

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

NOV 30 2020

SC Court of Appeals

Brian Boger, Special Referee

Appellate Case No. 2018-000450

Trenholm Building Company, Respondent,

v.

Rajarithnam S. Aluri, Trustee,
The Aluri Family Trust, UTD May 3, 2012, Appellant.

REPLY TO RETURN
TO COSTS MOTION

The appellant has filed a Return to the Motion to tax costs, quoting various professors who claim:

1. "Unspeakable quagmire."

These people say that the law of easements by necessity is "difficult and inconsistent at best." "[T]he law is confusing legally and factually on every front." "The law of easements * * * is the most complex and archaic body of American property law remaining in the twentieth century." "The law in this area is an unspeakable quagmire."¹

South Carolina's law of easement by necessity is the same now as it was 196 years ago when the first Court of Appeals defined it:

The necessity by which a person derives a right of way, is when one person sells to another lands inclosed on all sides by other lands. Here[,] the law imposes an obligation on the

¹ One wonders whether any of the academics who write this rubbish ever tried an easement case.

seller to allow the purchaser a right of way over his adjacent land.

Turnbull v. Rivers, 14 S.C.L. 131, 139 (Ct. App. 1825), *quoted by Judge Geathers eight years ago in Paine Gayle Properties, LLC v. CSX Transportation, Inc.*, 400 S.C. 568, 735 S.E.2d 528, 540 (Ct. App. 2012).

The law of easement by necessity has not been mooted in this case at any stage — not at trial, not in the appellant’s brief, not in the respondent’s brief — because it is perfectly simple and known to all. The law has never been in controversy here — only the facts.

2. False statements of fact.

Several factual claims made in the appellant’s Return are pulled from thin air.

The appellant says that “one half of [his] property cannot be accessed without excavating thousands of tons of dirt.”

By “access” the appellant means that the northern half of the back yard of his apartment building is not available for parking except by using respondent’s adjacent driveway. The alleged dominant tenement — Lot 650 — is **accessed** from Pickens Street, where it fronts on the west, and from a municipal alley, where it fronts on the south.

The northern half of appellant’s back yard was made unreachable by vehicles when the appellant or his predecessor built the retaining wall. The northern and southern halves of appellant’s back yard are now divided by this retaining wall. As shown in our Return to the appellant’s Petition for Rehearing, that wall did not exist in 1976. [See 1976 plat, R. 75.] There is no evidence of when, after 1976, it was built. Until it was built, the entire back yard of 616 Pickens Street was usable for parking vehicles. The back yard must have sloped gently upward from south to north before the wall was put in. There is no evidence that the wall existed when severance

occurred in 1998. The appellant testified that he “couldn’t remember” whether he himself put in the wall after he bought 616 Pickens in 2003. [R. 56/20–57/1.] This would be a surprising lapse of memory about a significant change in the layout of the property and a significant expense to accomplish it.

To restore the appellant’s back yard to its pre-wall condition — making all of it available to parking — it would be necessary, first, to remove the retaining wall. Next, the back yard could be sloped to its original shape, or else the soil north of the retaining wall could be removed. The appellant now says that this would require him to excavate “thousands of tons of dirt.” As the Court noted in its opinion, the appellant failed to provide any evidence of what would have to be done or how much it would cost.² Sloping would take a dozer about a day, one would think, or excavation a bit longer. But we have no evidence of cost since the appellant failed to present any.

Appellant says that he has been using respondent’s driveway since 2003. The circuit court rejected that testimony by accepting respondent’s contrary evidence. [Order, p. 6, last three lines, R. 7.] Appellant now tells us that respondent’s driveway “has been used [by] Appellant’s property owners since at least 1976.” This claim is simply made up.

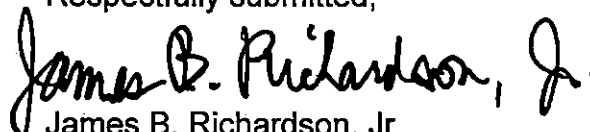
The appellant has nothing to say about the fact that he seeks this easement not for the benefit of the alleged dominant tenement (Lot 650) but for the use of his friends, his employees, a member of his family, and invitees attending functions at his hall down the street — people having no relation to Lot 650. [Tr. 108/13–109/3, R. 55–56.]

² Excavation would involve the removal of about 170 yards of dirt. This figure is derived by simple arithmetic from the dimensions shown in the 2015 plat, R. 60, assuming that the yard to the north of the retaining wall is about three feet higher than on the south. [R. 35, line 2.] A cubic yard of topsoil weighs something over one ton, as the Court could take notice if any of this were necessary.

CONCLUSION

The appellant's Return is unsupported in law or fact.

Respectfully submitted,

A handwritten signature in black ink that reads "James B. Richardson, Jr." with a stylized flourish at the end.

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

November 24, 2020.

Attorney for Respondent.

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**Rajarithnam S. Aluri, Trustee,
The Aluri Family Trust, UTD May 3, 2012, Appellant.**

CERTIFICATE OF SERVICE

I certify that I served a copy of respondent's Reply to appellant's Return to Motion to tax costs upon the attorney for the appellant, Allen Jackson Barnes, Esq., by first class mail, postage prepaid, addressed to him at his address of record, namely:

Allen Jackson Barnes, Esq.
Attorney at Law
Post Office Box 2838
Sumter, SC 29251

on November 24, 2020.



James B. Richardson, Jr.
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

Attorney for Respondent.

November 24, 2020.

**Law Office of
James B. Richardson, Jr.**

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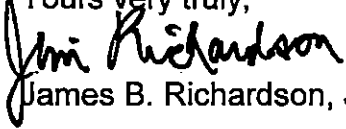
Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Trenholm Building v. Aluri
Appellate Case No. 2018-000450

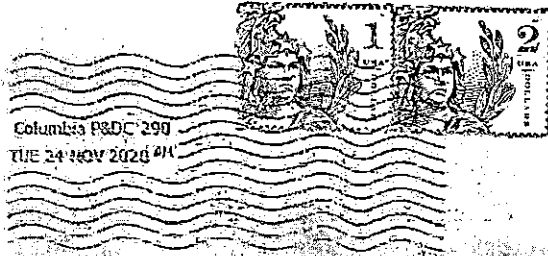
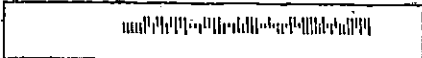
Dear Ms. Kitchings:

Enclosed for filing is respondent's Reply to appellant's Return to the Motion for taxation of costs.

Thanking you, I remain

Yours very truly,

James B. Richardson, Jr.

cc: Allen Jackson Barnes, Esq.
Carlos W. Gibbons, Esq.



James B. Richardson, Jr.
Attorney at Law
1229 Lincoln Street
Columbia, South Carolina 29201

TO:
Honorable Jenny A. Kitchings
Clerk, S. C. Court of Appeals
P. O. Box 11629
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