

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

**RECEIVED**

JUL 02 2020

SC Court of Appeals

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Case No. 2016-CP-32-0387  
Appellate Case No. 2019-001609

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Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005,  
Rachel R. Farley.....Appellant,

v.

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

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**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) Case Number: 2016-CP-32-00387

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

Plaintiffs, )

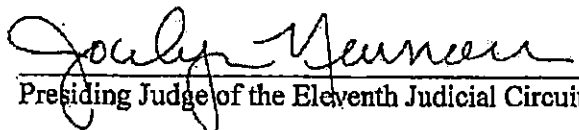
vs. )

The Church of the Harvest of )  
Columbia, Inc., )

Defendant. )

The Defendant is ordered to serve upon Drummond B. Farley, Rachel R. Farley, Carol E. Farley, and Nancy E. Farley, a Summons, a copy of this Order and a copy of the Complaint within fifteen (15) days of receipt of written notice of the filing of this Order. Once joined, those persons may obtain copies of relevant pleadings and documents from counsel for Rachel B. Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005, since their interests are aligned. Any Plaintiff may file and serve an Amended Complaint within fifteen (15) days after service upon the last additional Plaintiff. Joinder of the additional Plaintiffs shall relate back to the date on which this action was commenced.

IT IS SO ORDERED THIS 7<sup>th</sup> day of May, 2018

  
Presiding Judge of the Eleventh Judicial Circuit

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-32-00387

Rachel Farley, as Trustee of The Louise Farley Revocable  
 Trust Dated February 8, 2005, et al.

The Church of the Harvest of Columbia, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert W. Dibble, Jr.	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> 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 : See attached Order Adding Parties

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)
N/A	N/A	N/A
		\$
		\$
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.

*Jouly Yameen*  
 Circuit Court Judge

2757  
 Judge Code

5/7/18  
 Date



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

**PROCEDURAL BACKGROUND**

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

This action was commenced on February 3, 2016.<sup>1</sup> The Plaintiffs assert six causes of action: breach of the contract; breach of the contract accompanied by a fraudulent act; gross negligence; trespass on the easement; a request for declaratory judgment and a request for

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

injunctive relief. The Plaintiffs<sup>2</sup> and the Defendant filed cross motions for summary judgment. The Church submitted multiple briefs, affidavits of Mr. Jumper (who is the the pastor of The Church), an affidavit of Mr. Sturkie (who examined the title to the ten acres) and exhibits in support of its motion. The Plaintiffs submitted multiple briefs and the deposition of Mr. Jumper in support of their motion, but they did not submit any affidavits either in support of their motion or in opposition to the Defendant's motion. Mr. Jumper's deposition testimony does not contradict the Defendant's affidavits and exhibits. Therefore, the relevant facts underlying this Order are uncontroverted.

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

#### **LEGAL STANDARD**

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

#### **FACTUAL BACKGROUND AND DISCUSSION**

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

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

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

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

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

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

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

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

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

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

Under the terms of the Agreement, provided The Church bought Phase II, The Church had the option of either (1) increasing the width of the 50-foot easement to 66 feet or (2) relocating the 50-foot easement by granting to Mrs. Farley a 66 foot wide easement along the Western boundary of Phase II and Phase III (Tracts 2 and C-1) for access to her remaining ten (10) acres. *Id.* at ¶13. When The Church purchased Phase II and Phase III it elected to relocate the 50-foot easement. This election was consummated when Mrs. Farley, in the deed to Phase II and Phase III, reserved to herself, her heirs and assigns, an easement for ingress and egress 66 feet in width across, over through and along the Western boundary of Phase II and Phase III as shown on the plat recorded in Book 436 at Page 8. See Exhibit G to Jumper Aff. 8/1/18.<sup>4</sup>

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

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

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

### **BREACH OF CONTRACT CLAIMS**

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

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

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

of those causes of action: (“ . . . an action upon a contract” and “ . . . an action . . . upon a liability, express or implied . . . .” §15-3-530(1)), and that period of limitation expired well before this action was commenced in February of 2016.<sup>7</sup>

### **BREACH OF CONTRACT WITH FRAUDULENT ACT**

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

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

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

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

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

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

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

### NEGLIGENCE

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

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

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

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

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

#### **TRESPASS**

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

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

### **NUISANCE**

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

### **EASEMENT**

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

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

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

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

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

#### **RIGHT OF FIRST REFUSAL**

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

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

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

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

**STATUTE OF LIMITATIONS UNDER SECTION 15-3-340**

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

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

**ORDER**

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

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

**AND IT IS SO ORDERED.**

*Signature page to follow*

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



Lexington Common Pleas

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

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2019-05-09 12:08:56 page 13 of 13

ELECTRONICALLY FILED - 2019 May 09 2:28 PM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387

Rachel Farley et al  
PLAINTIFF(S)

Church of the Harvest of Columbia Inc  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

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

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

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

Plaintiffs' Motion to Alter/Amend is hereby DENIED.

**ORDER INFORMATION**

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

**For Clerk of Court Office Use Only**

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

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

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

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

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Lexington Common Pleas

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

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge

Electronically signed on 2019-06-19 18:34:16 page 3 of 3

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

## Certificate of Electronic Notification

### Recipients

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

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

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

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

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

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

Official File Stamp: 06-20-2019 12:27:25 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

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

Document(s) Submitted: Order Motion to Alter/Amend Denied  
Order/Electronic Form 4

Filed by or on behalf of: Alison Lee

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

The following people were served electronically:

Robert W. Dibble, Jr. for Church of the Harvest of Columbia Inc

S. Jahue Moore for Rachel Farley, Rachel R Farley

Brent Michael Takach for Church of the Harvest of Columbia Inc

Jennifer Dowd Nichols for Church of the Harvest of Columbia Inc

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

Nancy E Farley for Nancy E Farley

Carole E Farley for Carole E Farley

Nancy E Farley for Nancy E Farley

Carole E Farley for Carole E Farley

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

Drummond B Farley

MTLF00023

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

**PROCEDURAL BACKGROUND**

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

This action was commenced on February 3, 2016.<sup>1</sup> The Plaintiffs assert six causes of action: breach of the contract; breach of the contract accompanied by a fraudulent act; gross negligence; trespass on the easement; a request for declaratory judgment and a request for

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

injunctive relief. The Plaintiffs<sup>2</sup> and the Defendant filed cross motions for summary judgment. The Church submitted multiple briefs, affidavits of Mr. Jumper (who is the the pastor of The Church), an affidavit of Mr. Sturkie (who examined the title to the ten acres) and exhibits in support of its motion. The Plaintiffs submitted multiple briefs and the deposition of Mr. Jumper in support of their motion, but they did not submit any affidavits either in support of their motion or in opposition to the Defendant's motion. Mr. Jumper's deposition testimony does not contradict the Defendant's affidavits and exhibits. Therefore, the relevant facts underlying this Order are uncontroverted.

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

#### **LEGAL STANDARD**

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

#### **FACTUAL BACKGROUND AND DISCUSSION**

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

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

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

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

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

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

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

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

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

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

Under the terms of the Agreement, provided The Church bought Phase II, The Church had the option of either (1) increasing the width of the 50-foot easement to 66 feet or (2) relocating the 50-foot easement by granting to Mrs. Farley a 66 foot wide easement along the Western boundary of Phase II and Phase III (Tracts 2 and C-1) for access to her remaining ten (10) acres. Id. at ¶13. When The Church purchased Phase II and Phase III it elected to relocate the 50-foot easement. This election was consummated when Mrs. Farley, in the deed to Phase II and Phase III, reserved to herself, her heirs and assigns, an easement for ingress and egress 66 feet in width across, over through and along the Western boundary of Phase II and Phase III as shown on the plat recorded in Book 436 at Page 8. See Exhibit G to Jumper Aff. 8/1/18.<sup>4</sup>

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

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

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

### **BREACH OF CONTRACT CLAIMS**

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

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

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

action upon a contract” and “. . . an action . . . upon a liability, express or implied . . .” §15-3-530(1)), and that period of limitation expired well before this action was commenced in February of 2016.<sup>7</sup>

### **BREACH OF CONTRACT WITH FRAUDULENT ACT**

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

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

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

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

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

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

### NEGLIGENCE

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

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

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

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

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

### **TRESPASS**

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

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

## **NUISANCE**

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

## **EASEMENT**

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

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

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

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

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

#### **RIGHT OF FIRST REFUSAL**

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

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

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

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

#### STATUTE OF LIMITATIONS UNDER SECTION 15-3-340

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

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

**ORDER**

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

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

**AND IT IS SO ORDERED.**

*Signature page to follow*

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



Lexington Common Pleas

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

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2019-07-23 13:33:34 page 13 of 13

ELECTRONICALLY FILED - 2019 Jul 23 1:46 PM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387



Lexington Common Pleas

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

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2019-09-12 11:10:41 page 3 of 3

ELECTRONICALLY FILED - 2019 Sep 12 11:13 AM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387

MTLF00037

Rachel Farley et al  
PLAINTIFF(S)

Church of the Harvest of Columbia Inc  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

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

For Clerk of Court Office Use Only

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

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

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

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

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

2016 CP 32 00387

C.A. No.:2016-CP-32-\_\_\_\_\_

**COMPLAINT**

**(Breach of Contract, Breach of Contract  
Accompanied by Fraudulent Act, Gross  
Negligence, Trespass, Declaratory  
Judgment and Injunction)**

Rachel Farley, as Trustee of The Louise  
Farley Revocable Trust Dated February 8,  
2005, and as the Personal Representative of  
the Estate of Louise Farley,

Plaintiff,

vs.

The Church of the Harvest of Columbia, Inc.

Defendant.

FILED  
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The Plaintiff above named would Complain against the Defendant herein as follows:

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

1. Plaintiff is a citizen and resident of Lexington County, South Carolina and is the trustee of The Louise Farley Revocable Trust Dated February 8, 2005, and is the Personal Representative of the Estate of Louise Farley, which owns and/or controls the property that is the subject matter of this litigation.

2. At all times relevant hereto, Defendant acted by and through its agents, employees, servants, directors, board of trustees and/or others with authority to bind the Defendant. Upon information and belief, Defendant is an eleemosynary organization organized and existing under the laws of the State of South Carolina with an office for the conduct of its business in Lexington County, South Carolina.

3. This Court has jurisdiction over the subject matter herein and the parties hereto and

4. Venue is proper before this Court.

5. On or about October 11, 1994, the parties or their predecessors in interest, entered into an option agreement for Plaintiff to sell and Defendant to purchase certain parcels of real estate owned by Plaintiff off U.S. Highway 378 in Lexington County, South Carolina in 3 phases. As part of the agreement, Defendant was to purchase the parcels in a certain time-frame; was to move and relocate a fence owned by Plaintiff; and was to provide one or more easements for Plaintiff to access other property Plaintiff owned located behind the parcels being purchased by the Defendant. Additionally, Defendant would be entitled to a right of first refusal to purchase the other property owned by Plaintiff, located behind the property being purchased by Defendant in the agreement if Defendant were not otherwise in default. A copy of this agreement is attached hereto and incorporated herein by reference as Exhibit "A".

6. Plaintiff performed all obligations required of Plaintiff under this agreement.

7. Defendant unjustifiably refused and failed to comply with all of its obligations under this agreement, thereby constituting a breach of the parties' contract.

8. Defendant failed to remove and relocate Plaintiff's fence; Defendant attempted to move the location of one of Plaintiff's easements without Plaintiff's knowledge or permission; Defendant encroached upon, obstructed and otherwise blocked Plaintiff's access easements for ingress and egress to Plaintiff's property; Defendant has refused to remove the obstructions and encroachments on Plaintiff's access easements for ingress and egress to Plaintiff's property with the intent of devaluing the Plaintiff's property in order to purchase the property for a lower price; Defendant has demanded enforcement of the right of first refusal while it has remained in breach of the parties' agreement; and Defendant has otherwise breached the parties' agreement as may be discovered through the pendency of this action, all to Plaintiff's actual, consequential and incidental damage.

9. As a direct and proximate cause of Defendant's breaches of the parties' contract Plaintiff has been damaged in that Plaintiff has lost the benefit of the bargain; has incurred costs and fees; has lost the use of the property and property rights; has been denied the use of the easement(s); has suffered a devaluation of the real property; has lost the opportunity to sell the property at a reasonable value; has incurred additional taxes and has otherwise been damaged all to Plaintiff's actual, consequential and incidental damage.

10. Plaintiff is entitled to a judgment for actual damages.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract Accompanied by Fraudulent Act)**

11. Plaintiff hereby reasserts and realleges each and every allegation set forth above as if set forth here verbatim.

12. In addition to breaching the parties' contract as set forth above, Defendant had fraudulent intent relating to the breach of the contract and committed at least one fraudulent act accompanying the breach of the contract: Defendant attempted to relocate one of Plaintiff's easements without Plaintiff's knowledge or permission; Defendant intentionally erected obstructions and/or other encroachments in Plaintiff's easement(s); Defendant has refused to remove these obstructions and encroachments, upon demand of Plaintiff; and Defendant has sought to enforce a right of first refusal while in breach of the parties' agreement with the intended purpose of devaluing other property owned by Plaintiff in order to purchase the same for less than fair market value. Prior to Plaintiff's death, Defendant manipulated Plaintiff into accepting a reduced purchase price after the contracts had been signed and then into donating approximately half of the purchase price back to Defendant. Despite this overreaching by Defendant and Plaintiff's decedent's beseeching of Defendant not to pay off the mortgages early,

Defendant insisted on making an early pay off that caused Plaintiff's decedent to incur approximately \$80,000 in tax liability.

13. As a direct and proximate cause of Defendant's breaches of the parties' contract accompanied by fraudulent acts, Plaintiff has been damaged in that Plaintiff has lost the benefit of the bargain; has incurred costs and fees; has lost the use of the property and property rights; has been denied the use of the easement(s); has suffered a devaluation of the real property; has lost the opportunity to sell the property at a reasonable value; has incurred additional taxes and has otherwise been damaged all to Plaintiff's actual, consequential, incidental and punitive damage.

14. Plaintiff is entitled to a judgment for actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION**

**(Gross Negligence)**

15. Plaintiff hereby reasserts and realleges each and every allegation set forth above as if set forth here verbatim.

16. At all times relevant hereto, Defendant owed Plaintiff a duty of care commensurate with the circumstances not to obstruct or otherwise encroach upon Plaintiff's access easement(s) for ingress and egress to other property Plaintiff owned.

17. Defendant was grossly negligent, wanton, willful and/or reckless in one or more of the following particulars:

- a. In obstructing and/or otherwise encroaching upon Plaintiff's access easements for ingress and egress to other property Plaintiff owns by erecting at least three buildings in the easements;
- b. In attempting to move the location of one of Plaintiff's easements, without Plaintiff's knowledge or permission;
- c. In refusing to remove the obstructions or encroachments upon demand by Plaintiff with the intended purpose of devaluing Plaintiff's property in order to claim the right to purchase it below fair market value;
- d. In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing, all of

- which were the direct and proximate cause of the damages of which Plaintiff complains of herein, to include actual and punitive damages; and
- e. In other ways as may be discovered through the pendency of this action.

18. Plaintiff is entitled to a judgment for actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION**

**(Trespass)**

19. Plaintiff hereby reasserts and realleges each and every paragraph set forth above as if set forth here verbatim.

20. At all times relevant hereto, Plaintiff had legal title to the easements located on Defendant's property.

21. Defendant voluntarily entered upon Plaintiff's easements with encroachments and obstructions and has refused to remove the same, which are not de minimis.

22. Defendant's entry as complained of above was without Plaintiff's permission.

23. As a direct and proximate result of Defendant's trespass, Plaintiff has been damaged in that Plaintiff's property rights have been damaged and Plaintiff has been otherwise damaged as set forth above and herein, all to Plaintiff's actual and punitive damage.

24. Plaintiff is entitled to a judgment for actual and punitive damages.

**FOR A FIFTH CAUSE OF ACTION**

**(Declaratory Judgment)**

25. Plaintiff hereby reasserts and realleges each and every paragraph set forth above as if set forth here verbatim.

26. This action is brought pursuant to S.C. Code § 15-53-20, *et seq.*, 1976 (as amended), seeking an Order of this Court declaring the rights, title, ownership and interest of all persons, including the Plaintiff, in the property which is the subject of this action.

27. Plaintiff is entitled to a declaration from this Court of the rights of the parties one to another including a declaration that Plaintiff is entitled to reestablish the original location of

Plaintiff's easement in the width of 66' as shown on the plat attached and incorporated herein by reference as Exhibit "B"; that Plaintiff is entitled to a declaration from this Court that Defendant must remove all obstructions from this easement; for a declaration from this Court that Defendant must construct and maintain the easement in its original location; for a declaration from this Court that Defendant must move and relocate Plaintiff's fence; for a declaration from this Court that Defendant does not have the right of first refusal; and for a declaration from this Court for such other and further relief as this Court might deem just and proper.

**FOR A SIXTH CAUSE OF ACTION**

**(Injunction)**

28. Plaintiff hereby reasserts and realleges each and every paragraph set forth above as if set forth here verbatim.

29. Plaintiff will suffer irreparable harm if Defendant is not enjoined from obstructing the access easements; if Defendant is not enjoined from returning Plaintiff's access easement to its original location as shown on the attached plat (Exhibit "B"); and if Defendant is not enjoined to construct and maintain the easement in its original location, free from obstructions and encroachments.

30. Plaintiff believes such injunctive relief is necessary to protect Plaintiff's property rights. Plaintiff will suffer irreparable harm if these property rights are not restored through this injunctive relief. Upon information and belief, Plaintiff has no other adequate legal remedy against Defendant, Plaintiff is likely to succeed on the merits of this case and the balancing of the equities favors this relief.

31. Plaintiff is entitled to an injunction against Defendant as set forth above.

WHEREFORE, having fully complained against the Defendant herein, Plaintiff prays for

an order of this Court for actual, incidental, consequential and punitive damages; for costs and reasonable attorney's fees; for interest; for an injunction as set forth above; for declaratory relief as set forth above; and for such other and further relief as this Court might deem just and proper.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

William H. Edwards  
Attorney for the Plaintiff  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171  
(803) 796-9160

West Columbia, South Carolina  
February 2, 2016

DETH A. CARPICO  
CLERK OF COURT

2016 FEB -3 PM 3:14

FILED

STATE OF SOUTH CAROLINA  
AFFIDAVIT OF SERVICE

LEXINGTON COUNTY

COMMON PLEAS COURT

DOCKET # 2016-CP-32-00387

RACHEL FARLEY, AS TRUSTEE OF THE LOUISE FARLEY  
REVOCABLE TRUST DATED FEBRUARY 8, 2005

~ VS ~

THE CHURCH OF THE HARVEST OF COLUMBIA INC.,

THE UNDERSIGNED, JEFF COSTNER, BEING DULY SWORN SAYS THAT HE  
SERVED THE FOLLOWING :


(1) ORDER, (2) JUDGMENT IN A CIVIL CASE

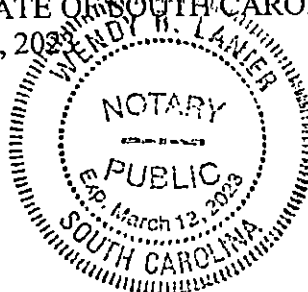
IN THE FOREGOING ACTION ON RACHEL R. FARLEY, AND BY DELIVERING  
TO, HER PERSONALLY, AND BY LEAVING WITH HER A COPY OF THE SAME  
AT,

8 PALM COURT, ISLE OF PALMS, SOUTH CAROLINA 29451  
(FULL ADDRESS WHERE SERVED)

ON THIS, 10TH DAY OF MAY, 2018, AT 02:15 PM, AND THAT HE KNOWS THE  
PERSON SO SERVED TO BE THE PARTY MENTIONED AND DESCRIBED IN  
THE PLEADINGS SERVED AS, RACHEL R. FARLEY, AND THAT HE IS NOT A  
PARTY TO NOR INTERESTED IN THE ACTION.

  
\_\_\_\_\_  
JEFF COSTNER-PROCESS SERVER

  
\_\_\_\_\_  
SWORN BEFORE ME THIS, 10TH DAY OF MAY, 2018  
WENDY LANIER, NOTARY PUBLIC, STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES, MARCH 12, 2023



STATE OF SOUTH CAROLINA  
AFFIDAVIT OF SERVICE

LEXINGTON COUNTY

COMMON PLEAS COURT

DOCKET # 2016-CP-32-00387

RACHEL FARLEY, AS TRUSTEE OF THE LOUISE FARLEY  
REVOCABLE TRUST DATED FEBRUARY 8,2005

~ VS ~

THE CHURCH OF THE HARVEST OF COLUMBIA INC.,

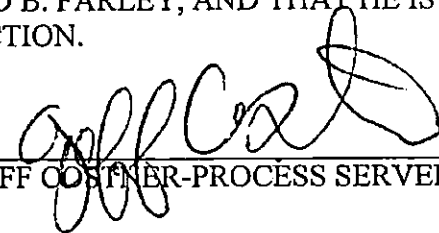
THE UNDERSIGNED, JEFF COSTNER, BEING DULY SWORN SAYS THAT HE  
SERVED THE FOLLOWING :

(1) ORDER, (2) JUDGMENT IN A CIVIL CASE

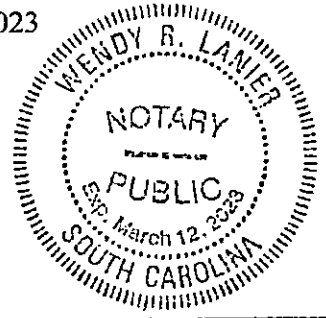
IN THE FOREGOING ACTION ON DRUMMOND B. FARLEY, AND BY  
DELIVERING TO, CINDY MOYE, GIRLFRIEND AND CO-RESIDENT, AND BY  
LEAVING WITH HER A COPY OF THE SAME AT,

742 C AVENUE, WEST COLUMBIA, SOUTH CAROLINA 29169  
(FULL ADDRESS WHERE SERVED)

ON THIS, 11TH DAY OF MAY, 2018, AT 09:15 AM, AND THAT HE KNOWS THE  
PERSON SO SERVED TO BE THE PARTY MENTIONED AND DESCRIBED IN  
THE PLEADINGS SERVED AS, DRUMMOND B. FARLEY, AND THAT HE IS NOT  
A PARTY TO NOR INTERESTED IN THE ACTION.

  
\_\_\_\_\_  
JEFF COSTNER-PROCESS SERVER

  
\_\_\_\_\_  
SWORN BEFORE ME THIS, 11TH DAY OF MAY, 2018  
WENDY LANIER, NOTARY PUBLIC, STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES, MARCH 12, 2023



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

Rachel Farley, as Trustee of the Louise )  
Farley Revocable Trust Dated February 8, )  
2005, and as the Personal Representative )  
of the Estate of Louise Farley, )

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

Plaintiff, )  
vs. )

**NOTICE OF MOTION FOR  
SUMMARY JUDGMENT**

The Church of the Harvest of Columbia, Inc.)  
Defendant. )

TO: JENNIFER DOWD, ESQUIRE, COUNSEL FOR THE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that on the 10<sup>th</sup> day after service hereof or as soon thereafter as counsel can be heard, the undersigned as counsel for Plaintiff will move before the court for an Order granting Summary Judgment as to liability in favor of the Plaintiff.

This Motion shall be based upon the deposition recently completed in this case of the Pastor and controlling officer of the Defendant.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore  
S. Jahue Moore (SC Bar #4063)  
Post Office Box 5709  
West Columbia, South Carolina 29171  
Phone: (803) 796-9160  
Fax: (803) 791-8410  
jake@mttlaw.com  
*Attorney for Plaintiff*  
*July 10, 2018*

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF LEXINGTON ) Case Number: 2016-CP-32-00387  
 )  
 Rachel Farley, as Trustee of the )  
 Louise Farley Revocable Trust )  
 Dated February 8, 2005; Drummond )  
 B. Farley; Rachel R. Farley; )  
 Carol E. Farley; Nancy E. Farley; )  
 )  
 Plaintiffs , )  
 vs. ) MOTION FOR SUMMARY JUDGMENT  
 )  
 The Church of the Harvest of )  
 Columbia, Inc., )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

**TO: JAHUE MOORE, ATTORNEY FOR PLAINTIFFS:**

You will please take notice that the Defendant will move before the presiding judge of the Eleventh judicial circuit at a time and place to be fixed by the Court for an Order granting summary judgment in favor of the Defendant on all causes of action and claims set out in the complaint. The motion is supported by the affidavit of Mr. Jumper a copy of which is attached hereto as Exhibit A and the original of which has been filed with the court. The grounds for the motion are:

1. The claims of the Plaintiff set out in the complaint are barred by the three year statute of limitations set out in S.C. Code Ann. §15-3-530; and
2. Any cause of action based upon an allegation of fraud with respect to Mrs. Louise Farley did not survive her death in 2012. Exhibit B is a copy of Mrs. Farley's death certificate.

Robert W. Dibble, Jr  
 Of Counsel  
  
 July 20, 2018  
 Chapin, South Carolina

s/ Jennifer Dowd Nichols, SC Bar 75916  
 Jennifer Dowd Nichols  
 Jeremy Martin  
 L.K. Harrell, III  
 Harrell, Martin & Peace, P.A.  
 PO Box 1000  
 Chapin, South Carolina 29036  
 Telephone: (803) 345-3353  
 Facsimile: (803) 345-9171

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CASE NO. 2016-CP-32-00387
	)	
Rachel Farley, as Trustee of The Louise	)	
Farley Revocable Trust Dated February	)	
8, 2005, and as the Personal	)	
Representative of the Estate of Louise	)	
Farley,	)	
	)	<b><u>AFFIDAVIT</u></b>
Plaintiffs,	)	
	)	
v.	)	
	)	
The Church of the Harvest of Columbia,	)	
Inc.,	)	
	)	
Defendant.	)	

Personally appeared before me Kenneth D. Jumper, Jr., who, being first duly sworn, deposed and said.

1. I am over the age of 21 and competent to give this Affidavit which is based on my personal knowledge. At all relevant times, I was, and still am, the pastor of the Church of the Harvest, Inc. (The Church) a non-denominational church located in Lexington, South Carolina.
2. Mrs. Louise Farley owned approximately 19 acres of land in Lexington County on the South Side of U.S. Highway 378. In 1994, The Church became interested in purchasing approximately 8 acres of her property. Mrs. Farley was represented by Mr. H. Ray Ham, Esq. The Church did not employ independent counsel. The Church and Mrs. Farley entered into an Option Agreement (the Agreement) dated October 11, 1994. The Agreement was prepared by Mr. Ham. Exhibit 1 is a true and accurate copy of the Agreement.
3. The Agreement required the Church to obtain a plat to be attached to the Agreement as Exhibit A. The Church commissioned and obtained such a plat. That plat is recorded at Slide 84 plat 7B.

KDJ

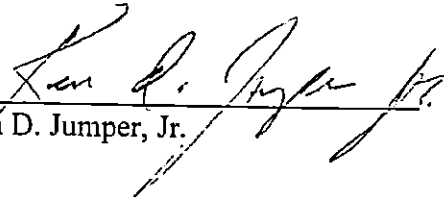
4. The 8 acres to be bought by the Church was broken down into 3 phases: Phase I (tract A) containing 2.864 acres; Phase II (Tract B) containing 2.584 acres; and Phase III (tract C-1 and C-2) containing 2.624 acres.
5. Mrs. Farley and the Church also executed a "memorandum of agreement" dated October 11, 1994 in which Mrs. Farley agreed to make a charitable contribution of \$50,000.00 to the church if the Church bought Phases I, II and III.
6. The remaining 10 acres of Mrs. Farley's property was located south of the 8 acres and would be landlocked if the Church purchased all of the 8 acres. To give Mrs. Farley access to her remaining property, the Agreement provided that Mrs. Farley would retain a 50' easement (herein referred to as "the 50 foot easement") over Phase I (tract A).
7. The Church closed the purchase of Phase I (tract A) in Mr. Ham's office on December 2, 1994. I attended the closing. Mrs. Farley executed and delivered to the Church a deed conveying 2.864 acres as shown on the plat recorded in Slide 84 and Plat 7B. The purchase price for Phase I was \$162,000.00. The Church paid Mrs. Farley \$40,000.00 (\$5,000 for the option agreement and \$35,000.00 at closing) and executed and delivered to her a note in the amount of \$122,000.00. To secure the payment of that note, the Church executed and delivered to Mrs. Farley a purchase money mortgage.
8. In 1998, the Church decided to exercise its option to purchase Phases II and III from Mrs. Farley. The Church notified Mrs. Farley of its intention to do so and commissioned and obtained a plat showing all three phases of the property being purchased. That plat is recorded in Book 436 at page 8. Mrs. Farley was represented by Mr. Ham in connection with the purchase and sale of Phases II and III. The Church did not employ independent counsel but paid a portion of Mr. Ham's attorney fees.
9. In August of 1998, the Church obtained a commitment from Carolina First for a loan ("The Carolina First Loan") to purchase phase II and III from Mrs. Farley.
10. Pursuant to the terms of the Agreement, the purchase price for each phase was \$162,000.00. The total purchase price for Phase II and Phase III was therefore \$324,000.00. Mrs. Farley reduced the purchase price for Phases II and III to \$274,000.00.
11. The closing of the purchase of Phases II and III took place in Mr. Ham's office on December 1, 1998. I attended the closing. Mrs. Farley executed and delivered to the

- Church a deed conveying Phase II containing 2.584 acres and Phase III containing 2.624 acres as shown on the plat recorded in Book 436 at page 8.
12. In exchange for the deed, the Church executed and delivered to Mrs. Farley a note in the amount of \$274,000.00. To secure the payment of that note, the Church executed and delivered to Mrs. Farley a purchase money mortgage.
  13. The Agreement contained a provision that, if the Church purchased Phase II, the Church had the option of either (i) increasing the 50 foot easement over Phase I to 66' in width or (ii) granting Mrs. Farley a 66' wide easement along the western boundary of Tracts B and C-1 for access to the remaining property owned by Mrs. Farley
  14. In the deed conveying Phases II and III to the Church, Mrs. Farley relocated the 50 foot easement by reserving to herself, her heirs and assigns, an easement for ingress and egress 66' in width over, to and along the western boundary of Phase II and Phase III as shown on the plat recorded in Book 436 at page 8.
  15. In January of 2001, the Carolina First Loan closed, and the Church paid in full the 1998 note in the amount of \$274,000.00 by check dated January 29, 2001, and Mrs. Farley satisfied the mortgage securing that note.
  16. The Church asked Mrs. Farley to subordinate her mortgage on Phase I to the lien of the mortgage securing the Carolina First Loan. Mr. Ham, as attorney for Mrs. Farley, advised the church that she would not do so.
  17. Under the terms of the note given by the Church to Mrs. Farley in connection with the purchase of Phase I, the Church had the right to prepay the note "at any time, without penalty." The Church exercised that prepayment right and paid in full the 1994 note in the amount of \$122,000.00, and Mrs. Farley satisfied the mortgage securing that note.
  18. In 2009 the Church constructed a permanent building which encroached approximately three (3) feet onto the sixty-six (66) foot easement reserved by Mrs. Farley in 1998.
  19. Between 2006 and 2008 the Church paved a portion of the sixty-six (66) foot easement reserved by Mrs. Farley and constructed an entrance into the easement from highway 378 and marked off several parking places on the paved portion of the easement.

[Remainder page left blank. Signature to follow]



FURTHER AFFIANT SAYETH NOT.

  
Ken D. Jumper, Jr.

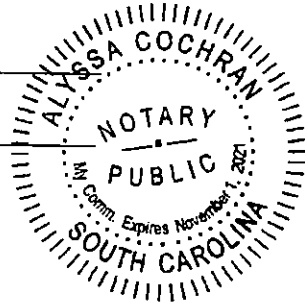
SWORN TO BEFORE ME THIS

20 day of July, 2018.



Notary Public for South Carolina

My Commission expires: 11/1/21



STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON ) OPTION AGREEMENT

THIS OPTION AGREEMENT is entered into on the 11<sup>th</sup> day of October, 1994, between LOUISE W. FARLEY, hereinafter referred to as "Seller", and CHURCH OF THE HARVEST OF COLUMBIA, INCORPORATED, hereinafter referred to as "Purchaser".

In consideration of the mutual agreements contained herein and the payment of monies as herein described, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

ARTICLE 1

Definitions

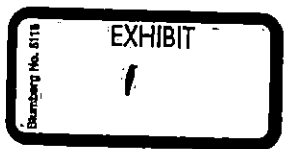
1.1 As used herein, the following terms shall have the following meanings:

(a) Agreement: This Option Agreement and exhibits hereto, any addenda and any modifications hereof or thereof.

(b) closing: Closing is the consummation of the purchase of a Phase.

(c) Date of Closing: The date of closing of Phase I shall be no later than ~~November 1~~ <sup>December 15, 1994</sup>, 1994. As to Phase II and Phase III of this Option Agreement, respectively, the closing shall be within thirty (30) days after the exercise of the option to purchase such Phase by the Purchaser.

(d) Defect of Title: Any impediment affecting



the marketability of the title to the property.

(e) Option Money: The sum of Five Thousand and No/100 (\$5,000.00) Dollars paid by Purchaser to Seller simultaneous with the execution hereof for the purpose of retaining the exclusive right to purchase the property as set out and described herein for Phase I, Phase II and Phase III.

(f) Permitted Encumbrances: Purchaser agrees to take title to the subject property subject to easements, restrictions, reservations, and right-of-ways of record, provided, that the Purchaser shall have thirty (30) days from the date of the execution of this Agreement to check the title to the subject property, and if there is anything of record affecting title, the Purchaser at that time may give written notice that the Purchaser does not wish to purchase the subject property under this Option Agreement, and the earnest money shall be returned to the Purchaser, provided, that the Purchaser shall not be reimbursed for the cost of any boundary survey or any other cost that the Purchaser may have incurred.

(g) Phase: One of three parcels which comprise the property. Phase I shall be shown as Tract A on a plat prepared for the Purchaser; Phase II shall be designated as Tract B on said plat; and, Phase III shall be designated as Tracts C-1 and C-2 on said plat. Said plat shall determine the boundaries of each Phase and said plat shall be obtained by the Seller and the boundaries mutually agreed upon between the parties prior to the closing of Phase I.

(h) Property: The real estate comprising Tracts A, B, C-1 and C-2 on a plat to be obtained by the Purchaser, and described in Exhibit A which is to be attached to this Option Agreement before the closing on Phase I.

(i) Purchase Price: The purchase price for each phase shall be One Hundred Sixty-two Thousand and No/100 (\$162,000.00) Dollars. The Seller agrees to finance the purchase of each phase as set out hereinafter.

(j) Purchaser: CHURCH OF THE HARVEST OF COLUMBIA, INCORPORATED.

(k) Seller: LOUISE W. FARLEY.

(l) Term: The total of the following, but no later than, as to each Phase, the closing for that Phase:

Phase I On or before ~~November 1, 1994;~~ <sup>December 1, 1994</sup> *WJF*

Phase II On or before January 1, 2001;

and,

Phase III On or before January 1, 2006.

(m) Exercise Period: The option to purchase each Phase must be exercised within the time periods set out below:

Phase II On or before December 1, 2000;

Phase III On or before December 1, 2005.

ARTICLE 2

Grant of Option

2.1 Grant: In consideration of the Option Money paid herewith, the receipt and sufficiency of which is hereby acknowledged, Seller has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto

Purchaser, the exclusive option and right to purchase during the term of this Agreement and any extensions thereof the property upon the terms and conditions set forth in this Agreement.

ARTICLE 3

Exercise of Option

3.1 Exercise: Purchaser may exercise the Option granted by this Agreement ("Option") and may purchase the property in the Phases as set out in Exhibit A (to be attached hereto) at a time in accordance with the exercise period and term and for the purchase price. Nothing herein contained shall be construed so as to create an obligation of the Purchaser to exercise all or any part of the Option. The Option shall be considered exercised for a particular Phase upon receipt by Seller of a Notice to Exercise of Option (the "Notice of Exercise") in the form attached hereto as Exhibit B.

3.2 Agreement of Purchase and Sale: Upon exercise of the Option by Purchaser as to either Phase, this Agreement shall become a contract of purchase and sale with regard to that Phase for which the Option is exercised and the Notice of Exercise shall become an addendum thereto.

3.3 Failure to Exercise: In the event that the Option to purchase a Phase is not exercised during the term for that Phase, Seller shall retain all monies paid up to that time by Purchaser. In addition, should the Purchaser not exercise the Option to Purchase Phase II, then, in that event, the Purchaser shall pay unto the Seller the sum of Forty Thousand and No/100 (\$40,000.00) Dollars in 24 consecutive monthly payments of ~~Twenty-five Hundred~~

*Handwritten initials/signature*

(51,666.00) ~~277K89~~

and No/100 (~~\$27,500.00~~) Dollars, with the first monthly payment due and payable on January 1, 2001. Should the Purchaser exercise its Option to Purchase Phase II, but does not exercise the Option to Purchase Phase III, then, in that event, the Purchaser shall pay unto the Seller the sum of ~~Forty Thousand~~ <sup>Twenty Seven Thousand</sup> and No/100 (~~\$40,000.00~~) <sup>\$27,500.00</sup> Dollars in 24 consecutive monthly installments of ~~Sixteen Hundred Sixty-six~~ <sup>\$ 833.33</sup> and 66/100 (~~\$1,666.66~~) <sup>277K89</sup> Dollars, with the first payment due and payable on January 1, 2001. In addition, the Purchaser shall have the obligation to pay all sums due according to any Note and Purchase Money Mortgage then in effect.

3.4 Assignment: This Agreement or the contract resulting from the exercise of this Option may not be assigned by the Purchaser unless prior consent to said Assignment is given by the Seller. Seller shall not arbitrarily and without good cause withhold permission for assignment, provided however, should there be an Assignment the Purchaser shall remain liable on all obligations to Seller created by this Agreement or the contract resulting from the exercise of this Option unless prior to any Assignment the Seller in writing releases the Purchaser from any obligation under this Agreement or the contract resulting from the exercise of the Option herein.

3.5 Time of Essence: Time is of the essence of this Agreement and the performance of the terms hereof.

ARTICLE 4

Deliveries, Representations and Warranties of Seller

4.1 (a) Conveyance of Title: At closing, Seller shall

deliver to Purchaser a good and marketable fee simple title to the property (or Phase thereof then purchased) by general warranty deed, without exceptions, free and clear of all liens.

(b) Seller and Purchaser agree that before the closing of the sale of the property contained in Phase I that the parties will execute any instruments or documents necessary to assure the right of ingress and egress for the Seller to other property of the Purchaser as set out hereinafter.

(c) It is understood and agreed between Purchaser and Seller that between Tracts A and B, and as a part of Tract A, the Seller shall retain a 50' wide easement for ingress and egress from U.S. Highway 378 to other property owned by the Seller that is behind Tracts A, B, C-1 and C-2.

(d) Should the Purchaser not exercise its Option to Purchase Phase II, then, in that event, the easement set out in subsection (c) herein shall be expanded to 58' with the Purchaser conveying unto the Seller on or before January 1, 2001 an easement of an additional 8' in width appurtenant to the easement herein set out in subsection (c) so that the total easement which the Seller shall have will be 58' in width.

(e) Should the Purchaser exercise its Option to Purchase Phase II, then, in that event, the Purchaser shall grant unto the Seller an additional 8' on each side of the easement described in subsection (c) so that the total width of the easement granted and/or reserved to the Purchaser is 66', or, at Purchaser's discretion, grant a 66' wide easement along the western boundary of

Tracts B and C-1 for egress and ingress by the Seller to other property owned by Seller behind Tracts ~~C-1~~<sup>ANT KBY</sup> and C-2. Said easement shall be appurtenant to and run with the land of the Seller, her successors or assigns.

(f) It is understood and agreed that the Purchaser shall be responsible for constructing and maintaining said easement in a reasonable state of repair for the purpose of ingress and egress by the Seller to Seller's other property behind the real property conveyed to the Purchaser, provided that should Purchaser not exercise its option under Phase II to purchase the property in Phase II, then the easement outlined in paragraphs (b), (c) and (d) hereinabove shall be granted or deeded to the Seller who shall then be responsible for maintaining said easement in a reasonable state of repair.

(g) It is understood and agreed that the Purchaser shall be given the right of first refusal on any property located behind Tracts A, B, C-1 and C-2 should Purchaser exercise its options to purchase the property contained in Phase II and Phase III. Upon Purchaser purchasing additional property from the Seller of property located behind property contained in Phase II and Phase III of this option, at that time reasonable access shall be mutually agreed upon for Seller to have reasonable access to her then-remaining property.

(h) It is understood and agreed that on the easement described herein in paragraphs (c) and (d) the Purchaser shall have the right for the installation of water and sewage lines, and any

other utility lines including but not limited to cable television lines, provided, that should the Purchaser exercise its right to have the easement for ingress and egress of Seller changed to the western boundary line of Tracts B and C-1, then, in that event, any cost of changing any utilities shall be the expenses of the Purchaser.

(i) Seller shall have reasonable access for water and sewer from Highway 378 to her property behind Tracts C-1 and C-2.

4.2 Failure of Good Title: If the Seller shall be unable to convey title to the property or any Phase, the Purchaser may elect to (a) accept such title as the Seller is able to convey without an appropriate abatement to the purchase price for defects or objections, or (b) elect to consider Seller in default and thereupon the Seller shall repay to the Purchaser all option money, and each party shall have no obligation to the other party.

4.3 Deed: Seller shall convey title to the property to Purchaser by general warranty deed. The deed must be witnessed and attested and bear tax stamps sufficient and suitable for recording in the State of South Carolina.

4.4 Title Insurance: Seller shall convey title to each Phase such as any reputable insurance company authorized to insure in South Carolina would approve and insure at ordinary regulated standard rates subject only to permitted encumbrances and insuring good and marketable fee simple title.

4.5 Rollback Taxes: It is understood and agreed by the Purchaser and Seller that there are no rollback taxes on the

property sold pursuant to this Option Agreement because the Purchaser is an eleemosynary organization. However, should there be any rollback taxes, Seller and Purchaser shall each be responsible for one-half of any rollback taxes on the property contained in Phase I, Phase II and Phase III, provided, that the Purchaser shall not be responsible for any amount of rollback taxes greater than \$5,000.00 on any phase.

*Change*

4.6 Default by Seller: In the event Seller fails to comply with the terms hereof within the stipulated time the Purchaser is to have the right to have the \$5,000.00 option money returned or to enforce the performance of this Agreement according to law.

4.7 Default by Purchaser: In the event Purchaser shall elect to exercise the options contained herein and thereafter default, Seller shall be entitled to retain the \$5,000.00 option money paid herewith and to enforce the performance of this Agreement according to law.

ARTICLE 5

Conditions Precedent

5.1 Inspection and Study Period: Purchaser shall have until December 1, 1994 to conduct such inspection and studies as Purchaser deems necessary upon the property. Should Purchaser determine from such inspection and studies that the property is not suitable for Purchaser's intended purposes, or should financing satisfactory to the Purchaser not be arranged on or before December 1, 1994, the Purchaser shall give written notice of same to the Seller, but Seller shall be entitled to keep the \$5,000.00 paid

simultaneously with the execution of this Agreement, and this Agreement will immediately be of no further force and effect and the parties hereto shall have no further rights, duties, or obligations hereunder.

ARTICLE 6

Payment of Purchase Price

6.1 Payment of Purchase Price for Phase I: In the event Purchaser purchases the property in Phase I, Purchaser shall pay to Seller at closing the sum of Thirty-five Thousand and No/100 (\$35,000.00) Dollars. The amount of \$5,000.00 paid by Seller to Purchaser simultaneous with the execution of this Agreement shall also be credited to the purchase price, making the total payment paid by Purchaser to Seller at closing the sum of Forty Thousand and No/100 (\$40,000.00) Dollars. The remaining amount of the consideration due and payable for the property contained in Phase I, the sum of One Hundred Twenty-two Thousand and No/100 (\$122,000.00) Dollars, shall be financed by the Seller with the Purchaser giving a Note and Purchase Money Mortgage secured by the property contained in Phase I, said Note being in the maximum amount of One Hundred Twenty-two Thousand and No/100 (\$122,000.00) Dollars. Said Note shall provide for an additional payment by the Purchaser of Forty Thousand and No/100 (\$40,000.00) Dollars on or before ~~January 1, 1995~~ <sup>June 27, 1995</sup>, and said Note shall provide that the remaining sum of Eighty-two Thousand and No/100 (\$82,000.00) Dollars shall be due and payable with interest at the annual rate of 9%, payable in 180 equal consecutive monthly installments, with

the first payment due and payable on January 1, 1996. Said Note shall also provide that there will be no penalty for early payment of the Note. Further, Seller agrees to subordinate said mortgage to a mortgage in an amount no greater than Three Hundred Twenty-five Thousand and No/100 (\$325,000.00) Dollars to be obtained by the Purchaser.

Note  
Change

6.2 Payment of Purchase Price for Phase II: In the event Purchaser exercises the option to purchase Phase II, Purchaser will pay to Seller at closing on Phase II the sum of Forty Thousand and No/100 (\$40,000.00) Dollars. The balance of the purchase price on Phase II shall be paid at closing by a Purchase Money Note (the "Note") secured by a Purchase Money Mortgage (the "Purchase Mortgage"). The Note for Phase II shall bear interest at the annual rate of 9%. Added to the balance due on the purchase price of Phase II shall be the sum of One Hundred Twenty-two Thousand and No/100 (\$122,000.00) Dollars plus any amount owed under the Note and Mortgage on Phase I and shall be payable in 120 equal consecutive monthly installments beginning on January 1, 2001.

6.3 Terms of the Purchase Mortgage for Phase III: In the event Purchaser exercises the option to purchase Phase III, Purchaser shall pay to Seller at closing the sum of Forty Thousand and No/100 (\$40,000.00) Dollars. The balance of the purchase price on Phase III shall be paid at closing by a Note and Purchase Money Mortgage in the amount of One Hundred Twenty-two Thousand and No/100 (\$122,000.00) Dollars plus any balance owed on the Note and Mortgage for Phase II. Said balance shall be paid in 60 equal

consecutive monthly installments, said payments including principal plus interest at the annual rate of 9%, with the first payment due and payable under said Note being January 1, 2006.

**ARTICLE 7**

**Miscellaneous**

7.1 **Notice:** Any notice required or permitted to be given is sufficient if it is in writing and sent by United States certified mail, return receipt requested, postage prepaid, to the party being given notice at the following address:

**Purchaser:** Church of the Harvest of  
Columbia, Incorporated  
Post Office Box 3771  
West Columbia, South Carolina 29171

**Seller:** Louise W. Farley  
1430 Pony Hill Road  
West Columbia, South Carolina 29169

7.2 The Seller agrees that the Purchaser shall have the right to landscape and use for parking the property contained in Phase II until January 1, 2001.

7.3 The Seller and Purchaser agree that the Purchaser shall, at Purchaser's expense, move the fence to the back of the property for Phase III.

*was  
did not  
do.*

7.4 **Hazardous Substances:** Seller acknowledges and warrants that she does not have any knowledge of anyone having deposited on any of the property in Phase I, Phase II and Phase III any hazardous waste, hazardous substances, hazardous materials, toxic substances, or other pollutants. The Purchaser is granted the right to make any tests Purchaser deems necessary between the date

of the execution of this Option Agreement and December 1, 1994. Should Purchaser ascertain that the property contained in either Phase I, Phase II or Phase III does not meet Purchaser's needs for any reason, then, upon written notice to the Seller of same, Seller shall return to Purchaser the \$5,000.00 earnest money paid with this Agreement, and the remainder of this Agreement shall be null and void.

7.5 Applicable Law: This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of South Carolina, and venue for any action shall lie in Lexington County, South Carolina.

7.6 Entire Agreement: This Agreement and the instruments referred to herein embody the entire agreement and understanding between the parties hereto relating to the subject matter hereof and replaces any prior agreement, and no modifications will be binding unless in writing and signed by Seller and Purchaser. Any terms of this Agreement which by their terms are to be performed after closing shall be deemed to survive closing.

7.7 Severability: If all or any portion of any provision of this Agreement is declared invalid by law, then the performance of the offending provision is excused by the parties. In the event the performance of the excused provision materially affects any aspect of this transaction, the party for whose benefit the excused provision was inserted in this Agreement shall have ten (10) days after the provision is declared invalid to terminate the Agreement. This Agreement shall then be null and void, and Seller shall

promptly refund the option money in accordance with Section 3.3.

7.8 Title and Captions: The titles or captions of the provisions of this Agreement are merely descriptive and are not representations of matters included or excluded from the provisions.

7.9 Additional Documents: Each of the parties hereto hereby agrees to execute, acknowledge (if necessary), and deliver such other documents as may be reasonably required by any title company, and memorandum of this Agreement in the form attached as Exhibit C hereto or such other form as is sufficient for recording and as the other party (or its designee) may reasonably require from time to time to carry out the intent and purpose of this Agreement.

7.10 Costs: Each party shall bear the cost of its own attorney's fees. Those costs herein expressly to be borne by a party shall be borne by that party. Otherwise, all costs associated with closings hereunder shall be paid by each of the parties, respectively, in accordance with ordinary and typical real estate practices.

IN WITNESS WHEREOF, the parties have set their hands and seals and have caused this Agreement to be executed in their names or by their duly authorized officers the day and year first above written.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H. Ray Han  
Dwight L. Tomman

SELLER:

Louise W. Farley  
LOUISE W. FARLEY

PURCHASER:

CHURCH OF THE HARVEST

H. Ray Han  
[Signature]

BY: [Signature]  
Pursuant to authorization  
of the board of trustees

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

PROBATE

PERSONALLY APPEARED before me the undersigned witness, who,  
being duly sworn, says that s/he saw the within named \_\_\_\_\_  
Louise W. Forley sign, seal and deliver  
the within written instrument and that s/he with the other witness  
whose signature appears above witnessed the execution thereof.

*Stanley J. Tomasi*  
Witness

Sworn to before me this 11<sup>th</sup>  
day of October, 1994.

*H. Ray Ham*  
Notary Public for South Carolina  
My Commission Expires: 8-20-99

EXHIBIT A

EXHIBIT B

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

NOTICE OF EXERCISE OF OPTION  
PHASE \_\_\_\_\_

TO: \_\_\_\_\_

You are hereby notified that \_\_\_\_\_  
hereby exercises the Option for Phase \_\_\_\_\_ of properties granted  
under that certain Option Agreement dated the \_\_\_\_\_ day of  
\_\_\_\_\_, 1994, by and between \_\_\_\_\_  
and \_\_\_\_\_. You are further notified that closing,  
pursuant to the terms and conditions of the aforementioned  
Agreement, shall occur no later than thirty (30) days from the date  
of this notice.

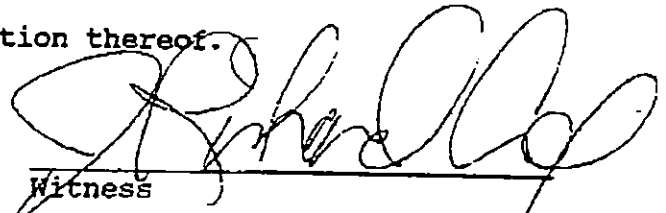
WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

PROBATE

PERSONALLY APPEARED before me the undersigned witness, who,  
being duly sworn, says that s/he saw the within named Kenneth R. Jumper, Jr. <sup>CHURCH OF</sup> THE HARVEST, P.  
\_\_\_\_\_ sign, seal and deliver the within written  
instrument and that s/he with the other witness whose signature  
appears above witnessed the execution thereof.

  
\_\_\_\_\_  
Witness

Sworn to before me this 11<sup>th</sup>  
day of October, 1994.

H. Ray Han  
Notary Public for South Carolina  
My Commission Expires: 5-2-99

ELECTRONICALLY FILED - 2018 Jul 20 2:50 PM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387





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

---


Personally appeared before me Clay Sturkie, who, being first duly sworn, deposed and said:

1. I am over the age of 21 and competent to give this Affidavit the contents of which are based on my personal knowledge.
2. I have examined the Deed records in Lexington County South Carolina with respect to the 10+- acres tract (the Property) owned by Mrs. Louise Farley and currently owned as a matter of record by the Louise Farley Revocable Trust Dated February 8, 2005. (the Trust)
3. According to the Deed records which I examined Mrs. Louise Farley conveyed the Property to the Trust by deed dated March 8, 2005 which is recorded in the Lexington County Deed Records in Deed Book 9960 at page 286. (the Deed)
4. Exhibit A attached hereto is a true and accurate copy of the Deed by which Mrs. Farley conveyed the property to the Trust.
5. I have also examined the Records of the Lexington County Probate Court with respect to the Estate of Louise Farley and Louise Watkins a/k/a Beulah Louise Watkins which was probated on May 9, 2012 as case no. 2012-ES-32-00557 (the Probate File)
6. The Probate File contained, inter alia, a petition for appointment (the Petition for Appointment) filed by Nancy E. Farley, 1158 North Shadow Drive, Mount Pleasant, S.C.

29464 and a Death Certification bearing State File Number 139-12-009821 (the Death Certificate) relating to Beulah Louise Farley and bearing the notation "Filed May 9, 2012 Probate Judge Lexington County, S.C."

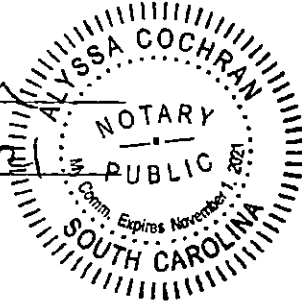
- 7. Exhibit B attached hereto is a true and accurate copy of the Petition for Appointment. Exhibit C attached hereto is a true and accurate copy of the Death Certificate.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Clay Sturkie

SWORN TO BEFORE ME THIS  
14 day of August, 2018.

Alyssa Cochran  
Notary Public for South Carolina  
My Commission expires: 11/1/2021



2005011783 FILED, RECORDED, INDEXED  
03/09/2005 10:25:20:700  
Rec Fee: \$11.00 St Fee: \$0.00 EXEMPT  
Co Fee: \$8.00 pages: 5  
Lexington County RDB Debra M. Gunter  
DEED Bk/Pg: 9960:286

STATE OF SOUTH CAROLINA ) THIS INSTRUMENT PREPARED WITHOUT  
 ) ABSTRACT VERIFICATION OR  
COUNTY OF LEXINGTON ) TITLE EXAMINATION

**DEED**

KNOW ALL MEN BY THESE PRESENTS, that I, Louise W. Farley, (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Five (\$5.00) Dollars to the Grantor paid by Louise Farley, as Trustee of The Louise Farley Revocable Trust Dated February 8, 2005 (hereinafter referred to as the "Grantee"), in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release, unto the Grantee, her Successors and Assigns, the following real property, to-wit:

All that piece, parcel or lot of land, with improvements thereon, containing One and Fifty-eight hundredths (1.58) acres, more or less, situate, lying and being in School District No. 2, County of Lexington, State of South Carolina, being about five miles West of West Columbia, as is fully shown and delineated by a plat thereof prepared by Karl B. Shuler, Surveyor, dated April 6, 1952, and recorded in Plat Book 28-G, at Page 60, in the Office of the Register of Deeds for Lexington County, SC; said parcel having such boundaries and measurements as shown on said plat.

TMS# Portion of 4527-03-024.

ALSO: A ten foot strip of land, lying and being in said County and State just East of the above described lot as is fully shown and delineated by said plat.

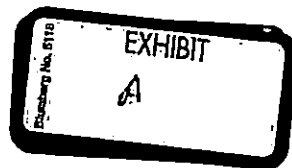
TMS# Portion of 4527-03-024.

ALSO: A ll that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County and State aforesaid, approximately five (5) miles from the City of Columbia, South Carolina, on the southern side of U.S. Highway No. 378 (formerly S.C. State Hwy. No. 43), being shown and designated as Lot No. Thirty-five (35) and being more definitely described and delineated upon a plat of the property of Samuel Luther Buff and Cora Buff, made by Karl B. Shuler, Surveyor, dated December 5, 1951, and recorded in Plat Book 29-G, at Page 67, in the Office of the Register of Deeds for Lexington County, SC; said Lot having such boundaries and measurements as shown on said plat.

TMS# 4527-03-025.

Lexington County Register of Deeds

Debra M. Gunter



**DERIVATION:** The above described parcels being that property conveyed to Grantor by deed of Estelle Schindledecker dated 2/15/55, and recorded 2/15/55 in the Office of the Register of Deeds for Lexington County, SC in Book 7-V, at Page 248.

**ALSO:** All that certain piece, parcel, lot or tract of land, with improvements thereon, situate, lying and being approximately four miles West of the City of West Columbia, County of Lexington, State of South Carolina, being known as Lot Thirty-six (36) as shown and delineated on a plat of lots laid out for Cora Buff and Samuel Luther Buff by Carl B. Shuler, Surveyor, dated December 5, 1951, and recorded in Plat Book 29-G, at Page 67, in the Office of the Register of Deeds for Lexington County, SC; said Lot having such boundaries and measurements as shown on said plat.

**DERIVATION:** Being that property conveyed to Grantor by deed(s) of (i) Cora Buff dated 1/15/65, and recorded 1/20/65 in the Office of the Register of Deeds for Lexington County, SC in Book 13-Q, at Page 95, and (ii) Drummond B. Farley dated 12/11/75, and recorded 12/12/75 in the Office of the Register of Deeds for Lexington County, SC in Book 106, at Page 107.

**TMS#: 4527-03-026.**

**ALSO:** All that certain lot of land, with improvements thereon, situate in Lexington School District No. 1, Lexington County, South Carolina, shown as Lot No. 34 on plat of the lands of Samuel Luther Buff and Cora Buff made by Karl B. Shuler, Surveyor, dated December 5, 1951, and recorded in Plat Book 29-G, at Page 67, in the Office of the Register of Deeds for Lexington County, SC; said Lot having such boundaries and measurements as shown on said plat.

**DERIVATION:** Being that property conveyed to Grantor by deed(s) of (i) Cora Buff dated 7/31/64, and recorded 8/5/64 in the Office of the Register of Deeds for Lexington County, SC in Book 13-E, at Page 443, and (ii) Drummond B. Farley dated 12/11/75, and recorded 12/12/75 in the Office of the Register of Deeds for Lexington County, SC in Book 106, at Page 110.

**TMS#: Portion of 4527-03-024.**

ALSO: All that certain piece, parcel, or tract of land, with improvements thereon, situate, lying and being in School District No. 1, County of Lexington, State of South Carolina, containing 2.03 acres, more or less, and being more particularly shown and delineated on a plat prepared by Larry W. Smith, RLS, of Associated Engineers and Surveyors, Inc., dated September 8, 1978, and recorded in Plat Book 168-G, at Page 101, #194, in the Office of the Register of Deeds for Lexington County, SC; said parcel having such boundaries and measurements as shown on said plat.

DERIVATION: Being that property conveyed to Grantor by deed(s) of (i) Nancy E. Farley dated 8/18/86, and recorded 11/19/86 in the Office of the Register of Deeds for Lexington County, SC in Book 850, at Page 202, and (ii) Karl S. Weldon dated 2/19/82, and recorded 3/2/82 in the Office of the Register of Deeds for Lexington County, SC in Book 504, at Page 253.

TMS#: 6400-03-097.

ALSO: All that certain piece, parcel, and lot of land, with all improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, located on Lake Murray, and being more particularly shown and delineated as Lot #1 on a plat prepared for Hoy Caughman by R.E. Collingwood, Jr., R.L.S. on April 7, 1962 and recorded in Plat Book 67-G, at Page 268, in the Office of the Register of Deeds for Lexington County, SC, further shown and delineated as Lot #1, .76+- acres on a plat prepared for Louise W. Farley and Phillip L. and Cheryl B. McCarthy by Carolina Surveying Service, Dennis G. Johns R.L.S. 8102 on August 11, 1982 and recorded in Plat Book 189-G, at Page 247, in the Office of the Register of Deeds for Lexington County, SC; said parcel having such boundaries and measurements as shown on said plats.

DERIVATION: Being that property conveyed to Grantor by deed of William H. James, Sr. dated 8/25/82, and recorded 9/11/82 in the Office of the Register of Deeds for Lexington County, SC in Book 535, at Page 238.

TMS#: 2219-01-007.

ALSO: All that certain tract of land, with improvements thereon, being and embracing 19.76 acres, situated on the Southeastern side of U.S. Highway 378, about 3-1/2 miles East of the Town of Lexington, in the County of Lexington, State of South Carolina, and being more fully shown and delineated upon a plat of the lands of George E. Seay and Annie Mae Corley prepared by C.D. Caughman, dated October 7, 1967, and recorded in Plat Book 95-G, at Page 11, in the Office of the Register of Deeds for Lexington County, SC; said tract having such boundaries and measurements as shown on said plat.

**LESS AND EXCEPT:**

- i) That 0.55 acre tract conveyed to Leo Otis Hall and Diane H. Hall by deed dated 6/1/90, and recorded 6/7/90 in the Office of the Register of Deeds for Lexington County, SC in Book 1602, at Page 76;
- ii) That 2.864 acre tract conveyed to the Church of the Harvest of Columbia, SC by deed dated 12/2/94, and recorded in the Office of the Register of Deeds for Lexington County, SC in Book 3272, at Page 315; and
- iii) That 2.584 acre tract, and that 2.624 acre tract, conveyed to the Church of the Harvest of Columbia, SC by deed dated 12/1/98, and recorded 12/9/98 in the Office of the Register of Deeds for Lexington County, SC in Book 4994, at Page 246.

DERIVATION: Being that property conveyed to Grantor by deed(s) of (i) Holmes C. Dreher, Special Referee, dated 3/7/75, and recorded 3/10/75 in the Office of the Register of Deeds for Lexington County, SC in Deed Book 59, at Page 286, and (ii) Drummond B. Farley dated 1/20/77, and recorded 2/14/77 in the Office of the Register of Deeds for Lexington County, SC in Book 180, at Page 340.

TMS#'s: 3500-04-031 & 3500-04-017.

GRANTEE'S ADDRESS: 1430 Pony Hill Rd.  
West Columbia, SC 29169

THIS conveyance is made subject to all covenants, restrictions, easements, rights-of-way, and other matters of record, and such matters as would be shown by a current Plat, affecting the within-described property.

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

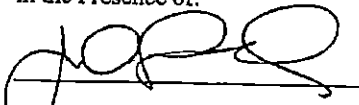
TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, her Successors and Assigns forever.

And the Grantor does hereby bind herself and her Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the Grantee, her Successors and Assigns, against Grantor and Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set her Hand and Seal this ninth day of March in the year of our Lord Two Thousand Five, and in the two hundred and twenty-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered  
in the Presence of:

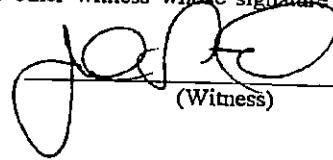
  
\_\_\_\_\_  
Julie A. Davis

  
\_\_\_\_\_  
Louise W. Farley

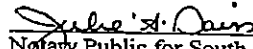
STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF LEXINGTON )

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor, Louise W. Farley, sign, seal and as her act and deed deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

  
\_\_\_\_\_  
(Witness)

SWORN to before me this 8th  
day of March, 2005.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 10/29/2013

Lexington County Register of Deeds

Debra M. Gunter



FORM #300PC (9/11)  
62-3-203, 62-3-301, 62-3-303, 62-3-401, 62-3-402,  
62-3-409 62-3-414, 62-3-601, 62-3-704,  
44-23-1000, 44-23-1120

*See order filed 2012-05-30-00627/BLLT  
Re: estate of Louise Watkins (deceased)*

- Decedent has a right to take legal action in this county because:
  - death
  - Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death
  - Decedent was domiciled in this county at date of death.
3. Venue for this proceeding is proper in this county because:

Domicile at date of Death: Lexington (County) South Carolina (State)

Age at Date of Death: 80 years

Date of Death: March 27, 2012

Date of Birth: November 10, 1931

Last Four Digits of Social Security Number: xxx-xx-8635

Name: Louise Farley (a/k/a Louise Watkins)

Decedent Information: Beulah Louise Watkins

2. Give your relationship to the decedent, if any, and your interest in this proceeding:
- Daughter

ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION

1. Applicant/Petitioner: Nancy Elaine Farley

Address: 1158 North Shadow Drive Mount Pleasant, SC 29464

Telephone: \_\_\_\_\_

- APPLICATION FOR
- PROBATE OF WILL
  - APPOINTMENT
  - FORMAL TESTACY
  - APPOINTMENT
  - FORMAL
- (Check any that apply)

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

Respondent(s) (if applicable)

Rachel Rebecca Farley  
vs  
Nancy Elaine Farley  
Petitioner

ONLY COMPLETE IF FILING PETITION FOR FORMAL TESTACY AND/OR APPOINTMENT

CASE NUMBER: 2012-ES-32-00557

IN THE MATTER OF Louise Farley (a/k/a Louise Watkins) (deceased)

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE PROBATE COURT

FILED  
MAY 9 2012

4. Names and addresses of devisees in the Will, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Addresses	Relationship to Decedent
Nancy E. Farley	12-18-1956	1158 North Shadow Drive, Mount Pleasant, SC	daughter
Carole E. Farley	12-18-1956	1158 North Shadow Drive, Mount Pleasant, SC	daughter
Bachel R. Farley	1954	8 Palm Court, Isle of Palms, SC	daughter
Branden Farley	5-10-1958	742 "C" Avenue, West Columbia, SC	son

(use additional sheet if necessary)

4A. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Addresses	Relationship to Decedent
Laurie Farley (Heritable Trust)			

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children)
- NO  YES If yes, please explain on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- NO  YES If yes, please explain on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- NO  YES If yes, please explain on page 3.
8. Has a Personal Representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- NO  YES If yes, please state details, including name and address of such Personal Representative, on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- NO  YES If yes, please state details, including name and address on page 3.
10. Have more than ten years passed since the decedent's death?
- NO  YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of \_\_\_\_\_ and real estate of about the value of \_\_\_\_\_. (A full inventory and appraisement, form #350PC, must be filed within 90 days.) If decedent was a non-resident, please attach South Carolina Tax Commission form ET-101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s) other than the one(s) attached hereto, relating to property in this State?

NO  YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- The original is attached.  
 The original is in the Court's possession.  
 An authenticated copy of a will probated in another jurisdiction is attached.  
 An authenticated copy of a will not probated in another jurisdiction is attached.  
 The will is lost, destroyed, or otherwise unavailable; however, a description of its contents is attached.

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

YES  NO If no, please explain on page 3.

3. The date of execution of the will was: March 13, 2009  
codicil(s): \_\_\_\_\_

4. Are you aware of any instrument or document amending or revoking the will?

NO  YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

YES  NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

YES  NO If no, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTION I AND II HERE.  
(If more space is required, use additional sheet.)

Laurie B. Farley changed name back to maiden name, Beulah L. Watkins.  
Rachel R. Farley has not come forth with original will and she has not been given as sufficient in advising Parole and Nancy Farley of probate address of will, probate, and division of property.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Nancy Elaine Farley

2. Priority for this appointment is:

- named as Primary Personal Representative in Will  
 named as Alternate Personal Representative in Will  
 nominee of above Primary Personal Representative in Will  
 nominee of above Alternate Personal Representative in Will  
 surviving spouse of decedent who is devisee of decedent or nominee of said spouse  
 other devisee of decedent (describe): \_\_\_\_\_ or nominee of said devisee  
 surviving spouse of decedent or nominee of said spouse  
 other heir of decedent (describe): DAUGHTER  
 creditor (Forty-five days after death must have passed), or nominee of creditor.  
 other (describe): \_\_\_\_\_

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

Rachel Rebecca Farley

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION:

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 1<sup>st</sup> day of

May, 2012

Donna R. Corley

Notary Public for South Carolina

My Commission Expires: 4-6-15

Signature: Nancy E. Farley

Name: NANCY E. FARLEY

Address: 1158 North Shadow Drive  
Mount Pleasant, SC 29464

E-mail: farleyne@bellsouth.net

Telephone (O): (843) 530-5953

(H): \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be  GRANTED  DENIED informally

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Daniel R. Eckstrom, Probate Court Judge

---

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

- the decedent died intestate. The heirs are:
- the decedent died testate. IT IS HEREBY ORDERED, that the Last Will and Testament of the above-named decedent, dated \_\_\_\_\_, be admitted formally to probate.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Daniel R. Eckstrom, Probate Court Judge

SEE ATTACHED ORDER

---

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED, that the above Application/Petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Daniel R. Eckstrom, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Nancy E. Farley

Name: Nancy E. Farley

Address: 1158 North Shadow Drive  
Mount Pleasant, SC 29464

E-mail: farley.ned@bellsouth.net

Telephone (O): (843) 530-5953

(H): \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

Attorney: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_



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

---

TO: JAHUE S. MOORE, ATTORNEY FOR THE PLAINTIFFS:

You will please take notice that the Defendant hereby supplements and amends its Motion for Summary Judgment filed on July 20, 2018. The Motion is supported by the Affidavits of Mr. Jumper and the Affidavit of Mr. Sturkie. The grounds for the motion are:

1. The claims of the Plaintiffs set out in the complaint are barred by the three year statute of limitations set out in S.C. Code Ann. §15-3-530; and
2. Any cause of action based upon an allegation of fraud with respect to Mrs. Louise Farley did not survive her death in 2012.
3. Neither the Plaintiffs nor any individual Plaintiff has standing with respect to the causes of action set out in the complaint other than those arising out of the alleged obstruction on to the 66' easement, and those are barred by the three year statute of limitations.

Robert W. Dibble, Jr.,  
Of Counsel

August 16, 2018  
Chapin, South Carolina

s/Jennifer Dowd Nichols, SC Bar #75916  
L.K. Harrell, III  
Jeremy C. Martin  
Jennifer Dowd Nichols  
Attorneys for the Defendant  
Harrell, Martin & Peace, P.A.  
Post Office Box 1000  
Chapin, South Carolina 29108  
Telephone: (803) 345-3353  
Facsimile: (803) 345-9171

ELECTRONICALLY FILED - 2018 Aug 16 1:07 PM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387

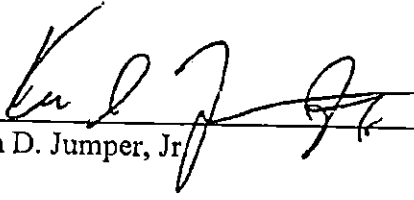
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CASE NO. 2016-CP-32-00387
	)	
Rachel Farley, as Trustee of the	)	
Louise Farley Revocable Trust	)	
Dated February 8, 2005; Drummond	)	
B. Farley; Rachel R. Farley;	)	
Carol E. Farley; Nancy E. Farley;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

Personally appeared before me Kenneth D. Jumper, Jr., who, being first duly sworn, deposed and said.

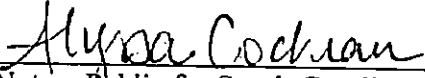
1. I am over the age of 21 and competent to give this Affidavit which is based on my personal knowledge.
2. The document attached hereto as Exhibit A is a true and accurate copy of a letter dated November 17, 2005 which was brought to the Church.
3. Exhibit B attached hereto is a true and accurate copy of Exhibit A with my handwritten response attached.
4. Exhibit C attached hereto is a true and accurate copy of a memo from HB Engineering, Inc. relating to the construction of the new parking lot (project 03108).
5. Exhibit D is a true and accurate copy of a copy from the Defendant's file of a letter dated January 4, 2006 from HB Engineering, Inc., to Mrs. Louise Farley.
6. Following the letter attached hereto as Exhibit D, the Defendant did not receive any complaints from Mrs. Farley concerning the water discharge from the new parking lot which was completed sometime prior to 2008.

[signature page to follow]

FURTHER AFFIANT SAYETH NOT.

  
Ken D. Jumper, Jr

SWORN TO BEFORE ME THIS  
17 day of August, 2018.

  
Notary Public for South Carolina  
My Commission expires: 11/1/21

Thursday, November 17, 2005

Dear Pastor Ken Jumper,

In this past week I have observed the runoff from your construction of the new Harvest Church. The silt and mud has overrun the flimsy plastic black fence for acres along the line of the start of my property. My son walked the once graveled road on my property and reported your water runoff had washed most of the gravel away.

The two catch basins at the lower end of your future parking lot are inadequate to channel water from your parking lot and building. You have a very dangerous new gulley that would be a serious danger to anyone, child or adult, unfortunate enough to fall in. A large deep gulley with a pipe underneath has washed water and exposed stumps on my property your landscaping man agreed to have hauled off years ago. He apparently just buried the stuff on my property.

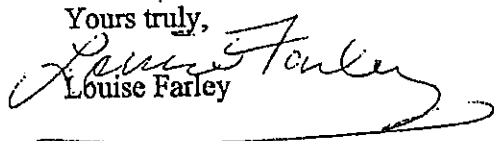
I need approved plans for your construction that will prevent damage to my back property.

I need to meet with you to decide on new survey markers between our properties.

Asphalt will add pollution to the runoff water and also increase the volume of water flowing down.

I will deliver this by hand and hope we can meet to discuss these issues.

Yours truly,

  
Louise Farley



COH 0000136

MTLF00094

Thursday, November 17, 2005

Dear Pastor Ken Jumper,

In this past week I have observed the runoff from your construction of the new Harvest Church. The silt and mud has overrun the flimsy plastic black fence for acres along the line of the start of my property. My son walked the once graveled road on my property and reported your water runoff had washed most of the gravel away.

The two catch basins at the lower end of your future parking lot are inadequate to channel water from your parking lot and building. You have a very dangerous new gulley that would be a serious danger to anyone, child or adult, unfortunate enough to fall in. A large deep gulley with a pipe underneath has washed water and exposed stumps on my property your landscaping man agreed to have hauled off years ago. He apparently just buried the stuff on my property.

I need approved plans for your construction that will prevent damage to my back property. I need to meet with you to decide on new survey markers between our properties.

Asphalt will add pollution to the runoff water and also increase the volume of water flowing down.

I will deliver this by hand and hope we can meet to discuss these issues.

Yours truly,

*Louise Farley*  
Louise Farley

*Hi Farley -*

*Thanks for bringg this matter to my attention. With Chris & I, architect and Nick Buzzell have been made aware of your concerns.*

*We will follow thru to be sure these issues are corrected*



COH 0000137

## MEMO

To: Craig Otto  
From: Tom Britt  
Project: Church of the Harvest  
HBE#: 03108  
Date:

Re: Ms Farley's Concerns

---

I visited the site this afternoon to observe the erosion problems pointed out by Ms Farley. I found the following:

1. There is a significant erosion problem starting at the end of the existing paved parking area closest to the teen center. The bottom slope has completely failed along the path of stormwater. The silt fence at the base of the slope is down. Sediment is visible along the natural path of stormwater into Ms Farley's property.
2. There are three locations along the back of the property where stormwater is leaving the site causing a moderate amount of sediment to be deposited on her property. The silt fence is down in these locations.

All of these problems are related to not having the parking lot curb and drainage system in place. If the parking lot construction will not start soon, I recommend the following temporary measures:

1. Create a temporary rip rap channel on the lower slope that has failed. Establish grass on the adjacent disturbed areas.
2. Create a temporary sediment basin by placing rip rap along the base of the slope at the natural draw closest to the teen center.
3. Create a temporary berm along the back of the future parking lot to direct the stormwater to the sediment basin in item 2.
4. Restore the silt fence throughout.

If this is the path we want to take, I can prepare a drawing showing these features. All of this work except restoring the silt fence would be additional to the original contract price.



# HB Engineering, Inc.

site and environmental consultants

---

January 4, 2006

Mrs. Farley  
c/o Darrell Roland  
Church of the Harvest  
PO Box 1934  
Lexington, SC 29071

Re: Stormwater and Erosion Concerns

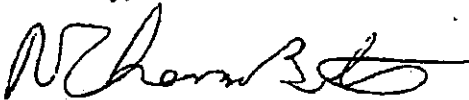
Dear Mrs. Farley:

I am the civil engineer for the current construction project at the Church of the Harvest. I designed the stormwater and erosion control system for the project. Following your letter to the Church, I was asked to inspect the site and make recommendations to correct any problems that I may find.

I visited the site on November 30, 2005 and found several areas that needed attention. Following that visit, I wrote a letter to the church listing my findings and recommendations. As a result the silt fence has been repaired and the contractor has committed to properly maintaining it for the duration of the project. The Church has instructed the contractor to construct a temporary berm along the back of the parking lot to direct all of the run-off to the controlled discharge point. It is my opinion that, most of your concerns are related to the construction not being completed. Once construction is completed in the Spring, these problems will not exist.

I will continue to make site visits and make any needed recommendations to the Church. If you have any questions, please feel free to call.

Sincerely,



R. Thomas Britt, P.E.  
Project Civil Engineer



---

720 Old Cherokee Road • Lexington, SC 29072 • (803) 957-7027 • (803) 957-1800 Fax • hbengr@acl.com

COH 0000140

MTLF00097

ELECTRONICALLY FILED - 2018 Aug 17 4:20 PM - LEXINGTON - COMMON PLEAS - CASE#2016CP3200387

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
 	)	
Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005, and as the Personal Representative of the Estate of Louise Farley,	)	C.A. No.: 2016-CP-32-00387
	)	
	)	
	)	
Plaintiff,	)	<b>MEMORANDUM IN OPPOSITION</b>
vs.	)	<b>OF DEFENDANT'S MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
The Church of the Harvest of Columbia, Inc.)	)	
	)	
Defendant.	)	
	)	

**STATEMENT OF THE FACTS**

Prior to the events at issue herein, Farley owned approximately 19 acres of land in Lexington County, South Carolina, which land is adjacent to land owned by the Church. In 1994, Farley signed an agreement with the Church whereby the Church purchased about 8 acres of Farley's land and creating an express easement in favor of Farley to traverse the land purchased by the Church in order for Farley to access the remainder of her land.

In 2006, the Church built a parking lot, a portion of which encroached on the Easement. In 2009, the Church built a structure, a portion of which encroached on the Easement. In both instances, the Church's encroachment was unintended, and to the extent that Farley knew of the encroachments, she did not take any action.

The parties' relationship deteriorated, and Farley sued the Church in February 2016, alleging breach of contract, negligence, and fraud. The Church filed a motion for summary judgment alleging, inter alia, that Farley's claims are time barred pursuant to S.C. Code Ann. § 15-3-530.

**QUESTION PRESENTED**

Does the Church's argument have any merit?

## DISCUSSION OF AUTHORITY

### I. The Church Cannot Establish That Farley's Easement Was Terminated

As an initial matter, it is clear that Farley has an express easement. *See Ward v. Evans*, 387 S.C. 401, 409, 693 S.E.2d 7, 11 (Ct. App. 2010) ("A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the land." (internal quotation marks omitted)).

Equally clear, however, an express "easement may be terminated by the servient estate owner's adverse use or possession of the easement area for the period of prescription." Jon W. Bruce & James W. Ely Jr., *The Law of Easements & Licenses in Land* ' 10:25 (Westlaw database updated Mar. 2018).

"To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for [the statutory period<sup>1</sup>]; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse or under claim of right." *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015). "[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Id.* at 306, 772 S.E.2d at 170.

---

<sup>1</sup>Although some recent case law states that the statutory period is 20 years, *see Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015); *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016), the applicable statute currently provides for a 10-year period, *see* S.C. Code Ann. § 15-3-340 ("No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.").

In the instant case, the Church's claim of prescription fails as a matter of law. First, the Church's adverse use of the property falls short of the statutory period, having begun sometime *after* February 2006, i.e., 10 years prior to the filing of the instant lawsuit. *See* Bruce & Ely, *The Law of Easements & Licenses in Land* ' 5:17 n.1 (citing, inter alia, *Frazier v. Smallseed*, 384 S.C. 56, 65, 682 S.E.2d 8, 13 (Ct. App. 2009) (evidence failed to demonstrate use of roadway for prescriptive period of 20 years); *Godfrey v. Van Harris Realty, Inc.*, 72 N.C. App. 466, 325 S.E.2d 27, 29 (1985) (evidence showed that adverse use fell several months short of 20-year period)).

Second, the Church's use was not adverse because it was with Farley's permission. *See, e.g., Bundy*, 412 S.C. at 307-08, 772 S.E.2d at 171-72 (evidence was sufficient to support special referee's finding that claimant's use of disputed road to access his property was permissive, and thus, defeated claimant's acquisition of a prescriptive easement).

Therefore, for either reason, the Church cannot prove that it terminated Farley's easement by prescription. At worst, there exists a genuine issue of material fact as to one or both of the arguments raised herein. In either event, the Church is not entitled to summary judgment in this matter.

## **II. The Church's Assertion Of The Three Year Limitations Period Is Without Merit**

Undeniably, there is a three-year limitations period for claims of breach of contract and negligence. *See* S.C. Code Ann. § 15-3-530(1); *see also Maher v. Tietex Corp.*, 331 S.C. 371, 376-77, 500 S.E.2d 204, 207 (Ct. App. 1998) (the claim accrues when the plaintiff discovered or should have reasonably discovered the alleged breach).

However, if and to the extent that Farley seeks to establish her rights with regard to the Easement, then the statutory period required for adverse possession applies. *See* Bruce & Ely, *The Law of Easements & Licenses in Land* ' 5:17 (Westlaw database updated Mar. 2018) ("In most jurisdictions, the period of prescription is derived by analogy from the statute of limitations governing actions to recover the possession of land. Courts typically rely on the adverse possession statute and assume, without discussion, that this measure determines the prescriptive period." (footnotes omitted)). In South Carolina, the limitations period for adverse possession is 10 years. *See* S.C. Code Ann. § 15-3-340; *see also supra* note 1.

In the instant case, regardless of the labels attached to the various counts of Farley's complaint against the Church, the gravamen of those allegations is Farley's right to the Easement and the Church's encroachment thereon. As summarized by the South Carolina courts,

[i]n determining whether a proceeding is an action for the recovery of real property within the meaning of the statute of limitations, the pleadings as a whole must be considered. *Winn v. Grantham*, 263 S.C. 368, 371, 210 S.E.2d 602, 603 (1974). "The character of an action is not to be determined by the terminology which the pleaders may chance to give to it." *Walsh v. Evans*, 112 S.C. 131, 136, 99 S.E. 546, 548 (1919).[<sup>2</sup>] "[W]hen a defendant's right to property is attacked and in his answer he raises the 'flag of dominion' the issue of recovery has been established." *Winn*, 263 S.C. at 372, 210 S.E.2d at 604.

*Portside Owners Ass'n, Inc. v. South Beach Racquet Club, Inc.*, No. 2008-UP-153, 2008 WL 9837329, at \*2 (S.C. Ct. App. Mar. 11, 2008) (unpublished) [copy enclosed].

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<sup>2</sup>*Accord Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC*, 413 S.C. 615, 620, 776 S.E.2d 426, 429 (Ct. App. 2015) (quoting *Seebaldt v. First Fed. Sav. & Loan Ass'n*, 269 S.C. 691, 692, 239 S.E.2d 726, 727 (1977)).

Here, it is clear that Farley seeks to defend her right to the Easement and fend off the attacks thereon by the Church's encroachments. Therefore, the 10-year limitations period of S.C. Code Ann. § 15-3-340 applies to Farley's claims against the Church rather than the 3-year limitations period of S.C. Code Ann. § 15-3-530. *See, e.g., Portside Owners Ass'n, Inc.*, 2008 WL 9837329, at \*2 ("The gravamen of Portside's complaint is to remove any cloud on its title in the 50' Tract and affirm its exclusive right to possession of the property. Portside attacked South Beach's use of the property as a violation of Portside's exclusive rights. As an action for the recovery of real property, the action is governed by § 15-3-340[.]"); *see also Winn*, 263 S.C. at 370, 372, 210 S.E.2d at 603, 604 ("Appellants . . . alleged that respondents were trespassing and encroaching upon their property. Appellants and respondents own adjoining lots and appellants alleged that respondents 'erected a building, parking lot and concrete drainage ditch on a portion of the property claimed and/or occupied by them, and in doing so have taken possession of a strip of property belonging to Plaintiffs"; "Considering the pleadings as a whole, there can be no doubt that the . . . action was one to recover possession of the land involved.").

Respectfully submitted,

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore (SC Bar #4063)

Post Office Box 5709

West Columbia, South Carolina 29171

Phone: (803) 796-9160

Fax: (803) 791-8410

jake@mttlaw.com

*August 20, 2018*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

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

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

Plaintiffs, )

vs. )

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

The Church of the Harvest of Columbia, Inc.)

Defendant. )

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

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

MOORE TAYLOR LAW FIRM, P.A.

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

ATTORNEY FOR THE PLAINTIFF  
RACHEL FARLEY

West Columbia, South Carolina  
May 20, 2019

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

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

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

Plaintiffs, )

vs. )

**MOTION FOR RECONSIDERATION**

The Church of the Harvest of Columbia, Inc.)

Defendant. )

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

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

MOORE TAYLOR LAW FIRM, P.A.

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

ATTORNEY FOR THE PLAINTIFF  
RACHEL FARLEY

West Columbia, South Carolina  
August 2, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2016-CP-32-00387

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

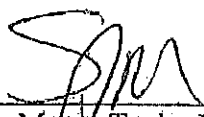
v.

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

NOTICE OF APPEAL

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

September 23, 2019.

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

Other Counsel of Record:

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

6/27/2018

PASTOR KEN JUMPER

- 1 A. That's correct.
- 2 Q. And I believe Sunset Boulevard is US Highway  
3 378?
- 4 A. That's correct.
- 5 Q. The real estate that we're talking about today I  
6 believe would have been acquired from Ms. Louise  
7 Farley in October of '94, is that correct?
- 8 A. The first parcel. Yes, sir.
- 9 Q. How many parcels have you acquired?
- 10 A. Three parcels.
- 11 Q. Were they all acquired at the same time or at  
12 different times?
- 13 A. Different times.
- 14 Q. When was the first one acquired, October of '94?
- 15 A. Yes, sir.
- 16 Q. When was the second one acquired?
- 17 A. To my best recollection, '98.
- 18 Q. When was the third one acquired?
- 19 A. Well, the second and the third were acquired at  
20 the same time.
- 21 Q. Now, after you acquired the property, these  
22 three parcels from Mrs. Farley, did she still  
23 own other property adjacent to the church?
- 24 A. Yes.
- 25 Q. And does her estate still own other property

**MARY H. OCCHIPINTI, COURT REPORTER**  
75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

MTLF000108

6/27/2018

PASTOR KEN JUMPER

1 adjacent to the church?

2 A. To my knowledge, yes.

3 MR. DIBBLE: Jake, just for clarification, the  
4 Estate, the name of the defendant was taken out  
5 because the estate never had title to the  
6 property. The property was deeded by Mrs.  
7 Farley to her Trust, which is the plaintiff in  
8 this case.

9 MR. MOORE: Sure.

10 MR. DIBBLE: Not the estate.

11 MR. MOORE: Sure.

12 Q. The property was basically, at some point in  
13 time, the adjacent property went to the Farley  
14 Trust, is that correct?

15 A. As far as I understand, yes.

16 Q. Did The Church of The Harvest get its three  
17 parcels from the Trust or did they get them from  
18 Mrs. Farley?

19 A. Mrs. Farley.

20 Q. Were you part of the negotiations dealing with  
21 the acquisition of that property?

22 A. Yes, sir.

23 Q. When did you join the church?

24 A. I started the church in 1989.

25 Q. When did you become the pastor?

**MARY H. OCCHIPINTI, COURT REPORTER**

**75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com**

MTLF000109

6/27/2018

PASTOR KEN JUMPER

1 Q. Do you know where the fence is?

2 A. I've asked several of our guys of that story and  
3 the fence was never built for her.

4 Q. You say -- what do you mean, the fence was never  
5 built for her.

6 A. In the document I read, there was a request to  
7 move it and it was not moved. I believe I have  
8 an explanation of why it wasn't, but ...

9 Q. Well, I just want to make sure. You say there  
10 was a request to move the fence, right?

11 A. Yes, sir.

12 Q. Now, there actually wasn't a request to move the  
13 fence, there was an agreement to move the fence.

14 A. Okay. Fair enough. Yes, sir.

15 Q. All right. And even though the church had an  
16 agreement to move the fence, the fence was never  
17 moved?

18 A. That would be correct.

19 Q. Do you now know where the fence is?

20 A. I'm not sure I understand your question.

21 Q. If I were to talk about the fence, do you know  
22 the fence I'm talking about?

23 A. Not exactly. No, sir.

24 Q. Has there ever been any effort on the part of  
25 the church to identify that portion of the fence

**MARY H. OCCHIPINTI, COURT REPORTER**

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

MTLF000110

6/27/2018

PASTOR KEN JUMPER

1 which was agreed to be moved but wasn't moved?

2 A. It was never an ongoing conversation between Ms.  
3 Farley and us.

4 Q. Well, one thing is for certain, it was in the  
5 agreement between Ms. Farley and the church?

6 A. That's correct.

7 Q. And the church did not honor its agreement?

8 A. Per the wording of that, that's correct, sir.

9 Q. Well, the wording is what we go by, right?

10 A. Well, if you understood and will understand Ms.  
11 Farley and I's relationship, it was an ongoing  
12 conversation and friendship there.

13 Q. Well, the wording, though, is what governs the  
14 relationship, right?

15 A. I understand your point.

16 Q. That would be true, wouldn't it?

17 A. Yes, sir.

18 Q. All right. And the church made a commitment to  
19 move the fence?

20 A. On that paper. Yes, sir.

21 Q. And that paper was the agreement, right?

22 A. That's correct.

23 Q. And the church never moved the fence it agreed  
24 to move?

25 A. According to that, yes, sir.

**MARY H. OCCHIPINTI, COURT REPORTER**

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

MTLF000111

6/27/2018

PASTOR KEN JUMPER

1 Q. Now, did Mrs. Farley ever tell you it's okay  
2 with me if you don't move the fence?

3 A. I do not remember that conversation.

4 Q. Do you know of anybody that Mrs. Farley  
5 basically said, it's okay with me if you don't  
6 move the fence?

7 A. I'm not for sure.

8 Q. Well, do you know of any written documentation  
9 where Mrs. Farley ever agreed for the fence not  
10 to be moved?

11 A. I do not.

12 Q. The fence that we're talking about, how big is  
13 it?

14 A. I do not know, sir.

15 Q. Now, is it my understanding that there was an  
16 easement that was to be provided?

17 A. Yes.

18 Q. What was the easement supposed to do?

19 A. Give her access to her property behind us.

20 Q. Now, when you say access, what do you mean by  
21 that?

22 A. I guess we would define access as the ability to  
23 get to it.

24 Q. Was the access to be limited in any way?

25 A. It's a 50 foot easement later moved to 66 foot

**MARY H. OCCHIPINTI, COURT REPORTER**

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

MTLF000112

6/27/2018

PASTOR KEN JUMPER

1 easement.

2 Q. So there was to be a 66 foot easement that would  
3 go across the property that she deeded you and  
4 that easement was for her to be able to access  
5 her property, correct?

6 A. Yes, sir.

7 Q. And the easement was to be a 66 foot easement?

8 A. On the west boundary. Yes, sir. After phase  
9 two and three.

10 Q. Did you ever give her the easement that was  
11 agreed to?

12 A. She has that easement. Yes, sir.

13 Q. So she presently has an easement to this day,  
14 but she's dead, so it would belong to what, the  
15 Trust?

16 A. So you're saying --

17 Q. Do you recognize that the Trust presently is the  
18 owner of the access easement that we're talking  
19 about?

20 A. The 66 foot on the west boundary?

21 Q. Yes.

22 A. Yes, sir.

23 Q. And the purpose of that 66 feet is so that  
24 whoever has the property that the Trust now owns  
25 can basically freely access the property?

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MTLF000113

6/27/2018

PASTOR KEN JUMPER

- 1 A. Yes, sir.
- 2 Q. It's an -- it's an easement for ingress and  
3 egress?
- 4 A. Correct.
- 5 Q. If I were to look at this plat, this appears to  
6 be a plat prepared for Louise W. Farley,  
7 Trustee. And it appears to be dated March 11,  
8 2014. Does the easement show up on that plat?
- 9 A. 2014. I'm trying to find 378.
- 10 MR. DIBBLE: 378. Do you want this on the  
11 record or off the record, Jake?
- 12 MR. MOORE: Just let him look at it and see if  
13 he can tell.
- 14 A. Is this 378?
- 15 MR. DIBBLE: No, 378, this is the north arrow  
16 going this way. This is the church property  
17 here. This is Sunset Boulevard here.
- 18 A. I got it. Your question again, please?
- 19 Q. Is the easement basically shown on this plat?
- 20 A. That's correct.
- 21 Q. All right. So if I look -- you're looking at it  
22 basically with the seal on your left. So if I  
23 look at the property as shown on here, it would  
24 basically be between the property line and the  
25 dotted line on your right side, correct?

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MTLF000114

6/27/2018

PASTOR KEN JUMPER

1 A. That's correct.

2 MR. MOORE: Could you mark this for me, please,  
3 Mary.

4 (Plaintiff's Exhibit Number 1 was marked for  
5 identification purposes.)

6 Q. Now, sir, if I look at the easement area which  
7 you have just identified for me, there appear to  
8 be all these lines down here and what appears to  
9 be islands of some sort drawn. Do you see all  
10 of that?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes, sir. Sorry, no grunts. I got you.

14 Q. That's okay. People grunt at me all the time.  
15 And when they grunt, uh-huh and huh-uh sound  
16 exactly the same when she's trying to transcribe  
17 it. What are those little lines?

18 A. Parking berms.

19 Q. Is that actually on the ground?

20 A. Is the berm on the ground?

21 Q. Yeah. This, is it on the ground?

22 A. Yes, sir.

23 Q. Well, sir, there appears to be a part of a  
24 parking lot now inside the easement, doesn't  
25 there?

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MTLF000115

6/27/2018

PASTOR KEN JUMPER

1 A. Well, that would be correct. Yes, sir.

2 Q. Well, if there is a parking -- if people park  
3 where the parking lot has been constructed --

4 A. Uh-huh.

5 Q. -- it's impossible to use the easement for  
6 ingress and egress, isn't it?

7 A. Yes, sir.

8 Q. Well, who -- when was that parking lot built  
9 inside the easement?

10 A. I do not know that date.

11 Q. Would it have been before or after the easement  
12 was given to the Farleys?

13 A. After.

14 Q. Can you give me a rough idea of how long it is  
15 that you've had a parking lot constructed inside  
16 the easement?

17 A. Well, that parking lot has probably been there  
18 eight years, ten years.

19 Q. Why did you do that if you knew there was an  
20 easement there?

21 A. Well, our -- my thought was we were creating --  
22 you know, opening out that end of the road  
23 there, off of 378 during that easement.

24 Q. When you -- were you involved in the design of  
25 this parking lot that is located inside of the

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MTLF000116

6/27/2018

PASTOR KEN JUMPER

1 easement?

2 A. Yes, but not exclusively.

3 Q. Who else from the church would have been  
4 involved in the decision to place a parking lot  
5 inside the easement?

6 A. Well, we had an architect in there and --

7 Q. Who would that have been?

8 A. The architect was Craig Otto.

9 Q. Who else would have been involved in the  
10 decision to place a parking lot inside the  
11 ingress and egress easement?

12 A. A couple of our elders at that time.

13 Q. Who would they have been?

14 A. I would have to check to be sure.

15 Q. Who actually did the physical construction of  
16 placing the parking lot inside the ingress and  
17 egress easement?

18 A. I am not sure who built the actual parking lot.

19 Q. Why would you have put a parking lot in the  
20 middle of a driveway?

21 A. I can't answer that question, sir.

22 Q. Why not?

23 A. In the sense that I don't know why we would have  
24 done that.

25 Q. Well, you knew -- the easement is basically a

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MTLF000117

6/27/2018

PASTOR KEN JUMPER

1 driveway, isn't it?  
2 A. Yes, sir.  
3 Q. And what the driveway was designed to do was to  
4 stay open and usable for a driveway, right?  
5 A. Yes, sir.  
6 Q. That was the agreement you had with Mrs. Farley?  
7 A. Yes, sir.  
8 Q. And it was to stay a driveway so that it could  
9 serve the property now owned by the Farley  
10 Trust?  
11 A. Yes, sir.  
12 Q. And when the driveway is being used as a parking  
13 lot, it can't be used as a driveway, can it?  
14 A. I understand your point, sir.  
15 Q. That's true, isn't it?  
16 A. Yes, sir.  
17 Q. Well, when you built the parking lot inside the  
18 driveway area, did you realize that it would  
19 prevent ingress and egress?  
20 A. I did not, sir.  
21 Q. Why wouldn't you have known that?  
22 A. I didn't pay attention to that detail, I  
23 suppose.  
24 Q. If you had paid attention to that detail, you  
25 would not have built the parking lot there,

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MTLF000118

6/27/2018

PASTOR KEN JUMPER

1 correct?

2 A. We would have moved that berm a little bit if we  
3 needed to, sir.

4 Q. Is the answer a yes, you would not have built it  
5 there if you had thought about it?

6 A. With this understanding today, yes.

7 Q. Why?

8 A. Because I would have wanted to clear her access  
9 for her. One -- may I make a statement?

10 Q. I guess.

11 A. You know, and I understand where you are on the  
12 paper, but there is a story behind this with Ms.  
13 Farley and I and our relationship that is not  
14 written, but she could get across our property  
15 to her property. We were amenable and working  
16 with her all along, all these years. And she  
17 never said, I want my easement now, because she  
18 had access. Our hope was, and plan, was to  
19 purchase the ten acres behind us. So in that  
20 process, it was never a matter of I want this  
21 easement now kind of thing, because we worked  
22 with her to get across our parking lot,  
23 etcetera. So that would be my explanation of  
24 that.

25 Q. Well, she had the easement though or either she

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MTLF000119

6/27/2018

PASTOR KEN JUMPER

1 or the Trust had the easement when you built the  
2 parking lot in the middle of the easement,  
3 didn't she?

4 A. Yes, sir.

5 Q. She never told you it was okay to build the  
6 parking lot in the middle of the easement, did  
7 she?

8 A. You know, I'm not sure of all our conversations  
9 there. I couldn't say. I'm sure she was  
10 informed of what we were doing and our plans, to  
11 what detail I do not know.

12 Q. Did she ever tell you it was okay with her for  
13 you to build a parking lot in the middle of the  
14 easement?

15 A. I -- I am not sure. I don't know the answer to  
16 that.

17 Q. Do you know of anybody in the world who could  
18 testify that Mrs. Farley or anybody from the  
19 Trust ever told you it was okay to build a  
20 parking lot in the middle of the easement?

21 A. No, sir.

22 Q. Do you now recognize that that parking lot in  
23 the middle of the easement is contrary to the  
24 easement?

25 A. Based on -- yes, sir.

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MTLF000120

6/27/2018

PASTOR KEN JUMPER

- 1 Q. And it impedes the easement?
- 2 A. Yes, sir.
- 3 Q. How often do you have cars parked out there in  
4 the middle of the driveway?
- 5 A. It's probably about an hour and a half on Sunday  
6 morning, once a week.
- 7 Q. Now, if we come along, we take a look here and  
8 there is a -- you see this thing that says one  
9 story building?
- 10 A. Uh-huh.
- 11 Q. Is that a yes?
- 12 A. Yes, sir.
- 13 Q. Now, when would that one story building have  
14 been constructed?
- 15 A. To the best of my recollection, 2001.
- 16 Q. Was Mrs. Farley alive at that time?
- 17 A. I think so, sir.
- 18 Q. Do you know?
- 19 A. I do not know for sure that date. I could look  
20 back. I wrote it down the other day.
- 21 Q. Did she ever provide you anything in writing  
22 wherein she consented to a portion of the  
23 building being constructed within the purview of  
24 the easement?
- 25 A. No, sir.

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MTLF000121

6/27/2018

PASTOR KEN JUMPER

1 Q. Did she ever tell you it was okay with her for  
2 you to build it within her easement?

3 A. Not to my recollection.

4 Q. Has anybody from the Farley Family Trust,  
5 Estate, anybody ever told you it was okay for  
6 you to build that building within the purview of  
7 the easement?

8 A. No, sir.

9 Q. Well, why did you do it?

10 A. Well, it was a mistake on our end. I became  
11 aware of it as we began this conversation with  
12 Rachel.

13 Q. Okay. Are you willing to move it for us?

14 A. We'll do whatever we need to to satisfy the  
15 situation.

16 Q. Okay. When can you have it gone?

17 A. I would have to research that.

18 Q. Is the building -- what is it built out of?

19 A. If that's the one -- that's the alley, what we  
20 would call the alley, then it's a concrete slab  
21 Hoover building.

22 Q. All right. So the thing has got a concrete base  
23 to it and it is a metal building?

24 A. Yes, sir.

25 Q. With pole construction or steel?

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MTLF000122

6/27/2018

PASTOR KEN JUMPER

- 1 A. I am not sure. I want to say steel, but I'm not  
2 sure, sir.
- 3 Q. All right. Now, there appears to be something  
4 here. Do you see these little marks right here?
- 5 A. Correct.
- 6 Q. Where it says asphalt parking lot?
- 7 A. Right.
- 8 Q. What is that?
- 9 A. There is a kind of a gravel parking lot back  
10 there. There is no pavement back there. We put  
11 some rock down.
- 12 Q. Well, it says asphalt parking lot, is that  
13 wrong?
- 14 A. It was proposed to be, but we did not get  
15 approval from the county to asphalt it.
- 16 Q. But what you did do is to gravel it and begin to  
17 use it as a parking lot, is that right?
- 18 A. Sometimes folks park back there. Yes, sir.
- 19 Q. How often are you using that portion of the  
20 easement to park cars in?
- 21 A. Actually, we do not use it, but on an occasional  
22 Sunday morning there are people back there  
23 during that hour and a half window.
- 24 Q. Well, during that hour and a half window when  
25 they're parking their cars there, there's no way

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MTLF000123

6/27/2018

PASTOR KEN JUMPER

1 that you're going to really be able to have full  
2 use of the easement for ingress and egress, is  
3 there?

4 A. That's correct.

5 Q. Why did you do that?

6 A. Here again, this easement was not -- you know,  
7 it was just in that process of conversation, our  
8 intent to buy this. And Ms. Farley never made  
9 any more mention of it to us.

10 Q. Well, you said it was your intent to buy the  
11 10.28 acres. That's an interesting concept to  
12 me. The church wanted to buy the 10.28 acres,  
13 is that correct?

14 A. It was our hope to potentially one day, yes.  
15 That's why we approached our agreements the way  
16 we did.

17 Q. Your lawyer is probably going to object to this  
18 question and that's okay. I just want to know,  
19 if you wanted to buy it, why don't you buy it?

20 A. Well, she had an appraisal, she being Rachel,  
21 and we had one about half that. And at that  
22 point, you know, we were just not willing to pay  
23 that appraisal versus our appraisal and we began  
24 to discuss other means. And then, of course,  
25 the litigation came along so it kind of thwarted

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MTLF000124

6/27/2018

PASTOR KEN JUMPER

1 terms of the easement?

2 MR. DIBBLE: I object to the form of the  
3 question.

4 Q. You recognize, do you not, that the construction  
5 of this building, this parking lot and this  
6 parking lot do violate the terms of the  
7 easement, don't you?

8 MR. DIBBLE: Object to the form of the question.

9 Q. You can answer that.

10 A. Well, as far as these two pieces, right now. As  
11 far as the building, it goes back to when Rachel  
12 Farley brought it to our attention a couple of  
13 years ago.

14 Q. All right. So you only have recently learned  
15 that the parking lot violates the easement?

16 A. Correct.

17 Q. But a couple of years ago you learned that the  
18 building violated the easement?

19 A. Well, she brought it to our attention at that  
20 time.

21 Q. And when she brought it to your attention, what  
22 did you say?

23 A. Well, that's when we began to talk about, well,  
24 we would like to buy it. Well, yeah. She came  
25 to us and said she had a buyer. She approached

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6/27/2018

PASTOR KEN JUMPER

1 us about buying it, if we would like to buy it.  
2 And then just over time, you know, it was like,  
3 well, your building is here. And because we  
4 didn't buy it, the relationship did -- it wasn't  
5 very amenable at that point for whatever reason,  
6 because we didn't buy it. And that's why it  
7 took some time to get our appraisal and we're  
8 still pressing on to buying it, purchasing it,  
9 hopefully at a fair market value price. And  
10 then, of course, the litigation came along, so  
11 we have not moved on to anything waiting to see  
12 what we can do here.

13 Q. Pastor, when Rachel pointed out to you that your  
14 building was within her easement or the Trust's  
15 easement, did you do anything to figure out how  
16 that had happened? Did you make inquiry to say,  
17 hey, how did we manage to do this?

18 A. Well, nothing other than to just say it to our  
19 staff guys. Guys, what happened here? Of  
20 course, you know.

21 Q. I don't, but that's why I asked. The staff guys  
22 --

23 A. I do not know either. I'm sorry. I do not know  
24 why we did that.

25 Q. When you asked the staff guys, hey, why did we

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6/27/2018

PASTOR KEN JUMPER

1 build a building within an easement, what did  
2 they tell you?

3 A. Well, they did not know why we would do that.

4 Q. Who built the building?

5 A. I want to say the guys at Hoover Building, but  
6 I'm not sure, sir. I would have to research  
7 that.

8 Q. The building that encroaches on it is how big of  
9 a building?

10 A. I'm going to do a guesstimate here of 30 by 60.

11 Q. So that would be about 1,800 square feet?

12 A. Yes, sir. Something like that, I'm not sure  
13 exactly.

14 Q. The building that encroaches into the easement  
15 would have been built in roughly what year?

16 A. I would have to look, '01, '03, '01 maybe, but I  
17 do not know exactly.

18 Q. What do you use the building for?

19 A. We have children's meetings there. Usually  
20 there is a little fellowship building, Sunday  
21 School classes on Sunday.

22 Q. Do you have any idea what you all paid to put  
23 the thing up?

24 A. I do not know, sir.

25 Q. Now, I believe that there is also on this plat

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MTLF000127

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PASTOR KEN JUMPER

- 1           that when those guys sat it there, those guys  
2           being our maintenance guys.
- 3       Q.     From looking at this plat, it looks like on  
4           several occasions, not just one, that the actual  
5           easement lines were just ignored.
- 6       A.     Uh-huh.
- 7       Q.     Would that be fair to say?
- 8       A.     I'm not sure, to use the word ignore.
- 9       Q.     Before any of this construction was done, the  
10          parking lot, the second parking lot, the  
11          encroaching building and the one-story portable  
12          building, did anybody do any sort of  
13          investigating to determine if it was okay to put  
14          the structures and the other things there?
- 15      A.     I do not know, sir.
- 16      Q.     As I understand it, what you're telling me is  
17          that you had a nice relationship with Mrs.  
18          Farley.
- 19      A.     I believe we had a good relationship. Yes, sir.
- 20      Q.     She was a nice lady.
- 21      A.     She was a friend.
- 22      Q.     And you were --
- 23      A.     Not a personal friend, though, a friend of the  
24          church.
- 25      Q.     She was friendly with your church?

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MTLF000128

6/27/2018

PASTOR KEN JUMPER

- 1 A. I don't know if I would use the word friendly,  
2 that's a lot of different connotations.
- 3 Q. You say she was a friend of the church?
- 4 A. She was. Yes, we had a good relationship,  
5 business and personal.
- 6 Q. And from what I hear you gathering -- I'm sorry,  
7 from what I hear you saying is that you and she  
8 sort of had a loose understanding that  
9 eventually you would buy the other 10.28 acres?
- 10 A. I don't know that we had an agreement. No, sir.
- 11 Q. All right. There was a hope that you would?
- 12 A. I was hoping one day we might, yes.
- 13 Q. Did she ever express a hope that one day you  
14 might?
- 15 A. Not that I can recall.
- 16 Q. Did she live on the 10.28 acres?
- 17 A. No, sir.
- 18 Q. What else -- what's on there, is it just woods?
- 19 A. Yes, sir.
- 20 Q. The Church of The Harvest, does it front on 378?
- 21 A. Yes, sir.
- 22 Q. Can you turn off of 378 onto the church?
- 23 A. Yes.
- 24 Q. You don't have to go to a side street to get to  
25 the church?

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MTLF000129

6/27/2018

PASTOR KEN JUMPER

- 1 A. No, sir.
- 2 Q. So you ought to be able to turn off of 378 and  
3 go to the easement and drive directly to Mrs.  
4 Farley's property?
- 5 A. Yes, sir.
- 6 Q. So if the easement is there, the property has  
7 direct access from 378?
- 8 A. Yes, sir. The easement? You said the easement  
9 has access?
- 10 Q. Yes.
- 11 A. Yes, sir.
- 12 Q. But if the easement is blocked, there is no  
13 direct access from 378?
- 14 A. Well, you still have access from 378, the  
15 easement does.
- 16 Q. But if the easement is blocked, you can't get to  
17 her property from --
- 18 A. Define blocked.
- 19 Q. Well, there are cars all parked all over the  
20 parking lot.
- 21 A. Well -- yes, sir, for an hour and a half a week.
- 22 Q. Well, if the parking lot is used as designed and  
23 all those parking spaces are used, you can't get  
24 to her property off of 378?
- 25 A. Yes, that's correct.

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MTLF000130

6/27/2018

PASTOR KEN JUMPER

1 Q. How would you get there, without the easement,  
2 how would you have to get there?

3 A. Well, you would drive down the parking lot that  
4 our folks do and drive the parking lanes.

5 Q. Well, yes, sir. But she doesn't have a right to  
6 use your parking lot. If she was going to use  
7 public access to get to the 10.28 acres, if she  
8 can't use the easement, how would she get to her  
9 property?

10 A. Well, she used our property as access for years.

11 Q. I didn't ask you that. I asked you, if in fact  
12 she wasn't going to use her easement, it was  
13 blocked, it couldn't be used, how could she get  
14 to her property?

15 MR. DIBBLE: I'm going to object to the form of  
16 the question only because she is not defined.

17 Q. She, Mrs. Farley. How would Mrs. Farley or  
18 anybody else get to the property other than the  
19 easement? I'm trying to get to this. Is there  
20 another public road that would serve the 10.28  
21 acres?

22 A. Not a public road. Well, I'm sorry: I'm not  
23 sure I understand that question.

24 Q. Is there -- well, is there a public road that  
25 would allow access to the 10.28 acres except for

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MTLF000131



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EXHIBITS

Plaintiff's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>Page#</u>
1	Plat		X	15
2	Plat		X	15
3	Easement		X	15

Defendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>Page#</u>
1	Book-Exhibits		X	52

1           THE COURT: The next case I have is Rachel Farley  
2 versus the Church of the Harvest of Columbia. Docket  
3 number 2016-CP-32-00387. The caption officially, Rachel  
4 Farley as the Trustee of the Louise Farley Revocable Trust  
5 Dated February 8, 2005. And then there are other  
6 individuals, Mr. Moore. Do you represent all of them  
7 because I got phone calls today from Carol Farley and  
8 Nancy Farley about notice of today's hearing.

9           MR. MOORE: Your Honor, those two young ladies are  
10 Beneficiaries of the trust. I do not represent them, I  
11 simply represent the Trustee. I understand those two have  
12 indicated they may have an issue getting here. We did not  
13 ask them to come, we did not tell them to be here. They  
14 are simply, Beneficiaries I do not represent.

15           THE COURT: And just for the record, Robert Dibble  
16 represents the Defendant. And the reason I am asking is  
17 because the caption, the initial caption of the case does  
18 not have them listed. But then there is subsequent  
19 documents that I have received, including some of the  
20 briefs that I received, have added them. And they are  
21 listed as case parties in the Clerk's office but I don't  
22 see where they have appeared formally as Plaintiffs.

23           MR. DIBBLE: No Ma'am, they have not. The caption of  
24 the case started out as the Estate of Louise Farley,  
25 Rachel Farley as Personnel Representative and Rachel

1 Farley as Trustee of the Trust. By consent order the  
2 Estate was dismissed leaving only the Trust as the  
3 Plaintiff. The Trust agreement, as amended, required  
4 distribution of the property two years after Ms. Farley's  
5 death in 2012. So we have made a motion to add the  
6 individual surviving children as parties because they have  
7 at least, to the ten acres of the easement in question.  
8 Those parties were added by order of the Court 90 days  
9 ago. We have served all of them with the complaint, the  
10 order and the summons. They are now Plaintiffs in the  
11 case. The two ladies that have called you also called our  
12 office. They thought it was in Richland County, we  
13 advised them it would be here today at 11:00. Mr.  
14 Drummond Farley has never contacted anyone to my  
15 knowledge. He has received copies of the order naming him  
16 as a Plaintiff, received copies of the complaint against  
17 the Church and received copies of the summons. So he is a  
18 party to it and I am sure Mr. Moore does not represent him  
19 either. But that is the historical.

20 THE COURT: That is how they got listed.

21 MR. DIBBLE: Yes, ma'am.

22 MR. MOORE: I did not, and this is just my oversight.  
23 I didn't realize they had been made parties but if they  
24 are parties I guess they had a right to notice and to be  
25 here.

1 THE COURT: They received notice from what the  
2 Clerk's office tells me. I think what they referenced was  
3 a hearing that is scheduled for September 10th, which  
4 there is a roster that has this case on the September  
5 10th. When I look at the document I believe it is Mr.  
6 Dibble's brief or amended motion that is listed as being  
7 set for a motion hearing on September the 10th.

8 MR. MOORE: Your Honor, may I ask, what is scheduled  
9 September 10?

10 MS. NICHOLS: I can speak to that.

11 THE COURT: Yes, ma'am.

12 MS. NICHOLS: The amended motion to the motion for  
13 summary judgment and I believe that is what has been  
14 scheduled. My paralegal actually contacted the Clerk's  
15 office yesterday and was told that was being heard today.  
16 But it was just the amendment to that, that initial motion  
17 that we--

18 THE COURT: Which is covered in the brief?

19 MS. NICHOLS: Yes, ma'am. That roster just came out  
20 yesterday.

21 THE COURT: As I understand it we are here on  
22 competing motions for summary judgment?

23 MR. DIBBLE: Yes, ma'am.

24 THE COURT: Okay. And so, I don't know who if you  
25 have a preference, of who goes first but I guess, Mr.

1 Moore, your's may have been filed first.

2 MR. MOORE: Yes, ma'am. Thank you, Your Honor. Your  
3 Honor, I represent the Trust, the Rachel Farley Trust.  
4 This case has to do with an easement. The easement was  
5 created by a Deed, that Deed is recorded and filed. It is  
6 December 1st of 1998. The Deed purports to be a 66 foot  
7 right-of-way that runs over the Western boundary of phase  
8 two and phase three on a plat. If I might hand up the  
9 plat as well as the actual Deed I think it might be of  
10 some assistance to the Court.

11 THE COURT: Have you seen it, Mr. Dibble?

12 MR. DIBBLE: Yes, ma'am.

13 THE COURT: And I, just to shortcut it, I have read  
14 all of your materials, I have read the affidavits, the  
15 attachments to them and I have read, obviously, there are  
16 several briefs and I have read all of them.

17 MR. MOORE: And, You Honor, there is, the only thing  
18 I believe the Court probably doesn't have is the  
19 deposition of Pastor Ken Jumper. If I might, I have  
20 marked the, what we believe to be the relevant places, I  
21 can either read them into the record or hand those up and  
22 the Court can probably read it faster than I can.

23 THE COURT: I was going to ask, that was the only  
24 thing that I didn't have.

25 MR. MOORE: Thank you, Ma'am.

1 THE COURT: And I knew that was the subject of, the  
2 last time we met that was part of the issue, waiting for  
3 the deposition.

4 MR. DIBBLE: If Mr. Moore would be kind enough to  
5 give me a copy at some point with the marked passages, so  
6 I can, if necessary, mark passages in response.

7 THE COURT: I can tell you, I see markings on page  
8 14; page 15; the bottom of page 16, beginning at line 23;  
9 page 17 and 18 and 19, and 20, 21, 22, 23; page 24,  
10 particularly beginning at line 19 for the rest of the  
11 page; page 25, 26, 27, 28, 29; page 30 beginning at line  
12 19; page 31, portions, specifically the questions and  
13 answers, lines 5 through 9; the question and answer, 10  
14 through 16. Then we skip to page 33, 34 beginning at line  
15 23, running over to page 35 at line 3; page 37, page 38  
16 and 39; page 40 with the question on line 17 through the  
17 answer to line 23.

18 MR. DIBBLE: I will try to respond to those, Judge,  
19 at some timely fashion once I get them.

20 THE COURT: I am going to read the whole thing.

21 MR. DIBBLE: That is fine, then I won't respond.

22 THE COURT: Yes. And then a couple of more, 42, 43.

23 MR. DIBBLE: If you are going to read the entire  
24 deposition--

25 THE COURT: -- I am going to read the whole thing.

1 MR. DIBBLE: Good.

2 THE COURT: I find that you find little pearls of  
3 wisdom when you read the whole thing.

4 MR. DIBBLE: That's right.

5 THE COURT: Yes sir, Mr. Moore, when you are ready.

6 MR. MOORE: Your Honor, the case is fairly simple.  
7 We have taken the deposition of Pastor Jumper who has been  
8 the basic Pastor of this Church throughout. Some time ago  
9 Ms. Farley sold parcel one to the Church. Thereafter she  
10 sold parcel two to the Church. The parties anticipated  
11 that parcel three would ultimately be sold to the Church.  
12 So the parties were working under a friendship arrangement  
13 and a tacit understanding that the Church was going to  
14 ultimately buy phase three. The parties had a very good  
15 relationship, they were friendly and they were all  
16 operating appearing under the assumption that the Church  
17 was going to be able to buy the third phase. The third  
18 phase is the partial of real estate that is in controversy  
19 in this lawsuit. The third phase is served by a 66 foot  
20 easement that runs down the Western boundaries of phases  
21 one and phase two. The, phase three is totally landlocked  
22 unless the 66 foot right-of-way exist. The right-of-way  
23 is shown on the plats and it is also a written  
24 right-of-way easement, it declares itself to be a recorded  
25 easement and it is 66 feet wide and it is clearly

1 delineated on the plats. As time passed the Church  
2 decided to build a parking lot and in error, as best  
3 Pastor Jumper knows, in error actually built the parking  
4 lot over the easement. It is basically a paved area but  
5 it is not used very often. It is pretty much used on  
6 Sunday's and a couple of other times. So it is used at  
7 times, not used at times. But the parking lot is there  
8 and it basically covers up the easement. Basically  
9 reading the Reverend's testimony that Ms. Farley did not  
10 complain at the time, again, there was a friendship  
11 arrangement and an understanding that the Church was going  
12 to buy phase three so there was acquiescence. There was  
13 never any demand that it be removed. There was simply an  
14 acquiescence, it is okay by us which basically creates a  
15 license. Thereafter the Church went to the back part of  
16 the easement and built a building. And the building  
17 encroaches a good way into the 66 foot easement as does a  
18 back parking lot. Again, there was fairly well  
19 acquiescence, there was no real objection from Ms. Farley  
20 and Pastor Jumper testified that that also was done in  
21 error. They just didn't check to see where the easement  
22 was before they built it, was no real claim of right, they  
23 just did it and it was fine by everybody. They were  
24 friends that were getting along, nobody complained and  
25 there was a tacit understanding they were going to buy the

1 property. Well, time passed and Ms. Farley died and her  
2 daughter became the Trustee of her Trust, the Trust was an  
3 Inter Vivos Trust. And it became clear that the parties  
4 could not agree on the price for lot three. And the  
5 Trustee, who got the property basically said, well, you  
6 are encroaching. There is another encroachment too. What  
7 has happened is, the Church, the way it built a portion of  
8 its improvements funneled property, I mean funneled the  
9 property, graded the property to where water is  
10 concentrated at a certain point and is being discharged  
11 through a series of riprap onto the Farley property.  
12 Again, nobody really thought about it at the time it was  
13 being done nor did anybody really complain about it, it  
14 was acquiesced in. The idea, again, being the Church was  
15 going to, in effect, buy the third property, the third  
16 parcel and everything would be fine. The riprap now has  
17 been placed, the water is now being dumped in a  
18 concentrated fashion and it is running off of the Church  
19 property onto the property of the Farley's. Now that it  
20 is clear that the actual anticipated purchase is not going  
21 to take place, the Church was asked to please remove your  
22 parking lot from the easement, please remove your second  
23 parking lot from the easement, please remove your building  
24 from the easement and please modify the drainage so that  
25 it is in accord with the natural drainage for the

1 property. As the Court is well aware, South Carolina  
2 follows the modified Common Enemy Doctrine when we talk  
3 about water discharge, water being a common enemy, it can  
4 be shed from one person's property onto another. But  
5 under the modified Common Enemy Doctrine it is illegal to  
6 concentrate water, as the Church is doing, and direct it  
7 in a non-natural flow towards your neighbor's property  
8 without an easement. And, of course, there is no easement  
9 for the discharged water. So what we are asking for is a  
10 judgment which would declare the easements to exist and to  
11 declare that the parking lots be removed from the easement  
12 and declare that the building should be removed from the  
13 easement and declare that the property be regraded so that  
14 water is being, not being discharged in an unnatural and  
15 concentrated fashion from the Church's property onto the  
16 Farley property. The easement, I am sure the Court can  
17 look at the plat, but the plat very clearly shows the 60  
18 foot wide easement, it shows where it is and it shows the  
19 building sticking into the easement and it shows the two  
20 parking lots there. The deposition, I believe, is fairly  
21 consistent with everything that I have explained from a  
22 factual standpoint. It is simply our position that there  
23 is a property right that is created by easement. That for  
24 a significant period of time there was acquiescence, the  
25 Church made the improvements, not realizing that the

1 easement actually was there so it was an accidental  
2 construction. And we are simply asking the Court to  
3 declare that the only access to the property is the access  
4 to the property and that our clients can use it and that  
5 they should be entitled to an unobstructive use of the  
6 property. We have, the easement, I think, is fairly clear  
7 that it is an access for ingress and egress. And that the  
8 law is very clear that when one has an easement for  
9 ingress and egress the serving of the property is not  
10 allowed to impede the ingress and egress. My client has  
11 attempted to sell the property, it is fairly valuable  
12 being where it is, it is basically is right there on 378.  
13 We have had a large contract to sell it but by virtue of  
14 the impediments into the easement the contract fell  
15 through. So we simply need a Declaration of the rights to  
16 the easement and a clearing of the easement so that we can  
17 have the access to our property and market it for the  
18 highest and best used. The case is fairly simple and I  
19 thank you for listening to me. And I will respond, I will  
20 respond to their motion, I guess, at the appropriate time.  
21 But we simply have made a motion for summary judgment to  
22 get the easement cleared and declare that it exist.

23 THE COURT: Okay. Mr. Moore, the survey that you  
24 provided to me, the long survey--

25 MR. MOORE: Yes, ma'am.

1 THE COURT: -- this is the Church's property, this is  
2 the Church's property. No, I am sorry, this is not, this  
3 is Ms. Farley's property, this is the Church's property.  
4 This was phase two, this was suppose to be phase three.

5 MR. MOORE: Yes, ma'am.

6 THE COURT: And the highlighted road was suppose to  
7 be, is the 66 foot easement.

8 MR. MOORE: That is the easement.

9 THE COURT: And everything on this side is, belongs  
10 to the Church, is phase one down there.

11 MR. MOORE: I don't think so. I think the Church,  
12 the Church's property is pretty much, I think that belongs  
13 to somebody else.

14 MR. DIBBLE: Your Honor, I have got, when I go  
15 through the documents I will show you the plat that shows  
16 all of that property.

17 MR. MOORE: That is not a problem.

18 THE COURT: Okay. I am looking at Plaintiff's  
19 exhibit number 9.

20 MR. DIBBLE: Yes ma'am, that is correct.

21 THE COURT: Which says that this up here is phase  
22 three which is how I came up--

23 MR. DIBBLE: No ma'am, that is not, you are correct  
24 that the plat you are holding in your right hand is  
25 accurate. The plat you are holding in your left hand is

1 accurate also. The plat in your right hand shows the  
2 three phase that the Church has actually purchased. The  
3 plat in your left hand shows the plat, ten acres that the  
4 Trust is still the owner of. So phase three is not the  
5 ten acres.

6 THE COURT: In my reading of the information that has  
7 been provided to me was that all three phases were  
8 completed.

9 MR. DIBBLE: Yes, ma'am.

10 THE COURT: So there seems to be a dispute about  
11 that.

12 MR. DIBBLE: No ma'am, I will show you the documents.

13 MR. MOORE: The question is to what they are calling  
14 phase three is not the ten acres. They are calling phase  
15 three another phase of their construction.

16 THE COURT: Okay.

17 MR. MOORE: But the, on the plat that I gave you--

18 THE COURT: 10.28 acres what you are calling phase  
19 three.

20 MR. MOORE: That was the anticipated phase three that  
21 the Church said they anticipated buying. What they did is  
22 they broke the property that they purchased as phase two  
23 up in the, what they call phase two and phase three. That  
24 can be some confusing.

25 THE COURT: Yes sir, Mr. Dibble.

1 MR. DIBBLE: I will hand you two notebooks, one for  
2 you and one for your Law Clerk. What I have done is I  
3 have taken some of the documents off of the affidavit and  
4 I can walk you through, fairly quickly--

5 THE COURT: Before you start I am going to have the  
6 Court Reporter mark there.

7 (Whereupon, Plaintiff's Exhibits 1, 2, and 3 were  
8 admitted into evidence.)

9 THE COURT: Yes sir, Mr. Dibble.

10 MR. DIBBLE: If you will look, I am going to walk you  
11 through the notebook, Judge. It gives you chronological  
12 sequence of what actually happened and I can take you  
13 through it fairly quickly. If you notice on the first  
14 page of the option agreement which is 10.1. The  
15 agreements between Ms. Louise Farley and the Church of the  
16 Harvest. At the time the contract was entered into the  
17 Trust was not in existence.

18 THE COURT: Right.

19 MR. DIBBLE: If you look at page six of the contract  
20 there is a C, and the reason for these paragraphs is the  
21 Church bought all three phases of the property, the ten  
22 acres that were landlocked. So in paragraph C, it says,  
23 understood and agree that between purchaser and seller  
24 that between Tract A and Tract B and is part of Tract A,  
25 the seller, Ms. Farley, shall retain a 50 foot right

1 easement, the ingress and egress from Highway 378 to other  
2 property owned by the seller. It is behind Tracts A, B,  
3 C1 and C2 which ultimately became Tracts, phase one, phase  
4 two and phase three. Paragraph E says that if the  
5 purchaser buys, the Church buys Tracts for phase one and  
6 phase two that the Church can either increase the 50 foot  
7 easement to 66 feet or relocate the easement to the  
8 Western side of the property of phase two and phase three.  
9 Phase one is Tract A, phase two is Tract B and phase three  
10 is Tract C1 and C2. So the Church initially gave Ms.  
11 Farley a 50 foot access easement over phase one. And if  
12 they bought phases two and three they had the option of  
13 moving the easement to the Western boundary of the  
14 property and the easement was to be 66 feet in width. The  
15 Church had the unfettered right to do that. On page 12 of  
16 the contract the Church agreed to move a fence for Ms.  
17 Farley, an obligation arose in 1994. And I point that out  
18 because one of the causes of action in the complaint is  
19 for damages for failing to relocate that fence. It is set  
20 out in the complaint, it is set out in Mr. Moore's brief.  
21 And I point that out that the obligation to do that arose  
22 from 1994, that is 18 years before her death and 22 years  
23 before this contract. Tab two is the plat of phase one,  
24 along the left-hand side of that plat you can see the  
25 term, 50 foot access easement. That complied with the

1 terms of the contract and the Church closed phase one.  
2 Ms. Farley retained the 50 foot access easement across  
3 phase one and complied with the terms of the contract.  
4 Tab three is memorandum of agreement that the Church and  
5 Ms. Farley signed where Ms. Farley agreed to make a  
6 \$50,000.00 dollar cash contribution to the Church if the  
7 Church bought phase one, phase two and phase three. And  
8 that becomes important later on. The next document is a  
9 Deed dated December 2nd, 1994 by which Ms. Farley conveyed  
10 to the Church, phase one, Tract A, according to the plat  
11 recorded, that is 7B which is the plat shown on, behind  
12 Tab two. Tab five is the note she gave, the note the  
13 Church gave Ms. Farley for the balance due on the purchase  
14 price for phase one. Purchase price was \$162,00.00  
15 dollars, she paid \$40,000.00 dollars in cash, \$35 in  
16 closing, she gave a note of \$122,000.00 dollars and if you  
17 notice in the middle of that note she reserved the right  
18 to prepay principle of interest at any time without  
19 penalty. Absolute unfettered right to do that. The next  
20 Tab is simply the mortgage securing that note recorded at  
21 3772 at page 317. That all occurred in 1994. And that is  
22 22 years before this lawsuit was brought in 2016. The  
23 next Tab is the composite plat showing phases one, phase  
24 two and phase three. Phase one is on the bottom left,  
25 phase two is on the bottom right, phase three is a

1 combination of Tracts C1 and C2. And it runs all the way  
2 back to the ten acres owned by Ms. Farley which lies  
3 behind the Church's property. So if you take these two  
4 plats that you have before you, Ms. Farley's property sits  
5 behind the Church's property like that. That is not to  
6 scale, obviously. Ms. Farley's property is here, the  
7 Church's property is here, between her and 378. This is  
8 378, the Church bought the frontage, she retained the ten  
9 acres behind the property. Okay. The easement provides  
10 the access to her property and I will get to how that  
11 easement got there in just a moment. That is how the  
12 property is located. The Church had an option to buy  
13 phase one, phase two and phase three. Now the Church has  
14 always been interested in purchasing the remaining ten  
15 acres behind what the Church now owns. No dispute about  
16 that. The next Tab is the Deed by which Ms. Farley  
17 conveyed phases two and three to the Church. And if you  
18 will look at the Deed, the very first thing of the Deed is  
19 a reservation of the easement by Ms. Farley, herself,  
20 relocating the easement to the Western boundary of phase  
21 two and three which the Church had the absolute right to  
22 do under the contract if they bought phase two but which  
23 Ms. Farley undertook herself to do by reserving the  
24 easement to herself, her Heirs and Assigns in the Deed to  
25 phase two to the Church. So the Church did not relocate

1 the easement, Ms. Farley herself relocated the easement to  
2 the Western boundary of the property. She was familiar  
3 with her property, she chose the location of the easement  
4 in the contract, she allowed the Church the right to  
5 relocate it. But when the Church bought phase two and  
6 three Ms. Farley relocated the easement to the Western  
7 boundary of the property herself. Mr. Hamm represented  
8 Ms. Farley on all of these transactions. Mr. Hamm  
9 witnessed the Deed, Mr. Hamm was her lawyer. She did the  
10 relocation, not the Church. I don't have notes  
11 representing the purchase price of the phase two and  
12 three, I haven't been able to locate that. But the Deed  
13 recites the consideration with the purchase price of  
14 phases two and three as being \$274,000.00 dollars. The  
15 contract called for a purchase price of \$162,000.00  
16 dollars per parcel. Ms. Farley accepted \$50,000.00  
17 dollars less for the sale of phase two and three. I  
18 believe, although she is dead now, she can't testify, but  
19 I speculate, for lack of a better word, that she reduced  
20 that purchase price in lieu of the \$50,000.00 dollar cash  
21 contribution she was obligated to make for the Church if  
22 they bought phases one, two and three. The next document  
23 is a mortgage securing the note of \$274,000.00 dollars  
24 which is the purchase price for phases two and three as  
25 shown on the plat. And then nothing happened between 1998

1 and 2001. And I know what happened but there is no  
2 document in the record to tell you what happened. But in  
3 January of 2001 the Church paid off the \$274,000.00 dollar  
4 loan with a check from Carolina First made payable to the  
5 Church of the Harvest and Louise W. Farley. Ms. Farley  
6 accepted the check and payment from the note. The next  
7 Tab is the satisfaction of the mortgage securing the  
8 \$274,000.00 dollar note which Mr. Hamm witnessed, her  
9 attorney. That was recorded as a separate document in the  
10 Court House. I have not been able to locate the check  
11 paying off the \$122,000.00 dollar note. Docket number 12  
12 is the recorded satisfaction of the mortgage, securing the  
13 \$122,000.00 dollar note. All of this occurred between  
14 1994 and 2001. Ms. Farley was engaged in these  
15 transactions on a personal basis. The contract was  
16 between Ms. Farley and the Church. Any breach of contract  
17 action arising out of that contract belonged to Ms. Farley  
18 alone. Any over-reaching by the Church against Ms.  
19 Farley, if such a thing occurred, was given a cause of  
20 action to Ms. Farley alone. No question about that  
21 because the Trust was not in existence and she was still  
22 alive. No one else had the opportunity to bring those  
23 causes of action except Ms. Farley. The next document is  
24 a Deed to the Trust. And you will note that in the Deed  
25 that the Louise Farley is the Trustee of the Trust which

1 was created, according to this Deed, on February 8, 2005,  
2 I believe confirmed that page in his argument. Any  
3 knowledge that Ms. Farley had individually at the time the  
4 Trust was created in February of 2005 would have been  
5 imputed to the Trust. I will say that again. Any  
6 knowledge that Ms. Farley had with regard to events that  
7 occurred in the past would have been imputed to the Trust.  
8 This Deed only conveyed property to the Trust, it did not  
9 assign any cause of action Ms. Farley may have had against  
10 the Church to the Trust. Those causes of action remain  
11 with Ms. Farley. The Trust obtained titled to the ten  
12 acres in question here, on this plat Mr. Moore has marked  
13 as an exhibit, this ten acres and the Church and the Trust  
14 acquired all right in title to the easement that Ms.  
15 Farley had relocated to the Western boundary of the  
16 property. No question about that.

17 THE COURT: Right in title subject to the easement.

18 MR. DIBBLE: No, ma'am. No, ma'am. She required fee  
19 simple title of the ten acres and she acquired--

20 THE COURT: She acquired--

21 MR. DIBBLE: The Trust acquired fee simple title to  
22 the ten acres and all right title and interest to the  
23 pertinent 66 foot easement that Ms. Farley herself had  
24 moved to the Western boundary of the property. Okay.

25 THE COURT: Let me restate it. The 66 foot easement

1 running from Highway 378 that she--

2 MR. DIBBLE: -- reserved in the Deed.

3 THE COURT: -- reserved in the Deed.

4 MR. DIBBLE: Yes, ma'am.

5 THE COURT: And the ten acres in the back of the  
6 property shown on Plaintiff's exhibit number one, which is  
7 the Deed Mr. Moore handed up, all that went to the Trust.

8 MR. DIBBLE: The Trust in 2005.

9 THE COURT: Yes, sir.

10 MR. DIBBLE: And that was seven years before Ms.  
11 Farley passed away in 2012. And of course all of her  
12 knowledge as an individual is imputed to the Trust itself  
13 because she was the Trustee of the Trust. And I can  
14 establish that by the Deed at Tab 13 where it says that,  
15 in consideration is paid by Louise Farley as Trustee of  
16 the Louise Farley revocable Trust. So she is the Trustee  
17 of the Trust. So anything that she knew at the time  
18 passed to the Trust and that comes important later. But  
19 the other important thing, Judge, is that this Deed didn't  
20 assign any of her individual causes of action to the  
21 Trust. All it does is convey property. Now the property  
22 in question is shown, the last page of that Deed, on page  
23 three, also that 19.6 acres and it goes over there and  
24 says, less and except the property already conveyed to the  
25 Church, phases one, two and three. If you look at the

1 description of the property on the bottom of page three,  
2 top of page four you can see that she owned 19 acres at  
3 one point, she had already conveyed the three parcels,  
4 phase one, phase two and phase three to the Church which  
5 we have already gone over those documents, they are  
6 recorded in the Court House. No dispute about any of  
7 that. Okay.

8 THE COURT: Yes, sir.

9 MR. DIBBLE: So far so good.

10 THE COURT: Yes, I am on exhibit number 14.

11 MR. DIBBLE: That is an exhibit dated 2004. That is  
12 the drawing of the Church's new parking lot in 2004, an  
13 important date, which shows the easement and it shows the  
14 parking lot encroaching on the easement. And then the  
15 next document is a letter from Ms. Farley herself--

16 THE COURT: -- I have read that and I have read the,  
17 it was about the runoff of the parking lot.

18 MR. DIBBLE: So she knows about the runoff, she has  
19 complained about the runoff in the parking lot, the runoff  
20 to her satisfaction according to the affidavit of Mr.  
21 Jumper, she has never complained about the runoff since  
22 January 2006. That is an important date because this  
23 lawsuit was brought in February of 2016, ten years and one  
24 month after the January 4th, 2006 letter. I go back again  
25 and remind you that the Deed of the Trust did not convey

1 any cause of action to the Trust. All of those causes of  
2 action remain with Ms. Farley to the extent they existed.  
3 Okay. The next document in Tab 16 is a copy of the, one  
4 of the efforts of the family to probate Ms. Farley's will.  
5 And that was dismissed without being completed. There is  
6 nothing in that probate file indicating an inventory of  
7 any claim against the Church as an asset of the Estate,  
8 any claim Ms. Farley had individually to the extent it  
9 survived her death would have passed to the Estate. There  
10 is nothing in this Estate file setting forth any claim  
11 whatsoever against the Church as an asset of the Estate.  
12 The next file is the file relating to the actual probate  
13 of the Estate which was filed and concluded in a proper  
14 fashion. And if you notice, the inventory of the  
15 appraisement, the death certificate is there setting forth  
16 a death as March 27, 2012. And the inventory and  
17 appraisement that is filed in that case by the Trustee,  
18 Ms. Farley, Ms. Rachel Farley, contains absolutely no  
19 claim against the Church. Any claim that Louise Farley  
20 would have had at her death, that survived her, would have  
21 passed to her Estate but the Estate did not contain any  
22 asset related to any claim Ms. Farley may have had against  
23 the Church. As a matter of fact, if you look at the final  
24 accounting which is a couple of pages down, it is  
25 consistent with the inventory, shows a beginning balance

1 of \$8,300.00 dollars, receipts of \$3,000.00 dollars, it  
2 lists disbursements. Go to the next page it shows the  
3 only assets they ran through the Estate are pickup trucks,  
4 expenses with probate fees, legal fees and that Estate was  
5 closed in September of 2017. And that Estate was  
6 ultimately, initially named in this case and was dismissed  
7 with the consent of the Plaintiff's lawyer. Any claim Ms.  
8 Farley had against the Church is gone even if it survived  
9 her death, the Estate did not claim it. But it is our  
10 position that nothing Ms. Farley had survived the death in  
11 the first place. If we keep on going over and just for  
12 completeness, I have included a consent order dismissing  
13 the Estate as a Plaintiff in this case. Now, Mr. Moore  
14 didn't talk about all of the claims his firm has made  
15 against the Church. The first claim is that they reached  
16 a contract by failing to move the fence. That obligation  
17 arose on October 11th, 1994. You saw from reading the  
18 letter from Ms. Farley, she drove back and forth across  
19 that property in 2005. No one can argue with any  
20 seriousness that she didn't know the fence hadn't been  
21 moved by 2005. Breach of contract actually governed by  
22 the three year statute, that was barred by the Estate. I  
23 can't imagine anyone arguing that a case brought 20 years,  
24 not quite 20 years, 15 years after, almost 20 years. If  
25 the obligation arose in 1994 and it was not done and then

1 three years passed and then three more years, then 1994,  
2 1997, 2000, the case was what, 16 years after the statute  
3 has run. And yet they are claiming damages because they  
4 failed to move the fence. The second claim is--

5 THE COURT: Breach of contract--

6 MR. DIBBLE: -- the second cause of action is that  
7 the Defendant attempted to relocate the easement and Ms.  
8 Farley relocated the easement herself. So I don't  
9 understand how that claim is even valid on its face, that  
10 Ms. Farley reserved the easement to herself in the Deed to  
11 phase two and three. But beyond that the Church had the  
12 absolute right to relocate the easement to its present  
13 location if they bought phases two and three. If they  
14 bought phases two and three, the right to move the  
15 easement arose unfettered. But she did it herself. They  
16 cannot now complain that the Church relocated the  
17 easement. The Church didn't relocate the easement, Ms.  
18 Farley relocated the easement in 1998 herself. So she  
19 knew she relocated the easement in 1998, any fraud, any  
20 wrongdoing by the Church would have arisen in 1998, be  
21 barred by the statute, the three year statute. The next  
22 claim is that the Defendant has obstructed and trespassed  
23 on the easements and refused to move the obstructions.  
24 The parking lot easement was open, obvious, on the highway  
25 378, it was paved and a driveway put in, it was

1 constructed in 2004 and 2005. Ms. Farley complained about  
2 water running off of it in 2005, she had knowledge of the  
3 parking lot in 2005, she had knowledge of the water runoff  
4 in 2005, that knowledge was imputed in the trust when the  
5 Trust was created. She was a Trustee when she found out  
6 about it in 2005 and 2006. The Trust is bound by that  
7 knowledge. The parking lot is a permanent structure, it  
8 has asphalt on it, it has curb cuts on it, it has a  
9 driveway curb cut on it, it is paved, it is open, it is  
10 obviously permanent. The damage is done and it is  
11 constructed in 2005 when she started complaining about the  
12 water runoff. She was a Trustee of the Trust and she knew  
13 about the---

14 THE COURT: Well, talk to me in conjunction with  
15 that, about the trespass. Because if, and I understand  
16 that in terms of a claim for going to the easement that it  
17 would, that it appears to be open and obvious, that she  
18 would have knowledge of it, she was a Trustee for the  
19 Trust at the time and had the opportunity to be able to  
20 bring any claims that she wanted to bring prior to her  
21 death.

22 MR. DIBBLE: Correct.

23 THE COURT: And I understand that your claim on that  
24 particular point the statute of limitations has run.

25 MR. DIBBLE: The three year statute applies to

1 trespass unless it is a nuisance.

2 THE COURT: Talk to me about that.

3 MR. DIBBLE: And I will and there are some  
4 interesting cases. And I will start with one that Mr.  
5 Moore cited, the Healey case. It says and this is and I  
6 think the law is applicable here. This is a little bit  
7 off point but the Court, our Court held a cause of action  
8 for rescission of a cancellation of a Deed which is not, no  
9 one is seeking that in this case, or contract for fraud  
10 descends to the Heirs if those causes of action existed in  
11 the ancestor unimpaired at the time of her death. So if  
12 the statute of limitations ran during Ms. Farley's  
13 lifetime, it is an impaired cause of action and the Heirs  
14 can't bring it even if it passes to them. That is the  
15 purpose of the statute of limitations. If I commit a tort  
16 against you and you don't bring the cause of action in a  
17 timely fashion and you die then it is extinguished because  
18 the Heirs can't rejuvenate the statute of limitations  
19 because you died. That would be, there would never be a  
20 statute of limitations because everybody is going to die.  
21 Now, there is nothing in this record to support the  
22 allegation that we, locking those easements with  
23 devaluating the Plaintiff's property. There is nothing in  
24 this record before you today, no document, no contract, no  
25 testimony, nothing to support that claim. The last claim

1 they make, as a breach of contract, is that we have  
2 demanded an enforcement of the right of first refusal.  
3 That is one of their breach's of contract claims. And I  
4 will respond this way. Number one, they have never  
5 represented to the Church a contract for the sell of the  
6 property which would trigger the right of first refusal.  
7 That is number one. If they had presented such a contract  
8 to the Church, the Church would have had the option of  
9 either buying the property under the terms of the contract  
10 in which case the Trust, the purchase price of the  
11 contract or the Church would have declined to exercise its  
12 right of first refusal, and the Trust would have sold the  
13 property to the buyer in which case the Trust would have  
14 gotten the purchase price under the contract. But they  
15 never presented the contract to the Church to trigger the  
16 right of first refusal. They sent some appraisements to  
17 us but they never presented a contract where Mr. X, a  
18 third party, offered to buy the property, the ten acres  
19 for X number of dollars. So the right of first refusal  
20 hasn't been triggered and if, in fact, they bring us a  
21 contract we will look at it and if we think the price is  
22 correct we will buy it and if we don't think the price is  
23 correct she will sell it and she will get the money. So  
24 there is no damage, no damage, no way she could be damaged  
25 by our assistance or refusal to exercise the right of

1 first refusal. Now that is all the first cause of action,  
2 breach of contract, all of that is gone by the three year  
3 statute without any question. The extent she had  
4 knowledge of every single thing that we talked about  
5 during her lifetime, all of that knowledge was imputed to  
6 the Trust as Trustee which she is the Trustee. As Trustee  
7 she was the Trustee from 2005 until she died in March of  
8 2012. She never brought a cause of action against the  
9 Church. The Heirs never listed causes of action in the  
10 inventory of the Estate and the Estate is closed. All of  
11 those causes of actions are barred by the three year  
12 statute of limitations. The next cause of action says,  
13 all of those breaches of contract were accompanied by a  
14 fraudulent act. And the law says that the breach of  
15 contact, which I was surprised frankly, the law says  
16 breach of contract covered by a fraudulent act is actually  
17 an action of the contract, not fraud. It is gone by the  
18 three year statute. A Federal case says that. But the  
19 fraud they allege, Judge, is what is so astonishing to me  
20 I guess. They allege that the Church talked her into  
21 taking less money for the property and forced her to take  
22 an early payoff on the loans. That is the fraud. And if  
23 you go back and look at the note for the first phase, the  
24 \$122,000.00 note for the first phase it had an absolute  
25 prepayment right. They could prepay that note any time

1 they wanted to whether she liked it or not. And they  
2 exercised that right and they paid off the note. The  
3 second note, I am assuming, did not contain that  
4 provision. I have not seen the note. She reduced the  
5 purchase price to \$274, she accepted a note mortgage for  
6 the purchase price of \$274, she was represented by Counsel  
7 when she did that, she accepted the payoff of \$274, she  
8 recorded a mortgage satisfaction of the \$274,000.00 dollar  
9 mortgage, witnessed by her lawyer. If a fraud occurred at  
10 that time, if a fraud occurred at that time, it occurred  
11 in 2001 when the payoffs occurred. And you can look at  
12 the documents in that notebook and both mortgage  
13 satisfactions are in there, one is dated March 16th signed  
14 by Mr. Hamm, one is dated March 30th on the \$122,000.00  
15 dollar note. Any fraud occurred at that time in 2001, she  
16 lived eleven years after that. She was not a little old  
17 lady in tennis shoes. She drove around that parking lot  
18 in 2005, she complained about the construction, she  
19 complained about the water, she complained about the  
20 parking lot and the runoff. If she had been defrauded in  
21 2001 she would have known about it. And the three year  
22 statute applies, it is a fraud. That cause of action is  
23 barred by the three year statute. Other causes of action  
24 are, negligence which is the three year statute. Again,  
25 everything they complain of arose out of a contract

1 between Mr. Farley and the Church. Ms. Farley had actual  
2 knowledge of what went on between 1994 and 2001, to 1994  
3 and 2005. She lived six years after that. She didn't  
4 bring any cause of action for negligence, no cause of  
5 action is passed to her Estate. The Estate has been  
6 closed. The Estate has been dismissed from this case.  
7 All of those causes of action belong to Ms. Farley. She  
8 didn't raise any question about it. Now the Trust has the  
9 right to maintain and just to close it off, none of the  
10 Plaintiffs have standing to bring those causes of action  
11 because they died with Ms. Farley, barred by the statute  
12 of limitations that did not survive. Now, the Trust does  
13 have the right to bring an action about the encroachment  
14 on the property, on the easement. I concede that, they  
15 have a right to bring it. That building was built in  
16 2009, Ms. Farley was alive. The building is open and  
17 obvious, there is a permanent building, it encroaches on  
18 the easement about three feet or four feet at the most.  
19 It has been sitting there in plain view since 2009. The  
20 parking lot was built in 2005 and Ms. Farley complained  
21 about the runoff in 2005, it was corrected in January of  
22 2006, ten years before this lawsuit was brought. The  
23 property line is an open and obvious encroachment on the  
24 easement. It is a permanent, both of those are permanent  
25 structures. And they have not sued us for nuisance, they

1 have sued us for trespass. And trespass is a three year  
2 statute, and you know the law as well as I do, that  
3 trespass, trespass causes of action are either permanent  
4 or periodic. And the Sylvester case is a nuisance case,  
5 trespass case. The trespass case was dismissed under the  
6 statute. The Catawba case, they built a dam not on the  
7 Plaintiff's property and the runoff caused by the dam was  
8 periodic and they said that was a periodic nuisance. So  
9 the dam didn't cause the problem, the runoff caused the  
10 problem. In this case, Judge, the buildings and the  
11 parking lot themselves are the encroachments, not the  
12 drainage for the parking lot or the building. The  
13 building and the parking lot were built, the parking lot  
14 was built more than ten years before this lawsuit was  
15 brought and the parking lot was built seven years before  
16 this lawsuit was brought. So we think that both of those  
17 causes of action, insofar as they are maintaining by the  
18 Trust are barred by the three year statute. The other two  
19 causes of action in the complaint are declaratory judgment  
20 and judgment. And this motion is not a final motion. The  
21 Plaintiff's motion is not a final motion. The Plaintiff  
22 seeks to establish only liability. He has asked the Court  
23 to order us to do certain things which is not within the  
24 purview of his motion. And I think he was, asking the  
25 Court to, the motion to sought, but I will let the Court

1 handle that. But just to take a moment to talk about his  
2 cases. He sites the Tilly case for the proposition that  
3 the cause of the action for fraud survives. In the Tilly  
4 case the Court held specifically that the consumer  
5 protection code in the action under the consumer  
6 protection code did not arise in the fraud and that is  
7 where it survived. In the Madison versus Palmetto case  
8 there were two causes of action. The first cause of  
9 action arose when the guy came and picked up the insurance  
10 policy and refused to accept any more premiums. And the  
11 second cause of action was fraud. And the Court  
12 specifically held, after quoting the statute, it is just  
13 as readily seen that the Respondent's second cause of  
14 action does not come within either of the instances where  
15 a cause of action survives. That case is diametrically  
16 opposed to their own argument. And the Court went on to  
17 say, the order of appeal did not order a consolidation,  
18 cases is for trial, readily suggested therein and gave the  
19 Respondent leave to amend the complaint to set out the  
20 first cause of action which is the wrongful retention of  
21 the insurance policy and proceed. But they sustained to  
22 the second cause of action because it did not survive.  
23 The Sylvester case is the same situation. And this, the  
24 Catawba case and the Sylvester case are very interesting,  
25 Judge. In both of those cases the permanent edifice was

1 not constructed on the Plaintiff's land. The dam was  
2 constructed from the legislative authority on condemned  
3 land. In Sylvester, the ditch was constructed in this  
4 valley and the water ran off into the Plaintiff's land.  
5 But neither of the permanent, neither of the permanent  
6 structures in those cases were constructed on the  
7 Plaintiff's property. In this case both of the permanent  
8 structures were constructed on the Plaintiff's property,  
9 both are permanent in nature, both are open and obvious.  
10 Ms. Farley knew of them as late as 2009 and did nothing to  
11 complain about. And to the extent she had a cause of  
12 action, we have already trespassed. That cause of action  
13 expired in 2012, did not survive her death, did not  
14 contain an inventory of either Estate, probate. And that  
15 case is gone.

16 THE COURT: Does the trespass expire as to the Trust  
17 as well?

18 MR. DIBBLE: The law is, it is very clear in South  
19 Carolina, if the trespass is permanent and the damage  
20 occurs when the construction is complete, cause of action  
21 arises at that time. If the trespass is periodic or  
22 continuing, continuing is what they use periodic, then the  
23 cause of action accrues every time the trespass occurs.  
24 As an example, if I walk across your land to get to my  
25 pond every Thursday a cause of action arises every

1 Thursday. The damage occurs every Thursday, you can  
2 recover damages for the past three years. If I walk on  
3 your property and build a deer stand, that is a permanent  
4 structure, that is not good, that is not good. Suppose I  
5 walk on your land and build a permanent building, instill  
6 a concrete building and then encroach it on your property,  
7 that is a permanent obstruction, the damage occurs when it  
8 is built and the cause of action arises then. And the  
9 statute begins to run then. The last case they cited,  
10 Portside, P-O-R-T-S-I-D-E, Portside Owners Association  
11 versus South Beach. And what they are arguing in that  
12 case, Judge, is that the ten year statute, the recovery of  
13 real property applies to this case and not the three year  
14 statute. If they are correct that would bar, that would  
15 not bar an action based on the parking lot which is built,  
16 not bar an action based on the building which was built in  
17 2009, if the ten year statute applies. But it would bar  
18 an action based on the parking lot which was built before  
19 January of 2006. But the Portside case is inapplicable  
20 because it says, the gravamen of Portside's complaint is  
21 to remove any cloud on its Title. And that is a recovery  
22 of property which is the ten year statute applies to  
23 actions for recovery of the property. We don't contend,  
24 there is no claim of Title by the Church here. We don't  
25 claim adverse possession, we are not claiming prescriptive

1 right, we do not challenge the ownership of the easement.  
2 We concede that the easement is owned by the Trust, they  
3 have absolute unfettered right to the easement. There is  
4 no Title issue in this case. It is simply a case of  
5 trespass. And if I understand the law, those permanent  
6 constructive obstructions are barred under the three year  
7 statute. All of the cases, all the claims of this case I  
8 think are barred and the whole case should be dismissed.

9 THE COURT: Mr. Moore.

10 MR. MOORE: Your Honor, those last comments truly  
11 struck me. And let me say this, I thought we had made it  
12 clear before today that we, one of the statute of  
13 limitations apply whether it is fraud or not, there is no  
14 proof of fraud in this case. We fully acknowledge that  
15 there is no fraud. I thought they understood that. We  
16 have gone through probably 30 or 45 minutes of discussion  
17 about a claim that I thought they understood, we are not  
18 pursuing the fraud claim.

19 THE COURT: Well, you haven't dismissed it.

20 MR. MOORE: If we haven't dismissed it it is there  
21 and it needs to go. We stipulate to that. There is no  
22 fraud in this case. But Counsel tells us that we have an  
23 absolute unfettered right to the 66 foot easement.  
24 Counsel tells us they make no claim to prescription.  
25 Counsel tells that we have a 66 foot easement that runs

1 down the entire Western side of the property and that we  
2 have the unfettered right to use it. Counsel tells us  
3 that we have a right to bring the action seeking the  
4 declaration that we have the unfettered right to use the  
5 easement unrestricted. Now, if he tells us that, that is  
6 exactly what my motion seeks. The unfettered right, the  
7 unfettered right to use the entire 66 feet of our  
8 easement. And the declaration that our easement exists  
9 with the unfettered right to use it ingress and egress.  
10 And I thank Counsel for agreeing that they are not  
11 claiming any prescriptive rights. When you use things,  
12 when he uses things such as open and obvious there is no  
13 doubt but that an easement can be extinguished in whole or  
14 in part by prescription. However, thankfully they are not  
15 raising that in their pleadings, they are not raising that  
16 in their argument and they are not raising that at all in  
17 regard to the viability of our easement. So my question  
18 is this. If, in fact, they acknowledge that we have the  
19 absolute unfettered right to use the 66 feet of our  
20 easement why did we just go through 45 minutes of  
21 discussion in argument to our motion for summary judgment.  
22 That is all our motion for summary judgment seeks right  
23 now, is that we have the open and unfettered right to use  
24 the 66 foot easement that is shown on the plat and that is  
25 shown on the document of creation. Now, a lot of our case

1 depends upon that but that is all I am seeking today, is  
2 what he says we have. Now, if we, in fact, have what  
3 Counsel says we have I would like for him to explain to me  
4 why it is he won't move the building. It encroaches three  
5 to five feet. Why is it that he will not move the parking  
6 lot on the back side that was built in 2009 along with the  
7 building. If we have the unfettered right to use the  
8 lower parking lot why won't he remove it. The lower  
9 parking lot, on a regular basis, on one to two days a week  
10 is having cars parked in it right in the middle of the  
11 easement. I don't have any doubt that he has a right  
12 probably to pave it but he sure as heck doesn't have a  
13 right to obstruct it. And his client is regularly  
14 obstructing the easement. Weekend, week out, the access  
15 to our property is obstructed. We have asked, please stop  
16 parking cars in the unfettered easement you acknowledge  
17 exist. And the answer is no, we are not going to do that.  
18 Yet he comes in today and tells us, you have a right to  
19 stop us. Well, the only way I know how to exercise the  
20 right they acknowledge we have is to ask the Court, since  
21 they won't do it voluntarily, please get your parking lot  
22 and your cars out of the easement area. Look, they own  
23 the fee simple Title, there is no doubt that that. And if  
24 they want to pave all or part of the easement that is okay  
25 by us, they have a right to do that. If they want to

1 maintain it, scrape it, they have a right to do that.  
2 However, they don't have a right to use it as a parking  
3 lot designed to obstruct an unfettered area. How can they  
4 acknowledge that we have the unfettered right to use it  
5 when they are on a regular basis bringing cars there and  
6 fettering our unfettered right.

7 THE COURT: Isn't that what your trespass claim is?

8 MR. MOORE: Your Honor, that, yes and no. Okay. It  
9 is certainly is what our declaratory judgment portion is  
10 and what our injunctive portion is. We would like to ask  
11 them to unfetter the fettering. They basically have got  
12 their building and two parking lots in the middle of the  
13 66 feet right-of-way that they acknowledge as a valid  
14 right-of-way and belongs to us. All we ask is that they  
15 move their building, they can take a piece of it off if  
16 they want to, just please get the building and the Court  
17 can look at the plat, it is there. If they would be, if  
18 we would be so kind as to ask them to move their building  
19 out of our 66 feet and to stop parking cars in the middle  
20 of the 66 feet and we can get a judicial declaration that  
21 the 66 foot right-of-way exist and we have a right to the  
22 unfettered use of ingress and egress. And I am not trying  
23 to be picky with them. We had a contract to sell this  
24 property for a very large sum of money. And the purchaser  
25 would not buy because we did not have something declaring

1 our unfettered right to use the 66 feet. There was a  
2 building in it and there is a parking lot in it and they  
3 are like, how can we get access, ingress and egress if  
4 people are parking on a regular basis in the middle. So  
5 our declaratory judgment section of our lawsuit simply  
6 asked that the Court order that which Mr. Dibble says we  
7 have. So we agree that we have an open continuous right  
8 to use the 66 feet open and unfettered and they have no  
9 right to obstruct that. If the Court orders, that the  
10 Court would simply do no more than grant the motion for  
11 summary judgment that I have made. If I might discuss  
12 some of the problems they have with the statute of  
13 limitations. A cause of action to trespass doesn't accrue  
14 until there has been a wrongful act. An encroachment is  
15 not wrongful until it exist without consent. If Mr.  
16 Dibble were to start parking his motor home in my front  
17 yard and I went, that is all right by me. That is not an  
18 open, obvious encroachment because I have acquiesced in  
19 that. The trespass only becomes a wrongful act when I  
20 basically have said, please, stop it and then the stopping  
21 is refused. The deposition will show you that these folks  
22 were friends and the Church had bought two parcels and the  
23 idea was they were going to buy the last parcel that we  
24 are arguing about now. And the Church will show that Ms.  
25 Farley did not object to the building and didn't object to

1 the parking lots when they were installed. It was okay.  
2 Now, it is only when they decided not to buy that we begin  
3 to object to the encroachments. If a property owner  
4 consents to an encroachment, consent does not give rise to  
5 a cause of action. An encroachment can be licensed and a  
6 licensed encroachment, whether the license exist by  
7 acquiescence or not, it is there but it doesn't give a  
8 rise to a cause of action if it is condoned or approved.  
9 But a license can be revoked at any time. The cause of  
10 action arises only after the Trust came into existence and  
11 only after the Trust said, stop, that is when they refused  
12 to stop parking the cars there and that is when they  
13 refused to stop, to stop, to remove the building. It is  
14 also, we were, it is apparent from the deposition that in  
15 regard to the water that that was also acquiesced in until  
16 recently. But the Church didn't terminate the easement.  
17 I appreciate Mr. Dibble for acknowledging that the Church  
18 hasn't terminated the easement. The Pastor of the Church,  
19 in his deposition, over and over again acknowledges what  
20 Mr. Dibble has acknowledged. The easement is there, they  
21 recognize its validity, they recognize it is a 66 foot  
22 easement and it runs from the entrance to the property all  
23 the way to the entrance of our property. It would be very  
24 hard for Mr. Dibble not to have acknowledged the validity  
25 of our easement since his witness has acknowledged it over

1 and over and over again. The easement is expressed, the  
2 easement is in writing, the easement is plated, the  
3 easement is acknowledged. The Pastor testified that the  
4 easement has been violated in error, that they simply did  
5 not know that they were encroaching when they built. Now,  
6 Mr. Dibble very kindly acknowledges that there is no  
7 attempt to terminate the easement by prescription.  
8 Therefore all of these language about its open and obvious  
9 doesn't exist. He acknowledges they are not attempting to  
10 establish an easement by prescription. So whether it is  
11 open and obvious doesn't matter because the concepts of  
12 open and obvious go only to the establishment of rights by  
13 prescriptive rights. And since those aren't raised in the  
14 pleadings and since the lawyer acknowledges that they are  
15 not attempting to create those by prescription, that means  
16 there is not any right to flood us like they are doing.  
17 There is no prescriptive rights to flood because Mr.  
18 Dibble acknowledges they are not trying to create anything  
19 by prescription and their pleadings don't say so. But  
20 there is no doubt, if they were trying to extinguish our  
21 rights by prescription they could try. And if they were  
22 trying to establish a flooding right by prescription they  
23 could try. But the period of prescription is actually 20  
24 years according to Bundy versus Shirley. That is 20  
25 years, if you don't consider tacking. If there is tacking

1 in place it is 20 years, if it is not tacking in place it  
2 is 10 years. 15-3-340 talks about whether it is a 10 year  
3 or 20 year statute of limitations. But there is no  
4 question, when you are talking about trying to secure  
5 either an interest in land, which is trying to create  
6 their easement by prescription, or to terminate by  
7 prescription it is 20 years. That creates a real problem  
8 for them for the building that was built in 2009, 10 years  
9 hasn't run so the building they created in 2009 doesn't  
10 even meet the 10 year statute of limitations which clearly  
11 applies, all we have to do is read Bundy versus Shirley  
12 and know that. So the building clearly is in play and of  
13 course the building is admittedly in the middle of the  
14 easement and the easement is supposed to be unfettered and  
15 we would simply ask them when they might have their  
16 building off of our easement and we would appreciate it.  
17 Again, if they were trying to terminate by prescription,  
18 which they are not, they would have to show that it was  
19 continued and uninterrupted for 20 years. But they can't  
20 show that because what is happening is the parking within  
21 the easement is sporadic. It doesn't happen every day.  
22 Counsel says the building has been there for nine years  
23 and he is probably correct. Their parking lot has been  
24 there for nine years as well, at least the one close to  
25 the property. There are two parking lots, there is one

1 that adjoins the, and you can see them on the plat. One  
2 adjoins the building and one is on the lower side. The  
3 one on the lower side was built on, in or about 2006, one  
4 on the upper side, about 2009 when the building was built.  
5 It also, in order to terminate or establish by  
6 prescription they must do so under a claim of right.  
7 Their must be a claim of right. Simply to say it is open  
8 and obvious begs the question. If it is open and obvious  
9 and consented to then no rights are created. And it is  
10 open and obvious but put there by mistake, that doesn't  
11 mean anything either. It must be under a claim of right.  
12 The Pastor has said that it wasn't claim of right, he has  
13 mistakenly put it there and they shouldn't have and he is  
14 sorry. So we have an acknowledgment there is no  
15 prescriptive rights. We have an acknowledgment there is  
16 no prescriptive termination. We have no prescriptive  
17 termination alleged in their answer. We have no  
18 prescriptive termination or creation for the drainage.  
19 And we have acknowledgment that it doesn't exist. So they  
20 basically are claiming that this has nothing to do with  
21 establishing rights to property. That being the case, the  
22 easement exists and we sure would like to have them move  
23 their stuff. Also, to prove termination by prescription,  
24 of course that is not an issue in this case, but even if  
25 they were trying to do that or even if they were trying to

1 create termination by prescription, the law says that is a  
2 question of fact and termination or creation by  
3 prescription must be proven by clear, cogent and  
4 convincing evidence. When we look at the deposition of  
5 the Pastor who says, we did it by mistake, we are sorry,  
6 we didn't know what we were doing, I can't explain it,  
7 they just messed up and we didn't think we were creating  
8 any rights. I would respectfully submit this prescriptive  
9 issue is simply not in play. The use falls short of even  
10 the 10 or 20 year rule for termination by prescription or  
11 creation by prescription. The use wasn't adverse because  
12 it was done by acquiescence and permission and the use was  
13 not under claim of right. So the prescriptive easement is  
14 gone. The three year statute of limitations is obviously  
15 not applicable. The use of the parking lot is temporary  
16 and sporadic, it occurs, according to the Pastor, about  
17 once or twice a week. Cars come and they park in the  
18 middle of the easement and they leave. That clearly is a  
19 use which is temporary and sporadic and therefore  
20 according to the Winn versus Grantham case and also under  
21 15-3-340, what we basically have here is a rolling wrong,  
22 is how they describe it. Is a continuous trespass, a  
23 rolling wrong if the use is temporary in nature you may  
24 bring an action for damages for the trespass and each time  
25 they do it creates a separate cause of action. Now, if we

1 have negligence, negligent encroachment is a nuisance and  
2 an intentional encroachment is a trespass. So either one  
3 basically provides, under the various case law that we  
4 have cited, that if the uses are sporadic and can be  
5 stopped that the, each use creates a new cause of action  
6 because the contractual violations arises each day. They  
7 call it a rolling wrong. The McCurley versus the Highway  
8 Department, 182, SE 2nd 299, says that the continuing  
9 cause of action can accrue each time it happens. And the  
10 Court has the right to abate it, if it is going on, if  
11 abatement is possible but it is a continuing cause of  
12 action against rise each time. So you had either a  
13 nuisance which is an unintentionally use or trespass which  
14 would be an intentional use. Either way, again, the  
15 nuisance is a negligence claim that they use the terms  
16 interchangeably. Trespass is an intentional use.  
17 Actually in this case they say they are now using it  
18 knowing that they are violating the easement but they  
19 started using it not meaning to violate the easement. So  
20 they basically are in a posture to where they have a  
21 rolling wrong. We brief these fairly extensively in our  
22 brief. So the problem they have with the building is that  
23 it is within the nine year statute so they can't create  
24 prescriptive rights and they are not even trying to  
25 anyway. So the building, they stipulate has got to be

1 moved. The parking lots also are being used to obstruct  
2 what they acknowledge to be a valid easement. In regard  
3 to monetary causes of action for negligence and  
4 trespass/nuisance, those exist. They go back three years  
5 from the time we actually filed the lawsuit. In regard  
6 to, it is very interesting that Counsel argues in regard  
7 to the contract claim and, again, the contract portion of  
8 this action is simply not the grabbable of what we are  
9 worried about. We would simply like to have this thing  
10 moved, if they would just get the parking lot and the  
11 building out of the easement so we can sell our property  
12 and use it, it is really all we want. But it is  
13 interesting that Counsel argues on the one hand that there  
14 is a right of first refusal that exists pursuant to the  
15 contract. And that is the exact same contract he says we  
16 are not a party to so it doesn't apply to us. It is  
17 interesting how it can be claimed and we are bound by a  
18 contract but we cannot enforce the contract that we are  
19 bound by. We would, however, acknowledge that he is  
20 correct, they do have a right of first refusal. The  
21 contract does accrue to the benefit of the Trust. The  
22 Trust clearly was for the benefit of Ms. Farley and the  
23 real party of interest statutes will apply. Why in the  
24 world they have named these beneficiaries as parties to  
25 this action, I don't know, but they are not here. But .

1 with all due respect to Mr. Dibble, if they will, I can  
2 promise him this. I believe I will say this. If they  
3 will just do what he said, if they will move their  
4 building and their parking lots out of the easement we  
5 will drop the rest of this lawsuit. We just want it gone,  
6 please move the building and the parking lot, we are  
7 happy. If he will give us what he consents to, an  
8 unfettered 66 foot easement, where it is on the plat, as  
9 it is on the plat, this lawsuit is over. Although very  
10 interesting, we have been trying to get that for quite  
11 some time. But I have talked much longer than I need to  
12 and as always I sincerely appreciate the Court's patience  
13 in listening to me. And I do mean sincerely, without  
14 trying to be condescending, that I appreciate, I hope Mr.  
15 Dibble appreciates the fact that I recognize we don't have  
16 a fraud claim. And I appreciate the fact that he  
17 recognizes that we have got a right to have our easement  
18 open and unfettered. I thank you, You Honor.

19 THE COURT: Thank you.

20 MR. DIBBLE: Just a couple of quick things.

21 THE COURT: Very briefly, Mr. Dibble.

22 MR. DIBBLE: Very brief. Number one, there is no  
23 nuisance claim in this complaint. Number two, the fourth  
24 cause of action of trespass, it is entitled trespass. It  
25 is on page five, it says that the Plaintiff has been

1 damaged of the rights set forth. It asserts a trespass  
2 claim that is barred by the three year statute. Third  
3 thing is, there is nothing in this record, I have seen no  
4 documentation or anybody refusing to buy any piece of  
5 property by reason of any obstruction of this easement.  
6 Fourth and I think very interesting, Mr. Moore now says,  
7 oh, the Trust, once Ms. Farley died the Trust revoked its  
8 consent to the encroachments. When Ms. Farley died in  
9 2012, Ms. Rachel Farley became the Trust on March 27,  
10 2012. This cause of action was not brought until February  
11 of 2016. She had a whole year to discover these  
12 encroachments which are open and obvious. And so the  
13 statute bars the trust even if you start the Trust, the  
14 statute running from February, I mean March of 2017. And,  
15 fourth, and I am sure Mr. Moore is correct, he is not  
16 pursuing it or the contract claim. But in his memorandum  
17 filed on August 21st, he says again, the Plaintiff did not  
18 comply with their obligation, they did not move the fence,  
19 they attempted to move the easements and they manipulated  
20 Louise Farley. So until fifteen minutes ago all of those  
21 causes of action, in my book, were viable in being  
22 assisted upon, by Ms. Farley as Trustee for the Trust.  
23 Our whole case is, Judge, these causes of actions barred  
24 by the statute of limitations, that is the only issue in  
25 front of you today. The rest of the case is wide open.

1 If they are not barred we will try the case to its  
2 conclusion. But our case is that this case ought to be  
3 dismissed by the statute.

4 MR. MOORE: Your Honor, this case, again, I need some  
5 clarification. One of the, this seminal point of our case  
6 is the right to the unfettered use of the easement. I am  
7 assuming what he is saying is that our claims for damages  
8 are barred by the statute of limitations but acknowledges  
9 that we have the right to the unfettered use of the  
10 easement. Is that correct?

11 MR. DIBBLE: No, sir. I am saying that your claim of  
12 trespass is barred under the three year statute because  
13 the obstructions to that easement are open and obvious and  
14 have been there more than three years. One has been there  
15 more than ten years. And at the very least the Trustee,  
16 Ms. Rachel Farley became Trustee in March of 2012, had a  
17 whole year to discover these obstructions and did nothing  
18 timely. The case was brought four years after the Trust  
19 became, she became Trustee of the Trust. Ms. Farley had  
20 all the knowledge in the world before she died so she  
21 couldn't bring the actions. I am not conceding anything.

22 MR. MOORE: Your Honor, will they just acknowledge  
23 that they will remove the obstructions?

24 THE COURT: That may be for another day.

25 MR. MOORE: Thank you, Your Honor.

1 MR. DIBBLE: You are right about that.

2 THE COURT: Thank you. I will read the deposition  
3 and get to it. Thank you. Your briefs said everything I  
4 needed to see.

5 MR. MOORE: Thank you, Your Honor.

6 MR. DIBBLE: Can we be of any assistance to mark  
7 these notebooks.

8 THE COURT: If you want to mark it that is fine but I  
9 will hold onto it.

10 MR. DIBBLE: Let's mark as Defendant's exhibit 1.

11 (Whereupon, Defendant's Exhibit 1 was admitted into  
12 evidence.)

13 THE COURT: And I have got copies.

14 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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1 CERTIFICATE OF REPORTER  
2  
34 State of South Carolina )  
5 County of Newberry )  
6  
78 I, Joy E. Holston, Official Court Reporter for the  
9 Eighth Judicial Circuit of the State of South Carolina, do  
10 hereby certify that the foregoing is a true, accurate and  
11 complete transcript of record of the proceedings had and  
12 evidence introduced in the trial of the captioned case,  
13 relative to appeal, in the County of Lexington, South  
14 Carolina on the 22nd day of August, 2018.15 I do further certify that I am neither of kin,  
16 counsel nor interest to any party hereto.  
17  
18

19 November 22, 2019

20 *Joy Holston*  
21 \_\_\_\_\_

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026  
24  
25

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2016-CP-32-0387  
Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005,  
Rachel R. Farley.....Appellant,

v.

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

**CERTIFICATE OF COUNSEL**

The undersigned certifies that the Record on Appeal contains all material proposed  
to be included by any of the parties and not any other material.

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July 1, 2020