

Susan requests that the Court grant this partial summary judgment as to the First Cause of Action for Declaratory Judgment in her Amended Complaint, and deny Betsy's Counterclaim to the extent it requests a Declaratory Judgment that Susan has no right to use the roads crossing over Betsy's Parcel.

Having considered the pleadings, memoranda, affidavits, the other matters of record, and the applicable law, the Court finds that there is no genuine issue of material fact as to the relief sought in the Motion, and that Plaintiff is entitled to partial summary judgment as a matter of law. Therefore, this Court grants the Motion, for the reasons set forth in more detail below.

FACTUAL BACKGROUND

The relevant facts, as contained in the affidavits associated with the Motion, the pleadings, and in documents recorded in the Berkeley County Register of Deeds Office, are as follows:

1. Susan and Betsy are sisters. Susan lives in Charlotte, North Carolina. Betsy lives in Mount Pleasant, South Carolina. They each own a large parcel of adjoining land near Huger in Berkeley County, South Carolina. Their respective parcels share a common boundary line and were previously a unified tract of land, totaling approximately 371 acres (formerly TMS No. 239-00-00-104), with its sole highway frontage on State Road S-8-98, also known as Highway 98 or Cainhoy Road. The unified tract was owned by their father, Benjamin Franklin Knott ("Mr. Knott"), until his death in 2009.

2. In 1998, Mr. Knott granted a Deed of Conservation Easement (the "Conservation Easement") on the unified tract to Wetlands America Trust, Inc. ("Wetlands America"). The unified 371 acre tract is referred to herein as the "Conservation Easement Property" and the

“Protected Property”. The Conservation Easement was recorded in the Berkeley County Register of Deeds on December 31, 1998 in Book 1521 at Page 0004.

3. Mr. Knott died on November 18, 2009. Under the terms of his Will, Mr. Knott devised approximately half of the Conservation Easement Property to Susan and the other half to Betsy. Susan and Betsy, in their capacity as co-Personal Representatives of Mr. Knott’s Estate, subsequently executed separate Deeds of Distribution from the Estate to evidence title to their respective parcels, which deeds were recorded in the Berkeley County Register of Deeds in January 2011. Betsy received the front half of the Conservation Easement Property, fronting on Cainhoy Road and totaling approximately 181 acres. Susan received the back half of the Conservation Easement Property, totaling approximately 189 acres. Susan’s parcel does not front on any roads and is landlocked.

4. The Motion seeks a partial summary judgment determining that Susan has an express right to access her parcel (“Susan’s Parcel”, TMS No. 239-00-00-104) by using the unpaved roads on Betsy’s parcel (“Betsy’s Parcel”, TMS No. 239-00-00-181) that were described in the text and exhibits to the Baseline Documentation Report prepared in conjunction with the Conservation Easement, for all activities permitted under the Conservation Easement.

5. The Conservation Easement Property is in a natural state and has no houses on it. It contains uplands and wetlands and provides habitat for ducks and other wildlife.

6. The Conservation Easement states its “Purpose” in Section 1.1 as follows: “It is the purpose of this Easement to assure that the Protected Property will be retained in perpetuity predominantly in its natural, scenic, and open condition, as evidenced by the Report, for conservation purposes and to prevent any use of the Protected Property which will significantly impair or interfere with

the conservation values of the Protected Property, its wildlife habitat, natural resources or associated ecosystem. ('Purpose').”

7. The Conservation Easement specifies the activities permitted on the Conservation Easement Property which include, without limitation, hunting, fishing, agriculture, and timber harvesting. Section 4 of the Conservation Easement sets forth the “Reserved Rights” of the Grantor (then Mr. Knott), many of which provide for the maintenance and use of the Conservation Property by the Grantor.

8. After his death on November 18, 2009, Mr. Knott’s Will was probated in the Charleston County Probate Court in Estate File No. 2009-ES-10-01843.

9. In his Will, Mr. Knott named Susan and Betsy as co-Personal Representatives.

10. Regarding the Conservation Easement Property, and consistent with Mr. Knott’s reserved right in Section 4.1 of the Conservation Easement, the Will directed that the 371 acre tract be subdivided between Susan and Betsy as shown on the “Subdivision Survey” attached to the Will. To evidence their respective ownership of the subdivided parcels, in January 2011 Susan and Betsy, in their capacity as co-Personal Representatives, executed and recorded two Deeds of Distribution:

(a) The Deed of Distribution evidencing Betsy’s Parcel was recorded in the Berkeley County Register of Deeds on January 20, 2011 in Volume 8790 at Page 126.

(b) The Deed of Distribution evidencing Susan’s Parcel was recorded in the Berkeley County Register of Deeds on January 20, 2011 in Volume 8790 at Page 130.

11. The property descriptions in the Deeds of Distribution reference a Plat recorded in the Berkeley County Register of Deeds on December 30, 2010 in Plat Cabinet O at Page 161P. Neither the recorded Plat nor the Subdivision Survey shows the unpaved roads within the Conservation Easement Property.

12. The Deeds of Distribution do not expressly reference the Conservation Easement, but the Deeds contain the following provision applicable to both Susan's Parcel and Betsy's Parcel: "TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining."

13. The introductory recital to the Conservation Easement provides that the term "Grantor" refers to Mr. Knott, together with his heirs, personal representatives, successors, and assigns. Susan is an heir, personal representative, and successor in title to Mr. Knott. Betsy is also an heir, personal representative, and successor in title to Mr. Knott.

14. Section 5.5, entitled "Subsequent Conveyances", provides that: "The Grantor shall include reference to all terms and conditions of this Easement in any subsequent deed, or legal instrument by which the Grantor divests itself of either the fee simple in all or part of the Protected Property, or its possessory interest in any portion of the Protected Property...."

15. Section 4 of the Conservation Easement, entitled "RESERVED RIGHTS", sets forth certain "Reserved Rights" which the Grantor reserved for himself and his heirs, successors and assigns. In Section 4.3, entitled "Roads", Mr. Knott expressly reserved for himself and his heirs, successors and assigns: "The right to use roads for all activities permitted under this Easement." (Emphasis added).

16. Section 5.8, entitled "Perpetuity", provides that: "The burdens of this Easement will run with the Protected Property and will be enforceable against the Grantor and all future owners in perpetuity during the period of such ownership."

17. The "roads" referenced in section 4.3, which Mr. Knott's "heirs, successors and assigns" have an express "right to use", are delineated on the Baseline Documentation Report (the "Report") prepared and executed by Mr. Knott and Wetlands America in December 1998 in conjunction with

the Conservation Easement. A copy of the Report was attached as Exhibit 1-A to Susan's Affidavit filed in support of the Motion. As stated in the Conservation Easement, the Report provides an accurate representation of the Protected Property and shall be used to monitor Grantor's "future uses of the Protected Property and practices thereon." See Conservation Easement at pages 2-3 and 16.

18. As stated in the "Physical Environment" section of the Report: "A section of County Road #98 flanks the property on the west for a distance of 0.70 miles. Improved dirt roads on the property total approximately 2.8 miles. Short sections of embankments on the managed wetlands are a part of the road system." The Report also refers to the entrance gate to the Conservation Easement Property, located on Cainhoy Road.

19. The specific locations of both the entrance gate and the roads with the Conservation Easement Property are shown on Appendix E to the Report. Photographs of the entrance gate and the road system are included in Appendix I to the Report.

20. Pursuant to Section 4.3 of the Conservation Easement, Mr. Knott's heirs, successors and assigns have reserved the "right to maintain and replace existing roads at the same location" as shown on the Report. Section 3.3 prohibits the building of any new roads on the Conservation Easement Property, with very limited exceptions. One exception is the reserved right in Section 4.3 to construct new roads to the defined "New Structures"; however, Mr. Knott's heirs, successors and assigns are required to "use existing roads whenever possible for access to the New Structures."

21. Since Mr. Knott's death, Betsy has maintained a locked entrance gate to the Conservation Easement Property where the existing interior road enters Cainhoy Road. Betsy has not provided

Susan with a key to the locked gate. Betsy contends that Susan does not have the right to access Susan's Parcel by using the roads on Betsy's Parcel shown on the Report.

22. Betsy further contends that Susan has no right to use the interior roads under the terms of the Conservation Easement because she "created" her own access problem. Betsy asserts Susan formerly owned a large parcel on the opposite side of Susan's Parcel that fronted on Charity Church Road and that Susan sold that property and abandoned an easement that would have provided her access from Charity Church Road to the ten acres she reserved immediately adjacent to Susan's Parcel.

23. Betsy also asserts that Susan's use of the interior roads to access Susan's Parcel without Betsy's permission would be in violation of law and that Susan has no standing to seek a declaration of her rights under the Conservation Easement.

CONCLUSIONS OF LAW

I. Standard of Review

Rule 56(c) of the South Carolina Rules of Civil Procedure requires that summary judgment be granted if "there is no genuine issue as to any material fact and...the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *McKnight v. South Carolina Dept. of Corrections*, 385 S.C. 380, 385, 684 S.E.2d 566, 568 (S.C.App. 2009) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party carries its initial burden, the opposing party must do more than rest upon

the mere allegations or denials of their pleadings, but must, by affidavit or otherwise, set forth “specific facts showing that there is a genuine issue for trial.” *Id.* (citing Rule 56(e), SCRCPP). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *CoastalStates Bank v. Hanover Homes of South Carolina, LLC*, 408 S.C. 510, 516, 759 S.E.2d 152, 156 (S.C.App. 2014) (citing *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct.App.2009)).

II. Plaintiff is Entitled to Partial Summary Judgment

The Court concludes that there is no genuine issue as to any material fact pertaining to the relief sought in the Motion, and that Plaintiff is entitled to partial summary judgment as a matter of law.

The Court agrees with the parties’ respective assertions that the terms of the Conservation Easement are clear and unambiguous. The construction of a clear and unambiguous contract or deed is for the Court. *Snow v. Smith*, 784 S.E.2d 242, 248 (S.C. Ct. App. 2016). Parol evidence is inadmissible to vary its terms. *Davis v. KB Home of South Carolina, Inc.*, 713 S.E.2d 799, 805 (S.C. Ct. App.2011), affirmed in part, vacated in part on other grounds, 429 S.C. 634 (2014). Further, the instrument should be construed as a whole to give meaning to all its terms. *Proctor v. Steedley*, 730 S.E.2d 357, 363 (S.C. Ct. App. 2012).

Applying these fundamental rules of construction to the Conservation Easement, the Court concludes that the clear and unambiguous terms of Section 4.3 of the Conservation Easement allow Susan, as successor in title to Mr. Knott, the Grantor, to exercise the Grantor’s reserved right to access her parcel by use of the roads described in the Report. Accordingly, the Court hereby grants the Motion to allow the Plaintiff and her heirs, successors, and assigns “[t]he right to use the roads

for all activities permitted under [the] Easement”, as is expressly set forth in Section 4.3. This right, which runs with the land in perpetuity under Section 5.8, was expressly reserved by Mr. Knott when he conveyed the Conservation Easement.

Since Mr. Knott also expressly reserved the right to subdivide the Conservation Easement Property into two parcels under Section 4.1, the Conservation Easement clearly envisioned that the Conservation Easement Property would have more than one owner, and that each owner would have the right to use the existing roads for any purposes allowed under the Conservation Easement, subject to any limitations contained in the Conservation Easement. Further, there would be no need for the owner of property to reserve a right to use the roads on the owner’s property. The reasonable interpretation and application of this reserved right is that it was to allow access over the other half of the Conservation Easement Property to gain access to the interior half once it was subdivided. Additionally, it would be impossible for the owner of the interior half of the Conservation Property to exercise the reserved rights to care for and maintain it, including preserving the conservation values, without access.

In opposing the Motion, Betsy asserts that the plain language of the Conservation Easement does not give Susan a right of access to her Parcel across Betsy’s Parcel because the Conservation Easement requires that the use of the Conservation Property must be in compliance with all applicable laws, and Susan’s use of the road without her permission would constitute a trespass under the law. The Court disagrees. Given the expressly reserved right in Section 4.3, Susan’s use of the roads on Betsy’s Parcel to access Susan’s Parcel for activities permitted under the Conservation Easement would be authorized by the terms of the Conservation Easement and would not constitute a trespass or otherwise violate South Carolina law. This limited use would not be

contrary to the intent and “Purpose” of the Conservation Easement since it expressly provides for it.

Betsy argues that Section 4.21 of the Conservation Easement is the only way that Susan can gain permission to cross Betsy’s Parcel. In that section, the Grantor reserved the right to, among other things, grant easements or rights of passage across or upon the Protected Property to “an adjacent property owner”, subject to certain conditions. Betsy’s argument ignores the plain meaning of Section 4.3. Susan’s Parcel is part of the Protected Property under the terms of the Conservation Easement. Section 4.21 refers to granting easements or rights of passage to “an adjacent property owner”, whereas Susan owns half of the Protected Property and comes under the definition of “Grantor”.

Betsy argues that, if Susan has the right to use the roads on Betsy’s Parcel, then Susan would also be able to hunt, fish, and exercise all of the other reserved rights in Section 4 on Betsy’s Parcel. The Court disagrees with that assertion. As stated in the Motion and by Susan’s counsel on the record at the hearing, Susan is not seeking to exercise any reserved right on Betsy’s Parcel except using the interior road to gain access to Susan’s Parcel. This statement is entirely consistent with the allegations in Susan’s first cause of action in her Amended Complaint, her Reply Memorandum, and her Supplemental Affidavit in which Susan states that she is asking the Court to affirm her express right to use the roads to access Susan’s Parcel to protect conservation values and exercise reserved rights on Susan’s Parcel, not on Betsy’s Parcel.

The only reserved right of the Grantor before the Court is the right to use the roads as stated in section 4.3. The Court does not rule upon whether Susan may exercise any other reserved rights on Betsy’s Parcel, and this Order shall not be considered or construed as such. Because of the limitation of the Court’s decision, the Court does not need to rule upon the argument made by

Susan's counsel to distinguish the right of access from what Susan's counsel describes as proprietary rights that pass with title.

Betsy argues that, under the Conservation Easement Act of 1991, specifically Section 27-8-40, Susan is not entitled to bring this action affecting the Conservation Easement. The Court disagrees. Susan owns half of the Conservation Easement Property and comes under the definition of "Grantor". The Conservation Easement Act states in Section 27-8-40 (A)(1) that "an owner of an interest in the real property burdened by the easement" may maintain an action. Additionally, S.C. Code Ann. § 27-8-40 (A)(4) provides that an action affecting a conservation easement may be brought by "a person otherwise authorized by law." As an affected person who is suffering an injury-in-fact that will be remedied by a favorable ruling of this Court, Susan also has constitutional standing and qualifies under subsection (A)(4) as well. See, ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008)(discussing the grounds for standing and elements needed to establish constitutional standing).

Even though Betsy contends the Conservation Easement is unambiguous, she raises alternative arguments in the event the Court were to determine that the language of the Conservation Easement is ambiguous, based on what she claims is external evidence of Mr. Knott's intent. However, because this Court concludes that Section 4.3 and the Conservation Easement clearly and unambiguously express Susan's reserved right to use the roads. Betsy's parol evidence may not be considered. Betsy's disputed assertions cannot be used to change, vary, or explain the unambiguous terms of the Conservation Easement. "When a deed is unambiguous, any attempt to determine the grantor's intent when reserving the easement must be limited to the deed itself, and using extrinsic evidence to contradict the plain language of the deed is improper." Snow

v. Smith, 784 S.E.2d 242, 248 (S.C. Ct.App. 2016). “The determination of the grantor’s intent when reviewing a clear and unambiguous deed is [also] a question of law for the court.” Id.

Finally, Betsy asserts that it would be inequitable for Susan to have the right to use the roads on Betsy’s Parcel. The Court disagrees. Betsy’s assertion is contrary to the Grantor’s expressly reserved right to use the roads in Section 4.3. The Court finds and concludes that permitting Susan, as the successor in title to half of the Conservation Easement Property, to exercise this reserved right solely to access her Parcel to maintain, protect, and preserve it is equitable, not inequitable.

To the extent that the Court has not specifically addressed in this Order any argument that Betsy has made in her filings or at the hearing, the Court has fully considered such arguments and rules that they do not create a genuine issue of material fact nor assert a principle of law under Rule 56 that would call for denial of the Motion.

For the reasons stated herein, it is ORDERED that Plaintiff’s Motion is hereby GRANTED.

It is further ORDERED that the Court hereby grants partial summary judgment and declares that:

- (A) Pursuant to the unambiguous terms of the governing Conservation Easement, including the expressly reserved rights in Section 4.3 thereof, Susan, as owner of approximately half of the Conservation Easement Property, has the right to use the roads crossing over Betsy’s Parcel to access Susan’s Parcel for all activities permitted under the Conservation Easement; and
- (B) Betsy is required to provide Susan at all times with the key or code to the locked entrance gate to the Conservation Easement Property.

It is further ORDERED that this partial summary judgment is granted pursuant to the First Cause of Action for Declaratory Judgment in Susan's Amended Complaint, and the Court hereby denies Betsy's Counterclaim to the extent it requests a Declaratory Judgment that Susan has no right to use the roads crossing over Betsy's Parcel.

AND IT IS SO ORDERED.

Roger M. Young, Sr.
Judge, Ninth Judicial Circuit

September____, 2020

RECEIVED

Oct 09 2020

SC Court of Appeals

ELECTRONICALLY FILED - 2020 Sep 11 9:12 AM - BERKELEY - COMMON PLEAS - CASE#2019CP0802334

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-08-02334

Susan Brooks Knott Floyd

Elizabeth Pope Knott Dross

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Charles P. Summerall, IV	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : See Order Granting Plaintiff's Motion for Partial Summary Judgment

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)
Susan Brooks Knott Floyd	Elizabeth Pope Knott Dross	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: See Deeds attached to the Amended Complaint for full property descriptions.

1. "Betsy's Parcel": Huger, Berkeley County, South Carolina
TMS No. 239-00-00-181
2. "Susan's Parcel": Huger, Berkeley County, South Carolina
TMS No. 239-00-00-104

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.

Roger M. Young, Sr. Circuit Court Judge	Judge Code	Date
---	------------	------

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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.
- (A) Pursuant to the unambiguous terms of the governing Conservation Easement, including the expressly reserved rights in Section 4.3 thereof, the owner of TMS No. 239-00-00-104 has the right to use the unpaved roads crossing over TMS No. 239-00-00-181 to access TMS No. 239-00-00-104 for all activities permitted under the Conservation Easement; and
 - (B) Betsy is required to provide Susan at all times with the key or code to the locked entrance gate to the Conservation Easement Property.



Berkeley Common Pleas

Case Caption: Susan Brooks Knott Floyd VS Elizabeth Pope Knott Dross

Case Number: 2019CP0802334

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134