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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court Of Common Pleas
Circuit Court Case No. 2018CP0702109

The Honorable Master in Equity and Special Circuit Court Judge

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Appellate Case No.2022-000475

Coffin Point Homeowners Association, Inc. ..... Appellant,

v.

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 Exchange Company, LLC, Qualified Intermediary for Barbara J. Bailey Limited Partnership, Travis Washington, Janet Embly, Trustee and Individually, William S. Embly, Trustee and Individually, William S. Emblee, Trustee and Individually, Scott Simmons Omari Trust, Mary Hudson, Rachell 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. Meyers, Jennifer J. Meyers, John Joseph Edwards, Nancy Jean Edwards, Preston Ventures, LLC, Donald Lunardini, Kristina Barbara Moore Lunardini, 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.

INITIAL BRIEF OF RESPONDENT STATE OF SOUTH CAROLINA

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STATEMENT OF ISSUES[1]

1. Whether the Order granting partial summary judgment was immediately appealable?

2. Whether Appellant's claims are not ripe because Appellant has not shown that any of the property it has claimed is a beach?

3. Whether Appellant's claims are not ripe because it has not shown that it owns the property if it is a beach?

4. Whether the circuit court properly found that §48-39-220 does not authorize quiet title actions as to beaches?

5. Whether S.C. Code Ann. §48-39-220 applies only to property owned by the State of South Carolina at the time of its passage?

6. Whether Appellant could exclude the public from the beach if it had been granted?

7. Whether Appellant has established a takings claim?

STATEMENT OF THE CASE

In addition to the history of the proceedings included in Appellant's brief, the State submits the following additional history:

By Order of September 28, 2020, the circuit court directed the Plaintiff to amend its Complaint to add the additional parties requested by the Defendant Hersh, as well as any other parties deemed necessary. R. p. * (Order). The Order provided that any party that had previously answered did not need to file an additional answer. Appellant filed a Second Amended Complaint on October 5, 2020. R. p. *. The State did not file an additional answer.

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1 Appellant's initial brief does not include a Statement of Issues as required by Rule 209, SCACR. The brief does include descriptive headers for its arguments in the Table of Contents and Argument sections.

The State filed a Motion for Summary Judgment on November 1, 2021, on grounds that included that Appellant had not produced a current description of the property claimed, had not proved that the property claimed today is in a chain with deeds that it has produced, and had not produced experts commonly used in tidelands cases, a title abstractor / examiner and a surveyor. R. p. *. The State filed a Supplemental Memorandum on December 15, 2021, (R. p. *).

At a motions hearing on December 22, 2021, by WebEx, the Court requested briefing on the question of whether S.C. Code Ann. §48-39-220 applies to beaches. R. p. * (Order of February 2, 2022). The State filed its Memorandum on the question on January 5, 2022. R. p. *.

The Court issued its Order on February 2, 2022, granting summary judgment to the Defendants to the extent that the property at issue is a beach, and denying summary judgment as to any part of that property that is not a beach. R. p. *. The Order allowed Appellant a period of time to survey any non-beach portion of the claim, and required that the survey identify which part of the property at issue is beach and what is not, and directed that the survey should identify where the 1891 grant is located in relation to the property claimed today. *Id.*

Appellant filed a Motion to Reconsider (R. p. *) to which the State responded in opposition (R. p. *). The Court denied the Motion by a summary order of March 17, 2022. This appeal then followed.

STATEMENT OF FACTS

The November 30, 1891, grant of the State of South Carolina to Charles Lyman under which Appellant claims, conveys 164 13/100 acres of "marshland" consisting of lots A and B containing, respectively 114 acres and 50 13/100 acres. R. p. *. The grant references a Plat on file in the Secretary at page 22 of Book 2 of Public Land Plats. Appellant has produced a plat dated August 13, 1891 for Lyman, but it does not contain the Book references in the grant and has

not been identified as the same plat. R. * . The plat describes Lot B as "a line of beach.", and that lot is the one under which Appellant makes its claim (R. p. *); however, Appellant never complied with the Court's above order directing that it produce a surveyor's opinion as to whether the grant and plat line up with the property claimed today and whether the claimed property is beach today. Instead, Appellant initiated this appeal.

STANDARD OF REVIEW

The following standard governs this appeal.

> "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court...." *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citing *Brockbank v. Best Capital Corp*., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000)). "[A] trial court may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Id.* at 234, 692 S.E.2d at 505 (quoting Rule 56(c), SCRCP).

Traynum v. Scavens, 416 S.C. 197, 201, 786 S.E.2d 115, 117 (2016).

ARGUMENT

This appeal is flawed at the outset because it does not meet the standards for an appeal of a partial summary judgment ruling. Appellant never alleged ownership of a beach, never established that the property at issue is beach and never proved ownership of such property. Its appeal is not ripe. Even if the appeal were properly taken, the circuit court correctly ruled that Appellant could not bring a quiet title action to beach property under S.C. Code Ann. §48-39-220, and Appellant does not have a takings claim based upon that ruling because it has not established that it owns the property at issue. Moreover, under State law, Appellant could not exclude the public from engaging in recreational activities on the beach even it did own it.

I

THE ORDER GRANTING PARTIAL SUMMARY JUDGMENT WAS NOT IMMEDIATELY APPEALABLE

> Generally, orders granting partial summary judgment may be immediately appealable under either the "involving the merits" or "substantial right" categories of section 14–3–330(1) and (2)(c). *See Link v. Sch. Dist. of Pickens County,* 302 S.C. 1, 6, 393 S.E.2d 176, 178–79 (1990) (holding an order granting partial summary judgment may be appealable under either category). To decide whether a particular summary judgment order fits into either subsection, however, the court must examine the order to determine if it meets the subsection's criteria for appealability.

Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011). The Orders at issue do not meet this criteria for an immediate appeal. They do not involve the merits or a substantial right because Appellant did not allege in its Complaint that the property is beach, does not claim it is beach in its brief[2], and did not bring his claim under S.C. Code §48-39-220 which provides a means of adjudicating tidelands claims. Appellant also did not comply with the parts of the Order giving Appellant time to survey the property to identify which part of the property is beach and which is not and to identify where the 1891 grant is located in relation to the property claimed today. As stated by the circuit court, "Plaintiff has not provided any information about his surveyor's opinion to show whether the property, as it exists today, is by its nature a beach or a marsh" (R. p. * (Order at p. 3) and "we do not know if the granted land is partially or fully underwater now or whether it is aligned with the property nv claimed by Plaintiff." R. p. * Order at p. 5, n. 2.

At this point, the appeal presents just a hypothetical question of whether if the property is a beach and Appellant has claim to it under the grant, it can bring this quiet title action. A hypothetical question is not ripe for appeal. *See State v. Cooper*, 342 S.C. 389, 397, 536 S.E.2d

2 Appellant makes assumptions "for the sake of argument" that the property is "tideland" or a "beach." Appellant's Brief at page 6,

870, 875 (2000). If none of the property is beach or if the 1891 grant does not include the property, then this appeal is moot. Accordingly, this Court should dismiss this appeal and remand this case to the circuit court for further proceedings.

II

THE CIRCUIT COURT PROPERLY FOUND THAT §48-39-220 DOES NOT AUTHORIZE QUIET TITLE SUITS AS TO BEACHES

Even if Appellant had established that the property at issue is beach and that the grant applied to it, this action could not be pursued as to the beach under, at least, §48-39-220. As noted above, at the motions hearing on December 22, 2021, by WebEx, the circuit court asked whether an action to establish title to beaches is authorized by S.C. Code Ann. §48-39-220. By the plain language of this statute, the circuit court found that such actions as to beaches are not authorized. R. p. *, Order at p. 3. As stated in the statute:

> Any person claiming an interest in tidelands which, for the purpose of this section, means all lands except beaches in the Coastal zone between the mean high-water mark and the mean low-water mark of navigable waters without regard to the degree of salinity of such waters, may institute an action against the State of South Carolina for the purpose of determining the existence of any right, title or interest of such person in and to such tidelands as against the State. (emphasis added).

Appellant reads §48-39-220 as simply being inapplicable to beaches[3] but the circuit court apparently concluded that the statute functions as a bar to such actions.[4] The statute sets forth a means of adjudicating title to "tidelands" and excludes beaches from the scope of those lands without providing any other means of establishing title to beaches. Appellant does not assert any

3 Section 48-39-10(H) defines beaches to mean "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established."

4 The Order stated that "[a]lthough §48-39-220(C) provides that '[n]othing contained in this chapter shall be construed to change the law of this State as it exists on July 1, 1977, relative to the right, title, or interest in and to such tidelands, except as set forth in this section', this Court finds that it does not permit this quiet title suit based upon the 1891 grant." R. p. * Order at p. 4.

other basis for claiming title to a beach and, as noted above, does not even claim that this property is beach. Whether some other means exists to establish title to beach property should not be decided on this appeal when Appellant does not allege that the property is beach and has not complied with the Court's order directing surveying as to the property.

III

EVEN IF, §48-39-220 DOES NOT BAR ACTIONS TO ESTABLISH TITLE TO BEACHES, APPELLANT HAS NOT ESTABLISHED TITLE, AND COULD NOT EXCLUDE OTHERS FROM THE PROPERTY

Even if this property is a beach and suit is not barred, the State has located no case setting a standard for beaches that is different from the presumption of State ownership and burden for overcoming that presumption that is applied to tidelands between mean high and low water.[5] That burden for tidelands is heavy and Appellant has failed to overcome it so far in this proceeding, including failing to provide a survey of the property as directed by the circuit court.

Even if, *arguendo*, Appellant had shown that the property is beach and that it was conveyed by the grant, under State law, Appellant could not exclude others from walking or otherwise engaging in recreational activities on the beach. As stated in §48-39-250:

> (1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions: . . .
>
> > (b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a

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5 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 Hobonny Club v. McEachern*, 272 S.C. 392, 252 S.E. 2d 133 (1979). The burden rests upon the claimants to prove that the State had granted title to the lands in question to them or their predecessors in title. *State v. Yelsen Land Co.*, 265 S.C. 78, 216 S.E. 2d 876 (1975). "[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A) must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed." *Hoyler v. State*, 428 S.C. 279, 292, 833 S.E.2d 845, 852 (Ct. App. 2019), reh'g denied (Oct. 17, 2019), cert. dismissed (Jan. 29, 2020) [emphasis added].

> significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues; . . .
>
> (d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.
>
> * * *
>
> (8) It is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike.

And as further provided in §48-39-260: "In recognition of its stewardship responsibilities, the policy of South Carolina is to . . . (6) preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access . . . ." This authority makes clear that the public may not be excluded from walking or otherwise engaging in recreation on State beaches.

IV

APPELLANT'S PROPERTY HAS NOT BEEN TAKEN BECAUSE IT HAS NOT ESTABLISHED OWNERSHIP

Appellant suggests that §48-39-220 applies only to property owned by the State on the date of its passage because to construe it otherwise would result in a taking of Appellant's property. Again, Appellant raises a hypothetical. To establish a takings claim, a party must "'first show that they had a legitimate property interest.'" *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 437, 661 S.E.2d 73, 79 (2008)." *Palmer v. State*, 427 S.C. 36, 44, 829 S.E.2d 255, 260 (Ct. App. 2019). Appellant has not made this showing of ownership and, in fact, did not even claim beach in its Complaint. *See* note 2, *supra*. Therefore, Appellant has no claim that the circuit court's construction of §48-39-220 would take its property because Appellant has not

established ownership.

CONCLUSION

This appeal about whether Appellant can bring an action for ownership of beach should not proceed when Appellant does not claim and show that the property is beach and failed to comply with the circuit court's orders for surveying of the property. Section 48-39-220 excludes beaches from its authorization for tidelands suits against the State, but even if, *arguendo*, the statute did not bar actions outside the statute for ownership of beach property, Appellant has not shown its entitlement to bring such an action. Certainly, Appellant cannot claim a taking would result from the circuit court's ruling when it has not proved ownership of a beach. For these reasons and the others discussed above, this appeal should be dismissed, and this case should be remanded for further proceedings.

Respectfully submitted,

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