

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005;
Drummond B. Farley; Rachel R. Farley; Carol E. Farley; and Nancy E. Farley, Appellants,

v.

Church of the Harvest of Columbia, Inc., Respondent.

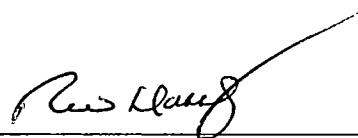
AFFIDAVIT IN SUPPORT OF
MOTION TO STAY APPEAL, TO DISMISS APPELLANTS' NOTICE OF APPEAL AS
UNTIMELY OR TO LIMIT ISSUES ON APPEAL
WITH SUPPORTING AUTHORITIES

PERSONALLY, appeared before me Robert W. Dibble, Jr. who, being first duly sworn,
deposes and said:

1. He is over the age of twenty-one (21) years old and competent to give this affidavit which is based on his personal knowledge and his review of the filings in the lower court.
2. He is a member of the South Carolina Bar admitted to practice in the South Carolina Courts. His South Carolina Bar number is 1675. He was counsel for the Respondent in the lower court and represents the Respondent in the appellate court.


3. The Order dismissing the case with prejudice was dated, signed by Judge Lee and filed on May 9, 2019. A copy of that Order was served by mail on all Plaintiffs on May 10, 2019. A copy of the certificate of service is attached hereto as Exhibit A.
4. A copy of each of the following documents is attached hereto respectively as Exhibits B, C, D, E, F, G, H, I and J.
 - B. Ms. Farley's Rule 59(e) Motion filed on May 20, 2019;
 - C. The Respondent's Response and Rule 60(a) Motion;
 - D. The Order of June 19, 2019 denying the Rule 59(e) Motion and granting the Rule 60(a) Motion;
 - E. The Revised Order of July 23, 2019 making the clerical changes to the May 9th Order;
 - F. Ms. Farley's Motion for Reconsideration of the July 23 Order filed on August 2, 2019;
 - G. The Order denying the Motion for Reconsideration;
 - H. The Notice of Appeal filed on September 23, 2019;
 - I. The Certificate of Service of the Motion; and
 - J. The Certificate of Service of this Affidavit.

FURTHER AFFIANT SAYETH NOT.

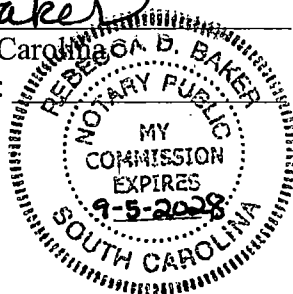


 Robert W. Dibble, Jr., SC Bar #1675

SWORN TO BEFORE ME THIS
15th day of October 2019.



 Notary Public for South Carolina
 My Commission expires:



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Rachel Farley, as Trustee of the Estate)
Louise Farley Revocable Trust)
Dated February 8, 2005; Drummond B.)
Farley; Rachel R. Farley; Carol E. Farley;)
Nancy E. Farley,)

C.A. No.: 2016-CP-32-00387

Plaintiffs,)

vs.)

**RULE 59 (e) MOTION TO
ALTER OR AMEND**

The Church of the Harvest of Columbia, Inc.)

Defendant.)

This matter came before the Court on cross motions for Summary Judgment on August 22, 2018. The Court issued its Order Denying Plaintiff's Motion for Summary Judgment, Granting Defendant's Motion for Summary Judgment and Dismissing the Case with Prejudice on May 9, 2019, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A". The undersigned hereby moves pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering or amending the Court's judgment so as to recognize the validity of the Plaintiff Trust's easement, that the easement has been obstructed by the Defendant and that the Defendant must remove the obstructions to the easement. The existence of the Plaintiff Trust's easement and the Defendant's obstruction thereof was raised to but not ruled upon by the Court and Counsel for the Defendant admitted and acknowledged in open court that the Plaintiff Trust has a valid easement upon the property of the Defendant and that the Defendant has obstructed the easement. The Court's order issued May 9, 2019, does not address these matters. Plaintiff Trust seeks to have the Court alter or amend this order to rule upon the existence of the Plaintiff Trust's valid easement upon the lands of the Defendant as admitted and acknowledged in open court by



counsel for Defendant, upon the obstruction of the easement by the Defendant, as admitted and acknowledged in open court by counsel for Defendant and a ruling that Defendant must remove any such obstructions.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF
RACHEL FARLEY

West Columbia, South Carolina
May 20, 2019

Exhibit A

Order Denying Plaintiff's
Motion for Summary Judgment
Granting Defendant's
Motion for Summary Judgment
And Dismissing the Case with Prejudice

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
)
)

Rachel Farley, as Trustee of the
Louise Farley Revocable Trust
Dated February 8, 2005; Drummond
B. Farley; Rachel R. Farley;
Carol E. Farley; Nancy E. Farley,

) CASE NO. 2016-CP-32-00387
)
)
)

Plaintiffs,

) ORDER DENYING PLAINTIFFS'
) MOTION FOR SUMMARY
) JUDGMENT, GRANTING
) DEFENDANT'S MOTION FOR
) SUMMARY JUDGMENT AND
) DISMISSING THE CASE WITH
) PREJUDICE
)
)
)

v.

The Church of the Harvest of Columbia,
Inc.,

Defendant.

PROCEDURAL BACKGROUND

The Plaintiffs in this case are Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005 (the Trust), and Rachel R. Farley, Drummond B. Farley, Carol E. Farley and Nancy E. Farley, individually. The Trust owns a ten acre tract of land which is accessible only by way of an appurtenant easement over land of the Defendant (The Church). The individual Plaintiffs were joined as parties due to their equitable interest in the ten acre tract and the easement, both of which are subjects of this action. Louise Farley (Mrs. Farley) is the Trust's predecessor in title. Mrs. Farley and The Church entered into a contract in which she granted The Church an option to purchase a portion of her property. That contract is also a subject of this action.

This action was commenced on February 3, 2016.¹ The Plaintiffs assert six causes of action: breach of the contract; breach of the contract accompanied by a fraudulent act; gross negligence; trespass on the easement; a request for declaratory judgment and a request for

¹ No question has been raised as to the jurisdiction of this Court over the parties or the subject matter of this action or as to venue in Lexington County.

injunctive relief. The Plaintiffs² and the Defendant filed cross motions for summary judgment. The Church submitted multiple briefs, affidavits of Mr. Jumper (who is the the pastor of The Church), an affidavit of Mr. Sturkie (who examined the title to the ten acres) and exhibits in support of its motion. The Plaintiffs submitted multiple briefs and the deposition of Mr. Jumper in support of their motion, but they did not submit any affidavits either in support of their motion or in opposition to the Defendant's motion. Mr. Jumper's deposition testimony does not contradict the Defendant's affidavits and exhibits. Therefore, the relevant facts underlying this Order are uncontroverted.

The motions came before the Court for hearing on August 22, 2018. During the hearing, which lasted over two hours, each counsel made extensive arguments in support of the respective motions. After reading the briefs, Mr. Jumper's deposition, the affidavits and exhibits, considering the arguments of counsel, the Plaintiffs' Motion for Summary Judgment is DENIED and the Defendant's Motion for Summary Judgment is GRANTED.

LEGAL STANDARD

A motion for summary judgment shall be granted when there is no genuine dispute as to any material facts and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014). When the evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than being resolved at the summary judgment stage. *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009).

FACTUAL BACKGROUND AND DISCUSSION

Mrs. Farley owned approximately Nineteen (19) acres of land in Lexington County on the South side of U.S. Highway 378. Jumper Aff. 7/20/18 ¶2. In 1994, The Church became

² The Plaintiffs' motion for summary judgment was filed only on behalf of the Trust and Rachel R. Farley. The Trust holds legal title to the ten acres. The individual Plaintiffs have an equitable interest in that property arising from the unfulfilled obligation of the Trustee to distribute that property to the beneficiaries of the Trust within two years following the death of Mrs. Farley which occurred in 2012. See, Defendants motion to join the individual Plaintiffs as parties pursuant to Rule 19, SCRPC, the brief in support of that motion and the Order granting that motion. The individual Plaintiffs are thus in privity with the moving parties, First Nat. Bank of Greenville v. U. S. Fidelity & Guaranty Co., 207 S. C. 15, 35 S. E. 2d 47 (1945), and they are therefore bound by the terms of this Order. Manning v. South Carolina Dept. of Highways, 914 F.2d 44 (4th Cir. 1990), Bailey v. U. S. Fidelity & Guaranty Co., 185 S. C. 169. 193 S. E. 2d 638 (1937). The Defendant's motion for summary judgment was filed after the individual Plaintiffs were joined as Defendants.

interested in purchasing approximately eight (8) acres of her property. *Id.* The eight (8) acres were to be divided into 3 Phases: Phase I (tract A) containing 2.864 acres; Phase II (tract B) containing 2.584 acres; and Phase III (tracts C-1 and C-2) containing 2.624 acres. *Id.* at ¶4.

The Church and Mrs. Farley entered into an agreement (the Agreement) on October 11, 1994. Jumper Aff. 7/20/18 ¶2. Mrs. Farley was represented by Mr. H. Ray Ham, Esq. *Id.* The Church did not employ independent counsel. *Id.* The Agreement, prepared by Mr. Ham, granted The Church the option of buying the three tracts over time. *Id.* The Agreement required The Church to obtain a plat to be attached to the Agreement as an exhibit, and The Church did so in a timely fashion. *Id.* at ¶3. That plat is recorded at Slide 84 plat 7B. *Id.* At the same time, Mrs. Farley and The Church also executed a “Memorandum of Agreement” in which Mrs. Farley agreed to make a charitable contribution of \$50,000.00 to The Church if The Church bought all three tracts. *Id.* at ¶5.

The remainder of Mrs. Farley’s property (ten acres) would be landlocked if The Church purchased all three tracts. To avoid this, the Agreement contained a provision allowing her to retain a fifty-foot easement (herein referred to as “the 50-foot easement”) over Phase I (tract A) for access to the ten acres.³ *Id.* at ¶6.

The Church closed the purchase of Phase I (tract A) in Mr. Ham’s office on December 2, 1994. *Id.* at ¶7. Mrs. Farley executed and delivered to The Church a deed conveying Phase I containing 2.864 acres as shown on the plat recorded in Slide 84 Plat 7B. *Id.* The purchase price for Phase I was \$162,000.00. *Id.* At the closing The Church paid Mrs. Farley \$40,000.00 and executed and delivered to her a note in the amount of \$122,000.00. *Id.* The note contained a provision granting The Church “the right to prepay any amounts of principal or accrued interest at any time, without penalty.” *Id.* at ¶17. To secure payment of that note, The Church executed and delivered to Mrs. Farley a purchase money mortgage. *Id.* at ¶7. Mrs. Farley retained the 50-foot easement across Phase I for her initial access to her remaining land pursuant to the terms of the Agreement. See Exhibit 3 to Jumper Aff. 8/1/18.

In 1998, The Church exercised its option to purchase Phase II and Phase III and commissioned and obtained a plat showing all three Phases in the eight (8) acres. Jumper Aff. 7/20/18 at ¶8. That plat is recorded in Book 436 at Page 8. *Id.* Mrs. Farley was represented by

³ The Agreement also contained a provision requiring The Church to relocate a fence belonging to Mrs. Farley. The Church has never moved the fence.

Mr. Ham in connection with the sale of Phases II and III. Jumper Aff. 7/20/18 ¶8. The Church did not employ independent counsel, however it did pay a portion of Mr. Ham's fees. Id.

Pursuant to the terms of the Agreement, the purchase price for each Phase was \$162,000.00, making the total purchase price for Phase II and Phase III \$324,000.00. Id at ¶10. The closing of the sale of Phase II and Phase III took place in Mr. Ham's office on December 1, 1998. Id. at ¶11. At the closing, Mrs. Farley executed and delivered to The Church a deed conveying Phase II containing 2.584 acres and Phase III containing 2.624 acres as shown on the plat recorded in Book 436 at Page 8. Id. The consideration in the deed is \$274,000.00 which reflects a reduction of \$50,000.00 in the purchase price of Phase II and Phase III. Id. at ¶10. In exchange for the deed, The Church executed and delivered to Mrs. Farley a note in the amount of \$274,000.00. Id. at ¶12. To secure payment of that note, The Church executed and delivered to Mrs. Farley a purchase money mortgage. Id.

Under the terms of the Agreement, provided The Church bought Phase II, The Church had the option of either (1) increasing the width of the 50-foot easement to 66 feet or (2) relocating the 50-foot easement by granting to Mrs. Farley a 66 foot wide easement along the Western boundary of Phase II and Phase III (Tracts 2 and C-1) for access to her remaining ten (10) acres. Id. at ¶13. When The Church purchased Phase II and Phase III it elected to relocate the 50-foot easement. This election was consummated when Mrs. Farley, in the deed to Phase II and Phase III, reserved to herself, her heirs and assigns, an easement for ingress and egress 66 feet in width across, over through and along the Western boundary of Phase II and Phase III as shown on the plat recorded in Book 436 at Page 8. See Exhibit G to Jumper Aff. 8/1/18.⁴

Early in 2001, The Church paid the 1998 note in the amount of \$274,000.00 in full. Id. at ¶15. On March 16, 2001 Mrs. Farley satisfied the mortgage securing that note. Id. The satisfaction was witnessed by Mr. Ham and was filed on March 29, 2001. See Exhibit J to Jumper Aff. 8/1/18. At the same time, The Church exercised its right to prepay the 1994 note in the amount of \$122,000.00. On March 30, 2001, Mrs. Farley satisfied the mortgage securing the note for \$122,000.00. Jumper Aff. 7/20/18 ¶17; see Exhibit K to Jumper Aff. 8/1/18. The satisfaction was recorded on April 2, 2001. Id.

⁴ This election was confirmed by the grant by The Church of the same easement to Mrs. Farley, her heirs and assigns. The easement is recorded in Book 4994 at Page 253. This Court takes judicial notice of this document pursuant to Rule 201(b), (c), and (f), SCRE.

Thus, as of April 2, 2001, all of the obligations under the terms of the Agreement and the Memorandum of Agreement had been performed⁵, and the Agreement and the Memorandum of Agreement had both been fully consummated: (1) Mrs. Farley had satisfied her commitment to make a charitable contribution of \$50,000.00 to The Church by reducing the purchase price of Phase II and Phase III from \$324,000.00 down to \$274,000.00; (2) the 1994 note for \$122,000.00 and the note for \$274,000.00 had each been paid in full, (3) the mortgage securing each note had been satisfied; (4) the 50-foot easement had been relocated to the Western side of The Church property and expanded to 66 feet in width; and (5) Mrs. Farley, her heirs and assigns, held, by both reservation and grant, an easement 66 feet in width along the Western boundary of Phase II and Phase III.

BREACH OF CONTRACT CLAIMS

The period of limitation applicable to a cause action for breach of contract begins to run when a party knows, or with the exercise of reasonable diligence should have known, that a cause of action might exist. Anonymous Taxpayer v. South Carolina Dept. of Rev., 377 S.C. 425, 661 S.E. 2d 73 (2008). Mrs. Farley had personal knowledge of each of the events which took place between October of 1994 and April of 2001. She participated in each of them. With the exercise of reasonable diligence, she should have been aware of the failure of The Church to move her fence. Mrs. Farley and The Church were the only parties to the Agreement. See Exhibit A to Jumper Aff. 7/20/18. Any cause of action against The Church for breach of the Agreement belonged only to Mrs. Farley. By the time of her death in 2012, see Exhibit C to Sturkie Aff. 8/14/18, Mrs. Farley knew of, or with the exercise of reasonable diligence, should have known of (1) the occurrence of each of those events; (2) every consequence resulting from those events; (3) every wrongful act or omission of The Church; (4) every consequence arising from each wrongful act or omission of The Church; and (5) each and every cause of action she had or may have had against The Church for either a breach of the Agreement or for any wrongful act or omission of The Church related to or arising under the Agreement or any consequence arising from those acts of omissions.⁶ The three-year statute is applicable to each

⁵ The obligation to move the fence arose on October 11, 1994, and the applicable statute of limitations has long since expired.

⁶ The Plaintiffs complain that The Church committed fraud by insisting that Mrs. Farley accept early payment of the \$274,000.00 note. However, Mrs. Farley had every right to refuse the proffered payment since that note did not contain a provision granting The Church prepayment rights, however, notwithstanding her right to refuse the payment, she accepted the money and satisfied the mortgage securing that note. Mrs. Farley was represented by Mr.

of those causes of action: (“ . . . an action upon a contract” and “ . . . an action . . . upon a liability, express or implied” §15-3-530(1)), and that period of limitation expired well before this action was commenced in February of 2016.⁷

BREACH OF CONTRACT WITH FRAUDULENT ACT

The Plaintiffs have also alleged that each breach of the Agreement by The Church giving rise to a cause of action in favor of Mrs. Farley was accompanied by a fraudulent act. Under South Carolina law, the cause of action for breach of contract accompanied by a fraudulent act sounds in contract. Harper v. Etheredge, 290 S.C. 112, 348 S.E. 2d 374, 378 (1986), Peoples v. Orkin Exterminating Co., 244 S.C. 173, 135 S.E. 2d 845 (1964), Wilson Group, Inc., v. Quorum Health Resources, Inc., 880 F. Supp. 416, 424 n.6 (D.S.C. 1995). As noted above, each alleged breach of the contract occurred and was known, or should have been known, to Mrs. Farley prior to her death and well prior to the commencement of this action. The same is true with respect to her knowledge of the consequences of each of those alleged breaches. Therefore, any cause of action for breach of contract accompanied by a fraudulent act based upon those alleged breaches of contract, or any of them, by The Church are also barred by the three-year statute set out in §15-5-530(1) and cannot be maintained.⁸

The Trust came into existence on February 8, 2005. See Exhibit A to Sturkie Aff. Mrs. Farley was the Trustee of the Trust, Id., and her personal knowledge of prior events was imputed to the Trust.⁹ Her children (the four individual Plaintiffs) were the beneficiaries of the Trust.

Ham at the time the note was paid, and he witnessed the satisfaction of the mortgage. Under those circumstances, it is difficult to find wrongdoing on the part of The Church in connection with that event. But even if The Church committed the alleged fraud, Mrs. Farley and Mr. Ham were aware of that fraud in 2001, and, to the extent any cause of action she may have had against The Church in that regard is not barred by the applicable statute of limitations, it did not survive her death in 2012. See S.C. Code Ann. §15-5-90.

⁷To the extent any of those causes of action survived Mrs. Farley’s death, they passed to her Estate. Mrs. Farley passed away on March 27, 2012. Her estate was initially named as a Plaintiff in this case, but the Estate was dismissed with the consent of Counsel for the Estate. None of the remaining Plaintiffs has standing to maintain those actions, and, in any event, the Estate would have taken those causes of action subject to the expired statute of limitations. See n. 8, *infra*.

⁸ To the extent those claims sound in fraud, they cannot be maintained by the Plaintiffs. Mrs. Farley passed away on March 27, 2012. Any claim she had against The Church based on fraud did not survive her death. S. C. Code Ann. §15-5-90; Brailsford v Brailsford, 380 S.C. 443, 669 S.E. 2d 342 (Ct. App. 2008) (“Dismissal of claim was warranted even though the causes of action were based on acts against the beneficiary prior to his death; actions for fraud and deceit were exempted from the survivability statute [15-5-90]”).

⁹ Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1943 (“ . . . ‘notice’ to an agent acting within the scope of his authority is notice to the principal if such notice relates to the business or transaction in which the agent is authorized to act for the principal and the matter is one over which his authority extends.”)); Wimberley v

See n. 2, supra. By deed dated March 8, 2005 and recorded in Deed Book 9960 at page 286, Mrs. Farley conveyed the ten (10) acre tract together with the appurtenant 66-foot easement to herself as Trustee for the Trust. See Exhibit A to Sturkie Aff. The deed did not contain any assignment or transfer of any cause of action Mrs. Farley had or may have had against The Church to either (1) the Trust, (2) the Trustee or (3) the beneficiaries of the Trust. *Id.* Those causes of action, to the extent they existed, remained with her. Therefore, neither the Trust nor the Trustee acting for the Trust nor the beneficiaries of the Trust, individually or collectively, has standing to bring any cause of action Mrs. Farley had or may have had against The Church, and those claims must be dismissed on that ground also.¹⁰

NEGLIGENCE

The Plaintiffs have also alleged that The Church was grossly negligent, committed a trespass on the easement and reduced the value of the ten acre tract by (1) constructing a building and two parking lots which impermissibly encroach on and obstruct the use of the 66-foot easement for access to the ten acre tract and (2) by concentrating the discharge of ground water from the property of The Church onto the ten acre tract. The evidence in the record establishes that The Church, between 2006 and 2008, paved a portion of the 66-foot easement reserved by Mrs. Farley, constructed an entrance into the easement from highway 378 and marked off several parking areas on the paved portion of the easement. *Jumper Aff.* 7/20/18 ¶19. Each of those events occurred after the Trust acquired the ten acres and the 66-foot easement. Mrs. Farley continued as the Trustee of the Trust until her death in 2012. See Plaintiffs' brief 8/21/18 p. 2. The evidence in the record also establishes that Mrs. Farley was aware of the construction of the parking lots in 2005, and during that year, she raised with The Church concerns about damage to the ten acre tract caused by the runoff and other associated construction on the property of The

Sovereign Camp W.O.W., 190 S.C. 158, 2 S.E. 2d 532d (1939); Blowers v. Southern Ry. Co., 74 S.C. 221, 54 S.E. 368 (1906). The same is true when the knowledge of the agent is acquired prior to the commencement of the relationship. McSweeney v. Prudential Ins. Co of America, 128 F.2d 660 (4th Cir. 1942) *cert. den.* 317 U.S. 658.

¹⁰ The Trust did not come into existence until February 8, 2005. Therefore, even if those causes of action had been assigned or transferred to the Trust, the Trustee or the beneficiaries of the Trust in 2005 or thereafter, those causes of action remained barred by the three-year statute of limitations. An assignee of a cause of action takes it subject to all existing impediments. Hughey v. Mooney, 282 S. C. 597, S.E. 2d 475 (Ct. App. 1984) ("The Court went on to hold that the 'causes of action for rescission or cancellation of a deed or contract descends to the heirs if they existed in the ancestor unimpaired at the time of his death.' ") (*Emphasis added*). If that was not the case, the right to bring suit on a cause of action could be extended forever by subsequent, seriatim assignments. The same is true with regard to successive trustees. The right to bring suit on a cause of action cannot be extended beyond the applicable limiting statute simply by appointing successive trustees each of whom has no personal knowledge of past events. .

Church. Jumper Aff. 8/17/18 and Exhibits attached thereto. The issues relating to the discharge of ground water were resolved in 2006 when the construction of the parking lots and the driveway from Highway 378 into the 66-foot easement was completed. *Id.* Finally, the record before me also establishes that the building which encroaches on the easement was built in 2009. Jumper Aff. 7/20/18 ¶18.

The evidence in the record establishes (1) the location of the 66-foot easement, (2) the location of the parking lots on the easement, (3) the location of the driveway from Highway 378 into the easement, (4) the paving of a portion of the easement, (5) the marking of parking spaces in the paved portion of a parking lot on the easement (6) the location of the building on the easement and (7) the timing of the construction of each of those encroachments. The record also establishes the nature, existence and extent of each of the alleged encroachments (the driveway, the parking lots and the building). The existence of each of those encroachments was obvious after each was in place in 2008 and 2009 respectively. Mrs. Farley, as Trustee, knew, or with the exercise of reasonable diligence should have known, those encroachments existed prior to her death in 2012. She knew of the ground water discharge issue in 2005. Thus, the existence of (1) any claim for damage to the ten acre tract due to concentrated discharge of ground water, (2) any claim for damage to the easement or the value of the ten acre tract due to the encroachments on and obstruction of the easement and (3) any claim for negligence and for trespass on the easement was known, or should have been known, to the Trust prior to Mrs. Farley's death in 2012. Each of those claims is therefore barred by the three-year statute of limitations. See, §15-3-530(1) ("an action upon . . . a liability, express or implied . . .") and §15-3-530(3) ("an action for trespass upon or damage to real property").

TRESPASS

To recover on a cause of action for trespass, a plaintiff must establish the intent to trespass on the part of the alleged trespasser. The Plaintiffs submitted the deposition of Mr. Jumper in support of their motion. He testified that The Church did not know the building encroached on the easement. The Plaintiffs conceded with regard to both the parking lots and the building that "in both instances the Church's encroachment was unintended . . ." Plaintiffs' brief 8/20/18 p. 1. Thus, there is no evidence in the record that The Church intended to invade the Plaintiffs' interest in either the ten acre tract or the easement. Therefore, the cause of action for trespass must be dismissed. To the extent the unintentional encroachment was the result of

negligence on the part of The Church, any resulting claim is also barred by the three-year statute. §15-3-530(1). Therefore, any cause of action for negligence (or for negligent trespass) must be dismissed on that ground also. See Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E. 2d 563 (Ct. App. 2001)¹¹

NUISANCE

Plaintiffs also argue that the three encroachments constitute a nuisance. A nuisance is a "substantial and unreasonable interference with the Plaintiff's use and enjoyment of his property" Silvester, supra. A continuing nuisance has been described as "nuisance that is intermittent or periodical, although not necessarily constant or unceasing." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E. 2d 327 (Ct. App. 2001). Plaintiffs assert that the encroachments constitute a continuing nuisance which, because of their continuous nature and if they are not abated, gives rise to a new cause of action each day. This Court disagrees and finds to the contrary that, to the extent the encroachments constitute a nuisance at all, they constitute a permanent nuisance. "A permanent nuisance may be expected to continue but is presumed to continue permanently, with no possibility of abatement." Id. A permanent nuisance may only be addressed for damages by one cause of action (not continuous), and such an action is barred if not brought within the statutory period after the first actionable injury. See Silvester, 543 S.E. 2d at 567. A permanent building, a paved driveway and two parking lots, to the extent each is a nuisance at all, constitute a permanent nuisance. Knowledge of the existence of such obvious encroachments on the easement is not subject to the discovery rule. Thus, the three-year statute of limitations, §15-3-530(3), is applicable, and, to the extent the complaint contains a cause of action for nuisance, that cause of action must also be dismissed.

EASEMENT

As a predicate for their case, the Plaintiffs assert that Mrs. Farley had, and that they now have, an express easement. This Court agrees, but the means by which the easement came into being, whether it arose as a matter of law, or by reservation, or by prescription, or by implication

¹¹ Mrs. Farley never, in any capacity, brought an action against The Church. The case at bar was instituted by the Trust and others fifteen years after the Agreement and Memorandum of Agreement were consummated, eight years after the parking lots were built, seven years after the building was constructed and almost four years after the death of Mrs. Farley.

or by grant, has no effect on the application of the appropriate statute of limitations to the causes of action pressed by the Plaintiff in this case.¹²

The Plaintiffs also argue that The Church “cannot establish that the Farley easement was terminated, Plaintiffs’ brief 8/20/19 p. 2, and that the claim of The Church “of prescription fails as a matter of law.” Id. at 3. The Court need not address these arguments. The Church has not asserted either that the easement has been terminated or that it has a prescriptive right to encroach on the easement. It is the position of The Church that the causes of action relating to the encroachments are forever barred, and this Court finds this position to be correct under the facts of this case.

The Plaintiffs also argue that The Church cannot establish a right to obstruct the easement under the doctrine of adverse possession because Mrs. Farley gave The Church permission to build the driveway, the parking lots and the building on the easement. Id. The Court need not address this argument. The Church has not asserted such a right, and there is nothing in the record to establish the assertion that Mrs. Farley ever gave The Church permission to encroach on the easement.¹³

RIGHT OF FIRST REFUSAL

The Agreement contained a provision granting The Church a right of first refusal to purchase the ten acre tract. See Exhibit A to Jumper Aff. 7/20/18. The Plaintiffs contend that The Church has wrongfully insisted upon exercising that right. However, the record establishes that the Plaintiffs have never submitted a binding contract for the sale of the ten acres to The Church which would give rise to the opportunity of exercising that right. Jumper Aff. 8/1/18 ¶2. Therefore, neither the claim for damage based on the wrongful insistence upon the right of first

¹² Plaintiffs then argue that the express easement may be terminated as the result of the adverse use of the easement by the servient estate “for the period of prescription.” The Court need not address this issue. Twenty years have not elapsed since the encroachments were completed and, in any event, there is no evidence in the record of the adverse use of the building, the parking lots and the driveway by the Plaintiffs. The Plaintiffs have offered no evidence that The Church objects to the use of the driveway or the parking lots by the Plaintiffs. Therefore, any use of the driveway and the parking lots on the easement by the Plaintiffs is permissive.

¹³ Any testimony in that regard would be barred by the provisions of §19-11-20, commonly referred to as “the dead man’s statute.”

refusal nor the claim that the right of first refusal is invalid is ripe for adjudication, and those claims are dismissed.¹⁴

STATUTE OF LIMITATIONS UNDER SECTION 15-3-340

Finally, the Plaintiffs assert that the ten-year statute of limitations set out in §15-3-340 is applicable here. That limitation applies to “an action for the recovery of real property” The Plaintiffs do not seek in this action “to remove [a] cloud on [their] title.” See, Unpublished Op. No. 2008-UP-153. The gravamen of the Plaintiffs’ claims in this action is the recovery of (1) damage for the diminution in value of the ten (10) acres, (2) damage for breach of contract (with and without a fraudulent act), (3) damage for fraud, (4) damage for trespass, (5) damage for negligence, and (6) damage for the encroachments on the easement. Those claims bring this action squarely within the scope of the three-year statute set out in §15-3-530(1) (“an action upon a contract, obligation, or liability, express or implied . . .”) and §15-3-530(3) (“an action for trespass upon or damage to real property; . . .”).” There are no issues of title in this case. The Plaintiffs do not contest the fee ownership by The Church of its land, and The Church does not contest the validity, existence or the Plaintiffs’ ownership of the easement. This is an action for breach of contract, fraud, trespass and negligence. It is not an action to remove a cloud on the Plaintiffs’ property or an “action to recover real property.” Under these circumstances, the limitation set out in §15-3-340 is not applicable.

¹⁴ See n. 13, *infra*. In addition, this Court cannot understand why such a claim could ever be maintained. If the Plaintiffs obtain a binding contract to sell the ten acres at a price acceptable to them and submit that contract to The Church to trigger the right of first refusal, the Plaintiffs would receive the acceptable sale price from either The Church, if it exercised its right of first refusal, or from the buyer, if The Church declined to buy the land. In either event, the Plaintiffs would receive the benefit of their bargain under the terms of the acceptable contract and would suffer no loss:

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED**,

1. Plaintiffs' Motion for Summary Judgment is **DENIED**;
2. Defendant's Motion for Summary Judgment is **GRANTED**;
3. The Complaint, each of the causes of action set forth therein and those causes of action referred to in this Order are **Dismissed with Prejudice**, and this case is forever ended.¹⁵

AND IT IS SO ORDERED.

Signature page to follow

¹⁵ The claims related to the wrongful exercise and validity of the right of first refusal are not ripe for adjudication, and those causes of action are dismissed without prejudice. Under the facts and circumstances of this action and the applicable law, the Plaintiffs are not entitled to their remaining requests for declaratory judgment or their request for injunctive relief, and those causes of action are dismissed with prejudice.



Lexington Common Pleas

Case Caption: Rachel Farley , plaintiff, et al VS Church of the Harvest of Columbia Inc
Case Number: 2016CP3200387
Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CASE NO. 2016-CP-32-00387
)	
Rachel Farley; as Trustee of the)	
Louise Farley Revocable Trust)	
Dated February 8, 2005; Drummond)	
B. Farley; Rachel R. Farley;)	
Carol E. Farley; Nancy E. Farley,)	
)	
Plaintiffs,)	
	)	<u>RESPONSE OF THE DEFENDANT TO</u>
	)	<u>MOTION PURSUANT TO RULE 59(e)</u>
	)	<u>AND MOTION OF DEFENDANT</u>
v.	)	<u>PURSUANT TO RULE 60(a)</u>
)	
)	
The Church of the Harvest of Columbia,)	
Inc.,)	
)	
Defendant.)	

The Defendant hereby responds to the motion filed on May 20, 2019 pursuant to Rule 59(e), SCRPC. The motion requests the entry of an Order altering or amending the Court’s Order of May 9, 2019 “so as to recognize the validity of the Plaintiff Trust’s Easement, that the Easement has been obstructed and that the Defendant must remove the obstructions.” Mot. p. 1. The motion to alter or amend should be denied.¹

A.

1. On page 9 of the Order the Court said “As a predicate for their case, the Plaintiffs assert that Mrs. Farley and that they now have an express easement. This Court agrees”

Therefore, the Court has in fact recognized the validity of the Plaintiff Trust’s easement, and the Order need not be amended in that regard.

¹ The 59(e) motion was filed on behalf of only Rachel Farley. Mr. Moore signed the motion as “ATTORNEY FOR THE PLAINTIFF RACHEL FARLEY.” Ms. Farley does not have standing as an individual to speak for the Trust.



2. The Court on pages 7-9 of the Order discussed the encroachments in the context of negligence, trespass and nuisance. In doing so, the Court recognized the existence of the building and the parking lots constructed by the Defendant on the easement. Therefore, the Court has recognized that the easement has been obstructed by the Defendant, and the Order need not be amended in that regard.
3. On page 10 of the Order, the Court said: "It is the position of The Church that the causes of action related to the encroachments are forever barred, and this Court finds this position to be correct under the facts of this case." Therefore, the Court has held that the Defendant cannot now be required to remove the obstructions because of the expiration of the applicable limitation period. Thus, the Order need not be amended in that regard either.

B.

In reviewing the Order filed on May 9, 2019, Counsel for the Defendant noted three clerical errors for which he takes full responsibility. Therefore, pursuant to Rule 60(a), SCRCP, the Defendant moves to correct those errors as follows.

1. Changing the last word in Footnote 2 from "Defendants" to "parties."
2. Changing the reference in Footnote 7 from "See n.8, infra." To "See n. 10, infra."
3. Changing the reference in Footnote 14 from "See n.13, infra." To "See n. 15, infra."

Pursuant to Rule 60(a) clerical mistakes may be correct by the Court at any time on its own initiative or upon motion on any party. The errors are clearly clerical in nature and have no impact on holding of the Court.

Based on the foregoing, the Defendant respectfully submits that the 59(e) motion should be denied and the Rule 60(a) motion should be granted.

s/Robert W. Dibble, JR., SC Bar #1675

Robert W. Dibble, Jr.

Attorneys for the Defendant

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Chapin, South Carolina 29108

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May 23, 2019

Chapin, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP3200387

Rachel Farley et al
PLAINTIFF(S)

Church of the Harvest of Columbia Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court on Plaintiff's Rule 59(e), SCRPC Motion to Alter/Amend the Order Denying Plaintiffs' Summary Judgment Motion and Granting Defendant's motion for the same (the "Order"). Defendant has filed a Rule 60(a), SCRPC motion to address clerical errors in the Order.

After careful consideration of the record in this case and the arguments raised by Plaintiffs, this Court is unable to discover any new material fact or any principle of law that was either overlooked or warrants reconsideration of the Order. The issues raised by Plaintiffs were addressed in the Order.

This Court has reviewed the Order and amended several clerical errors as noted by Defendant in its motion. A revised order reflecting those amendments has been filed pursuant to Rule 60(a).

Plaintiffs' Motion to Alter/Amend is hereby DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/19/2019 .

Nancy E Farley for Nancy E Farley
Carole E Farley for Carole E Farley
Nancy E Farley for Nancy E Farley
Carole E Farley for Carole E Farley
Drummond B Farley

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jun 20 12:27 PM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387



Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Lexington Common Pleas

Case Caption: Rachel Farley , plaintiff, et al VS Church of the Harvest of Columbia Inc

Case Number: 2016CP3200387

Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge

Certificate of Electronic Notification

Recipients

Jennifer Dowd Nichols - Notification transmitted on 06-20-2019 12:27:33 PM.

Robert Dibble - Notification transmitted on 06-20-2019 12:27:33 PM.

Brent Takach - Notification transmitted on 06-20-2019 12:27:33 PM.

S. Moore - Notification transmitted on 06-20-2019 12:27:33 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2016CP3200387

Official File Stamp: 06-20-2019 12:27:25 AM
Court: CIRCUIT COURT
Common Pleas
Lexington
Case Caption: Rachel Farley , plaintiff, et al VS Church of the
Harvest of Columbia Inc
Document(s) Submitted: Order Motion to Alter/Amend Denied
Order/Electronic Form 4
Filed by or on behalf of: Alison Lee

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Robert W. Dibble, Jr. for Church of the Harvest of
Columbia Inc
S. Jahue Moore for Rachel Farley, Rachel R
Farley
Brent Michael Takach for Church of the Harvest
of Columbia Inc
Jennifer Dowd Nichols for Church of the Harvest
of Columbia Inc

**The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:**

Nancy E Farley for Nancy E Farley
Carole E Farley for Carole E Farley
Nancy E Farley for Nancy E Farley
Carole E Farley for Carole E Farley

Drummond B Farley

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
)	
)	
Rachel Farley, as Trustee of the	)	CASE NO. 2016-CP-32-00387
Louise Farley Revocable Trust)	
Dated February 8, 2005; Drummond)	
B. Farley; Rachel R. Farley;)	
Carol E. Farley; Nancy E. Farley,)	
)	
	)	<u>REVISED</u>
	)	<u>ORDER DENYING PLAINTIFFS'</u>
Plaintiffs,	)	<u>MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT, GRANTING</u>
	)	<u>DEFENDANT'S MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT AND</u>
v.	)	<u>DISMISSING THE CASE WITH</u>
	)	<u>PREJUDICE</u>
)	
)	
The Church of the Harvest of Columbia,)	
Inc.,)	
)	
Defendant.)	

PROCEDURAL BACKGROUND

The Plaintiffs in this case are Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005 (the Trust), and Rachel R. Farley, Drummond B. Farley, Carol E. Farley and Nancy E. Farley, individually. The Trust owns a ten acre tract of land which is accessible only by way of an appurtenant easement over land of the Defendant (The Church). The individual Plaintiffs were joined as parties due to their equitable interest in the ten acre tract and the easement, both of which are subjects of this action. Louise Farley (Mrs. Farley) is the Trust's predecessor in title. Mrs. Farley and The Church entered into a contract in which she granted The Church an option to purchase a portion of her property. That contract is also a subject of this action.

This action was commenced on February 3, 2016.¹ The Plaintiffs assert six causes of action: breach of the contract; breach of the contract accompanied by a fraudulent act; gross negligence; trespass on the easement; a request for declaratory judgment and a request for

¹ No question has been raised as to the jurisdiction of this Court over the parties or the subject matter of this action or as to venue in Lexington County.



injunctive relief. The Plaintiffs² and the Defendant filed cross motions for summary judgment. The Church submitted multiple briefs, affidavits of Mr. Jumper (who is the the pastor of The Church), an affidavit of Mr. Sturkie (who examined the title to the ten acres) and exhibits in support of its motion. The Plaintiffs submitted multiple briefs and the deposition of Mr. Jumper in support of their motion, but they did not submit any affidavits either in support of their motion or in opposition to the Defendant's motion. Mr. Jumper's deposition testimony does not contradict the Defendant's affidavits and exhibits. Therefore, the relevant facts underlying this Order are uncontroverted.

The motions came before the Court for hearing on August 22, 2018. During the hearing, which lasted over two hours, each counsel made extensive arguments in support of the respective motions. After reading the briefs, Mr. Jumper's deposition, the affidavits and exhibits, considering the arguments of counsel, the Plaintiffs' Motion for Summary Judgment is DENIED and the Defendant's Motion for Summary Judgment is GRANTED.

LEGAL STANDARD

A motion for summary judgment shall be granted when there is no genuine dispute as to any material facts and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014). When the evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than being resolved at the summary judgment stage. *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009).

FACTUAL BACKGROUND AND DISCUSSION

Mrs. Farley owned approximately Nineteen (19) acres of land in Lexington County on the South side of U.S. Highway 378. Jumper Aff. 7/20/18 ¶2. In 1994, The Church became interested

² The Plaintiffs' motion for summary judgment was filed only on behalf of the Trust and Rachel R. Farley. The Trust holds legal title to the ten acres. The individual Plaintiffs have an equitable interest in that property arising from the unfulfilled obligation of the Trustee to distribute that property to the beneficiaries of the Trust within two years following the death of Mrs. Farley which occurred in 2012. See, Defendants motion to join the individual Plaintiffs as parties pursuant to Rule 19, SCRPC, the brief in support of that motion and the Order granting that motion. The individual Plaintiffs are thus in privity with the moving parties, *First Nat. Bank of Greenville v. U. S. Fidelity & Guaranty Co.*, 207 S. C. 15, 35 S. E. 2d 47 (1945), and they are therefore bound by the terms of this Order. *Manning v. South Carolina Dept. of Highways*, 914 F.2d 44 (4th Cir. 1990), *Bailey v. U. S. Fidelity & Guaranty Co.*, 185 S. C. 169, 193 S. E, 2d 638 (1937). The Defendant's motion for summary judgment was filed after the individual Plaintiffs were joined as parties.

in purchasing approximately eight (8) acres of her property. *Id.* The eight (8) acres were to be divided into 3 Phases: Phase I (tract A) containing 2.864 acres; Phase II (tract B) containing 2.584 acres; and Phase III (tracts C-1 and C-2) containing 2.624 acres. *Id.* at ¶4.

The Church and Mrs. Farley entered into an agreement (the Agreement) on October 11, 1994. Jumper Aff. 7/20/18 ¶2. Mrs. Farley was represented by Mr. H. Ray Ham, Esq. *Id.* The Church did not employ independent counsel. *Id.* The Agreement, prepared by Mr. Ham, granted The Church the option of buying the three tracts over time. *Id.* The Agreement required The Church to obtain a plat to be attached to the Agreement as an exhibit, and The Church did so in a timely fashion. *Id.* at ¶3. That plat is recorded at Slide 84 plat 7B. *Id.* At the same time, Mrs. Farley and The Church also executed a “Memorandum of Agreement” in which Mrs. Farley agreed to make a charitable contribution of \$50,000.00 to The Church if The Church bought all three tracts. *Id.* at ¶5.

The remainder of Mrs. Farley’s property (ten acres) would be landlocked if The Church purchased all three tracts. To avoid this, the Agreement contained a provision allowing her to retain a fifty-foot easement (herein referred to as “the 50-foot easement”) over Phase I (tract A) for access to the ten acres.³ *Id.* at ¶6.

The Church closed the purchase of Phase I (tract A) in Mr. Ham’s office on December 2, 1994. *Id.* at ¶7. Mrs. Farley executed and delivered to The Church a deed conveying Phase I containing 2.864 acres as shown on the plat recorded in Slide 84 Plat 7B. *Id.* The purchase price for Phase I was \$162,000.00. *Id.* At the closing The Church paid Mrs. Farley \$40,000.00 and executed and delivered to her a note in the amount of \$122,000.00. *Id.* The note contained a provision granting The Church “the right to prepay any amounts of principal or accrued interest at any time, without penalty.” *Id.* at ¶17. To secure payment of that note, The Church executed and delivered to Mrs. Farley a purchase money mortgage. *Id.* at ¶7. Mrs. Farley retained the 50-foot easement across Phase I for her initial access to her remaining land pursuant to the terms of the Agreement. See Exhibit 3 to Jumper Aff. 8/1/18.

In 1998, The Church exercised its option to purchase Phase II and Phase III and commissioned and obtained a plat showing all three Phases in the eight (8) acres. Jumper Aff. 7/20/18 at ¶8. That plat is recorded in Book 436 at Page 8. *Id.* Mrs. Farley was represented by

³ The Agreement also contained a provision requiring The Church to relocate a fence belonging to Mrs. Farley. The Church has never moved the fence.

Mr. Ham in connection with the sale of Phases II and III. Jumper Aff. 7/20/18 ¶8. The Church did not employ independent counsel, however it did pay a portion of Mr. Ham's fees. Id.

Pursuant to the terms of the Agreement, the purchase price for each Phase was \$162,000.00, making the total purchase price for Phase II and Phase III \$324,000.00. Id at ¶10. The closing of the sale of Phase II and Phase III took place in Mr. Ham's office on December 1, 1998. Id. at ¶11. At the closing, Mrs. Farley executed and delivered to The Church a deed conveying Phase II containing 2.584 acres and Phase III containing 2.624 acres as shown on the plat recorded in Book 436 at Page 8. Id. The consideration in the deed is \$274,000.00 which reflects a reduction of \$50,000.00 in the purchase price of Phase II and Phase III. Id. at ¶10. In exchange for the deed, The Church executed and delivered to Mrs. Farley a note in the amount of \$274,000.00. Id. at ¶12. To secure payment of that note, The Church executed and delivered to Mrs. Farley a purchase money mortgage. Id.

Under the terms of the Agreement, provided The Church bought Phase II, The Church had the option of either (1) increasing the width of the 50-foot easement to 66 feet or (2) relocating the 50-foot easement by granting to Mrs. Farley a 66 foot wide easement along the Western boundary of Phase II and Phase III (Tracts 2 and C-1) for access to her remaining ten (10) acres. Id. at ¶13. When The Church purchased Phase II and Phase III it elected to relocate the 50-foot easement. This election was consummated when Mrs. Farley, in the deed to Phase II and Phase III, reserved to herself, her heirs and assigns, an easement for ingress and egress 66 feet in width across, over through and along the Western boundary of Phase II and Phase III as shown on the plat recorded in Book 436 at Page 8. See Exhibit G to Jumper Aff. 8/1/18.⁴

Early in 2001, The Church paid the 1998 note in the amount of \$274,000.00 in full. Id. at ¶15. On March 16, 2001 Mrs. Farley satisfied the mortgage securing that note. Id. The satisfaction was witnessed by Mr. Ham and was filed on March 29, 2001. See Exhibit J to Jumper Aff. 8/1/18. At the same time, The Church exercised its right to prepay the 1994 note in the amount of \$122,000.00. On March 30, 2001, Mrs. Farley satisfied the mortgage securing the note for \$122,000.00. Jumper Aff. 7/20/18 ¶17; see Exhibit K to Jumper Aff. 8/1/18. The satisfaction was recorded on April 2, 2001. Id.

⁴ This election was confirmed by the grant by The Church of the same easement to Mrs. Farley, her heirs and assigns. The easement is recorded in Book 4994 at Page 253. This Court takes judicial notice of this document pursuant to Rule 201(b), (c), and (f), SCRE.

Thus, as of April 2, 2001, all of the obligations under the terms of the Agreement and the Memorandum of Agreement had been performed⁵, and the Agreement and the Memorandum of Agreement had both been fully consummated: (1) Mrs. Farley had satisfied her commitment to make a charitable contribution of \$50,000.00 to The Church by reducing the purchase price of Phase II and Phase III from \$324,000.00 down to \$274,000.00; (2) the 1994 note for \$122,000.00 and the note for \$274,000.00 had each been paid in full, (3) the mortgage securing each note had been satisfied; (4) the 50-foot easement had been relocated to the Western side of The Church property and expanded to 66 feet in width; and (5) Mrs. Farley, her heirs and assigns, held, by both reservation and grant, an easement 66 feet in width along the Western boundary of Phase II and Phase III.

BREACH OF CONTRACT CLAIMS

The period of limitation applicable to a cause action for breach of contract begins to run when a party knows, or with the exercise of reasonable diligence should have known, that a cause of action might exist. Anonymous Taxpayer v. South Carolina Dept. of Rev., 377 S.C. 425, 661 S.E. 2d 73 (2008). Mrs. Farley had personal knowledge of each of the events which took place between October of 1994 and April of 2001. She participated in each of them. With the exercise of reasonable diligence, she should have been aware of the failure of The Church to move her fence. Mrs. Farley and The Church were the only parties to the Agreement. See Exhibit A to Jumper Aff. 7/20/18. Any cause of action against The Church for breach of the Agreement belonged only to Mrs. Farley. By the time of her death in 2012, see Exhibit C to Sturkie Aff. 8/14/18, Mrs. Farley knew of, or with the exercise of reasonable diligence, should have known of (1) the occurrence of each of those events; (2) every consequence resulting from those events; (3) every wrongful act or omission of The Church; (4) every consequence arising from each wrongful act or omission of The Church; and (5) each and every cause of action she had or may have had against The Church for either a breach of the Agreement or for any wrongful act or omission of The Church related to or arising under the Agreement or any consequence arising from those acts of omissions.⁶ The three-year statute is applicable to each of those causes of action: (“ . . . an

⁵ The obligation to move the fence arose on October 11, 1994, and the applicable statute of limitations has long since expired.

⁶ The Plaintiffs complain that The Church committed fraud by insisting that Mrs. Farley accept early payment of the \$274,000.00 note. However, Mrs. Farley had every right to refuse the proffered payment since that note did not contain a provision granting The Church prepayment rights, however, notwithstanding her right to refuse the payment,

action upon a contract” and “. . . an action . . . upon a liability, express or implied” §15-3-530(1)), and that period of limitation expired well before this action was commenced in February of 2016.⁷

BREACH OF CONTRACT WITH FRAUDULENT ACT

The Plaintiffs have also alleged that each breach of the Agreement by The Church giving rise to a cause of action in favor of Mrs. Farley was accompanied by a fraudulent act. Under South Carolina law, the cause of action for breach of contract accompanied by a fraudulent act sounds in contract. Harper v. Etheredge, 290 S.C. 112, 348 S.E. 2d 374, 378 (1986), Peoples v. Orkin Exterminating Co., 244 S.C. 173, 135 S.E. 2d 845 (1964), Wilson Group, Inc., v. Quorum Health Resources, Inc., 880 F. Supp. 416, 424 n.6 (D.S.C. 1995). As noted above, each alleged breach of the contract occurred and was known, or should have been known, to Mrs. Farley prior to her death and well prior to the commencement of this action. The same is true with respect to her knowledge of the consequences of each of those alleged breaches. Therefore, any cause of action for breach of contract accompanied by a fraudulent act based upon those alleged breaches of contract, or any of them, by The Church are also barred by the three-year statute set out in §15-5-530(1) and cannot be maintained.⁸

The Trust came into existence on February 8, 2005. See Exhibit A to Sturkie Aff. Mrs. Farley was the Trustee of the Trust, Id., and her personal knowledge of prior events was imputed

she accepted the money and satisfied the mortgage securing that note. Mrs. Farley was represented by Mr. Ham at the time the note was paid, and he witnessed the satisfaction of the mortgage. Under those circumstances, it is difficult to find wrongdoing on the part of The Church in connection with that event. But even if The Church committed the alleged fraud, Mrs. Farley and Mr. Ham were aware of that fraud in 2001, and, to the extent any cause of action she may have had against The Church in that regard is not barred by the applicable statute of limitations, it did not survive her death in 2012. See S.C. Code Ann. §15-5-90.

⁷To the extent any of those causes of action survived Mrs. Farley’s death, they passed to her Estate. Mrs. Farley passed away on March 27, 2012. Her estate was initially named as a Plaintiff in this case, but the Estate was dismissed with the consent of Counsel for the Estate. None of the remaining Plaintiffs has standing to maintain those actions, and, in any event, the Estate would have taken those causes of action subject to the expired statute of limitations. See n. 10, infra.

⁸ To the extent those claims sound in fraud, they cannot be maintained by the Plaintiffs. Mrs. Farley passed away on March 27, 2012. Any claim she had against The Church based on fraud did not survive her death. S. C. Code Ann. §15-5-90; Brailsford v Brailsford, 380 S.C. 443, 669 S.E. 2d 342 (Ct. App. 2008) (“Dismissal of claim was warranted even though the causes of action were based on acts against the beneficiary prior to his death; actions for fraud and deceit were exempted from the survivability statute [15-5-90]”).

to the Trust.⁹ Her children (the four individual Plaintiffs) were the beneficiaries of the Trust. See n. 2, supra. By deed dated March 8, 2005 and recorded in Deed Book 9960 at page 286, Mrs. Farley conveyed the ten (10) acre tract together with the appurtenant 66-foot easement to herself as Trustee for the Trust. See Exhibit A to Sturkie Aff. The deed did not contain any assignment or transfer of any cause of action Mrs. Farley had or may have had against The Church to either (1) the Trust, (2) the Trustee or (3) the beneficiaries of the Trust. *Id.* Those causes of action, to the extent they existed, remained with her. Therefore, neither the Trust nor the Trustee acting for the Trust nor the beneficiaries of the Trust, individually or collectively, has standing to bring any cause of action Mrs. Farley had or may have had against The Church, and those claims must be dismissed on that ground also.¹⁰

NEGLIGENCE

The Plaintiffs have also alleged that The Church was grossly negligent, committed a trespass on the easement and reduced the value of the ten acre tract by (1) constructing a building and two parking lots which impermissibly encroach on and obstruct the use of the 66-foot easement for access to the ten acre tract and (2) by concentrating the discharge of ground water from the property of The Church onto the ten acre tract. The evidence in the record establishes that The Church, between 2006 and 2008, paved a portion of the 66-foot easement reserved by Mrs. Farley, constructed an entrance into the easement from highway 378 and marked off several parking areas on the paved portion of the easement. *Jumper Aff.* 7/20/18 ¶19. Each of those events occurred after the Trust acquired the ten acres and the 66-foot easement. Mrs. Farley continued as the Trustee of the Trust until her death in 2012. See Plaintiffs' brief 8/21/18 p. 2. The evidence in the

⁹ Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1943 (“... ‘notice’ to an agent acting within the scope of his authority is notice to the principal if such notice relates to the business or transaction in which the agent is authorized to act for the principal and the matter is one over which his authority extends.”)); Wimberley v Sovereign Camp W.O.W., 190 S.C. 158, 2 S.E. 2d 532d (1939); Blowers v. Southern Ry. Co., 74 S.C. 221, 54 S.E. 368 (1906). The same is true when the knowledge of the agent is acquired prior to the commencement of the relationship. McSweeney v. Prudential Ins. Co of America, 128 F.2d 660 (4th Cir. 1942) cert. den. 317 U.S. 658.

¹⁰ The Trust did not come into existence until February 8, 2005. Therefore, even if those causes of action had been assigned or transferred to the Trust, the Trustee or the beneficiaries of the Trust in 2005 or thereafter, those causes of action remained barred by the three-year statute of limitations. An assignee of a cause of action takes it subject to all existing impediments. Hughey v. Mooney, 282 S. C. 597, S.E. 2d 475 (Ct. App. 1984) (“The Court went on to hold that the ‘causes of action for rescission or cancellation of a deed or contract descends to the heirs if they existed in the ancestor unimpaired at the time of his death.’”) (*Emphasis added*). If that was not the case, the right to bring suit on a cause of action could be extended forever by subsequent, seriatim assignments. The same is true with regard to successive trustees. The right to bring suit on a cause of action cannot be extended beyond the applicable limiting statute simply by appointing successive trustees each of whom has no personal knowledge of past events.

record also establishes that Mrs. Farley was aware of the construction of the parking lots in 2005, and during that year, she raised with The Church concerns about damage to the ten acre tract caused by the runoff and other associated construction on the property of The Church. Jumper Aff. 8/17/18 and Exhibits attached thereto. The issues relating to the discharge of ground water were resolved in 2006 when the construction of the parking lots and the driveway from Highway 378 into the 66-foot easement was completed. *Id.* Finally, the record before me also establishes that the building which encroaches on the easement was built in 2009. Jumper Aff. 7/20/18 ¶18.

The evidence in the record establishes (1) the location of the 66-foot easement, (2) the location of the parking lots on the easement, (3) the location of the driveway from Highway 378 into the easement, (4) the paving of a portion of the easement, (5) the marking of parking spaces in the paved portion of a parking lot on the easement (6) the location of the building on the easement and (7) the timing of the construction of each of those encroachments. The record also establishes the nature, existence and extent of each of the alleged encroachments (the driveway, the parking lots and the building). The existence of each of those encroachments was obvious after each was in place in 2008 and 2009 respectively. Mrs. Farley, as Trustee, knew, or with the exercise of reasonable diligence should have known, those encroachments existed prior to her death in 2012. She knew of the ground water discharge issue in 2005. Thus, the existence of (1) any claim for damage to the ten acre tract due to concentrated discharge of ground water, (2) any claim for damage to the easement or the value of the ten acre tract due to the encroachments on and obstruction of the easement and (3) any claim for negligence and for trespass on the easement was known, or should have been known, to the Trust prior to Mrs. Farley's death in 2012. Each of those claims is therefore barred by the three-year statute of limitations. See, §15-3-530(1) ("an action upon . . . a liability, express or implied . . .") and §15-3-530(3) ("an action for trespass upon or damage to real property").

TRESPASS

To recover on a cause of action for trespass, a plaintiff must establish the intent to trespass on the part of the alleged trespasser. The Plaintiffs submitted the deposition of Mr. Jumper in support of their motion. He testified that The Church did not know the building encroached on the easement. The Plaintiffs conceded with regard to both the parking lots and the building that "in both instances the Church's encroachment was unintended . . ." Plaintiffs' brief 8/20/18 p. 1. Thus, there is no evidence in the record that The Church intended to invade the Plaintiffs' interest

in either the ten acre tract or the easement. Therefore, the cause of action for trespass must be dismissed. To the extent the unintentional encroachment was the result of negligence on the part of The Church, any resulting claim is also barred by the three-year statute. §15-3-530(1). Therefore, any cause of action for negligence (or for negligent trespass) must be dismissed on that ground also. See Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E. 2d 563 (Ct. App. 2001)¹¹

NUISANCE

Plaintiffs also argue that the three encroachments constitute a nuisance. A nuisance is a "substantial and unreasonable interference with the Plaintiff's use and enjoyment of his property" Sylvester, supra. A continuing nuisance has been described as "nuisance that is intermittent or periodical, although not necessarily constant or unceasing." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E. 2d 327 (Ct. App. 2001). Plaintiffs assert that the encroachments constitute a continuing nuisance which, because of their continuous nature and if they are not abated, gives rise to a new cause of action each day. This Court disagrees and finds to the contrary that, to the extent the encroachments constitute a nuisance at all, they constitute a permanent nuisance. "A permanent nuisance may be expected to continue but is presumed to continue permanently, with no possibility of abatement." Id. A permanent nuisance may only be addressed for damages by one cause of action (not continuous), and such an action is barred if not brought within the statutory period after the first actionable injury. See Silvester, 543 S.E. 2d at 567. A permanent building, a paved driveway and two parking lots, to the extent each is a nuisance at all, constitute a permanent nuisance. Knowledge of the existence of such obvious encroachments on the easement is not subject to the discovery rule. Thus, the three-year statute of limitations, §15-3-530(3), is applicable, and, to the extent the complaint contains a cause of action for nuisance, that cause of action must also be dismissed.

EASEMENT

As a predicate for their case, the Plaintiffs assert that Mrs. Farley had, and that they now have, an express easement. This Court agrees, but the means by which the easement came into being, whether it arose as a matter of law, or by reservation, or by prescription, or by implication

¹¹ Mrs. Farley never, in any capacity, brought an action against The Church. The case at bar was instituted by the Trust and others fifteen years after the Agreement and Memorandum of Agreement were consummated, eight years after the parking lots were built, seven years after the building was constructed and almost four years after the death of Mrs. Farley.

or by grant, has no effect on the application of the appropriate statute of limitations to the causes of action pressed by the Plaintiff in this case.¹²

The Plaintiffs also argue that The Church “cannot establish that the Farley easement was terminated, Plaintiffs’ brief 8/20/19 p. 2, and that the claim of The Church “of prescription fails as a matter of law.” Id. at 3. The Court need not address these arguments. The Church has not asserted either that the easement has been terminated or that it has a prescriptive right to encroach on the easement. It is the position of The Church that the causes of action relating to the encroachments are forever barred, and this Court finds this position to be correct under the facts of this case.

The Plaintiffs also argue that The Church cannot establish a right to obstruct the easement under the doctrine of adverse possession because Mrs. Farley gave The Church permission to build the driveway, the parking lots and the building on the easement. Id. The Court need not address this argument. The Church has not asserted such a right, and there is nothing in the record to establish the assertion that Mrs. Farley ever gave The Church permission to encroach on the easement.¹³

RIGHT OF FIRST REFUSAL

The Agreement contained a provision granting The Church a right of first refusal to purchase the ten acre tract. See Exhibit A to Jumper Aff. 7/20/18. The Plaintiffs contend that The Church has wrongfully insisted upon exercising that right. However, the record establishes that the Plaintiffs have never submitted a binding contract for the sale of the ten acres to The Church which would give rise to the opportunity of exercising that right. Jumper Aff. 8/1/18 ¶2. Therefore, neither the claim for damage based on the wrongful insistence upon the right of first refusal nor

¹² Plaintiffs then argue that the express easement may be terminated as the result of the adverse use of the easement by the servient estate “for the period of prescription.” The Court need not address this issue. Twenty years have not elapsed since the encroachments were completed and, in any event, there is no evidence in the record of the adverse use of the building, the parking lots and the driveway by the Plaintiffs. The Plaintiffs have offered no evidence that The Church objects to the use of the driveway or the parking lots by the Plaintiffs. Therefore, any use of the driveway and the parking lots on the easement by the Plaintiffs is permissive.

¹³ Any testimony in that regard would be barred by the provisions of §19-11-20, commonly referred to as “the dead man’s statute.”

the claim that the right of first refusal is invalid is ripe for adjudication, and those claims are dismissed.¹⁴

STATUTE OF LIMITATIONS UNDER SECTION 15-3-340

Finally, the Plaintiffs assert that the ten-year statute of limitations set out in §15-3-340 is applicable here. That limitation applies to “an action for the recovery of real property” The Plaintiffs do not seek in this action “to remove [a] cloud on [their] title.” See, Unpublished Op. No. 2008-UP-153. The gravamen of the Plaintiffs’ claims in this action is the recovery of (1) damage for the diminution in value of the ten (10) acres, (2) damage for breach of contract (with and without a fraudulent act), (3) damage for fraud, (4) damage for trespass, (5) damage for negligence, and (6) damage for the encroachments on the easement. Those claims bring this action squarely within the scope of the three-year statute set out in §15-3-530(1) (“an action upon a contract, obligation, or liability, express or implied”) and §15-3-530(3) (“an action for trespass upon or damage to real property;”) There are no issues of title in this case. The Plaintiffs do not contest the fee ownership by The Church of its land, and The Church does not contest the validity, existence or the Plaintiffs’ ownership of the easement. This is an action for breach of contract, fraud, trespass and negligence. It is not an action to remove a cloud on the Plaintiffs’ property or an “action to recover real property.” Under these circumstances, the limitation set out in §15-3-340 is not applicable.

¹⁴ See n. 15, *infra*. In addition, this Court cannot understand why such a claim could ever be maintained. If the Plaintiffs obtain a binding contract to sell the ten acres at a price acceptable to them and submit that contract to The Church to trigger the right of first refusal, the Plaintiffs would receive the acceptable sale price from either The Church, if it exercised its right of first refusal, or from the buyer, if The Church declined to buy the land. In either event, the Plaintiffs would receive the benefit of their bargain under the terms of the acceptable contract and would suffer no loss.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED,**

1. Plaintiffs' Motion for Summary Judgment is **DENIED**;
2. Defendant's Motion for Summary Judgment is **GRANTED**;
3. The Complaint, each of the causes of action set forth therein and those causes of action referred to in this Order are **Dismissed with Prejudice**, and this case is forever ended.¹⁵

AND IT IS SO ORDERED.

Signature page to follow

¹⁵ The claims related to the wrongful exercise and validity of the right of first refusal are not ripe for adjudication, and those causes of action are dismissed without prejudice. Under the facts and circumstances of this action and the applicable law, the Plaintiffs are not entitled to their remaining requests for declaratory judgment or their request for injunctive relief, and those causes of action are dismissed with prejudice.



Lexington Common Pleas

Case Caption: Rachel Farley , plaintiff, et al VS Church of the Harvest of Columbia Inc

Case Number: 2016CP3200387

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Rachel Farley, as Trustee of the Estate)
Louise Farley Revocable Trust)
Dated February 8, 2005; Drummond B.)
Farley; Rachel R. Farley; Carol E. Farley;)
Nancy E. Farley,)

C.A. No.: 2016-CP-32-00387

Plaintiffs,)

vs.)

MOTION FOR RECONSIDERATION

The Church of the Harvest of Columbia, Inc.)

Defendant.)

TO: ROBERT W. DIBBLE, JR., ESQUIRE, COUNSEL FOR THE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof or as soon thereafter as counsel can be heard, the undersigned, as counsel for the Plaintiff, Rachel Farley, will move before the Court for reconsideration of its Order dated July 23, 2019 and order the easement location be cleared of the Defendant's building and parking lot.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF
RACHEL FARLEY

West Columbia, South Carolina
August 2, 2019



STATE OF SOUTH CAROL.
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN CIVIL CASE

CASE NO. 2016CP3200387

Rachel Farley et al
PLAINTIFF(S)

Church of the Harvest of Columbia Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court on Plaintiff's Motion for Reconsideration filed on August 2, 2019 by Plaintiff. Defendant filed a response to the motion and Plaintiff sent letters providing additional information. The letters will be filed for the record. This Court has reviewed the documents filed as well as the Revised Order filed July 23, 2019. Based upon the information presented, the claims raised by Plaintiff, including easement, trespass, and nuisance, were fully addressed in the Order. See pages 8-10 and various footnotes. This Court is unable to discover any new material fact or principle of law that was overlooked or warrants further reconsideration. The Motion for Reconsideration is DENIED. In the Court's discretion, oral argument is not necessary. Rule 59(f), SCRPC.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/12/2019 .

Nancy E Farley for Nancy E Farley
Carole E Farley for Carole E Farley
Nancy E Farley for Nancy E Farley
Carole E Farley for Carole E Farley
Drummond B Farley

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Lexington Common Pleas

Case Caption: Rachel Farley , plaintiff, et al VS Church of the Harvest of Columbia
Inc
Case Number: 2016CP3200387
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2016-CP-32-00387

Rachel Farley's Trustee of the Louise Farley Revocable Trust
Dated February 8, 2005; Drummond B. Farley; Rachel R.
Farley; Carol E. Farley; & Nancy E. Farley,Appellant,


v.

Church of the Harvest of Columbia, Inc.,Respondent.

NOTICE OF APPEAL

Rachel Farley, et al., appeals the order of the Honorable Alison Renee Lee dated September 12, 2019. Appellant received notice of entry of this order on September 12, 2019.

September 23, 2019.

By: 
Moore Taylor Law Firm
S. Jahue Moore
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
803-796-9160
jake@mtflaw.com
Attorney for Appellant



Other Counsel of Record:

Robert W. Dibble, Jr., Esq.
PO Box 1000
Chapin, SC 29036
803-345-3353
Attorney for Respondent.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005;
Drummond B. Farley; Rachel R. Farley; Carol E. Farley; and Nancy E. Farley, Appellants,

v.

Church of the Harvest of Columbia, Inc., Respondent.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on October 15, 2019 she caused the *Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities* to be sent via United States Postal Service, first class mail, with adequate postage prepaid to the parties listed below:

S. Jahue Moore
Moore Taylor Law Firm
Post Office Box 5709
West Columbia, SC 29171

Drummond B. Farley
742 C. Avenue
West Columbia, SC 29169

Carol E. Farley
Post Office Box 1570
Johns Island, SC 29457

Nancy E. Farley
Post Office Box 1570
Johns Island, SC 29457


Rebecca D. Baker

Chapin, South Carolina
October 15, 2019



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005;
Drummond B. Farley; Rachel R. Farley; Carol E. Farley; and Nancy E. Farley, Appellants,

v.

Church of the Harvest of Columbia, Inc., Respondent.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

RECEIVED
OCT 16 2019
SC Court of Appeals

Appellate Case No. 2019-001609

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v.

Church of the Harvest of Columbia, Inc., Respondent.

CERTIFICATE OF SERVICE

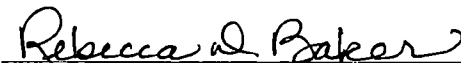
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Chapin, South Carolina
October 15, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

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Appellate Case No. 2019-001609

OCT 16 2019

SC Court of Appeals

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005;
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v.

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Nancy E. Farley
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Johns Island, SC 29457


Rebecca D. Baker

Chapin, South Carolina
October 15, 2019



**HARRELL, MARTIN
& PEACE, P.A.**
ATTORNEYS AT LAW

L.K. "Trey" Harrell, III
Jeremy C. Martin
M. Alan Peace **
Taylor A. Peace
Andrea "Andi" Cornelison

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III *

*Of Counsel
**Certified Mediator/Arbitrator

October 15, 2019

RECEIVED

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

OCT 16 2019

SC Court of Appeals

RE: Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; Drummond B. Farley; Carol E. Farley; and Nancy E. Farley v. Church of the Harvest of Columbia, Inc.
Appellate Case No. 2019-001609
Our File No. 3303.28245

Dear Ms. Kitchings:

Enclosed you will find the original and seven copies of the following documents in the above-referenced matter:

1. Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities; and
2. Affidavit in Support of Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities.

I respectfully ask that you please file/retain the original and six copies of each document, returning clocked-in copies to my attention in the envelope provided. I have enclosed our check in the amount of \$50.00 in payment of the motion filing fee.

By copy of this letter, I am serving a copy of these documents upon all parties of record.

Jenay Abbott Kitchings, Clerk of Court

October 15, 2019

Page 2 of 2

Thank you in advance for your time and attention to this matter. If you have any questions or need anything further in order to have these documents filed, please do not hesitate to contact me directly at 803-298-2105.

Very truly yours,



Rebecca D. Baker

Paralegal to Robert W. Dibble, Jr.

/rdb

Enclosures

cc: S. Jahue Moore, Esquire
Mr. Drummond B. Farley
Ms. Carol E. Farley
Ms. Nancy E. Farley



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Harrell, Martin & Peace, P.A.
 Attn: Becky Baker, Paralegal
 P.O. Box 1000
 Chapin, SC 29016

To: Jenny Abbott Kitchings, Clerk of Court
 South Carolina Court of Appeals
 Post Office Box 11629
 Columbia, SC 29211

RECEIVED
 OCT 18 2019
 SC Court of Appeals

EXPECTED DELIVERY DAY: 10/16/19
USPS TRACKING NUMBER

 9505 5134 3701 9288 3710 38