

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Judge

Case No.: 2015-CP-10-7000
Appellate Case No.: 2020-000955

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SC Court of Appeals

THELMA SMALLS DAVID, BERNARD
BROWN, BENJAMIN SMALLS,
EDWARD BROWN, NICOLETTE JAMES,
ROBERT BROWN, THOMAS BROWN
and DEBRA COMMODORE,

Appellants,

vs.

DONNA LEE COX, ROBERT R. COX,
JR., SHAWN THACKERAY and
LOWCOUNTRY HIGHLANDERS
FARM LLC.

Respondents.

BOHICKET FARMS, LL,

Intervenor.

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ORDER OF MARCH 2, 2016

00002

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-10-7000

Thelma Smalls David, Bernard Brown, Benjamin
Smalls, and Edward Brown

Donna Lee Cox

FILED
2016 MAR -2 AM 10:42
JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Plaintiffs' Motion for a Temporary Restraining Order came before Judge Murphy on January 25, 2016. Based upon the record, oral arguments of counsel, the briefs submitted, and the law applicable, the Court finds that the Plaintiffs failed to establish the three requirements that are necessary for a Temporary Restraining Order; therefore, Plaintiffs' Motion is respectfully denied.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Marti Murphy
Circuit Court Judge

Judge Code

2/22/16

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:

**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.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

ORDER OF SEPTEMBER 15, 2017

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015-CP-10-7000

THELMA SMALLS DAVID,)
BERNARD BROWN, BENJAMIN)
SMALLS, and EDWARD BROWN,)

Plaintiffs,)

vs.)

DONNA LEE COX and,)
ROBERT R. COX, JR.,)

Defendant.)

ORDER
(Motion for Joinder)

FILED
2017 SEP 15 PM 12:17
JULIE J. CLARK
CLERK OF COURT

It appears to the Court that the owners of the properties identified in the Charleston County Auditor's Office with T.M.S. #196-00-00-021 and T.M.S. #196-00-00-017 have an interest in the "dirt road," the use of which is the subject matter of this litigation. In the judgment of this Court, it is evident that those property owners must necessarily be joined in this action in order for complete relief to be accorded among the parties. Therefore, the Defendants' Motion for Joinder Pursuant to Rule 19 of the South Carolina Rules of Civil Procedure is GRANTED.

IT IS HEREBY ORDERED that the owners of T.M.S. #196-00-00-021 and T.M.S. #196-00-00-017 would be added by the Plaintiffs as Defendants in this action.

IT IS FURTHER THE ORDER OF THE COURT that if these parties, added as new Defendants, want to consent to the opening or the closing in writing and not participate in the lawsuit and do it by Affidavit, this Court will issue a supplemental Order that will allow the added Defendants to avoid any discovery or cost on their part.

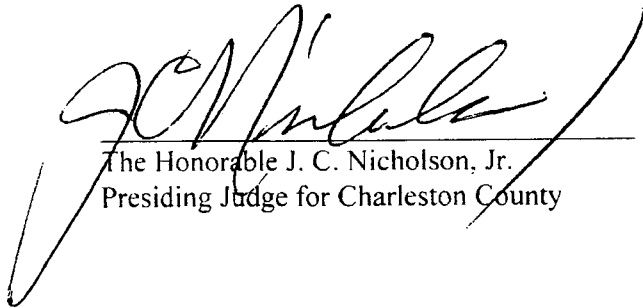
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IT IS FURTHER THE ORDER OF THIS COURT that if the added Defendants provide an Affidavit as hereinabove mentioned, they do not have to hire a lawyer if they are in agreement the road should stay open and be open then they can do an Affidavit and that's the end of their participation.

IT IS FURTHER ORDERED that all those persons wishing to access property via the "dirt road" that is the subject of this action, would be joined as Plaintiffs, pursuant to Rule 19(a) of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED!

9/14, 2017


The Honorable J. C. Nicholson, Jr.
Presiding Judge for Charleston County

Charleston, South Carolina

FINAL ORDER OF JANUARY 28, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2015-CP-10-7000

THELMA SMALLS DAVID,
BERNARD BROWN, BENJAMIN
SMALLS, EDWARD BROWN,
NICOLETTE JAMES, ROBERT
BROWN, THOMAS BROWN, and
DEBRA COMMODORE,

Plaintiffs,

FINAL ORDER

v.

DONNA LEE COX, ROBERT R. COX,
JR., SHAWN THACKERAY, and
LOWCOUNTRY HIGHLANDERS
FARM, LLC,

Defendants,

BOHICKET FARMS, LLC,

Intervenor.

This case came before this Court for trial without a jury, beginning on October 22, 2019. After the Plaintiffs had completed the presentation of their evidence, the Defendants Donna Lee Cox and Robert R. Cox, Jr. (the "Coxes") moved for dismissal, pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure, on the ground that upon the facts and the law the Plaintiffs had shown no right to relief.

Upon thorough consideration of the evidence and arguments of counsel, this Court, as trier of the facts, grants the Defendants' Motion and makes the following factual determinations and judgments of law.

FINDINGS OF FACT

This lawsuit involves the question of the existence of an easement. The property at issue is located off of Harts Bluff Road and Bears Bluff Road, on Wadmalaw Island, in the County of Charleston, South Carolina. There are eight named Plaintiffs in this case; not all of them are related to one another by blood, and nor is there privity of title among them. The evidence demonstrates the following:

- Plaintiff Thelma Smalls David ("David") owns two parcels of land, identified as TMS No. 196-00-00-133 and 196-00-00-134 (Defendants' Exhibit 31). David's property is designated as lot L and Cemetery Lot on a plat entitled, *Final Plat to Subdivide 20.47 Acres Estate of Daniel Brown*, recorded in Plat Book EJ at Page 896 (the "Daniel Brown Subdivision Plat") (Plaintiffs' Exhibit 7).
- Plaintiff Benjamin Smalls owns two parcels of land, identified as TMS Nos. 196-00-00-129 and 196-00-00-147. (Defendants' Ex. 31). Smalls' property is designated as lot G on the Daniel Brown Subdivision Plat.
- Plaintiff Nicolette James owns two parcels of land, identified as TMS Nos. 196-00-00-135 and 196-00-00-136. (Defendants' Ex. 31). James' property is designated as lots M and N on the Daniel Brown Subdivision Plat.
- Plaintiff Debra Commodore owns a parcel of land, identified as TMS No. 196-00-00-128. (Defendants' Ex. 31). Commodore's property is designated as lot F on the Daniel Brown Subdivision Plat.

- Plaintiff Bernard Brown owns two parcels of land, identified as TMS Nos. 196-00-00-132 and 196-00-00-137. (Defendants' Ex. 31). Bernard Brown's property is designated as lot J and lot O on the Daniel Brown Subdivision Plat.
- Plaintiffs Thomas Brown and Edward Brown have an interest, as beneficiaries of a trust, in the parcel of land once belonging to Frank Brown and identified as TMS No. 196-00-00-012, as set forth on a deed marked as Defendants' Exhibit 11. The deed indicates that the trustees of the trust are Carlnell Brown and Marc Brown, who are not parties to this lawsuit. Edward Brown testified that Plaintiffs Bernard Brown and Robert Brown have an heirs' interest in the same property.
- Defendants Robert Cox and Donna Cox (the "Coxes") own a parcel of land, identified as TMS # 196-00-00-023. (See Defendants' Exhibit 31).

For ease of understanding throughout this opinion, Plaintiffs Thomas Brown, Edward Brown, and Robert Brown will be referred to collectively as the "Frank Brown Plaintiffs," and Plaintiffs Thelma David, Bernard Brown, Benjamin Smalls, Debra Commodore, and Nicolette James will be referred to as the "Daniel Brown Plaintiffs."¹

The Coxes' property consists of approximately 30 acres of largely rural land, on which the Coxes reside. There are several dirt roads on the property; the Plaintiffs claim easement rights to one of them (the "Blue Road"). Edward Brown testified that, prior to 1987, he and various other people used to cross the Coxes' parcel by another road (the

¹ Although Daniel Brown and Frank Brown have the same last name, the evidence demonstrates that they were not related to one another by blood. For purposes of this case, having the same last name "Brown" does not necessarily mean that two people are related.

"Old Red Road").² However, in 1987, Plaintiff Edward Brown and his brother, James Brown, met with Defendant Donna Cox's now-deceased husband, Henry Lee, to discuss whether and where the Plaintiffs could cross the Cox's property. Lee and Brown agreed that they would, together, build the Blue Road that is the subject of this lawsuit, and that Brown could use it to access his field (located on the Frank Brown tract, TMS No. 196-00-00-012). Thereafter, the Old Red Road was no longer used, and the Plaintiffs used the Blue Road, in accordance with the agreement between Lee and Brown.

James Brown used the Blue Road for farming purposes until he died in 2015. Various members of the Frank Brown family also used the Blue Road to access TMS No. 196-00-00-012 for deer hunting, gardening, and firewood cutting. Brown also testified as to the existence of a cemetery on the property owned by Thelma David, stating that the Blue Road was used for burials. Photographs of the graves in the cemetery were admitted into evidence as Plaintiffs' Exhibit 17.

The Blue Road itself was described in detail by Edward Brown in his testimony at trial, and numerous photographs of the road were put into evidence. (Plaintiffs' Exhibit 16). Brown drew pictures of the Blue Road, which were admitted into evidence as Plaintiffs' Exhibit 3 and Defendants' Exhibit 28. Several recorded plats were also admitted into evidence, which plats depict a farm road, but which do not indicate that the depicted farm road is access to the platted property. (Plaintiffs' Exhibit 7; Plaintiffs'

² The two different roads are referred to as the "Red Road" and the "Blue Road" because of the colors used by Edward Brown to depict the routes of the two roads on an exhibit. (Defendants' Trial Exhibit 28).

Exhibit 9; Defendants' Exhibit 15). Brown testified that the Blue Road would "benefit" numerous parcels, and that the road continues over and past the Coxes' property, across numerous lots, to access various non-adjacent parcels of land, including the cemetery and the lot owned by Plaintiff Debra Commodore. The evidence as to where the Blue Road terminates is conflicting, but it is clear that it does not have a terminus on the Frank Brown Plaintiffs' property (i.e., TMS No. 196-00-00-012).

The Frank Brown Plaintiffs' property once stretched all the way across Harts' Bluff Road, to Wadmalaw Sound. Over the course of years, the Frank Brown Plaintiffs, and their predecessors in title, gradually cut off direct access to Harts' Bluff Road by subdividing their property. (See Defendants' Exhibits 13, 14). In the course of one of those subdivisions, the property was platted, on a plat recorded with the Charleston County Register of Mesne Conveyances in Plat Book BW at Page 11. The plat depicts a 50' Right of Way, named Back-a-Wood Road, which states: "We hereby dedicate the 50' road right-of-way to the use of the property owners. The owners and their heirs and assigns guarantee its maintenance." (Def. Ex. 14). This dedication is signed by Plaintiff Edward Brown, his brother Carl Brown (trustee of the Frank Brown estate), and an heir of Daniel Brown, Lillian Washington.

The Daniel Brown Plaintiffs acquired their property with reference to a plat recorded with the Charleston County Register of Mesne Conveyances in Plat Book EJ at Page 896. (Plaintiffs' Exhibit 7). The plat depicts two ingress-egress easements, one stretching from Back-a-Wood Road (to Harts Bluff Road in the North) and the other from Geneva Shaw Road (to Bears Bluff Road in the South), and it states: "We hereby dedicate

the NEW 20' INGRESS-EGRESS EASEMENTS to the use of the property owners forever. Owners of these lots and their heirs and assigns guarantee its maintenance until such time it is accepted into the public maintenance system." (See Pl. Ex. 7). This dedication is signed by Plaintiffs Thelma Smalls and Benjamin Smalls, among others.

LEGAL STANDARD

Pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure, "[a]fter the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." "Rule 41 allows the judge as the trier of facts to weigh the evidence, determine the facts, and render a judgment against the plaintiff at the close of his case if justified." *Johnson v. J.P. Stevens & Co., Inc.*, 308 S.C. 116, 417 S.E.2d 527, 529 (1992), citing *H. Lightsey & J. Flanagan, South Carolina Civil Procedure* 368 (1985). Involuntary dismissal, or non-suit, is appropriately granted when the plaintiff fails to meet his burden of proof. *Id.*

The question of whether an easement exists is a factual question in an action at law. *Bundy v. Shirley*, 412 S.C. 292, 302, 772 S.E.2d 163, 168 (2015). Appellate courts will uphold a master's factual findings if there is any evidence to support the decision. *Gooldy v. Storage Center-Platt Springs, LLC*, 811 S.E.2d 779, 422 S.C. 332 (2018).

The distinction between an appurtenant easement and an easement in gross involves the extent of a grant of an easement, as opposed to the creation of an easement. See *Windham v. Riddle*, 370 S.C. 415, 418, 635 S.E.2d 558, 559 (Ct. App. 2006) (characterizing the determination of whether an easement was appurtenant or in gross as a

determination of the extent of a grant of an easement), *aff'd*, 381 S.C. 192, 672 S.E.2d 578 (2009). The determination of the extent of a grant of an easement is an action in equity. *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997). The trial judge's determinations in an action in equity will not be overturned unless he commits error in his findings. *Pinckney v. Warren*, 344 S.C. 382, 544 S.E.2d 620 (2001).

APPLICATION OF LAW TO FACTS

I. The Plaintiffs have not met their burden to prove an easement by necessity.

The elements of a claim for easement by necessity are: (1) unity of title; (2) severance of title; and (3) necessity. *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528, 539 (Ct. App. 2012). "To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person." *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). "Severance of title means that title to a larger tract was 'severed' by conveyance of a part to the plaintiff's predecessor in title and of a part to the defendant's predecessor in title; 'they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance.'" *Id.* (quoting *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375; citing *Turnbull v. Rivers*, 14 S.C.L. 131, 139 (Ct. App. 1825) ("The necessity by which a person derives a right of way, is when one person sells to another lands inclosed [sic] on all sides by other lands. Here[,] the law imposes an obligation on the seller to allow the purchaser a right of way over his adjacent land.")).

The numerous Charleston County tax map exhibits, including Defendants' Exhibit 31, make it visually apparent that the Plaintiffs' parcels of land are not adjacent to and do

not about the Coxes' parcel (nor any other Defendants' parcel, for that matter). The evidence is clear that the Plaintiffs' claim for implied easement by necessity fails for their inability to demonstrate any one of the three essential elements.

The Frank Brown Plaintiffs' claim for an easement by necessity fails because no evidence was submitted that there was ever unity of title between the Coxes' and the Frank Brown Plaintiffs' land (i.e., TMS No. 196-00-00-012). Instead, the evidence demonstrates that the predecessor in title to the Frank Brown Plaintiffs (Edward Brown, Thomas Brown, and Robert Brown) once owned a long strip of land, separated from the Coxes' land by two independent parcels, and which formerly stretched across Harts Bluff Road and continued on to Wadmalaw Sound. Edward Brown testified that the heirs of Frank Brown had since subdivided that large tract, several times, over the course of many years.

In 1989, the Frank Brown Plaintiffs subdivided their land, portioning off parcels that abutted Harts Bluff Road. (Defendants' Exhibits 13 and 14, *Plat of the Subdivision of Lands of Carl Brown*, Plat Book BW at Page 11). In the course of subdividing their tract, those plaintiffs included the following language on their plat: "We hereby dedicate the 50' road right of way to the use of the property owners. The owners and their heirs and assigns guarantee its maintenance." (Def. Ex. 14). This dedication is signed by Plaintiff Edward Brown, as well as by Lillian Washington as Daniel Brown's heir (predecessor in title to the Daniel Brown Plaintiffs) and Carl Brown. This recorded promise unequivocally demonstrates that access over the Coxes' property is not necessary to the Frank Brown Plaintiffs' use and enjoyment of their property. This Court finds that it is

clear from the evidence that TMS No. 196-00-00-012 has access via Back-A-Wood Road, as depicted on the plat recorded in Book BW at Page 011.

The Daniel Brown Plaintiffs' claim for an easement by necessity fails because no evidence was submitted that there was ever unity of title between the Coxes' and the Daniel Brown Plaintiffs' lots. Instead, the evidence demonstrates that the predecessor in title to the Daniel Brown Plaintiffs once owned a long strip of land, which formerly stretched from Bears' Bluff Road to Harts' Bluff Road and then continued on to Wadmalaw Sound. Numerous unrelated parcels separate their land from that of the Defendants. (*See* Def. Ex. 31). Plaintiffs Thelma Smalls David, Bernard Brown, Benjamin Smalls, Nicolette James, and Debra Commodore own property reflected on a subdivision plat of the Daniel Brown tract, which plat was recorded in Plat Book EJ, at Page 896, in the RMC Office for Charleston County, South Carolina (Pls.' Ex. 7). This subdivision plat clearly demonstrates that when the Daniel Brown Plaintiffs subdivided their land, they specifically created and dedicated two "NEW 20' INGRESS-EGRESS EASEMENTS," which allowed them to access their property via Bears Bluff and Harts Bluff roads – and not by way of Defendants' land. *Id.* As depicted on the plat, these new easements cross the Daniel Brown Plaintiffs' lots, and they are designed to give access to the cemetery lot, as well as to the other lots that the Daniel Brown Plaintiffs own. Thus, this Court finds that the Daniel Brown Plaintiffs' claim for easement by necessity fails for want of the essential elements (enumerated *supra*).

In this Court's view of the evidence, it is clear that the Plaintiffs have not met their burden to prove unity, severance of title, nor necessity. I therefore dismiss their claim for an easement by necessity, with prejudice.

II. The Plaintiffs have not met their burden to prove a prescriptive easement.

In the case of *Bundy v. Shirley*, the Supreme Court of South Carolina held that there is a heightened standard of proof as to the elements of a prescriptive easement. 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015). The Court held that "[g]iven that a prescriptive easement results in diminished rights of the property owner, we find that a claimant seeking a prescriptive easement must be held to a strict standard of proof. Accordingly, we join the majority of state jurisdictions and hold that a party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Id.* at 306, 170, *quoting Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) ("a private way is an easement in favor of another, in derogation of the rights of the owner; and hence is not to arise without clear, unequivocal proof of such facts as will give the right from the owner to the claimant."); *also quoting* 2 Am. Jur. *Proof of Facts* 3d. 125 § 3 ("This stricter standard of proof may be a result of the general opinion expressed by courts and commentators that prescriptive rights are not favored in the law since they result in corresponding losses or forfeitures of rights of other persons.").

As set forth above, it is clear from the evidence that the Plaintiffs are not all related by privity of title or blood. Thus, under *Bundy*, they each had the independent burden of proving, by clear and convincing evidence, each and every element of their claims for a prescriptive easement: (1) the identity of the thing enjoyed; (2) open, notorious,

continuous and uninterrupted use; (3) for a period of 20 years; and (4) contrary to the true property owner's rights. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). This Court has weighed the evidence presented by the Plaintiffs, and it finds that the evidence is not clear and convincing as to the elements discussed below.

A. The Plaintiffs' permissive use defeats their claims for prescriptive easement.

First, the evidence makes it clear that the Plaintiffs' use of the dirt road at issue was always with permission. Edward Brown testified that, in about 1987, he and his brother James Brown had a meeting with Defendant Donna Cox's now-deceased husband, Henry Lee. The parties to the meeting came to an agreement that James Brown could access the fields that he farmed (some of which were located on TMS No. 196-00-00-012) across what is now the Coxes' property. Edward Brown testified that his brother James Brown and Henry Lee worked together to construct the road on the Defendants' property that is the subject of this lawsuit.

Our Supreme Court has long held that permissive use of property cannot ripen into an easement by prescription. *Bundy*, 412 S.C. at 307-310, 772 S.E.2d at 171-174, citing *Williamson v. Abbott*, 107 S.C. 397, 93 S.E. 15 (1917). "It is the well-settled rule that use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, if permissive in its inception, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him." *Id.*, quoting *Williamson*. "The asking and obtaining of permission . . . from the owner of the servient

estate, stamps the character of the use of as *not having been adverse, or under claim of right*, and therefore, as lacking that essential element which was necessary for it to ripen into a right by prescription." *Id.* at 310, 772 S.E.2d at 173 (emphasis added by *Bundy* Court).

The *Bundy* Court applied this ruling to a fact pattern in which Shirley (the alleged dominant estate holder) asked Bundy (the alleged servient estate holder) for permission to construct a gate on Bundy's property. Noting that "when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act," the Court found that "[b]y contacting Bundy regarding the gate, Shirley implicitly acknowledged Bundy's right to the property, thus defeating Shirley's own claim of right theory." *Id.* at 311, 772 S.E.2d at 174.

In weighing the evidence, this Court finds that Brown's testimony leaves no question that Plaintiffs' use of the road was permissive. Edward Brown's and James Brown's meeting with Henry Lee was an acknowledgement by the Browns of Lee's ownership of the property; it is clear that the parties made an agreement to construct together the dirt road that is the subject of this litigation. This agreement stamped the character of Plaintiffs' use as permissive and not hostile. This Court therefore holds that Plaintiffs have not met their burden to prove, by clear and convincing evidence, the essential element of adverse use.

B. The Plaintiffs did not meet their burden to prove open and notorious use.

Plaintiff Edward Brown was the only plaintiff to testify at trial. He stated that the Coxes' house was not visible from the road in question.³ This Court finds that this testimony weighs against the burden to prove, by clear and convincing evidence, that the Plaintiffs' use was open and notorious.

C. The Plaintiffs did not meet their burden to prove continuous use.

Plaintiff Edward Brown testified that the subject dirt road has been used by the Daniel Brown Plaintiffs for the purpose of gaining access to a cemetery lot, which is depicted on the subdivision plat that is Plaintiffs' Exhibit 7. Plaintiffs submitted photographs of various graves within the cemetery. This evidence shows that there were burials in the cemetery in 1989, 1996, 2009, 2010, and 2012. (*See* Plaintiffs' Composite Exhibit 17). This Court notes that there is a gap in burials of approximately 13 years, and it therefore finds that the evidence is not clear and convincing of continuous use of the subject road for access to the cemetery lot.

D. The Plaintiffs did not meet their burden to prove uninterrupted use.

This Court also finds that the Plaintiffs did not meet their burden to prove uninterrupted use by clear and convincing evidence. Edward Brown testified at length to a confrontation between himself and the Coxes' predecessor in title, Carl Eaton, in which Eaton brandished a gun at Brown and told him not to use the dirt road. Brown also testified that Eaton had similar encounters with Plaintiff Bernard Brown. Although

³ Brown testified at trial that the old Red Road was about 15 yards away from the house on the Lee (now Cox) property, but, in or about 1984, James Brown and Henry Lee built the new Blue Road on the south end of the property. Brown testified that he did not think the Coxes' house could be seen from the Blue Road the last time Brown was there.

Edward Brown testified that that Eaton's threats and confrontation did not actually deter him from using the road, the law in South Carolina is clear that Eaton interrupted Brown's use.

In the case of *Pittman v. Lowther*, our Supreme Court examined the question of what actions by a servient landholder constitute an interruption in prescriptive use. *Pittman v. Lowther*, 363 S.C. 47, 610 S.E.2d 479 (2005). The Court held that "verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period." *Id.* Edward Brown's testimony about the violent confrontation between himself and Eaton illustrates the Court's rationale for this holding. The Court found: "[t]o adopt an interpretation of 'effective interruption' which requires a servient landowner to take actions in addition to erecting barriers like fences and cables, would encourage wrongful or potentially violent behavior that is contrary to sound public policy considerations and the peaceful resolution of disputes." *Id.*

In weighing the evidence presented, this Court finds that Edward Brown's testimony about violent confrontations over his and other people's use of the subject road weighs against and defeats Plaintiffs' burden of proving uninterrupted use by clear and convincing evidence.

For the reasons set forth above, this Court finds that the Plaintiffs failed to establish the essential elements of their prescriptive easement claim.

III. The Plaintiffs have not proven easements appurtenant.

In the course of their Rule 41 argument, Defendants raised and sought a ruling as to the extent of any easement that might be found. As set forth above, this Court finds that the Plaintiffs have failed to prove their claims for easement by necessity and prescriptive easement. For the sake of judicial economy, the Court will also address the parties' arguments on scope. The question of the extent of an easement is in equity and for determination by the court. "The distinction between an appurtenant easement and an easement in gross involves the extent of a grant of an easement, as opposed to the creation of an easement." *Williams v. Tamsberg*, 425 S.C. 249, 821 S.E.2d 494 (Ct. App. 2018).

The evidence is clear that Plaintiffs' claim for an appurtenant easement burdening the Defendants' property must fail for want of essential elements. "An appurtenant easement inheres in the land, concerns the premises, and has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof.... Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross." *Tupper v. Dorchester County*, 326 S.C. at 325-26, 487 S.E.2d at 191.

As set forth in Section I, above, the evidence shows that the subject road is not essentially necessary to the Plaintiffs' enjoyment of the purported dominant estates; this lack of necessity alone defeats Plaintiffs' claim for an appurtenant easement. Furthermore, the absence of a terminus on the dominant estate is fatal to a claim of an appurtenant easement. *Id.*; see also *Shia v. Pendergrass*, 222 S.C. 342, 351, 72 S.E.2d 699, 703

(1952) (“[A]n essential feature of an appurtenant easement or way is that it have one of its termini on the dominant property.”).

The evidence presented by the Plaintiffs makes it clear that the dirt road which the Plaintiffs claimed to be an easement does not have a terminus on the property of any one of the plaintiffs to this lawsuit. Plaintiff Edward Brown testified at great length about the numerous unrelated parcels that he believed would benefit from the use of the road; several of the parcels are not party to this lawsuit. Brown testified that the road ran on and on, purportedly to access each of these numerous parcels. Further, Brown made two drawings of the subject road, one at trial and another at his deposition. (Plaintiffs’ Ex. 3 and Defendants’ Ex. 28). Finally, Plaintiffs admitted into evidence several plats purportedly depicting the subject road (although this Court notes that those plats do not designate the subject road as access) (Plaintiffs’ Exhibits 7 and 9; Defendants’ Exhibit 15). From the testimony, drawings, and plats, it is clear to the Court that the subject road does not have a terminus on the Frank Brown Plaintiffs’ property (TMS 196-00-00-012).

As to where the road may terminate, this Court finds the evidence to be conflicting. The two plats conflict, with the Daniel Brown subdivision plat depicting a farm road as continuing on past the cemetery lot and the Ben Brown subdivision plat purportedly depicting the subject road as connecting with the Back-a-Wood Road extension. Edward Brown’s two drawings conflict, with his trial drawing depicting the road as continuing on past the edge of the exhibit itself, and his deposition drawing depicting the road as terminating at the cemetery. Finally, Brown’s testimony at trial indicates that the road

goes on and on, from parcel to parcel, to benefit numerous lots, including that of Plaintiff Debra Commodore (located far beyond the cemetery).

This Court finds that the lack of any clear evidence as to the roads' terminus defeats any claim by the Plaintiffs to an easement appurtenant. This Court further finds that evidence shows that the subject road is not essentially necessary to the enjoyment of Plaintiffs' lots, which have other access as depicted on the plats in evidence; the lack of necessity further defeats any claim for an appurtenant easement.

CONCLUSION

For the reasons set forth above, this Court finds that the Plaintiffs have shown no right to relief under the facts and the law. Pursuant to Rule 41 of the South Carolina Rules of Procedure, the Defendants' Motion for Involuntary Dismissal and Non-Suit is granted, judgment is rendered against the Plaintiffs on the merits of their easement claims, and this action is dismissed.⁴

IT IS SO ORDERED!

The Honorable Mikell R. Scarborough,
Master-in-Equity, Charleston County

December __, 2019
Charleston, South Carolina

⁴ Defendants have made a motion for the award of attorney's fees and costs, which the Court will consider separately.



Charleston Common Pleas

Case Caption: Thelma Smalls David , plaintiff, et al VS Donna Lee Cox , defendant,
et al
Case Number: 2015CP1007000
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2020-01-28 16:45:43 page 18 of 18

00026

THIRD AMENDED COMPLAINT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015-CP-10-7000

THELMA SMALLS DAVID,)
BERNARD BROWN, BENJAMIN)
SMALLS, EDWARD BROWN,)
NICOLETTE JAMES, ROBERT)
BROWN, THOMAS BROWN, and)
DEBRA COMMODORE,)

Plaintiffs,)

vs.)

DONNA LEE COX, ROBERT R.)
COX, JR., SHAWN THACKERAY,)
and LOWCOUNTRY)
HIGHLANDERS FARM LLC,)

Defendants.)

THIRD AMENDED COMPLAINT

FILED
2018 SEP 10 PM 4:02
JULIE J. ARMSTRONG
CLERK OF COURT

Comes now the Plaintiffs, by and through undersigned counsel, allege and say
unto this Honorable Court the following:

1. That the subject matter hereof, the parties hereto and the matters and things
alleged herein, are within the jurisdiction of this Honorable Court.
2. That the Plaintiffs institute this cause of action against the Defendants pursuant to
Uniform Declaratory Judgment Act, Chapter 33, Title 15 of the South Carolina Code of Laws,
1976, as amended, for the purpose of declaring and having this Honorable Court adjudicate the
rights of the parties hereto and to further determine or enjoin the Defendants from interfering
with the rights of the Plaintiffs as it relates to the real property that is the subject matter of this
action.
3. Additionally, Plaintiffs alleges causes of action for negligence and civil
conspiracy against the Defendants, Donna Lee Cox and Robert R. Cox, Jr.

4. That at all times relevant herein, the Defendants, Donna Lee Cox and Robert R. Cox, Jr., knew or with the exercise of reasonable care, would or should have known that Inside/Gaillard Road was a public road and/or easement favoring the Plaintiffs and not subject to unilateral closure by those two (2) Defendants.

5. That at all times relevant herein, the Plaintiffs assert that Inside/Gaillard Road crosses the real property that is presently owned by the Defendants, Donna Lee Cox and Robert R. Cox, Jr.

6. That the Defendants, Donna Lee Cox and Robert R. Cox, Jr., filed a Motion to add the owners of the real property identified by T.M.S. #196-00-00-017, Lowcountry Highlanders Farm, LLC and T.M.S. #196-00-00-021, Shawn Thackeray. That although the Plaintiffs opposed the said Motion, the Court issued an Order mandating that the hereinabove mentioned property owners be added as Defendants to this action.

7. That at all times relevant herein, the Plaintiffs assert that Inside/Gaillard Road does not burden or cross the property identified by T.M.S. #196-00-00-017 and presently owned by Lowcountry Highlander Farm, LLC.

8. Further, the Plaintiffs allege at all times relevant herein, that the Defendants, Donna Lee Cox and Robert R. Cox, Jr., owed a duty to the Plaintiffs to not impede their usage of Inside/Gaillard Road.

9. Additionally, Plaintiffs allege that the Defendants, Donna Lee Cox and Robert R. Cox, Jr., breached that duty and in so doing, caused the Plaintiffs damages as will hereinafter more specifically appear.

10. Further, Plaintiffs assert that the Defendants knew or with the exercise of reasonable care, should or would have known that the road in question, namely, Inside/Gaillard Road, had been a public road and/or easement that has existed for a period well in excess of

eighty (80) years. Plaintiffs further assert that Inside/Gaillard Road was maintained by Charleston County in that the said road was graded, scraped, and/or improved the surface on a biweekly or monthly basis.

11. That the Defendants purchased the property which Inside/Gaillard Road crosses, from Robert Eaton on July 15, 1983 by way of deed recorded in Book G132, at page 23 in the R.M.C. Office for Charleston County. That prior thereto, Carl G. Eaton purchased the property that Inside/Gaillard Road crosses, from William T. Hart on April 15, 1974.

12. On or about April 15, 1984, the Defendant, Donna Lee Cox and her then husband, the late Henry J. Lee, Jr., erected a barrier across Inside/Gaillard Road and/or easement in an attempt to stop the Plaintiffs' ancestors from using the said public road and/or easement.

13. That on June 14, 1984, one of the Plaintiffs' ancestors, James W. Brown, brought an action for an injunction against the Defendant, Donna Lee Cox and her then husband, Henry J. Lee, to remove a barrier that was erected across Inside/Gaillard Road. A temporary Restraining Order and Rule to Show Cause was issued enjoining the Defendant, Henry J. Lee, Jr., his agent, servant and/or employees, from continuing to maintain a barrier across Inside/Gaillard Road and/or easement.

14. In the 1984 civil action, the Plaintiff, James W. Brown, alleges in paragraphs 15 and 16 of his Petition, *"That the Plaintiff has notified the Defendant that the placing of the barrier in and across the roadway constitutes a nuisance and for this reason stated, has requested that Defendant remove said barrier and discontinue the nuisance.*

That Defendant has failed and refuse to remove said barrier and the barrier is continuous in that it blocks the Plaintiff's access to his crop and/or property from the public highway and will cause irreparable harm, damages and extreme hardship to the Plaintiff relative to the ownership, use, and convenience and enjoyment of the property.

15. That the Defendant, Henry J. Lee, Jr., in his verified Answer to the Plaintiff, James W. Brown's allegation that he, Henry J. Lee, Jr., unlawfully closed the public road, stated the following, *"As to paragraphs 15 and 16, "upon receiving notification from the Plaintiff, the Defendant, on June 14, 1984, open said gate for free access to the Plaintiff."*

16. That while the County of Charleston may have stopped maintaining Inside/Gaillard Road in 1982 or 1983, the Plaintiffs and their ancestors never discontinued use of or relinquished the right to use the said public road and/or easement.

17. That the Plaintiff, Bernard Brown, is the owner of the real property located on Wadmalaw Island, South Carolina and identified in the Charleston County Auditor's Office with parcel or T.M.S. #196-00-00-132.

18. The Plaintiff, Thelma Smalls David, is the owner of property located on Wadmalaw Island, South Carolina and identified in the Charleston County Auditor's Office with parcel or T.M.S. #196-00-00-131.

19. The Plaintiff, Edward Brown, is an heir of the Estate of Frank Brown, and in part, the owner of the property located on Wadmalaw Island, South Carolina and identified in the Charleston County Auditor's Office by T.M.S. #196-00-00-012.

20. That the Plaintiffs assert that the Plaintiff, Debra Commodore, is the owner of property that cannot be accessed except and by and through Inside/Gaillard Road and/or easement that crosses the Defendants', Donna Lee Cox and Robert R. Cox, Jr., property.

21. That the Defendants, Donna Lee Cox and Robert R. Cox, Jr., are the owners of property located on Wadmalaw Island, South Carolina and identified in the Charleston County Auditor's Office with parcel or T.M.S. #196-00-00-023.

22. That from the inception and before the purchase of the property presently owned by Donna Lee Cox and Robert R. Cox, Jr., the Plaintiffs and their ancestors have used

Inside/Gaillard Road and/or easement sometimes known as the "*blind road*" that crosses Mr. and Mrs. Cox's property, to gain access to their property.

23. That the usage of this road by one or more of the Plaintiffs and/or their predecessors in interest and ancestors, has occurred for a period well in excess of eighty (80) years.

24. That the Plaintiffs assert that Inside/Gaillard Road sometimes known as "*blind road*", was a road that was maintained by the County of Charleston, State of South Carolina in that the road was scraped and kept as a County road up and through 1981.

25. That in fact, Plaintiffs assert that Inside/Gaillard Road was a road used by Daniel Brown, a predecessor in interest and/or ancestor of some of the Plaintiffs, to gain access to his property and house.

26. Specifically, the heirs of Frank Brown, including but not limited to the Plaintiffs, Bernard Brown and Edward Brown, have used the hereinabove mentioned easement or public road to cutting firewood, cultivating and harvesting truck crops, (soy beans, potatoes, green beans, etc.), from the property identified in the Charleston County Auditor's Office T.M.S. # 196-00-00-012.

27. The heirs of Frank Brown have constructed two (2) deer stands on the property identified in the Charleston County Auditor's Office by T.M.S. #196-00-00-012. To access those deer stands, the heirs of Frank Brown as well as their invited guest(s), have always used the hereinabove mentioned Inside/Gaillard Road that crosses the Defendants, Cox's, real property.

28. That the Plaintiffs, Benjamin Smalls and Thelma Smalls David and their ancestors, have established a family cemetery on the property identified in the Charleston County Auditor's Office by T.M.S. #196-00-00-133.

29. That since the first burial occurring more than twenty (20) years ago, the access to that cemetery has been exclusively through the use of Inside/Gaillard Road that crosses the Defendants, Cox's, property.

30. The Plaintiffs assert that Inside/Gaillard Road that crosses the Defendants, Cox's property, is and has been a public road used by the Plaintiffs and their ancestors or predecessors in interest.

31. That the Defendants, Donna Lee Cox and Robert R. Cox, Jr., unilaterally, without consultation and against the protest of the Plaintiffs, as evidenced by **Exhibit A** attached to the Complaint previously filed in this matter, dug ditches across Inside/Gaillard Road, and in so doing, have blocked the Plaintiffs from accessing their property.

32. The Defendants, Donna Lee Cox and Robert R. Cox, Jr., knew, or with the exercise of reasonable diligence, should have known that Inside/Gaillard Road was a public road used primarily by the Plaintiffs and their predecessors in interest in this action.

33. That the Defendants, Donna Lee Cox and Robert R. Cox, Jr., owed a duty not to interfere with the use of the said road as it relates to these Plaintiffs.

34. That the Defendants, Donna Lee Cox and Robert R. Cox, Jr., breached that duty, and in so doing, caused the Plaintiffs harm and damages.

35. That Plaintiffs assert that the damages, in part, are that the Plaintiffs cannot gain access to their property because the Defendants, Donna Lee Cox and Robert R. Cox, Jr., have negligently, willfully, wantonly, recklessly dug a ditch across a public road without the consent of any County authority or the Plaintiffs.

36. Plaintiffs further assert that the Defendants, Donna Lee Cox and Robert R. Cox, Jr., were negligent in that they willfully, wantonly, and recklessly dug a ditch across Inside/Gaillard Road.

37. Plaintiffs further assert that it is proper for this Court to mandate that the Defendants, Donna Lee Cox and Robert R. Cox, Jr., remove any obstructions or barricade and ditches that were placed across said road to block the Plaintiffs' access to their property.

38. Further, Plaintiffs assert that there is a substantial likelihood that they will prevail on the merits of this action.

39. Further, Plaintiffs assert that they are entitled to an award of attorney's fees together with costs for the bringing of this action and other damages against the Defendants, Donna Lee Cox and Robert R. Cox, Jr., for placing the barricade across Inside and/or Gaillard Road.

FOR A FIRST CAUSE OF ACTION
(AS TO THE DEFENDANTS, DONNA LEE COX AND
ROBERT R. COX, JR.)
(Negligence)

40. The Plaintiffs re-allege, adopt, and incorporate by reference herein, paragraphs 1-39 of the Second Amended Complaint as if repeated and set forth verbatim.

41. That the Defendants, owed a duty to the Plaintiffs not to impede or interrupt their usage of Inside/Gaillard Road.

42. That the Plaintiffs allege that the Defendants breached that duty and as a direct and/or proximate result thereof, the Plaintiffs suffered damages, both actual and punitive, in an amount to be proven at trial.

FOR A SECOND CAUSE OF ACTION
(AS TO THE DEFENDANTS, DONNA LEE COX AND
ROBERT R. COX, JR.)
(Civil Conspiracy)

43. The Plaintiffs re-allege, adopt, and incorporate by reference herein, paragraphs 1-42 of the Second Amended Complaint as if repeated and set forth verbatim.

44. The Plaintiffs assert that the Defendants combined and plotted with each other and/or with other person(s) for the purpose of obstructing the use of the public road used by the Plaintiffs and in so doing, caused the Plaintiffs special damages, including but not limited to, their inability to use the public road, loss of their ability to cut and haul away firewood from their property, unable to inter deceased family members in the family graveyard, and not being able to sell harvest timber from their properties because of the closure of the public road.

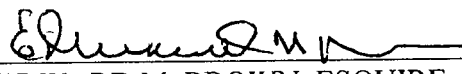
WHEREFORE, Plaintiffs pray that the Defendants, Donna Lee Cox and Robert R. Cox, Jr., be enjoined, permanently, from obstructing the Plaintiffs and other property owners from using Inside/Gaillard Road and/or easement.

That the Defendants, Donna Lee Cox and Robert R. Cox, Jr., be ordered to remove any barricades or obstructions in regard to the Plaintiffs using Inside/Gaillard Road and/or easement.

For damages, both punitive and actual, to be determined by the trier of facts in an amount to be proven at trial against the Defendants, Donna Lee Cox and Robert R. Cox, Jr.

That the Plaintiffs be awarded attorney's fees and costs for the bringing of this action.

And for such other relief as this Court may deem just, equitable and proper.

BY: 
EDWARD M. BROWN, ESQUIRE
Attorney for the Plaintiffs
P. O. Box 20261
Charleston, South Carolina 29413
(843) 559-9224

Charleston, South Carolina

Dated: September 10, 2018

**ANSWER OF DONNA LEE COX AND ROBERT R. COX, JR.
TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

00036

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

THELMA SMALLS DAVID,)
BERNARD BROWN, BENJAMIN)
SMALLS, EDWARD BROWN,)
NICOLETTE JAMES, GRACIE)
MOULTRIE a/k/a GRACIE SMILEY,)
ROBERT BROWN, THOMAS BROWN,)
and DEBRA COMMODORE)

Plaintiffs,)

vs.)

DONNA LEE COX, ROBERT R. COX, JR.,)
SHAWN THACKERAY, and)
LOWCOUNTRY HIGHLANDERS)
FARM, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015-CP-10-7000

**ANSWER OF DONNA LEE COX
AND ROBERT R. COX, JR.
TO PLAINTIFFS' THIRD
AMENDED COMPLAINT**

FILED
2018 OCT -1 PM 4:57
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendants, Donna Lee Cox and Robert R. Cox, Jr., by and through their undersigned counsel, answering the Plaintiffs' Third Amended Complaint, allege and say:

1. Defendants admit that this Court would have jurisdiction of this matter.
2. Defendants admit so much of Paragraph 2 as alleges that the Plaintiffs seek the adjudication of the rights of the parties to this action, but they deny that the Plaintiffs are entitled to the relief they seek.
3. Answering Paragraph 3, the Defendants deny that the Plaintiffs are entitled to the relief that they seek.
4. Defendants deny the allegations of Paragraphs 4 and 5 and demand strict proof that Inside/Gaillard Road exists and that it crosses the property of the Defendants.
5. Defendants admit the allegations of Paragraph 6.

00037

6. Answering the allegations of Paragraph 7, the Defendants demand strict proof of the existence, nature and scope of Inside/Gaillard Road.

7. Defendants deny the allegations of paragraph 8, 9, and 10.

8. Answering the allegations of Paragraph 11, the Defendants admit that their chain of title is recited therein, but deny that any public road crosses their property or crossed the property of their predecessors in title.

9. Answering the allegations of Paragraph 12, Defendants admit only that a gate was erected across their driveway in 1984.

10. Answering the allegations of Paragraphs 13 and 14, Defendants deny that the lawsuit discussed therein, which was filed in 1984, is relevant to the present action. Defendants further deny that the allegations contained in the previous lawsuit were true.

11. Answering the allegations of Paragraph 15, Defendants admit only that Henry J. Lee, Jr. opened the gate across his driveway on June 14, 1984, allowing James Brown to pass through to access his crops.

12. Answering the allegations of Paragraph 16, the Defendants deny that any road maintained by the County of Charleston ever crossed their property; the Defendants deny the remaining allegations of Paragraph 16.

13. The Defendants lack information sufficient to form a belief as to the allegations of Paragraphs 17, 18, and 19 and demand strict proof thereof.

14. The Defendants deny the allegations of Paragraph 20.

15. The Defendants admit the allegations of Paragraph 21.

16. The Defendants deny the allegations of Paragraph 22.

17. The Defendants deny the allegations of Paragraph 23.

18. The Defendants deny the allegations of Paragraphs 24 and 25.

19. The Defendants deny the allegations of Paragraph 26.

20. Answering the allegations of Paragraph 27, Defendants aver that, for months during the Deer Season which ended on January 1, 2016, they and their tenants were besieged by deer hunters accessing their property at all hours, on roaring all-terrain vehicles. Presumably, the hunters were heading for the deer stands referenced in Paragraph 27. In defense of their property, Defendants dug a ditch and posted a sign to prevent further illegal entrance through their property. Further answering the allegations of Paragraph 27, the Defendants deny that the hunters referenced therein were using or ever used a named road to access the property.

21. The Defendants demand strict proof of the allegations of Paragraph 28.

22. The Defendants deny the allegations of Paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and the WHEREFORE paragraphs, which are the remaining allegations of the Third Amended Complaint.

COUNTERCLAIM

Further answering the Complaint, and as a Counterclaim thereto, the Defendants allege:

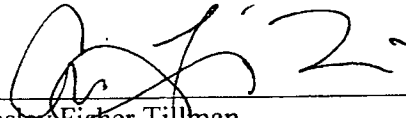
1. They are the lawful owners of the property identified as TMS# 196-00-00-023.

2. They and their two tenants, during the Deer Hunting season which commenced on August 15, 2015, were beset by numerous hunters operating excessively loud all-terrain vehicles, who drove across their property, even into their yards, at all hours of the day and night.

3. Irrespective of the claims of any of the Plaintiffs, the allowance by the Plaintiffs of “guests” to use the Defendants’ property, as alleged in Paragraph 27 of the Third Amended Complaint, constitutes a trespass and entitles the Defendants to both actual and punitive damages.

WHEREFORE, the Defendants pray that the Third Amended Complaint be dismissed and that the Court would grant them actual and punitive damages for Trespass, as well as the reasonable attorney's fees and costs accumulated in the course of defending against this action.

Respectfully submitted,



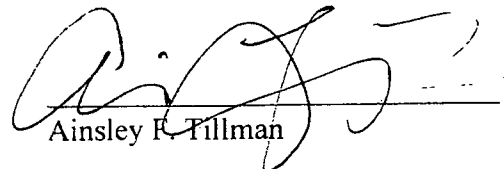
Ainsley Fisher Tillman
29 Brisbane Drive
Charleston, South Carolina 29407
(843) 277-4497
*Attorney for the Defendants,
Donna Lee Cox and Robert R. Cox, Jr.*

Charleston, South Carolina

Sept. 27th, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2018, I properly served the foregoing Answer to the Plaintiffs' Third Amended Complaint on all counsel of record.



Ainsley F. Tillman

TRANSCRIPT OF HEARING

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Thelma Smalls David, Bernard
Brown, Benjamin Smalls, Edward
Brown, Nicolette James, Robert
Brown, Thomas Brown, and Debra
Commodore,

Plaintiffs,

vs. CASE NO. 2015-CP-10-7000

Donna Lee Cox, Robert R. Cox, Jr.,
Shawn Thackeray, and Lowcountry
Highlanders Farm, LLC,

Defendants,

and

Bohicket Farms, LLC,

Intervenor.

VOLUME I

COPY

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:36 a.m. on
October 22, 2019 at 100 Broad Street, Charleston,
South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

1 **Any court, party, or person who has purchased a
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3 reporter, reproduce a copy or portion thereof as an
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5 internal use, but shall NOT otherwise provide or sell
6 a copy or copies to any other party or person.

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 Rileybradham@att.net

(INDEX AT REAR OF TRANSCRIPT)

1 (PLF. EXH. #1, Letter from Atty. Brown, was
2 marked for identification.)

3 (PLF. EXH. #2, Aerial Photo (was not put into
4 evidence), was marked for identification.)

5 (PLF. EXH. #3, 2001 GIS Aerial Photo, was
6 marked for identification.)

7 (PLF. EXH. #4, 2001 GIS Aerial Photo, was
8 marked for identification.)

9 (PLF. EXH. #5, 2015 GIS Aerial Photo, was
10 marked for identification.)

11 (PLF. EXH. #6, 2015 GIS Aerial Photo (was not
12 put into evidence), was marked for identification.)

13 (PLF. EXH. #7, Plat of Cemetery Lot, was
14 marked for identification.)

15 (PLF. EXH. #8, 2019 Tax Record (Was not put
16 into evidence), was marked for identification.)

17 (PLF. EXH. #9, Plat of Subdivision, was marked
18 for identification.)

19 (PLF. EXH. #10, 2019 Charleston County GIS
20 Plat, was marked for identification.)

21 (PLF. EXH. #11, Plat of Daniel Brown Property,
22 4/25/03, was marked for identification.)

23 (PLF. EXH. #12, Various photos of easement
24 ditch, was marked for identification.)

25 (PLF. EXH. #13, Composite: Summons and

1 Petition, Affidavit, Answer, Order and Rule to Show
2 Cause, were marked for identification.)

3 (PLF. EXH. #14, Order, was marked for
4 identification.)

5 (PLF. EXH. #15, Quit Claim Deed, was marked
6 for identification.)

7 (PLF. EXH. #16A-I, Photos, were marked for
8 identification.)

9 (PLF. EXH. #17A-E, Photos, were marked for
10 identification.)

11 (PLF. EXH. #18, Enlarged Photo Aerial, was
12 marked for identification.)

13 (DFT. EXH. #1, Master's Deed, Thelma David,
14 was marked for identification.)

15 (DFT. EXH. #2, Plat, Book E-J, was marked for
16 identification.)

17 (DFT. EXH. #3, Deed, Thelma David to Dante
18 David, was marked for identification.)

19 (DFT. EXH. #4, Deed, Thelma David to Adriana
20 David, was marked for identification.)

21 (DFT. EXH. #5, Deed, Debra Commodore, was
22 marked for identification.)

23 (DFT. EXH. #6, Deed, Benjamin Smalls, was
24 marked for identification.)

25 (DFT. EXH. #7, Plat, Book S-11, was marked for

1 identification.)

2 (DFT. EXH. #8, Deed, Lot J, was marked for
3 identification.)

4 (DFT. EXH. #9, Deed, Lot O, was marked for
5 identification.)

6 (DFT. EXH. #10, Plat, Lots O&P, was marked for
7 identification.)

8 (DFT. EXH. #11, Deed, O-12, property info, was
9 marked for identification.)

10 (DFT. EXH. #12, Deed, O-12, was marked for
11 identification.)

12 (DFT. EXH. #13, Carl Brown, Plat #1, was
13 marked for identification.)

14 (DFT. EXH. #14, Carl Brown, Slice and Dice,
15 was marked for identification.)

16 (DFT. EXH. #15, Plat, Ben Brown, was marked
17 for identification.)

18 (DFT. EXH. #16, Deed, Ben Brown, was marked
19 for identification.)

20 (DFT. EXH. #17, Order Striking Case, was
21 marked for identification.)

22 (DFT. EXH. #18, Deed, Nicolette James, was
23 marked for identification.)

24 (DFT. EXH. #19, Deed, Bob Cox, was marked for
25 identification.)

1 (DFT. EXH. #20, Plat, Cox, was marked for
2 identification.)

3 (DFT. EXH. #21, Photograph, was marked for
4 identification.)

5 (DFT. EXH. #22, Photograph, was marked for
6 identification.)

7 (DFT. EXH. #23, Photograph, was marked for
8 identification.)

9 (DFT. EXH. #24, Photograph, was marked for
10 identification.)

11 (DFT. EXH. #25, Photograph, was marked for
12 identification.)

13 (DFT. EXH. #26, Photograph, was marked for
14 identification.)

15 (DFT. EXH. #27, Photograph, was marked for
16 identification.)

17 (DFT. EXH. #28, Red Road/Blue Road, was marked
18 for identification.)

19
20 P R O C E E D I N G S

21
22 THE COURT: We've got this morning, and
23 scheduled for the next few days, the case of Thelma
24 Smalls David, et al versus Donna Lee Cox, et al. The
25 case number is 2015-CP-10-7000.

1 I've got Mr. McFarland and Mr. Brown present
2 for the Plaintiffs, and I've got Ms. Ainsley Tillman
3 for the Defendant, Coxes along with Mr. Ford.

4 Mr. Sinkler, you're here on behalf of whom?
5 Just refresh my memory. Are you with the Coxes as
6 well?

7 MR. SINKLER: Yes.

8 THE COURT: Very good. And Mr. Bradham,
9 you're here on behalf of --

10 MR. BRADHAM: Bohicket Farms, LLC.

11 THE COURT: There was a Thackeray Farms
12 listed. Is that the same or different or not?

13 MR. BRADHAM: Thackeray Farms owned the
14 property. My client bought it two years ago.

15 THE COURT: I've got it. So there would be a
16 change in the caption of that. So I reviewed the
17 Motions for Summary Judgment, the renewed Motions for
18 Summary Judgment, looked at some of the plats. This
19 case is going to be fairly intensive with documents,
20 and I know that's what Ms. Smith's been doing with
21 you-all since I've been waiting to come out here, to
22 mark some of those things. Like I said, we've got
23 some time. I just wanted to cover a few items with
24 you. Ms. Tillman, I did receive your pretrial brief.
25 I've had a chance to review that as well.

1 I think we can pretty much move forward. I
2 don't mind hearing a little something at the outset,
3 but we've talked about this previously. We have the
4 renewed Motion for Summary Judgment. What I need to
5 know is if there are any matters I need to take up
6 before we start?

7 I'll cover that, and then I want to cover some
8 other things such as -- I usually run until about
9 12:30 or so and break for lunch -- somewhere between
10 12:00 and 1:00 depending on where we are in the case.
11 We come back typically around 2:00. We move
12 forward -- I like to go somewhere between 5:00 and
13 6:00 in the afternoon, whatever a good breaking time
14 is, and then we start back tomorrow. Okay?

15 We'll plan to start back tomorrow at 9:30. We
16 should have everything done and we can get through
17 there. We'll go from there as we move forward.
18 Anything from the Plaintiff I need to take up?

19 MR. McFARLAND: Yes, Your Honor. Two of the
20 Plaintiffs, Ms. David and Mr. Smalls, have withdrawn
21 as Plaintiffs in the case.

22 THE COURT: All right.

23 MR. FORD: Is that Thelma David and Benjamin
24 Smalls?

25 MR. McFARLAND: That's correct.

1 MR. FORD: This is the first we've heard of
2 that, Judge.

3 THE COURT: They've just withdrawn so they
4 won't be -- I need to get into sort of realigning the
5 parties so we make sure we have everybody in there
6 properly, but those two would be removed as
7 Plaintiffs as of today's date as of the date of
8 trial. Mr. Ford?

9 MR. FORD: Ours is pretty standard, Rule 615.
10 We would like the sequestration of nonparty
11 witnesses, please.

12 THE COURT: All right. Sequester the nonparty
13 witnesses. Do we have any of those, Mr. McFarland?

14 MR. McFARLAND: We don't, Your Honor.

15 MR. FORD: That's easy.

16 MR. McFARLAND: There is one but he's not here
17 and won't be. That's an expert. He will be called
18 at the time -- just before it's time for him to
19 appear.

20 THE COURT: That's Mr. Parker, right?

21 MR. McFARLAND: That's correct.

22 THE COURT: I'm familiar with him. If he
23 walks in I'll let you-all know. Okay? Is the
24 Plaintiff ready to proceed?

25 MR. McFARLAND: We are, Your Honor.

1 THE COURT: Well, why don't we get started.
2 I'm ready to go.

3 MR. McFARLAND: Your Honor, we call as
4 Plaintiff's first witness, Mr. Ed Brown.

5 THE COURT: Mr. Brown, come on up, sir. Bring
6 whatever you need. I'm sure this will be a history
7 lesson for all of us.

8 MS. TILLMAN: Would you like any opening
9 statements from us?

10 THE COURT: I don't think I need them to be
11 honest with you. Like I said, I've reviewed it, read
12 it. I do have this question: The case was
13 bifurcated and sent over here, so the DJ easement
14 question is what I've got, right? That's what I've
15 got to deal with?

16 MR. McFARLAND: That's correct, Your Honor.

17 THE COURT: Mr. Brown, why don't you step over
18 there.

19 EDWARD M. BROWN,
20 being first duly sworn, testified as follows:

21 THE COURT: Your full name and address for the
22 record, please?

23 THE WITNESS: Edward M. Brown, 3129 Regal Oak
24 Lane, John Island, South Carolina.

25 THE COURT: What kind of oak was that?

1 A. Five.

2 Q. Five, all right.

3 A. The deceased siblings are Helen Brown, Sarah
4 Brown, Rosa Brown Taylor, and Carl Brown.

5 Q. Did your father own property on Wadmalaw?

6 A. He did.

7 Q. And where was that property located?

8 A. The property was located between Bears Bluff
9 and Harts Bluff Road. Harts Bluff Road intersects
10 Bears Bluff Road at two points, like a horseshoe, and
11 the property that Frank Brown owned crosses Harts
12 Bluff Road going north towards then Leadenwah Creek,
13 and it extends in a southerly direction almost --
14 well, not almost, but I would say about maybe 600 or
15 700 yards, maybe 1,000 yards from Bears Bluff Road.

16 Q. Now, for the ease of the Court, since this
17 exhibit is up here -- have you marked that?

18 MS. TILLMAN: We have not marked it.

19 MR. McFARLAND: To explain it to the court --
20 it might make it a little easier here. There is on
21 this exhibit -- and I'm not sure of the number.

22 MS. TILLMAN: We have not marked it.

23 MR. McFARLAND: I'll let you-all introduce it,
24 but there is on this exhibit that the Court can very
25 well see, certain lots that have been identified

1 along with Back-A-Wood Road, Bears Bluff Road, and up
2 at the very top would be Harts Bluff Road which runs
3 U-shaped from Bears Bluff; is that correct?

4 THE WITNESS: Yes. Bears Bluff Road (sic) is
5 the horseshoe.

6 Q. (BY MR. McFARLAND) I'm sorry. Harts Bluff
7 Road is the horseshoe?

8 A. You're correct.

9 Q. And on it is marked a property in pink, which
10 is -- it looks like pink to me. I might be color
11 blind. It says, Cox parcel. That is running along
12 off Harts Bluff Road. Can you see this?

13 A. Yes, I can see it.

14 Q. And then there is a Geneva Shaw Lane,
15 identified here at the bottom at Bears Bluff, and
16 Back-A-Wood at the very top. The strip that is here
17 in blue, do you recognize it?

18 A. Not --

19 Q. You can come over.

20 A. I don't think I can recognize it from that. I
21 do have some other documents that would be more -- I
22 would like to try to identify it by the TMS number.

23 Q. Okay.

24 A. This is -- there are two -- this is the Coxes
25 in this parcel. There are two tracts in between the

1 Cox and Frank Brown -- that would be the Estate of
2 Grace Brown and Daniel Brown.

3 Q. Okay.

4 A. And then this would be Frank Brown, however,
5 that doesn't go all the way to Bears Bluff Road as is
6 indicated here.

7 Q. Did your father own the property that is
8 between the Coxes' property and Back-A-Wood Road?

9 A. He owned -- yes. He owned a part of this --
10 he owned this tract, the one that had the TMS number
11 that ended in 012. That's the tract he owned. He
12 did not own the two other tracts that are closer to
13 the Coxes' property.

14 Q. And I'll get into the TMS numbers to help you
15 better identify what we're talking about.

16 THE COURT: And just so I'm clear for the
17 record, the Cox parcel does not touch the tract of
18 land that your family owns; is that right?

19 THE WITNESS: That is correct.

20 THE COURT: Okay. They're not adjacent.

21 Okay.

22 Q. (BY MR. McFARLAND) And between your --

23 A. Well, wait a minute. I have to adjust that.

24 THE COURT: You said some sort of estate -- I
25 want to go back there.

1 THE WITNESS: Yes. The Estate of Grace Brown
2 is a piece of property that my father had an interest
3 in. Now, that property, which is adjacent to the
4 Coxes' property is presently owned by my brother,
5 William Brown, William J. Brown. And the property
6 going towards the property that we're here about --
7 well, that Frank Brown owned -- the property that's
8 between William Brown's property and that property is
9 Daniel Brown.

10 THE COURT: Owned by Daniel Brown?

11 THE WITNESS: Yes. Owned by the Estate of
12 Daniel Brown.

13 THE COURT: So those are the two owners
14 between the Coxes and where we're talking about?

15 THE WITNESS: No. No. I'm sorry.

16 Q. (BY MR. McFARLAND) Let me see if I can help
17 clarify this here.

18 A. It's Ben Brown. It's not -- the property
19 between the Estate of Grace Brown and Frank Brown is
20 Ben Brown. I need to correct that. Daniel Brown is
21 the property that is on the other side of Frank
22 Brown.

23 THE COURT: And there's a Ben Brown estate?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. I've got it. Thank you.

1 Q. (BY MR. McFARLAND) I've just handed you
2 what's been premarked as Exhibit No. 3 for the
3 Plaintiffs.

4 A. Yes.

5 Q. And on that Exhibit, next to the Coxes'
6 property is the tract identified as TMS
7 196-00-00-015?

8 A. That's correct.

9 Q. And who is the owner of that property? That's
10 Exhibit No. 5, but that's almost the same as No. 4.

11 MR. FORD: Can we see that, Judge?

12 MR. McFARLAND: I'm sorry. Yes.

13 THE COURT: Show it to them first. So you're
14 asking which one? Whose property ends in 015?

15 THE WITNESS: 015 is the Estate of Grace
16 Brown.

17 THE COURT: Grace Brown, thank you.

18 Q. (BY MR. McFARLAND) And 013?

19 A. Ben Brown.

20 Q. And 012?

21 A. Frank Brown.

22 Q. Who's the current owner of 012?

23 A. The heirs of Frank Brown.

24 Q. And that would include -- who would that
25 include?

1 A. That would include myself, Robert Brown, Irene
2 Kelly, Thomas Brown, children of Rosa Taylor,
3 children of Helen Brown, and I think that's it.

4 THE COURT: Did Carl have any heirs?

5 THE WITNESS: He did but his portion of this
6 property has already been segregated. He has his.

7 Q. (BY MR. McFARLAND) And on the records of
8 the -- generally the tax records -- it will show your
9 name as the owner of that tract, but you are not the
10 sole owner based on your testimony; is that correct?

11 A. By no means am I the sole owner, no.

12 Q. Now, on tract -- there is a -- strike that.

13 The property that was owned by your father,
14 what was its use during his lifetime?

15 A. Primarily he farmed. He did cut some pulpwood
16 from there sometimes. If I recall correctly it was
17 hardwood as opposed to pine. That's pretty much
18 what -- and we had cows and other livestock also.

19 Q. And about when did your father start farming
20 on this property approximately?

21 A. I don't know that.

22 Q. How old are you?

23 A. I'm 70.

24 Q. And when you were a young boy was your father
25 farming that land?

1 A. Yes. I remember those days quite well. It
2 was hard work. Yes, he was. My first conscious
3 memory of being in the fields on that property is
4 probably when I was about four, or five. I remember
5 it being very, very hot. It was in the summertime.

6 Q. Did your other siblings assist your father in
7 farming that property?

8 A. Oh, absolutely.

9 Q. And how did your -- what was the access to
10 this property? We've already identified Harts Bluff
11 Road and Bears Bluff Road as being the main roads
12 surrounding this property. How did your father
13 access the property that he farmed?

14 A. We came through -- then it was called the
15 Blind Road. It's been called the Dirt Road. It was
16 also called -- I gave it the name Gailliard Road
17 because I saw an unrecorded plat that had that name
18 on it, so any one of those three names.

19 Q. And those roads intersected with which road?
20 Was it Harts Bluff or Bears Bluff?

21 A. Harts Bluff.

22 Q. Okay. And in order to get to his field, what
23 properties did he have to cross?

24 A. He had to cross the property -- then the
25 property was -- I don't know who owned the property,

1 but I know the property was farmed by -- the property
2 the Coxes have now was farmed by Bushy Davis and
3 Leeland Price, and then he also had to cross the
4 Estate of Grace Brown and the Estate of Benjamin
5 Brown. That is the property that has been
6 designated -- is this the right Exhibit, Exhibit
7 No. 3?

8 Q. Exhibit No. 3 is what you have.

9 A. Yes, he had to cross property that had TMS
10 No. 196-00-00-015 and 196-00-00-013.

11 Q. I take it your father used special equipment
12 to farm this land?

13 A. We did have special equipment. We did have
14 tractors. We had horses. We had a couple of horses.
15 We had trucks and what have you to go back in and get
16 the crops from the field during harvesting time and
17 during planting time.

18 Q. Was the -- strike that.

19 When did your father die?

20 A. My father died in 1969 -- I'm sorry -- 1968.
21 I was a freshman in college.

22 Q. Was his land -- was the land continued to be
23 farmed by anyone after that?

24 A. It was.

25 Q. And who farmed the land?

1 A. Primarily my brother, James.

2 Q. And when you say primarily, were there others
3 who farmed the land?

4 A. Well, I tried, not to farm, but as you-all may
5 know the practice of law is very, very stressful, so
6 sometimes during the summertime I would go back there
7 and I would plant a couple of rows of okra and squash
8 because the deer would not allow those things to come
9 to maturation. I tried. My brother -- my nephew,
10 Bernard, also -- I don't know if he did any farming
11 back then, but he did a lot of work, and my brother
12 Carl also did some farming back then.

13 Q. I'm going to show you what's been marked as
14 Exhibit No. 5. It's an aerial photograph similar to
15 Exhibit No. 3. Would you identify on that exhibit,
16 if you would, where your farm is located?

17 A. Okay. I don't know when this aerial photo was
18 taken, but -- to the right and up top that's a part
19 of the field that is there. Where you have the TMS
20 number that is identifying this property,
21 196-00-00-012, we used to plant to the left of that,
22 watermelons. That was all a field, and it was a
23 field all the way up to the tributary that intersects
24 this property and runs across Harts Bluff Road and
25 intersects this property and the property that's

1 adjacent to it on the right which would be the Estate
2 of Daniel Brown and it goes further.

3 Q. So on the northern side of that field --
4 there's a clearance there, right?

5 A. This clearance, yes, on the northern side of
6 that. I would say -- if I can demonstrate -- there
7 was a little patch of woods maybe about 100 yards
8 long going north to south. Then everything else
9 going up to what we called the creek -- we called it
10 the gutter but it was a creek -- we would farm. I
11 remember snap beans. I remember beans. I remember
12 cabbage, cucumber, and soybeans.

13 Q. Did your brother, after the death of your
14 father, continue farming those particular crops?

15 A. He did. He did. This is not the only place
16 he would farm. He farmed this, but he would also
17 farm this piece here (indicating) that is identified
18 as 196-00-13 and 15. What he would do is rent the
19 land and farm it, you know, and plant crops on it.

20 Q. So he would plant across those three tracts;
21 is that correct?

22 A. He did.

23 Q. How did he -- how did your brother, after the
24 death of your father, access the tracts that he
25 farmed?

1 A. We always accessed that tract by driving
2 through the Old Blind Road -- the Old Blind Road is
3 marked on Exhibit 3. You can clearly see it on
4 the -- you can clearly see it on Exhibit No. 3.
5 This, Exhibit No. 3, came into being after 1984, but
6 prior to 1984 there was another road, same road run
7 off Hart Road (sic) that ran through the back yard of
8 the Coxes. Then it was a guy by the name of Eaton.
9 Prior to Eaton moving there there was nothing there.

10 Q. So Eaton lived in a house that was adjacent to
11 the road?

12 A. What you called the Dirt Road, the Blind Road,
13 the Old Blind Road, yes.

14 Q. And so your brother and others accessed those
15 tracts using that road that passed the Eaton
16 residence; is that right?

17 A. Yes, that's correct.

18 Q. And about how close was that road to the Eaton
19 residence?

20 A. I would say maybe ten to 15 yards. It was
21 very close to the backyard. Now, I was away at
22 school when he built that house, but prior to my
23 going away to college and law school and what have
24 you, there was no house there.

25 Q. Approximately when -- do you recall when he

1 built the house?

2 A. Well, I don't know when he built the house,
3 but I do know -- I said this in my deposition, but I
4 made an error. He and I had a confrontation about
5 the use of that road. I said I was in high school.
6 I wasn't in high school. That was the last year of
7 law school.

8 Q. What year would that have been?

9 A. That would have been sometime -- I think it
10 was that Christmas of 1974 or the summer of 1975.

11 Q. And so the house was there at least in late
12 '74 or '75 as you recall?

13 A. Yes.

14 Q. And the access to those three tracts that we
15 talked about came past that house by some 15 yards or
16 so?

17 A. From the back.

18 Q. From the back door?

19 A. Yes.

20 Q. Okay. During the time that Mr. Eaton owned
21 the residence did you or anyone else -- was there
22 ever an attempt to prohibit you from using that
23 access to these farms?

24 A. Yes, there was. It was a very serious
25 attempt. I was coming back -- I had already gone

1 through the fields. I can't remember exactly why I
2 went there. I can't remember exactly what time of
3 year it was, but I was coming back from the fields to
4 get back to Harts Bluff Road to get back to Bears
5 Bluff Road, and as I was coming back Mr. Eaton came
6 out brandishing a gun. He looked like a crazy man.
7 I had never seen him before.

8 So he pulled out the gun, and he told me to
9 get out. Get out. I said, This is a -- this could
10 be a dangerous situation. So I got out. My hands
11 were up. His wife called him. He got distracted and
12 I hit him as hard as I could. I just grabbed -- I
13 mean, I just rushed him and the gun went one way and
14 I stayed on top of him. I got the gun.

15 I'll never forget that. I was young and
16 foolish then. Perhaps I should have just left,
17 but --

18 THE COURT: Right out of law school, huh?

19 THE WITNESS: I wasn't out of law school yet.
20 I hadn't graduated yet.

21 THE COURT: Young and foolish.

22 Q. (BY MR. McFARLAND) Were you in a vehicle at
23 the time he brandished the gun?

24 A. I was in a vehicle. I was in a vehicle.

25 Q. And so you stopped and got out of the vehicle

1 and had this confrontation with him?

2 A. It wasn't a confrontation. It was combat.

3 Q. Combat. I stand corrected. Was that the only
4 time during Mr. Eaton's ownership of this residence
5 that you personally had any -- you were confronted in
6 an effort to stop you from using the road?

7 A. That's the only time that he confronted me,
8 but I do know of an occasion where he confronted my
9 nephew, Bernard, with the same madness.

10 Q. After the confrontations did you-all continue
11 to use the road?

12 A. Yes. Yes.

13 Q. After Mr. Eaton's ownership of that house and
14 property, Henry Lee and Donna Lee became the owners;
15 is that correct?

16 A. That's what the property record shows, yes.

17 Q. Do you recall what year they became owners of
18 the property?

19 A. I think it was in 1983 or 1984. I think it
20 was in 1983 if I'm not mistaken. I have a property
21 record -- I think you'll -- I think it's '83. That
22 might be correct.

23 When -- after Mr. Lee and his wife became
24 owners of the property, was there any attempt to stop
25 you-all from using the road?

1 A. Yes. There was by Mr. Lee and -- at that time
2 Ms. Lee.

3 Q. How did they attempt to stop you from using
4 the road?

5 A. Mr. Lee or Ms. Lee put up a gate and my
6 brother, James, who was primarily doing all of the
7 farming then couldn't get to his crops, couldn't
8 harvest his crops. So he came to me and we brought
9 an action in the Court of Common Pleas for Charleston
10 County. The case number is 84-1734. The action was
11 for a temporary restraining order.

12 We got the -- I filed the action and the
13 Honorable Richard Fields executed an order requiring
14 Mr. Lee and/or Ms. Lee to take the gate down and they
15 did.

16 MR. FORD: Are these all of the pleadings in
17 that case, Mr. McFarland?

18 MR. McFARLAND: That's my understanding that
19 these are the pleadings, and I'll publish them so
20 that --

21 MR. FORD: Just for the record, what you're
22 producing as Exhibit 13 are the entire pleadings in
23 that case?

24 MR. McFARLAND: That's my understanding.

25 Q. (BY MR. McFARLAND) And what's been marked as

1 Plaintiffs Exhibit 13, Mr. Brown, is the lawsuit that
2 you referenced captioned James W. Brown versus Henry
3 J. Lee. It is Case No. 84-CP-10-1734. It was filed
4 on June 14th, 1984?

5 A. That is correct.

6 Q. That is correct. And then attached to it is
7 an order of the Honorable Richard Fields dated June
8 14th, 1984 along with an affidavit of James Brown
9 dated June 13th and filed on June 14th in the
10 captioned case. Then there is an answer from Henry
11 Lee that is verified and dated July 6, 1984. As
12 Counsel for the Plaintiff in this case, to your
13 knowledge are there any other documents filed in this
14 case?

15 A. There are no other documents that are filed
16 with the clerk -- that would be in the clerk's
17 office. Now, in terms of that filing I don't -- I've
18 searched and I can't find it. Those are the only
19 other documents that I have. I got those documents
20 from the clerk's office.

21 Q. And to your knowledge, there were no other
22 documents in the clerk's file other than what I just
23 published?

24 A. That is correct.

25 MR. McFARLAND: Your Honor, move the

1 introduction of --

2 THE COURT: I'm going to assume that
3 everything is without objection unless I hear one.

4 MR. FORD: That's fine. Those are for notice,
5 not necessarily for the truth of the matter asserted.

6 THE COURT: Okay.

7 MR. McFARLAND: So in the --

8 THE COURT: Any recollection as to what
9 happened? What transpired after that?

10 MR. McFARLAND: Yes.

11 Q. (BY MR. McFARLAND) Tell me again, the process
12 for the filing and the responses and what happened as
13 a result of your filing of this action?

14 A. After we filed the action the order was
15 served -- the order along with all the pleadings was
16 served on Mr. Lee and I don't think Donna Lee was a
17 party to that action, but the order was served and he
18 took the gate down. Maybe -- I can't remember how
19 long after that, but if I'm remembering correctly,
20 Demal Mattson represented Mr. Lee. He and I talked
21 and they wanted to pretty much just --

22 MR. FORD: Object as to hearsay. I don't know
23 what's coming but it sounds hearsay-ish.

24 THE WITNESS: I haven't said it yet.

25 MR. FORD: All right.

1 THE WITNESS: There was a move afoot to try to
2 resolve the matter in a neighborly fashion.

3 Q. (BY MR. McFARLAND) Before you get to that,
4 I'm going to show you a part of Exhibit 13 that is
5 identified as the answer of Henry Lee and ask you to
6 read Paragraph 6 of that answer.

7 A. Okay. Paragraph 6 reads in that answer -- as
8 Paragraph 15 and 16, upon receiving notification from
9 the Plaintiff, the Defendant, on June 14, 1984,
10 opened said gate for free access to Plaintiff.

11 Q. Thank you. So on the date that Mr. Lee was
12 served he removed the barrier, which was the gate; is
13 that correct?

14 A. He removed the gate.

15 Q. And I believe you were -- you made the
16 statement that there was some attempt to resolve this
17 in a neighborly fashion. Does that mean that there
18 was no further proceedings in this case in the Court?

19 A. It does mean that, but I must preface that by
20 saying this: Sometimes it's said that you should
21 never represent your family. In a lot of instances
22 that's true. I wanted to get a permanent injunction,
23 but my client, who is my brother said, Let's be
24 neighborly. I don't want you to go much further with
25 this. Let me see if I can work it out. That's what

1 happened.

2 Now, I don't remember -- I think about -- it
3 was before the -- it was some time between that day
4 and sometime in August, he called me and asked me to
5 come down there.

6 Q. When you say he, who are you referring to?

7 A. My brother, James, called me and asked me to
8 come down to his house and let's meet with Mr. Lee.
9 I was skeptical about that because Mr. Lee had an
10 attorney, so I told him that I don't know that I can
11 do that. He said, Well -- I told him to ask Mr. Lee
12 if he would -- if his attorney would agree to that.
13 He told me -- and I didn't verify this with
14 Mr. Manos -- but he told me that Mr. Lee said, Come
15 on. It's okay.

16 So I went down there and Mr. Lee -- I think
17 Donna Lee was there, too -- brought a case of beer,
18 Schlitz beer and put it on the tractor near his
19 house. They had a tractor. He said, Let's try to
20 resolve this. Let's have some beer. Well, I was
21 never a beer drinker. I didn't drink any of the
22 beer. I think my brother, James, had one or two.
23 The resolution was -- as I understand it, the
24 resolution was to just move the road from the behind
25 his house and move it to the south end of the

1 property. Mr. Lee helped with that in terms of the
2 construction of that road.

3 Q. When you say he helped with the construction
4 of that road, what do you mean?

5 A. I wasn't there when this was done. I didn't
6 actually see him do this, but my understanding of the
7 agreement was that they were going to -- Mr. Lee or
8 someone working for Mr. Lee was going to cut a path.
9 They were going to move that easement, the Old Blind
10 Road to the south end of the property which would be
11 located -- it's what you can see here on Exhibit
12 No. 3.

13 Instead of going through about 15 yards away
14 from the house that they bought, they just moved the
15 easement to the south end of the property.

16 Q. So in terms of disruption of your brother's
17 ability to get to his tract, the only period of time
18 where he could not access his farm was the time
19 between the placement of the gate and the restraining
20 order on June 14th to remove the gate when it was
21 removed; is that correct?

22 A. That's correct.

23 Q. After the order was served and the gate was
24 removed, he then just had a different route that he
25 took; is that correct?

1 A. That is correct.

2 Q. Now, in terms of what you have described as --
3 let me go back one step further.

4 In terms of the use of the original Old Blind
5 Road behind the Coxes' residence, besides your
6 brother -- I believe you said that you did some
7 farming there. Did you do farming there after the
8 Coxes became owners of this property.

9 A. Yes.

10 Q. Okay.

11 A. No, let me be quite frank. It wasn't really
12 farming. It was planting a couple of rows of okra.
13 That's not really farming.

14 Q. It was more gardening than farming?

15 A. More gardening than farming, yes.

16 Q. And so you -- you used that road to get to
17 these tracts or wherever you gardened your particular
18 crops?

19 A. I used the road to get to the tract for
20 gardening, for cutting firewood, for -- I think there
21 were a couple of occasions -- I bought a Winchester
22 rifle and I went back there for target practice. We
23 would cut firewood maybe three or four times, maybe
24 as much as five times a year, because there was a lot
25 of hardwood back there.

1 I had a sister that had a fireplace. I had a
2 nephew that had a fireplace, and I had a fireplace,
3 so we would go and cut wood repeatedly especially
4 during the wintertime. We would use that access, use
5 that road, use the Old Blind Road to get there.

6 Q. And when you say we, who are you referring to?

7 A. My nephew, Bernard; myself; my nephew, Robert;
8 my brother, Carl; my brother, Thomas; my brother,
9 William. There would be the guys that would help us,
10 Julius Simmons, Timmy Mitchell, all these guys.

11 Q. Did each of your brothers and your nephews all
12 have their own vehicles that they used to drive to
13 the area where the tree cutting, firewood cutting, or
14 planting was done?

15 A. My nephew, Buddy, had his own vehicle. My
16 brother, Carl, had his own vehicle. My brother,
17 William, had his own vehicle, and I borrowed a
18 vehicle from them.

19 Q. Now, after the conversation or the negotiation
20 that led to a different route than the area behind
21 the Coxes' residence, would you look at Exhibit
22 No. 3, I believe it is?

23 MR. McFARLAND: For the record, Your Honor,
24 these exhibits are from the Charleston County aerial
25 photographs for the year 2001.

1 THE COURT: Okay.

2 Q. (BY MR. McFARLAND) Would you identify as best
3 you can -- first of all, I'm going to get a pen so
4 you can -- where approximately the original road ran,
5 and if you would mark on that exhibit where the
6 original road ran?

7 A. I think it -- you want me to mark on this
8 (indicating)?

9 Q. Yes. If you would, yes.

10 A. Okay.

11 Q. If you would, just place an "X" on the line
12 where that is, just the "X" so we'll know that that's
13 the initial location, and then if you would also mark
14 on that exhibit where the alternate path or road was
15 and how it ran?

16 A. Do you want me to use a different color?

17 Q. No. You can use that. We'll just mark it
18 with a different letter.

19 A. The alternate path, as some of the pictures
20 will show later, after the road got to the -- I think
21 it was the Estate of Ben Brown -- you had like a "Y"
22 intersection. One went to the right and the other
23 one went to the left. The one going to the right led
24 directly to the cemetery and subsequently further
25 right to the property owned by Frank Brown, the

1 Estate of Frank Brown.

2 Q. And if you would put, just so we don't get
3 confused -- if you would put a "B" there? A "B" is
4 easier.

5 A. All right. (Witness complied.)

6 Q. I'm going to ask also that you circle the
7 residence so we'll know approximately where that is.
8 If you would circle the residence in blue here
9 (indicating)?

10 A. This is the residence (indicating). I
11 remember the circular driveway.

12 Q. If you would then, if you would mark where you
13 placed the pen drawing of the initial road? If you
14 would trace over that same line that you initially
15 placed there (indicating).

16 A. (Witness complies.)

17 Q. You can even make that heavy.

18 A. I'm pretty sure this was where -- it went to
19 the right -- the one on the left.

20 Q. And secondly, would you mark where the
21 alternate route -- try this green pen (indicating).

22 THE COURT: I have some other colors here.

23 MR. McFARLAND: The black will do because we
24 can identify -- it's so separated until -- if you can
25 just go with the green there and just make it as

1 steady as you can. Just trace it -- we're just
2 trying to identify approximately where the new road
3 ran.

4 THE WITNESS: (Witness complies.)

5 Q. (BY MR. McFARLAND) And if you would also
6 identify where it came off Harts Bluff?

7 A. You can't see Harts Bluff, but it would go
8 this way. Both came off Harts Bluff Road.

9 Q. Very well.

10 A. Do you want me to put a letter there?

11 Q. I'll have to complain to Mr. Brown's
12 Kindergarten teacher about his tracing.

13 THE COURT: So these markings are on
14 Plaintiff's Exhibit No. 3, correct?

15 MR. McFARLAND: That's correct, Your Honor.

16 THE COURT: All right. Thank you.

17 Q. (BY MR. McFARLAND) So Mr. Brown, with respect
18 to the markings that you've placed on Exhibit No. 3,
19 after the -- namely the conversation between your
20 brother and Mr. Lee, they came up with this route
21 that you show as B on Exhibit No. 3; is that correct?

22 A. That's correct.

23 Q. And after that was done -- first of all, about
24 what year was it that this new road was agreed upon?

25 A. It was in 1984. It was after the action for

1 the temporary restraining order. It was in 1984.

2 Q. So from 1984 until this particular lawsuit was
3 filed, did your brother and other members of your
4 family continue to use that route that you marked as
5 "B"?

6 A. Yes. My brother, Ms. Commodore's family, the
7 Smalls -- to get to that cemetery that is down there,
8 yes. Everybody used that -- the one that I marked as
9 "B".

10 Q. Okay. When did your brother stop farming
11 these tracts of land?

12 A. His health -- his health began to fail him in
13 about '82 or '83. So I would say that was
14 approximately -- maybe around 2013 or 2014. I'm not
15 sure about that, but I think -- it was about
16 two years before he died.

17 Q. And what year did he die?

18 A. Mr. McFarland, I'm ashamed to say but I can't
19 remember.

20 Q. At least until 2013, you believe, he continued
21 to farm the land?

22 A. Yes.

23 Q. So from 1984 or '85 until 2013 he continued to
24 use what is identified as the route "B" on Exhibit
25 No. 3; is that right?

1 A. That is correct.

2 Q. What other uses were made -- for what other
3 purposes was the route "B" used?

4 A. The heirs of Daniel Brown had --

5 MR. FORD: I need to object on this. It lacks
6 foundation. It sounds like he's going to testify
7 about what other people are doing and it needs
8 foundation as to how he knows.

9 MR. McFARLAND: Okay.

10 THE COURT: Noted.

11 Q. (BY MR. McFARLAND) Are you aware of anyone
12 else who used this road?

13 A. Yes.

14 Q. Are you personally aware of anyone who has
15 personally used this road?

16 A. Yes.

17 Q. And would you identify those persons?

18 A. The Smalls family, the Moultrie family, the
19 Gibbs family, the Samms family. I'm particularly
20 aware of attending funerals because there's a
21 cemetery on one of those lots that constitutes the
22 Estate of Daniel Brown. John Moultrie, who is buried
23 in that cemetery, was my classmate. So I went to his
24 funeral, and that's the route we used. There are a
25 number of people that are buried in that cemetery,

1 and the only way they got to the cemetery was through
2 that road, the one that we marked as Item "B" on
3 Exhibit 3, I think it is. Julia Smalls is buried
4 there. She's buried there.

5 Q. She's buried in the cemetery?

6 A. She's buried in the cemetery.

7 Q. So Smalls, Moultrie, Samms family?

8 A. Gibbs.

9 Q. And do you know when the last burial took
10 place at the cemetery?

11 A. If you give me a minute I'll tell you. Here
12 it is -- Alvin Samms. Alvin Samms was buried there
13 in 2012.

14 Q. And the earliest burial that you're aware of?

15 A. The earliest one that I'm aware of that I have
16 a picture of is Julia Brown Smalls. That was a few
17 days after February 7th, 1989.

18 Q. So the earliest burial you have is 1989 and
19 then the latest would have been in 2012?

20 A. That's correct.

21 Q. And besides accessing that property for --
22 that road "B" for purposes of reaching the farms and
23 burials, does anyone live on any of those tracts?

24 A. No one lives there now, but there was -- I
25 remember a family living on -- not a family but

1 families -- but it was only one house that lived --
2 that occupied one of those lots that constitute the
3 Estate of Daniel Brown.

4 Before we got to using the easement that's
5 identified as "B" on Exhibit 3, using the old one,
6 there was a family that lived there by the name of
7 Gadsden. She had three daughters. Those daughters
8 went to school with me. Their names were Blanche,
9 Lilly and Mary. In order to catch the school bus to
10 go to Rockville Elementary School then, they walked
11 from their house to that Old Blind Road to Harts
12 Bluff Road, caught the bus. The bus would continue
13 on up to the Samms' house on Harts Bluff Road, turn
14 around and take us -- after they picked up other kids
15 to Rockville Elementary School which is now Frierson
16 Elementary School.

17 Q. Is that house still there now?

18 A. No. The house is not there now.

19 Q. Do you know when it was razed or when you last
20 saw it?

21 A. Mr. McFarland, I want to say that I probably
22 was in the --

23 Q. Were you in grade school or high school or
24 college or law school?

25 A. I wasn't in law school.

1 Q. So it would have been before you went to law
2 school?

3 A. Yes. It was probably in the mid '60s/early
4 '70s.

5 Q. So before Mr. Eaton built the house and before
6 the Coxes bought the property from Eaton; is that
7 right?

8 A. Yes. Yes.

9 Q. So are there any buildings on any of these
10 lots now?

11 A. No.

12 Q. We'll come back to the location of the
13 cemetery later on, but let me ask you -- at the time
14 of this lawsuit -- this lawsuit alleges -- the
15 Coxes -- Donna Cox who is now remarried since the
16 death of Henry Lee to Robert Cox, the Coxes
17 apparently placed a barrier across the path of the
18 road that you've identified as "B"; is that correct?

19 A. Right. That's correct.

20 Q. And how long before this lawsuit did that
21 happen?

22 A. I was informed, I think by my brother, Carl
23 who was living there -- that they dug a ditch, that
24 somebody dug a ditch -- that Ms. Cox had dug a ditch
25 across the easement designated as "B" on Exhibit 3.

1 And on November 16th, 2015, I sent her a letter
2 telling her pretty much -- well, here is what the
3 letter said.

4 Q. Let me show you what's been marked as
5 Plaintiff's Exhibit No. 1.

6 MR. FORD: We have no objection but not as to
7 the truth of the matter asserted.

8 THE WITNESS: This is the letter that I sent.

9 Q. (BY MR. McFARLAND) And would you just publish
10 what you wrote?

11 A. The letter is dated November 16, 2015. It's
12 to:

13 "Donna Lee Cox, 1310 Harts Bluff
14 Road, Wadmalaw Island, South Carolina,
15 29487, regarding the ditch blocking
16 access to the property owned by the
17 Heirs of Frank Brown, TMS No.
18 196-00-00-012.

19 "Dear Ms. Cox, as I informed you
20 this morning in our telephonic
21 conversation, you have unlawfully
22 disrupted me and my siblings' access
23 to the hereinabove mentioned tract.
24 Moreover, there are four (4) to six (6)
25 other individuals that own land

1 adjacent to the Heirs of Frank Brown's
2 tract that don't have access because
3 of these ditches you dug across the road
4 or easement.

5 "The position you take in regard
6 to this easement is unreasonable. You
7 cannot, unilaterally close or disrupt
8 this easement. In that connection,
9 speaking only for my siblings and myself,
10 you need to fill those ditches so we
11 can have access to our property. If
12 that is not done within seven (7)
13 days from the date of this letter, we
14 will engage in whatever legal action
15 it takes to make sure that the easement
16 permanently remains unobstructed."

17 It was signed by me.

18 Q. And how was this delivered to Ms. Cox?

19 A. If I'm not mistaken -- I know it was mailed,
20 but I think I got Mr. James Jackson to also hand
21 deliver that letter to her.

22 Q. I'm going show you what's been marked as
23 Plaintiff's Exhibit No. 12. It's four photographs.
24 Would you identify those photographs, please?

25 A. This is the ditch that he dug across the road.

1 I said he because I later learned that Mr. Cox dug
2 the ditch. These photographs were taken at my
3 direction while I was there maybe about three or
4 four days after I sent that letter to her, the
5 November 16th, 2015 letter.

6 Q. Okay. And those -- and that would have been
7 before you filed this action?

8 A. Before I filed this action, yes.

9 Q. And what was -- was there any response from
10 Ms. Cox?

11 A. No, not at all.

12 Q. And since you filed this lawsuit, have you or
13 your family, had any access to the tracts that we
14 talked about ending in 15, 13, 12, or the cemetery?

15 A. No, we have not. My deceased brother, Carl,
16 wanted us to go back there and just close the ditch
17 or fill in the ditch and continue to use the access,
18 but I didn't think that was the proper way to do it.
19 I decided we would use the Court system.

20 Q. Now, you have testified about a cemetery --

21 A. Yes.

22 Q. -- that is -- let me make sure I've got the
23 right one here -- about the cemetery -- I'll just
24 continue my sentence -- the cemetery that was
25 accessed by the families who are buried there. I've

1 just shown you what has been marked as Exhibit No. 7,
2 I believe. Would you identify the location of the
3 cemetery on that plat?

4 A. The cemetery is located between -- it's
5 located north of Lot L on this plat and south of
6 Lot -- I can't make that out -- J, Lot J. I think
7 that's J. Yes, Lot J.

8 Q. And it is marked as a cemetery, to be used as
9 a cemetery?

10 A. It says, Cemetery lot for family use.

11 Q. And in order to assist the Judge in
12 identifying where that is, would you just draw a
13 circle around the lot that you're referring to on
14 that plat?

15 A. (Witness complies.) There is a little road on
16 this plat where there is a dotted line that
17 constitutes -- it's more legible on the bigger plat
18 (indicating).

19 Q. And it's your testimony that the road marked
20 "B" was the access road to that cemetery?

21 A. Sole access, yes.

22 Q. And whose property is that cemetery?

23 A. That cemetery is on the Estate of Daniel
24 Brown.

25 Q. And who was most recently listed as the owner

1 of that property?

2 A. Of the cemetery?

3 Q. Yes.

4 A. I think it was the Estate of Daniel Brown.

5 Q. It wasn't Thelma David, was it?

6 A. It could be Thelma David. It could be. It
7 could be.

8 Q. And it would have been her family?

9 A. Yes.

10 Q. Are you related to the Daniel Brown family?

11 A. No. No, we are not. Not that I know of.

12 Q. So the tract that is reflected on that plat,
13 Exhibit No. 7, is not a part of any property that had
14 been owned by your father?

15 A. No.

16 Q. And the access would have come from -- in
17 order to conduct burials on that cemetery would the
18 access have come from Harts Bluff Road?

19 A. From Harts Bluff Road through the access or
20 through the easement that we designated as "B" on
21 Exhibit 3.

22 Q. So that would have crossed Tracts 15, 13, and
23 12 before getting to the cemetery; is that correct?

24 A. Yes.

25 Q. Now, going back -- I just want to make sure I

1 clarified this. Prior to your filing this lawsuit
2 and since 1984 to your knowledge have there been any
3 attempts to prevent your family from using what we've
4 identified as road "B"?

5 A. No.

6 Q. And was that road also identified as Old Blind
7 Road afterwards?

8 A. Moving of the easement didn't change the name
9 of the -- it was Old Blind Road, Blind Road. Like I
10 said, I saw an unrecorded plat that had it as
11 Gailliard Road, also.

12 Q. And you had occasion in 2004, to engage in a
13 case titled Benjamin Brown versus Carl Brown?

14 A. I did.

15 Q. Do you remember that case?

16 A. I do.

17 Q. Would you just explain to the Court what that
18 case was about?

19 A. That case dealt with the property that has the
20 TMS No. 196-00-00-013, which is the Estate of Ben
21 Brown. Dorothy Pinckney, who was an heir of Ben
22 Brown, decided that she wanted to divest herself of
23 her interest in the property to my brother, myself --
24 my brother, Thomas, myself, and my brother, Carl. So
25 we had to bring an action in order to clear the

1 title, and that's what the case was about. We
2 cleared the title so that the property was properly
3 subdivided. I think there was a plat that showed the
4 subdivision of the property.

5 Q. Is this when Ben Brown received the TMS ending
6 in 013?

7 A. I'm not so sure that that's when he received
8 it, but that's the property.

9 Q. That's the property he was claiming?

10 A. Right. That's correct.

11 Q. For identification, I'm going to ask you to
12 look at a signature that is on this document and ask
13 you if on Page 7 your signature appears there?

14 A. It's mine.

15 (Off-the-record discussion.)

16 Q. Mr. Brown, I'm going to show you this order
17 that you've identified as containing your signature
18 as one of the counsel, and its consent order appears
19 to be?

20 A. It is.

21 Q. What is the caption of that case again?

22 A. It's Benjamin Brown, III versus Carl Brown,
23 Dorothy Pinckney, et. al.

24 Q. And what is the case number?

25 A. 2004-CP-10-0416.

1 Q. I'm going to ask you to go to Paragraph 7, and
2 would you --

3 A. Paragraph 7?

4 Q. Paragraph 7 on Page 3, and ask that you read
5 what is stated there.

6 A. Carl Brown will provide a road easement to
7 Benjamin Brown, III provided that Benjamin Brown, III
8 does not have access from Bears Bluff Road or in the
9 alternative from the dirt road formerly known as Old
10 Blind Road.

11 Q. And I would then ask you to turn to Page 5.

12 A. Yes.

13 Q. And is Paragraph 19, which is a part of the
14 Court's findings the same as Paragraph 7 that you
15 just read?

16 A. It is.

17 Q. And when was this order signed?

18 A. February 19, 2008.

19 Q. And who was the judge that signed it?

20 A. The Honorable Mikell R. Scarborough.

21 Q. And just for the record, who are the other
22 counsel for the parties?

23 A. The other counsel was Karen DeJong -- I don't
24 know if I pronounced her name correctly -- Edward
25 Brown and Kevin D. Phillips.

1 Q. Thank you. Now, since this order was entered
2 in 2008, to your knowledge has Carl Brown provided an
3 access road for Mr. Ben Brown to get to his property?

4 A. No.

5 Q. And how has Mr. Ben Brown been accessing his
6 property between 2008 and 2015?

7 A. Old Blind Road.

8 Q. Is Mr. Brown's property accessible from Bears
9 Bluff Road?

10 A. No.

11 Q. And we can look -- I believe we have an
12 exhibit that shows where Bears Bluff is in
13 relation -- excuse -- me. I think I have another one
14 that might be better.

15 MR. FORD: Can you identify what this is?

16 MR. McFARLAND: This is a Charleston County
17 Tax Map that just doesn't have the aerials but shows
18 all the lots, and here's Mr. Brown's lot, 13.

19 MS. TILLMAN: I'm wondering about this.

20 MR. McFARLAND: On the Charleston County you
21 can identify the wetlands, the Charleston County
22 plats, the wetlands for every piece of property. So
23 this represents the wetlands as determined by the
24 County.

25 MS. TILLMAN: My understanding of the GIS

1 system is that you would draw these in.

2 MR. McFARLAND: No, I did not. It comes
3 through -- the Court can pull it up right now. When
4 you pull it up it automatically produces the
5 wetlands. It's probably on yours. Where you take
6 out the aerials showing the trees and all the
7 building and all that, it leaves -- it shows -- this
8 is done by the County. That's a part of that plat.

9 MS. TILLMAN: Is this your experience? I have
10 not received this in a GIS map. My understanding is
11 that an individual can draw their own images on the
12 map. I'm curious about whether that's --

13 MR. McFARLAND: I think we can clarify that
14 because the Court has a computer there.

15 MS. TILLMAN: If this is reflected on the
16 Charleston County website I don't have a problem with
17 that. If it's your own --

18 MR. McFARLAND: I wish I had the skills to do
19 that. Your Honor, I think we have an issue that you
20 might be able to help us resolve. Counsel is
21 questioning whether this, showing the wetlands here,
22 was perhaps drawn there by me as opposed to part of
23 the Charleston County Mapping System.

24 THE COURT: It's on mine.

25 MS. TILLMAN: That's all I needed to know.

1 THE COURT: He's not that good of an artist.

2 MR. McFARLAND: I wouldn't be standing here
3 today if I were.

4 MR. BRADHAM: What's the number on that
5 exhibit?

6 MR. McFARLAND: Exhibit No. 10.

7 MR. BRADHAM: Thank you.

8 Q. (BY MR. McFARLAND) Mr. Brown, I'm going to
9 ask you what's been identified as Exhibit No. 10. It
10 is the Charleston County GIS Map which shows all the
11 tracts we've been discussing along with Bears Bluff
12 Road?

13 A. Yes.

14 Q. And you testified that there is no access from
15 Bears Bluff Road. Would you explain why you believe
16 there is no access from Bears Bluff to any of
17 these -- Tract 13 in particular?

18 A. Because you have -- coming from the north
19 going south you would have the wetlands. The these
20 little things that look like trees or plants, those
21 are the wetlands. In addition to that there is --
22 between 13 -- that is Ben Brown -- between 13 --
23 there is another lot that is 196-00-00-080. That
24 forecloses Mr. Ben Brown's access from Bears Bluff
25 Road, which is to the south of all of those. Then

1 you also have -- there's a church, there's a house,
2 there are two houses.

3 I think the house that is on the parcel with
4 the TMS number that ends 196-080 is Mack. The other
5 house below that is -- her name is Mack also, Anna
6 Mack, and then there's Salem Baptist church which the
7 property abuts Bears Bluff Road.

8 Q. If none of those houses were there could
9 Mr. Ben Brown access his property from Bears Bluff
10 Road?

11 A. No, he could not.

12 Q. Even if he crossed these properties that you
13 mentioned would he still be able to access his
14 property which is Tract 13?

15 A. No.

16 Q. Now, you are familiar with Back-A-Wood Road?

17 A. Very much so.

18 Q. Tell the Court how you're familiar -- what's
19 you're familiarity with Back-A-Wood Road.

20 A. I'm familiar with it because when I was a
21 little boy that was -- I'm familiar with it because I
22 was asked -- I think somebody called me from the
23 County and asked me -- said they needed -- they were
24 naming all of the roads for EMS or the emergency
25 system. They asked me if I would give a name to the

1 road, and that is name I gave it.

2 Q. So you gave the name Back-A-Wood Road?

3 A. Yes, I did. I did.

4 Q. Is that what the locals had been calling it?

5 A. Right. We used to call it the Back-A-Woods.

6 Q. It's back of the woods but it was Back-A-Wood?

7 THE COURT: That's what it is, right,

8 Back-A-Wood?

9 MR. McFARLAND: That's what it is.

10 Q. (BY MR. McFARLAND) And would you just
11 describe the road as it is now, and if anything's
12 changed about that road?

13 A. Okay. The road as it is now, coming from the
14 north the Leadenwah Creek going south, you have a
15 tidal creek. I don't know its name, but I do know
16 that when the tide is low there is no water there.
17 When the tide is high there's water there. That
18 tidal creek runs perpendicular to Back-A-Wood Road.

19 Back-A-Wood Road is there, the tidal creek,
20 and then you have -- that same tidal creek starts --
21 not starts, but it also comes off Harts Bluff Road.
22 There's a bridge on Harts Bluff Road that the County
23 uses to negotiate the tidal creek. The tidal creek
24 goes, I would say, maybe half a mile or more from
25 Harts Bluff Road, and I always get this confused, but

1 it but would be coming towards the City of
2 Charleston. I think that's west if I'm not
3 mistaken -- either west or east. The tidal creek is
4 there, so that's where Back-A-Wood Road is.

5 Q. I'm going to show you what's been marked as
6 Plaintiff's Exhibit No --

7 THE WITNESS: Your Honor, may I go to my seat
8 and get something?

9 THE COURT: Yes, sir.

10 Q. (BY MR. McFARLAND) I'm going to show you
11 what's been marked as Plaintiff's Exhibit No. 11. I
12 think we may have a correction with respect to the
13 Court's purposes with respect to Leadenwah Creek and
14 the creek is actually called Bess.

15 MR. BRADHAM: B-e-s-s Creek. Leadenwah is a
16 wholly separate river.

17 Q. (BY MR. McFARLAND) But for our purposes, this
18 plat, can you identify Back-A-Wood?

19 THE WITNESS: It's the road that has the
20 cul-de-sac in it. It comes from --

21 Q. That's north at the bottom, yes.

22 A. I'm going to turn it around. So it comes
23 from --

24 Q. This is north here (indicating).

25 A. So Harts Bluff Road is north of -- Back-A-Wood

1 Road runs perpendicular to Harts Bluff. You can't
2 see Harts Bluff Road on this plat.

3 THE COURT: Okay.

4 Q. (BY MR. McFARLAND) And what you're pointing
5 as north is on this --

6 A. That way.

7 Q. Closest to me, and then the cul-de-sac is
8 there almost center. Now this plat shows an area of
9 marsh?

10 A. That's correct.

11 Q. And how much marshland is shown at least on
12 the property side of Back-A-Wood Road?

13 A. I have to take my glasses off.

14 Q. If you don't mind, my eyesight might be better
15 than yours.

16 A. I think it's 1.63 acres. 1.631 acres?

17 Q. Yes. And the marsh continues across what is
18 identified here as the cul-de-sac and so the -- does
19 the plat just show a drawing of where a cul-de-sac
20 would go if a road was developed there?

21 A. Right.

22 Q. Was there ever a time when that marsh was
23 traversed by a bridge of any sort?

24 A. No. There were a couple of planks across it.
25 I remember that. There was no bridge.

1 Q. When you say planks, what do you mean?

2 A. I mean --

3 Q. A foot path?

4 A. You couldn't walk in the creek so there were
5 some planks. I would say maybe five inches wide, and
6 we would walk across them to --

7 Q. Was there ever -- I'm sorry.

8 A. So as to prevent our feet from getting wet.

9 Q. Was there ever an ability to cross that marsh
10 in a vehicle?

11 A. No. No.

12 Q. How long have you been familiar with
13 Back-A-Wood Road? Even before it got that name?

14 A. Like I said -- the first conscious memory I
15 have was -- about 65 years. If I may add, there's
16 also an aerial of that area that shows it just as
17 good if not better than that plat.

18 Q. Okay. I'm going back to our discussion about
19 Ben Brown and his tract. Would you review what has
20 been identified as Exhibit No. 9, and tell me if you
21 recognize that and whether that's consistent with the
22 earlier testimony with respect to access?

23 A. Yes, it is. Exhibit No. 9, the Bears Bluff
24 Road side of it shows the wetlands. It also shows
25 the wetlands on the north side of it. It's very

1 consistent.

2 Q. And the plat that you're looking at, what is
3 the year when it was finalized or approved? When was
4 it approved? I believe it's at the top.

5 A. It says December 10th, 2010.

6 Q. And who was it approved by?

7 A. Director of Planning, Charleston County
8 Planning Commission, Daniel -- I can't read that
9 name.

10 Q. That's okay. In any case this was Charleston
11 County Planning that approved this plat for the
12 Daniel Brown tract?

13 A. Yes.

14 Q. And it shows the wetlands that you testified
15 to earlier as to access?

16 A. Right.

17 MR. McFARLAND: I was just waiting for you. I
18 wanted to ask Mr. Brown a question about this plat.

19 Q. (BY MR. McFARLAND) Mr. Brown, I'm going ask
20 you to look again at Exhibit No. 9. At the very top,
21 the surveyor has placed a vicinity map, and I would
22 ask you if you would look at that?

23 A. I am.

24 Q. And on that vicinity map, he has a broken line
25 that says Farm Road.

1 A. That is correct. On the upper right-hand
2 corner.

3 Q. Do you know what that represents?

4 A. That represents the easement that we are here
5 about today.

6 Q. So that is a representation that the road
7 there crossed at least the TMS 12 and 13 all the way
8 to what road?

9 A. All the way to Harts Bluff Road, and it also
10 crosses 21 which would be the Coxes' property.

11 Q. I believe it's 23.

12 A. 23, I'm sorry. You're correct. 23.

13 Q. So it runs from the -- across the Brown
14 property -- across your property, the Brown -- Ann
15 Brown, Grace and the Coxes; is that correct?

16 A. Yes, that's correct. And the plat also shows
17 in the middle of it, the same thing, farm road. The
18 vicinity map shows it and also right across Lot 5,
19 the 11.6 acres. You have the egress/ingress and they
20 also have the delineation farm road.

21 MR. McFARLAND: Okay. And just for the
22 record, this plat is recorded in Book L10, 0339.

23 THE COURT: I've got it. Okay.

24 Q. (BY MR. McFARLAND) And to your knowledge, is
25 the farm road represented there, the same as what

1 you've been calling Blind Road?

2 A. Yes.

3 MR. McFARLAND: Your Honor, I've got some
4 photographs that I will walk Mr. Brown through that
5 were taken to show the condition of this road, and I
6 don't know whether you might want to break now? It
7 might take past 12:30 for him just to be able to --

8 THE COURT: Do you want to walk us through it?
9 Are we getting close to the end of Direct?

10 MR. McFARLAND: Yes.

11 THE COURT: Let's go ahead and press through.
12 Let's do that. Okay? Do we need a break? Does
13 anybody need a break right now?

14 THE WITNESS: I do.

15 THE COURT: Let's take five minutes and let's
16 come back. I'd like to finish him if we could.
17 Let's do that.

18 (A recess transpired.)

19 Q. (BY MR. McFARLAND) Mr. Brown, in your
20 testimony today about Old Blind Road, you indicated
21 that you have traveled that road; is that correct?

22 A. On a number of occasions, yes.

23 Q. And at some point, around the time of this
24 lawsuit or subsequent to this lawsuit, did you have
25 photos taken of your travel along the Old Blind Road

1 which would show its condition?

2 A. Yes. Those photos were taken probably within
3 a week after I sent that November 16, 2015 letter to
4 Ms. Cox.

5 MR. McFARLAND: I'm sorry. I should have
6 shown these to you during the break.

7 MS. TILLMAN: That's all right.

8 Q. (BY MR. McFARLAND) I'm going to show you a
9 series of photographs that you mentioned that you had
10 taken sometime following the -- or around the time of
11 the issuance of the letter to Ms. Cox, and ask you if
12 you would just walk us through the location where
13 each of those photographs was taken and then I want
14 you to describe it, and I'll hand it to the Judge so
15 he might have an opportunity to review them.

16 A. Okay. This first photo which is -- it has a
17 deposition exhibit on it, D. Lee Cox 1, that is a
18 photograph of the road that is --

19 Q. Are you looking for the exhibits that --

20 A. That is the photograph on the road on the
21 exhibit -- we've left Harts Bluff Road and crossed
22 the Thackery property, and now we're proceeding down
23 the Old Blind Road to the -- it would be to the right
24 of -- I'm sorry -- to the left of the Thackery
25 property. It would be to the left of Ms. Cox's

1 property, right on the edge of Ms. Cox's property,
2 and it proceeds to a curve. That's No. 1.

3 Q. Let me stop you there. Now, when you said it
4 proceeds to the right, on Exhibit No. 3, there is a
5 white area that you've represented as being road "B"
6 that appears almost parallel to this Harts Bluff
7 Road, and so you traveled down that road, and then
8 the first picture reflects what again?

9 A. It reflect the beginning of the road parallel
10 to the Cox property. It's on the Cox property, and
11 to the right of Exhibit B, you will see the Thackery
12 property. That's the property that ends in TMS No.
13 196-00-00-021. That's No. 1.

14 MR. McFARLAND: Let me just show this to the
15 Court.

16 THE COURT: Okay.

17 COURT REPORTER: Do you want those marked?

18 MR. McFARLAND: No. We have not marked --
19 this is going to be a composite. It will be the
20 next -- Exhibit No. 16.

21 THE WITNESS: May I proceed?

22 THE COURT: Sure.

23 MR. McFARLAND: So we'll call that 16A.

24 THE WITNESS: Okay. This next exhibit, which
25 will be 16B is the same road proceeding, if it's

1 proceeding to turning to the left. Now, this road is
2 on the Coxes' property, and it's been there ever
3 since 1984. This is the road. This is the road "B"
4 that I marked on a previous exhibit.

5 Q. (BY MR. McFARLAND) And what do we see there?
6 What is depicted in that picture?

7 A. Well, you've got some drainage, you've got
8 some puddles. You've got the Thackery field on the
9 left, and you have the Coxes' woods. On the -- I'm
10 sorry. You've got the Thackery field on the right
11 and the Cox woods that constitutes a part of the
12 Coxes' property on the left.

13 MR. McFARLAND: Just give us a second. I'll
14 hand this to the Court.

15 THE COURT: You'll call it 16B?

16 MR. McFARLAND: 16B, yes.

17 THE WITNESS: And if you'll notice, in 16B it
18 has proceeded to turn left. 16C is, in fact -- we've
19 made the left turn, and now we're going perpendicular
20 or across the Coxes' property to access the Estate of
21 Grace Brown, Benjamin Brown, the cemetery and the
22 Estate of Frank Brown.

23 Q. (BY MR. McFARLAND) Now, is the cemetery
24 before you get to the Estate of Frank Brown or after?

25 A. After. It's after. It's the adjacent

1 property.

2 Q. So you cross the Estate of Frank Brown first?

3 A. Right.

4 THE COURT: This was C, and I assume you're
5 holding D?

6 THE WITNESS: Yes. This is 16D. This is a
7 further pictorial of the same road going in the same
8 direction and accessing the same property that I told
9 you about before in the previous answer.

10 Q. (BY MR. McFARLAND) The next one will be E.

11 A. 16E is a picture of the ditch that's been dug
12 that this property is --

13 THE COURT: Let me just state this for the
14 record. I'm going to interject here. What they're
15 handing me -- they're all listed as exhibits to the
16 Deposition of Lee Cox on 2/15/18. They've been 1, 2,
17 3 and 4 so far if that helps.

18 MS. TILLMAN: Yes, Your Honor, as long as
19 we're keeping track of the order they are put in.

20 THE COURT: Right. And I'm writing the
21 numbers on them and we'll have them marked. Okay? C
22 and D look almost identical to me.

23 THE WITNESS: They are.

24 THE COURT: They are. Okay.

25 THE WITNESS: They were just a few feet from

1 each other going forward, going towards the
2 graveyard. The Estate of Grace Brown and the other
3 property is adjacent.

4 THE COURT: I've got you. Starting to head
5 into the woods?

6 THE WITNESS: Yes. We're at G now?

7 THE COURT: You're on E.

8 THE WITNESS: Yes. 16E is, as I said, this is
9 where the ditch has been dug, and there is a sign
10 there. I can't make it out, but this is the first
11 time I've ever seen this, and I think, if I'm not
12 mistaken, it said no trespassing. Never in my
13 negotiating this road have I ever seen a no
14 trespassing sign.

15 Q. (BY MR. MCFARLAND) Now, are you referring to,
16 not having seen it as of today or when this picture
17 was taken?

18 A. When this picture was taken. Well, it's there
19 now. We haven't used it since we brought this --
20 since this litigation has come about.

21 Q. And this would be F?

22 A. 16F is a few feet further. I think we've
23 already passed now the Coxes' property, on the far
24 end of the Coxes' property, adjacent to the Estate of
25 Grace Brown, and you can see the entrance of the road

1 as it goes into the trees and the canopy. It looks
2 dark but it's just because of the canopy.

3 THE WITNESS: What's the next number?

4 COURT REPORTER: G.

5 THE WITNESS: 16G is -- we passed the Coxes'
6 property, and now we're proceeding down the road,
7 down the Old Blind Road, and we're headed towards the
8 cemetery. The Estate of Frank and then the Daniel
9 Brown Estate.

10 16H is -- the road that makes a Y
11 intersection, the right goes to the cemetery. I'm
12 sorry. The Estate of Frank Brown is the cemetery.
13 If I'm not mistaken, we're already on -- we're
14 probably on either the Estate of Grace Brown or Ben
15 Brown, and we're proceeding towards the cemetery.

16 Now, to the left, that road that goes to the
17 left, would take you to the place we used to call the
18 Hill, which would be a part of the Estate of Frank
19 Brown, and that's designated by TMS No.
20 196-00-00-012. That would be this road that's to the
21 left and would be heading north.

22 THE COURT: You called it the Hill?

23 THE WITNESS: Yes. That was the Hill.

24 THE COURT: It was a little bit higher?

25 THE WITNESS: It was higher, and that's where

1 we had cows and a we have a well up there, too.

2 Q. (BY MR. McFARLAND) Is the road going to the
3 left -- where does that lead to?

4 A. That would have led to the part of the
5 property that we were planting to the north.

6 Q. And beyond that where would --

7 A. There was nothing beyond that. Beyond that
8 was that tidal creek.

9 Q. I thought at some point you were identifying
10 one of these two roads as leading to the cemetery?

11 A. The road that goes -- the road that is on this
12 one goes to the right of the Y intersection --

13 THE COURT: Straight?

14 THE WITNESS: To the right. It goes straight.

15 Q. (BY MR. McFARLAND) So the cemetery is to the
16 right?

17 A. It goes straight. Maybe that's a better way
18 to say it. It goes straight.

19 Q. But at the fork it's the right fork?

20 A. The right fork. Thank you for helping me with
21 that.

22 Q. Thank you.

23 A. And this last one is a close up of that
24 sign -- of a sign that was put -- the first time I
25 saw it was when I took this picture, and that is also

1 on the Old Blind Road proceeding towards the access
2 to those other properties, the properties that we
3 were talking about. I didn't put a letter on that
4 one.

5 COURT REPORTER: That is I.

6 Q. (BY MR. McFARLAND) You testified about the
7 existence of a cemetery, and I'm going to show you
8 this photo which will still be in that same sequence
9 if you would.

10 A. J is the road leading up to the cemetery, and
11 that would be the one that bears right at the Y
12 intersection. Well, it goes straight.

13 Q. And besides the road what else is depicted in
14 that?

15 A. Well, the tombstones.

16 Q. Okay.

17 A. There are about 12 to 15 people buried in that
18 graveyard, persons.

19 Q. While the tombstones are reflected in the
20 photo, I know you have some close ups, and if I
21 might, just without introducing, adding more paper to
22 this particular part of the case, there is a
23 tombstone for Ella Brown Green?

24 A. Yes. There is one for Ella Brown Green.

25 Q. Let me just show them to you.

1 MS. TILLMAN: Would you mind --

2 MR. McFARLAND: I'm sorry. I didn't show it
3 to Counsel.

4 THE COURT: Let's mark these separate. So far
5 they've all been road pictures. Now we've got the
6 cemetery. Let's mark that as one thing.

7 MR. McFARLAND: Very good. So this will be
8 17.

9 THE COURT: Yes, let's go with cemetery on the
10 cemetery and they can even be A, B, and C or whatever
11 you want to do with those.

12 MR. McFARLAND: Right.

13 THE COURT: Let's do that.

14 Q. (BY MR. McFARLAND) Okay. So the first one
15 that you've already identified is the road leading to
16 the cemetery and would be 17A. And then for some of
17 the markers that you have, that we have close ups of,
18 I would just ask you to identify each one of these
19 and the dates on the tombstones.

20 A. This is Ella Brown Green. The dates on the
21 tombstone are November 13, 1903 to January 27, 1996.
22 That was the date of her demise.

23 Q. And then what would be 17B? C, I'm sorry.

24 A. This is Private John William Moultrie, better
25 known as Knuckles, my classmate. I attended his

1 funeral. The dates on his tombstone, January 9, 1948
2 to -- I think it's December 20th, 2010. I
3 specifically remember this because they had -- in as
4 much as he was a member of the Marine Corps, there
5 were some representatives from the military to play
6 Taps at his interment.

7 Q. This will be 17D?

8 A. 17D is Julia Brown Smalls. The dates on her
9 tombstone is September 13, 1920 to February 7, 1989,
10 and it has, "Your children".

11 Q. Do you know which family Ms. Smalls was
12 related to? Let me ask it this way: Was Ms. Smalls
13 related to your family?

14 A. No, she was not. This would be Daniel
15 Brown's -- she would have been Daniel Brown's niece.

16 Q. Okay. This one is not very clear in term of
17 the dates, but -- this is 17E.

18 A. 17E is Sam Smalls. He was a private in the
19 U.S. Army. His date of birth was December 6, 1948 to
20 December 20th, 2009. He was also my classmate. I
21 have a better picture if you want to substitute it.

22 MR. McFARLAND: We can substitute a better
23 photograph which shows clearly the dates. That's the
24 only difference.

25 THE COURT: Okay. And it was 2009 is what

1 you're telling me?

2 THE WITNESS: Yes, sir. December 20, 2009.

3 THE COURT: All right.

4 Q. (BY MR. McFARLAND) Now, we've talked about
5 the location of this Blind Road, Old Blind Road.
6 We've testified in terms of how it looked back in
7 2015. Approximately how wide was this road?

8 A. Well, you can get two tractors going
9 side-by-side on it, so I would say probably anywhere
10 from 25 to 30 feet or more.

11 Q. Would that have been the width from --

12 A. The width, yes.

13 Q. The width starting from approximately Harts
14 Bluff Road?

15 A. That is correct. Yes, that would be it.

16 Q. Okay. From the times you traveled to the
17 burials that occurred at the cemetery, do you have
18 any recollection as to how many cars besides a
19 hearse, the family car, generally what we would
20 have -- do you remember how many other cars that
21 processed to the burial?

22 A. The one that John Moultrie, you know, there
23 were at least 30 cars that traveled to the funeral
24 that were in a procession. The reason -- he lived on
25 Wadmalaw. He was a Veteran and was well known. That

1 funeral was well-attended. Even at the church it was
2 well-attended.

3 I remember specifically the van that brought
4 the military people. I think there were three
5 people -- two or three Marines, guys dressed as
6 Marines. They played Taps and they had the flag.

7 Q. When you come in from Harts Bluff Road and
8 turn onto what we've identified as the "B" road, can
9 you see the Coxes' house as you travel along that
10 road?

11 A. Initially you could. I don't know that you
12 can now.

13 Q. As of the last time that you were there?

14 A. The last time I was there, no. I don't think
15 you can see it. I think there was probably 50 or
16 60 yards between -- I don't want to guess. I don't
17 think you can see it. You can see the -- you can't
18 see the house, but I think you can see a part
19 of the -- they have a circular driveway there.

20 Q. The activities that occur on your property as
21 well as the property of Ben Brown and the Estate of
22 Grace Brown, did they include any hunting activities?

23 A. Oh, yes. Yes.

24 Q. And would you tell the Court what you know in
25 terms of hunting activities?

1 A. Well, we would hunt there -- well, not me. I
2 wasn't very good at hunting. My nephew was very
3 good. He would have dogs and he would go hunting. I
4 remember he could knock a rabbit over with a shotgun
5 in a minute. It would take me ten shots and I
6 wouldn't hit the rabbit. So I didn't do much
7 hunting, but we used to hunt squirrels. We used to
8 hunt coons, raccoons. We used to hunt, for lack of a
9 better name -- I don't know what the real name is,
10 but they're called partridges, like doves, something
11 like doves.

12 As a matter of fact, I have a special memory
13 of that because one time I had this opportunity to
14 bring down a buck. It was to the north end of the
15 property, and the wind was blowing from north to
16 south, so I climbed and I crawled and I crawled. We
17 had a soybean field then.

18 So I crawled and I crawled and I crawled maybe
19 to about 30 yards and I reared up, and when I pulled
20 the trigger it said click. Nothing happened. Then
21 the deer left. I did shoot, but it was in the bush
22 already. That's the only time I had a chance to
23 shoot a deer.

24 Q. Are you aware of anyone ever hunting on the
25 Coxes' property?

1 A. No. No.

2 Q. And what time of day would you-all generally
3 go out to hunt?

4 A. We would hunt in the daytime. That was when I
5 was a little boy. Now, my son, who is a former
6 Charleston City police officer, he hunted there, and
7 I think he still hunts there sometimes. My nephew,
8 Feldman (phonetic) Taylor also hunts there. They
9 have a deer stand -- there are two deer stands on the
10 property.

11 Q. On which property?

12 A. On Frank Brown's property.

13 Q. So that would be TMS 12?

14 A. Yes. The one that ends in 012. There's
15 another grand nephew named Harlon Brown that hunts on
16 the property also, and another guy that hunts with
17 him is a guy by the name of Mike Seithel.

18 Q. Okay. Now, did any of these folks who hunted
19 there ask you or your brothers or your siblings for
20 permission to go hunt on the land?

21 A. No. I mean, the road was there. I took Mark
22 back there to show him where the property was.

23 Q. And how old is your son?

24 A. Mark is 37 now.

25 Q. And approximately how long has he been hunting

1 on your property?

2 A. Well, he picked up that habit, I guess, after
3 he became a police officer. I think he was trying
4 out for the SWAT team or something. He wanted to
5 perfect his -- I never understood why he wanted to
6 kill Bambi but he did.

7 Q. Are you aware of whether he had ever used the
8 property as a pistol range since he was an officer?

9 A. I would suspect that did he --

10 Q. Are you personally aware of it?

11 A. No. No. But what I want to say is that he
12 took some of his comrades, not comrades, but some of
13 his friends from the police force with him. I
14 remember one guy by the name of -- I think his name
15 was Magwood if I'm not mistaken.

16 THE COURT: Mr. McFarland, let's go ahead and
17 take our break.

18 MR. McFARLAND: I'm just about there. I
19 promised Counsel that I would be finished by 1:00.

20 THE COURT: Well, it's 1:00.

21 MR. McFARLAND: If I can have 60 seconds?

22 THE COURT: I'll give you 60 seconds.

23 MR. McFARLAND: I better not. I'll take your
24 word. I'll stop right here. I realize that 60
25 seconds might take him longer to answer than my

1 question.

2 THE COURT: Let's do that. Let's go ahead and
3 take a break. Let's come back at 2:15. Okay?

4 (A luncheon recess transpired.)

5 (PLF. EXH. #19, Aerial View, was marked for
6 identification.)

7 THE COURT: Let's see. You were 60 seconds
8 away. Let's move forward.

9 (Off-the-record conference.)

10 Q. (BY MR. McFARLAND) Mr. Brown?

11 A. Yes, sir.

12 Q. Early on I introduced a Charleston County GIS
13 plat showing the area of the three tracts closest to
14 Bears Bluff Road, and I would like to show you a
15 document that purports to reflect the area to the
16 north near Harts Bluff Road of those same tracts, and
17 this has been marked as --

18 MR. McFARLAND: You don't have it yet, Your
19 Honor. I just had it marked as Plaintiff's Exhibit
20 No. 19. It's an aerial just showing the wetlands and
21 this one also shows any buildings that are on the --

22 THE COURT: This is from Charleston County
23 GIS?

24 MR. McFARLAND: This is from Charleston County
25 GIS.

1 THE COURT: I've got it.

2 Q. (BY MR. McFARLAND) Mr. Brown, would you look
3 at that document and again, if you would, explain to
4 the Court what wetlands are shown there and the
5 location?

6 A. This is the wetland that is coming in -- you
7 see Harts Bluff Road and there's a bridge on Harts
8 Bluff Road. It goes -- I always get confused. I'm
9 going to say it goes to the right. It transects
10 196-00-00-015, 196-00-00-012, and 196-00-00-123. It
11 goes a little further than that because -- if I
12 remember correctly -- there's a pond, an irrigation
13 pond that Bushy Davis and Leeland Price used to use
14 to irrigate these farms. I'm familiar with this
15 right now.

16 Q. So in terms of the Back-A-Wood Road area, does
17 that reflect your wetlands going across or --

18 A. Yes, it does.

19 Q. Under or across the area of Back-A-Wood Road?

20 A. Yes it does.

21 Q. And the cul-de-sac that's there?

22 A. Yes. It's perpendicular, somewhat
23 perpendicular to the cul-de-sac.

24 Q. And I've got another larger aerial, which in
25 fact, basically is the same thing as this. Just for

1 the record, Mr. Brown, I'm going to show you what's
2 been marked as Plaintiff's Exhibit 18 and ask you if
3 you recognize that particular document?

4 A. I do.

5 Q. And what is it?

6 A. This is an aerial map or aerial photograph of
7 the properties that this creek -- this tidal creek
8 dissects. In addition to that it has Harts Bluff
9 Road on it. It does not show -- but what's included
10 in that is the Back-A-Wood Road -- you can see that
11 tidal creek dissects Back-A-Wood Road, and further on
12 to the -- that would be Lot 00-123 which would be to
13 the -- on this as I'm sitting it would be to the
14 right of Back-A-Wood Road.

15 THE COURT: Okay. Thank you.

16 Q. (BY MR. McFARLAND) Now, with respect to the
17 zoning of the property that is owned by your family,
18 the heirs of Frank Brown, what is the current zoning
19 of that property?

20 A. The property is agricultural and it's been
21 zoned agricultural for quite a while. The reason I
22 say that or one of the reasons I say that is because
23 on the previous exhibit that you showed me where --
24 that you introduced where I drew the old road, the
25 "A" road, I guess and the "B" road, all of those

1 roads used to be maintained by the County. They used
2 to be scraped by the County.

3 The County used to do it every two weeks. If
4 you look at any of these maps, after you cross the
5 Estate of Daniel Brown and then you go -- I think
6 that's west or east. I'm not sure. But they used to
7 come and scrape those roads. I even remember the
8 name of -- one of the men's name was -- his nickname
9 was Boozarie (phonetic) Mack, but his real name was
10 Anderson Mack and there was a guy who scraped it
11 before him.

12 The reason I remember so precisely is because
13 when you're a little child, but you see these big
14 road scrapers and you got excited about it. They
15 used to scrape Harts Bluff Road, too, because at that
16 point Harts Bluff was not a paved road.

17 Q. Harts Bluff Road --

18 A. -- was not a paved road.

19 Q. And during what period -- better yet, when did
20 the road scraping end?

21 A. I think I was in the 8th grade. I'm not sure.
22 I think I was in high school if I'm not mistaken.

23 Q. So this would have been before the 1984
24 lawsuit?

25 A. Yes. It was before 1984. It was the road

1 that goes directly behind it. It went behind their
2 house, but there was no house there then.

3 Q. So they scraped that road that eventually
4 became Old Blind Road behind the Coxes' house?

5 A. That road used to go all the way around and
6 come back -- it would start at Harts Bluff Road and
7 come all the way around and intersect Harts Bluff
8 Road at it's northernmost point near the -- I think
9 that's the Estate of Chisolm or Sam, but it's not
10 shown on any of these maps.

11 Q. Okay. Mr. Brown, I'm going to ask you to look
12 at what's been marked as Plaintiff's Exhibit 15, and
13 just tell me if you're familiar with this deed being
14 with prior counsel in this case or your research?

15 A. Give me a minute.

16 This is a deed that was done apparently by
17 Karen DeJong. She represented Mr. Brown in that 2008
18 proceeding. I think we've already put the pleadings
19 in the order for that. This is a deed where he
20 conveyed to himself -- I'm sorry, from himself to a
21 trust, and I remember the trustee was Ben Brown, III.

22 Q. Just so that -- I'm zeroing in on why this is
23 being introduced, if you would look at the
24 description and starting with -- on the west by the
25 Estate of William and Grace Brown, if you would just

1 read that portion to the end of that description
2 paragraph into the record?

3 A. I don't see it.

4 Q. It says it right here (indicating). On the
5 west and -- on the west and -- continue from there.

6 A. The description reads in part, And on the west
7 by the Estate of William and Grace Brown, said
8 property is being further described, and in
9 particular set out on the plat to subdivide the
10 Estate of Ben Brown dated March 4, 2008, and recorded
11 in Plat Book L10, Page 339 on December 10th, 2010 in
12 the RMC office for Charleston County. Said lot
13 having and favored with an easement of egress and
14 ingress shown on the herein above mentioned plat and
15 more particularly conveyed in a separate instrument
16 granting easement to Lot 5, the grantor, of said
17 easement being Ruth James and Edward Brown.

18 Q. And Edward Brown referred to there is
19 yourself?

20 A. I think so.

21 Q. Yours truly. And the L10, Page 339 is the
22 plat that we have introduced as Exhibit 9; is that
23 correct? That is the plat because the Court has
24 confirmed that.

25 A. This goes with what you have.

1 Q. Yes, thank you. And outside of work as the
2 attorney having filed this litigation initially and
3 conducting discovery by way of depositions, have you
4 had any contact with Donna Cox or Robert Cox
5 regarding the use of Old Blind Road?

6 A. Not other than taking their depositions, no.

7 Q. And do you know whether any of your other
8 family members outside of James Brown, the testimony
9 that you gave earlier, has had any contact with
10 Robert Cox or Donna Lee Cox regarding the use of Old
11 Blind Road?

12 A. Since the filing of this litigation?

13 Q. No. Let me make it clear. Prior to the
14 filing of this litigation.

15 A. Can you restate the question?

16 Q. Yes. Are you aware of any of the other tracts
17 or -- was there any other conversation about the use
18 of Old Blind Road with Donna Cox or Robert Cox?

19 A. No. There was no conversation about the use
20 of it. The road was always used. There was no need
21 to converse.

22 MR. McFARLAND: All right, Your Honor. My
23 minute is up.

24 THE COURT: All right. Very good.

25 MR. McFARLAND: And just before Cross begins,

1 there is a party, Nicolette James, who I do not
2 represent but as far -- Ms. Brown has informed me
3 that she is no longer a party to this action and
4 she's also being removed.

5 THE COURT: That would be another Plaintiff?

6 MR. McFARLAND: Yes.

7 THE COURT: I've got Thelma David, Benjamin
8 Smalls, and now Nicolette James.

9 MR. McFARLAND: That's correct.

10 THE COURT: All right. Very good. And all
11 those ones you've referenced you want in evidence,
12 correct, Mr. McFarland?

13 MR. McFARLAND: I'm sorry?

14 THE COURT: All those exhibits you've
15 referenced you would like in evidence?

16 MR. McFARLAND: Yes, please, Your Honor. I
17 believe we have agreed with opposing Counsel.

18 THE COURT: I haven't heard any objections. I
19 just wanted to verify that. Mr. Ford, have you got
20 some questions?

21 MR. FORD: Yes, sir. Are you ready,
22 Mr. Brown?

23 THE WITNESS: As ready as I'll ever be.

24 EXAMINATION

25 BY MR. FORD:

1 Q. Let's start off just by orienting everybody.
2 You've had a chance to look at this demonstrative
3 that's up on the board, correct?

4 A. I have looked at it.

5 Q. Does it look like an accurate configuration of
6 some of the properties at issue here?

7 A. Let me look at it again.

8 Q. Please.

9 A. I don't think it -- what you have drawn out is
10 probably correct, but it is not an accurate
11 configuration of the land especially of this tidal
12 creek.

13 Q. And there's no tidal creek on here, and you've
14 testified about that, correct? That one exists?
15 That's what you testified.

16 A. Say that again.

17 Q. No tidal creek is portrayed on this
18 demonstrative, but you have testified that one
19 exists?

20 A. It is there, yes.

21 Q. Is it accurate to say that what is configured
22 here is the Daniel Brown tract is to the far right
23 side, and then there's what we're calling the Edward
24 Brown tract next to it to the left, and then there
25 are some other tracts in between those two on the Cox

1 parcel?

2 A. That would be a fair representation -- well,
3 not quite. There are a couple of tracts down here
4 that are not represented.

5 Q. How about this demonstrative and this is
6 straight out of GIS. Just looking at the
7 configuration of the property alone, and we'll leave
8 the words out for the moment. Does this look like an
9 accurate configuration of the properties? And I'll
10 represent to you that those are just printed off GIS.

11 A. Again, my configuration of the lot -- it does
12 not accurately reflect the tidal creek or the
13 wetlands either between -- is this Bears Bluff?

14 Q. This is Bears Bluff.

15 A. It doesn't reflect the wetlands here, nor does
16 it adequately reflect the wetlands to the south or to
17 the north.

18 Q. So let's work together slowly. Down here we
19 have Bears Bluff Road, correct? It's straight.

20 A. Bears Bluff Road is --

21 Q. It's not a trick.

22 A. If you represent to me that's Bears Bluff Road
23 I'll --

24 Q. Well, you grew up here. Does this look like
25 the land? This isn't a trick question. This is

1 supposed to be easy.

2 A. Well, I didn't say it was a trick question,
3 but you're asking me to attest to a representation
4 when I don't think it adequately represents what's
5 there.

6 Q. Let's start slowly. Does this look like Bears
7 Bluff Road along here, this line (indicating)?

8 A. If you say that's Bears Bluff Road I will say
9 it's Bears Bluff Road.

10 Q. Fair enough. And I think you testified
11 earlier that Harts Bluff Road is kind of configured
12 like a horseshoe?

13 A. That is correct.

14 Q. And it just happens to say Harts Bluff Road.
15 Do you have any reason to doubt that?

16 A. No. That's Harts Bluff Road.

17 Q. And down here what we've got, at least it
18 says, is a parcel that ends in 023, and this says
19 Donna Lee Cox property. Do you have any reason to
20 doubt that?

21 A. No, I do not.

22 Q. Okay. And then this says there are some
23 tracts and this one -- and for the record I'm
24 pointing at the one that ends in 012, does that look
25 like it could be what we're calling the Frank Brown

1 tract; was that your father or grandfather?

2 A. My father.

3 Q. Does this 012 -- I know it's broken up, but
4 does it at least look like what we've been calling
5 the Frank Brown tract?

6 A. This is the Frank Brown Tract. It's only 012.
7 The rest of these are something else.

8 Q. I understand. Did it used to extend, the
9 Frank Brown tract, all the way from Back-A-Wood Road
10 down to -- I apologize -- from Harts Bluff Road all
11 the way to Bears Bluff Road?

12 A. They did not.

13 Q. This tract never extended all the way between
14 those two roads?

15 A. Not to my knowledge.

16 Q. And how about this tract, which I've been
17 calling the Daniel Brown tract. Does that look like
18 what has been referred to from time to time as the
19 Daniel Brown tract?

20 A. It does.

21 Q. And is it accurate to say that between the
22 Frank Brown tract and the Coxes' property there are
23 at least two parcels?

24 A. That's correct.

25 Q. And one of those parcels ends in 013, correct?

1 A. That's true.

2 Q. And another one appears to end in 015; does
3 that look accurate?

4 A. That's true.

5 Q. Which parcels are you in this lawsuit claiming
6 get the benefit of this easement that you're
7 claiming?

8 A. The benefit of this easement --

9 MR. FORD: Hold on just a second, please.

10 THE COURT: Thank you.

11 THE WITNESS: I have to backtrack. There's a
12 graveyard there that's not reflected.

13 Q. (BY MR. FORD) Let's stick to my question. My
14 question is: Which properties are you contending in
15 this lawsuit get the benefit of what you're claiming
16 as the easement? Let's take that one first.

17 A. And my answer would be the graveyard, but it's
18 not --

19 Q. And what is the TMS number on that?

20 A. I don't know. It's not reflected. Do you
21 have it?

22 Q. This is what I've got.

23 A. Well the graveyard is not on here.

24 Q. Do you know where the graveyard is that you're
25 talking about?

1 A. Yes.

2 Q. Where is it?

3 A. Well, no, not on this I don't.

4 Q. Well, this is what we've got. Does this help?

5 A. That doesn't help me. I don't see the
6 graveyard.

7 THE COURT: If I told you-all that it ends in
8 133 would that help?

9 THE WITNESS: 133?

10 THE COURT: Yes. It's listed in Thelma
11 David's name, but it's 133.

12 THE WITNESS: Yes, sir. That would help,
13 Your Honor.

14 THE COURT: That's what I'm finding.

15 THE WITNESS: Sir?

16 THE COURT: That's what I am finding.

17 Q. (BY MR. FORD) It looks great, so I'll reask
18 the question. Let's try to take it sequentially,
19 Mr. Brown. What properties are you claiming -- get
20 the benefit of the easement you're claiming?

21 A. Okay. This is Bernard Brown that ends in 132.
22 I don't know this other lady, but if her property is
23 north of Bernard Brown's she would have to give
24 access to that also. It's David Adriana, I think.

25 Q. What's the TMS?

1 A. 1313 I think.

2 THE COURT: 131.

3 THE WITNESS: 131, I'm sorry. 131. I don't
4 know Laverne Heyward, and I don't represent her, but
5 I would think that would be her only access.

6 Q. (BY MR. FORD) Let me pause. In this lawsuit
7 that you've brought, and you're the architect,
8 correct? You've designed this lawsuit. You've been
9 pursuing it until you brought in Mr. McFarland,
10 right? You've been prosecuting this, correct?

11 A. I filed the lawsuit, yes.

12 Q. Fair enough. In this lawsuit, what properties
13 are you claiming get the benefit of this easement?

14 A. Okay. In this law --

15 Q. Yes.

16 A. -- Debra Commodore --

17 Q. What's the TMS number?

18 A. 128.

19 Q. Thank you.

20 A. Bernard Brown.

21 Q. 132?

22 A. 132, and 196-00-00-012.

23 Q. And are those the only ones that you're
24 claiming in this lawsuit?

25 A. As far as Plaintiffs in this lawsuit, yes.

1 Q. And you had talked about 131, but it sounds
2 like that is not one you're claiming in this lawsuit;
3 isn't that correct?

4 A. 131 --

5 Q. We've talked about it.

6 A. Yes. I don't know who that is.

7 Q. I've got you. So just so I am clear of what
8 we're talking about, in this lawsuit the Plaintiffs
9 are claiming that the purported easement -- that they
10 benefit -- 132, Bernard Brown; 128, Debra Commodore;
11 and 012 Edward Brown, those three?

12 A. Yes.

13 Q. (BY MR. FORD) Thank you. All right. 012,
14 let's start with that. I think you testified that
15 that was your property, correct?

16 A. Yes.

17 Q. You can refer to the maps if you want to.
18 Again, it's not a trick.

19 A. I've got a map here.

20 Q. Fair enough.

21 A. I'll refer to it.

22 Q. Can I see what you're referring to just so
23 we're singing off the same page?

24 A. (Witness complies.)

25 Q. Okay. Who owns that property with you, if

1 anyone?

2 A. The heirs of Frank Brown.

3 Q. Is that property in a trust?

4 A. It has been in a trust and frankly I'm holding
5 it in trust for the heirs of Frank Brown.

6 Q. Who are the trustees of that trust?

7 A. Hold on a minute. Let me retract that. I'm
8 not so sure the property is in a trust now.

9 Q. Okay. Tell me what your understanding of that
10 property is?

11 A. The property is being held by whoever -- I
12 think it's me because I think it's listed in my
13 name -- being held for the heirs of Frank Brown and
14 those people are: Do you want me to list them all?

15 Q. Let's do it, yes.

16 A. Okay. James Brown -- from his family --

17 Q. Just go slowly for us. Okay?

18 A. Okay. James Brown.

19 Q. And that was your brother who is deceased?

20 A. No. Strike James Brown. Not James Brown.
21 His portion has already been segregated out. Not
22 Ruth Brown. Her portion has been segregated out.
23 Not Carl Brown. His portion has been segregated out.

24 Q. To whom? There are people who are now the
25 beneficiary of those folks?

1 A. Of what?

2 Q. James Brown?

3 A. Beneficiary of what?

4 Q. Of whatever they inherit from him; is that
5 what you're saying?

6 A. No.

7 Q. Just go on and tell me what you mean.

8 A. I don't understand the question.

9 Q. Let's go back to my original question. Who
10 owns the property, 012?

11 A. Thomas Brown, Irene Kelly, the children of
12 Rosa Brown, those children are Bernard Brown, Alice
13 Taylor, Anthony Taylor, Randolph Taylor, Annette
14 Taylor, Feldman Taylor, Katrina Taylor and there's
15 another nephew whose name I cannot remember. Okay?
16 Helen Brown, she's deceased. Rosa Taylor is deceased
17 by the way, also.

18 Helen's children are Robert Brown and Beverly
19 Manning. Frank Jenkins was one of her children, but
20 he's now deceased. He left as his heirs a wife,
21 Charlotte Jenkins, children, Keisha Jenkins, Katia
22 Jenkins, Melvin Jenkins, Nathaniel Mitchell, and
23 Cheryl Frazier.

24 Q. What are you reading from?

25 A. I'm reading from the family tree.

1 Q. Was that listed in evidence previously?

2 A. It's an exhibit to my deposition.

3 Q. I've got you. Keep going.

4 A. And of course there's me, myself, and William
5 Brown does have an interest in it also.

6 Q. And those are all for 012?

7 A. That's correct.

8 Q. And who's the trustee?

9 A. I don't know that there is a trustee, but let
10 me explain it to you. At one point you will see in
11 this deed, in the chain, that the property was put in
12 the name of Mark Brown and Carnell Brown as trustee.
13 That's in the chain of title. Then those boys --
14 Mark is my son. Carnell is my nephew. They have it
15 in trust for the heirs of Frank Brown, and then they
16 subsequently conveyed it to me after we told them to,
17 and I'm holding it in trust for -- I'm holding it for
18 the heirs of Frank Brown, but I don't think there's a
19 formal trust instrument that has been established.

20 Q. What I've got is Exhibit 11, which is a trust
21 to the real estate; does that look familiar to you?

22 A. This is what I was talking about earlier.

23 Q. Fair enough. Let's establish the predicate.
24 This says, Title to Real Estate, correct?

25 A. That's correct.

1 Q. And it was prepared by you, correct?

2 A. That's correct.

3 Q. And it relates to the deed, to 012, the
4 property, correct?

5 A. That's correct.

6 Q. And it says -- this is a question -- that it's
7 conveyed into the trustees who are Mark Brown and
8 Carnell Brown?

9 A. That's correct.

10 Q. And what I hear you saying is that's not where
11 it stands today?

12 A. I'm pretty sure that's correct. Yes.

13 Q. I pulled the TMS for the property information
14 from -- it says that that was the last instrument
15 that was recorded. I'm going to hand you that. This
16 is a question, what I just gave you. It says that
17 the most recent conveyance, I think, was dated
18 8/27/2003 which is the trust instrument I just handed
19 you; is that not accurate?

20 A. There is another instrument.

21 Q. Where is it?

22 A. I don't know where it is.

23 Q. But it's apparently not recorded with
24 Charleston County, correct?

25 A. Well, if this is the last thing that you have,

1 that is correct.

2 Q. I just looked at what the County website has.

3 A. If that's what it says.

4 Q. That's all we're trying to establish. Okay?

5 So what we've got, and this is a question --

6 Defendant's Exhibit 11, which establishes, at least

7 on its face that the trustees are Carnell Brown

8 and/or Mark Brown, correct?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. And are they part of this lawsuit?

13 A. No, they are not.

14 Q. If we're dealing with 012 should the trustees
15 of the property not be part of the lawsuit?

16 A. Not in my opinion. If they're holding it in
17 trust for the people that are listed here, then I
18 don't think they necessarily have to be a part of it.

19 Q. We'll let the law answer that question,
20 correct?

21 A. Right.

22 Q. But what this says is that the people who are
23 in the trust are Ruth B. James, Thomas F. Brown,
24 William J. Brown, Edward M. Brown, Irene L. Brown,
25 Rosa B. Taylor, Sarah B. Walker, James W. Brown, and

1 Helen B. Murphy, correct?

2 A. Right.

3 Q. Are all of those people part of this lawsuit?

4 A. I am, Thomas is, and by consent and
5 distribution Robert Brown is, in that he is the
6 son -- one of the children of Helen Brown Murphy and
7 again by dissent Rosa B. Taylor is the mother of
8 Bernard Brown.

9 Q. Okay. Are you done with your answer?

10 A. I guess, yes.

11 Q. I don't want to interrupt you.

12 A. No.

13 MR. FORD: One of them was premarked, which is
14 11. This has not been premarked. Just for the
15 record, 29 is just the property record card that we
16 downloaded from the Charleston County website for
17 012.

18 (DFT. EXH. #29, Property Record Card, was
19 marked for identification.)

20 Q. (BY MR. FORD) so we've established that 012
21 was in a trust and that the trustees have not been
22 named. Let's change topics to the evolution of this
23 property.

24 I'm talking about the Frank Brown tract, which
25 I understand to be your father?

1 A. That's exactly right.

2 Q. Did that tract used to extend all the way to
3 Harts Bluff Road as a single parcel?

4 A. It did.

5 Q. And the family carved off pieces over time,
6 correct?

7 A. That's correct.

8 Q. And the first carve off was to Carl Brown,
9 correct?

10 A. That's not correct.

11 Q. Let's talk about that. I'm going to show you
12 Exhibit 13, which is a certified copy. Have a look
13 at that.

14 A. (Witness complies.)

15 MR. FORD: Judge, I actually have copies if
16 you would like to follow along?

17 THE COURT: Okay.

18 Q. (BY MR. FORD) This has been premarked as
19 Exhibit 13 and is certified. Have you ever seen this
20 before?

21 A. I have.

22 Q. And does this look like what we're calling
23 now -- the parcel that became, in part, 012?

24 A. I don't understand the question.

25 Q. Fair enough. Frank Brown tract, does this

1 look like part of the Frank Brown tract?

2 A. This including -- this is the Frank Brown
3 tract initially. Originally this is the Frank Brown
4 tract.

5 Q. Fair enough.

6 A. However, what you are failing to recognize is
7 that the tract extended beyond Harts Bluff Road.

8 Q. I do recognize that.

9 THE COURT: It shows as Lot A on here; does it
10 not?

11 THE WITNESS: Yes, it does.

12 Q. (BY MR. FORD) And there's a Lot B, correct?

13 A. There is a Lot B.

14 Q. And so this tract did extend to and beyond
15 Harts Bluff Road, correct?

16 A. It did.

17 Q. And it also extended down to the very bottom.
18 Is that what's now Bears Bluff Road where it says
19 Herbert Smith?

20 A. No, it is not.

21 Q. What is that?

22 A. What is it?

23 Q. Yes.

24 A. That's the land of Herbert Smith.

25 Q. Okay. And at the top of Harts Bluff Road of

1 this tract what this plat shows, among other things,
2 is that the family cut off a piece, Part B, for Carl
3 Brown, correct?

4 A. That's correct.

5 Q. .69 acres?

6 A. Yes.

7 Q. Okay. And that parentally was -- the survey
8 was in 1971, so it was around that time, correct?

9 A. That's what it reflects, yes.

10 Q. Okay. Let me know when you're done.

11 A. What was your last question?

12 Q. There is no question. I'm just waiting to
13 take the exhibit when you're done with it.

14 MR. FORD: This is a certified copy. I would
15 offer it into evidence.

16 THE COURT: Defendants' Exhibit No. 13?

17 MR. FORD: Yes, sir.

18 Q. (BY MR. FORD) Defendants' 14, which is a
19 certified copy of a different plat, would you take a
20 look and see if you've seen that? Does this look
21 familiar to you?

22 A. I've never seen this before.

23 Q. So you deny this is a plat from the County of
24 Charleston given that it's a certified copy?

25 A. That's what it says.

1 Q. And what it shows is Back-A-Wood Road,
2 correct? Do you see where it says Back-A-Wood Road?

3 A. I do.

4 Q. And that area -- let's see -- if I'm looking
5 at it straight on to the right where these various
6 lots are, is that part of the Frank Brown tract?

7 A. That area is what now?

8 Q. I'm holding it visually so that north is face
9 down; are you with me?

10 A. I'm with you.

11 Q. And you see the road extends up as far as --
12 Back-A-Wood Road is extending straight up through the
13 middle, correct?

14 A. Yes.

15 Q. And it ends at Carl Brown, correct? Do you
16 see where it says Carl Brown above it a little bit?

17 A. Yes.

18 Q. That area to the right of Back-A-Wood Road, is
19 that part of the Frank Brown tract?

20 A. The area that is to the right of Back-A-Wood
21 Road that is on this plat, is -- you're talking about
22 Lot 1 and Lot -- Lot 3 and Lot 1 and 2?

23 Q. Yes, sir.

24 A. That was a part of the Frank Brown tract.

25 Q. Thank you. So what this shows -- and what is

1 the date of this plat? It suggests 1989 but you can
2 find your own date if you can find a different one.

3 A. It says here May of 1989.

4 Q. And what this shows is that for the Frank
5 Brown tract, the family has cut off pieces at the end
6 between itself and Harts Bluff Road, correct?

7 A. Yes.

8 Q. Okay. And does this say in the upper
9 right-hand corner, We hereby dedicate the 50-foot
10 road right of way to the use of the property
11 owners -- the owners and their heirs and assigns
12 guarantee its maintenance; does it say that?

13 A. It does say that.

14 Q. And did you sign that?

15 A. That is my signature.

16 Q. And did Carl Brown sign it?

17 A. That looks like his signature.

18 Q. And he would have to because he was the
19 trustee for 012, correct?

20 A. I don't know if he was the trustee or not at
21 that time, but that's what the exhibit shows. You
22 can see the exhibit.

23 Q. But what we can't really dispute is that the
24 Frank Brown tract used to extend to Harts Bluff Road
25 and the family cut off pieces over time, correct?

1 A. These two pieces were cut off.

2 Q. Okay. And I'm going to put it into evidence
3 if you're done with it?

4 A. Wait a minute.

5 MR. FORD: Okay. Let me know when you're
6 done. This is Exhibit 14. Defendant is offering
7 Exhibit 14.

8 MR. McFARLAND: No objection.

9 THE COURT: 14?

10 MR. FORD: Yes.

11 THE COURT: Okay.

12 Q. (BY MR. FORD) I would like to change topics,
13 Mr. Brown. You had your deposition taken, correct?

14 A. I did.

15 Q. You told the truth, the whole truth, and
16 nothing but the truth?

17 A. I did.

18 Q. Is what I've got here, which has been
19 premarked as Defendants' Exhibit 28, a depiction that
20 you drew during that deposition of what we're
21 alleging is the easement at issue here? That's your
22 drawing, correct?

23 A. This is not my drawing. This is my
24 delineation on this exhibit, yes.

25 Q. I'll be happy to fence words with you, but did

1 you draw the red line and the blue line in this
2 exhibit?

3 A. I did.

4 Q. I've got you. And what you testified, and
5 it's true, is that the original road is this red
6 line; is that correct?

7 A. Approximately, yes.

8 Q. And is this an accurate depiction to the best
9 of your knowledge?

10 A. To the best of my recollection, yes.

11 Q. Fair enough. And how far did it go? Where
12 did it wind up?

13 A. How far did what go?

14 Q. The red road.

15 A. It went all the way around to Harts Bluff Road
16 at the other end. This doesn't show how far it went.

17 Q. So it went up beyond what you drew here?

18 A. Yes, it did.

19 Q. And did it hit Harts Bluff Road?

20 A. It did, yes.

21 Q. Thank you. And I believe you testified that
22 that stopped being used what year? I have 1987 and
23 they started using the blue line. Is that accurate?

24 A. I don't remember the exact year, but it would
25 have been after 1984, after the --

1 Q. After the lawsuit?

2 A. Let me answer the question.

3 Q. Fair enough.

4 A. It would be after the temporary restraining
5 order issued on June 14th or on or about June 14,
6 1984.

7 Q. And you testified in your deposition that your
8 brother, James Brown, agreed to start using the blue
9 line, correct?

10 A. I testified in my deposition that my brother,
11 James Brown and Henry Lee agreed to move the easement
12 from the red line to the blue line.

13 Q. And is it true that from then your brother, to
14 the best of your knowledge, your brother, James Brown
15 used the blue line once they built it?

16 A. My brother used the blue line. I used the
17 blue line, my relatives used the blue line. The
18 Smalls used the blue line. The people who were going
19 to the graveyard and cemetery used the blue line to
20 access our property and their property and the
21 cemetery.

22 Q. And to round this discussion out you were
23 asked in your deposition about the gate that was
24 built by Henry Lee that gave rise to your
25 disagreement and I think you drew it, is the

1 question, drew it here where this little line is; is
2 that correct?

3 A. Well, you need to show me that in my
4 deposition.

5 Q. Sure. Page 31, Lines 1 and 2. I have the
6 original here. Would you like it?

7 A. No, I have a copy. What page is it?

8 Q. Page 31, Lines 13 and 14. You testified in
9 Lines 1 and 2 that Henry Lee constructed a gate
10 across the road. You testified in 13 and 14 that you
11 were drawing a red line where that was.

12 A. Let me read that, please. I thought my
13 testimony was I think the gate was right there
14 (indicating).

15 Q. That's what -- show us where you drew the gate
16 at your deposition. Is it this little line right
17 here?

18 A. If I'm not mistaken I further testified in my
19 deposition that I never actually saw the gate.

20 Q. Did you -- is this your drawing here where the
21 red line curves?

22 A. I made the mention that I thought that's where
23 the gate was. I said I think that's where the gate
24 is.

25 Q. Okay. And that's what you said, I think the

1 gate was right in there.

2 A. That's my exact testimony.

3 Q. Okay. Let's talk about -- so we talked about
4 what we'll call the old red road. Let's talk about
5 the new blue road. That is the blue line that you
6 drew. You testified that you had a meeting with
7 Donna Lee, Henry Lee, James Brown, and Edward Brown,
8 correct?

9 A. That was a meeting, yes.

10 Q. Exactly. And that everyone agreed that from
11 then on this south blue line would then be used,
12 correct?

13 A. What page are you on?

14 Q. Sure. Page 40, Line 24, and it extends onto
15 41.

16 A. What was your question again?

17 Q. Is what you testified there correct, and I'll
18 read it. Henry Lee said, Look, I just don't want
19 people coming through my yard so can we agree to move
20 the road to the south end of my property, and my
21 brother, James, said yes. Is that what happened?

22 A. That is not the entire answer I gave. That
23 was in part the answer I gave, yes, sir.

24 Q. And this was after the temporary restraining
25 order but before the harvesting. I think you

1 testified to that at Page 41. We were trying to get
2 the day and you said, Well, it was after the
3 temporary restraining order but before the harvesting
4 took place.

5 A. I think I said I don't remember the year. I
6 know it was after -- it wasn't too long after the
7 harvesting season, yes.

8 Q. Okay. And then Henry Lee and your brother,
9 James Brown, created the blue road, correct?

10 A. That's correct. Wait a minute. What line is
11 it?

12 Q. Page 42, Lines 21 through 24.

13 A. I said, If I recall correctly. Mr. Lee
14 assisted my brother in this blue road -- this new
15 road had to be created. It didn't occur overnight.
16 That's what I testified to.

17 Q. Fair enough. And that's the truth?

18 A. Yes.

19 Q. And it was used from then on out as best you
20 know?

21 A. Up until -- on or about November 16, 2015,
22 yes.

23 Q. The blue road?

24 A. Yes.

25 Q. Is this exhibit an accurate depiction of where

1 it ends?

2 A. No.

3 Q. Where does it end?

4 A. The blue road?

5 Q. Yes.

6 A. It ends -- you go to the right. The blue road
7 you see at the end -- it starts to the right.

8 Q. So for the people on the transcript -- it goes
9 straight and then it has a curve to the right?

10 A. Right. And goes to that field. See that
11 clearing to the right of it? That's part of 196-012.

12 Q. But that's not what you testified to. This is
13 new testimony now, right?

14 A. Well, show me where I testified otherwise.

15 Q. Well, how about this: You drew the blue line,
16 correct?

17 A. No one asked me if that's where it ended. Is
18 that in my testimony?

19 Q. I'm not going to argue with you, sir. So
20 you're telling the Court now that although under oath
21 that's what you represented, now you're telling me
22 that it extended beyond what you drew at the time?

23 A. I need you to show me in my deposition --

24 Q. I'm not going to argue with you, sir. Please
25 answer the question.

1 A. No. No. I can't answer the question. You
2 show me in my deposition testimony where I said the
3 blue road ended there.

4 Q. Is this an accurate drawing on this map of the
5 red and blue road?

6 A. Not to the extent that that's where the blue
7 road ended, and no, not to the extent that that's
8 where the red road ends because the red road, as I
9 said -- you can't see it on this plat on this Exhibit
10 No. 28. It goes all the way and comes back up to
11 Harts Bluff Road.

12 Q. Are you done?

13 A. Yes.

14 MR. FORD: I offer this into evidence, Your
15 Honor. This is Defendant's Exhibit 28.

16 THE COURT: All right. The red road/blue road
17 exhibit.

18 Q. (BY MR. FORD) You testified earlier about a
19 funeral you had attended. You only attended one
20 funeral at the cemetery, correct?

21 A. At that point, yes. I only remembered one,
22 but I attended also the funeral of Alvin Samms.

23 Q. When?

24 A. I don't know the exact date, but I can give
25 you the date of his death. Alvin died -- well, it

1 doesn't -- I don't have a date. He died in the year
2 of 2012, so 1925 to 2012. I don't remember the exact
3 date that he -- that they interred his body, but I
4 did go to his funeral.

5 Q. Do you have any relatives in that cemetery?

6 A. Do I have any relatives? Not that I'm aware
7 of.

8 Q. Do you have any ownership in the cemetery
9 parcel?

10 A. I do not.

11 Q. And you testified in your deposition that you
12 had only been to one for John Moultrie, who we have
13 since learned is an uncle, but now you're telling
14 us -- you're changing your testimony, correct?

15 A. No. I'm not changing my testimony. My memory
16 is better now.

17 Q. You testified that you had only been to one
18 funeral there on Page 92, Lines 20 to 24 of your
19 deposition. Now you're testifying differently,
20 correct?

21 A. I'm testifying -- in my deposition I said I
22 went to John Moultrie's funeral, but since the
23 deposition my memory serves me to know that I went to
24 Alvin's funeral also. So I'm not testifying
25 differently. I'm just saying what I know I did.

1 Q. Who owns the cemetery parcel?

2 A. I would -- I don't know. I'm assuming it's
3 the heirs of Daniel Brown, and what you're looking at
4 it says Thelma Smalls.

5 Q. It says Thelma David. Do you know if that's
6 true or not that she owns 133?

7 A. I have no independent knowledge of that, no.

8 Q. And you've brought photos of the graves, and
9 there are seven graves there, correct?

10 A. No, that's incorrect.

11 Q. How many graves are there?

12 A. I think there are about 50.

13 Q. Okay. The dates I've got -- you were asked
14 this at your deposition, too, correct?

15 A. Asked what?

16 Q. About the graves, correct?

17 A. I was asked about the graves, correct. I
18 didn't ask -- no one asked me about the graves. The
19 agreement was -- I testified in as much as I was the
20 lawyer then and the client, the agreement was that I
21 would be able to testify without having to ask myself
22 questions.

23 Q. Right. You gave a soliloquy about everything
24 you remembered, correct?

25 A. Some of it you could refer to as a soliloquy,

1 yes.

2 Q. I don't mean that unkindly. They said you
3 don't have to ask yourself questions and answer them
4 because that would be a little odd, so you just sort
5 of said what you needed to say, correct?

6 A. I testified and it was under oath.

7 Q. Okay.

8 A. Do you want me to give you the names of the
9 people in the graves?

10 Q. Yes. That would be great. And what are you
11 reading from just so we're all aware?

12 A. My deposition.

13 Q. Let's do it. Tell me where you are.

14 A. The exhibits.

15 Q. Which exhibit?

16 A. Bear with me.

17 Q. I'm going to come up and look at what you're
18 looking at.

19 A. You certainly can. John Moultrie.

20 Q. So you're looking at your Deposition Exhibit
21 No. 4?

22 A. No. This is Exhibit 13. John Moultrie that
23 was Knuckles.

24 Q. What was the date?

25 A. He passed away in 2010.

1 Q. Okay. Go ahead.

2 A. Alvin Samms he passed in 2012.

3 Q. Thank you.

4 A. Frank Gibbs.

5 Q. Thank you, sir. What date?

6 A. Do you want both dates?

7 Q. Just the date that he passed.

8 A. 1992.

9 Q. Thank you. Who else?

10 A. Julia Brown Smalls, passed in 1989.

11 Q. Yes, sir.

12 A. Ella Brown Green passed in 1996. Henry Gibbs

13 passed in 1996. Sam Smalls passed September 20,

14 2009.

15 Q. Anybody else?

16 A. There are other graves in there, and I have

17 some pictures of them although they're not in my

18 deposition.

19 Q. Where are those pictures?

20 A. They're over there on the table. I have some.

21 They might be duplicative. They might be the same

22 pictures.

23 Q. Let's figure it out.

24 A. Okay. Well, I have more than one picture. I

25 counted between 12 to 15 people in the graveyard.

1 Q. But you took pictures of all of the graves --

2 A. I took pictures and --

3 Q. Let me finish. And brought them to your
4 deposition, correct?

5 A. Say that again now?

6 Q. You took pictures of all of the graves and
7 brought them to your deposition, correct?

8 A. Not all of the graves, no.

9 Q. You testified at your deposition that you had
10 taken pictures of the graves and that's what you had?

11 A. I took pictures of the graves. There's no
12 question if I took pictures of all of the graves. I
13 didn't take pictures of all of the graves.

14 Q. Can you point us to any evidence today that
15 there are more graves than the seven that you've
16 already testified to?

17 A. You can look at the photograph of the graves.
18 There are more than seven people in the graveyard --
19 more than seven people interred in the graveyard. I
20 didn't take pictures of all of them.

21 Q. The property, 012, has always been zoned
22 agricultural, correct, as far as you know?

23 A. As far as I know, yes.

24 Q. Okay. You testified earlier about the Ben
25 Brown property, which is as I understand it a tract

1 that is between the Cox parcel and the Edward Brown
2 tract, correct?

3 A. That is the parcel that is adjacent to the
4 Frank Brown property, the Frank Brown parcel, and --
5 it has TMS No. 196-00-00-013.

6 Q. Thank you. And that is one of the properties
7 between the Frank Brown tract and the Cox parcel,
8 correct?

9 A. That is correct.

10 Q. Is Ben Brown a party to this lawsuit?

11 A. Is he a party to the lawsuit?

12 Q. Yes, sir. Is Ben Brown related to you?

13 A. I don't think he's related to me, no.

14 Q. I was just asking. Are any of the owners of
15 the Ben Brown tract parties to this lawsuit?

16 A. Any of them what now?

17 Q. Owners of what was the Ben Brown tract, that
18 strip, parties to this lawsuit?

19 A. No.

20 Q. Does Exhibit 15 look like the plat to what
21 we're calling the Ben Brown tract? This may have
22 been put into evidence earlier as well. I apologize
23 if it was.

24 THE COURT: It is. This is L10, 339?

25 MR. FORD: Yes.

1 THE COURT: It's also in evidence as
2 Plaintiff's Exhibit No. 9.

3 MR. FORD: Thank you.

4 THE COURT: This is a little bit of a larger
5 copy.

6 Q. (BY MR. FORD) Mr. Brown, does this look like
7 the plat to what we're calling the Ben Brown tract?

8 A. It is.

9 Q. Okay. And the tract itself, like all the
10 other ones, extends from -- up to Harts Bluff Road
11 and down to Bears Bluff Road, correct?

12 A. No, that's not correct.

13 Q. Okay. Bears Bluff Road is at the bottom,
14 correct?

15 A. Bears Bluff Road is at the bottom.

16 Q. And Harts Bluff Road is -- not the top one,
17 but it's the last road before we get to Wadmalaw
18 Sound, correct?

19 A. Say that again now.

20 Q. Sure. Harts Bluff Road is towards the top?

21 A. On this plat Harts Bluff Road is north.

22 Q. Right. Harts Bluff Road is up here. I've got
23 you. And this is dated 2010, correct?

24 A. Yes.

25 Q. Would you read the easement that you granted

1 here, please?

2 A. Where is it?

3 Q. It's on the upper right towards the top. It's
4 right near your signature.

5 A. All right. We hereby grant and dedicate --

6 Q. That's not what it says. Go ahead.

7 A. Say that again?

8 Q. How about I do it for you, and you tell me if
9 I get it right.

10 A. That's where I'm reading from.

11 Q. You said grant and that's not in that.

12 A. Do you want me to read it?

13 Q. Yes, please.

14 A. We hereby dedicate the new 20-foot and 30-foot
15 ingress/egress easement to the use of the owner of
16 the property forever, owners of these lots and their
17 assigns guarantee its maintenance until such time it
18 is accepted into the public maintenance system.

19 Q. I think a word may have been off in there, but
20 the document will speak for itself. And you signed
21 that, correct?

22 A. I did.

23 Q. And Carl Brown apparently signed that,
24 correct?

25 A. He did.

1 Q. Because he was the trustee of 012, correct?

2 A. In 2008 was he the trustee.

3 Q. Isn't that why he's signing it?

4 A. I don't know.

5 Q. But he signed it apparently?

6 A. He did sign it.

7 Q. And Benjamin Brown apparently signed it,
8 correct?

9 A. He did.

10 Q. And that easement on here, the new 20-foot
11 ingress extends from Back-A-Wood Road down 012, and
12 then 012 grants a -- to cross 012 to the Ben Brown
13 tract, correct?

14 A. No, that's not correct. You need to rephrase
15 that. I don't understand that.

16 Q. Look at the end of Back-A-Wood Road; do you
17 see Back-A-Wood Road?

18 A. Yes.

19 Q. And there is a 20-foot easement that extends
20 down the property line, correct?

21 A. That is correct.

22 Q. And then it turns across 012, correct?

23 A. That's what it says. Yes, that's correct.

24 Q. And it says 20-foot ingress/egress easement as
25 it crosses 012, correct?

1 A. That's correct.

2 Q. So we're on the same page so to speak. So you
3 guarantee Ben Brown, or at least whoever owns that
4 property, an easement across 012, correct?

5 A. That was one, only one ingress and egress
6 grant.

7 Q. Okay.

8 A. Wait a minute. Let me finish my answer. You
9 have to look at the heart of it in this matter.
10 Alternatively, if this didn't work and it couldn't
11 work and it didn't work because of the wetlands,
12 because of the creek, because of the tidal creek. So
13 if your question is -- it was never the intent to
14 guarantee that we would build a bridge across the
15 wetlands. That was never the intent. That's the
16 only way Back-A-Wood Road becomes operational.

17 Q. The easement says, among other things, owners
18 of these lots and their assigns guarantee its
19 maintenance until such time it is accepted into a
20 public maintenance system. Those are the words on
21 the plat, correct?

22 A. Those are the words on the plat.

23 Q. So at least according to this plat, that was
24 designated as the ingress/egress easement for the Ben
25 Brown tract?

1 A. I think you got it wrong. The plat does not
2 show -- do you see where it says, Farm Road down
3 below the wetlands -- the second wetlands coming from
4 the bottom of the plat coming north. Do you see
5 where it says, Farm Road?

6 Q. I see in the upper right-hand corner; is that
7 what you're talking about?

8 A. No, sir. I'm talking about on -- there is one
9 in the upper right-hand corner.

10 Q. So you're saying where the new 20-foot
11 easement ends there's a farm road?

12 A. There is -- that was the alternative easement.
13 That was the easement to get to Ben Brown's property.

14 Q. But that's not what this plat says?

15 A. No. The plat says what it says, but it does
16 say, Farm Road on there and in the upper right-hand
17 corner, you see it also says, Farm Road.

18 Q. It does. And on the upper right-hand corner
19 there's a little carve out and there's a little
20 dotted line.

21 A. Right. Farm Road. Right.

22 Q. But let's focus on this plat. You're a
23 lawyer. Let's focus on the words of the plat.
24 According to this plat, this document was recorded.
25 The ingress/egress is what was guaranteed by yourself

1 and Carl Brown extended from Back-A-Wood Road.

2 That's what this says, correct?

3 A. As one of the accesses.

4 Q. That's not what this says.

5 A. Well, the plat says what it says. And you
6 said the document speaks for itself.

7 THE COURT: I've got it. I've got it. Let's
8 move on. Okay?

9 MR. FORD: Okay.

10 Q. (BY MR. FORD) Here's the question: Do you
11 have any responsibility to the Ben Brown tract owners
12 to maintain an easement as a person who signed that
13 plat?

14 A. They have never asked me to maintain the
15 easement.

16 Q. You're a lawyer. Do you have any
17 responsibility as a gentleman who signed that plat to
18 maintain the easement?

19 A. No, I don't.

20 Q. And are there any wetlands shown on that plat?

21 A. Yes.

22 Q. Where?

23 A. Look to the -- do you see the cutout on the
24 right that says Lot 5? To the right of -- we have
25 wetlands right here (indicating).

1 Q. I've got you. Thank you. So it does show
2 wetlands, correct?

3 A. On --

4 Q. Does it show any wetlands on the easement, the
5 new easement?

6 A. It doesn't show wetlands on the new easement,
7 but the new easement -- that easement comes -- it
8 goes perpendicular across the wetlands. That is the
9 type of creek that goes all way to and past the
10 Estate of Daniel Brown.

11 Q. Okay. So the surveyor knew to draw wetlands,
12 but he didn't do any on this easement, correct?

13 A. I can't tell you what the surveyor knew.

14 Q. Well, you can see the plat.

15 A. I see the plat, yes.

16 Q. And it will speak for itself. You told me
17 about a farm road that you pointed out, correct?

18 A. Say that again now?

19 Q. You told me about a farm road that you pointed
20 out on this, correct?

21 A. Yes.

22 Q. Is that in the chain of title for the Coxes'
23 property?

24 A. I don't know.

25 Q. Do you know if that farm road is in the chain

1 of title for Bohicket Farm property?

2 A. I don't know that either. All I can tell you
3 is that the farm road has been there ever since I was
4 four or five, and I'm now 70, the Old Blind Road.

5 MR. FORD: Yes, sir. Exhibit 16 -- I'm going
6 to offer Exhibit 15 into evidence, although I may
7 need to duplicate it.

8 Q. (BY MR. FORD) Exhibit 16 -- I apologize if
9 this has also been offered into evidence, but does
10 this look like the Ben Brown deed?

11 A. That's what it looks like.

12 Q. Does this incorporate the plat we just talked
13 about?

14 A. Let me look at it. It does look like L10,
15 Page 339.

16 Q. And is that the one we were just talking
17 about?

18 A. Yes.

19 Q. Would you read the exhibit so people reading
20 the record know which one it is?

21 A. The exhibit number?

22 Q. Yes, sir.

23 A. 16.

24 Q. Thank you.

25 A. Defendant's Exhibit No. 16.

1 Q. Thank you. So whoever is taking title to the
2 Ben Brown property, at least evidenced in this deed,
3 is referred to the plat, correct?

4 A. Yes.

5 Q. Let's change topics. You've contended in the
6 past that what you're calling the Old Farm Road was a
7 public road, correct?

8 A. I did contend that, and the reason I contended
9 that is because it was maintained by the County.

10 Q. And if it's a public road it would mean that
11 it was being used with permission, correct?

12 A. Oh, I don't know that that is the case, no.

13 Q. You don't know one way or the other?

14 A. No.

15 Q. And if it's a public road then everyone using
16 it would have the same rights as each other, correct?
17 No rights different from anyone else?

18 A. If it was a public road then the people who
19 used it would be the public.

20 Q. Right. Okay. Can you point me to any
21 evidence that the -- what you're calling the Old Farm

22 Road was not used with permission?

23 A. Say that again?

24 Q. Sure. Can you point me to any evidence that
25 the Old Farm Road was not being used for years with

1 permission?

2 A. There was no permission necessary. I could
3 point you to a bunch of evidence. Do you want me to
4 point it out to you?

5 Q. Yes, sir.

6 A. The road that we're talking about, the one --
7 the blue road now -- not the new road but the blue
8 road was being scraped by the County at least once
9 every two weeks.

10 Q. The blue road?

11 A. I'm sorry. The red road was being scraped by
12 the County at least once every two weeks.

13 Numerous -- Leeland Price and a number of other
14 farmers would go and use that road. My father and my
15 siblings and I, we would use the road, and we never
16 sought permission from anybody. Look, the road was
17 there when the Eaton got there and also when the
18 Coxes got there. There was no permission. We never
19 needed any permission.

20 Q. Are you done?

21 A. I'm done.

22 Q. Thank you. I listened with interest to your
23 story or your testimony about Carl Eaton and the gun.
24 Do you remember that? Where he brandished the
25 firearm?

1 A. Yes.

2 Q. And you told a slightly different story at
3 your deposition, correct? You left out the part
4 about you tackling him, which to me seems memorable.

5 A. Well, the whole event was scary. I don't know
6 that it was -- I didn't leave it out. They asked me
7 what happened.

8 Q. Right.

9 A. And what -- I'll tell you exactly what
10 happened again. He came out, brandished the gun, and
11 I did tackle him, but I hit him, also. I took the
12 gun from him, kept the gun and went on. As I
13 remember correctly, it was my thought that I should
14 have hurt him, but then I thought about it after we
15 tussled. It wasn't a long tussle. He wasn't a very
16 tall man. He was probably your size.

17 Q. He was a Marine, right?

18 A. I don't know what he was. I did know later
19 on, though, he committed suicide. Marines don't do
20 that, do they?

21 Q. I'm listening to you.

22 A. So after I took the gun from him I kept the
23 gun, and I thought about what I should do with the
24 gun. I didn't know whether he was going to call the
25 police or not, so what I did to the gun -- a couple

1 of days later I took the gun and I threw it in Church
2 Creek. Do you know where that is? It was a bridge
3 across Church Creek from Wadmalaw to Johns Island.

4 Q. It doesn't really matter to me whether you
5 wrestled with him or not.

6 A. Well, you asked me a question.

7 Q. My question is different. You can keep
8 talking, but my question is a little different.

9 A. Okay.

10 Q. And you did testify at your deposition that
11 you had an encounter with him, and there's no doubt
12 about that, correct?

13 A. Absolutely.

14 Q. And I'm just commenting that -- what you are
15 testifying to now is -- it just seems memorable if
16 you were going to have a fight with this guy. That's
17 not what you said, but your testimony will speak for
18 itself.

19 A. Can you refer me to the page in my deposition?

20 Q. Oh, sure. Page 32.

21 THE COURT: We don't need to go there. It's
22 not important. It's not important.

23 Q. (BY MR. FORD) There's no dispute that you had
24 an encounter of some sort with Mr. Eaton, correct?
25 There's no dispute about that?

1 A. We engaged in combat.

2 Q. It's not a trick. That's fine. You engaged
3 in combat. That's fine. And what he was doing was
4 attempting to interrupt your use of that road, but
5 you didn't let him, correct?

6 A. I did not.

7 Q. You testified about the previous temporary
8 restraining order lawsuit, correct?

9 A. Right.

10 Q. And the allegation in that was that this was a
11 public road as well. That was your allegation?

12 A. That was one of the allegations.

13 Q. Right. And the substance was that a gate was
14 blocking your brother, James Brown, from accessing
15 his crops, correct?

16 A. That's correct.

17 Q. And the only allegation in there was that your
18 brother needed it for agricultural use. There were
19 no other uses that were alleged in that complaint at
20 least?

21 A. Not that I can recall. Do you have a copy of
22 the complaint I can look at?

23 Q. I guess. It was introduced into evidence.
24 You just looked at it.

25 THE COURT: That was Exhibit 13. I'm not sure

1 what's happened to that one. I don't think it was a
2 dispute.

3 Q. (BY MR. FORD) Exhibit 13, and the question
4 is -- and I didn't realize it was in dispute was what
5 you allege in there. The only use you allege in that
6 Complaint is that James Brown needed it for
7 agricultural uses. That's the question.

8 A. Among other things that's true.

9 Q. What does it say? I'm going to read with you.
10 You have the only copy.

11 A. That the Plaintiff has no way of gaining
12 access to his crops and/or property, which he leases,
13 except through the roadway that the Defendant has
14 borrowed or blocked off.

15 Q. So it alleges access to his crops, correct?

16 A. And also that the Plaintiff and his
17 predecessors in interest have used this roadway
18 and/or easement continuously, openly, notoriously, in
19 an adverse manner to the Defendant and his
20 predecessors in interest for a period well in excess
21 of 34 years with full knowledge of the Defendant
22 and/or his predecessors in interest.

23 Q. Thank you. Does it allege any use other than
24 agricultural?

25 A. Not in that complaint, no.

1 Q. Great. And you were the lawyer on that case
2 if I recall correctly?

3 A. I'm on the pleadings, yes.

4 Q. That's an easy one, right? What was the final
5 disposition of that case?

6 A. A temporary restraining order was issued.

7 Q. Yes, sir, but then what happened?

8 A. Then we had the meeting, and then the road was
9 moved.

10 Q. And under Rule 65, a temporary restraining
11 order expires after ten days, correct?

12 A. That's what the rule says, yes.

13 Q. Is that what happened here?

14 A. I didn't proceed forward to get a permanent
15 injunction if that's what you're asking, no.

16 Q. I'm just asking what happened. I wasn't
17 there. You were there. You were the lawyer on the
18 case.

19 A. I'm telling you that that's what happened.

20 Q. And you testified earlier that you provided us
21 with all of the pleadings, correct?

22 ~~A. As best that I can remember.~~

23 Q. But you didn't provide us with a final
24 disposition, did you?

25 A. No. No. I did not provide you with that.

1 Q. No, you didn't. You didn't come with that to
2 the courthouse. You didn't provide us with this. We
3 sent someone down to the courthouse, and this was the
4 first thing that came up. What this says is that it
5 was struck with leave to restore on good cause shown,
6 correct?

7 A. That's correct.

8 Q. Okay. And it was never restored, correct?

9 A. No, it was not.

10 MR. FORD: If we can mark this?

11 (DFT. EXH. #30, Form II, was marked for
12 identification.)

13 MR. FORD: I move for this to go into evidence
14 as Exhibit 30.

15 THE COURT: No. 30?

16 MR. FORD: Yes, sir.

17 THE COURT: Okay.

18 MR. FORD: If I can pause for a moment,
19 Your Honor, so I can consult with my Co-Counsel?

20 THE COURT: Okay.

21 MR. FORD: I appreciate your time, sir.

22 THE WITNESS: You're welcome.

23 THE COURT: Let me just ask: Mr. Bradham, any
24 questions?

25 MR. BRADHAM: I don't have anything,

1 Your Honor.

2 THE COURT: Very good. Yes, sir?

3 MR. McFARLAND: Yes.

4 MR. FORD: Your Honor, if the Court wants it,
5 we have the sealed transcript of Edward Brown.

6 THE COURT: You can put it in the record if
7 you would like.

8 MR. FORD: I would like to put the sealed
9 transcript in the record.

10 THE COURT: You can just put it up there
11 (indicating). Thank you.

12 MR. FORD: And just for the transcript, I'm
13 putting the sealed transcript of Edward M. Brown,
14 Esquire, transcript date of March 7, 2018.

15 THE COURT: Very good. Thank you.

16 All right, Mr. McFarland?

17 EXAMINATION

18 BY MR. McFARLAND:

19 Q. Mr. Brown, with respect to the beneficiaries
20 of what we've been calling the road "B", what we've
21 been calling road "B" originally in the Plaintiffs'
22 ~~case, and what has been referred to by Counsel for~~
23 the Defendants as the blue line road, the question
24 was: Who benefits from the use of or the location of
25 the blue line? I believe your testimony was that you

1 identified some lots at the end of the blue line, but
2 between those lots, 131, 128, are there other lots
3 that benefit from the location of this easement road?

4 A. Yes.

5 Q. And what other lots are those?

6 A. I have to --

7 Q. Who owns those lots?

8 A. Oh, the parcel is owned by the heirs of Frank
9 Brown.

10 Q. And that would be 012?

11 A. 012. The parcel that is owned by Bernard
12 Brown, I don't know -- maybe I can come down --

13 Q. Sure. I'm sorry. Let me get you -- you might
14 be able to look at one of these (indicating)?

15 A. This is it right here (indicating). This lot
16 right here (indicating) is -- okay.

17 Now, I don't know that this is a true
18 reflection of who owned these lots, but if this is a
19 true reflection, Debra Commodore, who is a Plaintiff
20 in this action, that's Lot 128; Benjamin Smalls,
21 that's Lot 129 -- I mean not lot. It's TMS No. 129,
22 and it has an "and 147", but I don't know if they
23 identify the same thing.

24 THE COURT: There are two lots. Okay.

25 THE WITNESS: Any lot that is north of the

1 cemetery is benefitted, and I think you said the
2 cemetery is owned by this lot right here. That's Lot
3 133. So any lot that's north of the cemetery
4 benefits. North will be going all the way up to 123
5 right here. In addition to 106 -- 196-00-12 (sic),
6 additionally, Ben Brown heirs 113 are --

7 Q. (BY MR. McFARLAND) I think that's 013.

8 A. 013, yes. 013 would benefit and also -- there
9 should be a 015. Where is that? The Estate of Grace
10 Brown, 015, that would benefit, too.

11 Q. So the beneficiaries then would include the
12 heirs of Grace Brown, Ben Brown, as well as the heirs
13 of Frank Brown, your family; is that correct?

14 A. That is correct.

15 Q. In addition to those parcels you mentioned
16 that are actually north and including the Commodore
17 property, the cemetery, Thelma David would all be
18 beneficiaries.

19 A. Right.

20 Q. And why are they considered beneficiaries of
21 this road?

22 A. Well, there's no other access that they would
23 have to those lots. This plat -- I don't know what
24 number it is, this plat.

25 Q. The one that's L10?

1 A. Yes, the one that's L10 -- L10, 339 that's
2 marked there. This access to any of those lots that
3 is south of that creek, or that tidal creek, is
4 subject to the jurisdiction of the Army Corps of
5 Engineers and the South Carolina Department of
6 Natural Resources. It says that on the plat.

7 Q. For the plat that you are looking at, and has
8 the easement language that Counsel went over with you
9 for the 20-foot and 30-foot easement, were those
10 easements ever created on the ground?

11 A. Not at all, no.

12 Q. And why not?

13 A. Well, the one coming -- the one that he's
14 referring to as Back-A-Wood Road, it wasn't --
15 according to Mr. Parker when he did the estimate
16 about a million and a half dollars to put a bridge
17 across that. That's just for the bridge.

18 MR. FORD: Objection. Hearsay.

19 THE COURT: I'll sustain it for now. He can
20 come in -- I've seen his affidavit.

21 Q. (BY MR. McFARLAND) But there is no -- the
22 easement was never created?

23 A. Never.

24 Q. So there's no maintenance of the easement
25 because it was never, in fact, created except on this

1 plat; is that correct?

2 A. Right.

3 Q. And then the ingress/egress easement that
4 actually crosses your tract, which is 012, which is
5 to the right of the Brown property, Ann Brown
6 property --

7 A. Yes.

8 Q. -- and where it says, 20-foot ingress/egress
9 easement, and then it leads into a farm road, that
10 easement is recognized by you; is that correct?

11 A. That is correct.

12 Q. And where does that 20-foot -- with the double
13 lines and the dotted lines in between those two solid
14 lines -- it leads to what is referred to here as a
15 farm road. And what is that farm road that it leads
16 to?

17 A. That's the reason we're here. That's the blue
18 road, I think -- that is the road -- the easement
19 that we're here about today. That is the easement.

20 Q. And is that also the easement referred to in
21 the deed from the -- the deed into Melvin Brown of
22 the lawsuit that was filed in 2004?

23 A. Into Ben Brown?

24 Q. Into Ben Brown.

25 A. Yes.

1 Q. And that lawsuit -- at least the order
2 recognized the existence of a farm road or dirt road
3 that would service Ben Brown?

4 A. It does.

5 Q. And that same dirt road/farm road services
6 your property; is that correct?

7 A. That is correct.

8 Q. And is that the same road that services the
9 heirs of Grace Brown?

10 A. Yes.

11 Q. And I believe you were asked about the
12 cemetery and who owns it, at least on the exhibit to
13 be introduced --

14 MR. FORD: I don't think we introduced it.
15 Your Honor, I would move, as a housekeeping matter
16 and introduce this --

17 THE COURT: Did we mark that as a number?

18 MR. FORD: We can use Defendants' --

19 THE COURT: We're up to 31, I think.

20 COURT REPORTER: Yes.

21 (DFT. EXH. #31, GIS Map (retained by Counsel),
22 was marked for identification.)

23 MR. FORD: And just for people reading the
24 transcript, this is a GIS map with some designations
25 on it.

1 MR. McFARLAND: That were placed there by
2 Defendants per Counsel.

3 THE COURT: With a lot of designations. It's
4 very colorful.

5 Q. (BY MR. McFARLAND) Just looking at
6 Defendants' No. 31, of the cemetery is actually
7 logged as TMS No. 133; is that correct?

8 A. If that's what --

9 Q. I think that's what the testimony says.

10 A. Yes, 133.

11 Q. And who is identified as the owner of that
12 lot?

13 A. Thelma Davis.

14 Q. To your knowledge is Thelma Davis the one who
15 created this cemetery?

16 A. Yes.

17 Q. And is she still responsible for it if you
18 know?

19 A. I don't know. I think there's a picture. I
20 mean, there's something that says it's a family
21 cemetery, so --

22 Q. And that's reflected on the plat?

23 A. Right.

24 Q. And it's your understanding that that would be
25 the family members of Thelma David or Smalls?

1 A. And/or the people who are the descendents of
2 Daniel Brown.

3 Q. And what is your relationship to Carl Brown?

4 A. Carl Brown was my brother. He's now deceased.

5 Q. And originally the property on the exhibit
6 that reflects the L10, 339 plat -- at least recorded
7 at L10, 339, Carl Brown was one of the signers of
8 that dedication on the plat?

9 A. That's correct.

10 Q. And you were a signer also?

11 A. I was.

12 Q. And did Carl Brown own a tract separate and
13 apart from the 012 parcel?

14 A. Yes.

15 Q. And where was -- where is Carl Brown's
16 property located on that plat?

17 A. If I could -- he had an exhibit. I don't know
18 which one it was, but I'll show it to you. It was
19 one of his exhibits, one of the Defendants' exhibits.
20 It was a small one.

21 THE COURT: What are you looking for?

22 MR. McFARLAND: I'm looking for a small plat
23 that Counsel introduced. Is that -- thank you.

24 Q. (BY MR. McFARLAND) I'm showing you what's
25 been identified as Defendants' 14.

1 A. Yes. Wait a minute. Let me see the other
2 one, please?

3 Q. And I'm handing you Defendants' 13, and you're
4 looking at 15 here.

5 A. So this is -- I need the other one.

6 Q. This is the one that you have there in front
7 of you, the larger version of that.

8 A. Here we go. So this --

9 Q. What are you reading --

10 A. This is Plaintiffs' Exhibit No. 13. You have
11 a Lot B here, and that's a little corner adjacent --
12 south of Harts Bluff Road, immediately south of Harts
13 Bluff Road. That is owned by Carl Brown.

14 Q. Okay.

15 A. And I'm now referring to Exhibit No. 14. This
16 exhibit was not, and I repeat does not, have the --
17 does not reflect the tidal creek that would be south
18 of Carl Brown's property. So Back-A-Wood Road does
19 not include the tidal creek?

20 Q. It does not reflect it on the plat.

21 A. No, it does not.

22 ~~Q. With respect to the creation of the easement~~
23 on Plaintiff's Exhibit No. 15, did part of that
24 easement exist on your property, 012? Was it carved
25 out of your property? That is your family, Frank

1 Brown's property?

2 A. I don't think so. I don't -- Mr. McFarland, I
3 don't know the answer to that question.

4 Q. If you don't I'll withdraw that.

5 THE COURT: Are you talking about the creation
6 of Back-A-Wood Road?

7 MR. McFARLAND: Well, the extension I believe
8 it is on the bottom. It looks like it might be --
9 Back-A-Wood Road below the cul-de-sac. I think
10 that's what I was asking.

11 THE COURT: Yes. Yes.

12 THE WITNESS: Are you asking about the
13 easement that's midway of this? Are you asking me
14 about this easement?

15 Q. (BY MR. McFARLAND) No. No. I was talking
16 about the extension of Back-A-Wood Road.

17 A. All right.

18 Q. You were asked about the number of grave sites
19 or graves that are in the cemetery. Did you
20 physically count the graves that are there?

21 A. I did.

22 Q. Are all of the graves there marked by
23 headstone or the --

24 A. No.

25 Q. -- or whatever you call the concrete slab?

1 A. No. Some of them you can tell -- there are
2 about two or three of them that are unmarked, and you
3 know, the mortician puts in a metal -- something
4 metal and it had the name of the person in it. You
5 could tell it was a grave there, but you can't make
6 out the name. Like I said, I actually went and
7 counted the graves and there were either 13 or 15
8 grave sites still there.

9 Q. And is there any other way of accessing those
10 graves except other than through the -- what we call
11 the blue line road?

12 A. The road with the blue line, no. Not at all.

13 Q. And did you know the owners of the Cox
14 property before Eaton was the owner?

15 A. It was owned by the Hart family. I don't know
16 that they were the immediate owners.

17 Q. How was that property used before Eaton built
18 his house?

19 A. It was a farm.

20 Q. And at the time it was a farm and prior the
21 construction of the home, your family had been

22 ~~accessing their tracts by way of what is originally~~
23 marked -- the red line?

24 A. Yes.

25 Q. And that road -- because of the construction

1 of the Eaton house was some 30 feet from -- or
2 slightly north thereof of the house that was built
3 there?

4 A. Say that again.

5 Q. In other words, the road preceded the house
6 that was constructed by Eaton?

7 A. Yes. The road has been there ever since I was
8 about -- ever since I remember that was about --
9 since I was four or five.

10 Q. So before and after Mr. Eaton built the house,
11 the road it was being used to access those tracts
12 that we have identified, for the Browns, Benjamin
13 Brown, Grace Brown.

14 A. Yes. Yes.

15 Q. Frank Brown?

16 A. Yes.

17 Q. And when the -- at the time the Coxes
18 purchased this property, Frank Brown had still been
19 using that road to -- I'm sorry not Frank -- James
20 Brown had been using the road to access the fields?

21 A. James was using the road. Yes, that's
22 correct. Price Davis -- I'm sorry -- Bushy Davis,
23 Leeland Price, and there was another farmer. I can't
24 remember his name, but -- it's not showing on any of
25 these plats, but all of them used to use that road to

1 get to their farm. That's one of the reasons that I
2 think that they used to have the road scraped every
3 once or twice a month, the road graded I should say.

4 Q. And of course the County had been grading the
5 road through the early '80s but in any case before
6 your lawsuit it had discontinued grading that
7 original old --

8 A. That's correct.

9 Q. -- old road?

10 A. That's correct.

11 Q. And just before this road -- when you look at
12 the photographs that you walked us through earlier
13 and Counsel had asked you about, who actually
14 maintained the -- was there a need to maintain that
15 blue road?

16 A. No. There wasn't really a need to maintain
17 it, and over the years -- like for instance, you can
18 see in this 2001 photo or County document which has a
19 photo of that, the road is clearly marked. You can
20 see it, but the canopy -- it's just like Bears Bluff
21 Road, the trees are growing, so I think my nephew
22 ~~Bernard and Benjamin Smalls and also when I was~~
23 cutting firewood from back there, we would sometimes,
24 you know, cut the limbs of the trees that hung over
25 the road. So if you call that maintenance of the

1 road, yes, we did.

2 Q. But beyond a canopy, what about the ground?
3 Was there any need to do any sort of maintenance
4 there?

5 A. No.

6 Q. And why was that?

7 A. Well, it was a pretty substantial road. It
8 drained well. There were a couple of spots. One
9 spot I remember that had -- you know, it was kind of
10 low. When it rained it would -- you would have
11 puddles. I have pictures of that, yeah.

12 Q. Let me ask you this way: When James Brown
13 accessed these fields, how often did he travel that
14 blue road?

15 A. When he was in his prime --

16 MR. FORD: I'm going to object to that. You
17 need to ask for a foundation as to how much Ed Brown
18 knows about what James Brown was doing during those
19 years.

20 THE COURT: All right.

21 Q. (BY MR. McFARLAND) And are you familiar with
22 your brother's activities on this farm?

23 A. Very much so. Yes.

24 Q. And I'm going to try to specify -- this would
25 be after '85. Do you know how often he went to his

1 farm?

2 A. I would say he would go to the farm probably
3 two to three times a week. Yeah, two to three times
4 a week. He was always doing something back there:
5 Planting, sweeping, fertilizing, cultivating,
6 harvesting, cutting ditch banks, cutting water
7 furrows through the field. So he would go back there
8 at least two to three times a week.

9 Q. And he would be driving across this -- he
10 wasn't walking?

11 A. No. No. No. No. No. He would be driving
12 with his tractor and with his truck. Sometimes he
13 would have -- and my nephew, Bernard, would go with
14 him to drive the tractor. I never got -- I never
15 graduated to driving the tractor.

16 Q. Just so -- for the record, and I know some of
17 us are city boys, but would you just describe this
18 tractor that we're talking about?

19 A. The tractor is a -- I guess it has a wheel
20 base probably about ten -- it depends on the size of
21 the tractor.

22 Q. ~~I'm talking about this tractor that your~~
23 brother --

24 A. That my brother had?

25 Q. Yes?

1 A. My brother had what is called -- what was that
2 thing? It was a Massey Ferguson. That was one of
3 them. I remember that one.

4 Q. Do you know how wide it was?

5 A. I would say if the wheel base --

6 THE COURT: About as wide as that table down
7 there, isn't it?

8 THE WITNESS: It's a little wider than that,
9 Judge.

10 THE COURT: About eight feet?

11 THE WITNESS: About eight or nine feet.

12 THE COURT: I've got a tractor, you know. I
13 know about tractors.

14 THE WITNESS: I think they make them smaller
15 now.

16 THE COURT: They'll kill you, too.

17 Q. (BY MR. McFARLAND) And so we're talking about
18 a pretty substantial piece of equipment?

19 A. Yes.

20 Q. Traveled across this road three times a week?

21 A. Yes.

22 Q. Is that about accurate?

23 A. Right. In addition to that, he had a cutter.

24 THE COURT: Are you talking about a bush hog?

25 THE WITNESS: No. A cutter. He had to till

1 the soil, and the cutter was always wider than the
2 tractor because you covered more -- when you drove
3 the tractor to cultivate -- to turn the soil. That's
4 what I mean. When you turn the soil, that would be
5 wider, and you would cover more area. So that would
6 be drug on the back of the tractor, through the road,
7 to the fields.

8 Q. And you would cross Grace's tract? Sometimes
9 I think you mentioned that there was a field up to
10 the north of what is shown on our Exhibit No. 3, so
11 it would cross Grace and then cross what is Ben Brown
12 to get to the Frank Brown property?

13 A. Yes.

14 Q. And James Brown --

15 A. The Frank Brown property. And there was
16 another piece of equipment that was particularly
17 interesting. He used to spray for insects -- you had
18 a tank. It was only -- it was about maybe four or
19 five feet wide. It had sprayers that came down from
20 the side. I think you would do six or eight rows out
21 at a time. You would go down the two middle rows and
22 ~~drop those things, the sprayers, and then it would~~
23 spray. Now, when they would be bringing it in there,
24 I think they would come up some.

25 Q. And what size vehicles would he use in

1 harvesting?

2 A. We had a -- he had a yellow truck that he
3 bought from Penske, a used truck.

4 Q. One of the big box trucks?

5 A. Yes, a box truck, and he also had a flatbed
6 Chevrolet truck. He had a pickup truck, and he
7 had -- there were times I remember that we were
8 cutting cabbage and that means -- we would cut the
9 cabbage, bag it up, put it in a special spot, and
10 the -- whoever the buyer was would send a tractor
11 trailer back there and we would load the cabbage on
12 the tractor trailer, and this is one of those big
13 trucks, a tractor and a trailer, an 18-wheeler. I
14 think that's what they call them, an 18-wheeler.

15 I specifically remember one day that one of
16 them got stuck and he had to help it get out with one
17 of his tractors. You know, he hooked it up.

18 Q. So this road was pretty well used?

19 A. Very much so.

20 Q. And your brother made a living farming in
21 part?

22 A. In part. That was not his only --

23 Q. I understand he had another job?

24 A. Yes, he did.

25 Q. What was that? What was that job?

1 A. He was a longshoreman.

2 Q. A longshoreman. And when he worked as a
3 longshoreman, what part of the week or day?

4 A. Well, you know, the way I understand how that
5 works, you go down there and you catch -- if a ship's
6 coming in, then you have this person that's called a
7 header, and they hire you and you unload the ship.
8 That would take maybe ten or 15 hours. Then you
9 don't work again for another two days and then that's
10 when he would farm, you know. So it was in between.

11 Q. So he did both. He was a longshoreman, and he
12 was a farmer?

13 A. He did.

14 Q. Right. And just with respect to this order
15 striking the Brown and Henry Lee case, the date on
16 the order is April 3rd, 1985, and was this after you
17 had witnessed the conversation with Mr. Lee and
18 James? Where they had worked out the provisions for
19 the new road?

20 A. Yes. It was well after that. And if I may
21 further explain, I said I went down there. I think
22 ~~in my deposition testimony, someone went down there~~
23 for me. I hired an abstracter. They got it, but
24 that was all I had. I wasn't trying to deceive
25 anybody to say that this was not there and I didn't

1 produce this, you know?

2 Q. The case was stricken because you-all didn't
3 have to do any more, things had worked out; is that
4 the way you viewed this?

5 A. That's correct.

6 MR. McFARLAND: Your Honor, I think I'm just
7 about there if I can have a second.

8 (Brief pause.)

9 That's all I have, Your Honor.

10 MR. FORD: Just a little bit, Judge. I'll try
11 to be quick.

12 THE COURT: I'm going to hold you to it.

13 EXAMINATION

14 BY MR. FORD:

15 Q. Mr. Brown, orienting you to the easement we
16 discussed that you granted to the Ben Brown parcel;
17 do you remember that discussion today?

18 A. Well, I do remember now. If you're asking me
19 to remember word-for-word I can't.

20 Q. I'm not going to ask you to remember
21 word-for-word. When you signed that easement, you
22 knew what the configuration of the topography was on
23 that property, correct?

24 A. You've got to explain that.

25 Q. Sure. You knew whether or not there was

1 marshland. You knew whether or not there were
2 creeks. You knew what the land was like when you
3 signed that document on the easement, correct?

4 A. I knew there was a creek there, yes.

5 Q. Changing topics. The blue road that we've
6 talked about; do you remember that, or do you need me
7 to put up the --

8 A. No.

9 Q. Okay. The Coxes dug the ditch on the blue
10 road and blocked it, correct?

11 A. That's correct.

12 Q. And that's what's the subject in this
13 litigation, correct?

14 A. They dug the ditch 34 years after we had been
15 using the road, yes.

16 THE COURT: Anything further?

17 MR. FORD: No.

18 THE COURT: Mr. Brown, help me out with a
19 couple of things.

20 EXAMINATION

21 BY THE COURT:

22 Q. ~~Your brother, Carl, he farmed? He~~
23 supplemented his income by that?

24 A. Yes.

25 Q. He did have some farming income. You talked

1 about him selling the cabbages. When did he stop
2 farming if you recall?

3 A. That was my brother, James, now.

4 Q. That was James? I'm sorry.

5 A. Carl did do a little farming, but he wasn't
6 good at that.

7 Q. Okay. James was the one that did it and was
8 also the longshoreman?

9 A. Yes, sir.

10 Q. When did James stop farming if you recall?

11 A. Judge, it was about -- Your Honor, it was
12 maybe two or three years before he died.

13 Q. Which was when? When did he die if you
14 recall?

15 A. He died -- he's been dead three years -- four
16 years. He died in 2014 or '15.

17 Q. '14 or '15?

18 A. I apologize for not remembering.

19 Q. That's all right. So up until 2010 you think
20 he was still farming?

21 A. Beyond that. He just wouldn't keep still. He
22 just had to have something to do, and that's what he
23 did.

24 Q. And then you testified earlier about some
25 folks that lived back there, and that was one of the

1 reasons why they graded the road, so the kids could
2 get to the school bus and get to school. They are
3 long gone from back there, are they not?

4 A. They -- yes. That was when we used the red
5 road so to speak.

6 Q. Right. And that was -- was that from the
7 Frank Brown family or was somebody else back in
8 there?

9 A. That was Nathaniel Brown. The house was owned
10 by a man by the name of Daniel Gibbs.

11 Q. Okay.

12 A. Daniel Gibbs lived in the house for a while.
13 Then the house -- Daniel Gibbs' daughter, Bertha
14 Gibbs, was married to a guy by the name of Johnnie
15 Samms. Johnnie Samms and Bertha Gibbs Samms lived in
16 the house for a while.

17 Now, Daniel Gibbs had already moved to Katie
18 Hill, the Liberia area. After Johnny Samms and they
19 left, the house the house was still there.

20 Ms. Commodore's grandmother and grandfather lived in
21 the house for maybe a year or two. They had another
22 ~~house at the end of the Daniel Gibbs' property near~~
23 the creek, beyond the tributary, beyond Harts Bluff
24 Road.

25 That house burned down, so they lived there

1 until they reconstructed that house. After that then
2 the house was rented until it just -- that's when
3 Ms. Lou Gadsden was the person who rented the house.

4 As I stated earlier she had three kids:
5 Lilly, Blanche, and Mary. Those kids used to walk
6 the red road and come to Harts Bluff Road to catch
7 the bus.

8 Q. And nobody has lived there since you were in
9 high school?

10 A. No. Nobody has lived there.

11 Q. Is anybody living back there now?

12 A. No.

13 Q. Let me see if I had something else to ask you.

14 Mr. Lee, Henry Lee, he was the beer
15 distributor, right?

16 A. Yes, sir.

17 Q. So he met you-all back there with a six-pack
18 of beer, he had plenty of those available, right?

19 A. It was a case.

20 Q. All right. With a case of beer. I've got
21 you. All right.

22 And then all of the grave sites have been in
23 there since the late '80s until 2012? It's all been
24 in that timeframe? Has that been since Ms. David has
25 owned the property or taken possession of that

1 property?

2 A. No. The grave site was there before she took
3 possession of the property.

4 Q. It was?

5 A. Yes. Julia Smalls -- Julia Brown Smalls -- I
6 think that's the first -- she was buried there in
7 1989. Thelma David -- the land was still in the
8 Estate of Ben Brown at that time.

9 Q. She got that later?

10 A. Yes, sir.

11 Q. Okay. There's a road in there somewhere
12 called Geneva Shaw Lane; do you know that?

13 A. I know there's a road called Geneva Shaw Lane
14 on paper.

15 Q. That's another paper road?

16 A. That's a paper road. That road does not
17 exist. When I was coming up that was a foot path.

18 Q. That was created when they subdivided off
19 those lots on the back?

20 A. Yes, sir.

21 THE COURT: Okay. That's all I've got.

22 Mr. Brown, you may step down. You-all have about
23 worn me out today.

24 THE WITNESS: I was just getting warmed up,
25 Judge.

1 THE COURT: I might learn some more about the
2 family.

3 (Witness excused.)

4 THE COURT: Mr. McFarland?

5 MR. MCFARLAND: Can we have a break so I can
6 determine what we might do at this point? And just
7 because of Mr. Parker, we would prefer no matter what
8 we do this afternoon just to have him on standby for
9 tomorrow morning so we don't have to try to get him
10 over here wherever he is.

11 THE COURT: That's fine. Let's figure out
12 what you want to do. If you want to put up one
13 witness, one short one today, otherwise I'm ready to
14 take a break.

15 (A recess transpired.)

16 MR. MCFARLAND: We have some other witnesses
17 but their testimony, even as short as it would be,
18 would certainly just duplicate what you've already
19 heard.

20 THE COURT: I've heard a lot today.

21 MR. MCFARLAND: So we would certainly like to
22 adjourn until tomorrow morning.

23 THE COURT: Let's do that. We'll let the
24 Plaintiff rest, and then we'll talk about that in the
25 morning.

1 MR. McFARLAND: And we'll have Mr. Parker as
2 our first witness tomorrow.

3 MR. FORD: Do you have anyone else planned?

4 MR. McFARLAND: No. He will be our last
5 witness.

6 MR. FORD: Thank you. I appreciate it.

7 THE COURT: Mr. Bradham, do you still want to
8 have your people? Let me make sure I've got them. I
9 told him he could bring his people after lunch if he
10 would like.

11 MR. BRADHAM: It sounds like I could get them
12 here earlier.

13 MR. McFARLAND: Are we starting at 10:00?

14 THE COURT: Yes.

15 MR. McFARLAND: I don't think Mr. Parker's
16 going to be very long.

17 MR. BRADHAM: I'll get him here at 11:00?

18 THE COURT: I think that will be plenty of
19 time.

20 MR. McFARLAND: I don't think Mr. Parker will
21 be long.

22 ~~MR. FORD: Let's try to get it done tomorrow.~~
23 How about that?

24 MR. McFARLAND: Pardon?

25 MR. FORD: Let's try to get it all done

1 tomorrow.

2 MR. McFARLAND: Oh, were you think there would
3 be a third day? I'm sorry. I think we can do that
4 if we get rolling.

5 THE COURT: Let's plan to get started right at
6 10:00. If you-all can be in here. I think we've
7 marked everything.

8 (The proceedings were recessed for the day at
9 4:40 p.m.)

CERTIFICATE OF REPORTER

I, Christine A. Smith, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

I further certify that I am neither related to
nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 26th day of November, 2019 at
Charleston, Charleston County, South Carolina.



Christine A. Smith
Court Reporter
My Commission expires
May 12, 2021

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Thelma Smalls David, Bernard
Brown, Benjamin Smalls, Edward
Brown, Nicolette James, Robert
Brown, Thomas Brown, and Debra
Commodore,

Plaintiffs,

vs. CASE NO. 2015-CP-10-7000

Donna Lee Cox, Robert R. Cox, Jr.,
Shawn Thackeray, and Lowcountry
Highlanders Farm, LLC,

Defendants,

and

Bohicket Farms, LLC,

Intervenor.

VOLUME II

COPY

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:36 a.m. on
October 22, 2019 at 100 Broad Street, Charleston,
South Carolina.

Christine A. Smith, Court Reporter

Master-in-Equity

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(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

THE COURT: We got through Mr. Brown's testimony yesterday. We're still in the Plaintiffs' case, so Mr. McFarland --

MR. McFARLAND: Thank you, Your Honor. Good morning.

THE COURT: Good morning.

MR. McFARLAND: Plaintiffs call Mr. Horry Parker.

WYATT HORRY PARKER,
being first duly sworn, testified as follows:

THE COURT: Mr. Parker, when you get comfortable, if you will give us your full name and address for the record, please, sir?

THE WITNESS: Wyatt Horry Parker, 32 Ashley Avenue, Charleston, South Carolina, 29401.

THE COURT: Thank you, sir.

EXAMINATION

BY MR. McFARLAND:

Q. Good morning, Mr. Parker. First, would you tell us what is your professional background?

A. I am an estimator, vice-president and treasurer of a marine construction company. It specializes in bridge and heavy construction on the

1 water.

2 Q. And how long have been engaged in the business
3 of bridge construction?

4 A. I've been with Cape Romain Contractors since
5 1980.

6 Q. Would you give us the benefit of your
7 education background, please?

8 A. I have a BA from the University of the South,
9 Sewanee, Tennessee.

10 Q. And do you have any professional
11 certifications?

12 A. I am not a certified engineer.

13 Q. You are not a certified engineer. How did you
14 get your training in bridge construction estimating?

15 A. Working the field, practical.

16 Q. And on how many projects would you estimate
17 over 30 years have you been an estimator on?

18 A. Successful projects? Probably four or five a
19 year.

20 Q. Four or five per year?

21 A. Yes.

22 Q. ~~And generally who are your clients? Who have~~
23 been your clients?

24 A. We do mainly commercial, developmental,
25 industrial work. South Carolina Department of

1 Transportation, the State Ports Authority, some of
2 the railroads, industries like WestVaco and people
3 like that.

4 Q. And have you testified in court previously in
5 matters involving bridge construction?

6 A. I've done depositions, yes.

7 Q. And about how many depositions have you done?

8 A. Probably three or so.

9 MR. McFARLAND: Your Honor, at this time I
10 would like to qualify Mr. Horry Parker as a bridge
11 construction estimator expert.

12 MR. FORD: We have no objection as to
13 estimation items only as to his qualification. We
14 reserve it as to whatever opinions he's offered, but
15 if the motion is purely on qualifications to estimate
16 the cost of a bridge, we don't have any objection on
17 that qualification.

18 THE COURT: Satisfactory?

19 MR. McFARLAND: Yes, Your Honor.

20 THE COURT: I find him so qualified.

21 Q. (BY MR. McFARLAND) All right, Mr. Parker, you
22 were contacted by Attorney Edward Brown to do an
23 analysis of what it would cost to construct a bridge
24 on Wadmalaw Island on the Back-A-Wood Road easement;
25 is that correct?

1 A. That's correct.

2 Q. And approximately when were you contacted by
3 Mr. Brown?

4 A. I think it was about a year and a half ago.

5 Q. And the project that he asked you to estimate,
6 as I mentioned already, was on Back-A-Wood Road?

7 A. That's correct. Yes.

8 Q. I'm going to show you an exhibit that has been
9 admitted to the Court as Plaintiff's Exhibit No. 11
10 and ask if you would tell the Court if on that plat
11 is represented the area where you were asked to
12 estimate the construction of a bridge?

13 A. Yes. Basically as you come down Back-A-Wood
14 Road there's a marsh area that actually has a
15 cul-de-sac drawn into it, but from one side of the
16 marsh to the high land on the other side, it's
17 roughly 230 feet.

18 Q. 230 feet?

19 A. Right.

20 Q. And as a result of that request and your
21 analysis were you able to determine the cost of
22 ~~constructing a bridge across the marsh?~~

23 A. Yes. We talked with Mr. Brown. He decided
24 that it needed to be a two-lane bridge. It did not
25 need a sidewalk. It would have to have handrail

1 barrier balls on it. Based on that you would have to
2 make the bridge two 12-foot lengths, room for the
3 barrier rail, which made the bridge roughly 27 feet
4 wide.

5 Q. And would those dimensions be consistent with
6 what is required by the South Carolina Department of
7 Transportation and DHEC and the other agencies
8 involved?

9 A. I would hope so, but until it's permitted you
10 never know.

11 Q. So this is your estimate before going through
12 the permitting process?

13 A. Yes, sir.

14 Q. And in your opinion, what would the cost, your
15 estimated cost of constructing a bridge across the
16 marsh area depicted on Exhibit No. 11, what would
17 that cost be?

18 A. I had given Mr. Brown a million and a quarter
19 dollars, but that was also not just construction.
20 That was also the estimate to do the permitting and
21 engineering design work.

22 Q. And all of that would be required, the
23 engineering and design work and permitting, it all
24 would be required in order to -- prior to beginning
25 construction of this bridge?

1 A. Yes, sir. Yes.

2 Q. I know I can do the math, but I believe you
3 said it was -- 230 feet long would be the length of
4 this bridge?

5 A. Approximately.

6 Q. So if I just simply divided \$1.25 million by
7 230, would that give me a fairly accurate estimate of
8 the per foot cost for construction, including
9 permitting, et cetera?

10 A. Yes. Based on the 27-foot width.

11 Q. Based on the 27-foot width. And this
12 \$1.25 million is just the cost of the bridge itself;
13 is that correct?

14 A. Yes.

15 Q. And there are approaches to the bridge
16 obviously that would have to be developed?

17 A. It does not include the cost of the
18 approaches, so therefore -- it does include what
19 would be called the approach slab. It's the
20 transition slab between the piling support for the
21 bridge and it would include the little bit of barrier
22 ~~rail the county would probably require you to have on~~
23 each corner of the bridge.

24 MR. McFARLAND: Just one second, Your Honor.

25 Q. (BY MR. McFARLAND) And I believe we talked

1 about the fact that there is a permitting process.

2 Would you identify the agencies that would be
3 involved in the permitting process?

4 A. Cape Romain doesn't do the permitting. You
5 would have to be involved probably with the Corps of
6 Engineers, the DNR, OCRM, obviously county, and I
7 don't know what else, what other agencies. It's a
8 whole lot.

9 Q. And do you have -- in your experience, can you
10 give us an estimate of the length of time this
11 permitting process alone would take?

12 A. It's unknown.

13 Q. And there would be public -- an opportunity
14 for public input?

15 A. Public input, yes, sir.

16 MR. McFARLAND: Your Honor, that is all I have
17 of Mr. Parker.

18 THE COURT: Mr. Parker, Mr. Ford's going to
19 ask you a few questions.

20 EXAMINATION

21 BY MR. FORD:

22 Q. Mr. Parker, my name is Ian Ford. I just have
23 a couple of questions. How much are you charging for
24 your work in this case?

25 A. None. I did charge for the original estimate.

1 Q. How much was that?

2 A. \$600.

3 Q. And you were only to tell what a bridge would
4 cost, correct?

5 A. Correct. The preliminary estimate, yes.

6 Q. Preliminary estimate. You're not offering an
7 opinion as to whether or not a bridge is required,
8 correct?

9 A. If you cross the area, my opinion is it would
10 be required. In the old days you used to just throw
11 a piece of pipe in the ditch and fill the marsh, but
12 that's no longer allowed.

13 Q. But that's not your area of expertise. You're
14 only here as an estimator today, correct?

15 A. That's correct.

16 Q. Did you take any measurements or anything
17 while you were out there?

18 A. I did off of Google, yes.

19 Q. You did off Google?

20 A. Right.

21 Q. Is that like this map here? I will represent
22 ~~to you that this is a Google map. It says Google at~~
23 the bottom and we pulled it. Is this what you used,
24 that type of thing?

25 A. Something like that, yes, and you can blow it

1 up.

2 Q. Like we did here, correct?

3 A. Well, you can blow it up a lot more.

4 Q. Sure. But does this look like an accurate
5 depiction? Again, it was pulled off Google. Is this
6 the kind of thing you used yourself to make the
7 measurements?

8 A. Yes.

9 Q. So you didn't actually take any measurements
10 out there?

11 A. Not with a tape, no.

12 Q. Did you do any measurements at all while you
13 were out there?

14 A. No.

15 Q. What underlying cost numbers did you use?
16 Like if I wanted to reproduce what you did, how would
17 I do it?

18 A. I did it two ways: One, generally a flat slab
19 concrete bridge like that. The foundation is the big
20 unknown.

21 Q. Is what?

22 A. The foundation.

23 Q. Is a what?

24 A. The big unknown in the cost.

25 Q. Thank you.

1 A. You don't know exactly what it costs to
2 support the -- you don't know what the design of the
3 foundation would be. Probably -- typically a flat
4 slab bridge just for a budget estimate would be in
5 the range of \$150 or \$175 a square foot.

6 Q. And is a flat slab bridge required here, or
7 could other configurations be done if you know, and
8 that might not be your area.

9 A. There are other styles of bridges, other
10 materials that could be done: Timber, prestressed
11 concrete slabs.

12 Q. Now, would those have different costs
13 depending on what's specified?

14 A. Yes.

15 Q. But you took your dictation from Edward Brown
16 as to what he wanted there, correct?

17 A. No. My recommendation, the best for your
18 money is a concrete slab, a flat slab poured bridge
19 as opposed to a timber bridge or a concrete
20 prestressed bridge.

21 Q. Is it accurate to say that there could be
22 other types of bridges, and those would cost
23 different amounts depending on what was specified?

24 A. Yes.

25 Q. Okay. And other than looking at Google Maps

1 and using whatever it is you used, do you have
2 anything else that we could use to recreate how you
3 arrived at your figure?

4 A. One of the other things I looked at is past
5 projects. We just finished a bridge off of Clements
6 Ferry Road. It was 180 feet, two lanes, and it did
7 have a sidewalk. The cost without permitting and
8 engineering was about \$1.1 million.

9 Q. And how long was that one?

10 A. That was 180 feet.

11 Q. What's the breakdown as to how much permitting
12 would cost for this preliminary estimate that you
13 made here?

14 A. I just put in probably \$40,000, I think. I
15 don't have any figures in front of me.

16 Q. \$40,000 just for permitting, and would that be
17 different if different permitting were required? How
18 did you come up with \$40,000?

19 A. Again, Cape Romain doesn't do permitting, so
20 I'm not privy to cost. I do know it can drag on
21 sometimes.

22 Q. All right. And how did you decide where the
23 bridge might start and where it might stop?

24 A. From Google Earth looking at where the marsh
25 started and stopped and where it passed the limits of

1 that.

2 Q. Is this the Google Earth that you looked at?

3 This is from Google Earth.

4 A. I don't -- there are several different Google
5 Earths I think, so I don't know if that's the exact
6 same thing or not.

7 Q. Here's a different Google Earth. This is from
8 Google Earth as far as we all know?

9 A. Correct.

10 Q. It says, Google.

11 A. Right.

12 Q. So is this what you looked at? And I'll
13 represent to you that we just pulled this off Google
14 Earth.

15 A. I don't know. Where is the wetlands we're
16 talking about?

17 Q. That's part of what I'm asking. Where is
18 Back-A-Wood Road on here? Is this it right here
19 (indicating)?

20 A. Right there (indicating).

21 Q. Is there two houses?

22 A. I believe that's it.

23 Q. So tell me what we're talking about?

24 A. It comes across the wetlands right here
25 (indicating).

1 Q. Is it shown on here?

2 A. Well, you can see it. I can. Again, you can
3 blow it up and get everything, plus you can scale off
4 of this.

5 Q. And the first time you went out there was
6 about a year and a half ago?

7 A. Yes.

8 Q. And you're understanding from that plat is
9 there is indeed an easement across that property,
10 correct?

11 A. I don't know that for sure.

12 Q. And let's see if we're on the same page here
13 figuratively speaking?

14 A. We walked in this way and then walked out to
15 the wetlands.

16 Q. So you started at Harts Bluff Road, and
17 there's a sign there for Back-A-Wood Road, a street
18 sign put up by the County?

19 A. I don't remember.

20 Q. Do you deny that there's a street sign there?

21 A. No.

22 Q. And then you walked up there and -- but you
23 can see on this that there is an easement, correct?

24 A. Right.

25 Q. And just for the record I'm looking at

1 Plaintiffs' 11, and it looks like whatever easements
2 are there were granted by various people as they
3 typically are, correct?

4 A. Right.

5 Q. Before someone grants an easement should they
6 go out and see what the terrain is like and what it
7 would be like to have to maintain it?

8 A. I don't grant easements.

9 Q. Do you know anything about easements?

10 A. I know they're legal.

11 Q. Do you know anything other than they're legal?

12 A. Not really.

13 Q. Would you suggest that someone, before they
14 grant an easement --

15 MR. McFARLAND: Your Honor, I'm going to
16 object to the question. I think Counsel limited the
17 testimony to cost estimating. I think he's going
18 into grant of easements and what one should do and
19 his opinion, which is not in the scope of what we
20 limited his testimony to.

21 MR. FORD: My question is going to be, what
22 ~~I'm leading to, is he's estimated cost. Should~~
23 someone look into the terrain before they grant an
24 easement to see how much it's going to cost?

25 THE COURT: I think you can ask him that.

1 Q. (BY MR. FORD) So that's the question. Before
2 someone grants an easement, should they figure out
3 how much it's going to cost to build a bridge over
4 it?

5 A. I don't know the answer to that.

6 Q. And if they don't look at it, it's at their
7 own risk, correct?

8 A. I don't know the answer to that.

9 Q. Did you go down and look at Geneva Shaw Lane
10 as well? The other access to the property?

11 A. No, I did not.

12 Q. Have you ever been there?

13 A. No.

14 Q. Before you went out there for this lawsuit,
15 have you ever been out here before?

16 A. I've been on Harts Bluff Road.

17 Q. But have you ever looked at it?

18 A. No. No.

19 MR. FORD: Just one minute.

20 Q. (BY MR. FORD) Are you aware of whether or not
21 there are any other ingress/egress points for these
22 properties?

23 A. Only what Mr. Brown told me.

24 Q. And I'm not being unkind, but you took what
25 Mr. Brown told you as your premise and tried to work

1 from there?

2 A. What Mr. Brown asked me for, a preliminary
3 estimate for what a bridge would cost.

4 Q. And he confined you specifically to the
5 Back-A-Wood Road area, the point he showed you?

6 A. Yes. Coming in from the side we came in on.

7 MR. FORD: Great. Thank you.

8 THE COURT: Anything?

9 MR. McFARLAND: Just one follow-up.

10 EXAMINATION

11 BY MR. McFARLAND:

12 Q. Mr. Parker, there is Exhibit 11 in front of
13 you. Had you seen that plat before?

14 A. Yes, I have.

15 Q. And when did you see that plat?

16 A. Mr. Brown gave me the plat the first time I
17 visited him or shortly thereafter when I was asking.

18 Q. So -- when you were engaged, you were
19 presented with a copy of the plat that's before you?

20 A. Yes.

21 Q. So in addition to Google Maps you also had
22 this actual plat of the area?

23 A. With the wetlands on it.

24 MR. McFARLAND: Very good. Thank you.

25 THE COURT: Anything further?

1 MR. McFARLAND: If there are no further --

2 THE COURT: I'm going to ask him some
3 questions.

4 MR. McFARLAND: Okay.

5 EXAMINATION

6 BY THE COURT:

7 Q. So Mr. Parker, you did go onsite. Was it one
8 time?

9 A. One time.

10 Q. And then you did your scales off the internet?

11 A. Off that plus this (indicating).

12 Q. Plus what you had in front of you, which is --
13 Exhibit 11 is the plat of the Daniel Brown property.
14 That's Book EG343; I think it is, right --

15 A. That's correct.

16 Q. -- from 2003? You mentioned -- you used to
17 put a pipe in the road and throw something over it
18 and be done with that. When did that change take
19 place to the best of your recollection?

20 A. Probably in the '70s when they really started
21 permitting the wetlands.

22 Q. So it was in place at the time Cape Romain
23 contractors -- you went to work with Cape Romain,
24 correct?

25 A. Yes.

1 Q. You said you started in '80?

2 A. Yes.

3 Q. So when would you make the decision that it
4 needs to be two lanes and concrete, poured concrete,
5 as opposed to a single-lane bridge out of timbers?
6 What criteria would be required?

7 A. Just in talking with Mr. Brown. I don't know
8 how many lots are on the other side, but if you have
9 more than one -- for a single-lane bridge that long
10 with multiple using that, it would be a pretty big
11 inconvenience to the residents in my opinion.

12 Q. Okay.

13 A. The concrete, again, I feel is the best return
14 for your dollar. You'll get a much longer lifespan
15 before you start needing major repairs.

16 Q. So it's really how substantial a length of
17 time before you have to start to have to take repairs
18 into place?

19 A. Right.

20 Q. Okay. I did the math, and if I did it
21 correctly at the \$1.25 million, that was right at
22 ~~\$5,435-a-foot. Does that sound about right?~~

23 A. Divide that by 27 and it should be in that
24 175-plus range. Construction is one thing.
25 Permitting again -- I'm not a permitter. I don't

DD221

1 charge for that. I don't see permitting invoices.

2 Q. That comes up to 201 if I do that; does that
3 sound about right?

4 A. Uh-huh.

5 Q. And everything is going to be dependent upon
6 what you find when you get there, correct?

7 A. That's correct.

8 THE COURT: And how much water flow there is
9 and how prepared for erosion. Okay. Very good.

10 Any follow-up?

11 MR. McFARLAND: No, Your Honor.

12 MR. FORD: I don't. At the appropriate time I
13 would like to make an exclusion motion as to the
14 testimony just to preserve it.

15 THE COURT: I'll do that. Anything further
16 for Mr. Parker?

17 MR. McFARLAND: Nothing further, and
18 Mr. Parker might be excused, Your Honor?

19 THE COURT: Certainly. Mr. Parker, good to
20 see you, sir.

21 (Witness excused.)

22 MR. McFARLAND: With the testimony of
23 Mr. Parker, Your Honor, the Plaintiffs rest.

24 THE COURT: Very good. Ms. Tillman?

25 MS. TILLMAN: Your Honor, I would like to make

1 a couple of motions if I could.

2 As Your Honor knows, the law does not favor
3 prescriptive easements, and in that regard it
4 requires the Plaintiffs to prove each and every
5 element of their case for a prescriptive easement by
6 clear and convincing and unequivocal evidence.

7 There are numerous Plaintiffs in this action.
8 We haven't heard testimony that all of them are
9 related by blood or by privity of the State, and so
10 I'm going to take them one at a time and move for an
11 involuntary nonsuit as to each particular Plaintiff.
12 I'm going to start, Your Honor, with Thelma Smalls
13 David.

14 THE COURT: Didn't she withdraw?

15 MR. McFARLAND: Yes.

16 MS. TILLMAN: Well, Your Honor, she did
17 withdraw, but Rule 41 requires that we consent to
18 that, and she was one of the original Plaintiffs in
19 this action. Since 2015 we have defended the case
20 against her for four years now and taken her
21 deposition, and for her to withdraw on the day of
22 trial, we don't consent to that. We would like to go
23 ahead and ask for a Ruling on the merits of the case.

24 THE COURT: Okay.

25 MS. TILLMAN: And so in that regard, we would

1 like to submit that Ms. Thelma David hasn't submitted
2 any evidence whatsoever, that she used the easement
3 in question or the intended road in question. She
4 hasn't submitted any evidence that she's used it
5 openly, notoriously, without interruption for
6 20 years, and so therefore we are asking, first for a
7 Ruling from Your Honor that she hasn't acquired any
8 easement in gross for her own use, and second,
9 Your Honor, we did hear testimony yesterday from
10 Ed Brown.

11 He testified -- although Ms. David at that
12 time had announced that she was going to withdraw,
13 Mr. Brown testified -- and I'll refer to this GIS map
14 as Exhibit 31.

15 He testified that her lots, specifically Lot
16 No. 133 and also 134, that they would -- I believe
17 the term that Mr. Brown used was they would benefit
18 from this easement. We're asking for a Ruling that
19 she has submitted no evidence whatsoever, that the
20 road even touches her parcels, and therefore that
21 those parcels could not benefit from that easement,
22 and that they couldn't have gained a prescriptive
23 appurtenant easement. There has been no testimony
24 that they touch her parcel at all. In fact, I
25 believe that the exhibit that Mr. Brown drew doesn't

1 indicate that the road touches her parcel. When he
2 drew a depiction of the blue road or the road that
3 has been in use, allegedly, since 1987, that road
4 doesn't touch Ms. Brown's (sic) parcel, and therefore
5 she can't acquire, as a matter of law, a prescriptive
6 easement appurtenant to it.

7 Those are the Rulings that we're asking for as
8 to Ms. David. Furthermore, we're asking -- Ms. David
9 has brought this cause of action to a Declaratory
10 Judgment Act, and in the Declaratory Judgment Act in
11 Section 15-53-100, allows the Court to make such
12 award of cost and attorneys' fees as they deem
13 equitable and just.

14 We defended this case against Ms. David for
15 four years now taking depositions, defended against
16 numerous motions that were brought by her, and there
17 are eight Plaintiffs in this action, so we would --
18 we are seeking an 1/8 cost for the defense of this
19 action from Ms. David.

20 I will be glad to submit an Affidavit of my
21 Attorneys' Fees for that. So that's our Rule 41, 52
22 ~~motion as to Ms. David.~~

23 THE COURT: You want to take them all, or how
24 do you want to do this?

25 MS. TILLMAN: Well, I was going to ask you. I

1 would like to take them all in turn.

2 THE COURT: Let's do it that way.

3 MS. TILLMAN: The next Plaintiff is Benjamin
4 Smalls. Benjamin Smalls is similar to Ms. David in
5 that he announced that he was withdrawing from the
6 case yesterday. We don't consent to that withdrawal.
7 We ask for a decision from Your Honor on the merits
8 of this case.

9 Mr. Smalls also has not presented any evidence
10 whatsoever that he's acquired an easement in gross.
11 He hasn't submitted that he used the road in question
12 openly without interruption and notoriously for a
13 period of 20 years. So we ask first for relief from
14 Your Honor that Mr. Smalls couldn't have acquired a
15 prescriptive easement in gross that burdens the
16 Coxes' property.

17 Secondly, I ask for a Ruling, Your Honor that
18 Mr. Smalls hasn't submitted any evidence whatsoever
19 that the road in question, which is the blue road
20 that is the subject of this litigation, touches this
21 parcel in any way. I will go back to this TMS --
22 Exhibit No. 31, which names Benjamin Smalls' parcels
23 as TMS 196-00-00-129 and 196-00-00-147. Those were
24 Lot G and G2 in the applicable subdivision plat, so
25 we're seeking a specific Ruling from Your Honor that

1 those parcels could not benefit from any appurtenant
2 easement or prescriptive easement across the Coxes'
3 property.

4 Finally, we are also seeking, under the
5 Declaratory Judgment Act, Section 15-53-100, we are
6 seeking a Ruling from Your Honor that Mr. Smalls
7 would be tasked with 1/8 of the cost of the defense
8 of this action. He also is one of the initial
9 Plaintiffs who brought this lawsuit in 2015, and we
10 have defended the action for four years against him
11 and are seeking the cost of that defense.

12 The next Plaintiff, Your Honor, is Nicolette
13 James. Nicolette James is -- similarly she has
14 announced yesterday that she was dropping out of the
15 case. We don't consent to her withdrawal and we
16 request that Your Honor would specifically rule that
17 she has not acquired a prescriptive easement in gross
18 that burdens the Cox property. She has submitted no
19 evidence whatsoever that she herself used the parcel
20 openly and continuously for a period of 20 years
21 without interrupting, and so therefore that's the
22 first Ruling we would like.

23 The second Ruling we would like, Your Honor,
24 is that Nicolette James, who Mr. Brown testified that
25 this easement would benefit her parcel, we're asking

1 for a Ruling that it could not. Her parcels are
2 196-00-00-135 and 196-00-00-136. The reason for our
3 requesting as to that lack of an appurtenant easement
4 is because Ms. James hasn't submitted any evidence
5 whatsoever that the road in question touches her
6 parcel in any way, and therefore she could not, under
7 the law, have acquired a prescriptive or appurtenant
8 easement. So we would like a Ruling as to that, and
9 also we would like a Ruling as to the cost of this
10 action. Again, we're seeking 1/8 of the attorneys'
11 fees and costs for the defense of this action from
12 Ms. James.

13 The next Plaintiff, Your Honor, is Debra
14 Commodore. Debra Commodore -- our first Ruling that
15 we're seeking is that she could not have acquired a
16 prescriptive easement in gross across the Coxes'
17 property because Ms. Commodore hasn't submitted any
18 evidence whatsoever that she herself used the
19 easement for 20 years openly, obviously, adversely,
20 and without interruption. Therefore we are seeking a
21 Ruling from Your Honor that she couldn't have
22 acquired a prescriptive easement in gross that runs
23 across this property.

24 And then also as to her parcel, which is
25 identified as TMS 196-00-00-128, we did hear

1 testimony from Mr. Brown yesterday that this easement
2 would benefit her parcel, however as he delineated
3 the road, there is no evidence whatsoever that the
4 road in any way touches Ms. Commodore's parcel from
5 the evidence that's been submitted, so we're seeking
6 a Ruling that Ms. Commodore could not have acquired a
7 prescriptive easement appurtenant that burdens the
8 Coxes' property. So we're asking for a Ruling on the
9 merits of that. Furthermore, we're asking pursuant
10 to the Declaratory Judgment Act for 1/8 of the cost
11 of the defense of this action against Ms. Commodore.

12 Next as to the Plaintiff, Bernard Brown,
13 Bernard Brown -- the first Ruling that we're seeking
14 is that Bernard Brown hasn't himself submitted any
15 evidence whatsoever that he has used the road in
16 question that is the subject of this litigation
17 openly, obviously, and continuously for a period of
18 20 years without interruption, and therefore that
19 Mr. Bernard Brown could not have acquired a
20 prescriptive easement in gross as to his own use, so
21 we're asking for a Ruling as to that.

22 ~~Mr. Bernard Brown, owns -- and I'm referring~~
23 again to Defendants' Exhibit No. 31. Mr. Brown owns
24 Parcel No. 196-00-00-132, and we haven't heard
25 evidence, certainly not clear and convincing and

1 unequivocal, that this road touches in any way his
2 parcel, and therefore we are seeking a Ruling from
3 Your Honor that Mr. Bernard Brown could not have
4 possibly acquired a burden to show a prescriptive
5 appurtenant easement that burdens the Coxes' property
6 and that it attached to his property.

7 THE COURT: Let me stop you there. He also --
8 I'm looking at that Exhibit 31. He also owns Lot
9 137; do you want to address that one?

10 MS. TILLMAN: Yes, Your Honor, I do.

11 THE COURT: I assume that's the same Bernard
12 Brown as Bernard M. Brown.

13 MS. TILLMAN: Yes. Thank you. It is the same
14 Bernard Brown. Sorry I did have that in my notes.
15 Yes, as to that parcel, also, we're seeking a Ruling
16 that there could be no prescriptive appurtenant
17 easement to that parcel that burdens the Coxes'
18 property because there's been no clear and convincing
19 evidence that the road touches the parcel and also
20 that it has been used openly, obviously, and
21 continuously for a period of 20 years to access that
22 parcel. Now it's going to get a little more
23 complicated.

24 THE COURT: Those are all Daniel Brown heirs;
25 are they not?

1 MS. TILLMAN: Those are all the -- well, no,
2 Your Honor. Actually, there was no evidence
3 submitted as to their privity with one another, they
4 have all acquired lots that were once owned by Daniel
5 Brown.

6 THE COURT: By the Daniel Brown Estate.

7 MS. TILLMAN: However, they are not all heirs
8 of Daniel Brown. They have purchased their lots,
9 some for consideration of \$15,000. They have --
10 there has been no evidence that they have any privity
11 of the Estate of Daniel Brown or with any of his
12 heirs, and therefore they couldn't possibly attack
13 any of those heirs' use to acquire -- and there
14 hasn't been any evidence at any rate that they could
15 have.

16 THE COURT: All right. Just one second.

17 So just so I'm clear all of those lots
18 mentioned so far are from the Daniel Brown Estate,
19 but your argument is that there's been no proof of
20 any privity to hack through that estate, correct?

21 MS. TILLMAN: That's correct. Yes,
22 Your Honor.

23 THE COURT: Okay.

24 MS. TILLMAN: Among the other reasons there
25 hasn't been evidence of the elements by -- of each

1 and every element by clear and convincing evidence.
2 Now, as to the Plaintiffs, Thomas Brown, Robert Brown
3 and Edward Brown -- actually, I'll do Thomas Brown
4 and Robert Brown. They haven't testified in any way
5 as to what ownership they have and in what parcel.
6 We heard testimony from Edward Brown that they are
7 heirs of Frank Brown. They, themselves, haven't
8 testified that the deed -- it doesn't reflect that
9 they have an ownership interest in what is designated
10 as TMS 196-00-00-121, Defendants' Exhibit 31.

11 Furthermore, they haven't submitted any
12 evidence that they themselves have used the road in
13 question as to every element by clear and convincing
14 evidence including continuously, adversely, openly,
15 and without any interruption for a period of
16 20 years.

17 So first we're seeking a Ruling that Thomas
18 Brown and Robert Brown could not have acquired a
19 prescriptive easement in gross their own benefit; and
20 then secondly, we are seeking a Ruling from Your
21 Honor that Thomas Brown and Robert Brown have not
22 submitted any evidence that this road -- here's where
23 it gets a little more complicated, Your Honor.

24 First, they haven't established by clear and
25 convincing evidence that the use of this road, and

1 this is as to the Parcel 012 -- that the use of the
2 road has been continuous and adverse for a period of
3 20 years. In fact, Mr. Brown testified as to
4 interrupted use. Each time he talked about Carl
5 Eaton, which designed it -- as Your Honor knows,
6 under the case law in this state that actually a
7 landowner isn't required to take such drastic
8 measures to interrupt a prescriptive easement. The
9 law, just out of good public policy prefers that a
10 landowner would simply say, Please stop using my
11 road, and that that would constitute an interruption,
12 and Your Honor, I can tell you which case that is if
13 you would like to reference it. I have so many
14 pieces of paper up here.

15 That's the case of Pittman versus Lauder,
16 which specifically says that verbal threats which
17 convey to the dominant landowner the impression that
18 the servient landowner does not acquiesce in the use
19 of the land, are also sufficient to interrupt the
20 prescriptive period, and I would submit that Carl
21 Eaton was certainly attempting to convey to Mr. Brown
22 ~~that he could not use that road access for Parcel~~
23 012.

24 So in that regarding I would submit that the
25 Plaintiffs have, at this stage, submitted clear and

1 convincing evidence that their use was without
2 interruption, which is one of the elements of a
3 prescriptive easement. So they have not met their
4 burden.

5 Furthermore, we're simply talking about Thomas
6 Brown and Robert Brown, that they haven't
7 submitted -- actually, I'll put the Plaintiff, Ed
8 Brown, in on this one, too. I'm seeking a Ruling
9 from Your Honor that even if Your Honor determines at
10 this stage that there has been sufficient evidence to
11 continue with the defense of this case, that Your
12 Honor would make a Ruling now that there has been no
13 evidence whatsoever that the scope of the use that
14 has occurred has been anything other than
15 agricultural use, seasonal agricultural use, and
16 therefore you would limit the scope of any
17 prescriptive easement that may be proven, although we
18 submit that there has not been sufficient evidence
19 for that, but that you would nonetheless limit the
20 scope of that use to strictly agricultural use,
21 seasonal, and specifically not for access to any
22 houses, not for access to any sort of subdivision,
23 or -- the scope of the use, Your Honor, may look to
24 the historic or the alleged of the property by the
25 Plaintiffs to determine what the landowner, by

1 failing to interrupt that use, if that's alleged,
2 would have sought -- it would have a loss if they did
3 not interpret the use.

4 In the scope of the easement, Your Honor, it's
5 not just its width or its breadth but it's also --

6 THE COURT: Use.

7 MS. TILLMAN: -- how it may be used. Along
8 those lines, the scope is also, or the extent of an
9 easement, is also whether it is in gross or
10 appurtenant. So we're also seeking a Ruling that Ed
11 Brown, Thomas Brown, and Robert Brown could not have
12 acquired an appurtenant easement to the tract that's
13 identified as 196-00-00-012 because by their own --
14 by Mr. Brown's own testimony and his delineations and
15 drawings, this road that is the subject of the
16 litigation, the blue road as it's depicted on
17 Exhibit No --

18 THE COURT: -- 28.

19 MS. TILLMAN: -- 28 clearly does not have a
20 terminus on Parcel No. 196-00-00-012, and that an
21 easement having terminus on the property of the
22 ~~dominant person that is seeking that easement is a~~
23 required element for an appurtenant easement which
24 must be essentially necessary. It must have a
25 terminus.

1 A failure to have a terminus on the land of
2 the party that is seeking the easement is fatal to a
3 claim for an appurtenant easement. Your Honor, that
4 is the case of Williams versus Tamsberg, which -- and
5 also in the case of Williams versus Tamsberg, it
6 reiterates that the distinction between an
7 appurtenant easement and an easement in gross
8 involves the extent or the scope of an easement as it
9 goes to the creation of an easement.

10 So as to the scope of any easement that may be
11 proven, although we submit that one cannot, we're
12 seek a Ruling from Your Honor at this time that the
13 Plaintiffs could not, not one of them, have acquired
14 an appurtenant easement by clear and convincing
15 evidence.

16 And also as to those Plaintiffs Thomas Brown,
17 Robert Brown, and Edward Brown, under the Declaratory
18 Judgment Act, we are seeking an award of the cost of
19 Defense, the cost of the attorneys fees for the
20 defense of this action equitably divided among the
21 Plaintiffs for the defense of this action for trial.

22 And also for good measure, as to the question
23 of whether the Plaintiffs could have acquired an
24 appurtenant easement, not only have they established
25 that there was not a terminus on any one of these

1 parcels, and not by clear and convincing evidence,
2 but they also haven't established that this road
3 that's the subject of this litigation would be
4 necessary for their use of the parcel.

5 There is other access to their property, and
6 therefore we would throw in the argument that the
7 Plaintiffs are sort of conflating an easement by
8 necessity with a prescriptive easement, and with
9 regards to whether or not this access across the
10 Coxes' parcel would be necessary for their use of the
11 property, their proper recourse in that regard would
12 be against one another seeking easements.

13 Guaranteed subdivided their land, Your Honor,
14 in such a way as to cut off their own assets, and
15 therefore if you do look for an easement by necessity
16 they would look to the most recent severance of the
17 property which we submitted evidence -- and that is
18 the subdivision plat in which Ed Brown guaranteed
19 access.

20 It's Defendants' Exhibit No. 14, Your Honor,
21 which demonstrates that the Plaintiffs' own
22 subdivision of that parcel that is TMS 196-00-00-012.

23 The subdivision of that parcel to carve off Parcel
24 No. 012, resulted in the cutting off of their own
25 access, although they did dedicate an easement for

1 their access.

2 However, our argument is that an appurtenant
3 easement could not be acquired not only because it
4 has no terminis but also because it is not necessary
5 for the Plaintiff for access. There is other access
6 to their property.

7 THE COURT: Once that plat was recorded with
8 that easement on it, it ended any necessity with it?
9 Is that your argument?

10 MS. TILLMAN: Could you say that again?

11 THE COURT: Once that plat was recorded with
12 an easement on it, your argument is it would have
13 ended any necessity to come across the Coxes'
14 property?

15 MS. TILLMAN: Well, yes, it would have done
16 that. It gives them another access and also before
17 that plat was recorded, the parcel touched Harts
18 Bluff Road, and they've carved off the portions of
19 the property that touch Harts Bluff Road, which is
20 why they had to dedicate an easement over Back-A-Wood
21 Road, and so the answer is both ways.

22 Prior to that subdivision they would have had
23 an access by Harts Bluff Road. After that
24 subdivision they've dedicated an easement for access
25 off Back-A-Wood Road, and therefore it's not

1 necessary to -- and so therefore, Your Honor, I move
2 for an involuntary nonsuit as to all of the
3 Plaintiffs for the reasons stated as well as for
4 attorneys' fees and costs for the defense of this
5 action.

6 THE COURT: Thank you, Ms. Tillman. All
7 right. Mr. McFarland?

8 MR. MCFARLAND: Thank you, Your Honor. Your
9 Honor, first with respect to the motion regarding
10 involuntary nonsuit as to Thelma David, the testimony
11 certainly asks -- Ms. David is identified as the
12 owner of the cemetery. The testimony of Mr. Brown is
13 replete with cross-examination with respect to the
14 fact that this easement leads directly to the
15 cemetery that's owned by Thelma David. There are
16 persons interred there, and so that has been -- it is
17 established that the easement access from Harts Bluff
18 Road to the cemetery has, since 1989, been by way of
19 this blue road or the "B" road as we called it, and
20 that there was no other access to the cemetery.

21 So with respect to Thelma David, it's really
22 ~~the cemetery that is at issue here, and the access to~~
23 the cemetery and those graves that are the persons
24 who are interred there. With respect to her -

25 THE COURT: Isn't she the owner of the lot,

1 though?

2 MR. McFARLAND: She's the --

3 THE COURT: She's listed as the owner.

4 MR. McFARLAND: Well, she's listed as the
5 owner of the lot, but the lot is occupied. It has
6 the interest of those who are buried there.

7 THE COURT: It's occupied in perpetuity by a
8 number of folks.

9 MR. McFARLAND: That's right.

10 THE COURT: Who are no longer with us.

11 MR. McFARLAND: That's right. So the only
12 access for those who would have an interest in the
13 cemetery at least to this day, whether there is
14 another body buried there or not, would be certainly
15 the heirs and persons interested in the 12 to 15
16 bodies that are already there.

17 So with respect to what Thelma David -- what
18 initially brought this action was not to develop this
19 plot in any other way than what it's already been
20 used for and that is a cemetery, which is a different
21 animal in terms of what we're talking about here
22 today because of the interment already of some 12 to
23 15 persons.

24 With respect to Lot 134, with her withdrawal,
25 there would certainly not be an issue with respect to

1 the Court granting any relief in terms of access to
2 134 by her so we do not disagree with that.

3 I'll come back, just as a general matter, the
4 attorneys' fees and costs, of course that's something
5 that would be addressed at a point where there's a
6 Ruling in this case and an award of attorneys' fees
7 and how that would be divided. I don't believe that
8 this would be an appropriate point in the case for
9 any addressing of attorneys' fees unless the Court
10 throws this case out in its entirety and there's no
11 further case presented by the defense here.

12 Just with respect to the cemetery, the
13 evidence, we don't have to bring everybody up to
14 present their evidence. This is already presented.
15 The question is whether the evidence is sufficient
16 with respect to the cemetery, with respect to -- let
17 me address -- before I go further, Nicolette James.

18 Nicolette James was no longer in this case as
19 of the second amended complaint, so she did not
20 remain in this case throughout. She has not been a
21 party to this action since the second amended
22 ~~complaint. So therefore we certainly disagree with~~
23 Counsel with respect to the fact that they have
24 defended against Ms. James as to Lots 135 and 136,
25 and consequently if there was an award of attorneys'

1 fees, and she has not been in this case and therefore
2 she's not a party against whom attorneys' fees would
3 be awarded. Of course I did not represent her, but
4 again, I wanted to make sure that she is not a party
5 to this action.

6 THE COURT: She had previously withdrawn; is
7 that right?

8 MR. McFARLAND: Yes. At least as of the
9 filing of the -- she was initially part of it.

10 THE COURT: All right.

11 MR. McFARLAND: With respect to the testimony
12 or the evidence presented on the use of the road,
13 yesterday, when on cross-examination, at one point
14 when Mr. Brown was asked about the lineage of Frank
15 Brown and the persons connected, and Mr. Brown
16 started testifying about who they were, he said, What
17 are you reading from? And he indicated that he was
18 reading from his deposition and family tree there, so
19 with respect to Thomas Brown and Robert Brown, those
20 two parties certainly were named as Frank Brown
21 heirs, and consequently Mr. Brown further testified
22 that they were all persons who use the blue road to
23 access 012.

24 With respect to 012, 012 as he testified and
25 there's nothing to contradict it in the record, he

1 was in fact, holding it in trust for all of these
2 heirs of Frank Brown. So he named them. He said
3 that they were users and of course testified as to
4 how they used the road to help with the crops and the
5 farming and the hunting as well as his own gardening.
6 So the testimony is quite clear that the persons who
7 used the blue road were in fact those persons who
8 were heirs of Frank Brown and identified in the
9 record. In fact, that's why we with all the
10 Plaintiffs' testimony on the facts we indicted to the
11 Court that the testimony of Mr. Brown is here. Robin
12 is here. Thomas is here. Bernard is here. The
13 testimony would be deplicious (sic) --

14 THE COURT: Duplicatus.

15 MR. McFARLAND: And so we did not see a need
16 to have them simply repeat what Mr. Brown had already
17 testified to that's in this record. Now, there's a
18 couple of things with respect to access, Your Honor.
19 One that I would like to point to first is this order
20 in the Benjamin Brown case versus Carl Brown where
21 this Court specifically identified the easement from
22 ~~Harts-Bluff Road to the property of the Browns~~
23 including 012.

24 Of course it recognized apparently that an
25 alternate route was not then at the time of this

1 trial in this case an alternate route available and
2 so it specifically found that the route that would be
3 available would be what we now call the blue road.
4 The blue road is in part depicted on Plaintiffs'
5 Exhibit No. 9. In the vicinity map up top, the Court
6 would see that the blue road runs from 012 and really
7 beyond all the way down, and apparently in its Ruling
8 the Court has already determined that access
9 because of -- I wasn't a part of that case, but I
10 would think that the record would show what the
11 surveyor put there and what the Court found was based
12 on testimony that would have indicated that there was
13 access from Harts Bluff Road all the way through the
14 Ben Brown and the heirs -- the other heirs -- and the
15 heirs of Frank Brown.

16 THE COURT: That order you're referencing is
17 Exhibit 14 from the 2004 case; is that correct?

18 MR. McFARLAND: Yes. It's the one that I
19 just --

20 THE COURT: Ben Brown versus Carl Brown?

21 MR. McFARLAND: Yes, that is the order.

22 THE COURT: And that order was dated what,
23 2008?

24 MR. McFARLAND: 2008. And so Exhibit 9 is a
25 2010-filed plat. We usually list on here all of the

1 prior plats, so this plat could not have been what
2 the Court was looking at in 2008. This doesn't look
3 like it came into existence -- I take that back.
4 This is in March of '08. I think that, for whatever
5 reason, took two years to get approved.

6 THE COURT: Okay.

7 MR. McFARLAND: Yes. Because that --

8 THE COURT: Is it dated March 4th, 2008? I
9 think that's right around the time of the signing of
10 the --

11 MR. McFARLAND: That's correct, Your Honor.

12 THE COURT: And it was revised in September of
13 '10, and placed of record. I don't know what
14 happened after the fact. This is the one that Carl
15 Brown, Benjamin Brown, and Edward Brown all signed
16 dedicating the new 20-foot and 30-foot
17 ingress/egress. So talk to me about necessity if
18 that's the case. What's the necessity of having the
19 blue road, the Old Blind Road, and now creating a new
20 road?

21 MR. McFARLAND: Because there is no access and
22 ~~the reason there is no access is because not only did~~
23 Carl Brown, Ed Brown, and I think Ruth James --

24 THE COURT: Benjamin signed it.

25 MR. McFARLAND: Benjamin signed it. Your

1 Honor, if you look carefully at this plat, there
2 existed already an easement, a 25-foot easement on
3 this side of Back-A-Wood Road. On this plat an
4 additional 20 feet was added that the Browns said
5 that they would be responsible for maintaining. We
6 submit that there is a difference between
7 constructing -- being required to construct a road
8 which the County does not. The County just says that
9 if you construct a road, and it's all on the plat
10 itself, then of course, you must construct to the
11 County standards what the dedication says, which is
12 what you see on every plat going back to the last --
13 the century before last, which says that we dedicate
14 this easement, blah, blah, blah and agree to
15 maintain -- the County basically requires you to say
16 you will maintain it. Maintenance can be viewed in a
17 couple of ways. You will always have -- it will
18 always be there, you will always keep it there, but
19 the question of whether you have to construct it,
20 that is not what that says. I think that's what
21 Counsel has been suggesting to the Court, that when
22 you dedicate an easement you are responsible for
23 constructing that easement.

24 I guess, another example would be where
25 subdivisions are built, the County allows for

1 subdivisions to be built, roads to be put in, but the
2 municipality of the County does not assume
3 maintenance until it has been constructed.

4 THE COURT: To County standards.

5 MR. MCFARLAND: To County standards. And it
6 says so on there that there's DHEC involved, all of
7 the agencies that Mr. Parker talked about being
8 involved. So in order to get a subdivision plat
9 approved you do not have to guarantee construction.
10 You only have to guarantee that there is an access
11 set aside.

12 Now, who may develop that access, and in this
13 case it would not be -- even if the Court were to say
14 Mr. Brown had to do it, that's only 20 feet of the
15 45 feet and on the other side. Here, if you look at
16 this, there was a previous plat that is noted here
17 which established Back-A-Wood Road from Harts Bluff
18 Road. It was not established per any subdivision by
19 Mr. Brown or his family. That was already done when
20 in fact this further subdivision took place and the
21 County simply said, We will allow you to subdivide
22 this property.

23 Your Honor, I'm trying to get a cold here, so
24 if you will let me get some water here?

25 THE COURT: Take your time.

1 MR. McFARLAND: What the County simply says is
2 that if you want to subdivide this property, you have
3 to put in access. You cannot have a new lot without
4 access, and so while they said that -- previous to
5 that, there was already -- and that's what the
6 surveyor said on here, that there is an access
7 existing at the time.

8 Now, if all of these landowners at some point
9 got together and decided they could afford
10 \$1.25 million to develop the road then to the extent
11 that Mr. Brown and his family has to participate in
12 part of the maintenance of that, yes, but basically
13 the County says that once you dedicate this area, you
14 cannot abandon it. You can't do anything to obstruct
15 it. You can't do anything that would cause the
16 property owners who relied upon that access to lose
17 what has now been given to them by virtue of the
18 approval here and the dedication.

19 So with respect to the issue of alternative
20 necessity, that is why if this Court rules that the
21 blue road, which has been used now for 30 years prior
22 to this lawsuit, from 1984-85 until 2015
23 continuously, there's no testimony that contradicts
24 the fact that Frank Brown, Ed Brown, Bernard Brown,
25 the funeral home all use this road to access the

1 other properties there.

2 So until the Court says, No, you can no longer
3 use this road, then we will have nothing more than
4 landlocked parcels with no access, and that's where
5 easement by necessity comes in that you --

6 THE COURT: No. No. No. No.

7 MR. McFARLAND: I know there is unity of title
8 and all that, but there is no unity of title as far
9 as we can tell in terms of -- other than these lots.

10 THE COURT: Well, that's what you-all are
11 subdividing.

12 MR. McFARLAND: Yes. No. No. I'm not
13 talking about -- there is unity of title here. I'm
14 talking about with respect to crossing the property.

15 THE COURT: That's why you have to show
16 essentially the elements of adverse possession,
17 right?

18 MR. McFARLAND: The prescriptive easement is
19 what's been argued here. The third amended complaint
20 did not identify what kind of easement was being
21 pursued here. I think Counsel started her pretrial
22 ~~brief all by saying this is a prescriptive easement~~
23 case, but in fact, this is an easement -- for these
24 landowners the only access that they currently have,
25 those who are in this case to access their

1 properties. The proof certainly has been that it has
2 been uninterrupted, and what Counsel was talking
3 about, the one interruption with Mr. Eaton has not --
4 was not even an interruption because Mr. Brown said
5 he continued on. After that he continued on. There
6 was some attempt, I guess, to stop the use, but prior
7 to the current Defendants' acquisition of this
8 property and since, there has been the access from
9 Harts Bluff Road. And then starting in 1984 there
10 was the alternate road, which is the blue road that
11 has been used continuously. That's why they dug the
12 ditch. They dug the ditch because it had been used
13 continuously.

14 THE COURT: Didn't they move that road by
15 agreement? Doesn't that take it out of the
16 adverse --

17 MR. McFARLAND: It was by agreement in
18 recognition of the right. See, it didn't change the
19 right to cross the property as this Court would have
20 an easement by necessity. The Court has the
21 authority to say, there's an easement, but we're
22 going to move this easement. We've had that in a
23 couple of cases, and that's all these parties did on
24 their own.

25 They just decided that -- you have a right to

1 use to cross my property because that's clear.
2 That's been established. Mr. Lee did not say, I
3 don't want you to use my property anymore. He just
4 said, Look. You-all are close, 30 feet from my
5 house. Maybe Mr. Eaton didn't mind that, but me and
6 my wife just can't live with tractors and 18-wheelers
7 coming by our house, so why don't we just move it,
8 and that's what they did. So the agreement was not
9 to change the right to use it and ask for permission,
10 it was simply to relocate it as some -- maybe it's in
11 a deposition -- that said that it was even a better
12 way to access their property.

13 If the Court looks at the aerial photographs,
14 the distance from the Coxes' house, maybe a couple
15 hundred yards if not more, was much more appropriate.
16 So what they did, as Mr. Brown said, he'd rather have
17 had a permanent injunction but they came --

18 THE COURT: They came to an agreement.

19 MR. McFARLAND: Mr. Brown just said, Look.
20 Why don't we help you. We want to be neighbors.

21 THE COURT: They came to an agreement.

22 ~~MR. McFARLAND: Yes. It was by agreement, but~~
23 it did not change the right and the easement -- the
24 existence of the right to an easement. So that's
25 where we -- that's why this is so important in terms

1 of the argument, so there was no interruption until
2 the ditch was dug in 2015. That's what's brought us
3 here.

4 No other action was taken by Mr. Lee or
5 Ms. Cox and her current husband, Robert Cox, to
6 interrupt or interfere with the use. Given the level
7 of use -- so it has been -- there's no question about
8 continuous. The fact that it was open. I believe
9 it -- if we hear the testimony, it will be said that
10 that's why they dug the ditch because they said that
11 they knew people were using that, and for some reason
12 decided that no longer should they be able to do so.

13 So there is no other route. The testimony
14 with respect to the cost of construction -- that's
15 why the County doesn't say that you have to build it.
16 There are all kinds of options that families have.
17 They can have a nonprofit to build and maintain a
18 road. There are all kinds of ways of doing that, but
19 this statement on the plat simply says, Maintain.

20 If you search cases about maintenance, you see
21 with respect to the highway department, you see
22 construction, installation and maintenance. You see
23 the sign said no longer County maintained. For
24 instance, the scraping of the road is maintenance,
25 but there has to be a road there first in order for

1 the County to come and scrape. So that's
2 maintenance.

3 If the construction, as happened in this case,
4 Mr. Lee and Mr. Brown and his family, got together
5 and created -- what is a very nice road at the edge
6 of their property. That's what we see on all these
7 plats.

8 So with respect to all of what Counsel has
9 said about Thomas Brown and Robert Brown, I think the
10 testimony from Mr. Brown and evidence comes into
11 whatever witnesses are presented, so the question is
12 whether the evidence of Mr. Brown is sufficient to
13 require this Court to require the Defendants to go
14 forward with their case.

15 We clearly believe that the exhibits, all of
16 what we have here -- I know the Court wants me to
17 perhaps move along here.

18 THE COURT: Well, I'm going to tell you that I
19 looked it up and we found Nicolette James in the
20 third amended complaint. So she may have been out,
21 but it looks like she was back in. So that argument
22 ~~may not fly as opposed to her.~~

23 Let's talk about -- aren't those the Daniel
24 Brown heirs? That's what I'm trying to keep
25 straight. Let's talk about them in specifics.

1 Nobody from that line has testified. Mr. Brown
2 testified. There may be some connection, but we have
3 three of them who clearly withdrew as Ms. Tillman
4 says, without our permission, we want to get a Rule
5 41(a) dismissal as to --

6 MR. McFARLAND: To Nicolette --

7 THE COURT: -- Nicolette James, Benjamin
8 Smalls, and Thelma David, and then that leaves us
9 with Debra Commodore and Bernard Brown.

10 MR. McFARLAND: With respect to certainly
11 Debra Commodore and there was testimony from
12 Mr. Brown, with respect to that -- her access and the
13 fact that she used the Harts Bluff Road and the blue
14 road to access her property, so that, too, was the
15 only access is by Harts Bluff Road, so that was the
16 testimony of Mr. Brown. He did testify with respect
17 to Mr. or Ms. Commodore. She's, of course, been here
18 in the courtroom. Our statement with respect to
19 repetition of testimony certainly applied to her.

20 And so again, the other three, you know, I
21 can't -- I agree that with respect to Mr. David and
22 Nicolette James and Ben Smalls who have withdrawn --

23 THE COURT: How about Bernard Brown?

24 MR. McFARLAND: -- at their peril.

25 THE COURT: Is Bernard Brown in the same boat

1 as Ms. Cox was?

2 MR. McFARLAND: No. Bernard Brown is in the
3 Frank Brown family tree, so he was mentioned in the
4 testimony. Bernard Brown is covered by Mr. Brown's
5 testimony and the fact that the record would reflect
6 that there's evidence of his use along with the Frank
7 Brown heirs.

8 Q. Bernard is a Frank Brown heir, right?

9 MR. McFARLAND: Yes.

10 THE COURT: But his lots are in the Daniel
11 Brown tract, are they not?

12 MR. McFARLAND: Let me see here. Yes. It's
13 132 and --

14 THE COURT: 132 and 137?

15 MR. McFARLAND: Yes.

16 THE COURT: So he's acquired those lots,
17 right?

18 MR. McFARLAND: And also, Your Honor, he is
19 one of the of -- because he's one of the heirs of
20 Frank Brown he has an interest in 012.

21 THE COURT: 012, sure.

22 MR. McFARLAND: So he gets to 012. I think
23 there is one of these plats that --

24 THE COURT: I've got that. My one question
25 for you, Mr. McFarland: What was the terminus of the

1 blue road? Where did it end up?

2 MR. McFARLAND: Well, based on what we have in
3 the record is that if you look at -- right at the top
4 of 012 --

5 THE COURT: Okay.

6 MR. McFARLAND: That's what I was just looking
7 for.

8 THE COURT: It should be Exhibit 28.

9 MR. McFARLAND: It was where Mr. Brown had
10 his --

11 THE COURT: Here's one.

12 MR. McFARLAND: And if you look here, this is
13 what was presented on yesterday as the terminus.
14 This is at the top of 012.

15 THE COURT: It looks like it ends up on one of
16 those small lots, but I don't know that that's the
17 cemetery, is it?

18 MR. McFARLAND: No. The cemetery, I believe,
19 is just to the left, but that was -- I think that was
20 a Thelma David -- I think this is the cemetery and
21 that's Thelma David's lot.

22 THE COURT: The adjacent lot?

23 MR. McFARLAND: Yes.

24 THE COURT: Okay. Thank you. Thank you. All
25 right. Thank you, sir.

1 MR. MCFARLAND: Yes, sir.

2 THE COURT: Anything further?

3 MS. TILLMAN: If I may address --

4 MR. MCFARLAND: All right. First, Your Honor,
5 again, the Plaintiffs have the burden of proving
6 their case by clear and convincing evidence.

7 THE COURT: At this stage aren't we at the any
8 evidence standard?

9 MS. TILLMAN: No. At this stage, Your Honor,
10 we weigh the evidence and determine whether it's been
11 clear and convincing as to the Plaintiffs' case, and
12 then make an adjudication on the merits under
13 Rule 41.

14 I can tell you the standard of review which is
15 that it's in any evidence standard, and Your Honor is
16 able to review the facts and is not required to view
17 them in the light that is favorable to the nonmoving
18 party, but in fact you may weigh the evidence at this
19 stage and determine whether it's been clear and
20 convincing. We submit it has not. Particularly I'll
21 highlight some of Mr. McFarland's argument.

22 ~~As to the question of whether the use was~~
23 adverse, there hasn't been clear and convincing
24 evidence of that. Mr. Brown testified that Mr. Lee
25 helped to build this blue road. He testified that

1 they agreed -- that they agreed that they would
2 construct it together and that conversation with
3 Mr. James which stamps the character of that use as
4 permissive, permissive use can never ripen into
5 adverse use and so we submit that there certainly
6 hasn't been clear and convincing evidence with use.

7 It was always with the permission and consent
8 of Mr. Lee by Mr. Brown's own testimony who testified
9 that Mr. Lee met with them and they agreed, and in
10 fact, Mr. Lee helped to build that road that is the
11 blue road.

12 THE COURT: The blue road?

13 MS. TILLMAN: Yes. And so as to that
14 element -- we submit that that is fatal to their
15 claim for a prescriptive easement. Also as to
16 Ms. Commodore, Mr. McFarland testified or rather
17 argued that Mr. Brown testified that she had used
18 that road. Again, there is no clear and convincing
19 evidence that she was using it to access. In fact
20 the complaint didn't even acquire her parcel until, I
21 believe, 2015. So therefore it's -- I don't believe
22 she could have submitted clear and convincing
23 evidence that she had used the road for 20 years. So
24 for that reason her claim should fail.

25 THE COURT: She's family or not family?

1 MS. TILLMAN: They haven't submitted any
2 evidence that there's any privity of title or blood
3 as to her. And again, she has purchased or acquired
4 a lot in the Daniel Brown tract, and I can tell
5 you -- I would like to tell you the year that she did
6 that.

7 Without having the deed right here, I know
8 that it was 2010 or beyond. I'm happy to supplement
9 with that information if you would like.

10 THE COURT: It would not be 20 years ago?

11 MS. TILLMAN: It would not be 20 years.

12 As to -- I would like to step back and talk a
13 little bit about Mr. McFarland's argument about the
14 dedication of the road. As Your Honor knows, in
15 South Carolina it is the law that a plat, once it is
16 recorded it gives to all subsequent purchasers every
17 right and appurtenance that appears on that plat a
18 dedication according to the Supreme Court in Carolina
19 Land versus Bland and Blue Ridge and a slew of cases
20 surround that, hold that when the owner of land has
21 it subdivided and platted into lots and streets and
22 ~~sells and conveys lots which the Daniel Brown~~
23 Plaintiffs have done and also the Frank Brown
24 Plaintiffs have done, with reference to the plat, he
25 thereby dedicates such streets to the use of such

1 owners, their successors in title, and the public.

2 Upon this dedication their conveyance is
3 complete. That's exactly what these heirs have done
4 or what these Plaintiffs have done with regard to
5 their property is they've subdivided, they've
6 dedicated assets to it, and therefore access across
7 the Coxes' property is not necessary.

8 Then as to the cemetery lot, Your Honor, as
9 far as weighing the evidence to determine whether
10 there has been clear and convincing evidence that has
11 been submitted as to continue issues, which is one of
12 the elements of a prescriptive easement, according to
13 my notes, Mr. Brown testified about a burial in 1989,
14 in 1996, in 2009, 2010, and 2012, and that is the
15 testimony that has been provided.

16 It's not clear and convincing that it's been
17 continuous therefore, because there is at least a
18 14-year gap between the 1996 burial and the 2009
19 burial, which I submit wouldn't constitute continuous
20 use.

21 There's also been no evidence as to the
22 cemetery, that the Coxes were aware of that use or
23 that it was notorious or open, so therefore I don't
24 believe that the Plaintiffs have met their burden to
25 prove a prescriptive easement to the cemetery by

1 clear and convincing evidence.

2 Also in that regard, Mr. Brown did testify
3 that he doesn't have any relatives who are buried in
4 that cemetery, so there's no privity of title or
5 blood that the ownership of that parcel is in
6 Ms. Thelma David, who hasn't testified to any use
7 whatsoever of the road, and so therefore I don't
8 believe that Edward Brown's testimony would be
9 sufficient to establish the elements of a
10 prescriptive easement to the cemetery lot, and
11 certainly not by clear and convincing evidence.

12 So we're asking Your Honor to find that there
13 could be no prescriptive easement as to that lot, and
14 that -- whether appurtenant or otherwise.

15 Sorry. Now I'm going back to the Ben Brown
16 subdivision plat on which Mr. Brown has dedicated an
17 easement or access, and two points I would like to
18 make about that is -- first, the Court order that was
19 in 2008, the plat was recorded in 2010. It may
20 have -- I don't have it in front of me, but it was
21 ultimately recorded in 2010, which demonstrates --
22 ~~that demonstrates to the Court that the order was~~
23 contingent on access being gained possibly by that
24 other route, but the recording of the subdivision
25 plat suggested that access couldn't have been gained

1 by that other route because the farm road or rural
2 road or dirt road or whatever it is nominated on that
3 plat is not designated as access.

4 In fact, it's specifically -- there is other
5 access to the property, which is the Back-A-Wood
6 Road, and so therefore in 2010 if Plaintiffs believe
7 or contended that they had access by way of that dirt
8 road and the plat should reflect that, it does not --
9 it reflects the date they were required to get other
10 access by the County of Charleston, and that is the
11 Back-A-Wood access and easement that they have
12 guaranteed -- dedicated and guaranteed to maintain.

13 And finally, as to Mr. Brown's testimony as to
14 the terminus of the road -- again, he hasn't
15 established by clear and convincing evidence where
16 the road ends if it does. In fact, he specifically
17 testified that a whole slew of parcels would benefit
18 from this road, which suggested that it goes on and
19 on and on without ending on any particular parcel and
20 therefore it couldn't have a terminus on Parcel
21 196-00-00-012 if it continues on to benefit all these
22 others lots as Mr. Brown testified.

23 So therefore we would urge this Court to find
24 that they haven't proven by clear and convincing
25 evidence that they've acquired a prescriptive

1 appurtenant easement to 196-00-00-012.

2 THE COURT: All right. Thank you,
3 Ms. Tillman.

4 MR. McFARLAND: Can I have a brief --

5 THE COURT: I'm going to let you -- I'll give
6 you a brief time.

7 MR. McFARLAND: Thank you, Your Honor. Just a
8 couple of things. With respect to the evidence on
9 terminus, that evidence was introduced through
10 Defense Counsel's examination in addition to what I
11 said and the blue road terminus Counsel specifically
12 identified and asked Mr. Brown to identify an exhibit
13 on which -- which is a defense exhibit from the
14 deposition. So there is clear evidence as introduced
15 in part by the Defendants themselves.

16 With respect to the continuous use and open
17 and notorious, the testimony about the funeral
18 processions coming in and the length, the 18-wheelers
19 and all of that -- I mean, this is not a situation
20 where somebody was walking onto a piece of property
21 and maybe was having a garden or something or putting
22 ~~up a deer stand. There were deer stands near this~~
23 property, and all of the evidence shows that it
24 was -- there was no interruption from 1985 when the
25 gate came down.

1 With respect to the gate coming down, Mr. Lee
2 was under a court order to open that original Old
3 Blind Road to Frank Brown, James Brown, and the
4 others who had been using that. He took it down, and
5 he says he took it down immediately.

6 So we've already discussed how the blue road
7 came about. This agreement was not somebody saying,
8 well, I'm going to do this for you. The Court had
9 already said, you cannot close off the road that he
10 had been using, and consequently that led to the
11 alternate route. So that's what we have here.

12 And also with respect to Counsel's argument
13 that there was on the creation of an alternate route,
14 yes, again, that is the law. In the deed for Ben
15 Brown, I believe -- I can put my finger on it,
16 Your Honor, there is a specific reference.

17 There is a specific reference to the fact that
18 this lot having and favored with an easement of
19 ingress and egress as shown on the hereinabove
20 mentioned plat, and more particularly conveyed in the
21 separate instrument granting said easement to Lot 5,
22 the grantors have said the easement needed to be
23 changed and Edward Brown owned Lot 5 and Ruth James
24 was just above that, and this easement comes across.
25 Apparently their property -- they had agreed to

1 maintain. The reference here, by separate
2 instrument, would be the Court order that said that
3 easement is there because that easement leads to the
4 blue road. If you look at the plat, it shows that
5 that easement comes across the Brown property, and
6 then of course, enters what is described on the plat
7 as the farm road.

8 The other thing, with respect to the date on
9 the plat, as this Court well knows, generally in
10 quiet title actions you get a survey done, which is
11 why it was done in March of '08 and that's presented
12 to the Court showing exactly where the easement would
13 be placed, and of course either the County approves
14 that plat or this Court will approve the plat, so in
15 terms of the time frame between the original March
16 date and the subsequent 2010 date, I think it would
17 not be unusual to find plats in this case where there
18 has been that kind of gap.

19 It is clear that the original plat was entered
20 prior to there being an order for the issuance of the
21 deed and the order in the case involving the Browns
22 over the quieting of the title to the lot created and
23 serviced by the easement. The Court specifically
24 recognizes this blue road.

25 Somebody had to tell the Court, enter into the

1 record, that that was an access point for the Court
2 to mention it in two places in that settlement order,
3 Paragraph 17 and Paragraph 19. So we would ask the
4 Court to -- except for where we have agreed with
5 respect to those three parties to deny Defendants'
6 Motion for an Involuntary Nonsuit.

7 THE COURT: All right. I'm going to take
8 five minutes and I'll come back and I'm going to give
9 you-all my Ruling. Okay? I'm going to take a break
10 and we'll come back in more like ten minutes.

11 (A recess transpired.)

12 THE COURT: All right. We have reached a
13 stage of the trial at which the Plaintiffs have
14 rested. The Defendants have moved for a nonsuit or a
15 directed verdict, whatever term you wish to use,
16 pursuant to Rule 41(b), involuntary dismissal and
17 nonsuit at this stage of the trial.

18 I'm citing from the case of Johnson versus --
19 I'm going to give you-all some law, and I'm going to
20 weave some facts into it, and I'll give you-all a
21 Ruling, and you'll be able to get it from the
22 transcript.

23 After the Plaintiff has tried his case, the
24 Defendant without waiving his right to offer evidence
25 may move for a dismissal on the grounds of the facts

1 of the law to show that Plaintiff is not entitled to
2 any relief.

3 The Court may then determine and render
4 judgment against the Plaintiff or may decline to
5 render judgment until the close of all of the
6 evidence. Rule 41(b) allows a Judge, as the trier of
7 facts, to weigh the evidence, determine the facts,
8 and render a judgment against the Plaintiff at the
9 close of his case. You have justified -- I'm going
10 to state for you my reasons for my Ruling and go from
11 there.

12 The facts, and I want to commend the lawyers
13 on the case for one -- for being prepared and civil
14 with everyone in the case as well. I went home last
15 night, and I read a lot of case law. I figured the
16 substantive matter was before the Court. Like I
17 said, I'm going to make some findings of fact as well
18 as conclusions of law, and I'm going to cite you to a
19 number of cases, most of which were cited in
20 Ms. Tillman's brief to the Court, which the Court
21 again had a chance to review.

22 ~~The case that I find -- I'm just going to tell~~
23 you this. The case that I find most similar to the
24 facts of our case is the case of Bundy versus
25 Shirley. That's 412 S.C. 292. It's a Supreme Court

1 opinion from 2015 in which the Supreme Court affirmed
2 the Court of Appeals which had reversed the special
3 referee finding that Mr. Shirley had an easement
4 across Mr. Bundy's property. That's the lawyer
5 Bundy. You may know him in Charleston. Now he's in
6 Camden.

7 I'll cite some of the cases in there and tell
8 you why I find it similar. Justice Beatty wrote this
9 opinion. Justice Beatty has written a number of
10 these opinions most recently. In fact in this Court
11 was the case -- another case I'm going to cite you to
12 and that's Roosevelt Simmons versus Berkeley
13 Electric. That case is -- again Chief Justice
14 Beatty's case, 419 S.C. 223, and that's from 2016.

15 In the Bundy case, Mr. Bundy allowed
16 Mr. Shirley to put up a gate and expressed his
17 interest in allowing him to have a key to the gate.
18 They got into a dispute and Mr. Bundy revoked
19 Mr. Shirley's right to use the road that went across
20 his property. He asked Shirley to remove the gate,
21 and that lead to that litigation. All right?

22 So essentially it stands for the proposition
23 which is also a long held rule in this state which is
24 from Williamson versus Abbott, from 1917, at
25 107 S.C. 397. That basically stands for the

1 proposition once permission has been given that it
2 can never ripen into an adverse use.

3 So finding facts in this case -- I find that
4 there was a road from Harts Bluff Road which gained
5 access to -- I want to make sure I get the right
6 Brown estate. Essentially it got to the cemetery,
7 the original road went to the cemetery, which is on
8 the Daniel Brown Estate property. There was evidence
9 testified to by Mr. Brown who's been the only
10 substantive witness that we had that there was an
11 altercation that he had with a Carl Eaton who was the
12 predecessor in interest of Ms. Cox and then Ms. Lee,
13 married to Henry J. Lee, the beer distributor.

14 The issue with Mr. Eaton somehow got itself
15 resolved and then Mr. Lee stepped in and there was
16 another argument and then the road was moved. Okay?
17 The movement of the road, despite having been brought
18 as an action, a temporary restraining order having
19 been issued to move the gate, there was some type of
20 agreement reached. Okay? There had to have been
21 because the road was then constructed. It was moved,
22 and then it moved over and to the best we can tell it
23 ended up again on the Daniel Brown Estate property.
24 Again, on property owned by Ms. Thelma Smalls David.

25 Ms. David, for whatever reason, has asked to

1 be let out of this case. The Defendants have not
2 consented to that. They sought this motion under
3 Rule 41(b) asking that the case be dismissed, which
4 is their right again under Rule 41 -- 41(a)(2) except
5 as provided by Plaintiff by stipulation and Rule 1,
6 41(a)(1), an action shall not be dismissed if the
7 Plaintiffs say upon order of the Court and upon such
8 terms and conditions as the Court deems proper.

9 In the event of a counter claim the case
10 should be moved forward with the Court's permission.
11 I've already cited to Rule 41(b). So the case
12 proceeds on.

13 I frankly believe that because of Ms. David's
14 failure to prosecute the case, that the issue of an
15 easement appurtenant is resolved because the only
16 evidence in the record is whether it ended on the
17 cemetery lot or ended on the other lot of Ms. David.
18 If he wanted to have an easement appurtenant it's got
19 to begin on one tract and end on the other. It has
20 its terminis on what we call the dominant estate.
21 All the other estates are servient estates. That's
22 what creates an easement appurtenant.

23 So her failure to participate in this becomes,
24 I think, fatal to that issue, that easement
25 appurtenant. So then we turn to whether or not it's

1 an easement in gross. And easement in gross is a
2 "mere privilege" to use the property of another for
3 purposes of access. That's where the issue of
4 permission comes in. Again, I'm citing from Bundy
5 versus Shirley.

6 Permissive use will defeat the establishment
7 of a prescriptive easement. Once permission is
8 granted by the landowner, there is no longer adverse
9 use or use under a claim of right. That's where I
10 wanted to talk about Simmons versus Berkeley
11 Electric. This Court thought that adverse use and
12 claiming the right were two separate methods by which
13 to establish a prescriptive easement until the
14 Simmons versus Berkeley Electric case came out in
15 which Justice Beatty informed me that it is not.

16 So in order to establish a right by
17 prescription you have to show, one, use and
18 occupation or enjoyment; two, the identity of the
19 thing enjoyed; and three, that it is adverse to the
20 right of some other person that then has to be
21 established for a period of 20 years and again has to
22 be adverse.

23 The Court's Ruling in that case, the holding
24 in that case essentially was -- the Courts in this
25 State should only determine whether the claimant's

1 use was indeed adverse. We cite again back to the
2 Bundy case where you have permissive use and it
3 cannot ripen into adversity.

4 So the determination of the existence of an
5 easement is a question of fact in a law action. The
6 scope of the easement is a question of fact in
7 equity, not in law.

8 Simmons versus Berkeley Electric was a Summary
9 Judgment case. Bundy versus Shirley was a trial.
10 Then in Pittman versus Lowther, which was also cited
11 to the Court, the issue became one of what does it --
12 as the Court states in that case: Pittman versus
13 Lowther, 363 S.C. 47. This is from South Carolina
14 Supreme Court Justice Burnett wrote the opinion in
15 2005. He states in here, we have not previously
16 addressed the issue of what constitutes an
17 interruption in the context of establishing a
18 prescriptive easement when the owner of the servient
19 tenement erects barriers that are repeatedly ignored
20 by the owner, the dominant tenant.

21 We've sort of gotten out of the issue of an
22 easement appurtenant. In any event the Court goes
23 on. We conclude actions as sufficient to interrupt
24 the prescriptive period when a servient landowner
25 engages in overt acts such as erecting physical

1 barriers which cause a discontinuance of the dominant
2 landowner's use of the land no matter how brief. It
3 goes on to cite when the instances can come such as
4 calling for the police and authorities.

5 In the Williamson case, Williamson versus
6 Abbot, that's the 1917 case which as cited is still
7 good law. The Court cited to Judge O'Neil, who I
8 assume was Elton O'Neil who the Inn of Court in
9 Columbia is named for at USC -- he says, in one
10 respect, I think there's a great difference as to the
11 evidence from which a dedication to public use may
12 have been presumed and prescription for a private
13 way.

14 In the latter, the prescriptive right to use a
15 road, no such right can arise in woodlands without
16 some unequivocal act of adverse right such as cutting
17 out the road or repairing it. The reason for that is
18 obvious. A private way is an easement in favor of
19 another in derogation of the rights of the owner and
20 hints as not to arise without clear, unequivocal
21 proof of such facts as would give the rights of the
22 owner to the claimant.

23 The testimony in this case was that the road
24 was constructed together between Mr. Lee, and I think
25 it was James Brown, who was the farmer. They

1 constructed that road together, and I assume during
2 Henry Lee's lifetime it was permissive to use it, and
3 then subsequent to that the Coxes have now decided
4 that they're not going to do that.

5 So that may or may not end the inquiry because
6 ultimately the Court's got to look -- is there some
7 other easement, and as Mr. McFarland, he didn't
8 specifically state what type of easement we're
9 talking about.

10 If you don't have an easement appurtenant you
11 then have an easement in gross. If an easement in
12 gross is a mere privilege to use it, it generally
13 ends at that person's death, the grantor's death, or
14 loss of their right of the use of the ownership of
15 the property. That would be Mr. Lee at that time.
16 It could be Ms. Cox, but clearly Ms. Cox has not
17 consented to that, otherwise this case wouldn't still
18 be going on four years after it was filed. So it
19 just has to come to a conclusion.

20 The reason I find that there is no easement by
21 necessity is because, in fact, the Plaintiffs through
22 the subdivision of their tracts of land. Both the
23 Frank Brown Estate property and the Daniel Brown
24 Estate property have created easements which provide
25 legal access to the properties and the lots contained

1 therein.

2 Those are all the lots we talked about
3 repeatedly throughout the course of the trial. It is
4 sufficient and this is where I had some disagreement,
5 Mr. McFarland, with your argument: It is sufficient
6 for the law and sufficient for the County to approve
7 a plat when access is granted by way of an easement.
8 They would not have approved those plats without some
9 type of easement having been shown on the plats. So
10 as to the Daniel Brown properties, those easements
11 show up in two fashions. One, Back-A-Wood Road and
12 the Back-A-Wood Road extension, which I believe gets
13 you at least to the cemetery, and then you've got the
14 Geneva Shaw Lane on the south side, coming from the
15 south side on Bears Bluff Road. So there is an
16 easement that exists on each of those roads.

17 It may or may not be a 50-foot easement. I
18 think there was a 20 and there was a 30 and there was
19 a 25 and there was a 50. There are different
20 easements of different widths. That always is
21 dependent upon what the law requires and what the
22 intended use of the property is for.

23 I don't doubt that the cost of building a
24 bridge across the marsh would be expensive. I
25 personally think it could be done for a lot less than

1 \$1.25 million, but that depends on how much time and
2 effort you want to put into it and how much repair
3 costs you are going to have ultimately.

4 As to the Frank Brown heirs, likewise, there
5 is an access easement created in the formation of
6 Back-A-Wood Road, which gets you to Lot
7 196-00-00-012. That's the property that Mr. Ed Brown
8 testified he holds title to, but he holds title to in
9 trust for the benefit of his family. That's the main
10 property there, because again, that's on the other
11 side of the marsh.

12 That easement, in and of itself -- it's not
13 required to be built. It is required to be provided
14 for so that future owners of the property can gain
15 access to their property. It's on that basis that I
16 find that there is no easement by necessity across
17 the property of the Defendants, Donna Lee and Robert
18 Cox, and on that basis I make my Ruling, and I'll
19 grant the nonsuit to the Plaintiffs.

20 I'm not prepared to grant the relief of the
21 costs that you cite because I haven't seen anything
22 to that extent. I think that's pretty much my
23 Ruling. I'll be glad to expand on that if anybody
24 asks now, or accept a motion later. What I need you
25 to do, of course, is to submit what your costs and

1 expenses are. If we need to have a hearing on that
2 we can do that. Okay?

3 Anything further from the Defendants as to the
4 Court's Ruling?

5 MS. TILLMAN: Just to clarify, Your Honor, I'm
6 not sure whether -- you say you're granting the Rule
7 41 Motion as for the --

8 THE COURT: I probably said Plaintiffs. I
9 meant Defendants.

10 MS. TILLMAN: Yes, Your Honor.

11 THE COURT: Your motion. It's your motion.
12 Sorry about that, Ms. Tillman. Sometimes you sit
13 over there.

14 MS. TILLMAN: I know.

15 THE COURT: But I am granting that motion.
16 Mr. McFarland?

17 MR. McFARLAND: Certainly there's a lot to
18 respond to, but I think we'll just wait until we get
19 the written order, Your Honor.

20 THE COURT: What I'm going to ask that you do,
21 and for the benefit of those folks who are here, the
22 parties, again I want to thank you-all for being
23 civil with one another. It makes my job a lot more
24 enjoyable.

25 What I would ask that you do -- I typically

1 give both sides a period of time in which to provide
2 me with a proposed order. I'm happy to accept that
3 from both sides, Plaintiff and Defense. This is
4 essentially a directed verdict, nonsuit, involuntary
5 nonsuit stage of the case.

6 I've done my findings of fact and my
7 conclusive law for the record. You-all can get a
8 copy of the transcript from Ms. Smith. She will be
9 glad to prepare it for you. If you need some time to
10 do that I'll give you 30 days from the time you-all
11 get that so you can prepare an order. Then any
12 motion as to that I'll certainly give you an
13 opportunity to address that again, Mr. McFarland.
14 Okay?

15 MR. McFARLAND: Thank you, Your Honor.

16 THE COURT: Thank you-all very much. Good to
17 see you.

18 (The proceedings were concluded at 12:23 p.m.)
19
20
21
22
23
24
25

I N D E X

Page

WITNESS/EXAMINATION

EDWARD M. BROWN,

EXAMINATION

BY MR. McFARLAND

EXAMINATION

BY MR. FORD

EXAMINATION

BY MR. McFARLAND

EXAMINATION

BY MR. FORD

EXAMINATION

BY THE COURT

CERTIFICATE OF REPORTER

WYATT HORRY PARKER,

EXAMINATION

BY MR. McFARLAND

EXAMINATION

BY MR. FORD

EXAMINATION

BY MR. McFARLAND

EXAMINATION

BY THE COURT

C E R T I F I C A T E

E X H I B I T S

Page

PLF. EXH. #1, Letter from Atty. Brown

PLF. EXH. #2, Aerial Photo (was not put
into evidence)

PLF. EXH. #3, 2001 GIS Aerial Photo

PLF. EXH. #4, 2001 GIS Aerial Photo

PLF. EXH. #5, 2015 GIS Aerial Photo

PLF. EXH. #6, 2015 GIS Aerial Photo (was
not put into evidence)~~PLF. EXH. #7, Plat of Cemetery Lot~~PLF. EXH. #8, 2019 Tax Record (Was not
put into evidence)

PLF. EXH. #9, Plat of Subdivision

PLF. EXH. #10, 2019 Charleston County GIS
PlatPLF. EXH. #11, Plat of Daniel Brown
Property, 4/25/03

1 PLF. EXH. #12, Various photos of easement
ditch
2 PLF. EXH. #13, Composite: Summons and
Petition, Affidavit, Answer, Order and
3 Rule to Show Cause
PLF. EXH. #14, Order
4 PLF. EXH. #15, Quit Claim Deed
PLF. EXH. #16A-I, Photos
5 PLF. EXH. #17A-E, Photos
PLF. EXH. #18, Enlarged Photo Aerial
6 PLF. EXH. #19, Aerial View

7
8 DFT. EXH. #1, Master's Deed, Thelma David
DFT. EXH. #2, Plat, Book E-J,
DFT. EXH. #3, Deed, Thelma David to Dante
9 David
DFT. EXH. #4, Deed, Thelma David to
10 Adriana David
DFT. EXH. #5, Deed, Debra Commodore
11 DFT. EXH. #6, Deed, Benjamin Smalls
DFT. EXH. #7, Plat, Book S-11,
12 DFT. EXH. #8, Deed, Lot J
DFT. EXH. #9, Deed, Lot O
13 DFT. EXH. #10, Plat, Lots O&P
DFT. EXH. #11, Deed, O-12, property info
14 DFT. EXH. #12, Deed, O-12
DFT. EXH. #13, Carl Brown, Plat #1
15 DFT. EXH. #14, Carl Brown, Slice and Dice
DFT. EXH. #15, Plat, Ben Brown
16 DFT. EXH. #16, Deed, Ben Brown
DFT. EXH. #17, Order Striking Case
17 DFT. EXH. #18, Deed, Nicolette James
DFT. EXH. #19, Deed, Bob Cox
18 DFT. EXH. #20, Plat, Cox
DFT. EXH. #21, Photograph
19 DFT. EXH. #22, Photograph
DFT. EXH. #23, Photograph
20 DFT. EXH. #24, Photograph
DFT. EXH. #25, Photograph
21 DFT. EXH. #26, Photograph
DFT. EXH. #27, Photograph
22 DFT. EXH. #28, Red Road/Blue Road
DFT. EXH. #29, Property Record Card
23 DFT. EXH. #30, Form II
DFT. EXH. #31, GIS Map (retained by
24 Counsel)
25

APPELLANTS' EXHIBIT 13

000281

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 84-CP-10-1234

JAMES W. BROWN,
Plaintiff,
VS.
HENRY J. LEE, JR.,
Defendant.

SUMMONS
FILED
FILED
JUN 14 1984

JUN 14 1984

HOWARD A. TAYLOR
CLERK, C. P. & C. S.

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and REQUIRED to answer the Petition in this action, a copy of which will be filed in the Office of the Clerk of Court of Common Pleas for Charleston County on _____, a copy of which is herewith served upon you and to serve a copy of your Answer to said Petition on the Plaintiff or his attorney, EDWARD M. BROWN, at 119 Spring Street, Charleston, South Carolina, 29403, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Petition.

EDWARD M. BROWN,
ATTORNEY and COUNSELOR AT LAW

BY: Edward M. Brown
EDWARD M. BROWN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

Dated: 6-13-84
Charleston, South Carolina

NON-JURY

FILED
FILED
JUN 14 1984

JUN 14 1984

HOWARD A. TAYLOR
CLERK, C. P. & C. S.



c. For an Order temporarily and permanently restraining the Defendant constructing any further barriers from hindering the egress and ingress to and from and over the Defendant's property by way of the said easement.

d. And for damages against the Defendant in the amount of Sixty Thousand and 00/100 Dollars (\$60,000.00), the cost herein;

And for such other relief as this Court may deem just, equitable, and proper.


EDWARD M. BROWN,
ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina

Dated: 6-13-39

3 Copies
By Hand
6-14-84

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NUMBER:

84-1734

FILED

JUN 14 1984

HOWARD A. TAYLOR
CLERK

ORDER
AND RULE TO SHOW CAUSE

JAMES W. BROWN,
Plaintiff,

VS.

HENRY J. LEE, JR.,
Defendant.

Upon reading and filing of a verified Complaint of the Plaintiff for this action and the Affidavit of the Plaintiff, James W. Brown:

It appears to the satisfaction of this Court that this is a proper case for granting a temporary restraining order.

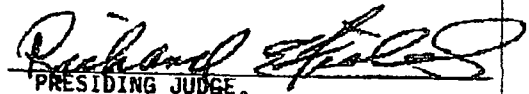
That unless the temporary restraining order prayed for in the Plaintiff's Petition is granted, grave injuries will result to the Plaintiff before this matter can be heard on the merits;

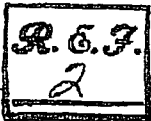
NOW, THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that the Defendant and Plaintiff shall appear before me in chambers, at 9:30 o'clock 9:30 a.m. on the 15th day of June, 1984, ^{or as soon there-} then and thereto after as the matter can be heard the Defendant to show cause, if any, as to why he, his agent, servant, and employees should not be enjoined during the pendency of this action from continuing to maintain a barrier across a roadway and/or easement extending from Hart Bluff Road across the Defendant's property to the property leased and/or owned by the Plaintiff which is and can be more specifically identified by way of tax map number 196-00-00-023 or lot number 23, said tax map number referring to the property owned by the Defendant, and why the Defendant, his agent, servants, and employees shall not be ordered and direct to remove said barrier as the aforesaid easement that the Defendant heretofore constructed across the roadway during the pendency of this action.

R.E.F.
1

IT IS FURTHER ORDERED that a copy of Plaintiff's Petition and Affidavit, together with a certified copy of this Rule to Show Cause and Order be served upon the Defendant, Henry J. Lee, Jr., and his attorney, Deno Manos.

AND IT IS SO ORDERED.


PRESIDING JUDGE,
NINTH JUDICIAL CIRCUIT



Charleston, South Carolina

Dated: June 14, 1984

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 84-1734

JAMES W. BROWN,
Plaintiff,

FILED

VS.

JUN 14 1984

AFFIDAVIT

HENRY J. LEE, JR.,

BY TAYLOR

Defendant. By D. J.

JUN 14 10 51 AM '84
CLERK OF COURT
SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY appeared before me JAMES W. BROWN, who being duly sworn and depose says as follows:

1. That affiant is a resident of and domicile in the County of Charleston, State of South Carolina.
2. That affiant presently has a tomatoe crop planted and ready for harvest on a parcel and piece of land most specifically identified by tax map number 196-00-00-012 or lot number 12 located on Wadmalaw Island, in the County of Charleston, State of South Carolina and adjacent to a parcel of property owned by the Defendant, said property more specifically identified by tax map number 196-00-00-023 or lot number 23.
3. That affiant has, from and since 1949, farm and or planted crop for harvest on the hereinabove referred to real property consisting of twenty-eight (28) or more acres and known as lot number 12.
4. That affiant has always and openly, notoriously, and without objection from Defendant and/or Defendant's predecessors in interest, use an easement and/or public highway running from Hart Bluff Road across the Defendant's property, said property being most specifically identified by tax map number 196-00-00-023 or lot number 23.
5. That until about March 15, 1982, the easement and/or public highway and roadway in question, was a Charleston County owned highway, but

was subsequently abandoned by the County of Charleston.

6. That the Defendant, has in fact constructed barriers across the said easement and/or roadway preventing the Plaintiff and/or the Plaintiff's employees or surrogates from gaining access to the Plaintiff's crop and/or the property most specifically identified by tax map number 196-00-00-012 or lot number 12.

7. That since 1949, Plaintiff has always farm the hereinabove referred to property in an open, notorious, obvious, and adverse manner.

8. That the Plaintiff has always, since 1949, used the roadway and/or easement in question to gain access to property for the purpose of farming the twenty-eight (28) acres hereinbefore identified by tax map number 196-00-00-012 or lot number 12.

9. That the Plaintiff and Plaintiff's ancestors and/or predecessors in interest have always used the roadway across lot or parcel number 23, in an open, notorious, obvious and adverse fashion.

10. That the Defendant and his predecessors in interest well knew that the Plaintiff gained access to and from the property herein identified by tax map number 196-00-00-012 or lot number 12, by and through the easement and/or public highway across lot number 23, that is the subject matter of this dispute.

11. That at no time during the pass thirty-four (34) years has the Defendant and/or the Defendant's predecessors in interest objected to the use of said roadway by the Plaintiff and/or the Plaintiff's predecessors in interest and other members of the Plaintiff's family and/or household until about the month of March, 1982.

12. That barriers were never constructed across said roadway and/or easement until about April, 1984 and if they were constructed prior to April, 1984, they were immediately removed after protest from the Plaintiff.

13. That the Defendant constructed a barrier across the roadway and/or easement that is the subject matter of this action, so as to prevent the Plaintiff from gaining access to his crop and/or the property herein identified by tax map number 196-00-00-012 or lot number 12.

14. That the Defendant, by way of putting up the obstruction, has caused the Plaintiff to suffer extreme hardship, irreparable harm that will result in the economic loss of the Plaintiff's crop by way of not being able to harvest his crop that has been planted on said lot number 12.

15. Plaintiff avers that there are no other reasonable and/or viable way by which the Plaintiff can gain access to his crops for harvesting purposes.

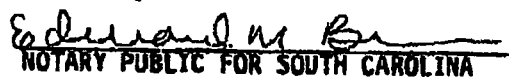
16. The crops in question, are scheduled to be harvest on Monday, June 18, 1984.

17. That unless the roadway in question, is opened up, the Plaintiff will suffer irreparable harm by way of not being able to harvest said crop and suffer extreme hardship.

18. That the Plaintiff has been informed and believes that a Rule to Show Cause should be issued by this Court, requiring the Defendant to appear in the Show Cause, why, if any, he might have as to why he should not be temporarily enjoined from continuing to maintain the barrier across that roadway in question, extending from Hart Bluff Road across the Defendant's property to the Plaintiff's crop and/or property during the pendency of this action.


JAMES W. BROWN

SHORN to before me this 13th
day of June, 1984.


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 11-6-90

60288

APPELLANTS' EXHIBIT 14

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2004-CP-10-0416

BENJAMIN BROWN, III,

Plaintiff,

v.

CARL BROWN, DOROTHY BROWN PINCKNEY,
SARAH BROWN SEABROOK, ERNESTINE
BROWN ROBINSON, FLOSSIE BROWN MACK,
HEIRS AT LAW AND DISTRIBUTEES OF
BENJAMIN BROWN, JOHN DOE AND MARY
ROE, adults and RICHARD ROE AND JANE DOE,
infants, persons under disability or incompetence,
if any, including those persons who might be in the
military and covered by the Soldier's and Sailor's
Civil Relief Act, fictitious names designating any
unknown heirs, devisees, distributees, issue,
executors, administrators, successors or assigns of
the above-named defendants, and also the following
deceased persons:
RACHAEL BROWN, LOTTIE BROWN SHAFFER,
SARAH BROWN, BENJAMIN BROWN, II,
MARY ANN BROWN, LAWRENCE STANLEY
and all other persons known or claiming any right,
title, estate in or lien upon the real estate described in
the Complaint herein,

Defendants.

AND

CARL BROWN and DOROTHY BROWN
PINCKNEY,

Third-Party Plaintiffs,

v.

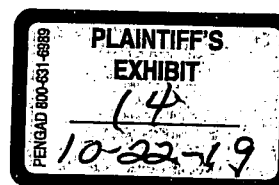
JAMES MACK, JR., and SALEM BAPTIST
CHURCH OF WADMALAW ISLAND,
an unincorporated association,

Third-Party Defendants.

ORDER

FILED
2008 FEB 22 PM 1:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

00290



A handwritten signature in black ink, appearing to be "J. Armstrong".

to the land of James W. Brown. This portion is on the right side of the referenced Plat with the Plat oriented to the north.

4. From Harts Bluff Road and south, Carl Brown will receive five (5) acres, adjacent to Harts Bluff Road, excluding T.M.S. #196-00-0-072.
5. Benjamin Brown, III, will receive the remaining acres, approximately eleven and four tenths (11.4) acres beginning south of Carl Brown's five (5) acres as hereinabove referenced. That Power of Attorney is incorporated herein by reference and made a part hereof.
6. Carl Brown agrees to dismiss, with prejudice, his lawsuit styled Carl Brown v. Benjamin Brown, et al., Case No. 2004-CP-10-2883.
7. Carl Brown will provide a road easement to Benjamin Brown, III, provided that Benjamin Brown, III, does not have access from Bears Bluff Road or in the alternative from a dirt road formerly known as Old Blind Road.
8. Cost of survey will be borne equally between Carl Brown and Benjamin Brown, III. Said survey or plat resulting therefrom will be submitted by surveyor to the Charleston County Planning Board for approval. Both parties, within thirty (30) days from January 22, 2008, shall pay to James Pennington, the surveyor, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) each, for the purpose of having the latter complete the survey, construction of the appropriate plat for the submission and approval of the necessary governmental agency.
9. The entire agreement regarding the division of the property in question is subject to the approval of the Charleston County Planning Board.
10. Master Deeds will be issued to all appropriate parties. The parties included as a minimum are Benjamin Brown, III; Carl Brown; Flossie Brown Mack; James Mack, Jr.; and Salem Baptist Church of Wadmalaw Island, an unincorporated association.
11. As to other matters, I hereby order that the cost of mediation in the amount of Four Hundred Fifty and No/100 Dollars (\$450.00) will be paid to the mediator, the Honorable Richard E. Fields. The mediation costs will be split equally between the parties in this case, as follows:
 - a. The Plaintiff Benjamin Brown, III, represented by Karen M. DeJong, Esquire, to pay a total of One Hundred Fifty and No/100 Dollars (\$150.00);
 - b. Defendants Carl Brown and Dorothy Brown Pinckney, represented by Edward M. Brown, Esquire, to pay a total of One Hundred Fifty and No/100

Dollars (\$150.00); and

- c. Defendants Sarah Brown Seabrook, Ernestine Brown Robinson, and Flossie Brown Mack, as well as Third-Party Defendant James Mack, Jr., represented by Kevin D. Phillips, Esquire, to pay a total of One Hundred Fifty and No/100 Dollars (\$150.00).
12. Sally A. King-Gilreath, Esq., the Guardian ad Litem for any and all unidentified heirs in this matter, brought before this Court at the end of the hearing her claimed legal costs for the performance of her duties. I hereby order that legal costs in the amount of Seven Hundred Fifty and No/100 Dollars (\$450.00) be paid to Sally A. King-Gilreath in compensation for her duties as Guardian ad Litem. The legal costs will be split equally among the parties in this case, as follows:
- a. The Plaintiff Benjamin Brown, III, represented by Karen M. DeJong, Esquire, to pay a total of Two Hundred Fifty and No/100 Dollars (\$250.00).
 - b. Defendants Carl Brown and Dorothy Brown Pinckney, represented by Edward M. Brown, Esquire, to pay a total of Two Hundred Fifty and No/100 Dollars (\$250.00); and
 - c. Defendants Sarah Brown Seabrook, Ernestine Brown Robinson, and Flossie Brown Mack, as well as Third-Party Defendant James Mack, Jr., represented by Kevin D. Phillips, Esquire, to pay a total of Two Hundred Fifty and No/100 Dollars (\$250.00).

This agreement is made a part of this Order.

The purpose of this hearing is to comply with the edicts of Rule 43(k) of the South Carolina Rules of Civil Procedure. After the agreement was read into the record by Edward M. Brown, Attorney for the Defendants, Carl Brown and Dorothy Brown Pinckney, all parties were put under oath and asked if they heard the agreement as read into the record; did they believe that the agreement was fair and proper; did they want this court to approve the agreement and make it the order of the court. All parties answered in the affirmative.

After reviewing the status of the case and hearing all parties in the case as to the results of the mediation conference and the settlement agreement that has been reached, I hereby make the

A handwritten signature, possibly reading "MS", enclosed within a hand-drawn oval.

following findings:

13. The Court finds that the Power of Attorney hereinabove-referred to, irretrievably grants to Loretta Brown, the right to bind Benjamin Brown, III, to the agreement. The Mediation Agreement that was agreed to by all parties is made a part of this Order.
14. The Plat recorded in Charleston County RMC's office in Book V151, P. 654, was used as a basis for the Agreement and this Order and is a part of the Mediation Agreement.
15. With regard to the 2.0 acres of waterfront parcel, which is facing and adjacent to the marsh and creek, Benjamin Brown, III, shall receive one (1) acre and Carl Brown shall receive one (1) acre. Benjamin Brown, III, shall receive the western portion of the waterfront parcel, adjacent to the parcel owned by Grace and William Brown. This portion is on the left side of the referenced Plat with the Plat oriented to the north. Carl Brown shall receive the eastern portion of the waterfront parcel, adjacent to the land of James W. Brown. This portion is on the right side of the referenced Plat with the Plat oriented to the north.
16. From Harts Bluff Road and south, Carl Brown will receive five (5) acres, adjacent to Harts Bluff Road, excluding T.M.S. #196-00-0-072.
17. Benjamin Brown, III, will receive the remaining acres, approximately eleven and four tenths (11.4) acres beginning south of Carl Brown's five (5) acres as hereinabove referenced. That Power of Attorney is incorporated herein by reference and made a part hereof.
18. Carl Brown agrees to dismiss, with prejudice, his lawsuit styled Carl Brown v. Benjamin Brown, et al., Case No. 2004-CP-10-2883.
19. Carl Brown will provide a road easement to Benjamin Brown, III, provided that Benjamin Brown, III, does not have access from Bears Bluff Road or in the alternative from a dirt road formerly known as Old Blind Road.
20. Cost of survey will be borne equally between Carl Brown and Benjamin Brown, III. Said survey or plat resulting therefrom will be submitted by surveyor to the Charleston County Planning Board for approval. Both parties, within thirty (30) days from January 22, 2008, shall pay to James Pennington, the surveyor, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) each, for the purpose of having the latter complete the survey, construction of the appropriate plat for the submission and approval of the necessary governmental agency.

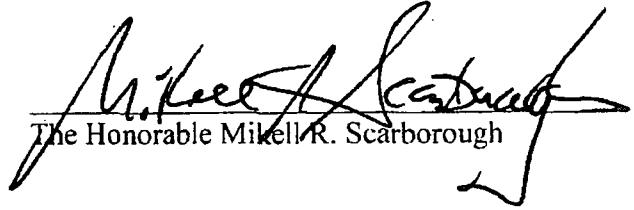


21. The entire agreement regarding the division of the property in question is subject to the approval of the Charleston County Planning Board.
22. Master Deeds will be issued to all appropriate parties. The parties included as a minimum are Benjamin Brown, III; Carl Brown; Flossie Brown Mack; James Mack, Jr.; and Salem Baptist Church of Wadmalaw Island, an unincorporated association.
23. As to other matters, I hereby order that the cost of mediation in the amount of Four Hundred Fifty and No/100 Dollars (\$450.00) will be paid to the mediator, the Honorable Richard E. Fields. The mediation costs will be split equally between the parties in this case, as follows:
 - a. The Plaintiff Benjamin Brown, III, represented by Karen M. DeJong, Esquire, to pay a total of One Hundred Fifty and No/100 Dollars (\$150.00);
 - b. Defendants Carl Brown and Dorothy Brown Pinckney, represented by Edward M. Brown, Esquire, to pay a total of One Hundred Fifty and No/100 Dollars (\$150.00); and
 - c. Defendants Sarah Brown Seabrook, Ernestine Brown Robinson, and Flossie Brown Mack, as well as Third-Party Defendant James Mack, Jr., represented by Kevin D. Phillips, Esquire, to pay a total of One Hundred Fifty and No/100 Dollars (\$150.00).
24. Sally A. King-Gilreath, Esq., the Guardian ad Litem for any and all unidentified heirs in this matter, brought before this Court at the end of the hearing her claimed legal costs for the performance of her duties. I hereby order that legal costs in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) be paid to Sally A. King-Gilreath in compensation for her duties as Guardian ad Litem. The legal costs will be split equally among the parties in this case, as follows:
 - a. The Plaintiff Benjamin Brown, III, represented by Karen M. DeJong, Esquire, to pay a total of Two Hundred Fifty and No/100 Dollars (\$250.00).
 - b. Defendants Carl Brown and Dorothy Brown Pinckney, represented by Edward M. Brown, Esquire, to pay a total of Two Hundred Fifty and No/100 Dollars (\$250.00); and
 - c. Defendants Sarah Brown Seabrook, Ernestine Brown Robinson, and Flossie Brown Mack, as well as Third-Party Defendant James Mack, Jr., represented by Kevin D. Phillips, Esquire, to pay a total of Two Hundred Fifty and No/100 Dollars (\$250.00).



IT IS FURTHER ORDERED that upon approval of the plat as proposed herein, that Defendant, Carl Brown's counsel shall prepare the legal description for all lots approved thereby and shall submit these lot descriptions to the Master-in-Equity Office which shall prepare the deeds referenced herein at paragraph 10.

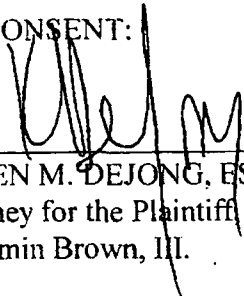
AND IT IS SO ORDERED.

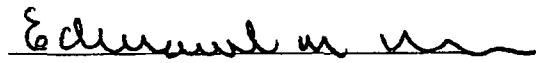

The Honorable Mikell R. Scarborough

Feb 19, 2008

Charleston, South Carolina

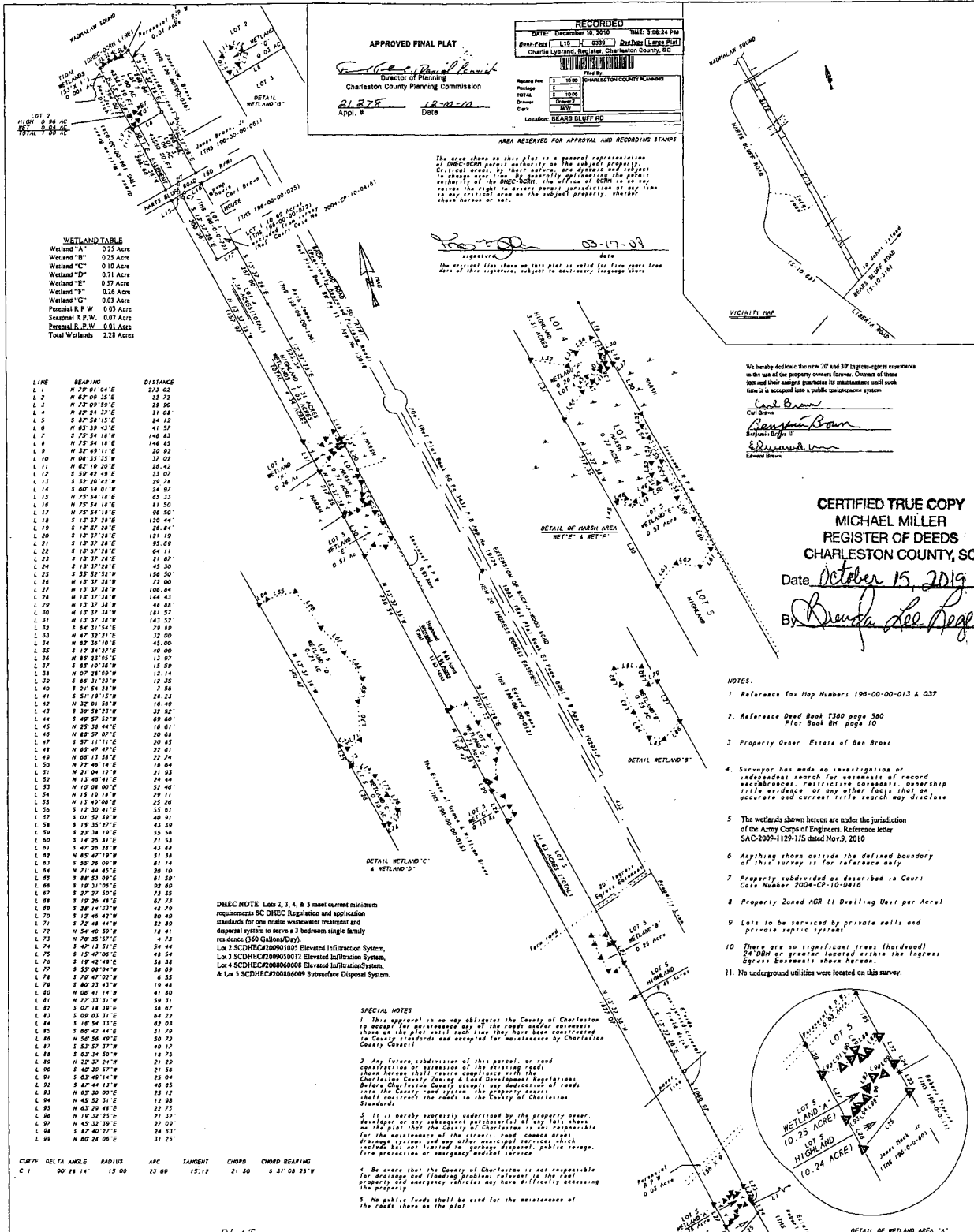
WE CONSENT:


KAREN M. DEJONG, ESQUIRE
Attorney for the Plaintiff
Benjamin Brown, III.


EDWARD M. BROWN, ESQUIRE
Attorney for the Defendants,
Carl Brown and Dorothy Brown Pinckney


KEVIN D. PHILLIPS, ESQUIRE
Attorney for Defendants, Sarah Brown
Seabrook, Ernestine Brown Robinson,
Flossie Brown Mack and Third-Party
Defendant, James Mack, Jr.

APPELLANTS' EXHIBIT 15



PLAT
TO SUBDIVIDE
17.97 Acres
The Estate of Ben Brown
LOCATED
Wadmalaw Island
Charleston County, South Carolina

FIELD DATE: MARCH 4, 2008
REVISED: September 30, 2010

SCALE: 1" = 200'

3431.DWG

3055 KAYAMAH HIGHWAY
SUITE 3
CHARLESTON, SC 29407
PHONE: (843) 571-5181
FAX: (843) 571-7447

LEGEND

- 5/8" Iron Rod New
- 5/8" Iron Rod Old
- 2" Crimped Iron Pipe Old
- 1 1/2" Open Pipe Old
- Power Pole
- DHEC-DCRM Control Critical Line
- Freshwater Wetlands
- Freshwater Wetland/Salt Marsh
- R.P.W. Relatively Permanent Water

DEFENDANT'S EXHIBIT
15
10-02-19

RESPONDENTS' EXHIBIT 3



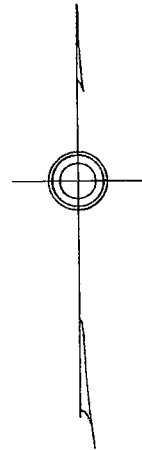
DEPOSITION
EXHIBIT
A-2
7-15-77

RESPONDENTS' EXHIBIT 7

00301

RESPONDENTS' EXHIBIT 13

00302



DATE 11 36 55

HERBERT SMITH

Date October 15, 2019
By Brian LaRue
00303

RESPONDENTS' EXHIBIT 14

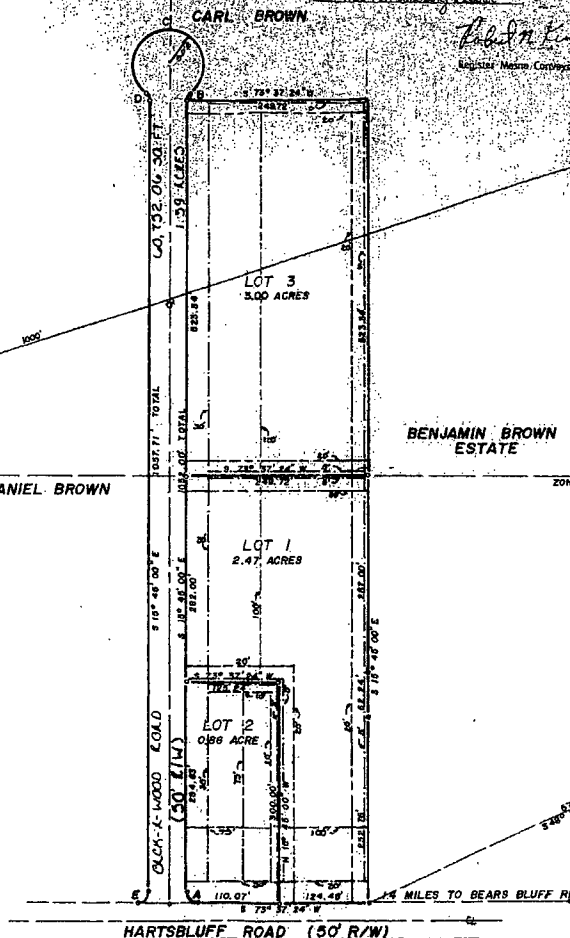
CURVE DATA

- (A)
 $\Delta = 90^\circ 37' 36"$
 $R = 15.00'$
 $LC = 23.73'$
 $T = 15.17'$
 $CHD = 23.33'$
 $CHD BKG = S 61^\circ 03' 48" E$
- (B)
 $\Delta = 52^\circ 01' 11"$
 $R = 15.00'$
 $LC = 13.62'$
 $T = 7.32'$
 $CHD = 13.16'$
 $CHD BKG = S 10^\circ 15' 35" W$
- (C)
 $\Delta = 284^\circ 02' 25"$
 $R = 50.00'$
 $LC = 247.87'$
 $T = 39.04'$
 $CHD = 61.54'$
 $CHD BKG = N 74^\circ 15' 00" E$
- (D)
 $\Delta = 52^\circ 01' 14"$
 $R = 15.00'$
 $LC = 13.62'$
 $T = 7.32'$
 $CHD = 13.16'$
 $CHD BKG = N 41^\circ 49' 37" W$
- (E)
 $\Delta = 89^\circ 22' 24"$
 $R = 15.00'$
 $LC = 23.40'$
 $T = 14.84'$
 $CHD = 21.30'$
 $CHD BKG = S 28^\circ 56' 12" W$

--- SCREENING LINES
 --- DETACK LINES

I, James G. Penington, a Registered Surveyor of the State of South Carolina, hereby certify that I have surveyed the property shown hereon, that this plat represents the true dimensions of the property, the necessary markers have been installed to the precision is 1:10,000.

James G. Penington
 James G. Penington, R.L.S. No. 10291
 Sample Engineering, Inc., P.O. Box 31817
 Charleston County, S.C. 29417 571-5191



Surveyed and Subdivided by
 JAMES G. PENINGTON
 Registered Land Surveyor
 No. 10291
 State of South Carolina
 Date of Survey: August 18, 1988
 Date of Plat: October 15, 2019
 Reference: Deed Book P152, Page 663
 Area: 1.39 acres
 Method: D.M.D. method

Robert N. King
 Register of Deeds
 Charleston County, S.C.

We hereby dedicate the 50' road right-of-way to the use of the property owners. The owners and their heirs shall maintain the road in its entirety.

Carl Brown
 Daniel Brown
 Edward M. Brown

Carl Brown
 CARL BROWN

PLAT OF THE SUBDIVISION OF LANDS OF CARL BROWN
 LOCATED ON WADMALAW ISLAND
 CHARLESTON COUNTY, SOUTH CAROLINA

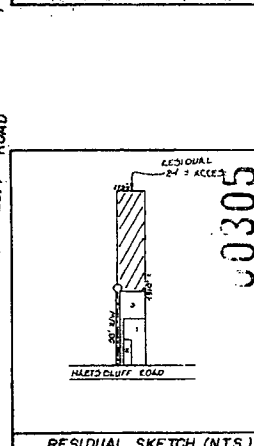
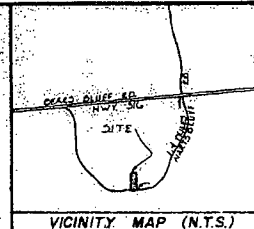
DATE: AUGUST 18, 1988 SCALE: 1"=100'

NOTES:

- Reference T.M.S. 196-00-00-12
- Reference Deed Book P152, Page 663.
- Area determined by D.M.D. method.

LEGEND:

- Iron Pipe Old
- Iron Pipe New
- Screening Lines
- Detacked Road



APPROVED FINAL PLAT
James G. Penington
 CLERK, CHARLESTON COUNTY COUNCIL
 WILLIAM W. MILLER
 DIRECTOR OF PLANNING
 CHARLESTON COUNTY PLANNING BOARD
 DATE: MAY 16, 1989
 PB # 13018

THESE LOTS 1, 2, & 3 MEET HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM ONLY.

This approval in no way obligates the County of Charleston to maintain this right-of-way until it has been constructed to County standards.

CERTIFIED TRUE COPY
 MICHAEL MILLER
 REGISTER OF DEEDS
 CHARLESTON COUNTY, SC

Date: October 15, 2019

By: *Brenda Lee Degette*



14

RESPONDENTS' EXHIBIT 17

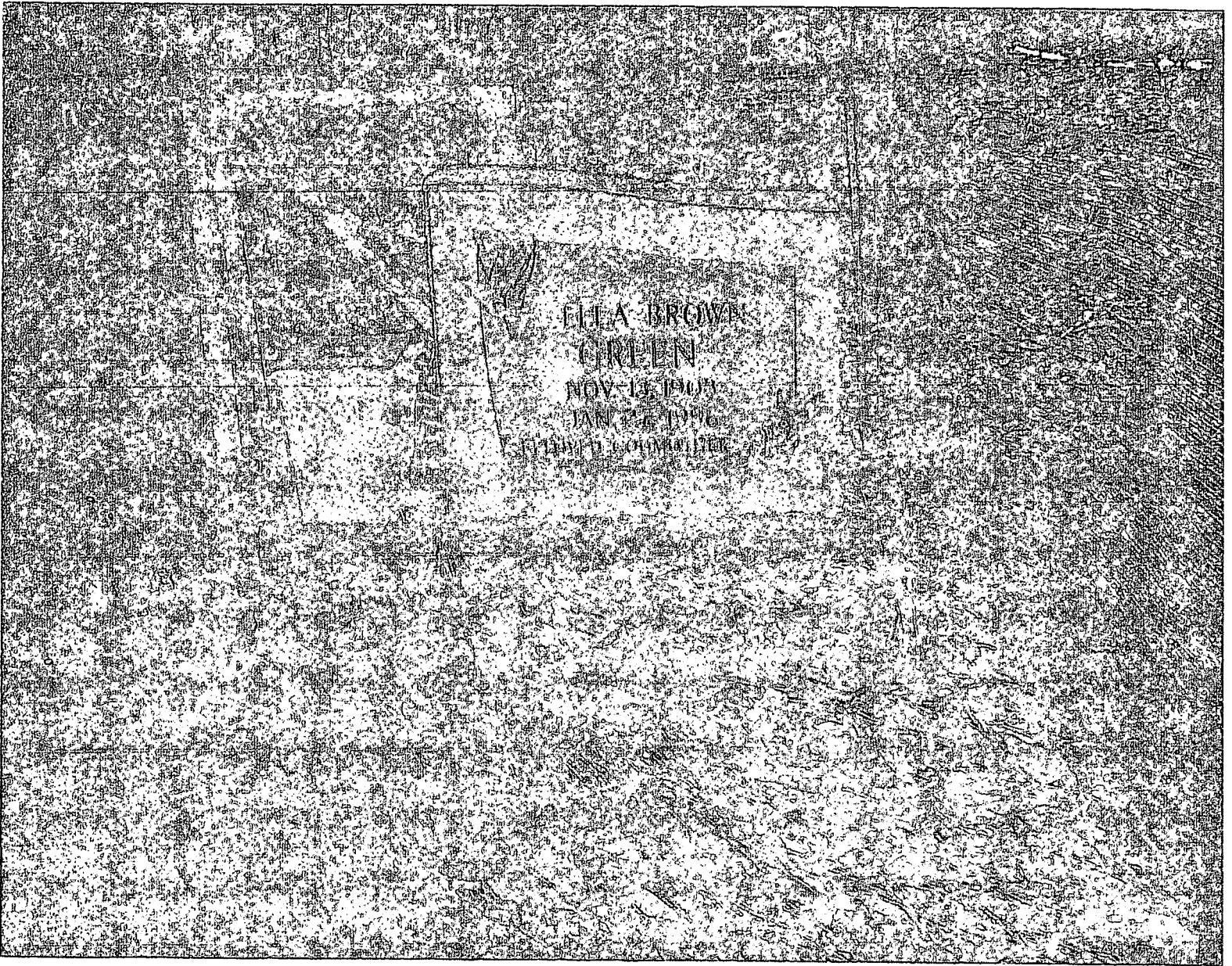
IN LOVING MEMORY OF

JULIA BROWN

DECEASED

1901

1901



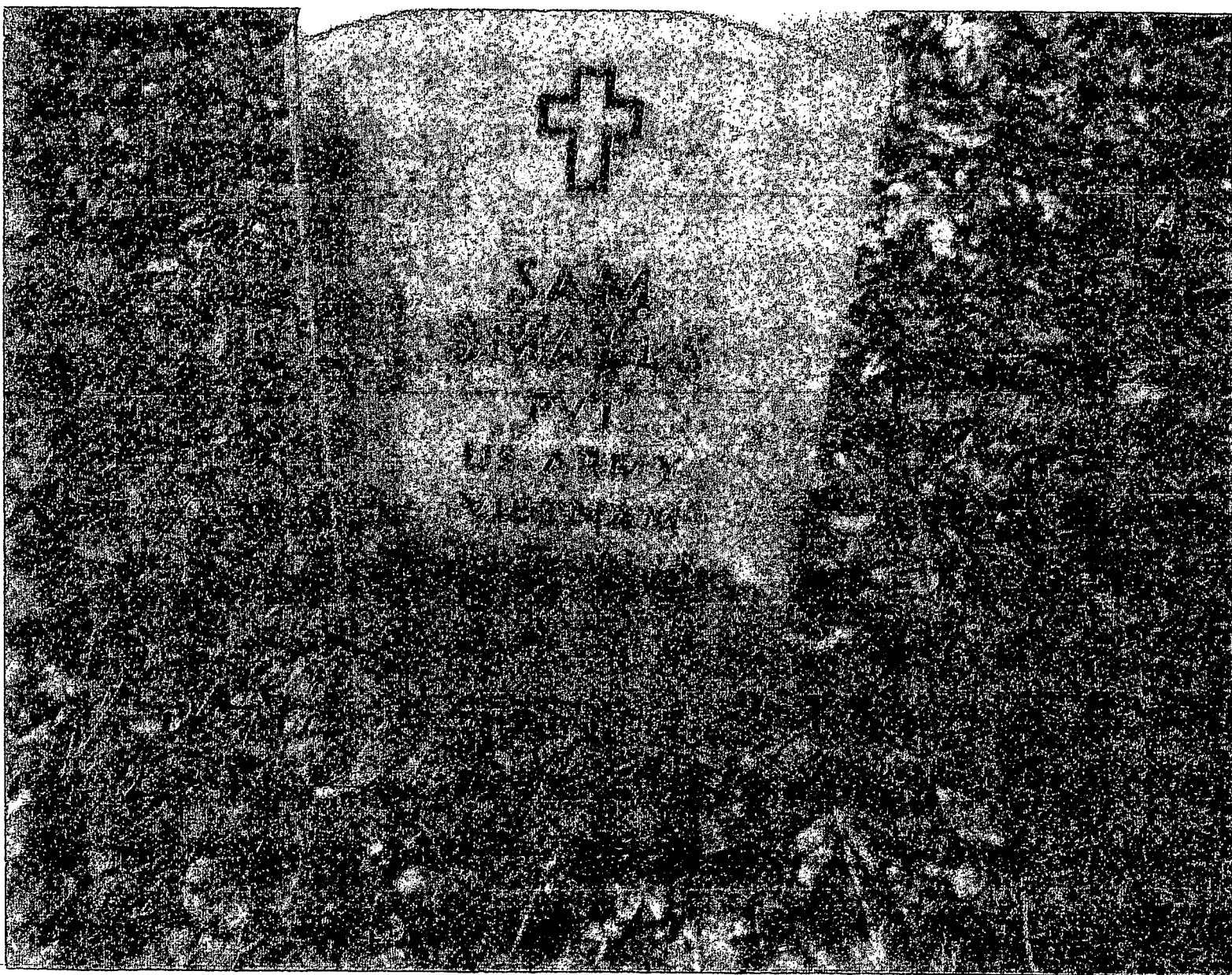
ELLA BROWN

GREEN

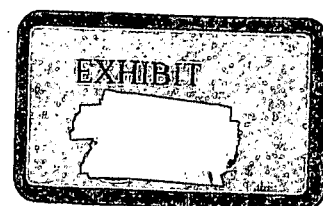
NOV 12 1903

JAN 24 1906

SENATE COMMITTEE



00309



JOHN
WILLIAM
MOULTRIE JR

PVT

US MARINE CORPS

SGT

US ARMY

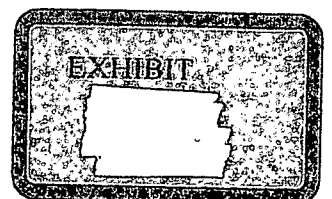
PERMANENTLY

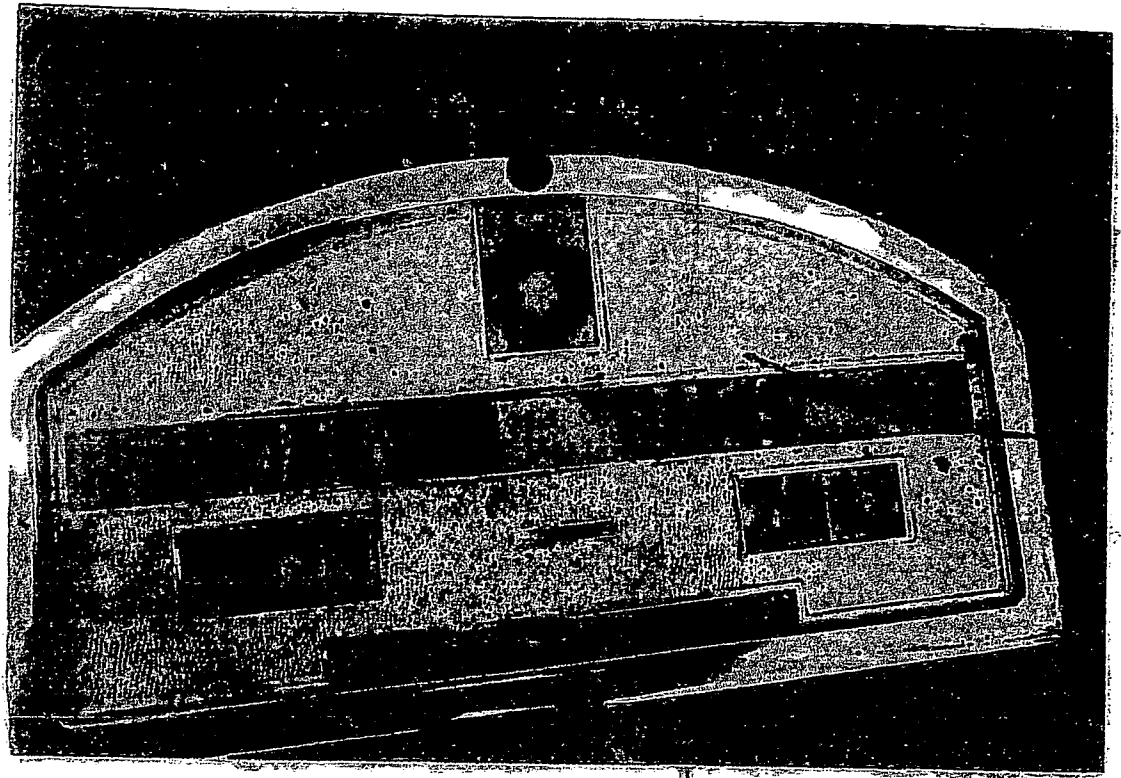
RETIRED

1950

1950

00310



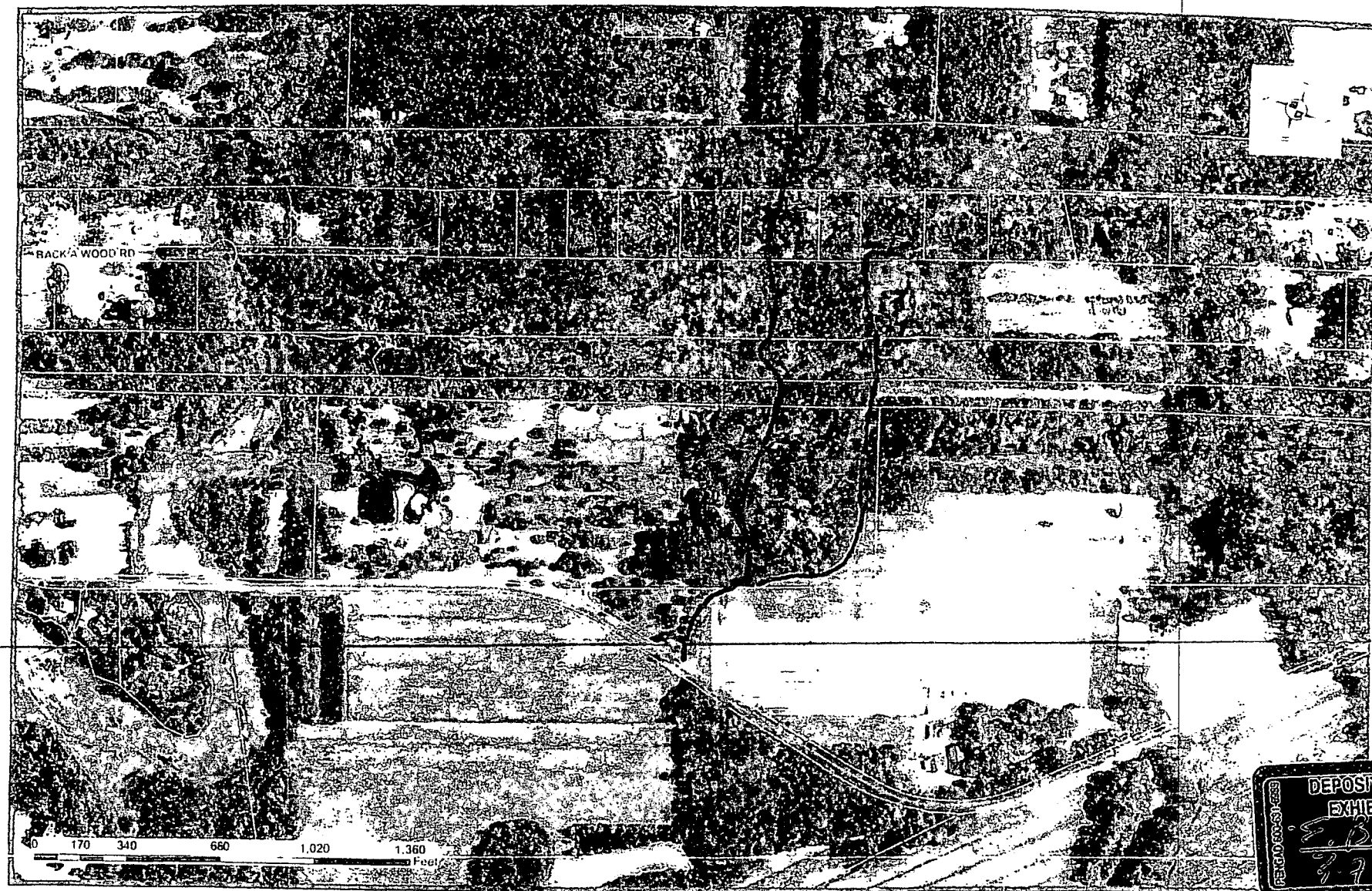


0311

RESPONDENTS' EXHIBIT 28

00312

Ex. 28



00313

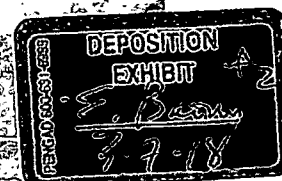


Exhibit #2

1 2

RESPONDENTS' EXHIBIT 30

00314

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CC EDWARD TAYLOR
CC C.J. MANOS
IN THE CIRCUIT COURT

JAMES W. BROWN
Plaintiff

v.
HENRY J. LEE JR.
Defendant

ORDER

Case No. 84-CP-10-1734

Form II

IT IS ORDERED that the above case be:

FILED

APR 3 1985

HOWARD A. TAYLOR

By HC

APR 3 3 48 PM '85
CLERK OF COURT
CP AND OS
CHARLESTON COUNTY,
SOUTH CAROLINA

1. Transferred to Jury Calendar.

2. Transferred to NonJury Calendar.

3. Demurrer-Sustained-Overruled.

4. Transferred to Magistrate Court.

XX 5. Struck with leave to restore on good cause shown, Rule 81/82.

6. Continued on Motion of (Plaintiff) (Defendant) until the _____ Term.

The reason is:

(a). Pending Motion: _____

(b). Discovery Incomplete _____

(c). Conflict-Attorney for (Plaintiff) (Defendant) _____

(d). Other: _____

Additional Matters: _____

Presiding Judge, Ninth Judicial Circuit

CHARLESTON, South Carolina

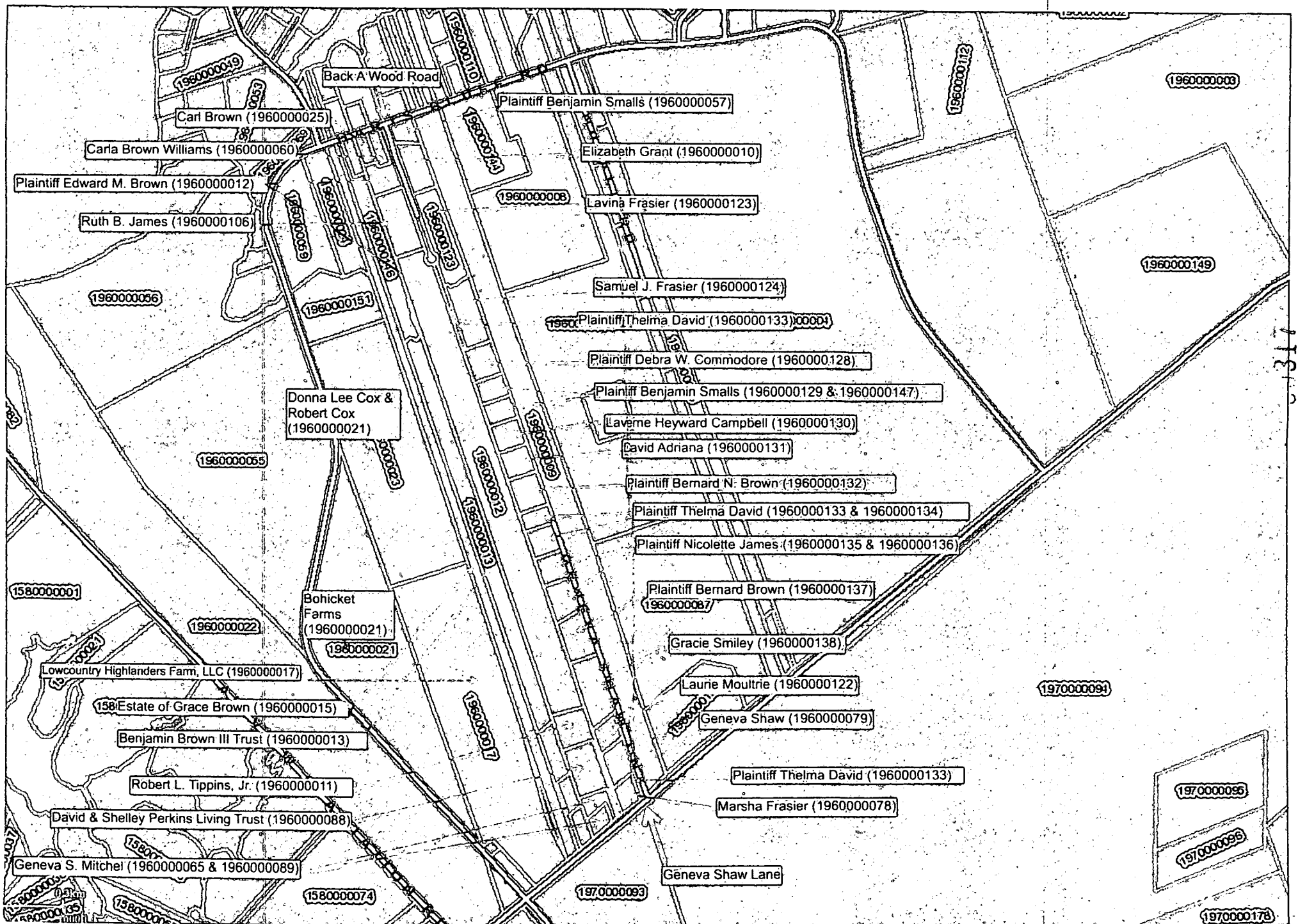
APRIL 3, 19 85



00315

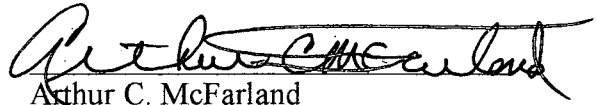
RESPONDENTS' EXHIBIT 31

00316



Certificate of Counsel

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



Arthur C. McFarland
1847 Ashley River Road, Suite 200
Charleston, South Carolina 29407
843.763-3900
Attorney for Appellants

January 14, 2021

RECEIVED

FEB 09 2021

SC Court of Appeals