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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 II OF V

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1 A: I am somewhat.

2 Q: What is it?

3 A: I think it's something the power company has.

4 Q: Santee Cooper Power?

5 A: I think so. I don't know, but I think it's ---

6 Q: Have you ever seen one?

7 A: Have I seen a Santee Cooper key?

8 Q: Yes, sir.

9 A: Have not.

10 **MR. FLOYD:** No further questions.

11 **THE COURT:** Thank you. Re-direct?

12 **MR. WELLS:** No re-direct.

13 **THE COURT:** Okay. Thank you, sir. You may come
14 down. Watch your step coming down.

15 **COURT REPORTER:** Go ahead and have a seat until the
16 Judge comes back.

17 **MR. GUY:** All right.

18 (Off the Record)

19 **COURT REPORTER:** All rise.

20 **THE COURT:** Thank you so much, please be seated.

21 **COURT REPORTER:** Judge, this is James Lindsay Guy,
22 II.

23 **JAMES LINDSAY GUY, II,** having been duly sworn,
24 testifies as follows:

25 **MR. GUY - DIRECT EXAMINATION BY MR. WELLS:**



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1 Q: Mr. Guy, where do you live?

2 A: I live in the Boykin Community of Kershaw
3 County.

4 Q: Okay. I have to ask you when you were born?

5 A: I was born July 31, 1943.

6 Q: Okay. And what's your father's name?

7 A: Edwin Powe Guy.

8 Q: Okay. And we've heard some testimony earlier
9 this morning about deeds from an Edwin P. Guy,
10 is that your father?

11 A: That's my father, yeah.

12 Q: Okay. And are you familiar with a dirt road on
13 the Kershaw County/Richland County line called
14 Shady Grove Road?

15 A: Yes, sir.

16 Q: And how did you become familiar with Shady Grove
17 Road?

18 A: Back in the early 1940s my father bought about
19 1500 acres from a Mr. Kester and that road led
20 to the property that he bought from Mr. Kester.

21 Q: Okay. Did your -- did your father in 1969 sell
22 412 acres to East Highland Company?

23 A: Yes, he did. That was part of the Kester
24 property.

25 Q: And was East Highland a division of Catawba



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1 Timber or Bowater?

2 A: Yes, it was, uh-huh.

3 Q: Those were all sort of one, the same big
4 company?

5 A: Same thing, yeah. Tennessee company.

6 Q: Okay. Now, when's the earliest -- what's your
7 earliest memory of Shady Grove Road?

8 A: Probably when I was a you child eight or nine,
9 ten years old.

10 Q: And what did you do on Shady Grove Road?

11 A: Well, I'd go down there with my father. There
12 was a field down there on the river at the end
13 of that road and we called it the coon hunt
14 field. And my father used to farm that -- that
15 field. And we'd have dove shoots down there and
16 coon hunts.

17 Q: Let me show you Plaintiff's Exhibit 10 and ask
18 you if you're familiar with this plat?

19 A: Yes, I am.

20 Q: What is that plat? What do you call it?

21 A: This was a plat made by Robert Cano. This is a
22 plat of my father's entire property in that area
23 called the English Swamp. He bought a portion
24 of it from Mr. Richard Lloyd and a portion from
25 Mr. Kester. He bought it with his uncle who he



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1 was in business with and as they began to split
2 up the business, my father wanted to own all of
3 it and he only owned half of it. And so what
4 they did is they divided this thing into 40 acre
5 blocks and my father -- my father's uncle got
6 part of it and my father got the other part.
7 And then my father systematically bought out his
8 uncle and they would appraise each 40 acre block
9 to come up with what was the value. And that
10 sell to East Highland was an attempt or part of
11 the process in which my father was to get Mr.
12 Powe's interest. He sold out and then took the
13 money and bought out Mr. -- a portion of Mr.
14 Powe's property.

15 Q: Is the coon hunt field depicted on that plat?

16 A: Yes, it is.

17 Q: Can you point to the Judge and show him where
18 the coon hunt field was?

19 A: Yes, sir. It was right here on the river.
20 Right here on the river is a white -- I think
21 you can sort of see it where it's open there.

22 Q: And is the road that I call Shady Grove Road
23 depicted on that plat?

24 A: Well, it continues all the way to the -- it
25 comes in here like that. It comes in here right



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1 there and goes right to the coon hunt field.

2 Q: Does it show -- what is the name of it on that
3 plat?

4 A: I don't see a name on it. Camp Road, Camp Road.

5 Q: Is Camp Road the same location aa what I call
6 Shady Grove Road?

7 A: Yes, it is.

8 Q: Okay. Are you familiar with the Gonzales plat?

9 A: I've seen that plat, yes.

10 Q: And what portion of this property shown as
11 1023.07 acres came out of your father's property
12 to East Highland Timber? Can you show about
13 where that property is on this plat?

14 A: It starts right about here and kind of goes --
15 it's all of this property here and it kind of
16 goes in that direction. It would be from right
17 here back that way (indicating).

18 Q: Would that be the eastern and southeastern
19 portion of 1023 acres?

20 A: Yes, it would.

21 Q: And did the road called Camp Road or Shady Grove
22 Road enter that 412 acre parcel?

23 A: Yes, it does.

24 Q: And are you -- this is Plaintiffs Exhibit 8, are
25 you familiar with that plat?



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1 A: Yes, that's the plat that was -- was made when
2 my father sold it to East Highlands. These --
3 you see my father owned all of this property on
4 the east side and actually -- and owned this
5 also. And he and I actually put these corners
6 in there to put a dividing line because that's
7 -- he wanted to sell everything to the west of
8 that. The reason he did it like that was he
9 took it off of the creek because he didn't want
10 to have to sit there and look at -- when this
11 tract got cut over he didn't want to have to
12 look at it at the edge of the creek so that's
13 why -- that's why it's kind of an irregular
14 thing. It wasn't a straight line.

15 Q: Now, the creek you're talking about is Spears
16 Creek?

17 A: Spears Creek, yes, sir.

18 Q: Now, is there a road shown on that plat?

19 A: Yes, right here (indicating).

20 Q: Okay. What is it called on that plat?

21 A: Woods Road.

22 Q: Is that the same road as Camp Road and Shady
23 Grove Road?

24 A: Yes.

25 Q: Was there a bridge across Spears Creek?



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1 A: There was.

2 Q: And is the bridge shown on this 1957 plat, which
3 is Plaintiffs Exhibit 10?

4 A: Yes, it's shown right here.

5 Q: Let me show you Plaintiff's Exhibit 19. Are you
6 familiar with this plat?

7 A: I've seen that plat.

8 Q: And you actually have a copy of it.

9 A: I have an original of it.

10 Q: Okay. The plat?

11 A: The plat, yes, sir.

12 Q: Okay. And do you see the word bridge on this
13 plat?

14 A: Right here (indicating).

15 Q: Let the record show that he is pointing to a
16 place on tract 3. Is that approximately the
17 same location as the bridge on Plaintiff's
18 Exhibit 10?

19 A: Looks like it, yeah.

20 Q: What did your father call the Shady Grove Road?

21 A: He called it the CC Road.

22 Q: And do you know what that referred to?

23 A: Yeah. He told me that the CCC, the Conservation
24 Core and back in the '30s during the depression
25 worked on that road and fixed it and might have



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1 built it. I don't know whether they built it or
2 they fixed it up but that -- that's why he
3 called it that. And, as a matter of fact, the
4 key that I had to that gate -- we have keys to
5 a lot of different gates on the properties we
6 owned and we used to stamp that key CC so we'd
7 know which key would go and unlock the gate.

8 Q: Was there a gate at the entrance to the Guy
9 property?

10 A: There was.

11 Q: And can you show the location of that gate on
12 Plaintiff's Exhibit 2?

13 A: That gate was right here on the property line.

14 Q: Okay. Is that the gate and the lock you were
15 referring to with the CC on the key?

16 A: No. Actually the gate was -- there was a gate
17 back in here on this Shady Grove Road and that's
18 the gate we had -- that's for the gate marked
19 CC. This one we marked LE for Lower English.

20 Q: And how often did you use Shady Grove Road
21 coming up?

22 A: Well, we had the Veneer plant which is why my
23 father bought most of this farm land. And we
24 cut timber in there on occasions and we'd go in
25 there and do it then. And then, of course, we



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1 used to hunt it all the time.

2 Q: So the use was hunting and timber?

3 A: It was.

4 Q: Okay. Let me ask you if you've ever seen this
5 item?

6 A: Yes. My parents used to have camp hunts and
7 coon hunts down there on the coon hunting field
8 and this was an invitation that my mother used
9 to send out. It says, Mr. And Mrs. Edwin Guy
10 invite you to a campfire supper and coon hunt.
11 R.S.V.P. December 9th, 1954. And I used to go
12 to those coon hunts. It was quite a social
13 event they would have down there and you could
14 drive a car all the way to the coon hunt field.

15 Q: On Shady Grove Road?

16 A: On Shady Grove Road. And this little map that
17 she used to have, she drew up here on there to
18 show coming from Camden crossing highway on
19 Number 1. Back then, of course, it wasn't the
20 interstate. And then you get 601 and you turn
21 left at Shady Grove Road and that was a dirt
22 road that you could drive in all the way down
23 there. Matter of fact, when I was in college I
24 remember leaving college and going straight in
25 my car from the school after class to the coon



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1 hunt field for a dove shoot.

2 Q: Okay.

3 MR. WELLS: I move to introduce Plaintiff's 48.

4 THE COURT: Can I look at it.

5 MR. WELLS: Yes.

6 THE COURT: Thank you.

7 (Plaintiff's Exhibit Number 48 was admitted into
8 evidence at this time.)

9 Q: Could you point on Plaintiff's 48 to where --
10 what road is shown as Shady Grove Road?

11 A: It's marked -- it's written in here as Dirt
12 Road.

13 MR. PEEL: Objection.

14 THE COURT: What grounds?

15 MR. PEEL: There's no -- Shady Grove Road is not on
16 there anywhere. It does not say that.

17 THE COURT: Okay.

18 MR. PEEL: That was the question.

19 THE COURT: Objection overruled. Let me hear the
20 witness's testimony.

21 A: Yeah. I can tell you that where she's got
22 marked here Dirt Road, that is the same road
23 we're talking about.

24 THE COURT: Okay. Do you still object?

25 MR. PEEL: Yes, sir. The question was show where



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1 Shady Grove Road is marked on there. And Shady
2 Grove Road is not marked on there.

3 **MR. WELLS:** Let me withdraw the questions.

4 Q: Can you show the Dirt Road that we're talking
5 about?

6 A: Right there (indicating).

7 Q: And what's it called on the Exhibit at 48?

8 A: It's called Dirt Road.

9 Q: Okay. Is that one and the same as what I have
10 been referring to as Shady Grove Road?

11 A: It is.

12 **THE COURT:** Okay, Mr. Peel?

13 **MR. PEEL:** That's fine.

14 **THE COURT:** Okay. Thank you. All right, go ahead.

15 Q: The day on that Exhibit 48, was that written at
16 the time?

17 A: What?

18 Q: That the invitation was extended?

19 A: It was.

20 Q: And you provided that to me, is that correct?

21 A: I did. They had numerous of campfires down
22 there or coon hunts.

23 Q: Was that a yearly thing?

24 A: Sometimes it'd be more than one year -- more
25 than one a year.



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1 Q: Did you go? Did you go to those coon hunts?

2 A: I did.

3 Q: Was it fun?

4 A: Yeah. I drank my first whisky down there.

5 Q: Okay.

6 A: Underage, I'll add. I hope the statute's over.

7 Q: Did you continue to use this dirt road when you
8 needed to access the coon field?

9 A: I did.

10 Q: Okay. Do you still have the coon field today?

11 A: I still own that property, yes, sir.

12 Q: And did you continue to use Shady Grove Road
13 during the 1950s?

14 A: I did.

15 Q: The 1960s?

16 A: Yes, sir.

17 Q: The 1970s?

18 A: Yes.

19 Q: In the 1980s?

20 A: Yes.

21 Q: And during the 1980s, are you a member of a hunt
22 club?

23 A: I am.

24 Q: And what's the name of the hunt club?

25 A: Boykin Hunting Club.



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1 Q: And did it also lease the property shown on
2 Plaintiff's Exhibit 2 to hunt?

3 A: The Boykin Hunt Club hunted on my property which
4 was my father's. And they also leased -- Mr.
5 Lloyd owned the western portion of that. They
6 hunted it. Well, the portion that my father --
7 when my father sold this to East Highlands, East
8 Highlands sold it to Richard Lloyd who owned a
9 bunch of property up in here. We used to lease
10 that land, the hunt club leased that land from
11 Mr. Lloyd up until Mr. Lloyd's estate sold the
12 property and then we no longer hunted it.

13 Q: If the sale of the property from the Lloyd
14 Estate was in 1999 ---

15 A: That's right.

16 Q: --- did you hunt the property until about 1999?

17 A: Until then, yes, sir. When it sold, then we
18 didn't -- no longer had the lease on it.

19 Q: And did you use Shady Grove Road to reach the
20 Lloyd property for hunting purposes?

21 A: We did.

22 Q: Until the hunting lease expired in 1999?

23 A: That's correct.

24 Q: Did you have -- did anyone stop you from using
25 that road?



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1 A: Nobody stopped me.

2 Q: Did you ask permission to use that road?

3 A: No, sir.

4 Q: Would you have asked permission to use that
5 road?

6 A: No, sir.

7 Q: Why not?

8 A: Because I had use of it. It was a road I had
9 been using and a road my father used for over
10 60 years.

11 Q: Did you believe that you had a right to use it?

12 A: Yes, I did.

13 Q: And what was that based on?

14 A: Based on the fact that we owned property down
15 there and that was our access to the property.

16 Q: When the 412 acres was sold to East Highland
17 Timber ---

18 A: I don't remember the date.

19 Q: Well, when that was done, was there any other
20 access to that 412 acre tract other than the
21 road shown on the plat as Dirt Road or Woods
22 Road?

23 A: No, there was no other access to it. No access
24 road.

25 Q: That tract did not have any access to 601, did



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1 it?

2 A: No.

3 Q: Other than the road shown as Dirt Road?

4 A: Right.

5 Q: Or Woods Road?

6 A: (Nods head.)

7 Q: And have you continued to use Shady Grove Road
8 to access your property?

9 A: I have.

10 Q: And do you know when you last used it?

11 A: I don't know when it was they took the locks
12 away, but I used it up until then. And then
13 I've used it through the Santee Cooper key.

14 Q: So you've used it since they took the locks
15 away?

16 A: Yes.

17 Q: Have you invited other people to hunt on the Guy
18 property?

19 A: I have.

20 Q: And to use this road?

21 A: I have. And I've given them keys to my lock.

22 Q: And have they -- have other people used this
23 road to reach your property?

24 A: Oh, yeah.

25 Q: Over the years?



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1 A: Over the years.

2 Q: Since 19 what?

3 A: Well, since probably -- I can't remember back in
4 the '40s when he bought it, but it was certainly
5 in '50s.

6 Q: Okay. And when you use the road, do you sneak
7 in there?

8 A: No, sir.

9 Q: Is your use open and notorious?

10 A: It was.

11 Q: Okay. Answer any questions that the defendant
12 might have.

13 **MR. GUY - CROSS EXAMINATION BY MR. FLOYD:**

14 Q: Mr. Guy, my name is Joey Floyd. I represent
15 Nancy Martin. You and I had an opportunity to
16 meet during the course of this case. I'm going
17 to start with that, it was in 1957, is that what
18 this plat right here was?

19 A: Yes.

20 Q: You testified about a bridge, right?

21 A: Yes.

22 Q: And you and your father built that bridge?

23 A: Well, I don't know that me and my father built
24 it. I remember going down there when I was a
25 young boy, eight or nine, ten years old and



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1 watching them work on that bridge.

2 Q: But didn't you say your father built that
3 bridge?

4 A: Yeah, he built it.

5 Q: So, that's the one you built so the one we see
6 on this plat is 1885 plat, that's not the same
7 bridge that we're talking about, is it?

8 A: Well, it might not be the same bridge but it's
9 where he built it, rebuilt it.

10 Q: Okay. But your father built that bridge that we
11 see on that 1957 plat?

12 A: Right. And that bridge was -- as I recall I
13 went down there and watched him work on it.

14 Q: Okay. Shady Grove's not on that plat anywhere,
15 is it?

16 A: Shady Grove was not a name I was familiar with
17 until several years ago when this street -- they
18 had a street sign on there.

19 Q: All right. And nothing on there says Shady
20 Grove anywhere?

21 A: On there.

22 Q: On anything, right? All right. And nothing on
23 it says Northeast Shady Grove Road either, does
24 it?

25 A: No, sir.



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1 Q: That coon hunt that we were talking about, that
2 invitation, you said it was a big community
3 thing?

4 A: It wasn't community, it was private.

5 Q: Private. But everybody was invited in that area
6 that your parents knew, right?

7 A: If you got an invitation you got to go. If you
8 didn't get an invitation, you didn't get to go.

9 Q: Right. But your parents knew all the landowners
10 around there?

11 A: Well, it's not necessarily landowners, it was
12 their friends.

13 Q: Their friends, they all owned property right
14 around there, didn't they?

15 A: Not necessarily.

16 Q: And your dogs, their dogs were running on
17 everybody's land around there, right?

18 A: Well, the dogs don't understand property lines.

19 Q: There were no property lines too, so they'd go
20 all over the place?

21 A: Oh, yeah.

22 Q: And most times people ask permission to hunt
23 somebody's property, don't they?

24 A: Yeah, yeah.

25 Q: You aren't aware of any written or deed easement



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1 to use this Dirt Woods Road that we see on this?

2 A: I don't know -- I haven't researched all of the
3 deeds so I don't know what -- whether there are
4 easements. I don't know whether there are
5 written easements or not.

6 Q: But you don't know of any, right?

7 A: Don't know of any.

8 Q: Right. And you don't have any specific
9 knowledge of what's shown on the Gonzales plat
10 on the 1,000 acre tract near the Dirt Woods
11 Road, you don't have any specific knowledge of
12 this dirt road being public and maintained, do
13 you?

14 A: No. I know that the road patrol, what we called
15 the road patrol used to scrape these roads.

16 Q: You never saw it with your own eyes?

17 A: Never saw them, no, sir. But I've seen road
18 patrol back there in the swamp.

19 Q: Back behind this property, right?

20 A: I don't remember exactly where I saw them, but
21 I remember as a young boy watching the road
22 patrol scrape the road.

23 Q: But you never saw them scrape any of this road
24 that we see on the Gonzales plat?

25 A: I don't know whether it was that road or not



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1 that was in the swamp.

2 Q: And you've got a Santee Cooper key, right?

3 A: I do.

4 Q: How did you get a Santee Cooper key?

5 A: They gave me one.

6 Q: And what does that Santee Cooper key do?

7 A: It opens the lock.

8 Q: It opens all Santee Cooper locks on owner's
9 gates, doesn't it?

10 A: I don't know whether it opens all of them, but
11 it's one they gave me. The history behind that,
12 you be interested in knowing, is that power line
13 that they put through there, they wanted it to
14 go through my farm. And we had taken a portion
15 of that swamp and put it in a private foundation
16 to dedicate it so that it would not be -- that
17 our timber would be cut. So when they wanted to
18 come through there, I said you can't come
19 through there. And we went to the -- I went to
20 the board and that's why that property -- that's
21 why that power line goes right down the property
22 line.

23 Q: They's why they shift it?

24 A: That's right.

25 Q: And that's actually a Santee Cooper key or



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1 Santee Cooper lock on this gate right here too,
2 isn't it?

3 A: Yes, I think there is. I don't remember but I
4 think there is.

5 Q: And you actually access your property from Old
6 English Road, don't you?

7 A: I access part of my property at Old English.
8 But actually I access part of my property and
9 then it goes into the foundation we set up.

10 Q: But that's the gate you come in to access your
11 property off of Old English?

12 A: That property, that portion of the property,
13 yes.

14 Q: And you actually just use a lock -- let me ask
15 you this. You've seen this plat before, this
16 Gonzales plat, right?

17 A: Right.

18 Q: And you're familiar with the gate right here?

19 A: Right.

20 Q: Which is on Ms. Martin's property now, right?

21 A: I assume that's her property, I don't know.
22 Now, I can't tell you whether -- where that gate
23 is. I know there's a gate there and I can't
24 tell you at what point ---

25 Q: All right. Let's talk about coming from 601?



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1 A: Right, okay.

2 Q: From 601 you come down a dirt road to a gate.

3 A: Right.

4 Q: A locked gate.

5 A: That's right.

6 Q: And how long has that gate been there?

7 A: I don't know how long it's been there but my
8 lock's been on there up until the time she took
9 it off.

10 Q: Been there since 1970?

11 A: Well, I moved back after college and working at
12 the bank in '68 so I would say at least until
13 then.

14 Q: So, you think since 1970 it's been there?

15 A: Probably but I can't testify to any factual
16 knowledge.

17 Q: And it's been locked, hasn't it?

18 A: It's been locked with about five locks.

19 Q: Since the time it went up, right?

20 A: As far as I know.

21 Q: And your father had a lock on that gate, didn't
22 he?

23 A: He did, uh-huh.

24 Q: You don't know how your father came to get a
25 lock on that gate, do you? You don't know how



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1 that went down, do you?

2 A: No. He gave me a key and from time to time I
3 changed that lock because the locks would break
4 or something like that.

5 Q: All right. And that's part of your replacing
6 the lock, correct?

7 A: Yeah. I had replaced that lock before.

8 Q: And you believe that people put up gates, and
9 they put up locked gates to keep people out,
10 don't you?

11 A: Sure.

12 Q: And you believe that these county operators,
13 they could be bribed to go plow some roads every
14 now and then, right?

15 A: Back in the old days they did.

16 Q: They would bribe them with liquor, right?

17 A: They don't do that now.

18 Q: Right. They don't do it now, but back in the
19 day was it something that you were aware of?

20 A: I was.

21 Q: And a fellow named Duncan Kirkland, have you
22 ever heard of him?

23 A: Oh, yeah.

24 Q: Tell me -- Duncan Kirkland had the ability to
25 persuade motor grader operators every now and



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1 then to plow a little further, didn't he?

2 A: Duncan took it upon himself to kind of be the
3 landlord down there even though he didn't own
4 the property, but he looked after it. And if he
5 had to, you know, get a road scraped, he
6 thought, then he'd see to it.

7 Q: All right. And I'll ask you about these
8 pictures here that I've got as Exhibit 2. You
9 said you've driven down from 601 down Northeast
10 Shady Grove Road?

11 A: Uh-huh.

12 Q: Mr. Wells calls it Shady Grove, I call it
13 Northeast Shady Grove Road. And we'll see why
14 ---

15 **THE COURT:** That's why it's Defendant's Exhibit 2,
16 right?

17 **MR. FLOYD:** Defendant's Exhibit Number 2.

18 Q: Are you familiar with these pictures? Have you
19 seen an end of county maintenance sign on that
20 road?

21 A: I don't recall seeing that sign, no, sir.

22 Q: Okay.

23 A: I'm assuming this is the road. I couldn't tell.

24 Q: Okay, that's fine.

25 A: You're showing me pictures of it.



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1 Q: Are you familiar with the gate shown in Exhibit
2 2?

3 A: That gate used to be blue, as I recall.

4 Q: Okay. It used to be a blue gate, painted blue?

5 A: It was painted blue.

6 Q: Years and years ago, right?

7 A: I don't remember when, but that's right.

8 Q: And do you remember a little placard sign over
9 in one area?

10 A: Recently, yeah. It hadn't been there all that
11 long.

12 Q: All right. You don't know how often that -- how
13 long that's been there?

14 A: No. But I'm looking at four or five locks here.

15 Q: Yeah. You don't know anything about any lock
16 cleanings that went on on that property? Have
17 you ever seen locks hanging?

18 A: Lock cleaning?

19 Q: Have you ever seen any locks hanging from the
20 gate?

21 A: No, sir.

22 Q: You never saw that?

23 A: Locks were around that tree and mine was one of
24 them.

25 Q: But you've never seen locks hanging off the gate



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1 like that?

2 A: I don't recall seeing that, no, sir.

3 Q: All right. And you don't want strangers going
4 down your road, do you?

5 A: No, I don't want poachers going down there.

6 Q: You said you gave keys to people.

7 A: Pardon me?

8 Q: You gave keys to people to your lock?

9 A: The people that I let go in there, yeah.

10 Q: That you gave permission to enter, right,
11 because you gave them a key?

12 A: Yeah, it's my land.

13 Q: But you gave them a key to the lock, you gave
14 them permission to come in?

15 A: Yeah.

16 Q: Through the locked gate?

17 A: Yes. They didn't have a key and they wanted to
18 go in the land, in there and hunt and I gave
19 them a key.

20 Q: And you don't know of any legal right that you
21 have to use that road?

22 A: I don't know what you mean by legal right. I
23 had a -- I've been using that road since I can
24 remember.

25 Q: You weren't there for any conversations between



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1 your father and Mr. Martin, having any
2 conversation about that gate, were you?

3 A: I don't know ---

4 Q: You don't know what sort of arrangements they
5 may have had?

6 A: I don't know if they had any arrangements. He
7 never told me he did.

8 Q: Fair enough.

9 **MR. FLOYD:** No further questions, Your Honor.

10 **THE COURT:** Thank you. Any re-direct?

11 **MR. WELLS:** Nothing on re-direct.

12 **QUESTIONS BY THE COURT:**

13 **THE COURT:** Well, let me stop here for a minute.
14 Sometimes in non-jury cases the judge will ask
15 questions and I don't allow the lawyers to
16 follow-up on my questions. And the questions
17 may times are -- seem out in left field, but
18 there's a reason I'm asking it. Now, Mr. Guy,
19 you said that you wouldn't let Santee Cooper go
20 through your property, right?

21 **MR. GUY:** (Nods head.)

22 **THE COURT:** You have to say yes or no, I'm sorry.

23 **MR. GUY:** Yes, sir. Yes, sir.

24 **THE COURT:** Did they compensate you for finally
25 putting those power lines there?



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1 **MR. GUY:** No, sir. The history behind that was that
2 when this foundation was drawn up, it was drawn
3 up by an attorney names John Rainey. And at the
4 time John Rainey was chair- -- not at the time
5 he drew it up, but later he was chairman of the
6 Santee Cooper Board. And he called me and said,
7 you know, they want to come through your
8 property. And I went to the Santee Cooper
9 Board, and I don't know, it was eight or ten of
10 the gentlemen around there and Mr. Rainey. And
11 I explained to them that my father wanted this
12 land preserved and not -- the timber not cut,
13 this portion of the English Farm. And he said
14 -- I said that I object to it. And Mr. Rainey
15 said, well I'm in a bad position because I'm the
16 one who drew up this foundation to preserve this
17 land and now I'm chairman of the Santee Cooper
18 Board. So Mr. Rainey worked it out with the
19 Board that they would change the route of the
20 power line so it wouldn't go across this swamp
21 that had been compared to the Congaree Swamp
22 down here as far as old timber.

23 **THE COURT:** All you got was a key for doing this,
24 right?

25 **MR. GUY:** That's right. I got a key.



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1 **THE COURT:** Okay. Thank you, sir. Come down,
2 please. Watch your step coming down.

3 **COURT REPORTER:** Give me your full name.

4 **MR. HIGGINS:** Ben Heyward Higgins.

5 **COURT REPORTER:** H-A-Y or E-Y?

6 **MR. HIGGINS:** H-I-G-G-I-N-S.

7 **COURT REPORTER:** That's Higgins?

8 **MR. HIGGINS:** Right

9 **COURT REPORTER:** How do you spell Heyward.

10 **MR. HIGGINS:** H-E-Y-W-A-R-D.

11 **COURT REPORTER:** H-E-Y-W-A-R-D.

12 **BEN HEYWARD HIGGINS,** having been duly sworn,
13 testifies as follows:

14 **MR. HIGGINS - DIRECT EXAMINATION BY MR. WELLS:**

15 Q: Mr. Higgins, where do you live?

16 A: I live at 2775 Highway 1 South, Elgin.

17 Q: And where did you grow up?

18 A: Right there at Shady Grove and 601.

19 Q: And how long did you live there?

20 A: Probably 16, 17 years old.

21 Q: And when were you born, what year were you born?

22 A: '47.

23 Q: 1947. So, have you ever used Shady Grove Road
24 to go up and down it?

25 A: Yes, sir.



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1 Q: All right. And how far towards the river on
2 Shady Grove Road have you gone?

3 A: Well, I've been all the way down to the creek,
4 but the gate is where we always stopped.

5 Q: And where was the gate? This is Plaintiff's
6 Exhibit 2 and I need you to come over here and
7 maybe get yourself oriented to where lines are
8 and where the road is. Do you see a road called
9 Shady Grove Road on this plat?

10 A: This ought to be Shady Grove in here, right?
11 Yeah, this is Martin. That gate was down in
12 this area here.

13 Q: Was there a gate at the guy property?

14 A: Yes, sir. That's the only gate that I knowed
15 of.

16 Q: Okay. So when you were growing up, give me the
17 years. This would be 1947 through -- you aid 16
18 years?

19 A: When I was 16 or 17 years old I moved to town,
20 but otherwise my parents, they lived there.

21 Q: '63 or '64?

22 A: Right.

23 Q: Was Shady Grove Road maintained by any public
24 entity back in those days?

25 A: All the way to the Guy gate and they'd turn



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1 around there and went back out.

2 Q: Was that a county?

3 A: County road, yes, sir. County scraper.

4 Q: Okay. Did you ever see the county scraper ---

5 A: Yes, sir.

6 Q: --- on Shady Grove Road?

7 A: Saw it all the time. I lived right there on the
8 corner.

9 Q: And how far down did it -- did it go to the Guy
10 property?

11 A: All the way to the Guy gate and turn around and
12 left back out.

13 Q: They had a turnaround at the Guy gate?

14 A: Right.

15 Q: And going to the Guy gate, from 601 to the Guy
16 gate, did you ever ask anyone for permission to
17 use Shady Grove Road?

18 A: No, sir.

19 Q: Would it have occurred to you to ask anyone for
20 permission to use Shady Grove Road?

21 A: Say it again.

22 Q: Would it have occurred to you to ask ---

23 A: No.

24 Q: --- permission?

25 A: No.



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1 MR. WELLS: Those are all the questions I have.

2 THE COURT: Okay. Mr. Floyd?

3 MR. FLOYD: Sure.

4 MR. HIGGINS - CROSS EXAMINATION BY MR. FLOYD:

5 Q: Mr. Higgins, my name is Joey Floyd. I represent
6 Nancy Martin. Can you show me exactly where you
7 grew up on this plat here?

8 A: Right where 601 -- right there on the corner.

9 Q: Right here where number 10 is? I'll get it for
10 you, on the Gonzales plat.

11 A: Where 601 and Shady Grove cross, we grew up
12 right here on the corner.

13 Q: Okay. So you're pointing to the property line
14 here between this big 1,000 acre tract.

15 A: Oh, it's -- well, it's back down this way
16 really.

17 Q: Okay.

18 A: This is where Shady Grove comes in, we lived
19 right here on this corner.

20 Q: On the corner, all right.

21 A: It's not a very good map.

22 Q: Okay. Have you been back to this property since
23 you moved away?

24 A: Years ago I used to go back in there.

25 Q: 40, 50 years ago?



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1 A: No.

2 Q: When is years ago? When's the last time you
3 think you were there?

4 A: I went there on the edge of that property and
5 picked some goose berries on that edge, the road
6 there on that thousand and some acres. That was
7 before -- I don't even know who owned it at that
8 time.

9 Q: Okay. You can't tell me exactly what year ---

10 A: Probably somewhere when I was in my 20s. I'm 69
11 now.

12 Q: So, if you were 20 in 1967, you think 1967?

13 A: Twenty years ago -- when I was 20 years old,
14 somewhere in that neighborhood.

15 Q: And you were born in 1947?

16 A: Right.

17 Q: So that would be about 1967, all right. Do you
18 remember this road having a name when you lived
19 there?

20 A: Shady Grove?

21 Q: Did you call this Shady Grove too?

22 A: Yes, sir.

23 Q: You didn't call this Northeast Shady grove Road?

24 A: I don't remember exactly what it was called, but
25 it was an address Shady Grove Road.



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1 Q: Did you ever see a gate installed on Nancy
2 Martin's property, or what is now Ms. Martin's
3 property?

4 A: My uncle put a gate up there temporary one time,
5 but he took it back down.

6 Q: He put it up there because he had cattle, didn't
7 he?

8 A: No.

9 Q: Why did he put it up?

10 A: He didn't have any cattle.

11 Q: Okay. Why did your uncle put a gate up there?

12 A: I reckon to keep people -- he was gonna move
13 there one time. My father had bought a piece of
14 property right to the left from Hunter Higgins.
15 And my uncle Wade, his brother, was gonna move
16 there. And his wife didn't want to move there.
17 So that done away with the gate.

18 Q: Okay.

19 A: But he didn't own cows.

20 Q: Okay. Well, Mr. Wells asked you if you ever
21 asked for permission to go down that road?

22 A: You didn't have to. It was a county road.

23 Q: But you didn't ever get caught down there
24 either, did you?

25 A: What?



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1 Q: Nobody ever told you get out of here son, did
2 they?

3 A: Wasn't nobody down there.

4 Q: Because these people that own this property
5 didn't live there, did they?

6 A: At one time I remember going to the Martin house
7 and they lived there. Danny and two brothers,
8 two twins. We played with them when we was
9 kids.

10 Q: Do you know where that is on this? It's before
11 you ---

12 A: It's the Martin house, the Martin place. The
13 one that she owns, whoever.

14 Q: Is it before this gate or after this gate, do
15 you know?

16 A: Before.

17 Q: It's before this gate right here, right? This
18 being the gate between 601 and this you call the
19 Guy property?

20 A: There wasn't no gate there.

21 Q: How about today, do you know where the gate is
22 today?

23 A: I don't know what's down there.

24 Q: You don't know what's there now, okay. Did
25 anybody ever ---



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1 A: The only gate that I know of was a pole gate
2 that was put there somewhere in the mid '70s by
3 Wessinger and his hunting club. But that was in
4 the mid '70s.

5 Q: How do you know about that?

6 A: Cause I lived down there.

7 Q: I thought you said you moved away whenever you
8 were 17, 1964.

9 A: My parent's lived there and I'd visit them.

10 Q: So you do remember there being a locked pole
11 gate across that road, don't you?

12 A: In the mid '70s but before then it wasn't there.

13 Q: And it was locked, wasn't it?

14 A: Correct. They had a hunting club in there.

15 Q: And you couldn't get past that gate right there,
16 could you?

17 A: Oh, I've been past that gate because I had a key
18 to it at one time.

19 Q: How did you get a key to it?

20 A: Got it from Wessinger.

21 Q: You asked them for permission to get it, didn't
22 you?

23 A: Of course.

24 Q: And they allowed you to borrow the key for some
25 reason, right?



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1 A: Yeah, so we could get -- I went back in Mr.
2 Cleveland's property on the right.

3 Q: Down here south of my client's property?

4 A: Right.

5 Q: For what?

6 A: To get some rocks off an old house place.

7 Q: Did you have permission to go in there and get
8 them?

9 A: Sure.

10 Q: Who did you get permission from?

11 A: Mr. Cleveland.

12 Q: Okay.

13 A: Cleveland also had a road, a right-of-way in
14 there adjoining his property years ago, before
15 it was a gate even there.

16 Q: So you do remember there being a locked gate
17 down here where this word gate is shown on here
18 between tracts 3 and 4, right?

19 A: You talking about on my uncle's ---

20 Q: Well, the Wessingers put in a gate. You know
21 where that is, right? The pole gate.

22 A: I know where it's at.

23 Q: And you do remember that gate being locked?

24 A: I was in a hunting club in the mid '70s.

25 Q: Yeah.



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1 A: But I have a key to it

2 Q: But you don't know if there's a turnaround here
3 in front of that gate or not, do you?

4 A: When they put that pole gate up, the motor
5 grader would go in there and turn around at the
6 house.

7 Q: What county was that that did that maintenance?

8 A: It's in Richland County.

9 Q: So who did the maintenance, was it Richland
10 County or Kershaw County?

11 A: I don't know. All I know it was a motor grader.

12 Q: You just saw them?

13 A: Yeah. Seen them go and scraping the road in and
14 out.

15 Q: How do you know it was a county motor grader?

16 A: Because it's yellow.

17 Q: Aren't all motor graders yellow?

18 A: I don't know. I've never seen a pink one.

19 Q: Aren't all of them yellow?

20 A: As far as I know.

21 Q: Okay. So you don't know if it was a county guy
22 or not, do you?

23 A: I'm assuming it was.

24 Q: You know the Wessingers have a motor grader too,
25 don't you?



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- 1 A: No, I don't know.
- 2 Q: You don't know that?
- 3 A: No.
- 4 Q: So you don't know if it was the Wessingers going
5 in there ---
- 6 A: I know it wasn't Gary.
- 7 Q: It could have been Glen, right?
- 8 A: No, he drowned when the dozier turned over on
9 him in the pond.
- 10 Q: Who drowned?
- 11 A: His brother, Gary.
- 12 Q: Okay. So you don't know if it was Glen, do you?
- 13 A: (No response.)
- 14 Q: It could have been one of the Wessingers,
15 could've been somebody ---
- 16 A: I'm sure it was a county maintained motor
17 grader.
- 18 Q: How?
- 19 A: Cause they got numbers on the side of it.
- 20 Q: Is there any other specifying feature that you
21 can tell me as you sit here today that you know
22 it was county? Did you talk to the guy, the
23 employee?
- 24 A: No, sir, I did not.
- 25 Q: Where did your uncle put up a gate?



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- 1 A: Where?
- 2 Q: Yes.
- 3 A: At the edge of the property line, but it didn't
4 stay there but just a short time. He took it
5 down.
- 6 Q: What property line?
- 7 A: At the edge of the Martin property line.
- 8 Q: On this Gonzales plat here, would you be talking
9 about between ---
- 10 A: Where is the Martin house at?
- 11 Q: All right. I'll represent to you ---
- 12 **MS. MARTIN:** Yes.
- 13 **MR. FLOYD:** That's your home?
- 14 **MS. MARTIN:** Uh-huh.
- 15 Q: I'll represent to you that the old Martin house
16 is in front of the gate right there on what's
17 identified at tract 3.
- 18 A: All right. The property line was before you get
19 to the Martin house which belonged to aunt
20 Mattie.
- 21 Q: Which is a number 4 certain tract?
- 22 A: I don't know about that.
- 23 Q: On this ---
- 24 A: Looking at the map.
- 25 Q: On this Gonzales plat?



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- 1 A: Where does it say Mattie Higgins owned it?
- 2 Q: When did Mattie Higgins own it?
- 3 A: It's been quite a few years ago. She sold it.
- 4 Q: To who?
- 5 A: I'm assuming to Martin.
- 6 Q: Martin who?
- 7 A: I don't even know her.
- 8 Q: You don't know the last name? So you think they
- 9 sold it to Ms. Martin or Mr. Martin?
- 10 A: I reckon Ms. Martin.
- 11 Q: Can you show me on here where you think ---
- 12 A: If you show me where the house place is again I
- 13 can show you.
- 14 Q: Where my finger is in front of the E on Edward
- 15 Frank Martin.
- 16 A: Is this the property line here?
- 17 Q: The property line immediately before the gate.
- 18 What sort of gate did your uncle put there?
- 19 A: Metal gate as far as I know, just a metal gate.
- 20 Q: Was it locked?
- 21 A: I don't remember. I don't remember that.
- 22 People used to go down there and dump their
- 23 trash in that gully that used to be right there
- 24 in front of the Martin house. They did it for
- 25 years.



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1 Q: And he put a gate there ---

2 A: Cause he was gonna move there and Aunt Mattie
3 didn't want to move there, so that ended that.

4 Q: But he put ---

5 A: And I reckon the gate come down.

6 Q: So he put a gate up to keep people out, right?

7 A: I don't know what he put it up for.

8 Q: Well, a gate ---

9 A: He didn't have any cows, I know that.

10 Q: Did people used to put up gates to keep people
11 out?

12 A: I don't know.

13 Q: You don't know?

14 A: I like to build a fence because it makes good
15 neighbors.

16 Q: Just like gates, they make good neighbors?

17 A: I suppose.

18 **MR. FLOYD:** No further questions.

19 **THE COURT:** Thank you. Anything else, Mr. Wells?

20 **MR. WELLS:** Nothing else from the plaintiff.

21 **THE COURT:** Okay. Thank you, sir. You may step
22 down. Watch your step coming down. Let's take
23 a break until about 4:25 and we can pop out --
24 do y'all have a curfew today or whatever? I can
25 go until about 5:30. Otherwise I'll get hungry.



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1 Is that okay?

2 **MR. WELLS:** Yes, sir.

3 **THE COURT:** Thank you.

4 (A break was taken from 4:07 p.m. until 4:23 p.m.)

5 **COURT REPORTER:** Can I get your full name?

6 **MR. KIRKLAND:** William Duncan Kirkland, Jr.

7 **WILLIAM DUNCAN KIRKLAND, JR.,** having been duly sworn,
8 testifies as follows:

9 **MR. KIRKLAND - DIRECT EXAMINATION BY MR. WELLS:**

10 Q: Mr. Kirkland, where do you live?

11 A: 2275 Porter Cross Road.

12 Q: And how far from Shady Grove Road do you live?

13 A: Approximately five, five and a half miles.

14 Q: Okay. And did you ask me before we started
15 today to speak a little bit louder?

16 A: Yes, sir I did.

17 Q: Okay. And if you don't hear a question that I
18 ask or that Mr. Floyd asks then you will tell us
19 that you didn't hear, is that --

20 A: Yes, sir.

21 Q: --- agreed upon? All right. Who was Dunk
22 Kirkland?

23 A: Dunk Kirkland was my father's uncle.

24 Q: Okay. And did you know him?

25 A: Yes, sir. I used to hang with him quite a



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1 while, nine or ten years. Yes, sir.

2 Q: Okay. And when was that?

3 A: I started driving for Bubba Dunk, that's what I
4 always called him, that's what we always called
5 him was Bubba Dunk. That's the same thing as
6 Dunk Kirkland. I started driving him down in
7 the swamp down Shady Grove Road and the other
8 roads in approximate 1954 and I was nine years
9 old. That's whenever I started driving for him
10 in the swamp.

11 Q: How did you get down to Shady Grove Road?

12 A: Bubba Dunk he would drive a Chevrolet pickup
13 down there to the Walter Richardson Store and we
14 would stop there and get a drink a pack of
15 crackers and then he would drive across 601 and
16 stop and I would get in the driver's seat and I
17 would drive from there on.

18 Q: And he would allow you to drive the pickup?

19 A: On the dirt road, yes, sir.

20 Q: On the dirt road. And was the dirt road the
21 same road that I refer to as Shady Grove Road?

22 A: Yes, sir.

23 Q: What did you all call it?

24 A: I don't really recall it, calling it nothing,
25 just a swamp road.



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1 Q: Okay. And how far back towards the Wateree
2 River would you go?

3 A: Sometimes we would go all the way to the river.

4 Q: Okay. And what was the purpose for his being
5 down there?

6 A: Bubba Dunk, he was a sort of an auxiliary game
7 warden and he also worked for Mr. Guy. They
8 called him Icky Guy. And he worked with him at
9 that time to kind of look out for the place down
10 there.

11 Q: And was your purpose in being down there to get
12 to drive?

13 A: Yes, sir.

14 Q: Because you were a little boy?

15 A: Yes, sir.

16 Q: All right. Was Shady Grove Road maintained by
17 any public entity?

18 A: I don't -- county road graders kept up with
19 Swamp Road all the time. As long as I was
20 driving down there I drove for Bubba Dunk
21 approximately up to 1961, '62 somewhere along in
22 that until I started looking at girls and I went
23 the other way.

24 Q: Okay. And how did you know that county road
25 graders were maintaining that road?



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1 A: I saw them.

2 Q: You saw the graders?

3 A: Yes, sir.

4 Q: And how far back did the motor grader go towards
5 the Wateree River.

6 A: They went as far -- as far as I can recollect
7 they went all the way to the river. They
8 crossed the bridge down there and scraped the
9 road. The roads were like a super highway
10 almost back then.

11 Q: Was it well maintained?

12 A: Yes, sir.

13 Q: What do you mean it was like a super highway?

14 A: Well, the road probably was 55 or 60 foot wide,
15 you know. Had probably 20 foot in the middle
16 and both sides of it was kept up, mowed and
17 everything.

18 Q: Were there any gates on it back in those days?

19 A: No, sir. No, sir.

20 Q: Did you ask permission from anyone when you
21 drove down this dirt road?

22 A: We asked permission from no one, no.

23 Q: Did you think you had the right to be there on
24 the road?

25 A: Yes, sir.



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1 Q: And was the use open and notorious?

2 A: Sir?

3 Q: Was your use of the road open and notorious?

4 A: I'm gonna -- sorry, I didn't hear you.

5 Q: Was your use of Shady Grove Road open and
6 notorious?

7 A: It was open, yes, sir.

8 Q: And tell me again what years we are talking
9 about?

10 A: I started driving for Bubba Dunk in 1954 and I
11 was nine years old and like I said in 1961 and
12 maybe 1962 I quit. That's whenever I started
13 dating and I started going elsewhere besides
14 down there.

15 Q: All right. Answer and questions that the
16 defendant might have.

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

18 **MR. KIRKLAND - CROSS EXAMINATION BY MR. FLOYD:**

19 Q: You mentioned that -- Mr. Kirkland, my name is
20 Joey Floyd.

21 A: Yes, sir.

22 Q: I represent Nancy Martin in this case. You
23 mentioned that you did not ask permission from
24 anybody?

25 A: No. No, sir, we did not.



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1 Q: Do you know if your great uncle had asked or had
2 gotten permission from anyone?

3 A: Bubba Dunk, he didn't ask permission from
4 nobody. Like I said he worked for Icky Guy and
5 he was going down there checking out Guy's place
6 and make sure wasn't nobody doing a burn or
7 nothing else out there or trespassing.

8 Q: Did you ever see the landowners on this property
9 anywhere that said don't come on my property?

10 A: I never seen no landowner down there that told
11 us to get out or nothing else, no.

12 Q: Y'all were just driving down there by yourself
13 doing your own thing?

14 A: Right, right.

15 Q: What was your fathers name?

16 A: William Duncan Kirkland, Sr.

17 Q: Did you father also work for Mr. Guy?

18 A: No, sir.

19 Q: Okay. Did your father do any maintenance or
20 hunt on this property? Anything like that?

21 A: Well, our whole family fished down there, yes,
22 sir.

23 Q: Okay. Did they hunt down there and that sort of
24 thing?

25 A: At times, yes.



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1 Q: Did y'all hunt on what's called Cleveland
2 Swamp's property too?

3 A: We hunted everywhere down there as far as I
4 know. We went squirrel hunting.

5 Q: And y'all knew everybody who owned that property
6 didn't you?

7 A: The only the person I knew of was Bubba Dunk and
8 whenever Bubba Dunk told me I could go up there
9 I went.

10 Q: But Bubba Dunk knew everybody down there didn't
11 he?

12 A: Absolutely.

13 Q: And they knew who he was?

14 A: Absolutely.

15 Q: And they didn't mind him going down there did
16 they?

17 A: I'd say we never saw nobody while I was with
18 him, no.

19 Q: So it was fine for him to go wherever he wanted
20 to go whenever he wanted to go, right?

21 A: Absolutely.

22 Q: Did he also go on the Cleveland Swamp property?

23 A: Yes, sir.

24 Q: Did he also go over here on the Old English
25 Road?



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1 A: Yes, sir, we went on that one sometimes.

2 Q: Did Bubba Dunk park a truck in Old English Road
3 and prevent people from coming onto that
4 property at anytime?

5 A: I don't recall that. Not when I was with him.

6 Q: Do you ever remember him sitting in -- on the
7 back of his truck with a shotgun to keep people
8 from hunting on people's properties?

9 A: No, not as far as I know.

10 Q: Okay. How did you know that road was 60 feet
11 wide?

12 A: Well, just like I knew that wall right back
13 yonder is about 20 foot from here, you know.

14 Q: That's 20 feet?

15 A: Approximately, yes, sir.

16 Q: From where you are?

17 A: Right.

18 Q: To that wall back there?

19 A: Right.

20 Q: Okay.

21 A: Yes, sir.

22 Q: Did you take out a tape measurer and measure out
23 60 feet?

24 A: I did not measure nothing I -- I told you the
25 road was about 60 foot wide and that's what I



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1 told him and that's what I meant.

2 Q: Are you familiar with the process back in the
3 '50's of people plowing roads a little bit
4 further than they were suppose to plow roads?

5 A: No.

6 Q: Never heard of that?

7 A: No.

8 Q: Never heard of anybody getting bribed to go a
9 little farther with the motor grader?

10 A: No.

11 Q: Never heard of that?

12 A: No.

13 Q: Last time you were on this property -- are you
14 familiar with this property here that we're
15 talking about today?

16 A: If you're talking about Shady Grove Road, yes,
17 sir.

18 Q: All right. Can you show me Shady Grove Road on
19 this plat?

20 A: I can show you off of 601, yeah.

21 Q: Okay.

22 A: I gotta get my bearings here.

23 Q: This is called McCords Ferry. Isn't that
24 highway 601?

25 A: McCords Ferry Road, yeah.



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1 Q: Okay. This is called Shady Grove Road which is
2 what would be on the west side.

3 A: Yeah. That's the left side or the west side,
4 yeah.

5 Q: So, that portion is paved on the west side?

6 A: Right. The Walter Richardson Store was right
7 here in the corner right here. That's where he
8 would drive from his house down to here, we'd
9 get a drink, pack of crackers and drive across
10 the road and then I'd start driving, from there
11 on back.

12 Q: And the last time you were there was about 1963?

13 A: Well, I road down there the other day to see
14 exactly what we was talking about. Whenever I
15 drove up and saw the gate down there, that's the
16 first time I ever seen a gate. It looked like
17 a cow path on the other side of it. Like I
18 said, all that road used to be maintained back
19 whenever I was driving for Bubba Dunk.

20 Q: And the last time you were down there before
21 your most recent visit was about 1963, right?

22 A: '61.

23 Q: '61, okay.

24 **MR. FLOYD:** No further questions.

25 **THE COURT:** Any re-direct?



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1 MR. WELLS: Nothing further for this witness.

2 THE COURT: Okay. Thank you, sir. Watch your step
3 coming down.

4 MR. WELLS: Judge, we have one more short witness
5 and that will end our day.

6 THE COURT: Okay. And you have another witness
7 that's coming on Wednesday, right?

8 MR. WELLS: Yes, sir. Well, we have several more
9 tomorrow morning.

10 THE COURT: Okay.

11 MR. WELLS: The Plaintiff hasn't testified yet. But
12 we have one more out here waiting.

13 THE COURT: Okay. I remember there's somebody who's
14 ill who we want to take on Wednesday, right?

15 MR. WELLS: Yes.

16 THE COURT: Is that still the case, right?

17 MR. WELLS: Yes.

18 COURT REPORTER: Stand right there for me. Give me
19 your full name.

20 MR. WOOTEN: Alan Mustard Wooten.

21 COURT REPORTER: Alan, A-L-L-E-N or A-N?

22 MR. WOOTEN: A-L-A-N.

23 COURT REPORTER: A-L-A-N?

24 MR. WOOTEN: A-L-A-N.

25 COURT REPORTER: Mustard?



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1 MR. WOOTEN: Mustard.

2 COURT REPORTER: M-U-S-T-A-R-D?

3 MR. WOOTEN: Yes, ma'am.

4 COURT REPORTER: And Wooten, W-O-O-T-E-N?

5 MR. WOOTEN: That's right.

6 COURT REPORTER: And you said you're a junior?

7 MR. WOOTEN: (Shakes head.)

8 COURT REPORTER: No, just Alan Mustard Wooten?

9 MR. WOOTEN: Yes.

10 COURT REPORTER: Okay, great.

11 ALAN MUSTARD WOOTEN, having been duly sworn,
12 testifies as follows:

13 MR. WOOTEN: You're gonna have to talk slower than
14 that though cause I can't hear good.

15 COURT REPORTER: I'm sorry.

16 MR. WOOTEN - DIRECT EXAMINATION BY MR. WELLS:

17 Q: Mr. Wooten, where do you live?

18 A: In Boykin, South Carolina.

19 Q: Okay. And do you know Jamie Guy?

20 A: I do.

21 Q: How long have you known Mr. Guy?

22 A: All his life.

23 Q: Okay. And are you a member of the Boykin Hunt
24 Club?

25 A: Yes, sir.



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1 Q: And as a member of the Boykin Hunt Club have you
2 ever hunted the Guy property on 601?

3 A: Yes, sir.

4 Q: And have you also hunted the Lloyd property or
5 called the English tract?

6 A: I have.

7 Q: Okay. And are you familiar with a road called
8 Shady Grove Road?

9 A: I am now because it's on my GPS. We called it
10 the CC Road.

11 Q: Okay. That's what you called it, the CC Road?

12 A: Right.

13 Q: And does it start at 601?

14 A: That's right.

15 Q: Okay. And where does it go?

16 A: All the way to the river.

17 Q: Okay. And have you ever used Shady Grove Road
18 as access to the Guy property?

19 A: Yes, sir. Back in the '60s and early '70s the
20 lower side of the Guy property, that's the only
21 way you could access it.

22 Q: And why is that?

23 A: With a vehicle. There was no road from the
24 upper side to the lower side.

25 Q: And is that because of the creek in the middle?



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- 1 A: No, the creek would be vertical from that.
- 2 Q: Okay. You're talking about Spears Creek?
- 3 A: Spears Creek.
- 4 Q: Okay. Are you familiar with Raglin Creek?
- 5 A: Yes, sir.
- 6 Q: Okay. Did you use Shady Grove Road when you
7 hunted the English tract owned by the Lloyd ---
- 8 A: Yes.
- 9 Q: --- R.W. Lloyd?
- 10 A: Yes.
- 11 Q: Okay. Do you remember when that was?
- 12 A: In the '60s and early '70s I would say.
- 13 Q: Was there a gate on this road you called the CC
14 Road?
- 15 A: Yes, sir.
- 16 Q: And how did you access through that gate?
- 17 A: We had a key to it.
- 18 A: Okay. Did it ever stop you from reaching the
19 Guy property or the Lloyd property or any
20 property that you were trying to hunt on?
- 21 A: No, sir.
- 22 Q: Did you ever go back using Shady Grove Road for
23 any other purpose?
- 24 A: Other than hunting?
- 25 Q: Other than hunting.



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1 A: No, sir.

2 Q: Okay. You were just a hunter?

3 A: That's right.

4 Q: Did you ever ask for permission to use this road
5 that you called the CC Road? Did you ever ask
6 permission from Nancy Martin to use that road?

7 A: No, sir.

8 Q: Did you ever ask permission from Edwin F.
9 Martin, Jr. to use that road?

10 A: No, sir.

11 Q: Do you ever remember being stopped or not being
12 able to use the road when you wanted to go
13 hunting?

14 A: No, sir.

15 Q: The gate -- was the gate any kind of impediment
16 to you at all?

17 A: I have a key to the gate. The gate was on the
18 edge of the Guy property.

19 Q: Okay. You're talking about a gate on the Guy
20 property?

21 A: That's right.

22 Q: Answer any questions the defendant might have.

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

24 **MR. WOOTEN - CROSS EXAMINATION BY MR. FLOYD:**

25 Q: Mr. Wooten, my name is Joey Floyd. I represent



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1 Nancy Martin. We've had the opportunity to meet
2 over the phone I might add.

3 A: Yes, sir.

4 Q: Are you familiar with this Gonzales plat, have
5 you ever seen this?

6 A: I might. I'm just as blind as I am deaf. Let
7 me go look, get close. No.

8 Q: Never seen it?

9 A: Huh-uh.

10 Q: When was the last time that you went down what
11 you call CC Road, is that what you call it?

12 A: Yes.

13 Q: When was the last time?

14 A: I would say in the early to mid '70s.

15 Q: Do you recall there being a gate on that road?

16 A: Not the last time I was in there, there was no
17 gate except the gate that was at the Guy
18 property.

19 Q: Now, you thought that you were there late '60s
20 or early '70s?

21 A: Mid '60s during -- I hunted in there all during
22 the '60s and early '70s and then I quit dog
23 hunting about that time.

24 Q: You said you quit dog hunting about 1970?

25 A: All hunting.



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1 Q: Oh, you quit hunting altogether about 1970
2 because of children, right?

3 A: Something like that, in the early '70s.

4 Q: Yeah.

5 A: Yes, sir.

6 Q: And you said you didn't ask permission. You
7 didn't have to ask permission because you had a
8 key, right?

9 A: That's right.

10 Q: To a locked gate?

11 A: That's right.

12 Q: What are gates for?

13 A: To keep people out.

14 **MR. FLOYD:** No further questions.

15 **THE COURT:** Any re-direct?

16 **MR. WELLS:** No re-direct for this witness, Your
17 Honor.

18 **THE COURT:** Sir, you can come down. Watch your step
19 coming down. Thank you very much.

20 **MR. WOOTEN:** Thank you.

21 **THE COURT:** Is that your last witness for the day,
22 Mr. Wells?

23 **MR. WELLS:** Yes. Judge we have four witnesses which
24 are going to be fairly brief and they are
25 subpoenaed for tomorrow morning.



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1 **THE COURT:** Okay.

2 **MR. WELLS:** We have the plaintiff which is going to
3 be a fairly lengthy witness, I think.

4 **THE COURT:** Unless y'all settle.

5 **MR. WELLS:** Unless we settle.

6 **THE COURT:** Right.

7 **MR. WELLS:** We have Claude Campbell's video taped
8 testimony which is about an hour and 20 minutes,
9 I believe. And then we have Mr. Mills who is
10 coming in Wednesday and Arnold Ross Taylor who
11 will be a brief witness, who will here Wednesday
12 as well.

13 **THE COURT:** Okay. We're recessing tomorrow at noon.
14 The video tape, have you seen it Mr. Floyd?

15 **MR. FLOYD:** It was a videotaped deposition, yes, sir.

16 **THE COURT:** Okay. So it was a deposition.

17 **MR. FLOYD:** So I was there for it.

18 **THE COURT:** You were there?

19 **MR. FLOYD:** Yes, sir, I was there.

20 **MR. WELLS:** Mr. Campbell is deceased. He died after
21 we filed, but before trial.

22 **THE COURT:** I understand. All right. Well, we
23 stand in recess until tomorrow morning at 9:30.

24 **MR. FLOYD:** One thing, Your Honor.

25 **THE COURT:** Yes, sir?



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1 **MR. FLOYD:** Can we keep all of our stuff here in the
2 courtroom? Can we do that?

3 **THE COURT:** Well, you know, the courtroom is locked
4 but people have access to it. Housekeeping has
5 access and the Sheriff's Deputies have access.
6 I could -- you know. But you're welcome to
7 leave it here. To be blunt with you, unless you
8 leave some things like your laptop or your
9 equipment, I suspect they're not going to steal
10 the plats and exhibits. But I will ask the
11 court reporter to marshal all the exhibits, hold
12 onto them over night and make sure we know where
13 they are. So, this building doesn't close until
14 5:00. So I can get you out cause I know some
15 people to get you out of the building.

16 **MR. FLOYD:** Okay, Judge. Thank you.

17 **THE COURT:** Thank you so much. I'll see you in the
18 morning.

19 (The hearing adjourned at 4:45 p.m.)

20 DAY TWO - Tuesday, March 22, 2016

21 **COURT REPORTER:** Your name is?

22 **MR. DARGAN:** Timothy G. Dargan.

23 **COURT REPORTER:** D-A-R-G-A-N?

24 **MR. DARGAN:** Right.

25 **TIMOTHY G. DARGAN,** having been duly sworn, testifies



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1 as follows:

2 **MR. DARGAN - DIRECT EXAMINATION BY MR. WELLS:**

3 Q: Mr. Dargan, where do you live?

4 A: Darlington.

5 Q: Okay. And what is your education after high
6 school?

7 A: A political science degree and a forestry degree
8 from Sewanee.

9 Q: Okay. And where do you work presently?

10 A: I'm a consulting forester in Darlington.
11 Dargan, King and Knight, LLC.

12 Q: Okay. And in 1999 did you perform some services
13 for Robert J. Sheheen as trustee of the Lloyd
14 Trust?

15 A: Yes.

16 Q: And what did you -- what were you asked to do
17 for the Lloyd Trust?

18 A: Well, in 1999 we handled the sale of English
19 tract.

20 Q: Okay. And is that a thousand acre tract on the
21 Kershaw County/Richland County line?

22 A: Yes.

23 Q: And you're looking at Plaintiff's Exhibit Two
24 over there which is a Gonzales plat. Is that a
25 fair representation of the property?



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1 A: Yes.

2 Q: And was this a timber sale or was it a sale of
3 the actual property, timber and all?

4 A: This was the land sale.

5 Q: Okay. And what did you do in preparation for
6 that sale?

7 A: We cruised the timber. We coordinated with the
8 surveyor. It was not this one, it was Lackey,
9 to survey the tract and we overlaid timber type
10 maps on the plat. Sent out invitations to bid
11 on the land.

12 Q: All right. And let me show you Plaintiff's
13 Exhibit 38. Do you recognize that document?

14 A: Yes. This is our sale ...

15 Q: Okay. And how many perspective buyers did you
16 send that flyer to, if you remember?

17 A: I don't remember exactly, but I would guess 40,
18 50.

19 Q: Okay. The more you send it to the more likely
20 you're going to get favorable bid, is that
21 correct?

22 A: Yes. We hope so.

23 Q: In preparation for the sale and cruising the
24 timber, did you ever have occasion to use Shady
25 Grove Road? Also known as Northeast Shady Grove



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1 Road, to reach the property?

2 A: Yes.

3 Q: Okay. And do you remember a gate on that prop-
4 -- on that road?

5 A: I'm not sure if there was a gate. But if there
6 was it was not locked. I don't remember having
7 to unlock a gate to get to it.

8 **THE COURT:** I'm sorry, sir, say that again.

9 A: I said I'm not sure if there was a gate. I
10 don't remember a locked gate. A closed gate.

11 **THE COURT:** I'm sorry, go ahead.

12 Q: Was any gate open that you needed to go through?

13 A: Well I -- that's what I -- I can't recall
14 exactly whether there was.

15 Q: Okay. On Plaintiff's Exhibit 38, don't you show
16 a gate at the entrance to the Lloyd Property?

17 A: Yes.

18 Q: And is that on Shady Grove Road?

19 A: Yes.

20 Q: Okay. Did you have any trouble reaching the
21 Lloyd property form Highway 601 on Shady Grove
22 Road?

23 A: I don't recall having any trouble doing that.

24 Q: Do you know how many times you accessed the from
25 601 on Shady Grove Road during your services for



1 the Lloyd Trust?

2 A: No.

3 Q: And the last paragraph in your request for bids,
4 would you read that paragraph for the court?

5 A: Access to the property is via US Highway 601,
6 Old English Road and Northeast Shady Grove Road.
7 Locked gates have combination locks. The
8 combination is 0056. Perspective bidders may
9 inspect the property at their convenience.
10 Anyone entering the property does so at his own
11 risk and no liability is assumed by the Lloyd
12 Timber Trust or Dargan, King and Knight, LLC.
13 For additional information or assistance call
14 Dargan, King and Knight, LLC at 843-395-0068.

15 Q: All right. So, the combination lock that you
16 are advertising and putting in the
17 advertisement, do you remember which gate that
18 was on?

19 A: Well, it was on the gate at the property line to
20 the Lloyd property.

21 Q: Okay. Did you ever in the course of your
22 services for the Lloyd Trust ask permission from
23 anyone to use Shady Grove Road?

24 A: I did not.

25 **MR. WELLS:** Answer any questions the defendant may



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1 have.

2 **THE COURT:** Okay. Mr. Peel, Mr. Floyd?

3 **MR. DARGAN - CROSS EXAMINATION BY MR. FLOYD:**

4 Q: Mr. Dargan, my name is Joey Floyd. I represent
5 Nancy Martin. We've spoken on the phone a
6 couple of times. I don't know if you remember
7 that. That thing you were just talking about,
8 that took place 1999, right?

9 A: Yes.

10 Q: 16 years ago?

11 A: Yes.

12 Q: Last time you went to the property?

13 A: I think so, yeah.

14 Q: Been about 16 years?

15 A: Yeah.

16 Q: How many times did you go on this property?

17 A: Well, we worked on the property from I think
18 about 1986 to -- until when it sold in '99.

19 Q: But you accessed this property back in 1999 just
20 a couple of times, you said?

21 A: Well, I don't think we could get what we needed
22 to do as far as cruising on that side of the
23 property. Just a couple of times on that side.

24 Q: All right. And you talked about combination
25 locks. So you had multiple locks with the same



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1 combination, right?

2 A: That's right.

3 Q: And somebody gave you permission to put your
4 lock on those gates, didn't they?

5 A: Well, I guess the Lloyd Timber Trust did.

6 Q: You got permission, didn't you?

7 A: I don't recall, you know, asking.

8 Q: Well, you had to put locks on the gates, right?

9 A: Well, there were locks there at the Lloyd --
10 there were gates on this property.

11 Q: But you had to get permission to put your lock
12 on there didn't you?

13 A: I guess so.

14 Q: Okay.

15 **MR. FLOYD:** No further questions.

16 **THE COURT:** Any re-direct?

17 **MR. DARGAN - RE-DIRECT EXAMINATION BY MR. WELLS:**

18 Q: Did you ever talk to E.F. Martin, Jr. about
19 permission to get into the Lloyd property from
20 Shady Grove Road?

21 A: No.

22 Q: Did you ever talk to Nancy Martin about getting
23 permission to use Shady Grove Road to access the
24 Lloyd property?

25 A: No.



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1 MR. WELLS: Judge, I would move to introduce
2 Plaintiff's Exhibit 38.

3 THE COURT: Okay.

4 MR. PEEL: I need to look at it.

5 THE COURT: All right. Could you let him look at
6 it, Mr. Dargan?

7 MR. PEEL: Thank you.

8 MR. FLOYD: Are you familiar with the Plaintiff's
9 tract of land here?

10 THE COURT: Hold on a second. His motion was to
11 have it admitted and I didn't rule on his motion
12 yet. Do y'all object or not object?

13 MR. PEEL: I don't object, but would like the
14 opportunity to re-cross since it wasn't moved
15 until afterwards.

16 THE COURT: That was fine. I just -- you don't
17 object?

18 MR. PEEL: We don't object.

19 THE COURT: Okay. Your motion is granted.

20 (Plaintiff's Exhibit Number 38 was admitted into
21 evidence at this time.)

22 THE COURT: Mr. Wells, do you have any other re-
23 direct?

24 MR. WELLS: I did want to clarify one thing.

25 Q: This Gonzales plat that have not seen, shows the



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1 gate in this area. Do you remember a gate down
2 in this area on the Martin property, as you were
3 accessing the Lloyd property through Shady Grove
4 Road 16 years ago? Do you remember a gate
5 there?

6 A: I don't remember whether there was one or not.

7 **THE COURT:** Does that end your re-direct?

8 **MR. WELLS:** I think it does, Your Honor.

9 **THE COURT:** And your motion with regards to Exhibit
10 Number 38 is granted. Mr. Floyd, re-cross,
11 please?

12 **MR. DARGAN - RE-CROSS EXAMINATION BY MR. FLOYD:**

13 Q: Are you familiar with the Plaintiff's tract of
14 land in this case? This 1,000 acre tract?

15 A: Yes.

16 Q: Are you familiar with there being a gate here?

17 A: Yes.

18 Q: Are you familiar with there being a gate here,
19 off of 601?

20 A: Yeah, off 601.

21 Q: Are you familiar with the gate off of Old
22 English Road?

23 A: Yes.

24 Q: And you said there was also a gate here, at what
25 is shown on Gonzales plat on the Laura Jane



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1 Lewis Allen tract, between that tract and the
2 1,000 acre tract, right?

3 A: Yeah, but the gate was off actually across the
4 property line on the Lloyd tract.

5 Q: So that's three combination locks that all had
6 the same combination on them, right?

7 A: Yes. Yes.

8 Q: All right. And on your document here,
9 Plaintiff's Exhibit Number 38, this is a plat
10 that you prepared, right?

11 A: No, I didn't prepare.

12 Q: You didn't prepare this document?

13 A: I prepared the document. But I mean, we over
14 laid these timber types only.

15 Q: Well, you put this map on your paper, right?

16 A: That's correct.

17 Q: What does that word say there with this dashed
18 line?

19 A: Existing woods road.

20 Q: Just a woods road, right?

21 A: Yes.

22 Q: That's not Shady Grove road is it?

23 A: I don't know.

24 Q: It's shown on your map as an existing woods
25 road, isn't it?



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1 A: It's shown. Some of it is shown as Shady Grove
2 Road. I don't think Shady Grove Road is there.

3 Q: Up close to 601, right?

4 A: Right.

5 Q: But as it approaches the Plaintiff's property in
6 this case, what's it called?

7 A: Existing woods road.

8 Q: Whenever you do all this forestry work, if there
9 are multiple points of access, you said you do
10 the same combination for all the locks, right?

11 A: We did in this case, yes.

12 Q: And you can't remember, as you sit here today,
13 whether or not there was a locked gate between
14 601 and what you call the Lloyd tract?

15 A: That's right.

16 Q: If there would have been a gate there, you would
17 have put your combination lock on that gate as
18 well, right?

19 A: Well, no. I wouldn't have done that without --
20 if there was a locked gate there I would've got
21 permission to do ---

22 Q: From somebody?

23 A: From somebody.

24 Q: And if there was a locked gate there, you would
25 have gotten permission from somebody and you



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1 would've put the same combination lock on that
2 gate, right?

3 A: Yes, probably would have.

4 Q: You said there is access to this tract of land
5 off of 601, right?

6 A: Right.

7 Q: Which is off of 601 directly on to the Lloyd
8 tract, right?

9 A: Right.

10 Q: Is that why you said that in your invitation to
11 bid because there was access from 601 directly
12 on to the Lloyd tract, right?

13 A: Right.

14 Q: And you're talking about an entrance also off of
15 Northeast Shady Grove, right?

16 A: Right.

17 Q: And that is just -- you don't know anything
18 about legal access do you?

19 A: No.

20 Q: You just made an assumption, right?

21 A: Yes.

22 **MR. FLOYD:** No further questions.

23 **QUESTIONS BY THE COURT:**

24 **THE COURT:** Sometimes in non-jury cases the Judge
25 will ask questions. I just have one question,



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1 I think it's a term or art probably in your
2 profession. You said you were cruising the
3 site? What does that mean?

4 **MR. DARGAN:** That means taking samples to estimate
5 the volume of the timber.

6 **THE COURT:** Okay. How's that done?

7 **MR. DARGAN:** Running a compass lines though the woods
8 and taking, taking plots at pre determined
9 intervals.

10 **THE COURT:** And, and you had to do that more than
11 once, I guess. It sounds like it's pretty,
12 pretty complicated and ...

13 **MR. DARGAN:** Yeah. But we did it once. I mean it
14 took several days to do it.

15 **THE COURT:** I see. And you didn't live out there,
16 you came back and forth?

17 **MR. DARGAN:** Right.

18 **THE COURT:** All right. Thank you, sir. Watch your
19 step coming down please.

20 **MR. DARGAN:** Okay. Thank you.

21 **THE COURT:** Mr. Wells, I guess you -- he's leaving,
22 you don't need him any more, I guess?

23 **MR. WELLS:** No. No, sir.

24 **THE COURT:** Okay. Thank you, sir.

25 **MR. WELLS:** He's got a funeral to attend himself,



1 so.

2 **THE COURT:** Okay.

3 **COURT REPORTER:** Hello.

4 **MR. LAFAYE:** Hey.

5 **COURT REPORTER:** Can I have your name, please?

6 **MR. LAFAYE:** Yes. Angus Lafaye. That's L-A-F-A-Y-E.

7 **COURT REPORTER:** L-A-F-A-Y-E?

8 **MR. LAFAYE:** Yep. Little F.

9 **COURT REPORTER:** Little F.

10 **ANGUS LAFAYE**, having been duly sworn, testifies as
11 follows:

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

13 **MR. LAFAYE - DIRECT EXAMINATION BY MR. WELLS:**

14 Q: Mr. Lafaye, where do you live?

15 A: I live in Columbia.

16 Q: Okay. And where do you work? Where are you
17 employed?

18 A: Milliken Forestry Company.

19 Q: And what's your position with Milliken Forestry
20 Company?

21 A: Well, right now I'm kind of quasi retired.

22 Q: Okay. And what did you do for Milliken Forestry
23 before you retired?

24 A: Well, I worked for Milliken Forestry Company for
25 40 years and I was the president of Milliken



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1 Forestry.

2 Q: Okay. And let's go back 40 years. Where did
3 you go to college?

4 A: Clemson.

5 Q: And when did you graduate from Clemson?

6 A: '65.

7 Q: Okay. And what was waiting for young men who
8 graduated from Clemson in 1965?

9 A: US Army.

10 Q: Okay. And what did you do after graduating from
11 Clemson?

12 A: I went to work in Camden for H.R. Oliver.

13 Q: Okay. And did you do that for a period of time
14 before you ---

15 A: A couple of years.

16 Q: --- went to the army.

17 A: No, I -- well, I did it a little bit before I
18 went into the Army and then after I came back.

19 Q: And did Mr. Oliver work for -- do any work for
20 the Lloyd -- R.W. Lloyd?

21 A: Yeah. R.W. Lloyd. We managed his timberland.

22 Q: R.W. Lloyd was living at that time?

23 A: Yes, he was.

24 Q: And did you happen to do any work on a 1,023
25 acre tract on the Kershaw County and Richland



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1 County line?

2 A: Yeah. That's the English tract.

3 Q: That's what you called it?

4 A: We called it the English tract.

5 Q: Okay. And if you say the English tract, you're
6 talking about the tract that's shown on the
7 Plaintiff's Exhibit 2 over there on that board?

8 A: Right. Right.

9 Q: Okay. And when did you first set foot on the
10 English Tract.

11 A: Well, it was '67, '68, somewhere in that time
12 frame.

13 Q: And what kind of services did you perform on the
14 English tract?

15 A: We were -- we were -- we managed the timber.
16 Therefore we were marking the timber to be cut
17 and had it replanted, what got cut, and what
18 have you.

19 Q: Are you familiar with a road that leads from 601
20 -- Highway 601 into the southern boundary of
21 that English tract?

22 A: Yes. Yes.

23 Q: What do you call that road?

24 A: Well I -- I never really had a name for it, per
25 se. That was just the access that we used to go



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1 in there to harvest all -- you know, we were
2 thinning pulpwood back there at that time.

3 Q: Okay. Would you approach the, this is a blow up
4 of Plaintiff's Exhibit 2, and show the Judge
5 where the road is that you would use to access
6 the timber.

7 A: It was this road that came right back this
8 direction.

9 Q: And at that time was that road maintained by any
10 government?

11 A: The county maintained the road to the English
12 gate.

13 Q: Okay. Show the judge where the English Gate
14 was.

15 A: English gate's right here (indicating).

16 Q: Okay. So, from 601 to the property line ---

17 A: Right.

18 Q: --- of the Lloyd property?

19 A: Right.

20 Q: Have you preformed any other services on this
21 1,023 acre tract?

22 A: When the -- when -- after Dick Lloyd's death the
23 Lloyd Estate sold that tract and we helped Floyd
24 Whitfield buy the tract. And we managed the
25 tract for Floyd Whitfield while he owned it.



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1 And then we helped him sell it to Kirkman
2 Finley.

3 Q: Okay. And when Kirkman Finley bought it, I
4 believe his company was called Prospect Hill of
5 Edisto Island?

6 A: Yeah.

7 Q: That was Kirkman's Company?

8 A: Right.

9 Q: Did you all manage it for Kirkman as well?

10 A: Yeah. We did. We did.

11 Q: And there was a sale, and we have the -- we put
12 the deeds in from the Lloyd Trust to the
13 Whitfield Company in 1999. Is that the sale
14 that you recall?

15 A: Right. Yes, that's it.

16 Q: And after the Whitfield Company bought the
17 property, did you continue to manage the
18 property for the Whitfield Company?

19 A: We did.

20 Q: And in the course of that management, did you
21 use this road that you've indicated on the plat
22 to access the southern end of the property?

23 A: We did, yeah. We had a timber sale in that
24 area. And all of the wood went out this road.

25 Q: During all this time did you ever ask permission



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1 from anyone to use that road?

2 A: No, never did. I just assumed that is was a
3 community road that everybody used.

4 Q: Did you know Mr. Guy?

5 A: Yeah.

6 Q: Did you know Icky Guy?

7 A: Yeah.

8 Q: That would be Edwin P. Guy?

9 A: Edwin P. Guy.

10 Q: All right. Did you know Jamie Guy?

11 A: I know Jamie Guy.

12 Q: Did you know that they used the road as well?

13 A: Right, right. And I think that, you know, Edwin
14 Guy maintained that road. And the Boykin
15 Hunting Club hunted the English tract while the
16 Lloyd Family owned it.

17 Q: Okay. Did you hunt with them at all?

18 A: No, I didn't hunt with them.

19 Q: And was there a 2001 timber sale?

20 A: We had a timber sale for Whitfield ---

21 Q: Okay.

22 A: --- right after he bought it. In this area.

23 Q: In the area which is the southern part of the
24 property?

25 A: The Richland County point and south of Raglin



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1 Creek.

2 Q: Do you think you could have taken timber out
3 across Raglin Creek?

4 A: No. There was no road across Raglin Creek.

5 Q: Okay. Did you ever ask permission to use the
6 road from Nancy Martin or E.F. Martin, Jr.?

7 A: Never did.

8 Q: Were you familiar with a gate on the Martin
9 property? On the Shady Grove Road or the road
10 ---

11 A: Yeah. Yeah ---

12 Q: --- that you've indicated?

13 A: --- yes.

14 Q: You were familiar with that?

15 A: Right.

16 Q: How did you access in and out through that gate?

17 A: You know, I'm trying to remember. I remember
18 the gate there. I don't remember ever having to
19 open that gate, but I remember the gate was
20 there. And, and what's typical of those kind of
21 gates is you'll come up to it and there will be
22 a little bit of chain and a whole lot of locks.
23 And everybody's got a lock on it, so that's kind
24 of what I assumed that was.

25 Q: Was the gate open at times?



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1 A: Yeah.

2 Q: So you could just pass through it?

3 A: Yeah.

4 Q: You didn't have to get out of your truck ---

5 A: No.

6 Q: --- and unlock it? So at times it was just
7 open?

8 A: Right. I mean there were other gates, you know,
9 other gates. And the only one that I ever
10 remember being locked was the English gate. And
11 that's because of the Boykin Hunting Club.

12 Q: The Prospect Hill of Edisto Island, Kirkman's
13 company ---

14 A: Right.

15 Q: --- sold the property in 2005?

16 A: Right.

17 Q: So, did that end your involvement with the
18 property?

19 A: It did.

20 Q: From, I think you said 1967 when you first went
21 to work for Rock Oliver on the Lloyd tract to
22 2005, did you ever fail to get access to the
23 Lloyd property through that road?

24 A: Well, after -- after I quit working for Rock
25 Oliver about 1969 or so, I didn't go in and out



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1 of there. So I don't know what went on from
2 then until 2000.

3 Q: But during your experience, did you ever have
4 trouble with that road or the gate ---

5 A: No, no.

6 Q: --- or it being locked?

7 A: Huh-uh.

8 Q: I mean locked out?

9 A: I'd say I always assumed it was a community
10 road. If it wasn't a county road it was a
11 community road.

12 Q: All right. Answer any questions the defendant
13 may have.

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

15 **MR. LAFAYE - CROSS EXAMINATION BY MR. FLOYD:**

16 Q: Mr. Lafaye?

17 A: Yes.

18 Q: My name is Joey Floyd. I represent Nancy
19 Martin. I wanted to clarify a few things. You
20 said you didn't access this property between
21 1969 and 2000?

22 A: Right.

23 Q: So you don't know what happened ---

24 A: No.

25 Q: --- in that time frame?



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- 1 A: No.
- 2 Q: Okay. And you just thought everybody could use
3 it?
- 4 A: Yes.
- 5 Q: So ...
- 6 A: I never assumed that everybody could use it. I
7 said it was a community road.
- 8 Q: Okay. All right. So you mentioned this image
9 of a series of locks on a chain?
- 10 A: Yeah.
- 11 Q: And a gate being across the road?
- 12 A: (Nods head.)
- 13 Q: And you said that's typical?
- 14 A: Yeah.
- 15 Q: And why is that typical?
- 16 A: So that everybody can get in and out of the
17 road.
- 18 Q: And that gate's there to keep people out and the
19 only people that can access it are those that
20 have permission?
- 21 A: That have a lock.
- 22 Q: That have a lock. They have permission to have
23 a lock on the gate, right?
- 24 A: Yes.
- 25 Q: So the landowner controls access by controlling



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1 who has a lock on the gate, right?

2 A: I guess so, yeah.

3 Q: Okay. And you know Ted Jolly, right?

4 A: I know Ted Jolly.

5 Q: How do you know Ted Jolly?

6 A: He was a consultant for us.

7 Q: And do you know what property Mr. Jolly worked
8 on out here?

9 A: No.

10 Q: Did you know that Mr. Jolly was Nancy Martin's
11 forester?

12 A: Nope, I didn't.

13 Q: Or Mr. Martin's forester?

14 A: I didn't know that.

15 Q: Whenever a forester confronted with an issue of
16 access, like needing to get into a particular
17 property, sometimes you have to be resourceful,
18 right?

19 A: Well, I mean if, usually you got to call
20 somebody to talk to them and find out how to get
21 in.

22 Q: To figure out a way to get in that locked gate,
23 right?

24 A: Right.

25 Q: And somebody gave you permission to go in their



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1 property there, didn't they?

2 A: They never gave me permission to go in there.

3 Q: Somebody gave you permission to in this big
4 tract over here?

5 A: Oh yeah, yeah, yeah.

6 Q: And somebody said, you can get in through this
7 gate by using this combination, this key
8 somehow, some way, right?

9 A: Correct.

10 Q: So you were using it with somebody's permission?

11 A: Right.

12 Q: And in fact you were using this dirt road that's
13 shown on the Plaintiff's -- or excuse me, the
14 Defendant's property here, with somebody's
15 permission?

16 A: Well, I never sought out or got permission.

17 Q: You didn't seek. I didn't say you sought ---

18 **THE COURT:** Let him finish his answer, please, Mr.
19 Floyd.

20 **MR. FLOYD:** Okay. Go ahead.

21 **THE COURT:** Say again, sir.

22 **MR. LAFAYE:** I said, I never called anybody and got
23 permission. I never called and got a key or
24 what have you.

25 Q: But they gave you permission to get to their



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1 property, didn't they, the Plaintiff or the Dick
2 Lloyd trust?

3 A: Yeah.

4 Q: When foresters -- excuse me, when timber
5 companies log, they're authorized to build
6 bridges across creeks and that sort of stuff to
7 cross the land?

8 A: Yeah.

9 Q: They're fully entitled to cut logs, make a
10 bridge ---

11 A: Well, I ---

12 **THE COURT:** Hold on a second, let me -- he didn't
13 get to finish his question that time. What was
14 your question, Mr. Floyd?

15 Q: Okay. When loggers log any tract of land, they
16 come across a creek, they're entitled to lay
17 logs across the creek and go across it and cut
18 it, aren't they?

19 A: If -- in my -- just -- they can't make a road
20 where they want to make a road. They have to --
21 it has to be laid out as far as the timber sale.

22 Q: But they can lay logs in the creek and cut,
23 right?

24 A: Well, not according to DMPs, you can't do that.

25 Q: Okay. Have you ever seen them do that?



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1 A: Build bridges, yeah. Build a road, yeah. But
2 not just lay logs in the creek.

3 Q: Whenever they need to get access, they make the
4 access for themselves, right?

5 A: Yeah.

6 Q: And it's not uncommon for one forester to call
7 up another forester to get access to somebody
8 else's property, is it?

9 A: Yes. That's typical.

10 Q: That's a common occurrence, right?

11 A: Right.

12 Q: And are you familiar with Santee Cooper asking
13 landowners to put locks on their gates?

14 A: No.

15 Q: You're not familiar with that at all?

16 A: No.

17 Q: Do you own property?

18 A: Oh, you're talking about the Santee Cooper
19 wanting to put locks on gates.

20 Q: Sure.

21 A: Oh, I thought you meant calling me up to tell me
22 to put ...

23 Q: No, no, no. I'm just saying are you familiar
24 with the process of ---

25 A: Yeah. Yeah, they -- all power companies and



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1 utilities have locks on ---

2 Q: They'll just ask the landowner, do you mind if
3 we install a lock on your gate?

4 A: That's right.

5 Q: Okay. It's not that they have a right, they
6 just ask permission ---

7 A: Right.

8 Q: --- to install their lock on the gate?

9 A: Right.

10 Q: And you own some property, right?

11 A: Right.

12 Q: And in fact, you have a key to all Santee Cooper
13 locks for landowners, don't you?

14 A: I do.

15 Q: And that key will work on any landowner's lock
16 that has a Santee Cooper lock on it?

17 A: That's right.

18 **MR. FLOYD:** No further questions.

19 **THE COURT:** All right. Any re-direct?

20 **MR. WELLS:** No re-direct.

21 **THE COURT:** Okay. Thank you, sir. You may come
22 down. Watch your step coming down, please.

23 **COURT REPORTER:** Can I get your name, please?

24 **MR. BAKER:** Gordan H. Baker.

25 **COURT REPORTER:** G-O-R or ...



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1 MR. BAKER: G-O-R-D-A-N.

2 COURT REPORTER: H. Baker?

3 MR. BAKER: Yes, ma'am. B-A-K-E-R.

4 GORDAN H. BAKER, having been duly sworn, testifies as
5 follows:

6 MR. BAKER - DIRECT EXAMINATION BY MR. WELLS:

7 Q: Mr. Baker, where do you live?

8 A: I live in Columbia.

9 Q: And where do you work?

10 A: Milliken Forestry Company.

11 Q: And what is your job there?

12 A: Consulting partner and manage property and
13 timber land.

14 Q: Okay. And have you done work as a forester on
15 this 1,023 acre tract that's owned by Country
16 Properties today?

17 A: Yes, sir.

18 Q: Shown on the Gonzales plat.

19 A: That's correct.

20 Q: Have you ever seen the Gonzales Platt before?

21 A: I don't recall, but I'm pretty sure I've had to
22 because I've seen all of the plats.

23 Q: And for what companies did you manage this
24 tract?

25 A: For Gonzales and for the Whitfield company.



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1 Porter Whitfield.

2 Q: Okay. So, the Whitfield Company, I will submit
3 to you acquired that property in 1999. Did that
4 start your involvement with this tract?

5 A: Yes, sir.

6 Q: Do you know Kirkman Finley?

7 A: I do.

8 Q: And there's a deed in our chain to Prospect Hill
9 of Edisto Island. Have you ever heard of
10 Prospect Hill?

11 A: Yes.

12 Q: Is that one of Kirkman's companies?

13 A: I think it is.

14 Q: Okay. And what services did you provide for the
15 Whitfield Company?

16 A: We helped them with timber sales.

17 Q: Okay. And did they do timber sales while they
18 owned this property?

19 A: Yes, sir.

20 Q: And were you involved in those timber sales?

21 A: I was.

22 Q: Okay. Now, do you remember accessing the
23 southern side of that property? Below Raglin
24 Creek?

25 A: Yes, sir.



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1 Q: And what road did you use to access the southern
2 side of the property?

3 A: The county road. Shady Grove Road I think was
4 the name of it.

5 Q: Okay. And do you remember gates on that road?

6 A: Yes, sir.

7 Q: How many gates?

8 A: I remember two.

9 Q: Okay. And where were they?

10 A: One was about half way down, two thirds of the
11 way down or so. And then there was one right at
12 the property line. Right across from the
13 property line.

14 Q: The property line onto the Whitfield tract?

15 A: Whitfield tract, yes, sir.

16 Q: Do you remember when you did timber sale for
17 Whitfield?

18 A: No. 2000, late 2001 when we started it, the
19 timber sale, the first one that I remember.

20 Q: Okay. Which way did the timber go out?

21 A: Shady Grove Road.

22 Q: Okay. And how did you access the gate that you
23 said was about half way down Shady Grove Road
24 towards the property?

25 A: Went through the gate. Is that what you're



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1 asking?

2 Q: Yes.

3 A: I went through the gate.

4 Q: Okay. And was the gate open?

5 A: I really don't remember. If I had to guess, I'd
6 say it was locked most of the time. But I just
7 don't recall.

8 Q: Okay. Did you have a lock on the gate?

9 A: I did. Yes. Somebody had to give me access to
10 it at some point before then.

11 Q: All right. Did that gate keep you from using
12 Shady Grove Road to do the timber sale?

13 A: No, sir.

14 Q: And did you put a lock on the gate?

15 A: I did.

16 Q: Okay. And you put a lock on the gate on Shady
17 Grove Road for your use?

18 A: That's correct.

19 Q: Did you ever ask for permission to use that road
20 from Nancy Martin?

21 A: No, sir.

22 Q: Did you ever ask for permission to use that road
23 from E.F. Martin, Jr.?

24 A: No, sir.

25 Q: Okay. Did you do a timber sale on there also



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1 for Prospect Hill?

2 A: Yes, sir.

3 Q: And when was that?

4 A: Some time after 2001. 2003 or '04 I'm guessing.

5 Q: Okay. And which way did the timber leave the
6 property for that timber sale?

7 A: The same way. Through that gate on Shady Grove
8 Road.

9 Q: Log truck drivers. Are you familiar with log
10 truck drivers?

11 A: Yes, sir.

12 Q: Do they like to get out and unlock a gate?

13 A: No, sir. Nobody does.

14 Q: Okay. And do you believe the gate was open
15 during those timber sales?

16 A: I believe it was.

17 Q: Okay. And you were managing the timber sale?

18 A: Yes, sir.

19 Q: You were in charge?

20 A: Yes, sir.

21 Q: And you never asked anyone's permission to get
22 that timber out?

23 A: No, sir.

24 Q: Answer any questions the defendant might have.

25 **MR. BAKER - CROSS EXAMINATION BY MR. FLOYD:**



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1 Q: Mr. Baker?

2 A: Yes.

3 Q: My name is Joey Floyd, I Represent Nancy Martin.
4 You said you were familiar with the Gonzales
5 plat?

6 A: Yes, sir. Well, I'm not familiar with it, I
7 just ---

8 Q: You've seen it?

9 A: I've seen it.

10 Q: Okay. I'm going to bring it a little closer so
11 you can see it. You said you came in off of
12 Northeast Shady Grove Road?

13 A: Yes.

14 Q: To access the 1,000 acre tract?

15 A: Yes, sir.

16 Q: You said you remember a gate about two thirds of
17 the way down. And on this plat here, the
18 Gonzales plat, which is, I think, Exhibit 2,
19 there's something identified there between
20 tracts 3 and 4. 3 and 4 in parentheses. What
21 that word?

22 A: Gate.

23 Q: All right. And then you said there was also a
24 gate here, between what's call the Laura Jane
25 Lewis Allen tract on this and the 1,000 acre



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1 tract, right?

2 A: Correct.

3 Q: So you said you believe this gate here, we'll
4 call it the first gate.

5 A: Okay.

6 Q: The first gate was locked most of the time that
7 you recall?

8 A: As I recall, yes.

9 Q: And I also heard you say, you had a lock on it.

10 A: That's correct.

11 Q: Somebody gave you access to put your lock on
12 there?

13 A: I'm sorry, I don't remember that.

14 Q: Somebody -- you had to get your lock on there
15 somehow, right?

16 A: Well it could have been open.

17 Q: Somebody had to give you access to it, is what
18 you said, right?

19 A: They gave me access. But the gate could have
20 been open is what I'm trying to say when I put
21 my lock on there. I just don't recall to tell
22 you the truth.

23 Q: All right. What are gates for?

24 A: To keep people out.

25 Q: And whether you got access or whether you put



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1 your lock on there, you assumed you had
2 permission to do it, right?

3 A: Yes, sir.

4 Q: Because the people you were logging for had
5 given you permission to use that road?

6 A: Uh-huh.

7 Q: You don't know where they got permission from?
8 You don't know if they got permission, do you?

9 A: Huh-uh.

10 **MR. FLOYD:** No further questions. Thank you.

11 **THE COURT:** Any re-direct?

12 **MR. WELLS:** No re-direct.

13 **THE COURT:** All right. Thank you, sir. You may
14 come down. Watch your step coming down, please.

15 **COURT REPORTER:** Right here for me. Can I have your
16 name please?

17 **MR. CATE:** William Cate.

18 **COURT REPORTER:** William Cate. K or C?

19 **MR. CATE:** C.

20 **COURT REPORTER:** C-A-T-E.

21 **WILLIAM CATE,** having been duly sworn, testifies as
22 follows:

23 **MR. CATE - DIRECT EXAMINATION BY MR. WELLS:**

24 Q: Mr. Cate, where do you live?

25 A: I live in Eastover. 2 Cooks Mountain Road,



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1 Eastover, South Carolina.

2 Q: And what is your profession?

3 A: I sell real estate for Milliken Forestry as an
4 independent contractor.

5 Q: Okay. And you are a licensed realtor in South
6 Carolina?

7 A: I am.

8 Q: Okay. Are you familiar with a 1,023 acre tract
9 on the Richland County/Kershaw County line?

10 A: Yes, I am.

11 Q: Okay. And if you look over to the board, which
12 is Plaintiff's Exhibit 2, does that look like
13 the tract on the Richland County/Kershaw County
14 line?

15 A: It does.

16 Q: Okay. And how did you become involved with that
17 tract?

18 A: Milliken Forestry had a listing to sell the
19 tract in, I guess, 2001. And I was shown the
20 tract by someone from Milliken Forestry the
21 first time. And I was involved with several
22 viewings and the sale of that property. Really,
23 two different times.

24 Q: Okay. Did you, were you involved in the sale
25 from Whitfield Company to Prospect Hill of



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1 Edisto Island?

2 A: I was.

3 Q: And do you know Kirkman Finnley?

4 A: I do.

5 Q: And Prospect Hill is his company?

6 A: Correct.

7 Q: And were you involved in the sale from Prospect
8 Hill of Edisto Island to Pine Ridge Investments?

9 A: I was.

10 Q: Okay. So that's the involvement that you had?

11 A: Correct.

12 Q: But actually you listed it before that, before
13 it sold to Prospect Hill?

14 A: We had it listed for probably a year before it
15 sold from Mr. Whitfield to Kirkman Finley and
16 then -- yeah, Prospect Hill. And then within a
17 year, he decided to sell the property and we
18 obtained the listing for Mr. Finley to sell the
19 property. So it was period of maybe, less than
20 three years that I was involved.

21 Q: Okay. And while you were involved, did you
22 inspect the property?

23 A: Numerous times. Yes, sir.

24 Q: Okay. And is that something you normally do?

25 A: Yes, sir.



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1 Q: First of all, as a real estate agent, you don't
2 sale houses in subdivisions so much, do you?

3 A: I strictly deal in land.

4 Q: Big, big tracts?

5 A: Typically tracts larger than a hundred acres.

6 Q: Okay. So you went in and out of this property
7 many times? How many times do you think?

8 A: Probably a dozen or so.

9 Q: Okay. How did you access the Richland County
10 side of the property?

11 A: It was a series of gates you had to go through.

12 Q: Okay. And was there a road?

13 A: There was a road.

14 Q: What was the name of the road?

15 A: As I recall, it's Shady Grove Road.

16 Q: Okay. And how many gates were on that road that
17 you remember?

18 A: Two gates.

19 Q: Okay. And how did you get through the first
20 gate coming from 601?

21 A: There was a combination lock on it that I used.

22 Q: Okay. And the second gate?

23 A: Same combination lock.

24 Q: Did the first gate ever cause you a problem?
25 Did you ever get turned around and were not able



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1 to access the property?

2 A: No. I was always able to access it.

3 Q: Did you ever ask anyone for their permission to
4 use that gate?

5 A: No, sir. When I was taken into the property the
6 first time, I was told that we had access
7 through that gate. And, so that's the way I
8 accessed it.

9 Q: Okay. Did you ever ask for permission from
10 Nancy Martin to use that gate?

11 A: No, sir.

12 Q: Did you ever ask for permission to use that gate
13 from E.F. Martin, Jr.?

14 A: No, sir.

15 Q: Did you know E.R. Martin ---

16 A: I was acquainted -- I was acquainted with E.F.
17 Martin very well. Yes, sir.

18 Q: Okay. You knew who he was?

19 A: Yes, sir.

20 Q: And when you were trying to sell the property
21 you showed it to people?

22 A: I did.

23 Q: Okay. And you used Shady Grove Road to access
24 the southern side of it, the Richland County
25 side?



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1 A: Yes, sir.

2 Q: Through the two gates?

3 A: That's correct.

4 Q: And you never had a problem?

5 A: Never.

6 **MR. WELLS:** Those are all the questions I have.

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

8 **MR. CATE - CROSS EXAMINATION BY MR. FLOYD:**

9 Q: Mr. Cate, my name is Joey Floyd. We've had the
10 opportunity to speak on the phone. Nice to see
11 you in person. When you accessed this property,
12 somebody told you that you had permission to use
13 this road, right?

14 A: Yes, sir.

15 **MR. FLOYD:** No further questions. Thank you, Your
16 Honor.

17 **THE COURT:** Okay. Any re-direct?

18 **MR. CATE - RE-DIRECT EXAMINATION BY MR. WELLS:**

19 Q: Do you remember who that somebody was?

20 A: Angus Lafaye.

21 Q: Okay.

22 A: He was the broker in charge of Milliken Forestry
23 at the time. He's the one the showed me the
24 property initially.

25 Q: All right.



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1 **MR. WELLS:** Those are all the questions I have.

2 **THE COURT:** Any re-cross?

3 **MR. FLOYD:** No. Thank you.

4 **THE COURT:** All right. Thank you, Mr. Cate. Watch
5 your step coming down, sir.

6 **MR. WELLS:** Judge, those are all the witnesses we
7 have waiting, but we do have the video of Claude
8 Campbell that we -- he's the only witness that
9 we know exactly how long he's going to talk.
10 And it's an hour and about thirteen minutes, I
11 believe.

12 **THE COURT:** Do we need a break now and then listen
13 to the video or do you want to go ahead and
14 start?

15 **MR. PEEL:** You Honor, if we could take a short
16 break. I know we are going to adjourn at noon,
17 but that ought to put us just a few minutes
18 past. Of we could have a quick one.

19 **THE COURT:** Okay. Give us about -- let's reconvene
20 about ten minutes after the hour.

21 **MR. FLOYD:** He can set up the equipment as well,
22 Your Honor.

23 **THE COURT:** Okay, great. Great. Let's reconvene in
24 about fifteen minutes.

25 **(A short break was taken at 10:53 a.m.)**



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1 **THE COURT:** Do you have a transcript of the depo?

2 **MR. WELLS:** That is the original.

3 **THE COURT:** Make that part of the record, Court's
4 Exhibit 1. The question was, Mr. Wells and Mr.
5 Floyd, whether or not we should mark the
6 original transcript of the deposition as the
7 Court's Exhibit?

8 **MR. WELLS:** Yes, I think so.

9 **MR. PEEL:** No objection.

10 **THE COURT:** Okay, great. Thank you so much.

11 **(Court's Exhibit Number 1 was admitted into evidence**
12 **at this time.)**

13 **THE COURT:** Mr. Peel?

14 **MR. FLOYD:** As I recall, during the deposition if I
15 objected Mr. Wells rephrased the question and I
16 really don't recall any. Do you, John?

17 **MR. WELLS:** The notice was for a de benne esse
18 deposition because I knew he was in poor health.

19 **THE COURT:** Okay.

20 **MR. WELLS:** It might not -- I thought that he just
21 would not be able to get here.

22 **THE COURT:** And where is he today?

23 **MR. WELLS:** He is deceased.

24 **THE COURT:** He is deceased?

25 **MR. WELLS:** He died last year about this time.



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1 THE COURT: Okay. All right. You may proceed.

2 (THE DE BENNE ESSE VIDEO DEPOSITION OF MR. CLAUDE
3 CAMPBELL WAS PLAYED AT THIS TIME.)

4 THE COURT: Anything further of this witness?

5 MR. WELLS: Nothing further.

6 THE COURT: Anything further, Mr. Floyd?

7 MR. FLOYD: No, sir.

8 THE COURT: Okay. We stand in recess until 9:30
9 tomorrow morning.

10 (The hearing adjourned at 12:33 p.m.)

11 DAY THREE - Wednesday, March 23, 2016

12 THE COURT: Thank you very much. Please be seated.
13 All right, Mr. Wells?

14 MR. WELLS: Judge, the Plaintiff calls Arnold Ross
15 Taylor.

16 **ARNOLD ROSS TAYLOR**, having been duly sworn, testifies
17 as follows:

18 MR. TAYLOR - DIRECT EXAMINATION BY MR. WELLS:

19 Q: Mr. Taylor, where are you employed?

20 A: University of South Carolina, Thomas Cooper
21 Library, Department of Government Information
22 and Maps.

23 Q: And what do you do there?

24 A: Maintain the aerial photo collection and federal
25 maps.



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1 Q: Okay. And explain to the court -- describe this
2 USC collection of photographs and maps.

3 A: It's a federal depository. We are in charge of
4 all federally produced maps. And in particular
5 we focus on the Department of Agriculture
6 aerial photo collection, which is a collection
7 that began back in the late '30s and is pretty
8 much -- every county is documented approximately
9 every ten years up until the '80s.

10 Q: And tell me about the aerial photography. Why
11 was the aerial photography done?

12 A: It was initially done for the sake of crop
13 inventories with the crop alliance within the
14 Department of Agriculture. And it has since
15 been maintained for historical value, as it's
16 proven very useful for all sorts of research.

17 Q: And these are photographs, aerial photographs
18 taken at different periods of time back to when?

19 A: 1938 is generally when they begin for most
20 counties.

21 Q: Okay. And they were originally restored with
22 the?

23 A: County Agriculture Departments.

24 Q: Okay.

25 A: For our service bureaus.



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1 Q: And then they were transferred to USC for
2 safekeeping?

3 A: Right.

4 Q: Okay. Now, are these photographs available to
5 the public?

6 A: Yeah, it's open to anybody.

7 Q: Okay. And so anyone can go in and request and
8 search for a photograph of a particular area
9 they are interested in?

10 A: Correct.

11 Q: And you help them find it. So this is like a
12 library for aerial photographs. Is that
13 correct?

14 A: That's true.

15 Q: Okay. Now, did I come to visit you last week
16 and we discussed some photographs and some
17 exhibits ---

18 A: Yes.

19 Q: --- for this court case? Okay. I'm going to
20 start with an exhibit which is Plaintiff's
21 Exhibit 46 and ask you to look at that exhibit
22 and tell me does the underlying photograph in
23 that exhibit come from the University of South
24 Carolina collection?

25 A: Yes, it does.



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1 Q: And do you have the original of that photograph
2 with you today?

3 A: Yes.

4 MR. PEEL: Your Honor, can we look at it?

5 THE COURT: Yes, sir.

6 MR. PEEL: Thank you.

7 (Plaintiff's Exhibit Number 46 was introduced into
8 the record at this time.)

9 Q: Now the Plaintiff's Exhibit has some markings on
10 the top that look like white-out, do you see
11 those?

12 A: Yes.

13 Q: Do they appear on the original photograph?

14 A: Yes, they do.

15 Q: Okay. Now let me show you Plaintiff's Exhibit
16 54. Is Plaintiff's Exhibit 54 a copy of the
17 original that you brought to court with you
18 today?

19 A: Yes, it is.

20 Q: Okay. And you do not want to deposit your
21 original with us in our evidence of this case,
22 do you?

23 A: Better hold on to it.

24 Q: Okay.

25 A: Not many of them around.



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1 Q: All right.

2 **MR. WELLS:** Judge, at this point I would move to
3 introduce Plaintiff's 54 as an exhibit in this
4 case.

5 **THE COURT:** All right. Your motion's granted.

6 **(Plaintiff's Exhibit Number 54 was introduced into**
7 **the record at this time.)**

8 Q: All right. Now, let me show you Plaintiff's
9 Exhibit 45. Do you recognize the underlying
10 photograph in Plaintiff's Exhibit 45?

11 A: Yes.

12 Q: And is it from the University of South Carolina
13 collection?

14 A: Definitely is.

15 Q: Okay. And do you have the exact underlying
16 photograph for Plaintiff's Exhibit 45 with you
17 today?

18 A: Not with me. I have an adjacent image which
19 covers basically most of the area.

20 Q: Okay. And the image in Plaintiff's 45, what is
21 the number of that image?

22 A: I can't rightly tell because that part of the
23 image is not available, but I do know the
24 adjacent image is Photo 1H81 or 82.

25 Q: Okay.



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1 A: Right.

2 Q: But Plaintiff's Exhibit 45, does the underlying
3 image come from the University of South
4 Carolina?

5 A: It does.

6 Q: Okay. Tell the court how these images are
7 taken, the overlap on the images.

8 A: Yeah, with each photo, and the series is based
9 on the photo index, there's approximately a 30
10 to 40 percent overlap of images. That way let's
11 say photo 1H81 is missing, photo 1H80 and 82
12 will cover that area and it's about a 30 percent
13 side lap on them as well. So there's a good bit
14 of coverage from either side.

15 Q: Are the photographs taken on the same day?

16 A: For the most part, yeah. It's usually over the
17 course of a couple weeks.

18 Q: Okay. But if ---

19 A: The companies hired ---

20 Q: --- if it were side by side ---

21 A: Oh, definitely. Yeah.

22 Q: They take them in series as they're flying over?

23 A: Right.

24 Q: Okay. Now, let me show you Plaintiff's Exhibit
25 52. Is that a copy of 1H81?



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1 A: Exact image right here.

2 MR. FLOYD: Can we see the original image?

3 MR. WELLS: Yes.

4 THE COURT: Excuse me one moment, please.

5 (Off the Record)

6 THE COURT: Thank y'all, I apologize. The
7 housekeeping people didn't realize I'd be on
8 time today so they hadn't finished. Mr. Wells,
9 if you would just -- Mr. Wells, make sure that
10 ---

11 MR. WELLS: Oh, thank you.

12 THE COURT: Yeah. In fact, take some more because
13 I'm not going to use them Mr. Taylor have you
14 ever testified before me before?

15 MR. TAYLOR: Oh, no.

16 THE COURT: Okay. Just want to remind you if you
17 need a break for any reason just let me know.

18 MR. TAYLOR: Okay, thanks.

19 THE COURT: Yes, sir. I'm sorry, Mr. Wells, please
20 proceed.

21 Q: Is Plaintiff's Exhibit 54 an exact copy of what
22 is in your collection?

23 A: Yes, it is.

24 MR. WELLS: I move to introduce Plaintiff's Exhibit
25 54.



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1 MR. PEEL: Objection.

2 THE COURT: On what grounds, Mr. Peel?

3 MR. PEEL: Relevancy.

4 THE COURT: How are these aerial photographs
5 relevant, Mr. Wells?

6 MR. WELLS: We're going to show in a minute that
7 they show the road in question and they show it
8 at different periods in time as existing as an
9 existing road on these photographs.

10 THE COURT: Okay. Mr. Peel?

11 MR. PEEL: Well, at this time all I've heard is that
12 these are maps that came out of USC archives.
13 And so to say that they're to be introduced as
14 evidence at this time is actually premature.

15 THE COURT: Objection overruled.

16 (Plaintiff's Exhibit Number 54 was admitted into
17 evidence at this time.)

18 Q: Now let me show you Plaintiff's Exhibit 44 and
19 let you look at that. Do you have the
20 underlying photograph for Plaintiff's Exhibit 44
21 in the USC collection?

22 A: Yes.

23 Q: And what is the date on that photograph?

24 A: November 27th, 1970.

25 Q: Okay. And do you have that photograph with you?



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1 A: Yes, right here.

2 Q: All right. Look at Plaintiff's Exhibit 53 and
3 tell me if that is a copy of the photograph from
4 your collection?

5 A: Yes, it is.

6 Q: Okay.

7 **MR. FLOYD:** And the original, please. Okay.

8 **MR. WELLS:** Judge, we would move to introduce
9 Plaintiff's Exhibit 53.

10 **THE COURT:** Any objection?

11 **MR. PEEL:** Same objection, Your Honor.

12 **THE COURT:** Objection overruled.

13 **(Plaintiff's Exhibit Number 53 was admitted into
14 evidence at this time.)**

15 Q: And let me show you Plaintiff's Exhibit 43 and
16 ask you if you can identify the underlying
17 photograph in that exhibit as coming from the
18 USC collection?

19 A: Yes.

20 Q: And let me give you Plaintiff's Exhibit 51 and
21 ask you if this is a copy of the underlying
22 photograph from your collection?

23 A: Yes, it is.

24 Q: And do you have the original with you today?

25 A: Right here.



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1 Q: Okay.

2 MR. FLOYD: May I see it? Okay.

3 MR. WELLS: I would move the introduction of
4 Plaintiff's Exhibit 51.

5 MR. PEEL: Same objection, Your Honor.

6 THE COURT: Objection overruled.

7 (Plaintiff's Exhibit Number 51 was admitted into
8 evidence at this time.)

9 THE COURT: Do you want to note a continuing
10 objection?

11 MR. PEEL: Yes, sir. That might be the way.

12 THE COURT: Okay. Your motion is granted and you
13 don't have to stand up every time. I know you
14 object to this whole line of evidence he's
15 presenting.

16 MR. PEEL: All right.

17 Q: So to review, Mr. Taylor, Plaintiff's Exhibit
18 44, Plaintiff's Exhibit 43, Plaintiff's Exhibit
19 45 and 46, the underlying photographs are kept
20 in the South Carolina collection.

21 A: Yes, they are.

22 Q: These come from that collection?

23 A: Right.

24 Q: And they are available to the public?

25 A: Correct.



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1 Q: Are these available online?

2 A: Some of them are. Eventually, they all will be.

3 Q: Okay. Now, let me show you Plaintiff's Exhibit
4 31. Excuse me, Plaintiff's Exhibit 49. Let me
5 show you Plaintiff's Exhibit 49. Do you
6 recognize that exhibit?

7 A: Yes.

8 Q: What is that?

9 A: It's a South Carolina Highway Department County
10 Road map from 1939.

11 Q: Okay. And are those maps kept in the USC
12 collection?

13 A: We have them there and they're also available
14 online.

15 Q: Okay. And where do you get them? From the
16 Highway Department?

17 A: Right.

18 Q: And that is a map of Richland County?

19 A: It is.

20 Q: Okay. And it's from 1939?

21 A: Right.

22 Q: And it comes from the collection?

23 A: It does.

24 Q: Available to the public?

25 A: Definitely.



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1 Q: Available online?

2 A: Yes.

3 Q: And that is where these documents are stored?

4 A: Correct.

5 **MR. WELLS:** I would move to introduce Plaintiff's
6 Exhibit, is it 49?

7 **MR. TAYLOR:** It is 49.

8 **MR. WELLS:** Plaintiff's Exhibit 49.

9 **THE COURT:** Mr. Peel?

10 **MR. PEEL:** No objection.

11 **THE COURT:** All right. Your motion is granted, Mr.
12 Wells.

13 **(Plaintiff's Exhibit Number 49 was admitted into**
14 **evidence at this time.)**

15 Q: Now, going back in time, does USC maintain a
16 collection of historical maps from the United
17 States Department of Agriculture?

18 A: Yes, we do.

19 Q: Before photography?

20 A: Correct.

21 Q: Okay. And let me show you Plaintiff's Exhibit
22 50. Do you recognize that map?

23 A: Yes. That's the original soil survey done for
24 Richland County, 1916.

25 Q: Okay.



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- 1 A: It's available online as well.
- 2 Q: And does that show the county line between
3 Kershaw County and Richland County on it?
- 4 A: Yes, it does.
- 5 Q: On the eastern side of the county?
- 6 A: Uh-huh.
- 7 Q: Okay. And is that map kept with the collection?
- 8 A: It is.
- 9 Q: Is it available to the public?
- 10 A: Definitely.
- 11 Q: Is it stored as a public record?
- 12 A: It is.
- 13 Q: All right.
- 14 **MR. WELLS:** And I would move to introduce Plaintiff's
15 Exhibit 50.
- 16 **MR. PEEL:** I need to look at it, Your Honor, please.
- 17 **THE COURT:** I'm sorry, say again.
- 18 **MR. PEEL:** I need to look at it.
- 19 **THE COURT:** Oh, yes sir.
- 20 **MR. FLOYD:** John, when did you produce this document?
- 21 **MR. WELLS:** We produced it last Wednesday.
- 22 **THE COURT:** Y'all might want to talk -- you want to
23 take a brief ---
- 24 **MR. FLOYD:** No, I think we are fine.
- 25 **THE COURT:** --- a chance to talk to each other. All



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1 right. Mr. Peel and Mr. Floyd, my practice is
2 if that wasn't produced in accord with a
3 discovery request historically I don't let it
4 in. So if y'all think y'all have never seen
5 that, I'll give Mr. Wells a chance to explain
6 when he produced that.

7 **MR. FLOYD:** I just haven't -- I haven't seen it. I
8 mean, when did you produce it? What day did you
9 send it?

10 **MR. WELLS:** We sent it out last Wednesday. Was it
11 Wednesday or Thursday?

12 **MR. PEEL:** I can check real quick.

13 **THE COURT:** All right. Stand at ease. I'm not
14 going to leave the room.

15 **MR. PEEL:** Okay. Thank you.

16 **MR. WELLS:** Judge, we'll withdraw that map.

17 **THE COURT:** Okay. All right, please proceed, Mr.
18 Wells.

19 **MR. WELLS:** Answer any questions that the defendant
20 might have.

21 **MR. FLOYD:** No questions for this witness.

22 **QUESTIONS BY THE COURT:**

23 **THE COURT:** All right. Sometimes in non-jury cases,
24 Mr. Taylor, the judge will ask questions and it
25 drives lawyers crazy, because I don't let them



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1 followup on my questions. What you testified to
2 was that you, that the exhibits were actually
3 copies of actual documents ---

4 **MR. TAYLOR:** Correct.

5 **THE COURT:** ---that were at USC. And lawyers --
6 we've got four lawyers so we have four different
7 opinions about everything, but I get the last
8 word. Now when you are talking about a map or
9 a picture or photograph you don't have to
10 produce the person that took the picture but --
11 and maybe I'm mischaracterizing what Mr. Wells
12 is trying to prove, but are you familiar with
13 the area that the photographs appear to
14 illustrate?

15 **MR. TAYLOR:** I've never done any official time on
16 the property, but I've worked with these images
17 for the past 21 years.

18 **THE COURT:** I understand that, but I'm saying can
19 you present -- you're under oath, could you say
20 this picture accurately represents the way that
21 property looked on the day it was taken?

22 **MR. TAYLOR:** Yes.

23 **THE COURT:** You can say that, okay. And how can you
24 say that?

25 **MR. TAYLOR:** It's a photograph.



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1 **THE COURT:** But you didn't take the photograph.

2 **MR. TAYLOR:** No, I didn't.

3 **THE COURT:** And you've never been to the property?

4 **MR. TAYLOR:** No.

5 **THE COURT:** So, your testimony is that that's
6 accurate, but that you've never seen the
7 property that it's a picture of?

8 **MR. TAYLOR:** I think we can trust it. It hasn't
9 been altered in any way.

10 **THE COURT:** All right. I'm not going to argue with
11 you about that. Let me ask though are all of
12 these photographs taken by airplane?

13 **MR. TAYLOR:** Yes.

14 **THE COURT:** None taken by satellite?

15 **MR. TAYLOR:** No, these are the historic images. The
16 more modern ones are from satellite.

17 **THE COURT:** All right. When did you start taking
18 them with satellite?

19 **MR. TAYLOR:** Depending upon the county, most of it
20 started about 1990.

21 **THE COURT:** 1990, okay. All right, thank you so
22 much.

23 **MR. TAYLOR:** Yes, sir.

24 **THE COURT:** You can come down, sir. Please watch
25 your step coming down.



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1 **MR. PEEL:** Your Honor, based on the responses to
2 your questions I move all these photographs be
3 removed from evidence as there is absolutely no
4 testimony as to what they relate to.

5 **THE COURT:** Well, I'm going to keep them in, but I
6 will obviously take Mr. Taylor's testimony into
7 account when I review the file. And of course
8 y'all are both going to submit proposed orders
9 ---

10 **MR. PEEL:** Yes, Your Honor.

11 **THE COURT:** --- so you might want to note that I
12 guess, if that's going to be an issue.

13 **MR. PEEL:** Okay, I appreciate it, Your Honor.

14 **THE COURT:** Okay. Thank you. Thank you, Mr.
15 Taylor. Watch your step coming down. All
16 right, Mr. Wells?

17 **MR. WELLS:** I call Michael Mills.

18 **THE COURT:** Ms. Johnson, are you involved in this
19 case?

20 **MS. JOHNSON:** No, Your Honor, I'm just here to
21 watch.

22 **THE COURT:** Okay. Do you need me for anything?

23 **MS. JOHNSON:** (Shakes head.)

24 **THE COURT:** Okay. Thank you. Are you going to stay
25 for the whole rest of the case or just today?



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1 **MS. JOHNSON:** As long as I can learn something.

2 **THE COURT:** Okay. She's a young lawyer. You've
3 been out what, a year or two?

4 **MS. JOHNSON:** No, I've been out a few years, but
5 just practicing on my own more recently.

6 **THE COURT:** Okay. Ms. Johnson you're doing what the
7 old timers used to do before World War III, so.

8 **MS. JOHNSON:** Trying to learn.

9 **THE COURT:** Okay. You can keep your water with you,
10 if you'd like.

11 **MR. MILLS:** Thank you.

12 **COURT REPORTER:** State your name, please.

13 **MR. MILLS:** Michael Mills.

14 **MICHAEL MILLS,** having been duly sworn, testifies as
15 follows:

16 **MR. MILLS - DIRECT EXAMINATION BY MR. WELLS:**

17 Q: Mr. Mills, where do you live?

18 A: I live at -- near Blair, South Carolina.
19 Fairfield County.

20 Q: And we have a motion in this case, you are the
21 witness who has been diagnosed with leukemia.
22 Is that right?

23 A: That's correct.

24 Q: And you were up at Ohio State getting treatment
25 on Monday?



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1 A: That's correct.

2 Q: And I think you were telling me beforehand that
3 you have to take a pill sometime today.

4 A: 10:30.

5 Q: At 10:30?

6 A: Right.

7 Q: Is that part of that treatment?

8 A: Yes.

9 Q: Now, what is your educational background?

10 A: I have a BS from Clemson University.

11 Q: In what year?

12 A: 1976.

13 Q: Okay. And are you a licensed surveyor?

14 A: I am.

15 Q: And your license number is what?

16 A: 11606.

17 Q: Okay. And give your work experience from 1976
18 until the present.

19 A: Continuously involved in surveying from 1976 up
20 to the present time.

21 Q: And where did you work?

22 A: I worked with what was at that -- 1976 known as
23 Glenn Brothers Land Surveying which is now Glenn
24 Associates Surveying, Incorporated.

25 Q: All right. Let me show you Plaintiff's Exhibit



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1 39 and ask you if that's your resume?

2 A: That is my resume.

3 **MR. WELLS:** I move to introduce Plaintiff's Exhibit
4 39 as the resume of the witness.

5 **THE COURT:** All right. Your motion is granted.

6 **(Plaintiff's Exhibit Number 39 was admitted into**
7 **evidence at this time.)**

8 Q: Okay. And in the course of your stay did you
9 take any continuing legal education -- or
10 continuing surveying education cases?

11 A: Yes, I have.

12 Q: Courses? All right. And on your resume I
13 believe you've noted right-of-way issues that
14 you took?

15 A: Correct.

16 Q: And who was that taught by?

17 A: I don't recall the instructor.

18 Q: Okay. And you've taken a course on easements
19 pertinent to surveyors?

20 A: Correct.

21 Q: SC Law of Encumbrances: Easements and Rights of
22 Way?

23 A: Correct.

24 Q: Is it necessary for a surveyor to be able to
25 identify a prescriptive easement when he is out



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1 on property?

2 A: It is necessary to recognize what may show
3 evidence of a prescriptive easement.

4 Q: Why is that?

5 A: Well, that it is a right and a burden
6 potentially on a property and would be part of
7 the survey and noted on the survey.

8 Q: Your client might want to know about it.

9 A: That's correct.

10 Q: Isn't that correct?

11 A: Right.

12 Q: In your course work and your study and your
13 experience as a surveyor, are you taught to look
14 for the signs of prescriptive easement?

15 A: Yes.

16 Q: And what would those signs be? What would you
17 look for?

18 A: Might be any indication of use, some mark or
19 tract on the ground. It could involve clearing.
20 Various types of indication -- evidence that
21 might show that there is a use on the property
22 either that you're surveying or an adjacent
23 property.

24 Q: Do you look at the adjacent property to see if
25 the adjacent property might have need of a



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1 particular road, woods road?

2 A: Yes.

3 Q: Okay. And what would the need be? What are you
4 looking for there?

5 A: Well, I think we're looking more for evidence of
6 use that would show that there was -- you could
7 decide there was a need for the road or whatever
8 the use is.

9 Q: What do you look for for evidence of use? What
10 is evidence of use?

11 A: Well worn tracks. What I mean is a track of a
12 vehicle, animals, foot paths anything that shows
13 a disturbance on the face of the earth that
14 indicates people or it could even be animals
15 driven by people. Anything that would show that
16 there has been a constant, or over a period of
17 time, usage of a particular portion of a
18 property.

19 Q: When you are going to draw a plat, when you're
20 hired to draw a plat, what research do you do in
21 the courthouse?

22 A: We try to obtain all of the recorded deeds and
23 plats, possibly written easements that might
24 pertain to the subject property or the adjoining
25 properties.



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1 Q: Okay.

2 A: We would include -- beyond courthouse research,
3 we may use public records such as photography,
4 other published maps, any information that may
5 aid us in either determining a boundary or uses
6 on the property.

7 Q: Okay.

8 **MR. WELLS:** And at this point I would like to move
9 to qualify Mr. Mills as an expert in the field
10 of surveying land.

11 **THE COURT:** Any voir dire?

12 **MR. PEEL:** No, Your Honor.

13 **THE COURT:** All right, your motion is granted.

14 Q: All right. Now moving to this case, did you
15 prepare a plat of a 1023 acre piece of property
16 on the Richland County/Kershaw County line in
17 2004?

18 A: Yes.

19 Q: And is this a copy of your plat over here, and
20 it's on the board?

21 A: That is correct.

22 Q: Okay. And did you research prior plats when you
23 were preparing this plat?

24 A: Yes.

25 Q: And do you remember which prior plats you looked



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1 at?

2 A: We had on the subject tract or any of the
3 adjoining plats? All right, I'm ...

4 Q: On the subject tract.

5 A: Yes, there was one that was prepared for Robert
6 Sheheen Trust a few years prior to our survey.

7 Q: Okay.

8 A: And there was a separate plat that was prepared
9 for the East Highlands Company that was a
10 portion of this 1023 acres.

11 Q: The A 412 -- was that the 412 acre tract?

12 A: That's correct.

13 Q: You studied that plat as well?

14 A: Yes.

15 Q: Okay. Now, let me find that ... Look at
16 Plaintiff's Exhibit 8 and see if that's a copy
17 of the other plat that you studied.

18 A: That is correct. The plat is titled The Plat of
19 Properties Surveyed for Catawba Timber Company.

20 Q: Okay. And it shows -- does it show a woods road
21 on the plat?

22 A: It does.

23 Q: And do you know which road that is? Can you
24 show us that road -- show us that road on
25 Plaintiff's Exhibit 2.



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1 A: That is the same road that we have on Exhibit 2,
2 that crosses from Highway 601 through our
3 subject property surveyed for Gonzales Land and
4 Timber, and on to the properties further to the
5 east.

6 Q: And in preparing the Gonzales plat, did you go
7 to the property?

8 A: Yes.

9 Q: And did you go to the southern side or the
10 Richland County side of the property?

11 A: Yes.

12 Q: How did you enter the property from 601?

13 A: Along the road that we note as Shady Grove Road.
14 It passed through several of the tracts that you
15 see noted there and on to the subject property.

16 Q: Did you use that road throughout your survey
17 project?

18 A: That was one of the roads, yes.

19 Q: Okay. And did it have a gate on it?

20 A: There was a gate on the road.

21 Q: Was the gate open or shut?

22 A: I don't recall the condition of the gate at the
23 times we were doing the survey.

24 Q: Did the gate obstruct your entrance into the
25 property from 601?



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1 A: No.

2 Q: Were you able to pass over this road from 601 to
3 the property line of the 1023 tract?

4 A: Yes.

5 Q: Okay. How many times do you think you needed to
6 access that side of the property to do your
7 surveying work?

8 A: I don't recall exactly, but likely over the
9 period that we surveyed there it could have been
10 ten to fifteen times.

11 Q: Okay.

12 A: I warned my crews in passing through here.

13 Q: Okay. Did the crews ever report to you any
14 problems accessing through the gates?

15 A: No.

16 Q: And this is the product of the survey?

17 A: That's correct.

18 Q: All right. Did Country Properties ask you to do
19 some work to help prepare it for trial today?

20 A: Yes.

21 Q: And what did Country Properties ask you to do?

22 A: They wanted to get more detailed research and
23 prepare any exhibits, maps, photography that we
24 could, that showed historical evidence of the
25 road and how it appeared over the years.



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1 Q: All right. And did you do that?

2 A: Yes.

3 Q: And where did you -- did you obtain aerial
4 photographs?

5 A: Yes.

6 Q: And where did you obtain them?

7 A: Primarily and maybe wholly from the USC Thomas
8 Cooper Library here in Columbia.

9 Q: Okay. All right, let me show you Plaintiff's
10 Exhibit 46 and ask you is that a smaller version
11 of one of your exhibits that you prepared?

12 A: Yes, it is.

13 Q: All right. Let me ask you if this blow up is an
14 accurate ---

15 **MR. PEEL:** Your Honor, it would be a lot easier if
16 we look at these pictures before he hands them
17 to the witnesses. We don't have any copies.

18 **THE COURT:** Okay.

19 **MR. PEEL:** It wouldn't slow things down so much.

20 Q: Is Plaintiff's Exhibit 46 an exhibit that you
21 prepared?

22 A: Yes.

23 **MR. WELLS:** Okay. I move to introduce Plaintiff's
24 Exhibit 46 as an exhibit in this trial.

25 **MR. PEEL:** Objection, Your Honor. It's -- on



1 several grounds if you care to hear it.

2 **THE COURT:** Yes, sir, I do.

3 **MR. PEEL:** Okay. First of all it's demonstrative
4 only. It was created by an expert. Secondly,
5 it is hearsay as to the markings he has put on
6 there. Those were not on that map. And
7 thirdly, there is no foundation for where that
8 photograph -- what it depicts and where it is.
9 The previous witness failed to identify it for
10 anything other than came from his files.

11 **THE COURT:** Objection overruled. Please proceed,
12 Mr. Wells.

13 **(Plaintiff's Exhibit Number 46 was admitted into**
14 **evidence at this time.)**

15 Q: Mr. Mills, take the blowup of Plaintiff's
16 Exhibit 43, and if you wouldn't mind moving over
17 and showing the court where Shady Grove Road --
18 if Shady Grove Road is on that picture and where
19 it would be.

20 A: This is the road I'm pointing to that represents
21 what is now known as Shady Grove Road and that
22 passes through several properties on into the
23 subject property that is now owned by Country
24 Properties and exits to the east of the property
25 of Country Properties.



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1 Q: All right. And what's the purpose of taking the
2 1943 photograph?

3 A: 1943 photograph is just obvious representation
4 from a photograph, not a created so to speak
5 document, but it's an actual photograph that we
6 have annotated for clarity but it does, from a
7 photographic depiction, show a road on the face
8 of the earth in this location.

9 Q: Did you add the property lines?

10 A: Yes.

11 Q: How did you do that?

12 A: Through our CAD software. We are able to create
13 this overlay to show the property lines for
14 clarity.

15 Q: Did you add the labels to the photograph?

16 A: Yes.

17 Q: And why did you do that?

18 A: Again, for -- to give some clarity and be of
19 help seeing what the photograph represented.

20 Q: Do you use aerial photography in your business
21 as a surveyor?

22 A: Yes, quite often.

23 Q: And what kind of purposes do you use -- for what
24 purpose do you use aerial photography?

25 A: One of the primary purposes is similar to what



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1 we have here, just to see prior uses of land.
2 It is a great aid to have a photographic image
3 of a particular parcel of land or even
4 surrounding land. Even if we begin surveys to
5 be a guide to everyone involved in the survey
6 and it reveals various information that -- well,
7 we can see fields, even property lines by use,
8 or indications of property lines.

9 Q: All right. The program that you used to add the
10 property lines, is it widely available?

11 A: Yes.

12 Q: Is it used by counties to do tax maps and so
13 forth?

14 A: They would use a similar program, yes.

15 Q: Okay. Now, let me show you Plaintiff's Exhibit
16 45. Do you recognize that exhibit?

17 A: Yes.

18 Q: Is it one that you created?

19 A: Yes.

20 Q: Did you create it from an underlying photograph?

21 A: Yes.

22 Q: And while you are testifying let me let the
23 defense ---

24 A: I will point out one thing that's interesting,
25 what -- we did not add to these photographs and



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1 you will see in whole or part on these is the
2 date by which -- and this is actual government
3 stamping that produced the photography this date
4 on this one 4/29/43 ---

5 Q: That's not your label?

6 A: That's not our label. That would be in this
7 little label that you see in part and is visible
8 on the entire photo on the other side is label
9 ATA that would be another designation, but this
10 is the date of the photographic representation
11 of this one, April 29th 1943.

12 Q: All right. Let me get back to Plaintiff's
13 Exhibit 45, did you create that from an
14 underlying photograph?

15 A: Yes.

16 Q: And was that underlying photograph obtained from
17 the USC collection?

18 A: Yes.

19 Q: And did you add the property lines?

20 A: We did.

21 Q: Did you add the labels?

22 A: All except the date that you can see in white,
23 it's labeled 4/10/51.

24 Q: And what kind of technique did you use to add
25 the property lines on Plaintiff's Exhibit 45?



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1 A: Again, using our CAD software from our surveys
2 and property lines that are overlaid on the
3 photography.

4 Q: And is that software broadly in use ---

5 A: Yes.

6 Q: --- to enhance aerial photography?

7 A: Yes, for many purposes. Yes.

8 Q: But is it similar to the software?

9 A: We often produce an aerial photo exhibit for
10 landowners, not necessarily involved with any
11 case such as this, but just as a matter of
12 course because it's a very useful map for
13 landowners to see the whole property and with
14 the property boundaries overlaid on the
15 photography.

16 **MR. WELLS:** I would move the introduction now of
17 Plaintiff's Exhibit 45.

18 **MR. PEEL:** Same objection, Your Honor.

19 **THE COURT:** Overruled.

20 **(Plaintiff's Exhibit Number 45 was admitted into**
21 **evidence at this time.)**

22 **THE COURT:** Let me ask you, Mr. Mills, and I am
23 sorry to interrupt, Mr. Wells. You said a CAD
24 software. Is CAD an abbreviation or acronym?

25 **MR. MILLS:** Yes.



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1 **THE COURT:** What does it mean?

2 **MR. MILLS:** Computer Aided Drafting. It's common, I
3 guess you'd say acronym now for it.

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

5 **Q:** Does the 1951 aerial photograph show the road
6 that we call Shady Grove Road, it's sometimes
7 called Northeast Shady Grove Road and it's
8 called Woods Road on several of the plats? Does
9 it show that?

10 **A:** Yes, it does.

11 **Q:** Can you point out to the court where that road
12 is shown on the 1951 photograph?

13 **A:** I'm pointing to this white line that appears on
14 the photograph which is -- shows up as white
15 because it's relatively white, sandy ground so
16 it makes it distinctive on the black and white
17 photography.

18 **Q:** All right. Now, let me show you Plaintiff's
19 Exhibit 43, and ask you if that is an exhibit
20 that you created?

21 **A:** Yes, it is.

22 **Q:** Did you create it from an underlying photograph?

23 **A:** Yes.

24 **Q:** And where did you obtain the underlying
25 photograph?



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1 A: It's all through -- came from the Thomas Cooper
2 Library, USC.

3 Q: Okay. And did you add the property lines to
4 that photograph?

5 A: Yes.

6 Q: And did you add labels to that property line --
7 to that photograph?

8 A: We did, yes.

9 Q: Did you also add the location of Raglin Creek or
10 the county line to that photograph?

11 A: We did, yes.

12 Q: And what is the date in the top left-hand corner
13 on that photograph? What is the date showing?

14 A: There is no date. Are you looking at the same
15 one?

16 Q: There is no date, okay.

17 A: Right.

18 Q: Do you ---

19 A: But I know the day ---

20 Q: --- know the date of that photograph?

21 A: --- enlargements. The photography date we have
22 in our title clause is 1981.

23 Q: But this exhibit is essentially a photograph
24 from the University collection that you have
25 enhanced with labeling?



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1 A: That's correct.

2 Q: Correct.

3 **MR. WELLS:** Move the introduction of Plaintiff's
4 Exhibit, is that 45?

5 **MR. TAYLOR:** 43.

6 **MR. WELLS:** 43.

7 **MR. PEEL:** Same objection, Your Honor.

8 **THE COURT:** All right. Overruled.

9 **(Plaintiff's Exhibit Number 43 was admitted into**
10 **evidence at this time.)**

11 Q: And is this the blowup of that photograph?

12 A: Yes, that is correct.

13 Q: And does it show the road known as Shady Grove
14 Road or Northeast Shady Grove Road or Woods Road
15 on that photograph?

16 A: Yes, it does.

17 Q: And where is the road, if you could point it out
18 to the court?

19 A: It's the white line that crosses from US Highway
20 601 through the woods across the property line
21 of Country Properties and onto the east side of
22 the Country Properties tract.

23 Q: And is that in what year? What year was the
24 photograph taken?

25 A: 1981.



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1 Q: Okay. And let me show you one more, which is
2 Plaintiff's Exhibit 44. Is that an exhibit that
3 you created, Plaintiff's Exhibit 44?

4 A: Yes, it is.

5 Q: Did you create that exhibit from an underlying
6 photograph obtained from the University of South
7 Carolina Library?

8 A: Yes.

9 Q: Did you add the labels and the property lines to
10 that?

11 A: Yes.

12 Q: And did you use a CAD program or a computer
13 aided drafting program to add the property
14 lines?

15 A: That is correct.

16 Q: And is that a product that is broadly used in
17 the industry for surveying and other mappers?

18 A: Yes.

19 Q: And did you add also the Kershaw County/Richland
20 County line?

21 A: Yes.

22 Q: And what is the date on that underlying
23 photograph?

24 A: 11/27/70.

25 Q: Did you add the date label to that exhibit?



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1 A: No, that is the stamping on the original
2 photography.

3 Q: And does that Exhibit show the location of a
4 road called Shady Grove Road or Northeast Shady
5 Grove Road or Woods Road?

6 A: Yes.

7 **MR. WELLS:** Okay. Move to introduce Plaintiff's
8 Exhibit 44.

9 **MR. PEEL:** Same objection, please.

10 **THE COURT:** Yes. Overruled.

11 **(Plaintiff's Exhibit Number 44 was admitted into**
12 **evidence at this time.)**

13 Q: Is this the blowup of that?

14 A: That is correct.

15 Q: And does -- could you show the court where the
16 road called Shady Grove Road or Northeast Shady
17 Grove Road appears on that photograph?

18 A: It begins on the left side of the photography or
19 map where US 601 and travels through various
20 properties and woodland to the Country
21 Properties tract and then further on to the east
22 on the adjoining property.

23 Q: Okay. Let me show you Plaintiff's Exhibit 42.
24 Do you know where that photograph was obtained?

25 A: This photography is -- we downloaded in digital



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1 format from a United States Department of
2 Agriculture site, website.

3 Q: That did not come from USC?

4 A: No.

5 Q: Correct?

6 A: No.

7 Q: From the downloaded photograph did you add the
8 property lines?

9 A: Yes.

10 Q: Did you add labels to the roads and county lines
11 and so forth?

12 A: Yes.

13 Q: Did you add the property lines by a CAD program?

14 A: That is correct.

15 Q: And that CAD program is widely used in the
16 industry of surveying?

17 A: Yes.

18 Q: Or similar products to that?

19 A: Yes.

20 Q: And that is similar to the tax mapping products
21 that counties use?

22 A: Yes.

23 Q: And does Plaintiff's Exhibit 42 show the road
24 sometimes known as Shady Grove Road, Northeast
25 Shady Grove Road or Woods Road?



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1 A: Yes.

2 **MR. WELLS:** Okay. I move to introduce Plaintiff's
3 Exhibit 42.

4 **MR. PEEL:** Same objection, Your Honor.

5 **THE COURT:** All right. Overruled.

6 **(Plaintiff's Exhibit Number 42 was admitted into**
7 **evidence at this time.)**

8 Q: And could you show -- this is a blowup of that
9 photograph? What's the date on that photograph?

10 A: 2013.

11 Q: Okay. And does the road known as Shady Grove
12 Road, Northeast Shady Grove Road or Woods Road
13 show on that plat?

14 A: Yes, sir.

15 Q: Or that photograph? Excuse me.

16 A: Yes, it does. Begins on the left side of the
17 photography map at US 601, traverses through
18 some woodland and properties to the Country
19 Properties tract and on to the east.

20 Q: Okay. Now, I want to show you Plaintiff's
21 Exhibit 41.

22 **THE COURT:** Do you need your break right now?

23 **MR. MILLS:** I'll holler.

24 **THE COURT:** No, take your time. I mean ---

25 **MR. MILLS:** No, 10:30 is my time.



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1 **THE COURT:** Why don't we go ahead and stand at ease
2 now and you can take a break. You ned to take
3 that pill, so we'll stand at ease.

4 **MR. WEILLS:** Okay.

5 **THE COURT:** We're a few minutes early.

6 **MR. MILLS:** I can take it now.

7 **THE COURT:** Well, I mean -- is it a problem if you
8 take it a few minutes ---

9 **MR. MILLS:** No, it's close enough.

10 **THE COURT:** Okay.

11 **MR. MILLS:** It's part of a clinical trial and they
12 want to keep it fairly close on a given time,
13 but this is fine.

14 **THE COURT:** No, whatever is good for you.

15 **MR. MILLS:** It's gone.

16 **THE COURT:** Oh, too late. Okay. Does it change the
17 way you feel or anything when you take it? Do
18 you need a break to ---

19 **MR. MILLS:** No, no.

20 **THE COURT:** All right.

21 **MR. MILLS:** I'm fine.

22 **THE COURT:** All right. Thank you, sir. Please
23 proceed, Mr. Wells.

24 **Q:** Mr. Mills, is Plaintiff's Exhibit 41 an exhibit
25 that you prepared?



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1 A: Yes, it is.

2 Q: What underlying map did you use to prepare that
3 Exhibit 41?

4 A: This is a contour map commonly known as a
5 Quadrangle Map produced by United States
6 Department of Interior Geological Survey.

7 Q: And did you select that particular map because
8 it depicts the area where Shady Grove Road is
9 located?

10 A: That's correct.

11 Q: And what is the date on that map?

12 A: 1953, I believe.

13 Q: Could you check it and make sure?

14 A: Let's look at the large version. 1953.

15 Q: Okay. And where did you obtain that map?

16 A: The original copy was obtained from the South
17 Carolina Geodetic Survey Offices over off of
18 Broad River Road where they have those available
19 for sale.

20 Q: And did Glenn and Associates purchase a copy of
21 this ---

22 A: We had this map in our files. We have most of
23 the maps that cover the state.

24 Q: Okay. So you had this in your inventory before
25 Country Properties ever asked you about it?



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1 A: Right. We had this on hand in our files, yes.

2 Q: Okay. And did you add the labeling and the
3 property lines to that one?

4 A: Yes.

5 Q: And did you add the property lines by use of a
6 computer program?

7 A: Yes.

8 Q: That is broadly used in the surveying business?

9 A: Yes.

10 Q: The key, the map key, did you add the map key or
11 was the map key already on the map?

12 A: Map key was already on the map.

13 Q: Okay. So this is a map that you obtained from
14 where?

15 A: From the South Carolina Geodetic Survey Offices.

16 Q: Okay. That you did some enhancement to to put
17 labels and property lines?

18 A: That's correct.

19 Q: And that's all you did?

20 A: That's right.

21 **MR. WELLS:** All right. I move to introduce
22 Plaintiff's Exhibit 41.

23 **THE COURT:** Mr. Peel?

24 **MR. PEEL:** A little different objection. The same
25 objection to hearsay but in addition, there has



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1 been no background laid for what is depicted on
2 that map, at all.

3 **THE COURT:** Okay. Mr. Wells?

4 **MR. WELLS:** I can cure that.

5 **THE COURT:** Okay.

6 **Q:** Is Shady Grove Road depicted on Plaintiff's
7 Exhibit 41?

8 **A:** Yes.

9 **Q:** The road known as Shady Grove Road, Northeast
10 Shady Grove Road or the Woods Road?

11 **A:** That's correct.

12 **Q:** Okay. It is shown on the map?

13 **A:** That's correct.

14 **THE COURT:** Mr. Peel, is that better?

15 **MR. PEEL:** I should have been more clear. The
16 entirety of that map, all the lines, there's no
17 background as to where that information came
18 from or was compiled or the sources of that
19 information.

20 **THE COURT:** Okay. Mr. Wells?

21 **Q:** Let me work on that foundation. You obtained
22 this from what place?

23 **A:** The South Carolina Geodetic Survey is the office
24 that sold the original copy that we had in our
25 file. This map is actually produced just as



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1 they are produced across the entire United
2 States by the United States Geological Survey
3 Department of Interior.

4 Q: And is that a public office that you -- from
5 which you obtained this?

6 A: Yes. We obtained it from a state, South
7 Carolina state office and the documents are
8 available from the United States government.

9 Q: Is that the office where you would go to find a
10 public record of this type?

11 A: Yes. We have many times. As I say this was in
12 our files because we've used this map for other
13 purposes.

14 Q: Is that the public office that stores this type
15 of public record?

16 A: Yes.

17 Q: The type of public record on Plaintiff's Exhibit
18 41?

19 A: That's correct.

20 Q: So you obtained it from the public office where
21 records of this type are stored?

22 A: That's correct.

23 **MR. WELLS:** All right. I would move the
24 introduction.

25 **MR. PEEL:** Your Honor, if I may. I won't go on too



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1 long but ---

2 **THE COURT:** No, I understand.

3 **MR. PEEL:** Hearsay. There's no background as to the
4 road. It's a topographic map which generally
5 shows elevations. It is not a road map and
6 clearly if you look on the map there's a road --
7 he's pointing to Northeast Shady Grove Road,
8 there's a road above that on that map that
9 doesn't even appear on Mr. Mills' survey. So,
10 the objection is hearsay.

11 **THE COURT:** Okay.

12 **MR. PEEL:** As to the information contained in the
13 map.

14 **THE COURT:** All right. Objection overruled, but I
15 will remind you of course you know you're going
16 to have a chance to talk them about that when
17 you ---

18 **MR. PEEL:** Thank you, Your Honor.

19 **THE COURT:** --- cross examine him, so objection is
20 overruled.

21 **(Plaintiff's Exhibit Number 41 was admitted into**
22 **evidence at this time.)**

23 Q: Now, does this map -- what's the date on it?

24 A: 1953.

25 Q: Does it show a road known as Shady Grove Road or



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1 Northeast Shady Grove Road or a Woods Road?

2 A: Yes, it does.

3 Q: And could you point out where the road is shown
4 on this map?

5 A: I'm pointing to this double solid line that
6 leads from US 601 passing to the properties that
7 we depicted Country Properties and then on the
8 east side on to the Wateree River.

9 Q: From the map key, what does a double solid line
10 indicate?

11 A: It indicates a light duty road.

12 Q: Okay. And is there a road below that grade on
13 the map key?

14 A: Yes, sir.

15 Q: What is that?

16 A: Unimproved dirt road shown by a double dashed
17 line.

18 Q: Okay. So this is shown as what kind of road?

19 A: A light duty road.

20 Q: In 1953?

21 A: 1953, yes.

22 **MR. PEEL:** Your Honor, may I go stand up there so I
23 can ---

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

25 **MR. PEEL:** --- read what he's -- I can't read



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1 nothing that small. I don't have a copy and I
2 can't read the small map. I hope you don't
3 mind.

4 **MR. MILLS:** No, I don't mind, I understand.

5 **MR. PEEL:** Thank you. Thank you, Your Honor.

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

7 **MR. PEEL:** I'll try to stay out of the way but if
8 you point to something else, I'm going to just
9 hang close.

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

11 A: I may add that the use of these maps extended
12 far beyond just contour purposes. It is
13 valuable for contours, but also for the road
14 networks and other features that may be labeled
15 on the map as part of the mapping. It's not
16 incidental purpose that there are roads mapped
17 on that quadrangle map.

18 Q: All right. From your work that you did for
19 Country Properties, your research that you
20 performed, as an expert in the field of
21 surveying, did you draw any conclusions from
22 that research?

23 A: From the mapping that we have available here,
24 photography at least from as far back as 1943 is
25 evidenced just by these photographs the road



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1 that we're calling Shady Grove Road, or
2 Northeast Shady Grove Road or is on these maps
3 as Woods Road existed in a well defined state at
4 least through -- back to that date in 1943.

5 Q: Okay. Let me ask you about the map, plat shown
6 as Plaintiff's Exhibit 8. Did you examine that
7 plat?

8 A: Yes.

9 Q: This would be the one for the 412 acres?

10 A: That is correct.

11 Q: It shows Woods Road cutting through it?

12 A: That's correct.

13 Q: Did you find -- as a surveyor, did you find any
14 other access to that 412 acres other than the
15 road shown as Woods Road?

16 A: No, not to that 412 acres.

17 **MR. PEEL:** I'm sorry, what was your question? I was
18 looking at ...

19 **MR. WELLS:** I asked him if he detected any other
20 right of access to that tract other than the
21 road shown as Woods Road on that map.

22 **MR. PEEL:** Objection, Your Honor as to whether that
23 calls for a conclusion of law as to access.
24 Access is a legal term if he's talking about ---

25 **THE COURT:** Mr. Wells, are you really asking for an



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1 opinion or are you asking for a ---

2 **MR. WELLS:** I am asking him, did he detect -- does
3 he see any other way of access shown on this ---

4 **MR. MILLS:** This was ---

5 **THE COURT:** Hold on a second. I'm sorry, Mr. Mills.
6 I'm sorry, Mr. Peel, do you want to repeat your
7 objection again?

8 **MR. PEEL:** Yes, Your Honor. The questions is, is
9 there any other way to access the property?
10 Access to property is a legal conclusion.
11 Certainly there is ways to get to that land. If
12 he's asking is this the only road he found into
13 there, that's a different question.

14 **THE COURT:** Okay. Objection overruled. Please
15 proceed, Mr. Wells.

16 **MR. WELLS:** Those are all the questions I have.

17 **THE COURT:** Okay. You can have a seat if you'd
18 like.

19 **MR. PEEL:** Your Honor, can we take a short recess?

20 **MR. FLOYD:** Two minutes?

21 **THE COURT:** Two minutes? I'll give you five.

22 **MR. PEEL:** Thank you.

23 (A short break was taken from 10:39 a.m. until 10:44
24 a.m.)

25 **THE COURT:** Mr. Floyd?



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1 MR. FLOYD: May it please the court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. MILLS - CROSS EXAMINATION BY MR. FLOYD:

4 Q: I'm Joey Floyd. I represent Nancy Martin.
5 Mr. Mills, we've had the opportunity to meet
6 before. Let's go through some of this stuff
7 here that we've talked about already this
8 morning. When I took your deposition, we talked
9 about what I believe is a five step process that
10 you go through to prepare a plat. You began
11 with courthouse research?

12 A: That's correct.

13 Q: You interview landowners if necessary?

14 A: That's correct.

15 Q: You do the survey work in the field?

16 A: Correct.

17 Q: Then you do office work, map calculations?

18 A: Correct.

19 Q: And then you gather information from adjoining
20 properties to see if there are any conflicts?

21 A: Correct.

22 Q: And the first time that you visited this area
23 that's shown on what I call the Gonzales plat,
24 would have been in 2004?

25 A: Correct.



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1 Q: And you don't have any knowledge about the use
2 of any of these roads on any of this property
3 prior to 2004, correct?

4 A: No.

5 Q: And you were on the ground whenever they did
6 this research, or they did this survey in 2004,
7 right?

8 A: Correct.

9 Q: And you followed your standard procedure when
10 you prepared this plat?

11 A: Correct.

12 Q: You mapped out the corners? You got a lot of
13 details on here?

14 A: Correct, yes.

15 Q: You showed an easement on the north side of
16 Country Properties' property?

17 A: Right.

18 Q: And you went into great detail to locate that
19 easement on this plat.

20 A: Correct.

21 Q: And easements are important to show on any
22 survey, right?

23 A: Correct.

24 Q: And you know that this property has an access
25 point off of Highway 601?



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1 A: Correct.

2 Q: And that's Country Properties has an access
3 point. It also has an access point off of Old
4 English Road.

5 A: Correct.

6 Q: And you can reach all areas of this property,
7 right?

8 A: It leads right to it, yes.

9 Q: Okay. And you also noted the presence of gates
10 at various locations on the plat.

11 A: Yes, sir.

12 Q: You also noted the presence of a gate on what is
13 shown on your plat, Gonzales plat, on the
14 property of what appears to be Edward Frank
15 Martin, Jr. Is that correct?

16 A: That's correct.

17 Q: And it appears between tracts (3) and (4), is
18 that correct?

19 A: That's correct.

20 Q: And you testified that you show gates if it
21 might be an impediment to a property?

22 A: We show gates if they're there.

23 Q: You show gates if they may be an impediment to
24 the property, right?

25 A: A gate can be an impediment to the property,



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1 yes.

2 Q: And that's why you showed them, right?

3 A: Yes.

4 Q: You didn't show a gate off of Highway 601 on
5 this entrance. Why is that?

6 A: If there was one there I don't recall it. So I
7 don't know.

8 Q: It wouldn't matter because it's not an
9 impediment to Gonzales' property at the time,
10 right? Because it would be on his property.

11 A: If there was a gate there. I don't recall if
12 there was or wasn't.

13 Q: Likewise, if there was a gate up here off of Old
14 English Road, you didn't show a gate on this
15 property, did you?

16 A: No. And my label is -- no.

17 Q: And you wouldn't show it because that would be
18 leading onto your client's, your customer's
19 property, right?

20 A: If there was a gate there, we would have shown
21 it, yes.

22 Q: So you say now, if there was a gate there, you
23 would have shown it. Is that what you say?

24 A: If it was there, we would have shown a gate
25 there. But I don't recall, I'd have to look at



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1 it again. It's labeled. It doesn't appear that
2 there is a gate there or shown.

3 Q: Okay. But that gate would not be an impediment
4 to this property because it leads directly onto
5 their property, right?

6 A: That's correct.

7 Q: Okay. And you followed your standard procedure
8 in doing this plat, right?

9 A: Correct.

10 Q: And we both agree that you found no written or
11 recorded easement across these properties to the
12 south that lead across what's known as Edward
13 Frank Martin Jr.'s land and Laura Jane Lewis
14 Allen's land?

15 A: That's correct. No recorded easement.

16 Q: When you are hired to do survey work ---

17 A: There was -- excuse me. There was one recorded
18 easement retained by Edwin Guy across the 400
19 acre tract and when his deed was given to East
20 Highland Company along that road.

21 Q: But again there is no easement to the south of
22 what is shown, the 1023 acre property?

23 A: No, did not find any.

24 Q: Across Laura Jane Lewis Allen, triangular piece
25 right here, or the property of Edward Frank



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1 Martin, Jr., right? Is that correct?

2 A: That's correct.

3 Q: When you're hired to do survey work the issue of
4 access is usually worked out before you go do
5 your work, right?

6 A: Yes.

7 Q: And you've got quite a bit of experience in
8 surveying large tracts, don't you?

9 A: Yes.

10 Q: And sometimes you have to be resourceful to get
11 access, don't you?

12 A: Try to obtain access. I think access is a legal
13 term but ---

14 Q: Okay.

15 A: Physical means of entry.

16 Q: You try to get a physical means of entry ---

17 A: Yes.

18 Q: --- onto the property.

19 A: Right.

20 Q: You have to be resourceful sometimes?

21 A: Right.

22 Q: In fact you knew or you know that there are some
23 Santee Cooper power lines back there, don't you?

24 A: That's correct.

25 Q: And you know that Santee Cooper asks landowners



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1 to put their locks on gates and that sort of
2 thing, don't you?

3 A: Generally speaking, yes.

4 Q: They don't necessarily have an easement, but
5 they just ask them if they can put their locks
6 on the gates, right?

7 A: You'd have to read their easement document, at
8 certain times they do, it is broadened that they
9 do have rights of access.

10 Q: You show one easement on here, correct, for the
11 power company?

12 A: The power line easement, yes.

13 Q: You don't see any other easements for the power
14 company besides the one running north and south,
15 do you?

16 A: No.

17 Q: Okay. But you're familiar with Santee Cooper
18 placing locks on landowner's gates?

19 A: Correct.

20 Q: In fact you've got a Santee Cooper key, don't
21 you?

22 A: I do.

23 Q: And from time to time you use foresters to gain
24 access to properties?

25 A: That's correct.



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1 Q: So you knew who the forester was for this
2 property too, didn't you?

3 A: Yes.

4 Q: Okay. All right. We've heard a little bit
5 about a Dirt Woods Road. The term dirt wood
6 roads is just a common description of a dirt
7 road in the woods used by surveyors, right?

8 A: It is a description, yes.

9 Q: So, if I pulled all of your plats I would find
10 the words dirt woods road on a number of large
11 tracts of land if there are dirt roads on the
12 property?

13 A: Yes.

14 Q: It doesn't necessarily mean that it's a public
15 road, does it?

16 A: No.

17 Q: Doesn't necessarily mean it's a county road?

18 A: No.

19 Q: Doesn't necessarily mean that it's an easement,
20 does it?

21 A: If it's not a recorded easement, it's not our
22 determination.

23 Q: Fair enough. You're just showing that there is
24 a ---

25 A: We're just showing that there is a road there.



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1 Q: Dirt road?

2 A: Right.

3 Q: And are you familiar with this road that you
4 showed to the south of the Laura Jane Lewis
5 Allen property?

6 A: Yes.

7 Q: You show a dirt road that appears to be on here,
8 right?

9 A: That's correct.

10 Q: Are you familiar with that road?

11 A: Yes.

12 Q: It's a dirt road, isn't it?

13 A: It is.

14 Q: And it is shown with a dotted line, right?

15 A: It is.

16 Q: And the words dirt woods road, I don't see it on
17 here any where, but that's what it is, isn't it?

18 A: That's what it is.

19 Q: If you were redoing this plat you could put the
20 words dirt woods road right there on that road,
21 couldn't you?

22 A: It would add clarity, yes.

23 Q: And on this map you show, or on this plat you
24 show McCord's Ferry road, right?

25 A: That's correct.



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1 Q: You show it as a heavy thick line, right?

2 A: That's correct.

3 Q: And you show Shady Grove Road as a heavy thick
4 line, right?

5 A: Correct.

6 Q: And you show what you identified as Shady Grove
7 Road, unpaved?

8 A: Correct.

9 Q: Did you look at the county records to see what
10 the county reflected this road as being?

11 A: I don't recall if I did.

12 Q: You didn't look, did you?

13 A: No.

14 Q: So you don't know what the county shows this
15 road as being, do you?

16 A: No.

17 Q: You don't know how far the county shows it as
18 being public, private or anything?

19 A: No.

20 Q: And you've based your opinion, or the things
21 that you've testified about today, you haven't
22 visited this property since 2004, have you?

23 A: Not this section, no. I've been along the
24 northern section but not the southern section.

25 Q: When you say the northern section, have you been



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1 on what is the 1,000 acre tract?

2 A: No, just adjoining it on the property lines.

3 Q: Okay. And you haven't been down this road here,
4 the dirt woods road or behind Ms. Martin's gate,
5 have you?

6 A: No.

7 Q: Those aerial photos that you showed us and all
8 that sort of thing, these roads or these aerial
9 photos that you said -- do you even know who's
10 using those roads? These photos don't show us
11 who's using the roads, do they?

12 A: No.

13 Q: They don't tell us who has permission to use the
14 roads?

15 A: No.

16 Q: And you really don't even know how it came into
17 existence do you?

18 A: No.

19 Q: Locked gates means that somebody behind that
20 gate wants to control access, don't they?

21 A: Will you say that again?

22 Q: A locked gate, by way of example, the locked
23 gate behind tracts (3) and (4) ---

24 A: We are just showing a gate and I don't recall it
25 being locked.



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1 Q: Okay.

2 A: It may have been, don't recall.

3 Q: Fair enough. Let's just talk about gates in
4 general. A locked gate, when we find a locked
5 gate that means that somebody behind that gate
6 wants to control access to that property behind
7 it, doesn't it?

8 A: Could be, sometimes it's to control animals.

9 Q: To control entry?

10 A: Yes.

11 Q: If it's across a road where cars and trucks can
12 travel, if there is a gate there and it's
13 locked, then the purpose of that gate is to
14 control entry, right?

15 A: If it is locked, yes.

16 Q: All right. On what you identified earlier as --
17 what do you call this?

18 A: It is commonly called a quadrangle map, I
19 believe that's even on the title at the bottom,
20 USGS Quadrangle map.

21 Q: Okay. And you use these quadrangle maps to help
22 you with topographic information, don't you?

23 A: Topographic, which includes not only contouring,
24 but roads and any other physical features on the
25 face of the earth.



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1 Q: So what this tells us is the elevation of the
2 property here, there. It just gives us an idea
3 of the elevation of the land, right?

4 A: Right.

5 Q: All right. You have put your own comments on a
6 number of these photos and that sort of stuff.
7 Do you know what this road is called as you come
8 off of 601? Do you know what Richland County
9 designates this road as, the name of it?

10 A: Shady Grove Road, as far as I know, yes.

11 Q: But you didn't check with the county, so you
12 don't really know what the county ---

13 A: It's on the road sign, yes.

14 Q: Okay. All right. So going back to this, I see
15 on here you have attempted to superimpose what
16 appears to be the 1023 acre tract of land on
17 what you call the quadrangle map, right?

18 A: That's correct.

19 Q: And you've taken the effort to notate Shady
20 Grove -- what you call Shady Grove Road on here,
21 right?

22 A: That's correct.

23 Q: But I noticed on here when I compare the two,
24 between the way you superimpose the property,
25 there is also a road that goes straight through



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1 the plaintiff's property, isn't it?

2 A: Correct.

3 Q: It starts at Highway 601 and goes all the way
4 through and it appears to keep going, doesn't
5 it? On and off the plaintiff's property, right?

6 A: Correct.

7 Q: In fact there are multiple roads on the
8 plaintiff's property that enter off of 601,
9 right?

10 A: Correct.

11 Q: But you didn't show those roads on the 2004
12 Gonzales plat, did you?

13 A: We didn't.

14 Q: And on this 2004 plat you also noted another
15 gate, a cable gate.

16 A: Correct.

17 Q: Between what appears to be Laura Jane Lewis
18 Allen's property and what is now Country
19 Properties' property, is that right?

20 A: Correct.

21 Q: And does that indicate to you that that might be
22 an impediment to get onto that property?

23 A: It could be.

24 Q: And in fact on this Gonzales Plat you noted that
25 you didn't note any sort of right-of-way or



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1 easement of any sort to get from Highway 601 to
2 what is now Country Properties' property, did
3 you?

4 A: We just noted that there was a dirt road there.
5 That's all.

6 Q: Did you note that there was a right-of-way or an
7 easement ---

8 A: No.

9 Q: Okay. And that was the answer?

10 A: No was the answer, yes.

11 Q: And of all this stuff that you've done with
12 these photographs and all that sort of stuff,
13 all that you've really shown us is that there
14 has been what appears to be a road there,
15 really?

16 A: That's correct.

17 Q: You can't tell us anything else besides that,
18 right?

19 A: I can tell you that there was a road there by
20 these exhibits since at least 1943.

21 Q: But you can't tell us who's using it, can you?

22 A: No.

23 Q: You can't tell us who had permission to use it?

24 A: You can infer that the landowners did when --
25 where the road traversed ---



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1 Q: From personal knowledge?

2 A: No, I have no personal knowledge, no.

3 Q: Any of those pictures show a gate?

4 A: The photographs? No, I don't believe they do.

5 Q: The resolution is probably not good enough to
6 see gates, is it?

7 A: No.

8 Q: I believe earlier you testified entry to what
9 you call the southern -- we'll call this the
10 southeast ---

11 A: Yes.

12 Q: --- part of the plaintiff's property. And this
13 is a map that you've looked at, right? This is
14 the 2014, what you called ---

15 A: 2013.

16 Q: Okay.

17 A: That was produced in 2014.

18 Q: So that's when you prepared it, March 5th?

19 A: Right. Date of photography was 2013.

20 Q: Okay. So this was in 2013? All right. So if
21 we look at this we see an entry off Highway 601,
22 right?

23 A: Correct.

24 Q: And it looks on here like we can see the roads
25 that go all the way kind of through this



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1 property, don't we?

2 A: They do in 2013, yes.

3 Q: And you can see if I entered at 601, couldn't I
4 -- it appears I could drive on a car or a road
5 and get all the way down here to the
6 southeastern portion of the property. If I came
7 in off of -- this is Old English Road right
8 here, right?

9 A: That's correct.

10 Q: If I came in off of Old English Road and drove
11 a car I could do the same thing couldn't I? I
12 could get to the southeastern portion of the
13 property.

14 A: I can see a track there. Can't tell you whether
15 your car would make it or not.

16 Q: Okay. Do you know if a car would make it down
17 the aerial photos that you produced earlier?

18 A: I would assume so.

19 Q: Same kind of thing?

20 A: Same kind of thing.

21 Q: You're making assumptions?

22 A: Well, you can see the track of the road.

23 Q: On both?

24 A: Right.

25 Q: On 2013 and what you see here on these other



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1 aerial photos?

2 A: Yes.

3 Q: No further questions. Thank you.

4 **THE COURT:** Any re-direct?

5 **MR. WELLS:** No re-direct.

6 **QUESTIONS BY THE COURT:**

7 **THE COURT:** All right. I just -- you probably said
8 this and I apologize if you already testified to
9 this. How do you find the easements when you're
10 doing a survey? How do you know what's an
11 easement? What has an easement, what doesn't
12 have an easement?

13 **MR. MILLS:** Well, if an easement is recorded and the
14 documents are clear enough then they can be
15 relatively easy to retrace.

16 **THE COURT:** Okay.

17 **MR. MILLS:** But if they're unrecorded that's why
18 we're here today and times.

19 **THE COURT:** Okay. So do you or do you have somebody
20 in your office physically come to the courthouse
21 and do a title search?

22 **MR. MILLS:** Sometimes a title search is provided by
23 the landowner. And in fact just before we
24 finished this survey we were provided with a
25 title report on this tract.



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1 **THE COURT:** And I guess that was the lady you called
2 up first right? The lady you called as a
3 witness?

4 **MR. WELLS:** Yes, that's a title searcher.

5 **THE COURT:** Right. So, your conclusions as to what
6 has an easement and what doesn't have an
7 easement is based on somebody else's opinion or
8 somebody else's work or whatever they found that
9 was recorded?

10 **MR. MILLS:** It would have to be a prior opinion or
11 recorded document that we have stated to be an
12 easement.

13 **THE COURT:** All right. And you said in this case
14 there was an easement that wasn't recorded? Is
15 that -- unless I misunderstood you.

16 **MR. MILLS:** In regard to this particular road we're
17 discussing?

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

19 **MR. MILLS:** We didn't find any recorded easement
20 involving the entirety of the road. There is a
21 easement retained by prior owner of the 450 acre
22 portion. I'll point to that.

23 **THE COURT:** Yes, sir. Watch your step though.
24 Okay, go ahead.

25 **MR. MILLS:** This section was actually part of this



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1 property further to the east.

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

3 **MR. MILLS:** When the owner of this property sold
4 this 400 plus acres he retained a right-of-way
5 for his use across this portion of the property
6 that is shown and described as the woods road on
7 Exhibit 8.

8 **THE COURT:** All right. Thank you, sir. I
9 understand. You may come down and watch your
10 step coming down.

11 **MR. WELLS:** Move this witness be excused.

12 **THE COURT:** Any objection?

13 **MR. PEEL:** No, sir, no objection.

14 **THE COURT:** All right. Thank you, Mr. Mills. Okay.
15 Mr. Wells?

16 **MR. WELLS:** Judge, we are to the Plaintiff's
17 testimony, so I call him next.

18 **THE COURT:** Okay. Do you want -- do y'all want to
19 take a little break before we start on that?
20 Then our next break will be our lunch break?

21 **MR. PEEL:** Yes, sir.

22 **THE COURT:** Okay. We'll stand in recess until about
23 11:20, about 15 minutes.

24 **(A short break was taken from 11:06 a.m. until 11:22**
25 **a.m.)**



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1 **THE COURT:** Okay. Mr. Wells?

2 **MR. WELLS:** I call James F. Podell.

3 **THE COURT:** Now let me ask, Mr. Wells, is there
4 anybody else in the courtroom that you're going
5 to call as a witness?

6 **MR. WELLS:** No, sir. No, Your Honor, this is it.

7 **THE COURT:** I was making sure that, you know, you'd
8 asked that the witnesses be excluded. Is there
9 anybody here that you're concerned about?

10 **MR. FLOYD:** Judge, Mr. Bostick, one of our witnesses
11 is here. I don't want to surprise the court by
12 his presence.

13 **THE COURT:** I understand. But do you have an
14 objection to him sitting and hearing other
15 witnesses' testimony?

16 **MR. WELLS:** Judge, I think if we are going to
17 sequester, we need to sequester. So, I think it
18 would be best if he stay outside.

19 **THE COURT:** Okay.

20 **MR. FLOYD:** No problem.

21 **THE COURT:** All right. Sir, you can stay and I
22 don't know -- are you planning to get him today?
23 I was thinking we might break for lunch in about
24 an hour.

25 **MR. FLOYD:** I figure we might start the defense case



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1 2:00-ish, 2:30, 3:00 or something like that.

2 **THE COURT:** Okay.

3 **MR. FLOYD:** By the time we finish with Mr. Podell
4 and all this other stuff. So, yes, he may be a
5 witness today, I'm not certain.

6 **THE COURT:** Okay. Sir, it's nothing -- you know, we
7 don't have anything against you personally.
8 It's just that he's making the same request that
9 Mr. Floyd made of his witness.

10 **MR. FLOYD:** Can I excuse him until 2:00 o'clock? I
11 hate to make him stand in the hall. He's under
12 our subpoena, as long as he comes back.

13 **THE COURT:** All right. Does that suit you, sir?

14 **MR. BOSTICK:** Thank you.

15 **THE COURT:** All right, you're welcome. Thank you.
16 All right. Mr. Podell?

17 **JAMES F. PODELL,** having been duly sworn, testifies
18 as follows:

19 **MR. PODELL - DIRECT EXAMINATION BY MR. WELLS:**

20 Q: Where do you live?

21 A: Pontiac, South Carolina.

22 Q: And give us a brief synopsis of your business
23 background.

24 A: I started in the real estate business in the
25 spring of 1963 and selling houses. I've been in



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1 business until today.

2 Q: And what all activities of the real estate
3 business have you been involved in?

4 A: Selling houses, buying houses, selling land,
5 buying land, developing land.

6 Q: Okay.

7 A: Owner financing land.

8 Q: And what is Country Properties, LLC?

9 A: It's an LLC that owns property.

10 Q: Okay. Was it originally formed as a
11 partnership?

12 A: The partnership is still in existence, yes, sir.

13 Q: And who were the partners?

14 A: Claude Campbell and myself.

15 Q: Okay. And tell the court what kind of projects
16 you and Mr. Campbell would do as Country
17 Properties, a partnership.

18 A: We started out many years ago with a tract of
19 land outside of Elgin and developed it in phases
20 and sold lots.

21 Q: Okay. When you formed the LLC were you and Mr.
22 Campbell the sole owners of the LLC?

23 A: Sole members, yes, sir.

24 Q: Okay. And then did you buy Mr. Campbell out?

25 A: No, I did not.



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1 Q: Okay. Did your wife buy Mr. Campbell out?

2 A: Yes, she did.

3 Q: And was that in 2012?

4 A: Yes, sir.

5 Q: And she bought his interest, so she stands in
6 his shoes?

7 A: That's correct.

8 Q: So it's still a two member LLC?

9 A: That's correct.

10 Q: With you and Dorothy Ann Podell as the two
11 members. Is that correct?

12 A: That is correct.

13 Q: All right. Now, do you remember the purchase of
14 the 1023 acre tract from Pine Ridge Investments,
15 LLC on March 11th, 2009?

16 A: Yes, sir.

17 Q: Okay. And let me go back to the plat which is
18 Plaintiff's Exhibit 2. Tell me how you got
19 involved with the purchase of this tract.

20 A: Harold Pickrel brought me this plat at some
21 point in time. He wanted to know if I'd be
22 interested in it or knew of anybody that would
23 be. I told him I probably wouldn't be, but
24 maybe Mr. Campbell might be.

25 Q: You said you would not be?



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1 A: That's correct.

2 Q: Okay.

3 A: And so I took the plat and dropped it off to Mr.
4 Campbell at his store.

5 Q: All right. And what happened after that?

6 A: I stopped in the store a few days after that and
7 he asked me, he said are you sure you're not
8 interested in that tract of land. I said well,
9 no, not really. He said well, you ought to take
10 a look at it. I said well if you're interested
11 in it I'll ride out there with you and take a
12 look or something to that nature. That was kind
13 of that conversation.

14 Q: Did you go out there with Mr. Campbell to look
15 at it?

16 A: I did.

17 Q: Okay. Do you know how many times? And I am
18 speaking of you and Mr. Campbell right now.

19 A: No, I'm sorry. I didn't go out there with him.

20 Q: Okay. When did you -- did you go out to the
21 property?

22 A: Yes.

23 Q: Okay. When did you go out to the property? Let
24 me ask you when in relation to this conversation
25 with Mr. Campbell, not asking you for exact, but



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1 a week later or a month later?

2 A: I would say three, three or four weeks after
3 that conversation.

4 Q: Did anyone go with you? When you first went to
5 the property the first time?

6 A: I believe the first time I went Ann and I went
7 out together.

8 Q: Okay.

9 A: That's when Mr. Campbell and somebody else, I
10 think it was Mack Brazell, we met them out
11 there. They were looking at it also.

12 Q: On that visit did you use the road known as
13 Shady Grove Road or Northeast Shady Grove Road
14 to access the property?

15 A: I don't think so.

16 Q: All right. How many times did you go to the
17 property before you bought it?

18 A: I would say five, maybe six times.

19 Q: Did you at some point use Northeast Shady Grove
20 Road to access the 1023 acre tract before you
21 bought it?

22 A: Yes.

23 Q: And was there a gate on the Martin property?

24 A: Yes.

25 Q: How did you get through the gate?



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1 A: As I remember the back the first time I was
2 there was with Harold Pickrel, had taken me out
3 there. And he got out and opened the gate and
4 we went on through.

5 Q: All right. And during subsequent visits did you
6 use Shady Grove Road to access the property
7 before you bought it?

8 A: Yes.

9 Q: And were you able to access the property through
10 the gate on the Martin Property?

11 A: Yes.

12 Q: And how were you able to access the property
13 through the gate on the Martin property?

14 A: Mr. Pickrel gave me the combination for the lock
15 that was on it.

16 Q: And you would unlock the gate and go through?

17 A: Yes.

18 Q: Is that your testimony?

19 A: Yes.

20 Q: Now, was it important to you, as a potential
21 purchaser, to be able to access the property
22 through Shady Grove Road or Northeast Shady
23 Grove Road?

24 A: Yes.

25 Q: Why?



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1 A: Other than by foot, it's the only way that you
2 could get to that property.

3 Q: Are you speaking of the Richland County side?

4 A: Yes.

5 Q: All right. What is the creek in the middle of
6 the property?

7 A: Raglins Creek.

8 Q: Okay. How deep is it?

9 A: The creek itself is probably in places two,
10 three, four feet deep.

11 Q: All right. Did it have a dam across Raglin
12 Creek when you were prospectively going to buy
13 it?

14 A: Yes, it did.

15 Q: Was there a road on the dam?

16 A: Well, yes and no.

17 Q: All right. Explain your answer.

18 A: Okay. You can probably run over it with a four-
19 wheeler, ATV, but to drive a pickup truck across
20 it it would be very difficult. It was narrow,
21 very narrow.

22 Q: Did you go to that dam with Ms. Podell in the
23 pickup at one time?

24 A: Yes.

25 Q: Was she willing to ride across the dam or not?



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1 A: No. She refused to ride across.

2 Q: All right. How was the decision made to buy the
3 1023 acre tract?

4 A: Well, the day we met Claude and Mack out there,
5 Claude said something to Ann that Jim's kind of
6 put it off on you. Don't you think that we
7 ought to buy this property? To my surprise she
8 said, well, you know it's a lot closer than any
9 of the other stuff he has and it would probably
10 be more convenient. Maybe he could get rid of
11 some of the other property and it might be
12 something to look in to.

13 Q: Okay. Why did you decide to buy this property?

14 A: Talking further we had some other property, some
15 money that was owed Country Properties, then we
16 decided if we could do some trading and
17 swapping, get some debt paid off, put a little
18 bit of money into it, it would probably be worth
19 buying.

20 Q: And what were the purposes to which you wanted
21 to put this property?

22 A: Just to have it.

23 Q: All right. Are you a hunter?

24 A: Yes.

25 Q: When Ms. Podell talked about the other



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1 properties you have, was she talking about other
2 hunting properties?

3 A: Yes, sir.

4 Q: Now, during your investigation of this property
5 did you go and get out and look at this gate on
6 the Martin property?

7 A: Well, I opened it and went through it.

8 Q: Okay. So you went out and opened it yourself --
9 -

10 A: Yes.

11 Q: --- on some occasion? Is that correct?

12 A: That's right.

13 Q: Did it have other locks on it?

14 A: Yes.

15 Q: What did you think the purpose for the gate was?

16 A: The gate is there to, as in other tracts to keep
17 certain entities from going on the property.
18 People tend to want to dump garbage, shingles
19 and debris on properties and that's a way to
20 prevent that from happening.

21 Q: But as to the other landowners behind the gate,
22 what did you believe the rule would be as to
23 those landowners?

24 A: I believed that this was a road for us to use,
25 we were able to use it.



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1 Q: Okay. Was the sale to Country Properties of the
2 1023 acre tract closed by a lawyer?

3 A: Yes.

4 Q: And who was that?

5 A: Charnell Peake.

6 Q: Okay. Did you go to the closing?

7 A: Yes.

8 Q: And did you question the lawyer about the
9 access, the right to use Shady Grove Road?

10 A: Yes.

11 Q: You remember that?

12 A: Yes.

13 Q: You remember that distinctly?

14 A: Yes.

15 Q: Were you satisfied that you had the right to use
16 that road as a result of that closing?

17 A: Yes, sir.

18 Q: And why did you think that you have the right to
19 use Shady Grove Road?

20 A: Well, we'd been using it. The plat showed it.
21 At the closing I asked if it was going to be a
22 problem with that road and the answer was
23 basically, well it's on the plat and it's been
24 used for years and years and years. And that
25 was it.



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1 Q: After the closing, did you continue to use Shady
2 Grove Road to access the property?

3 A: Yes, sir.

4 Q: What happened in June of 2009?

5 A: The way you gave me the date I assume that's
6 when my lock was taken off with some others and
7 hung up on a tree or the gate. I don't remember
8 which.

9 Q: Okay. Did you -- was there a notice on the
10 gate?

11 A: Yes, it said something about locks and calling
12 a phone number.

13 Q: All right. Did you call the phone number?

14 A: Yes, sir.

15 Q: And did you contact anyone?

16 A: I had to leave a message and then I got a phone
17 call back in, I don't know, ten days, two weeks.
18 And basically insisted that I wanted to put my
19 lock back on the gate so we could use the road
20 and was told that well, probably would have to
21 talk to that individual's attorney. I say
22 individual because I don't really know who I was
23 talking to.

24 Q: Okay.

25 A: Now I might have been given the name at the time



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1 but I just don't remember it.

2 Q: Now, were you given the name of a lawyer?

3 A: No. I asked for it but I did not get it.

4 Q: Okay. Was that the end of that conversation?

5 A: Yes, sir.

6 Q: Did you get permission to use the road?

7 A: No, sir.

8 Q: Have you ever received permission to use Shady
9 Grove Road?

10 A: No, sir.

11 Q: Have you ever asked for permission to use Shady
12 Grove Road?

13 A: No, sir.

14 Q: Has Nancy Martin ever given you permission to
15 use Shady Grove Road?

16 A: No, sir.

17 Q: Have you ever asked Nancy Martin for permission
18 to use Shady Grove Road?

19 A: No, sir.

20 Q: Have you ever asked Gary Wessinger or anyone in
21 the hunt club for permission to use Shady Grove
22 Road?

23 A: No, sir.

24 Q: As a result of that phone call did you ever find
25 out who the lawyer was?



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- 1 A: No, not from that phone call.
- 2 Q: Okay. Did you make a subsequent phone call?
- 3 A: Yes.
- 4 Q: And what was the substance of that phone call?
- 5 A: Basically the same thing, when I asked for the
6 attorney's name I was given one. And I knew the
7 name.
- 8 Q: Who was the -- what was the name?
- 9 A: George Lafaye.
- 10 Q: Lafaye?
- 11 A: Yes.
- 12 Q: Okay. And did you try to contact Mr. Lafaye?
- 13 A: I did.
- 14 Q: And what did you find when you tried to contact
15 Mr. Lafaye?
- 16 A: I got an answering machine or service and I left
17 a message, who I was and would they please call
18 back. And I really don't know if it was his
19 office or not.
- 20 Q: Did you ever get a call back?
- 21 A: No, sir.
- 22 Q: Did you make any more phone calls to the number
23 on the gate?
- 24 A: Don't believe so.
- 25 Q: Okay. Have you used the road shown as Shady



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1 Grove Road since that time?

2 A: Yes, sir.

3 Q: Okay. And when was that?

4 A: A couple of years ago, I believe.

5 Q: Okay. And why did you use Shady Grove Road?

6 A: I had a fellow in the timber business, signed a
7 contract on 65 acres that had contingency. And
8 the timber gentleman and myself went on Shady
9 Grove Road and some of the other roads that were
10 on the property.

11 Q: Now let me ask you about the times you used
12 Shady Grove Road to go from 601 to your
13 property.

14 A: Yes.

15 Q: Was your use open and notorious?

16 A: I am not familiar with the term notorious.

17 **MR. PEEL:** Objection.

18 **THE COURT:** Hold on one second, Mr. Podell. Yes,
19 sir, Mr. Peel.

20 **MR. PEEL:** Calls for legal conclusion.

21 **THE COURT:** Let's talk about that. Isn't that a
22 fact issue though? I mean, is there something
23 they would have to prove to support their
24 position? I mean, you know, he asked if it was
25 open and notorious. You say that's a legal



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1 conclusion. You say -- I'm thinking it's a fact
2 that we need to have. Now, you know, have you
3 -- do you have any response to that?

4 **MR. PEEL:** Yes, Your Honor. Open and notorious is a
5 legal term of art, certainly he can ask him what
6 he did when he accessed the road, but open and
7 notorious is direct from the case law and it is
8 a legal term of art ---

9 **THE COURT:** Okay. Mr. Wells?

10 **MR. PEEL:** --- in direct questions.

11 **MR. WELLS:** Judge, I'm in a catch 22. If I don't
12 get them to testify that their use was open and
13 notorious then the motion is to dismiss because
14 they didn't say it was open and notorious. And
15 so I believe it's a question of fact.

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

17 **MR. PEEL:** But I would say it's leading. He can ask
18 a direct question about his methods and manners
19 for entering the property and it's up to the
20 court to determine was that, what he did, open
21 and notorious.

22 **THE COURT:** And the fact that now your objection is
23 leading, is sustained.

24 Q: Was your use -- what time of day was it?

25 A: Are you asking me the last time I was on it or



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1 any ---

2 Q: These times that you used it was it at night or
3 in the day time?

4 A: Day time, I'm sorry.

5 Q: Did you try to disguise your entry into the
6 Martin property?

7 **MR. PEEL:** Objection.

8 **THE COURT:** What grounds?

9 **MR. PEEL:** Leading.

10 **THE COURT:** Sustained.

11 Q: Just describe when you would go in there then.
12 Was it by vehicle?

13 A: I drove up to the gate, got out, unlocked the
14 lock, opened the gate, went through, drove on to
15 the next gate, opened it.

16 Q: Okay.

17 A: Came back, went through the same process.

18 Q: Okay. As you moved through this road, did you
19 believe that you had a right to use that road?

20 A: Yes, sir.

21 Q: Based on what?

22 A: Well, the fact that it's on this plat. That's
23 part of the description of the property. I've
24 owned other tracts of land with the same
25 circumstances, gates and locks that was used.



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1 Q: All right. Do you believe that you have a
2 prescriptive easement on Shady Grave Road
3 leading to your property?

4 A: Yes, I do.

5 **MR. PEEL:** Objection.

6 **THE COURT:** Overruled. Madam Court Reporter, did
7 you get all of that?

8 **COURT REPORTER:** (Nods head.)

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

10 Q: Now, have you now seen the deed to E.F. Martin,
11 Sr. that has been entered into evidence in this
12 case?

13 A: Yes, sir.

14 Q: Do you believe that you have a deeded easement
15 over the Martin property by virtue of that deed?

16 A: Yes, I do.

17 Q: Do you believe that Shady Grove Road from
18 Highway 601 to your property line is a public
19 road?

20 A: Say that again.

21 Q: Do you believe that Shady Grove Road also known
22 as Northeast Shady Grove Road from Highway 601
23 to the property line of the Country Properties'
24 property is a public road?

25 A: Yes, sir.



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1 Q: Why do you think that?

2 A: It's been maintained in the past years to that
3 point.

4 Q: Okay. And do you believe it's shown as a public
5 road on a map?

6 A: Yes.

7 Q: Okay. And what map would that be?

8 A: Well, I've looked at -- you're talking about the
9 maps we've looked at here ---

10 Q: Look at Plaintiff's Exhibit 49.

11 A: Uh-huh.

12 Q: How is Shady Grove Road depicted on Plaintiff's
13 Exhibit 49? If you can't see it then tell me
14 you can't see it.

15 A: I'm trying to locate it here. I'm sorry, I'm
16 not able to decipher.

17 Q: Okay. Have you ever asked for permission to use
18 that road?

19 A: No, sir.

20 Q: Answer any questions the defendant might have.

21 **THE COURT:** Actually, if I can amend my request that
22 we start lunch at 12:30. This might be a good
23 breaking point.

24 **MR. PEEL:** It really would be, Your Honor.

25 **THE COURT:** Can we come back at 1:00 or do we need



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1 more time than that?

2 **MR. PEEL:** No, sir that's fine.

3 **THE COURT:** Okay. Thank you. Mr. Podell, you can
4 come down. So you know the rules about ---

5 **MR. PODELL:** Yes, sir. I'll talk about ball games
6 only.

7 **THE COURT:** Okay. All right. Watch your step. See
8 you at 1:00.

9 **(A break was taken from 11:49 a.m. until 1:02 p.m.)**

10 **THE COURT:** Thank you so much. Please be seated.
11 Do y'all need to talk or anything, I can ---

12 **MR. FLOYD:** I think we're good, ready to go.

13 **THE COURT:** Okay. Are you ready, Mr. Podell?

14 **MR. PODELL:** Yes, sir.

15 **THE COURT:** Okay. You may proceed, Mr. Floyd.

16 **MR. FLOYD:** Thank you, Your Honor.

17 **MR. PODELL - CROSS EXAMINATION BY MR. FLOYD:**

18 Q: Mr. Podell, my name is Joey Floyd and we've had
19 the opportunity to meet in this case. I
20 represent Nancy Martin. As we sit here today,
21 let's go back in time to when this aerial
22 photograph here, can't remember what Exhibit,
23 was taken in the year 2013. You have an access
24 or an entrance off of 601?

25 A: Yes, sir.



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1 Q: And you have an entrance to your property off of
2 Old English Road?

3 A: Yes, sir.

4 Q: And if I got in my car, or in my truck, and
5 drove onto your property, I could drive through
6 a locked gate, here off of 601, right?

7 A: Yes, sir.

8 Q: I would have to open that gate?

9 A: Yes, sir.

10 Q: And how many locks does that gate have on it?

11 A: Two, I think.

12 Q: Okay. Multiple locks ---

13 A: Yes.

14 Q: --- on that gate? I could get in my car and
15 drive through your property, across roads and I
16 could have crossed the dam, and I could have
17 gotten all the way out here to the southeastern
18 corner of your property. Likewise, I could have
19 come down Old English Road. I would have had to
20 unlock a gate to come onto your property here
21 off of Old English, right?

22 A: Yes.

23 Q: And there are multiple locks on that gate?

24 A: Yes, sir.

25 Q: How many?



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1 A: Three or four.

2 Q: Okay. I would open it and I could drive my car
3 through roads and across the dam to the
4 southeastern corner of your property, couldn't
5 I?

6 A: Yes, sir.

7 Q: And the fact that both of those existed, this
8 entrance and this entrance, existed when you
9 bought this property, right?

10 A: That's correct.

11 Q: And you keep locks on these gates to keep people
12 out, don't you?

13 A: Yes, sir.

14 Q: And if you come up on a locked gate that
15 indicates to you that unwanted guests or
16 trespassers are not welcome beyond that gate,
17 right?

18 A: In most of the cases, yes.

19 Q: I'm going to jump back to something you
20 testified about during your examination by Mr.
21 Wells. You believe that your property is made
22 up in part by the property from a partition
23 plat, right?

24 A: That's correct.

25 Q: You hadn't looked at any title work -- did you



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1 look at any title work before you closed on this
2 property?

3 A: No, sir.

4 Q: So you looked at all of this title work after
5 the fact, right?

6 A: That's correct.

7 Q: And now you contend that you are entitled to go
8 across Ms. Martin's property to access or to get
9 onto your property?

10 A: That's correct.

11 Q: All right. And you say that you have some
12 deeded easements?

13 A: That's correct, yes.

14 Q: But you heard your abstractor say, no deeded
15 easement, right? During her testimony in this
16 trial you heard her say no easements, that there
17 was no right-of-way across Ms. Martin's land?

18 A: No, I didn't hear that.

19 Q: You didn't hear that, okay. Could she tell us
20 or show us where the right-of-way was? She
21 couldn't could she?

22 **MR. WELLS:** Your Honor, I object to this. I think
23 it's a mischaracterization of Ms. Williams'
24 testimony.

25 **THE COURT:** Okay. What was her testimony?



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1 MR. WELLS: That this easement shown on Plaintiff's
2 Exhibit 27 is in the Defendant's chain of title.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: I don't think that's what she said, but
5 I mean ...

6 MR. WELLS: But she said what she said.

7 THE COURT: Right.

8 MR. FLOYD: She said she couldn't locate it. I mean
9 that's what I heard.

10 THE COURT: That's consistent with what Mr. Mills
11 testified to, that there was no recorded
12 easement ---

13 MR. FLOYD: That's right.

14 THE COURT: --- as far as he's concerned.

15 MR. FLOYD: That's ---

16 THE COURT: All right.

17 Q: And like you said, Mr. Mills, couldn't tell you
18 -- told us that there wasn't a written or
19 recorded easement across Ms. Martin's property.
20 You heard that didn't you?

21 A: Yes.

22 Q: And to the extent that there is language in
23 these deeds it all says plantation purposes
24 right?

25 A: That's correct.



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1 Q: You don't have a farm on your property, do you?

2 A: Yes.

3 Q: What do you grow?

4 A: Trees.

5 Q: Is trees a plantation use?

6 A: I assume it is.

7 Q: Okay. You said your lawyer told you that you
8 had an easement.

9 A: Wasn't my lawyer. It was the seller's lawyer.

10 Q: And you bought the property, right?

11 A: Yes.

12 Q: He's your closing attorney, right?

13 A: He closed it.

14 Q: Okay. But there's no information from the
15 surveyor we heard today, that there's a written
16 or recorded easement, right?

17 A: Right, uh-huh.

18 Q: In fact, all we've heard is people talk about
19 they've used it for hunting and fishing, right?

20 A: In addition to other things, yes, sir.

21 Q: What else?

22 A: Go to the river, haul logs, survey.

23 Q: Hunting, fishing, survey, timber. Okay. So,
24 these deeds don't say anything about building a
25 housing subdivision, do they?



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1 A: No, sir.

2 Q: Don't say anything about accessing houses back
3 there do they?

4 A: No, sir.

5 Q: And you can't show me where this purported
6 right-of-way is, can you?

7 A: I'm sorry?

8 Q: Your surveyor hasn't been able to tell us, your
9 abstractor hasn't been able to tell us and you
10 can't tell us where this purported right-of-way
11 is, right?

12 A: No, I can tell you. I can drive on it.

13 Q: Okay. But you're making assumptions, right?
14 There's no description anywhere, is it?

15 A: Yes. It's on the plat.

16 Q: Where is -- oh, let's talk about that. Yeah,
17 let's talk about that. So you're talking about
18 the 2004 plat, right?

19 A: That's correct.

20 Q: The 2004 Gonzales plat.

21 A: That's correct.

22 Q: All right. So you had this plat before you
23 bought the 1,000 acre tract, right?

24 A: That's correct, yes.

25 Q: And so whenever you were looking at it I heard



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1 you say, you came in off of 601 off what you
2 call Shady Grove Road. I call it Northeast
3 Shady Grove Road, and we'll find out why in a
4 little while.

5 A: It's been called a lot of things.

6 Q: Right. But if you come in off of 601 towards
7 Ms. Martin's -- this property Ms. Martin now
8 owns and you said you came up to a gate that was
9 locked?

10 A: Uh-huh.

11 Q: You unlocked it and you went through. You came
12 up to another gate at your property line, you
13 unlocked it and you went through, is that right?

14 A: That's correct.

15 Q: So you knew that there was a locked gate on what
16 is now Ms. Martin's property ---

17 A: That is correct.

18 Q: --- when you bought it?

19 A: That's correct.

20 Q: And you had access to this plat, right?

21 A: That's correct.

22 Q: There is not a single word anywhere on Ms.
23 Martin's property that anyone has a right to use
24 the dirt road on Ms. Martin's property, is
25 there?



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1 A: No, sir.

2 Q: And in fact you're aware of an end of county
3 maintenance sign ---

4 A: Yes, sir.

5 Q: --- at the end of the dirt road leading towards
6 Ms. Martin's property?

7 A: That's correct.

8 Q: It's big, white, got black letters on it, right?

9 A: Uh-huh.

10 Q: Says end of county maintenance?

11 A: Yes, sir.

12 Q: Now you agree with me that that gate is shown on
13 the Gonzales plat as a pretty accurate depiction
14 of where that gate is located, right?

15 A: That's correct.

16 **THE COURT:** Mr. Floyd, for clarity of the record,
17 what you're driving at when you say there is no
18 sign that says end of county maintenance, you
19 mean to make the point that once you get past
20 that sign the public will be on notice that's a
21 private road?

22 **MR. FLOYD:** Yes, your honor.

23 Q: The end of county maintenance, Mr. Podell, the
24 end of county maintenance road -- the end of
25 county maintenance sign, is it before you get to



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1 Ms. Martin's gate?

2 A: Yes, sir.

3 Q: Okay. Do you know how long this gate has been
4 on Ms. Martin's property?

5 A: No, sir.

6 Q: Okay. And you don't know how long that gate has
7 been locked, do you?

8 A: No, sir.

9 Q: And you didn't look at any title work when you
10 bought this property?

11 A: No, sir.

12 Q: The only thing you looked at was a single plat?

13 A: That's correct.

14 Q: And this plat doesn't say there's an easement of
15 any kind across Ms. Martin's property does it?

16 A: No, sir.

17 Q: And when you bought this property there was
18 actually a dam crossing, you testified about
19 that?

20 A: Yes.

21 Q: To get you across the dam, right? All right.
22 I want to make sure I was clear on something.
23 You said earlier I think -- and I want to just
24 ask you this question. Did you ever ask anybody
25 for a key to this gate?



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- 1 A: Yes.
- 2 Q: Okay. So you did ask somebody for a key?
- 3 A: Yes.
- 4 Q: And who did you ask for a key?
- 5 A: One of the hunt club members.
- 6 Q: You asked Dunn Mountain Hunt Club for a key to
7 the gate?
- 8 A: Yes, sir.
- 9 Q: And they told you no, didn't they?
- 10 A: Eventually.
- 11 Q: But you knew that you had to ask permission to
12 get behind that gate didn't you?
- 13 A: No.
- 14 Q: Why did you ask for a key?
- 15 A: Because I was able to use the gate and all of a
16 sudden I wasn't.
- 17 Q: Because you didn't have a lock on the gate any
18 more, right?
- 19 A: That's correct.
- 20 Q: So you were denied permission. You actually cut
21 the chain on the gate and put your own lock on
22 the gate, didn't you?
- 23 A: Yes, sir.
- 24 Q: Eventually, that lock was removed, wasn't it?
- 25 A: No. Well, yes, both of them were removed. I



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1 put one on and then the second time I cut the
2 chain and put a lock on it.

3 Q: And you are familiar with Santee Cooper having
4 keys -- having locks on gate too, right?

5 A: Yes, sir.

6 Q: And they have one on your lock ---

7 A: No, sir.

8 Q: --- on your gate?

9 A: I assume that's it. I don't know.

10 Q: Is it a gold lock?

11 **THE COURT:** I apologize. I want to make sure I get
12 the facts straight. The chain and lock that you
13 removed, were those your gates or the one that
14 we're talking about? The one on Shady Grove
15 Road?

16 **MR. PODELL:** The one on Shady Grove Road.

17 **THE COURT:** Okay. I just wanted to get the facts
18 straight.

19 **MR. FLOYD:** I may help clarify this.

20 Q: If you will flip to Exhibit 2. I have it for
21 you right here.

22 **THE COURT:** Plaintiff's Exhibit or Defendant's
23 Exhibit?

24 **MR. FLOYD:** Defendant's Exhibit Number 2.

25 **THE COURT:** Okay.



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1 Q: Do you recognize this picture, what it might be?
2 Have any idea?

3 A: It's a road.

4 Q: Do you recognize this road? You can keep
5 flipping through it.

6 A: Okay.

7 Q: Do you recognize any of those pictures?

8 A: Yes, sir.

9 Q: All right. What do those pictures look like to
10 you?

11 A: Pictures of a road, a gate, sign and locks.

12 Q: Do you recognize the road, the gate ---

13 A: Yes.

14 Q: What is that stuff? What are you looking at?
15 What are these pictures from? Do they appear to
16 be driving down Northeast Shady Grove toward Ms.
17 Martin's gate?

18 A: Yes.

19 Q: Have you seen all of that before?

20 A: Yes.

21 Q: Are these pretty accurate portrayals of what it
22 looks like driving down the road?

23 A: Yes, sir.

24 Q: And in fact, the next to last picture there --
25 the last three pictures there, does that kind of



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1 look like what the gate looks like that you
2 recall on Ms. Martin's property?

3 A: Yes.

4 Q: This will be Defendant's Exhibit Number 2. And
5 does this look like a picture of that gate that
6 is located on the Gonzales plat right above the
7 word Edward Frank Martin, Jr.?

8 A: Yes, sir.

9 Q: Okay. And the next to the last picture, is that
10 -- do you remember seeing a pine tree with a
11 series of locks and a chain link and that sort
12 of stuff?

13 A: Yes, sir.

14 Q: Okay. And is that where you would have cut a
15 link out and put your lock on it?

16 A: Probably so. Yes, sir.

17 Q: And then somebody took your lock off, didn't
18 they?

19 A: Yes, sir.

20 Q: Did they hang it across the gate for you to come
21 retrieve?

22 A: Yes.

23 Q: Okay. And do you recall a sign similar to what
24 you see on the last?

25 A: I do not.



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1 Q: Okay. You don't remember seeing a sign?

2 A: No. I mean I remember with the locks there was
3 a ...

4 Q: With the locks hanging beside it and the sign
5 beside it. Do you remember that?

6 A: No, I remember -- yes, it has the phone number
7 on it. Okay. That's ---

8 Q: The date was a little different. I think this
9 one is dated 2005 is that right? And I think
10 you said you saw a date -- one dated 2009?

11 A: Yeah, this one is 2005.

12 Q: Okay. This was before you bought this property?

13 A: Yes, sir.

14 Q: Do you have a Santee Cooper key?

15 A: No, sir.

16 Q: Never have?

17 A: Don't know.

18 Q: But you think you might have had one, right?

19 A: Possibly, yes.

20 Q: Okay. And if you had a Santee Cooper key you
21 know that those keys open all Santee Cooper
22 locks, right?

23 A: Yes, sir. Uh-huh.

24 Q: Okay. And you've never seen any county
25 maintenance personnel behind Ms. Martin's gate,



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1 have you?

2 A: No, sir.

3 Q: And in fact there is a second gate that you said
4 you go through, right here at the edge of your
5 property and what's known as the Lewis tract
6 here, and you have five or six locks on that
7 gate as well, don't you?

8 A: I think there is. Yes, sir. I don't have them
9 on there, they were there when we bought the
10 property.

11 Q: Uh-huh. But it was locked when you bought the
12 property, wasn't it?

13 A: Yes, sir.

14 Q: And you maintained the locked gate here, didn't
15 you?

16 A: Yes, sir.

17 Q: All right. So, after you bought this property
18 you testified about a dam ---

19 A: Yes, sir.

20 Q: --- that people were a little afraid to drive
21 across and all that sort of stuff, right?

22 A: Yes, sir.

23 Q: Okay. Are we talking about the dam that sits on
24 the Richland County/Kershaw County line?

25 A: Yes, sir.



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1 Q: After you bought this property, you spent about
2 \$70,000 on that dam, didn't you?

3 A: I don't recall right now.

4 Q: Okay. I can get your deposition out if you want
5 me to.

6 A: No. I mean that's fine.

7 Q: Did you spend about \$70,000 in upgrading and
8 fixing the pond dam? You hired an engineer ---

9 A: Yes, attempted, yes.

10 Q: Okay. Did you hire an engineer and contractor
11 to do the work?

12 A: Yes, uh-huh.

13 Q: And in fact once you completed those repairs
14 that dam was eighteen feet wide, wasn't it?

15 A: Yes.

16 Q: And you even drove a bull dozer across that dam,
17 didn't you?

18 A: Yes, sir.

19 Q: All right. We heard a little bit about an offer
20 on a piece of property. You said you made an
21 offer to purchase a piece of property. Would
22 that be the Lewis tract that you made an offer
23 on?

24 A: Yes, sir.

25 Q: You made an offer that was conditioned upon the



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1 owners at the time clearing up what you call the
2 road issue, didn't you?

3 A: Yes.

4 Q: Because you weren't sure if you had access from
5 601 to get to that property, were you?

6 A: No, that's not true.

7 Q: But it was conditioned upon the owners clearing
8 up the road issue?

9 A: Correct.

10 Q: And the road issue is the road issue across Ms.
11 Martin's property, right?

12 A: Yes, sir.

13 Q: And you ended up not buying it, right?

14 A: That's correct.

15 Q: Because they couldn't clear up the road issue,
16 right?

17 A: That's correct.

18 Q: And you've also told Jamie Guy that he can come
19 across your property if this case is resolved in
20 your favor, haven't you?

21 A: Yes.

22 Q: All right. Let's talk about a street sign. Are
23 you familiar with the street sign on your
24 property?

25 A: Yes, sir.



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1 Q: Did you install a street sign on your property,
2 up in the woods on the southeastern side?

3 A: Yes, sir.

4 Q: You installed that road sign after this lawsuit
5 started, did you?

6 A: Yes, sir.

7 Q: And you bought that sign off the internet,
8 didn't you?

9 A: Yes, sir.

10 Q: And at the time that you asked Richland County
11 to assign you an address you had one structure
12 on your property, didn't you?

13 A: That's correct. Yes, sir.

14 Q: And that one structure was located in Kershaw
15 County close to 601, wasn't it?

16 A: Yes, sir.

17 Q: It's a barn shed, right?

18 A: Yes, sir.

19 Q: So you asked Richland County to assign you an --
20 I'm sorry.

21 A: No, I did not ask.

22 Q: Did your wife ask them to assign a street
23 address to this property?

24 A: Yes, she did.

25 Q: Okay. But you got involved with that process



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1 didn't you?

2 A: Yes.

3 Q: And you were actively involved in that process?

4 A: Yes.

5 Q: And the request was for Richland County to
6 assign an address to a vacant parcel?

7 A: Yes, sir.

8 Q: And the person that you talked with to do that
9 was Alfred Tindal, right?

10 A: That's correct.

11 Q: Because she was employed with Richland County,
12 right?

13 A: That's correct.

14 Q: And you've known Ms. Tindal for about twenty
15 years, haven't you?

16 A: Probably so. Yes, sir.

17 Q: You didn't tell Ms. Tindal that there were
18 locked gates between 601 -- there were two
19 locked gates between 601 and this property that
20 you were trying to address, right?

21 A: No, sir.

22 Q: You never mentioned locked gates to any body at
23 Richland County, did you?

24 A: No, sir.

25 Q: You didn't tell Richland County personnel



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1 anything about this litigation either, did you?

2 A: No, sir.

3 Q: But you did tell Ms. Tindal that you used the
4 road across Ms. Martin's property to access your
5 property back here didn't you?

6 A: We did. Yes, sir.

7 Q: You told her that in 2014?

8 A: Probably so. Yes, sir.

9 Q: But you didn't have access to that road whenever
10 you told Ms. Tindal that, did you?

11 A: Thought I did, but I wasn't able to use it.

12 Q: You didn't have the right to use that road
13 whenever you told Ms. Tindal that?

14 A: I felt I had the right to use that road when I
15 talked to Ms. Tindal. I think today I have the
16 right to use that road.

17 Q: You weren't using that road when Ms. Tindal
18 asked you what roadway you use?

19 A: No, sir.

20 Q: Okay. I found it interesting also that you said
21 you think this dirt road is public all the way
22 up to your property.

23 A: Yes, sir.

24 Q: No further. You say it's private from your
25 property line right on back, is that what you



1 say?

2 A: (No audible response.)

3 Q: What do you say?

4 A: What's your definition of public and private?

5 Q: I heard you say that you believe this road was
6 public up to your property line. That's what
7 you said, right?

8 A: That's correct.

9 Q: Okay. Despite that fact, you've taken a street
10 sign and you've installed it here on your
11 property, haven't you.

12 A: That's correct. Yes, sir.

13 Q: And you still maintain that that's a public road
14 from 601 all the way to your property line but
15 no further?

16 A: Didn't say that. You said that.

17 Q: Okay.

18 **MR. FLOYD:** No further questions.

19 **THE COURT:** Any re-direct?

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

21 **MR. PODELL - RE-DIRECT EXAMINATION BY MR. WELLS:**

22 Q: Mr. Floyd asked you about the width of the dam?

23 A: Yes, sir.

24 Q: Across Raglin Creek?

25 A: Yes, sir.



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1 Q: Would you look at Plaintiff's Exhibit 37?

2 A: Yes, sir.

3 Q: Do you recognize that picture?

4 A: Yes, sir.

5 Q: Did you take the picture?

6 A: Yes, sir.

7 Q: And what does that show on the picture?

8 A: Portion of the dam that has been washed out.

9 Q: Okay. When was the picture taken?

10 A: Wasn't the last flood, it was two years ago.

11 Q: Okay. Was that the 2015 flood or a rainstorm
12 previously?

13 A: A rainstorm previous to that.

14 Q: Does it normally look like that or was that
15 damage from a storm?

16 A: That was damage from a rainstorm.

17 Q: Okay. Hold that up so the court can see it and
18 show which side the -- I think you can tell
19 which side the pond is on.

20 **THE COURT:** This is Plaintiff's Exhibit Number 37,
21 correct?

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

23 **THE COURT:** Thank you.

24 **MR. WELLS:** We move to introduce Plaintiff's Exhibit
25 37.



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1 MR. PEEL: No objection, Your Honor.

2 THE COURT: All right. Your motion is granted.

3 (Plaintiff's Exhibit Number 37 was admitted into
4 evidence at this time.)

5 Q: Was that -- did you repair the dam after that
6 picture was taken?

7 A: Yes, sir.

8 Q: And is the dam in good repair today?

9 A: No, sir.

10 Q: And when did it fall into disrepair?

11 A: When we had the twenty inch rain in '15,
12 October.

13 Q: Now, Mr. Floyd asked you about a conversation
14 with Gary Wessinger ---

15 A: Yes, sir.

16 Q: --- about the access through the gate?

17 A: Yes, sir.

18 Q: Tell me about that incident.

19 A: I was using the road, as I recall the gate was
20 open.

21 Q: The gate on Ms. Martin's property?

22 A: Yes. And I went through the other gate and I
23 believe if I'm correct here when I came back the
24 gate was locked so I had to go back through
25 again. If I remember correctly I think I called



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1 one of them on the phone or Norman Ford may have
2 got one of them to open the gate and I turned
3 around and came back through it. It was opened
4 up for me.

5 Q: Where did you find Mr. Wessinger?

6 A: They have a hunt club up on Old English Road.

7 Q: Okay. And how did you see them, were they out
8 there hunting?

9 A: Yes.

10 Q: Okay. And tell me about the conversation that
11 you had on that day.

12 A: I asked him if I could have a key from him,
13 because I was locked out of using this road and
14 I thought I had the right to use it until we got
15 it resolved and I would like to have a key if he
16 didn't mind so I could get in and out.

17 Q: Why did you talk to them about a key?

18 A: So I could get to my property and get out of my
19 property.

20 Q: Did you assert to them that you had the right to
21 use the road?

22 A: Yes, I did.

23 Q: Did anyone give you a key?

24 A: No, sir.

25 Q: Those are all of the questions that I have.



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1 THE COURT: Any re-cross?

2 MR. FLOYD: Yes, sir.

3 MR. PODELL - RE-CROSS EXAMINATION BY MR. FLOYD:

4 Q: Could you tell me the date of that picture of
5 the dam that you have there?

6 A: I don't have a date exact right now, I can find
7 it but I don't know it.

8 Q: Was that before the repairs that you made to the
9 dam?

10 A: Yes.

11 Q: So, that would have been pre \$70,000 fix to the
12 dam, right?

13 A: No. This is after the \$70,000.

14 Q: But you fixed it didn't you?

15 A: Yes.

16 Q: And the Wessingers told you that you could not
17 have a key, didn't they?

18 A: That's correct.

19 Q: And the day that you saw the Wessingers was on
20 a Saturday, wasn't it?

21 A: Probably.

22 Q: Because everybody was hunting?

23 A: Probably, yes.

24 Q: And when Dunn's Mountain Hunt Club hunts they
25 leave the gates open on Saturday, don't they?



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1 A: Yes.

2 MR. FLOYD: At this time I move to introduce
3 Defendants Exhibit Number 2, pictures.

4 MR. WELLS: I haven't seen them.

5 MR. FLOYD: They are the same ones in your notebook
6 right there.

7 MR. WELLS: No objection.

8 THE COURT: Okay. Your motion is granted.

9 (Defendant's Exhibit Number 2 was admitted into
10 evidence at this time.)

11 MR. FLOYD: No further questions. Thank you, Your
12 Honor.

13 QUESTIONS BY THE COURT:

14 THE COURT: All right, thank you. Mr. Podell,
15 you've seen me ask witnesses questions and I
16 want to get the facts straight but I also have
17 some ideas of how to rule. Of course, I am
18 going to ask the lawyers to submit proposed
19 orders. I'm not going to rule from the bench
20 this week. Mr. Podell, how much did you pay for
21 this property?

22 MR. PODELL: \$2,014,000.

23 THE COURT: And how much is it worth today?

24 MR. PODELL: I would say probably the same thing.

25 THE COURT: I'm not being facetious and we all know



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1 I used to practice law like everybody else. I
2 used to always ask my clients, if you win what
3 do you win?

4 **MR. PODELL:** What I already thought I had.

5 **THE COURT:** Well, I know but the point is if the
6 property is still worth the same as it was when
7 you bought it, how are you damaged by not being
8 able to use that particular ---

9 **MR. PODELL:** Oh, you have to ---

10 **THE COURT:** Let me finish my question, okay. That
11 particular access, Mr. Floyd has been making the
12 point that you had three other ways to get on
13 that property. Now how does this hurt anybody
14 by not taking that particular route?

15 **MR. PODELL:** Financially, it does hurt because I
16 have had inquiries as to selling this tract of
17 land in Richland County, because it's three,
18 four, 360-some acres I think according to the
19 tax map. And of course if the defendant
20 prevails that's an impossibility.

21 **THE COURT:** Okay. Now, I'm confused. You said -- I
22 thought the tract was over a thousand acres?

23 **MR. PODELL:** It is. But there is -- in Richland
24 County ---

25 **THE COURT:** I see.



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1 MR. PODELL: --- 360-some acres. In other words the
2 creek's the line.

3 THE COURT: Okay.

4 MR. PODELL: And without the ingress and egress, if
5 you want to call it that, or the road that's
6 been there for 90 years is all of a sudden shut
7 off.

8 THE COURT: Uh-huh.

9 MR. PODELL: Financially, I'm damaged.

10 THE COURT: Okay. Thank you so much sir.

11 MR. PODELL: Could I ask a question?

12 THE COURT: Well, that's not really how the system
13 works ---

14 MR. PODELL: How it works.

15 THE COURT: --- but you might want to talk to Mr.
16 Wells he can ---

17 MR. PODELL: I understand, yes, sir.

18 THE COURT: --- bring that up, sir.

19 MR. PODELL: That's it for me.

20 THE COURT: Yes, sir. Yes, sir, please. Watch your
21 step coming down.

22 MR. PODELL: Thank you.

23 THE COURT: You're welcome. Watch your step please.
24 All right. Thank you.

25 MR. PODELL: Thank you.



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1 **THE COURT:** All right. Mr. Floyd? Mr. Wells,
2 anything else for the Plaintiff.

3 **MR. WELLS:** Your Honor, with that Plaintiff rests.

4 **THE COURT:** Plaintiff rests. Any motions, Mr.
5 Floyd?

6 **MR. FLOYD:** I'd like to reserve them until the end,
7 Your Honor.

8 **THE COURT:** Okay. Okay. Normally at this time
9 there would be a motion for a non-suit.
10 Frequently I let people do it after all the
11 evidence is put in from both sides.

12 **MR. FLOYD:** We're not waiving, we're reserving, Your
13 Honor.

14 **THE COURT:** Say again, sir?

15 **MR. FLOYD:** We're not waiving and just reserving.

16 **THE COURT:** Oh, yes, sir. All right. Plaintiff has
17 rested, do you have any motions from the
18 Plaintiff?

19 **MR. WELLS:** Judge, during lunch there was some brief
20 discussions on settlement and I was unable to
21 talk to Mr. Podell because he was an active
22 witness on the stand.

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

24 **MR. WELLS:** And if we could have ---

25 **MR. PEEL:** My witnesses aren't going to show up



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1 until 2:00 o'clock so that's fine, Your Honor.

2 **MR. WELLS:** --- a recess until 2:00 to explore a
3 settlement option ---

4 **THE COURT:** Okay.

5 **MR. WELLS:** --- then I would appreciate that.

6 **THE COURT:** All right. Your clients of course
7 understand that a case that's settled is a case
8 you can't lose, so you understand that.

9 **MR. WELLS:** All right.

10 **MR. FLOYD:** Thank you, Your Honor.

11 **THE COURT:** You're welcome, you're welcome. Folks,
12 see you at 2:00 o'clock. Your negotiations are
13 going to be off the record so the court reporter
14 doesn't need to be here either.

15 **(A break was taken from 1:34 p.m. until 2:02 p.m.)**

16 **THE COURT:** All right. Mr. Floyd?

17 **MR. FLOYD:** Your Honor, the defense calls it's first
18 witness Mr. Gary Wessinger.

19 **COURT REPORTER:** What was your first name, Mr.
20 Wessinger?

21 **MR. WESSINGER:** Gary.

22 **COURT REPORTER:** Gary. And it's W-E-S-S-I-N-G-E-R?

23 **MR. WESSINGER:** (Nods head.)

24 **GARY WESSINGER,** having been duly sworn, testifies as
25 follows:



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1 MR. WESSINGER - DIRECT EXAMINATION BY MR. FLOYD:

2 **THE COURT:** Mr. Wessinger, if you need a break for
3 any reason just let me know.

4 Q: Will you state your name for the record, please?

5 A: Gary Wessinger.

6 Q: When were you born, Mr. Wessinger?

7 A: September 26, 1937.

8 Q: How old does that make you today?

9 A: 78.

10 Q: Where do you live?

11 A: Up in Irmo. Address is 3359 Kennerly Road.

12 Q: And how long have you lived there?

13 A: All my life.

14 Q: Have you ever heard of the Dunn's Mountain Hunt
15 Club?

16 A: Yes, sir.

17 Q: What is the Dunn's Mountain Hunt Club?

18 A: A hunting club that we started up with C.F.
19 Martin, we leased the property from him.

20 Q: What does Dunn's Mountain Hunt Club hunt?

21 A: Deer.

22 Q: All right. Who all started the Dunn's Mountain
23 Hunt Club?

24 A: David Wynn actually started it. He's the one
25 that got the land from Mr. Martin. He handled



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1 all the money and other things and we did all
2 the work.

3 Q: Who is we?

4 A: Me and my brother and a guy name Bob Post.

5 Q: Okay. When did the Dunn's Mountain Hunt Club
6 start?

7 A: I think it was in 1970.

8 Q: Are you familiar with some property off of
9 Highway 601 near the Kershaw County/Richland
10 County line?

11 A: (No response.)

12 Q: Do you want me to ask the question again?

13 A: Yeah.

14 Q: Are you familiar with some property off of
15 Highway 601 near the Richland County/Kershaw
16 County line?

17 A: Yes, sir.

18 Q: All right. And are you familiar with some
19 property that's owned by Nancy Martin?

20 A: Yes, sir.

21 Q: Did that property -- was it formerly owned by
22 her father?

23 A: Yes, sir.

24 Q: E.F. Martin, Jr? Can you tell me the first time
25 you think you visited this property?



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1 A: Well, the first time I went on that property
2 over there was I hunted with Cleveland Swamp,
3 that's the next swamp to it.

4 Q: Do you know where -- do you recognize this plat?
5 Can you identify -- this is the Gonzales plat
6 that was prepared in 2004, can you orient
7 yourself on here with Highway 601 being here?

8 A: Yeah.

9 Q: And what's called Northeast Shady Grove Road.
10 On this particular plat it's called Shady Grove
11 Road.

12 A: Yeah.

13 Q: Do you recognize where the properties are on
14 this plat here?

15 A: Yes, sir.

16 Q: All right. And tell me where Cleveland Swamp is
17 in relation to ---

18 A: Cleveland Swamp is on the other side, the lower
19 side more towards Sumter, I would say.

20 Q: Would you say south?

21 A: Yes, sir.

22 Q: Okay. And when were you hunting over here in
23 Cleveland Swamp?

24 A: In 1969.

25 Q: All right. Did you know Nancy Martin's father?



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1 A: Not at that time.

2 Q: Okay. When did you meet Nancy Martin's father?

3 A: Probably a year after I hunted over there with
4 Cleveland.

5 Q: So the year after you hunted the Cleveland
6 Swamp?

7 A: Yes, sir. Whenever we started to cut roads and
8 stuff.

9 Q: Would that have been in 1970?

10 A: Yes, sir.

11 Q: All right. Did Dunn's Mountain Hunt Club lease
12 property from Edward Frank Martin, Jr.?

13 A: Yes, sir.

14 Q: All right. Do you see on this plat here -- can
15 you see it where it shows the name Edward Frank
16 Martin, Jr.?

17 A: Yes, sir.

18 Q: Would that be the property -- and I'm looking at
19 the Gonzales plat, would that be the property of
20 Dunn's Mountain Hunt Club?

21 A: Yes.

22 Q: And when did Dunn's Mountain start leasing this
23 property?

24 A: I think that was acutally like 1970.

25 Q: All right. When you first started leasing this



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1 property -- when I say you I mean when Dunn's
2 Mountain started leasing this property, was
3 there a gate on that dirt road that leads from
4 601 to Mr. Martin's property?

5 A: To my knowledge, I can't remember.

6 Q: Okay. Do you recall there being any sort of
7 wooden gate or anything like that?

8 A: There was an old wooden gate there that it would
9 take three people to open and close it.

10 Q: And where would that wooden gate be?

11 A: On Shady Grove Road, right where her property
12 starts. I would think it was right in there.

13 Q: Ms. Martin's property start -- Mr. Martin's
14 property started at 3, 4, 5, and 6.

15 A: Then this here is what we called the Mattie
16 Higgins property at that time, which we had
17 hunting -- rights to hunt it too then.

18 Q: All right. And so this triangular piece here,
19 are you familiar with what's called the Lewis
20 tract?

21 A: Yes, sir.

22 Q: All right. Does that accurately portray what
23 you recall the Lewis tract looking like?

24 A: Yes, sir.

25 Q: All right. Are you familiar with where there is



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1 a gate on Nancy Martin's property today?

2 A: Yes, sir.

3 Q: All right. And who installed that gate on Nancy
4 Martin's property?

5 A: Well, we had that gate out at the other place
6 where the wooden gate was. And Mr. Higgins,
7 when they were -- when we lost the lease to the
8 property that we had out there which later on
9 Mr. Martin bought.

10 Q: That was the lease to the Higgins property?

11 A: Yeah. We had a lease on the Higgins property
12 whenever we first started hunting over there and
13 we put the gate on the line at the Higgins.
14 Well, whenever Ms. Mattie died we -- he moved
15 the gate down to the present location, but we
16 have had to do a lot of work to it since then.

17 Q: Do you recall about when this gate gets in it's
18 current location now?

19 A: I don't know. I think it's somewhere along '82,
20 '83 somewhere.

21 Q: Okay. Has there been a locked gate across this
22 road since 1970?

23 A: Yes, sir.

24 Q: And why was that gate installed on the property?

25 A: Because it's so many people just running in



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1 there doing devilment.

2 **COURT REPORTER:** Doing what, I'm sorry?

3 **MR. WESSINGER:** Devilment.

4 **COURT REPORTER:** Thank you.

5 Q: Was Mr. Martin concerned about the timber on his
6 property?

7 A: Yes, sir. He was afraid that somebody was going
8 to start a fire and wanted it ...

9 Q: Have you ever seen any county maintenance
10 personnel maintaining the portion of the road
11 beyond the gate on Ms. Martin's property?

12 A: No, sir.

13 Q: Who maintained the road on Ms. Martin's property
14 after Dunn's Mountain started leasing that
15 property?

16 A: Me and my brother.

17 Q: How did you maintain it?

18 A: Well, we had tractors with the scrape blades and
19 then we bought a motor grader.

20 Q: Did you build any additional roads on the
21 property?

22 A: Yes, sir. On the line all the way around the
23 property except for where the swamp part was.
24 We cut roads all the way around the property,
25 both sides of the road.



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1 Q: And who maintained all the roads on the
2 property?

3 A: We did.

4 Q: What sort of conditions did Dunn's Mountain Hunt
5 Club keep the roads in?

6 A: We kept them where Mr. Martin could drive his
7 Mercedes over them.

8 Q: Lot's of mud holes and that sort of stuff?

9 A: No mud holes.

10 Q: All right. Do you recall there being a gate of
11 some sort between the Lewis property and the big
12 thousand acre tract beyond the Lewis property?

13 A: Yes, sir.

14 Q: Okay. Was that gate always locked?

15 A: That gate was always locked whenever I was
16 there.

17 Q: All right. Did you know Mr. Lewis?

18 A: Oh, yeah.

19 Q: Was Mr. Lewis a member of the Dunn's Mountain
20 Hunt Club?

21 A: Yes, sir. He was a member and when the property
22 come up for sale he bought it and it went into
23 the hunting club then.

24 Q: Whenever Dunn's Mountain Hunting Club installed
25 the gate across this road, this dirt road on Mr.



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1 Martin's property, did anybody use that road
2 without Mr. Martin's permission?

3 **MR. WELLS:** Your Honor, I object. That's cause for
4 hearsay, a statement by Mr. Martin who is not
5 here.

6 **THE COURT:** Mr. Floyd?

7 **MR. FLOYD:** I'll rephrase.

8 **THE COURT:** Okay.

9 Q: Were you instructed by Mr. Martin to let anybody
10 use that road without his permission?

11 **MR. WELLS:** Same objection.

12 A: No, sir.

13 **MR. WELLS:** Same objection.

14 **THE COURT:** He's asking for hearsay?

15 **MR. WELLS:** He's asking for a statement by Mr.
16 Martin who is out of court. An out of court
17 declaration by Mr. Martin who is not here.

18 **THE COURT:** And Mr. Martin is deceased?

19 **MR. FLOYD:** Yes, he is, Your Honor.

20 **THE COURT:** Okay.

21 **MR. FLOYD:** I'll ask it another way.

22 **THE COURT:** I was going to say, sustain the
23 objection but you can re-characterize.

24 Q: Who was authorized to use this road beyond the
25 locked gate on this dirt road on Mr. Martin's



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1 property?

2 A: The hunting club and he had a fellow by the name
3 of Guy, and his son, and Mr. Higgins had a lock
4 on it, and it was another guy that had a lock on
5 it, had a piece of property down there, but I
6 don't know his name.

7 Q: Did you have to have permission to use the road?

8 A: What, somebody that didn't have a key?

9 Q: No. Did somebody have to have permission to use
10 that road, that dirt road?

11 A: Whenever Mr. Martin had it, they did.

12 Q: And did they have to have Mr. Martin's
13 permission to use that road?

14 A: Yes, sir.

15 Q: When Ms. Martin, Nancy Martin owned this
16 property was it the same policy?

17 A: Yes, sir.

18 Q: What would you do if somebody asked Dunn's
19 Mountain Hunting Club for a key or for
20 permission to use that road?

21 A: Give them Mr. Martin's phone number.

22 Q: Did you just hand them a key?

23 A: No, sir.

24 Q: What did you tell those folks that asked?

25 A: I told them that we didn't have any



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1 authorization to let nobody use the road without
2 his permission.

3 Q: Are you familiar with any logging operations
4 that went on on the big tract, the 1,000 acre
5 tract up here?

6 A: Yes, sir.

7 Q: Are you familiar with any logging operations
8 that went on while Mr. Martin was alive?

9 A: Yes, sir.

10 Q: And are you familiar with loggers using this
11 road?

12 A: Yes, sir. They used the road. Mr. Martin let
13 them use the road.

14 **MR. WELLS:** Your Honor, I object to anything that he
15 is saying that Mr. Martin said or allowed people
16 to do because Mr. Martin is not here to testify
17 to that. It's a hearsay objection.

18 **MR. FLOYD:** It's an exception, Judge, under Rule
19 804, he's dead.

20 **THE COURT:** You have the rule with you?

21 **MR. FLOYD:** I do. Rule 804.

22 **THE COURT:** Okay. Please publish it. It's Rule 804
23 in South Carolina Rules of Evidence.

24 **MR. FLOYD:** Unavailability as a witness includes
25 situations in which the Declarant under



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1 Subsection (3)(a)(4) is unable to be present or
2 testify at a hearing because of death or then
3 existing physical or mental illness or
4 infirmity.

5 **THE COURT:** Okay. Mr. Wells? Do you renew your
6 objection?

7 **MR. WELLS:** Judge, we just note the objection for
8 the record.

9 **THE COURT:** Okay. Objection overruled.

10 Q: Now what were you saying about Mr. Martin with
11 the loggers?

12 A: He give them permission. We never had anything
13 to do with them.

14 Q: Did Mr. Martin tell you anything about the
15 loggers?

16 A: Well, sometime he would and sometime he
17 wouldn't. He'd say, well, I forgot about it, I
18 meant to tell you about it.

19 Q: If you saw people using the road, such as
20 loggers, would you tell Mr. Martin about it?

21 A: Yes, sir.

22 Q: And what would he tell you?

23 A: He would tell me whether they had permission to
24 be there.

25 **THE COURT:** All right. Hold on. And Mr. Wells, you



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1 note a continue objection, is that correct?

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

3 **THE COURT:** Okay. Duly noted.

4 Q: When did Dunn's Mountain Hunt Club hunt the
5 property? What day of the week?

6 A: On Saturdays.

7 Q: Did Dunn's Mountain lock the gate while it was
8 hunting?

9 A: No, sir. The gate wasn't locked while we was
10 hunting.

11 Q: Are you familiar with what's in -- I'll show you
12 a picture here, Defendant's Exhibit 2? Some
13 pictures here that I have, which is a picture of
14 a gate. Do you see that gate?

15 A: Yes, sir.

16 Q: Do you recognize that gate?

17 A: Yes, sir.

18 Q: Do you recognize the next to the last picture
19 here of that gate, as well?

20 A: Yes, sir.

21 Q: Do you recognize the chain around the tree?

22 A: Yes, sir.

23 Q: Do you recognize multiple locks around the tree?

24 A: Yes, sir.

25 Q: Not necessarily recognize the locks themselves,



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1 but do you see multiple ---

2 A: Yeah. I see locks.

3 Q: Did anybody's lock go on that chain link around
4 that tree without Mr. Martin's permission?

5 A: In my -- as far as I remember, no.

6 Q: Okay. And Dunn's Mountain had control of the
7 property because it was leasing the property,
8 right?

9 A: Right.

10 Q: What did Dunn's Mountain Hunt Club do if
11 additional locks appeared on the gate?

12 A: I would talk to Mr. Martin and tell him. And
13 he'd say, well what do you think we ought to do
14 about it? And I'd say, well let's put a sign up
15 there that in three weeks from now if nobody
16 gets in touch who these locks belong to, they
17 will be removed.

18 Q: I'm going to had you a document and I'll mark it
19 Defendants Exhibit Number 12.

20 **(Defendant's Exhibit Number 12 was marked for**
21 **identification purposes.)**

22 Q: Mr. Wessinger, I'll ask you to take a look at
23 that. Are you familiar with ever seeing a sign
24 like this?

25 A: Yes, sir.



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1 Q: Okay.

2 A: I put it on the ---

3 Q: Is this a sign that you read before today?

4 A: Yes, sir.

5 Q: And would you have put this sign on the gate
6 around September 16th, 2005?

7 A: Yes, sir.

8 Q: Is this a pretty accurate copy of that sign that
9 you put on there?

10 A: Yes, sir.

11 **MR. FLOYD:** I move that this be entered into
12 evidence as Defendant's Exhibit Number 12.

13 **MR. WELLS:** No objection.

14 **THE COURT:** All right. Your motion is granted.

15 **(Defendant's Exhibit Number 12 was admitted into
16 evidence at this time.)**

17 Q: All right. During your deposition, when Mr.
18 Wells took your deposition, there were questions
19 about a lock cleaning. Have you ever heard --
20 have you ever used that term?

21 A: Yes.

22 Q: What does that mean?

23 A: We would get rid of all the locks that wasn't
24 authorized to be on that gate.

25 Q: And how frequently would you do a lock cleaning?



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1 A: It all depended on how often they built up.
2 Sometimes you go down there, you know, and there
3 wouldn't be nobody put one on there. And then
4 you go down there and there would be one or two
5 on it. And they'd be little ole, what I call
6 dime store locks. And I would talk to Mr.
7 Martin and tell him. And he would say, do you
8 know who it is. And I said no. I said did you
9 give them permission? He said no, I haven't
10 given anybody any permission. And he'd tell me
11 to take them off.

12 Q: And how would you take them off?

13 A: Take a bolt cutter and pop 'em off.

14 Q: And would you then secure the fence back ---

15 A: Yes, sir.

16 Q: --- so that it would remain secure?

17 A: Yes, sir.

18 Q: And did the gate at all times remain locked?

19 A: Yes, sir.

20 Q: Unless you were hunting on Saturdays, right?

21 A: Right.

22 Q: And how many of these signs do you remember
23 putting on the gate over the years?

24 A: Well, this one here was the last one that was
25 put on, because I wasn't smart enough before to



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1 figure out how to take plexiglass and cover it
2 up so the weather wouldn't destroy it. That's
3 why this one lasted so long.

4 Q: But did you put a sign up every time you would
5 do a lock cleaning?

6 A: Yes, sir.

7 Q: And how many times do you think you did a big
8 lock cleaning?

9 A: I don't know, probably six times, six or eight
10 times over the years.

11 Q: And that is what I would call a big lock
12 cleaning?

13 A: Yes, sir.

14 Q: Now, there were multiple times where you just
15 snipped off one or two, right?

16 A: Yes, sir.

17 Q: Do you know how many times you did that?

18 A: I don't know. I just don't know.

19 Q: Okay. And I see on this picture here,
20 Defendant's Exhibit 2, a picture of signs on the
21 gate. Is that right?

22 A: Uh-huh.

23 Q: And I also see some locks hanging over the gate.

24 A: Yes, sir.

25 Q: Who hung those locks over the gate?



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1 A: We did, because that was some that we took off.

2 Q: Would those have been unauthorized locks?

3 A: That's right. They never come and got them.

4 Q: Did anybody ever claim a lock?

5 A: (Shakes head.)

6 Q: So, if folks were using this road without Mr.
7 Martin's permission he didn't know about it,
8 right?

9 A: That's right.

10 Q: Did Dunn's Mountain also have a key accessible
11 to members of the hunt club?

12 A: Yes, sir.

13 Q: And where was that key kept?

14 A: It was kept in a certain location at the
15 clubhouse.

16 Q: Did all of the members of Dunn's Mountain have
17 a key?

18 A: No, sir.

19 Q: Why not?

20 A: Because we was trying to control the traffic and
21 that way we would know if somebody was in there.
22 If the key was gone when we went down we would
23 know somebody was in there. We didn't have a
24 log book or anything like that.

25 Q: And what was Dunn's Mountain's policy about



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1 using the club key?

2 A: The policy on that was if we had an organized
3 hunt nobody had to get the key. The reason the
4 key was there mostly was for guys that had dogs
5 and their dogs hadn't come back on Saturday and
6 they would stay down there Saturday night or
7 either go back out on Sunday to see if they
8 could find their dogs.

9 Q: Was it so that they could get into the property
10 to retrieve ---

11 A: That's right.

12 Q: --- their hounds?

13 A: Yes, sir.

14 Q: When you were leasing the property you couldn't
15 watch that gate 24 hours a day, seven days a
16 week, could you?

17 A: No, sir.

18 Q: Did Mr. Martin direct Dunn's Mountain Hunt Club
19 to lock the gate?

20 A: Yes, sir. We maintained the gates and the
21 locks.

22 Q: But he told you to keep it locked, didn't he?

23 A: Right.

24 Q: Answer any questions that Mr. Wells has.

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



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1 MR. WESSINGER - CROSS EXAMINATION BY MR. WELLS:

2 Q: Mr. Wessinger, I think you testified that you
3 did not have any authority to grant permission
4 to use Shady Grove Road?

5 A: No, sir.

6 Q: Anyone who wanted permission would have to go to
7 Mr. Martin, is that what your testimony was?

8 A: Yes.

9 Q: And later on to Nancy Martin?

10 A: Yes, sir.

11 Q: And I believe you testified that the first gate
12 that you noticed across Shady Grove Road was a
13 wooden gate?

14 A: Yes, sir.

15 Q: Is that correct? And then did you purchase a
16 steel gate, the hunt club?

17 A: Yes, we made that, what we call a plat gate.

18 Q: But in 1970 either the wooden gate or the gate
19 that you installed was on the Higgins property,
20 is that correct?

21 A: Yes, sir.

22 Q: So, there was no gate on the Martin property
23 until approximately 1982?

24 A: No, sir.

25 Q: So, if anyone said that there was a gate on the



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1 Martin property from 1970 until now, that would
2 not be correct according to your memory?

3 A: No, sir.

4 Q: Now, you testified I believe, that there were
5 other people who put locks on the gate and used
6 the gate, is that right?

7 A: Yes, sir.

8 Q: So if the gate was there to keep people out, it
9 didn't work did it?

10 A: Yes, sir. Only people that was authorized went
11 through.

12 Q: Well, who put the other locks on it?

13 A: Who put the locks on it?

14 Q: Right.

15 A: The landowners that Mr. Martin give permission
16 to.

17 Q: How about the locks that you cleaned off in the
18 lock cleanings? Were those unauthorized locks?

19 A: Yes, sir.

20 Q: So those were evidence that unauthorized people
21 were using the road, is that correct?

22 A: That's right. They would come by and cut the
23 chain and put a lock in it.

24 Q: So there was evidence during the 30 year period
25 that you were involved with this piece of



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1 property -- 40 year period that unauthorized
2 people were using that road, isn't that correct?

3 A: Not all the time. They was unauthorized when
4 they did it.

5 Q: Okay. But they were putting their locks on the
6 gate. Is that correct?

7 A: That's right.

8 Q: And from time to time you would go down and
9 there would be locks that you could not
10 identify. Isn't that correct?

11 A: Yes, sir.

12 Q: And you did not know who those locks belonged
13 to?

14 A: No, sir.

15 Q: Do you know whether Mr. Martin ever gave
16 permission to Angus Lafaye to use Shady Grove
17 Road?

18 A: Tell me the name again.

19 Q: Angus Lafaye.

20 A: No, sir. I don't know.

21 Q: Do you know if Mr. Martin ever gave permission
22 to use Shady Grove Road to Algie Campbell?

23 A: No, sir. I don't know.

24 Q: Do you know if Mr. Martin ever gave permission
25 to use Shady Grove Road to Alan Wooten?



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1 A: No, sir. I don't know that.

2 Q: Do you know if Mr. Martin ever gave permission
3 to use Shady Grove Road to Cecil Brazell?

4 A: No, sir. I don't know that.

5 Q: Do you know if Mr. Martin ever gave permission
6 to use Shady Grove Road to W.D. Kirkland?

7 A: Yes, sir.

8 Q: And would that be Dunc Kirkland? The old man?

9 A: Yes, sir, the old man.

10 Q: Do you know if he ever gave permission to Tim
11 Dargan?

12 A: No, not by that name.

13 Q: Do you know if Mr. Martin ever gave permission
14 to use Shady Grove Road to Billy Cate?

15 A: No, sir. I don't know that.

16 Q: Do you know if Mr. Martin ever gave permission
17 to use Shady Grove Road to Gordan Baker?

18 A: No, sir.

19 Q: Do you know if Mr. Martin ever gave permission
20 to use Shady Grove Road to Harold Pickrel?

21 A: No, sir.

22 Q: Do you know Benny Higgins?

23 A: Yes, sir.

24 Q: All right. Did you give a key to Benny Higgins
25 during the '70s?



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1 A: I never gave a key to Benny Higgins.

2 Q: Okay. Do you know if Mr. Martin ever gave
3 permission to use Shady Grove Road to Mack
4 Brazell?

5 A: No, sir. I don't know that.

6 Q: And do you know if Mr. Martin ever gave
7 permission to use Shady Grove Road to Jamie Guy?

8 A: Yes, sir.

9 Q: Do you know if Mr. Martin ever gave permission
10 to use Shady Grove Road to Claude Campbell or
11 Jim Podell?

12 A: No, sir.

13 Q: Did you tell me during the deposition that you
14 could find up to nine locks on the gate at one
15 time?

16 A: Yes, sir.

17 Q: Okay. And that you did not know -- you knew who
18 some of them went to?

19 A: Yeah, I knew who some of them was.

20 Q: One of the would be yours, right?

21 A: Right.

22 Q: One of them might be Santee Cooper?

23 A: Right.

24 Q: But there were numerous locks that you did not
25 know who they belonged to?



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1 A: Well, they would just build up over a period of
2 time.

3 Q: Okay. So there's a constant matter through this
4 time that you hunted this property these locks
5 would build up with unauthorized users?

6 A: Yes, sir. And that's what we would call a lock
7 cleaning.

8 Q: Okay.

9 A: We put the note up like this, and tell them, you
10 know, they had permission to use that they need
11 to get in touch with Mr. Martin.

12 Q: But during your time with the Dunn's Martin
13 (sic) Hunt Club there was unauthorized use of
14 Shady Grove as evidenced by these unauthorized
15 locks that were hanging on the gate?

16 A: Yes, sir.

17 Q: Those are all the questions I have.

18 **THE COURT:** Any re-direct?

19 **MR. FLOYD:** Yes, Your Honor.

20 **MR. WESSINGER - RE-DIRECT EXAMINATION BY MR. FLOYD:**

21 Q: In 1970, regardless of the location of this
22 gate, Mr. Martin directed you to keep a locked
23 gate across that dirt road between 601 and his
24 property, didn't he?

25 A: Yes, sir.

