

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

H. MARSHALL HOYLER,

Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA,

Defendant,

MERRY LAND PROPERTIES, LLC,

Defendant/Intervenor.

IN THE COURT OF COMMON PLEAS

CASE NO.:2007-CP-07-3212

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ORDER FOR JOINDER OF PARTIES

11 MAR 17 AM 10:46
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter came before me on January 31, 2011, for hearing on the merits. This is a non-jury action brought by Plaintiff in accordance with S. C. Code Sec. 48-39-220 to determine Plaintiff's legal interest in tidelands situate adjacent to the Beaufort River, Port Royal, Beaufort County, S. C.

BACKGROUND

Plaintiff claims fee simple ownership of a parcel of land located between the mean high water and mean low water marks of the Beaufort River, consisting of approximately 90 acres of lands below mean high water. Plaintiff's claim of ownership allegedly originates with a Grant from the State of South Carolina to Plaintiff's predecessor in title, J. M. Crofut, dated July, 1891, for "95.27 acres of Marsh Land on Beaufort River near the Town of Beaufort."

"The State of South Carolina holds presumptive title to all tidelands within its borders, which are held in trust for the benefit of the public. See *Coburg Dairy, Inc. v. Lesser*, 318 S. C. 510, 458 S. E. 2d 547 (1995); *Hobonney Club, Inc. v. McEachern*, 272 S. C. 392, 252 S.E. 2d

133 (1979). The State may, however, grant private individuals an ownership interest in tidelands. ... A grant from the State purporting to vest title to tidelands in a private party is construed strictly in favor of the government and against the grantee. *See State v. Pacific Guano, Co.*, 22 S. C. 50 (1884).” Lowcountry Open Land Trust v. State and James A. Atkins, 347 S. C. 96, 102-103, 552 S. E. 2d 778, 781-782 (2001).

S. C. Code Sec. 48-39-220 provides a statutory remedy to apply the legal presumptions set forth above and to determine the validity of claims of ownership of tidelands. Actions pursuant to this Section are brought against the State of South Carolina. Here, Merry Land Properties, LLC, (“Merry Land”) intervened based on ownership of upland parcels that abut the marshes of the Beaufort River. Merry Land is in possession of State and Federal permits authorizing construction of a community marina over and through the marsh property claimed by Plaintiff. These permits were obtained prior to Merry Land learning of Plaintiff’s claim of ownership of the marshes abutting the Beaufort River.

THE INTERESTS OF JUSTICE ARE SERVED BY PERMISSIVE JOINDER

At the commencement of the hearing, the parties apprised the Court of the existence of a survey, prepared by Plaintiff’s surveyor, which purportedly re-creates the boundaries of the State Grant. That survey revealed the existence of 32 parcels, including the two parcels owned by Merry Land, that abut the marsh parcel that Plaintiff claims. Plaintiff’s surveyor has identified the owner of each of the parcels abutting the marsh parcel. In addition, the survey revealed the existence of three docks, constructed by abutting property owners whose interests in waterfront access may be affected. Plaintiff’s counsel reported that Plaintiff was unaware of these possible encroachments until he obtained this survey.

Following this discussion, this Court terminated the hearing and discussed with the parties the Court's belief as to the necessity of joining the property owners of the 30 parcels, in addition to the parcels owned by Merry Land, that abut the property that is the subject of this action. It would appear, in accordance with SCRCR Rule 20, that these property owners "may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action."

Here, should this Court declare that the State Grant to J. M. Crofut, Plaintiff's predecessor in title, is a valid conveyance of tidelands in accordance with the applicable case law and legal standards, then the property owned by Merry Land, and Merry Land's ability to construct a community marina, will not be the only property and property rights impacted by the Court's decision. At a minimum, it is possible that the seaward boundary of the 30 additional parcels could change as a result of Plaintiff's re-creation of the boundaries of the Crofut Grant. But, of even greater significance, the owners of the 30 additional parcels could face actions for trespass, based on the construction of docks, or could lose the right of access to the Beaufort River upon a declaration that the Crofut Grant is valid.

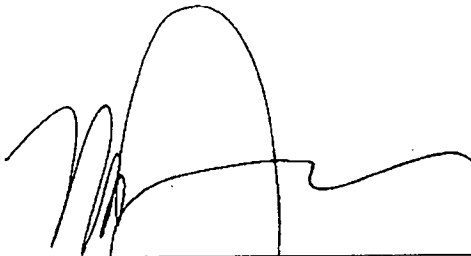
Therefore, this Court finds that all property owners abutting the marsh acreage that is the subject of this action shall be joined as Defendants in this action, and shall be served with copies of the Summons and Complaint in this action. To expedite this, the Court attaches as Exhibit "A" to this Order a chart prepared by Merry Land's counsel which identifies all abutting owners and provides contact information for these property owners.

CONCLUSION

It is, therefore, ORDERED, that the parties identified on Exhibit "A" who have not already intervened in this action or been named as parties to this action shall be served a copy of the Summons and Complaint in this civil action, and joined in this action in accordance with SCRCP Rule 20. Such service of process shall be undertaken by Plaintiff, and shall be accomplished within sixty days of the date of this Order.

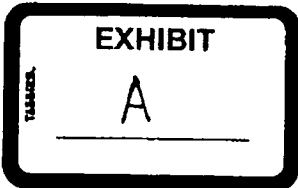
It is further ORDERED that the trial in this civil action shall recommence after all property owners identified in Exhibit A have been served with the pleadings, and have had an opportunity to respond to the pleadings. Provided, however, that hearing in this matter shall not reconvene before August 1, 2011, unless all parties are in agreement regarding reconvening before August 1, 2011.

AND IT IS SO ORDERED.



MARVIN H. DUKES, III
MASTER-IN-EQUITY
BEAUFORT COUNTY

3/14, 2011



MERRY LAND PROPERTIES PROPERTY OWNER LISTING					
	Approx Frontage	Parcel ID	Name/Address	Maples Book/Page	Phone No
1.	400' (already has a dock?)	R120-007-000-0357	Sherbert T. Ray 144 Spanish Point Drive Beaufort SC	2878/1102	
2.	300'	R120-007-000-0359	Ray	2878/1102	
3.	75'	R120-007-000-0360	Ray	Same	
4.	existing dock	R120-007-000-0361	Spanish Point Personal Residence, LLC 152 Spanish Point Drive	2662/6	
5.	100'	R120-007-000-0362	Samai Vranuch Supan 154 Spanish Point Drive	397/1285	843/525-6569
6.	100'	R120-007-000-0363	Larry F. Hamilton 156 Spanish Point Drive	2209/1702	843/379-2370
7.	100'	R120-007-000-0364	Edward & Carol Wise 158 Spanish Point Drive	379/1017	843/524-2031
8.	100'	R120-007-000-0365	Mark Carey, Trustee 160 Spanish Point Drive	1336/1553	843/525-9988
9.	200'	R120-007-000-0366	Arthur and Francis Jenkins (162 Spanish Point Drive) 1624 PARIS AVE APT 118 PORT ROYAL SC 29935-2039	130/230	843/524-4363
10.	100'	R120-007-000-0368	Robert Chiavello 166 Spanish Point Drive	1006/2261	
11.	70'	R120-007-000-0369	Tocharoen Living Trust (Ahraya Tocharoen) 168 Spanish Point Drive	2934/1477	843/525-6260
12.	50'	R120-007-000-0370	Helen M. Olesak Andrew?	2658/2295	843/524-5949

			1 TODD DRIVE BEAUFORT SC 29902		
13.	50'	R120-007-000-0371	Raeford Lackey 3 Todd Drive	616/419	843/986-0986
14.	50'	R120-007-000-0372	Patricia Banfield 5 Todd Drive	2941/1406	
15.	75'	R120-007-000-0373	Bertrand Cooper Jr. 7 Todd Drive	2892/1611	843/524-5761
16.	400'	R120-007-000-0097	NHP SH South Carolina I, LLC 610 NEWPORT CENTER DR SUITE 1150 NEWPORT BEACH CA 09226	2645/2438	
17.	200'	R120-007-000-097A	Oyster Cove Homeowners Assn. PO BOX 1759 BEAUFORT SC 29901-1759	558/1223	
18.	50'	R120-007-000-0099	Sally & John Avery 8528 SOAPSTONE CREEK CIR HIAWASSEE GA 30546- 5414	2286/785	
19.	less than 50' not eligible	R120-007-000-0678	Helen Harwood Trustee 910 OYSTER COVE RD BEAUFORT SC 29902	1092/652	843/522-8787
20.	200'	R120-007-000-0102	South Carolina Bank & Trust 402 D N MAIN ST SUMMERVILLE SC 29483	2978/1577	
21.	50'	R120-007-000-102C	South Carolina Bank & Trust 402 D N MAIN ST SUMMERVILLE SC 29483	2978/1577	
22.	75'	R120-007-000-102A	Rita Brown 2 Pleasant View Lane	2353/836	843/525-9970

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			Beaufort SC		
23.	800'	R120-007-000-0190	Beaufort River Development LLC 200 Main Street, Suite 201 Hilton Head Island SC 29926		
24.	200'	R110-007-000-116A	Houston Family Partnership 209 Seventh Street Suite 300 Augusta GA 30901	2233/1806	
25.	less than 50' community dock?	R110 009 00A 0029	Joan Taylor Trustee PO BOX 2241 BEAUFORT SC 29901	1563/1976	
26.	less than 50' community dock?	R110-009-00A-0030	Georgiana Cooke 51 Shipwright Circle Port Royal SC 29935	908/1960	843/524-0883
27.	less than 50' community dock?	R110-009-00A-0031	Michael & Nancy Bull 55 Shipwright Circle Port Royal SC 29935	961/2277	843/524-2855
28.	less than 50' community dock?	R110-009-00A-0032	Marny Harris Vonharten 57 Shipwreck Circle	1311/2244	843/522-9144
29.	less than 50' community dock?	R110-009-00A-0033	59 Shipwright Circle LLC 1 SUTTON PLACE S NEW YORK NY 10022	2684/1296	
30.	less than 50' community dock?	R110-009-00A-0034	Patricia Kelsey 28 TWIN LAKE VILLA RD NEW LONDON NH 03257	2819/504	
31.	less than 50' community dock?	R110-009-00A-0035	Richard & Gwendolyn Meadows 354 EDGEMERE WAY N NAPLES FL 34105	697/290	
32.	less than 50' community dock?	R110-009-00A-0036	Michael Woodworth 65 Shipwright Circle Port Royal SC	2180/716	843/524-0951

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