

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

RECEIVED

AUG 18 2017

STEPHEN A. SPITZ, SPECIAL REFEREE

SC Court of Appeals

APPELLATE CASE NO.: 2016-001878
CASE NO.: 2015-CP-07-1931

JULIA TOMPKINS EWING,

Respondent,

vs.

KEITH A. GUEST and STEPHANIE C. GUEST and
PLEASANT POINT PROPERTY OWNERS ASSOCIATION, INC.,

Defendants

OF WHOM

KEITH A. GUEST and STEPHANIE C. GUEST are

Appellants.

RECORD ON APPEAL
VOLUME I

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-1931

Julia Tompkins Ewing

Keith A Guest and Stephanie C. Guest

PLAINTIFF(S)

Pleasant Point Property Owners Association,
Inc.

DEFENDANT(S)

Submitted by: Stephen A. Spitz, Special Referee
S.C. Bar Number 5287
Of Counsel
Stevens & Lee
151 Meeting Street
Suite 350
Charleston, S.C. 29401

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Julia Tompkins Ewing	Keith A Guest and Stephanie C Guest	\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
Beaufort County RMC Office in Plat Book 18 at Page 45 (Subdivision Plat Dated December 4, 1969)
Beaufort County RMC Office in Plat Book 60 at Page 122 (Subdivision Plat 1997)

000001

Stephen A. Spitz.
~~Circuit Court Judge~~
Appointed Special Referee

Date Aug 8 / 2016

This judgment was entered on the 12 day of Aug, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 10th day of Aug, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Marlene Hengard
Judicial Clerk

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

State of South Carolina)
County of Beaufort)
)
Julia Tompkins Ewing,)
Plaintiff)
vs.)
)
Keith A. Guest and Stephanie)
C. Guest and Pleasant Point)
Property Owners Association,)
Inc.)
Defendants)
_____)

Court of Common Pleas
Case No. 2015-CP-07-1931

**Special Referee's Supplemental
Second Final Order Aug 8, 2016**

2016 AUG 12 PM 4:51
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
SOUTH CAROLINA

As background, this case was referred to me to become the Special Referee, by both the consent of the parties and by Circuit Court Order. I held a hearing on Jan 20, 2016; the Plaintiff and the Defendants and their respective counsel were all present and each side presented evidence and exhibits and arguments.

On or about March 25, 2016, I filed of record an Original Order (Hereinafter "First Final Order") resolving the case. Subsequently, both sides timely filed Motions to Reconsider. On May 20, 2016, I held a second hearing on the Post-Trial Motions, where again each side presented a variety of arguments and introduced a number of exhibits.

Thereafter, Plaintiff's filed a "Memorandum with Regard to Post-Trial Motions" on or about June 27, 2016 and then the Defendants, Keith A. Guest and Stephanie C. Guest filed a "Post-Trial Brief of Defendants, Keith and Stephanie Guest" on or about July 22, 2016. All motions were filed in a timely manner as I granted some minor extensions of time due to various circumstances that, at least in my opinion, fully warranted brief extensions of time under the specific circumstances.

As one would fully expect, because this case has excellent lawyers on both sides of the case, the post-trial memorandums by each side are very well briefed, well-written, and well-argued. I commend the lawyers in this case for being very cordial with each other, highly professional at all-times, and very skilled and competent at their craft throughout these proceedings. It has been a professional and personal pleasure to be a Special Referee.

SAS, pg 1

I have now had the opportunity to carefully review the arguments and evidence introduced at the May 20th hearing and to read all the Memorandums of Law and exhibits referenced by both sides and this Supplemental Order (Hereinafter the "Second Final Order") follows.

This Second Final Order is designed to discuss and explain various aspects of my prior First Order and it also addresses some new arguments made by each party¹ at the May 20, 2016 hearing and in their subsequent Memorandums of Law.

Turning to those arguments and concerns:

1. The Defendants Guests argue that Lot 1's true intended access was exclusively from Sussex Court. While I think this argument is well done, I respectfully disagree. I continue to find, as I did in the First Order, that there is credible evidence in the record --- that as depicted on the original subdivision plat of the entire subdivision --- an easement existed, as claimed by the Plaintiff. See, merely as one of several examples in support of this conclusion the uncontested testimony of a licensed land surveyor called by the Plaintiff in support of her position. I also note that the Plaintiff testified that access was never through Sussex Court. See Trial Transcript, Pgs. 113 and 114.

2. The Defendants also argue that the grant to General Tompkins of an easement in 1974 changed what the Plaintiffs had been using at the time of their purchase and was, in effect, a replacement or a substitute for the easement created by the original subdivision plat. Again, I continue to disagree with this argument. In general, property rights are fixed at the time of purchase. And, when something is intended to substitute or replace a prior vested existing property right, words expressing that very specific intent are needed in any subsequent document. In the absence of such specific intent, and words clearly hinting that a substitution was intended, I find that intent and the specific words needed lacking in the 1974 trapezoid easement, and thus I continue to agree with the Plaintiff that the 1974 easement was not ever intended to be a true substitute for the original easement².

¹ Pleasant Point Property Owners Association, Inc. is still very much a part of this case, should they choose to further participate hereafter on appeal but they were not present at the post-trial May 20, 2016 hearing.

² Of course, the easements are vastly different. One is merely a life estate while the other appears to be an easement appurtenant that runs with the land and runs to subsequent owners and purchasers.

3. The Defendants Guests next argue that a number of subsequent plats do not show the original easement found on the original plat. There is no question but the Defendants arguments on this point are factually accurate – there are a number of subsequent plats that do not show the road.

3a. But, the question of law that is then raised, deals with parties, like the Plaintiffs, who continue to reply upon an original plat which they initially acquired their property. Can subsequent plats, by others that the Plaintiffs have not been parties to or agreed with or consented to dislodge and displace a prior property right that a purchaser acquired in their initial purchase? In some instances, the answer to this question may be “yes” based upon express mutual consent by all relevant parties, including the original purchaser, or by adverse possession, or by subsequent acts of eminent domain, or so on. However, is there anything in this specific record that qualifies to divest and displace a prior vested property right? I don’t find that merely subsequent plats placed on the record **by others** without the prior person’s consent has that legal effect.

3b. So, although the number of subsequent plats that no longer show the former road is admittedly of some concern, it is simply – by itself – insufficient in my own mind to displace a prior vested property right. If I am wrong (and I certainly do not claim to always be right in all property matters) an appellate court will undoubtedly correct my error(s).

4. Did I, as claimed by the Defendant’s excellent counsel, make a further error by **sua sponte** granting the Plaintiff’s a prescriptive easement that was neither pled nor proven? First, if I did in fact do this and further if it is a true error, I genuinely and personally apologize to the Defendants and their counsel and I would immediately correct the First Order by ordering in this Second Order the deletion of the entire discussion of prescriptive rights found in the First Order. But, I am not at all sure that this act really was done by me in a sua sponte manner for all of the following reasons:

4a. First, I am absolutely certain that I did not come up with this argument on my own. I very carefully read and reviewed the closing arguments in the original trial (by both sides) and I immediately noticed the argument, albeit a brief one, by the Plaintiff’s counsel, Mr. Tedder, that there was “probably a prescriptive easement” Trial Hearing, Closing Argument Pg. 261: 13. The argument about prescriptive easement, in short, came from the Plaintiffs not this Special Referee.

4b. I also reviewed the Beaufort County Court Records concerning this case filed on the Internet. I found and read the Summon and Complaint in this case and I noticed that the Plaintiff's Complaint pled, as its very First Cause of Action, a Declaratory Judgment (See Plaintiff Original Complaint, Paragraph 33). I find of further great significance that the Defendant Guests, in their filed Answer and Counterclaim, admitted the allegations found in Plaintiff's paragraph 33 found in her Complaint and that the Defendants actually "join[ed] in the request that this Court declare the respective rights of the parties." See Defendants First Defense to the First Cause of Action. Defendants Answer and Counterclaim, Pg. 5, Paragraph 33. This also strongly supports that this is not a Sue Sponte act by this special Referee but an act taken with the express consent of both parties.

4c. Am Jur.2d, Declaratory Judgments, Section 153 states, "that declaratory judgments are commonly used in resolving controversies over easements." And that "a declaratory judgment may be brought to determine right to an easement or determine the relative rights of the parties affected by an easement." Id. at Section 153. This is what the First Order did and it further undercuts the Defendants argument.

4d. In summary, this issue was raised in the pleadings and both sides agreed and mutually requested for a Court to determine their respective property rights. Moreover, as for the scope of this agreement, it is not only common place to ask for declaratory relief to determine the scope and rights and duties of easement holders, but this issue was specifically discussed by one of the parties in her attorneys closing arguments at the conclusion of the trial hearing (without objection at that time). Collectively, when you place 4a / 4b / 4c together, I decline to find that this was an issue improperly raised as an inappropriate sua sponte action. Naturally, if an Appellate Court should disagree, I very humbly apologize to all concerned.

5. The follow-up question is whether or not a prescriptive easement was actually proven by the Plaintiff. I find from my own view of the evidence that the 20 years of continuous use, under a claim of right, along with all the other necessary elements of a prescriptive easement were all well-proven on the record. At the very same time, I am fully and totally aware that an Appellate Court may take a different view than my own.

In this regard, I think it is appropriate to specifically address the Defendants arguments dealing with Mr. Cloide Branning who testified on the Defendant's behalf. Although I do not personally know Mr. Branning, his testimony under oath

has every appearance of being delivered in all good faith. It clearly merits consideration. At the very same time, he did acknowledge on cross examination that he moved away from the property in 1979 and had no personal knowledge of anything that may have occurred thereafter. See Trial Transcript, Pg. 174:1-8. ("I don't know what happened" referring to all events after 1979).

5a. Between 1979 and 2015 is an extremely long period of time, far beyond the 20 years necessary for a prescriptive easement. The Plaintiff testified directly about her extensive contacts with the property during this very time period and testified again, in apparent good faith and under oath, as to her personal contacts with the property since she was 18 years of age. On the whole, just like Mr. Branning, her testimony appears to be highly logical, reasonable, and in good faith.

In short, if we have two credible witnesses (which it appears to me that we do) and if one does have to weigh a witness who admitted he lacked all personal knowledge of everything that may have happened after 1979 with another witness who, without apparent contradiction from any other witness in the record, appears to have had very extensive personal knowledge far beyond the necessary time period for a prescriptive easement, I can find that these two witnesses do not necessarily contradict each other and I can accept their respective testimony and easily reconcile what they say under the facts and circumstances of this case.

5b. In short, applying the standard demanded by the South Carolina Supreme Court in prescriptive easement cases found in the recent Bundy v. Shirley case, in light of the Plaintiff's uncontested testimony about her parents and then her use of the property for almost 36 consecutive years, long after Mr. Branning left the scene, I still continue to find and conclude that Plaintiff has proven a prescriptive easement.

5c. Accordingly, I decline to withdraw that part of the First Order that finds a prescriptive easement.

6. Other questions raised by the Post-Trial Motions. With regard to other matters that the parties have raised in their respective post-trial motions, I fully and totally agree with the Plaintiff's counsels comment about the rights (or much more accurately the lack of rights) of non-parties and the HOA in the matters at issue here. I have made no determinations of any kind that anyone else has any rights at all in this easement. Let's leave it that – and reserve for future litigation, if any is ever needed, the rights of others. This is an easement appurtenant with a terminus

on one tract but which crosses another tract and it is limited to access. There is no issue of fact or law concerning anyone else.

7. The Plaintiff filed a very extensive Motion to Reconsider with claims of errors in many many particulars in the First Order. I have reviewed all of those claims, and to make absolutely certain that it is clear – even if not discussed in specific terms in this Second Supplemental Order --- I have considered and deny all those matters so that they are properly reserved and preserved for further appellate review, if that should take place. Similarly, the Defendant has raised a large number of claims to redo many aspects of the First Order. To make certain that all these issues are properly reserved and preserved for further appellate review, if that should occur, unless they are specifically discussed in this Second Order, I have considered and denied all those matters as well. The purpose of this paragraph seven is to make certain that both parties can properly assert to an Appellate Court that I did consider and deny their Post -Trial Motions, unless specifically addressed herein. Unless specifically changed by this Order, I reaffirm the First Order for the reasons stated herein and in that Order itself.

8. In regard to the Plaintiff's request for an injunction and decretal provisions. In its prior Post Trial Memorandum, the Plaintiff ends its Memorandum with a suggested set of proposed Orders and Decrees. I have somewhat modified what Plaintiff has requested but I am in general agreement that the more certain an Order can be the more that Order may be of assistance to the parties who should be in a position to know what they should and should not do – if that is possible. Therefore,

It Is Ordered, Adjudged, And Decreed:

(1) The Plaintiff and The Defendants have the use of a permanent, nonexclusive right of ingress and egress over and upon the streets and other ways of passage of the Pleasant Point Subdivision as depicted on the initial subdivision plat dated Dec 4, 1969 and recorded in the Beaufort County RMC Office in Plat Book 18 at page 45, including granting the Plaintiff the right to use the 40 foot area in controversy at the southern end of Pleasant Point Drive (hereinafter referred to as the "40 foot area") and

(2) The Plaintiff has the use of a permanent prescriptive easement appurtenant for ingress and egress over the dirt driveway shown on the 1997 plat recorded in the Beaufort County RMC Office in Plat Book 60 at Page 190 (hereinafter the dirt driveway) including the entrance to the southern half of her carport extending nine

feet beyond the platted end of the forty foot easement area for the width of the platted easement (hereinafter referred to the "Extension Area") which she and her predecessor in interest has used as a driveway and carport entrance for more than twenty years prior to the commencement of this action, and

(3) That the Plaintiff is authorized to remove any obstructions presently existing in the 40-foot area and in the dirt driveway and extension area which impede the normal use of the driveway, to avoid obstructions of the 40 foot area and the dirt driveway in the future, and to restore the dirt driveway to its original location (subject to (5) in this Order, please read below) and

(4) That the Defendants are permanently enjoined from obstructing or interfering with the normal driveway use of the 40-foot area or the dirt driveway and extension area

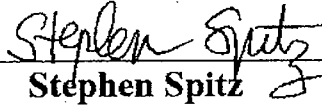
(5) Notwithstanding all of the above, any part of this Second Final Order that requires affirmative action by the Defendants to physical change the existing situation, such as restoring a driveway, is stayed and the parties are instructed to carry on with current status quo as to that matter, until and unless either:

(A) This Order becomes truly final because there is no appeal by any and all parties or

(B) This Order is appealed and the Appellate Court(s) of this State have ruled upon the validity of the First Final Order of March, 2016 and this Second Final Order of August, 2016³ and then, of course, the parties should proceed as the Appellate Court(s) so instructs.

³ It certainly seems (at least to me) it would be the wise and prudent not to Order the return of a driveway to its original condition, until that Order was reviewed, if appropriate, by the proper authorities on appeal.

Very Respectfully Submitted,



Stephen Spitz

Appointed Special Referee
Of Counsel

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Dated this August 8, 2016

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August 8, 2016
Jerri Ann Roseneau
Beaufort County
Clerk of Court
P.O. Drawer 1128
Beaufort County, S.C. 29901

Ewing vs. Guest
Case No: 2015-CP-07-1931

Dear Jerri:

I am enclosing an original Form 4 Order and an attached original Order ruling on both parties post-trial motions in the above captioned case. This order ends this case. By email, I have copied all the lawyers, and our excellent court reporter, and some staff in various lawyer's offices with a copy of this letter and with a copy of the attached order. Please do not hesitate to have your office contact me if you need any further or additional information.

With the very kindest personal regards, I remain,

Very truly yours,



Stephen Spitz
Appointed Special Referee
Of Counsel
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000011

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State of South Carolina)
County of Beaufort)

Julia Tompkins Ewing,)
Plaintiff)

vs.)

Keith A. Guest and)
Stephanie C. Guest and)
Pleasant Point Property)
Owners Association, Inc.)
Defendants)

Court of Common Pleas
Case No. 2015-CP-07-1931

Special Referee's Final Order
of March 25, 2016

2016 MAR 29 PM 2:41
CLERK OF COURT
JULIA TOMPKINS EWING
COUNTY OF BEAUFORT, S.C.

Both by the consent of the parties, and by prior Order of the Circuit Court, I was appointed to be a Special Referee to hear the evidence in this case and to enter a Final Order¹. I have found this to be an interesting, but challenging assignment, for the reasons discussed subsequently in this opinion.

Initial Comments

This case was very well tried by four highly experienced and competent lawyers: David Tedder, Esq. and Chris Inglese, Esq. for the Plaintiff, Julia Tompkins Ewing; H. Fred Kuhn, Jr, Esq. for the Defendants, Keith A. Guest and Stephanie C. Guest; and James A. Grimsley, III, Esq., for the Defendant Pleasant Point Property Owners Association. The lawyers are to be commended for their professional skill and professional courtesy throughout the trial. In my opinion, all the parties in this case were superbly represented by their respective counsel.

¹ It is unfortunate that the parties virtually had this entire case settled by a prior mediation but, for whatever reason, everyone agrees that this mediation failed to resolve the property dispute between the Guests and the Plaintiff. I have not been asked by either party to enforce the failed mediation. Nor does the record reflect the reasons for this failure. Under these circumstances, I do not feel bound by that prior mediation, particularly because I was not asked by either party to enforce any alleged agreement(s) flowing from this prior mediation. Accordingly, I am basing this Order totally and completely upon the properly introduced evidence at the hearing on Jan 20, 2016.

The Key Question in This Case

The key question before me is whether or not an alleged forty foot roadway, depicted on a recorded plat for the Pleasant Point Plantation in 1969 (Plat Book 18, Pg. 45), does or does not still currently exist for the benefit of the Plaintiff? (See Exhibit No. D-52 and the highlighted area in yellow)

Overview of Plaintiff's Arguments

Summarizing the opposing positions, as I understand them: the Plaintiff argues that the 40 foot roadway easement that clearly seems to exist in 1969 on a recorded plat, this same easement is referenced in subsequent plats, and also referenced in various subsequent deeds, including a plat recorded in 1999, strongly suggesting that the easement remains in existence.

The Plaintiff also noted that the 40 foot roadway is shown on the Defendant Guest's own plat and deed. Moreover, the Plaintiff argues that she has a prescriptive easement to continue to access the property in the same manner she and her late father have previously been doing for many years. For any or all of these reasons, the Plaintiff argues that the roadway cannot now be unilaterally changed by the Defendant Guests.

Overview of Defendants' Guests Arguments

In opposition, the Defendants Guests argue that Plantation Point Drive was long ago reconfigured, new lots have been added, and since virtually the ENTIRE area has been redone, and reconfigured, and since Plantation Point Drive now terminates at a different point, and since there was a subsequent express easement between General Tompkins (the Plaintiff's late father) and Mr. Branning (on behalf of the Pleasant Point Plantation) in 1979, the original 40 foot roadway shown on the 1969 Plat (ten years earlier) has been terminated, or replaced, or abandoned, or so the Defendant Guests now argue. The Defendant also argues that based upon Colin Branning's testimony that the original intent was for this easement only to serve the Manor House. See Trial Record, Pgs.148-182 for the Branning testimony.

Findings of Fact & Conclusions of Law

As both the finder of fact, pursuant to SCRCF 52, and based upon the law of property in South Carolina, I find the following facts and make the following conclusions of law:

1. In the Plaintiff's chain of title there is a plat done by R.D. Trogon, Jr., dated December 4, 1969, showing the country club section of the Pleasant Point Plantation. On this plat, the Plaintiff as of the date of this Order owns Lots 1, 2, 3 which (as I understand from her testimony) is based upon the inheritance of these three Lots from her late father. See Plat Book 18 at Page 45, lots 1, 2, 3.
2. Also found on this 1969 plat is a dotted set of lines that connect Lots 1 and Lots 2 to Pleasant Point Drive (See Exhibit marked D-52). There is testimony in the trial record that these dotted lines reflect a 40 feet roadway adjacent to both Lots 1 and 2. David Youmans, a South Carolina certified land surveyor, testified this was an "adjacent roadway" and that it was an "extension of Pleasant Point Drive" directly to the Plaintiffs property. See Trial Record, Pg. 68:8-12.
3. Mr. Youmans further testified that he relied upon and reviewed this Plat in some of his more recent survey work. See Trial Record, Pg. 68: 13-15.
4. Normally, the property law of South Carolina attaches material significance to easements and roadways and other areas of passage found on a recorded plat. For example, in 1965, in **Blue Ridge Realty Co. v. Williamson**, 145 S.E.2d 922 (S.C. 1965), the South Carolina Supreme Court laid down a general principle of property law that a reference to a plat in a deed normally indicates that the plat is part of the Deed and the conveyance.
5. Specifically, as applied in the Blue Ridge case, this principle of law permitted the Court to conclude that the Lots No. 11, 12, 17 shown on the recorded plat in the Blue Ridge Case permitted the Court to conclude that "Gippy Court" was a part of the conveyance of those lots and that the abutting road to Gippy Court, which dead ended in a turn-around circle, was something that the Lot Owners could properly use as owners of adjoining lots. Lots 13 and 14 were subsequently conveyed to the Williamsons who constructed a wall preventing traffic from using the turn-around circle. In turn, the parties that owned Lots 11, 12, 17 sought to enjoin the Williamsons' obstruction to the use of the turn-around circle. Relying upon the prior South Carolina case of Cason v. Gibson, 61 S.E.2d 58 the Court in **Blue Ridge** quoted the Cason case "Where plaintiff purchased a

corner lot which reference to a recorded subdivision map which showed lot to front on a certain street, and thereafter defendants separately purchased lots which contained a portion of the street which bounded plaintiff's lot, plaintiff **had a special property interest in the street** as to entitle him to maintain suit for preservation of the street even though dedication had never been accepted by municipal authorities" *Id.* at 145 S.E.2d 922, 925. (Emphasis Added, to the words a "special property interest in the street.")

6. A subsequent case to the **Blue Ridge** case, **Murrells Inlet Corp. v. Ward**, **662 S.E.2d 452 (S.C. App. 2008)** partially extended the **Blue Ridge** decision by further holding that:

The rule . . . in **Blue Ridge** is nothing more than a presumption that when a grantor conveys property with a reference to a plat showing streets **or other ways of passage**, the grantors intends to allow the grantee the use of the delineated streets and ways of passage. *Id.* 662 S.E.2d at 457. Emphasis Added to "or other ways of passage"

7. Applying the **Murrells Inlet** case here, one of the "ways of passage to Pleasant Drive" for Lots 1 and 2 shown the 1969 Plat is the 40 foot roadway depicted on the recorded Plat². Therefore, I initially find that based upon the testimony of a certified South Carolina land surveyor, and based upon the Plat itself, and based upon the applicable case law, the 1969 Plat properly created a 40 foot roadway and/or easement "or other way of passage" for the Owners of Lots 1,2 and I further find that this Plat is squarely within the Defendants Guests chain of title giving the Guests and giving all other parties that own property near-by constructive record notice of the existence of such "other way of passage."

² I discuss subsequently the argument by the Defendants Guests that this easement was only intended to be used by the Manor House.

8. I further find that there is substantial evidence that this easement was noted and relied upon in subsequent conveyances. See, for example, Trial Record, Pg. 75:9-24 where a certified South Carolina land surveyor, David Youmans, testified as follows:

Q. Thank you. I'm going to present you with another deed. This is also in Defendant's Exhibits and chain of title as Part of the same Tab No. 9, I believe, in Defendant's 1, and can you tell us what I've presented to you here?

A. This is a deed from Alyon, Incorporated to Roi W. and Dyan M. Young.

Q. And the date of that deed is?

A. Recorded 9/27/2001

Q. And if you would go to the property description in that deed?

A. It's the same as the one I just read, Plat Book 68, Page 171

Q. Do you know that as the defendants' property, in this case the Guests?

A. Yes.

9. Accordingly, I find that an examination of the title would show to any perspective purchaser, such as the Guests and / or others, that there certainly appeared to be substantial evidence that the 40 foot right of way continued to exist and prior to the purchase of this property they would have the burden of inquiry to determine the rights they were purchasing.

10. There is also evidence in the trial record that the Defendant's deed itself contains a direct reference to the 1999 plat which, in turn, references the 1969 plat. See Defendant's Exhibit No. 1, Tab 12) I further note and find that the property description found in the Defendant's own deed reads as follows:

All that certain parcel of land situated on Lady's Island,
County of Beaufort, State of South Carolina, being known
And designated as follows: Consisting of 3.917 acres, more
or less, (being shown and delineated as 2.430 acres, more or
less, and 1.487 acres, more or less) a portion of County Club
Section of Pleasant Point Plantation, on that certain plat
Prepared by David S. Youmans, RLC, dated and recorded
In the Register of Deeds Office for Beaufort County, South
Carolina in Plat Book 68 at Page 171. Trial Record, Pg. 80: 1-11.

11. The Defendant's deed further provides as follows: "For a more complete description as to metes and bounds, courses, and distances, reference may be made to the afore- mentioned plat of record. This property is subject to all applicable covenants, restrictions, conditions, and easements **filed of record in Beaufort County, South Carolina.**" **Emphasis Added.** As previously discussed, this includes the Plats and Deeds that do reference the 40 foot roadway easement.

12. At this point, is important to note that the Plaintiff is not claiming a fee simple or any actual estate of land in the 40 foot roadway but merely the limited right to use that track to access her property. Quoting the Plaintiff's trial court testimony:

Q. But, you are making a claim to the 40 foot driveway shown at 18 at 45.

A. Yes, just the use of it. I'm not contesting the fact that they own land, or anything like that, just that there's an easement over it, and we should be allowed to use the easement as we have for almost the last 40 years. Tr. Record, Pg.119: 18-24.

13. Although I do find this Plaintiff's claim to certainly appear to be valid, as hinted at the very beginning of this Order, there are several matters that make this case more challenging than it may first appear. The first of these, however, can rather easily be dismissed with the apparent consent of both parties. Although there was a prior mediation in this case, both sides have acknowledged on the record that this prior mediation was unsuccessful. Mr. Tedder noted that "it failed and is irrelevant" Trial Record, Pg. 142: 4-5; and Mr. Kuhn apparently fully agreed noting that "It failed, that's for sure" Trial Record, Pg. 142: 9.

14. Accordingly, I have not considered a number of references in the Trial Record concerning this mediation³.

15. The second potentially troublesome matter is that there is testimony by Cloide Branning, that the 40 foot roadway found on the original Plat Book 18, Pg. 45 that appears to access lots 1, 2, 3, (owned by the Plaintiff for many years) to Pleasant Point Drive and adjoining land now owned by the Defendant Doctor Keith Guest, and his wife, Stephanie Guest, was probably at the time of the 1969 Plat, and for a number of years thereafter, inaccessible.

³ Among the rules concerning mediations, are the following, "Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

- (1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;
- (2) Admissions made in the course of the mediation proceeding by another party or any other person present;
- (3) Proposals made or views expressed by the mediator;
- (4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or
- (5) All records, reports or other documents created solely for use in the mediation.

Mr. Branning testified that:

- Q. And why did you have to go around instead of coming up
Straight up Pleasant Point Drive, that 40 foot drive that's shown
on the plat?
- A. Trees and --- there were trees and hedges.
- Q. So physically, it was impossible?
- A. Physically.
- Q. Although there may have been a road drawn on a piece of
Paper, there was no road in existence?
- A. Correct.

Trial Record, Pg. 180:15-25; Pg. 181: 1-4.

16. Without making a specific finding of fact about the testimony quoted above, but merely assuming that this testimony is 100% accurate, does it necessarily follow that no easement or roadway existed? I believe the law in South Carolina is otherwise.

17. In **Carolina Land Company, Inc. v. Bland**, 217 S.E.2d 16 (1975) it was argued that an easement had been abandoned for a 30' foot street because it was never opened or used. The South Carolina Supreme Court disagreed. It found that mere nonuse, by itself, was not enough to abandon easement. Applying this rule here, even if what happened in the 1970s was that the 40 foot track remained uncleared and unused for a number of years, this testimony by itself does not conclusively determine that an abandoned was actually intended.

18. Applying the Carolina Land Company case, to the facts in this case, and reviewing the Defendants Guests deed and plat it clearly references various prior deeds and plats, including the 199 Plat recorded at Plat Book 68 at 171. In turn, that plat completed by David Youmans, Registered Land Surveyor, shows a reference to the Tompkins (Ewing) property and the original Plat done in 1969. Thus, I find that Defendant Guests were at the very least on constructive record notice, and most likely actual notice, from their own Plat, that the 40 foot easement existed and was located on their property. In turn, this knowledge is very significant legally, because, quoting again directly from the Carolina Land Company case:

Carolina Land Company had constructive notice of the Appellants easement based upon the recorded instruments in its chain of title. The law imputes to a purchaser who proposes to acquire title to real estate **notice of the recitals** contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired. [Citations omitted].

Emphasis Added.

19. I find that what was said in Carolina Land Co. case squarely applies here: "This plat was thus a link in the chain of title to the property so acquired and gave constructive notice of the appurtenant easement in question." *Id.*, at 217 S.E.2d 16, 20 (S.C. 1976).

20. I further note that pursuant to the **Murrells Inlet Corp.** case that the easement shown on a recorded plat is deemed completed and dedicated at the time the conveyance is made (citing a number of prior South Carolina cases) and the mere fact that it is not yet in use does not mean that it necessarily is either abandoned or not yet in existence. In short I find that the mere fact the easement was not immediately freed of trees, hedges, and other impediments does not bar the Plaintiff's claim for using the 40 foot easement today.

21. The third matter of some potential concern is the second easement created for General Tompkins and whether or not it was designed or intended to create a substitute easement for the original easement found on the 1969 Plat. The record is very clear that Pleasant Point Plantation conveyed an easement for life, to the General, his wife, and his daughter (the Plaintiff) (or the survivor of them for his or her life) a triangle tract of land on what is now the Defendants Stephanie and Doctor Guests' land. The question has now arisen as to whether or not this easement for life was intended to be a substitute for the easement found on the original 1969 Plat and referenced again on the 1999 plat? For several reasons, I find this is **not** a substitute nor an accord and satisfaction.

22. First, I note that there is no mention in the express easement document itself that it was actually intended in any way to substitute for any other pre-existing easement nor is there any reference or language whatsoever to the abandonment of any former easement by the creation of this second easement. On this ground alone, it is highly doubtful that this is a true substitute easement. I would assume that if one wanted to create a true substitute easement that would be noted on the

document itself. Second, there is affirmative testimony in the trial record from the land surveyor, David Youmans, which is not contradicted (as best as I can tell) elsewhere in the trial record, that this was not a genuine substitute for the prior easement. Specifically, land surveyor, David Youmans, testified that:

- Q. Did you interpret this as it relates to the 40-foot roadway?
A. No, not at all.
Q. And, if the 40-foot roadway had not existed at the time of this [second] easement, in your opinion, would there have been a way to drive a car to the carport on Mrs. Ewing's property, absent the 40 - foot roadway?
A. No, sir.

Trial Record, Pgs. 71:14-16; Pg. 71:22-25; Pg. 72:1-2.

In short, based upon the language in the easement which lacks any hint of a intention of substitution and based upon this testimony, which I find credible and trustworthy, I find that both easements co-existed for a number of years but one was never intended to be an actual substitute for the other.

23. I turn to the defendant's argument that the easement found on the 1969 plat and the 1999 plat and in a number of subsequent deeds is limited to an easement that deals only with the Manor House. I simply don't find this limitation in the documents or subsequent Plats. If a way of passage is specially limited and was not intended to be used by adjoining lots that would otherwise naturally appear to have the benefit of the "other way of passage" -- I would anticipate that would be noted on the Plat itself.

24. Moreover, I am at least somewhat leery of testimony delivered in a trial many decades after the fact that appears to squarely contradict a recorded document that has been filed of record for many decades because accepting that testimony opens the door to the impeachment of recorded documents that others have testified that they have relied upon for many years. Strictly as a policy manner, this would unsettle many previously recorded property claims.

25. I find instructive that in **Murrells Intel Corp. v. Ward**, 662 S.E.2d 452 (S.C. App. 2008), in the final paragraph of that opinion, the Court of Appeals held that the dedication of the easement was completed when an adjoining lot was originally conveyed and further held, in words in the final sentences of that opinion, that seem to me to squarely apply to this case.

It would now be unfair to deny MIC the right to the full use and enjoyment of the easement as indicated in the plat, regardless of what Ward now argues were her intentions at the time the plat was recorded. Subsequent Purchasers are entitled to rely on recorded deeds and plats to determine their rights in respect to property.

26. Finally, I also do agree with Plaintiff's counsel in his opening statement that as an alternative reason for finding that a 40 foot right of way exists is that the Plaintiff has proven a prescriptive use on this record by clear and convincing evidence⁴. I find that for many years (certainly beyond the 20 year required time period) under a claim of right to use, the Plaintiff has used the same access and egress method in a clear, open, actual, notorious, visible manner, and this prescriptive right existed even before the Guests owned their property⁵. The Guests are charged with what is open and visible on their own property and they had at least constructive, if not actual, notice of the Plaintiff's prescriptive easement rights.

27. See, in general, **Hartley v. John Wesley United Methodist Church of Johns Island**, 584 S.E.2d 386 (S.C. App 2003) describing the elements of prescriptive easement (1) the continued and uninterrupted use or enjoyment of the right for the full period of twenty years (substantial evidence supports this finding

⁴ I note that both the question of the plats and deeds of record, and the question of whether or not a prescriptive right of use exists are both properly before me. See Plaintiffs First Cause of Action (See Plaintiff's Complaint, Paragraph 33 for a Declaratory Judgment) and the Defendant Guests Answer and Counterclaim (Paragraph 33) asking for similar relief.

⁵ Her testimony included her statement that she has been using the driveway / road that had been shown on many plats "since 1969 / 1970" Trial Record, Pg. 111: 20-25 and that she has been using the carport to park her car or her Dad used the carport to park his car "same amount of years." See Trial Record, Pg. 112, 1-6. See also Defendant's Exhibits, Exhibit D-15, D-16, D-17, D-18.

here) (2) identity of the thing enjoyed (the Plaintiff has testified that she has used the identical access point that her father did for many years) and (3) use or enjoyment was adverse or under claim of right (among other testimony in this case, (there is testimony by the Plaintiff that she was under the impression, she had the right to use the roadway; very similar to the facts found in **Revis v. Barrett**, 467 S.E.2d 460 (S.C.App. 1996), where a daughter's testimony as to her belief that she had a continuing right to use a roadway, originating with her father's own prior use of the roadway many years previously, was considered by the Court as a proper basis for a claim of right or under color of title analysis.

28. As I understand the law of South Carolina on this point, our courts have held in order for a party to earn a prescriptive easement under claim of right he or she must demonstrate a substantial belief that she or he has the right to use the parcel or road based upon the totality of circumstances surrounding his use. I find this test has been met on this record. The mere fact of the existence and use of the carport for well more than 20 years, by itself, is certainly at least some evidence of a prescriptive easement.

No Attorney Fees

29. But, I have concluded that the Plaintiff is not entitled to attorney fees in this case for several reasons. It needs no citation to state that the normal rule in South Carolina is that each side should pay their own attorney. Thus, it is the exception and not the normal rule that Plaintiff argues for in this case. Does the Plaintiff fall within one the limited exceptions? I don't think so⁶.

⁶ Often, "the award of attorney's fees is left to the discretion of the trial judge and will only be disturbed upon a showing of abuse of discretion." **Upchurch v. Upchurch**, 367 S.C. 16, 28, 624 S.E.2d 643, 648 (2006). Moreover, in determining the amount of attorney's fees to award, the court is often instructed to consider: (1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services. **Glasscock v. Glasscock**, 403 S.E.2d 313, 315 (S.C. 1991). And, these factors have not been fully proven on this record.

30. The Guests arguments were well-made and well-articulated. I do think I have some discretion in this area, and since the Defendants arguments were well-made and well-articulated, I simply decline to find that attorney fees should be paid by the Guests. This looks to me, especially in the absence of a controlling statute, to be a matter of some discretion for the Courts in this State and especially so since I further find that not all the factors that normally go into an award of attorney fees have been adequately demonstrated on this record, See footnote 6. At all events, I remain unconvinced that attorney fees are warranted in this specific situation.

Respectfully Submitted,

Stephen Spitz.
Stephen A. Spitz⁷
Appointed Special Referee
Of Counsel
Stevens & Lee
151 Meeting Street
Suite 350
Charleston, SC 29401
Email: sasp@stevenslee.com
Phone Number: 843-414-5085

⁷ I also want to thank Marie H. Bruegger, Registered Professional Reporter, CRR, for her excellent work at the January 20, 2016 hearing.

Dated this 25th of March, 2016

Copies by email to:

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P.O. Drawer 1128
Beaufort County, S.C. 29901

Marie H. Bruegger, CCR, RPR, CRR
A. William Roberts, Jr. & Associates
234 Seven Farms Drive, Suite 210
Charleston, SC 29492

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) Case No.: 2015-CP-07-1931

JULIA TOMPKINS EWING,

Plaintiff,

vs.

CONSENT ORDER

KEITH A. GUEST and STEPHANIE C.

GUEST and PLEASANT POINT

PROPERTY OWNERS ASSOC. INC.

Defendant,

2015 SEP 28 PM 12:57
JERRI ANN ROSEHEAU
DEAFORT COUNTY S.C.
CLERK OF COURT

This matter came before me for hearing on Friday, September 4, 2015, pursuant to a Request for a Preliminary Injunction filed by Plaintiff on August 11, 2015 in conjunction with a Summons and Complaint, which was initially scheduled to be heard on Friday, August 28th before the Honorable Marvin Dukes, Master in Equity for Beaufort County. Upon discovery of a potential conflict of interest, Judge Dukes recused himself and requested reassignment to another judge for hearing. I agreed to hear this matter at the time stated, and issued, upon petition of Plaintiff, a Temporary Restraining Order on Wednesday, September 2nd, prohibiting certain further action by Defendants Keith and Stephanie Guest until the matters alleged could be heard by me on Friday the 4th.

Present at the hearing were the Plaintiff Julia Tompkins and her attorneys, David L. Tedder and Christopher Inglese. Defendants Keith Guest and Stephanie Guest and their attorney, Fred H. Kuhn, were also present. Defendant Pleasant Point Property Owners Association, Inc. (PPPOA) was represented by James A. Grimsley III. After hearing arguments from Mr. Tedder and Mr. Kuhn, and being advised by Mr. Grimsley that the PPPOA did not intend to advocate for or against the matters involved in the hearing, but were present generally due to their alleged status of owners of a portion of the properties involved in the dispute over easement rights, I offered to allow the parties to take a few minutes to see if they could arrive at an agreement on matters that would resolve the current issues until a trial or other hearings might be scheduled.

000027

After a short recess, I was advised that a temporary agreement had been reached, and I proceeded to hear the terms of the consent agreement, as presented by Mr. Tedder. Mr. Kuhn and Mr. Grimsley agreed the recitation of the terms by Mr. Tedder was accurate. I then put the parties under oath individually, being Julia Tompkins Ewing, Keith A. Guest and Stephanie C. Guest, and elicited from each their testimony and affirmance that:

1. they had heard the terms of the agreement as presented;
2. it was in fact their agreement and they understood the terms as presented;
3. they wanted the Court to approve the agreement in a consent order;
4. they understood that if the terms were violated, the violation would be an act in contempt of court subjecting the violator to the punishment of the Court, which could include fines and/or imprisonment; and
5. knowing all of these matters, they still wished the Court to enter the agreement as a Consent Order.

THEREFORE, based on the terms as presented to me, and the consent to the terms as set forth herein,

IT IS ORDERED, ADJUDGED AND DECREED that until trial and decision of this Court of the matters alleged in the pleadings submitted by the parties, or further Order of the Court:

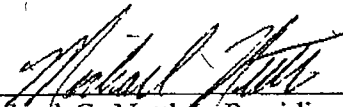
- A. No further work shall be undertaken on the driveway/road in the easement areas involved which are the subject of this case, except for minor repair and routine maintenance as may become necessary, without the written consent of all parties;
- B. There shall be no blocking of the access area at the Ewing carport area or at the driveway/road beginning as presently in place at the Sussex Court/Pleasant Point Drive terminus;
- C. So long as this Order is in effect, the access point to be used by all parties, their guests and invitees, shall be that access point marked as "New Driveway" on

the photographs attached as Exhibit G to Defendant Guest's Memorandum In Opposition to Motion for Temporary Injunction, and will not use the former access point marked as "Old Driveway" on said photographs;

- D. The driveway/road area presently being used, as depicted in photographs in the possession of both Plaintiff and Defendant (which are attached as Exhibit G to Defendant Guest's Memorandum In Opposition to Motion for Temporary Injunction) which have staking adjacent to the stand of trees and electrical power box defining the area to cross from the newly installed driveway/road to the already existing driveway/road, shall continue as the temporary route to be used by the parties, and includes the right of ingress and egress for the parties' guests, invitees, contractors and subcontractors and the parties will confine their travels to this route;
- E. No parking of vehicles shall be allowed or permitted in any portion of the driveway access as temporarily defined by this order;
- F. The parties agree to expeditiously seek the appointment of a mutually agreeable Special Referee to hear and decide this matter, and waive any rights they may have to defer final trial on this matter until after 180 days have passed from the date of last pleading;
- G. The parties are encouraged to be civil and polite to each other. There shall be no physical confrontations between the parties, or verbal attacks, and in the event of such, the Sheriff's Department is to be called and an Incident Report obtained and provided to the parties for their use in bringing the matter before the Court;
- H. The terms and conditions of this Agreement are without prejudice to any of the parties, including the Defendant Pleasant Point Property Owners Association, Inc., which has other matters in dispute with the Defendant Keith A. and Stephanie C. Guest which are not directly involved in the matters at issue in this action;
- I. This Order shall have no precedential effect as to any of the parties or the issues raised by their pleadings;

- J. The Temporary Restraining Order previously issued is hereby dissolved and withdrawn; and
- K. Any willful violation of this Consent Order is punishable by the Court as an act in contempt of the Court, subjecting the offender(s) to such punishment as the Court may impose in its discretion, to include fines and/or imprisonment.

AND IT IS SO ORDERED.



Michael G. Nettles, Presiding Judge for the
14th Judicial Circuit

September 25, 2015
Florence, South Carolina

000030

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
2015 DEC -3 AM 10:25) Case No.: 2015-CP-07-1931

JULIA TOMPKINS EWING,)
Plaintiff,)
vs.)
KEITH A. GUEST and STEPHANIE C.)
GUEST and PLEASANT POINT)
PROPERTY OWNERS ASSOC. INC.)
Defendant.)

**CONSENT ORDER APPOINTING
A SPECIAL REFEREE**

THIS MATTER came before this Honorable Court upon Summons and Complaint and a motion for injunctive relief heard on September 4, 2015. That hearing resulted in entry of a consent order addressing certain issues on a temporary basis pending a final hearing.

WHEREAS the Consent Order filed September 28, 2015 included a provision that the parties agree to seek the appointment of a mutually agreeable Special Referee to hear and decide this matter.

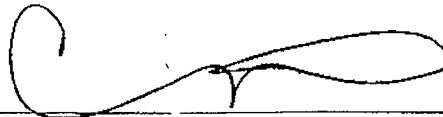
WHEREAS the parties agree to have Mr. Stephen A. Spitz, Esquire serve as Special Referee to decide all matters contained in the parties pleadings with any appeals directly to the Court of Appeals and having the same force as a Judgment from Circuit Court.

THEREFORE Mr. Stephen A. Spitz, Esquire having hereby consented to said appointment it is:

ORDERED that the agreement for the appointment of Mr. Stephen A. Spitz, Esquire as Special Referee with all appeals to the Court of Appeals, in the above captioned matter is now an order of this court.

IT IS SO ORDERED!

000031



Presiding Judge,
Fourteenth Judicial Circuit

This 2^{Dec} day of November, 2015
Charleston, South Carolina

I SO MOVE:

**CHRISTOPHER INGLESE or
DAVID L. TEDDER P.A.**
Attorneys for Plaintiff

I CONSENT:

FRED KUHN, ESQUIRE,
Attorney for Defendants, Guests.

I CONSENT:


James Grimsley, Esquire
Attorney for Defendant, PPPOA

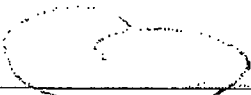
I CONSENT:

Stephen A. Spitz, Esquire
Special Referee

Presiding Judge,
Fourteenth Judicial Circuit

This 24 day of November, 2015
Charleston, South Carolina

I SO MOVE:



CHRISTOPHER INGLESE or
DAVID L. TEDDER P.A.
Attorneys for Plaintiff

I CONSENT:

FRED KUHN, ESQUIRE
Attorney for Defendants, Guests

I CONSENT:

James Grimsley, Esquire
Attorney for Defendant, PPPOA

I CONSENT:

Stephen A. Spitz, Esquire
Special Referee

000033

Presiding Judge, Family Court
Ninth Judicial Circuit

This _____ day of November, 2015
Charleston, South Carolina

I SO MOVE:

**CHRISTOPHER INGLESE or
DAVID L. TEDDER P.A.**
Attorneys for Plaintiff

I CONSENT:

H. Fred Kuhn, Jr

FRED KUHN, ESQUIRE
Attorney for Defendants, Guests

I CONSENT:

James Grimsley, Esquire
Attorney for Defendant, PPPOA

I CONSENT:

Stephen A. Spitz, Esquire
Special Referee

Presiding Judge,
Fourteenth Judicial Circuit

This _____ day of November, 2015
Charleston, South Carolina

I SO MOVE:

I CONSENT:

**CHRISTOPHER INGLESE or
DAVID L. TEDDER, P.A.**
Attorneys for Plaintiff

FRED KUHN, ESQUIRE
Attorney for Defendants, Guests

I CONSENT:

I CONSENT:

James Grimsley, Esquire
Attorney for Defendant, PPPOA

Stephen Spitz

Stephen A. Spitz, Esquire
Special Referee

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JULIA THOMPkins EWING

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2015 AUG 11 11:52

2015-CP - 07-1931

vs.

KEITH GUEST ETAL

Defendant(s)

(Please Print)

Submitted By: Christopher S. Inglese for David Tedder, PA
Address: 604-A Bladen Street, Beaufort, SC 29902

SC Bar #: 100131

Telephone #: (843) 521-4222

Fax #: (843) 521-0082

Other:

E-mail: susan@tedderlawoffice.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☒ Possession (450) ☐ Building Code Violation (460) ☒ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☒ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consequence Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature:

Date: 8/11/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JULIA TOMPKINS EWING,

Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE C.
GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-07-1931

SUMMONS

2015 AUG 11 AM 11:52
BEAUFORT COUNTY CLERK
OFFICE OF THE CLERK

TO THE DEFENDANT(s) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, Christopher S. Inglese and David Tedder P.A., at 604 Bladen Street, Beaufort, South Carolina, 29902, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

CHRISTOPHER INGLESE, for
DAVID TEDDER P.A.:


Attorneys for Plaintiff
PO Box 1282
604 Bladen Street
Beaufort, SC 29902
Phone: (843) 521-4222
Fax: (843) 521-0082

August 11, 2015
Beaufort, South Carolina

000037

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-07- 1931

JULIA TOMPKINS EWING,

Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE C.
GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.

Defendant.

COMPLAINT

2015 AUG 11 AM 11:52
BEAUFORT COUNTY CLERK
JULIA TOMPKINS EWING

TO: THE DEFENDANTS LISTED ABOVE

Plaintiff, JULIA TOMPKINS EWING, alleges:

JURISDICTION AND VENUE

1. Plaintiff, Julia Tompkins Ewing (hereinafter "Ewing"), is a property owner of a parcel of real property located in the County of Beaufort in the State of South Carolina.

2. Upon information and belief, the Defendants, Keith Guest and Stephanie Guest (hereinafter the "Guests"), are citizens and residents domiciled in the County of Beaufort, in the State of South Carolina, and at all times mentioned, Defendants were, and still are, residing in Beaufort, South Carolina.

3. Defendant, Pleasant Point Property Owner's Association Inc. is a corporation organized under the laws of the State of South Carolina and operating in Beaufort County, South Carolina, and at all times mentioned, Defendant was, and still has its principal place of business in Beaufort, South Carolina.

FACTUAL BACKGROUND

4. Julia Tompkins, the Plaintiff is the current owner of a certain parcel of land in Beaufort County known as 6 Sussex Court a/k/a parcel number R200 009 00A 0078 0000.

5. Defendants, the Guests, own an adjacent parcel known as 335 Pleasant Point

000038

Drive a/k/a parcel number R200 009 00A 0172 0000.

6. Both the Plaintiff's property and the Defendants' property are part of a subdivision known as Pleasant Point Plantation Country Club. The original subdivision plat is on file with the Beaufort County Register of Deeds at Plat File Book 18 Page 45 and dates back to December 4, 1969. (Exhibit A)

7. The original subdivision plat dated December 4, 1969 shows a forty (40') feet wide right of way (the end of Pleasant Point Drive) that accesses Plaintiff property shown as parcels 1, 2 and 3. Defendants parcel is a portion of the large adjacent property to the East.

8. Pleasant Point Plantation conveyed Plaintiff's property to Plaintiff's father General Rathvon McC. Tompkins by virtue of a deed dated December 5, 1969 and recorded in the Register of Deeds for Beaufort County on December 15, 1969 at Book 169 Pages 150-151.

9. Plaintiff's father purchased the property in reliance upon the existing right of way shown in the 1969 plat.

10. On April 30, 1974 the Pleasant Point Plantation granted the Plaintiff's father an easement for the purpose of landscaping, constructing driveways, walkways and other activities. (Exhibit B). The easement is a portion of the forty (40') feet of right of way shown on the 1969 plat. This easement expired upon the passing of Ms. Julia Vogel Tompkins in 2013. However, the establishment of this easement in conjunction with the forty (40') feet right of way establishes a continuous use of the access area in excess of forty (40) years.

11. In 1995 Plaintiff's father deeded the property into a trust and in 2013 the Plaintiff acquired the property as a partial distribution of the assets of the trust.

12. The Guests' property appears to have been subdivided pursuant to a "Closing Plat" on file with the Beaufort County Register of Deed at Book 60 Page 190. The Closing Plat is dated June 10, 1997 and acknowledges the existence of the 1969 forty (40') feet of

right of way as well as the 1974 easement. (Exhibit C)

13. Based on available public records, the Guests' property once belonged to American Hospital Insurance Group, Inc. who conveyed the property to Roy W. Young and Dyan M. Young by virtue of a deed dated January 22, 1999 and filed in the Beaufort County Register of Deeds at Book 1132 Page 1549.

14. Apparently the Youngs were foreclosed upon by JP Morgan Chase bank and the Guests acquired the property through foreclosure auction by virtue of a Special/Limited Warranty Deed dated January 28, 2010 and filed with the Beaufort County Register of Deeds at Book 02938 Page 0589.

15. The area of the driveway in dispute is the forty (40') feet wide right of way shown on the 1969 plat and also shown on subsequent plats.

16. In 2013 the Plaintiff's mother passed away and Plaintiff moved into the property 6 Sussex Court.

17. The Plaintiff approached the Defendants about the driveway issue in an attempt to resolve and potential problems with the shared driveway.

18. The parties agreed in the spring of 2014 to enter into pre-litigation alternative dispute resolution efforts.

19. David Tedder P.A represented the Plaintiff. The law office of Moss, Kuhn and Fleming represented the Guests. Tupper Grimsley & Dean P.A represented the Pleasant Point Property Owner's Association although the property owners' association was not part of the mediation efforts. The Honorable Thomas Cooper, retired circuit Court Judge from Manning, SC, served as neutral.

20. On May 4, 2014 the parties did spend a full day at the neutral office of E. John Daus working towards a resolution of the parties' dispute with the neutral.

21. The efforts of mediation were put in a writing signed by all parties and were to be followed up with a more formal writing for submittal to the court. (Exhibit D)

22. Counsel for the Plaintiff made numerous attempts to have the Defendants execute

the final version of the mediated agreement for the purpose of submitting it to the Court for a final order. However, Defendants refused to sign the final version.

23. The mediated agreement provided among other things: a shared use of the driveway, shared expense of constructing and maintaining the amended driveway, a twelve (12') feet travel lane coming at its closest point, three (3') feet off the Plaintiff's property line, **preservation of the current drive** until the modifications were completed and the cooperation of the parties regarding filing new plats and applying for permits.

24. On or about June 1, 2015 Plaintiffs arranged for a surveyor to stake the property for the purpose of making the modifications agreed upon at mediation. Plaintiff paid her half of the surveyor bill and the other half was submitted to the Guests.

25. On July 20, 2015 Plaintiff's came home to find that a fence that the Guests had constructed blocked the existing driveway. The stakes from the surveyor engaged by the Plaintiff had been pulled up and a second driveway was constructed to the left of the existing driveway.

26. Counsel for Plaintiff immediately put the Guests on notice of their trespass via phones calls and a cease and desist letter to the Guests counsel dated July 28, 2015 with no response and no action from the Guests.

27. The second driveway is not consistent with the mediated agreement. The second driveway causes a serious safety concern. The line of sight using the existing driveway is much safer than what the Guests have inappropriately created.

28. Plaintiff's and plaintiff's predecessors in title have always had and continuously used the driveway as shown on numerous plats for over forty-five (45) years.

29. That upon information and belief there was a public dedication and public use of the forty (40') feet right of way from the 1969 plat that requires a formal judicial abandonment and that no abandonment of the right of way established on the 1969 plat has ever occurred.

30. Plaintiff seeks the preservation of the status quo pending the outcome of the

litigation of the case by placing a temporary injunction and a restraint on blocking or impeding the use of the original access and that the Defendants be ordered to immediately removed the fence blocking Plaintiff's access to her property. Plaintiff is also seeking an order requiring the Guests to have the second driveway removed and returned to its original grassy condition.

31. Plaintiff is seeking a declaration of the parties' rights regarding the signed, mediated agreement and any breaches or rights of rescission therein as well as the rights of the parties regarding the preservation of access to the right of way and the preservation of the status quo regarding the Plaintiff's means of access.

32. That as a result of the Defendants' bad faith, negligence, knowing and willful breach, and trespass, the Plaintiff has experienced damages including but not limited to consequential damages, compensatory damages, costs of litigation, attorneys fees, and that Defendants' conduct is deserving of punitive damages and an award of attorney fees against the Defendants.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

33. That this action is brought pursuant to §§ 15-53-10 and 15-67-10, et seq., of the Code of Laws of South Carolina, 1976, as amended, for the purpose of obtaining a declaration of the rights, status and other legal relationship of the parties hereto with respect to the properties which are the subject of this action, and to determine any adverse rights, claims, estates, liens and/or interests in the subject properties, and the rights of the parties, respectively.

FOR A SECOND CAUSE OF ACTION
(S.C. Code Section 57-9-10 et. seq.)

34. Plaintiff seeks an order of the court preserving the right of way created in the 1969 plat and relied upon by the Plaintiff's predecessors in title when he purchased the property. Section 57-9-10 requires a formal abandonment procedure including a judicial

decree that abandoning the street or roadway is in the best interest of all concerned.

35. The formal procedures required under Section 57-9-10 are necessary procedures for the abandonment of a roadway as applied in Town of Kingstree v. Chapman et. al. (405 S.C. 282 Ct. of App. 2013).

36. The formal procedures required have never been sought and thus the original right of way continues to be in existence regardless of any subsequent plat.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

37. That the parties engaged in contractual obligations including exchanges of offers and acceptance.

38. That the contracted agreement was in consideration of legal and valuable consideration.

39. That the Defendants have breach the contract.

40. That the Defendants' breach has caused damages to the Plaintiff

FOR A FOURTH CAUSE OF ACTION

(Trespass)

41. That the Defendants have trespassed upon the Plaintiff's right to use the right of way and access to the Plaintiff's property.

42. That by blocking the roadway to the property, Defendants have deprived the Plaintiff of the use of her property rights by blocking the long-standing access point to the right of way.

FOR A FIFTH CAUSE OF ACTION

(Quiet Title)

43. That the property in question was once and is still a dedicated public right of way.

44. That now there is a dispute over the ownership and rights regarding the property.

45. That the property in question is a right of way, or in the alternative is owned by the Pleasant Point Property Owners Association with easement and rights of access preserved for the Plaintiff's.

FOR A SIXTH CAUSE OF ACTION
(Injunctive Relief)

46. That the Defendants have wrongfully blocked the access on the Plaintiff.
47. That the Plaintiff's are likely to succeed on the merits of the case.
48. That the Plaintiff will continue to be deprived of the convenience of access they have been accustomed to for over forty-five (45) years.
49. That public policy favors an injunction in favor of the Plaintiff and does not prejudice the Defendants.
50. That the Plaintiff's will continue to be harmed by the conduct of the Defendants without the court's intervention.

WHEREFORE, plaintiff demands judgment against defendants for:

1. Restraining order and preliminary injunction prohibiting Defendants from blocking, interfering or otherwise preventing Plaintiff's use of the original driveway access;
2. For an Order declaring the rights and interest of the parties regarding the real property in dispute and regarding the mediated agreement;
3. For an Order awarding Plaintiff Damages for loss of use of her property; and
4. For an award to the Plaintiff of Attorney's fees and costs; and
5. Such other and further relief as this court may deem just and proper and in favor of the Plaintiff.

CHRISTOPHER INGLESE, for
DAVID TEDDER P.A.:



Attorneys for Plaintiff
PO Box 1282
604 Bladen Street
Beaufort, SC 29902
Phone: (843) 521-4222
Fax: (843) 521-0082

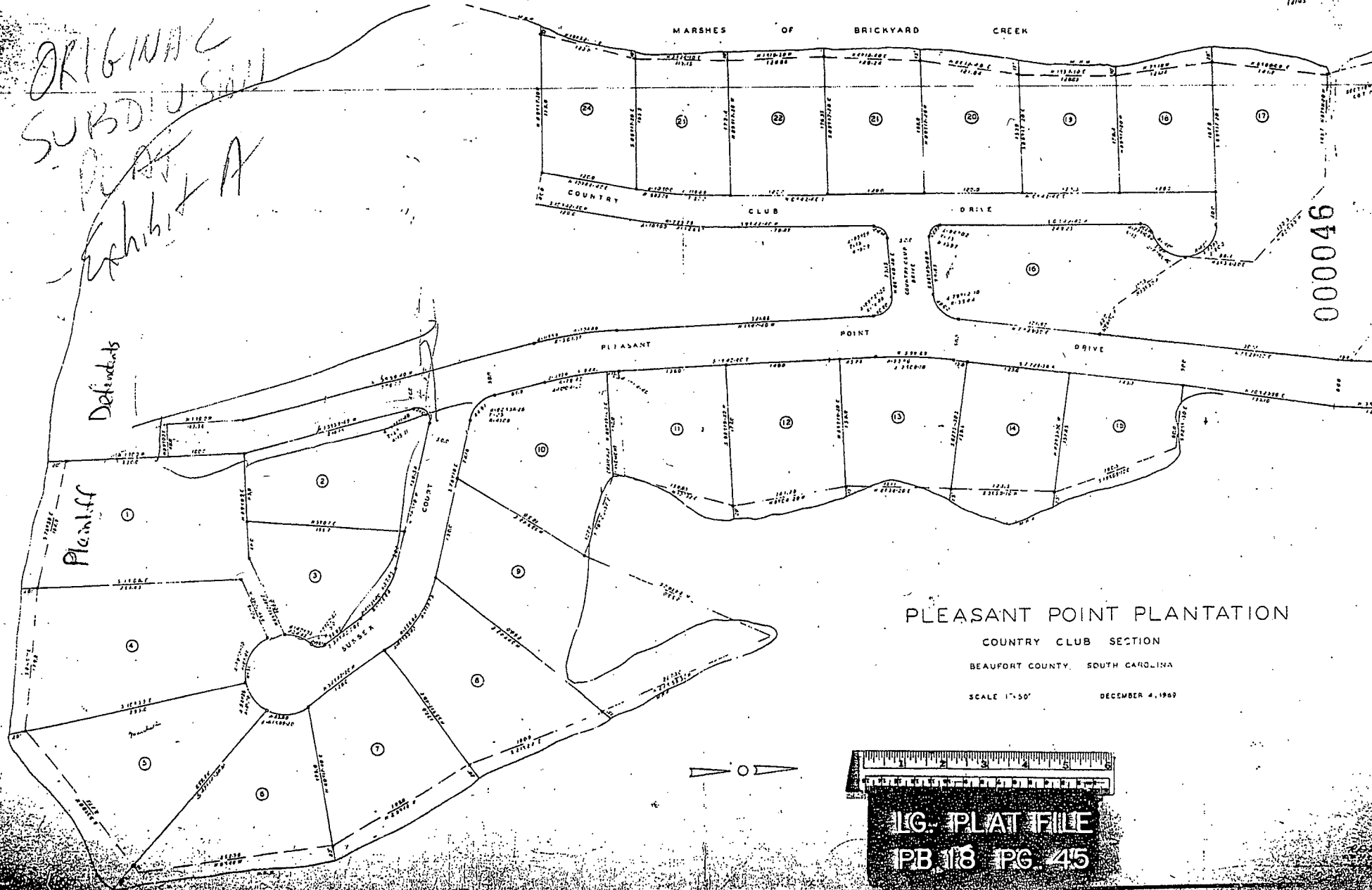
August 11, 2015
Beaufort, South Carolina

000044

Exhibit A

000045

ORIGINAL
SUBDUED
PLAT
Exhibit A



1 LG. PLAT FILE
PB 118 PG 45

Exhibit B

000047

STATE OF SOUTH CAROLINA

CITY OF BEAUFORT

EASEMENT

2469 p.
P 454

WHEREAS, Pleasant Point Plantation is the owner of certain real property on Lady's Island, Beaufort County, State of South Carolina as shown on a plat recorded in Plat Book 18 at Page 45 of a plat prepared by R. D. Trogdon, Jr. dated December 4, 1969 in the Office of the Clerk of Court for Beaufort County, South Carolina, and;

WHEREAS, Rathvon McC. Tompkins is the owner of Lots One (1), Two (2) and Three (3) as shown on the plat referred to above; and,

WHEREAS, Pleasant Point Plantation and Rathvon McC. Tompkins have entered into an agreement for the grant of an easement by Pleasant Point Plantation to Rathvon McC. Tompkins of certain real property described below.

NOW, therefore, in and for the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, Pleasant Point Plantation hereby grants, assigns and sets over to Rathvon McC. Tompkins and Julia Vogel Tompkins, or the survivor of them, only for their lives, an easement for the right to construct walkways, driveways, install water lines and sewer lines, utility lines and poles; and ornamental exterior objects; and to plant and maintain trees, shrubbery and grass in and on the real property described as follows, to-wit:

all that certain piece, parcel or tract of real property on Lady's Island, Beaufort County, State of South Carolina, shown and described on a plat prepared by R. D. Trogdon, Jr., R.L.S., on April 30, 1974 and is more particularly described as beginning at a concrete marker on the Western boundary line of Lot One (1) which is One Hundred Sixty-Nine (169.00) feet, more or less, from the marshes of Brickyard Creek; and thence proceeding in the direction of N16°13'40"W for a distance of One Hundred Seventy-One and Sixty-Five Hundredths (171.65) feet to a concrete marker; thence proceeding in the direction of N10°58'W for a distance of One Hundred Twenty-Eight and Forty Hundredths (128.40) feet to a concrete marker; thence proceeding in the direction of S17°19'40"E for a distance of Two Hundred Eighteen and Fifteen Hundredths (218.15) feet along the Western boundary line of lot two (2) to a concrete marker; thence in the direction of S41°00'E for a distance of Eighty-One (81.00) feet along the Western boundary line of Lot One (1) to a concrete marker which is the point of beginning. For a more complete and accurate description, reference is made to the above referred to plat which is attached hereto and made a part hereof.

to have and to hold the above easement, the rights, members and hereditaments thereto, all and singular, to Rathvon McC. Tompkins and Julia Vogel Tompkins, or the survivor of them, only for their lives.

In witness whereof, Pleasant Point Plantation, has caused this agreement to be signed on August 2nd, in the year of our Lord one thousand nine hundred and seventy-four, in the two hundred and fifty year of the Sovereignty and Independence of the United States of America.

Caroline M. Brown
J. Thomas Miller

PLEASANT POINT PLANTATION
[Signature]
Clarence C. Manning, General Partner

STATE OF SOUTH CAROLINA

AFFIDAVIT

I, *Caroline M. Brown*, and made oath that the above is a true and correct copy of the original of the above described agreement as shown to me by *Clarence C. Manning*, General Partner of Pleasant Point Plantation, and that the same is a true and correct copy of the original of the above described agreement as shown to me by *J. Thomas Miller*, and that the same is a true and correct copy of the original of the above described agreement as shown to me by *Caroline M. Brown*.

J. Thomas Miller
CLERK OF COURT FOR BEAUFORT COUNTY
JUL 13, 1974

Caroline M. Brown

000048



455

LOT 4

LOT 1

LOT 2

PLAT PREPARED FOR
R. MCG. TOMPKINS
A PORTION OF PLEASANT ROAD PLANTATION
COUNTRY CLUB SECTION
SOUTH CAROLINA

SCALE 1" = 50'
APRIL 30, 1974

R. D. TROST, JR.
No. 2712

000049

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

456

FILED
AT

1956

1956

MAY 17 1956

1956

[Signature]
CLERK OF COURT

000050

Exhibit C

000051



*Closing Plat
Exhibit B*

VERIFIED EXISTING PARCELS AS SHOWN
ON BEAUFORT COUNTY TAX MAP THIS DATE

DATE: *6-10-97*
Register of Mails Conveyances

LOT 1
TOMPKINS
DEED BOOK 163, PAGE 150,
REFERENCE PLAT BY R. D.
TROGDON, JR., DATED DEC-
EMBER 4, 1969, PLAT BOOK
18, PAGE 45.

PLEASANT POINT DRIVE AS
SHOWN ON ABOVE REFERENCED
PLAT.

LOT 2
TOMPKINS

CLOSING PLAT PREPARED FOR
AMERIL. HOSPITAL INSURANCE GROUP, INC.

THE "MANOR HOUSE", A PORTION OF COUNTRY
CLUB SECTION, SOMETIMES KNOWN AS LOT
29, COUNTRY CLUB SECTION, PLEASANT
POINT PLANTATION SUBDIVISION AS SHOWN
ON A PLAT BY R. D. TROGDON, JR., DATED
DECEMBER 4, 1969, REVISED JUNE 24,
1982 AND RECORDED IN THE OFFICE OF
THE CLERK OF COURT FOR BEAUFORT COUNTY,
SOUTH CAROLINA IN PLAT BOOK 30, PAGE
14

THIS PROPERTY IS LOCATED IN ZONE A-
11 (ELEV. 13.00) AS DETERMINED BY FEMA.
FIRM COMMUNITY-PANEL NUMBER 450025
0070 D, DATED 9/29/86.

PIN: R200-009-00A-0172-0000

0 20' 40' 80' 120'
SCALE 1" = 40' MAY 30, 1997



I HEREBY STATE THAT TO THE BEST OF
MY KNOWLEDGE, INFORMATION AND BELIEF,
THE SURVEY SHOWN HEREON WAS MADE IN
ACCORDANCE WITH THE REQUIREMENTS OF
THE MINIMUM STANDARDS MANUAL FOR THE
PRACTICE OF LAND SURVEYING IN SOUTH
CAROLINA, AND MEETS OR EXCEEDS THE
REQUIREMENTS FOR A CLASS B SURVEY AS
SPECIFIED THEREIN; ALSO THERE ARE NO
VISIBLE ENCROACHMENTS OR PROJECTIONS
OTHER THAN SHOWN.

David S. Youmans
DAVID S. YOUMANS R.L.S. 9765
BEAUFORT SURVEYING, INC.
1925 DUKE STREET (P.O. BOX 1231)
BEAUFORT, SOUTH CAROLINA 29901
(803) 524-3261 525-1175

6297BS

22X



ORIGINAL DOCUMENT
POOR CONDITION OR CONTRAST

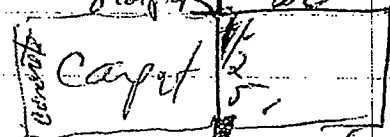
000052

Exhibit D

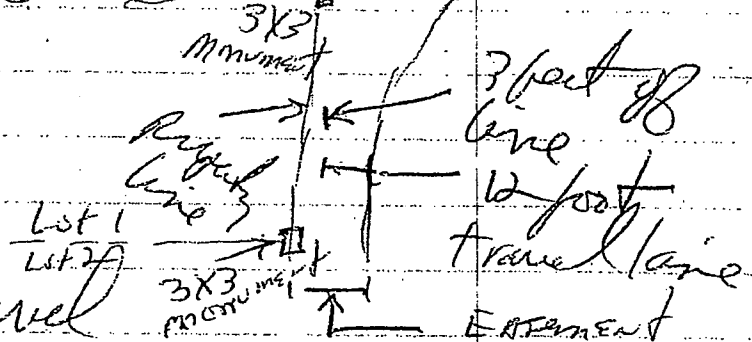
000053

MAY 4, 2014 Mediated
 Settlement Agreement
 (no parking)

- 1) Manure area at Carport is 30 feet wide, 25 foot deep (towards driveway) equal to carport width
- 2) Costs are 50/50 split



- 3) Maintenance 50/50



4. 15 easement travel area 3 feet off Ewing property line in general, but widens from bushes at corner 3X3 monument at boundary of Lots 1 and 2 to the 20 feet at carport with the beginning point being the area at Sussex ~~Carport~~ Court and boundary of Lot 2

OK - 5/5

~~Parties to use best efforts to have CGS 99-CP-07-1672 opened to receive settlement~~
 AT EXPENSE of Mr. FURMAN. 000054

- 6) Parties to seek reasonable quotes for installation of Road using best efforts
- 7) Parties also to prepare A new agreement, new easement, obtaining quit-claims from Pleasant Point POA
- 8) Old easement to be abandoned by parties
9. Current Drive to be used until new road completed
10. Both parties will cooperate and jointly sign/Apply for permit to build road

000055

Kerith Gust
Shahamir Gust

Julia Tonger Ewing

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No.: 2015-CP-07-1931

JULIA TOMPKINS EWING,
Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE
C. GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.,
Defendants.

ANSWER AND COUNTERCLAIM

TO: CHRISTOPHER INGLESE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF.

The Defendants, Keith A. Guest and Stephanie C. Guest, answering the Complaint, and by way of Counterclaim against the Plaintiff, would respectfully show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. The allegations of Paragraph 1 of the Complaint are admitted.
2. The allegations of Paragraph 2 of the Complaint are admitted.
3. The allegations of Paragraph 3 of the Complaint are admitted.

FACTUAL BACKGROUND

4. The allegations of Paragraph 4 of the Complaint are admitted.
5. The allegations of Paragraph 5 of the Complaint are admitted.
6. With respect to the allegations of Paragraph 6 of the Complaint it is denied that the Defendants' property is part of a subdivision known as Pleasant Point Plantation Country Club. It is further denied that Exhibit A is a true and accurate copy of the original subdivision

plat inasmuch as extraneous markings have been made upon Exhibit A. The remaining allegations of said paragraph are admitted.

7. With respect to the allegations of Paragraph 7 of the Complaint it is denied that the forty (40') feet wide right of way at the end of Pleasant Point Drive provides access to the Plaintiff's property, but rather, said forty (40') feet wide right of way at the end of Pleasant Point Drive provides access to the Defendants' property. The Plaintiff's access, to the Plaintiff's property, which is known as 6 Sussex Court, is off of Sussex Court and is plainly and clearly shown on the Pleasant Point Plantation County Club subdivision plat referenced in Paragraph 6 of the Complaint. This access off Sussex Court is the access to Plaintiff's property.

8. The allegations of Paragraph 8 of the Complaint are admitted.

9. The allegations of Paragraph 9 of the Complaint are denied and strict proof demanded thereof. It is further alleged that a reasonably prudent person, including the Grantee in the deed recorded in Book 169 at Page 150, would have purchased the property in reliance upon the access shown on the Pleasant Point Plantation subdivision plat, which is the direct access of Sussex Court which is plainly and clearly shown on the aforesaid plat.

10. With respect to the allegations of Paragraph 10 of the Complaint, it is admitted that Rathvon McC. Tompkins and Julia Vogel Tompkins, in obvious recognition of the fact that they needed the permission of Pleasant Point Plantation in order to utilize any portion of Pleasant Point Drive to access their property, instead of their access as a matter of right directly from Sussex Court, acquired from Pleasant Point Plantation permission to utilize that property described in the easement recorded in Book 248 at Page 454 for the purposes set forth in said document. Upon information and belief, the property described in this easement was utilized by Mr. and Mrs. Tompkins with the permission of Pleasant Point Plantation, as described in the

Easement Agreement, until it expired in accordance with the terms the easement upon the passing of Mrs. Tompkins in or around 2013. Between April 30, 1974 when this easement was granted and June 11, 2013 when Julia Vogel Tompkins passed away, the property described in the Easement Agreement was used with the express permission of Pleasant Point Plantation as set forth in the Easement Agreement. The remaining allegations of said paragraph are denied.

11. With respect to the allegations of Paragraph 11 of the Complaint, it is admitted that on August 26, 1995 R. McC. Tompkins conveyed Lots 1, 2 and 3 of Pleasant Point Plantation Country Club to the Trustees of the Rathvon McClure Tompkins Revocable Trust, and on September 12, 2013 the Rathvon McClure Tompkins Trust, as well as the Julia Vogel Tompkins Trust, conveyed Lots 1, 2 and 3 of Pleasant Point Planation Subdivision to Julia Tompkins Ewing.

12. With respect to the allegations of Paragraph 12 of the Complaint it is admitted that the plat attached as Exhibit C was recorded with the Office of the Register of Deeds for Beaufort County, South Carolina in Book 60 at Page 190 and said plat speaks for itself and the allegations of said paragraph insofar as they are inconsistent with the face of the plat are denied and strict proof demanded thereof.

13. The allegations of Paragraph 13 of the Complaint are admitted.

14. The allegations of Paragraph 14 of the Complaint are admitted.

15. The allegations of Paragraph 15 of the Complaint are admitted upon information and belief.

16. These Defendants lack sufficient information to form an opinion or belief regarding the allegations of Paragraph 16 of the Complaint and the same are denied and strict

proof demanded thereof, although it is admitted upon information and belief that Julia Vogel Tompkins died on June 11, 2013.

17. With respect to the allegations of Paragraph 17 of the Complaint it is admitted that the parties have attempted to resolve, without success, the Plaintiff's claim that she has the right to travel over the Defendants' property in order to access her property, and the remaining allegations of said paragraph are denied.

18. With respect to the allegations of Paragraph 18 of the Complaint it is admitted that the Defendants agreed to meet with the Plaintiff in an attempt to resolve the Plaintiff's continued trespass on their property and the remaining allegations are denied.

19. The allegations of Paragraph 19 of the Complaint are admitted.

20. The allegations of Paragraph 20 of the Complaint are admitted as being generally accurate.

21. With respect to the allegations of Paragraph 21 of the Complaint, it is admitted that Exhibit D is a document signed by all parties and sets forth the general terms upon which the parties were able to agree but, as is alleged in Paragraph 21, this was not intended to be a final binding contract and all parties understood that another document would be prepared which would set forth in more detail and with more specificity the various items and points upon which the parties would need to agree before their dispute could be resolved with any finality. The remaining allegations of said paragraph are denied.

22. The allegations of Paragraph 22 of the Complaint are denied.

23. With respect to the allegations of Paragraph 23 of the Complaint, Exhibit D to the Complaint speaks for itself and insofar as said allegations are inconsistent with the said Exhibit they are denied and strict proof demanded thereof.

24. The allegations of Paragraph 24 of the Complaint are denied and strict proof demanded thereof, except it is admitted that the Plaintiff, from the Defendants' perspective, did nothing and was uncooperative for over a year after executing Exhibit D.

25. The allegations of Paragraph 25 of the Complaint are denied, except it is admitted that the Defendants commenced construction of a driveway located completely on Defendants' property, shifted just a few feet closer to the property line, as contemplated by Defendants in signing Exhibit D..

26. The allegations of Paragraph 26 of the Complaint are denied.

27. The allegations of Paragraph 27 of the Complaint are denied.

28. The allegations of Paragraph 28 of the Complaint are denied.

29. The allegations of Paragraph 29 of the Complaint are denied.

30. Upon information and belief, the allegations of Paragraph 30 of the Complaint are admitted, although it is expressly denied that the Plaintiff is entitled to the relief which they are purportedly seeking.

31. Upon information and belief the allegations of Paragraph 31 of the Complaint are admitted.

32. The allegations of Paragraph 32 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment)

33. The allegations of Paragraph 33 of the Complaint are admitted and the Defendants join in the request that this Court declare the respective rights of the parties.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(S.C. Code Section 59-7-10 et seq.)

34. The allegations of Paragraph 34 of the Complaint are denied.

35. The allegations of Paragraph 35 of the Complaint are denied.

36. The allegations of Paragraph 36 of the Complaint are admitted with the Defendants noting that the "formal procedures" required under Section 57-9-10 do not apply to the circumstances of this case.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Breach of Contract)

37. The allegations of Paragraph 37 of the Complaint are denied.

38. The allegations of Paragraph 38 of the Complaint are denied.

39. The allegations of Paragraph 39 of the Complaint are denied.

40. The allegations of Paragraph 40 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Trespass)

41. The allegations of Paragraph 41 of the Complaint are denied.

42. The allegations of Paragraph 42 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Quiet Title)

43. The allegations of Paragraph 43 of the Complaint are denied.

44. The allegations of Paragraph 44 of the Complaint are admitted, and it is affirmatively alleged that the Plaintiff's apparent claim that she has the right to trespass over the property of the Defendants in order to access her property is patently frivolous.

45. The allegations of Paragraph 45 of the Complaint are denied.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION
(Injunctive Relief)

46. The allegations of Paragraph 46 of the Complaint are denied. Plaintiff has access from Sussex Court as shown on Exhibit A.

47. The allegations of Paragraph 47 of the Complaint are denied.

48. The allegations of Paragraph 48 of the Complaint are denied. Plaintiff acquired her property less than two (2) years ago.

49. The allegations of Paragraph 49 of the Complaint are denied. In effect, Plaintiff is requesting, under the guise of an "injunction" legal sanctioning of her continued trespass over these Defendants' property.

50. The allegations of Paragraph 50 of the Complaint are denied.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Trespass)

51. The Plaintiff, since the expiration of the easement personally granted to her parents expired on or about June 11, 2013 with the passing of Julia Vogel Tompkins, has trespassed on the property of these Defendants on an almost daily basis by traveling from Pleasant Point Drive across the property of these Defendants to the Plaintiff's garage.

52. The aforesaid action of the Plaintiff in trespassing across these Defendants' property is wanton, willful, and reckless disregard of these Defendants' rights and the Plaintiff is on notice to stay off these Defendants' property and to cease said trespass. The Plaintiff has both actual and constructive knowledge of the fact that the easement previously granted to her parents expired with her mother's passing on June 11, 2013, and yet she continues to act as if said easement were still in effect and willfully and intentionally trespasses over these Defendants' property.

53. As a direct and proximate result of the aforesaid trespass by the Plaintiff, these Defendants have been injured and damaged in that they have been deprived of the full and free use and access of their property, their property has suffered wear and tear, they have incurred

costs and attorney's fees in protecting their property rights, and they are entitled to a judgment against the Plaintiff for both actual and punitive damages.

**FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION AND BY WAY OF
COUNTERCLAIM AGAINST THE PLAINTIFF**
(Slander of Title)

54. The Plaintiff has negligently, recklessly and intentionally slandered and impaired these Defendants' title to their property by falsely claiming an easement over Plaintiff's property running from Pleasant Point Drive to the garage located on the Plaintiff's property.

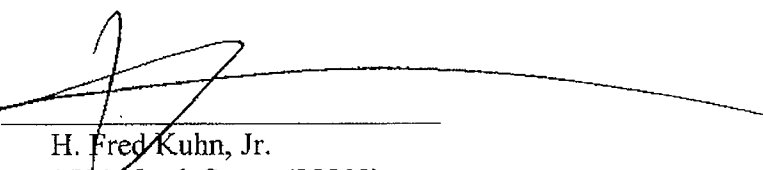
55. As a direct and proximate result of the aforesaid slander and impairment of these Defendants' title by the Plaintiff these Defendants have suffered damages in that they have been deprived of the full and free use and access of their property, their property has suffered wear and tear, they have incurred costs and attorney's fees in protecting their property rights, and they are entitled to a judgment against the Plaintiff for both actual and punitive damages.

**FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION AND BY WAY OF
COUNTERCLAIM**
(Injunction)

56. These Defendants are entitled to an injunction, temporarily and permanently, barring and prohibiting the Plaintiff from entering in or upon the property of these Defendants and barring and prohibiting the Plaintiff from utilizing these Defendants' property in order to access Plaintiff's garage, or any other portion of Plaintiff's property.

WHEREFORE, having answered the Complaint of the Plaintiff, these Defendants pray that the same be dismissed, that they be granted judgment against the Plaintiff for a fair and reasonable amount of both actual and punitive damages, as determined by a jury, for injunctive relief, both temporarily and permanently as prayed for herein, together with such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.

1501 North Street (29902)

Post Office Drawer 507

Beaufort, South Carolina 29901-0507

843-524-3373

843-524-1302 – facsimile

Beaufort, South Carolina
August 20, 2015

Attorneys for the Defendants

Keith A. Guest and Stephanie C. Guest

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) Case No.: 2015-CP-07-1931

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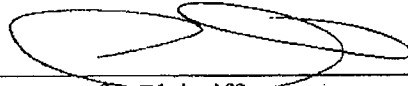
6. Plaintiff denies Paragraph 54 and further alleges that Plaintiff relies on the public record, which provides a forty (40') feet access way to her property.
7. Plaintiff denies Paragraph 55 and demands strict proof thereof.

**REPLY TO DEFENDANT'S FOURTH DEFENSE TO ALL CAUSES OF ACTION
AND BY WAY OF COUNTERCLAIM
(Injunction)**

8. Plaintiff denies Paragraph 56 and further alleges it is the Plaintiff entitled to an injunction, temporarily and permanently, prohibiting Defendant's from interfering with Plaintiff's rights of access.

WHEREFORE, the Plaintiff prays for the relief requested in the Complaint and herein, for the cost of this action, attorney fees and a fair and reasonable amount of both actual and punitive damages, as determined by this Court or the trier of fact and such other relief as the court deems proper and in favor of the Plaintiff.

CHRISTOPHER INGLESE, for
DAVID TEDDER P.A.:



Attorneys for Plaintiff
PO Box 1282
604 Bladen Street
Beaufort, SC 29902
Phone: (843) 521-4222
Fax: (843) 521-0082

September 17, 2015
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-07- 1931

JULIA TOMPKINS EWING,

Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE C.
GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.

Defendant.

Certificate of Service

2015 SEP 17 AM 10:23
JERRI ANN ROSEBEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The undersigned hereby certifies that on the 17th day of September 2015, a true and correct copy of the Plaintiff's Reply to Defendant's Answer and Counterclaim was hand delivered to the following:

Fred Kuhn, Esquire
1501 North Street
Beaufort, SC 29901

Martha S. Harrington
Martha S. Harrington

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-07-1931

JULIA TOMPKINS EWING,

Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE
C. GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.,

Defendants.

MOTION OF DEFENDANTS KEITH A.
GUEST AND STEPHANIE C. GUEST
FOR RECONSIDERATION,
AMENDMENT, AND NEW TRIAL
(SCRCP 59)

TO: DAVID L. TEDDER, ESQUIRE AND CHRISTOPHER S. INGLESE, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF AND JAMES A. GRIMSLEY, III, ESQUIRE,
ATTORNEY FOR THE DEFENDANT PLEASANT POINT PROPERTY OWNERS,
ASSOCIATION, INC.:

PLEASE TAKE NOTICE that the Defendants Keith A. Guest and Stephanie C. Guest, through their undersigned attorneys, hereby move before the Honorable Stephen A. Spitz, Special Referee, for reconsideration and amendment of the Special Referee's Final Order of March 25, 2016, filed March 29, 2016, or alternatively for a new trial, on the ground that the Special Referee erred in his Final Order in several particulars, as more fully set forth below.

1. The Court erred in failing to find as a matter of fact that the Plaintiff's residence is located on Lot 1 of Pleasant Point Plantation as shown on that plat recorded in Plat Book 18 at Page 45.

2. The Court erred in failing to find as a matter of fact that Lots 2 and 3 of Pleasant Point Plantation, also owned by the Plaintiff, are undeveloped.

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3. The Court erred in failing to find as a matter of fact that the intended access to Lot 1 of Pleasant Point Plantation is from the cul-de-sac at the end of Sussex Court, as plainly shown on that plat of Pleasant Point Plantation recorded in Plat Book 18 at Page 45.

4. The Court erred in failing to find as a matter of fact that Pleasant Point Plantation was developed by Pleasant Point Plantation Associates ("the developer").

5. The Court erred in failing to find as a matter of fact that when the developer paved the roads in Pleasant Point, the 40-foot road in dispute in this case was not paved, as were all the other roads.

6. The Court erred in failing to find as a matter of fact the 40-foot road in dispute in this case has never been used as a road.

7. The Court erred in failing to find as a matter of fact that the "Old Manor House," which is the Guests' current residence, was originally intended by the developer to be the Club House for the subdivision's future golf course, but when the golf course was subsequently laid out this proved impractical and the Club House was located elsewhere within the subdivision.

8. The Court erred in failing to find as a matter of fact that when the developer sold the subdivision it conveyed fee simple title to the disputed 40-foot road.

9. The Court erred in failing to find as a matter of fact that on May 3, 1985 the developer sold the "Old Manor House" property to Robert Louis White, and this conveyance included fee simple title to the disputed road.

10. The Court erred in failing to find as a matter of fact that when the above-referenced conveyed property was surveyed and the survey was recorded on October 29, 1985, it showed fee simple title to the disputed road had been conveyed by the developer.

11. The Court erred in failing to find as a matter of fact that, on October 29, 1986, the developer sold some adjoining properties to William S. Howard and William F. Jones, who immediately resold the same property to Robert Louis White and Louis Griffin White, Jr. The Court further erred in failing to find as a matter of fact that the plat which was recorded as part of this transaction confirmed that the disputed road was no longer in existence and had merged into the Manor House property as one, united parcel, as shown on that plat prepared for Robert Louis White by R.D. Trogdon, Jr. dated October 22, 1986.

12. The Court erred in failing to find as a matter of fact that on May 13, 1987 the aforesaid referenced parties filed a "Corrective Deed" in order to "clarify the misunderstandings" as to "the intended property" that was conveyed; that this Corrective Deed added a new paragraph to the legal description expressly stating that the property conveyed included all of the property between a 1.47 acre tract and the Manor House tract; and that this property is that portion of Pleasant Point Drive that would have provided access to the already conveyed disputed road, as plainly and clearly set forth in that deed recorded on May 22, 1987 in Book 477 at Page 1165.

13. The Court erred in failing to find as a matter of fact that on June 19, 1987 the Whites sold Lot 28, of the 1.487 acre parcel and the property between the 1.487 acre parcel and the Old Manor House property to J. True Martin; that the plat recorded with this deed again confirmed the nonexistence of the disputed road as a road, as well as the fact that the portion of Pleasant Point Drive that would have led to the disputed road was no longer a road and was privately owned, as shown on that plat recorded on July 17, 1987 in Book 342 at Page 4481.

14. The Court erred in failing to find as a matter of fact that the underlying land on which the Plaintiff's parents' lifetime easement as well as the disputed road was located was conveyed in fee simple absolute by the American Hospital Insurance Group, Inc. to Roy W. Young

and Diane M. Young pursuant to a General Warranty Deed dated January 22, 1999 and recorded on February 1, 1999 in Book 1132 at Page 1549.

15. The Court erred in failing to find as a matter of fact that the Plaintiff's predecessors in title (her parents), in apparent recognition of the fact that the disputed road either no longer existed or its continued existence was in question, negotiated a lifetime easement with the developer in order to access their property from the west.

16. The Court erred in failing to find as a matter of fact that on November 1, 1999 Julia Vogel Tompkins, Barney Rathvon Tompkins and Julia Lindsly Tompkins Ewing as Trustees of the Rathvon McClure Tompkins Revocable Trust dated September 10, 1991, and Julia Vogel Tompkins, individually, as Plaintiffs, instituted a quiet title action against Roi W. Young and Dyan M. Young in the Beaufort County Court of Common Pleas under Civil Action No. 99-CP-07-1672 in which they asked the Court to declare their right to use the disputed roadway.

17. The Court erred in failing to find as a matter fact that in connection with the aforesaid quiet title action admitted that they were aware that the Youngs and their predecessors in title had eliminated the disputed road as a roadway and claimed fee simple absolute ownership of the roadway.

18. The Court erred in failing to find as a matter fact that in the above-referenced quiet title action the Plaintiff's predecessors in title admitted that the Youngs and their predecessors in title had interfered with, restrained and prohibited their use of the disputed roadway and one of the purposes of the quiet title action was to obtain a restraining order so that Plaintiff's predecessors in title could use the roadway.

19. The Court erred in failing to find as a matter of fact that in connection with the above-referenced quiet title action the Youngs filed an Answer and Counterclaim asserting their

absolute, fee simple ownership interest over the disputed roadway and requested an Order restraining, prohibiting and forbidding the Plaintiffs in the quiet title action from using any portion of the disputed roadway except for that area encompassed by the lifetime easement held by this Plaintiff's parents.

20. The Court erred in failing to find as a matter of fact that access to Lots 1, 2 and 3 is provided by the subdivision's street identified as Sussex Court, as shown by the subdivision plat recorded in Plat Book 18 at Page 45, which plat is expressly referred to in the deeds conveying Lots 1, 2 and 3 to the Tompkins.

21. The Court erred in failing to find as a matter of fact that the subdivision plat recorded in Plat Book 18 at Page 45 shows a portion of Pleasant Point Drive, a subdivision roadway, adjacent to and immediately to the west of Lots 1 and 2 but that this area adjacent to and to the west of Lots 1 and 2 was never paved or otherwise developed, improved, and was never actually made a part of the subdivision roadway system and has never been maintained by the developer or the homeowners association.

22. The Court erred in failing to find as a matter of fact that the developer and the current homeowners association are two (2) separate and distinct entities and when the developer conveyed the roads in the subdivision to the homeowners association the disputed roadway was not included because the developer had already conveyed fee simple absolute title to the disputed roadway to the Defendant Guests' predecessors in title.

23. The Court erred in failing to find as a matter of fact that in 1976 Rathvon Mc.C Tompkins for valuable consideration made and entered into an agreement with Pleasant Point Plantation a partnership, owner and developer of Pleasant Point Plantation Subdivision, wherein and whereby the parties agreed for the area adjacent to and to the west of Lots 1 and 2 to be

removed and eliminated from the platted subdivision roadway system and for the Tompkins to have a private easement for a driveway to their Lots 1 and 2 over a portion of the subject area, for their joint lives only.

24. The Court erred in failing to find as a matter of fact that the aforesaid lifetime easement would have been an unnecessary nullity and an exercise in futility if the disputed roadway existed.

25. The Court erred in failing to find as a matter of fact that the aforesaid lifetime easement makes sense only if there was, at a minimum, a dispute as to the continued existence of the disputed roadway.

26. The Court erred in failing to find as a matter of fact that the aforesaid easement constituted an accord and satisfaction whereby the Plaintiff's predecessors in title were granted a lifetime easement in exchange for relinquishing any claim over the disputed roadway.

27. The Court erred in failing to find as a matter of fact that pursuant to the said agreement and in reliance thereon, Pleasant Point Plantation granted to the Tompkins the lifetime easement recorded in Book 248 at Page 454.

28. The Court erred in failing to find as a matter of fact that pursuant to the said agreement the Tompkins since 1976 have used that area described in the easement recorded in Book 248 at Page 454 for their exclusive use, benefit and enjoyment.

29. The Court erred in failing to find as a matter of fact that no other persons, including other members of the subdivision or the public in general have used the disputed roadway or the lifetime easement granted to the Tompkins.

30. The Court erred in failing to find as a matter of fact that pursuant to the aforesaid agreement Pleasant Point Plantation deleted the area adjacent to the west of Lots 1 and 2 from the

platted subdivision roadway system and recorded a revised subdivision plat deleting the disputed road from Pleasant Point Drive and showing the Tompkins' easement area instead, said plat having been recorded in Plat Book 30 at Page 141.

31. The Court erred in failing to find as a matter of fact and conclude as a matter of law that by virtue of the aforesaid agreement, the conditions of which were fully performed by Pleasant Point Plantation and/or its successors, the Tompkins, as co-owners of Lots 1, 2 and 3 waived and relinquished any rights in the disputed roadway except for the rights granted to them by the easement recorded in Book 248 at Page 454.

32. The Court erred in failing to find as a matter of fact that the Tompkins had the easement granted for their lifetime recorded in Book 248 at Page 454 and therefore gave notice to the world of their rights to use the easement as their private easement, excluding all others.

33. The Court erred in failing to find as a matter of fact that the Tompkins since 1976 have asserted and continue to assert the right to the exclusive use, benefit, enjoyment and control over the lifetime easement area and have represented and continue to represent that the subject area is private and not part of the Pleasant Point Subdivision roadway system and not available for general use by owners in the subdivision or by the public.

34. The Court erred in failing to find as a matter of fact that the Guests and their predecessors in title, as well as others owning property in the subdivision, have relied upon the Tompkins' assertions of exclusive rights in the lifetime easement area and have not interfered with their use.

35. The Court erred in failing to find as a matter of fact and conclude as a matter of law that by virtue of their longstanding assertion of exclusive rights to the lifetime easement area and their objection to use of the disputed road as a public roadway the Plaintiff is estopped and barred

from now claiming that the disputed roadway is a part of the subdivision roadway system or a private easement.

36. The Court erred in failing to find as a matter of fact and conclude as a matter of law that, on one hand, the disputed roadway is part of the subdivision roadway system, which makes it available for use by the general public with maintenance responsibility lying upon the homeowners association, but on the other hand a private easement for the benefit of the Plaintiff, said conclusions being incompatible, inconsistent and nonsensical.

37. The Court erred in failing to find as a matter of fact that the Plaintiff and her predecessors in title have delayed an unreasonable length of time in asserting that the subject area is part of the subdivision roadway system or a 40 foot easement, said delay leading the Defendant Guests and their predecessors in title to believe Plaintiff and her predecessors in title did not claim any rights in this subject area except those easement rights granted to the Tompkins for their lifetime by that easement recorded in Book 248 at Page 454.

38. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the Plaintiff and her predecessors in title abandoned their claim to the disputed road when they failed to pursue the 1999 quiet title action.

39. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the Plaintiff is barred by principles of *res judicata* from asserting the continued existence of the disputed roadway or a right to an easement over the disputed roadway as a result of not prevailing in the 1999 quiet title action.

40. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the Plaintiff is barred by principles of *res judicata* from asserting the continued existence of

the disputed roadway or a right to use the disputed roadway as a private easement since this was an issue that was actually raised or could have been raised in the 1999 quiet title action.

41. The Court erred in failing to find as a matter of fact and conclude as a matter of law that by virtue of the Plaintiff's unreasonable delay in asserting her claim and the Defendants' reliance thereon to their detriment, the Plaintiff is barred from claiming any right in the disputed road area.

42. The Court erred in failing to find as a matter of fact that the use of the disputed roadway by the Plaintiff's predecessors in title was permissive, said permission being given initially by Colin Branning and subsequently by virtue of the lifetime easement.

43. The Court erred in finding as a matter of law that the Plaintiff had acquired any rights to the disputed road by virtue of adverse possession where use of the area was permissive.

44. The Court erred repeatedly in its finding of fact by referring to the disputed road and an easement over the disputed area synonymously and interchangeably, where these are two (2) separately distinct entities.

45. The Court erred in failing to explain, clarify or set forth who is responsible for maintaining the disputed area.

46. The Court erred in failing to explain, set forth or clarify whether the disputed area the Court has granted Plaintiff the right to use is a road or an easement.

47. The Court erred in failing to explain, set forth or clarify who owns the road, if it is a road, or who owns the servient estate, if it is an easement, which it has granted the Plaintiff the right to use in its Order.

48. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the disputed roadway not only was abandoned, but in fact, never came into existence.

49. The Court erred in finding as a matter of fact that Plaintiff's predecessor in title, in purchasing Lot 1 of Pleasant Point Plantation, relied upon the recorded subdivision plat now found in Plat Book 18 at Page 45, where the deed to Julia Vogel Tompkins and R. McC. Tompkins, Plaintiff's predecessors in interest, is dated December 5, 1969, and the plat recorded in Plat Book 18 at Page 45 was recorded on December 15, 1969.

50. The Court erred in concluding as a matter of law that the principles set forth in *Blue Ridge Realty Company v. Williamson*, 247 S.C. 112, 119, 145 S.E.2d 922, 925 (1965), as follows "Where Plaintiff purchased a corner lot with reference to a **recorded** subdivision map which showed lot front on a certain street, and thereafter Defendants separately purchased lots which contained a portion of the street which bounded Plaintiff's lot, Plaintiff had a special property interest in the street as to entitle him to maintain suit for preservation of the street even though dedication had never been accepted by municipal authorities", quoting *Cason v. Gleason*, 271 S.C. 500, 61 S.E.2d 58 (1950)(emphasis added). Where the deed to Plaintiff's predecessors in title could not have referenced a "recorded subdivision map" inasmuch as a deed was executed prior to the recording of the plat.

51. The Court erred in finding as a matter of fact that an examination of title which showed any prospective purchaser, such as the Guests and/or others, that there certainly appeared to be substantial evidence that the 40 foot right of way continued to exist at the time of their purchase of the property, where this is contrary to and unsupported by the evidence.

52. The Court erred in finding as a matter fact that there is substantial evidence that the "easement" over the disputed roadway was noted and relied upon in subsequent conveyances (See Finding of Fact No. 8) where this finding is contrary to and unsupported by the evidence.

53. The Court erred as a matter of law in granting to the Plaintiff an easement over the disputed roadway where there is no express or implied grant of an easement, in any form or fashion or under any theory of law, supported by the evidence.

54. The Court erred in finding as a matter of fact that the only evidence of abandonment is "mere nonuse" (See Finding of Fact No. 17) where this finding is contrary to and not supported by the evidence, inasmuch as there are multiple plats and deeds showing the roadway ceased to exist almost immediately after the original subdivision plat was recorded, the roadway was physically blocked, at least one (1) lawsuit was unsuccessfully brought to reassert the roadway, and the issue was resolved between these parties' predecessors in interest by granting a lifetime easement to the Plaintiff's predecessors in interest. Furthermore, the evidence was not only that the roadway was abandoned, but that it never came into existence, it was never paved, it was never maintained, and it was never physically marked out or delineated in any form or fashion much less ever used by anyone.

WHEREFORE, the Defendant Guests pray that the Court inquire into the matters set forth herein, reconsider and amend its Final Order of March 25, 2016, and determine that the disputed roadway does not exist and is owned in fee simple absolute by the Defendant Guests, that the Plaintiff has not right, whether by ownership easement or otherwise, to travel over said property, and that Plaintiff's proper means of access to Lot 1 of Pleasant Point Plantation Subdivision is by way of the cul-de-sac at the end of Sussex Court as is clearly and plainly shown on the subdivision plat, together with such other and further relief as the Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: H. Fred Kuhn, Jr.

H. Fred Kuhn, Jr.

1501 North Street (29902)

Post Office Drawer 507

Beaufort, South Carolina 29901-0507

843-524-3373

843-524-1302 – facsimile

Beaufort, South Carolina

April 8, 2016

Attorneys for the Defendants

Keith A. Guest and Stephanie C. Guest

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CERTIFICATE OF SERVICE

Undersigned certifies that the Motion of Defendants Keith A. Guest and Stephanie C. Guest for Reconsideration, Amendment, and New Trial (SCRCP 59), to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Stephen Spitz, Special Referee
STEVENS & LEE
A Stevens & Lee/Griffin Company
151 Meeting Street, Suite 350
Charleston, SC 29401

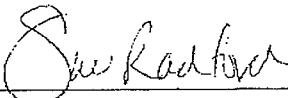
Christopher Inglese, Esquire
David Tedder, P.A.
604-A Bladen Street
Beaufort, South Carolina 29902

James A. Grimsley, III, Esquire
Tupper, Grimsley and Dean, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901

2016 APR - 8 PM 3:36
U.S. DISTRICT COURT
SOUTH CAROLINA
BEAUFORT

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on April 8, 2016.

MOSS, KUHN & FLEMING, P.A.

By: 
Sue Radford

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-1931

Julia Tompkins Ewing

Keith A Guest and Stephanie C Guest

PLAINTIFF(S)

Pleasant Point Property Owners Association,
Inc

DEFENDANT(S)

Submitted by: Special Referee, Stephen A Spitz

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Stephen Spitz
Circuit Court Judge Special Referee

Judge Code

March 25 / 2016
Date

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Mar, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 31 day of Mar, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

C. Fagley
D. Fagley

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Grunsky
P. P. Rubin

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter:

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

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

State of South Carolina)
County of Beaufort)

Julia Tompkins Ewing,)
Plaintiff)

vs.)

Keith A. Guest and)
Stephanie C. Guest and)
Pleasant Point Property)
Owners Association, Inc.)
Defendants)

Court of Common Pleas
Case No. 2015-CP-07-1931

**Special Referee's Final Order
of March 25, 2016**

2016 MAR 29 PM 2:41
CLERK OF COURT'S OFFICE

Both by the consent of the parties, and by prior Order of the Circuit Court, I was appointed to be a Special Referee to hear the evidence in this case and to enter a Final Order¹. I have found this to be an interesting, but challenging assignment, for the reasons discussed subsequently in this opinion.

Initial Comments

This case was very well tried by four highly experienced and competent lawyers: David Tedder, Esq. and Chris Inglese, Esq. for the Plaintiff, Julia Tompkins Ewing; H. Fred Kuhn, Jr, Esq. for the Defendants, Keith A. Guest and Stephanie C. Guest; and James A Grimsley, III, Esq., for the Defendant Pleasant Point Property Owners Association. The lawyers are to be commended for their professional skill and professional curtesy throughout the trial. In my opinion, all the parties in this case were superbly represented by their respective counsel.

¹ It is unfortunate that the parties virtually had this entire case settled by a prior mediation but, for whatever reason, everyone agrees that this mediation failed to resolve the property dispute between the Guests and the Plaintiff. I have not been asked by either party to enforce the failed mediation. Nor does the record reflect the reasons for this failure. Under these circumstances, I do not feel bound by that prior mediation, particularly because I was not asked by either party to enforce any alleged agreement(s) flowing from this prior mediation. Accordingly, I am basing this Order totally and completely upon the properly introduced evidence at the hearing on Jan 20, 2016.

The Key Question in This Case

The key question before me is whether or not an alleged forty foot roadway, depicted on a recorded plat for the Pleasant Point Plantation in 1969 (Plat Book 18, Pg. 45), does or does not still currently exist for the benefit of the Plaintiff? (See Exhibit No. D-52 and the highlighted area in yellow)

Overview of Plaintiff's Arguments

Summarizing the opposing positions, as I understand them: the Plaintiff argues that the 40 foot roadway easement that clearly seems to exist in 1969 on a recorded plat, this same easement is referenced in subsequent plats, and also referenced in various subsequent deeds, including a plat recorded in 1999, strongly suggesting that the easement remains in existence.

The Plaintiff also noted that the 40 foot roadway is shown on the Defendant Guest's own plat and deed. Moreover, the Plaintiff argues that she has a prescriptive easement to continue to access the property in the same manner she and her late father have previously been doing for many years. For any or all of these reasons, the Plaintiff argues that the roadway cannot now be unilaterally changed by the Defendant Guests.

Overview of Defendants' Guests Arguments

In opposition, the Defendants Guests argue that Plantation Point Drive was long ago reconfigured, new lots have been added, and since virtually the ENTIRE area has been redone, and reconfigured, and since Plantation Point Drive now terminates at a different point, and since there was a subsequent express easement between General Tompkins (the Plaintiff's late father) and Mr. Branning (on behalf of the Pleasant Point Plantation) in 1979, the original 40 foot roadway shown on the 1969 Plat (ten years earlier) has been terminated, or replaced, or abandoned, or so the Defendant Guests now argue. The Defendant also argues that based upon Colin Branning's testimony that the original intent was for this easement only to serve the Manor House. See Trial Record, Pgs.148-182 for the Branning testimony.

Findings of Fact & Conclusions of Law

As both the finder of fact, pursuant to SCRCP 52, and based upon the law of property in South Carolina, I find the following facts and make the following conclusions of law:

1. In the Plaintiff's chain of title there is a plat done by R.D. Trogdon, Jr., dated December 4, 1969, showing the country club section of the Pleasant Point Plantation. On this plat, the Plaintiff as of the date of this Order owns Lots 1, 2, 3 which (as I understand from her testimony) is based upon the inheritance of these three Lots from her late father. See Plat Book 18 at Page 45, lots 1, 2, 3.
2. Also found on this 1969 plat is a dotted set of lines that connect Lots 1 and Lots 2 to Pleasant Point Drive (See Exhibit marked D-52). There is testimony in the trial record that these dotted lines reflect a 40 feet roadway adjacent to both Lots 1 and 2. David Youmans, a South Carolina certified land surveyor, testified this was an "adjacent roadway" and that it was an "extension of Pleasant Point Drive" directly to the Plaintiffs property. See Trial Record, Pg. 68:8-12.
3. Mr. Youmans further testified that he relied upon and reviewed this Plat in some of his more recent survey work. See Trial Record, Pg. 68: 13-15.
4. Normally, the property law of South Carolina attaches material significance to easements and roadways and other areas of passage found on a recorded plat. For example, in 1965, in **Blue Ridge Realty Co. v. Williamson**, 145 S.E.2d 922 (S.C. 1965), the South Carolina Supreme Court laid down a general principle of property law that a reference to a plat in a deed normally indicates that the plat is part of the Deed and the conveyance.
5. Specifically, as applied in the Blue Ridge case, this principle of law permitted the Court to conclude that the Lots No. 11, 12, 17 shown on the recorded plat in the Blue Ridge Case permitted the Court to conclude that "Gippy Court" was a part of the conveyance of those lots and that the abutting road to Gippy Court, which dead ended in a turn-around circle, was something that the Lot Owners could properly use as owners of adjoining lots. Lots 13 and 14 were subsequently conveyed to the Williamsons who constructed a wall preventing traffic from using the turn-around circle. In turn, the parties that owned Lots 11, 12, 17 sought to enjoin the Williamsons' obstruction to the use of the turn-around circle. Relying upon the prior South Carolina case of Cason v. Gibson, 61 S.E.2d 58 the Court in **Blue Ridge** quoted the Cason case "Where plaintiff purchased a

corner lot which reference to a recorded subdivision map which showed lot to front on a certain street, and thereafter defendants separately purchased lots which contained a portion of the street which bounded plaintiff's lot, plaintiff **had a special property interest in the street** as to entitle him to maintain suit for preservation of the street even though dedication had never been accepted by municipal authorities" *Id.* at 145 S.E.2d 922, 925. (Emphasis Added, to the words a "special property interest in the street.")

6. A subsequent case to the **Blue Ridge** case, **Murrells Inlet Corp. v. Ward**, 662 S.E.2d 452 (S.C. App. 2008) partially extended the **Blue Ridge** decision by further holding that:

The rule . . . in **Blue Ridge** is nothing more than a presumption that when a grantor conveys property with a reference to a plat showing streets **or other ways of passage**, the grantors intends to allow the grantee the use of the delineated streets and ways of passage. *Id.*, 662 S.E.2d at 457. Emphasis Added to "or other ways of passage"

7. Applying the **Murrells Inlet** case here, one of the "ways of passage to Pleasant Drive" for Lots 1 and 2 shown the 1969 Plat is the 40 foot roadway depicted on the recorded Plat². Therefore, I initially find that based upon the testimony of a certified South Carolina land surveyor, and based upon the Plat itself, and based upon the applicable case law, the 1969 Plat properly created a 40 foot roadway and/or easement "or other way of passage" for the Owners of Lots 1,2 and I further find that this Plat is squarely within the Defendants Guests chain of title giving the Guests and giving all other parties that own property near-by constructive record notice of the existence of such "other way of passage."

² I discuss subsequently the argument by the Defendants Guests that this easement was only intended to be used by the Manor House.

8. I further find that there is substantial evidence that this easement was noted and relied upon in subsequent conveyances. See, for example, Trial Record, Pg. 75:9-24 where a certified South Carolina land surveyor, David Youmans, testified as follows:

- Q. Thank you. I'm going to present you with another deed. This is also in Defendant's Exhibits and chain of title as Part of the same Tab No. 9, I believe, in Defendant's 1, and can you tell us what I've presented to you here?
- A. This is a deed from Alyon, Incorporated to Roi W. and Dyan M. Young.
- Q. And the date of that deed is?
- A. Recorded 9/27/2001
- Q. And if you would go to the property description in that deed?
- A. It's the same as the one I just read, Plat Book 68, Page 171
- Q. Do you know that as the defendants' property, in this case the Guests?
- A. Yes.

9. Accordingly, I find that an examination of the title would show to any perspective purchaser, such as the Guests and / or others, that there certainly appeared to be substantial evidence that the 40 foot right of way continued to exist and prior to the purchase of this property they would have the burden of inquiry to determine the rights they were purchasing.

10. There is also evidence in the trial record that the Defendant's deed itself contains a direct reference to the 1999 plat which, in turn, references the 1969 plat. See Defendant's Exhibit No. 1, Tab 12) I further note and find that the property description found in the Defendant's own deed reads as follows:

All that certain parcel of land situated on Lady's Island, County of Beaufort, State of South Carolina, being known And designated as follows: Consisting of 3.917 acres, more or less, (being shown and delineated as 2.430 acres, more or less, and 1.487 acres, more or less) a portion of County Club Section of Pleasant Point Plantation, on that certain plat Prepared by David S. Youmans, RLC, dated and recorded In the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 68 at Page 171. Trial Record, Pg. 80: 1-11.

11. The Defendant's deed further provides as follows: "For a more complete description as to metes and bounds, courses, and distances, reference may be made to the afore- mentioned plat of record. This property is subject to all applicable covenants, restrictions, conditions, and easements **filed of record in Beaufort County, South Carolina.**" **Emphasis Added.** As previously discussed, this includes the Plats and Deeds that do reference the 40 foot roadway easement.

12. At this point, is important to note that the Plaintiff is not claiming a fee simple or any actual estate of land in the 40 foot roadway but merely the limited right to use that track to access her property. Quoting the Plaintiff's trial court testimony:

Q. But, you are making a claim to the 40 foot driveway shown at 18 at 45.

A. Yes, just the use of it. I'm not contesting the fact that they own land, or anything like that, just that there's an easement over it, and we should be allowed to use the easement as we have for almost the last 40 years. Tr. Record, Pg.119: 18-24.

13. Although I do find this Plaintiff's claim to certainly appear to be valid, as hinted at the very beginning of this Order, there are several matters that make this case more challenging than it may first appear. The first of these, however, can rather easily be dismissed with the apparent consent of both parties. Although there was a prior mediation in this case, both sides have acknowledged on the record that this prior mediation was unsuccessful. Mr. Tedder noted that "it failed and is irrelevant" Trial Record, Pg. 142: 4-5; and Mr. Kuhn apparently fully agreed noting that "It failed, that's for sure" Trial Record, Pg. 142: 9.

14. Accordingly, I have not considered a number of references in the Trial Record concerning this mediation³.

15. The second potentially troublesome matter is that there is testimony by Cloide Branning, that the 40 foot roadway found on the original Plat Book 18, Pg. 45 that appears to access lots 1, 2, 3, (owned by the Plaintiff for many years) to Pleasant Point Drive and adjoining land now owned by the Defendant Doctor Keith Guest, and his wife, Stephanie Guest, was probably at the time of the 1969 Plat, and for a number of years thereafter, inaccessible.

³ Among the rules concerning mediations, are the following, "Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

- (1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;
- (2) Admissions made in the course of the mediation proceeding by another party or any other person present;
- (3) Proposals made or views expressed by the mediator;
- (4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or
- (5) All records, reports or other documents created solely for use in the mediation.

Mr. Branning testified that:

- Q. And why did you have to go around instead of coming up Straight up Pleasant Point Drive, that 40 foot drive that's shown on the plat?
- A. Trees and --- there were trees and hedges.
- Q. So physically, it was impossible?
- A. Physically.
- Q. Although there may have been a road drawn on a piece of Paper, there was no road in existence?
- A. Correct.

Trial Record, Pg. 180:15-25; Pg. 181: 1-4.

16. Without making a specific finding of fact about the testimony quoted above, but merely assuming that this testimony is 100% accurate, does it necessarily follow that no easement or roadway existed? I believe the law in South Carolina is otherwise.

17. In **Carolina Land Company, Inc. v. Bland**, 217 S.E.2d 16 (1975) it was argued that an easement had been abandoned for a 30' foot street because it was never opened or used. The South Carolina Supreme Court disagreed. It found that mere nonuse, by itself, was not enough to abandon easement. Applying this rule here, even if what happened in the 1970s was that the 40 foot track remained uncleared and unused for a number of years, this testimony by itself does not conclusively determine that an abandoned was actually intended.

18. Applying the Carolina Land Company case, to the facts in this case, and reviewing the Defendants Guests deed and plat it clearly references various prior deeds and plats, including the 199 Plat recorded at Plat Book 68 at 171. In turn, that plat completed by David Youmans, Registered Land Surveyor, shows a reference to the Tompkins (Ewing) property and the original Plat done in 1969. Thus, I find that Defendant Guests were at the very least on constructive record notice, and most likely actual notice, from their own Plat, that the 40 foot easement existed and was located on their property. In turn, this knowledge is very significant legally, because, quoting again directly from the Carolina Land Company case:

Carolina Land Company had constructive notice of the Appellants easement based upon the recorded instruments in its chain of title. The law imputes to a purchaser who proposes to acquire title to real estate **notice of the recitals** contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired. [Citations omitted].

Emphasis Added.

19. I find that what was said in Carolina Land Co. case squarely applies here: "This plat was thus a link in the chain of title to the property so acquired and gave constructive notice of the appurtenant easement in question." *Id.*, at 217 S.E.2d 16, 20 (S.C. 1976).

20. I further note that pursuant to the **Murrells Inlet Corp.** case that the easement shown on a recorded plat is deemed completed and dedicated at the time the conveyance is made (citing a number of prior South Carolina cases) and the mere fact that it is not yet in use does not mean that it necessarily is either abandoned or not yet in existence. In short I find that the mere fact the easement was not immediately freed of trees, hedges, and other impediments does not bar the Plaintiff's claim for using the 40 foot easement today.

21. The third matter of some potential concern is the second easement created for General Tompkins and whether or not it was designed or intended to create a substitute easement for the original easement found on the 1969 Plat. The record is very clear that Pleasant Point Plantation conveyed an easement for life, to the General, his wife, and his daughter (the Plaintiff) (or the survivor of them for his or her life) a triangle tract of land on what is now the Defendants Stephanie and Doctor Guests' land. The question has now arisen as to whether or not this easement for life was intended to be a substitute for the easement found on the original 1969 Plat and referenced again on the 1999 plat? For several reasons, I find this is **not** a substitute nor an accord and satisfaction.

22. First, I note that there is no mention in the express easement document itself that it was actually intended in any way to substitute for any other pre-existing easement nor is there any reference or language whatsoever to the abandonment of any former easement by the creation of this second easement. On this ground alone, it is highly doubtful that this is a true substitute easement. I would assume that if one wanted to create a true substitute easement that would be noted on the

document itself. Second, there is affirmative testimony in the trial record from the land surveyor, David Youmans, which is not contradicted (as best as I can tell) elsewhere in the trial record, that this was not a genuine substitute for the prior easement. Specifically, land surveyor, David Youmans, testified that:

Q. Did you interpret this as it relates to the 40-foot roadway?

A. No, not at all.

Q. And, if the 40-foot roadway had not existed at the time of this [second] easement, in your opinion, would there have been a way to drive a car to the carport on Mrs. Ewing's property, absent the 40 - foot roadway?

A. No, sir.

Trial Record, Pgs. 71:14-16; Pg.71:22-25; Pg. 72:1-2.

In short, based upon the language in the easement which lacks any hint of a intention of substitution and based upon this testimony, which I find credible and trustworthy, I find that both easements co-existed for a number of years but one was never intended to be an actual substitute for the other.

23. I turn to the defendant's argument that the easement found on the 1969 plat and the 1999 plat and in a number of subsequent deeds is limited to an easement that deals only with the Manor House. I simply don't find this limitation in the documents or subsequent Plats. If a way of passage is specially limited and was not intended to be used by adjoining lots that would otherwise naturally appear to have the benefit of the "other way of passage" -- I would anticipate that would be noted on the Plat itself.

24. Moreover, I am at least somewhat leery of testimony delivered in a trial many decades after the fact that appears to squarely contradict a recorded document that has been filed of record for many decades because accepting that testimony opens the door to the impeachment of recorded documents that others have testified that they have relied upon for many years. Strictly as a policy manner, this would unsettle many previously recorded property claims.

25. I find instructive that in **Murrells Intel Corp. v. Ward**, 662 S.E.2d 452 (S.C. App. 2008), in the final paragraph of that opinion, the Court of Appeals held that the dedication of the easement was completed when an adjoining lot was originally conveyed and further held, in words in the final sentences of that opinion, that seem to me to squarely apply to this case.

It would now be unfair to deny MIC the right to the full use and enjoyment of the easement as indicated in the plat, regardless of what Ward now argues were her intentions at the time the plat was recorded. Subsequent Purchasers are entitled to rely on recorded deeds and plats to determine their rights in respect to property.

26. Finally, I also do agree with Plaintiff's counsel in his opening statement that as an alternative reason for finding that a 40 foot right of way exists is that the Plaintiff has proven a prescriptive use on this record by clear and convincing evidence⁴. I find that for many years (certainly beyond the 20 year required time period) under a claim of right to use, the Plaintiff has used the same access and egress method in a clear, open, actual, notorious, visible manner, and this prescriptive right existed even before the Guests owned their property⁵. The Guests are charged with what is open and visible on their own property and they had at least constructive, if not actual, notice of the Plaintiff's prescriptive easement rights.

27. See, in general, **Hartley v. John Wesley United Methodist Church of Johns Island**, 584 S.E.2d 386 (S.C. App 2003) describing the elements of prescriptive easement (1) the continued and uninterrupted use or enjoyment of the right for the full period of twenty years (substantial evidence supports this finding

⁴ I note that both the question of the plats and deeds of record, and the question of whether or not a prescriptive right of use exists are both properly before me. See Plaintiffs First Cause of Action (See Plaintiff's Complaint, Paragraph 33 for a Declaratory Judgment) and the Defendant Guests Answer and Counterclaim (Paragraph 33) asking for similar relief.

⁵ Her testimony included her statement that she has been using the driveway / road that had been shown on many plats "since 1969 / 1970" Trial Record, Pg. 111: 20-25 and that she has been using the carport to park her car or her Dad used the carport to park his car "same amount of years." See Trial Record, Pg. 112, 1-6. See also Defendant's Exhibits, Exhibit D-15, D-16, D-17, D-18.

here) (2) identity of the thing enjoyed (the Plaintiff has testified that she has used the identical access point that her father did for many years) and (3) use or enjoyment was adverse or under claim of right (among other testimony in this case, (there is testimony by the Plaintiff that she was under the impression, she had the right to use the roadway, very similar to the facts found in **Revis v. Barrett**, 467 S.E.2d 460 (S.C.App. 1996), where a daughter's testimony as to her belief that she had a continuing right to use a roadway, originating with her father's own prior use of the roadway many years previously, was considered by the Court as a proper basis for a claim of right or under color of title analysis.

28. As I understand the law of South Carolina on this point, our courts have held in order for a party to earn a prescriptive easement under claim of right he or she must demonstrate a substantial belief that she or he has the right to use the parcel or road based upon the totality of circumstances surrounding his use. I find this test has been met on this record. The mere fact of the existence and use of the carport for well more than 20 years, by itself, is certainly at least some evidence of a prescriptive easement.

No Attorney Fees

29. But, I have concluded that the Plaintiff is not entitled to attorney fees in this case for several reasons. It needs no citation to state that the normal rule in South Carolina is that each side should pay their own attorney. Thus, it is the exception and not the normal rule that Plaintiff argues for in this case. Does the Plaintiff fall within one the limited exceptions? I don't think so⁶.

⁶ Often, "the award of attorney's fees is left to the discretion of the trial judge and will only be disturbed upon a showing of abuse of discretion." **Upchurch v. Upchurch**, 367 S.C. 16, 28, 624 S.E.2d 643, 648 (2006). Moreover, in determining the amount of attorney's fees to award, the court is often instructed to consider: (1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services. **Glasscock v. Glasscock**, 403 S.E.2d 313, 315 (S.C. 1991). And, these factors have not been fully proven on this record.

30. The Guests arguments were well-made and well-articulated. I do think I have some discretion in this area, and since the Defendants arguments were well-made and well-articulated, I simply decline to find that attorney fees should be paid by the Guests. This looks to me, especially in the absence of a controlling statute, to be a matter of some discretion for the Courts in this State and especially so since I further find that not all the factors that normally go into an award of attorney fees have been adequately demonstrated on this record, See footnote 6. At all events, I remain unconvinced that attorney fees are warranted in this specific situation.

Respectfully Submitted,

Stephen Spitz
Stephen A. Spitz⁷

Appointed Special Referee
Of Counsel

Stevens & Lee

151 Meeting Street

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Charleston, SC 29401

Email: sasp@stevenslee.com

Phone Number: 843-414-5085

⁷ I also want to thank Marie H. Bruegger, Registered Professional Reporter, CRR, for her excellent work at the January 20, 2016 hearing.

Dated this 25th of March, 2016

Copies by email to:

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COUNTY OF BEAUFORT

Plaintiff,

VS.

KEITH A. GUEST and STEPHANIE C.
GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-07-1931

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e)**

TO THE DEFENDANTS ABOVE NAMED:

2016 APR 11 PM 3:17
JULIA A. BOWEN
DEPUTY CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned Attorney, will move before the Special Referee of the Common Pleas Court for the Fourteenth Judicial Circuit, in the Beaufort County Court of Common Pleas, 100 Ribaut Road, Beaufort, SC 29901, within ten (10) days of issuing this Motion to Alter or Amend the Special Referee's Final Order, under the provisions of Rule 59(e) of the South Carolina Rules of Civil Procedure, or as soon thereafter as counsel may be heard, for an Order granting the amendments requested in this motion requiring the Defendant to return the driveway to its pre-litigation location and alignment and further clarifying that the declaration of a prescriptive easement includes the driveway area outside of the boundaries of the platted 40' roadway. That based on the attached exhibit, the Court's records, and trial testimony, Plaintiff is entitled to the relief requested.

Therefore Plaintiff prays to the Court for the following:

1. An amendment to the Court's Order modifying the Court's Form 4 to identify the TMS#s and addresses of the real estate in which the Court's Order is applicable;

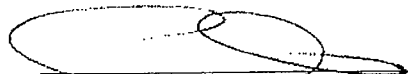
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2. An amendment to the Court's Order modifying the Form 4 to reflect that the Final Order of the Special Referee "does" end the case;
3. To clarify the area of the prescriptive easement to include the area of the driveway that extends beyond and outside of the 40' platted roadway toward the marsh providing Plaintiff with a turnaround area, that has been in continuous use for over twenty years as testified to and shown on the plat filed in Plat Book 68 Page 171;
4. An amendment to the Court's Order permanently restraining the Defendants (the Guest) from interfering, blocking or otherwise disturbing Plaintiff's lawful use of the 40' platted roadway and the prescriptive easement as shown on the plat filed in Plat Book 69 Page 171;
5. To Amend the Order of this Court filed March 29, 2016 to include a provision requiring the Defendant Guests at Defendant Guests' expense to return the driveway to its previous alignment, location and condition prior to the date of filing this action August 11, 2015, including but not limited to removing the fence, and replacing the displaced grass, and as shown on that certain plat filed in Plat Book 68 Page 171 in Beaufort County Office of the Register of Deeds and presented into evidence as Defendant's Exhibit 1 Tab 12; and
6. Such other and further relief as this Court may deem just and proper and in favor of the Plaintiff.

This motion shall be supported by the Plaintiff's Motion and the record made before the court at trial or at the time of a hearing or before the time of the hearing.

WHEREFORE, the Plaintiff prays for the relief requested herein and such other relief as the court deems proper and in favor of the Plaintiff.

CHRISTOPHER INGLESE, for
DAVID TEDDER P.A.:



Attorneys for Plaintiff
PO Box 1282
604 Bladen Street
Beaufort, SC 29902
Phone: (843) 521-4222
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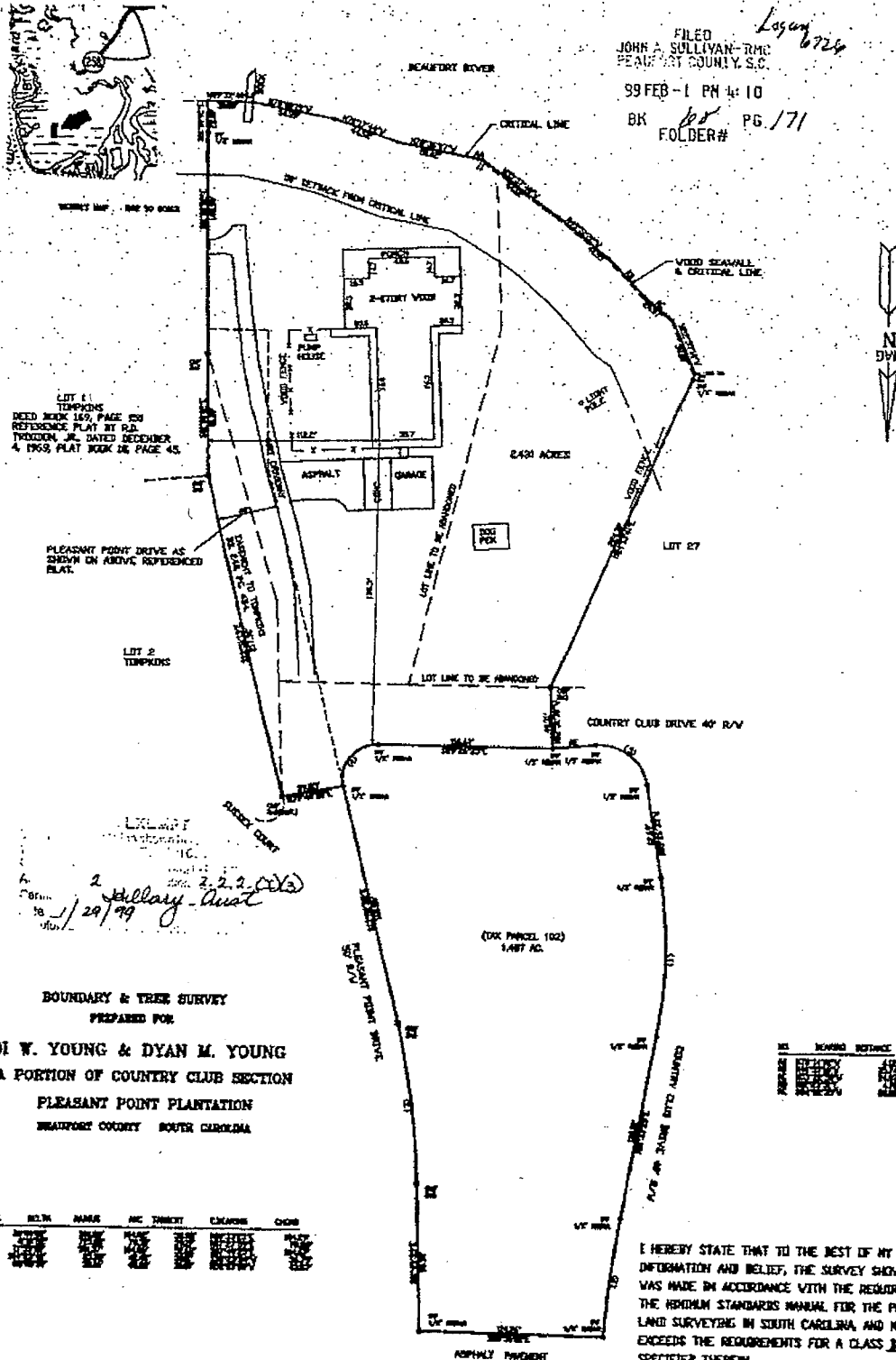
April 8, 2016
Beaufort, South Carolina

000100

FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.

59 FEB -1 PM 4:10

BK *for* PG. 171
FOLDER#



BOUNDARY & TREE SURVEY
PREPARED FOR

ROY W. YOUNG & DYAN M. YOUNG
A PORTION OF COUNTRY CLUB SECTION
PLEASANT POINT PLANTATION
BEAUFORT COUNTY SOUTH CAROLINA

NO.	BLTN.	NAME	AC. TREES	CHANGES	OWNER
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9
10	10	10	10	10	10

THIS PROPERTY IS LOCATED IN ZONE 4-12 (ZEL 1300) AS
DETERMINED BY FEMA, FIRM COMMUNITY-PANEL NUMBER
40000 0079 & DATED 5/29/64.

FILE: R200-008-004-0171-0000
R200-008-008-0172-0000
R200-008-004-0102-0000

0 30' 60' 120' 180'

SCALE 1" = 60'

JANUARY 27, 1990



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE,
INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN
WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF
THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF
LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR
EXCEEDS THE REQUIREMENTS FOR A CLASS 2 SURVEY AS
SPECIFIED THEREIN.
ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN.

David S. Youmans
DAVID S. YOUNG & DYAN M. YOUNG
BEAUFORT SURVEYING, INC.
1925 DUKE STREET (PO BOX 1231)
BEAUFORT, S.C. 29901
PHONE (843) 824-2001 FAX (843) 824-2002

000101

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT)

CASE NO.: 2015-CP-07-1931

JULIA TOMPKINS EWING)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

KEITH A. GUEST, STEPHANIE C. GUEST)
AND PLEASANT POINT PROPERTY)
OWNERS ASSOCIATION, INC.)

Defendant.)

Plaintiff's Attorney:

CHRISTOPHER INGLESE, Bar No. 100131

Address:

DAVID L. TEDDER PA PO BOX 1282

BEAUFORT SC 29901

Phone: 843-521-4222 Fax 843-521-0082

E-mail: _____ Other: _____

Defendant's Attorney:

FRED KUHN, JAMES GRIMSLEY, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

2016 APR 11 PM 3:17
JULIA TOMPKINS EWING
BEAUFORT COUNTY, S.C.
CLERK OF COURT

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: RULE 59(e) Motion to Alter or Amend Order

Estimated Time Needed: 15

Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

4/8/16
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** 25

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: Rule 59(e) Motion to Alter or Amend Order

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

000102

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JULIA TOMPKINS EWING,

Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE C.
GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-07-1931

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION FOR
TEMPORARY INJUNCTION**

2015 AUG 11 AM 11:52
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned Attorney, will move before the Presiding Judge of the Common Pleas Court for the Fourteenth Judicial Circuit, in the Beaufort County Court of Common Pleas, 100 Ribaut Road, Beaufort, SC 29901, on or before the _____ day of _____, 2015 at _____ .m. or as soon thereafter as counsel may be heard, for an Order granting the relief as requested in this motion and Plaintiff's attached complaint pursuant to SCRCF Rule 65 enjoining the defendant from the continued, further, or actual obstruction of the Plaintiff's driveway. Therefore Plaintiff prays to the court for the following:

1. Temporary injunction to preserve the Plaintiff's original access to and from the right of way pending the outcome of the related litigation;
2. An order requiring the Defendants' to return the area to the left of the blocked driveway back to its original grassy appearance;
3. An order requiring the Defendants (the Guest) to pay the half of the surveyor fees they have yet to pay;
4. Attorney's fees and costs for the necessity of bringing a motion to preserve the status quo regarding the ingress and egress of the Plaintiff's property; and

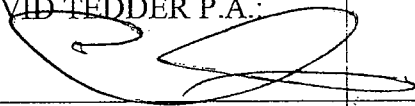
000103

5. Such other and further relief as this court may deem just and proper and in favor of the Plaintiff.

This motion shall be supported by the Plaintiff's affidavit attached and the record made before the court at or before the time of the hearing.

WHEREFORE, the Plaintiff prays for the relief requested herein and such other relief as the court deems proper and in favor of the Plaintiff.

CHRISTOPHER INGLESE, for
DAVID TEDDER P.A.



Attorneys for Plaintiff
PO Box 1282
604 Bladen Street
Beaufort, SC 29902
Phone: (843) 521-4222
Fax: (843) 521-0082

August 11, 2015
Beaufort, South Carolina

000104

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JULIA TOMPKINS EWING,

Plaintiff,

vs.

KEITH A. GUEST and STEPHANIE C.
GUEST and PLEASANT POINT
PROPERTY OWNERS ASSOC. INC.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-07-_____

AFFIDAVIT OF PLAINTIFF

2015 AUG 11 AM 11:52
CLERK OF COURT
BEAUFORT COUNTY, SC

PERSONALLY APPEARED BEFORE ME, Ellen Walsh, Marketing Representative for Plaintiff herein, who being first duly sworn says:

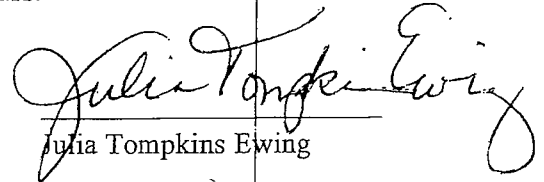
1. My name is Julia Tompkins Ewing and I am the owner of 6 Sussex Court Beaufort County, South Carolina. I have lived at 6 Sussex Court for two years but have been familiar with the property and spent a lot of time there since my father purchased the property in 1969.
2. My father Rathvon McClure Tompkins a/k/a R. McC. Tompkins purchased the property in 1969. In 1995 the property was deeded from my father to a number of trustees and ultimately in 2013 I acquired the property as a partial distribution as a beneficiary of The Rathvon McClure Tompkins Trust.
3. The home on the property was built in 1805 by James Cuthbert. The property has been in our family for 46 years.
4. The Guests (Defendants) acquired the property next door by Special/Limited Warranty deed filed in the Beaufort County Register of Deeds Book 02938 Page 0589 from JP Morgan Chase Bank. Upon information and belief, the Guests acquired the property through foreclosure auction.

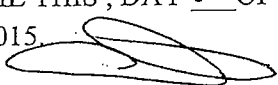
5. In 2013 a dispute arose regarding the driveway and access to my property. The Guests were alleging that we were trespassing, despite a 1969 plat filed at the Beaufort County Register of Deeds office at Book 18 Page 45 clearly showing a 40' feet right of way for the benefit of my property. (Exhibit A)
6. To my knowledge, the existing driveway/right of way has been in existence for over forty five (45) years and I have always known the driveway on the 1969 plat to be the access to my property.
7. In a good faith effort to resolve the dispute, I entered into pre-litigation mediation. We worked all day at great expense to put together a proposed resolution to the dispute.
8. On May 4, 2014 all of the parties agreed in concept to the proposal and all parties signed off on a handwritten agreement outlining the steps to resolution. (Exhibit B)
9. Generally, we agreed to adjust the drive to my home, prohibit parking at a designated "turn around" area, share the costs of adjusting the travel lane and to maintain the status quo until completion of the mediated agreement.
10. Suddenly, upon a return from out of town, on 20th day of July 2015 I came home to find a fence blocking the driveway and a partial new driveway place outside of the area agreed upon for access. (Exhibit C)
11. The new driveway is not what we agree too and the fencing blocking the original access is also in violation of our agreement.
12. The Defendants also caused the removal of stakes that we paid a surveyor to place in anticipation of making the agreed to adjustments to the driveway.

13. The Defendants unilaterally blocked the only access to the property that has been in place for at least forty five (45) years.

14. The Defendants also unilaterally placed a new driveway in contradiction to our agreement and outside of the agreed upon area.

15. I am asking the court to enforce the mediated agreement by maintaining the access that has been in place for more than forty five (45) years. Or in the alternative, I would like the court to preserve the existing access that has been available to my family for over forty five (45) years.


Julia Tompkins Ewing

SWORN AND SUBSCRIBED TO
BEFORE ME THIS, DAY 5th OF
August, 2015. 

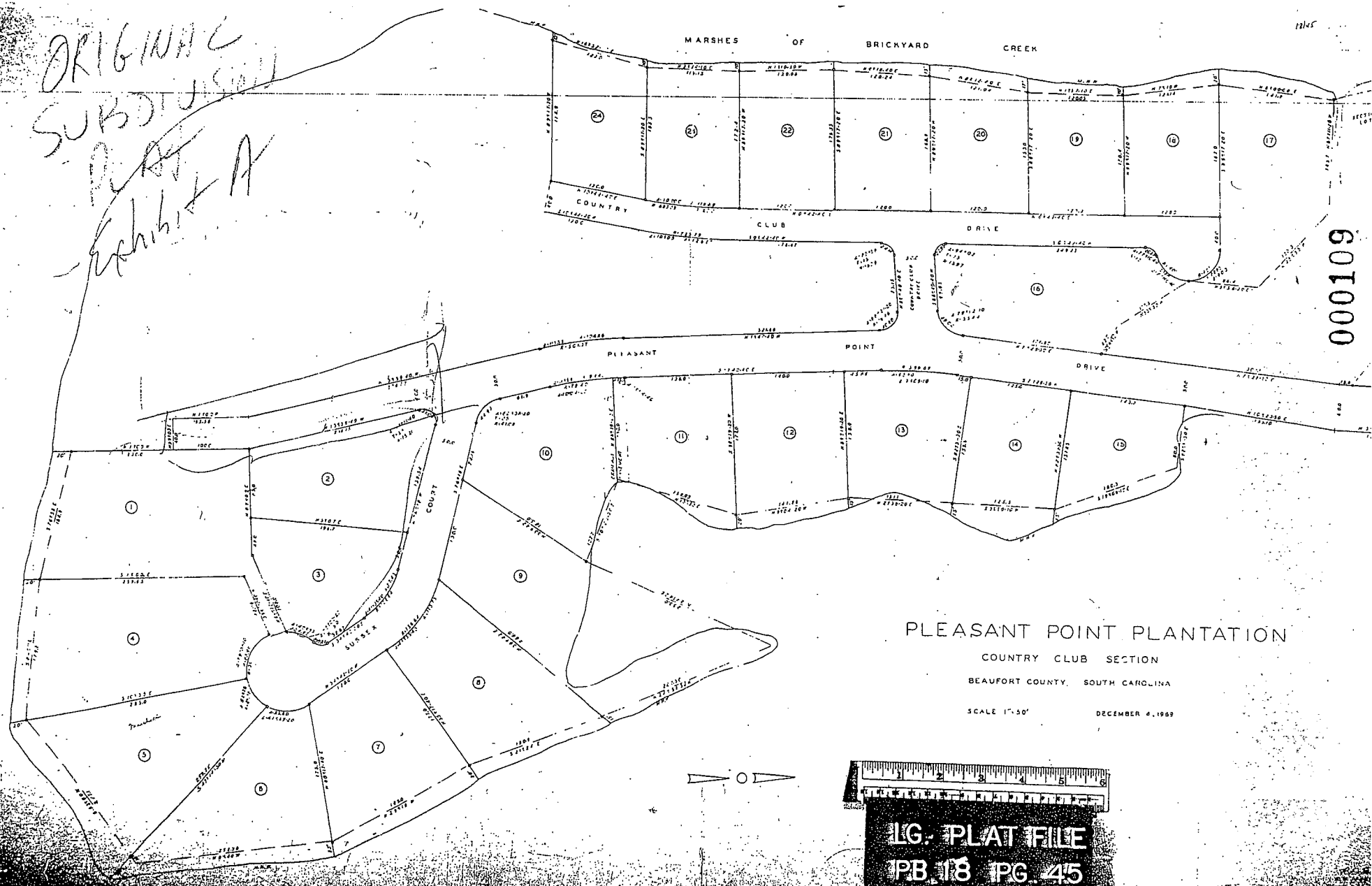
Notary Public State of South Carolina
My Commission Expires 4/11/2022

000107

Exhibit A

000108

ORIGINAL
SUBDIVISION
PLAN
EXHIBIT A

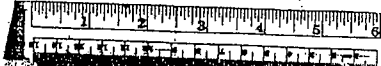


PLEASANT POINT PLANTATION

COUNTRY CLUB SECTION

BEAUFORT COUNTY, SOUTH CAROLINA

SCALE 1"=50' DECEMBER 4, 1989



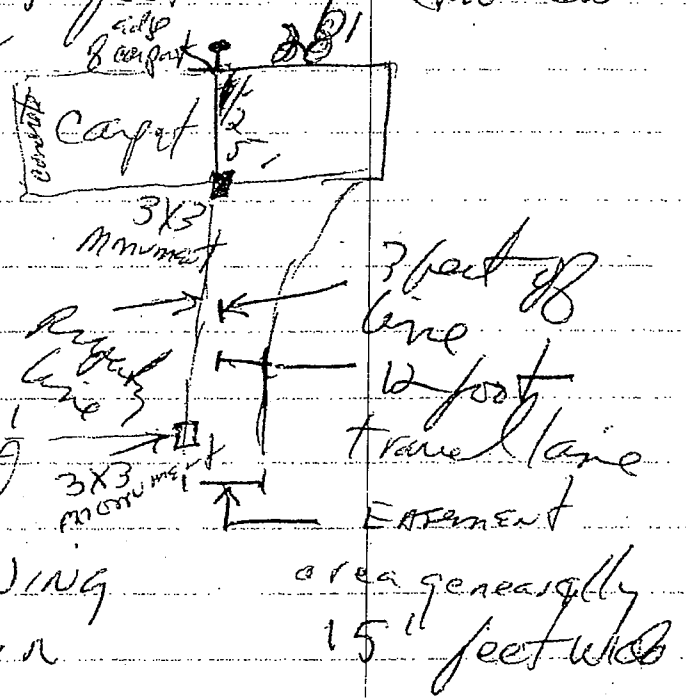
116 PLAT FILE
PB 118 PG 45

Exhibit B

000110

MAY 4, 2014 Mediated Settlement Agreement (no parking)

- 1) Manuevering area for carport is 28 feet wide, 4-25 foot deep (towards driveway) equal to carport width
- 2) Costs are 50/50 split
- 3) Maintenance 50/50
4. 15 easement travel are 3 feet off Ewing property line (general), but widens from bushes at corner 3X3 monument at boundary of Lots 1 and 2 to the 28 feet at carport with the beginning point being the area at Sussex Court and boundary of Lot 2



OK - 50/50

50/50

Parties to use best efforts to have CAGS 99-CP-07-1672 opened to receive settlement terms

000111

- 6) Parties to seek reasonably quotes for installation of Road using best efforts
- 7) Parties also to prepare a new agreement, new easement, obtain quit-claims from Pleasant Point POA
- 8) Old easement to be abandoned by parties
9. Current Drive to be used until new road completed
10. Both parties will cooperate and jointly sign/apply for permit to build road

000112

Kerli Gust
Shelburne, N.Y.

Julia Tongue Ewing

Exhibit C

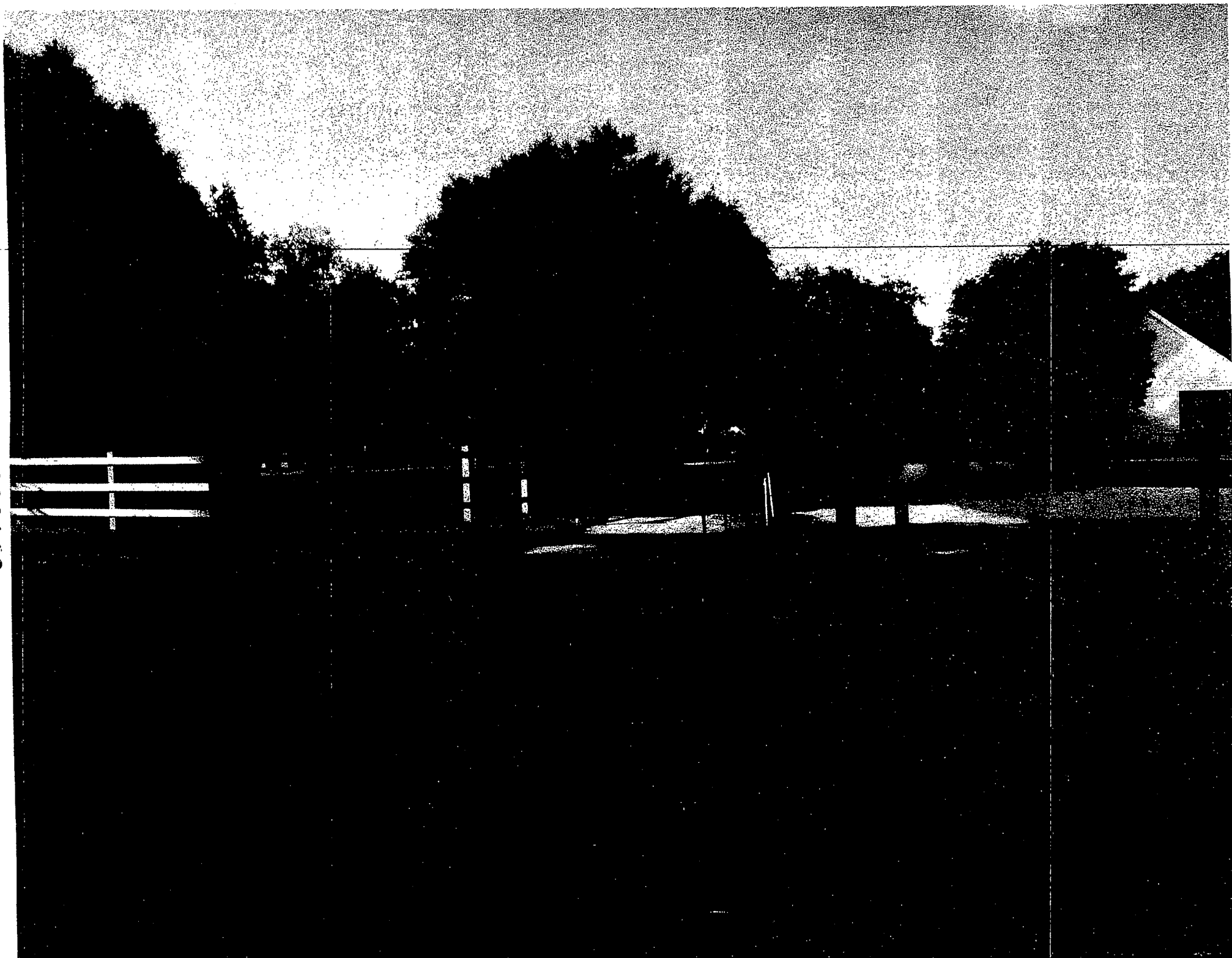
000114



CT1000



000116



In the Matter Of:

Ewing, Julia Tompkins v
Guest, Keith, et al

Hearing
January 20, 2016

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000117



1980 - 2015

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT
4 JULIA TOMPKINS EWING,
5 Plaintiff,
6 vs. CASE NO. 2015-CP-07-1931
7 KEITH A. GUEST and
8 STEPHANIE C. GUEST and
9 PLEASANT POINT PROPERTY
OWNERS ASSOCIATION, INC.,
Defendants.

10 BEFORE: STEPHEN A. SPITZ, Judge
11 DATE: January 20, 2016
12 TIME: 9:46 AM
13 LOCATION: City Municipal Court
14 1901 Boundary Street
Beaufort, SC
15 REPORTED BY: MARIE H. BRUEGGER, Registered
16 Professional Reporter, CRR

17
18
19
20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
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000118

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dave@tedderlawoffice.com

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fred@mossandkuhn.com

ATTORNEYS FOR THE DEFENDANT
PLEASANT POINT PROPERTY OWNERS
ASSOCIATION, INC.:

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jimgrimsley@tgdpa.com

(INDEX AT REAR OF TRANSCRIPT)

000119

1 (PLF. EXH. 1, Package Containing Deeds
2 and Plat for Plaintiff's Parcel, was marked for
3 identification.)

4 (DFT. EXH. 1, Package Containing Deeds
5 and Plat for Defendants' Parcel, was marked for
6 identification.)

7 MR. TEDDER: As I said, I'm David
8 Tedder, representing the plaintiffs in this.

9 This particular action centers around
10 the existence or nonexistence of a 40-foot
11 easement shown as Pleasant Point Drive on a plat
12 back from the 1960s. That plat was the basis of a
13 subdivision of several lots. Three of the lots
14 were purchased by Mrs. Tompkins -- excuse me,
15 Mrs. Ewing's father -- in reference to that plat,
16 which then invokes a whole series of case law
17 about the existence and how do you abandon a plat
18 or change a plat or anything like that.

19 Over the years, the adjoining
20 property, which I'm going to refer to as the Manor
21 House, which was an original house on Pleasant
22 Point, a large house with a pool house that is
23 adjacent to this and also abuts what was shown as
24 Pleasant Point Drive on that Plat Book 18 at 45,
25 through a series of ownership changes and

OPENING ARGUMENT BY PLAINTIFF

1 whatever, eventually ended up with the defendants,
2 the Guests, represented by Mr. Kuhn, and in that
3 time period, there were multiple deeds which
4 changed the configuration of the Manor House lot
5 and some of the roads that are adjacent to or tie
6 into Pleasant Point Drive.

7 The crux of this case is going to be
8 not who owns the land underneath these roadways,
9 but the rights to those areas as shown on the
10 roadways, irrespective of who owns it, whether
11 that be in fee or subject to the easement.

12 The present action was brought as a
13 result of the defendants, without apparent
14 permission from the property owners or my clients,
15 to erect a fence over a portion of that 40-foot
16 area known as Pleasant Point Drive and to begin
17 the movement of a driveway that had been in
18 existence for in excess of 40-some-odd years to a
19 different position, which the present structure of
20 this case is there is a consent preliminary
21 injunction, or order, prohibiting further
22 construction or movement until this court makes
23 its decision.

24 THE COURT: Well, let me stop you
25 right here and just ask a single question. I have

OPENING ARGUMENT BY PLAINTIFF

1 not looked at -- well, let me strike the question,
2 because I don't know what's coming into evidence.
3 I would like to see the prior order, or orders,
4 that were entered in this case. I purposely have
5 not gone online and done any of that.

6 Do you have any objection to me seeing
7 the prior orders?

8 MR. KUHN: No, sir, Your Honor.

9 MR. TEDDER: Mr. Inglese will pass
10 that up.

11 What you will see and hear, and the
12 testimony is going to be, I think, fairly short,
13 just establishing the use of the roadway area.
14 We've stipulated to the admissibility of the items
15 of record that you'll be seeing, at least, I
16 think, five different plats over the years,
17 multiple deeds, all of which I don't think bring
18 into dispute anything other than does that 40-foot
19 easement still exist, easement area, roadway area,
20 whatever you want to call it.

21 I sometimes slip in my real estate to
22 interchange easement and road. I'm going to try
23 to use the word road to distinguish it from a
24 trapezoidal area that is an easement, called an
25 easement, and has a writing attached to it.

OPENING ARGUMENT BY PLAINTIFF

1 The parties cannot agree. It's
2 unfortunate we're in litigation over this, but I
3 think the case law is clear going back to the
4 cases from the '50s that, basically, the rule is,
5 it always has been, if you buy a piece of property
6 from a developer that references a plat, that
7 dedication is complete as to the owner and in some
8 cases to the public and all the other subdivided
9 lots all the way out to where you have to go, and
10 the case law is clear that a resubdivision or
11 recutting of lots and roads subsequent to that
12 plat is irrelevant as to the existence of that
13 prior platted road. That's basically the entire
14 case.

15 I'm going to call in the property
16 owners association, who's represented by Mr. Jim
17 Grimsley, to identify some documents, and really,
18 that's all I have for them.

19 I think the testimony is going to be
20 fairly short in this, and I have to advise my
21 clients and the others, in pretrial, a couple of
22 things we agreed that we have no objection and, in
23 fact, would like to accompany Your Honor out to
24 the property so you can visualize the property and
25 see what we're talking about at this point.

OPENING ARGUMENT BY PLAINTIFF

1 But I'd also like to get into the
2 record, Mr. Kuhn, the stipulations concerning the
3 costs of this action, which we're splitting, for
4 the court reporter, so that it's clear, there's no
5 misunderstanding, when our young lady's bill comes
6 in. And that's all I have.

7 THE COURT: So it's almost in the
8 nature of a declaratory judgment.

9 MR. TEDDER: It actually was brought
10 in the format of a declaratory judgment with a
11 request for a permanent injunction.

12 THE COURT: I apologize. Have I seen
13 the actual pleadings? You sent those previously,
14 and I put those in a notebook, and I -- okay.

15 MR. TEDDER: We're happy -- we brought
16 plenty of copies. We're happy to provide you with
17 the complaint and the answer.

18 THE COURT: Got it.

19 MR. TEDDER: Because I'm sure Mr. Kuhn
20 will tell you --

21 The other thing that Mr. Kuhn can
22 agree with me on is we have previously compiled
23 documents comprising the chains of title of both
24 the plaintiff and defendant. There are multiple
25 documents. We're going to call them Plaintiff's 1

1 OPENING ARGUMENT BY PLAINTIFF
2 and Defendant's 1, and there are tabs beyond each
3 one to identify each of the sequential documents
4 behind those.

5 THE COURT: I have Plaintiff's 1 up
6 here, which has already been marked, and you're
7 telling me it's coming in by stipulation, and I
8 have a Defense 1, which is a variety of different
9 things. Looks like the chain of title.

10 MR. KUHN: I stipulate to those, yes,
11 sir, Your Honor.

12 MR. TEDDER: Thank you.

13 MR. KUHN: Please the Court, Your
14 Honor, I'm Fred Kuhn. I'm here on behalf of the
15 defendants, Keith Guest and his wife Stephanie
16 Guest, who are seated beside me.

17 Your Honor, I'd like to go through the
18 chain of title, because we're going to throw it
19 all at you pretty quickly during the course of the
20 trial, and you're going to be hearing a lot of
21 names, a lot of references to different plats, and
22 I think it will be good for the judge to have a
23 kind of understanding of the chain of title as you
24 hear the testimony.

25 If I could pass some things up to Your
Honor. The large plat, Your Honor, is a plat

OPENING ARGUMENT BY DEFENDANTS

1 recorded in Plat Book 18, Page 45. If you look to
2 the far left, you'll see where a road marked
3 Pleasant Point Drive terminates and where another
4 road branches off Pleasant Point Drive called
5 Sussex Court that ends in a circular cul-de-sac.
6 That Lot No. 1, which is the lot all the way to
7 the left --

8 THE COURT: I'm going to be very
9 informal. Fred, come up here. Make sure that I
10 can read -- and you can come, of course, Counsel.
11 Let's all make sure that I understand what he's
12 telling me.

13 And I apologize. Do you want me to
14 call you formally by your --

15 MR. KUHN: I respond to almost
16 everything.

17 THE COURT: Okay. So do I.

18 MR. TEDDER: I'm the one with hair.

19 THE COURT: Easy.

20 MR. KUHN: We could have gone all day
21 without that comment. He's already getting dirty,
22 Your Honor.

23 Sussex Court here ends in a
24 cul-de-sac.

25 THE COURT: Got it.

OPENING ARGUMENT BY DEFENDANTS

1 MR. KUHN: Pleasant Point Drive shown
2 here.

3 THE COURT: Okay.

4 MR. KUHN: Right here is the location
5 of my clients' property and a building called the
6 Manor House.

7 THE COURT: Right.

8 MR. KUHN: This Lot 1 is owned by the
9 plaintiff, as well as Lot 2 and 3. She inherited
10 these from her parents.

11 THE COURT: Okay.

12 MR. KUHN: You can see that the
13 intended --

14 THE COURT: With your permission, I'm
15 going to mark so that I -- okay. Go on. Keep
16 going.

17 MR. KUHN: You can see that there is a
18 cut right here off of the Sussex Court to this
19 property, and this property, Lot 1, has an address
20 of 6 Sussex Court. This is where their mailbox
21 is. This is where they get deliveries. They have
22 blocked this, of their own, and the --

23 THE COURT: Who's blocked it?

24 MR. KUHN: The plaintiffs. It's
25 available to them if they want it.

OPENING ARGUMENT BY DEFENDANTS

1 This is the -- one of the original
2 plats of Pleasant Point Plantation, and we'll be
3 talking about who made it and when they made it,
4 who originally made it.

5 Almost immediately after this plat was
6 recorded, this plat was recorded, and I will --
7 because the plats are stored on microfilm, and the
8 copies are not so good, this plat is actually two
9 pages. They couldn't get it all on one sheet at
10 the courthouse, Part 1 and Part 2. It's the same
11 plat, Plat Book 22, Page 109. I took the liberty
12 of blowing up Part 2, which is the part that shows
13 the area we're concerned about.

14 And if you look on here, to get you
15 oriented, you see this little strip of peninsula
16 is this little peninsula.

17 THE COURT: I got it.

18 MR. KUHN: That's the Sussex Court
19 turnaround. Here's Plantation Point Drive. And
20 because I anticipated the difficulty, I enlarged
21 it, so here we've got --

22 THE COURT: Make sure you're seeing
23 this too. That's why I want y'all up here.

24 MR. KUHN: And because we've got a
25 fancy copier, I made the lines more visible.

OPENING ARGUMENT BY DEFENDANTS

1 THE COURT: Highlighted it, okay.

2 MR. KUHN: And you'll see that there
3 is a very big difference in the configuration of
4 this peninsula. The Sussex Court, the Ewings'
5 property is the same, still the access off Sussex
6 Court, but Plantation Point Drive now terminates
7 here. If you line those up sort of beside each
8 other, you'll see that shortly after the turn, it
9 terminates, and it curves around, and you now have
10 a loop that goes around like this.

11 THE COURT: Oh, I see. I understand
12 exactly.

13 MR. KUHN: Additional lots have been
14 added. These lots here have been added. This lot
15 is where my clients now live. This transformation
16 took place -- I've got the dates written down --
17 within a couple of years after these plats. They
18 just redid the area for some reason.

19 THE COURT: So they replatted it, and
20 they changed the configuration.

21 MR. KUHN: And you'll see this part,
22 more significantly why we're here today, this
23 disappeared, no longer existed.

24 If you then look at the next deed in
25 that package of documents, Your Honor -- well, at

OPENING ARGUMENT BY DEFENDANTS

1 the easement.

2 THE COURT: Defendant 1?

3 MR. KUHN: Yes, sir.

4 THE COURT: What page?

5 MR. KUHN: The package I handed out.

6 I have mine in an order different from -- these
7 are the same --

8 THE COURT: I've got two packages
9 here.

10 MR. KUHN: This page here.

11 THE COURT: Oh, this.

12 MR. KUHN: Yes, sir.

13 THE COURT: Behind this.

14 MR. KUHN: I'll be referring to mine,
15 which some of these are not included in there.
16 I'll put them in as we go along.

17 THE COURT: Fair enough.

18 MR. KUHN: This is the easement that
19 was given to Mr. and Mrs. -- General and
20 Mrs. Tompkins, the plaintiff's predecessors in
21 title, from whom she inherited her property. And
22 this document is --

23 THE COURT: Got it.

24 MR. KUHN: This document was signed by
25 the grantor by a gentleman named Cloide Branning

1 OPENING ARGUMENT BY DEFENDANTS
2 on behalf of Pleasant Point Plantation, and
3 Mr. Branning is the gentleman in the second row
4 back here seated behind me.

5 THE COURT: A pleasure to see you.

6 MR. KUHN: He knows a lot of the
7 history of this plantation. He knows how this
8 document came into being.

9 The key thing about this is you'll see
10 it is a driveway easement, although it does allow
11 them to plant and do other stuff if they want to,
12 and it's only in existence for their lifetime.
13 Upon the death of the survivor of them, it passes.

14 THE COURT: I'm going to read all
15 this. These are just preliminary notes so that
16 when I --

17 MR. KUHN: It'll help as you hear the
18 testimony to understand what we're talking about.

19 THE COURT: Exactly.

20 MR. KUHN: And here is the plat that
21 accompanies the easement, and this is the lifetime
22 easement that was granted.

23 THE COURT: Got it.

24 MR. KUHN: And you will see on here
25 that they've drawn Pleasant Point. They labeled
the road. There's no road labeled here. This has

OPENING ARGUMENT BY DEFENDANTS

1 disappeared. This piece of Pleasant Point Drive
2 has disappeared by the time this easement was put
3 into existence.

4 If you compare the dates on the
5 documents, you will see that this was done years
6 later, so it makes sense that it would not be
7 shown on here, which I think reinforces our
8 position that it did not exist.

9 And also, just as a rhetorical
10 question, why would General Tompkins need this as
11 an easement if this was a road? And if you
12 compare these, you will see, on later plats, that
13 the 40-foot road easement, if it still existed,
14 encompasses that greatly. It's a small part of
15 it.

16 THE COURT: I didn't mean to interrupt
17 your opening statement so much, but I really--
18 this helps, gentlemen. This really does help
19 orient me towards what we have in front of us,
20 okay.

21 MR. KUHN: If I can pass you another
22 package of documents. And again, these deeds, I
23 think, are in some of the exhibits, but I just
24 have them chronologically organized so they make
25 sense to me.

OPENING ARGUMENT BY DEFENDANTS

1 THE COURT: I can tell everyone in
2 this whole room, you know, this is overlooked.
3 Insomnia is a real problem in our society, and if
4 you read property descriptions, property plats,
5 and property things, that will always put you to
6 sleep.

7 MR. KUHN: So I will try to liven this
8 up with a joke or two in between.

9 The first document on top, Your Honor,
10 is a deed from the American Hospital Insurance
11 Group to a couple, Roi and Dyan Young, and it's
12 for 1.32 acres, also known as Lot 29, also known
13 as the Manor House. This is one of the deeds --

14 THE COURT: This is the deed to the
15 Manor House.

16 MR. KUHN: Yes, this is.

17 THE COURT: I got it. I got it
18 already. All right.

19 MR. KUHN: If you read the first
20 paragraph, it's for Lot 29, and if you read the
21 second part, where it starts: All that parcel of
22 real property, the second parcel, it says: All
23 that parcel of real property being located to the
24 west of Lots 1 and 2 of Country Club Section of
25 Pleasant Point as shown on a deed recorded in Deed

OPENING ARGUMENT BY DEFENDANTS

1 Book 248 at Page 454.

2 So this deed from American Hospital to
3 the Youngs is not only for Lot 29, but it's also
4 for all that property to the west of Lots 1 and 2,
5 which are the properties owned by the Ewings, as
6 shown on that plat recorded at Deed Book 248, 454.

7 So this is an express deed for title
8 to the easement property that General Tompkins
9 had. This deed at 248, 454, that's the easement
10 that we just looked at.

11 THE COURT: Got it.

12 MR. KUHN: So this deed is conveying
13 ownership of the easement.

14 THE COURT: That last sentence is not
15 something that I completely agree with
16 necessarily.

17 MR. KUHN: It's conveying fee simple
18 title to the land.

19 THE COURT: Yes. Now, that I can
20 totally agree with.

21 MR. KUHN: And there's no reservation
22 that it's subject to an easement.

23 THE COURT: I understand that.

24 MR. KUHN: But we know from looking at
25 the easement, it expires automatically upon the

OPENING ARGUMENT BY DEFENDANTS

1 death of General and Mrs. Tompkins.

2 But the next deed is the next deed in
3 the chain of title, and there's actually several.
4 This is from the Youngs to a company called Alyon,
5 Inc., and this simply -- this is where the title
6 to Lot 29 and some other property is now
7 consolidated in these deeds.

8 And I'm going to run through these
9 quickly, because these next several deeds, for
10 some reason, the Youngs and Alyon, Inc. just
11 exchanged this property back and forth, but you'll
12 see this covers all the property. It's now four
13 acres of land, and I'll get to where the
14 additional three acres come from in a second, Your
15 Honor.

16 And if you'll look at the plat that's
17 the fourth page back, attached to this deed, there
18 are several things about this plat that are of
19 note. The boundary encompasses fee simple title,
20 encompasses both the easement granted to General
21 and Mrs. Tompkins and --

22 THE COURT: I apologize, Counsel.
23 Slow down for just a moment. What deed are you
24 looking at right now?

25 MR. KUHN: It's the deed from the

OPENING ARGUMENT BY DEFENDANTS

1 Youngs to Alyon, Inc. It should be the very top
2 deed.

3 THE COURT: Got it. Okay.

4 MR. KUHN: And if you look at the
5 fourth page, which is this page here, there's the
6 plat to the property.

7 THE COURT: Got the plat.

8 MR. KUHN: And you see at this point
9 in time, the Youngs own Lot 29 that the house is
10 on, Lot 28, which is next door, this little piece
11 of what used to be a road, and the acreage down
12 here, which you'll hear testimony about is largely
13 lowlands.

14 The next several deeds are just trades
15 back and forth between Alyon and the Youngs. For
16 some reason, they conveyed the property to Alyon,
17 Alyon, Inc. conveys it back to them, they convey
18 it to Alyon, Alyon, Inc. conveys it back to them,
19 they convey it back to Alyon, Alyon conveys it
20 back to them, and then it gets foreclosed on.

21 In all of those deeds, the legal
22 description is the same, the property that's shown
23 on that plat we just looked at. And then JPMorgan
24 Chase Bank forecloses on Alyon in July of 2009,
25 the legal description is the same, and then my

1 OPENING ARGUMENT BY DEFENDANTS
2 clients purchased the property for fair market
3 value from the bank in 2010.

4 If we look back into the chain to
5 figure out how these other properties came into
6 being -- if I can show you this package -- this is
7 the chain of title to the Manor House. You see
8 Pleasant Point Plantation Associates conveys
9 Lot 29, also known as the Old Manor House, to a
10 guy named Robert Lewis White.

11 And I think the interesting things in
12 the description, that you'll see it refers to
13 Lot 29 as being shown on a plat by RD Trogon,
14 Jr., registered land surveyor, dated December 4th,
15 1969. That's the plat that I first showed Your
16 Honor, the large plat that shows Pleasant Point
17 Drive extended up into the properties.

18 But then it goes on to say that was
19 revised on December 7th, 1971, revised again in
20 '74, revised again in '82, and it's now shown in
21 Plat Book 30 at Page 141. That's the revised
22 plat, the second large plat I showed Your Honor
23 that shows the loop and the new lots being shown
24 in that subdivision.

25 THE COURT: Let me make sure -- slow
it down for a moment. Let me make sure both I and

1 OPENING ARGUMENT BY DEFENDANTS
2 opposing counsel understand what you just said,
3 which is looking at the deed by Robert Lewis
4 White, and it's to Pleasant Point Plantation
5 Associates Partnership, limited partnership, where
6 do I see all the descriptions of being revised?
7 And I apologize.

8 MR. KUHN: No problem, Your Honor.
9 That's what I want to do, since it's buried.
10 Right here. It's a deed from Pleasant Point --
11 this is the developer -- to Robert Lewis White.

12 THE COURT: Oh, revised. I got it. I
13 see.

14 MR. KUHN: If you read -- the plat by
15 Mr. Trogon, the initial one from 1969, is this
16 one.

17 THE COURT: Got it. Okay.

18 MR. KUHN: When it says revised,
19 that's this one.

20 THE COURT: Got it. Got it.

21 MR. KUHN: So almost right away,
22 they're conveying property out according to the --

23 THE COURT: I understand.

24 MR. KUHN: It's the same plat, same
25 surveyor. They just revised it to add these lots
 and put in the cul-de-sac, take out the extension.

OPENING ARGUMENT BY DEFENDANTS

1 THE COURT: When I say I understand,
2 that is metaphorically said. I understand where
3 we might be going, but I haven't read and studied
4 all these, and so the answer is I think I may
5 understand, okay, reserving judgment as to whether
6 I really do or don't.

7 MR. KUHN: Your Honor, at this point
8 in time, the easement, the lifetime easement, has
9 been granted to General and Mrs. Tompkins, and
10 you'll see this deed references a plat recorded in
11 Plat Book 30 at Page 141. That plat is the next
12 document in line, right after that, right after
13 that deed.

14 This is the plat referenced in that
15 deed, and as you'll see, it has -- the deed, it
16 said revised twice. You'll see that now, here is
17 the original, here was that other one. You'll see
18 it's changed just a little bit.

19 MR. TEDDER: I want to make sure I'm
20 looking at the same thing.

21 THE COURT: Yes. I know this is
22 unusual, but all --

23 MR. TEDDER: I was going to object to
24 him arguing his case during his opening argument.

25 THE COURT: Well, I asked that.

OPENING ARGUMENT BY DEFENDANTS

1 MR. KUHN: I'm really not arguing; I'm
2 just going through the chain.

3 THE COURT: This is the plat I'm now
4 looking at.

5 MR. KUHN: As the testimony will show,
6 Plat Book 30, Page 141, for the record, and you'll
7 see, now they've added the easement to General
8 Tompkins, same as the plat we looked at a few
9 minutes ago that I had to blow up, but they've
10 added that little lifetime easement that was
11 granted to General and Mrs. Tompkins. And again,
12 most importantly, from my point of view, that
13 initial extension is nonexistent.

14 MR. TEDDER: I would say no longer
15 shown on that plat.

16 THE COURT: I understand exactly what
17 you were going to say, which is no longer shown.
18 Whether or not it exists is --

19 MR. TEDDER: And Fred, I was looking
20 for your documents. Did you already show him 68
21 at 171? It's reference to another legal
22 description. That's the actual closing plat that
23 is referenced.

24 MR. KUHN: This one. I did when I was
25 going through these documents.

OPENING ARGUMENT BY DEFENDANTS

1 THE COURT: And the reason for
2 following this unusual procedure is that if you go
3 in without any background, you're listening to
4 someone on the stand talk about --

5 MR. KUHN: It's like Charlie Brown's
6 adults.

7 THE COURT: It's very difficult to
8 follow.

9 MR. KUHN: I appreciate your
10 indulgence.

11 THE COURT: Anything I say I
12 understand is subject to actually studying and
13 really sitting down and --

14 MR. TEDDER: And, of course, you
15 understand, Your Honor, anything that happened
16 after 18 at 45 is irrelevant.

17 THE COURT: I understand that
18 position, okay. I understand exactly that
19 position.

20 MR. KUHN: The next deed is from
21 Mr. White to the Davises, and this deed is for the
22 Manor House. It says it's the same property that
23 Mr. White acquired from Plantation. It references
24 a different deed, though. It references the deed
25 from Mr. Trogon recorded in Plat Book 19 at

OPENING ARGUMENT BY DEFENDANTS

1 Page 160. In other words, they've gone back to
2 this old deed, 19 at 160, even though we know it's
3 since been revised.

4 I just point that out, Your Honor. I
5 think that's just an error on the part of whoever
6 -- they just didn't pull the most recent copy of
7 that plat.

8 THE COURT: So that I understand your
9 position, let me make sure where you think the
10 error took place, okay.

11 MR. KUHN: Here. This is the plat
12 they reference in this deed. Even though they say
13 it's the same property we acquired, under that
14 plat, it's a little bit -- this is different
15 from -- this is just another -- totally another
16 version of what we've looked at. They've made the
17 road a little bit narrower, so we've got -- and
18 what I expect Your Honor may conclude is that
19 Mr. Trogon did the initial plat, he revised it
20 three times, and the most recent revision is the
21 one --

22 THE COURT: When I'm looking at --
23 what stack are you -- you've lost me. I
24 apologize, but you've lost me.

25 MR. KUHN: Pleasant Point Plantation

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Associates, this stack right here.

THE COURT: Got it. Okay. I'm with
you.

MR. KUHN: This deeded plat is in
there about halfway through, I guess.

THE COURT: And your position is --

MR. KUHN: It's next.

THE COURT: No, it's 160.

MR. KUHN: One more.

THE COURT: This is 141, not the right
plat.

Your position is that this plat --

MR. KUHN: That they pulled an older
version; they didn't pull the most recent version.

THE COURT: -- is an older version,
and it'd been revised, but they made a mistake.

MR. KUHN: Yes, sir. And we know that
because we can see in the deeds references to
subsequent revisions and the chain of title before
this.

THE COURT: I can tell you --

MR. TEDDER: 19 at 160?

THE COURT: 19, 160.

I can tell you that even the court
reporter -- she is swell and wonderful -- is

OPENING ARGUMENT BY DEFENDANTS
1 totally lost as to what we actually are doing.

2 MR. KUHN: I'm trying to read the
3 numbers out.

4 THE COURT: On Plat -- and I'm going
5 to use the last three numbers -- 160, while none
6 of this is actually evidence, this is merely
7 opening statement, unless you all have stipulated
8 to these various chains, and I think maybe you
9 have.

10 MR. TEDDER: I think the issue is
11 we're not referring to them by the stipulated
12 exhibit numbers at this point.

13 THE COURT: That's going to confuse
14 everybody later on. How do we identify this stack
15 of plats and documents that I was just handed up?

16 MR. KUHN: How about I just mark them
17 in order, defendant's blank, blank, blank, blank.

18 THE COURT: Perfect. Let's go do that
19 right this minute, okay, and that's so you can
20 follow what we're talking about, okay. Does that
21 make sense?

22 MR. TEDDER: Yes, yes, sir, it does.

23 THE COURT: We're off the record now
24 for just one moment.

25 (Off-the-record discussion.)

OPENING ARGUMENT BY DEFENDANTS

1 (DFT. EXH. 2, Deeds and Titles, were
2 marked for identification.)

3 (DFT. EXH. 3, Deeds and Titles, were
4 marked for identification.)

5 (DFT. EXH. 4, Deeds and Titles, were
6 marked for identification.)

7 (DFT. EXH. 5, Plat, was marked for
8 identification.)

9 (DFT. EXH. 6, Plat, was marked for
10 identification.)

11 (DFT. EXH. 7, Plat, was marked for
12 identification.)

13 (DFT. EXH. 8, Plat, was marked for
14 identification.)

15 MR. KUHN: Your Honor, the first part,
16 D-2 is a deed from Pleasant Point Plantation
17 Associates to Mr. White, which we just discussed.

18 THE COURT: Got it.

19 MR. KUHN: And the key thing there is
20 if you see Mr. Trogon's plat, it refers to the
21 plat at 30, 141, and then the very last sentence
22 in that first paragraph, right there, where it
23 talks about where it's bounded on the north,
24 south, east, and west. On the east, which would
25 be the boundary between my clients' property and

OPENING ARGUMENT BY DEFENDANTS

1 the Ewings' property, it says: Bounded on the
2 east by Lot 1, where it measures 169 feet, more or
3 less, and then: By an undesignated narrow strip
4 of land between the subject property and Lot 2,
5 where it measures 223.06 feet. For a more
6 complete description, reference to the above plat
7 of record.

8 If you go to the plat --

9 MR. TEDDER: Mr. Kuhn, could you just
10 one time reidentify which document you're looking
11 at?

12 MR. KUHN: D-2, a deed from Pleasant
13 Point Plantation Associates to Robert Lewis White.

14 MR. TEDDER: Got it.

15 THE COURT: And if I understand what
16 he's saying to me, he's talking about the first
17 paragraph of the property description and talking
18 about near the bottom of the first paragraph of
19 the property description: An undesignated narrow
20 strip of land between the subject property and
21 Lot 2. That's where he's just stopped.

22 MR. KUHN: And if you -- sounds like
23 they're talking about the easement granted to
24 General Tompkins. It references the plat, Plat
25 Book 30, Page 141. And if you look at the plat,

OPENING ARGUMENT BY DEFENDANTS

1 which is the next document in that package, the
2 plat at Page 30, 141, you will see that the
3 Tompkins' easement, for lack of a better phrase,
4 is shown on there, and if you look to the east of
5 the property that my client was conveyed -- or
6 that in this case my clients' predecessor in
7 title, Mr. White, was conveyed, you'll see it
8 bounded on the east by Lot 1, and then an
9 undesignated strip of land down towards the
10 bottom. So I think that's what it's referring to
11 is that easement, which at that time was in
12 existence.

13 The next document is from Mr. White to
14 Mr. and Mrs. Davis, and it again references that
15 same plat, Book 19, Page 160. And at this time,
16 General Tompkins and his wife were still alive.
17 And this is where we got to the Plat 19, 160 that
18 is not -- we know from reading the deeds, or Your
19 Honor will know when he sits down to study these,
20 this is not the most recent plat that was in
21 existence at that time.

22 Then if we go to the next deed in the
23 chain of title, this is where Mr. and Mrs. Davis
24 convey it to American Hospital Insurance Group,
25 and now we're up to 1997. This deed is a general

OPENING ARGUMENT BY DEFENDANTS
warranty deed.

I'm referring to this deed here.

MR. TEDDER: Yeah.

MR. KUHN: And if you look at the
legal description, it's 1.32 acres, also known as
Lot 29, also known as the Manor House, as shown on
that plat at Plat Book 60 at 190, then it goes:
Save and except that parcel located to the
immediate west of Lot 1 and 2 which is described
on a plat prepared by RD Trogon, Jr., dated
April 30th, 1974, which plat is recorded in Deed
Book 248 at 455. That is the plat for the
Tompkins' easement. So this title -- so this
deed, general warranty deed, excludes the land
that the Tompkins' easement is on.

MR. TEDDER: Your Honor, we are not in
dispute over ownership of the land lying to the
west of Lots 1 and 2, and I think I've stipulated
to that. I don't know how this serves us moving
forward, but to kind of get into it, I don't want
to interrupt someone's opening statement, but all
this is outside our chain of title.

THE COURT: I understand exactly. I
understand already, okay. Honestly, I do. I'm
just letting him make an opening statement.

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1 MR. KUHN: I appreciate your patience,
2 Your Honor. I'm almost done.

3 If you look at the plat that's
4 referenced, you'll see the plat to Lot 29. The
5 easement is shown.

6 The next document is a quitclaim deed
7 dated the same date as the prior deed, between the
8 same parties as the prior general warranty deed,
9 and this deed conveys fee simple title,
10 unencumbered by any easement, to the Tompkins'
11 easement property.

12 These are my clients' predecessors in
13 title, and then we've already gone through the
14 chain of title from American Hospital Insurance
15 Group through the Youngs, and so forth, where this
16 land was conveyed, fee simple, absolute,
17 unencumbered by any easement.

18 When Mrs. Tompkins passed away in
19 2013, the parties attempted by mediation to
20 resolve their differences, prelitigation
21 mediation, voluntary mediation, were unable to do
22 so.

23 THE COURT: Whoever was kind enough to
24 put the water up, thank you very much. It's far
25 too early and it'd be totally inappropriate to

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1 drink scotch, so I'll stick to the water.

2 MR. KUHN: If I can show you some
3 photographs, Your Honor.

4 THE COURT: All right. Come on up so
5 that we all can take a look at the same thing that
6 I'm looking at, all right.

7 Are these marked?

8 MR. KUHN: These are not marked.

9 THE COURT: Let's go and mark the
10 exhibits if you're going to use that in any way,
11 including in the opening statement, so that I
12 know, more important potentially the Court of
13 Appeals and the Supreme Court will know, what fun
14 we're having here today. You see I'm a stickler
15 for marking exhibits. If you refer to it in the
16 opening, closing, or anything else, let's get it
17 marked.

18 (DFT. EXH. 9, Color Photograph, was
19 marked for identification.)

20 (DFT. EXH. 10, Color Photograph, was
21 marked for identification.)

22 (DFT. EXH. 11, Color Photograph, was
23 marked for identification.)

24 (DFT. EXH. 12, Color Photograph, was
25 marked for identification.)

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1 (DFT. EXH. 13, Color Photograph, was
2 marked for identification.)

3 MR. KUHN: Starting with
4 Defendant's 9, Your Honor, this is a photograph
5 standing approximately at this old point here
6 looking into my client's property. This fence you
7 can see right here, this surrounds -- it's the
8 fence erected by the Ewings around their property,
9 and it's pretty much on the boundary line. This
10 is the fence that was erected by my client right
11 before this lawsuit was instituted.

12 And just to give you a new
13 perspective, that's showing roughly the same area.
14 The old access that's marked old entrance there,
15 my clients moved it over to be closer to the
16 boundary line, and that's the new entrance that
17 you may hear some testimony about. That was
18 Defendant's 9.

19 Defendant's 10 is looking at the
20 so-called new entrance, but from the entrance
21 looking up towards Sussex Court.

22 THE COURT: Do you understand?

23 MR. TEDDER: When were these taken,
24 Fred?

25 MR. KUHN: About the time of the TRO,

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1 late last year, about the time suit was filed.

2 And then here's just a little bit
3 further back, showing the new entrance. This is
4 sort of the -- this is the Ewings' property over
5 here. That's my clients' house. There's a
6 temporary fence there erected to just keep people
7 from using the old one 'til the new one got
8 established.

9 And then this photograph, which is
10 Defendant's 12 --

11 THE COURT: This is 13.

12 MR. KUHN: Okay. Defendant's 13, this
13 is -- you can see a six on the mailbox. That's
14 the 6 Sussex Court address. This fence was
15 erected by the Ewings, and it cuts across right
16 here off of Sussex Court. This is the original
17 intended access.

18 THE COURT: These are all things, I
19 presume, he is going to offer into evidence. You
20 are certainly entitled to make all the objections
21 you want at that time.

22 MR. TEDDER: I understand.

23 THE COURT: This is just to orient a
24 very slow judge.

25 MR. TEDDER: I understand.

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1 MR. KUHN: At this time, Your Honor,
2 I'd move to introduce Defendant's 1 through 13.

3 MR. TEDDER: Now, not to be a
4 stickler, I'm plaintiff. I haven't brought
5 anything -- we're in opening statements, which is
6 why I'm trying to get us --

7 THE COURT: I understand exactly. I
8 was going to tell him no. You're going to go
9 first, okay. You're the plaintiff. You'll
10 certainly have that opportunity.

11 MR. KUHN: Your Honor, to wrap all
12 that up, our position is the easement was
13 extinguished under a multitude of theories decades
14 ago, whether it's abandonment, accord and
15 satisfaction -- you'll see there's a prior lawsuit
16 where this was raised, and they dropped it --
17 waiver, estoppel, or just legal title, that that
18 40-foot road vanished almost immediately after it
19 was created.

20 And I expect the testimony will show
21 that the plat upon which they are relying to
22 General Tompkins, although his deed talks about
23 that plat, that plat was not recorded until after
24 his deed was executed, so it'd have been
25 impossible for him to rely upon the recording of

1 OPENING ARGUMENT BY DEFENDANTS
2 that deed for access.

3 THE COURT: Give me your list again of
4 theories why there is no easement. Accord and
5 satisfaction, abandonment, estoppel, waiver.
6 There was one more.

7 MR. KUHN: I think just relying just
8 on chain of title, just absolute chain of title,
9 adverse possession. We've been claiming it.

10 And I would note they made a reference
11 to the fact that this driveway had been used by
12 Mrs. Ewings' predecessors in title for many, many
13 years. Of course, that was a permissive use under
14 the easement, not an adverse, hostile, notorious
15 use.

16 In sum, we'd ask the court to bar them
17 from traveling across my client's property to
18 access their property and use the
19 originally-intended driveway as shown on the very
20 first plat and every plat since then that's
21 intended to serve their property. We've also
22 counterclaimed for damages for the money my client
23 has spent to maintain the road, for the loss of
24 use of his property, and attorneys fees.

25 Thank you, Your Honor. I appreciate
 your patience.

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1 THE COURT: I appreciate counsel's
2 patience whereby merely because I joke about it
3 doesn't mean that I don't take it very, very
4 seriously and have some idea how significant
5 property rights really are, having taught them for
6 about 35 years.

7 So plaintiff, let's get started.

8 MR. GRIMSLEY: If it please the Court,
9 Your Honor, if I may, very briefly before we --

10 THE COURT: Oh, sure, sure.

11 MR. GRIMSLEY: Your Honor, Jim
12 Grimsley. I'm here for the Pleasant Point
13 Property Owners Association, commonly known as
14 PPPOA.

15 I think you've got a pretty good feel
16 now for what the issues really are, and the issues
17 really boil down to a dispute between the Ewings
18 and the Guests as to who is going to control this
19 area that's in dispute.

20 There's no question that there is a
21 40-foot-wide strip that goes between the two
22 properties, and it's shown on the early plats.
23 It's shown as dotted lines on subsequent plats.
24 It's there in virtually every document that you're
25 going to be looking at from a plat standpoint.

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1 The association, years ago, decided
2 that they did not want to undergo the expense to
3 pave, maintain, and control that area, which only
4 benefited two property owners. In other words, it
5 would have been a total waste of association funds
6 to do that, between 18- and \$20,000, not to
7 mention maintenances as time went on, because it
8 only served two property owners.

9 So from the association standpoint, it
10 had absolutely no interest in who ultimately
11 controls that area. We're not interested in
12 paving it. We're not interested in maintaining
13 it.

14 And you're going to -- well, you've
15 already heard that the Ewings claim it by virtue
16 of some sort of a dedicated easement. You've
17 heard the Guests maintain that they already had a
18 deed to that property from some 30 years ago.
19 This has been a dispute that's been ongoing
20 between the Guests' predecessors in title and
21 General Tompkins and, most recently, Mrs. Ewing,
22 who is the daughter of General Tompkins.

23 This goes back a ways. Both the
24 predecessor and Mrs. Ewing have been told
25 explicitly back in 2005 the association is not

1 OPENING ARGUMENT BY DEFENDANTS
2 interested in being part of all of this, so
3 whatever is decided is decided, and that's kind of
4 our position.

5 You're going to also see perhaps a
6 letter introduced into evidence that the
7 association at one time claimed some interest that
8 preceded the communication in 2005, ten years ago
9 now, 11 years ago now, whereby we said no
10 interest, none whatsoever. The board decided,
11 decided the cost was not worth the exercise, so we
12 really have no real interest in doing this.

13 You're also going to see, perhaps,
14 communication between me and the Guests concerning
15 the building of this fence that you've already
16 seen a picture of. The association's interest
17 under its restrictive covenants is to be able to
18 control what physically goes on within the
19 Pleasant Point Plantation subdivision, or PUD, and
20 that was the basis for that letter. We don't want
21 things going up without prior ARC or ARB approval.

22 But it frankly has no real interest in
23 that road, and that's where we stand. A little
24 briefer than Mr. Kuhn, but that's it.

25 THE COURT: Unless there's an
objection, I'm going to thank him and then dismiss

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1 him and see no reason for him to stay for the rest
2 of the day.

3 MR. KUHN: I have no objection to
4 that, Your Honor.

5 MR. TEDDER: I'm thinking he may want
6 to stay for his witness, for his client.

7 MR. GRIMSLEY: I'll stick around for
8 his testimony.

9 MR. TEDDER: But beyond that --

10 THE COURT: Well, if he wants to stay,
11 that's fine. He's officially dismissed in the
12 sense that he's told us, as I understand it, he
13 has absolutely -- his client has absolutely no
14 interest in the outcome of this lawsuit. If you
15 have no interest, you can wander in or wander out,
16 and why you would want to stay, that is up to you.

17 MR. TEDDER: No objection.

18 THE COURT: You're free to go if you
19 want to.

20 MR. GRIMSLEY: Yes, sir. I'll be
21 around for a little bit.

22 MR. TEDDER: I will call as my first
23 witness Mr. Bundy.

24 ROBERT JAMES BUNDY, JR.
25 being first duly sworn, testified as follows:

ROBERT BUNDY - EX. BY MR. TEDDER
DIRECT EXAMINATION

BY MR. TEDDER:

Q. Mr. Bundy, would you state your full
name for the record, please?

A. My name is Robert James Bundy, Jr.

Q. And you're a resident of Beaufort
County?

A. I am, yes, sir.

Q. And who is your employer?

A. Bundy Appraisal & Management.

Q. And what is your position with that
company?

A. I'm a community manager and real
estate agent.

Q. And in that position, do you have any
relationship with the area known as Pleasant Point
Plantation?

A. I am their association manager.

Q. You're familiar with the plaintiff and
the defendants in this case?

A. I am.

Q. And how long has your company -- do
you know how long your company has been managing
Pleasant Point Plantation?

A. I believe since 1994.

ROBERT BUNDY - EX. BY MR. TEDDER

1 Q. And you have access, in your capacity
2 as the manager, to the files and records of the
3 Pleasant Point Property Owners Association?

4 A. Yes, sir, I do.

5 Q. I'm going to very succinctly ask you
6 if you can identify for me this letter.

7 A. Yes, sir.

8 MR. TEDDER: If I might mark this
9 as -- this would be Plaintiff's -- I'll mark this
10 as Plaintiff's Exhibit 2 for identification only
11 at this time.

12 (PLF. EXH. 2, 8/31/15 Letter to
13 Mr. Kuhn from Mr. Grimsley, was marked for
14 identification.)

15 BY MR. TEDDER:

16 Q. Now, this letter, let me pass it back
17 up again to you so you can refer to it, which has
18 been preliminarily marked as Plaintiff's
19 Exhibit 2, a letter being dated August 31st, 2015.

20 Did you confer with legal counsel of
21 the association to cause this letter to be sent to
22 Mr. Kuhn?

23 A. Did we speak before he sent the
24 letter?

25 Q. Yes.

ROBERT BUNDY - EX. BY MR. TEDDER

A. Yes, I believe so.

Q. And do the Items No. 1 and 2 in there
on the first page accurately represent the
position of the property owners association
regarding the construction of the fence?

A. Yes.

MR. TEDDER: Your Honor, I would offer
this up as Plaintiff's 2.

MR. KUHN: I object to it, Your Honor.
It contains a lot of hearsay and legal
conclusions, and it is not relevant. We're not
here about a fence.

MR. TEDDER: Your Honor, I forgot to
hand you a copy.

THE COURT: Well, first I would like
to take a look at it, on the off-chance that I --
is there --

MR. TEDDER: It's a business record,
kept in the ordinary course of business.

THE COURT: Hang on. I know.
Counsel, is there really any reason to believe
that -- well, honestly, this is my weak, weak
area, honestly, okay. I mean, property law, sure.
Plats, sure. Evidence, open to --

I'm going to allow this in, subject to

1 ROBERT BUNDY - EX. BY MR. TEDDER
2 some possible further concern down the line,
3 because it does fall within a business record
4 and --

5 MR. KUHN: Your Honor, I'm not
6 objecting to it saying it's not a business record.
7 I'm saying it contains hearsay, it's prejudicial,
8 contains conclusion of law, which is your
9 province, not somebody else's. I might as well
10 get another lawyer to come in and write a letter
11 in my favor and put that into evidence.

12 And it has to do with a fence. My
13 clients built a fence, which is shown in the
14 picture. The covenants require they have
15 permission to build a fence. They did not have
16 permission to build a fence. They wrote the
17 letter complaining about the fence. We took the
18 fence down. Has nothing to do with these -- it's
19 just prejudicial. It says they broke survey
20 markers, accused them of violating the law. It
21 says a criminal offense, which is highly
22 prejudicial. It has nothing to do with why we're
23 here.

24 So I got to call my clients on the
25 stand and say they didn't mess with the survey
markers? They didn't get arrested? They were not

ROBERT BUNDY - EX. BY MR. TEDDER
1 guilty?

2 THE COURT: Let me read the letter
3 again, okay. Take a minute and let me actually
4 read the letter very carefully.

5 So do I understand that the
6 agreed-upon facts are as soon as they were sent
7 this letter, they took it down?

8 MR. KUHN: We then entered in
9 negotiations with the PPPOA, because there were
10 other alleged violations. Mr. Grimsley and I have
11 numerous email exchanges. We finally met. We
12 signed a settlement agreement that resolves all
13 the issues between us, including that issue.

14 MR. TEDDER: I might solve this in
15 another way. If I heard Mr. Kuhn correctly, in
16 his objections, he said he would stipulate that
17 the property owners association -- that they put
18 up a fence, that they did not have permission from
19 the property owners association to put up the
20 fence, and had no other -- and that they
21 acknowledged that there was no application to the
22 POA for such permit. Did I understand?

23 THE COURT: And then when they got
24 this letter, they took it down.

25 MR. KUHN: Not right away, but

ROBERT BUNDY - EX. BY MR. TEDDER
eventually. Again, we did not --

MR. TEDDER: The point of the letter
being they did not have permission --

MR. KUHN: As part of our settlement
agreement, Your Honor, we didn't --

MR. TEDDER: If he'll stipulate to it,
I can avoid the legal conclusions in there,
because that's your province. I agree that
whether or not something happened which was
unlawful in this letter is merely an opinion.

MR. KUHN: I don't think it's relevant
at all, Your Honor. What if I dig up a traffic
offense that the Ewings did five years ago and
bring that in to impeach their character? Doesn't
have anything to do with why we're here.

MR. TEDDER: It relates to the
obstructions on the easement property.

THE COURT: I'm going to exclude this
letter. I think that you can get almost
everything that you want into this case by calling
a different witness and talking about it, but I'm
going to exclude this particular letter, which I
really do find troublesome in a couple of ways.

BY MR. TEDDER:

Q. If I could, Mr. Bundy, ask you: Do

1 ROBERT BUNDY - EX. BY MR. TEDDER
2 you have anything in the association records that
3 shows that permission to construct a fence was
4 given to the Guests at the time of on or about
5 August 31st, 2015?

6 A. There is nothing.

7 Q. And at the time on or about
8 August 31st, 2015, had you received any permit
9 application to the property owners association for
10 approval of a fence?

11 A. No, sir.

12 Q. Did you look at the area where the
13 fence was constructed at that time?

14 A. Yes, sir.

15 Q. Did it appear to you, in your opinion,
16 to be across the area that was not within --
17 excuse me, was within Pleasant Point Drive?

18 A. Yes, sir.

19 Q. Still under the ownership of Pleasant
20 Point Property Owners Association?

21 MR. KUHN: I'm going to object. That
22 calls for a legal conclusion.

23 THE COURT: I'm going to let him
24 answer the question. I understand. Your
25 objection is overruled.

THE WITNESS: Yes.

ROBERT BUNDY - EX. BY MR. TEDDER
BY MR. TEDDER:

Q. In your file, are you aware of any letters kept by the association and minutes that indicate, in 2004, the association's decision at that time to clear and pave the 40-foot extension known as Pleasant Point Drive between these two properties?

A. I am aware of a letter, yes, sir.

Q. Was there also official action taken by the board of the association to reach that conclusion? In other words, was a vote taken to authorize the clearing and the paving of that road in 2004?

A. I've got to believe that there was because of the letter following, but I don't have any minutes that would show that.

MR. KUHN: I'm going to move to strike the answer. He's speculating.

THE COURT: From your personal knowledge, then repeat the last question that you asked.

BY MR. TEDDER:

Q. To your personal knowledge, was action taken by the Pleasant Point Property Owners Association indicating to the two property owners

1 ROBERT BUNDY - EX. BY MR. TEDDER
2 on either side of Pleasant Point Drive a decision
3 to clear and pave that 40-foot area?

4 A. Yes.

5 MR. TEDDER: I think that's all I have
6 of this witness.

7 CROSS-EXAMINATION

8 BY MR. KUHN:

9 Q. Were you present then?

10 A. Quite possibly, I was, as an assistant
11 to my grandfather, who was the manager at the
12 time.

13 Q. So you don't have any recollection of
14 it? By your personal knowledge means did you see
15 it, were you there, did you hear it, do you
16 remember it being --

17 A. I was at many of the board meetings,
18 and I also obviously worked with my grandfather
19 very closely as his assistant, so I know that
20 there was a letter sent, as directed by the board.

21 Q. Because you've seen it?

22 A. Because I've seen it, and I -- and I
23 remember discussion with either the board or my
24 grandfather that both parties must sign it and
25 return it in order for this to go forward.

Q. Which they did not do?

ROBERT BUNDY - EX. BY MR. KUHN

1 A. Which I don't believe happened.

2 MR. KUHN: That's all I have. Thank
3 you.

4 MR. TEDDER: One follow-up question.

5 REDIRECT EXAMINATION

6 BY MR. TEDDER:

7 Q. Mr. Bundy, you mentioned seeing a
8 letter. Can you identify what I've passed up to
9 you as being that letter?

10 A. Yes, this is the letter.

11 MR. KUHN: No objection.

12 MR. TEDDER: This would be
13 Plaintiff's 3, as I recall.

14 (PLF. EXH. 3, 9/17/04 Letter to
15 Mrs. Tompkins and Mr. Young from PPPOA, was marked
16 for identification.)

17 MR. TEDDER: That's all I have of this
18 witness.

19 THE COURT: I'll give it to the court
20 reporter as soon as I quickly skim it.

21 MR. GRIMSLEY: Wait a minute. I got a
22 couple of questions. I think the court excluded
23 this letter from me, as I recall.

24 MR. TEDDER: It did, but it's still
25 part of the record. It's marked as excluded.

ROBERT BUNDY - EX. BY MR. GRIMSLEY

1 MR. GRIMSLEY: Your Honor, I've got
2 just a couple of questions of Mr. Bundy.

3 THE COURT: Sure.

4 CROSS-EXAMINATION

5 BY MR. GRIMSLEY:

6 Q. Mr. Bundy, do you have anything in
7 your file that reflects any communications with
8 either party here or their predecessors in
9 interest to this September 17, 2004, letter, which
10 is Plaintiff's No. 3?

11 A. Yes, sir. I have these three letters
12 that reflects the same.

13 Q. And these are directed to Mr. Roi
14 Young -- two to Mr. Roi Young and one to
15 Mrs. Julia Tompkins?

16 A. That is correct.

17 Q. You don't have copies of these, do
18 you?

19 A. Not present, not with me, sir. I'm
20 sorry.

21 MR. GRIMSLEY: I'll show these to
22 counsel.

23 MR. TEDDER: No objection.

24 MR. KUHN: No objection, Your Honor.

25 MR. GRIMSLEY: Your Honor, I'd like to

ROBERT BUNDY - EX. BY MR. GRIMSLEY
introduce these, and I'm going to get copies made.

(DFT. PPP EXH. 1, 3/31/06 Letter to
Mr. Young from PPPOA, was marked for
identification.)

(DFT. PPP EXH. 2, 8/16/05 Letter to
Mr. Young from PPPOA, was marked for
identification.)

(DFT. PPP EXH. 3, 8/16/05 Letter to
Mrs. Tompkins from PPPOA, was marked for
identification.)

BY MR. GRIMSLEY:

Q. You're familiar with these three
letters?

A. Yes, sir.

Q. Very basically, if you could just
peruse them and tell the court what they say,
first the dates, and then what they say.

A. Two letters dated August 16, 2005.
Both have the same body. One is addressed to
Mrs. Julia Tompkins at 6 Sussex Court and one to
Mr. Roi Young at 335 S. Pleasant Point Drive.

MR. GRIMSLEY: And just for the
court's edification, Julia Tompkins is Julia
Ewing. Roi Young is a predecessor in title to the
Guests.

ROBERT BUNDY - EX. BY MR. GRIMSLEY

MR. KUHN: Julia Tompkins is

Mrs. Ewing's mother.

MRS. EWING: My mother. It's my
mother.

MR. GRIMSLEY: I meant your mother.
I'm sorry.

THE COURT: I knew it was your mother.

BY MR. GRIMSLEY:

Q. Go ahead.

A. It states: Mr. Young wrote the board
as to any plans they have for resolving the issue
of a road between your houses.

After receiving your most recent
inquiry concerning the driveway and the
possibility of building an extension to Pleasant
Point Drive, the board ask that I make a report to
them at their monthly meeting held August 11,
2005.

We reviewed the plats of 1969 forward
and recognize a proposed extension of Pleasant
Point shown. We also reviewed the bylaws of 1981
that addressed the association's responsibility to
pave certain existing roads previously unpaved by
earlier developers.

After a thorough discussion, the board

ROBERT BUNDY - EX. BY MR. GRIMSLEY
determined that there is no road to be paved, and
they had no obligation to build a road.

The quote obtained from REA
Construction Company in January of this year was
\$19,800 to build and pave the extension.

The board determined that they could
not justify spending \$19,800 of association funds
to serve two owners. They also noted that each of
you have access to your properties from
established roads.

The board also acknowledges that they
have no authority to intervene in matters
concerning any perceived encroachment on private
property.

Those essentially were the same
letter.

Q. Now, if you could read the subsequent
letter there.

A. March 31st, 2006, Mr. Roi Young, at
524 First Avenue South, Lewiston, Montana.

Dear Mr. Young: I shared your letter
of March 7th with the board of directors. Their
position has not changed as they cannot justify
spending \$19,800 for the exclusive benefit of two
property owners.

ROBERT BUNDY - EX. BY MR. GRIMSLEY

1 I am certain that they will approve
2 any satisfactory plan you, Mrs. Tompkins, or you
3 and Mrs. Tompkins propose for improvement at your
4 expenses.

5 I will notify you if anything comes to
6 my attention that suggests other options.

7 I am enclosing a survey of the area in
8 question for your use.

9 Q. These are all signed by your
10 grandfather, Laurence Davis?

11 A. Correct, yes, sir.

12 MR. TEDDER: Mr. Grimsley, is the copy
13 of the survey referenced in there in that file?

14 MR. GRIMSLEY: The actual survey is
15 not referenced in the letter. I don't know
16 exactly what was attached to the letter.

17 BY MR. GRIMSLEY:

18 Q. Now, subsequently, you're aware that
19 Mrs. Ewing and the Guests engaged in a mediation
20 effort a couple of years ago?

21 A. Yes, sir.

22 Q. Pleasant Point Plantation Owners
23 Association was not a party to that mediation,
24 correct?

25 A. That is correct.

ROBERT BUNDY - EX. BY MR. GRIMSLEY

1 Q. We did not attend, you had no
2 participation, no input into it, correct?

3 A. Correct.

4 Q. Are you aware that -- let me rephrase
5 that.

6 Are you aware of any communication
7 that went out to the parties engaged in that
8 mediation that Pleasant Point Plantation had no
9 interest in the outcome of it?

10 A. Yes, sir, I believe so, a couple of --

11 Q. Let me show you a copy of an email
12 here, see if that rings a bell.

13 A. Yes.

14 Q. And who is it addressed to?

15 A. It is addressed to Dave and Cory.

16 That is --

17 Q. Do you know who Cory is?

18 A. Cory Fleming, with Moss & Kuhn.

19 Q. This Kuhn right here, right?

20 A. Yes, sir.

21 MR. KUHN: My distinguished law
22 partner. I will stipulate to that.

23 MR. GRIMSLEY: I'm going to have this
24 introduced. Any objection?

25 MR. KUHN: No objection from the

ROBERT BUNDY - EX. BY MR. GRIMSLEY
defendants.

MR. TEDDER: No objection.

(DFT. PPP EXH. 4, 3/20/14 Email to
Mr. Tedder and Mr. Fleming from Mr. Grimsley, was
marked for identification.)

MR. TEDDER: If I might, I wanted to
look at the last letter, the 2005 letter.

BY MR. GRIMSLEY:

Q. If you will, just relate what this
says.

A. This states: Dave and Cory, the
Pleasant Point Property Owners Association is
agreeable to relinquishing, via quitclaim
instrument, any interest it still may hold in the
property which is the subject of the dispute
between your respective clients. Once you have it
worked out between yourselves, please provide me
with a draft of the document you would like for
PPPOA to execute. With this, I don't see any
reason for the association to participate in the
contemplated mediation or further proceedings.
Thanks, Jim Grimsley.

Q. And the association itself actually
approved this response, correct?

A. That is correct, yes, sir.

ROBERT BUNDY - EX. BY MR. GRIMSLEY

1 Q. Very good. And does this remain the
2 position of the association at this point, we have
3 no interest in the outcome of this case?

4 A. It does, yes, sir.

5 MR. GRIMSLEY: Your Honor, I have no
6 further questions. Thank you.

7 MR. TEDDER: If I might have a couple
8 of redirect questions?

9 THE COURT: Sure. Go ahead.

10 FURTHER DIRECT EXAMINATION

11 BY MR. TEDDER:

12 Q. Mr. Bundy, there are restrictive
13 covenants that apply to all of the areas of
14 Pleasant Point dating back to the original
15 subdivision plats back in 1969 that specifically
16 refer to 161 at 39. Are you aware of these
17 restrictive covenants found of record?

18 A. Yes, sir, I am, yes, sir.

19 Q. And in those covenants, are other
20 easements reserved for utilities along the sides
21 of each lot?

22 A. I believe so, yes, sir.

23 Q. And to refresh your memory, would that
24 be Paragraph 15?

25 THE COURT: Have you put this --

ROBERT BUNDY - EX. BY MR. TEDDER
1 marked this, the restrictive covenants for the
2 whole subdivision?

3 MR. TEDDER: Was that not part of our
4 plaintiff's exhibits? This is a recorded
5 document. I'll make it Plaintiff's --

6 THE COURT: Does anybody have an
7 objection to marking the actual covenants in the
8 subdivision?

9 MR. KUHN: They are a record on file
10 at the courthouse. My client disputes that the
11 covenants are applicable to his property, which is
12 one of the issues we worked out with the property
13 owners association pursuant to a separate
14 agreement, so with --

15 THE COURT: They're of record, but by
16 agreement between the homeowners association and
17 your client, they're not applicable to this.

18 MR. KUHN: We should probably put the
19 actual agreement into the record, because we had
20 to craft it very carefully. I just don't want
21 Your Honor to think that we --

22 MR. GRIMSLEY: I can tell you, Your
23 Honor, what the agreement basically says is that
24 in exchange for them adhering to the covenants
25 going before the association's ARB for any

ROBERT BUNDY - EX. BY MR. TEDDER
1 improvements on the property, doing certain things
2 in exchange for that, the association is going to
3 undo its fine that it had levied against the
4 Guests, it will give them the amenity pass for the
5 pool and the tennis courts and what have you at
6 Pleasant Point, and has also agreed to confirm
7 what they have by way of color of title, that they
8 are going to quitclaim their interest to the
9 Guests. They have no interest in this property
10 whatsoever.

11 THE COURT: Are the plaintiffs a party
12 to this agreement?

13 MR. TEDDER: We are not a party to
14 this agreement and --

15 MR. GRIMSLEY: They are not.

16 THE COURT: Were you aware of this
17 agreement?

18 MR. TEDDER: I was aware that an
19 agreement was being negotiated, but I've not been
20 provided a copy of it.

21 THE COURT: I don't want to try your
22 case for you, but this is for you to decide
23 whether you want me to look at the agreement, look
24 at the covenants, or not.

25 MR. GRIMSLEY: I don't think it has

1 ROBERT BUNDY - EX. BY MR. TEDDER
2 any real relevance to the issues before the
3 court --

4 THE COURT: It may well be.

5 MR. GRIMSLEY: -- to be perfectly
6 honest with you.

7 THE COURT: And to be honest you, it
8 may be going up a rabbit hole and down a rabbit
9 hole that I don't need to go through, if that's
10 the case.

11 MR. KUHN: To get back to these, these
12 are covenants that are on file. We take -- but I
13 don't know what relevance they have.

14 MR. TEDDER: The relevancy is, Your
15 Honor, that there was just testimony that they
16 have no interest in this area, but by the
17 covenants, they have reserved utility easements
18 along the front side and rear on the plats at the
19 time of this recording.

20 MR. KUHN: Not reflective of
21 utilities, but we're talking about the right to
22 drive -- a different type of easement.

23 THE COURT: Right. I understand that.

24 MR. KUHN: It's apples and oranges.

25 THE COURT: It's a completely
different kind of easement. I'll leave it to the

ROBERT BUNDY - EX. BY MR. TEDDER
1 two of you. If one of you wants to put --

2 MR. KUHN: It's kind of like a turnip
3 behind the barn. It's not doing us any good, it's
4 not doing us any harm, so --

5 MR. GRIMSLEY: It's a matter of
6 record, Your Honor. They're recorded.

7 THE COURT: And it's a matter of
8 record, I know it's a matter of record, and I'd
9 like to put it into the record so that we have a
10 complete description of what it is we looked at.
11 He's already talking about a document that if he's
12 got it in his hand, I think it should be part of
13 the record, but that's just me.

14 MR. GRIMSLEY: I see no reason that it
15 shouldn't be, frankly. They're applicable to the
16 entire subdivision. There's some dispute as to
17 whether or not it applies to the Manor House
18 property that the Guests own, but nonetheless,
19 they are applicable to the entire subdivision and,
20 frankly, do no harm and may do no good. I don't
21 know.

22 MR. KUHN: We can let it be -- my only
23 objection is relevance, Your Honor.

24 THE COURT: I understand. I'm not in
25 the position to -- again, I'm not in the position

1 ROBERT BUNDY - EX. BY MR. TEDDER
2 to say are they or aren't they relevant because I
3 haven't heard all the testimony.

4 MR. KUHN: I understand.

5 MR. TEDDER: Then I would ask this be
6 marked as Plaintiff's 4.

7 THE COURT: I'll certainly accept it.

8 (PLF. EXH. 4, Restrictive Covenants
9 for Subdivision, were marked for identification.)

10 BY MR. TEDDER:

11 Q. And one final question. On what's
12 been marked as D-1 PPP, which is the letter dated
13 March 31, 2006, sent to Mr. Roi Young, there was
14 reference to the enclosure of a survey of the
15 area. Do you have knowledge of what survey that
16 was?

17 A. I do not have knowledge of what survey
18 that was.

19 Q. But I take it that at this time in
20 2006, you were involved with this property and
21 were well aware of what was going on?

22 A. In 2006, I was still acting as an
23 assistant capacity for Pleasant Point, but yeah, I
24 was --

25 Q. Is it your understanding that
Mr. Young was asking for the road to be paved at

1 ROBERT BUNDY - EX. BY MR. TEDDER
this particular time?

2 A. I believe, yes, sir.

3 MR. TEDDER: That's all I have.

4 MR. KUHN: I have no questions, Your
5 Honor.

6 THE COURT: I think you're excused.

7 THE WITNESS: Thank you, Your Honor.

8 MR. TEDDER: Your Honor, if I might
9 have the indulgence of a five-minute break for the
10 facilities?

11 THE COURT: Sounds swell. I was
12 waiting for somebody to ask.

13 MR. GRIMSLEY: And Your Honor, with
14 your permission, I'm going to go ahead and take
15 leave.

16 THE COURT: You were invited to this
17 party, you see, you were needed and wanted to put
18 in a couple of exhibits, but the answer is sure,
19 you're already out of here, as far as I'm
20 concerned.

21 MR. GRIMSLEY: There have been several
22 reiterations of those covenants, just so you know.
23 I'm not sure how far along that's going to go.
24 There are several versions.

25 THE COURT: I've already heard that

1 ROBERT BUNDY - EX. BY MR. TEDDER
they may or may not be relevant.

2 (A recess transpired.)

3 MR. TEDDER: I'm going to let my
4 associate, Mr. Inglese, examine the next witness.

5 THE COURT: Sure.

6 MR. INGLESE: We'll call Mr. David
7 Youmans.

8 DAVID SAMUEL YOUMANS, RLS
9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. INGLESE:

12 Q: Good morning.

13 A. Good morning.

14 Q. Would you state your name for the
15 record?

16 A. David Samuel Youmans.

17 Q. And are you residing in Beaufort
18 County?

19 A. I do.

20 Q. And what's your occupation?

21 A. Professional land surveyor.

22 Q. And how long have you been doing that?

23 A. Ever since I got out of the Army in
24 1969, passed the state board, registered in 1983.

25 MR. KUHN: I will stipulate that

DAVID YOUMANS - EX. BY MR. INGLESE
1 Mr. Youmans is qualified as a registered land
2 surveyor in the state of South Carolina and
3 Beaufort County.

4 MR. INGLESE: Thank you, Mr. Kuhn.

5 BY MR. INGLESE:

6 Q. And are you familiar with the
7 properties at issue in this case?

8 A. Yes, sir, I am.

9 Q. You're familiar with my client,
10 Mrs. Ewing?

11 A. Yes.

12 Q. As well as the defendants, the Guests?

13 A. Yes.

14 Q. I want to start from the beginning.
15 I'm going to present you with a plat. Do you
16 recognize this plat? This is in the record
17 already as part of Defendant's 1, and it's one of
18 the tabs. It is, excuse me, Plaintiff's 1, and
19 Tab 1.

20 A. Yes, I'm familiar with that plat, yes,
21 sir.

22 Q. And what are you looking at there?

23 A. This is a plat done by RD Trogon,
24 Jr., December 4, 1969, showing the country club
25 section of Pleasant Point Plantation.

DAVID YOUMANS - EX. BY MR. INGLESE

1 Q. And do you recognize my client, the
2 plaintiff's, property in that plat?

3 A. Yes, I do.

4 Q. Can you identify it?

5 A. Yes, sir. It's Lots 1, 2, and 3 of
6 the said country club section of Pleasant Point
7 Plantation.

8 Q. And is there an adjacent roadway to
9 those lots?

10 A. There is. The extension of Pleasant
11 Point Drive continues up fully beside Lot 2 and
12 partially beside Lot 1.

13 Q. And in your more recent surveys
14 regarding these properties in this case, did you
15 rely on or look to this plat in your survey work
16 that you did?

17 A. Yes, sir.

18 Q. And how did you rely on this plat?
19 What did you do?

20 A. The basis for relying on this was it's
21 the plat referenced in the deed to the Tompkins
22 for Lots 1, 2, and 3.

23 Q. Mr. Youmans, I'm going to present to
24 you what's another plat. This is a plat filed at
25 Book 68, Page 171. It's part of Defendant's 1,

DAVID YOUMANS - EX. BY MR. INGLESE
1 Tab 12. Is this a survey that you recognize?

2 A. Yes, sir. This is a plat that I did
3 in 1999 for Roi and Dyan Young of what is commonly
4 known as the Manor House and some adjacent
5 properties.

6 Q. And are there plat references to
7 previous plats on that?

8 A. I show a reference to the plat that
9 we -- that you just showed to me, Plat Book 18 at
10 Page 45, that shows the 40-foot roadway.

11 Q. And is there another plat referenced
12 there, or should I say easement referenced?

13 A. Yeah, there's an easement reference,
14 yes.

15 Q. And what is that reference?

16 A. It's an area adjacent to Lot 2 and
17 partially Lot 1, Deed Book 248, Page 454, an
18 easement from Pleasant Point to Mr. Tompkins. And
19 if I recall correctly, it's stated in the easement
20 for landscaping purposes, utilities, et cetera.

21 Q. So, to summarize, you noted a reference
22 to a 40-foot roadway relying on the 1969 plat, as
23 well as a reference to an easement. Is there a
24 date for that easement?

25 A. Not on the plat, no, sir. It lists

1 DAVID YOUMANS - EX. BY MR. INGLESE
the deed book and page, but not a date.

2 Q. Do you recognize --

3 MR. INGLESE: Your Honor, this plat is
4 already in and is marked as part of Defendant's 1,
5 and it has a tab No. 7A on it.

6 THE COURT: Got it.

7 BY MR. INGLESE:

8 Q. And I just presented you with a
9 document called: Easement. Do you recognize
10 that?

11 A. Yes, sir. This is the easement --
12 this is the deed -- or the instrument granting the
13 easement to Mr. Tompkins from Pleasant Point
14 Plantation.

15 Q. Could you read the fourth paragraph
16 down?

17 A. Now, therefore, in and for the sum of
18 \$10, the receipt of which is hereby acknowledged,
19 Pleasant Point Plantation hereby grants, assigns,
20 and sets over to Rathvon McC. Tompkins and Julia
21 Vogel Tompkins, or the survivor of them, only for
22 their lives, an easement for the right to
23 construct walkways, driveways, install water lines
24 and sewer lines, utility lines and poles; and
25 ornamental exterior objects; and to plant and

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 maintain trees, shrubbery, and grass in and on the
3 real property described as follows, to wit.

4 Q. And again, the plat before this one
5 that we talked about references this easement.
6 How did you interpret that in your application to
7 that easement on that most recent plat, the 1999
8 plat that you surveyed?

9 A. I'm not sure I understand what you're
10 asking me.

11 Q. So your plat shows a 40-foot roadway,
12 and it also shows this easement that we're reading
13 from here?

14 A. Right.

15 Q. Did you interpret this as a
16 substitution of the 40-foot roadway?

17 A. No, not at all.

18 Q. How did you interpret this as it
19 relates to the 40-foot roadway?

20 A. It was a portion of the 40-foot road,
21 less than half of a sliver down the side, that was
22 granted to Mr. Tompkins.

23 Q. And if the 40-foot roadway had not
24 existed at the time of this easement, in your
25 opinion, would there have been a way to drive a
 car to the carport on Mrs. Ewing's property,

1 DAVID YOUMANS - EX. BY MR. INGLESE
absent the 40-foot roadway?

2 A. No, sir.

3 Q. So this odd-shaped easement, is it
4 your testimony, would not have provided accessway
5 for Mrs. Ewing?

6 A. That's correct, had nothing to do with
7 access to their carport.

8 Q. And it had to do with what?

9 A. Evidently, for landscaping.

10 MR. KUHN: I'm going to object. This
11 is asking him to interpret why the parties to the
12 easement executed it.

13 MR. INGLESE: Your Honor, I'm asking
14 for an interpretation of the surveyor's work in
15 his application of the survey that he created in
16 1999. In other words, he had to go through a
17 process of evaluating what's out there and then
18 apply what he knows and his knowledge as an expert
19 to produce the plat in 1999, which included both
20 the roadway and this easement.

21 THE COURT: I'm going to allow this
22 testimony, subject, of course, to relevancy and a
23 number of other things.

24 But I didn't hear his full answer.

25 BY MR. INGLESE:

DAVID YOUMANS - EX. BY MR. INGLESE

1 Q. So the question was -- I think you did
2 answer it. You said evidently, this easement was
3 for -- and I'll let you fill in the rest.

4 A. Just like it stated, for walkways,
5 driveways, planting of shrubbery, trees, grass,
6 et cetera, but it didn't say anything about access
7 to supplant the 40-foot right-of-way.

8 Q. At the time you created the 1999 plat,
9 did you think that the 40-foot roadway had been
10 abandoned or had disappeared somehow?

11 A. I had no knowledge of that one way or
12 the other.

13 Q. But you showed it on that plat?

14 A. Right.

15 Q. I'm going to present you with a deed
16 that's already been submitted to the court. This
17 is Defendant's 1, Tab 9, and this is a deed, and
18 I'd like you to read the first paragraph of the
19 property description there.

20 A. All that certain parcel of real
21 property situated on Lady's Island, in Beaufort
22 County, South Carolina, containing 3.917 acres,
23 more or less (being shown and delineated as 2.430
24 acres, more or less, and 1.487 acres, more or
25 less), a portion of Country Club Section of

DAVID YOUMANS - EX. BY MR. INGLESE
1 Pleasant Point Plantation on a plat prepared by
2 David S. Youmans, RLS, dated January 27, 1999, and
3 recorded with the Register of Deeds Office for
4 Beaufort County, South Carolina, in Plat Book 68
5 at Page 171. For a more complete description as
6 to metes, bounds, courses, and distances,
7 reference is made to the aforementioned plat of
8 record.

9 Q. That plat book and page number, again,
10 was?

11 A. 68 at Page 171.

12 Q. And is that the plat that you prepared
13 in 1999?

14 A. Yes, sir, it is.

15 Q. And that's the plat showing the
16 40-foot roadway as well as the odd-shaped
17 easement?

18 A. Correct.

19 Q. And just for clarification, that deed
20 is filed at what book and page number? It should
21 be --

22 A. Book 1367, Page 1111.

23 Q. And can you tell the date of that
24 deed?

25 A. It was filed December 20, but I

DAVID YOUMANS - EX. BY MR. INGLESE
1 can't -- of '00, I think. It's hard to read, but
2 it was notarized 8 November of 2000, so I'm
3 assuming it was recorded in December of 2000.

4 Q. Thank you. I'm sorry. Could you just
5 tell the court who the grantor is in this deed and
6 who the grantee is in this deed?

7 A. This is Roi Young and Dyan Young,
8 grantors, to Alyon, Incorporated, A-L-Y-O-N.

9 Q. Thank you. I'm going to present you
10 with another deed. This is also in defendant's
11 exhibits and chain of title as part of the same
12 Tab No. 9, I believe, in Defendant's 1, and can
13 you tell us what I've presented to you here?

14 A. This is a deed from Alyon,
15 Incorporated to Roi W. and Dyan M. Young.

16 Q. And the date of that deed is?

17 A. Recorded 9/27/2001.

18 Q. And if you would go to the property
19 description in that deed?

20 A. It's the same as the one I just read,
21 Plat Book 68, Page 171.

22 Q. Do you know that as the defendants'
23 property, in this case the Guests?

24 A. Yes.

25 Q. Continuing on in the same vein, I'm

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 presenting you with another deed in Defendant's
3 Exhibit 1, Tab 9, I believe. What deed is this?

4 A. This is a deed from Roi W. and Dyan M.
5 Young to Alyon, Incorporated, same description,
6 references Plat Book 68, Page 171, recorded
7 9/27/2001.

8 Q. And that property description refers
9 to you as the surveyor and your plat, the same
10 plat that we've been talking about?

11 A. Right, yes, sir.

12 Q. And moving right along -- and the date
13 on this one, did you already say?

14 A. 9/27/2001.

15 Q. And here's another one here, if you
16 would.

17 A. From Alyon, Incorporated to Roi W.
18 Young and Dyan M. Young, same description, plat by
19 me, January 27, '99, Plat Book 68 at Page 171.
20 This one was recorded November 8th, 2002.

21 Q. Same thing here, another deed here
22 within the defendant's chain of title.

23 A. Okay. Roi W. Young and Dyan M. Young
24 to Alyon, Inc., same description as the previous
25 deeds, Plat Book 68, Page 171, recorded on
26 November 13th, 2002.

DAVID YOUMANS - EX. BY MR. INGLESE

1 Q. Thank you, Mr. Youmans. Just a couple
2 more.

3 Another deed in defendant's chain of
4 title, if you would, grantor/grantee.

5 A. Alyon, Inc. to Roi W. Young and Dyan
6 M. Young, same description of property, Plat
7 Book 68, Page 171, recorded December 23rd, 2002.

8 Q. And it references your plat?

9 A. Yes, sir.

10 Q. At Book 68, Page 171?

11 A. Correct.

12 Q. I've presented you with another deed,
13 if you would. Just a couple more.

14 A. This is a deed from Roi W. Young and
15 Dyan M. Young to Alyon, Inc., again, same
16 description, plat by me, Plat Book 68, Page 171,
17 recorded December 23rd, 2002.

18 Q. Thank you. This one's a little bit
19 different, so take a closer look at that. What's
20 the title of that document there?

21 A. This is the Court of Common Pleas,
22 Docket No. 2009-CP-07-0076, JPMorgan Chase Bank
23 National Association, as purchaser of the loans
24 and other assets of Washington Mutual Bank,
25 formerly known as Washington Mutual Bank, FA,

DAVID YOUMANS - EX. BY MR. INGLESE
1 Plaintiff, versus Alyon, Inc., First National Bank
2 of Florida, Sea Island Air, Inc., OCS Doors, LLC,
3 Pleasant Point Property Owners Association, Inc.,
4 as defendants.

5 Q. And the name of the document is what?

6 A. Title under order of court.

7 Q. And if you would, are you familiar
8 with this? Have you seen this before?

9 A. I don't think so.

10 MR. INGLESE: There's a property
11 description on Page 2 of that document, and I
12 think if opposing counsel doesn't object, this is
13 a foreclosure deed, Your Honor. It's within the
14 defendant's chain of title, again, in Exhibit D-1,
15 Tab 9.

16 BY MR. INGLESE:

17 Q. If you would, there's a property
18 description as part of the master's order in that,
19 and if you would, just read that reference there.

20 A. It's the same as before. All that
21 certain parcel of real property situated on Lady's
22 Island, in Beaufort County, South Carolina,
23 consisting of 3.917 acres, more or less (being
24 shown and delineated as 2.430 acres, more or less,
25 and 1.487 acres, more or less), a portion of

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 Country Club Section of Pleasant Point Plantation,
3 on that certain plat prepared by David S. Youmans,
4 RLS, dated January 27, 1999, and recorded in the
5 Register of Deeds Office for Beaufort County,
6 South Carolina, in Plat Book 68 at Page 171.

7 THE COURT: And Counsel, that's been
8 previously marked as a defendant's exhibit, right?

9 MR. INGLESE: Yeah. That is
10 duplicative. It's also in Exhibit 1.

11 THE COURT: I understand exactly.

12 MR. INGLESE: Thank you.

13 BY MR. INGLESE:

14 Q. Almost done, Mr. Youmans. Thank you
15 for that.

16 Here's another deed in the chain of
17 title there. Can you tell who the grantor and
18 grantee are in this deed?

19 A. JPMorgan Chase Bank National
20 Association, whose mailing address is blah, blah,
21 blah, to Keith A. Guest and Stephanie C. Guest,
22 hereinafter grantees.

23 Q. And is there a property description
24 provided in that deed? If you would kindly read
25 that description.

 A. It's the same. All that certain

DAVID YOUMANS - EX. BY MR. INGLESE
parcel of land situated on Lady's Island, County
of Beaufort, State of South Carolina, being known
and designated as follows: Consisting of
3.917 acres, more or less (being shown and
delineated as 2.430 acres, more or less, and
1.487 acres, more or less), a portion of Country
Club Section of Pleasant Point Plantation, on that
certain plat prepared by David S. Youmans, RLS,
dated January 27, 1999, and recorded in the
Register of Deeds Office for Beaufort County,
South Carolina, in Plat Book 68 at Page 171. For
a more complete description as to metes and
bounds, courses, and distances, reference may be
made to the aforementioned plat of record. This
property is subject to all applicable covenants,
restrictions, conditions, and easements filed of
record in Beaufort County, South Carolina. Being
the same property as conveyed from Roi W. Young
and Dyan M. Young to Alyon, Inc., as described in
Deed Book 1685, Page 2122, dated 12/23/2002,
recorded 12/23/2002 in Beaufort County records,
Tax/Parcel ID: R200-009-00A-0172-0000, Tax Map:
200, Map 9A, Parcel 172. Property address is 335
Pleasant Point Drive, Beaufort, SC, 29907-1164.

Q. Do you recognize that as the

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 defendant's property?

3 A. Yes.

4 Q. Thank you.

5 MR. INGLESE: Your Honor, if I may,
6 just to be clear, I want to make sure that the
7 court has as an exhibit the plat that we've been
8 referring to at Book 68, Page 171?

9 THE COURT: I do.

10 MR. INGLESE: Okay. Thank you.

11 BY MR. INGLESE:

12 Q. Mr. Youmans, here's another plat. Do
13 you recognize this?

14 A. Yes. This is a plat that I prepared
15 in 2012 for Julia Vogel Tompkins Trust, et al.,
16 showing Lots 1, 2, and 3, Country Club Section of
17 Pleasant Point Plantation.

18 Q. And is the --

19 THE COURT: What's the number of --

20 MR. INGLESE: It hasn't been presented
21 yet. If there's no objection from opposing
22 counsel, I would proffer this as Plaintiff's 6, I
23 believe, five or six.

24 MR. KUHN: No objection.

25 (PLF. EXH. 5, Plat, was marked for
 identification.)

DAVID YOUMANS - EX. BY MR. INGLESE

1 MR. INGLESE: Just to be clear, this
2 is Plaintiff's 5.

3 BY MR. INGLESE:

4 Q. On this plat, you had mentioned 2012.
5 Do you recall the circumstances in which you were
6 asked to prepare this?

7 A. Yes. There's been as, I guess, a
8 subject of this action, a dispute over access
9 along the side of Lots 1 and 2 of Country Club
10 Section. This plat shows a proposed access
11 easement that's three feet parallel to Lot 2 and
12 15 feet wide -- 12 feet wide beyond that going
13 from Pleasant Point Drive at the intersection with
14 Sussex Court and going back to an area in front of
15 the carport of the Tompkins, or now Ewing,
16 residence.

17 Q. And when you prepared this, you are
18 showing in this survey the 40-foot road extension
19 of Pleasant Point Drive, correct?

20 A. Yes, sir, that's correct.

21 Q. And what were you relying on to
22 display that 40-foot roadway extension?

23 A. Their deed and the plat that was
24 referenced in their deed.

25 Q. This was never filed?

DAVID YOUMANS - EX. BY MR. INGLESE

1 A. I'm not aware of it, no, sir.

2 Q. You labeled it proposed access
3 easement. How did you get to that proposed access
4 easement?

5 A. As best I remember, that was an
6 agreement between the two parties involved, the
7 Guests and the Ewings, as to the location of the
8 easement. We physically surveyed it, put wire
9 flags along the edge of the easement for
10 identification, field identification.

11 Q. Were your flags ever removed?

12 A. Yes, sir, they were.

13 Q. When were they removed?

14 A. I have no knowledge of that. Sometime
15 after we left, but I don't know when.

16 Q. Do you know who removed them?

17 A. I have no idea.

18 Q. Are you aware of the statute that
19 prohibits removing surveyors' flags?

20 A. Yes, sir, I am.

21 Q. How many times did you go out to this
22 area to survey it? Since the 1999 plat was filed,
23 how many times have you been out there to survey
24 it?

25 A. Maybe a dozen.

DAVID YOUMANS - EX. BY MR. INGLESE

1 Q. And was it my client that requested
2 you survey the area?

3 A. At first I was going out there at the
4 request of Roi Young, when he owned the Manor
5 House property next door.

6 Q. And why did you have to go out there
7 so many times?

8 A. Different configurations of access in
9 the 40-foot right-of-way between Roi Young and the
10 Tompkins' property.

11 Q. And did you ever have to go back out
12 to the property because your stakes were
13 disturbed?

14 A. Yes, sir.

15 Q. Of the dozen or so times, how many
16 times did you have to resurvey because your stakes
17 were removed?

18 A. Oh, that I'm not sure, several. At
19 first it was because of different configurations
20 of access by both parties, but lately, it's
21 because the markers were removed.

22 Q. I'm going to show you some pictures.
23 Do these represent the area between the Guests'
24 and the Ewings' property? Do you find those
25 pictures familiar to you?

DAVID YOUMANS - EX. BY MR. INGLESE

1 A. Yes, sir.

2 Q. Do you see any of your stakes in one
3 of those pictures?

4 A. Right. I see the stakes that we put
5 up.

6 Q. Do you see the pile of rocks in one of
7 those pictures, the mound of rocks there?

8 A. Right, yes, sir.

9 Q. And can you say that those rocks were
10 in the 40-foot roadway extension that we've been
11 referring to on your plats?

12 A. Yes, sir.

13 MR. INGLESE: If I may offer these as
14 Plaintiff's 6.

15 MR. KUHN: No objection.

16 (PLF. EXH. 6, Three Black-and-White
17 Photographs, were marked for identification.)

18 THE COURT: Do we have an actual date
19 or approximate date when Plaintiff's 6 was taken?

20 MR. INGLESE: September -- there's a
21 date stamp on the photo of September 3rd.

22 THE COURT: A date stamp? Fine, fine.

23 MR. TEDDER: Your Honor, if I might, I
24 was just discussing with Mr. Kuhn, at a previous
25 hearing that we held in August, there were some

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 submissions that are in the court file. I believe
3 the original color renderings of those are in the
4 court file.

5 THE COURT: Got it.

6 MR. KUHN: Which I presume you do not
7 have in front of you?

8 THE COURT: I certainly do not. The
9 more plats the merrier, right?

10 BY MR. INGLESE:

11 Q. Were you aware of a fence that was
12 ever constructed inside the 40-foot roadway
13 extension area?

14 A. Yes, sir. The fence I don't think was
15 inside of that, the 40-foot extension area. I
16 think it was out in the actual right-of-way of
17 Pleasant Point Drive.

18 Q. This photo I'm going to present to
19 you, in I guess the right-hand corner of the
20 property, there's a property address there.
21 What's that address?

22 A. 335 Pleasant Point Drive.

23 Q. And there's what looks like a fence to
24 the right of that address?

25 A. Yes, sir.

26 Q. Were you ever familiar with that fence

1 DAVID YOUMANS - EX. BY MR. INGLESE
in that location there?

2 A. Yes, sir.

3 Q. And is that fence blocking the
4 original driveway?

5 A. Yes, sir, it was, when it was placed
6 there.

7 Q. And the original driveway, was it
8 within the 40-foot roadway extension of Pleasant
9 Point Drive, as surveyed?

10 A. Partially. It went outside of that
11 onto the Manor House property for a portion of
12 that distance.

13 MR. INGLESE: We would offer this as
14 Plaintiff's 7.

15 MR. KUHN: No objection.

16 (PLF. EXH. 7, Color Photograph, was
17 marked for identification.)

18 BY MR. INGLESE:

19 Q. You're familiar with some construction
20 that went on in this driveway area, in this
21 disputed area between the parties?

22 A. Yes, sir. There was some rock placed
23 over a portion of that, basically, in the proposed
24 access easement area shown on this plat.

25 Q. So you saw this area before that rock

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 that I'm showing you there was laid?

3 A. Yes, sir. That's in that 12-foot-wide
4 proposed access easement area.

5 Q. Is it your understanding that the
6 Guests were responsible for this construction and
7 the change in the accessway there?

8 A. That's what I heard, yes, sir.

9 Q. I'm going to go back to Plat Book 68,
10 Page 171, your 1999 plat, and I want to look
11 closely at the area near the Pleasant Point Drive
12 where it ends -- or where the concrete ends and it
13 turns to the right or to the left there. There's
14 a line to be abandoned noted on your plat. Can
15 you describe what that area is and who it belongs
16 to?

17 A. That is --

18 MR. KUHN: Can I see what he's
19 referring to, Your Honor?

20 THE COURT: Yeah. Slow down for a
21 second. I don't know. I've got -- I've got the
22 plat out, but I don't know where we're talking
23 about.

24 MR. INGLESE: Yeah. We're looking at
25 the area, Your Honor, where it's labeled as line
26 to be abandoned that runs horizontally across the

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 Guests' property, and it runs across the 40-foot
3 roadway. There's two lines to be abandoned, one's
4 a vertical line, one's a horizontal. We're
5 talking about the area north of the line to be --
6 the horizontal line to be abandoned.

7 THE COURT: I apologize, Counsel. I
8 really am lost as to what you're talking about, so
9 I won't understand this.

10 MR. INGLESE: We're talking to the
11 witness about this area here, at the roadway here.

12 THE COURT: Okay. Do you understand
13 where he's talking about?

14 MR. KUHN: Yes, sir. I'm following
15 now. Thank you.

16 BY MR. INGLESE:

17 Q. So you've made a note of line to be
18 abandoned there.

19 A. You're talking about this line right
20 here?

21 Q. Correct.

22 A. The one above Tax Parcel 1 of 2?

23 Q. Correct.

24 A. Originally on the original plat of the
25 Country Club Section, 18 at 45 I think was the
 recording, was only I think 24 lots in the Country

1 DAVID YOUMANS - EX. BY MR. INGLESE
2 Club Section, and they created four or five more
3 lots that came off the extension of that, and this
4 Country Club Drive, or road, came around to
5 service all those and came back in to Pleasant
6 Point Drive.

7 Mr. White, a predecessor to title of
8 this property, acquired a deed by deed to this
9 portion of property right -- portion of that
10 Country Club Drive. I've got it referenced on
11 this plat Deed Book 477 at Page 1165.

12 THE COURT: Now, are you reading,
13 Mr. Youmans, from the plat itself?

14 THE WITNESS: Oh, I'm sorry, Your
15 Honor, from the other plat that I was shown prior
16 to this one. That plat does not have that
17 reference on there.

18 MR. INGLESE: On Plaintiff's 5,
19 there's a plat reference here in this dotted area
20 here.

21 THE COURT: Okay. So this is the
22 same -- all right, okay. And you're reading off
23 of -- just tell me where on this plat you're
24 reading. This is the one that was never filed,
25 right?

 MR. INGLESE: Correct.

DAVID YOUMANS - EX. BY MR. INGLESE

1 THE WITNESS: Yes, sir. Talking about
2 this right here. That's that piece of property
3 that used to be Country Club Drive.

4 THE COURT: I got you. I understand.
5 I hear you loud and clear.

6 When was this plat prepared?

7 MR. INGLESE: In 2012. There's some
8 dotted lines.

9 THE COURT: Yeah. I see the dotted
10 lines, okay.

11 MR. INGLESE: There's some reference
12 to the plats.

13 THE COURT: Do we know exactly when in
14 2012 this was prepared? That could be really
15 relevant.

16 THE WITNESS: June 18.

17 BY MR. INGLESE:

18 Q. What is your understanding of these
19 dotted lines as it relates to the 40-foot roadway
20 extension of Pleasant Point Drive?

21 A. The plat that created this had it
22 moved back out, and the deed from Pleasant Point
23 to I think it was Mr. White deeded that portion of
24 it.

25 Q. Including the 40-foot right-of-way or

DAVID YOUMANS - EX. BY MR. INGLESE
1 not? Or excuse me.

2 A. That I'm not sure of. I'd have to
3 look back at that document.

4 MR. INGLESE: Your Honor, the
5 photograph that the witness was talking about I
6 would offer as Plaintiff's 8.

7 MR. KUHN: No objection.

8 (PLF. EXH. 8, Color Photograph, was
9 marked for identification.)

10 MR. INGLESE: And with that, Your
11 Honor, we'll open up the witness to opposing
12 counsel.

13 (DFT. EXH. 14, Plat, was marked for
14 identification.)

15 CROSS-EXAMINATION

16 BY MR. KUHN:

17 Q. Mr. Youmans, if I could show you what
18 I've marked as Defendant's 14. Is that a copy of
19 a plat that you made back in 1997?

20 A. Yes, sir, it is.

21 Q. I put some extra markings on there,
22 the yellow highlight, and I've drawn in a carport.
23 Do you see that?

24 A. Yes, sir.

25 Q. When you did that survey and you show

1 DAVID YOUMANS - EX. BY MR. KUHN
2 the 40-foot easement as shown on the original
3 Pleasant Point Drive, you're simply noting that
4 that was shown on an early plat. Is that correct?

5 A. Yes, sir, showing the reference to
6 that plat.

7 Q. Let me rephrase it a little bit
8 different. When you were out there at that time
9 to do that survey, there was no paved road, there
10 was no road in existence?

11 A. No, sir.

12 Q. No 40-foot road was in existence?

13 A. Just a driveway going to the
14 respective houses.

15 MR. TEDDER: With permission, I'd just
16 like to see what he's looking at because I can't
17 understand without looking at it all.

18 THE COURT: Do you have Defendant's 14
19 up here?

20 MR. KUHN: I'm getting ready to
21 introduce it now, Your Honor. You have a copy of
22 this plat, but just I've made some extra markings
23 on it.

24 MR. TEDDER: This is 60 at 190. I
25 just -- I missed the plat book reference.

26 MR. KUHN: Your Honor, I'd move to

1 DAVID YOUMANS - EX. BY MR. KUHN
introduce Defendant's 14.

2 THE COURT: Objections to 14?

3 MR. TEDDER: If it's a recorded plat,
4 I mean, we've already seen it.

5 THE COURT: He's modified the plat.

6 MR. TEDDER: The highlighting that
7 he's showing there?

8 MR. KUHN: Yes. I'm happy to explain.

9 MR. TEDDER: If it's of assistance to
10 the court in understanding what the testimony is,
11 I'm not going to have any objection to that,
12 understanding that it's not a survey, it's an
13 illustrative --

14 THE COURT: It's Mr. Kuhn's drawings.

15 MR. TEDDER: Yes. It has no
16 evidentiary value other than for us to understand
17 what he's talking about.

18 THE COURT: For all we know, it's a
19 future Picasso.

20 MR. KUHN: I will cite it later on,
21 Your Honor.

22 BY MR. KUHN:

23 Q. I have highlighted in yellow what you
24 marked: Shell driveway. Do you see that?

25 A. Yes, sir.

DAVID YOUMANS - EX. BY MR. KUHN

1 Q. Is that what was in existence at that
2 time?

3 A. That's correct.

4 Q. So this 40-foot road existed only on a
5 plat. Is that correct?

6 A. Correct.

7 Q. What actually existed, in fact, on the
8 land was the yellow shell driveway?

9 A. Correct.

10 Q. And then I've drawn in a carport. Do
11 you see that?

12 A. Yes, sir.

13 Q. And was there a carport located in
14 that location?

15 A. We did not locate it, but there was a
16 carport there, yes, sir.

17 Q. There was a carport there at the time,
18 it's just not shown on your plat?

19 A. Correct.

20 THE COURT: I'm excited to see your
21 modifications.

22 MR. KUHN: Simply the yellow
23 highlighting is what was actually on the ground at
24 the time, not the 40-foot road.

25 THE COURT: I understand exactly.

DAVID YOUMANS - EX. BY MR. KUHN

1 (DFT. EXH. 15, Color Photograph, was
2 marked for identification.)

3 (DFT. EXH. 16, Color Photograph, was
4 marked for identification.)

5 (DFT. EXH. 17, Color Photograph, was
6 marked for identification.)

7 (DFT. EXH. 18, Color Photograph, was
8 marked for identification.)

9 (DFT. EXH. 19, Color Photograph, was
10 marked for identification.)

11 BY MR. KUHN:

12 Q. If I can show you Defendant's 15, 16,
13 17, 18, and 19. Do you recognize what those
14 depict? Or I can lead, can't I? Do those depict
15 the carport? Are those pictures of the carport
16 from various angles?

17 A. Oh, yes, yes, they are, yes, sir.

18 Q. And the survey stakes, those are your
19 survey stakes?

20 A. Correct, depicted in that easement
21 that was shown on a prior plat.

22 MR. KUHN: Your Honor, I'd move to
23 introduce Defendant's 15 through 19.

24 THE COURT: I'm sorry. I was taking a
25 note up here. What am I looking at?

DAVID YOUMANS - EX. BY MR. KUHN

1 MR. KUHN: Those are photographs of
2 the carport that is put in as an X on the prior
3 exhibits.

4 THE COURT: Got it. I understand.
5 Have you seen these?

6 MR. TEDDER: I'm not certain that I
7 have. With your permission --

8 Your Honor, I'm not sure, and perhaps
9 I missed it, but did Mr. Youmans testify what
10 these survey stakes were depicting?

11 MR. KUHN: He did not. He just
12 identified them as his own.

13 THE COURT: Objection?

14 MR. TEDDER: Without some description
15 as to what's going on there, I think it's
16 premature, because it does -- it has things on
17 there that we can't understand what they're
18 showing. Maybe I can take care of it in cross,
19 but I believe those things came about for
20 something that we were doing in mediation, which
21 is not admissible.

22 THE COURT: Do you want to lay a
23 further foundation?

24 MR. KUHN: I'm just trying to show a
25 picture of the garage. The survey stakes just

1 DAVID YOUMANS - EX. BY MR. KUHN
happen to be in the picture.

2 THE COURT: Okay.

3 MR. KUHN: The relevance of that, the
4 point of that, is the garage faces my clients'
5 property, and it's on the property line.

6 MR. TEDDER: Your Honor, I'm going to
7 withdraw my objection to it. I'll take care of
8 it.

9 THE COURT: And these are all 15
10 through 19?

11 MR. TEDDER: And again, Your Honor,
12 are those date stamped? I forgot to look.

13 MR. KUHN: They're not.

14 THE COURT: No, there's no dates on
15 these. Take another look at it?

16 MR. TEDDER: Yes, sir.

17 Fred, do you know when they were
18 taken?

19 MR. KUHN: June, July, August,
20 September.

21 MR. TEDDER: Of this year?

22 MR. KUHN: Last year.

23 MR. TEDDER: 2015. Who took them?

24 MR. KUHN: Me.

25 THE COURT: Merely out of curiosity,

1 DAVID YOUMANS - EX. BY MR. KUHN
2 Counsel, how much longer do you think with this
3 witness? I'm thinking about lunch.

4 MR. TEDDER: Yes, sir. I understand.
5 It's 12:15.

6 MR. KUHN: About ten more minutes for
7 me, Your Honor.

8 MR. TEDDER: If you'll stipulate that
9 you took them on a date, I'll admit them. I just
10 want to be able to tie them in to when they were
11 taken.

12 MR. KUHN: I took these about three
13 days before the hearing held on the temporary
14 restraining order.

15 MR. TEDDER: I just want to identify
16 the point in time that they illustrate.

17 Without objection.

18 THE COURT: Now they're in record and
19 identified as to the date.

20 MR. TEDDER: Yes.

21 (DFT. EXH. 20, Color Photograph, was
22 marked for identification.)

23 (DFT. EXH. 21, Color Photograph, was
24 marked for identification.)

25 BY MR. KUHN:

Q. Mr. Youmans, I've shown you

1 DAVID YOUMANS - EX. BY MR. KUHN
2 Defendant's 20 and 21. Do you recognize what
3 those depict?

4 A. Yes, sir. Those are more pictures of
5 the carport with a line drawn in that says:
6 Approximate boundary line location for 40-foot
7 easement.

8 Q. Now, that line and that notation I put
9 on those pictures, and I'm not a surveyor. Does
10 that show approximately where that 40-foot road
11 that's depicted on the original plat that you
12 reference in your survey would have ended?

13 A. That's pretty close. I think it may
14 have been a little further towards the water, but
15 that's relatively close, yes, sir.

16 Q. Would it be fair to say that that
17 40-foot encroachment, or easement, whatever you
18 want to call it, does not go all the way to the
19 end of the carport?

20 A. That's correct.

21 Q. It stops somewhere short of that?

22 A. That's correct, yes, sir.

23 MR. KUHN: Your Honor, I'd move to
24 introduce Defendant's 20 and 21. Again, these
25 were taken by me approximately three days before
the temporary restraining order hearing.

DAVID YOUMANS - EX. BY MR. KUHN

1 THE COURT: Have you seen 20 and 21?

2 Counsel, have you seen 20 and 21?

3 MR. KUHN: They saw them at the
4 temporary restraining order hearing, but --

5 MR. TEDDER: I think I've already seen
6 these. I think the best evidence of this boundary
7 line location is the actual survey that's admitted
8 of record.

9 MR. KUHN: Which is my next exhibit,
10 but this gives you photographic -- this way you
11 can picture --

12 MR. TEDDER: My objection is to having
13 a surveyor having to testify to the approximate
14 location of a line that he actually surveyed.

15 THE COURT: I hear the objection. I'm
16 going to overrule the objection, but I understand
17 that that may go to weight.

18 MR. TEDDER: Yes, Your Honor.

19 THE COURT: And I understand the
20 weight of the approximation argument from this
21 witness. That I understand.

22 MR. KUHN: 20 and 21, Your Honor.

23 (DFT. EXH. 22, Plat, was marked for
24 identification.)

25 BY MR. KUHN:

DAVID YOUMANS - EX. BY MR. KUHN

1 Q. Mr. Youmans, if I can show you what
2 we've marked as Defendant's Exhibit 22 so we can
3 be exact. This is a survey that you prepared, is
4 that correct?

5 A. Yes, sir, it is.

6 Q. And I have added on here a notation:
7 Line drawn on Defendant's 20 and 21, that we just
8 looked at. Am I pointing to the right line here?

9 A. Yes, you are.

10 Q. This dotted line that ends, bisects
11 the carport somehow, that's the approximate line
12 that's shown on the photographs. Is that correct?

13 A. Yes, sir, correct.

14 Q. Where I've highlighted in yellow what
15 you've labeled: Dirt drive, that's physically
16 what was on the land when you did this survey. Is
17 that correct?

18 A. That's correct, yes, sir.

19 Q. What you've labeled: Pleasant Point
20 Drive 40-foot right-of-way, that existed only at
21 the courthouse records on a plat. Is that
22 correct?

23 A. Correct.

24 Q. And also, it's not labeled, but this
25 road approximately 12-foot wide which you have:

DAVID YOUMANS - EX. BY MR. KUHN

1 Proposed access easement, it is labeled: Proposed
2 access easement, that was not in existence at that
3 time?

4 A. No, sir. That's something that was
5 created that we duplicated on the ground with the
6 flags that were shown on the photographs.

7 (DFT. EXH. 23, Plat, was marked for
8 identification.)

9 BY MR. KUHN:

10 Q. For comparison purposes, if I could
11 show you Defendant's Exhibit 23. Do you recognize
12 what that is?

13 A. Yes, sir, same plat with some
14 additions to it. This shows the location of the
15 fence that was erected out in the right-of-way of
16 Pleasant Point Drive, shows the rock/stone that
17 was put down in the approximate location of the
18 new 12-foot easement and the fence that was put
19 up, the wood fence along the edge. It also shows
20 the Tompkins' fence too.

21 MR. KUHN: Your Honor, I move to
22 introduce Defendant's 22 and 23.

23 MR. INGLESE: Your Honor, there's
24 writing on this Exhibit 22, and you already have
25 the -- there's already one entered without writing

1 DAVID YOUMANS - EX. BY MR. KUHN
2 on it, so we'd prefer the court stick to the one
3 that doesn't have highlights and writing on it as
4 the counsel for defendants' impressions of and
5 opinions about the survey. You already have one
6 that's clean, so I don't think it's necessary to
7 utilize something that has those markings on them.

8 No objection to 23. There is a
9 highlight on it, but I have no problem with that,
10 because we don't have any disagreement about the
11 fence as it's shown on that survey.

12 THE COURT: Do you want to be heard
13 about the additional writings?

14 MR. KUHN: Your Honor, the witness has
15 testified that the highlighted portion of
16 Exhibit 22 is the actual road that was in
17 existence at the time. That's the only reason
18 it's highlighted, so you can tell what he's
19 talking about.

20 And the phrase: Line shown on
21 Defendant's 20 and 21 is written there so that
22 when Your Honor looks at this, you will know which
23 line he was talking about when he says this line
24 on this plat is the same line shown in those
25 photographs.

 THE COURT: I think I do understand

1 DAVID YOUMANS - EX. BY MR. KUHN
2 the very limited purpose for the exhibit, and it's
3 in the record, so I'm going to allow this.

4 MR. KUHN: Thank you, Your Honor.

5 BY MR. KUHN:

6 Q. Mr. Youmans, if you could maybe come
7 around and show His Honor the fence that you were
8 talking about and the rock.

9 A. Certainly.

10 Q. And for the record, this is the same
11 fence and the same rock that Mr. Inglese was
12 asking you about on direct testimony, correct?

13 A. Correct.

14 The difference between that plat and
15 this one is we went back and located the fence
16 that was erected out in the right-of-way and the
17 rock that's shown on one of the photographs,
18 pretty much in that easement area, the proposed
19 easement area and a little bit of fence here and
20 the Ewings' fence they had erected at the time.

21 THE COURT: And this is all gone now,
22 the fence that was --

23 THE WITNESS: The fence is gone. I
24 don't know if I've been back since that rock was
25 there.

 MR. TEDDER: Your Honor, I think your

1 DAVID YOUMANS - EX. BY MR. KUHN
2 examination later this afternoon will reveal the
3 true state of affairs.

4 THE COURT: I understand exactly,
5 taken subject to a visual examination. And let's
6 mark this something so I can go out with this
7 particular plat, along with -- I don't want to
8 take everything else, but I want to walk out with
9 this one.

10 MR. KUHN: That's Defendant's 23.

11 THE COURT: Let me make a little note.

12 (DFT. EXH. 24, Color Photograph, was
13 marked for identification.)

14 BY MR. KUHN:

15 Q. If I could show you Defendant's 24.
16 Do you know what area of this property that
17 depicts?

18 A. This is -- no, sir, I'm not sure. I'm
19 not sure what it is. I think it's somewhere on
20 Sussex Court, but I'm not positive.

21 Q. You're correct.

22 A. The only reason I say that, it's
23 consistent with the fencing that the Ewings were
24 doing.

25 Q. When you did your survey, did you come
around to this area here, and do you recall what

DAVID YOUMANS - EX. BY MR. KUHN
1 you saw when you came around to that area?

2 A. I don't recall.

3 Q. That's fine. Let's keep this one for
4 ID for Your Honor.

5 MR. KUHN: That's all the questions I
6 have.

7 REDIRECT EXAMINATION

8 BY MR. INGLESE:

9 Q. Just to reiterate, Mr. Youmans, the
10 series of deeds that reference your 1999 plat that
11 shows the 40-foot roadway/accessway, you put that
12 40-foot roadway extension in there, at that time,
13 did you have any reason to believe that that
14 40-foot roadway extension did not exist?

15 A. No, sir.

16 Q. And it was your belief at that time --
17 that's why you showed it in the survey -- that
18 that roadway was still available to the Ewings?

19 A. Yes, sir.

20 MR. INGLESE: Nothing further. Pause
21 one moment, Your Honor.

22 BY MR. INGLESE:

23 Q. And did you examine public records at
24 the time you created that 1999 plat?

25 A. I really don't recall.

DAVID YOUMANS - EX. BY MR. INGLESE

1 Q. Is it customary practice for you, as a
2 surveyor, to reference existing public records and
3 the plats therein?

4 A. When we get a work order in, we
5 usually go to our file room first, because we have
6 records going back into the '60s. We compare what
7 we have to what the county shows on their GIS site
8 or tax maps, if you will. If we notice any
9 discrepancy, certainly, we pull deeds, adjoining
10 deeds, what plats we can find, whatever.

11 Q. And did your inventory include the
12 Trogdon plats that created this neighborhood?

13 A. We have all of Doug Trogdon's records
14 and plats, yes, sir.

15 Q. All of them?

16 A. Yes, sir.

17 Q. Nothing further.

18 RECROSS-EXAMINATION

19 BY MR. KUHN:

20 Q. You did not search the title, though?

21 A. No, sir.

22 Q. All these deeds we've been talking
23 about today, a lot of these are new to you?

24 A. No. I've seen most of the ones that
25 we've been looking at.

DAVID YOUMANS - EX. BY MR. KUHN
1 Q. But not all of them?

2 A. I don't think so.

3 MR. KUHN: That's all.

4 THE COURT: Well, first of all,
5 Mr. Youmans, thank you very much.

6 THE WITNESS: Yes, sir.

7 THE COURT: Appreciate your
8 testifying, and you're excused.

9 THE WITNESS: Yes, sir.

10 THE COURT: And I know this was the
11 most delightful thing you've done in many decades.

12 THE WITNESS: It's the most fun I've
13 had all morning.

14 THE COURT: There you go.

15 Why don't we have a break for lunch.
16 What's your call on this?

17 MR. KUHN: You're in charge, Your
18 Honor. It's fine with me.

19 MR. TEDDER: However much time you
20 want to take. I know you're not familiar with
21 Beaufort, so between --

22 THE COURT: I'm not familiar with
23 Beaufort. I'm not permitted, of course, to go out
24 with either side during the lunch break.

25 MR. TEDDER: Which I'm happy to give

1 DAVID YOUMANS - EX. BY MR. KUHN
2 you some directions as to different eateries that
3 we have around here, based upon the amount of time
4 that you're going to set aside.

5 THE COURT: I'm at your discretion
6 here. Happy to make the call if no one gives me a
7 suggestion, but if counsel gives me a suggestion,
8 I'm happy to follow counsel's suggestion.

9 MR. TEDDER: Looking at the time of
10 12:30 and knowing we want to wrap this up in a
11 day, I'm going to suggest if you're not going to
12 get heartburn at eating semifast sandwich food, we
13 have several things within a mile of here --

14 THE COURT: Perfect.

15 MR. TEDDER: -- that will work, so I'm
16 going to say 40 minutes.

17 THE COURT: 40 minutes is fine with
18 me. Do we have agreement with counsel that 40
19 minutes is the right number?

20 MR. KUHN: Yes.

21 (A luncheon recess transpired.)

22 MR. TEDDER: We would call Julia
23 Tompkins Ewing.

24 JULIA TOMPKINS EWING
25 being first duly sworn, testified as follows:

DIRECT EXAMINATION

JULIA EWING - EX. BY MR. TEDDER
BY MR. TEDDER:

Q. Could you state your full name for the
record, please?

A. Julia Tompkins Ewing.

Q. And where do you reside now?

A. 6 Sussex Court.

Q. And how long have you resided there?

A. We moved down January 2014. I've been
living in the house since I was 18.

Q. And we can do the math, but about when
was that that you moved into the house at 18?

A. That's getting a little personal.
1969.

Q. Is that the time when your father
purchased the property?

A. Yes.

Q. From that time until today, have you
been in constant contact with this property?

A. Yes.

Q. This road/driveway that we have been
discussing and has been shown on many plats as
being the driveway that went around and now
accesses your carport, how long have you been
using it?

A. Since 1969, 1970, somewhere in there.

JULIA EWING - EX. BY MR. TEDDER

1 Q. As far as getting in and out of what
2 has been shown on Defendant's Exhibit D-15, 16,
3 17, and 18, which are general views of the
4 carport, for how many years have you been parking
5 or have you observed your father parking in that
6 area?

7 A. The same amount of years.

8 Q. When did you obtain title to the
9 property?

10 A. My mother died June 13th, I think
11 August or September of that year, 2013, I believe.
12 I'm not sure exact date.

13 THE WITNESS: Do I give these back to
14 you?

15 THE COURT: They all eventually go to
16 the most important person in the room, the court
17 reporter.

18 BY MR. TEDDER:

19 Q. I'm going to show you which is in
20 Plaintiff's No. 1, Tab 4, which is a deed recorded
21 at Book 3277 at Page 755, and ask you if you
22 recognize what this document is?

23 A. Yes.

24 Q. What is this document?

25 A. It's when I received the property, the

JULIA EWING - EX. BY MR. TEDDER

1 deed.

2 Q. Can you examine the last page on this
3 and look at the legal description in the first
4 paragraph and relate to me what the general
5 description is in the plat book?

6 A. Do you want me to read this paragraph
7 right here?

8 Q. Does it reference the plat book?

9 A. It references the plat book and the
10 plat that my father bought the property with.

11 Q. And does that plat, your examination,
12 show the 40-foot road known as Pleasant Point
13 Drive?

14 A. It certainly does.

15 Q. Have you ever seen any document of
16 public record that shows an abandonment of that
17 40-foot easement --

18 A. I have not.

19 Q. -- by your predecessor in title or
20 yourself?

21 A. No.

22 Q. I want to go back and clear up
23 something about the address of 6 Sussex Court
24 that's shown on that plat as a cul-de-sac. Has
25 that road ever been -- that drive ever been

1 JULIA EWING - EX. BY MR. TEDDER
opened?

2 A. There was never a drive there. We had
3 an address that was Post Office Box 326 downtown.
4 There was no Sussex Court. It was dirt.

5 Q. When would you get the address --

6 A. And furthermore, can I just say, too,
7 that the house was built in 1805, and the house
8 has always been oriented to where the carport and
9 everything else is. That's where we enter the
10 house, always.

11 Q. Do you know when the address 6 Sussex
12 Court was assigned to the property?

13 A. I believe it was about 1982, somewhere
14 in the early '80s. I'm not positive.

15 Q. Have you ever taken access off Sussex
16 Court to enter your house?

17 A. Never. It's impossible.

18 Q. Has your father ever taken it?

19 A. Never.

20 Q. And you know that because?

21 A. I know that because I was there and
22 lived there and witnessed it, and I also know that
23 he bought the property with the 40-foot-wide
24 easement, and that was enough for him. He didn't
25 have to go through all of this.

JULIA EWING - EX. BY MR. TEDDER

1 Q. There has been some prior testimony
2 and reference to an easement that had a plat
3 attached to it that is recorded at 248 at 454,
4 which is Defendant's No. 1.

5 MR. TEDDER: I got this from up there,
6 but it wasn't marked with an exhibit number. It
7 is the easement itself. Fred, I thought you
8 admitted it.

9 MR. KUHN: It was part of D-1, which
10 y'all objected to, so I'll renew my motion to
11 enter Defendant's D-1.

12 MR. TEDDER: D-1 is the major one. I
13 didn't -- anyway, this is a --

14 MR. KUHN: I have no objection to it
15 coming in. It's already in.

16 BY MR. TEDDER:

17 Q. Are you familiar with the
18 circumstances of the creation of this easement
19 back in --

20 A. 1979.

21 Q. -- 1979, some ten years after your
22 father purchased the property?

23 A. Uh-huh, I am.

24 Q. What was the reason?

25 A. Landscaping.

JULIA EWING - EX. BY MR. TEDDER

Q. What occurred in that area?

A. My father was mowing the lawn, and he thought he ought to own it, and so he asked Mr. Branning to buy it, actually, an easement, because he was mowing the lawn. It had nothing to do with the 40-foot access, although it was in the middle of it.

Q. Who is Mr. Branning that you just mentioned?

A. Cloide Branning was the first developer after the group of eight businessmen who purchased the land originally from -- the eight businessmen who were the first developers. He was, I think, the second, worked with Pendley brothers in Atlanta.

Q. To your personal knowledge, was he one of the developers at the time your father bought the property?

A. I don't think he was, but Cloide can speak to that better than I can.

Q. Throughout the however many years '69 to 2015 i's, has the property ever been accessed any other way than the drive that was shown on the plats and actually highlighted on Defendant's Exhibit No. D-14 coming up on Pleasant Point

JULIA EWING - EX. BY MR. TEDDER

1 Drive?

2 A. It's never been accessed any other
3 way.

4 Q. And I guess a few years ago, were you
5 aware of an attempt to fix the problems between
6 the neighbors when Roi Young and his wife owned
7 the Manor House property?

8 A. Yes.

9 Q. How are you familiar with that?

10 A. I stood in the driveway with the
11 homeowners association and the Youngs and all of
12 our lawyers.

13 Q. And what did you try to resolve at
14 that time?

15 A. The fact that we had ingress and
16 egress, that we had bought the property with a
17 40-foot-wide easement to access our property.
18 That's all we were trying to do this whole time.

19 Q. When you were discussing that with the
20 homeowners association and Mr. Young, did y'all
21 make reference to the plats of record? Were you
22 looking at those?

23 A. They had them in their hands.

24 Q. Was one of those one of the plats that
25 showed, as Mr. Kuhn I believe referred to it, the

JULIA EWING - EX. BY MR. TEDDER
1 40-foot road that then narrowed down? It looked
2 like the road -- that made it look as if the road
3 went all the way out to the marsh.

4 A. Yes. Mr. Young referenced it himself.
5 He said that he thought the road went all the way
6 to the marsh, and I told him right then and there
7 that I didn't care to go all the way to the marsh
8 on his property, that I just wanted to get in and
9 out of my carport and out to the road.

10 MR. TEDDER: I apologize, Your Honor.
11 I'm trying to find --

12 THE COURT: Are you looking for this?

13 MR. TEDDER: No. It's going to be an
14 old plat. It is, I believe, 60 at 190.

15 BY MR. TEDDER:

16 Q. What year was that that you were
17 having those discussions?

18 A. I'm sorry?

19 Q. What year was that that you were
20 having discussions with the homeowners
21 association?

22 A. It was early 2000. I would guess it
23 was 2002. 2002 to maybe 2003, I gave a deposition
24 to Harold Boney, and it was right after 9/11,
25 actually, the year after that. I remember that

JULIA EWING - EX. BY MR. TEDDER
particular date.

Q. Having now found it, which is -- I believe it's Defendant's 1, Tab 2, which is a plat filed at 19 at Page 160, do you recognize that plat as one of the ones that y'all were discussing as where the road went and extended to?

A. Yes.

Q. And I believe it's your testimony, to recap, now that we have the plat in front of us, the area extending off Pleasant Point Drive that narrows down is the area that you're not making a claim to -- or did not make a claim saying you owned beyond the widened area, beyond --

A. I'm not making a claim all the way to the marsh, if that's what you're asking me.

Q. That's right. That's what I was --

A. That's correct.

Q. But you are making a claim to the 40-foot driveway shown at 18 at 45?

A. Yes, just the use of it. I'm not contesting the fact that they own the land, or anything like that, just that there's an easement over it, and we should be allowed to use the easement as we have for almost the last 50 years.

Q. Now, at that time, there was a letter

1 JULIA EWING - EX. BY MR. TEDDER
2 that came out of the property owners association
3 dated 2014 that Mr. Bundy testified about that
4 said, in essence, that there -- that would pave
5 it?

6 A. 2014?

7 Q. Excuse me, 2004.

8 A. Right.

9 Q. Do you have any personal knowledge of
10 why nothing ever happened with that letter and the
11 actions that --

12 A. Why it wasn't completed or -- because
13 they didn't want to pay for it.

14 Q. And do you know why Mr. Young didn't
15 follow through, why he wrote a letter in 2005?

16 A. Things sort of fell apart because Roi
17 Young's son was killed in a terrible car accident
18 on Coosaw, and they basically moved away from
19 Beaufort.

20 Q. So it kind of died because of external
21 circumstances?

22 A. So I don't know what happened after
23 that, yes.

24 Q. In this past summer -- not this past
25 summer, last year, in 2014, spring of 2014, did we
attempt to resolve these issues?

JULIA EWING - EX. BY MR. TEDDER

A. We did, with Judge Tommy Cooper.

Q. And as a result of all those
machinations, some plats were created?

A. Yes.

Q. During that period of time, did you
have surveys done?

A. Yes.

Q. Who did you have the surveys done by?

A. David Youmans.

Q. How many surveys, to your knowledge,
during the course of the --

A. Three.

Q. -- beginning of the litigation have
you done?

A. Three.

Q. And during those survey operations,
did you have stakes and markers placed?

A. Yes.

Q. Can you tell me what happened to those
stakes and markers?

A. They disappeared.

Q. And when you say disappeared, give us
a little bit more detail about what happened
immediately after the staking of many of the areas
that were shown on the survey.

JULIA EWING - EX. BY MR. TEDDER

1 A. I was advised to take a picture of
2 everything because it probably would disappear.

3 Q. And did they disappear?

4 A. Yes.

5 Q. And how long did it take for them to
6 disappear between the times you were told to take
7 the pictures?

8 A. Not very long.

9 Q. Well, let's be a little bit more
10 specific. Was it a day? An hour?

11 A. An hour.

12 Q. Did you see anyone come onto the
13 property?

14 A. No.

15 Q. Who else was on the two properties at
16 the time that could have removed the stakes?

17 A. Well, I was at home, and I had just
18 paid for it, so -- I assume the Guests were there.
19 I'm not positive they were, but I believe they
20 were.

21 Q. You didn't have the stakes removed?

22 A. No, I didn't.

23 Q. And how much money have you spent on
24 surveys, having stakes replaced, and things laid
25 out?

JULIA EWING - EX. BY MR. TEDDER

1 A. I have -- I haven't looked back,
2 because it's a little painful, but I would say
3 several thousand dollars.

4 Q. Since this latest litigation --

5 A. Yes.

6 Q. -- in 2014?

7 A. Yes.

8 Q. This past summer, in July, tell the
9 court, if you would, what happened on the
10 afternoon of July 20th.

11 A. Well, actually, I believe it was
12 July 22nd. I came back from an extended trip in
13 the middle of the night, and the driveway as I
14 know it was fenced off, and at the edge of the
15 property was a cut-in to be used, I suppose, as
16 the driveway.

17 Q. What actions did you take?

18 A. I drove in, called you the next day
19 and said we've got a problem, because, obviously,
20 something happened in the middle of the night when
21 we left town, and it's not in accordance to the
22 agreement where the driveway was to enter the
23 property. And there is a reason it was entering
24 it there, because it's the highest point of the
25 property, and where the Guests cut in this little

1 JULIA EWING - EX. BY MR. TEDDER
2 whatever it is is the lowest point of the
3 property. And so this all occurred after we had
4 signed off on everything the following year.

5 Q. I want to back up and get the dates in
6 here. When they cut in the road, you say it was
7 on the lowest part of the property --

8 A. Yeah.

9 Q. -- what did that cause?

10 A. It caused a lot of heartache.

11 Q. And why is that?

12 A. Because it was hard to get in and out.

13 Q. Because?

14 A. Because it was muddy and under water.

15 Q. And was there several rain events at
16 that time that you had to deal with?

17 A. Yes.

18 Q. Did you get stuck?

19 A. Yes.

20 Q. Prior to the road being cut in on July
21 of 2015, had you just asked the surveyor to go
22 back and restake the area?

23 A. Yes. It was right before that. It
24 was in June, the survey date, June --

25 Q. And what happened to those survey
stakes?

JULIA EWING - EX. BY MR. TEDDER

1 A. Those are the ones I was referring to
2 that disappeared. And I split that survey, the
3 cost of it, with the homeowners association,
4 because they wanted to understand what was going
5 on at the end of the driveway also.

6 Q. What are you asking the court to do on
7 your behalf insofar as the 40-foot right-of-way
8 shown as Pleasant Point Drive on Plat Book 18 at
9 45?

10 A. What am I asking for?

11 Q. Yes.

12 A. To use it to get in and out of my
13 driveway and my carport and my house and my life.

14 Q. Speaking of getting into your carport,
15 the easement that we talked about a minute ago
16 which was the trapezoidal area, just to be clear;
17 the plat that was attached to it, or the drawing
18 that is attached to it, which is also shown on
19 Defendant's D-23, which is the compilation plat
20 last done by David Youmans, can you tell the court
21 how you can access your carport from that
22 easement, being the smaller easement referenced
23 in --

24 A. I don't think I understand your
25 question.

JULIA EWING - EX. BY MR. TEDDER

1 Q. Is there any physical way to get into
2 your carport through the use of the easement shown
3 on that?

4 A. No, no, absolutely not.

5 Q. Does it even make it to the carport?

6 A. It's a trapezoid. It was grass being
7 mown. It had nothing to do with in and out of the
8 carport or anywhere near it.

9 Q. Is there any way to access the
10 carport, as shown on D-17 through -- excuse me,
11 D-15 through 19. Is there any way to access the
12 carport --

13 A. No.

14 Q. -- from anywhere other than where the
15 driveway is showing now?

16 A. No.

17 Q. Can you access it from the easement
18 that expired when your parents died?

19 A. No, because it has nothing to do with
20 it. It's a piece of grass that has nothing to do
21 with the driveway. And the carport was placed
22 where it is between two like, you know,
23 600-year-old oak trees on the border of their
24 property, right at the end of the 40-foot-wide
25 dedicated easement.

JULIA EWING - EX. BY MR. TEDDER

1 Q. What would you have to do -- if this
2 area that the current drive is going through, the
3 40-foot access area, if you did not have access to
4 your carport from there, what would you have to do
5 to get access?

6 A. I have no idea, cut through three lots
7 or something that I might want to sell some day.
8 I have no idea. I've never even considered it,
9 because I feel like the letter of the law protects
10 me, and I don't even have to think about it.

11 Q. The carport was built after the
12 subdivision plat was created?

13 A. That's correct. And I might add that
14 when my father bought this property, none of the
15 land was platted west of us, nothing, nada, except
16 for the easement.

17 Q. You've been in and out of Pleasant
18 Point since 1969 with your parents and your own
19 ownership. You're aware there are restrictive
20 covenants out there?

21 A. Yes.

22 Q. Do the restrictive covenants require
23 permission to build things?

24 A. Yes.

25 Q. Do the restrictive covenants, to your

1 JULIA EWING - EX. BY MR. TEDDER
2 knowledge, require that you provide parking areas
3 away from the street?

4 A. I believe so.

5 Q. Because of the -- back in July, when
6 you came home and found the area obstructed as
7 shown in -- when I say the area obstructed, out by
8 the corner of Sussex Road. And we'll look at --
9 let's look at D-12 and D-11 and those areas there.
10 Does that fence in the area in which you had been
11 driving in and out to the carport, does it
12 obstruct your --

13 A. Are you talking about --

14 Q. Does that fence obstruct your ability
15 to use the drive that we've been talking about --

16 A. This fence?

17 Q. -- being in use since 1969?

18 A. This fence?

19 Q. Yes.

20 A. Yes, it obstructed it, of course it
21 did.

22 Q. And you can see that because you can
23 see the old roadbed?

24 A. Exactly, which my father dug out with
25 a shovel.

Q. So in your complaint, you've asked for

1 JULIA EWING - EX. BY MR. TEDDER
all the obstruction to be removed?

2 A. Yeah. I just want the obstructions
3 removed, I want to get in and out the way we
4 always have, and if they want me to kick in on the
5 gravel, I'd be happy to.

6 Q. At this point there's been earlier
7 testimony about or allusions to that fence having
8 been taken down. At this point in time, are there
9 still obstructions across --

10 A. Yes, there is.

11 Q. -- the entranceway of the 40-foot
12 right-of-way?

13 A. There's string and wood across there.

14 Q. When you say string and wood, there
15 are some string and wood --

16 A. It's exactly like this.

17 Q. -- indications on D-11?

18 A. It's like this.

19 Q. So it's these things that are shown on
20 D-11 that are still up there preventing you from
21 driving across that area.

22 To your knowledge, have you or your
23 father or your mother ever been served with a
24 civil suit to abandon a road right-of-way?

25 A. Not to my knowledge.

JULIA EWING - EX. BY MR. TEDDER

1 Q. Have you had issues over the years
2 with that area of the 40-foot right-of-way by the
3 carport being blocked?

4 A. Yes, recently, in the last several
5 years, never before that.

6 Q. Could you explain to the court what
7 you mean by that area being blocked? What caused
8 that?

9 A. I mean that the Guests' guests pull up
10 there or they park there over the first two years
11 I was coming in and out of the house recently,
12 made it hard for us to back up, or we'd have to go
13 knock on the door and ask them to move their cars.
14 We have never parked on their side or done
15 anything like that..

16 Q. There's been some prior testimony
17 about the carport -- the relationship of the
18 carport to the end, if you will, of the 40-foot
19 easement. Are you aware that the carport and the
20 40-foot easement as shown on Exhibit D-23 --
21 excuse me. That's the wrong one.

22 Well, let's go back to D-23. In
23 examining the area up by the carport, you see the
24 dashed lines where the 40-foot right-of-way is?
25 Are you there?

JULIA EWING - EX. BY MR. TEDDER

1 A. Yeah.

2 Q. Do they extend past the edge of your
3 carport or to the edge of your carport?

4 A. The carport extends further out. Is
5 that what you're asking me?

6 Q. Yes.

7 A. Yes, I'm aware of that, and the reason
8 that it was placed like that was because it's
9 between these two huge oak trees.

10 Q. Have you, throughout your occupancy
11 and use of that property, used the area that is
12 beyond that 40 foot for parking maneuvering?

13 A. Never.

14 Q. Let me ask the question again. When
15 you back out of the area closest to the river on
16 the carport, are you backing out into that area?

17 A. Into that area, yes, I am.

18 Q. How many years, to your knowledge, has
19 that occurred?

20 A. 50 years.

21 And I'll remind the Court or whomever
22 that Mr. Young thought it went all the way to the
23 marsh, so there's that little detail.

24 MR. KUHN: We'll, of course, object to
25 her reading Mr. Young's mind.

JULIA EWING - EX. BY MR. TEDDER

1 THE WITNESS: He said it to me. He
2 said it to me.

3 MR. KUHN: Then I object on admissible
4 grounds.

5 THE WITNESS: How is that reading his
6 mind?

7 MR. TEDDER: Hold on. The judge has
8 to make a ruling on the objection, which is?

9 THE COURT: The objection is
10 sustained.

11 MR. TEDDER: It's speculation.

12 THE WITNESS: If someone actually says
13 something to me -- okay.

14 BY MR. TEDDER:

15 Q. Moving on, the area --

16 THE COURT: Let me explain. When you
17 refer to what someone else says to you, and
18 they're not here in the court, there are some
19 exceptions, but the general problem is they're not
20 available to be examined or cross-examined or --
21 so that creates what's called an evidentiary
22 problem. That's why I sustained it.

23 THE WITNESS: He said/she said. Got
24 it. Thank you.

25 THE COURT: Now you know all the

JULIA EWING - EX. BY MR. TEDDER
evidence I know.

THE WITNESS: That's a good thing,
Judge.

BY MR. TEDDER:

Q. Looking at Exhibit D-23, at its bottom
edge, which I want to show --

THE COURT: D-23?

MR. TEDDER: D-23.

BY MR. TEDDER:

Q. At the bottom of the plat, below
Lot 28, do you see an area marked: This portion
of country club deeded per Deed Book 477 at 1165?

A. I see that, yes.

Q. You also see a dashed line that runs
parallel to your property line which is part of
the 40-foot right-of-way?

A. That's correct.

Q. You have continued to make a -- do you
continue to make a claim to the 40-foot
right-of-way in that area to exit out?

A. Yes.

Q. Do you dispute the ownership of the
fee simple to the --

A. That the Guests own the property.

Q. That the Guests own --

JULIA EWING - EX. BY MR. TEDDER

1 A. I do not. I do not dispute that at
2 all.

3 Q. But you're asserting your right to
4 traverse it?

5 A. Exactly.

6 Q. In the course of this action to
7 preserve your rights to get in and out, have you
8 incurred various attorneys fees and costs?

9 A. Why yes.

10 Q. And without having gotten a final bill
11 yet, can you estimate how much you've paid
12 already?

13 A. Including the mediation with Judge
14 Cooper and all of that, I would guess \$15,000.

15 MR. KUHN: Your Honor, I'm going to
16 object as being not relevant. It's not
17 recoverable under any of the causes of action that
18 they've pled.

19 THE COURT: I haven't -- I haven't
20 looked carefully at the causes of action that have
21 been pled, so I'm not eager to rule on this right
22 now. At the same time, I'm aware that there are
23 certain things that are recoverable, and there are
24 certain things that are not, and hopefully, I will
25 know the difference in the course of my order. So

1 JULIA EWING - EX. BY MR. TEDDER
2 subject to all those whatever you might call them,
3 and they are significant, I'll take this for
4 whatever it's worth.

5 MR. KUHN: Thank you, Your Honor.

6 MR. TEDDER: And in fact, Your Honor,
7 if we were to submit, I would have to provide a
8 supplemental affidavit because of the course of
9 the proceedings today.

10 THE COURT: And I'm speaking out loud.
11 I haven't really fully researched this. Mediation
12 costs I'm not sure fall into the category of
13 recoverable damages, to begin with, for either
14 side, but I'm not positive of that, and I really
15 would like to turn a computer on before I give
16 some conclusion on that.

17 MR. TEDDER: Your Honor, I think that
18 concludes my examination of Mrs. Tompkins. And I
19 want to make sure I get the exhibit returned back
20 up there and not back at my --

21 THE WITNESS: It sounds like a bingo
22 game. Here's D-22.

23 THE COURT: It does sound a little bit
24 like bingo, doesn't it, D-22, P this. It does
25 have that sort of ring to it.

THE WITNESS: Are these yours also?

JULIA EWING - EX. BY MR. TEDDER

1 THE COURT: If it's got that little
2 sticker on it, probably. They ultimately go to,
3 like I say --

4 THE WITNESS: The most important
5 person in the room.

6 THE COURT: Exactly.

7 MR. KUHN: Please the Court, Your
8 Honor.

9 CROSS-EXAMINATION

10 BY MR. KUHN:

11 Q. Mrs. Ewing, what is your address?

12 A. 6 Sussex Court.

13 Q. And that has been your address since
14 at least the early '80s?

15 A. I'm not sure, because I wasn't really
16 living there, my parents were, but I would guess
17 that's about when the development assigned numbers
18 to everybody. I'm not positive, though, of the
19 date.

20 Q. If I can show you this plat, do you
21 recognize what it depicts?

22 A. Yes, I do.

23 Q. I'm going to highlight a section here.

24 A. Right, right, right.

25 Q. That section that I've highlighted --

1 A. How about this section right here?

2 Q. -- what is that?

3 A. Sorry?

4 Q. The section that I've highlighted,
5 what is that?

6 A. I think it was a developer's plan for
7 a driveway.

8 Q. And your mailbox is located on Sussex
9 Court --

10 A. It is.

11 Q. -- at the end of that yellow
12 highlighted area?

13 A. But that's not 'til much later.

14 Q. That's where it is now, correct?

15 A. That's correct.

16 THE COURT: Does that have a number?

17 MR. KUHN: I'm getting ready to mark
18 it and introduce it, Your Honor. I move to
19 introduce this as defendant's next in order.

20 THE WITNESS: I think you already have
21 that.

22 THE COURT: We like to --

23 MR. TEDDER: This is 18 at 45 half a
24 dozen times over, but -- I don't know what the
25 relevance is to --

1 MR. KUHN: The yellow highlighted the
2 witness has testified was the developer's
3 originally-intended driveway.

4 THE COURT: I'll certainly take it for
5 that purpose.

6 MR. TEDDER: I'm sorry. Its purpose
7 is to show the intent?

8 THE COURT: No, what the developer
9 proposed for the subdivision.

10 THE WITNESS: On the same plat is the
11 easement, so why don't we highlight the easement
12 also.

13 MR. KUHN: I get to ask the questions.

14 THE COURT: On cross-examination, you
15 don't get to ask the questions; he does.

16 THE WITNESS: All right. Yes, sir.

17 THE COURT: So it's as -- it's a
18 difficult position to sometimes be in, but you let
19 him ask the questions.

20 THE WITNESS: Yes, sir.

21 BY MR. KUHN:

22 Q. What was your explanation as to why
23 your father needed to get an easement from
24 Mr. Branning? You said he needed it to mow the
25 lawn?

1 A. He was mowing the grass. He thought
2 he ought to own it. It was a landscaping
3 easement, had nothing to do with the 40-foot
4 easement of the driveway or anything like that.
5 If you look at the plat, you'll see it has no
6 relationship to the driveway or getting in and out
7 of the carport.

8 Q. Why, then, do you think this easement
9 expressly says it's for the purpose of
10 constructing a driveway if it's just to mow the
11 grass?

12 A. I think it refers to many other things
13 besides that. It says -- it talks about
14 sidewalks, driveways, utilities, landscaping,
15 grass, and that sort of thing. But my father's
16 not here, he's not on earth, so you'd have to ask
17 him, I guess.

18 Q. So you don't know why it refers to
19 giving the ability to construct a driveway when it
20 has nothing to do with a driveway, according to
21 your testimony?

22 A. That's correct. It has to do with
23 landscaping, best of my knowledge.

24 Q. Under your testimony, the 40-foot
25 roadway adjoining Lot 1 was still in existence

1 when this easement was done. Do you know why it's
2 not shown on that easement?

3 A. What do you mean under my testimony?
4 You mean just now?

5 Q. Yes, ma'am.

6 A. Why is it not shown? Because all
7 they're showing is what he was buying from
8 Mr. Branning.

9 Q. They show Country Club Drive.

10 A. Right.

11 Q. But they don't show it --

12 A. This is the only one. Isn't that odd
13 that it doesn't show the easement.

14 Q. Yes, ma'am, very.

15 A. It's very odd, isn't it? Even all the
16 ones you went through with the Youngs, it's on
17 there.

18 Q. But your testimony is, from what you
19 understand, is this was not a trade-off, because
20 your dad could not access Lot 1 --

21 A. Absolutely not.

22 Q. -- from what had never existed, that
23 Mr. Branning gave them this so he could have
24 access to it for his life?

25 A. He bought it from Mr. Branning.

1 Q. \$10, you're correct.

2 A. I actually think it was more than
3 that, but whatever.

4 Q. You said it was impossible to access
5 your property from the 6 Sussex Court entranceway.
6 Why is that?

7 A. There are several big oak trees right
8 there. It bears no relation to the way the house
9 is situated. You'd be going across other lots to
10 get to the carport or where we enter the house.
11 It was never in the equation, no matter how many
12 lines have been drawn, never.

13 Q. It'd be inconvenient, not impossible?

14 A. Okay, semantics.

15 Q. Do you recognize this document?

16 A. I do.

17 Q. And what is that?

18 A. This was the result of the mediation.

19 Q. Is that your signature on the second
20 page?

21 A. It certainly is.

22 MR. TEDDER: Excuse me. Excuse me.

23 What is that that you handed up?

24 MR. KUHN: The mediation agreement.

25 MR. TEDDER: The mediation

1 agreement --

2 THE WITNESS: I didn't think we were
3 going into this.

4 MR. TEDDER: -- has failed and is
5 irrelevant. I thought we stipulated at the
6 beginning of this, before we went in the judge's
7 chambers, that we agreed that the mediation
8 agreement was not an agreement.

9 MR. KUHN: It failed, that's for sure.

10 MR. TEDDER: And mediation
11 agreements -- Your Honor, you're a better mediator
12 than I am -- they're confidential.

13 THE COURT: In general, mediation
14 doesn't come into the trial, not through the front
15 door and not through the back door and not through
16 the side door.

17 MR. KUHN: The reason I am proffering
18 that is Mr. Youmans testified that on one of the
19 plats that he did recently, he drew a driveway
20 along the border of the properties, and that his
21 understanding was that was the -- where it was
22 supposed to be pursuant to the agreement. The
23 agreement he was talking about was this agreement.

24 THE WITNESS: You're also missing the
25 third piece of paper where it's drawn out, for

1 that matter.

2 MR. KUHN: I'm just trying to fill in
3 that gap. If that's clear, Your Honor, then I
4 don't need to put this in, that that was the
5 agreement he was talking about, nothing else.

6 THE COURT: I'm not sure that I fully
7 understand your argument. I'll accept it and mark
8 it, but in general, there's no jury here, so I
9 don't have to decide right away about this. I'm
10 concerned about bringing in documents from
11 mediation. That's in general.

12 MR. KUHN: I absolutely understand
13 that.

14 THE COURT: That would be true for
15 Mr. Youmans, by the way, as well as this document.
16 I mean, I'm, in general, concerned about talking
17 about the mediation. I'll accept it, but you know
18 all the caveats I had once before about watch out,
19 I may decide to simply give this zero weight
20 because it's a mediation document. That's likely
21 to be what I end up doing, and if I do it, you're
22 at least entitled in a footnote to say: Once
23 more, Spitz is wrong, and, you know, you can
24 take -- you can take -- you can disagree with me,
25 but in general, I just want to tell you, I'd like

1 to keep mediation -- bring it in for whatever it's
2 worth, how about that.

3 MR. KUHN: Again, Your Honor, my
4 purpose in offering this is Mr. Youmans, almost in
5 passing on one of his plats, this was the proposed
6 access pursuant to, quote, an agreement of the
7 parties. I hadn't intended to introduce this 'til
8 that happened, so I better put this in so you'll
9 know what he was talking about.

10 THE COURT: That makes sense. That
11 makes sense to me. And by the way, I do remember
12 him saying that and wondering at the time what
13 exactly he was talking about.

14 MR. TEDDER: To reiterate, Your Honor,
15 settlement agreements between parties are not
16 allowed.

17 THE COURT: I know.

18 MR. TEDDER: And all of this was done
19 pursuant to settlement negotiations.

20 THE COURT: I understand that. I
21 understand that.

22 MR. KUHN: They opened the door. I
23 want to make sure it shuts so that there's no
24 ambiguity in Your Honor's mind as to what we're
25 talking about.

1 THE COURT: What's interesting about
2 two really good lawyers is I understand both of
3 their arguments, all right. I really do. You got
4 two really good lawyers here.

5 MR. KUHN: I have no further
6 questions, Your Honor.

7 THE COURT: Any redirect?

8 MR. TEDDER: I'm just trying to
9 think -- I'm trying to wrap my head around we just
10 had an offer of a mediated agreement being
11 identified, but there were no questions about it?
12 There were answers. Did I miss something?

13 MR. KUHN: I asked her what it was and
14 if it was her signature. That's the only
15 questions I had about it. It speaks for itself.

16 THE WITNESS: Do you want me to -- is
17 this being entered or --

18 MR. KUHN: Yes, ma'am. It will be
19 marked.

20 (DFT. EXH. 53, Mediated Settlement
21 Agreement, was marked for identification.)

22 MR. TEDDER: If I might, Your Honor, I
23 would have no redirect at this time, but I reserve
24 the right to re-call her in rebuttal.

25 THE COURT: Okay. I understand that.

1 THE WITNESS: Do I stand down now, or
2 what do I do?

3 THE COURT: Yeah.

4 MR. TEDDER: At this point, Your
5 Honor, plaintiff would rest its case and move for
6 a directed verdict on the uncontroverted facts
7 that appear in the record based on the chain of
8 title and the applicable case law, which, at your
9 pleasure, I am happy to argue now or follow
10 through with the way that you -- whatever way you
11 want to conduct this.

12 THE COURT: Well, first of all, your
13 motion is denied, all right. And I'm delighted to
14 hear your arguments, but maybe you should save
15 them for the end of the trial instead of right
16 here.

17 MR. TEDDER: That's what I suspected
18 His Honor was going to say.

19 MR. KUHN: I believe it's the
20 appropriate time for the defendant to move for a
21 directed verdict on the ground they have not
22 proven their case. Looking at the facts in the
23 light most reasonable to the plaintiff and the
24 light most favorable to the plaintiff, the
25 uncontroverted evidence as shown by the documents

1 on file at the Beaufort County Courthouse,
2 corroborated by the plaintiff's own testimony,
3 shows the defendant is entitled to a judgment in
4 their favor as a matter of law.

5 THE COURT: And I'm going to deny that
6 motion as well.

7 MR. KUHN: Thank you, Your Honor.

8 (DFT. EXH. 52, Plat at Plat Book 18,
9 Page 45, was marked for identification.)

10 MR. KUHN: Please the Court, Your
11 Honor, I call Cloide Branning.

12 MR. TEDDER: Your Honor, I anticipate
13 that I'm going to have to make some objections to
14 his testimony as a developer to contravene the
15 documents that are of the four corners themselves.
16 I know there's not a jury here, but I suspect his
17 testimony will be irrelevant and containing parol
18 evidence.

19 THE COURT: All those objections are
20 heard, but at the moment, I'm going to deny them,
21 because I think I should listen first before I
22 make any kind of rulings about what he is going to
23 testify to, but hasn't yet.

24 MR. TEDDER: I understand. There were
25 no depositions of Mr. Branning, because we just

1 found out about his testimony over the weekend, so
2 I'm going to have to wing it as we go along as to
3 what he might testify.

4 THE COURT: I understand.

5 CLOIDE BRANNING

6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KUHN:

9 Q. Mr. Branning, what is your address?

10 A. 312 Farnsleigh Drive, Bluffton, South
11 Carolina.

12 Q. Are you employed?

13 A. Yes, I am.

14 Q. And by whom are you employed?

15 A. A church in Columbia, South Carolina.

16 Q. And what is the nature of your
17 employment?

18 A. I raise funds for them to help them --
19 help the inner city.

20 Q. You were involved in the development
21 of Pleasant Point Plantation here in Beaufort
22 County?

23 A. Yes, sir.

24 Q. What was the nature of your
25 involvement?

CLOIDE BRANNING - EX. BY MR. KUHN

1 A. I was the owner.

2 Q. Is this the only property that you
3 have developed?

4 A. No.

5 Q. What other properties did you develop
6 or assist in the development of?

7 A. A golf course in Atlanta, Georgia, a
8 golf course in Augusta, Georgia, before I came to
9 Beaufort, and then I was involved in development
10 with Charles Fraser in Sea Pines.

11 Q. Are you involved in any other business
12 ventures?

13 A. Many.

14 Q. Generally speaking, what type of
15 ventures?

16 A. Oh, I have patents with the University
17 of North Carolina. I've been involved in getting
18 rid of creosote in the environment. I've owned
19 pole plants in Georgia, in Fitzgerald, Georgia,
20 and produced -- owned timberland. It's various,
21 all kinds of business.

22 Q. Do you serve on any boards of
23 directors?

24 A. Yes.

25 Q. Of what type organizations?

CLOIDE BRANNING - EX. BY MR. KUHN

A. Promise Keepers.

Q. What is Promise Keepers?

A. A men's Christian organization of
8 million men.

Q. Is that a national organization?

A. Yes, it is.

Q. You've been on the board of directors
of that?

A. Yes.

MR. TEDDER: Your Honor, I'm not sure
what the relevance of this is.

THE COURT: This is just background.

MR. KUHN: Background to show he's
familiar with contracts and --

BY MR. KUHN:

Q. Are you familiar with deeds,
easements, contracts, that type of thing?

A. Pretty familiar.

Q. Did you know General Tompkins?

A. Yes, sir, I did.

Q. How is it that you met him?

A. I moved in next door, and I believe I
had met him before, but when I moved in, we got
close.

Q. You say you moved in next door. Where

CLOIDE BRANNING - EX. BY MR. KUHN
1 did you move?

2 A. I moved in the Manor House.

3 Q. Who lived there before you?

4 A. Nobody.

5 Q. And for how long had it been vacant?

6 A. Seven or eight years.

7 Q. And how did you access the Manor

8 House?

9 A. On the right-hand side coming around.

10 Q. Was there one called a shell driveway,
11 shell road?

12 A. Yes.

13 Q. And you say coming around. What do
14 you mean by that?

15 A. Well, I didn't go straight in to the
16 house like they do now. I had to go that little
17 cutoff road and then go up around by a pump house
18 and go around.

19 Q. The Manor House, is that located on
20 the water?

21 A. Yes.

22 Q. And the shell road, did it run between
23 the house and the water?

24 A. That's correct.

25 Q. If I could show you --

CLOIDE BRANNING - EX. BY MR. KUHN

1 MR. KUHN: Lord, if I could find it.

2 Your Honor, there is a plat that has yellow
3 highlighting that has the road highlighted that I
4 showed Mr. Youmans.

5 THE COURT: This?

6 MR. KUHN: No, sir. It was right
7 before that. It was on a smaller sheet of paper.

8 THE COURT: Is it in a stack that you
9 gave me that --

10 MR. KUHN: It's one I did
11 individually. It has the garage with an X in blue
12 on it. Here it is, the last one I look at. Thank
13 you.

14 BY MR. KUHN:

15 Q. Referring to Defendant's 14, there is,
16 highlighted in yellow, what the surveyor labeled a
17 shell driveway. Is that the driveway that you
18 would have used to access your property?

19 A. Yeah. This didn't exist this way when
20 I came there.

21 Q. If you could show His Honor, using
22 that diagram, how your access was when you moved
23 in.

24 A. My access was around this way.

25 THE COURT: Got it. Okay.

CLOIDE BRANNING - EX. BY MR. KUHN

1 THE WITNESS: And the general did that
2 to get to his carport before that, but there was a
3 hedge right here to keep him from coming in this
4 way.

5 BY MR. KUHN:

6 Q. That's going to be my next question.
7 How did the general access his property right up
8 until the time you moved in?

9 A. Well, I don't know until the time I
10 moved in, but when I moved in, he parked in the
11 back of the house, never came in forward, because
12 he couldn't get forward.

13 Q. There was a hedge planted that would
14 have blocked what's been called --

15 A. Everybody, anybody coming in. There
16 was just -- there was no road through. That
17 port -- that port we're talking -- carport we're
18 talking about was there to fit the big house and
19 the little house.

20 Q. What do you mean by that?

21 A. Well, it was owned by the same family.

22 MRS. EWING: Object. This is wrong.
23 This is so wrong.

24 MR. TEDDER: Your Honor, I'm not
25 certain I understand what he's alluding to,

1 CLOIDE BRANNING - EX. BY MR. KUHN
2 because I don't have anything to what he's -- the
3 area he's describing. Maybe I missed it, but --

4 BY MR. KUHN:

5 Q. If you could just repeat that. Let me
6 break it down. The property where you live and
7 the property where General Tompkins lived, did
8 that used to be co-owned by the same people?

9 A. Same people, the Winn-Dixie people
10 that --

11 MRS. EWING: Maris, Bob Maris.

12 MR. TEDDER: You can't interrupt.

13 I'm sorry. I'm having trouble
14 hearing, and it's probably me.

15 MR. KUHN: I'll back up.

16 THE COURT: Do you want to move up
17 closer to the witness?

18 MR. TEDDER: Yeah, if you don't mind.
19 I just want to be able to hear what he --

20 THE COURT: Off the record.

21 (Off-the-record discussion.)

22 THE COURT: Back on the record.

23 BY MR. KUHN:

24 Q. The hedge that you mentioned, where
25 was that located on this plat? If you would show
His Honor, referring to Exhibit D-14.

CLOIDE BRANNING - EX. BY MR. KUHN

1 A. Well, it's hard for me to locate it,
2 but this hedge was right here. The back of the --
3 the back of the big house is --

4 THE COURT: Come around so you can see
5 it too.

6 MR. TEDDER: When we say the hedge is
7 located here, that doesn't tell us anything.

8 THE COURT: I understand that. Even
9 the court reporter, as smart as she is, can't
10 figure out located here.

11 BY MR. KUHN:

12 Q. If there's no objection, Your Honor,
13 I'm going to write the word hedge in the area
14 you're referencing.

15 A. This is the back of the house. The
16 carport's right there. There was a hedge that was
17 here, like this. You couldn't get through.

18 THE COURT: Got it.

19 THE WITNESS: The general came around,
20 because nobody lived here, if he wanted to go to
21 the carport, but when I came there, he didn't come
22 around and bother me. He was one of the nicest
23 men I ever met in my life, and he -- so we were
24 trying to figure out a way for him to get to his
25 carport, okay.

CLOIDE BRANNING - EX. BY MR. KUHN
THE COURT: Okay.

THE WITNESS: What else do you need?

BY MR. KUHN:

Q. Well, where did you go from there,
then? He didn't want to come that way, and I
assume you didn't want him to come that way. What
did y'all decide to do?

A. Well, we worked together a lot. We
used to go in the woods and find -- what do they
call that?

Q. Fat lighter?

A. Fat lighter, yeah. And we were making
Christmas gifts, and we'd cut them up, and he was
giving them to friends, and we became pretty
close. I went to dinner with him at the officer's
club over at Parris Island, and my wife and
myself, I went to -- they had us over to dinner.
I mean, we had a close relationship 'til I sued
the Marine Corps, and then it went downhill.

Q. What did y'all resolve as far as him
accessing his property? Was there any discussion
about that?

A. Well, I don't know how it all came to
it, but he was going to cut -- I think we had
conversations of he was going to use that

CLOIDE BRANNING - EX. BY MR. KUHN
1 cut-through, and I says: General, don't do that.

2 MR. TEDDER: Your Honor, Your Honor,
3 I'm going to have to -- I don't have -- he's
4 testifying as to what hearsay is for someone who's
5 deceased.

6 THE COURT: I understand.

7 MR. KUHN: The dead man's statute
8 would not apply because Mr. Branning has no
9 interest in the outcome of this litigation.

10 MR. TEDDER: I'm not talking about the
11 dead man's statute.

12 THE COURT: I agree the dead man's
13 statute does not apply. The general thing is that
14 this is just, in my opinion, general hearsay and
15 creates a problem, not because of the dead man's
16 statute.

17 MR. KUHN: Let me get around that,
18 then, Your Honor.

19 BY MR. KUHN:

20 Q. Mr. Branning, if I could show you --
21 this is already in evidence -- what's been
22 identified as an easement given by you to Mr. and
23 Mrs. Tompkins for their lifetime. Was that given
24 to him so he could mow his yard?

25 A. No. That's ridiculous.

CLOIDE BRANNING - EX. BY MR. KUHN
Q. Why did you give that to him?

MR. TEDDER: Your Honor, again, I'm going to object on parol evidence. That document speaks for itself within the four corners of the document, and it is unambiguous and speaks for itself.

THE COURT: Let me see the document just one moment.

THE WITNESS: That's my signature.

THE COURT: Right. He's the one who signed this document. I think he can testify -- he hasn't contradicted the document because -- let me see the actual --

MR. TEDDER: Your Honor, I believe the question was what did my client's father think he was getting it for, which is, again, reading somebody else's mind.

MR. KUHN: No. My question was did Mr. Branning give him that document so that General Tompkins could mow his lawn.

THE WITNESS: By the way, he didn't buy it. I guarantee you that.

THE COURT: As I read the document -- I'm going to overrule your objection, and for this reason: As I read the document, it is an

1 CLOIDE BRANNING - EX. BY MR. KUHN
2 easement. It's not a general easement. It's an
3 easement for the right to construct walkways,
4 driveways, water lines, sewer lines, utility
5 lines, and ornamental exterior objects, and to
6 plant and maintain trees, shrubs, and grass in the
7 following area. So it has a number of specific
8 uses that it includes in the scope of the
9 easement, and I'm going to let him talk further.

10 I understand your concern, and it may
11 be very legitimate about the parol evidence rule,
12 but at the moment, I'm going to let him continue.

13 MR. TEDDER: A secondary argument, it
14 is irrelevant because we have stipulated that the
15 easement has no validity any further since it
16 expired on its own terms.

17 THE COURT: And I certainly understand
18 that the length of the easement and the
19 termination of the easement is a question for me.
20 That I absolutely understand, in my opinion,
21 either it is a matter of contested fact, which it
22 appears to be, or as a matter of law, but under
23 either, I'm the one who's going to have to
24 interpret this particular document. I haven't
25 made the determination about that, but I'm going
to take the testimony for whatever it's worth

CLOIDE BRANNING - EX. BY MR. KUHN
1 right now.

2 MR. TEDDER: I understand.

3 MR. KUHN: Thank you, Your Honor.

4 BY MR. KUHN:

5 Q. Mr. Branning, why did you sign that
6 document? Why did you give that easement?

7 A. Because it's something we worked out
8 together in case that road -- I wouldn't be there
9 or the property was sold or I wouldn't be in the
10 big house, I wouldn't have the land, I wouldn't
11 have the authority, but if the property was sold,
12 that gave him a right to build egress into his
13 property.

14 Q. You didn't mind him going over your
15 property because he was your friend?

16 A. That's exactly right.

17 Q. But you wanted him to have the right
18 to go over your property for his life --

19 A. Exactly.

20 Q. -- along that access route?

21 A. Exactly.

22 Q. Why didn't you just tell him: Why
23 don't you use your access off 6 Sussex Court?

24 A. I just didn't -- you know, a friend's
25 a friend. This is a great American general, a war

CLOIDE BRANNING - EX. BY MR. KUHN
1 hero, a man that I looked up to, and I just wanted
2 to honor him. I wanted to make it easy for him
3 and Mrs. Tompkins.

4 Q. And the provision in there that it
5 would expire upon the survivor of General Tompkins
6 or Mrs. Tompkins would pass, that was an
7 intentional provision?

8 A. Exactly.

9 Q. After the document was signed, is that
10 the route that General Tompkins used to access his
11 property?

12 A. After I cut the hedge down. I brought
13 a front end loader in and knocked that hedge down.

14 Q. If I can show you --

15 THE COURT: Do you remember about the
16 time period, the year when the hedge went down?

17 THE WITNESS: '74, '75, something like
18 that.

19 (DFT. EXH. 29, Sheet with Three Color
20 Photographs, was marked for identification.)

21 BY MR. KUHN:

22 Q. Mr. Branning, if I can show you
23 Exhibit D-29. There's three photographs on there.
24 The top photograph is the one I think we're
25 interested in. Does that depict the hedge?

CLOIDE BRANNING - EX. BY MR. KUHN

1 A. Well, yeah, this hedge, but it was
2 much -- it went around this way and went across,
3 yeah.

4 Q. If you could show His Honor what
5 you're talking about in that photograph.

6 THE COURT: And let's get opposing
7 counsel over here too.

8 THE WITNESS: That's my daughter, by
9 the way.

10 THE COURT: Oh, she's just cute as can
11 be.

12 BY MR. KUHN:

13 Q. Mr. Branning, if you could show His
14 Honor what you're talking about in that
15 photograph, or have you already done that?

16 THE COURT: I've got it.

17 BY MR. KUHN:

18 Q. As I understand, that photograph
19 doesn't show the area that we're talking about,
20 but just shows the hedge that leads into that
21 area?

22 A. My daughter's over playing on the
23 general's property.

24 THE COURT: Okay.

25 MR. TEDDER: Your Honor, I have to

1 CLOIDE BRANNING - EX. BY MR. KUHN
2 object. It doesn't show anything in relation to
3 anything that anyone can relate to and the
4 relationship to my client's house or the 40-foot
5 easement. I agree it's a beautiful picture of
6 Cloide with his granddaughter.

7 THE WITNESS: That's not my
8 granddaughter.

9 MR. TEDDER: Excuse me.

10 THE WITNESS: That's my daughter.

11 MR. TEDDER: Daughter. I don't see
12 the relevancy of these photos.

13 THE COURT: Your objection's noted.
14 I'm going to permit this. Whether or not it's
15 actually relevant and whether or not anything
16 turns on that, that's a different question
17 altogether. I'm going to reserve judgment on that
18 one. I'm not ruling on that. I'm taking evidence
19 today. I'm not interpreting it in any particular
20 way.

21 MR. KUHN: Just to expound on the
22 relevance, Your Honor, he's testified there's a
23 hedge that ran across the alleged easement. The
24 hedge could be six inches tall and look like it'd
25 been there for two months, or a hedge could be
like this, eight feet tall and obviously had been

CLOIDE BRANNING - EX. BY MR. KUHN
1 there for many years. That's the relevance, to
2 give you an idea what kind of hedge we're talking
3 about.

4 THE COURT: I understand.

5 (DFT. EXH. 30, Sheet with Three Color
6 Photographs, was marked for identification.)

7 BY MR. KUHN:

8 Q. Mr. Branning, if I could show you what
9 we've marked Defendant 30. Do you recognize what
10 those are?

11 A. Yes.

12 Q. And the middle photograph, does that
13 depict -- or what does that depict?

14 A. Well, I see the general's car over
15 there.

16 Q. And are those cars General Tompkins'
17 cars?

18 A. Yes. I think it was a Fiat, or
19 something like that.

20 Q. Are those parked on his property?

21 A. They're parked on his property.

22 Q. But those are not in the carport?

23 A. Not in the carport.

24 Q. And that photograph would have been
25 taken approximately when in this time frame?

1 CLOIDE BRANNING - EX. BY MR. KUHN
2 Before the easement? After the easement? About
3 the same time?

4 A. I would think it would be after the
5 easement, because I can't see the hedge here.

6 Q. And would he generally go and park on
7 his property before he got to the carport?

8 A. When I first came there, he always
9 parked behind -- on his property, on the other
10 side. He never went to the carport.

11 MR. KUHN: I move to introduce
12 Defendant's 30. Only the middle photograph has
13 any bearing.

14 MR. TEDDER: Again, as to -- actually,
15 I have no objection to this picture.

16 THE COURT: Okay.

17 BY MR. KUHN:

18 Q. Mr. Branning, you were on this
19 property, lived in the Manor House from
20 approximately what time frame until approximately
21 when?

22 A. I left in -- can I look?

23 THE COURT: Sure, refresh your memory,
24 sure.

25 THE WITNESS: At 84, you got to.

THE COURT: I'm not quite there, but I

1 CLOIDE BRANNING - EX. BY MR. KUHN
2 already refresh my memory on a regular basis like
3 this.

4 THE WITNESS: I moved to Hilton Head
5 in 1979, so I was there from 1971 to 1979.

6 BY MR. KUHN:

7 Q. While you were there, was what they've
8 called the 40-foot-wide road, was that ever used
9 by anybody?

10 A. Well, it was just a little rock road,
11 shell road.

12 Q. Was it ever paved by the owners
13 association, maintained by the owners association?

14 A. No.

15 Q. There's a plat recorded shortly after
16 the original plat that does not depict that road,
17 and it shows a loop with some more lots
18 subdivided. Do you have any knowledge as to how
19 that took place?

20 A. No, I don't.

21 Q. That was before your time?

22 A. Or after it.

23 MR. KUHN: Thank you. That's all the
24 questions I have.

25 THE WITNESS: What do you want to do
with all this stuff?

CLOIDE BRANNING - EX. BY MR. TEDDER
CROSS-EXAMINATION

BY MR. TEDDER:

Q. Good afternoon, Mr. Branning. It's
been a number of years.

A. It has.

Q. I'm going to turn back to this alleged
hedge. You say the hedge, if I understand your
testimony, was located as you've drawn it in ink
on Exhibit D-14?

A. As close as I can remember.

Q. Now, and that shows also in ink a
carport area. Is that correct?

A. Yeah, that's correct.

Q. Now, in looking at these two sets of
pictures, one of which you admitted the middle
picture of and the other that you say allegedly
shows the hedge going across there, the clothes
are the same on your daughter, correct?

A. Yeah, they are.

Q. So they were taken at the same time?

A. I imagine they were.

Q. So if this hedge that you show on the
top photo here prohibited, as I understood your
testimony, General Tompkins from being able to
access the carport area until you knocked it down,

CLOIDE BRANNING - EX. BY MR. TEDDER
1 wouldn't we see that in --

2 MR. TEDDER: These are the same.
3 There's one other set of photographs that you gave
4 him, Fred.

5 BY MR. TEDDER:

6 Q. The middle picture I believe is D-30.
7 If his cars, as you testified, were parked in the
8 area where the carport is, wouldn't the hedge have
9 already had to been taken down, if, in fact, there
10 was a hedge?

11 A. I took it down.

12 Q. But it's not showing here on the
13 picture showing the cars parked in front of
14 Mr. Tompkins's house.

15 A. You say all these were taken on the
16 same day.

17 Q. I'm asking you. You took them, and
18 they appear to me that they have the same clothes
19 on the child, looking at the blouse and the
20 shorts, so it appears to me they were taken at the
21 same time.

22 A. Well, I can't -- I can't answer that.

23 Q. But you will agree that the middle
24 picture that shows the area of the carport, which
25 is where General Tompkins was parking, does not

1 CLOIDE BRANNING - EX. BY MR. TEDDER
have any obstruction by hedges?

2 A. That's correct.

3 Q. And do you have any idea about what
4 year these were taken? I don't recall your
5 testimony, but --

6 A. '74 or -5.

7 MR. TEDDER: The one that shows the
8 middle picture, Fred, did you have that marked?

9 MR. KUHN: 29 and 30, I think.

10 MR. TEDDER: That's what -- I had down
11 30, but I don't see 30 up there with a stamp on
12 it.

13 MR. KUHN: There it is.

14 MR. TEDDER: Oh, there it is. I was
15 just making sure they were up there.

16 BY MR. TEDDER:

17 Q. Now, you testified you were an owner
18 of this property?

19 A. Uh-huh.

20 Q. When did you become an owner of this
21 property?

22 A. 1971.

23 Q. So this was after -- I know you've
24 been in the audience, so you've heard their
25 testimony. That would have been after General

CLOIDE BRANNING - EX. BY MR. TEDDER
1 Tompkins's deed dated 1969?

2 A. Yes.

3 Q. So you had nothing to do with the
4 creation of Plat Book 18 at 45?

5 A. Not a bit.

6 Q. And if I recall, you actually were
7 involved in this property in the early '70s as
8 part of the Pendley-Pendley-Branning partnership?

9 A. They signed it over to me.

10 Q. But that's how you were having the
11 deeds and plats created as of record, showing
12 Pendley-Pendley-Branning?

13 A. Pendley-Pendley-Branning; yeah.

14 Q. And you actually were involved in a
15 development venture with the two brothers out of
16 Atlanta?

17 A. Uh-huh.

18 Q. And I believe Mr. Kuhn confirmed that
19 you were not a participant in the creation of the
20 subsequent plats that were recorded where the
21 easement is shown. Were you still involved with
22 Pleasant Point Plantation when Lots I believe it's
23 23 and 24 were added in the area?

24 A. Where are they?

25 Q. This is the Manor House area.

CLOIDE BRANNING - EX. BY MR. TEDDER

1 A. Right, yeah. Where's 23 and 24, right
2 there and there?

3 Q. Yes, sir.

4 A. They were added?

5 Q. I'm asking if you have any knowledge
6 of that. Were you involved at that time?

7 A. This looks like the manor property.
8 There was a pump house right here.

9 Q. But you agree with me that that plat
10 book still shows a 40-foot extension running
11 behind the Manor House and General Tompkins's
12 property?

13 A. Well, that's why I gave him the
14 easement.

15 Q. This shows not the easement.

16 A. I know that. I gave him the easement
17 so that they kept that road going through there,
18 he would have an egress to his property.

19 Q. When you say that road going through
20 there, which road are you talking about?

21 A. This road going up this way.

22 Q. Which is shown on there as -- let's
23 make sure we read it right -- Pleasant Point
24 Drive.

25 A. Uh-huh. There was a reason we did

1 CLOIDE BRANNING - EX. BY MR. TEDDER
this. Do you want to know?

2 Q. I want to ask the question, if I can.
3 If he had Pleasant Point Drive extending up past
4 Lot 2 all the way up to Lot 1, why would he need
5 the little easement that we have here?

6 A. Because it wasn't extended. It wasn't
7 that wide, and it wasn't extended.

8 Q. Let's be careful of what we're talking
9 about. I don't dispute that there was probably a
10 dirt drive there or a shell drive as you talked
11 about, but this plat shows a wide extension of
12 Pleasant Point Drive, 40-foot wide, all the way up
13 to halfway up, approximately, Lot 1.

14 And you've been a developer. You were
15 a developer at that point for how many years?

16 A. For five, six years.

17 Q. You had good lawyers at that time, as
18 I recall?

19 A. Very good.

20 Q. Were you aware of the principle that
21 when you sell a lot based on a plat that shows
22 streets, every lot owner has a right to maintain
23 those streets in their chain of title, and it
24 can't be abandoned?

25 A. Well, I thought this was abandoned

CLOIDE BRANNING - EX. BY MR. TEDDER
1 because we weren't going to use the Manor House as
2 a clubhouse, and that was the only reason it was
3 put in there.

4 Q. Well, be that as your recollection of
5 it --

6 A. That's not my --

7 Q. -- I asked the question were you aware
8 of the legal --

9 A. I made the decision -- I made the
10 decision --

11 MR. KUHN: I ask the witness be
12 allowed to finish his answer.

13 THE WITNESS: I made the decision that
14 it wasn't going to be a clubhouse.

15 BY MR. TEDDER:

16 Q. I don't have any issue with what your
17 decision about the clubhouse is, but by what
18 authority do you believe you had the right to
19 close off that road shown on 18 at 45 and 19 at
20 116?

21 A. Because I owned the property, and it
22 wasn't going to be used for a clubhouse and didn't
23 need that road.

24 Q. You say, if I recall correctly, you
25 moved away about 1979?

CLOIDE BRANNING - EX. BY MR. TEDDER

1 A. Uh-huh.

2 Q. So you have no personal knowledge of
3 the use of that road from nineteen seventy -- that
4 road, the shell drive, as you showed it, running
5 off of Pleasant Point Drive up to Lot 1, past
6 Lot 2, you have no knowledge of what actually
7 occurred in there?

8 A. I don't know what happened.

9 Q. You were aware of the requirement that
10 there would be off-street parking in the
11 restrictive covenants. Were you involved in the
12 approval of the carport facing the way it faced?

13 A. The carport was way there before the
14 covenants were drawn.

15 Q. But you would also agree, would you
16 not, that with the carport facing the way that it
17 did, facing the banner house to the west, the
18 easement area that you granted in Book 248, you
19 couldn't have driven a car into the end of the
20 carport?

21 A. I agree with you, but there's more to
22 this story than we're talking about.

23 Q. Well, I'm trying to go with what the
24 record shows.

25 A. The record --

CLOIDE BRANNING - EX. BY MR. TEDDER

1 Q. And I have an easement that you
2 created that you say was for access, but I
3 don't -- there's no way --

4 A. I gave an -- I gave an easement there
5 because of circumstances of Mrs. Tompkins's dog
6 being buried in those woods. I helped bury the
7 dog, and she didn't want to tear them up, and so
8 we gave the easement so he could have egress up
9 that way.

10 Q. But it could not be used -- as it's
11 drawn on that little trapezoid irregular area in
12 248, you could not access the carport from that
13 area?

14 A. It wasn't a question at that time.

15 Q. That's not my question. I'm asking
16 you physically, since you're familiar with the
17 property, is there any way to drive within that
18 easement into the edge of the carport?

19 A. No.

20 Q. Mr. Branning, at the time that the
21 easement that was created at Book 248, Page 454 --
22 you've looked at it, you've had it up there in
23 your testimony -- there is nothing in here stating
24 that the 40-foot right-of-way is going to be
25 abandoned, is there?

CLOIDE BRANNING - EX. BY MR. TEDDER

A. No.

MR. TEDDER: That's all I have, Your
Honor.

REDIRECT EXAMINATION

BY MR. KUHN:

Q. That's because it had already been
abandoned, correct?

A. Correct.

Q. When you got there, not even General
Tompkins was using that access to his property.
He was coming around the shell road. Is that
correct?

A. That's correct.

Q. And the dog burial, was that on the
Sussex Court access area?

A. No. That was on the Pleasant Point
Drive area, to the left of it.

Q. And they did not want to drive over
that, obviously?

A. She didn't, no.

Q. The Manor House was originally, as I
understand your testimony, intended to be the
clubhouse for Pleasant Point Plantation?

A. Correct.

Q. And this 40-foot drive was intended to

1 CLOIDE BRANNING - EX. BY MR. KUHN
serve the Manor House when it became a clubhouse.

2 Is that --

3 A. That's correct.

4 Q. And, of course, that never happened?

5 A. Never happened.

6 Q. The clubhouse was built somewhere
7 else?

8 A. Correct.

9 Q. Not even close to where we're talking
10 about. Is that true?

11 A. Correct.

12 Q. This 40-foot access was never intended
13 to be access to Lot 1, where Mrs. Ewing is now?

14 MR. TEDDER: Objection. The
15 intention, it's parol evidence again.

16 MR. KUHN: I'll rephrase that.

17 BY MR. KUHN:

18 Q. To your knowledge, was it ever used to
19 access Lot 1?

20 A. No.

21 Q. That's all the questions I have.

22 Thank you.

23 RECROSS-EXAMINATION

24 BY MR. TEDDER:

25 Q. You're saying that the shell road was

CLOIDE BRANNING - EX. BY MR. TEDDER
1 never used to access Lot 1?

2 A. Well, you could --

3 MR. KUHN: The 40-foot-wide road.

4 MR. TEDDER: That's why I'm trying to
5 be careful of what we're talking about.

6 BY MR. TEDDER:

7 Q. You're saying that the dirt --

8 A. You couldn't get through. You
9 couldn't go around to the front of the house.

10 Q. Whose house?

11 A. Either house. You couldn't get to his
12 carport, or you couldn't get to the front of the
13 big house.

14 MR. TEDDER: I'm totally confused,
15 Your Honor, at this, but I'm going to look at the
16 plat, and try to figure out what he's trying to
17 say.

18 BY MR. TEDDER:

19 Q. Looking at D-52 just for reference, so
20 we have it, which is 18 at 45. It's marked up.
21 This being Pleasant Point Drive extending all the
22 way across the middle, up past Lot 2 to Lot 1, how
23 can you say that this road would never service
24 Lot 1?

25 A. Because there wasn't -- you couldn't

CLOIDE BRANNING - EX. BY MR. TEDDER
1 go through there.

2 Q. This is Lot 1, correct?

3 A. Yeah.

4 Q. If there's a road that comes up to
5 this edge right here, and the carport is right
6 there --

7 A. It didn't come up that far. It came
8 up right about there.

9 Q. I'm showing you this plat, and I'm
10 showing you a platted road. Would you agree that
11 it comes into --

12 A. Well, that does right there, yeah.

13 Q. Yes, sir. Now, the drive, since 1979,
14 you don't know how it's been used?

15 A. No.

16 Q. And at the time that you moved away in
17 1979 -- or excuse me, 1974 -- are you telling me
18 that this drive that's behind your daughter's head
19 between the area that you said was the carport
20 area, that this drive did not extend all the way
21 down to Pleasant Point Drive?

22 A. Well, I cut it through here.

23 Q. So in 1974, it was existing, coming
24 through all the way back to Pleasant Point Drive?

25 A. Yeah, but I cut it through.

CLOIDE BRANNING - EX. BY MR. TEDDER

1 Q. I don't doubt that you may have done
2 that, but it was in existence in 1974, to your
3 knowledge?

4 A. Uh-huh.

5 MR. TEDDER: That's all I have, Your
6 Honor.

7 FURTHER DIRECT EXAMINATION

8 BY MR. KUHN:

9 Q. Just to be sure we're clear,
10 Mr. Branning, Mr. Tedder asked you about the road
11 extending to Lot 1. You indicated you could not
12 use that. Why could you not use it when you first
13 moved there?

14 A. To go around to my house.

15 Q. And why did you have to go around
16 instead of coming up straight up Pleasant Point
17 Drive, that 40-foot drive that's shown on the
18 plat?

19 A. I couldn't get through.

20 Q. That's because trees and stuff were
21 growing in it?

22 A. Trees and -- there were trees and
23 hedges.

24 Q. So physically, it was impossible?

25 A. Physically.

CLOIDE BRANNING - EX. BY MR. KUHN

1 Q. Although there may have been a road
2 drawn on a piece of paper, there was no road in
3 existence?

4 A. Correct.

5 Q. Actuality?

6 A. Yeah.

7 Q. And after you did the easement, you
8 cut a hole in the -- you cleared enough so that
9 General Tompkins could use the easement to get to
10 his property?

11 A. I cleared a hole for both of us, if I
12 wanted to go that way or he wanted to go that way.

13 I want to clear one thing up.

14 Q. Yes, sir.

15 A. I didn't sell that property, that
16 easement, to General Tompkins.

17 Q. The deed recites \$10. I believe
18 that's the only consideration. Do you recall if
19 you even got that?

20 A. I don't know.

21 Q. Thank you, sir. You did this as a
22 favor to a friend, bottom line?

23 A. That's correct, and a great American.

24 Q. Thank you.

25 THE COURT: Thank you very much.

CLOIDE BRANNING - EX. BY MR. KUHN
THE WITNESS: Thank you, Judge.

Pleasure meeting you.

THE COURT: Pleasure.

MR. KUHN: May the witness be excused,
Your Honor?

THE COURT: Sure.

Let's take a five-minute break.

(A recess transpired.)

THE COURT: I'm ready.

MR. KUHN: Please the Court, Your
Honor, call Dr. Keith A. Guest.

KEITH A. GUEST

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KUHN:

Q. Please the Court, would you state your
full name please, sir?

A. Keith Alexander, Keith A. Guest.

Q. What is your address?

A. 335 Pleasant Point Drive, Beaufort.

Q. And how old are you?

A. 57 years old.

Q. Are you married?

A. Yes, I am.

Q. To whom are you married?

KEITH GUEST - EX. BY MR. KUHN

1 A. Stephanie Guest.

2 Q. This is Stephanie seated at the table
3 with us?

4 A. It is.

5 Q. Are you employed?

6 A. Yes, I am.

7 Q. Where are you employed?

8 A. I work for a company called Senior
9 Health Associates.

10 Q. And what is the nature of your
11 employment at Senior Health Associates?

12 A. I'm a physician, and we provide
13 healthcare.

14 Q. And where is your practice located?

15 A. We have multiple locations throughout
16 the state of South Carolina.

17 Q. What is your educational background?

18 A. I have a college degree from the
19 College of Charleston, chemistry and biology,
20 medical degree from the University of South
21 Carolina. I have board fellowships in internal
22 medicine, hospice and palliative medicine, and
23 geriatric medicine.

24 Q. How long have you lived at your
25 current address?

KEITH GUEST - EX. BY MR. KUHN

1 A. We moved in in 2010. I think we
2 bought the house around January/February of that
3 year, but we didn't actually move in until late
4 May of that year.

5 Q. Were you familiar with this property
6 before you bought the house?

7 A. No. We saw it in the MLS listing
8 under foreclosures and went and looked at it. And
9 we bought the house fairly rapidly, because there
10 were other people interested in buying it, and so
11 we didn't have much experience with the house
12 before we bought it.

13 Q. Have you lived in the house since that
14 time?

15 A. Yes.

16 Q. This is your home, your primary
17 residence?

18 A. Yes, primary residence.

19 Q. How do you get from the street to your
20 house?

21 A. There is a driveway that comes in from
22 where Pleasant Point Drive turns and turns into
23 Sussex Court that comes down to the house, and
24 that's how we get in and out.

25 Q. You're familiar with your neighbors,

KEITH GUEST - EX. BY MR. KUHN
1 the Ewings?

2 A. Yes.

3 Q. Were they there when you moved in?

4 A. Mrs. Tompkins, General Tompkins's
5 wife, lived there, and her children, Mrs. Ewing
6 and her son, would visit periodically, and we met
7 them that way. But Mrs. Tompkins was getting up
8 in years and was -- health wasn't the best. She
9 had some full-time caregivers that took care of
10 her in the house, and so she didn't get out much.
11 By the time we moved in, she was pretty much
12 confined to being inside, and that's -- so we
13 actually moved in next to Mrs. Tompkins.

14 Q. And how did Mrs. Tompkins or her
15 visitors get from the public road to her house?

16 A. By the driveway.

17 Q. Same driveway you used to get to
18 your --

19 A. Same driveway that we use.

20 Q. And this driveway, did it go over your
21 property?

22 A. Yes, it does.

23 Q. Did you question why their driveway --
24 why you had to share the driveway?

25 A. Yes. Well, when we bought the house,

KEITH GUEST - EX. BY MR. KUHN

1 there was -- you know, you get the plat, and there
2 was a -- it said easement to the Tompkins, and it
3 also said abandoned roadway in the plat that we
4 were there -- that was there. And so we looked
5 into the easement arrangement, and it said it was
6 a lifetime easement to the Tompkins to drive in
7 and out.

8 The driveway, because trees have grown
9 up over time in the easement, you can't actually
10 stay -- access the houses through the easement any
11 longer. The driveway actually veers out of the --
12 even out of the 40-foot -- what was labeled as an
13 abandoned roadway when we originally purchased the
14 house, and then comes onto our property
15 completely.

16 However, we didn't say anything to the
17 neighbors about that. The only thing that we
18 eventually wound up doing was saying that --
19 acknowledging that there was a lifetime easement,
20 and rather than pointing out, well, you're not
21 even driving in that easement, you're driving on
22 my property entirely, we just said when the
23 easement -- when Mrs. Tompkins passes, the
24 easement is over, and we would like, you know, for
25 you to make other arrangements to get in and out

1 KEITH GUEST - EX. BY MR. KUHN
2 of your property after the easement ends.

3 Q. While Mrs. Tompkins was alive, she and
4 her guests had your permission to drive over what
5 was in existence at that time?

6 A. Right, over the -- but it was even
7 more than just in -- within the defined what was
8 called easement.

9 Q. Even though it was outside the
10 boundaries?

11 A. Outside, onto our land entirely. And
12 as a matter of fact, you couldn't -- you can't
13 stay within the easement and access either of our
14 properties because of the trees have grown up
15 there.

16 Q. Now, after Mrs. Tompkins passed, did
17 that change?

18 A. Well, as soon -- right after she
19 passed, we received a notice from the Ewings that
20 they intended to demonstrate a continued right to
21 access the property by using that area of our
22 land, and so we wound up in court with a mediation
23 agreement working on it -- working on a mediation
24 agreement and to come to some resolution with
25 that.

Q. To make a long story short, you were

KEITH GUEST - EX. BY MR. KUHN
1 put on notice from the Ewings, Mrs. Ewing, I
2 guess, that she wanted to continue to use the same
3 access that her mother and father had enjoyed.
4 You did not agree with that, and y'all ended up in
5 front of Judge Tommy Cooper to try to resolve that
6 dispute?

7 A. Right. And I believe that it actually
8 started with when -- after she passed away, after
9 a certain amount of time, we sent them a letter
10 saying that the lifetime easement is over, and
11 then after that, then that's what occurred, yes.
12 We went in front of the judge for a mediation.

13 Q. You waited a suitable period of time
14 for them to -- for mourning and such?

15 A. Right, exactly. We didn't do it
16 immediately, but within -- you know, after a
17 mourning period, we said: Okay, you know, that's
18 done with, and we need you to put your driveway on
19 your property now.

20 Q. And they did not agree with that?

21 A. No, sir.

22 Q. And that's what led to an attempt to
23 resolve it informally with Judge Cooper?

24 A. That's correct.

25 Q. And that ultimately failed, and that's

KEITH GUEST - EX. BY MR. KUHN
1 what led to this lawsuit?

2 A. That's correct.

3 Q. And us being here today. Is that
4 correct?

5 A. Yes, sir.

6 Q. Now, after meeting with Judge Cooper,
7 did you relocate the entrance of the driveway?

8 A. Yeah. We had, as part of our
9 agreement, agreed that the driveway would follow
10 along the edge of the property. We said we'll put
11 it as -- we will continue to allow you to drive on
12 our property. We want the driveway, however,
13 moved as far as possible over to the edge of our
14 property.

15 MR. TEDDER: Your Honor, if I may,
16 he's testifying there was an agreement, and I
17 thought we had ascertained there was no agreement.
18 In fact, they pled and said there was no
19 agreement.

20 MR. KUHN: All that's true. I'm
21 still --

22 MR. TEDDER: I mean, it's referring to
23 the terms of a confidential mediation agreement,
24 and they pled and said there was no agreement.

25 MR. KUHN: Let me rephrase the

1 KEITH GUEST - EX. BY MR. KUHN
question. Maybe we can --

2 THE COURT: Got it.

3 MR. KUHN: If I could see
4 Defendant's 23, which is the large second one by
5 Mr. Youmans. It might be that one closest to Your
6 Honor. Here it is. I found it.

7 BY MR. KUHN:

8 Q. Dr. Guest, if you could show His
9 Honor -- referring to Defendant's 23, if we look
10 at the end of this road, there are two
11 entranceways shown onto the driveway, one that's
12 not colored in or shaded in and one that's shaded
13 in. Do you know what those two different
14 entrances represent?

15 A. I believe that there's another --
16 David Youmans prepared another one on the very
17 same day that shows what you're asking.

18 Q. It's that one right there.

19 A. Yes, right.

20 THE COURT: I think this is 22.

21 THE WITNESS: So anyway, it just -- it
22 basically -- this would be pushed over to the edge
23 of our property, and so we would -- this is the --
24 you know, if you were going -- if you insist on
25 driving on our land, we would like -- we would

1 KEITH GUEST - EX. BY MR. KUHN
prefer that you drive here.

2 And so any rate, that's what this
3 shows. Is there a question? What was the
4 question? I'm sorry. Did I answer it?

5 BY MR. KUHN:

6 Q. If I refer to a different plat, you
7 did.

8 So did you then put some -- create a
9 road here where this shaded portion is?

10 A. Not initially, no. What happened was
11 we came -- okay. After about a year-and-a-half
12 after this, a year-and-a-half transpired from
13 between these conversations, and nothing happened.

14 Q. The conversation with Judge Cooper?

15 A. Right, the conversation with Judge
16 Cooper. And a year-and-a-half went by, and even
17 though we had given money to an escrow account to
18 pay for -- pay for construction -- there was a
19 period of time when the Ewings were out of town
20 for an extended period of time, for a month or
21 longer --

22 MR. TEDDER: Can I just enter a
23 continuing objection to the references to the
24 mediated agreements and terms?

25 THE COURT: No, no.

KEITH GUEST - EX. BY MR. KUHN

1 THE WITNESS: So at any rate, we had a
2 lot of rain, big rain event, and the driveway was
3 washing out, and it had to be -- again, I had to
4 spend more money to have more plantation mix
5 brought in. Now, I had -- over the years, since
6 we moved in, in the five years we were there, we
7 had, on multiple occasions, had rock and various
8 repairs done to the driveway in order to make it
9 usable, okay, to continue to drive on it.

10 BY MR. KUHN:

11 Q. Get rid of potholes and stuff like
12 that?

13 A. Get rid of potholes and make it so
14 that it wasn't washed out, I mean, thousands of
15 dollars. I think I had provided some receipts of
16 how much we have spent over that time maintaining
17 the driveway so that we could use it, and the
18 neighbors had been using it at my expense without
19 ever contributing a dime.

20 So at any rate, it got unusable, and
21 so when it came time to -- I said, well, I've got
22 to spend several thousand dollars to fix the
23 driveway so that I can use it, and what I'm going
24 to do is to do it just like it says here. I'm
25 going to make it just like this.

KEITH GUEST - EX. BY MR. KUHN

1 Q. When you say: Says here, so we know
2 later what we're talking about, you're referring
3 to Defendant's Exhibit 22?

4 A. This says: Proposed access easement
5 from David Youmans's drawing.

6 So what I did was put it exactly
7 there, right where it shows that says: Proposed
8 access easement.

9 And then they came home from wherever
10 they were, they were out of town a while and did
11 not -- didn't like the new location, even though
12 it was on the map that their land -- that the, you
13 know, surveyor drew.

14 Q. Let me stop you right there. When you
15 did that, do you have any reason to believe they
16 would not like that?

17 A. No. That was the agreement, to my
18 understanding.

19 Q. And when you did that, did you have to
20 do anything to keep people from using the old
21 entranceway?

22 A. Yes. And that was the reason for
23 which people have been referring to today as a
24 fence that I constructed, and in no way did I
25 agree with that. It was a -- at first I put up

KEITH GUEST - EX. BY MR. KUHN

1 simple stakes with a string and little red tape
2 tied to it, and people just would -- and the UPS
3 guy, friends of my children, I mean, the Ewings
4 weren't even in the country. I'm not saying the
5 Ewings drove over it. They weren't even there.
6 Other people drove over it, the mailman, the UPS
7 guy, every -- so I said, well, I'm going to have
8 to put something more substantial to deter people
9 from driving on the -- what had been the access
10 point, because I had relocated it to the proposed
11 access point as shown on the map prepared by
12 Mr. Youmans.

13 Q. And where you tried to get grass and
14 stuff to grow?

15 A. I planted, you know, sprigs of grass,
16 what do you call it, plugs of grass, centipede
17 grass, and then -- but people continued to drive
18 on it, so I had to put something -- and even
19 though I had put stakes, they drove over those, so
20 I put a barrier, which was about 15-foot long, to
21 actually prevent people from using the old area
22 until the grass grew in and to encourage people to
23 go over to the new driveway which I have
24 constructed here that's ten feet over.

25 Q. So this barrier was intended to be

1 KEITH GUEST - EX. BY MR. KUHN
temporary?

2 A. Yes. It was always intended to be
3 temporary, always intended to be temporary.

4 And the homeowners association
5 objected to it. They said they didn't like the
6 way it looked. I said: Well, that's fine. And
7 after we talked, the homeowners association and I
8 talked about it, we came to an agreement, and the
9 agreement was once the grass grew, that the
10 barrier would come down.

11 In the meantime, we had the hearings
12 because the court -- we had to come to court
13 because they had tried to get an emergency
14 injunction to stop me from -- I'm not sure
15 exactly, from having -- having my property on my
16 property where I want to have my driveway, but
17 they wanted me to -- they want my driveway to be
18 where they want my driveway to be on my property.

19 So but at any rate, in the meantime,
20 we got an order from the court that says: You
21 will not make any further changes to what's
22 existing as of today, the court is today, and that
23 included there was a barrier erected at that time.
24 And so even though I had made arrangements with
25 the homeowners association to take the barrier

1 KEITH GUEST - EX. BY MR. KUHN
2 down, I had to explain to the homeowners
3 association that I was now under court order not
4 to disturb the barrier.

5 Now, after we made -- came to an
6 understanding with the homeowners, that we did
7 eventually take the wooden part down, but left the
8 stakes with the string up there, and again, it's
9 just so people won't drive on it until the grass
grows. And that's it, and that's temporary.

10 Q. Was there a time when the road was
11 temporarily blocked because you were doing repairs
12 to it?

13 A. There was about a two-hour-long period
14 one day after some rain that we had some
15 plantation mix delivered by truck, but -- and
16 between the time the truck dropped the material to
17 be spread and the time that the guys with the
18 construction crew with the bobcat spread it out,
19 there was one day -- there was a two-hour period
20 in which we did repairs to the driveway in which
21 there was rock there.

22 (DFT. EXH. 50, Color Photograph, was
23 marked for identification.)

24 BY MR. KUHN:

25 Q. If I can show you Defense -- what

1 KEITH GUEST - EX. BY MR. KUHN
2 we've marked Defense 50. Do you recognize what
3 that photograph depicts?

4 A. That's the reason that we put the
5 plantation mix in and had it -- because we had an
6 unprecedented rain event this summer, and I had to
7 fix it. So anyway.

8 Q. So you had to raise it up and put
9 plantation mix?

10 A. We had to raise it up, bring -- I had
11 to bring, at my own expense, more plantation mix.

12 Q. What is plantation mix?

13 A. Well, it's a combination of gravel and
14 sand and stuff that's commonly used to make dirt
15 driveways. Crusher run is another thing that
16 people call it.

17 MR. KUHN: I submit Defendant's 50.

18 MR. TEDDER: Your Honor, I have
19 previously looked at -- I believe Fred showed --
20 Mr. Kuhn showed me all of these photographs, and
21 the only objection that I have is to there are
22 some of those that contain add-on wording.
23 They're not photographs, they're beginning to show
24 something, one of which says: Tree blocking
25 access, which is D-35. I think that I would have
an objection to that one, but the remainder of

1 KEITH GUEST - EX. BY MR. KUHN
2 those I don't think have any other notations on
3 them. That would speed things along.

4 THE COURT: I understand what's
5 happening with the evidence.

6 Do you have a response to -- let's
7 take it in order. That hasn't come up yet, so --
8 maybe it's coming in right now, though.

9 (DFT. EXH. 31, Color Photograph, was
10 marked for identification.)

11 (DFT. EXH. 32, Color Photograph, was
12 marked for identification.)

13 (DFT. EXH. 33, Color Photograph, was
14 marked for identification.)

15 (DFT. EXH. 34, Color Photograph, was
16 marked for identification.)

17 (DFT. EXH. 35, Color Photograph, was
18 marked for identification.)

19 (DFT. EXH. 36, Color Photograph, was
20 marked for identification.)

21 (DFT. EXH. 37, Color Photograph, was
22 marked for identification.)

23 (DFT. EXH. 38, Color Photograph, was
24 marked for identification.)

25 (DFT. EXH. 39, Color Photograph, was
marked for identification.)

1 KEITH GUEST - EX. BY MR. KUHN
2 (DFT. EXH. 40, Color Photograph, was
3 marked for identification.)

4 (DFT. EXH. 41, Color Photograph, was
5 marked for identification.)

6 (DFT. EXH. 42, Color Photograph, was
7 marked for identification.)

8 (DFT. EXH. 43, Color Photograph, was
9 marked for identification.)

10 (DFT. EXH. 44, Color Photograph, was
11 marked for identification.)

12 (DFT. EXH. 45, Color Photograph, was
13 marked for identification.)

14 (DFT. EXH. 46, Color Photograph, was
15 marked for identification.)

16 BY MR. KUHN:

17 Q. If I can show you what's been marked
18 D-31 through D-46.

19 THE COURT: Now it's coming in.

20 BY MR. KUHN:

21 Q. Just one general question: Do those
22 pictures fairly and accurately depict the area
23 that we've been talking about?

24 A. They do.

25 Q. One of those pictures has a notation
that says something to the effect: Tree blocking

1 KEITH GUEST - EX. BY MR. KUHN
driveway.

2 A. Yes, sir.

3 Q. Do you see that one? And what number
4 is that photograph?

5 A. That's 35.

6 Q. And that's a notation that's been
7 added to the photograph after it was taken. Is
8 that correct?

9 A. Yes, sir.

10 Q. If you would run through those
11 photographs and show them to His Honor and tell
12 him what they show, what you're looking at, what
13 they're depicting.

14 MR. TEDDER: Your Honor, if I may
15 approach also?

16 THE COURT: Yeah, absolutely.

17 THE WITNESS: Yes, of course.

18 THE COURT: Do you need to --

19 THE WITNESS: Do you want to come
20 around this way so you can see?

21 MR. TEDDER: I can stand either behind
22 you or behind you.

23 THE COURT: Come behind me.

24 MR. KUHN: If you would read the
25 number out as you go through.

KEITH GUEST - EX. BY MR. KUHN

1 THE WITNESS: This is looking out
2 towards Pleasant Point where it turns into Sussex
3 Court. This is --

4 THE COURT: Let's wait until he gets
5 here.

6 THE WITNESS: Okay.

7 MR. KUHN: Keith, you speak up. She's
8 got to get what you say. And when you refer to a
9 photograph, if you would say what number it is
10 you're talking about.

11 THE WITNESS: This is looking out
12 towards the street from my house. This fence is
13 on the Ewings' property, and this was constructed
14 between -- in the year-and-a-half period between
15 we met with the one judge and before we went to
16 our hearing. So this is where I planted the grass
17 and the sprigs of grass and stuff, and this is
18 where the old driveway used to come in, and this
19 is the new one. And like I said, this matches
20 this.

21 This is the same view from the
22 other direction.

23 MR. KUHN: That photograph is D-32?

24 THE WITNESS: D-32.

25 MR. KUHN: If you would read the

1 KEITH GUEST - EX. BY MR. KUHN
2 numbers off.

3 THE WITNESS: It's the same view from
4 the other direction, from the street view.

5 And again, 33 is very similar to 32 in
6 that it's just the same view. This is the
7 temporary barrier that I put up to prevent people
8 from driving in.

9 If you look at D-31, you'll see these
10 little stakes with the string and the orange. I
11 put this up across this way originally, and people
12 were actually just running over them, and so I had
13 to put something a little more substantial, which
14 is gone now.

15 This is a view basically from the area
16 between the Ewings' house and my house. This is a
17 fence that they have constructed. This is the
18 area of the 40-foot easement that goes from this
19 over to about this tree here, and it's about
20 40 feet from here to here.

21 So as you see, if you follow along
22 this path 40 feet, and it goes further out, by the
23 time you get to here, this clump of trees -- and
24 by the way, this is the clump of trees where
25 Mr. Branning said the dog was buried and that they
really didn't want to take those trees out; so --

KEITH GUEST - EX. BY MR. KUHN

1 But at any rate, this is -- in
2 order -- this driveway where both the Ewings and I
3 access, this is completely outside of the 40-foot
4 easement, in any rate, and completely on my
5 property. Nobody disputes that that -- they have
6 no access to that property.

7 This is just another one. These are
8 buildings that I -- you know, this is a garage for
9 me. This is my driveway.

10 MR. TEDDER: That's D-36 he's
11 referring to.

12 THE WITNESS: D-36. That's another
13 view.

14 MR. KUHN: Thank you.

15 THE WITNESS: D-37 is similar to D-35,
16 without the annotations on it.

17 And this is a picture taken from
18 approximately this location looking out.

19 And another one showing the utility
20 box that's here within the easement, within the
21 40-foot easement, which is another confounding
22 thing that the homeowners realized that if there
23 is -- this would have to be all redone.

24 And again, similar view. This shows
25 the road that I constructed. This was the old

KEITH GUEST - EX. BY MR. KUHN
1 driveway.

2 And the same. And you can see that
3 this barrier ends here and here, so it's only this
4 long. And by the way, it's gone now.

5 MR. TEDDER: That's D-41.

6 THE WITNESS: D-41.

7 D-42 is very similar to D-41, just
8 maybe a few feet further down the road.

9 And again, D-43 is a few steps closer
10 to the road.

11 D-44, again, just continuing to walk
12 down the driveway.

13 And this is the -- after I fixed the
14 drainage issue showing that it's plantation mix
15 driveway now.

16 And a few more steps down the road.

17 MR. KUHN: Thank you. Your Honor, I
18 move to introduce those photographs.

19 THE COURT: Now, do you have an
20 objection to D-35?

21 MR. TEDDER: D-35. There's a
22 substantive drawing that does not have that on
23 there. I think it's not an accurate depiction.
24 It's an opinion of a depiction.

25 THE COURT: I understand. And D

1 KEITH GUEST - EX. BY MR. KUHN
2 something, very close, 36 or 37, is the actual
3 photograph without the objectionable words, so my
4 recommendation is let's withdraw -- and I will
5 rule if you really insist on it, but let's
6 withdraw D-35, and let's put in D-37, without the
7 words, and then you can in a post --

8 MR. KUHN: Then I have a clean record.

9 THE COURT: You have a clean record,
10 okay. You read my mind.

11 MR. KUHN: And I like a clean record.
12 I'll withdraw D-35.

13 For the record, while we're talking
14 about withdrawing, I also withdraw D-24, the
15 photograph that Mr. Youmans could not identify for
16 sure.

17 THE COURT: For the court reporter,
18 we're withdrawing D-35. That's not coming in.
19 And D-37, which depicts D-35, without the
20 objectionable words, whether or not they are
21 actually objectionable is another matter, but
22 without the words on the photograph, so that the
23 record reflects that. It'll show that we all were
24 trying in good faith to move this along.

25 MR. KUHN: Keep it clean.

(DFT. EXH. 51, Color Photograph, was

KEITH GUEST - EX. BY MR. KUHN
marked for identification.)

BY MR. KUHN:

Q. If I could show you Defendant's 51.
Defendant's 51, do you recognize what that
depicts?

A. Yes, I do.

Q. And if you'd show that photograph to
His Honor and explain to him what that depicts.

A. This is 6 Sussex Court.

THE COURT: Okay. Got it.

THE WITNESS: They have constructed a
fence across their access.

BY MR. KUHN:

Q. When you say fence across their --

THE COURT: Have you seen D-51?

MR. TEDDER: I believe Fred, Mr. Kuhn,
showed it to me earlier today. Is it a picture of
some green fence posts next to a mailbox?

THE WITNESS: Picture of the mailbox.

THE COURT: It's very exciting.

BY MR. KUHN:

Q. So we're clear, will you show His
Honor on D-22 where the photograph -- the objects
shown in D-51 are located?

A. Right there. Where you're looking at

1 KEITH GUEST - EX. BY MR. KUHN
D-51, that's that.

2 THE COURT: With the permission of
3 everybody in the room -- I'm looking for consent
4 here -- I'd like to write D-51.

5 MR. KUHN: I can take a hint, Your
6 Honor. You certainly have my consent.

7 THE COURT: Is there an objection? If
8 there is --

9 MR. KUHN: No, sir, no, sir, Your
10 Honor. That's --

11 THE COURT: I'm not trying to push any
12 lawyer to --

13 MR. KUHN: I just note the irony.
14 When I write on it, David objects. When you write
15 on it, it's okay.

16 THE COURT: I'm going to put my
17 initials, all right.

18 MR. KUHN: I understand.

19 MR. TEDDER: He's sitting up there.

20 MR. KUHN: That's exactly why.

21 BY MR. KUHN:

22 Q. Keith, why do you not want your
23 neighbors driving across your property to get to
24 their house?

25 A. Well, it's my property, first of all.

KEITH GUEST - EX. BY MR. KUHN

1 They have their own property. It's normal and
2 customary for people to put their driveways on
3 their own property and not to put their driveway
4 on the neighbor's property. It's just normally
5 the way things are done in the United States, I
6 think.

7 Q. And have the Ewings demonstrated
8 animosity towards you because you do not agree to
9 them?

10 A. Absolutely.

11 Q. In what way?

12 A. Well, we had -- as part of the hearing
13 that we had, we had to have the judge admonish
14 both us and them to refrain from obscene gestures
15 and obscene language, and we have videotapes of
16 both of those occurring on their behalf towards us
17 when they're unhappy.

18 Q. Have you and your wife been the
19 victims of such conduct by Mr. and Mrs. Ewing?

20 A. We have. We have video recording
21 evidence that the last judge saw.

22 (DFT. EXH. 49, Color Photograph, was
23 marked for identification.)

24 BY MR. KUHN:

25 Q. If I could show you --

KEITH GUEST - EX. BY MR. KUHN

1 MR. TEDDER: Fred, could I look at
2 that first so I can -- I have no idea what the
3 relevance of this photo is. Because it's so
4 blurry, it doesn't show anything. I'm not sure
5 how it's relevant to the existence of an easement
6 or not.

7 MR. KUHN: It probably shows more
8 motivation to their position in this lawsuit than
9 purely legal motives.

10 THE COURT: First, I'm going to take a
11 look at it. Second, he does have the right to
12 testify as to his -- and you're absolutely right.
13 This photo doesn't show anything, so I don't
14 know -- I'll let you put it in, honestly. I'll
15 overrule your objection, and I don't think that's
16 going to hurt your case.

17 BY MR. KUHN:

18 Q. It's hard to see, but D-49, who is
19 inside the car?

20 A. Mrs. Ewing.

21 Q. And what is she doing?

22 A. She's flipping me the bird.

23 Q. And show His Honor that, because it is
24 hard to see with a still from a video.

25 THE COURT: You're better than me at

1 KEITH GUEST - EX. BY MR. KUHN
2 seeing anything inside the car. I don't -- I
3 don't personally see it, but I'll be happy to put
4 it in for whatever it's worth.

5 BY MR. KUHN:

6 Q. And Mr. Ewing, has he called you
7 ethnic slurs?

8 A. Yes, sir.

9 MR. TEDDER: Again, Your Honor, I
10 object to the relevance of this.

11 THE COURT: This one, what is the
12 relevance of this?

13 MR. KUHN: To show, again, that the
14 motivation behind the plaintiff's lawsuit is more
15 than altruistic.

16 MR. TEDDER: This is postfiling
17 action, so I have no idea how that relates to the
18 intention of resolving a dispute that has been
19 ongoing since, by their own evidence, court
20 filings back to 1999. I just think it's totally
21 irrelevant and prejudicial.

22 THE COURT: It is prejudicial. It is
23 prejudicial. And do we need to hear the actual
24 ethnic slurs?

25 MR. KUHN: No, sir, Your Honor. In
fact, strictly speaking, I'm hoping that

1 KEITH GUEST - EX. BY MR. KUHN
2 everything I'm doing is prejudicial to the
3 plaintiff's case in a certain sense.

4 THE COURT: I understand.

5 MR. KUHN: But I understand Your
6 Honor's position, and to keep the record clean,
7 I'll withdraw the question.

8 THE COURT: Okay. Thank you very
9 much.

10 BY MR. KUHN:

11 Q. And have you had to spend money
12 maintaining this driveway?

13 A. I have.

14 (DFT. EXH. 47, Invoices from Palmetto
15 Coastal, was marked for identification.)

16 BY MR. KUHN:

17 Q. If I can show you Defendant's 47. Do
18 you recognize what those documents are?

19 A. These are invoices that we had to pay
20 for both the material and the labor to maintain
21 the driveway at various times over the last five
22 years.

23 Q. Has the plaintiff assisted you in any
24 way with those maintenance expenses?

25 A. They have not paid one dime towards
the maintenance of the road, or driveway, or

KEITH GUEST - EX. BY MR. KUHN
1 whatever you want to call it.

2 Q. Generally speaking, what are those
3 maintenance expenses? What are these people doing
4 for the road?

5 A. They're bringing in either river rock,
6 plantation mix, or crushed rock or sand at various
7 times in different amounts, and then we have had
8 to pay to have them to rent the equipment, the
9 bobcats or whatever, to spread it and level it and
10 then to bring one of these rollers to roll it out
11 flat and keep it smooth.

12 Q. So basically to repair the roadway,
13 the driveway, from wear and tear, exposure to the
14 elements?

15 A. Normal wear and tear, plus some
16 abnormal rain events that we've had.

17 Q. We had the huge rain where Columbia
18 got flooded, which is, I think, shown in one of
19 the pictures here?

20 A. Right, yeah.

21 MR. KUHN: Your Honor, I'd move to
22 introduce Defendant's 47.

23 MR. TEDDER: I don't know what
24 objection I can have to them. I'm not sure of the
25 actual relevance to the causes of action that we

1 KEITH GUEST - EX. BY MR. KUHN
have before us.

2 THE COURT: I'm going to admit them,
3 okay. That question, I think, is for me, in
4 general.

5 MR. TEDDER: Yes, sir.

6 BY MR. KUHN:

7 Q. Have you had to hire me to defend your
8 title to your property?

9 A. I have.

10 Q. And am I charging you?

11 A. Yes, you are.

12 (DFT. EXH. 48, Attorney's Fee
13 Affidavit, was marked for identification.)

14 BY MR. KUHN:

15 Q. If I could show you Defendant's 48.
16 If you would look at that. Does that fairly and
17 accurately recap the expenses that you've incurred
18 by way of attorneys fees and court costs in
19 connection with defending your title to your
20 property?

21 A. Yes, it does.

22 Q. And to be clear, that does not include
23 anything related to any mediation. Is that
24 correct?

25 A. It does not, or nor does it include

1 KEITH GUEST - EX. BY MR. KUHN
anything related to today.

2 MR. TEDDER: Your Honor, I'd have the
3 same objection Mr. Kuhn raised with me talking
4 about my fees. I don't know of any basis that
5 he's entitled to attorneys fees under the actions
6 before us, but again, I understand what Your Honor
7 will do.

8 THE COURT: How are they relevant?
9 Because the general rule, of course, is each side
10 pays their own attorneys fees, unless it's by
11 contract or a particular statute.

12 MR. KUHN: Yes, Your Honor. One of my
13 counterclaims is for slander of title. I believe
14 as part of the slander of title cause of action,
15 my client is entitled to recover costs and fees
16 reasonably incurred in defense of his title.

17 MR. TEDDER: My response to that, I
18 believe, the Pond Place Partners case provides a
19 complete bar against those types of costs in a
20 litigation.

21 THE COURT: I'm well aware of Pond
22 Place.

23 Merely to keep it all on the record,
24 it would be -- it would be sad if you had to go
25 through this again with the appellate court saying

1 KEITH GUEST - EX. BY MR. KUHN
2 you should have admitted the single -- so that's
3 not to say that I accept it as a valid argument
4 today or ultimately, but merely to put it on the
5 record and keep it there for a while.

6 MR. TEDDER: Yes, sir, I understand.
7 And with that, if I could, I would like to have
8 leave to file with the Court and with Mr. Kuhn an
9 updated version, in case you should find that
10 there's a reason that we should receive attorneys
11 fees.

12 THE COURT: Absolutely, and both sides
13 can elect to include additional expenses from
14 today or whenever it may be.

15 MR. TEDDER: Thank you.

16 THE COURT: No problem with all of
17 that.

18 MR. KUHN: I have no further questions
19 of this witness, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. TEDDER:

22 Q. Mr. Guest, as I understand your
23 testimony, when you started looking at the Manor
24 House property to purchase it, it was coming out
25 of a foreclosure, and you said you were moving
very quickly on it. You did have a title search

1 KEITH GUEST - EX. BY MR. TEDDER
done on the property, did you not?

2 A. Yes.

3 Q. And the title search, did it not
4 reveal the prior plats in the record regarding the
5 various deeds/plats back and forth between
6 Mr. Young, Mr. White, and Alyon?

7 A. I didn't see but a summary, of course.
8 The summary that I received was that there was an
9 existing easement that was given to the lifetime
10 of Mr. Tompkins and to his surviving spouse to
11 access their property from Pleasant Point, and
12 that there was an abandoned -- well, that there
13 were actually two abandoned roadways that were
14 never constructed that were part of the original
15 planning for the community, and that those were
16 abandoned.

17 Q. I'm going to ask you if this -- is
18 this the document, Plat Book 68 at 171, which
19 you're referring to when you say you saw easements
20 abandoned or roadways abandoned?

21 A. No, no, it's not.

22 Q. What document is it, then, that you --

23 A. I don't know. I don't have it in
24 front of me, but --

25 Q. Was it a recorded plat?

KEITH GUEST - EX. BY MR. TEDDER

1 A. This, just like it says, a lot line to
2 be abandoned and --

3 Q. You're pointing between Lots 28 and 29
4 there?

5 A. No, no, I'm not. I'm pointing to this
6 lot -- this one that goes between here and here.

7 MR. TEDDER: And Your Honor, because
8 you have no idea where between here and here is --

9 THE COURT: That is true.

10 MR. TEDDER: -- what he is pointing to
11 is the area above Tax Parcel 102, which we can
12 bring up there so you can see what we're talking
13 about.

14 MR. KUHN: I can redraw that plat in
15 my sleep, so I do know what he's talking about,
16 actually.

17 THE WITNESS: I was pointing to this
18 line here.

19 BY MR. TEDDER:

20 Q. And that line is labeled what?

21 A. Lot line to be abandoned.

22 Q. Does it say road to be abandoned?

23 A. No, it doesn't.

24 Q. On the 40-foot easement running north
25 and south off Pleasant Point Drive from Sussex,

1 KEITH GUEST - EX. BY MR. TEDDER
does it say road to be abandoned?

2 A. It does -- no, it does not say that.

3 Q. Does it show the outlines of a 40-foot
4 easement?

5 A. No. Of course, you realize that this
6 is not the document that I was looking at when I
7 purchased the house.

8 Q. I didn't ask that question.

9 A. You did earlier. You did ask me that
10 earlier, you did.

11 Q. I'm asking you to look at this plat
12 here, which is a recorded plat. Prior to the time
13 that you purchased the property, does it show the
14 outlines of a 40-foot road adjacent to Lots 1
15 and 2?

16 A. It shows -- no, it does not show a
17 road, it shows an easement. And usually, a road
18 only occupies a small portion of an easement, but
19 it shows an easement, yes.

20 MR. TEDDER: Of course, he's speaking
21 legal conclusions more liking to Your Honor.

22 THE COURT: I understand, absolutely.
23 BY MR. TEDDER:

24 Q. Now, there is no question because --
25 let's confirm. I've been out to the property with

1 KEITH GUEST - EX. BY MR. TEDDER
2 you and your attorney, and we've walked this area
3 before.

4 A. Right.

5 Q. And looking at Defendant's 23, there
6 is no question that what is labeled as a dirt
7 drive goes outside the area of the dashed lines
8 that were labeled at some point that --

9 A. I don't believe anyone disagrees that
10 they are driving on my property, yes.

11 Q. This area here that has PB and CATV by
12 it, that is shown, the block of pictures --

13 A. It's in this set.

14 Q. -- toward the end in the 40s and 50s.

15 A. If we come back a little bit more,
16 there's -- that comes in available there, yes,
17 there and there.

18 Q. You would agree that this
19 Defendant's 40 photograph, which shows this green
20 utility box, is shown on here as PB power box?

21 A. Yes.

22 Q. And this area here, the power box, is
23 further to the west on this plat than the clump of
24 trees which is adjacent to the cable TV box?

25 A. If this direction is west, then yes.

Q. West being towards your house?

KEITH GUEST - EX. BY MR. TEDDER

1 A. Right.

2 Q. Now, in looking at this, is it your
3 testimony that there is not room to get within the
4 property on that side of the cable box?

5 A. There is not -- yes, that this -- if
6 you -- for the easement, actually, mostly at this
7 point right here where the road extends out, there
8 is not room to drive and stay within the 40-foot
9 easement without hitting a tree.

10 Q. Tree, not the box?

11 A. Not that box, no.

12 Q. And there's nothing to prevent us from
13 cutting down those trees, other than getting
14 Pleasant Point Association's permission?

15 A. Well, you'd have to -- it's my
16 property, so I think you would have to get -- I
17 think you would have to ask me.

18 Q. There's a legal conclusion out there.
19 We have not contested that you have a deed to that
20 property?

21 A. Right, that's right. I mean, everyone
22 says that's my property, that's true.

23 Q. And that that same goes for this area
24 that is labeled on D-23, this portion of Country
25 Club Drive deeded per Deed 477 at 1165.

KEITH GUEST - EX. BY MR. TEDDER

1 A. Is there a question?

2 Q. We've not -- no one has ever -- my
3 client has not said that you did not own that.

4 A. I still don't understand. Is there a
5 question?

6 Q. Have we ever -- have you ever been
7 told by my client we contest your ownership of
8 either of those areas?

9 A. Yes.

10 Q. The ownership?

11 A. Yes. When we first met, she said that
12 I don't own that land. She told me I don't own
13 that land.

14 Q. Let's go back in time to the passing
15 of Julia Tompkins, when you say my client gave you
16 notice that they intended to continue to use it.
17 Are you talking about a written letter?

18 A. No, verbally.

19 Q. So there was a discussion about where
20 people could drive between you and them?

21 A. Was there -- yes, there was a
22 discussion about that.

23 Q. And did Mrs. Ewing tell you that they
24 had used it for many, many years and were going to
25 continue driving on it?

KEITH GUEST - EX. BY MR. TEDDER

1 A. She said that they had an easement,
2 and I said: Well, I know what an easement is, and
3 I said: My understanding is the easement expires
4 when your mother passes.

5 Q. And you said that you had talked to, I
6 believe, Mrs. Tompkins, elder Mrs. Tompkins, and
7 said that you'd given them permission?

8 A. No, I didn't say that.

9 Q. Maybe I misunderstood you, but I wrote
10 down that you said that you had given the Tompkins
11 permission to use that drive.

12 A. When the question came up I think
13 earlier, I said there was -- that her friends and
14 people who were coming to help and, you know,
15 laborers, people cleaning the house, people --
16 that those people, you know, I gave -- I never
17 objected to them coming to take care of her or to
18 do the yard work or whatever it is, home repairs,
19 construction crews, you know, anyone who visited
20 her, so -- but, I mean, I never -- she was very
21 frail, and I didn't have a meaningful conversation
22 with her about the driveway.

23 Q. I'm going to hand you a deed that's
24 actually a deed into you from JPMorgan Chase
25 Bank -- I believe it is in Defendant's 1,

KEITH GUEST - EX. BY MR. TEDDER

1 Tab 11 -- and ask you if you can go to the middle
2 part of the legal description and read for me from
3 where it says: On that certain plat.

4 A. You want me to start at which part?

5 Q. Just start at the beginning.

6 A. Okay. All that certain parcel of land
7 situated on Lady's Island, County of Beaufort,
8 State of South Carolina, being known and
9 designated as follows: Consisting of 3.917 acres,
10 more or less (being shown and delineated as
11 2.430 acres, more or less, and 1.487 acres, more
12 or less), a portion of Country Club Section of
13 Pleasant Point Plantation, on that certain plat
14 prepared by David S. Youmans, RLS, dated
15 January 27th, 1999, and recorded in the Register
16 of Deed Office for Beaufort County, South
17 Carolina, in Plat Book 68 at Page 171.

18 Q. I ask you, is this the plat referenced
19 in that deed?

20 A. Where is the label on it? Book 68,
21 Page 171. Yes, it is that.

22 Q. Continue on in here. Does this deed
23 not say: This property is subject to all
24 applicable covenants, restrictions, conditions,
25 and easements filed of record in Beaufort County?

KEITH GUEST - EX. BY MR. TEDDER

1 A. It does say that.

2 Q. And does this plat reference Plat
3 Book 18 at 45?

4 A. It does.

5 Q. Have you found or did your lawyers,
6 when you closed this, provide you any
7 documentation that indicated there was an
8 abandonment of road right-of-way, a written
9 document?

10 A. Not at closing.

11 Q. But you did subsequently find a
12 document that showed an abandonment of road?

13 A. I had had opinions from lawyers that
14 it was an abandonment.

15 Q. But you have no written document?

16 A. I do not have a -- all I have is the
17 documents that you've seen, including the Pleasant
18 Point I think Homeowners Association, saying that
19 they have no desire or claim to that easement.
20 They have no desire to enforce that easement.
21 They have never intended, nor do they ever intend,
22 to utilize that easement for any purpose, and
23 they -- that's all I have is the statements from
24 the people who supposedly had the easement.

25 Q. We've established that you're a

1 KEITH GUEST - EX. BY MR. TEDDER
2 well-educated doctor, but you are not a lawyer,
3 are you?

4 A. I am not.

5 Q. Did you buy title insurance when you
6 purchased this property?

7 A. Yes.

8 MR. KUHN: I'm going to object.
9 That's not relevant.

10 MR. TEDDER: It goes to knowledge of
11 what he had at the time of purchase.

12 THE COURT: I'm going to let him
13 answer, but I really am going to reserve whether
14 or not it's relevant in this particular setting
15 and in this particular proceeding.

16 MR. TEDDER: Subject to my continuing
17 objection about the mediation agreement, I would
18 like to ask some questions, since it's made to
19 appear to the Court awful one-sided about who was
20 doing what.

21 THE COURT: The door has been opened.
22 I don't think the door should have been opened,
23 and I want to tell you, I bet at the end of the
24 day, I slam it pretty shut on everything dealing
25 with the mediation.

But subject to all of that, having

1 KEITH GUEST - EX. BY MR. TEDDER
2 opened it for one side, I certainly think it's
3 unfair if I say to you heck no, okay. So come on
4 in, all right, all subject to the fact it really
5 doesn't belong there, in my opinion, on either
6 side.

7 MR. KUHN: So on advanced rule, note
8 my objection, then, to it. What's good for the
9 goose --

10 THE COURT: It could be continuing
11 too. We could have a continuing that just runs
12 and runs and runs. At the end of the proceeding,
13 let it run on some more, okay.

14 MR. KUHN: Thank you, Your Honor.

15 BY MR. TEDDER:

16 Q. Mr. Tompkins, there were some meetings
17 with Judge Cooper, mediation meetings with Judge
18 Cooper?

19 A. You mean Dr. Guest?

20 Q. Excuse me, Dr. Guest. I'm sorry.

21 A. Yes.

22 Q. After those meetings, there were
23 several communications between myself and your
24 attorney at the time, Cory Fleming, that you're
25 aware of?

A. No. I'm not aware of your

1 KEITH GUEST - EX. BY MR. TEDDER
communications between the two of you.

2 Q. You're not aware of us -- of any
3 conversations, communications, electronic asking
4 for us to finalize matters? You mentioned about
5 escrowing money. Do you not recall anything that
6 happened for a year-and-a-half about trying to
7 figure things out?

8 A. All I -- what I'm aware -- this is
9 what I'm --

10 MR. KUHN: I'm going to object.
11 That's like ten questions in one.

12 THE COURT: I hear your objection.

13 MR. KUHN: He said he wasn't aware of
14 communications between Mr. Fleming and Mr. Tedder.

15 THE COURT: It was well stated, okay.
16 It was well stated, okay.

17 BY MR. TEDDER:

18 Q. Did Mr. Cory Fleming provide to you
19 copies of emails from me throughout the course of
20 the year-and-a-half period, more or less, that you
21 mentioned?

22 A. No. He -- when Cory Fleming and I
23 spoke, he would say to me: We need to put money
24 in an escrow. I said: How much? He said: This
25 much. Okay. But he didn't tell me that: This is

1 KEITH GUEST - EX. BY MR. TEDDER
2 a result of a conversation that I had between
3 David Tedder and myself. And then he would just
4 give me the information that I needed in order to
5 make a decision about what to do, which didn't
6 include what you and he talked about.

7 BY MR. TEDDER:

8 Q. Did you direct --

9 THE COURT: We are far afield, because
10 we're getting almost into attorney-client
11 privilege.

12 MR. TEDDER: I understand.

13 THE COURT: The door was open, but I'm
14 not going to let --

15 MR. TEDDER: I'm going to stop. I'm
16 going to stop. I know when to leave well enough
17 alone on that one.

18 THE COURT: Okay.

19 BY MR. TEDDER:

20 Q. Just to clarify, at the time that you
21 brought in the plantation sand and other stuff, I
22 believe it was in July?

23 A. That was once.

24 Q. You did not have permission --

25 A. There were multiple times.

Q. The time in July when the fence was

KEITH GUEST - EX. BY MR. TEDDER
1 put up, you did not have permission from the
2 Pleasant Point Owners Association to do anything
3 on that road?

4 A. Don't need permission.

5 Q. Are you claiming -- let me make
6 certain.

7 A. You understand, of course, that I am
8 not part of the homeowners association, and I am
9 not subject to the covenants.

10 Q. I'm going to show you on Defendant's
11 D-23. And if I might ask you to come up here so
12 His Honor can see it at the same time, what I'm
13 pointing to.

14 THE COURT: You're outside the
15 homeowners association, Doctor?

16 THE WITNESS: Yes, sir.

17 THE COURT: And you're not part of the
18 covenants?

19 THE WITNESS: No, sir. Are the
20 Ewings, are you part of the -- are they part of
21 the homeowners?

22 MR. TEDDER: Frankly, Your Honor,
23 there's about half a dozen questions in there
24 because you have the original restrictive
25 covenants, then you have the original bylaws in

1 KEITH GUEST - EX. BY MR. TEDDER
2 the homeowners association, then you have the
3 secondary homeowners association that came after
4 the first homeowners association fell all apart.
5 So I don't know what the question is, without
6 being a little bit more specific, but what I'm
7 going to say will, I think, show the relevancy of
8 this.

8 BY MR. TEDDER:

9 Q. In the plat that you took -- which I
10 have now covered up. It was 160 in the deed. Did
11 I leave it here? Here it is. I'm sorry.

12 You claim -- I'm referring now to what
13 would have been Defendant's 1, Tab 12, Plat
14 Book 68 at 171, referenced in your deed earlier in
15 your testimony. Is that your property line shown
16 right there at the corner of Sussex Court?

17 A. It is.

18 MR. TEDDER: Your Honor, you see where
19 I'm pointing to there?

20 THE COURT: Yeah.

21 MR. TEDDER: Right there, Fred.

22 BY MR. TEDDER:

23 Q. Now, looking at what is D-23, can we
24 agree that the line we just pointed to is that
25 line right there?

KEITH GUEST - EX. BY MR. TEDDER

1 A. Yes.

2 Q. So my question is: You have no
3 ownership to the south of Pleasant Point Drive
4 past the point there?

5 A. I have no ownership there.

6 Q. So, then, by what right did you go out
7 there, in your mind, and place plantation sand,
8 crusher run, whatever it was?

9 A. All of the properties within Pleasant
10 Point, there is an easement on either side of the
11 road that extends -- that when people's driveways
12 join to the road, okay. So every single homeowner
13 within the -- within this property within here has
14 to join the driveway through a short period of
15 easement to the actual roadway.

16 Q. And where is that on here that you see
17 that? I see no documents. Can you show me a
18 document that shows that?

19 A. A document that shows you what?

20 Q. That shows that there is a ten-foot
21 place for you to come through the edge to get to
22 your property with a driveway outside your
23 property line.

24 A. All people in the neighborhood have to
25 enter the road, the paved road. There's an

KEITH GUEST - EX. BY MR. TEDDER
1 easement on either side of the paved road that
2 belongs to the homeowners association, so every
3 single person who has a driveway -- concrete,
4 plantation mix, or otherwise -- must build a small
5 section of their driveway to connect to the actual
6 asphalt.

7 Q. And in fact, that area existed prior
8 to doing that in the area that you built the fence
9 across, temporary fence across, and put, as you
10 said, dirt clumps across it or grass clumps across
11 it, the old entrance. You had a way.

12 A. Do you have a question?

13 Q. You had a way to get from wherever you
14 wanted to enter your property over the existing
15 dirt drive, as shown through here, and you chose
16 to move it?

17 A. I did choose to move it. The
18 homeowners did not object to it. They still don't
19 object to it, as a matter of fact.

20 MR. TEDDER: I'll not argue about
21 that, Your Honor, because we have that agreement.

22 THE WITNESS: We have an agreement
23 that says that I can move it as I choose to see
24 fit.
25

KEITH GUEST - EX. BY MR. TEDDER
BY MR. TEDDER:

Q. Can you show me that agreement?

A. Yes.

THE WITNESS: Do we have that
agreement between the homeowners association and
us? Did we bring it?

MR. TEDDER: That is not the
testimony, as I understood it, of the POA this
morning.

THE WITNESS: Yeah. I thought we were
going to enter -- I thought that Jim Grimsley said
he was going to enter it into the --

MR. KUHN: We were, but Jim and I
talked. We decided it wasn't relevant in the
case, the agreement we had, but there is an
agreement. It's in my office. I just didn't
bring it with me.

BY MR. TEDDER:

Q. I'm going to ask the question again.
At the time that you did this and brought in that
plantation mix to move the drive, did you have
written permission from the Pleasant Point
Property Association to move the drive?

A. No.

Q. Did you have permission from

KEITH GUEST - EX. BY MR. TEDDER
1 Mrs. Ewing to move the drive?

2 A. I don't need permission from
3 Mrs. Ewing to do things on my property.

4 Q. I didn't ask you whether you needed
5 permission; I asked you did you have the
6 permission.

7 A. No. I do not have permission from her
8 to do things on my property or where my property
9 adjoins the homeowners' property. The issue is
10 she wants to use my property to get onto her
11 property, rather than use her property.

12 Q. Rather than argue with you, I'll say
13 there's a disagreement of whether we have an
14 easement that allows us to do that on your
15 property versus whether you have property free and
16 clear of an easement.

17 MR. KUHN: I will object. That's
18 getting argumentative, and it's not a question.

19 THE COURT: It was clearly
20 argumentative. It's well argued, but it was
21 clearly argumentative. I was going to exclude it
22 if you didn't say something.

23 MR. KUHN: Thank you, Your Honor.

24 BY MR. TEDDER:

25 Q. Let me ask you this question: You put

1 KEITH GUEST - EX. BY MR. TEDDER
2 up 24-hour surveillance on the corner peering into
3 their property. You don't think that's an
4 invasion of their privacy?

5 A. I didn't.

6 Q. You don't have video cameras pointing
7 at them?

8 A. No.

9 Q. I thought you just tried to admit a
10 video that -- a still.

11 A. Oh, I took that with my phone. I did
12 that with my phone as they were being abusive, and
13 I told them: I'm videotaping you cussing me out,
14 and they said they didn't care, and I have that on
15 video.

16 MR. TEDDER: I don't have anything
17 further.

18 THE COURT: Okay.

19 MR. KUHN: I have nothing further of
20 this witness, Your Honor.

21 THE COURT: Okay. It was a pleasure
22 to hear your testimony.

23 MR. KUHN: I call Stephanie Guest,
24 Your Honor.

25 STEPHANIE C. GUEST

being first duly sworn, testified as follows:

STEPHANIE GUEST - EX. BY MR. KUHN
DIRECT EXAMINATION

BY MR. KUHN:

Q. Can you state your full name, please,
ma'am?

A. Stephanie Catterton Guest.

Q. What is your address?

A. 335 Pleasant Point Drive, Beaufort,
South Carolina.

Q. And Keith Guest, who just testified,
is your husband. Is that correct?

A. Yes.

Q. When you purchased your home, were you
aware that there was an easement that ran across
your property?

A. Yes.

Q. And what was your understanding of the
nature of that easement?

A. My understanding was it was a lifetime
easement to the Tompkins.

Q. And the Tompkins are now deceased,
correct?

A. Yes.

Q. Once the Tompkins passed away, did you
object to their successor in interest, their
daughter, continuing to drive across your property

1 STEPHANIE GUEST - EX. BY MR. KUHN
2 to access her house?

3 A. Yes, we did.

4 Q. Why?

5 A. Well, it was always our intention to
6 reclaim our property and to use it for our
7 personal use. We would prefer that they use their
8 property for their access, and we use our own
9 property. We would like to be able to contain our
10 property and possibly fence in for our dogs and
11 our use. The houses are very close together. It
12 doesn't -- it's not very comfortable to have so
13 many people using the road.

14 Recently, I think they were having
15 some construction work done, and they had someone
16 with a very large utility trailer -- now that they
17 have a fence that goes around their property, when
18 they have people who come up the driveway to
19 access their property, they often don't drive
20 through their fence and park in their yard; they
21 park either in our yard or in what they're
22 considering that 40-foot area. And this gentleman
23 was turning around and backing up his trailer, and
24 he backed it up all the way across our front yard,
25 up to our pool, right across the grass. It's just
 a confusing area for people.

STEPHANIE GUEST - EX. BY MR. KUHN

1 Q. So it's not just the Ewings using it,
2 it's all the people who go to the house?

3 A. Uh-huh.

4 Q. If they had no other way to get to
5 their property, would you be a little more
6 lenient, maybe, in allowing them to use your
7 property?

8 A. Well, it would be something to discuss
9 at that point, but we're talking about two yards
10 that are almost four acres in size that have
11 access to the highway. The road goes all the way
12 around. There's a lot of ways they could access
13 that property.

14 Q. That's all the questions I have.
15 Thank you.

16 THE COURT: Take what you want.

17 MR. INGLESE: There's a deed somewhere
18 around here.

19 THE COURT: Oh, we're not short of
20 deeds. There's a special bargain today. For the
21 price of six deeds -- for the price of four, we'll
22 give you six.

23 CROSS-EXAMINATION

24 BY MR. INGLESE:

25 Q. Mrs. Guest, I'm going to just show you

STEPHANIE GUEST - EX. BY MR. INGLESE
1 this deed, and I know you've heard a little bit
2 about it already, but if you recognize that deed.
3 That's the deed to you and your husband for your
4 property. And you've already acknowledged the
5 easement, the easement, the lifetime easement, but
6 if you look at the property description on Page 2,
7 do you acknowledge the plat reference to Book 68,
8 Page 171, in that property description?

9 A. Yes.

10 Q. And I'm going to present you with that
11 Plat Book 68, 171. And just to be clear about
12 your acknowledgment of the easement, there's a
13 dashed line that's odd-shaped, sort of a trapezoid
14 shape, and it says inside of that area -- what
15 does that refer to?

16 A. Easement to Tompkins.

17 Q. And is it --

18 MR. KUHN: Your Honor, I'm going to
19 object. He's just asking the witness to read the
20 document. The document speaks for itself.

21 THE COURT: No. I'm going to -- I'm
22 going to allow this, to have her explain what she
23 sees on the plat, for a while, at least.

24 BY MR. INGLESE:

25 Q. And that's the easement you were

1 STEPHANIE GUEST - EX. BY MR. INGLESE
referring to in your direct examination from
2 Mr. Kuhn, correct?

3 A. Yes.

4 Q. On this plat, which was referred to in
5 the deed that you took the property, there's also
6 another dashed line, and I'll help you with that.
7 I'm pointing to a horizontal dashed line there.

8 A. I see it.

9 Q. There's a reference on this plat to
10 that area. Do you know that as the 40-foot
11 roadway extension that we've been talking about?

12 A. Yes.

13 Q. And do you see the plat reference to
14 that 40-foot roadway extension on the plat?

15 A. Yes, I see it.

16 Q. And what is that plat reference to?

17 A. Do you want me to read this?

18 Q. Yes, please.

19 A. It says: Pleasant Point Drive as
20 shown on above-referenced plat.

21 Q. And the above-referenced plat is
22 referenced in some text above that. Could you
23 read that reference?

24 A. It says: Lot Line 1, Tompkins, Deed
25 Book 169, Page 150, reference plat by RD Trogon,

1 STEPHANIE GUEST - EX. BY MR. INGLESE
2 Jr., dated December 4th, 1969, Plat Book 18,
3 Page 45.

4 Q. Okay. Thank you.

5 THE COURT: And I've read this a few
6 times myself already today. I can give you the
7 book and plat number.

8 MR. INGLESE: You're keeping up,
9 Judge?

10 THE COURT: Yeah. I actually -- some
11 of this is --

12 MR. INGLESE: Sinking in?

13 THE COURT: Scary to say, some of this
14 is actually making sense.

15 BY MR. INGLESE:

16 Q. Mrs. Guest, if there's a roadway as
17 acknowledged on this plat, is it really proper for
18 you to object to the use of a roadway that's been
19 platted and has been part of the chain of title
20 that you took your property under?

21 MR. KUHN: I'm going to object.
22 Proper in what way? Legal? Morally proper?
23 Ethically proper? Good manners? I'm going to
24 object. It's too vague.

25 MR. INGLESE: I'll withdraw that
question.

STEPHANIE GUEST - EX. BY MR. INGLESE

1 THE COURT: I was about to say, I'm
2 going to sustain the objection.

3 BY MR. INGLESE:

4 Q. Now that you've had an opportunity to
5 review the plat that was referenced in your deed,
6 do you now acknowledge the existence of that
7 40-foot roadway?

8 A. Roadway? I mean, there's no roadway
9 now. Were they looking for a road? And who would
10 build the road and who would maintain the road?
11 Or are we talking about a driveway or -- and who's
12 going to put in this driveway and who's going to
13 maintain this driveway? I'm not sure what you're
14 talking about.

15 Q. I'm referring to what the plat
16 demonstrates via the dashed lines that we just
17 talked about.

18 A. On a road that's not there?

19 Q. I'm not talking about what physically
20 exists. I'm talking about what appears on the
21 plat, which you just read the references to, the
22 extension of Pleasant Point Drive.

23 MR. KUHN: Is he asking for a legal
24 conclusion? I'd object.

25 THE COURT: He is asking for a legal

1 STEPHANIE GUEST - EX. BY MR. INGLESE
conclusion.

2 MR. INGLESE: I'm asking the witness
3 to acknowledge the existence of what she just read
4 on the plat. I'm not asking for her to
5 determine --

6 THE COURT: She's read it. Now, what
7 it means, that's a different question and --

8 Did you go to law school, ma'am?

9 THE WITNESS: I didn't. I'm sorry.

10 THE COURT: I'm going to sustain the
11 objection.

12 MR. INGLESE: Very well.

13 BY MR. INGLESE:

14 Q. Mrs. Guest, when the surveyor came out
15 there and put some stakes out there, were you --
16 did you observe the surveyor putting stakes in the
17 yards?

18 A. I did.

19 Q. And did you observe it on more than
20 one occasion?

21 A. I can only recall one.

22 Q. Do you know when that was?

23 A. I do not.

24 Q. You don't remember? Was it last year?
25 Last summer?

STEPHANIE GUEST - EX. BY MR. INGLESE

A. Last year.

Q. Do you recall removing any of the
surveyor's stakes?

A. I did not remove any stakes.

MR. INGLESE: Nothing further.

MR. KUHN: No further questions of
this witness, Your Honor.

THE COURT: Fine. You did a very nice
job.

MR. KUHN: Very soft-spoken.

(DFT. EXH. 25, File Folder for Large
Plat at Plat Book 18, Page 45, was marked for
identification.)

(DFT. EXH. 26, File Folder for Large
Plat at Plat Book 19, Page 160, was marked for
identification.)

(DFT. EXH. 27, Summons in Tompkins v.
Young, was marked for identification.)

(DFT. EXH. 28, Answer and Counterclaim
in Tompkins v. Young, was marked for
identification.)

MR. KUHN: Your Honor, I move to
introduce Defendant's 1 through 13 and 25, 26, 27,
and 28, which are all either documents recorded at
the courthouse or matters of public record.

STEPHANIE GUEST - EX. BY MR. INGLESE

1 MR. TEDDER: Fred, have I seen all of
2 those?

3 MR. KUHN: You should have.

4 MR. TEDDER: I don't recall if I've
5 seen those.

6 Your Honor, as to these large blow-ups
7 marked D-25 and D-26, I don't have any objection.
8 These two are public records, because they're
9 filed in the courthouse, but I have no idea what
10 the relevance is to the present cause of action
11 that we have going on there, because these were
12 dismissed and would have no precedential value in
13 this matter, so I object to these on relevance.

14 These I don't have any objection to,
15 provided I can respond to what Mr. Kuhn is going
16 to say their relevance is.

17 THE COURT: You certainly can respond,
18 all right, and in frank candor, I haven't studied
19 all the complaint and the answer terribly. I
20 don't even know, I'm embarrassed to tell you this,
21 precisely --

22 MR. TEDDER: This is in a prior case.

23 THE COURT: Oh, in a prior case.

24 Well, then I don't feel so bad about not knowing
25 it because -- and all I can tell you is I'm going

1 STEPHANIE GUEST - EX. BY MR. INGLESE
2 to take it for whatever it's worth, but I'm going
3 to be able to sort it out pretty quickly.

4 MR. TEDDER: Yes, sir.

5 THE COURT: I really am going to be
6 able to do that.

7 MR. KUHN: Your Honor, if I could
8 maybe just explain Defendant's 25 and 26, because
9 they might be a little confusing.

10 THE COURT: Sure.

11 MR. KUHN: The way large plats were
12 recorded in Beaufort County, because of their size
13 on paper, they were folded and put in manila
14 folders, and you would find the plat by thumbing
15 through the manila folders in a file drawer and
16 pull it out. On the outside of the manila folder
17 was where they wrote the filing information.

18 When we went to microfilm, what they
19 did is they microfilmed the cover of the file and
20 then microfilmed the plat that was in the file, so
21 when you look at those plats, they don't have the
22 filing information on them. So those two exhibits
23 are simply the folder covers for the two plats
24 that they reference, showing when they were filed.

25 THE COURT: Got it.

 MR. TEDDER: The only point I'm going

STEPHANIE GUEST - EX. BY MR. INGLESE
1 to make out, because I understand what I think --
2 there's also filing dates on the deeds that match
3 that, because you can't magically just have the
4 deeds appear. You have to have the plats recorded
5 and then put in there. Even though the reference
6 dates may be plat book December 4th, and the
7 deed's dated December 5th, both may not be filed
8 'til December 15th.

9 THE COURT: I understand that.

10 MR. KUHN: Of course, with deeds and
11 smaller plats, it's stamped on them, but with the
12 larger ones, you have to have the outside file
13 folder to know.

14 THE COURT: Unfortunately, I have
15 spent a lot of time in a number of counties
16 dealing with the RMC and plats. Unfortunately,
17 the truth is I have.

18 Since it's time for another break; in
19 my opinion, for another five minutes or so, I'll
20 end with a very brief thing that we don't have to
21 put on the record.

22 (Off-the-record conference.)

23 THE COURT: Let's take a break.

24 (A recess transpired.)

25 MR. KUHN: We rest, Your Honor.

STEPHANIE GUEST - EX. BY MR. INGLESE

1 MR. TEDDER: Your Honor, I'm a little
2 rusty. I'm not sure if it's time for me to move
3 for a directed verdict or call my rebuttal
4 witness.

5 THE COURT: I think you call a
6 rebuttal witness next before you truly rest. When
7 you rest, that means the bulk case is over.

8 So have you got a rebuttal witness?

9 MR. TEDDER: I do. I call Mrs. Ewing.

10 THE COURT: And I think -- and this
11 shows you how rusty I am. I think her testimony
12 is limited on rebuttal to things that --

13 MR. TEDDER: Raised in their case, and
14 I understand that.

15 JULIA TOMPKINS EWING
16 being previously duly sworn, testified further as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. TEDDER:

20 Q. Mrs. Ewing, I'm reminding you that
21 you're still under oath.

22 I want to direct your attention to
23 some of the testimony that came from Mr. Cloide
24 Branning, and specifically, back to the existence
25 of a hedge across an area that he drew in blue ink

JULIA EWING - EX. BY MR. TEDDER
1 next to a blue area named carport on D-14.

2 As I recall his testimony, he said he
3 cut a road through there. Those pictures were
4 taken about 1974, and that he cut a road through
5 there. Can you tell me, from your personal
6 knowledge as an adult over the age of 18, back in
7 the 1969/'70 era, was there a hedge across that
8 road at any time?

9 A. There was no hedge. You can see it in
10 the picture also. There was no hedge.

11 Q. And when you say in the picture, are
12 you talking about Item D-30, which is a lateral
13 view from one side of the --

14 A. This is D-30. This is --

15 Q. You've got to speak a little bit
16 louder.

17 A. This is D-30. The middle picture
18 shows his granddaughter, or his daughter.

19 THE COURT: His daughter.

20 THE WITNESS: His daughter. They're
21 parked where they were always parked. There's no
22 carpark. There's no carport at this point.
23 There's no hedge. There's no hedge. My parents
24 had some azaleas coming out one side, but it never
25 blocked anything.

JULIA EWING - EX. BY MR. TEDDER

1 When I first drove on this island, it
2 was through everybody's front yards. In about
3 1971, Eric Schriver cut the road in so that my
4 father could access his property.

5 BY MR. TEDDER:

6 Q. When you say cut the road in --

7 A. With a lawnmower.

8 Q. -- describe where it began and where
9 it ended.

10 A. It began at the asphalt -- well, it
11 wasn't an asphalt road; it was a dirt road,
12 Pleasant Point Drive. And there actually was a
13 street sign that said: Pleasant Point Drive all
14 the way down there, and that's why the Guests have
15 that address. And you can see there was no
16 carport, and there certainly was not any hedge.
17 He has his years mixed up, I'm afraid.

18 Q. From the time that you occupied the
19 property with your father and mother -- and I'm
20 showing you what's been marked D-11 and an area
21 marked: Old entrance. Is that the area that you
22 accessed up the driveway into your carport?

23 A. Yes.

24 Q. Can you explain to the court why the
25 movement of the access point off Pleasant Point

JULIA EWING - EX. BY MR. TEDDER
1 Drive by Mr. Guest causes you a problem?

2 A. Well, it's because it's where he
3 wanted it, just subjectively. Number two, but
4 more importantly, it's the lowest point of the
5 property, so it's always under water, regardless
6 of 2000-year events like the floods last summer.
7 It was under water the other day after a
8 three-hour rain.

9 Also, it's right on top of my property
10 line. In the agreement that everybody says
11 they're not going to talk about, it began at the
12 old entrance, and then it looped over, and we were
13 going to cut down a bunch of trees and stuff,
14 which really isn't necessary, and it was three
15 feet off my property line. You can see here --
16 you can't see from this picture, but he cut this
17 road in right on top of my property line. It's
18 right on top of it.

19 So those are the objections. Not to
20 mention you come around the corner, and you're
21 jogging around, and you can't see who's coming the
22 other way. It's awkward and dangerous.

23 Q. I'm going to show you what was marked
24 as D-24, which is over by Sussex Court and was
25 marked on a plat by His Honor. Has that area,

JULIA EWING - EX. BY MR. TEDDER
1 ever in your lifetime, been opened up for
2 vehicular --

3 A. Never. We didn't even have -- this
4 was -- this wasn't put here until the early '80s.
5 We had a post office box downtown. And I'm the
6 one who just added this fence. But you have to
7 really see this to understand what I'm saying.

8 THE COURT: Well, I think I'm going to
9 do that. I think we're going to all walk out and
10 take a look at the property. I can barely contain
11 myself.

12 THE WITNESS: I know you can't.

13 BY MR. TEDDER:

14 Q. Mrs. Ewing, I'm going to show you
15 three items which I'll collectively keep together,
16 which are invoices. Are those invoices that you
17 incurred for surveying costs regarding this
18 litigation?

19 MR. KUHN: I'm going to object; number
20 one, it's leading; number two, it's not proper
21 rebuttal; and number three, of course somebody had
22 to pay a surveyor. I'm not sure how that relates
23 to the existence of establishing any issues here.

24 THE COURT: What was number three
25 again? I apologize. I must be getting tired.

JULIA EWING - EX. BY MR. TEDDER

1 MR. KUHN: It doesn't relate to any of
2 the issues here. What does the fact she had to
3 pay a surveyor and how much she had to pay the
4 surveyor have anything to do with any of the
5 issues we're here about today?

6 THE COURT: Does this deal with her
7 expert witness, Youmans?

8 MR. TEDDER: Yes, sir. He prepared
9 the documents that we've been looking at today.

10 THE COURT: I'm going to -- I
11 understand it's leading. I couldn't agree more.
12 I'm going to overlook that and tell you that he
13 can reask the question, if he wants, in a
14 nonleading way.

15 MR. KUHN: But, of course, it could
16 have been as part of their case-in-chief.

17 THE COURT: And that one gives me some
18 pause. I'm not sure that this is really rebuttal.
19 This clearly is, okay, but that one gives me some
20 pause. I'm probably still going to allow it, but
21 I'm going allow it subject to careful
22 consideration, is this proper rebuttal testimony.
23 And I'm not prepared to answer that question. I
24 merely see the issue like you.
25

JULIA EWING - EX. BY MR. TEDDER
BY MR. TEDDER:

Q. So I'll then rephrase the question.
Do you recognize these documents?

A. Yes. They're bills for surveying.

THE COURT: That takes care of
Objection No. 1. You can't resolve Objection
No. 3. I'm the one who has to do that.

MR. TEDDER: Yes, sir. I think they
opened the door when they talked about their costs
and other stuff.

THE COURT: Yeah, I understand.

MR. TEDDER: And I would just relate
that these are invoices dated 5/12/14, 5/20/14,
and 10/23/14 and do them collectively as one
exhibit, if that suffices. And I've lost track of
the numbers.

(PLF. EXH. 9, Three Invoices to Mrs.
Ewing from Beaufort Surveying, was marked for
identification.)

THE COURT: And apparently, today we
had a swinging door. It revolved so fast, up and
down and back and forth, that we invented
something new and important. It really swings and
opens on both sides.

THE WITNESS: It's a court of equity.

1 JULIA EWING - EX. BY MR. TEDDER
It should swing both ways.

2 THE COURT: Well, that's an
3 interesting question, it's a case of equity or a
4 case of law or a mixed case. That's an
5 interesting question.

6 THE WITNESS: I'm hoping it's a case
7 of law.

8 MR. TEDDER: Your Honor, I believe
9 that's all the rebuttal testimony from this
10 witness.

11 THE COURT: Fine, okay. Now we're
12 ready for relevant motions.

13 THE WITNESS: Am I excused, sir?

14 THE COURT: Yeah, you're excused.

15 THE WITNESS: Thank you.

16 THE COURT: Very pleasant to see you
17 again.

18 THE WITNESS: So nice to see you.

19 THE COURT: By the way, I say this to
20 everybody. I do know how serious this is. I do
21 understand that this is important to the parties.
22 I'm deliberately acting in a sort of flippant way
23 simply to reduce a little bit of some real tension
24 in this room.

25 And you have excellent lawyers today

1 JULIA EWING - EX. BY MR. TEDDER
2 on both sides. These people are really, you can
3 tell, extremely nice people, and you're caught up
4 in a very unfortunate situation on both sides.
5 Without judging anything, I do understand.

6 At the same time, I'm kind of glad
7 that we got through it in one day, and hopefully,
8 we have time to drive out to the property and take
9 a quick peek.

10 I want the court reporter, if she
11 doesn't mind, unless you have to go back right
12 away, to go with us, because there may be
13 something said at the scene of the property that
14 we may want to put on the road. You don't have to
15 do this, this is your call, but I would like it,
16 because I've done this before with court
17 reporters. And, of course, you've got to drag
18 that -- and you don't take shorthand, right?

19 THE REPORTER: No.

20 THE COURT: You're going to be
21 excused, okay. We're going to be without a court
22 reporter, but the record should reflect that we
23 are walking out to the property to show the
24 special referee. I've looked at all the photos,
25 and I understand a lot of this, but there's
nothing like seeing it firsthand for yourself.

1 JULIA EWING - EX. BY MR. TEDDER
2 That's where we're going next. That's within my
3 discretion anyway. I've briefed this and filed
4 motions on this before.

5 MR. KUHN: I believe the viewing's
6 with the consent of the parties, Your Honor.

7 THE COURT: Okay.

8 MR. TEDDER: I'm sorry. I didn't hear
9 the last thing he --

10 MR. KUHN: The viewing is with the
11 consent of both parties.

12 MR. TEDDER: Oh, yes, yes.

13 THE COURT: That's great. Thank you.
14 You've really been wonderful to all work with.

15 Have you got some motions you want me
16 to hear and deny promptly?

17 MR. INGLESE: Some closing arguments
18 at least, Your Honor.

19 THE COURT: Oh, sure, okay.

20 MR. TEDDER: Again, we renew our
21 motion for a directed verdict.

22 THE COURT: Denied, but it was very
23 well argued.

24 MR. KUHN: Let's see if I can do
25 better.

Your Honor, I move for a directed

1 JULIA EWING - EX. BY MR. TEDDER
2 verdict in favor of the defendants, Keith and
3 Stephanie Guest, on the same grounds stated in my
4 earlier motion for a directed verdict, as well as
5 for a verdict in favor of these defendants,
6 granting to them relief on the grounds of looking
7 at the evidence in a light most favorable to the
8 defendants -- or excuse me, most favorable to the
9 plaintiffs -- the defendants are entitled to a
10 judgment in their favor as a matter of law.

11 THE COURT: It's very well considered,
12 Counselor, but it's denied.

13 MR. KUHN: Thank you, Your Honor.

14 THE COURT: What's next?

15 MR. INGLESE: Closing arguments.

16 MR. TEDDER: Closing arguments, since
17 we haven't argued the law yet today.

18 THE COURT: Okay. By all means, give
19 me some closing arguments.

20 MR. TEDDER: Your Honor, if it please
21 the Court, one of the reasons why we did not move
22 for a summary judgment is because we wanted to
23 have an opportunity to have everyone to have a
24 time to speak their peace and avoid an appeal
25 based on there being a missed issue of fact
involved here.

CLOSING ARGUMENT BY PLAINTIFF

1 Even after the testimony of all day
2 long, I don't think there has been an issue of
3 fact created that cuts against the record in the
4 public records of Beaufort County showing what
5 occurred.

6 Since the earliest 20th century, the
7 Hornbook law has been, starting with Blue Ridge,
8 which there are cites inside the case law with the
9 Blue Ridge case, the Carolina Land, Murrells
10 Inlet, Davis v. Epting.

11 The case law is very clear. If a
12 developer creates a plat in a subdivision showing
13 streets and then sells off of that plat, that plat
14 becomes part of the deed, and the conveyance is
15 completed at the time of the conveyance. Anything
16 the developer does subsequent to that is of no
17 effect as between the plat and the owner.

18 In one of the cases, which I believe
19 is Blue Ridge, the roads were even dedicated to
20 Greenville County, and Greenville County gave a
21 deed back to the developer, and the law is very
22 clear from those rulings for the last 50 years, it
23 doesn't matter.

24 As recently as the Town of Kingstree
25 case from 2013, which involved the town having a

CLOSING ARGUMENT BY PLAINTIFF

1 dedicated street between two lots and two ladies
2 who did not want the street abandoned, pursuant to
3 the statutory procedure, our court came down and
4 said no matter what the town did with the
5 abandonment, because these people bought in
6 reliance on a plat, the easement didn't go away.

7 I asked Mr. Branning what thought he
8 had -- what he thought gave him the right to say
9 this easement is abandoned when I showed him the
10 other plat, and the answer is very telling:

11 Because I thought I had the power. But thinking
12 you have the power and what the case law says is
13 entirely different.

14 Once you accept the premise of you
15 have the right because of the plat to maintain
16 that easement against all others, and, of course,
17 everybody that bought in the subdivision has a
18 right to go there, when you look at it, the deeds
19 between Pleasant Point Owners Association and the
20 predecessors in title to the Guests for either of
21 the two areas, these are the areas lying to the
22 west of Lots 1 and 2 or the areas lying between
23 what was formerly an open space area and the
24 bottom of Lot 28, it doesn't matter. They can own
25 the fee all day long, but you can only deed what

CLOSING ARGUMENT BY PLAINTIFF

1 you have, and at the time they deeded it, they had
2 a piece of property that was subject to a road
3 right-of-way shown by plats that could not be
4 given away, could not be abandoned, absent the
5 clear and convincing evidence of an intent of the
6 dominant tenement owner to abandon it. There has
7 been absolutely no evidence here today that shows
8 a clear intent to abandon the 40-foot
9 right-of-way.

10 The driveway that was used, albeit
11 outside of the area, for 40-some-odd years doesn't
12 negate the fact that there's a 40-foot easement
13 there. They probably have a prescriptive easement
14 to the use of the driveway outside that easement
15 area under the law of applied easements in South
16 Carolina, including that area that is beyond the
17 40-foot easement toward the marsh by the carport,
18 where the carport extends further than the 40-foot
19 easement -- or right-of-way easement shown on this
20 as Pleasant Point Drive.

21 The court has held in numerous cases,
22 including the Carolina Land case, that the
23 recutting and resubdivision by developers'
24 assessors does not destroy the earlier subdivision
25 and easements created therein as to those people

CLOSING ARGUMENT BY PLAINTIFF
1 who bought the land within there.

2 Without any other evidence of some
3 clear intent to abandon this 40-foot area by the
4 dominant owner, which is Lots 1, 2, 3, 4, 5, and I
5 believe seven that show on 18 at 45, the court has
6 to rule that the easement still is in existence.

7 You asked a question earlier, I
8 believe, about the standard. The cases hold that
9 the existence of an easement is a matter of law,
10 the extent of an easement is a matter of equity,
11 as I recall all of the cases, running from Blue
12 Ridge up to the latest cases out there.

13 Davis v. Epting is a case that clearly
14 shows that you cannot fence in barriers, do any of
15 those things, within the area of the easement,
16 whether or not they're within the traveled lane,
17 because you're entitled -- the dominant tenement
18 owner is entitled to the entire area.

19 I'm sorry that the defendants weren't
20 apprized of the law of the state of South Carolina
21 when they hurried and bought the property, and I
22 think they had a misunderstanding about the
23 purpose of that prior easement that was for the
24 lifetime, but that was for a narrow area that had
25 no utility to access the property whatsoever. It

CLOSING ARGUMENT BY PLAINTIFF

1 didn't touch any roads. So I think that's just a
2 red herring out there.

3 I think if you look at the cases that
4 we're happy to provide you copies of for your
5 convenience of Davis at Epting, the Newington
6 Plantation cases. The Newington case is of
7 interest because there was some testimony about
8 what was the intent of these people when they
9 created these easements, and because we didn't use
10 the clubhouse anymore or a clubhouse, that
11 easement had no purpose anymore. It's not the
12 intent at the time three years later, four years
13 later, ten years later, when you look at it, and
14 say my plan changed; it's the intent at the time
15 of the creation of the easement by filing the
16 documents that are out there.

17 I've already cited the Blue Ridge
18 case, the Kingstree case, Carolina Land, and
19 Murrells Inlet cases. All of these are an
20 unbroken line of cases that clearly hold the
21 premises that I'm talking about, including a
22 Pendarvis case, which is an interesting case, in
23 that they thought they built an easement in a
24 certain area, as they hauled out shells and other
25 stuff to create a causeway, stepfather provided

CLOSING ARGUMENT BY PLAINTIFF

1 the property and gave it away and found something
2 in the easement where the easement, actually
3 constructed, wasn't where they thought it was.
4 The Court finds they still get to go out there
5 because of the laws that we have?

6 Even these cases hold -- even if you
7 undergo the statutory abandonment, 57-9-10, as the
8 Kingstree case, you can move to this to abandon
9 it, but it is not effective as against a property
10 owner who took it under a subdivision plat who has
11 a private easement. The only way to get rid of it
12 is to get statute and the owners that took off
13 that to agree to abandon the easement, a lot of
14 cases that go out for a long time.

15 It's clear that the easement got
16 obstructed by the fence. It's clear there's still
17 obstructions out there, albeit minor, in that
18 there are stakes, but they're there, no permission
19 to move the road.

20 Our ultimate request is that there be
21 a declaration that the 40-foot easement extends
22 the entire length from Pleasant Point Drive to its
23 terminus, that we have an easement by prior use or
24 adverse possession to the nine -- six to nine feet
25 beyond the easement that goes to the edge of the

CLOSING ARGUMENT BY PLAINTIFF

1 carport that has been in use by under
2 Mr. Branning's -- carport area under
3 Mr. Branning's testimony since the early '70s,
4 clearly in excess of the adverse position time,
5 and a permanent injunction to prevent -- and
6 without belaboring the point, the other leave we
7 requested in the complaint, I think we have ample
8 evidence to support each of those matters out
9 there.

10 Thank you.

11 MR. KUHN: Please the Court, Your
12 Honor, I was going to waive closing, but I can't
13 waive it when my opponent did not.

14 Very briefly, Your Honor, in a
15 nutshell, the original 40-foot-wide roadway is
16 shown on the original plat, and as Mr. Tedder has
17 pointed out, there is a difference between the
18 existence of an easement and the extent or use to
19 which an easement may be put.

20 I think it is abundantly clear, just
21 on the face of the plat itself, in conjunction
22 with Mr. Branning's undisputed testimony, that the
23 original intent was that the Manor House would be
24 the clubhouse, and that road would serve the Manor
25 House as a clubhouse. That was never intended and

CLOSING ARGUMENT BY DEFENDANTS

1 never has been used for access to Lot 1, so that
2 40-foot was never intended to provide access to
3 Lot 1, and that is abundantly clear from the plat
4 itself, because otherwise, why would the developer
5 have gone to great length to draw that narrow
6 strip of land as part of Lot 1 that leads to
7 Sussex Court and give that property the address
8 6 Sussex Court. If Plantation Point Drive was
9 intended to be the access for Lot 1, it would have
10 a Lot 1 -- a Plantation Point Drive address, and
11 their lot would not have that narrow strip of land
12 leading from the bulk of the property to Sussex
13 Court.

14 So the first point is that was never
15 intended to provide access to Lot 1, and using
16 that to access Lot 1 would be extending the scope
17 of that easement beyond its express and clear,
18 intended purpose.

19 Second, if that ever existed, it was
20 abandoned almost immediately after it was put on
21 paper by subsequent plats revised by Mr. Trogon,
22 the same surveyor who did the original plat,
23 showing it no longer existed and now came into a
24 U-turn loop just a few short years later. Ever
25 since then, it had been abandoned, and fee simple

CLOSING ARGUMENT BY DEFENDANTS

1 title unencumbered by an easement.

2 The plats that Mr. Youmans has shown,
3 where he's got that as a dotted line, he's always
4 been careful to note this is what's shown on the
5 original plat. It's historical information only.
6 He's not showing it as an easement, doesn't label
7 it as an easement.

8 General Tompkins then entered into an
9 accord and satisfaction with the homeowners
10 association, acting through Mr. Branning, in
11 effect, if you will give me a lifetime easement so
12 I can access my property along its western
13 boundary and not have to use my Sussex Court
14 access, then that resolves the issue, and that is
15 why the 40-foot easement is not shown on that
16 easement agreement and the only easement shown is
17 the new easement, lifetime easement, to General
18 and Mrs. Tompkins.

19 And again, applying common sense, if
20 General Tompkins and Mrs. Tompkins had a
21 40-foot-wide easement to access Lot 1, why would
22 they need another easement contained entirely
23 within that easement limited to their lifetime?
24 Makes absolutely no sense to say: I have this
25 40-foot-wide easement already, but now I want a

CLOSING ARGUMENT BY DEFENDANTS

1 smaller easement located within that easement for
2 a shorter period of time, which makes no sense.
3 That's expressly for a driveway.

4 As Mr. Branning testified, again
5 uncontroverted, that he has no dog in this fight,
6 the reason for that was so that General Tompkins
7 could access his property on the western boundary,
8 because they did not want to use the Sussex Court.

9 So whatever theory -- latches, waiver,
10 estoppel, accord and satisfaction, abandonment,
11 extending the extent of an easement -- I
12 respectfully request Your Honor to grant judgment
13 in favor of the defendants, Keith and Stephanie
14 Guest, let them use their property unencumbered by
15 any easement, and Mrs. Ewing can access her
16 property, as intended, off Sussex Court.

17 Thank you, Your Honor.

18 THE COURT: I told the court reporter
19 that assuming, and I think this is a fair
20 assumption, you can't just suddenly, magically
21 come to a settlement, which would be nice, but I
22 don't think it's going to happen, we're going to
23 transcribe the hearing today.

24 She's got my business card. She's
25 going to send that to me. That's something that

CLOSING ARGUMENT BY DEFENDANTS

1 the two parties are going to pay for 50/50.

2 That's not something for me to pay for. When I
3 get it, I'm going to tell -- I'll immediately
4 write each of you and say: I now have the
5 transcript, all right.

6 I don't think I need the cases. I'm
7 very familiar with every case that you cited,
8 except the most recent one, the Kingstree case.
9 That one I haven't read, or I missed reading. My
10 memory has failed me. But I can find it
11 immediately, okay. 2013 is -- I'll find that
12 case. I know all the others pretty well. I know
13 all the equitable arguments they say, whether it's
14 true or not, that I taught equity for many years
15 and property for many years at two different law
16 schools in this state, so I'm feeling pretty
17 comfortable with that..

18 MR. KUHN: Which is why I did not cite
19 any law. You probably would have corrected me.

20 THE COURT: I am delighted -- if you
21 so decide to send me anything, that's your call.
22 You can send me anything that you want or nothing.
23 That's truly your call, all right.

24 And within either 30 or 45 days, and
25 I'm not sure which, I'm going to tell you from the

CLOSING ARGUMENT BY DEFENDANTS

1 day I get the transcript, I'm going to send out an
2 order. So that's my plan. I'm going to stick to
3 that deadline.

4 And, you know, I just say this one
5 final thing. I really do think the lawyers did an
6 excellent job. I know the parties are having some
7 personal difficulties with each other. That's
8 almost understandable, given the nature of this
9 kind of property dispute.

10 It is better -- it is better to settle
11 a case yourself, if you can do it, than turn it
12 over to a total stranger, and honestly, I don't
13 have any idea right now what I'm going to do. I'm
14 telling you, I do not have any idea as I sit here
15 right now. I certainly will promptly do something
16 within 30 to 45 days of receiving the transcript,
17 and I will write you both and tell you when that
18 happens.

19 And for the court reporter, you know,
20 you've got a billion important things to do, so we
21 should be on the list, but this is probably not
22 the most urgent thing that you have. I'll leave
23 that for you, all right. And you can call me if
24 you need some further directions.

25 I'm not going to push you and tell

CLOSING ARGUMENT BY DEFENDANTS

1 you, the way some lawyers do, everything I do is
2 the most important thing in the world. That's not
3 true. I'm also not going to tell you these people
4 can wait forever, because they honestly can't.
5 They really do need to get this resolved, if at
6 all possible. So you do your part, and I'll try
7 to do my part, and so on.

8 Questions? Comments?

9 Yeah.

10 MR. TEDDER: Just as a reminder, we
11 had a preliminary consent order entered by Judge
12 Nettles in November that I believe, without
13 looking at it, says it will continue in effect
14 until further order of the court, which will
15 remain.

16 And just for your ease, there's the
17 Kingstree case. I gave you just the front page,
18 if you want to, with the cites, so you don't have
19 to look it up.

20 THE COURT: Fine.

21 MR. TEDDER: And I was kind of
22 expecting, Your Honor, to hear you at the South
23 Carolina Bar this weekend.

24 THE COURT: You're going to.

25 MR. TEDDER: In which case there are

CLOSING ARGUMENT BY DEFENDANTS

two more easement cases that came out in the last
month.

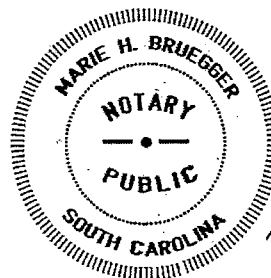
(The proceedings were concluded at
4:42 PM.)

CLOSING ARGUMENT BY DEFENDANTS
CERTIFICATE OF REPORTER

I, Marie H. Bruegger, Registered
Professional Reporter, Certified Realtime
Reporter, and Notary Public for the State of South
Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate, and
complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 28th day of January,
2016, at Charleston, Charleston County, South
Carolina.



Marie H. Bruegger
Registered Professional
Reporter, CCR
My commission expires
April 18, 2021

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21 PLF. EXH. 4, Restrictive Covenants for 64 7

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5 Mr. Tedder and Mr. Fleming from

6 Mr. Grimsley

7 (Plaintiff's Exhibit No. 2 was not
8 allowed by The Court and is not attached to this
9 transcript.)

10 (Defendant's Exhibit No. 23 was
11 retained by The Court and is not attached to this
12 transcript.)

13 (Defendant's Exhibits 24 and 35 were
14 withdrawn by counsel for Defendants and are not
15 attached to this transcript.)

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