

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE No. 2015-CP-18-707

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SC Court of Appeals

JOHN MURRAY GIBBS,

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff,

vs.

HENDERSON GIBBS, JR.,

Defendant.

**ORDER FOR WRIT OF ASSISTANCE
AND POSSESSION**

THIS MATTER is before me on Application of Plaintiff for a Writ of Assistance. Based upon the Application and Record of the case, I make the following findings of fact and conclusions of law:

(1) Plaintiff above named commenced an action against Defendant above named for the purposes of partitioning the following described real property:

ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lec Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands

of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

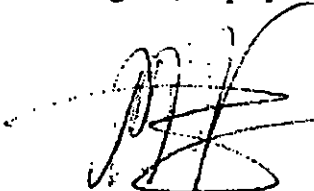
(2) The Special Referee's Final Order was entered July 17, 2020, wherein all of Defendant's interests in the above-described property was partitioned by allotment unto the Plaintiff.

(3) The Special Referee's Order denying Defendant's Motion to Set Aside Judgment was entered October 8, 2020.

(4) Defendant appealed the Final Order to the South Carolina Court of Appeals, which Final Order was affirmed by Unpublished Opinion filed November 2, 2022, with the Remittitur issued to the Court of Common Pleas and filed January 20, 2023.

(5) The Special Referee's Final Order of July 17, 2020, having been affirmed on appeal, directs as follows:

7. Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8, below, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, to include all agents, employees, tenants and any other persons present upon the property

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with permission of John Murray Gibbs or acting through or on behalf of him.

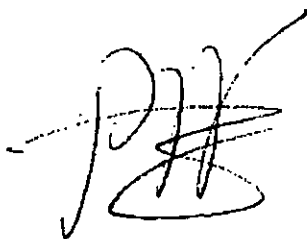
8. Henderson Gibbs, Jr., his agents, and any other persons acting through him or on his behalf, within fourteen (14) days from the entry and service of this Order upon Henderson Gibbs, Jr., shall remove any and all personal property and other personal effects which may be situated upon or stored on or within the properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina.

(6) Upon entry of the Remittitur affirming Special Referee's Final Order, service upon the Defendant was perfected by Notice of Electronic Filing directed to Defendant's counsel via e-mail from the Court's e-filing system.

(7) More than fourteen days have elapsed since entry and service of the Remittitur and the Special Referee's Final Order is therefore the law of the case. Despite entry of the Remittitur, the Defendant and/or others claiming or acting through him, particularly Defendant's son Jason Gibbs, still occupy the properties or allow others to do so, and have within and on the premises certain items of furniture, equipment, vehicles, third-parties, and personal property which they have failed or refused to remove from the property, although they have been informed and are aware the property is now owned by the Applicant.

(8) The Applicant is entitled to possession of the property pursuant to the Special Referee's Final Order entered July 17, 2020 and affirmed on appeal by the South Carolina Court of Appeals, with Remittitur entered in the Dorchester County Court of Common Pleas on January 20, 2023.

(9) The Special Referee retained jurisdiction to issue a Writ of Assistance pursuant to the Final Order which reads:

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9. The undersigned will retain jurisdiction to do all necessary acts incident to this partition action including, but not limited to, the issuance of a Writ of Assistance.

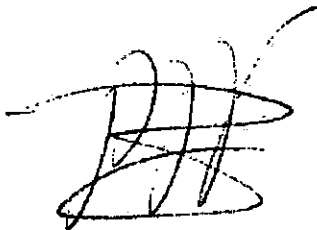
(10) Applicant is entitled to a Writ of Assistance to remove the Defendant, Defendant's son Jason Gibbs, together with any and all persons whosoever claiming thereunder, and all their personal property from the subject property, and to put Applicant in full, peaceable and quiet possession thereof, and to keep Applicant in such possession.

THEREFORE, on Application of the Plaintiff and for good cause shown, pursuant to the laws of this State and the Rules of Civil Procedure, it is hereby,

ORDERED, ADJUDGED, and DECREED that the Plaintiff shall have possession of the properties at 187 Pidgeon Bay Road, Summerville, SC bearing Dorchester County Tax Map Number 129-16-00-012 and 205 N Maple Street, Summerville, SC bearing Dorchester County Tax Map Number: 130-13-00-050; and,

It is further ORDERED, ADJUDGED, and DECREED that Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, to include Jason Gibbs, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8 of the Final Order, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, or that of John Murray Gibbs' agents, employees, tenants and any other persons present upon the property at his direction and on his behalf; and

It is further ORDERED, ADJUDGED, and DECREED that the Dorchester County Sheriff is directed to remove the Defendant, together with any and all persons whosoever claiming under

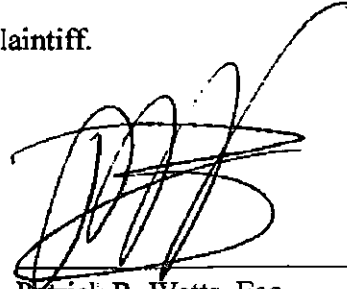
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him, from the subject properties, together with their possessions thereon which may be present upon premises without the express consent of the Plaintiff.

AND IT IS SO ORDERED!

March 23, 2023

Camden, South Carolina



Patrick R. Watts, Esq.

Special Referee for Dorchester County