THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Master-In-Equity

Mikell Scarborough, Master-in-Equity

Case No. 2008-CP-10-5661

Carolyn Smalls, Respondent,

v.

Floyd D. Sanders, Appellant.

NOTICE OF APPEAL

Floyd Sanders appeals the orders of the Honorable Mikell R. Scarborough, dated April 22, 2011 and April 29, 2013. Appellant's attorney received written notice of entry of the order denying reconsideration on May 6, 2013.

May 30, 2013

John Edward Robinson
36 Broad Street
Charleston, SC 29401
(843) 723-5152
Attorney for Appellant

Other Counsel of Record:

Charles Goldberg
61 Broad Street
Charleston, SC 29401
Attorney for Respondent
(843) 720-2800

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Master-In-Equity

Mikell Scarborough, Master-in-Equity

Case No. 2008-CP-10-5661

Carolyn Smalls, Respondent,

v.

Floyd D. Sanders, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Carolyn Smalls, by personally delivering a copy of it to her attorney of record, Charles Goldberg, at his office at 61 Broad Street, Charleston, South Carolina, 29401, on May 30, 2013.

May 30, 2013

John Edward Robinson
36 Broad Street
Charleston, SC 29401
(843) 723-5152
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE: 08-CP-10-5661

CAROLYN SMALLS,

Plaintiff,

vs.

FLOYD D. SANDERS,

Defendant.

ORDER

This is an action wherein the Plaintiff (Carolyn) claims adverse possession of acreage upon which sits her mobile home and garden.

The Defendant (Floyd) denies the claim and has filed a Counterclaim in which he seeks to quiet title to the entire tract of 4.75 acres which he obtained by a deed from his father Andrew Sanders (Andrew).

I held a hearing on February 23, 2011. The Plaintiff was represented by Charles S. Goldberg, Esquire, and the Defendant by John Edward Robinson, Esquire.* I received evidence from the parties and took the testimony of the parties and their witnesses. Based upon the evidence and testimony, I find as follows:

FINDINGS OF FACT

1. The subject matter is real estate located in Charleston County and within the jurisdiction of this Court.

*The Court wishes to commend counsel and both parties to this action who are brother and sister. They were civil and acted with respect towards one another at the time of trial. The work-product of both lawyers has been used by the court to reach its conclusion herein. For their excellent research and writing of well-reasoned and researched proposals, this court is extremely grateful.

2. The parties stipulated certain facts by a written document entitled "Stipulated Facts", a copy of which is attached hereto and made the findings of this Court by reference thereto as Exhibit "A."

3. Carolyn has proven the elements of adverse possession by clear and convincing evidence.

4. Laches is an applicable defense against Floyd under the circumstances set forth.

5. Carolyn's claim is only for that area of the property upon which is situated her home and her garden with ingress and egress from South Santee Road.

DISCUSSION/ANALYSIS

In order to prove adverse possession where the Plaintiff claims a portion of the land, the standard of proof is by clear and convincing evidence.

The elements of adverse possession required to be proven by that standard are continuous, hostile, open, exclusive, actual and notorious. See Exhibit "B" attached hereto for a discussion of relevant law.

Carolyn moved her mobile home onto the tract with Andrew's permission in 1982. The mobile home was in an area which was referred to as the one acre tract and on an area designated as wetlands by the McClellan survey of 1997.

Andrew conveyed 3.75 acres of the property to Floyd by a deed dated March 31, 1989, and that deed was recorded in Book C-183, page 538 in the RMC Office for Charleston County. On the same date, Andrew and his wife, Alfair conveyed

the remaining one acre tract to Floyd, and that deed was recorded in Book C-183, page 542. In the RMC Office for Charleston County.

The testimony of Katrina Pinckney was that the children were not happy with their parents' actions, but that they were later made aware of the fact that it was "family tradition" that property would be conveyed to the youngest child who was Floyd. See Exhibit "C" attached hereto for an interesting discussion of the law of "Ultimogeniture."

There is no dispute that from 1982 until a fire destroyed Carolyn's mobile home in March, 1997, that Carolyn openly possessed a portion of the property described generally in testimony as being near the front part of the acreage.

There is no dispute that following the fire, Carolyn raised a required down payment of $3,133.00 and had a survey prepared in December, 1997, and that she purchased a second mobile home and moved it onto an area further back of the first mobile home site in June, 1998. A possessor does not have to physically occupy the land the entire period to satisfy the "continuity" requirement. Once actual possession begins the possession remains continuous unless the possessor abandons the property. From the testimony, it appears there was never an intent to abandon the idea of staying on the property by her actions aforementioned. See Mullis v. Winchester, 237 SC 495, 118 SE2d 61, at 65, which in part states "Actual possession, once taken, will continue, though the party taking such possession should not continue to rest with his foot upon the soil, until he be

disseised, or until he does some act which amounts to a voluntary abandonment of the possession."

Floyd's letter to her in April, 2008, does not in itself interrupt her possession, but falls into the category of an ineffectual protest of ownership. See Jordan v. Lang, 122 SC 159 (1885), which holds that such a protest does not interrupt the "period" but actually strengths the adverse possession claim. Also see Woycik v. Woycik, 537 A2d 541 (Conn. App. 1988) where a similar letter was mailed to the claimant, but no legal action was filed against the claimant.

The testimony is that Carolyn not only placed a mobile home upon the property but improved it by putting down a gravel road, placed septic tanks, and maintained a vegetable garden. Floyd does not dispute those facts. Here we have the required ten years of open possession.

The testimony of Floyd's witness, his sister, Katrina Pinckney, establishes hostility from the time Floyd's siblings learned of the conveyance from Andrew Sanders to Floyd, and that was sometime in 1989. Even if this Court would discount that length of time, the testimony from Carolyn is that the survey which she had made by Mr. McClellan showed Floyd as the owner. The survey is dated December, 1997, and was recorded in April, 1998, in Plat Book DB, page 438. After this notice, Carolyn still proceeded with her plans to place the second home on the property. This was accomplished in June, 1998. Here you have the element of "hostility" and "notorious".

The "exclusive" element of adverse possession requires that the property not be shared by claimant and the true owner. The testimony is that Carolyn lived on the property from 1982 with her father's permission. The property was divided into 2 separate lots, i.e., a 3.75 acre lot and a 1 acre lot. Floyd's title examination was introduced into evidence and shows that Floyd obtained title by separate deeds in 1989. Floyd obtained title to the 3.75 acres from Andrew of the 3.75 acres in Deed Book C-183, page 538, and then obtained title on the same date (March 31, 1989) to the 1 acre tractin Deed Book C-183, page 542. There were 2 tax map numbers to these lots. Andrew continued to live in his home on the 1 acre tract, and in June, 1998, Carolyn re-entered the 3.75 acre tract and replaced her destroyed mobile home with a new one.

The testimony is that in order for Carolyn to obtain a mortgage on her mobile home, she was required to obtain a survey on the area where the mobile home was to be located. She selected James O.McLellan, III to survey the property. The survey is dated December 15,1997, and was recorded in the RMC Office for Charleston County on April 1, 1998, in Plat Book DB, page 438.

The title examiner's exhibits include what is known commonly as the Auditor's card. The back of that card states "Line#12—Previously mapped as 3.75 ac hi LOT Pt. lot 16. Per plat DB 438 PID# 802-00-00-157 was deleted and combined with this card for 1999. PID #802-00-00-157 was LOT Pt. Lot 16, 1.0 ac hi. New acreage for this card is now 3.75 ac hi Wetland 1.25 ac. for a total of

5.00 ac. Plat does not give wetland acreage therefore calc. By (mapping) 12-8-98 JA".

It therefore appears that beginning in the year 1998, the property was combined as one tract. I conclude that area where the Andrew's home is located was actually a separated portion of the overall acreage until the McClellan plat abandoned the line between that portion and the area upon which Carolyn lives in 1997. The McClellan plat of 1997 clearly shows Floyd to be the owner of the property. If Carolyn did not know about the deed along with the rest of the family, she certainly knew it when she saw the plat.

The case of McDaniel v. Kendrick, 386 SC 437, 688 SE2d 852 (Ct. App.2009) is similar to, but distinguishable from, the facts of this case. In McDaniel v. Kendrick, permission to enter onto the subject property was given by an owner, and then a party alleged that they had disclaimed that possession. McDaniel cites Frady v. Ivester, 118 S.C. 195, (1921), and Davis v. Monteith , 289 S.C. 176, (1986), for this distinction. Frady states that, where entry onto the property was originally permissive, there must be notice of intent to adversely possess. Id. at 205. Davis provides that occupation of property with an owner's permission is not hostile, but may ripen into hostility, for purposes of adverse possession, when permission of the record owner to possess is withdrawn. Id. at 180. Young v. Nix, 286 S.C. 134, 136 (Ct. App. 1985), provides that there must be a "clear and positive disclaimer of the title under which entry was made."

In this case, Plaintiff's admissions as corroborated by the testimony of Frances Pinckney, clearly demonstrate that she entered onto the property with permission in 1982. In 1989, legal title passed from Andrew Sanders to the Defendant Floyd Sanders. Thereafter, in 1998, Plainitff moved her replacement mobile home onto the property. I specifically find this was done without the consent or permission of the Defendant who, as owner of the property, had every right to demand she remove the encroachment. This the Defendant did not do. I find, this act is sufficient notice of hostile intent, under these facts, to meet the element of hostility required to satisfy the burden of proof for adverse possession for the requisite statutory period.

Using the June, 1998 trigger date as the prescription date, Carolyn repossessed and reentered the property at a different location after she knew Floyd owned it because his ownership was shown on the 1997 survey. For this reentry, she never had the true owner's permission or consent. Carolyn then went further to show her possession by the actions taken by her to improve the property.

Where a possessor is not claiming under a written instrument as in this case, Section 15-67-250, South Carolina Code of Laws, as amended, requires that the land be fenced, cultivated or improved. While that statute says "and", it is meant to read that cultivation or improvement is by itself sufficient to show possession. See Frazier v. Smallseed, 384 SC 56, 682 SE2d 8 (Ct. App. 2009;

King v. Hawkins, 282 SC 508, 319 SE2nd 361 (Ct. App. 1984). Carolyn's building the gravel roadway, planting a garden, and putting in the wells/septic tanks go to show the improvements required to possess the property.

I find that it would be inequitable to require Carolyn to have her home be moved off of this tract entirely. At the same time, this court must recognize that Floyd does have title to the property.

I therefore find that Carolyn has proven the required elements of adverse possession, i.e., continuous, hostile, open, notorious, actual and exclusive on a small portion of the property and not the entire tract.

I have also concluded that regardless of my findings of adverse possession, I find and conclude that Floyd is estopped from challenging Carolyn's right to remain on that portion of the property since he sat upon his rights for the period of ten years.

Floyd testified that he visited his father who lived on the property numerous times and especially that period where he was stationed at Fort Jackson in Columbia, South Carolina. He admitted that he did nothing from 1989 when the property was conveyed to him until his letter of April, 2008, and that he took no legal action to remove Carolyn from the property. Here, Carolyn was certainly prejudiced by purchasing a second mobile home and making further improvements to the property at great expense.

I have ruled Carolyn's Reply be amended to include the defense of laches.

The evidence and testimony supports that amendment. Floyd's counterclaim has asked this court for an equitable remedy, i.e., to quiet the title, and therefore laches is applicable in this case.

The party seeking laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Kelley v. Kelley, 368 SC 602, at 606, 629 SE2d 388, at 391 (Ct. App. 2006). The determination of whether laches has been established is largely within the discretion of the trial court. For the defense of laches to be sustained, "the circumstances must have been such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts." Kelley, supra. (Quoting Byars v. Cherokee County, 237 SC 548, at 560, 118 SE2d 324, at 330 (1961). In fairness to the parties under all circumstances hereinabove set forth, I find that some flexibility should be shown by this Court in issuing the ruling in this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be granted to the Plaintiff upon the following conditions, to wit:

(1) That she obtain and pay for a survey which allots her the legally minimum amount of acreage upon which to place her home as approved by the Town of McClellanville's Planning and Zoning Board, and which would allow for an ingress-egress easement from South Santee Road to the remaining acreage to the rear of the property designated for Carolyn Smalls.

(2) That upon approval of such a survey this Court issue its deed of conveyance to the Carolyn.

(3) That upon approval of such a survey this Court issue its deed for the residual to Floyd Sanders.

AND IT IS SO ORDERED!

MIKELL R. SCARBOROUGH
MASTER IN EQUITY FOR THE
COUNTY OF CHARLESTON

April 22, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA PLEAS	)	IN THE COURT OF COMMON
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.:2008-CP-10-5661
CAROLYN SMALLS, Plaintiff, vs. FLOYD D. SANDERS, Defendant.	)	**STIPULATED FACTS**

1. The parties are brother and sister, two (2) of the thirteen biological children of Alfair and Andrew Sanders.
2. Andrew and/or Alfair Sanders received or conveyed the subject property by the following deeds and on the following dates:

3.75 acres:

Book C183 at Page 538 recorded March 31, 1989 from Andrew Sanders to Floyd D. Sanders for 4.75 ac of Lot 16 less and excepting 1 ac.

Book J43 at Page 345 recorded February 26, 1942 from Binna Sanders, Ned Sanders, Antiny(Anthony) Sanders and Etta Sanders (Bryand) to Andrew Sanders for Lot No. 16

1.0 acres:

Book C183 at Page 542 recorded March 31, 1989 from Andrew Sanders and Alfair Sanders to Floyd D. Sanders Book W093 at Page 209 recorded January 13, 1970 from Winchester Graham Homes of
Walterboro, Inc. to Andrew Sanders and Alfair Sanders

Book E091 at Page 139 recorded October 08, 1968 from Associates Discount Corporation to Winchester Graham Homes of Walterboro, Inc.

Book M089 at Page 035 recorded January 11, 1968 from Winchester Graham Homes of Walterboro, Inc. to Associates Discount Corporation

Book T087 at Page 322 recorded May 05, 1667 from Andrew Sanders and Alfair Sanders to Winchester Graham Homes of Walterboro, Inc. (NOTE: Alfair conveying her interest as wife of
Andrew Sanders; never owned any interest by means of conveyance).

Exhibit A

Book J43 at Page 345 recorded February 26, 1942 from Binna Sanders, Ned Sanders, Antiny (Anthony) Sanders and Etta Sanders (Bryand) to Andrew Sanders for Lot No. 16

3. Alfair Sanders was not ever vested with title to the "4.5" acre tract; she was once vested with title to the 1-acre tract when a home was built, but Andrew Sanders and Alfair Sanders transferred their interest to this tract to Floyd Sanders in March 1989 (see reference above).
4. The deed from Andrew Sanders into Floyd Sanders was prepared by Robert Fogel of Legare, Hare, and Smith.
5. The parties agree that all record title to the subject property is vested with Floyd Sanders, and recorded in the RMCO, Charleston County.
6. Carolyn Smalls moved onto the property in 1982.
7. At the time Carolyn Smalls moved onto the property, her parents, Andrew and Alfair, still lived on the property.
8. At the present time a brother, Bobby Sanders, still lives on the property.
9. Carolyn Smalls later had a trailer on the property.
10. In 1997, the trailer where Carolyn resided burned.
11. In 1998, Carolyn Smalls placed a new trailer on the property.
12. In 2002, Alfair Sanders died.
13. In 2008, Andrew Sanders died.
14. During her time on the property, Smalls has brought in gravel around her home, and planted a garden. She maintains her residence.
15. The photographs of the Carolyn Smalls residence and the area around it show the extent of Smalls' improvements. She has not improved other parts of the property.
16. Carolyn Smalls has not posted the area around her house with "No Trespassing" signs.

Exhibit B

LEGAL AUTHORITY APPLIED IN THE CASE

1. "The determination of title to real property is legal in nature....Moreover, an adverse possession claim is an action at law..." Jones v. Leagan, 384 S.C. 1 at 10, 681 S.E.2d 6 at 11, (2009) *quoting* Clark v. Hargrave, 323 S.C. 84, 473, S.E. 2d 474, 476 (Ct. App. 1996)(*internal cites to Clark in Jones omitted*).
2. "Because an adverse possession claim is an action at law, the character of the possession is a question for the jury or fact finder." Jones v. Leagan 384 S.C. 1 at 10, 681 S.E.2d 6 at 11, (2009) *citing* Miller v. Leaird, 307 S.C. 56, 61, 413 S.E. 2d 841, 843 (1992).
3. The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time. Mullis v. Winchester, 237 S.C. 487, 491, 118 S.E. 2d 61, 63 (1961).
4. In South Carolina, adverse possession may be established if the elements of the claim are shown to exist for ten years. S.C. Code Ann. §15-67-210 (S.C. Code of Laws of 1976, as amended). The statutory period for a claim under color of title is forty (40) years. S.C. Code Ann. §15-3-380 (S.C. Code of Laws of 1976, as amended).
5. A party must prove a claim of adverse possession by clear and convincing evidence. Davis v. Monteith, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986).
6. "...[A]ppellate review is limited to a determination of whether any

evidence reasonably tends to support the trier of fact's findings." Jones v. Leagan *citing* Miller v. Leaird, 307 S.C. 56, 61, 413 S.E. 2d 841, 843 (1992).

7. "In South Carolina, unlike in most other jurisdictions, possession under a mistaken belief that the property is one's own and with no intent to claim against the property's true owner cannot constitute hostile possession. Lusk v. Callaham, 339 S.E.2d 156 at 158 (S.C. App. 1986), *citing* Brown v. Clemens, 338, S.E. 2d 338 (S.C. 1985).

8. South Carolina observes the "minority rule" on adverse possession. "[T]he minority rule rewards an intentional wrongdoer and disfavors an honest, mistaken entrant" Lusk v. Callaham, 339 S.E.2d 156 at 158.

9. Lynch v. Lynch, 236 S.C. 612, 115 S.E. 2d 301 at 305 (1960), *summarizing adverse possession elements in cases involving relatives:* "In determining what amounts to hostility, the relation which the party claiming adverse possession with reference to the owner is important. 1 Am. Jur., page 873. As a general rule, the law presumes that the exclusive possession for land by one who is a stranger to the holder of the legal title is adverse. Knotts v. Joiner, 217 S.C. 99, 59 S.E. 2d 850. But the family or other relation may be such as to not create such presumption. 2 C.J.S. Adverse Posssession §216(b). In Whitaker v. Jeffcoat 128 S.C. 404, 122 S.E. 495, 496, Mr. Justice Cothran stated that where one seeks to acquire title by adverse possession against his brothers and sisters, such a claim should not be sustained 'except upon a clear preponderance of the evidence." *Id.*

Exhibit B

10. "(Where) entry into possession was permissive...(one) could not hold adversely to the rights of the mortgagors until (one) either surrendered the possession or gave notice of an adverse possession" (Frady v. Ivester, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921).

11. "[W]here one's possession was begun in privity with or in subservience to the title of another, a quasi fiduciary relation is established, and, before the foundation can be had for... the defense of adverse possession by the acquisition of an outstanding title, a clear, positive, and continued disclaimer of the title under which he entered and the assertion of an adverse claim must be brought home to the other party. Until the trust is openly repudiated, the cestui que trust may rely upon the integrity of the trustee without endangering his right by lapse of time." Grant v. Grant 288 S.C. 86, 340 S.E. 2d 791 at 793 (1986) *citing* Weston v. Morgan, 162 S.C. 177, 205-06 160 S.E. 436, 446 (1929).

12. Matthews v. Dennis (365 S.C. 245, 616 S.E. 2d 437 (S.C. App. 2005), cited to persuasive authority binding in other jurisdictions. Specifically, Martin v. Proctor, 313 S.E. 2d 659, 662 (1984) (noting...."[U]se by a child of land owned by its parent is regarded as permissive" absent clear notice of the childs (sic) intention to assert an adverse claim."

13. "The exclusive possession necessary to acquire title by adverse possession is not satisfied if the occupancy is shared with the owner or with agents of the owner". Butler v. Lindsey, 293 S.C. 466 at 472, 361 S.E. 2d 623 at 624

(Ct. App. 1987).

14. "The presumption is that the possession of a tenant in common is for the benefit of all, and before the statute can begin to run it must appear that the holding tenant claimed the property as his own and has in unequivocal terms so notified the others," Whitaker v. Jeffcoat, 122 S.E. 495 at 496.

15. Where one enters onto property with permission, there must be a "clear and positive disclaimer of the title under which entry was made" for a claim of adverse possession. Young v. Nix, 286 S.C. 134, 136, 332 S.E. 2d 773, 774 (Ct. App. 1985).

16. "If a claimant asserts title by adverse possession and his or her occupancy is not under color of title, the claimant must show either fencing or improvements covering most of the subject land or some other continuous use and exercise of dominion." Frazier v. Smallseed 385 S.C. 56, 63, 682 S.E. 2d 8 at 12(S.C. App. 2009) *citing* King v. Hawkins, 282 S.C. 508, 511, 391 S.E. 2d 361, 362 (1984).

Exhibit C

I. Issue of "Ultimogeniture" and the "Nottingham" or "Borough-English" Rule of Inheritance.

Testimony at trial indicated that there was a tradition or pattern for at least two generations of the Sanders family passing property from youngest son of a previous generation to youngest son of the next generation. While this tradition is not binding on the Court, the Court notes that this "rule" of inheritance was once a part of the English Common Law. In his Digest of the Laws of England Respecting Real Property, Vol. 2, (1842), William Cruise states:

> "16. With respect to lands held in borough English, Littleton says, s. 165., some boroughs have a custom, that if a man has issue many sons, and dies, the youngest shall inherit all the tenements which were his father's within the same borough, by force of the custom.
>
> 17. This custom extends to estates tail, and also to descendible freeholds. Thus Lord Coke says,—" If lands, of the nature of borough English, be litten to a man and his heirs, during the life of J. S., and the lessee dieth, the youngest son shall enjoy it-"
>
> 18. The right of representation takes place in the descent of lands held in borough English: therefore, if the youngest son dies in the lifetime of his father, leaving a daughter, she will inherit the lands.
>
> 19. The custom of borough English is however confined to lineal descents..."

Id. p.442. [1]

Records document that this tradition existed in the borough of Nottingham, as well as Kent, Sussex, and Surrey County until relatively recent

[1] Digest of the Laws of England Respecting Real Property, Vol. 2, (1842), Joseph Butterworth and Son, Law-Booksellers, Publishers.

Exhibit C

times. (E. Cobham Brewer's Dictionary of Phrase and Fable, 1989, citing *MacMillan's Magazine,* xlvi (1882) (available online at http://www.bartleby.com/81/2298.html and current as of March 29, 2011). tradition was abolished by Parliament with the passage of the Administration of Estates Act of 1925. It is worthy of note that Defendant's method of inheritance was a distinct and recognized tradition at the English Common Law until modern times.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE 5661
CASE NO. 2008 CP- 10 - [redacted]

Carolyn Smalls

PLAINTIFF(S)

Floyd D. Sanders

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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.

FILED
2013 APR 29 AM 9:45
JULIE J. ARMSTRONG
CLERK OF COURT

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. Additional Information for the Clerk : Defendant's motion to grant a new trial and/or seek relief pursuant to SCRCP 52, 59, and 60 is respectfully denied. Plaintiff will obtain survey w/in 120 days.

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

~~1046~~ 1062
Judge Code

April 26, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20_____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20___to attorneys of record or to parties (when appearing pro se) as follows:

_____
_____
_____
ATTORNEY(S) FOR THE PLAINTIFF(S)

_____
_____
_____
ATTORNEY(S) FOR THE DEFENDANT(S)

_____
CLERK OF COURT

Court Reporter: _____

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
CAROLYN SMALLS. xx Plaintiff	)	CASE NO. 2008-CP-10-5661 - - -
	)	
v.	)	MOTION INFORMATION FORM AND COVER SHEET
	)	
FLOYD D. SANDERS, et al...	)	
☐ Defendant.	)	

Plaintiff's Attorney: Charles S. Goldberg , Bar No. 2168 Address:61 Broad Street Charleston, SC 29401 phone: 720-2800 fax: 722-1190 e-mail: other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
x **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion Type

☐ Written motion attached
x Form Motion – CONSENT ORDER OF REFERENCE
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ JULY 13,2009_____
Signature of Attorney for ☐Plaintiff / ☐DefendantDate submitted

SECTION III: Motion Fee

X PAID – AMOUNT:
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE: 08-CP-10-5661

CAROLYN SMALLS,

Plaintiff,

vs.

FLOYD D. SANDERS,

Defendant.

CONSENT ORDER OF REFERENCE

FILED
2009 JUL 20 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This is an action in which the Plaintiff claims ownership of real estate by adverse possession. The case is presently on the jury trial roster.

The issues are joined. The parties have agreed that the matter should be referred to the Master in Equity for Charleston County for the convenience of the Defendant who is a resident of Georgia.

NOW, THEREFORE, upon motion of plaintiff's attorney and with the consent of the defendant's attorney,

IT IS ORDERED that the above-entitled matter be referred to The Honorable Mikell R. Scarborough, Master in Equity for

Ref# 09-11722

Charleston County, for the purpose of taking testimony, receiving evidence, and submitting an order; provided, however, in the event there is to be an appeal then it is directly appealable to the Supreme Court of South Carolina, as provided by Section 14-11-85, South Carolina Code of Laws, as amended.

JUDGE, NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
~~June~~ July 17,2006.

I MOVE THE ABOVE:

Charles S. Goldberg
Attorney for the Plaintiff

I CONSENT:

John Edward Robinson
Attorney for the Defendant

PAID
DATE 7-14-06
AMOUNT 105.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
BY:

Recycled Paper

PLEASE PRESS FIRMLY

USPS TRACKING NUMBER

9505 5109 4495 3157 5504 73

PLEASE PRESS F

UNITED STATES POSTAL SERVICE

1024

29211

PAID
CHARLESTON.SC
29401
JUN 06.13
AMOUNT

$5.60
00094495-07

PRIORITY MAIL

UNITED STATES POSTAL SERVICE®

www.usps.com

From:

McDowell Law Offices
P.O. Box 670
Charleston, SC 29402-0670

TRY FREE
CARRIER PICK-UP
usps.com/pickup

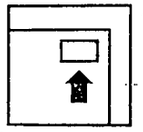
Daniel E. Shearouse
Clerk, SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

▲ Complete address information or place label here ▲

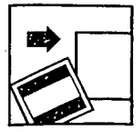
We Deliver.

HOW TO USE:

1. *COMPLETE ADDRESS AREA*
Type or print return address and addressee information in designated area or on label.



2. *PAYMENT METHOD*
Affix postage or meter strip to area indicated in upper right hand corner.



3. *ATTACH LABEL (Optional)*
Remove label backing and affix in designated location.

4. *Bring your Priority Mail package to a post office, present it to your letter carrier, or call 1-800-222-1811 for pick up service. Stamped mail may be deposited in a collection box **ONLY** if it weighs less than 16 ounces.*