

**NOTICE OF APPEAL IN A CIVIL COURT**

THE STATE OF SOUTH CAROLINA  
In The Court of Common Pleas

68459

---


APPEAL FROM JASPER COUNTY  
Court of Common Pleas

Deborah Bridget Kane, Special Referee

---

Case No. 2005-CP-27-195

---

 Heirs of Henry Gibbs, et al  
Levy Center, LLC

Respondents,

**V.**

Leanora Nelson, et al

Appellant.

---

**NOTICE OF APPEAL**

---

Leanora Nelson appeals the ORDER of Special Referee Deborah B. Kane dated 4/12/13. Appellant received written notice of entry of this order on 4/22/13.

May 17, 2013

s/Leanora Nelson, Pro se  
157-10 Riverside Drive West  
Apartment Number 10N  
New York City, NY 10032  
(212) 923-5195

Other Counsel of Record:  
Womble Carlyle Sandridge & Rice, LLP  
Matthew E. Tillman, Esq.  
Post Office Box 999  
Charleston, SC 29402  
(843) 720-2982

**RECEIVED**

MAY 21 2013

**SC Court of Appeals**

USPS - M.O. 20439521605



the Plaintiffs filed an Amended Complaint on June 20, 2005, in which they requested that the Court identify the owners and quiet title to several parcels of property, including the following parcels in Jasper County, South Carolina ("Quiet Title Action"):

- TMS# 039-00-11-002;
- TMS # 039-00-10-006;
- TMS # 039-00-00-001;
- TMS# 039-00-08-027; and
- TMS# 039-00-09-008. ("Jasper County Parcels")

The Quiet Title Action was referred to the Undersigned Special Referee. On September 7, 2005, I entered a Final Order – Partition in Kind ("Final Order"). In the Final Order, I made certain findings, to include:

1. The owners of the Jasper County Parcels are Leanora Nelson, Rosalind Nelson, Jean Nelson Lumsby, Henry Harris and Quanta Gibbs ("Nelson Heirs");
2. The Nelson Heirs had each quitclaimed their respective interest in the Disputed Parcels to The Wilcy R. Nelson Family, LLC ("Nelson LLC"); and
3. Fee simple title to the Disputed Parcels was vested in the Nelson LLC.

These findings were made upon representations made by Plaintiffs' counsel, Horace Jones and other evidence provided at the final hearing.

On September 16, 2005, the Nelson LLC sold TMS Numbers 039-00-10-006, 039-00-11-002 and 039-00-00-001 to Levy Center. The Nelson LLC was represented at the sale by Horace Jones, Jr., an attorney who represented the plaintiffs in the Quiet Title Action and who purportedly had power of attorney to close the transaction on behalf of the Nelson LLC.

On May 17, 2011, three of the Nelson Heirs – Leanora Nelson, Jean Nelson Lumsby and Selena Cecchini (child of the deceased Rosalind Nelson) – filed a complaint against the Levy Center, LLC in the United States District Court for the District of South Carolina ("Federal Court

Action”)<sup>1</sup> In the Complaint filed in that action, the Plaintiffs generally allege that they were defrauded by their attorney, that the creation of the Nelson LLC was fraudulent, that the quitclaim deeds to the Nelson LLC were forged, and that the transfer of the Disputed Parcels to the Nelson LLC and then to Levy Center, LLC were void. Further, the Plaintiffs allege that Henry Harris and Quanta Gibbs – two of the Nelson heirs identified as owners of the Disputed Parcels – do not exist.

On July 30, 2012, the Plaintiffs filed the present Motion to Vacate, and made the same general allegations as those set forth in the Federal Court Action.

### ORDER

#### **I. Plaintiff's Motion to Vacate is Untimely under Rule 60(b), SCRPC.**

The Plaintiff does not specify the procedural avenue upon which she seeks relief in the present action. However, the claim is time barred under the South Carolina Rules of Civil Procedure and state statutes.

A court “may relieve a party from a final judgment for any of five reasons, enumerated as Rule 60(b)(1) through (5).” Momani v. Van Surdam, 296 S.C. 409, 410, 373 S.E.2d 691 (Ct. App. 1988). The Plaintiffs argue that the Final Order was procured by fraud by their own attorney. Therefore, Rule 60(b)(1),(2) and (5) are inapplicable. An action to vacate a judgment based on fraud pursuant to Rule 60(b)(3), SCRPC, must be brought “not more than one year after the judgment . . . was entered.” The Final Order was entered on September 7, 2005. The Plaintiff filed her Motion to Vacate on July 30, 2012 – nearly seven years after entry of the Final Order. The Plaintiff did not argue – nor did she present evidence to support an argument – that they are entitled to relief from the one year limit set forth in Rule 60(b)(3).

---

<sup>1</sup> This federal court action is captioned *Leanora Nelson et al. v. Levy Center, LLC*, Case No. Case 9:11-cv-01184-SB-BHH. By text order dated December 13, 2012, United States Magistrate Judge Bruce Howe Hendricks entered an order staying the federal litigation pending disposition of the proceedings in this matter.

To the extent the Plaintiff seeks to proceed under Rule 60(b)(4), SCRCP, that provision is inapplicable. "Rule 60(b)(4), SCRCP provides the court may relieve a party or his legal representative from a final judgment, order, or proceeding if the judgment is void." Linda Mc Co. v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010). "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Id. The Plaintiff does not contend that any of the above definitions apply.

For the reasons set forth above, Plaintiffs' Motion to Vacate must be denied as untimely under South Carolina Rule of Civil Procedure 60.

## **II. Plaintiff's Motion to Vacate is Barred Under S.C. Code § 15-67-90.**

S.C. Code Ann. § 15-67-90 provides:

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

Under S.C. Code § 16-67-90, the Plaintiff was required to challenge the Final Order within three years of September 7, 2005. The earliest date on which the Plaintiff challenged the Final Order was May 17, 2011, the date on which the Plaintiffs filed their complaint in the Federal Court Action. This is nearly six years after the Final Order was entered in the Jasper County Clerk of Court's Office.

Further, the Plaintiffs failed to prove that they are entitled to any relief from this three year statute of limitations under equitable principles. Therefore, because the Plaintiffs failed to

file the Motion to Vacate or otherwise challenge the entry of the Final Order within three years after entry of the order, the Motion to Vacate must be denied.

### III. Plaintiff's Motion to Vacate is Barred by the Doctrine of Laches.

Assuming, *arguendo*, that the Plaintiffs' Motion to Vacate was timely filed, their request for relief is barred under the equitable doctrine of laches. Under South Carolina law, "[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." Jones v. Leagan, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009). The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 199, 371 S.E.2d at 528.

The Plaintiff asserts that she was unaware that her attorney had allegedly committed fraud when handling the Quiet Title Action, that Henry Harris and Quanta Gibbs do not exist, that she was unaware the property was conveyed to the Nelson LLC, and that she did not know that that three of the parcels were conveyed from the Nelson LLC to Levy Center.

Levy Center introduced into evidence the deposition transcripts of Leandra Nelson and Selena Cecchini from the Federal Court Action, without objection. The testimony provided by

Ms. Nelson shows that she was aware, as early as 2005, of some of the issues she raises as grounds for vacating the Final Order. Specifically, Ms. Nelson testified that, as early as 2005, her attorney informed her of the existence of Henry Harris and Quanta Gibbs. Nelson Dep. at 57; 63-65. She further testified that she was aware of the existence of the Nelson, LLC in November 2005. Id. at 78. Ms. Nelson became aware that the some of the parcels were titled in the name of Levy Center, LLC as early as 2006. Id. at 88-89. Further, Ms. Nelson received checks from the Nelson LLC bank account in 2006 and 2007. Id. at 135-140. Despite being made aware of the above facts – all of which she claims were part of the alleged fraud – in 2005 and 2006, the Plaintiff waited until 2011 to file the Federal Court Action and July 2012 to file the present Motion to Vacate. This was a delay that was unreasonable under the circumstances of this matter.

There is no evidence that Levy Center knew of any alleged fraud or disputes concerning the Jasper County Parcels when it purchased three of those parcels from the Nelson LLC in September of 2005. Indeed, Levy Center suffered prejudice as a result of the purchase. First, it lost the use of the \$600,000 it paid for the three parcels for nearly six years after Ms. Nelson was made aware of the existence of the Nelson LLC. Further, Mr. Rhangos testified that Levy Center has paid the taxes on the parcels and incurred expenses in preparing the parcels for sale. Therefore Levy Center has been prejudiced by the Plaintiffs' unreasonable delay in asserting their claims. As such, the Plaintiffs' request to vacate the Final Order is barred under the doctrine of laches.

For the reasons set forth above, I hereby DENY Plaintiff Leanoira Nelson's Motion to Vacate/Overturn Final Partition Order Secured by Fraud.

IT IS SO ORDERED.

April 12, 2013  
Walkerboro, South Carolina

Deborah Kane  
Special Referee Deborah Kane