

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

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2019-001140
Civil Action No. 2018-CP-08-00817

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SC Court of Appeals

Ronald L. Jones and Gayle Langley Jones, Thomas Huguenin Gaillard, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas W. Cone, Jr. as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007, ... Respondents,

v.

Rogers Townsend & Thomas, P.C. Lisa Hostetler; Alexander C. Peabody; and Peabody & Associates, Inc., ... Defendants,

Of Which Rogers Townsend & Thomas, P.C. and Lisa Hostetler are Appellants.

APPELLANTS' RETURN TO RESPONDENTS' MOTION TO DISMISS APPEAL

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PROCEDURAL BACKGROUND

This case is before the Court on appeal from the Berkeley County Court of Common Pleas. Rogers Townsend & Thomas, P.C. and Lisa Hostetler (“Appellants”) seek review of two orders entered by Judge Deadra Jefferson. This case began with a Summons and Complaint filed by Ronald L. Jones and Gaye Langley Jones (“Plaintiff” or “Jones”)¹ on May 4, 2018. [Resp. Ex. 1.] Plaintiff alleges negligence by Rogers Townsend & Thomas, P.C. (“Rogers Townsend”, Lisa Hostetler (“Hostetler”), Alexander C. Peabody (“Peabody”), and Peabody & Associates, Inc. (“Peabody & Associates”) (collectively “Defendants”) in relation to the purchase of a property in Berkeley County (“the subject property”). [*Id.*] Plaintiff alleges that Rogers Townsend and Hostetler (collectively, “Appellants”), as the closing attorneys, and Peabody and Peabody & Associates, as land surveyors, failed to disclose an easement on the subject property. [*Id.*]

On June 12, 2018, Appellants filed a motion to add Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr. Revocable Trust, as plaintiffs to the suit, under Rule 19, SCRC. [Resp. Ex. 4.] Gaillard and Cone, as trustees, own the allegedly dominant estate as to the easement asserted by Plaintiffs. The trustees (hereinafter, “Respondents” or “Movants”) were joined as involuntary plaintiffs to this suit by order of Judge Perry Buckner on August 6, 2018. [Resp. Ex. 6.] Subsequently, the Respondents filed a motion for non-joinder on March 29, 2019 arguing that the recording of a new “Access, Maintenance and Joint Dock Use Agreement” mooted the need for their continued participation in the case. [Resp. Ex. 10.] Concurrently, Appellants filed a motion to alter or amend

¹ The complaint was filed in both Mr. and Ms. Jones’ names. However, in 2012, prior to the alleged discovery of the easement, Mr. Jones’ interest in the subject property was quit claim deeded to Ms. Jones, who is presently the sole owner. For the sake of simplicity, Appellants refer to Ms. Jones as the sole plaintiff, as she is the only one actively involved in this suit and living on the property in question.

their pleadings to formally include a declaratory judgment claim to determine the validity of the alleged easement. [Resp. Ex. 11.]

After arguments on May 7, 2019, Judge Deadra Jefferson granted Respondents' motion in a May 9, 2019 Form 4 order, stating that Respondents are "no longer indispensable parties." [Resp. Ex. 14.] Additionally, Judge Jefferson granted Appellants' motion to amend their pleadings to include declaratory judgment by Form 4 order the same day. On May 20, 2019, Appellants filed a motion to reconsider the non-joinder of Respondents. [Resp. Ex. 15.] On June 5, 2019, Plaintiffs filed a motion to dismiss the claim for declaratory judgment. On June 26, 2019, Judge Jefferson denied Appellants' motion to reconsider the order allowing Respondents to leave the case. [Resp. Ex. 17.] This appeal followed and Plaintiffs' motion to dismiss the declaratory judgment claim remains pending. On August 21, 2019, Respondents filed a motion to dismiss this appeal on the grounds that the underlying order is not immediately appealable. The instant return is Appellants' response to that motion.

FACTUAL BACKGROUND

On or about March 12, 2010, Gaye L. Jones and Ronald L. Jones purchased the house and property located at 145 Memes Way, Charleston, South Carolina from E*Trade Bank for one million fifty thousand twenty-five and 00/100 dollars (\$1,050,025.00). [See Resp. Ex. 1, ¶ 9.] For the transaction, Appellants acted as closing attorneys and the Peabody defendants performed a survey. The property is identified by tax map system number 263-00-03-079, or by the appellation "Lot 6B," and is located at the end of a small finger of land running along a tendril of marsh off the Wando River just inside the Berkeley County line.

Plaintiff asserts that the closing documents and survey do not reflect an alleged easement that has caused damage to her property rights because it affects the full use and enjoyment of her

property. Plaintiff alleges that approximately five years after the sale, in 2015, she learned of a previously undisclosed easement encumbering the property. [*Id.*, ¶ 15.] As it relates to this action the alleged easement granted to the owner of Lot 6A a twenty-five-foot ingress/egress around Lot 6B. [*Id.*, ¶ 17.] Put simply, the alleged easement was meant by the drafter to almost completely encircle Lot 6B “except for most of the Northern boundary of the Lot,” thus giving the right to walk the perimeter of Plaintiffs’ lot, 6B. [*Id.*]² The only lot owners involved in this suit are the owners of Lot 6A (Respondents/Movants) and 6B (Jones).

Plaintiff alleged in her Complaint that the dominant rights of Lot 6A, owned by Trustees/Plaintiffs/Respondents, and also marsh-front, remained active. [*Id.*, ¶ 30.] At least one of the Trustees named herein resides in the home on Lot 6A and is Plaintiff’s next-door neighbor. The validity or status of the easement has never been determined by a court and the alleged dominant estate holders were not originally parties to this suit. Without naming the dominant estate holders, Jones alleged in her complaint that “the owners of Lot 6A (TMS #263-00-03-068) will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement, and that as a result, **the owners of Lot 6A will continue to have an easement** on the Plaintiffs property, depriving them of exclusive ownership of their property.” [*Id.*, ¶¶ 31–32 (emphasis added).] Based on later disclosures, discussed *infra*, it appears that Plaintiff and Respondents reached an agreement to share the costs of building and maintain a dock on Plaintiff’s property, which they purport changes the easement referenced in the complaint.

After examining the public record to discover the dominant estate owners of Lot 6A, Appellants moved to name Respondents as involuntary parties on June 12, 2019. Appellants’

² The easement in the complaint is identified as Deed Book 5506, Page 12, hereinafter the “2006 easement.”

lawyers argued that the Trustees were the dominant estate holders of a purported easement and, as such, there were multiple reasons they should be added as parties because the validity of the subject easements was in contest in this suit. The Hon. Perry M. Buckner granted this motion, observing during the hearing, that a complete adjudication could not be achieved without the dominant estate holder being named as a party to the action. Addressing Appellants' counsel Judge Buckner stated, "I'm granting your motion because I don't believe that with the disposition of this action complete relief can be granted. And it impairs your ability to raise the defense because you would then have to do it in multiple actions." [Resp. Ex. 5, p. 10, ll. 16–19.]

Following the addition of Respondents by Judge Buckner as involuntary plaintiffs, and between January and April 2019, Appellants attempted to take their depositions. These efforts were repeatedly turned back by Respondents' counsel, who asserted scheduling issues. He indicated that Respondents and their counsel were unavailable until March 13, 2019. The dates of April 5 and 8–12 were eventually agreed upon to take Respondents' depositions.³ On March 22, 2019, Respondents recorded with the Berkeley County Register of Deeds an "Access, Maintenance and Joint Dock Use Agreement" (hereinafter, the "new easement") between Plaintiff and Respondents. This new agreement creates a very harmonious plan for Plaintiff and Respondents to jointly fund the maintenance and construction of a dock on Plaintiff's property that will exceed 800 feet in length and extend from the marsh to the Wando River.⁴ The March 2019 Agreement indicates the dock will be for the use of both Respondents and Plaintiff. Respondents contend that this new easement negates any reason for their continued involvement in this case. On March 28,

³ To clarify the events surrounding these discussions, Appellants have attached a timeline with the relevant documents, as **Appendix I**.

⁴ The new agreement, recorded March 22, 2019, dated March 15, 2019, and signed February 15, 2019, states that construction of the dock should commence by April 15, 2018, more than two weeks before the complaint in this case was filed on May 4, 2019. [Resp. Ex. 7, p. 3, ¶ 2.]

the undersigned renewed and confirmed the April deposition dates consistent with the parties' prior agreement. Respondents' counsel responded by insisting that his clients be dismissed from the suit prior to taking the depositions. Not being amenable to this demand or agreeing with its premise, Appellants noticed the depositions as previously agreed. On March 29, 2019, counsel for Respondents then stated he would file a motion for protective order preventing the depositions unless his clients were dismissed.⁵ Realizing that such a motion would constitute a *de facto* continuance of the depositions, regardless of its merits, Appellants withdrew the notices. Respondents moved for dismissal under Rule 21 on March 29, 2019.

Respondents' Motion for Nonjoinder was heard before Judge Jefferson concurrently on May 7, 2019 with Appellants' motion to amend their answer to include a counterclaim of declaratory judgment against all plaintiffs, including Respondents. Appellants seek a judicial determination of the rights of Plaintiff and Respondents as to the easements, or lack thereof. Without such a determination, the court lacks the power to bind the involved parties.⁶

The gravamen of Movants' argument that they no longer belong as parties to this suit is based upon the allegation that they have no ownership in the 2006 "Old Purported Easement" by virtue of their disclaiming same in the new Access, Maintenance and Joint Dock Use Agreement, but this proven incorrect upon examination of the documents as explained, *infra*. The new easement and agreement does indeed contain the disclaimer text asserted by Respondents as follows:

⁵ Respondents required that they be dismissed before they would appear for depositions. Appellants agreed only if Respondents would resolve their role in this case by declaring the purported prior easement in the complaint invalid as to them. Respondents would not agree. Thus, Appellants must contend they are still rightfully necessary parties to this suit.

⁶ Appellants would also note that the facially defective 2007 easement attached to Respondents' motion as Exhibit 2, has naught to do with the facts currently contested in this case because on its face the grantee is acting as grantor.

6. Termination of Old Purported Easement. Gaillard and Cone have remised, quitclaimed, terminated, canceled and forever released, and by these presents do hereby remise, quitclaim, terminate, cancel and forever release unto Jones, her heirs and assigns, all of Gaillard's and Cone's right, title and interest, if any, in and to the Old Purported Easement, inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement and other rights granted to Gaillard and Cone by this Agreement.

[Resp. Ex. 7, p. 5, ¶ 6.]

Respondents' counsel represented the following to the trial court during the May 7, 2019 hearing:

This old purported easement from 2006 has been terminated. The documents have been filed. They're recorded. That easement is terminated. So, there is no longer an easement that threatens either Rogers, Townsend and Thomas' title insurer or threatens Jones with anything.

[Resp. Ex. 13, p. 10, ll. 21–24.] Respectfully, this representation of Respondents to the trial court is not correct as shown by Respondents' exhibits and as explained below.

The March 15, 2019 Access, Maintenance and Joint Dock Use Agreement describes the "Old Purported Easement" being disclaimed as, a "25['] Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that 'Title to Real Estate' dated **April 8, 2005 and recorded on August 3, 2005**, in the Berkeley County Register of Deeds Office in Book 4887, at page 65 ('Old Purported Easement') inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement." [Resp. Ex 7, p. 3 (Emphasis added).]

However, the easement which is the subject of this action as framed by Plaintiff is contained in the 2006 deed and described in Complaint Paragraph 16, as follows:

Upon information and belief a 25-foot Ingress/Egress easement was created by way a [sic] deed from James J. Monogham to Benjamin L. Daniel, Sr. dated **April 4, 2006** and recorded in the Office of the Register of Deeds for Berkeley County in Deed Book 5506 at page 12.

[Resp. Ex. 1, ¶ 16 (emphasis added).] The easement created by the 2006 deed is not disclaimed in Respondent's new agreement as represented by the trial court. In fact, the new agreement does not mention the 2006 purported easement at all. The parties to this action well understood there were two purported easements in the Lot 6B chain of title, one filed in 2005 from Coastal Plains Development and one in 2006 from Benjamin L. Daniel. Respondents "remit, quitclaim and terminate" only the easement created in the **2005 deed**, leaving them remaining as dominant estate holders of the purported easement created in the **2006 deed** and the one which the Jones Complaint describes as the one at issue in this case.

Accordingly, Respondents' contention that they no longer have any interest in the prior purported easements over Lot 6B is patently incorrect because Trustees disclaimed only the easement alleged to have been created in the 2005 deed and *not* the easement alleged to have been created in the 2006 deed, the one addressed in the Jones' Complaint. Therefore, Respondents' filing of the March 2019 Agreement changed nothing as they remain the dominant estate holder of the purported 2006 easement.⁷ Curiously, Respondents, Movants herein, did not attach a copy of the 2005 deed which they "remit, quitclaim and terminate" in their exhibits attached to their motion. For purposes of clarity, Appellants attach both the subject 2005 deed and the 2006 deed herein as Appellants' **Exhibits A and B**.

The lower court first granted Respondent's motion to remove them from the case, by Form 4 order filed May 9, 2019 [Resp. Ex. 14], and then granted Appellant's motion to amend their answer by Form 4 order, filed shortly thereafter on the same day. Despite the foregoing, Plaintiff's complaint has not been amended and still alleges that Respondents "will continue to

⁷ This is what Jones perhaps meant in Paragraph 32 of her complaint when she states, "That as a result, the owners of Lot 6A will continue to have an easement on Plaintiffs' property, depriving them of the exclusive ownership of their property."

have an easement on the Plaintiffs [sic] property, depriving them of exclusive ownership of their property.” [Resp. Ex. 1, ¶ 32.] Thus, Appellants filed a motion asking Judge Jefferson to alter or amend her Form 4 order allowing Respondents to leave the case while issues to which they must be a party remain to be decided. [Resp. Ex. 15.] That motion was denied, and this appeal followed.

ARGUMENT

I. THE ORDER DISMISSING RESPONDENTS AS PARTIES TO THIS CASE IS IMMEDIATELY APPEALABLE.

The order dismissing Respondents from this case is appealable both as a final order affecting the merits of the case and an order affecting a substantial right. Understanding the nature and impact of the lower court’s appealed order requires analysis of both the position of the dismissed parties as to the issues at stake in the case and the effect on the case of the exclusion of the dismissed parties. Where there is no more specific statute, this analysis occurs under the appeals framework in S.C. Code Ann. § 14-3-330. *See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Envtl. Control*, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010). Section 14-3-330 provides in relevant part that appeal may be had of:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]

S.C. Code Ann. § 14-3-330(1)–(2).

a. The lower court's order is immediately appealable because it is a final order involving the merits of the action under S.C. Code Ann. § 14-3-330(1).

The appealed order is a final order. When this suit was commenced, Plaintiff alleged that the unnamed Respondents held an easement of ingress and egress across her property and sought damages for alleged damages. Appellants timely answered, contesting the validity of the subject easements and moved to name the Lot 6A owners as parties. Judge Bucker granted the motion, naming Respondents as involuntary plaintiffs because they were the dominant estate holders of the contested easement.

During the discovery phase of the case, on March 22, 2019, Respondents recorded the Access, Maintenance and Joint Use Dock Agreement, which they claim quitclaimed and renounced any interest in the 2006 easement. Even were that so, the new easement plainly states that it only replaces the older purported easement. That being so, Plaintiff Jones will most certainly argue that the damages are continuing because she only entered into the new agreement in order to reduce in width the prior purported easement. Indeed, Jones continues to maintain in her complaint that Respondents continue to claim an easement on her property and that statement has not been amended. [Resp. Ex. 1, ¶ 32.]

The crux of this appeal lies in the logic that must be applied to Plaintiff's claims. To establish the negligence of the closing attorneys, Plaintiff must first establish that there was a valid easement that was overlooked, thus breaching the duty of the closing attorneys. *Henkel v. Winn*, 346 S.C. 14, 18, 550 S.E.2d 577, 579 (Ct. App. 2001) (to prove legal malpractice, the plaintiff must establish, *inter alia*, breach of a duty by the attorney). In order to establish such a breach of duty, the finder of fact must first determine that there *actually is* a valid easement to be

overlooked.⁸ To undertake such a determination would be futile, unless the dominant estate holder was put on notice and bound to the determination. It is absurd to suggest, as Plaintiff seems to, that the dominant and servient estate holders can simply stipulate that the piece of paper recorded in 2006, before any of the current parties owned their respective parcels, is valid at this stage in the chain of the title. Appellants must be allowed to put before the finder of fact the question of whether the easement(s) of 2005 and 2006 were in the first instance valid easements, in order to receive a fair trial on the element of breach of duty. By cutting off the ability to do so, the lower court's ruling decision necessarily involved the merits of the case. The lower court's order is a *de facto* determination of the rights between Plaintiff and Respondents. But it is also a curtailed ruling that did not actually delve into the validity of the easement, Respondents' questionable contentions, or the conflicting assertions of Plaintiff.

To involve the merits, an order “must finally determine some substantial matter forming the whole or a part of some cause of action or defense. . . .” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Knowles v. Standard Savings & Loan Ass'n*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979)). In a 2005 case, this Court held that an interlocutory order involved the merits when “the circuit court weighed the evidence and concluded that the exclusivity provision did not apply because [Plaintiff] was neither a statutory employee nor a borrowed servant of the Hospital. In so holding, the circuit court ‘finally

⁸ At the hearing before Judge Buckner, Plaintiff's counsel argued that there are “only two people who can make a determination as to whether or not an easement exists[, that] is the dominant estate holder and the servient estate holder. And we both agree the same thing, we believe that the easement does exist.” Plaintiff argues that Appellants do not have standing to challenge a stipulation between herself and Respondents that the 2006 easement exists. This hints at the sort of public policy violation that occurs when a legal malpractice claim is assigned to an adversary. Because of the risk of collusion (*i.e.*, an agreement to stipulate to damages), such assignments are not permitted. See generally *Skipper v. ACE Prop. & Cas. Ins. Co.*, 413 S.C. 33, 775 S.E.2d 37 (2015).

determined a substantial matter forming a part of the Hospital's defense,' and thus, the order is appealable." *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 173–74, 624 S.E.2d 439, 442 (Ct. App. 2005).

Likewise, when the circuit court dismissed Respondents, whom Plaintiff contends were and are the owners of the easement that caused her damage, the court finally determined a substantial matter that forms part of Appellants' defense and also prevents the ability to clear the title – namely, the ability to challenge the absence of any damage by showing that there was and is no easement damaging Plaintiff. This leaves Appellants to try this suit against a non-party, because whether the easements are valid *must be determined* by litigating Respondents' use or nonuse of the purported easement and the scope of said use. Indeed, Appellants must appeal the May 9, 2019 order now as failing to do so until after the trial would be found to be a waiver.

In the 2001 case, Plaintiff Olsen, who used crutches, slipped while in a building leased from the University of the South Carolina and operated by Faculty House. *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 199–200, 544 S.E.2d 38, 41 (Ct. App. 2001) (affirmed in result on other grounds at 354 S.C. 161, 580 S.E.2d 440). She first sued Faculty house and then amended her suit to include the University. *Id.* at 200, 544 S.E.2d at 41. The trial court granted summary judgment and dismissed the University based on the statute of limitations. *Id.* Some time later, the trial court also partially granted summary judgment to Faculty House by dismissing one of Olsen's causes of action. *Id.* The plaintiff then appealed both orders. *Id.* This Court determined that Olsen had waived her right to appeal summary judgment in favor of the University because she did not appeal when the final order as to the University was issued. *Id.* at 212, 544 S.E.2d at 47. The Court found that the "grant of summary judgment to the University based on the statute of limitations was a final order because it left nothing further for determination."

Quoting century-old precedent, the Court recognized that, “Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; *but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final.*” *Id.* at 213, 544 S.E.2d at 48 (quoting *Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (1883)) (emphasis in original). It matters not whether there be other parties in the case. When an order finally determines the case as between two parties, that is a final order. *Id.* at 214, 544 S.E.2d at 48 (“The order expressly ruled that *all* of Olson’s claims against the University were barred The fact Olson had continuing claims against Faculty House was irrelevant to the dismissal of the University. Nothing short of direct appeal could resurrect the action against the University.”) The Court went on to opine that anything other than direct appeal when a party’s participation in a case is ended, would put that party “‘on hold’ indefinitely.” *Id.*

Here, the court has dismissed the Respondents and finally ended their participation in the case. The question before the Court is whether the dismissal order is immediately appealable. Respondents were made parties because they were or are the dominant estate holders of the purported easement that is the subject of this action. The appealed order provides that there is nothing further for the trial court to do with respect to Respondents’ participation in the case.⁹ As such, the order dismissing them from the case is final within the meaning of S.C. Code Ann. § 14-3-330(1). The order prevents any final judgment as to the interests of the owners of the purported easement about which Plaintiff complains. Further, due to the final nature of the order, Appellants would be at risk of waiver if not appealing directly from the order following their motion to alter or amend.

⁹ Respondents have acted in accordance with this ruling, by not joining in Plaintiff’s motion to dismiss Appellant’s counterclaim for declaratory judgment as to the easement in the complaint.

b. The lower court's order is also immediately appealable because it affects a substantial right of Appellant under S.C. Code Ann. § 14-3-330(2).

The May 9, 2019 Order is immediately appealable because it affects a substantial right, and in effect determines the action as between Appellants and Respondents and prevents a judgment from which an appeal might be taken by Appellants after final judgement. Respondents were made parties plaintiff because they claim to own the purported easement(s) which are the subject of this action. Appellants dispute the validity of those easements as well as the new easement. The scrutiny at the trial of this case as to the validity and scope of the subject purported easements involves the relationship between the owners of the alleged easements, the Respondents, and the property itself, including, but not limited to, their use of the easements and its frequency as well as any demand made by them upon Plaintiff to use the easement.

After all, Jones may own the fee simple of Lot 6B, but the Trustees are dominant estate holders of the purported 2006 easement. Therefore, it is their activity and conduct which is the primary focus of the defense in their quest to litigate the validity and scope of the easement, and any damages therefrom, which is disputed. It is a substantial right of Appellants to pursue this defense against the parties who would claim they once had ownership of valid easements but no longer do because of the mid-suit filing of the new easement, which Trustees wrongfully claim renounced their interest in the Old Purported Easement which has “replaced” the purported easements which prompted this action.¹⁰

Under Section 14-3-330, a party may immediately appeal an “order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action” S.C. Code Ann.

¹⁰ As stated *supra*, the new easement does not address the 2006 easement in the complaint, but only terminates the earlier, identical 2005 easement—thus potentially leaving the 2006 easement in existence.

§ 14-3-330(2). In a 2012 case, our Supreme Court concluded that denying a party the right to determine whom to name as a defendant to a cause of action is the denial of a substantial right. Plaintiff Neeltec sued Willard Long, the proprietor of a competing fireworks store. *Neeltec Enters. v. Long*, 397 S.C. 563, 565, 725 S.E.2d 926, 927–28 (2012). Long moved to be dismissed and have the corporate owners of the store substituted in his place. *Id.* The trial court granted the motion, removing the individual defendant from the case. *Id.* Neeltec appealed, but was dismissed by the Court of Appeals. *Id.* The Supreme Court granted cert and reversed, holding that the right of a party to name its defendants is a substantial right and immediately appealable under Section 14-3-330(20)(a). *Id.* at 567–68, 725 S.E.2d at 929.

In this case, the trial court's order deprives Appellants of the ability to bring the validity of the purported easement(s) before the Court for a final and binding determination. Whether stylized as part of Appellants' defense and right to challenge Plaintiff as to the element of breach of duty, or as the declaratory judgment, as in Appellants' amended answer, the result is still the same: the trial court's order deprived Appellants' of a substantial right and has prevented the entry of a final judgment on a fundamental issue in the case. The Declaratory Judgment is illustrative of the principle that Respondents, as the interested dominant estate holders, must be parties to this case. The act provides, "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." S.C. Code Ann. § 15-53-80. The trial court granted Appellants' motion to add a counterclaim of declaratory judgment and simultaneously dismissed a necessary defendant for that claim.

However, even without consideration of the declaratory judgment counterclaim, the same issue is at stake. There can be no final and binding determination of the rights of the estate-holders

as to the various easements without the dominant estate holder. This is illustrated by the fact that the new easement serves merely to make it appear as though the Respondents have totally abandoned their interest in the purported easements. Respondents were free to acknowledge the purpose of the 2019 easement was to correct the old 2005 and 2006 purported easements which were defective, but they refused to do that. Rather, the new easement provides that the Old Purported Easement is being “*replaced*” with the Dock Use Agreement. [Resp. Ex. 7, p. 3 (emphasis added).] After all, the new easement, among other things, provides for the same encircling border access to Plaintiff’s property, only narrower. [*Id.*, p. 3, ¶ 1.] Respondents seek to exit from this case on the basis that they continue to assert claims against Plaintiff—only slightly different ones. Moreover, this argument assumes *arguendo* that the new easement actually does terminate and replace the 2006 easement in the complaint. As noted, only the 2005 easement is terminated, and the 2006 purported easement is alleged by Plaintiff Jones to remain. Indeed, Plaintiff’s complaint has not been amended and continues to set forth a claim that there is a continuing easement damaging her use and enjoyment of Lot 6B. [Resp. Ex. 1, ¶ 32.] If Respondents truly had no interest in said “old” easements they could have easily exited the case by such an acknowledgement.

It is thus abundantly necessary that the rights of the estate-holders be finally decided in a court of law. If there is no determination of their rights, then there can be no final and binding determination as to whether there was an easement to be overlooked by Plaintiff’s closing attorneys or any damages resulting therefrom. By dismissing Respondents, the trial court deprived Appellants of a foundational part of their defense. For the foregoing reasons, the appealed order also falls under Section 14-3-330(2).

Moreover, Appellants could not wait until after the trial and entry of a final order of judgment to appeal Respondents' dismissal as a party because to do such could amount to a waiver. This was articulated in 1933 South Carolina Supreme Court case, regarding the substitution of the plaintiff in a debt collection case. The original creditor received default judgment against Mr. and Mrs. Copeland, but the judgment naming Mrs. Copeland was later overturned for lack of service. *Watts v. Copeland*, 170 S.C. 449, 450, 170 S.E. 780, 781 (1933). The original action was then served on Mrs. Copeland, some years after its drafting, by the Laurens County Sheriff. *Id.* at 450–51, 170 S.E. at 781. Mrs. Copeland answered the complaint. *Id.* A new party successfully sought to be substituted as plaintiff on the basis of an assignment from the original creditor. *Id.* at 451, 170 S.E. at 781. Mrs. Copeland went to trial and received a final order before attempting to appeal the substitution. *Id.* at 456–57, 170 S.E. at 783. The Supreme Court held that, by waiting, Mrs. Copeland was estopped from appeal of the question. *Id.*

A similar situation is at bar: the lower court's order does not merely substitute plaintiffs, but rather, erases two entirely. It is clear to see that by waiting to appeal the instant order, Appellants would waive any right to an appeal on the issue included therein. Such a policy is sound on the theory that an aggrieved party under these facts cannot 'wait and see' how the trial turns out and later complain on appeal that the trial court erred in granting dismissal of a key party which merits the appellant a new trial.

c. This Court reversed the grant of dismissal under Rule 21, SCRPC, on direct appeal in the *Farmer v. CAGC* case.

As Respondents have argued, the precise fact-pattern in this case appears to be a novel one. After a diligent search, Appellants have been unable to locate a case where the dominant estate holder seeks to be dismissed from a case adjudicating their purported easement. However, a recent Court of Appeals case contains certain parallels as to the novelty of the issues in this case. An

order of the Richland County Circuit Court dismissing a joined party under Rule 21, SCRCP, was heard on direct appeal, following a motion to alter or amend under Rule 59. *See Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 584, 819 S.E.2d 142, 144–45 (Ct. App. 2018). An appeal of a motion to dismiss a party under Rule 21, SCRCP, is heard under an abuse of discretion standard. *See generally DirecTV, Inc. v. Leto*, 467 F.3d 842 (3d Cir. 2006). The Court of Appeals found that the circuit court granted dismissal to the movant because it reasoned no relief could be granted as to a dissolved business trust. *See Farmer*, at 586, 819 S.E.2d at 146. However, this was a novel question in South Carolina. *Id.* This Court held that it is not “within the court’s discretion to answer [a] question of first impression with no factual record while ruling upon a Rule 21 motion. Motions to dismiss are no place for novelty.” *Id.* (citing *Evans v. State*, 344 S.C. 60, 68, 543 S.E.2d 547, 551 (2001)). In so ruling, the Court recognized that the party that sought joinder of the movant asserted no affirmative claim of relief against the movant, but added it to a declaratory judgment action as is proper under the Declaratory Judgment Act. *Id.* at 587, 819 at 146.

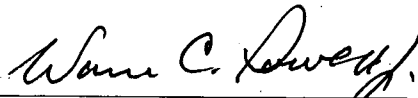
In this case, the addition of the Respondents as plaintiffs was from the beginning in the nature of a declaratory judgment action, although the assertion of such was not necessary until the trustees incorrectly denied they had any interest in the purported easements mid-suit. After that event, Appellants moved to amend the answer to assert a formal declaratory judgment claim, which is otherwise inherent in the elements Plaintiff must establish in this case. Respondents were properly joined to this suit by Judge Buckner, pursuant to Rule 19, SCRCP, which provides for joinder where the party’s absence prevents complete relief, the party’s absence would impair ability to protect their interests, or the party’s absence creates the risk of doubled or inconsistent legal obligations. While Respondents claim they have replaced the 2006 purported easement with the new easement and dock agreement, this is not correct and does not alter the fact that

Respondents continue, as Plaintiffs' complaint recites, to claim dominant estate status permitting them to enter Plaintiff's property, which forms the basis of her suit against Appellants. Plaintiff's title cannot be cleared, nor can Plaintiff's and Respondents' rights be established without Respondents remaining parties because the Respondents are parties to this most recent transaction with Plaintiff, while also remaining owner of the purported easement from 2006 about which Plaintiff Jones complains.

The efficacy of all of the implicated easements must be tested to afford adequate relief to Appellants in this case. Moreover, any attempt to adjudicate the rights and obligations of both parties to an easement, without the dominant estate holder being a party, would be a novel question under South Carolina law. The *Farmer* case demonstrates that the nonjoinder of a party under such circumstances is a matter reviewable on direct appeal. For this and all the foregoing reasons, Appellants respectfully request that the Court deny Respondents' motion to dismiss this appeal and find this case eligible for immediate appeal under Section 14-3-330.

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC



Warren C. Powell, Jr., Bar No. 4525
Chelsea J. Clark, Bar No. 102211
Post Office Box 61110 (29260)
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina
(803) 252-7693
wpowell@brunerpowell.com
cclark@brunerpowell.com
Attorneys for Appellants

Columbia, South Carolina
October 9, 2019

EXHIBIT A



Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00025519 Vol: 4887 Pg: 64

Instrument Number: 2005-00025519

Recorded On: August 03, 2005 As-Deed

Parties: COASTAL PLAINS DEVELOPMENT CO INC

To MONAGHAN JAMES J

of Pages: 5

Comment:

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

Deed	10.00
# of Pages over 4	0
	0
Total:	10.00

FILED, RECORDED, INDEXED
Aug 03, 2005 12:50P
Fees 10.00
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

RECEIVED

Aug 03, 2005

ASSESSOR
BERKELEY COUNTY SC
JANET B. JURSKO
AUDITOR BERKELEY COUNTY SC

I hereby certify that the within and foregoing was recorded in the Recorder's Office in Berkeley County, SC

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

File Information:

Record and Return To:

Document Number: 2005-00025519

Receipt Number: 1860

Recorded Date/Time: August 03, 2005 12:50:43P

Book-Vol/Pg: BK-R VL-4887 PG-64

User / Station: B Edgerton - Cash Station 8

CUTCHIN FIRM

985 B JOHNNIE DODDS BLVD

MT PLEASANT SC 29464

After Recording, Please Return to:

William J. Cutchin
CUTCHIN LAW FIRM, PC
985-B Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF BEREKLEY) *Prepared Without Title Search*

KNOW ALL MEN BY THESE PRESENTS, THAT WE, **Coastal Plains Development Co., Inc.**, by its authorized representative, in the State aforesaid, for and in consideration of the sum of Three Hundred Sixty Thousand Dollars and No Cents (\$360,000.00), to us in hand paid at and before the sealing of these presents by **James J. Monaghan**, in the State aforesaid, for which the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell, and release unto the said **James J. Monaghan**, his heirs and assigns, forever, in fee simple, the following described real property to wit:

See Schedule "A" attached hereto and incorporated by reference herein.

TOGETHER with all and singular, the Rights, 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 his Heirs and Assigns forever.

AND we do hereby bind our Administrators, Successors, and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **James J. Monaghan**, his Heirs and Assigns, against our Heirs, Successors, and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

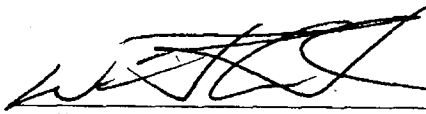
(4)

00025519 Vol: 4887 Pg: 66

WITNESS our Hand and Seal by our representative, this 8th day of April, 2005 in the year of our Lord Two Thousand Five (2005) and in the Two Hundred Twenty-Eighth year of the Sovereignty and Independence of the United States of America.

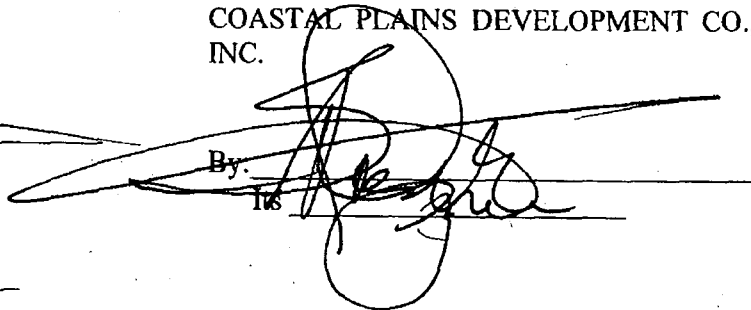
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

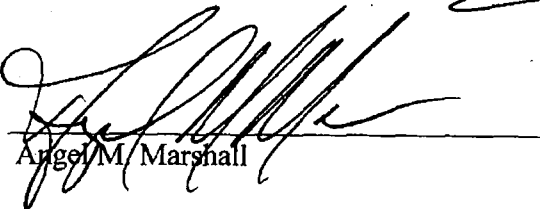
COASTAL PLAINS DEVELOPMENT CO.,
INC.


William J. Cutchin

By.

Its




Angel M. Marshall

STATE OF SOUTH CAROLINA)

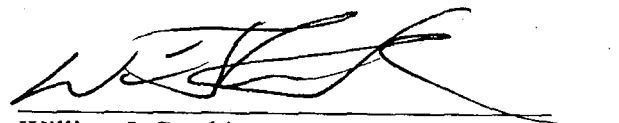
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PROBATE

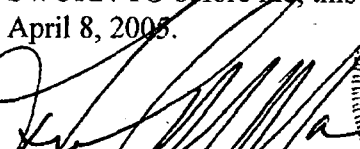
COUNTY OF CHARLESTON)

)

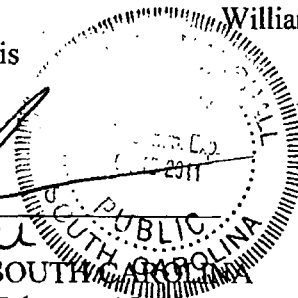
PERSONALLY appeared before me William J. Cutchin and made oath that he saw the within named **Coastal Plains Development Co., Inc.**, by its **authorized representative**, sign, seal, and as its act and deed, deliver the within written Deed, and that he with Angel M. Marshall witnessed the execution thereof.


William J. Cutchin

SWORN TO before me, this
April 8, 2005.


Angel M. ~~Cook~~ Marshall

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: February 15, 2011



Schedule A**Legal Description**
(Deed)

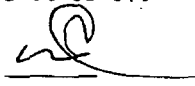
ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6 B on a plat entitled " PLAT SHOWING A SUBDIVISION OF LOT6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" dated March 17, 2005 prepared by Charles F. Dawley, Jr., R. L.S. and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest in Lot 6A (TMS # 263-00-03-068) as shown on the above-referenced plat, Lot 5 (No. 108 Cainhoy Landing Road, TMS # 263-00-05-005) as shown on the above-referenced plat, Lot 6 (No. 110 Cainhoy Landing Road, TMS # 263-00-05-006) as shown on the above-referenced plat, and Lot 7 (112 Cainhoy Landing Road, TMS # 263-00-05-007) as shown on a plat dated 9/1/86 by Carolina Surveying & Mapping, William H. Dennis, RLS, and entitled "Plat of 45.02 Acres Known as Cainhoy Landing Containing 30 Lots and Depicting As Built Locations of Roads and Easements Located in Berkeley County, South Carolina," as recorded in Plat Cabinet G, page 6, in the RMC Office for Berkeley County. This Easement shall begin on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22' 10" W for 154.18', and then continuing on Lines L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for most of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

This is the same property conveyed to Grantor by deed of Riverview Developers, LLC dated March 25, 2005 and recorded simultaneously herewith in the RMC Office of Berkeley County.

Grantee's address:281 Indigo Bay Circle, Mt. Pleasant, SC 29464

Portion of TMS # 263-00-03-079

Lawyer Responsible 

AFFIDAVIT

00025519 Vol: 4887 Pg: 68

STATE OF SOUTH CAROLINA)

) Date of Transfer of Title

COUNTY OF CHARLESTON)

April 8, 2005

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by **Coastal Plains Development Co., Inc., by its authorized representative, to James J. Monaghan, ON April 8, 2005.**
3. Check one of the following: The DEED is
 - (a) _____ 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 distribution to a trust beneficiary.
 - (c) _____ EXEMPT from the deed recording fee because (exemption# _____) (Explanation if required) Transfer to Grantor(s)' Trust(s) _____ (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) XX The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **\$360,000.00.**
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO _____ 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 \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (a) XX the amount listed in item 4 above.
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .
8. 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 not more than one year, or both.

Sworn to before me this
April 8, 2005

Angel M. Marshall

Notary Public for South Carolina

My Commission Expires: February 18, 2011



[Signature]
William J. Cutchin, Legal Representative
connected with this transaction

EXHIBIT B

**Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120**

00055535 Vol: 5506 Pg: 12



53 2006 00055535

Instrument Number: 2006- 00055535**Recorded On:** April 05, 2006As
Deed**Parties:** MONAGHAN JAMES J

To

DANIEL BENJAMIN L SR

Recorded By: CUTCHIN LAW FIRM**Num Of Pages:** 5**Comment:****** Examined and Charged as Follows: ****

Deed	10.00				
Recording Charge:	10.00				
		Consideration Amount	RS#/CS#		
Deed Tax	0.00		D 7250	Deed State Tax	0.00
				Deed County Tax	0.00
EXEMPT					
Tax Charge:	0.00				

RECEIVED

Apr 05, 2006

ASSESSOR
BERKELEY COUNTY SC
JANET B. JURDSKO
AUDITOR BERKELEY COUNTY SC

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006- 00055535
 Receipt Number: 44128
 Recorded Date/Time: April 05, 2006 03:58:24P
 Book-Vol/Pg: Bk-R VI-5506 Pg-12
 Cashier / Station: D Smith / Cash Station 9

Record and Return To:

CUTCHIN LAW FIRM
 985-B JOHNNIED DODDS BLVD
 MT PLEASANT SC 29464



Cynthia B. Forte
 Cynthia B Forte - Register of Deeds

After Recording, Please Return to:

William J. Cutchin
CUTCHIN LAW FIRM, PC
985-B Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA)
)
) TITLE TO REAL ESTATE
COUNTY OF BERKELEY) *Prepared Without Title Search*

KNOW ALL MEN BY THESE PRESENTS, THAT I, **James J. Monaghan**, in the State aforesaid, for and in consideration of the sum of Five Dollars and No Cents (\$5.00), to me in hand paid at and before the sealing of these presents by **Benjamin L. Daniel, Sr.**, in the State aforesaid, for which the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell, and release unto the said **Benjamin L. Daniel, Sr.**, his heirs and assigns, forever, in fee simple, the following described real property to wit:

See Schedule "A" attached hereto and incorporated by reference herein.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

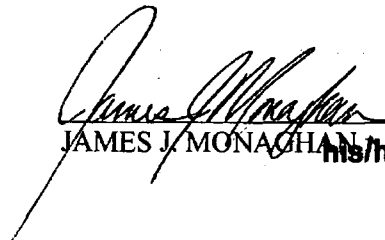
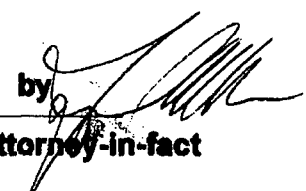
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Benjamin L. Daniel, Sr.** his Heirs and Assigns forever.

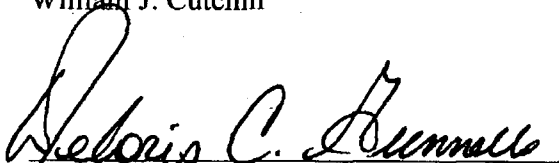
AND I do hereby bind myself and my Heirs, Personal Representatives, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **Benjamin L. Daniel, Sr.**, his Heirs and Assigns, against me and my Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal , this 4th day of April in the year of our Lord Two Thousand Six (2006) and in the Two Hundred Twenty-Ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


William J. Cutchin

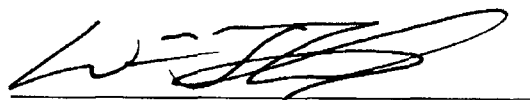
 by 
JAMES J. MONAGHAN his/her attorney-in-fact


Deloris C. Gunnells

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PROBATE

PERSONALLY appeared before me William J. Cutchin and made oath that he saw the within named **James J. Monaghan** sign, seal, and as his act and deed, deliver the within written Deed, and that he with Deloris C. Gunnells witnessed the execution thereof.


William J. Cutchin

SWORN TO before me, this
April 4, 2006.


Deloris C. Gunnells
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: February 4, 2013

Schedule A**Legal Description
(Deed)**

ALL my ONE-HALF INTEREST in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6 B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" dated March 17, 2005 prepared by Charles F. Dawley, Jr., R. L.S. and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest in Lot 6A (TMS # 263-00-03-068) as shown on the above-referenced plat, Lot 5 (No. 108 Cainhoy Landing Road, TMS # 263-00-05-005) as shown on the above-referenced plat, Lot 6 (No. 110 Cainhoy Landing Road, TMS # 263-00-05-006) as shown on the above-referenced plat, and Lot 7 (112 Cainhoy Landing Road, TMS # 263-00-05-007) as shown on a plat dated 9/1/86 by Carolina Surveying & Mapping, William H. Dennis, RLS, and entitled "Plat of 45.02 Acres Known as Cainhoy Landing Containing 30 Lots and Depicting As Built Locations of Roads and Easements Located in Berkeley County, South Carolina," as recorded in Plat Cabinet G, page 6, in the RMC Office for Berkeley County. This Easement shall begin on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22' 10" W for 154.18', and then continuing on Lines L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for most of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

This is the same property conveyed to Grantor by deed of Coastal Plains Development Co., dated April 8, 2005 and recorded on August 3, 2005 at Book 4887, Page 64 in the RMC Office of Berkeley County.

Grantee's address: 451-C Jessen Lane, Charleston, SC 29492

TMS # 263-00-03-079

Lawyer Responsible _____

AFFIDAVIT

00055535 Vol: 5506 Pg: 16

STATE OF SOUTH CAROLINA)

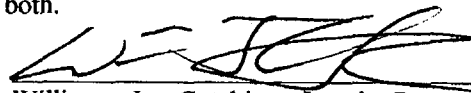
) Date of Transfer of Title

COUNTY OF BERKELEY)

) April 4, 2006

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by **James J. Monaghan** to **Benjamin L. Daniel, Sr., ON April 4, 2006.**
3. Check one of the following: The DEED is
 - (a) _____ 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 distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because (exemption# 12) (Explanation if required) Transfer to Grantor(s)' Trust(s) (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) XX The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **\$5.00.**
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO _____ 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 \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (a) XX the amount listed in item 4 above.
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .
8. 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 not more than one year, or both.


 William J. Cutchin, Legal Representative
 connected with this transaction

Sworn to before me this

April 4, 2006


 Deloris C. Gunnells
 Notary Public for South Carolina
 My Commission Expires: February 4, 2013

Appendix I

TIMELINE

1. February 25, 2019: Powell letter to opposing counsel requesting to commence depositions in this case during the week of March 11, 2019. [**App. Exhibit 1**]
2. March 4, 2019: Powell email to opposing counsel following up on his letter of February 25, 2019 requesting the commencement of depositions during the week of March 11, 2019. [**App. Exhibit 2**]
3. March 4, 2019: Attorney Hulst's email to Powell and Maring that he is "booked up for March and moreover my clients are presently out of the country." [**App. Exhibit 3**]
4. March 11, 2019: Powell letter to other counsel of record: Since Mr. Hulst has no time in March to schedule depositions, April 1–3 are proposed. [**App. Exhibit 4**]
5. March 13, 2019: Attorney Hulst email to other counsel of record announcing approval of depositions to be held on April 5 and 8–12. [**App. Exhibit 5**]
6. March 22, 2019: The "Access, Maintenance and Joint Dock Use Agreement" is recorded and provides that Plaintiff Jones and Plaintiff Trustees shall build a 800' plus dock from Lot 6B with Jones paying 50% of the construction cost and the Trustees the other 50% with all having the right to use the dock. [**App. Exhibit 6**]
7. March 27, 2019 (noon): Powell email to opposing counsel responding that April 8–12 is satisfactory to commence depositions in the case. [**App. Exhibit 7**]
8. March 27, 2019: Hulst to other counsel of record. Q: Why continue to delay? That easement is now gone. What is the point of his clients' continued participation as a party? [**App. Exhibit 8**]
9. March 28, 2019: Powell email to attorney Hulst responding to his repeated request that his clients be dismissed as having an interest in the case to which Powell proposed

dismissal possible if Respondents acknowledged that, on reflection, the 2006 easement was not valid and had been replaced by the dock easement filed March 22, 2019. [**App. Exhibit 9**]

10. March 28, 2019: Trustees decline to comment; Hulst email to other counsel of record regarding Hulst's intent to file a motion and let a judge decide concerning the dismissal. [**App. Exhibit 10**]

11. March 28, 2019 (1:41 pm): Powell email to Hulst regarding Defendants' intent to notice the depositions and get those out of the way, "as we agreed to do. That may eliminate the need for your motion." [**App. Exhibit 11**]

12. March 28, 2019 (1:49 pm): Hulst response to Powell and other counsel of record: "I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case." [**App. Exhibit 12**]

13. March 28, 2019: Notices of video depositions of (1) Thomas W. Cone, Jr. for April 8, 2019; (2) Thomas H. Gaillard for April 9, 2019; and (3) Gayle Langley Jones for April 10, 2019. [**App. Exhibit 13**]

14. March 29, 2019 (5:35 pm): Hulst email to Powell and other counsel of record, "I am in receipt of your deposition notices for my clients... Please confirm by April 2 that these depositions are off-calendar or I will move for a protective order." [**App. Exhibit 14**]

15. April 4, 2019: Powell email to Hulst, cc to all, after trying to move forward with discovery for two months. No need to file a motion for protective order as it would give you an automatic stay anyway. [**App. Exhibit 15**]

Appendix I

TIMELINE

1. February 25, 2019: Powell letter to opposing counsel requesting to commence depositions in this case during the week of March 11, 2019. [**App. Exhibit 1**]
2. March 4, 2019: Powell email to opposing counsel following up on his letter of February 25, 2019 requesting the commencement of depositions during the week of March 11, 2019. [**App. Exhibit 2**]
3. March 4, 2019: Attorney Hulst's email to Powell and Maring that he is "booked up for March and moreover my clients are presently out of the country." [**App. Exhibit 3**]
4. March 11, 2019: Powell letter to other counsel of record: Since Mr. Hulst has no time in March to schedule depositions, April 1–3 are proposed. [**App. Exhibit 4**]
5. March 13, 2019: Attorney Hulst email to other counsel of record announcing approval of depositions to be held on April 5 and 8–12. [**App. Exhibit 5**]
6. March 22, 2019: The "Access, Maintenance and Joint Dock Use Agreement" is recorded and provides that Plaintiff Jones and Plaintiff Trustees shall build a 800' plus dock from Lot 6B with Jones paying 50% of the construction cost and the Trustees the other 50% with all having the right to use the dock. [**App. Exhibit 6**]
7. March 27, 2019 (noon): Powell email to opposing counsel responding that April 8–12 is satisfactory to commence depositions in the case. [**App. Exhibit 7**]
8. March 27, 2019: Hulst to other counsel of record. Q: Why continue to delay? That easement is now gone. What is the point of his clients' continued participation as a party? [**App. Exhibit 8**]
9. March 28, 2019: Powell email to attorney Hulst responding to his repeated request that his clients be dismissed as having an interest in the case to which Powell proposed

dismissal possible if Respondents acknowledged that, on reflection, the 2006 easement was not valid and had been replaced by the dock easement filed March 22, 2019. [**App. Exhibit 9**]

10. March 28, 2019: Trustees decline to comment; Hulst email to other counsel of record regarding Hulst's intent to file a motion and let a judge decide concerning the dismissal. [**App. Exhibit 10**]

11. March 28, 2019 (1:41 pm): Powell email to Hulst regarding Defendants' intent to notice the depositions and get those out of the way, "as we agreed to do. That may eliminate the need for your motion." [**App. Exhibit 11**]

12. March 28, 2019 (1:49 pm): Hulst response to Powell and other counsel of record: "I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case." [**App. Exhibit 12**]

13. March 28, 2019: Notices of video depositions of (1) Thomas W. Cone, Jr. for April 8, 2019; (2) Thomas H. Gaillard for April 9, 2019; and (3) Gayle Langley Jones for April 10, 2019. [**App. Exhibit 13**]

14. March 29, 2019 (5:35 pm): Hulst email to Powell and other counsel of record, "I am in receipt of your deposition notices for my clients... Please confirm by April 2 that these depositions are off-calendar or I will move for a protective order." [**App. Exhibit 14**]

15. April 4, 2019: Powell email to Hulst, cc to all, after trying to move forward with discovery for two months. No need to file a motion for protective order as it would give you an automatic stay anyway. [**App. Exhibit 15**]

EXHIBIT 1

BRUNER, POWELL, WALL & MULLINS, LLC

WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ATTORNEYS AND COUNSELORS AT LAW
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POST OFFICE BOX 61110
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JAMES L. BRUNER, P.A.
RETIRED
BRIAN P. ROBINSON, P.A.
OF COUNSEL

CHELSEA J. CLARK
STEVEN R. SPREEUWERS

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: WPOWELL@BRUNERPOWELL.COM

February 25, 2019

VIA U.S. MAIL & EMAIL (jjh@williamsandhulst.com)

Jary J. Hulst, Esquire
Williams & Hulst, Esquire
209 East Main Street
Moncks Corner, South Carolina 29461

Re: Ronald L and Gayle Langley Jones, et al. v. Rogers Townsend Thomas, PC, et al.
Civil Action No. 2018-CP-08-817
Our File No. 2-2120.7

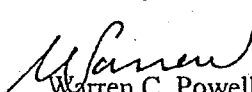
Dear Jay & Robert:

Please find enclosed our answers to the Trustees' interrogatories and request for production. Also enclosed are the documents responsive to the request for production on the flash drive provided, said documents labeled RT&T_000001 thru RT&T_0001158. I have not heard back from Robert this morning as to the handling of his client's financial information but am confident that gentlemen of your standing can work this out.

I propose to commence depositions in this case during the week of March 11, 2019 starting with the deposition of Mr. Cone followed by Mr. Guillard and Ms. Jones. I could make Ms. Hostetler available on Wednesday, March 13. We would, of course, need to block off March 11-13 to get this done. If this does not fit your schedule, please provide me with alternate dates later in the month. I trust this finds both of you well and look forward to hearing from you.

With my kindest regards, I am,

Sincerely,


Warren C. Powell, Jr.

WCPjr/ljf
Enclosure

cc: Robert W. Maring, Esquire
Ryan A. Earhart, Esquire

EXHIBIT 2

Laura Fetner

From: Warren Powell
Sent: Monday, March 4, 2019 3:33 PM
To: Robert Maring; Jary J Hulst
Subject: Jones and Trustees v RT&T and Hostetler

Gentlemen: Just following up on my letter of February 25. May we commence depositions this coming Monday with the deposition of Mr. Cone followed by Mr. Gaillard and Ms. Jones? I expect this to take at least two days and possibly into Wednesday morning to conclude all three depositions. Let me know your situations and whether you have several consecutive days available later in the month which would be more convenient for you. I trust this finds you well and look forward to hearing back. Warren

PS: Robert, I expect to get our responses to your discovery out tomorrow. W

Warren C. Powell, Jr.

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BRUNER, POWELL, WALL & MULLINS, LLC

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Columbia, SC 29260-1110

(o) 803.252.7693

(f) 888.726.9015

www.brunerpowell.com

EXHIBIT 3

Laura Fetner

From: Laura Fetner
Sent: Tuesday, March 5, 2019 1:23 PM
To: Laura Fetner
Subject: FW: Jones and Trustees v RT&T and Hostetler

From: Warren Powell
Sent: Monday, March 04, 2019 6:22 PM
To: Jary J Hulst <jjh@williamsandhulst.com>; robert@maringmoyer.com
Subject: RE: Jones and Trustees v RT&T and Hostetler

I will check my schedule and get back to you. W

Warren C. Powell, Jr.

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From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Monday, March 04, 2019 5:44 PM
To: Warren Powell <wpowell@brunerpowell.com>; robert@maringmoyer.com
Subject: Re: Jones and Trustees v RT&T and Hostetler

Sorry Warren. I am booked up for most of March and moreover my clients are presently out of the country. We can discuss some dates in April if you wish.

Sent from my iPhone

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com<mailto:jjh@williamsandhulst.com>

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On Mar 4, 2019, at 2:33 PM, Warren Powell <wpowell@brunerpowell.com> wrote:

Gentlemen: Just following up on my letter of February 25. May we commence depositions this coming Monday with the deposition of Mr. Cone followed by Mr. Gaillard and Ms. Jones? I expect this to take at least two days and possibly into Wednesday morning to conclude all three depositions. Let me know your situations and whether you have several consecutive days available later in the month which would be more convenient for you. I trust this finds you well and look forward to hearing back. Warren

PS: Robert, I expect to get our responses to your discovery out tomorrow. W

Warren C. Powell, Jr.

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EXHIBIT 4

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BRIAN P. ROBINSON, P.A.
OF COUNSEL

CHELSEA J. CLARK
STEVEN R. SPREEUWERS
ABIGAIL A. CARSON

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

March 11, 2019

AUTHOR'S E-MAIL: WPOWELL@BRUNERPOWELL.COM

Robert W. Maring, Esquire
Maring & Moyer, LLC
Post Office Box 478
Georgetown, South Carolina 29442

Jary J. Hulst, Esquire
Williams & Hulst, Esquire
209 East Main Street
Moncks Corner, South Carolina 29461

Re: *Ronald L and Gayle Langley Jones, et al. v. Rogers Townsend Thomas, et al.*
Civil Action No. 2018-CP-08-817
Our File No. 2-2120.7

Dear Robert & Jay:

Please find accompanying this correspondence Defendants' Answers to Jones' Interrogatories and her Requests for Production. You will notice that we have provided an additional flash drive which includes supplemental production Bates numbered RT&T_001259 thru RT&T_001406. Of course, our entire production of documents is intended to respond to Ms. Jones' Requests for Production as well as the Trustees' Requests. Likewise, the documents supplemented herewith are intended to respond to the Trustees' Requests as well.

Correction to prior production: As to the documents produced on February 25, 2019, during our supplemental document production, we noticed that our letter dated February 25, 2019 to Mr. Hulst incorrectly states we are producing documents Bates numbered RT&T_000001 thru RT&T_0001158. **The correct Bates range for our initial production is RT&T_000001 thru RT&T_001258.**

As for scheduling, since Jay's time has already been committed for the remainder of March I propose that we commence depositions in this case on April 1 through April 3 in the same order as I proposed before, Mr. Cone, Mr. Gaillard and Ms. Jones. If you wish to take Ms. Hostetler's deposition immediately thereafter let me know and I will confirm her availability. I trust this finds both of you well and look forward to hearing from you.

With my kindest regards, I am,

Sincerely,



Warren C. Powell, Jr.

WCPjr/ljf
Enclosures

cc: Ryan A. Earhart, Esquire
Joshua H. Umbarger, Esquire

EXHIBIT 5

Laura Fetner

From: Laura Fetner
Sent: Thursday, March 14, 2019 10:03 AM
To: Laura Fetner
Subject: FW: Jones v. RTT

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Wednesday, March 13, 2019 4:31 PM
To: Warren Powell <wpowell@brunerpowell.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: Jones v. RTT

Warren:

I am in receipt of your letter dated March 11, 2019 inquiring about depositions on April 1-3. I have been in contact with my clients and between their schedules and mine we are available for depositions on April 5, and 8-12. Hope that works for you.

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com

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EXHIBIT 6

Laura Fetner

From: Warren Powell
Sent: Wednesday, March 27, 2019 12:01 PM
To: Jary J Hulst
Cc: Robert Maring
Subject: RE: Jones v. RTT

Robert and Jay, I am unavailable on April 5 but April 8-12 works. Robert, does that suit you and your client as well? Does some location in Mount Pleasant suit you two to hold these depositions? Jay, I have received and thank you for the document executed by the plaintiffs. Permit me to respond regarding the dismissal of your clients as plaintiffs after these depositions are concluded. Warren

Warren C. Powell, Jr.

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To: Warren Powell <wpowell@brunerpowell.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: Jones v. RTT

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EXHIBIT 7

Laura Fetner

From: Warren Powell
Sent: Wednesday, March 27, 2019 12:01 PM
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Cc: Robert Maring
Subject: RE: Jones v. RTT

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EXHIBIT 8

Laura Fetner

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Wednesday, March 27, 2019 12:32 PM
To: Warren Powell
Cc: Robert Maring; Ryan Earhart
Subject: RE: Jones v. RTT

Warren:

Why continue to delay the decision? How can my clients' testimony possible effect their status in this case as nominal plaintiffs? The whole point of their being dragged into this case is—according to your pitch to the judge—was so that they would be bound by any adverse ruling on the easement. That easement is now gone. What is the point of their continued participation as a party?

As you know, Ryan Earhart has kindly agreed to stipulate to their dismissal on behalf of his client. I request that you do the same.

J. Jay Hulst
Williams & Hulst, LLC
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Moncks Corner, SC 29461
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Sent: Wednesday, March 27, 2019 12:01 PM
To: Jary J Hulst <jjh@williamsandhulst.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: RE: Jones v. RTT

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(f) 888.726.9015

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Sent: Wednesday, March 13, 2019 4:31 PM
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Cc: Robert Maring <robert@maringmoyer.com>
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Warren:

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EXHIBIT 9

Laura Fetner

From: Warren Powell
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst
Subject: RE: Jones v. RTT

Jay, The issues in a case are framed by the pleadings. The subject post pleading document signed by the plaintiffs at most relate to but do not discard matters addressed in the pleadings. If your clients would be willing to admit by affidavit and a request to admit that upon reflection since the suit was filed they now realize that prior to the document executed this month they had no easement across the Ms. Jones' property then we may have something to talk about. This would indeed shorten the duration of their depositions and would greatly improve their exit from the case. I'm certain that a fine lawyer such as yourself is aware of all of the various arguments in the case so you need no sermon for me on the matter. Let me know. Best, Warren

Warren C. Powell, Jr.

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Subject: RE: Jones v. RTT

Warren:

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As you know, Ryan Earhart has kindly agreed to stipulate to their dismissal on behalf of his client. I request that you do the same.

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EXHIBIT 10

Laura Fetner

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Thursday, March 28, 2019 1:38 PM
To: Warren Powell
Cc: Robert Maring; Ryan Earhart; Shanna H Saulisbury
Subject: RE: Jones v. RTT

Warren:

I will go ahead and file a motion and we can let a judge consider your comments below and decide about the need for my clients' continued participation in the case.

Thanks.

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com

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Warren C. Powell, Jr.

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Subject: RE: Jones v. RTT

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As you know, Ryan Earhart has kindly agreed to stipulate to their dismissal on behalf of his client. I request that you do the same.

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com

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From: Warren Powell <wpowell@brunerpowell.com>
Sent: Wednesday, March 27, 2019 12:01 PM
To: Jary J Hulst <jjh@williamsandhulst.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: RE: Jones v. RTT

Robert and Jay, I am unavailable on April 5 but April 8-12 works. Robert, does that suit you and your client as well? Does some location in Mount Pleasant suit you two to hold these depositions? Jay, I have received and thank you for the document executed by the plaintiffs. Permit me to respond regarding the dismissal of your clients as plaintiffs after these depositions are concluded. Warren

Warren C. Powell, Jr.
BRUNERPOWELL
BRUNER, POWELL, WALL & MULLINS, LLC
P.O. Box 61110
1735 St. Julian Place, Suite 200
Columbia, SC 29260-1110
(o) 803.252.7693
(f) 888.726.9015
www.brunerpowell.com

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Wednesday, March 13, 2019 4:31 PM
To: Warren Powell <wpowell@brunerpowell.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: Jones v. RTT

Warren:

I am in receipt of your letter dated March 11, 2019 inquiring about depositions on April 1-3. I have been in contact with my clients and between their schedules and mine we are available for depositions on April 5, and 8-12. Hope that works for you.

J. Jay Hulst
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EXHIBIT 11

Laura Fetner

From: Warren Powell
Sent: Thursday, March 28, 2019 1:41 PM
To: Jary J Hulst
Subject: RE: Jones v. RTT

OK. I will go ahead and notice the depositions and get those out of the way as we agreed to do. That may eliminate the need for your motion. W

Warren C. Powell, Jr.

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From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Thursday, March 28, 2019 1:38 PM
To: Warren Powell <wpowell@brunerpowell.com>
Cc: Robert Maring <robert@maringmoyer.com>; Ryan Earhart <ryan.earhart@earhartoverstreet.com>; Shanna H Saulisbury <shs@williamsandhulst.com>
Subject: RE: Jones v. RTT

Warren:

I will go ahead and file a motion and we can let a judge consider your comments below and decide about the need for my clients' continued participation in the case.

Thanks.

J. Jay Hulst
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Sent: Thursday, March 28, 2019 12:41 PM

To: Jary J Hulst <jjh@williamsandhulst.com>

Subject: RE: Jones v. RTT

Jay, The issues in a case are framed by the pleadings. The subject post pleading document signed by the plaintiffs at most relate to but do not discard matters addressed in the pleadings. If your clients would be willing to admit by affidavit and a request to admit that upon reflection since the suit was filed they now realize that prior to the document executed this month they had no easement across the Ms. Jones' property then we may have something to talk about. This would indeed shorten the duration of their depositions and would greatly improve their exit from the case. I'm certain that a fine lawyer such as yourself is aware of all of the various arguments in the case so you need no sermon for me on the matter. Let me know. Best, Warren

Warren C. Powell, Jr.

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(o) 803.252.7693

(f) 888.726.9015

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From: Jary J Hulst <jjh@williamsandhulst.com>

Sent: Wednesday, March 27, 2019 12:32 PM

To: Warren Powell <wpowell@brunerpowell.com>

Cc: Robert Maring <robert@maringmoyer.com>; Ryan Earhart <ryan.earhart@earhartoverstreet.com>

Subject: RE: Jones v. RTT

Warren:

Why continue to delay the decision? How can my clients' testimony possible effect their status in this case as nominal plaintiffs? The whole point of their being dragged into this case is—according to your pitch to the judge—was so that they would be bound by any adverse ruling on the easement. That easement is now gone. What is the point of their continued participation as a party?

As you know, Ryan Earhart has kindly agreed to stipulate to their dismissal on behalf of his client. I request that you do the same.

J. Jay Hulst

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To: Jary J Hulst <jjh@williamsandhulst.com>
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Warren C. Powell, Jr.

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From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Wednesday, March 13, 2019 4:31 PM
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Cc: Robert Maring <robert@maringmoyer.com>
Subject: Jones v. RTT

Warren:

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EXHIBIT 12

Laura Fetner

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Thursday, March 28, 2019 1:49 PM
To: Warren Powell
Cc: Robert Maring; Ryan Earhart
Subject: RE: Jones v. RTT

Warren:

I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case.

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com

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From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 1:41 PM
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Subject: RE: Jones v. RTT

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Warren C. Powell, Jr.

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Cc: Robert Maring <robert@maringmoyer.com>; Ryan Earhart <ryan.earhart@earhartoverstreet.com>; Shanna H

Saulisbury <shs@williamsandhulst.com>

Subject: RE: Jones v. RTT

Warren:

I will go ahead and file a motion and we can let a judge consider your comments below and decide about the need for my clients' continued participation in the case.

Thanks.

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Cc: Robert Maring <robert@maringmoyer.com>; Ryan Earhart <ryan.earhart@earhartoverstreet.com>

Subject: RE: Jones v. RTT

Warren:

Why continue to delay the decision? How can my clients' testimony possible effect their status in this case as nominal plaintiffs? The whole point of their being dragged into this case is—according to your pitch to the judge—was so that they would be bound by any adverse ruling on the easement. That easement is now gone. What is the point of their continued participation as a party?

As you know, Ryan Earhart has kindly agreed to stipulate to their dismissal on behalf of his client. I request that you do the same.

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EXHIBIT 13

BRUNER, POWELL, WALL & MULLINS, LLC

WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
RETIRED
BRIAN P. ROBINSON, P.A.
OF COUNSEL

CHELSEA J. CLARK
STEVEN R. SPREEUWERS
ABIGAIL A. CARSON

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: WPOWELL@BRUNERPOWELL.COM

March 28, 2019

Robert W. Maring, Esquire
Maring & Moyer, LLC
Post Office Box 478
Georgetown, South Carolina 29442

Jary J. Hulst, Esquire
Williams & Hulst, Esquire
209 East Main Street
Moncks Corner, South Carolina 29461

Ryan A. Earhart, Esquire
Joshua H. Umbarger, Esquire
Earhart Overstreet, LLC
Post Office Box 22528
Charleston, South Carolina 29413

Re: *Ronald L and Gayle Langley Jones, et al. v. Rogers Townsend Thomas, et al.*
Civil Action No. 2018-CP-08-817
Our File No. 2-2120.7

Dear Counsel:

As agreed by Jay's email of March 13 and my March 27 response, please find enclosed Notices of Video Depositions for Mr. Cone, Mr. Gaillard and Mrs. Jones, scheduled for April 8, 9 and 10, which I hereby serve upon you. I have not heard from Robert as to his and Ms. Jones' availability so if we cannot go forward with her deposition during the week of April 8, we'll do it later.

With my kindest regards, I am,

Sincerely,


Warren C. Powell, Jr.

WCPjr/ljf
Enclosures

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2018-CP-08-817

RONALD L. JONES; GAYLE)
LANGLEY JONES; THOMAS H.)
GAILLARD as TRUSTEE; and, THOMAS)
W. CONE, JR. as TRUSTEE,)

Plaintiffs,)

vs.)

**NOTICE OF VIDEO DEPOSITION
OF THOMAS W. CONE, JR.**

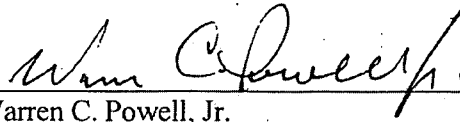
ROGERS TOWNSEND & THOMAS, P.C.,)
LISA HOSTETLER, ALEXANDER,)
C. PEABODY, and PEABODY &)
ASSOCIATES, INC.,)

Defendants.)

TO: ROBERT W. MARING, ESQUIRE, ATTORNEY FOR PLAINTIFFS RONALD L. JONES AND GAYLE LANGLEY JONES; JARY J. HULST, ESQUIRE, ATTORNEY FOR PLAINTIFFS THOMAS H. GAILLARD as TRUSTEE and THOMAS W. CONE, JR. as TRUSTEE, and RYAN A. EARHART, ESQUIRE, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY and PEABODY & ASSOCIATES, INC.:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants, by and through their undersigned counsel, will take the deposition of Thomas W. Cone, Jr., by video and stenographic means upon oral examination before a Notary Public at the Offices of Earhart Overstreet, LLC, 878 Whipple Rd., Mt. Pleasant, SC, on Monday, April 8, 2019 at 10:00 AM. You are invited to attend and take such part as is fit and proper.

Signature on following page.



Warren C. Powell, Jr.

BRUNER, POWELL, WALL & MULLINS, LLC

Post Office Box 61110

1735 St. Julian Place, Suite 200

Columbia, South Carolina 29260

(803) 252-7693

wpowell@brunerpowell.com

Attorneys for Defendants Rogers Townsend &

Thomas, PC and Lisa Hostetter

Columbia, South Carolina

March 28, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2018-CP-08-817

RONALD L. JONES; GAYLE)
LANGLEY JONES; THOMAS H.)
GAILLARD as TRUSTEE; and, THOMAS)
W. CONE, JR. as TRUSTEE,)

Plaintiffs,)

vs.)

ROGERS TOWNSEND & THOMAS, P.C.,)
LISA HOSTETLER ALEXANDER,)
C. PEABODY, and PEABODY &)
ASSOCIATES, INC.,)

Defendants.)

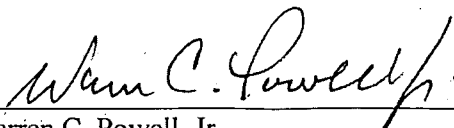
**NOTICE OF VIDEO DEPOSITION
OF THOMAS H. GAILLARD**

TO: ROBERT W. MARING, ESQUIRE, ATTORNEY FOR PLAINTIFFS RONALD L. JONES AND GAYLE LANGLEY JONES; JARY J. HULST, ESQUIRE, ATTORNEY FOR PLAINTIFFS THOMAS H. GAILLARD as TRUSTEE and THOMAS W. CONE, JR. as TRUSTEE, and RYAN A. EARHART, ESQUIRE, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY and PEABODY & ASSOCIATES, INC.:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants, by and through their undersigned counsel, will take the deposition of Thomas H. Gaillard, by video and stenographic means upon oral examination before a Notary Public at the Offices of Earhart Overstreet, LLC, 878 Whipple Rd., Mt. Pleasant, SC, on Tuesday, April 9, 2019 at 10:00 AM. You are invited to attend and take such part as is fit and proper.

Signature on following page

Columbia, South Carolina
March 28, 2019


Warren C. Powell, Jr.
BRUNER, POWELL, WALL & MULLINS, LLC
Post Office Box 61110
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29260
(803) 252-7693
wpowell@brunerpowell.com
*Attorneys for Defendants Rogers Townsend &
Thomas, PC and Lisa Hostetler*

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2018-CP-08-817

RONALD L. JONES; GAYLE)
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GAILLARD as TRUSTEE; and, THOMAS)
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Plaintiffs,)

vs.)

ROGERS TOWNSEND & THOMAS, P.C.,)
LISA HOSTETLER ALEXANDER,)
C. PEABODY, and PEABODY &)
ASSOCIATES, INC.,)

Defendants.)

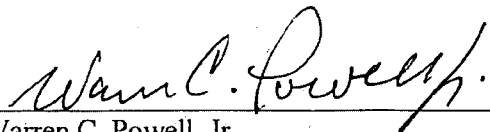
**NOTICE OF VIDEO DEPOSITION
OF GAYLE LANGLEY JONES**

TO: ROBERT W. MARING, ESQUIRE, ATTORNEY FOR PLAINTIFFS RONALD L. JONES AND GAYLE LANGLEY JONES; JARY J. HULST, ESQUIRE, ATTORNEY FOR PLAINTIFFS THOMAS H. GAILLARD as TRUSTEE and THOMAS W. CONE, JR. as TRUSTEE, and RYAN A. EARHART, ESQUIRE, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY and PEABODY & ASSOCIATES, INC.:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants, by and through their undersigned counsel, will take the deposition of Gayle Langlely Jones, by video and stenographic means upon oral examination before a Notary Public at the Offices of Earhart Overstreet, LLC, 878 Whipple Rd., Mt. Pleasant, SC, on Wednesday, April 10, 2019 at 10:00 AM. You are invited to attend and take such part as is fit and proper.

Signature on following page

Columbia, South Carolina
March 28, 2019


Warren C. Powell, Jr.
BRUNER, POWELL, WALL & MULLINS, LLC
Post Office Box 61110
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wpowell@brunerpowell.com
*Attorneys for Defendants Rogers Townsend &
Thomas, PC and Lisa Hostetler*

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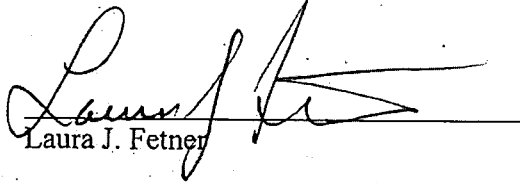
I, Laura J. Fetner, a legal assistant with the law firm Bruner Powell Wall & Mullins, LLC, attorneys for Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler, do hereby certify that on this 28th of March 2019, I served the *Notice of Video Deposition of Thomas W. Cone, Jr., Notice of Video Deposition of Thomas H. Gaillard*, and *Notice of Deposition of Gayle Langley Jones*, upon the following parties, via U.S. First Class Mail, postage prepaid and via Email, addressed as follows:

Robert W. Maring, Esquire
Maring & Mover, LLC
Post Office Box 478
Georgetown, South Carolina 29442
robert@maringmoyer.com
Attorneys for Plaintiffs

Jary J. Hulst, Esquire
Williams & Hulst, Esquire
209 East Main Street
Moncks Corner, South Carolina 29461
jjh@williamsandhurst.com
Attorneys for Trustees

Ryan A. Earhart, Esquire
Earhart Overstreet, L.L.C.
Post Office Box 22528
Charleston, South Carolina 29413
ryan.earhart@earhartoverstreet.com
josh@earhartoverstreet.com

Attorneys for Defendants Alexander C. Peabody and Peabody & Associates, Inc.



Laura J. Fetner

Columbia, South Carolina

EXHIBIT 14

Laura Fetner

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Friday, March 29, 2019 5:35 PM
To: Warren Powell
Cc: robert@maringmoyer.com; ryan.earhart@earhartoverstreet.com; Shanna H Saulisbury
Subject: Fwd: Jones v. RTT

Warren:

I am in receipt of your deposition notices for my clients. As I indicated to you yesterday before the notices were emailed, it makes more sense to hold off on the depositions until the non-joinder motion is resolved. Please confirm by April 2 that these depositions are off-calendar or I will move for a protective order.

Thanks.

Sent from my iPhone

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com<mailto:jjh@williamsandhulst.com>

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Begin forwarded message:

From: Jary J Hulst <jjh@williamsandhulst.com>
Date: March 28, 2019 at 1:48:50 PM EDT
To: Warren Powell <wpowell@brunerpowell.com>
Cc: Robert Maring <robert@maringmoyer.com>, Ryan Earhart <ryan.earhart@earhartoverstreet.com>
Subject: RE: Jones v. RTT

Warren:

I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case.

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232
jjh@williamsandhulst.com

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From: Warren Powell <wpowell@brunerpowell.com>

Sent: Thursday, March 28, 2019 1:41 PM

To: Jary J Hulst <jjh@williamsandhulst.com>

Subject: RE: Jones v. RTT

OK. I will go ahead and notice the depositions and get those out of the way as we agreed to do. That may eliminate the need for your motion. W

Warren C. Powell, Jr.

BRUNERPOWELL

BRUNER, POWELL, WALL & MULLINS, LLC

P.O. Box 61110

1735 St. Julian Place, Suite 200

Columbia, SC 29260-1110

(o) 803.252.7693

(f) 888.726.9015

www.brunerpowell.com

From: Jary J Hulst <jjh@williamsandhulst.com>

Sent: Thursday, March 28, 2019 1:38 PM

To: Warren Powell <wpowell@brunerpowell.com>

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Shanna H Saulisbury <shs@williamsandhulst.com>

Subject: RE: Jones v. RTT

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Thanks.

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Warren C. Powell, Jr.

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From: Jary J Hulst <jjh@williamsandhulst.com>

Sent: Wednesday, March 27, 2019 12:32 PM

To: Warren Powell <wpowell@brunerpowell.com>

Cc: Robert Maring <robert@maringmoyer.com>; Ryan Earhart <ryan.earhart@earhartoverstreet.com>

Subject: RE: Jones v. RTT

Warren:

Why continue to delay the decision? How can my clients' testimony possible effect their status in this case as nominal plaintiffs? The whole point of their being dragged into this case is—according to your pitch to the judge—was so that they would be bound by any adverse ruling on the easement. That easement is now gone. What is the point of their continued participation as a party?

As you know, Ryan Earhart has kindly agreed to stipulate to their dismissal on behalf of his client. I request that you do the same.

J. Jay Hulst

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From: Warren Powell <wpowell@brunerpowell.com>
Sent: Wednesday, March 27, 2019 12:01 PM
To: Jary J Hulst <jjh@williamsandhulst.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: RE: Jones v. RTT

Robert and Jay, I am unavailable on April 5 but April 8-12 works. Robert, does that suit you and your client as well? Does some location in Mount Pleasant suit you two to hold these depositions? Jay, I have received and thank you for the document executed by the plaintiffs. Permit me to respond regarding the dismissal of your clients as plaintiffs after these depositions are concluded. Warren

Warren C. Powell, Jr.

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From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Wednesday, March 13, 2019 4:31 PM
To: Warren Powell <wpowell@brunerpowell.com>
Cc: Robert Maring <robert@maringmoyer.com>
Subject: Jones v. RTT

Warren:

I am in receipt of your letter dated March 11, 2019 inquiring about depositions on April 1-3. I have been in contact with my clients and between their schedules and mine we are available for depositions on April 5, and 8-12. Hope that works for you.

J. Jay Hulst
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notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

EXHIBIT 15

Laura Fetner

From: Warren Powell
Sent: Thursday, April 4, 2019 9:24 AM
To: Jary J Hulst
Cc: robert@maringmoyer.com; ryan.earhart@earhartoverstreet.com; Shanna H Saulisbury
Subject: RE: Jones v. RTT

Jay, I have been on the road and just saw this. In addition, my secretary has been out sick all week. Of course, I want to move forward with discovery in this case as I've tried to do over the last couple of months. Nonetheless, we both know a motion for protective order would grant you an automatic stay of the discovery. In such event, no need to file. I understand your position that the plaintiffs will not be showing up next week for the depositions so that is that. Given the position of your clients there is no need to go forward with Ms. Jones either as I wish to take the plaintiffs' depositions during the same timeframe. We will all need to reschedule depositions once things settle out. In the interim there are a number of written discovery matters which we need to address. I will be getting back to you on that. Best, Warren

Warren C. Powell, Jr.

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(f) 888.726.9015
www.brunerpowell.com

From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Friday, March 29, 2019 5:35 PM
To: Warren Powell <wpowell@brunerpowell.com>
Cc: robert@maringmoyer.com; ryan.earhart@earhartoverstreet.com; Shanna H Saulisbury <shs@williamsandhulst.com>
Subject: Fwd: Jones v. RTT

Warren:

I am in receipt of your deposition notices for my clients. As I indicated to you yesterday before the notices were emailed, it makes more sense to hold off on the depositions until the non-joinder motion is resolved. Please confirm by April 2 that these depositions are off-calendar or I will move for a protective order.

Thanks.

Sent from my iPhone

J. Jay Hulst
Williams & Hulst, LLC
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232

jjh@williamsandhulst.com<<mailto:jjh@williamsandhulst.com>>

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2018-CP-08-00817

RECEIVED
OCT 09 2019
SC Court of Appeals

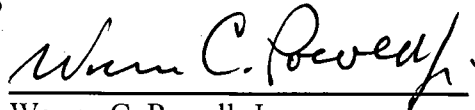
Ronald L. Jones and Gayle Langley Jones, Thomas Huguenin Gaillard, as Trustee of The
Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas W. Cone, Jr. as
Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007
.....Plaintiffs/Respondents

v.

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Defendants/Appellants

PROOF OF SERVICE

I certify that I have served the *Appellants' Return to Respondents' Motion to Dismiss* on
Ronald L. Jones and Gayle Langley Jones by depositing a copy of it in the United States Mail,
postage prepaid, on October 9, 2019 addressed to their attorney of record, Robert W. Maring,
Maring & Moyer, LLC, PO Box 478, Georgetown SC 29442 and on Thomas Huguenin Gaillard,
as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas
W. Cone, Jr. as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 by
depositing a copy of it in the United States Mail, postage prepaid, on October 9, 2019 addressed
to their attorney of record, Jay J. Hulst, Williams & Hulst, 209 E. Main St., Moncks Corner SC
29461 and Ryan A. Earhart, Esquire and Thomas H. Umbarger, Esquire, Earhart Overstreet, LLC,
PO Box 22528, Columbia SC 29413



Warren C. Powell, Jr.
Chelsea C. Clark
Bruner Powell Robbins Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260-1110
803-252-7693
Attorneys for Appellants

Columbia, South Carolina
October 9, 2019

BRUNER, POWELL, WALL & MULLINS, LLC

WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
RETIRED
BRIAN P. ROBINSON, P.A.
OF COUNSEL

CHELSEA J. CLARK
ABIGAIL A. CARSON
J. CROOM HUNTER

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: WPOWELL@BRUNERPOWELL.COM

October 9, 2019

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
OCT 09 2019
SC Court of Appeals

Re: Ronald L. Jones, et al. v. Rogers Townsend & Thomas, PC
Civil Action No. 2018-CP-08-817
Our File No. 3-2120.7

Dear Ms. Kitchings:

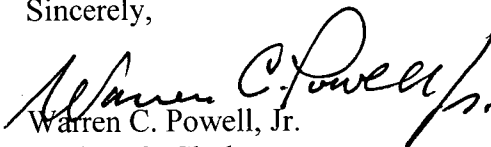
Pursuant to SCACR 240, enclosed please find the originals and eight (8) copies of the following:

1. Appellants' Return to Respondents' Motion to Dismiss;
2. Proof of Service;

Please return our clocked copy via our courier.

With my kindest regards, I am,

Sincerely,


Warren C. Powell, Jr.
Chelsea C. Clark

WCPjr/ljf

Enclosures

Cc: Robert W. Maring, Esquire
Jary J. Hulst, Esquire
Ryan A. Earhart, Esquire