THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE RICHLAND COUNTY
COURT OF COMMON PLEAS

RECEIVED
AUG 19 2019
SC Court of Appeals

The Honorable Joseph M. Strickland, Master-in-Equity

Appellate Case No.: 2019-000569

Country Properties, LLC.....Appellant,

v.

Nancy Dunn Martin.....Respondent.

RECORD ON APPEAL

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and

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Attorneys for Respondents

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
) CASE NO.: 2014-CP-40-1805
Country Properties, LLC,)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
Nancy Dunn Martin,)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
John W. Wells, Bar No. 6019	Joey R. Floyd, Bar No. ____
Address:	Address:
PO Box 10 Lugoff, SC 29078	PO Box 61110 Columbia, SC 29260
Phone: 803-438-4200 Fax 803-438-5090	Phone: 803-252-7693 Fax ____
E-mail: Jwells@baxleywells.com Other:	E-mail: ____ Other: ____

FILED
RICHLAND COUNTY
2014 JUL 28 PM 12:27
JEANNETTE W. McBRIDE
C.C.P., R.M. & G.S.

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Order of Reference
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

/s/ John W. Wells
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ ____
☐ EXEMPT:
(check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE ____
☐ Other: ____	Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

NOTICE OF MOTION AND MOTION FOR AN ORDER OF REFERENCE

2014-CP-40-1805

FILED
RICHLAND COUNTY
2014 JUL 28 P 3:27
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED, JOEY R. FLOYD, ATTORNEY FOR THE DEFENDANT:

YOU WILL TAKE NOTICE that ten (10) days from the service hereof, or as soon thereafter as counsel may be heard, the undersigned attorney for the Plaintiff will move before the Court of Common Pleas for Richland County at the Richland County Courthouse, Columbia, South Carolina, for an Order referring this case to Joseph M. Strickland, the Standing Master-in-Equity for Richland County with finality, to make all findings of fact and conclusions of law necessary to resolve the issues herein, said Order to only be appealable to the Supreme Court of South Carolina.

This Motion is made on the ground of the pleading herein filed.

BAXLEY, PRATT & WELLS, P.A.

John W. Wells
Attorney for Plaintiff
Post Office Box 10
Lugoff, South Carolina 29078
(803) 438-4200

Lugoff, South Carolina
Date: 7/1/14

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

CONSENT ORDER OF REFERENCE

2014-CP-40-1805

FILED
2014 JUL 28 PM 2:22
RICHLAND COUNTY
JEANNETTE W. GRADICK
C.C.P. & G.S.

Upon Motion of John W. Wells, attorney for the Plaintiff and it appearing that the Defendant, has answered the Complaint and consents to this reference, and it further appearing that this is a proper matter to refer to the Master in Equity;

NOW, THEREFORE, on Motion of John W. Wells and with the consent of Joey R. Floyd, Attorney for the Defendant;

IT IS ORDERED that the above entitled cause, and that the above entitled be and the same is hereby referred to the said Joseph M. Strickland, Master in Equity for Richland County to take the testimony arising under the pleadings, to make his findings of fact and conclusions of law, with authority to enter a final judgment in this cause, with appeal directly to the Supreme Court of South Carolina.

Presiding Judge of the
Fifth Judicial Circuit

Columbia, South Carolina

Date: July 7, 2014

I CONSENT:

Joey R. Floyd
Attorney for Defendant

John W. Wells
Attorney for Plaintiff

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-**CP**-40-1805

Country Properties, LLC

PLAINTIFF(S)

Nancy Dunn Martin

DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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.

FILED
RICHLAND COUNTY
2016 SEP 27 P 12:06

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

~~Circuit Court Judge~~ Master — 2097 Judge Code — Sept. 22, 2016 Date

For Clerk of Court Office Use Only

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

John W. Wells, Esq.

Joey R. Floyd, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	
Country Properties, LLC,	)	2014CP4001805
	)	
Plaintiff,	)	**Final Order**
	)	
vs.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	

RICHLAND COUNTY FILED
2016 SEP 27 PM 12:16
JEANETTE W. WALDRIDGE C.C.P. & G.S.

Hearing Date:	March 21-24, 2016
Judge:	Joseph M. Strickland
Court Reporter:	Amanda Creel Godfrey
Attorney for Plaintiff:	John W. Wells
Attorney for Defendant:	Joey R. Floyd

"I regard this case as one of the very greatest importance, the decision of which will control in a measure, one of the most constantly recurring grounds of controversy in reference to a right which is held to as tenaciously, and asserted as vigorously, as the recognized love of the Anglo Saxon for his land: The right to the use of a road. I have accordingly given it my most earnest and laborious consideration." Justice Cothran writing for the majority in Brasington v. Williams 143 S.C. 223, 141 S.E. 375 (1927).

This action is one brought by the Plaintiff to establish an easement across one property of the Defendant serving the property of the Plaintiff. The property of the Plaintiff, described herein below, will sometimes be referred to as the dominant estate and the property of the Defendant, also described herein below, will sometimes be referred to as the servient estate.

This case was commenced by the filing of a Summons and Complaint on March 18, 2014, seeking an easement across the lands of the Defendant on three separate theories, to wit; easement by deed; a private easement arising at law by prescription; and an easement by virtue of the fact that the road identified by the Plaintiff through the property of the Defendant is a public road. The Defendant filed and served her Answer and Counterclaim asserting various defenses including a general denial of the allegations by the Plaintiff; that the Plaintiff's claims are barred by the Statute of Limitations, abandonment of the easement and adverse possession of the easement by the Defendant. The Plaintiff filed a Reply which is a general denial of the allegations of the Defendant's Counterclaim.

This action was referred to me by a Consent Order of Referee of the Honorable L. Casey Manning dated July 7, 2014. Discovery was conducted by both sides, and the matter was set for trial during the week of March 21, 2016.

The Plaintiff appeared at the hearing in the person of James F. Podell, a member and principal of the Plaintiff limited liability company, represented by John W. Wells, its counsel of record. The Defendant appeared represented by Joey R. Floyd and Wesley D. Peel, both of whom have appeared as counsel of record for the Defendant. The case was tried before me without a jury.

FINDINGS OF FACT

1. That the Plaintiff is a limited liability company formed under the laws of the State of South Carolina with its principal place of business in the County of Richland, State of South Carolina.

2. That the Defendant is a citizen and resident of the County of Richland, State of South Carolina.

3. That the Plaintiff is the owner of a certain tract of land located partly in Kershaw County and partly in Richland County which was conveyed to the Plaintiff by deed of Pine Ridge Investments, LLC, dated March 11, 2009, and recorded in the RMC office for Richland County in Book 1515, at page 1554, the same being also filed in the ROD office for Kershaw County, the tract being described as follows:

All that piece, parcel or lot of land, with improvements thereon, if any, lying, situate and being in the State of South Carolina, Counties of Richland and Kershaw, located approximately ten (10) miles South of Lugoff, containing 1,023.07 acres, more or less, and being shown and described on a plat prepared for Gonzales Land and Timber, LLC, by Michael R. Mills, P.L.S., dated June 22, 2004, and recorded in the office of the ROD for Richland County in Book "951", at page 1618 and recorded in the office of the ROD for Kershaw County in Book "3121", at page 7. Said plat is incorporated herein by reference for a more complete and accurate description.

The 1,023.07 acres is split between Richland County, containing 383.63 acres and Kershaw County containing 640.07 acres.

4. That the Defendant is the owner of several tracts of land located in the County of Richland, State of South Carolina described as follows:

PARCEL 1:

All that certain piece, parcel or tract of land , situate, lying and being near Raglin Creek, east of U.S. Highway 601, in School District No. 2, in the County of Richland, and State of South Carolina, containing Sixty-Five and 06/100ths (65.06) acres, more or less, and bounded as follows: to wit: On the NORTH by property now or formerly of R. W. Lloyd; on the EAST by property now or formerly of R. W. Lloyd; on the SOUTHEAST and SOUTH by property now or formerly Astor V. Cleveland; and on the WEST by property now or formerly of Jessie Dunn Martin; said tract will more fully appear reference to a plat prepared for Rufus D. Lewis, Jr., by Edward R. Owens, R.L.S., dated October 18, 1976. Be all measurements a little more or less.

TMS# 38000-03-08 and 38000-03-08

This being the same property conveyed to the Defendant by deed of Laura Jane Lewis Allen, et al. dated November 15, 2012, and recorded in the RMC for Richland County in Book 1813, at page 244.

PARCEL 2:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels 3, 4, 5, and 6, containing in the aggregate 164.0 acres, more or less, as shown on a plat surveyed for Heirs of Osie E. Martin by Jas. C. Covington, C.E., dated October 8, 1930, and recorded in the office of the RMC for Richland County in Plat Book R, at page 199; said parcels having such boundaries and measurements as shown on said plat which are specifically incorporated herein by reference thereto.

TMS # R38000-03-07 & R38000-03-15

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U.S. Hwy. 601, in the County of Richland, State of South Carolina, being more particularly shown as a portion of Tract 1 and 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E. dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book R, at page 199; said property being more particularly shown and delineated as 23.20 acres on a plat prepared for Neal H. Higgins and Karen J. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded in Plat Book 55, at page 7626, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto as often as necessary for a more complete and accurate description; be all measurements a little more or less.

TMS #: R38000-03-06

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U. S. Hwy. 601, in the County of Richland, State of South Carolina, being more particularly shown as a portion of Tract 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E., dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book R, at page 199; said property being more particularly shown and delineated as 23.30 acres on a plat prepared for Van A. Higgins and Linda L. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded May 19, 1995 in Plat Book 55, at page 7627, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto as often as necessary for a more complete and accurate description; be all measurements a little more or less.

TMS# R3800-03-48

Parcel 2 was conveyed to the Defendant by Corrective Limited Warranty Fiduciary Deed of Dorothy Martin Tate and Nancy Dunn Martin as successor co-trustees of the Edward Frank Martin, Jr., Trust dated August 5, 2004, dated December 13, 2007, and recorded in the RMC office for Richland County in Book 1384, at page 3241. This corrective deed corrected a deed from the same grantor to the same grantee dated August 9, 2007, and recorded in the RMC office for Richland County on September 20, 2007, in Book 1359, at page 2178.

5. That the Plaintiff's tract is divided by Raglin Creek, which flows generally from west to east, and serves as the county line between Kershaw County to the north of the Creek and Richland County to the south of the creek. According to the property description in the Plaintiff's deed, approximately 384 acres of the Plaintiff's property is located south of Raglin Creek in Richland County, and approximately 640 acres of the Plaintiff's property lies to the north of Raglin Creek in Kershaw County.

6. That the Plaintiff's tract has road frontage on U. S. Highway 601 above Raglin Creek in Kershaw County, but the Plaintiff's tract has no public road access south of Raglin Creek. To the extent that Raglin Creek is a natural barrier to ingress and egress, the 384 acres of the Plaintiff's tract located south of Raglin Creek in Richland County has no access except via the easement that the Plaintiff seeks to establish in this action.

7. I find from the testimony presented at trial that at some point several years before the plaintiff purchased his property in March of 2009, Pine Ridge Investments, LLC, the Plaintiff's predecessor in title, built a dam across Raglin Creek with a narrow road across the top of the dam. After the Plaintiff purchased the property, it improved the dam somewhat, making it safe for a vehicle to cross, but the dam has been damaged by storms, as it appears from a photograph,

Plaintiff's Exhibit 37, showing a gap eroded from the dam, and during the historic rains of October 2015, the dam washed out completely. I find as a matter of fact from the greater weight of all of the testimony presented, that Raglin Creek is a substantial natural barrier to the Plaintiff's ability to access the 384 acres of its property south of Raglin Creek in Richland County, and while the property south of Raglin Creek can be accessed by foot and has at times been accessible by personal vehicle, the natural barrier of the creek does limit the Plaintiff's ability to access its lands south of the creek, particularly with large vehicles and equipment necessary to harvest timber on the lands in Richland County south of Raglin Creek.

8. That the Plaintiff's use of its tract is for recreation including hunting and fishing, and for growing and harvesting timber. This has been the historical use of the tract by all of the Plaintiff's predecessors in title during the time period relevant to this case.

9. That the use by the Defendant and her predecessors in title of her tract of land has been for recreation including hunting and, growing and harvesting timber.

10. That there is a dirt road leading from Highway U. S. 601 to the southern boundary of the Plaintiff's tract and extending through the Plaintiff's tract to property owned by James L. Guy, II. This road is located south of Raglin Creek and would provide access to the Plaintiff's 384 acres south of Raglin Creek but for a locked gate on the Defendant's property where the road passes through the Defendant's tract. This locked gate is the source of the controversy in this case.

11. That the first 2,900 feet or so of the road in question from U. S. Highway 601 and proceeding eastward is maintained by Richland County. Richland County has no record of any deeded easement to this portion of the road maintained by it and provides maintenance to that

portion of the road under the legal theory that an easement by prescription in favor of the public has arisen over time from the continuous and adverse use of the road by the public. The county maintained portion of Northeast Shady Grove Road extends eastward from U. S. Highway 601 past the Defendant's western property line and ends on the Defendant's property. The end of county maintenance sign on Northeast Shady Grove Road is just inside the Defendant's property.

12. That Richland County has named the portion of the road maintained by it Northeast Shady Grove Road.

13. That the dirt road in question is shown on the 2004 plat by Michael Mills of Glenn and Associates, Plaintiff's Exhibit 2, as Shady Grove Road and Dirt Woods Road. It is shown on the 1998 Robert H. Lackey Surveying, Inc. plat, Plaintiff's Exhibit 6, as N.E. Shady Grove Road and Existing Woods Road. It is shown on the 1969 Fred J. Hager plat, Plaintiff's Exhibit 8, as Woods Road. It is shown on the 1957 plat for Powe Veneer Company, Plaintiff's Exhibit 10, as Camp Road. All of these plats show a dirt road extending from U. S. Highway 601 eastward below Raglin Creek through the Defendant's tract to the lands of the Plaintiff and then extending to the Guy Property east of the Plaintiff's tract.

14. The road in question appears on aerial photographs from 2013, Plaintiff's Exhibit 42; 1981, Plaintiff's Exhibit 43; 1970, Plaintiff's Exhibit 44; 1951, Plaintiff's Exhibit 45; and 1943, Plaintiff's Exhibit 46. These aerial photographs show a road in the same location as the road depicted in the above mentioned plats. The road was receiving enough use to resist the overgrowth of vegetation and remain visible from the air from 1943 to 2013.

15. The road in question is shown as a light duty road on 1953 Leesburg Quadrangle Map prepared by the United States Department of the Interior Geological Survey, Plaintiff's Exhibit 41.

16. The road in question is shown on a 1939 map prepared by the South Carolina Highway Department, Plaintiff's Exhibit 49. On this map, it is shown as a double solid line, whereas private roads are depicted on this map by a dotted line, indicating that the South Carolina Highway Department considered the entire road back to the Plaintiff's property to be a public road in 1939.

17. The Plaintiff produced no less than four witnesses who testified that the road in question had received public maintenance from Highway U. S. 601 to the Plaintiff's property line during the 1950s and 1960s.

18. That no party or government authority has petitioned any court or initiated any action to close or abandon any portion of the road in question that was previously maintained by the public or designated as a public road by the South Carolina Highway Department. No party has complied with the requirements of §57-9-10 South Carolina Code of Laws Annotated to abandon or close the road in question or any part thereof.

19. At this point, it would be useful to compare the history of the 2,900 foot portion of Northeast Shady Grove Road that currently receives maintenance services from Richland County (hereinafter county maintained portion) with the disputed portion of the road that lies east of the end of county maintenance sign, and up to and beyond the Plaintiff's southern property line (hereinafter the disputed portion). According to the combined testimony of witnesses Algie Campbell, W. D. Kirkland, Bennie Higgins and Angus Lafaye, both the county maintained

portion and the disputed portion of the road in question received public maintenance services from 1945 until at least 1969. Both portions of the road are equally indicated as a public road on the 1939 South Carolina Highway Department Map, Plaintiff's Exhibit 49. Both portions of the road are equally vivid and distinct on the 1943 aerial photograph, Plaintiff's Exhibit 46, and the 1970 aerial photograph, Plaintiff's Exhibit 44. There is ample testimony from witnesses Campbell, Kirkland and Higgins that they enjoyed unfettered use of both portions of the road as members of the public during the 1940s, 1950s, and 1960s. There is no evidence of a written or recorded easement conveying either portion to Richland County. There is no evidence of a formal dedication of either portion to the public for use as a public road. From 1945 until at least 1969, both portions of the road, the part now maintained by Richland County and the disputed portion, enjoyed equal status as a publicly maintained road.

In 1962, the South Carolina General Assembly enacted into law §57-9-10 South Carolina Code of Laws Annotated which requires any interested person or, the State or its political subdivisions to file a court action to close a road and to give notice of that court action to other landowners whose property would be affected by the road closing.

In about 1970 the Dunn's Mountain Hunt Club began to lease the hunting rights on the property now owned by the Defendant and property to the west of the Defendant's tract owned by a man named Higgins. The hunt club installed a steel gate across the road in question on the Higgins property in about 1970 according to the Defendant's witness, Gary Wessinger. That gate was later moved in 1982 eastward onto the property of the Defendant according to Wessinger. It appears that after the gate was installed, Richland County stopped maintaining the

disputed portion of the road while it continued to maintain the 2,900 foot portion of the road that it maintains today.

In summary, both the county maintained portion of the road and the disputed portion of the road were equally public until at least 1969. The statutory requirement for closing a public road became law in 1962 while both portions were under equal public maintenance and equal public use. The Dunn's Mountain Hunt Club, and later the Defendant's predecessor in title, began erecting gates across the road in 1970, but neither they nor Richland County complied with the statutory requirements for closing a public road. Therefore, the disputed portion of the road is still a public road because the legal requirement to close it to the public has never been met.

20. The compelling irony in this case is that the Defendant would be wholly without access to her property if the public easement to the first 2,900 feet of Northeast Shady Grove Road had not arisen at law from the very public maintenance and public use of the road described by the Plaintiff's witnesses. The Defendant readily accepts the benefit of the public easement providing access to her property, but seeks to deny that same benefit to the two landowners, the Plaintiff and Guy, whose lands are further down the road. If the public use and public maintenance were not as the Plaintiff's witnesses Campbell, Kirkland, Higgins and Lafaye testified that they were, the Defendant herself would be landlocked.

21. I find by strict, cogent and convincing evidence as set forth above that the continuous widespread public usage of the disputed portion of Northeast Shady Grove Road from 1945 through 1963, without challenge or interference from the previous owners of the Defendant's tract, establishes the public character of the road. This conclusion is fortified by the extent and

duration of the public maintenance performed on the disputed portion of Northeast Shady Grove Road from 1945 until 1969 which was equal in all respects to the public maintenance on the 2,900 foot section of the road that is currently maintained by Richland County as a prescriptive easement.

22. I find by strict, cogent and convincing evidence that Northeast Shady Grove Road was a public road from U. S. Highway 601 to the plaintiff's property line where, according to testimony of the Plaintiff's witnesses, the county motor grader turned around at until the first gate was erected in 1970.

23. I find by strict, cogent and convincing evidence that the §57-9-10 South Carolina Code of Laws Ann. requiring a judicial proceeding to abandon or close a public road was in effect in 1970 when the first gate was put up on Northeast Shady Grove Road.

24. I find by strict, cogent and convincing evidence that the judicial proceeding required under §57-9-10 South Carolina Code of Laws Annotated to close the disputed portion of Northeast Shady Grove Road and to cut off the Plaintiff's legal right to use the disputed portion of the road has never been filed.

25. That the Defendant's property includes a tract containing 213.53 acres as shown on a plat prepared by Bostick Surveying for Nancy D. Martin dated February 15, 2010, Plaintiff's Exhibit 22, and an adjacent tract, sometimes referred to as the Lewis Tract, containing 64.68 acres as shown on a plat prepared by Bostick Surveying for Nancy D. Martin, et al. dated September 9, 2012, Plaintiff's Exhibit 23. Both plats show the disputed portion of the road in question and label it Black Dog Road.

26. That the 213.53 acre tract shown on Plaintiff's Exhibit 22 was conveyed to the Defendant on August 9, 2007, by the trustees of the Edward Frank Martin, Jr. Trust, Plaintiff's Exhibit 24.

27. That the 213.53 acre tract show on Plaintiff's Exhibit 22 was passed down to the Defendant's father, Edward Frank Martin, Jr. through his mother and sisters from his father, Edward Frank Martin, Sr. who died owning it on December 15, 1967.

28. That Edward Frank Martin, Sr. obtained this tract from Florence Martin Van Horten by deed dated December 29, 1939, Plaintiff's Exhibit 27, which deed imposes a twenty (20) foot permanent right of way on the property "from said road running through the plantation back to the lands of J. H. and Ella T. Miller."

29. That the easement in favor of J. H. and Ella T. Miller derives from a deed by J. H. Miller to Ossee M. Martin dated November 18, 1918 reserving the identical easement over the lands now owned by the Defendant, Plaintiff's Exhibit 29.

30. That the lands of J. H. and Ella T. Miller, referred to in Plaintiff's Exhibit 27 as the tracts served by the twenty (20) foot right of way, are now a portion of the Plaintiff's tract south of Raglin Creek.

31. That the only road fitting the description in Plaintiff's Exhibit 27 running through the Defendant's property to the Plaintiff's property, which is shown on the 1939 South Carolina Highway Department Map, Plaintiff's Exhibit 49, and the 1943 aerial photograph, Plaintiff's Exhibit 46, is the disputed portion of Northeast Shady Grove Road.

32. That as to the 64.68 acre tract owned by the Defendant shown on Plaintiff's Exhibit 23, it is shown as 65.61 acres on a plat prepared for the Estate of F. R. Martin by Keels Engineering Company dated May 25, 1970, Plaintiff's Exhibit 35.

33. That according to the August 15, 1971 deed from Sara Martin Goff et al. to Joe Earl Taylor et al., Plaintiff's Exhibit 33, this tract of the Defendant is identical to the tract conveyed to Fletcher R. Martin by the heirs of Mattie L. C. Desportes by deed dated September 24, 1948, Plaintiff's Exhibit 36, which deed describes and conveys Tract E from the 1884 plat of the property partitioned in the 1885 lawsuit of Mattie L. C. Desportes v. John A. Myers et al., the 1884 plat being Plaintiff's Exhibit 19.

34. That on December 21, 1926, Mattie L. C. Desportes was the owner of Tract E (now the Defendant's 64.68 acre tract acquired from Lewis in 2012) when the said Mattie L. C. Desportes signed a deed to the Plaintiff's predecessor in title, Lura Mae Kinsland, Plaintiff's Exhibit 16, conveying to Kinsland Tract 1 from the 1884 partition suit, Plaintiff's Exhibit 19, when she imposed upon Tract E:

"also convenient rights of way for cart and wagon road over the lands of the parties of the first part and each of them to the Burney lands, the Martin lands, and the English lands for the purposes of ingress and egress and access from the public road to such tracts of land. Said grantee, her heirs and assigns shall also have the right to construct and use cart and wagon roads connecting the said tracts of land hereby conveyed with each other by the nearest convenient route, the present roads upon said lands to be followed where (illegible) and no lands at present under cultivation to be taken for roads without compensation being made for the same. **The said rights of way to be appurtenant to and pass by conveyance of the tracts of land above described.** The said right of way not to exceed twenty feet in width (illegible)." (Emphasis added)

35. That the tracts conveyed to Kinsland by Mattie L. C. Desportes, J. H. Miller and Ella T. Miller, formerly Ella Black, were Tract 1, Tract 2 and Tract 4 from the 1884 partition plat, Plaintiff's Exhibit 19, which now form the southeastern corner of the Plaintiff's tract, and the easement conveyed in Plaintiff's Exhibit 16 was for the purpose of giving those tracts now owned by the Plaintiff access to the public road.

36. That on December 21, 1926 when they signed the deed to Lura Mae Kinsland, Plaintiff's Exhibit 16, conveying Tracts 2 and 4 from the 1884 partition plat together with the rights of way to reach those lands which are now a part of the Plaintiff's tract, J. H. Miller and Ella T. Miller owned and through Plaintiff's Exhibit 16 conveyed to Kinsland, her heirs and assigns the right of way over the Defendant's tract described in the November 18, 1918 deed to Ossee M. Martin, Plaintiff's Exhibit 29, and later described on the deed to the Defendant's grandfather, Plaintiff's Exhibit 27.

37. I find by a preponderance of the evidence that the Plaintiff's Exhibit 16 conveyed the twenty (20) foot easement on the Defendant's 213 acre tract shown on the 2010 Bostick Plat, Plaintiff's Exhibit 22, and the easement over the Defendant's 64.68 acre tract shown on the 2012 Bostick Plat, Plaintiff's Exhibit 23, to Lura Mae Kinsland, the Plaintiff's predecessor in title, and expressly made both easements into appurtenances to pass by conveyance of Tracts 1, 2, and 4 from the 1884 partition plat which are now part of the Plaintiff's tract.

38. I find that both easements imposed on both of the Defendant's tracts flowed to the Plaintiff by and through the language "Together with all and singular, the rights, members, hereditaments, appurtenances to the said premises belonging or in anywise incident appertaining," which language is found in each deed in the Plaintiff's chain of title and which language was meant to convey the said easements, which were appurtenances to the Plaintiff's tract.

39. That at the time of the research of Shady Grove Road performed by Michael Mills in 2014, both easement deeds cited above were greater than sixty years old and therefore outside of the scope of a sixty year title search, which is the standard of practice for title searches in South

Carolina, although many real estate attorneys now use a forty year standard. This explains why Michael Mills testified that he did not discover an easement to Shady Grove Road.

40. I find by clear and convincing evidence that the Plaintiff and its predecessors in title used the disputed portion of the road in question for a period exceeding twenty (20) years.

41. I find by clear and convincing evidence that the use by the Plaintiff and its predecessors in title was continuous and uninterrupted for the full twenty (20) year period.

42. I find by clear and convincing evidence that the use by the Plaintiff and its predecessors in title was adverse to the rights of the Defendant.

43. I find by clear and convincing evidence that efforts by the Defendant and her predecessors in title to stop the adverse use of the road in question by erecting and locking a gate on the road failed. The Plaintiff produced numerous witnesses who testified that they used the road openly and notoriously in spite of the Defendant's efforts, and the Defendant's witnesses testified that adverse users were cutting the chain on the gate and installing their own locks.

44. I find by clear and convincing evidence that the Plaintiff's use of the road in question was under a claim of right, that the members of the limited liability company believed they had a right to use the road in question because it appeared prominently on the 2004 Gonzales Plat, Plaintiff's Exhibit 2, and because its predecessors in title maintained a lock on the gate and used the road whenever they needed to do so.

45. I find no evidence that the Defendant or her predecessors in title ever gave the Plaintiff or any of those using the road in question under the plaintiff or his predecessors in title permission to use the road. The only people who received permission to use the road from the Defendant or her father were her surveyor, her foresters, the members of Dunn's Mountain Hunt Club and

Santee Cooper; and in the end she withdrew her permission from the hunt club and Santee Cooper.

46. I find by clear and convincing evidence that the Plaintiff and its predecessors in title back to 1976 were business entities and a trust which could only use the disputed road in and through their employees, agents, foresters, timber crews, surveyors, real estate agents, and invited guest, who hunted and fished on the Plaintiff's tract together with members of hunt clubs who leased the hunting rights to the Plaintiff's tract and that these persons used the road in question with a frequency commensurate with the use of the property for hunting, fishing and, growing and harvesting timber. From 1976 to the present, no individual person has owned the Plaintiff's tract.

47. I find by clear and convincing evidence that the Plaintiff has proved the identity of the thing enjoyed, the road in question, from 1939 when it appeared on the South Carolina Department of Highways Map through the 2004 Gonzales Plat.

48. I find by clear and convincing evidence that the Plaintiff has proven the elements of an easement by prescription.

49. I find that the Defendant has failed to prove by clear and convincing evidence that she has adversely possessed the road for a ten (10) year period. The Plaintiff produced witnesses who testified to using the road adversely to the Defendant's interests within a ten (10) year period prior to the filing of the lawsuit.

CONCLUSIONS OF LAW

THE PRESCRIPTIVE EASEMENT

The prescriptive easement derives from the presumption of a lost grant. "It is enough if the use of the way cannot be reconciled with the right of the owner of the land otherwise than by supposing a license or grant, and in that case, if sufficient time has elapsed, the law presumes a grant." Craven v. Rose 3 S.C. 72 (1871). The law presumes from the use of the way by the claimant, that he must have a grant of an easement that has been lost.

In order to establish an easement by prescription, a party must show: (1) The continued and uninterrupted use or enjoyment of a right for a full period of Twenty (20) years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right. Horry County v. Laychur, 315 S.C.364, 434 S.E.2d 259 (1993). Once a right of way by prescription has been established by 20 years of continuous use, a later diminishment in the frequency of that use does not necessarily nullify the established right by prescription. Culthbert v. Lawton 3 McCord 194 14 S.C.L.194 (Ct. App. 1825). "Furthermore, in order to satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant." Jones v.Daley 363 S.C.310, 609 S.E.2d 597 (2005). "The element of continued use does not require the use thereof every day for statutory period, or even on a weekly or monthly basis; but simply the exercise of the right more or less frequently according to the nature of the use and the needs of the claimant." Jones v. Daley supra. The needs of the claimant in this case include only hunting sporadically, taking timber occasionally, showing the property for sale and surveying the property.

The standard of proof for establishing an easement by prescription is proof by clear and convincing evidence. Bundy v. Shirley 412 S.C. 292, 772 SE 2d 163 (2015). As to the twenty year use element, the Plaintiff produced testimony that members of the Plaintiff LLC, James Podell, and Claude Campbell used the disputed road to access their property before and after they acquired title to it on March 11, 2009. It produced testimony that Cecil Brazell had used the disputed road to hunt the property as an invited guest during the ownership period of Pine Ridge Investments LLC and that Harold Pickrel used the disputed road to show the property under the ownership period of Pine Ridge Investments LLC. It produced testimony that Angus Lafaye and Gordon Baker had used the disputed road to provide forestry services to both the Whitfield Company and Prospect Hill of Edisto Island during their ownership periods from 1999 to 2005. Also, Billy Cate used the disputed road to show the property during the Whitfield Company and Prospect Hill ownership periods. Mike Mills testified that he used the disputed road to survey the Plaintiff's tract in 2004. Also, Gordon Baker testified that timber harvests were conducted on the Plaintiff's tract during the Whitfield company period of ownership and the Prospect Hill period, and that the log trucks used the disputed road to hall the timber out. The Defendant's witnesses testified that the log trucks caused damage to the disputed road when the timber was cut on the tract now owned by the Plaintiff. Tim Dargan testified that he used the disputed road to provide forestry services to Robert J. Sheheen as Trustee of the Lloyd Trust. Mr. Dargan produced and distributed Plaintiff's Exhibit 38, which is an advertisement inviting potential buyers to use the disputed road to access the property and giving out the combination of the lock on the gate. Jamie Guy II testified that he used the disputed road to hunt the property now owned by the Plaintiff under a hunting lease that was in effect during the Lloyd and Lloyd Trust

ownership period from 1974 until 1999. Angus Lafaye testified that he used the disputed road to provide forestry services to the then owner of the land now owned by the Plaintiff from 1968 until 1969. Jamie Guy II testified that he has used the disputed road to access the property now owned by the Plaintiff and his property behind it continuously from the early 1950s until the filing of this lawsuit. Algie Campbell, W. D. Kirkland and Benny Higgins testified as to their use of the disputed road during the 1940s, 1950s, and 1960s. Claude Campbell testified that he had first used the disputed road to visit his uncle Fletcher Martin in 1939. In addition to the use witnesses as produced by the Plaintiff, the testimony of the defense witnesses, including the Defendant herself, that unauthorized locks had to be removed from the chain on the Defendant's gate from 1982 until 2009 proves adverse use by the owners of the unauthorized locks over a twenty year period.

A party may "tack" the period of use of prior owners in order to satisfy the twenty year requirement. Morrow v. Dyches 328 S. C. 522, 492 S. E. 2nd 420 (1997). I conclude as a matter of law that the owner can make use of the road through his agents, foresters, surveyors, realtors, timber crews, and hunters who hunted by invitation of the owner or as members of a hunting club that has leased the hunting rights to the property. In this case the property now owned by the Plaintiff has been owned by a trustee and various business entities since December 30, 1976, which entities must act through their agents, contractors, and lessees, and so forth.

I conclude as a matter of law that the Plaintiff has met his burden of proof as to use of the disputed road for a twenty year period.

I conclude as a matter of law that the Plaintiff has met his burden of proof as to the identity of the thing enjoyed by introducing the various plats, aerial photographs, and maps cited above in the paragraphs 13 and 14 of the Findings of Fact.

I conclude as a matter of law that the use of the disputed road by those using the road under the Plaintiff and its predecessors in title was adverse. "When the claimant has established that the use was open, notorious, continuous and uninterrupted, the use will be presumed to have been adverse." Kelley v. Synder 396 S. C. 564, 722 S. R. 2d 813 (2012). The Plaintiff's witnesses who testified as to the use of the disputed road generally used it to hunt, survey the Plaintiff's property, cruise timber, and cut timber, all of which are daytime activities. Many of them testified that their use was open and notorious. Most of them used motor vehicles. It is difficult to imagine a use of a dirt road more adverse than sending fully loaded log trucks down it as witness Gordon Baker described. Witness Tim Dargan put the combination of his lock on the gate in a sales flier and distributed it to potential purchasers. The lock cleaning testimony of the Defendant's hunt club witnesses showed that unauthorized users cut the chain on the Defendant's gate and installed unauthorized locks on the chain continually during the 1970s, 1980s, 1990s, and 2000s, so that periodic lock cleanings were necessary to remove the unauthorized locks. After each lock cleaning, the accumulation of unauthorized locks would start again, indicating that the adverse users simply ignored the efforts by the Defendant to restrict their use. The act of cutting the Defendant's chain and installing a lock not authorized by her is an act in defiance of the Defendant's right to control the road or her property, the quintessential adverse use, and according to the Defendant's witnesses, it went on all the time during the twenty year period prior to the filing of this lawsuit.

The Defendant asserts that the Plaintiff and its predecessors in title used the disputed road by permission granted by the Defendant and her predecessors in title, and that the use was permissive and not adverse. There is no evidence in the record that the Plaintiff or any of its witnesses ever received permission from the Defendant or her predecessors in title except witness Bennie Higgins and witness Jamie Guy II. Witness Bennie Higgins, who used the disputed road as a member of the public and was otherwise not associated with any owner of the Plaintiff's tract, testified that he obtained a key to a gate on the road from Wessinger (Transcript p. 180, line 20) in the 1970s. Gary Wessinger denies giving Higgins a key (Transcript p. 390, line 1). But if this key was given to Bennie Higgins it was while the gate across the disputed road was on the property of one Higgins, also leased by the hunt club before the gate was moved to the Defendant's property in 1982 according to Defendant's witness Gary Wessinger. Even if witness Higgins got a key to the gate he was not an owner of the Plaintiff's tract at the time, and the gate was not located on the Defendant's tract at that time. As to witness Jamie Guy II, the Defendant's witnesses associated with the Dunn's Mountain Hunt Club testified that Mr. Guy's lock was not removed from the Defendant's gate during the various lock cleanings because Mr. Guy had an arrangement with the Defendant's father to use the disputed road. Mr. Guy came back to testify in reply that no such arrangement existed, and that he never sought or received permission from the Defendant or her father to use the disputed road.

The Defendant cites the case of Bundy v. Shirley supra as authority for the proposition that the gates erected by the hunt club prove permissive use of the road. In that case Shirley, who was seeking to prove a prescriptive easement over the lands of Bundy, built a gate across the road on Bundy's property with Bundy's permission. The Supreme Court held that by going

to Bundy and obtaining permission to build the gate, Shirley acknowledged Bundy's right to control the use of the road, and the act of obtaining permission to build the gate rendered Shirley's use of the road permissive rather than adverse. Also in Bundy v. Shirley, Bundy's property had been leased to the State of South Carolina as game management lands under a program where the public was allowed to enter onto private property leased to the state to hunt and carry on other recreational activities during the twenty year use period. The Supreme Court expressed doubt as to whether Shirley's use of the road while the lands were open to the public constituted adverse use. Finally, during the game management lease, the South Carolina Department of Natural Resources erected a cable gate across the road. Shirley sought and obtained a key from the SCDNR game warden which he used to unlock the SCDNR gate and use the road. Obtaining the key from the game warden, the lessee of the owner Bowater was evidence of permissive use.

In this case, the Plaintiff had nothing to do with the construction or maintenance of the gates across the disputed roadway. The Defendant's property has never been leased to the state for use by the public. The Plaintiff has never obtained a key from the Defendant or any lessee of the Defendant. After the Defendant removed the Plaintiff's lock from her gate in 2009, the Plaintiff made several attempts to contact the Defendant to discuss the matter. When these efforts proved unsuccessful it ultimately filed this lawsuit. None of the facts that led the Supreme Court to conclude that Shirley's use of the road was permissive in Bundy V. Shirley supra are present in this case. Under Williamson v. Abbott 107 S.C. 397, 93 S. E. 15 (1917). "The asking and obtaining of permission" is necessary to stamp the character of the use as not having been adverse. In this case the Defendant and her predecessors in title erected a gate

across the disputed road, by all accounts refused to give the Plaintiff or the Plaintiff's predecessors in title permission to use the disputed road, and the Plaintiff and its predecessors in title continued to use the road whenever they needed to do so in spite of the gate. In order to support a finding of permissive use, the Defendant, a tenant of the Defendant, or someone claiming authority under the Defendant would first have to give permission to the Plaintiff or someone claiming under it to use the road or at least provide a key, which never happened in this case. Finally, the case of Craven v. Ross 3 S.C. 72 (1871) held that, "The way had been used for the required period over land enclosed and occupied by the defendant and during a portion of that time the plaintiff had, in order to use it, opened a gate placed by the defendant at the entrance of the land. It therefore followed that if the use was of the character stated in the evidence, it was necessarily adverse." In other words, continued use by the Plaintiff after the Defendant erects a gate on the road has been held to be evidence of adverse use.

A party claiming a prescriptive easement under a claim of right must demonstrate a substantial belief that he had the right to use the road based upon the totality of the circumstances. Hartley v. John Wesley United Methodist Church 355 S.C. 145, 584 S. E. 2d 386 (Ct. App. 2003). The law granting a prescriptive easement under claim of right does not mandate a party to believe that he holds actual title or that he plans to acquire it. Hartley v. John Wesley United Methodist Church, supra. James Podell testified that he believed that he had the right to use the disputed road because it was shown on the 2004 Mills plat, Plaintiff's Exhibit 2, that was used in drafting the deed to the Plaintiff and referred to it in the property description, based on statements made by his closing attorney in reference to the right to use the road at his closing, and based on the fact that he was able to use the disputed road to access his property

throughout the process of purchasing the Plaintiff's tract. Likewise, other witnesses produced by the Plaintiff who used the road under prior owners testified that they believed that they had the right to use the road because it had been used for a considerable time to access the Plaintiff's tract and because it had received public maintenance services in the past. I conclude as a matter of law that the Plaintiff has proved by clear and convincing evidence that the Plaintiff and its predecessors in title used the disputed road under a claim of right. I conclude as a matter of law that the Plaintiff has proved that it has a private prescriptive easement to use the disputed road across the lands of the Defendant to access the lands of the Plaintiff.

EASEMENT BY GRANT

The standard of proof applicable to establishing an easement by grant, has not been elevated to a higher standard of proof than the preponderance of the evidence standard applied generally in civil actions in South Carolina.

As a result of an 1885 partition suit, J. H. Miller became the owner of Tract D shown on the 1885 partition plat, Plaintiff's Exhibit 19, which became the greatest part of the Defendant's primary 213 acre tract, and the same J. H. Miller owned Tract 2 on Plaintiff's Exhibit 9, which became a portion of the Plaintiff's tract below Raglin Creek. Ella T. Miller, the wife of J. H. Miller, got Tract F and Tract 4 in the same partition suit, which later became a portion of the Plaintiff's tract. Mattie L. C. Desportes got Tract E, which became the Defendant's 64.68 acre tract, and Tract 1, which became the southeastern most portion of the Plaintiffs tract, all as shown on the 1884 plat, Plaintiff's Exhibit 19.

In 1918 J. H. Miller sold Tract D to one Ossee Martin, Plaintiff's Exhibit 29, but because he still owned Tract 2 and his wife, Ella, stilled owned Tracts F and 4, J. H. Miller was careful to

reserve for himself and his wife a twenty (20) foot easement through Tract D to provide access to Tract F, Tract 2 and Tract 4 that later became part of the Plaintiff's tract below Raglin Creek.

On December 21, 1926, J. H. Miller conveyed Tract 2, Ella T. Miller conveyed Tract 4, and Mattie L. C. Desportes conveyed Tract 1 from the 1884 partition plat to the Plaintiff's predecessor in title, Lura Mae Kinsland. In order to provide access to Tracts 1, 2, and 4, all of which are part of the Plaintiff's tract, the 1926 deed to Lura Mae Kinsland grants a right of way over the cart and wagon roads owned and controlled by the grantors, J. H. Miller, Ella T. Miller, and Mattie L. C. Desportes leading to and providing access to these tracts. At the time of the 1926 conveyance, Mattie L. C. Desportes stilled owned Tract E from the 1884 partition that later became the Defendant's 64.68 acre tract. J. H. Miller and Ella T. Miller owned in 1926 the twenty (20) foot right of way over Tract D, which is now the greater portion of 213 acre tract that had been reserved to them in the 1918 deed to Ossee Martin in order to provide access to the same Tracts 2 and 4 that they conveyed to Lura Mae Kinsland. In Plaintiff's Exhibit 16, the twenty (20) foot wide easement retained by J. H. Miller in his 1918 deed of Tract D to Ossee Martin, plus a right of way over Tract E, now the 64.68 acre Lewis tract owned by the Defendant, were granted with the stipulation that existing roads be used where possible. Plaintiff's Exhibit 16 conveys a twenty foot easement across both of the Defendant's tracts serving property that was to become the southeastern corner of the Plaintiff's tract, south of Raglin Creek in Richland County.

Also the 1926 Kinsland deed specifically provides that the rights of way conveyed by that deed were to become appurtenances to Tracts 1, 2, and 4' and pass by conveyance of said lands. Every deed from Lura Mae Kinsland to the Plaintiff in the chain of title conveying a portion of

Tracts 1, 2, and 4, included the language, "Together with all and singular, the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining." This language comes directly from §27-7-10 *South Carolina Code of Laws Ann.*, which sets forth the statutory deed form drafted by the General Assembly. It is not meaningless or flowery language to impress the reader. It means that the conveyance of lands also includes appurtenances such as easements and rights of way that are necessary for the use and enjoyment of the land. In this case, the deeds in the Plaintiff's chain of title after the Lura Mae Kinsland deed, Plaintiff's Exhibit 16, conveyed the appurtenances from grantor to grantee, which included the easements and rights of way over the two tracts owned by the Defendant, which were necessary to provide access to these tracts. Therefore, I conclude as a matter of law that the Plaintiff has proved by a preponderance of the evidence that it has a twenty (20) foot wide easement by grant over the lands of the Defendant following the course of the only west to east road through the lands of the defendant to the lands of the Plaintiff, which is the disputed road. This is a private easement appurtenant in favor of the Plaintiff.

PUBLIC EASEMENT BY DEDICATION

Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Horry County v. Laychur 315 S.C. 364, 434 S. E 2d 259 (1993). Second, there must be within a reasonable time, an express or implied public acceptance of the property offered for dedication. Helsel v. City of North Myrtle Beach 307 S. C. 24, 413 S. E. 2d 821 (1992). Even though a land owner must positively and unmistakably express his or her intention to dedicate property, the intent to dedicate may be implied from allowing lengthy public use of the land. Cleland v. Westvaco

Corp. 314 S. C. 508, 431 S. E. 2d 264 (Ct. App. 1993). No formal acceptance of the land by a public authority is necessary to complete the dedication; acceptance may be implied by the public's continuous use of the property. Boyd v. Hyatt 294 S. C. 360, 364 S. E. 2d 478 (Ct. App. 1988). Acceptance of offer of dedication also may be recognized through a public authority's using, repairing or working the streets. Helsel v. City of North Myrtle Beach supra.

The public easement by dedication where the dedication is proved by the owner's acquiescence in public use and maintenance of the road, and the acceptance of the dedication is proved by public maintenance of the road, is similar to a prescriptive easement in favor of the public but the elements are not identical.

In a public dedication case, the twenty (20) year use period for use by the public does not apply. "Where there has been an intended dedication by the owner of the property, no specific duration of use is required to show acceptance. The sufficiency of the use depends on the circumstances of each case." Boyd v. Hyatt supra. (finding public use for 13 years sufficient evidence of acceptance by the public)

The standard of proof for a public dedication of a right of way is strict, cogent and convincing evidence. Mack v. Edens 320 S. C. 236, 464 S, E, 2d 124 (1995).

As to the manifest intent of the Defendant's and her predecessors in title to dedicate the disputed road for public use, the Plaintiff produced testimony that the disputed road was open to the public and used by members of the public having no association with the Plaintiff's property or the Defendant's property from 1944 until 1963 or 1964. Witnesses Campbell, Kirkland, and Higgins testified that the disputed road was well maintained by county road scrapers during this time period. "The roads were like a super highway back then," according to W. D. Kirkland

(Transcript p. 186). Witness Angus Lafaye testified that the county did maintenance on the disputed road when he did forestry work on the Plaintiff's tract in 1968 and 1969 when it was owned by Richard Lloyd. So the Plaintiff has satisfied the public dedication requirement by presenting the uncontroverted testimony of members of the public who used the disputed road for a lengthy period of time. The Plaintiff has satisfied the public acceptance of the dedication requirement by presenting testimony that the disputed road received regular public maintenance from 1944 until at least 1969. The Plaintiff also introduced the 1939 South Carolina Highway Department Map showing the disputed road as a public road.

The disputed portion of Northeast Shady Grove Road and the portion now maintained by Richland County appear to have been equally public rights of way from 1939 until 1969 in terms of public use and public maintenance. The General Assembly passed a statute requiring a legal action to be filed in order to abandon or close a public road in 1962 while the disputed road was still under county maintenance according to the testimony of the Plaintiff's witnesses. The Defendant's predecessors in title began erecting gates on the road in 1970, but they never filed the legal action required by §57-9-10 *South Carolina Code of Laws Ann.* Having failed to comply with the requirements of notice and due process mandated by the State in order to abandon a public road, the Defendant and her predecessors in title have failed to legally extinguish the public character of the road that it enjoyed in 1962 when §57-9-10 was enacted. Therefore I conclude as a matter of law that the disputed portion of Northeast Shady Grove Road from the end of county maintenance sign to the Plaintiff's property line is a public road until the Defendant or Richland County complies with the applicable statute to close it.

STATUTE OF LIMITATIONS

The statute of limitations applicable to prescriptive easement actions is ten (10) years from the time the easement is obstructed. §15-3-340 *South Carolina Code of Laws Ann.* Bowen v. Team 6 Rich. 298, 40 S. C. L. 298 (1853). The ten (10) year statute under current §15-3-340 *South Carolina Code of Laws Ann.* is the only statute of limitations that has ever been used in a prescriptive easement case. §15-3-360 *South Carolina Code of Laws Ann.* has never been applied in a prescriptive easement case, and it cannot be applied to a claim for prescriptive easement because the Claimant in a prescriptive easement case is forced to rely on multiple entries on the servient estate which must occur at least twenty (20) years prior to the filing of the lawsuit. If he files the action within one (1) year of each entry upon which he relies he will never have twenty (20) years of continuous use when filing the suit.

ADVERSE POSSESSION OF THE EASEMENT BY DEFENDANT

The Defendant has not adversely possessed the easement over Shady Grove Road, because she has not obstructed the adverse use of the road for the full ten (10) year period required under the Statute of Limitations §15-3-340 *South Carolina Code of Laws Ann.* and the common law. Bowen v. Team supra. The Plaintiff produced testimony of witnesses James Podell, Claude Campbell, Lafaye, Baker, Cate, Pickrel, Cecil Brazell, Mac Brazell, Mills and Guy to prove use of the disputed road within ten (10) years of the filing of suit. Adverse possession is the same legal issue as the running of the Statute of Limitations since the cause of action for adverse possession is based on the running of the ten (10) year Statute of Limitations.

Evidence of adverse use of the road by the Plaintiff and others within ten (10) years of the filing of the action defeats the Defendant's claim of adverse possession.

CONCLUSION

In conclusion the Plaintiff has proved that the disputed road appears on maps, plats and aerial photographs dating back to 1939. It has received public maintenance in the past and use by the public. Those performing work, hunting and fishing under the Plaintiff and his predecessors in title have use the road to reach the Richland County side of the Plaintiff's tract South of Raglin Creek in spite of the gates erected by the Defendant and her predecessors in title for a period exceeding twenty years. The efforts by the Defendant to curtail such use by erecting gates, coupled with the stubborn determination of the Plaintiff and its predecessors to continue such use, establishes that the use was adverse. Finally, the deed to the Defendant's grandfather, E. F. Martin, Sr., imposes a twenty (20) foot easement on her property extending from west to east to provide access to the predecessors in title to the southeastern corner of the Plaintiff's tract, placing the Defendant on notice that she owes the Plaintiff access across her property to its lands lying south of Raglin Creek. The prescriptive easement is based on the theory of a lost grant, and in this case, the lost grant has turned up in the 1939 deed to E. F. Martin, Sr. and the 1926 deed to Lura Mae Kinsland. Considering all of these facts together, it is manifest that the Plaintiff is entitled to at least a private easement to use this road that has endured for seventy years, and has been used by the Plaintiff and its predecessors in title as the principal, if not the sole, access to that portion of the Plaintiff's property lying south of Raglin Creek in Richland County, which creek has obstructed access to this portion of the Plaintiff's property from U.S. Highway 601 for most of that seventy year period.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is ordered:

1. That the Plaintiff has a private twenty (20) foot wide easement across the lands of the Defendant to use the disputed portion of Northeast Shady Grove Road from the end of county maintenance sign to the Plaintiff's southern property line as shown on the 2004 Gonzales plat, Plaintiff's Exhibit 2. The Defendant is enjoined from obstructing the Plaintiff's use of the road by a locked gate or any other device. To the extent that the Defendant keeps a gate across said road, the Defendant is ordered to provide the Plaintiff with a means of opening the gate such as a key or combination to any lock on the gate within thirty (30) days of the signing of this order. This easement is appurtenant to the tract now owned by the Plaintiff and shall run with the land to the Plaintiff's successors and assigns; and

2. Northeast Shady Grove Road from the end of county maintenance sign to the Plaintiff's southern property line as shown on the 2004 Gonzales plat, Plaintiff's Exhibit 2, is declared to be a public road open to the public for use by the public, provided that Richland County is not required by this order to provide maintenance services to the portion of Northeast Shady Grove Road past its end of county maintenance sign. The Defendant is ordered to remove her gate from this road within thirty (30) days of the signing of this order.

AND IT IS SO ORDERED.

Joseph M. Strickland
Master in Equity for Richland County

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2014-CP-40-1805

Country Properties, LLC
PLAINTIFF(S)

Nancy Dunn Martin
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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.

2017 JUL 21 P1:58
RICHLAND COUNTY, SC
CLERK OF COURT
FILED

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: Defendant's Motion to Alter or Amend Pursuant to Rule 59(e) and 52(b), SCRCP is DENIED

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2017 July 21, 2017

Master in Equity Judge Strickland | Judge Code | Date

For Clerk of Court Office Use Only

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

John W. Wells, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joey R. Floyd, Esquire

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

12-082 RP

The South Carolina Court of Appeals

Country Properties, LLC, Respondent,

v.

Nancy Dunn Martin, Appellant.

Appellate Case No. 2017-001795

ORDER

Appellant has filed a motion for leave to make a motion for relief pursuant to Rule 60(b), SCRCP, with the trial court. Respondent filed a return, and Appellant filed a reply. After careful consideration, the motion is granted. This appeal shall be held in abeyance pending the trial court's ruling on the motion. Appellant shall provide this Court with status updates every thirty days.

FOR THE COURT

Columbia, South Carolina

cc:
Joey Randell Floyd, Esquire
Wesley Dickinson Peel, Esquire
Robert Crum Osborne, III, Esquire
John W. Wells, Esquire
Michael Brent McDonald, Esquire

FILED
October 5, 2017

ELECTRONICALLY FILED - 2019 Feb 06 10:14 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4001805
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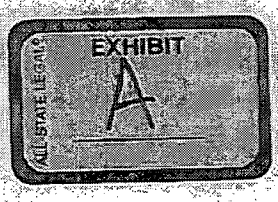
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2014-CP-40-01805
Country Properties, LLC	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANT'S RULE 60(b) MOTION**
	)	
v.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	

STATEMENT OF THE CASE

This matter is before this Court, pursuant to the Rule 60(b) motion of Defendant Nancy Dunn Martin ("Defendant" or "Martin"). This matter initially came before the Court upon the complaint of Plaintiff Country Properties, LLC ("Plaintiff" or "Country Properties"). The subject of the underlying case relates to an easement for the use of a dirt road on Martin's property. Following a trial held March 21–24, 2016, this court issued an order finding, among other things, that the Plaintiff had an easement across Martin's property and that the road across Martin's property was also a public road.

Following the issuance of this Court's order, Defendant appealed to the Court of Appeals on August 22, 2017. On August 27, 2017, Defendant discovered new evidence related to the proceedings. On August 30, 2017, Defendant petitioned the appellate court for leave to file a Rule 60(b) Motion to seek Relief from Judgment or Order before this court. The Court of Appeals granted Defendant's motion on October 5, 2017.[1] On October 24, 2017, Defendant filed a Rule 60(b) motion with this Court. The parties appeared and argued the Motion on July 18, 2018 and

[1] Pursuant to the Court of Appeal's order, the appeal is held in abeyance so that the trial court can entertain the Rule 60(b) motion.



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this order follows. After review of the motion and arguments of the parties, I find that Defendant's motion should be granted and that a new trial should be ordered.

BACKGROUND

Country Properties filed suit on March 18, 2014 in Richland County, South Carolina listing five causes of action against Martin. Plaintiff sought access to Defendant's property under three theories of declaratory judgment: that it was deeded a right of access, that it held a prescriptive easement, and that the road through Defendant's property is public. Based on the first two theories, Plaintiff also sought a permanent injunction to prevent obstruction of its use of the road through Defendant's property. Defendant answered the complaint, opposing all causes of action asserted by Plaintiff, and counterclaimed under a theory of adverse possession or prescription by servient tenement.

The case was referred by consent to the Master-in-Equity by The Honorable Casey Manning in July 2014. The matter was tried before this court on March 21–24, 2016. Following the presentation of numerous exhibits and witness testimony, this court issued an Order in favor of the Plaintiff. The final order, filed on September 27, 2018, found that Plaintiff has an easement through Defendant's property, that Defendant should be enjoined from obstructing Plaintiff's access to the easement road, and that the road through Defendant's property is an unmaintained public road of Richland County. The order relied in part on evidence from the Plaintiff that Raglin Creek formed a natural barrier impeding Plaintiff's access to its property—thus necessitating the need for access via Defendant's property. Plaintiff avowed that a dam that had previously created passage across the creek was washed out completely and unusable. Following the order finding for the Plaintiff, Defendant filed a motion to alter or amend that was subsequently denied. Defendant appealed the case to the Court of Appeals, but shortly thereafter discovered new

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evidence regarding the dam. Aerial photos of the dam showed that it had in fact been recently repaired. The photos imply that vehicular traffic may now traverse the dam. This development suggests that the Plaintiff's need for the use of Defendant's property may be significantly less than indicated at trial. Based on this information, Defendant sought and received leave from the Court of Appeals to file a Rule 60(b) motion for relief from judgment. Following a hearing on this matter, I conclude that Defendant's motion should be granted and a new trial ordered.

DISCUSSION

Defendant moves for relief from judgment on the basis of Rule 60(b)(2), SCRCP. Rule 60(b) provides, in relevant part, as follows:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
> ***
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> ***

Rule 60(b), SCRCP. In order to prevail on a Rule 60(b)(2) a moving party must show that the new evidence: "(1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) (quoting James F. Flanagan, SOUTH CAROLINA CIVIL PROCEDURE 484 (2d ed. 1996). The decision to grant a motion under Rule 60(b), SCRCP, is within the sound discretion of the trial judgment and will be reversed only under an abuse of discretion standard. *See Se. Hous. Found. v. Smith*, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008) (citations omitted); *see also Lanier*, 364 S.C. at 215–16, 612 S.E.2d at 458 (citations omitted).

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The new evidence presented by Defendant is aerial photographs taken by a drone of a dam on Plaintiff's property. These photos depict a full functional dam with no damage apparent in the photos. At trial, Plaintiff presented witness testimony by one of its two members about the dam. The testimony indicated that the dam had previously been dangerous or unstable, preventing usage by larger vehicles. Testimony indicated that $70,000 in repairs had previously been made to the dam, but that the October 2015 flood that gravely affected South Carolina caused significant damage to the dam, causing it to again be impassible. Notably the trial in this matter was held only a few short months after the historic October 2015 floods giving little intervening time for repairs or improvements to the deluged dam.

The new evidence presented however suggests that Plaintiff has now had the opportunity to repair the dam, making it passable, and therefore eliminating any need for Plaintiff to traverse Martin's property. The evidence at trial suggested that a large portion of Plaintiff's property could not be reached by Plaintiff's other existing methods of egress because of the impeding creek and damaged dam. The evidence now suggests the Plaintiff can access all of its property via routes that do not transect Martin's property, which changes the court's analysis. Therefore, I find that the new evidence supports the conclusion that the outcome of a new trial would likely be different than the outcomes previously reached. Because the likely result of the trial would be changed, I find that this new evidence is material to the issues to be determined and that it is appropriate to order a new trial.

The timing of events in this case indicate that Defendant could not have obtained this new evidence in time to present it at the original trial. The dam is located near the center of Plaintiff's property (a little over 1000 acres) and is not visible from Defendant's property. The new evidence was gathered using an aerial drone — not a technology one typically employees. Prior to the

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original trial, Defendant did not have an opportunity to view the dam or to ascertain its importance to the accessibility of Plaintiff's property. Further, the dam had recently been damaged by the flood and there is no evidence in the record to suggest it had been repaired at the time of the original trial. The record completely lacks any similar evidence to that now presented by the Defendant. Additionally, this new evidence does not conflict with prior evidence or testimony about the dam, but rather presents new information about the state of the dam and its role in this case. Thus, this new evidence is not cumulative or impeaching, nor was it obtainable by Defendant prior to the original trial. Therefore, it is appropriate to consider this new evidence now.

Given that Defendant has presented new evidence it could not have previously discovered, that this evidence materially affects the prior determinations of the court and likely changes the outcome of the case, and that this evidence is neither cumulative nor impeaching, I conclude that Defendant's Rule 60(b) motion should be granted and a new trial ordered.

ORDER

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment is **GRANTED**.

IT IS FURTHER ORDERED that a new trial shall be held in this matter.

IT IS SO ORDERED.

-electronic signature page to follow-

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-40-01805

Country Properties, LLC,

PLAINTIFF(S)

Nancy Martin,

DEFENDANT(S)

Submitted by: s/Joey R. Floyd P.O. Box 61110, Columbia, South Carolina 29260	**Attorney for :** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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.**

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Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

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

John W. Wells
P.O. Box 10
Lugoff, SC 29078
ATTORNEY(S) FOR THE PLAINTIFF(S)

Joey R. Floyd
P.O. Box 61110
Columbia, SC 29260
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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Richland Common Pleas

Case Caption: Country Properties LLC vs Nancy Dunn Martin

Case Number: 2014CP4001805

Type: Master/Order/Form 4

It is so Ordered

s/Joseph M. Strickland, 3055

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2019 Mar 26 9:22 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4001805

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-01805

Country Properties, LLC,

Plaintiff

vs.

Nancy Dunn Martin,

Defendant(s)

ORDER DENYING PLAINTIFF'S RULE 59(e), SCRCP MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANT'S RULE 60(b) MOTION

The matter before the court is a motion by the Plaintiff, M. Brent McDonald, Rule 59(e) SCRCP Motion to Alter or Amend Order Granting Defendant's Rule 60(b) Motion, in the above captioned case.

The motion is denied.

AND IT IS SO ORDERED

Joseph M. Strickland, as
Master in Equity for Richland County

Columbia, South Carolina
March 19, 2019

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Country Properties, LLC,)
Plaintiff(s))

vs.)

Nancy Dunn Martin,)
Defendant(s))

CIVIL ACTION COVERSHEET

2014-CP - 40- 1805

Submitted By: John W. Wells
Address: PO Box 10 Lugoff, SC 29078

SC Bar #: 6019
Telephone #: 803-438-4200
Fax #: 803-438-5090
Other:
E-mail: jwells@baxleywells.com

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

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☑ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: J. W. Wells **Date:** 3/14/14

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

50

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

SUMMONS

2014-CP-40-

NON-JURY TRIAL REQUESTED

2014 MAR 18 AM 10:08

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office, Three The Common At Lugoff, Post Office Box 10, Lugoff, South Carolina 29078, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for Judgment by default for the relief demanded in the Complaint.

BAXLEY, PRATT & WELLS, P.A.

BY: _____

John W. Wells
Attorney for Plaintiff
Three The Common At Lugoff
Post Office Box 10
Lugoff, SC 29078
(803) 438-4200

Lugoff, South Carolina

Dated: March 14, 2014

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Country Properties, LLC,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	
vs.	)	2014-CP-40-
	)	
Nancy Dunn Martin,	)	**NON-JURY TRIAL REQUESTED**
	)	
Defendant.	)	

2014 SEP 18 AM 10:08

The Plaintiff above named, complaining of the Defendant herein, would respectively show unto the Court:

1. That the Plaintiff is a limited liability company formed under the laws of the State of South Carolina with its principal place of business in the County of Richland, State of South Carolina.

2. That the Defendant is a citizen and resident of the County of Richland, State of South Carolina.

3. That the Plaintiff is the owner of a certain tract of land located partly in Kershaw County and partly in Richland County which was conveyed to the Plaintiff by deed of Pine Ridge Investments, LLC, dated March 11, 2009, and recorded in the RMC office for Richland County in Book "1515", at page 1554, the same being also filed in the ROD office for Kershaw, the tract being described as follows:

All that piece, parcel or lot of land, with improvements thereon, if any, lying, situate

and being in the State of South Carolina, Counties of Richland and Kershaw, located approximately ten (10) miles South of Lugoff, containing 1,023.07 acres, more or less, and being shown and described on a plat prepared fro Gonzales Land and Timber, LLC, by Michael R. Mills, P.L.S., dated June 22, 2004, and recorded in the office of the ROD for Richland County in Book "951", at page 1618 and recorded in the office of the ROD for Kershaw County in Book "3121", at page 7. Said plat is incorporated herein by reference for a more complete and accurate description.

The 1,023.07 acres is split between Richland County, containing 383.63 acres and Kershaw County containing 640.07 acres.

4. That the Defendant is the owner of several tracts of land located in the County of Richland, State of South Carolina described as follows:

PARCEL 1: All that certain piece, parcel or tract of land , situate, lying and being near Raglin Creek, east of U.S. Highway 601, in School District No. 2, in the County of Richland, and State of South Carolina, containing Sixty-Five and 06/100ths (65.06) acres, more or less, and bounded as follows: to wit: On the NORTH by property now or formerly of R. W. Lloyd; on the EAST by property now or formerly of R. W. Lloyd; on the SOUTHEAST and SOUTH by property now or formerly Astor V. Cleveland; and on the WEST by property now or formerly of Jessie Dunn Matin; said tract will more fully appear reference to a plat prepared for Rufus D. Lewis, Jr., by Edward R. Owens, R.L.S., dated October 18, 1976. Be all measurements a little more or less.

38000-03-08 and 38000-03-08

This being the same property conveyed to the Defendant by deed of Laura Jane Lewis Allen, et al. dated November 15, 2012, and recorded in the RMC for Richland County in Book "1813", at page 244.

PARCEL 2: All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels 3, 4, 5, and 6, containing in the aggregate 164.0 acres, more or less, as shown on a plat surveyed for Heirs of Osie E. Martin by Jas. C. Covington, C.E.,

dated October 8, 1930, and recorded in the office of the RMC for Richland County in Plat Book "R", at page 199; said parcels having such boundaries and measurements as shown on said plat which are specifically incorporated herein by reference thereto.

TMS # R38000-03-07 & R38000-03-15

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U.S. Hwy. 601, in the County of Richland, State of South Carolina, being more particularly shown as a portion of Tract 1 and 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E. dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book "R", at page 199; said property being more particularly shown and delineated as 23.20 acres on a plat prepared for Neal H. Higgins and Karen J. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded in Plat Book "55", at page 7626, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto as often as necessary for a more complete and accurate description; be all measurements a little more or less.

gw #3

TMS #: R38000-03-06

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U. S. Hwy. 601, in the County of Richland, State of South Carolina, being more particularly shown as a portion of Tract 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington,C.E., dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book "R", at page 199; said property being more particularly shown and delineated as 23.30 acres on a plat prepared for Van A. Higgins and Linda L. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded May 19, 1995 in Plat Book "55", at page 7627, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto as often as necessary for a more complete and accurate description; be all measurements a little more or less.

TMS# R3800-03-48

PARCEL 2 was conveyed to the Defendant by Corrective Limited Warranty Fiduciary Deed of Dorothy Martin Tate and Nancy Dunn Martin as successor co-trustees of the Edward Frank Martin, Jr., Trust dated August 5, 2004, dated December 13, 2007, and recorded in the RMC office for Richland County in Book "1384", at page 3241. This corrective deed corrected a deed from the same grantor to the same grantee dated August 9, 2007, and recorded in the RMC office for Richland County on September 20, 2007, in Book "1359", at page 2178.

5. That Shady Grove Road also known as Camp Road is a public dirt road extending from U.S. Highway 601 and running in an easterly direction through the above described property of the Defendant to the above described property of the Plaintiff and extending through the Plaintiff's above described property to property now owned by James L. Guy, II.

#4

6. That Shady Grove Road has been in existence serving as access to the Plaintiff's property for approximately one hundred (100) years, and that the entire length of Shady Grove Road through the property of the Defendant, the property of the Plaintiff and the property of Guy has been publicly maintained at times.

7. That the Defendant has lately placed locks on a gate obstructing Shady Grove Road and blocking the Plaintiff's access via Shady Grove Road to its above described property, said gate being on the property of the Defendant described above.

FOR A FIRST CAUSE OF ACTION

8. That the Plaintiff's predecessors in title acquired the right to use Shady Grove Road as access to the Plaintiff's property from the predecessors in title of the Defendant

by an easement reserved in the deed from John H. Miller to Osee M. Martin a/k/a Osie M. Martin dated November 18, 1918, and recorded in the RMC office for Richland County in Deed Book "BV", at page 69, and by deed of Mattie Le C Desportes, J. H. Miller and Ella J. Miller to Lura Mae Kirkland dated December 21, 1926, and recorded in the RMC office for Richland County in Deed Book "CW", at page 121.

9. That the former deed mentioned in Paragraph 8 reserved to the Plaintiff an easement over the Defendant's property described as Parcel 2 in Paragraph 4, and the latter deed referenced in Paragraph 8 granted the Plaintiff an easement over the Defendant's property described as Parcel 1 in Paragraph 4.

#5

10. That the Plaintiff is the owner of a deeded right of way across and through the above described property of the Defendant, and the Defendant's property is encumbered by the said right of way, known as Shady Grove Road by virtue of the deeds mentioned in Paragraph 8.

11. That the Plaintiff is entitled to a declaratory judgment declaring that the Plaintiff has a permanent deeded right of access to the road known as Shady Grove Road through the property of the Defendant.

FOR A SECOND CAUSE OF ACTION

12. That each and every allegation of the First Cause of Action and the recitation of facts of above is realleged as strongly as if restated verbatim.

13. That the Plaintiff, it's predecessors in title and others have used Shady Grove Road from Highway U.S. 601 to the Plaintiff's property line for ingress and egress, which use has been continuous and uninterrupted for multiple twenty (20) year periods including the most recent twenty (20) years prior to the filing of this complaint; which use has pertained to a road that has been mentioned and identified in deeds going back to November 18, 1918, and is identified and shown on Richland County tax maps which identify the thing enjoyed; and which use has been adverse or under a claim of right.

14. That the use of the road by the Plaintiff, the Plaintiff's predecessors in title and others has been open and notorious during the prescriptive easement periods.

15. That the Plaintiff and the Plaintiff's predecessors in title have used Shady Grove Road under a claim of right, believing that they had the right to use the road because of the deeds set forth in the First Cause of Action, and because of the public maintenance of the road.

16. That the Plaintiff is informed and believes that it has a prescriptive easement to use Shady Grove Road as access to the Plaintiff's property from U. S. Highway 601 to the Plaintiff's property line.

17. That the Plaintiff is informed and believes that the Plaintiff is entitled to a declaratory judgment declaring that the Plaintiff has a permanent prescriptive easement to the road known as Shady Grove Road leading from U. S. Highway 601 to the Plaintiff's

property line.

FOR A THIRD CAUSE OF ACTION

18. That each and every allegation of the First and Second Causes of Action and the recitation of facts above is realleged as strongly as if restated verbatim.

19. That the Plaintiff is informed and believes that the Plaintiff is entitled to a permanent injunction prohibiting the Defendant from blocking or obstructing Shady Grove Road based on the Plaintiff's rights to use the said Shady Grove Road acquired under the deeds cited in Paragraph 8 above.

FOR A FOURTH CAUSE OF ACTION

20. That each and every allegation of the First, Second and Third Causes of Action and the recitation of facts are repeated as strongly as if restated here verbatim.

21. That the Plaintiff is informed and believes that the Plaintiff is entitled to a permanent injunction prohibiting the Defendant from blocking or obstructing the Plaintiff's access to the Plaintiff's property via Shady Grove Road based on the Plaintiff's prescriptive easement to use Shady Grove Road.

FOR A FIFTH CAUSE OF ACTION

22. That each and every allegation of the First, Second, Third, and Fourth Causes of Action and the recitation of facts are repeated as strongly as if restated here verbatim.

23. That Shady Grove Road, also known as Camp Road is a public road, a portion of

which is currently maintained by Richland County, and all of which road from U. S. Highway 601 to the property now owned by Guy has been maintained by Kershaw County from time to time.

24. That the property owners along Shady Grove Road made a dedication of the road to the public for public use.

25. That the act of scraping and maintaining Shady Grove Road by Richland County and Kershaw County demonstrates a public acceptance of the dedication of the road.

26. That upon information and belief, the Plaintiff is entitled to declaratory judgment declaring that Shady Grove Road is a public road from Highway 601 to the Plaintiff's property line, that the Plaintiff has the right to use Shady Grove Road for ingress and egress because of its public character; and granting the Plaintiff a permanent injunction prohibiting the Defendant from obstructing Shady Grove Road because of the public character of Shady Grove Road.

WHEREFORE, the Plaintiff prays that the Court will issue its Order as follows:

1. Granting the Plaintiff a declaratory judgment that the Plaintiff has a permanent deeded easement to use Shady Grove Road from Highway U.S. 601 to the Plaintiff's property line.

2. Granting the Plaintiff a declaratory judgment that the Plaintiff has a permanent prescriptive easement to use Shady Grove Road as access to the Plaintiff's property

from Highway U.S. 601 to the Plaintiff's property line.

3. Enjoining the Defendant from obstructing Shady Grove Road based on the Plaintiff's deeded easement and right to use Shady Grove Road acquired by deed.

4. Enjoining the Defendant from obstructing Shady Grove Road by virtue of the Plaintiff's prescriptive easement and right to use Shady Grove Road acquired by operation of law.

5. Granting the Plaintiff a declaratory judgment that Shady Grove Road is a public road, and the Plaintiff, as a member of the public, has the right to use Shady Grove Road from Highway U.S. 601 to the Plaintiff's property line, and enjoining the Defendant from blocking or obstructing Shady Grove Road.

BAXLEY, PRATT & WELLS, P.A.

BY: _____

John W. Wells
Attorney for Plaintiff
Three The Common At Lugoff
Post Office Box 10
Lugoff, SC 29078
(803) 438-4200

Lugoff, South Carolina

Dated: March 14, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Country Properties, LLC, Plaintiff, vs. Nancy Dunn Martin, Defendant.	IN THE COURT OF COMMON PLEAS Civil Action No.: 14-CP-40-1805 **ANSWER & COUNTERCLAIM**

RICHLAND COUNTY
FILED
2014 MAY 22 AM 11:05
JEANNETTE W. McBRIDE
C.C.P. & G.S.

The Defendant Nancy Dunn Martin (referred to herein as "the Defendant") responds to the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies any and all allegations in the Complaint which are not specifically admitted herein.

2. Defendant is without sufficient information to admit or deny the allegations in Paragraph 1; therefore, the allegations in Paragraph 1 are denied and strict proof is demanded thereof.

3. Defendant admits the allegations in Paragraph 2.

4. Defendant admits the allegations in Paragraph 3 to the extent that the Plaintiff owns a tract of land that is located in Richland County and Kershaw County. The Defendant craves reference to the deed(s) of record regarding the legal description of said property. The Defendant denies the remaining allegations, if any, of Paragraph 3.

5. Defendant admits the allegation of Paragraph 4 to the extent that Defendant owns several tracts of land in close proximity to the Plaintiff's land. The Defendant craves reference to the deed(s) of record regarding the legal descriptions of said properties. The Defendant denies

the remaining allegations, if any, of Paragraph 4.

6. Defendant denies the allegations of Paragraph 5.

7. Defendant denies the allegations of Paragraph 6.

8. Defendant denies the allegations of Paragraph 7 that allege the Defendant has lately place locks on a gate. The Defendant would further allege and show that a locked gate has been across the private road owned by the Defendant for approximately 40 years.

9. Defendant denies the allegations of Paragraphs 8, 9 10 and 11.

10. Paragraph 12 does not make any allegations against the Defendant and does not require a response from the Defendant. However, to the extent that Paragraph 12 may be construed to have allegations against the Defendant, said allegations are denied and strict proof is demanded thereof.

11. Defendant denies the allegations of Paragraphs 13, 14, 15, 16 and 17.

12. Paragraph 18 does not make any allegations against the Defendant and does not require a response from the Defendant. However, to the extent that Paragraph 18 may be construed to have allegations against the Defendant, said allegations are denied and strict proof is demanded thereof.

13. Defendant denies the allegations in Paragraph 19.

14. Paragraph 20 does not make any allegations against the Defendant and does not require a response from the Defendant. However, to the extent that Paragraph 20 may be construed to have allegations against the Defendant, said allegations are denied and strict proof is demanded thereof.

15. Defendant denies the allegations in Paragraph 21.

16. Paragraph 22 does not make any allegations against the Defendant and does not

require a response from the Defendant. However, to the extent that Paragraph 22 may be construed to have allegations against the Defendant, said allegations are denied and strict proof is demanded thereof.

17. Defendant denies the allegations in Paragraph 23, 24, 25 and 26.

FOR A SECOND DEFENSE
(Rule 12(b)(6), Failure to state a Cause of Action)

18. The Defendant reiterates the responses and allegations contained hereinabove as fully as if repeated herein verbatim to the extent they are consistent with the following responses and allegations.

19. The allegations contained in the Complaint fail to set forth facts sufficient to constitute a cause of action against Defendant.

FOR A THIRD DEFENSE
(No Easement)

20. The purported deeds reserving, or granting, the alleged easement(s) do not grant an easement across/over the real property owned by Defendant.

FOR A FOURTH DEFENSE
(Easement is Unnecessary)

21. The Plaintiff has multiple points of access to all parts of its property (the entire tract) through various access points, including, but not limited to, Highway 601 and Old English Road.

FOR A FIFTH DEFENSE
(Failure to Define Location of Easement)

22. To the extent that the Plaintiff's predecessors in title attempted to grant an easement, which is specifically denied by the Defendant, the predecessors in title failed to define the location of easement.

23. In the alternative, if the Court determines that there was a grant of an easement, which is specifically denied by the Defendant, the location of said easement is undefined and the Defendant has the right to locate the easement.

FOR A SIXTH DEFENSE
(No Continuous and Uninterrupted Use for 20 years)

24. The Plaintiff can not show or establish continuous and uninterrupted use of the private road across the Defendant's property.

FOR AN SEVENTH DEFENSE
(No Adverse Use or Use Under Claim of Right)

25. The Plaintiff can not show, or establish, adverse use or use of the private road across the Defendant's property under a claim of right.

FOR AN EIGHTH DEFENSE
(Abandonment)

26. The Plaintiff and/or the Plaintiff's predecessors in title abandoned any right(s) that it/they may have had in the private road across the Defendant's property.

27. The Plaintiff is barred from claiming any right to an easement, if any such easement exists, because said right(s) to the easement, if any such easement ever existed, has been abandoned.

FOR A NINTH DEFENSE
(Statute of Limitations)

28. The Plaintiff's cause(s) of action are barred by the applicable Statute of Limitations.

FOR A TENTH DEFENSE
(Laches)

29. The Plaintiff's cause(s) of action are barred by the doctrine of laches.

FOR AN ELEVENTH DEFENSE
(Waiver)

30. Under the facts of this case, the Plaintiff has waived any claim, if any it had, against the Defendant.

FOR A TWELFTH DEFENSE
AND A FIRST COUNTERCLAIM
(Adverse Possession/Prescription by Servient Tenement)

31. The county road commonly known and referred to as Northeast Shady Grove Road terminates at a point on property owned by the Defendant, Nancy Martin.

32. The Defendant and Defendant's predecessors in title have maintained a locked gate beyond the terminus of the county road known as Northeast Shady Grove Road in excess of 40 years before this lawsuit was filed by the Plaintiff.

33. The locked gate is situated wholly upon the real property owned by Nancy Martin.

34. The Defendant and her predecessor's in title have, at all times, maintained the locked gate, created dirt roads (oftentimes referred to as various "woods roads") on the Defendant's property(ies), and maintained said private dirt roads for the exclusive use of the property owners and guests/authorized users of the property now owned by the Defendant Nancy Martin.

35. The Defendant's use of the various roads, along with the Defendant's predecessor in title's use of the various roads, on the Defendant's property have been continuous, hostile, open, adversarial, notorious and exclusive.

36. To the extent that any other person(s) have used the various roads behind the locked gate beyond the terminus of Northeast Shady Grove Road, said use has been with the permission of the owner(s) of the property now owned by Nancy Martin.

37. If there was ever an easement across the property now owned by Nancy Martin, which is specifically denied, the Defendant and her predecessor's in title have adversely possessed said easement and the easement is now owned by Nancy Martin by virtue of adverse possession, adverse prescription and/or prescription by the servient tenement.

WHEREFORE, having answered the Complaint of the Plaintiff, the Defendant Nancy Martin prays that this Court find:

(a) That there is no easement across the Defendant's property;

(b) That in the event there is an easement, the Plaintiff and/or the Plaintiff's predecessor's in title have abandoned said easement;

(c) That in the event there is an easement, the Defendant and/or her predecessor's in title have extinguished any easement by way of adverse possession and/or prescription by the servient tenement; and

(d) That Plaintiff's Complaint should be dismissed with attorneys' fees and costs taxed to the Plaintiff.

Joey R. Floyd
Wesley D. Peel
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200 (29204)
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendant,
Nancy Dunn Martin

Alexander M. Sanders, Jr.
19 Water Street
Charleston, SC 29401
(843) 953-5755
Attorney for the Defendant,
Nancy Dunn Martin

May 21, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Country Properties, LLC, Plaintiff, vs. Nancy Dunn Martin, Defendant.	IN THE COURT OF COMMON PLEAS Civil Action No.: 14-CP-40-1805 **CERTIFICATE OF SERVICE**

RICHLAND COUNTY
FILED
2014 MAY 22 AM 11:05
JEANNETTE W. McBRIDE
C.C.P. & G.S.

I, Kim Warnock, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for the Defendant Nancy Dunn Martin, do hereby certify that on May 21, 2014, I served a copy of the documents listed below on counsel of record by depositing a copy of same in the U.S. Mail, first-class, postage prepaid and addressed as follows:

Pleading(s)/Documents served:

Answer and Counterclaim of Defendant Nancy Dunn Martin to Plaintiff's Complaint.

Counsel served:

John W. Wells, Esquire
Baxley Pratt & Wells, PA
P.O. Box 10
Lugoff, SC 29078
Attorneys for the Plaintiff

KWarnock

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2014-CP-40-1805

RICHLAND COUNTY
FILED
2014 MAY 29 AM 11:56
JEANETTE W. MCBRIDE
C.C.P. & G.S.

REPLY

The Plaintiff would respectfully show that:

1. That the allegations of Paragraphs 31, 32, 33, 34, 35, 36, and 37, are denied and strict proof thereof is required by the Plaintiff.

WHEREFORE, the Plaintiff prays that the relief sought in the Defendant's Counterclaim should be denied, and judgment entered for the Plaintiff on its claims for relief set forth in the Complaint.

BAXLEY, PRATT & WELLS, P.A.

BY: _____

John W. Wells
Attorney for Plaintiff
Three The Common At Lugoff
Post Office Box 10
Lugoff, SC 29078
(803) 438-4200

Lugoff, South Carolina

Dated: 5/28/14

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2014-CP-40-1805

AFFIDAVIT OF SERVICE BY MAIL

RICHLAND COUNTY FILED
2014 MAY 29 AM 11:56
JEANNETTE W. MCBRIDE C.C.P. & G.S.

PERSONALLY appeared before me, Dona R. Ammons, Secretary to John W. Wells, Attorney, who being sworn, deposes and says that she served his Reply in the above captioned case by depositing a copy of the same in the United States Postal System, on May 28, 2014, with proper postage affixed thereto and properly addressed to:

Joey R. Floyd, Esquire
PO Box 61110
Columbia, S.C. 29260-1110

BAXLEY, PRATT & WELLS, P.A.

Dona R. Ammons
Dona R. Ammons
Secretary to John W. Wells

SWORN to before me this the
28th day of May, 2014

Notary Public for South Carolina
My commission expires: 2/25/18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2014-CP-40-1805
Country Properties, LLC, Plaintiff, vs. Nancy Dunn Martin, Defendant.	)	**DEFENDANT'S NOTICE OF MOTION AND MOTION TO ALTER OR AMEND PURSUANT TO RULES 59(e) AND 52(b), SCRCP**

2016 NOV -9 AM 11:48
RICHLAND COUNTY FILED
JEANNETTE W. McBRIDE C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that, Pursuant to Rule 59(e), SCRCP, Defendant, Nancy Dunn Martin ("Defendant" or "Martin"), by and through her undersigned attorneys, respectfully moves the Court to alter or amend its Order entered on, or about, September 27, 2016 (the "Order"), written notice of which was received on November 1, 2016. Because the Court sat as the finder of fact in the trial of this matter, Defendant also brings this motion pursuant to Rule 52(b), SCRCP, to amend, as necessary, the Court's findings of fact.

Defendant hereby moves that the Order be altered or amended on the following grounds:

1. The Court erred in finding that the 384 acres of Plaintiff's tract located south of Raglin[1] Creek has no access without accessing the private dirt road on the Defendant's property beyond the terminus of the public portion of Northeast Shady Grove Road. The Plaintiff's property has no less than three points of access to public roads without using the dirt road on the Defendant's property.
2. The Court erred in finding that the 384 acres of Plaintiff's tract located south of Raglin Creek has no access without accessing the private dirt road on the Defendant's property

[1] The creek is actually "Raglins Creek;" however, it is referred to in the Order as "Raglin Creek." For purposes of this motion, it will be referred to as "Raglin Creek."

beyond the terminus of Northeast Shady Grove Road because the Plaintiff did not assert a claim of necessity and Counsel for the Plaintiff stipulated at trial that there was no claim for an easement by necessity.

3. The Court erred in finding that Raglin Creek is a substantial natural barrier to the Plaintiff's ability to access the 384 acres of its property south of Raglin Creek and that Raglin Creek limits the ability of the Plaintiff to access its lands south of Raglin Creek. The Plaintiff has access to its property through its own property.
4. The Court erred in finding there was widespread public usage of the dirt road on the Defendant's property beyond the end of the county road[2] from 1945 through 1969.
5. The Court erred in finding that the of the dirt road on the Defendant's property was a public road until 1970.
6. The Court erred in failing to consider the testimony of Randy Byrd, the Richland County Right of Way Agent, who testified where Northeast Shady Grove Road starts and where Northeast Shady Grove Road ends, according to Richland County's records.
7. The Court erred in failing to consider the testimony of Richland County's Right of Way Agent, Randy Byrd, who testified that the dirt road on the Defendant's property is not and has never been a public road.
8. The Court erred in failing to consider Richland County's maps (Defendant's Exhibit 9) that demonstrates the private dirt road on the Defendant's property is not a public road.
9. The Court erred in finding that the sole method of closing a public road is pursuant to S.C. Code § 57-9-10.

[2] Based on the undisputed testimony of Randy Byrd, the Right of Way Agent for Richland County.

10. Assuming that the dirt road on the Defendant's property was public, the Court erred in finding that the road was not abandoned by the public.

11. The Court erred in failing to consider the Plaintiff's own expert's testimony where he testified that he failed to find an easement on the Defendant's property.

12. The Court erred in failing to consider the Plaintiff's title abstractor's testimony that she failed to find an easement on the Defendant's property.

13. The Court erred in finding that the Plaintiff's deeds to the Plaintiff's property conveyed an easement(s) appurtenant to the Plaintiff's property.

14. The Court erred in finding that the language in the in deeds conveyed an easement.

15. To the extent there is an easement by grant, the Court erred in failing to find that the Plaintiff's use of the alleged easement does not exceed the scope of the easement.

16. The Court erred in finding that the Plaintiff and its predecessors in title used the dirt road on the Defendant's property for a period exceeding twenty (20) years.

17. The Court erred in finding that the Plaintiff and its predecessors in title use of the dirt road on the Defendant's property was continuous and uninterrupted for a twenty (20) year period.

18. The Court erred in finding that the Plaintiff and its predecessors in title use of the private dirt road beyond the terminus of Northeast Shady Grove Road was adverse to the rights of the Defendant and her predecessors in title.

19. The Court erred in finding that the Plaintiff and its predecessors in title use of the dirt road on the Defendant's property was open and notorious.

20. The Court erred in finding that the Defendant's attempts to prevent adverse use of the private dirt road on the Defendant's property failed.

21. The Court erred in considering whether the Plaintiff's and its predecessors in interest use of the dirt road on the Defendant's property was under a claim of right in determining whether a prescriptive easement exists.

22. The Court erred in finding that the Plaintiff and its predecessors in title use of the disputed portion of the dirt road on the Defendant's property was under a claim of right.

23. The Court erred in finding there was no evidence that the Defendant gave the Plaintiff or any other person(s) using the dirt road on the Defendant's property permission to use the road.

24. The Court erred in finding that the Plaintiff, in regard to the dirt road on the Defendant's property, proved the identity of the thing enjoyed.

25. The Court erred in finding that the Plaintiff proved the elements of an easement by prescription.

26. The Court erred in finding that the Defendant failed to prove that it had adversely possessed the disputed portion of the dirt road on the Defendant's property for a period of ten (10) years.

27. The Court erred in concluding as a matter of law that the Plaintiff met its burden of proof as to the use of the disputed road for a twenty (20) year period.

28. The Court erred in concluding as a matter of law that the Plaintiff met its burden of proof as to identity of the thing enjoyed.

29. The Court erred in failing to delineate and define the purported prescriptive period that gives rise to the prescriptive easement.

30. The Court erred in concluding as a matter of law that the Plaintiff met its burden of proof as to proving that the Plaintiff and its predecessors in title use of the dirt road on the Defendant's property was adverse.

31. The Court erred in concluding as a matter of law that the Plaintiff and its predecessors in title proved that its/their use of the dirt road on the Defendant's property was under a claim of right.

32. The Court erred in concluding as a matter of law that the Plaintiff proved that it has a twenty (20) foot wide easement by grant over the lands of the Defendant which is located on the dirt road on the Defendant's property.

33. The Court erred in concluding that the dirt road on the Defendant's property is a private easement appurtenant in favor of the Plaintiff.

34. The Court erred in finding that the dirt road on the Defendant's property is a public road.

35. The Court erred in concluding that Plaintiff's claims are not barred by the Statute of Limitations, S.C. Code §§ 15-35-340, 360 and 380.

36. The Court erred in concluding that the Defendant has not adversely possessed the disputed portion of Northeast Shady Grove Road for a period of ten (10) years.

37. The Court erred, as a matter of law, in failing to consider the presence of locked gate (i.e. a physical barrier), located wholly on the Defendant's property, discontinued the non-permissive use of the dirt road on the Defendant's property to interrupt the purported prescriptive period.

38. The Court erred in failing to determine that the use of the dirt road on the Defendant's property by the witnesses called by the Plaintiff testified that they used the road by obtaining permission from someone, i.e. permissive use.

39. The Court erred in failing to consider the Plaintiff's representative asking for permission to use the dirt road on the Defendant's property.

40. The Court erred in failing to find that permissive use can never rise to the level of adverse use.

41. The Court failed to address and rule upon the Defendant's Counterclaim for Adverse Possession/Prescription by the Servient Tenement.

42. The Court failed to address the abandonment of the easement since it found that there was an easement. The Court should find that the easement was abandoned.

WHEREFORE, for the foregoing reasons, the Defendant respectfully requests that the Court alter or amend the Order in the following respects:

(a) That there was no grant of an express easement across the Defendant's property.

(b) That the Plaintiff failed to establish that it has a prescriptive easement to use the dirt road on the Defendant's property beyond the end of Northeast Shady Grove Road.

(c) That the Plaintiff failed to establish all of the necessary elements of a prescriptive easement, in that the Plaintiff failed to establish continued and uninterrupted use or enjoyment for a period of twenty (20) years and the Plaintiff failed to prove use or enjoyment which was adverse or under a claim of right.

(d) That all "use" of the private dirt road on the Defendant's property proffered by the Plaintiff was permissive use and to the extent that there was any stealthy use of the private dirt road, the stealth use was stopped when discovered.

(e) That the Plaintiff failed to establish that it has a twenty foot (20') easement by grant over the disputed portion of Northeast Shady Grove Road.

(f) That the private dirt road on the Defendant's property is not, and never was, a public road.

(g) That the Plaintiff's claims are barred by the applicable Statutes of Limitation, SC Code §§ 15-35-340, 360 and 380.

(h) That it was undisputed a locked gate has been located on the Defendant's property, beyond the terminus of the public portion of Northeast Shady Grove Road, in excess of 40 years. As such, the locked gate serves as a complete bar to the Plaintiff's claims in this action because the locked gate is absolutely clear evidence that all use of the dirt road behind the locked gate was strictly permissive use. To the extent that there was stealthy use of the private dirt road beyond the locked gate, the stealth use was eliminated when it was discovered.

(i) The presence of a locked gate (i.e. a physical barrier), located wholly on the Defendant's property, discontinued the non-permissive use of the dirt road on the Defendant's property to interrupt the purported prescriptive period.

(j) That the Defendant and/or her predecessors in title have established that she and/or her predecessors in title adversely possessed the road for a period of ten (10) years.

(k) That to the extent that there may have been an easement, which is disputed by the Defendant, the easement rights have been adversely possessed by the Defendant and/or her predecessors in title.

(l) That there is no evidence of any intent for the private dirt road to be dedicated to public use and that there is no evidence supporting the acceptance of the private dirt road for public use.

(m) That the Order be clarified, altered amended and/or modified to ascertain whether the Court is ruling that the private dirt road on the Defendant's property is a public road or whether the Court has determined that the road is subject to a private easement since the Order, as written, is inconsistent.

Respectfully Submitted,

BRUNER POWELL WALL & MULLINS, LLC

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Wesley D. Peel
Robert C. Osborne III
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendant

Columbia, South Carolina
November 9, 2016

STATE OF SOUTH CAROLINA COUNY OF RICHLAND Country Properties, LLC, Plaintiff, v. Nancy Dunn Martin, Defendant.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-40-1805 **CERTIFICATE OF SERVICE**

RICHLAND COUNTY FILED
2016 NOV -9 AM 11:08
JEANETTE W. McBRIDE C.C.P. & G.S.

I, Katie Gjennestad, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on the 9th day of November, 2016, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following:

Pleadings/Documents Served:

DEFENDANT'S NOTICE OF MOTION AND MOTION TO ALTER OR AMEND PURSUANT TO RULES 59(e) AND 52(b), SCRCP

Person(s) Served:

John W. Wells, Esquire
Baxley Pratt & Wells, PA
P.O. Box 10
Lugoff, SC 29078

Joseph M. Strickland
Richland County Master In Equity
P.O. Box 2766
Columbia, SC 29202

Katie Gjennestad

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNY OF RICHLAND Country Properties, LLC, Plaintiff, v. Nancy Dunn Martin, Defendant.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-40-1805 **CERTIFICATE OF SERVICE**

I, Katie Gjennestad, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiff, do hereby certify that on the 10th day of November, 2016, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following:

Pleadings/Documents Served:

FILED COPY OF DEFENDANT'S NOTICE OF MOTION AND MOTION TO ALTER OR AMEND PURSUANT TO RULES 59(e) AND 52(b), SCRCP

Person(s) Served:

John W. Wells, Esquire
Baxley Pratt & Wells, PA
P.O. Box 10
Lugoff, SC 29078

Joseph M. Strickland
Richland County Master In Equity
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Columbia, SC 29202

Katie Gjennestad

Columbia, South Carolina

84417

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity

RECEIVED
AUG 30 2017
SC Court of Appeals

Case No.: 2014-CP-40-1805

Country Properties, LLC.....Respondent,

vs.

Nancy Dunn Martin.....Appellant.

APPELLANT'S REQUEST FOR LEAVE TO MAKE MOTION FOR RELIEF PURSUANT TO RULE 60(b), SCRCP

Appellant, Nancy Dunn Martin ("Appellant" or "Martin"), hereby requests leave to make a motion for relief from the Final Order of the Honorable Joseph M. Strickland entered on September 27, 2016, pursuant to Rules 60(b)(2) and 60(b)(3), SCRCP.

This matter involves Respondent's, Country Properties, LLC ("Respondent" or "Country Properties"), claim of an alleged easement across Martin's property. Martin has appealed the trial court's ruling that an easement in favor of Respondent exists across her property. During the trial of the matter, Plaintiff and its counsel alleged that a portion of Plaintiff's property is inaccessible by road unless accessed by the alleged easement through Martin's property. In fact, the Final Order issued upon the conclusion of trial contained the following finding of fact:

> That Plaintiff's tract has frontage on U.S. Highway 602 above Raglin Creek in Kershaw County but the Plaintiff's tract has no public road access south of Raglin Creek. ***To the extent that Raglin Creek is a natural barrier to ingress and egress, the 384 acres of***

> ***the Plaintiff's tract located south of Raglin Creek in Richland County has no access except via the easement that the Plaintiff seeks to establish in this action.***

Final Order at ¶ 6 (emphasis added). Additionally, the trial court stated:

> I find from the testimony presented at trial that at some point several years before the plaintiff purchased his [sic] property in March of 2009, Pine Ridge Investments, LLC, the Plaintiff's predecessor in title, built a dam across Raglin Creek with a narrow road across the top of it making it safe for a vehicle to cross, but the dam has been damaged by storms, as it appears from a photograph, Plaintiff's Exhibit 37, showing a gap eroded from the dam, and during the historic rains of October 2015, the dam washed out completely. I find as a matter of fact from the greater weight of all the testimony presented, that Raglin Creek is a substantial natural barrier to the Plaintiff's ability to access the 384 acres of its property south of Raglin Creek in Richland County, and while the property south of Raglin Creek can be accessed by foot and has at times been accessible by personal vehicle, ***the natural barrier of the creek does limit the Plaintiff's ability to access its lands south of the creek, particularily with large vehicles and equipment necessary to harvest timber on the lands in Richland County South of Raglin Creek.***

Final Order at ¶ 7 (emphasis added). Despite Plaintiff and its counsel making these representations which were ultimately included in the trial court's order, Martin recently discovered that the dam referenced in the Final Order has been rebuilt and once again provides Plaintiff with access to its property south of Raglin Creek. Photographs showing the rebuilt dam is attached hereto as **Exhibit A.**[1]

It is clear from the trial court's Final Order that the Plaintiff's alleged inability to access portions of its property played a significant role in the court ruling that Plaintiff had an easement across Defendant's property. Given the importance of this issue, Martin seeks leave to present evidence to the trial judge, pursuant to Rules 60(b)(2) and 60(b)(3), SCRCP, which clearly

[1] Additional evidence of the rebuilt dam exists and will be presented to the trial court should this Court grant Martin's motion.

demonstrates that Plaintiff may access all of its property without an easement through Martin's property.

Therefore, Martin respectfully requests that she be granted leave a file a motion for relief under Rule 60(b), SCRCP, for the reasons stated above, and Martin further requests that the deadlines in the instant appeal be stayed and/or extended accordingly.

Joey R. Floyd (SC Bar No. 68491)
Wesley D. Peel (SC Bar No. 9283)
Robert C. Osborne III (SC Bar No. 101827)
Bruner Powell Wall & Mullins, LLC
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Columbia, SC

August 30, 2017

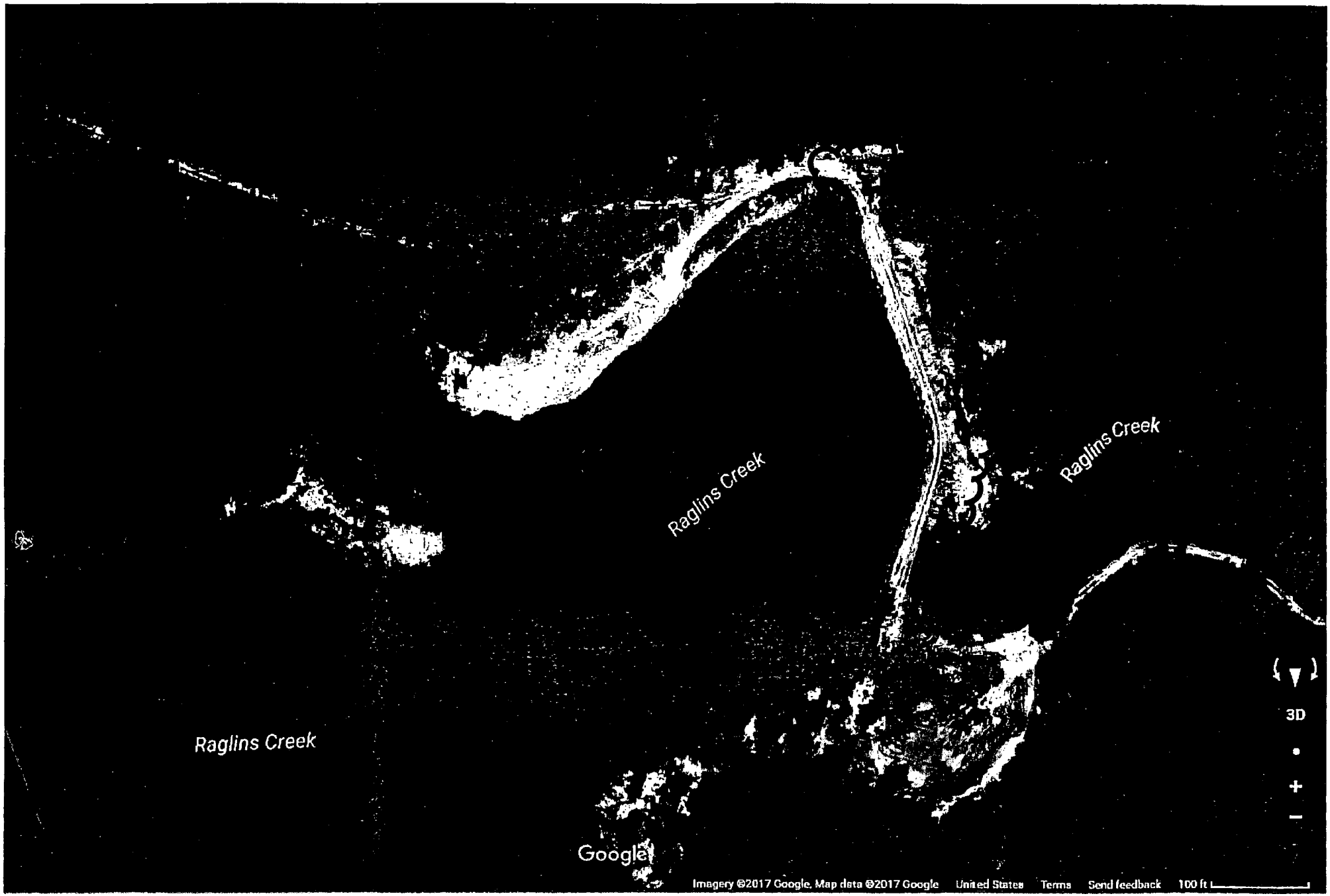
Other Counsel of Record:

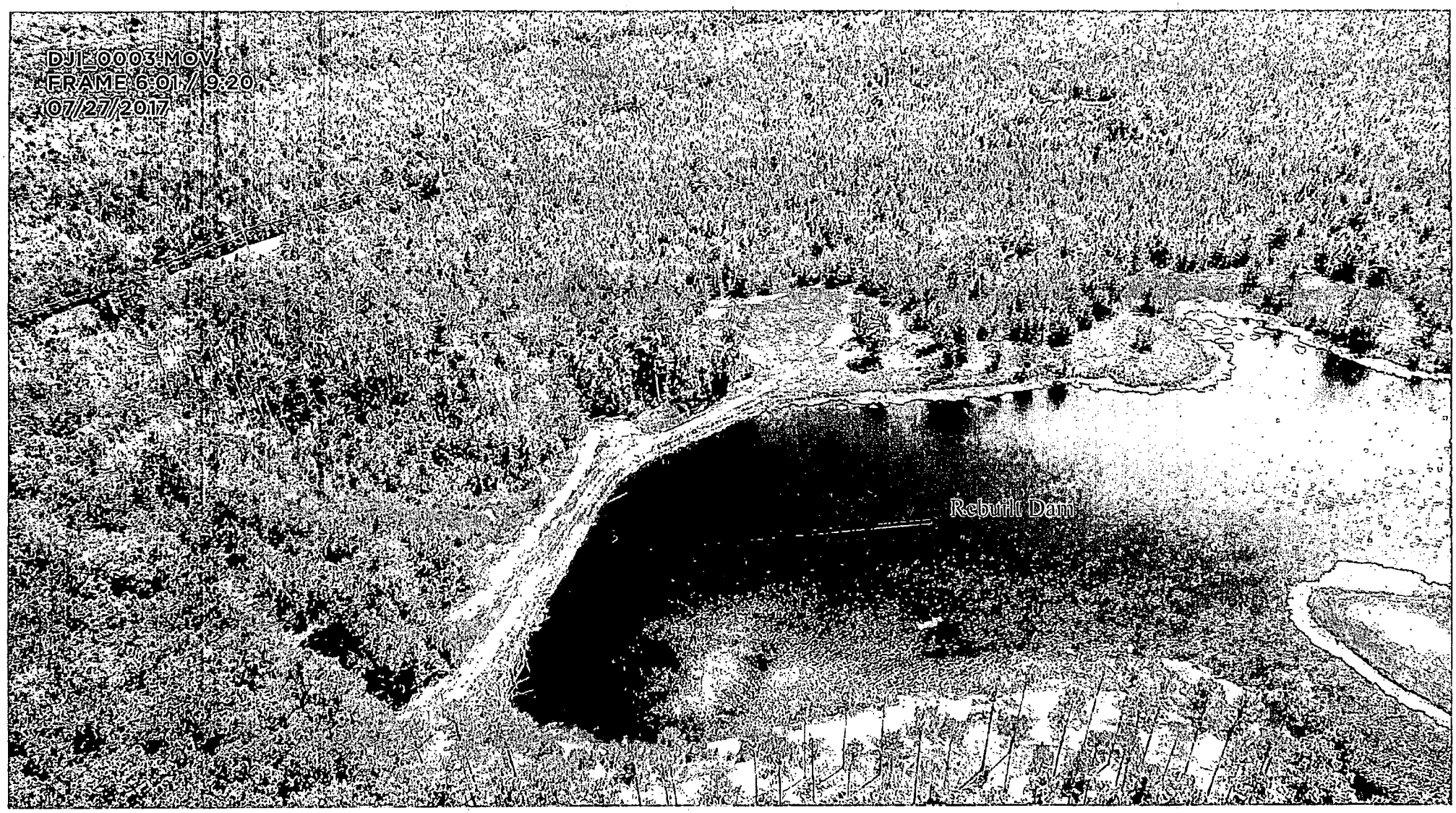
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Attorneys for Respondent

EXHIBIT A


Raglins Creek
Raglins Creek
Raglins Creek
Raglins Creek
3D
Google
Imagery ©2017 Google, Map data ©2017 Google
United States
Terms
Send feedback
100 ft


DJI_0003.MOV
FRAME 6:01 / 9:20
07/27/2017
Reburlt Dam

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity

Country Properties, LLC.....Respondent,

vs.

Nancy Dunn Martin.....Appellant.

PROOF OF SERVICE

I certify that I have served ***Appellant's Request for Leave to Make Motion for Relief Pursuant to Rule 60(b), SCRCP*** on Respondent Country Properties, LLC by depositing a copy of it in the United States Mail, postage prepaid, on August 30, 2017, addressed to its attorneys of record, John Wells, Esq. and M. Brent McDonald, Esq. (addresses shown below).

August 30, 2017

Joey R. Floyd (SC Bar No. 68491)
Wesley D. Peel (SC Bar No. 9283)
Robert C. Osborne III (SC Bar No. 101827)
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RECEIVED
AUG 30 2017
SC Court of Appeals

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BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

** Also Admitted in District of Columbia

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OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III

AUTHOR'S E-MAIL: jfloyd@brunerpowell.com

August 30, 2017

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court -The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
AUG 30 2017
SC Court of Appeals

RE: Country Properties, LLC v. Nancy Dunn Martin
Civil Action No.: 2014-CP-40-1805
BPWM File No.: 8-2376.102

Dear Ms. Kitchings:

Enclosed herewith you will find an original and eight (8) copies of ***Appellant's Request for Leave to Make Motion for Relief Pursuant to Rule 60(b), SCRCP*** and a check in the amount of $25.00 to cover the applicable filing fee. Also enclosed is a Proof of Service evidencing service of the same upon counsel for the Respondent. I kindly ask that your staff file the original and copies in accordance with your procedures. Thereafter, I ask that your staff return two (2) filed copies back to my runner who will be waiting. Feel free to call me if you, or a member of your staff, have any questions. Please note, as stated in the motion, Appellant requests that the deadlines in the instant appeal be stayed and/or extended accordingly until a decision on the motion is issued.

With my kindest regards, I am

Sincerely,

Joey R. Floyd

JRF/rco
Enclosures
cc: John Wells, Esquire (Via U.S. Mail w/ Copy of Enclosures)
M. Brent McDonald (Via U.S. Mail w/ Copy of Enclosures)
Nancy D. Martin (Via E-Mail Only w/ Copy of Enclosures)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2014-CP-40-1805
	)	
Country Properties, LLC,	)	
	)	**MEMORANDUM IN SUPPORT OF**
Plaintiff,	)	**DEFENDANT'S MOTION TO ALTER OR**
	)	**AMEND PURSUANT TO RULES 59(e)**
vs.	)	**AND 52(b), SCRCP**
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	
	)	

RICHLAND COUNTY
FILED
2017 JAN 19 PM 3:03
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Defendant, Nancy Dunn Martin ("Martin" or Defendant") submits this memorandum of law in support of her motion to alter or amend the Final Order entered on September 27, 2016 in this matter (the "Order").[1] In its Order, the Court held that:

(1) The Plaintiff, Country Properties, LLC ("Plaintiff") had a prescriptive easement and an easement by grant to use a dirt road, behind a locked gate, located entirely on the Defendant's property.

(2) The Plaintiff has an easement by grant.

(3) The dirt road, behind a locked gate on the Defendant's property (the gate has been in place in excess of 40 years), beyond the terminus of what Richland County designates as the end of Northeast Shady Grove Road is a public road.

(4) The Plaintiff's claims were not barred by the applicable statute of limitations.

(5) The Defendant failed to establish that she adversely possessed any easement rights that the Plaintiff and/or its predecessors may have had in the private dirt road beyond the terminus of the public portion of Northeast Shady Grove Road.

[1] Written notice of the entry of judgment was received on November 1, 2016. Defendant timely filed the subject motion on November 9, 2016.

Defendant respectfully requests that Court reconsider its findings and conclusions and that it alter and/or amend the Order based on the arguments in this memorandum. The arguments below are substantially similar to the findings and conclusions set forth in the Defendant's Proposed Order submitted to the Court on May 13, 2016, attached hereto as **Exhibit A.**

I. The Court Erred in Finding That Plaintiff Established an Easement by Prescription and an Easement by Grant.

A. There is no Easement by Prescription

In order to establish an easement by prescription, a party must show: (1) The continued and uninterrupted use or enjoyment of a right for a full period of twenty (20) years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse, or under a claim of right. *Simmons v. Berkeley Electric Cooperative, Inc.*, 2016 S.C. LEXIS 325 (2016) (citing *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917)). It should be noted that in *Simmons*, the Supreme Court clarified that "[b]y placing a 'comma' after the term 'adverse', [the Supreme Court] intended to modify the term 'adverse,' not create another method to establish a claim. *Id.*

Here, the Court found that the Plaintiff established all of the necessary elements for a prescriptive easement.[2] This finding was in error. As to the first element, continuous or interrupted use for a period of twenty (20) years, the Court found that the Plaintiff's and its predecessors' disregard for the Defendant's and its predecessors' locked gate as evidence of adverse for a period of twenty-years. This ruling is in direct conflict with South Carolina precedent. In *Pittman v. Lowther*, 363 S.C. 47, 610 S.E.2d 479 (2005), our Supreme Court addressed the issue of "what

[2] As an aside, Plaintiff only seeks to establish an easement by prescription and an easement by grant. Counsel for the Plaintiff conceded at trial that "we did not claim an easement by necessity, which is an easement because [Plaintiff] has no other access." *See* Trial Trans., 18:19-21. As such, the Court's finding that Plaintiff has no access to its land south of Raglin's Creek except via the easement at issue, is an unnecessary finding of fact. Furthermore, the finding is unsupported by the evidence in this case as there is testimony indicating that the Plaintiff can access the property south of Raglin's Creek across a road/dam in place over Raglin's Creek.

constitutes an interruption in the context of establishing a prescriptive easement where the owner of the servient tenement erects barriers that are repeatedly ignored by the owner of the dominant tenement." The facts of *Pittman* are similar to the case at hand. In *Pittman*, Respondent, a landowner, erected a gate and other barricades in an attempt to keep Petitioner, a neighboring landowner, from using a road which crossed Respondent's land. *Id.* at 49, 610 S.E.2d at 480. Petitioner filed suit seeking to establish a prescriptive easement over Respondent's land. *Id.* The trial court found ruled in favor of the Petitioner, finding that Petitioner had demonstrated a prescriptive easement existed. *Id.* The Court of Appeals reversed finding that the trial court erred in ruling the Petitioner enjoyed uninterrupted adverse use of the land for a period of twenty years. *Id.* Specifically, the Court of Appeals found that the "[r]espondent's repeated attempts to prevent [the] Petitioner from crossing Respondent's land constituted interruptions in Petitioner's use and enjoyment of the disputed portion of [the road]". The Supreme Court affirmed the decision. The Supreme Court declined to find Petitioner's "persistent trespassing" as proof of adverse use. Instead, the Court embraced the reasoning of Justice Oliver Wendell Holmes, Jr., reasoning which has been followed by other jurisdictions:

> A landowner...is not required to battle successfully for his rights. It is enough if he asserts them to the other party by an overt act, which, if the easement existed, would be a cause of action. Such an assertion interrupts the would-be dominant owner's impression of acquiescence, and growth in his mind of a fixed association of ideas; or, if the principle of prescription be attributed solely to the acquiescence of the servient owner, it shows that acquiescence was not a fact.

Id. at 51-52, 610 S.E.2d at 481 (quoting *Garret v. Mueller*, 144 Or. App. 330, 927 P.2d 612 (1996)).

The court further stated

> [A]ctions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, *such as erecting physical barriers*, which cause a discontinuance of the dominant landowner's

> use of the land, ***no matter how brief***. In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period

Id. at 52, 610 S.E.2d at 481 (emphasis added). Based upon this reasoning, the Supreme Court concluded that Respondent's actions in erecting barriers "caused Petitioner to discontinue use of the land, albeit briefly, and were certainly sufficient to leave Petitioner with the impression that Respondent did not acquiesce in the use of his land." *Id.* at 52, 610 S.E.2d 481-82. Thus, the Supreme Court ruled that the Petitioner failed to establish an easement by prescription. *Id.*

Here, like the Respondent in *Pittman*, Defendant's predecessors erected barriers intended to keep others from using the disputed portion of the road. Defendant and her predecessors in title also posted signs indicating that the owners of the property did not acquiesce to unauthorized use of the road and routinely conducted "lock cleanings" to prevent unauthorized use of the road. Any use of the road behind the locked gate was permissive use. These facts are not in dispute. The Defendant's overt acts, along with her predecessors in title, were sufficient to interrupt the prescriptive period. Requiring a servient landowner to take actions in addition to erecting barriers like fences and cables, would encourage wrongful or potentially violent behavior that is contrary to sound public policy considerations and the peaceful resolution of disputes. *See id.* at 52, 610 S.E.2d at 481. The court erred in finding that the Plaintiff proved the first element necessary in establishing an easement by prescription, the continued and uninterrupted use or enjoyment of a right for a full period of twenty (20) years. To hold otherwise would require landowners to guard the entrances to their property with guards and/or guard shacks.

It has long been held that "permissive use of property cannot ripen into an easement by prescription." *Bundy v. Shirley*, 412 S.C. 292, 308 772 S.E.2d 163, 172 (2015) (citing *Williamson v. Abbott*, 107 S.C. 397, 93 S.E. 15 (1917)). This established principle precludes Plaintiff from

establishing an easement by prescription across Defendant's property. Although the court attempted distinguish *Bundy* from the present case, *Bundy v. Shirley* is controlling. *See Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015). In *Bundy*, the claimant alleged that he had a prescriptive easement over a road located on an adjacent property owner's land. *Id.* at 297-98. The claimant had used the road at issue for 19 years before the property on which the gate was located was sold to a new owner. *Id.* Prior to the sale, the land was leased to the South Carolina Department of Natural Resources as a Wildlife Management Area. *Id.* During that time, a cable gate was located on the road; however, the claimant obtained a key from the game warden allowing him to pass through the gate. *Id.* After the sale, a new gate was erected across the road. The claimant obtained a key to the new gate from the property owner which allowed him to continue to enter and exit through the gate. *Id.* Following a dispute between the two, the property owner prohibited the claimant from using the road. *Id.* The property owner then filed a declaratory judgment action seeking a determination of whether claimant had a prescriptive easement over the disputed road. *Id.*

The Supreme Court held that the claimant's claim of a prescriptive easement was defeated because the claimant's use of the road was always permissive. *Id.* at 311-312, 772 S.E.2d at 173-74; *see also Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 584, 735 S.E.2d 528, 537 (2012). Thus, the claimant could not establish an easement by prescription. *Id.* The Court should have reached the same conclusion in this matter. **It is undisputed that a locked gate was erected across the road in 1970.** "Although the presence of a locked gate [is] not dispositive of permissive use, it is strong evidence of permissive use of the road." *Id.* at 311. Here, despite the presence of a locked gate, the Court declined to find that the Plaintiff's and its predecessors' use of the road was permissive. This was error. The testimony given by every witness demonstrates

that people who went through the gate either obtained permission from the Defendant or her predecessors or from someone who had been given permission to use the road by the Defendant or her predecessors.[3] The record is devoid of testimony where a person seeking to use the road did so without first getting a key or combination to a lock on the gate. There is no testimony indicating that someone unilaterally began using the road behind the locked gate for a twenty-year period without first obtaining someone's permission OR being granted by permission by the locks remaining on the gate. That is, no one encountered the locked gate, cut a link of the chain, placed their own lock on the gate and used the road in that manner for a period of twenty years. While there were unknown locks that would appear from time to time on the gate, the unknown locks were removed during the lock cleanings. The fact that certain people who used the road obtained permission from someone other than a member of the Martin family does not mean that their use of the road was not permissive. Those persons obtaining permission from someone who had been given permission by the Martin family is still permissive use.

The Court distinguished *Bundy* from the present case on the following bases:

(1) "The Plaintiff had nothing to do with the construction or maintenance of the gate across the disputed roadway";

(2) "The Defendant's property has never been leased to the state for use by the public"; and

(3) "The Plaintiff has never obtained a key from the Defendant or any lessee of the Defendant."

[3] The following witnesses testified that they had permission from someone or either obtained a key allowing them to use the road.: Cecil Brazzel (Trial Trans.; 94:3-6); Harold Pickrell (Trial Trans.; 122:23-25); Mack Brazell (Trial Trans.; 141:19-23); Ben Higgins (Trial Trans.;181:7-12); William Kirkland (Trial Trans.; 193:7-9); Timothy Dargan (Trial Trans.; 211:11-13); Angus Lafaye (Trial Trans.; 229:3-230:3); Gordan Baker (Trial Trans.; 236:9-10; 239:25-240:8); William (Cate Trial Trans.; 245:9-14).

The Plaintiff not having been involved with the construction of the gate is immaterial. The Court provided no explanation as to why this is a relevant factor. Regardless of who erected the gate, the fact remains that the gate prevented unauthorized use of the road across the Defendant's property. Notably, the Plaintiff's member admitted that he asked for a key to the gate, effectively recognizing that the Plaintiff had no rights in the private dirt road. People who went through the gate either obtained permission from the Defendant or her predecessors or from someone who had been given permission to use the road by the Defendant or her predecessor in interest. Again, there is no testimony indicating that an unauthorized user of the road placed their own lock on the gate without permission from another and used the road for twenty years. This would have been impossible as the testimony clearly indicates that periodic "lock cleanings" took place between 1970 and 2009.[4] Each time a time cleaning took place and an unauthorized lock was removed, the period for a prescriptive easement started anew. *See Pittman*, 363 S.C. at 52, 610 S.E.2d at 481 ("[A]ctions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, *no matter how brief*.") (emphasis added). Without question, the cutting and removal of a lock from the gate, thereby preventing that user from entering qualifies as an "overt act" which interrupts the prescriptive period. Moreover, the Defendant and her predecessors leaving certain locks on the gate during the lock cleanings is clear evidence of permissive use. Without permission, the locks would have been removed. Defendant and her predecessors could have easily removed all locks when performing lock cleanings but did not do so – instead, they left locks on the gate that they had given permission to be on the gate. By leaving certain locks on the gate, the Defendant and her predecessors, at a minimum, impliedly gave

[4] The Court found "lock cleanings" occurred "continually during the 1970s, 1980s, 1990s and 2000s". During a "lock cleaning", Defendant or her predecessors would remove all unauthorized locks from the gate.

permission to those persons to continue using the road. Those persons are thereby precluded from establishing a prescriptive easement. *See Bundy*, 412 S.C. at 309, 772 S.E.2d at 172 ("[U]se by express **or implied permission** or license, no matter how long continued, cannot ripen into an easement by prescription."). (Emphasis added by Defendant)

The second factor provided by the Court is in direct conflict with the Court's ruling that the private dirt road is a public road. If the disputed private dirt road was in fact a public road, any use of the road would have been permissive. On one hand, the Court states that the Plaintiff and its representatives use of the disputed road was adverse. On the other, it claims that the disputed road has been a public road since 1939. As discussed above, the Court should not find that the use of the road was adverse if it is a public road. As for the third reason provided, while there is no testimony indicating that the Plaintiff obtained a key to the gate from the Defendant, the Plaintiff has not used the disputed road for a period of twenty years. Thus, whether Plaintiff obtained a key is wholly irrelevant. Even assuming that the Plaintiff or its representatives use of the road was adverse, there is no question that it has not used the road for a period of twenty years. As for the other users of the road, there is ample testimony that those persons used the road assuming that they had permission to do so. All use of the road after the gate was erected was under either express or implied permission. Thus, *Bundy* precludes a finding that Plaintiff established an easement by prescription.

As an aside, South Carolina courts have defined adverse use as "use without license or permission." *Simmons*, 2016 S.C. Lexis 325, *10 (citing *Black's Law Dictionary* 1681 (9th ed. 2009). If, as the Court found, the disputed road was a public road, the public would have permission to use the road. The general public's right to use a road is what differentiates a public road from a private road. The use of a public road cannot be adverse. Thus, if the road was a

public road, the Plaintiff could not obtain an easement by prescription. *See* 2 Am. Jur. *Proof of Facts* 3d 197 § 6, at 218 (1988) ("Any use of property which is not hostile or adverse to the interest or title of the property owner cannot ripen into a prescriptive right."). *See Also Davis v. Monteith*, 289 S.C. 176, 179-80, 345 S.E.2d 724, 726 (1986) ("[A]dverse possession does not run against the State or its duly constituted political subdivisions."); *see also Bundy v. Shirley*, 412 S.C. 292, 304 772 S.E.2d 163, 170 (2015) ("Our state decisions on adverse possession are instructive because 'the right to an easement by prescription is substantially the same in quality and characteristics as that required to acquire title by adverse possession.'") (quoting 25 Am. Jur.2d *Easements & Licenses* § 39 (2014)). It was clear error for the Court to find that the disputed road was public and that Plaintiff acquired a prescriptive easement over the road. If the road was public, there can be no adverse use. Thus, Plaintiff could not have acquired a prescriptive easement. Notably, the private dirt road at issue in this case is located entirely in Richland County. Richland County's representative testified at trial that the dirt road at issue in this case is, and at all times has been, a private dirt road.[5] The dirt road on the Defendant's property is a private dirt road, not a public road and there is no easement on the property.

B. There is no Easement by Grant.

Although the Plaintiff's own experts testified that there was no deeded easement over the Defendant's property, the Court found that the Plaintiff established an easement by grant. "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71 558 S.E.2d 902, 909 (Ct. App. 2001). "To afford notice of a provision in a recorded instrument, the language must be so intelligible and significant that it would naturally raise a well-grounded suspicion in

[5] See Trial Exhibit, Defendant's 9. The private dirt road is noted as a private road in the County's records.

the mind of a reasonably prudent person, or a person of ordinary diligence and understanding sufficient to suggest an inquiry that would lead to a knowledge of the facts." *Id.* "A description of an easement in a recorded document it is sufficient when it contains language that acts as a guide to the location of the easement on the land such that the easement is 'capable of being rendered to a certainty by reference to something extrinsic to which it refers.'" *Id.* (citing *Allen v. Duvall*, 311 N.C. 245, 316 S.E.2d 267, 270 (N.C. 1984)).

Both of the expert witnesses who testified in this matter stated that they were unable to find a deeded easement or a reserved right-of-way across the Defendant's property. *See* Trial Trans., 77:7-78:22; 301:10-23. Anna Williams, a title abstractor, testified that her search of both the Plaintiff's and Defendant's chain of title revealed no reserved right-of-way across the Defendant's property. *See* Trial Trans., 77:7-78:22. Ms. Williams was specifically questioned on what the Court's order refers to as "Tract D". *Id.* The Court found that in a 1918 deed, a twenty (20) foot easement was reserved over through Tract D. This is in direct conflict with Ms. Williams' testimony which provides:

Q: So, in tract D there is no reservation of any type of right-of-way?

A: No, sir.

Id. at 77:14-16. Ms. Williams also testified that while a deed in the Plaintiff's chain of title may reference an easement or right-of-way, there was no way to determine the specific location of the alleged right-of-way. *Id.* at 78:16-22. Ms. Williams' testimony coincides with the testimony of Michael Mills, a surveyor who surveyed the Plaintiff's property. Like Ms. Williams, Mr. Mills testified that there was no recorded easement across the Defendant's property. *See* Trial Trans., 301:10-23. Despite this testimony, the Court found that the Plaintiff established a twenty (20) foot easement by grant over the Defendant's. Even if there was at one time an easement across

Defendant's property, something the Defendant denies, there is no evidence which indicates the easement alleged by the Plaintiff is the easement referenced in the deeds relied on by the Plaintiff. Here, any alleged easement does not contain "...language that acts as a guide to the location of the easement on the land such that the easement is 'capable of being rendered to a certainty by reference to something extrinsic to which it refers.'" *Rabon Creek Watershed Conservation Dist.*, 348 S.C. at 71 558 S.E.2d at 909. Therefore, the Court erred in finding the Plaintiff established an easement by grant.

II. The Court Erred in Finding That Plaintiff's Claims Were Brought Within the Applicable Statute of Limitations

The Court, with little explanation, determined that Plaintiff's claims were brought within the applicable Statute of Limitations. This was error. There is no dispute that a gate, a locked gate, obstructing use of the disputed road was erected in 1970. The statute of limitations begins to run at the time the cause of action accrues. *Harvey v. S.C. Dep't. of Corr.*, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct. App. 2000). "[A] particular cause of action accrues at the moment when the plaintiff has a legal right to sue on it." *King v. James*, 388 S.C. 16, 25-26, 694 S.E.2d 35, 40 (Ct. App. 2010). "An assignee may not maintain a claim if a statute of limitations defense would have been effective if the same claim had been brought by the assignor. Thus, if a claim was barred by the statute of limitations at the time of the assignment, the assignee may not assert the claim. A subrogee of a time-barred claim is similarly barred." 54 C.J.S. Limitations of Actions § 40.

"Statutes of limitations are not simply technicalities." *Moates v. Bobb,* 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" *Id.* (quoting *McKinney v. CSX Transp., Inc.,* 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)); see also *Transp. Ins. Co. & Flagstar Corp. v. S. Carolina Second Injury Fund*, 389 S.C. 422, 428, 699

S.E.2d 687, 690 (2010); *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010).

The Court correctly determined that the Statute of Limitations governing the obstruction of an easement is ten (10) years. *See Bowen v. Team*, 6 Rich. 298, 40 S.C.L. 298 (1853); *see also* S.C. Code § 15-3-340. However, the Court failed to specify when the statute of limitations began to run. Assuming, *arguendo*, that the Plaintiff did have an easement by grant over the land of the Defendant, something the Defendant denies, the statute of limitations should have started running in 1970 when the gate across the disputed road was erected. Again, the statute of limitations begins to run at the time the cause of action accrues. *Harvey*, 338 S.C. at 508. Even if the Plaintiff's predecessors in interest did in fact have an easement by grant across Defendant's property, which is disputed, the Plaintiff's predecessors in interest had a viable claim for obstruction of the easement the day the gate was erected. As such, the statute of limitations began to run in 1970 and expired in 1980. *See King*, 388 S.C. at 25-26. Therefore, Plaintiff's claims are barred pursuant to S.C. Code § 15-3-340.

S.C. Code § 15-3-380 is also applicable to this case. It provides:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

This is a statute of limitations upon an action for the recovery of any interest in real property and expressly gives good title if a suit is not commenced within the forty-year period provided. This statute is applicable as the Plaintiff seeks an interest, specifically, an easement, in Defendant's property. Michael Mills, the Plaintiff's own expert, testified that he found no recorded easement

across Defendant's property. *See* Trial Trans., 301:10-23; 315:19-22. The Court acknowledged this in its Order stating that the easement deeds relied on by the Plaintiff as establishing an easement by grant "were greater than sixty years old and therefore outside the scope of a sixty year title search". The deeds relied on by the Plaintiff as establishing an easement are from the 1920s and 1930s. While Defendant disputes that these deeds establish the easement claimed by the Plaintiff, the court ruled these deeds established an easement by grant. Following these deeds, there is no specific reference to the alleged easement nor does the alleged easement identify the purported location(s) of any purported easement. In one instance, the purported easement references "by the lands of Martin" without giving any reference to the location of the easement, effectively giving rise to the question of whether or not the purported easement is even on the land at issue in this civil action.

S.C. Code § 15-3-380 creates a forty-year statute of limitations. Here, Defendant and her predecessors are in possession of the road "under a claim of title by virtue written instrument" because there is no recent recorded document which provides as an easement across Defendant's land. Stated another way, within the normal title search period, there is no document that would put the Defendant on notice that the alleged easement runs across her property. *See* Trial Trans., 301:10-23; 315:19-22. It would be burdensome and likely impossible to require a prospective buyer of property to search an entire chain of title in order to ensure no easements exist. S.C. Code § 15-3-380 is designed to prevent such a requirement. If an easement is omitted from a chain of title for a period of more than forty years and the servient estate possesses the alleged easement under a claim of title, i.e., it acts as if no easement exists, the easement is in effect extinguished. During the forty-year period, the dominant estate may bring an action to enforce the easement. However, if as is the case here, the dominant estate has not been in possession of the alleged

easement for a period of forty-years, an action to recover or enforce the easement is barred by S.C. Code § 15-3-380. The forty year statute of limitations acts an outer limit within which an action can be filed. Under the Court's ruling, any easement contained in a recorded deed, no matter how old, could later be used to establish an easement across another's property. Regardless of whether an alleged easement disappeared from the chain of title for hundreds of years, under the Court's ruling, the easement could be re-established. The reason that a standard title search and the statute of limitations are both forty years is not coincidence. Abstractors perform forty-year title searches because S.C. Code § 15-3-380 bars actions to recover an interest in property based upon recorded documents more than forty-years old. Plaintiff's claims are therefore barred under S. C. Code § 15-3-380.

III. The Court Erred in Finding that the Disputed Road was Public

Dedication requires two elements: (1) the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use, and (2) there must be, within a reasonable amount of time, an express or implied public acceptance of the property offered for dedication. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993); *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (1992). As dedication is an exceptional mode of passing an interest in land, the standard of proof for a public dedication of a right of way is strict, cogent and convincing evidence. *Mack v. Edens*, 320 S.C. 236, 464 S.E.2d 124 (1995). The record must contain evidence the owner of the property clearly, convincingly, or unequivocally intended to dedicate his property for public use. *Cleland v. Westvaco Corp.*, 314 S.C. 508, 431 S.E.2d 264 (Ct. App. 1993).

In this case, the evidence and testimony fails to establish dedication and it fails to establish acceptance. As for dedication, there is no strict, cogent or convincing evidence that Defendant

either expressly or impliedly dedicated the road to public use. The Court's ruling is based entirely on the fact that the private dirt road at issue in this action was used by people outside of the Martin family. As such, the Defendant and her predecessors dedicated the road for public use. While the Plaintiff did provide testimony indicating use of the road, those who testified as having used the road prior to the erection of the gate in 1970, had some connection with the Defendant or her predecessors. For example, Algie Campbell, Jr. testified to having used the road in the 1940s through 1960s; however, he also testified that he and his father knew the owners of the property at that time. *See* Trial Trans., 130:12-15. Similarly, James Guy II testified as having used the road in the 1940s, 1950s and 1960s; however, his father owned property located at the end of the road. *See* Trial Trans., 146:16-20. In fact, Mr. Guy stills owns the property he referred to as visiting prior to the erection of the gate. *See* Trial Trans., 156:10-11. Ben Higgins also testified to using the road but his family owned property located along the road. *See* Trial Trans., 173:18. Finally, William Kirkland's testimony provides that he used the road prior to the gate being erected when driving Bubba Dunk, a friend and/or employee of Icky Guy, a property owner along the road. Contrary to the Court's finding, the record is wholly devoid of any testimony of the members of "public having no association" with the Plaintiff or Defendant's property having used the road. While the people cited above may have used the road, their use is insufficient to establish that the road was dedicated for public use.

The Court also erred in finding strict, cogent and convincing evidence of acceptance of the road by Richland County. Most notably, Randy Byrd, Richland County's Right of Way Agent, testified that only the first 2900-foot portion of the disputed from Highway 601 is a county maintained road. *See* Trial Exhibit, Defendant's 8. Mr. Byrd expressly stated that the gate on Defendant's property is located beyond the end of the portion of Northeast Shady Grove Road (i.e.

the gate is beyond the terminus of the public road). *See* Trial Trans., 410:11-14; *see also* Trial Exhibit, Defendant's 8 and 9. The County has also placed a sign on the road before it reaches Defendant's property which states that county maintenance ends at that point. *See* Trial Trans., 411:14-18. There can be no more compelling evidence or proof that the road is not public beyond that of the county official charged with maintaining roads stating that this private dirt road is not currently nor has it been maintained by the county. *Id.* This is especially true given that the only evidence offered by the Plaintiff supporting the contention that the road was accepted by the county is testimony of two witnesses stating they saw a motor grader on the road and could not be certain if they were county motor graders. The fact of the matter is that private contractors and individuals maintain their own private dirt roads. Regardless, there is certainly no strict, cogent and convincing evidence to prove that the road is a public road. In fact, to the contrary, there is testimony which suggests that the caretaker of the Guy property may have bribed the county motor grader operator with liquor. *See* Trial Trans., 167:12-20.

IV. The Court Erred in Finding that Defendant Did Not Adversely Possess Any Easement Held by Plaintiff or its Predecessors

Even if this Court were to find that an easement through the Defendant's property existed at one point in time, Defendant and her predecessors have taken ownership of the former easement through adverse possession. As discussed at length above, Defendant and her predecessors have maintained a locked gate across the road for over 40 years. In doing so, the Defendant has established all of the required elements of adverse possession. In South Carolina, the party asserting adverse possession must show continuous, hostile, open, actual, notorious and exclusive possession for at least ten years. *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (2009).

"Generally, a claimant's possession to constitute adverse possession much be such as to indicate his exclusive ownership of the property, and not only must his possession be without subserviency to, or recognition of the title of the true owner, but it must be hostile thereto and to the whole world." *Gregg v. Moore*, 226 S.C. 366, 370, 85 S.E.2d 279, 281 (1954). The locked gate across the road clearly demonstrates the Defendant's exclusive and hostile possession of the property. South Carolina courts have repeatedly found that the fencing or gating of property is clear evidence of one exercising dominion and control over the property in a manner that is adverse. *See e.g., King v. Hawkins*, 282 S.C. 508, 511, 319 S.E.2d 361, 362 (1984). Similarly, South Carolina courts have determined that installing fencing and making other improvements to property constitutes open and notorious acts for the purposes of proving adverse possession. *Jones*, 384 S.C. at 14, 681 S.E.2d at 14. In addition to proving hostile, open, actual, notorious and exclusive possession, Defendant can show that these elements have existed continuously for a period greater than ten years because there is ample testimony indicating that the gate was built in in 1970. The overwhelming weight of the evidence and testimony establishes that any use of the locked gate was with the permission of Defendant or her predecessors. As such, Defendant and her predecessors have adversely possessed any rights that the Plaintiff or its predecessors may have had in the dirt road.

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(803) 252-7693
Attorneys for the Defendant

Columbia, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNY OF RICHLAND	)	Civil Action No. 2014-CP-40-1805
	)	
Country Properties, LLC,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	
	)	

RICHLAND COUNTY
FILED
2017 JAN 19 PM 3:03
JEANNETTE W. McBRIDE
C.C.P. & G.S.

I, Katie Gjennestad, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Defendant, do hereby certify that on the 19th day of January, 2017, I served the pleadings/documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following.

Pleadings/Documents Served:

Defendant's Memorandum in Support of Defendant's Motion to Alter or Amend Pursuant to Rules 59(e) and 52(b), SCRCP

Person(s) Served:
John W. Wells, Esquire
Baxley Pratt & Wells, P A
P.O. Box 10
Lugoff, SC 29078

Katie Gjennestad

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Country Properties, LLC) CASE NO.
☐ Plaintiff) 2014-CP-40-1805

v.) MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Nancy Dunn Martin)
☒ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
John W. Wells, Bar No.	Robert C. Osborne III, Bar No. 101827
Address:	Address:
P.O. Box 10, Lugoff, SC 29078	P.O. Box 61110, Columbia, SC 29260
phone: 803.438.4200 fax:	phone: 803.252.7693 fax: 803.254.5719
e-mail: jwells@baxleywells.com other:	e-mail: rosborne@brunerpowell.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

RICHLAND COUNTY FILED 2017 OCT 24 PM 3:15 ANNETTE W. MCBRIDER C.C.P. & G.S.

SECTION I: Hearing Information

Nature of Motion: Motion for Relief from Judgment
Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — October 24, 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Date Filed: 10/24/17

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2014-CP-40-1805
	)	
Country Properties, LLC,	)	**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b), SCRCP**
Plaintiff,	)	
vs.	)	
Nancy Dunn Martin,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2017 OCT 24 PM 3:15
ANNETTE W. MCBRIDE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that, pursuant to the Order of the South Carolina Court of Appeals attached hereto as **Exhibit A**, Defendant Nancy Dunn Martin ("Martin" or Defendant"), by and through her undersigned attorneys, moves for relief from this Court's Final Order issued on September 27, 2016, in the above-captioned matter, pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

This matter involves Plaintiff's, Country Properties, LLC ("Plaintiff" or "Country Properties"), claim of an alleged easement across Martin's property. During the trial of the matter, Plaintiff and its counsel alleged that a portion of Plaintiff's property is inaccessible by road unless accessed by the alleged easement through Martin's property. In fact, the Final Order issued upon the conclusion of trial contained the following finding of fact:

> That Plaintiff's tract has frontage on U.S. Highway 602 above Raglin Creek in Kershaw County but the Plaintiff's tract has no public road access south of Raglin Creek. ***To the extent that Raglin Creek is a natural barrier to ingress and egress, the 384 acres of the Plaintiff's tract located south of Raglin Creek in Richland County has no access except via the easement that the Plaintiff seeks to establish in this action.***

Final Order at ¶ 6 (emphasis added). Additionally, the trial court stated:

> I find from the testimony presented at trial that at some point several years before the plaintiff purchased his [sic] property in March of 2009, Pine Ridge Investments, LLC, the Plaintiff's predecessor in title, built a dam across Raglin Creek with a narrow road across the top of it making it safe for a vehicle to cross, but the dam has been damaged by storms, as it appears from a photograph, Plaintiff's Exhibit 37, showing a gap eroded from the dam, and during the historic rains of October 2015, the dam washed out completely. I find as a matter of fact from the greater weight of all the testimony presented, that Raglin Creek is a substantial natural barrier to the Plaintiff's ability to access the 384 acres of its property south of Raglin Creek in Richland County, and while the property south of Raglin Creek can be accessed by foot and has at times been accessible by personal vehicle, ***the natural barrier of the creek does limit the Plaintiff's ability to access its lands south of the creek, particularly with large vehicles and equipment necessary to harvest timber on the lands in Richland County South of Raglin Creek.***

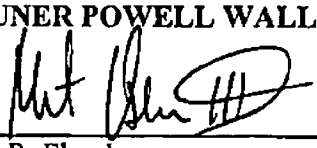
Final Order at ¶ 7 (emphasis added). Despite Plaintiff and its counsel making these representations which were ultimately included in the trial court's order, Martin recently discovered that the dam referenced in the Final Order has been rebuilt and once again provides Plaintiff with access to its property south of Raglin Creek. Photographs showing the rebuilt dam is attached hereto as a part of **Exhibit B**, the affidavit of Zack Sykes.

It is clear from this Court's Final Order that the Plaintiff's alleged inability to access portions of its property played a significant role in the court ruling that Plaintiff had an easement across Defendant's property. Given the importance of this issue, Martin hereby moves for relief from judgment pursuant to Rules 60(b), SCRCP.

This motion may be further supplemented by a memorandum of law, arguments of counsel and/or witness testimony at the appropriate time.

-Signature Page Follows-

BRUNER POWELL WALL & MULLINS, LLC



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Wesley D. Peel
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Attorneys for the Defendant

Columbia, South Carolina

October 23, 2017

EXHIBIT A

The South Carolina Court of Appeals

Country Properties, LLC, Respondent,

v.

Nancy Dunn Martin, Appellant.

Appellate Case No. 2017-001795

ORDER

Appellant has filed a motion for leave to make a motion for relief pursuant to Rule 60(b), SCRCP, with the trial court. Respondent filed a return, and Appellant filed a reply. After careful consideration, the motion is granted. This appeal shall be held in abeyance pending the trial court's ruling on the motion. Appellant shall provide this Court with status updates every thirty days.

FOR THE COURT

Columbia, South Carolina

cc:
Joey Randell Floyd, Esquire
Wesley Dickinson Peel, Esquire
Robert Crum Osborne, III, Esquire
John W. Wells, Esquire
Michael Brent McDonald, Esquire

FILED
October 5, 2017

RECEIVED
OCT - 9 2017

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2014-CP-40-1805
	)	
Country Properties, LLC,	)	
	)	**AFFIDAVIT OF ZACH SYKES**
Plaintiff,	)	
	)	
vs.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	
	)	

RICHLAND COUN
FILED
2017 OCT 24 PM 3:15
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I, Zach Sykes, being first duly sworn, depose and say as follows:

1. I own and operate a DJI Phanton 3 Drone which is registered in compliance with all applicable laws and regulations.

2. On August 27, 2017, I operated my drone while standing on property owned by the Defendant in this case, Nancy Dunn Martin ("Martin"), located in Richland County, South Carolina.

3. While standing on Martin's property, I flew my drone over adjacent property owned by the Plaintiff in this case, Country Properties, LLC ("Country Properties").

4. Specifically, I flew my drone along Raglins Creek, the boundary between Richland County and Kershaw County.

5. While in flight, my drone captured video of the ground below, including pictures of Country Properties' land along Raglins Creek.

6. After the flight, using specialized computer software, I captured screenshots of the video thereby creating images of Country Properties' land along Raglins Creek.

7. The pictures attached hereto as **Exhibit A** are true, fair and accurate depictions of Country's Properties land along Raglins Creek on August 27, 2017.

8. I abided by and was in compliance with all applicable laws and regulations while flying my drone on August 27, 2017.

FURTHER AFFIANT SAYETH NOT.

Zach Sykes

SWORN TO BEFORE ME
this 23rd day of October, 2017

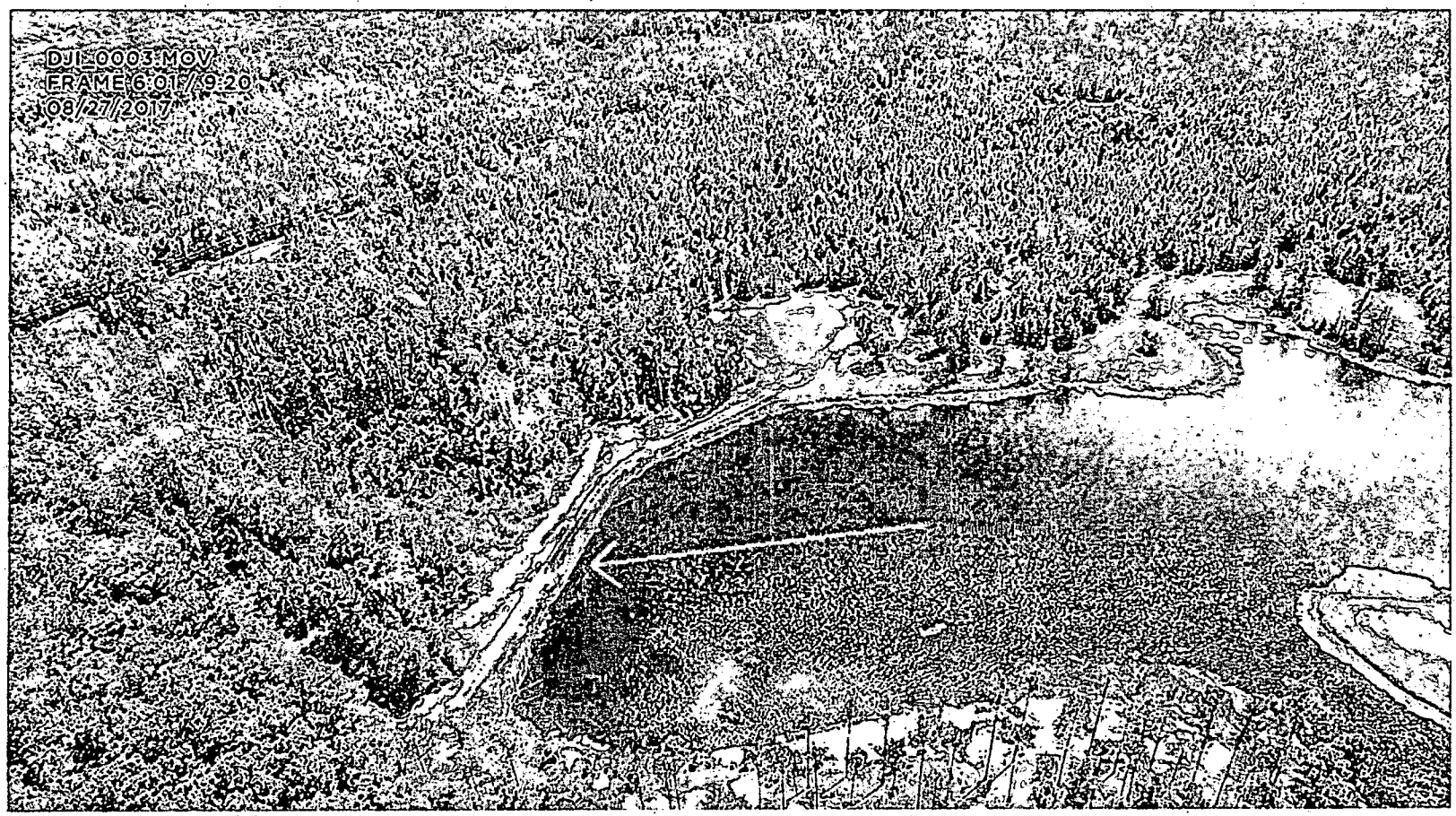
(L.S.)

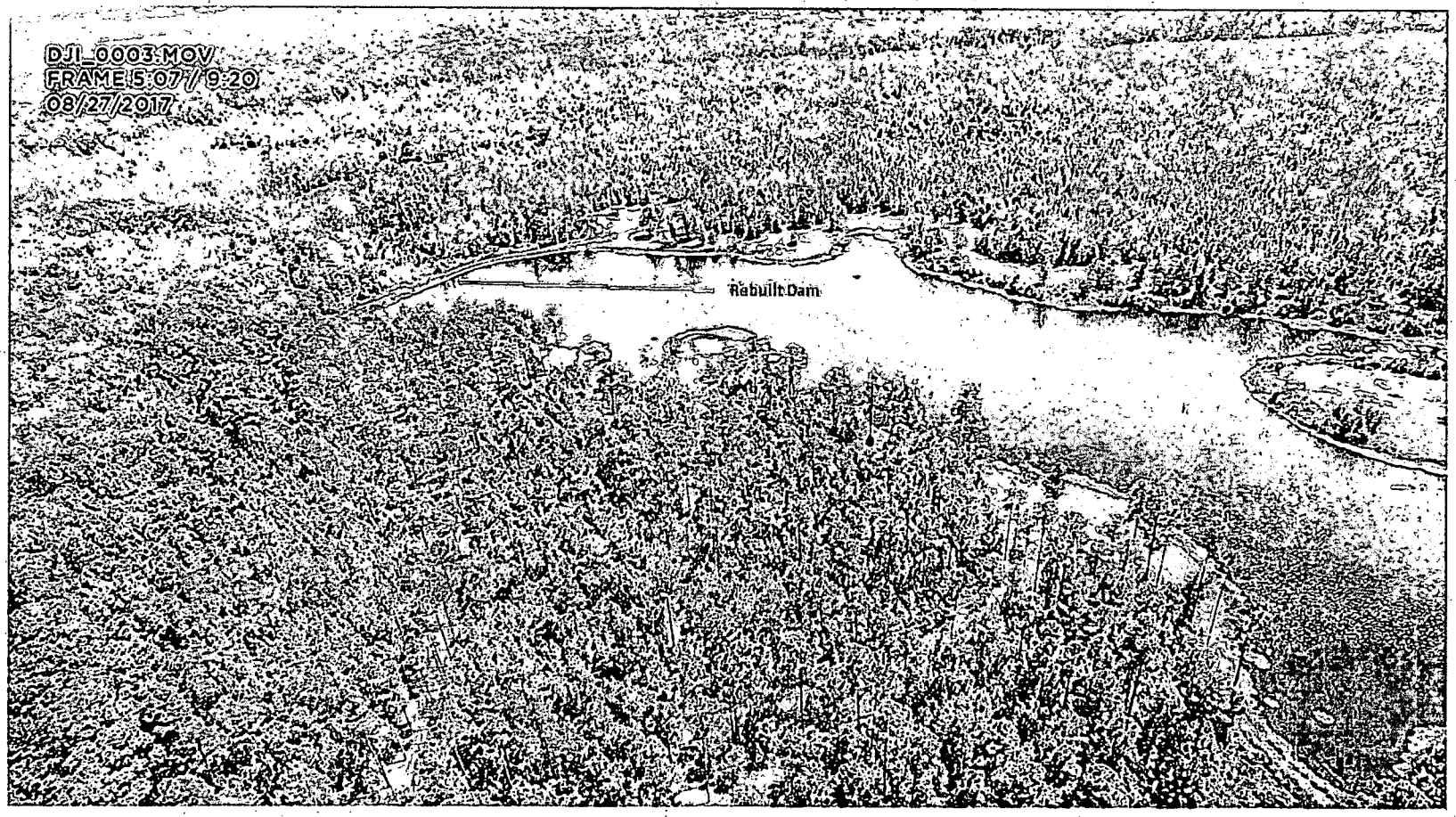
Shari Bookert (Printed Name)
Notary Public for South Carolina
My Commission expires 05/05/2026 (SEAL)

SHARI BOOKERT
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 5/5/2026

EXHBIT A

TO AFFIDAVIT OF ZACH SYKES


DJI_0003.MOV
FRAME: 6,01 / 9,20
08/27/2017


DJI_0003.MOV
FRAME 5:07 / 9:20
08/27/2017
Rebuilt Dam


DJI_0003.MOV
FRAME 4:18 / 9:20
08/27/2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNY OF RICHLAND	)	Civil Action No. 2014-CP-40-1805
	)	
Country Properties, LLC,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	
	)	

RICHLAND COUNTY FILED
2017 OCT 24 PM 3:15
JEANNETTE W. MCBRIDE C.C.P. & G.S.

I, Angela S. Hook, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Defendant, do hereby certify that on the 24th day of October, 2017, I served the documents set forth below on the person(s) identified below, by depositing copies thereof in the U.S. Mail, postage-paid, in an envelope securely sealed, and addressed to the following:

Documents Served

Defendant's Motion for Relief from Judgment Pursuant to Rule 60(b)

Parties Served

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Bundy McDonald, LLC
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Summerville, SC 29485
Attorneys for Plaintiff

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(Via U.S. Mail)

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** Also Admitted in District of Columbia

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

October 24, 2017

VIA HAND DELIVERY
The Honorable Jeanette McBride
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29201

RE: Country Properties, LLC v. Nancy Dunn Martin
Civil Action No.: 2014-CP-40-1805
BPWM File No.: 8-2376.102

Dear Ms. McBride:

Enclosed for filing please find the original and copy of Defendant's Motion Coversheet, Motion For Relief From Judgment Pursuant to Rule 60(b), Certificate of Service and my firm's check for the $25.00 filing fee. Please have a member of your staff file the enclosed and return a filed copy back to me via my firm's courier.

Thank you for your assistance.

With my kindest regards, I am,

Sincerely,

Robert C. Osborne III

RCO/ash

Enclosures

cc: John Wells (via U.S. Mail, w/ enclosures)
M. Brent McDonald (via U.S. Mail, w/ enclosures)
The Honorable Joseph M. Strickland (via hand delivery and U.S. Mail w/enclosures)
Nancy D. Martin (via email, w/enclosures)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Country Properties, LLC	)	Civil Action No.: 2014-CP-40-01805
	)	
Plaintiff,	)	
	)	**POST-HEARING**
v.	)	**BRIEF OF THE DEFENDANT**
	)	**IN SUPPORT OF RULE 60(b) MOTION**
Nancy Dunn Martin,	)	
	)	
Defendant.	)	

STATEMENT OF THE CASE

This matter is before this Court, pursuant to the Rule 60(b) motion of Defendant Nancy Dunn Martin ("Defendant" or "Martin"). This matter initially came before the Court upon the complaint of Plaintiff Country Properties, LLC ("Plaintiff" or "Country Properties") in 2014. The subject of the underlying case is a private road[1] across Martin's property. Following a trial held March 21–24, 2016, the Court issued an order finding that the Plaintiff had an easement across Martin's property and that the private road across Martin's property was a public road.

Following the issuance of this Court's Order, Defendant filed a Motion to Alter or Amend. After the motion was denied, Defendant appealed to the Court of Appeals on August 22, 2017. On August 27, 2017, Defendant discovered new evidence related to the proceedings. On August 30, 2017, Defendant petitioned the appellate court for leave to file a Rule 60(b) Motion to seek Relief from Judgment or Order before the trial court. The Court of Appeals granted Defendant's motion on October 5, 2017. On October 24, 2017, Defendant filed a Rule 60(b) motion with this Court.

[1] Richland County's employee unequivocally testified during trial that it was a private road. (Trial Transcr. P.415)

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Pursuant to the Court of Appeal's order, the appeal is held in abeyance so that the trial court can entertain the Rule 60(b) motion. On July 18, 2018, the parties appeared before the Court to argue the motion. This post-trial brief of the Defendant follows.

ARGUMENT

Defendant bases this motion on the fact that Plaintiff has rebuilt a dam that was allegedly washed-out in the floods of 2015. Based on this Court's Order, the Defendant maintains that the washed-out dam and accompanying testimony/references to the dam had an impact on the findings and conclusion of the Court's final order in this case. Defendant has provided this Court with drone photographs of the rebuilt dam. (See Affidavit of Zach Sykes) The rebuilt dam was discovered by Defendant on August 27, 2017. Prior to that time, Defendant was without knowledge of the dam reconstruction.

Defendant moves for relief from judgment on the basis of these photos on two grounds: new evidence under Rule 60(b)(2), and extrinsic fraud under Rule 60(b)(3). Rule 60(b) provides, in relevant part, as follows:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
> ***
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud, misrepresentation, or other misconduct of an adverse party;
> ***

Rule 60(b), SCRCP.

In order to prevail on a Rule 60(b)(2) a moving party must show that the new evidence:

(1) will probably change the result if a new trial is granted;
(2) has been discovered since the trial;
(3) could not have been discovered before the trial;
(4) is material to the issue; and
(5) is not merely cumulative or impeaching.

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Lanier v. Lanier, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) (citing James F. Flanagan, SOUTH CAROLINA CIVIL PROCEDURE 484 (2d ed. 1996).

Defendant asserts that these factors are met for the following reasons. The dam, as shown in the drone photos was a crucial part of Plaintiff's trial strategy and case. The dam relates directly to the accessibility of Plaintiff's property and was discussed in two separate locations in this Court's final order. Defendant believes that evidence of the rebuilt dam, among other things, and its effects on Plaintiff's ability to access its property would change the result of the ruling in this case if a new trial is granted.

The rebuilt dam was discovered by Defendant on August 27, 2017. Evidence of the rebuilt dam could not have been discovered by Defendant at trial. In fact, the testimony at trial was that the dam had been washed out in the floods. To Defendant's knowledge, the dam had not been rebuilt at the time.[2] Defendant only discovered the rebuilt dam upon taking the initiative to photograph Plaintiff's property from the air. The rebuilt dam is not visible to Defendant from her property.

The existence of the repaired dam is material to the subject-matter of this case. The existence of the dam changes the sympathetic plight of Plaintiff and constitutes a significant change in the facts surrounding the case. As demonstrated by the Court's findings in paragraphs six and seven and its conclusion in the final order, the dam materially related to this case.

The new evidence of the dam is neither cumulative nor meant to impeach. Rather, the photos are evidence of a new set of facts not available to Defendant at trial. The dam was heavily

[2] Evidence relating to the dam was put into the record by Plaintiff. For example, Plaintiff's Exhibit 37 in the transcript shows a closeup picture of the dam. Exhibit 37 was a picture illustrating a wash-out on the dam prior to the flood of October 2015 when the dam was allegedly washed out completely. Multiple witnesses were asked questions by Plaintiff's Counsel about the dam, including the Plaintiff's representative.

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discussed during the trial, which included both exhibits and testimony relating to the dam. However, this new evidence relates to an entirely different state of the dam. Evidence of the reconstructed dam was not and could not have been discussed at trial.

Defendant believes that the factors set forth for new evidence fit well with the evidence newly discovered by Defendant. Applying the test to the facts in this case, Defendant asserts that a new trial or vacation of the Court's final order is warranted.

For proving extrinsic fraud under Rule 60(b)(3), the following standard has been set:

> A judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." Extrinsic fraud is collateral or external to the trial of the matter. It is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Intrinsic fraud, on the other hand, is fraud presented and considered in the trial. For example, perjury is intrinsic fraud and will not support an action to set aside the judgment.

Hagy v. Pruitt (In re Pruitt), 339 S.C. 425, 431–32, 529 S.E.2d 714, 717–18 (2000) (citations omitted).

Defendant asserts that Plaintiff's failure to disclose its intent to rebuild the washed-out dam prevented Defendant from fully exercising her opportunity to be heard. Plaintiff failed to advise the Court that its access to its property via the dam would be restored. This omitted fact prevented Defendant from asserting in its case that Plaintiff would soon have its own method of ingress and egress restored (just like it had been before the dam was allegedly washed out). Defendant had to take aerial photos of Plaintiff's property to discover this important omitted fact, which was never disclosed to Defendant until trial. Plaintiff's deceptive actions in this case have prevented Defendant from exercising her right to a full and fair hearing. Therefore, Defendant assert that she is entitled to relief from the Court.

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Defendant's counsel has only located three cases regarding easements that have been published since the Plaintiff filed its complaint.[3] The *Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015), case is the closest factual scenario to the case at hand.

For the above-stated reasons, Defendant requests that the Court order a new trial before the Master in Equity or a Special Referee, vacate the final order entered by the Court in this matter, and/or grant relief from the judgment to Defendant.

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC

s/Joey R. Floyd
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Attorneys for Defendant Nancy Martin

July 18, 2018
Columbia, South Carolina

[3] While no easement cases appear to address a Rule 60(b) scenario, counsel notes that the following cases relating to easements have been issued by the appellate courts since the filing of Plaintiff's complaint. *Gooldy v. Storage Ctr.-Platt Springs, LLC*, 422 S.C. 332, 811 S.E.2d 779 (2018) (addressing an implied easement); *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016) (addressing a prescriptive easement); *Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015) (also addressing a prescriptive easement).

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Country Properties, LLC, Plaintiff, v. Nancy Dunn Martin, Defendant.	)	**Case No.: 2014-CP-40-01805** **MEMORANDUM IN OPPOSITION OF DEFENDANT'S RULE 60(b), SCRCP MOTION**

Plaintiff Country Properties, LLC (hereinafter "Plaintiff") hereby submits this memorandum in opposition of Defendant Nancy Dunn Martin's (hereinafter "Defendant") Rule 60(b), SCRCP Motion ("Motion"). For the reasons stated herein and at the hearing of this matter, this motion should be denied.

Procedural Background

This Court entered its final order in this case on September 27, 2016. The final order found that Plaintiff had a prescriptive easement over the property of the Defendant, an easement by grant over the property of Defendant, and that the road in question was dedicated to the public. *See* September 27, 2016 Order. Defendant filed a Rule 59(e) and Rule 52(b), SCRCP, motion in November 9, 2016. That motion was denied on July 21, 2017. Defendant served a Notice of Appeal on August 22, 2017. On August 30, 2017, Defendant filed a motion with the S.C. Court of Appeals for leave to file the present Rule 60(b)(2)-(3), SCRCP motion with this Court. The S.C. Court of Appeals granted the Motion for leave to file the present motion on October 5, 2017.[1] Defendant filed the Motion with this Court on October 24, 2017.

[1] The S.C. Court of Appeals made no findings on the merits of the present motion.

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Argument

The Motion should be denied because the Defendant cannot and does not meet its burden of proof for relief under Rule 60(b)(2)-(3), SCRCP and Rule 60(b) is inapplicable to the facts submitted by the Defendant.

In Lanier v. Lanier, 612 S.E.2d 456, 459, 364 S.C. 211 (2005) the South Carolina Supreme Court established the standard for relief under Rule 60(b)(2), SCRCP as follows: "To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." Defendant does not and cannot meet these elements.

Likewise, Defendant fails to meet its burden of proof for a Rule 60(b)(3) motion as outlined in Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605 (2003)("fraud upon the court is that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.") *see also* Chewning, 354 S.C. at 86 ("Again, any claim of fraud upon the court must be accompanied by particularized allegations.").

I. The allegation of repairing a dam is insufficient to support a Rule 60(b)(2), SCRCP, Motion.

Rule 60(b), SCRCP, reads: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: .... (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)...."

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"To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." Lanier, 612 S.E.2d at 459.

In the present case, Appellant has not provided any evidence or argument to this Court that any of the five elements could be met. First, as a preliminary matter, Defendant in fact argued in its Rule 59 motion that Plaintiff had additional access over the dam to its property south of Raglin Creek. *See* Defendant's Rule 59 Motion, p. 1. Therefore, Defendant cannot meet the plain language of Rule 60(b)(2) because it in fact argued the very position it now takes in its Rule 59 motion. With regard to the first and fourth common law elements, even assuming there was a repair of the dam that occurred after trial, the outcome of the present case will not change because the existence/nonexistence of additional means of access is not an element of a prescriptive easement, an easement by grant or a public dedication of a road.[2] This is not an easement by necessity case. An easement by necessity was not pled and the Trial Court did not find an easement by necessity. In fact, the Trial Court specifically inquired into this issue.

"THE COURT: Now does the -- does the fact that the dam was washed away, and I think Mr. Floyd said a road as well, does that change anything as far as your theory, Mr. Wells?

MR. WELLS [Respondent Attorney]: Judge, we never claimed -- we did not claim a easement by necessity, which is an easement because he has no other access. So I don't think that changes the law in the case."

Trial Transcript, p. 18, line 15-22 (attached hereto as Exhibit A).

[2] Defendant conceded this point in its Rule 59 Motion. *See* Defendant's Rule 59 Motion, pp. 1-2.

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With regard to the second, third and fifth element, the record in this case is replete with the evidence that the dam over the years has washed out and then rebuilt. *See* Trial Transcript, p. 357, line 22-p. 359, line 12 (attached as Exhibit B); *see also* Trial Transcript, p. 94, line 10-p. 95, line 18 (attached as Exhibit C) *see also* Trial Transcript, p. 358, line 1-p. 359, line 12 (attached as Exhibit D). In fact, this Court noted this in the factual findings in its Order. *See* Final Order, Paragraph 7. The fact that a dam was rebuilt once again as has been attempted throughout this property's history is not new evidence. Moreover, even if the dam were rebuilt it occurred AFTER the trial of case. Evidence that did not exist at the time of the trial cannot serve as a basis for a Rule 60(b)(2) motion. *See* Baicker-McKee, Janssen, and Corr, *Federal Civil Rules Handbook*, p. 1259 (2016)("Implicit in these [Rule 60(b)(2)] elements is the recognition that the evidence must be evidence of facts that were in existence at the time of trial, though not discovered until after trial.").[3]

Rule 60(b)(2), SCRCP does not apply in this case and Defendant fails to meet its burden of proof for its application. The Motion should be denied.

II. The allegation of repairing a dam is insufficient to support a Rule 60(b)(3), SCRCP, Motion.

Rule 60(b), SCRCP, provides, in part: "(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: .... (3) fraud, misrepresentation, or other misconduct of an adverse party;...."

[3] In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. Gardner v. Newsome Chevrolet–Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

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"When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCP, the movant must prove her entitlement by clear and convincing evidence." Gainey v. Gainey, 382 S.C. 414, 427, 675 S.E.2d 792, 799 (Ct.App. 2009).

In order to secure equitable relief on the basis of fraud, the fraud must be extrinsic. Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951). (extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment). Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). "Again, any claim of fraud upon the court must be accompanied by particularized allegations." Chewning, 354 S.C. at 86.

There is no evidence, much less clear and convincing evidence, to support the serious allegation of extrinsic fraud on this Court. The repair of a dam after the trial of the case does not amount in any conceivable way to an extrinsic fraud. There is no evidence or argument that Defendant was not given an opportunity to fully exhibit or try her case. In fact, much of the Defendant's case, as shown in the trial transcript excerpts attached hereto, was about the repair and damage to the dam. However, just as it was during the trial and as it is on appeal, the ruling of the Court finding a prescriptive easement, an easement by grant and public dedication does not depend on alternate means of access.

Rule 60(b)(3), SCRCP does not apply in this case and Defendant fails to meet its burden of proof for its application. The Motion should be denied.

Conclusion

For the reasons stated herein, Defendant's Rule 60(b) Motion should be denied.

Respectfully Submitted,

BUNDY MCDONALD, LLC

/s M. Brent McDonald
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Attorneys for Plaintiff Country Properties, LLC

July 17, 2018

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CERTIFICATE OF SERVICE

I, Kathy Wentland, an employee of Bundy McDonald, LLC, hereby certify that true and correct copies of the PLAINTIFF'S MEMORANDUM IN OPPOSITION OF DEFENDANT'S RULE 60 MOTION, were served on all parties via Electronic Filing, Electronic Mail, U. S. Mail, postage paid, this 17 day of July, 2018, as follows:

Joey Randell Floyd, Esquire
Brumner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorney for Defendant Nancy Dunn Martin
jfloyd@brunerpowell.com

s/Kathy Jo Wentland

maintenance on it. The hunt club did all the maintenance on these roads. We've got a number of defenses. We've got -- if you happen to find that there is in some way an easement, there's an abandonment, there's adverse possession, and a number of other statute of limitations, a number of other defenses that we believe will cause the Defendant to prevail in this case. And we'll certainly be as speedy as we can in this trial, Judge. Thank you.

THE COURT: Let me have a call here with the lawyers right here on the record. This lawsuit was filed back in 2014?

MR. FLOYD: That's correct.

THE COURT: Now does the -- does the fact that the dam was washed away, and I think Mr. Floyd said a road as well, does that change anything as far as your theory, Mr. Wells?

MR. WELLS: Judge, we never claimed -- we did not claim a easement by necessity, which is an easement because he has no other access. So I don't think that changes the law in the case.

THE COURT: All right. Mr. Floyd, Mr. Peel?

MR. FLOYD: I don't -- I don't think it changes, it's all on his property, he's rebuilt it. He

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built it, he modified it, and all that sort of stuff so he's got access.

THE COURT: All right. Mr. Wells, call your first witness please.

MR. WELLS: I call Anna Williams.

ANNA C. WILLIAMS, having been duly sworn, testifies as follows:

MS. WILLIAMS - DIRECT EXAMINATION BY MR. WELLS:

Q: Ms. Williams, where do you live?

A: Ridgeway, South Carolina.

Q: And how long have you been a title searcher?

A: 30 years.

Q: Okay. And what companies and individuals have you worked for in that time?

A: Some of the clients I've worked for, this is not a full list, would be Absolute Title of Columbia, South Carolina; Poinsettia Title in Lexington, South Carolina; The Law Offices of Roddy Jordan; Law offices of Bart Bartlett; Law Office of George Lafaye; Law Office of Tally Lattimore; Hawkins, Richardson and Associates out of Greer, South Carolina; Russell Templeton, Columbia, South Carolina; Baxley, Pratt and Wells, Lugoff; Connel and Simmons in Lugoff; Patrick Partin Camden, South Carolina;

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say?
A: (No audible response.)
Q: What do you say?
A: What's your definition of public and private?
Q: I heard you say that you believe this road was public up to your property line. That's what you said, right?
A: That's correct.
Q: Okay. Despite that fact, you've taken a street sign and you've installed it here on your property, haven't you.
A: That's correct. Yes, sir.
Q: And you still maintain that that's a public road from 601 all the way to your property line but no further?
A: Didn't say that. You said that.
Q: Okay.
MR. FLOYD: No further questions.
THE COURT: Any re-direct?
MR. WELLS: Yes, Your Honor.
MR. PODELL - RE-DIRECT EXAMINATION BY MR. WELLS:
Q: Mr. Floyd asked you about the width of the dam?
A: Yes, sir.
Q: Across Raglin Creek?
A: Yes, sir.

EXHIBIT
B
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Q: Would you look at Plaintiff's Exhibit 37?
A: Yes, sir.
Q: Do you recognize that picture?
A: Yes, sir.
Q: Did you take the picture?
A: Yes, sir.
Q: And what does that show on the picture?
A: Portion of the dam that has been washed out.
Q: Okay. When was the picture taken?
A: Wasn't the last flood, it was two years ago.
Q: Okay. Was that the 2015 flood or a rainstorm previously?
A: A rainstorm previous to that.
Q: Does it normally look like that or was that damage from a storm?
A: That was damage from a rainstorm.
Q: Okay. Hold that up so the court can see it and show which side the -- I think you can tell which side the pond is on.
THE COURT: This is Plaintiff's Exhibit Number 37, correct?
MR. WELLS: Yes, Your Honor.
THE COURT: Thank you.
MR. WELLS: We move to introduce Plaintiff's Exhibit 37.

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MR. PEEL: No objection, Your Honor.
THE COURT: All right. Your motion is granted.
(Plaintiff's Exhibit Number 37 was admitted into evidence at this time.)
Q: Was that -- did you repair the dam after that picture was taken?
A: Yes, sir.
Q: And is the dam in good repair today?
A: No, sir.
Q: And when did it fall into disrepair?
A: When we had the twenty inch rain in '15, October.
Q: Now, Mr. Floyd asked you about a conversation with Gary Wessinger ---
A: Yes, sir.
Q: --- about the access through the gate?
A: Yes, sir.
Q: Tell me about that incident.
A: I was using the road, as I recall the gate was open.
Q: The gate on Ms. Martin's property?
A: Yes. And I went through the other gate and I believe if I'm correct here when I came back the gate was locked so I had to go back through again. If I remember correctly I think I called

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we had to enter into the property and that was the access that he had been given for it.

Q: So you were given a key?

A: Uh-huh.

Q: And you just used it?

A: That's correct.

Q: All right. Nobody ever confronted you about it, nobody ever said anything to you about it?

A: No one ever said anything.

Q: All right. Wasn't there a dam across this Raglins Creek right here or a road?

A: No, there was no dam across it. My brother and I put a dam across it. We rebuilt the old dam that was there.

Q: So there was a dam there?

A: We rebuilt that dam.

Q: So you could drive across it, right?

A: No, you couldn't use that.

Q: You never drove across that?

A: No ---

THE COURT: I'm sorry. Mr. Floyd?

MR. FLOYD: Yes, sir.

THE COURT: You had asked him about the dam and his testimony was that they rebuilt it. Is he talking about rebuilding after what happened in

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October or was it ---

MR. BRAZELL: Oh, no. It was -- my understanding, it was used back in timber days an it had burst at some point and it never was built back. And my brother and I took it upon ourselves to build it back.

THE COURT: And what year was that, sir?

MR. BRAZELL: What year?

THE COURT: Yes, sir.

MR. BRAZELL: In '09.

THE COURT: '09, okay. Thank you very much. I'm sorry to interrupt you.

MR. FLOYD: No, no.

Q: So y'all built the dam?

A: Uh-huh.

Q: But it was one there before, you just improved what was there?

A: (Nods head.)

Q: Did you hunt on Saturdays?

A: Yes, sir.

Q: And do you know Dunn's Mountain Hunting Club?

A: Uh-huh.

Q: And did they come Saturdays as well?

A: I wouldn't have any idea.

Q: But you know who Dunn's Mountain Hunting Club

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Q: Would you look at Plaintiff's Exhibit 37?
A: Yes, sir.
Q: Do you recognize that picture?
A: Yes, sir.
Q: Did you take the picture?
A: Yes, sir.
Q: And what does that show on the picture?
A: Portion of the dam that has been washed out.
Q: Okay. When was the picture taken?
A: Wasn't the last flood, it was two years ago.
Q: Okay. Was that the 2015 flood or a rainstorm previously?
A: A rainstorm previous to that.
Q: Does it normally look like that or was that damage from a storm?
A: That was damage from a rainstorm.
Q: Okay. Hold that up so the court can see it and show which side the -- I think you can tell which side the pond is on.
THE COURT: This is Plaintiff's Exhibit Number 37, correct?
MR. WELLS: Yes, Your Honor.
THE COURT: Thank you.
MR. WELLS: We move to introduce Plaintiff's Exhibit 37.

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MR. PEEL: No objection, Your Honor.

THE COURT: All right. Your motion is granted.

(Plaintiff's Exhibit Number 37 was admitted into evidence at this time.)

Q: Was that -- did you repair the dam after that picture was taken?

A: Yes, sir.

Q: And is the dam in good repair today?

A: No, sir.

Q: And when did it fall into disrepair?

A: When we had the twenty inch rain in '15, October.

Q: Now, Mr. Floyd asked you about a conversation with Gary Wessinger ---

A: Yes, sir.

Q: --- about the access through the gate?

A: Yes, sir.

Q: Tell me about that incident.

A: I was using the road, as I recall the gate was open.

Q: The gate on Ms. Martin's property?

A: Yes. And I went through the other gate and I believe if I'm correct here when I came back the gate was locked so I had to go back through again. If I remember correctly I think I called

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Country Properties, LLC, Plaintiff, v. Nancy Dunn Martin, Defendant.	)	**Case No.: 2014-CP-40-01805** **PLAINTIFF'S RULE 59(e), SCRCP MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANT'S RULE 60(b) MOTION**

Plaintiff Country Properties, LLC (hereinafter "Plaintiff") hereby submits this Rule 59(e), SCRCP Motion to Alter or Amend the Order granting Defendant Nancy Dunn Martin's (hereinafter "Defendant") Rule 60(b), SCRCP Motion ("Order")(attached hereto as Exhibit A). Plaintiff received written notice of the entry of the Order on January 28, 2019. For the reasons stated herein, stated in the Plaintiff's memorandum in Opposition to the Rule 60(b) Motion, and stated at the hearing on the Rule 60(b) Motion, this Rule 59(e) Motion should be granted and the Order should be altered or amended in accordance herewith and Defendant's Rule 60(b) Motion should be denied.

Procedural Background

This Court entered its final order in this case on September 27, 2016. The final order found that Plaintiff had a prescriptive easement over the property of the Defendant, an easement by grant over the property of Defendant, and that the road in question was dedicated to the public. *See* September 27, 2016 Order. Defendant filed a Rule 59(e) and Rule 52(b), SCRCP, motion in November 9, 2016. That motion was denied on July 21, 2017. Defendant served a Notice of Appeal on August 22, 2017. On August 30, 2017, Defendant filed a motion with the S.C. Court of Appeals for leave to file a Rule 60(b)(2)-(3), SCRCP motion with this Court. The S.C. Court of Appeals granted the Motion for leave to file the Rule 60(b), SCRCP

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motion on October 5, 2017.[1] Defendant filed the Rule 60(b) Motion with this Court on October 24, 2017. On July 18, 2018, the parties appeared and argued the Rule 60(b) motion before the Honorable Joseph M. Strickland. On January 28, 2019, the Court entered the Order granting Defendant's Rule 60(b) Motion.

Grounds for Altering and Amending Order

1. The Court erred in finding that Defendant met its burden of proof for relief under Rule 60(b)(2), SCRCP.
2. The Court erred in ruling that Rule 60(b) is applicable to the "new evidence" submitted by the Defendant.
3. The Court erred in ruling that the aerial photographs submitted by the Defendant in support of the Rule 60(b) Motion are material to the outcome of the case and not cumulative because the record in this case is replete with the evidence that the dam over the years has washed out and was then rebuilt. *See* Trial Transcript, p. 357, line 22-p. 359, line 12; *see also* Trial Transcript, p. 94, line 10-p. 95, line 18; *see also* Trial Transcript, p. 358, line 1-p. 359, line 12. In fact, this Court noted this in the factual findings in its original order. The fact that a dam was rebuilt once again as has been attempted throughout this property's history is not new or material evidence. In fact, nothing prevented the Defendant from attempting to introduce evidence at the trial of this action relating to the *ability* to rebuild the dam.
4. The Court failed to rule on Plaintiff's argument that evidence that the dam could be rebuilt or that Plaintiff may have additional means of access is not new evidence. Defendant argued in its Rule 59 motion that Plaintiff had additional access over the dam to its property south of Raglin Creek.

[1] The S.C. Court of Appeals made no findings on the merits of the Rule 60(b) motion.

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5. The Court erred in ruling that the Plaintiff claimed a need for access based upon necessity. As previously pointed out in the Defendant's Rule 59(e) and Rule 52 Motion, Plaintiff did not claim an easement by necessity and the Court did not find an easement by necessity in its final order.
6. The Court erred in ruling that the aerial photos submitted in support of Defendant's Rule 60(b) Motion showed a condition that "eliminat[ed] any need for Plaintiff to traverse [Defendant's] property" and that such a condition was material to the types of easements claimed. Plaintiff did not claim an easement by necessity and the Court did not find an easement by necessity in its final order.
7. The Court erred in ruling that the court's analysis in its final order is changed because "evidence now suggests that Plaintiff can access all of its property via routes that do not transect [Defendant's] property." Plaintiff did not claim an easement by necessity and the Court did not find an easement by necessity in its final order.
8. The Court erred in ruling that alternative or additional means of access, even if they do exist, are material to the issue of a prescriptive easement claim or a claim of an easement by public dedication. It is well settled that the elements of a prescriptive easement or easement by public dedication do not consider, require or prevent additional or alternative means of access.
9. The Court erred in ruling that alternative or additional means of access, even if they do exist, would likely result in a change in the outcome of the trial finding a prescriptive easement claim and a claim of an easement by public dedication. It is well settled that the elements of a prescriptive easement or easement by public dedication do not consider, require, or prevent additional or alternative means of access.

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10. The Court found in its final order, as a matter of law, that Plaintiff's chain of title established an express easement by grant. The Court erred in finding that the repair of a dam is in any way material to construing the language in deeds, as matter of law, and finding an express easement.

11. The Court found in its final order, as a matter of law, that Plaintiff's chain of title established an express easement by grant. The Court erred in finding that the repair of a dam would likely result in a change in the outcome of the trial where the express language in the deeds was found, as matter of law, to establish an express easement.

12. The Court erred in ruling that "prior to the original trial, Defendant did not have the opportunity to view the dam or to ascertain its importance to the accessibility of Plaintiff's property." The Defendant could have utilized discovery to view the dam at any point prior to trial.

13. The Court abused its discretion in granting a new trial pursuant to Rule 60(b).

14. The Court failed to rule on the Plaintiff's argument that since there is no evidence that the dam was repaired at the time of the trial, evidence that did not exist at the time of the trial cannot serve as a basis for a Rule 60(b)(2) motion. *See* Baicker-McKee, Janssen, and Corr, *Federal Civil Rules Handbook*, p. 1259 (2016)("Implicit in these [Rule 60(b)(2)] elements is the recognition that the evidence must be evidence of facts that were in existence at the time of trial, though not discovered until after trial.").

Conclusion

For the reasons stated herein, stated in the Plaintiff's memorandum in Opposition to the Rule 60(b) Motion, and stated at the hearing on the Rule 60(b) Motion, this Rule 59(e) Motion should be granted and the Order should be altered or amended in accordance herewith and Defendant's Rule 60(b) Motion should be denied.

Respectfully Submitted,

BUNDY MCDONALD, LLC

/s M. Brent McDonald
M. Brent McDonald, SC Bar # 78057
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Summerville, SC 29485
Telephone: 888-552-1559
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BAXLEY PRATT & WELLS, P.A.

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Attorneys for Plaintiff Country Properties, LLC

February 6, 2019

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CERTIFICATE OF SERVICE

I, Kathy Wentland, an employee of Bundy McDonald, LLC, hereby certify that true and correct copies of the PLAINTIFF'S RULE 59(e) MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANT'S RULE 60 MOTION, were served on all parties and Judge Strickland via Electronic Filing, Electronic Mail, U. S. Mail, postage paid, this 6th day of February 2019, as follows:

The Honorable Joseph M. Strickland
PO Box 192
Columbia, SC 29202-0192
(US MAIL Only)

Joey Randell Floyd, Esquire
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorney for Defendant Nancy Dunn Martin
jfloyd@brunerpowell.com

s/Kathy Jo Wentland

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Country Properties, LLC	)	Civil Action No.: 2014-CP-40-01805
	)	
Plaintiff,	)	
	)	**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO ALTER OR AMEND**
v.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	

STATEMENT OF THE CASE

This matter is before the Court upon Plaintiff's Motion to Alter or Amend this Court's January 26, 2019 order, which granted Defendant's Rule 60(b) motion for a new trial. This case relates to a purported easement in favor of Country Properties, LLC ("Plaintiff" or "Country Properties") for the use of a road through Nancy Dunn Martin's property ("Defendant" or "Martin"). Following trial, judgment was entered in favor of the Plaintiff. Defendant appealed and shortly thereafter discovered new evidence relating to the case. The Court of Appeals granted leave for Defendant to file a Rule 60(b) motion seeking a new trial, which this court granted following a hearing for arguments. Defendant files the instant memorandum in opposition of Plaintiff's motion to alter or amend the Court's order for a new trial.

BACKGROUND

Country Properties filed this suit on March 18, 2014 against Defendant, listing five causes of action. Plaintiff sought to use a road that runs through Defendant's property under three theories: that it was deeded a right of access, that it held a prescriptive easement, and that the road through Defendant's property is public, not private. Based on the first two theories, Plaintiff also sought a permanent injunction to prevent obstruction of its use of the road through Martin's family

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land. Martin answered the complaint, opposing all causes of action asserted by Plaintiff, and counterclaimed adverse possession or prescription by servient tenement.

Following referral to the Master-in-Equity, a multi-day trial was held in March 2016. Ultimately, the Court issued an order in favor of the Plaintiff, which became final following a motion to alter or amend filed by Defendant. The Court's order found both that Plaintiff had a private easement through Martin's property and that the road upon which Plaintiff wished to travel was an unmaintained public road. The order recited and relied on numerous details about Raglin Creek, which runs through Plaintiff's land, and the dam on Plaintiff's land that impounds the creek. Shortly after appealing the Court's order, Defendant discovered new evidence about the creek and the dam, in the form of aerial photographs of the creek and a dam that appears fully functionable and traversable. After seeking approval from the Court of Appeals, Defendant filed a Rule 60(b) motion.

ARGUMENT

The motion currently at bar arises from this Court's ruling on the Rule 60(b) motion filed by Defendant. The decision to grant or deny a Rule 60(b) motion is within the sound discretion of the trial judge and an appellate court is limited to determining whether there was an abuse of discretion. *Rouvet v. Rouvet*, 388 S.C. 301, 308, 696 S.E.2d 204, 208 (Ct. App. 2010) (citing *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006)). An abuse of discretion only occurs when "the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support." *Id.* (citing *Gainey v. Gainey*, 382 S.C. 414, 423, 675 S.E.2d 792, 797 (Ct. App. 2009)). In exercising this discretion to grant a new trial under Rule 60(b)(2), SCRCP, the trial court finds that newly discovered evidence:

(1) will probably change the result if a new trial is granted;
(2) has been discovered since the trial;

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(3) could not have been discovered before the trial;
(4) is material to the issue; and
(5) is not merely cumulative or impeaching.

Lanier v. Lanier, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) (quoting James F. Flanagan, *South Carolina Civil Procedure* 484 (2d ed. 1996).

This Court properly found and concluded that Martin met her burden of proof under these elements. *See Rouvet*, 388 S.C. at 309, 696 S.E.2d at 208 (quoting *BB&T*, 369 S.C. at 552, 633 S.E.2d at 503) ("The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief."). Every element of the above test was found to be satisfied. *Cf. Se. Hous. Found. v. Smith*, 380 S.C. 621, 639, 670 S.E.2d 680, 689 (Ct. App. 2008) (stating that despite the appellant's arguments, the trial judge specifically addressed each element of the *Lanier* test). Plaintiff now seeks to impose further tests on the granting of a new evidence motion. To the extent that Plaintiff could have raised any arguments to the Court during the briefing and arguing of the Rule 60(b) motion and did not, those arguments are not preserved for the Court's review of its motion requesting reconsideration of the Court's ruling. Rule 59(e) motions allow a party to preserve issues that have been raised but not ruled upon; Rule 59(e) motions *do not* allow a party to preserve an issue that was never before raised. *See Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006).

Defendant has presented, and the Court has found, sufficient facts in evidence to support a holding that Defendant met her burden under Rule 60(b)(2) and the *Lanier* test. If Plaintiff now seeks to add further qualifications beyond those necessary to establish a *prima facie* case, the burden should be on Plaintiff to rebut the matters established by Defendant and found by the Court. Plaintiff has not alleged that the photos present evidence of a condition that did not exist at the time of trial. Because the photos portray land that Defendant cannot reach without permission, Defendant has no way to know the precise date of any improvements. Plaintiff—who would have

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that knowledge—has not averred at any point in the current proceedings that the dam was repaired after trial. *See* Memorandum in Opposition filed July 17, 2018, p. 4 (arguing the age of the evidence with a hypothetical "if" and citing a secondary federal source). Moreover, Defendant has not found any time-of-evidence requirement similar to that proposed by Plaintiff discussed in any existing South Carolina precedent on Rule 60(b)(2) motions. *See, e.g.*, *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004); *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989); *Ortowski v. Ortowski*, 237 S.C. 499, 117 S.E.2d 860 (1961); *Evatt v. Campbell*, 234 S.C. 1, 106 S.E.2d 447 (1959); *Johnston v. Belk-McKnight Co.,* 188 S.C. 149, 198 S.E. 395 (1938); *Stoney v. Stoney*, 425 S.C. 47, 819 S.E.2d 201 (Ct. App. 2018); *Se. Hous. Found. v. Smith*, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008); *Jamison v. Ford Motor Co.*, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007); *Lanier v. Lanier*, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005).

In fact, the precedent on new evidence motions has been consistent in South Carolina jurisprudence for decades. In discussing, almost verbatim, the factors recited in *Lanier*, the state Supreme Court in 1937 stated that newly discovered evidence includes that which raises "a new ground of claim or defense," explains "an apparent conflict" with evidence offered at trial, or contradicts evidence offered at trial. *McCabe v. Sloan*, 184 S.C. 158, 167–68, 191 S.E. 905, 909 (1937). No requirement related to time, other than the traditional criterion for due diligence, is included in our case law. The Court of Appeals recently stated that relief under Rule 60(b)(2) "depends upon the posttrial discovery of previously unknown, outcome-changing facts the moving party could not have, with due diligence, unearthed before trial." *Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018) (emphasis added). There is no evidence presented by Plaintiff showing that Defendant failed to meet the classic test for a new evidence motion, summarized above by the Court of Appeals and specifically outlined in *Lanier*.

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Plaintiff further asserts that Defendant should have availed herself of some discovery mechanism to surveil the Raglin Creek dam prior to trial. Defendant did take an opportunity to inspect the dam before trial. At the time Defendant viewed the dam and drove across it, the dam was in full repair, had received $70,000 worth of improvements and repairs, and was easily crossable. Defendant had no reason to believe that the condition of the recently strengthened dam changed prior to trial in this matter. Defendant was ambushed at trial with information that the dam had been damaged by the October 2015 flood. Plaintiff never volunteered this information to Defendant, as one might do in continuing discovery.

Moreover, Plaintiff had never given any indication in its complaint or in discovery that it would rely on, or even introduce, evidence about the creek and dam at trial. Indeed, there is no mention of the creek or dam in Plaintiff's Complaint. In interrogatory responses to Defendant, the only reference made by Plaintiff regarding any water or dam was a statement that Plaintiff had "made a pond dam wider" when improving its property. See **Exhibit A**. There was no reference to Raglin Creek and there were no other indicia prior to trial that could have led Defendant to believe Plaintiff would generate the specter of a "natural barrier" on its property that in some form or fashion might justify a prescriptive easement. Indeed, it is somewhat incongruent for Plaintiff to argue that Defendant should have required an inspection of Plaintiff's dam prior to trial while also maintaining that the creek and dam are irrelevant to the issues before the Court in this case.

This Court properly concluded that the new evidence presented by Defendant is both relevant and material to the outcome of this case. The Court's order references Raglin Creek or the dam across it on Plaintiff's property multiple times. *See* Order filed Sept. 27, 2016, p. 5, ¶¶ 5, 6, 7; p. 6, ¶¶ 7, 10; p. 7, ¶ 13; pp. 25, 30. The creek and the dam are used many times to define the portion of Plaintiff's property that may be reached by crossing through the middle of Martin's

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family land, while a substantive discussion of the creek and dam takes up nearly all of page 5 of the Court's order. Importantly, the order uses a totality of the circumstances test to analyze Plaintiff's claims to a prescriptive easement. *See id.* at 23 (citing *Hartley v. John Wesley United Methodist Church*, 355 S.C. 145, 584 S.E.2d 386 (Ct. App. 2003). It is clear throughout the order that the "natural barrier" ostensibly imposed by the creek without a dam plays a large role in the Court's assessment of the totality of the circumstances that might lead Plaintiff to believe it has a right to cross through Martin's land. The new evidence provided by Defendant shows that the creek may not subject Plaintiff to the level of burden indicated at trial. While the parties may only speculate as to the precise way the evidence was weighed by the Court in its examination of the totality of the circumstances, it is abundantly clear that the Court considered evidence—introduced by the Plaintiff—regarding Raglin Creek and its dam, or lack thereof, as a pertinent and relevant part of the case. Perhaps nowhere is this more apparent than in the last sentence of the Court's conclusion on page 30, which reads:

> Plaintiff is entitled to at least a private easement to use this road that has endured for seventy years, and has been used by the Plaintiff and its predecessors in title as the principal, if not the sole, access to that portion of the Plaintiff's property lying south of Raglin Creek in Richland County, which creek has obstructed access to this portion of the Plaintiff's property from U.S. Highway 601 for most of that seventy year period.

Clearly, the Plaintiff's perceived necessity of using Defendant's land to access the southern portion of its tract played an important part in the Court's study of whether Plaintiff might have prescriptive easement. *See* Order at 26 (noting that conveyance includes "easements and rights of way that are *necessary* for the use and enjoyment of the land" (emphasis added)). One might perhaps presume that conduct leading to a prescriptive easement had necessarily occurred if indeed the "sole" way to access a portion of allegedly dominant estate was through another's land. Defendant's newly discovered evidence casts substantial doubt on the finding that "the 384 acres

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of the Plaintiff's tract located south of Raglin Creek in Richland County has no access except via the easement that the Plaintiff seeks to establish in this action." Order at 5, ¶ 6 (emphasis added). Certainly, Plaintiff need not have pleaded "easement by necessity" in order for necessity to have played some part in assessing Plaintiff's claims to an easement by prescription, or even for that part to have a significant impact on the Court's ultimate decision. Plaintiff hinged a great deal of its arguments at trial and afterwards on Raglin Creek as demonstrated by the findings in the Court's order. That emphasis was focused on how the creek required Plaintiff to traverse Defendant's property in order to reach its own. The evidence brought forward by Martin clearly shows that this is no longer the case, if indeed it ever was.

CONCLUSION

For the foregoing reasons, Martin requests that the Court deny Plaintiff's motion to alter or amend the Court's order and allow this matter to proceed to trial.

BRUNER POWELL WALL & MULLINS, LLC

s/ Joey R. Floyd
Joey R. Floyd, Bar No. 68491
Wesley D. Peel, Bar No. 9283
Chelsea J. Clark, Bar No. 102211
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Attorneys for Nancy Dunn Martin

March 11, 2019
Columbia, South Carolina

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EXHIBIT A

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STATE OF SOUTH CAROLINA)	
)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND)	
	Civil Action No.: 2014-CP-40-1805
Country Properties, LLC,)	
)	
Plaintiff,)	**PLAINTIFF'S ANSWER TO DEFENDANT'S INTERROGATORIES**
)	
vs.)	
)	
Nancy Dunn Martin,)	
)	
Defendant.)	
)	

TO: JOEY R. FLOYD, ESQUIRE, ATTORNEY FOR THE DEFENDANT:

The Plaintiff answers the Defendant's interrogatories dated May 21, 2014, as follows:

1. Identify each person (including their name, current address and telephone number) known to you, or your counsel to be a witness concerning the facts of the case and/or the things and matters alleged in the pleadings in this civil action. In addition, indicate whether or not written or recorded statements have been taken form the witness and indicate who has possession of such statements.

ANSWER:

a. James F. Podell, PO Box 279 Elgin, SC 29045
No written or recorded statement has been taken

b. James L. Guy, II, PO Box 129 Camden, SC 29021
No written or recorded statement has been taken

c. Robert J. Sheheen, PO Drawer 10 Camden, SC 29021

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persons who participated in hunting or other recreational activities on the property of the Plaintiff and James L. Guy, II.

15. Explain, in detail, all improvements that you have made on your property and/or all work that has taken place on your property since you became the owner of the property.

ANSWER:

Plaintiff has erected a metal shed building for storing equipment and has made a pond dam wider.

16. Set forth each and every reason why you are pursuing this action and your intended use of your property.

ANSWER:

The Plaintiff's property consists of a 1000 acres. The southern portion of the Plaintiff's property which is accessible by Shady Grove Road is not easily accessible by any other road because of the terrain. Also, the Plaintiff believes that he has a right to use this road as it was represented to him that he had the right to use the road when he purchased his property. The preponderance of the evidence is that the road has been open for a long time and has been included in deeds in the past. However, the road described in the deeds is only twenty (20') feet in width, so it could never be used as a subdivision road and it would have no benefit to the Plaintiff as to any subdivision of the Plaintiff's property. The Plaintiff is seeking access by Shady Grove Road for recreational and agricultural purposes. The Plaintiff's intended use for his property is agricultural and recreational including but not limited to the growing of timber and hunting. The Plaintiff has no plans or intentions to subdivide the property for residential or commercial purposes at this time.

17. Identify each person, other than legal counsel, who assisted in responding to these Interrogatories.

ANSWER:

a. James F. Podell

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"X", at page 1166, showing the road. -provided

v. December 9, 1954, Coon Hunt Invitation showing the road in the driving directions. - provided

w. Plat prepared for Nancy Martin by Carl Bostic dated February 15, 2010. - provided

x. Plat prepared for Nancy Martin Graybill & Lansche, LLC, by Carl Bostic dated September 9, 2012. - provided

y. Photo of Plaintiff's washed out dam. - provided

z. November 12, 1976 Certificate of Title of James E. Stephenson, Attorney - provided

Baxley, Pratt & Wells, PA

BY: _____
John W. Wells
Attorney for the Plaintiff

Lugoff, South Carolina

Date: 6/20/14

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A #: 2014-CP-40-1805
	)	
Country Poperties, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	
	)	

COPY

HEARING

****

Monday, March 21, 2016
10:45 a.m. - 4:45 a.m.
Tuesday, March 22, 2016
10:03 a.m. - 12:33 p.m.
Wednesday, March 23, 2016
9:32 a.m. - 3:49 p.m.
Thursday, March 24, 2016
9:55 a.m. - 12:44 p.m.

The hearing before the Honorable Joseph M. Strickland, Master-In-Equity for Richland County, was taken at the Richland County Courthouse, 1701 Main Street, Courtroom 2D, Columbia, South Carolina on the 21st, 22nd, 23rd, and 24th days of March, 2016 before Amanda Jo Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.

(Plaintiff's Exhibit Numbers 1 through 55 and Defendant's Exhibit Numbers 1 through 11 were marked for identification purposes prior to the hearing.)

DAY ONE - Monday, March 21, 2016

THE COURT: Good morning everyone. This is Civil Action Number 2014-CP-40-1805, Country Properties, LLC against Nancy Dunn Martin.

Those of you who've never appeared in my court before, keep in mind, if you need a break for any reason just let us know, we're pretty flexible on things like that. And let me announce now that we're going to recess tomorrow at noon. One of the attorneys involved had a death in the family and wants to go to a funeral out of town, so we'll just plan a recess at noon tomorrow.

Also I talked to the attorneys in chambers and I asked them if it was -- we've blocked out all week for this trial, five days. I asked if it were -- if it would be a good investment of time to talk settlement. And the attorneys seem to agree that y'all have been talking for awhile and that'll be -- that would not be a good use of time to try to talk settlement. Do y'all still feel that way, Mr. Floyd, Mr.

Wells, y'all still feel that way? Your clients still feel that way?

MR. WELLS: I think we're pretty far apart.

THE COURT: Okay. All right. Please proceed with -- oh, and also you'll hear -- you'll see me stand up a lot of times in the trial. I was told by a World War II Veteran that that's how you keep from falling asleep, even though he remembered people falling asleep on their feet. And I don't want to imply, cast any aspersion on the attorneys that they put people to sleep or not but I -- if you see me standing up it's not -- doesn't mean you have to stand necessarily or that -- I appreciate the courtesy but that throws some people off that I'm standing. But no, it's just something, something that I do. You may proceed with opening statements.

OPENING STATEMENT BY MR. WELLS:

MR. WELLS: Judge, because this is a property case, I think I have to, sort of, engage in the art of the law -- the art of the law a little bit. This case involves a piece of property and I'm going to draw Highway 601. And on highway -- let's put the Wateree River over here. The

river's over here. The Richland and Kershaw County line is a creek that runs kind of in this direction called Raglin Creek. And the Plaintiff owns a piece of property that comes from 601, it's got kind of a little top knot here, comes down here, and it runs, sort of, in this direction. Raglin Creek cuts the Plaintiff's property. The Defendant has property, this is called the Lewis Tract, kind of a triangular piece, and then her main piece is down here. And her tract is below the Defendant's property-line. There is a road called Shady Grove Road that comes in like this, and it comes on up into the Plaintiff's property, and it goes back, this is the Guy property back here. You will hear from Mr. Guy probably this afternoon. And there is a gate across this road in here. And this is the gate that we're seeking to remove. Mr. Podell does have frontage on -- Country Properties has frontage on 601, but our access over here to the part below Raglin's Creek is denied except through this road coming through our property. There is no bridge across Raglin Creek, there was a dam. The dam was washed out actually in

floods of October of 2015. But there was a dam across this creek, but it's -- it's -- we claim it's an inadequate access to get to our property down here. We have about 300 acres below the creek. And we're going to show that our -- our people and the Guy people have used this road to access this property. We're going to have use witnesses going back about 70 years. I believe we can show that the road is a lot older than that. But we are going to claim on three theories. We are going to show that when this property came into the Defendant's granddaddy in 1939, her grandfather received the deed to this property that was subjected to a 20 foot easement going to people who own property back here, which is now part of our tract. So we're going to claim an easement by deed. We're going to show public maintenance over the years of Shady Grove Road, all the way to our property line. And we're going to rely on the prescriptive easement by showing use of this road, both adverse and under a claim of right, for a period of more than 20 years. And we're going to show the identity of the road. We're going to show

photographs going back to 1943, which shows this road on the photographs, probably about every ten years since that time. We're going to show old maps, and that's what we're going to rely on to prove that we have access to the Plaintiff's property through Shady Grove Road. Thank you.

THE COURT: Yes, sir. Mr. Floyd?

OPENING STATEMENT BY MR. FLOYD:

MR. FLOYD: May it please the court, Your Honor?

THE COURT: Yes, sir.

MR. FLOYD: Joey Floyd on behalf of the Defendant, Nancy Martin. I'm not the artist that Mr. Wells is so I'm going to take a picture here and I'm going to do a little -- same demonstration. So this is, the blue part that you see here on this demonstrative exhibit here is Nancy Martin's property. And this green thing that you see here is a public road, Highway 601. This road that you see up here is also a public road called Old English Road. That property outlined in red is the Plaintiff's property in this case, Country Properties, LLC. This green road that you see here is actually called Northeast Shady Grove

Road. It's not Shady Grove Road, it's Northeast Shady Grove Road. And on the Plaintiff's property, he mentioned a dam across Raglin's Creek. It's more than a dam actually, it was a road and a dam and he testified about that. And he also testified about how wide it was and about how much he spent in making repairs and upgrades so that it would be a passable road. So that gives you, kind of, an idea. And this gate that we're talking about is just beyond a sign that says end of county maintenance on Northeast Shady Grove Road. It's a couple of hundred feet just beyond that on this marked property. The county says it's a private road. My client says it's a private road. And everybody in the world knew it was a private road. There is no easement in my client's chain of title, we'll establish that. This property here that you see, of Nancy Martin's property, was leased to a hunting club in 1970, Dunn's Mountain Hunt Club. The hunting club used that property for hunting for right at 43 years up until about 2013. That gate's been locked since 1970. Anybody using that road has been -- use has been with

permission of Mr. Martin or Nancy Martin when she became the owner. The Plaintiff has three points of access on his property. He has an access off of 601 and he testified he could get to anywhere on his property from any of these three points of access. 601 and off of Old English. This gate was locked when he bought it, he knew it was there. And there's a case in South Carolina, it's a pretty recent case, called Bundy v. Shirley. And that case is going to be talked about a lot because that establishes a lot of -- it cleared up a lot of easement law questions in South Carolina by the Supreme Court. And that gate, it doesn't matter if it's locked but I will tell you it has been locked. It's an obstruction across the road. The erection of a gate is a clear indication by the property owner, this is mine. If you want to use it, you're using it with my permission, period. In addition to that, there's going to be testimony of what we call -- the Wessingers, who were the hunting club folks that hunted there, they did what's called lock cleanings. They would go through the locks with the landlord and they would say, do

maintenance on it. The hunt club did all the maintenance on these roads. We've got a number of defenses. We've got -- if you happen to find that there is in some way an easement, there's an abandonment, there's adverse possession, and a number of other statute of limitations, a number of other defenses that we believe will cause the Defendant to prevail in this case. And we'll certainly be as speedy as we can in this trial, Judge. Thank you.

THE COURT: Let me have a call here with the lawyers right here on the record. This lawsuit was filed back in 2014?

MR. FLOYD: That's correct.

THE COURT: Now does the -- does the fact that the dam was washed away, and I think Mr. Floyd said a road as well, does that change anything as far as your theory, Mr. Wells?

MR. WELLS: Judge, we never claimed -- we did not claim a easement by necessity, which is an easement because he has no other access. So I don't think that changes the law in the case.

THE COURT: All right. Mr. Floyd, Mr. Peel?

MR. FLOYD: I don't -- I don't think it changes, it's all on his property, he's rebuilt it. He

built it, he modified it, and all that sort of stuff so he's got access.

THE COURT: All right. Mr. Wells, call your first witness please.

MR. WELLS: I call Anna Williams.

ANNA C. WILLIAMS, having been duly sworn, testifies as follows:

MS. WILLIAMS - DIRECT EXAMINATION BY MR. WELLS:

Q: Ms. Williams, where do you live?

A: Ridgeway, South Carolina.

Q: And how long have you been a title searcher?

A: 30 years.

Q: Okay. And what companies and individuals have you worked for in that time?

A: Some of the clients I've worked for, this is not a full list, would be Absolute Title of Columbia, South Carolina; Poinsettia Title in Lexington, South Carolina; The Law Offices of Roddy Jordan; Law offices of Bart Bartlett; Law Office of George Lafaye; Law Office of Tally Lattimore; Hawkins, Richardson and Associates out of Greer, South Carolina; Russell Templeton, Columbia, South Carolina; Baxley, Pratt and Wells, Lugoff; Connel and Simmons in Lugoff; Patrick Partin Camden, South Carolina;

THE COURT: Please proceed, Mr. Wells.

Q: The Whitfield Company, where did they get the property?

A: From deed from Robert J. Sheheen, as Trustee by deed dated March the 22nd, 1999. Recorded in Richland County in book 291 at page 1478.

Q: Okay. Is that a copy of -- what exhibit is that?

A: Exhibit 5.

Q: Is Plaintiff's Exhibit 5, a copy of that deed?

A: Yes, sir, it is.

MR. WELLS: I move to introduce Plaintiff's Exhibit 5.

(Plaintiff's Exhibit Number 5 was admitted into evidence at this time.)

Q: Where did Robert Sheheen, as Trustee, receive title to the property?

A: A Robert Sheheen, as Trustee, from R. W. Lloyd from deed dated December the 30th, 1976 recorded in Richland County in deed book 410 at page 86. He received it with Henry Savage, who died in 1990, leaving Robert Sheheen as the sole trustee.

Q: Okay. Now, we're going to deviate from the 1023 acres. Down to a 412 acre tract, which is

-- let me ask you if -- what is the derivation for the 412 acre tract?

A: Yes, the 412 acre portion of the Plaintiff's tract, where Shady Grove enters the tract, was conveyed by R.W. Lloyd by East Highland Company, dated May 17th, 1974 recorded in book IC at page 2280.

Q: Okay. And where did East Highland Company get that tract?

A: From Evan P. Guy, dated by deed October the 6th, 1969 recorded in Richland County in deed book D156 at page 222.

Q: Okay. And is this a copy of that deed, Plaintiff's Exhibit 7?

A: Yes, sir, it is.

(Plaintiff's Exhibit Number 7 was admitted into evidence at this time.)

Q: And does that deed refer to a Catawba Timber plat?

A: It does. It's recorded in plat book X at 949.

Q: Okay. And is this a copy of that ---

A: Yes, sir, it is.

Q: --- plat? So would that be the 412 acre tract?

A: Yes, sir.

Q: All right. Can you show the judge on the

A: Yes, sir, it is.
Q: Okay.
THE COURT: Mr. Peel?
MR. WELLS: We will move to admit ---
MR. PEEL: I withdraw my objection.
THE COURT: Okay. Without objection, your motion's granted, Mr. Wells.
MR. WELLS: Thank you. We'll leave that there.
(Plaintiff's Exhibit Number 10 was admitted into evidence at this time.)
Q: Now, moving further back in time, where did Kester, Mr. Kester get the property that he conveyed to Guy and Powe?
A: He got it from C.E. Borresteel and May Borresteel dated June the 2nd, 1939 and recorded in Richland County in deed book EO at page 492.
Q: Now, let me give you Plaintiff's Exhibit 12. Is that a copy of the deed to Kester from Borresteel?
A: It is.
Q: All right. Now starting in this deed, in the property description, does it refer to some tract numbers?
A: Yes, sir. It refers to said tract being

composed of tract one allotted to Mattie L. Desportes and tract number two allotted to Lelia S. Miller being conveyed by J.H. Miller on partition plat filed in Judgement Roll Number 1158 in the Office of the Clerk of Court for Fairfield County, South Carolina.

Q: Okay. So does this deed refer to -- this is the first reference to the tracts coming from the 1884/'85 partition ---

A: Yes, sir.

Q: --- in Fairfield County?

A: Yes, sir.

Q: And which tracts are in the Plaintiff's chain of title?

A: One and two.

Q: Okay.

MR. WELLS: Now, move to admit this deed as Plaintiff's Exhibit 12.

MR. FLOYD: Book and page number, John, please?

MS. WILLIAMS: It is book EO at page 492.

MR. FLOYD: Thank you.

Q: Does it talk about rights-of-way?

A: Yes, it does.

Q: What does it say about rights-of-way?

A: Granting also by these presents all such right-

of-way for ingress and egress as are appurtenant and applicable to the above described lands and reserving such rights as may be applicable to other adjoining lands, all rights reserved and granted herein are in accordance with and subject to the conditions set forth in the deed from J.H. Miller and all others to Lura Mae Miller dated December the 21st, 1926.

Q: Okay. And where did the Borresteels get the property?

A: They received it from the Bordeau Company by deed dated June the 6th, 1939 recorded in Richland County in deed book EO at page 493.

Q: And is this a copy of that deed?

A: Yes, sir, it is.

Q: Okay. Was that taken from the ROD -- excuse me, the RMC in Richland County?

A: Yes, sir, it is, the RMC of Richland County.

MR. WELLS: Move to admit Plaintiff's Exhibit ---

MS. WILLIAMS: 13.

MR. WELLS: --- 13 and Plaintiff's Exhibit 12.

Q: Does Plaintiff's Exhibit 13 speak to rights-of-way?

A: Yes, sir, it does.

THE COURT: One moment, please.

MR. PEEL: May I look at Exhibit 13? I'm sorry, I just didn't have that one on my desk to look at. Thank you.

(Plaintiff's Exhibit Numbers 12 and 13 were admitted into evidence at this time.)

Q: And where did the Bordeau Company get the property?

A: Sorry, Mr. Wells, do you not want me to read the easement?

Q: Did Plaintiff's Exhibit 13 contain language about rights-of-way?

A: Yes, sir, it does.

Q: What are those rights-of-way?

A: Granting also by these presents all such right-of-way for ingress and egress as are pertinent and applicable to the above described lands and reserving such rights as may be applicable to other adjoining lands, all of rights reserved and granted herewith are in accordance with the and subject to the conditions set forth in the deed from J.H. Miller and others dated December 21st, 1926 recorded in CW at page 121.

Q: All right.

THE COURT: Which Exhibit is that?

MS. WILLIAMS: That is Exhibit 13, Your Honor.

Q: And where did the Bordeau Company get the property?

A: From H.O. Williams, Dimple Williams, J.E. West, and Birdie West by deed dated December 24th, 1929 recorded in book DL at page 176 in Richland County.

Q: All right.

A: RMC.

Q: Look at Plaintiff's Exhibit 14, is that the deed from Williams to Bordeau?

A: Yes, it is.

Q: Okay. Does it contain the identical language about the rights-of-way?

A: It contains the identical language about the rights-of-way.

MR. WELLS: All right. Move to ---

MS. WILLIAMS: 14.

MR. WELLS: --- to admit Plaintiff's 14.

MR. FLOYD: Book and page number on that?

MS. WILLIAMS: Yes, sir. It is deed book DL page 176.

COURT REPORTER: I'm sorry, I was just looking down at this. Was it was Mr. Floyd who asked?

MR. FLOYD: (Nods head.)

COURT REPORTER: Thank you.

(Plaintiff's Exhibit Number 14 was admitted into evidence at this time.)

Q: All right. And where did Williams get the property?

A: From Luna Mae Kinsland by deed dated July 12th, 1928 recorded in Richland County RMC in deed book DG at page 351.

Q: Let me hand you Plaintiff's Exhibit 15 and 16. I think 16 lops over to the back. Is that the deed from Kinsland to Williams?

A: It is.

Q: All right. Does it contain the identical language about the rights-of-way?

A: Yes, sir. Identical language, yes, sir.

MR. WELLS: And I move to admit 15 and 16 as the deed from -- it's two pages, from Kinsland to Williams.

MS. WILLIAMS: Correct.

MR. WELLS: All right.

MR. FLOYD: Just the book and page number please?

MS. WILLIAMS: DG 351.

(Plaintiff's Exhibit Numbers 15 and 16 were admitted into evidence at this time.)

Q: And where did Laura Kinsland get the property?

A: She received from J.H. Miller, Ella J. Miller, Mattie L. Desportes by deed dated December 21st, 1926 and recorded in Richland County RMC in book CW at page 121.

Q: Okay. Now, let's talk about -- let me show you this deed and ask you if Plaintiff's Exhibit 17 is the deed to Ms. Kinsland?

A: It is.

Q: And is that a certified copy?

A: No, it's not. Yes, it is. Excuse me, it's on the back. Certified.

MR. WELLS: All right. Move to admit Plaintiff's Exhibit 17.

MR. FLOYD: Book and page number please?

MS. WILLIAMS: CW 121.

(Plaintiff's Exhibit Number 17 was admitted into evidence at this time.)

Q: All right. Now, what tracts did Luna Mae Kinsland get?

A: 1, 2 and 4.

Q: Okay. Now, let me skip over to Plaintiff's Exhibit 19 and ask you if you've ever seen this plat?

A: Yes, sir, I have.

Q: Now, where did that plat come from, which

courthouse?

A: This plat came from the Fairfield County Clerk of Court.

Q: And is that the partition plat from the partition suit ---

A: Yes, sir, it is.

Q: --- of these lands?

A: Yes, sir, it is.

THE COURT: Let me ask the witness. Let him finish his question before you answer.

MS. WILLIAMS: Oh, I'm sorry.

THE COURT: When people are well prepared and sometimes they do that, they answer the question before he asks it, so.

MR. WELLS: Now, I move to admit Plaintiff's Exhibit 19.

MR. PEEL: And I don't believe that is a complete copy of that plat.

MR. WELLS: It's certified.

THE COURT: That's Number 19, Mr. Wells?

MR. WELLS: Yes.

MR. PEEL: And that is incomplete, Your Honor. We'd object.

THE COURT: Okay. Now, you object because it's not the whole plat or ---

MR. PEEL: Correct.

THE COURT: But -- Mr. Wells, is that what you intend to do, only submit that part of it?

MR. WELLS: We want to show the plat of the property. Now here's the problem. This plat in the deed book in Fairfield County is cut in half.

THE COURT: Uh-huh.

MR. WELLS: And they cut it in half at sometime in the past because it was too big to go in the book all by itself or together.

THE COURT: Uh-huh.

MR. WELLS: But this copy that I have made is about the best plat that you can get. You can get a full copy of half of it with the language or you can get the entire plat with the language cut off but you can't get it all because the copy machine won't hold it.

THE COURT: What do y'all have, Mr. Peel, Mr. Floyd?

MR. FLOYD: We've got the whole thing.

THE COURT: Now, tell me why your's is different from the exhibit, Number 19. Tell me why that's different.

MR. FLOYD: It's a -- a lot of the legal description of it. It's got all of the acreages and tracts

and that's kind of important when it comes to a plat, as far as the ---

THE COURT: Okay.

MR. FLOYD: --- tract number, how many acres, and that sort of stuff.

THE COURT: I'll -- I'll let in Exhibit 19 with the understanding of course that, you know, it shows what it shows and you have something that says something different but it can come in. I mean I don't necessarily think that's a reason to keep it out of evidence.

MR. WELLS: Judge. Let me -- let me try again. We have ---

THE COURT: No, I just ruled -- I just ruled that it can come in.

MR. WELLS: Okay.

THE COURT: Yeah.

(Plaintiff's Exhibit Number 19 was admitted into evidence at this time.)

Q: Let me ask you if you've ever seen Plaintiff's Exhibit 18?

A: Yes, sir.

Q: And what is Plaintiff's Exhibit 18?

A: It is the report of commission -- Commissioner and the order of Judge Wallace along with some

of the plat language. Yeah, it's -- it's the order and the entire plat that was filed with the Judgement Roll in Fairfield County.

Q: Does Plaintiff's Exhibit 18 contain all of the language that was attached to the plat?

A: Yes, sir, it does. Starting with Parcel A here, the language that's below that is attached right here to the judgement, the portion of the plat.

Q: Okay.

MR. WELLS: Move to admit 18 and 19, Your Honor.

THE COURT: All right, Mr. Peel?

MR. PEEL: No objection, Your Honor.

THE COURT: All right, your motion's granted, Mr. Wells.

(Plaintiff's Exhibit Number 18 was admitted into evidence at this time.)

Q: Now, let's get back to Ms. Kinsland.

A: Right.

Q: When she got tract 1 and 2, where are tract 1 and 2?

A: Tract 1 (indicating). Tract 2 (indicating).

Q: Who owned tract 2, can you tell from that deed?

A: That would've been Lelia S. Miller.

Q: Okay. But who signed the deed to Kinsland?

A: J.H. Miller, Ella J. Miller, and Mattie L. Desportes.
Q: Okay. Do you know what Mattie owned?
A: Mattie owned tract E and 1.
Q: Okay. So Ms. Kinsland is getting this area in here (indicating)?
A: Yes.
Q: Okay. Now, does the deed, which is Plaintiff's Exhibit 17, contain right-of-way language?
A: It does.
Q: All right. Now, I think we have a blow up of that one. Can you find the right-of-way language in Plaintiff's Exhibit 17? Can you read it?
A: The said rights-of-way to be -- actually, I believe it starts up here. Rights-of-way paid (sic) by grantors by operation of law or by deed said also convenient rights-of-way for cart and wagon, roads over the lands of the parties of the first part and each of them to the Burnway lands, the Martin lands, the English lands for purposes of ingress and egress from the public road to each of said tracts of land. Said grantee, her heirs and assigns shall have the right to construct and

use such cart and wagon roads pertaining -- connecting the two tracts of said land hereby conveyed with each other by the nearest route, the present roads upon the said lands followed -- it kind of -- cultivation to be -- I cannot read that, I'm sorry. Without -- for cause. And then it goes, the said rights-of-ways to be appurtenant to and be part of conveyed with any and all acts that shall be confirmed to the same lands and reality and is hereby expressly understood and agreed between the grantors and the grantee that no one of the grantors is liable under his or her warranty to any part of the lands hereby conveyed by the owner or such grantor being bound under the said covenants of warranty only as to the tracts owned by him or her.

Q: All right.

A: That's nasty.

Q: Is it hard to read?

A: It's very difficult to read.

Q: Okay. It's a bad copy?

A: Best copy available.

Q: Okay. And when Ms. Mattie L.C. Desportes signed that deed, was she the owner of tract E

on the plat?

A: She was.

Q: Now, where did J.H. Miller and Mattie Desportes come up or -- and Ella Miller, where did they acquire the property?

A: From the partition suit.

Q: And that's in Fairfield County?

A: Recorded in Fairfield and filed in Judgement Roll 1158 by order of W.H. Wallace dated February the 20th, 1885.

Q: All right. Now, let me start on the Defendant's chain. Do you have a Defendant's Chain to go by?

A: I do.

Q: Where did Ms. Martin receive her property?

A: From Edwin Martin, Jr. Trust dated August the 5th, 19- -- 2004. Being recorded in the RMC for Richland County in deed book 1359 at page 2178.

Q: And let me show you Plaintiff's Exhibit 24, is that a copy of that deed?

A: It is.

MR. WELLS: Move to admit Plaintiff's Exhibit 24.

MR. FLOYD: Book and page number, and date of filing?

November the 18th, 1918 recorded in book BV at page 69.

Q: All right. Let me show you Plaintiff's Exhibit 29. Is that a copy of what is recorded in BV ---

A: 69?

Q: --- at page 69?

A: Yes, sir.

Q: And who is it -- who is the grantor?

A: John Miller, J.H. Miller.

Q: And who is the grantee?

A: Ossie E. Martin.

Q: Okay. And does that deed contain the right-of-way language?

A: It does.

Q: Okay.

MR. WELLS: I move to admit Plaintiff's Exhibit 29.

(Plaintiff's Exhibit Number 29 was admitted into evidence at this time.)

Q: Now the deeds that contain the right-of-way language, Plaintiff's Exhibits 27, 28, and 29, are all of those deeds in the Defendant's Chain of Title?

A: They are.

Q: And did J.H. Miller derive his title back to

obtained from the Lewis family, is that correct?

A: Yes, sir.

Q: How many acres is it?

A: The plat refers to 64.68 acres.

Q: Okay. Now, let me go back to our large Gonzales plat, which I think is Plaintiff's Exhibit 2 ---

A: Uh-huh.

Q: --- where are -- where is the 65 acre tract that we're talking about now?

A: (Witness indicates.)

Q: That triangular piece?

A: Yes, sir.

Q: Okay. Where did Laura Jane Lewis Allen, et al. receive that piece?

A: From deed of Charlotte P. Lewis dated December 23rd, 1985 and recorded in RMC for Richland County in deed book D773 at page 473.

Q: And where did Charlotte P. Lewis obtain title to that property?

A: From Rufus D. Lewis, Jr. dated August the 15th, 1983 and recorded in the Richland County RMC in deed book D618 at page 503.

Q: And where did Rufus D. Lewis, Jr. receive title

to that property?

A: From Tucker Enterprises, Inc. by deed dated November the 9th, 1976 and recorded in the Richland County RMC in book D403 at page 630.

Q: Let me show you Plaintiff's Exhibit 32, is that a copy of the deed to Rufus -- Rufus Lewis, Jr.?

A: Yes, sir, it is.

(Plaintiff's Exhibit Number 32 was admitted into evidence at this time.)

Q: Now, Plaintiff's Exhibit 33 and the Defendant's deed that she got from Laura Jane Lewis Allen, et al., both refer to a plat by E.F. Owens?

A: Yes.

Q: And neither gives you any reference as to where that plat is recorded?

A: No, sir.

Q: And we don't even know if that plat ever was recorded, is that right?

A: Yes, sir.

Q: But they refer to the same acreage?

A: Yes, sir.

Q: And when did Rufus Lewis obtain title? What is the date of his deed, which is Plaintiff's 33?

A: The date of his deed is 11/9/1976.

Q: Okay. And where did Mr. -- where did Tucker Enterprises get the property?

A: Tucker Enterprises received the property by item three of the Will of Raymond R. Tucker, who died October the 13th, 1975. His estate is probated in box 31346 in the Richland County Probate Court.

Q: Okay. And where did R.R. Tucker get title to the 65 acre tract?

A: From John V. Green, C. Lem Harper, and Joe Earl Taylor by deed dated January the 19th, 1973 and recorded in the RMC for Richland County in book D268 at page 233.

Q: And let me show you Plaintiff's 34. Is that the deed to R.R. Tucker?

A: It is.

(Plaintiff's Exhibit Number 34 was admitted into evidence at this time.)

Q: Now, look at the property description and see if it determines that that is identical to another piece of property.

A: It says it's deemed identical lands which were conveyed to Fletcher R. Martin as 108.2 acres by deed of John A. Desportes, Henry W. Desportes, Jr., William S. Desportes and

Eleanor D. Peay.

Q: So the 65 acre piece is identical to a 108 acre piece?

A: Correct, yes, sir.

Q: And where did John Green, et al. get the property?

A: From Sarah Martin Goff, Emma L. Higgins, Mattie M. Higgins, Edna M. Poe, Elizabeth R. Tucker, Neze M. Martin, and F.D. Martin, Sr., who were all children of Fletcher R. Martin, by deed dated August the 18th, 1971 and recorded in the RMC for Richland County in book D216 page 103.

Q: And let me show you Plaintiff's Exhibit 33 and ask you if that is a copy of the deed to John V. Green, et al. from Sarah Martin Goff, et al.?

A: It is.

Q: And were Sarah R. Martin Goff, they were the heirs of Fletcher R. Martin, is that correct?

A: Correct, yes.

Q: All right. Does it say when he died?

A: Fletcher R. Martin died intestate in Richland County, South Carolina on or about the 8th day of March, 1949 seize and possessed of the below described real estate, leaving him surviving as

what was originally described as 108 acres in the partition action has somehow become 65 acres now that Ms. Martin owns?

THE COURT: You have to speak up, ma'am.

A: No, I found nothing that explained why it went from 108 acres to 64.

Q: Am I rounding up? It's 64?

A: 65.51.

Q: 65.5, okay. So, we don't know if that was carved out somewhere or if there's a survey error, we just don't know based upon your research?

A: Just refer to it as identical as, identical as.

Q: Okay. As -- as E?

A: Uh-huh.

Q: Okay. And which lands do you believe Ms. -- out of this original partition action, comprise Ms. Martin's property today, based upon your check of the title?

A: E is hers.

Q: Yes.

A: I believe D, and a portion of C.

Q: And a portion of C, okay. In the Lewis tract ---

A: Yes, sir.

Q: --- in that chain of title stemming from the Exhibit -- well, the one moving from -- the last one -- the one coming out of the Desportes Estate. The first one I guess we should say.
A: The first deed?
Q: Yes.
A: Deed book 25, page 514.
Q: 25, 514?
A: Yes.
Q: Okay. And that nor any of the deeds in the tract D chain titled up for Ms. Martin, reference any type of right-of-way reserved?
A: No, sir.
Q: So, in tract D there is no reservation of any type of right-of-way?
A: No, sir.
Q: Okay. And Mr. -- the plaintiff's land is now over here (indicating)?
A: Yes.
Q: It would be ---
A: Yes.
Q: --- they were part of the original tract. All that's now compiled into one large property that we see here?
A: Yes, sir.

MR. BRAZELL: I had to put my glasses on, Your Honor.

MR. WELLS: Let the record reflect that he had the wrong road at first and then he picked out the road that's labeled Shady Grove Road.

MR. BRAZELL: That road right there.

Q: Now, which part of the property is used to access that?

A: I used it to come into this section in Richland County here, from there (indicating).

Q: Do you know the location of Raglin Creek?

A: It's this creek right here (indicating).

Q: And is it a barrier to breaching that side of the property that you just pointed to from 601?

A: Yes, very much so.

Q: Okay. Do you know when Pineridge Investments purchased this property?

A: I looked back on some records to try to find that date and I could not find it before I came. I think it was in '08 or '09.

Q: How long did it own the property?

A: I do not know that.

Q: Why did you go to the property?

A: Carl asked me if I wanted to buy some of the land in there, 400 acres of it.

we had to enter into the property and that was the access that he had been given for it.

Q: So you were given a key?

A: Uh-huh.

Q: And you just used it?

A: That's correct.

Q: All right. Nobody ever confronted you about it, nobody ever said anything to you about it?

A: No one ever said anything.

Q: All right. Wasn't there a dam across this Raglins Creek right here or a road?

A: No, there was no dam across it. My brother and I put a dam across it. We rebuilt the old dam that was there.

Q: So there was a dam there?

A: We rebuilt that dam.

Q: So you could drive across it, right?

A: No, you couldn't use that.

Q: You never drove across that?

A: No ---

THE COURT: I'm sorry. Mr. Floyd?

MR. FLOYD: Yes, sir.

THE COURT: You had asked him about the dam and his testimony was that they rebuilt it. Is he talking about rebuilding after what happened in

October or was it ---

MR. BRAZELL: Oh, no. It was -- my understanding, it was used back in timber days an it had burst at some point and it never was built back. And my brother and I took it upon ourselves to build it back.

THE COURT: And what year was that, sir?

MR. BRAZELL: What year?

THE COURT: Yes, sir.

MR. BRAZELL: In '09.

THE COURT: '09, okay. Thank you very much. I'm sorry to interrupt you.

MR. FLOYD: No, no.

Q: So y'all built the dam?

A: Uh-huh.

Q: But it was one there before, you just improved what was there?

A: (Nods head.)

Q: Did you hunt on Saturdays?

A: Yes, sir.

Q: And do you know Dunn's Mountain Hunting Club?

A: Uh-huh.

Q: And did they come Saturdays as well?

A: I wouldn't have any idea.

Q: But you know who Dunn's Mountain Hunting Club

A: He does.
Q: A locked gate?
A: Yes, sir.
Q: Are you familiar with his entrance off of Old English Road up here?
A: Uh-huh.
Q: Does he have a locked gate right here?
A: I believe it's a cable gate.
Q: A cable gate?
A: Uh-huh.
Q: Are there multiple locks on each one of those?
A: I can't speak to Old English, but there's only one by -- on the main, what I call the main road.
Q: Just the one down here?
A: That's correct.
Q: Where do you primarily access his property?
A: Primarily there.
Q: Off 601?
A: Yes.
Q: Okay. And you can get to all parts of his property from 601 couldn't you?
A: Once upon a time, yes.
Q: Before the floods?
A: Uh-huh.

Q: I mean there was -- there was a pond here, there was a road across the dam, right?
A: Correct.
Q: And you could access any point on his property?
A: I could.
Q: Okay. Mr. Podell's given you a key and he's told you you can hunt at anytime you want to hunt?
A: Yes.
Q: And you've been in business with Mr. Podell for a long time as well, right?
A: We have done business together, yes.
Q: Done business with him.
A: Uh-huh.
Q: Buying lots, selling lots and that sort of stuff. How many years do you think you've been doing business with him?
A: 20.
Q: All right. So, is it important to you -- you sell large tracts of land?
A: Actually, that would've been the last one I sold.
Q: But you -- you're familiar with selling large tracts of land, right?
A: Yes, I am.

A: As far as I know.
Q: And you've been on this big tract of land right here?
A: Right.
Q: A number of times, right?
A: Uh-huh.
Q: And in fact, you've come in off of 601?
A: That's correct.
Q: And you can drive all the way across this property and stay on that property to get back here, can't you?
A: No.
Q: Now remember, there used to be a dam here and a road.
A: Well, if that was a dam, I wouldn't have road it. If you had a four-wheeler. If you just want to take a chance you could drive across it.
Q: Did you ever see the road after Mr. Podell did some improvements to it?
A: On what road?
Q: On the road across the dam?
A: Yeah, uh-huh.
Q: You did?
A: Uh-huh.
Q: And you wouldn't have driven a four-wheeler

across it?
A: Oh, no. No, no. Prior to that.
Q: Okay, prior to that. But after he did that, I mean, you could easily drive across that, couldn't you?
A: Yeah.
Q: And you could access all parts of this property, right?
A: From my understanding you can't do it now.
Q: Could you before?
A: Could I before? Could I drive a four-wheeler across it?
Q: No, sir. It's ---
A: It was not a road, it was a dam. And the dam wasn't wide enough for you to drive a vehicle across it. If you choose to do that, but it was not made for that, to drive across, it's to hold water back.
Q: But ---
A: It restrains the water.
Q: --- across the dam, right?
A: It's to strand water. It wasn't a road, the dam you spoke of.
Q: There are roads across dams, right?
A: (No response.)

Q: They have roads across dams, right, yes or no?
A: If you want to cross it, yes, sir.
Q: And you could access all the parts of this property coming off that Highway 601, right?
A: Yes, I bet you could.
Q: Mr. Podell's financing some spec homes for you right now?
A: I'm hard of hearing, sir.
Q: He's financing some homes for you right now?
A: Has he financed some homes for me? I'm building a house, yes, sir. I'm building two houses.
Q: And he's financing those for you, isn't he?
A: That's correct.
Q: Do you own any other tracts of land?
A: Do I?
Q: Do you, yes, sir.
A: Do I own any tracts of land?
Q: Uh-huh?
A: No, sir.
Q: Okay. Do you have a Santee Cooper key?
A: Excuse me?
Q: Do you have a Santee Cooper key?
A: I do not.
Q: Are you familiar with what a Santee Cooper key is?

Creek.

Q: Do you think you could have taken timber out across Raglin Creek?

A: No. There was no road across Raglin Creek.

Q: Okay. Did you ever ask permission to use the road from Nancy Martin or E.F. Martin, Jr.?

A: Never did.

Q: Were you familiar with a gate on the Martin property? On the Shady Grove Road or the road ---

A: Yeah. Yeah ---

Q: --- that you've indicated?

A: --- yes.

Q: You were familiar with that?

A: Right.

Q: How did you access in and out through that gate?

A: You know, I'm trying to remember. I remember the gate there. I don't remember ever having to open that gate, but I remember the gate was there. And, and what's typical of those kind of gates is you'll come up to it and there will be a little bit of chain and a whole lot of locks. And everybody's got a lock on it, so that's kind of what I assumed that was.

Q: Was the gate open at times?

A: As I remember the back the first time I was there was with Harold Pickrel, had taken me out there. And he got out and opened the gate and we went on through.
Q: All right. And during subsequent visits did you use Shady Grove Road to access the property before you bought it?
A: Yes.
Q: And were you able to access the property through the gate on the Martin Property?
A: Yes.
Q: And how were you able to access the property through the gate on the Martin property?
A: Mr. Pickrel gave me the combination for the lock that was on it.
Q: And you would unlock the gate and go through?
A: Yes.
Q: Is that your testimony?
A: Yes.
Q: Now, was it important to you, as a potential purchaser, to be able to access the property through Shady Grove Road or Northeast Shady Grove Road?
A: Yes.
Q: Why?

A: Other than by foot, it's the only way that you could get to that property.
Q: Are you speaking of the Richland County side?
A: Yes.
Q: All right. What is the creek in the middle of the property?
A: Raglins Creek.
Q: Okay. How deep is it?
A: The creek itself is probably in places two, three, four feet deep.
Q: All right. Did it have a dam across Raglin Creek when you were prospectively going to buy it?
A: Yes, it did.
Q: Was there a road on the dam?
A: Well, yes and no.
Q: All right. Explain your answer.
A: Okay. You can probably run over it with a four-wheeler, ATV, but to drive a pickup truck across it it would be very difficult. It was narrow, very narrow.
Q: Did you go to that dam with Ms. Podell in the pickup at one time?
A: Yes.
Q: Was she willing to ride across the dam or not?

A: No. She refused to ride across.
Q: All right. How was the decision made to buy the 1023 acre tract?
A: Well, the day we met Claude and Mack out there, Claude said something to Ann that Jim's kind of put it off on you. Don't you think that we ought to buy this property? To my surprise she said, well, you know it's a lot closer than any of the other stuff he has and it would probably be more convenient. Maybe he could get rid of some of the other property and it might be something to look in to.
Q: Okay. Why did you decide to buy this property?
A: Talking further we had some other property, some money that was owed Country Properties, then we decided if we could do some trading and swapping, get some debt paid off, put a little bit of money into it, it would probably be worth buying.
Q: And what were the purposes to which you wanted to put this property?
A: Just to have it.
Q: All right. Are you a hunter?
A: Yes.
Q: When Ms. Podell talked about the other

A: Three or four.
Q: Okay. I would open it and I could drive my car through roads and across the dam to the southeastern corner of your property, couldn't I?
A: Yes, sir.
Q: And the fact that both of those existed, this entrance and this entrance, existed when you bought this property, right?
A: That's correct.
Q: And you keep locks on these gates to keep people out, don't you?
A: Yes, sir.
Q: And if you come up on a locked gate that indicates to you that unwanted guests or trespassers are not welcome beyond that gate, right?
A: In most of the cases, yes.
Q: I'm going to jump back to something you testified about during your examination by Mr. Wells. You believe that your property is made up in part by the property from a partition plat, right?
A: That's correct.
Q: You hadn't looked at any title work -- did you

Ms. Martin's gate?
A: Yes, sir.
Q: Okay. Do you know how long this gate has been on Ms. Martin's property?
A: No, sir.
Q: Okay. And you don't know how long that gate has been locked, do you?
A: No, sir.
Q: And you didn't look at any title work when you bought this property?
A: No, sir.
Q: The only thing you looked at was a single plat?
A: That's correct.
Q: And this plat doesn't say there's an easement of any kind across Ms. Martin's property does it?
A: No, sir.
Q: And when you bought this property there was actually a dam crossing, you testified about that?
A: Yes.
Q: To get you across the dam, right? All right. I want to make sure I was clear on something. You said earlier I think -- and I want to just ask you this question. Did you ever ask anybody for a key to this gate?

A: Yes.
Q: Okay. So you did ask somebody for a key?
A: Yes.
Q: And who did you ask for a key?
A: One of the hunt club members.
Q: You asked Dunn Mountain Hunt Club for a key to the gate?
A: Yes, sir.
Q: And they told you no, didn't they?
A: Eventually.
Q: But you knew that you had to ask permission to get behind that gate didn't you?
A: No.
Q: Why did you ask for a key?
A: Because I was able to use the gate and all of a sudden I wasn't.
Q: Because you didn't have a lock on the gate any more, right?
A: That's correct.
Q: So you were denied permission. You actually cut the chain on the gate and put your own lock on the gate, didn't you?
A: Yes, sir.
Q: Eventually, that lock was removed, wasn't it?
A: No. Well, yes, both of them were removed. I

put one on and then the second time I cut the chain and put a lock on it.

Q: And you are familiar with Santee Cooper having keys -- having locks on gate too, right?

A: Yes, sir.

Q: And they have one on your lock ---

A: No, sir.

Q: --- on your gate?

A: I assume that's it. I don't know.

Q: Is it a gold lock?

THE COURT: I apologize. I want to make sure I get the facts straight. The chain and lock that you removed, were those your gates or the one that we're talking about? The one on Shady Grove Road?

MR. PODELL: The one on Shady Grove Road.

THE COURT: Okay. I just wanted to get the facts straight.

MR. FLOYD: I may help clarify this.

Q: If you will flip to Exhibit 2. I have it for you right here.

THE COURT: Plaintiff's Exhibit or Defendant's Exhibit?

MR. FLOYD: Defendant's Exhibit Number 2.

THE COURT: Okay.

Q: Do you recognize this picture, what it might be? Have any idea?
A: It's a road.
Q: Do you recognize this road? You can keep flipping through it.
A: Okay.
Q: Do you recognize any of those pictures?
A: Yes, sir.
Q: All right. What do those pictures look like to you?
A: Pictures of a road, a gate, sign and locks.
Q: Do you recognize the road, the gate ---
A: Yes.
Q: What is that stuff? What are you looking at? What are these pictures from? Do they appear to be driving down Northeast Shady Grove toward Ms. Martin's gate?
A: Yes.
Q: Have you seen all of that before?
A: Yes.
Q: Are these pretty accurate portrayals of what it looks like driving down the road?
A: Yes, sir.
Q: And in fact, the next to last picture there -- the last three pictures there, does that kind of

Q: After you bought this property, you spent about $70,000 on that dam, didn't you?
A: I don't recall right now.
Q: Okay. I can get your deposition out if you want me to.
A: No. I mean that's fine.
Q: Did you spend about $70,000 in upgrading and fixing the pond dam? You hired an engineer ---
A: Yes, attempted, yes.
Q: Okay. Did you hire an engineer and contractor to do the work?
A: Yes, uh-huh.
Q: And in fact once you completed those repairs that dam was eighteen feet wide, wasn't it?
A: Yes.
Q: And you even drove a bull dozer across that dam, didn't you?
A: Yes, sir.
Q: All right. We heard a little bit about an offer on a piece of property. You said you made an offer to purchase a piece of property. Would that be the Lewis tract that you made an offer on?
A: Yes, sir.
Q: You made an offer that was conditioned upon the

owners at the time clearing up what you call the road issue, didn't you?

A: Yes.

Q: Because you weren't sure if you had access from 601 to get to that property, were you?

A: No, that's not true.

Q: But it was conditioned upon the owners clearing up the road issue?

A: Correct.

Q: And the road issue is the road issue across Ms. Martin's property, right?

A: Yes, sir.

Q: And you ended up not buying it, right?

A: That's correct.

Q: Because they couldn't clear up the road issue, right?

A: That's correct.

Q: And you've also told Jamie Guy that he can come across your property if this case is resolved in your favor, haven't you?

A: Yes.

Q: All right. Let's talk about a street sign. Are you familiar with the street sign on your property?

A: Yes, sir.

Q: Did you install a street sign on your property, up in the woods on the southeastern side?
A: Yes, sir.
Q: You installed that road sign after this lawsuit started, did you?
A: Yes, sir.
Q: And you bought that sign off the internet, didn't you?
A: Yes, sir.
Q: And at the time that you asked Richland County to assign you an address you had one structure on your property, didn't you?
A: That's correct. Yes, sir.
Q: And that one structure was located in Kershaw County close to 601, wasn't it?
A: Yes, sir.
Q: It's a barn shed, right?
A: Yes, sir.
Q: So you asked Richland County to assign you an -- I'm sorry.
A: No, I did not ask.
Q: Did your wife ask them to assign a street address to this property?
A: Yes, she did.
Q: Okay. But you got involved with that process

didn't you?
A: Yes.
Q: And you were actively involved in that process?
A: Yes.
Q: And the request was for Richland County to assign an address to a vacant parcel?
A: Yes, sir.
Q: And the person that you talked with to do that was Alfred Tindal, right?
A: That's correct.
Q: Because she was employed with Richland County, right?
A: That's correct.
Q: And you've known Ms. Tindal for about twenty years, haven't you?
A: Probably so. Yes, sir.
Q: You didn't tell Ms. Tindal that there were locked gates between 601 -- there were two locked gates between 601 and this property that you were trying to address, right?
A: No, sir.
Q: You never mentioned locked gates to any body at Richland County, did you?
A: No, sir.
Q: You didn't tell Richland County personnel

anything about this litigation either, did you?
A: No, sir.
Q: But you did tell Ms. Tindal that you used the road across Ms. Martin's property to access your property back here didn't you?
A: We did. Yes, sir.
Q: You told her that in 2014?
A: Probably so. Yes, sir.
Q: But you didn't have access to that road whenever you told Ms. Tindal that, did you?
A: Thought I did, but I wasn't able to use it.
Q: You didn't have the right to use that road whenever you told Ms. Tindal that?
A: I felt I had the right to use that road when I talked to Ms. Tindal. I think today I have the right to use that road.
Q: You weren't using that road when Ms. Tindal asked you what roadway you use?
A: No, sir.
Q: Okay. I found it interesting also that you said you think this dirt road is public all the way up to your property.
A: Yes, sir.
Q: No further. You say it's private from your property line right on back, is that what you

say?

A: (No audible response.)

Q: What do you say?

A: What's your definition of public and private?

Q: I heard you say that you believe this road was public up to your property line. That's what you said, right?

A: That's correct.

Q: Okay. Despite that fact, you've taken a street sign and you've installed it here on your property, haven't you.

A: That's correct. Yes, sir.

Q: And you still maintain that that's a public road from 601 all the way to your property line but no further?

A: Didn't say that. You said that.

Q: Okay.

MR. FLOYD: No further questions.

THE COURT: Any re-direct?

MR. WELLS: Yes, Your Honor.

MR. PODELL - RE-DIRECT EXAMINATION BY MR. WELLS:

Q: Mr. Floyd asked you about the width of the dam?

A: Yes, sir.

Q: Across Raglin Creek?

A: Yes, sir.

Q: Would you look at Plaintiff's Exhibit 37?
A: Yes, sir.
Q: Do you recognize that picture?
A: Yes, sir.
Q: Did you take the picture?
A: Yes, sir.
Q: And what does that show on the picture?
A: Portion of the dam that has been washed out.
Q: Okay. When was the picture taken?
A: Wasn't the last flood, it was two years ago.
Q: Okay. Was that the 2015 flood or a rainstorm previously?
A: A rainstorm previous to that.
Q: Does it normally look like that or was that damage from a storm?
A: That was damage from a rainstorm.
Q: Okay. Hold that up so the court can see it and show which side the -- I think you can tell which side the pond is on.
THE COURT: This is Plaintiff's Exhibit Number 37, correct?
MR. WELLS: Yes, Your Honor.
THE COURT: Thank you.
MR. WELLS: We move to introduce Plaintiff's Exhibit 37.

MR. PEEL: No objection, Your Honor.

THE COURT: All right. Your motion is granted.

(Plaintiff's Exhibit Number 37 was admitted into evidence at this time.)

Q: Was that -- did you repair the dam after that picture was taken?

A: Yes, sir.

Q: And is the dam in good repair today?

A: No, sir.

Q: And when did it fall into disrepair?

A: When we had the twenty inch rain in '15, October.

Q: Now, Mr. Floyd asked you about a conversation with Gary Wessinger ---

A: Yes, sir.

Q: --- about the access through the gate?

A: Yes, sir.

Q: Tell me about that incident.

A: I was using the road, as I recall the gate was open.

Q: The gate on Ms. Martin's property?

A: Yes. And I went through the other gate and I believe if I'm correct here when I came back the gate was locked so I had to go back through again. If I remember correctly I think I called

one of them on the phone or Norman Ford may have got one of them to open the gate and I turned around and came back through it. It was opened up for me.

Q: Where did you find Mr. Wessinger?

A: They have a hunt club up on Old English Road.

Q: Okay. And how did you see them, were they out there hunting?

A: Yes.

Q: Okay. And tell me about the conversation that you had on that day.

A: I asked him if I could have a key from him, because I was locked out of using this road and I thought I had the right to use it until we got it resolved and I would like to have a key if he didn't mind so I could get in and out.

Q: Why did you talk to them about a key?

A: So I could get to my property and get out of my property.

Q: Did you assert to them that you had the right to use the road?

A: Yes, I did.

Q: Did anyone give you a key?

A: No, sir.

Q: Those are all of the questions that I have.

THE COURT: Any re-cross?

MR. FLOYD: Yes, sir.

MR. PODELL - RE-CROSS EXAMINATION BY MR. FLOYD:

Q: Could you tell me the date of that picture of the dam that you have there?

A: I don't have a date exact right now, I can find it but I don't know it.

Q: Was that before the repairs that you made to the dam?

A: Yes.

Q: So, that would have been pre $70,000 fix to the dam, right?

A: No. This is after the $70,000.

Q: But you fixed it didn't you?

A: Yes.

Q: And the Wessingers told you that you could not have a key, didn't they?

A: That's correct.

Q: And the day that you saw the Wessingers was on a Saturday, wasn't it?

A: Probably.

Q: Because everybody was hunting?

A: Probably, yes.

Q: And when Dunn's Mountain Hunt Club hunts they leave the gates open on Saturday, don't they?

here?
A: Yes. There's two of them on here. McCord's Ferry Road which is Highway 601 and Shady Grove Road which is the paved portion west of 601.
Q: Okay. And then on the east side of 601 there is a dotted red line, right?
A: Yes.
Q: And what does that tell you?
A: This is a county maintained dirt road.
Q: And how far does the county maintain -- what have you shown on here?
A: 2,903 to 14 feet.
Q: Okay. And what does the blue line on here indicate to you?
A: There's a road that goes on down through there. Woods Road or whatever, you know, it's been there for who knows how long. I don't know.
Q: And does Richland County deem this to be a private road?
A: Yes.
Q: Are you familiar with Richland County performing any maintenance on the dirt road beyond the end of County maintenance sign?
A: I'm not familiar with it. No, sir.
Q: Are you familiar with Richland County performing

A: I would just say two that I've seen.
Q: Answer any questions Mr. Wells may have.
THE COURT: All right. Mr. Wells?
MR. WELLS: No questions.
THE COURT: All right. Thank you, sir. You can come down, watch your step coming down.
MR. FLOYD: I ask that this witness be released.
THE COURT: All right. Mr. Wells, any objection?
MR. WELLS: No objection.
THE COURT: All right. Thank you, sir.
MR. FLOYD: The Defendant calls Nancy Martin, Your Honor.
NANCY DUNN MARTIN, having been duly sworn, testifies as follows:
MS. MARTIN - DIRECT EXAMINATION BY MR. FLOYD:
Q: Will you please state your name for the record?
A: Nancy Dunn Martin.
Q: When were you born, Ms. Martin?
A: October 22, 1960.
Q: I hate to do this but I need to. So how old does that make you today?
A: 55.
Q: Are you familiar with some property that you own off of Highway 601 near the Richland County/Kershaw County line?

A: Yes, sir.
Q: And does this Gonzales plat here, which has previously been entered into evidence, does it show the property that you own?
A: Yes, sir.
Q: All right. Will you identify the property that you own?
A: Lot 3, 4, 5, 6, and then the large angular Allen tract
Q: Okay. And those 3, 4, 5 and 6 would be in parentheses?
A: Yes, sir. In parentheses.
Q: And shown as being Edward Frank Martin, Jr.?
A: That's correct.
Q: Who was Edward Frank Martin, Jr.?
A: My Father.
Q: Let me show you what's been marked as Defendants Exhibit Number 1.
A: Yes.
Q: What is this?
A: I think that's the Richland County satellite map.
Q: And does it accurately portray Old English Road?
A: Yes, sir.
Q: Does it accurately portray Highway 601?
A: Yes, sir.

Q: Does it accurately show Northeast Shady Grove Road?
A: It does.
Q: Does it accurately show the end of county maintenance?
A: Yes, sir.
Q: Does it also accurately show the boundaries of your property in blue?
A: Yes, sir.
Q: Does it also show the presence of a gate on your property?
A: Yes, sir.
Q: Identified as Gate 1.
A: Yes, sir.
Q: Does it also show the Plaintiff's property?
A: It does.
Q: Does it show it accurately?
A: Yes, sir.
Q: Are you familiar with a road and a dam on the Plaintiff's property?
A: Yes, sir.
Q: Does it accurately show the approximate location of that road and dam?
A: Yes, it does.
Q: Okay.

MR. FLOYD: At this time I'd move to enter into evidence Defendant's Number 1, Defendant's Exhibit Number 1.

MR. WELLS: No objection.

THE COURT: All right. Your motion's granted.

(Defendant's Exhibit Number 1 was entered into evidence at this time.)

Q: How do you access your property here, Ms. Martin?

A: I enter off of Highway 601 onto Northeast Shady Grove Road.

Q: Do you travel down Northeast Shady Grove Road?

A: I do.

Q: Do you come to a locked gate?

A: Yes, sir.

Q: Do you have to unlock that gate?

A: I do.

Q: And then you come onto your property?

A: That's right.

Q: How many ways of accessing your property do you have?

A: One.

Q: Are you familiar with the Plaintiff's property?

A: Yes, sir.

Q: Are you familiar with the Plaintiff having some gates on his property?

A: Yes, sir.
Q: Or it's property. Does the Plaintiff have a gate on it's property between the Lewis -- what was formerly known as Lewis Tract on your property?
A: Yes, sir.
Q: And was that gate locked ---
A: Yes.
Q: --- whenever the Plaintiff purchased his property?
A: Yes, sir.
Q: Was that gate locked at all times prior to the Plaintiff's purchase of the property?
A: As far as I know.
Q: Does the Plaintiff -- have you had the opportunity to ride around the Plaintiff's property?
A: I have.
Q: Are you familiar with an entrance off of Highway 601?
A: Yes, sir.
Q: Are you familiar with a locked gate coming off of 601?
A: Yes, sir.
Q: Did you drive in off of 601?
A: Yes, sir.

Q: Did you travel all around on the Plaintiff's property?
A: Yes, sir.
Q: Were you able to drive across the Plaintiff's dam?
A: Yes, sir.
Q: Were you able to access all points of his property?
A: Yes, sir.
Q: Did you come in off or did you by chance have a reason to enter or exit off of Old English Road?
A: Exited off of Old English out onto Old English Road from the Plaintiff's property.
Q: And was that visit to this property while this lawsuit was pending?
A: It was.
Q: And did you have permission to be on his property?
A: Yes, sir.
Q: Do you recall any of these gates being locked on the Plaintiff's property?
A: The Highway 601 gate was locked, the what's showing gate number 2 between the Lewis tract and the Plaintiff's property was locked. And the gate on the right under the word road, Old

In The Matter Of:

Country Properties v.
Martin

Rule 60(b) Hearing
July 18, 2018

Gina M. Smith Court Reporting, LLC
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF RICHLAND

COUNTRY PROPERTIES, LLC,

Plaintiff,

vs

Civil Action No.: 2014-CP-40-1805

NANCY DUNN MARTIN,

Defendant.

RULE 60(b) HEARING
BEFORE THE HONORABLE JOSEPH M. STRICKLAND

DATE: Wednesday, July 18, 2018

TIME: 2:59 p.m.

REPORTED BY: GINA M. JOHNSON
Certified Shorthand Reporter
Registered Professional Reporter

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THE COURT: Mr. Floyd.

MR. FLOYD: May it please the Court, your Honor.

THE COURT: Yes, sir.

MR. FLOYD: We're here on the defendant, Nancy Martin's Rule 60(b) motion. And as you will recall, this case was tried before you a little better than two years ago. I put some pictures up in front of you --

THE COURT: Okay.

MR. FLOYD: -- up on the bench there, your Honor, just to kind of reorient you and refresh your recollection. The first picture that you'll see up there is a picture of Country Properties' property. It is the lake or the pond. It's a dammed-up creek, Raglins Creek, and it gives you an idea of the road and the dam that are situated on Country Properties' property. It's about a thousand acres that Country Properties owns.

And as you'll recall, Ms. Martin owns the property adjacent to it in the woods a little over as you look at maybe the -- I think it's the third picture. The third picture, her property is to the right of that third picture that shows the head of the dam at the top of the page.

We've submitted a Rule 60(b) motion. These pictures were part of the affidavit of Zach Sykes. They were taken using a drone, one of these drone machines that you fly over properties, and they were based on Nancy's property, and it shows the date -- speaks to the date of August 2017 of when these pictures were taken.

In this Court's order, which I have copies of it here as well, I think it's important for us just to take a moment --

THE COURT: Yes, sir. Thank you.

MR. FLOYD: And I've highlighted it, your Honor. This is an issue that I think we need to address because in your order on the first tab there, the first blue tab, I've highlighted two paragraphs, paragraph 6 and 7, and I've also highlighted the conclusion portion of your order.

Based on the order alone, your order discusses the access as a basis for this Court's finding of the easements and such, and in fact, in the conclusion, once again, the order addresses the fact that the access to the plaintiff's property lying south of Raglins Creek -- as you'll recall, the majority of this property is situated in Kershaw County. The creek is the county line.

There is a couple hundred acres up in Richland County.

And during the trial, the plaintiff presented various witnesses in an attempt to suggest to this Court that the Richland County portion of the plaintiff's property was inaccessible.

Mr. Podell admitted during cross-examination that during the trial that he had spent some $70,000 in improvements to the dam, but he also testified that this dam had been washed out in the floods of 2015. We didn't know that when we went to trial because the trial took place in early 2016.

And if you look at some of the testimony, just by way of example, page 12 of the transcript, and I can get you -- I didn't bring copies of everything. I just want to point out a few things. Page 12 of the trial transcript, Mr. Wells suggested that it was inadequate access to get to the property down in Richland County.

During the testimony of Mr. Brazell, the direct examination by Mr. Wells, the dam was brought up. During the cross-examination of Mack Brazell, I had to address some issues that he

brought up about the dam. Angus Lafaye was another witness that he talked about, you know, the dam and timber and such like that, and there were a number of witnesses that testified about that. Mr. Podell also said that the dam has been washed out. That was from page 359 of the transcript.

So what we have here is I anticipate, expect that the plaintiff's going to say none of that really matters, he's just making a bunch of noise. Well, I think it does matter because two reasons: It made it into your findings and it was in your conclusions, and I think clearly it was at least a part of the decision in reaching this Court's order.

The actual intent, I believe, of the plaintiff was to make this Court believe that this private road on Ms. Martin's property was the only means of access the plaintiff had to this Richland County property, and they admitted that it wasn't an easement by necessity, they acknowledged during the trial.

But in spite of that, they presented all of this evidence to suggest that this is the only way we can get there, this is -- you know, this property's inaccessible, the dam's not good, the

dam's washed out. If none of it matters, why would it find its way into your order? Why would it find its way into your findings? Why would it find its way into the conclusion?

Under Rule 60(b), the standard, there are five factors that we have to talk about. Number one, will probably change the trial -- change the result if a new trial is granted, has been discovered since the trial, could not have been discovered before the trial, is material to the issue and is not merely cumulative or impeaching. So let's go through that.

THE COURT: Okay.

MR. FLOYD: We believe it will probably change the result of a new trial if granted because it's clear that the Court relied on this. It was emphasized by the plaintiff.

It's an important fact that this dam has indeed been rebuilt, and Mr. Podell testified that he actually drove a bulldozer on it before 2015. We haven't had an opportunity to do any discovery to figure out what sort of loads this thing can take, but that's pretty important, that dam, and we believe that it would change the result.

It has been discovered since the trial.

We didn't discover it until 2017. It couldn't have been discovered before the trial. In fact, we were surprised at trial that they said that, but you know, it is what it is.

It is material to the issue because it appears in your findings. It appears in your conclusion. It's not merely cumulative or impeaching. I think it was an attempt by the plaintiff to try and put this -- to try and put their thumb on the scales to try and persuade this Court to find an easement. We know that this dam exists and we know that this road exists because of these 2017 drone photos. That's Rule 60(b)(2). This is newly discovered evidence. And all of those -- we believe that we meet all five factors and the Court should either give us a new trial or set that order aside.

Rule 60(b)(3) states -- that's the extrinsic fraud -- it can be set aside on the grounds of fraud if it's extrinsic. And that extrinsic fraud is fraud that induces a person not to present a case or deprive the person of the opportunity to be heard. Not knowing that this dam exists and now we know that it does exist in 2017, we believe that that is certainly extrinsic fraud

or a misrepresentation.

I don't know what Mr. Podell would have said now at trial if -- you know, regarding the rebuilding of the dam, but the fact of the matter is the dam does exist and we only discovered it in August of 2017.

And based on these two rules, Rule 60(b)(2) -- Rule 60(b)(2) and Rule 60(b)(3), we believe that Ms. Martin should be granted a new trial or you should set aside your order. I'll be happy to answer any questions that the Court may have.

THE COURT: And I'm not on the phone, I'm just looking up Rule 60(b) --

MR. FLOYD: Okay.

THE COURT: -- on the phone. But go ahead. Yes, sir.

MR. McDONALD: Thank you, your Honor. May it please the Court. Brent McDonald on behalf of Country Properties. We filed a memorandum in opposition and I have it and I can hand it up.

THE COURT: Okay.

MR. McDONALD: I believe, Mr. Floyd, we e-mailed a copy to you. May I approach, your Honor?

THE COURT: Yes.

MR. McDONALD: Our position quite succinctly is what your Honor found was -- in this order was an easement by grant, a dedication of prescriptive easement. An additional means of access is not relevant, is not an element of one of these three causes of action in which you ruled in the favor of Country Properties.

So under the Rule 60(b) element that newly-discovered evidence, assuming this is newly-discovered evidence for the purpose of argument, will probably change the result if a new trial is granted, it will not change the result and it's not material to any of these three things that you ruled on in your order.

Now, one of the things that was just stated was that the plaintiff was putting a thumb on the scales in this case. Your Honor, this is a blowup from the transcript, and your Honor may recall when the fact that the dam had been washed out at the time of this trial as a result of the 2015 flood, you asked very directly, now, does the does the fact that the dam was washed away -- and I think Mr. Floyd said a road as well -- does that change anything as far as your theory, Mr. Wells?

Mr. Wells: Judge, we never claimed -- we did not claim an easement by necessity which is an easement because he has no other access, so I don't think that changes the law in this case.

So it was presented, it was asked by you directly in this case, is this going to be an issue in this case, and it was responded to as not an issue.

Now, the defendant wanted to talk about the dam and the road access, and I submit to you that's probably why it made its way into the order. That was something that the defendant talked about.

But at the end of the day, nothing changes the fact whether the dam -- whether the additional access exists now that didn't exist at the time of the trial with regard to the three legal bases in which you found an easement over this road over the property of the defendant. So I submit to you nothing changes. Under Rule 60(b), those elements can't be met under newly-discovered evidence.

Now, there is absolutely no evidence of any extrinsic fraud on this Court with regard to additional access, and I submit to you the question was expressly asked by you and answered truthfully, so I don't think -- the burden is on the defendant

in this case to carry under Rule 60(b), both subsection 2 and 3, to make their showing of the five elements under that or extrinsic fraud, and I don't believe they can meet that burden.

This case was decided by you, Judge, in 2016. It went up on appeal. It's now back to this Court with leave of the Appellate Court, and I believe, your Honor, it needs to move ahead. There's no grounds for any relief under Rule 60(b)(2) or (b)(3). And I would incorporate our memorandum that we submitted as well, Judge. To the extent you have any questions, I'd be glad to answer. Thank you.

THE COURT: Anything further, Mr. Floyd?

MR. FLOYD: I can't recall exactly when this quote happened, but that was I believe early on in the case, and I would submit to you -- was it the first day before testimony started, I believe?

MR. McDONALD: That was page 18 and 19 of the transcript.

MR. FLOYD: I think it was the first day, and I will submit to you, if that doesn't change, why did we have this parade of witnesses and discussion about this dam for, you know, multiple days? And it is important and it found its way

into your order. There are findings. And it is in your conclusion. And I would submit to you for the rule -- under Rule 60(b), we believe we've established enough to get a new trial or set aside the order.

THE COURT: Now, procedurally, how did this case get back to this Court?

MR. McDONALD: Your Honor, what happened was when you bring a Rule 60(b) motion, what you have to do is you have to ask the Appellate Court to grant leave to file it with this Court. They don't make any rulings on the merits.

So they filed a motion with the Appellate Court. The Appellate Court then said, okay, you can file your Rule 60(b) motion, which they then filed in front of your Honor. The Court of Appeals has asked for an update every 30 days on the status of this depending on your Honor's ruling when it goes back up there to continue the appeal, but procedurally that's how it happened.

THE COURT: Have any other cases -- reported cases dealing with this type scenario, this type of a relief that was sought by the plaintiff?

MR. McDONALD: No, your Honor, not that

I'm aware of other than I believe that the five factors -- the five factors that Mr. Floyd read are not necessarily in the text of the rule themselves. There are other cases. I'm not aware of cases that deal with evidence that is -- so those -- let me back up.

Those five factors are common law factors addressing Rule 60(b), but I'm not aware of any directly related --

THE COURT: I'm looking for a case that the facts are similar to this is the best way to put it. You don't have any cases where the facts are similar to this one?

MR. FLOYD: I haven't done an exhaustive research. I do know there was some easement cases that came out. I wasn't prepared to discuss those cases.

THE COURT: Oh, no, I understand.

MR. FLOYD: I'm kind of limited to the 60(b), your Honor.

THE COURT: I'm not going to rule right now, and so I'm going to have to go back and study this and maybe, you know, it would give me a shortcut if y'all had said there are other cases where the same type issue came up, same type

situation, so -- all right. Anything further?

MR. McDONALD: Nothing from the plaintiff, your Honor.

THE COURT: Mr. Floyd?

MR. FLOYD: Thank you for your time, your Honor.

THE COURT: Okay. I'll take this under advisement. Now, are y'all -- you're reporting back to the Court of Appeals. Y'all want me to expedite it or you want me to just get to you in the next 30 days or how do you want me to handle it?

MR. McDONALD: Next 30 days would be great for the plaintiff, your Honor. Thank you.

MR. FLOYD: Next 30 days is fine.

THE COURT: Okay. Thank you.

MR. FLOYD: I am dutifully responding every month to the Court of Appeals. Not to worry.

THE COURT: All right. Thank y'all so much.

(The proceeding concluded at 3:13 p.m.)

CERTIFICATE OF REPORTER

I, Gina M. Johnson, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing proceeding was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of July, 2018, at Columbia, Richland County, South Carolina.



Gina M. Johnson
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
October 1, 2023.

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STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
COUNTY OF RICHLAND)C/A No. 2014-CP-40-1805

Country Properties LLC,
Plaintiff,
v.
Nancy Dunn Martin,
Defendant.

HEARING

****

Thursday, March 14, 2019
1:03 p.m. - 1:22 p.m.

The hearing before the Honorable Joseph M. Strickland, Master-In-Equity for Richland County, was taken at 1701 Main Street, Courtroom 2-D, Columbia, South Carolina, on the 14th day of March, 2019, before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.

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EXHIBITS

(No exhibits were marked during this hearing.)

CALL TO ORDER:

THE COURT: This is Civil Action Number 2014-CP-40-1805, Country Properties, LLC against Nancy Dunn Martin. Now before the Court is the plaintiff's motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. It's a motion to alter or amend the Court's previous Order ordering a new trial in this matter. All right. You may proceed.

MOTION:

MR. McDONALD: Thank you, Your Honor. Brett McDonald here on behalf of the plaintiff, Country Properties.

THE COURT: Sorry, how do you spell your last name, sir?

MR. McDONALD: McDonald. M-C-D-O-N-A-L-D.

THE COURT: Okay. Mr. McDonald, please proceed.

MR. McDONALD: Thank you, Your Honor. And we filed our motion; I've got a copy here that I can hand up if Your Honor would like.

THE COURT: Yes, sir.

MR. McDONALD: May I approach? Thank you, Your Honor.

THE COURT: Thank you.

MR. McDONALD: And I wanted to start off with

essentially our main point on this. We're here on a motion to reconsider your order granting a new trial in this case pursuant to Rule 60(b) and essentially, the -- what has occurred is the defendant is taking the position after Your Honor's final order in this case that an additional means of access via a dam that has been rebuilt some how changes what Your Honor ruled. And if Your Honor will recall, Your Honor found an easement in favor of the plaintiffs on three different theories. An express easement or an easement by grant, an easement pursuant to a public dedication and offer and acceptance public road, and a prescriptive easement. And I would point out to you in the response that the plaintiff's received to the Rule 59(e) motion really wrapped their arguments around the prescriptive easement and I think the reason that is as it bears out is quite simple, and that is Your Honor in the trial of the case read and took deeds, plaintiff's chain of title, defendant's chain of title, and also what's called -- what we refer to as the Lewis chain of title and found pursuant to those deeds an express

easement. Now, the elements of express easement in addition to the elements of public dedication and prescriptive easement do not take into account additional means of access. Doesn't matter whether you have additional means of access in order to establish those things. And nothing that has been brought forward in this Rule 60 motion changes the fact that the Court found, as a matter of fact, in the action at law, so as a matter of law eventually, that there was an express easement pursuant to those deeds. Nothing that they presented changes that. And the reason it's important is because of the three theories that the judge -- that Your Honor found for the easement, they're independent of one another. So what you have to show for a Rule 60(b)(2) motion, is pursuant to the *Lanier* case *Laney* -- or *Lanier*, it's 612 S.E.2d 456, there's a few factors. The first one you have to show is that it will probably change the result if a new trial is granted. And we would take the position it wouldn't change the result because the factors that establish each of these three easements don't have anything to do with

additional access. It certainly wouldn't change the result of an express easement pursuant to the plain language of the deeds. It wouldn't change the result of public dedication, whether it's a public road in the evidence that was presented. So they can't -- and it wouldn't change the result of a prescriptive easement. Now, the defendant's argument is that under the totality of the circumstances, this rebuilding of the dam and repairing of the dam is new evidence that somehow it would change the mindset of the plaintiff in establishing a prescriptive easement either pursuant to adverse use or under a claim of right, which Your Honor found both in its Order. We would submit that it doesn't change that at all from the standpoint of additional access. The reason being is there's evidence in the record that the dam had been washed out and rebuilt and now that it's rebuilt again, is of no moment to change the outcome of the trial. To give Your Honor an example, if Your Honor, were to affirm or deny this Rule 59(e) motion and have -- it was upheld on appeal and we had a new trial and

then Your Honor ruled again, maybe this time in favor of the defendant, and the dam washes out again, then, you know, are we back with another Rule 60 -- 60 motion for a new trial. So I don't think that they can show that the result of a new trial -- result would change if a new trial was granted. The other -- just to be brief, the other element that I think is incredibly important is element number four, which is whether it's material to the issue. It's not material to any of the elements of each one of these three theories of an easement, which Your Honor found in all three. And then the fifth one is not merely cumulative or impeaching -- well, it would be cumulative as the example that I just gave, the fact that there is evidence that it washed out before and been rebuilt. And the other incredibly important, I believe, issue here is if that was something that they wanted to argue at the original trial that you could build this dam because it has been rebuilt in the past and you could access it, I would submit to you they did argue that at the trial, then nothing prevented them from saying you can rebuild it. And if

that was gonna be critical to whether or not these three easements existed, then they could have submitted that evidence and they didn't, so -- and I would submit to you they argued that there was additional means of access. They argued it at the trial. They argued in their 59(e) motion after Your Honor's final Order. So that was before the Court. This is nothing new that's presented to the Court.

THE COURT: That's what I wanted to ask you about. Had the dam been rebuilt at the time we had trial?

MR. McDONALD: It's my understanding from the -- from the transcript of the case is what happened was the dam had been rebuilt pursuant to Mr. Podell's testimony. The dam had been rebuilt at some point after a washout in -- let me find the exact date -- Exhibit 37 was shown to Mr. Podell, and he said he recognized the picture and it says, question, what is that, showed the picture. Portion of the dam that has been washed out. Okay. When was that picture taken. Answer, wasn't the last flood; it was two years ago. Okay. Was that the 2015 flood or a rainstorm previously? A rainstorm

previous to that. So my understanding from the record and what's in the record is there was a breach of the dam pursuant to some rainstorm; then it was rebuilt or rehabilitated and then there was an event in 2015, I think it was the October 2015 floods, that washed it out again. My understanding from Mr. Podell's testimony at the trial, page 359 of the transcript, and is the dam in good repair today. Answer, no, sir. Now, what's been submitted to Your Honor is a drone showing the repair of the dam and that -- whether it's been repaired again. It's really just a continuation of what was argued before -- before Your Honor. So I would submit to you it's nothing new that would come to Your Honor and I would also reiterate this notion that if it washes out again in the future, then this is just a never-ending series of requests for new trial. Now, and I'll wrap up with this, and I would refer to my motion for the additional grounds, but I think the most critical thing is nothing that's been presented changes any of the three easements, but most notably would like to argue is it doesn't change the express easement. There's absolutely no reason for the

granting of a new trial on the express easement. There's no argument that's been made for the grant of a new trial on public dedication. And the only arguments made on prescriptive easement is some how additional means of access impact a claim of right. I would submit to you that Your Honor also found adverse use and that that's not an element of additional access. And I would wrap up with this, this issue was at the very beginning of the trial Your Honor asked Mr. Wells, now, does the fact that the dam was washed away, I think Mr. Floyd said the road, as well, does that change anything as far as your theory, Mr. Wells? Response, Judge, we never claimed -- we did not claim an easement by necessity, which is an easement because he has no other access. So I don't think that changes the law in the case. So this was brought up directly by you, responded to, and we would submit we're still in the same situation as that first day of court, with the same response. Thank you very much, Your Honor, for your time.

THE COURT: All right. Now, before you get started, Ms. Clark, let me ask you, again, we talked in

chambers and I explained why I ruled the way I did, because I was convinced that something -- something I didn't hear about at the trial was -- actually had taken place, that the dam had been rebuilt. Now, you're saying the dam wasn't built at the time of the trial, though?

MR. McDONALD: That's -- that's the testimony that I have from Mr. Podell, is the dam -- excuse me, just a second. And is the dam in good repair today, this is page 359 in the transcript. Answer, no, sir. When did it fall into disrepair? We had the 20-inch rain in 2015 in October. I think that was the issue that's been brought up in their Rule 60 motion is to say -- they said, well, we didn't know that it had been washed out. That was a new event. And I would just point to this is something that's -- it's just the next chapter to what had occurred throughout that time. Thank you.

THE COURT: All right. Ms. Clark?

MR. FLOYD: Your Honor, may I -- just a moment, I want to clarify one thing about Exhibit 37. I believe he's referring to a picture of some slight erosion on the dam. I don't think it's a wash-out as that may be -- trying to

misrepresentation to the Court there is some washed out portion of the dam where water's rushing through the dam. I think it was more so erosion. I'll be glad to give that picture to the Court. I just wanted to clarify that. And staying with your instructions, to get young lawyers involved, Ms. Clark's going to argue motion, Your Honor.

THE COURT: Okay.

MR. McDONALD: And Your Honor, and I respect that. I just want to -- to the comment that there had been a misrepresentation, I'm just reading from the trial transcript, Your Honor. Portion of -- what does that show on that picture. A portion of the dam has been washed out. So Exhibit 37 says what it says. I was just reading that from the trial ---

MR. FLOYD: And that's fair. I just wanna make sure that we understand that particularly, Your Honor.

THE COURT: Oh, yes, sir. Ms. Clark, you may proceed.

MS. CLARK: Thank you. I'd like to start just with a copy of the final Order from the case. I have highlighted the sections where this dam

and creek are mentioned and it's quite numerous. The dam takes up a whole page of the order roughly on page five and page six. It's mentioned number -- numerous times and it's also discussed in the conclusion of the order on page 30. In fact, it states the creek and the dams came to be sort of a -- a symbol for why they wanted this easement because it's not debated that they have other ways to get on their property. And that -- that sort of pervasive theme in the order is why we think that the new evidence is still relevant. Clearly, it mattered before. I'd like to start with just one quick point, which is much of what Mr. McDonald discussed was already discussed at our last hearing and was already ruled on in the Order as far as the elements of the *Lanier* case have already been found. So we should be sticking to things that are sort of -- weren't addressed.

THE COURT: All right. Now, let me go back to my statements in chambers where I tried to explain why I ruled the way I did ---

MS. CLARK: Uh-huh.

THE COURT: --- and is it your client's position

that there are things I didn't hear at the trial that were relevant and I was convinced by your motion or by the support for your motion that -- that the dam -- at the time of trial, the dam was washed out and that was news to me. Now ---

MS. CLARK: Yes.

THE COURT: --- and you now argue that it wasn't news to me because they talked about it in the hearing on the merits, but ---

MS. CLARK: So I do have a couple of points to make on that subject.

THE COURT: Yes, ma'am.

MS. CLARK: The first is that if they wish to establish the time of the building and the washing out and the various statuses of the dam, they could have put forth an affidavit from their client in relation to these motions. So they're just relying on what happened at trial, and what happened at the trial was a complete surprise to us because they did not plead necessity in their Complaint and we weren't expecting the natural barrier of the dam to even come up. We were totally surprised. When he says we argued things at

trial, arguments was all we had because we were not prepared to address the dam. I think I attached to my response to their motion some discovery they sent us where we asked about work that they had done on the property and they said they had made a pond dam wire. A pond dam does not indicate a great natural barrier. The question of what is a washout and what isn't a washout is still up for debate. They haven't resolved that question. But I think the importance of this dam goes back to the fact that it sort of indicates the whole reasoning behind the case, which is to get to that side of their property through Ms. Martin's land and I think part of the reasoning in the Order and the way that the dam is so often discussed recognizes that if you -- that's the only way to get on your property. It really is kind of a necessity thing to get to that portion of their property, then it becomes kind of a -- an inference that they had to do adverse behavior to get to it. And the adverse behavior or the claim of right is the basis for the prescriptive easement.

THE COURT: Now, if we have a new trial, is there

anything different than what happened in the old trial, the first trial?

MS. CLARK: I think we could get into a lot more new evidence on the situation. I think that we were surprised at trial and weren't prepared to deal with the fact that they seem to think this dam is so important and I think it goes to the continuousness of the adverse possession. So they had to establish, you know, a long period of time where they continuously and interruptedly used her property. And the fact that the dam works sometimes and that it doesn't work and then it works again suggests that there's probably breaks where they don't need to use her property and that would I think challenge the whole concept of the prescriptive easement.

THE COURT: Okay. So that'll be different if we try it again?

MS. CLARK: Yes. And that's what was found in the -- - in the Order that they're currently challenging. That all goes to the totality of the circumstances test that was listed in the -- in the Order. This case is under a clear and convincing evidence standard. It's not

just a regular preponderance more likely than not standard because it is taking her property and forcing her to let them use it, so I think this new evidence could possibly be taken more seriously because of the standard in the case.

THE COURT: Now, where did that standard come from?

MS. CLARK: I believe it's discussed in the *Bundy v. Shirley* case, the current sort of prescriptive easement treatise by the Supreme Court. They discuss that standard and they -- they specifically mention the policy behind that is because you're forcing someone to be a surrogate tenant. I -- I know that their arguments so far have represented that it's possible this dam and these photos came after the trial. We have no way to know when the dam was rebuilt and they have not offered us any evidence to clarify that at this point. We can only offer what we can show from the sky because it's not her property and she can't just go look at it. When she did have the opportunity to look at it before the trial, it was in perfectly good use and they drove across it. So the washout was a total surprise because I was not updated in discovery or

anything else like that. I -- my last point is that anything that should be considered at this point in the case should be things that weren't addressed already, including the -- the *Lanier* case was already addressed. And we are -- you already found that we met all the elements of that test. So anything now that should dissuade your findings should come from them and they have not actually offered any rebutting evidence.

THE COURT: Okay. Mr. McDonald?

MR. McDONALD: Yes, very briefly. Again, once again, you've heard nothing but how anything that they've said changes the finding of an express easement or changes the finding of an easement by a public dedication, absolutely nothing. The reason that there's not evidence submitted at this stage is there's no evidence that can be submitted at this stage. But, more importantly, is none of this changes the deeds that were already before you. None of this changes the evidence of the public dedication that was already before you. The only argument they made that some how the prescriptive easement has changed you've already heard from

me on that.

THE COURT: That's all right.

MR. McDONALD: I don't believe it's changed. But thank you very much, Your Honor.

THE COURT: All right.

MR. McDONALD: I just wanna end on that. Thank you.

THE COURT: All right. Sur rebuttal?

MS. CLARK: I just have one last point and it goes back to the order I handed up with the highlights. The dam is pervasive and the reason for this case and I think that it affects the totality of the circumstances and the final outcome of the Order.

THE COURT: Anything further?

MR. McDONALD: Nothing, Your Honor. Thank you very much for your time.

THE COURT: Anything further?

MR. FLOYD: Thank you for your time, Your Honor.

MS. CLARK: No, sir.

RULING:

THE COURT: Okay. I'll take this matter under advisement. However, obviously, y'all want it done more quickly, and I will try to get it out -- what's today, Thursday?

MR. McDONALD: Yes.

THE COURT: At least by next Friday.

MR. McDONALD: Thank you very much, Your Honor.

THE COURT: Thank y'all. Thank you for your patience in this matter.

(There being no further questions, the deposition concluded at 1:22 p.m.)



Plaintiff's Chain

I will ask Ms. Anna Williams to testify as to the Plaintiff's Chain of Title as follows:

1. Country Properties, LLC from Pineridge Investments LLC by Deed dated March 11, 2009 and recorded in Richland County Book 1515 at page 1554.
2. Pineridge Investments LLC from Prospect Hill of Edisto Island LLC by deed dated October 21, 2005 recorded November 2, 2005 in Kershaw County in Book 1861 page 220.
3. Prospect Hill of Edisto Island LLC from the Whitfield Company by deed dated July 8, 2004 and recorded July 9, 2004 in Book 1599 at page 184 in Kershaw County and book 954 at page 3721 in Richland County.
4. The Whitfield Company from Robert J. Sheheen as Trustee by deed dated March 22, 1999 recorded in Richland County in Book 291 at page 1478, Plat recorded in Book 291 at page 477.
5. Robert J. Sheheen and Henry Savage Jr. as Trustee from R. W. Lloyd by deed dated December 30, 1976 recorded in Richland County in Book D 410 at page 86. Henry Savage Jr. died in 1990 leaving Robert J. Sheheen as the sole trustee.
6. The four hundred twelve (412) acre portion of the Plaintiff's tract where Shady Grove Road enters the tract was conveyed to R. W. Lloyd by deed of East Highland Company dated May 17, 1974 recorded in Kershaw County in Book IC at page 2280.
7. East Highland Company from Edwin P. Guy by deed dated October 6, 1969 recorded in Richland County Deed Book D-156 at page 222.
8. The four hundred twelve (412) acre parcel was a portion of a tract deeded to Edwin P. Guy and James E. Powe dated October 20, 1944 and recorded in Richland County Book FQ at page 349. James E. Powe et al conveyed his interest to Edwin P. Guy by three (3) deeds recorded in Kershaw County in Book HW page 1097 and Book HW page 1121, and HR 2199.
9. George W. Kester obtained four hundred and fourteen (414) acres which included Tract 1 and Tract 2 from the 1880's partition suit plat in Fairfield County, being the tract formerly owned by J. H. Miller and allotted to Leila Miller in the partition suit, from C. E. Borresteel and May Borresteel dated June 2, 1939 and recorded in Richland County in Book EO at page 492.
10. C E Borresteel from the Bordeau Company by deed dated June 2, 1939 recorded in Richland County in Deed Book EO at page 493, conveyed all rights of way.
11. The Bordeau Company from H. O. Williams, Dimple Williams, J.E. West and Byrdie West by deed dated December 24, 1929 and recorded in Book DL 176 in Richland County, Tract 2, and conveyed all rights of way.
12. H.O. Williams et al from Luna Mae Kinsland by deed dated July 12, 1928 recorded in Richland County in Book DG at page 351.
13. Luna Mae Kinsland received Tract 2 from J. H. Miller, Ella J. Miller, Mattie L. C. Desportes by deed dated December 21, 1926 and recorded in Richland County in Book CW at page 121. Tract 2 and Tract D were allotted to Leila S. Miller,

Tract 1 and Tract E were allotted to Mattie L C. Desportes by the partition suit, Mattie L. C. Desportes v. John A. Myers as Trustee of the Estate of Mary P. Black by Order of W. H. Wallace dated February 20, 1885. Judgment Roll 1158 in the Office of the Clerk of Court for Fairfield County.

I hereby certify that this plat was filed for record in my office at 1:00 P.M. o'clock of the 7 day of July 2004, and was immediately recorded in book B121 of Plats, page 7

Billie D. McLeod

Register Kershaw County, SC

PLAINTIFF'S EXHIBIT 18 5/2/11

I, HOWLEY CRAWLEY, THAT I HAVE CONSULTED THE FEMA FLOOD INSURANCE RATE MAP AND TO THE BEST OF MY KNOWLEDGE, BELIEF, AND INFORMATION, A PORTION OF THE SUBJECT PROPERTY IS LOCATED IN ZONE "A" AS SHOWN THEREON AND IS IN A FEMA DESIGNATED SPECIAL FLOOD HAZARD ZONE. REMAINDER OF PROPERTY IS LOCATED IN ZONE "C" KERSHAW COUNTY AND ZONE "X" RICHLAND COUNTY, AREAS OF MINIMAL FLOODING.

KERSHAW COUNTY
COMMUNITY PANEL NUMBER 450113 0165B
COMMUNITY PANEL DATE NOVEMBER 2, 1983

RICHLAND COUNTY
COMMUNITY PANEL NUMBER 450278C 1500
COMMUNITY PANEL DATE JANUARY 19, 1994

ADJOINING LANDOWNER REFERENCES

1. ROBERT HUGH ALLEN AND GRACE SUE ALLEN
TMS # 0387-00-00-014
DEED: BOOK R PAGE 1343
PLAT: BOOK 35 PAGE 1507

2. REBECCA D. ALLEN, ET AL
TMS # 0387-00-00-015
DEED: BOOK 752 PAGE 257
PLAT: BOOK 28 PAGE 579
PLAT: BOOK 35 PAGE 1507

3. RANDOLPH GRANT ROWE AND BARBARA ELLEN ROWE
TMS # 0387-00-00-018
DEED: BOOK PAGE
PLAT: BOOK 38 PAGE 579

DOROTHY W. TATE AND NANCY W. CARRICK
TMS # 0387-00-00-017
DEED: BOOK 3 PAGE 13
PLAT: BOOK 3 PAGE 13

CHADWICK N. TYLER
DEED: BOOK 3 PAGE 13
PLAT: BOOK 3 PAGE 13
TMS # 0387-00-00-019

BARBARA ELLARD TYLER AND NANCY ELLARD TYLER
DEED: BOOK 93 PAGE 56
TMS # 0387-00-00-016

JAMES LINDSAY GUY, II
TMS # 0388-00-00-003
DEED: BOOK 15 PAGE 2177
PLAT: BOOK 35 PAGE 3013

UPPER ENGLISH SWAMP, INC.
DEED: BOOK 41 PAGE 2791
DEED: BOOK 3 PAGE 280
PLAT: BOOK 33 PAGE 3012
PLAT: BOOK 38 PAGE 3703

ERNIES K. GUY
TMS # 0387-00-00-010
DEED: BOOK 38 PAGE 849
PLAT: BOOK 1999

PHILLIP A. BROWN
(KERSHAW COUNTY)
TMS # 0388-00-00-033
(RICHLAND COUNTY)
TMS # R35000-03-01
DEED: BOOK 0828 PAGE 298
PLAT: BOOK J PAGE 4

SCDOT HIGHWAY 601
KERSHAW COUNTY-DOCKET NO. 38.220
SHEETS 23-25 OF 165

1,023.07 ACRES TOTAL
(INCLUDES 14.11 ACRES WITHIN SCPSA ELECTRIC TRANSMISSION R/W)
(INCLUDES 2.51 ACRES WITHIN DIRT TRAIL R/W EASEMENT)

KERSHAW COUNTY
RICHLAND COUNTY
RACING CREEK-COUNTY LINE (APPROXIMATE LOCATION)

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
(KERSHAW COUNTY)
DEED: BOOK 103 PAGE 311
PLAT: BOOK 41 PAGE 58
(RICHLAND COUNTY)
DEED: BOOK D-1086 PAGE 14

70' SANTEE COOPER TRANSMISSION LINE R/W
NOTE: POINTS SHOWN (C-CM) (TYPICAL) ARE SCPSA R/W MONUMENTS

SANTEE COOPER TRANSMISSION LINE, R/W VARIES

SHADY GROVE RD. S 40-25 (PAVED)

SHADY GROVE RD. (UNPAVED)

EDWARD FRANK MARTIN, JR.
TMS # 38000-03-13
DEED: BOOK: D1001 PAGE: 868
PLAT: BOOK 79 PAGE 199
(TRACTS 3,4,5,6)

LAURA ANNE LEWIS ALLEN, CHARLOTTE LYNN LEWIS BRUCE, AND RUFUS DUNCAN LEWIS, II
TMS # 38000-03-08
DEED: BOOK 0173 PAGE 173
PLAT: BOOK Y PAGE 1184

SCREAMING EAGLE PARTNERSHIP AND CLEVELAND SWAMP TIMBER CO., INC.
TMS # 40300-01-01
PLAT: BOOK D1035 PAGE 66

JAMES LINDSAY GUY, II
TMS # 40300-01-01
DEED: BOOK 0088 PAGE 194

(4) RAY H. LOVE, JR.
TMS # 38000-03-04
DEED: BOOK 330 PAGE 2989
PLAT: BOOK 214 PAGE 307
PLAT: BOOK Y PAGE 1554

(5) NEAL H. HIGGINS AND KAREN J. HIGGINS
TMS # 38000-03-09
DEED: BOOK 1257 PAGE 633
PLAT: BOOK "B" PAGE 199

JOE ELLISON CLEVELAND
TMS # 38000-03-03
DEED: BOOK 01024 PAGE 981
PLAT: BOOK "Y" PAGE 4400

(6)

(7) CHARLES W. COOMBS AND CYNTHIA J. COOMBS
TMS # 38000-03-02
DEED: BOOK 01373 PAGE 41
PLAT: BOOK Y PAGE 1554

(8) CHARLES W. COOMBS AND CYNTHIA J COOMBS
KERSHAW COUNTY
TMS # 0387-00-00-027
DEED: BOOK 318 PAGE 193
(PLAT: BOOK 38 PAGE 2048)
RICHLAND COUNTY
TMS # 38000-03-19
DEED: BOOK 1240 PAGE 812
PLAT: BOOK Y PAGE 1554

(9) TIMOTHY LYNN HIGGINS
(KERSHAW COUNTY)
TMS # 0387-00-00-028
DEED: BOOK 35 PAGE 353
(PLAT: BOOK 38 PAGE 2049)
(RICHLAND COUNTY)
TMS # 38000-03-16
DEED: BOOK 709 PAGE 612
PLAT: BOOK Y PAGE 1554

EUGENE J. HIGGINS
(KERSHAW COUNTY)
TMS # 0387-00-00-033
DEED: BOOK 35 PAGE 353
PLAT: BOOK 38 PAGE 2048

(10)

SUBJECT PROPERTY
THE WHITFIELD COMPANY
(KERSHAW COUNTY)
TMS # 0387-00-00-030
DEED: BOOK 742 PAGE 261
PLAT: BOOK A149 PAGE 8
PLAT: BOOK 38 PAGE 1526
(RICHLAND COUNTY)
TMS # 40300-01-02
DEED: BOOK 0411 PAGE 68
PLAT: BOOK X PAGE 949

LOCATION SKETCH
SCALE: 1 INCH = 1 MILE

COURSE TABLE AROUND 1023.07 ACRES		
PT-PT	BEARING	DISTANCE
200-110	N 36°39'04" E	14.27'
110-209	N 54°59'00" E	1858.98'
202-114	N 62°12'28" E	1024.06'
114-204	N 27°21'38" E	116.97'
204-205	S 27°21'38" E	58.10'
205-206	S 37°58'30" E	49.98'
206-207	S 62°10'48" E	50.00'
207-208	S 62°00'48" E	50.00'
208-209	S 69°41'48" E	50.00'
209-210	S 66°37'48" E	200.00'
210-211	S 67°26'48" E	200.00'
211-212	S 67°11'48" E	198.25'
212-8	S 66°40'28" E	259.37'
8-213	N 45°39'47" E	376.96'
213-214	N 48°15'47" E	100.00'
214-215	N 45°30'47" E	50.00'
215-216	N 37°15'47" E	50.00'
216-217	N 34°31'47" E	50.00'
217-218	N 30°03'47" E	98.85'
218-219	N 34°35'47" E	180.90'
219-220	N 31°24'31" E	174.24'
220-116	S 85°48'09" E	50.00'
116-118	S 85°48'38" E	928.87'
118-221	S 86°45'12" E	1998.85'
221-222	N 22°07'44" E	2791.39'
223-131	N 85°52'45" E	1810.82'
131-223	S 01°26'46" W	218.06'
223-224	S 01°28'46" W	883.59'
224-225	N 88°40'23" E	1223.30'
225-226	S 5°05'05" E	1063.03'
226-227	N 87°31'42" E	1268.18'
227-228	S 02°11'01" E	3567.39'
228-229	N 78°40'44" W	3944.68'
229-230	N 11°20'22" E	287.13'
230-231	N 78°43'02" W	3023.19'
231-232	N 77°44'00" W	1466.43'
232-140	S 66°41'41" W	1248.61'
140-141	S 66°40'53" W	234.26'
141-142	S 66°16'31" W	358.00'
142-143	S 66°42'26" W	380.07'
143-144	S 66°42'28" W	371.84'
144-145	S 66°42'26" W	358.13'
145-108	S 66°42'28" W	236.82'
108-233	S 66°39'28" W	224.72'
233-234	SEE CURVE DATA	
234-200	N 01°50'47" E	605.76'

COURSE TABLE AROUND SCPSA R/W EASEMENT		
PT-PT	BEARING	DISTANCE
121-134	S 02°24'37" W	817.61'
134-223	S 02°28'03" W	1363.55'
223-224	S 02°28'46" W	680.99'
224-59	N 88°04'59" W	49.41'
59-127	S 03°18'38" W	26.20'
127-135	S 02°28'06" W	447.00'
135-125	S 05°01'58" W	1644.36'
125-83	S 05°03'05" W	1566.06'
83-84	N 78°40'44" W	70.42'
84-123	N 04°28'09" E	125.14'
123-126	N 05°06'12" E	1433.46'
126-137	N 05°05'00" E	1642.31'
137-128	N 02°25'10" E	445.70'
128-120	N 02°27'28" E	2088.01'
120-85	N 00°04'48" W	794.70'
85-121	N 85°52'45" E	155.30'

CURVE TABLE					
CURVE	RADIUS PT	LENGTH	RADIUS	TANGENT	CHORD
233-234	233-234	1431.50'	7859.43'	717.63'	1428.33'

CHORD	BEARING	DELTA
233-234	N 07°16'41" E	10°15'08"

BOUNDARY SURVEY FOR
GONZALES LAND AND TIMBER, LLC
LOCATED APPROXIMATELY 10 MILES SOUTH OF LUGOFF
KERSHAW AND RICHLAND COUNTIES, SOUTH CAROLINA
JUNE 22, 2004
SCALE: 1 INCH = 500 FEET

SURVEYED BY: ELDIN ASSOCIATES SURVEYING, INC.
P.O. BOX 12 JOHNSTON, SC 29832 (803) 348-6237

RECORD X DEED ( ) TITLE

6-22-2004

SOUTH CAROLINA REGISTERED LAND SURVEYOR

SOUTH CAROLINA ASSOCIATE SURVEYOR

8339 (COMP.) 1491,3574,4472 (HLF.)

Print Job: 413578

Instrument: 2009031889 Book/Page: R 1515 : 1554 DateTime: 04/24/2009 15:47:56:217

State of South Carolina
I certify that this is a true and correct copy
Dated 3/15 , 2016
Register of Deeds
Richland County

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE (DEED)
COUNTY OF KERSHAW and RICHLAND)

Whereas, Pine Ridge Investments, LLC has agreed to convey the parcel of real property described herein to **Country Properties, LLC** in exchange for the contemporaneous conveyance by **HVP3, LLC to Pine Ridge Investments, LLC** of another parcel of real property located in Kershaw County, South Carolina and described in another deed to be recorded contemporaneously herewith; and,

NOW, THEREFORE:

KNOW ALL MEN BY THESE PRESENTS THAT **Pine Ridge Investments, LLC (Grantor/s)** in the State aforesaid, for and in consideration of **Nine Hundred and NO/100 ($900,000.00) dollars and other valuable consideration**, to the Grantor herein paid at and before the sealing of these presents by **Country Properties, LLC (Grantee/s)** in the state aforesaid, the receipt and sufficiency whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said **Grantee/s.**

** SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION INCORPORATED HEREIN BY REFERENCE FOR A MORE COMPLETE AND ACCURATE DESCIRPTION. **

The above described property is the same property conveyed to Pine Ridge Investments, LLC by deed of Prospect Hill of Edisto Island, LLC dated October 21, 2005 and recorded in the Office of the ROD for Richland County in Record Book 1120 at page 3241 on November 14, 2005 and recorded in the ROD for Kershaw County in Book 1861 at page 220 on November 2, 2005.

Grantee's Mailing Address: PO box 279, Elgin, SC 29045

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said Premises belonging, or in anywise incident appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his successors, heirs and assigns, forever.

Grantor/s hereby bind Grantors' successors, heirs, personal representatives and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, his successors, heirs and assigns against Grantor/s and Grantor/s' successors, heirs and assigns, and all other persons 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.

Book 1515-1554
2009031889 04/24/2009 15:47:56:217 Deed
Fee: $10.00 County Tax: $830.50 State Tax: $1963.00

2009031889 Richard W. Rodden Richland County R.O.D.

CEB CD

PLAINTIFF'S EXHIBIT 3 3/21/16

Instrument: 2009031889 Book/Page: R 1515 : 1555 DateTime: 04/24/2009 15:47:56:217

WITNESS Grantor/s' hand and seal this 11th **day of March, 2009**

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1

Witness #2

PINE RIDGE INVESTMENTS, LLC

by: _____
Carl Brazell, Member Grantor

_____ Grantor
Carl Brazell Member

_____ Grantor

_____ Grantor

*****

STATE OF SOUTH CAROLINA)
) **PROBATE**
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantor/s sign, seal and as Grantor/s' act and deed, deliver the within-written Deed, and that s/he with the other witness subscribed above, witnessed the execution thereof.

Witness #1

SWORN to before me this
11th **day of March, 2009.**

_____ [SEAL]
Notary Public for South Carolina
My Commission Expires: 05-06-2012

CEB CD

Instrument: 2009031889 Book/Page: R 1515 : 1556 DateTime: 04/24/2009 15:47:56:217

EXHIBIT "A"

All that piece, parcel or lot of land, with improvements thereon, if any, lying, situate and being in the State of South Carolina, Counties of Richland and Kershaw, located approximately ten (10) miles South of Lugoff, containing 1,023.07 acres, more or less, and being shown and described on a plat prepared for Gonzales Land and Timber, LLC by Michael R. Mills, P.L.S., dated June 22, 2004 and recorded in the Office of the ROD for Richland County in Book _____ at page _____ and recorded in the Office of the ROD for Kershaw County in Book _____ at page _____. Said plat is incorporated herein by reference for a more complete and accurate description.

The 1,023.07 acres is split between Richland County, containing 383.63 acres and Kershaw County containing 640.07 acres.

CA

CEB

Instrument: 2009031889 Book/Page: R 1515 : 1557 DateTime: 04/24/2009 15:47:56:217

STATE OF SOUTH CAROLINA)
COUNTY OF Richland and Kershaw) AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 1023.07 acres, of which 383.63 acres are located in Richland and 640.07 acres are located in Kershaw County bearing Richland & Kershaw County Tax Map Number 40300-01-02 & 387-00-00-020, was transferred by Pine Ridge Investments, LLC to Country Properties, A SC General Partnership on 03/11/09.

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $2,014,000.00.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $2,014,000.00

(b) Place the amount listed in item 5 above here: -0-
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $2,014,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $4,659.25 (Kershaw) / $2,792.55 (Richland). $1967.37 X 640.07 acres located in Kershaw County = $1,259,254.51X $3.70 = $4,659.25 **

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney.

**$1967.37 X 383.63 acres = $754,742.15 x $3.70 = $2,792.55

CEB 09

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

SWORN to before me this 11 day of March 20 07

Notary Public for SC

My Commission Expires: 5-2-15

Charnell G. Peake

Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, a partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

1. transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. that are otherwise exempted under the laws and Constitution of this State or of the United States;
4. transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40 (A);
5. transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
6. transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. that constitute a contract for the sale of timber to be cut;
8. transferring realty to a corpporation, a partnership, or a trust in order to become, or as, stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, benficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust benficiary of the entity is subject to the fee even is the realty is transferred to another corporation, a partnership, or trust;
9. transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
12. that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
13. transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
14. transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
15. transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulations under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

12246 BK1861 PG220

STATE OF SOUTH CAROLINA)
) **TITLE TO REAL ESTATE**
COUNTY OF RICHLAND) **LIMITED WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS that Prospect Hill of Edisto Island, LLC, a South Carolina limited liability company ("Grantor"), for and in consideration of the sum of $5.00 and other valuable consideration to Grantor paid by Pine Ridge Investments, LLC, a South Carolina limited liability company ("Grantee"), the receipt and legal sufficiency of which are hereby acknowledged by Grantor, has granted, bargained, sold, released, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, release, alien, convey, and confirm unto Grantee, all that tract or parcel of land with improvements thereon lying (the "Premises") described as follows:

000012246
RECORDED 11/02/2005 03:12:14PM
Bk:01861 Pg:00220 Pages:8
Fee:10.00 State:3454.10
County:1461.35 Exempt:_____
Billie O. McLeod, Register of Deeds
Kershaw County, SC

DESCRIPTION OF PREMISES CONVEYED

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

GRANTEE'S MAILING ADDRESS: For the purposes of this deed the Grantee's mailing address is:

2232 Highway 1 South
Elgin, SC 29045

TOGETHER WITH ALL AND SINGULAR the rights, members, hereditaments, and appurtenances to the Premises belonging or in anywise incident or appertaining.

TOGETHER with any and all buildings, improvements, personalty and fixtures situated thereon, and any and all crops and timber growing thereon, and all surface or subsurface sand, gravel, oil, gas, or mineral rights.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the "Permitted Exceptions"):

(i) the lien of current and future taxes, assessments, and other governmental charges, both special and general, that are not due and payable; (ii) "roll back" taxes, if any, that are not yet due

Recorded this 2nd Day
Of November, 2005.

Robin H. Watkins
Kershaw County Auditor

FILED FOR RECORD 11/02/2005
AT 03:12P BOOK 01861 PAGE 00220
Billie O. McLeod -Reg of Deeds - RMC
Kershaw County Government Ctr 000012246

ATTEST True, Correct & Certified Copy of Original on File in this Office.

Billie D. McLeod
Register of Deeds Kershaw County

PLAINTIFF'S EXHIBIT 4 3/31/16 DGR

and payable; (iii) all reservations, easements, rights-of way, restrictive covenants, licenses, and other encumbrances, restrictions, or agreements of record (other than liens securing or evidencing a liquidated claim or indebtedness, all of which shall be satisfied at Closing); and (iv) all encroachments, overlaps, boundary line disputes, shortages in area, parties in possession, and other matters not of record that would be disclosed by an accurate survey or inspection of the property.

SUBJECT TO THE PERMITTED EXCEPTIONS, TO HAVE AND TO HOLD, all and singular, the Premises unto Grantee, his heirs and assigns forever;

AND SUBJECT TO THE PERMITTED EXCEPTIONS, Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the Premises unto Grantee, his heirs and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

WITNESS Grantor's hand and seal this 21 day of October, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

PROSPECT HILL OF EDISTO ISLAND, LLC, a South Carolina limited liability company

By: _____
Kirkman Finlay III
Manager and Sole Member

_____
Witness No. 1

_____
Witness No. 2

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF RICHLAND)

I, Laura H. Huggins, a notary public for the State of South Carolina, do hereby certify that Prospect Hill of Edisto Island, LLC by Kirkman Finlay III, its sole member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 21 day of October, 2005.

_____ (SEAL)
Laura H. Huggins
My Commission Expires: May 26, 2008

EXHIBIT A

LEGAL DESCRIPTION

TRACT I:

ALL that certain tract or parcel of land situate, lying and being in Ragland's Creek Section, School District No. 2 of Richland County and Kershaw County, South Carolina located approximately 16 miles South of Camden on the waters of Ragland's Creek, bounded on the North by lands now or formerly of Lloyd and lands of Guy; on the East by lands of Guy; on the South by lands now or formerly of A. V. Cleveland and Martin; and on the West by Lloyd, containing 412 acres, more or less, all being more fully shown and described on a plat of property surveyed for Catawba Timber Co., "Edwin Guy Tract No. 1346" prepared by Fred J. Hager, Reg. Surveyor, dated September 24, 1969, recorded in Plat Book "X", Page 949, in the Office of the Clerk of Court for Richland County, South Carolina, and in Plat Book 34, Page 1526 in the Office of the Clerk of Court for Kershaw County, South Carolina, which plat is incorporated into this description by reference thereto and to which plat reference is made for metes and bounds description of said lands.

TRACT II:

ALL that certain parcel or tract of land lying mostly in Kershaw County with a smaller portion lying in Richland County, and being approximately 15 miles South of Camden on the east side of U. S. Highway #601, and on the waters of Ragland's Creek 605 acres, more or less, and being bounded as follows: North by lands now or formerly of Dunn, lands now or formerly of Watkins and lands now or formerly of Ancrum; East by lands formerly of Lloyd, now Guy; South by lands now or formerly of Lloyd; and, West by U. S. Highway 601.

THE above described property is the same property shown as 1,023.07 acres on that certain plat prepared for Robert J. Sheheen, Trustee by Robert H. Lackey Surveying, Inc. dated March 30, 1998 recorded in the Office of the Register of Deeds for Richland County in Record Book 241 at Page 1477 and in the Office of the Clerk of Court for Kershaw County at Plat Slide A-149 at Page 8.

TAX MAP NOS.: 40300-01-02 (Richland County portion)
387-00-00-020 (Kershaw County portion)

DERIVATION: Limited Warranty Deed from The Whitfield Company to Prospect Hill of Edisto Island, LLC dated as of July 8, 2004 and recorded with the Richland County Register of Deeds on July 9, 2004 at Book 00954 at Page 3721 and with the Kershaw County Register of Deeds on July 9, 2004 at Book 01599 at Page 00184.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND AND) AFFIDAVIT
KERSHAW

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 1023.7 acres of which 383.63 acres are located in Richland bearing RICHLAND & Kershaw County Tax Map Number 40300-01-02 RC & 387-00-00-020 was transferred & 640.07 acres by Prospect Hill of Edisto Island, LLC in Kershaw to Pine Ridge Investment, LLC on 10/21/05.

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit):

_____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $2075.00 per acre X 640.07 acres located in Kershaw

(b) _____ The fee is computed on the fair market value of the realty which is county =$1,328,145.20 X $3.70 = $4,915.45

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	$1,328,145.20
(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	-0-
(c) Subtract Line 6(b) from Line 6(a) and place result here:	$1,328,145.20

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $4,915.45.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney at law.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

Charnell G. Peake
Print or Type Name Here

SWORN to before me this 21
day of October 2005
Notary Public for SC
My Commission Expires: 12/17/06

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, a partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and reamining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

1. transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. that are otherwise exempted under the laws and Constitution of this State or of the United States;
4. transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40 (A);
5. transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
6. transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. that constitute a contract for the sale of timber to be cut;
8. transferring realty to a corpporation, a partnership, or a trust in order to become, or as, stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, benficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust benficiary of the entity is subject to the fee even is the realty is transferred to another corporation, a partnership, or trust;
9. transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
12. that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
13. transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
14. transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
15. transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulations under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND & KERSHAW

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 1023.7 acres of which 383.63 acres are in Richland & 640.07 acres in Kershaw bearing Richland & kershaw County Tax Map Number 40300-01-02 & 387-00-00-020, was transferred by Prospect Hill of Edisto Island, LLC to Pine Ridge Investment, LLC on 10/21/05.

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $2075.00 per acre X 383.63 acres located in Richland

(b) _____ The fee is computed on the fair market value of the realty which is =$754,532.25 X $370=$2793.50

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	$754,532.25
(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	-0-
(c) Subtract Line 6(b) from Line 6(a) and place result here:	$754,532.25

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $2,793.50.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney at law.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

SWORN to before me this 21
day of October 20 05
Notary Public for SC
My Commission Expires: 12/17/06

Charnell G. Peake
Print or Type Name Here

12246 BK1861 PG227

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, a partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

1. transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. that are otherwise exempted under the laws and Constitution of this State or of the United States;
4. transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40 (A);
5. transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
6. transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. that constitute a contract for the sale of timber to be cut;
8. transferring realty to a corpporation, a partnership, or a trust in order to become, or as, stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, benficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust benficiary of the entity is subject to the fee even is the realty is transferred to another corporation, a partnership, or trust;
9. transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
12. that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
13. transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
14. transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
15. transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulations under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Instrument: 1999025194 Book/Page: R 291 : 1478 DateTime: 03/25/1999 14:46:03:500

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF KERSHAW)
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS, That I, Robert J. Sheheen, Trustee, in the State aforesaid, for and in consideration of the sum of One Million Five Hundred Seventy Thousand Eight Hundred Fifty and 00/100 ($1,570,850.00) Dollars to me paid by The Whitfield Company, a South Carolina Partnership in the State aforesaid have granted, bargained, sold and released, and by these presents do grant bargain, sell and release unto the said The Whitfield Company, a South Carolina Partnership, its successors and assigns:

BOOK 00291-1478
1999025194 03/25/1999 14:46:03:50
Fed: $110.00 County Tax: $636.90 State Tax: $1505.40
Deed
1999025194 John G Norris
Richland County ROD

TRACT I: All that certain tract or parcel of land situate, lying and being in Ragland's Creek Section, School District No. 2 of Richland County, South Carolina, and in Kershaw County, South Carolina, located approximately 16 miles South of Camden on the waters of Ragland's Creek, bounded on the NORTH by lands now or formerly of Lloyd and lands of Guy; on the EAST by lands of Guy; on the SOUTH by lands now or formerly of A. V. Cleveland and Martin; and on the WEST by Lloyd, containing 412 acres, more or less, all being more fully shown and described on a plat of property surveyed for Catawba Timer Company, "Edwin P. Guy Tract No. 1346," by Fred J. Hager, RLS, dated September 24, 1969, recorded in Plat Book "X", page 949, in the office of the Clerk of Court of Richland County, South Carolina, and in Plat Book 34, page 1526, in the office of the Clerk of Court for Kershaw County, South Carolina, which said plat is incorporated into this description by reference thereto and to which plat reference is made for a metes and bounds description of said lands.

TRACT II: All that parcel or tract of land lying mostly in Kershaw County with a small part in Richland County, and lying about fifteen (15) miles South of Camden on the east side of U. S. Highway #601, and on the waters of Raglin's Creek, and containing six hundred five (605) acres, more or less, and being bounded as follows: NORTH by lands now or formerly of Dunn, lands of now or formerly of Watkins and lands now or formerly of Ancrum; EAST by lands formerly of Lloyd, now of Guy; SOUTH by lands now or formerly of Lloyd; and, WEST by U.S. Highway 601.

State of South Carolina
I certify that this is a true and correct copy
Dated 3/17/2016
Register of Deeds
Richland County

PLAINTIFF'S EXHIBIT
5
3/21/16

Instrument: 1999025194 Book/Page: R 291 : 1479 DateTime: 03/25/1999 14:46:03:500

The above described property is subject to easements and roadways which are disclosed by an examination of the public records or a visual inspection of the premises.

The above described property is the same conveyed to Henry Savage, Jr. and Robert J. Sheheen, Trustees by R. W. Lloyd by deed dated December 30, 1976 and recorded in the office of the Clerk of Court for Kershaw County on December 30, 1976 in Deed Book I G at page 2147 and recorded in the office of the Register of Mesne Conveyances in Richland County on January 24, 1977 in Deed Book D410 at page 86. Henry Savage, Jr., Trustee died in Kershaw County in 1990 leaving Robert J. Sheheen, Trustee as the sole Trustee.

The above described property is the same property shown 1023.07 acres on that certain plat prepared for Robert J. Sheheen, Trustee by Robert H. Lackey Surveying, Inc. dated March 30, 1998 recorded in the Office of the Clerk of Court for Kershaw County in Plat Book ___ at page ___ and in the Office of the Register of Mesne Conveyances for Richland County in Plat Book ____ at page ____.

Grantee's Address: #4 Carriage Lane Suite 300-C

Charleston, SC 29407

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 said The Whitfield Company, a South Carolina Partnership its successors and assigns, forever.

And I do hereby bind myself and my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said The Whitfield Company, its successors and assigns, against me and my heirs and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

WITNESS My Hand and Seal this 22nd day of March in the year of our Lord one thousand nine hundred and ninety-nine and in the two hundred and twenty-third year of the Sovereignty and Independence of the United States of America.

Instrument: 1999025194 Book/Page: R 291 : 1480 DateTime: 03/25/1999 14:46:03:500

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Nancy Richbourg

Robert J. Sheheen, Trustee

Robert J. Sheheen, Trustee

Lynn N. Robinson
as to Robert J. Sheheen, Trustee

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF KERSHAW)

I, Lynn N. Robinson, Notary Public for the State of South Carolina, do hereby certify that Robert J. Sheheen, Trustee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn to before
me this 22nd day of March, 1999.

Lynn N. Robinson
Notary Public for South Carolina
My Commission Expires: 3/14/04

Please Return to: Cooper & Todd, LLP
Post Office Drawer 99
Camden, SC 29020

Instrument: 1999025194 Book/Page: R 291 : 1481 DateTime: 03/25/1999 14:46:03:500

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF RICHLAND)

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is 377 acres, more or less, located in Richland County, bearing Richland County Tax Map No. 40300-01-02, transferred by Robert J. Sheheen, Trustee to The Whitfield Company, a South Carolina Partnership on March 22, 1999.

3. Check one of the following: The deed is

(a) __X__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer t a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because;

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) __X__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $1,535.43 per acre at 377 acres (located in Richland County) = $578,857.11 x $3.70 = $2,141.77.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No __X__ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	$578,857.11
(b) Place the amount listed in item 5 above here:	0
(c) Subtract Line 6(b) from Line 6(a) and place result here:	$578,857.11

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $2,141.77.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the closing attorney.

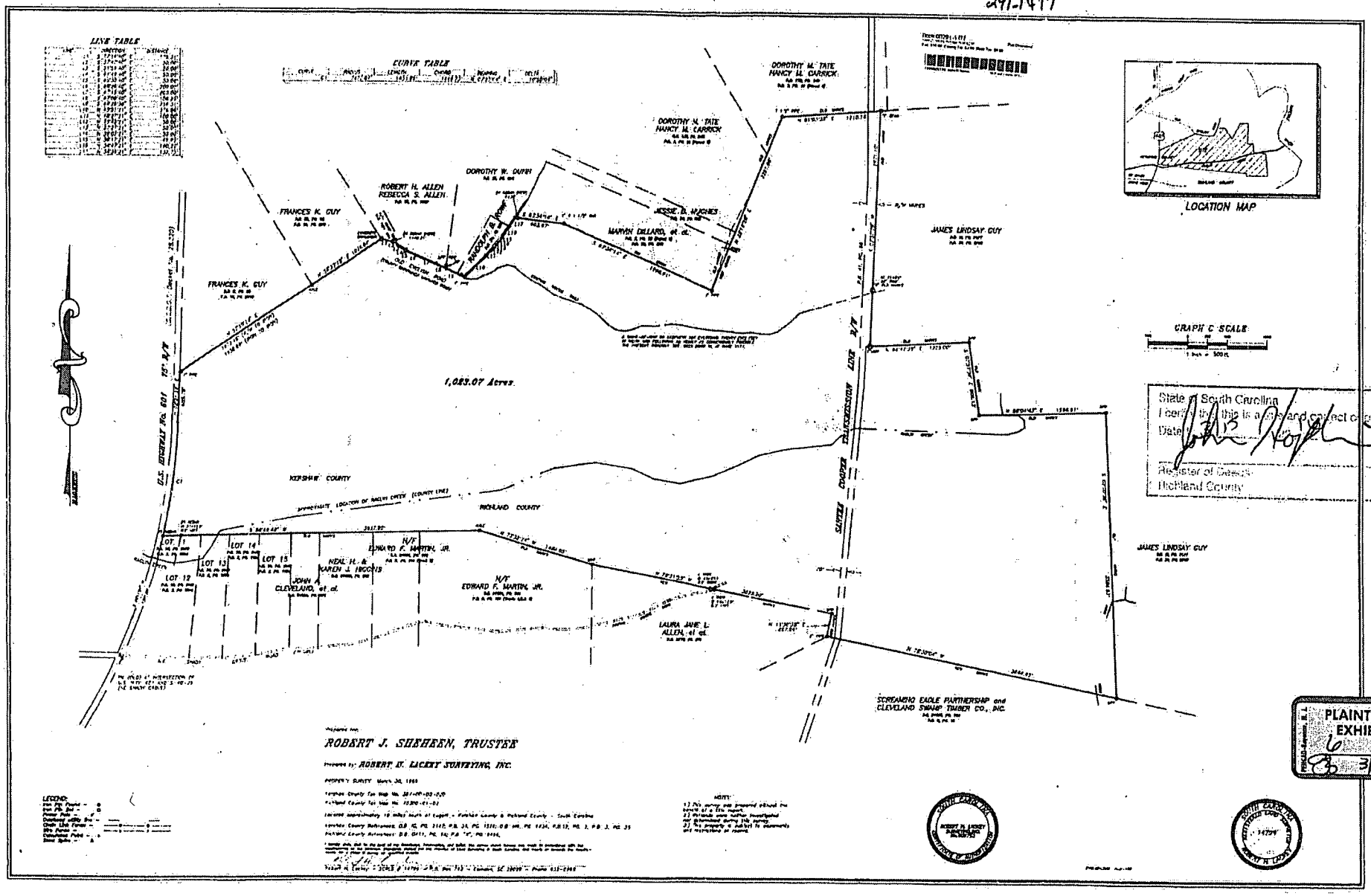
9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Roderick M. Todd, Jr.

SWORN to before me this 22nd
day of March, 1999.

Notary Public for South Carolina
My Commission Expires 11-26-2000

291-1477



State of South Carolina
I certify that this is a true and correct copy
Date 3/21/16
Register of Deeds
Richland County

PLAINTIFF'S EXHIBIT
6
3/21/16

291

D 156 PAGE 222

Form A24-SC-1

State of South Carolina
I certify that this is a true and correct copy
Dated [illegible], 20[illegible]
South Carolina
Register of Deeds
Richland County

Tract No. 1346

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND & KERSHAW

KNOW ALL MEN BY THESE PRESENTS, That

EDWIN P. GUY of Kershaw County in the State aforesaid in consideration of the sum of One Hundred Thirty-two Thousand Eight Hundred Seventy-Four and 12/100 ($132,874.12) Dollars, to me in hand paid at and before the sealing and delivery of these Presents by EAST HIGHLANDS COMPANY a Tennessee Corporation with its principal office at Calhoun, Tennessee 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 said EAST HIGHLANDS COMPANY all that certain tract or parcel of land situated as follows:

All that certain parcel or tract of land situated, lying and being in Raglands Creek Section, School District No. 2, of Richland County, South Carolin and in Kershaw County, South Carolina, located approximately 16 miles South of Camden on the waters of Ragland Creek, bounded on the North by lands now or formerly of Lloyd and lands now of Edwin P. Guy; on the East by lands of Edwin P. Guy; on the South by lands now or formerly of A. V. Cleveland and Martin; and on the West by Lloyd, and being more fully described by metes and bounds as follows:

Beginning at an oak in the line of Lloyd and corner common to other lands of Edwin P. Guy and this property; thence with the new line North 89 degrees 57 minutes East 1,225 feet to a metal fence post; thence South 4 degrees 54 minutes East 905.6 feet to a metal fence post; thence South 89 degrees East, crossing Ragland Creek along the way, 1,568.4 feet to a metal fence post; thence South 0 degrees 55 minutes West 3,590 feet to a metal fence post in the line of A. V. Cleveland and corner common to lands of Edwin P. Guy and this property; thence with the line of Cleveland North 75 degrees 30 minutes West 3,645 feet to an old corner and metal fence post; thence North 14 degrees 15 minutes East 288 feet to a metal fence post; thence North 75 degrees 45 minutes West, crossing a woods road along the way, 3,025 feet to a metal fence post at 0. Witnesses; thence North 25 degrees 23 minutes East, crossing Ragland Creek and the County line along the way, 2,195 feet to an old corner and metal fence post; thence South 80 degrees 21 minutes East 2,115 feet to an old corner and metal fence post; thence North 36 degrees 40 minutes East 610 feet to an old corner and metal fence post; thence South 84 degrees 10 minutes East 132 feet to a metal fence post; thence North 5 degrees 46 minutes East 478 feet to an oak tree at the beginning corner, containing 412 acres, more or less, all being more fully shown on a plat of property surveyed for Catawba Timber Company, "Edwin P. Guy Tract No. 1346," by Fred J. Hager, R.L.S., dated September 24, 1969, recorded in Plat Book X, page 949, in the office of the Clerk of Court of Richland County, South Carolina, in Plat Book ___, page ___,

D 156 PAGE 222

DOCUMENTARY TAX COUNTY SOUTH CAROLINA 1190 PD. 10612 615910 RICHLAND COUNTY

Oct 6 4 34 PM '69 JOHN R. T. C. C. C.

STATE OF SOUTH CAROLINA SOUTH CAROLINA TAX COMMISSION DOCUMENTARY STAMP TAX 266.00 PD. 10613 RICHLAND

PLAINTIFF'S EXHIBIT 1 5/21/82

in the office of the Clerk of Court of Kershaw County, South Carolina, to which reference is made.

Grantor reserves an easement of right of way across the above described property over the existing woods road, the location of which is as indicated on the above referred to plat, for purposes of ingress and egress to other lands of the Grantor lying to the North and to the East of the above described property. The above referred to easement is reserved by the grantor for the benefit of himself, his heirs and assigns, forever.

This conveyance is SUBJECT to all existing easements and right of way for public roads and highways, and public utilities, if any, extending into, through, over, or across the above described property.

East Highlands Company assumes and agrees to pay all taxes assessed against the above described property for the year 1969.

The above described property is a portion of the property conveyed to the grantor and James E. Powe by deed of George W. Kester recorded in the office of the Clerk of Court for Kershaw County in Book CX at page 152 and in Richland County in Book FQ at page 349; the interest of James E. Powe in the above described property was acquired by the grantor by deed of Gary P. Jarman recorded in Kershaw County in Book HW at page 1097 and to be recorded in Richland County, and by deed of James E. Powe, et al, recorded in Kershaw County in Book HW at page 1121 and to be recorded in Richland County.

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 said EAST HIGHLANDS COMPANY its Successors and Assigns, forever.

AND I do hereby bind myself my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said EAST HIGHLANDS COMPANY its Successors and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my hand and seal, this 6th day of October in the year of our Lord one thousand nine hundred and sixty-nine and in the one hundred ninety-fourth year of the Independence of the United States of America.

Signed, sealed and delivered in the presence of

Edwin P. Guy (L. S.)

THE STATE OF SOUTH CAROLINA
Kershaw COUNTY

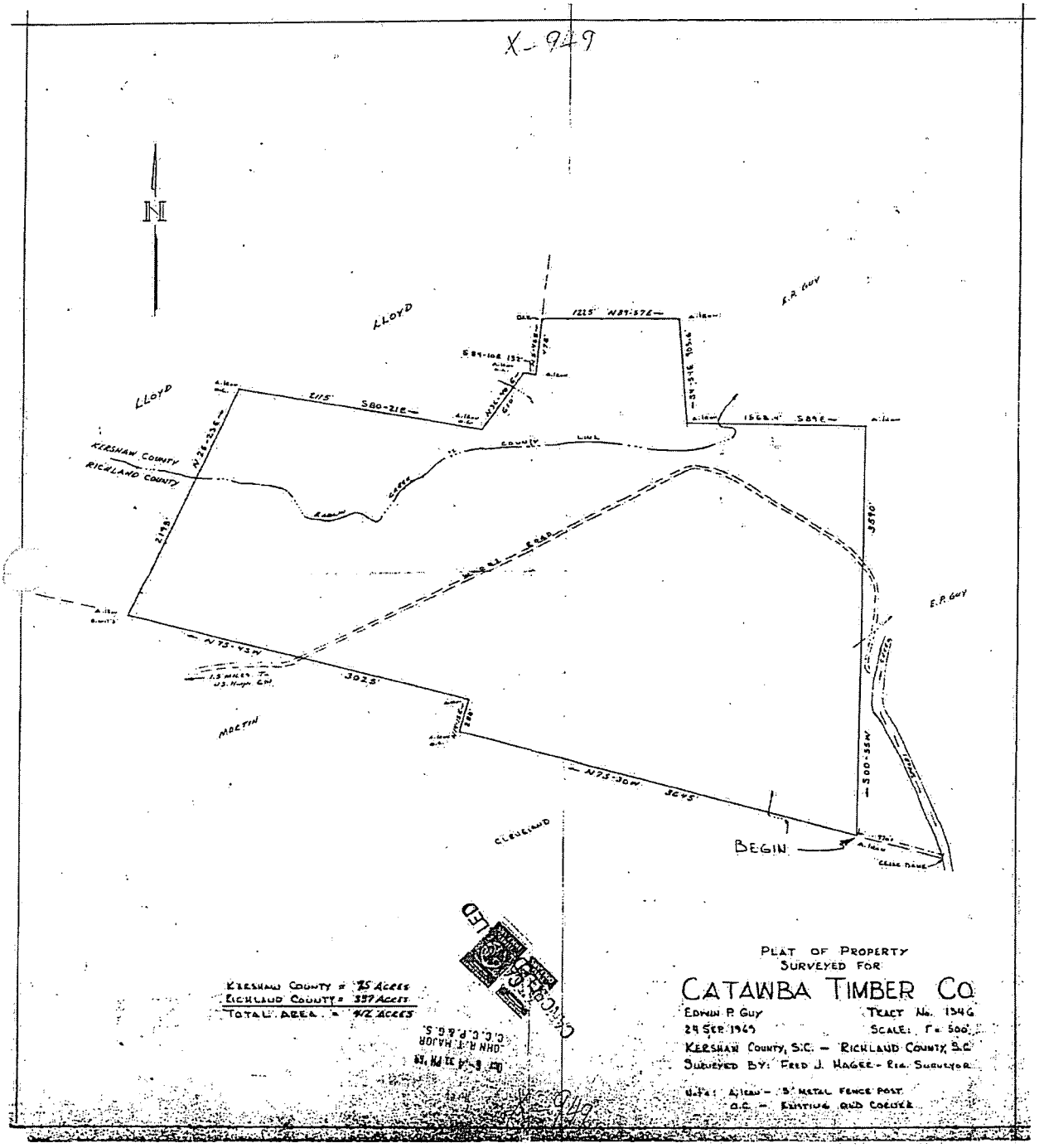
PERSONALLY appeared before me Robert J. Sheheen and made oath that he saw the within named Edwin P. Guy sign, seal and as His act and deed deliver the within written deed, and that he with J. Ernest Kinard, Jr. witness the execution thereof.

SWORN TO before me this 6th day of October A. D. 1969

(L. S.)
Notary Public for South Carolina
My commission expires: 1/1/70

D 156 PAGE 224

X-929



State of South Carolina
I certify that this is a true and correct copy
Dated 3/15 p. 24
Register of Deeds
Richland County

PLAINTIFF'S EXHIBIT
8
3/21/16

TIMESAVER BLANK NO. 7 - TITLE TO REAL ESTATE
PRIVATE PERSON TO PRIVATE PERSON
TIMESAVER PUBLISHING CO., CONWAY, S. C.

STATE OF SOUTH CAROLINA,

COUNTY OF KERSHAW AND RICHLAND

Fi Clerk of [illegible]
Re Court $ 15.75
Richland $ 95.75
[illegible]

Know all Men by these Presents,

That WE, JAMES E. POWE, MARY EMMA P. GRAY, SUSAN P. HUGGINS, AND CHARLOTTE P. BOURNE, Of Cheraw,

in the State aforesaid, for and in consideration of the sum of EIGHTY-TWO THOUSAND FIVE HUNDRED TWENTY-TWO & 38/100- ($82,522.38) DOLLARS

to us paid by EDWIN P. GUY

to the State aforesaid, (Receipt whereof is hereby acknowledged)

have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said Edwin P. Guy, his heirs and assigns forever,

ALL of our undivided four-fifths (4/5) interest in and to the following described property:

ALL that piece, parcel or tract of land lying and being situate in the Counties of Richland and Kershaw, State of South Carolina, consisting of four hundred and fifty five (455) acres, more or less, this being all the remaining portion not previously conveyed to Edwin P. Guy by us or by us through Burness Bourne our Attorney-in-Fact or to East Highland Timber Corporation or to Cantey Forest Products, Incorporated, Camden, S. C., of those two tracts totaling 2,575.6 acres more or less purchased by Edwin P. Guy and James E. Powe, the first from Richard W. Lloyd consisting of 1,102.6 acres as recorded in the Office of the Clerk of Court for Kershaw County in Deed Book CX, page 152, and the second tract from George W. Kester, consisting of 1,473 acres as recorded in the office of the Clerk of Court for Richland County in Deed Book FQ page 349 and bounded as follows:

North by lands of Richard W. Lloyd, by lands of Edwin P. Guy, and by lands now or formerly of James E. Powe of which this formerly was a part;
East by lands now or formerly of James E. Powe of which this formerly was a part;
South by lands of Cleveland, formerly of Burney;
West by lands of Richard W. Lloyd, by lands of Julia Martin and perhaps others.

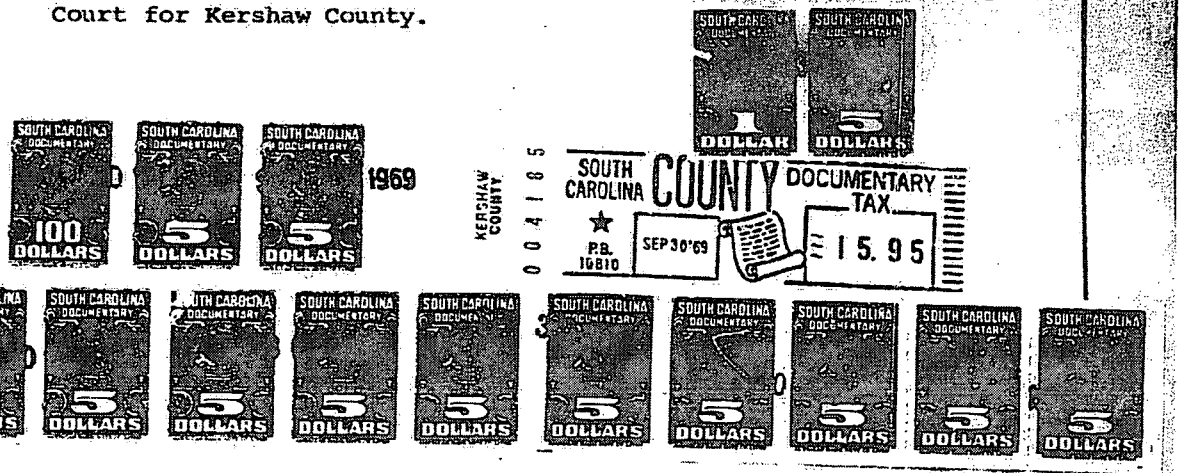
The above described tract is more particularly shown by a timber cruise plat of the Old English Tract by Robert F. Knoth and Company, Charleston, South Carolina, Foresters, dated January 1957 and

(over)

PLAINTIFF'S EXHIBIT 9

Copy of Original on File in this Office.
Billie D. Mizell
Register of Deeds Kershaw County

recorded in the Office of the Clerk of Court for Kershaw County in Plat Book 34, Page 544. The area being conveyed hereby is indicated on said plat as Blocks numbers eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), the southern thirteen and eighty one hundredth (13.81) acres of block twenty three (23), the western eighteen (18) acres more or less of Block A, and Block twenty four (24) less sixteen (16) acres in the northeast quadrant of said block as to be shown by a plat now being prepared and to be recorded in the office of the Clerk of Court for Kershaw County.



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 said:

Edwin P. Guy, his

Heirs and Assigns forever.

And we do hereby bind ourselves, our Heirs and Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said:

Edwin P. Guy, his

Heirs and Assigns, against us and our Heirs, and all persons whomsoever and anyone else lawfully claiming, or to claim the same or any part thereof.

Witness our Hands and Seals this 25th day of September in the year of our Lord one thousand nine hundred and sixty-nine and in the one hundred and ninety-fourth year of the Sovereignty and Independence of the United States of America.

James E. Powe (L. S.)
Mary P. Gray (L. S.)
Susan P. Huggins (L. S.)
Charlotte P. Bourne (L. S.)
(L. S.)

Signed, Sealed and Delivered in the Presence of

STATE OF SOUTH CAROLINA,

COUNTY OF CHESTERFIELD

PERSONALLY appeared before me, Barbara B. Garris and made oath that he saw the within named James E. Powe, Mary Emma P. Gray, Susan P. Huggins, and Charlotte P. Bourne

Sign, Seal and as their Act and Deed deliver the within written Deed; and that he with C. Anthony Harris witnessed the execution thereof.

Sworn to before me this 25th day of September A. D. '19

C. Anthony Harris (L. S.)
Notary Public for South Carolina

Barbara B. Garris

My commission expires: 1/1/70

RENUNCIATION OF DOWER

STATE OF SOUTH CAROLINA,

COUNTY OF CHESTERFIELD

I, Barbara B. Garris, a Notary Public for South Carolina do hereby certify unto all whom it may concern, that Mrs. Gary E. Powe

the wife of the within named grantor James E. Powe did this day appear before me and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named grantee Edwin P. Guy, his Heirs and Assigns, all her interest, and estate, and also all her right and claim of Dower, of, in or to, all and singular the premises within mentioned and released.

Given under my Hand and Seal this 25th day of September Anno Domini 19 69

Barbara B. Garris (L. S.)
Notary Public for South Carolina

My commission expires: 1/1/70

Gary E. Powe (L. S.)
Gary E. Powe

STATE OF SOUTH CAROLINA)
) Affidavit
COUNTY OF KERSHAW)

PERSONALLY appeared before me, J. Ernest Kinard, Jr., who, being duly sworn, deposes and says that he is a practising attorney of the firm of Savage, Royall & Kinard; and that he is the attorney who handled this transaction and knows of his own knowledge that of the total consideration property in the value of $14,030.00 lies in Kershaw County, and property in the value of $68,490.00 lies in Richland County.

SWORN to and subscribed before me this 26th day of September, 1969

J. Ernest Kinard

Notary Public of S. C.

My commission expires: 1/1/71

Acres for $ _____ Township _____

Purchased _____

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW AND RICHLAND

JAMES E. POWE, MARY EMMA P. GRAY, SUSAN P. HUGGINS AND CHARLOTTE P. BOURNE (Grantors)

TO

EDWIN P. GUY

TITLE TO REAL ESTATE
(Private Individual to Another)

I hereby certify that the within deed has been this 26th day of September A. D. 19 69 Recorded in Book EH of Deeds, Page 1121 at 4:06 o'clock P. M. Clerk of Court of Kershaw County

I hereby certify that the within deed has been this 26 day of Sept A. D. 19 69 Transferred on Auditor's Book Page 41

Auditor of Kershaw County

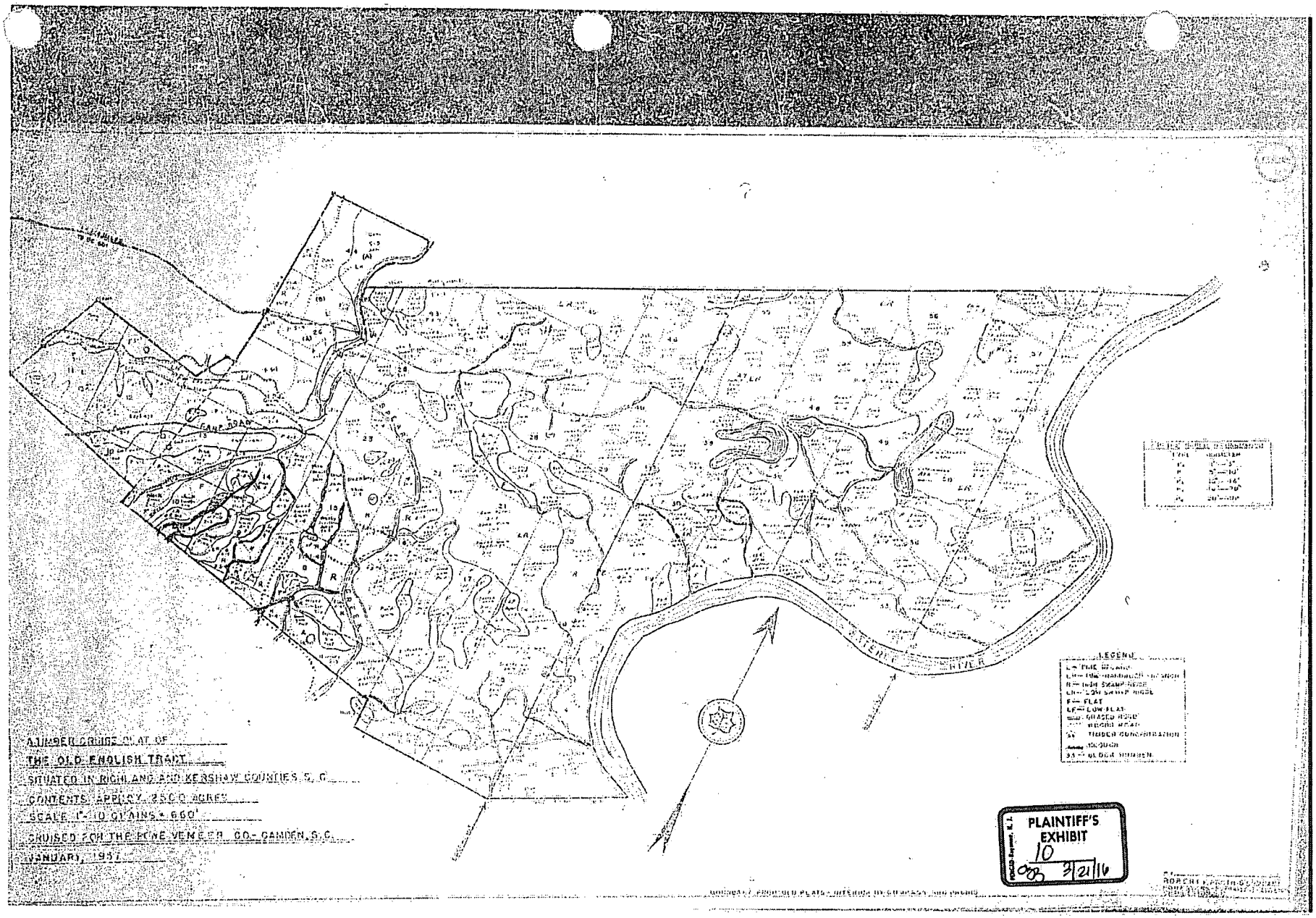
No. 7 THEAVER PUBLISHING Co. CONWAY, S. C.

SILVE S. Mfg. Stationers Printing Binding

Savage, Royall, Kinard & Kinard
Camden, S. C.

FILE FOR RECORD
'69 SEPT. 26 4:06 P.M.
O. E. OSBURN
CLERK OF COURT
KERSHAW COUNTY

PB34 p544



A TIMBER CRUISE PLAT OF
THE OLD ENGLISH TRACT
SITUATED IN RICHLAND AND KERSHAW COUNTIES, S. C.
CONTENTS APPROX. 2500 ACRES
SCALE 1" = 10 CHAINS = 660'
CRUISED FOR THE POPE VENEER CO. - CAMDEN, S.C.
JANUARY, 1957

Clerk of Court of Common Pleas of Richland County, S. C.—Book F. Q. of Deeds

FQ
349
10/20/44
10/20/44

Geo. N. Kester
to
James E. Powe et al

STATE OF SOUTH CAROLINA
County of Richland

KNOW ALL MEN BY THESE PRESENTS, That I, George N. Kester in the State aforesaid, for and in consideration of the sum of Twenty Two Thousand Five Hundred Dollars ($22,500.00) to me paid by James E. Powe & Edwin P. Guy, Doing Business As The Powe Veneer Company in the State aforesaid, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said James E. Powe And Edwin P. Guy, Doing Business As The Powe Veneer Company,

All that piece or tract of land in the State of South Carolina, one being in Richland County, but a small portion lying in Kershaw County, and being on the waters of the Wateree River, Spear's Creek, and Rollins Creek, and containing one thousand four hundred seventy-three (1473) acres, more or less, and being bounded as follows; north by property of James E. Powe and Edwin P. Guy known as the Harriet English Place, owned by the Wateree River; south by lands of W. B. Burney, and west by lands formerly of the Black estate and lands of R. W. Lloyd.

The above described property is composed of several tracts acquired by George W. Kester under the following deeds; (1) deed of R. Leland Moore dated January 15, 1938, and recorded in the office of the Clerk of Court for Richland County, in book ES at page 497; (2) deed of C. E. Bennett and May K. Bennett dated June 2, 1938 and recorded in said office in Book EO at Page 492, (3) deed of C. C. Bullock and Rose C. Bullock dated June 1, 1938 and recorded in said office in book EO at page 499; (4) deed of R. W. Lloyd dated December 30, 1941 and recorded in said office in book FB at page 257; (5) deed of P. H. Brown dated January 27, 1942 and recorded in said office in book FB at page 214.

It is understood and agreed between the parties hereto that in addition to the consideration above stated the grantee agrees to reimburse the grantor for such Federal Income Tax for 1944 as may be chargeable to the grantor in connection with this sale, from until March 15, 1945 the grantee shall not remove more than 60% of the timber located upon the above described property and this condition and the tax reimbursement above referred to shall until March 15, 1945, be a covenant running with the above described lands.

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 said James E. Powe & Edwin P. Guy, Doing Business As The Powe Veneer Company, their heirs and assigns forever.

And I do hereby bind myself and my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said James E. Powe & Edwin P. Guy, Doing Business As The Powe Veneer Company, their heirs and assigns against me and my heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my hand and seal this 20th day of October in the year of our Lord one thousand nine hundred and forty four and in the one hundred and sixty ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:
Ola Burney
C. F. Grayson

Int. Rev. $2.25
Int. Rev. $2.25
Cancelled

George N. Kester (Seal)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Before me, a Notary Public of South Carolina, personally appeared Ola Burney and made oath that she saw the within named George N. Kester sign, seal and as his act and deed, deliver the within written Deed for the uses and purposes therein mentioned; and that she with C. F. Grayson witnessed the execution thereof and subscribed their names as witnesses thereto.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20 day of October, 1944.
C. F. Grayson
Notary Public of South Carolina
Ola Burney

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RENUNCIATION OF DOWER

I, C. F. Grayson, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Lizzie C. Kester the wife of the within named George N. Kester did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named James E. Powe & Edwin P. Guy, Doing Business As The Powe Veneer Company, their heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Lizzie C. Kester

PLAINTIFF'S EXHIBIT 11 3013/21/16

I CAROLINA

STATE OF SOUTH CAROLINA

C. E. Bonnette & Wife

Geo. W. Kester

KNOW ALL MEN BY THESE PRESENTS, That We, C. E. Bonnette & Wife May W. Bonnette of Richmond County, North Carolina in the State aforesaid, for and in consideration of the sum of Ten Dollars and other valuable consideration to us in hand paid at and before the sealing of these presents by George W. Kester in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said George W. Kester, his heirs and assigns

All that piece, parcel or tract of land, lying and being and situated in Richland County, South Carolina, containing four hundred fourteen (414) acres, more or less, and bounded on the North by lands of W.L.Saunders, on the east by the Wateree River, on the south by lands of W.B.Burney, and on the west by lands of Mattie LeC.DesPortes, and Ella J.Miller, said tract being composed of Tract No.1 allotted to Mattie LeC.DesPortes and Tract No.2 allotted to LeLia S.Miller (being conveyed by J.H.Miller on a partition plat filed in Judgement Roll No.1158, in the office of the Clerk of Court for Fairfield County, South Carolina, in Equity the action of Mattie LeC.DesPortes against John A.Myers and others, and recorded in said Office in Book AK page 422 and being a portion of the lands described in a deed from J.H.Miller, Ella J.Miller, and Mattie LeC DesPortes to Lura Mae Kinsland, dated the 21st day of December 1926, and duly recorded in Book "CW" page 121, in the Office of the Clerk of Court in Richland County. Granting also by these presents all such rights-of-way for ingress and egress as are appurtenant and applicable to the above described lands, and reserving such rights as may be applicable to other adjoining lands, all rights reserved and granted herein are in accordance with and subject to the considitions set forth in said deed from J.H.Miller and others to Lura Mae Kinsland, dated the 21st day of December 1926, and recorded in Book "CW page 121, in the Office of the Clerk of Court in of Richland County. This conveyance is made subject to all taxes, tax liens and tax sales assessed, accrued and unpaid against said lands, which the grantee assumes and agrees to pay.

State of South Carolina
I certify that this is a true and correct copy
Dated 31st May, 2016
Register of Deeds
Richland County

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 said George W. Kester, his heirs and assigns forever.

And we do hereby bind ourselves and our heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said George W. Kester his heirs and assigns against the lawfully claiming, or to claim, the same or any part thereof.

WITNESS our hand and seal this 2nd day of June in the year of our Lord one thousand nine hundred and thirty nine and in the one hundred and sixty fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:
J. G. Patla
Rose L. Patla

$48.30 Fi Rev. Stamps cancelled

Affidavit
C. E. Bonnette (Seal)
May W. Bonnette (Seal)

STATE OF SOUTH CAROLINA, County of Richland

Before me J. G. Patla a Notary Public of South Carolina, personally appeared and made oath that he saw the within named C. E. Bonnette & Wife May W. Bonnette sign, seal, and as their act and deed, deliver the within written Deed for the uses and purposes therein mentioned; and that he, with Rose L. Patla witnessed the execution thereof subscribed their names as witnesses thereto.

SWORN TO AND SUBSCRIBED BEFORE ME, this 2nd day of June 1939.

Rose L. Patla (Seal)
Notary Public of South Carolina
My commission expires Dec 27- 1940

J. G. Patla

STATE OF SOUTH CAROLINA, County of Richland

RENUNCIATION OF DOWER

I, Rose L. Patla, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. May W. Bonnette the wife of the within-named did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named, George W. Kester, his heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this 2nd day of June Anno Domini 1939

Rose L. Patla (Seal)
Notary Public of South Carolina

May W. Bonnette

Filed for record this 5 day of June 1939 at 2:10 o'clock P. M.

C.C.C.P.&G.S.

PLAINTIFF'S EXHIBIT 12 3/21/16

Bordens Co. a Corp.
to
C. E. Bowerbank

STATE OF SOUTH CAROLINA
County of Richland

KNOW ALL MEN BY THESE PRESENTS, That Borden Company, a corporation duly organized under the laws of the State of North Carolina in the State aforesaid, for and in consideration of the sum of Five Dollars and other valuable consideration to it in hand paid at and before the sealing of these presents by C. E. Bowerbank of the County of Richland, State of South Carolina the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said C. E. Bowerbank, his heirs and assigns

All that piece parcel or tract of land lying and being and situate in Richland County, South Carolina, containing Four hundred fourteen (414) acres, more or less and bounded on the North by lands of W.L. Saunders, on the east by the Wateree River, on the south by lands of W.H.Burney and on the west by lands of Mattie Le DesPortes, and Ella J.Miller, said tract being composed of Tract No.1 allotted to Mattie ~~Le DesPortes~~ Subtract No.2 allotted to Lelia S.Miller, (being conveyed by J.H.Miller) on a partition plat filed in Judgement Roll No.1152 in the office of the Clerk of Court for Fairfield County, South carolina, in the action of Mattie Le DesPortes against John A.Myers and others and recorded in said office in Book "AK" page 422, and being also a portion of the land described in a deed from J.H.Miller Ella J.Miller and Mattie Le DesPortes to Lura Mae Kinsland, dated the 21st day of December 1926, and duly recorded in Book C-W page 121, in the office of the Clerk of Court for Richland County.

Granting also, by these Presents all such rights of-way, for ingress and egress as are appurtenant and applicable to the above described lands, and reserving such rights as may be applicable to other adjoining lands, all of rights reserved and granted herein are in accordance with the and subject to the conditions set forth in said deed from J.H.Miller and others to Lura Mae Kinsland, dated the 21st day of December 1926, and recorded in Book "C-W page 121, in the office of the Clerk of Court for Richland County.

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 said C. E. Bowerbank, his heirs and assigns forever.

And the said Borden Company do hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said C. E. Bowerbank, his heirs, executors and administrators, against the claims of any person or persons claiming or to claim the same or any part thereof.

In Witness Whereof, the said Borden Company has caused these presents to be signed with its corporate name by its Vice President, and its corporate seal to be hereunto affixed, attested by its Secretary, at Richland, this 2nd day of June in the year of our Lord one thousand nine hundred and thirty-nine, and in the one hundred and sixty-third year of the Sovereignty and Independence of the United States of America.

Affidavit Filed

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:
R. M. Mills
Ruby D. Rickman

Borden Company (Corporate Seal)
By J. W. Borden Jr. Vice President
Attest: Edward B. Greenawalt Secretary

STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

Before me, a Notary Public of South Carolina, personally appeared R. M. Mills and made oath that he saw the within named Borden Company by its proper officers sign, seal and as its act and deed deliver the within written Deed for the uses and purposes therein mentioned, and that he, with Ruby D. Rickman witnessed the execution thereof, and subscribed their names as witnesses thereto.

SWORN TO AND SUBSCRIBED BEFORE ME, this 3rd day of June 1939.
Ruby D. Rickman
Notary Public of South Carolina
My Comm. Exp. Dec. 10- 1939
R. M. Mills

STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

RENUNCIATION OF DOWER

Recorded 10-40 A.M. June 13- 1939 edel

I, _____, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. _____ the wife of the within named _____ did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named _____ heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this _____ day of _____, Anno Domini 19__

Notary Public of South Carolina

Filed for record this _____ day of _____ 19__, _____ o'clock.

C.C.C.P.&G.S.

PLAINTIFF'S EXHIBIT 13 3/21/14

State Of SOuth CarOlina :
COunty Of Richland: :

KNOW ALL MEN BY THESE PRESENTS, that we H O.Williams and Wife, and J.E.West and Wife Byrdie L.West, in the State aforesaid, for and in cOnsideratiOn Of the sum Of Ten DOllars ($10.00) in hand paid at and before the sealing Of these presents by BOrdeum CO, Of Buna Ombe COunty NOrth CarOlina, the receipt whereOf is hereby acknOwledged have granted, bargained, sOld and released and by these presents dO grant, bargain, sell and rElease, untO the said BOrdeum CO:

All that piece, parcel Or tract Of land lying, being and situate in Richland COunty, SOuth CarOlina, cOntaining fOur hundred and fOurteen (414) acres, mOre Or less, and bOunded On the nOrth by lands Of W.L.Saunders On the east by the Wateree River, On the sOuth by lands Of Wade Burney and On the west by lands Of Mattie Le DespOrtes and Ella J.Miller, said tract being a cOmpOsed Of Tract NO.1 allOtted tO Mattie Lee DespOrtes and tract NO.2 allOtted tO Leila S.Miller, being cOnveyed J.H.Miller, On a partitiOn plat filed, in Judgment ROll NO.II58, in the Office Of the Clerk Of COurt fOr Fairfield COunty, S.C, in the actiOn Of Mattie Lee DespOrtes against John A.Myers and Others, and recOrded in said Office in BOOk "AK" Page 422.

Granting alsO by these presents, all such right Of way, fOr ingress and egress as are appurtenant and applicable tO the abOve described lands, and reserving such rights as may be applicable tO Other adjOining lands, all Of rights reserved and granted herein are in accOrdance with and subject tO the cOnditiOns set fOrth in a deed frOm J.H.Miller, Ella J.Miller and Mattie Lee DespOrtes tO Laura Mae Kinsland, dated the 21st day Of December 1926, and duly recOrded in bOOk W Page 121, in the Office Of the Clerk Of COurt Richland COunty.

This cOnveyance is made subject tO all the terms and cOnditiOns set Out and cOntained in a certain deed fOr the sale and relOval Of timber executed by Laura Mae Kinsland tO C.F.COrn Of Sumter, S.C, which instrument bears date Of March 2nd, 1927, and the warrantis Of seizen right tO cOnvey and against insumbarances as hereinafter cOntained, are subject tO the terms and effect Of said instrument, and the grantOrs hereby transfer, assigns and cOnvey untO the grantees herein all the rents prOfits, percentages, Or purchase price frOm the sale Of said timber, applicable tO the tracts Of land herein cOnveyed that is tO say, this cOnveyance is made subject tO the burndes Of the said cOntract, and the grantees are allOwed the benefits thereunder, insO far as the same effects the tracts Of land hereby cOnveyed.

TOgether with all and singular the rights, members hereditments and appurtenances tO the said premises, belOnging Or in anywise incident Or appertaining.

TO Have And TO HOld all and singular the said premises befOre mentiOned untO BOrdum CO, [illegible]

And we dO bind Ourselves and Our hiers, executOrs, and administratOrs tO warrant and fOrever defend all and singular the said premises untO the said BOrdum CO, their hiers and assigns against us and Our hiers and all Others whOmsOever lawfully claiming, Or tO claim the same, Or any part thereOf.

Witness Our hands and seals this the 24th day Of December 1929 in the year Of Our LOrd One thOusand nine hundred twenty nine in the One hundred and fifty third year Of the SOvereignty and Independence Of the United States Of America.

Signed, sealed and delivered in the presence Of:
DOle N.BOrdum.
J.D.Dermid.

H.O.Williams
Dimple B.Williams (Seal).
J.E.West (Seal).
Byrdie L.West (Seal).

NOrth
Buna Ombe
Dale N.BOrdum

H.O.Williams and Dimple B.Williams and J.E.West, their

Byrdie L.West

Deed
J.D.Dermid.
24
Dec. 38.
J.D.Dermid.
N.C.
(NOtarial Seal).
COm.Expires Sep.13, 1938.

NOrth Buna Ombe
J.D.Dermid.
Dimple B.William and Byrdie L.West Wives
NOrth
H.O.Williams and J.E.West
BOrdum CO.
their hiers
22
Dec. 29.
J.D.Dermid.
N.C.
(NOtarial Seal).
COm.Expires Sept.13th, 1938.

Dimple B.Williams
Byrdie L.West

RecOrded September 28th, 1936, at 10:50 A.M.

State of South Carolina
I certify that this is a true and correct copy
Dated 3/18, 2016
Register of Deeds
Richland County

PLAINTIFF'S EXHIBIT 14 3/21/16

And I do hereby bind myself and my hiers,executors,and administrators,to warrant and forever defend all and singular the said premises unto the said A.E.Craig,his hiers and assigns,against me and my hiers,and all other persons whomsoever lawfully claiming,or to claim, the same or any part thereof..

Witness my hand and seal this 3rd day of July in the year of our Lord one thousand nine hundred and twenty eight and in the one hundred and fifty second year of the Sovereignty and Independence of the United States of America.

Signed,sealed and delivered in the presence of:
Dorothy F.Joy.
W.S.Gardner.

Luther B.Jones(Seal)

State of South Carolina.
County of Richland.

Personally appeared before me Dorothy F.Joy and made oath that she saw the within named Luther B.Jones,sign,seal and as his act and deed,deliver the within written deed for the uses and purposes therein mentioned,and that she with W.S.Gardner witnessed the execution thereof.

Dorothy F.Joy.

Sworn to before me this 3rd day of July,1928.
W.S.Gardner(L.S.)
Notary Public for South Carolina.

.....Recorded February 28th,1930 at 4:10 P.M.....

State of South Carolina
County of Richland.

Laura Mae Kinsland and C.S.Kinsland.
To
H.C.Williams and Dymple B. Williams,and J.E.West and Lydia West.

State of South Carolina
I certify that this is a true and correct c
Dated 3/12, 20 12
Register of Deeds
Richland County

KNOW ALL MEN BY THESE PRESENTS,That we,Laura Mae Kinsland,and C.S. Kinsland her husband,in the State aforesaid,for and in consideration of the sum of Ten Dollars ($10.00) in hand paid at and before the sealing of these presents by H.C.Williams and Dymple B. Williams,his wife,and J.E.West and Byrdie L.West his wife,of Asheville,Buncombe Co,North Car.the receipt whereof is hereby acknowledged,have granted,bargained,sold and released,and by these presents do grant,bargain,sell and release unto the said H.C.Williams and Dymple B.Williams,as undivided one half interest,and unto J.E.West and Byrdie L.West an undivided one half interest (as an estates by entirley with the right of survivorship) their hiers and assigns:

All that piece,parcel or tract of land lying,being and situate in Richland County,South Carolina,containing four hundred and fourteen(414) acres,more or less,and bounded on the North by lands of W.L.Saunders;on the east by Wateree River;on the south by lands of W.B.Burney;and on the west by lands of Mattie LaC.DePorter and Ella J.Miller;said tract being composed of Tract No.1,allotted to Mattie LaC DePorter,and Tract No.2 allotted to Lelia B.Miller (being conveyed by J.E.Miller) on a partition plat filed in Judgment Roll No.1156,in the office of the Clerk of Court for Fairfield County,S.C.,in the action of Mattie LaC DePorter against John Ashyers and others,and recorded in said office in book AK,Page 422.

Granting,also,by these presents,all such rights of way for ingress and egress,as are appurtenant and applicable to the above described land,and reserving such rights as may be aplicable to other adjoining lands;all of rights reserved and granted here are in accordance with and subject to the conditions set forth in a deed from J.E.Miller,Ella J.Miller and Mattie LaC DePorter to Laura Mae Kinsland,dated the 21st day of December 1926,and duly recorded in book "GW" page 121,in the office of the Clerk of Court,Richland County.

This conveyance is made subject to all of the terms and conditions set out and contained in a certain deed for the sale and removal of timber executed by Laura Mae Kinsland to C.F.Corn,of Sumter,S.C,which instrument bears date of March 2nd,1927,and the warranties of seizin,right to convey and against encumberances,as hereinafter contained,are subject to the terms and effects of the said instrument;and the grantors hereby transfer,assign and convey unto the grantees herein,all of the rents,profits,percentage or purchase price from the sale of said timber,applicable to the tracts of land herein conveyed;that is to say,this conveyance is made subject to the burdens of the said contracts and the grantees are allowed the benefits thereunder, in so far as the same affects the tracts of land hereby conveyed.

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 said premises before mentioned unto H.C.Williams and Dymple B.Williams,his wife,an undivided one half interest,as an estate by entirley with the right of survivorship,and unto J.E.West and Byrdie L.West,his wife, an undivided one half interest,as an estate by entirley with the right of survivorship.

And we do hereby bind ourselves and our hiers executors and administrators,to warrant and forever defend,all and singular the said premises unto the said H.C. Williams,and Dymple B.Williams,and J.E.West and Byrdie L.West,their hiers and assigns,against us and our hiers and all others whomsoever lawfully claiming,or to claim the same,or any part thereof.

Witness our hands and seals,this 12th day of July,in the year of Our Lord,one thousand nine hundred and twenty eight,and in the one hundred and fifty third year of the Sovereignty and Independence of the United States of America.

Signed,sealed and delivered(in the presence of:
Guy Beaver.
Eva Lide Irwin.

Laura Mae Kinsland(Seal).
Claud S.Kinsland(Seal).

PLAINTIFF'S EXHIBIT 15
5/21/15
PENGAD Bayonne, N.J.

...South Carolina. } Personally appeared before me
...ty of Richland } Guy Weaver.

...made oath that he saw the within named Laura Mae Kinsland and C.E.Kinsland
...sign, seal and their act and deed deliver the
...e written deed for the uses and purposes therein mentioned, and that
...with Eva LeMcErwin. witnessed the execution thereof.

...rn to before me this 3rd
...of July A. D. 1930 Guy Weaver.
Eva LeMcErwin.
...Notary Public for S.C. (L. S.)
Notarial Seal.

STATE OF SOUTH CAROLINA, North Richland COUNTY. RENUNCIATION OF DOWER

I, Eva LeMcErwin, Notary Public of South Carolina, do hereby certify unto all whom it may concern that Mrs. Laura Mae Kinsland the wife of the within named C.E.Kinsland on this day appeared before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto H.O.Williams and Dempsie D.Williams, J.E.West, and Byrdie L.West and assigns, all her interest and estate, and also all her Right and Claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my Hand and Seal this 3rd day of Aug. A. D. 1930.
Eva LeMcErwin.
Notary Public of S.C.
Notarial Seal.

Laura Mae Kinsland

Recorded Feb.28th,1930 at 4:10 P.M.

State of South Carolina
County of Richland.

R.T.Neeley,E.V.Neeley,Sallie Geers, Julia Anne Tucker,Frank Neeley, Andrew Neeley,Tom Neeley,Martha James, and William Neeley.
To
V.E.Neeley.

Title To Real Estate.

Whereas Clarkie Gates died intestate and leaving as her sole hiers at law the following:R.T.Neeley,E.V.Neeley,Sallie Geers,Julia Anne Tucker,Frank Neeley,Andrew Neeley,Tom Neeley,V.E.Neeley,Martha James,and William Neeley,and the said hiers at law are desirous,and do hereby partition and convey to each other their respective undivided interest in the lot of land hereinafter described,which lots byva scheme of division are set forth on a plat made of the lands of the estate of the said Clarkie Gates,dated March 20,1925m by Tomlinson Engeering Company,and subdivided February 12,1930,now therefore,

Know All Men By These PresentsThat we R.T.Neeley, E.V.Neeley,Sallie Geers,Julia Anne Tucker,Frank Neeley,Andrew Neeley,Tom Neeley,Martha James, and William Neeley,County of Richland,in the State aforesaid,for and in consideration of the sum of One($1.00) Dollar and other valuable consideration to us paid by V.E.Neeley,in the State aforesaid,have granted,bargained,sold and released,and by these presents do grant,bargain,sell and release unto the said V.E.Neeley.

All that certain piece,parcel or lot of land,situate lying and being near Columbia,County of Richland,South Carolina,containing four and four tenths (4&4) acres,more or less,designated as lot No.8 on a plat made of the property of Clarkie Gates, deceased,by Tomlinson Engeering Co,dated March 20,1925,subdivided February 12,1930,bounded on the north by Hunter A.Gibbes and ... Gibbes,and measuring thereon one hundred and eighty(180') feet, on the east by lot #9 and measuring thereon eleven hundred and eighteen(1118') feet,on the south by the Seaboard Railway Co,measuring thereon one hundred and eighty(180') feet,on the west by lot No.7 and measuring thereon ten hundred and sixty(1060') feet .

Together with all and singular the rights,membersm 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 said V.E.Neeley,his hiers and assigns forever.And we do hereby bind ourselves and our hiers,executors and administrators to warrant and forever defend all and singular the said premises unto the said V.E.Neeley,his hiers and assigns,against us and our hiers and all others lawfully claiming,or to claim,the same or any part thereof.

Witness Our Hands and seals this 22d day of February in the year of our Lord one thousand nine hundred and thirty,and in the one hundred and fifty third year of the Sovereignty and Independence of the United States of America.

Signed,sealed and delivered in the presence of:
Margarite Dale Donald
Jess W.Crouse.

Sallie Geers(Seal)
Martha James(Seal).
Frank Neeley(Seal).
William E.Neeley(Seal).
R.T. Neeley(Seal).
Andrew Neeley(Seal).
Anne Tucker(Seal).
Tom Neeley(Seal).
E.V.Neeley(Seal).
Julia Anne Tucker(Seal).
E.E.Tucker. (Seal).
Jesse T.Tucker(Seal).

State of South Carolina
I certify that this is a true and correct copy
Dated 1/31/15
...C.C.P.
...County

PLAINTIFF'S EXHIBIT 16
08206 3/21/16

STATE OF SOUTH CAROLI

J. H. Miller et Ux

to

Lura Mae Kirkland

For Record of Chattel Mortgages Book E Page 182

KNOW ALL MEN BY THESE PRESENTS, That We J. H. Miller, Ella J. Miller (formerly Ella J. Monk) and Mattie Lee C. DuPorte

in the State aforesaid for and in consideration of the sum of Five Thousand ($5000.00) Dollars, unto us in hand paid at and before the sealing of these presents by Lura Mae Kirkland of Columbia in the State aforesaid

to us in hand paid at and before the sealing of these presents by Lura Mae Kirkland of Columbia, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Lura Mae Kirkland, her heirs and assigns

All that piece, parcel or tract of land lying and being and situate in Richland County, South Carolina, containing four hundred and fourteen (414) acres, more or less, and bounded on the North or lands of W. A. Sanders — the east by Watereé River, on the south by lands of W. B. Burney, and west by lands of said Mattie Lee DuPorte and Ella J. Miller, said tract being composed of Tract No. 1 allotted to Mattie Lee DuPorte and Tract No. 2 allotted to Leila S. Miller (being surveyed by J. E. Miller) on a Partition Plat filed in Judgement Roll No. 4198 in the office of the Clerk of Court for Fairfield County, S. C. in the action of Mattie Lee DuPorte against John A. Dyess and others and recorded in said office in Book A-M page 422. Also

All that piece, parcel or tract of land lying and situate in Richland County, South Carolina, containing one hundred and sixty six (466) acres, more or less, and bounded on the North by lands of Moore Lumber Co., on the east by Wateree River, on the south by lands of W. A. Sanders and on the west by lands of Ella J. Miller, said tract being Tract No. 4 allotted to Ella J. Miller (Now Miller) on Partition Plat above referred to.

For a more particular description of both of said tracts reference may be had to Plat of C.T. Floyd C.E. dated 20th day of December 1926, which is made a part of this Deed.

The grantors also hereby grant to the grantee hereby, her heirs and assigns, rights of way held by the grantors by operation of law or by deed and also convenient rights of way for cart and wagon roads over the lands of the parties of the first part and of each of them to the Burney lands, the Hart M. lands and the English lands for the purpose of ingress and egress from the public road to each of said tracts of land, said grantee, her heirs and assigns to have the right to construct and use cart and wagon roads connecting the two tracts of land hereby conveyed with each other by the nearest convenient route, the precise route upon the said lands to be followed where practical and reasonable, and no lands at present under cultivation to be taken for roads without compensation being made for same. The said rights of way to be appurtenant to and to pass by conveyance of the tracts of land above described. The said right of way not to exceed twenty feet in width and when established shall be confined to the same line and location and it is hereby expressly understood and agreed by and between the grantors and the grantee that no one of the grantors is liable under his or her warranty to any part of the lands hereby conveyed by the other of grantors, each grantor being bound under the said covenant of warranty only as to the tract owned by him or her.

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 said Lura Mae Kirkland, her heirs and assigns forever.

And we do hereby bind ourselves and our heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Lura Mae Kirkland, her heirs and assigns against us and our heirs and all others whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our hand and seal, this 21st day of December in the year of our Lord one thousand nine hundred and twenty-six and in the one hundred and fifty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

R. G. Moore — $5824.00 Cancelled — J. H. Miller

R. P. McGowan — Ella J. Miller

Mattie Lee C. DuPorte

STATE OF SOUTH CAROLINA,
County of Laurens

Before me R. G. Moore, a Notary Public of South Carolina

Personally appeared R. G. Moore and made oath that he saw the within named J. H. Miller, Ella J. Miller and Mattie Lee C. DuPorte sign, seal, and as their act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that he, with R. P. McGowan witnessed the execution thereof and subscribed their names as witnesses thereto.

SWORN TO AND SUBSCRIBED BEFORE ME, this 21st day of December 1926

R. P. McGowan (Seal)
Notary Public of South Carolina.

R. G. Moore

STATE OF SOUTH CAROLINA,
County of Laurens

RENUNCIATION OF DOWER.

I, R. P. McGowan, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Ella J. Miller the wife of the within named J. H. Miller did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Lura Mae Kirkland, her heirs and assigns all her interest and estate, and also all her right and claim of dower of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this 21st day of December Anno Domini 1926

R. P. McGowan (Seal)
Notary Public for South Carolina.

Ella J. Miller

Filed for record this 3 day of Jan 1927 at 11:20 A.M. and recorded

C.C.C.P. & G.

PLAINTIFF'S EXHIBIT 17 98 3/2/16

State of South Carolina } In the Court of
County of Fairfield } Common Pleas.

Mattie Le b. Desportes
vs.
John A. Myers, as Trustee
of the estate of Mary P.
Black, deceased, and others.

The undersigned, Commissioners appointed to make Partition of the tracts of land sought to be Partitioned in this action, respectfully Return to the Court:

That in obedience to the instructions contained in the Writ in Partition to us directed, after having been first duly sworn, to divide the said lands fairly and equally, according to the best of our skill and ability, and having called to our aid H Edmunds, a surveyor, we went upon the said premises, and we have divided the said premises, and allot the same as follows:

River Place, Plat No. 1.

To Mattie Le b. Desportes, Tracts E and No. 1.
To Lula S. Miller, Tracts D and No. 2.
To Mary P. Black, Tracts C and No. 3.
To Ella L. Black, Tracts F and No. 4.

1

PLAINTIFF'S EXHIBIT 18 3088 OS 8/21/16

To Eunice J. Black, Tract A. & No. 6.
To Virginia J. Black, Tract B. & No. 5.

Sand Hill Place, Plat No. 2.

To Mattie Lee Despartes, Tract C.
To Leila B. Miller, Tract B.
To Mary B. Black, Tract F.
To Ella J. Black, Tract A.
To Eunice J. Black, Tract D.
To Virginia J. Black, Tract E.

Home Place, Plat No. 3.

To Mattie Lee Despartes, Tract F.
To Leila B. Miller, Tract E.
To Mary P. Black, Tract D.
To Ella J. Black, Tract A.
To Eunice J. Black, Tract C.
To Virginia J. Black, Tract B.

We have also cut off the Tract of land designated on Plat No. 4, known as the Holcomb Tract, and containing seventy one and 3/10 acres which we value at Three hundred dollars, and we respectfully recommend be sold and the proceeds applied to the costs and expenses of this action.

All which is respectfully submitted.

J. Stewart
A. P. Austin
J. N. Woodward

29th Dec 1884

In the Common Pleas.

Mattie L. L. Desportes

vs.

John A. Myers, as Trustee, and others.

Return of Commissioners in Partition

Filed 5th Feby 1885

W. M. Mew C.C.P.

The State of South Carolina.
To Messrs. Frank B. Austin, J. Turner Stewart, Thomas H. Woodward, John Boyd, and George H. McMaster, Greeting.

Whereas it has been made to appear, in the Honorable Court of Common Pleas, for the County of Fairfield in the State aforesaid that Mattie Lee C. Desportes, Lula S. Miller, Mary P. Black, Ella J. Black, Eunice J. Black, and Virginia J. Black are seized in fee, as tenants in common, of all that certain piece, parcel or tract of land, containing five hundred and thirty six acres, more or less, situate and lying on Quattiman's Creek in the County and State aforesaid; and bounded by lands formerly owned by John L. Palmer, Mary Watling, by the estate of William Richardson deceased, and by the estate of Osmond Woodward, deceased: and also, a certain tract of land, lying, being and situate in the Counties of Richland, Kershaw and Fairfield in the State aforesaid, on the Wateree River, containing two thousand eight hundred acres, more or

less, and bounded by lands of N. Austin Black, the Englishes, Nixons and others: and that the said tracts of land are now subject to be partitioned between the said Matrice Le C. Despotes, Lida S. Miller, Mary P. Black, Ella J. Black, Eunice J. Black and Virginia J. Black, in the proportions hereinafter mentioned.

And Whereas the said Matrice Le C. Despotes has filed a Complaint in the said Court praying for a partition of the said premises, and thereupon such proceedings have been had, as that the said Court did on the ___ day of September 1884, order that a Writ in Partition do issue to be directed to you the above named Commissioners, authorizing and requiring you to go upon the aforementioned premises and to make Partition thereof according to the Act of the General Assembly in such case made and provided.

Now, therefore, you the said Frank B. Austin, J. Turner Stewart, Thomas H. Woodward, John Boyd and George H. McMaster or a majority of you are hereby authorized and re-

quired, after being sworn to do impartial justice to go upon the premises in question, (taking to your aid a surveyor, if necessary) and so to divide the same as to allot to the above named Mattie Le. Desfontes, Leila S. Miller, Mary P. Black, Ella J. Black, Eunice J. Black, and Virginia J. Black, each, the one sixth (1/6) part thereof: regard being had to the true and real value of said land. And when you have so done, you, or a majority of you as aforesaid, shall return a general plat of said land into the Clerks office of said County, with a Certificate thereon under your hands and seals, describing the manner in which you have made the Partition aforesaid. But if, in the opinion of you or a majority of you, the said land can not be fairly and equally divided between the parties interested therein, without manifest injury to them, or some or one of them, then you shall appraise the value of said land, and certify such appraisement and your opinion as aforesaid to the said Court.

And you are required to return
this Writ, with an account of your
proceedings thereon to the said Court
at Fairfield Court House, on or before
the first day of October, next.

Witness C. H. Kew, Esquire,
Clerk of the said Court at Fair-
field Court House the
day of September in the year
of our Lord, one thousand eight
hundred and eighty four, and
in the one hundred and ninth
year of the Sovereignty and
Independence of the United
States of America.

Jas. H. Rion,
Plaintiff's Attorney.

State of South Carolina }
County of Barnwell }

Personally appears
J. J. Dixon, H. B. Austin and
W. N. Woodward
and make
oath that they will fairly and
impartially execute the foregoing
Writ of Partition according to
the best of their skill and
ability.

Sworn to before me
this 22nd day of Sept-
ember, 1884.

W. J. Jordan
Notary Public

J. J. Dixon
H. B. Austin
W. N. Woodward

LIVE OAK LEGAL BLANK,
Printed and Sold only by
Walker, Evans & Cogswell,
CHARLESTON, S. C.

State of South Carolina } In the Court of
County of Fairfield } Common Pleas

Mattie L. C. Desportes,
vs.
John A. Myers as Trustee
of the estate of Mary P. Black,
deceased, Leila S. Miller,
Mary P. Black, Ella J.
Black, Eunice J. Black,
and Virginia J. Black

The Commissioners in Partition having submitted their Return with accompanying plats, showing the division made by them among the parties in interest of the real estate sought to be partitioned in this action: and the Defendants Mary P. Black, Ella J. Black, Eunice J. Black, and Virginia J. Black, by John L. Black their Guardian ad litem, having excepted to the said Return; and after hearing affidavits in support of the exceptions and the viva voce testimony of one of said Commissioners and their surveyor in support of the Return; and the Argument of Counsel thereon:

It is Ordered, Adjudged and Decreed, That the said Return of the Commissioners in Partition be accepted

and filed.

II. That the said Return be confirmed and become the Decree of this Court.

III. That the title to the several parcels respectively assigned to them be vested in the said Maria L. D. Sproles, Lelia S. Miller, Mary P. Black, Ella J. Black, Eunice J. Black, and Virginia J. Black, upon the payment by them of the costs and expenses of this action in proportion to their respective interests in the premises.

IV. That the several plats returned by the said Commissioners with their Return be recorded in the Office of the Register of Mesne Conveyances for Fairfield County aforesaid; the expense thereof to be taxed as part of the costs of these proceedings.

V. That the tract of land delineated in Plat No 4, containing Seventy one 3/4 acres, be sold by the Clerk of this Court on the first Monday in November next or some convenient sale day thereafter, before the Court House door in Winnsboro, after due notice by public advertisement at public outcry to the highest bidder for Cash.

VI. That the said Clerk do apply the proceeds of said sale, first to the pay-

amount of the expenses of said sale, and then to the payment of the costs and expenses of this action.

VII. That if the sum realized from such sale should prove insufficient to pay off said costs and expenses in full, that the balance remaining unpaid be paid by the said Mattie L. Wallace, Lelia S. Miller, Mary P. Black, Ella J. Black, Eunice J. Black and Virginia L. Black, in proportion to their respective interests in the premises; and that the proportion to be paid by each, be charged upon the rents of their respective parcels of the land until the same be paid.

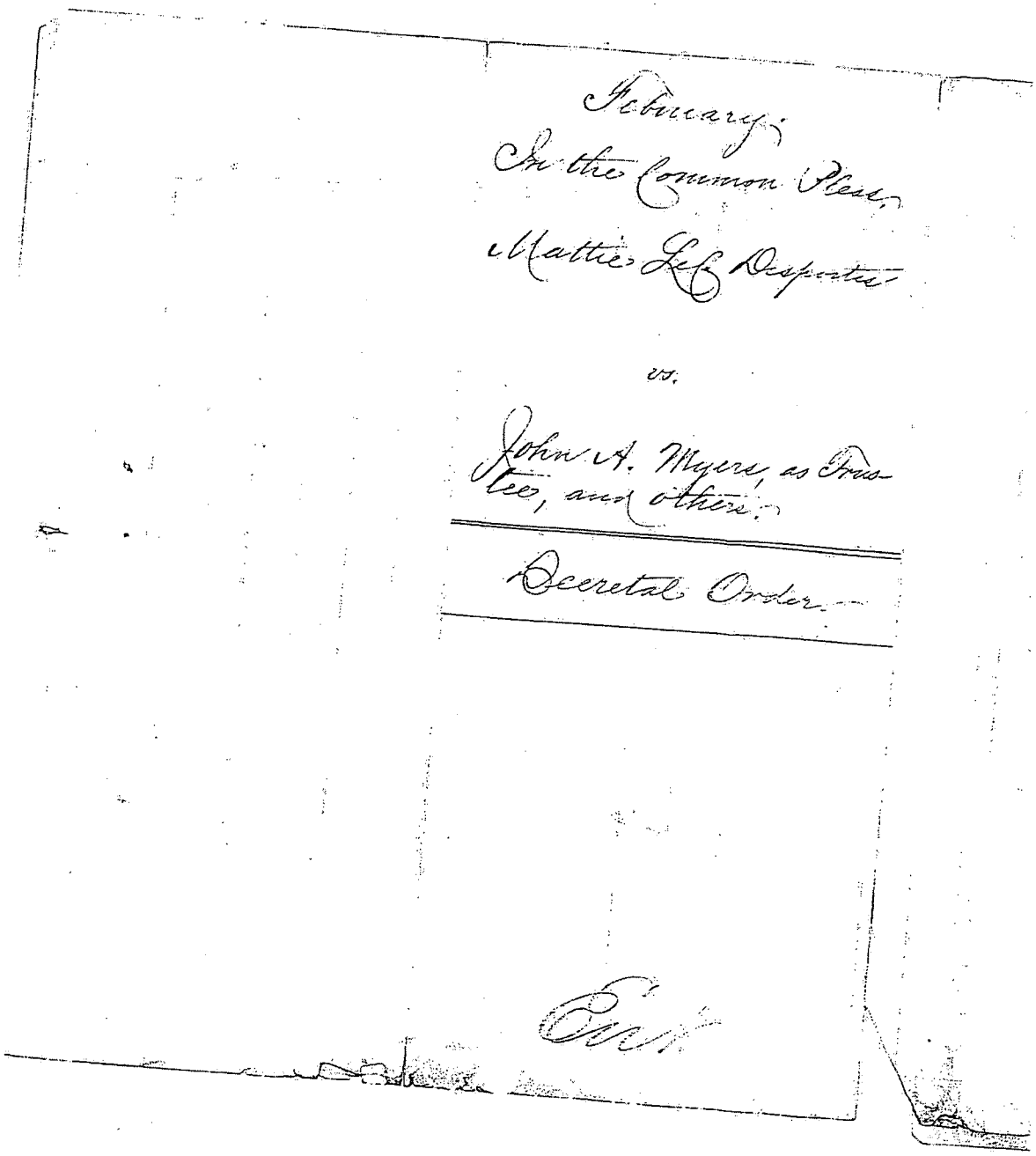
This 20th day of February 1885

M. L. Wallace

and the viva voce testimony of one of said Commissioners and their surveyor in support of the Return; and the Argument of Counsel thereon:

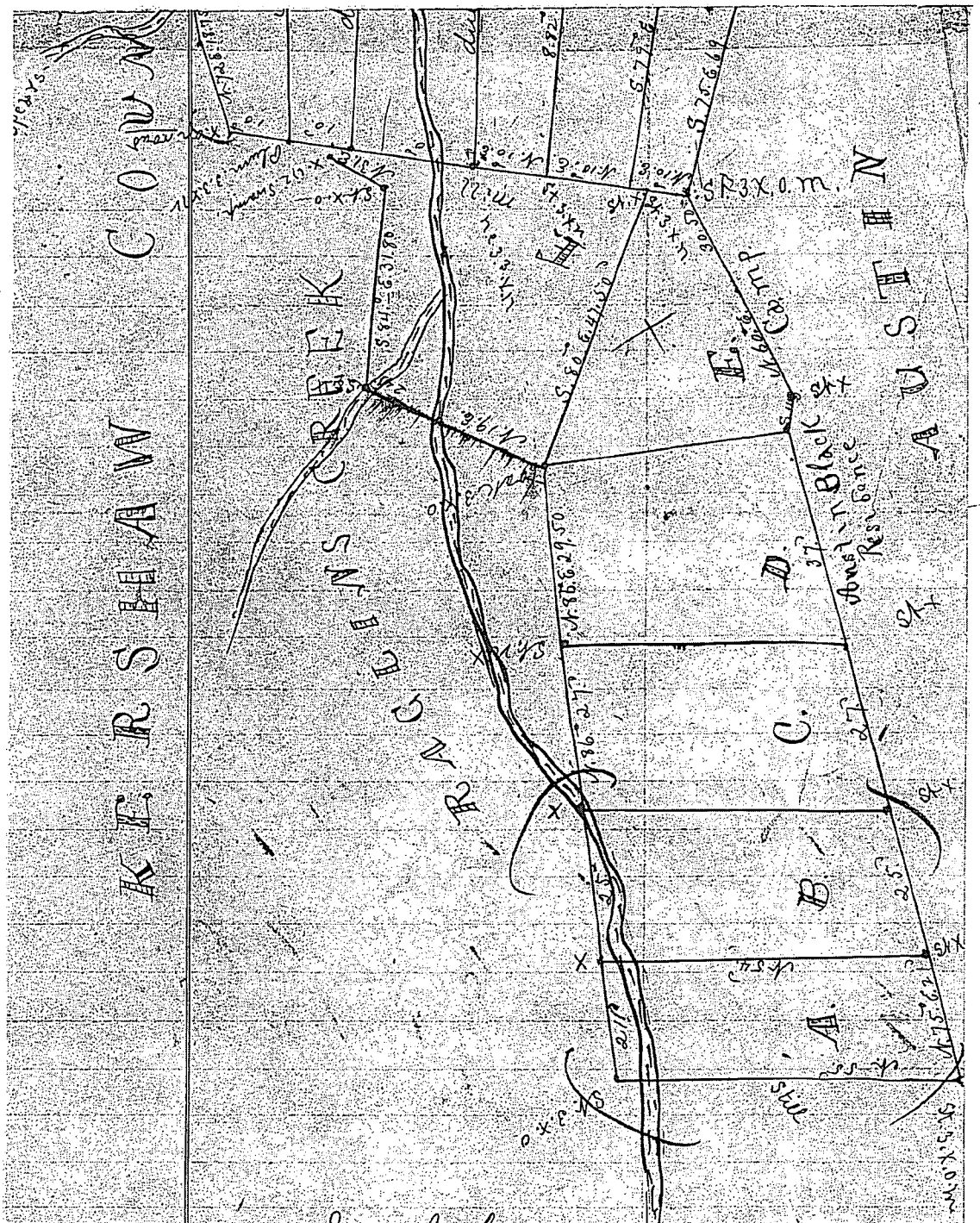
It is Ordered, Adjudged and Decreed

I. That the said Return of the Commissioners in Partition be accepted



February
In the Common Pleas
Mattie Lee Disputes
vs.
John A. Myers, as Trustee, and others.
Decretal Order.

Entered



South Carolina

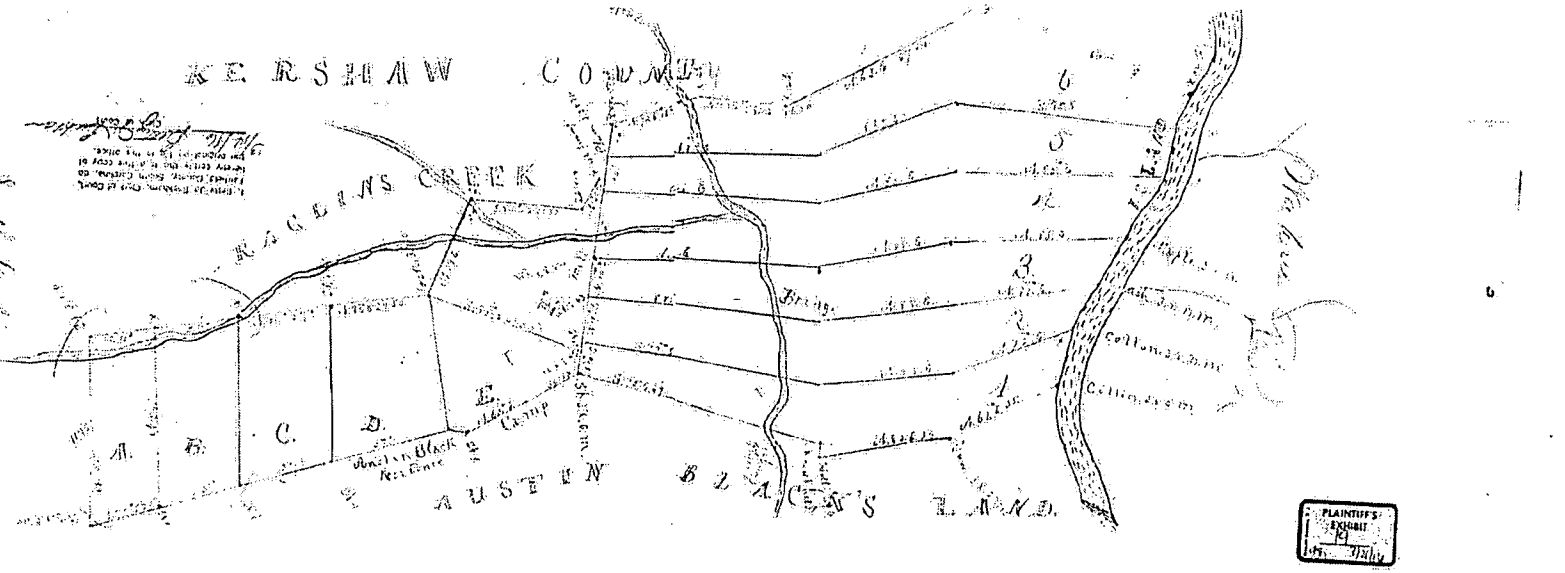
Richland & Kershaw Counties

By request of the Commissioners appointed by the Hon. Court of Sandfield County and by their directions, I have resurveyed and divided the above tract of land into six separate tracts, which lies partly in Kershaw & Richland Co. on R320 Line

Creek waters of the Waccamaw River – A. 110 a. B. 127 7/10 a. C. 122 2/10 a. D. 140 a. E. 108 7/10. F. 155 3/10 a. – Chainmen – Thos. Skelly & Wm. Kennedy – Axeman Jno. Walling. The above are the River Lands, divided also, into six separate tracts as will be seen above, the great swamp also, is shown with its millions of splendid timber filled with deer, turkeys, & other game. Its waters teeming with the finest fish.

A part of this track lies in Horshaw and part in Richland County lying on Spears Creek and the Waccamaw River – I have placed the figures 1. 2 &c to distinguish these lots from others – Thus – Lot (1) 237 a (2) 242 a (3) 289 a (4) 316 a (5) 286 a (6) 331 a – Commissioners & Surveyor Steward – Frank Austin and May Thos. W. Woodward – Surveyed in November & December 1884.

Record to Plat 3rd Book 185


KERSHAW COUNTY
HAGGINS CREEK
A.
B.
C.
D.
E.
Camp
Austin Black's Land
Cotton Field
Cotton Field
PLAINTIFF'S EXHIBIT

Defendant's Chain

1. The Defendant received approximately two hundred ten and five tenths (210.5) acres, being the most western most two hundred ten and five tenths (210.5) acres of her present lands, closest to Hwy US 601 by Deed of Dorothy Martin Tate as Trustee and Nancy Dunn Martin as Trustee of the Edward Frank Martin Jr Trust Dated August 5, 2004, said Deed being dated August 9, 2007 and recorded in the RMC office for Richland County in Book 1359 at Page 2178 on September 20, 2007.
2. The Trustees of the Edward Frank Martin Jr. trust received one hundred sixty four (164) acres of the above two hundred ten and five tenths (210.5) acres tract by Deed Edward Frank Martin Jr dated August 5, 2004 and recorded in the RMC for Richland County in Deed Book 967, page 779. This one hundred sixty four (164) acre tract consists of Parcels 3, 4, 5 and 6 on the October 8, 1930 plat prepared for Ossie E. Martin recorded in Plat book R at page 199.
3. The one hundred sixty four (164) acre tract was conveyed to Edward Frank Martin Jr by Deed of Jessie Martin Pratt and Naomi Martin Jackson dated October 16, 1990 and recorded in the RMC office for Richland County in Deed Book 1001 page 866 on October 18, 1990.
4. The one hundred sixty four (164) acre tract was owned by Edward Frank Martin Sr. who died testate on December 15, 1967 and devised the property to his wife Jessie Dunn Martin for life, remainder to this children, Jessie Martin Pratt, Edward Frank Martin Jr. and Naomi Martin Jackson under Item 2 of his August 1, 1952 will recorded in the Probate Court for Richland County in Box 1057 package 24, 834.
5. The life tenant Jessie Dunn Martin died on November 4, 1985, her estate being filed in the Probate Court for Richland County at 1985-ES-40-01277.
6. Edward Frank Martin, Sr. received the 164 acre parcel by deed of Florence Martin Van Horton dated December 29, 1939 recorded in the RMC office for Richland County in book ES at page 27. Florence Martin Van Horton received the tract by deed of Ellen I. Butler, Tax Collector of Richland County by deed dated September 9, 1936 and recorded in the RMC for Richland County in Deed book ED at page 14. The Richland county Tax Collector seized the property from Mrs. O.E. Martin, defaulting tax payer according to the tax deed.
7. Ossie Martin received one hundred forty (140) acres known as Tract D on the 1885 Fairfield County partition plat by deed of J. H, Miller dated November 18, 1918 and recorded in Book BV at page 69. Ossie E. Martin obtained a portion of the one hundred sixty four (164) acre tract from C.M. Martin by deed of C. M. Martin dated November 15, 1911 recorded in the RMC for Richland County in Book AZ at page 448.



8. Mary Black conveyed one hundred twenty two (122) acres to Cordero M. Martin by deed dated November 14, 1892 recorded in the RMC for Richland County in Book X at page 383.
9. The 1885 partition suit of Mattie L. C. Desportes vs. John A. Meyers as Trustee et al. awards Tracts D and 2 to Leila S. Miller and Tracts C and 3 to Mary Black. Judgment Roll 1158 Fairfield County Clerk of Court.

DEED PREPARATION ONLY
NO TITLE EXAMINATION REQUESTED OR PERFORMED

GRANTEE'S ADDRESS: 107 San Mateo Court
Hopkins, SC 29061

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CORRECTIVE
LIMITED WARRANTY
FIDUCIARY DEED

WHEREAS, the property below was conveyed to Nancy D. Martin by deed of Dorothy Martin Tate and Nancy Dunn Martin as successor Co-Trustees of the Edward Frank Martin, Jr., Trust dated August 5, 2004 by deed dated August 9, 2007, recorded September 20, 2007 in Book 1359 at Page 2178, in the office of the ROD for Richland County, SC; and

WHEREAS, language in the deed made reference to an easement which was not a valid easement and did not exist.

This deed is given to omit the easement language in the deed.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that ***Dorothy Martin Tate and Nancy Dunn Martin as successor Co-Trustees of the Edward Frank Martin, Jr. Trust dated August 5, 2004*** (hereinafter referred to as "Grantor"), for and in consideration of the sum of Five ($5.00) Dollars and no/100 and to distribute a trust, to it paid by ***Nancy D. Martin,*** (hereinafter referred to as "Grantee"), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, her heirs and assigns, subject to the easements, restrictions, rights-of-way, reservations and conditions of record, and matters appearing on plats of record ("Exceptions"), the property described as follows:

SEE EXHIBIT "A" ATTACHED
HERETO AND INCORPORATED
HEREIN BY REFERENCE

TOGETHER with, subject to the above Exceptions, 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, subject to the above Exceptions, all and singular the premises before mentioned unto the said Grantee, her heirs and assigns forever.

State of South Carolina
I certify that this is a true and correct copy
Dated 3/15/ 20 10
Register of Deeds
Richland County

Book 1384-3241
2007110621 12/17/2007 16:06:32:600 Warranty Deed
Fee:$11.00 County Tax:$0.00 State Tax:$0.00
2007110621 Richard W. Rodden Richland County ROD

PLAINTIFF'S EXHIBIT 21 3/21/16

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee, her heirs and assigns, against it and its successors and assigns 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 this 13th day of December, in the year of our Lord two thousand and seven.

WITNESSES:

Gaye Boulas

Timothy L. Thompson

Carl A. Ellsworth

Dorothy Martin Tate

Dorothy Martin Tate, Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004, Grantor

Nancy Dunn Martin

Nancy Dunn Martin, Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004, Grantor

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, a Notary Public for South Carolina, do hereby certify that Dorothy Martin Tate as Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 10 day of December, 2007.

V. Gaye Boulas

Notary Public for South Carolina
My Commission Expires: 8/3/2014

Instrument: 2007110621 Book/Page: R 1384 : 3243 DateTime: 12/17/2007 16:06:32:600

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, a Notary Public for South Carolina, do hereby certify that Nancy Dunn Martin as Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 13th day of December, 2007.

Carla A. Ellsworth
Notary Public for South Carolina
My Commission Expires: 1/24/12

EXHIBIT "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels 3, 4, 5, and 6, containing in the aggregate 164.0 acres, more or less, as shown on a plat surveyed for Heirs of Osie E. Martin by Jas. C. Covington, C.E., dated October 8, 1930, and recorded in the Office of the RMC for Richland County in Plat Book R at page 199; said parcels having such boundaries and measurements as shown on said plat which are specifically incorporated herein by reference thereto.

DERIVATION: This being the property conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 by deed of Edward Frank Martin, Jr. a/k/a E. F. Martin, Jr. dated August 5, 2004 and recorded August 12, 2004 in the office of the Register of Deeds for Richland County in Deed Book 967 at Page 779.

TMS #: R38000-03-07 & R38000-03-15

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U.S. Hwy. 601, in the County of Richland, State of South Carolina; being more particularly shown as a portion of Tract 1 and 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E., dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book R at page 199; said property being more particularly shown and delineated as 23.20 acres on a plat prepared for Neal H. Higgins and Karen J. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded in Plat Book 55, page 7626, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto as often as necessary for a more complete and accurate description; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 by deed of Neal H. Higgins and Karen J. Higgins recorded June 15, 2005 in the office of the Register of Deeds for Richland County in Deed Book 1063 at Page 3486.

TMS #: R38000-03-06

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U.S. Hwy. 601, in the County of Richland, State of South Carolina; being more particularly shown as a portion of Tract 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E., dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book R at page 199; said property being more particularly shown and delineated as 23.30 acres on a plat prepared for Van A. Higgins and Linda L. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded May 19, 1995 in Plat Book 55, page 7627, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto

as often as necessary for a more complete and accurate description; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 by deed of Stanley W. Higgins and Van A. Higgins recorded June 15, 2005 in the office of the Register of Deeds for Richland County in Deed Book 1063 at Page 3488.

TMS #: R38000-03-48

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information.

2. The properties being transferred bearing Richland County Tax Map Numbers 38000-03-07, 38000-03-15, 38000-03-06, and 38000-03-48 were transferred by **Dorothy Martin Tate and Nancy Dunn Martin as Successor Co-Trustees of the Edward Frank Martin, Jr. Trust dated August 5, 2004** to **Nancy D. Martin** on the 13th day of December, 2007.

3. Check one of the following: The deed is

(a)_____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ___X___ exempt from the deed recording fee because (See Information section of affidavit): Exempt #12 - Corrective Deed
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ____ or No ____ to the following. A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: $ 0.00.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	0.00
(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	0.00
(c) Subtract Line 6(b) from Line 6(a) and place result here:	0.00

7. The deed recording fee due is based on the amount on Line 6(c) above and the deed recording fee due is: $0.00.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

TIMOTHY C. THOMPSON

SWORN to before me this 14th
day of December, 2007.

J. Gaye Burks

Notary Public for South Carolina
My Commission Expires: 8/3/2014

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interests and other tangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation.

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and

(12) that constitutes a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

DEED PREPARATION ONLY
NO TITLE EXAMINATION REQUESTED OR PERFORMED

GRANTEE'S ADDRESS: 107 San Mateo Court
Hopkins, SC 29061

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

LIMITED WARRANTY
FIDUCIARY DEED

WHEREAS, the property below was conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004; and

WHEREAS, Edward Frank Martin, Jr., died on July 25, 2006, and pursuant to Article XI, upon the death of Edward Frank Martin, Jr., Dorothy Kelly Martin shall be the successor trustee, but if she is unable to serve, then the successor Co-Trustees shall be Dorothy Martin Tate and Nancy Dunn Martin; and

WHEREAS, Dorothy Kelly Martin predeceased Edward Frank Martin, Jr., on July 14, 2006 and Dorothy Martin Tate and Nancy Dunn Martin became the successor Co-Trustees.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that ***Dorothy Martin Tate and Nancy Dunn Martin as successor Co-Trustees of the Edward Frank Martin, Jr. Trust dated August 5, 2004*** (hereinafter referred to as "Grantor"), for and in consideration of the sum of Five ($5.00) Dollars and no/100 and to distribute a trust, to it paid by ***Nancy D. Martin,*** (hereinafter referred to as "Grantee"), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, her heirs and assigns, subject to the easements, **including an Easement reserved unto Nancy D. Martin and Dorothy M. Tate, their heirs and assigns, referenced herein,** restrictions, rights-of-way, reservations and conditions of record, and matters appearing on plats of record ("Exceptions"), the property described as follows:

SEE EXHIBIT "A" ATTACHED
HERETO AND INCORPORATED
HEREIN BY REFERENCE

TOGETHER with, subject to the above Exceptions, 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, subject to the above Exceptions, all and singular the premises

State of South Carolina
I certify that this is a true and correct copy
Dated 3/12/2016
Register of Deeds
Richland County

1

Book 1359-2178
2007085897 09/20/2007 11:31:55:083
Fee:$11.00 County Tax:$0.00
Warranty Deed
State Tax:$0.00

2007085897 Richard W. Rodden Richland County ROD

PLAINTIFF'S EXHIBIT 24 3/22 3/21/16

before mentioned unto the said Grantee, her heirs and assigns forever.

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee, her heirs and assigns, against it and its successors and assigns 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 this 9th day of August, in the year of our Lord two thousand and seven.

WITNESSES:

George E. Lafayette

Eva M. Robinson

Dorothy Martin Tate

Dorothy Martin Tate, Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004, Grantor

George E. Lafayette

Eva M. Robinson

Nancy Dunn Martin

Nancy Dunn Martin, Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004, Grantor

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, a Notary Public for South Carolina, do hereby certify that Dorothy Martin Tate as Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 9th day of August, 2007.

GEORGE E. LAFAYE III NOTARY PUBLIC SOUTH CAROLINA

George E. Lafayette

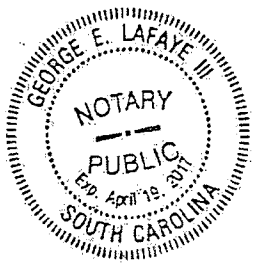
Notary Public for South Carolina
My Commission Expires: 4/19/2017

Instrument: 2007085897 Book/Page: R 1359 : 2180 DateTime: 09/20/2007 11:31:55:083

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, a Notary Public for South Carolina, do hereby certify that Nancy Dunn Martin as Sucessor Co-Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 9th day of August, 2007.



Notary Public for South Carolina
My Commission Expires: 4/19/2017.

EXHIBIT "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels 3, 4, 5, and 6, containing in the aggregate 164.0 acres, more or less, as shown on a plat surveyed for Heirs of Osie E. Martin by Jas. C. Covington, C.E., dated October 8, 1930, and recorded in the Office of the RMC for Richland County in Plat Book R at page 199; said parcels having such boundaries and measurements as shown on said plat which are specifically incorporated herein by reference thereto.

DERIVATION: This being the property conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 by deed of Edward Frank Martin, Jr. a/k/a E. F. Martin, Jr. dated August 5, 2004 and recorded August 12, 2004 in the office of the Register of Deeds for Richland County in Deed Book 967 at Page 779.

TMS #: R38000-03-07 & R38000-03-15

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U.S. Hwy. 601, in the County of Richland, State of South Carolina; being more particularly shown as a portion of Tract 1 and 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E., dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book R at page 199; said property being more particularly shown and delineated as 23.20 acres on a plat prepared for Neal H. Higgins and Karen J. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded in Plat Book 55, page 7626, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto as often as necessary for a more complete and accurate description; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 by deed of Neal H. Higgins and Karen J. Higgins recorded June 15, 2005 in the office of the Register of Deeds for Richland County in Deed Book 1063 at Page 3486.

TMS #: R38000-03-06

ALSO: All that certain piece, parcel or lot of land, situate, lying and being about 23 miles east of the City of Columbia, and about one mile east of State Highway No. 26, now known as U.S. Hwy. 601, in the County of Richland, State of South Carolina; being more particularly shown as a portion of Tract 2 on a plat of land surveyed for the heirs of Mrs. Osie E. Martin by James C. Covington, C.E., dated October 8, 1930, recorded in the office of the Clerk of Court for Richland County in Plat Book R at page 199; said property being more particularly shown and delineated as 23.30 acres on a plat prepared for Van A. Higgins and Linda L. Higgins by W. Frank McAulay, Jr., PLS# 3124, dated January 6, 1995, recorded May 19, 1995 in Plat Book 55, page 7627, and having such shapes, courses, distances, metes and bounds as shown upon said latter plat, reference being craved thereto

as often as necessary for a more complete and accurate description; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Trust dated August 5, 2004 by deed of Stanley W. Higgins and Van A. Higgins recorded June 15, 2005 in the office of the Register of Deeds for Richland County in Deed Book 1063 at Page 3488.

TMS #: R38000-03-48

The Grantors herein specifically reserve unto Nancy D. Martin and Dorothy Martin Tate, who own property adjoining some of this property above, an easement for ingress, egress and access to the property owned jointly by Nancy D. Martin and Dorothy Martin Tate and which property owned by them is known as KERSHAW **County Tax Map Number** 388-1; 387-12; and 387-17.

Instrument: 2004066290 Book/Page: R 967 : 779 DateTime: 08/12/2004 15:41:39:960

GRANTEE'S ADDRESS: 359 Alexander Circle
Columbia, SC 29206

STATE OF SOUTH CAROLINA)
) DEED
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS, that ***Edward Frank Martin, Jr. a/k/a E. F. Martin, Jr.*** (hereinafter referred to as "Grantor"), for and in consideration of the sum of Five Dollars and to fund a revocable trust, to me, paid by ***Edward Frank Martin, Jr. as Trustee of the Edward Frank Martin, Jr. Revocable Trust dated August 5, 2004***, (hereinafter referred to as "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, the property described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels 3, 4, 5, and 6, containing in the aggregate 164.0 acres, more or less, as shown on a plat surveyed for Heirs of Osie E. Martin by Jas. C. Covington, C.E., dated October 8, 1930, and recorded in the Office of the RMC for Richland County in Plat Book R at page 199; said parcels having such boundaries and measurements as shown on said plat which are specifically incorporated herein by reference thereto.

TMS #: R38000-03-07 & R38000-03-15

All that certain piece parcel or lot of land with improvements thereon, situate, lying and being at the Northwest corner of the intersection of Richland Street and Two Notch Road, in the City of Columbia, County of Richland, State of South Carolina, being shown on a plat prepared for J. W. Thomas by Tomlinson Engineering Company, dated November 3, 1923; said lot having the following boundaries and measurements as shown on said plat, to wit: On the Northeast by property now or formerly of Estate of Seegar, ditch being the line, whereon it measures 135.4 feet; on the East by Two Notch Road, whereon it measures 44.7 feet; on the South by Richland Street, whereon it measures 101.1 feet; and on the West by lot now or formerly of Daniel Myers, whereon it measures 129.3 feet; be all measurements a little more or less.

TMS #: R11509-10-16

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being on Northwesterly side of Percival Road, near the City of Columbia, in the County of Richland, State of South Carolina, being a parcel containing 2.24 acres on a plat prepared for E. Frank Martin by McMillan Engineering Company, dated November 19, 1964; said parcel having the following boundaries and measurements as shown on said plat, to wit: On the

Book 00967-0779 Deed
2004066290 08/12/2004 15:41:39:96
Fee: $10.00 County Tax: $0.00 State Tax: $0.00

2004066290 John G. Norris Richland County ROD

State of South Carolina
I certify that this is a true and correct copy
Dated 3/15/2016
Register of Deeds
Richland County

PLAINTIFF'S EXHIBIT 25 337 3/21/16

North by Lot 48, Block Z, Woodfield Park, whereon it measures 96.4 feet; on the East by Lots 49, 50, 51, and 52, Block Z, Woodfield Park, whereon it measures 419.4 feet; on the Southeast by Lot 53, Block Z, Woodfield Park, whereon it measures 189.0 feet; on the South by Percival Road, whereon it fronts and measures 150.5 feet; on the Southwest by Lot 1, whereon it measures 154. 0 feet; and on the Northwest by Lots 22, 23, 24, 25, 26, 27, and 28, Block Z, Woodfield Park, whereon it measures 539. 0 feet, be all measurements a little more or less.

TMS #: R19604-04-14

DERIVATION: This being a portion of the property devised to Jessie Dunn Martin for life with remainder to Jessie Martin Pratt, Edward Frank Martin, Jr. and Naomi Martin Jackson by the terms of the Last Will and Testament of Edward Frank Martin who died testate on December 15, 1967, as evidenced by the records filed in the Office of the Judge of Probate for Richland County in Box 1057 at Package 24,834, Jessie Dunn Martin having died on November 4, 1985 as evidenced by records filed in the Office of the Judge of Probate for Richland County in Package 85ES4001277; Subsequently, an undivided two-thirds (2/3) interest was conveyed to Edward Frank Martin, Jr. by deed of Jessie Martin Pratt and Naomi Martin Jackson dated October 16, 1990 and recorded October 18, 1990 in the Office of the Register of Deeds for Richland County in Deed Book 1001 at Page 866.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE is made subject to easements, conditions and restrictions of record, including matters appearing on plats of record.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, its successors and assigns forever.

AND Grantor does hereby bind himself and his heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against himself and his heirs and assigns 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.

Instrument: 2004066290 Book/Page: R 967 : 780.1 DateTime: 08/12/2004 15:41:39:960

WITNESS MY HAND and seal this 5th day of August, in the year of our Lord two thousand and four.

WITNESSES:

Edward Frank Martin, Jr. a/k/a E.F. Martin, Jr., Grantor

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, the undersigned witness, who being duly sworn, deposes and says that (s)he saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written deed for the uses and purposes therein mentioned; and that (s)he with the other witness whose name appears above, witnessed the execution thereof.

Witness

SWORN to before me this 5th day of August, 2004.

Notary Public of S.C.
My Commission Expires:2/24/2013

State of South Carolina
COUNTY OF RICHLAND

D BK. 1001 PAGE 866

DEED
(Individual)

© CENTRAL OFFICE PRODUCTS
Columbia, S. C.
Form No. 731
Rev. 1977



OCT 18 10 24 AM '90

FILED
MESNE CONVEYANCES
CLARA L. BARTLETT

KNOW ALL MEN BY THESE PRESENTS, That Jessie Martin Pratt and Naomi Martin Jackson (hereinafter called "Grantor"), for and in consideration of the sum of

Five and no/100 and partition of property Dollars

to the Grantor in hand paid at and before the sealing of these presents, by

Edward Frank Martin, Jr. of P. O. BOX 4464 Columbia, S.C. 29240

(hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:

All our right, title and interest, being an undivided two thirds interest in and to:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels 3, 4, 5, and 6, containing in the aggregate 164.0 acres, more or less, as shown on a plat surveyed for Heirs of Osie E. Martin by Jas. C. Covington, C.E., dated October 8, 1930, and recorded in the Office of the RMC for Richland County in Plat Book R at page 199; said parcels having such boundaries and measurements as shown on said plat which are specifically incorporated herein by reference thereto.

This being a portion of the property devised to Jessie Dunn Martin for life with remainder to Jessie Martin Pratt, Edward Frank Martin, Jr., and Naomi Martin Jackson by the terms of the Last Will and Testament of Edward Frank Martin who died testate on December 15, 1967, as evidenced by the records filed in the Office of the Judge of Probate for Richland County in Box 1057 at Package 24,834, Jessie Dunn Martin having died on November 4, 1985 as evidenced by records filed in the Office of the Judge of Probate for Richland County in Package 85ES4001277.

TMS: 38000-3-7 and 38000-3-15.

FOR CONTINUATION OF LEGAL DESCRIPTIONS - SEE ATTACHED EXHIBIT A.

State of South Carolina
I certify that this is a true and correct copy
Dated 3/15/96
Register of Deeds
Richland County

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

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

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

D BK. 1001 PAGE 866

PLAINTIFF'S EXHIBIT 26 98 3/21/16

Florence Martin Van Horton
to
E. F. Martin

STATE OF SOUTH CAROLINA
County of Richland

KNOW ALL MEN BY THESE PRESENTS, That I Florence Martin Van Horton, of the State of Virginia
in the State aforesaid, for and in consideration of the sum of Five Dollars ($5.00) & Other valuable Consideration
to me paid by E. F. Martin in the State aforesaid
receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain,
sell and release unto the said E. F. Martin

All that tract or lot of land in Center Township, School District #12-a Richland County, South Carolina, containing one hundred twenty two (122) acres, more or less, bounded on the north by lands of English Estate; on the south by lands of Dr.Burney, known as Austin Black Estate; on the east by lands of J.L.Black Estate; and on the west by lands now or formerly of J. L. Black Estate, and being the identical premises heretofore conveyed to the grantor by Ellen I.Butler, Tax Collector, by deed dated September 9, 1936, and recorded February 3, 1937, in Deed Book "ED" at page 14.

ALSO

All that piece, parcel or tract of land, situate, lying and being near Reglins Creek in school district #12-A in Richland County and State of South Carolina, containing one hundred forty (140) acres, more or less, and being known as tract "D" upon original plat for petition of the lands of Mary G.Black, deceased, and others and being bounded as follows: on the north by lands of Burney; on the east by lands of Martin; on the South by lands of Miller and others; and on the west by lands of Miller and others, with the exception of a permanent right of way of twenty (20) feet from the certain road passing by lands of T.M.Martin, and this said road runs to the said plat and the said right of way to be enforced from said road running through the said plantation back to the said lands of J.H. and Ella T.Miller and said right of way to be left open for plantation uses of the said J.H. and Ella T.Miller, their successors or assigns forever and this to be binding for the right of way through said plantation for plantation purposes and to be agreed to be binding forever upon said Cocose M.Martin, her heirs and assigns for plantation uses only and for the protection of the said property for said J.H. and Ella T.Miller.

And this being the identical property heretofore conveyed to the grantor by Ellen I.Butler, Tax Collector, by deed dated September 9, 1936, and recorded February 3, 1937, in Deed Book "ED" at page 14 of the Clerk of Court's Office, Richland County.

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 said E. F. Martin, his heirs and assigns forever.

And I do hereby bind myself and my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said E. F. Martin, his heirs and assigns against me and my heirs and all and every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my hand and seal this 29th day of December in the year of our Lord one thousand nine hundred and thirty nine and in the one hundred and sixty-third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:
C. B. Van Horton
Jessie H. Martin

Florence Martin Van Horton (Seal)

$2.75 1-1-58 Cancelled

Affidavit Filed

STATE OF Virginia
COUNTY OF Norfolk

Before me C. B. Van Horton, Notary Public of South Carolina
Personally appeared before me C. B. Van Horton
and made oath that he saw the within named Florence Martin Van Horton sign, seal, and as her act and deed, deliver the within written Deed for the uses and purposes therein mentioned; and that he, with Jessie H. Martin witnessed the execution thereof and subscribed their names as witnesses thereto.

SWORN TO AND SUBSCRIBED BEFORE ME this 29 day of December 1939.
R. F. Shortt (Seal)
Notary Public of Virginia
My Commission Expires 3/3/40

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Recorded 10th A.M. January 6, 1941 Deed

RENUNCIATION OF DOWER

I, _____, Notary Public for South Carolina, do hereby certify unto all whom it may concern that Mrs. _____ the wife of the within named _____ did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named _____ heirs and assigns all her interest and also all her right and claim of dower of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal this _____ day of _____ Anno Domini 19__

_____
Notary Public of South Carolina

Filed the ____ day of _____ 19__ at ____ o'clock ____ M.

State of South Carolina, County of Richland
I certify that this is a true and correct copy of Deed Book E S Page 27
Date 3/21/2016
Register of Deeds, Richland County

PLAINTIFF'S EXHIBIT 27 3/21/16

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 his hand and seal.

Date: October 16, 19 90

Signed, Sealed and Delivered
in Presence of:

Millard H. Lucas
Gary R. Everett

Jessie Martin Pratt (Seal)
Jessie Martin Pratt

(Seal)

Naomi Martin Jackson (Seal)
Naomi Martin Jackson

State of South Carolina)
COUNTY OF RICHLAND) PROBATE

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

SWORN to before me (date) October 16, 1990

Millard H. Lucas
(Witness)

Gary R. Everett (Seal)
Notary Public for South Carolina
My Commission expires: May 24, 1992

NELSON, LAFAYE & EVERETT
Attorneys and Counselors at Law
P. O. BOX 11986
COLUMBIA, S. C. 29211

D BK. 1001 PAGE 867

State of South Carolina
COUNTY OF RICHLAND

JESSIE MARTIN PRATT and
NAOMI MARTIN JACKSON Grantor

TO

EDWARD FRANK MARTIN, JR. Grantee
(include mailing address)

DEED
(Individual)

Filed this day of , 19 ,
at o'clock, M.
and recorded in Deed Book at page

R.M.C./Clerk of Court,
County, S.C.

Recorded this day of , 19 ,
in Page

Auditor County.

14 ED

State of South Carolina,

COUNTY OF RICHLAND

TAX COLLECTOR'S TAX TITLE

Ellen I.Butler, Tax Collector to Florence Martin Van Horten.

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, W. M. Mobley, as Treasurer of Richland County, did issue, in accordance with the laws of and in the name of, the State of South Carolina, a certain warrant or execution against Mrs. O.H.Martin, defaulting taxpayer of the County of Richland, State of South Carolina, directing and commanding T.Alex Heise, as Sheriff of Richland County to levy, by distress and sale, so much of the taxpayer's estate, real, personal, or both, as may be sufficient to satisfy the taxes, State, School, County and special, of such defaulter; and

Further directing that under and by virtue of such warrant or execution that T.Alex Heise as Sheriff of the County of Richland do take exclusive possession of so much of the defaulting taxpayer's estate, real, personal, or both, as may be necessary to take and collect the sum of $ 86.22, of which $ 14.00 is costs and penalty, in order to pay the taxes due thereon by the said defaulter, for the year commencing January 1, 19 28 and, 1929.

WHEREAS, by virtue of said warrant or execution T.Alex Heise as Sheriff of the County and State aforesaid, did, on the 31st day of March 19 31, seize and take possession of the real property of Mrs. O.H.Martin, which is hereinbelow described; and,

WHEREAS, at a sale made on the 4th day of May, 19 31, during the usual hours of sale, after due advertisement, did sell the property of the defaulting taxpayer to E.F.Martin the purchaser thereof, for the sum of $ 86.22, he being the highest bidder at said sale; and he duly assigned his bid to Mrs. Florence Martin Van Horten

WHEREAS, the said purchaser duly complied with the terms of the sale, and whereupon T.Alex Heise as Sheriff of Richland County issued him his receipt for the purchase money, with said duplicate warrant, and endorsement thereon annexed in accordance with the laws of the State of South Carolina; and the period of twelve (12) months having elapsed since the day of said sale, and the defaulting taxpayer, or other party interested to redeem said property so sold for taxes, having not redeemed the same, as provided by law;

NOW, THEREFORE, I, Ellen I.Butler as Tax Collector in and for the County of Richland, State of South Carolina, acting by and pursuant to an act of the Legislature entitled, "An Act to Provide for the appointment of a Tax Collector for delinquent Taxes in the County of Richland; to Fix his duties and powers and to fix the compensation and to relieve the Sheriff of the Duties of Collecting Taxes on Execution, Approved the 26th day of March, 1932;" In consideration of the premises, and in further consideration of the sum of $ 86.22 good and lawful money of the United States, to me in hand paid by the said Florence Martin Van Horten (receipt whereof is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, sell and release, unto the said Florence Martin Van Horten

All that tract of land in Center Township, School District No. 12-A, Richland County, South Carolina, containing one hundred and twenty two (122A) acres, more or less, bounded on the North by lands of English Estate, on the south by lands of Dr. Burney, known as Austin Black Estate, on the east by lands of J.L.Black Estate and west by J.L.Black Estate, being the premises conveyed to Mrs. O.H. Martin by C.W.Martin, by deed recorded in Deed Book "AZ" at page 448, excepting therefrom forty one (41A) acres conveyed to Alexander Myers Martin by deed recorded in Deed Book "IM" at page 264.

All that piece, or parcel of land, situate, lying and being near Eaglins Creek, in School District No.12-A in the County of Richland and State of South Carolina, containing one hundred and forty (140A) acres, more or less, known as tract "D" upon the original plat for partition of the lands of Mary T.Black, deceased, and others, bounded by the lands of Dr. Burney, C.H. Martin, Mrs. Ella T. Miller, et al, with the exception of a permanent right of way of twenty (20') feet from a certain road passing by the lands of C.H.Martin and this said road runs to the said plat and the said right of way to be enforced from said road running through the said plantation back to the said lands of J.H. and Ella T.Miller, said right of way to be left open and kept open for plantation uses of the said J.H. and Ella T.Miller, their successors or assigns forever, and this to be binding for the right of way through said plantation for plantation purposes and to be agreed to be binding for ever upon said Cora H. Martin, her heirs and assigns for plantation uses only and for the protection of said property for said J.H. and Ella T.Miller.

This is to certify that I delivered the within deed to E.F.Martin as Agent for Florence Martin Van Horten & put him in possession of the described premises for said Florence Martin Van Horten this 9th day of September 1936.

W.S.Gardner
Asst. Tax Collector R.C.

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 hereby granted, with the appurtenances, unto the said Florence Martin Van Horten, her heirs and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my hand and seal this 9th day of September, A. D. 1936, and in the one hundred and sixtieth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Helen DuPre Timmerman

W.S.Gardner

Ellen I.Butler
Tax Collector R.C.

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND

PERSONALLY appeared before me Helen DuPre Timmerman and made oath that he saw the above named Ellen I.Butler as Tax Collector of the County of Richland, sign, seal and as h.. act and deed, deliver the above Deed of Conveyance, and that s.he.. with W.S.Gardner witnessed the execution thereof.

SWORN to before me this 9th day of September A. D. 1936

W.S.Gardner (L.S.)
Notary Public for South Carolina

Helen DuPre Timmerman

Filed and Recorded this 3rd day of February, 19 37, in Book 20 Page 14, at 10.50 A.M.

C.C.C.P.&C.S.

State of South Carolina
I certify that this is a true and correct copy
Dated 2/3, 20 37
Register Mesne Conveyance
Richland County

PLAINTIFF'S EXHIBIT 28 2/21/38

PLAINTIFF'S EXHIBIT 29

STATE OF SOUTH CAROLINA

Jno. H. Miller
to
Osee M. Martin

KNOW ALL MEN BY THESE PRESENTS, That I Jno. H. Miller of Florence County South Carolina in the State aforesaid, in consideration of the sum of Fourteen Hundred and no/100 Dollars to me paid by Osee M. Martin of Florence County South Carolina in the State aforesaid, (which money is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Osee M. Martin:

In the County of Richland and State of South Carolina all of that plot or part, piece or parcel and tract of land situate, lying and being near Eaglins Creek in said County and State aforesaid and said to contain One Hundred Forty (140) acres, more or less of land known as tract (D) upon the original plat for partition of the lands of Mistress Mary P. Black, deceased, and others filed in the office of Clerk of Court of Common Pleas for Fairfield County S.C. and Bounded by the lands Dr. Barnes, C.M. Martin share of Mattie C. Desportes and Mistress Ella I. Miller. With the Exception of a permanent right of way of Twenty (20) feet from a certain road passing by lands of C.M. Martin and this said road runs through this said plat and this said right of way to be in force from said road running through this said plantation back to said lands of J.H. and Ella T. Miller said right of way to be left open and kept open for plantation uses of said J.H. Miller and Ella T. Miller, their successors or assigns forever and this to be binding for the right of way through said plat or plantation of land for plantation purposes to be and is agreed to be binding forever upon said Osee M. Martin her heirs and assigns for plantation uses only, and for the protection of said property of said J.H. Miller and Ella T. Miller.

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 said Osee M. Martin and her heirs and assigns forever.

And I do hereby bind myself heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Osee M. Martin her heirs and assigns against myself and my heirs or any person or persons lawfully claiming, or to claim, the same or any part thereof.

WITNESS my hand and seal this 18th day of November in the year of our Lord one thousand nine hundred and Eighteen and in the one hundred and Forty Third year of the Sovereignty and Independence of the United States of America.

Jno. H. Miller (Seal)

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:
J. M. Samuels
J. S. Pinson

STATE OF SOUTH CAROLINA, County of Florence — Before me personally appeared before me J. M. Samuels and made oath that he saw the within named Jno. H. Miller sign, seal, and as his act and deed, deliver the within written Deed for the uses and purposes therein mentioned; and that he, with J. S. Pinson witnessed the execution thereof, and subscribed their names as witnesses thereto.

SWORN TO AND SUBSCRIBED BEFORE ME, this 18 day of November 1918.

J. M. Pinson (Seal)
N. P. S. C.

J. M. Samuels

STATE OF SOUTH CAROLINA, County of Florence — RENUNCIATION OF DOWER

I, J. M. Pinson, a Notary Public for S.C. do hereby certify unto all whom it may concern, that Mrs. Ella T. Miller the wife of the within named Jno. H. Miller did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Osee M. Martin and her heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this 18 day of November Anno Domini 1918.

J. M. Pinson (Seal)
N. P. S. C.

Ella T. Miller

Recorded 6 Dec. 1918 at 11 A.M.

State of South Carolina
I certify that this is a true and correct copy
Dated 11 Nov 1918
Register of Deeds
Richland County

Chain of Title

65.06 acres of Defendant from Lewis

1. Received by Nancy Dunn Martin by Deed of Laura Jane Lewis Allen, Charlotte Lynn Lewis Grimes and Rufus Duncan Lewis III dated November 15, 2012 and recorded in Richland County RMC Book 1813 at page 244 containing 65.06 acres.

2. Laura Jane Lewis Allen et. Al. from Charlotte P. Lewis by deed dated December 23, 1985 and recorded in the RMC for Richland County in Book D773 page 473.

3. Charlotte P. Lewis from Rufus D. Lewis Jr. dated August 15, 1983 and recorded in the Richland County RMC in Book D618 at page 503.

4. Rufus D. Lewis Jr. from Tucker Enterprises Inc. by Deed dated November 9, 1976 and recorded in the Richland County RMC in Book D403 at page 630.

5. Tucker Enterprises, Inc. by Item III of the August 11, 1972 will of Raymond R. Tucker who died October 13, 1975 whose estate is probated in box #31346 in the Richland County Probate Court.

6. R. R. Tucker from John V. Green, C. Lem Harper and Joe Earl Taylor by deed dated January 19, 1973 and recorded in the RMC for Richland County in Book D 268 at page 233. Described as 65.51 acres by a May 25, 1970 survey.

7. John V. Green et al. from Sara Martin Goff, Emma L. Higgins, Mattie M. Higgins, Edna M. Poe, Elizabeth R. Tucker, Neze M. Martin and F. D. Martin Sr. (all children of Fletcher R. Martin) by deed dated August 18, 1971 and recorded in the RMC for Richland County in Book D216 at page 103. Described as 65.51 acres, but is identical to the 108.2 acre tract conveyed to Fletcher R. Martin.

8. Sara Martin Goff et al. inherited the property from their father, Fletcher R. Martin who dies intestate on March 8, 1949 and from their mother who died October 12, 1968 per the deed cited in paragraph 7 above.

9. Fletcher R. Martin from John A DesPortes Jr., Henry W. DesPortes Jr, William S. DesPortes and Eleanor D. Peay by deed dated September 24, 1948 and recorded in the RMC for Richland County in Book 25 at page 514. Describes 108.2 acres designated as Tract E in the 1885 partition.



10. John A DesPortes Jr. from John A. DesPortes Sr. by inheritance per deed cited in paragraph 9.

11. John A DesPortes Sr., Henry W. DesPortes Jr., William S. DesPortes and Eleanor D. Peay from Mattie L. DesPortes who died November 10, 1927, per the deed cited in paragraph 9.

12. Mattie L. C. DesPortes received Tract E, 108.2 acres, from the 1885 partition suit Mattie L. C. DesPortes v. John A. Meyers as Trustee found in Judgment Roll 1158 in Fairfield County.

Instrument Number: 2012096255 Book/Page: R 1813/244 Date Time: 11/16/2012 13:00:53:840

Book 1813-244 Deed
2012096255 11/16/2012 13:00:53:840
Fee:$10.00 County Tax: $128.70 State Tax: $304.20
2012096255 John T. Hopkins II Richland County R.O.D.

----------Space above this line for recording information----------

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS, that

LAURA JANE LEWIS ALLEN, CHARLOTTE LYNN LEWIS GRIMES and RUFUS DUNCAN LEWIS, III

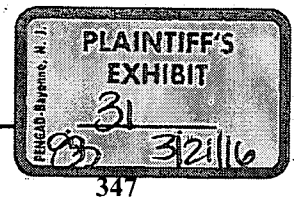
(hereinafter termed "Grantor" which term shall include the singular, plural, masculine, feminine, and neuter) for and in consideration of the sum of One Hundred Seventeen Thousand and 00/100 ($117,000.00) Dollars, to Grantor paid at and before the sealing of these presents, the receipt and sufficiency of which is hereby acknowledged, by

NANCY DUNN MARTIN

(hereinafter termed "Grantee" which term shall include the singular, plural, masculine, feminine, and neuter) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to easements, restrictions, reservations, and conditions (hereinafter termed "Exceptions") set forth below unto the Grantee, the following described real estate:

ALL THAT CERTAIN PIECE, PARCEL, OR TRACT OF LAND, situate, lying and being near Raglin Creek, east of U.S. Highway 601, in School District No. 2, in the County of Richland, and State of South Carolina, containing Sixty-five and 06/100ths (65.06) acres, more or less; and bounded as follows, to wit: On the North by R.W. Lloyd; on the East by R.W. Lloyd; on the Southeast and South By Astor V. Cleveland; and, on the West by Jessie Dunn Martin; said tract will more fully appear reference to a plat prepared for Rufus D. Lewis, Jr., by Edward R. Owens, R.L.S., dated October 18, 1976. Be all measurements a little more or less. 38000-03-08 Number: 38000-03-08

This being the same property conveyed unto the Grantors herein by deed of Charlotte P. Lewis, dated December 23, 1985, and recorded in the Office of the Register of Deeds for said County in Deed Book D773 at Page 473.



This conveyance is made subject to existing easements and to easements and restrictions of record including those shown on recorded plats.

Grantee's Address: 107 San Mateo Court
Hopkins, SC 29061

Tax Map Number: 38000-03-08

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 HOLD, all and singular the premises before mentioned unto the Grantee, Grantee's heirs, successors and assigns forever.

AND THE GRANTOR hereby binds Grantor, Grantor's heirs, successors and assigns to warrant and forever defend all and singular the premises subject to the aforesaid Exceptions unto the Grantee, Grantee's heirs, successors and assigns against Grantor, Grantor's heirs, successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 15 day of November, in the year of our Lord Two Thousand Twelve (2012), and in the Two Hundred and Thirty-sixth (236th) year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Laura Jane Lewis Allen
LAURA JANE LEWIS ALLEN

Sterling R. Allen POA
CHARLOTTE LYNN LEWIS GRIMES
By Sterling R. Allen, her Attorney in fact

Sterling R. Allen, POA
RUFUS DUNCAN LEWIS, III
By Sterling R. Allen, his Attorney in fact

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness, who being first duly sworn, deposes and says that (s)he saw the within-named LAURA JANE LEWIS ALLEN sign, seal and as her act and deed deliver the within written deed, and that (s)he with the other witness subscribing above witnessed the execution thereof.

SWORN to before me this
NOVEMBER 15, 2012

Notary Public for South Carolina
My Commission Expires: 08-16-17

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness, who being first duly sworn, deposes and says that (s)he saw the within-named CHARLOTTE LYNN LEWIS GRIMES, by Sterling R. Allen, her Attorney in fact sign, seal and as her act and deed deliver the within written deed, and that (s)he with the other witness subscribing above witnessed the execution thereof.

SWORN to before me this
NOVEMBER 15, 2012

Notary Public for South Carolina
My Commission Expires: 08-16-17

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness, who being first duly sworn, deposes and says that (s)he saw the within-named RUFUS DUNCAN LEWIS, III by Sterling R. Allen, his Attorney in fact sign, seal and as his act and deed deliver the within written deed, and that (s)he with the other witness subscribing above witnessed the execution thereof.

SWORN to before me this
NOVEMBER 15th, 2012

Notary Public for South Carolina
My Commission Expires: 08/16/17

CANCELLED

Form No. 11—Title to Real Estate by a Corporation
Revised 1959

FILED
NOV 12 2 50 PM '76
REGISTER OF MESNE CONVEYANCES RICHLAND CO., S.C.
CLARA DARRETT

The State of South Carolina,
COUNTY OF RICHLAND

KNOW ALL MEN BY THESE PRESENTS, That
Tucker Enterprises, Inc., a South Carolina Corporation,

SOUTH CAROLINA COUNTY DOCUMENTARY TAX
$31.35
RICHLAND COUNTY 06221

STATE OF SOUTH CAROLINA DOCUMENTARY STAMP TAX $7.00

in the State aforesaid, for and in consideration of the sum of
TWENTY-EIGHT THOUSAND FOUR HUNDRED SEVENTY-SIX AND 40/100/ ($28,476.40) *Dollars*
to it in hand paid at and before the sealing of these presents, by
in the State aforesaid, Rufus D. Lewis Jr. *(the receipt whereof is hereby acknowledged)*
has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said
RUFUS D. LEWIS, JR.

All that piece, parcel or lot of land, lying, being and situate near Raglin Creek, East of U. S. Highway #501, in School District #2 of the County of Richland, in the State of South Carolina, containing Sixty-five and six-hundredths (65.06) acres, more or less, and bound as follows: NORTH by R. W. Lloyd; EAST by R. W. Lloyd; SOUTHEAST AND SOUTH by Astor V. Cleveland; and WEST by Jessie Dunn Martin.

The foregoing is more particularly described on that plat for Rufus D. Lewis, Jr., by Edward F. Owens, R. L. S., dated October 18, 1976, to be recorded simultaneously herewith.

The foregoing tract was obtained by R. R. Tucker by deed dated January 19, 1973, and recorded in the office of the Clerk of Court for Richland County in Deed Book D268, page 233. Raymond R. Tucker subsequently died testate, a resident of Richland County on October 13, 1975, and reference is made to his will as found on record in the office of the Probate Judge for Richland County, wherein he devised the same to Tucker Enterprises, Inc.

ADDRESS OF GRANTEE:

2941 Stepp Drive
Columbia, South Carolina

PLAINTIFF'S EXHIBIT 32

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 said premises before mentioned unto the said

RUFUS D. LEWIS, JR., his *Heirs and Assigns forever.*

And the said Tucker Enterprises, Inc. *does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said* RUFUS D. LEWIS, JR., his *Heirs and Assigns, against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.*

IN WITNESS WHEREOF Tucker Enterprises, Inc. (Insert Name of Corporation) *has caused these presents to be executed in its name by* Robert Eugene Tucker (Insert name of President or Vice-President) *its President, and by* Ulden Tucker Jennings (Insert name of Secretary or Treasurer) *its* Secretary *and its corporate seal to be hereto affixed this* 9th *day of* November *in the year of our Lord, one thousand nine hundred and* seventy-six *, and in the* ~~[illegible]~~ two hundred and first *year of the Sovereignty and Independence of the United States of America.*

Signed, Sealed and Delivered in Presence of

Witness

Witness

TUCKER ENTERPRISES, INC. (Seal)

By _____ President.

_____ Secretary or Treasurer.

D 433 PAGE 631

D 463 PAGE 632

The State of South Carolina,

COUNTY OF RICHLAND

PERSONALLY appeared before me Herbert C. Jennings *(Insert name of Witness)*

who, in oath, says that he saw the within-named Tucker Enterprises, Inc. *(Insert name of Corporation)*

by Robert Eugene Tucker *(Insert name of President or Vice-President)* *its*

President and Ulden Tucker Jennings *its* Secretary *(Insert name of Secretary or Treasurer)*

sign the within Deed, and the said Corporation, by said officers, seal said Deed, and, as its act and deed, deliver the same, and that he with Claude M. Jennings *(Insert name of other Witness)* *witnessed the execution thereof.*

Herbert C. Jennings *(Witness)*

SWORN to before me, this 9th *day of* November *, A. D. 1976*

James M. Sharpe Jr. *(Seal)*
Notary Public, S. C.

My commission expires: Sept 1983

NOTARIAL SEAL

D 463 PAGE 632

TITLE TO REAL ESTATE
The H. L. Bryan Company, Columbia, S.C. Form 14

State of South Carolina,

County of Richland

JAN 19 11 16 AM '73
JOHN MAJOR
C. C. & G. S

Know All Men by These Presents, That John V. Green, C. Lem Harper, and Joe Earl Taylor

RICHLAND COUNTY 04103 SOUTH CAROLINA COUNTY DOCUMENTARY TAX P.B. 10512 JAN 15 '73 $25.30

RICHLAND 04902 STATE OF SOUTH CAROLINA DOCUMENTARY STAMP TAX P.B. 10503 $46.00

in the State aforesaid, for and in consideration of the sum of Twenty Three Thousand ($23,000.00) Dollars to us paid by R. R. Tucker in the State aforesaid receipt of which is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

R. R. Tucker, his heirs and assigns

All that certain piece, parcel or tract of land situate, lying and being near Raglin Creek, East of U. S. Highway #601, in School District #2 of the County of Richland, in the State of South Carolina, comprising 65.51 acres, more or less, being more particularly shown on a plat prepared for the Estate of F. R. Martin by Keels Engineering Company on May 25, 1970, having such measurements and boundaries as shown on said plat; being the identical lands which were conveyed to Fletcher R. Martin as 108.2 acres, by deed of John A. DesPortes, Henry W. DesPortes, Jr., William S. DesPortes and Eleanor D. Peay, which deed was dated August 18, 1971, recorded in the office of the Clerk of Court for Richland County in Deed Book D-216, at page 103. This tract is shown on Tax Map Sheet for Richland County #788 as Lot One (1) in Block One (1).

The address of the grantee is Route 2
Elgin, South Carolina

This being the identical property heretobefore conveyed to the grantors herein by deed of Sara Martin Goff, et. al., said deed being recorded in Deed Book 216 at page 103 in the Office of the Clerk of Court for Richland County, said deed being dated the 18th day of August, 1971 and recorded on the 19th day of August, 1971.

D 268 PAG 233

PLAINTIFF'S EXHIBIT 34 3/21/16

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 said

R. R. Tucker, his

Heirs and Assigns forever.

And we do hereby bind us and our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

R. R. Tucker, his

Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our *Hand and Seal this* 19th *day of* January *in the year of our Lord one thousand nine hundred and* seventy-three *and in the one hundred and* ~~ninety-seventh~~ ninety-sixth *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Allen Cox
Amelia Mahyar

John K. Thomas (SEAL)
E. Lowe Harper (SEAL)
R. R. Tucker, Jr. (SEAL)

D 268 PAG. 234

STATE OF SOUTH CAROLINA,
Richland COUNTY.

PERSONALLY appeared before me Stuart Hope and made oath that he saw the within-named John V. Green, C. Lem Harper, and Joe Earl Taylor sign, seal and, as their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with Amelie Morgan witnessed the execution thereof.

SWORN to before me this 19th day of January, 1973

Georgia B. Cyrus (L. S.)
Notary Public of S. C.
My commission expires Aug 1, 1978

STATE OF SOUTH CAROLINA,
Richland COUNTY.

RENUNCIATION OF DOWER

I, Georgia B. Cyrus, Notary Public of South Carolina, do hereby certify unto all whom it may concern, that Mrs. Jane Green, Rebecca Harper and Frankie Taylor the wives of the within-named John V. Green, C. Lem Harper and Joe Earl Taylor did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

R. R. Tucker, his

heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 19th day of January Anno Domini 19 73

Georgia B Cyrus (L. S.)
Notary Public of S. C.
My commission expires Aug 1, 1978

Frankie S. Taylor
Rebecca R. Harper
Jane Green

D 268 PAGE 235

FILED
JUN 1 9 09 AM '70
JOHN R. TAYLOR
C. C. C. & S. S.
CANCELLED
By Keels Engr. Co.
SOUTH CAROLINA
No. 1726
H. KEELS
REGISTERED ENGINEER
PLAT OF F. R. MARTIN
Scale 1" = 20'
May 5, 1970
JAMES E. POWE
PLAINTIFF'S EXHIBIT
3/24/76

Vol 21 Page 516

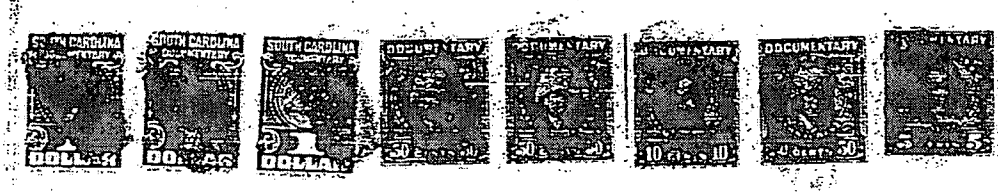
TITLE TO REAL ESTATE — Form 11
The R. L. Bryan Company, Printers, Binders, Stationers, Columbia, S. C.

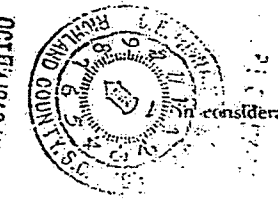
State of South Carolina,
COUNTY OF RICHLAND

WHEREAS, Mrs. Mattie L. DesPortes died testate, leaving of force her Last Will and Testament, dated November 10, 1927, probated in the Office of the Probate Judge for Fairfield County, and under the terms of said will the following described tract of land was devised to John A. DesPortes, Henry W. DesPortes, Jr., William S. DesPortes, and Eleanor D. Peay, and WHEREAS, John A. DesPortes, Sr., died testate, leaving his interest in said property his son, John A. DesPortes, Jr., and,

WHEREAS, the owners of said property are desirous of conveying same, NOW,

Know All Men by These Presents. That We, John A. DesPortes, Jr., Henry W. DesPortes, Jr., William S. DesPortes, and Eleanor D. Peay,





in the State aforesaid, for in consideration of the sum of Twelve Hundred ($1200.00) Dollars, to us paid by Fletcher R. Martin, in the State aforesaid receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

FLETCHER R. MARTIN:

All that certain piece, parcel, tract or lot of land situate, lying and being in the County of Richland, State of South Carolina, being located near Raglin Creek, and containing one hundred eight and two-tenths (108.2) acres, more or less, and designated as tract "E" of the Black estate lands, as will appear by reference to a plat of same dated November and December 1934, recorded in the Office of the Clerk of Court for Fairfield County in Deed Book "AA" at page 422; and being bounded as follows: On the North by tract "F" on said plat; on the East by tract "C" and "F" on said plat; on the South by lands formerly of Austin Black; and on the West by tract "D" on said plat, all of which will more fully appear by reference to said plat.



VOL 25 Page 517

To have and to Hold all and singular the premises before mentioned unto the said

Fletcher A. Martin, his

Heirs and Assigns forever.

And we do hereby bind ourselves and our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Fletcher A. Martin, his

Heirs and Assigns, against us and our Heirs ~~and against every person~~ claiming, or to claim, the same or any part thereof.

WITNESS our Hands and Seals this 24 day of September in the year of our Lord one thousand nine hundred and forty-eight and in the one hundred and seventy-third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Frank L. Taylor

Rogers Hudson

Eleanor T. Jones

Hubert Sistare, Sr. [SEAL]

Wm. S. DesPortes [SEAL]

Henry W. DesPortes Jr. (SEAL)

Eleanor D. Peay (SEAL)

as to Eleanor D. Peay:

STATE OF SOUTH CAROLINA, FAIRFIELD COUNTY.

PERSONALLY appeared before me Roy W Hudson and made oath that he saw the within-named Eleanor D. Peay sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned; and that he, with Eleanor T Jones witnessed the execution thereof.

NOTARIAL SEAL

SWORN to before me this 25th day of September 1948

R. C. Hood [L. S.]
Notary Public of S. C.

Roy W. Hudson

STATE OF SOUTH CAROLINA, RICHLAND COUNTY.

RENUNCIATION OF DOWER

I, Frank L. Taylor, a Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Iva B. DesPortes the wife of the within-named Henry W. DesPortes, Jr., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, [illegible] Martin, his

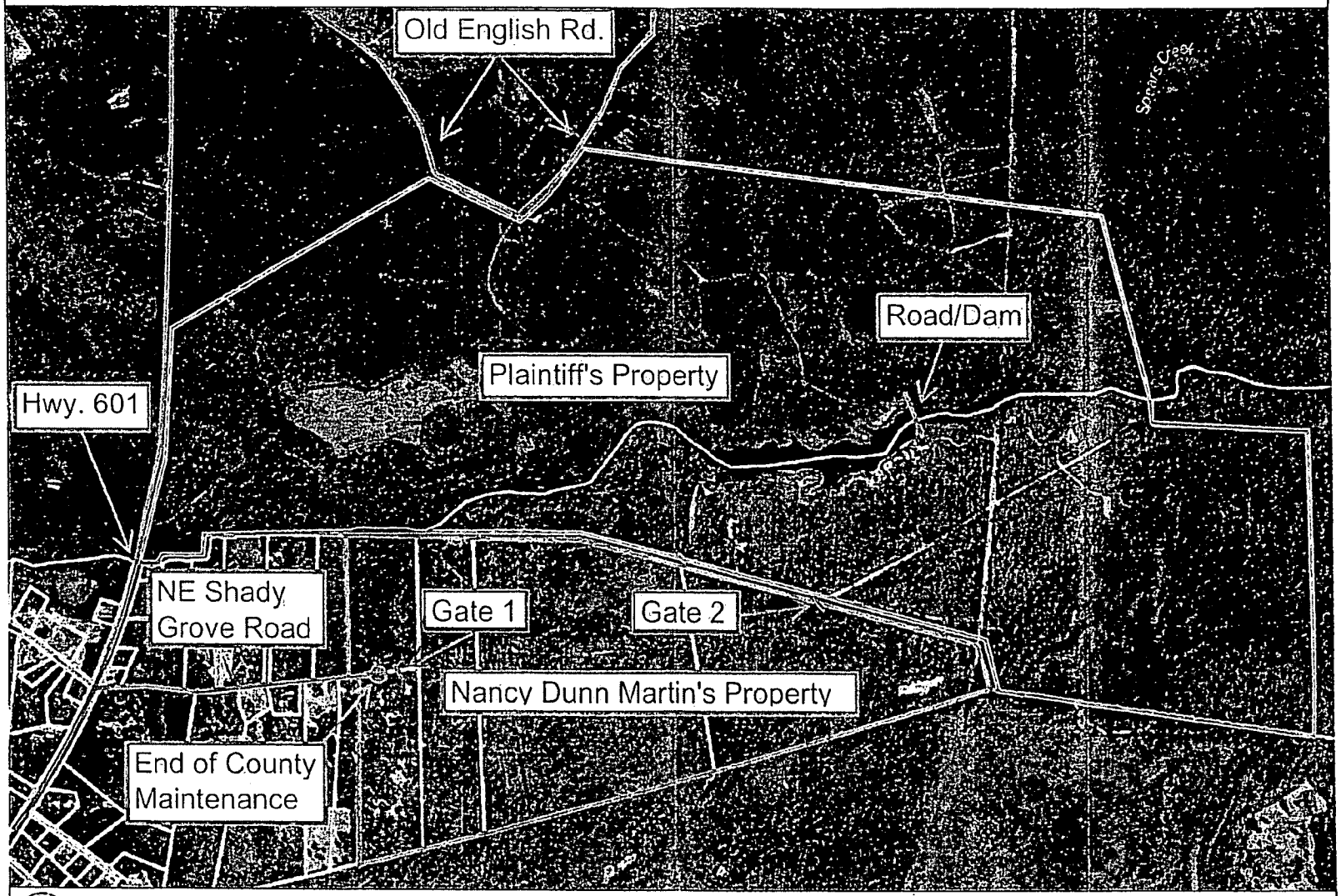


PLAINTIFF'S EXHIBIT 37

PENGAD-Bayonne, N. J.

DEFENDANT'S EXHIBIT 361 9/7 3/21/16

Richland County, SC | Internet Mapping



DISCLAIMER : This is a product of the Richland County GIS Department. The data depicted here have been developed with extensive cooperation from other county departments, as well as other federal, state and local governments agencies.Richland County expressly disclaims responsibility for damages or liability that may arise from the use of this map.

RC GE

84363

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 22 2017
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity

Case No.: 2014-CP-40-1805

Country Properties, LLC.....Respondent,

vs.

Nancy Dunn Martin.....Appellant.

NOTICE OF APPEAL

Nancy Dunn Martin ("Martin") appeals the Final Order of the Honorable Joseph M. Strickland entered on September 27, 2016 and the Form 4 Order of the Honorable Joseph M. Strickland denying Martin's Motion pursuant to Rules 52(b) and 59(e), SCRCP entered on July 21, 2017. Martin received written notice of the entry of the September 27, 2106 Order on November 1, 2016 and Martin filed a Motion pursuant to Rules 52(b) and 59(e) on November 9, 2016. Martin received written notice of the entry of the Form 4 Order, denying Martin's Rule 52(b) and 59(e) Motion, on July 31, 2017.

August 22, 2017

Joey R. Floyd (SC Bar No. 68491)
Wesley D. Peel (SC Bar No. 9283)
Robert C. Osborne III (SC Bar No. 101827)
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Appellant

Other Counsel of Record:

John Wells, Esq.
Baxley Pratt & Wells, P.A.
P.O. Box 10
Lugoff, SC 29078
(803) 438-4200

M. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
(888) 552-1559

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 22 2017
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity

Case No.: 2014-CP-40-1805

Country Properties, LLC.....Respondent,

vs.

Nancy Dunn Martin.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Country Properties, LLC by depositing a copy of it in the United States Mail, postage prepaid, on August 22, 2017, addressed to its attorneys of record, John Wells, Esq. and M. Brent McDonald, Esq. (addresses shown below). I have also served a copy of the Notice of Appeal upon (1) the Honorable Joseph M. Strickland at P.O. Box 2766, Columbia, SC 29202 and (2) The Honorable Jeanette McBride, Richland County Clerk of Court, at P.O. Box 2766, Columbia, SC 29202.

August 22, 2017

Joey R. Floyd (SC Bar No. 68491)
Wesley D. Peel (SC Bar No. 9283)
Robert C. Osborne III (SC Bar No. 101827)
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Appellant

Other Counsel of Record:

John Wells, Esq.
Baxley Pratt & Wells, P.A.
P.O. Box 10
Lugoff, SC 29078
(803) 438-4200

M. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
(888) 552-1559

Attorneys for Respondent

BRUNER, POWELL, WALL & MULLINS, LLC

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

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

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: jfloyd@brunerpowell.com

August 22, 2017

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court -The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
AUG 22 2017
SC Court of Appeals

RE: Country Properties, LLC v. Nancy Dunn Martin
Civil Action No.: 2014-CP-40-1805
BPWM File No.: 8-2376.102

Dear Ms. Kitchings:

Enclosed herewith you will find an original and two (2) copies of the Appellant's (Nancy Dunn Martin), ***Notice of Appeal*** and a check in the amount of $100.00 to cover the applicable filing fee. Also enclosed are copies of the orders being appealed. Finally, you will find a Proof of Service evidencing service of the same upon counsel for the Respondent, the Richland County Clerk and the Richland County Master-in-Equity. I kindly ask that your staff file the original and copies in accordance with your procedures. Thereafter, I ask that your staff return the filed copies back to my runner who will be waiting. Feel free to call me if you, or a member of your staff, have any questions.

With my kindest regards, I am

Sincerely,

Joey R. Floyd

JRF/rco
Enclosures
cc: John Wells, Esquire (Via U.S. Mail w/ Copy of Enclosures)
M. Brent McDonald (Via U.S. Mail w/ Copy of Enclosures)
The Honorable Jeanette McBride (Via U.S. Mail w/ Copy of Enclosures)
The Honorable Joseph M. Strickland (Via U.S. Mail w/ Copy of Enclosures)
Nancy D. Martin (Via E-Mail Only w/ Copy of Enclosures)

89415

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE RICHLAND COUNTY
COURT OF COMMON PLEAS

The Honorable Joseph M. Strickland, Master-in-Equity

Civil Action No.: 2014-CP-40-01805

RECEIVED
MAR 29 2019
SC Court of Appeals

Country Properties, LLC.....Appellant,

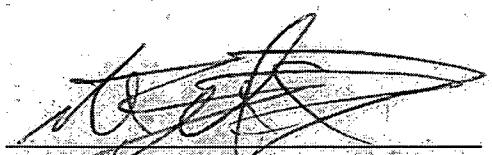
vs.

Nancy Dunn Martin.....Respondent.

NOTICE OF APPEAL

Plaintiff Country Properties, LLC ("Appellant") appeals the order of the Honorable Joseph M. Strickland, Master-in-Equity Order Granting Defendant's Rule 60(b) Motion filed on January 28, 2019. (attached hereto as Exhibit A). Appellant also appeals the Order Denying Plaintiff's Rule 59(e), SCRCP Motion To Alter Or Amend Order Granting Defendant's Rule 60(b) Motion filed on March 20, 2019. (attached hereto as Exhibit B). Appellant received written notice of entry of the Order Denying Plaintiff's Rule 59(e), SCRCP Motion To Alter Or Amend Order Granting Defendant's Rule 60(b) Motion on March 20, 2019.

[Signature Page Follows]



M. Brent McDonald, Esquire (S.C. Bar 78057)
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone:843-492-0221
brent@bundymcdonald.com
Attorney for Appellant

March 26, 2019

Other Counsel of Record:

John W. Wells, Esquire
Baxley, Pratt & Wells, P.A
P.O. Box 10
Lugoff, SC 29078
Telephone No.: 803-438-4200
Attorney for Appellant

Joey D. Floyd
Wesley D. Peel
Robert C. Osborne, III
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Telephone No.: 803-252-7693
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE RICHLAND COUNTY
COURT OF COMMON PLEAS

The Honorable Joseph M. Strickland, Master-in-Equity

Civil Action No.: 2014-CP-40-01805

RECEIVED
MAR 29 2019
SC Court of Appeals

Country Properties, LLC.....Appellant,

v.

Nancy Dunn Martin.....Respondent.

PROOF OF SERVICE

I, the undersigned Paralegal at the law offices of Bundy McDonald, LLC, attorneys for Appellant Country Properties, LLC do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Notice of Appeal

Counsel Served: John W. Wells, Esquire
Baxley, Pratt & Wells, P.A
P.O. Box 10
Lugoff, SC 29078
Telephone No.: 803-438-4200
Attorney for Appellant

Joey D. Floyd
Wesley D. Peel
Robert C. Osborne, III
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Telephone No.: 803-252-7693
Attorneys for Respondents

Kathy J. Wentland

Kathy J. Wentland

March 26, 2019

Bundy McDonald
TRIAL LAWYERS

M. BRENT MCDONALD
brent@bundymcdonald.com
843-492-0221 (Direct)
843-901-9233 (Cell)

March 26, 2019

Via Certified Mail – Return Receipt Requested
The Honorable Jenny Abbott Kitchings
Clerk of Court – The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Country Properties, LLC. v. Nancy Dunn Martin
Civil Action No: 2014-CP-40-01805

Dear Ms. Kitchings:

Enclosed please find an original and one copy of Notice of Appeal, Proof of Service of same upon all counsel of record, along with our firm check in the amount of $250.00 for the filing fee. The Notice of Appeal has also been electronically filed with the Clerk of the Lower Court.

Please file the original and return a filed stamped copy to us in the enclosed self-addressed envelope.

With kindest regards, I remain

Sincerely,

M. Brent McDonald
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
(843) 492-0221
Attorney for Appellant

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MAR 29 2019
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MBM/kjw
Enclosure
cc: John Wells, Esquire
Joey R. Floyd, Esquire
Wesley D. Peel, Esquire
Robert C. Osborne, III, Esquire





BUNDY MCDONALD, LLC

ATTORNEYS AT LAW

1516 OLD TROLLEY ROAD, 2ND FLOOR
SUMMERVILLE, SC 29485

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