

RECEIVED

May 23 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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

Appellate Case No.: 2017-001795
Civil Action No.: 2014-CP-40-01805

Raglins Creek Farms, LLC, ...Respondent,

v.

Nancy Dunn Martin, ...Appellant.

RECORD ON APPEAL: VOLUME I OF V

Joey R. Floyd
Wesley D. Peel
Chelsea J. Clark
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Appellant

John W. Wells
Baxley, Wells & Benson, PA
3 The Commons
Lugoff, SC 29078
(803) 438-4200

M. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
(888) 552-1559
Attorneys for Respondent

Index

VOLUME I	1–247
VOLUME II	248–494
VOLUME III	495–741
VOLUME IV	742–988
VOLUME V	989–1236

Orders and Judgments

1. Consent Order of Reference	1
2. Order Denying Motion for Summary Judgment	2
3. Final Order and Form 4	4
4. Form 4 order denying motion to alter or amend	37
5. Order granting new trial	39

Pleadings

6. Summons & Complaint	48
7. Answer & Counterclaim	60
8. Reply to Counterclaim	66

Transcripts and Exhibits

9. Transcript: Motion for Summary Judgment	67
10. Transcript: Trial	104
a. Plaintiff's Exhibit 1	630
b. Plaintiff's Exhibit 2	632
c. Plaintiff's Exhibit 3	633
d. Plaintiff's Exhibit 4	638
e. Plaintiff's Exhibit 5	646
f. Plaintiff's Exhibit 6	651
g. Plaintiff's Exhibit 7	652
h. Plaintiff's Exhibit 8	655
i. Plaintiff's Exhibit 9	656
j. Plaintiff's Exhibit 10	660
k. Plaintiff's Exhibit 11	661
l. Plaintiff's Exhibit 12	662
m. Plaintiff's Exhibit 13	663
n. Plaintiff's Exhibit 14	664
o. Plaintiff's Exhibit 15	665
p. Plaintiff's Exhibit 16	666
q. Plaintiff's Exhibit 17	667

i.	Enlarged legal description.....	668
r.	Plaintiff's Exhibit 18.....	669
s.	Plaintiff's Exhibit 19.....	683
t.	Plaintiff's Exhibit 20.....	684
u.	Plaintiff's Exhibit 21.....	686
v.	Plaintiff's Exhibit 22.....	692
w.	Plaintiff's Exhibit 23.....	693
x.	Plaintiff's Exhibit 24.....	694
y.	Plaintiff's Exhibit 25.....	699
z.	Plaintiff's Exhibit 26.....	702
aa.	Plaintiff's Exhibit 27.....	704
bb.	Plaintiff's Exhibit 28.....	705
cc.	Plaintiff's Exhibit 29.....	706
dd.	Plaintiff's Exhibit 30.....	707
ee.	Plaintiff's Exhibit 31.....	709
ff.	Plaintiff's Exhibit 32.....	713
gg.	Plaintiff's Exhibit 33.....	716
hh.	Plaintiff's Exhibit 34.....	720
ii.	Plaintiff's Exhibit 35.....	723
jj.	Plaintiff's Exhibit 36.....	724
kk.	Plaintiff's Exhibit 37.....	726
ll.	Plaintiff's Exhibit 38.....	727
mm.	Plaintiff's Exhibit 39.....	730
nn.	Plaintiff's Exhibit 40.....	733
oo.	Plaintiff's Exhibit 41.....	737
pp.	Plaintiff's Exhibit 42.....	738
qq.	Plaintiff's Exhibit 43.....	739
rr.	Plaintiff's Exhibit 44.....	740
ss.	Plaintiff's Exhibit 45.....	741
tt.	Plaintiff's Exhibit 46.....	742
uu.	Plaintiff's Exhibit 47.....	743
vv.	Plaintiff's Exhibit 48.....	744
ww.	Plaintiff's Exhibit 49.....	745
xx.	Plaintiff's Exhibit 50.....	746
yy.	Plaintiff's Exhibit 51.....	747
zz.	Plaintiff's Exhibit 52.....	748
aaa.	Plaintiff's Exhibit 53.....	749
bbb.	Plaintiff's Exhibit 54.....	750
ccc.	Plaintiff's Exhibit 55.....	751
ddd.	Defendant's Exhibit 1.....	752

eee.	Defendant's Exhibit 2	753
fff.	Defendant's Exhibit 3	761
ggg.	Defendant's Exhibit 4	762
hhh.	Defendant's Exhibit 5	763
iii.	Defendant's Exhibit 6	771
jjj.	Defendant's Exhibit 7	772
kkk.	Defendant's Exhibit 8	773
lll.	Defendant's Exhibit 9	776
mmm.	Defendant's Exhibit 10	777
nnn.	Defendant's Exhibit 11	837
ooo.	Defendant's Exhibit 12	895
ppp.	Court's Exhibit 1 (excluding exhibits to deposition transcript)	896
11.	Transcript: Motion to Alter or Amend	952

Other Materials or Documents

12.	Defendant's Motion for Summary Judgment	993
a.	Defendant's Memorandum in Support	995
13.	Plaintiff's proposed order denying motion for summary judgment	1016
14.	Defendant's Pre-Trial Brief	1019
15.	Plaintiff's four proposed final orders and cover letter	1039
16.	Defendant's proposed final order and cover letter	1129
17.	Defendant's Motion to Alter or Amend	1160
a.	Defendant's Memorandum in Support	1169
18.	Defendant's Motion for Relief from Judgment	1217
19.	Plaintiff's Motion to Alter or Amend Rule 60(b) Order	1230

Certification of Counsel

20.	Rule 210(g), SCACR Certification	1236
-----	--	------

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

Country Properties, LLC,)

Plaintiff,)

vs.)

Nancy Dunn Martin,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CONSENT ORDER OF REFERENCE

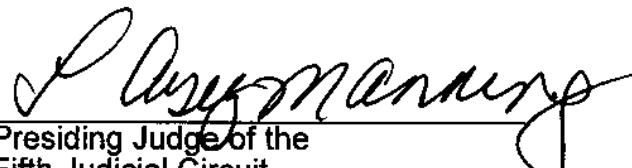
2014-CP-40-1805

FILED
 2014 JUL 28 PM 12:26
 JEANNETTE W. MCBRIDE
 C.C.P. & C.S.
 RICHLAND COUNTY

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

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

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

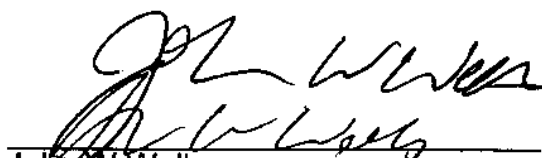

 Presiding Judge of the
 Fifth Judicial Circuit

 South Carolina

Date: July 7, 2014

I CONSENT:


 Joey R. Floyd
 Attorney for Defendant


 John W. Wells
 Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Country Properties, LLC,)
Plaintiff,)
vs.)
Nancy Dunn Martin,)
Defendant.)

IN THE COURT OF COMMON PLEAS

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

**ORDER DENYING MOTION
FOR SUMMARY JUDGMENT**

2015 NOV 10 AM 8:35
CLERK OF COURT
FILED
CLERK OF COURT
FILED

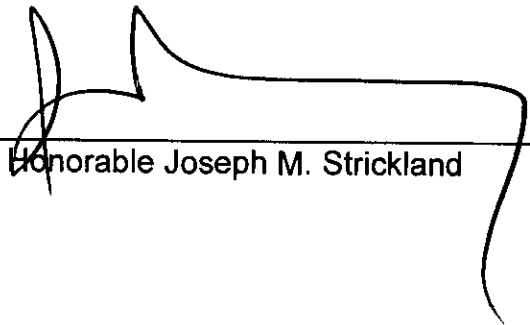
This action is one brought by the Plaintiff to establish his right to use Northeast Shady Grove Road as it proceeds through the lands of the Defendant under various theories including the theory that he has a prescriptive easement over the road and the theory that that road is a public road. The Defendant filed a Motion for Summary Judgment under Rule 56 SCRCP asserting that she is entitled to judgment as a matter of law because the undisputed facts in this case require a judgment for the Defendant.

A hearing was held on October 27, 2015. Joey R. Floyd appeared and argued the Motion for the Defendant. John W. Wells appeared and argued against the Motion for the Plaintiff.

After vigorous arguments were made by both parties supporting their respective positions, I concluded as a matter of law that the factual issues relevant to the establishment or the defeat of a prescriptive easement or a right to use a road because it is a public road are in dispute. I conclude as a matter of law that the facts necessary to establish an easement by prescription or a public road are sufficiently in dispute to deny the Motion for Summary Judgment and to set this case for trial. I conclude as a matter of law that the outcome of this case, like most prescriptive easement cases, will

be determined by its facts, and that those facts are in dispute. Therefore, the Defendant's Motion for Summary Judgment is denied.

AND IT IS SO ORDERED.


The Honorable Joseph M. Strickland

Columbia, SC
Date: Nov. 3, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014- CP-40-1805

Country Properties, LLC

Nancy Dunn Martin

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Master

2097
Judge Code

Date

Sept. 22, 2016

For Clerk of Court Office Use Only

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

John W. Wells, Esq.

Joey R. Floyd, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

ATTORNEY FOR THE DEFENSE
Shavette W. Brinde
 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.

SCRCP Form 4C (03/2013)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

IN THE COURT OF COMMON PLEAS

2014CP4001805 (10)

Final Order

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

PARCEL 1:

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

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

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

PARCEL 2:

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

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

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

TMS #: R38000-03-06

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

TMS# R3800-03-48

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

THE PRESCRIPTIVE EASEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EASEMENT BY GRANT

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

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

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

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

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

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

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

PUBLIC EASEMENT BY DEDICATION

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

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

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

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

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

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

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

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

STATUTE OF LIMITATIONS

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

ADVERSE POSSESSION OF THE EASEMENT BY DEFENDANT

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

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

CONCLUSION

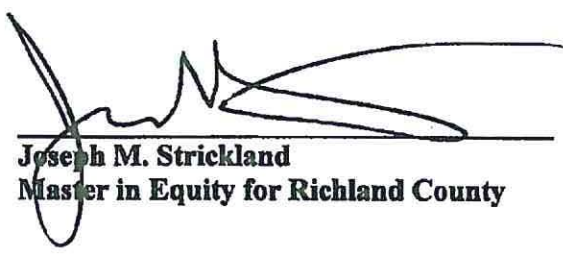
In conclusion the Plaintiff has proved that the disputed road appears on maps, plats and aerial photographs dating back to 1939. It has received public maintenance in the past and use by the public. Those performing work, hunting and fishing under the Plaintiff and his predecessors in title have use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

ORDER

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

1. That the Plaintiff has a private twenty (20) foot wide easement across the lands of the Defendant to use the disputed portion of Northeast Shady Grove Road from the end of county maintenance sign to the Plaintiff's southern property line as shown on the 2004 Gonzales plat, Plaintiff's Exhibit 2. The Defendant is enjoined from obstructing the Plaintiff's use of the road by a locked gate or any other device. To the extent that the Defendant keeps a gate across said road, the Defendant is ordered to provide the Plaintiff with a means of opening the gate such as a key or combination to any lock on the gate within thirty (30) days of the signing of this order. This easement is appurtenant to the tract now owned by the Plaintiff and shall run with the land to the Plaintiff's successors and assigns; and
2. Northeast Shady Grove Road from the end of county maintenance sign to the Plaintiff's southern property line as shown on the 2004 Gonzales plat, Plaintiff's Exhibit 2, is declared to be a public road open to the public for use by the public, provided that Richland County is not required by this order to provide maintenance services to the portion of Northeast Shady Grove Road past its end of county maintenance sign. The Defendant is ordered to remove her gate from this road within thirty (30) days of the signing of this order.

AND IT IS SO ORDERED.



Joseph M. Strickland
Master in Equity for Richland County

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-1805

Country Properties, LLC

Nancy Dunn Martin

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

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

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

ORDER INFORMATION

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

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2014-CP-40-01805
	)	
Country Properties, LLC	)	
	)	
	)	ORDER GRANTING DEFENDANT'S
Plaintiff,	)	RULE 60(b) MOTION
	)	
v.	)	
	)	
Nancy Dunn Martin,	)	
	)	
Defendant.	)	

STATEMENT OF THE CASE

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

Following the issuance of this Court’s order, Defendant appealed to the Court of Appeals on August 22, 2017. On August 27, 2017, Defendant discovered new evidence related to the proceedings. On August 30, 2017, Defendant petitioned the appellate court for leave to file a Rule 60(b) Motion to seek Relief from Judgment or Order before this court. The Court of Appeals granted Defendant’s motion on October 5, 2017.¹ On October 24, 2017, Defendant filed a Rule 60(b) motion with this Court. The parties appeared and argued the Motion on July 18, 2018 and

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

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

BACKGROUND

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

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

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

DISCUSSION

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

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

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

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

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

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

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

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

ORDER

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

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

IT IS SO ORDERED.

-electronic signature page to follow-

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-40-01805

Country Properties, LLC,

Nancy Martin,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: s/Joey R. Floyd
P.O. Box 61110, Columbia, South Carolina 29260

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

Date _____

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:

Columbia, SC 29260

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

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 are approximately 20 lines visible. The paper has a slight shadow on its right side, suggesting it's resting on a surface.

ROA 000046

ROA 000046



Richland Common Pleas

Case Caption: Country Properties LLC vs Nancy Dunn Martin

Case Number: 2014CP4001805

Type: Master/Order/Form 4

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2019-01-26 09:59:16 page 9 of 9

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Country Properties, LLC,

Plaintiff(s)

vs.

Nancy Dunn Martin,

Defendant(s)

ROA 000048
IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40- 1805

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

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

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

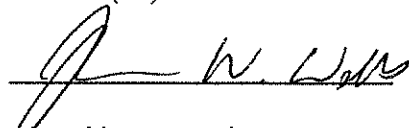
DOCKETING INFORMATION (Check all that apply)

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

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☒ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: 

Date: 3/14/14

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

ROA 000048

FOR MANDATED ADR COUNTIES ONLY

ROA 000049

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

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

ROA 000049

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Country Properties, LLC,)

Plaintiff,)

vs.)

Nancy Dunn Martin,)

Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

2014-CP-40-

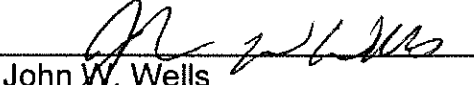
NON-JURY TRIAL REQUESTED

RICHLAND COUNTY
FILED
2014 MAR 18 AM 10:08
JEANETTE E. HARRIS
Clerk, C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED:

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

BAXLEY, PRATT & WELLS, P.A.

BY: 

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

Lugoff, South Carolina

Dated: March 14, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Country Properties, LLC,)
Plaintiff,)
vs.)
Nancy Dunn Martin,)
Defendant.)

IN THE COURT OF COMMON PLEAS

COMPLAINT

2014-CP-40-

NON-JURY TRIAL REQUESTED

RICHLAND COUNTY
FILED
2014 MAR 18 AM 10:08
JEANETTE L. HERNIMAN
CLERK
C.C.P. S.C.

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

1. That the Plaintiff is a limited liability company formed under the laws of the State of South Carolina with its principal place of business in the County of Richland, State of South Carolina.
2. That the Defendant is a citizen and resident of the County of Richland, State of South Carolina.
3. That the Plaintiff is the owner of a certain tract of land located partly in Kershaw County and partly in Richland County which was conveyed to the Plaintiff by deed of Pine Ridge Investments, LLC, dated March 11, 2009, and recorded in the RMC office for Richland County in Book "1515", at page 1554, the same being also filed in the ROD office for Kershaw, the tract being described as follows:

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

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

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

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

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

38000-03-08 and 38000-03-08

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

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

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

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

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

*gms
#3*

TMS #: R38000-03-06

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

TMS# R3800-03-48

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

- 
5. That Shady Grove Road also known as Camp Road is a public dirt road extending from U.S. Highway 601 and running in an easterly direction through the above described property of the Defendant to the above described property of the Plaintiff and extending through the Plaintiff's above described property to property now owned by James L. Guy, II.
 6. That Shady Grove Road has been in existence serving as access to the Plaintiff's property for approximately one hundred (100) years, and that the entire length of Shady Grove Road through the property of the Defendant, the property of the Plaintiff and the property of Guy has been publicly maintained at times.
 7. That the Defendant has lately placed locks on a gate obstructing Shady Grove Road and blocking the Plaintiff's access via Shady Grove Road to its above described property, said gate being on the property of the Defendant described above.

FOR A FIRST CAUSE OF ACTION

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

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

9. That the former deed mentioned in Paragraph 8 reserved to the Plaintiff an easement over the Defendant's property described as Parcel 2 in Paragraph 4, and the latter deed referenced in Paragraph 8 granted the Plaintiff an easement over the Defendant's property described as Parcel 1 in Paragraph 4.
10. That the Plaintiff is the owner of a deeded right of way across and through the above described property of the Defendant, and the Defendant's property is encumbered by the said right of way, known as Shady Grove Road by virtue of the deeds mentioned in Paragraph 8.
11. That the Plaintiff is entitled to a declaratory judgment declaring that the Plaintiff has a permanent deeded right of access to the road known as Shady Grove Road through the property of the Defendant.

FOR A SECOND CAUSE OF ACTION

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

13. That the Plaintiff, its predecessors in title and others have used Shady Grove Road from Highway U.S. 601 to the Plaintiff's property line for ingress and egress, which use has been continuous and uninterrupted for multiple twenty (20) year periods including the most recent twenty (20) years prior to the filing of this complaint; which use has pertained to a road that has been mentioned and identified in deeds going back to November 18, 1918, and is identified and shown on Richland County tax maps which identify the thing enjoyed; and which use has been adverse or under a claim of right.
14. That the use of the road by the Plaintiff, the Plaintiff's predecessors in title and others has been open and notorious during the prescriptive easement periods.
15. That the Plaintiff and the Plaintiff's predecessors in title have used Shady Grove Road under a claim of right, believing that they had the right to use the road because of the deeds set forth in the First Cause of Action, and because of the public maintenance of the road.
16. That the Plaintiff is informed and believes that it has a prescriptive easement to use Shady Grove Road as access to the Plaintiff's property from U. S. Highway 601 to the Plaintiff's property line.
17. That the Plaintiff is informed and believes that the Plaintiff is entitled to a declaratory judgment declaring that the Plaintiff has a permanent prescriptive easement to the road known as Shady Grove Road leading from U. S. Highway 601 to the Plaintiff's

property line.

FOR A THIRD CAUSE OF ACTION

18. That each and every allegation of the First and Second Causes of Action and the recitation of facts above is realleged as strongly as if restated verbatim.
19. That the Plaintiff is informed and believes that the Plaintiff is entitled to a permanent injunction prohibiting the Defendant from blocking or obstructing Shady Grove Road based on the Plaintiff's rights to use the said Shady Grove Road acquired under the deeds cited in Paragraph 8 above.

FOR A FOURTH CAUSE OF ACTION

- 
20. That each and every allegation of the First, Second and Third Causes of Action and the recitation of facts are repeated as strongly as if restated here verbatim.
 21. That the Plaintiff is informed and believes that the Plaintiff is entitled to a permanent injunction prohibiting the Defendant from blocking or obstructing the Plaintiff's access to the Plaintiff's property via Shady Grove Road based on the Plaintiff's prescriptive easement to use Shady Grove Road.

FOR A FIFTH CAUSE OF ACTION

22. That each and every allegation of the First, Second, Third, and Fourth Causes of Action and the recitation of facts are repeated as strongly as if restated here verbatim.
23. That Shady Grove Road, also known as Camp Road is a public road, a portion of

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

24. That the property owners along Shady Grove Road made a dedication of the road to the public for public use.
25. That the act of scraping and maintaining Shady Grove Road by Richland County and Kershaw County demonstrates a public acceptance of the dedication of the road.
26. That upon information and belief, the Plaintiff is entitled to declaratory judgment declaring that Shady Grove Road is a public road from Highway 601 to the Plaintiff's property line, that the Plaintiff has the right to use Shady Grove Road for ingress and egress because of its public character; and granting the Plaintiff a permanent injunction prohibiting the Defendant from obstructing Shady Grove Road because of the public character of Shady Grove Road.

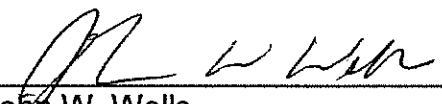
WHEREFORE, the Plaintiff prays that the Court will issue its Order as follows:

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

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

3. Enjoining the Defendant from obstructing Shady Grove Road based on the Plaintiff's deeded easement and right to use Shady Grove Road acquired by deed.
4. Enjoining the Defendant from obstructing Shady Grove Road by virtue of the Plaintiff's prescriptive easement and right to use Shady Grove Road acquired by operation of law.
5. Granting the Plaintiff a declaratory judgment that Shady Grove Road is a public road, and the Plaintiff, as a member of the public, has the right to use Shady Grove Road from Highway U.S. 601 to the Plaintiff's property line, and enjoining the Defendant from blocking or obstructing Shady Grove Road.

BAXLEY, PRATT & WELLS, P.A.

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

Lugoff, South Carolina

Dated: March 14, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Country Properties, LLC,

Plaintiff,

vs.

Nancy Dunn Martin,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-1805

ANSWER & COUNTERCLAIM

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

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

FOR A FIRST DEFENSE
(General Denial)

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

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

3. Defendant admits the allegations in Paragraph 2.

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

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

the remaining allegations, if any, of Paragraph 4.

6. Defendant denies the allegations of Paragraph 5.

7. Defendant denies the allegations of Paragraph 6.

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

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

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

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

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

13. Defendant denies the allegations in Paragraph 19.

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

15. Defendant denies the allegations in Paragraph 21.

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

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

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

FOR A SECOND DEFENSE

(Rule 12(b)(6), Failure to state a Cause of Action)

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

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

FOR A THIRD DEFENSE

(No Easement)

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

FOR A FOURTH DEFENSE

(Easement is Unnecessary)

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

FOR A FIFTH DEFENSE

(Failure to Define Location of Easement)

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

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

FOR A SIXTH DEFENSE

(No Continuous and Uninterrupted Use for 20 years)

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

FOR AN SEVENTH DEFENSE

(No Adverse Use or Use Under Claim of Right)

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

FOR AN EIGHTH DEFENSE

(Abandonment)

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

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

FOR A NINTH DEFENSE

(Statute of Limitations)

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

FOR A TENTH DEFENSE

(Laches)

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

FOR AN ELEVENTH DEFENSE
(Waiver)

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

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

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

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

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

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

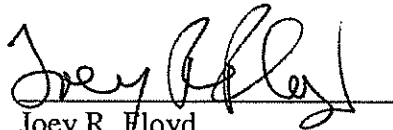
35. The Defendant's use of the various roads, along with the Defendant's predecessor in title's use of the various roads, on the Defendant's property have been continuous, hostile, open, adversarial, notorious and exclusive.

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

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

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

- (a) That there is no easement across the Defendant's property;
- (b) That in the event there is an easement, the Plaintiff and/or the Plaintiff's predecessor's in title have abandoned said easement;
- (c) That in the event there is an easement, the Defendant and/or her predecessor's in title have extinguished any easement by way of adverse possession and/or prescription by the servient tenement; and
- (d) That Plaintiff's Complaint should be dismissed with attorneys' fees and costs taxed to the Plaintiff.



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

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

May 21, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Country Properties, LLC,)
Plaintiff,)
vs.)
Nancy Dunn Martin,)
Defendant.)

IN THE COURT OF COMMON PLEAS

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

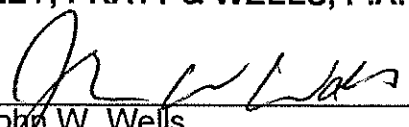
REPLY

The Plaintiff would respectfully show that:

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

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

BAXLEY, PRATT & WELLS, P.A.

BY: 

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

Lugoff, South Carolina

Dated: 5/28/14

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 COUNTY OF RICHLAND) C/A No. 2014-CP-40-1805

Country Properties, L.L.C.,)
)
 Plaintiff,)
)
 v.)
)
 Nancy Dunn Martin,)
)
 Defendant.)
 -----)

COPY

HEARING

Tuesday, October 27, 2015
 12:00 p.m. - 12:45 p.m.

The hearing before the Honorable Joseph M. Strickland, Master-In-Equity for Richland County, was taken at 1701 Main Street, Courtroom 2D, Columbia, South Carolina on the 27th day of October, 2015 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

APPEARANCES

John W. Wells, Esquire
 Baxley, Pratt & Wells, P.A.
 3 The Common At Lugoff
 Lugoff, South Carolina 29078
 Attorney for the Plaintiff

Joey R. Floyd, Esquire
Wesley D. Peel, Esquire
 Bruner, Powell, Wall & Mullins, L.L.C.
 1735 St. Julian Place, Suite 200
 Columbia, South Carolina 29204
 Attorneys for the Defendant

INDEXMOTION FOR SUMMARY JUDGMENT:

ARGUMENT BY MR. FLOYD 3
 ARGUMENT BY MR. WELLS 17

MOTION FOR DE BENE ESSE DEPOSITION:

ARGUMENT BY MR. WELLS 33
 Certificate 37

EXHIBITS

(No exhibits were admitted during the hearing.)



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN

3

1 THE COURT: Okay this is civil action number 2014-
2 CP-40-1805. Country Properties, LLC against
3 Nancy Dunn Martin. Our notes indicate that
4 this is a motion by the Defendant for summary
5 judgement. Mr Floyd, if you could get started
6 by telling me what this case is about, who's
7 suing who for what?

8 MR. FLOYD: Okay, Your Honor. May I approach, Your
9 Honor?

10 THE COURT: Yes.

11 MR. FLOYD: I don't know if you have this in your
12 files, I want to make sure you have it, it is
13 our Memorandum in support of our Motion for
14 Summary Judgement.

15 THE COURT: Okay. Thank you.

16 MR. FLOYD: For use of the laws in the motion that
17 was filed. Here is a case that I'm going to be
18 relying on heavily today as we get started,
19 Your Honor.

20 THE COURT: Okay. Thank you.

21 MOTION FOR SUMMARY JUDGMENT - ARGUMENT BY MR. FLOYD:

22 MR. FLOYD: The best place to start, Your Honor, is,
23 I guess, there are basically three questions
24 that we want answered in this case and I'll get
25 into telling you a little more about it. The



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN

4

1 Plaintiff in this case is Country Properties
2 LLC. Mr. Podell is one of the members of the
3 LLC. He and his wife he had a former member of
4 LLC, but Ms. Campbell is now deceased and his
5 wife has taken her place. Nancy Martin is the
6 Defendant. She's right here with me and I'll
7 get in to describing that. But there's
8 basically three questions and those are, does
9 the permissive intermittent use of a locked
10 gate give rise to a prescriptive easement;
11 does a property owner have to post a guard by
12 a locked gate on his or her property, 24/7, to
13 show the world he or she claims the rights to
14 use that road behind a locked gate; and does
15 the locked gate -- the use of a locked gate, by
16 unknown persons, give rise to a prescriptive
17 easement. And the answer to that is no.
18 Here's a diagram that we had made, Your Honor,
19 to give you an idea of where this property is
20 located. Kind of give you a perspective of,
21 not only the Plaintiff's property, but my
22 client's property, Nancy Dunn Martin. For
23 point of reference, this is Highway 601
24 (indicating), and this is on the County Line
25 between Richland County and Kershaw county.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN

5

1 The foundry -- or the county line being Raglins
2 Creek. The Plaintiff's property at that line,
3 on this blow up in red -- and I've identified
4 it as being the Plaintiff's property. And
5 there's a creek that sort of winds itself
6 through the Plaintiff's property and the upper
7 portion of that being Kershaw county, and the
8 lower portion of that being Richland county.
9 This exhibit is actually Exhibit A in your
10 notebook that you have there as a demonstrative
11 exhibit. And my client's property is at the
12 property outlined in blue here (indicating).
13 It's Nancy Dunn Martin's property here
14 (indicating). And she owns about 276 acres.
15 And the Plaintiff owns about 1,023 acres here
16 (indicating). And I think it's fair to say
17 that the entire issue or the subject matter of
18 this dispute centers around a locked gate key
19 that's on Ms. Martin's property. There is a
20 short public road here that leads to a number
21 of homes on this property. There are no
22 residences beyond the gate. This little green
23 dot here (indicating) signifies the end of
24 county maintenance. This gate right here
25 (indicating) that we've shown on this Exhibit



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN

6

1 was installed in 1970. And it's been
2 continuously locked since 1970. Ms. Martin
3 leased her property to the Dunns Mountain
4 Hunting Club, actually her father, her
5 grandfather, her grandmother leased it to them
6 starting about a number of years ago. But it
7 was continuously leased to the Dunns Mountain
8 Hunting Club from 1970 until 2013. This gate
9 has a number of locks. And the way I describe
10 it in my memorandum is it has a chain links
11 with -- from time to time it would have
12 different locks that kind of intertwine with
13 the chain links so that different folks could
14 have access. For example, the Martin family
15 forester had a key, Santee Cooper had a key,
16 and the Dunns Mountain Hunting Club had a key.
17 And from time to time, other folks, for various
18 reasons, would put locks on there. And there's
19 testimony that, from time to time, the Martin
20 family or the Dunns Mountain Hunting Club,
21 along with Mr. Martin or Ms. Martin, would do
22 a lock cleaning, and they would take off all
23 the unwanted locks. The Plaintiff purchased
24 this property in 2009 and he testified that he
25 used a combination lock that was on it that was



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 the combination was given to him by the former
2 owner. He replaced that lock with his lock.
3 So for 44 years this gate was locked before
4 this lawsuit was filed. And this lawsuit filed
5 in 2014. The Plaintiff has at least three
6 points of access to his property. One off of
7 Highway 601 and two points of access off of Old
8 English Road. There's also a dam and a road
9 going across Raglins Creek here. And you can
10 see the (inaudible) kind of depicted on this
11 blow-up here, where he can access the Richland
12 County property. I think in his memorandum Mr.
13 Wells has indicated that the floods earlier
14 this month blew out the dam. But he when he
15 bought the property he did some substantial
16 improvements to the dam, he can certainly build
17 it back. I don't know the status of that right
18 now just because I haven't been out there but
19 he's indicated that it has, in fact, blown out.
20 So the Plaintiff has access to all points on
21 his property. He would maintain that he
22 doesn't have access, but he clearly does
23 because there is a road -- there was a road and
24 there was a dam there that he can certainly
25 rebuild. What he's asking for in this case is



1 to get my client to unlock the gate that's been
2 locked for 44 years and to get a fourth point
3 of access. Another gate here (indicating),
4 gate two on Mr. Podell's property, Country
5 Property's property, has always been right
6 there and it's always been locked during the
7 tenure of Ms. Martin's ownership of the
8 property and that sort o stuff. But I show
9 that only to show there was a cutoff there. In
10 this case, it's strikingly similar to the Bundy
11 case which I handed you. I don't know if the
12 Court's familiar with it but I'll briefly go
13 into the facts. Mr. Wells represented Mr.
14 Shirley in that case, where Mr. Bundy bought
15 some property and there was a -- there were
16 some issues regarding the use of road. I
17 picked out at least six points that I could say
18 are almost identical to this case. And that is
19 the plat in the Bundy case shows a continuous
20 dotted line. Mr. Wells is going to tell you
21 about the plat that shows a dotted line for
22 access. The maintenance extended from the
23 Sumter/Kershaw county line to the Miller
24 property which is the last occupied residence.
25 Almost identical, that's where the end of



1 county maintenance goes on this. There was a
2 lock cable on two points at the entrance of the
3 property. Again, there's a locked gate, been
4 locked for 44 years. Mr. Shirley used a key
5 which was given to him by his father, by the
6 South Carolina Department of Natural Resources
7 game warden, to unlock the gate. After Mr.
8 Bundy purchased the property Shirley asked for
9 and got permission to erect a gate on the road.
10 And in this case -- I didn't include this in my
11 memorandum but I think it's important enough,
12 once I started going through it, may I
13 approach, Your Honor?

14 **THE COURT:** Yes, sir.

15 **MR. FLOYD:** Mr. Podell actually asked for a key to
16 the gate shortly after he purchased the
17 property. And my question, you will see there
18 on page 124, have you ever asked anyone for
19 keys, answer yes. If you flip over, I go
20 through this exchange with him. And he said,
21 he drove around, he thinks, around Old English
22 to their hunting camp to ask them if they had
23 a key or would they open the gate and leave it
24 open. And then on page 126 and I asked him, is
25 that the same conversation that you asked him



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 10

1 for a key. And he said, the same day, yes.
2 And then he goes on to say that, at first, he
3 said he would, and in fact he called me, I
4 think, the next day or day after and he said,
5 well I've been inquiring about this and I don't
6 think it's a good idea for me to give you a
7 key. I just don't want to get involved, that's
8 what the person said back to Mr. Podell. Mr.
9 Shirley testified that he believed he had a
10 right to use the road because he thought it was
11 a continuation of Saxon Road. Again, Mr.
12 Podell has testified that he believes he had a
13 right to use this road. And in Bundy vs.
14 Shirley the Court found that permission defeats
15 a claim to prescriptive easement because the
16 disputed property is no longer deemed adverse
17 or under a claim of right. What we have to
18 keep in mind is there's a locked gate there,
19 it's been there for 40 years. That's a signal
20 to the world that somebody behind that gate
21 claims a right to maintain and keep a locked
22 gate there at that property. Just like, in
23 Bundy vs. Shirley, Mr. Podell, contrary to his
24 claim that he has a right, asked for permission
25 to use that gate, because he asked for a key.



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 11

1 So going on through the prescriptive easement,
2 I'm certain the Court's familiar with this
3 prescriptive easement, you have to show three
4 things: continued and uninterrupted use or
5 enjoyed a right for a period of 20 years; the
6 identity of the thing enjoyed; and the use or
7 enjoyment, which is either adverse or under a
8 claim of right. The Supreme Court took a look
9 at this -- South Carolina Supreme Court took a
10 look at this and said Bundy repeatedly argued
11 before the Special Referee, that permissive use
12 precludes the establishment of a prescriptive
13 easement. No different. They relied on a case
14 called Williamson vs. Eb, and it's in this
15 case, for the proposition that permissive use
16 of property cannot write an end easement by
17 prescription. The presence of locks on that
18 gate since 1970 were all with the permission of
19 the Martin family. Nobody ever brought suit,
20 nobody did anything. The landowner implicitly
21 acknowledged in this case that the -- in the
22 Bundy v. Shirley, reporting a Paine case the
23 landowner implicitly acknowledged that the
24 railroad company's right, which was
25 inconsistent with the landowner's claim of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 12

1 right. Again by asking for permission, Mr.
2 Podell, for Country Properties, acknowledged
3 Ms. Martin's right for that gate and in fact
4 asked permission. Permissive use can not write
5 an end to an easement by prescription -- or
6 prescriptive easement. And they in fact tell
7 that by contacting Bundy regarding the gate,
8 Shirley implicitly acknowledged Bundy's right
9 to the property, thus defeating Shirley's own
10 claim of right. So that is the first grounds
11 upon which we move for summary judgment, and
12 that is to say any use of a locked gate from
13 1970 to 2014, before this lawsuit was filed,
14 was all with permissive use. It's a signal to
15 the world, I own this property, I claim it as
16 mine, if you want to use it, you've to get
17 permission. In fact the deposition testimony
18 all goes in that direction as well. Next
19 ground that we move for is the statue of
20 limitation. Under 15-3-380 there's a 40-year
21 statue. Here the Defendant holds legal title
22 to the property for which the Plaintiff seeks
23 an entrance and easement. The installation of
24 this gate in 1970 started that 40 year statue.
25 And that statue of limitations expired in 2010.



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 13

1 Again, this lawsuit was filed in 2014. Under
2 15-3-360 it's a one and ten. I call it a one
3 and ten. The last time the Plaintiff entered
4 through the Defendant's gate was in 2009,
5 meaning that the Plaintiff should have
6 commenced this lawsuit in 2010 to satisfy the
7 first requirement since the locked gate was
8 installed in 1970. And actually should have
9 been commenced before 1980. And under 15-3-340
10 the ten-year statute. The Plaintiff or, it's
11 predecessor in interest, should have commenced
12 this action on or before 1980 because the
13 locked gate was erected in 1970 and the
14 Plaintiff's predecessors took no action,
15 effectively acquiescing to the Martin family
16 their claim to that land behind that gate. The
17 last ground upon which we've moved -- or the
18 next to last, is adverse possession. The
19 continuous hostile open action and notorious
20 and exclusive possession of that. The Martin
21 family, again, locked out the world when the
22 gate was installed. That locked gate checks
23 off every element. It's continuous, it's
24 hostile, it's open, it's adverse, it's
25 notorious and it's exclusive. Clearly it meets



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 14

1 all the time frames set forth in the case law
2 of South Carolina of being adverse possession.
3 Mr. Wells has also said that this road is a
4 public road, it's a dedication. He calls it an
5 ancient farm road. I have a little different
6 interpretation of ancient farm road. While it
7 is -- does give the appearance of a being road,
8 there's no mention of this locked gate
9 throughout his files. Which I'll get to that
10 directly. But there's no evidence in the
11 record that this private dirt road on the other
12 side of this locked gate has ever been publicly
13 maintained. It's physically impossible for the
14 county to maintain that road behind the gate
15 because it's a locked gate. And the hunting
16 club has maintained all the roads on Ms.
17 Martin's property, they've testified to that.
18 Now going into Mr. Wells, his brief and motions
19 and affidavit -- or his brief and affidavits
20 that he's submitted, the affidavits that he's
21 submitted say nothing more than, I've used that
22 road on occasion, or I used that road by using
23 this person's permission, that person's access,
24 this is how I got in. In fact, they all access
25 the road through a locked gate with the



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 15

1 permission of the property owner because the
2 property owner has given his or her permission
3 to have a lock on the gate. In some instances
4 they were just sneaky about the way they got in
5 there. They just used somebody else's
6 combination lock that the owners may not have
7 even known about. The affidavit of Gordon
8 Baker specifically mentions that he had to
9 access this property through a locked gate.
10 Let me see, the Plaintiff acknowledges, in his
11 memorandum, that they had accessed this -- his
12 property in Richland County by way of the dam.
13 He flat out says they accessed the property
14 through Richland County in Richland County by
15 going across the dam. Now that they can't
16 because the dam's been blown out. Again Mr.
17 Podell significantly improved that dam after
18 the purchase of this property. So, in
19 conclusion, you don't have to reach any of that
20 to get to this conclusion besides knowing that
21 this gate's been locked for 44 years, the
22 Plaintiff has no rights to use the dirt road
23 beyond the locked gate, and that the Bundy v.
24 Shirley case says, when you've got a locked
25 gate, that's notice to the world that the



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 16

1 person behind it owns that property behind that
2 gate is allowing people to use that gate with
3 permission only. And that permission is
4 subject to revocation at any time. If any of
5 the predecessors in interest to the Plaintiff's
6 title truly had a beef with it they should have
7 filed a suit long, long ago. The statue of
8 limitations has expired, Ms. Martin enjoyed
9 this property by not having people claiming --
10 or not even, maybe, claiming but not having
11 people use it. Because as you can see it
12 slices right through the middle of her
13 property. and that's why they put a gate up
14 there, 40 years ago, to maintain their property
15 rights. And I think that's about it, Your
16 Honor, I'll be happy to answer any questions
17 that you have, I think I've covered the ground
18 pretty well.

19 **THE COURT:** Let me ask counsel for the Plaintiff,
20 are you going to focus on the statue of
21 limitations argument?

22 **MR. WELLS:** Yes, Your Honor.

23 **THE COURT:** All right, would you address that first?

24 **MR. WELLS:** Yes, Your Honor.

25 **THE COURT:** All right.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 ARGUMENT BY MR. WELLS:

2 MR. WELLS: There is case law in South Carolina that
3 the statue of limitations cannot bar an
4 easement by prescription. And that case, which
5 I can hand up, is Parkins vs. Dunham; it's an
6 1848 case. And what the Court ruled in Parkins
7 vs. Dunham is that the prescriptive easement is
8 an incorporeal hereditament. That is, it is an
9 intangible thing. And it cannot be possessed
10 by the property owner or the owner of the
11 thing, because it is an intangible right. And
12 so the statue of limitations cannot apply to
13 the prescriptive easement. The only case in
14 South Carolina history where a statue of
15 limitations has ever been applied to a
16 prescriptive easement is Bowen vs. Team which,
17 by the way, was a Kershaw county case from
18 1853. They applied a 10 year statue. That was
19 the ten-year statue for recovering real estate
20 in that time. But at that time the ten-year
21 statue applied to a right whereas the modern
22 day 15-3-340 applies to the ownership of land,
23 ownership of real estate. Bowen vs. Team
24 applied a ten-year statue and, of course, we
25 have produced evidence of adverse use of this



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 18

1 road within ten years of the filing of the
2 Summons and Complaint. Summons and Complaint
3 was filed in 2014, so that takes us back to
4 2004. And we have affidavits in the file from
5 Mark Mills, we have Jim Podell's deposition, we
6 have Claude Campbell's deposition, we have
7 Angus LaFaye, we have Gordon Baker, all of
8 these people say they used this road without
9 any permission from the Martins during this
10 ten-year period. So the statue of limitations
11 has not run against this Plaintiff. The other
12 statue which, is 15-3-360, has never been
13 applied in a prescriptive easement case. It
14 cannot apply to a prescriptive easement case
15 because it requires the suit to be filed within
16 one year of the entry upon which the claimant
17 is relying. And the claimant in a prescriptive
18 easement case has to rely and is forced to rely
19 on a series of entries going back 20 years. He
20 can't file a suit after each continuous entry
21 that he relies upon to stake his claim. I
22 could not find where 15-3-360 has ever been
23 applied in any case ever in South Carolina
24 history. But it cannot apply to a prescriptive
25 easement because we are forced to rely on a



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 19

1 series of entries, not just one entry. We're
2 not here today to decide what the facts are in
3 this case. We're only here today to decide
4 whether there are disputed facts in this case.
5 And all of the facts that Mr. -- that the
6 Defendant relies on are disputed. First of
7 all, and we cited this page two of our brief,
8 even though a gate was installed in 1970, which
9 we don't dispute that, the gate was not always
10 locked or even shut. And there are two
11 witnesses to that which are James Guy, his
12 deposition is cited in our brief, and Mark
13 Mills. So the gate was not even always shut.
14 But we have produced affidavits from these
15 witnesses that go back through time, over our
16 20-year period, that they used this road
17 without asking any permission from the Martins
18 during this period, including Mr. Podell, Mr.
19 Campbell, Mr. Mills, Mr. Guy who owned -- he
20 was -- owned a part of our property they were
21 predecessors to title to part of it, Mr. Angus
22 LaFaye, who was a high-up forester in Milliken
23 Forestry, Gordon Baker, Billy Cate, Harold
24 Pickerell, Cecil Brazell, we've covered the
25 bases for our predecessors to title for 20



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 20

1 years. So there are disputes -- there is a
2 dispute as to whether this property was used in
3 an adverse way. The Defendant has said that --
4 they asked the question, do you have to guard
5 the gate 24/7. Well you do if that's the only
6 way to stop prescriptive easement use. Because
7 if we show adverse use -- it doesn't matter how
8 it happened, if we show adverse use, over our
9 20-year period, then we prevail on the
10 prescriptive easement. Now, as far as the
11 county maintenance, Randy Byrd, whose
12 deposition has been taken, it's cited in the
13 brief, he testified that Richland County is of
14 the opinion that this is a prescriptive
15 easement. That's how they maintain it. They
16 don't have a written easement to maintain the
17 part that they maintain, which is 2,900 feet.
18 So Richland County believes that this is a
19 prescriptive easement. They stop at the last
20 house where the last boater lives. That is an
21 economic and political decision as to where to
22 turn the motorway around. That decision, based
23 on economics and political considerations, does
24 not control whether there is a prescriptive
25 easement on Shady Grove Road. We maintain that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 21

1 Richland County thinks it is a prescriptive
2 easement, Jamie Guy, who is cited in his
3 deposition, he thinks it's a prescriptive
4 easement. The Plaintiff thinks it's a
5 prescriptive easement. We called Mark Mills
6 who did the survey of it and he thinks it's a
7 prescriptive easement. Everybody thinks it's a
8 prescriptive easement except Nancy Martin. And
9 so we contend that there are factual disputes
10 as to the use of this road, the nature of the
11 use, over actually 70 years. We've shown you
12 the ariel photograph of this thing from 1943.
13 This road's been in existence. It has been
14 resistant to overgrowth by use since 1943.
15 There's actually testimony in Jamie Guy's
16 deposition that this thing was even built or
17 improved by the CCC which was the Civilian
18 Conservation Corp during the Roosevelt
19 administration. That's where it came from. So
20 it's a federal highway. But we have produced
21 the affidavits, we have not relied on the
22 pleadings. We have produced the affidavits and
23 the deposition testimony that there were
24 adverse users. But we didn't do anything -- we
25 produced no testimony better than the testimony



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 22

1 of Gary Wessinger. Gary Wessinger who was the
2 Defendant's witness. He was asked by the
3 Defendant's attorney, did anybody use northeast
4 Shady Grove Road without Mr. Martin's
5 permission during your tenure out there at the
6 Dunns Mountain Hunting Club, and this is from
7 about 1970 2012. And Mr. Wessinger testified,
8 I'm sure they did, because like I say, every
9 once in a while, we would have to have a lock
10 cleaning. It would get to be so many on there
11 nobody knew who they was, nobody would own up
12 to them. So he's testifying that adverse users
13 were putting their locks on this gate, and they
14 couldn't control it. But all I think we have
15 to produce is one person to say I used that, or
16 the Plaintiff or one of his predecessors in
17 title, during the 20-year period, in order to
18 open that up as a question of fact -- a
19 disputed question of fact in order to defeat a
20 summary judgment motion. The trial is where we
21 settle all this and decide whether we can prove
22 adverse use through this period, not the
23 summary judgment motion, thank you.

24 **THE COURT:** Okay. Mr. Floyd?

25 **MR. FLOYD:** Briefly. Just one thing, one fact that



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 23

1 he keeps leaving out and that is the adverse
2 use. It can't be adverse if it is with the
3 permission of the owners. Randy -- let me
4 clarify this about Northeast Shady Grove Road.
5 This was an exhibit, this and the memorandum.
6 Just to make sure we're all clear on the
7 prescriptive easement portion of Northeast
8 Shady Grove Road, there might have been a
9 little confusion there but I want to make sure.
10 During Mr. Byrd's testimony he testified that
11 that portion of the road that the county
12 maintains is a prescriptive easement, not this
13 portion (indicating) of the road on Ms.
14 Martin's property. And as you can see, on this
15 exhibit from his deposition, he produced this
16 at his deposition to show me where the SCDOT
17 had it's roads, that's the heavy dark line up
18 there on the McCords Ferry, Highway 601, and he
19 showed me the county unpaved road. And then
20 it's a private road, it's a blue line, that
21 goes all the way through Ms. Martin's property,
22 so I thought that would be important. But it's
23 in the memorandum as well, it's just important
24 enough that I thought I would point that out.
25 That is, that can be found in Exhibit F as part



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 24

1 of Exhibit A. So there is a portion of
2 Northeast Shady Grove Road, that portion of
3 which the county maintains is a prescriptive
4 easement. Ms. Martin doesn't object to that,
5 up to the end of county maintenance side. And
6 the Mills group, he mentioned the Mills group.
7 Exhibit D is a survey that they preformed for
8 the prior owner of Gonzales Land and Timber.
9 And again, just like I told you, just like
10 Bundy v. Shirley, there's a dotted line shown
11 going through Ms. Martin's property. But
12 there's nothing on this plat right here
13 (indicating) that says there's an easement
14 going through her property. But he did pick up
15 on the easement -- if you look about the middle
16 of the page, and I'd be glad to give the Court
17 a bigger copy of this, he did pick up the
18 easement that goes through Mr. Podell - Country
19 Property's property back to Mr. Guys property.
20 So there is no indication of any sort of
21 easement on this. And going back to whether or
22 not this gate's locked, the best evidence I
23 could find is the affidavit of Tim Dargan,
24 where he attached his bid, the invitation to
25 bid, on some property he tells people that they



1 can use this road. And in fact he says, locked
2 gates, they can access -- locked gates have
3 combination locks. So this business about
4 whether or not the gates were locked, that's
5 all a red herring. It's leased to a hunting
6 club, of course the gates are going to be open
7 sometimes when they're hunting, it's going to
8 have to be open. But this affidavit that he
9 submitted is pretty indicative it's a locked
10 gate it has been a locked gate since 1970 so
11 that's all.

12 **THE COURT:** Mr. Wells?

13 **MR. WELLS:** Judge, I'm glad that Mr. -- my opponent,
14 reminded me about Tim Dargan. Tim Dargan was
15 the seller of the land back when Robert Sheheen
16 was the trustee of this property for the Lloyd
17 trust. And he, when he was going to sell it,
18 they were going to have an auction. And he
19 included his combination for his lock on the
20 gate in the request for bids for the auction.
21 So he published to the world the number, for
22 all the adverse users who wanted to use it, to
23 go back and forth in there through the gate.
24 So that's how tight the security was that this
25 Defendant had on that gate. It's being



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 26

1 published in a request for bids, a combination
2 lock, how to get back there. He mentioned
3 Bundy vs. Shirley and that case is extremely
4 painful to me as I was on the other side of
5 that. But I do think it is necessary to go
6 over why Shirley lost that easement, and it's
7 on page 7 of the case that he's given you. But
8 the first thing was that the servient tract of
9 Bundy in that case was leased to the SC DNR for
10 game management purposes back in the 80s and
11 that was --

12 **THE COURT:** What do the initials mean, the acronym?

13 **MR. WELLS:** The Department of Natural Resources and
14 the game wardens and all that.

15 **THE COURT:** Okay. I see.

16 **MR. WELLS:** They have the game management lands
17 where the public can hunt. And the Supreme
18 Court, on page seven says, first of all he was
19 not an adverse user because he had permission
20 as a member of the public to use the hunting --
21 go across the hunting property. That was his
22 problem number one. His problem number two was
23 that the friendly game warden back at that time
24 gave Brett Shirley's daddy a key so they could
25 use the gate. They had a gate across the road



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 27

1 that was locked during non-hunting season, when
2 hunting season was over. And so the Supreme
3 Court says number two, problem number two, game
4 warden gave Brett Shirley a key. Now we never
5 got a key from Nancy Martin in this case.
6 Problem number three, and this was what was
7 fatal, and I thought it was sort of a dirty
8 trick, after this case was tried and after the
9 briefs were already filed in the Court of
10 Appeals a case was cited called Paine Gale
11 Properties vs. CSX, where these two guys went
12 to the CSX right-of-way agent and asked
13 permission to build a gate on their road across
14 the CSX right of way. And the Court held in
15 that case that by going to CSX and asking for
16 permission to build a gate on the road that
17 they had shown that it was permissive use.
18 That case was decided after our case was tried,
19 after all our facts were facts, and the Court
20 of Appeals retroactively applied it to our
21 case. And the fatal sin number three is that
22 Brett Shirley went to Bundy, got permission to
23 build a gate across their road. Now that never
24 happened in this case. We didn't build this
25 gate. We didn't ask permission to build a



1 gate. We didn't get permission from anybody to
2 build a gate. The facts in Shirley vs. Bundy
3 -- Bundy vs. Shirley are just so different from
4 this case and the reasons why Shirley lost,
5 none of those apply in this case. So that case
6 is really, it's just not on point for this
7 case.

8 **THE COURT:** Anything else?

9 **MR. FLOYD:** Your Honor, there is a case that
10 addresses the statue of limitations.

11 **THE COURT:** Okay.

12 **MR. FLOYD:** It's an unpublished opinion, 2006-UP --
13 2008-UP-153 it's Portside Owners Association
14 vs. South Beach Racket club, I'd be happy to
15 get a Court copy of it.

16 **THE COURT:** If it's unpublished can I use it? I
17 mean, I don't think I can if it's unpublished.

18 **MR. FLOYD:** I think it's instructive to the Court.
19 You may not be able to rely on it but I
20 certainly think it's instructive.

21 **THE COURT:** I can get it, what's the document?

22 **MR. FLOYD:** 2008-UP-153, Portside Owners Association
23 vs. South Beach. And I would also point out
24 the statues, I'm pretty confident, they were a
25 little different if there were even any statues



1 back in 1848.

2 **THE COURT:** Do you have that case in front of you
3 or?

4 **MR. FLOYD:** I do, Your Honor.

5 **THE COURT:** All right, tell me about it then. Mr.
6 Wells, have you heard of this case?

7 **MR. WELLS:** Never heard of it as unpublished.

8 **MR. PEEL:** If you don't mind a jack-in-the-box, Your
9 Honor, it's a case of defined over
10 encroachments and easements down in Hilton Head
11 between these different regimes and the Court
12 of Appeals found that the ten year statute of
13 limitations is applicable to a fight over an
14 easement, which I think is pretty clear by the
15 statute -- the statute after that old case, that
16 that old case doesn't apply is very clear.
17 These statutes relate to real property and the
18 easement is real property. It's (inaudible)
19 most of the time, it's real property, and the
20 statutes apply in this case. And there's
21 probably a couple of other ones out there but
22 clearly the Court of Appeals upheld the Circuit
23 Court in that and found that they could not
24 assert, they didn't bring their actions in time
25 down there in Hilton Head.



1 THE COURT: All right, Mr. Wells, any response?

2 MR. WELLS: Well we clearly have use within 10 years
3 of the filing of the Summons and Complaint. So
4 we don't think that a ten-year statute hurts us.
5 But we would say that that is an unpublished
6 opinion and my 1848 case is published. So we
7 think it trumps that. Thank you.

8 MR. FLOYD: Just, I think, going back on all this.
9 The thing we've got to remember and keep in
10 mind is that Mr. Podell asked for permission,
11 and that's very important and instructive in
12 this whole thing. That's all I'll say.

13 THE COURT: Anything else?

14 MR. WELLS: In the part where he's talking about
15 asking permission, he did not ask the Martins,
16 he asked a hunter and he did not receive
17 permission. So he never used the roads, it's
18 permissive use. He never used the road under
19 that permission because he never received
20 permission. So there's no permissive use
21 because they refused to give permission.

22 MR. FLOYD: And going back into that, he never
23 believed he had a right to otherwise he
24 wouldn't have asked for a key. That's just
25 like Shirley. Shirley had that same problem.



1 He had to ask for permission and that's
2 contrary to his claim of right. And that puts
3 us right back where we are. If it's a locked
4 gate, Bundy v. Shirley makes it pretty clear
5 that, you know, it's you know permissive use
6 and the fact that there were gates, there were
7 locks on there, they were used, those were all
8 there with the permission of the owners.

9 **THE COURT:** Anything else?

10 **MR. WELLS:** I think you pretty well have it.

11 **THE COURT:** As the lawyers know one of the things
12 that makes summary judgment so hard to get is
13 that the other side doesn't have to prove
14 anything. They just have to identify the
15 delineations of the material fact under the
16 rule. I think Mr. Wells has done that
17 therefore the Defendant's Motion for Summary
18 Judgment is denied. Mr. Wells, if you'll write
19 a brief non-argumentative order stating that
20 for my signature I'd appreciate it.

21 **MR. WELLS:** Judge, I like brief.

22 **THE COURT:** Okay.

23 **MR. FLOYD:** I'll file a Form Four, Judge, just so
24 that we don't get questions of law and fact and
25 that you will deny it, I'm fine.



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN

32

1 **THE COURT:** He can prepare it. If the proposed
2 order is argumentative I won't sign it. I will
3 tweak it a little bit.

4 **MR. WELLS:** I will just say that you've concluded,
5 as a matter of law, that there are questions of
6 fact and it needs to go to trial.

7 **THE COURT:** Is that good enough?

8 **MR. WELLS:** Without going into what facts are facts.

9 **MR. FLOYD:** That's fine, I just don't want to get
10 caught in that situation were something moves
11 the law of the case.

12 **THE COURT:** All right. Now, we'll have a trial, I
13 guess, unless y'all settle it without my
14 involvement. How long do you think it would
15 take to try this? As you know, the ones who
16 appear before me, everything we do is to a date
17 certain. So, if you give us an estimate we
18 can certainly accommodate you. It may not be
19 until next year though.

20 **MR. FLOYD:** I've spoken with Mr. Scott and I think
21 we are looking at maybe three, four days.
22 That's what Mr. Wells is telling us.

23 **THE COURT:** Okay, we'll set aside a week. Now I
24 know nobody has a calendar open now unless it's
25 on the phone but what's the best time? Can you

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 33

1 all do it February or March or?

2 MR. FLOYD: I'd just as soon get it done in January,
3 Judge.

4 THE COURT: Okay.

5 MR. FLOYD: Because the last time I spoke with Mr.
6 Scott, I don't think y'all had started
7 scheduling anything in January.

8 THE COURT: That's fine.

9 MOTION FOR DE BENE ESSE DEPOSITION - ARGUMENT BY MR.

10 WELLS:

11 MR. WELLS: Judge, there's one more matter that I
12 had -- I filed a motion to take the deposition
13 de bene esse. Tim Dargan is a forester who
14 lives in Darlington, South Carolina. I don't
15 think he's a hundred miles from this
16 courthouse. He was -- he's reluctant to come
17 because he's a fact witness. I can't pay him
18 for his time, I don't think, to come and
19 testify. But I was requesting leave of the
20 Court to do a de bene esse deposition of Mr.
21 Dargan. I think he is going to be a minor
22 witness but I do need to get his testimony.

23 THE COURT: All right, Mr. Floyd, you have a problem
24 with it?

25 MR. FLOYD: Yes, Your Honor. I have submitted a



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 memorandum. May I approach?

2 **THE COURT:** Yes, sir. Mr. Wells, can you just
3 subpoena him and make him come or would your
4 rather not do that?

5 **MR. WELLS:** Well, Judge, I can. These are
6 professionals though and we try to show some
7 courtesy when we can. And I told him that I
8 would come and make this motion in front of
9 Your Honor and attempt to get him leave to just
10 sit for a deposition in his office. If Your
11 Honor denies that then I will do the best I
12 can.

13 **THE COURT:** Okay, all right. Your motion is denied.
14 You want to do a brief, non-argumentative order
15 denying that motion?

16 **MR. FLOYD:** I'll do it Your Honor.

17 **THE COURT:** Okay, thank you. Now as far as, again,
18 we can probably set aside a week for a date
19 certain for the trial of this. Let me remind
20 the attorneys to submit trial briefs November
21 16th. That helps me quite a bit. Do you know
22 already how many witnesses you're going to
23 call?

24 **MR. WELLS:** Judge I think we have about 16.

25 **THE COURT:** Okay. Mr. Floyd, do you know how many



1 witnesses you're going to call?

2 MR. FLOYD: Somewhere between five and ten, it all
3 depends on the who opposing counsel calls.

4 THE COURT: And I try to estimate how long it's
5 going to take, and of course you don't know how
6 long the cross examination is going to take.
7 Do you think a week is enough time or we could
8 block out two.

9 MR. WELLS: Judge, I think if you set aside a week
10 that would be a prudent scheduling.

11 THE COURT: Any other motions I need, before we
12 schedule the trial?

13 MR. FLOYD: Not that I know of right now.

14 THE COURT: Okay, well, we'll set a date certain as
15 soon as possible, Mr. Floyd. We'll try to get
16 it in in January. If not, as soon as we can,
17 early next year. I'll check and see what's
18 going on this year. Now what happens is we
19 schedule things because people want to get it
20 done quickly and they call us up, it's too
21 close to Christmas or too close to Thanksgiving
22 and they don't want to go. Could you all come
23 this year, if we push it?

24 MR. FLOYD: I think we've been kind of operating --
25 or I've been operating under the assumption



COUNTRY PROPERTIES, L.L.C. V. NANCY DUNN MARTIN 36

1 that we would be pushed off into the first of
2 next year. Because I don't think you really
3 have any time available based on my
4 conversation with Mr. Scott.

5 **THE COURT:** Okay.

6 **MR. FLOYD:** I'm fine, mid-January. We really need
7 that because Mr. Peel's got two trials in as
8 well.

9 **THE COURT:** And you're still running for circuit
10 judge, right?

11 **MR. FLOYD:** That's right.

12 **THE COURT:** All right. Do I need to accommodate you
13 on that?

14 **MR. FLOYD:** No, sir, I'll be fine.

15 **THE COURT:** All right, all right. Anything else
16 today, anything?

17 **MR. FLOYD:** That's it. Thank you so much.

18 (There being noting further, the hearing concluded at
19 12:45 p.m.)

20

21

22

23

24

25



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

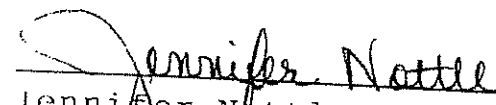
(803) 252-3445 / (800) 822-0896

CERTIFICATE

This is to certify that the within hearing consisting of thirty-six (36) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 18, 2015.


Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: 7/11/2023



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) COURT OF COMMON PLEAS
) C/A #: 2014-CP-40-1805

Country Properties, LLC,)

Plaintiff,)

v.)

Nancy Dunn Martin,)

Defendant.)
-----)**HEARING**

Monday, March 21, 2016

10:45 a.m. - 4:45 a.m.

Tuesday, March 22, 2016

10:03 a.m. - 12:33 p.m.

Wednesday, March 23, 2016

9:32 a.m. - 3:49 p.m.

Thursday, March 24, 2016

9:55 a.m. - 12:44 p.m.

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

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

APPEARANCES

John D. Wells, Esquire
Jessica LeGrand, Law Clerk
 Baxley, Pratt & Wells, P.A.
 3 The Common at Lugoff
 Post Office Box 10
 Lugoff, South Carolina 29078
 (803)438-4200
 jwells@baxleywells.com
 Attorney for the Plaintiff

Joey R. Floyd, Esquire
Wesley D. Peel, Esquire
 Bruner, Powell, Wall & Mullins, LLC
 1735 St. Julian Place, Suite 200
 Columbia, South Carolina 29204
 (803)252-7693
 jfloyd@brunerpowell.com
 wpeel@brunerpowell.com
 Attorneys for the Defendant

INDEXPAGEDAY ONE - MONDAY, MARCH 21, 2016:**OPENING STATEMENTS:**

MR. WELLS.	11
MR. FLOYD.	14

ANNA C. WILLIAMS:

MR. WELLS.	DIRECT EXAMINATION.	19
MR. PEEL.	CROSS EXAMINATION.	74

CECIL LAVON BRAZELL:

MR. WELLS.	DIRECT EXAMINATION.	86
MR. FLOYD.	CROSS EXAMINATION.	92

HAROLD V. PICKRELL, III:

MR. WELLS.	DIRECT EXAMINATION.	99
MR. FLOYD.	CROSS EXAMINATION.	107
MR. WELLS.	RE-DIRECT EXAMINATION.	123

ALGIE CAMPBELL, JR.:

MR. WELLS.	DIRECT EXAMINATION.	124
MR. FLOYD.	CROSS EXAMINATION.	128



LEVER MACK BRAZELL:

MR. WELLS. . . . DIRECT EXAMINATION. 134
 MR. FLOYD. . . . CROSS EXAMINATION. 137

JAMES LINDSAY GUY, II:

MR. WELLS. . . . DIRECT EXAMINATION. 145
 MR. FLOYD. . . . CROSS EXAMINATION. 160
 QUESTIONS BY THE COURT. 171

BEN HEYWARD HIGGINS:

MR. WELLS. . . . DIRECT EXAMINATION. 173
 MR. FLOYD. . . . CROSS EXAMINATION. 176

WILLIAM DUNCAN KIRKLAND, JR.:

MR. WELLS. . . . DIRECT EXAMINATION. 187
 MR. FLOYD. . . . CROSS EXAMINATION. 191

ALAN MUSTARD WOOTEN:

MR. WELLS. . . . DIRECT EXAMINATION. 198
 MR. FLOYD. . . . CROSS EXAMINATION. 201

Day One Adjourned. 205

DAY TWO - TUESDAY, MARCH 22, 2016:**TIMOTHY G. DARGAN:**

MR. WELLS. . . . DIRECT EXAMINATION. 206
 MR. FLOYD. . . . CROSS EXAMINATION. 210
 MR. WELLS. . . . RE-DIRECT EXAMINATION. 211
 MR. FLOYD. . . . RE-CROSS EXAMINATION. 213
 QUESTIONS BY THE COURT. 216

ANGUS LAFAYE:

MR. WELLS. . . . DIRECT EXAMINATION. 218
 MR. FLOYD. . . . CROSS EXAMINATION. 226

GORDAN H. BAKER:

MR. WELLS. . . . DIRECT EXAMINATION. 233
 MR. FLOYD. . . . CROSS EXAMINATION. 237

WILLIAM CATE:

MR. WELLS. . . . DIRECT EXAMINATION. 240
 MR. FLOYD. . . . CROSS EXAMINATION. 245
 MR. WELLS. . . . RE-DIRECT EXAMINATION. 245

VIDEO TESTIMONY OF CLAUDE CAMPBELL:

VIDEO PRESENTATION OF TESTIMONY. 248



Day Two Adjourned. 248

DAY THREE - WEDNESDAY, MARCH 23, 2016:

ARNOLD ROSS TAYLOR:

MR. WELLS. . . . DIRECT EXAMINATION. 248
QUESTIONS BY THE COURT. 261

MICHAEL MILLS:

MR. WELLS. . . . DIRECT EXAMINATION. 265
MR. FLOYD. . . . CROSS EXAMINATION. 297
QUESTIONS BY THE COURT. 314

JAMES PODELL:

MR. WELLS. . . . DIRECT EXAMINATION. 318
MR. FLOYD. . . . CROSS EXAMINATION. 336
MR. WELLS. . . . RE-DIRECT EXAMINATION. 357
MR. FLOYD. . . . RE-CROSS EXAMINATION. 361
QUESTIONS BY THE COURT. 362

GARY WESSINGER:

MR. FLOYD. . . . DIRECT EXAMINATION. 367
MR. WELLS. . . . CROSS EXAMINATION. 386
MR. FLOYD. . . . RE-DIRECT EXAMINATION. 391
MR. WELLS. . . . RE-CROSS EXAMINATION. 392

GLEN WESSINGER:

MR. FLOYD. . . . DIRECT EXAMINATION. 394
MR. WELLS. . . . CROSS EXAMINATION. 401
QUESTIONS BY THE COURT. 404

RANDY BYRD:

MR. FLOYD. . . . DIRECT EXAMINATION. 407
VOIR DIRE EXAMINATION. 417
MR. WELLS. . . . CROSS EXAMINATION. 418
MR. FLOYD. . . . RE-DIRECT EXAMINATION. 425
QUESTIONS BY THE COURT. 427

COURT'S QUESTIONS TO MR. PODELL. 434

COURT'S QUESTIONS TO COUNSEL. 436

Day Three Adjourned. 440

DAY FOUR - THURSDAY, MARCH 24, 2016:

NICK EARL ANDERSON:

MR. FLOYD. . . . DIRECT EXAMINATION. 441



MARK PAUL KAYS:

MR. FLOYD. . . . DIRECT EXAMINATION. 444

NANCY DUNN MARTIN:

MR. FLOYD. . . . DIRECT EXAMINATION. 450

MR. WELLS. . . . CROSS EXAMINATION. 462

MR. FLOYD. . . . RE-DIRECT EXAMINATION. 477

MR. WELLS. . . . RE-CROSS EXAMINATION. 478

QUESTIONS BY THE COURT. 478

COURT'S QUESTIONS TO COUNSEL. 481

JAMES LINDSAY GUY, II:

MR. WELLS. . . . DIRECT EXAMINATION. 489

MR. FLOYD. . . . CROSS EXAMINATION. 491

CLOSING ARGUMENTS:

MR. WELLS. 493

MR. FLOYD. 512

MR. WELLS. REPLY. 520

MR. PEEL. REPLY. 522

MR. WELLS. REPLY. 524

MR. PEEL. REPLY. 525

Day Four Adjourned. 526

Certificate 527

EXHIBITS

Plaintiff's Exhibit Number 1 74
(Plaintiff's Chain of Title)

Plaintiff's Exhibit Number 2 23
(Gonzales Land and Timber, LLC Plat)

Plaintiff's Exhibit Number 3 23
(Country Properties, LLC Deed)

Plaintiff's Exhibit Number 4 25
(Prospect Hill of Edisto Island, LLC Deed)

Plaintiff's Exhibit Number 5 27
(The Whitfield Company Deed)

Plaintiff's Exhibit Number 6 26
(Lackey Surveying Plat)

Plaintiff's Exhibit Number 7 28
(East Highlands Deed)

Plaintiff's Exhibit Number 8 32
(Catawba Timber Company Plat)



Plaintiff's Exhibit Number 9.	32
(Edwin P. Guy Deed)	
Plaintiff's Exhibit Number 10.	36
(The Old English Tract Plat)	
Plaintiff's Exhibit Number 11.	32
(Kester to Veemer Company Deed)	
Plaintiff's Exhibit Number 12.	39
(Borrestell to Kester Deed)	
Plaintiff's Exhibit Number 13.	39
(Bordeaux Company to Borrestell Deed)	
Plaintiff's Exhibit Number 14.	41
(Williams/West to Bordeaux Company Deed - DL176)	
Plaintiff's Exhibit Number 15.	41
(Kinsland to Williams/West Deed - DL351)	
Plaintiff's Exhibit Number 16.	41
(Clarkie Gates Deed - DG352)	
Plaintiff's Exhibit Number 17.	42
(Miller/Desportes to Kinsland Deed - CW121)	
Plaintiff's Exhibit Number 18.	46
(Partition Suit Judgement)	
Plaintiff's Exhibit Number 19.	45
(1884 Plat - large posterboard. Original submitted to the Court with original transcript but not sealed within the original transcript.)	
Plaintiff's Exhibit Number 20.	74
(Defendant's Chain)	
Plaintiff's Exhibit Number 21.	52
(Defendant's Deed - Corrective Limited Warranty Fiduciary Deed)	
Plaintiff's Exhibit Number 22.	53
(Bostick Surveying Plat 3/25/10)	
Plaintiff's Exhibit Number 23.	61
(Boundary Surgery by Bostick 11/2/12)	
Plaintiff's Exhibit Number 24.	50
(Trust Deed - San Mateo Court)	
Plaintiff's Exhibit Number 25.	53
(Trust Deed - Alexander Circle)	
Plaintiff's Exhibit Number 26.	55
(E.F. Martin, Jr. Deed)	
Plaintiff's Exhibit Number 27.	59
(E.F. Martin, Sr. Deed)	
Plaintiff's Exhibit Number 28.	59
(Tax Collector's Tax Title)	
Plaintiff's Exhibit Number 29.	60
(John H. Miller Deed)	



Plaintiff's Exhibit Number 30.	74
(Chain of Title, 65.06 acres of Defendant from Lewis)	
Plaintiff's Exhibit Number 31.	63
(Martin Deed)	
Plaintiff's Exhibit Number 32.	65
(Rufus Lewis Deed)	
Plaintiff's Exhibit Number 33.	68
(Taylor/Harper/Green Deed)	
Plaintiff's Exhibit Number 34.	66
(Tucker Deed)	
Plaintiff's Exhibit Number 35.	10
(Keels Engineering Plat)	
Plaintiff's Exhibit Number 36.	71
(Fletcher R. Martin Deed)	
Plaintiff's Exhibit Number 37.	359
(Picture of dam)	
Plaintiff's Exhibit Number 38.	212
(Timberland Sale ad)	
Plaintiff's Exhibit Number 39.	267
(Resume of Michael R. Mills, Sr., PLS#11606)	
Plaintiff's Exhibit Number 40.	10
(Resume for Glenn Associates Surveying, Inc.)	
Plaintiff's Exhibit Number 41.	292
(Leesburg Quadrangle Map)	
Plaintiff's Exhibit Number 42.	286
(2013 Aerial Photograph)	
Plaintiff's Exhibit Number 43.	282
(1981 Aerial Photograph)	
Plaintiff's Exhibit Number 44.	284
(1970 Aerial Photograph)	
Plaintiff's Exhibit Number 45.	279
(1951 Aerial Photograph)	
Plaintiff's Exhibit Number 46.	251, 275
(1943 Aerial Photograph)	
Plaintiff's Exhibit Number 47.	10
(Catawba Timer Company Plat	
Plaintiff's Exhibit Number 48.	154
(Coon Hunt Invitation)	
Plaintiff's Exhibit Number 49.	259
(1939 Highway Map - large posterboard. Original submitted to the Court with original transcript but not sealed within the original transcript.)	
Plaintiff's Exhibit Number 50.	259
(1916 Soil Survey Map)	



Plaintiff's Exhibit Number 51.	257
(1/24/81 Aerial Photograph)	
Plaintiff's Exhibit Number 52.	253
(4/10/51 Aerial Photograph)	
Plaintiff's Exhibit Number 53.	256
(11/27/70 Aerial Photograph)	
Plaintiff's Exhibit Number 54.	255
(4/29/43 Aerial Photograph)	
Plaintiff's Exhibit Number 55.	10
(4/29/43 Aerial Photograph)	
Defendant's Exhibit Number 1.	453
(Map of property from Richland County Tax Assessor's website with demarcations of boundaries, roads and gates)	
Defendant's Exhibit Number 2.	362
(Various pictures of NE Shady Grove Road (public portion and private portion) and the gate on Nancy Martin's property)	
Defendant's Exhibit Number 3.	10
(2004 Plat for Gonzales Land and Timber, LLC filed with the Richland County Register of Deeds)	
Defendant's Exhibit Number 4.	10
(1930 Plat by Jas E. Covington)	
Defendant's Exhibit Number 5.	10
(1973 Timber Deed and Invitation to Bid to cut timber on what is now Nancy Martin's property)	
Defendant's Exhibit Number 6.	10
(2010 Plat of Lots 3, 4, 5 and 6 prepared by Carl Bostick and filed in the Richland County Register of Deeds)	
Defendant's Exhibit Number 7.	10
(2012 Plat of 64.68 acres prepared by Carl Bostick and filed in the Richland County Register of Deeds)	
Defendant's Exhibit Number 8.	414
(Fax from Randy Byrd to Carl Bostick dated 12/8/09)	
Defendant's Exhibit Number 9.	418
(Map from Randy Byrd Deposition delineating certain road as SCDOT, County and private roads)	



Defendant's Exhibit Number 10.	10
(Richland County's FOIA response dated January 6, 2015, regarding copies of communications and records pertaining to the addressing of 1078 and 1080 Shady Grove Road)	
Defendant's Exhibit Number 11.	10
(Richland County's Policies and Procedures for assigning and addressing properties in Richland County (Addressing and Road Naming Guidelines, Richland County, SC)	
Defendant's Exhibit Number 12.	381
(Notice of gate lock cleaning)	
 Court's Exhibit Number 1.	 247
(Original Sealed Video Deposition of Claude E. Campbell)	



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

10

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

4 DAY ONE - Monday, March 21, 2016

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

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

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

11

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

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

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

19 **OPENING STATEMENT BY MR. WELLS:**

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

12

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

13

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

14

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

8 **THE COURT:** Yes, sir. Mr. Floyd?

9 **OPENING STATEMENT BY MR. FLOYD:**

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

11 **THE COURT:** Yes, sir.

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

15

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

16

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

17

1 you know who this one is? Do you know who that
2 one is? If they didn't, we've got pictures of
3 locks strung across the gate, signs placed on
4 there, over the course of 40 years. If you're
5 using this road, you're using it with my
6 permission. If you don't -- if one of these is
7 your locks, you take it. Got pictures of those
8 things, they've been up there over the years.
9 There's three necessary things that you have to
10 establish in order to prove a prescriptive
11 easement. Continued and uninterrupted use, the
12 identity of the thing enjoyed, and use of it
13 which is adverse or under a claim of right.
14 Well, you can't claim that you're using it
15 adversely if you're using it with the
16 permission of the owner. You cannot overcome
17 that bar. And for that reason there is no
18 prescriptive easement. There is no testimony,
19 we've taken a number of depositions, that the
20 county has maintained this property. Richland
21 County doesn't maintain it, Kershaw County
22 doesn't maintain it. There's a lot of
23 conjecture and speculation, I think, maybe that
24 they might have one day, but nobody can say
25 they physically saw anybody doing any



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

18

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

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

14 **MR. FLOYD:** That's correct.

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

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

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

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

19

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

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

5 **MR. WELLS:** I call Anna Williams.

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

8 **MS. WILLIAMS - DIRECT EXAMINATION BY MR. WELLS:**

9 Q: Ms. Williams, where do you live?

10 A: Ridgeway, South Carolina.

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

12 A: 30 years.

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

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

20

1 Phillip Temple in Greenville, South Carolina;
2 Robert Buggle, Columbia, South Carolina; the
3 Hanson Law Firm, Columbia, South Carolina;
4 Howell, Linkous and Nettles in Charleston,
5 South Carolina; Parker Poe, Columbia, South
6 Carolina; Natalie Quinn, Columbia, South
7 Carolina; George Speedy, Camden, South
8 Carolina; Allen Wise, Columbia, South Carolina.

9 Q: Okay. So you have 30 years experience
10 searching titles, right?

11 A: Correct.

12 Q: For a lot of people?

13 A: Yes, sir.

14 Q: And were you asked to search the chains of
15 title of properties owned by Country
16 Properties, LLC and Nancy Dunn Martin down on
17 601 at the Kershaw County/Richland County line?

18 A: Yes, sir.

19 Q: Okay. Did you perform those searches?

20 A: I performed chains of titles.

21 Q: Chains of titles. What's the difference?

22 A: A title search would perform me doing deeds
23 out, mortgages, liens, and judgements in the
24 last ten years. What I did was copy all of the
25 deeds in the chain of title leading from now



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

21

1 back to the beginning of time when it was
2 issued by a decree of the Fairfield County
3 Court in a partition deed.

4 Q: And do you have a document called a Plaintiff's
5 Chain? And there's another document ---

6 A: I do.

7 Q: --- Defendant's Chain?

8 A: I do.

9 Q: And is it prepared from your notes on the title
10 searches?

11 A: It is.

12 MR. PEEL: Objection, Your Honor.

13 THE COURT: What grounds?

14 MR. PEEL: Judge, this is demonstrative evidence,
15 it's not a document being typed.

16 THE COURT: Okay.

17 MR. PEEL: It's the witness's notes.

18 THE COURT: Okay. Mr. Wells?

19 MR. WELLS: I haven't offered it into evidence.

20 THE COURT: Okay. Objection overruled.

21 MR. WELLS: Okay.

22 Q: And will you be relying on that document as you
23 put in the evidence?

24 A: I will.

25 Q: Okay. You've gotta have notes, right?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

22

1 A: Yes, sir.

2 Q: Okay. Can't do this from memory?

3 A: No, sir.

4 Q: All right. Starting with the Plaintiff's
5 property, where did Country Properties, LLC
6 obtain it's property?

7 A: They obtained the property from Pine Ridge
8 Investments, LLC by deed dated March the 11th,
9 2009 and recorded in the Richland County RMC in
10 book 1515 at page 1554.

11 Q: All right. And I'm handing you a copy of
12 Plaintiff's Exhibit 3. Is that a copy of that
13 deed?

14 A: Yes, sir, it is.

15 Q: Okay. And did you obtain that from the
16 Richland County RMC?

17 A: Yes, sir, I did.

18 Q: And the copy that you're looking at right
19 there, is it a certified copy?

20 A: Yes, sir, it is.

21 MR. WELLS: I would offer that as Plaintiff's
22 Exhibit 3.

23 MR. PEEL: Your Honor, to the extent we've reviewed
24 these deeds and they're all certified copies,
25 we would stipulate to the admission of it.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

23

1 It's not necessary for him to lay the
2 foundation for each deed.

3 **THE COURT:** Okay. Mr. Wells, is that satisfactory?

4 **MR. WELLS:** Yes, Your Honor, I'll keep going. And
5 if I get an objection we'll deal with it at the
6 time.

7 **THE COURT:** All right. Thank you.

8 **(Plaintiff's Exhibit Number 3 was admitted into**
9 **evidence at this time.)**

10 **Q:** Now, how many acres does that deed describe?

11 **A:** It was for 1023 acres point seven.

12 **Q:** Okay. And does it refer to a plat?

13 **A:** Yes, sir, it does.

14 **Q:** And what's the date on that plat?

15 **A:** The date was June 22nd, 2004.

16 **Q:** Okay. Is this a copy of the plat?

17 **A:** Yes, sir, it is.

18 **MR. WELLS:** Okay. I offer this as Plaintiff's
19 Exhibit 2.

20 **THE COURT:** Okay. Thank you.

21 **(Plaintiff's Exhibit Number 2 was admitted into**
22 **evidence at this time.)**

23 **Q:** I think we have a blow up of that. Is this a
24 copy of that plat?

25 **A:** Yes, sir, it is.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

24

1 Q: Now, can you show us where the Plaintiff's
2 property is?

3 A: The Plaintiff's property is here (indicating).

4 Q: Okay.

5 A: Well, this is the Plaintiff's property, this
6 whole plat is.

7 Q: Okay. All right. Now, where is Shady Grove
8 Road on that plat? Is it labeled?

9 A: No, just shows it.

10 Q: Is that it (indicating)?

11 A: I believe so, although it marks it as a Dirt
12 Woods Road.

13 Q: Okay. All right. Take your seat. And where
14 did -- who deeded it to Country Properties?

15 A: Pine Ridge.

16 Q: All right. Where did Pine Ridge get it?

17 A: Pine Ridge, LLC from Prospect Hill of Edisto
18 Island, LLC by deed dated October the 24th,
19 2005 recorded November the 2nd, 2005 in Kershaw
20 County book 1861 at page 220.

21 Q: And is that your -- a copy of that deed?

22 A: Yes, sir, it is.

23 Q: And it's Plaintiff's Exhibit what?

24 A: 4.

25 Q: Plaintiff's Exhibit 4.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

25

1 MR. WELLS: And I would move to introduce
2 Plaintiff's Exhibit 4.

3 (Plaintiff's Exhibit Number 4 was admitted into
4 evidence at this time.)

5 Q: What is the property conveyed in Plaintiff's
6 Exhibit 4?

7 A: The property conveyed in Plaintiff's Exhibit 4
8 is two parcels. One consisting of 412 acres,
9 and the other at 605 acres.

10 Q: Does it refer to the same plat?

11 A: No, sir, it refers to plat X at 949 and plat 34
12 at 1526 as it refers to the 412 acres.

13 Q: Okay.

14 A: Then it goes on to say that the above described
15 property is the same shown as 1023.7 acres as
16 shown on a certain plat for Robert Sheheen by
17 Robert Lackey dated March the 30th, 1998.

18 Q: All right. So it refers to the Lackey plat?
19 Let me show you a copy of Plaintiff's Exhibit
20 6.

21 A: Yes, sir.

22 Q: Is that the Lackey plat?

23 A: This is the correct plat, recorded in book 241
24 at 1477.

25 Q: All right.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

26

1 MR. WELLS: I move to introduce the Plaintiff's
2 Exhibit 6 and Plaintiff's Exhibit -- is that 5?

3 MS. WILLIAMS: 4.

4 MR. WELLS: Plaintiff's Exhibit 4 and Plaintiff's
5 Exhibit 6.

6 THE COURT: Since y'all stipulated to the
7 admissibility or -- of all of these plats that
8 are certified ---

9 MR. FLOYD: I believe that one's filed as well,
10 isn't it, John? That plat, the Lackey plat, is
11 it filed?

12 MR. WELLS: Yes, yes.

13 THE COURT: Well, the reason, normally I would make
14 a statement that the motion is granted but in
15 this case it's stipulated to. So unless you
16 have an objection you're just not going to say
17 anything, is that correct, Mr. Peel?

18 MR. FLOYD: That's correct, Your Honor, because all
19 these deeds are -- we know what they are even
20 if they're certified or not, we've seen them.

21 THE COURT: Okay.

22 MR. FLOYD: The filed ones.

23 THE COURT: All right.

24 (Plaintiff's Exhibit Number 6 was admitted into
25 evidence at this time.)



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

27

1 **THE COURT:** Please proceed, Mr. Wells.

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

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

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

9 **A:** Exhibit 5.

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

11 **A:** Yes, sir, it is.

12 **MR. WELLS:** I move to introduce Plaintiff's Exhibit
13 5.

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

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

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

24 **Q:** Okay. Now, we're going to deviate from the
25 1023 acres. Down to a 412 acre tract, which is



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

28

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

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

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

10 A: From Evan P. Guy, dated by deed October the
11 6th, 1969 recorded in Richland County in deed
12 book D156 at page 222.

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

15 A: Yes, sir, it is.

16 (P~~l~~a~~i~~n~~t~~i~~f~~f'~~'~~s E~~x~~h~~i~~b~~i~~t N~~u~~m~~b~~e~~r~~ 7 w~~a~~s a~~d~~m~~i~~t~~t~~e~~d~~ i~~n~~to
17 e~~v~~i~~d~~e~~n~~c~~e~~ a~~t~~ t~~h~~i~~s~~ t~~i~~m~~e~~.)

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

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

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

22 A: Yes, sir, it is.

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

24 A: Yes, sir.

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

29

1 Gonzalez plat, where the 412 acres are?

2 A: (Indicating). Now actually it comes over here
3 to about this little crook and comes down.

4 Q: Is that where Shady Grove road enters into ---

5 A: Yes ---

6 MR. PEEL: Objection.

7 Q: --- Woods Road?

8 A: Woods Road, yes.

9 THE COURT: Hold on a second, ma'am, I'm sorry.

10 MS. WILLIAMS: I'm sorry.

11 THE COURT: What was your objection, Mr. Peel?

12 MR. PEEL: Mischaracterization of the exhibit, it's
13 not -- there's nothing that says Shady Grove
14 Road on there.

15 THE COURT: Is that the same ---

16 MR. WELLS: Yes, it does.

17 THE COURT: Is it Plaintiff's Exhibit 2, Mr. Wells?

18 MR. WELLS: Yes.

19 MR. PEEL: It says Woods Road.

20 MR. WELLS: There's Shady Grove Road down here.

21 THE COURT: Is this identical to Plaintiff's Exhibit
22 2?

23 MR. WELLS: Yes.

24 THE COURT: Okay. Mr. Peel, you know, on the
25 exhibit I'm looking at, the marked exhibit,



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

30

1 they have -- well ...

2 **MR. FLOYD:** That's the public ---

3 **MR. PEEL:** Yeah. Where they were pointing, it says
4 Dirt Woods Road.

5 **THE COURT:** Okay.

6 **MR. PEEL:** On -- on this 412 acres that we're
7 talking about, it says Dirt Woods Road.

8 **THE COURT:** All right. Let me show you what I'm
9 looking at.

10 **MR. FLOYD:** That is the public portion of -- towards
11 601, Your Honor.

12 **THE COURT:** Okay. It says Dirt Woods. This says
13 Shady Grove.

14 **MR. PEEL:** Right. Right back there, yes.

15 **THE COURT:** Okay.

16 **MR. PEEL:** Unpaved. But up here where they're
17 pointing, that's my objection, it says Dirt
18 Woods Road.

19 **THE COURT:** Okay.

20 **MR. PEEL:** And that's ---

21 **THE COURT:** All right, objection sustained.

22 **Q:** Is the 412 acre tract where the Dirt Woods Road
23 enters into the Plaintiff's property?

24 **A:** Yes.

25 **Q:** Where did Edwin P. Guy get the 412 acres?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

31

1 A: Edwin P. Guy and James E. Powe got the property
2 at FQ page 349 dated October the 20th, 1944.
3 James E. Powe subsequently conveyed his
4 interest to Edwin P. Guy by three deeds
5 recorded in Kershaw County. The first of which
6 is deed book HW at page 1097, book HW at 1121,
7 and HR 2199.

8 THE COURT: Is that somebody's phone?

9 MR. PODELL: Pardon me. Let me shut it off.

10 Q: Let me show you Plaintiff's Exhibit 11. Is
11 that the deed from Kester?

12 A: Yes, sir, this is the deed from Kester and to
13 Edwin P. Guy and James E. Powe.

14 Q: Let me show you the deed marked as Plaintiff's
15 Exhibit 9.

16 A: Yes, sir. These are the deeds from Edwin --
17 from Edwin Powe, et al. -- I mean, excuse me
18 I'm so sorry. From James Powe, et al. into --
19 back into Edwin P. Guy.

20 Q: Okay.

21 MR. WELLS: Move to introduce Plaintiff's Exhibit --
22 -

23 MS. WILLIAMS: 9.

24 MR. WELLS: --- 9 and Plaintiff's Exhibit 11.

25 MR. FLOYD: I'm sorry. What was the book and page



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

32

1 number on that?

2 **MS. WILLIAMS:** This particular deed is deed book HW
3 at 1121.

4 **MR. FLOYD:** And that's Exhibit 9?

5 **MS. WILLIAMS:** Exhibit 9, yes, sir.

6 **MR. FLOYD:** Okay.

7 (Plaintiff's Exhibit Numbers 9 and 11 were admitted
8 into evidence at this time.)

9 **MR. WELLS:** Also move to introduce Plaintiff's
10 Exhibit 8, which is the plat of the 412 acres?

11 **MS. WILLIAMS:** Yes, sir.

12 (Plaintiff's Exhibit Number 8 was admitted into
13 evidence at this time.)

14 **Q:** Let me show you Plaintiff's Exhibit 10 which is
15 a plat. What's the date on that plat?

16 **A:** January 1957.

17 **Q:** Okay. And is it the one that is referred to in
18 the deed that is Plaintiff's Exhibit 9?

19 **A:** Yes, sir, it is.

20 **Q:** Does Plaintiff's Exhibit 10 show the same road
21 that is designated as Dirt Woods Road on the
22 Plaintiff's Exhibit 2?

23 **A:** Yes, sir, it does.

24 **Q:** Okay. What is it designated as on Plaintiff's
25 Exhibit 10?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

33

1 A: Just orientating myself with all of this. Camp
2 Road.

3 Q: Okay.

4 A: Yes, sir.

5 Q: So on Plaintiff's Exhibit 10, Camp Road is in
6 the same location as Woods Road?

7 A: Yes, sir.

8 Q: Or Dirt Woods Road is on the later plat?

9 A: Yes, sir.

10 Q: And what's the date on Plaintiff's Exhibit 10?

11 A: January 1957.

12 MR. PEEL: Your Honor?

13 THE COURT: Yes, sir, Mr. Peel?

14 MR. PEEL: May I see the exhibit please, Your Honor?

15 THE COURT: Say again, sir.

16 MR. PEEL: I'd like to look at that agreement.

17 THE COURT: All right, one moment.

18 MR. PEEL: Thanks. Your Honor, I don't think he's
19 moved to admit it, but this is not a filed
20 copy, sir.

21 THE COURT: Say again?

22 MR. PEEL: This is not a filed certified copy, so.

23 THE COURT: All right. Mr. Wells, can I look at?
24 Mr. Wells, can I look at that ---

25 MR. PEEL: But I don't think he's moved to admit it



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

34

1 but I would have an objection.

2 MR. WELLS: Well, I ---

3 THE COURT: May I -- may I look at that briefly?

4 MR. WELLS: Yes.

5 THE COURT: Okay. Mr. Peel just points out this is
6 not a certified true copy.

7 MR. WELLS: I think I can lay a foundation for it
8 under rule 901(b)(7).

9 THE COURT: Okay.

10 MR. WELLS: By showing that it came from the Clerk
11 of Court's office.

12 THE COURT: Plaintiff's Exhibit 10 came from the
13 Clerk of Court's office, not the Register of
14 Deeds office?

15 MR. WELLS: Or Register of Deeds office.

16 THE COURT: It did come from the Register of Deeds?

17 MS. WILLIAMS: Kershaw County.

18 THE COURT: From Kershaw County?

19 MS. WILLIAMS: Yes, sir.

20 THE COURT: Oh, do they call it the RMC still over
21 in Kershaw County?

22 MS. WILLIAMS: ROD.

23 MR. WELLS: It's ROD, Register of Deeds over there.

24 THE COURT: Oh okay, same thing here. Some people
25 as you know use the -- the old name, so. Okay.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

35

1 Mr. Peel, does that satisfy you?

2 MR. PEEL: Well, I'd like to hear what she has to
3 say, yeah. If he's going to lay the foundation
4 that'll be ---

5 THE COURT: Okay.

6 MR. PEEL: --- different. We can deal with it on
7 cross-examination.

8 THE COURT: All right. Mr. Wells, here you go.

9 Q: According to this plat, does Plaintiff's
10 Exhibit 10 come from a copy?

11 A: Kershaw County ROD.

12 Q: Was it a recorded document?

13 A: Correct. Yes, sir.

14 Q: And it's recorded as a plat?

15 A: Yes, sir.

16 Q: Is it referred to in the deed that is ---

17 A: It is.

18 Q: --- Plaintiff's Exhibit 9, I believe?

19 A: Plaintiff's Exhibit 9 refers to plat of the Old
20 English Tract by Robert F. Knoth and Company,
21 Charleston, South Carolina dated January 1957
22 and recorded in the -- at that time, Office of
23 the Clerk of Court for Kershaw County in plat
24 book 34 at page 544.

25 Q: And is that where that document came from?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

36

1 A: Yes, sir, it is.

2 Q: Okay.

3 THE COURT: Mr. Peel?

4 MR. WELLS: We will move to admit ---

5 MR. PEEL: I withdraw my objection.

6 THE COURT: Okay. Without objection, your motion's
7 granted, Mr. Wells.

8 MR. WELLS: Thank you. We'll leave that there.

9 (Plaintiff's Exhibit Number 10 was admitted into
10 evidence at this time.)

11 Q: Now, moving further back in time, where did
12 Kester, Mr. Kester get the property that he
13 conveyed to Guy and Powe?

14 A: He got it from C.E. Borresteel and May
15 Borresteel dated June the 2nd, 1939 and
16 recorded in Richland County in deed book E0 at
17 page 492.

18 Q: Now, let me give you Plaintiff's Exhibit 12.
19 Is that a copy of the deed to Kester from
20 Borresteel?

21 A: It is.

22 Q: All right. Now starting in this deed, in the
23 property description, does it refer to some
24 tract numbers?

25 A: Yes, sir. It refers to said tract being



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

37

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

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

10 A: Yes, sir.

11 Q: --- in Fairfield County?

12 A: Yes, sir.

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

15 A: One and two.

16 Q: Okay.

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

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

20 MS. WILLIAMS: It is book E0 at page 492.

21 MR. FLOYD: Thank you.

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

23 A: Yes, it does.

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

25 A: Granting also by these presents all such right-



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

38

1 of-way for ingress and egress as are
2 appurtenant and applicable to the above
3 described lands and reserving such rights as
4 may be applicable to other adjoining lands, all
5 rights reserved and granted herein are in
6 accordance with and subject to the conditions
7 set forth in the deed from J.H. Miller and all
8 others to Lura Mae Miller dated December the
9 21st, 1926.

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

12 A: They received it from the Bordeaux Company by
13 deed dated June the 6th, 1939 recorded in
14 Richland County in deed book E0 at page 493.

15 Q: And is this a copy of that deed?

16 A: Yes, sir, it is.

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

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

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

21 **MS. WILLIAMS:** 13.

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

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

25 A: Yes, sir, it does.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

39

1 THE COURT: One moment, please.

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

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

7 Q: And where did the Bordeaux Company get the
8 property?

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

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

13 A: Yes, sir, it does.

14 Q: What are those rights-of-way?

15 A: Granting also by these presents all such right-
16 of-way for ingress and egress as are pertinent
17 and applicable to the above described lands and
18 reserving such rights as may be applicable to
19 other adjoining lands, all of rights reserved
20 and granted herewith are in accordance with the
21 and subject to the conditions set forth in the
22 deed from J.H. Miller and others dated December
23 21st, 1926 recorded in CW at page 121.

24 Q: All right.

25 THE COURT: Which Exhibit is that?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

40

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

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

4 A: From H.O. Williams, Dimple Williams, J.E. West,
5 and Birdie West by deed dated December 24th,
6 1929 recorded in book DL at page 176 in
7 Richland County.

8 Q: All right.

9 A: RMC.

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

12 A: Yes, it is.

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

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

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

18 MS. WILLIAMS: 14.

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

20 MR. FLOYD: Book and page number on that?

21 MS. WILLIAMS: Yes, sir. It is deed book DL page
22 176.

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

25 MR. FLOYD: (Nods head.)



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

41

1 COURT REPORTER: Thank you.

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

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

6 A: From Luna Mae Kinsland by deed dated July 12th,
7 1928 recorded in Richland County RMC in deed
8 book DG at page 351.

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

12 A: It is.

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

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

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

19 MS. WILLIAMS: Correct.

20 MR. WELLS: All right.

21 MR. FLOYD: Just the book and page number please?

22 MS. WILLIAMS: DG 351.

23 (Plaintiff's Exhibit Numbers 15 and 16 were admitted
24 into evidence at this time.)

25 Q: And where did Laura Kinsland get the property?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

42

1 A: She received from J.H. Miller, Ella J. Miller,
2 Mattie L. Desportes by deed dated December
3 21st, 1926 and recorded in Richland County RMC
4 in book CW at page 121.

5 Q: Okay. Now, let's talk about -- let me show you
6 this deed and ask you if Plaintiff's Exhibit 17
7 is the deed to Ms. Kinsland?

8 A: It is.

9 Q: And is that a certified copy?

10 A: No, it's not. Yes, it is. Excuse me, it's on
11 the back. Certified.

12 MR. WELLS: All right. Move to admit Plaintiff's
13 Exhibit 17.

14 MR. FLOYD: Book and page number please?

15 MS. WILLIAMS: CW 121.

16 (Plaintiff's Exhibit Number 17 was admitted into
17 evidence at this time.)

18 Q: All right. Now, what tracts did Luna Mae
19 Kinsland get?

20 A: 1, 2 and 4.

21 Q: Okay. Now, let me skip over to Plaintiff's
22 Exhibit 19 and ask you if you've ever seen this
23 plat?

24 A: Yes, sir, I have.

25 Q: Now, where did that plat come from, which



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

43

1 courthouse?

2 A: This plat came from the Fairfield County Clerk
3 of Court.

4 Q: And is that the partition plat from the
5 partition suit ---

6 A: Yes, sir, it is.

7 Q: --- of these lands?

8 A: Yes, sir, it is.

9 THE COURT: Let me ask the witness. Let him finish
10 his question before you answer.

11 MS. WILLIAMS: Oh, I'm sorry.

12 THE COURT: When people are well prepared and
13 sometimes they do that, they answer the
14 question before he asks it, so.

15 MR. WELLS: Now, I move to admit Plaintiff's Exhibit
16 19.

17 MR. PEEL: And I don't believe that is a complete
18 copy of that plat.

19 MR. WELLS: It's certified.

20 THE COURT: That's Number 19, Mr. Wells?

21 MR. WELLS: Yes.

22 MR. PEEL: And that is incomplete, Your Honor. We'd
23 object.

24 THE COURT: Okay. Now, you object because it's not
25 the whole plat or ---



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

44

1 MR. PEEL: Correct.

2 THE COURT: But -- Mr. Wells, is that what you
3 intend to do, only submit that part of it?

4 MR. WELLS: We want to show the plat of the
5 property. Now here's the problem. This plat
6 in the deed book in Fairfield County is cut in
7 half.

8 THE COURT: Uh-huh.

9 MR. WELLS: And they cut it in half at sometime in
10 the past because it was too big to go in the
11 book all by itself or together.

12 THE COURT: Uh-huh.

13 MR. WELLS: But this copy that I have made is about
14 the best plat that you can get. You can get a
15 full copy of half of it with the language or
16 you can get the entire plat with the language
17 cut off but you can't get it all because the
18 copy machine won't hold it.

19 THE COURT: What do y'all have, Mr. Peel, Mr. Floyd?

20 MR. FLOYD: We've got the whole thing.

21 THE COURT: Now, tell me why your's is different
22 from the exhibit, Number 19. Tell me why
23 that's different.

24 MR. FLOYD: It's a -- a lot of the legal description
25 of it. It's got all of the acreages and tracts



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

45

1 and that's kind of important when it comes to
2 a plat, as far as the ---

3 **THE COURT:** Okay.

4 **MR. FLOYD:** --- tract number, how many acres, and
5 that sort of stuff.

6 **THE COURT:** I'll -- I'll let in Exhibit 19 with the
7 understanding of course that, you know, it
8 shows what it shows and you have something that
9 says something different but it can come in.
10 I mean I don't necessarily think that's a
11 reason to keep it out of evidence.

12 **MR. WELLS:** Judge. Let me -- let me try again. We
13 have ---

14 **THE COURT:** No, I just ruled -- I just ruled that it
15 can come in.

16 **MR. WELLS:** Okay.

17 **THE COURT:** Yeah.

18 (Plaintiff's Exhibit Number 19 was admitted into
19 evidence at this time.)

20 **Q:** Let me ask you if you've ever seen Plaintiff's
21 Exhibit 18?

22 **A:** Yes, sir.

23 **Q:** And what is Plaintiff's Exhibit 18?

24 **A:** It is the report of commission -- Commissioner
25 and the order of Judge Wallace along with some



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

46

1 of the plat language. Yeah, it's -- it's the
2 order and the entire plat that was filed with
3 the Judgement Roll in Fairfield County.

4 Q: Does Plaintiff's Exhibit 18 contain all of the
5 language that was attached to the plat?

6 A: Yes, sir, it does. Starting with Parcel A
7 here, the language that's below that is
8 attached right here to the judgement, the
9 portion of the plat.

10 Q: Okay.

11 MR. WELLS: Move to admit 18 and 19, Your Honor.

12 THE COURT: All right, Mr. Peel?

13 MR. PEEL: No objection, Your Honor.

14 THE COURT: All right, your motion's granted, Mr.
15 Wells.

16 (Plaintiff's Exhibit Number 18 was admitted into
17 evidence at this time.)

18 Q: Now, let's get back to Ms. Kinsland.

19 A: Right.

20 Q: When she got tract 1 and 2, where are tract 1
21 and 2?

22 A: Tract 1 (indicating). Tract 2 (indicating).

23 Q: Who owned tract 2, can you tell from that deed?

24 A: That would've been Lelia S. Miller.

25 Q: Okay. But who signed the deed to Kinsland?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

47

1 A: J.H. Miller, Ella J. Miller, and Mattie L.
2 Desportes.

3 Q: Okay. Do you know what Mattie owned?

4 A: Mattie owned tract E and 1.

5 Q: Okay. So Ms. Kinsland is getting this area in
6 here (indicating)?

7 A: Yes.

8 Q: Okay. Now, does the deed, which is Plaintiff's
9 Exhibit 17, contain right-of-way language?

10 A: It does.

11 Q: All right. Now, I think we have a blow up of
12 that one. Can you find the right-of-way
13 language in Plaintiff's Exhibit 17? Can you
14 read it?

15 A: The said rights-of-way to be -- actually, I
16 believe it starts up here. Rights-of-way paid
17 (sic) by grantors by operation of law or by
18 deed said also convenient rights-of-way for
19 cart and wagon, roads over the lands of the
20 parties of the first part and each of them to
21 the Burnway lands, the Martin lands, the
22 English lands for purposes of ingress and
23 egress from the public road to each of said
24 tracts of land. Said grantee, her heirs and
25 assigns shall have the right to construct and



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

48

1 use such cart and wagon roads pertaining --
2 connecting the two tracts of said land hereby
3 conveyed with each other by the nearest route,
4 the present roads upon the said lands followed
5 -- it kind of -- cultivation to be -- I cannot
6 read that, I'm sorry. Without -- for cause.
7 And then it goes, the said rights-of-ways to be
8 appurtenant to and be part of conveyed with any
9 and all acts that shall be confirmed to the
10 same lands and reality and is hereby expressly
11 understood and agreed between the grantors and
12 the grantee that no one of the grantors is
13 liable under his or her warranty to any part of
14 the lands hereby conveyed by the owner or such
15 grantor being bound under the said covenants of
16 warranty only as to the tracts owned by him or
17 her.

18 Q: All right.

19 A: That's nasty.

20 Q: Is it hard to read?

21 A: It's very difficult to read.

22 Q: Okay. It's a bad copy?

23 A: Best copy available.

24 Q: Okay. And when Ms. Mattie L.C. Desportes
25 signed that deed, was she the owner of tract E



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

49

1 on the plat?

2 A: She was.

3 Q: Now, where did J.H. Miller and Mattie Desportes
4 come up or -- and Ella Miller, where did they
5 acquire the property?

6 A: From the partition suit.

7 Q: And that's in Fairfield County?

8 A: Recorded in Fairfield and filed in Judgement
9 Roll 1158 by order of W.H. Wallace dated
10 February the 20th, 1885.

11 Q: All right. Now, let me start on the
12 Defendant's chain. Do you have a Defendant's
13 Chain to go by?

14 A: I do.

15 Q: Where did Ms. Martin receive her property?

16 A: From Edwin Martin, Jr. Trust dated August the
17 5th, 19-- 2004. Being recorded in the RMC
18 for Richland County in deed book 1359 at page
19 2178.

20 Q: And let me show you Plaintiff's Exhibit 24, is
21 that a copy of that deed?

22 A: It is.

23 MR. WELLS: Move to admit Plaintiff's Exhibit 24.

24 MR. FLOYD: Book and page number, and date of
25 filing?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

50

1 MS. WILLIAMS: Again, dated August the 5th, 2004,
2 book 1359 at page 2178. And that's August the
3 9th.

4 MR. FLOYD: What's the date of filing to be exact?

5 MS. WILLIAMS: The filing date is September the
6 20th, 2007.

7 MR. PEEL: Mr. Wells, may I have a look? Your
8 Honor?

9 THE COURT: Yes. Sure, sure.

10 MR. PEEL: Thank you.

11 (Plaintiff's Exhibit Number 24 was admitted into
12 evidence at this time.)

13 THE COURT: I want to make sure I have the facts
14 straight. The Defendant got a deed to the
15 property in 2009? The reason why I ask that is
16 I thought you said it was recorded on 2007.

17 MS. WILLIAMS: Excuse me, it's probably just a typo.
18 Yes, sir. Let me rephrase that. It was dated
19 August the 9th, 2007 and recorded 9/20/2007.

20 THE COURT: Oh, I see, I see. Okay, that's fine,
21 that's fine. So she had a deed almost two
22 years before it was actually recorded?

23 MS. WILLIAMS: No, sir. They were both recorded in
24 2007. It was dated 2007 and recorded in 2007.

25 THE COURT: Okay.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

51

1 MS. WILLIAMS: I think what I was referring to was I
2 said August the 5th and it was August the 9th
3 that it was dated.

4 THE COURT: Okay.

5 MS. WILLIAMS: It's dated August 9th, 2007 ---

6 MR. FLOYD: That's what I was asking.

7 MS. WILLIAMS: --- and recorded September the 20th,
8 2007.

9 THE COURT: All right, thank you, thank you. Please
10 bear with me, I have to get the facts straight.
11 An old saying it's okay to be wrong on the law
12 but if you're wrong on the facts, you really
13 have problems. So thank you for your patience.

14 MS. WILLIAMS: I'm sorry I misspoke.

15 THE COURT: That's all right. Please proceed, Mr.
16 Wells.

17 Q: In order to make the Defendant's chain
18 complete, there is a corrective deed that was
19 filed later in 2007. Is that a copy of that
20 deed?

21 A: Yes, sir. This is a corrective deed dated
22 December the 10th, 2007, recorded December the
23 17th, 2007 book 1384 at page 3241 in Richland
24 County RMC.

25 Q: Is that Plaintiff's 21?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

52

1 A: It is Plaintiff's Exhibit 21, a certified true
2 copy.

3 Q: Okay.

4 MR. PEEL: Your Honor, can I inspect the deed?

5 THE COURT: Yes, sir.

6 MR. PEEL: Thank you. Thank you.

7 MS. WILLIAMS: You're welcome.

8 (Plaintiff's Exhibit Number 21 was entered into
9 evidence at this time.)

10 Q: Now to be clear, Plaintiff's Exhibits 21 and 24
11 are deeds where Nancy Martin individually got
12 the property from a trust, isn't that correct?

13 A: It's -- yes, sir.

14 Q: So she owns it individually now? It was owned
15 by a Trust called the Edwin F. Martin, Jr.
16 Trust?

17 A: Correct.

18 Q: Okay. Now, let me show you Plaintiff's Exhibit
19 22 and ask you if that is a plat of the
20 property. And let me give you a hint, it's not
21 referred to in that deed which I think was
22 dated after that deed, but is that the property
23 that she received in those two deeds?

24 A: Yes, sir, it is.

25 Q: Okay. And is this recorded?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

53

1 A: It is. I'm unable to read the recording
2 information into the record. I apologize.

3 MR. WELLS: No objection to 22?

4 MR. PEEL: No.

5 (Plaintiff's Exhibit Number 22 was admitted into
6 evidence at this time.)

7 Q: All right. Where did the trustees get the
8 property, this portion?

9 A: They received it by deed of Edward Frank
10 Martin, Jr. dated August the 5th, 2007,
11 recorded in RMC Richland County in deed book
12 967 page 779.

13 Q: All right. Is this a copy of that deed?

14 A: Yes, sir it is.

15 MR. WELLS: And that is Plaintiff's Exhibit 25, move
16 to admit.

17 MR. PEEL: No objection.

18 THE COURT: Motion's ---

19 COURT REPORTER: I'm sorry. Did I hear an
20 objection?

21 MR. PEEL: I said no objection.

22 COURT REPORTER: I'm sorry, thank you.

23 THE COURT: Your motion is granted, Mr. Wells.

24 (Plaintiff's Exhibit Number 25 was admitted into
25 evidence at this time.)



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

54

1 Q: All right. And where did Edwin F. Martin get
2 the property? F. Martin, Jr., excuse me.

3 A: Edwin Frank Martin, Jr. by deed of Jessie
4 Martin Pratt and Naomi Martin Pratt (sic) dated
5 October 16th, 1990 and recorded in the RMC
6 office for Richland County in deed book 1001 on
7 page 866 October the 18th, 1990.

8 Q: Look at Plaintiff's Exhibit 26 and tell me if
9 that is the deed to Edwin Frank Martin, Jr.

10 A: Yes, sir, it is.

11 Q: And does it also recite that his mother passed
12 away who was a life tenant?

13 A: Yes, sir.

14 Q: What was her name, Jessie Martin?

15 A: This being a portion of the property devised to
16 Jessie Martin -- Jessie Dunn Martin for life
17 with the remainder to Jessie Martin Pratt,
18 Edward Frank Martin, Jr., and Naomi Martin
19 Jackson by the terms of the Last Will and
20 Testament of Edward Frank Martin who died
21 testate December the 15th, 1967, as evidenced
22 in the records filed in the Office of the Judge
23 of Probate for Richland County in box 1057
24 package 24,834. Jessie Dunn Martin having died
25 on November the 4th, 1985 as evidence by



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

55

1 records filed in the Office of the Judge of
2 Probate for Richland County in package
3 85ES4001277.

4 Q: All right. Did you check the probate of the
5 Estate of Edwin Frank -- Edward Frank Martin --
6 -

7 A: I did.

8 Q: --- Senior?

9 A: I did.

10 Q: And was it willed just as this deed says it was
11 willed?

12 A: It was.

13 Q: The property?

14 (Plaintiff's Exhibit Number 26 was admitted into
15 evidence at this time.)

16 Q: And let me show you Plaintiff's Exhibit 27.
17 Who was that deed from and who was it to?

18 A: Laurence Martin Van Horton to E.F. Martin.

19 Q: Okay.

20 A: Senior.

21 Q: And what property does that deed describe?

22 A: Tract D.

23 Q: Okay.

24 A: 20 foot road --- I know it's up here somewhere.

25 MR. PEEL: Your Honor?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

56

1 THE COURT: Yes, sir.

2 MR. PEEL: It'd be a big help, of course I don't
3 mean to interrupt him, but if while we're doing
4 the deed, if we can get the book and page
5 number because that's how we have them
6 organized so I'll know which one we're talking
7 about.

8 Q: Would you give the book and page number for
9 Plaintiff's Exhibit ---

10 MR. PEEL: I'm sorry, Your Honor.

11 Q: --- 27?

12 A: Deed book ES at page 27.

13 MR. PEEL: Thank you.

14 Q: Does deed book ES at page 127 contain right-of-
15 way language?

16 A: It does.

17 Q: Hold on, let me use the blow up. Starting with
18 the word also. Do you see the word also in the
19 description?

20 A: Repeat that again, sir?

21 Q: The word also?

22 A: Do you want me to start through there?

23 Q: Yes.

24 A: All that piece, parcel or tract of land
25 situated lying and being near Raglin Creek in



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

57

1 School District 12A in Richland County and
2 state of South Carolina containing 148 -- 40
3 acres, more or less, and being show as tract D
4 upon original plat for petition of the land of
5 Mary G. Black, deceased, and others and being
6 bounded as follows: on the north by lands of
7 Burney; on the east by lands of Martin; on the
8 south by lands of Miller and Others; on the
9 west by lands of Miller and others with the
10 exception of a permanent right-of-way 20 feet
11 from the certain road passing by land of C.M.
12 Martin and this said road runs to the said plat
13 and the said right-of-way to be enforced from
14 the rest running through the said plantation
15 back to the said lands of J.H. and Ella T.
16 Miller and said right-of-way to be left open
17 for plantation uses of the said J.H. and Ella
18 T. Miller, their successors and signs forever
19 and this to be binding for -- forever upon the
20 O -- Ossie M. Marin, her heirs, and assigns for
21 plantation uses and for this protection of the
22 pro- -- property for J.H. and Ella T. Miller.

23 Q: Okay. It refers to what tract?

24 A: D.

25 Q: And where is D on the partition plat?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

58

1 A: D is there on the partition plat (indicating).

2 Q: All right. And it refers to it's in favor of
3 Ella Miller and J.H. Miller?

4 A: Correct.

5 Q: And where was J.H. Miller on the partition
6 plat?

7 A: J.H. Miller on the partition plat. That's at
8 D and 2.

9 Q: Okay. In Plaintiff's Exhibit 27, who is the
10 grantee?

11 A: I'm sorry. Florence Martin.

12 Q: No, she's the grant -- who is the grantor?

13 A: Oh, I'm sorry. E.F. Martin is the grantee in
14 ES27.

15 Q: Okay. Now, let me move next ---

16 **THE COURT:** Hold on, I'm sorry. Your question was
17 who was the grantor and the witness answered
18 the grantee is.

19 Q: Who is the grantor?

20 A: Grantor, Florence Martin then Horton.

21 Q: Who is the grantee?

22 A: E.F. Martin.

23 **THE COURT:** All right, thank you.

24 Q: Let me show you ED14. Is that Plaintiff's
25 Exhibit 28?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

59

1 A: Plaintiff's Exhibit 28, certified copy from the
2 Register of Deeds, Richland County.

3 Q: Is that the deed to Florence Martin Van Horton?

4 A: It is.

5 Q: And who deeded it to her?

6 A: The tax collector for Richland County.

7 Q: Okay.

8 A: Ella I. -- Ellen I. Butler.

9 Q: Okay. And does that deed contain the right-of-
10 way language for the 20 foot right-of-way?

11 A: It does.

12 Q: All right.

13 **MR. WELLS:** I move to admit Plaintiff's Exhibits 27
14 and 28.

15 **THE COURT:** And your motion's granted.

16 **(Plaintiff's Exhibit Numbers 27 and 28 were admitted**
17 **into evidence at this time.)**

18 Q: All right. And where did the tax collector --
19 well, we know where the tax collector got the
20 deed. Who was the defaulting tax payer in the
21 tax deed, let me ask ---

22 A: Mrs. O.E. Martin.

23 Q: Okay. And where did Mrs. O.E. Martin get tract
24 D?

25 A: Partition plat by deed of J.H. Miller dated



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

60

1 November the 18th, 1918 recorded in book BV at
2 page 69.

3 Q: All right. Let me show you Plaintiff's Exhibit
4 29. Is that a copy of what is recorded in BV
5 ---

6 A: 69?

7 Q: --- at page 69?

8 A: Yes, sir.

9 Q: And who is it -- who is the grantor?

10 A: John Miller, J.H. Miller.

11 Q: And who is the grantee?

12 A: Ossie E. Martin.

13 Q: Okay. And does that deed contain the right-of-
14 way language?

15 A: It does.

16 Q: Okay.

17 MR. WELLS: I move to admit Plaintiff's Exhibit 29.
18 (Plaintiff's Exhibit Number 29 was admitted into
19 evidence at this time.)

20 Q: Now the deeds that contain the right-of-way
21 language, Plaintiff's Exhibits 27, 28, and 29,
22 are all of those deeds in the Defendant's Chain
23 of Title?

24 A: They are.

25 Q: And did J.H. Miller derive his title back to



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

61

1 the partition? It doesn't say where he got his
2 title, does it?

3 A: No, it does not.

4 Q: All right. Now, let's talk about the 65 acre
5 piece known as the Lewis Chain of Title. Do
6 you have notes for the Lewis Chain of Title?

7 A: I do.

8 Q: All right. Let me, first of all, just get a
9 picture of that piece of property. Show you
10 Plaintiff's Exhibit 23 and ask you if that is
11 a plat of the Lewis property now owned by the
12 Defendant?

13 A: It is.

14 (P~~l~~aintiff's Exhibit Number 23 was admitted into
15 evidence at this time.)

16 Q: All right.

17 THE COURT: Before we go any further. I am -- I
18 think this would be a good time to break for
19 lunch. We can break for one hour.

20 MR. WELLS: Yes, Your Honor. We're just getting
21 started with this chain.

22 THE COURT: Right. We'll reconvene at 1:00 p.m.

23 MR. WELLS: Okay.

24 THE COURT: Does that suit everyone?

25 MR. PEEL: Yes, Your Honor.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

62

1 THE COURT: All right, we'll stand in recess until
2 1:00 p.m.

3 (A break was taken from 11:58 a.m. until 1:04 p.m.)

4 THE COURT: Mr. Wells, you may proceed.

5 Q: Ms. Williams, to clear up a matter that we went
6 over before, the 1884 partition suit, does it
7 not involve another tract of land other than
8 the one that's shown on Plaintiff's Exhibit 19
9 that has nothing to do with this case?

10 A: Well, it -- that -- the suit covers tracts E
11 and 1, D and 2.

12 Q: Those tracts are out of a tract called the
13 River Place?

14 A: Correct. Oh, yes, sir, there's also a ---

15 Q: On page two ---

16 A: Land Hill Place, and a Home Place.

17 Q: Okay ---

18 A: Also included in this, yes, sir.

19 Q: And those have nothing to do with our case
20 today?

21 A: No, sir.

22 Q: So we're just focused on what they called, or
23 back then, the River Place?

24 A: Yes, sir.

25 Q: That's the only part of that partition that



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

63

1 applies?

2 A: Yes, sir.

3 Q: Okay. Now, I think you were going to tell us
4 about the Lewis Chain of Title?

5 A: Yes, sir.

6 Q: A piece of property the Defendant owns?

7 A: Yes, sir.

8 Q: And where did Nancy Martin receive title to the
9 Lewis Chain?

10 A: Oh, those were that RMC deed book at 1813 at
11 page 244 dated November the 11th of 2012.

12 Q: Okay. And have you looked at that deed?

13 A: Yes, sir. And I've also looked at the
14 corrective deed.

15 Q: The deed at 1813 page 244, Plaintiff's Exhibit
16 31, is this the deed?

17 A: Yes, sir.

18 Q: All right.

19 MR. WELLS: And I move to admit that one.

20 (Plaintiff's Exhibit Number 31 was admitted into
21 evidence at this time.)

22 Q: Now I believe you had already -- we've already
23 admitted Plaintiff's Exhibit 23?

24 A: Yes, sir.

25 Q: And that is a plat of the property that she



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

64

1 obtained from the Lewis family, is that
2 correct?

3 A: Yes, sir.

4 Q: How many acres is it?

5 A: The plat refers to 64.68 acres.

6 Q: Okay. Now, let me go back to our large
7 Gonzales plat, which I think is Plaintiff's
8 Exhibit 2 ---

9 A: Uh-huh.

10 Q: --- where are -- where is the 65 acre tract
11 that we're talking about now?

12 A: (Witness indicates.)

13 Q: That triangular piece?

14 A: Yes, sir.

15 Q: Okay. Where did Laura Jane Lewis Allen, et al.
16 receive that piece?

17 A: From deed of Charlotte P. Lewis dated December
18 23rd, 1985 and recorded in RMC for Richland
19 County in deed book D773 at page 473.

20 Q: And where did Charlotte P. Lewis obtain title
21 to that property?

22 A: From Rufus D. Lewis, Jr. dated August the 15th,
23 1983 and recorded in the Richland County RMC in
24 deed book D618 at page 503.

25 Q: And where did Rufus D. Lewis, Jr. receive title



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

65

1 to that property?

2 A: From Tucker Enterprises, Inc. by deed dated
3 November the 9th, 1976 and recorded in the
4 Richland County RMC in book D403 at page 630.

5 Q: Let me show you Plaintiff's Exhibit 32, is that
6 a copy of the deed to Rufus -- Rufus Lewis,
7 Jr.?

8 A: Yes, sir, it is.

9 (Plaintiff's Exhibit Number 32 was admitted into
10 evidence at this time.)

11 Q: Now, Plaintiff's Exhibit 33 and the Defendant's
12 deed that she got from Laura Jane Lewis Allen,
13 et al., both refer to a plat by E.F. Owens?

14 A: Yes.

15 Q: And neither gives you any reference as to where
16 that plat is recorded?

17 A: No, sir.

18 Q: And we don't even know if that plat ever was
19 recorded, is that right?

20 A: Yes, sir.

21 Q: But they refer to the same acreage?

22 A: Yes, sir.

23 Q: And when did Rufus Lewis obtain title? What is
24 the date of his deed, which is Plaintiff's 33?

25 A: The date of his deed is 11/9/1976.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

66

1 Q: Okay. And where did Mr. -- where did Tucker
2 Enterprises get the property?

3 A: Tucker Enterprises received the property by
4 item three of the Will of Raymond R. Tucker,
5 who died October the 13th, 1975. His estate is
6 probated in box 31346 in the Richland County
7 Probate Court.

8 Q: Okay. And where did R.R. Tucker get title to
9 the 65 acre tract?

10 A: From John V. Green, C. Lem Harper, and Joe Earl
11 Taylor by deed dated January the 19th, 1973 and
12 recorded in the RMC for Richland County in book
13 D268 at page 233.

14 Q: And let me show you Plaintiff's 34. Is that
15 the deed to R.R. Tucker?

16 A: It is.

17 (Plaintiff's Exhibit Number 34 was admitted into
18 evidence at this time.)

19 Q: Now, look at the property description and see
20 if it determines that that is identical to
21 another piece of property.

22 A: It says it's deemed identical lands which were
23 conveyed to Fletcher R. Martin as 108.2 acres
24 by deed of John A. Desportes, Henry W.
25 Desportes, Jr., William S. Desportes and



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

67

1 Eleanor D. Peay.

2 Q: So the 65 acre piece is identical to a 108 acre
3 piece?

4 A: Correct, yes, sir.

5 Q: And where did John Green, et al. get the
6 property?

7 A: From Sarah Martin Goff, Emma L. Higgins, Mattie
8 M. Higgins, Edna M. Poe, Elizabeth R. Tucker,
9 Neze M. Martin, and F.D. Martin, Sr., who were
10 all children of Fletcher R. Martin, by deed
11 dated August the 18th, 1971 and recorded in the
12 RMC for Richland County in book D216 page 103.

13 Q: And let me show you Plaintiff's Exhibit 33 and
14 ask you if that is a copy of the deed to John
15 V. Green, et al. from Sarah Martin Goff, et
16 al.?

17 A: It is.

18 Q: And were Sarah R. Martin Goff, they were the
19 heirs of Fletcher R. Martin, is that correct?

20 A: Correct, yes.

21 Q: All right. Does it say when he died?

22 A: Fletcher R. Martin died intestate in Richland
23 County, South Carolina on or about the 8th day
24 of March, 1949 seize and possessed of the below
25 described real estate, leaving him surviving as



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

68

1 his sole heirs and distributees at law his
2 wife, Juliann Campbell Martin and the following
3 children: Sarah Martin Goff; Emma L. Higgins;
4 Mattie M. Higgins; Edna M. Poe; Elizabeth M.
5 Tucker; Neze M. Martin; and F.D. Martin, Sr.
6 Thereafter on the 12th day of October, 1968
7 Juliann Campbell Martin, never having
8 remarried, died intestate in Richland County,
9 having no predeceased children, leaving as her
10 sole heirs and distributees at law the above
11 named children of Fletcher R. Martin. There
12 was no probate -- probate administered --
13 administration of either of the above named
14 deceased peoples.

15 Q: Let me go back to the deed from -- to John D.
16 Green from Sarah Martin Goff, Emma Higgins, I
17 believe it's the one previous to that?

18 A: Say that one more time.

19 Q: The deed to John D. Green from Sarah Martin
20 Goff.

21 A: Et al., yes, sir.

22 (Plaintiff's Exhibit Number 33 was admitted into
23 evidence at this time.)

24 Q: Yes. Does it refer to a Keels Engineering
25 plat?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

69

1 A: Comprised of 65.51 acres, more or less, being
2 more particularly shown on the plat prepared
3 for the Estate of F.R. Martin by Keels
4 Engineering company on May the 25th, 1970.

5 Q: And what's the plat book and page, does it say?

6 A: No, it does not.

7 Q: All right. Let me show you this plat. Does
8 that appear to be the Keels plat? What's the
9 date on that plat?

10 A: This plat is dated May the 25th, 1970. It's a
11 plat for the Estate of F.R. Martin in Richland
12 County by Keels Engineering Company recorded
13 June the 1st, 1970 in book X at page 166 in the
14 office of the RMC for Richland County.

15 Q: And was that obtained from the office of the
16 RMC from Richland County?

17 A: Yes, sir.

18 Q: All right.

19 **MR. PEEL:** Your Honor.

20 **THE COURT:** Mr. Peel?

21 **MR. PEEL:** May I see the plat, please? Thank you.

22 Q: Now, that plat has a slightly different acreage
23 from the 2012 plat, is that correct?

24 A: It does.

25 Q: But it's the same shape?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

70

1 A: Yes, sir, it is.

2 Q: Now, let me ask you where Fletcher R. Martin
3 received title to this piece of property?

4 A: From John A. Desportes, Jr.; Henry W.
5 Desportes, Jr.; William S. Desportes; and
6 Eleanor D. Peay by deed dated September the
7 24th, 1948 and recorded in the RMC for Richland
8 County in book 25 page 514.

9 Q: All right. Let me show you Plaintiff's Exhibit
10 36. Is Plaintiff's Exhibit 36 a copy of the
11 deed from the Desportes family to Fletcher R.
12 Martin?

13 A: Yes, it is.

14 Q: And what tract does it describe?

15 A: This is for tract E.

16 Q: Does it go back to our 1884 plat?

17 A: It does.

18 Q: And show us where tract E is?

19 A: Right here (indicating).

20 Q: And does Plaintiff's Exhibit 36 also recite
21 that Mattie Desportes died and left it to the
22 Desportes grantors?

23 A: Yes.

24 Q: So that would be the end of the title to tract
25 E going all the way back to the 1884 partition?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

71

1 A: Yes, sir.

2 (Plaintiff's Exhibit Number 36 was admitted into
3 evidence at this time.)

4 MR. WELLS: Now, at this point, Judge, I would like
5 to offer, for the benefit of the court,
6 documents -- documents labeled Plaintiff's
7 Chain, Defendant's Chain, and Chain of Title
8 65.06 acres of Defendant from Lewis, which are
9 notes on these chains of title, which I believe
10 we've laid a foundation for to come in and
11 would aide the court in following, in case you
12 haven't take meticulous notes on all of the
13 books and pages and dates of deeds.

14 THE COURT: All right.

15 MR. WELLS: I have her notes, that she has been
16 referring to, throughout the trial which I
17 offer as Plaintiff's Exhibit 1, Plaintiff's
18 Exhibit 20, and Plaintiff's Exhibit 30.

19 THE COURT: All right, Mr. Peel?

20 MR. PEEL: Your Honor, we object that the notes are
21 hearsay, the deeds say what they say, and to
22 that end, I assume the court ---

23 THE COURT: One moment, please. Ms. Williams?

24 MS. WILLAISM: Yes, sir, I'm sorry.

25 THE COURT: You okay?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

72

1 MS. WILLIAMS: Yes, sir. I just needed a breath of
2 air.

3 THE COURT: Do you need to take a break?

4 MS. WILLIAMS: No, sir.

5 THE COURT: Well, no, we can take a break if you
6 like.

7 MS. WILLIAMS: No, sir. I've already done the
8 breathing treatments, I'm fine. It's just a
9 lot of reading. I think we're over that now.

10 THE COURT: Well, I was going to say, Mr. Peel --
11 much of her testimony was simply reading from
12 her notes.

13 MS. WILLIAMS: Yes, sir.

14 THE COURT: That's the truth?

15 MS. WILLIAMS: Yes, sir.

16 THE COURT: Yeah, so it's already in. It's been
17 published and -- and I think it might help me
18 keep track of everything. Duly noting your
19 objections I know -- I know you had some ---

20 MR. PEEL: Well, I was going to finish by saying I -
21 - unless we get a directed verdict here at some
22 point, I assume the court will be asking for
23 proposed orders and briefs and a lot of that
24 can be addressed.

25 THE COURT: All right, yeah. And in this case I



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

73

1 don't know yet because I haven't heard ---

2 MR. PEEL: Right.

3 THE COURT: --- I haven't heard your side of the
4 case or the rest of the Plaintiff's side but
5 something like this would be a lot of things to
6 remember, you know, details to remember. I do
7 sometimes ask the attorneys prepare proposed
8 orders, so. In this case I know, I've already
9 determined I can't rule from the bench because,
10 you know, of the evidence that's yet to come in
11 but ---

12 MR. PEEL: Yes, Your Honor.

13 THE COURT: --- but I would -- if you ask -- Mr.
14 Wells, does that bother you, if I announce now
15 that I want proposed orders from counsel?

16 MR. WELLS: No.

17 THE COURT: All right. And could y'all remind me at
18 the end of the week that I did say that?

19 MR. WELLS: All right. So we offer these and I
20 assume they are coming in under the objection,
21 is that correct?

22 THE COURT: Well, I don't know.

23 MR. PEEL: I still would like my objection on the
24 record.

25 THE COURT: Okay, objection overruled.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

74

1 (Plaintiff's Exhibit Numbers 1, 20 and 30 were
2 admitted into evidence at this time.)

3 MR. WELLS: No more questions for this witness.

4 THE COURT: Okay. Mr. Peel?

5 MR. PEEL: Your Honor, I think -- can you give me
6 just a second to ---

7 THE COURT: Sure.

8 MR. PEEL: --- figure out the exhibits that I'd like
9 to show her. I think I can move a little
10 quicker.

11 THE COURT: All right, let's stand in recess for
12 about ten minutes then.

13 MR. PEEL: Okay, thank you. That'll move it along a
14 little quicker.

15 (A short break was taken from 1:20 p.m. until 1:33
16 p.m.)

17 THE COURT: You may proceed.

18 MR. PEEL: Yes, Your Honor.

19 MS. WILLIAMS - CROSS-EXAMINATION BY MR. PEEL:

20 Q: Ms. Williams, correct?

21 A: Yes, sir.

22 Q: Okay. I'm Wesley Peel, I'm here with Mr. Floyd
23 representing Ms. Martin. I appreciate your
24 testimony and the work you did on getting these
25 graphs together. I've got a few questions for



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

75

1 you. Let's work backwards. Your last bit of
2 testimony was regarding what is referred to as
3 the Lewis tract, I believe?

4 A: Yes, sir.

5 Q: And that is property that Ms. Martin owns
6 today, correct?

7 A: Correct.

8 Q: And you reference further we keep going back to
9 the original partition plat, I'm gonna call it
10 ---

11 A: Yes, sir.

12 Q: --- which is Exhibit 19 here ---

13 A: Yes, sir.

14 Q: --- and that comes out of Exhibit 18?

15 A: Yes, sir.

16 Q: Which is the petition action. And -- so, you
17 were talking about Tract E is what you were
18 referring to?

19 A: Yes, sir.

20 Q: Now, I noticed you said something that puzzled
21 me, that the 65 acre tract was the same as 108
22 acre tract?

23 A: That's what the deed said.

24 Q: That's what the deed says but you -- you didn't
25 find anywhere in the chain that explains why



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

76

1 what was originally described as 108 acres in
2 the partition action has somehow become 65
3 acres now that Ms. Martin owns?

4 **THE COURT:** You have to speak up, ma'am.

5 A: No, I found nothing that explained why it went
6 from 108 acres to 64.

7 Q: Am I rounding up? It's 64?

8 A: 65.51.

9 Q: 65.5, okay. So, we don't know if that was
10 carved out somewhere or if there's a survey
11 error, we just don't know based upon your
12 research?

13 A: Just refer to it as identical as, identical as.

14 Q: Okay. As -- as E?

15 A: Uh-huh.

16 Q: Okay. And which lands do you believe Ms. --
17 out of this original partition action, comprise
18 Ms. Martin's property today, based upon your
19 check of the title?

20 A: E is hers.

21 Q: Yes.

22 A: I believe D, and a portion of C.

23 Q: And a portion of C, okay. In the Lewis tract
24 ---

25 A: Yes, sir.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

77

1 Q: --- in that chain of title stemming from the
2 Exhibit -- well, the one moving from -- the
3 last one -- the one coming out of the Desportes
4 Estate. The first one I guess we should say.

5 A: The first deed?

6 Q: Yes.

7 A: Deed book 25, page 514.

8 Q: 25, 514?

9 A: Yes.

10 Q: Okay. And that nor any of the deeds in the
11 tract D chain titled up for Ms. Martin,
12 reference any type of right-of-way reserved?

13 A: No, sir.

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

16 A: No, sir.

17 Q: Okay. And Mr. -- the plaintiff's land is now
18 over here (indicating)?

19 A: Yes.

20 Q: It would be ---

21 A: Yes.

22 Q: --- they were part of the original tract. All
23 that's now compiled into one large property
24 that we see here?

25 A: Yes, sir.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

78

1 Q: 1023 acres?

2 A: Yes.

3 Q: I'm going to ask you a very broad question.
4 You read -- counsel had you read up -- in the
5 Martin, the Martin chain of title and the
6 Country Properties' chain of title some very
7 broad grants of right-ofways?

8 A: I've read all the right-of-ways on the deed,
9 yes.

10 Q: On the deed.

11 A: Yes.

12 Q: Did you see anything in your title work
13 anywhere that tells you where those right-of-
14 ways are located?

15 A: Just what the deed said.

16 Q: Okay. And I notice they all reference the
17 right-of-way 20 feet from the certain road.
18 That the right-of-way is 20 feet from some
19 certain road. Were you able to determine from
20 anything you reviewed what the certain road was
21 that it was 20 feet from?

22 A: No, sir. I don't make assumptions.

23 Q: Okay. And -- let me see, I want to make sure
24 I'm referring to the proper exhibits. I'm
25 going to get this blowup. I hand you Exhibit



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

79

1 22 which was the -- I'm sorry the words are so
2 small. The 2010 survey I think you said that
3 is tract D.

4 A: Uh-huh. That is Edward chain of title, yes.

5 Q: Okay. And the triangle over here, do you
6 believe that to be D?

7 A: No, sir.

8 Q: What do you believe that to be?

9 A: How far does it say it comes off of 601? 2,914
10 feet from the end of the right-of-way
11 maintenance. So, let's see, I'll have to check
12 these lines. I'm gonna need a calculator to
13 add this up to to do it back to make sure to
14 tell you exactly which piece it comes out of.

15 Q: Well, if you don't know that's fine.

16 A: Okay.

17 Q: That's fine. But, I didn't want to make you do
18 math, I'm sorry.

19 A: It's no problem.

20 Q: Exhibit 10 was this Old English tract?

21 A: Yes, sir.

22 Q: Could you -- can you orient -- are you able to
23 orient that tract ---

24 A: Yes, sir.

25 Q: --- as to the ...



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

80

1 A: I need the deed to that goes with that. I need
2 the deed that goes with it to give you ---

3 COURT REPORTER: I'm sorry, I can't hear you.

4 A: I'm not saying anything, I'm just trying to
5 find the exhibit, the deed that goes with this
6 plat because it tells which tracts.

7 Q: Turn to Exhibit 9.

8 A: All right. On this plat was conveyed 8, 9, 10,
9 11, 12, 13, 14, 15. And then the southern
10 13.81 acres of number 23 and the western acres
11 of number 24. So, if I'm not mistaken -- all
12 right. Raglin Creek comes through this one
13 right here, which is the property line going
14 out to like -- out to the Wateree River.
15 Raglin Creek is right here coming through these
16 pieces.

17 Q: So, that's the Wateree River, right here?

18 A: Yes, Wateree River. Raglin Creek runs all the
19 way down to the Wateree River.

20 Q: It doesn't have to be oriented to the north?
21 This is oriented to the north.

22 A: Then that's how -- I did it right in the first
23 place. Okay. These are the parcels here and
24 then the Guy tract that was conveyed along this
25 creek line. Along this Camp Road creek line



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

81

1 right through here (indicating). And this
2 extends way out past the property so it's going
3 to be this corner in here comes in here. This
4 corner here needs to come down here and a
5 little bit lower. You have to use the creek to
6 bear -- the creek's going to be your boundary
7 right here.

8 Q: It was just below what's called Camp Road?

9 COURT REPORTER: Below what? I'm sorry, I can't
10 hear you.

11 MR. PEEL: I'm sorry we've got our backs turned to
12 you, I apologize.

13 Q: Below what is Camp Road.

14 A: The creek is above, so let's find the creek.
15 And with a timber tract it's difficult to find
16 the creek names on here. Spears Creek.

17 Q: It's difficult to tell from a timber tract?

18 A: It is.

19 Q: Because this was made for the purpose of
20 cruising timber, correct? But it was 5, is
21 this 5?

22 A: Yes, sir it's 5. Book and page number should
23 be at the top.

24 Q: I'm sorry there, for the record PB 34, page 544
25 is the timber cruise plat.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

82

1 A: 34 544. Okay. Those are 8, 9, 10, 11, 12, 13,
2 14. Here's 11, 12, 10, 13, there's another 10,
3 14, 9, 8.

4 Q: And what year was this?

5 A: 1957.

6 Q: 1957, okay. The ---

7 THE COURT: Hold on one moment, please.

8 MR. PEEL: Sorry.

9 THE COURT: I apologize. They are painting and
10 putting carpet into the courthouse.

11 COURT REPORTER: Thank you.

12 THE COURT: You're welcome. We should probably get
13 a new building I think all together.

14 Q: Okay. In the -- let's switch back over to the
15 Country Properties chain of title.

16 A: Okay.

17 Q: The original tracts that were first conveyed in
18 that chain of title you went through were --
19 was it 1, 2, and 4, is that correct?

20 A: 1, 2, D and F.

21 Q: 1, 2 D and F?

22 A: Or 1, 2, D. Yeah, there was four in there I
23 believe. I'd have to see the deeds. Well,
24 we've got CW 121. Tract 1, tract 2, and tract
25 4.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

83

1 Q: Yes. And how many acres was that?

2 A: Let's see 414 -- it doesn't say how many total
3 acres it is.

4 Q: Isn't 414 was the total acres?

5 A: It says for tract 1 166.

6 Q: 1 is 166?

7 A: It's just a partial piece of land being tract
8 number 4. 414 acres more or less bounded,
9 being composed of tract 1 and 2. So 1 and 2
10 according to this deed is 414 acres.

11 Q: Okay. That's what I was wanting.

12 A: Okay. And then tract 4 is 166 acres.

13 Q: Okay.

14 A: According to this deed.

15 Q: Could you go back and look at what was
16 originally partitioned out? That's tracts 1,
17 2, and 4. And I'll tell you they found this in
18 the attachment to the plat.

19 A: Yes, sir.

20 Q: Here's Exhibit 19.

21 A: We're looking for the number 1, 2, 3, 4? We're
22 not doing the A, B, C?

23 Q: Yeah. Let's look at -- let's look at 1 and 2
24 first and see what the acreage for those are in
25 the partition.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

84

1 A: I have 1, 237 acres. 2 is 242 acres.

2 Q: Okay. So some quick math, 479, right?

3 A: Yes, sir.

4 Q: For if you combine them it's 479. So, would
5 you agree we're missing about 60 acres off of
6 1 and 2 in the CW 121 conveying tracts 1 and 2
7 versus what was partitioned out?

8 A: The acreages do not match between the plat and
9 the deed.

10 Q: Okay. And then what does tract 4 have on the
11 partition action?

12 A: That's either 316 or 516.

13 Q: Written number form in parenthesis and it
14 appears to be one of those two?

15 A: Yeah.

16 Q: And what is it on CW 121?

17 A: Tract 4, 166 acres.

18 Q: 166. So, that seems to be about half that
19 size.

20 A: The acreages do not match up between this.

21 Q: Okay.

22 MR. PEEL: Your Honor, if you'll give me just one
23 second please?

24 THE COURT: Yes, sir.

25 MR. PEEL: Your Honor, I don't have anymore



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

85

1 questions.

2 THE COURT: All right. Any re-direct?

3 MR. PEEL: Thank you.

4 THE COURT: Thank you. Mr. Wells, any re-direct?

5 MR. WELLS: Nothing on re-direct, Your Honor.

6 THE COURT: All right. Thank you, Ms. Williams, you
7 can come down. Watch your step coming down
8 please.

9 MS. WILLIAMS: Thank you, Your Honor.

10 THE COURT: Make sure not to take any exhibits with
11 you though.

12 MS. WILLIAMS: Yes, Your Honor.

13 THE COURT: All right. Okay. Thank you.

14 COURT REPORTER: And I would just ask before you
15 leave the courtroom, please make sure you don't
16 have any exhibits.

17 MS. WILLIAMS: He said that.

18 MR. PEEL: Your Honor, I'd like to take a second to
19 put these back in order because they were ---

20 THE COURT: Sure. That's fine, that's fine. We'll
21 stand at ease.

22 (Off the Record)

23 THE COURT: All right. Call your next witness, Mr.
24 Wells.

25 MR. WELLS: I call Cecil Brazell.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

86

1 THE COURT: Okay.

2 COURT REPORTER: State your full name please.

3 MR. BRAZELL: Cecil Lavon Brazell.

4 COURT REPORTER: C-E-C-I-L?

5 MR. BRAZELL: C-E-C-I-L. Lavon is L-A-V-O-N.
6 Brazell, B-R-A-Z-E-L-L.

7 CECIL LAVON BRAZELL, having been duly sworn,
8 testifies as follows:

9 MR. BRAZELL - DIRECT EXAMINATION BY MR. WELLS:

10 Q: Mr. Brazell, where do you live?

11 A: At 423 North Brickyard Road, Columbia.

12 Q: And what would you describe your job as?

13 A: I am a sub -- a contractor, residential mostly.
14 And I do some developments.

15 Q: How many houses do you think you have built?

16 A: Oh, 5,000, something like that.

17 Q: Okay. And how many subdivisions have you
18 developed over your career?

19 A: We've probably developed 10 ourself.

20 Q: Okay. What's the name of your company?

21 A: I am C&C Builders of Columbia.

22 Q: Okay. Are you familiar with a company called
23 Pineridge Investments, LLC?

24 A: I am.

25 Q: Who was the principal in Pineridge



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

87

1 Developments, LLC?

2 A: Carl Brazell, my brother.

3 Q: And he is now deceased?

4 A: He is.

5 Q: Okay. Did you work with Carl on that project?

6 A: Which project are we speaking of?

7 Q: With Pineridge Development -- Pineridge
8 Investments, LLC.

9 A: I bought some land through that company,
10 Pineridge, LLC. He owner financed it for me.

11 Q: Now, do you know if your brother, Carl, and
12 Pineridge Developments -- Investments, as
13 Pineridge Investments purchased a 1023 acre
14 tract on the Richland/Kershaw County line?

15 A: Yes, they did.

16 Q: Are you familiar with that piece of property?

17 A: I am.

18 Q: And I would ask you to look over here at the
19 tripod at the Gonzales Timber Plat. Does that
20 look like a plat of your -- of the 1023 acres?

21 A: Yes, that's what I understand.

22 Q: Okay. Now, did you ever visit this piece of
23 property, this 1023 acre tract?

24 A: Many times.

25 Q: And did you -- are you familiar with a road



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

88

1 called Shady Grove Road?

2 A: I am.

3 Q: And can you show the Judge where Shady Grove
4 Road is on the plat?

5 A: It comes down from up here at 601. I was
6 looking for it on your map. It must be here.
7 But it comes off of 601 and it comes down and
8 it cuts down through the woods and comes into
9 this property in here (indicating).

10 Q: Okay. Did you ---

11 THE COURT: Wait one moment. What road are you
12 pointing to, sir?

13 MR. BRAZELL: It came in off of 601 Highway,
14 McCord's Ferry Road up here.

15 THE COURT: Right.

16 MR. BRAZELL: It came in and went down. And I used
17 to use it to go into this section right here.

18 THE COURT: Where is Shady Grove Road?

19 MR. BRAZELL: I thought it was this road right here.
20 I don't' see it marked on there.

21 THE COURT: Okay. I'm sorry, go ahead. Go on, Mr.
22 Wells.

23 MR. BRAZELL: I see it. I see it up here now. It
24 comes in here, right here (indicating).

25 THE COURT: Okay.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

89

1 MR. BRAZELL: I had to put my glasses on, Your
2 Honor.

3 MR. WELLS: Let the record reflect that he had the
4 wrong road at first and then he picked out the
5 road that's labeled Shady Grove Road.

6 MR. BRAZELL: That road right there.

7 Q: Now, which part of the property is used to
8 access that?

9 A: I used it to come into this section in Richland
10 County here, from there (indicating).

11 Q: Do you know the location of Raglin Creek?

12 A: It's this creek right here (indicating).

13 Q: And is it a barrier to breaching that side of
14 the property that you just pointed to from 601?

15 A: Yes, very much so.

16 Q: Okay. Do you know when Pineridge Investments
17 purchased this property?

18 A: I looked back on some records to try to find
19 that date and I could not find it before I
20 came. I think it was in '08 or '09.

21 Q: How long did it own the property?

22 A: I do not know that.

23 Q: Why did you go to the property?

24 A: Carl asked me if I wanted to buy some of the
25 land in there, 400 acres of it.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

90

1 Q: Okay. Did you investigate buying that 400
2 acres?

3 A: He and I entered into a contract to buy it, for
4 me to purchase that.

5 Q: And where was the 400 acres of the property
6 that you were going to buy?

7 A: It was this section that's in Richland County.

8 Q: Below Raglin Creek?

9 A: Yes.

10 Q: Did you hunt the property?

11 A: Yes, I did.

12 Q: What did Pineridge Investments do with the
13 property? What was it's use?

14 A: Recreation mostly and some hunting, but he had
15 cleared off some land down there and made him
16 a place so he could bring a camper down there.

17 Q: And did you also hunt on the property?

18 A: I did.

19 Q: And when you accessed the Richland County side
20 by going in through Shady Grove Road, is that
21 the way you entered it?

22 A: I did.

23 Q: Was there a gate on the Martin property?

24 A: I don't know if it was on the Martin property
25 or not. There was a gate there that we had to



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

91

1 enter in and I was given a key when I went into
2 a contract with my brother. And he said that's
3 the way I got through that gate. I used it
4 until we sold it.

5 Q: Who gave you the key?

6 A: My brother, Carl.

7 Q: Did you ever ask permission to use that road
8 from E.F. Martin?

9 A: Never.

10 Q: E.F. Martin, Jr.?

11 A: I don't even know the Martins that you're
12 speaking of.

13 Q: Okay. Did you ask anybody for permission to
14 use that road?

15 A: No, I did not.

16 Q: Did the gate pose any kind of obstacle or
17 barrier to you to go in and out?

18 A: No because we had a key. We could go and come
19 as we wanted to.

20 Q: Okay. And was your use of the road open and
21 notorious?

22 A: Yes.

23 Q: And did you use this road, which we're
24 referring to as Shady Grove Road, and there's
25 some dispute as to the name, but did you use



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

92

1 Shady Grove Road to go in and out of whenever
2 you needed to get back there?

3 A: I did. That was the only road that I knew that
4 entered in there.

5 Q: Answer any questions that the defense might
6 have.

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

8 THE COURT: Yes, sir.

9 MR. BRAZELL - CROSS EXAMINATION BY MR. FLOYD:

10 Q: Mr. Brazell, my name's Joey Floyd and I
11 represent Nancy Martin here. Just so we're
12 clear, we were talking about this, on this
13 plat, the Gonzales plat, you pointed out on
14 here, you said that you came in off 601?

15 A: Yes, sir.

16 Q: And you called it Shady Grove Road?

17 A: That's correct.

18 Q: There is a gate shown on this Gonzales plat.
19 Do you see it?

20 A: Uh-huh.

21 Q: Remember that gate?

22 A: Well, there's a gate at a pine tree there, but
23 I don't know the location of your plat there.

24 Q: Do you remember the county maintenance ended on
25 this road?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

93

1 A: Yes, it did.

2 Q: Do you remember a sign that said end of county
3 maintenance?

4 A: Because there's a gate there, they couldn't go
5 any further.

6 Q: There's a gate beyond the end of county
7 maintenance sign, right?

8 A: Uh-huh.

9 Q: Okay. And that's the gate that you said you
10 had a key to, right?

11 A: That is right.

12 Q: You said you didn't ask Mr. Martin for
13 permission?

14 A: No. I was told I didn't need to have it.

15 Q: But you didn't tell him, I'm gonna use that
16 road, did you?

17 A: I did not.

18 Q: You never saw him?

19 A: Never ran into him.

20 Q: Never got in an argument with him?

21 A: No.

22 Q: He never told you don't use that road?

23 A: Huh-uh.

24 Q: So how was your use open and notorious?

25 A: Because my brother said that was the only way



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

94

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

3 Q: So you were given a key?

4 A: Uh-huh.

5 Q: And you just used it?

6 A: That's correct.

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

9 A: No one ever said anything.

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

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

15 Q: So there was a dam there?

16 A: We rebuilt that dam.

17 Q: So you could drive across it, right?

18 A: No, you couldn't use that.

19 Q: You never drove across that?

20 A: No ---

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

22 **MR. FLOYD:** Yes, sir.

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

95

1 October or was it ---

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

7 **THE COURT:** And what year was that, sir?

8 **MR. BRAZELL:** What year?

9 **THE COURT:** Yes, sir.

10 **MR. BRAZELL:** In '09.

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

13 **MR. FLOYD:** No, no.

14 **Q:** So y'all built the dam?

15 **A:** Uh-huh.

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

18 **A:** (Nods head.)

19 **Q:** Did you hunt on Saturdays?

20 **A:** Yes, sir.

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

22 **A:** Uh-huh.

23 **Q:** And did they come Saturdays as well?

24 **A:** I wouldn't have any idea.

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



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

96

1 is?

2 A: Yeah, because of living right there on the
3 land.

4 Q: Did you know that Dunn's Mountain Hunting Club
5 leased this property?

6 A: No, I do not.

7 Q: Do you remember any sign on this gate right
8 here?

9 A: No.

10 Q: You don't remember any signs at all being right
11 here?

12 A: No.

13 Q: Never during the course of your ownership?

14 A: No.

15 Q: Okay. Do you own a lot of property?

16 A: I own a good bit.

17 Q: Have you ever had -- do you have any Santee
18 Cooper power lines running through your
19 property?

20 A: Uh-huh.

21 Q: And Santee Cooper will give you a key, won't
22 they?

23 A: Yes.

24 Q: And you have a Santee Cooper key, don't you?

25 A: No, I do not.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

97

1 Q: All right, sir. Are you familiar with these
2 power lines back here?

3 A: Yes.

4 Q: How owns those?

5 A: I assume that's Santee Cooper.

6 Q: All right.

7 A: I didn't look to see.

8 Q: Are you familiar with the points of access off
9 of this road over here called Old English?

10 A: Yes.

11 Q: Is there a point of access right there?

12 A: Uh-huh.

13 Q: And there was a point of access over here on
14 601?

15 A: That's correct.

16 Q: And Santee Cooper had a lock on that gate right
17 there ---

18 A: I wouldn't have known.

19 Q: And you didn't look for other ---

20 A: I just knew how to go over there.

21 Q: Because your brother gave you a key?

22 A: He gave me a key to this gate right here.

23 Q: Was there a cable gate on your brother's
24 property just beyond Ms. Martin's property?

25 A: No.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

98

1 Q: There was no gate there at all?

2 A: There was not a gate there, no.

3 Q: Never -- you never saw a gate on that side of
4 the road?

5 A: (Shakes head.)

6 Q: All right. Do you know how your brother got a
7 key?

8 A: I wouldn't have any idea.

9 Q: Where is your brother now?

10 A: He's passed away.

11 Q: Do you know why that gate was there?

12 A: I haven't any idea.

13 Q: What are gates usually for?

14 A: I have them on my cattle farm in order to keep
15 cattle in.

16 Q: All right. So what would a gate across a road
17 would be used for?

18 A: It's to keep somebody out or keep something in.

19 Q: So you would agree with me that gates across
20 roads are meant to exclude people and prevent
21 people from getting ---

22 A: Well, exclude something.

23 Q: Okay. The hold people out, right?

24 A: I don't know if it's people. Like I said, I
25 keep my cows in with my gate, so.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

99

1 Q: All right. So this is a gate across a road,
2 right?

3 A: Yeah.

4 Q: All right. So what do gates across roads do?

5 A: It's gonna block entrance to it by -- for
6 something.

7 MR. FLOYD: That's all the questions I have. Thank
8 you, Your Honor.

9 THE COURT: Any redirect, Mr. Wells?

10 MR. WELLS: No redirect. May the witness be
11 excused?

12 THE COURT: Okay. Any objection?

13 MR. PEEL: No, Your Honor.

14 THE COURT: All right. Thank you, sir. Watch your
15 step coming down.

16 MR. WELLS: I call Harold Pickrel.

17 COURT REPORTER: Harold Pickrel?

18 MR. PICKRELL: Pickrel.

19 COURT REPORTER: Spell your name, please.

20 MR. PICKRELL: P-I-C-K-R-E-L.

21 HAROLD V. PICKREL, III, having been duly sworn,
22 testifies as follows:

23 MR. PICKREL - DIRECT EXAMINATION BY MR. WELLS:

24 Q: Mr. Pickrel, state your full name for the
25 record.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

100

1 A: Harold V. Pickrel, III.

2 Q: And where do you live?

3 A: 2026 Woodcreek Farms Road, Elgin, South
4 Carolina.

5 Q: And you are a license realtor, is that correct?

6 A: Yes, I am.

7 Q: And do you -- are you familiar with a piece of
8 property, and we have it up here on the board
9 that's Plaintiff's Exhibit 2, a 1023 acre tract
10 on the boundary between Lugoff -- between
11 Kershaw County and Richland County?

12 A: Yes, I am.

13 Q: Okay. And have you ever been involved in the
14 sale of that tract?

15 A: Yes, I have.

16 Q: When was the -- what was the first sale that
17 you were involved in involving this 1023 acre
18 tract?

19 A: The first sale would've been probably five or
20 so years ago. It involved lot trading and cash
21 between Country Properties and Carl Brazell.

22 Q: Who was the seller?

23 A: Mr. Brazell. Well, he may have owned it as a
24 different entity, but.

25 MR. FLOYD: Your Honor?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

101

1 THE COURT: Yes, sir.

2 MR. FLOYD: Just one thing. We have a lot of
3 witnesses. Can I ask that these witnesses be
4 sequestered outside so that we don't have them
5 listen to all this testimony?

6 THE COURT: All right. Mr. Wells?

7 MR. WELLS: Judge, I don't have any objection as
8 long as -- I know most of these witnesses know
9 each other and I don't want anyone disqualified
10 by saying hello or goodbye once a witness
11 leaves the stand.

12 THE COURT: I think ---

13 MR. WELLS: You can instruct them about not talking
14 about the testimony, but ---

15 THE COURT: Well, I was going to say, yeah, Mr.
16 Floyd obviously is concerned about them
17 tailoring their testimony to what they heard on
18 the stand. And, not saying they would or they
19 would do anything wrong, so as a result, if
20 they're non-parties, you can exclude them
21 except for the last witness who's already
22 testified, I mean. But I'm inclined to grant
23 the motion. The problem is it may be a little
24 uncomfortable. There is a canteen on level G1
25 where you can get a cup of coffee or a soda or



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

102

1 something. But otherwise, they'll just have to
2 wait in the hall, I guess.

3 MR. WELLS: I think these witnesses are going to be
4 brief.

5 THE COURT: Okay.

6 MR. WELLS: All right.

7 THE COURT: All right. You may -- did y'all
8 understand what we're talking about? So those
9 of you who haven't been called to testify yet,
10 could you please leave the courtroom and
11 standby. And apparently it will be less than
12 30 minutes, do you think, Mr. Wells? Less than
13 an hour before they're called to testify?

14 MR. WELLS: Yes, sir.

15 THE COURT: Okay. So you may all be excused.

16 MR. WELLS: Mr. Brazell, you can stay if you want to
17 because you -- but you can go if you want to as
18 well since you've already testified.

19 MR. BRAZELL: Do you want me to stay?

20 MR. WELLS: No. You can go ahead and go.

21 MR. BRAZELL: Okay.

22 MR. FLOYD: Just don't talk to the other witnesses.

23 THE COURT: Let's take a brief break, 15 minutes or
24 less, and then let's plan to finish by 4:00.
25 Does that suit everybody? Or is that ---



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

103

1 MR. PEEL: Yes.

2 THE COURT: Well, it doesn't matter. I mean, if we
3 have to stay beyond 4:00 we can do that.

4 MR. WELLS: Judge, I would like to try to get these
5 short use witnesses -- I want to try to get
6 them done if we can.

7 THE COURT: Okay.

8 MR. WELLS: If we can't, we can't.

9 THE COURT: Okay, let's do it this way. Let's take
10 a recess around 4:00 and then I have to run an
11 errand and return a phone call. I won't say
12 what it's about. Well, I'll just say we have
13 ---

14 MR. FLOYD: We're fine with adjourning.

15 MR. PEEL: Judge, I mean, these will be short, I
16 think, today.

17 MR. WELLS: Yes.

18 THE COURT: Okay.

19 MR. PEEL: So we ought to be able to get that done.

20 THE COURT: All right. Do you mind coming back at
21 about 2:30, right on the dot?

22 MR. PICKREL: No, sir, no problem.

23 THE COURT: Mr. Wells, is that okay.

24 MR. WELLS: That's fine.

25 THE COURT: We'll stand in recess until 2:30. We'll



COUNTRY PROPERTIES V. NANCY DUNN MARTIN 104

1 recess then about 4:00. And actually, I'm
2 willing to work as long as it takes, but
3 there's something I need to do at 4:00.

4 **MR. PEEL:** That's no problem. Your Honor, since
5 he's already taken the stand, we'd ask that the
6 court will remind him not to discuss his
7 testimony.

8 **THE COURT:** Oh, I'm sure -- Mr. Wells, you've told
9 him that?

10 **MR. PICKREL:** Not a problem.

11 **THE COURT:** Thank you. We'll be back at 2:30.

12 **(A break was taken from 2:15 p.m. until 2:35 p.m.)**

13 **THE COURT:** Thank you so much. Please be seated.
14 Mr. Pickrel, if you'd get back to the witness
15 stand. All right. You may proceed, Mr. Wells.

16 **Q:** Mr. Pickrel, I think you told us that you're a
17 licensed realtor?

18 **A:** Yes.

19 **Q:** And you have been involved in selling the 1023
20 acre tract on the Richland/Kershaw County line
21 that's shown on Plaintiff's Exhibit 2 over
22 there?

23 **A:** Yes.

24 **Q:** And when you were involved in the sell of that,
25 who was the seller and who was the purchaser?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

105

1 A: The seller I remember as being Carl Brazell.
2 I don't remember the entity that he owned it in
3 and the purchaser was Country Properties.

4 Q: Okay. Did you show it to other people?

5 A: I did.

6 Q: How many times do you think you showed the
7 property?

8 A: Two different people, probably a couple, three
9 times each.

10 Q: And were you familiar with Shady Grove Road?

11 A: I was, am.

12 Q: Okay. And where did it enter the property that
13 you were trying to sell?

14 A: When I was first taken to the property by the
15 listing agent we went in on Shady Grove Road
16 and came in on the Richland side of the
17 property and he got out, opened the gate, we
18 went on back into the property.

19 Q: Was there a gate on Shady Grove Road?

20 A: There was either a gate or a cable but I
21 believe it was a gate.

22 Q: Okay. Was the gate any kind of problem to
23 enter by?

24 A: No, sir.

25 Q: Okay. And did you -- how did you get in by



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

106

1 Shady Grove Road when you showed the property?

2 A: We came in off of 601, went straight up Shady
3 Grove to the gate and then went on in to the
4 property.

5 Q: How did you get through the gate?

6 A: There were multiple locks on the gate. If I
7 recall, there was either a key lock or
8 combination lock that I guess Mr. Brazell was
9 using.

10 Q: Okay. Did you have a key or a combination to
11 that lock?

12 A: At one point I did, yes, sir.

13 Q: And did that lock pose any kind of problem for
14 you going in and out of Shady Grove Road?

15 A: No.

16 Q: And did you use Shady Grove Road every time you
17 needed to use Shady Grove Road to reach the
18 1023 acre tract?

19 A: I did.

20 Q: Now, did you sneak back there or did you ride
21 back there openly and notoriously?

22 A: No, we road back there open and -- in a truck.

23 Q: Okay.

24 A: Just straight down the road.

25 Q: And you entered it by motor vehicle?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

107

1 A: Yes.

2 Q: Did you ask anyone's permission to go back
3 there?

4 A: The real estate broker that was handling it --
5 no, we just -- he just said go, this is the way
6 we get in.

7 Q: You did not ask for anyone Martin, E.F. Martin,
8 or a Nancy Martin, you did not ask their
9 permission to use Shady Grove Road through
10 their property?

11 A: No.

12 Q: Okay. Answer any questions that the defendants
13 might have.

14 THE COURT: Okay. Mr. Floyd?

15 MR. PICKREL - CROSS EXAMINATION BY MR. FLOYD:

16 Q: Mr. Pickrel, my name is Joey Floyd. I
17 represent Nancy Martin. I believe you said you
18 are a licensed realtor, right?

19 A: I am.

20 Q: All right. How long have you known, Mr.
21 Podell?

22 A: 30 years.

23 Q: 30 years. And you actually hunt on his
24 property here don't you?

25 A: I have hunted that property, yes, sir.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COUNTRY PROPERTIES V. NANCY DUNN MARTIN

108

1 Q: You've got a key to get inside his gates too,
2 right?

3 A: I do.

4 Q: And are you familiar with his points of access
5 on his property?

6 A: I am.

7 Q: Does this look kind of like what that plat
8 shows up there? Help you orient here. Highway
9 601.

10 A: Uh-huh.

11 Q: Plaintiff's property. There's a pond, road and
12 a dam. All that make sense? You kind of
13 understand what's going on now?

14 A: I do.

15 Q: Now, why are you calling this Shady Grove Road?
16 Is it actually Northeast Shady Grove Road? Do
17 you know?

18 A: Yeah, I believe it was Northeast Shady Grove
19 Road but I'm not one hundred percent sure.

20 Q: Okay. So, you said you hunt this property here
21 of Mr. Podell's?

22 A: Uh-huh.

23 Q: Are you familiar with his access off of 601?

24 A: I am.

25 Q: He's got a lock there?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

109

- 1 A: He does.
- 2 Q: A locked gate?
- 3 A: Yes, sir.
- 4 Q: Are you familiar with his entrance off of Old
- 5 English Road up here?
- 6 A: Uh-huh.
- 7 Q: Does he have a locked gate right here?
- 8 A: I believe it's a cable gate.
- 9 Q: A cable gate?
- 10 A: Uh-huh.
- 11 Q: Are there multiple locks on each one of those?
- 12 A: I can't speak to Old English, but there's only
- 13 one by -- on the main, what I call the main
- 14 road.
- 15 Q: Just the one down here?
- 16 A: That's correct.
- 17 Q: Where do you primarily access his property?
- 18 A: Primarily there.
- 19 Q: Off 601?
- 20 A: Yes.
- 21 Q: Okay. And you can get to all parts of his
- 22 property from 601 couldn't you?
- 23 A: Once upon a time, yes.
- 24 Q: Before the floods?
- 25 A: Uh-huh.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN 110

1 Q: I mean there was -- there was a pond here,
2 there was a road across the dam, right?

3 A: Correct.

4 Q: And you could access any point on his property?

5 A: I could.

6 Q: Okay. Mr. Podell's given you a key and he's
7 told you you can hunt at anytime you want to
8 hunt?

9 A: Yes.

10 Q: And you've been in business with Mr. Podell for
11 a long time as well, right?

12 A: We have done business together, yes.

13 Q: Done business with him.

14 A: Uh-huh.

15 Q: Buying lots, selling lots and that sort of
16 stuff. How many years do you think you've been
17 doing business with him?

18 A: 20.

19 Q: All right. So, is it important to you -- you
20 sell large tracts of land?

21 A: Actually, that would've been the last one I
22 sold.

23 Q: But you -- you're familiar with selling large
24 tracts of land, right?

25 A: Yes, I am.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

111

1 Q: And was this the primary plat that you used to
2 market the property?

3 A: I did not market the property. That was the
4 plat that was given to me by the seller's agent
5 who is also the same person that showed us the
6 points of access and used that plat to show the
7 property.

8 Q: Okay. And so, this is that plat, right?

9 A: Yes.

10 Q: And this is the only plat that you were aware
11 of whenever you were marketing and trying to
12 sell it, right?

13 A: Correct.

14 Q: You see this on this Gonzales plat between what
15 appears to be tracts three and four and right
16 above the name Edward Frank Martin, do you see
17 that?

18 A: I do.

19 Q: What does that say right there?

20 A: I can't read it. It says gate.

21 Q: Good. Does that indicate where there was a
22 gate on Mr. Martin's property?

23 A: It indicates there was a gate there.

24 Q: All right. Do you recall there being a gate on
25 that property?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

112

1 A: I do. I recall one gate that we went through
2 to get on that property.

3 Q: Do you recall coming down to a sign that said
4 end of county maintenance?

5 A: I don't recall, not saying it wasn't there, I
6 just don't recall it.

7 Q: Okay. You just don't remember?

8 A: Right.

9 Q: All right. This gate that you had to go
10 through, do you know if it was on Mr. Martin's
11 property or off his property?

12 A: I mean obviously, looking at the plat, I would
13 say that it's on there. I don't recall going
14 through that gate. I only remember going
15 through one gate and it was the one ---

16 Q: You think there was just a gate there?

17 A: I do. I know that's the only one we unlocked
18 and went through.

19 Q: But this indicates to you that there's a gate
20 there as well, right?

21 A: It indicates that there is a gate there.

22 Q: All right. Whenever you sell large tracts is
23 it important to find access?

24 A: Normally, yes.

25 Q: Knowing where you have access, what's legal



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

113

1 access and all that sort of stuff?

2 A: Yes.

3 Q: Is that important to you?

4 A: It is.

5 Q: All right. On this plat, does it show, up
6 here, a right-of-way easement up off of Old
7 English Road? Does it show that? You saw this
8 plat back years ago?

9 A: Yes, uh-huh.

10 Q: Does it show that? North of Raglins Creek?
11 See that? Up near Old English Road?

12 A: Buyer says so that's what I believe.

13 Q: All right. Is there any sort of right-of-way
14 or easement shown on this 2004 plat relating to
15 this dashed road down here that's called Dirt
16 Woods Road?

17 A: In the area of where you're pointing out the
18 gate?

19 Q: Is there any indication here that there is a
20 right-of-way or an easement?

21 A: Can I see it again?

22 Q: Sure. Does it say right-of-way or easement
23 anywhere?

24 A: I do not see that on the plat.

25 Q: All right. So you said you were given a key by



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

114

1 somebody ---

2 A: Yes.

3 Q: --- to a gate?

4 A: Correct.

5 Q: Who gave you that key?

6 A: Walter Campbell.

7 Q: All right. Do you know what sort of key it
8 was?

9 A: Just a small key to a Masterlock or something
10 like that.

11 Q: Do you know who's lock it was on the gate to
12 unlock?

13 A: I -- my thinking it was Mr. Brazell's.

14 Q: Okay. Do you know that for sure?

15 A: I do not.

16 Q: You don't know how he got that key, do you?

17 A: Well, I mean -- it's on your property so I
18 assume you got it from the seller.

19 Q: But you don't know where it came from?

20 A: Correct.

21 Q: You're just making an assumption? Do you own
22 some other tracts of land as well? Some large
23 tracts?

24 A: I do.

25 Q: Do you own some tracts that have Santee Cooper



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

115

1 lines running across them?

2 A: Santee Cooper, no.

3 Q: Do you have -- you familiar with Santee Cooper
4 though?

5 A: I am.

6 Q: Are you familiar with Santee Cooper putting
7 locks on gates if they want -- if they ask the
8 landowner to get access are you familiar with
9 that?

10 A: Well, I would assume they would do that anyway.

11 Q: All right. Do you have a Santee Cooper key?

12 A: I do not.

13 Q: You've never had a Santee Cooper key?

14 A: No.

15 Q: Do you remember if you used a key or a
16 combination lock on that gate?

17 A: I -- I didn't.

18 Q: Has it been too long really for you to remember
19 where the gate was?

20 A: No, I remember where the gate was.

21 Q: Okay. Where was the gate?

22 A: The gate that I went through was the gate right
23 on the property line.

24 Q: Which property line?

25 A: I don't recall this gate. I don't recall a



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

116

1 gate right as you enter the property because
2 the property had been cut at that time.

3 Q: So you're saying that this ---

4 A: Where you're pointing is where I ---

5 Q: --- the property line between what's shown here
6 is Lewis Allen, Laura Jane Lewis Allen and
7 Charlotte -- so it's a triangular piece, right?

8 A: Correct.

9 Q: And you're saying that there was just a gate
10 right there?

11 A: That's the gate I recall going through.

12 Q: You just remember one gate?

13 A: Yeah.

14 Q: Okay. But you don't remember the other gate?

15 A: I do not.

16 Q: All right. Can you remember the gate in your
17 mind what it might have looked like?

18 A: (No response.)

19 Q: If I show you some pictures? Exhibit 2 in my
20 notebook, this is riding down -- I represent to
21 you this is riding down this road here
22 Northeast Shady Grove. Does that look familiar
23 at all?

24 A: No. I've never been going through when someone
25 coming, mound on the left-hand side.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

117

1 Q: Does it look kind of like that?

2 A: The gate we went through, seems like this was
3 good and steep right here.

4 Q: Do you remember any of that?

5 A: I do not.

6 Q: Okay. So you don't know if that was the gate
7 or not? You just don't remember?

8 A: Well, I just remember a pretty significant hill
9 on the left-hand side where we went on to the
10 1000 acres.

11 Q: What's it been six or seven years since you
12 went there?

13 A: Probably.

14 Q: All right. And you don't know how somebody got
15 the key for you to get access? You can't
16 testify how you got -- how that person got ---

17 A: No, other than the real estate broker.

18 Q: Did you have a copy of that key made?

19 A: No.

20 Q: Did you give it back to somebody?

21 A: Either gave it -- either would have given it
22 back to Mr. Kay or may have kept it because we
23 eventually moved forward to a contract and a
24 subsequent sell.

25 Q: Okay. Did you ever have a combination to any



COUNTRY PROPERTIES V. NANCY DUNN MARTIN 118

1 of these -- this gate or some other gate on
2 this property?

3 A: I don't recall if there was a combination lock
4 there. There may have been and -- I hesitate
5 on that a little bit because I do have other
6 properties and there are -- some have
7 combinations on that lock so I just can't
8 recall if that one was combination or key.

9 Q: Do you ever retain services of foresters?

10 A: Very seldom.

11 Q: Very seldom. Do you know if foresters connect
12 with one another to get access? Have you ever
13 heard of somebody doing that?

14 A: I would think sometimes they would.

15 Q: Okay. So you don't know anything about who put
16 the gate there, how long it's been there?

17 A: No.

18 Q: When's the first time you saw this property?

19 A: The first time I was shown the property by the
20 broker.

21 Q: 2008, 2009?

22 A: Somewhere in there.

23 Q: So you don't know what's happened on that
24 property since before then?

25 A: No, I don't. I haven't been on the property



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

119

1 since then.

2 Q: Before that time?

3 A: Since then.

4 Q: How about before 2008, have you ever been to
5 this property?

6 A: If so it would have been simply because of the
7 piece of property I used to be an owner in,
8 hunting on it with dogs.

9 Q: Let's talk about that. Are you familiar with
10 this property to the south down here?

11 A: Which piece is that?

12 Q: This property down here that appears to be
13 owned by Screaming Eagle Partnership and
14 showing Cleveland Swamp Timber Company?

15 A: I am familiar with it.

16 Q: Tell me what you know about Cleveland Swamp and
17 Company?

18 A: 2700 acre tract. Goes all the way to the
19 Wateree River. Has access really off Screaming
20 Eagle Road after you cross 601. It's owned by
21 a group of people. I used to be an owner in.

22 Q: And there's a little dirt road or -- I
23 shouldn't say dirt road, but there is a little
24 dash line, right? Are you familiar with this
25 little dashed line right here?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

120

- 1 A: I am.
- 2 Q: Tell me where this road takes you to?
- 3 A: It eventually takes you all the way out to
- 4 Screaming Eagle Road.
- 5 Q: All the way out to 601, right?
- 6 A: Eventually.
- 7 Q: Okay. This road right here takes you basically
- 8 from Wateree River ---
- 9 A: Uh-huh.
- 10 Q: All the way back down ---
- 11 A: Correct.
- 12 Q: --- to 601? And that comes right by this
- 13 property that's owned by Ms. Martin, doesn't
- 14 it?
- 15 A: It does.
- 16 Q: Right by her land?
- 17 A: Uh-huh.
- 18 Q: I counted up -- you said you probably used this
- 19 road six times?
- 20 A: Which one?
- 21 Q: This piece here, I'm sorry. What's called --
- 22 this dirt road across Ms. Martin's property
- 23 that's shown on this Gonzales plat.
- 24 A: I'd say that's fair.
- 25 Q: Six times?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

121

1 A: Uh-huh.

2 Q: Did you ever see anyone on a Saturday?

3 A: I do not. Carl's daddy would go ---

4 Q: Okay. Could it have been Saturday, that people
5 like to look at large tracts on Saturdays?

6 A: I would imagine they would -- but I cannot
7 recall a day.

8 Q: You said there were multiple locks on the gate
9 that you went through? Do you remember that?

10 A: I seem to remember there being several locks on
11 that gate.

12 Q: And do you know who other -- who else had locks
13 on it?

14 A: I do not.

15 Q: You didn't ---

16 A: I can speculate, but I do not.

17 Q: All right. So this Exhibit 2 that I showed you
18 a little earlier, I showed you a picture of a
19 pine tree here that's got a chain around it.

20 A: Right.

21 Q: And it's got multiple locks on it.

22 A: Right.

23 Q: Is that kind of what you remember?

24 A: I actually don't remember it being around a
25 tree. I thought it was more in the middle of



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

122

1 the gate, but.

2 Q: Is that how you remember the locks being on it?

3 A: But I do remember multiple locks.

4 Q: Is that how people connect the locks on that
5 link and just use one link to the next?

6 A: I think in most instances they would or they
7 couldn't get in.

8 Q: Okay. So you don't, as you sit here today, you
9 don't know if those locks had permission to be
10 on there or not, do you?

11 A: I've never seen a permission slip, no.

12 Q: You don't know one way or the other, do you?

13 A: No.

14 Q: You didn't ride up and down the road with a
15 sign on the side of your truck that said I'm
16 using this road cause I want to use it, did
17 you?

18 A: No.

19 Q: You just used it. Somebody gave you a key and
20 said here, here's a key, you can just go use
21 it, right?

22 A: That's right.

23 Q: So you obtained permission from somebody to go
24 use the road? They gave you permission?

25 A: Correct.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

123

1 Q: And you own some tracts of land, right?

2 A: I do.

3 Q: You keep locks on those gates, right?

4 A: On some of them.

5 Q: Some of them you just have a gate up?

6 A: Some of them have a gate.

7 Q: But the ones that have a gate have a lock on
8 them, right?

9 A: Generally.

10 Q: And why do you put a lock on those gates?

11 A: Well, in my case we're in a subdivision. It's
12 generally because it's not hunting land and
13 we're trying to prevent dumping and so forth.

14 Q: Keep people out, right?

15 A: That's correct.

16 Q: And what was the purpose of that gate on that
17 property, do you know?

18 A: I would assume it would be keep people out.

19 Q: Okay. That's all the questions I have.

20 **THE COURT:** Any re-direct?

21 **MR. PICKREL - RE-DIRECT EXAMINATION BY MR. WELLS:**

22 Q: Did it keep you out?

23 A: No.

24 Q: Okay.

25 **MR. WELLS:** Those are all the questions I have.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

124

1 THE COURT: Any re-cross?

2 MR. FLOYD: No, sir.

3 THE COURT: All right. Thank you, sir. Watch your
4 step coming down, please.

5 MR. WELLS: We call Algie Campbell, Jr.

6 COURT REPORTER: Give me your name.

7 MR. CAMPBELL: Algie Campbell, Jr.

8 COURT REPORTER: Keep standing for me for just a
9 minute. Algie?

10 MR. CAMPBELL: Algie, L-G-I-E.

11 COURT REPORTER: A-L-G-I-E?

12 MR. CAMPBELL: A-L-G-I-E.

13 COURT REPORTER: And Campbell, C-A-M-P-B-E-L-L?

14 MR. CAMPBELL: Yeah.

15 ALGIE CAMPBELL, JR., having been duly sworn,
16 testifies as follows:

17 MR. CAMPBELL - DIRECT EXAMINATION BY MR. WELLS:

18 Q: Mr. Campbell, where do you live?

19 A: I live on Larry Jeffers Road, 1220.

20 Q: Now, you're retired as a state employee?

21 A: Yeah, state.

22 Q: And you worked for PRT, is that right?

23 A: PRT. Retired in 2003.

24 Q: All right. Are you familiar with Shady Grove
25 Road?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

125

1 A: Yeah.

2 Q: And how are you familiar with Shady Grove Road?

3 A: My mother went to school at Shady Grove School.
4 And then the road, we went down it and went in
5 the swamp back in that area.

6 Q: When were you born?

7 A: 1940.

8 Q: When's the first time you think you ever saw
9 Shady Grove Road?

10 A: Somewhere around when I was maybe four or three
11 year -- some three, four years old. My daddy
12 had took me to -- around the swamp by walk til
13 they could build a house. They built a -- coon
14 hunt and stuff like that when I was a kid.

15 Q: Why did you use Shady Grove Road?

16 A: That was the only road that went to the swamp
17 where we coon hunted and stuff, deer, to the
18 road.

19 Q: Who owned the property back in the back?

20 A: As far as I know Guy owns everything. The
21 other side was called John Wilson. There was
22 pecan orchards down there and all.

23 Q: What kind of activities did y'all do down at
24 the end of Shady Grove Road?

25 A: We fished down there, hunted and mostly that



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

126

1 was the big thing, recreation we had was, you
2 know, into the river fishing, about everybody
3 did in that area.

4 Q: And did you follow Shady Grove Road to the
5 Wateree River?

6 A: All the way to the river. They had a boat
7 landing at the end of the river, went down
8 where you -- some of the people would have a --
9 what we call a -- now they call it an old wood
10 boat they put in at the river at the end of it.

11 Q: Was there a bridge over Spears Creek?

12 A: Yeah, it was a bridge and it was a nice bridge
13 as far as I can remember and the trucks and
14 cars and stuff would drove over it.

15 Q: Pretty well constructed?

16 A: It was well constructed going by the number
17 that bridges it. That and people with a lot of
18 knowledge that can build that type of bridge.

19 Q: Now, your use of Shady Grove Road would've
20 started in like 1944, is that right?

21 A: Around 1944 on up. To say that I started and
22 can remember it, you know, back then. They
23 took me around the swamp and all.

24 Q: And, that went on for how long?

25 A: Around 2000 and -- '59 or '60, somewhere along



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

127

1 in there when I got up.

2 Q: That would be 1959 or '60?

3 A: '60, somewhere along in there because I got
4 married in '53.

5 Q: Was that county maintained at that time?

6 A: It was well kept up and all. But seeing
7 anybody scraping or anything, it was always
8 kept up neat.

9 Q: I'm talking about Shady Grove Road now.

10 A: Yeah, Shady Grove Road was kept up because
11 they'd come out to number 12, it went all the
12 way to number 12 around the Tuckers and all
13 back down through there.

14 Q: Did you ever ask anyone's permission to use
15 shady Grove Road?

16 A: No.

17 Q: Did anyone ever stop you from using Shady Grove
18 Road?

19 A: Not while I was -- that I can remember of it.
20 Nobody ever stopped us.

21 Q: Did other people use it?

22 A: Everybody mostly they coon hunted and had
23 recreation to use that road.

24 Q: And that was the way to get to the Wateree
25 River from 601 ---



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

128

1 A: Yes, sir. The only way to get to Wateree River
2 at that time or you had to go way up or down
3 Clover to get to it.

4 Q: And Shady Grove took it's name from a school?

5 A: Yeah. It was a school right at the -- the
6 school was right at number 12 now where it
7 comes square up to -- Fort Jackson comes around
8 the road there on 12. The school was right at
9 the edge of it. My uncle, if I asked him --
10 let's say that he's one of the first ones
11 bought the school from the county when they did
12 selling the schools.

13 Q: Okay. Answer any questions that the defendants
14 might have.

15 **MR. CAMPBELL - CROSS EXAMINATION BY MR. FLOYD:**

16 Q: Mr. Campbell, my name is Joey Floyd. I
17 represent Nancy Martin here. You went fishing
18 and hunting on some of these properties here?

19 A: Yeah.

20 Q: And you went with the owners, didn't you, the
21 people that hunted and fished? These people
22 owned this property, didn't they?

23 A: I knew them cause we went to all the -- well,
24 a couple of the owners went and fished but we
25 went by ourselves back there. Really anybody



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

129

1 in the community could go down that road and go
2 to the river and fish. But that was the only
3 recreation we had back then when I was growing
4 up.

5 Q: And they told you, you were a young boy, you
6 could go down there and you could hunt and
7 fish, just take care of the property?

8 A: Yeah. It was the road.

9 Q: And they gave you permission to do it, didn't
10 they?

11 A: They didn't give me permission. I mean that
12 was just a way of life back then.

13 Q: But they didn't tell you don't use it, did
14 they?

15 A: Didn't tell you not to and didn't tell you
16 could.

17 Q: But you knew you could use it because you
18 hunted and fished with them, right?

19 A: No. I hunted and fished with my father.

20 Q: Right.

21 A: And they had -- about everybody really in the
22 community fishing because they're -- from what
23 I can understand there was way back the road
24 was built back because they have a driveway
25 from the river and everything.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

130

1 Q: Okay. Let's come back to that in a second.
2 But these folks back here, they hunted too,
3 didn't they? They owned the property?

4 A: If they did I didn't never see them in there.

5 Q: They never -- you never ---

6 A: While we was in there that I know of.

7 Q: But you knew them, didn't you?

8 A: Yeah. I knew some of them.

9 Q: And you knew these folks over here that owned
10 this property too, didn't you?

11 A: Who?

12 Q: You knew all these people that owned this
13 property? You knew them or your dad knew them,
14 didn't he?

15 A: I imagine he did.

16 Q: Yeah. And they knew that you were down there.
17 They knew that you were down there hunting and
18 fishing and using it, didn't they?

19 A: I imagine we did. I won't say they knew it or
20 not but the road was there.

21 Q: You weren't trespassing were you?

22 A: No. Not back then, it wasn't trespassing. You
23 never did hear of trespassing. That come out
24 years later.

25 Q: All right. But they knew you were there and



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

131

1 they were okay with you using it? They didn't
2 mind you using that property, did they?

3 A: But I know they didn't. Everybody else did.

4 Q: Right.

5 A: Yeah, in the neighborhood was country right in
6 that area.

7 Q: Yes, sir. And are you familiar with this road
8 down south of my client's property here, it's
9 a road on what's called Cleveland Swamp, are
10 you familiar with that road?

11 A: And that swamp was the land we used to call
12 bare bottom. It was a dead end. Cleveland
13 Swamp was what we call Guy Swamp now.

14 Q: And it goes all the way to the Wateree River,
15 doesn't it?

16 A: No. No, sir.

17 Q: Okay. You said ---

18 A: Not then. They put that road in when they cut
19 logs in there years later.

20 Q: When, do you know?

21 A: No, I don't. It was years later, it was in --
22 lots of years because they had -- one time when
23 it wasn't but the road, they had Shady Grove
24 Road. Next road coming on down went all the
25 way to the river was the Gault Swamp. And the



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

132

1 next one was a Pete Swamp.

2 Q: But you don't know when this road here, to the
3 south of my client's property was built all the
4 way to the river, do you?

5 A: It would've been -- no, sir. I don't know
6 exactly when. It was during the cutting the
7 logging out and that's when they ---

8 Q: It was when you were still going there though,
9 wasn't it? Before 1960?

10 A: I don't remember exactly when that road was put
11 in to be exact.

12 Q: But you know it goes to the river now, right?

13 A: Yeah, it goes to the river now.

14 Q: But you don't know anything about any right-of-
15 ways, do you?

16 A: Like what?

17 Q: You just said something about a right-of-way to
18 the river. You don't know anything about a
19 right-of-way to the river, do you?

20 A: Right-of-way would -- when we was growing, that
21 was the main road that go until Shady Grove was
22 a way to get to the road.

23 Q: So what you're saying is you used it, right?

24 A: Yeah, but there's a lot of county roads. I
25 can't ---



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

133

1 Q: But it just looked like one, right?

2 A: No, it was a road, county road.

3 Q: Okay. Tell me how you know that.

4 A: Know what? Because they kept that -- the road
5 was kept up.

6 Q: Did you see them with your eyes? You didn't
7 see any county operators doing it, did you?

8 A: Yeah. Did you ever see all the things that
9 you'd see? All right.

10 Q: I'm just asking a question. Did you ever see
11 the county operator run the motor graders down
12 there?

13 A: No, sir, I didn't.

14 Q: Okay. I didn't think you did. And the last
15 time you were on this property was about 1960?

16 A: Somewhere along that area.

17 MR. FLOYD: No further questions.

18 THE COURT: Any re-direct?

19 MR. WELLS: No re-direct, Your Honor.

20 THE COURT: All right. Thank you, sir. Watch your
21 step coming down.

22 MR. WELLS: Your Honor, may this witness be excused?

23 THE COURT: Yes, sir. Watch your step coming down.
24 Thank you, sir.

25 COURT REPORTER: Stand right there for me. State



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

134

1 your full name.

2 **MR. BRAZELL:** Mack Brazell.

3 **COURT REPORTER:** M-A-C or M-A-C-K?

4 **MR. BRAZELL:** M-A-C-K. Well, it's Lever Mack
5 Brazell.

6 **COURT REPORTER:** L-E-I ...

7 **MR. BRAZELL:** L-E-V-E-R.

8 **COURT REPORTER:** L-E-V-E-R, Mack Brazel.

9 **MR. BRAZELL:** M-A-C-K, B-R-A-Z-E-L-L.

10 **LEVER MACK BRAZELL,** having been duly sworn, testifies
11 as follows:

12 **THE COURT:** I'm sorry, sir. How do you spell your
13 last name again?

14 **MR. BRAZELL:** B-R-A-Z-E-L-L.

15 **THE COURT:** Okay. Thank you.

16 **MR. BRAZELL - DIRECT EXAMINATION BY MR. WELLS:**

17 **Q:** Mr. Brazell, where do you live?

18 **A:** 1640 Blaney Road, Elgin, South Carolina.

19 **Q:** And what's your profession?

20 **A:** I'm a home builder.

21 **Q:** Okay. And are you familiar with Shady Grove
22 Road?

23 **A:** Somewhat, yes, sir.

24 **Q:** Okay. And have you ever driven down Shady
25 Grove Road?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

135

1 A: I have.

2 Q: And why did you do that?

3 A: We were looking at property.

4 Q: And who is we?

5 A: Claude Campbell and myself.

6 Q: And were you looking at the 1,000 acre tract
7 that we have over here on Plaintiff's Exhibit
8 2?

9 A: Yes, sir.

10 Q: Was there a gate on Shady Grove Road when you
11 went down it?

12 A: Gate or a chain? Yes, sir. It was -- we had
13 to stop and open it up to go in.

14 Q: Okay. Do you know if the gate you're talking
15 about -- where was it on this map? Was it on
16 the property line or was it before you got to
17 the property line?

18 A: There was two gates. And one of them's, I
19 would have to say, about midway. And either it
20 had a combination lock, but it had a lot of
21 locks on it. And then when we got to the
22 entrance of the property there was another gate
23 there, but I don't think that gate was locked.

24 Q: Okay. So the first gate was locked?

25 A: Yes, sir.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

136

1 Q: And did you have a combination lock to get in
2 and out of that gate?

3 A: I don't -- yes, but I don't remember the
4 combination.

5 Q: But there was a combination lock?

6 A: To my recollection it was. It had a lot of
7 locks on it. It was more than one lock on the
8 gate. There was several locks on the gate.

9 Q: Did they gate that we're talking about ---

10 A: Yes, sir

11 Q: --- did it ever stop you from going in and
12 using the road?

13 A: No, sir.

14 Q: Because you would -- tell me what you would do?

15 A: Well, we went up to the gate, we opened it up
16 and we went in there and I remember when it
17 was, it was during hunting season because that
18 was when Claude, you know, was thinking about
19 buying this property. And Mr. Cecil Brazell
20 was into hunting and his truck was parked on
21 the road out there.

22 Q: You recognized Cecil Brazell's truck?

23 A: Yes, I did. And I know Cecil and I recognized
24 Cecil.

25 Q: Okay.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

137

1 A: I didn't see Cecil but I saw his truck and I
2 knew that was him in there hunting.

3 Q: Did you ever ask permission from Nancy Martin
4 or Edwin F. Martin, Jr. To use that road?

5 A: I don't -- I do not know those people so I did
6 not ask permission from anyone.

7 Q: Okay. Did you ever see Mr. Campbell ask
8 permission from anyone to use ---

9 A: No, sir.

10 Q: --- that road?

11 A: We went together, we went in. He said get out,
12 open the gate and that's what I did.

13 Q: He was aging at that time, is that ---

14 A: That's correct.

15 MR. WELLS: Those are all the questions I have of
16 this witness.

17 THE COURT: Okay. Mr. Floyd?

18 MR. BRAZELL - CROSS EXAMINATION BY MR. FLOYD:

19 Q: Mr. Brazell, I'm Joey Floyd. I represent Nancy
20 Martin.

21 A: Excuse me, sir?

22 Q: I'm Joey Floyd. I represent Nancy Martin in
23 this case.

24 A: Okay. All right, sir.

25 Q: Are you related to Cecil?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

138

1 A: No relation.

2 Q: Okay. You talked about some gates here. Have
3 you ever seen a plat of this property?

4 A: I have.

5 Q: Are you familiar with this plat called the
6 Gonzales plat, the 2004 Gonzales plat?

7 A: Let me see, let me find where I'm at. McCord's
8 Ferry. Swamp. I'm not familiar with it, but
9 okay. Yes, sir.

10 Q: Have you seen this plat before?

11 A: Not this particular plat, but I have seen a plat
12 of the property of this tract right here, yes,
13 sir.

14 Q: When you say -- you're talking about this big
15 blowup that I have here or have you ever seen
16 anything with the name Gonzales Land and Timber
17 ---

18 A: I have not, no, sir.

19 Q: You've never seen it?

20 A: If I did, I wouldn't recollect.

21 Q: Okay. Do you recognize the 1023 acre tract
22 here?

23 A: I do.

24 Q: Have you seen that platted before?

25 A: I have seen a plat of the property before now.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

139

1 Q: Does that look like an accurate representation
2 of the property?

3 A: I wouldn't have a clue if it's accurate.

4 Q: You don't know what it looks like?

5 A: No.

6 Q: All right. Do you see this word right here?

7 A: I do.

8 Q: What is that word between what appears to be
9 tracts 3 and 4 on the Edward Frank Martin, Jr.
10 tract, can you read it?

11 A: Do I recognize the ---

12 Q: No, sir. Can you tell me ---

13 COURT REPORTER: I'm sorry, do I recognize what? I
14 didn't understand what you said.

15 MR. BRAZELL: Recognize the gate?

16 COURT REPORTER: I didn't hear what you said.

17 MR. FLOYD: He said the road.

18 COURT REPORTER: Thank you, I'm sorry.

19 MR. FLOYD: Yes.

20 A: I thought you said recognize the road?

21 Q: I said do you recognize this word right here?

22 A: Gate, yeah, uh-huh.

23 Q: Is that an accurate representation of where you
24 think the gate was on this property?

25 A: I guess so, it appeared to be about midways. I



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

140

1 remember driving in the Tahoe, an eighth of a
2 mile maybe.

3 Q: And unlocking the gate?

4 A: And unlocked the gate, uh-huh.

5 Q: And then you went on to -- then you entered the
6 property after another gate, right?

7 A: I think that gate was open. I don't remember --
8 there wasn't no lock or anything on that gate is
9 my recollection.

10 Q: When you say that gate, are you referring to the
11 gate between what is identified on the Gonzales
12 plat as the Laura Jane Lewis Allen property and
13 Country Properties property over here, the 1023
14 acre tract, right? That would be the second
15 gate, I think. Is that what you --

16 A: I guess.

17 Q: Do you know?

18 A: There's gates in there. I remember the gate
19 being at the entry. When Claude and I got to
20 that point, he said okay, this is where our land
21 begins. I'm assuming that's what he was talking
22 about.

23 Q: So you remember opening a gate, driving a little
24 way and then going through another gate?

25 A: That's correct.



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

141

1 Q: Okay. That makes sense. Do you know who owned
2 that gate between tracts 3 and 4?

3 A: Who owns the gate?

4 Q: Do you know who owns this gate?

5 A: No, I don't know that -- I didn't know it
6 belonged to anybody.

7 Q: Okay. Did you know at the time?

8 A: Did I know at the time?

9 Q: Who owned it?

10 A: No.

11 Q: You don't know who owns it today either, do you?

12 A: No, I don't.

13 Q: All right. What's the purpose of a locked gate
14 on a tract of land? To keep people out, right?

15 A: Yes, sir. Like my dad would say, locks will
16 keep thieves out. You can't do nothing about a
17 liar, but you can put a lock on something to
18 keep somebody out.

19 Q: Okay. You got permission to go on Mr. Podell's
20 property any time you want to?

21 A: I think so.

22 Q: You got the key to his gates, don't you?

23 A: I do.

24 Q: And you can go on his tract of land any time you
25 want to go there, right?



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

142

1 A: As far as I know.

2 Q: And you've been on this big tract of land right
3 here?

4 A: Right.

5 Q: A number of times, right?

6 A: Uh-huh.

7 Q: And in fact, you've come in off of 601?

8 A: That's correct.

9 Q: And you can drive all the way across this
10 property and stay on that property to get back
11 here, can't you?

12 A: No.

13 Q: Now remember, there used to be a dam here and a
14 road.

15 A: Well, if that was a dam, I wouldn't have road
16 it. If you had a four-wheeler. If you just
17 want to take a chance you could drive across it.

18 Q: Did you ever see the road after Mr. Podell did
19 some improvements to it?

20 A: On what road?

21 Q: On the road across the dam?

22 A: Yeah, uh-huh.

23 Q: You did?

24 A: Uh-huh.

25 Q: And you wouldn't have driven a four-wheeler



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

143

1 across it?

2 A: Oh, no. No, no. Prior to that.

3 Q: Okay, prior to that. But after he did that, I
4 mean, you could easily drive across that,
5 couldn't you?

6 A: Yeah.

7 Q: And you could access all parts of this property,
8 right?

9 A: From my understanding you can't do it now.

10 Q: Could you before?

11 A: Could I before? Could I drive a four-wheeler
12 across it?

13 Q: No, sir. It's ---

14 A: It was not a road, it was a dam. And the dam
15 wasn't wide enough for you to drive a vehicle
16 across it. If you choose to do that, but it was
17 not made for that, to drive across, it's to hold
18 water back.

19 Q: But ---

20 A: It restrains the water.

21 Q: --- across the dam, right?

22 A: It's to strand water. It wasn't a road, the dam
23 you spoke of.

24 Q: There are roads across dams, right?

25 A: (No response.)



COUNTRY PROPERTIES V. NANCY DUNN MARTIN

144

1 Q: They have roads across dams, right, yes or no?

2 A: If you want to cross it, yes, sir.

3 Q: And you could access all the parts of this
4 property coming off that Highway 601, right?

5 A: Yes, I bet you could.

6 Q: Mr. Podell's financing some spec homes for you
7 right now?

8 A: I'm hard of hearing, sir.

9 Q: He's financing some homes for you right now?

10 A: Has he financed some homes for me? I'm building
11 a house, yes, sir. I'm building two houses.

12 Q: And he's financing those for you, isn't he?

13 A: That's correct.

14 Q: Do you own any other tracts of land?

15 A: Do I?

16 Q: Do you, yes, sir.

17 A: Do I own any tracts of land?

18 Q: Uh-huh?

19 A: No, sir.

20 Q: Okay. Do you have a Santee Cooper key?

21 A: Excuse me?

22 Q: Do you have a Santee Cooper key?

23 A: I do not.

24 Q: Are you familiar with what a Santee Cooper key
25 is?

