

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

Appellate Case No. 2012-212137

RECEIVED
MAY 30 2013

SC Court of Appeals

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and
Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South
Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc.,
Defendants Of Whom City of Greenville and Mayor Knox H. White are the
Respondents/Appellants,.....Respondents/Appellants.

**APPELLANTS' FINAL REPLY BRIEF OF
APPELLANTS/RESPONDENTS**

May 28, 2013

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STATEMENT OF THE CASE

In this action, the Plaintiffs, South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and Robert M. Lloyd (collectively “SCPIF”) brought an action alleging that the City of Greenville had permitted a purpresture over land that the City owned in northern Greenville County. Defendants were the City of Greenville and Cliffs, a luxury residential developer in that area. R. pp. 47-50.

One request in SCPIF’s prayer for relief was that the City be required to survey its property, determine its property line, and fence an area of the roadway that was infringing on City land. That roadway led to several home sites in the Cliffs’ community. If SCPIF had prevailed on that claim, the Cliffs might have been forced to build a new bridge across a steep gully or ravine to avoid trespassing on the City’s property. Shortly after SCPIF filed suit, the City and Cliffs came to an initial agreement.

During the course of this litigation, the City ended the purpresture by divesting itself of its ownership of the subject land in two different conveyances. R. pp. 95-101; pp. 129-131. SCPIF moved for an award of attorneys’ fees. R. pp. 132-165. The Court awarded partial attorneys’ fees for time billed through the first conveyance that partially ended the purpresture. R. pp. 43-44.

SCPIF appealed the Circuit Court’s failure to award full attorneys’ fees, and the City appealed the award of partial attorneys’ fees. The basic issue is the appropriateness and amount of attorneys’ fees. Both sides have appealed and filed multiple briefs.

STATEMENT OF FACTS

The City has criticized SCPIF's Statement of Facts. The City makes many factual assertions in its Statement of the Case in its "Initial Reply Brief of the Respondent/Appellants" with which SCPIF disagrees. For purposes of clarity, SCPIF will highlight the portions of the City's Statement of the Case that it finds to be particularly erroneous.

There was never any finding by the Court of any purpresture or trespass. Furthermore, ***there was no finding*** by the Court, based on any evidence Sloan submitted, that there as [sic] ***a purpresture or trespass of any specific acreage.*** Sloan's Statement of the Case ***fails to cite any such finding*** in the transcripts or Court Orders because such findings do not exist.

There was never any finding by the Court of any "continuing" purpresture or trespass. Further, there was no finding by the Court, based on the evidence Sloan submitted, that there was ***a continuing purpresture or trespass of any specific acreage.*** Sloan's Statement of the Case ***fails to cite any such findings*** in the transcripts or Court Orders because such findings do not exist.

There was never any finding by the Court that the City had "constructive" notice or any other notice of the purpresture or trespass for eight years. Additionally, ***Sloan offered no evidence that the City had "constructive" notice or any other notice of the purpresture or trespass for eight years.*** Sloan's Statement of the Case fails to cite any such findings in the transcripts or Court Orders because such findings and evidence does [sic] not exist

There was never any finding by the Court that the plats or the survey report provided by Sloan proved that there was any purpresture or trespass of a specific size or the specific boundary line should be used. Sloan's Statement of the Case fails to cite any such findings in the transcripts or orders because such findings and evidence does [sic] not exist.

There was never any finding by the Court that, in response to Sloan's Motion to Amend, the City recorded a boundary line agreement to end a purpresture of 3.2 acres. Further, there was no finding by the Court, based on any evidence Sloan submitted, that that was the case. Sloan's Statement of the Case fails to cite any such findings in the transcripts Court Orders [sic] because such findings do not exist.

Initial Reply Brief of the Respondent/Appellants, pages 1-2.

SCPIF respectfully submits that the City's Statement of the Case in general, and the highlighted factual assertions in particular, are untrue. SCPIF stands by its original Statement of Facts, but to illustrate the error's in the City's Statement of the Facts, SCPIF will cite references in the Record to further establish the accuracy of SCPIF's Statement of Facts.

First, the City **admitted** the existence of the purpresture in its Answer. SCPIF alleged in paragraph 12 of the Complaint, "Upon information and belief, the City had knowledge of this purpresture or encroachment on its lands as early as 2003." R. pp. 47-50. In its Answer, the City admitted: "Defendants **admit** that portion of paragraph 12 that implies **some knowledge** about a **potential encroachment or purpresture** but would deny that they had all the facts at that time" (emphasis added). R. pp. 51-54. Thus, the City admitted knowledge of the matter.

Counsel for the City, SCPIF, and the Cliffs signed a Consent Order, and Judge Hill signed and entered the Consent Order on August 18, 2011, concluding the case. The Consent Order recites many finding of fact (as stated by SCPIF):

2. On June 19, 2008, the City by its deed conveyed its title to **.29 acres of land** described therein to the Defendant Cliffs.

* * *

5. On February 13, 2009, the City by its deed quitclaimed its title to **additional land** described therein to the Defendant Cliffs.

* * *

6. The deed referenced in paragraph 5 **supplemented the deed** referenced in paragraph 2, ended the City's ownership of the subject land, and thereby **ended the trespass on the subject land** by the Defendant Cliffs.

* * *

9. *When the City disposed of its ownership* of the land being trespassed upon, *the trespass ended*, and this case became moot.

10. The Court hereby revokes its January 30, 2009 Order, and dismisses this action on the grounds of mootness.

R. pp. 29-34 (Consent Order entered August 18, 2011 (emphasis added)). SCPIF respectfully suggests that these matters constitute Circuit Court Findings of Fact that a trespass or purpresture had existed, that the conveyance of .29 acres partially ended the purpresture, and that the trespass or purpresture ended only when the quitclaim deed was filed in February 2009.

The City further admitted that it failed to make a survey of the western boundary of its land. “[T]he City’s settlement *did not require a survey* and in fact the settlement agreement in place was done without one” (Initial Reply Brief of the Respondents/Appellants, page 19) (emphasis added). Such a survey could have established the proper and historic boundary line between its property and that of the Cliffs.

On May 12, 2008, SCPIF filed a Motion for Judgment on the Pleadings and attached to the Motion a copy of a plat filed in the Greenville County Register of Deeds Office. R. pp. 66-69. Neither the City nor the Cliffs objected to the attached plat. The plat showed the boundary line, as drawn by the surveyor for the Cliffs, and the Cliffs’ road clearly trespassing on the land owned by the City of Greenville. The signed and sealed survey, dated June 14, 2000, was filed in the Register of Deeds office on August 21, 2000. R. p. 69. This document supports SCPIF’s assertion that *the purpresture had existed for at least eight years* before the City entered into the agreements to correct the purpresture first in June 2008 and later in February 2009. SCPIF contends that the filing

of the survey in the Register of Deeds office was *constructive notice* to the City of the purpresture.

The City contends that they did not have *actual knowledge* of the purpresture until 2003, when the Water Commission representatives came to the City, which owned the land, with a proposed settlement related to the purpresture. Nevertheless, for five years while the City “negotiated” with the Cliffs, the City failed to hire a professional surveyor to determine where the boundary lay, even after the Cliffs’ surveyor had drawn the boundary line four different ways, with four different bearings, all different from the historic Wiswall line.

On October 2, 2008, the Circuit Court heard SCPIF’s Motion for Judgment on the Pleadings, SCPIF’s Motion to Amend the Complaint, and the Motions by the City and Cliffs for Summary Judgment. R. pp. 241-283. Toward the end of the hearing, SCPIF presented evidence in the form of additional plats, also filed in the Greenville County Register of Deeds office, showing multiple drawings of the same property line between the City and the Cliffs, drawn by Cliffs’ surveyor. R. p. 278; p. 281. These multiple and variant drawings of the property line tended to show that the .29 acres that the City had conveyed to the Cliffs was not the entire purpresture, because many of the drawings by the Cliffs’ surveyor (besides the one they used for the June conveyance) showed the purpresture to encumber more City-owned land. Neither the City nor the Cliffs disputed the authenticity of the multiple plats, showing multiple bearings and multiple endpoints for the boundary line between the land owned by the City and the land owned by the Cliffs. R. pp. 277-283. All of the plats had been recorded in the Greenville County Register of Deeds office on behalf of the Cliffs.

The Circuit Court stated,

I'm going to grant the Defendant's Motion for Summary Judgment. I'm ruling on the motion which is [ripe] to be heard based on the evidence that is before me. There is no evidence that this encroachment – I don't think the evidence in these two maps that you've shown me is enough for me to conclude that there's a disputed issue of material fact regarding the encroachment . . . But if you want to go do a survey, then you are free to do that. I'll allow you to do it. And if I need to sign an order, I will. Or if y'all can do it by agreement, that would be fine. But it would be at the cost of the Plaintiff. And then if that survey shows that . . . there is, in fact, some encroachment, then you're free to file a 59(e) motion to . . . bring the question back before me.

R. p. 281 (Transcript of Record, October 2, 2008, page 41, lines 1-17).

SCPIF engaged James R. Freeland, P.E., R.L.S., a registered land surveyor, who surveyed the property and who also physically examined the property, looking for evidence on the ground to establish the historic location of the boundary. R. pp. 104-107.

Before the Court signed a formal Order granting the Motion for Summary Judgment, SCPIF filed a Motion for Leave to File a Second Supplemental Complaint on October 28, 2008. R. pp. 70-72. SCPIF attached to the Motion another plat printed from the Greenville County Register of Deeds Office filed June 24, 2008 in conjunction with the transfer of the .29 acres. R. p. 102. This deed shows the boundary line almost touching the inside of the curve of the road going around the ravine. This line differed from the boundary line on the plat dated June 2000. R. p. 69.

SCPIF also attached Freeland's Report with his seal and a drawing. R. pp. 102-107. The Freeland drawing displays on one sheet all four property lines drawn at various times by the Cliffs' surveyor, and recorded in the Greenville County Register of Deeds office. The Freeland drawing also shows the historic Wiswall Line, which SCPIF contended was the true boundary line between the property of the City and the Cliffs.

The Freeland Report disclosed that as Freeland followed the historic Wiswall line,

he discovered that the Cliffs had not only built a road on land owned by the City, but also that the Cliffs had sold City-owned land as parts of three residential lots in the upscale mountain community to three separate buyers. These buyers thereby possessed a claim or an interest adverse to the City in the dispute over the wrongfully misappropriated real estate. In later pleadings, SCPIF sought to add the new purported “purchasers” or “owners” of the City-owned land as additional defendants. R. pp. 70-72; pp. 79-83.

Throughout this entire conflict and negotiated settlement, the City relied on the land surveyor employed by the party with opposing interests to its own: the Cliffs. As demonstrated by SCPIF, the surveyor for the Cliffs drew this boundary line four different ways, with none of them in accord with the endpoints and bearings of the historic boundary line, the Wiswall Line. All of the Cliffs’ drawings benefitted the Cliffs and disadvantaged the City. Because the City failed to commission its own survey during the entire five years of alleged “negotiations,” the City lacked a good faith factual basis for either negotiating with Cliffs or for defending this lawsuit, because they refused to commission a new comprehensive survey. At the attorneys’ fee hearing, Defendant City justified its failure to commission a survey by implying to the Court that surveying the property correctly is nearly impossible because the topography is steep. R. pp. 352-356 (October 26, 2011 Transcript, p. 19, ll. 5-10 and p. 23, l. 7-9).

Shortly thereafter, SCPIF submitted a proposed Third Supplemental Complaint. The Cliffs and the City opposed the further amendment of the Complaint, and the Court held another hearing on December 17, 2008. In the hearing, Cliffs agreed that the historic Wiswall Line was the proper boundary line. R. p. 315 (Transcript of record, December 17, 2008, page 32, lines 2-7). The dispute focused upon the location of the

Wiswall Line. R. p. 315 (Transcript of record, December 17, 2008, page 32, lines 7-13).

Furthermore, although the ordinance enacted on April 28, 2008, after an alleged five years of “negotiations,” called for the parties to execute mutual releases, as of December 17, 2008, the City and Cliffs had not executed mutual releases that they had forecast signing in June 2008. R. p. 320 (Transcript, December 17, 2008, p. 37, ll. 5-10). After the hearing on December 17, 2008, SCPIF issued a FOIA request to the City requesting copies of the mutual releases. A month later, on January 22, 2009, the City responded that they still had no such mutual releases. R. p. 124.

Ultimately, the Court indicated that it would rule that the City and the Cliffs had agreed on a common boundary line as part of the exchange of money and real estate, and even though they may have begun with a wrong boundary line (drawn by the Cliffs’ surveyor), they had resolved the issue, and the Court would not intervene further. R. p. 327 (Transcript of record, December 17, 2008, p. 44, ll. 15 – p. 47, l. 10). On January 29, 2009, the Court entered an Order drafted by counsel for Cliffs. R. pp. 17-25.

On February 12, 2009, SCPIF filed a Motion to Alter or Amend the Judgment alleging and demonstrating several factual errors in the Order.

On February 13, 2009, the City executed the Boundary Line Agreement, Quitclaim, and Release. R. pp. 114- 124. On February 18, 2009, the City sent a copy of the Boundary Line Agreement, Quitclaim, and Release to SCPIF. R. pp. 129-131. It was only after SCPIF had demonstrated in the Motion to Alter or Amend the Judgment that Cliffs had “sold” city-owned land as parts of three residential lots to innocent purchasers that the City and the Cliffs executed the “Boundary Line Agreement, Quitclaim, and Release” and thereby ended the purpresture as to the whole 3.5 acres, rather than deeding

only .29 acres.

The Court never ruled on SCPIF's Motion to Alter or Amend the Judgment. On August 18, 2011, the Court entered the Consent Order that states in part: "The Court hereby revokes its January 30, 2009 Order, and dismisses this action on the grounds of mootness." R. pp. 29-34 (Consent Order entered August 18, 2011, par. 10).

On November 7, 2011, Judge D. Garrison Hill entered a Form 4 Judgment, which states the following: "Plaintiff's Motions for attorney's fees pursuant to S.C. Code 15-77-300 is granted for all fees and expenses incurred prior to June 24, 2008, the date of the recording of the deed of the 0.29 acres." R. p. 34.

On November 23, 2011, the Court entered a more formal order awarding fees to SCPIF. That Order contains many findings of fact. R. pp. 35-42.

2. On June 19, 2008, the City by its deed conveyed its title to .29 acres of land described therein to the Defendant Cliffs. This deed was recorded June 24, 2008, Greenville County Deed Book 2329 on pages 817-20. On June 24, 2008, the City received \$100,000 from Cliffs as part of the consideration.

3. On February 13, 2009, the City by its deed **quitclaimed its title to additional land** described therein to the Defendant Cliffs. The Quitclaim deed was recorded February 16, 2009 at the Greenville County Deed Book 2353, on pages 1209-11.

4 **The deeds referenced above ended the City's ownership** of the subject land, and thereby ended the trespass on the subject land by the Defendant Cliffs.

* * *

14. Likewise, in the case at bar, Mr. Sloan and SCPIF are prevailing parties. **For several years**, The Cliffs at Glassy, Inc. had encroached upon City-owned land, committing a purpresture. **Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it.**

15. Plaintiffs established that **Defendant City had failed to repel a purpresture and remedy the situation for several years.**

Plaintiffs' lawsuit obtained the relief sought, "a unilateral change in position by the agency" ending the purpresture, and ***Plaintiffs prevailed***. *Sloan v. Friends of the Hunley*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011).

16. Second, ***Defendant City acted without substantial justification*** in pressing its claims in this lawsuit. Courts look to whether the governmental defendant had a reasonable basis in law and fact. *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004). Defendant City did not have a reasonable basis in law and fact. ***Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it***. Defendants were not "substantially justified" in pressing their claims in this lawsuit.
17. Finally, no special circumstances make an award of fees unjust. Plaintiffs funded this litigation with their resources. . . . ***Plaintiff's action benefitted the City by prompting \$100,000 in income from the sale***.
18. Under these circumstances, ***the defense of these matters was not substantially justified***. Plaintiffs established that Defendant City had ***failed to repel a purpresture, and remedy the situation for years***. Accordingly, Plaintiffs meet the qualifications for an award of attorneys' fees under S.C. Code § 15-77-300.

R. pp. 35-42 (Order Granting Attorneys Fees and Costs pursuant to S.C. Code Ann. § 15-77-300, entered November 23, 2011 ("Fees Order")) (emphasis added)).

Accordingly, the Circuit Court made Findings of Fact that the City had "failed to exercise reasonable care to discover" the location of the property line between its property and that of the Cliffs (par. 16). R. p. 38. The Court also found that the City had conveyed land twice to the Cliffs: once in the deed conveying .29 acres in June (par. 2), and again in the quitclaim deed in February that related to "additional land" (par. 3). R. p. 35. The Court also found that the "City had failed to repel a purpresture and remedy the situation for several years" (par. 15). R. p. 38. These explicit findings of fact support the Statement of the Case and a Statement of Facts as previously reported by SCPIF and completely answer the factual discrepancies alleged in Respondent-Appellant's Brief.

ARGUMENT

I. THE CIRCUIT COURT'S DECISION TO AWARD ATTORNEYS' FEES TO SCPIF WAS A VALID EXERCISE OF ITS DISCRETION.

The Circuit Court has discretion to grant attorneys' fees under S.C. Code Ann. § 15-77-300 because viewing the evidence and testimony on an outcome basis and considering the SCPIF's success in achieving its goals, SCPIF "prevailed."

A court determines the prevailing party by evaluating the degree of success obtained. *Commissioner, Immigration and Naturalization, et al. v. Marie Lucie Jean*, 496 U.S. 154, 110 S.Ct. 2316, 110 L.Ed.2d 134 (1990). Sheriff Heath was the prevailing party in that he successfully prevented the Council from taking the Communications Division from his office, established that he has authority to set policies for Sheriff's Department personnel, and established that such personnel are not subject to the Council's personnel policies. On only one minor issue was the Council found to be correct, that being the matter of the grievance process. Therefore, on the main issue, as well as the majority of issues, we find that Sheriff Heath was the prevailing party.

Heath v. County of Aiken, 302 S.C. 178, 183, 394 S.E.2d 709, 711-712 (1990). At the hearing, on attorneys' fees October 26, 2011, SCPIF's counsel recounted the timeline of events before the Court and demonstrated that SCPIF's actions prompted the actual transfer of the actual property encroached upon. R. pp. 338-344 (Transcript of October 26, 2011 hearing, p. 5, l. 6 – p. 11, l. 17). At the hearing on attorneys' fees, Defendant Cliffs presented additional facts but did not object to the accuracy of this timeline R. pp. 351-356 (Transcript of October 26, 2011 hearing, p. 18, l. 6 – p. 23, l. 16). After hearing this account and viewing the evidence, the Circuit Court concluded that SCPIF prevailed R. pp. 35-42 (Order on Attorneys Fees).

The Supreme Court has "ruled relevant to the issue of substantial justification the *outcome* of the matter eventually litigated." *Heath*. 302 S.C. 178, 183, 394 S.E.2d 709,

712 (1990). Defendant City attempted to justify its refusal to commission a survey by implying that the steep terrain made it impossible for a surveyor to assuredly identify boundary lines. R. pp. 352-356 (October 26, 2011 Transcript, p. 19, ll. 5-10 and p. 23, l. 7-9). At the hearing on attorneys' fees, the Court heard the City's explanation and the account of the City's refusal over five years to commission its own survey. R. pp. 351-357 (October 26, 2011 Transcript, pp 18-24).

The City Attorney's testimony that he had been working on the matter did not foreclose the conclusion that the litigation prompted the resolution of the dispute. The conveyance of deeds and payment of \$100,000 occurred only after SCPIF filed suit. The Circuit Court is much closer to the presentation of evidence, the arguments of counsel, and the analysis of the documentary evidence, and possesses discretion to award attorneys' fees. This exercise of discretion will be affirmed, unless there is actual abuse.

The Circuit Court determined that SCPIF pursued litigation until the City executed the deed related to the encroachment on City land by the Cliffs. Each deed came only at the prompting of litigation, the one in June, about two months after litigation started, and the one in February after SCPIF had demonstrated the errors in the drawings of the Cliffs' surveyor and the likelihood that the Cliffs had "sold" City-owned land to three buyers. After observing all the evidence and the representations of counsel at hearings, the Circuit Court properly determined that the litigation, and specifically the survey SCPIF commissioned, produced successful results.

In this case, the Circuit Court observed that the conveyance happened only and immediately after SCPIF had begun litigation against both the City and the Cliffs. The Circuit Court is well aware of SCPIF's reputation as a tenacious and often successful

litigant. The Circuit Court determined that SCPIF's litigation, particularly the survey of the land encroached upon, prompted the conclusion of negotiations that had been dragging on for several years. Accordingly, there is no abuse of discretion in the award of fees.

II. THE CIRCUIT COURT MADE ALL THE NECESSARY FINDINGS TO SUPPORT AN AWARD OF ATTORNEYS' FEES.

The Circuit Court awarded attorneys' fees under S.C. Code Ann. § 15-77-300. The appropriate standard of review is abuse of discretion. *Heath v. County of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990).

The Circuit Court made all the necessary findings for an award of attorneys' fees. "Plaintiffs established that *Defendant City had failed to repel a purpresture and remedy the situation for several years.*" R. p. 38 (Fees Order, par. 15). The Circuit Court found that the "Plaintiffs' lawsuit obtained the relief sought." R. p. 38 (Fees Order, par. 15). As noted above, the Circuit Court ruled in its Order awarding fees, "*The deeds referenced above ended the City's ownership* of the subject land, and thereby ended the trespass on the subject land by the Defendant Cliffs," meaning the deed for .29 acres, filed in June 2008, *and the quitclaim deed* filed in February, 2009. R. p. 38 (Fees Order, par. 15). The *combination* of the two deeds ended the purpresture. (The award of attorneys' fees should cover the time until the purpresture was fully ended, February 16, 2009, but the Circuit Court erroneously stopped short of awarding the full fees incurred until the purpresture was fully ended.)

The Circuit Court determined that the City was not substantially justified in defending this lawsuit. "Second, *Defendant City acted without substantial justification* in pressing its claims in this lawsuit." R. p. 38 (Fees Order, par. 16). The City was not

substantially justified in defending this lawsuit because the City did not attempt to discover where the actual boundary was, and did nothing to learn where it was. “Defendant City did not have a reasonable basis in law and fact. *Defendants did not know the location of its property line, and failed to exercise reasonable care to discover it.*” R. p. 38 (Fees Order, par. 16).

There were no other considerations that would make an award of fees unjust. “Finally, no special circumstances make an award of fees unjust. Plaintiffs funded this litigation with their resources. . . . Plaintiff’s action benefitted the City by prompting \$100,000 in income from the sale.”

The Court concluded its analysis of the Plaintiffs’ entitlement to attorneys’ fees this way: “Under these circumstances, *the defense of these matters was not substantially justified.*” The Circuit Court then went through the six factors related to the proper amount of attorneys’ fees, making findings of fact as to each element. The Circuit Court made all the appropriate findings for an award of attorneys’ fees. As stated above, the only abuse of discretion was in terminating the accumulation of fees prior to the termination of the purpresture.

III. THE COURT SHOULD HAVE AWARDED FEES THROUGH THE TIME OF THE QUITCLAIM DEED OF THE 3.2 ACRES.

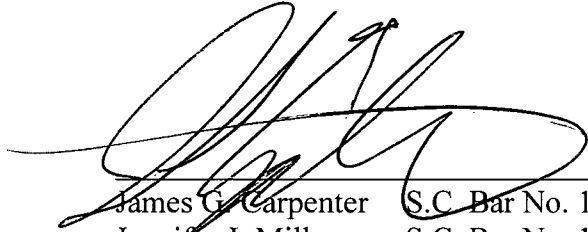
The Circuit Court heard a detailed account of the Plaintiff’s survey of the land including the qualifications of the surveyor and the location and amount of the land encroached upon. R. pp. 342-343 (Transcript of October 26, 2011 Attorneys Fees Hearing, pp. 9-10). The Circuit Court asked questions on these points. It revealed that the first quit claim deed of .29 acres did not complete the remedy. R. p. 343 (Transcript of October 26, 2011 hearing, p. 10, ll. 13-19). Defendants did not object to this account.

It revealed that as soon as this new survey was filed with the Court (the next day, the City issued a quitclaim deed for the majority of the encroachment. R. p. 344 (Transcript of October 26, 2011 hearing, p. 11, ll. 1-13).

CONCLUSION

Because the Plaintiff's litigation brought an end to the purpresture in February 2009, Plaintiff's attorneys fees award should cover his fees expended until that time.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

A large, stylized handwritten signature in black ink, likely belonging to James G. Carpenter, is written over a horizontal line.

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Appellant/Respondent certifies that as required by SCACR 211, the Final Reply Brief of Appellant-Respondent is identical to the brief previously served under Rule 208 except for references to the record and correction of typographical errors and misspellings.



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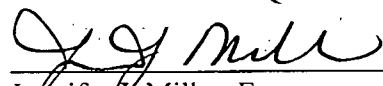
v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc.,
Defendants Of Whom City of Greenville and Mayor Knox H. White are the
Respondents/Appellants,.....Respondents/Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that she caused to be served the Final Briefs and
Record on Appeal upon counsel for the Respondents by hand delivery, postage prepaid this
Tuesday, May 28, 2013, addressed as follows:

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