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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Master-In-Equity

The Honorable Mikell Scarborough

Appellate Case No. 2022-000185

Larry Gregg, Appellant,

v.

Herman Smalls, III, Izetta Shaw a/k/a Syvetta Smalls, John Doe and Jane Does, as fictitious names for a class of unknown persons being incompetents, minors, person in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributees, administrators, or personal representatives of deceased persons Herman Smalls, Jr. and Lamont Green and all other persons known or appear of record to have some right, title and interest in or lien upon the real estate described in the complaint herein, Defendants.

Of whom Herman Smalls, III, and Izetta Shaw aka Syvetta Smalls are Respondents.

RECORD ON APPEAL

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Dated: August 5, 2022

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COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

ORDER APPOINTING GUARDIAN AD LITEM

(Action to Quiet Title)
(Adverse Possession)

WHEREAS, Plaintiff in this action brought suit to quiet title;

WHEREAS, Defendants are named in this action as JOHN DOE and JANE DOE, as fictitious names representing a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned persons, persons under any other form of legal disability, unknown heirs, devisees, distributes, or personal representatives of deceased persons HERMAN SMALLS, JR and LAMONT GREEN, or any person or persons above named should they be deceased, and all other persons or entities who claim interest in or a lien upon the real estate which is the subject of this action; and

WHEREAS, Defendants require a Guardian *ad litem* to represent their interests, if any;

WHEREAS, Kelley Y. Woody, Esq. has been found to be without a conflict of interest in the representation of Defendants represented by fictitious names JOHN DOE and JANE DOE;

IT IS HEREBY ORDERED that Kelley Y. Woody, Esq. serve as Guardian *ad litem* for the unknown Defendants designated as JOHN DOE and/or JANE DOE in this action.

Clerk of Court, Ninth Judicial Circuit

Charleston, SC

Dated: _____, 2019



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III
Case Number: 2019CP1002342
Type: Order/Appointment Of Guardian Ad Litem

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court, by BLC

Electronically signed on 2019-11-21 16:20:24 page 3 of 3

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

ORDER FOR PUBLICATION
(Action to Quiet Title)
(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

UPON reading the Affidavit of Karen M. DeJong, attorney for the Plaintiff in the above named case, it appears to my satisfaction that Plaintiff and his attorney do not have current addresses for some Defendants joined in this case, including but not limited to those defendants fictitiously named as JOHN DOE and JANE DOE, representing unknown incompetents, minors, persons in military service to the United States of America, imprisoned persons, and persons under any other legal disability, and representing unknown heirs at law or devisees who claim or may claim any interest in or lien upon the real estate which is the subject of this action.

IT FURTHER APPEARS to my satisfaction that such Defendants cannot be found in South Carolina and their true names and addresses are not known to Plaintiffs and cannot be ascertained by Plaintiffs or their lawyer despite the exercise of reasonable diligence.

AND IT FURTHER APPEARS that notwithstanding that such Defendants cannot be located, a cause of action exists against such Defendants and this Court has jurisdiction of the subject matter herein because the real property at issue is located in Charleston County;

AND IT FURTHER APPEARS that the Summons, Lis Pendens, Notice Nisi, and Notice of Intent to Refer, and Amended Complaint have been filed with this Office of the Clerk of Court for Charleston County;

NOW THEREFORE IT IS ORDERED that the service upon the Defendants of a filed copy of the Summons and Lis Pendens is to be effected by publication thereof in the *Post and Courier* as a newspaper of general circulation for Charleston County most likely to give notice of this matter to each of the Defendants joined in this matter and that such publication is to occur once a week for three (3) consecutive weeks;

AND FURTHER ORDERED that upon receiving information containing the name, address, and place of residence of any Defendants joined in this action who have not heretofore been served, Plaintiff shall serve upon such Defendants a filed copy of the Summons, Amended Complaint, Lis Pendens, Notice Nisi, Notice of Right of First Refusal by personal service or by first class postage prepaid certified US Mail with Return Receipt and Restrictive delivery requested.

AND IT IS SO ORDERED!

Clerk of Court for Charleston County

Charleston, SC
Dated: _____, 2019



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III

Case Number: 2019CP1002342

Type: Order/Publication

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court, by BLC

Electronically signed on 2019-11-21 16:27:38 page 3 of 3

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

ORDER OF REFERENCE

v.

HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.

Defendants.

IT APPEARING that the Complaint herein seeks equitable relief, namely, to quiet title by adverse possession, to certain real property located in Charleston County, and therefore, the action is properly within the equity jurisdiction of this Court; and

NOW, THEREFORE, on motion of Karen M. DeJong, attorney for Plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the within action be referred to the Hon. Mikell R. Scarborough, Master-In-Equity for Charleston County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to render a final decree with direct appeal to the South Carolina Court of Appeals in accordance with Section 14-11-85, Code of Laws of South Carolina, 1976, as amended.

Charleston, SC

Julie J. Armstrong
Clerk of Court

I SO MOVE:

s/Karen M. DeJong
Karen M. DeJong, Esq.
Attorney for Plaintiff



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III , defendant, et al

Case Number: 2019CP1002342

Type: Order/Referred to Master or Special Referee

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court, by BLC

Electronically signed on 2020-05-08 15:33:05 page 3 of 3

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

CONSENT ORDER OF REFERENCE

v.

HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.

Defendants.

IT APPEARING that the Complaint herein seeks equitable relief, namely, to quiet title by adverse possession, to certain real property located in Charleston County, and therefore, the action is properly within the equity jurisdiction of this Court; and

NOW, THEREFORE, by mutual consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED that the within action be referred to the Hon. Mikell R. Scarborough, Master-In-Equity for Charleston County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to render a final decree with direct appeal to the South Carolina Court of Appeals in accordance with Section 14-11-85, Code of Laws of South Carolina, 1976, as amended.

Charleston, SC

The Honorable Jennifer B. McCoy
Chief Administrative Judge, Ninth Judicial Circuit

WE CONSENT:

s/Karen M. DeJong
Karen M. DeJong, Esq.
Attorney for Plaintiff

s/J. Christopher Lanning, Esq.
J. Christopher Lanning, Esq.
Attorney for Defendants Herman
Smalls, III and Izetta Shaw a/k/a
Syvetta Smalls



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III , defendant, et al

Case Number: 2019CP1002342

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jennifer B. McCoy #2764

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
LARRY GREGG)
Plaintiff(s),)
-vs-)
)
HERMAN SMALLS, III, IZETTA SHAW)
A/K/A SYVETTA SMALLS, JOHN DOE)
AND JANE DOE, AS FICTITIOUS)
NAMES FOR A CLASS OF UNKNOWN)
PERSONS BEING INCOMPETENTS,)
MINORS, PERSONS IN MILITARY)
SERVICE TO THE UNITED STATES OF)
AMERICA, IMPRISONED, AND/OR)
UNDER ANY OTHER FORM OF LEGAL)
DISABILITY, INCLUDING BUT NOT)
LIMITED TO UNKNOWN HEIRS,)
DEVISEES, DISTRIBUTES,)
ADMINISTRATORS, OR PERSONAL)
REPRESENTATIVES OF DECEASED)
PERSONS HERMAN SMALLS, JR. AND)
LAMONT GREEN AND ALL OTHER)
PERSONS KNOWN OR APPEAR OF)
RECORD TO HAVE SOME RIGHT,)
TITLE, INTEREST IN OR LIEN UPON)
THE REAL ESTATE DESCRIBED IN)
THE COMPLAINT HEREIN.)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO: **2019-CP10-02342**

SCHEDULING ORDER

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following schedule is established in this case based upon an in court and/or telephone conference.

1. All motions to amend the pleadings join additional parties shall be filed on or before N/A.
2. The plaintiff(s) must identify any experts on or before N/A.
3. The defendant(s) must identify any experts on or before N/A.
4. Discovery shall be completed on or before April 30, 2021.
All discovery requests must be served in time for the response thereto to be served within this deadline.
5. All dispositive motions shall be filed on or before May 10, 2021.
a. Otherwise the parties agree any untimely motions shall be waived.
6. The parties shall mediate this case with N/A.

The mediator shall submit his written report to the court within 10 days of mediation.

7. This case is set for pre-trial hearing and all outstanding motions on **May 17, 2021 at 10:30 a.m.**
8. The party shall come to the pre-trial hearing with a pre-trial brief to be exchanged, a list of witnesses and a good faith estimate of time for trial and all other matters per Rule 16(a)(8).
9. Upon completion of all steps noted above, the matter shall be set for a day certain trial (usually 30 – 60 days) and, unless otherwise agreed in writing, subject to all matters under Rule 16(b)(1-5).
10. This order may not be amended except by order of the Mikell R. Scarborough, Master-In-Equity for Charleston County.

IT IS SO ORDERED.

Charleston, South Carolina

Mikell R. Scarborough
Master-In-Equity



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III , defendant, et al

Case Number: 2019CP1002342

Type: Order/Scheduling Order

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-02-11 12:13:19 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Larry Gregg,)
)
 Plaintiff,)
)
 vs.)
)
 Herman Smalls, III, Izetta Shaw a/k/a)
 Syvetta Smalls, John Doe and Jane Doe,)
 as fictitious names for a class of unknown)
 persons being incompetents, minors, person)
 in military service to the United States of)
 America, imprisoned, and/or under any)
 other form of legal disability, including but)
 not limited to unknown heirs, devisees,)
 distributes, administrators, or personal)
 representatives of deceased persons Herman)
 Smalls, Jr. and Lamont Green and all other)
 persons known or appear of record to have)
 some right, title, interest in or lien upon the)
 real estate described in the complaint herein)
)
 Defendants.)
)
)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2019-CP-10-02342

**ORDER GRANTING DEFENDANTS’
 MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court for a hearing on June 22, 2021 on Plaintiff's Motion for Summary Judgment and Defendant’s Motion for Summary Judgment. Plaintiff Larry Gregg filed this action against Defendants seeking a judgment from the court that he acquired the subject property by adverse possession. Defendants filed an Answer and Counterclaim setting forth that Plaintiff had not acquired the subject property by adverse possession because he could not prove all of the elements necessary to prove adverse possession. Defendants included in their Answer and Counterclaim an action for Ejectment to have Plaintiff removed from the subject property. Plaintiff filed a Reply to Defendants’ Answer and Counterclaim.

After considering the pleadings and exhibits attached to Defendants' Memorandum in Support, as well as arguments presented at the hearing, this Court finds that Plaintiff is unable to prove the necessary elements to acquire the subject property by adverse possession. Accordingly, there are no genuine issues of material facts, and Defendants are entitled to judgment as a matter of law.

FINDINGS OF FACTS

The subject property for this action is known as Lot 4B, 2229 David Green Road, Mt. Pleasant South Carolina (hereinafter "the Property"). A Final Order After Hearing in a Quiet Title Action in Case Number: 2016-CP-10-06964, *Robinson v. Ketchen, et al.* was signed and filed by the undersigned, The Honorable Mikell R. Scarborough, Charleston County Master-In-Equity, on March 4, 2019 (hereinafter the "Order"). In Paragraph 7, Page 11, of the Order, Judge Scarborough ruled that:

"The heirs of Herman Smalls, Jr. are the owners of Lot 4B as described in Exhibit "A" and fee simple title is quieted and confirmed in their names; subject however to the claims, if any, of Larry Gregg with it being the obligation of the Herman Smalls Jr. Heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot 4B, and further subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrances by such owner's consent or due process of law."

The Property was part of a larger tract owned by Herman Smalls, Jr. and his family. Several years prior to the *Robinson v. Ketchen, et al* case being filed and a final order being signed, Herman Smalls, Jr. and his family divided this larger tract into several lots. The family then determined that Herman Smalls, Jr. and his sister, Ellen Smalls Manigault, were entitled to Lot 4. Herman Smalls, Jr, and his sister, Ellen Smalls Manigault, divided Lot 4 into two lots, Lot 4A and Lot 4B. Ellen Smalls Manigault received Lot 4A and Herman Smalls, Jr. received Lot 4B

(the Property). The Order confirmed ownership of Lot 4A to Ellen Smalls Manigault and Lot B to the heirs of Herman Smalls, Jr. (Herman Smalls, Jr died in 2005), subject to any claim of Larry Gregg.

Herman Smalls, Jr. placed a mobile home on the Property in the early 1980's and used it on vacations and at other times. In 1986, Plaintiff moved his mobile home to the Property based on a conversation he had with Herman Smalls, Jr. Through this conversation, Plaintiff received permission from Herman Smalls, Jr. to place his mobile home on the Property. After Plaintiff moved his mobile home on the Property he made improvements to his mobile home over several years by adding a carport and three rooms.

Herman Smalls, Jr. died in 2005 and his estate has not been probated. He left as his heirs, Syvetta Smalls, Herman Smalls, III and Lamont Green. Lamont Green died in either 2018 or 2019 leaving no spouse and no children. Currently the heirs of Herman Smalls, Jr. are Syvetta Smalls and Herman Smalls, III.

After the death of Herman Smalls, Jr., Syvetta Smalls and Herman Smalls, III knew the Plaintiff was still living on the Property and gave him permission to live on the Property. After the Final Order in Case Number: 2016-CP-10-06964, *Robinson v. Ketchen, et al.* was filed on March 4, 2019 and Defendants were determined to be the owners of the Property, they promptly provided notice to Plaintiff on April 24, 2019 that he did not have permission to reside on the Property and that he needed to vacate the Property.

CONCLUSIONS OF LAW

A. Summary Judgment

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Columbia v.*

American Civil Liberties Union, etc., et al., 323 S.C. 384, 475 S.E.2d 747 (1996). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

The moving party has the burden of establishing that there is no genuine issue of material fact. *McNair v. Rainsford*, 330 S.C. 332 (Ct. App 1998). Once the moving party carries its initial burden, the opposing party “may not rest on mere allegations or denials of his pleadings, but must set forth or point to specific facts showing that there is genuine issue of material fact.” *Bravis v. Dunbar*, 316 S.C. 263 (Ct. App. 1994). Rule 56, SCRCP, requires the entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Etheredge v. Richland Sch. Dist. 1*, 330 S.C. 447 (Ct. App. 1998).

B. Adverse Possession

In South Carolina to establish a claim for adverse possession, the claimant must prove by clear and convincing evidence his possession of the subject property was continuous, hostile, actual, open, notorious and exclusive for the statutory period. *All Saints Parish, Waccamaw v. Protestant Episcopal Church In the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004). The statutory period in South Carolina for adverse possession is ten (10) years. S.C. Code Ann. 15-67-210 (2005). In *Knox v. Bogan*, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996), the court explained for the possession to be hostile, the adverse claimant is required to show that his possession was actual, exclusive, open, notorious, and *without the consent* of the title owner.

In *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852 (S.C. Ct. App. 2009), McDaniel owned property that Kendrick was living on for over 19 years. McDaniel's father owned the property and deeded to McDaniel while Kendrick was residing on the property. Kendrick and McDaniel's father were once married and then later divorced. Kendrick continued to live on the property after the divorce. McDaniel was aware that Kendrick was living on the property when she was conveyed ownership and she gave Kendrick permission to reside on the property. Then in 2005 McDaniel provided Kendrick with a notice to vacate. Kendrick failed to vacate and McDaniel filed suit. Kendrick claimed ownership to the property by adverse possession. The trial court ruled that Kendrick failed to prove adverse possession of the property because she had not demonstrated the required element of hostility. Kendrick then appealed.

Kendrick contended that the trial court erred in finding she was required to establish the element of hostility when claiming adverse possession of an entire tract of land. She maintained that the trial court further erred in concluding her possession was not sufficiently hostile. The Court disagreed with her contentions.

The court cited *All Saints Parish, Waccamaw* and *Knox v. Bogan* regarding what must be proven to claim adverse possession and specifically, hostility. Citing *Knox v. Bogan*, the supreme court, addressing the requirement of hostility, stated:

“The only issue is whether the Knoxes' possession was sufficiently hostile. As we read *Perry v. Heirs at Law* (316 S.C. 224, 449 S.E.2d 250 (1994) and *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (1988) either there is no longer a hostility requirement where the claim is to an entire tract, or South Carolina does in fact follow the majority view that the mental attitude of the possessor of land is immaterial. Under the majority view an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the statute of limitations has run. The majority view represents the most practical approach to the hostility requirement of adverse possession and is in keeping with the national trend of authority.”

The Court in *McDaniel* set forth that:

“The supreme court did not, as Kendrick argues, eliminate the hostility requirement when a party claims adverse possession of an entire tract of land. The court simply explained the hostility requirement is not necessarily predicated upon the claimant's conscience intention to possess the property against the true owner's wishes. A claimant may establish adverse possession if he occupies the property under the mistaken belief that it belongs to him. In any case, Knox makes clear the claimant must be on the property without the consent of the title owner.” *Id* at 442.

The Court in *McDaniel* also set forth that Kendrick was given permission by McDaniel for her to occupy the property. The Court then stated:

“Instead, this case is more analogous to those wherein a party entered land with permission of the owner and then claimed adverse possession at a later point. See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner's tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); *Frady v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) (“The defendant's entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse possession.”); *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct. App. 1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner's widower did not establish claim of adverse possession without a “clear and positive disclaimer of the title under which entry was made”). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. *All Saints Parish, Waccamaw*, 358 S.C. at 233, 595 S.E.2d at 266-67.” *Id* at 443-444.

The Court in *McDaniel* affirmed the trial court’s ruling stating that Kendrick entered the property with her husband’s permission and remained there for the next nineteen years with McDaniel’s permission. Kendrick’s refusal to vacate the property in 2005 began her time of occupying the property with hostility. However, Kendrick clearly had not satisfied the statutory period for adverse possession because McDaniel commenced her lawsuit just a few months later. The Court held, “Accordingly, the trial court did not err in finding Kendrick was required to

establish the element of hostility and that she failed to do so by clear and convincing evidence.”
Id at 444.

In the instant case, Plaintiff cannot satisfy the elements of adverse possession, specifically hostility. South Carolina case law is clear that in order to prove hostility in an adverse possession claim, the claimant’s possession must be *without the consent* of the owner. It is undisputed that Herman Smalls, Jr. consented to and gave Plaintiff permission to place his mobile home on the Property and live on the Property. It is also undisputed that after the death of Herman Smalls, Jr., his heirs, Syvetta Smalls and Herman Smalls, III, gave Plaintiff permission to stay and live on the Property.¹ South Carolina case law is very specific regarding hostility and states that the claimant’s conscious intention must be to possess the property against the owner’s intentions. Plaintiff cannot prove he had a conscious intention to possess the Property against the intentions of Herman Smalls, Jr or his heirs because he stated in his deposition that he never meant to take the Property away from Herman Smalls, Jr. and his heirs. Because Plaintiff had permission from Herman Smalls, Jr. and his heirs to live on the Property, he lacked the conscious intention to possess the Property without the consent of the owners. Plaintiff is unable to prove he possessed the Property without the consent of Herman Smalls, Jr., and his heirs; therefore, he cannot prove that he occupied the Property with hostility.

The mistaken belief rule does not apply in this instance because Plaintiff did not provide any testimony or evidence that he occupied the Property under the mistaken belief that he owned it. Plaintiff testified in his deposition that he did not know who owned the Property. Furthermore, Plaintiff never paid the property taxes on the Property. Accordingly, Plaintiff is unable to prove that he was under a mistaken belief that he owned the Property.

The facts and circumstances in this case after the death of Herman Smalls, Jr. are similar to the *McDaniel* case. It is undisputed that Plaintiff was given permission to live on the Property by Defendants, just as McDaniel gave permission to Kendrick to live on her property. Once this Court determined that Defendants were the owners of the Property in Case Number: 2016-CP-10-06964, *Robinson v. Ketchen, et al.*, it is also undisputed that Defendants informed Plaintiff on April 24, 2019 to vacate the Property, just as McDaniel informed Kendrick to vacate her property. When Plaintiff received the notice to vacate and failed to move off the Property, his time began to run for occupying the Property with hostility and *without the consent* of the owner. Plaintiff, just like Kendrick, is unable to establish a claim for adverse possession, because he cannot prove by clear and convincing evidence that his possession of the Property was continuous, hostile, actual, open, notorious and exclusive for the statutory period of ten (10) years. Therefore, it is undisputed that the Plaintiff has not satisfied the statutory requirements.

Plaintiff is unable to prove the element of hostility for adverse possession regarding the subject property. Plaintiff had permission to live on the Property and his possession was with the consent of the owners. Only recently did Plaintiff's occupancy of the Property begin to be hostile, but clearly, not for the statutory period of ten (10) years. No material issues of fact remain to be decided. Therefore, when no issues of material fact exist, the appropriate action is summary judgment. *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972).

THEREFORE IT IS ORDERED that Defendants' Motion for Summary Judgment is granted.

The Honorable Mikell R. Scarborough

Charleston, South Carolina
_____, 2022



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III , defendant, et al

Case Number: 2019CP1002342

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2022-01-26 16:24:23 page 10 of 10

Larry Gregg
PLAINTIFF(S)

Herman Smalls, III et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration of the Plaintiff's Motion for Reconsideration, filed February 3, 2022, the Court respectfully DENIES the Plaintiff's Motion.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/11/2022 .

Herman Smalls, Jr
Lamont Green

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Larry Gregg VS Herman Smalls III , defendant, et al

Case Number: 2019CP1002342

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2022-02-11 12:27:13 page 3 of 3

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW, and
LAMONT GREEN,

Defendants.

ADVERSE POSSESSION COMPLAINT

FILED
2019 MAY -7 AM 10:43
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

Plaintiff, LARRY GREGG, complaining of the Defendants, files this Complaint and would show unto the Court:

1. Plaintiff resides at and is and has been, for more than 37 years, in possession of 2229 David Green Road, Mount Pleasant, Charleston County, South Carolina (“the Property”) and is bringing this action to declare that Plaintiff is the lawful owner of said property and that he is entitled to have title conferred to him.
2. Defendant HERMAN SMALLS, III is a resident of Bronx, New York, Defendant, IZETTA SHAW is a resident of Bronx, New York, and Defendant LAMONT GREEN is a resident of Bronx, New York..
3. Plaintiff brings this action under S.C. Code of Laws-Recovery of Property, §15-67-10, *et seq.*, which deals with Possession and Adverse Possession of real property.
4. Under claim of ownership, Plaintiff has possessed for greater than thirty-seven (37) years the real property located at 2229 David Green Road, Mount Pleasant, South Carolina 29464 (hereinafter “the Property”), and further described as follows:

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as Lot 4-B on that certain plat titled “The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish,” prepared by James F. Bennett, Surveyor, and recorded July

2, 1985 in the Charleston County RMC Office in Plat Book BE at Page 50.

This is the same property conveyed to Herman Smalls by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 801.

5. Being the same property conveyed to Defendants by Final Order filed March 4, 2019 in Case No. 2016-CP-10-6964 (Action to Quiet Title), Johnson, et al. v. Ketchen, et al. Pursuant to said Final Order, the conveyance to Defendants is “subject however to the claims, if any, of Larry Gregg with it being the obligation of Herman Smalls, Jr. heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot 4B”. **See Final Order, Page 11, Par.#7 attached hereto as EXHIBIT A.**

6. Since 1982, Plaintiff has had exclusive, complete, actual, open, notorious, hostile and continuous undisputed possession of the Property adverse to Defendants for more than thirty-seven (37) years.

7. Defendants have never been in possession of the Property or have any other indicia of ownership other than the aforesaid deed.

8. Defendants’ claims are without any right, and they have no estate, right, title, lien or interest in or to the Property, or any part of the Property.

9. Plaintiff have made substantial improvements to the Property over the last thirty-seven (37) years, including installation of a substantial enclosure, mobile house, upon Lot 4B, removing timber from the land, clearing the lot and installing a car park.

10. Plaintiff has always claimed ownership and title to the Property and has never paid rent to the Defendants or any other person.

11. Plaintiff is entitled to a declaratory judgment that he is the fee simple owner by adverse possession of the Property and the issuance of a deed to him reflecting his ownership.

WHEREFORE, Plaintiff request judgment as follows:

A. For a decree declaring that Plaintiff owns absolutely and is entitled to a quiet and peaceful possession of the Property as against Defendants and that Defendants

have no estate, right, title, lien or interest in or to the Property or any part of it and that title to the Property be quieted in Plaintiff against all claims of Defendants and all persons claiming under Defendants;

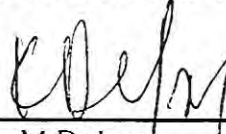
B. For a decree permanently enjoining Defendants from asserting any estate, right, title, lien or interest in or to the Property or any part of it adverse to Plaintiff;

C. For the issuance of a deed vesting fee simple title in Plaintiff.;

D. For the costs of this action; and

E. For such other and further relief as the Court deems appropriate.

DEJONG LAW FIRM LLC



Karen M DeJong
222 West Coleman Blvd., Suite 110
Mount Pleasant, SC 29464
(843) 216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

Mount Pleasant, SC
May 1, 2019

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.

Defendants.

AMENDED COMPLAINT
(Action to Quiet Title)
(Adverse Possession)

FILED
2019 JUN 10 PM 2:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ JS

Plaintiff, LARRY GREGG, complaining of the Defendants, files this Complaint and would show unto the Court:

Parties and Jurisdiction

1. Plaintiff resides and is in possession of 2229 David Green Road, Mount Pleasant, Charleston County, South Carolina (“the Property”) and is bringing this action to declare that Plaintiff is the lawful owner of said Property and that he is entitled to have title conferred to him.
2. Upon information and belief, Defendant HERMAN SMALLS, III is a resident of Bronx, New York, Defendant, IZETTA SHAW a/k/a SYVETTA SMALLS is a resident of Bronx, New York, Defendant HERMAN SMALLS, JR. and Defendant LAMONT GREEN are deceased.

3. Under claim of ownership, Plaintiff has possessed for greater than thirty-seven (37) years the Property located at 2229 David Green Road, Mount Pleasant, South Carolina 29464 (hereinafter “the Property”), and further described as follows:

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as Lot 4-B on that certain plat titled “The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish,” prepared by James F. Bennett, Surveyor, and recorded July 2, 1985 in the Charleston County RMC Office in Plat Book BE at Page 50.

This is the same property conveyed to Herman Smalls by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 801.

TMS# 561-00-00-085

4. Being the same property conveyed to the heirs of Herman Smalls, Jr., by Final Order filed March 4, 2019 in Case No. 2016-CP-10-6964 (Action to Quiet Title), Johnson, et al. v. Ketchen, et al. Pursuant to said Final Order, the conveyance to Defendants is “subject however to the claims, if any, of Larry Gregg with it being the obligation of Herman Smalls, Jr.’s heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot 4B”. **See Final Order, Page 11, Par.#7 attached hereto as EXHIBIT A.**

5. Pursuant to S.C. Code Section 15-53-10, *et seq.* (Uniform Declaratory Judgments Act), this Court is empowered to determine and declare the rights, title, and interests in the parties, including the estates of deceased Defendant, as it concerns the Property.

6. The named Defendants and the fictitious Defendants in this matter are persons or heirs, devisees, or successors of persons who own, or may claim to own, a right, title, and/or interest in some or all of the Property or claim a lien, judgment, easement, encumbrance, or other right, title or interest in some or all of the Property.

FIRST CAUSE OF ACTION
(Quiet Title)

8. All of the foregoing allegations are incorporated into this Cause of Action as if fully set forth herein.

9. Herman Smalls was conveyed the Property by Deed from Ellen Manigault which was recorded on July 11, 1985 at the Charleston County Register of Mesne Conveyances in Book N146, Page 801.

10. By Final Order filed March 4, 2019 in Case No. 2016-CP-10-6964 (Action to Quiet Title), Johnson, et al. v. Ketchen, et al., the Court ruled that the heirs of Herman Smalls, Jr. would take title to the Property, subject however to the claims, if any, of Plaintiff with it being the obligation of Herman Smalls, Jr.'s heirs and Plaintiff to undertake such processes as required by law to determine their respective interests and claims to Lot 4B.

11. Accordingly, fee simple title to the Property should be quieted and confirmed solely in the name of Herman Smalls, Jr.'s children: Defendants HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS and LAMONT GREEN, subject to Plaintiff's adverse possession claim.

SECOND CAUSE OF ACTION
(Adverse Possession)

12. All of the foregoing allegations are incorporated into this Cause of Action as if fully set forth herein.

13. Since 1982, Plaintiff has had exclusive, complete, actual, open, notorious, hostile and continuous undisputed possession of the Property adverse to Defendants for more than thirty-seven (37) years.

14. Defendants have never been in possession of the Property or have any other indicia of ownership.

15. Defendants' claims are without any right, and they have no estate, right, title, lien or interest in or to the Property, or any part of the Property.

16. Plaintiff have made substantial improvements to the Property over the last thirty-seven (37) years, including installation of a substantial enclosure and mobile house upon Lot 4B, removing timber from the land, clearing the lot and installing a car port.

17. Plaintiff has always claimed ownership and title to the Property and has never paid rent to the Defendants or any other person.

18. Plaintiff brings this action under S.C. Code of Laws-Recovery of Property, §15-67-10, *et seq.*, which deals with Possession and Adverse Possession of real Property. This statute gives the Court the authority to declare that, by reason of adverse possession, legal title to the Property is vested in the Plaintiff.

19. Plaintiff is entitled to a declaratory judgment that he is the fee simple owner by adverse possession of the Property and the issuance of a deed to him reflecting his ownership.

WHEREFORE, Plaintiff request judgment as follows:

A. For a decree declaring that Plaintiff owns absolutely and is entitled to a quiet and peaceful possession of the Property as against Defendants and that Defendants have no estate, right, title, lien or interest in or to the Property or any part of it and that title to the Property be quieted in Plaintiff against all claims of Defendants and all persons claiming under Defendants;


B. For a decree permanently enjoining Defendants from asserting any estate, right, title, lien or interest in or to the Property or any part of it adverse to Plaintiff;

C. For the issuance of a deed vesting fee simple title in Plaintiff.;

D. For the costs of this action; and

E. For such other and further relief as the Court deems appropriate.

DEJONG LAW FIRM LLC



Karen M DeJong

222 West Coleman Blvd., Suite 110
Mount Pleasant, SC 29464
(843) 216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

Mount Pleasant, SC
June 6, 2019

3:00 pm
6/10

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

LIS PENDENS
(Action to Quiet Title)
(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW
a/k/a SYVETTA SMALLS, JOHN DOE
and JANE DOE, as fictitious names for a
class of unknown persons being
incompetents, minors, persons in military
service to the United States of America,
imprisoned, and/or under any other form of
legal disability, including but not limited to
unknown heirs, devisees, distributees,
administrators, or personal representatives
of deceased persons HERMAN SMALLS,
JR. and LAMONT GREEN and all other
persons known or appear of record to have
some right, title, interest in or lien upon the
real estate described in the complaint
herein.

Defendants.

FILED
2019 JUN 10 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

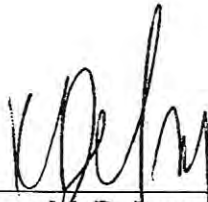
NOTICE IS HEREBY GIVEN that an action has been initiated and is pending
in the Court of Common Pleas of Charleston County by the Plaintiff against the
Defendants; that the object of the action is to determine the rightful owners of the below
described real estate.

The real estate affected by this action is described as follows, to wit:

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as Lot 4-B on that certain plat titled "The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish," prepared by James F. Bennett, Surveyor, and recorded July 2, 1985 in the Charleston County RMC Office in Plat Book BE at Page 50.

This is the same property conveyed to Herman Smalls by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 801.

TMS# 561-00-00-085



Karen M. DeJong
DeJong Law Firm, LLC
222 West Coleman Blvd., Suite 110
Mt. Pleasant, SC 29464
(843) 216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

**Mount Pleasant, SC
June 6th, 2019**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Larry Gregg,)
)
 Plaintiffs,)
)
 vs.)
)
 Herman Smalls, III, Izetta Shaw a/k/a)
 Syvetta Smalls, John Doe and Jane Doe,)
 as fictitious names for a class of unknown)
 persons being incompetents, minors, person)
 in military service to the United States of)
 America, imprisoned, and/or under any)
 other form of legal disability, including but)
 not limited to unknown heirs, devisees,)
 distributes, administrators, or personal)
 representatives of deceased persons Herman)
 Smalls, Jr. and Lamont Green and all other)
 persons known or appear of record to have)
 some right, title, interest in or lien upon the)
 real estate described in the complaint herein)
)
 Defendants.)
)
)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2019-CP-10-2342

ANSWER AND COUNTERCLAIM

FILED
 2019 JUL 15 PM 3:37
 CLERK OF COURT
 BY [Signature]

Defendants, Herman Smalls, III and Izetta Shaw a/k/a Syvetta Smalls, answering the Complaint of the Plaintiff and setting forth a counterclaim would respectfully show as follows:

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless expressly admitted herein.
2. Responding to Paragraph 1 of the Amended Complaint, Defendants admit that Plaintiff resides at 2229 David Green Road, Mt. Pleasant, South Carolina (“the Property”) but denies that Plaintiff is in possession of the Property and demands strict proof thereof. Defendants deny the remaining portions of this paragraph and demand strict proof thereof.

3. Responding to Paragraphs 2, 3, 4, 5 and 6 of the Amended Complaint, Defendants admit the allegations contained in these paragraphs.

**AS TO THE FIRST CAUSE OF ACTION
(Quiet Title)**

4. Responding to Paragraph 8 of the Amended Complaint, Defendants reallege all allegations and defenses set forth above in Paragraphs 1 through 3.

5. Responding to Paragraphs 9 and 10 of the Amended Complaint, Defendants admit the allegations contained in these paragraphs.

6. Responding to Paragraph 11 of the Amended Complaint, Defendants admit that fee simple title to the Property should be quieted and confirmed in the name of Herman Smalls, III, Izetta Shaw a/k/a Syvetta Smalls and Lamont Green. Defendants deny that Plaintiff has an adverse claim or any claim to the Property and demands strict proof thereof.

**AS TO THE SECOND CAUSE OF ACTION
(Adverse Possession)**

7. Responding to Paragraph 12 of the Amended Complaint, Defendants reallege all allegations and defenses set forth above in Paragraphs 1 through 6.

8. Defendants deny the allegations contained in Paragraphs 13, 14, and 15 of the Amended Complaint and demand strict proof thereof.

9. Responding to Paragraph 16 of the Amended Complaint, Defendants lack sufficient information to respond and therefore deny the same and demand strict proof thereof.

10. Defendants deny the allegations contained in Paragraphs 17, 18 and 19 of the Amended Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE
(Failure to Satisfy Elements of Adverse Possession)

11. Defendants reallege and re-incorporate herein the allegations set forth above in Paragraphs 1 through 10.

12. Plaintiff has failed to satisfy all the elements of adverse possession and therefore his claim should be denied.

FOR A THIRD DEFENSE
(Affirmative Defenses)

13. Defendants reallege and re-incorporate herein the allegations set forth above in Paragraphs 1 through 12.

14. Defendants specifically plead as any other affirmative defenses which may arise through discovery or during the process of this action.

FOR A FOURTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Ejectment)

15. Defendants reallege and re-incorporate herein the allegations set forth above in Paragraphs 1 through 14.

16. Plaintiff is a resident of Charleston County, South Carolina.

17. Defendants, Herman Smalls, III and Syvetta Smalls, are residents of the State of New York.

18. The property which is the subject of this action is described as follows:

ALL that certain lot, piece, parcel of land, situate, lying and being in Christ Church Parish, County of Charleston, South Carolina, know and designated as Lot 4-B on that certain plat title "The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish," prepared by James F. Bennett, Surveyor, and recorded July 2, 1985 in the Charleston Count RMC Office in Plat Book BE at Page 50.

Being the same property conveyed to Herman Smalls by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 801.

TMS Number: 561-00-00-085

19. The Property was conveyed to the heirs of Herman Smalls, Jr. by an Order of the Court filed in Charleston County in Case Number 2016-CP-10-6964.

20. Defendants, Herman Smalls, III and Syvetta Smalls, are the heirs of Herman Smalls, Jr. Defendant, Lamont Green, is also an heir of Herman Smalls, Jr. and is deceased.

21. Plaintiff has been and is currently residing on the Property.

22. Defendants provided notice to Plaintiff, by a letter dated April 24, 2019, that they are the owners of the property pursuant to the Order referenced above and that they were requesting he vacate the Property within 30 days from the date of the letter.

23. Plaintiff has not vacated the property.

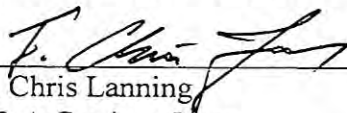
24. Defendants are informed and believe that the Plaintiff is to be removed from the property.

25. Defendants are informed and believe that the Plaintiff is to be responsible for all costs and fees incurred by Defendants and/or associated with his removal from the Property.

WHEREFORE, Defendants pray the following:

1. That the Complaint of the Plaintiff be dismissed in its entirety;
2. For an Order of the Court setting forth that the Plaintiff is to be removed from the Property;
3. For an award of Defendant's costs and fees associated with Plaintiff's removal from the Property; and
4. For any other such relief the court deems just and proper.

BRUSH LAW FIRM, P.A.



J. Chris Lanning

12-A Carriage Lane
Charleston, SC 29407
(843)766-5576 - Phone
(843)766-9152 - Fax
Attorneys for the Defendants

Charleston, South Carolina
7/15, 2019

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributees, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

ACCEPTANCE OF SERVICE

FILED
2019 JUL 15 PM 3:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY *Dr*

On behalf of Defendants Herman Smalls, III and Izetta Shaw a/k/a Syvetta Smalls, I, J. CHRIS LANNING, ESQ., of Brush Law Firm, hereby accept service of a copy of the Summons and Complaint in this matter pursuant to Rule 4(j), SCRCP at the following location: 12-A Carriage Lane, Charleston, SC 29407 on ~~June 3~~, 2019.

July

Sworn to before me this 3rd day of July, 2019.
Cara Wyatt
Notary of S.C.
My Commission Expires: 9/27/27



J. Chris Lanning
J. Chris Lanning, Esq.
Attorney for Defendants
Herman Smalls, III and
Izetta Shaw a/k/a Syvetta Smalls

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributees, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.

Defendants.

REPLY TO COUNTERCLAIM
(Action to Quiet Title)
(Adverse Possession)

FILED
2019 AUG 16 AM 8:41
JULIE J. ARNSTROUB
CLERK OF COURT
P

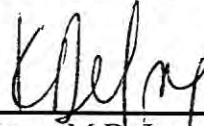
Plaintiff, LARRY GREGG, through his attorney, replies to the Counterclaim filed by the Defendants:

1. Plaintiff denies the allegations set forth in Paragraph 15.
2. Plaintiff admits the allegations set forth in Paragraph 16.
3. Plaintiff is without sufficient knowledge to respond to the allegations set forth in Paragraph 17.
4. Plaintiff admits the allegations set forth in Paragraphs 18 - 23.
5. Plaintiff denies the allegations set forth in Paragraphs 24 – 25.

WHEREFORE, Plaintiff request judgment as follows:

- A. For a decree declaring that Plaintiff owns absolutely and is entitled to a quiet and peaceful possession of the Property as against Defendants and that Defendants have no estate, right, title, lien or interest in or to the Property or any part of it and that title to the Property be quieted in Plaintiff against all claims of Defendants and all persons claiming under Defendants;
- B. For a decree permanently enjoining Defendants from asserting any estate, right, title, lien or interest in or to the Property or any part of it adverse to Plaintiff;
- C. For the issuance of a deed vesting fee simple title in Plaintiff.;
- D. For the costs of this action; and
- E. For such other and further relief as the Court deems appropriate.

DEJONG LAW FIRM LLC



Karen M DeJong
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(843) 216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

Mount Pleasant, SC
August 13, 2019

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

NOTICE OF INTENT TO REFER
(Action to Quiet Title)
(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

TO THE DEFENDANTS ABOVE NAMED:

Please take notice that upon the expiration of thirty (30) days after this Notice has been served upon you, Plaintiffs intend to appear before the Presiding Judge of the Charleston County Court of Common Pleas, 100 Broad Street, Charleston, SC 29401, and request from this Court an Order referring this matter to the Charleston County Master-In-Equity or a Special Referee for the purpose of holding a hearing into the merits of this matter, together with the authority to enter a final judgment in this matter, and to further request that any appeal from this matter be made directly to the Supreme Court of South Carolina.

DEJONG LAW FIRM LLC

s/Karen M. DeJong

Karen M DeJong
222 West Coleman Blvd., Suite 110
Mount Pleasant, SC 29464
(843) 216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

Mount Pleasant, SC
November 20, 2019

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

NOTICE NISI

(Action to Quiet Title)

(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

TO THE DEFENDANTS ABOVE NAMED who may be deemed infants, insane persons, and/or incompetents, or those acting on their behalf: Please take notice there has been filed in the Office of the Clerk of Court, for Charleston County, South Carolina, an Order appointing Kelley Y. Woody, Esq., as Guardian *ad litem*. She may be contacted as follows:

Kelley Y. Woody, Esq.
P.O. Box 6432
Columbia, SC 29260
(803) 787-9678

This appointment shall become absolute upon expiration of thirty (30) days following last publication of the Summons in this matter, unless prior to that time you or someone acting on your behalf procures someone else to be appointed as Guardian *ad litem* to represent you in this action.

DEJONG LAW FIRM LLC

s/Karen M. DeJong

Karen M DeJong

222 West Coleman Blvd., Suite 110

Mount Pleasant, SC 29464

(843) 216-6161

karen@dejonglawfirm.com

Attorney for Plaintiff

Mount Pleasant, SC
November 20, 2019

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

AFFIDAVIT IN SUPPORT OF PUBLICATION
(Action to Quiet Title)
(Adverse Possession)

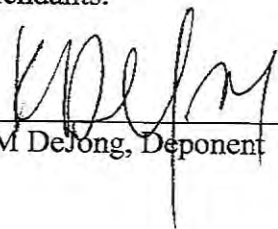
KAREN M DEJONG personally appeared before me, the undersigned Notary Public for South Carolina, and after being duly sworn, she deposed and stated as follows:

1. She is the attorney for the Plaintiff in the foregoing action.
2. The above action has been commenced by the Plaintiff to adjudge and declare that he is the fee simple owner of the subject property in Charleston County, SC, as more fully described in **Exhibit A** to the Amended Complaint, which was filed on June 10, 2019.
3. The grounds for this action are more fully stated in the Amended Complaint and a cause of action exists against Defendants to exclude and bar them, and every one of them who claim, own or

have some lien or interest in the subject real property from any right, title, interest, lien or estate therein.

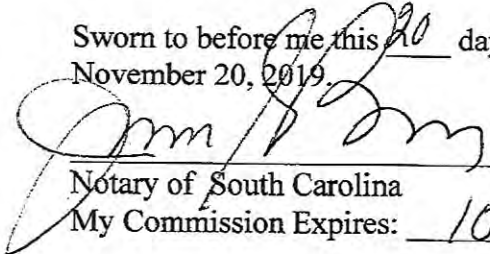
4. Defendants John Doe and Jane Doe are necessary and proper parties to this action on real property in Charleston County, SC and the Lis Pendens, Summons, Amended Complaint, have been filed with the Charleston County Clerk of Court.

5. She made a diligent search to locate and communicate with Defendants John Doe and Jane Doe, but to no avail. Upon information and belief, Herman Smalls, Jr. and Lamont Green are deceased. She has no information as to the identities and/or current addresses of these Defendants. A diligent search of public records and specific questioning of Plaintiff resulted in no information or present addresses or telephone numbers of these Defendants.



Karen M DeJong, Deponent

Sworn to before me this 20 day of
November 20, 2019.



Notary of South Carolina
My Commission Expires: 10-5-22

Jocelyn G Bolling
Notary Public
State of South Carolina
Commission Expires 10/05/2022

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2019-CP-10-02342

LARRY GREGG,

PLAINTIFF,

ANSWER TO THE AMENDED COMPLAINT
AND CONSENT TO REFERENCE FOR JOHN
DOE AND JANE DOE

v.

HERMAN SMALLS III, ET AL,

DEFENDANTS.

The undersigned Guardian ad Litem Nisi for John Doe and Jane Doe (Unknown Defendants) does hereby answer the Amended Complaint as follows:

1. That unless specifically admitted or qualified or explained herein, all allegations of the Amended Complaint are denied.
2. That the Unknown Defendants lack sufficient information at this time to make a determination as to the other allegations set forth in the Amended Complaint and therefore hereby deny all such allegations.
3. The Unknown Defendants consent to having this matter referred to the Master in Equity for Charleston County, or a Special Referee as deemed appropriate by the Court, pursuant to Rule 53(b) SCRPC (as amended); that the Master in Equity or Special Referee shall make final judgment in the matter in accordance with Rule 53 SCRPC, and that any appeal from the final order of the Master in Equity or Special Referee shall be to the Supreme Court of South Carolina.

WHEREFORE, having fully answered, the Unknown Defendants pray that the Court inquire unto the matters set forth herein, determine and protect the priorities of the parties, and for such other and further relief as may be just and proper.

s/Kelley Y. Woody

Kelley Y. Woody
Guardian ad Litem Nisi
for John Doe and Jane Doe

Columbia, South Carolina

May 12, 2020

52

P.O. Box 6432
Columbia, South Carolina 29260
(803) 787-9678
kwoody@kelleywoody.com

KAREN DEJONG DEJONG LAW FIRM LLC
222 WEST COLEMAN BLVD SUITE 110
MOUNT PLEASANT SC 29464

AFFIDAVIT OF PUBLICATION

The Post and Courier

State of South Carolina

County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

- 05/13/20 Wed PC
- 05/20/20 Wed PC
- 05/27/20 Wed PC
- 05/13/20 Wed CNW
- 05/20/20 Wed CNW
- 05/27/20 Wed CNW

at a cost of **\$486.96**
Account# **364166**
Order# **1872085**
P.O. Number:

Subscribed and sworn to before me this 27th day of May A.D. 2020

[Signature]
advertising clerk

[Signature]
NOTARY PUBLIC, SC
My commission expires

53



COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10-2342
AMENDED SUMMONS (Action to Quiet Title) (Adverse Possession)
LARRY GREGG, Plaintiff
v.
HERMAN SMALLS, III, IZETTA SHAW, a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributees, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.
Defendants.
TO DEFENDANTS NAMED ABOVE:
You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber at her office address stated below, within thirty (30) days after the service upon you, exclusive of the day of such service. If you fail to answer the Amended Complaint with this time, judgment by default will be entered against you for the relief demanded in the Amended Complaint.
June 6, 2019
Mount Pleasant, SC
s/ Karen M. DeJong
Karen M. DeJong, Esq.
S.C. Bar #70699
DeJong Law Firm, LLC
222 West Coleman Blvd., Ste. 110
Mt. Pleasant, SC 29464
Tel: No. 252-216-6161
karen@dejonglawfirm.com
ADE 1872085

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CIVIL ACTION: 2019-CP-10-02342

LARRY GREGG,

PLAINTIFF,

v.

HERMAN SMALLS, III, ET AL,

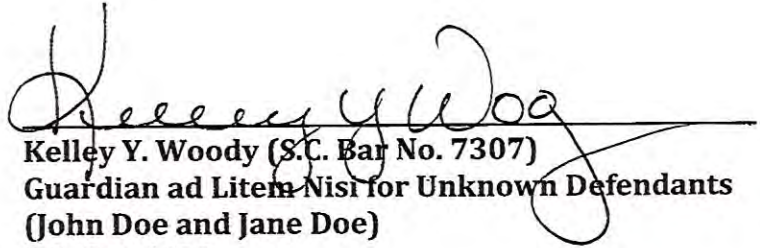
DEFENDANTS.

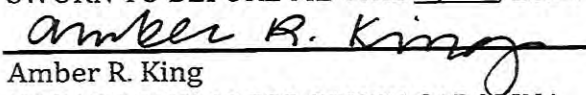
AFFIDAVIT OF ATTORNEY FOR
UNKNOWN DEFENDANTS IN THE
MILITARY SERVICE AND GUARDIAN
AD LITEM FOR UNKNOWN
DEFENDANTS WHO ARE MINORS
OR UNDER LEGAL DISABILITY
INCLUDING ALL UNKNOWN HEIRS
AND ASSIGNS OF HERMAN SMALLS,
JR., AND LAMONT GREEN

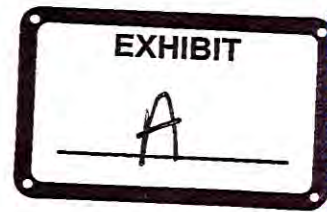
PERSONALLY APPEARED BEFORE ME, Kelley Y. Woody, who being duly sworn, deposes and states as follows:

1. That she consented to her appointment as Attorney for Unknown Defendants in the Military Service and Guardian ad Litem for Unknown Defendants who are Minors or Under Legal Disability including unknown heirs and assigns of Herman Smalls, Jr., (deceased) and Lamont Green (deceased) (Unknown Defendants also referred to as John Doe and Jane Doe);
2. That she reviewed the pleadings filed by Plaintiff's attorney regarding this matter;
3. That she filed an Answer and a Consent to Reference on behalf of the Unknown Defendants;
4. That she sent correspondence to J. Chris Lanning, Esquire, Attorney for Herman Smalls III and Izetta Shaw, inquiring as to heirs of Herman Smalls, Jr., and Lamont Green and any other person or entity claiming any interest in the subject property other than those named in the Complaint; copy of this letter is filed herewith as Exhibit A;
5. That Affiant received no response to this letter and the letter was not returned to her;

FURTHER AFFIANT SAYETH NOT.


Kelley Y. Woody (S.C. Bar No. 7307)
Guardian ad Litem Nisi for Unknown Defendants
(John Doe and Jane Doe)
P.O. Box 6432
Columbia, SC 29209
803-787-9678 (phone) kwoody@kelleywoody.com

SWORN TO BEFORE ME THIS 4/23, 2021

Amber R. King
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: January 21, 2031



ELECTRONICALLY FILED - 2021 Apr 23 12:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002342

**KELLEY YARBOROUGH WOODY
ATTORNEY AT LAW, LLC**

P.O. Box 6432 • COLUMBIA • SOUTH CAROLINA • 29260 • KWOODY@KELLEYWOODY.COM
803-787-9678 (PHONE) 803-787-9743 (FAX)

May 12, 2020

J. Chris Lanning, Esquire
Attorney for Herman Smalls III and Izetta Shaw
12-A Carriage Lane
Charleston, SC 29407

Re: Larry Gregg v. Herman Smalls III, et al
Civil Action: 2019-CP-10-02342

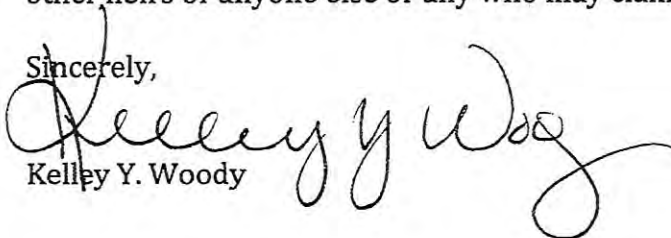
Dear Mr. Lanning:

I am the Court appointed Guardian ad Litem for **Unknown** Defendants including any unknown minors, incarcerated, or imprisoned in the above-referenced action only. I will file an Answer on behalf of these defendants.

This action seeks to quiet (confirm) the title to property known as 2229 David Greed Road, Mount Pleasant, South Carolina in the name of Larry Gregg and will terminate any interest in the subject property that may be held by Herman Smalls III, Izetta Shaw aka Syvetta Smalls, and any heirs or devisees of Herman Smalls, Jr. (deceased) and Lamont Green (deceased).

It is my duty to raise any legal defenses that any *unknown* heirs or *unknown* persons who are minors, incompetent, incarcerated, or in the military service may have to this action, including **all** unknown persons or entities. Herman Smalls III, Izetta Shaw aka Syvetta Smalls, and Lamont Green are the only known heirs of Herman Smalls, Jr. There are no known heirs of Lamont Green. Please contact me with any information you may have as to other heirs or anyone else or any who may claim an interest in the subject property.

Sincerely,


Kelley Y. Woody

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-In-Equity

THE HONORABLE MIKELL SCARBOROUGH

Case No. 2019-CP-10-02342

LARRY GREGG,

Appellant,

v.

HERMAN SMALLS, III and
IZETTA SHAW aka SYVETTA SMALLS,

Respondents.

NOTICE OF APPEAL

LARRY GREGG APPEALS the Order of the Honorable Mikell Scarborough dated January 27, 2022. Appellant received written notice of entry of this order on January 27, 2022.

Dated: February 18, 2022

s/Karen M. DeJong
Karen M. DeJong, Esq.
SC Bar No. 70699
DeJong Law Firm, LLC
222 West Coleman Blvd.,
Ste. 110
Mt. Pleasant, SC 29464
Tel. No. 843-216-6161
karen@dejonglawfirm.com
Attorney for Appellant

Other Counsel of Record:

J. Christopher Lanning, Esq.

Brush Law Firm

12A Carriage Lane

Charleston, SC 29407

Tel. 843-766-5576

clanning@brushlawfirm.com

Attorney for Respondents

Herman Smalls, III and Izetta

Shaw aka Syvetta Smalls

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

MOTION TO APPOINT GUARDIAN AD LITEM

(Action to Quiet Title)
(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

PLAINTIFF hereby petitions this Honorable Court for appointment of a guardian *ad litem* and respectfully shows as follows:

1. This action is being commenced to determine adverse claims, if any, and to quiet title to the parcels of land described in Exhibit A to the Amended Complaint filed in this matter, and to declare that the Plaintiff is the fee simple owner of the subject land.

2. Plaintiff has joined some Defendants in this matter under the fictitious names of JOHN Doe and Jane Doe as representing a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned persons, and persons under any other form of legal disability, as well as representing unknown heirs, devisees, distributes, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN or any persons

includible within this action should they be deceased, and all other persons or entities who claim any interest in or a lien upon the real estate which is the subject of this action.

3. The names, addresses, and whereabouts of such Defendants are unknown to the Plaintiff and cannot with reasonable diligence be ascertained by Plaintiff or his lawyer. In that Plaintiff has been unable to locate such Defendants, it is appropriate that a Guardian *ad litem*, be appointed for such of the said parties who may be infants, insane persons and incompetents.

4. Plaintiff is informed and believes that no application has been made by or on behalf of any Defendant who may be an infant, insane person, or incompetent, for the appointment of a Guardian *ad litem*. Plaintiff does not know of any general or testamentary powers regarding such infants, insane persons and/or incompetents, and to whom notice of this application can be given, otherwise than by publication.

5. Kelley Y. Woody, Esq. is a competent and suitable person to be appointed for and to act as the Guardian *ad litem* for such Defendants who may be infants, insane persons or incompetents. She is a member of the South Carolina Bar, has no claim adverse to such Defendants, and is not connected in any manner with the Plaintiff or Plaintiff's attorney in this action, and has consented to act as Guardian *ad litem*.

WHEREFORE Plaintiff requests entry of an Order appointing Kelley Y. Woody, Esq. or some other suitable person as Guardian *ad litem*, for such of the above named Defendants, unless someone in their behalf shall, within the specified period of time after the service of a copy of the Notice of the entry of the Order being herein prayed for prescribed the manner in which the service of Notice of entry thereof shall be made upon the same Defendants.

DEJONG LAW FIRM LLC

s/Karen M. DeJong

Karen M DeJong
222 West Coleman Blvd., Suite 110
Mount Pleasant, SC 29464
(843) 216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

Mount Pleasant, SC
November 20 2019

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

**PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

(Action to Quiet Title)

(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW
aka SYVETTA SMALLS, JOHN DOE and
JANE DOE, as fictitious names for a class of
unknown persons being incompetents, minors,
persons in military service to the United State
of America, imprisoned, and and/or under any
other form of legal disability, including but
not limited to unknown heirs, devisees,
distributes, administrators, or personal
representative so deceased persons HERMAN
SMALLS, JR. and LAMONT GREEN and all
other persons known or appear of record to
have some right, title, interest in or lien upon
the real estate described in the complaint
herein,

Defendants.

COMES NOW Plaintiff, Larry Gregg, by and through his undersigned attorney, which respectfully submits this Motion for Summary Judgment as to Defendants Herman Smalls, III and Izetta Shaw a/k/a Syvetta Smalls’ claims against him. In support of this Motion, Larry Gregg will show the Court that Defendants cannot meet their burden of proof and are unable to present any evidence that proves Plaintiff Larry Gregg is not entitled to the Property by means of adverse possession.

Plaintiff will rely upon the pleadings, discovery, deposition testimony, and such other affidavits and/or memorandum of law, which may be submitted hereafter.

April 22, 2021
Mount Pleasant, SC

DEJONG LAW FIRM, LLC

s/Karen M. DeJong
Karen M. DeJong, Esq.
222 West Coleman Blvd., Ste. 110
Mount Pleasant, SC 29464
Tel. No. 843-216-6161
Fax No. 843-300-1080
karen@dejonglawfirm.com
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Larry Gregg,)
)
 Plaintiffs,)
)
 vs.)
)
 Herman Smalls, III, Izetta Shaw a/k/a)
 Syvetta Smalls, John Doe and Jane Doe,)
 as fictitious names for a class of unknown)
 persons being incompetents, minors, person)
 in military service to the United States of)
 America, imprisoned, and/or under any)
 other form of legal disability, including but)
 not limited to unknown heirs, devisees,)
 distributes, administrators, or personal)
 representatives of deceased persons Herman)
 Smalls, Jr. and Lamont Green and all other)
 persons known or appear of record to have)
 some right, title, interest in or lien upon the)
 real estate described in the complaint herein)
)
 Defendants.)
)
)
)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2019-CP-10-2342

**DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that Defendant, Syvetta Smalls, by and through her undersigned attorney, shall, and hereby does move this Honorable Court for an Order granting summary judgment in her favor in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that Defendant is entitled to judgment as a matter of law.

This motion is based upon the pleadings in the within action, memorandum in support of this motion, which will be filed with the court before the hearing, and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

BRUSH LAW FIRM, P.A.

s/ J. Chris Lanning
J. Chris Lanning
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576 - Phone

April 27, 2021
Charleston, South Carolina

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

(Action to Quiet Title)
(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW
aka SYVETTA SMALLS, JOHN DOE and
JANE DOE, as fictitious names for a class of
unknown persons being incompetents,
minors, persons in military service to the
United State of America, imprisoned, and
and/or under any other form of legal
disability, including but not limited to
unknown heirs, devisees, distributes,
administrators, or personal representative so
deceased persons HERMAN SMALLS, JR.
and LAMONT GREEN and all other persons
known or appear of record to have some
right, title, interest in or lien upon the real
estate described in the complaint herein,
Defendants.

Plaintiff moves for summary judgment as to his causes of action and as to Defendants’
counterclaims pursuant to Rule 56, SCRCF, on the grounds that material facts are not in dispute,
and Plaintiff is entitled to judgment as a matter of law.

This is a claim to title of the property located at Lot 4B, 2229 David Green Road, Mt.
Pleasant, Charleston County, South Carolina, based upon adverse possession by the Plaintiff.
Defendants counterclaim with an ejection cause of action.

All parties agree that on March 4, 2019, Hon. Mikell R. Scarborough, Charleston County
Master-In-Equity, filed a Final Order After Hearing in a Quiet Title Action, Robinson, et al. v.

Ketchen, et al., Case No. 2016-CP-10-6964. In Paragraph 7, Page 11 of the Order, Judge

Scarborough ruled that:

“The heirs of Herman Smalls, Jr. are the owners of Lot 4B as described in Exhibit “A” and fee simple title is quieted and confirmed in their names; subject however to the claims, if any, of Larry Gregg with it being the obligation of the Herman Smalls, Jr. Heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot4B, and further, subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrances by such owner’s consent or due process of law”.

Exhibit A of the Order, Page 15, sets for the legal description of Lot 4B:

“LOT 4B (TMS No. 561-00-00-085)

ALL that certain lot, piece, or parcel of land, situate, lying and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as Lot 4-B on that certain plat titled “*The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish*”, prepared by James F. Bennett, Surveyor, and recorded July 2, 1985, in the Charleston County RMC Office in Plat Book BE at Page 50.

This is the same property conveyed to Herman Smalls by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 801.”

See Filed Complaint, Exhibit A.

On May 7, 2019, Plaintiff filed a Complaint for Adverse Possession and on July 15, 2019, Defendants answered the Complaint with a Counterclaim for Ejectment against Plaintiff.

UNDISPUTED FACTS

Plaintiff, Larry Gregg, has lived on Lot 4B a/k/a 2229 David Green Road, Mt. Pleasant, SC since on or about 1986. Defendants Herman Smalls, Jr., Izetta Shaw a/k/a Syvetta Smalls, Herman Smalls, III and Lamont Green reside in New York, with Defendant Herman Smalls, Jr. passing away in New York in 2005 and Defendant Lamont Green passing away in New York in 2018 or 2019.

In 1986, Plaintiff moved his mobile home to Lot 4B. Defendant Herman Smalls, Jr. also lived on Lot 4B in his own mobile home. Neither party had a deed to Lot 4B, they were both “squatters”. From 1986 until Herman Smalls, Jr.’s death in 2005, Plaintiff constructed an addition to his mobile home by expanding the width of his home to add more rooms. Plaintiff also constructed a roof to cover the expanded mobile home. **See Affidavit of Larry Gregg attached as Exhibit 1 and Affidavit of Charles Gadsden attached as Exhibit 2.**

After Herman Smalls, Jr.’s death in 2005, Plaintiff made the following additional improvements: front porch deck, back porch deck, fireplace with chimney, separate garage and a shed. **See Gregg’s Affidavit, Exhibit and Gadsden Affidavit attached as Exhibit 2.**

While Defendants had knowledge that Plaintiff was residing on the property at least from 2005 until now, no Defendant has had anything to do with constructing the improvements or maintaining the property and no Defendants ever offered or paid for the materials used in the constructing and maintaining of the property. **See Gregg’s Affidavit, Exhibit 1.**

Plaintiff initiated this action to declare that Plaintiff is the rightful owner of the property through adverse possession.

I. PLAINTIFF OWNS LOT 4B, 2229 DAVID GREEN ROAD THROUGH HIS CONTINUOUS, HOSTILE, OPEN, ACTUAL, NOTORIUS, AND EXCLUSIVE POSSESSION IN EXCESS OF TEN YEARS.

Plaintiff has met all of the elements for an adverse possession claim for the statutory period of ten (10) years for Lot 4B, 2229 David Green Road, Mt. Pleasant, SC. “The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time.” Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009); cited in Taylor v. Heirs of William Taylor, 419 S.C. 639, 650, 799 S.E. 2d 919, 924 (Ct. App. 2017).

The statutory period for adverse possession is ten (10) years in South Carolina. S.C. Code Ann. 15-67-210 (2005). The party asserting adverse possession must show that they have met the elements by clear and convincing evidence. Jones, 384 S.C. at 10-11, 681 S.E.2d at 11; Taylor, 419 S.C. at 651, 799 S.E.2d at 924-25.

The Jones Court and Taylor Courts also addressed the element of continuous possession:

For possession to be continuous, a party “claiming adverse possession must have personally held the property for ten years”. Id. at 15, 681 S.E.2d at 14. “Occasional and temporary use or occupation does not constitute adverse possession. However, the rule requiring continuity of possession does not mean the person in possession must be actually on the land during the whole of the statutory period”. Id. at 16, 681 S.E.2d at 14.”

Taylor, 419 S.C. at 651-652, 799 S.E.2d at 925.

As set forth above in the sworn testimony of Plaintiff and Charles Gadsden, **Exhibits 1 and 2**, there is no question that Plaintiff has been in continuous possession of Lot 4B, 2229 David Green Road, Mt. Pleasant, SC for greater than ten (10) years.

The Taylor Court also addressed the element of “hostile” possession:

To show the possession was hostile, the adverse claimant is required to show only that his possession was actual, exclusive, open, notorious, and without the consent of the title owner. Knox v. Bogan, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996). The mistaken belief rule, which requires the possessor to be aware that he does not have title and intend to dispossess the true owner, is not applicable in disputes over entire tracts of land... Thus, for the possession to be hostile when a tract of land is at issue, the adverse claimant need not show a conscious intent to dispossess the true owner... The claimant may establish hostile possession by showing he occupied the property without the title owner’s consent even if he occupied the property under the mistaken belief that it belonged to him...”

Taylor, 419 S.C. at 652, 799 S.E.2d at 925.

Plaintiff had actual possession of the property since 1986. He and Mr. Smalls, each owned their own mobile home on the property. In 1989, Hurricane Hugo destroyed Mr. Small’s mobile home. Mr. Smalls, who resided in New York, never stayed on the property again when

visiting family, from that date until his death in 2005. From 1989 until now, Plaintiff has had actual and exclusive possession of Lot 4B. **See Exhibits 1 and 2.**

Further, with regard to the elements of open and notorious, the Jones and Taylor Courts held:

For possession to be open and notorious, “the legal owner need not have actual knowledge the claimant is claiming the property adversely, but the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it. Jones, 384 S.C. at 13-14, 681 S.E. 2d at 13. “Acts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy.” Id. At 14, 681 S.E. 2d at 13. “Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on notice that his land is being adversely possessed.” Id.

Taylor. 419 S.C. at 651, 799 S.E.2d at 925.

Defendant Syvetta Smalls testified at her deposition that her family knew that Plaintiff lived in his home on Lot 4B with Herman Smalls, Jr. prior to her father’s death in 2005 and that Plaintiff continues to live on Lot 4B up until now. **See Deposition Transcript of Syvetta Smalls dated April 19, 2021, P. 15 attached as Exhibit 3.**

Plaintiff has been responsible for all improvements made to the property during that time period. His activities have always been open and notorious. Plaintiff added on to his mobile home by expanding its’ width and built a roof over the home between 1986 and 2005. After Mr. Small’s death, Plaintiff built a front porch deck, back porch deck, fireplace with chimney, separate garage and a shed. **See Exhibits 1 and 2.**

Finally, Plaintiff testified at his deposition that he did not have permission from Defendants Syvetta Smalls, Herman Smalls, III or Lamont Green to stay on the property after Herman Small, Jr.’s death in 2005. **See Deposition Transcript of Larry Gregg dated April 19, 2021, P. 17 to 18, attached as Exhibit 4.** Plaintiff resided on the property for fifteen (15) years after Herman Small, Jr.’s death without permission from Mr. Small’s children.

CONCLUSION

For the reasons stated herein, by clear and convincing evidence, the Plaintiff is entitled to Summary Judgment and the issuance of a Deed to him conveying title in the property known as Lot 4B, 2229 David Green Road, Mt. Pleasant, SC 29464.

Dated: June 15, 2021

DEJONG LAW FIRM, LLC

Mount Pleasant, SC

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Larry Gregg,)
)
 Plaintiffs,)
)
 vs.)
)
 Herman Smalls, III, Izetta Shaw a/k/a)
 Syvetta Smalls, John Doe and Jane Doe,)
 as fictitious names for a class of unknown)
 persons being incompetents, minors, person)
 in military service to the United States of)
 America, imprisoned, and/or under any)
 other form of legal disability, including but)
 not limited to unknown heirs, devisees,)
 distributes, administrators, or personal)
 representatives of deceased persons Herman)
 Smalls, Jr. and Lamont Green and all other)
 persons known or appear of record to have)
 some right, title, interest in or lien upon the)
 real estate described in the complaint herein)
)
 Defendants.)
)
)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2019-CP-10-02342

**MEMORANDUM IN SUPPORT
 OF DEFENDANTS MOTION
 FOR SUMMARY JUDGMENT**

Defendants by and through their undersigned attorney, submit the following memorandum in support of their Motion for Summary Judgment.

STATEMENT OF THE CASE

This is an action to quiet title in the name of the Plaintiff for the property known as Lot 4B, 2229 David Green Road, Mt. Pleasant South Carolina (hereinafter “the Property”), based upon adverse possession. Plaintiff filed a Summons, Complaint and Lis Pendens on May 7, 2019 and later filed an Amended Summons, Amended Complaint and Amended Lis Pendens on June 10, 2019. Defendants filed an Answer and Counterclaim on July 15, 2019. Defendants’ Answer set forth a denial of Plaintiff’s Complaint, that Defendant could not establish all the elements of

adverse possession and set forth a cause of action for ejectment of the Plaintiff from the Property. Plaintiff filed a Reply to Defendants' Answer and Counterclaim on August 16, 2019. Kelley Y. Woody was appointed as Guadian ad Litem by an Order filed on November 21, 2019.

The Honorable Mikell R. Scarborough, Charleston County Master-In-Equity, signed and filed a Final Order After Hearing in a Quiet Title Action in Case Number: 2016-CP-10-06964, *Robinson v, Ketchen, et al.* on March 4, 2019. In Paragraph 7, Page 11, of the Order, Judge Scarborough ruled that:

“The heirs of Herman Smalls, Jr. are the owners of Lot 4B as described in Exhibit “A” and fee simple title is quieted and confirmed in their names; subject however to the claims, if any, of Larry Gregg with it being the obligation of the Herman Smalls Jr. Heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot 4B, and further subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrances by such owner’s consent or due process of law.”

Herman Smalls, Jr. nor his heirs had good title to the Property until this Order was filed. Several years before this Order was filed his family had divided a larger tract, which encompassed the Property, and set forth that Herman Smalls, Jr. and his sister, Ellen Smalls Manigault, were entitled to Lot 4. Herman Smalls, Jr. and his sister, Ellen Smalls Manigault, then divided Lot 4 into Lot 4A and Lot 4B (the Property). Ellen Smalls Manigault got Lot 4A and Herman Smalls, Jr. got Lot 4B (the Property). The Order then confirmed ownership of Lot 4A and Lot 4B.

Herman Smalls, Jr. placed a mobile home on the Property in the early 1980's and used it on vacations and at other times. In 1986, Plaintiff moved his mobile home to the Property based on a conversation he had with Herman Smalls, Jr. (See Larry Gregg Deposition Page 15, Lines 22-25 and Page 16, Lines 1-7). The Plaintiff received permission from Herman Smalls, Jr. to place his mobile home on the Property (See Larry Gregg Deposition, Page 16, Lines 8-14 and also See Syvetta Smalls Deposition, Page 15, Lines 6-10). After the Plaintiff moved his trailer

on the Property he made improvements to his mobile home over several years by adding a carport and three rooms.

Herman Smalls, Jr. died in 2005 and his estate has not been probated. He left as his heirs, Syvetta Smalls, Herman Smalls, III and Lamont Green. Lamont Green died in either 2018 or 2019 leaving no spouse and no children. Currently the heirs of Herman Smalls, Jr. are Syvetta Smalls and Herman Smalls, III.

After Herman Smalls, Jr.'s death, the Defendants knew that Plaintiff was still living on the Property and gave him tacit permission to live on the Property. (See Syvetta Smalls Deposition, Page 15, Lines 13-16 and Page 16, Lines 17-19). After the Final Order in Case Number: 2016-CP-10-06964, *Robinson v. Ketchen, et al.* was filed on March 4, 2019, and the Defendants were determined to be the owners of the Property, they promptly provided notice to Plaintiff on April 24, 2019 that he did not have permission to reside on the Property and that he needed to vacate the Property (See Lanning Letter to Gregg).

REVIEW OF APPLICABLE LAW

Summary Judgment

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Columbia v. American Civil Liberties Union, etc., et al.*, 323 S.C. 384, 475 S.E.2d 747 (1996). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

The moving party has the burden of establishing that there is no genuine issue of material fact. *McNair v. Rainsford*, 330 S.C. 332 (Ct. App 1998). Once the moving party carries its initial burden, the opposing party “may not rest on mere allegations or denials of his pleadings, but must set forth or point to specific facts showing that there is genuine issue of material fact.” *Bravis v. Dunbar*, 316 S.C. 263 (Ct. App. 1994). Rule 56, SCRCP, requires the entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Etheredge v. Richland Sch. Dist. 1*, 330 S.C. 447 (Ct. App. 1998).

Adverse Possession

In order to establish a claim for adverse possession, the claimant must prove by clear and convincing evidence his possession of the subject property was continuous, hostile, actual, open, notorious and exclusive for the statutory period. *All Saints Parish, Waccamaw v. Protestant Episcopal Church In the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004). The statutory period in South Carolina for adverse possession is ten (10) years. S.C. Code Ann. 15-67-210 (2005). In *Knox v. Bogan*, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996), the court explained for the possession to be hostile, the adverse claimant is required to show that his possession was actual, exclusive, open, notorious, and *without the consent* of the title owner.

In *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852 (S.C. Ct. App. 2009), McDaniel owned property that Kendrick was living on for over 19 years. McDaniel’s father owned the property and deeded to McDaniel while Kendrick was residing on the property. Kendrick and McDaniel’s father were married and then later divorced. Kendrick continued to live on the property after the divorce. McDaniel was aware that Kendrick was living on the property when she was conveyed ownership and then in 2005 provided her with a notice to vacate. Kendrick

failed to vacate and McDaniel filed suit. Kendrick claimed ownership to the property by adverse possession. The trial court ruled that Kendrick failed to prove adverse possession of the property because she had not demonstrated the required element of hostility. Kendrick then appealed.

Kendrick contended that the trial court erred in finding she was required to establish the element of hostility when claiming adverse possession of an entire tract of land. She maintained that the trial court further erred in concluding her possession was not sufficiently hostile. The Court disagreed with her contentions.

The court cited *All Saints Parish, Waccamaw* and *Knox v. Bogan* regarding what must be proven to claim adverse possession and specifically, hostility. Citing *Knox v. Bogan*, the supreme court, addressing the requirement of hostility, stated:

“The only issue is whether the Knoxes' possession was sufficiently hostile. As we read *Perry v. Heirs at Law* (316 S.C. 224, 449 S.E.2d 250 (1994) and *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (1988) either there is no longer a hostility requirement where the claim is to an entire tract, or South Carolina does in fact follow the majority view that the mental attitude of the possessor of land is immaterial. Under the majority view an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the statute of limitations has run. The majority view represents the most practical approach to the hostility requirement of adverse possession and is in keeping with the national trend of authority.”

The Court in *McDaniel* set forth that:

“The supreme court did not, as Kendrick argues, eliminate the hostility requirement when a party claims adverse possession of an entire tract of land. The court simply explained the hostility requirement is not necessarily predicated upon the claimant's conscience intention to possess the property against the true owner's wishes. A claimant may establish adverse possession if he occupies the property under the mistaken belief that it belongs to him. In any case, *Knox* makes clear the claimant must be on the property without the consent of the title owner.” *Id* at 442.

The Court in *McDaniel* also set forth that Kendrick was given tacit permission by McDaniel for her to occupy the property. The Court then stated:

“Instead, this case is more analogous to those wherein a party entered land with permission of the owner and then claimed adverse possession at a later point. See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner's tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); *Frady v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) (“The defendant's entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse possession.”); *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct.App. 1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner's widower did not establish claim of adverse possession without a “clear and positive disclaimer of the title under which entry was made”). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. *All Saints Parish, Waccamaw*, 358 S.C. at 233, 595 S.E.2d at 266-67.” *Id* at 443-444.

The Court in *McDaniel* affirmed the trial court’s ruling stating that Kendrick entered the property with her husband’s permission and remained there for the next nineteen years with McDaniel’s tacit permission. Kendrick’s refusal to vacate the property in 2005 began her time of occupying the property with hostility. However, Kendrick clearly had not satisfied the statutory period for adverse possession because McDaniel commenced her lawsuit just a few months later. The Court held, “Accordingly, the trial court did not err in finding Kendrick was required to establish the element of hostility and that she failed to do so by clear and convincing evidence.” *Id* at 444.

ARGUMENT

The Plaintiff cannot satisfy the elements of adverse possession, specifically hostility. South Carolina case law sets forth that in order to prove hostility and ultimately adverse possession of property, the possession must be *without the consent* of the owner. In this instance it is undisputed that the Plaintiff had permission and consent to place his mobile home on the Property and live on the Property. (See Larry Gregg Deposition Page 15, Lines 22-25 and Page

16, Lines 1-14 and See Syvetta Smalls Deposition, Page 15, Lines 6-10). South Carolina case law is also very specific regarding the claimant's conscience intention to possess the property against the owner's intentions. The Plaintiff in his deposition specifically states that he never meant to take the Property away from Herman Smalls, Jr. and his heirs. (See Larry Gregg Deposition, Page 16, Lines 15-17). Therefore, the Plaintiff is unable to prove that he possessed the Property with hostility and against the true rights of Herman Smalls, Jr. and the Defendants.

The mistaken belief rule does not apply in this instance because the Plaintiff has failed to submit or provide any testimony or evidence that he is occupying the Property under the mistaken belief that he owns it. The Plaintiff testified in his deposition that he did not know who owned the Property. (See Larry Gregg Deposition, Page 11, Lines 22-25). Furthermore, the Plaintiff has never paid the property taxes on the Property. (See Larry Gregg Deposition, Page 16, Lines 20-25 and Page 17, Line 1).

The facts and circumstances in this case, after the death of Herman Smalls, Jr., are similar to the *McDaniel* case. It is undisputed that the Defendants knew the Plaintiff was living on the property and gave him tacit permission to remain on the Property, just as McDaniel gave tacit permission to Kendrick to live on her property. (See Syvetta Smalls Deposition, Page 15, Lines 13-16 and Page 16, Lines 17-19). Once the court determined that the Defendants were the owners of the Property in Case Number: 2016-CP-10-06964, *Robinson v. Ketchen, et al.*, it is undisputed that the Defendants informed the Plaintiff to vacate the Property, just as McDaniel informed Kendrick to vacate her property. (See Lanning Letter to Gregg dated April 24, 2019). It is also undisputed that when the Plaintiff received this letter and failed to vacate the Property, his time began to run for occupying the Property with hostility and *without the consent* of the owners, just as Kendrick's time began to run for occupying McDaniel's property without her

consent. The Plaintiff, just like Kendrick, is unable to establish a claim for adverse possession, because he cannot prove by clear and convincing evidence possession of the Property was continuous, hostile, actual, open, notorious and exclusive for the statutory period, ten (10) years. It is clear that the Plaintiff has not satisfied the statutory requirements. Thus, the Defendants request that the Court grant summary judgment in their favor.

CONCLUSION

The Plaintiff is unable to prove the element of hostility for adverse possession regarding the subject property. The Plaintiff had permission to live on the property and his possession was with the consent of the owners. Just recently the Plaintiff's occupancy at the Property began to be hostile but clearly not for the statutory period of ten (10) years. The Defendants further bolster their claim through the inclusion of copies of the deposition testimony of the Plaintiff and Defendant, Syvetta Smalls, and of the letter to vacate the Property. When taken as a whole, no material issues of fact remain to be decided. Therefore, when no issues of material fact exist, the appropriate action is summary judgment. *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972). Accordingly, the Defendants pray that the Court award them summary judgment by dismissing the complaint of the Plaintiff and granting them the relief requested in their Counterclaim.

BRUSH LAW FIRM, P.A.

s/ J. Chris Lanning
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June 17, 2021
Charleston, South Carolina

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

Civil Action No.: 2019-CP-10-2342

LARRY GREGG,

Plaintiff,

**PLAINTIFF'S MOTION
FOR RECONSIDERATION
PURSUANT TO RULE 59(a) and 59(e)
S.C.R.C.P.**

v.

HERMAN SMALLS, III, IZETTA SHAW a/k/a SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representatives of deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein.

Defendants.

TO DEFENDANTS NAMED ABOVE:

PLEASE TAKE NOTICE that the Plaintiff intends to move before the Honorable Court at a date and time to be set by the Court for an order reconsidering, altering or amending the Order Granting Defendants HERMAN SMALLS, III and IZETTA SHAW a/k/a SYVETTA SMALLS' Motion for Summary Judgment which was filed on January 27, 2022, pursuant to Rule 59(a) and 59(e), S.C.R.C.P. on the grounds that the Court failed to rule or erred in its' finding of facts and conclusions of law with regard to Plaintiff's adverse possession/quiet title claim.

February 3, 2022
Mount Pleasant, SC

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Larry Gregg,
Plaintiff,

vs. CASE NO. 2019-CP-10-02342

Herman Smalls III, et al.,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 11:51 a.m. on
June 22, 2021 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

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P R O C E E D I N G S

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THE COURT: Let's turn to Larry Gregg versus Herman Smalls, III, Izetta Shaw Smalls, et al, 2019-CP-10-2342. I apologize for holding you-all back, but it was just a long time.

Mr. Lanning, are you still available on the phone?

MR. LANNING: Yes. I'm driving in my car right now, Judge. I'm good.

THE COURT: I heard you're going to Beaufort.

MR. LANNING: Yes, sir.

THE COURT: So I have Cross Motions for Summary Judgment in an adverse possession case, and so generally I always think of adverse possession as being a fairly fact-intensive inquiry. My question to you-all right out of the shoot is: Do you-all think it's a question of law or a question of fact that I'm going to have to decide here today? Because if it's a question of fact, I don't see how I can grant summary judgment, but summary judgment is sometimes really helpful to educate the Court. I'm willing to do this.

I have read you-all's briefs, your memorandums in support of each of your Motions for Summary

1 Judgment, and I was nodding my head at the bottom of
 2 both of them, however, it seems somewhat fact
 3 intensive. So I'm going to first turn to Ms. DeJong
 4 as the Plaintiff's Counsel. I think she filed her
 5 motion first, and then -- Chris, I'm concerned about
 6 you being on that road.

7 Number one, it's dangerous going down that way
 8 to Beaufort; and two, you might hit a couple of gaps
 9 and we might not be able to hear you. Is there
 10 anything you want -- to get an answer to my first
 11 question, let me hear from you first on that one.

12 MR. LANNING: Judge, I think it's all going to
 13 boil down to when the Defendants or Mr. Herman
 14 Smalls, Junior, when they actually got possession of
 15 the property. I don't know if that's going to be
 16 fact or if that's something you can determine today.

17 I think that's really what it's going to boil
 18 down to -- kind of when they got possession, legal
 19 possession, and then kind of when the time began to
 20 run for Mr. Gregg to occupy that property. You know,
 21 is it back to 2005, or is it back to whenever you
 22 issued the order in 2019? I don't know if that's
 23 going to be fact intensive or what.

24 THE COURT: Okay.

25 MR. LANNING: I think that's what it kind of

1 boils down to. I think that's really where it boils
2 down to of what the issue is.

3 THE COURT: Okay. I'm with you. Let me turn
4 to Karen. Ms. DeJong, do you agree with that? I
5 must have you on mute. Hold on, Karen, one second.
6 I did. I apologize. I can hear you now. Now I
7 can't. You just muted yourself. Try it again. Hold
8 on.

9 MS. DeJONG: There we go.

10 THE COURT: Okay. Thank you.

11 MS. DeJONG: I don't know if the legal
12 possession of the property is relevant. He's
13 conceded to Larry Gregg proving all elements of
14 adverse possession except for the hostile element.
15 The hostile element, once we give you our factual
16 argument, should be easy to decide.

17 THE COURT: All right. So you present it as a
18 question of hostility. He presents it as a question
19 of timing. So we've got some disagreement. Go
20 ahead. I'm going to let you go ahead and make your
21 argument. Let me hear from you. I know you-all
22 supported it with some depositions and stuff. Just
23 take me to where you-all want to go there as well.
24 Okay?

25 MS. DeJONG: Do you me to give you a short,

1 quick history?

2 THE COURT: Sure. Well, you know, I think I
3 vaguely remember this case because the order included
4 the language subject to Mr. Gregg's claim for adverse
5 possession if I remember correctly. Help me with the
6 geographical location and how long the case went on
7 for and that kind of stuff.

8 MS. DeJONG: Well, this property that Larry
9 Gregg lived on is identified as Lot 4(B) on David
10 Green Road in Mt. Pleasant, South Carolina. He's
11 lived on that property since 1986. My attached
12 affidavit is from his deposition showing that he made
13 improvements on the property up until now,
14 significant improvements.

15 If we go right to the hostile element portion,
16 Mr. Lanning is arguing that Defendant, Izetta Shaw,
17 gave tacit permission after her father's death in
18 2005 for Larry Gregg to live on the property. I
19 don't know the definition of tacit, but I don't see
20 how -- this is the legal part of it. I don't see how
21 somebody can give permission for somebody else to
22 live on the property if they don't own the property.
23 It's like a worthless permission.

24 Also, Larry Gregg testified in his deposition
25 that he didn't have permission. So Your Honor, I

7
1 think my strongest argument regarding the hostile
2 element is this lawsuit that you were involved in in
3 2016. In 2016, there's a bunch of David Green heirs
4 that live on David Green Road. One is Jonnie Mae
5 Robinson, and she filed a quiet title action,
6 2016-CP-10-6964. She named 19 Defendants as heirs of
7 David Green in the complaint. She amended the
8 complaint and added nine more heirs for a total of 28
9 Defendants.

10 Larry Gregg was never named in it. He's the
11 son of Joseph Small, so he was an heir of David
12 Green. The Defendants in this lawsuit will not
13 bring -- Izetta Shaw filed the answers to Jonnie
14 Mae's amended complaint, and they also didn't notify
15 the Court that Larry Gregg actually lived on the land
16 in Lot 4(B) across from Jonnie Mae Robinson since
17 1986.

18 I think it's clear that they did not intend
19 for Larry Gregg to make any claim to Lot 4(B), that
20 he owned the property in a hostile manner, that they
21 did not give him permission to stay on the property,
22 and they did not consent to that. It was only when,
23 I think, he appeared at your final hearing in January
24 of 2019, that the Court became first aware that Larry
25 Gregg lived on the property with a house and

1 improvements, and that's when you had your order
2 saying that the heirs of Herman Smalls, Junior with
3 the owners of lot 4(B) subject to Larry Gregg.

4 So I think by their own action in that 2016
5 lawsuit, they clearly did not intend for Larry Gregg
6 to make a claim for this property, and that it was a
7 hostile possession of it by Larry Gregg.

8 THE COURT: He would have been residing on the
9 property during the whole time period of that
10 lawsuit; is that right?

11 THE WITNESS: Yes. They never told you.

12 THE COURT: All right. And how about -- I
13 think, if I'm not mistaken, Mr. Lanning put into his
14 position that Larry Gregg took possession with
15 permission of Herman Smalls, Junior; is that correct?
16 Or what's your status on that one?

17 I'm talking to you, Karen. I'm sorry.

18 MS. DeJONG: I'm so sorry. What did you say?

19 THE COURT: That Mr. Lanning indicated in his
20 memoranda that Larry Gregg took possession of the
21 property with the permission of Herman Smalls,
22 Junior, of course now deceased.

23 MS. DeJONG: Right. And Mr. Lanning as well
24 as myself both acknowledge that Mr. Smalls, Junior
25 did not have good title to the property, that he was

1 also there as a squatter. So that permission is not
2 what element with the hostile -- element should be
3 about because he wasn't a landowner.

4 Also, in Mr. Lanning's memorandum, he cites
5 cases involving permission of a landowner, and in
6 this case we just don't have that. Herman Smalls,
7 Junior was not a landowner. He didn't find that he
8 was until March 4th, 2019 where he found his heirs
9 could possibly own Lot 4(B).

10 THE COURT: Okay. You stated earlier that
11 David Green was an heir of whom? I'm sorry. Larry
12 Gregg was an heir of someone in the family or no?

13 MS. DeJONG: Yes. Joseph Smalls. So he is
14 Uncle Herman Smalls, Junior -- Izetta Shaw is
15 cousin -- I mean the Defendant, Izetta Shaw and
16 Lamont Green and Herman Smalls, III are his cousins.

17 THE COURT: What was Joseph Smalls'
18 relationship to Herman, Junior?

19 MS. DeJONG: They're brothers.

20 THE COURT: Brothers, okay. All right.

21 MS. DeJONG: This fact also is not disputed by
22 Mr. Lanning. I'm sure he will correct me if I'm
23 wrong, but Herman Smalls, Junior never lived on Lot
24 4(B). He resided in New York State. He died in New
25 York state. His children that are Defendants in this

1 lawsuit lived in New York State. He would
2 occasionally come down and visit when he had a mobile
3 home before Hurricane Hugo, but he wasn't a permanent
4 resident like Larry Gregg has been for all these
5 years.

6 THE COURT: Okay. And they all live in New
7 York still, I think, don't they?

8 MS. DeJONG: They all live in New York.
9 Lamont Green passed away in New York.

10 THE COURT: Yes. Okay. Thank you, Karen.
11 Let me turn -- Chris, if you would -- Mr. Lanning, go
12 ahead. Let me hear from you.

13 MR. LANNING: Thank you, Your Honor. I've
14 pulled off on the side of the road, so I'm not
15 driving.

16 This property, as you know, was divided up --
17 this came out of the larger tract. The family had
18 basically kind of done a partition of the property
19 before this lawsuit back in the early 80s. Lot 4 was
20 given to -- was supposed to go to Mr. Herman Smalls,
21 Junior and his sister, Ms. Ellen Smalls Manigault.
22 They then divided the property into Lot A and Lot
23 4(B).

24 So Ms. Manigault got Lot 4(A) and Mr. Smalls
25 got Lot 4(B). This was all done before Mr. Gregg put

1 his mobile home out there. It is in the deposition
2 testimony that Mr. Smalls gave him permission to put
3 his trailer out there. He had consent to put that
4 trailer out there. I just don't think he can show
5 the hostility. He does have permission to be out
6 there from one of the owners of the property.

7 He died in 2005, and there's some other
8 testimony from Ms. Smalls that they knew that
9 Mr. Gregg was out there. They didn't do anything
10 about it. They had basically given him kind of known
11 permission to be out there on the property.

12 Not until there was an order from the Court
13 that said they are the exact owners of the property,
14 of that Lot 4(B), did they provide notice to
15 Mr. Gregg that he needed to vacate the property. At
16 that point, I think he is occupying the property with
17 some hostility. That was in 2019.

18 In his deposition testimony there's testimony
19 that he had permission to be out there. He actually
20 even testified that he didn't mean to take any
21 property from Mr. Herman Smalls or his heirs. That
22 part of the hostility requirement, you have to occupy
23 that property without the consent or this is mine.
24 This is not your property. You're taking it. He
25 hasn't done that.

1 He's never paid taxes on the property. I
2 asked him in his deposition if he even knew who owned
3 the property, and he said he didn't even know who
4 owned the property. So our side and what we believe
5 is that he has not held that property with the
6 hostility requirement for the ten years. There is a
7 case, which I did cite, which is somewhat similar in
8 that -- Kendrick versus McDaniel. If you look at
9 that, I think it's very similar to what's happened in
10 this case. That is where there's a lady who had
11 permission to live on the property and then there
12 came a point where she did not.

13 She tried to argue that she didn't have to
14 show the hostility requirement, but the Court said
15 that she did. Hostility started running whenever she
16 was given notice to vacate which is kind of very
17 similar here. Mr. Gregg was given permission, and
18 then once he received notice to vacate that's when
19 his hostility began to run back in 2019.

20 THE COURT: Okay. So from your perspective
21 there is no hostility until they tell him to get off
22 the property in '19; is that right?

23 MR. LANNING: That's correct, Your Honor. And
24 there's some testimony from Ms. Smalls that --
25 Ms. DeJong asked her: Did you ever evict or ever

1 decide to get Mr. Gregg off the property? And they
2 said, Not until this lawsuit. So they knew that he
3 was out there.

4 THE COURT: Okay. Is this the one -- help me
5 a little bit on the background. I can't recall who
6 brought this case, but is this the one where the
7 family had pretty much done a partition in kind, and
8 it came in later that the quiet title was really sort
9 of to confirm what was going on, or am I mistaken in
10 that, Ms. DeJong?

11 MS. DeJONG: I don't -- no. There was no
12 partition action that I'm aware of before that.

13 THE COURT: But the lots were created at some
14 point in time.

15 MS. DeJONG: Yes. The lots were created, but
16 it was all heirs' property. The lot that Mr. Lanning
17 was talking about, Lot 4(A), went to Allan Manigault
18 and Lot 4(B) went to Herman Smalls, Junior. They
19 left out Larry's father. They were all the same line
20 of descent with regard to their mother, and they
21 completely left him out. That's why those plats were
22 questioned and why our quiet title action was filed
23 because they were unsalable. There was not good
24 title to them. That's why American Star also was a
25 Plaintiff in that lawsuit with Jonnie Mae Robinson

1 because it wasn't good title.

2 THE COURT: Was Joseph Smalls provided for in
3 the order or not?

4 MS. DeJONG: No. He was not provided for in
5 the order.

6 THE COURT: Was he named? Was he a named
7 Defendant?

8 MS. DeJONG: He was named as a Defendant but
9 there were no other or -- of the 20 Defendants -- was
10 never corrected with the Court -- they say he passed
11 away with no children.

12 THE COURT: Okay. And we find that Larry
13 Gregg is his son; is that what you're telling me?

14 MS. DeJONG: Yes. Again, it's their intent to
15 not let him make claim, and that's where the hostile
16 possession is taking place. He proved adverse
17 possession before the 2019 order because he was there
18 16 years before the Judge signed the order regarding
19 Lot 4(B).

20 THE COURT: Right. He claimed to go into
21 possession when? Was it --

22 MS. DeJONG: 1986.

23 THE COURT: 1986. Okay. And wasn't there
24 some sort of -- wasn't there a separate house or
25 something there at one time?

1 MS. DeJONG: There was another mobile home
2 that was owned by Herman Smalls, Junior. It was
3 added to the property, but Hurricane Hugo came
4 through and demolished it. I even found an
5 independent witness named Charles Gadsden, and he's
6 been a Mason for 42 years.

7 He came to my office and testified that that
8 mobile home was demolished by Hurricane Hugo and
9 eventually taken down and moved. So Herman Smalls
10 never came back to the property after 1989 after
11 Hurricane Hugo.

12 THE COURT: The mobile home was destroyed by
13 Hugo?

14 MS. DeJONG: Yes. My client's roof was taken
15 off and some of the framing that was attached to his
16 mobile home so he had to replace that damage.

17 THE COURT: All right. Very good. So that
18 helps me a lot. Let me do this: I'm going to review
19 you-all's records a little bit closer. I had a
20 chance to review the memoranda this morning, but I
21 didn't get through all of the exhibits. I have not
22 read all the testimony from the depositions. You-all
23 have helped me to crystalize this thing.

24 Like I said, I was sort of nodding my head as
25 to both parties' position relative to your briefs.

1 Let me take a good, hard look at it. It sounds like
2 something that maybe could be resolved at the summary
3 judgment stage, but I think it's going to depend, as
4 you-all have stated the questions for me -- how do
5 you view the question? Is there one of hostility or
6 one of possession? Can you give possession if you
7 don't have legal title?

8 I think that's the question that Ms. DeJong
9 has raised. How can you give permission when you
10 don't even own the property?

11 MS. DeJONG: Exactly.

12 THE COURT: And then you raised the other
13 issue of him actually being an heir that was omitted
14 from the lawsuit, so that's a different story
15 altogether. That would tend to -- my thinking is
16 that would tend to lead towards hostility.

17 Anyway, I'll take a look at those cases.
18 Hostility -- my recollection is when Knox v. Bogan
19 came out, that that sort of got people's attention,
20 and it changed sort of where we were looking at. It
21 might have been -- I think it was post Perry versus
22 Heirs of Gadsden that sort of changed the way the
23 Court was looking at hostility.

24 So let me -- I'll review some of the law, and
25 if I think I can decide it on summary judgment I will

1 try to do that for you. If not, I'll let you-all
2 know. I'll do that in the next 30 days or so. Okay?

3 MS. DeJONG: Thank you. We also have a
4 pretrial -- Mr. Lanning, I think we have a pretrial
5 meeting scheduled for after this motion. Do you want
6 to put that to the side?

7 THE COURT: Where do you-all stand? Are you
8 ready to go to trial if we need to go to trial? What
9 do we need to do?

10 MS. DeJONG: I'm still trying to depose
11 Defendant, Herman Smalls, III, and I haven't been
12 successful in that, and we still haven't done
13 mediation.

14 THE COURT: All right.

15 MS. DeJONG: But that's it.

16 THE COURT: Why don't you-all pursue those
17 issues and then -- just touch base with me in about
18 30 days and see where we stand. Would you-all do
19 that? If we need a pretrial, we'll do that. All
20 right?

21 MS. DeJONG: All right. Thank you very much.

22 MR. LANNING: Yes, sir. Thank you.

23 THE COURT: Good to see you. Bye-bye.

24 (The proceedings were concluded at 12:11 p.m.)
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State of South Carolina)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of April, 2022 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
March 17, 2031

EXHIBIT A

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT
JONNIE MAE ROBINSON, SHIRLEY R. MORRIS, ANNA L. GOODWINE, and AMERICAN STAR DEVELOPMENT SC, LLC. Plaintiffs.	CASE NO. 2016-CP10-6964
Vs.	
ALFREDA R. KETCHEN, MARIE GREEN, JOHN ROBINSON, ROSEZENA GREEN, HENRY GREEN, JR., DAVID GREEN, ISAAC GREEN, BLONDELL GREEN STEED, JOSEPH GREEN, JOSEPH SMALLS, ANNA L. GOODWINE, DEBORAH BRYANT, NATHANIEL BRYANT, HERMAN SMALLS, JOHN DOE, and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United States of America, imprisoned, and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributees, administrators, or personal representatives of deceased persons DAVID GREEN, ADELINE GREEN ROBINSON, JOHN ROBINSON, HENRY GREEN a/k/a HENRY GREEN SR., and HELEN GREEN SMALLS and all other persons or entities who claim any interest in or a lien upon the real estate which is the subject of this action., Defendants.	FINAL ORDER AFTER HEARING (Action to Quiet Title) 2019 MAR -4 AM 11:48 JULIE J. ARMSTRONG CLERK OF COURT FILED

This **Final Order After Hearing** (the "Order") results from a hearing held January 9, 2019, before the Honorable Mikell R. Scarborough, Charleston County Master-in-Equity, as a hearing on the merits of a Complaint filed by Plaintiffs Jonnie Mae Robinson, Shirley R. Morris, Anna L. Goodwine, and American Star Development SC, LLC, to quiet title to real property parcels located in Charleston County, South Carolina.

Procedural History

This matter was filed December 30, 2016, and the Proofs of Service and Affidavits of Service filed with the Clerk of Court confirm the Defendants were served with a Summons, Complaint, Lis Pendens, Notice Nisi, Ex Parte Motion for Appointment of Guardian ad litem, Order Appointing Guardian ad litem, Notice of Statutory Right of First Refusal, Notice of Intent to Refer, Affidavit in Support of Publication, and Order for Publication for this matter. Thereafter, a First Amended Complaint was filed on August 9, 2017. Pursuant to SCRCP Rule 53(e) and S.C. Code Section 14-11-60 and Order for Entry of Default and for Reference to Master filed March 19, 2018, this case was referred to the Master-in-Equity's Court to hear all issues arising in this action. That Order provided any appeal shall be to the South Carolina Supreme Court or South Carolina Court of Appeals, as appropriate. On November 21, 2018, a Notice of Hearing was duly served upon the parties stating the date, time, and place of the hearing and that Notice and a Proof of Service thereon were thereafter filed with this Court.

Parties, Jurisdiction, and Venue

Plaintiffs Jonnie Mae Robinson and Anna L. Goodwine are residents of Charleston County, South Carolina, and one or more of the Defendants reside in Charleston County. Moreover, the parcels of real property which are the subject matter of this action (collectively, the "Property") are located in Charleston County, South Carolina. Accordingly, this Court has personal jurisdiction over the interests of the parties in this action, in rem jurisdiction over the Property, and venue is proper because this matter involves a dispute over title to real property located wholly in Charleston County, SC. Plaintiff American Star Development SC, LLC ("American Star") is a party to this action because it has a Purchase and Sale Contract to buy some of the parcels constituting the Property.



Answers to the Complaint were filed in this matter by Angela Johnson, Esq. in her capacity as the court-appointed guardian *ad litem* and by David Pagliarini, Esq. in his capacity as attorney for Defendants Alfreda R. Ketchen (now known as, and hereafter referred to as, Alfreda Jamison), David Green, Blondell Green Steed, Hartwell Tomlin, Maybell Tomlin, Lavern Wise, Lamont Green, Izetta Shaw (sometimes known as Souvetta or Civetta Shaw), Antonio Green, Raymond Green, and Francena Polanco. No other appearances or answers were filed.

Appearances at Hearing

Plaintiffs Jonnie Mae Robinson, Shirley R. Morris, and Anna L. Goodwine and American Star Development SC, LLC (by and through its authorized member, Brian Harvin) appeared at the hearing along with their lawyer, Jamison Cox. Angela Johnson, Esq. appeared as guardian *ad litem* and David Pagliarini, Esq. appeared on behalf of his clients Alfreda Jamison, David Green, Blondell Green Steed, Hartwell Tomlin, Maybell Tomlin, Lavern Wise, Lamont Green, Izetta Shaw (a/k/a Souvetta Shaw or Civetta Shaw), Antonio Green, Raymond Green, and Francena Polanco. An attendance list was circulated among the persons who attended the hearing and retained by the Court.

Background Facts

The parcels comprising the Property are more particularly described in Exhibit "A", which is attached and made a part of this Order. The Property is located on David Green Road in an unincorporated area of the County, but near the Town of Mount Pleasant. The Property was purchased by David Green in 1926 and comprised approximately 9.75 acres. He died intestate in Charleston County, South Carolina in or about 1951. Mr. Green was survived by five (5) adult children, but his estate was not submitted to probate. The Property was subsequently subdivided



and deeded by and to various family members as set forth below. Plaintiffs filed this action quiet title to resolve any remaining questions about their respective parcels.

Testimony and Evidence

Plaintiffs' complaint was supported by sworn testimony of four (4) individuals and twenty (20) exhibits. Plaintiff Shirley R. Morris testified as to the David Green family tree, Plaintiff Jonnie Mae Robinson testified as to the title history of certain parcels presently titled in her name or the name of her sister, Plaintiff Shirley R. Morris. Thereafter, Plaintiff Anna L. Goodwine testified as to the title history of the parcel in her name. Defendant Nathaniel Bryant testified as to the title history of the parcel in his and his wife's (Deborah Bryant) names. Plaintiffs' twenty exhibits were comprised of various deeds and plats in the chain of title to the Property which were submitted into evidence.

No one offered testimony, exhibits, or arguments in opposition to the Plaintiffs. Defendant Larry Gregg addressed the Court and represented that he is a surviving son of Joseph Smalls (a deceased son of Helen Green Smalls). Mr. Gregg did not present sworn testimony and the Court responded to Mr. Gregg's representations as set forth below.

Findings of Fact and Conclusions of Law

Based on the pleadings filed in this matter, along with the testimony and exhibits presented at the hearing, I make the following Findings of Fact and Conclusions of Law:

1. The Property is in Charleston County, South Carolina and now consists of 9 parcels plus an access road as more particularly described in Exhibit "A", which is made a part of this Order. Accordingly, jurisdiction for this matter was properly set in Charleston County.

2. David Green purchased the Property in 1926 as evidenced by the deed recorded in the Charleston County Register of Deeds Office (the "ROD") in Deed Book D-35, Page 143. A copy of that deed was submitted without objection into this Court's record as Plaintiffs' Exhibit #1.

3. David Green died intestate in or about 1951 while residing in Charleston County. He was survived by his wife, Evelena, and their four (4) adult children, Henrietta Anna Lee Green Nelson, Henry Green, Elizabeth Green Tomlin, and Adelaide (incorrectly referred to in the caption as "Adeline") Green Robinson, as well as the three (3) children of a predeceased daughter, Helen Green Smalls. David Green's estate was not submitted to probate, but I find his heirs at law were his wife Evelena, his children Henrietta Lee Green Nelson, Henry Green, Elizabeth Green Tomlin, Adeline Green Robinson, and the heirs of his deceased daughter Helen Green Smalls, those being her widower, Herman Smalls, Sr., and her children Herman Smalls, Jr., Joseph Smalls, and Ellen Smalls Manigault.

4. David Green was followed in death by his widow, Evelena, who died intestate about 1960 while residing in Charleston County. Evelena Green's estate was not submitted to probate, but she did not remarry after David Green's death and she had no further children. Evelena Green was survived only by the five (5) branches mentioned above and as set forth in the Family Tree prepared by Plaintiffs and submitted without objection into this Court's record as Plaintiffs' Exhibit #2. Evelena Green's her heirs at law were her abovementioned children with David Green.

5. On June 21, 1979, the heirs of David Green recorded a plat in Plat Book AN, Page 74 (the "1979 Plat") which subdivided the Property into five (5) parcels of equal size (numbered Lot 1 through Lot 5) and created an access path which was named David Green Road (the "Road"). A



copy of the 1979 Plat was submitted without objection and accepted into this Court's record as Plaintiffs' Exhibit #3.

6. On November 26, 1979, five (5) deeds were recorded in the ROD in Deed Book T120, at Pages 200, 199, 198, 197, and 196 (the "1979 Deeds") by the surviving children of David Green along with the senior surviving issue of David Green's deceased children (Helen Green Smalls and Adelaide Green Robinson). Each deed conveyed one of the five lots created by the 1979 Plat to a member of each of the five branches of David Green's heirs. A copy of the five deeds were submitted without objection into this Court's record as Plaintiffs' Exhibits #4, 5, 6, 7, and 8. I find the five deeds constituted a voluntary partition-in-kind of the Property among the five branches of David Green's heirs with each branch receiving a 1/5th interest in the Property and an undivided ownership interest in David Green Road.

7. Specifically, the Property was partitioned among the five branches as follows:

(a) Elizabeth Green Tomlin branch-Lot #1: Elizabeth Green Tomlin was a surviving daughter of David and Evelena Green and therefore entitled to a 1/5th interest in the Property. She conveyed all her 1/5th interest in the Property to her son Michael Green by the 1979 Deed for Lot #1 as recorded in Deed Book T120 at Page 200. Michael Green thereafter conveyed all his interest in Lot #1 to Plaintiff Jonnie Mae Robinson by deed recorded in Deed Book H170 at Page 448 on November 10, 1987 and did so for the consideration recited in said deed. Thereafter, by plat recorded in Plat Book DC at Page 685 on February 16, 2001, Jonnie Mae Robinson subdivided Lot #1 into Lots 1A and 1C. Then, by deed recorded in Deed Book W367 at Page 121 on April 3, 2001, Jonnie Mae Robinson conveyed Lot 1C to Shirley R. Morris and Mrs. Morris has retained Lot 1C in her name. Thereafter, by plat recorded in Plat Book L09 at Page 0095 in February 2009,

Jonnie Mae Robinson subdivided Lot 1A into Lots 1A and 1B and has retained them in her name. Ms. Robinson has owned Lots 1A and 1B for more than twenty years and her use and ownership of those Lots has not been challenged. Likewise, Mrs. Morris has owned Lot 1C for more than 17 years and her use and ownership of that Lot has not been challenged.

(b) Adelaide Green Robinson branch-Lot #2: Adelaide Green Robinson was a daughter of David and Evelena Green, but she died intestate prior to the 1979 Deeds and was survived by her heirs at law, those being her husband John Robinson, and her adult children Plaintiff Jonnie Mae Robinson, Plaintiff Shirley R. Morris, Alfreda R. Ketchen, and Douglas Robinson. Adelaide Green Robinson's heirs at law, acting by and through Shirley R. Morris, Alfreda R. Ketchen, and Douglas Robinson, and with the actual knowledge and consent of Adelaide Green Robinson's widower, John Robinson, and her daughter Plaintiff Jonnie Mae Robinson, conveyed all their 1/5th interest in the Property in the form of Lot #2 to Alfreda Jamison (then known as Alfred R. Ketchen) by the 1979 deed recorded in Deed Book T120 at Page 199. Alfreda Jamison then subdivided her Lot #2 by the plat recorded in Plat Book AQ at Page 89 on July 21, 1980 to create Lots #2A and #2B. Thereafter, Alfreda Jamison retained Lot 2A in her name and conveyed Lot 2B to Plaintiff Jonnie Mae Robinson by deed recorded in deed Book 165 at Page 111 on June 8, 1987. Mrs. Jamison has lived on Lot 2A for more than twenty years, paid the taxes thereon, and her use and ownership of that Lot has not been challenged. Likewise, Mrs. Robinson has lived on Lot 2B for more than 10 years, paid the taxes thereon, and her use and ownership of that Lot has not been challenged.

(c) Henry Green branch-Lot #3: Henry Green was a son of David and Evelena Green but he died intestate in 1961, which was prior to the 1979 Deeds. Henry Green was survived by his widow, Marie Green, and his children Rosezena Green, Isaac Green, Joseph Green, David Green,

Henry Green, Jr., and Blondell Green Steed and they constituted Henry Green's heirs at law. The Henry Green heirs received their 1/5th interest in the Property in the form of Lot #3, which was deeded to Henry Green's widow, Marie Green, by 1979 deed recorded in Deed Book T120 at Page 197. Marie Green died intestate about 2001 and her estate was not submitted to probate. She did not remarry after Henry Green's death and her interest in the Property, as an heir of Henry Green, descended to her heirs at law, those being the abovenamed children she had with Henry Green.

(d) Helen Green Smalls branch-Lot 4: Helen Green Smalls was a daughter of David and Evelena Green but died intestate in 1940. Her estate was not submitted to probate, but she was survived by her widower, Herman Smalls, Sr., and her three children, Herman Smalls, Jr., Joseph Smalls, and Ellen Smalls Manigault and they constituted her heirs at law. Herman Smalls, Sr. died intestate in 1965 without remarrying or having other children and was survived by his children with Helen Green Smalls, the abovementioned Herman Smalls, Jr., Joseph Smalls, and Ellen Smalls Manigault. Joseph Smalls died intestate, unmarried, and with no children legally established; thus, leaving Herman Smalls, Jr. and Ellen Smalls Manigault as Joseph Smalls' heirs at law.¹ Ellen Smalls Manigault, acting for herself and Herman Smalls, Jr. as the heirs of Helen Green Smalls conveyed to herself all their 1/5th interest in the Property by the 1979 Deed for Lot 4 recorded in Deed Book T120 at Page 196. Then, again acting for herself and Herman Smalls, Jr., she subdivided Lot 4 by plat recorded in Plat Book BE at Page 50 on July 2, 1985 to create Lots 4A and 4B and by deeds recorded July 11, 1985, in Deed Book N146 at Pages 797 and 801, she conveyed Lot 4A to her daughter and son-in-law, Deborah Bryant and Nathaniel Bryant, and

¹ Defendant Larry Gregg represented to this Court that he and his three sisters are the children of Joseph Smalls, but acknowledged he had no birth certificate or other written evidence legally sufficient to prove his representation.

conveyed Lot 4B to her brother, Herman Smalls, Jr. Herman Smalls, Jr. died intestate and unmarried in 1985 and was survived by his 3 children, Herman Smalls III, Izetta Shaw (sometimes known as "Civetta" or "Souvetta" Shaw), and Lamont Green.

Deborah Bryant and Nathaniel Bryant have used and owned Lot 4A for more than twenty years, paid the taxes thereon, and their use and ownership has not been challenged.

I conclude Lot 4A is properly titled in the name of Deborah Bryant and Nathaniel Bryant. I also conclude Lot 4B should be titled in the name of the heirs of Herman Smalls, Jr., provided, however, my determination on Lot 4B makes no determination regarding as to who are the proper heirs at law of Herman Smalls, Jr., and is without prejudice to, the claims of Larry Gregg, if any, arising from any use or occupancy of Lot 4B.

(e) Henrietta Anna Lee Green Nelson-Lot 5: David and Evelena Green's surviving daughter, Henrietta Anna Lee Green Nelson was entitled to a 1/5th interest in the Property. She conveyed all her 1/5th interest in the Property in the form of Lot 5 to her daughter Anna L. Goodwine by the 1979 Deed recorded in Deed Book T120 at Page 198 and by corrective deed recorded in Deed Book H333 at Page 231. Anna L. Goodwine has used and owned Lot 5 for more than twenty (20) years, paid the taxes thereon, and her use and occupancy have not been challenged.

(f) David Green Road: The 1979 Plat included a dedication of the Road for public use, but ownership thereof has never been transferred to a government body. The Road is not paved and neither Charleston County nor the Town of Mount Pleasant have accepted the Road into their inventory of publicly maintained roads. Accordingly, I conclude the Road is privately owned in

undivided interests by the persons who own the Property as set forth above and they are responsible for its maintenance, but the Road is available for public use. I further find the Road is already subject to an easement for a municipal water line and by this Order the Road is made further available for creation, installation, and use of easements for other general utilities, including but not limited to sanitary sewer. An owner desiring to install utilities may contract to do so, including the granting of an easement therefor, provided, however, the cost of designing, installing, maintaining, and replacing the utilities shall be paid by the party(ies) desiring such utilities be installed or the utility owning such facilities. but any parcel owner desiring to connect to such utilities shall be responsible for the tap fees and extension fees or equivalents thereof as may be required to connect any such utility to the parcel owner's Lot.

Order

1. The foregoing Findings of Fact and Conclusions of Law are incorporated herein and this Order shall be interpreted pursuant to those Findings of Facts and Conclusions of Law.

2. Jonnie Mae Robinson is the sole owner of Lots 1A, 1B, and 2B as described in Exhibit "A" and fee simple title is quieted and confirmed in her name to the exclusion of all others; subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrance by the owner's consent or due process of law.

3. Shirley R. Morris is the sole owner of Lot 1C as described in Exhibit "A" and fee simple title is quieted and confirmed in her name to the exclusion of all others; subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrance by the owner's consent or due process of law.

4. Alfreda Jamison (formerly Alfreda R. Ketchen) is the sole owner of Lot 2A as described in Exhibit "A" and fee simple title is quieted and confirmed in her name to the exclusion of all others; subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrance by such owner's consent or due process of law.

5. The heirs of Henry Green and Marie Green are the owners of Lot 3 as described in Exhibit "A" and fee simple title is quieted and confirmed in their names to the exclusion of all others; subject however, to their obligation to undertake such processes as are required by law to determine the identity of such heirs and further subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrance by the owners' consent or due process of law.

6. Deborah Bryant and Nathaniel Bryant are the sole owners of Lot 4A as described in Exhibit "A" and fee simple title is quieted and confirmed in their names to the exclusion of all others; subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrance by such owners' consent or due process of law.

7. The heirs of Herman Smalls, Jr. are the owners of Lot 4B as described in Exhibit "A" and fee simple title is quieted and confirmed in their names; subject however to the claims, if any, of Larry Gregg with it being the obligation of the Herman Smalls, Jr. heirs and Larry Gregg to undertake such processes are required by law to determine their respective interests and claims to Lot 4B, and further subject, however, to the rights of any mortgagee or lien holder of public record having obtained such encumbrance by such owner's consent or due process of law.

8. Anna L. Goodwine is the sole owner of Lot 5 as described in Exhibit "A" and fee simple title is quieted and confirmed in her name to the exclusion of all others; subject, however, to the



rights of any mortgagee or lien holder of public record having obtained such encumbrance by the owner's consent or due process of law.

9. David Green Road is an access easement which is privately owned in undivided interests by the owners of the Property's parcels which abut David Green Road. This Road is not publicly maintained, but it is available for public use. The road path is already subject to an easement for water utility lines and owners of the parcels adjacent to David Green Road may further use the road path for the installation of other utilities, including but not limited to sanitary sewer. The cost of designing and installing the utilities shall be paid by the party(ies) desiring to make such utilities available, but any tap fees or extension fees or equivalents thereof shall be paid by the parcel owner desiring to connect to such utility.

10. All other parties are barred and forever divested of any right, title, interest, estate, claim, or lien of any kind in the Property except easements of public record.

11. This Court retains jurisdiction to make such other and further Orders as it believes reasonable or necessary.

AND IT IS SO ORDERED!

Dated: 2/27, 2019
Charleston, SC

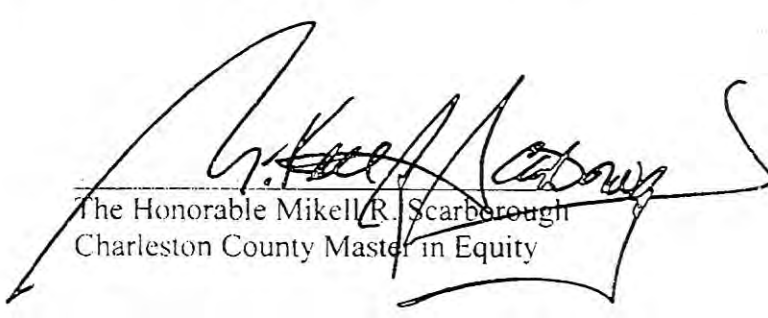

The Honorable Mikell R. Scarborough
Charleston County Master in Equity

Exhibit "A"

Legal Description of the Property

Lot 1A (TMS No. 561-00-00-073)

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 1A** on a plat titled "*Plat Of The Subdivision Of Lot 1 Containing 1 Acre Into Lots 1a And 1b Each Containing 0.50 Acre Owned By Jonnie Mae Robinson*" as drawn by E.M. Seabrook, Jr., Inc. Engineers-Surveyors", and recorded on or about February 27, 2009, in the Charleston County RMC Office in Plat Book L09 at Page 95

This is a portion of the same property conveyed to Grantor, Jonnie Mae Robinson, by deed of Michael Green recorded November 10, 1987, at Book H-170, Page 448, in the RMC Office for Charleston County, South Carolina

Lot 1B (TMS No. 561-00-00-596)

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 1B** on a plat titled "*Plat Of The Subdivision Of Lot 1 Containing 1 Acre Into Lots 1a And 1b Each Containing 0.50 Acre Owned By Jonnie Mae Robinson*" as drawn by E.M. Seabrook, Jr., Inc. Engineers-Surveyors", and recorded on or about February 27, 2009, in the Charleston County RMC Office in Plat Book L09 at Page 95

This is a portion of the same property conveyed to Jonnie Mae Robinson by deed of Michael Green recorded November 10, 1987, at Book H-170, Page 448, in the RMC Office for Charleston County, South Carolina

Lot 1C (TMS No. 561-00-00-161)

ALL that certain lot, piece, or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 1-C**, (Cluster) containing 0.59 acres, as shown on a plat of Hager E. Metts, Surveyor, PLS 4183, dated March 12, 1999, and revised August 10, 1999, April 28, 2000, July 7, 2000, and September 15, 2000, entitled "*Subdivision Plat Of Parcel 1-A Owned By Jonnie Mae Robinson Near Mt. Pleasant, Christ Church Parish, Charleston County, SC*" which plat was recorded in the RMC Office for Charleston County in Plat Book DC at Page 685 on February 16, 2001. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

This is the same property conveyed to Shirley R. Morris by Jonnie Mae Robinson by deed recorded a portion of the same property conveyed to Jonnie Mae Robinson by deed of Michael Green recorded November 10, 1987, at Book H-170, Page 448, in the RMC Office for Charleston County, South Carolina



Lot 2A (TMS No. 561-00-00-078)

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 2A** on that certain plat prepared by Forrest G. Calvert dated May 27, 1980, and recorded July 21, 1980 in the Charleston County RMC Office in Plat Book AQ at Page 89.

This is the same property conveyed to Alfreda R. Ketchen by deed of Elizabeth Tomlin, et. al. recorded October 26, 1979, in the Charleston County RMC Office in Book T-120 at Page 199.

Lot 2B (TMS No. 561-00-00-072)

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 2B** on that certain plat prepared by Forrest G. Calvert dated May 27, 1980, and recorded July 21, 1980 in the Charleston County RMC Office in Plat Book AQ at Page 89.

This is the same property conveyed to Jonnie Mae Robinson by deed of Alfreda R. Ketchen recorded June 8, 1987, in the Charleston County RMC Office in Book U-165 at Page 111.

Lot 3 (TMS No. 561-00-00-071)

ALL that certain lot piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 3** on that certain plat titled "*Division Of The Property Of David Green In Christ Church Parish*" as drawn by James F. Bennett, Surveyor, and recorded on June 21, 1979, in the Charleston County RMC Office in Plat Book AN at Page 74.

This is the same property conveyed to Marie Green by deed of Elizabeth Tomlin, et. al. recorded October 26, 1979, in the Charleston County RMC Office in Book T-120 at Page 197.

Lot 4A (TMS No. 561-00-00-070)

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 4-A** on that certain plat titled "*The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish*", prepared by James F. Bennett, Surveyor, and recorded July 2, 1985, in the Charleston County RMC Office in Plat Book BE at Page 50.

This is the same property conveyed to Deborah Bryant and Nathaniel Bryant by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 797.

Lot 4B (TMS No. 561-00-00-085)

ALL that certain lot, piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 4-B** on that certain plat titled "*The Subdivision of Lot 4 of the Property of David Green in Christ Church Parish*", prepared by James F. Bennett, Surveyor, and recorded July 2, 1985, in the Charleston County RMC Office in Plat Book BE at Page 50.

This is the same property conveyed to Herman Smalls by deed of Ellen Manigault recorded July 11, 1985, in the Charleston County RMC Office in Book N-146 at Page 801.

Lot 5 (TMS No. 561-00-00-053)

ALL that certain lot piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Lot 5** on that certain plat titled "*Division Of The Property Of David Green In Christ Church Parish*" as drawn by James F. Bennett, Surveyor, and recorded on June 21, 1979, in the Charleston County RMC Office in Plat Book AN at Page 74.

This is the same property conveyed to Anna L. Goodwine by deed of Henrietta Nelson recorded October 2, 1990, in the Charleston County RMC Office in Book T-197 at Page 788.

Access Easement – David Green Road (No TMS)

ALL that certain lot piece, or parcel of land, situate, lying, and being in Christ Church Parish, County of Charleston, South Carolina, known and designated as **Ingress and Egress Easement 50' Wide 1.33 Acres** on that certain plat titled "*Division Of The Property Of David Green In Christ Church Parish*" as drawn by James F. Bennett, Surveyor, and recorded on June 21, 1979, in the Charleston County RMC Office in Plat Book AN at Page 74.

This is a portion of the same property conveyed to David Green by deed of Henry Green recorded on or about November 4, 1929, in the Charleston County RMC Office in Book D-35 at Page 143.

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

v.

HERMAN SMALLS, III, IZETTA SHAW
aka SYVETTA SMALLS, JOHN DOE and
JANE DOE, as fictitious names for a class of
unknown persons being incompetents, minors,
persons in military service to the United State
of America, imprisoned, and and/or under any
other form of legal disability, including but
not limited to unknown heirs, devisees,
distributes, administrators, or personal
representative so deceased persons HERMAN
SMALLS, JR. and LAMONT GREEN and all
other persons known or appear of record to
have some right, title, interest in or lien upon
the real estate described in the complaint
herein,

Defendants.

**AFFIDAVIT OF PLAINTIFF LARRY
GREGG IN SUPPORT OF HIS MOTION
FOR SUMMARY JUDGMENT**

(Action to Quiet Title)
(Adverse Possession)

I, LARRY GREGG, do hereby swear as follows:

1. I am 62 years old and I have lived at 2229 David Green Road, Mount Pleasant, SC since 1986.

2. In 1986, I was residing in a trailer on rented property in Mount Pleasant, South Carolina on Route 17 and Six Mile Road. This property is currently owned by Dominion formerly known as SCE&G.

3. In 1986, my uncle, Herman Smalls, Jr. invited me to live on Lot 4B, David Green Road, Mt. Pleasant, SC and I moved my trailer to this property. Neither of us had a deed to this property.

4. Herman Smalls, Jr. was my uncle and he lived in New York all of his life. Approximately twice a year, he would come down to visit and stay for a week or so at his mobile home on Lot 4B.

5. In September, 1989, Hurricane Hugo came through and destroyed my uncle's mobile home. My home was also damaged, including the framing for the addition that I was making to the home to expand its' width. **See Photos of My Home the Day after Hurricane Hugo attached as Exhibit A.**

6. After the hurricane, Herman Smalls, Jr. never returned to the property and eventually, the remains of the mobile home torn down and removed from the property. **See Photos of Vacant Land where Herman Smalls, Jr.'s Mobile Home used to be Located as Exhibit B.**

7. Mr. Smalls' children, Defendants Herman Smalls, III, Izetta Shaw a/k/a Syvetta Smalls and Lamont Green never stayed on the property as there was no place for them to stay.

8. Herman Smalls, Jr. passed away in 2005 in New York State.

9. Prior to Mr. Smalls' death, I had added on three rooms to my mobile home and I had added a roof. **See Photo of Improvements before 2005 as Exhibit C.**

10. Since Mr. Small's death, I have built a front porch deck addition, back porch deck addition, fireplace with chimney, separate garage, and a shed. **See Photos of Improvements after 2005 as Exhibit D.**

11. At no time has any of the Defendants, including Herman Smalls, Jr., Syvetta Shaw, Herman Smalls, III or Lamont Green, ever help pay for or assist in the construction and installation of the improvements that I have made upon Lot 4B.

12. In December, 2016, my third cousin, Jonnie Mae Robinson, filed a lawsuit to quiet title for all the heirs property on David Green Road, including my property, Lot 4B. At the merits hearing on January 9, 2019, I spoke to the Judge Scarborough about my claim to Lot 4B. The Judge then ordered the division of property to the rightful owners except for Lot 4B.

13. On Page 11 of the Order filed on March 4, 2019, Judge Scarborough ruled that "the heirs of Herman Smalls, Jr. are the owners of Lot 4B....., subject however to the claims, if any, of Larry Gregg with it being the obligation of the Herman Smalls, Jr. heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot 4B...".

14. On May 7, 2019, I hired Karen M. DeJong as my attorney and she filed an Adverse Possession Complaint for me with regard to my claim to Lot 4B.

Dated: 6/15/2021

Larry Gregg
LARRY GREGG
Plaintiff

Sworn to before me this 15th
Day of June, 2021.

Sarah Chubb
Notary of S.C.

My Commission Expires: July 8, 2025

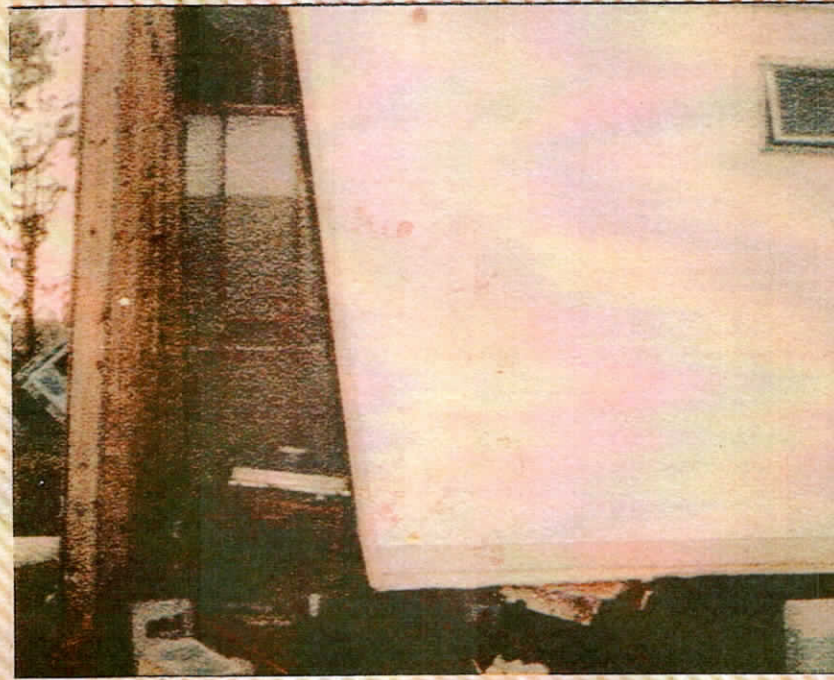


EXHIBIT A

EXHIBIT A



THE back
of the trailer
with the trailer
turn off the
the back of
gone



the left
viewing of
the house



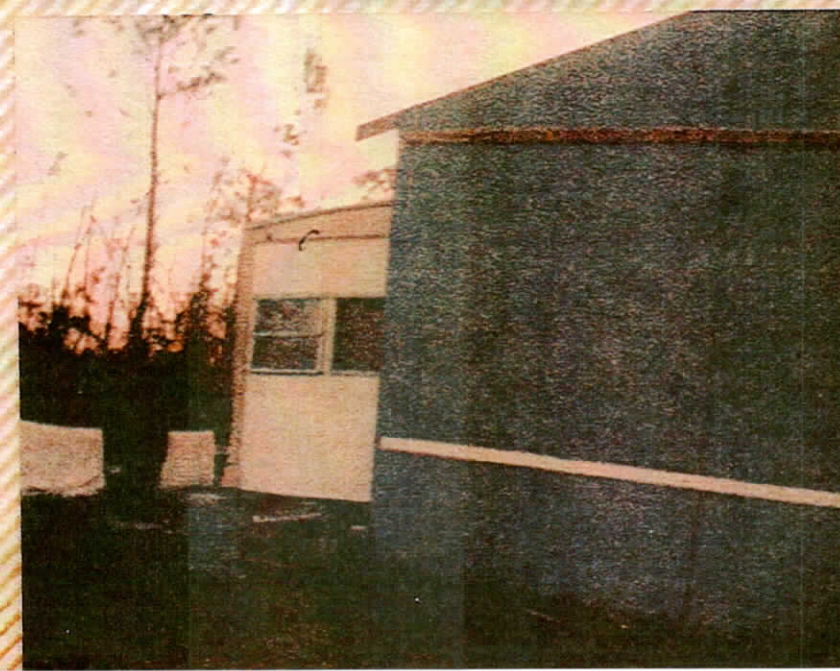
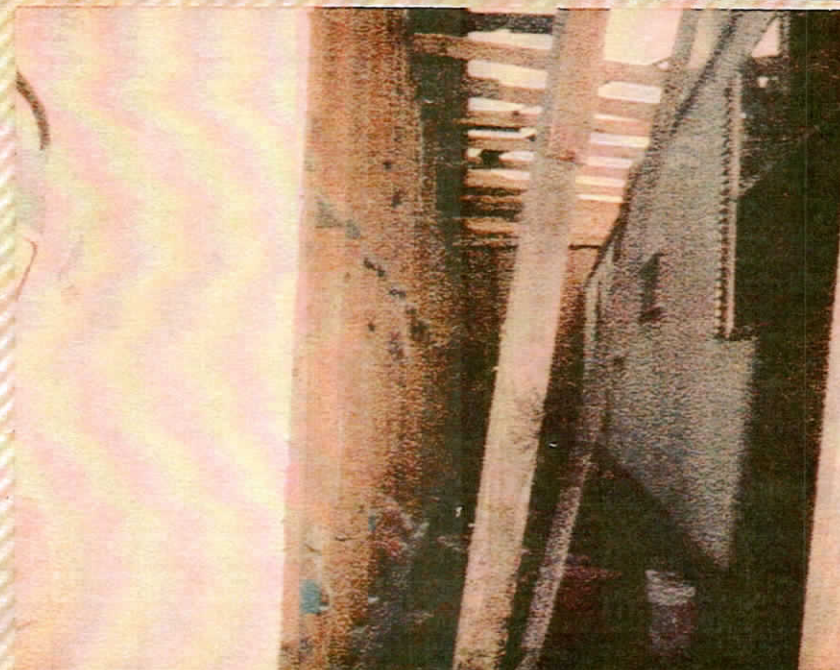
THE back of
the house
was
turn off

my home
9-22-1999

6881 1st Ave
Spartanburg SC 29176

HURRICANE Hugo

my home
9-22-1989

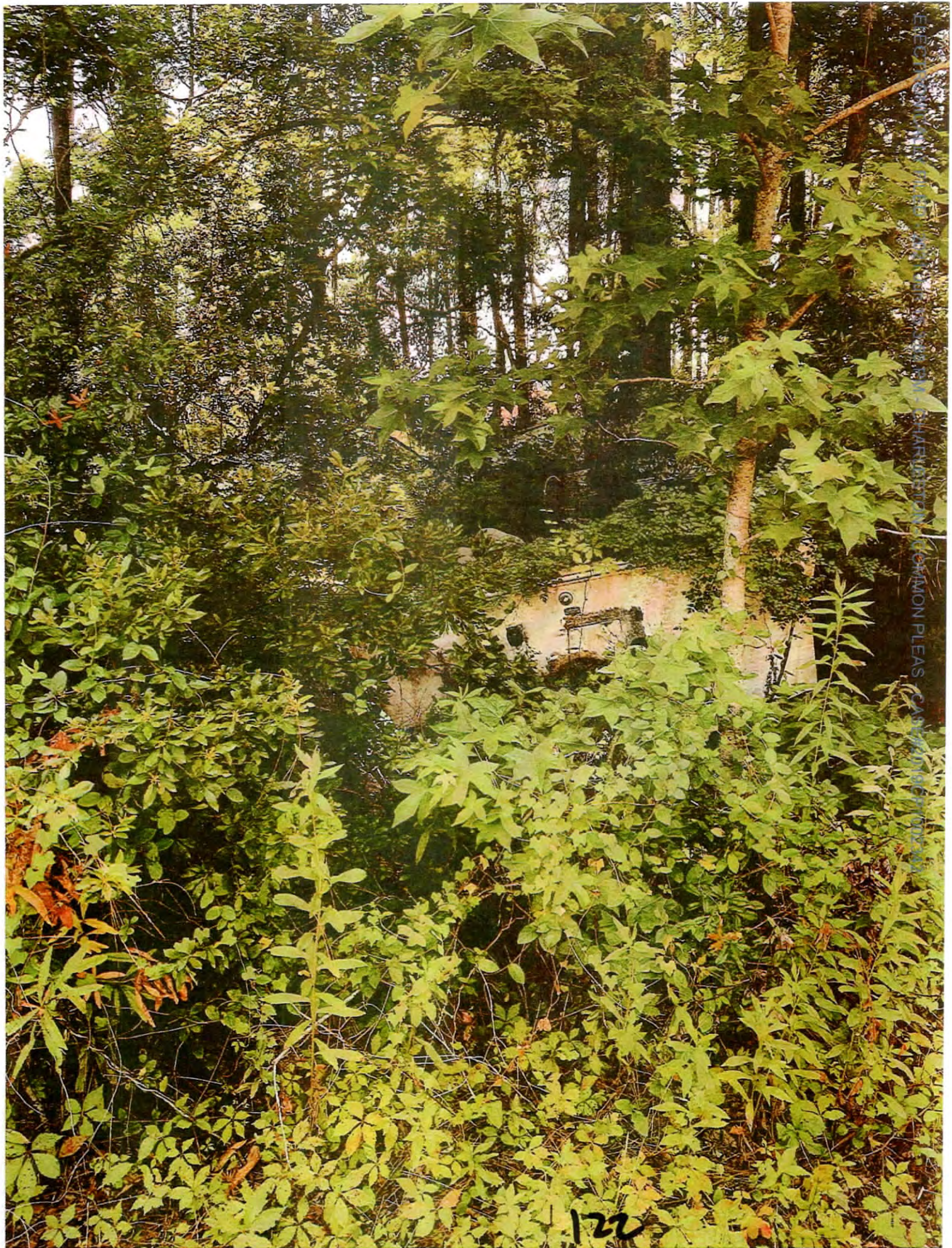


As you can see how the storm shifted the new part of the house away from the trailer about 3 feet

this was the house with the trailer inside

EXHIBIT B

121



EMERALD MOUNTAIN NATURE CENTER
CHARLESTON COMMON PLEAS

122



ELECTRONIC JOURNAL OF TAXONOMY, VOL. 13, 53 PAGES, CHARLESTON, COMMON PLEASANCE, MARCH 2016

123

Horizontal Smilax in the forest used to be here

ELECTRONICALLY FILED: 2021 Jun 15 10:08 AM EST BY: JAMES W. HARRIS, JR., CLERK OF SUPERIOR COURT



124

How many small to trailer used to be here

EXHIBIT C

125



David Green Rd

120

PHOTOGRAPH BY CHARLTON COMMONWEALTH REAL ESTATE

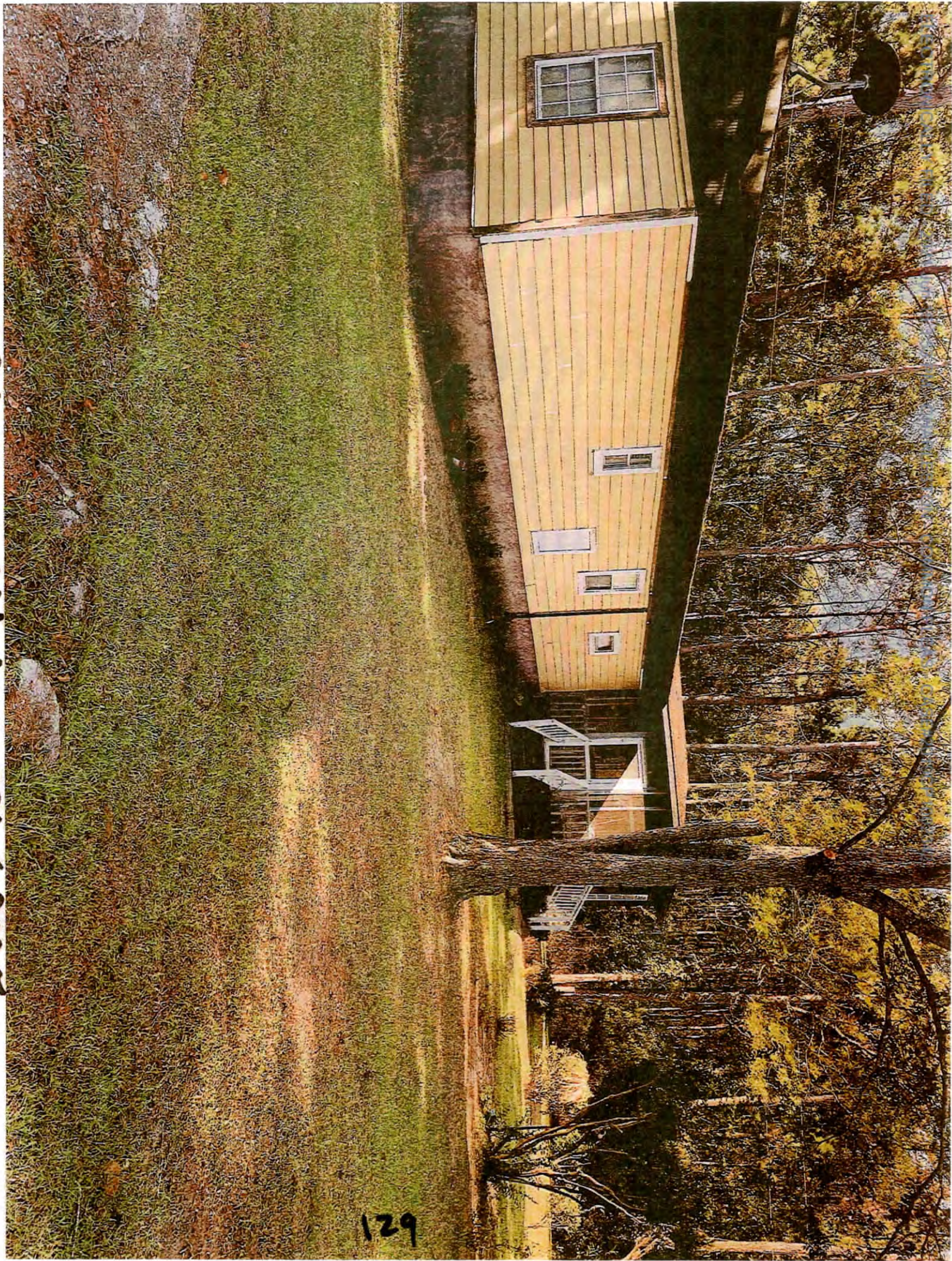
roof built
before 2005

Addition
built 2005
before it

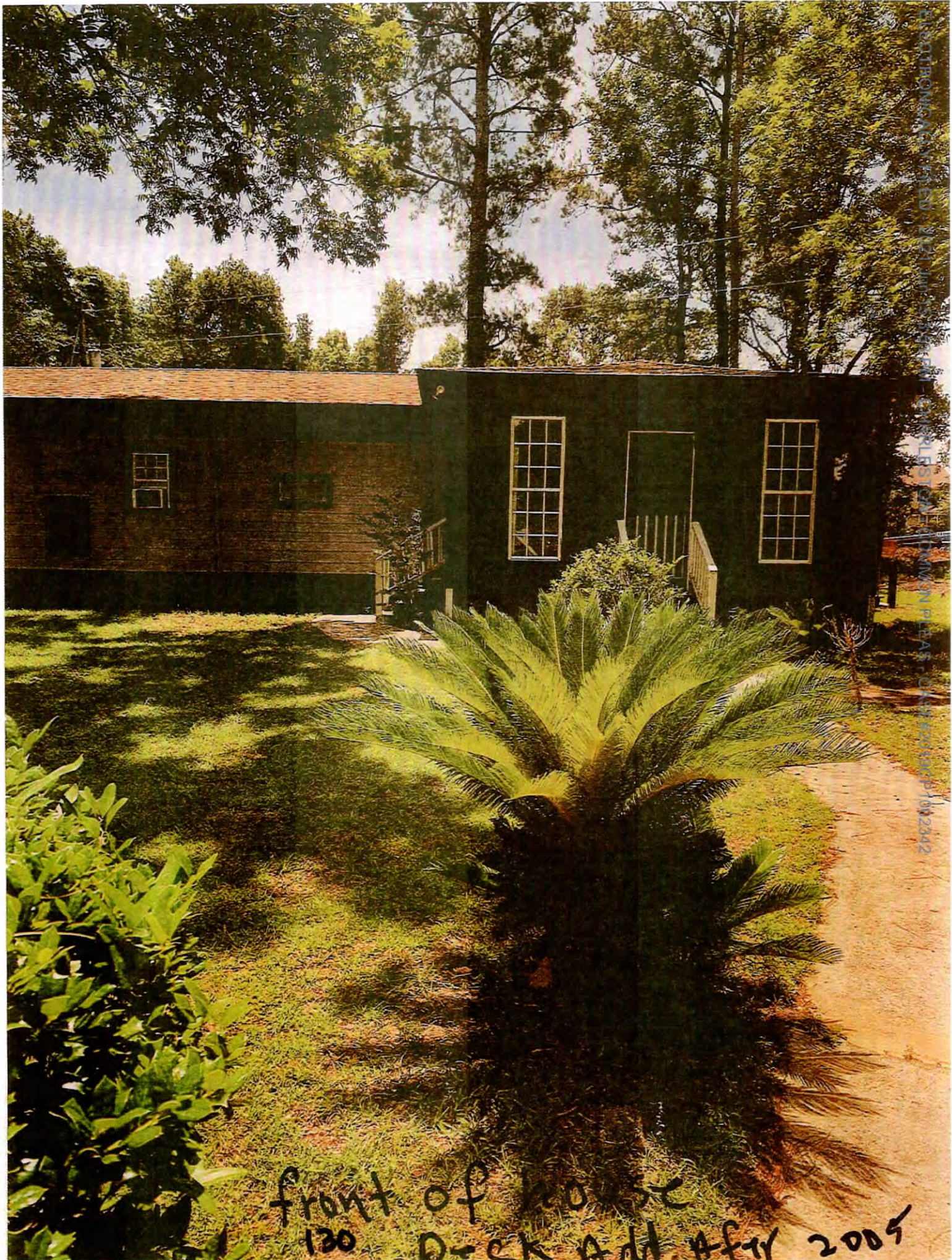
EXHIBIT D

128

TRAILER HOUSE AND DRIVE ROAD

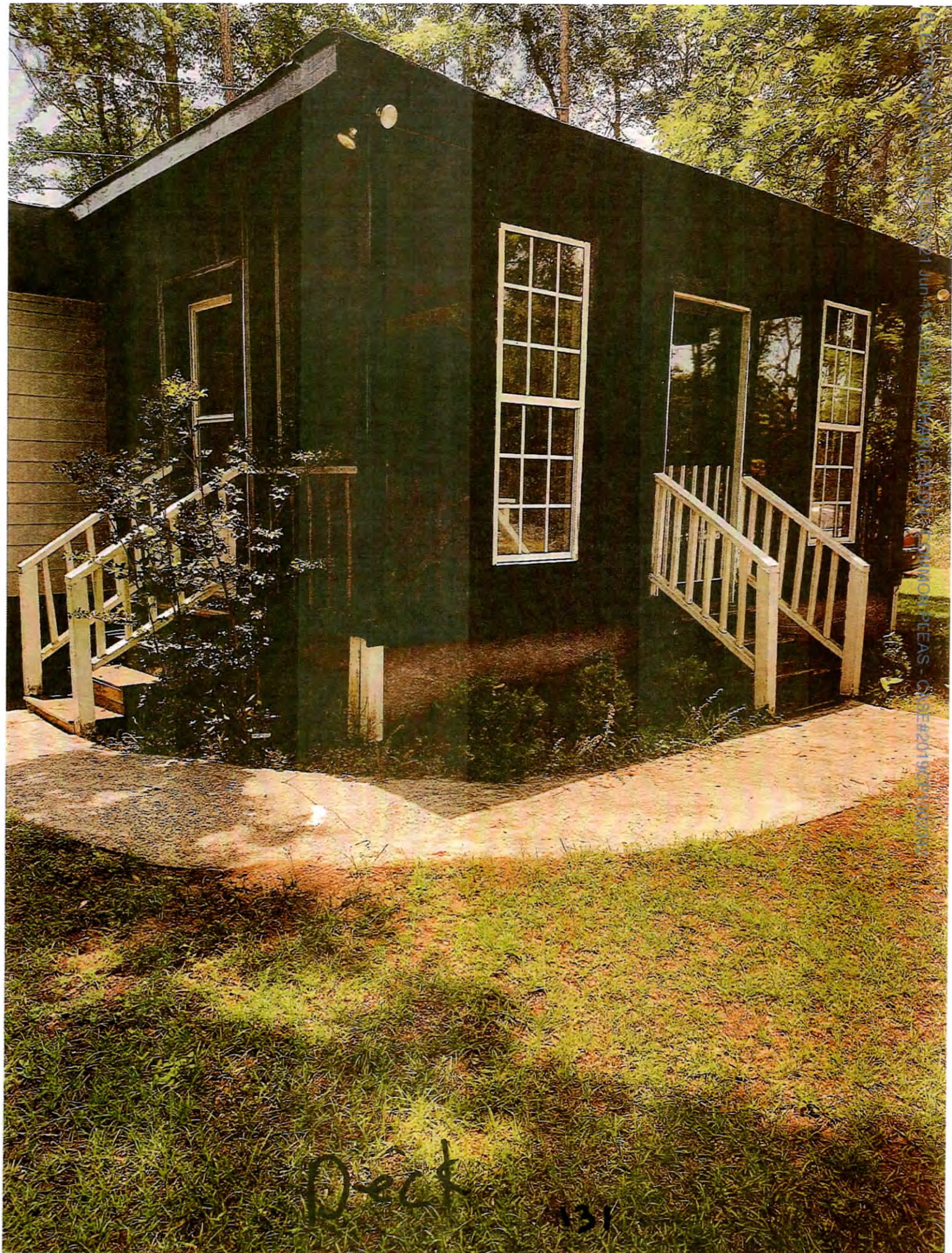


129



ELECTRONICALLY FILED WITH THE CLERK OF SUPERIOR COURT IN AND FOR THE COUNTY OF HAWAII, HONOLULU, HAWAII

front of house
130 Deck Add After 2005



Deck 131



ELECTRONICALLY FILED: 2021 JUN 23 3:53 PM - CHARLOTTE - COMMON PLEAS - CASE# 2019CV002246

132

back of house Deck After 2005



FILED - 2021 JUN 15 3:53 PM - CHARLESTON - COMMON PLEAS CASE#2019CP1002342

133
back of Deck after 2005
with built fire place



ELECTRONICALLY FILED - 2021 JUN 17 3:53 PM - CHARLESTON - COMMON FILE AS CAS 202106170000000000

Garage built after 2005

134



ELECTRONICALLY FILED - 2021 JUN 12 3:53 PM - CHARLESTON - COMMON PLEAS - CASE# 2019CV000240

135

back of house deck after 2006



FILED ELECTRONICALLY FILED - 2023 JUN 15 3:53 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002242

136
back of Deck after 2005
with built fire place

ELECTRICALLY FILED - 2021 JUN 15 3:52 PM - CHARLESTON COUNTY PLAS. CASE# 2019-00000000000000000000



Garage built after 2005

137



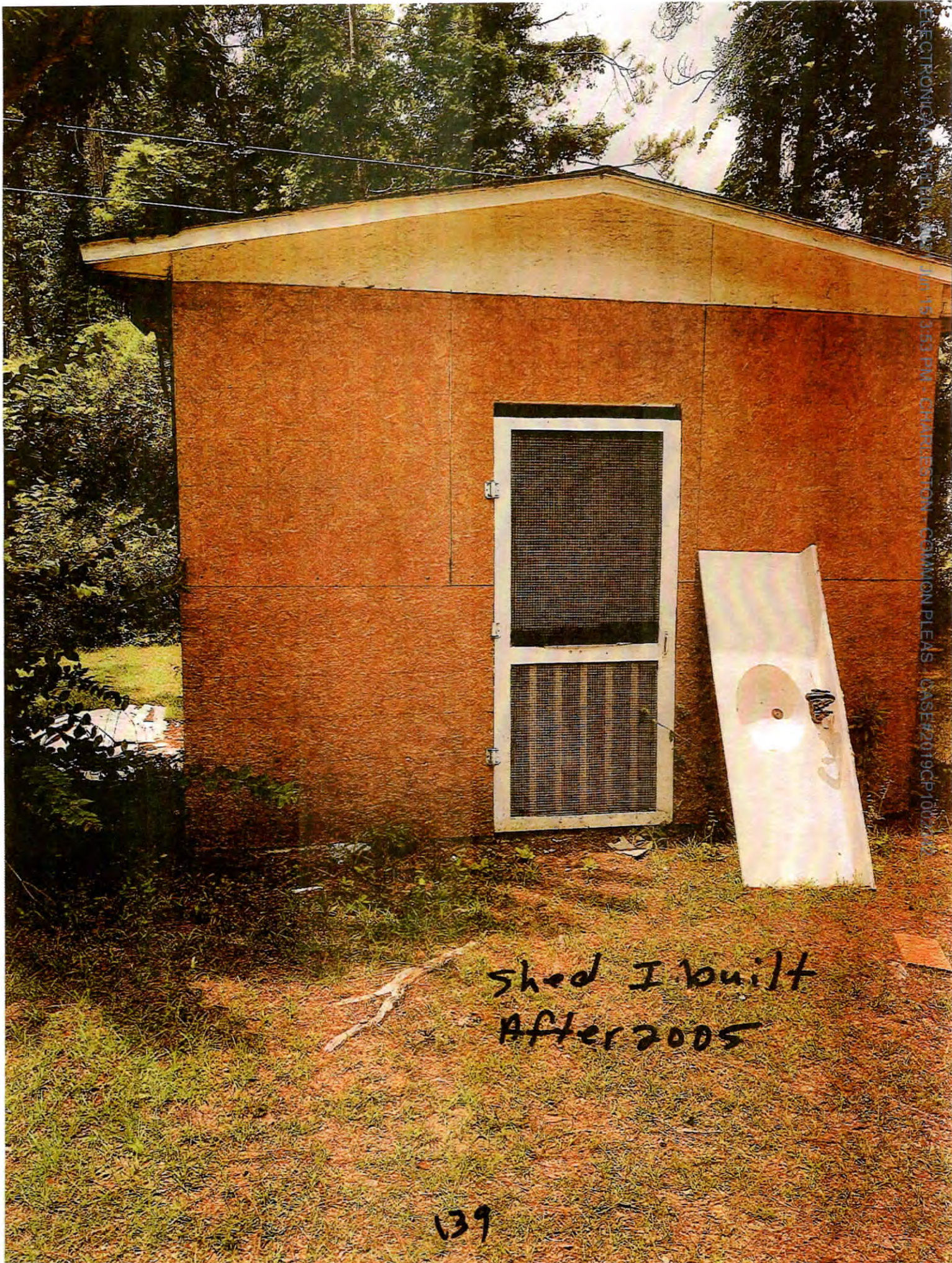
PHOTO TAKEN BY: FBI, FD-2021 Jun 15 3:53 PM - CHARLESTON - EQUINUM PLEAS - CASE#2019011001142



Home

Garage

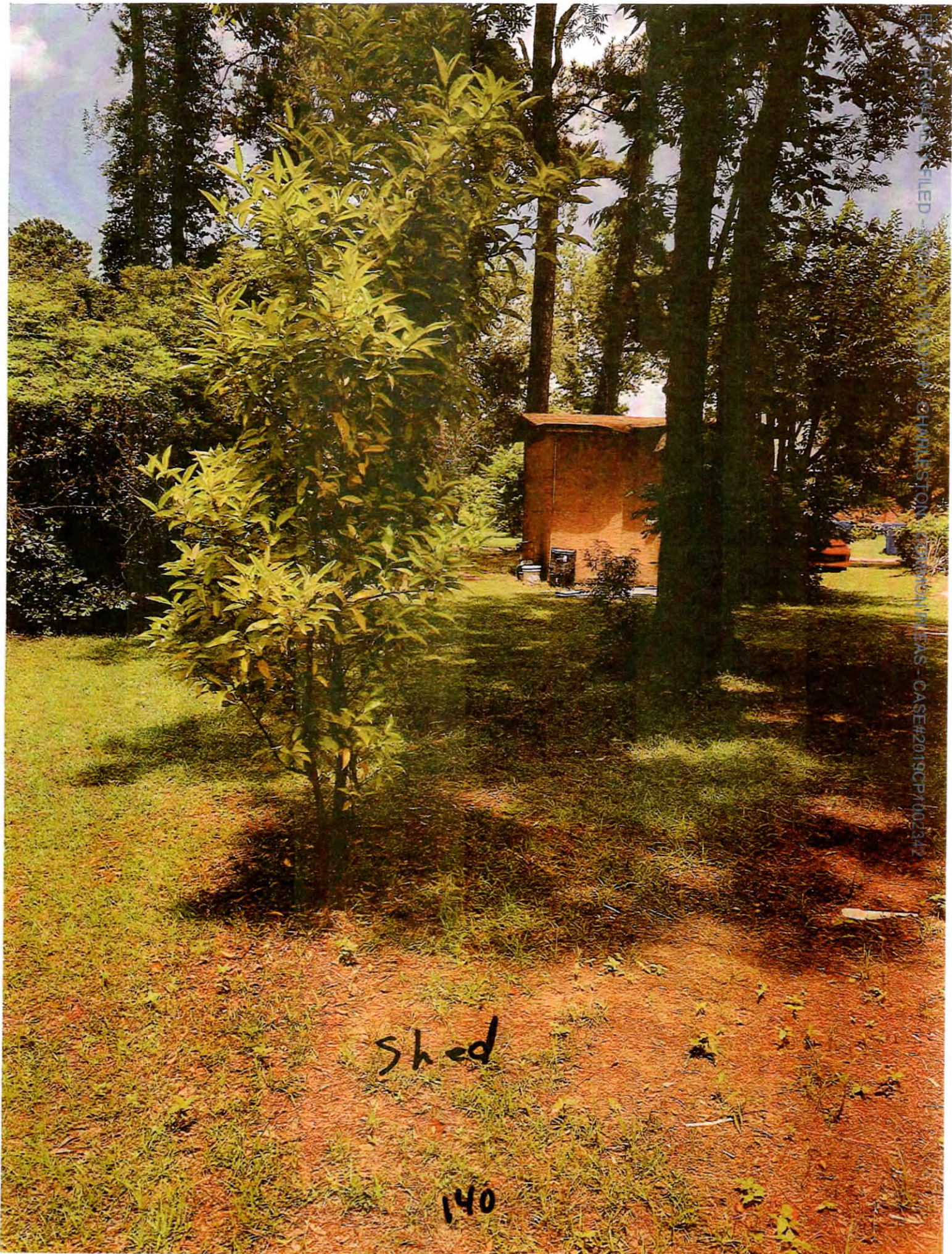
131



ELECTRONIC... JAN 19 3:53 PM - CHURCHSTON - COMMON PLEAS - CASE#2019CP100242

Shed I built
after 2005

139



FILED - 10:43 AM - CHARLESTON, SOUTH CAROLINA - CASE#2019CP1002342

Shed

140

EXHIBIT 2

EXHIBIT 2

141

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

**AFFIDAVIT OF CHARLES GADSDEN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

CHARLES GADSDEN personally appeared before me, the undersigned Notary Public for South Carolina, and after being duly sworn, he deposed and stated as follows:

1. Plaintiff, Larry Gregg's grandmother, Louise Gregg, and my grandfather, Oliver Floud, were sister and brother.
2. I am 79 years and I have lived at 1194 Venning Road, Mount Pleasant, SC my whole life except for the two years that I spent in the military. I have personally known Larry Gregg since he was a teenager.
3. Before Hurricane Hugo in September, 1989, I know that Larry Gregg moved his home from a trailer park on Route 17 and Six Mile Road to David Green Road, Mount Pleasant, SC, where he still resides.

4. At the time Larry Gregg moved onto the David Green Road property, Herman Smalls, Jr. had a mobile home next to Larry on the land.

5. I knew Herman Smalls, Jr. (Larry's Gregg's uncle) because I would visit with the Green family and he would be there as well.

6. Right after Hurricane Hugo, I went to David Green Road to make sure that the Green family and Larry Gregg were okay.

7. I am retired but I was a brick mason for 43 years and I have been on many construction sites in the Charleston/Berkeley County areas.

8. I saw the destruction caused by Hurricane Hugo on David Green Road. Based upon my knowledge and experience, Herman Smalls, Jr.'s mobile home was demolished and unlivable after Hurricane Hugo. The trailer's walls were caved in and the winds had torn the trailer from its' frame and pushed away from Larry Gregg's property.

9. I have visited with Larry Gregg many times since he has lived on David Green Road.

10. Herman Smalls, Jr. never repaired the mobile home and never lived on the property after September, 1989. At some point, the mobile home was torn up and removed from the property.

11. I have never seen anyone live on the property for the last 31 years except for Larry Gregg.

12. With regard to Larry Gregg's mobile home, he began to make improvements on it before Hurricane Hugo, including adding on rooms. After Hurricane Hugo, he had to make repairs to the additions and the roof as well.

13. Since that time, I have seen improvements made to the property by Larry Gregg. In addition to replacing the damaged roof with a new roof, Larry Gregg finished adding on the rooms, installed a garage, concrete walkway, storage shed and other improvements on the land.

Charles Gadsden
CHARLES GADSDEN

Sworn to before me this 14th day of June, 2021

Sarah Chubb
Notary of South Carolina

My Commission Expires: *July 8th 2025*



EXHIBIT 3

EXHIBIT 3

144

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS)
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342)
3 LARRY GREGG,))
4 Plaintiff,))
5 v.) VIDEOCONFERENCE)
6 HERMAN SMALLS, III,) DEPOSITION OF:)
7 IZETTA SHAW A/K/A SYVETTA) SYVETTA SMALLS)
8 SMALLS, JOHN DOE AND JANE))
9 DOE, AS FICTITIOUS NAMES))
10 FOR A CLASS OF UNKNOWN))
11 PERSONS BEING))
12 INCOMPETENTS, MINORS,))
13 PERSON IN MILITARY))
14 SERVICE TO THE UNITED))
15 STATES OF AMERICA,))
16 IMPRISONED, AND/OR UNDER))
17 ANY OTHER FORM OF LEGAL))
18 DISABILITY, INCLUDING BUT))
19 NOT LIMITED TO UNKNOWN))
20 HEIRS, DEVISEES,))
21 DISTRIBUTES,))
22 ADMINISTRATORS, OR))
23 PERSONAL REPRESENTATIVES))
24 OF DECEASED PERSONS))
25 HERMAN SMALLS, JR. AND))
LAMONT GREEN AND ALL))
OTHER PERSONS KNOWN OR))
APPEAR OF RECORD TO HAVE))
SOME RIGHT, TITLE,))
INTEREST IN OR LIEN UPON))
THE REAL ESTATE DESCRIBED))
IN THE COMPLAINT HEREIN,))
Defendants.))

21 Given before Sabre Bridgers, Court Reporter and
22 Notary Public, via Zoom Videoconference, Okatie,
23 South Carolina on Monday, April 19, 2021 commencing
24 at 1:15 o'clock p.m.

25 SDB Job # 202122

Sabre D. Bridgers
Court Reporter & Notary Public
(843) 540-5716
sabrebridgers@gmail.com

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APPEARANCES

FOR PLAINTIFF:

DeJong Law Firm, LLC
BY: Karen DeJong
222 West Coleman Boulevard
Suite 110
Mt. Pleasant, SC 29464-5652
(843) 216-6161
Karen@dejonglawfirm.com

FOR DEFENDANT

Brush Law Firm
BY: J. Christopher Lanning
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
Clanning@brushlawfirm.com

ALSO PRESENT: Larry Gregg

1 trailer there. Larry came afterwards.

2 Q. Okay. So I'm just trying to get a ballpark of
3 what year this was. Was it prior to your father's
4 death?

5 A. Oh. Yes. Yes.

6 Q. And has Larry Gregg lived on that property in the
7 trailer ever since?

8 A. He's still currently there.

9 Q. Did Larry have permission to live on Lot 4-B?

10 A. Yes, from my father.

11 Q. Then after your father's death did he have
12 permission to live on Lot 4-B?

13 A. Well, my father died so I didn't see a need to do
14 anything until this lawsuit came up.

15 Q. Which? This lawsuit that we're here for today?

16 A. Yes.

17 Q. Have you ever tried to enter Lot 4-B and talk to
18 Larry Gregg?

19 A. When I came to South Carolina I would stay at my
20 father's trailer or I would stay at relatives'
21 trailer. I didn't go to Larry's trailer.

22 Q. Did you have the keys to Larry Gregg's trailer?

23 A. Oh. Absolutely not.

24 (Technical interruption.)

25 A. Excuse me?

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STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF BEAUFORT)

I, Sabre Bridgers, Court Reporter and Notary Public, certify that I did have LARRY GREGG to appear before me via Zoom Videoconference at 1:50 o'clock p.m. on Monday, April 19, 2021, Okatie, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 10th day of May, 2021.

Sabre D. Bridgers
Notary Public for South Carolina
My Commission Expires: January 17, 2030

Sabre D. Bridgers
Court Reporter & Notary Public
(843) 540-5716
sabrebridgers@gmail.com

148

EXHIBIT 4

EXHIBIT 4

149

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
3 LARRY GREGG,)
4 Plaintiff,)
5 v.) VIDEOCONFERENCE
6 HERMAN SMALLS, III,) DEPOSITION OF:
7 IZETTA SHAW A/K/A SYVETTA) LARRY GREGG
8 SMALLS, JOHN DOE AND JANE)
9 DOE, AS FICTITIOUS NAMES)
10 FOR A CLASS OF UNKNOWN)
11 PERSONS BEING)
12 INCOMPETENTS, MINORS,)
13 PERSON IN MILITARY)
14 SERVICE TO THE UNITED)
15 STATES OF AMERICA,)
16 IMPRISONED, AND/OR UNDER)
17 ANY OTHER FORM OF LEGAL)
18 DISABILITY, INCLUDING BUT)
19 NOT LIMITED TO UNKNOWN)
20 HEIRS, DEVISEES,)
21 DISTRIBUTES,)
22 ADMINISTRATORS, OR)
23 PERSONAL REPRESENTATIVES)
24 OF DECEASED PERSONS)
25 HERMAN SMALLS, JR. AND)
LAMONT GREEN AND ALL)
OTHER PERSONS KNOWN OR)
APPEAR OF RECORD TO HAVE)
SOME RIGHT, TITLE,)
INTEREST IN OR LIEN UPON)
THE REAL ESTATE DESCRIBED)
IN THE COMPLAINT HEREIN,)
Defendants.)

21 Given before Sabre Bridgers, Court Reporter and
22 Notary Public, via Zoom Videoconference, Okatie,
23 South Carolina on Monday, April 19, 2021 commencing
24 at 1:50 o'clock p.m.

25 SDB Job # 202122

Sabre D. Bridgers
Court Reporter & Notary Public
(843)540-5716
sabrebridgers@gmail.com

150

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APPEARANCES

FOR PLAINTIFF:

DeJong Law Firm, LLC
BY: Karen DeJong
222 West Coleman Boulevard
Suite 110
Mt. Pleasant, SC 29464-5652
(843) 216-6161
Karen@dejonglawfirm.com

FOR DEFENDANT

Brush Law Firm
BY: J. Christopher Lanning
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
Clanning@brushlawfirm.com

ALSO PRESENT: Syvetta Smalls

1 A. No, sir.

2 Q. I don't have any further questions. Thank you,
3 Mr. Gregg?

4 A. Thank you.

5 (Technical interruption.)

6 MR. LANNING: We can't hear you, Karen.

7 MS. DEJONG: Can you hear me now?

8 MR. LANNING: Yeah, that's better.

9 MS. DEJONG: All right. I just have a
10 couple of follow-up questions.

11 **CROSS EXAMINATION BY MS. DEJONG:**

12 Q. Mr. Gregg, you said that you had moved onto the
13 property between 1985 and 1986; correct?

14 A. Yes.

15 Q. Mr. Gregg, you said you had moved on the property
16 between 1985 to 1986. Have you lived on that property
17 ever since?

18 A. Before 1985?

19 Q. No. From 1985 or '86 until now have you lived on
20 the property?

21 A. Yes.

22 Q. That's approximately 35 years; correct?

23 A. Yes.

24 Q. When Mr. Lanning was talking about Herman Smalls
25 and the trailer we're talking about Syvetta's father,

1 that Herman Smalls?

2 A. Yes.

3 Q. And is Herman Smalls' trailer still on the
4 property?

5 A. No, ma'am.

6 Q. And what happened to that trailer?

7 A. When Hurricane Hugo came through in 1989 it
8 demolished the trailer right then and there.

9 Q. All right. And what did Mr. Herman Smalls do
10 after he lost the trailer?

11 A. After Herman Smalls lost the trailer I can't
12 recall that he came back to South Carolina. I just
13 can't recall that.

14 Q. All right. One final question: Do you have
15 written permission to stay on the property from either
16 Syvetta Smalls, Herman Smalls, III, or Lamar?

17 A. No, ma'am.

18 MS. DEJONG: I don't have any further
19 questions.

20 MR. LANNING: I don't have any further
21 questions.

22 (Deposition concluded at 2:18 p.m.)
23
24
25

EXHIBIT A
LARRY GREGG DEPOSITION

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
 3 LARRY GREGG,)
 4 Plaintiff,)
 5 v.) VIDEOCONFERENCE
 6 HERMAN SMALLS, III,) DEPOSITION OF:
 7 IZETTA SHAW A/K/A SYVETTA) LARRY GREGG
 8 SMALLS, JOHN DOE AND JANE)
 9 DOE, AS FICTITIOUS NAMES)
 10 FOR A CLASS OF UNKNOWN)
 11 PERSONS BEING)
 12 INCOMPETENTS, MINORS,)
 13 PERSON IN MILITARY)
 14 SERVICE TO THE UNITED)
 15 STATES OF AMERICA,)
 16 IMPRISONED, AND/OR UNDER)
 17 ANY OTHER FORM OF LEGAL)
 18 DISABILITY, INCLUDING BUT)
 19 NOT LIMITED TO UNKNOWN)
 20 HEIRS, DEVISEES,)
 21 DISTRIBUTES,)
 22 ADMINISTRATORS, OR)
 23 PERSONAL REPRESENTATIVES)
 24 OF DECEASED PERSONS)
 25 HERMAN SMALLS, JR. AND)
 LAMONT GREEN AND ALL)
 OTHER PERSONS KNOWN OR)
 APPEAR OF RECORD TO HAVE)
 SOME RIGHT, TITLE,)
 INTEREST IN OR LIEN UPON)
 THE REAL ESTATE DESCRIBED)
 IN THE COMPLAINT HEREIN,)
 Defendants.)

21 Given before Sabre Bridgers, Court Reporter and
 22 Notary Public, via Zoom Videoconference, Okatie,
 23 South Carolina on Monday, April 19, 2021 commencing
 24 at 1:50 o'clock p.m.

25 SDB Job # 202122

Sabre D. Bridgers
 Court Reporter & Notary Public
 (843) 740-5776
 sabre@intertec.com

1 to Exhibit B, Ms. Bridgers? Thank you.
2 Q. And this is Exhibit B. Do you see this, Mr.
3 Gregg?
4 A. Yeah, I see it. It says -- it says "Lot 4-B" and
5 some letters above that, acres or something, eight.
6 Q. Okay.
7 A. 0.80 acres.
8 Q. Right.
9 A. Yeah, I see that.
10 Q. Okay. So, this is Lot 4-A and Lot 4-B is
11 depicted on this plat; all right? Is your trailer on
12 Lot 4-A or Lot 4-B; do you know?
13 A. All I know it's on Lot 4.
14 Q. Okay.
15 A. It could be 4, is that a B?
16 Q. I think Lot A is on the left and Lot 4-B is on
17 the right if you're looking at it?
18 A. Well, I don't want to guess at it. I would say
19 I'm on Lot 4.
20 Q. All right. And do you have a deed to Lot 4?
21 A. No, sir.
22 Q. Do you know who owns Lot 4?
23 A. No, sir.
24 Q. You don't know who owns Lot 4?
25 A. No, sir.

Robert M. Bridgers
Court Reporter & Notary Public
PH: 779-551-6
central@rmbmail.com

1 did you have a company come and build it for you?
2 A. No. No.
3 Q. Did you have a company build the carport?
4 A. No, I did not have a company build the carport.
5 Q. Did you build the carport?
6 A. Yes.
7 Q. All right. What about your 3 rooms onto the
8 trailer, when did you add those rooms onto the
9 trailer?
10 A. I built them. I can't recall that. I know it's
11 there.
12 Q. And did you have a company or a contractor put
13 those additions on the trailer?
14 A. No, sir.
15 Q. Did you do that work?
16 A. Yes, sir.
17 Q. Did you get permits from Mt. Pleasant to build
18 those rooms?
19 A. No, sir. No, sir.
20 Q. How big are those rooms?
21 A. They're 12x12, something like that.
22 Q. All right. Let's go back to the trailer. Who
23 let you know you could put the trailer on the
24 property?
25 A. Mr. Herman Smalls.

1 Q. And did he tell you where to put the trailer on
2 the property?

3 A. I can't recall that. Only thing I can recall,
4 could recall to say when the trailer park closed he
5 said, "Why are you looking for a place and you have a
6 place on David Green Road? Move the trailer right on
7 down there."

8 Q. Okay. So, he gave you permission to place that
9 trailer on the property?

10 A. Right here, sir.

11 Q. And then you started living out there; right?
12 Then you started living out there after the trailer
13 park closed?

14 A. Yes, sir.

15 Q. All right. Did you ever mean to take the
16 property away from Mr. Smalls and his other heirs?

17 A. No, sir.

18 Q. What's that?

19 A. No, sir.

20 Q. Okay. Have you ever paid any property taxes on
21 the property?

22 A. He told me don't worry about no taxes, it's all
23 covered.

24 Q. So, my question is: Have you ever paid property
25 taxes on the property?

1 A. No, sir.

2 Q. I don't have any further questions. Thank you,
3 Mr. Gregg?

4 A. Thank you.

5 (Technical interruption.)

6 MR. LANNING: We can't hear you, Karen.

7 MS. DEJONG: Can you hear me now?

8 MR. LANNING: Yeah, that's better.

9 MS. DEJONG: All right. I just have a
10 couple of follow-up questions.

11 **CROSS EXAMINATION BY MS. DEJONG:**

12 Q. Mr. Gregg, you said that you had moved onto the
13 property between 1985 and 1986; correct?

14 A. Yes.

15 Q. Mr. Gregg, you said you had moved on the property
16 between 1985 to 1986. Have you lived on that property
17 ever since?

18 A. Before 1985?

19 Q. No. From 1985 or '86 until now have you lived on
20 the property?

21 A. Yes.

22 Q. That's approximately 35 years; correct?

23 A. Yes.

24 Q. When Mr. Lanning was talking about Herman Smalls
25 and the trailer we're talking about Syvetta's father,

1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF BEAUFORT)

4 I, Sabre Bridgers, Court Reporter and Notary Public,
5 certify that I did have LARRY GREGG to appear before
6 me via Zoom Videoconference at 1:50 o'clock p.m. on
7 Monday, April 19, 2021, Okatie, South Carolina; that
8 the witness was sworn and cautioned to tell the truth,
9 the pages constitute a true and accurate transcript of
10 the testimony given at that time and place.

11 I further certify that I am not of counsel or kin to
12 any of the parties to this cause of action, nor am I
13 interested in any manner in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 seal this the 10th day of May, 2021.

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24
25

Sabre D. Bridgers
Notary Public for South Carolina
My Commission Expires: January 17, 2030

Sabre D. Bridgers
Court Reporter & Notary Public
(803) 740-5716
sabrbridgers@gmail.com

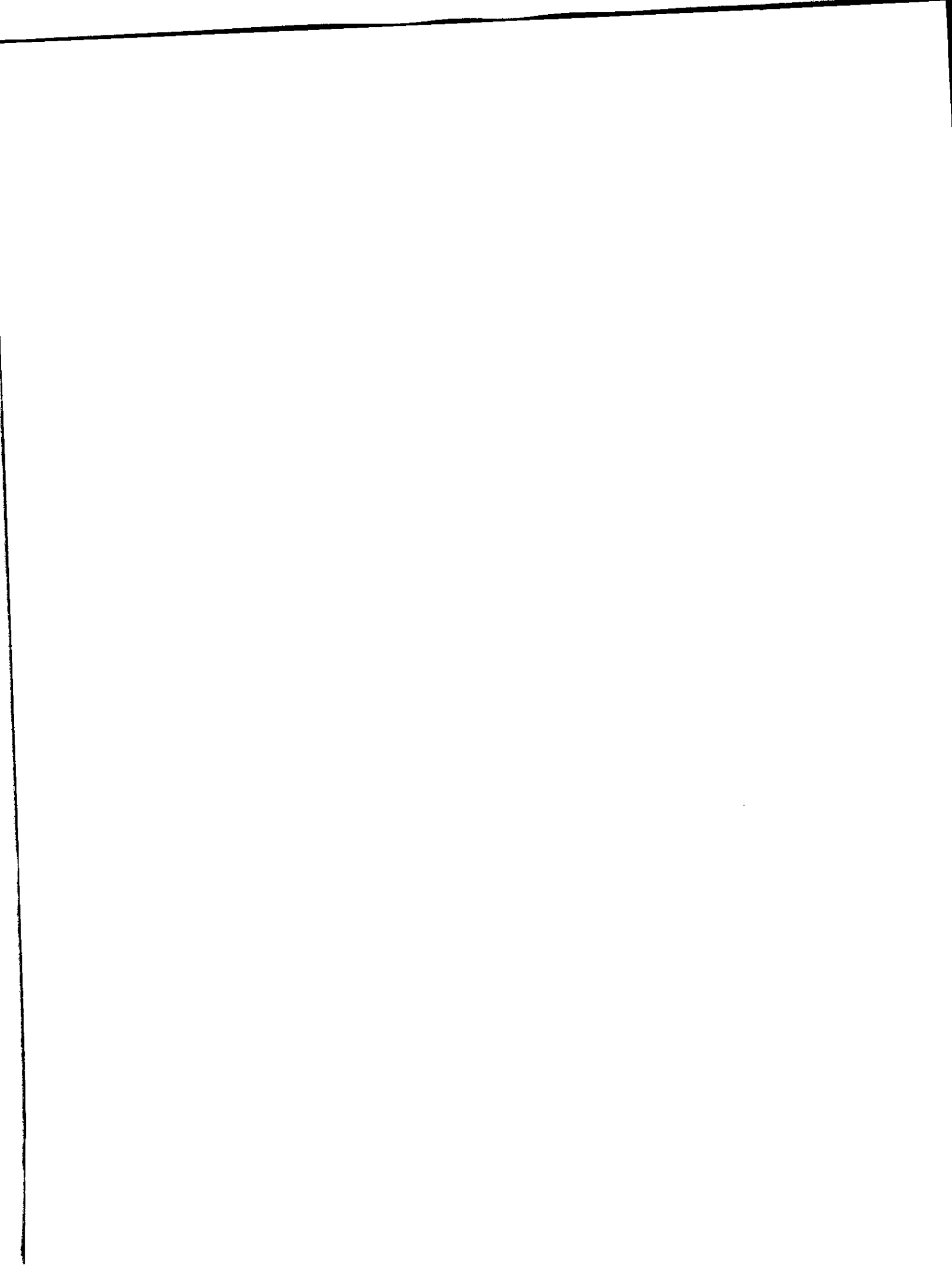
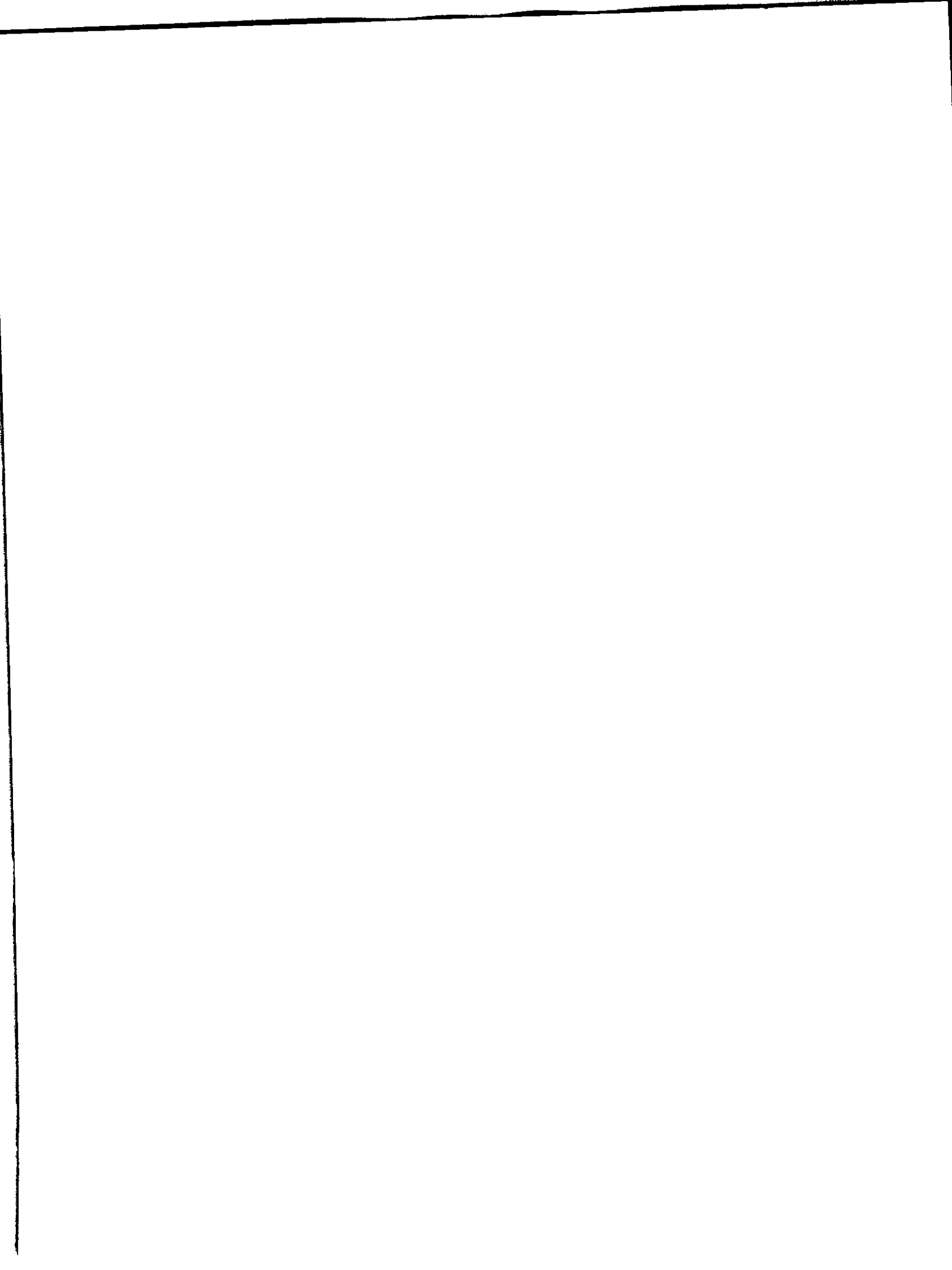


EXHIBIT B
SYVETTA SMALLS DEPOSITION

162

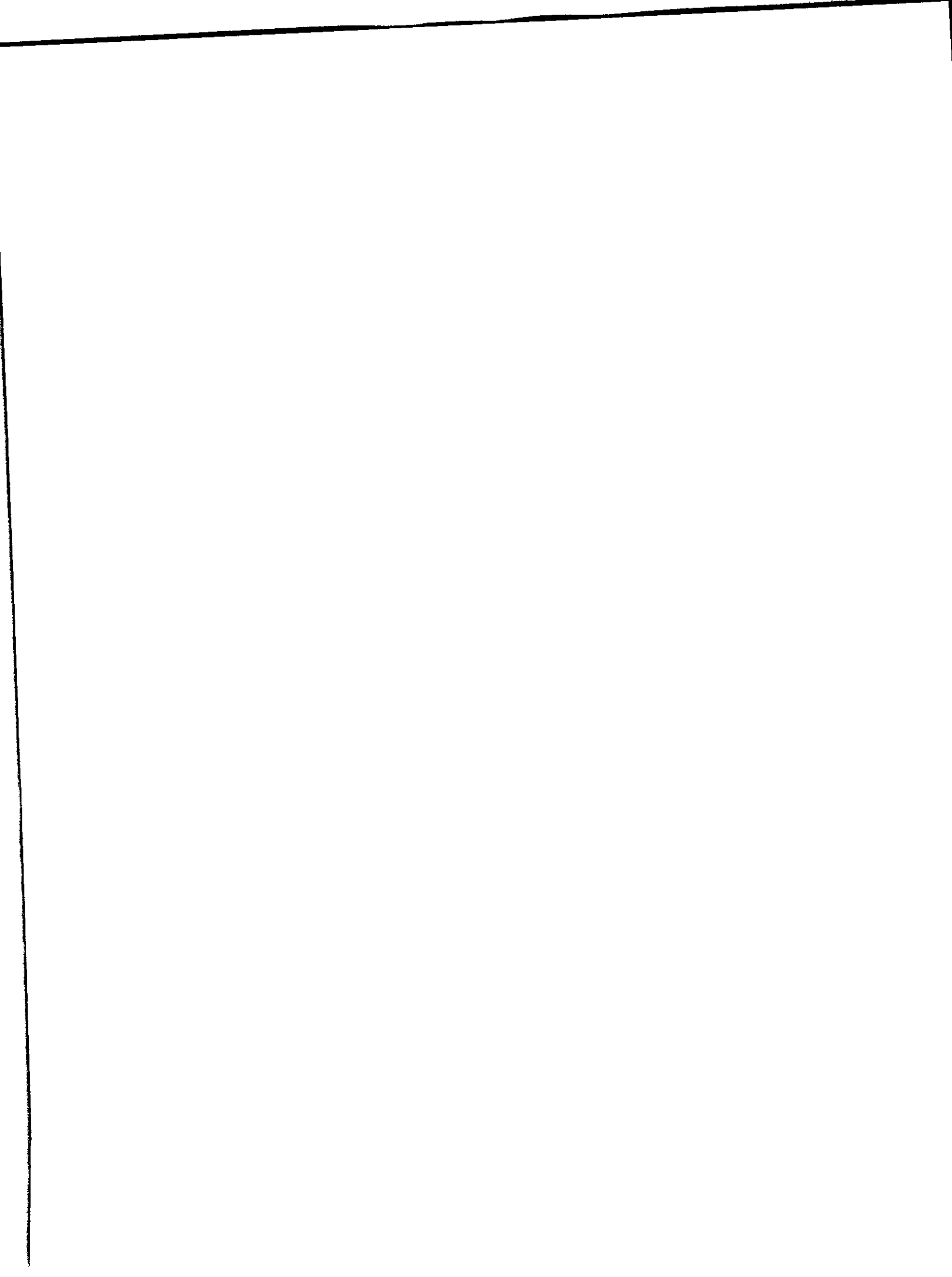


1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
3 LARRY GREGG,)
4 Plaintiff,)
5 v.) VIDEOCONFERENCE
6 HERMAN SMALLS, III,) DEPOSITION OF:
7 IZETTA SHAW A/K/A SYVETTA) SYVETTA SMALLS
8 SMALLS, JOHN DOE AND JANE)
9 DOE, AS FICTITIOUS NAMES)
10 FOR A CLASS OF UNKNOWN)
11 PERSONS BEING)
12 INCOMPETENTS, MINORS,)
13 PERSON IN MILITARY)
14 SERVICE TO THE UNITED)
15 STATES OF AMERICA,)
16 IMPRISONED, AND/OR UNDER)
17 ANY OTHER FORM OF LEGAL)
18 DISABILITY, INCLUDING BUT)
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20 HEIRS, DEVISEES,)
21 DISTRIBUTES,)
22 ADMINISTRATORS, OR)
23 PERSONAL REPRESENTATIVES)
24 OF DECEASED PERSONS)
25 HERMAN SMALLS, JR. AND)
LAMONT GREEN AND ALL)
OTHER PERSONS KNOWN OR)
APPEAR OF RECORD TO HAVE)
SOME RIGHT, TITLE,)
INTEREST IN OR LIEN UPON)
THE REAL ESTATE DESCRIBED)
IN THE COMPLAINT HEREIN,)
Defendants.)

21 Given before Sabre Bridgers, Court Reporter and
22 Notary Public, via Zoom Videoconference, Okatie,
23 South Carolina on Monday, April 19, 2021 commencing
24 at 1:15 o'clock p.m.

25 SDB Job # 202122

Sabre D. Bridgers
Court Reporter & Notary Public
(843) 206-2716
sdb@stateofsc.com



1 trailer there. Larry came afterwards.

2 Q. Okay. So I'm just trying to get a ballpark of
3 what year this was. Was it prior to your father's
4 death?

5 A. Oh. Yes. Yes.

6 Q. And has Larry Gregg lived on that property in the
7 trailer ever since?

8 A. He's still currently there.

9 Q. Did Larry have permission to live on Lot 4-B?

10 A. Yes, from my father.

11 Q. Then after your father's death did he have
12 permission to live on Lot 4-B?

13 A. Well, my father died so I didn't see a need to do
14 anything until this lawsuit came up.

15 Q. Which? This lawsuit that we're here for today?

16 A. Yes.

17 Q. Have you ever tried to enter Lot 4-B and talk to
18 Larry Gregg?

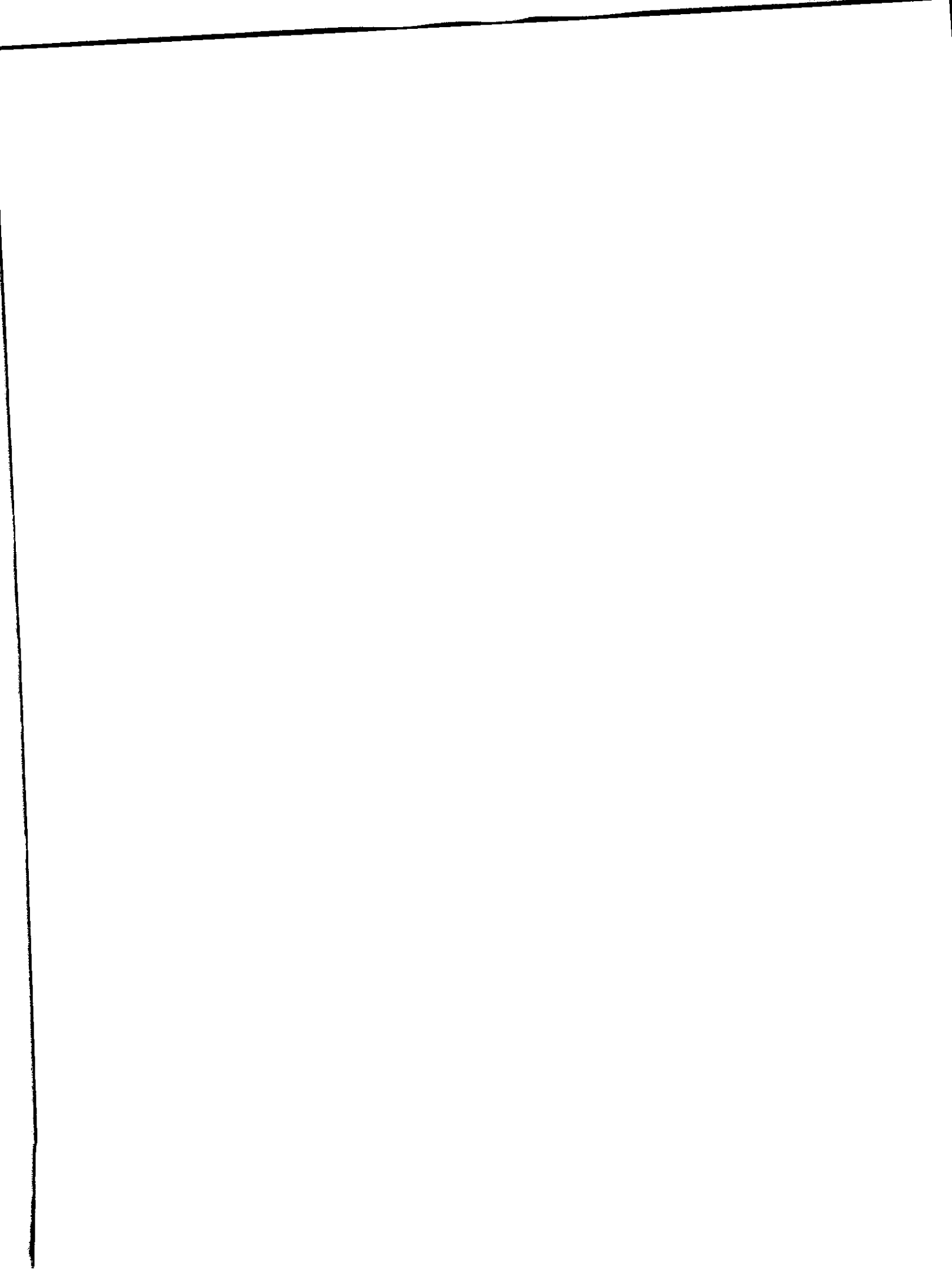
19 A. When I came to South Carolina I would stay at my
20 father's trailer or I would stay at relatives'
21 trailer. I didn't go to Larry's trailer.

22 Q. Did you have the keys to Larry Gregg's trailer?

23 A. Oh. Absolutely not.

24 (Technical interruption.)

25 A. Excuse me?



1 Q. Did you have the keys to Larry Gregg's trailer?

2 A. Oh. Absolutely not.

3 Q. Do you know if anybody else has lived on Lot 4-B
4 beside Larry Gregg after your father's death?

5 A. I'm quite sure my -- my relatives, if they needed
6 a place to stay they had access to it. If they were
7 wanting to they would have access to it. But after my
8 father died it was just too difficult for me to return
9 to the trailer. We just kept the utilities on in the
10 trailer so if some family member needed it they had
11 access to it.

12 Q. So, I would ask you what family members so we can
13 depose them?

14 A. Well, I'll have to -- I'll have to think and see
15 whoever did it. I'll have to find out from my other
16 relatives who stayed there.

17 Q. From 2005 until now have you or your siblings
18 sought to evict Larry from the property?

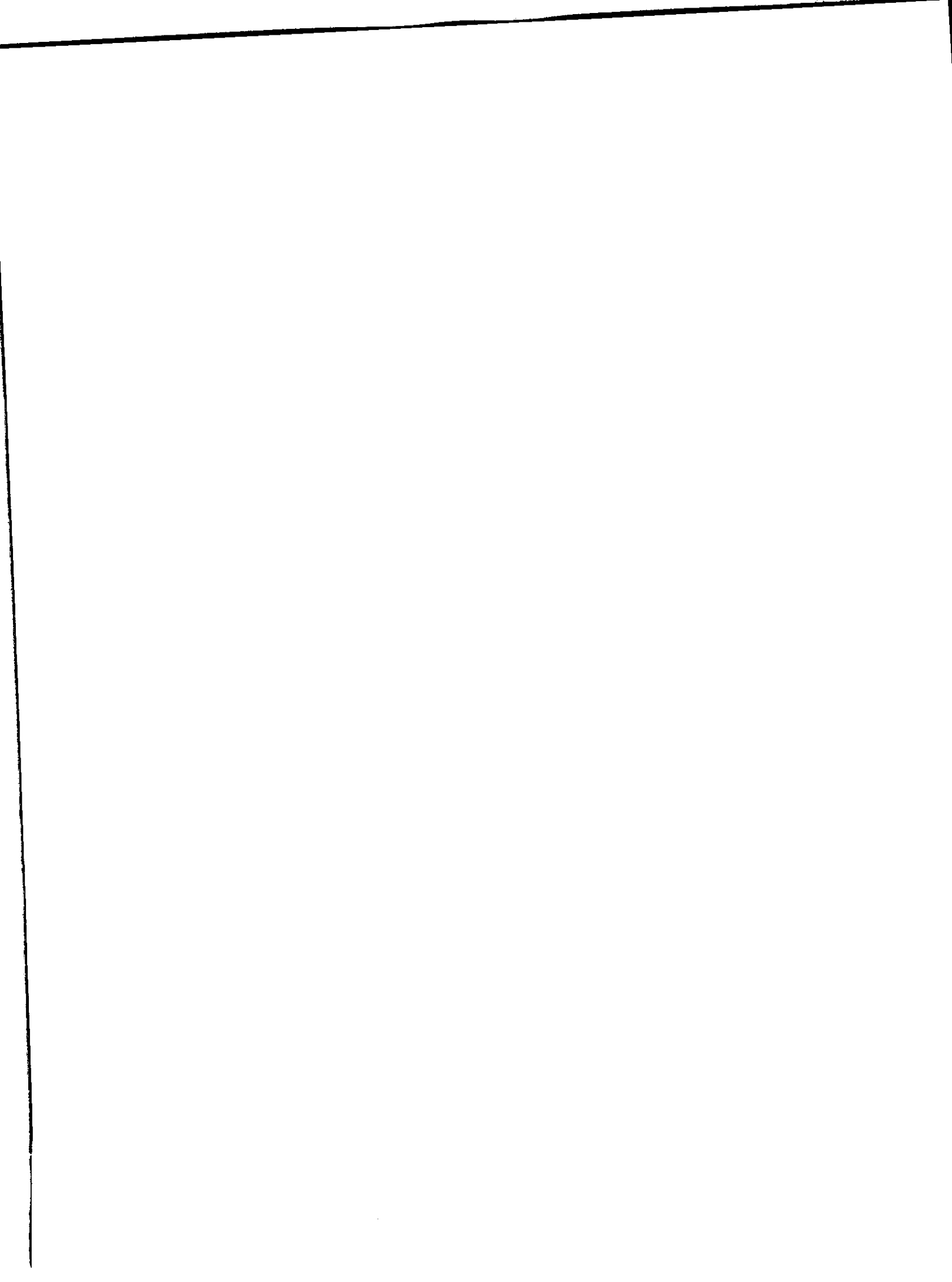
19 A. From 2005 until now? Not until this lawsuit.

20 Q. All right. One second please.

21 MS. DEJONG: Chris, I'm going to see if
22 Larry has any questions.

23 MR. LANNING: Okay.

24 Q. Ms. Smalls, you mentioned something about
25 utilities on the vacant, the trailer that your



1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF BEAUFORT)

4 I, Sabre Bridgers, Court Reporter and Notary Public,
5 certify that I did have SYVETTA SMALLS to appear
6 before me via Zoom Videoconference at 1:15 o'clock
7 p.m. on Monday, April 19, 2021, Okatie, South
8 Carolina; that the witness was sworn and cautioned to
9 tell the truth, the pages constitute a true and
10 accurate transcript of the testimony given at that
11 time and place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 10th day of May, 2021.

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Sabre D. Bridgers
Notary Public for South Carolina
My Commission Expires: January 17, 2030

Sabre D. Bridgers
Court Reporter & Notary Public
(803) 740-2716
sbridgers12@gmail.com

166

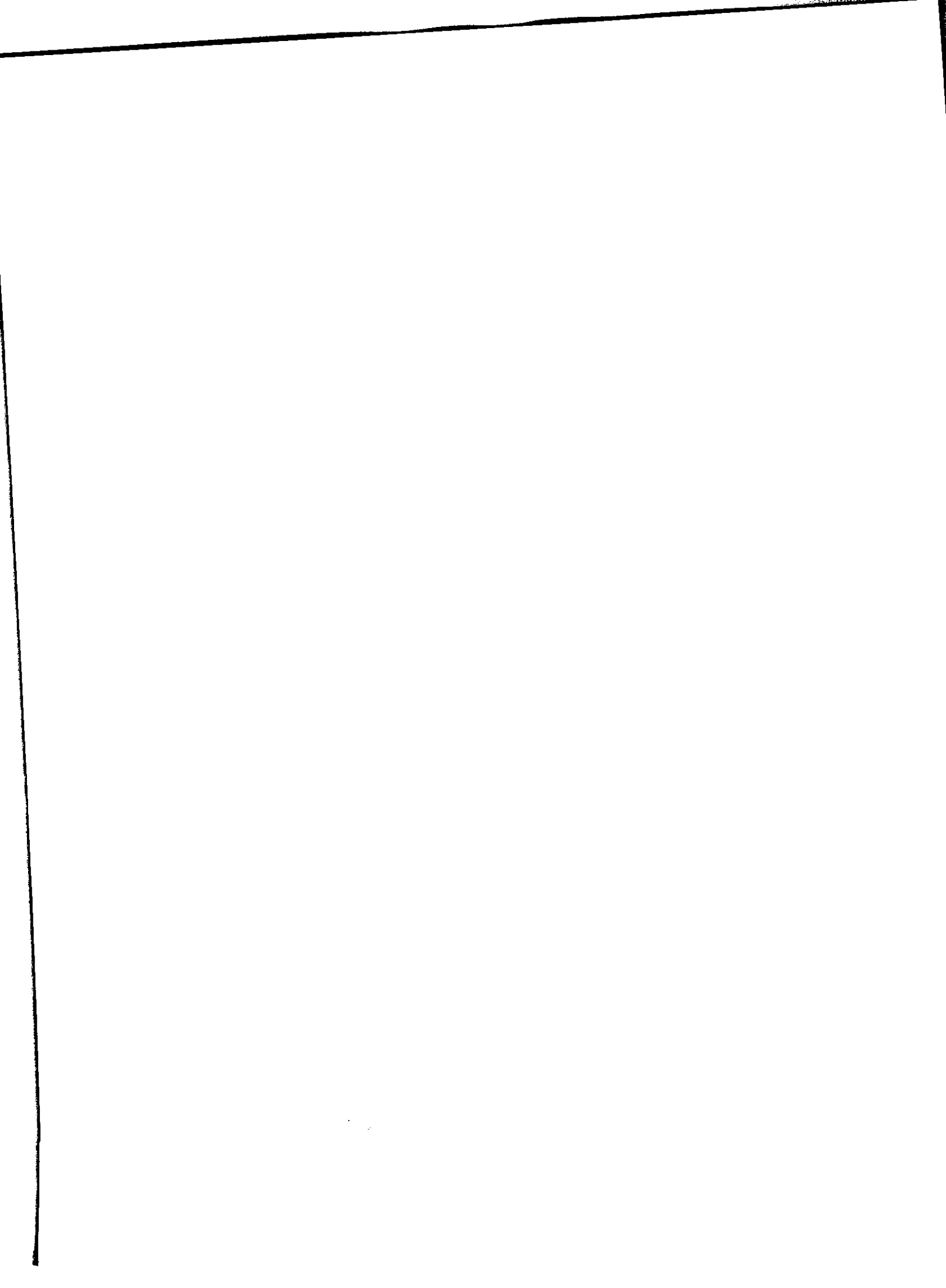


EXHIBIT 1

EXHIBIT 1

114

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

**AFFIDAVIT OF PLAINTIFF LARRY
GREGG IN SUPPORT OF HIS MOTION
FOR SUMMARY JUDGMENT**

(Action to Quiet Title)
(Adverse Possession)

v.

HERMAN SMALLS, III, IZETTA SHAW
aka SYVETTA SMALLS, JOHN DOE and
JANE DOE, as fictitious names for a class of
unknown persons being incompetents, minors,
persons in military service to the United State
of America, imprisoned, and and/or under any
other form of legal disability, including but
not limited to unknown heirs, devisees,
distributes, administrators, or personal
representative so deceased persons HERMAN
SMALLS, JR. and LAMONT GREEN and all
other persons known or appear of record to
have some right, title, interest in or lien upon
the real estate described in the complaint
herein,

Defendants.

I, LARRY GREGG, do hereby swear as follows:

1. I am 62 years old and I have lived at 2229 David Green Road, Mount Pleasant, SC
since 1986.

2. In 1986, I was residing in a trailer on rented property in Mount Pleasant, South
Carolina on Route 17 and Six Mile Road. This property is currently owned by Dominion
formerly known as SCE&G.

3. In 1986, my uncle, Herman Smalls, Jr. invited me to live on Lot 4B, David Green Road, Mt. Pleasant, SC and I moved my trailer to this property. Neither of us had a deed to this property.

4. Herman Smalls, Jr. was my uncle and he lived in New York all of his life. Approximately twice a year, he would come down to visit and stay for a week or so at his mobile home on Lot 4B.

5. In September, 1989, Hurricane Hugo came through and destroyed my uncle's mobile home. My home was also damaged, including the framing for the addition that I was making to the home to expand its' width. **See Photos of My Home the Day after Hurricane Hugo attached as Exhibit A.**

6. After the hurricane, Herman Smalls, Jr. never returned to the property and eventually, the remains of the mobile home torn down and removed from the property. **See Photos of Vacant Land where Herman Smalls, Jr.'s Mobile Home used to be Located as Exhibit B.**

7. Mr. Smalls' children, Defendants Herman Smalls, III, Izetta Shaw a/k/a Syvetta Smalls and Lamont Green never stayed on the property as there was no place for them to stay.

8. Herman Smalls, Jr. passed away in 2005 in New York State.

9. Prior to Mr. Smalls' death, I had added on three rooms to my mobile home and I had added a roof. **See Photo of Improvements before 2005 as Exhibit C.**

10. Since Mr. Small's death, I have built a front porch deck addition, back porch deck addition, fireplace with chimney, separate garage, and a shed. **See Photos of Improvements after 2005 as Exhibit D.**

11. At no time has any of the Defendants, including Herman Smalls, Jr., Syvetta Shaw, Herman Smalls, III or Lamont Green, ever help pay for or assist in the construction and installation of the improvements that I have made upon Lot 4B.

12. In December, 2016, my third cousin, Jonnie Mae Robinson, filed a lawsuit to quiet title for all the heirs property on David Green Road, including my property, Lot 4B. At the merits hearing on January 9, 2019, I spoke to the Judge Scarborough about my claim to Lot 4B. The Judge then ordered the division of property to the rightful owners except for Lot 4B.

13. On Page 11 of the Order filed on March 4, 2019, Judge Scarborough ruled that "the heirs of Herman Smalls, Jr. are the owners of Lot 4B....., subject however to the claims, if any, of Larry Gregg with it being the obligation of the Herman Smalls, Jr. heirs and Larry Gregg to undertake such processes as required by law to determine their respective interests and claims to Lot 4B...".

14. On May 7, 2019, I hired Karen M. DeJong as my attorney and she filed an Adverse Possession Complaint for me with regard to my claim to Lot 4B.

Dated: 6/15/2021

Larry Gregg
LARRY GREGG
Plaintiff

Sworn to before me this 15th
Day of June, 2021.

Sarah Chubb
Notary of S.C.

My Commission Expires: July 8, 2025

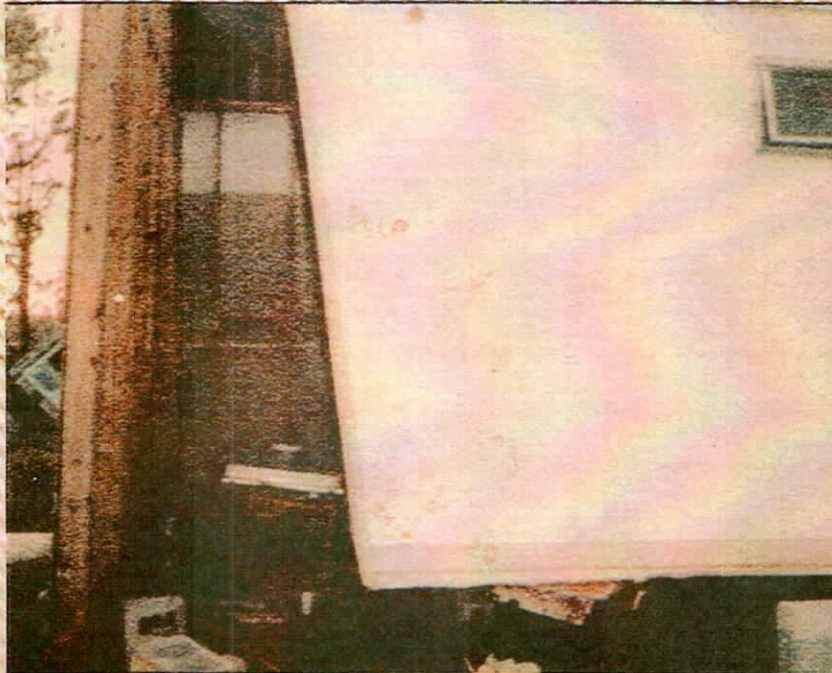


EXHIBIT A

EXHIBIT A



THE BACK
OF THE TRAILER
WITH THE TRAILER
TURN OFF AND
THE BACK OF
GONE



THE LEFT
PIPING OF
THE HOUSE



THE
ROW WAS
TURN OFF

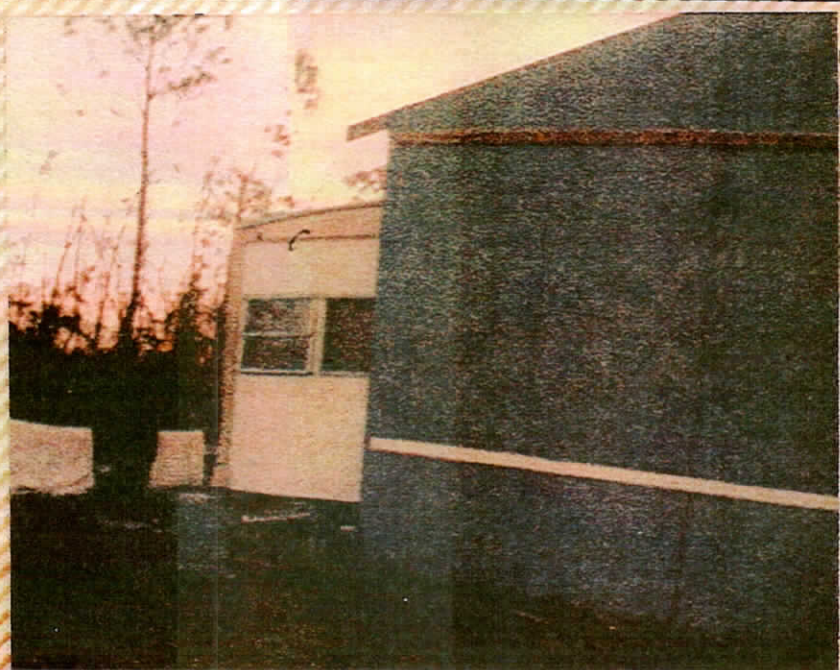
my home
9-22-1999

ELECTRONICALLY FILED - 2021 Jun 15 3:53 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002342

after
the morning after
6881 21, 1989

HURRICANE Hugo

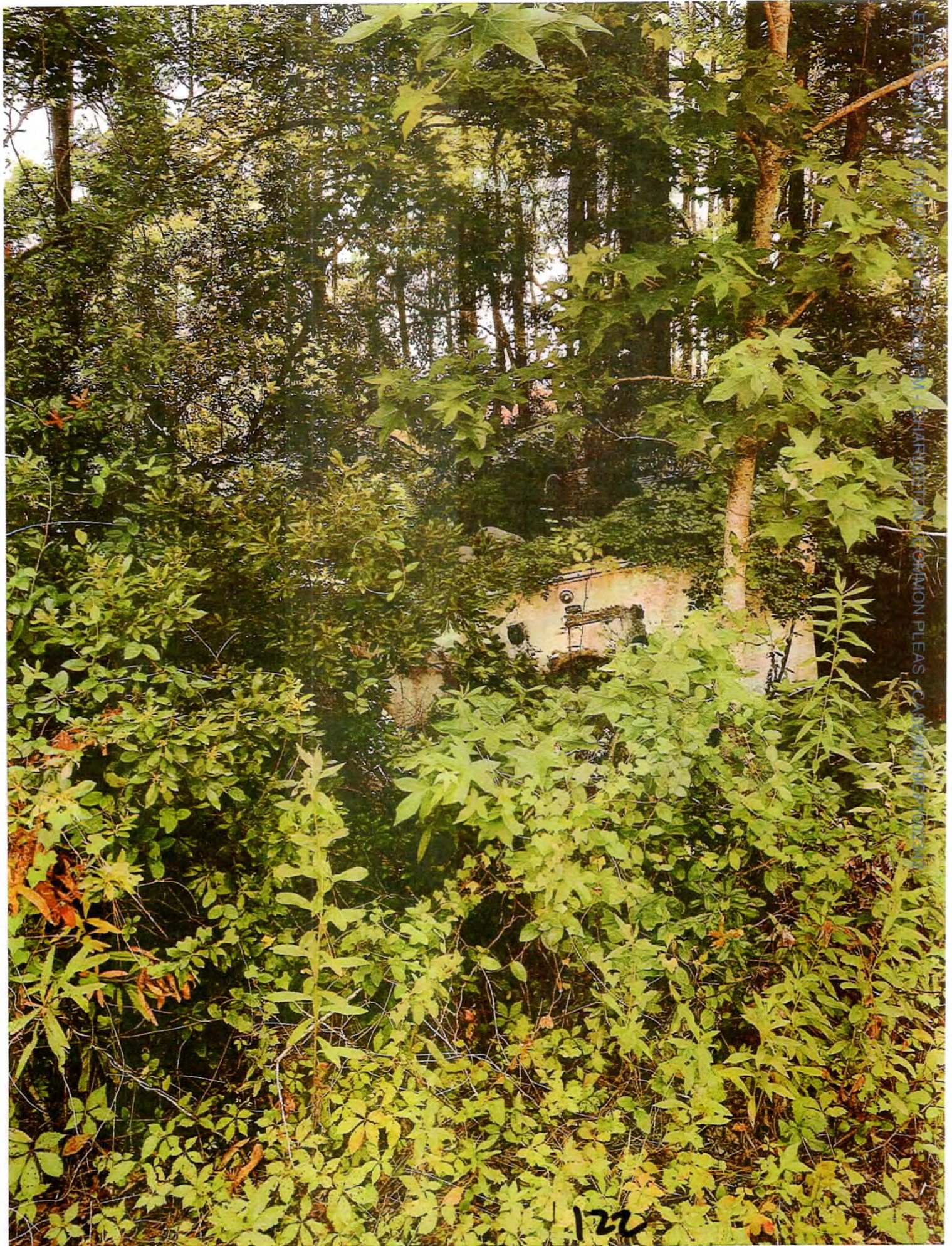
my home
9-22-1989



As you can
see how the
storm shift
the new part
of the house
away from
the trailer about
3 feet

this was the
house with
the trailer
inside

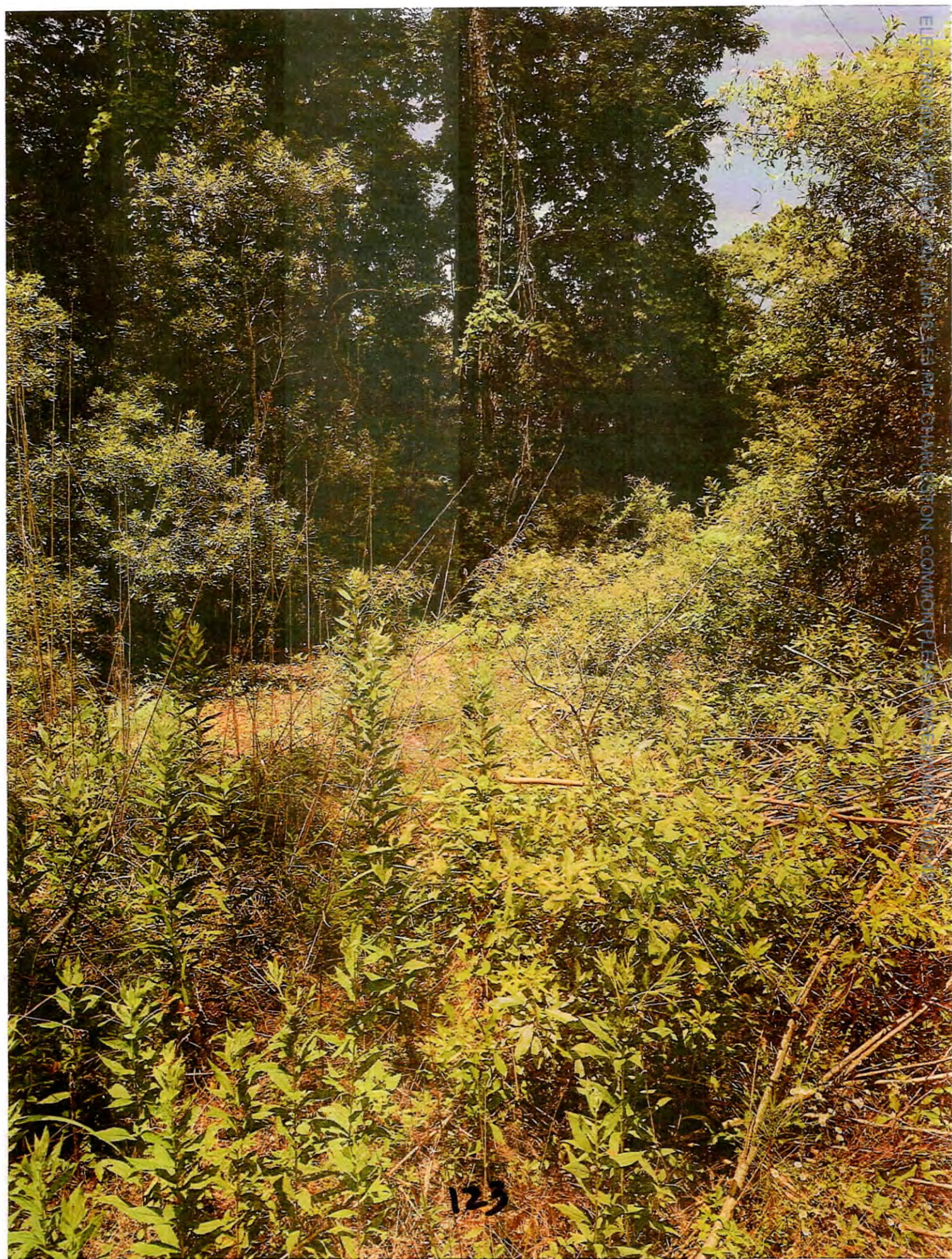
EXHIBIT B



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122

ELECTRONIC FIELD NO. 15159 P11 - CHARLESTON - COMMON PLEASANT MOUNTAIN



123

Horizontal Smilax section that used to be here

ELECTRONICALLY FILED JUN 15 2021 JUN 15 10:00 AM



124

the small trailer used to be here

EXHIBIT C

125



David Green Rd

120

CAMERA EXIF: 2011 JUN 18 3:53 PM CHARLESTON, COMMONWEALTH OF MASSACHUSETTS

roof built
before 2005

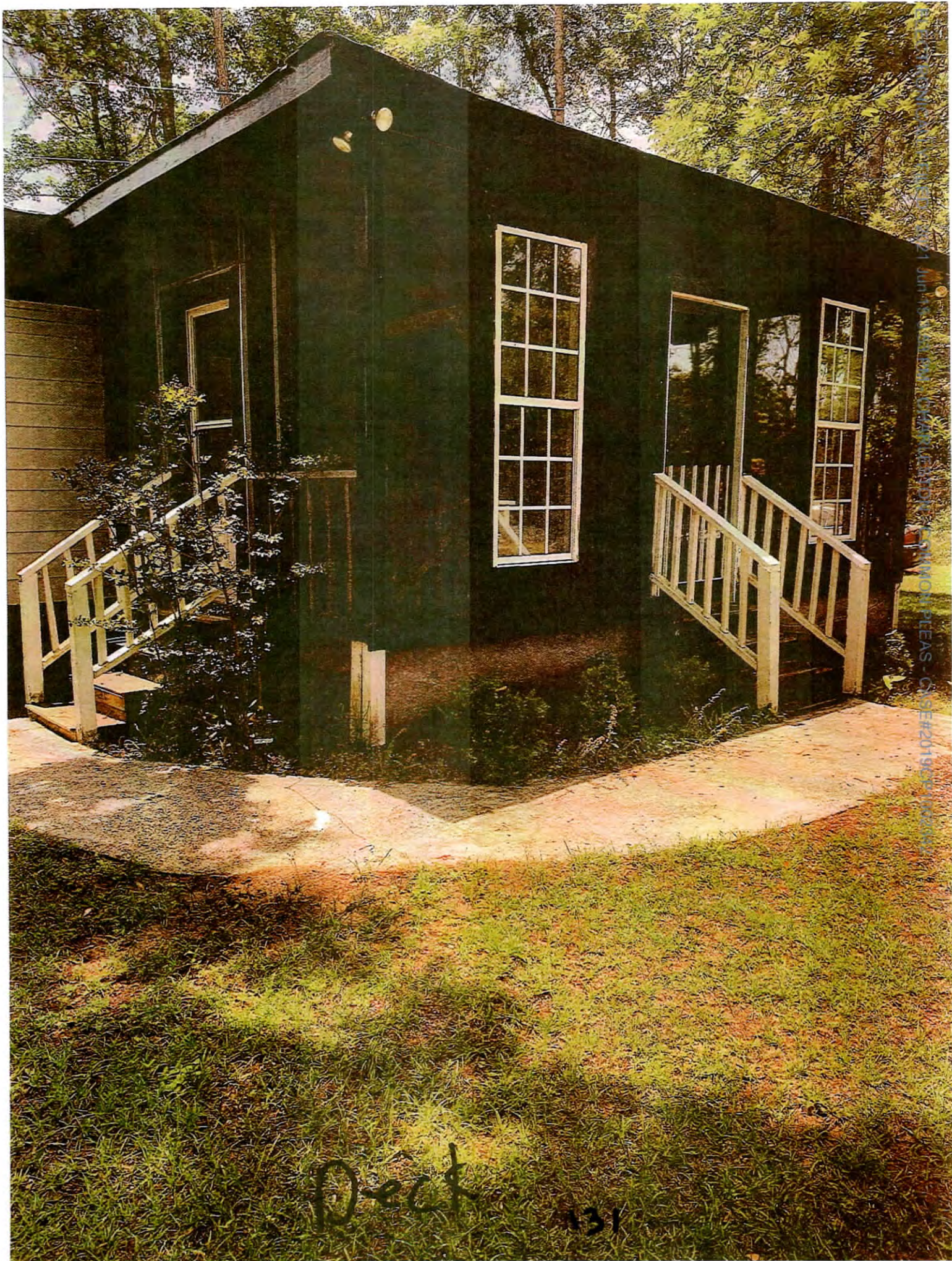
addition
built 2005
before it

127

ELECTRONICALLY FILED IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT OF CHARLESTON, COMMON PLEAS, EASTERN DISTRICT OF MISSISSIPPI

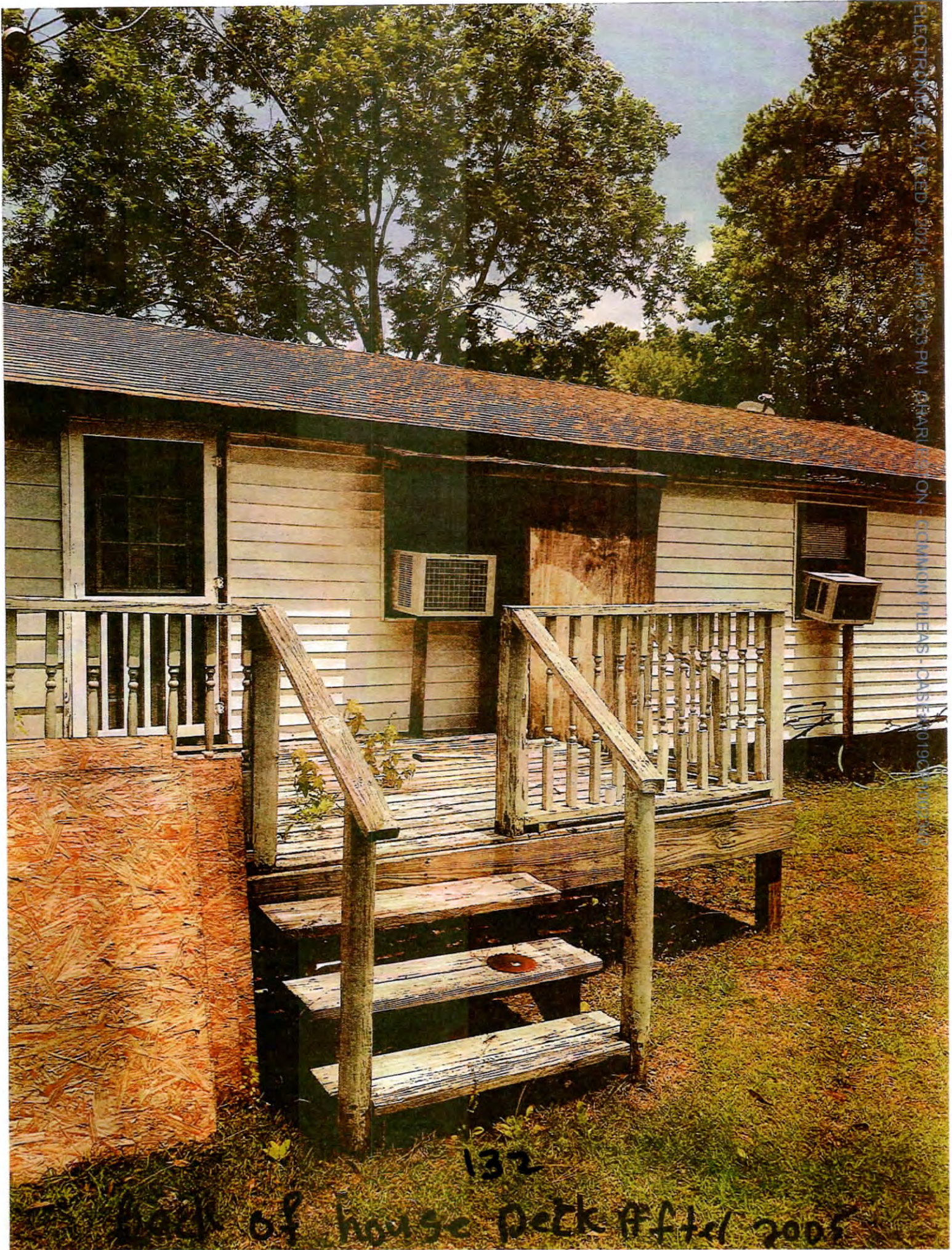
EXHIBIT D

128



EVERETT/STANLEY PHOTOGRAPHY © 2019 JUNE 18, 2019 11:58 AM C:\STANLEY\PHOTO\2019\06\18\20190618_115811.JPG - CAMERON PLEAS - CASE#20190618_115811.JPG

Deck 131



ELECTRONICALLY FILED: 2021 Jun 10 3:53 PM - CHARLOTTE ON - COMMON PLEAS - CASE# 019C-1102340

132

back of house deck after 2005



FILED - 2021 JUN 15 3:53 PM - CHARLESTON - COMMON PLEAS CASE#2019CPJM02342

133
back of Deck after 2005
with built fire place



Garage built after 2005

134

ELECTRONICALLY FILED - 2021 JUN 15 3:35 PM - CHARLESTON - DONALD HEAS - CASE#2019PC000000



ELECTRONICALLY RECORDED - 2021 JUN 12 3:53 PM - CHARLOTTE ON - COMMON PLEAS - CASE# 019C 11002449

135

back of house deck after 2006

PHOTOGRAPHICALLY FILED - 2021 JUN 15 3:53 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1J02242



136
back of Deck after 2005
with built fire place



Garage built after 2005

FILED: 2021 JUN 15 3:53 PM - CHARLESTON - COMMON PLEAS - CASE #2019-00100-00

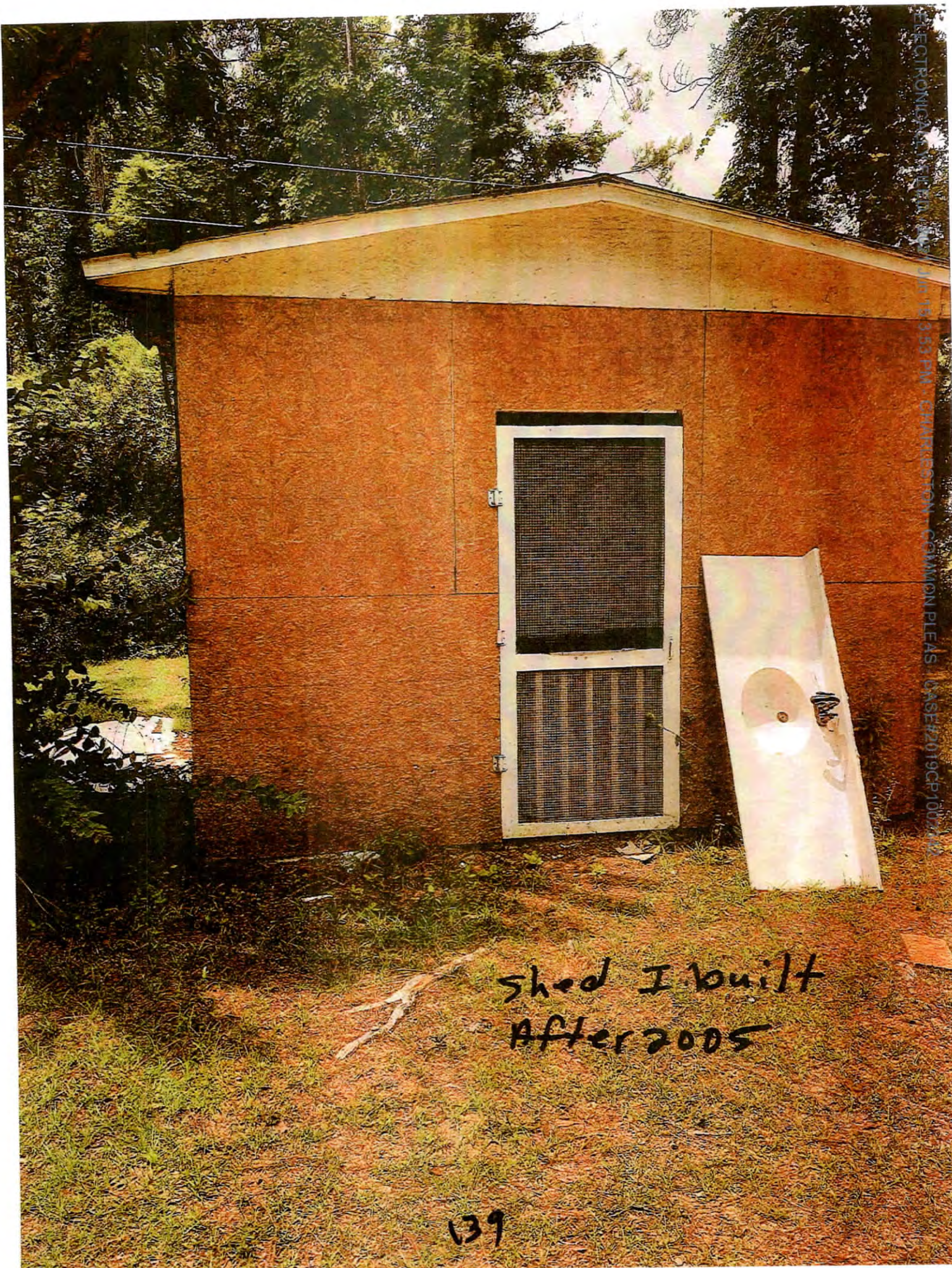


Home

Garage

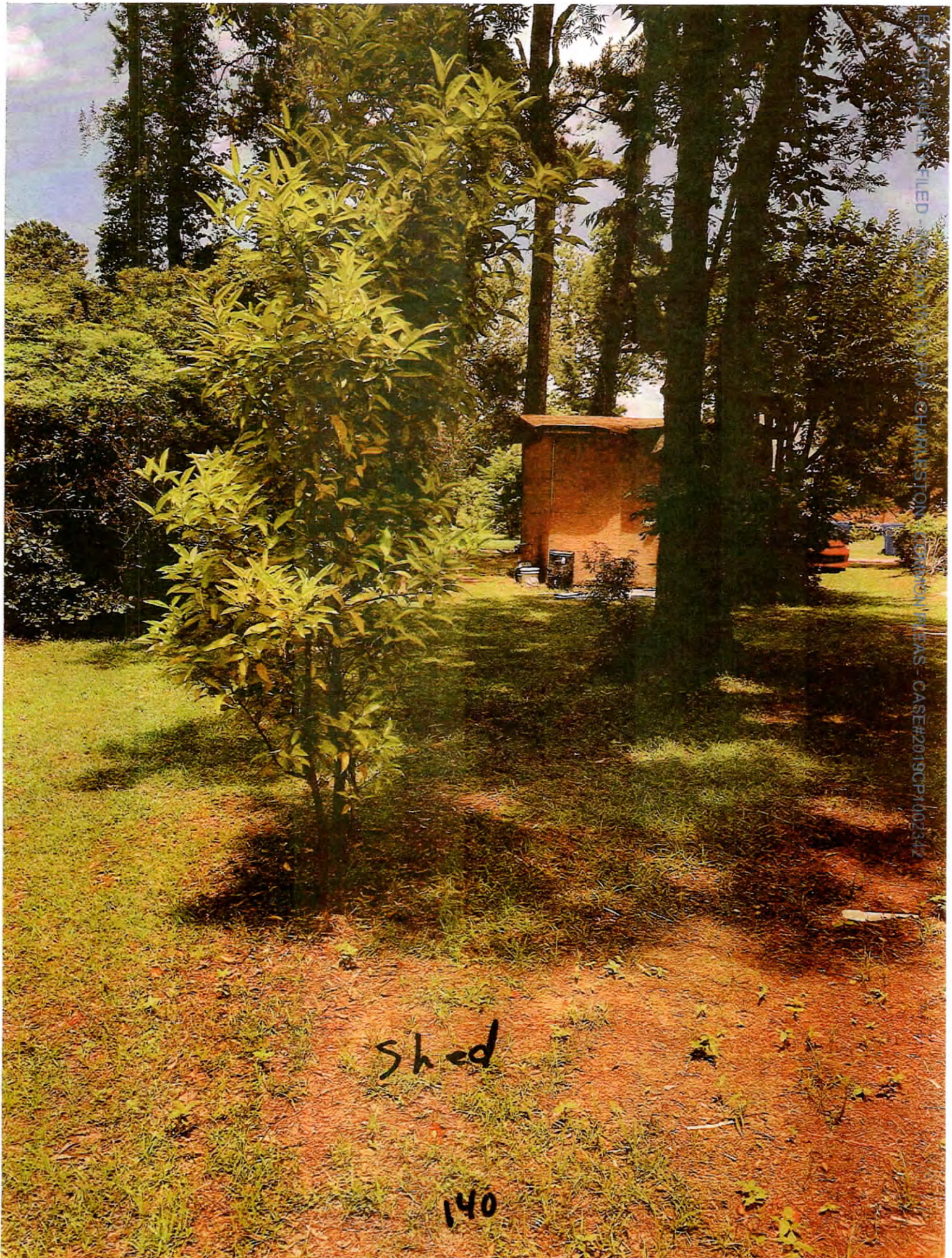
131

ELECTRONIC SYSTEMS INC. JUN 19 3 53 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1007402



shed I built
After 2005

139



FILED - 5/13/2019 10:53 AM CHARLESTON COUNTY, SOUTH CAROLINA - CASE#2019CP1002342

Shed

140

EXHIBIT 2

EXHIBIT 2

141

COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
Civil Action No.: 2019-CP-10- 2342

LARRY GREGG,

Plaintiff,

**AFFIDAVIT OF CHARLES GADSDEN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

v.

HERMAN SMALLS, III, IZETTA SHAW aka SYVETTA SMALLS, JOHN DOE and JANE DOE, as fictitious names for a class of unknown persons being incompetents, minors, persons in military service to the United State of America, imprisoned, and and/or under any other form of legal disability, including but not limited to unknown heirs, devisees, distributes, administrators, or personal representative so deceased persons HERMAN SMALLS, JR. and LAMONT GREEN and all other persons known or appear of record to have some right, title, interest in or lien upon the real estate described in the complaint herein,

Defendants.

CHARLES GADSDEN personally appeared before me, the undersigned Notary Public for South Carolina, and after being duly sworn, he deposed and stated as follows:

1. Plaintiff, Larry Gregg's grandmother, Louise Gregg, and my grandfather, Oliver Floud, were sister and brother.
2. I am 79 years and I have lived at 1194 Venning Road, Mount Pleasant, SC my whole life except for the two years that I spent in the military. I have personally known Larry Gregg since he was a teenager.
3. Before Hurricane Hugo in September, 1989, I know that Larry Gregg moved his home from a trailer park on Route 17 and Six Mile Road to David Green Road, Mount Pleasant, SC, where he still resides.

4. At the time Larry Gregg moved onto the David Green Road property, Herman Smalls, Jr. had a mobile home next to Larry on the land.

5. I knew Herman Smalls, Jr. (Larry's Gregg's uncle) because I would visit with the Green family and he would be there as well.

6. Right after Hurricane Hugo, I went to David Green Road to make sure that the Green family and Larry Gregg were okay.

7. I am retired but I was a brick mason for 43 years and I have been on many construction sites in the Charleston/Berkeley County areas.

8. I saw the destruction caused by Hurricane Hugo on David Green Road. Based upon my knowledge and experience, Herman Smalls, Jr.'s mobile home was demolished and unlivable after Hurricane Hugo. The trailer's walls were caved in and the winds had torn the trailer from its' frame and pushed away from Larry Gregg's property.

9. I have visited with Larry Gregg many times since he has lived on David Green Road.

10. Herman Smalls, Jr. never repaired the mobile home and never lived on the property after September, 1989. At some point, the mobile home was torn up and removed from the property.

11. I have never seen anyone live on the property for the last 31 years except for Larry Gregg.

12. With regard to Larry Gregg's mobile home, he began to make improvements on it before Hurricane Hugo, including adding on rooms. After Hurricane Hugo, he had to make repairs to the additions and the roof as well.

13. Since that time, I have seen improvements made to the property by Larry Gregg. In addition to replacing the damaged roof with a new roof, Larry Gregg finished adding on the rooms, installed a garage, concrete walkway, storage shed and other improvements on the land.

Charles Gadsden
CHARLES GADSDEN

Sworn to before me this 14th day of June, 2021

Sarah Chubb
Notary of South Carolina

My Commission Expires: July 8th 2025



EXHIBIT 3

EXHIBIT 3

144

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
3 LARRY GREGG,)
4 Plaintiff,)
5 v.) VIDEOCONFERENCE
6 HERMAN SMALLS, III,) DEPOSITION OF:
7 IZETTA SHAW A/K/A SYVETTA) SYVETTA SMALLS
8 SMALLS, JOHN DOE AND JANE) DOE, AS FICTITIOUS NAMES)
9 FOR A CLASS OF UNKNOWN) PERSONS BEING)
10 INCOMPETENTS, MINORS,) PERSON IN MILITARY)
11 SERVICE TO THE UNITED) STATES OF AMERICA,)
12 IMPRISONED, AND/OR UNDER) ANY OTHER FORM OF LEGAL)
13 DISABILITY, INCLUDING BUT) NOT LIMITED TO UNKNOWN)
14 HEIRS, DEVISEES,) DISTRIBUTES,)
15 ADMINISTRATORS, OR) PERSONAL REPRESENTATIVES)
16 OF DECEASED PERSONS) HERMAN SMALLS, JR. AND)
17 LAMONT GREEN AND ALL) OTHER PERSONS KNOWN OR)
18 APPEAR OF RECORD TO HAVE) SOME RIGHT, TITLE,)
19 INTEREST IN OR LIEN UPON) THE REAL ESTATE DESCRIBED)
20 IN THE COMPLAINT HEREIN,)
21 Defendants.)

21 -----
22 Given before Sabre Bridgers, Court Reporter and
23 Notary Public, via Zoom Videoconference, Okatie,
24 South Carolina on Monday, April 19, 2021 commencing
25 at 1:15 o'clock p.m.

25 -----
SDB Job # 202122

Sabre D. Bridgers
Court Reporter & Notary Public
(843) 540-5716
sabrebridgers@gmail.com

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APPEARANCES

FOR PLAINTIFF:

DeJong Law Firm, LLC
BY: Karen DeJong
222 West Coleman Boulevard
Suite 110
Mt. Pleasant, SC 29464-5652
(843) 216-6161
Karen@dejonglawfirm.com

FOR DEFENDANT

Brush Law Firm
BY: J. Christopher Lanning
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
Clanning@brushlawfirm.com

ALSO PRESENT: Larry Gregg

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Court Reporter & Notary Public
(843) 540-5716
sabrebridgers@gmail.com

1 trailer there. Larry came afterwards.

2 Q. Okay. So I'm just trying to get a ballpark of
3 what year this was. Was it prior to your father's
4 death?

5 A. Oh. Yes. Yes.

6 Q. And has Larry Gregg lived on that property in the
7 trailer ever since?

8 A. He's still currently there.

9 Q. Did Larry have permission to live on Lot 4-B?

10 A. Yes, from my father.

11 Q. Then after your father's death did he have
12 permission to live on Lot 4-B?

13 A. Well, my father died so I didn't see a need to do
14 anything until this lawsuit came up.

15 Q. Which? This lawsuit that we're here for today?

16 A. Yes.

17 Q. Have you ever tried to enter Lot 4-B and talk to
18 Larry Gregg?

19 A. When I came to South Carolina I would stay at my
20 father's trailer or I would stay at relatives'
21 trailer. I didn't go to Larry's trailer.

22 Q. Did you have the keys to Larry Gregg's trailer?

23 A. Oh. Absolutely not.

24 (Technical interruption.)

25 A. Excuse me?

EXHIBIT 4

EXHIBIT 4

149

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
3 LARRY GREGG,)
4 Plaintiff,)
5 v.) VIDEOCONFERENCE
6 HERMAN SMALLS, III,) DEPOSITION OF:
7 IZETTA SHAW A/K/A SYVETTA) LARRY GREGG
8 SMALLS, JOHN DOE AND JANE)
9 DOE, AS FICTITIOUS NAMES)
10 FOR A CLASS OF UNKNOWN)
11 PERSONS BEING)
12 INCOMPETENTS, MINORS,)
13 PERSON IN MILITARY)
14 SERVICE TO THE UNITED)
15 STATES OF AMERICA,)
16 IMPRISONED, AND/OR UNDER)
17 ANY OTHER FORM OF LEGAL)
18 DISABILITY, INCLUDING BUT)
19 NOT LIMITED TO UNKNOWN)
20 HEIRS, DEVISEES,)
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22 ADMINISTRATORS, OR)
23 PERSONAL REPRESENTATIVES)
24 OF DECEASED PERSONS)
25 HERMAN SMALLS, JR. AND)
LAMONT GREEN AND ALL)
OTHER PERSONS KNOWN OR)
APPEAR OF RECORD TO HAVE)
SOME RIGHT, TITLE,)
INTEREST IN OR LIEN UPON)
THE REAL ESTATE DESCRIBED)
IN THE COMPLAINT HEREIN,)
Defendants.)

21 Given before Sabre Bridgers, Court Reporter and
22 Notary Public, via Zoom Videoconference, Okatie,
23 South Carolina on Monday, April 19, 2021 commencing
24 at 1:50 o'clock p.m.

25 SDB Job # 202122

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APPEARANCES

FOR PLAINTIFF:

DeJong Law Firm, LLC
BY: Karen DeJong
222 West Coleman Boulevard
Suite 110
Mt. Pleasant, SC 29464-5652
(843) 216-6161
Karen@dejonglawfirm.com

FOR DEFENDANT

Brush Law Firm
BY: J. Christopher Lanning
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
Clanning@brushlawfirm.com

ALSO PRESENT: Syvetta Smalls

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A. No, sir.

Q. I don't have any further questions. Thank you, Mr. Gregg?

A. Thank you.

(Technical interruption.)

MR. LANNING: We can't hear you, Karen.

MS. DEJONG: Can you hear me now?

MR. LANNING: Yeah, that's better.

MS. DEJONG: All right. I just have a couple of follow-up questions.

CROSS EXAMINATION BY MS. DEJONG:

Q. Mr. Gregg, you said that you had moved onto the property between 1985 and 1986; correct?

A. Yes.

Q. Mr. Gregg, you said you had moved on the property between 1985 to 1986. Have you lived on that property ever since?

A. Before 1985?

Q. No. From 1985 or '86 until now have you lived on the property?

A. Yes.

Q. That's approximately 35 years; correct?

A. Yes.

Q. When Mr. Lanning was talking about Herman Smalls and the trailer we're talking about Syvetta's father,

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1 that Herman Smalls?

2 A. Yes.

3 Q. And is Herman Smalls' trailer still on the
4 property?

5 A. No, ma'am.

6 Q. And what happened to that trailer?

7 A. When Hurricane Hugo came through in 1989 it
8 demolished the trailer right then and there.

9 Q. All right. And what did Mr. Herman Smalls do
10 after he lost the trailer?

11 A. After Herman Smalls lost the trailer I can't
12 recall that he came back to South Carolina. I just
13 can't recall that.

14 Q. All right. One final question: Do you have
15 written permission to stay on the property from either
16 Syvetta Smalls, Herman Smalls, III, or Lamar?

17 A. No, ma'am.

18 MS. DEJONG: I don't have any further
19 questions.

20 MR. LANNING: I don't have any further
21 questions.

22 (Deposition concluded at 2:18 p.m.)
23
24
25

1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF BEAUFORT)

4 I, Sabre Bridgers, Court Reporter and Notary Public,
5 certify that I did have LARRY GREGG to appear before
6 me via Zoom Videoconference at 1:50 o'clock p.m. on
7 Monday, April 19, 2021, Okatie, South Carolina; that
8 the witness was sworn and cautioned to tell the truth,
9 the pages constitute a true and accurate transcript of
10 the testimony given at that time and place.

11 I further certify that I am not of counsel or kin to
12 any of the parties to this cause of action, nor am I
13 interested in any manner in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 seal this the 10th day of May, 2021.

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Sabre D. Bridgers
Notary Public for South Carolina
My Commission Expires: January 17, 2030

Sabre D. Bridgers
Court Reporter & Notary Public
(843) 540-5716
sabrebridgers@gmail.com

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EXHIBIT A
LARRY GREGG DEPOSITION

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
3 LARRY GREGG,)
4 Plaintiff,)
5 v.) VIDEOCONFERENCE
6 HERMAN SMALLS, III,) DEPOSITION OF:
7 IZETTA SHAW A/K/A SYVETTA) LARRY GREGG
8 SMALLS, JOHN DOE AND JANE) DOE, AS FICTITIOUS NAMES)
9 FOR A CLASS OF UNKNOWN) PERSONS BEING)
10 INCOMPETENTS, MINORS,) PERSON IN MILITARY)
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15 ADMINISTRATORS, OR) PERSONAL REPRESENTATIVES)
16 OF DECEASED PERSONS) HERMAN SMALLS, JR. AND)
17 LAMONT GREEN AND ALL) OTHER PERSONS KNOWN OR)
18 APPEAR OF RECORD TO HAVE) SOME RIGHT, TITLE,)
19 INTEREST IN OR LIEN UPON) THE REAL ESTATE DESCRIBED)
20 IN THE COMPLAINT HEREIN,)
21 Defendants.)

21 -----
22 Given before Sabre Bridgers, Court Reporter and
23 Notary Public, via Zoom Videoconference, Okatie,
24 South Carolina on Monday, April 19, 2021 commencing
25 at 1:50 o'clock p.m.

SDB Job # 202122

Sabre S. Bridgers
Court Reporter & Notary Public
(843) 219-2776
sbridgers@mail.com

1 to Exhibit B, Ms. Bridgers? Thank you.
2 Q. And this is Exhibit B. Do you see this, Mr.
3 Gregg?
4 A. Yeah, I see it. It says -- it says "Lot 4-B" and
5 some letters above that, acres or something, eight.
6 Q. Okay.
7 A. 0.80 acres.
8 Q. Right.
9 A. Yeah, I see that.
10 Q. Okay. So, this is Lot 4-A and Lot 4-B is
11 depicted on this plat; all right? Is your trailer on
12 Lot 4-A or Lot 4-B; do you know?
13 A. All I know it's on Lot 4.
14 Q. Okay.
15 A. It could be 4, is that a B?
16 Q. I think Lot A is on the left and Lot 4-B is on
17 the right if you're looking at it?
18 A. Well, I don't want to guess at it. I would say
19 I'm on Lot 4.
20 Q. All right. And do you have a deed to Lot 4?
21 A. No, sir.
22 Q. Do you know who owns Lot 4?
23 A. No, sir.
24 Q. You don't know who owns Lot 4?
25 A. No, sir.

Taber J. Bridgers
Court Reporter & Notary Public
(813) 206-7766
taber@tabersreporting.com

1 did you have a company come and build it for you?

2 A. No. No.

3 Q. Did you have a company build the carport?

4 A. No, I did not have a company build the carport.

5 Q. Did you build the carport?

6 A. Yes.

7 Q. All right. What about your 3 rooms onto the
8 trailer, when did you add those rooms onto the
9 trailer?

10 A. I built them. I can't recall that. I know it's
11 there.

12 Q. And did you have a company or a contractor put
13 those additions on the trailer?

14 A. No, sir.

15 Q. Did you do that work?

16 A. Yes, sir.

17 Q. Did you get permits from Mt. Pleasant to build
18 those rooms?

19 A. No, sir. No, sir.

20 Q. How big are those rooms?

21 A. They're 12x12, something like that.

22 Q. All right. Let's go back to the trailer. Who
23 let you know you could put the trailer on the
24 property?

25 A. Mr. Herman Smalls.

1 Q. And did he tell you where to put the trailer on
2 the property?

3 A. I can't recall that. Only thing I can recall,
4 could recall to say when the trailer park closed he
5 said, "Why are you looking for a place and you have a
6 place on David Green Road? Move the trailer right on
7 down there."

8 Q. Okay. So, he gave you permission to place that
9 trailer on the property?

10 A. Right here, sir.

11 Q. And then you started living out there; right?
12 Then you started living out there after the trailer
13 park closed?

14 A. Yes, sir.

15 Q. All right. Did you ever mean to take the
16 property away from Mr. Smalls and his other heirs?

17 A. No, sir.

18 Q. What's that?

19 A. No, sir.

20 Q. Okay. Have you ever paid any property taxes on
21 the property?

22 A. He told me don't worry about no taxes, it's all
23 covered.

24 Q. So, my question is: Have you ever paid property
25 taxes on the property?

1 A. No, sir.

2 Q. I don't have any further questions. Thank you,
3 Mr. Gregg?

4 A. Thank you.

5 (Technical interruption.)

6 MR. LANNING: We can't hear you, Karen.

7 MS. DEJONG: Can you hear me now?

8 MR. LANNING: Yeah, that's better.

9 MS. DEJONG: All right. I just have a
10 couple of follow-up questions.

11 **CROSS EXAMINATION BY MS. DEJONG:**

12 Q. Mr. Gregg, you said that you had moved onto the
13 property between 1985 and 1986; correct?

14 A. Yes.

15 Q. Mr. Gregg, you said you had moved on the property
16 between 1985 to 1986. Have you lived on that property
17 ever since?

18 A. Before 1985?

19 Q. No. From 1985 or '86 until now have you lived on
20 the property?

21 A. Yes.

22 Q. That's approximately 35 years; correct?

23 A. Yes.

24 Q. When Mr. Lanning was talking about Herman Smalls
25 and the trailer we're talking about Syvetta's father,

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STATE OF SOUTH CAROLINA)
: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF BEAUFORT)

I, Sabre Bridgers, Court Reporter and Notary Public,
certify that I did have LARRY GREGG to appear before
me via Zoom Videoconference at 1:50 o'clock p.m. on
Monday, April 19, 2021, Okatie, South Carolina; that
the witness was sworn and cautioned to tell the truth,
the pages constitute a true and accurate transcript of
the testimony given at that time and place.

I further certify that I am not of counsel or kin to
any of the parties to this cause of action, nor am I
interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this the 10th day of May, 2021.

Sabre D. Bridgers
Notary Public for South Carolina
My Commission Expires: January 17, 2030

Sabre D. Bridgers
Court Reporter & Notary Public
(803) 846-8716
sabre@bridgers@gmail.com

EXHIBIT B
SYVETTA SMALLS DEPOSITION

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-2342
)
 3 LARRY GREGG,)
)
 4 Plaintiff,)
)
 5 v.) VIDEOCONFERENCE
)
 6 HERMAN SMALLS, III,) DEPOSITION OF:
 IZETTA SHAW A/K/A SYVETTA)
 7 SMALLS, JOHN DOE AND JANE) SYVETTA SMALLS
 DOE, AS FICTITIOUS NAMES)
 8 FOR A CLASS OF UNKNOWN)
 PERSONS BEING)
 9 INCOMPETENTS, MINORS,)
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 14 ADMINISTRATORS, OR)
 PERSONAL REPRESENTATIVES)
 15 OF DECEASED PERSONS)
 HERMAN SMALLS, JR. AND)
 16 LAMONT GREEN AND ALL)
 OTHER PERSONS KNOWN OR)
 17 APPEAR OF RECORD TO HAVE)
 SOME RIGHT, TITLE,)
 18 INTEREST IN OR LIEN UPON)
 THE REAL ESTATE DESCRIBED)
 19 IN THE COMPLAINT HEREIN,)
)
 20 Defendants.)

21 -----
 21 Given before Sabre Bridgers, Court Reporter and
 22 Notary Public, via Zoom Videoconference, Okatie,
 23 South Carolina on Monday, April 19, 2021 commencing
 24 at 1:15 o'clock p.m.

25 -----
 25 SDB Job # 202122

Sabre B. Bridgers
 Court Reporter & Notary Public
 (843) 840-8776
 sabreb@att.net

1 trailer there. Larry came afterwards.

2 Q. Okay. So I'm just trying to get a ballpark of
3 what year this was. Was it prior to your father's
4 death?

5 A. Oh. Yes. Yes.

6 Q. And has Larry Gregg lived on that property in the
7 trailer ever since?

8 A. He's still currently there.

9 Q. Did Larry have permission to live on Lot 4-B?

10 A. Yes, from my father.

11 Q. Then after your father's death did he have
12 permission to live on Lot 4-B?

13 A. Well, my father died so I didn't see a need to do
14 anything until this lawsuit came up.

15 Q. Which? This lawsuit that we're here for today?

16 A. Yes.

17 Q. Have you ever tried to enter Lot 4-B and talk to
18 Larry Gregg?

19 A. When I came to South Carolina I would stay at my
20 father's trailer or I would stay at relatives'
21 trailer. I didn't go to Larry's trailer.

22 Q. Did you have the keys to Larry Gregg's trailer?

23 A. Oh. Absolutely not.

24 (Technical interruption.)

25 A. Excuse me?

1 Q. Did you have the keys to Larry Gregg's trailer?

2 A. Oh. Absolutely not.

3 Q. Do you know if anybody else has lived on Lot 4-B
4 beside Larry Gregg after your father's death?

5 A. I'm quite sure my -- my relatives, if they needed
6 a place to stay they had access to it. If they were
7 wanting to they would have access to it. But after my
8 father died it was just too difficult for me to return
9 to the trailer. We just kept the utilities on in the
10 trailer so if some family member needed it they had
11 access to it.

12 Q. So, I would ask you what family members so we can
13 depose them?

14 A. Well, I'll have to -- I'll have to think and see
15 whoever did it. I'll have to find out from my other
16 relatives who stayed there.

17 Q. From 2005 until now have you or your siblings
18 sought to evict Larry from the property?

19 A. From 2005 until now? Not until this lawsuit.

20 Q. All right. One second please.

21 MS. DEJONG: Chris, I'm going to see if
22 Larry has any questions.

23 MR. LANNING: Okay.

24 Q. Ms. Smalls, you mentioned something about
25 utilities on the vacant, the trailer that your

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Court Reporter & Notary Public
(843) 540-5776
sabr@briddensreporting.com

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STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF BEAUFORT)

I, Sabre Bridgers, Court Reporter and Notary Public, certify that I did have SYVETTA SMALLS to appear before me via Zoom Videoconference at 1:15 o'clock p.m. on Monday, April 19, 2021, Okatie, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 10th day of May, 2021.

Sabre D. Bridgers

Notary Public for South Carolina

My Commission Expires: January 17, 2030

Sabre D. Bridgers
Court Reporter & Notary Public
(843) 840-8716
sabrbridgers@gmail.com

EXHIBIT C
LANNING LETTER TO GREGG -- APRIL 24, 2019



BRUSH LAW FIRM

Attorney at Law

12-A Carriage Lane
Charleston, SC 29407
Phone: (843) 766-5576
Fax: (843) 766-9152

112 West Doty Ave., Suite A
Summerville, SC 29483
Phone: (843) 900-5821
Fax: (843) 695-0056

April 24, 2019

Larry Gregg
2241 David Green Road
Mt. Pleasant, SC 29466

Re: 30 Day Notice

Dear Mr. Gregg:

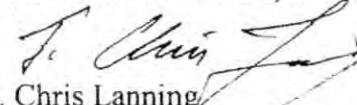
I have been retained by the heirs of Herman Smalls, Jr regarding the property you are currently living on, specifically, Lot 4-B on a plat titled "*The Subdivision of the Property of David Green in Christ Church Parish*" with TMS Number 561-00-00-085. My clients informed me that Herman Smalls, Jr. gave you permission to reside on this property many years ago. As you know, Mr. Smalls is deceased. My clients, who are Mr. Smalls's heirs, have been determined to be the owners of this property as set forth in a quiet title action in Charleston County (*Johnnie Mae Robinson, et al v. Alfreda R. Ketchen, et al, Case Number 2016-CP-10-6964*). The purpose of this letter is to inform you that you no longer have permission to reside on the property and my clients are requesting that you vacate the property immediately.

This letter will provide you with notice that you have thirty (30) days from the date you receive it to remove yourself and all your property off the property. If you fail to do so, my clients will pursue all legal remedies available to them to have you removed.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Yours truly,

BRUSH LAW FIRM, P.A.


J. Chris Lanning

cc: Syvetta Smalls

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