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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2019-001140

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

v.

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

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

RECORD ON APPEAL

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#78

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP0800817

Ronald L. Jones		Rogers Townsend & Thomas P.C.	
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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.

FILED
2018 AUG 10 PM 1:16
MARY BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
VB

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

ORDER INFORMATION

Rogers Townsend & Thomas P.C.'s Motion to Add a Party is GRANTED. The Additional parties will be made a Plaintiff pursuant to Rule 19 SCRCP.

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.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Perry M. Buckner — 2122 — 8/6/18
Judge Code — DATE

VB

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

Circuit Court Judge Perry M Buckner **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the **day of June, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on the **day of June, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Karen Andersen

Mary P. Brown - 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.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0800817

Ronald L. Jones et al
PLAINTIFF(S)

Rogers Townsend & Thomas P.C. et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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.

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

This Matter came before the Court on May 7, 2019, upon Plaintiffs Thomas H. Gaillard and Thomas Cone's (hereinafter "Trustees") Motion for Nonjoinder, pursuant to Rule 21, filed March 29, 2019. Warren Powell, Jr., Esq. appeared on behalf of Defendant Rogers Townsend & Thomas P.C. ("RT&T"), Jay Hulst, Esq. appeared on behalf of the Trustees, and Robert Maring, Esq. appeared on behalf of Plaintiff Ronald Jones. "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP; See Branham v. Ford Motor Co., 390 S.C. 203, 242, 701 S.E.2d 5, 26 (2010). The Court finds that the Trustee Plaintiffs are no longer indispensable parties and their presence is not required to resolve the dispute. Per Mr. Hulst, the Trustees assert that their rights are not affected and that they have resolved the underlying easement issue by entering into a new easement with Plaintiff Jones thereby

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/09/2019 .

Gaye Langley Jones

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 May 09 3:18 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

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Court Reporter:

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

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resolving and determining their interests in this matter. While the issue of the validity of any easements is viable to Defendant RT&T's defenses it is not viable or dispositive of the Trustee Plaintiffs interest in the property. Moreover, the Court was advised that Defendants Alexander Peabody and Peabody & Associates, Inc. stipulate to the Trustee Plaintiffs dismissal as parties. Therefore, the Motion for Nonjoinder, pursuant to Rule 21, SCRCP, is hereby Granted.

ELECTRONICALLY FILED - 2019 May 09 3:18 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Berkeley Common Pleas

Case Caption: Ronald L. Jones VS Rogers Townsend & Thomas P.C.

Case Number: 2018CP0800817

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0800817

Ronald L. Jones et al
PLAINTIFF(S)

Rogers Townsend & Thomas P.C. et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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.

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

This Matter came before the Court on May 7, 2019, upon Defendant Rogers Townsend & Thomas P.C.'s ("RT&T") Motion to Alter/Amend Answer, filed March 29, 2019. Warren Powell, Jr., Esq. appeared on behalf of RT&T, Jay Hulst, Esq. appeared on behalf of Thomas Huguenin Gaillard, Trustee, and Robert Maring, Esq. appeared on behalf of Ronald Jones. "Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried and the lack of opportunity to refute it." Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). There being no showing of prejudice, Defendant RT&T's Motion to Amend is heard and respectfully GRANTED pursuant to Rule 15(a), SCRCP.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/09/2019 .

Gaye Langley Jones

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 May 09 3:19 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

ELECTRONICALLY FILED - 2019 May 09 3:19 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Court Reporter:

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

ELECTRONICALLY FILED - 2019 May 09 3:19 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Berkeley Common Pleas

Case Caption: Ronald L. Jones VS Rogers Townsend & Thomas P.C.

Case Number: 2018CP0800817

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

ELECTRONICALLY FILED - 2019 Jun 26 4:55 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY RONALD L. JONES and GAYLE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018–CP–08–00817 **ORDER DENYING DEFENDANT'S MOTION TO ALTER/AMEND JUDGMENT**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiffs' (Trustees) Attorney:	Jay Hulst, Esq.
Plaintiffs' (Jones') Attorney:	Robert Maring, Esq.
Defendants' (RT&T)Attorney:	Warren Powell, Esq.
Defendants' (Hostetler) Attorney:	Warren Powell, Esq.
Defendants' (Peabody) Attorney:	Ryan Earhart, Esq
Date of Hearing:	May 7, 2019
Court Reporter:	Dayton Grainger

THIS MATTER comes before this Court by way of Defendants, Rogers Townsend & Thomas, PC and Lisa Hostetler's (hereinafter "Defendants") Motion for Reconsideration, Alter or Amend, filed May 20, 2019, asking this Court to alter or amend its Order Granting Plaintiffs Thomas H. Gaillard and Thomas W. Cone's ("Plaintiffs") Motion for Nonjoinder, filed May 9, 2019. Defendants forwarded a copy of their Motion via e-mail and a filed copy was received by this office on May 20, 2019. Plaintiffs served their response in opposition to the Defendants' Motion on May 30, 2019, and filed the same on May 29, 2019. Having considered the Defendants'

ELECTRONICALLY FILED - 2019 Jun 26 4:55 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Motion, as well as the various interests balanced by the Court at the time of the ruling, the Defendants' Motion to Reconsider, Alter or Amend Judgment is hereby denied.[1]

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

The Defendants' motion seeks to reargue the issue on the same basis previously presented, presents no novel facts, arguments, or theories in support of the Motion to Reconsider, Alter or Amend the Judgment. The Defendants have not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. However, the Defendants' motion seeks to have the Court make additional findings of fact and conclusions of law wholly unrelated to the interpretation and application of Rule 21, SCRCP. As such the Court declines to make any additional findings of fact unrelated to the motion originally before it. Further, the Court would note as it did in the original Order that nothing in the ruling

[1] This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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has a preclusive effect on the Defendants pursuing any of its causes of action or defenses.

Accordingly, the Motion to Reconsider, Alter or Amend is hereby DENIED.

IT IS SO ORDERED.

_____
Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

_____day of _____, 2019
Charleston, South Carolina
At Chambers

ELECTRONICALLY FILED - 2019 Jun 26 4:55 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Berkeley Common Pleas

Case Caption: Ronald L. Jones VS Rogers Townsend & Thomas P.C.

Case Number: 2018CP0800817

Type: Order/Amend

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
RONALD L. JONES AND GAYE LANGLEY JONES) **Plaintiff(s)**
)
vs.
)
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER, ALEXANDER C. PEABODY AND PEABODY & ASSOCIATES, INC.,) **Defendant(s)**

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP - 08- 817

FILED
18 MAY -4 PM 12:
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Submitted By: Robert W. Maring, Maring & Moyer, LLC
Address: PO Box 478, Georgetown, SC 29442

SC Bar #: 8810
Telephone #: 843-545-9544
Fax #: 843-545-9735
Other:
E-mail: robert@maringmoyer.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 cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

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)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

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

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

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ 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 Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ 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) _____
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)

Submitting Party Signature: _____ **Date:** 5/4/18

SCCA / 234 (02/2018)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 2018-CP-08-817
COUNTY OF BERKELEY)	
RONALD L. JONES AND GAYE)	
LANGLEY JONES,)	
)	
PLAINTIFFS,)	
)	
VS.)	SUMMONS
)	(JURY TRIAL DEMANDED)
ROGERS TOWNSEND &)	
THOMAS, P.C., LISA HOSTETLER)	
ALEXANDER C. PEABODY AND)	
PEABODY & ASSOCIATES, INC.)	
)	
DEFENDANTS.)	

FILED
18 MAY -4 PM 12:14
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Berkeley County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
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Georgetown, SC
May 4, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 2018-CP-08-817
COUNTY OF BERKELEY)	
RONALD L. JONES AND GAYE)	
LANGLEY JONES,)	
)	
PLAINTIFFS,)	
)	
VS.)	COMPLAINT
)	(JURY TRIAL DEMANDED)
ROGERS TOWNSEND &)	
THOMAS, P.C., LISA HOSTETLER)	
ALEXANDER C. PEABODY AND)	
PEABODY & ASSOCIATES, INC.)	
)	
DEFENDANTS.)	
)	

FILED
18 MAY -4 PM 12:14
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Comes now the Plaintiffs who, complaining of the Defendants, allege as follows:

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.
2. Upon information and belief Rogers Townsend & Thomas, P.C. is a professional corporation organized and existing pursuant to the laws of the State of South Carolina and doing business in Berkeley County, South Carolina.
3. Upon information and belief Lisa Hostetler is a citizen and resident Richland County, State of South Carolina and at all times relevant herein was employed as an attorney for the Defendant Rogers, Townsend & Thomas, P.C.
4. Upon information and belief Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates Inc.

5. Upon information and belief Peabody & Associates, Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.

6. The Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.

7. Upon information and belief, venue is proper in Berkeley County, South Carolina.

FACTS

8. Each and every allegation contained herein is repeated as if verbatim.

9. That on or about May 7, 2010 the Plaintiffs purchased the following property from E*TRADE BANK by deed filed with the Berkeley County Register of Deeds Office on May 13, 2010 and recorded in Deed Book RP 8440 at page 218 with the following description:

> All that lot, piece, or parcel of land, including any and all improvements thereon, situate lying and being near Cainhoy North of Wando River, Berkeley County, South Carolina, and being shown and designated as Lot 6B on a plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village" Creating Lot 6A and 6B, Situated As Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005 prepared by Charles F. Dawley, Jr. R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Robert L. Jones by Peabody & Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet P at Page 4A. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, metes and bounds.

10. The Settlement Agent for this transaction was identified on the (HUD-1) Settlement Statement as the Defendant Rogers, Townsend & Thomas, P.C., 220 Executive Center Drive, Suite 109, Columbia, SC 29210.

11. Upon information and belief, attorney's fees for the May 7, 2010 closing were paid to the Defendant Rogers Townsend & Thomas for their role as serving as settlement agent for the real estate transaction.
12. That at all times relevant herein, Defendant Rogers, Townsend, P.C. by and through its employees, including, but not limited to, Lisa Hostetler acted as the Settlement Agent for the Plaintiffs in the above referenced transaction.
13. Upon information and belief Defendant Lisa Hostetler signed the HUD-1 Settlement Statement representing herself to be the Settlement Agent for Defendant Rogers, Townsend, & Thomas, P.C.
14. Upon information and belief, Lisa Hostetler and/or agents of the Defendant Rogers, Townsend & Thomas, P.C. generated title insurance commitments and issued an owners' policy of Title Insurance for this transaction. At all times, Defendant Rogers, Townsend & Thomas, P.C. and Lisa Hostetler, were a licensed attorney and law firm who were practicing law in the State of South Carolina and within the course and scope of their employment and/or agency for the Defendant law firm at the time of their actions and inactions related to the transaction hereinabove referenced.
15. On or about May 15, 2015, the Plaintiff discovered for the first time, that there was an easement of record that affected the property purchased by the Plaintiffs as herein described.
16. Upon information and belief a 25 foot Ingress/Egress easement was created by way a deed from James J. Monogham to Benjamin L. Daniel, Sr. dated April 4, 2006 and recorded in the Office of the Register of Deeds for Berkeley County in Deed Book 5506 at page 12.
17. The easement granted to the owners of Lot 6A (TMS#263-00-03-068) Lot 5 (No. 108 Cainhoy Landing Road, TMS # 263-00-05-005) Lot 6 (No. 110 Cainhoy Landing Road,

TMS # 263-00-05-006) Lot 7 (112 Cainhoy Landing Road, TMS #263-00-05-007) a 25' Ingress/Egress along the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18 and then continuing on lines L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, and L1. Therefore, the Easement will almost completely encircle the Lot 6B except for most of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

18. The easement described in paragraph 17 herein was created by a Deed in the direct chain of title for the subject premises.

19. That prior to the closing on the Property described herein, the Plaintiff's engaged the services of Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor to survey the property for an accurate and detailed description of the property, the improvements and any easements that would affect the property.

20. A survey was performed and a Plat was provided to the Plaintiffs' attorneys prior to closing.

21. The Defendants Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor were paid Five Hundred and Fifty 00/100 ($550.00) Dollars for the preparation and delivery of the Plat.

22. The survey was relied upon to describe the property in the legal description on the Deed conveying the property to the Plaintiffs as herein described and was recorded simultaneously with the Deed.

23. The survey failed to disclose the existence of the easement as described in paragraph 16 herein.

24. Upon information and belief, the existence of this easement was not disclosed to the Plaintiffs prior to the closing on May 7, 2010 or any time after closing by any of the Defendants.

25. Upon information and belief, the existence of this easement should have been disclosed on the Plat prepared by Defendants Alexander C. Peabody, PLS and Peabody & Associates, Inc. prior to the closing and prior to its recording.

26. The existence of the easement is and was a material fact that should have been disclosed to the Plaintiffs prior to closing on the property hereinabove referenced by the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler.

27. The Plaintiffs are informed and believe that the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler did not disclose this encumbrance/easement on the property, nor, did the Defendants properly communicate and explain the existence of the easement.

28. The Plaintiffs are informed and believe that the Defendants Alexander C. Peabody and Peabody & Associates, Inc. did not properly disclose this easement on the plat prepared for the Plaintiffs.

29. That as a result of the existence of the easement, the Plaintiffs have lost full enjoyment and use of their property.

30. That subsequent to discovery of the easement, the Plaintiffs have terminated three (3) of the (4) properties that held an easement though agreements between the Plaintiffs and those Lot Owners.

31. That the owners of lot 6-A (TMS#263-00-03-068) will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement.

32. That as a result, the owners of Lot 6-A will continue to have an easement on the Plaintiffs property, depriving them of exclusive ownership of their property.

FOR A FIRST CAUSE OF ACTION

(NEGLIGENCE AS TO ROGERS TOWNSEND & THOMAS, P.C. AND LISA HOSTETLER)

33. Each and every allegation is repeated as if verbatim.

34. Plaintiffs were foreseeable parties to suffer injury if the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler failed to perform their duties and meet the standard of care in their representations in the aforementioned property transaction.

35. Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler owed a duty to meet the standard of care in their handling of the closing and transaction and to prevent foreseeable injuries to Plaintiffs.

36. The standard of care for lawyers representing a client in transactions in South Carolina requires a lawyer, among other things, to inform, consult, and communicate with the client as to a transaction about the means by which the client's objectives are to be accomplished, to keep the client reasonably informed about the status of the matter, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

37. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler acts of omission and/or commission in the following particulars to wit:

    a. By failing to meet the applicable standard of care in the representation of the Plaintiffs and handling of the transaction described above;

    b. By failing to disclose to the Plaintiffs the existence of the easement as described in herein;

    c. By failing to disclose to the Plaintiff's key facts concerning the transaction which prejudicial to the Plaintiffs' interest;

    d. In failing to properly communicate with the Plaintiffs' before, during or after the transaction;

    e. In failing to properly supervise the transaction;

    f. In failing to properly train its employees;

    g. In failing to properly hire employees with sufficient knowledge and skill to properly conduct the transaction;

    h. In violating the rules, regulations and statures governing attorneys conduct in the State of South Carolina;

38. That as a direct and proximate result of one or more of the Defendants' actions or omissions the Plaintiffs suffered damages.

39. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

40. Each and every allegation is repeated as if verbatim.

41. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Charles Nation, an expert witness and lawyer licensed to practice law in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

FOR A SECOND CAUSE OF ACTION

(NEGLIGENCE AS TO ALEXANDER C. PEABODY AND PEABODY ASSOCIATES, INC.)

42. Each and every allegation is repeated as if verbatim.

43. Plaintiffs were foreseeable parties to suffer injury if the Defendants Alexander C. Peabody and Peabody & Associates, Inc. failed to perform their duties and meet the standard of care in their representations in their preparation of the Plat for the Plaintiffs.

44. Defendants Alexander C. Peabody and Peabody & Associates, Inc. owed a duty to meet the standard of care in their preparation of the Plat for the transaction and to prevent foreseeable injuries to Plaintiffs.

45. The standard of care for surveyors engaging in the business of surveying in South Carolina requires a surveyor, among other things, to show any easements known to the surveyor on the survey performed and to properly investigate the records of the Register of Deeds, to include, but not limited to, the Deed in the direct chain of title to be able to accurately determine the boundary of the lot and any other encumbrances, including, but not limited to the existence of easements that may exist in the Deed into the current owner of the property.

46. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Alexander C.

Peabody and Peabody & Associates, Inc. acts of omission and/or commission in the following particulars to wit:

i. By failing to meet the applicable standard of care in the preparation of the the Plat for the above described real estate transaction above;

j. By failing to disclose on the Plat the existence of the easement as described in herein;

k. In failing to properly supervise the preparation of the plat;

l. In failing to properly train its employees;

m. In failing to properly hire employees with sufficient knowledge and skill to properly prepare the plat;

n. In violating the rules, regulations and statures governing surveyors in the State of South Carolina;

47. That as a direct and proximate result of one or more of the Defendants actions or omissions the Plaintiffs suffered damages.

48. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

49. Each and every allegation is repeated as if verbatim.

50. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Wendell Powers, an expert witness and surveyor licensed in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

WHEREFORE, Plaintiffs pray as follows:

A. For a judgment in an amount to be determined by the jury for actual, consequential and punitive damages against all Defendants;

B. For the costs and disbursements of this action;

C. For such other and further relief as the court may deem just and proper.

May 4, 2018

Robert W. Maring
SC Bar 8810
Attorney for Plaintiffs
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843-545-9544 phone
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robert@maringmoyer.com

Common Pleas

Clerk : Mary P. Brown
300 B California Avenue
Moncks Corner, SC 29461
Phone:(843) 719-4400 Fax:(843) 719-4509

Received From:	Maring, Robert Wade			Date: 5/ 4/2018
	PO Box 478			Receipt #: 6080395
	Georgetown, SC 294420478			Clerk: c08slovin
Paying for:	Jones, Ronald L.			
Transaction Type:	Payment		Reference #: 2216	
Payment Type:	Check	$150.00	Comment:	
Total Paid:		$150.00	Non-Refundable	

Total Received: $150.00
Change Due: $0.00

You may check the status of your Berkeley case at:
http://www.sccourts.org/caseSearch/

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2018CP0800817	Ronald L. Jones VS Rogers Townsend & Thomas P.C.	**$150.00**	**$150.00**	**$0.00**	**210**

Total Cases:	**1**	**$150.00**	**$150.00**	**$0.00**

State of South Carolina	)	**In the Court Of Common Pleas**
	)	**For the Ninth Judicial Circuit**
County of Berkeley	)	**Civil Action Number: 2018-CP-09-___**

Affidavit Required Under Carolina Code Ann. Section 15-36-100

PERSONALLY APPEARED BEFORE ME, Charles Owen Nation, II, who, after first being duly sworn and under oath, states as follows. I am the owner of Nation Law Firm, P.C., and have been a member of the South Carolina Bar engaged in the general practice of law since November of 1984. I am a member of the South Carolina Bar Association, and have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100, which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omission(s) prior to the filing of complaint asserting negligence on the part of an attorney. This affidavit is given in connection with the area of practice dealing with residential real estate closings, more particularly, the refinance of the attorney on the abstract of real property, and the simultaneous representation of an owner of real property, a borrower and mortgagor, and a bank loaning funds on the condition of it being assured of a first mortgage lien encumbering the residential property which secures the repayment of the loan involved with the transaction. The facts as they have been presented to me appear to be as follows, and all references to documents filed of record are intended to refer to the Office of the Register of Deeds for the County of Berkeley, State of South Carolina:

1. Plaintiffs, Gaye Langley Jones and Ronald K. Jones, at all times relevant, were and are residents of the County of Berkeley County, State of South Carolina.

2. Rogers, Townsend & Thomas, LLC, at all times relevant, were licensed attorneys who were practicing law in the State of South Carolina.

3. On information and belief, Lisa M. Hostetler, at all times relevant, was employed by the law firm of Rogers, Townsend & Thomas, LLC.

4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

   All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID



ROA 0026

E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.

This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.

TMS #263-00-03-068

5. The property, Lot 6B, was conveyed by Deed of Coastal Plains Development Company, Inc., to James J. Monaghan by deed dated April 8, 2005, and filed of record in Deed Book 4887 at Page 84.

6. The subject property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006, and filed of record in Deed Book 5506 at Page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., by deed dated August 22, 2006, and filed of record in Deed Book 5904 at Page 177.

7. Rogers, Townsend & Thomas, LLC issued or caused Investor's Title Insurance Company Policy Number SC401720100521, a Homeowner's Policy of Title Insurance, to be issued, which insures the subject property, property shown and designated as Lot 6B on a plat filed of record in Plat Cabinet Q at Page 357A, hereinafter "Investor's Policy."

8. The exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, make no mention of some of the documents which are contained within the abstract of the title search.

9. While the abstract of the title search reveals the existence of the following documents in the chain of title to the subject property, the exceptions reflected

within Investor's Policy, and the Title Insurance Commitment which was prepared prior to Investor's Policy, make no mention of the following documents:

a. Easement to real estate from Candace A. Harvey, owner of Lot Number 6, as reflected on Slide Cabinet G at Page 6; and

b. Easement in a deed from Coastal Plains Development Co., Inc., to James J. Monaghan dated April 8, 2005, and filed of record in the Office of the Register of Deeds for the County of Berkeley in Volume 4887 at Page 65; and

c. Easement in deed from James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in the Office of the Register of Deeds for the County of Berkeley in Volume 5506 at Page 13, which conveyance and easement state as follows:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as

recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

TMS#263-00-03-079

10. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

11. Easements filed of public record were not noted and included within the title insurance commitment nor in the title insurance policy but were, however, noted in the abstract.

12. The plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easements above which completely encircle Lot 6B for a width of 25 feet except for most of the northern part of the lot. Further, the exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, excludes all loss, costs, attorney's fees and expenses resulting from those matters disclosed on a plat by Peabody & Associates, Inc., dated March 24, 2010.

13. I know I have not reviewed the entire closing file maintained by the parties.

14. I have attached a RESUME which reflects some of my educational background and experience, believe I am an expert in the field of residential real estate transactions, and estimate I have personally served as the closing attorney for either the seller or the purchaser or the bank, and others, in a variety of

transactions which include sales, purchases, refinances, etc., in more than one thousand (1,000) residential real estate transactions since my admission to the bar in 1984.

15. Based on the foregoing facts, the validity and accuracy of which I assume, it is my judgment Lisa M. Hostetler and the law firm which employed her appear to have been negligent in (a) failing properly to review the abstract of the subject property, and (b) in failing properly to list the exceptions applicable to the subject property. The factual basis for my opinion is my review of the files shared with me. As a result of the failure to review the abstract and note the easements filed of record, the subject property was purchased and easements which exists as a matter of record affect the subject property but were not disclosed.

16. In my judgment, a reasonably competent and careful South Carolina lawyer would not have closed the Loan and allowed the conveyance without reviewing the abstract, and the easements, and the plats related thereto, and explained the effect of the documents revealed in the abstract but not in the title insurance commitment or policy to be issued. I hold the foregoing opinions to a reasonable degree of professional certainty.

Charles Owen Nation, II

Sworn and **subscribed** to before me this 2 day of May, 2018.

Notary Public for South Carolina
My commission expires: 08/16/2027
(Seal)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,	)	
Plaintiffs,	)	
vs.	)	ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,	)	
Defendants.	)	

FILED
2018 JUN 12 PM 3:59
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2 and 3 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 and 7 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the

balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants deny so much of the allegations of Paragraphs 12, 13, and 14 of the Complaint as can be construed to allege that Lisa Hostetler acted as a settlement agent, signed any documents, or issued any title policies, or acted in any capacity at the Plaintiffs' closing.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11."

12. Defendants admit the allegations of Paragraphs 18 through 23 of the Complaint.

13. Defendants admit the allegations of Paragraphs 24 through 28 of the Complaint.

14. Defendants deny the allegations of Paragraph 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to dos so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE OF LISA HOSTETLER ALEXANDER
(Not the Proper Party)

76. Lisa Hostetler Alexander was not the supervising attorney in the closing of the lot for Plaintiffs.

77. Lisa Hostetler Alexander did not owe Plaintiffs any duty to give them legal advice or to notify them of any easement on their property.

78. Lisa Hostetler Alexander pleads that she is not a proper party to this lawsuit as a complete defense.

79. Lisa Hostetler Alexander pleads lack of any duty as a complete defense.

FOR A TENTH DEFENSE
(SCRCP Rule 12(b)(7))

80. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

81. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

82. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6B will fail to provide complete relief to the parties.

83. The owners of Lot 6B should be joined in this action.

84. This action should be dismissed for failure to join necessary parties or in the alternative the necessary parties should be joined.

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr. S.C. Bar No. 4525
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Columbia, South Carolina

June 8, 2018

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	CASE NO.: 2018-CP-08-00817
COUNTY OF BERKELEY	
RONALD L. JONES AND GAYE LANGLEY JONES,	
Plaintiffs,	**DEFENDANTS ALEXANDER C. PEABODY and PEABODY & ASSOCIATES, INC.'s ANSWER TO PLAINTIFFS' COMPLAINT**
v.	
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER, ALEXANDER C. PEABODY AND PEABODY & ASSOCIATES, INC.,	
Defendants.	

FILED
18 JUN 21 PM 2:28
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO: ROBERT W. MARING, ESQUIRE, Attorney for Plaintiffs

The Defendants Alexander C. Peabody and Peabody & Associates, Inc. above-named answer the Plaintiffs' Complaint as follows:

1. The allegations of the Complaint not specifically admitted herein are denied.

2. The Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 3 and therefore deny the same.

3. The allegations of Paragraph 4 are admitted.

4. The allegations of Paragraph 5 are admitted.

5. The allegations of Paragraphs 6 and 7 are conclusions of law for which no response is required. To the extent a response is required, they are denied.

6. In responding to the allegations of Paragraph 8, the Defendants reiterate their responses to the allegations of Paragraphs 1 through 7 above.

7. The Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraphs 9 through 14 and therefore deny the same.

8. The allegations of Paragraph 15 are denied.

RE/JU

9. The allegations of Paragraph 16 are admitted.

10. The allegations of Paragraph 17 are denied as stated.

11. The allegations of Paragraph 18 are admitted.

12. The allegations of Paragraph 19 are denied as stated.

13. The allegations of Paragraphs 20 and 21 are admitted.

14. The allegations of Paragraph 22 are denied as stated.

15. The allegations of Paragraphs 23 through 25 are denied.

16. The allegations of Paragraphs 26 and 27 do not pertain to these Defendants. To the extent a response is required, the Defendants would deny the same.

17. The allegations of Paragraphs 28 through 29 are denied.

18. The Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraphs 30 through 32 and therefore deny the same.

19. The allegations of Paragraph 33 through 41 are not directed at these Defendants. To the extent a response is required, the Defendants would deny the same.

20. Responding to the allegations of Paragraph 42, the Defendants reiterate their responses to the allegations of Paragraphs 1 through 41 above.

21. The allegations of Paragraph 43 are denied.

22. The allegations of Paragraph 44 are denied as stated.

23. The allegations of Paragraphs 45 and 46 are denied.

24. The allegations of Paragraphs 47 and 48 are denied.

25. In responding to the allegations of Paragraph 49, the Defendants would reiterate their responses to the allegations of Paragraphs 1 through 48 above.

26. The allegations of Paragraph 50 are denied.

FURTHER RESPONDING AND AS A FIRST AFFIRMATIVE DEFENSE

27. Plaintiffs' Complaint fails to state facts sufficient to constitute causes of action against these Defendants for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FURTHER RESPONDING AND AS A SECOND AFFIRMATIVE DEFENSE

28. The Plaintiffs' Complaint may be barred in whole or in part by the doctrines of estoppel and/or waiver.

FURTHER RESPONDING AND AS A THIRD AFFIRMATIVE DEFENSE

29. Plaintiffs' claims against these Defendants are barred to the extent relief is obtainable from other avenues.

FURTHER RESPONDING AND AS A FOURTH AFFIRMATIVE DEFENSE

30. Defendants are or may be entitled to such offsets that may be revealed by information obtained during the course of investigation and discovery as consistent with applicable law.

FURTHER RESPONDING AND AS A FIFTH AFFIRMATIVE DEFENSE

31. Plaintiffs' claims, either in whole or in part, are barred by the terms of the subject Agreements.

FURTHER RESPONDING AND AS A SIXTH AFFIRMATIVE DEFENSE

32. Plaintiffs' claims, either in whole or in part, are barred by the parole evidence rule.

FURTHER RESPONDING AND AS
A SEVENTH AFFIRMATIVE DEFENSE

33. Plaintiffs' claims may be barred, either in whole or in part, by the statute of frauds.

FURTHER RESPONDING AND AS
AN EIGHTH AFFIRMATIVE DEFENSE

34. Plaintiffs' claims may be barred, either in whole or in part, by Plaintiffs' failure to mitigate their damages.

FURTHER RESPONDING AND AS
A NINTH AFFIRMATIVE DEFENSE

35. At all relevant times, Defendants exercised the necessary degree of care and skill maintained by other professionals under similar conditions and in like circumstances.

FURTHER RESPONDING AND AS
A TENTH AFFIRMATIVE DEFENSE

36. Defendants owed no duty to the Plaintiffs and therefore all the tort claims must fail.

FURTHER RESPONDING AND AS
AN ELEVENTH AFFIRMATIVE DEFENSE

37. The damages sustained by Plaintiffs, if any, were caused by Plaintiffs' own negligence and/or the intervening and superseding negligence of others not under the control of Defendants; thus, Plaintiffs' recovery, if any, should be barred or reduced as provided by law.

FURTHER RESPONDING AND AS
A TWELFTH AFFIRMATIVE DEFENSE

38. Plaintiffs' claims are barred, in whole or in part, because any alleged rights or remedies in favor of Plaintiffs against these Defendants have been discharged or released by reason of various acts and omissions on the part of Plaintiffs, each of which, in and of itself, constitutes a legally sufficient cause to affect such discharge or release.

FURTHER RESPONDING AND AS
A THIRTEENTH AFFIRMATIVE DEFENSE

39. Plaintiffs' claims are barred by their own failure to perform their contractual duties and to satisfy conditions precedent.

FURTHER RESPONDING AND AS
A FOURTEENTH AFFIRMATIVE DEFENSE

40. Plaintiffs are not entitled to recover in tort for purely economic losses.

FURTHER RESPONDING AND AS
A FIFTEENTH AFFIRMATIVE DEFENSE

41. This Defendants expressly reserve the right to assert claims for express or implied indemnity and/or contribution pursuant to S.C. Code Ann. § 15-38-10 *et seq.* and other applicable law as to any co-defendants.

FURTHER RESPONDING AND AS
A SIXTEENTH AFFIRMATIVE DEFENSE

42. Plaintiffs' Complaint fails to state a claim upon which attorney's fees can be awarded and/or allege facts which, if proven, would entitle Plaintiffs to an award of attorney's fees.

FURTHER RESPONDING AND AS
A SEVENTEENTH AFFIRMATIVE DEFENSE

43. Plaintiffs' Complaint fails to state a claim upon which punitive damages can be awarded and/or allege facts which, if proven, would entitle Plaintiffs to an award of punitive damages.

FURTHER RESPONDING AND AS
A EIGHTEENTH AFFIRMATIVE DEFENSE

44. Any award of punitive or exemplary damages in this action would be in violation of the rights of Defendants under the United States Constitution and the Constitution of the State of South Carolina.

FURTHER RESPONDING AND AS
A NINTEENTH AFFIRMATIVE DEFENSE

45. Plaintiffs' Complaint fails to state a claim upon which prejudgment interest can be awarded and/or allege facts which, if proven, would entitle Plaintiffs to an award of prejudgment interest.

FURTHER RESPONDING AND AS
A TWENTIETH AFFIRMATIVE DEFENSE

46. Defendants reserve the right to raise any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendants, Alexander C. Peabody and Peabody & Associates, Inc., pray for the Plaintiffs' Complaint to be dismissed, for the cost of this action to be cast upon the Plaintiffs and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

EARHART OVERSTREET LLC

RYAN A. EARHART, ESQUIRE
SC BAR: 76597

JOSHUA H. UMBARGER, ESQUIRE
SC BAR: 101911

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

P.O. Box 22528
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(843) 972-9403

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and THOMAS W. CONE, JR., as TRUSTEE,	)	
Plaintiffs,	)	
v.	)	**SUMMONS**
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,	)	
Defendants.	)	

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

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., S.C. Bar No. 4525
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Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
May 7, 2019

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE, and THOMAS W. CONE, JR. as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	AMENDED ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER and PETITION FOR DECLARATORY JUDGMENT

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3 and 7 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11of the Complaint.

8. Defendants admit the allegations of Paragraphs 12, 13, and 14 of the Complaint.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaintincludes the wording of he described purported easement and that same is accurate except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11;" also Defendants deny the conclusions stated in said Paragraph.

12. Defendants deny the allegations of Paragraphs 18.

13. Defendants admit the allegations of Paragraphs 19 thru 25 and 27-28 of the Complaint.

14. Defendants deny the allegations of Paragraph 26, 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from thisaction.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

FOR A THIRD DEFENSE

(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE

(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fenceswere continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to do so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked graveon their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiverof the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE
(SCRCP Rule 12(b)(7))

76. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

77. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

78. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6A will fail to provide complete relief to the parties.

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

79. The owners of Lot 6Ahave been joined in this action and should remain parties to afford complete relief as to the issues presented.

FOR A TENTH DEFENSE
AND
PETITION FOR DECLARATORY JUDGMENT

80. The plaintiffs collectively allege that an easement appurtenant exists granting the owners of Lot 6A the right to traverse the property of Lot 6B.

81. The plaintiffs collectively allege that the easement appurtenant was originally recorded in a deed from James J. Monogham to Benjamin L. Daniel, dated April 4, 2006, and filed in the Register of Deeds office on April 5, 2006 at Deed Book 5506, page 12. A copy of the Deed is attached hereto as Exhibit 1. The plat referenced in the Monogham deed is attached hereto as Exhibit 2.

82. The plaintiffs collectively assert that they have replaced the original easement, which they now call a "Purported Easement," with an easement dated March 15, 2019 and recorded in the Register of Deeds office on March 22, 2019 at RB 2977, page 604. A copy of the 2019 easement is attached hereto as Exhibit 3. Because the line segments referred to in Exhibit 2 are difficult to read, the plat of Lot 6B is attached hereto as Exhibit 4.

83. The plaintiffs' assertions have no effect upon the nature of the "Purported Easement" with respect to their successors. The nature of the "Purported Easement" and its effect upon subsequent owners of the two lots can only be determined by a judgment.

84. A justiciable controversy exists as to the Jones plaintiffs with respect to the original "Purported Easement" in that the Jones plaintiffs assert that they have been damaged because the "Purported Easement" allowed strangers access to their property, and that

ELECTRONICALLY FILED - 2019 May 07 3:48 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Defendants were negligent in failing to alert them to the "Purported Easement" at the time the Jones purchased Lot 6B (the servient estate).

85. A justiciable controversy exists as to the Trustee plaintiffs with respect to the original "Purported Easement" because they and the Jones plaintiffs have entered into the March 2019 easement based upon the uncertain nature of what they describe as of the "Purported Easement."

86. The Defendants' legal rights are affected by the determination of whether the "Purported Easement" is in fact a valid easement, as set forth in the Complaint in this matter.

87. The plaintiffs allege that the "Purported Easement" is valid.

88. The defendants aver that the "Purported Easement" is not a valid easement under the facts of this case.

89. The defendants request that the Court determine the rights of the owners of Lot 6A and Lot 6B under the "Purported Easement."

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for a determination that the "Purported Easement" is in fact and law invalid, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
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Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
May 7, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	_____ JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	
)	CASE NO.: 2018-CP-08-817
RONALD L. JONES, et al.)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
Rogers Townsend & Thomas, PC, et al.)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____	Warren C. Powell, Jr., Bar No. 4525
Address:	Address:
_____	PO Box 61110, Columbia SC 29260
Phone: _____Fax _____	Phone: 803-252-7693 Fax_____
E-mail: _____Other: _____	E-mail: BRobinson@BrunerPowell.comOther:

☒ **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: Motion to Add Party
Estimated Time Needed: 45 min 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.

Warren C. Powell
Signature of Attorney for ☐ Plaintiff /☒ Defendant

June 8, 2018
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: _____

MARY P. BROWN CLERK OF COURT BERKELEY COUNTY, SC
2018 JUN 12 PM 4:02
FILED

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

CLERK'S VERIFICATION

Collected by: MK Date Filed: 6/12/18
☒ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $ _____

WCP

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)	
Plaintiffs,)	
vs.)	DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.'S MOTION TO ADD A PARTY (SCRCP RULE 19(a))
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

TO: ROBERT W. MARING, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that defendant, Rogers Townsend & Thomas, P.C., will, by and through its undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order making THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, AND THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 parties plaintiff needed for a just adjudication under SCRCP Rule 19(a) as plaintiffs.

The grounds for the motion are set forth in a memorandum file contemporaneously herewith.

FILED
2018 JUN 12 PM 4:02
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Movant attempted to consult with opposing counsel, as required by Rule 11, SCRCP, both by telephone and by e-mail, but was unable to reach opposing counsel.

BRUNER, POWELL, WALL & MULLINS, LLC

/s/ Warren C. Powell, Jr.
Warren C. Powell, Jr. S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)	
Plaintiffs,)	
vs.)	MEMORANDUM IN SUPPORT OF DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.'S MOTION TO ADD A PARTY (SCRCP RULE 19(a))
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

THE FACTS

The plaintiffs (collectively "Jones") purchased property on which Rogers Townsend & Thomas, P.C. ("RT&T") acted as the closing attorney in 2010. Jones claims to have discovered an easement on the property of which it claims to have been unaware at the time of purchase. Jones sued RT&T for failing to inform Jones of the easement prior to closing. RT&T issued a policy of title insurance to Jones.

RT&T has or will enter defenses to the Jones claims. RT&T avers that the easement being sued over is not legally viable, or that the dominant property holder has waived the easement or that the dominant property holder is estopped to assert the easement.

The proposed new parties, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 2007, are the owners of the dominant estate.

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2018 JUN 12 PM 4:02
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

THE LAW

Rule 19(a), SCRCP, allows either party to an existing lawsuit to join another person if the joinder will not deprive the court of jurisdiction and if the absence of the proposed party will prevent complete relief.

The dominant estate is the proper party to assert and defend an easement. Sheppard v. Justin Enters., 373 S.C. 518, 646 S.E.2d 177 (Ct.App. 2007).

Under most circumstances, an order is not binding on a non-party. Pharr v. Canal Ins. Co., 233 S.C. 266, 104 S.E.2d 394 (1959).

APPLICATION OF THE LAW TO THE FACTS

If RT&T is successful in defending claims brought by Jones on the grounds that the easement either does not exist or that it is unenforceable by waiver or estoppel, complete relief will not be achieved thereby. If the unbound dominant property owner asserts rights in the easement over the Jones property, Jones may bring an action against the title insurer to defend Jones or enter suit against the alleged dominant estate holder, which could lead to additional actions against Movant, unless completer is not afforded here.

Including the dominant property owners in this lawsuit will afford complete relief to all the parties because it will determine the status of the easement for both the dominant and servient estates. Including the dominant property owners will not prejudice Jones, because Jones contends that the alleged easement has caused her damage and, of course, she has in interest in defeating or terminating the alleged easement.

CONCLUSION

The proposed new parties should be added as party defendants because they may claim a purported easement to which Jones objects and which RT&T is challenging, because they are needed for complete relief, and because adding them will not prejudice any existing party.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr. S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	CASE NO.: 2018-CP-08-817
RONALD L. JONES and GAYE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr., Revocable Trust,)	PLAINTIFFS THOMAS HUGUENIN GAILLARD AND THOMAS W. CONE, JR.'S MOTION FOR NON-JOINDER PURSUANT TO RULE 21 SCRCP
Plaintiffs,)	
v.)	
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

TO: WARREN C. POWELL, JR., ATTORNEY FOR DEFENDANTS ROGERS TOWNSEND & THOMAS, P.C. and LISA HOSTETLER, RYAN A. EARHART, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY, and PEABODY & ASSOCIATES, INC.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for Plaintiffs Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust (hereinafter "Gaillard and Cone"), will move before the presiding Judge of the Berkeley County Court of Common Pleas for an Order releasing them as involuntary plaintiffs in the above cited action pursuant to Rule 21 of the South Carolina Rules of Civil

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Procedure. Plaintiffs' motion is based upon the arguments and authorities below and the pleadings, exhibits, affidavits, other admissible evidence, applicable common law and statutory law and any memorandum of law or further supporting documentation provided to this Court.

FACTUAL BACKGROUND

Plaintiffs Ronald L. Jones and Gaye Langley Jones (hereinafter "Jones") purchased property at issue in this case in 2010. Jones alleges that Defendants Rogers Townsend & Thomas, P.C. ("RTT") acted as closing counsel. Jones further alleges that they discovered an easement on the property that they not made unaware of at the time of purchase. Jones sued RTT, the closing attorney Lisa Hostetler, and the surveyor Alexander C. Peabody and Peabody & Associates, Inc. ("Peabody") for damages based on the various causes of action set forth in their Complaint.

On June 12, 2018 counsel for RTT filed a Motion to Add a Party under SCRCP Rule 19(a) and also filed a Memorandum in Support of Defendant RTT's Motion to Add a Party. RTT contended in its Memorandum that the proposed new parties, Gaillard and Cone, were the owners of the dominant estate and that the dominant estate was the proper party to assert and defend an easement. RTT further contended that the easement being sued over was not legally viable, or that the dominant property holder had waived the easement or that the dominant property holder was estopped to assert the easement. RTT argued that Gaillard and Cone be added as parties to the action because if RTT prevailed in its defenses, Gaillard and Cone, as non-parties, might still claim rights under the purported easement because they might not be bound by any adverse ruling regarding the easement in this case.

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RTT's Motion was heard before the Honorable Perry M. Buckner. Cone and Gaillard were not provided with notice of the hearing. Judge Buckner issued a Form 4 Order dated August 6, 2018 and filed with the clerk on August 13, 2018, granting RTT's motion to add Gaillard and Cone as parties to this action.

BASIS FOR GRANT OF MOTION

Since the issuance of Judge Buckner's Order, Jones, Gaillard and Cone have entered into an Access, Maintenance and Joint Dock Use Agreement (hereinafter, the "Agreement") that has been recorded with the Berkeley County Register of Deeds Office in Book RB2977 at Page 604. (A true and correct copy of the Agreement is attached hereto as Exhibit A.) The terms of the Agreement terminate the purported easement at issue in this case and provides that Gaillard and Cone relinquish any interest they may have had in that easement. Accordingly, Gaillard and Cone no longer have any interest in the outcome of this case and there is no basis for keeping them in this action as parties. Counsel for Defendants have been provided with a recorded copy of the Agreement.

SCRCP Rule 21 provides that parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Gaillard and Cone are being forced to spend time and money participating as Plaintiffs in an action where they have asserted no claim and have had no claims asserted against them. Because the basis for adding Gaillard and Cone as parties to this action no longer exist, it is reasonable and just that they be released as parties to this action. Their continued forced participation in this action as parties is unfair and unjust.

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Gaillard and Cone, by and through their undersigned counsel, requested that Defendants consent to an order releasing them as nominal plaintiffs in this action. Ryan Earhart, counsel for Peabody, agreed to stipulate to Gaillard and Cone's dismissal from this action. Warren Powell, counsel for RTT and Lisa Hostetler has refused to stipulate. The basis for Mr. Powell's refusal is set forth in his email attached hereto as Exhibit B.

Counsel for Gaillard and Cone has consulted with opposing counsel as required by Rule 11, SCRCP prior to the filing of this motion.

CONCLUSION

Based on the foregoing, Plaintiffs Gaillard and Cone ask that the Court issue an Order releasing them as Plaintiffs in this action.

WILLIAMS AND HULST, LLC

/s/ *J. Jay Hulst*

J. Jay Hulst
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232 phone
(843) 899-5834 fax
jjh@williamsandhulst.com

ATTORNEYS FOR PLAINTIFFS
THOMAS W. CONE, JR., AND
THOMAS HUGUENIN GAILLARD

Dated: March 28, 2019

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EXHIBIT A

CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA	)	
	)	ACCESS, MAINTENANCE AND
COUNTY OF BERKELEY	)	JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of MARCH, 2019, by and between **Gaye L. Jones** ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access, ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS, the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8, 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"), inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS, the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"), and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other, in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone, their heirs, successors, successors-in-title, invitees, licensees, lessees and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access, ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family, successors, heirs, assigns, invitees, licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"), subject, however, to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct, maintain, repair and replace the Joint Dock.

TO HAVE AND TO HOLD, all and singular, subject to terms and conditions set forth herein, the aforesaid Dock Access Easement, unto Gaillard and Cone, their heirs, successors, successors-in-title and assigns, forever.

2. Joint Dock Construction. On or before April 15, 2018, Jones and Gaillard and Cone (each a "Party" and collectively, the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit, the cost of which shall be split between the Parties as follows: Jones: 50%; Gaillard and Cone: 50%. Once construction of the Joint Dock commences, such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein, or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided, then, in such event, the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead, gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default, including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party, including their successors, heirs, assigns, respective agents, lessees, invitees, and licensees, and hold each other harmless from and against any and all claims, demands, actions, causes of action, damages, liens, losses, liabilities, fines, penalties, costs and expenses, including attorneys' fees and court costs, caused by or in any way attributable to the negligence, gross negligence of willfulness of such indemnitor, or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1,000,000 per occurrence, the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail, return receipt requested, overnight delivery, or by hand-delivery to the address provided by such Lot Owner, or if no address is provided, then to the residence located on the Jones Property or the Gaillard and Cone Property, as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service, or deposit with a national overnight carrier, and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties, their heirs, successors, successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

_____ (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that **Gaye L. Jones**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.

_____
Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15 day of MARCH, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mills Caldwell
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF Charleston)

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

W. Britt Ballard

Tammy S. Griffin

Thomas W. Cone, Jr. (SEAL)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF Charleston)

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007**. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

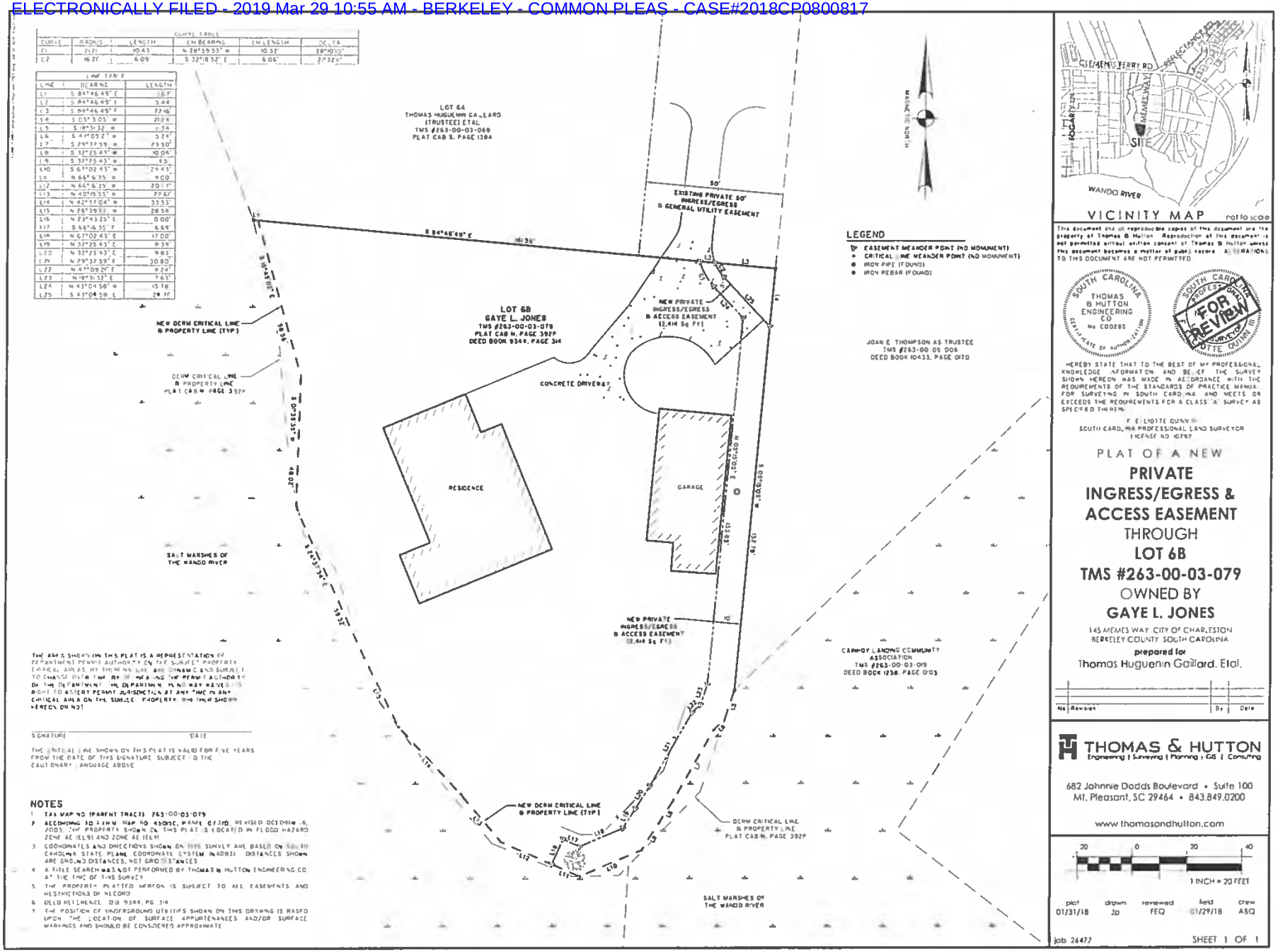
ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

EXHIBIT "C"
EASEMENT PLAT

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

ROA 0078

ROA 0078



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EXHIBIT B

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Jary J Hulst

From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst
Subject: RE: Jones v. RTT

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

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

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

Warren:

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

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

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

Confidentiality Notice:
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information which is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you

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have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

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

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

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

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

Warren:

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

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

Confidentiality Notice:
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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE,)	
Plaintiffs,)	
v.)	DEFENDANTS' MOTION TO AMEND THE ANSWER
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

TO: ROBERT W. MARING, ESQUIRE AND JAY J. HULST, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that Defendants, Rogers Townsend & Thomas, P.C., and Lisa Hostetler will, by and through their undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order allowing them to file an amended answer, a copy of which is attached hereto.

The grounds for the motion are that the controversy exists as to the nature of the deeds and other instruments and how they relate to the alleged easement at issue herein and the Court can determine the nature under the Declaratory Judgment Act, and that the case is not set for trial and no plaintiff will be prejudiced by the amendment. A copy of the proposed amended answer is attached hereto.

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Movant has not attempted to consult with opposing counsel, as otherwise required by Rule 11, SCRCP, because such consultation would serve no useful purpose.

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina
March 29, 2019

ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE,	)	
Plaintiffs,	)	
v.	)	**SUMMONS**
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,	)	
Defendants.	)	

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

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	AMENDED ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER and PETITION FOR DECLARATORY JUDGMENT

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3 and 7 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property

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description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants admit the allegations of Paragraphs 12, 13, and 14 of the Complaint.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint includes the wording of he described purported easement and that same is accurate except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11;" also Defendants deny the conclusions stated in said Paragraph.

12. Defendants deny the allegations of Paragraphs 18.

13. Defendants admit the allegations of Paragraphs 19 thru 25 and 27-28 of the Complaint.

14. Defendants deny the allegations of Paragraph 26, 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

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18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

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FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

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41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to do so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

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FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

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FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE
(SCRCP Rule 12(b)(7))

76. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

77. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

78. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6A will fail to provide complete relief to the parties.

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79. The owners of Lot 6A have been joined in this action and should remain parties to afford complete relief as to the issues presented.

FOR A TENTH DEFENSE
AND
PETITION FOR DECLARATORY JUDGMENT

80. The plaintiffs collectively allege that an easement appurtenant exists granting the owners of Lot 6A the right to traverse the property of Lot 6B.

81. The plaintiffs collectively allege that the easement appurtenant was originally recorded in a deed from James J. Monogham to Benjamin L. Daniel, dated April 4, 2006, and filed in the Register of Deeds office on April 5, 2006 at Deed Book 5506, page 12. A copy of the Deed is attached hereto as Exhibit 1. The plat referenced in the Monogham deed is attached hereto as Exhibit 2.

82. The plaintiffs collectively assert that they have replaced the original easement, which they now call a "Purported Easement," with an easement dated March 15, 2019 and recorded in the Register of Deeds office on March 22, 2019 at RB 2977, page 604. A copy of the 2019 easement is attached hereto as Exhibit 3. Because the line segments referred to in Exhibit 2 are difficult to read, the plat of Lot 6B is attached hereto as Exhibit 4.

83. The plaintiffs' assertions have no effect upon the nature of the "Purported Easement" with respect to their successors. The nature of the "Purported Easement" and its effect upon subsequent owners of the two lots can only be determined by a judgment.

84. A justiciable controversy exists as to the Jones plaintiffs with respect to the original "Purported Easement" in that the Jones plaintiffs assert that they have been damaged because the "Purported Easement" allowed strangers access to their property, and that

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Defendants were negligent in failing to alert them to the "Purported Easement" at the time the Jones purchased Lot 6B (the servient estate).

85. A justiciable controversy exists as to the Trustee plaintiffs with respect to the original "Purported Easement" because they and the Jones plaintiffs have entered into the March 2019 easement based upon the uncertain nature of what they describe as of the "Purported Easement."

86. The Defendants' legal rights are affected by the determination of whether the "Purported Easement" is in fact a valid easement, as set forth in the Complaint in this matter.

87. The plaintiffs allege that the "Purported Easement" is valid.

88. The defendants aver that the "Purported Easement" is not a valid easement under the facts of this case.

89. The defendants request that the Court determine the rights of the owners of Lot 6A and Lot 6B under the "Purported Easement."

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for a determination that the "Purported Easement" is in fact and law invalid, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

_____

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

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EX 1

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

00055535 Vol: 5806 Pg: 12

Instrument Number: 2006- 00055535
As
Deed

Recorded On: April 05, 2006

Parties: MONAGHAN JAMES J
To
DANIEL BENJAMIN L SR

Recorded By: CUTCHIN LAW FIRM

Num Of Pages: 8

Comment:

** Examined and Charged as Follows: **

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

RECEIVED
Apr 05, 2006
ASSESSOR
BERKELEY COUNTY SC
JANET B. JUDSKO
AUDITOR BERKELEY COUNTY SC

** THIS PAGE IS PART OF THE INSTRUMENT **

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

File Information:
Document Number: 2006- 00055535
Receipt Number: 44128
Recorded Date/Time: April 05, 2006 03:58:24P
Book-Vol/Pg: Bk-R Vl-5806 Pg-12
Cashier / Station: D Smith / Cash Station 9

Record and Return To:
CUTCHIN LAW FIRM
985-B JOHNNIED DODDS BLVD
MT PLEASANT SC 29464

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B Forte - Register of Deeds

ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

00055535 Vol: 5896 Pg: 13

After Recording, Please Return to:

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

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

William J. Cutchin

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

Deloris C. Gunnells

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BERKELEY)

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

William J. Cutchin

SWORN TO before me, this
April 4, 2006.

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

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Schedule A

Legal Description
(Deed)

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

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

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

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

TMS # 263-00-03-079

Lawyer Responsible _____

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AFFIDAVIT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

Date of Transfer of Title
April 4, 2006

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **James J. Monaghan** to **Benjamin L. Daniel, Sr.**, ON **April 4, 2006.**

3. Check one of the following: The DEED is
   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) __X___ EXEMPT from the deed recording fee because (exemption# _12_) (Explanation if required)_Transfer to Grantor(s)' Trust(s)_____ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) ___XX_ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of $5.00.
   (b) _____ The fee is computed on the fair market value of the realty which is $____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) __XX__ the amount listed in item 4 above.
   (b) _____ the amount listed in item 5 above (no amount place zero)
   (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

William J. Cutchin, Legal Representative connected with this transaction

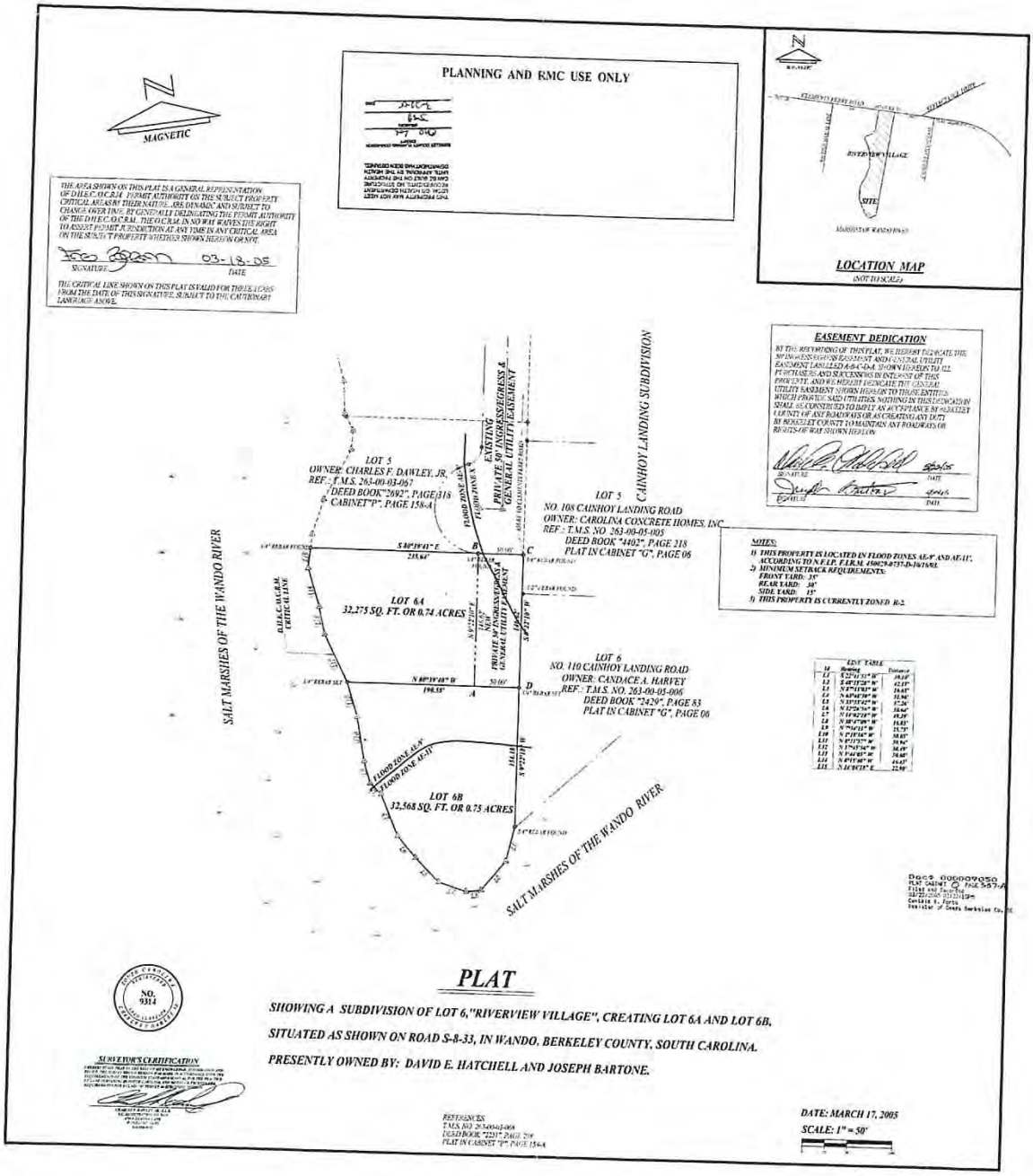
Sworn to before me this
April 4, 2006

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

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EX 2

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EX 3

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CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of March, 2019, by and between Gaye L. Jones ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as Exhibit "C" and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access. ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS. the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8. 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"). inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS. the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control. Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"). and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises. the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other. in hand paid. the receipt of which is hereby acknowledged, and for other good and valuable consideration. the receipt. adequacy and sufficiency of which are hereby expressly acknowledged. the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone. their heirs. successors. successors-in-title. invitees. licensees. lessees and assigns. a non-exclusive. permanent. perpetual. transmissible. appurtenant ingress. egress. and access easement and right-of-way. ten (10) feet in width. upon. over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access. ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family. successors. heirs. assigns. invitees. licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"). subject. however. to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct. maintain. repair and replace the Joint Dock.

TO HAVE AND TO HOLD. all and singular. subject to terms and conditions set forth herein. the aforesaid Dock Access Easement. unto Gaillard and Cone. their heirs. successors. successors-in-title and assigns. forever.

2. Joint Dock Construction. On or before April 15. 2018. Jones and Gaillard and Cone (each a "Party" and collectively. the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit. the cost of which shall be split between the Parties as follows: Jones: 50%; Gaillard and Cone: 50%. Once construction of the Joint Dock commences. such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein. or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided. then, in such event. the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead. gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default. including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party. including their successors, heirs. assigns. respective agents. lessees. invitees. and licensees. and hold each other harmless from and against any and all claims. demands. actions. causes of action. damages. liens. losses, liabilities, fines. penalties. costs and expenses. including attorneys' fees and court costs. caused by or in any way attributable to the negligence. gross negligence of willfulness of such indemnitor. or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1.000.000 per occurrence. the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail. return receipt requested. overnight delivery. or by hand-delivery to the address provided by such Lot Owner. or if no address is provided. then to the residence located on the Jones Property or the Gaillard and Cone Property. as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service. or deposit with a national overnight carrier. and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties. their heirs. successors. successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

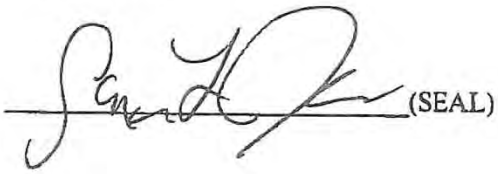
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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones





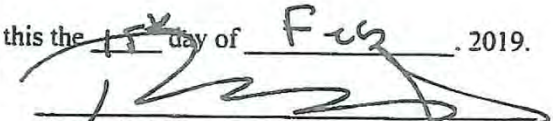
(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that Gaye L. Jones, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.



Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF. the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED. SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mott Connard
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED. SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

W. Britt Braund

Tammy S. Griffin

Thomas W. Cone, Jr. (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007.** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot. piece. or parcel of land. including any and all improvements thereon. situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses. meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

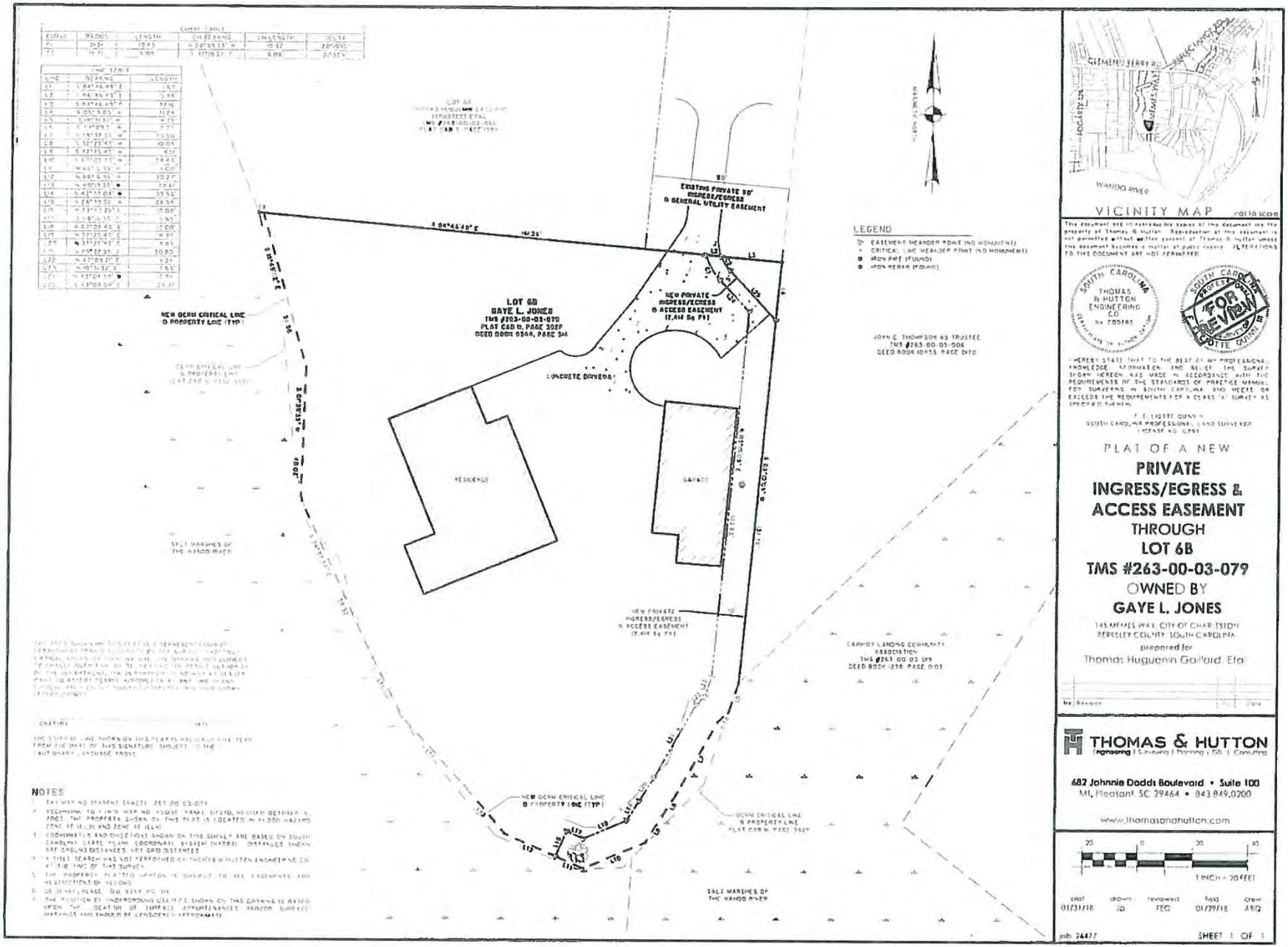
All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

EXHIBIT "C"
EASEMENT PLAT

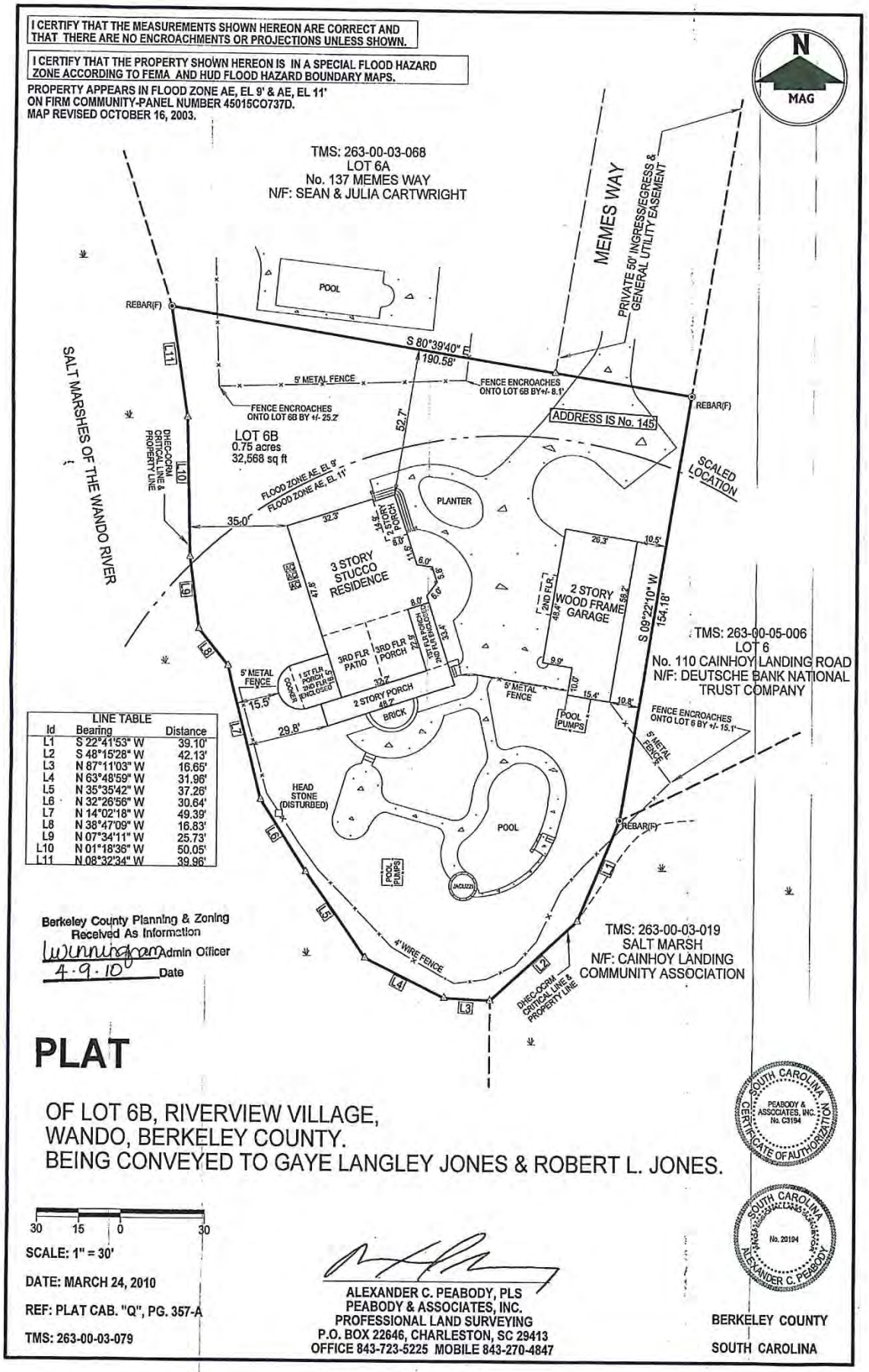
ROA 0115


LOT 6B
GAYE L. JONES
TMS #263-00-03-079
PLAT CAB D, PAGE 308P
DEED BOOK 0346, PAGE 344
NEW PRIVATE INGRESS/EGRESS & ACCESS EASEMENT (7,414 Sq Ft)
EXISTING PRIVATE 50' INGRESS/EGRESS & GENERAL UTILITY EASEMENT
CONCRETE DRIVEWAY
RESIDENCE
GARAGE
JOHN E. THOMPSON AS TRUSTEE
TMS #263-00-03-006
DEED BOOK 10455, PAGE 0170
CARROT LANDING COMMUNITY ASSOCIATION
TMS #263-00-03-099
DEED BOOK 1238, PAGE 003
NEW OCRM CRITICAL LINE & PROPERTY LINE (TYP)
SALT MARSHES OF THE WANDO RIVER
LEGEND
EASEMENT MEANDER POINT (NO MONUMENT)
CRITICAL LINE MEANDER POINT (NO MONUMENT)
IRON PIPE (FOUND)
IRON REBAR (FOUND)
NOTES
VICINITY MAP
WANDO RIVER
SEGREANTOWN
CLEMENTS FERRY RD
HOCKLEY LN
SITE
THOMAS & HUTTON ENGINEERING CO.
SOUTH CAROLINA
PROFESSIONAL ENGINEER
FOR REVIEW
PLAT OF A NEW
PRIVATE INGRESS/EGRESS & ACCESS EASEMENT
THROUGH
LOT 6B
TMS #263-00-03-079
OWNED BY
GAYE L. JONES
145 MEMES WAY, CITY OF CHARLESTON
BERKELEY COUNTY, SOUTH CAROLINA
prepared for
Thomas Huguenin Gaillard, Esq.
THOMAS & HUTTON
682 Johnnie Dodds Boulevard • Suite 100
Mt. Pleasant, SC 29464 • 843.849.0200
www.thomasandhutton.com
1 INCH = 20 FEET
SHEET 1 OF 1

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EX 4

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LINE TABLE		
Id	Bearing	Distance
L1	S 22°41'53" W	39.10'
L2	S 48°15'28" W	42.13'
L3	N 87°11'03" W	16.65'
L4	N 63°48'59" W	31.96'
L5	N 35°35'42" W	37.26'
L6	N 32°26'56" W	30.64'
L7	N 14°02'18" W	49.39'
L8	N 38°47'09" W	16.83'
L9	N 07°34'11" W	25.73'
L10	N 01°18'36" W	50.05'
L11	N 08°32'34" W	39.96'

Berkeley County Planning & Zoning
Received As Information
Winningham Admin Officer
4-9-10 Date

PLAT

OF LOT 6B, RIVERVIEW VILLAGE,
WANDO, BERKELEY COUNTY.
BEING CONVEYED TO GAYE LANGLEY JONES & ROBERT L. JONES.

30 15 0 30

SCALE: 1" = 30'

DATE: MARCH 24, 2010

REF: PLAT CAB. "Q", PG. 357-A

TMS: 263-00-03-079

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION PEABODY & ASSOCIATES, INC. No. C3194

SOUTH CAROLINA No. 20194 ALEXANDER C. PEABODY

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

BERKELEY COUNTY
SOUTH CAROLINA

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and THOMAS W. CONE, JR., as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER, C. PEABODY; and. PEABODY & ASSOCIATES, INC., Defendants.	MEMORANDUM IN OPPOSITION TO PLAINTIFF TRUSTEES' MOTION TO DISMISS AND IN SUPPORT OF DEFENDANTS' MOTION AMEND ITS ANSWER TO ASSERT A DECLARATORY JUDGMENT CLAIM

THE FACTS

Defendants offer the following as a succinct statement of the facts material to the motions before the court:

1. On May 7, 2010 the plaintiff purchased Lot 6B, 145 Memes Way, on which a residence had previously been constructed (Complaint Paragraph 9).

2. Defendants Rogers Townsend & Thomas, PC ("RT&T") and Lisa Hostetler had multiple roles in connection with Plaintiff Jones' purchase and/or closing on her residence which is in part the subject of this action.

3. The purported easement which is the subject of this lawsuit first appeared in a deed from former Lot 6B owner James J. Monaghan, Deed Book 5506 at page 12, filed on April 5, 2006 to Benjamin L. Daniel. Plaintiff Jones contends in her Complaint that this deed creates an easement (purported) which almost entirely encircles Lot 6B, naming as the alleged dominant estate the owners of Lot 6A. Since April 5, 2006 the ownership of Lot 6A

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has changed hands such that since 2011 Trustees Gaillard and Cone now own Lot 6A and did so at the commencement of this action. The deed Jones received did not contain the relevant easement language.

4. Jones entered suit May 4, 2018.

5. Defendants Rogers Townsend & Thomas, PC and Hostetler moved to make the purported dominant estate holders plaintiffs to this action at a hearing which involved opposition from Plaintiff Jones. The August 6, 2018 Order of Judge Buckner made Gaillard and Cone, Trustees, parties plaintiff (Attached as Exhibit 13).

6. Plaintiff Jones alleges in her May 4, 2018 Complaint (Attached as Exhibit 1) that:

a. Upon information and belief a 25-ft Ingress/Egress easement was created by way a deed from James J. Monaghan to Benjamin L. Daniel dated April 4, 2006 and recorded on April 5, 2006 in the office of the Register of Deeds for Berkeley County in Deed Book 5506 at page 12 (Complaint Paragraph 16) .

b. The easement granted to the owners of Lot 6A (TMS #263-00-03-068) … a 25' - Ingress/Egress along the northern boundary of the Lot 6B … "Therefore, the easement will almost completely encircle the Lot 6B … except for most of the northern boundary of the lot. This easement is given in perpetuity and is to run with the land" (Complaint Paragraph 17).

c. As a result of the existence of the easement, Plaintiffs have lost full enjoyment and use of their property" (Complaint Paragraph 29).

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d. That the owners of Lot 6A (TMS #263-00-03-068) will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement (Complaint Paragraph 31).

e. That as a result, the owners of Lot 6A will continue to have an easement on Plaintiffs' property, depriving them of exclusive ownership of their property (Complaint Paragraph 32).

7. Timeline of events leading to this hearing.

a. February 25, 2019: Powell letter to opposing counsel requesting to commence depositions in this case during the week of March 11, 2019 (Attached as Exhibit 2).

b. March 4, 2019: Powell email to opposing counsel following up on his letter of February 25, 2019 requesting the commencement of depositions during the week of March 11, 2019 (Attached as Exhibit 3).

c. March 4, 2019: Attorney Hulst's email to Powell and Maring that he is "booked up for March and moreover my clients are presently out of the country." (Attached as Exhibit 3).

d. March 11, 2019: Powell letter to other counsel of record: Since Mr. Hulst has no time in March to schedule depositions, April 1-3 are proposed (Attached as Exhibit 4).

e. March 13, 2019: Attorney Hulst email to other counsel of record announcing approval of depositions to be held on April 5 and 8-12 (Attached as Exhibit 5).

f. March 22, 2019: Plaintiffs' "Access, Maintenance and Joint Dock Use Agreement" filed March 22, 2019 (Attached as Exhibit 6), which provides that Plaintiff

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Jones and Plaintiff Trustees shall build a 800' plus dock from Lot 6B with Jones paying 50% of the construction cost and the Trustees the other 50% with all having the right to use the dock.

g. March 27, 2019 (noon): Powell email to opposing counsel responding that April 8-12 is satisfactory to commence depositions in the case (Attached as Exhibit 7).

h. March 27, 2019: Hulst to other counsel of record. Q: Why continue to delay? That easement is now gone. What is the point of his clients' continued participation as a party? (Attached as Exhibit 7).

i. March 28, 2019: Powell email to attorney Hulst responding to his repeated request that his clients be dismissed as having an interest in the case to which Powell proposed dismissal possible if Trustees acknowledged that, on reflection, the 2006 easement was not valid and had been replaced by the dock easement filed March 22, 2019 (Attached as Exhibit 8).

j. March 28, 2019: Trustees decline to comment; Hulst email to other counsel of record regarding Hulst's intent to file a motion and let a judge decide concerning the dismissal. (Attached as Exhibit 8).

k. March 28, 2019 (1:41 pm): Powell email to Hulst regarding Defendants' intent to notice the depositions and get those out of the way, "as we agreed to do. That may eliminate the need for your motion." (Attached as Exhibit 9).

l. March 28, 2019 (1:49 pm): Hulst response to Powell and other counsel of record: "I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case." (Attached as Exhibit 9).

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

n. March 29, 2019 (5:35 pm): Hulst email to Powell and other counsel of record, "I am in receipt of your deposition notices for my clients… Please confirm by April 2 that these depositions are off-calendar or I will move for a protective order" (Attached as Exhibit 11).

o. April 4, 2019: Powell email to Huslt, cc to all, after trying to move forward with discovery for two months. No need to file a motion for protective order as it would give you an automatic stay anyway (Attached as Exhibit 12).

ARGUMENT AS TO TRUSTEES' MOTION FOR ORDER OF NONJOINDER

In their motion, Gilliard and Cone do not cite any case law. They rely instead on SCRCP Rule 21. Relevant to this motion is Farmer v. CAGC Ins. Co., 424 S.C. 579, 819 S.E.2d 142 (Ct.App. 2018). (Trustees' Motion for Non-Joinder, attached as Exhibit 14).

In the Farmer case, the Court of Appeals held that "Rule 21 should be viewed by the company it keeps; its neighbors, Rules 17, 19, and 20 are provisions that also tell us who are proper parties. . . Although Rule 21 does not define misjoinder, the cases make it clear that parties are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a)." Id. at 586, 819 S.E.2d 145.

The permissive joinder preconditions in Rule 20(a), Permissive Joinder, are: (1) asserting "a right to relief in respect of, or arising out of the same transaction, occurrence, or series of transactions or occurrences and [2] if any question of law or fact common to all these persons will arise in the action. . . [or] [1] if there is asserted against them jointly, severally, or in the

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and [2] if any question of law or fact common to all defendants will arise in the action."

As to the allegations of the plaintiffs' May 4, 2018 Complaint, the Trustee Plaintiffs (Lot 6A owners) may in the future, "…reduce the size and scope of the easement" (Complaint Paragraph 31) and, "That as a result, the owners of Lot 6A will continue to have an easement on Plaintiffs' property, depriving them of exclusive ownership of their property." (Complaint Paragraph 32) As the plaintiffs' pleadings before the court state, the Trustees, "will continue to have an easement on Plaintiffs' property." (Complaint Paragraph 32) and, "…will not terminate their rights to the easement" (Complaint Paragraph 31).

The parties' attempt to repair the defective nature of the "purported 2006" easement by an attempted renunciation and replacement of it with the "Access, Maintenance and Joint Dock Use Agreement" (filed March 29, 2019) does not eliminate the reality that Plaintiff Jones, as stated in the Complaint, continues to assert claims for damages against the defendant attorneys based upon the 2006 purported easement, which as the Trustees admit, names the Lot 6A owners as the would be dominant estate holders of the 2006 purported easement. The Movants' Motion for Nonjoinder should be denied for at least the following reasons:

(1) Plaintiff Jones contends, "That as a result of the [purported 2006] easement, the plaintiffs have lost full enjoyment and use of their property" (Complaint Paragraph 29). The Trustee Plaintiffs admit that as Lot 6A owners since 2011 they were named as purported dominant estate owners of the 2006 easement. Accordingly, the trial of this case involved "a right of relief … arising out of … a series of transactions or occurrences AND questions of law and fact common to all parties: validity of the 2006 easement from both a legal and factual

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standpoint, and, if valid, whether the purported dominant estate holders since 2006, including the Trustees, abandoned the easements.

(2) Even under the most recent transaction in the "series of transactions" since 2006, the, March 29, 2019 "Access, Maintenance and Joint Dock Use Agreement" between Jones and the Trustees will need to be tested (litigated) as to scope, validity and other details. All parties to this latest transaction, Jones and the Trustees, are necessary or appropriate parties to the issues concerning the March 2019 'replacement easement,' keeping in mind that the plaintiff seeks damages related thereto.

(3) The August 6, 2018 order entered by Judge Buckner naming the purported dominant estate holders (Trustees herein) as parties was in the wake of these Defendants' Rule 19 motion. Rule 19 provides in material part that a person can be joined, "if (1) in his absence complete relief cannot be accorded among those parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest, or (ii) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." While the Trustees claim they have replaced the 2006 purported easement with the March 29, 2019 dock easement this does not alter the fact that the Trustees continue, as Plaintiffs' Complaint recites, to claim dominant estate status permitting them to enter Plaintiff's property which forms the basis of her suit against the defendant lawyers. Complete relief cannot be accorded without the Trustees remaining parties because, at a minimum, the Trustees are parties to this most recent transaction with Jones. They claim this recent easement is appurtenant and runs with the land, the damage from which

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Plaintiff Jones seeks recompense from the defendant lawyers. The efficacy of the recent transaction must be tested and as parties to same, the Trustees should remain parties to this suit.

ARGUMENT AS TO DEFENDANT MOVANTS' MOTION TO AMEND THE ANSWER TO ASSERT A PETITION FOR DECLARATORY JUDGMENT

South Carolina Code §15-53-30 provides that,

> "Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations there under.

Movants are interested in a series of transactions culminating in contracts and deeds and other writings and their legal relations are dependent upon the construction of these documents. Accordingly, Movants seek an order allowing the amendment of their answer and service of a petition for declaratory judgment pursuant to the above section to determine the validity of the 2006 easement which prompted this lawsuit and the 2019 easement.

Movants incorporate herein all arguments made above in response to Plaintiff Trustees' Motion for an Order of Nonjoinder as some of those responses apply equally here. The issues which are the subject of Movants' proposed Petition for Declaratory Judgment grow out of the same core of operative facts as the issues presented in the plaintiffs' Complaint. Accordingly, Movants' motion to amend their answer should be granted as such motions are granted freely to achieve the ends of justice.

Aside from any considerations of the Trustee Plaintiffs' effort to obtain an order of nonjoinder, the defendant attorneys in this case are entitled to have the documents representing the series of transactions addressed in the original pleadings and those related to such construed under the Act. The test under Rule 15(c), SCRCP is whether the claim asserted in the amended

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pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading. *See,* Patent v. Miller, 420 S.C. 471, 804 S.E.2d 252 (2017). (Motion to Amend Answer and Proposed Amended Answer, attached as Exhibit 15).

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler

Columbia, South Carolina
May 3, 2019

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

Jones v RTT

Exhibits to Memo re dismissal and amending answer

1. 5.4.18 – Complaint
2. 2.25.19 – Letter, Powell to Hulst
3. 3.4.19 – Email exchange re 2.25.19 letter / clients out of country
4. 3.11.19 – Letter re doc production to PL counsel
5. 3.13.19 – Email from Hulst re avail Apr 5, 8-12
6. 3.22.19 – Filed Dock Agreement
7. 3.27.19 – Email exchange re Easement is gone …
8. 3.28.19 – Email exchange: Powell: If Trustees acknowledge upon reflection, that the 2005 easement was invalid and has been replaced, dismissal likely. Hulst: Ignores suggestion; will proceed with motion.
9. 3.28.19 – Email exchange: No depositions of Trustees until after motion resolved
10. 3.28.19 – Deposition Notices
11. 3.29.19 – Hulst email, depositions off-calendar
12. 4.4.19 – Powell email re discovery
13. 8.7.18 – Judge Buckner Form-4 Order
14. Trustees' motion for non-joinder
15. Defendant Attorneys' Motion to Amend Answer and proposed Amended Answer

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

RONALD L. JONES AND GAYE LANGLEY JONES)
Plaintiff(s))
vs.)
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER, ALEXANDER C. PEABODY AND PEABODY & ASSOCIATES, INC.,)
Defendant(s))

CIVIL ACTION COVERSHEET

2018-CP - 08- 817

FILED
18 MAY -4 PM 12:
MARY E. BROWN
CLERK OF COURT
BERKELEY CO., S.C.

Submitted By: Robert W. Maring, Maring & Moyer, LLC
Address: PO Box 478, Georgetown, SC 29442

SC Bar #: 8810
Telephone #: 843-545-9544
Fax #: 843-545-9735
Other:
E-mail: robert@maringmoyer.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 cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

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)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

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

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

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ 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 Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ 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) _____
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)

Submitting Party Signature: _____ **Date:** 5/4/18

SCCA / 234 ((

Exhibit 1

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS CASE NO. 2018-CP-08-_____
RONALD L. JONES AND GAYE LANGLEY JONES, PLAINTIFFS, VS. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER C. PEABODY AND PEABODY & ASSOCIATES, INC. DEFENDANTS.	)	SUMMONS (JURY TRIAL DEMANDED)

FILED
18 MAY -4 PM 12: 13
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Berkeley County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
May 4, 2018

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS CASE NO. 2018-CP-08-_____
RONALD L. JONES AND GAYE LANGLEY JONES,)) PLAINTIFFS,)) VS.)) ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER) ALEXANDER C. PEABODY AND) PEABODY & ASSOCIATES, INC.)) DEFENDANTS.)	COMPLAINT (JURY TRIAL DEMANDED)

FILED
18 MAY -4 PM 12:13
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Comes now the Plaintiffs who, complaining of the Defendants, allege as follows:

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.
2. Upon information and belief Rogers Townsend & Thomas, P.C. is a professional corporation organized and existing pursuant to the laws of the State of South Carolina and doing business in Berkeley County, South Carolina.
3. Upon information and belief Lisa Hostetler is a citizen and resident Richland County, State of South Carolina and at all times relevant herein was employed as an attorney for the Defendant Rogers, Townsend & Thomas, P.C.
4. Upon information and belief Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates Inc.

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5. Upon information and belief Peabody & Associates, Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.

6. The Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.

7. Upon information and belief, venue is proper in Berkeley County, South Carolina.

FACTS

8. Each and every allegation contained herein is repeated as if verbatim.

9. That on or about May 7, 2010 the Plaintiffs purchased the following property from E*TRADE BANK by deed filed with the Berkeley County Register of Deeds Office on May 13, 2010 and recorded in Deed Book RP 8440 at page 218 with the following description:

> All that lot, piece, or parcel of land, including any and all improvements thereon, situate lying and being near Cainhoy North of Wando River, Berkeley County, South Carolina, and being shown and designated as Lot 6B on a plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village" Creating Lot 6A and 6B, Situated As Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005 prepared by Charles F. Dawley, Jr. R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Robert L. Jones by Peabody & Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet P at Page 4A. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, metes and bounds.

10. The Settlement Agent for this transaction was identified on the (HUD-1) Settlement Statement as the Defendant Rogers, Townsend & Thomas, P.C., 220 Executive Center Drive, Suite 109, Columbia, SC 29210.

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11. Upon information and belief, attorney's fees for the May 7, 2010 closing were paid to the Defendant Rogers Townsend & Thomas for their role as serving as settlement agent for the real estate transaction.

12. That at all times relevant herein, Defendant Rogers, Townsend, P.C. by and through its employees, including, but not limited to, Lisa Hostetler acted as the Settlement Agent for the Plaintiffs in the above referenced transaction.

13. Upon information and belief Defendant Lisa Hostetler signed the HUD-1 Settlement Statement representing herself to be the Settlement Agent for Defendant Rogers, Townsend, & Thomas, P.C.

14. Upon information and belief, Lisa Hostetler and/or agents of the Defendant Rogers, Townsend & Thomas, P.C. generated title insurance commitments and issued an owners' policy of Title Insurance for this transaction. At all times, Defendant Rogers, Townsend & Thomas, P.C. and Lisa Hostetler, were a licensed attorney and law firm who were practicing law in the State of South Carolina and within the course and scope of their employment and/or agency for the Defendant law firm at the time of their actions and inactions related to the transaction hereinabove referenced.

15. On or about May 15, 2015, the Plaintiff discovered for the first time, that there was an easement of record that affected the property purchased by the Plaintiffs as herein described.

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

17. The easement granted to the owners of Lot 6A (TMS#263-00-03-068) Lot 5 (No. 108 Cainhoy Landing Road, TMS # 263-00-05-005) Lot 6 (No. 110 Cainhoy Landing Road,

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TMS # 263-00-05-006) Lot 7 (112 Cainhoy Landing Road, TMS #263-00-05-007) a 25' Ingress/Egress along the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18 and then continuing on lines L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, and L1. Therefore, the Easement will almost completely encircle the Lot 6B except for most of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

18. The easement described in paragraph 17 herein was created by a Deed in the direct chain of title for the subject premises.

19. That prior to the closing on the Property described herein, the Plaintiff's engaged the services of Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor to survey the property for an accurate and detailed description of the property, the improvements and any easements that would affect the property.

20. A survey was performed and a Plat was provided to the Plaintiffs' attorneys prior to closing.

21. The Defendants Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor were paid Five Hundred and Fifty 00/100 ($550.00) Dollars for the preparation and delivery of the Plat.

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22. The survey was relied upon to describe the property in the legal description on the Deed conveying the property to the Plaintiffs as herein described and was recorded simultaneously with the Deed.

23. The survey failed to disclose the existence of the easement as described in paragraph 16 herein.

24. Upon information and belief, the existence of this easement was not disclosed to the Plaintiffs prior to the closing on May 7, 2010 or any time after closing by any of the Defendants.

25. Upon information and belief, the existence of this easement should have been disclosed on the Plat prepared by Defendants Alexander C. Peabody, PLS and Peabody & Associates, Inc. prior to the closing and prior to its recording.

26. The existence of the easement is and was a material fact that should have been disclosed to the Plaintiffs prior to closing on the property hereinabove referenced by the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler.

27. The Plaintiffs are informed and believe that the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler did not disclose this encumbrance/easement on the property, nor, did the Defendants properly communicate and explain the existence of the easement.

28. The Plaintiffs are informed and believe that the Defendants Alexander C. Peabody and Peabody & Associates, Inc. did not properly disclose this easement on the plat prepared for the Plaintiffs.

29. That as a result of the existence of the easement, the Plaintiffs have lost full enjoyment and use of their property.

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30. That subsequent to discovery of the easement, the Plaintiffs have terminated three (3) of the (4) properties that held an easement though agreements between the Plaintiffs and those Lot Owners.

31. That the owners of lot 6-A (TMS#263-00-03-068) will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement.

32. That as a result, the owners of Lot 6-A will continue to have an easement on the Plaintiffs property, depriving them of exclusive ownership of their property.

FOR A FIRST CAUSE OF ACTION

(NEGLIGENCE AS TO ROGERS TOWNSEND & THOMAS, P.C. AND LISA HOSTETLER)

33. Each and every allegation is repeated as if verbatim.

34. Plaintiffs were foreseeable parties to suffer injury if the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler failed to perform their duties and meet the standard of care in their representations in the aforementioned property transaction.

35. Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler owed a duty to meet the standard of care in their handling of the closing and transaction and to prevent foreseeable injuries to Plaintiffs.

36. The standard of care for lawyers representing a client in transactions in South Carolina requires a lawyer, among other things, to inform, consult, and communicate with the client as to a transaction about the means by which the client's objectives are to be accomplished, to keep the client reasonably informed about the status of the matter, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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37. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler acts of omission and/or commission in the following particulars to wit:

a. By failing to meet the applicable standard of care in the representation of the Plaintiffs and handling of the transaction described above;

b. By failing to disclose to the Plaintiffs the existence of the easement as described in herein;

c. By failing to disclose to the Plaintiff's key facts concerning the transaction which prejudicial to the Plaintiffs' interest;

d. In failing to properly communicate with the Plaintiffs' before, during or after the transaction;

e. In failing to properly supervise the transaction;

f. In failing to properly train its employees;

g. In failing to properly hire employees with sufficient knowledge and skill to properly conduct the transaction;

h. In violating the rules, regulations and statures governing attorneys conduct in the State of South Carolina;

38. That as a direct and proximate result of one or more of the Defendants' actions or omissions the Plaintiffs suffered damages.

39. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

40. Each and every allegation is repeated as if verbatim.

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41. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Charles Nation, an expert witness and lawyer licensed to practice law in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

FOR A SECOND CAUSE OF ACTION

(NEGLIGENCE AS TO ALEXANDER C. PEABODY AND PEABODY ASSOCIATES, INC.)

42. Each and every allegation is repeated as if verbatim.

43. Plaintiffs were foreseeable parties to suffer injury if the Defendants Alexander C. Peabody and Peabody & Associates, Inc. failed to perform their duties and meet the standard of care in their representations in their preparation of the Plat for the Plaintiffs.

44. Defendants Alexander C. Peabody and Peabody & Associates, Inc. owed a duty to meet the standard of care in their preparation of the Plat for the transaction and to prevent foreseeable injuries to Plaintiffs.

45. The standard of care for surveyors engaging in the business of surveying in South Carolina requires a surveyor, among other things, to show any easements known to the surveyor on the survey performed and to properly investigate the records of the Register of Deeds, to include, but not limited to, the Deed in the direct chain of title to be able to accurately determine the boundary of the lot and any other encumbrances, including, but not limited to the existence of easements that may exist in the Deed into the current owner of the property.

46. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Alexander C.

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Peabody and Peabody & Associates, Inc. acts of omission and/or commission in the following particulars to wit:

i. By failing to meet the applicable standard of care in the preparation of the the Plat for the above described real estate transaction above;

j. By failing to disclose on the Plat the existence of the easement as described in herein;

k. In failing to properly supervise the preparation of the plat;

l. In failing to properly train its employees;

m. In failing to properly hire employees with sufficient knowledge and skill to properly prepare the plat;

n. In violating the rules, regulations and statures governing surveyors in the State of South Carolina;

47. That as a direct and proximate result of one or more of the Defendants actions or omissions the Plaintiffs suffered damages.

48. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

49. Each and every allegation is repeated as if verbatim.

50. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Wendell Powers, an expert witness and surveyor licensed in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

WHEREFORE, Plaintiffs pray as follows:

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A. For a judgment in an amount to be determined by the jury for actual, consequential and punitive damages against all Defendants;

B. For the costs and disbursements of this action;

C. For such other and further relief as the court may deem just and proper.

May 4, 2018

Robert W. Maring
SC Bar 8810
Attorney for Plaintiffs
PO Box 478
Georgetown, SC 29440
843-545-9544 phone
843-545-9735 fax
robert@maringmoyer.com

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State of South Carolina	)	**In the Court Of Common Pleas**
	)	**For the Ninth Judicial Circuit**
County of Berkeley	)	**Civil Action Number: 2018-CP-09-___**

Affidavit Required Under Carolina Code Ann. Section 15-36-100

PERSONALLY APPEARED BEFORE ME, Charles Owen Nation, II, who, after first being duly sworn and under oath, states as follows. I am the owner of Nation Law Firm, P.C., and have been a member of the South Carolina Bar engaged in the general practice of law since November of 1984. I am a member of the South Carolina Bar Association, and have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100, which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omission(s) prior to the filing of complaint asserting negligence on the part of an attorney. This affidavit is given in connection with the area of practice dealing with residential real estate closings, more particularly, the refinance of the attorney on the abstract of real property, and the simultaneous representation of an owner of real property, a borrower and mortgagor, and a bank loaning funds on the condition of it being assured of a first mortgage lien encumbering the residential property which secures the repayment of the loan involved with the transaction. The facts as they have been presented to me appear to be as follows, and all references to documents filed of record are intended to refer to the Office of the Register of Deeds for the County of Berkeley, State of South Carolina:

1. Plaintiffs, Gaye Langley Jones and Ronald K. Jones, at all times relevant, were and are residents of the County of Berkeley County, State of South Carolina.

2. Rogers, Townsend & Thomas, LLC, at all times relevant, were licensed attorneys who were practicing law in the State of South Carolina.

3. On information and belief, Lisa M. Hostetler, at all times relevant, was employed by the law firm of Rogers, Townsend & Thomas, LLC.

4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

   All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID



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E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.

This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.

TMS #263-00-03-068

5. The property, Lot 6B, was conveyed by Deed of Coastal Plains Development Company, Inc., to James J. Monaghan by deed dated April 8, 2005, and filed of record in Deed Book 4887 at Page 84.

6. The subject property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006, and filed of record in Deed Book 5506 at Page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., by deed dated August 22, 2006, and filed of record in Deed Book 5904 at Page 177.

7. Rogers, Townsend & Thomas, LLC issued or caused Investor's Title Insurance Company Policy Number SC401720100521, a Homeowner's Policy of Title Insurance, to be issued, which insures the subject property, property shown and designated as Lot 6B on a plat filed of record in Plat Cabinet Q at Page 357A, hereinafter "Investor's Policy."

8. The exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, make no mention of some of the documents which are contained within the abstract of the title search.

9. While the abstract of the title search reveals the existence of the following documents in the chain of title to the subject property, the exceptions reflected

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within Investor's Policy, and the Title Insurance Commitment which was prepared prior to Investor's Policy, make no mention of the following documents:

a. Easement to real estate from Candace A. Harvey, owner of Lot Number 6, as reflected on Slide Cabinet G at Page 6; and

b. Easement in a deed from Coastal Plains Development Co., Inc., to James J. Monaghan dated April 8, 2005, and filed of record in the Office of the Register of Deeds for the County of Berkeley in Volume 4887 at Page 65; and

c. Easement in deed from James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in the Office of the Register of Deeds for the County of Berkeley in Volume 5506 at Page 13, which conveyance and easement state as follows:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as

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recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

TMS#263-00-03-079

10. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

11. Easements filed of public record were not noted and included within the title insurance commitment nor in the title insurance policy but were, however, noted in the abstract.

12. The plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easements above which completely encircle Lot 6B for a width of 25 feet except for most of the northern part of the lot. Further, the exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, excludes all loss, costs, attorney's fees and expenses resulting from those matters disclosed on a plat by Peabody & Associates, Inc., dated March 24, 2010.

13. I know I have not reviewed the entire closing file maintained by the parties.

14. I have attached a RESUME which reflects some of my educational background and experience, believe I am an expert in the field of residential real estate transactions, and estimate I have personally served as the closing attorney for either the seller or the purchaser or the bank, and others, in a variety of

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transactions which include sales, purchases, refinances, etc., in more than one thousand (1,000) residential real estate transactions since my admission to the bar in 1984.

15. Based on the foregoing facts, the validity and accuracy of which I assume, it is my judgment Lisa M. Hostetler and the law firm which employed her appear to have been negligent in (a) failing properly to review the abstract of the subject property, and (b) in failing properly to list the exceptions applicable to the subject property. The factual basis for my opinion is my review of the files shared with me. As a result of the failure to review the abstract and note the easements filed of record, the subject property was purchased and easements which exists as a matter of record affect the subject property but were not disclosed.

16. In my judgment, a reasonably competent and careful South Carolina lawyer would not have closed the Loan and allowed the conveyance without reviewing the abstract, and the easements, and the plats related thereto, and explained the effect of the documents revealed in the abstract but not in the title insurance commitment or policy to be issued. I hold the foregoing opinions to a reasonable degree of professional certainty.

Charles Owen Nation, II

Sworn and **subscribed** to before me this 2nd day of May, 2018.

Notary Public for South Carolina
My commission expires: April 6 2027
(Seal)

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS CASE NO. 2018-CP
RONALD L. JONES AND GAYE) LANGLEY JONES,)) PLAINTIFFS,)) VS.)	AFFIDAVIT OF WENDELL POWERS
ROGERS TOWNSEND &) THOMAS, P.C., LISA HOSTETLER) ALEXANDER C. PEABODY AND) PEABODY & ASSOCIATES, INC.)	

PERSONALLY APPEARED BEFORE ME, Wendell C. Powers who, after being duly sworn and under oath states as follows. I am a licensed surveyor in the State of South Carolina and am the owner of Powers Land Surveying and have been engaged as a land surveyor in South Carolina since June 1970. I have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones, and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100 which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omissions(s) prior to the filing of a complaint asserting negligence on the part of a land surveyor. This affidavit is given in connection with the preparation of a Plat for a real estate transaction in Berkeley County, South Carolina. These are the facts as have been provided to me as well as my opinion on this matter.

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.

2. Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates, Inc..

3. Upon information and belief Peabody & Associates Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.



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4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

> All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.
>
> This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.
>
> TMS #263-00-03-068

5. The property, Lot 6B was conveyed by Deed from Coastal Plains Development Company Inc. to James J. Monaghan by deed dated April 8, 2005 and filed of Record in Deed Book 4887 at Page 84.

6. The property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006 and filed of record in Deed Book 5506 at page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated August 22, 2006, and filed of record in Deed Book 5904 at page 177.

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7. That the Deed from James J. Monaghan to Benjamin L. Daniel Sr. dated April 5, 2006 reserved the following description and easement:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.
>
> TMS#263-00-03-079

8. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill

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South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

9. A plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easement above which completely encircled Lot 6B for a width of 25 feet except for most of the northern part of the lot.

10. I have worked in the surveying business for over 47 years and have been registered land surveyor for most of my time in the business.

11. I have surveyed thousands of properties over my career and have prepared as many plats. I have prepared thousands of plats for residential closings.

12. I am currently licensed as a Registered Land Surveyor in the State of South Carolina and have been since April 1973.

13. I have been in the continual practice of land surveying as a Registered Land Surveyor since my licensing in 1973.

14. South Carolina has established the minimum standards for the practice of surveying in South Carolina pursuant to State of South Carolina Code of Regulations Chapter 29, Article 4 Regulations 400-490.

15. Based on the forgoing facts a review of the proposed Complaint and consultation with Plaintiff's counsel, the validity of which I have to assume, it is my judgment that Alexander C. Peabody and Peabody Associates, Inc. appears to have been negligent in failing to meet the minimum standards required of land surveyors as defined in State of South Carolina Code of Regulations

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Chapter 29, Article 4 Regulations 400-490 in the following ways: (a) failing to disclose the 25 foot easement on the March 24, 2010 plat to the Plaintiffs (b) in failing to review deeds into the chain of title necessary to properly execute the survey and preparation of the plat according to the findings of all relevant information; and (c) in failing to accurately present and reveal all of the pertinent information included in the legal descriptions on the Plat;.

16. It is my judgment, a reasonably competent and careful South Carolina Land Surveyor would have properly and carefully researched the legal descriptions of the property to insure that an accurate and complete representation of all relevant matters were disclosed on the Plat.

17. This opinion is made to a reasonable degree of professional land surveyor certainty.

Wendell C. Powers, Registered Land Surveyor

Sworn to Before me on this 3rd day of May, 2018

Notary Public for South Carolina

My commission expires: 5/8/23

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BRUNER, POWELL, WALL & MULLINS, LLC
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E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

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

CHELSEA J. CLARK
STEVEN R. SPREEUWERS

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

February 25, 2019

VIA U.S. MAIL & EMAIL (jjh@williamsandhulst.com)
Jary J. Hulst, Esquire
Williams & Hulst, Esquire
209 East Main Street
Moncks Corner, South Carolina 29461

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

Dear Jay & Robert:

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

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

With my kindest regards, I am,

Sincerely,

Warren C. Powell, Jr.

WCPjr/ljf
Enclosure
cc: Robert W. Maring, Esquire
Ryan A. Earhart, Esquire

Exhibit 2

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	RESPONSE OF DEFENDANTS ROGERS TOWNSEND & THOMAS, PC and LISA HOSTETLER TO PLAINTIFFS THOMAS HUGENIN GAILLARD and THOMAS W. CONE'S FIRST SET OF INTERROGATORIES

TO: ROBERT W. MARING, ESQUIRE, ATTORNEY FOR THE JONES PLAINTIFFS AND JARY J. HULST, ESQUIRE, ATTORNEY FOR THE TRUSTEE PLAINTIFFS.

Defendants Rogers Townsend & Thomas, P.C. and Lisa Hostetler by and through their undersigned counsel, hereby respond to Plaintiffs Thomas Hugenin Gaillard, as Trustee of the Thomas Hugenin Gaillard Revocable Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust, First Set of Interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and who has possession of such statements.

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Response:

a. All witnesses named by Plaintiffs in their response to Defendants' Interrogatories;

b. All parties to this action;

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of you or your counsel that relate to the claim or the defense in the case.

Response:

These Defendants incorporate herein the documents produced in response to Plaintiffs' Requests for Production, designated as Bates numbers RT&T_000001 thru RT&T_001258.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Response:

Insurance Company: Endurance American Specialty Insurance Company
Address: Wilmington, Delaware
Policy No. LPL10005448501
Coverage amount:
* Each claim: $3,000,000;
* Maximum total policy period aggregate: $3,000,000.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Response:

Not applicable.

5. List the names and addresses of any and all expert witnesses whom the party proposes to use as a witness at the trial of this case.

Response:

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These Defendants have not yet identified an expert witness whom the party proposes to use as a witness at the trial of the case but reserves the right to do so.

6. *For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statement taken from such witness.*

Response:

a. Plaintiff Gayle Jones
c/o Robert W. Maring, Esquire
Maring & Moyer, LLC
PO Box 478
Georgetown SC 29442

Ms. Jones is expected to testify regarding details concerning the purchase of her home and events subsequent to the purchase material to this action.

b. Thomas H. Gaillard and Thomas W. Cone, Jr.
c/o J. Jay Hulst, Esquire
Williams & Hulst, LLC
PO Box 1288
Moncks Corner SC 29461

These witnesses are expected to testify regarding the purchase of their property and their alleged knowledge and understanding of the purported easement that is the subject of this action.

c. Lisa Hostetler, Esquire
c/o Warren C. Powell, Jr., Esquire
Bruner Powell Wall & Mullins, LLC
PO Box 61110
Columbia SC 29260

Ms. Hostetler is expected to testify regarding the facts and circumstances surrounding the purchase of the Plaintiffs' real estate and relevant details thereof.

d. Alexander C. Peabody
c/o Ryan A. Earhart, Esquire
PO Box 22528
Charleston, South Carolina 29413

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Mr. Peabody is expected to testify as to his knowledge of the survey conducted on and around the subject property and his preparation of the plat for same.

e. Prior owners of Lots 6A and 6B, including:
Riverview Developers, LLC, c/o agent David E. Hatchell
Coastal Plains Development, Inc., c/o Benjamin L. Daniel, Sr.
Elizabeth Francis Daniel
James J. Monaham
Benjamin Daniel, Sr.
Carolina Concrete Homes, c/o John Busche, President
E-Trade Bank (Foreclosure & REO)
Sean and Julie Cartwright
Chevy Chase Bank (Foreclosure & REO)
Capital One Bank

These prior property owners can be expected to testify regarding their ownership of Lots 6A and B. Discovery along these lines continues.

f. Charles F. Dawley, Jr.
475 Deanna Ln.
Wando SC 29492

The exact testimony of this witness is unknown but is expected to concern his prior work related to the subject property.

7. *Set forth the legal and factual basis for Rogers Townsend & Thomas, PC and Lisa Hostetler's claim that the easement that is the subject of this action is invalid.*

Response:

Factual Basis:

a. Documents related to the subject property produced by other parties to this lawsuit.

b. Documents filed in the Berkeley County Register of Deeds as follows:

Lot 6A

Deed Book 2686, p. 0290

Deed Book 4704, p. 0051

Deed Book 5365, p. 0134

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Deed Book 5401, p. 0113

Deed Book 6709, p. 0131

Deed Book 8382, p. 247

Deed Book 8823, p. 317

Deed Book 8923, p. 68

Deed Book 11420, p. 167

Deed Book 6664, pp. 181-184

Lot 6B

Deed Book 4887, p. 0064

Deed Book 5506, p. 0012

Deed Book 5904, p. 0177

Deed Book 8173, p. 328

Deed Book 8440, p. 218

Deed Book 4704, p. 0051

Deed Book 4887, p. 0064

Deed Book 5506, p. 0012

Deed Book 5904, p. 0177

Deed Book 8173, p. 328

Deed Book 8440, p. 218

c. All other filings in the Office of the Berkeley County Register of Deeds material to the property which is the subject of this action.

d. Photographs and survey photocopies of the subject property included in these Defendants' response to Plaintiffs' Request for Production.

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e. Trustees' production in response to discovery requests, identified as No. 00001-No. 00206.

f. Jones' production in response to Defendants' discovery request.

Legal Basis: The legal basis for Defendants' position is shown in the following:

a. These Defendants' Answer;

b. Report of Defendants' attorney, Warren C. Powell, Jr. to Melissa Demmon, Esquire (Endurance Insurance) dated November 2, 2018, Bates RT&T_001256, identified as privileged on Defendants' Privilege Log.

c. South Carolina statutory and common law.

d. Opinions revealed in emails produced by these Defendants in response to Plaintiff Trustees' Requests to Produce.

8. Set forth a list of all documents in possession of you or your counsel that you contend support the legal and factual basis for your claim that the easement that is the subject of this action is invalid.

Response:

a. Documents related to the subject property produced by other parties to this lawsuit.

b. Documents filed in the Berkeley County Register of Deeds as follows:

Lot 6A

Deed Book 2686, p. 0290

Deed Book 4704, p. 0051

Deed Book 5365, p. 0134

Deed Book 5401, p. 0113

Deed Book 6709, p. 0131

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Deed Book 8382, p. 247

Deed Book 8823, p. 317

Deed Book 8923, p. 68

Deed Book 11420, p. 167

Deed Book 6664, pp. 181-184

Lot 6B

Deed Book 4887, p. 0064

Deed Book 5506, p. 0012

Deed Book 5904, p. 0177

Deed Book 8173, p. 328

Deed Book 8440, p. 218

Deed Book 4704, p. 0051

Deed Book 4887, p. 0064

Deed Book 5506, p. 0012

Deed Book 5904, p. 0177

Deed Book 8173, p. 328

Deed Book 8440, p. 218

c. All other filings in the Office of the Berkeley County Register of Deeds material to the property which is the subject of this action.

d. Photographs and survey photocopies of the subject property included in these Defendants' response to Plaintiffs' Request for Production.

e. Trustees' production in response to discovery requests, identified as No. 00001-No. 00206.

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f. Report of Defendants' attorney, Warren C. Powell, Jr., to Melissa Demmon, Esquire of Endurance Insurance dated November 2, 2018, Bates RT&T_001256, identified as privileged on Defendants' Privilege Log.

9. Identify any and all letters, emails, telefaxes, or other correspondence between Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler and/or their agents or representatives with any of the Plaintiffs.

Response:

All responsive communications to this Interrogatory have been produced by these Defendants' responses to Requests for Production, Bates numbered RT&T_000001 thru RT&T_001258.

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

Columbia, South Carolina
February 25, 2019

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	RESPONSE OF DEFENDANTS ROGERS TOWNSEND & THOMAS, PC and LISA HOSTETLER TO PLAINTIFFS THOMAS HUGENIN GAILLARD and THOMAS W. CONE'S FIRST SET OF REQUEST TO PRODUCE

TO: ROBERT W. MARING, ESQUIRE, ATTORNEY FOR THE JONES PLAINTIFFS AND JARY J. HULST, ESQUIRE, ATTORNEY FOR THE TRUSTEE PLAINTIFFS.

Defendants Rogers Townsend & Thomas, P.C. and Lisa Hostetler by and through their undersigned counsel, hereby respond to Plaintiffs Thomas Hugenin Gaillard, as Trustee of the Thomas Hugenin Gaillard Revocable Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust, First Requests for Production as follows:

1. All written, typed, printed or electronic documents, invoices, statements, checks, receipts, contracts, licenses, permits, letters, memos or other materials, including photographs, which relate to the allegations and/or claims set forth in the Complaint and/or the allegations and/or claims set forth in Defendants' Answer.

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Response

These Defendants incorporate their Response to Plaintiff's production, Bates Nos: RT&T_000001 thru RT&T_001258.

2. All statements of possible witnesses, including but not limited to the pages, whether written, oral, summaries, or otherwise reproduced in any manner, relating to the matters set forth in the Plaintiffs Complaint and/or Defendants' Answer.

Response:

There are no statements of witnesses.

3. All documents identified in response to your Answers to the Trustee Plaintiffs' First Set of Interrogatories.

Response:

These Defendants incorporate their Response to Plaintiff's production, Bates Nos: RT&T_000001 thru RT&T_001258.

4. Any documents or materials which Defendants intend to introduce in the trial of this case.

Response:

These Defendants incorporate their Response to Plaintiff's production, Bates Nos: RT&T_000001 thru RT&T_001258.

5. Any and all reports of expert witnesses retained by the Defendants. If you contend any item need not be produced, identify such item and set forth your failure to produce same. It is requested that this production be made within thirty (30) days after the date of service of this Request at the Office of Williams & Hulst, LLC. Visual inspections and copies may be made of any and all documents.

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Response:

There are no such reports.

Warren C. Powell, Jr.
Bruner Powell Wall & Mullins, LLC
PO Box 61110
Columbia SC 29260
(803) 252-7693
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler

Columbia, South Carolina
February 25, 2019

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY RONALD L. JONES and GAYLE LANGLEY JONES, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817 **PRIVILEGE LOG OF DEFENDANT ROGERS TOWNSEND & THOMAS, PC**

Bates No.	Date	Document	Nature of Privilege	Protected under:
RT&T_000358-000360	1.15.15	Letter to Melissa S. Demmon, Esquire, professional liability, Endurance Services, Ltd., from Robert P. Wood, RT&T	Report of facts of underlying claim.	Rule 26(b)(3), SCRCP
RT&T_000687-000699		Attorney notes	Post claim memo to file (13 pages)	Mental impressions of counsel, Rule 26(b)(3), SCRCP
RT&T_000700	1.27.16	Email exchange Bob Wood to defense counsel Powell	re client conference concerning claim	Work product doctrine 26(b)(3); and attorney-client privilege
RT&T_000701	1.27.16	Email from Bob Wood to defense counsel, RT&T attorney Stuart Lee and Wood's secretary, Sheri McClendon	Post claim communication concerning the dynamic of the subject underlying claim	Work product doctrine 26(b)(3); and attorney-client privilege
RT&T_000702	2.11.16	Redacted: Emails Bob Wood (RT&T) to Stuart	Post claim communication	Work product doctrine, Rule

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		Lee (RT&T); response to email from Stuart Lee to Zacharias (also redacted)	from firm counsel to RT&T attorney; mental impressions of counsel;	26(b)(3), SCRCP; Common interest doctrine
RT&T_000706	3.27.17	Redaction: Email from Bob Wood to Stuart Lee, both of RT&T	Post claim communications	Work product 26(b)(3), SCRCP
RT&T_000707	12.8.16	Redaction: Email from Bob Wood to Melissa Demmon, Esquire at Endurance Insurance, cc Lee and Moon, of RT&T	Post claim communication to RT&T carrier transmitting information re Jones claim in anticipation of litigation.	Work product doctrine, Rule 26(b)(3), SCRCP
RT&T_000719-000720	1.4.16; 12.22.15	Redaction: Email chain: Wood to Rupert of RT&T	Post claim intra-office communications	Work product doctrine/mental impressions of counsel, 26(b)(3), SCRCP
RT&T_000726	6.16.16	Redaction: Email, Wood of RT&T to Lee of RT&T	Post claim communication from firm counsel Bob Wood to Stuart Lee re claim	Work product doctrine, 26(b)(3), SCRCP
RT&T_000726-000729	1.28.16 to 12.8.16	Email: Bob Wood to Stuart Lee with email chain between Lee and Investors Title	Development of underlying facts	Work product doctrine, Rule 26(b)(3), SCRCP
RT&T_000730	12.8.16	Email: Bob Wood to Stuart Lee	Re contact with E&O carrier and settlement issues; update on resolution efforts & RTT carrier notice; development of underlying facts	Work product doctrine, Rule 26(b)(3), SCRCP
RT&T_000731-000732	12.16.16	Email exchange between Wood and Demmon	Re efforts toward potential resolution, discussion of possible	Work product doctrine, Rule 26(b)(3), SCRCP; attorney-client privilege

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			defenses, and forwarding email chain previously addressed in this log	
RT&T_000741-000747	1.4.16 1.5.16	Intra-office Email exchange between Bob Wood and Steve Moon, with attachments	Mental impressions of counsel as to easement with Google Map photographs attached	Work product doctrine, Rule 26(b)(3), SCRCP
RT&T_000748-000750	1.7.16	Email, Wood to Koutrakos	Potential conflicts and table with tax map attached	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_000751-000763		Research results	SC caselaw	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001089	3.10.16	Redaction to invoice for attorney services	Mental impressions of counsel	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001091	1.20.16	Redactions to invoice for attorney services	Mental impressions of counsel	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001092	1.21.16	Redactions to invoice for attorney services	Mental impressions of counsel	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001092	2.3.16	Redaction to invoice for attorney services	Entry relates to another case and, accordingly, outside the scope of Rule 26	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001092	3.2.16	Redaction to invoice for attorney services	Research	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001094-001096	1.5.16	Emailed letter to Melissa Demmon of Endurance Insurance, from firm counsel, Bob Wood	Report to E&O carrier including mental impressions of RT&T 's counsel	Attorney work product, Rule 26(b)(3), SCRCP; attorney-client privilege

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RT&T_001103, 001104 and 001105	1.7.16	Email from Bob Wood to Donna Milikin	Re purported Easement	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001108-001112	1.13.16	Memorandum: Wood to defense counsel, Warren Powell	Background of claim, analysis of material issues concerning the purported easement and plan for defense	Attorney work product, Rule 26(b)(3), SCRCP; Attorney-client privilege
RT&T_001113-001114	1.13.16	Email: Robert P. Wood, Esquire to Warren C. Powell, Jr., Esquire	Email with Tax map attachment	Attorney work product, Rule 26(b)(3), SCRCP; Attorney-client privilege
RT&T_001115	1.27.16	Redaction: Email: Stuart Lee, Esquire to Robert P. Wood, Esquire (RT&T firm counsel) and Warren Powell, Esquire	Re counsel's mental impressions of caselaw prepared in anticipation of litigation for trial	Attorney work product, Rule 26(b)(3), SCRCP involving mental impressions of counsel
RT&T_001119-01120	1.27.16	email: Stuart Lee to Robert Wood, cc Warren Powell	Re appropriate handling of RT&T file in anticipation of litigation	Attorney work product, Rule 26(b)(3), SCRCP; attorney-client privilege
RT&T_001121-001124	1.13.16 to 1.27.16	Email chain between Stuart Lee, Esquire and Robert P. Wood, Esquire and Uta Zacharias of Investors Title	Re results of contact with Clement Jones and efforts to resolve purported disputes; discussion of visit to Jones property; communications in anticipation of litigation,	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001125	1.27.16	Redaction: Email from Powell to Wood	Communication in anticipation of litigation	Attorney work product, Rule 26(b)(3), SCRCP

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RT&T_001126-001127	1.27.16	Email exchange: Wood, Lee and Powell	Post claim communication in anticipation of litigation concerning efforts to avoid trial and any third-party claim; also, discussion of confidentiality issues related to RT&T file	Attorney work product, Rule 26(b)(3), SCRCP; Attorney-client privilege
RT&T_001128	1.27.16	Email: Lee to Wood, and Powell; Wood to Lee and Powell	Re purported easement issues	Attorney work product, Rule 26(b)(3), SCRCP; attorney-client privilege
RT&T_001129-001130	1.27.16	Email: Powell to Wood and Lee	Re transmittal of file to Ms. Jones	Attorney-client privilege
RT&T_001131	1.27.16	Email: Powell to Wood	Re found caselaw affecting anticipated litigation	Attorney work product, Rule 26(b)(3), SCRCP; attorney-client privilege
RT&T_001132-001141	12.16.16	Email: Demmon to Wood	Re RT&T's status report to carrier on claim development in anticipation of litigation and forwarding past email	Attorney work product, Rule 26(b)(3), SCRCP; attorney-client privilege
RT&T_001132	12.8.16	Email: Melissa Demmon of endurance Insurance to Bob Wood of RT&T	Communications to carrier re claim developments, with past emails transmitted to convey history of developments; said communication made in	Attorney work product, Rule 26(b)(3), SCRCP

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			anticipation of litigation	
RT&T_001142	1.7.16 To 1.11.16	Redaction: Email exchange between Wood and his legal assistant, Donna Miliken	Communication prepared in anticipation of litigation re 25' easement	Attorney work product, Rule 26(b)(3), SCRCP
RT&T_001146-001150	2.3.16	Redactions: Uncommitted time log or Robert Wood	Redaction to entries for Wood's time unrelated to the Jones claim	Attorney work product, Rule 26(b)(3), SCRCP; Outside scope of discovery under Rule 26, SCRCP
RT&T_001256	11.2.18	Email: RT&T defense counsel, Warren Powell to Melissa Demmon of Endurance Insurance	Mental impressions of counsel	Attorney work product, Rule 26(b)(3), SCRCP

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and, THOMAS W. CONE, JR. as TRUSTEE,)) Plaintiffs,)) vs.)	Certificate of Service
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)) Defendants.)	

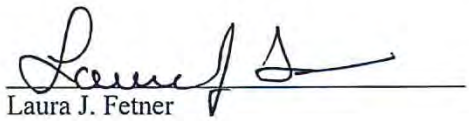
I, Laura J. Fetner, a legal assistant with the law firm Bruner Powell Wall & Mullins, LLC, attorneys for Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler, do hereby certify that on this 25th of February 2019, I served the ***Response of Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler to Plaintiffs Thomas Hugenin Gaillard and Thomas W. Cone's First Set of Interrogatories, Documents Bates numbered RT&T_000001 thru RT&T_001258***, and ***Privilege Log*** upon the following parties, via U.S. First Class Mail, postage prepaid and via Email, addressed as follows:

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

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

Ryan A. Earhart, Esquire
Earhart Overstreet, L.L.C.
Post Office Box 22528
Charleston, South Carolina 29413
ryan.earhart@earhartoverstreet.com
josh@earhartoversreet.com
Attorneys for Defendants Alexander C. Peabody and Peabody & Associates, Inc.



Laura J. Fetner

Columbia, South Carolina

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Warren Powell

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

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

Sent from my iPhone

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

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

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

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

Exhibit 3

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

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

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

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

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

March 11, 2019

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

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

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

Dear Robert & Jay:

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

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

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

With my kindest regards, I am,

Sincerely,

Warren C. Powell, Jr.

WCPjr/ljf
Enclosures
cc: Ryan A. Earhart, Esquire
Joshua H. Umbarger, Esquire

Exhibit 4

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Warren Powell

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

Warren:

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

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

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Exhibit 5

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CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Exhibit 6

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of March, 2019, by and between Gaye L. Jones ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access. ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS. the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8. 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"). inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS. the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control. Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"). and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises. the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other. in hand paid. the receipt of which is hereby acknowledged, and for other good and valuable consideration. the receipt. adequacy and sufficiency of which are hereby expressly acknowledged. the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone. their heirs. successors. successors-in-title. invitees. licensees. lessees and assigns. a non-exclusive. permanent. perpetual. transmissible. appurtenant ingress. egress. and access easement and right-of-way. ten (10) feet in width. upon. over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access. ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family. successors. heirs. assigns. invitees. licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"). subject. however. to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct. maintain. repair and replace the Joint Dock.

TO HAVE AND TO HOLD. all and singular. subject to terms and conditions set forth herein. the aforesaid Dock Access Easement. unto Gaillard and Cone. their heirs. successors. successors-in-title and assigns. forever.

2. Joint Dock Construction. On or before April 15. 2018. Jones and Gaillard and Cone (each a "Party" and collectively. the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit. the cost of which shall be split between the Parties as follows: Jones: 50%: Gaillard and Cone: 50%. Once construction of the Joint Dock commences. such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein. or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided. then, in such event. the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead. gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default. including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party. including their successors, heirs. assigns. respective agents. lessees. invitees. and licensees. and hold each other harmless from and against any and all claims. demands. actions. causes of action. damages. liens. losses, liabilities, fines. penalties. costs and expenses. including attorneys' fees and court costs. caused by or in any way attributable to the negligence. gross negligence of willfulness of such indemnitor. or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1.000.000 per occurrence. the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail. return receipt requested. overnight delivery. or by hand-delivery to the address provided by such Lot Owner. or if no address is provided. then to the residence located on the Jones Property or the Gaillard and Cone Property. as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service. or deposit with a national overnight carrier. and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties. their heirs. successors. successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

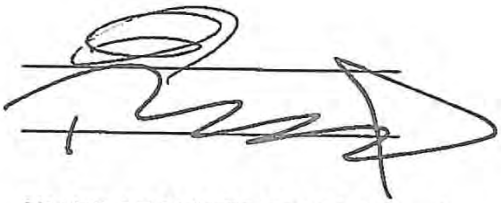
(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones





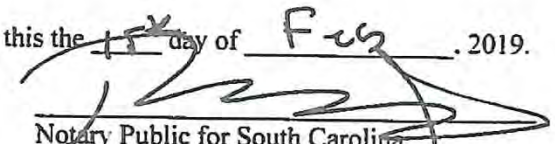
(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that Gaye L. Jones. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.



Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF. the undersigned have signed this AGREEMENT this 15 day of MARCH, 2019.

SIGNED. SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mitch Connard
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF Charleston)

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. Griffin
Notary Public, South Carolina
My Commission Expires
April 9, 2023

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

W. Britt Bullard

Tammy S. Griffin

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007.** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot. piece. or parcel of land. including any and all improvements thereon. situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses. meets and bounds.

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

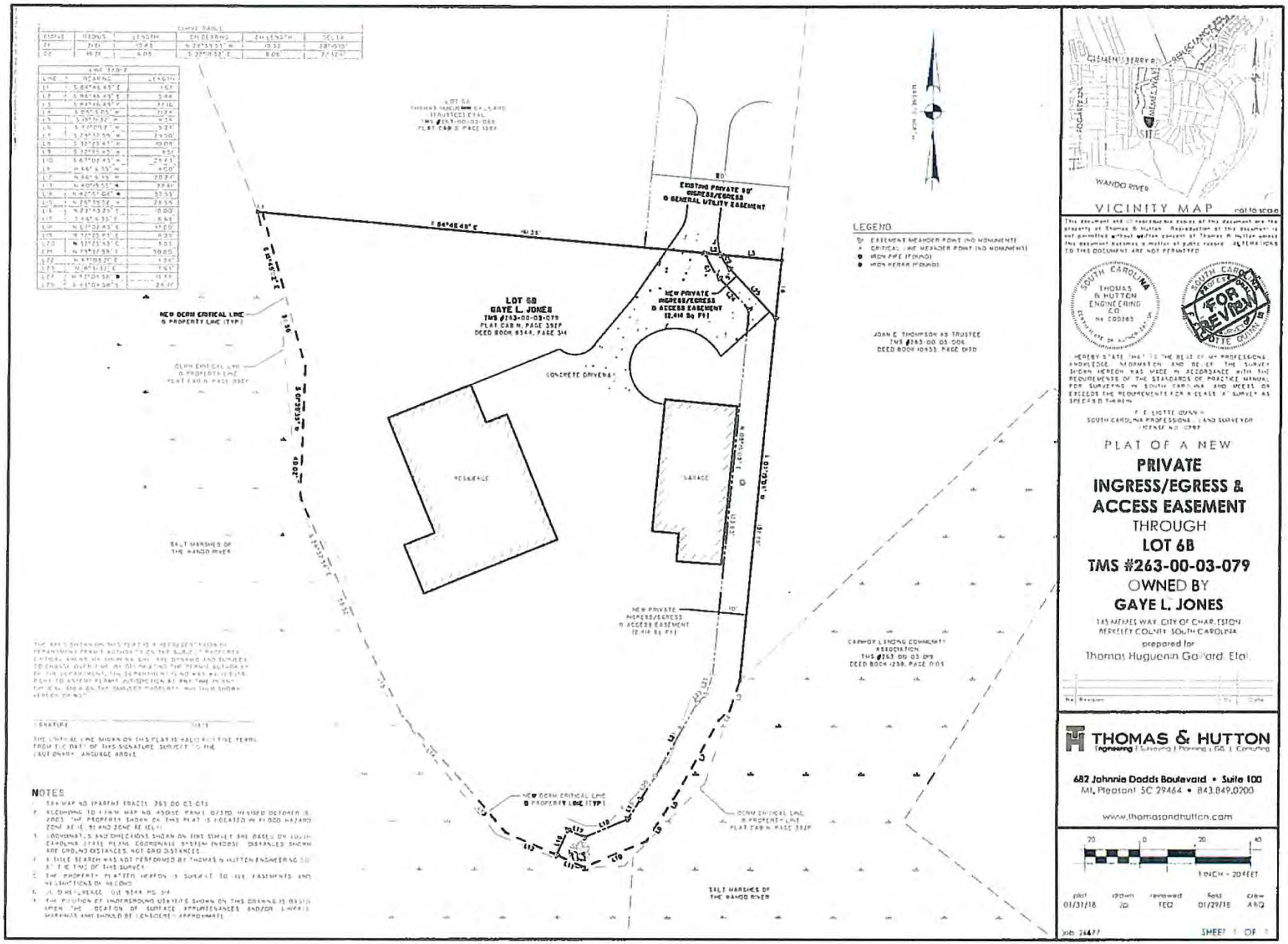
TMS No. 263-00-03-066

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

EXHIBIT "C"
EASEMENT PLAT

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

ROA 0185



ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

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

Warren:

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

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

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

Confidentiality Notice:
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information which is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

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

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

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

Exhibit 7

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Warren Powell

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

Warren:

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

Thanks.

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

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From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst <jjh@williamsandhulst.com>
Subject: RE: Jones v. RTT

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

Warren C. Powell, Jr.
BRUNERPOWELL
BRUNER, POWELL, WALL & MULLINS, LLC
P.O. Box 61110
1735 St. Julian Place, Suite 200
Columbia, SC 29260-1110
(o) 803.252.7693
(f) 888.726.9015
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Exhibit 8

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY COMMON PLEAS - CASE#2018CP0800817

Warren Powell

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

Warren:

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

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

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

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

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

Exhibit 9

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

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

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

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

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

* *ALSO ADMITTED IN DISTRICT OF COLUMBIA*

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

March 28, 2019

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

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

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

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

Dear Counsel:

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

With my kindest regards, I am,

Sincerely,

Warren C. Powell, Jr.

WCPjr/ljf
Enclosures

Exhibit 10

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and, THOMAS W. CONE, JR. as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER, ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	**NOTICE OF VIDEO DEPOSITION OF THOMAS W. CONE, JR.**

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

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

Signature on following page.

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

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

Columbia, South Carolina
March 28, 2019

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and, THOMAS W. CONE, JR. as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	**NOTICE OF VIDEO DEPOSITION OF THOMAS H. GAILLARD**

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

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

Signature on following page

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

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

Columbia, South Carolina
March 28, 2019

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and, THOMAS W. CONE, JR. as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	**NOTICE OF VIDEO DEPOSITION OF GAYLE LANGLEY JONES**

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

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

Signature on following page

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

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

Columbia, South Carolina
March 28, 2019

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; THOMAS H. GAILLARD as TRUSTEE; and, THOMAS W. CONE, JR. as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	Certificate of Service

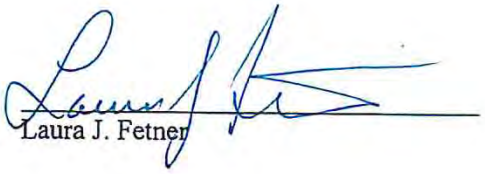
I, Laura J. Fetner, a legal assistant with the law firm Bruner Powell Wall & Mullins, LLC, attorneys for Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler, do hereby certify that on this 28th of March 2019, I served the ***Notice of Video Deposition of Thomas W. Cone, Jr.***, ***Notice of Video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

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

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

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

Ryan A. Earhart, Esquire
Earhart Overstreet, L.L.C.
Post Office Box 22528
Charleston, South Carolina 29413
ryan.earhart@earhartoverstreet.com
josh@earhartoversreet.com
Attorneys for Defendants Alexander C. Peabody and Peabody & Associates, Inc.



Laura J. Fetner

Columbia, South Carolina

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Warren Powell

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

Warren:

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

Thanks.

Sent from my iPhone

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

Exhibit 11

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Warren Powell

From: Warren Powell
Sent: Thursday, April 04, 2019 9:24 AM
To: 'Jary J Hulst'
Cc: robert@maringmoyer.com; ryan.earhart@earhartoverstreet.com; Shanna H Saulisbury
Subject: RE: Jones v. RTT

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

Warren C. Powell, Jr.
BRUNERPOWELL
BRUNER, POWELL, WALL & MULLINS, LLC
P.O. Box 61110
1735 St. Julian Place, Suite 200
Columbia, SC 29260-1110
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From: Jary J Hulst <jjh@williamsandhulst.com>
Sent: Friday, March 29, 2019 5:35 PM
To: Warren Powell <wpowell@brunerpowell.com>
Cc: robert@maringmoyer.com; ryan.earhart@earhartoverstreet.com; Shanna H Saulisbury <shs@williamsandhulst.com>
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Warren:

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

Thanks.

Sent from my iPhone

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

Exhibit 12

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

#78

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP0800817

Ronald L. Jones		Rogers Townsend & Thomas P.C.	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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.

FILED
2018 AUG 17 PM 1:16
MARY BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
VB

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

ORDER INFORMATION

Rogers Townsend & Thomas P.C.'s Motion to Add a Party is GRANTED. The Additional parties will be made a Plaintiff pursuant to Rule 19 SCRCP.

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.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Perry M. Buckner — 2122 Judge Code — 8/6/18 DATE VB

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

Exhibit 13

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Circuit Court Judge Perry M Buckner | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of June, 2018, and a copy mailed first class or placed in the appropriate attorney's box on the day of June, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Karen Andersen

Mary P. Brown - 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.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

John B. Williams
Jary J. Hulst

209 E. Main Street
Moncks Corner, SC 29461

Phone 843.761.8232
Fax 843.899.5834

WILLIAMS AND HULST, LLC.

ATTORNEYS AT LAW

Appellate work
Aviation law
Business formation
Commercial disputes
Condemnation
Construction law
Contracts
Insurance coverage
Municipal law
Personal injury
Probate and estate matters
Real estate
Utility industry related matters
Wills
Wrongful death

March 29, 2019

BOTH VIA E-MAIL & U.S. MAIL
Warren C. Powell, Jr., Esq.
Bruner, Powell, Wall & Mullins, LLC
Post Office Box 61110
Columbia, SC 29260-1110



Ryan A. Earhart, Esq.
P.O. Box 22528
Charleston, SC 29413

RE: Ronald L. and Gaye Langley Jones, et al. v. Rogers Townsend Thomas, PC, et al.
Case No.: 2018-CP-08-817

Dear Mr. Powell and Mr. Earhart:

Enclosed for service upon you is Plaintiffs Thomas Huguenin Gaillard and Thomas W. Cone, Jr.'s Motion for Non-Joinder Pursuant to Rule 21 SCRCP that has been filed in the above cited action.

With kindest regards, I remain

Sincerely,

WILLIAMS AND HULST, LLC

Shanna H. Saulisbury
Paralegal to J. Jay Hulst, Esq.

JJH:shs
Enclosures as stated
cc: Robert W. Maring, Esq.
(Via e-mail and U.S. mail w/enclosures)

Exhibit 14

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-08-817
RONALD L. JONES and GAYE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr., Revocable Trust, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	PLAINTIFFS THOMAS HUGUENIN GAILLARD AND THOMAS W. CONE, JR.'S MOTION FOR NON-JOINDER PURSUANT TO RULE 21 SCRCP

TO: WARREN C. POWELL, JR., ATTORNEY FOR DEFENDANTS ROGERS TOWNSEND & THOMAS, P.C. and LISA HOSTETLER, RYAN A. EARHART, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY, and PEABODY & ASSOCIATES, INC.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for Plaintiffs Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust (hereinafter "Gaillard and Cone"), will move before the presiding Judge of the Berkeley County Court of Common Pleas for an Order releasing them as involuntary plaintiffs in the above cited action pursuant to Rule 21 of the South Carolina Rules of Civil

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Procedure. Plaintiffs' motion is based upon the arguments and authorities below and the pleadings, exhibits, affidavits, other admissible evidence, applicable common law and statutory law and any memorandum of law or further supporting documentation provided to this Court.

FACTUAL BACKGROUND

Plaintiffs Ronald L. Jones and Gaye Langley Jones (hereinafter "Jones") purchased property at issue in this case in 2010. Jones alleges that Defendants Rogers Townsend & Thomas, P.C. ("RTT") acted as closing counsel. Jones further alleges that they discovered an easement on the property that they not made unaware of at the time of purchase. Jones sued RTT, the closing attorney Lisa Hostetler, and the surveyor Alexander C. Peabody and Peabody & Associates, Inc. ("Peabody") for damages based on the various causes of action set forth in their Complaint.

On June 12, 2018 counsel for RTT filed a Motion to Add a Party under SCRCP Rule 19(a) and also filed a Memorandum in Support of Defendant RTT's Motion to Add a Party. RTT contended in its Memorandum that the proposed new parties, Gaillard and Cone, were the owners of the dominant estate and that the dominant estate was the proper party to assert and defend an easement. RTT further contended that the easement being sued over was not legally viable, or that the dominant property holder had waived the easement or that the dominant property holder was estopped to assert the easement. RTT argued that Gaillard and Cone be added as parties to the action because if RTT prevailed in its defenses, Gaillard and Cone, as non-parties, might still claim rights under the purported easement because they might not be bound by any adverse ruling regarding the easement in this case.

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RTT's Motion was heard before the Honorable Perry M. Buckner. Cone and Gaillard were not provided with notice of the hearing. Judge Buckner issued a Form 4 Order dated August 6, 2018 and filed with the clerk on August 13, 2018, granting RTT's motion to add Gaillard and Cone as parties to this action.

BASIS FOR GRANT OF MOTION

Since the issuance of Judge Buckner's Order, Jones, Gaillard and Cone have entered into an Access, Maintenance and Joint Dock Use Agreement (hereinafter, the "Agreement") that has been recorded with the Berkeley County Register of Deeds Office in Book RB2977 at Page 604. (A true and correct copy of the Agreement is attached hereto as Exhibit A.) The terms of the Agreement terminate the purported easement at issue in this case and provides that Gaillard and Cone relinquish any interest they may have had in that easement. Accordingly, Gaillard and Cone no longer have any interest in the outcome of this case and there is no basis for keeping them in this action as parties. Counsel for Defendants have been provided with a recorded copy of the Agreement.

SCRCP Rule 21 provides that parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Gaillard and Cone are being forced to spend time and money participating as Plaintiffs in an action where they have asserted no claim and have had no claims asserted against them. Because the basis for adding Gaillard and Cone as parties to this action no longer exist, it is reasonable and just that they be released as parties to this action. Their continued forced participation in this action as parties is unfair and unjust.

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Gaillard and Cone, by and through their undersigned counsel, requested that Defendants consent to an order releasing them as nominal plaintiffs in this action. Ryan Earhart, counsel for Peabody, agreed to stipulate to Gaillard and Cone's dismissal from this action. Warren Powell, counsel for RTT and Lisa Hostetler has refused to stipulate. The basis for Mr. Powell's refusal is set forth in his email attached hereto as Exhibit B.

Counsel for Gaillard and Cone has consulted with opposing counsel as required by Rule 11, SCRCP prior to the filing of this motion.

CONCLUSION

Based on the foregoing, Plaintiffs Gaillard and Cone ask that the Court issue an Order releasing them as Plaintiffs in this action.

WILLIAMS AND HULST, LLC

/s/ *J. Jay Hulst*

J. Jay Hulst
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232 phone
(843) 899-5834 fax
jjh@williamsandhulst.com

ATTORNEYS FOR PLAINTIFFS
THOMAS W. CONE, JR., AND
THOMAS HUGUENIN GAILLARD

Dated: March 28, 2019

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EXHIBIT A

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CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

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***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA)
) ACCESS, MAINTENANCE AND
COUNTY OF BERKELEY) JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of MARCH, 2019, by and between **Gaye L. Jones** ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access, ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS, the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8, 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"), inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS, the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"), and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other, in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone, their heirs, successors, successors-in-title, invitees, licensees, lessees and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access, ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family, successors, heirs, assigns, invitees, licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"), subject, however, to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct, maintain, repair and replace the Joint Dock.

TO HAVE AND TO HOLD, all and singular, subject to terms and conditions set forth herein, the aforesaid Dock Access Easement, unto Gaillard and Cone, their heirs, successors, successors-in-title and assigns, forever.

2. Joint Dock Construction. On or before April 15, 2018, Jones and Gaillard and Cone (each a "Party" and collectively, the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit, the cost of which shall be split between the Parties as follows: Jones: 50%; Gaillard and Cone: 50%. Once construction of the Joint Dock commences, such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein, or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided, then, in such event, the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead, gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default, including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party, including their successors, heirs, assigns, respective agents, lessees, invitees, and licensees, and hold each other harmless from and against any and all claims, demands, actions, causes of action, damages, liens, losses, liabilities, fines, penalties, costs and expenses, including attorneys' fees and court costs, caused by or in any way attributable to the negligence, gross negligence of willfulness of such indemnitor, or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1,000,000 per occurrence, the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail, return receipt requested, overnight delivery, or by hand-delivery to the address provided by such Lot Owner, or if no address is provided, then to the residence located on the Jones Property or the Gaillard and Cone Property, as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service, or deposit with a national overnight carrier, and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties, their heirs, successors, successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that **Gaye L. Jones**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.

Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mott Connard
Tammy L. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

W. Britt Bullard

Tammy S. Griffin

Thomas W. Cone, Jr. (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007.** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

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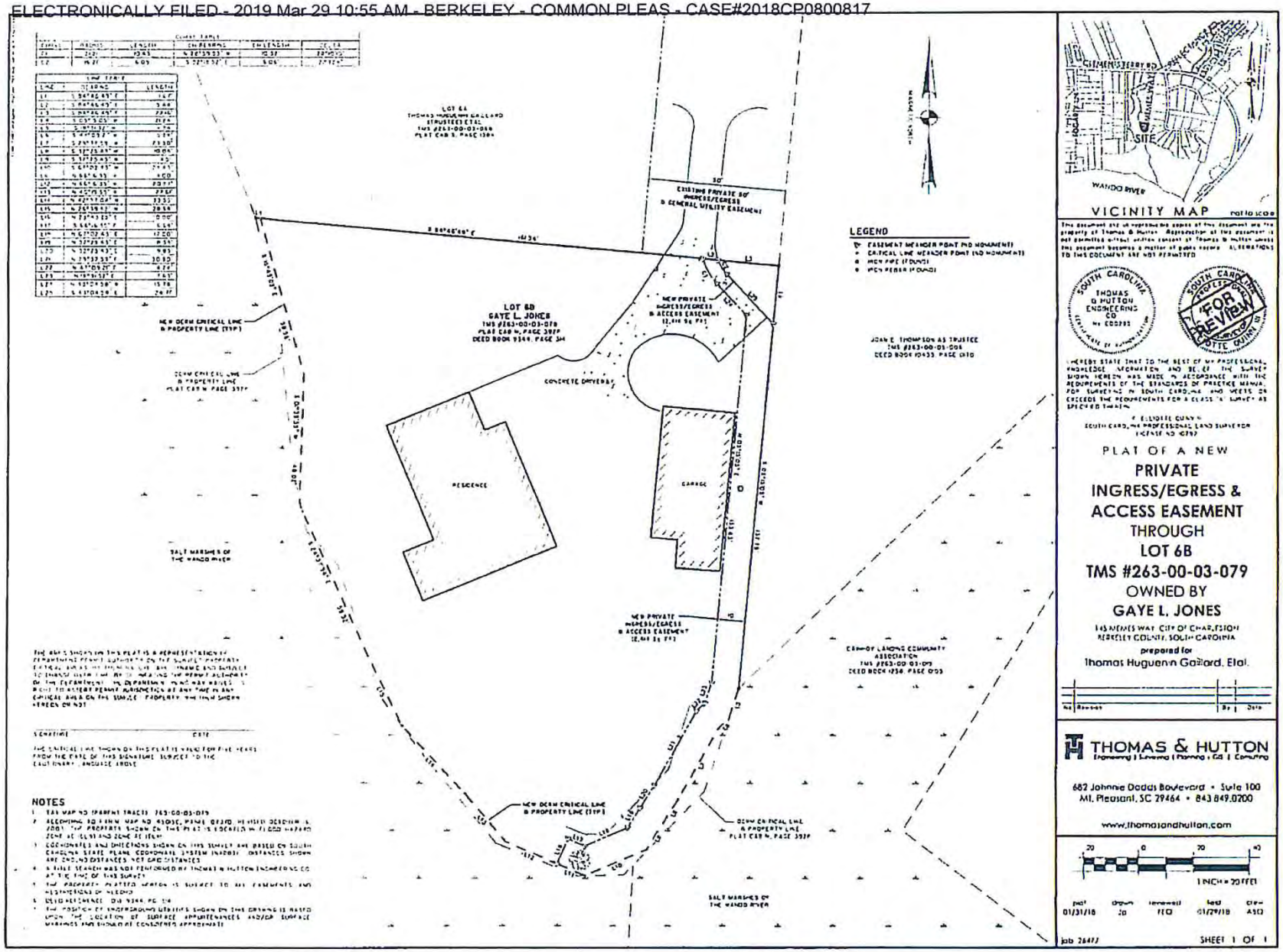
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EXHIBIT "C"
EASEMENT PLAT

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EXHIBIT B

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Jary J Hulst

From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst
Subject: RE: Jones v. RTT

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

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

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

Warren:

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

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

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

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have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

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

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

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

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

Warren:

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

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

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STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	DEFENDANTS' MOTION TO AMEND THE ANSWER

TO: ROBERT W. MARING, ESQUIRE AND JAY J. HULST, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that Defendants, Rogers Townsend & Thomas, P.C., and Lisa Hostetler will, by and through their undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order allowing them to file an amended answer, a copy of which is attached hereto.

The grounds for the motion are that the controversy exists as to the nature of the deeds and other instruments and how they relate to the alleged easement at issue herein and the Court can determine the nature under the Declaratory Judgment Act, and that the case is not set for trial and no plaintiff will be prejudiced by the amendment. A copy of the proposed amended answer is attached hereto.

Exhibit 15

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Movant has not attempted to consult with opposing counsel, as otherwise required by Rule 11, SCRCP, because such consultation would serve no useful purpose.

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina
March 29, 2019

ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE,	)	
Plaintiffs,	)	
v.	)	**SUMMONS**
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,	)	
Defendants.	)	

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

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817 AMENDED ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER and PETITION FOR DECLARATORY JUDGMENT

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3 and 7 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property

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description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants admit the allegations of Paragraphs 12, 13, and 14 of the Complaint.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint includes the wording of he described purported easement and that same is accurate except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11;" also Defendants deny the conclusions stated in said Paragraph.

12. Defendants deny the allegations of Paragraphs 18.

13. Defendants admit the allegations of Paragraphs 19 thru 25 and 27-28 of the Complaint.

14. Defendants deny the allegations of Paragraph 26, 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

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18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

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FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

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41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to do so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

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FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

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FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE
(SCRCP Rule 12(b)(7))

76. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

77. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

78. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6A will fail to provide complete relief to the parties.

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79. The owners of Lot 6A have been joined in this action and should remain parties to afford complete relief as to the issues presented.

FOR A TENTH DEFENSE
AND
PETITION FOR DECLARATORY JUDGMENT

80. The plaintiffs collectively allege that an easement appurtenant exists granting the owners of Lot 6A the right to traverse the property of Lot 6B.

81. The plaintiffs collectively allege that the easement appurtenant was originally recorded in a deed from James J. Monogham to Benjamin L. Daniel, dated April 4, 2006, and filed in the Register of Deeds office on April 5, 2006 at Deed Book 5506, page 12. A copy of the Deed is attached hereto as Exhibit 1. The plat referenced in the Monogham deed is attached hereto as Exhibit 2.

82. The plaintiffs collectively assert that they have replaced the original easement, which they now call a "Purported Easement," with an easement dated March 15, 2019 and recorded in the Register of Deeds office on March 22, 2019 at RB 2977, page 604. A copy of the 2019 easement is attached hereto as Exhibit 3. Because the line segments referred to in Exhibit 2 are difficult to read, the plat of Lot 6B is attached hereto as Exhibit 4.

83. The plaintiffs' assertions have no effect upon the nature of the "Purported Easement" with respect to their successors. The nature of the "Purported Easement" and its effect upon subsequent owners of the two lots can only be determined by a judgment.

84. A justiciable controversy exists as to the Jones plaintiffs with respect to the original "Purported Easement" in that the Jones plaintiffs assert that they have been damaged because the "Purported Easement" allowed strangers access to their property, and that

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Defendants were negligent in failing to alert them to the "Purported Easement" at the time the Jones purchased Lot 6B (the servient estate).

85. A justiciable controversy exists as to the Trustee plaintiffs with respect to the original "Purported Easement" because they and the Jones plaintiffs have entered into the March 2019 easement based upon the uncertain nature of what they describe as of the "Purported Easement."

86. The Defendants' legal rights are affected by the determination of whether the "Purported Easement" is in fact a valid easement, as set forth in the Complaint in this matter.

87. The plaintiffs allege that the "Purported Easement" is valid.

88. The defendants aver that the "Purported Easement" is not a valid easement under the facts of this case.

89. The defendants request that the Court determine the rights of the owners of Lot 6A and Lot 6B under the "Purported Easement."

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for a determination that the "Purported Easement" is in fact and law invalid, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

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EX 1

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Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 2946161120

00055535 Vol: 5506 Pg: 12

Instrument Number: 2006- 00055535
As
Deed

Recorded On: April 05, 2006
Parties: MONAGHAN JAMES J
To
DANIEL BENJAMIN L SR
Recorded By: CUTCHIN LAW FIRM
Comment:

Num Of Pages: 5

** Examined and Charged as Follows: **

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

RECEIVED
Apr 05, 2006
ASSESSOR
BERKELEY COUNTY SC
JANET B. JUDSKO
AUDITOR BERKELEY COUNTY SC

** THIS PAGE IS PART OF THE INSTRUMENT **

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

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

Record and Return To:
CUTCHIN LAW FIRM
955-B JOHNNIED DODDS BLVD
MT PLEASANT SC 29464

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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00055535 Vol: 5806 Pg: 13

After Recording, Please Return to:

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

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

William J. Cutchin

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

Deloris C. Gunnells

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BERKELEY)

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

William J. Cutchin

SWORN TO before me, this
April 4, 2006.

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

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00055535 Vol: 5506 Pg: 15

Schedule A

Legal Description
(Deed)

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

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

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

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

TMS # 263-00-03-079

Lawyer Responsible _____

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AFFIDAVIT

00055535 Vol: 5806 Pg: 16

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
COUNTY OF BERKELEY) April 4, 2006

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **James J. Monaghan** to **Benjamin L. Daniel, Sr.**, ON **April 4, 2006.**

3. Check one of the following: The DEED is
   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) __X___ EXEMPT from the deed recording fee because (exemption# _12_) (Explanation if required)_Transfer to Grantor(s)' Trust(s)_____ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) __XX_ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of $5.00.
   (b) _____ The fee is computed on the fair market value of the realty which is $____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) __XX__ the amount listed in item 4 above.
   (b) _____ the amount listed in item 5 above (no amount place zero)
   (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

William J. Cutchin, Legal Representative connected with this transaction

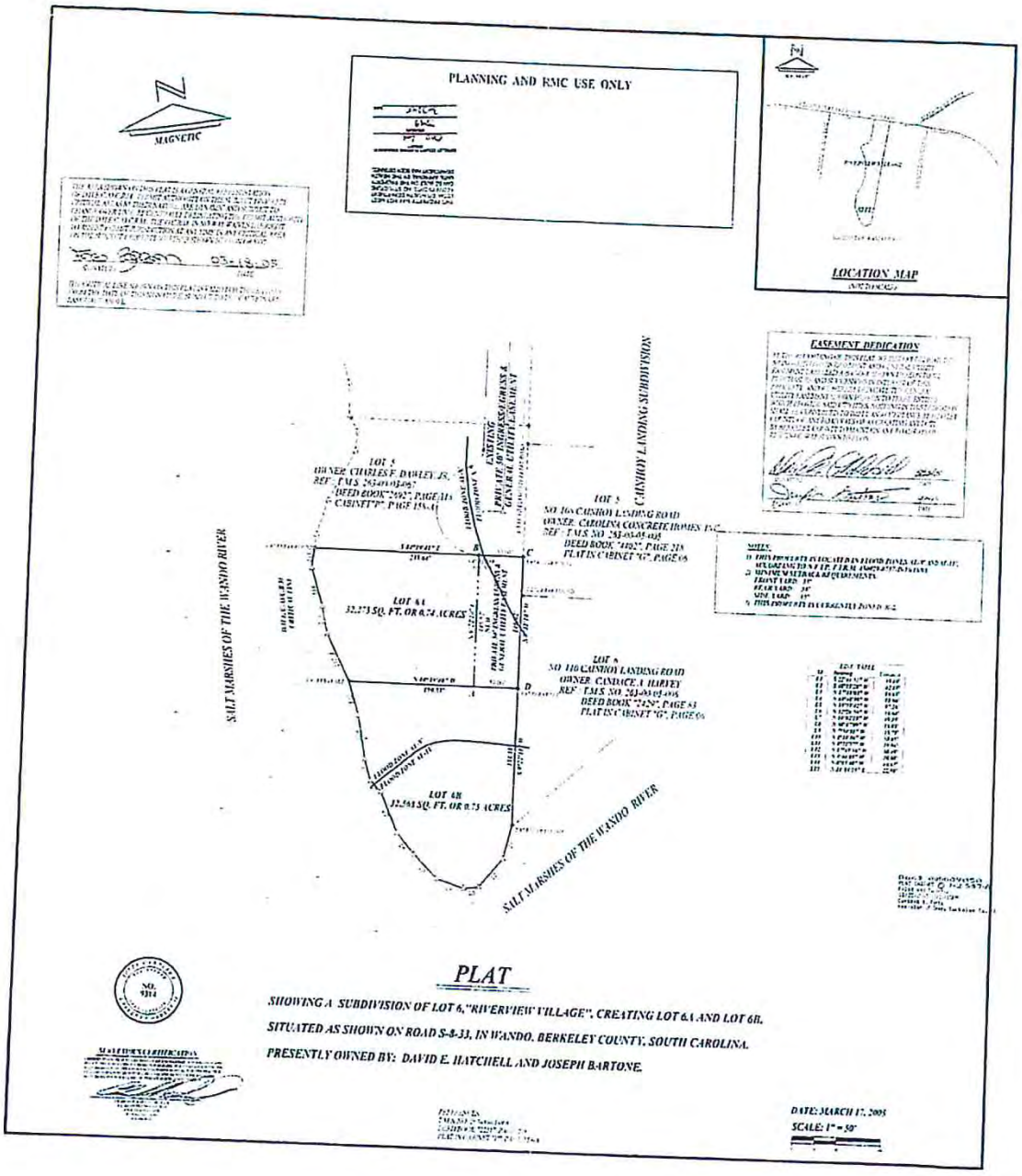
Sworn to before me this
April 4, 2006

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

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EX 2

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EX 3

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CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA)
) ACCESS, MAINTENANCE AND
COUNTY OF BERKELEY) JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of March, 2019, by and between Gaye L. Jones ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as Exhibit "C" and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access, ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS, the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8, 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"), inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS, the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"), and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other, in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone, their heirs, successors, successors-in-title, invitees, licensees, lessees and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access, ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family, successors, heirs, assigns, invitees, licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"), subject, however, to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct, maintain, repair and replace the Joint Dock.

TO HAVE AND TO HOLD, all and singular, subject to terms and conditions set forth herein, the aforesaid Dock Access Easement, unto Gaillard and Cone, their heirs, successors, successors-in-title and assigns, forever.

2. Joint Dock Construction. On or before April 15, 2018, Jones and Gaillard and Cone (each a "Party" and collectively, the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit, the cost of which shall be split between the Parties as follows: Jones: 50%; Gaillard and Cone: 50%. Once construction of the Joint Dock commences, such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein, or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided, then, in such event, the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead, gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default, including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party, including their successors, heirs, assigns, respective agents, lessees, invitees, and licensees, and hold each other harmless from and against any and all claims, demands, actions, causes of action, damages, liens, losses, liabilities, fines, penalties, costs and expenses, including attorneys' fees and court costs, caused by or in any way attributable to the negligence, gross negligence of willfulness of such indemnitor, or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1,000,000 per occurrence, the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail, return receipt requested, overnight delivery, or by hand-delivery to the address provided by such Lot Owner, or if no address is provided, then to the residence located on the Jones Property or the Gaillard and Cone Property, as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service, or deposit with a national overnight carrier, and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties, their heirs, successors, successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 13th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert W. Mahy, Notary Public for the State of South Carolina do hereby certify that Gaye L. Jones, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 13th day of Feb, 2019.

Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mitch Connell
Tammy L. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston) ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

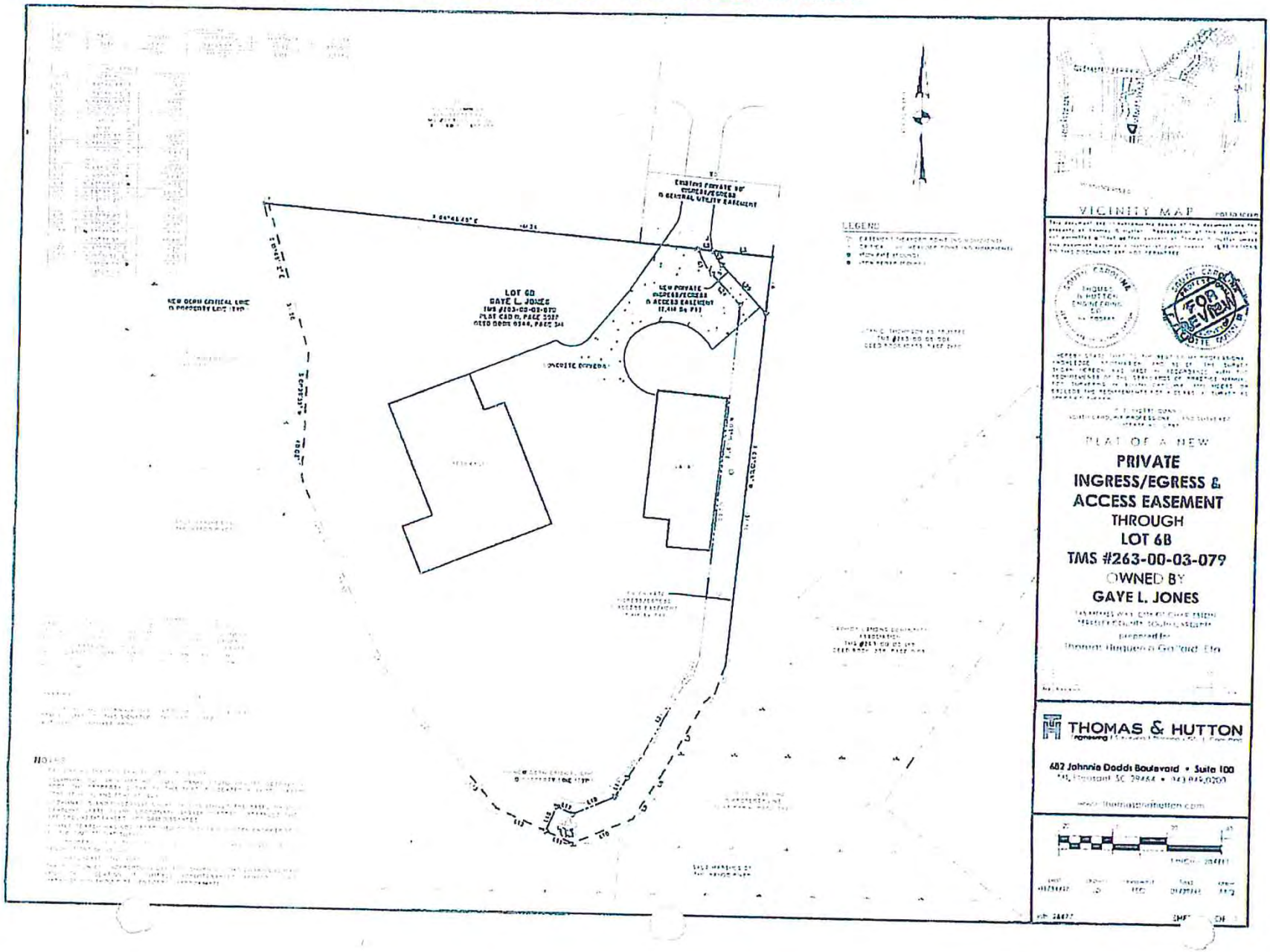
All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

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EXHIBIT "C"
EASEMENT PLAT

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817
ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817



ROA 0257

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ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

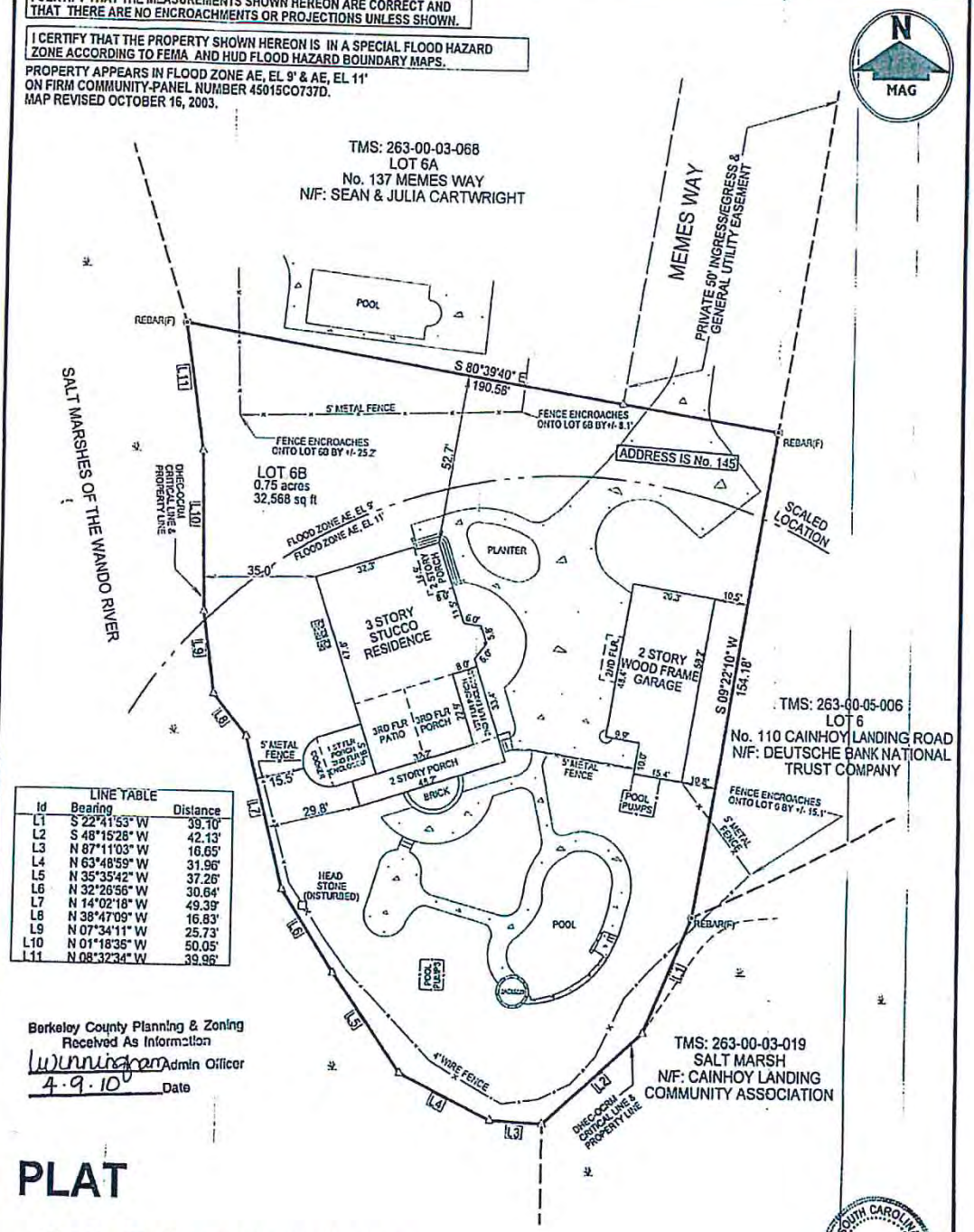
EX 4

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817
ELECTRONICALLY FILED - 2019 Mar 29 4:31 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 9' & AE, EL 11'
ON FIRM COMMUNITY-PANEL NUMBER 45015C0737D.
MAP REVISED OCTOBER 16, 2003.



LINE TABLE		
Id	Bearing	Distance
L1	S 22°41'53" W	39.10'
L2	S 48°15'28" W	42.13'
L3	N 87°11'03" W	16.65'
L4	N 63°48'59" W	31.96'
L5	N 35°35'42" W	37.26'
L6	N 32°26'56" W	30.64'
L7	N 14°02'18" W	49.39'
L8	N 38°47'09" W	16.83'
L9	N 07°34'11" W	25.73'
L10	N 01°18'35" W	50.05'
L11	N 08°32'34" W	39.96'

Berkeley County Planning & Zoning
Received As Information
W Cunningham Admin Officer
4-9-10 Date

PLAT

OF LOT 6B, RIVERVIEW VILLAGE,
WANDO, BERKELEY COUNTY.
BEING CONVEYED TO GAYE LANGLEY JONES & ROBERT L. JONES.

30 15 0 30
SCALE: 1" = 30'

DATE: MARCH 24, 2010

REF: PLAT CAB. "Q", PG. 357-A

TMS: 263-00-03-079

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C0194
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
No. 25194
ALEXANDER C. PEABODY

BERKELEY COUNTY
SOUTH CAROLINA

ELECTRONICALLY FILED - 2019 May 20 3:59 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr.Revocable Trust, Dated April 3, 2007, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	**DEFENDANTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND THE ORDER OF MAY 9, 2019 [SCRCP 59(e)]**

Defendants respectfully move this Honorable Court to reconsider, alter or amend its Order of May 9, 2019 granting the Trustee Plaintiffs' Motion for Nonjoinder which removed the Trustees as parties to this action. This motion is based upon the following:

A. INTRODUCTION

1. Plaintiffs Jones purchased Lot 6B, 145 Memes Way, which adjoins Lot 6A purchased by Trustee Plaintiffs in 2011.

2. Both Jones and Trustees claimed at the time of the commencement of this action that a valid easement of ingress and egress existed on the Jones' property by virtue of "excepting language" contained in an April 5, 2006 deed from James Monaghan to Ben Daniel conveying Lot 6B and naming owners of Lot 6A as the owners of a purported easement for ingress and egress with language allowing the Lot 6A owners to walk around the perimeter of the Jones

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property, for which Jones seeks damages against the defendant lawyers who did not disclose the purported easement.

3. The validity of the 2006 purported easement is in contest in this case as Defendants deny that any valid easement existed at the time this suit was entered and if the easement was ever valid it was abandoned prior to the bringing of this action.

4. On May 4, 2018 Jones, the servient estate holder, entered suit.

5. On August 6, 2018, on motion of Defendants, Judge Buckner ordered Trustees be made involuntary Plaintiffs to the suit as the dominant estate holder of the contested 2006 purported easement. (Order, dated August 6, 2018).

6. Between February 25, 2019-March 29, 2019 Defendants sought to take the Plaintiffs' depositions and Trustees' counsel agreed on March 13, 2019 to hold the depositions on April 5 and 8-12.

7. On March 22, 2019 Jones and the Trustees filed a new easement in which:

a. Jones and Trustees (Cone, Gaillard) will jointly build a dock greater than 800 feet in length out to the Wando River with each paying 50% of the construction cost;

b. Trustees having the right to use the dock and cross Jones' property; and which

c. Purports to disclaim 2006 easement.

8. On March 27-29, 2019 the Trustees make dismissing them a condition of their appearing for their depositions.

9. On March 29, 2019 the Trustees fileda motion for Order of Nonjoinder to exit the suit based upon the March 22, 2019 easement filed by Plaintiffs, with Movants claiming via

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motion that they "no longer have any interest in the outcome of this case and there is no basis for keeping them in this action as parties." (Trustees' March 28, 2019 Motion)

10. The Jones' May 4, 2018 Complaint alleges:

a. That as a result of the existence of the easement, the Plaintiffs have lost full enjoyment and use of their property. (Complaint Paragraph 29);

b. That the owners of Lot 6A, the Trustee Plaintiffs, will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement. (Complaint Paragraph 31);

c. That as a result, the owners of Lot 6A will continue to have an easement on the Plaintiffs' property, depriving them of exclusive ownership of their property. (Complaint Paragraph 32).

11. On May 9, 2019, the court filed an Order granting Defendants' motion to amend their Answer to assert a declaratory judgment claim and in a separate order the Trustees' motion for nonjoinder asserting, "Per Mr. Hulst, the Trustees assert that their rights are not affected and that they have resolved the underlying easement issue by entering into and determining their interests in this matter. While the issue of the validity of any easements is viable to Defendant RT&T's defenses it is not viable or dispositive of the Trustee Plaintiffs' interest in the property."

B. RELIEF SOUGHT AND ARGUMENT

Movants respectfully request this Honorable Court to Reconsider, Alter or Amend its May 9, 2019 order and judgment in accordance with the following:

1. Plaintiff argued before the Court that Defendants in this action do not have standing to contest the validity of the 2006 purported easement or the March 22, 2019 purported

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easement although the Court's order does not address this issue. Movants respectfully request that the Order be amended to rule on this issue.

2. The May 9, 2019 Order states in part that the Trustees resolved the underlying easement issue with Plaintiff Jones by filing a new easement ten months after this suit was filed, implying there was a claim or dispute between Trustees and Jones about such. Movants respectfully point out there is no evidence in the record by affidavit or otherwise of such a dispute to support this implied finding and, this being so, that the order be amended to remove same.

3. Movants respectfully request that the Order of May 9, 2019 be amended to make a finding that the Trustee Plaintiffs claimed an interest in the purported 2006 easement across Lot 6B as dominant estate holders at the time this suit was entered, and the issues joined.

4. It is uncontested in the record that the Complaint states that the Lot 6A owners, the Trustees, will not terminate their rights to the easement but have agreed to narrow it in size and scope (Complaint Paragraph 31) and as a result the Trustees will continue to have an easement on the plaintiffs' property. (Complaint Paragraph 32). Movants respectfully request the order be amended to reflect this fact.

5. If the trial of this action were to proceed and it was found that the 2006 easement and/or the March 22, 2019 easement were invalid then the Jones property would be clear without any such encumbrance but only if the purported dominant estate holders were parties to the action and bound by such a judgment. Rule 19(a) entitled, "Persons to Be Joined if Feasible" states, "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties …" In the

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absence of the Trustees in the case any finding of invalidity of the easements cannot provide complete relief as the Trustees would not be bound by same.

6. Because the Trustees claim an interest in the subject matter of the case, both at the time suit was entered and the issues joined as well as now, Rule 19(a)(2), SCRCP mandates their participation as parties in the suit. Rule 19(a) entitled, "Persons to be Joined if Feasible" states, "a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be jointed as a party in the action if (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect the interest or (ii) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff." Without the purported dominant estate holders as parties in this case they cannot protect their interests in the subject matter and Jones may be faced with inconsistent results requiring further litigation as, for example, a finding in this suit that the alleged easements are invalid without such a result binding on those claiming the right to cross Jones' property. If such results and subsequent litigation is entered there is a likelihood that Movants will also be made a party exposing them to multiple suits because the Trustees were not made parties to the current action.

7. The Court's May 9, 2019 order states, "Per Mr. Hulst, the Trustees assert that their rights are not affected and that they have resolved the underlying easement issue by entering into a new easementwith Plaintiff Jones thereby resolving and determining their

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interests in this matter." This is close to language in the Trustee's motion, "… Gaillard and Cone no longer have any interest in the outcome of this case …" There is no affidavit or even a pleading submitted by the Trustees to contend or to provide evidence to support this contention. Argument of counsel is not evidence. Sutton v. HealthSouth Corp., 400 S.C. 412, 420, 734 S.E.2d 641, 645-46 (2012); Brown v. Johnson, 276 S.C. 68, 71-72, 275 S.E.2d 876, 878 (1981); SCDOT v. Thompson, 357 S.C. 101, 105, 590, S.E.2d 511, 513 (Ct. App. 2003). Accordingly, the court's finding is not based upon any evidence before it and, that being so, Movants respectfully request that the order be amended removing said statement and finding.

8. Defendants' Answer was amended on May 7, 2019 asserting a Petition for Declaratory Judgment as to the plaintiffs in the case under the Declaratory Judgment Act as permitted by the court's order allowing the amendment. Despite such, the court issued its order on May 9, 2019 dismissing the alleged Dominant Estate holders (Trustees) from the case. Movants respectfully request the Court reconsider its decision and vacate said nonjoinder/dismissal allowing the Petition for Declaratory Judgment to go forward.

9. Trustees' motion for an order of nonjoinder relies upon Rule 21, SCRCP and cite to no case law in support. In Farmer v. CAGC Ins. Co., 424 S.C. 579, 819 S.E.2d 142 (Ct. App. 2018) the Court of Appeals held that, "Rule 21 should be viewed by the company it keeps; its neighbors, Rules 17, 19 and 20 are provisions that also tell us who are proper parties … Although Rule 21 does not define misjoinder, the cases make it clear that parties are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a). "Id. at 586, 819 S.E.2d 145. Under Rule 20, SCRCP, the Trustees are proper parties. Movants respectfully request the court amend its order and rule upon the Farmer standard and Rule 20(a), SCRCP.

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10. Respectfully, it is manifestly unjust for the Trustees to be dismissed prior to their depositions being taken, particularly when they through counsel agreed to sit for their depositions within days prior to filing the March 22, 2019 easement and then demanded dismissal before agreeing to be deposed. Movants respectfully request that the order of nonjoinder be vacated to allow for the previously scheduled depositions to be taken.

Respectfully submitted,

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., SC Bar No. 4525
Bruner Powell Wall & Mullins, LLC
PO Box 61110
Columbia SC 29260
(803) 252-7693
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend & Thomas, PC and Lisa Hostetler

Columbia, South Carolina
May 20, 2019

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EXHIBIT A

Recorded On-2006-Apr-05 As-55535

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

00055535 Vol: 5506 Pg: 12

53 2006 00055535

Instrument Number: 2006- 00055535
As
Deed

Recorded On: April 05, 2006

Parties: MONAGHAN JAMES J
To
DANIEL BENJAMIN L SR

Recorded By: CUTCHIN LAW FIRM

Num Of Pages: 5

Comment:

**** Examined and Charged as Follows: ****

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

RECEIVED

Apr 05,2006

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

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

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

File Information:

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

Record and Return To:

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

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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Recorded On-2006-Apr-05 As-55535

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

00055535 Vol: 5506 Pg: 13

After Recording, Please Return to:

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

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

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

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

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

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

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

Recorded On-2006-Apr-05 As-55535

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

William J. Cutchin

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

Deloris C. Gunnells

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PROBATE

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

William J. Cutchin

SWORN TO before me, this
April 4, 2006.

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

Recorded On-2006-Apr-05 As-55535

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Schedule A

Legal Description
(Deed)

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

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

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

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

TMS # 263-00-03-079

Lawyer Responsible _____

Recorded On-2006-Apr-05 As-55535

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AFFIDAVIT

00055535 Vol: 5506 Pg: 16

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

Date of Transfer of Title
April 4, 2006

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **James J. Monaghan** to **Benjamin L. Daniel, Sr.**, ON **April 4, 2006**.

3. Check one of the following: The DEED is
   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) __X___ EXEMPT from the deed recording fee because (exemption# _12_) (Explanation if required)_Transfer to Grantor(s)' Trust(s)_____ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) ___XX_ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **$5.00**.
   (b) _____ The fee is computed on the fair market value of the realty which is $____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) __XX__ the amount listed in item 4 above.
   (b) _____ the amount listed in item 5 above (no amount place zero)
   (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

William J. Cutchin, Legal Representative connected with this transaction

Sworn to before me this
April 4, 2006

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

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EXHIBIT B

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 2018-CP-08-817
COUNTY OF BERKELEY)	
RONALD L. JONES AND GAYE)	
LANGLEY JONES,)	
)	
PLAINTIFFS,)	
)	
VS.)	COMPLAINT
)	(JURY TRIAL DEMANDED)
ROGERS TOWNSEND &)	
THOMAS, P.C., LISA HOSTETLER)	
ALEXANDER C. PEABODY AND)	
PEABODY & ASSOCIATES, INC.)	
)	
DEFENDANTS.)	

FILED
18 MAY -4 PM 12: 14
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Comes now the Plaintiffs who, complaining of the Defendants, allege as follows:

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.
2. Upon information and belief Rogers Townsend & Thomas, P.C. is a professional corporation organized and existing pursuant to the laws of the State of South Carolina and doing business in Berkeley County, South Carolina.
3. Upon information and belief Lisa Hostetler is a citizen and resident Richland County, State of South Carolina and at all times relevant herein was employed as an attorney for the Defendant Rogers, Townsend & Thomas, P.C.
4. Upon information and belief Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates Inc.

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5. Upon information and belief Peabody & Associates, Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.

6. The Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.

7. Upon information and belief, venue is proper in Berkeley County, South Carolina.

FACTS

8. Each and every allegation contained herein is repeated as if verbatim.

9. That on or about May 7, 2010 the Plaintiffs purchased the following property from E*TRADE BANK by deed filed with the Berkeley County Register of Deeds Office on May 13, 2010 and recorded in Deed Book RP 8440 at page 218 with the following description:

> All that lot, piece, or parcel of land, including any and all improvements thereon, situate lying and being near Cainhoy North of Wando River, Berkeley County, South Carolina, and being shown and designated as Lot 6B on a plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village" Creating Lot 6A and 6B, Situated As Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005 prepared by Charles F. Dawley, Jr. R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Robert L. Jones by Peabody & Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet P at Page 4A. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, metes and bounds.

10. The Settlement Agent for this transaction was identified on the (HUD-1) Settlement Statement as the Defendant Rogers, Townsend & Thomas, P.C., 220 Executive Center Drive, Suite 109, Columbia, SC 29210.

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11. Upon information and belief, attorney's fees for the May 7, 2010 closing were paid to the Defendant Rogers Townsend & Thomas for their role as serving as settlement agent for the real estate transaction.

12. That at all times relevant herein, Defendant Rogers, Townsend, P.C. by and through its employees, including, but not limited to, Lisa Hostetler acted as the Settlement Agent for the Plaintiffs in the above referenced transaction.

13. Upon information and belief Defendant Lisa Hostetler signed the HUD-1 Settlement Statement representing herself to be the Settlement Agent for Defendant Rogers, Townsend, & Thomas, P.C.

14. Upon information and belief, Lisa Hostetler and/or agents of the Defendant Rogers, Townsend & Thomas, P.C. generated title insurance commitments and issued an owners' policy of Title Insurance for this transaction. At all times, Defendant Rogers, Townsend & Thomas, P.C. and Lisa Hostetler, were a licensed attorney and law firm who were practicing law in the State of South Carolina and within the course and scope of their employment and/or agency for the Defendant law firm at the time of their actions and inactions related to the transaction hereinabove referenced.

15. On or about May 15, 2015, the Plaintiff discovered for the first time, that there was an easement of record that affected the property purchased by the Plaintiffs as herein described.

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

17. The easement granted to the owners of Lot 6A (TMS#263-00-03-068) Lot 5 (No. 108 Cainhoy Landing Road, TMS # 263-00-05-005) Lot 6 (No. 110 Cainhoy Landing Road,

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TMS # 263-00-05-006) Lot 7 (112 Cainhoy Landing Road, TMS #263-00-05-007) a 25' Ingress/Egress along the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18 and then continuing on lines L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, and L1. Therefore, the Easement will almost completely encircle the Lot 6B except for most of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

18. The easement described in paragraph 17 herein was created by a Deed in the direct chain of title for the subject premises.

19. That prior to the closing on the Property described herein, the Plaintiff's engaged the services of Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor to survey the property for an accurate and detailed description of the property, the improvements and any easements that would affect the property.

20. A survey was performed and a Plat was provided to the Plaintiffs' attorneys prior to closing.

21. The Defendants Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor were paid Five Hundred and Fifty 00/100 ($550.00) Dollars for the preparation and delivery of the Plat.

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22. The survey was relied upon to describe the property in the legal description on the Deed conveying the property to the Plaintiffs as herein described and was recorded simultaneously with the Deed.

23. The survey failed to disclose the existence of the easement as described in paragraph 16 herein.

24. Upon information and belief, the existence of this easement was not disclosed to the Plaintiffs prior to the closing on May 7, 2010 or any time after closing by any of the Defendants.

25. Upon information and belief, the existence of this easement should have been disclosed on the Plat prepared by Defendants Alexander C. Peabody, PLS and Peabody & Associates, Inc. prior to the closing and prior to its recording.

26. The existence of the easement is and was a material fact that should have been disclosed to the Plaintiffs prior to closing on the property hereinabove referenced by the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler.

27. The Plaintiffs are informed and believe that the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler did not disclose this encumbrance/easement on the property, nor, did the Defendants properly communicate and explain the existence of the easement.

28. The Plaintiffs are informed and believe that the Defendants Alexander C. Peabody and Peabody & Associates, Inc. did not properly disclose this easement on the plat prepared for the Plaintiffs.

29. That as a result of the existence of the easement, the Plaintiffs have lost full enjoyment and use of their property.

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30. That subsequent to discovery of the easement, the Plaintiffs have terminated three (3) of the (4) properties that held an easement though agreements between the Plaintiffs and those Lot Owners.

31. That the owners of lot 6-A (TMS#263-00-03-068) will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement.

32. That as a result, the owners of Lot 6-A will continue to have an easement on the Plaintiffs property, depriving them of exclusive ownership of their property.

FOR A FIRST CAUSE OF ACTION

(NEGLIGENCE AS TO ROGERS TOWNSEND & THOMAS, P.C. AND LISA HOSTETLER)

33. Each and every allegation is repeated as if verbatim.

34. Plaintiffs were foreseeable parties to suffer injury if the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler failed to perform their duties and meet the standard of care in their representations in the aforementioned property transaction.

35. Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler owed a duty to meet the standard of care in their handling of the closing and transaction and to prevent foreseeable injuries to Plaintiffs.

36. The standard of care for lawyers representing a client in transactions in South Carolina requires a lawyer, among other things, to inform, consult, and communicate with the client as to a transaction about the means by which the client's objectives are to be accomplished, to keep the client reasonably informed about the status of the matter, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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37. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler acts of omission and/or commission in the following particulars to wit:

    a. By failing to meet the applicable standard of care in the representation of the Plaintiffs and handling of the transaction described above;

    b. By failing to disclose to the Plaintiffs the existence of the easement as described in herein;

    c. By failing to disclose to the Plaintiff's key facts concerning the transaction which prejudicial to the Plaintiffs' interest;

    d. In failing to properly communicate with the Plaintiffs' before, during or after the transaction;

    e. In failing to properly supervise the transaction;

    f. In failing to properly train its employees;

    g. In failing to properly hire employees with sufficient knowledge and skill to properly conduct the transaction;

    h. In violating the rules, regulations and statures governing attorneys conduct in the State of South Carolina;

38. That as a direct and proximate result of one or more of the Defendants' actions or omissions the Plaintiffs suffered damages.

39. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

40. Each and every allegation is repeated as if verbatim.

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41. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Charles Nation, an expert witness and lawyer licensed to practice law in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

FOR A SECOND CAUSE OF ACTION

(NEGLIGENCE AS TO ALEXANDER C. PEABODY AND PEABODY ASSOCIATES, INC.)

42. Each and every allegation is repeated as if verbatim.

43. Plaintiffs were foreseeable parties to suffer injury if the Defendants Alexander C. Peabody and Peabody & Associates, Inc. failed to perform their duties and meet the standard of care in their representations in their preparation of the Plat for the Plaintiffs.

44. Defendants Alexander C. Peabody and Peabody & Associates, Inc. owed a duty to meet the standard of care in their preparation of the Plat for the transaction and to prevent foreseeable injuries to Plaintiffs.

45. The standard of care for surveyors engaging in the business of surveying in South Carolina requires a surveyor, among other things, to show any easements known to the surveyor on the survey performed and to properly investigate the records of the Register of Deeds, to include, but not limited to, the Deed in the direct chain of title to be able to accurately determine the boundary of the lot and any other encumbrances, including, but not limited to the existence of easements that may exist in the Deed into the current owner of the property.

46. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Alexander C.

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Peabody and Peabody & Associates, Inc. acts of omission and/or commission in the following particulars to wit:

i. By failing to meet the applicable standard of care in the preparation of the the Plat for the above described real estate transaction above;

j. By failing to disclose on the Plat the existence of the easement as described in herein;

k. In failing to properly supervise the preparation of the plat;

l. In failing to properly train its employees;

m. In failing to properly hire employees with sufficient knowledge and skill to properly prepare the plat;

n. In violating the rules, regulations and statures governing surveyors in the State of South Carolina;

47. That as a direct and proximate result of one or more of the Defendants actions or omissions the Plaintiffs suffered damages.

48. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

49. Each and every allegation is repeated as if verbatim.

50. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Wendell Powers, an expert witness and surveyor licensed in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

WHEREFORE, Plaintiffs pray as follows:

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A. For a judgment in an amount to be determined by the jury for actual, consequential and punitive damages against all Defendants;

B. For the costs and disbursements of this action;

C. For such other and further relief as the court may deem just and proper.

May 4, 2018

Robert W. Maring
SC Bar 8810
Attorney for Plaintiffs
PO Box 478
Georgetown, SC 29440
843-545-9544 phone
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robert@maringmoyer.com

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State of South Carolina	)	**In the Court Of Common Pleas**
	)	**For the Ninth Judicial Circuit**
County of Berkeley	)	**Civil Action Number: 2018-CP-09-___**

Affidavit Required Under Carolina Code Ann. Section 15-36-100

PERSONALLY APPEARED BEFORE ME, Charles Owen Nation, II, who, after first being duly sworn and under oath, states as follows. I am the owner of Nation Law Firm, P.C., and have been a member of the South Carolina Bar engaged in the general practice of law since November of 1984. I am a member of the South Carolina Bar Association, and have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100, which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omission(s) prior to the filing of complaint asserting negligence on the part of an attorney. This affidavit is given in connection with the area of practice dealing with residential real estate closings, more particularly, the refinance of the attorney on the abstract of real property, and the simultaneous representation of an owner of real property, a borrower and mortgagor, and a bank loaning funds on the condition of it being assured of a first mortgage lien encumbering the residential property which secures the repayment of the loan involved with the transaction. The facts as they have been presented to me appear to be as follows, and all references to documents filed of record are intended to refer to the Office of the Register of Deeds for the County of Berkeley, State of South Carolina:

1. Plaintiffs, Gaye Langley Jones and Ronald K. Jones, at all times relevant, were and are residents of the County of Berkeley County, State of South Carolina.

2. Rogers, Townsend & Thomas, LLC, at all times relevant, were licensed attorneys who were practicing law in the State of South Carolina.

3. On information and belief, Lisa M. Hostetler, at all times relevant, was employed by the law firm of Rogers, Townsend & Thomas, LLC.

4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

   All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID



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E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.

This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.

TMS #263-00-03-068

5. The property, Lot 6B, was conveyed by Deed of Coastal Plains Development Company, Inc., to James J. Monaghan by deed dated April 8, 2005, and filed of record in Deed Book 4887 at Page 84.

6. The subject property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006, and filed of record in Deed Book 5506 at Page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., by deed dated August 22, 2006, and filed of record in Deed Book 5904 at Page 177.

7. Rogers, Townsend & Thomas, LLC issued or caused Investor's Title Insurance Company Policy Number SC401720100521, a Homeowner's Policy of Title Insurance, to be issued, which insures the subject property, property shown and designated as Lot 6B on a plat filed of record in Plat Cabinet Q at Page 357A, hereinafter "Investor's Policy."

8. The exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, make no mention of some of the documents which are contained within the abstract of the title search.

9. While the abstract of the title search reveals the existence of the following documents in the chain of title to the subject property, the exceptions reflected

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within Investor's Policy, and the Title Insurance Commitment which was prepared prior to Investor's Policy, make no mention of the following documents:

a. Easement to real estate from Candace A. Harvey, owner of Lot Number 6, as reflected on Slide Cabinet G at Page 6; and

b. Easement in a deed from Coastal Plains Development Co., Inc., to James J. Monaghan dated April 8, 2005, and filed of record in the Office of the Register of Deeds for the County of Berkeley in Volume 4887 at Page 65; and

c. Easement in deed from James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in the Office of the Register of Deeds for the County of Berkeley in Volume 5506 at Page 13, which conveyance and easement state as follows:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as

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recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

TMS#263-00-03-079

10. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

11. Easements filed of public record were not noted and included within the title insurance commitment nor in the title insurance policy but were, however, noted in the abstract.

12. The plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easements above which completely encircle Lot 6B for a width of 25 feet except for most of the northern part of the lot. Further, the exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, excludes all loss, costs, attorney's fees and expenses resulting from those matters disclosed on a plat by Peabody & Associates, Inc., dated March 24, 2010.

13. I know I have not reviewed the entire closing file maintained by the parties.

14. I have attached a RESUME which reflects some of my educational background and experience, believe I am an expert in the field of residential real estate transactions, and estimate I have personally served as the closing attorney for either the seller or the purchaser or the bank, and others, in a variety of

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transactions which include sales, purchases, refinances, etc., in more than one thousand (1,000) residential real estate transactions since my admission to the bar in 1984.

15. Based on the foregoing facts, the validity and accuracy of which I assume, it is my judgment Lisa M. Hostetler and the law firm which employed her appear to have been negligent in (a) failing properly to review the abstract of the subject property, and (b) in failing properly to list the exceptions applicable to the subject property. The factual basis for my opinion is my review of the files shared with me. As a result of the failure to review the abstract and note the easements filed of record, the subject property was purchased and easements which exists as a matter of record affect the subject property but were not disclosed.

16. In my judgment, a reasonably competent and careful South Carolina lawyer would not have closed the Loan and allowed the conveyance without reviewing the abstract, and the easements, and the plats related thereto, and explained the effect of the documents revealed in the abstract but not in the title insurance commitment or policy to be issued. I hold the foregoing opinions to a reasonable degree of professional certainty.

Charles Owen Nation, II

Sworn and **subscribed** to before me this 2 day of May, 2018.

Notary Public for South Carolina
My commission expires: 08/16/2027
(Seal)

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS CASE NO. 2018-CP
RONALD L. JONES AND GAYE) LANGLEY JONES,)) PLAINTIFFS,)) VS.)) ROGERS TOWNSEND &) THOMAS, P.C., LISA HOSTETLER) ALEXANDER C. PEABODY AND) PEABODY & ASSOCIATES, INC.))	AFFIDAVIT OF WENDELL POWERS

PERSONALLY APPEARED BEFORE ME, Wendell C. Powers who, after being duly sworn and under oath states as follows. I am a licensed surveyor in the State of South Carolina and am the owner of Powers Land Surveying and have been engaged as a land surveyor in South Carolina since June 1970. I have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones, and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100 which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omissions(s) prior to the filing of a complaint asserting negligence on the part of a land surveyor. This affidavit is given in connection with the preparation of a Plat for a real estate transaction in Berkeley County, South Carolina. These are the facts as have been provided to me as well as my opinion on this matter.

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.

2. Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates, Inc..

3. Upon information and belief Peabody & Associates Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.

EXHIBIT 2

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4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

> All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.
>
> This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.
>
> TMS #263-00-03-068

5. The property, Lot 6B was conveyed by Deed from Coastal Plains Development Company Inc. to James J. Monaghan by deed dated April 8, 2005 and filed of Record in Deed Book 4887 at Page 84.

6. The property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006 and filed of record in Deed Book 5506 at page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated August 22, 2006, and filed of record in Deed Book 5904 at page 177.

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7. That the Deed from James J. Monaghan to Benjamin L. Daniel Sr. dated April 5, 2006 reserved the following description and easement:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.
>
> TMS#263-00-03-079

8. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill

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South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

9. A plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easement above which completely encircled Lot 6B for a width of 25 feet except for most of the northern part of the lot.
10. I have worked in the surveying business for over 47 years and have been registered land surveyor for most of my time in the business.
11. I have surveyed thousands of properties over my career and have prepared as many plats. I have prepared thousands of plats for residential closings.
12. I am currently licensed as a Registered Land Surveyor in the State of South Carolina and have been since April 1973.
13. I have been in the continual practice of land surveying as a Registered Land Surveyor since my licensing in 1973.
14. South Carolina has established the minimum standards for the practice of surveying in South Carolina pursuant to State of South Carolina Code of Regulations Chapter 29, Article 4 Regulations 400-490.
15. Based on the forgoing facts a review of the proposed Complaint and consultation with Plaintiff's counsel, the validity of which I have to assume, it is my judgment that Alexander C. Peabody and Peabody Associates, Inc. appears to have been negligent in failing to meet the minimum standards required of land surveyors as defined in State of South Carolina Code of Regulations

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Chapter 29, Article 4 Regulations 400-490 in the following ways: (a) failing to disclose the 25 foot easement on the March 24, 2010 plat to the Plaintiffs (b) in failing to review deeds into the chain of title necessary to properly execute the survey and preparation of the plat according to the findings of all relevant information; and (c) in failing to accurately present and reveal all of the pertinent information included in the legal descriptions on the Plat;.

16. It is my judgment, a reasonably competent and careful South Carolina Land Surveyor would have properly and carefully researched the legal descriptions of the property to insure that an accurate and complete representation of all relevant matters were disclosed on the Plat.

17. This opinion is made to a reasonable degree of professional land surveyor certainty.

Wendell G. Powers, Registered Land Surveyor

Sworn to before me on this 3rd day of May, 2018

Notary Public for South Carolina

My commission expires: 5/8/23

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EXHIBIT C

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)	
Plaintiffs,)	
vs.)	ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

FILED
2018 JUN 12 PM 3:59
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2 and 3 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 and 7 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants deny so much of the allegations of Paragraphs 12, 13, and 14 of the Complaint as can be construed to allege that Lisa Hostetler acted as a settlement agent, signed any documents, or issued any title policies, or acted in any capacity at the Plaintiffs' closing.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11."

12. Defendants admit the allegations of Paragraphs 18 through 23 of the Complaint.

13. Defendants admit the allegations of Paragraphs 24 through 28 of the Complaint.

14. Defendants deny the allegations of Paragraph 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

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19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

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FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

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41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to dos so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

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FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

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FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE OF LISA HOSTETLER ALEXANDER
(Not the Proper Party)

76. Lisa Hostetler Alexander was not the supervising attorney in the closing of the lot for Plaintiffs.

77. Lisa Hostetler Alexander did not owe Plaintiffs any duty to give them legal advice or to notify them of any easement on their property.

78. Lisa Hostetler Alexander pleads that she is not a proper party to this lawsuit as a complete defense.

79. Lisa Hostetler Alexander pleads lack of any duty as a complete defense.

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FOR A TENTH DEFENSE
(SCRCP Rule 12(b)(7))

80. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

81. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

82. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6B will fail to provide complete relief to the parties.

83. The owners of Lot 6B should be joined in this action.

84. This action should be dismissed for failure to join necessary parties or in the alternative the necessary parties should be joined.

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr. S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

EXHIBIT D

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2018-CP-08-817

RONALD L. JONES, et al.
Plaintiff,
vs.
Rogers Townsend & Thomas, PC, et al.
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____ Address: _____ Phone: _____Fax _____ E-mail: _____Other: _____	Warren C. Powell, Jr., Bar No. 4525 Address: PO Box 61110, Columbia SC 29260 Phone: 803-252-7693 Fax____ E-mail: BRobinson@BrunerPowell.comOther:

☒ **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: Motion to Add Party
Estimated Time Needed: 45 min 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.

Warren C. Powell
Signature of Attorney for ☐ Plaintiff/☒ Defendant

June 8, 2018
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: _____

MARY P. BROWN CLERK OF COURT BERKELEY COUNTY, SC
FILED
2018 JUN 12 PM 4:02

JUDGE'S SECTION

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

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: NK Date Filed: 6-12-18
☒ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $ _____

WCP

SCCA 233 (11/2003)

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)	
Plaintiffs,)	
vs.)	DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.'S MOTION TO ADD A PARTY (SCRCP RULE 19(a))
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

TO: ROBERT W. MARING, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that defendant, Rogers Townsend & Thomas, P.C., will, by and through its undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order making THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, AND THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 parties plaintiff needed for a just adjudication under SCRCP Rule 19(a) as plaintiffs.

The grounds for the motion are set forth in a memorandum file contemporaneously herewith.

FILED
2018 JUN 12 PM 4:02
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Movant attempted to consult with opposing counsel, as required by Rule 11, SCRCP, both by telephone and by e-mail, but was unable to reach opposing counsel.

BRUNER, POWELL, WALL & MULLINS, LLC

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(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)) Plaintiffs,)) vs.)) ROGERS TOWNSEND & THOMAS, P.C.,) LISA HOSTETLER ALEXANDER,) C. PEABODY, and PEABODY &) ASSOCIATES, INC.,)) Defendants.)	MEMORANDUM IN SUPPORT OF DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.'S MOTION TO ADD A PARTY (SCRCP RULE 19(a))

THE FACTS

The plaintiffs (collectively "Jones") purchased property on which Rogers Townsend & Thomas, P.C. ("RT&T") acted as the closing attorney in 2010. Jones claims to have discovered an easement on the property of which it claims to have been unaware at the time of purchase. Jones sued RT&T for failing to inform Jones of the easement prior to closing. RT&T issued a policy of title insurance to Jones.

RT&T has or will enter defenses to the Jones claims. RT&T avers that the easement being sued over is not legally viable, or that the dominant property holder has waived the easement or that the dominant property holder is estopped to assert the easement.

The proposed new parties, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 2007, are the owners of the dominant estate.

FILED
2019 JUN 12 PM 4:02
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

THE LAW

Rule 19(a), SCRCP, allows either party to an existing lawsuit to join another person if the joinder will not deprive the court of jurisdiction and if the absence of the proposed party will prevent complete relief.

The dominant estate is the proper party to assert and defend an easement. Sheppard v. Justin Enters., 373 S.C. 518, 646 S.E.2d 177 (Ct.App. 2007).

Under most circumstances, an order is not binding on a non-party. Pharr v. Canal Ins. Co., 233 S.C. 266, 104 S.E.2d 394 (1959).

APPLICATION OF THE LAW TO THE FACTS

If RT&T is successful in defending claims brought by Jones on the grounds that the easement either does not exist or that it is unenforceable by waiver or estoppel, complete relief will not be achieved thereby. If the unbound dominant property owner asserts rights in the easement over the Jones property, Jones may bring an action against the title insurer to defend Jones or enter suit against the alleged dominant estate holder, which could lead to additional actions against Movant, unless completer is not afforded here.

Including the dominant property owners in this lawsuit will afford complete relief to all the parties because it will determine the status of the easement for both the dominant and servient estates. Including the dominant property owners will not prejudice Jones, because Jones contends that the alleged easement has caused her damage and, of course, she has in interest in defeating or terminating the alleged easement.

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CONCLUSION

The proposed new parties should be added as party defendants because they may claim a purported easement to which Jones objects and which RT&T is challenging, because they are needed for complete relief, and because adding them will not prejudice any existing party.

BRUNER, POWELL, WALL & MULLINS, LLC

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Columbia, South Carolina

June 8, 2018

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EXHIBIT E

#78

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP0800817

Ronald L. Jones		Rogers Townsend & Thomas P.C.	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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.

FILED
2018 AUG 10 PM 1:16
MARY BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
VB

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

ORDER INFORMATION

Rogers Townsend & Thomas P.C.'s Motion to Add a Party is GRANTED. The Additional parties will be made a Plaintiff pursuant to Rule 19 SCRCP.

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.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Perry M. Buckner — 2122 Judge Code — 8/6/18 DATE VB

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

Circuit Court Judge Perry M Buckner | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of June, 2018, and a copy mailed first class or placed in the appropriate attorney's box on the day of June, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Karen Andersen

Mary P. Brown - 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.

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

EXHIBIT F

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

Jary J Hulst

From: Jary J Hulst
Sent: Friday, March 22, 2019 1:31 PM
To: Warren Powell; ryan.earhart@earhartoverstreet.com
Cc: Shanna H Saulisbury; Robert Maring
Subject: Ronald L Jones, Gayle Langley Jones, and Thomas H Gillard and Thomas Cone, as trustees v Rogers Townsend & Thomas, PC et al., Civil Action Number 2018-CP-08-817
Attachments: Recorded Agreement-Gaillard, Cone and Jones 3.22.19.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Warren and Ryan:

Attached is a copy of the recorded Access, Maintenance and Joint Dock Use agreement that was recently executed by the my clients and Gaye Jones. Accordingly, the purported easement at issue in this case has been terminated and replaced by the new easement described in this instrument, and my clients no longer have any possible interest in the outcome of this case.

Please advise whether you will consent to an order releasing them as nominal plaintiffs in this action.

Your anticipated cooperation is greatly appreciated.

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

Confidentiality Notice:
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information which is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA)
) ACCESS, MAINTENANCE AND
COUNTY OF BERKELEY) JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of MARCH, 2019, by and between **Gaye L. Jones** ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access. ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS. the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8. 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"). inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS. the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control. Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"). and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises. the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other. in hand paid. the receipt of which is hereby acknowledged, and for other good and valuable consideration. the receipt. adequacy and sufficiency of which are hereby expressly acknowledged. the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone. their heirs. successors. successors-in-title. invitees. licensees. lessees and assigns. a non-exclusive. permanent. perpetual. transmissible. appurtenant ingress. egress. and access easement and right-of-way. ten (10) feet in width. upon. over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access. ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family. successors. heirs. assigns. invitees. licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"). subject. however. to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct. maintain. repair and replace the Joint Dock.

TO HAVE AND TO HOLD. all and singular. subject to terms and conditions set forth herein. the aforesaid Dock Access Easement. unto Gaillard and Cone. their heirs. successors. successors-in-title and assigns. forever.

2. Joint Dock Construction. On or before April 15. 2018. Jones and Gaillard and Cone (each a "Party" and collectively. the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit. the cost of which shall be split between the Parties as follows: Jones: 50%: Gaillard and Cone: 50%. Once construction of the Joint Dock commences. such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein. or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided. then, in such event. the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead. gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default. including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party. including their successors, heirs. assigns. respective agents. lessees. invitees. and licensees. and hold each other harmless from and against any and all claims. demands. actions. causes of action. damages. liens. losses, liabilities, fines. penalties. costs and expenses. including attorneys' fees and court costs. caused by or in any way attributable to the negligence. gross negligence of willfulness of such indemnitor. or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1.000.000 per occurrence. the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail. return receipt requested. overnight delivery. or by hand-delivery to the address provided by such Lot Owner. or if no address is provided. then to the residence located on the Jones Property or the Gaillard and Cone Property. as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service. or deposit with a national overnight carrier. and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties. their heirs. successors. successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that **Gaye L. Jones**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.

Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mitch Gaillard
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF Charleston)

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of MARCH, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot. piece. or parcel of land. including any and all improvements thereon. situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

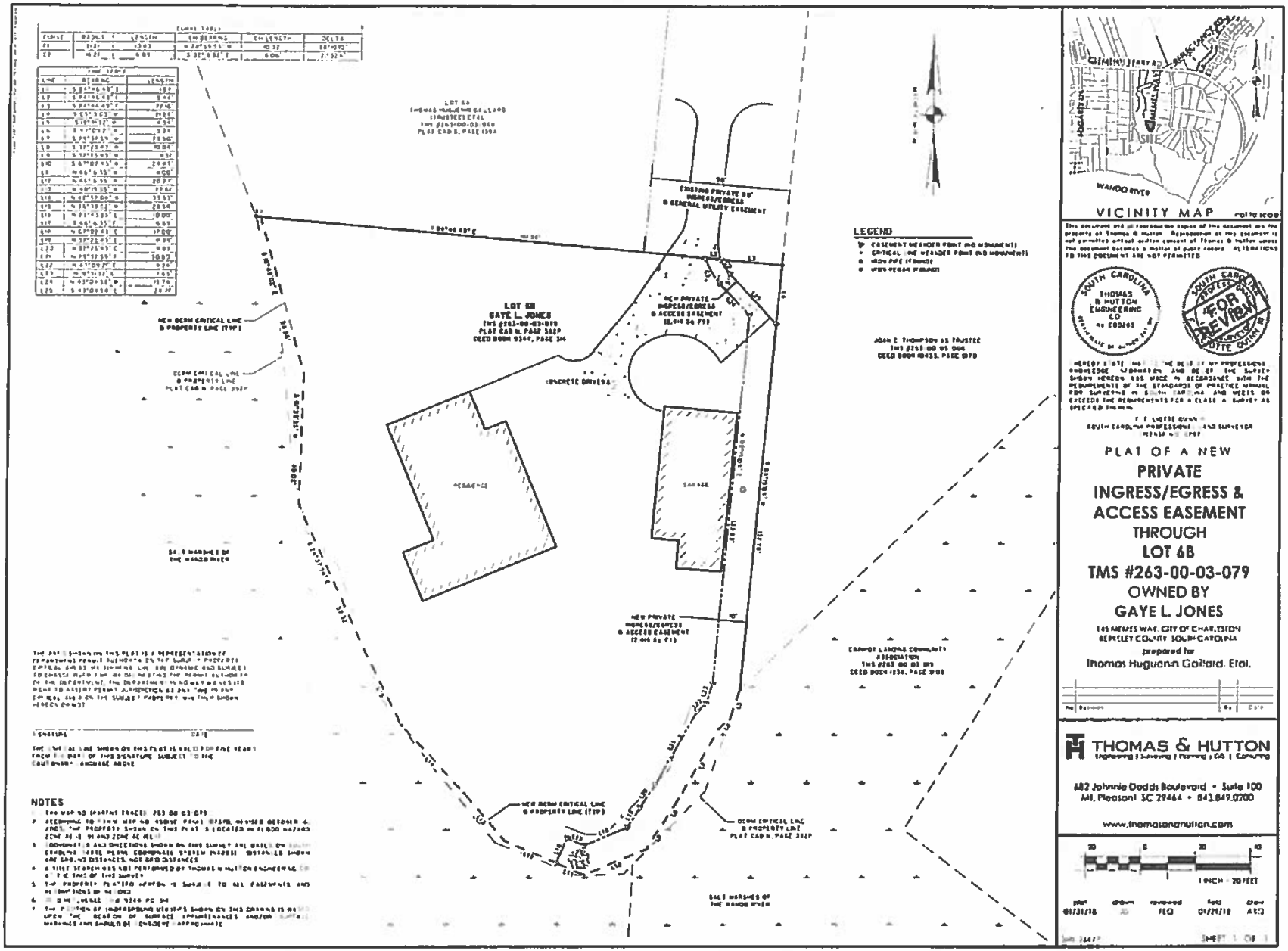
TMS No. 263-00-03-066

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EXHIBIT "C"
EASEMENT PLAT

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ROA 0327



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EXHIBIT G

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817
ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-08-817
RONALD L. JONES and GAYE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr., Revocable Trust, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	)	PLAINTIFFS THOMAS HUGUENIN GAILLARD AND THOMAS W. CONE, JR.'S MOTION FOR NON-JOINDER PURSUANT TO RULE 21 SCRCP

TO: WARREN C. POWELL, JR., ATTORNEY FOR DEFENDANTS ROGERS TOWNSEND & THOMAS, P.C. and LISA HOSTETLER, RYAN A. EARHART, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY, and PEABODY & ASSOCIATES, INC.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for Plaintiffs Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust (hereinafter "Gaillard and Cone"), will move before the presiding Judge of the Berkeley County Court of Common Pleas for an Order releasing them as involuntary plaintiffs in the above cited action pursuant to Rule 21 of the South Carolina Rules of Civil

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Procedure. Plaintiffs' motion is based upon the arguments and authorities below and the pleadings, exhibits, affidavits, other admissible evidence, applicable common law and statutory law and any memorandum of law or further supporting documentation provided to this Court.

FACTUAL BACKGROUND

Plaintiffs Ronald L. Jones and Gaye Langley Jones (hereinafter "Jones") purchased property at issue in this case in 2010. Jones alleges that Defendants Rogers Townsend & Thomas, P.C. ("RTT") acted as closing counsel. Jones further alleges that they discovered an easement on the property that they not made unaware of at the time of purchase. Jones sued RTT, the closing attorney Lisa Hostetler, and the surveyor Alexander C. Peabody and Peabody & Associates, Inc. ("Peabody") for damages based on the various causes of action set forth in their Complaint.

On June 12, 2018 counsel for RTT filed a Motion to Add a Party under SCRCP Rule 19(a) and also filed a Memorandum in Support of Defendant RTT's Motion to Add a Party. RTT contended in its Memorandum that the proposed new parties, Gaillard and Cone, were the owners of the dominant estate and that the dominant estate was the proper party to assert and defend an easement. RTT further contended that the easement being sued over was not legally viable, or that the dominant property holder had waived the easement or that the dominant property holder was estopped to assert the easement. RTT argued that Gaillard and Cone be added as parties to the action because if RTT prevailed in its defenses, Gaillard and Cone, as non-parties, might still claim rights under the purported easement because they might not be bound by any adverse ruling regarding the easement in this case.

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RTT's Motion was heard before the Honorable Perry M. Buckner. Cone and Gaillard were not provided with notice of the hearing. Judge Buckner issued a Form 4 Order dated August 6, 2018 and filed with the clerk on August 13, 2018, granting RTT's motion to add Gaillard and Cone as parties to this action.

BASIS FOR GRANT OF MOTION

Since the issuance of Judge Buckner's Order, Jones, Gaillard and Cone have entered into an Access, Maintenance and Joint Dock Use Agreement (hereinafter, the "Agreement") that has been recorded with the Berkeley County Register of Deeds Office in Book RB2977 at Page 604. (A true and correct copy of the Agreement is attached hereto as Exhibit A.) The terms of the Agreement terminate the purported easement at issue in this case and provides that Gaillard and Cone relinquish any interest they may have had in that easement. Accordingly, Gaillard and Cone no longer have any interest in the outcome of this case and there is no basis for keeping them in this action as parties. Counsel for Defendants have been provided with a recorded copy of the Agreement.

SCRCP Rule 21 provides that parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Gaillard and Cone are being forced to spend time and money participating as Plaintiffs in an action where they have asserted no claim and have had no claims asserted against them. Because the basis for adding Gaillard and Cone as parties to this action no longer exist, it is reasonable and just that they be released as parties to this action. Their continued forced participation in this action as parties is unfair and unjust.

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Gaillard and Cone, by and through their undersigned counsel, requested that Defendants consent to an order releasing them as nominal plaintiffs in this action. Ryan Earhart, counsel for Peabody, agreed to stipulate to Gaillard and Cone's dismissal from this action. Warren Powell, counsel for RTT and Lisa Hostetler has refused to stipulate. The basis for Mr. Powell's refusal is set forth in his email attached hereto as Exhibit B.

Counsel for Gaillard and Cone has consulted with opposing counsel as required by Rule 11, SCRCP prior to the filing of this motion.

CONCLUSION

Based on the foregoing, Plaintiffs Gaillard and Cone ask that the Court issue an Order releasing them as Plaintiffs in this action.

WILLIAMS AND HULST, LLC

/s/ J. Jay Hulst

J. Jay Hulst
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232 phone
(843) 899-5834 fax
jjh@williamsandhulst.com

ATTORNEYS FOR PLAINTIFFS
THOMAS W. CONE, JR., AND
THOMAS HUGUENIN GAILLARD

Dated: March 28, 2019

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EXHIBIT A

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

CYNTHIA B FORTE

BERKELEY COUNTY

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Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

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STATE OF SOUTH CAROLINA	)	
	)	ACCESS, MAINTENANCE AND
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THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of MARCH, 2019, by and between **Gaye L. Jones** ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access, ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS, the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8, 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"), inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS, the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"), and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other, in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone, their heirs, successors, successors-in-title, invitees, licensees, lessees and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access, ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family, successors, heirs, assigns, invitees, licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"), subject, however, to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct, maintain, repair and replace the Joint Dock.

TO HAVE AND TO HOLD, all and singular, subject to terms and conditions set forth herein, the aforesaid Dock Access Easement, unto Gaillard and Cone, their heirs, successors, successors-in-title and assigns, forever.

2. Joint Dock Construction. On or before April 15, 2018, Jones and Gaillard and Cone (each a "Party" and collectively, the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit, the cost of which shall be split between the Parties as follows: Jones: 50%; Gaillard and Cone: 50%. Once construction of the Joint Dock commences, such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein, or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided, then, in such event. the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead. gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default. including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party. including their successors, heirs, assigns. respective agents. lessees. invitees. and licensees. and hold each other harmless from and against any and all claims. demands. actions. causes of action. damages. liens. losses. liabilities. fines. penalties. costs and expenses. including attorneys' fees and court costs. caused by or in any way attributable to the negligence. gross negligence of willfulness of such indemnitor. or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1.000.000 per occurrence. the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail. return receipt requested. overnight delivery. or by hand-delivery to the address provided by such Lot Owner. or if no address is provided. then to the residence located on the Jones Property or the Gaillard and Cone Property. as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service. or deposit with a national overnight carrier. and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties. their heirs. successors. successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that **Gaye L. Jones**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.

Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF. the undersigned have signed this **AGREEMENT** this 15 day of March, 2019.

SIGNED. SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mitt Connard
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007,** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

W. Britt Bullard

Tammy S. Griffin

Thomas W. Cone, Jr. (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot. piece. or parcel of land. including any and all improvements thereon. situate, lying and bearing near Cainhoy North of Wando River, Berkeley County. South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County. South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

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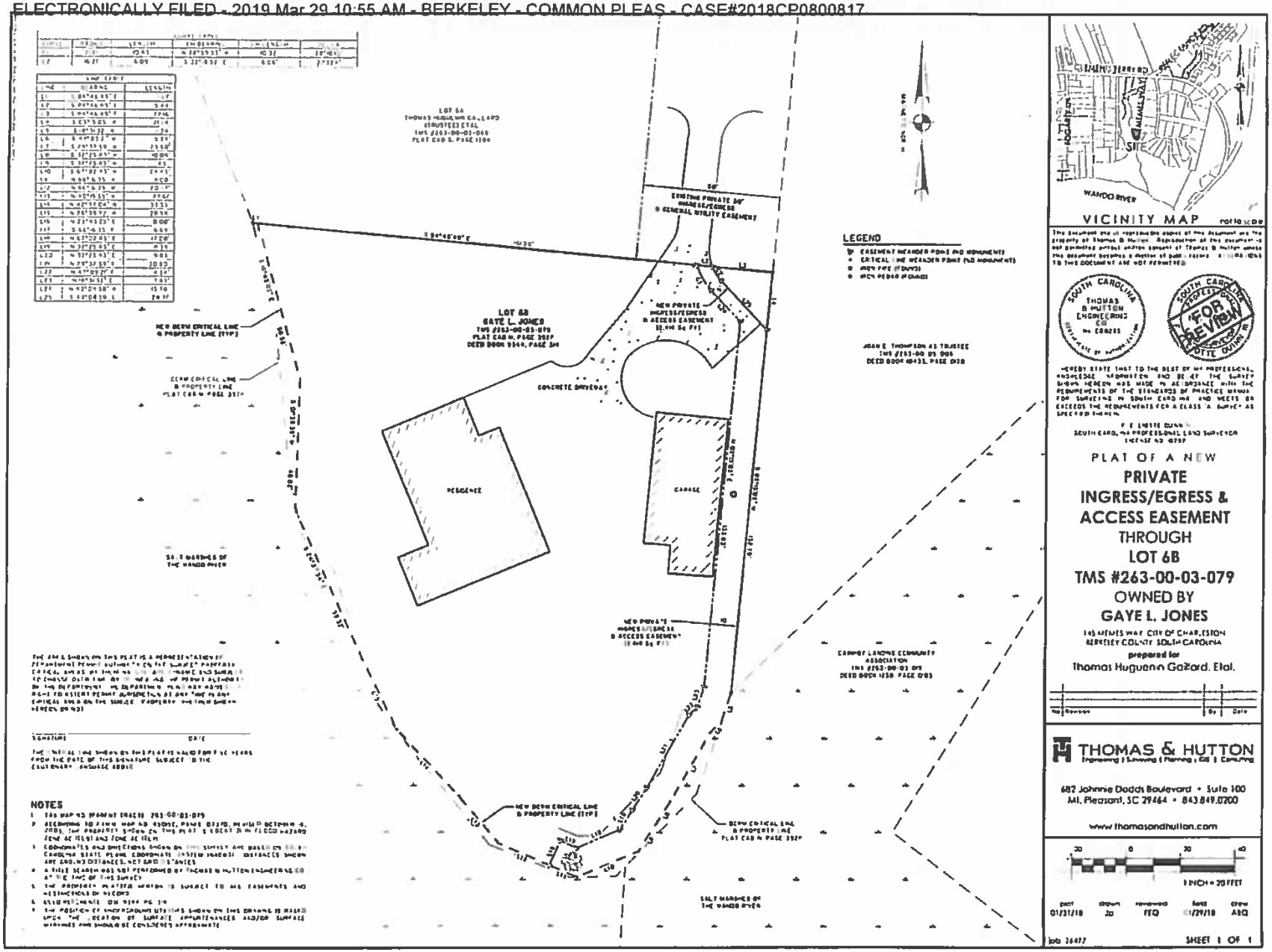
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EXHIBIT "C"
EASEMENT PLAT

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EXHIBIT B

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Jary J Hulst

From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst
Subject: RE: Jones v. RTT

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

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

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

Warren:

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

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

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

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have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

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

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

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

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

Warren:

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

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

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EXHIBIT H

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ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	DEFENDANTS' MOTION TO AMEND THE ANSWER

TO: ROBERT W. MARING, ESQUIRE AND JAY J. HULST, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that Defendants, Rogers Townsend & Thomas, P.C., and Lisa Hostetler will, by and through their undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order allowing them to file an amended answer, a copy of which is attached hereto.

The grounds for the motion are that the controversy exists as to the nature of the deeds and other instruments and how they relate to the alleged easement at issue herein and the Court can determine the nature under the Declaratory Judgment Act, and that the case is not set for trial and no plaintiff will be prejudiced by the amendment. A copy of the proposed amended answer is attached hereto.

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Movant has not attempted to consult with opposing counsel, as otherwise required by Rule 11, SCRCP, because such consultation would serve no useful purpose.

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina
March 29, 2019

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ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE,	)	
Plaintiffs,	)	
v.	)	**SUMMONS**
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,	)	
Defendants.	)	

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

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

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ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	AMENDED ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER and PETITION FOR DECLARATORY JUDGMENT

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3 and 7 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property

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description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants admit the allegations of Paragraphs 12, 13, and 14 of the Complaint.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint includes the wording of he described purported easement and that same is accurate except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11;" also Defendants deny the conclusions stated in said Paragraph.

12. Defendants deny the allegations of Paragraphs 18.

13. Defendants admit the allegations of Paragraphs 19 thru 25 and 27-28 of the Complaint.

14. Defendants deny the allegations of Paragraph 26, 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

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18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

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FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

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41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to do so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

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FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

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FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE
(SCRCP Rule 12(b)(7))

76. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

77. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

78. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6A will fail to provide complete relief to the parties.

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79. The owners of Lot 6A have been joined in this action and should remain parties to afford complete relief as to the issues presented.

FOR A TENTH DEFENSE
AND
PETITION FOR DECLARATORY JUDGMENT

80. The plaintiffs collectively allege that an easement appurtenant exists granting the owners of Lot 6A the right to traverse the property of Lot 6B.

81. The plaintiffs collectively allege that the easement appurtenant was originally recorded in a deed from James J. Monogham to Benjamin L. Daniel, dated April 4, 2006, and filed in the Register of Deeds office on April 5, 2006 at Deed Book 5506, page 12. A copy of the Deed is attached hereto as Exhibit 1. The plat referenced in the Monogham deed is attached hereto as Exhibit 2.

82. The plaintiffs collectively assert that they have replaced the original easement, which they now call a "Purported Easement," with an easement dated March 15, 2019 and recorded in the Register of Deeds office on March 22, 2019 at RB 2977, page 604. A copy of the 2019 easement is attached hereto as Exhibit 3. Because the line segments referred to in Exhibit 2 are difficult to read, the plat of Lot 6B is attached hereto as Exhibit 4.

83. The plaintiffs' assertions have no effect upon the nature of the "Purported Easement" with respect to their successors. The nature of the "Purported Easement" and its effect upon subsequent owners of the two lots can only be determined by a judgment.

84. A justiciable controversy exists as to the Jones plaintiffs with respect to the original "Purported Easement" in that the Jones plaintiffs assert that they have been damaged because the "Purported Easement" allowed strangers access to their property, and that

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Defendants were negligent in failing to alert them to the "Purported Easement" at the time the Jones purchased Lot 6B (the servient estate).

85. A justiciable controversy exists as to the Trustee plaintiffs with respect to the original "Purported Easement" because they and the Jones plaintiffs have entered into the March 2019 easement based upon the uncertain nature of what they describe as of the "Purported Easement."

86. The Defendants' legal rights are affected by the determination of whether the "Purported Easement" is in fact a valid easement, as set forth in the Complaint in this matter.

87. The plaintiffs allege that the "Purported Easement" is valid.

88. The defendants aver that the "Purported Easement" is not a valid easement under the facts of this case.

89. The defendants request that the Court determine the rights of the owners of Lot 6A and Lot 6B under the "Purported Easement."

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for a determination that the "Purported Easement" is in fact and law invalid, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

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Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

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EXHIBIT I

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0800817

Ronald L. Jones et al
PLAINTIFF(S)

Rogers Townsend & Thomas P.C. et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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.

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

This Matter came before the Court on May 7, 2019, upon Plaintiffs Thomas H. Gaillard and Thomas Cone's (hereinafter "Trustees") Motion for Nonjoinder, pursuant to Rule 21, filed March 29, 2019. Warren Powell, Jr., Esq. appeared on behalf of Defendant Rogers Townsend & Thomas P.C. ("RT&T"), Jay Hulst, Esq. appeared on behalf of the Trustees, and Robert Maring, Esq. appeared on behalf of Plaintiff Ronald Jones. "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP; See Branham v. Ford Motor Co., 390 S.C. 203, 242, 701 S.E.2d 5, 26 (2010). The Court finds that the Trustee Plaintiffs are no longer indispensable parties and their presence is not required to resolve the dispute. Per Mr. Hulst, the Trustees assert that their rights are not affected and that they have resolved the underlying easement issue by entering into a new easement with Plaintiff Jones thereby

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/09/2019 .

Gaye Langley Jones

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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

resolving and determining their interests in this matter. While the issue of the validity of any easements is viable to Defendant RT&T's defenses it is not viable or dispositive of the Trustee Plaintiffs interest in the property. Moreover, the Court was advised that Defendants Alexander Peabody and Peabody & Associates, Inc. stipulate to the Trustee Plaintiffs dismissal as parties. Therefore, the Motion for Nonjoinder, pursuant to Rule 21, SCRCP, is hereby Granted.

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Berkeley Common Pleas

Case Caption: Ronald L. Jones VS Rogers Townsend & Thomas P.C.

Case Number: 2018CP0800817

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

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EXHIBIT J

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Jary J Hulst

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

Follow Up Flag: Follow up
Flag Status: Flagged

Warren:

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

Thanks.

Sent from my iPhone

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

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Begin forwarded message:

> **From:** Jary J Hulst <jjh@williamsandhulst.com>
> **Date:** March 28, 2019 at 1:48:50 PM EDT
> **To:** Warren Powell <wpowell@brunerpowell.com>
> **Cc:** Robert Maring <robert@maringmoyer.com>, Ryan Earhart <ryan.earhart@earhartoverstreet.com>
> **Subject: RE: Jones v. RTT**
>
> Warren:
>
> I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case.
>
> J. Jay Hulst
> Williams & Hulst, LLC
> P.O. Box 1288
> Moncks Corner, SC 29461

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(843) 761-8232
jjh@williamsandhulst.com

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

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

Warren C. Powell, Jr.
BRUNERPOWELL
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(f) 888.726.9015
www.brunerpowell.com

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

Warren:

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

Thanks.

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

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From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst <jjh@williamsandhulst.com>
Subject: RE: Jones v. RTT

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

Warren C. Powell, Jr.
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(o) 803.252.7693
(f) 888.726.9015
www.brunerpowell.com

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

Warren:

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

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

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

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

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

Warren C. Powell, Jr.
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(o) 803.252.7693
(f) 888.726.9015
www.brunerpowell.com

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

Warren:

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

J. Jay Hulst
Williams & Hulst, LLC
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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-08-817
RONALD L. JONES and GAYE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr., Revocable Trust, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	OPPOSITION OF TRUSTEE PLAINTIFFS THOMAS HUGUENIN GAILLARD AND THOMAS W. CONE, JR., TO MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND FILED BY DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.

As further set forth below, Plaintiff Thomas W. Cone, as trustee for the Thomas W. Cone Revocable Trust, and Plaintiff Thomas Huguenin Gaillard, as trustee for the Thomas Huguenin Gaillard Revocable Trust, oppose the Motion for Reconsideration and to Alter or Amend submitted by Defendant Rogers Townsend & Thomas, P.C.

I. FACTUAL BACKGROUND

Plaintiffs Ronald L. Jones and Gaye Langley Jones (hereinafter "Jones") purchased the property at issue in this case in 2010. Defendant Rogers Townsend & Thomas, P.C. ("RT&T") served as the settlement agent for the conveyance. An easement, recorded on April 4, 2006, grants four neighboring lots the right of access to a 25-foot wide

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strip that extends around the perimeter of Jones' property.[1] *See* April 4, 2006 Easement, attached as Exhibit A. Jones claims that they were not informed about the existence of the easement prior to the closing on the property. *See* Complaint, ¶¶15-17, attached as Exhibit B. Jones sued RT&T, and the closing attorney Lisa Hostetler, and also Alexander C. Peabody and Peabody & Associates, Inc. ("Peabody"), the surveyor that prepared Jones' plat, for negligence based on their failure to identify and inform Jones about the easement. RT&T admits the existence of the 2006 easement and its terms, that it was not disclosed to Jones prior to closing, and that the plat should have shown the easement. *See* RT&T's Answer, ¶¶ 10, 11, 13, attached hereto as Exhibit C.

Thomas W. Cone, as trustee for the Thomas W. Cone Revocable Trust, and Thomas Huguenin Gaillard, as trustee for the Thomas Huguenin Gaillard Revocable Trust (collectively "the Trustees") own Lot 6A—the property adjacent to and directly north of Jones' property. Lot 6A is one of the four lots designated as having a right of ingress/egress over Lot 6B—Jones' Property—under the terms of the 2006 easement. *See* Exhibit A.

Along with filing an Answer, RT&T also filed a motion to add a party pursuant to SCRCP Rule 19(a). *See* Defendant RT&T's Motion to Add a Party (Rule 19(a)) and Memorandum in Support of Defendant RT&T's Motion to Add a Party (SCRCP 19(a)) attached hereto as Exhibit D. In its memorandum, RT&T contended that the Trustees, as the easement's dominant estate holders, were the proper parties to assert and defend the

[1] This same easement is also found in the chain of title dated April 8, 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65.

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2006 easement. Exhibit D, p. 2. RT&T further argued, in general terms, that the easement was not legally viable, that the Trustees had waived the easement, or that they were estopped to assert the easement. *Id.* RT&T concluded that the Trustees were necessary parties to the action because if RT&T prevailed on these defenses, the Trustees could potentially claim rights under the easement because, as non-parties, they would not be bound by any adverse ruling regarding the validity of the easement. *Id.*

In particular, RT&T worried:

> If the unbound dominant property owner asserts rights in the easement over the Jones property, Jones may bring an action against the title insurer to defend Jones or enter suit against the alleged dominant estate holder, which could lead to additional actions against Movant, unless completer [sic] is not afforded here.[2]

Id.

The motion was heard by the Honorable Perry M. Buckner. The Trustees were not provided with notice of the hearing and had no opportunity to respond. Judge Buckner issued a Form 4 Order dated August 6, 2018 and filed with the clerk on August 13, 2018, granting RT&T's motion and simply stating "The Additional parties will be made a Plaintiff pursuant to Rule 19 SCRCP." *See* Order dated August 6, 2018, and filed on August 13, 2018, attached as Exhibit E.

On March 15, 2019, Jones and the Trustees executed an Access, Maintenance and Joint Dock Use Agreement (hereinafter, "the Agreement"). A copy of the Agreement is

[2] Presumably, RT&T meant "unless complete relief is afforded here."

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attached hereto as Exhibit F. The Agreement terminates the 2006 easement—identified therein as the "Old Purported Easement"—specifying that Gaillard and Cone:

> ...remise, quitclaim, terminate, cancel, and forever release unto Jones, her heirs and assigns, all of [their] right, title and interest, if any, in and to the Old Purported Easement....

Exhibit F, ¶6.

The Agreement was recorded with the Berkeley County Register of Deeds Office on March 22, 2019, in Book RB2977 at Page 604 and forwarded to counsel for RT&T and Peabody by email that same afternoon with a request that they stipulate to a dismissal of the Trustees based on the termination of the 2006 easement—i.e., the old purported easement. *See* Exhibit F, transmittal email. Counsel for Peabody agreed to the requested dismissal. Counsel for RT&T refused to consent. When questioned as to the basis for his refusal, this was his response:

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

Email from counsel for RT&T dated March 28, 2019.

The morning after receipt of the above email, the Trustees filed a motion for nonjoinder pursuant to SCRCP Rule 21. *See* Plaintiffs Thomas Huguenin Galliard and

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Thomas W. Cone, Jr's Motion for Nonjoinder Pursuant to Rule 21 SCRCP attached hereto as Exhibit G.[3] That afternoon, RT&T filed a motion to amend its answer to add a claim against Jones and the Trustees for declaratory relief, claiming that:

> "... the controversy exists as to the nature of the deeds and other instruments and how they relate to the alleged easement at issue and the Court can determine the nature under the Declaratory Judgment Act....

See Defendants' Motion to Amend the Answer attached hereto as Exhibit H.

RT&T filed a supplemental memorandum opposing the Trustees' motion for nonjoinder and supporting its motion to amend its answer late Friday afternoon on May 3, 2019. Both the motions were heard on May 7, 2019. On May 9, 2019, Judge Jefferson issued a Form 4 Order granting Trustees' motion. See Order executed and filed on May 9, 2019, attached as Exhibit I.

II. RT&T FAILS TO RAISE ANY LEGITIMATE GROUND TO RECONSIDER, ALTER, OR AMEND THE COURT'S ORDER DISMISSING CONE AND GAILLARD.

The Trustees object to the three-page "Introduction" section of RT&T's motion to the extent it contains unsupported factual statements, misstatements of fact, and baseless legal conclusions. More particularly, in paragraph A(6) RT&T contends:

> 6. Between February 25 2019-March 29, 2019 Defendants sought to take the Plaintiffs' depositions and Trustees' counsel agreed on March 13, 2019 to hold the depositions on April 5 and 8-12.

[3] In hindsight, the Trustees' designation of the motion as being for "nonjoinder" might be a source for some confusion. Rule 21 SCRCP does not define or refence the term other than in the title of the rule. In any event, the motion sought to have Cone and Gaillard dropped from the case as provided for under the Rule.

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See Defendants' Motion for Reconsideration and to Alter or Amend the Order of May 9, 2019[SCRCP 59(e)], hereinafter, "Motion for Reconsideration," p. 2. On March 13th, counsel for Trustees provided to RT&T's counsel six dates in April during which he and the Trustees were available for deposition. *See* emails between counsel, attached hereto as Exhibit J. Counsel for RT&T did not respond until two weeks later—and only after receiving a copy of the executed Agreement terminating the 2004 easement and the Trustees request for a consent order releasing them from the case. RT&T's counsel merely replied that "April 8-12 works"— and asked counsel for Jones whether that suited his client's schedule. Jones' counsel never replied. There was never any agreement between counsel as to a specific date for any of the proposed depositions.[4] Furthermore, the Agreement and its termination and cancelation of the old purported easement had nullified that basis for Trustees continued participation in the case as parties.

In paragraph A(7), RT&T states:

> 7. On March 22, 2019 Jones and the Trustees filed a new easement in which:
>
> ...
>
> c. Purports to disclaim 2006 easement.

Motion for Reconsideration, p. 2. The Agreement does not *purport* to disclaim the 2006 easement—it clearly terminates and cancels the 2006 easement. *See* Exhibit F, ¶6. The agreement is recorded. The new easement set forth in the Agreement is not contingent in

[4] RT&T planned each Trustee's deposition to last an entire day. The Court commented during the hearing on the motion for nonjoinder that requiring an entire day for such depositions was unreasonable.

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any way on the validity or invalidity of the 2006 Old Purported Easement. RT&T offers absolutely no facts or law to support its baseless implication that the old easement has not been disclaimed by the Trustees.

In paragraph A(8), RT&T claims:

> 8. On March 27-29, 2019 the Trustees make dismissing them a condition of their appearing for their depositions.

Motion for Reconsideration, p. 2. As indicated in the March 28th email of counsel for Trustees, the Trustees believed it would be best to delay their depositions until a court could rule on their nonjoinder motion. RT&T's counsel was specifically advised that once the motion was resolved he could "then proceed with their depositions whether they were in or out of the case." *See* Exhibit J. RT&T's bitter disappointment over a brief disruption in deposition scheduling provides no legitimate basis for keeping Trustees in the case.

In the next section of its brief, captioned "Relief Sought and Argument," RT&T requests that the Court reconsider, alter, or amend its order on no less than ten different issues. As set forth below, the Court should deny RT&T's requests.

First, in paragraph B(1), RT&T contends:

> 1. Plaintiff argued before the Court that Defendants in this action do not have standing to contest the validity of the 2006 purported easement or the March 22, 2019 purported easement although the Court's order does not address this issue. Movants respectfully request that the order be amended to rule on this issue.

Motion for Reconsideration, p. 3-4.

RT&T fails to provide any reason or rationale why the Court should rule on this issue and include it in its order dismissing the Trusteed from the case. There is absolutely

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no indication that the Court based its order on RT&T's standing to challenge the validity of the old purported easement. RT&T has provided no transcript of the hearing, so it is unclear whether or when or in what context such a statement was made. While counsel for Jones might have questioned RT&T's standing as a non-party to challenge the validity of the Agreement in connection with RT&T motion to amend its answer, the issue was not raised by either RT&T or the Trustees in connection with the Trustees' motion for nonjoinder. A party may not raise for the first time in a motion to reconsider, alter, or amend an issue that could have been presented prior to judgment. *Kan Enterprises, Inc. v. S.C. Department of Revenue,* 420 S.C. 596, 608, 803 S.E.2d 882, 888 (Ct. App. 2017), *reh'g denie*d (Sept. 22, 2017).

Next, RT&T asks the court to amend its order to remove an "implied finding" in its order. In paragraph B(2), RT&T argues:

> 2. The May 9, 2019 Order states in part that the Trustees resolved the underlying easement issue with Plaintiff Jones by filing a new easement ten months after the suit was filed, implying there was a claim or dispute between Trustees and Jones about such. Movants respectfully point out that there is no evidence in the record by affidavit or otherwise of such a dispute to support this implied finding, and this being so, that the order be amended to remove same.

Motion for Reconsideration, p. 4.

RT&T failed to raise any evidentiary objections in its opposition to the Trustees' motion. It is too late to do so now. *See Kan Enterprises, Inc., supra.* Moreover, RT&T fails to cite any authority supporting its contention that it can challenge supposed findings that it unilaterally deems have been "implied" in an order. As RT&T pointed out, Jones alleged in her Complaint that the Trustees would not terminate their substantial rights

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granted under the old purported easement, but they were willing to reduce the size and scope of the easement. RT&T's absurd contention is that the Trustees were not serious about their rights under the easement and that the Jones did not really care about the impact of the easement—that it is some kind of conspiracy to get RT&T to pay for construction of the dock. By its terms, the Agreement between Jones and the Trustees resolved the outstanding issues between the neighbors by terminating and cancelling the old purported easement and establishing a new easement dramatically reduced in size and scope. *See* Exhibit F, ¶6. The evidence establishing both the dispute and its resolution is the Access, Maintenance, and Joint Dock Use Agreement itself, an instrument that is of record and which was provided to the Court by the Trustees and by RTT.

In paragraphs B(3) and B(4), RT&T requests that the Court add two specific factual findings to the Order:

> 3. Movants respectfully request that the Order of May 9, 2019 be amended to make a finding that the Trustee Plaintiffs claimed an interest in the Purported 2006 easement across Lot 6B as dominant estate holders at the time this suit was entered, and the issues joined.
>
> 4. It is uncontested in the record that the Complaint states that the Lot 6A owners, the Trustees, will not terminate their rights to the easement but have agreed to narrow the it in size and scope (Complaint Paragraph 31) and as a result the Trustees will continue to have an easement on the plaintiffs' property, (Complaint Paragraph 32). Movants respectfully request the order be amended to reflect this fact.

Motion for Reconsideration, p. 4.

In its opposition and at the hearing, RT&T never asked the Court to make any specific factual findings in support of an order dismissing the Trustees. As stated

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previously, a party may not raise for the first time in a motion to reconsider, alter, or amend an issue that could have been presented prior to judgment. *See Kan Enterprises, Inc., supra.* Moreover, RT&T fails to provide any explanation as to why these facts are essential to the Court's Order dismissing the Trustee Plaintiffs. There is no purpose for including what is now a moot point—that the Trustees might have "claimed an interest in the Purported 2006 easement across lot 6B as the dominant estate holders—because that easement has been terminated and cancelled and the Trustees have expressly released any right title and interest in the easement. *See* Exhibit F, ¶6. Likewise, what Jones' complaint alleged a year ago does not necessarily establish or control the fact or interests of the parties today. The 2006 purported easement was terminated and cancelled by the Trustees according to the terms of the Agreement between Jones and the Trustees recorded on March 22, 2019. *See* Exhibit F. The Trustees released all of their right, title, and interest under the old easement. *See* Exhibit F. RT&T has come forward with nothing—other than vague and conclusory argument—to dispute this.

At trial, RT&T will presumably have the opportunity to try to prove what it believes the pleadings established when "suit was entered, and the issues joined"—to the extent a judge or jury is interested in those now-academic points. However, RT&T will simply have to try these issues without the Trustees as nominal parties.

In paragraph B(5), RT&T argues:

> 5. If the trial of the action were to proceed and it was found that the 2006 easement and/or the March 22, 2019 easement were invalid then the Jones property would be clear with out any such encumbrance but only if the purported dominant estate holders were parties to the action bound by such a judgment.... In the absence of the Trustees in the

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> case any finding of invalidity of the easements cannot provide complete relief as the trustee would not be bound by the same.

Motion for Reconsideration, p. 4-5.

RT&T fails to identify the particular relief it seeks from the Court on this issue. Moreover, *if* the case is tried, and *if* the 2006 easement was somehow found to be invalid, it would not matter to or affect the Trustees because they have already terminated the 2006 easement and released their right title and interest in the easement. *See* Exhibit F, ¶6. RT&T provides absolutely no authority to support its wishful thinking that—despite being a non-party to the Agreement, it can attack a private easement freely granted by Jones to the Trustees *and* get a Court to declare it invalid. Even if a Court somehow determined that the new easement was invalid as to RT&T, complete relief will have been afforded to the parties. RT&T would be off the hook for any damages to Jones arising out of its malpractice. Jones chose not to bring suit against the Trustees on the old purported easement and Jones voluntarily chose to enter into the new easement with Trustees. Jones could not now be heard to complain about any effort by the Trustees to exercise the rights granted under the new easement.

As the litigation proceeds, RT&T will certainly have the opportunity to argue about the effect of the Trustee's termination of the 2006 easement and the impact of the Jones' grant of the new easement on Jones' damages. But RT&T's bare claim that the Trustees must remain in the case so that they can be bound in the event of some vaguely threatened ruling on the validity of the new easement is patent nonsense and should be rejected by the Court.

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In paragraph B(6) RT&T makes essentially the same argument:

> 6. Because the Trustees claim an interest in the subject matter of the case, both at the time suit was entered and the issues joined as well as now, Rule 19 (a)(2) mandates their participation as parties to the suit.... Without the purported dominant estate holders as parties in this case they cannot protect their interests in the subject matter and Jones may be faced with inconsistent results requiring further litigation as, for example, a finding in this suit that the alleged easements are invalid without such a result binding on those claiming the right to cross Jones' property. If such results and subsequent litigation is entered there is a likelihood that Movants will also be made a party exposing them to multiple suits because the Trustees were not made parties to the current action.

Motion for Reconsideration, p. 5.

Again, RT&T fails to identify the relief it seeks from the Court on this issue. The Court ruled that the Trustees are no longer indispensable parties. RT&T simply rehashes the same arguments it made to the Court in its opposition to the Trustees' motion and, in doing so, fails to point out what facts or legal authorities the Court overlooked or misapprehended in its ruling.

RT&T persists in misrepresenting the facts of the case, baselessly claiming that the "Trustees claim an interest in the subject matter of the case, both at the time suit was entered and the issues joined *as well as now*.... Motion for Reconsideration, p. 5, ¶B(6) (emphasis added). What Rule 19(a)(2) actually requires is that an indispensable party claim an interest in the *subject* of the action, not the subject matter. Rule 19(a)(2) SCRCP (emphasis added). The Trustees claim no interest in the Jones malpractice action against RT&T or in the easement that RT&T negligently failed to bring to the attention of Jones. Indeed, the Trustees have terminated and cancelled that easement and, further, have released all of

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their right, title and interest in the easement. *See* Exhibit F, ¶6. The new easement, reached as part of a more comprehensive agreement between Jones and the Trustees, is neither contingent nor dependent on the validity of the 2006 easement and is not the "subject" of the action. *See* Exhibit F.

Moreover, for the sake of argument, to the extent the Trustees might have originally claimed an interest in the subject of the action, RT&T has failed to establish that a disposition of the action without the Trustees' would, as a practical matter, impair or impede the Trustees' ability to protect that interest, or leave Jones or any of the defendants subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. *See* Rule 19(a)(2)(i) and (ii). Instead, RT&T merely offers up self-serving conclusions that the Trustees "cannot protect their interest in the subject matter" and that "Jones may be faced with inconsistent results requiring further litigation as, for example, a finding that the alleged easement are invalid without such a result binding" the Trustees.

The Trustees released their right title and interest in the 2006 easement and the disposition of the action, as a practical matter, will have no affect on them. Moreover, Rule 19(a)(2)(ii) requires a showing that a party will be subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the claimed interest, not merely "inconsistent results." *See* Rule 19(a)(2)(ii) SCRCP. Again, RT&T fails to provide any legal or factual basis for its claim that the "alleged easements are invalid" or its claim that if there was such a finding, "and subsequent litigation is entered," there is a likelihood that RT&T would also be made a party." Rule 19(a)(2)(ii) requires a *substantial risk* of multiple

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or inconsistent obligations, not a mere likelihood based on imagined outcomes. RT&T's baseless arguments fail to meet the standards set in Rule 19.

In paragraph B(7), RT&T attacks the language of the Order:

> 7. The Court's May 9, 2019 order states, "Per Mr. Hulst, the Trustees assert that their rights are not affected and that they have resolved the underlying easement issue by entering into a new easement with Plaintiff Jones thereby resolving and determining their interests in the matter. This is close to language in the Trustees motion, "…Gaillard and Cone no longer have any interest in the outcome of this case…" There is no affidavit or even a pleading submitted by the Trustees to contend or provide evidence to support this contention…. Accordingly, the court's finding is not based on any evidence before it and, that being so, Movants respectfully request that the order be amended removing said statement and finding.

Motion for Reconsideration, p. 5-6.

First of all, RT&T never raised any kind of evidentiary objection regarding the foundational basis for the Trustees' assertion that they have resolved the underlying easement issue by entering into a new easement and therefore no longer have any interest in the outcome of the case. A party may not raise for the first time in a motion to reconsider, alter, or amend an issue that could have been presented prior to judgment. *See Kan Enterprises, Inc., supra.*

Second, RT&T's statement that "there is no affidavit or even a pleading submitted by the Trustees to contend or to provide evidence to support this contention" is untrue. The Trustees motion for nonjoinder was based on 1) RT&T's motion to add a party pursuant to Rule 19(a) SCRCP and its memorandum in support thereof, both of which are matters of record; 2) Judge Buckner's Form 4 Order granting RT&T's motion which is of record; and 3) the Trustee's motion for nonjoinder and attached copy of the recorded Access,

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Maintenance, and Joint Dock Use Agreement, both of which are matters of record. All of these pleadings and exhibits support the Court's ruling. Accordingly, RT&T's request that the order be amended to remove the statement and finding by the Court should be denied.[5]

In paragraph B(8), RT&T argues:

> 8. Defendants Answer was amended on May 7, 2019 asserting a Petition for Declaratory Judgment as to the plaintiffs in the case.... Despite such, the court issued is order on May 9, 2019 allowing the Amendment. Movants respectfully request the Court reconsider its decision and vacate said nonjoinder/dismissal allowing the Petition for Declaratory Judgment to go forward.

Motion for Reconsideration, p. 6.

RT&T never raised this issue in its opposition or at the hearing. A party may not raise for the first time in a motion to reconsider, alter, or amend an issue that could have been presented prior to judgment. *See Kan Enterprises, Inc., supra.*

Moreover, RT&T could not have properly filed its amended answer on May 7, 2019, given that the Court's written order granting RT&T's motion to amend was not filed until May 9, 2019. Indeed, RT&T did not bother to file the motion to amend its answer to add the claim for declaratory relief until the Trustees filed their motion for nonjoinder. It is clearly a sham petition designed to shore up RT&T's opposition to the Trustee's request that they be dropped from the case and deserves to be treated as such.

During the hearing on RT&T's motion, the Court made clear its doubts as to the viability of RT&T's claim for declaratory relief and whether a court would even consider

[5] To the extent the Court determines that the "Per Mr. Hulst..." phase in the Order might serve as a source of confusion regarding the evidentiary basis for the Court's ruling, the Trustees would not object to the deletion of those three words or some similar revision.

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it. Yet, as stated in Rule 15 SCRCP, leave to amend is to be freely given—and it was. However, the fact that the Court ultimately granted RT&T's leave to amend is in no way inconsistent with the Court's decision to dismiss the Trustees from the case.[6] In its petition for declaratory relief, RT&T asks "that the Court determine the rights of the owners of Lot 6A and Lot 6B under the "Purported Easement." As set forth in the Trustee's motion for nonjoinder, the Agreement, and as determined by the Court, the 2006 purported easement had already been terminated and cancelled and the Trustees had released all of their right, title, and interest under the easement.

Based on the foregoing, RT&T's request that the Court vacate its order dismissing the Trustees should be denied. RT&T's claim for declaratory relief can still go forward against Jones.

In paragraph B(9), RT&T argues:

> 9. Trustees' motion for an order of nonjoinder relies on Rule 21, SCRCP and cite no case law in support.... Under Rule 20, SCRCP, the Trustees are proper parties. Movants respectfully request the court amend its order and rule upon the *Farmer* standard and Rule 20(a), SCRCP.

Motion for Reconsideration, p. 6.

Rule 21 SCRCP provides that "parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage, of the action and on such terms as are just." Rule 21 SCRCP. RT&T's argument that Rule 21 itself somehow fails

[6] According to the Berkeley County Clerk of Court website, it appears that the order granting the Trustee's motion for nonjoinder was actually filed before the Court's order granting RT&T's motion to amend.

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to provide sufficient authority for the relief requested by Trustees is nonsense. Moreover, trial judges in South Carolina have inherent authority to manage and realign parties. *See Branham v. Ford Motor Co.,* 390 S.C. 203, 242, 701 S.E.2d 26 (2010). Indeed, a motion to dismiss a party under Rule 21 is addressed to the court's discretion. *See, e.g., Wagdy k. Demian v. South Carolina Health and Human Services Finance Comm'n.*, 297 S.C. 1, 374 S.E. 510, 512 (Ct. App. 1988); *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 819 S.E.2d 142 (Ct. App. 2018)

The Court should reject RT&T's request that it amend its order to rule on the standard set forth in *Farmer v. CAGC Ins. Co.*, *supra,* and Rule 20(a). The Trustees were not added as plaintiffs pursuant to Rule 20 SCRCP. That rule governs permissive joinder of parties and is plainly inapplicable here. Under Rule 20(a) parties *may join* an action as plaintiffs—that is, they have a right to join in an action—if they assert any right to relief jointly, severally or in the alternative in respect of or arising out of the same transaction, occurrence…and if any questions of law or fact common to all these persons will arise in the action. The Trustees do not seek permissive joinder as plaintiffs and have asserted no right to any relief in the action.

Alternatively, under Rule 20(a), persons may be joined as defendants if there is asserted against them…any right to relief in respect of or arising out of the same transaction or occurrence… and if any question of law or fact common to all defendants will arise in the action. Rule 20(a) SCRCP. Jones asserts no right to relief against the Trustees, and as such they are not subject to permissive joinder as defendants under Rule 20. Accordingly,

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RT&T's request that the Court amend its order to rule on the standards set forth in *Farmer v. CAGC Ins. Co.* and Rule 20 SCRCP should be denied.

Lastly, in paragraph B(10), RT&T claims it to be "manifestly unjust for the Trustees to be dismissed prior to their depositions being taken…." Motion for Reconsideration, p. 7. On the contrary, it is manifestly unjust that RT&T's persists in attempting to force the Trustees' to continue to expend time, effort, and money in this case all for the sake of RT&T's convenience. RT&T can still take the depositions of the Trustees in this case—they simply will not be parties to the action. The parties' disagreement over deposition scheduling provides no legitimate basis for vacating the Court's order dismissing the Trustees.

III. CONCLUSION

Based on the foregoing, Plaintiffs Gaillard and Cone, as Trustees, ask that the Court deny RT&T's motion for reconsideration and to alter or amend the Court's order ordering that the Trustees be dismissed from the case.

WILLIAMS AND HULST, LLC

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Dated: May 29, 2019

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EXHIBIT A

Recorded On-2006-Apr-05 As-55535

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

00055535 Vol: 5506 Pg: 12

53 2006 00055535

Instrument Number: 2006- 00055535
As
Deed

Recorded On: April 05, 2006

Parties: MONAGHAN JAMES J
To
DANIEL BENJAMIN L SR

Recorded By: CUTCHIN LAW FIRM

Num Of Pages: 5

Comment:

**** Examined and Charged as Follows: ****

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

RECEIVED

Apr 05,2006

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

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

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

File Information:

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

Record and Return To:

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

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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Recorded On-2006-Apr-05 As-55535

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After Recording, Please Return to:

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

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

William J. Cutchin

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

Deloris C. Gunnells

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PROBATE

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

William J. Cutchin

SWORN TO before me, this
April 4, 2006.

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

Recorded On-2006-Apr-05 As-55535

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Schedule A

Legal Description
(Deed)

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

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

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

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

TMS # 263-00-03-079

Lawyer Responsible _____

Recorded On-2006-Apr-05 As-55535

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AFFIDAVIT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

Date of Transfer of Title
April 4, 2006

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **James J. Monaghan** to **Benjamin L. Daniel, Sr.**, ON **April 4, 2006**.

3. Check one of the following: The DEED is
   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) __X___ EXEMPT from the deed recording fee because (exemption# _12_) (Explanation if required)_Transfer to Grantor(s)' Trust(s)_____ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) ___XX_ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **$5.00**.
   (b) _____ The fee is computed on the fair market value of the realty which is $____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) __XX__ the amount listed in item 4 above.
   (b) _____ the amount listed in item 5 above (no amount place zero)
   (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

William J. Cutchin, Legal Representative connected with this transaction

Sworn to before me this
April 4, 2006

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

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EXHIBIT B

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 2018-CP-08-817
COUNTY OF BERKELEY)	
RONALD L. JONES AND GAYE)	
LANGLEY JONES,)	
)	
PLAINTIFFS,)	
)	
VS.)	COMPLAINT
)	(JURY TRIAL DEMANDED)
ROGERS TOWNSEND &)	
THOMAS, P.C., LISA HOSTETLER)	
ALEXANDER C. PEABODY AND)	
PEABODY & ASSOCIATES, INC.)	
)	
DEFENDANTS.)	

FILED
18 MAY -4 PM 12: 14
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Comes now the Plaintiffs who, complaining of the Defendants, allege as follows:

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.
2. Upon information and belief Rogers Townsend & Thomas, P.C. is a professional corporation organized and existing pursuant to the laws of the State of South Carolina and doing business in Berkeley County, South Carolina.
3. Upon information and belief Lisa Hostetler is a citizen and resident Richland County, State of South Carolina and at all times relevant herein was employed as an attorney for the Defendant Rogers, Townsend & Thomas, P.C.
4. Upon information and belief Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates Inc.

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5. Upon information and belief Peabody & Associates, Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.

6. The Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.

7. Upon information and belief, venue is proper in Berkeley County, South Carolina.

FACTS

8. Each and every allegation contained herein is repeated as if verbatim.

9. That on or about May 7, 2010 the Plaintiffs purchased the following property from E*TRADE BANK by deed filed with the Berkeley County Register of Deeds Office on May 13, 2010 and recorded in Deed Book RP 8440 at page 218 with the following description:

> All that lot, piece, or parcel of land, including any and all improvements thereon, situate lying and being near Cainhoy North of Wando River, Berkeley County, South Carolina, and being shown and designated as Lot 6B on a plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village" Creating Lot 6A and 6B, Situated As Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005 prepared by Charles F. Dawley, Jr. R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Robert L. Jones by Peabody & Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet P at Page 4A. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, metes and bounds.

10. The Settlement Agent for this transaction was identified on the (HUD-1) Settlement Statement as the Defendant Rogers, Townsend & Thomas, P.C., 220 Executive Center Drive, Suite 109, Columbia, SC 29210.

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11. Upon information and belief, attorney's fees for the May 7, 2010 closing were paid to the Defendant Rogers Townsend & Thomas for their role as serving as settlement agent for the real estate transaction.

12. That at all times relevant herein, Defendant Rogers, Townsend, P.C. by and through its employees, including, but not limited to, Lisa Hostetler acted as the Settlement Agent for the Plaintiffs in the above referenced transaction.

13. Upon information and belief Defendant Lisa Hostetler signed the HUD-1 Settlement Statement representing herself to be the Settlement Agent for Defendant Rogers, Townsend, & Thomas, P.C.

14. Upon information and belief, Lisa Hostetler and/or agents of the Defendant Rogers, Townsend & Thomas, P.C. generated title insurance commitments and issued an owners' policy of Title Insurance for this transaction. At all times, Defendant Rogers, Townsend & Thomas, P.C. and Lisa Hostetler, were a licensed attorney and law firm who were practicing law in the State of South Carolina and within the course and scope of their employment and/or agency for the Defendant law firm at the time of their actions and inactions related to the transaction hereinabove referenced.

15. On or about May 15, 2015, the Plaintiff discovered for the first time, that there was an easement of record that affected the property purchased by the Plaintiffs as herein described.

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

17. The easement granted to the owners of Lot 6A (TMS#263-00-03-068) Lot 5 (No. 108 Cainhoy Landing Road, TMS # 263-00-05-005) Lot 6 (No. 110 Cainhoy Landing Road,

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TMS # 263-00-05-006) Lot 7 (112 Cainhoy Landing Road, TMS #263-00-05-007) a 25' Ingress/Egress along the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, "RIVERVIEW VILLAGE", CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18 and then continuing on lines L1, L2, L3, L4, L5, L6, L7, L8, L9, L10, and L1. Therefore, the Easement will almost completely encircle the Lot 6B except for most of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

18. The easement described in paragraph 17 herein was created by a Deed in the direct chain of title for the subject premises.

19. That prior to the closing on the Property described herein, the Plaintiff's engaged the services of Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor to survey the property for an accurate and detailed description of the property, the improvements and any easements that would affect the property.

20. A survey was performed and a Plat was provided to the Plaintiffs' attorneys prior to closing.

21. The Defendants Alexander C. Peabody with Peabody & Associates, Inc. a Professional Land Surveyor were paid Five Hundred and Fifty 00/100 ($550.00) Dollars for the preparation and delivery of the Plat.

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22. The survey was relied upon to describe the property in the legal description on the Deed conveying the property to the Plaintiffs as herein described and was recorded simultaneously with the Deed.

23. The survey failed to disclose the existence of the easement as described in paragraph 16 herein.

24. Upon information and belief, the existence of this easement was not disclosed to the Plaintiffs prior to the closing on May 7, 2010 or any time after closing by any of the Defendants.

25. Upon information and belief, the existence of this easement should have been disclosed on the Plat prepared by Defendants Alexander C. Peabody, PLS and Peabody & Associates, Inc. prior to the closing and prior to its recording.

26. The existence of the easement is and was a material fact that should have been disclosed to the Plaintiffs prior to closing on the property hereinabove referenced by the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler.

27. The Plaintiffs are informed and believe that the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler did not disclose this encumbrance/easement on the property, nor, did the Defendants properly communicate and explain the existence of the easement.

28. The Plaintiffs are informed and believe that the Defendants Alexander C. Peabody and Peabody & Associates, Inc. did not properly disclose this easement on the plat prepared for the Plaintiffs.

29. That as a result of the existence of the easement, the Plaintiffs have lost full enjoyment and use of their property.

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30. That subsequent to discovery of the easement, the Plaintiffs have terminated three (3) of the (4) properties that held an easement though agreements between the Plaintiffs and those Lot Owners.

31. That the owners of lot 6-A (TMS#263-00-03-068) will not terminate their rights to the easement, but in the alternative, have agreed to reduce the size and scope of the easement.

32. That as a result, the owners of Lot 6-A will continue to have an easement on the Plaintiffs property, depriving them of exclusive ownership of their property.

FOR A FIRST CAUSE OF ACTION

(NEGLIGENCE AS TO ROGERS TOWNSEND & THOMAS, P.C. AND LISA HOSTETLER)

33. Each and every allegation is repeated as if verbatim.

34. Plaintiffs were foreseeable parties to suffer injury if the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler failed to perform their duties and meet the standard of care in their representations in the aforementioned property transaction.

35. Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler owed a duty to meet the standard of care in their handling of the closing and transaction and to prevent foreseeable injuries to Plaintiffs.

36. The standard of care for lawyers representing a client in transactions in South Carolina requires a lawyer, among other things, to inform, consult, and communicate with the client as to a transaction about the means by which the client's objectives are to be accomplished, to keep the client reasonably informed about the status of the matter, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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37. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Rogers, Townsend & Thomas, P.C. and Lisa Hostetler acts of omission and/or commission in the following particulars to wit:

    a. By failing to meet the applicable standard of care in the representation of the Plaintiffs and handling of the transaction described above;

    b. By failing to disclose to the Plaintiffs the existence of the easement as described in herein;

    c. By failing to disclose to the Plaintiff's key facts concerning the transaction which prejudicial to the Plaintiffs' interest;

    d. In failing to properly communicate with the Plaintiffs' before, during or after the transaction;

    e. In failing to properly supervise the transaction;

    f. In failing to properly train its employees;

    g. In failing to properly hire employees with sufficient knowledge and skill to properly conduct the transaction;

    h. In violating the rules, regulations and statures governing attorneys conduct in the State of South Carolina;

38. That as a direct and proximate result of one or more of the Defendants' actions or omissions the Plaintiffs suffered damages.

39. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

40. Each and every allegation is repeated as if verbatim.

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41. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Charles Nation, an expert witness and lawyer licensed to practice law in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

FOR A SECOND CAUSE OF ACTION

(NEGLIGENCE AS TO ALEXANDER C. PEABODY AND PEABODY ASSOCIATES, INC.)

42. Each and every allegation is repeated as if verbatim.

43. Plaintiffs were foreseeable parties to suffer injury if the Defendants Alexander C. Peabody and Peabody & Associates, Inc. failed to perform their duties and meet the standard of care in their representations in their preparation of the Plat for the Plaintiffs.

44. Defendants Alexander C. Peabody and Peabody & Associates, Inc. owed a duty to meet the standard of care in their preparation of the Plat for the transaction and to prevent foreseeable injuries to Plaintiffs.

45. The standard of care for surveyors engaging in the business of surveying in South Carolina requires a surveyor, among other things, to show any easements known to the surveyor on the survey performed and to properly investigate the records of the Register of Deeds, to include, but not limited to, the Deed in the direct chain of title to be able to accurately determine the boundary of the lot and any other encumbrances, including, but not limited to the existence of easements that may exist in the Deed into the current owner of the property.

46. The injuries and damages suffered by the Plaintiffs were due to and caused by the negligence, recklessness, willfulness and wantonness of the Defendants Alexander C.

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Peabody and Peabody & Associates, Inc. acts of omission and/or commission in the following particulars to wit:

i. By failing to meet the applicable standard of care in the preparation of the the Plat for the above described real estate transaction above;

j. By failing to disclose on the Plat the existence of the easement as described in herein;

k. In failing to properly supervise the preparation of the plat;

l. In failing to properly train its employees;

m. In failing to properly hire employees with sufficient knowledge and skill to properly prepare the plat;

n. In violating the rules, regulations and statures governing surveyors in the State of South Carolina;

47. That as a direct and proximate result of one or more of the Defendants actions or omissions the Plaintiffs suffered damages.

48. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

EXPERT AFFIDAVIT

49. Each and every allegation is repeated as if verbatim.

50. Pursuant S.C. Code Ann. § 15036-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 1, is the affidavit of Wendell Powers, an expert witness and surveyor licensed in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit.

WHEREFORE, Plaintiffs pray as follows:

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A. For a judgment in an amount to be determined by the jury for actual, consequential and punitive damages against all Defendants;

B. For the costs and disbursements of this action;

C. For such other and further relief as the court may deem just and proper.

May 4, 2018

Robert W. Maring
SC Bar 8810
Attorney for Plaintiffs
PO Box 478
Georgetown, SC 29440
843-545-9544 phone
843-545-9735 fax
robert@maringmoyer.com

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State of South Carolina	)	**In the Court Of Common Pleas**
	)	**For the Ninth Judicial Circuit**
County of Berkeley	)	**Civil Action Number: 2018-CP-09-___**

Affidavit Required Under Carolina Code Ann. Section 15-36-100

PERSONALLY APPEARED BEFORE ME, Charles Owen Nation, II, who, after first being duly sworn and under oath, states as follows. I am the owner of Nation Law Firm, P.C., and have been a member of the South Carolina Bar engaged in the general practice of law since November of 1984. I am a member of the South Carolina Bar Association, and have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100, which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omission(s) prior to the filing of complaint asserting negligence on the part of an attorney. This affidavit is given in connection with the area of practice dealing with residential real estate closings, more particularly, the refinance of the attorney on the abstract of real property, and the simultaneous representation of an owner of real property, a borrower and mortgagor, and a bank loaning funds on the condition of it being assured of a first mortgage lien encumbering the residential property which secures the repayment of the loan involved with the transaction. The facts as they have been presented to me appear to be as follows, and all references to documents filed of record are intended to refer to the Office of the Register of Deeds for the County of Berkeley, State of South Carolina:

1. Plaintiffs, Gaye Langley Jones and Ronald K. Jones, at all times relevant, were and are residents of the County of Berkeley County, State of South Carolina.

2. Rogers, Townsend & Thomas, LLC, at all times relevant, were licensed attorneys who were practicing law in the State of South Carolina.

3. On information and belief, Lisa M. Hostetler, at all times relevant, was employed by the law firm of Rogers, Townsend & Thomas, LLC.

4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

   All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID



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E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.

This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.

TMS #263-00-03-068

5. The property, Lot 6B, was conveyed by Deed of Coastal Plains Development Company, Inc., to James J. Monaghan by deed dated April 8, 2005, and filed of record in Deed Book 4887 at Page 84.

6. The subject property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006, and filed of record in Deed Book 5506 at Page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., by deed dated August 22, 2006, and filed of record in Deed Book 5904 at Page 177.

7. Rogers, Townsend & Thomas, LLC issued or caused Investor's Title Insurance Company Policy Number SC401720100521, a Homeowner's Policy of Title Insurance, to be issued, which insures the subject property, property shown and designated as Lot 6B on a plat filed of record in Plat Cabinet Q at Page 357A, hereinafter "Investor's Policy."

8. The exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, make no mention of some of the documents which are contained within the abstract of the title search.

9. While the abstract of the title search reveals the existence of the following documents in the chain of title to the subject property, the exceptions reflected

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within Investor's Policy, and the Title Insurance Commitment which was prepared prior to Investor's Policy, make no mention of the following documents:

a. Easement to real estate from Candace A. Harvey, owner of Lot Number 6, as reflected on Slide Cabinet G at Page 6; and

b. Easement in a deed from Coastal Plains Development Co., Inc., to James J. Monaghan dated April 8, 2005, and filed of record in the Office of the Register of Deeds for the County of Berkeley in Volume 4887 at Page 65; and

c. Easement in deed from James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in the Office of the Register of Deeds for the County of Berkeley in Volume 5506 at Page 13, which conveyance and easement state as follows:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as

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recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.

TMS#263-00-03-079

10. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

11. Easements filed of public record were not noted and included within the title insurance commitment nor in the title insurance policy but were, however, noted in the abstract.

12. The plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easements above which completely encircle Lot 6B for a width of 25 feet except for most of the northern part of the lot. Further, the exceptions reflected within Investor's Policy, and the Title Insurance Commitment which was prepared prior to the issuance of Investor's Policy, excludes all loss, costs, attorney's fees and expenses resulting from those matters disclosed on a plat by Peabody & Associates, Inc., dated March 24, 2010.

13. I know I have not reviewed the entire closing file maintained by the parties.

14. I have attached a RESUME which reflects some of my educational background and experience, believe I am an expert in the field of residential real estate transactions, and estimate I have personally served as the closing attorney for either the seller or the purchaser or the bank, and others, in a variety of

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transactions which include sales, purchases, refinances, etc., in more than one thousand (1,000) residential real estate transactions since my admission to the bar in 1984.

15. Based on the foregoing facts, the validity and accuracy of which I assume, it is my judgment Lisa M. Hostetler and the law firm which employed her appear to have been negligent in (a) failing properly to review the abstract of the subject property, and (b) in failing properly to list the exceptions applicable to the subject property. The factual basis for my opinion is my review of the files shared with me. As a result of the failure to review the abstract and note the easements filed of record, the subject property was purchased and easements which exists as a matter of record affect the subject property but were not disclosed.

16. In my judgment, a reasonably competent and careful South Carolina lawyer would not have closed the Loan and allowed the conveyance without reviewing the abstract, and the easements, and the plats related thereto, and explained the effect of the documents revealed in the abstract but not in the title insurance commitment or policy to be issued. I hold the foregoing opinions to a reasonable degree of professional certainty.

Charles Owen Nation, II

Sworn and **subscribed** to before me this 2 day of May, 2018.

Notary Public for South Carolina
My commission expires: 08/16/2027
(Seal)

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS CASE NO. 2018-CP
RONALD L. JONES AND GAYE) LANGLEY JONES,)) PLAINTIFFS,)) VS.)) ROGERS TOWNSEND &) THOMAS, P.C., LISA HOSTETLER) ALEXANDER C. PEABODY AND) PEABODY & ASSOCIATES, INC.))	AFFIDAVIT OF WENDELL POWERS

PERSONALLY APPEARED BEFORE ME, Wendell C. Powers who, after being duly sworn and under oath states as follows. I am a licensed surveyor in the State of South Carolina and am the owner of Powers Land Surveying and have been engaged as a land surveyor in South Carolina since June 1970. I have been retained by Robert W. Maring, on behalf of his clients, Gaye Langley Jones, and Ronald K. Jones, to give an opinion under South Carolina Code Ann. Section 15-36-100 which requires a contemporaneous affidavit of an expert specifying the negligent act(s) or omissions(s) prior to the filing of a complaint asserting negligence on the part of a land surveyor. This affidavit is given in connection with the preparation of a Plat for a real estate transaction in Berkeley County, South Carolina. These are the facts as have been provided to me as well as my opinion on this matter.

1. Plaintiffs, Ronald Jones and Gaye Jones are citizens and residents of Berkeley County, South Carolina.
2. Alexander C. Peabody is a citizen and resident Charleston County, State of South Carolina and at all times relevant herein was a Registered Land Surveyor and an owner/principal in Peabody & Associates, Inc..
3. Upon information and belief Peabody & Associates Inc. is corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a surveyor in Berkeley County, South Carolina.

EXHIBIT 2

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4. The following property was conveyed by Deed from Riverview Developers, LLC, to Coastal Plains Development, Inc., dated April 8, 2005, and filed of record April 13 2005, in the Office of the Register of Deeds for the County of Berkeley at Deed Book 474 at Page 51:

> All that lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6A & 6B on a plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SIOTUATED AS WHON ONROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWENED BY DAVID E, HATCHELL AND JOSEPH BARTONE" DATED March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S., and recorded March 22, 2005, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q at Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: a 50' Ingress/Egress Easement and General Utility Easement Labeled A-B-C-D-A as shown on the Plat entitled 'PLAT SHOWING A SUBDIVISION OF LOT 6 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA, PRESENTLY OWED BY DAVID E. HATCHELL AND JOSEPH BARTONE" is hereby dedicated and given to all purchasers and successors of interest in this property and the General Utility Easement is dedicated and given to those entitles which provide said utilities.
>
> This is the same property conveyed to Grantor by deed of Joseph Bartone and David E. Hatchell dated April 5, 2002 and r4ecorded on April 8, 2002 at Book 2686 at Page 290 in the RMC Office of Berkeley County.
>
> TMS #263-00-03-068

5. The property, Lot 6B was conveyed by Deed from Coastal Plains Development Company Inc. to James J. Monaghan by deed dated April 8, 2005 and filed of Record in Deed Book 4887 at Page 84.

6. The property was thereafter conveyed by James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated April 4, 2006 and filed of record in Deed Book 5506 at page 12, and by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr. by deed dated August 22, 2006, and filed of record in Deed Book 5904 at page 177.

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7. That the Deed from James J. Monaghan to Benjamin L. Daniel Sr. dated April 5, 2006 reserved the following description and easement:

> All my one-half interest in that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in all that lot, piece, or parcel of land, including any and all improvements thereon situate, lying and being in near Cainhoy North of Wando River, Berkeley County, SC and being shown and designated as Lot 6B on a plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" DATED MARCH 17, 2005, PREPARED BY Charles F. Dawley, Jr., R.L.S., and recorded March 22, 200, in the Office of the Register of Deeds for Berkeley County in Plat Cabinet Q, Page 357A. Reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.
>
> EXCEPT: A 25' Ingress/Egress Easement is hereby dedicated and given to all owners and successors of interest **in Lot 6A** (TMS#263-00-03-068) as shown on the above-referenced plat, **Lot 5** (No. 108 Cainhoy Landing Road, TMS#263-00-05-005) as shown on the above-referenced plat, **Lot 6** (No. 110 Cainhoy Landing Road, TMS#263-00-05-006) as shown on the above referenced plat, and **Lot 7** (112 Cainhoy Landing Road, TMS#263-00-05-007) AS SHOWN ON A PLAT DATED 9/1/86 BY Carolina Surveying & Mapping, William H Dennis RLS, and entitled "PLAT OF 45.02 ACRES KNOWN AS CAINHOY LANDING CONTAINING 30 LOTS AND DEPICTING AS BUJIT LOCATIONS OF ROADS AND EASEMENTS LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA," as recorded in Plat Cabinet G page 6, in the RMC Office for Berkeley County. This Easement shall be on the Northern boundary of the Lot 6B at the point labeled D and extending one-half the way to the point labeled A as shown on the Plat entitled "PLAT SHOWING A SUBDIVISION OF LOT 6, 'RIVERVIEW VILLAGE', CREATING LOT 6A AND 6B, SITUATED AS SHOWN ON ROAD S-8-33, IN WANDO, BERKELEY COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY DAVID E. HATCHELL AND JOSEPH BARTONE" and shall run down the sides of the Lot shown on said plat as going S 9° 22/10" W for 154.18'. and then continuing on Lines L1, L2, L3, L4, L4, L6, L7, L8, L9, L10 and L11. Therefore, the Easement will almost completely encircle the Lot 6B except for moat of the Northern boundary of the Lot. This easement is given in perpetuity and is to run with the land.
>
> TMS#263-00-03-079

8. The Master in Equity's deed which serves to transfer the property to E Trade* Bank of Fort Mill

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South Carolina, conveys Lot 6B as shown on a plat filed in Plat Cabinet Q at Page 357A, this being the identical property conveyed by deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated April 4, 2006, and filed of record April 5, 2006, in Book 5506 at Page 12 and also by Quit Claim Deed of James J. Monaghan to Benjamin L. Daniel, Sr., dated August 22, 2006 and filed of record in the Office of the Register of Deeds for Berkeley County on August 28, 2006 in Book 5904 at Page 177.

9. A plat of Lot Number 6B filed of record in Plat Cabinet P at Page 4A, prepared by Alexander C. Peabody, PLS with Peabody & Associates, Inc., does not reflect the existence of the easement above which completely encircled Lot 6B for a width of 25 feet except for most of the northern part of the lot.
10. I have worked in the surveying business for over 47 years and have been registered land surveyor for most of my time in the business.
11. I have surveyed thousands of properties over my career and have prepared as many plats. I have prepared thousands of plats for residential closings.
12. I am currently licensed as a Registered Land Surveyor in the State of South Carolina and have been since April 1973.
13. I have been in the continual practice of land surveying as a Registered Land Surveyor since my licensing in 1973.
14. South Carolina has established the minimum standards for the practice of surveying in South Carolina pursuant to State of South Carolina Code of Regulations Chapter 29, Article 4 Regulations 400-490.
15. Based on the forgoing facts a review of the proposed Complaint and consultation with Plaintiff's counsel, the validity of which I have to assume, it is my judgment that Alexander C. Peabody and Peabody Associates, Inc. appears to have been negligent in failing to meet the minimum standards required of land surveyors as defined in State of South Carolina Code of Regulations

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Chapter 29, Article 4 Regulations 400-490 in the following ways: (a) failing to disclose the 25 foot easement on the March 24, 2010 plat to the Plaintiffs (b) in failing to review deeds into the chain of title necessary to properly execute the survey and preparation of the plat according to the findings of all relevant information; and (c) in failing to accurately present and reveal all of the pertinent information included in the legal descriptions on the Plat;.

16. It is my judgment, a reasonably competent and careful South Carolina Land Surveyor would have properly and carefully researched the legal descriptions of the property to insure that an accurate and complete representation of all relevant matters were disclosed on the Plat.

17. This opinion is made to a reasonable degree of professional land surveyor certainty.

Wendell G. Powers, Registered Land Surveyor

Sworn to before me on this 3rd day of May, 2018

Notary Public for South Carolina

My commission expires: 5/8/23

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EXHIBIT C

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)	
Plaintiffs,)	
vs.)	ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

FILED
2018 JUN 12 PM 3:59
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2 and 3 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 and 7 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the

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balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants deny so much of the allegations of Paragraphs 12, 13, and 14 of the Complaint as can be construed to allege that Lisa Hostetler acted as a settlement agent, signed any documents, or issued any title policies, or acted in any capacity at the Plaintiffs' closing.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11."

12. Defendants admit the allegations of Paragraphs 18 through 23 of the Complaint.

13. Defendants admit the allegations of Paragraphs 24 through 28 of the Complaint.

14. Defendants deny the allegations of Paragraph 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

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19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

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FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

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41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to dos so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

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FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

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FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE OF LISA HOSTETLER ALEXANDER
(Not the Proper Party)

76. Lisa Hostetler Alexander was not the supervising attorney in the closing of the lot for Plaintiffs.

77. Lisa Hostetler Alexander did not owe Plaintiffs any duty to give them legal advice or to notify them of any easement on their property.

78. Lisa Hostetler Alexander pleads that she is not a proper party to this lawsuit as a complete defense.

79. Lisa Hostetler Alexander pleads lack of any duty as a complete defense.

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FOR A TENTH DEFENSE
(SCRCP Rule 12(b)(7))

80. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

81. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

82. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6B will fail to provide complete relief to the parties.

83. The owners of Lot 6B should be joined in this action.

84. This action should be dismissed for failure to join necessary parties or in the alternative the necessary parties should be joined.

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr. S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

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EXHIBIT D

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
RONALD L. JONES, et al.)
Plaintiff,)
vs.)
)
Rogers Townsend & Thomas, PC, et al.)
Defendant.)

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2018-CP-08-817

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____ Address: _____ Phone: _____Fax _____ E-mail: _____Other: _____	Warren C. Powell, Jr., Bar No. 4525 Address: PO Box 61110, Columbia SC 29260 Phone: 803-252-7693 Fax____ E-mail: BRobinson@BrunerPowell.comOther:

☒ **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: Motion to Add Party
Estimated Time Needed: 45 min 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.

Warren C. Powell
Signature of Attorney for ☐ Plaintiff/☒ Defendant

June 8, 2018
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: _____

FILED
2018 JUN 12 PM 4:02
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

JUDGE'S SECTION

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

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: NK Date Filed: 6-12-18
☐ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $ _____

WCP

SCCA 233 (11/2003)

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)	
Plaintiffs,)	
vs.)	DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.'S MOTION TO ADD A PARTY (SCRCP RULE 19(a))
ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

TO: ROBERT W. MARING, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that defendant, Rogers Townsend & Thomas, P.C., will, by and through its undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order making THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, AND THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 parties plaintiff needed for a just adjudication under SCRCP Rule 19(a) as plaintiffs.

The grounds for the motion are set forth in a memorandum file contemporaneously herewith.

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2018 JUN 12 PM 4:02
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CLERK OF COURT
BERKELEY COUNTY, SC

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Movant attempted to consult with opposing counsel, as required by Rule 11, SCRCP, both by telephone and by e-mail, but was unable to reach opposing counsel.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr. S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS Civil Action No. 2018-CP-08-817
RONALD L. JONES and GAYLE LANGLEY JONES,)) Plaintiffs,)) vs.)) ROGERS TOWNSEND & THOMAS, P.C.,) LISA HOSTETLER ALEXANDER,) C. PEABODY, and PEABODY &) ASSOCIATES, INC.,)) Defendants.)	MEMORANDUM IN SUPPORT OF DEFENDANT ROGERS TOWNSEND & THOMAS, P.C.'S MOTION TO ADD A PARTY (SCRCP RULE 19(a))

THE FACTS

The plaintiffs (collectively "Jones") purchased property on which Rogers Townsend & Thomas, P.C. ("RT&T") acted as the closing attorney in 2010. Jones claims to have discovered an easement on the property of which it claims to have been unaware at the time of purchase. Jones sued RT&T for failing to inform Jones of the easement prior to closing. RT&T issued a policy of title insurance to Jones.

RT&T has or will enter defenses to the Jones claims. RT&T avers that the easement being sued over is not legally viable, or that the dominant property holder has waived the easement or that the dominant property holder is estopped to assert the easement.

The proposed new parties, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 2007, are the owners of the dominant estate.

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2019 JUN 12 PM 4:02
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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THE LAW

Rule 19(a), SCRCP, allows either party to an existing lawsuit to join another person if the joinder will not deprive the court of jurisdiction and if the absence of the proposed party will prevent complete relief.

The dominant estate is the proper party to assert and defend an easement. Sheppard v. Justin Enters., 373 S.C. 518, 646 S.E.2d 177 (Ct.App. 2007).

Under most circumstances, an order is not binding on a non-party. Pharr v. Canal Ins. Co., 233 S.C. 266, 104 S.E.2d 394 (1959).

APPLICATION OF THE LAW TO THE FACTS

If RT&T is successful in defending claims brought by Jones on the grounds that the easement either does not exist or that it is unenforceable by waiver or estoppel, complete relief will not be achieved thereby. If the unbound dominant property owner asserts rights in the easement over the Jones property, Jones may bring an action against the title insurer to defend Jones or enter suit against the alleged dominant estate holder, which could lead to additional actions against Movant, unless completer is not afforded here.

Including the dominant property owners in this lawsuit will afford complete relief to all the parties because it will determine the status of the easement for both the dominant and servient estates. Including the dominant property owners will not prejudice Jones, because Jones contends that the alleged easement has caused her damage and, of course, she has in interest in defeating or terminating the alleged easement.

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CONCLUSION

The proposed new parties should be added as party defendants because they may claim a purported easement to which Jones objects and which RT&T is challenging, because they are needed for complete relief, and because adding them will not prejudice any existing party.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr. S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
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Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina

June 8, 2018

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EXHIBIT E

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

#78

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP0800817

Ronald L. Jones		Rogers Townsend & Thomas P.C.	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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.

FILED
2018 AUG 10 PM 1:16
MARY BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
VB

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

ORDER INFORMATION

Rogers Townsend & Thomas P.C.'s Motion to Add a Party is GRANTED. The Additional parties will be made a Plaintiff pursuant to Rule 19 SCRCP.

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.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Perry M. Buckner — 2122 Judge Code — 8/6/18 DATE VB

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

Circuit Court Judge Perry M Buckner | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of June, 2018, and a copy mailed first class or placed in the appropriate attorney's box on the day of June, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Karen Andersen

Mary P. Brown - 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.

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EXHIBIT F

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

Jary J Hulst

From: Jary J Hulst
Sent: Friday, March 22, 2019 1:31 PM
To: Warren Powell; ryan.earhart@earhartoverstreet.com
Cc: Shanna H Saulisbury; Robert Maring
Subject: Ronald L Jones, Gayle Langley Jones, and Thomas H Gillard and Thomas Cone, as trustees v Rogers Townsend & Thomas, PC et al., Civil Action Number 2018-CP-08-817
Attachments: Recorded Agreement-Gaillard, Cone and Jones 3.22.19.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Warren and Ryan:

Attached is a copy of the recorded Access, Maintenance and Joint Dock Use agreement that was recently executed by the my clients and Gaye Jones. Accordingly, the purported easement at issue in this case has been terminated and replaced by the new easement described in this instrument, and my clients no longer have any possible interest in the outcome of this case.

Please advise whether you will consent to an order releasing them as nominal plaintiffs in this action.

Your anticipated cooperation is greatly appreciated.

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

Confidentiality Notice:
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information which is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

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CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA	)	
	)	ACCESS, MAINTENANCE AND
COUNTY OF BERKELEY	)	JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of MARCH, 2019, by and between **Gaye L. Jones** ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access. ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS. the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8. 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"). inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS. the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control. Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"). and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises. the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other. in hand paid. the receipt of which is hereby acknowledged, and for other good and valuable consideration. the receipt. adequacy and sufficiency of which are hereby expressly acknowledged. the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone. their heirs. successors. successors-in-title. invitees. licensees. lessees and assigns. a non-exclusive. permanent. perpetual. transmissible. appurtenant ingress. egress. and access easement and right-of-way. ten (10) feet in width. upon. over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access. ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family. successors. heirs. assigns. invitees. licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"). subject. however. to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct. maintain. repair and replace the Joint Dock.

TO HAVE AND TO HOLD. all and singular. subject to terms and conditions set forth herein. the aforesaid Dock Access Easement. unto Gaillard and Cone. their heirs. successors. successors-in-title and assigns. forever.

2. Joint Dock Construction. On or before April 15. 2018. Jones and Gaillard and Cone (each a "Party" and collectively. the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit. the cost of which shall be split between the Parties as follows: Jones: 50%: Gaillard and Cone: 50%. Once construction of the Joint Dock commences. such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein. or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided. then, in such event. the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead. gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default. including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party. including their successors, heirs. assigns. respective agents. lessees. invitees. and licensees. and hold each other harmless from and against any and all claims. demands. actions. causes of action. damages. liens. losses, liabilities, fines. penalties. costs and expenses. including attorneys' fees and court costs. caused by or in any way attributable to the negligence. gross negligence of willfulness of such indemnitor. or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1.000.000 per occurrence. the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail. return receipt requested. overnight delivery. or by hand-delivery to the address provided by such Lot Owner. or if no address is provided. then to the residence located on the Jones Property or the Gaillard and Cone Property. as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service. or deposit with a national overnight carrier. and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties. their heirs. successors. successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property, and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title, assigns, grantees and representatives and Gaillard and Cone and their heirs, successors, successors-in-title, assigns, grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto, so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that **Gaye L. Jones**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.

Notary Public for South Carolina
My Commission Expires: 12-15-25

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mitch Gaillard
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF Charleston)

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of MARCH, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot. piece. or parcel of land. including any and all improvements thereon. situate, lying and bearing near Cainhoy North of Wando River, Berkeley County, South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County, South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

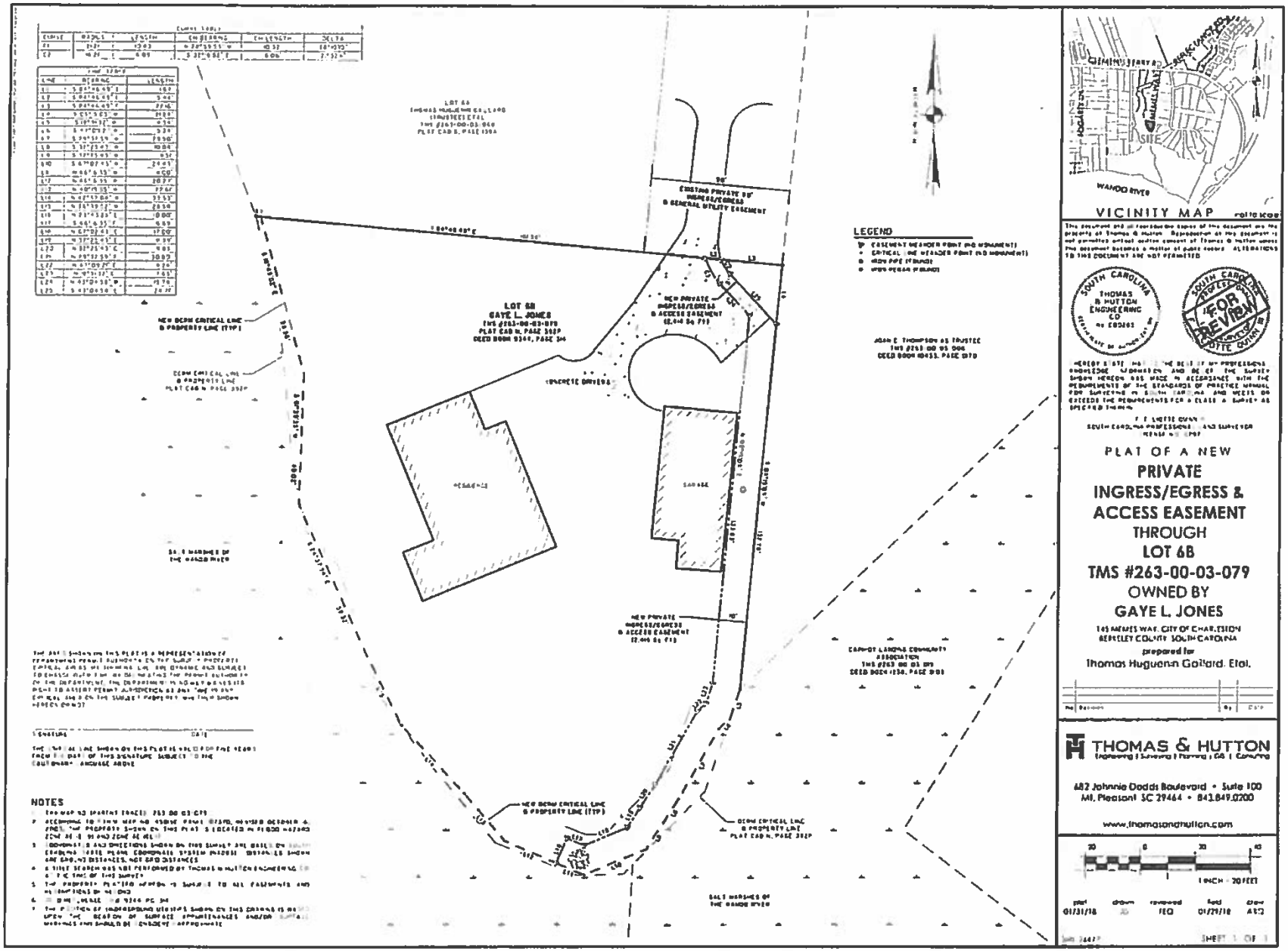
All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

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EXHIBIT "C"
EASEMENT PLAT

ROA 0450


LOT 6B
GAYE L. JONES
TMS #263-00-03-079
PLAT CAB M, PAGE 268P
DEED BOOK 0360, PAGE 346
NEW PRIVATE INGRESS/EGRESS & ACCESS EASEMENT
EXISTING PRIVATE 50' INGRESS/EGRESS & GENERAL UTILITY EASEMENT
LEGEND
NOTES
VICINITY MAP
PLAT OF A NEW
PRIVATE
INGRESS/EGRESS &
ACCESS EASEMENT
THROUGH
LOT 6B
TMS #263-00-03-079
OWNED BY
GAYE L. JONES
145 ANEWES WAY, CITY OF CHARLESTON
BERKELEY COUNTY, SOUTH CAROLINA
prepared for
Thomas Huguenin Gaillard, Etal.
THOMAS & HUTTON
482 Johnnie Dodds Boulevard • Suite 100
Mt. Pleasant SC 29464 • 843.849.0200
www.thomasandhutton.com
1 INCH = 30 FEET
SHEET 1 OF 1

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EXHIBIT G

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ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	CASE NO.: 2018-CP-08-817
RONALD L. JONES and GAYE LANGLEY JONES, THOMAS HUGUENIN GAILLARD, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr., Revocable Trust,)	PLAINTIFFS THOMAS HUGUENIN GAILLARD AND THOMAS W. CONE, JR.'S MOTION FOR NON-JOINDER PURSUANT TO RULE 21 SCRCP
Plaintiffs,)	
v.)	
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,)	
Defendants.)	

TO: WARREN C. POWELL, JR., ATTORNEY FOR DEFENDANTS ROGERS TOWNSEND & THOMAS, P.C. and LISA HOSTETLER, RYAN A. EARHART, ATTORNEY FOR DEFENDANTS ALEXANDER C. PEABODY, and PEABODY & ASSOCIATES, INC.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for Plaintiffs Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust (hereinafter "Gaillard and Cone"), will move before the presiding Judge of the Berkeley County Court of Common Pleas for an Order releasing them as involuntary plaintiffs in the above cited action pursuant to Rule 21 of the South Carolina Rules of Civil

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Procedure. Plaintiffs' motion is based upon the arguments and authorities below and the pleadings, exhibits, affidavits, other admissible evidence, applicable common law and statutory law and any memorandum of law or further supporting documentation provided to this Court.

FACTUAL BACKGROUND

Plaintiffs Ronald L. Jones and Gaye Langley Jones (hereinafter "Jones") purchased property at issue in this case in 2010. Jones alleges that Defendants Rogers Townsend & Thomas, P.C. ("RTT") acted as closing counsel. Jones further alleges that they discovered an easement on the property that they not made unaware of at the time of purchase. Jones sued RTT, the closing attorney Lisa Hostetler, and the surveyor Alexander C. Peabody and Peabody & Associates, Inc. ("Peabody") for damages based on the various causes of action set forth in their Complaint.

On June 12, 2018 counsel for RTT filed a Motion to Add a Party under SCRCP Rule 19(a) and also filed a Memorandum in Support of Defendant RTT's Motion to Add a Party. RTT contended in its Memorandum that the proposed new parties, Gaillard and Cone, were the owners of the dominant estate and that the dominant estate was the proper party to assert and defend an easement. RTT further contended that the easement being sued over was not legally viable, or that the dominant property holder had waived the easement or that the dominant property holder was estopped to assert the easement. RTT argued that Gaillard and Cone be added as parties to the action because if RTT prevailed in its defenses, Gaillard and Cone, as non-parties, might still claim rights under the purported easement because they might not be bound by any adverse ruling regarding the easement in this case.

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RTT's Motion was heard before the Honorable Perry M. Buckner. Cone and Gaillard were not provided with notice of the hearing. Judge Buckner issued a Form 4 Order dated August 6, 2018 and filed with the clerk on August 13, 2018, granting RTT's motion to add Gaillard and Cone as parties to this action.

BASIS FOR GRANT OF MOTION

Since the issuance of Judge Buckner's Order, Jones, Gaillard and Cone have entered into an Access, Maintenance and Joint Dock Use Agreement (hereinafter, the "Agreement") that has been recorded with the Berkeley County Register of Deeds Office in Book RB2977 at Page 604. (A true and correct copy of the Agreement is attached hereto as Exhibit A.) The terms of the Agreement terminate the purported easement at issue in this case and provides that Gaillard and Cone relinquish any interest they may have had in that easement. Accordingly, Gaillard and Cone no longer have any interest in the outcome of this case and there is no basis for keeping them in this action as parties. Counsel for Defendants have been provided with a recorded copy of the Agreement.

SCRCP Rule 21 provides that parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Gaillard and Cone are being forced to spend time and money participating as Plaintiffs in an action where they have asserted no claim and have had no claims asserted against them. Because the basis for adding Gaillard and Cone as parties to this action no longer exist, it is reasonable and just that they be released as parties to this action. Their continued forced participation in this action as parties is unfair and unjust.

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Gaillard and Cone, by and through their undersigned counsel, requested that Defendants consent to an order releasing them as nominal plaintiffs in this action. Ryan Earhart, counsel for Peabody, agreed to stipulate to Gaillard and Cone's dismissal from this action. Warren Powell, counsel for RTT and Lisa Hostetler has refused to stipulate. The basis for Mr. Powell's refusal is set forth in his email attached hereto as Exhibit B.

Counsel for Gaillard and Cone has consulted with opposing counsel as required by Rule 11, SCRCP prior to the filing of this motion.

CONCLUSION

Based on the foregoing, Plaintiffs Gaillard and Cone ask that the Court issue an Order releasing them as Plaintiffs in this action.

WILLIAMS AND HULST, LLC

/s/ J. Jay Hulst

J. Jay Hulst
P.O. Box 1288
Moncks Corner, SC 29461
(843) 761-8232 phone
(843) 899-5834 fax
jjh@williamsandhulst.com

ATTORNEYS FOR PLAINTIFFS
THOMAS W. CONE, JR., AND
THOMAS HUGUENIN GAILLARD

Dated: March 28, 2019

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EXHIBIT A

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CYNTHIA B FORTE

BERKELEY COUNTY

REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2019009110		
Receipt Number:	121752	**Return To:**	WILLIAMS & HULST
Recorded As:	AGREEMENT		PO BOX 1288
Recorded On:	March 22, 2019		MONCKS CORNER, SC, 29461
Recorded At:	11:55:23 AM	**Received From:**	WILLIAMS & HULST
Recorded By:	LYNETTE SHELTON	**Parties:**	
Book/Page:	RB 2977: 604 - 616		Direct- JONES, GAYE L
Total Pages:	13		Indirect- THOMAS HUGUENIN GAILLARD REVOCABLE

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$18.00
Tax Charge:	$0.00

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

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STATE OF SOUTH CAROLINA)
) ACCESS, MAINTENANCE AND
COUNTY OF BERKELEY) JOINT DOCK USE AGREEMENT

THIS ACCESS, MAINTENANCE AND JOINT DOCK USE AGREEMENT (this "Agreement") is made as of this 15 day of March, 2019, by and between Gaye L. Jones ("Jones"), as grantor, and Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007 (collectively, "Gaillard and Cone"), as grantees.

WITNESSETH:

WHEREAS, Jones is the owner of that certain real property located in Berkeley County, South Carolina, designated as Lot 6B, Berkeley County TMS No. 263-00-03-079, as more particularly described by that certain Quit Claim Deed dated February 28, 2012 and recorded on March 2, 2012 in the Berkeley County Register of Deeds Office ("ROD") in Book 9344, at Page 314, and as shown on that certain plat entitled "Plat Showing a Subdivision of Lot 6, "Riverview Village", Creating Lot 6A and Lot 6B, Situated as Shown on Road S-8-33, in Wando, Berkeley County, South Carolina, Presently Owned by David E. Hatchell and Joseph Bartone" dated March 17, 2005, prepared by Charles F. Dawley, Jr., R.L.S. and recorded March 22, 2005 in the ROD in Plat Cabinet Q at page 357A ("Lot 6 Subdivision Plat"), and in that Plat dated March 24, 2010 recorded in the ROD in Plat Cabinet N at Page 392P, and as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Jones Property"); and

WHEREAS, Gaillard and Cone are the owners of certain real property located in Berkeley County, South Carolina, known as Lot 6A, Berkeley County TMS No. 263-00-03-068, as more particularly described by that certain deed dated May 2, 2011 and recorded on May 6, 2011 in the ROD in Book 8923 at Page 11, and as shown on the Lot 6 Subdivision Plat and as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Gaillard and Cone Property"); and

WHEREAS, at the request of Jones and Gaillard and Cone, an "Easement Plat of a 10' Private Ingress/Egress & Access Easement through Lot 6B" has been prepared by Thomas & Hutton dated January 25, 2017, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein (the "Easement Plat"); and

WHEREAS, Jones is the owner of that portion of Lot 6B where a "New Private 10' Ingress/Egress & Access Easement" is located within that part of the area of Lot 6B as shown and delineated on the Easement Plat (this area of Lot 6B hereinafter referred to as "Ingress/Egress & Access Easement Area"); and

WHEREAS, Jones desires to grant to Gaillard and Cone, their heirs, successors, successors-in-title and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and

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across the Ingress/Egress & Access Easement Area for the purpose of access, ingress and egress to the Joint Dock (as defined herein), which easement shall run with the title to the Jones Property and the Gaillard and Cone Property; and

WHEREAS, the parties desire to terminate a '25 Ingress/Egress Easement purportedly over Lot 6B in favor of owners and successors of Lot 6A as described in that "Title to Real Estate" dated April 8, 2005 and recorded on August 3, 2005 in the Berkeley County Register of Deeds Office in Book 4887, at Page 65 ("Old Purported Easement"), inasmuch as the Old Purported Easement is being replaced with the Dock Access Easement (as defined herein) and other rights granted to Gaillard and Cone by this Agreement

WHEREAS, the parties desire to construct a joint dock (the "Joint Dock") for the joint and shared use by the present or future owner(s) of the Jones Property and the Gaillard and Cone Property in accordance with the terms and provisions of the joint dock permit therefor issued by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM"), Permit No. OCRM-01-732-R (the "Dock Permit"), and upon the terms and conditions more particularly set forth herein; and

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accomplished hereby and the sum of Five and 00/100 ($5.00) Dollars paid to each other, in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. Grant of Dock Access Easement. Jones does hereby grant to Gaillard and Cone, their heirs, successors, successors-in-title, invitees, licensees, lessees and assigns, a non-exclusive, permanent, perpetual, transmissible, appurtenant ingress, egress, and access easement and right-of-way, ten (10) feet in width, upon, over and across the Ingress/Egress & Access Easement Area for the purpose of providing pedestrian and golf cart access, ingress and egress as shown on the Easement Plat to be used jointly and in common with Jones and her family, successors, heirs, assigns, invitees, licensees and lessees for full use and enjoyment in the Ingress/Egress & Access Easement Area in any manner not inconsistent with the rights granted herein ("Dock Access Easement"), subject, however, to the terms and conditions set forth herein. The Parties may also use the Ingress/Egress & Access Easement Area temporarily to allow the parties and their independent contractors to construct, maintain, repair and replace the Joint Dock.

TO HAVE AND TO HOLD, all and singular, subject to terms and conditions set forth herein, the aforesaid Dock Access Easement, unto Gaillard and Cone, their heirs, successors, successors-in-title and assigns, forever.

2. Joint Dock Construction. On or before April 15, 2018, Jones and Gaillard and Cone (each a "Party" and collectively, the "Parties") agree to commence construction or cause the commencement of construction of the Joint Dock in accordance with the terms and provisions of the Dock Permit, the cost of which shall be split between the Parties as follows: Jones: 50%; Gaillard and Cone: 50%. Once construction of the Joint Dock commences, such construction

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shall be expeditiously continued until construction the Joint Dock has been completed, lien free, in accordance with the terms and provisions of the Dock Permit.

3. Joint Use and Maintenance of the Joint Dock. Except as otherwise provided herein, the Parties agree that they will share jointly in ownership and use of the Joint Dock. The Parties agree to share jointly in the cost and expense of the Joint Dock, including but not limited to construction, maintenance, repair, insurance, taxes, utilities, permitting fees, repair and replacement of the Joint Dock, including the pier head and the floating dock. The Joint Dock shall be constructed and maintained by the Parties in conformance with the Dock Permit and all applicable OCRM rules, regulations and requirements. The floating dock shall be shared as follows: Jones shall have the exclusive use of one-half of the river side of the floating dock and one-half of the shore side of the floating dock; Gaillard and Cone shall have the exclusive use of the remaining one-half of the river side of the floating dock and the remaining one-half of the shore side of the floating dock. In the event the Joint Dock (including, without limitation, the pier head and floating dock) is damaged or destroyed by fire, storm or other casualty, all repair and/or reconstruction costs shall be shared equally by the Parties, their heirs, successors, successors-in-title and assigns.

4. Use and Maintenance of the Ingress/Egress Easement Area. Except as to the rights herein granted, the Parties shall have the full use and control of the Ingress/Egress & Access Easement Area. The Parties agree that they will make no use of the Ingress/Egress & Access Easement Area which is inconsistent with the uses and the purposes for which the Dock Access Easement has been granted and created, and without limiting the generality of this provision, the Parties agree that no obstructions and no parked cars or permanent structures such as buildings, sheds and other structures shall be placed upon or within the Ingress/Egress & Access Easement Area at any time. Jones, at Jones' sole cost and expense, agrees to remove the existing water well or any other obstruction located within the Ingress/Egress Easement Area which would prevent the use and enjoyment of the Dock Access Easement by the Parties hereto. The Parties agree to jointly restore the Ingress/Egress & Access Easement Area to its original condition, to the extent reasonably possible, including any landscaping or other improvements on the Ingress/Egress & Access Easement Area which are damaged, disturbed or destroyed by reason of any excavation, construction, reconstruction, maintenance or other use of the Ingress/Egress & Access Easement Area. The Parties, for themselves, and for their heirs, successors, successors-in-title and assigns, agree to be jointly responsible for the upkeep, care, maintenance, and servicing of the Ingress/Egress & Access Easement Area to the extent any maintenance, care, and upkeep are warranted, in a good, safe and workmanlike manner, and to keep the same in good condition and repair, without any liens against the Ingress/Egress & Access Easement Area or Jones' adjoining property. The Parties jointly agree to restore, at their expense, the Ingress/Egress & Access Easement Area to its original condition, insofar as reasonably possible, immediately after any maintenance, repair or replacement work is finished. Neither Party shall interfere with the use of the Ingress/Egress & Access Easement Area by the other Party or Parties, their families, successors, successors-in-title, heirs, assigns, invitees, licensees and lessees. Gaillard and Cone agree and understand that the Ingress/Egress & Access Easement Area shall not be paved or otherwise altered from its natural state unless otherwise approved in writing by Jones, in her reasonable discretion. Notwithstanding the foregoing, the Parties may grade the Ingress/Egress & Access Easement Area to the extent necessary for the safe and effective use of same. Any

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excessive noise within the Ingress/Egress & Access Easement or on the Joint Dock shall be strictly prohibited.

5. Relocation of Ingress/Egress & Access Easement Area. Jones may relocate the Ingress/Egress & Access Easement Area at her expense and in her reasonable discretion, in the event Grantor desires to utilize further or differently the Jones Property of which the Ingress/Egress & Access Easement Area is a part, provided that the essential purpose of the Dock Access Easement is not altered and further provided that the access granted herein is not materially impaired by such relocation.

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

7. Remedies. Should any Party breach its covenants and agreements contained herein, or should payment for any shared costs or expenses not be made in full to the other Party or Parties within thirty (30) days of service of notice as herein provided, then, in such event. the defaulting Party shall forfeit all rights to use the Joint Dock, together with any pier, pierhead. gangways and floating docks as may exist on the Joint Dock, unless and until the payments due hereunder are properly paid with interest at the rate of one and one-half (1 1/2%) percent per month following expiration of the thirty (30) day notice period. The nondefaulting Party shall also have the right to seek any other legal or equitable remedy as a result of such default. including the right to place a lien on the defaulting Party's lot to secure payment of delinquent costs and expenses.

8. Indemnification and Insurance. Each Party agrees to defend and indemnify the other Party. including their successors, heirs, assigns. respective agents. lessees. invitees. and licensees. and hold each other harmless from and against any and all claims. demands. actions. causes of action. damages. liens. losses. liabilities. fines. penalties. costs and expenses. including attorneys' fees and court costs. caused by or in any way attributable to the negligence. gross negligence of willfulness of such indemnitor. or the exercise of any of the rights herein granted or the breach or default of any of the conditions and covenants herein. The Parties agree to jointly maintain liability insurance on the Joint Dock in an amount not less than $1.000.000 per occurrence. the cost of which shall be a common expense shared jointly by the Parties. The Parties shall all be listed as named insureds in such liability insurance policy.

9. Notice. Notice by one Party to the other Party or Parties shall be given either by registered mail. return receipt requested. overnight delivery. or by hand-delivery to the address provided by such Lot Owner. or if no address is provided. then to the residence located on the Jones Property or the Gaillard and Cone Property. as the case may be. Service of notice shall be deemed effective on the date of deposit with the United States Postal Service. or deposit with a national overnight carrier. and/or date of hand delivery.

10. Amendment. This Agreement may be amended only by written instrument duly executed by the Parties. their heirs. successors. successors-in-title and permitted assigns.

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11. Miscellaneous. This Easement is solely for the benefit of the Gaillard and Cone Property that adjoins the Ingress/Egress & Access Easement Area, and may not be assigned by Gaillard and Cone or used by them to benefit other property. The rights, interests and obligations of this Agreement shall run with Gaillard and Cone Property and the Jones Property. and shall be binding upon and inure to the benefit of Jones, her heirs, successors, successors-in-title. assigns, grantees and representatives and Gaillard and Cone and their heirs, successors. successors-in-title, assigns. grantees and representatives. This Agreement shall be governed by the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in multiple counterparts. each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all Parties hereto, whether or not each counterpart is executed by all Parties hereto. so long as each Party hereto has executed one or more counterparts hereof.

(this space left intentionally blank; signature pages to follow)

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IN WITNESS WHEREOF, the undersigned have signed this **AGREEMENT** this 15th day of February 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Gaye L. Jones

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Robert D. Mahy, Notary Public for the State of South Carolina do hereby certify that **Gaye L. Jones**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of Feb, 2019.

Notary Public for South Carolina
My Commission Expires: 12-15-25

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IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007

W. Mitt Connard
Tammy S. Griffin

Thomas Huguenin Gaillard (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas Huguenin Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

TAMMY S. GRIFFIN
Notary Public, South Carolina
My Commission Expires
April 9, 2023

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

ELECTRONICALLY FILED - 2019 Mar 29 10:55 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

IN WITNESS WHEREOF, the undersigned have signed this AGREEMENT this 15 day of March, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007

W. Britt Bullard

Tammy S. Griffin

Thomas W. Cone, Jr. (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Tammy S. Griffin, Notary Public for the State of South Carolina do hereby certify that **Thomas W. Cone, Jr., as Trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 15th day of March, 2019.

Tammy S. Griffin
Notary Public for South Carolina
My Commission Expires: 4/9/23

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EXHIBIT "A"
DESCRIPTION OF THE JONES PROPERTY

All that lot. piece. or parcel of land. including any and all improvements thereon. situate, lying and bearing near Cainhoy North of Wando River, Berkeley County. South Carolina and being sworn and designated as lot 6B on a plat entitled "plat showing a subdivision of lot 6,"Riverview Village" creating lot 6-A and 6-B situation as shown Road S-8-33, in Wando, Berkeley County. South Carolina. Being more specifically shown and designated on a plat made for Gaye Langley Jones and Ronald L Jones by Peabody and Associates, Inc. dated March 24, 2010 and recorded in Berkeley County in Plat Cabinet N at Page 392P. Reference to said latter plat is hereby craved for a more complete description as to distances, courses, meets and bounds.

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EXHIBIT "B"
DESCRIPTION OF THE GAILLARD AND CONE PROPERTY

All that certain lot, piece or parcel of land, including any and all improvements thereon, situate, lying and being near Cainhoy, North of Wando River, Berkeley County, SC, and being shown and designated as "LOT 6A, NEW AREA 47,840 SQ. FT., 1.10 ACRE" on a plat entitled "LOT 4, LOT 5, LOT 6A, RIVERVIEW VILLAGE, 124, 130 & 137 MEMES WAY" dated May 11, 2015, prepared by Matthew E. McBeath, PLS, recorded in the Register of Deeds for Berkeley County, SC on June 8, 2015, in Plat Cabinet S, at Page 138-A, reference to which is hereby craved for a more complete description as to distances, courses, metes and bounds.

TMS No. 263-00-03-066

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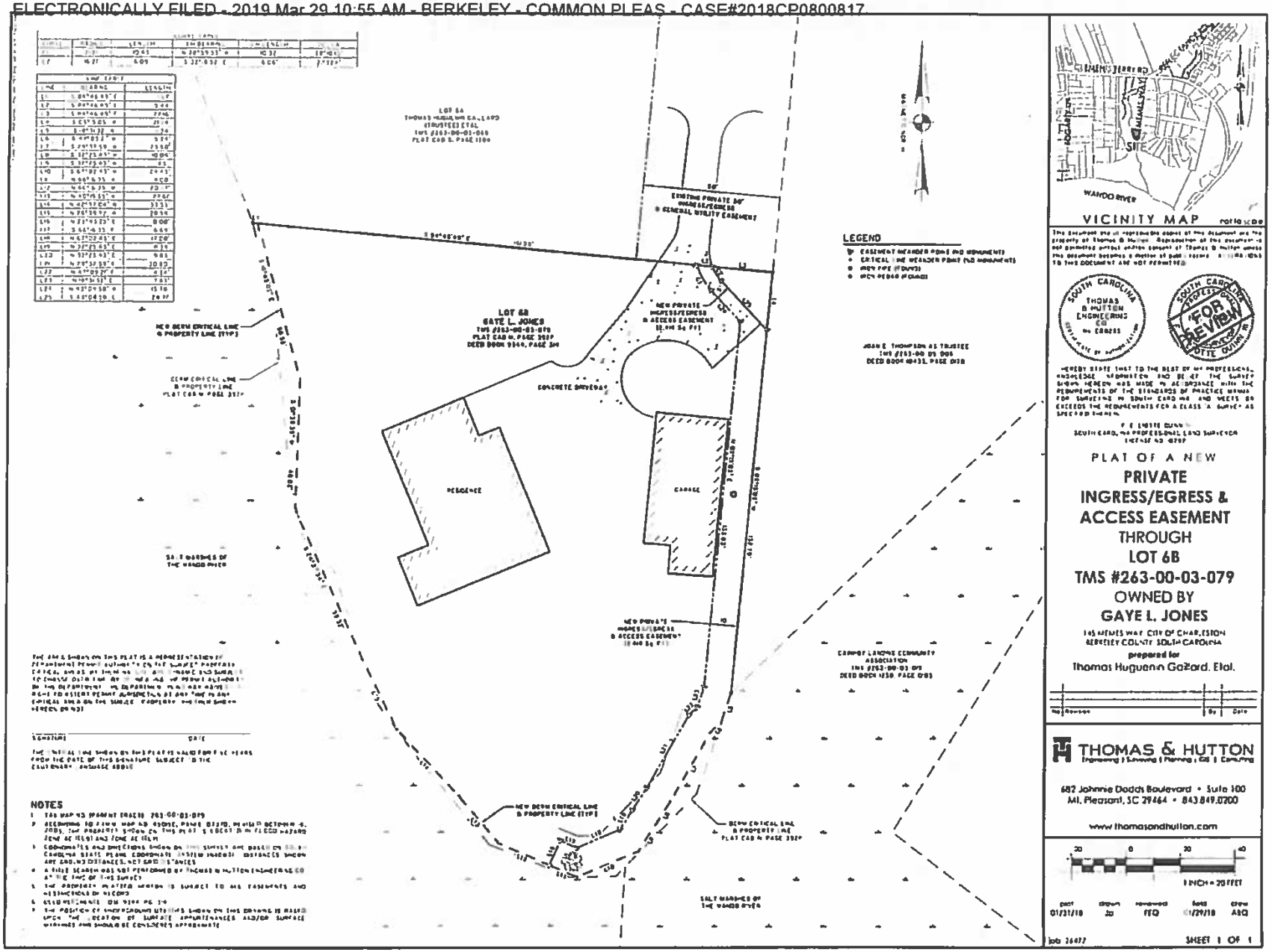
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EXHIBIT "C"
EASEMENT PLAT

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EXHIBIT B

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Jary J Hulst

From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst
Subject: RE: Jones v. RTT

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

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

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

Warren:

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

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

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

Confidentiality Notice:
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information which is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you

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have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

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

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

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

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

Warren:

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

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

Confidentiality Notice:
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EXHIBIT H

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ELECTRONICALLY FILED - 2019 Mar 29 4:51 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, v. ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC., Defendants.	DEFENDANTS' MOTION TO AMEND THE ANSWER

TO: ROBERT W. MARING, ESQUIRE AND JAY J. HULST, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS.

You will please take notice that Defendants, Rogers Townsend & Thomas, P.C., and Lisa Hostetler will, by and through their undersigned attorney, move before the Court at the Courthouse, 300 California Avenue, Moncks Corner, South Carolina, in ten days or as soon thereafter as it can be heard for an order allowing them to file an amended answer, a copy of which is attached hereto.

The grounds for the motion are that the controversy exists as to the nature of the deeds and other instruments and how they relate to the alleged easement at issue herein and the Court can determine the nature under the Declaratory Judgment Act, and that the case is not set for trial and no plaintiff will be prejudiced by the amendment. A copy of the proposed amended answer is attached hereto.

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Movant has not attempted to consult with opposing counsel, as otherwise required by Rule 11, SCRCP, because such consultation would serve no useful purpose.

BRUNER, POWELL, WALL & MULLINS, LLC

s/Warren C. Powell, Jr.
Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com

Columbia, South Carolina
March 29, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE,	)	
Plaintiffs,	)	
v.	)	**SUMMONS**
ROGERS TOWNSEND & THOMAS, P.C.; LISA HOSTETLER; ALEXANDER C. PEABODY; and, PEABODY & ASSOCIATES, INC.,	)	
Defendants.	)	

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

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

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STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-08-817
RONALD L. JONES; GAYLE LANGLEY JONES; and, THOMAS H. GAILLARD as TRUSTEE, Plaintiffs, vs. ROGERS TOWNSEND & THOMAS, P.C., LISA HOSTETLER ALEXANDER, C. PEABODY, and PEABODY & ASSOCIATES, INC., Defendants.	AMENDED ANSWER OF ROGERS TOWNSEND & THOMAS and LISA HOSTETLER ALEXANDER and PETITION FOR DECLARATORY JUDGMENT

Rogers Townsend & Thomas, P.C. and Lisa Hostetler Alexander (collectively "Defendants") answer the allegations of the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 4, and 5 of the Complaint.

3. Defendants admit the allegations of Paragraphs 2, 3 and 7 of the Complaint.

4. Defendants deny the allegations of Paragraphs 6 of the Complaint.

5. Answering the allegations of Paragraph 8 of the Complaint, Defendants repeat and reallege the foregoing.

6. Defendants deny so much of the allegations of Paragraph 9 of the Complaint as can be construed to allege the property was purchased on May 7, 2010, and that the property

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description includes "recorded in Berkeley County in Plat Cabinet P at Page 4A" and admit the balance of the allegations. Further answering said Paragraph, Defendants are informed and believe the deed was issued and the property purchased by Plaintiffs on March 12, 2010 and the description contains the phrase "recorded in Berkeley County in Plat Cab. N at Page 392P."

7. Defendants admit the allegations of Paragraphs 10 and 11 of the Complaint.

8. Defendants admit the allegations of Paragraphs 12, 13, and 14 of the Complaint.

9. Defendants are without knowledge of and therefore deny the allegations of Paragraph 15 of the Complaint.

10. Defendants admit the allegations of Paragraph 16 of the Complaint.

11. Defendants admit the allegations of Paragraph 17 of the Complaint includes the wording of he described purported easement and that same is accurate except that the words "Ingress/Egress along the Northern boundary" should read "Ingress/Egress beginning on the Northern boundary" and the words "L10, and L1" should read "L10, and L11;" also Defendants deny the conclusions stated in said Paragraph.

12. Defendants deny the allegations of Paragraphs 18.

13. Defendants admit the allegations of Paragraphs 19 thru 25 and 27-28 of the Complaint.

14. Defendants deny the allegations of Paragraph 26, 29 and 30 of the Complaint.

15. Defendants are without knowledge of and therefore deny the allegations of Paragraph 31 of the Complaint.

16. Defendants deny the allegations of Paragraph 32 of the Complaint.

17. Answering the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege the foregoing.

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18. Defendants admit the allegations of Paragraph 34 of the Complaint, but deny any damage to Plaintiffs.

19. Defendants admit the allegations of Paragraphs 35 and 36 of the Complaint.

20. Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

21. Answering the allegations of Paragraph 40 of the Complaint, Defendants repeat and reallege the foregoing.

22. Defendants admit an affidavit is attached, and deny all other allegations of Paragraph 41 of the Complaint.

23. Answering the allegations of Paragraph 42 of the Complaint, Defendants repeat and reallege the foregoing.

24. The allegations of Paragraphs 43 through 50 of the Complaint do not implicate Defendants and therefore do not require an answer from Defendants, but if an answer is required, Defendants deny the same.

FACTS COMMON TO AND INCORPORATED INTO ALL DEFENSES

25. Plaintiffs own Lot 6B.

26. The dominant property, if an easement exists, is Lot 6A.

FOR A SECOND DEFENSE
(Not the Real Party in Interest)

27. Ronald L. Jones transferred all his right, title, and interest in the property at issue to Gayle L. Jones by quit claim deed dated February 28, 2012 and filed in the Berkeley County Register of Deeds office at Book 9344, page 315.

28. Ronald L. Jones is not a real party in interest.

29. Ronald L. Jones must be dismissed from this action.

30. As to Ronald L. Jones, Defendants plead lack of interest as a complete defense.

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FOR A THIRD DEFENSE
(Statute of Limitations)

31. Plaintiffs have owned the property continuously since March 12, 2010.

32. Plaintiffs knew or should have known that there might exist an easement on their own property.

33. Plaintiffs have failed to bring their action within the three-year statute of limitations.

34. Defendants plead the statute of limitations as a complete defense.

FOR A FORTH DEFENSE
(Easement, If Any Such Exists, Is No Longer Enforceable So There Are No Damages)

35. Plaintiff's house and garage was constructed no later than November 2006.

36. Plaintiff's fence was, upon information and belief, constructed no later than November 2006.

37. Plaintiff's garage and fence completely block the purported 25-foot easement on the East side of the property.

38. Plaintiff's fence on the West side of the property from the Fire Pit to the property line was built no later than November 2006.

39. Plaintiff's fence on the West side of the property runs across the entire purported easement.

40. Plaintiff's garage and fences were continuously and are currently obstructing the purported easement and were hostile to the use of the purported easement, were open to the view of all who attempted to use the purported easement, were actually in place, were notorious, and provided exclusive possession to Plaintiffs to the exclusion of all the world.

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41. Plaintiff's garage and fences have been continuously in place for longer than 10 years.

42. The owner of Lot 6A can no longer enforce any purported easement on Lot 6B.

43. The owner of Lot 6A is estopped from attempting to enforce the purported easement.

44. Because there is no longer an enforceable easement, if ever there were one, Plaintiff cannot assert any damages.

45. Defendants plead no easement and therefore no damages as a complete defense.

FOR A FIFTH DEFENSE
(Purported Easement Never Existed)

46. The granting clause in the deed from Coastal Plains Development Co., Inc. to James J. Monaghan employs language that is confusing and contradictory.

47. There was no grantee in the language Plaintiff relies upon.

48. The language Plaintiff relies upon did not reserve or grant an easement.

49. There is no easement to a third party prior to the deed to Monaghan.

50. If Coastal Plains Development Co., Inc. was attempting to create an easement, it failed to do so.

51. Coastal Plains Development Co., Inc. did not follow the requirement of the common law.

52. Any attempt to create an easement must follow the common law because the common law is the controlling law regarding easements in South Carolina.

53. Failure to follow the requirement of the common law is fatal to any attempt to establish an easement.

54. Defendants plead that no easement ever existed as a complete defense.

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FOR A SIXTH DEFENSE
(No Easement Existed)

55. There is no requirement for Lot 6A to have ingress and egress to any identifiable reason on Lot 6B.

56. Lot 6A has access to the marsh on its own boundary.

57. Lot 6A has access to the outside world on its own boundary.

58. An easement over Lot 6B is not necessary to the proper enjoyment of Lot 6A.

59. The purported easement over Lot 6B is not required for the proper enjoyment of Lot 6A.

60. Defendants plead that no easement exists as a complete defense.

FOR AN SEVENTH DEFENSE
(Plaintiffs Cannot Show Damages)

61. There is a grave on Lot 6B as shown by a gravestone.

62. Plaintiffs closed on the house knowing that the gravestone existed on Lot 6B.

63. Plaintiffs were aware that persons related to the deceased are entitled to come onto their property to visit the grave of their relative.

64. Plaintiffs waived any objection to having unknown numbers of strangers access their property when they closed knowing of the marked grave on their new property.

65. A copy of the e-mail from Plaintiffs accepting the property with the gravestone is attached as Exhibit "A."

66. Plaintiffs cannot show any damages from the owners of Lot 6A having access to their property when they are willing to allow unknown numbers of complete strangers to access their property.

67. Defendants plead no damages as a complete defense.

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FOR AN EIGHTH DEFENSE
(Easement Waived)

68. Plaintiff's house, garage, and fences were constructed no later than November 2006.

69. The owner of Lot 6A took possession of Lot 6A on or about May 4, 2006.

70. The owner of Lot 6A could have observed the construction of the garage and fences on Lot 6B.

71. The owner of Lot 6A constructed the house on Lot 6A before February 7, 2007.

72. On information and belief, the owner of Lot 6A did not protest the construction of the garage or the fences on Lot 6B at any time up to the present.

73. The owner of Lot 6A has waived any claim to an easement across Lot 6B.

74. Because the owner of Lot 6A has waived any claim to an easement, Plaintiffs have suffered no damages.

75. Defendants plead waiver of the easement by the dominant property owner as a complete defense.

FOR A NINTH DEFENSE
(SCRCP Rule 12(b)(7))

76. Jones claims that the owners of Lot 6B have an easement over her property, Lot 6A.

77. Rogers Townsend &Thomas, P.C. would affirmatively plead and show that the owners of Lot 6A either never had an easement or have waived the easement or are estopped to claim an easement over Lot 6B.

78. Adjudication of the existence *vel non* of the easement in this matter without binding the owners of Lot 6A will fail to provide complete relief to the parties.

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79. The owners of Lot 6A have been joined in this action and should remain parties to afford complete relief as to the issues presented.

FOR A TENTH DEFENSE
AND
PETITION FOR DECLARATORY JUDGMENT

80. The plaintiffs collectively allege that an easement appurtenant exists granting the owners of Lot 6A the right to traverse the property of Lot 6B.

81. The plaintiffs collectively allege that the easement appurtenant was originally recorded in a deed from James J. Monogham to Benjamin L. Daniel, dated April 4, 2006, and filed in the Register of Deeds office on April 5, 2006 at Deed Book 5506, page 12. A copy of the Deed is attached hereto as Exhibit 1. The plat referenced in the Monogham deed is attached hereto as Exhibit 2.

82. The plaintiffs collectively assert that they have replaced the original easement, which they now call a "Purported Easement," with an easement dated March 15, 2019 and recorded in the Register of Deeds office on March 22, 2019 at RB 2977, page 604. A copy of the 2019 easement is attached hereto as Exhibit 3. Because the line segments referred to in Exhibit 2 are difficult to read, the plat of Lot 6B is attached hereto as Exhibit 4.

83. The plaintiffs' assertions have no effect upon the nature of the "Purported Easement" with respect to their successors. The nature of the "Purported Easement" and its effect upon subsequent owners of the two lots can only be determined by a judgment.

84. A justiciable controversy exists as to the Jones plaintiffs with respect to the original "Purported Easement" in that the Jones plaintiffs assert that they have been damaged because the "Purported Easement" allowed strangers access to their property, and that

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Defendants were negligent in failing to alert them to the "Purported Easement" at the time the Jones purchased Lot 6B (the servient estate).

85. A justiciable controversy exists as to the Trustee plaintiffs with respect to the original "Purported Easement" because they and the Jones plaintiffs have entered into the March 2019 easement based upon the uncertain nature of what they describe as of the "Purported Easement."

86. The Defendants' legal rights are affected by the determination of whether the "Purported Easement" is in fact a valid easement, as set forth in the Complaint in this matter.

87. The plaintiffs allege that the "Purported Easement" is valid.

88. The defendants aver that the "Purported Easement" is not a valid easement under the facts of this case.

89. The defendants request that the Court determine the rights of the owners of Lot 6A and Lot 6B under the "Purported Easement."

WHEREFORE, having fully answered, Defendants pray for judgment in their favor, for a determination that the "Purported Easement" is in fact and law invalid, for costs, and for such other and further relief as the Court finds just and fair.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., S.C. Bar No. 4525
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Fax (803) 254-5719
wpowell@brunerpowell.com
Attorneys for Defendants Rogers Townsend Thomas, PC and Lisa Hostetler

Columbia, South Carolina
March 29, 2019

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

EXHIBIT I

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817
ELECTRONICALLY FILED - 2019 May 09 3:18 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800817

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0800817

Ronald L. Jones et al
PLAINTIFF(S)

Rogers Townsend & Thomas P.C. et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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.

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

This Matter came before the Court on May 7, 2019, upon Plaintiffs Thomas H. Gaillard and Thomas Cone's (hereinafter "Trustees") Motion for Nonjoinder, pursuant to Rule 21, filed March 29, 2019. Warren Powell, Jr., Esq. appeared on behalf of Defendant Rogers Townsend & Thomas P.C. ("RT&T"), Jay Hulst, Esq. appeared on behalf of the Trustees, and Robert Maring, Esq. appeared on behalf of Plaintiff Ronald Jones. "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP; See Branham v. Ford Motor Co., 390 S.C. 203, 242, 701 S.E.2d 5, 26 (2010). The Court finds that the Trustee Plaintiffs are no longer indispensable parties and their presence is not required to resolve the dispute. Per Mr. Hulst, the Trustees assert that their rights are not affected and that they have resolved the underlying easement issue by entering into a new easement with Plaintiff Jones thereby

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/09/2019 .

Gaye Langley Jones

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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

resolving and determining their interests in this matter. While the issue of the validity of any easements is viable to Defendant RT&T's defenses it is not viable or dispositive of the Trustee Plaintiffs interest in the property. Moreover, the Court was advised that Defendants Alexander Peabody and Peabody & Associates, Inc. stipulate to the Trustee Plaintiffs dismissal as parties. Therefore, the Motion for Nonjoinder, pursuant to Rule 21, SCRCP, is hereby Granted.

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Berkeley Common Pleas

Case Caption: Ronald L. Jones VS Rogers Townsend & Thomas P.C.

Case Number: 2018CP0800817

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

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EXHIBIT J

ELECTRONICALLY FILED - 2019 May 29 2:57 PM - BERKELEY - COMMON PLEAS - CASE#2018CP080817

Jary J Hulst

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

Follow Up Flag: Follow up
Flag Status: Flagged

Warren:

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

Thanks.

Sent from my iPhone

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

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Begin forwarded message:

> **From:** Jary J Hulst <jjh@williamsandhulst.com>
> **Date:** March 28, 2019 at 1:48:50 PM EDT
> **To:** Warren Powell <wpowell@brunerpowell.com>
> **Cc:** Robert Maring <robert@maringmoyer.com>, Ryan Earhart <ryan.earhart@earhartoverstreet.com>
> **Subject: RE: Jones v. RTT**
>
> Warren:
>
> I believe it best to get the motion resolved before proceeding with the depositions. You then proceed with their depositions whether they are in or out of the case.
>
> J. Jay Hulst
> Williams & Hulst, LLC
> P.O. Box 1288
> Moncks Corner, SC 29461

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(843) 761-8232
jjh@williamsandhulst.com

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

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

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

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

Warren:

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

Thanks.

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

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exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone at (843) 761-8232 or reply to this email and delete all copies of this message.

From: Warren Powell <wpowell@brunerpowell.com>
Sent: Thursday, March 28, 2019 12:41 PM
To: Jary J Hulst <jjh@williamsandhulst.com>
Subject: RE: Jones v. RTT

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

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

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

Warren:

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

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

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

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

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

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

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

Warren:

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

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

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No. 2180-CP-08-00817
)	
RONALD JONES,)	
)	
Plaintiff,)	
)	
vs.)	Transcript of Record
)	
ROGERS TOWNSEND & THOMAS, PC, et al,)	
)	
Defendant.)	DATE: August 6, 2018
)	

B E F O R E:

THE HONORABLE PERRY M. BUCKNER, III

A P P E A R A N C E:

ROBERT MARING
Attorney for the Plaintiff

WARREN C. POWELL JR.
Attorney for the Defendant

ROBERT BLAIN
Attorney for the Defendant, Peabody

Original transcript ordered by:
Williams and Hulst, LLC

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

THE COURT: The last matter for hearing is Ronald Jones vs. Rogers Townsend & Thomas, motion to add a party. This is the defendant, Rogers, Townsend & Thomas, PC's motion to add a party pursuant to Rule 19. I would ask that the attorneys identify themselves and who they represent. This is 2018 at 817.

MR. POWELL: Warren Powell, Your Honor. I represent Rogers Townsend and Thomas.

THE COURT: And you are the moving party?

MR. POWELL: I am.

THE COURT: Please be seated.

MR. MARING: Robert Maring from Georgetown, South Carolina. I represent the plaintiffs, Ronald and Gay Jones.

THE COURT: Very well.

MR. BLAIN: Robert Blain, here for Mr. Ryan Earhart on behalf of defendant, Peabody.

THE COURT: Am I hearing you correctly that it's Fain?

MR. BLAIN: B-l-a-i-n, Your Honor.

THE COURT: Mr. Blain, happy to have you. You want to argue an opposition to the motion?

MR. BLAIN: I don't intend to argue, Your Honor. I am not taking a position on the motion.

THE COURT: Just you, Mr. Powell. Are opposing the

motion?

MR. MARING: I am, Your Honor.

THE COURT: Mr. Maring, I read your motion and I've also read quickly your memorandum in support of your motion.

MR. POWELL: Your Honor, excuse me. For the record, I'm Mr. Powell.

THE COURT: I'm sorry. I'm confusing both sides. Mr. Powell, I've read your motions and I've read your memorandum.

Mr. Maring, I apologize if I'm calling you Mr. Powell and vice-versa. At this point in the day, I don't know my name very well.

MR. POWELL: You probably owe them an apology, but not me.

THE COURT: Happy to hear from you, Mr. Powell.

MR. POWELL: Yes, Your Honor. As you point out correctly, we move under Rule 19 and, specifically, I would point out the language in the rule that a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if, and then the No. 2, under that, he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may, as a practical matter, impair or impede his ability to protect that

interest, or leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise - otherwise - inconsistent obligations by reason of his claimed interest.

The comment to the rule points out that it's the same as the federal rule. But it points out here that the principle behind this rule is that, whenever possible, persons materially interested in the action should be joined so that they may be heard and a complete determination had.

Your Honor, under this case, this concerns an easement, an alleged easement on a piece of property.

THE COURT: Which your client issued a title insurance policy?

MR. POWELL: They did. And they acted as closing attorney.

THE COURT: So they closed it and issued a title insurance policy?

MR. POWELL: That's right, sir. And the -- just to get the numbers straight, Lot 6A is -- the owner of Lot 6A, if there is an easement at all, they are the owner of that easement.

THE COURT: Who is "they"?

MR. POWELL: That is not a party to this case.

THE COURT: But "named person", Counsel, the record doesn't know who you are talking about.

MR. POWELL: It's in the motion.

THE COURT: I understand that, but I need to know.

MR. POWELL: Trustee is Thomas Huguenin Gaillard --

THE COURT: All right.

MR. POWELL: -- as trustee of the Thomas Gaillard Revocable Trust dated April 3rd, 2007, and Thomas W. Cone, Jr., as trustee of the Thomas W. Cone, Jr., Revocable Trust dated April 3, 2007.

THE COURT: So you want to add both of these entities as parties to this action pursuant to Rule 19A?

MR. POWELL: That's right.

THE COURT: On the basis that you don't think adequate relief can be given unless there's a determination as to whether or not this is or is not a valid easement?

MR. POWELL: Correct, sir. Your Honor, in short form, as I say, the owners I just recited of Lot 6A, if there is an easement, they are the owner. They are the dominant estate, if there is one at all.

The plaintiff is the owner of Lot 6B over which the alleged easement --

THE COURT: Subservient estate?

MR. POWELL: -- subservient estate, correct. So the plaintiff has sued the law firm and the surveyor in this matter. But the dominant estate owner is not a party. It would seem that the dominant estate owner, the person or the

lot, the owners of the lot, would have a right to use the alleged easement, if there is one, would be a material -- would have a material interest in this lawsuit.

THE COURT: Have you raised as a defense to this matter -- on behalf of your clients, have you raised the fact that you -- first of all, you don't concede there's an easement. But have you raised the defense if an easement does exist, that it should be determined as a part of this action?

MR. POWELL: Well, it would necessarily have to be so. That's our defense, that it is not. So that is a predicate to getting to the goal line in this case.

THE COURT: All right.

MR. POWELL: And the problem is, Your Honor, and I would submit that here, if, for example, we win, say we win this lawsuit, that there is no easement, well, the dominant estate owner is not a party. And he should be made a party in order to, whatever the result, to bind him to the result. If he doesn't care, he doesn't care. But at least he's bound by the result.

THE COURT: Which is exactly what you believe is the reason for Rule 19?

MR. POWELL: Yes, sir.

THE COURT: Because complete relief can't be given absent the joiner?

MR. POWELL: Yes, sir, or also avoids inconsistent results. If we win and then there's a subsequent action between these two, for whatever reason, and then the dominant stakeholder wins, then you've got inconsistent results. And that's not supposed to be.

THE COURT: Thank you very much. Mr. Maring, let me hear from you.

MR. MARING: Thank you, Your Honor. First of all, the law firm has no standing to request whether or not there's an easement or not. That's between the dominant and servient estate. They have no standing to say there is no easement. We believe there is an easement. We've been in this for two years --

THE COURT: I understand you do --

MR. MARING: We've been in this two years and we resolved --

THE COURT: The law firm does have a right to raise the defense, first of all, there is no easement, which is in their pleading.

MR. MARING: Well, yeah.

THE COURT: And the determination of whether or not there is or is not an easement, his argument is that he can't get complete relief unless he binds them with being a part of this action. He also argues it would lead to possibly inconsistent results. Tell me your response.

MR. MARING: Your Honor, our action is simply for negligence. Whether or not an easement exists or not, the negligence was failing to disclose that to my clients. Whether or not they got the benefit of the bargain prior to closing the transaction, knowing that there was an easement -- and I will say, Your Honor, this was an easement of record --

THE COURT: You concede, Mr. Maring, if there is no easement, they had no duty to disclose? If there is no easement, they had no duty to disclose?

MR. MARING: If there is no easement, if there is no easement, they have no duty to disclose. I agree. But if there's no easement, Your Honor -- well, let's take a step back. We are not contending that the easement doesn't exist. We believe that the easement does exist.

THE COURT: I completely understand that.

MR. MARING: Our neighbors, they are trying to say that --

THE COURT: How would you be prejudiced by the joinder?

MR. MARING: I have to sue my neighbor, Your Honor. There's nothing more prejudicial than suing your neighbor.

THE COURT: You are not asking for damages against your neighbor, are you? You are just asking for the Court to determine whether or not both the dominant and the

subservient alleged owners of this easement are bound by this action.

MR. MARING: Well, no, Your Honor. I believe what they are saying is, they believe that the reason that they are asking for these clients to be brought in is that somehow they are going to be prejudiced because of some right that the dominant estate holder is going to have. The only person that the dominant estate holder can assert any action against is my clients. They can't bring an action against the law firm. There's no shoe to fall later on for the law firm in this case.

THE COURT: You say that's an action. You are talking about damages now and I'm talking about whether or not there's a determination as a matter of law as to whether an easement exists or not so that the people that may or may not purportedly hold any interest in this easement are also joined as parties in this action.

MR. MARING: Well, Your Honor, I would say submit to you that the only two people, the only two people who can make a determination as to whether or not an easement exists is the dominant estate holder and the servient estate holder. And we both agree the same thing, we believe that the easement does exist.

THE COURT: Well, then that might be an easy call for the Court, but they are not parties to this action. And

that's what this motion is about, not determining whether the easement does or does not exist.

MR. MARING: And I would like to know from counsel, does he want me to sue my neighbor, or is he asking the Court to make them sue me?

THE COURT: All right. Mr. Maring, you made your point. Be seated. Briefly in reply now.

MR. POWELL: Rule 19, I think, addresses counsel's concern. It allows the Court to make a party that may not want to enter be brought in as an involuntary plaintiff.

MR. MARING: If I could, Your Honor --

THE COURT: Hold now. Sit down, Mr. Maring. When I say it's over, it's over. You don't stand up and say, uh-oh, but, but. I agree that Rule 19 does address it. Nobody is asking you to create a dispute with your neighbor, Mr. Maring. This is exactly why we have Rule 19. And because I believe that, in their absence, complete relief cannot be granted in this action, because I want the parties all bound by it, you will prepare the order, Mr. Powell. And you will make them plaintiffs in this matter so the Court can make a determination, so that Mr. Maring doesn't have this idea that somehow or another, I'm creating hostility with his neighbors between both the servient and subservient.

I'm granting your motion because I don't believe that with the disposition of this action complete relief can

be granted. And it impairs your ability to raise the defense because you would then have to do it in multiple actions.

Now, whether or not there is or is not an easement, the Court offers no opinion on that. Mr. Maring says he believes there is. And if that is the case, he alleges you violated a duty to disclose that to your client as closing attorney. And that is a matter that will be litigated. But we are going to make sure we have all the parties before the Court at that time.

Please prepare the order consistent with my ruling. You have seven days from today. They don't have electronic filing here yet.

Although, when you are you getting it, next month?

THE CLERK: Yes, Your Honor.

THE COURT: Next month. Well, they are coming. They are doing county by county. We've done about 20-something counties over 26 now. So, please, prepare the order granting your motion for joinder, unless you want me to do a form order that says they are plaintiffs by order of the Court pursuant to Rule 19. The motion is granted.

MR. POWELL: Suit you?

MR. MARING: That's fine, Your Honor.

THE COURT: Do me a Form 4 order. Motion granted. And Thomas Huguenin Gaillard, as trustee of the Thomas Huguenin Gaillard Revocable Trust dated April 3rd, 2007, and

Thomas W. Cone, Jr., as trustee of Thomas W. Cone, Jr. Revocable Trust dated April 3rd, 2007, are now named party plaintiffs in this matter. And ordered that adjudicate -- adjust adjudication pursuant to 12A. The motion is granted. Thank you all very much.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	NINTH JUDICIAL CIRCUIT
RONALD L. JONES AND GAYLE L. JONES, THOMAS H. GAILLARD, as Trustee of The thomas H. Gaillard Revocable Trust, Dated April 3, 2007 and THOMAS W. CONE, JR., as Trustee of The Thomas W. Cone, Jr., Revocable Trust, Dated April 3, 2007,	Case No.: 18-CP-08-0817
Plaintiffs,	TRANSCRIPT OF RECORD
-vs-	
ROGERS, TOWNSEND & THOMAS, P.C., LISA HOSTETLER, ALEXANDER C. PEABODY & ASSOCIATES, INC.,	
Defendants.	

May 7, 2019
Moncks Corner, South Carolina

BEFORE:

HONORABLE Deadra L. Jefferson, Judge

A P P E A R A N C E S:

Robert W. Maring, Esq.
Attorney for Ronald and Gayle Jones

Jary J. Hulst, Esq.
Attorney for Gaillard and Cone

Warren C. Powell, Jr., Esq.
Attorney for Rogers, Townsend & Thomas

T. Dayton Grainger, Jr.
Family Court Reporter

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

Certificate p. 46

EXHIBITS

NO.	DESCRIPTION	ID.	EV.

(There were no exhibits marked.)

THE COURT: This is Ronald Jones versus Rogers, Townsend and Thomas, P.C., 2018-817. Who is appearing on behalf of the Plaintiff?

MR. MARING: I am, Your Honor, Robert Maring.

THE COURT: Okay, and there's someone assisting you?

MR. HULST: No.

THE COURT: No? You're just here to hang out? Okay.

MR. HULST: I'm ---

THE COURT: You're Mr. Jones? No?

MR. HULST: I'm Jary Hulst.

THE COURT: Okay.

MR. HULST: I represent William Cone and Thomas Gaillard, who were named as the nominal Plaintiffs in a motion to add a party back in June. We have the motion for ---

THE COURT: So, ---

MR. HULST: --- misjoinder, non-joinder.

THE COURT: Oh, I got you.

MR. HULST: And Mr. Powell, to my far left, has the motion to amend.

THE COURT: Yeah, and you are Mr. Powell?

MR. POWELL: I am, Your Honor.

THE COURT: And you represent Rogers, Townsend and Thomas, P.C.?

MR. POWELL: And Ms. Lisa Hoststetler.

THE COURT: Lisa Hoststetler?

MR. POWELL: Hoststetler, yes, ma'am.

THE COURT: Hostetler. Spell that for me.

MR. POWELL: H-o-s-t-e-t-l-e-r.

THE COURT: Thank you, Hostetler.

MR. POWELL: Right.

THE COURT: All right. We'll take the motions in the order they were filed. Well, they're both filed on the same day. So, what order do y'all want to go?

MR. POWELL: Your Honor, I'll be delighted to go ahead at this time.

THE COURT: All right. Sure. You may proceed.

MR. POWELL: Your Honor, ---

THE COURT: And that's the motion to alter – motion to alter or amend? Whose order was it?

MR. POWELL: It was – it was – no, ma'am. It was a motion to amend the answer to assert ---

THE COURT: Amend the answer. That's a typo on – motion to amend the answer.

MR. POWELL: Yes, ma'am.

THE COURT: Okay. You may proceed. I apologize for that.

MR. POWELL: These motions – these are cross-motions, Your Honor, and they bleed over into one another.

THE COURT: Okay.

MR. POWELL: With the Court's permission I will address both at this time.

THE COURT: That's fine.

MR. POWELL: Because separating them would be a mess.

THE COURT: That's fine.

MR. POWELL: Your Honor, first of all, we make a motion to amend our answer to assert a declaratory judgment action. Mr. Hulst has filed a motion to – in essence, for non-joinder claiming that his client should be dismissed under the facts of the case. That's looking at the forest.

Permit me, if you will, Your Honor, to introduce the Court as to the facts involving the case. Your Honor, we had a notebook FedExed to the courthouse yesterday for you and your clerk.

THE COURT: To this courthouse?

MR. POWELL: Yes, ma'am.

THE COURT: Was it documents that were already filed?

MR. POWELL: They were filed, but the exhibits weren't with them, because the exhibits were too large to email those.

THE COURT: Check downstairs.

MR. POWELL: They have been signed for. So, ---

THE COURT: We have just got to check downstairs for them. My clerk didn't look. She's going to get it.

MR. POWELL: In any event, I think I can start ahead.

THE COURT: Yeah. Go right ahead.

MR. POWELL: If you want to reference the exhibits in the notebook when she gets back that will be fine. I have provided opposing counsel with copies of that, too. Your Honor, this – first of all, let me comment about the estates that are involved, and when I say estates, I mean, real estate.

THE COURT: Were the exhibits the plats and other things?

MR. POWELL: No, ma'am.

THE COURT: Okay.

MR. POWELL: No, ma'am. They were emails, some emails and some other documents. In fact, the complaint is one of the exhibits and so on. There are a number of ---

THE COURT: What are you seeking to – you want to amend to add a DJ action?

MR. POWELL: Yes, ma'am.

THE COURT: And what is it you're asking that the Court determine in that DJ action?

MR. POWELL: I'm asking the Court to determine whether or not a 2006 easement, which was the easement alleged --- the purported 2006 easement, whether or not it is valid, and if it is valid, whether or not Mr. Hulst's clients and the – and his predecessors in interest abandoned that easement, and in addition, there has been another easement.

I will assert, Your Honor, that there are problems with the 2006 easement, and another easement has been filed in this matter about six weeks ago, and that is the – that forms the basis of – not to speak for him, but Mr. Hulst's claims that – urges that his client should be dismissed because of the new easement that comes along in that – in light of that, it makes his clients unnecessary and should not be misjoined in this case to that – which we oppose. We oppose ---

THE COURT: And I apologize. I didn't put the full caption on the record, because it's not on my docket, and for the Court Reporter's benefit it's Ronald L. Jones and Gayle Langley Jones, Thomas Huguenin, H-u-g-u-e-n-i-n, Gaillard, as Trustee of the Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas W. Cone, Jr., as Trustee of the

Thomas W. Cone, Jr., Revocable Trust, Dated April 3, 2007, versus Rogers, Townsend and Thomas, P.C., Lisa Hostetler, Alexander C. Peabody and Peabody & Associates, Incorporated, which will make a whole lot more sense for my Court Reporter.

MR. POWELL: Yes, ma'am.

THE COURT: So, now, he'll know who you're talking about.

MR. POWELL: All right.

THE COURT: Okay.

MR. POWELL: The – on May 7 of 2010 – the facts are a little convoluted. So, ---

THE COURT: Let me interrupt you one quick second.

MR. POWELL: Yes, ma'am.

THE COURT: Does the Plaintiff object to this motion to amend the answer?

MR. MARING: I do, Your Honor.

THE COURT: And tell me what prejudice you suffer.

MR. MARING: Well, they have no standing to bring this argument, Your Honor. He is asking for a declaratory judgment action as to the validity ---

THE COURT: But is that really the standard? Wouldn't that be a defense?

MR. MARING: Well, it's not just that, Your Honor. It's also under mootness and – because what he's basically saying is ---

THE COURT: I don't have to determine the merits. That's for another day. The standard is whether he's entitled to do it, whether you're

prejudiced, which means a lack of opportunity -- lack of notice and a lack of opportunity to refute it. I'm supposed to grant all amendments, really.

MR. MARING: I do understand that.

THE COURT: Whether they're valid or not.

MR. MARING: I understand, Your Honor.

THE COURT: It's the issue of the defense.

MR. MARING: And ---

THE COURT: And that's why I'm asking, you are sort of putting – you want me to determine the – what's the word that I'm looking for – the liability of his amendment, and I don't know that that's the standard I'm supposed to apply.

MR. MARING: It's whether or not the amendment is futile, and I think that would be the standard, and I think ---

THE COURT: I don't know if it's futile. Then, you expect me to go to the merits of it, and the law says I'm not supposed to do that. That's almost like when somebody asks to amend something and they know the statute has run; that's not for me to decide. That's for you to file a motion to say the statute has run, and the Court says the statute's run, which sometimes can be – that probably is not the best example, because sometimes statutes legal – I mean, a factual issue for a jury to decide, but you know it's a very light standard for ---

MR. MARING: And Your Honor, listen, I do understand that, and I think that Mr. Hulst's argument for non-joinder, he wants – he wants our neighbors out, and in essence, we have settled our dispute, and that's part of the – that's part of what we believe to be part of this declaratory judgment

action. You know if you look at his motion he also is attacking the validity of the newest easement that we have entered into, but I will let Mr. Hulst – I think this is his argument. I mean, I'm not going to – I mean, I understand that the standard is certainly low on the threshold for granting amendments. I would just stick to my argument that the amendment is futile. We'll be back in six weeks on a motion to dismiss, and you're right, that is what it is.

THE COURT: Unfortunately, procedurally ---

MR. MARING: I understand.

THE COURT: --- that's how it works.

MR. MARING: I understand that, Judge.

THE COURT: That's why I asked the question, because there's no need in us having a protracted argument when the standard is that low. I'm just trying to figure out what – where's the lack of notice and where's the inability to refute it, because your defense is the ability to refute it, which is, you file a motion to dismiss.

MR. MARING: I understand, Your Honor.

THE COURT: Yeah. So, that's why I asked that question. Do y'all really have an objection? Is your objection really about defending it and having it dismissed, or is your argument really about his right to have the amendment?

MR. HULST: Can I ---

THE COURT: Yeah.

MR. HULST: Can I speak, Your Honor?

THE COURT: Yes.

MR. HULST: So, my clients – and I'm just going to refer to them as Cone and Gaillard, because saying all of the trust stuff ---

THE COURT: I agree, it's a lot.

MR. HULST: --- is too much for me to handle. So, you know the reason my clients, who own the dominant estate in this action, who own the property that has the easement -- the reason my clients were added to this case was stated in Mr. Powell's motion to add a party pursuant to Rule 19, indispensible parties, and the basis for adding them is, if RT&T -- that's Rogers, Townsend and Thomas -- is successful in defending claims brought by Jones on the grounds that the easement does not exist or that it is unenforceable by waiver or estoppel, complete relief will not be achieved thereby. If the unbounded dominant property owner asserts rights to an easement over the Jones property Jones may bring an action against the title insurer to defend Jones or enter suit against the alleged dominant estate holder, which could lead to additional actions against movant, RT&T, unless complete relief is supported. That's why they were added.

So, the whole issue is whether or not -- if this old 2000 easement is in existence, is deemed to be invalid my client might bring an action against either RT&T's title insurer, which is Lawyers Title or against the Jones', who would turn around and make claim to their title insurer.

This old purported easement from 2006 has been terminated. The documents have been filed. They're recorded. That easement is terminated. So, there is no longer an easement that threatens either Rogers, Townsend and Thomas' title insurer or threatens the Jones with anything. Plus, the new easement that has been put in their place between two private

landholders, the Jones and my clients, was – was – was negotiated by and done at the instance of RT&T's title insurer, Lawyers Title.

So, my people agreed to this new easement. They agreed to terminate the old easement, and the whole basis for them being added a party has now been removed. There is no longer a basis for them to remain in the case.

Mr. Powell insists that they have to remain in the case, because he wants to litigate about the old purported easement, and he wants to add this declaratory relief action to declare that the old purported easement is invalid, and that doesn't matter, because it's terminated.

THE COURT: All of this sounds like a defense.

MR. HULST: Well, ---

THE COURT: Which is what you move to – it is not for me to determine the viability of his amendment.

MR. HULST: Well, my motion was filed first, right? So, ---

THE COURT: Well, I don't know. I hadn't looked to see what time each one was filed.

MR. HULST: Will you concede that my motion was filed before yours?

THE COURT: I don't know that it really makes a difference.

MR. HULST: Well, that's ---

THE COURT: They were both filed on the same day.

MR. HULST: When I'm filing a motion and there's no notice, no nothing about, well, I'm planning on amending my complaint to add ---

THE COURT: You're saying you never got notice of the motion to amend?

MR. HULST: I got notice of the motion to amend the – the – the – after I filed this motion to have my clients dismissed. So, yeah, I've had notice of this motion.

THE COURT: Well, let me ask what – was there a cross-claim or a counterclaim filed against your claim?

MR. HULST: No. My clients have no claim.

THE COURT: So, if your – I'm a little confused then. If you settled with the Plaintiffs, then, you're out of it all together. So, I'm trying to figure out, why did you file this motion?

MR. POWELL: No, ma'am.

THE COURT: Did you file a counterclaim?

MR. POWELL: No, ma'am. We moved before Judge Buckner after reviewing a motion under Rule 19 as Mr. Hulst said. These people – my clients have been sued because the Plaintiff claims that she wasn't informed of this easement owned by Mr. Hulst's client, okay?

We – that is in contest whether that easement is valid or not, and if it is valid – in other words, for technical reasons that I will not punish Your Honor today to get into, but it is in contest whether that easement is valid. That's what this litigation is about in part.

Mr. Hulst's client was, as he says, the purported – and as the new easement calls it, the purported 2006 easement, the alleged 2006 easement. My clients get sued by Ms. Jones for – because she wasn't informed about it. She was claiming damage and does continue to claim damage to her property because Mr. Hulst's clients, before this suit was filed and after this suit was filed and continues today, claims a right to traverse across her

property. Now, they may have filed a new easement as between them ---

THE COURT: But they have settled it, correct?

MR. POWELL: But – no, ma'am. They filed a new easement, a new easement.

THE COURT: He just told me they have settled.

MR. POWELL: They have not. There was never a claim ---

THE COURT: I don't think you can say whether they have settled ---

MR. MARING: Your Honor, we have never had a claim against one another. As a Plaintiff I only sued Rogers Townsend and the surveyor for professional negligence for failing to disclose the ---

THE COURT: I got ---

MR. MARING: --- 2006 easement.

THE COURT: Yeah, I got that part.

MR. MARING: We never sued the Gaillards – Mr. Cone and Mr. Gaillard over the validity of the easement.

THE COURT: But they're suing Rogers and Townsend?

MR. POWELL: No, they're not.

MR. HULST: We have no ---

THE COURT: Then, why are they parties?

MR. POWELL: They're a party -- Your Honor, if might answer that. They're a party because they assert a right to cross over the property, and that is in contest in this case.

THE COURT: Who owns the property?

MR. POWELL: Ms. Jones owns the – owns 6-B. Next door to it is 6-A. The alleged easement, the purported easement, gives Ms. Jones – gives the –

Mr. Hulst's clients – the trustees, and that's how I'll refer to them going forward, the trustees, because they're the owners of 6-A, the right to traverse her property.

Now, what they have done is they have filed what I call a dock easement. They have combined together and said, okay, we're going to build this dock together. So, they – she voluntarily gave them an easement six weeks ago in an express easement across her property, but she continues to assert damages against my client for that. She continues to assert damages in this case for the easement that Mr. Hulst's clients assert, and I can point to Your Honor – if I might, I can perhaps elucidate, if I get a chance to make my presentation ---

THE COURT: I'm just trying to figure out – because I'm not resolving this today. It's not before me to resolve today. I have two very limited issues before me, and I'm trying to figure out ---

MR. HULST: My clients have no claim in ---

THE COURT: When were they added as parties?

MR. HULST: We were added ---

MR. MARING: Last year. Last ---

THE COURT: And at whose motion were you added as parties?

MR. POWELL: Me, Your Honor, the Defendants.

THE COURT: And who granted that motion?

MR. POWELL: Judge Buckner.

THE COURT: And they were granted as indispensible?

MR. POWELL: They were granted as appropriate and necessary parties ---

THE COURT: Because it affected their interest?

MR. POWELL: Because it affected their interest and complete – and complete relief could not be accorded without the dominant estate holder.

THE COURT: Yeah, but they have resolved this issue.

MR. POWELL: No, ma'am, not as to us. You see ---

THE COURT: How could they not have resolved it as to you?

MR. POWELL: Because they – they continue to assert the right to cross her property for which my client has been sued. If I ---

THE COURT: That doesn't give you an interest. The only people interested in that are the people owning the property and whose rights they claim are being infringed.

MR. POWELL: But Your Honor, ---

THE COURT: That's a little confusing. It has nothing – you may want to call them as witnesses, but they're not dispensable – indispensible to you doing what you need to do.

MR. POWELL: Your Honor, if I might, I have cited some law to you, and under Rules 19 ---

THE COURT: It's all discretionary.

MR. POWELL: Nineteen and 20 and 21 they ---

THE COURT: They might have been indispensible before they resolved it.

MR. POWELL: They haven't resolved it.

THE COURT: They say they have resolved it.

MR. POWELL: All they did is file a new easement, and if I might ---

THE COURT: It's their dispute, and if they say it's resolved, it's their

interest that they say they have resolved.

MR. POWELL: But we have a – we are interested and what we seek to do in our --

THE COURT: And really, they don't need my permission, because they could resolve it and file a 41 and dismiss the parties if they want to.

MR. POWELL: Your Honor, they didn't bring them in.

THE COURT: It doesn't matter. They can still dismiss them if they resolved the dispute that's factually between them.

MR. POWELL: There is no dispute between them.

THE COURT: They say there is. You have an easement. The only people that can be affected by that are the folks – is the property owner and the person who wants to come over their property.

MR. POWELL: Your Honor, ---

THE COURT: That's the only way they would have come into this, because they don't claim to have any damages.

MR. POWELL: Well, -- no, ma'am. It's beyond – what they do claim, though, is a right to traverse the property. This isn't – as to Mr. Hulst's client it isn't a matter of ---

THE COURT: Who owns the property? Who is the dominant estate owner?

MR. POWELL: The dominant estate owner is Mr. Hulst's – Mr. Hulst's client.

THE COURT: Uh-huh (affirmative response). So, it's their property?

MR. POWELL: No, ma'am.

THE COURT: They ---

MR. POWELL: No, the dominant estate holder easement law, Your Honor, is the party that has the right to use the easement.

MR. MARING: The easement is located on my – the easement is on my client's property.

THE COURT: Who owns the land?

MR. MARING: My clients.

MR. POWELL: Ms. Jones.

THE COURT: And how big of an easement are we talking about?

MR. MARING: Your Honor, it was a 25 foot easement that traversed the entire – it circled the property. It's on a peninsula on Daniel Island overlooking the water, and it was a 25 foot easement that circled the – that encircled the water.

What we have done is we have resolved the issues of that 25 foot, because the easement was – there was a garage that was built inside the easement area, that the right side of the house could potentially be in the easement area.

What we have done is we have – and you have a copy of it in the file that Mr. Powell's provided you. Basically what we have done is we did a 10 foot easement that traversed half the property to the back. So, we have reduced the scope – quite frankly, we have mitigated the damages for the law firm. It's undisputed that the easement was not disclosed to my clients when they purchased the property. What we have done is we have mitigated our damages. We have ---

THE COURT: Was the easement ever filed?

MR. MARING: Yes.

THE COURT: And you're saying it wasn't disclosed to them?

MR. MARING: No.

THE COURT: And you're saying it was missed in the title search?

MR. MARING: It was.

THE COURT: Okay.

MR. HULST: The title insurer – it's the agent that has ---

MR. MARING: Their agent ---

MR. POWELL: No, they're not our agent. The ---

MR. MARING: Your ---

THE COURT: You're talking to each other.

MR. MARING: Your Honor, in essence, we have resolved the issue with the easement by reducing the scope and the size of the easement on the property, and as two property owners we have a right – as a matter of fact, the law favors two property owners to resolve their differences, which is what we have done.

THE COURT: I'm trying to figure out, why do they even need to be in this when they're not claiming any damages? Well, ---

MR. MARING: And now, you see why ---

MR. POWELL: May I – may I be permitted to answer, Your Honor? In the complaint, which is under Tab 1 in the notebook ---

THE COURT: I have the complaint right here.

MR. POWELL: Okay. Under paragraph 31 and 32 expresses better than I can the situation, and it's on page six of the complaint, and that is, the pleading before Your Honor that – that these motions are all under the – the issues framed here by the Plaintiff, by Plaintiff Jones, paragraph 31

states, "That the owners of Lot 6-A ..." – that's Mr. Hulst. Now, this was contemplated when this suit was filed, "That the owners of Lot 6-A will not terminate their rights to the easement." Okay? They will not terminate; that's what the Plaintiff says, "...but in the alternative have agreed to reduce the size and scope of the easement from 25 feet to 10 feet." Paragraph 32, "That as a result the owners of Lot 6-A will continue to have an easement on the Plaintiff's property depriving them of exclusive ownership of their property ..." -- for which Plaintiff/Jones seeks damages against my client.

What we – the reason that the Hulst – that the trustees are – are parties – appropriate parties to be included in this case is that it needs – in order to provide a complete relief certainly the dominant estate holder needs to be in the lawsuit.

First of all, we have alleged in our answer that they have abandoned the easement, okay, over the course of time. That needs to be determined, and that determination needs to be binding upon the dominant ---

THE COURT: Sounds to me like their agreement has nullified any of those arguments, because they have resolved it among themselves, and I'm trying to figure out how you're going to have any authority to change what they have agreed, because it doesn't matter what a Court finds. They have usurped it by making an additional agreement which they're entitled to do. It's their property.

MR. POWELL: Your Honor, it – that's – that's true, but what we are entitled to determine is as to both parties, all parties, is whether or not that 2006 easement is valid and whether the current easement is valid. The current easement that they just drafted – you see what 32 says, paragraph

32; it says, they continue to assert a right to use the easement for which Mr. Jones – Mr. – Ms. Jones seeks damages against my client.

So, what our defense is, the easement is, A, no good to begin with, and what they have done, yeah, they have narrowed it trying to fix that 2006 easement. It had horrible problems with it. They tried to fix that, and the Plaintiff states that even though it's narrowed they're going to continue to assert the easement in this case, and so, she seeks damages for that reason.

Now, if the 2006 easement and the 2019 easement of six weeks ago is – if both of them are not valid, -- first of all, if the first one isn't valid, then, my client should – should take advantage of that, because they did that on their own, but Mr. Jones – Ms. Jones, rather, her position in the case continues, even though we – even though we tried to cancel out the 2006 easement, I still got this easement on my property, and they still got a right to come across it, and lawyer/Defendants, you need to pay me for that. So, Your Honor, to release the dominant estate holder in this case hamstrings the defense ---

THE COURT: How?

MR. POWELL: And – because I need to be able to bind the dominant estate holder to whatever finding the Court makes; that is, that we could go forward – even now we could go forward, and if the Court – if they're dismissed, if they get out of the case, they could later say and continue to use the easement and – and then, say, well, if it was found invalid in – in our favor they could ignore it, because they're not parties to this case.

MR. HULST: Which easement are you talking about?

MR. POWELL: I'm talking about both of them. I'm talking about the second easement and the first, because ---

MR. HULST: The first easement is terminated. The ---

MR. POWELL: If ---

MR. HULST: --- second ---

MR. POWELL: --- you would not interrupt me, please.

MR. HULST: The second easement is ---

MR. POWELL: The second easement ---

MR. HULST: Is between ---

MR. POWELL: There's still that issue, because that easement is the easement that Ms. Jones also sues my clients for – to recover for. She says in paragraph 32 of the complaint, "That as a result the owners of Lot 6-A will continue to have an easement on Plaintiff's property depriving them of the exclusive ownership of their property." So, ---

THE COURT: Apparently that's not their position anymore.

MR. POWELL: Well, that's the pleading before Your Honor. That is ---

THE COURT: It's a notice document. It's not binding. You can change your mind about your theory 20 times while you're trying a case. That's just to put you on notice as to what you need to defend. They're not bound by that. They can change their theory any time they want to.

MR. POWELL: Well, that's true, Your Honor, but today they haven't done it.

THE COURT: I don't know. When they filed that easement it sounds to me like they did.

MR. POWELL: Your Honor, all – the easement doesn't say anything

about what Ms. Jones is claiming from us. It doesn't address it. That's what this case is about, whether she's entitled to damages. You see what they're doing. They are – they have combined together and – and filed this easement and they're building a dock together, splitting it 50/50. All of that is in the notebook, and they're both going to have joint use of the dock, and they want the lawyers to pay for it.

THE COURT: I don't know. It sounds to me like they're trying to make lemonade out of lemons. They got to come over the property somehow. So, they needed to resolve it. I commend them for doing it, because most people – unfortunately this week I have been hearing a lot of boundary disputes with people that are making each other sick fighting all day long over 20 feet of property.

So, if they were able to resolve it I commend them for it, because it means, then, that they have finality in their life about it, and they don't have to go back and forth about it for the next three or four years.

MR. POWELL: Your Honor, ---

THE COURT: I don't have a problem with people resolving disputes.

MR. POWELL: Well, Your Honor, I ---

THE COURT: That are mutually beneficial to them, and I don't know that it really makes a difference as to your liability or non-liability.

MR. POWELL: Well, it would, but in any event, Your Honor, ---

THE COURT: No. Either you did what you are supposed to do or you didn't. It's a standard. It's about whether you met your duty of care or whether you didn't.

MR. POWELL: No, ma'am, respectfully. It's also as to whether the

easement is valid in the first instance, and that's why they changed it, one of the reasons they changed it; they filed the other one, because that one that they would have to litigate under had problems from stem to stern, and so, what they're trying to do is to come up with this new one with Ms. Jones continuing to assert damages against my client for that easement.

THE COURT: I read the paragraphs you were referring to, and it sounds to me like their actions are consistent with what they have alleged. What they say is, that the owners – and I'm not going to go through the whole lot reference – will not terminate their rights to the easement but in the alternative have agreed to reduce the size and scope of the easement, and it sounds like they have come to an agreement about that, because they feel it's mutually beneficial, and for whatever reason – people settle cases for a myriad of reasons, and I'm not trying to dissect somebody's brain and find out why they agreed. It's usually everybody gave a little bit for the purpose of peace, especially when you're dealing with property, and then, section – paragraph 32 says, "That as a result the owners of Lot 6-A will continue to have an easement on the Plaintiff's property depriving them of exclusive ownership of their property."

So, basically, the gist of what the Plaintiffs have alleged is that they were never told there was an easement. I don't think they really care what size it was, because they don't want it on their property at all, but you have some folks who have a right to an easement, that it was not discovered by your client. I assume they did the closing. I have read these pleadings, but I have read a lot of things all week. So, I'd have to go back and read it again, but I'm still at a loss as to why – I guess I'll think through it some

more, because we have gone far from the purpose of what these motions are, and I need to reign it in and get us back on track. I need to know as a practical matter why you object to his motion to amend, because I think he's entitled to it. Whether you can defend it is a whole other issue.

MR. MARING: I ---

THE COURT: The standard is notice and a lack of opportunity to defend. I think he's entitled to amend it. Now, whether it has any validity, whether it has any viability, that's another day.

MR. MARING: That's fine, Your Honor.

THE COURT: Yeah. I think he's entitled to the amendment. The other issue becomes, though, the non-joinder, and I need to hear from Mr. Hulst and then, I will hear from Mr. Maring and then I will hear from Mr. Powell.

MR. HULST: Your Honor, the non-joinder is simply based on – the basis – the reason why we were brought into the case in the first place; we have no claims against RT&T. We have – we have – RT&T until now asserted no claims against – against my clients, and the reason – the sole reason we're brought into this case is because Mr. Powell stood up and told Judge Buckner that there was no way he could assure complete relief for his clients in this case without having my clients there, because they would not be bound by any determination as to the validity of the old easement.

Well, we have – that's why we're in the case. So, we're just dragging along in the case. We have no claims. We just get to be glorified ---

THE COURT: Doesn't the determination of this easement affect you?

MR. HULST: The determination ---

THE COURT: Wouldn't an appropriate way to deal with this either be a summary judgment or a directed verdict?

MR. HULST: The determination of ---

THE COURT: Non-jury under Rule 40?

MR. HULST: Well, a determination of the old easement is that the old easement is gone. It's been terminated.

THE COURT: Yeah, but what if there's some other decision regarding that that affects your client?

MR. HULST: Some other decision regarding the old easement?

THE COURT: Theoretically. I mean, I'm just thinking ahead.

MR. HULST: I don't know how any other decision regarding that easement can affect my client. My client has terminated all of their rights under that easement, and the only thing that they would have is some claim against the Jones for the old easement, which they have terminated. So, there's – it's gone. That's just how property law works. If you ---

THE COURT: Well, I know this may come as a surprise, -- and I hadn't practiced law in 23 years, but a bulk of my practice was property. I did a lot of ---

MR. HULST: Right.

THE COURT: A lot of – I did a lot of ---

MR. HULST: Sure.

THE COURT: --- title searches. I ain't done one in a long time. I ain't looking to do one any time soon.

MR. HULST: Right.

THE COURT: I would suspect it has changed so much that I wouldn't

even know where to start, but this is not a foreign subject matter to me.

MR. HULST: Excellent.

THE COURT: I did a lot of closings, did a lot – drafted a lot of easements.

MR. HULST: Excellent. So, ---

THE COURT: Yeah. So, I know what you're talking about. Yeah.

MR. HULST: So, -- so, the basis for us continuing in the case, dragging along at great expense to my clients without any possibility of recovering anything -- there's not going to be any attorney's fees for them. There's not going to be any reward for them down at the end. They're just in here, really, at – at – at Mr. Powell's ---

THE COURT: Seems like you'd bring a frivolous proceedings thing once this is all over.

MR. HULST: Yeah, but you have to try the case and prevail on the case to do that.

THE COURT: Well, according to what you're telling me you will.

MR. HULST: Your Honor, that's – that's cold comfort to my clients.

THE COURT: So, you're saying, pursuant to Rule 21 they're not – and Rule 19 they're not necessary for this case to be adjudicated?

MR. HULST: They are not necessary based on ---

THE COURT: And you have eliminated their need to be a part of it because you all have basically dealt with this impediment by drafting a new easement and filing it?

MR. HULST: That's exactly right.

THE COURT: In a nutshell, okay. Mr. Maring, what's your position?

MR. MARING: Your Honor, I mean, basically that's – that is our position, is that we have resolved this, and the other thing, Your Honor, Mr. Powell made a comment earlier that the validity of the easements are in question. Your Honor, I'm the Plaintiff. I represent the servient estate. Jay here represents the dominant estate. We both agree that the 2006 easement was valid. That is why we resolved the case. I did not sue Mr. Cone or Mr. Gaillard indicating that the easement was invalid.

My clients would have the only – are the only people who can actually make that claim. The law firm can't make the claim that the easement is invalid.

THE COURT: Tell me something; how are y'all contending that this was missed in the title search? Was it recorded?

MR. MARING: Yes.

THE COURT: And y'all are just saying whoever did the title search just missed it or ---

MR. MARING: They did.

THE COURT: Or that they found it and didn't disclose it?

MR. MARING: Well, it depends on the theory of the Defendants. The Defendants' theory is that – will be that it didn't need to be disclosed; although, the title insurance company has now paid four other – three other lot owners whatever thousands of dollars to – because they made claims on this easement as well, and three years later litigation and finally getting this case resolved; so, you know that's a whole other issue, but that's a different damages issue, and that's not here for today, but for purposes of today, Your Honor, that's one of the – we have never had a dispute as to whether

or not the easement was valid or not. We never had a lawsuit. We never had cross-claims against one another or claims against one another. We simply resolved this case between the two of us as landowners should do. So, -- and in terms of, you know, keeping our neighbor in, Mr. Powell wants us to – what Mr. Powell wants to do is, he wants to litigate the 2006 case, but guess what, if he litigates that case and we lose, -- when I say we lose, and ---

THE COURT: Well, actually, it may be a valid argument for them, but I think regardless of how it turns out it really doesn't affect y'all, because you have already entered into a separate agreement.

MR. MARING: Right. It makes – which makes it moot.

THE COURT: But I don't think there's anything that precludes him from pursuing that.

MR. MARING: Well, no, I understand that, Your Honor. I mean, that's another day. That's another day. That's another fight. I understand.

THE COURT: Because it goes to ---

MR. MARING: Yes, ma'am.

THE COURT: --- the issue of his – of his clients' duty and whether they were deficient in that duty or fell short of that duty of care by not – and profession – you know ---

MR. MARING: And it goes back to, my same standing arguments will be brought at a later motion to dismiss, yeah.

THE COURT: It needed to be disclosed or whether they had a professional duty to disclose it or not, because that's – your complaint talks about them failing to disclose it, not discover it, and that's why I asked that

question. You can continue. I'm sorry.

MR. MARING: No, Your Honor. I mean, I think that's basically – that's basically the crux of my argument, in that, we never had the dispute. We resolved our dispute, and when it says, will not terminate, they believe they have a valid easement, and because they believe they had a valid easement my clients had to make a decision, and as you said, the law favors property owners who settle their disputes, and that's exactly what we did, and to keep our neighbors in here now and have them continue to pay for a lawyer when they're not – they aren't – they really have no bearing in this case, -- I mean, there's no outcome now that – the old easement is gone. Mr. Powell can bring in all of the witness testimony he wants to. He can certainly depose Mr. Cone. He can depose Mr. Gaillard. He can call them and compel them to testify at trial if he would like to, but to keep them as parties and to require them to continue to have a lawyer on board – and I'm making this argument now because I want to be a good neighbor to our neighbors. I don't want our neighbors to continue to have to pay attorney's fees on the suit that we brought. So, I think I'll close with that, Your Honor. Thank you.

THE COURT: You're welcome, and Mr. Hulst, I apologize. There was a typo on my note sheet, and I kept mispronouncing your name.

MR. HULST: Don't worry about. Everybody ---

THE COURT: And I'm so sorry. Mr. Powell, is there anything further you'd like to add?

MR. POWELL: Yes, Your Honor, and if I might indulge the Court, I would like to simply state that, of course, -- and I would like also to explain

to the Court how we ended up here today, because I think that's important, and it will shed some light on the matter.

Of course, the trustees and their neighbor have agreed among themselves that this easement was valid. Why, because that would enable Ms. Jones to sue the lawyers to get money to help build the dock that they wanted to build anyway.

That's why this is – that's what's going on here. So, naturally they never filed a claim against each other, because Ms. Jones – it was set up to have Ms. Jones sue my clients to try to get money. They have agreed, as it says in the new easement, to build this dock over 800 feet long, and they – they are – the deal – I don't have any proof of it yet, but the deal is that that money is going to help build the dock.

Now, that's why it is important for us to be able to show that the 2006 easement was not valid to begin with, because Ms. Jones never – naturally, never contended it wasn't. Judge Buckner asked them – asked Mr. Maring, why aren't you helping Mr. Powell? I don't understand. Mr. Powell wants to clear your land of this burden that you say that you have suffered so much. Why don't you – why aren't you helping Mr. Powell?

The reason is, this whole thing is about a claim to see what money they can choke out of the lawyers, because the easement wasn't valid to begin with.

Now, Your Honor, this is – this is where we are, and to explain why we are here, Your Honor, back – back in – realizing that this case was approaching a year ---

THE COURT: Have y'all considered referring this to the master, the

portion that deals with the easement, and have that portion of it resolved, because that's going to have to be resolved on a non-jury basis anyway. I don't see a jury trying to determine the validity of an easement.

MR. POWELL: We haven't talked about that yet, Your Honor, but ---

THE COURT: I think you need to.

MR. POWELL: But Your Honor, permit me to add this: On – on February 25 – this is under Exhibit 2 in the notebook – I wrote opposing counsel requesting to commence depositions in this case during the week of March 11. On March 4 I followed up on that letter, realizing that the one year was approaching. See, this case was filed one year ago last week. On March 4 I followed up on that letter and haven't heard from you gentlemen. Can we request – can depositions get started on March 11 next week? The same day the trustees' lawyer wrote me and said, -- said that he was booked for March. He was out all of March, and besides, his clients were out of the country.

On March 11, the following Monday, I wrote – write everybody and I say, Mr. Hulst has no time in March to deal with this. I propose April 1 through 3. On the 13th of March Mr. Hulst writes back and says, the April – say that – he finds that he can do it April 5 and April 8 through 12, and on the 22nd of March, that's when they filed the new easement, okay, the reformed, new and improved easement, which narrows it, but Mr. Jones still seeks damages for in this case.

THE COURT: But that was always their allegation in the complaint.

MR. POWELL: It was as to the old easement, but she ---

THE COURT: I don't see it as depreciably different than the new one.

MR. POWELL: Well, ---

THE COURT: They basically alleged in their pleadings that at some point the people they were dealing with were going to narrow the scope of it anyway, and so, I don't see anything that they alleged is different now procedurally.

MR. POWELL: I agree. I agree with that, and for that reason the trustees need to remain, because you're exactly right, Your Honor. It's the same easement all of the way as it was originally for which she seeks damages before and after the new easement was filed six weeks ago.

That was on the 22nd of March is when they filed that. The – and it's called the Access, Maintenance and Joint Dock Use Agreement, and it provides that they each pay half of the building of the dock and both have access to it, and you're right. It's very similar to the old easement, only narrower.

On March 27 I write all counsel and say, April 8 through 12 agreed, as Mr. Hulst suggested. Let's commence depositions April 8 through 12 is satisfactory. On the same day Mr. Hulst emails back, and says, dismiss my clients. I want to be dismissed now. We filed this new easement. We have shed ourselves of the purported 2006 easement in favor of the – of the dock easement we just filed. So, what's the point in my client staying?

I write back and say, -- I respond – this is under Exhibit 8 in the notebook, and I responded to Mr. Hulst's repeated demand of wanting to be dismissed, and I said, look, if the trustees – I suggested this to him. I said, if the trustees have no interest in the purported easement of 2006, then, if they were to respond affirmatively to a request to admit that upon reflection

that easement was not valid, then, we may very well have something to talk about. He declined or didn't answer that, and said, -- said that we're just going to file a motion to resolve this.

On the 28th I announced that I would get discovery moving by noticing the depositions as we agreed to do, and that may eliminate the need for any motion once I have an opportunity to depose the trustees.

Mr. Hulst writes back on the 28th and says, I believe it best to get the motion heard before moving forward with the depositions. That same day the depositions went out because I told my paralegal to send them out, and the next day Mr. Hulst says, cancel the depositions or I'll file a motion for protective order telling us in essence, you're – you're not going to -- dismiss my clients or you're not going to depose them. You can depose them as non-clients.

So, here we have – I've been trying to – to get depositions – to get discovery started in the case since February. They filed this thing in March, and then, in April he tells me, no, even the dates we agreed to we're not going to do it, and so, that's why we're here, Your Honor. I should not have to agree to dismiss a client in order to take the deposition. The ---

THE COURT: I would imagine y'all can agree on taking depositions.

MR. POWELL: Your Honor, he told me – I've got it right here. It's in that notebook. He writes back. He says, no, we're going to get this motion heard, and then, you can take them as non-parties. Well, ---

THE COURT: Well, that's his prerogative.

MR. POWELL: Well, no, ma'am. It's – it's not his – he has – he is supposed to cooperate in discovery particularly when he suggested the

dates. What he was doing was delaying it to get this new easement filed trying to claim that the party is over as far as he's concerned, but it is not.

THE COURT: Are y'all going to agree to the discovery, because they are fact witnesses, and they do need to be made ---

MR. HULST: I offered to have ---

THE COURT: And I don't think he should have to jump through hoops for that. That's unreasonable.

MR. HULST: I offered to have them here as witnesses.

MR. POWELL: Now, Your Honor, ---

MR. HULST: They just don't want to – they're just not to be parties anymore.

MR. POWELL: Your Honor, the – the – the – our answer contains a declaratory judgment claim against all of these parties, against Mr. Hulst's client and Mr. Jones to make that clear to the Court, and that's something we have a right to do; under the statute a series of transactions or a series of deeds – it specifically lists deeds.

THE COURT: That's important to your defense, but it has no practical effect to them now that they have filed this new easement, and frankly, you're not going to have any standing to challenge their agreement. They can agree to whatever they want to agree to.

MR. POWELL: Your Honor, ---

THE COURT: And it's going to be upheld.

MR. POWELL: Your Honor, ---

THE COURT: It's their property.

MR. POWELL: That's true, but I do have a right to challenge the

validity of the 2006 easement and the ---

THE COURT: Not the validity. What you're looking for is clarity as it relates to your client's duty, but it's not going to change anything. Let's say it's invalid. Let's say it is valid. It really doesn't matter to them. They have made an agreement. Their agreement is valid. It eclipses everything else that happened before that as it relates to the two of them. You may need the clarity of that as regards your defense, and I think that's valid for you to pursue, but as a practical effect, it's not going to have any effect on them at all.

MR. POWELL: All we seek from Mr. Hulst's client – and the reason his clients need to be in the case – is a declaration as to the validity of the easement, because – because he was the recipient of the 2006 easement; whether or not he continues to have any interest in it is of no moment as far as the declaratory judgment claim is concerned. That the Court can resolve, and he would be bound by it through the declaratory judgment, and that would be that. Your Honor is right in that respect. It won't affect them as to the status of the ---

THE COURT: I don't even know that you need a dec. action for that purpose to – to propound that defense.

MR. POWELL: Well, Your Honor, that's the way we have it framed. If – if later it – if they want to claim that it's inappropriate they can move as Your Honor ---

THE COURT: I suspected they're going to, and I don't know how that's going to turn out, but I don't know that you necessarily need that to advance your defense.

MR. POWELL: Well, ---

THE COURT: I assume you have experts.

MR. POWELL: It is – it is necessary, Your Honor. It would be necessary to include that, because what that would do is it would – it would forever resolve the validity of that '06 easement. If the Court says that '06 easement is no good, then, ---

THE COURT: I don't know ---

MR. POWELL: --- this case is over.

THE COURT: You know I have granted your amendment, because I think you're entitled to it, but I don't know that a Court is going to go back that far and deal with that now that they have a new one. I think they may – you know you only decide issues that aren't moot. You don't just decide issues to decide them, and if you have an expert that's going to – that – and I would assume you do on the standard of care, I would assume that they would opine about these issues, which would form the basis of your defense, and I don't know. I don't know. I don't know that I would make a decision on it. I have no idea, but like I told you, my scope about your amendment was very limited. It's about notice and the opportunity ---

MR. POWELL: Right.

THE COURT: --- to defend. That's it. That's really all – you know that's the only thing you deal with on a motion to amend, but as I think through it, I don't know that any Court is going to take that on when they have filed a new easement.

MR. POWELL: Well, Your Honor, that is ---

THE COURT: I don't know that it's – because you don't make

decisions just to make them when they're not going to have any practical impact, and I don't know that it's necessary for you to do that to assert your defense.

MR. POWELL: Well, Your Honor, ---

THE COURT: But I don't know. I don't – and you know I'm just sort of thinking out loud. I don't know how that's going to play out.

MR. POWELL: Well, Your Honor, the – I was explaining this to you because under the complaint before you, the complaint before you seeks damages for my client based upon both iterations of this easement prior to – prior to the March, 2019 easement and after, seeks damages from my client. So, under – under that scenario, of course, the dominant estate holder is an appropriate party to that mix. He is appropriate for any number of reasons, not the least of which is, was the easement abandoned, which we have asserted as a defense in the case, and now, they have got my whole plan, you know, from this argument; they see where I'm going with it, and – but in any event, that's – to let the – and he doesn't have to – it's like I told Mr. Hulst, if you don't have any objection and if you don't have any use or any interest in the 2006 easement anymore, then, just acknowledge that it wasn't valid, because it doesn't affect you, but he declined to do that.

I suggested that because if he had agreed to do that, then, we would be in a position where we wouldn't have to litigate it with his client, and of course, I would submit to Your Honor, the reason that he wouldn't do it, -- the trustees, not Mr. Hulst, because they're calling the shots. The reason the trustees would not agree to that is, they want this money to help build the dock.

THE COURT: I don't know if that's a nefarious purpose that they have. I have no idea.

MR. POWELL: I don't either.

THE COURT: I can't make that leap.

MR. POWELL: But in any event, Your Honor, they – he argues he had no interest in the case at all, and that may be – that may be right, but we have an interest and have a right under the declaratory judgment act to determine the rights of the parties in all of this, and that's where we're headed with that, and you're right. It wouldn't require a jury to do that. There may be some overlapping matter there, but in any event, Your Honor, the – I think in the memo that I have asserted and the arguments we have presented – and if you look at Rule 20 as I have stated in my – in our memorandum, Your Honor, the three reasons that the motion for non-joinder should be denied is, first, as a result of the purported 2006 easement the Plaintiffs allege that they have lost the use – the full enjoyment and use of the property, Lot 6-A owners since 2011, that they were named as the purported dominant estate holder. Accordingly, the trial of this case involved a right of relief arising out of a series of transactions or occurrences and questions of law and fact common to all of the parties, and that is – what is that dispute? It's the validity of the 2006 easement from both a legal and factual standpoint, and if it's valid, whether the purported dominant estate holder since 2006, including the trustees, abandoned the easement, and that's the first reason the motion for non-joinder should be denied, because that – as the law states, as the rule states, if you have both common issues of fact and law permeating the parties in the dispute, and

that is in the trial against my – against the Defendant/lawyers, then, those parties are appropriate; those people or entities are appropriate parties to that action.

The second, -- the second reason it should be denied is that, even under the most recent transaction in the series of transactions since 2006, which is the March 29 – the access and dock easement of six weeks ago between Jones and the trustees, it will need to be tested as to scope, validity and other details.

Now, why does that have to happen, because Ms. Jones continues to assert damages against my client for that. They're the one that filed it. I didn't want to litigate another easement, but that's what they decided to do. So, we have got to.

That being so, the parties to that agreement, including the trustees, should remain in this case, and then, finally, what Judge Buckner ruled, what he decided last year in his August 6 order, still is viable today, and that is under Rule 19 a person can be joined if in his absence complete relief cannot be accorded among those parties, or he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may as a practical matter impede – impair or impede – it doesn't have to impair but just impede his ability to protect that interest or leave any of the persons already parties subject to substantial risk of incurring double, multiple or otherwise inconsistent obligation by reason of his claimed interest. Make no mistake, the trustees in this case continue to claim an easement across the property, and while Ms. Jones ---

THE COURT: They don't claim an interest. They have resolved it.

MR. POWELL: But they – no, they claim in this suit – or outside this suit they claim the right to traverse the property.

THE COURT: They have the right to traverse it, because they have entered into an agreement to do so.

MR. POWELL: That – that may be, but Ms. Jones sues us for that. She seeks damages for us for something she agreed to do.

THE COURT: She says y'all made that her only option. People are going to get ingress/egress on property.

MR. POWELL: And that's the issue, Your Honor. You put your finger on it, because if the 2006 easement is not valid she didn't have to do it. She didn't have to do it at all.

THE COURT: You can still litigate that. I don't think there's anything that precludes you from litigating that as a defense.

MR. POWELL: Well, it certainly will be litigated in the declaratory judgment.

THE COURT: I would imagine you all can resolve making all of these people available to be deposed, because I think it is important and it is necessary. Whether they're parties they are certain fact witnesses, and they need to be deposed, and I don't think you all should make them jump through hoops to schedule that.

MR. POWELL: Your Honor, now, understand we're going to amend – file our amendment.

THE COURT: I have already granted your amendment.

MR. POWELL: Thank you, Your Honor.

THE COURT: The order will be issued today. I'm going to think about

the non-joinder for a few minutes, but I'm inclined to grant it. Yes, sir.

MR. HULST: Just one other thing is that the other Defendant in this case, the Peabody, the surveyor, they have stipulated to us being dropped from the case.

THE COURT: They're not represented, though, correct?

MR. HULST: Yes. They're represented ---

THE COURT: Who are they represented by?

MR. MARING: Carla Copeland. No, I'm sorry.

MR. POWELL: Earhart.

MR. MARING: Earhart.

THE COURT: Ryan?

MR. MARING: Ryan Earhart.

THE COURT: He chose not to be present today, correct?

MR. POWELL: That's right, Your Honor.

THE COURT: Okay. I'm going to think about the second one a little bit. The motion to amend has already been granted, and I'll do an order regarding that shortly. I'm going to think about this other one a little bit, but like I said, I don't think they're indispensible to resolve this. I think you can pursue your defense without them; however, you all need to make them available. He shouldn't have to go through a bunch of hoops to depose them, and he shouldn't have a bunch of preconditions about deposing them. You need to make them available, and y'all need to consider, if there are no motions filed regarding the DJ action – let's just jump ahead. Once motions are filed regarding ---

MR. MARING: Yes.

THE COURT: --- the DJ action, if they are denied you all need to go ahead and think about bifurcating this to let the master hear the easement part of it, because I can tell you from experience, no jury wants to hear that.

It's just – it's too much. You need somebody with that particular expertise to hear that. I think that's more effective, and we're fortunate; in this county we have a master who is versed and who does it full-time, and you can probably get a hearing in July or August to get that resolved, and then, leave the remainder of it for the jury to decide if it gets that far. Have you all mediated this? Have y'all thought about mediating it?

MR. POWELL: No, ma'am. My efforts to take these depositions would have ---

THE COURT: Would have eclipsed being able to do that?

MR. POWELL: Would have preceded the mediation.

THE COURT: Y'all need to agree on some dates for the depositions. I think you need to go ahead and get that out of the way.

MR. POWELL: Your Honor, ---

THE COURT: Yes, sir.

MR. POWELL: --- if I might?

THE COURT: Sure.

MR. POWELL: Excuse me. Excuse me.

THE COURT: No, that's okay. Go ahead.

MR. POWELL: I would like to depose the trustees as parties.

THE COURT: I don't know that it matters one way or the other. They're fact witnesses either way. I don't know that it makes any appreciable difference whether they're parties or non-parties. It's about

their factual knowledge of the issues.

MR. POWELL: Yes, ma'am, but ---

THE COURT: And frankly, I don't know that it matters.

MR. POWELL: Well, see, it matters this way: If they're parties, when we go to trial I don't have to subpoena them. I won't be able to use the depositions at trial.

MR. HULST: Your Honor, if they're parties I have to appear with them. If they're not parties I will be unlikely to appear with them, because I don't ---

THE COURT: Yeah, but they still got to show up if they're subpoenaed.

MR. HULST: And there's no doubt that they'll show up, but this is really a cost feature to my clients, because he's talking about all day depositions for each of my clients.

THE COURT: Why would it need to be all day ---

MR. MARING: That's what he wants.

MR. HULST: That's what he wants.

THE COURT: --- if it's limited as to the easement? Well, you kind of need to set aside a whole day, because how many witnesses are we talking about?

MR. MARING: Per day?

MR. HULST: One.

THE COURT: No, you need to set more than one in a day. It shouldn't take you more than a couple of hours to depose each of these people.

MR. HULST: It's what he's wanted to do.

MR. POWELL: Your Honor, the – the ---

THE COURT: People work. You know this is our job. We get paid to be here. They don't

MR. POWELL: Yes.

THE COURT: You need to be mindful of that. Yeah. It would make them a whole more amenable to showing up. It would make them a whole lot more cooperative.

MR. POWELL: I'll do my best, Your Honor. Of course, ---

THE COURT: Yeah.

MR. POWELL: --- the length of the deposition depends on what the answers are.

THE COURT: Yeah. I would imagine you all could – it shouldn't take more than a couple of hours to depose each of these folks, other than the Plaintiff. Now, the Plaintiff, that's a whole different story. It would take a lot longer, because you have a lot more to talk about. You have to talk about the relationship with the law firm and all of that other stuff.

MR. MARING: I understand, Your Honor.

THE COURT: But these other folks shouldn't take that long to depose, and you shouldn't have to spend all day for that. They shouldn't have to take a day away from their job to be deposed, party or non-party; I think it's unreasonable for the limited issue that you need to talk to them about. Okay.

MR. MARING: Thank you, Your Honor.

THE COURT: Y'all work out those dates. I'll let you know what I

decide on the other after I think about it overnight.

MR. POWELL: Thank you, Your Honor.

THE COURT: You're welcome.

--- END OF TRANSCRIPT OF RECORD ---

I, the undersigned, T. Dayton Grainger, Jr., Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, on the 7th Day of May, 2019.

I do further certify that I am neither of kin, counsel or interest to any party.

August 2, 2019



T. Dayton Grainger, Jr.

90267

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2018-CP-08-00817

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

v.

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

---

NOTICE OF APPEAL

Rogers Townsend & Thomas, P.C. and Lisa Hostetler appeal the Order of The Honorable Deadra L. Jefferson, dated June 26, 2019 and received by Defendant/Appellant on June 26, 2019.

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Attorneys for Thomas Huguenin Gaillard, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas W. Cone, Jr. as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 Plaintiffs/Respondents

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Attorneys for Peabody & Associates, Inc.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 12 2019
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2018-CP-08-00817

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

v.

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Ronald L. Jones and Gayle Langley Jones by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2019 addressed to their attorney of record, Robert W. Maring, Maring & Moyer, LLC, PO Box 478, Georgetown SC 29442 and on Thomas Huguenin Gaillard, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas W. Cone, Jr. as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2019 addressed to their attorney of record, Jay J. Hulst, Williams & Hulst, 209 E. Main St., Moncks Corner SC 29461.

Warren C. Powell, Jr.
Bruner Powell Robbins Wall & Mullins, LLC
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Attorneys for Appellants

Columbia, South Carolina
July 12, 2019.

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JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

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

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

* *ALSO ADMITTED IN DISTRICT OF COLUMBIA*

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

July 12, 2019

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

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

Dear Ms. Kitchings:

Pursuant to SCACR 203, enclosed please find for filing the following:

1. Notice of Appeal;
2. Proof of Service;
3. A copy of the Order of The Honorable Deadra L. Jefferson, filed June 26, 2019;
4. A copy of the Order of The Honorable Deadra L. Jefferson, filed May 3, 2019;
5. Our firm's check in the amount of $250.00 to cover the filing fee.

Please clock in our copies and return them with our courier.

With my kindest regards, I am,

Sincerely,

Warren C. Powell, Jr.

WCPjr/ljf
Enclosures
Cc: Robert W. Maring, Esquire
Jary J. Hulst, Esquire
Ryan A. Earhart, Esquire

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v.

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

AMENDED NOTICE OF APPEAL

Rogers Townsend & Thomas, P.C. and Lisa Hostetler appeal the Order of The Honorable Deadra L. Jefferson, dated June 26, 2019 and received by Defendant/Appellant on June 26, 2019 and the Order of The Honorable Deadra L. Jefferson, dated May 9, 2019 and received by Defendant/Appellant on May 9, 2019.

Warren C. Powell, Jr.
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803-252-7693
Attorneys for Appellants

Columbia, South Carolina
July 12, 2019.

Other Counsel of Record:

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.....Plaintiffs/Respondents

v.

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

AMENDED PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on Ronald L. Jones and Gayle Langley Jones by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2019 addressed to their attorney of record, Robert W. Maring, Maring & Moyer, LLC, PO Box 478, Georgetown SC 29442 and on Thomas Huguenin Gaillard, as Trustee of The Thomas Huguenin Gaillard Revocable Trust, Dated April 3, 2007, and Thomas W. Cone, Jr. as Trustee of The Thomas W. Cone, Jr. Revocable Trust, Dated April 3, 2007 by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2019 addressed to their attorney of record, Jay J. Hulst, Williams & Hulst, 209 E. Main St., Moncks Corner SC 29461.

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Post Office Box 61110
Columbia, South Carolina 29260-1110
803-252-7693
Attorneys for Appellants

Columbia, South Carolina
July 12, 2019.

EXHIBIT A

Recorded On-2005-Aug-03 As-25519



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

00025519 Vol: 4887 Pg: 64

Instrument Number: 2005-00025519

Recorded On: August 03, 2005 **As-Deed**

Parties: COASTAL PLAINS DEVELOPMENT CO INC

To MONAGHAN JAMES J

# of Pages: 5

Comment:

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

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

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

RECEIVED

Aug 03,2005

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

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

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

File Information:

Document Number: 2005-00025519
Receipt Number: 1860
Recorded Date/Time: August 03, 2005 12:50:43P
Book-Vol/Pg: BK-R VL-4887 PG-64
User / Station: B Edgerton - Cash Station 8

Record and Return To:

CUTCHIN FIRM
985 B JOHNNIE DODDS BLVD
MT PLEASANT SC 29464

Recorded On-2005-Aug-03 As-25519

Doc # 00025519
00025519 Vol: 4887 Pg: 65

After Recording, Please Return to:

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

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

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

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

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said his Heirs and Assigns forever.

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

(4)

Recorded On-2005-Aug-03 As-25519

00025519 Vol: 4887 Pg: 66

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

COASTAL PLAINS DEVELOPMENT CO., INC.

William J. Cutchin

By: _____
Its _____

Angel M. Marshall

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

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

William J. Cutchin

SWORN TO before me, this
April 8, 2005.

Angel M. ~~Cooke~~ Marshall
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: February 15, 2011

Recorded On-2005-Aug-03 As-25519

00025519 Vol: 4887 Pg: 67

Schedule A

Legal Description
(Deed)

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

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

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

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

Portion of TMS # 263-00-03-079

Lawyer Responsible _____

Recorded On-2005-Aug-03 As-25519

AFFIDAVIT

00025519 Vol: 4887 Pg: 68

STATE OF SOUTH CAROLINA)
) Date of Transfer of Title
COUNTY OF CHARLESTON) April 8, 2005

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **Coastal Plains Development Co., Inc., by its authorized representative,** to **James J. Monaghan**, ON **April 8, 2005**.

3. Check one of the following: The DEED is
   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) _____ EXEMPT from the deed recording fee because (exemption# ____) (Explanation if required)_Transfer to Grantor(s)' Trust(s)_____ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) ___XX_ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of **$360,000.00**.
   (b) _____ The fee is computed on the fair market value of the realty which is $____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) __XX__ the amount listed in item 4 above.
   (b) _____ the amount listed in item 5 above (no amount place zero)
   (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

William J. Cutchin, Legal Representative connected with this transaction

Sworn to before me this
April 8, 2005

ANGEL M. MARSHALL NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 02-15-2011

Angel M. Marshall
Notary Public for South Carolina
My Commission Expires: February 15, 2011

RECEIVED
Aug 03 2020
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, pursuant to Rule 210, SCACR.

s/ Chelsea J. Clark
Chelsea J. Clark, Esquire

Columbia, South Carolina
July 14, 2020