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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2023-001222
Civil Action No. 2021-CP-0202344

Da’Nita White,.....Respondent – Appellant,

v.

Roshana Robins,..... Appellant – Respondent.

INITIAL BRIEF OF APPELLANT – RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err in determining Defendant's mobile home encroached on Plaintiff's property when Plaintiff failed to meet her burden of demonstrating an absence of a genuine issue of material fact?
2. Did the Circuit Court err in granting summary judgment without applying South Carolina Precedent which uses the deed of the Complaining landowner to determine the location of a boundary line in a property dispute?
3. Did the Circuit Court err in granting summary judgment without conducting a proper inquiry into the facts of the case?

STATEMENT OF THE CASE

Da'Nita White, ("Plaintiff") filed a Summons and Complaint, on November 5, 2021, and Lis Pendens on February 09, 2021, against Roshana Robins ("Defendant") wherein asserting causes of actions of Trespass to Land/ Recovery of Land, Nuisance and Attorney's fees with Punitive Damages. Defendant filed an Answer on December 10, 2021.

Plaintiff submitted to the Defendant on January 27, 2022. their First Interrogatories and Request for Production of Documents from the Defendant via US Mail. This request was returned to the sender by US Mail, the Plaintiff then sent a letter to the Defendant stating that the Plaintiff sent a second copy to the Defendant on March 16, 2022, with no certificate of service filed.

Plaintiff filed a Motion to Compel on May 10, 2022. The Motion stated Plaintiff attempted to serve the Defendant twice, however there is no indication that the Defendant received the Discovery Request as there is attached to the Motion a return to sender Letter where the Plaintiff sent the Discovery via mail the first time and no documentation for the second other than a letter to the court and a fact in the Motion.

An Order Compelling the Defendant to Provide Discovery was granted on August 22, 2022, that stated if the Defendant did not provide Discovery by October 17, 2022, that the Court

would order the Defendant to pay \$450.00 to the Plaintiff for Attorney fees incurred in pursuing the Motion.

Plaintiff filed a Motion for Summary Judgment on November 4, 2022, along with a Brief in support of the Motion. A Notice of Appearance was filed by Plaintiff's new counsel on February 2, 2023. An Order for Substitution of Counsel was made on February 6, 2023.

The Plaintiffs Motion for Summary Judgment was heard by the Aiken County Court of Common Pleas on March 28, 2023. At the hearing, Defendant was not represented by counsel. On April 12, 2023, the Court Granted the Plaintiff's Motion for Summary Judgment. The Defendant received the Court's Order by U.S. Mail on or about Saturday, April 15, 2023. A Notice of Appearance was filed on behalf of the Defendant on April 27, 2023, along with a Motion to Reconsider the Order Granting the Plaintiff's Motion for Summary Judgement. The basis of the Defendant's motion was that Summary judgment was inappropriate because there was a dispute to where the boundary line exists. The Court filed an Order Dismissing Defendant's Motion to Reconsider, Alter, and/or Amend Judgement on May 25, 2023. This Order stated that the Defendant did not file the Motion to Reconsider, Alter, and/or Amend Judgement in a timely manner. Defendant reached out to court via email on two separate occasions informing the court that Defendant's motion was timely pursuant to Rule 6(e). An Order to Vacate the Order Dismissing Defendant's Motion to Reconsider for Failure to Timely File was filed on June 1, 2023, on behalf of the court. The order stated, "The Defendant received the court's form 4 Order via mail on April 15, 2023. Thus, the Defendant had 10 days to file a motion to reconsider plus an additional 5 days. The Defendant timely filed and served the motion on April 27th "

A Memorandum in Opposition to Defendants Motion to Reconsider was filed on June 8, 2023. The Memorandum in Opposition to Defendants Motion to Reconsider includes that the

Defendant should be denied a Motion to Reconsider due to Technical Deficiencies as well as that the Motion Does Not Meet the Standard in Rule 59(e). Subsequently, an Order Denying Defendant's Motion to Reconsider was filed on June 22, 2023. The order declared "the Defendant did not present sufficient evidence to show a genuine issue of material fact regarding the property boundary and encroachment." (Order p. 6).

An Order providing the Notice of Appeal and Exhibits/Filing of Exhibits for the Notice of Appeal to Court of Appeals was filed on July 31, 2023. The Notice of Appeal confirmation letter was sent on August 2, 2023. On or about August 2023, both parties entered into settlement negotiations but were not successful on a settlement.

STATEMENT OF FACTS

On or about May 6, 2019, Roshana Robins ("the Appellant") purchased a parcel of land identified as parcel 013-17-15-009 and a mobile home: 777-00-15-221 ("Appellant's Property") from her long-time neighbors Henry C. Harmon and Lucille Harmon. Immediately adjacent to the Appellant's property is an abandoned house that shares a boundary line with Respondent's property. Later that year, Roshana Robins met a woman named Da'Nita White, who was visiting the neighborhood, and informed her the abandoned property was for sale. On or about August 14, 2020, Da'Nita White ("the Respondent") purchased the parcel of real property identified as parcel 13-17-15-010 ("Respondent's Property").

On or about August 11, 2011, Tripp Land Surveying, Inc. surveyed the property and generated a plat including Plaintiffs property on August 11, 2021, (the "Plat"). Upon review of the Plat, Respondent believed an encroachment existed and removed a fence that divided the property lines. On or about November 5, 2021, Respondent commenced a suit against the Appellant for nuisance and trespass, alleging the Defendant's mobile home encroached on her property by

approximately three and one-half feet (3½ ft). Respondent alleged that the encroachment was evidenced by the Plat generated by Tripp Land Surveying. Neither party surveyed their property prior to purchase.

In the legal description of the property conveyed to Respondent, J.T. Wise, C.E. surveyed the property and subdivision of the area and generated a plat including Plaintiffs property on June 6, 1947, (the "Original Plat"). Upon information and belief, the Original Plat was never filed or recorded with the County of Aiken. The property description in the deed to Ms. White is as follows:

All that certain lot or parcel of land situate, lying and being in the State of South Carolina, County of Aiken, in Schultz Township, Scholl District Number 66, and known and designated as Lot No. 10 in Block "A" on a Plat made by J.T. Wise, C.E., under date of June 6th, 1947. Said lot has a frontage of 50 feet, more or less, on United States Highway No. 1., and extends back between parallel lines a distance of 165 ft, more or less, and is bounded on the North by said U.S. Highway No.1; East by Lot No. 11; South by Lot No. 23; and on the West by Lot No. 9. All of which will fully appear by reference to said Plat.

On or about December 10, 2021, Appellant filed an answer to Respondent's Complaint. In Appellants response, she stated that the county legally allowed the manufactured home to be placed in 1991 and that an encroachment did not exist. She further explained that she was in the process of attempting to get her own survey. On multiple occasions, prior to Respondent filing the suit, Respondent offered to buy Appellant's property, but Appellant refused to sale. Since litigation commenced, Respondent has purchased additional parcels in the neighborhood. Upon Information and belief, according to the Plat, boundary line issues exist throughout the entire neighborhood.

On November 4, 2022, the Plaintiff filed a motion for summary judgment. A hearing on the Plaintiff's motion was held on March 27, 2023. Present at the hearing were the Respondent and her attorney, and the Appellant, who proceeded pro se. During the proceeding, the Respondent's attorney argued that Appellant never contested any issues in this case. Further, the

Judge advised the Appellant to submit proof by the next day that the “encroached property” was lawfully hers. The hearing concluded with the Judge informing both parties she would issue her order by the end of the week.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard of review as the trial court; summary judgment is only proper when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC;). The moving party has the initial burden of demonstrating no issue of material fact exists. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115-117, 410 S.E.2d 537, 545 (1991). In determining whether a genuine question of fact exists, the court must view the evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *Faile v. S. C. Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991).

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (2008); *Austin v. Beaufort County Sheriff's Office*, 377 S.C. 31, 659 S.E.2d 22 (2008). However, Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 534 S.E.2d 688 (S.C. 2000) (citing *Tupper v. Dorchester County*, 487 S.E.2d 187 (S.C. 1997)). Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003). “By granting a

summary judgment or a directed verdict, the judge in effect holds as a matter of law that the evidence is all on one side and that the facts are not debatable.” *Anders V. S.C.* 307 S.C. 371, 415 S.E.2d 406 (Ct. App. 1992).

ARGUMENTS

I. SUMMARY JUDGMENT IS IMPROPER WHEN A GENUINE ISSUE OF MATERIAL FACT EXISTS.

Summary judgment is only proper where reasonable minds cannot differ. "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 443 S.E.2d 392, 394 (1994). A court must construe all ambiguities, conclusions, and inferences arising from the evidence in the light most favorable to the non-moving party. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). Summary judgment is not appropriate if facts are conflicting, or if the inferences to be drawn from the facts are doubtful. *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 417 S.E.2d 631 (Ct. App. 1992).

Under South Carolina Rule of Civil Procedure 56, summary judgment is only appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. The moving party has the burden of clearly establishing the absence of a genuine issue of material fact. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008). A "non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment". *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330- 331, 673 S.E.2d 801 (2009). A scintilla is "any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror." *Young v. Hyman*, 199 S.C. 233, 19 S.E.2d 109 (1942). In a motion for summary judgment proceeding, the moving party

carries the burden of proof even when the nonmoving party does not submit any evidence in opposition. *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460 (1990).

In this case, Motion for Summary Judgment was granted in the Plaintiff's favor because the Court held Defendant did not present sufficient evidence to show a genuine issue of material fact regarding the property boundary and encroachment. (Order p. 4) However, South Carolina Law declares that the moving party must meet their burden of demonstrating an absence of a genuine issue of material fact and once that burden is met, the burden shift and Defendant must submit a mere scintilla of evidence showing a genuine issue of material fact. Motion for summary judgment was not proper because Plaintiff failed to their burden in this case. There is a genuine issue of material fact as to Ms. White's ownership of the three and half feet.

A. IT WAS THE RESPONDENT'S BURDEN TO ESTABLISH THE ABSENCE OF A GENUINE ISSUE OF MATERIAL FACT.

The South Carolina Supreme court has addressed the initial burden the moving party carries to succeed on a summary judgment motion: the grant of summary judgment is appropriate only if it is clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that the movant is entitled to judgment as a matter of law.. A party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact. *Ben. Fin.*

I. Inc. V. Windham, 431 S.C. 256, 262, 847 S.E.2d 793 (2020). All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). A party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment

even though his adversary does not come forward with opposing materials. *Title Insurance Co. of Minnesota v. Christian*, 267 S.C. 71, 226 S.E.2d 240 (1976). Only when “the moving party has satisfied this requirement does the burden shift to the nonmoving party to present evidence that there is a genuine issue for trial.”

In *Ben. Fin. I. Inc. V. Windham*, the circuit court awarded Summary Judgment to the Defendant on his counterclaims. The circuit court's order provided it had reviewed "the pleadings, affidavits on file, Windham's brief, and arguments of counsel." 431 S.C. 256 at 267. Beneficial argued Windham was not entitled to the motion for summary judgment relief because Windham did not meet his burden of proof for any of his counterclaims, even though Beneficial did not submit evidence in opposition at the hearing. *Id.* The Court of Appeals reversed the circuit court's award of summary judgment to Windham on his counterclaims for fraud, negligent misrepresentation, intentional infliction of emotional distress, and negligent and reckless training and supervision and held that Windham failed to prove there were no genuine issues of material fact regarding these claims. *Id.*

The Court in *Standard Fire Ins. Co. v. Marine Contracting & Towing Co* took a similar approach as *Windham*, the appellate court reversed an order granting partial summary judgment for the Respondent because the record did not support summary judgment. *Id.* at 420-42. The Court reasoned that summary judgment was not proper because the movant did not meet their burden of showing an absence of a genuine issue of material fact. *Id.* The Court held that questions of fact remained as to the insurance policy and appellant's knowledge of respondent's operation. *Id.* Further, they stated not only was the record devoid of pleadings and affidavits, but significant dates chronicling this controversy have been omitted. *Id.*

The Order of Summary Judgment fails to provide sufficient findings of fact that would

demonstrate Respondent is the lawful owner of the disputed 3 ½ feet of property. In Respondent's Complaint, she alleges Appellant is trespassing on her property. To prove trespassing, Ms. White had the burden of providing evidence that she was the lawful owner of the property, and that Ms. Robins was interfering with her right to possess the property. Further, Ms. White had the burden of showing the Court that her legal ownership of the property was not being disputed by Ms. Robins. This case is similar to Ben. Fin. I. Inc, because this court entered summary judgment with the reasoning that the non-movant did not present any evidence or a lack of evidence disputing the material facts. However, unlike the Court in this case, Ben Fin. I. Inc. makes it clear that the burden is on the movant to present evidence to the Court proving there are no genuine issues of material fact regarding movant's claims. Summary judgment is improper because Ms. White failed to produce evidence to the Court demonstrating that the property was lawfully hers and that there was no dispute as far as ownership.

The Order of Judgment states that, "The Defendant did not file affidavits, but instead filed supplemental documents that included a deed describing the property and an image of a surveyance showing an encroachment." (Order p. 6). Further, the Court stated, "Defendant did not present any other evidence to dispute the existence of an encroachment based on the established boundary line." (Order p. 6.) However, according to the standard of judgment and prior case law Ms. Robins was not required to submit any evidence if Ms. White did not meet her burden. Like the movant in Standard Fire Ins. Co., Ms. White omitted evidence that was pertinent in determining whether there was a dispute of ownership over the three and a half feet of property in question. The record does not provide the Plat that was referenced in the legal description of Ms. White's property. If the court does not have sufficient evidence of the boundary lines, a genuine issue of material fact exists as to where the boundary line is situated. Therefore, Ms.

White failed to meet her burden and Summary Judgment should not have been rendered.

B. THE APPELLANT ONLY HAD TO PRESENT A “MERE SCINTILLA” OF EVIDENCE TO WITHSTAND SUMMARY JUDGMENT.

The non-moving party does not have the burden of proof in a motion for summary judgment proceeding and instead may show that: (1) the movant's evidence is inadmissible or conclusory; (2) the evidence shows a genuine issue of material fact; or (3) a genuine issue exists as to the conclusions drawn from the facts. Rule 56(c), SCRPC. Historically, South Carolina has adopted the “mere scintilla” rule at the motion for summary judgment stage. "at the summary judgment stage of the proceeding, it was only necessary ... to submit a scintilla of evidence warranting a determination by the jury." *Anders v. South Carolina Farm Bureau Mutual Insurance Co.*, 307 S.C. 371, 415 S.E.2d 406 (Ct. App. 1992). The scintilla of evidence principle means that a case must undergo a jury trial even if there is the slightest trace of evidence that supports an inference.

There are certain instances where the South Carolina Courts have not adopted the mere scintilla rule. The Court of Appeals in *Shelton v. LS & K, Inc.* held that "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." 374 S.C. 294, 297, 648 S.E.2d 307, 308 (Ct. App. 2007). Nonetheless, this court still recognized that the movant had the burden of establishing the absence of a genuine issue of material fact. However, they stated, “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing the trial court there is an absence of evidence to support the nonmoving party's case.” *Id.* In *Shelton*, Appellant pedestrian filed suit against respondent parking lot owner alleging that it was negligent in the design of its landscaping and parking lot, causing and/or contributing to an accident

in which the pedestrian was hit by a driver. *Id.* The owner's summary judgment motion was granted by the Greenville County Circuit Court. The Court of appeals affirmed the finding that Shelton failed to present evidence of a duty on the part of LS&K, or that such a duty was breached.

In *Hancock v. Mid-South Management Co.*, the South Carolina Supreme Court took the occasion to articulate the standard for summary judgment motions. *Id.* at 326. The Court reasoned that the mere scintilla evidence rule should be applied in South Carolina Cases applying state law and the preponderance of evidence standard. *Id.* The Court in *Anders* applied the *Hancock* standard. In *Anders*, Appellant-insurance company sought review of a summary judgment entered against it by the trial court, in an action filed by respondents, a father and his daughter, requesting that the trial court hold that appellant failed in its duty to offer underinsured-motorist coverage incident to the issuance of a motor vehicle liability insurance policy. *Id.* Most of the facts developed by the affidavits, exhibits and depositions were not greatly in dispute by the parties. *Id.* However, the Court found that Appellant did submit a “mere scintilla” of evidence. In Appellant’s affidavit he presented facts to the court demonstrating Respondent initialed the spaces indicating that he had rejected the optional excess uninsured and underinsured motorist coverages. *Id.* Further, Appellant stated that he specifically advised Respondent that his initials were to indicate his rejection of the other optional coverages they discussed. *Id.* The Court of Appeals reversed the lower court’s Summary Judgment holding that Appellants affidavit was sufficient evidence to withstand summary judgment because the fact that Respondent initialed boxes rejecting certain forms of coverage could be classified as scintilla of evidence warranting a determination by the jury. *Id.*

This Court should adopt the “mere scintilla” rule in *Hancock* and *Anders*. This case is similar to *Anders*’ in the respect that the non-movant did not present substantial evidence to the

Court disputing movant's facts. As stated in the Anders case. "most of the facts presented by the affidavits and exhibits were not greatly in dispute, but other issues were in substantial contest." 307 S.C. at 371 (Ct. App. 1992). In this case, The Order of Judgment stated that, "Defendant did not present any evidence to dispute the existence of an encroachment based on the established boundary line other than supplemental documents, which included a deed describing the property and an image of a surveyance showing an encroachment." (Order p. 6). However, Like the Anders case, Ms. Robins did submit statements to the Court disputing certain issues. In Ms. Robins, answer she disputed the fact that the mobile home was unlawfully placed on the property. Further, she asserted in her answer and during the Summary Judgment hearing that the county allowed placement of the mobile home in 1991 legally and she was paying taxes on the mobile home (Transcript p.16) The Court in Anders found statements sufficient to meet the non-movant's burden. That case established that a non-movant could withstand summary judgment with a simple denial. This case is distinguished from Anders, because the parties in that case did have the opportunity to provide full discovery and that court took into account the sophistication of the movant. The movant in Anders was a businessman and attorney and the court took his status into relevant consideration in determining whether sufficient advice was given to him regarding the underinsurance. In this case, the movant was being represented by Counsel and the non-movant was a pro-se litigant, but no consideration was given to the non-movant in respect to the issues in this case.

The Court in Shelton did not apply the "mere scintilla" rule but nonetheless, this court could also adopt their standard. This case is distinguished from Shelton because the Defendant in that case moved for Summary Judgment and Judgment was granted in favor of the Defendant because Plaintiff failed to present a genuine issue of material fact. The basis for Shelton not

applying the mere scintilla rule was the non-movant for Summary Judgment was the Plaintiff and they had the initial burden as the Plaintiff of proving their prima facie case. In Shelton, the Court placed a heavy burden on the Plaintiff to show there was a genuine issue of material fact; although, she was the non-movant. This recognized that the burden should be placed on the Complainant whether they were the movant or non-movant for Summary Judgment.

Summary Judgment was not appropriate in this case because this Court shifted Plaintiff's burden on the defendant-non movant. Plaintiff did not meet their burden of demonstrating an absence of a genuine issue of material fact. The Plaintiff presented a deed and a plat referencing ownership of the land (Plaintiff's Exhibit A and C). The Plaintiff referenced two Plats in her evidence but only presented one plat for the Circuit Court's review. The survey introduced by the Plaintiff was not the survey described Plaintiff's deed. Further, Plaintiff failed to present evidence that the mobile home was unlawfully placed. These facts alone create an issue of fact that would necessitate a jury trial. If the Circuit Court did not consider the wrong Plat; the evidence of the Deed alone and the Plaintiff's affidavit would not be enough to establish an absence of a genuine issue of material fact.

II. THE ORDER OF JUDGMENT IS CONTROLLED BY ERRORS OF LAW BECAUSE THE COURT DID NOT APPLY THE LAW FOR BOUNDARY DISPUTES UNDER HAMMONDS.

On appeal from a case tried by a judge in an action at law, "the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs.*, 266 S.C. 81, 221 S.E.2d 773 (1976). The appellant retains the burden of proving to the appellate court that the trial court made erroneous findings. *Bell*, 385 S.C. 364, 684 S.E.2d 199. Essentially, an "error of law" means that the wrong rule or "legal standard" was applied to the facts of the case and/or the Court did not follow the

case law that should be applied in a specific case. The South Carolina Supreme Court relies on the Plat referenced in the conveyance instrument when determining where a boundary line is situated. The boundaries described on a deed by which an individual acquired title, controls. *Hammond v. Lindsey*, 277 S.C. 182 (1981). Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 217 S.E. (2d) 16 (1975); *Lynch v. Lynch*, 236 S.C. 612, 115 S.E. (2d) 301 (1960). “When maps, plats, or field notes are referred to in a grant or conveyance, they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of land” *Hobonny Club, Inc. V. Mceachern*, 272 S.C. 392, 52 S.E.2d 133 (1979).

In boundary line dispute actions, the Supreme Court has applied *Hammond v. Lindsay*. In *Hammond*, Respondent alleged that appellant's fence encroached upon his property. 277 S.C. 182 (1981). The court advised that, “In order to find the existence of an encroachment, the boundaries described in the 1915 deed must control. *Id.* There is no encroachment if the 1951 deed, incorporating the 1916 plat, establishes the boundaries.” *Id.* In this boundary line dispute action, the court erred in not directing a verdict for the defending landowner because the complaining landowner was bound by the description contained in a certain deed, on which he had relied when subdividing his lots. *Id.* Since the complaining landowner received the property by way of the 1951 deed describing the property as that shown on the 1916 plat, the Court held that he was limited to that description. *Id.*

The Court in *Lynch* and *Hobonny* applied the *Hammond* standard in their boundary dispute. In *Lynch*, the surveyors for the parties to this action agree that

according to the Smith plat the disputed area was not conveyed to F. M. Lynch by J. C. Lynch as a part of the 519 1/2-acre tract. 236 S.C. at 612, (1960). The appellants, therefore, must rely upon their title to the disputed area by adverse possession. *Id.* In *Hobonny*, The South Carolina Supreme Court looked at the plats incorporated in the deed to determine which land the grantor intended to convey to the grantee. 272 S.C. 392 (1979). The Supreme Court ruled that the lower court was proper in granting Summary Judgment to the landowner *Hobonny* because he had valid title to the tidelands embraced within the boundaries of the plats attached to the royal grants, and that the State of South Carolina has no valid claim of title to said property. *Id.* The State argued that the grants did not contain any reference to the low water mark as indicative of the conclusion that the grantor did not intend to convey tideland. *Id.* The State did not prevail because the plats demonstrated that the boundary of the property conveyed is a physically established line, surveyed and marked on the ground. *Id.*

The Order of Summary Judgment was improper because it was not supported by Supreme Court Case law. Summary Judgment should not have been granted due to the lack of supporting evidence in the record. Ms. Robins, through her attorney, argued that Summary Judgment needed to be reconsidered because the 1947 Plat was not included in the evidence. The Circuit Court denied the motion to reconsider and affirmed their ruling with the knowledge that the Original Plat was omitted from evidence. The Circuit Court reasoned that Ms. Robins did not raise these issues prior to judgement being rendered. However, this issue was not an issue of fact but rather an issue of law. It was not Ms. Robin's burden to raise the issue of the 1947 Plat not being included in evidence. The Judge should not have reached a final disposition without requesting the Original Plat from Ms.

White. The Circuit Court should not have made a Summary Judgment ruling until all necessary evidence was presented to the Court. It was Respondent's burden to present the Plat referenced in her deed to the Court. Summary judgment is only proper when an inquiry into the facts is not desirable to clarify the application of the law.

Further, the Court improperly applied *Hammonds V. Lindsey* in the Order of Judgment. The order states that, "Nonetheless, even under *Hammonds* and *Bodiford* precedents, summary judgment for the Plaintiff is proper." (Order p. 5). In the case of *Hammonds*, the court reversed the lower court's decision and remanded entry of judgment in favor of appellant-defending landowner because the Plat did not demonstrate complaining landowners' encroachment claim. Moreover, the Order of Judgment states, "The Plaintiff's and Defendant's lands have remained geographically unchanged since the 1922 plat and the 2021 surveyance." (Order p. 6). The Circuit court's holding that the boundaries have remained geographically unchanged since the 1922 plat and the 2021 surveyance is supported by no legal precedence. In precedent cases, the court has always looked at the Plat referenced in the deed to determine the location of the boundary lines.

III. SUMMARY JUDGMENT IS INAPPROPRIATE WHEN FURTHER INQUIRY INTO THE FACTS OF THE CASE IS DESIRABLE TO CLARIFY THE APPLICATION OF THE LAW.

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. at 101. Summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 53-54, 677 S.E.2d 32

(Ct. App. 2009). In *Baughman*, the Court ruled summary judgment is premature if the non-moving party can demonstrate that further discovery would uncover additional relevant evidence. Summary Judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." 306 S.C. at 101, 112, 410 (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. *Laurens Emergency Afed. Specialists v. MS Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003).

The Circuit Court should not have issued Summary Judgment without further inquiry into the facts of the case. The Court did not have sufficient evidence to make a Summary Judgment Ruling. The Judge's ruling was based on the opinion that the 2021 survey presented by the Plaintiff showed an encroachment onto the Plaintiff's property by the Defendant's mobile home. However, there was a couple of issues of material fact at the time Summary Judgment was rendered. The main issue in this case was ownership of the disputed property. There lies an issue of material fact as to Plaintiff's ownership of the disputed property and Defendant's lawful placement of the mobile home. There was no inquiry by the Court regarding the Original Plat or the mobile home permit.

Further, there were issues in this case regarding discovery. On January 27, 2023, Plaintiff submitted a discovery request to the defendant via US Mail with no certificate of service filed. On May 10, 2022, Plaintiff filed a Motion to Compel. The Motion stated Plaintiff attempted to serve the Defendant twice; however, there is no indication that Defendant received the Discovery Request as there is a return to sender Letter attached to the motion, where the Plaintiff sent the Discovery via mail the first time and no documentation was submitted for the second request. It is evident from the Motion for Summary Judgment hearing that Appellant was

not receiving information from the Court and Opposing Counsel. During the hearing, Appellant stated that she did not appear for the original hearing date for the Motion for Summary because she did not receive written notice from the Court. (Transcript pg. 4). Given the fact that the Plaintiff filed a motion to compel, it can be inferred that “discovery” and or the discovering of more information was needed in this case. Accordingly, summary judgment being rendered before discovery is a clear indication that further inquiry of the facts was needed in this matter,

CONCLUSION

Based upon the reasons stated, this Court should reverse the judgment of the Circuit Court because the Order of Summary Judgment fails to apply the current law under Hammonds, which requires the Court to look at the Complainant’s deed for the purpose of determining the boundaries, metes, courses and distances of the property conveyed, and Summary Judgment was improper because Plaintiff failed to show the Court there was an absence of genuine issue of material fact and further inquiry into the facts were required prior to the Court entering a final judgment on the case as provided hereinabove.

Respectfully submitted,

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