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**Dec 29 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master In Equity and Special Circuit Court Judge

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APPELLATE CASE NO.: 2022-000475

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Coffin Point Plantation Homeowners Association, Inc.

Appellants,

vs.

The State of South Carolina, Estate of Charles H. Lyman, The St. Helena Company, Its Successors or Assigns, The Estate of J.D. Cameron a/k/a J. Donald Cameron, The Estate of J.E. McTeer, Wilma Clark, Jeanine Skok, Lawrence Casler, Dean Morrissey, Carol Morrissey, Ralph Netherland, Gloria Netherland, Special Trust of William B. Fahrner, Mark Heles, Beverly Heles, David Smith, Lynn Smith, LiLi, LLC, Revocable Living Trust of Thomas Walterhoefer, Ceclily Deegan McMillan, Steven Teets, Lucinda Teets, Beverly Boulware, Russell Waldon, Nicolette Waldon, David Shaffer, Delora Cook, Gerald Hartwig, Carol Hartwig, Paulette Brown, Benjamin Couch, Thomas S. Clark Family Living Trust, Euniceteen Diggs, Janet Kathleen Reynolds Trust, Slade Family Revocable Trust, David C. Strother, Andrew Seward, Ashley Heath Madilon, Arnold Hollis, Lillian Hollis, Jennifer Allen, Zia As Exchange Company, LLC, Qualified Intermediary for Barbara J. Bailey Limited Partnership, Travis Washington, Janet Embly, Trustee and Individually, William S. Embly, Trustee and Individually, Scott Simmons Omari Trust, Mary Hudson, Rachelle Carolynne Owens Revocable Trust, Gerald Hartwig, Carol Hartwig, Gerald L. Wayne, Vivian M. Wayne, Lorrie Gaskin Germann, Grant Martin Germann, Gregory J. Giardina, Melissa Basenburg, Mark M. Hazard, Micah L. Myers, Jennifer J. Myers, John Joseph Edwards, Nancy Jean Edwards, Preston Ventures, LLC, Donald Lunardini, Kristina Barbara Moore Lunaradini, Melissa Uhlman Revocable Trust and All Other Persons Known or Unknown Having Any Interest, Title, Estate or Interest In Or Lien Upon the Real Property Described in the

Complaint Herein Through the Above Defendants or Any Other Source Being Designated Collectively As John Doe and Mary Roe Including All Persons Who May Be Deceased, Minors, Persons in the Armed Forces of the United States of America, Insane or Incompetent Persons, and All Other Persons Under Any Other Disability Who Might Have or Claim to Have Any Right, Title or Interest in or Lien Upon the Real Property Described in the Complaint.

Respondents.

---

APPELLANT'S REVISED INITIAL BRIEF

---

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## STATEMENT OF THE CASE

### A. PROCEDURAL HISTORY

This quiet title action was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on October 25, 2018. In its Complaint, the Plaintiff, Coffin Point Plantation Homeowners Association, Inc. (“Coffin Point Plantation HOA”) asks the Court to confirm and quiet title to a parcel of real property located in Beaufort County, South Carolina.

On February 19, 2019 an Order Appointing a Guardian ad Litem to represent all unknown persons with an interest in the subject property, minor heirs, persons under disability or in the military service was filed.

On March 13, 2019 an Order allowing service by publication was filed, and on April 8, 2019 an Affidavit confirming service by publication was filed.

On March 28, 2019 a Consent Order of Reference was filed, referring the case to the Honorable Marvin H. Dukes, III, Beaufort County Master in Equity.

In response to a Motion to Dismiss filed by the Defendant State of South Carolina on July 17, 2019 and a Motion to Dismiss filed by the Defendant Scot F. Hersh on July 17, 2019 the Court entered an Order on July 17, 2019 allowing the Plaintiff to amend its Complaint. The Amended Summons and Complaint was filed with the Court on July 31, 2019, essentially adding additional parties to the case as Defendants. On August 9, 2019 the Defendant Scot F. Hersh filed his Answer to the Amended Complaint. On August 14, 2019 the State of South Carolina filed its Answer to the Amended Complaint. The Defendants John B. Marlow and Veronica Elaine Marlow, Valerie Gladieux, David Ross Striebinger, Jill C. Striebinger, Anthony Roselle, Michelle R. Roselle, Maureen Westmoreland Dodgen, Dudley Sandford Dodgen, Jr., James Von Rossem, Laurie Van

Rossem, Charles Replogle, Dianne Replogle, Frederick Lambert Urtz and Jill Urtz filed their Answers to the Amended Complaint on August 15, 2019. All other Defendants are in default.

The Court, *sua sponte*, asked the parties to submit briefs regarding the applicability of §48-39-220 of the South Carolina Code of Laws to this action. After receiving the State of South Carolina's Memo on January 5, 2020 and the Plaintiff's Memo on January 10, 2022 the Court issued its Order Granting Partial Summary Judgment on February 2, 2022.

On February 7, 2022 the Plaintiff filed its Motion to Reconsider, Alter or Amend the Judgment.

On March 17, 2022 the Court issued its Order denying the Plaintiff's Motion for Reconsideration.

On April 12, 2022 the Plaintiff filed its Notice of Appeal to the South Carolina Court of Appeals.

## B. FACTUAL BACKGROUND

On November 30, 1891, a Deed and Land Grant was executed by the State of South Carolina in accordance with Acts of the General Assembly in relation to Vacant Lands. Pursuant to this Deed and Land Grant the State of South Carolina, as Grantor, for and in consideration of the sum of \$164.00 paid to the Secretary of State by Charles H. Lyman, granted, bargained, sold and conveyed to Charles H. Lyman, his heirs and assigns forever, 164.13 acres of real property, consisting of Lots A and B, which are described in the Deed as follows:

(A) Plantation, or Tract of Vacant Land, situate in St. Helena Township in Beaufort County and State aforesaid containing one hundred and sixty four and 13/100 acres, more or less, being marsh land between high and low water mark on St. Helena Island lying to the Northwest, North and Northeast of Coffin Point Plantation, being Lot "A" containing 114 acres more or less and Lot "B" containing 50 13/100 acres, more or less, having such shape, form and marks as are represented by a Plat of

said land on file in the Office of the Secretary of State in Book 2 of Public Land Plats, Page 22, together with all woods, trees, water courses, profits, commodities, appurtenances and hereditaments whatsoever thereunto belonging: reserving nevertheless to the State of South Carolina all mineral and phosphate rights and the right of the said State of South Carolina to the exclusive use, control and ownership of all mineral and phosphate deposits on the premises hereby granted.

This litigation is concerned only with Lot B. (ROA, pg. \_\_\_\_\_).

As noted above, Lot B is described in the Deed as “being marsh land between the high and low water mark.” (ROA, pg. \_\_\_\_\_).

The aforesaid Deed and Land Grant from the State of South Carolina to Charles H. Layman, his heirs and assigns, forever, was executed by his Excellency, B.R. Tillman, “Governor and Commander-in-Chief in and over the State of South Carolina,” and J. E. Tindall, Secretary of State of the State of South Carolina on November 30, 1981 (ROA, pg. \_\_\_\_\_).

On December 9, 1891, this Deed and Land Grant was duly recorded in the Office of the Commissioners of the Sinking Fund of South Carolina in Vol. 91 at Page 58 of the South Carolina Archives for State Grants. (ROA, pg. \_\_\_\_\_).

This Deed and Land Grant recites that it “is issued in conformity with a Resolution of the Commissioners of the Sinking Fund directing the same, adopted on the Eighth day of Sept 1891” and signed by the Secretary of the Sinking Fund Commission. (ROA, pg. \_\_\_\_\_).

The aforesaid Deed and Land Grant was additionally duly recorded by the South Carolina Secretary of State in the Book of Public Grants for the State of South Carolina in Record Book 2 at Page 22. (ROA, pg. \_\_\_\_\_).

Finally, this Deed and Land Grant from the State of South Carolina to Charles H. Lyman was recorded one more time, this time in Deed Book 19 at Page 86 in the Office of the Register of Deeds for Beaufort County, South Carolina. (ROA, pg. \_\_\_\_\_).

The plat referenced in the foregoing Deed and Land Grant is a plat prepared by H. G. Judd, Surveyor, on August 13, 1891, and re-surveyed on June 12, 1892. It is recorded in the Office of the Secretary of State for South Carolina in Book 2 of Public Land Plats at Page 22. It was also filed with the South Carolina Department of Archives and History in its "Sinking Fund Miscellaneous Plats" at pages 298-99. This plat shows both Lot A and Lot B. The plat contains a certification by the surveyor that he has been "well acquainted" with this tract of land for at least 25 years. In this certification he describes the property as "marsh land" states that "the same is actually and bona fide vacant land." In this certification he describes Lot B as "the line of beach extending from the mouth of Coffin Creek along the southerly margin of Morgan River, and then along the easterly line of the Coffin Point place 171 chains, with a width of 3 chains between high and low water marks; and find that the space between said lines contains 50 acres & three tenths." Lot B is precisely shown on the plat, with courses, metes, bounds, and distances. (ROA, pg. \_\_\_\_).

In it's Complaint, the Plaintiff alleges that it is now the owner of Lot B as a result of a recorded chain of title extending over the ensuing years from Charles H. Lyman to itself. (POA, pg. \_\_\_\_).

### C. STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRPC, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court

will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct.App.1995) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Nelson v. Charleston County Parks & Recreation Comm'n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct.App.2004).

I. THE BEAUFORT COUNTY MASTER IN EQUITY ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT TO THE DEFENDANTS TO THE EXTENT THAT THE PROPERTY AT ISSUE IS A BEACH, WHERE §48-39-220 OF THE SOUTH CAROLINA CODE OF LAWS, BY ITS EXPRESS LANGUAGE, DOES NOT APPLY TO AN ACTION TO ESTABLISH TITLE TO BEACHES.

In its Order Granting Partial Summary Judgment, the Court granted summary judgment for the Defendants in this case to the extent that the property at issue is a beach. In so doing, the Court relied upon S.C. Code Ann. §48-39-220, which expressly does not apply to beaches. It is respectfully submitted that the Court's interpretation of, and reliance on, §48-39-220 is misplaced.

Section 48-39-220 of the South Carolina Code of Laws allows any person who claims an interest in "tidelands" to bring an action against South Carolina for the purpose of determining the existence of any right, title or interest of such person to such tidelands against the State. This section expressly provides that it does not apply to "beaches."

Under the statute, "tidelands" and "beaches" are precisely defined. Whether Lot B is a "tideland" or a "beach" or a combination of both, is a question of fact. Questions of fact, of course, are not appropriate for resolution by summary judgment.

Assuming for the sake of argument that all or a portion of Lot B is a "tideland," then §48-39-220 expressly allows an action for a private citizen to establish an interest in the subject tideland.

Assuming, for the sake of argument, that all or a portion of Lot B is a "beach," there is nothing in §48-39-220 which prohibits a person from bringing an action to establish an ownership interest in a "beach."

Contrary to the conclusion set forth in the Order Granting Partial Summary Judgment, §48-39-220 does not prohibit an action to establish title to beaches. By the express language of the statute, it simply does not apply to any action to establish title to beaches. ("Any person claiming

an interest in tidelands which, for the purpose of this section, means all lands except beaches . . .”  
(emphasis added)) *Id.*, Sec. 48-39-220(A) . In other words, this statute simply has no application whatsoever to an action to establish title to a beach. Accordingly, it does not prohibit such an action.

II. THE BEAUFORT COUNTY MASTER IN EQUITY ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT TO THE DEFENDANTS TO THE EXTENT THAT THE PROPERTY AT ISSUE IS A BEACH WHERE THE SOUTH CAROLINA GENERAL ASSEMBLY, BY ENACTING §48-39-220 OF THE SOUTH CAROLINA CODE OF LAWS COULD NOT DIVEST A THIRD PARTY OF TITLE TO REAL PROPERTY WHICH HAD ALREADY VESTED IN THE THIRD PARTY BY VIRTUE OF A GRANT OR CONVEYANCE TO THAT THIRD PARTY BY THE STATE OF SOUTH CAROLINA PRIOR TO THE PASSAGE OF §48-39-220.

The Court correctly notes in the Order Granting Partial Summary Judgment that it is currently the public policy of South Carolina to hold tidelands and beaches in trust for the people of South Carolina. This public policy, however, applies only to tidelands and beaches that are owned by the State of South Carolina, not to privately owned property. In *Hollier v. State*, 428 S.C. 279, 291, 833 S.E.2d 845, 852 (Ct.App. 2019, Rehearing denied October 17, 2019, Certiorari dismissed January 29, 2020) the Court stated:

**“Our State’s tidelands** are a precious public resource held in trust for the people of South Carolina.”

*Id.*, *emphasis added*. The emphasized language above, can be restated as: **“Tidelands that are owned by the State** are a precious public resource held in trust for the people of South Carolina.”

In its Order Granting Partial Summary Judgment the Court correctly notes that *Hobonny Club v. McEachern*, 272 S.C. 392, 252 S.E.2d 133 (1979) stands for the proposition that title to lands lying between the mean high-water mark and mean low-water mark is held by the State in trust for public purposes absent a grant from the State or the King of England. See Order, pg. 2 (*emphasis added*). In this case, the essential element of the “absence of a grant from the State” is missing, inasmuch as this property was expressly granted and sold by the State of South Carolina to a private citizen. As the Court in *Hobonny* noted: “Despite the special status accorded tidelands, the government, and specifically the King of England, had the power to grant, and did in fact grant, tidelands to subjects, who exercised private ownership.” *Id.* The property at issue in this case was

sold by the State of South Carolina in 1891, for good and valuable consideration, to a private citizen, Lt. Lyman, who is the Plaintiff's alleged predecessor in title. The deed from the State to Lt. Lyman was duly recorded and was executed by no less than, among others, the Governor, the Attorney General, the Comptroller General, and the Treasurer of South Carolina. This deed was recorded in the South Carolina Archives for State Grants, in the South Carolina Secretary of State Book of Public Grants for the State of South Carolina, and, finally, in the Office of the Register of Deeds for Beaufort County, South Carolina. According to the allegations of the Complaint, Lt. Lyman thereafter sold this property to the St. Helena Company, which sold it to J.D. Cameron, who sold it to J.E. McTeer, with each of these transactions accomplished pursuant to a deed duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. (ROA, pg. \_\_\_\_).

The bottom line is the State of South Carolina sold this property in 1891 to a private citizen. This sale and conveyance took place long before the General Assembly enacted §48-39-220.

The South Carolina Supreme Court long ago recognized the "sanctity" of private property rights. *Ex Parte Bacot*, 36 S.C. 125, 15 S.E.2d 204 (1892). Although the General Assembly may change the existing law at its pleasure, it may not deprive a person of a vested property right. This is prohibited by both the South Carolina Constitution, as well as the Fifth Amendment to the Constitution of the United States. "The State has no power to divest or impair vested rights, whether such an attempt to do so be made by legislative enactment, by municipal ordinance, or by change in the Constitution of the State." *Muldrow v. Caldwell*, 173 S.C. 243, 175 S.E. 501 (1934).

Accordingly, §48-39-220 applies only to property that was owned by the State of South Carolina at the time of its passage. Since the State of South Carolina had already sold and

conveyed this property to a private citizen, and it was privately owned property at the time of the enactment of §48-39-220, this section has no applicability to the property at issue in this case.

CONCLUSION

Section 48-39-220 in no way prohibits an action to establish title to a beach. In fact, it expressly states that it does not apply to an action to establish title to a beach.

Additionally, although it is currently the public policy of South Carolina to hold beaches in trust for the public, that was obviously not the policy back in 1891, when South Carolina sold this property to a private citizen. South Carolina simply does not have the power, by legislative enactment, to divest a private citizen of his property.

It is accordingly respectfully requested that the Order of the Beaufort County Master in Equity granting partial summary judgment to the Defendants be reversed and this case remanded back to the Beaufort County Court of Common Pleas for further proceedings.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM BEAUFORT COUNTY  
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Honorable Marvin H. Dukes, III, Master In Equity and Special Circuit Court Judge

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APPELLATE CASE NO.: 2022-000475

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Coffin Point Plantation Homeowners Association, Inc.,

Appellant

v.

State of South Carolina

Respondents.

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CERTIFICATE OF SERVICE

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The undersigned certifies that the **Appellant's Revised Initial Brief** to which this certificate is affixed, was served upon the parties to this action by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the following:

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in a post office or official depository under the exclusive care and custody of the United States

Postal Service on December 29, 2022.

MOSS & KUHN, P.A.

By: 

\_\_\_\_\_  
Sue Radford

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Dec 29 2022

SC Court of Appeals

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December 29, 2022

The Honorable Jenny Abbott Kitchings  
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RE: Coffin Point Plantation Homeowners Association, Inc. v. The State of South Carolina, et al.  
Appellate Case No.: 2022-000475

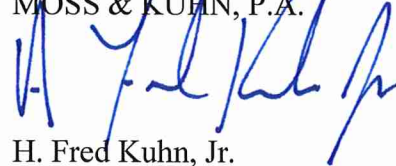
Dear Mrs. Kitchings:

Pursuant to this Court's Order dated December 20, 2022, enclosed please find the Appellant's Revised Initial Brief and Revised Designation of Matter to be Included in Record on Appeal.

With kindest regards, I am

Very truly yours,

MOSS & KUHN, P.A.



H. Fred Kuhn, Jr.

HFKjr:sr  
Enclosure

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Mark Heles and Beverly Heles  
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Cecily Deegan McMillan  
Steven Teets and Lucinda Teets  
Beverly J. Boulware  
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Scott Simmons Omari Trust  
Mary Hudson  
Rachelle Carolynne Owens Revocable Trust  
Gerald L. Wayne and Vivian M. Wayne  
Grant M. Germann and Lorrie G. Germann  
Gregory L. Giardina and Melissa C. Giardina  
Melissa Basenburg  
Micah L. Meyers and Jennifer J. Meyers  
James J. Edwards and Nancy J. Edwards  
Preston Ventures, LLC  
Donald Lunardini and Kristina Lunardini  
Melissa Uhlman Revocable Trust