

Notice Of Appeal In A Civil Matter

The State Of South Carolina  
In The Court Of Appeals  
In The Supreme Court  
Appeal From Charleston County  
Court Of Common Pleas

The Honorable Mikell R. Scarborough Circuit Court Judge

CASE NO.: 20-21-Cp-10-04058

Heirs of Property of Helen G. Tolbert

Betty Jean T. Jones

Sara Jo T. Latten

Respondents

Keith L. Tolbert

Charles L. McMillian AKA Charles Tolbert

III

V.

Carolyn Tolbert Smith

Appellant

Carolyn Tolbert Smith

338 Fifth Avenue

Mt. Pleasant, SC

29464

1-843-216-6960

Mona C. Pro Se

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**SC Court of Appeals**

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Carolyn Tolbert Smith  
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Mt. Pleasant, SC 29464  
1-843-214-6960

Appellant Pro Se

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SC Court of Appeals

South Carolina Court of Appeals  
Ridge land County, South Carolina

CASE No: 2021-Cp-10-04058

Hearing Date September 26, 2022

Heirs Of Helen A. Grant Tolbert

Sara Jo T. Latten

Betty Jean T. Jones

Respondents

Keith L. Tolbert

Charles L. McMillian, III AKA. Charles Tolbert

V.

Carolyn Tolbert Smith Appellant

Appeal From Charleston County SC

The Honorable Mikell R. Scarborough

Circuit Court Judge

Carolyn T. Smith, appearing Pro Se submits this  
Opposition To Summary Judgement

Appellant can demonstrate that there is genuine issue as to material fact not heard at the above mentioned hearing. Said material facts preclude the entry of the Court's entry of order [Judgment] entered November 8, <sup>30</sup>2022, and received by Appellant Dec 1, 2022. Opposition is based upon and

A-2

A-2  
Cont?

## Standard For Summary judgment

Fleming v. Rose 350 S.E. 488, 493, 567 S.E. 2d 857, 860 2002

→ Supported by "Memorandum of Points And Authorities" for example - Pleadings, Affidavits, papers on file, interrogatories and the like. Appellant acts to head off a travesty of justice: an egregious act.

a) The Circuit Court erred in skipping and ignoring

a) The Standard For Summary Judgment. Stated it "soup," Summary judgment shall be rendered, if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact that the moving party is entitled to judgment as a matter of fact. Herein the Circuit Court did not hear arguments nor request pleadings, interrogatories, affidavits nor other materials at hearing herein mentioned.

The Circuit Court held an "open and shut" hearing, starting with the Summary judgment claim filed by Charles Tolbert, argued by Counsel for Charles Tolbert. Said Counsel chose and based her argument on Case Law - Fender v. The Heirs of Smashum wherein land and Ouster therein were the issues. The circuit Court

judge admitted there that he was considering said case law wherein a sixth element, "Ouster," was a major issue. However

b) the circuit Court erred in pointedly utilizing "Ouster" arbitrarily to support a judgment call that there could be no counterclaim to Quiet title wherein a Deed of Distribution existed. The judgment call by the judge herein was that, "Ouster" in my counterclaim to Quiet title, "Ouster," could not be achieved. So

Counterclaim is defeated. This issue is arguable.

- c) The Circuit Court erred in not hearing any rebuttle to the claim of defeat of my Counterclaim to quiet title. Below please find genuine issues as to material fact. Appellant now points to Fender v. The Heirs of Smashum

Page ② ←

Paragraph:

⑥ of

Fender v

Heirs of

Smashum

Queen Smashum Counter claimed to quiet title to a property Fender claimed belonged to him as to Adverse Possession. In spite of a Deed of Distribution, the Counterclaim to quiet title prevailed. Appellant's issue like Queen Smashum's should prevail - see page with case law Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E. 2d 654, 656 (Cr. App. 2002).

- d) The circuit Court failed to prove the Appellant executed and signed on to any corrective Deed of Distribution. Counsel(s) for the Plaintiffs, Keith Talbert and Charles Talbert executed new Deed(s) of Distribution. Appellant has seen prove • forgeries of Appellant's name printed where a signature is required also my signature forged. The Circuit Court approved said forgeries and the accusation that Appellant executed said correction.

- e) The circuit Court failed to observe observe the five not six SC standard of elements to be satisfied for a claim of Adverse Possession to succeed or prevail in South Carolina i.e. one must prove hostile, open, actual, notorious and exclusive possession of a property. Said elements Appellant satisfied. The circuit Court opened and shut the hearing door on said genuine issues when he opened the session to only arguments pro the Summary Judgment.

## At 4 Opposition To Summary Judgment

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming v Rose, 350 S.C. 488, 493, 567 S.E. 2d 857, 860 (2002)

In CASE No: 2021-CP-10-04058, Plaintiffs Keith L. Tolbert and Charles Tolbert, A.K.A. Charles Leon McMillian, III are not entitled to judgment as a matter of law.

There is genuine issue as to material fact not heard at Hearing, September 21, 2022. Moreover Summary judgment is a drastic remedy that should be cautiously invoked to ensure no person is improperly deprived of disputed factual issues to be argued (interpreted) from case law utilized in the appeal of Fender v. Heirs of Smashum - Fleming v Rose, 360 S.C. 488, 493, 567 S.E. 2d 857, 860 (2002).

I demonstrate below genuine issues of material fact in case 2021-CP-10-04058 noted above.

The Circuit Court, utilizing case law Fender v. Heirs of Smashum, included "Ouster," resulting in a requirement of satisfaction of six elements to prevail in a matter of Adverse Possession, the fact that is arguable herein is that there are only five elements required by established South Carolina law, to satisfy, to insure one's ability to prevail in the matter of Adverse Possession. These five elements I cite now:

- ① Occupation is open and notorious (famous)
- ② Occupation is exclusive
- ③ Occupation is hostile
- ④ Occupation is continuous for the statutory period i.e 10 or 20 yrs.
- ⑤ Occupation is continuous and uninterrupted 6. Ouster

A4 cont.

Appellant will show that she, Carolyn T. Smith has established title by Adverse possession to the subject properties i.e. lots 326 and 327, 338 Fifth Avenue, Mt. Pleasant, SC 29464 and the adjacent lot at the corner of Fifth Avenue and Sixth Street.

b) Because the Circuit Court did not hear genuine issues as to material facts herein said court did not consider conclusions, inferences, to be drawn from evidentiary facts existing in my counterclaim to quiet title. Said facts prove my right to Adverse Possession of the subject properties - Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App 2002) Further/Moreover Summary judgment is a drastic remedy that should be cautiously invoked, to assure no person is improperly deprived of a trial (interpreted as opportunity of defense) in disputed factual issues - drawn from Lanham v. Blue Cross Blue Shield S.C. 349 S.C. 356, 563, S.E. 2d 331, 334 (2002) Below Appellant proves hostile, open, actual, notorious \* and exclusive possession of the pr subject property

a) Open - Affidavits in the hands of previous counsel prove open possession

b) Actual, notorious (famous) - Proof of these three elements are shown as follows - My address has been continuously that of the subject property i.e.

A4

property at 338 Fifth Avenue Mt. Pleasant, SC 29464 has been my Appellant's residence for twenty-seven years. This fact in itself proves and satisfies five and all six elements that gain title to Adverse Possession. Nonetheless here below is further breakdown:

- \* What is exclusive exclusive herein is the fact that no others have lived at/in the subject property other than Appellant and her children and Appellant's parents Fred W. and Helen G. Tolbert = Appellant 1995-2022 continually uninterrupted, children nineteen year, twenty years in 2023.

Some proof herein: Appellant's address is noted by employment with Charleston County Schools 1995-2020; D.M.V., TRS, Charleston County Property tax of (2003-2022); M.S.B.C., The Church of The Open Door (from Mt Pleasant long distant); Hibben United Methodist Church, Colleagues; Deacons, Deaconesses and Church members

(Local) Schools of grand children, neighbors postmen and post women, banks grocers checking accounts Life insurance Company and more,

- \* Hostility carries/bares malevolence, ill will occasioned by intimidation of or by a party or parties intimidated by one seen as an antagonist. Appellant, seem as the antagonist creates hostility. My Control over the affairs of Helen and Fred especially finances and all that follows proving Appellant's total control and po-

A-6

Profits

ession of the subject properties constitute Appellant's hostile occupation of/on the subject property (1) Appellant was given P.A for parents; telephone was put in the name of grandson Torrance W. Smith; Ave; grand daughter, added fiber optics, Wifi capability; internet and cable; Take over of Helen's car used to take Fred & Helen on afternoon outings, to restaurants at hotels and other locations - Also travels for a 3 week stay at the Hippocrates Health Resort in W. Palm Beach, FL and to Miami; Appellant's verbal retaliation when Sara Jo called to challenge my spending countered with, "When any other sibling decides to come, take my place and toil and struggle lovingly with our deserving parents, mother and daddy I'll give up the reins to that one. Besides Helen and Appellant, Carolyn share our checking account. Appellant's spend her own money from my job with mother's money." Betty Jean never agreed with my Power of Attorney. Charles Tolbert and Charla his sister were, "busted," from the subject properties beginning 1985 when in response to their grandmother Helen's and Fred's Fiftieth wedding anniversary with nasty, smutty threatening letters. Helen read Charla's but Appellant intercepted and saved Charles Tolbert who dropped in be mother passed. He sat away; looked at Helen; said, "She looks good;" asked would Appellant

A-6

A-7

## Charles Tolbert turned out

In and about Oct./Nov. 2020 or '21 Charles Tolbert arrived in Charleston, called Appellants home to request a visit so that he could get a picture of Fred Tolbert's mother. We (Occupation) occupants at said property turned Charles out denied him visitation and entry

Because we've paid all taxes, 2003-2022  
\* Appellant only profits annually per monies on I.R.S. returns.

\* Appellant's children and some grand children live with Appellant the living. Siblings saw that rooms use to be theirs now belong to my family. The revelation of said ouster, "brought it home," when siblings and some grands assembled at the subject property at the time of Blanton Tolbert's funeral. Siblings already knew that Appellant's grands were the only grands that spent all summers at subject property. Surely Appellant has address genuine issues as to material fact which preclude entry of Summary judgment. Pleadings, papers, interrogatories, affidavits are filed with former Counsel. All documents required by the SC Court of Appeals will be mailed or hand delivered to said Court

\* Appell has addressed six elements to show <sup>can't</sup> compliance that in turn entitles the

\* Appellant title to Adverse Possession.  
Title by ten years adverse possession by a cotenant

A-8

\* Against another may be acquired only after actual ouster of which the latter has notice or should have in the exercise of a reasonable diligence and vigilance,

" Watson v. Little, 224 S.C. 359, 364, 79 S.E. 2d 384, 387 (1953). eg improvements and upkeep of the property roof replaced; dwelling exterior painted, grounds built up; kitchen appliances replaced - fridge, stove, sink, and dish washer, installation of decorative wall shelving, toilets upgraded three grounded sheds installed, regular care of grounds, fences damaged recently by hurricane Ian (Ean) and by tree limb cutter. Some tree trimming as well. Notice was also given by the taxes paid for 19 plus year and by the length of time Appellant's family had/lived here 27 years with no other shelter available, lost.

Actual, open, hostile occupation, notorious (famously noted widespread) and exclusive possession of the subject property is and for twenty or more years clearly and unequivocally has been revealed to all present heirs. Anyone would evince from the facts, all fact presented herein that title to Adverse Possession unequivocally is due Appellant, Carolyn Tolbert Smith

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Cover sheet

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Mt. Pleasant, SC 29464

JAN 03 2023

SC Court of Appeals

The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Thank you in advance.

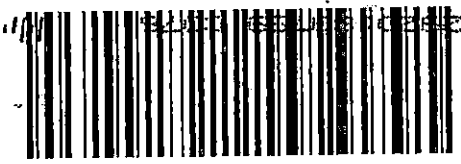
Judges of The South Carolina Court of Appeals:

Appellant herein, Carolyn Tolbert Smith submit to the court Pro Se my appeal to Summary judgment Order [Judgment] by the Honorable Mikell R. Scarborough. Once again I pray the Courts indulgence and apologize that with no professional assistance at this time, as I solicit professional help appropriate at the appellate level, I began the appeal Pro Se. I feared not entering my appeal timely, if no extension were given me in which case a travesty of justice would occur, an egregious outcome.

My mother, Mrs. Helen G. Tolbert and my late father Mr. Fred W. Tolbert left property that they made priceless sacrifice to acquire. Said parents are among the worthiest for whom I dearly struggle to show thanks, to Ma + Pa and love, respect and honor by preserving the subject property as a legacy to them.

I shall spend more time now to secure Counsel. No forsaking family + tourist

The Commandant  
338 Fifth Ave  
Mt. Pleasant, S.C 2940



DEC 31, 22  
AMOUNT  
**\$7.49**  
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**SC Court of Appeals**

South Carolina Court of Appeals  
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Urgent, please.

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