

Waterbody/Easement: South Carolina Appellate Court Addresses Dispute Over Control



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

06/03/2024

Co-Author JD Bruning

The Court of Appeals of South Carolina (“Court”) addressed in a March 20th Opinion an issue involving easements granting access to or control over a body of water. *See Carr Farms, Inc. and Titan Farms, LLC v. Watson*, 2024 WL 1192623.

The question considered was whether the easement holder had exclusive use and control of a pond bordering the three landowners’ properties.

Susannah Smith Watson (“Watson”) owned the dominant estate that was benefited by the easement granting control over the man-made pond that bordered and occupied portions of the properties of Watson, Carr Farms, Inc. (“Carr”), and Titan Farms, LLC (“Titan”).

Easements are generally appurtenant or in gross. In other words, the easement either attaches to the land or a specific individual, respectively. If an easement attaches to the land, the rights associated with that easement automatically pass to any subsequent owners.

Conversely, an easement in gross is tied only to a specific individual. It does not automatically pass to any subsequent owners.

Carr and Titan claimed the easement was not appurtenant. Therefore, they argued it should not convey exclusive control to Watson. Rather, it should also be usable by Titan since the pond occupies a portion of their property.

The easement in question was known as the “Smith Deed Easement.” It was granted to “F. Broadus Smith” (“Smith”) as a result of his building a dam which created the pond. The easement granted Smith and his heirs and assigns “exclusive usage and control” of the pond.

In order to be deemed an easement appurtenant, the easement must meet several requirements. The easement must:

- inhere in the land,
- concern the premises,
- have a terminus over the land of the dominant estate,
- and be essentially necessary to the enjoyment thereof.

The easement was appurtenant because the use of Titan’s land was essential for the existence of the pond as granted in the Deed. This satisfied the inherence and concern requirements as; the easement

bordered Watson's land, allowing Watson easy access to the easement and satisfying the terminus requirement; and the easement was necessary to the enjoyment of the dominant estate because the pond would be unable to exist without the easement to occupy Titan's land.

The Court determined the easement's language of conveyance clearly indicated the intent for Smith and his heirs and assigns to have "exclusive use and control" of the easement.

The Court held that the lack of specificity defining the amount of Titan's land to be occupied and the absence of the easement from Titan's and Carr's chain of title were not determinative to the issue. Therefore, the lack of specificity of the amount of Titan's land to be used for the pond was not deemed fatal. In the absence of more specific terms, the easement's contemplated use is restricted to what is reasonably necessary and minimally burdensome to the servient estate.

The absence of the easement from the chain of title is not fatal to the issue because Titan and Carr had constructive and inquiry notice of the possibility of an easement due to the prior proper recording of the easement and the obvious visibility of the pond. Accordingly, Titan and Carr were not entitled to claim they were not bound by the easement.

Despite Titan and Carr's arguments, the Court held that the granting of an exclusive easement was not contrary to South Carolina law.

The Court affirmed the lower court's holding that Watson's easement was appurtenant and granted Watson exclusive control over the pond.

A copy of the decision can be downloaded [here](#).