party Complaint). The plat was approved by Mr. Randy Pierce, the Town Administrator for Seabrook Island. *Id.* Using the reference to this new plat, the Plaintiffs purchased Lot 22, Block 32 from Carroll M. and Lorraine D. Gantz. (Title to Real Estate, Ex. C to Answer and Third Party Complaint) The deed from Mr. and Mrs. Gantz to the McLaughlins references the property description in the new plat. The deed from the Gantzes was recorded on October 9, 2002, in Book L421 at Page 820. *Id.* Both the plat and the deed were recorded as of October, 2002.

In the spring of 2006, the McLaughlins submitted a plan to the SIPOA Architectural Review Board to build their home on Lot 22 at 3061 Baywood Drive. The McLaughlins understood from SIPOA that they had the obligation to pay for the removal of any pipe in the No Build Area. (McLaughlin Depo, p. 14) The McLaughlins submitted house plans through their architect Whitney Powers and were told by Coy Foster, SIPOA's ARB administrator, that the McLaughlins were financially responsible for removing the pipe from the drainage area. (Ex. E to Answer and Third Party Complaint). The SIPOA Architectural Review Board approved the plans for the McLaughlins on August 18, 2006, through Coy Foster's letter.

In June 2007, SIPOA contacted the McLaughlins about creating a plan to address the abandoned easement and pipe. (Letter, June 19, 2007). The Plaintiffs also received this letter. (Ralph Depo, p. 54, p. 55, p. 59). The Plaintiff Richard Ralph testified that the pipe was working and did not want the McLaughlins to "tear the thing apart or filling it in or whatever they wanted to do on the property. And that is when I argued against it." (Ralph Depo. P. 60).

The McLaughlins sought financing for their construction in 2008. (McLaughlin Depo, p. 334). During that time, Mr. McLaughlin contacted Ron Ciancio of the SIPOA legal committee who gave him verbal approval to continue the process in order to obtain a loan and begin construction. *Id.* at 65. The Ralphs continued to express concerns during this time.

On September 22, 2008, SIPOA's director, John Thompson sent an email to the McLaughlins and the Ralphs regarding the easement. In that email, Mr. Thompson wrote

> The Owner of Lot 22 is interested in building a new home, and wishes to remove the drain pipe from the old easement. The Owners of Lots 21 and 23 [the Ralphs] are concerned about potential adverse impacts this may have on the drainage characteristics of their lots.
>
> ...
>
> The SIPOA would like to discuss the possibility of re-establishing the easement and providing for the long term care of the pipe, which is presently still in very good condition, bud doing so will require the cooperation of all parties.

(Email, 9/22/2008, Ralph Depo. Ex. 9)

On September 29, 2008, the President of SIPOA, Sam Reed, convened a meeting with the McLaughlins and their neighbors. The McLaughlins brought their then attorney, their architect, and representatives of their contracting company, too, to discuss a plan from Robert George, a professional engineer, regarding the removing of the pipe and a remedy. (McLaughlin Depo., p. 48, p. 49) At that meeting, the McLaughlins agreed to give SIPOA a new easement in the setback area between their property and the Ralphs to install Mr. George's plan and remedy. Mr. McLaughlin allowed a tour of their property and a proposed solution. The Ralphs withdrew any support for that plan. And, from September through December, 2008, the McLaughlins attempted to resolve the issue. Ultimately, on December 9, 2008, the McLaughlins removed the pipe in the NO BUILD area.

On that same day, SIPOA filed a complaint and motion for a temporary restraining order in that case captioned *Seabrook Island Property Owners Assoc. v. Paul Dennis McLaughlin and Susan Rhode McLaughlin*, Case Number 2008-CP-10-6975, in this Court. That lawsuit requested relief for all property owners on Seabrook Island, including the Ralphs, in order to stop the McLaughlins from building their home unless the McLaughlins installed another drainage system. The Plaintiff dismissed its lawsuit two (2) days after it was filed on December 11, 2008.

In allowing the abandonment of the easement in 2002, approving plans in 2008, the McLaughlins relied upon SIPOA in constructing their house. The Ralphs sued on September 30, 2011. In their lawsuit, the Ralphs acknowledge receipt of knowledge of the abandonment of the easement on September 22, 2008, over three years before their suit was filed. (Complaint, p. 5) The Plaintiff's Complaint has no enumerated causes of action but asserts there has been an increase of surface water flow and destruction of drainage leading to anguish and emotional discomfort entitling them to actual and punitive damages". (Complaint, p. 7)

ARGUMENT

1. The Plaintiffs' Complaint is barred by the applicable Statute of Limitations

As stated in their Complaint, by admission, and by testimony, the Plaintiffs filed suit more than three (3) years after knowing of their potential causes of action and some six (6) years after the new plat was recorded, well outside of the statute of limitations. See S.C. Code Ann. §15-3-530(3)(1962, as amended)(three year statute of limitations for damage to property or trespass). Although there are no causes of action stated in the Plaintiffs' Complaint, they are seeking to enforce alleged rights in an easement, which easement was for SIPOA, and not the Ralphs. (Complaint, pp. 6-7). In addition to the Ralphs acknowledging receipt of knowledge of the abandonment of the easement on September 22, 2008, Mr. Ralph testified that he knew in

2007 that the McLaughlins were "going to tear the thing apart or filling it in or whatever they wanted to do with it. And, that is when I argued against it.' (Ralph Depo., p. 60). Yet, neither of the Ralphs took any steps to protect their alleged interest in SIPOA's easement against the McLaughlins or SIPOA within three years. At that time, the Ralphs knew or should have known of their potential cause of action against the McLaughlins or SIPOA. Going back further to 2002 when the new plat was recorded, the Ralphs certainly are beyond their three (3) year window to sue. A party has constructive notice and the statute of limitations beings to run when a party knows of facts and circumstances that would put a person of common knowledge and experience on notice that some right had been invaded or that some claim might exist; failure to know the extent of damages is immaterial. *Barr v. City of Rock Hill,* 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The emails to the Ralphs, the recording of the new plat, the recording of the deed, the minutes of SIPOA, all put the Ralphs on notice that they had a claim, but they did nothing until eight days after the statute of limitations ran. In the summer of 2007, the Ralphs knew that there were some violation of their rights, but they failed to act.

2. The Plaintiffs have no cause of action for trespass against the McLaughlins for removing any pipe in the "NO BUILD" area and to remove the drainage pipe.

Although there is no cause of action pled for trespass, the Ralphs are seeking to make this a trespass case. This case is analogous to *Snow v. City of Columbia,* 409 S.E.2d 797, 305 S.C. 544 (1991). In *Snow,* homeowners brought suit against the City of Columbia for damage caused by the discharge of water from a leaking water main. *Id.* In that case, the Court of Appeals held that the rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 does not apply in South Carolina. That rule states that a person who bring on his lands and collects or keeps anything there likely to do mischief, if it escapes, must keep at his peril and is liable

for damage to others. In *Rylands,* a mill owner was liable for escaping water. Tort liability is grounded not on the notion that a defendant by his mere act or omission has caused harm but rather on the notion that a *wrongful* act or omission has caused some harm. The Defendant must be "unjustified". *Snow, id.* As in this case, the Snows asserted that an intrusion on land is actionable without regard to intent, which the Court of Appeals said was a "mistaken view of trespass to land." *Id.* at 552, 409 S.E.2d at 802. To constitute an "actionable trespass, there must be an affirmative act, the invasion of the land must be intentional, and the harm caused must be the direct result of that invasion." *Id.* at 553, 409 S.E.2d at 802. Intent must be shown by showing a voluntary act and that the Defendant knew or should have known the result would follow. *Id.* Here, any entry on the land of the Ralphs is the result of the McLaughlins' approved, sanctioned, and planned removal of the drainage pipe in the NO BUILD area. As in *Snow*, the McLaughlins have not intentionally discharged water upon the Ralphs' property. There has been no testimony that the McLaughlins have dumped, poured, or dropped water on the Ralphs' property at any time. The removal of the drainage pipe, as authorized, and, at one time, as litigated and dismissed by SIPOA, does not constitute an act where the McLaughlins intentionally caused water to be discharged onto the Ralphs' property.

The Ralphs claim for trespass are further barred by the common enemy rule. South Carolina follows the common enemy rule with respect to the diversion of surface waters naturally flowing across land. *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 598 S.E.2d 712 (2004); *Baltzeger v. Carolina Midland Ry. Co.* 54 S.C. 242; 32 S.E. 358 (1899). The rule allows a landowner to treat surface water as a common enemy and dispose of it as the landowner sees fit. *Lucas v. Rawl Family Ltd. P'ship,* 359 S.C. 505, 598 S.E.2d 712 (2004).

There are only two exceptions, the landowner must not create a nuisance *per se* and an upper landowner may not collect the water and then cast it in concentrated form upon a lower landowner. *Id.* In their Complaint, the Ralphs allege the McLaughlins proceeded with their building plans, had a section of culvert on their property dug up and destroyed and raised the elevation of their lot, all leading to "the increase of surface water flow and destruction of drainage across the Ralphs' property." (Complaint, pp. 6-7). These affirmative acts lead to the "increase of surface water flow." *Id.* The McLaughlins' actions complained of are allowed under the common enemy rule in order to direct surface water off of their property, as stated in the Complaint. Each landowner is entitled to take whatever steps he pleases on his own land to dispose of surface water without liability to adjoining landowners. *Lucas, id.* at 511, 598 S.E.2d at 715. That is exactly what the McLaughlins have done and no cause of action for trespass can be sustained accordingly. There is no evidence that an exception has been met, either, by nuisance *per se* or concentrated collection by the McLaughlins. There is no testimony of either.

3. The Defendants' Third-Party Claims for reliance on the SIPOA for indemnification should stand due to the reliance on SIPOA

The McLaughlins' third-party complaint pursuant to Rule 14 SCRCP arises from the actions of SIPOA in 2002 and 2008 regarding the abandonment of the easement and the approval of plans. SIPOA already attempted one lawsuit against the McLaughlins which it hastily dismissed after two (2) days. *See Seabrook Island POA v. McLaughlin*, Case No. 2008-CP-10-6975. If the McLaughlins are found in any way liable to the Ralphs, they seek to hold SIPOA liable. There is no cause of action for promissory estoppel, contrary to what SIPOA has asserted.

CONCLUSION

For the reasons stated herein, the McLaughlins request that his Court grant its Motion for Summary Judgment to dismiss the Ralphs' claims with prejudice.

Mt. Pleasant, South Carolina

May 9, 2016

BUIST, BYARS & TAYLOR, LLC

By: _____

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2015-CP-10-3550

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of May, 2016, emailed a true and accurate copy of the foregoing Defendants' Motion for Summary Judgment through the United States Postal Service, postage prepaid, addressed as follows:

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FILED
2016 MAY 11 PM 3:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2015-CP-10-3550
RICHARD RALPH AND EUGENIA RALPH, Plaintiffs, vs. PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN, Defendants.	)	**PLAINTIFFS' MOTIONS FOR A NEW TRIAL**

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Plaintiffs hereby move for a New Trial *Nisi Additur*, or, in the alternative, a New Trial as to Damages Only, or, in the alternative, a New Trial Absolute.

The Trial

At trial, Plaintiffs presented evidence that they had an ownership interest in a drainage easement, containing a drainage pipe and No Build Area, which extended onto the Defendants' property. The Plaintiffs offered testimony by Howard Yates, an expert in the law of real property, that the existence of the drainage easement on the Defendants' lot had not been extinguished by a new plat recorded by the previous owner. Mr. Yates further testified that the Seabrook Island Property Owners' Association ("SIPOA") could not have unilaterally abandoned the easement, although it had attempted to do so around the time the Defendants purchased their lot.

At the close of evidence, the Plaintiffs made a motion for a Directed Verdict as to the issue of liability. Plaintiffs contended that the Defendants had trespassed as a matter of law. This is because the following facts, constituting the elements of trespass, were utterly uncontroverted: (1) that the Plaintiffs had an ownership interest in the drainage pipe and No Build Area; (2) that the

Defendants authorized their construction crews to dig up the pipe and to build a portion of their house in the No Build Area; and (3) that the Plaintiffs did not grant them permission to do so.

At trial, Plaintiffs presented evidence that they had suffered damages caused by the Defendants' trespass. Foremost was the testimony of storm-water drainage engineer Robert George, P.L.S., P.E., who testified, in accordance with his scientific analysis and within a reasonable degree of engineering certainty, that poor drainage and flooding on the Plaintiffs' property was a direct result of the Defendants' trespass in digging up the drainage pipe and building their house on the No Build Area. Further, the Plaintiffs themselves testified that there was a marked and noticeable difference in the drainage of storm-water from their property before, as opposed to after, the Defendants' construction.

Mr. George's analysis that the Defendants' trespass caused the flooding and poor drainage on the Plaintiffs' property was largely unrefuted by the Defendants, who focused their defense instead on the issue of whether or not the Defendants had permission to build from the SIPOA, and on whether the SIPOA had previously abandoned the drainage easement.[1] Aside from assertions by the Defendants that they had seen water after a "heavy, heavy" rain in the Plaintiffs' back yard prior to their construction (which assertions conflicted with the Plaintiffs' testimony,

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[1] The issue of whether the Defendants reasonably relied on the SIPOA's abandonment of the easement had been previously litigated when it was asserted as a Third-Party Claim in this same lawsuit. In an order dated May 26, 2016, The Honorable G. Thomas Cooper, Jr. held:

> As a practical matter, there is no evidence to show that the SIPOA has ever made any promises to the McLaughlins. Accordingly, as a matter of law, there is simply no genuine issue of material fact that the McLaughlins reasonably relied on the...SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by the Plaintiffs.
>
> In fact, the record is completely clear that there was absolutely no "unambiguous representation" from SIPOA that the McLaughlins' only responsibility regarding the pipe was that they had to pay to remove the pipe. Rather, the entire history of the interactions between SIPOA indicate the opposite—that the McLaughlins had to assume all responsibility for the disposition of the pipe."

Plaintiffs argued at the close of their evidence that all claims by the Defendants to the contrary should be excluded from testimony at trial, and again, at the close of Defendants' evidence, that an instruction be given by the Court as to the Defendants' improper reliance on the SIPOA.

and were further undermined by the Defendants' own admission that they were only in town for brief visits on the weekend and so did not have an opportunity to witness how the water that they saw actually drained), Mr. George's expert testimony that the drainage problem on the Plaintiffs' property was caused by the Defendants' construction was not substantially contradicted by the Defendants at trial.

Standard

Motions for a new trial on the ground of inadequacy of the verdict are addressed to the sound discretion of the trial judge, and the grant thereof is subject to review on appeal only as to whether there has been an abuse of discretion. *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973). "An appellate court will not review the trial court's decision for an additur or a new trial unless it is wholly without evidentiary support or manifestly controlled by error of law." *Thomas v. Seay*, 295 S.C. 455, 457, 369 S.E.2d 660 (Ct. App. 1988).

I. Because the jury's verdict is inadequate in light of the evidence presented at trial, *additur* would be proper.

The Plaintiffs hereby request that this Honorable Court would grant them relief from what the fair preponderance of the evidence reveals to be an inadequate verdict by the jury. The jury found in favor of the Plaintiffs on their cause of action for trespass. Therefore, in light of the evidence of the actual damages caused by that trespass, the jury's award of $1,000 is insufficient compensation for the loss suffered.

The appropriate measure of damages for permanent injury to real property by trespass is the diminution in market value of the property, as well as any other damages proximately caused by that trespass. *Kelly v. Para-Chem Southern, Inc.*, 311 S.C. 223, 428 S.E.2d 703 (1993); *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993).

At trial, the Plaintiffs offered the testimony of Nick Thompson, III, MAI, who was certified as an expert in residential real property appraisal. Mr. Thompson asserted that the value of the Plaintiffs' property could be depreciated, as a result of the drainage problems caused by the trespass, by 40-60% of what would be its fair market value without defect. The Plaintiffs testified that they believed their property would be valued at $775,000 without defect. Mr. Thompson agreed that this appraisal by the Plaintiffs of their property value was likely accurate. The Plaintiffs also stated that they believed the damage to their property caused by the McLaughlins' actions to have been around $200,000. A property owner, familiar with his property value, may give an estimate as to the damage inflicted on it, even though he is otherwise not an expert. *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (S.C., 1981). The Plaintiffs' and Mr. Thompson's testimony as to the property value and its diminution were not substantively controverted by the Defendants.

Furthermore, the Plaintiffs attested (and Mr. George corroborated) that they had expended $17,000 in an effort to mitigate their damages by hiring Mr. George to come up with a means of draining their property as it had drained before the Defendants' construction. The necessity of hiring Mr. George was proximately caused by Defendants' trespass, even though he was unable to solve the Plaintiffs' drainage problems.

In consideration of the evidence regarding damages, the jury's award of $1000 is unduly conservative and warrants *additur* by this Court. "The practice of using *additur* is said to be in the interest of sound administration of justice, since it avoids the necessity of a new trial with its accompanying expense and delay." *Waring v. Johnson*, 341 S.C. 248 at 258, 533 S.E.2d 906 (Ct. App. 2000), *citing* 58 Am.Jur.2d *New Trial* § 584 (1989).

II. In the alternative, the Plaintiffs request a New Trial as to Damages Only.

Because the jury found in favor of the Plaintiffs on the question of trespass, and because a directed verdict on the issue of liability would have been proper, and because the jury's award of damages is so grossly inadequate as to suggest that it was motivated by passion, caprice, prejudice, partiality, or some other influence outside the evidence, the Plaintiffs request, in the alternative, that this Court would grant them a new trial as to the issue of damages only.

After closing statements and jury charges, the jury deliberated for approximately five and a half hours (requesting once to hear again the testimony of Howard Yates) before submitting that it was deadlocked. After an Allen charge, the jury returned to deliberations and subsequently announced that it had reached a verdict another hour later, at approximately 5:30pm.

Plaintiffs urge this Court to find that although the jury decided in favor of the Plaintiffs as to liability, its award of damages is so grossly inadequate in light of the evidence presented—especially when considered along with the jury's previous deadlock and the increasing lateness of the hour—that it suggests the jury was motivated by improper concerns, rather than by those founded on the evidence and in the instructions of the Court.

The relief of a new trial would be appropriate if this Court is convinced that the verdict is substantially disproportionate to "any rational appraisal or estimate of the damages even though the inference of passion, prejudice, partiality, or other improper motive on the part of the jury is no more natural or reasonable than the inference of mistake or misapprehension on their part." *Toole v. Toole,* 260 S.C. 235, 195 S.E.2d 389 (1973), *quoting* 15 Am.Jur. 623 *Damages* § 205.

Certainly, the jury's award of damages goes against the fair preponderance of the evidence and is inconsistent with its finding of liability on the part of the Defendants. However, because

there could be no question of fact and the Defendants are liable for trespass as a matter of law, the Plaintiffs request that this Honorable Court would grant them a new trial as to damages only.

III. In the alternative, Plaintiffs request a New Trial Absolute.

In the alternative, because of the reasons stated above, and because the jury's verdict is contrary to the fair preponderance of the evidence, Plaintiffs request that they be granted a New Trial Absolute. The "thirteenth juror doctrine" allows a trial judge to grant a new trial absolute when he finds that the evidence does not justify the verdict. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995). "Where a verdict gives grossly inadequate damages, it is as much a ground for a motion for a new trial by the plaintiff as a grossly excessive verdict would be a ground for such a motion by the defendant." *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (S.C. 1973).

For the reasons set forth above, the Plaintiffs pray for the relief requested herein.

Respectfully submitted,

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February 3rd, 2017

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2015-CP-10-3550
Richard Ralph and Eugenia Ralph, Plaintiffs, vs. Paul Dennis McLaughlin and Susan Rode McLaughlin, Defendants	)	**THE DEFENDANTS PAUL DENNIS MCLAUGHLIN AND SUSAN RHODE MCLAUGHLIN'S REPLY TO THE PLAINTIFFS' POST-TRIAL MOTION**

TO: THE HONORABLE ROGER YOUNG, SR.
PRESIDING JUDGE FOR CHARLESTON COUNTY

The Defendants Paul Dennis McLaughlin and Susan Rode McLaughlin (the "McLaughlins" of the "Defendants") hereby submit their Reply to the Plaintiffs' Post-Trial Motion dated February 3, 2017. For the reasons stated herein, the McLaughlins request that the Plaintiffs' Motion be DENIED.

STANDARD OF REVIEW

Compelling reasons must be given to justify invading a jury's province in granting a new trial. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995). Substantial deference must be afford to a jury's determination of damages when considering whether or not to grant a new trial nisi additur. *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003). The thirteenth juror doctrine entitles a trial court to act as a thirteenth juror when it finds the evidence does not justify

the verdict and it may then gran a new trial based solely on the facts. *Curtis v. Blake*, 392 S.C. 494, 709 S.E.2d 79 (2011).

ARGUMENT

Your Honor tried this case to a jury beginning with jury selection on January 23, 2017, and ending the with the jury's verdict after six hours of deliberation on January 26, 2017. The jury returned a verdict in favor the Plaintiffs in what the jury specifically described as nominal damages in the amount of One Thousand and No/100 ($1,000.00) Dollars. (Verdict Form) The jury paid close attention to the charges given to them, none of which were objected to by the Plaintiffs, one of which was as follows:

Nominal Damages

- *The plaintiff is entitled to at least nominal damages if you find the Defendant committed a trespass. Nominal damages may be a token sum such as one cent or one dollar.*

(Jury Charges, Jan. 26, 2017)

The jury's verdict adequately awarded the Plaintiffs damages. On January 26, 2017, after closing arguments and Your Honor's charge, the jury deliberated most of the day, well over (6) hours. The deliberations followed two full days of detailed testimony by the Plaintiffs, the Defendants, Howard Yates, Robert George, "Nick" Thompson, and John Wells. During their deliberations, the jury asked to re-hear the testimony of Howard Yates. After that testimony was re-heard, the jury advised Your Honor that it could not reach a decision. Around 4:30 p.m. on the last day of trial, the jury received an *Allen* charge. *Allen v. United States*, 164 U.S. 492 (1896); *Johnson v. Sam English Grading, Inc.*, 412 S.C. 433, 772 S.E.2d 544 (Ct. App. 2015),

reh'g denied, cert. denied. There were no objections given by the Plaintiffs to the jury receiving an *Allen* charge or to any of the jury charges.

Ultimately, the jury returned its verdict scratching out "actual" by damages and inserting "nominal", which Your Honor's un-objected charge specifically allowed as to the only cause of action submitted to the jury: trespass. The Court granted directed verdicts for the Defendants as to the Plaintiffs causes of action for intentional infliction of emotional distress and punitive damages. The jury relied upon the Court's instruction that if trespass is proved, a plaintiff is entitled to some damages, if only nominal. *See* Jury Instructions; *Norvell v. Thompson*, 20 S.C.L. (2 Hill) 470, 471 (1843); *Green Tree Servicing, LLC, v. Williams*, 377 S.C. 179 , 659 S.E.2d 193 (Ct. App. 2008). *College of Charleston Foundation v. Ham;* 585 F.Supp.2d 737 (D.S.C. 2008). The jury's verdict should be upheld as it is legally sound, based upon hours of deliberation, and showed consideration and thought by the jury.

Your Honor denied the Plaintiffs' motion for a directed verdict, finding that there were issues of fact regarding the trespass cause of action. To grant a new trial, this Court would be basically have to find that a directed verdict was warranted against the Defendants, which finding Your Honor did not make at the time of the trial. *Curtis v. Blake*, 392 S.C. 494, 709 S.E.2d 79 (2011). Ultimately, their one cause of action for trespass was ruled to be a question of fact, which fact question the jury answered, finding trespass but awarding only nominal damages after much deliberation.

The Plaintiffs are upset with the amount of the jury's nominal damage award, but that does not justify a new trial nisi additur, a new trial on damages, or a new trial absolute. In their Motion, the Plaintiffs list nothing more than their list of proposed damages. Based upon the length of deliberations and the ultimate jury verdict, the jury considered all of the evidence,

including the Plaintiffs alleged damages. Damages were disputed greatly in this case. The listing of damages does not constitute compelling reasons for invading the jury's province. *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003). The amount of the verdict is not grossly inadequate or shocking where the jury specifically named the damages to be nominal. *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000). The jury carefully considered both the facts and Your Honor's charge which stated nominal damages may be a token amount such as one cent or one dollar. *See* Jury Charges. The naming of the damages award as nominal after great deliberations by the jury indicated that there was no passion, caprice, prejudice or gross inadequacy to warrant a new trial. The jury committed no abuse of discretion amounting to an error of law. *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993). The jury's verdict shows great discretion and consideration of the facts and evidence presented and the manner in which they viewed the case. There may have been a trespass, but there were no damages the jury could award beyond the nominal sum awarded. There was no error of law were the Plaintiffs are upset about the jury's award and their perceived inadequacy of the nominal damages awarded.

The Plaintiffs are not entitled to a new trial on the issue of damages alone. A new trial on damages alone is not warranted unless all the evidence presented indicated that there should be a directed verdict on the issue of liability. *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993); S.C. Code Ann. §15-33-135. Again, this Court directed verdicts in this matter to the Defendants on the issues of punitive damages and intentional infliction of emotional distress. The Court refused to direct a verdict to the Plaintiffs on their cause of action for trespass, and, the Court also refused to direct a verdict to the Defendants on the same issue. Accordingly, there can be no new trial on damages alone.

Therefore, the Defendants request that Your Honor deny the Plaintiffs' Motion.

Mt. Pleasant, South Carolina

February 13, 2017

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2015-CP-10-3550
RICHARD RALPH AND EUGENIA RALPH,	)	
Plaintiffs,	)	**PLAINTIFFS' REPLY TO THE DEFENDANTS PAUL DENNIS MCLAUGHLIN AND SUSAN RHODE MCLAUGHLIN'S REPLY TO THE PLAINTIFFS' POST-TRIAL MOTION**
vs.	)	
PAUL DENNIS MCLAUGHLIN AND SUSAN RODE MCLAUGHLIN,	)	
Defendants.	)	

The Plaintiffs hereby respond to the Defendants' Reply to the Plaintiffs' Post-Trial Motion, dated February 13, 2017.

I. The jury's award of $1000 signifies actual damages and, as such, it is inadequate compensation for the loss suffered by the Plaintiffs.

The jury did not "scratch[] out 'actual' by damages and insert[] 'nominal." (Defendants' Reply to the Plaintiffs' Post-Trial Motion, p. 3). Instead, the foreman wrote the word "nominal" underneath the printed description of the damages as "actual." Thus, the amount of $1000 is followed by the term "actual nominal damages," and the Defendants' claim that the jury intended to award only nominal damages is unfitting.

In fact, the jury's award of $1000 is substantial, rather than nominal. As described to the jury in this Court's charge, nominal damages are properly "a token sum such as one cent or one dollar." (Jury Charges, Jan. 26, 2017). They are meant to be a trifling amount awarded to the plaintiff when there is no significant loss or injury for which he may be compensated, but still the

law recognizes a technical invasion of his rights.[1] Nominal damages are in contrast to actual damages, the purpose of which is to compensate for a tangible loss suffered.

The fair preponderance of the evidence presented at trial demonstrates that the Plaintiffs indeed suffered a tangible, substantial loss as a result of the Defendants' actions, and that the jury's award of $1000 is inadequate compensation for that loss. Thus, the Plaintiffs' Motion for a New Trial would be properly granted by this Court.

II. A directed verdict was warranted against the Defendants for their trespass.

There could be no question of material fact as to any element of the Plaintiffs' cause of action for trespass. Where a deed describes land as shown on a specified plat, that plat becomes a part of the deed, and purchasers of lots with reference to such plats acquire every easement, privilege and advantage depicted thereon. *Blue Ridge Company v. Williamson*, 247 S.C. 112 (1965). Element (1), that the Plaintiffs were in legal possession of a property interest in the drainage pipe and No Build Area located in part on the Defendants lot, was satisfied without question by the evidence that the Plaintiffs' title referenced a plat depicting those easements. Further, the Defendants admitted that a portion of their house now rests in the No Build Area, and that they intended for their construction crew to place it there. Thus, element (2)—that the Defendants voluntarily entered the plaintiffs' property and committed an intentional physical interference with the Plaintiffs' present right to possess it—is met without question. Finally, there was no question of fact presented as to element (3), that the Plaintiffs did not grant the Defendants permission to enter or interfere with the property. Therefore, a directed verdict would have been

[1] In a trespass case in which the jury had been charged as to nominal damages and instructed to award a "token amount or trifling sum," but instead awarded $200, the Supreme Court reversed the judgment, stating: "[t]his [award] was not responsive to the trial judge's instruction. A verdict for $200 is a verdict for substantial, not nominal damages." *Hinson v. A.C. Sistare Const. Co.*, 236 S.C. 125 at 134, *citing* 15 Am.Jur., *Damages, Section 5* (overruled on other grounds by *McCall v. Batson*, 285 S.C. 243 (1985)).

appropriate as to the Defendants' liability, and the Plaintiffs' Motion for a New Trial as to Damages would be properly granted by this Court.

For the reasons set forth above and in their Motion for a New Trial, filed on February 3, 2017, the Plaintiffs request that this Honorable Court would grant its Motion for a New Trial *Nisi Additur*, or, in the alternative, a New Trial as to Damages Only, or, in the alternative, a New Trial Absolute.

Respectfully submitted,

Ainsley F. Tillman
29 Brisbane Drive
Charleston, SC 29407
(843) 277-4497
and
G. Dana Sinkler
2180 Rosebank Plantation Road
Wadmalaw Island, SC 29487
(843) 224-1758
Attorneys for Plaintiffs

Charleston, South Carolina
February 14, 2017

Ainsley F. Tillman
29 Brisbane Drive
Charleston, SC 29407
(843) 277-4497

April 7, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Richard Ralph and Eugenia Ralph v. Paul Dennis McLaughlin and Susan Rode McLaughlin*
Case No. 2015-CP-10-3550

Dear Ms. Kitchings,

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of service of the Notice of Appeal on the Respondents;
(2) A copy of the Order and Judgement which are to be challenged on appeal;
(3) A filing fee of $100;
(4) A copy of my correspondence with the court reporter.

I appreciate your assistance with this matter. Please do not hesitate to contact me with any questions that you may have.

Yours very truly,

Ainsley F. Tillman

Enclosures

cc: G. Hamlin O'Kelley, III, Esquire

83042

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2015-CP-10-3550

Richard Ralph
and Eugenia Ralph,

Appellants,

v.

Paul Dennis McLaughlin
And Susan Rode McLaughlin,

Respondents.

NOTICE OF APPEAL

Richard Ralph and Eugenia Ralph appeal the Order of the Honorable Roger M. Young, Sr., filed March 2, 2017. Appellants received written notice of entry of this order on March 7, 2017.

March 31, 2017

Ainsley F. Tillman
29 Brisbane Dr.
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and
G. Dana Sinkler
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Attorneys for Appellants

Other Counsel of Record:
G. Hamlin O'Kelley, III, Esquire
Buist, Byars, & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
(843)856-4488
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2015-CP-10-3550

Richard Ralph
and Eugenia Ralph,

Appellants,

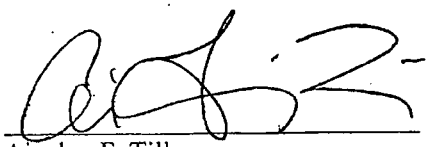
v.

Paul Dennis McLaughlin
And Susan Rode McLaughlin,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents Paul Dennis McLaughlin and Susan Rode McLaughlin by depositing a copy of it in the United States Mail, postage prepaid, on March 31, 2017, addressed to their attorney of record, G. Hamlin O'Kelley, III, 652 Coleman Boulevard, Suite 200, Mount Pleasant, South Carolina, 29464.



Ainsley F. Tillman
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(843) 277-4497
Attorneys for Appellants

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-3550

FILED
2017 FEB -6 A 9:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Richard Ralph and Eugenia Ralph

PLAINTIFF(S)

Paul Dennis McLaughlin and Susan Rode McLaughlin

DEFENDANT(S)

Submitted by: The Court.

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. ☐ See Page 2 for additional information.

☐ **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

☐ **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: Jury Verdict in favor of the plaintiffs against the defendants in the amount of $1,000.00 actual damages. Parties have Ten (10) days to submit any post trial motions.

RECEIVED
APR 11 2017
SC Court of Appeals

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)
Richard Ralph and Eugenia Ralph	Paul Dennis McLaughlin and Susan Rode McLaughlin	$1,000.00
		$
		$

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

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

2134
Judge Code

1/26/17
Date

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

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

Ainsley Tillman

ATTORNEY(S) FOR THE PLAINTIFF(S)

George O'Kelly

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Amanda Haffenden

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDCIAL CIRCUIT
) 2015-CP-10-3550
Richard Ralph and Eugenia Ralph,)
)
Plaintiffs,)
)
v.)
) **VERDICT FORM**
Paul Dennis McLaughlin and Susan Rode)
McLaughlin,)
)
Defendants.)

VERDICT

☒ We, the Jury, find for the **Plaintiff** against the Defendant in the amount of $ 1000.~ **actual** damages.
Nominal

#147

FOREPERSON

26 JAN 2017
DATE

☐ We, the Jury, find for the **Defendant.**

FOREPERSON

DATE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	2015-CP-10-3550
	)	
Richard Ralph and Eugenia Ralph,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL**
	)	
Paul Dennis McLaughlin and Susan Rode McLaughlin,	)	
	)	
Defendants.	)	

BACKGROUND

This trespass case came before this Court for a jury trial beginning January 23, 2017. The jury was charged and began deliberations on Thursday, January, 26, 2017. The jury deliberated over five hours and returned a verdict in the amount of one thousand dollars ($1,000.00) in favor of the plaintiffs. On February 3, 2017, the plaintiffs filed a motion for a new trial *nisi additur*, or in the alternative, a new trial as to damages only, or in the alternative, a new trial absolute. Defendants provided this Court with a Reply to plaintiffs' motion. After thorough consideration of the plaintiffs' arguments and the defendants' arguments, this Court does not find compelling reasons to invade the jury's province. Therefore, plaintiffs' Motion for a New Trial is denied.

STATEMENT OF FACTS

This trespass case involved a drainage easement and a no build area that extended across several lots located on Seabrook Island including lots twenty two through twenty six illustrated on the "E.M. Seabrook Jr." plats. (Pls.' Ex. 2 & 4). Plaintiffs are the owners of Lot 23. (Pls.' Ex. 1). Defendants are owners of Lot 22. (Pls.' Ex. 3). Defendants asserted that the drainage easement and the no build area had been abandoned as illustrated on the "Forsberg" plat. (Pls.' Ex. 5).

At trial the plaintiffs presented evidence, including the above referenced deeds and plats, indicating that plaintiffs had an ownership interest in the drainage easement and no build area ("easement"). Howard Yates, qualified as an expert in the law of real property, testified that he examined the chain of title on the subject properties and found that all deeds in the chain of title were subject to the easement. Mr. Yates testified that any abandonment of interest in the easement by the Seabrook Island Property Owners' Association (SIPOA) would not have extinguished the easement. Rather, abandonment of the easement would require at least the agreement of all the owners of any property that had an interest in the easement. Additionally, Mr. Yates testified that the recording of the Forsberg plat indicating the easement is "to be abandoned" does not result in the abandonment of the easement. (Pls.' Ex. 5). However, Mr. Yates also testified on cross examination that recorded plats become part of the deed to a property and that the Forsberg plat did become part of the defendants' deed. Mr. Yates also testified that the easement was originally in favor of SIPOA.

Testimony was received regarding alleged damage caused to plaintiffs' property by defendants' removal of a portion of the drainage pipe (part of the easement) that was located on defendants' property. Plaintiffs asserted that the drainage pipe removal increased the volume of surface water on plaintiffs' property after rainfall and increased length of time required for that surface water to dissipate. Mrs. Ralph testified that prior to the drainage pipe removal, the surface water after rain fall would take approximately one to one and one half days to dissipate, and subsequent to the drainage pipe removal, it takes several days for the surface water to dissipate. Mrs. Ralph also testified that although there was a surface water problem prior to removal of the drainage pipe, the removal of the drainage pipe exacerbated the surface water problem. Robert George was qualified as an expert in civil engineering, registered land surveying, and storm water drainage, and testified that the removal of the drainage pipe directly caused the poor drainage and flooding on the plaintiffs' property.

However, Mr. George also testified that he was not aware of the surface drains that the defendants had installed on their own property to alleviate problems that may have resulted from the removal of the drainage pipe. Additionally, the defendant, Mr. McLaughlin, testified that he visited his property at least three times prior to removal of the drainage pipe, and observed standing water on the plaintiffs' property after rain fall. Mr. McLaughlin also testified that the standing water was in an amount that it reached the steps of the plaintiffs' property.

Finally, this Court received testimony regarding the value of plaintiffs' property. Mrs. Ralph testified that the exacerbated surface water problem would have to be disclosed if the property were sold, and that it has decreased the value of the property. Mrs. Ralph testified that based on comparable homes in the neighborhood, she believed the value of her property to be seven hundred seventy five thousand dollars ($775,000.00) if the exacerbated surface water problem did not exist. Mr. Ralph testified that he believed the diminution of value to his home was approximately two hundred thousand dollars ($200,000.00). Testimony was also received from Nick Thompson regarding the value of the plaintiffs' property. Mr. Thompson was qualified as an expert in commercial and residential real property appraisal. Mr. Thompson testified that the plaintiffs' valuation of their property was likely accurate, and that plaintiffs' property could be depreciated by between forty and sixty percent (40-60%) based on the surface water problem.

At the close of plaintiffs' case-in-chief, the plaintiffs moved for a directed verdict on their cause of action for trespass and this Court denied that motion. Defendants also moved for a directed verdict on plaintiffs' cause of action for trespass, intentional infliction of emotional distress, and punitive damages. This Court denied defendants' motion for directed verdict on trespass, but granted a directed verdict on the intentional infliction of emotional distress and punitive damages. At the close of all the evidence, this Court ruled there was sufficient evidence for the jury to determine issues

of trespass and abandonment regarding the easement, and denied both parties' motions for directed verdict.

After closing arguments, the jury was charged on the law including the law of easements, trespass, and nominal and actual damages. Neither the plaintiffs, nor the defendants, objected to the charges given by this Court. During deliberation, the jury requested to rehear the testimony of Howard Yates. The jury deliberated over five hours before indicating that it was deadlocked. This Court gave the jury an Allen[1] charge, after which the jury continued deliberation for an additional hour before returning a verdict. Neither party objected to this Court giving the jury an Allen charge. The jury's verdict was in the amount of one thousand dollars ($1,000.00) in favor of the plaintiffs. The word "nominal" was hand written on the verdict form by the jury.

DISCUSSION

I. Nominal Damages

The jury was given the following instruction on nominal damages: "The plaintiff is entitled to at least nominal damages if you find the defendant committed trespass. Nominal damages may be a token sum such as one cent or one dollar."[2] The jury returned a verdict in the amount of $1,000.00 and wrote "nominal" on the verdict form. Plaintiff asserts that $1,000.00 is not a nominal award, but rather a substantial award, relying upon Hinson v. A.T. Sistare Const. Co., 236 S.C. 125; 113 S.E.2d 341 (1960) (overruled on other grounds by McCall v. Batson, 285 S.C. 243; 329 S.E.2d 741 (1985)). The facts in Hinson, however, are distinguishable from the case before this Court.

Hinson involved a condemnation action which was appealed resulting in the condemnee receiving an award of twenty three hundred fifty dollars ($2,350.00) as opposed to the condemnation

[1] Allen v. United States, 164 U.S. 492 (1896).
[2] See Snow v. City of Columbia, 305 S.C. 544, 553; 409 S.E.2d 797, 802 (Ct. App. 1991) ("mere entry entitles the party in possession at least to nominal damages.").

board's proposed tender of seven hundred dollars ($700.00). Id. at 130; 113 S.E.2d at 343. At the end of the trespass case,[3] the jury's verdict read "We find for the plaintiff the sum of nominal dollars actual damages and two thousand dollars punitive damages." Id. at 133; 113 S.E.2d at 345. The jury was instructed to put "some token amount or some trifling sum in lieu of the word 'nominal[,]'" and the jury returned a sum of two hundred dollars ($200). Id. at 134; 113 S.E.2d at 345. The Hinson court found that "$200 is a verdict for substantial, not nominal, damages[,]" and reversed the judgment "as to actual damages and affirmed as to punitive damages." Id. The Court further explained that "[w]here there has been a wilful (sic) invasion of a legal right but no substantial damage has been shown to have resulted therefrom, a verdict for punitive damages alone will stand, since it will be presumed that nominal damages, incapable of admeasurement, have been merged in the punitive damages." The Court's decision was based on the fact that the "verdict in the condemnation proceeding included just compensation for its loss [condemnee's shrubbery] as well as for all other loss sustained by him as the result of the taking. Id. at 133; 113 S.E.2d at 344.

In the case before this Court, at the close of the plaintiffs' case-in-chief, this Court directed a verdict in favor of the defendants against plaintiffs' assertion of punitive damages and therefore there was not the possibility of nominal damages being "merged into" punitive damages. Additionally, unlike the plaintiff in Hinson, plaintiffs had not received compensation in any manner prior to trial, a factor that influenced the Hinson Court's decision. Finally, the award of two hundred dollars in nominal damages in Hinson, represents approximately eight and one half percent (8.5%) of Hinson's actual damages represented by the award in the condemnation proceeding. Here, the award of one thousand dollars ($1,000.00) in nominal damages represents one half of one percent (0.5%) of the

[3] The plaintiff maintained a suit against the contractor who performed work on that part of the plaintiff's property which was condemned on the basis that such work began prior to tender of any money from the State and prior to a decision in plaintiff's appeal of the condemnation board's award.

lowest estimate of plaintiffs' alleged actual damages.[4] Therefore, this Court finds that it was the jury's intention to award nominal damages, not actual damages; by writing "nominal" on the verdict form, and based on the facts before this Court, the jury's award of one thousand dollars ($1,000.00) is nominal.

II. New Trial

Rule 59 of the South Carolina Rules of Civil Procedure authorizes the granting of a new trial "on all or part of the issues [] in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State;" Rule 59, SCRCP. "The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88–89; 610 S.E.2d 852, 856 (Ct. App.2005)).

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice." Waring v. Johnson, 341 S.C. 248, 257; 533 S.E.2d 906, 911 (Ct. App. 2000). In the case of the former, the trial judge may order a new trial *nisi additur* or new trial *nisi remittitur*; in the case of the later, "the trial judge is required to grant a new trial absolute." Id. "In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or *nisi* in a law case upon his disapproval of the

[4] If this Court uses the estimate of 40%-60% of property value loss presented at trial, the $1,000.00 in nominal damages would represent a range between three thousandths of one percent (0.003%) and two thousandths of one percent (0.002%) of the alleged actual damages.

verdict on factual grounds . . . ." Vinson v. Hartley, 324 S.C. 389, 404; 477 S.E.2d 715, 723 (Ct. App. 1996).

Our appellate courts have held that in reviewing a jury's verdict "the jury does not have to believe uncontradicted testimony" because "[t]he fact that testimony is not contradicted directly does not render it undisputed." Vinson, 324 S.C. at 409-410. It remains in the jury's province to determine "the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation." Id. at 410. Furthermore, "[i]f there is any evidence to sustain the factual findings implicit in the jury's verdict, this court must affirm." Id. (quoting Hobgood v. Pennington, 300 S.C. 309, 313; 387 S.E.2d 690, 692 (Ct. App. 1989)).

A. New Trial Absolute

Under the thirteenth juror doctrine, the fact that "the trial judge is compelled to submit the issues to the jury" does not prevent the trial judge from granting a new trial absolute. Howard v. Roberson, 376 S.C. 143, 152; 654 S.E.2d 877, 881 (Ct. App. 2007). The South Carolina Supreme Court has explained the thirteenth juror doctrine as

> a vehicle by which the trial court may grant a new trial absolute when [it] finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Folkens v. Hunt, 300 S.C. 251, 254; 387 S.E.2d 265, 267 (1990) (internal citations omitted).

Several reasons have been held to provide a basis for a trial judge granting a new trial absolute including: "that justice has not prevailed," "the verdict is inconsistent and reflects the jury's confusion," or "[the] verdict is unsupported by evidence." Vinson, 324 S.C. at 404. (internal citations omitted). Additionally, "[a] trial court may grant a new trial absolute on the ground that the verdict

is excessive or inadequate[,]" however, "[t]he jury's determination of damages . . . is entitled to substantial deference." Id. "If the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trial absolute." Waring v. Johnson, 341 S.C. 248, 257; 533 S.E.2d 906, 911 (Ct. App. 2000).

South Carolina's Supreme Court has found a jury verdict in the amount of $6,000.00 "irreconcilably inconsistent with the unchallenged evidence presented at trial []" that included medical bills and lost wages totaling "$30,026 in undisputed damages." Dillon v. Frazer, 383 S.C. 59, 64; 678 S.E.2d 251, 253 (2009). The Court found such an award "grossly inadequate" demonstrating "that the verdict was actuated by improper motivation." Id. at 65. In reaching this decision, the Court found the jury's questions during deliberation (including whether any insurance had paid the plaintiff's medical bills and whether the plaintiff had been paid while he was not working), and the trial court's instructions that "those matters 'are not for your concern[,]'" in light of the verdict indicate that "that the jury failed to follow the court's instruction." Id. at 64.

In contrast, the Vinson court affirmed the trial court's denial of plaintiff's "motions for reformation of the verdict, new trial *nisi additur*, and new trial absolute." Vinson, 324 S.C. at 412. The court found that based on the plaintiff's testimony, the jury could have found that the injuries were not a result of the accident. Id. Additionally, the plaintiff's "credibility may have been seriously weakened by his first claiming lost wages, then withdrawing that claim when confronted with deposition testimony which indicated he had no lost wages and was not making such a claim." Id. Finally, the court found that "certain inconsistencies came out during Dr. Carlson's [the plaintiff's doctor] testimony which may have brought his credibility into question." Id. Based on a review of the trial court's record, the appellate court determined that "the trial court's ruling is not 'wholly

unsupported by the evidence' nor is it 'controlled by an error of law[,]'" concluding "the trial judge did not abuse his discretion . . . ." Id.

In the case before this Court, although there was testimony that the surface water problem on the plaintiffs' property was exacerbated by the defendants' trespass, i.e., the removal of the drainage pipe, Mrs. Ralph also testified that her property always had some type of surface water problem. Defendants also testified that on various trips to their property, prior to the removal of the drainage pipe, they observed flooding of the plaintiffs' property after rain fall. Based on testimony from the plaintiffs, the alleged diminution in property value could have been in an amount of two hundred thousand dollars ($200,000.00). However, the plaintiffs also presented testimony of a forty to sixty percent decrease in the property value. Based on that percentage range and Mrs. Ralph's testimony on the estimated value of the property, the resulting loss in property value could have been in an amount between three hundred ten thousand dollars ($310,000.00) and four hundred sixty five thousand dollars ($465,000.00).

The jury's verdict in favor of the plaintiffs indicates that the jury found that the defendants committed trespass by removing the drainage pipe. The award of nominal damages in the amount of one thousand dollars ($1,000.00) indicates that the jury did not find that the defendants' trespass caused the damage alleged by the plaintiffs but understood that the law requires at least nominal damages to vindicate the plaintiffs' rights.

This Court finds there exists evidence to sustain the factual findings implicit in the jury's verdict. Additionally, the length of deliberation coupled with the request to rehear testimony indicates the jury's thoughtfulness and thoroughness in its deliberation and reaching its verdict. There is no indication to this Court that the jury was confused or that the verdict was unsupported by the evidence. Finally, this Court finds that the amount of the verdict is consistent with the instructions given to the

jury, and as such, does not shock the conscience of this Court. Plaintiffs' motion for a new trial absolute is denied.

B. New Trial Nisi Additur

"The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Waring v. Johnson, 341 S.C. 248, 256; 533 S.E.2d 906, 910 (Ct. App. 2000). "The consideration of a motion for a new trial *nisi additur* requires the court to consider the adequacy of the verdict in light of the evidence presented." Id. at 257. "A new trial *nisi additur* may be ordered when the verdict is merely insufficient based on the evidence." Id. However, a trial judge is required to "offer compelling reasons for invading the jury's province by granting a motion for *additur*." Luchok v. Vena, 391 S.C. 262, 264; 705 S.E.2d 71, 72 (Ct. App. 2010) (quoting Green v. Fritz, 356 S.C. 566, 570; 590 S.E.2d 39, 41 (Ct. App. 2003) (noting that the trial judge's "mere listing of [plaintiff's] claimed damages . . . in [its] order does not constitute compelling reasons for invading the jury's province. Green, 356 S.C. at 570)).

The Waring court affirmed the trial court's granting of a new trial *nisi additur*, finding the trial court "articulated compelling reasons in [its] order justifying the grant of the *nisi additur*." Waring, 341 S.C. at 261. The jury in Waring returned a verdict in "the exact amount of Waring's medical bills." Id. at 255. The trial court reasoned the jury had failed to consider pain and suffering based on the facts that Waring had received years of medical treatment, "underwent surgery for a condition which numerous doctors testified was aggravated by the wreck[,] . . . took advantage of every recommendation of her physicians[,] . . . will most likely suffer pain for the remainder of her life[, and] . . . [is] unable to continue her previous active lifestyle." Id. at 260.

In contrast, the Luchok court found that the trial court improperly granted a new trial *nisi additur* because it failed to provide compelling reasons for invading the jury's province. Luchok, 391 S.C. at 265. During trial Ms. Luchok was the only witness to testify in her case in chief. Id. at 264. Ms. Luchok's testimony indicated that she did not require an ambulance or seek immediate treatment, but rather "drove herself home after the accident." Id. While she went to her family doctor the next day, she did not begin chiropractic treatment until "more than three weeks after the accident[,]" and that treatment included "massages she received from a massage therapist who worked for the chiropractor." Id. The trial judge granted a new trial *nisi additur* because the jury award failed to cover all the chiropractic bills and the chiropractic bills were "reasonable and necessary." Id. at 265. However, the Luchok court found the trial court's findings were not compelling reasons and therefore overruled the trial court. Id.

For the reasons stated in Part II. A., supra, this Court does not find any compelling reasons to invade the province of the jury. Therefore, plaintiffs' motion for a new trial *nisi additur* is denied.

C. New Trial as to Damages Only

"The law in South Carolina is clear that when a verdict in favor of a plaintiff is fully supported by the evidence on the issue of liability but the damages awarded are inadequate, a new trial *may* be ordered on the issue of damages alone. S.C.R.C.P. 59(a). (Emphasis added.) (sic)" Cartin v. Keller Bldg. Products of Charleston, 299 S.C. 152, 153; 382 S.E.2d 922, 923 (1989). However, "[a] new trial on damages alone is not warranted unless the evidence presented indicated that a directed verdict on the issue of liability would have been proper." Pelican Building Centers of Horry – Georgetown, Inc. v. Dutton, 311 S.C. 56, 61; 427 S.E.2d 673, 676 (1993).

This Court denied both plaintiffs' and defendants' motions for a directed verdict on the trespass cause of action which were made at the end of the plaintiffs' case-in-chief. Additionally, at

the close of all evidence, this Court ruled there was sufficient evidence for the jury to determine issues of trespass and abandonment regarding the easement, and denied both parties' motions for directed verdict. For these reasons and the reasons stated in Part II. A., supra, plaintiffs' motion for a new trial as to damages only is denied.

CONCLUSION

IT IS THEREFORE ORDERED that Plaintiffs' Motion for a New Trial Absolute, New Trial *Nisi Additur*, and New Trial as to Damages Only is DENIED.

IT IS SO ORDERED!

February 28, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge