THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

The Milton P. Demetre Family Limited Partnership .....Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson .....Respondents.

FINAL BRIEF OF APPELLANT

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant

Cain Denny, Esquire
Cain Denny, P.A.
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF ISSUES ON APPEAL

1. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. MURRELL'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972) (A PLAT WHICH DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK IS IRRELEVANT TO DETERMINGING WHETHER MARSH IS ABOVE OR BELOW THE MEAN HIGH WATER MARK), IN FINDING THAT THE WORDS "MARSH LAND" ON THE 1920 PLAT MEAN THAT THE PROPERTY IN THAT AREA IS NECESSARILY BELOW THE MEAN HIGH-WATER MARK WHERE THE 1920 PLAT DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK?

2. BASED ON THE WORDS "MARSH LAND" ON THE 1920 PLAT, THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THE STATE IS A NECESSARY PARTY. THE COURT OF APPEALS' OPINION REVERSED THE DOCK CASE ORDER AND REMANDED THE DOCK CASE WITHOUT THE STATE AS A PARTY FOR THE MASTER TO DETERMINE WHETHER APPELLANT OWNS THE SUBJECT PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION WHERE IT AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY?

3. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 393 S.C. 100, 712 S.E.2d 395 (2011) (THE PUBLIC TRUST DOCTRINE DOES NOT EXTEND ABOVE THE MEAN HIGH-WATER MARK), WHERE, BASED ON THE PUBLIC TRUST DOCTRINE, THE MASTER FINDS THAT THE STATE OWNS PROPERTY ABOVE THE MEAN HIGH-WATER MARK?

4. THE PARTIES STIPULATED ON THE RECORD AT TRIAL THAT APPELLANT HAS RECORD TITLE TO THE SUBJECT PROPERTY. HOWEVER, THE MASTER'S ORDER ON REMAND FINDS THAT, IN APPELLANT'S CHAIN OF TITLE, HIS LOTS "DID NOT EXIST." DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH BELUE V. FETNER, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) (THE COURT WILL NOT GO BEYOND PARTIES STIPULATION TO DETERMINE THE FACTS)?

5. WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE COURT OF APPEALS REVERSED THE ORIGINAL DOCK CASE ORDER'S FINDINGS FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT ADVERSE POSSESION, AND, ON REMAND, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, DID THE MASTER ERR IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY?

6. TO THE EXTENT THAT ANY OF RESPONDENTS' AFFIRMATIVE DEFENSES REMAINED AVAILABLE FOR THEM TO ARGUE ON REMAND, IN RULING

AGAINST THOSE AFFIRMATIVE DEFENSES, SHOULD THE MASTER HAVE CITED AUTHORITY?

7. DID THE MASTER ERR IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST WHICH DOES NOT REQUIRE CONSENT OF THE LANDOWNER OVER WHOSE PROPERTY THE DOCK WHARFS?

8. THE MASTER'S ORDER ON REMAND FINDS THAT THE SUBJECT PROPERTY ACCRETED AFTER 1920. THERE IS NO EVIDENCE TO SUPPORT THAT THE PROPERTY WAS BELOW THE MEAN HIGH-WATER MARK IN 1920. HOWEVER, APPELLANT'S PROPERTY IS THE HIGHLAND TO WHICH ANY ACCRETION WOULD HAVE ADDED IF ANY HAD OCCURRED. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT THE STATE OWNS THE PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. BEACH CO., 248 S.C. 115, 271 S.E.2d 115 (1978) (NATURAL ACCRETION BENEFITS THE PRIVATE HIGHLAND OWNER TO WHOSE PROPERTY IT ADDS)?

9. APPELLANT'S PROPERTY IS IDENTICALLY SITUATED TO AND SHARES THE SAME KEY LINKS IN ITS CHAIN OF TITLE AS THE SUBJECT PROPERTY IN DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012) (FINDING THAT CERTAIN HIGH MARSH IS PART OF FOLLY ISLAND AND OWNED BY DREHER, A PRIVATE CITIZEN). DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH DREHER WHERE IT FINDS THAT THE SUBJECT HIGH MARSH IN THE PRESENT CASE IS OWNED BY THE STATE?

10. DOES THE ORDER ON REMAND ERR IN FINDING THAT THE FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT?

11. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT THE 1786, 1895, AND 1920 PLATS ARE MORE PRECISE AS TO THE LOCATION OF THE MEAN HIGH-WATER MARK THAN THE 2005 KENNERTY TOPOGRAPHIC SURVEY WHERE THE EARLIER PLATS DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK, BUT THE 2005 KENNERTY TOPOGRAPHIC SURVEY DOES?

12. DOES THE ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2d 40 (1995), IN FINDING THAT APPEALLANTS' LOTS "DO NOT EXIST?"

13. DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT IS "INCORRECT" IN ADDING LOTS AND THAT THE 1968 PLAT WAS INTENDED TO "CORRECT" THE 1965 PLAT?

14. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT APPELLANT'S PREDECESSOR IN INTEREST BELIEVED THAT HE DID NOT OWN THE SUBJECT LOTS BASED ON THE FINDING THAT HE SOLD THE PROPERTY IN THAT AREA WITH A QUITCLAIM DEED WHERE THE EVIDENCE SHOWS THAT APPELLANT'S PREDECESSOR IN INTEREST ALSO SOLD PROPERTY IN THAT AREA BY GENERAL WARRANTY DEEDS?

15. THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT FOR ADVERSE POSSESSION. HOWEVER, THE COURT OF APPEALS REVERSED THE DOCK CASE ORDER, AND RESPONDENTS DID NOT PETITION FOR REHEARING OR A WRIT OF CERTIORARI. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT RESPONDENTS' AFFIRMATIVE DEFENSES ARE AVAILABLE TO THEM TO ARGUE ON REMAND. DOES THIS FINDING CONFLICT WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 388 S.C. 171, 525 S.E.2d 869 (2000) (AN UNAPPEALED RULING BY THE COURT OF APPEALS BECOMES THE LAW OF THE CASE)?

16. WHERE THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THERE IS HIGHLAND IN THE AREA OF THE UNDEVELOPED ROADWAY RUNNING ALONG RESPONDENTS' LOTS, AND WHERE THE COURT OF APPEALS OPINION FOUND THAT THERE IS HIHGLAND IN THAT AREA; DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE STATE OWNS THAT AREA?

STATEMENT OF THE CASE

Civil Action Nos. 2002-CP-10-4880 ("Road Case) and 2005-CP-10-4101 ("Dock Case") were consolidated and referred to the Charleston County Master-in-Equity ("Master"). They were tried together before the Master on December 12, 2006. The Master filed the Road Case Order on March 7, 2007, and the Dock Case Order on March 26, 2007. Appellant filed SCRCP Rule 59(e) Motions regarding both orders. The Master denied those Motions, and Appellant appealed.

The Court of Appeals filed an Opinion on January 14, 2009, withdrew that Opinion, and substituted and re-filed Unpublished Opinion No. 2009-UP-029 on April 21, 2009, which affirmed the Road Case Order and reversed and remanded the Dock Case Order.

On remand of the Dock Case, the Master heard arguments without taking any additional evidence on October 21, 2011. He filed an Order on Remand on January 13, 2012. Appellant's counsel received notice of the Order on Remand on January 23, 2012 and timely filed a SCRCP Rule 59(e) Motion on February 2, 2012. The Master filed an Order Denying the Appellant's Rule 59(e) Motion on April 19, 2012. Appellant's counsel received that Notice on May 7, 2012. Appellant timely appealed to the South Carolina Court of Appeals on May 31, 2012.

ARGUMENT

1. THE ORDER ON REMAND CONFLICTS WITH STATE V. MURRELLS'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972), AND WITH THE COURT OF APPEALS' REVERSAL OF THE MASTER'S ORIGINAL DOCK CASE ORDER.

The Master's Order on Remand conflicts with State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972) and conflicts with the Court of Appeals' reversal of the Master's original March 27, 2007 "Dock Case" Order. Murrell's Inlet Camp & Marina, Inc holds that a plat which does not show the location of the mean high-water mark is irrelevant to a determination of whether marsh is above or below the mean high water mark. 259 S.C. at 408, 192 S.E.2d at 201 ("The maps do not purport to locate the mean high-water mark, and do not discriminate between high and low marsh in any manner. . . . Since the record is barren of any evidence by which the jury could possibly correlate the platted line to this issue [of the location of the mean-high water mark], the conclusion of the judge that the plats were irrelevant is abundantly clear.")

Despite Murrell's Inlet Camp & Marina, Inc, the Master's Order on Remand finds based solely on the words "MARSH LAND" on 1920 Plat that the property in that area is necessarily below the mean high-water mark. (Order on Remand, p. 1.) (R. p. 879) ("As to the lands

extending to the Folly River, a review of the 1920 plat (Plat Book C 128) by which the lots of Folly Island were conveyed shows this property as 'MARSH LAND."); (Order on Remand, p. 4) (R. p. 882) ("Both parties contend the State is not a necessary party to this action; however, this court disagrees since 'high marsh' is contained within the area previously denoted as Marshland.")

However, the 1920 Plat is just a developer's sales plat, is not topographic, and was not intended to show what property is above or below the mean high-water mark. It does not show the location of the mean high-water mark. (1920 Plat) (R. p. 803). (1920 Plat – Oversized Document) (R. p. 1068). Thus, the Master's finding that the words "MARSH LAND" necessarily mean low marsh below the mean high-water mark conflicts with Murrell's Inlet Camp & Marina, Inc.

The only evidence in the record regarding what property is above the mean high-water mark is the 2005 Kennerty Topographic Survey, which alone shows its location. (2005 Kennerty Topographic Survey - Oversized Document) (R. p. 664). The 2005 Kennerty Topographic Survey shows that portions of the subject area are above the mean high-water mark.

Thus, the Master's Order on Remand conflicts with Murrell's Inlet Camp & Marina, Inc. and errs by failing to find that Appellant owns the property above the mean high-water mark riverward of Respondents' lots shown on the 2005 Kennerty Topographic Survey.

2. THE MASTER'S ORDER ON REMAND CONFLICTS WITH THE COURT OF APPEALS REVERASAL OF THE MASTER'S ORIGINAL DOCK CASE ORDER WHERE THE MASTER AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY.

The Master's original March 26, 2007 "Dock Case" Order found that, based solely on the words "MARSH LAND" on the 1920 Plat, the subject area is below the mean high-water mark,

and that, based on the State's presumptive ownership of lands below the mean high-water mark, that the State was a necessary party. (Master's Original Mach 26, 2007 Dock Case Order, p. 18) (R. p. 34) ("As to the remaining lands extending to the Folly River, this court's review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland. Therefore I conclude any challenge to ownership of this marshland must be pursued in an action against the State to challenge its presumptive title to the marsh which can only be overcome by evidence which is clear and convincing (citation omitted).")

However, the Court of Appeals reversed the Master's original Dock Order, found that portions of the lots are above the mean high-water mark, and remanded the case, without the State as a party, for a determination of whether Appellant owns those portions of the lots. (The Milton P. Demetre Family Limited Partnership v. Beckmann, Unpublished Opinion No. 2009-UP-029, filed January 14, 2009, Withdrawn, Substituted, and Refiled April 21, 2009, p. 9) (herein "Court of Appeals' Opinion") (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of that issue."); (Court of Appeals Opinion, p. 10) (R. p. 878) ("However, we reverse the master's March 26, 2007 order and remand for findings in accordance with this opinion."). Respondents did not petition for a rehearing or for a writ of certiorari regarding the Court of Appeals Opinion's finding that portions of the lots are above the mean high-water mark, and it became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000).

Thus, the Court of Appeals reversed the Master's finding that all of the subject property was below the mean high-water mark, but, in his Order on Remand, the Master again makes the same finding. Thus, the Master's Order on Remand conflicts with the Court of Appeals Opinion.

3. THE ORDER ON REMAND CONFLICTS WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 393 S.C. 100, 712 S.E.2d 395 (2011), AND WITH THE COURT OF APPEALS' REVERSAL OF THE MASTER'S ORIGINAL DOCK CASE ORDER.

The Master's Order on Remand conflicts with Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011) and with the Court of Appeals' reversal of the Master's Original "Dock Case" Order.

Estate of Tenney holds that the State's claim to land under the public trust doctrine does not extend to land above the mean high water mark. 393 S.C. at 106-07, 712 S.E.2d at 398 (2011) ("The proposition that the public trust doctrine extends above the high water mark first appeared in Coburg I (citation omitted) . . . We decide today that neither the facts, nor the holding of McCullough v. Wall offer a substantial enough foundation for the principal propounded in Coburg.")

Based solely on the words "MARSH LAND" on the 1920 Plat, the Master's original March 26, 2007 Dock Case Order found that the property in that area of the 1920 Plat is below the mean high-water mark and that the State is a necessary party. (Original Dock Case Order, p. 18) (R. p. 34) ("Therefore, I conclude any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina . . ."); (Original Dock Case Order, p. 19) (R. p. 35) ("CONCLUSION . . . 3. That this court does not have the proper parties before it to determine the title to marshlands.")

However, the Court of Appeals reversed the Master's original Dock Case Order, found that portions of the lots are above the mean high-water mark, and remanded the case, without the State as a party, for a determination of whether Appellant owns those portions of the lots. (Court of Appeals Opinion, p. 9) (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of that issue); (Court of Appeals Opinion, p. 10) (R. p. 878) ("However, we reverse the master's March 26, 2007 order and remand for findings in accordance with this opinion.")

Nonetheless, although the State is not a party to the case, and although, per Estate of Tenney, the State, under the public trust doctrine, does not claim property above the mean high-water mark, the Master's Order on Remand finds that the State owns the subject property above the mean high water mark. (Master's Order on Remand, p. 5) (R. p. 883) ("5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of "Marshland on the 1920 plat of Folly Island. 6. The State of South Carolina is the owner of the land seaward of the Defendant's lots.")

Thus, the Master's finding that, under the public trust doctrine, the State owns the subject property above the mean high-water mark conflicts with Estate of Tenney and conflicts with the Court of Appeals' reversal of the Master's original Dock Case Order.

4. THE ORDER ON REMAND CONFLICTS WITH BELUE V. FETNER, 251 S.C. 600, 164 S.E.2d 753 (1968) IN DISREGARDING THE PARTIES' STIPULATION.

The Master's Order on Remand conflicts with Belue v. Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968), which holds that, "[w]hen counsel enter into an agreed stipulation, the court will not

go beyond such stipulation to determine the facts upon which the case is to be decided." 251 S.C. at 606, 164 S.E.2d at 755 (1968); Rule 43(k), SCRCP (Stipulations are not binding unless written or entered on the record).

The parties in the present case stipulated on the record at trial that Appellant has record title to the subject property. (Trial Tr.. 05:24 – 07:25) (R. pp. 141 – 43) ("MR. COOPER [APPELLANT'S COUNSEL]: . . . Again, we just want to put a stipulation on the record consistent with our discussions with the Court in chambers. It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership [Appellant] has been stipulated to . . . That's the stipulation, as I understand it, your Honor. COURT: Any response by the Defendants? Everybody in agreement with that? MR. PEEPLES [CITY OF FOLLY BEACH'S COUNSEL]: Yes, your honor. MS. DEUTSCH [RESPONDENTS' COUNSEL]: Yes, your honor.")

However, the Master's Order on Remand finds that, in Appellant's chain of title, the subject lots "do not exist." (Master's Order on Remand, p. 5) (R. p. 883) ("SUMMARY OF THE FINDINGS OF FACT . . . 2. On the 1920 plat the so-called Demetre 'lots' are not shown and therefore do not exist.").

The Master's finding that the lots "do not exist" is based on his same error, discussed above, regarding the words "MARSH LAND" on the 1920 Plat. There is no evidentiary support for this finding.

In fact, the record shows that Appellant paid property taxes on these lots since purchasing them as had his predecessor in interest Seabrook before him. (Trial Tr. 156:24 – 157:04) (R. pp. 243 - 44). ("[COURT] Q And so you pay property taxes on the lots that you own? [DEMETRE] A. Yes, I do. Q And you pay the property tax, do you not, on the marsh out to the Folly River.

A. Yes, I do. And Mr. Seabrook paid the taxes on it.") In contrast, Respondents have never paid any property taxes on the subject lots.

Regardless, the Master's finding that Appellant's lots "do not exist" conflicts with the parties' stipulation on the record at trial that Appellant has record title to the subject property. The Master's disregard of the parties' stipulation conflicts with Belue.

5. THE MASTER ERRED IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, AND THEY HAD NO REMAINING AFFIRMATIVE DEFENSES.

The Master erred in failing to find that Appellant owns the subject property where Respondents stipulated to Appellant's title and where all of Respondents' affirmative defenses have been ruled against. Where there are no affirmative defenses, record title is good title.

Respondents stipulated to Appellant's record title on the record at trial. (Trial Tr. 05:24 - 07:25) (R. pp. 141 – 43). ("MR. COOPER [APPELLANT'S COUNSEL]: . . . Again, we just want to put a stipulation on the record consistent with our discussions with the Court in chambers. It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership [Appellant] has been stipulated to . . . That's the stipulation, as I understand it, your Honor. COURT: Any response by the Defendants? Everybody in agreement with that? MR. PEEPLES [CITY OF FOLLY BEACH'S COUNSEL]: Yes, your honor. MS. DEUTSCH [RESPONDENTS' COUNSEL]: Yes, your honor.")

The Master's original Dock Case Order found for Respondents on each of their affirmative defenses except adverse possession, on which it did not rule. (Original Dock Case Order, pp. 9 – 18) (R. pp. 25 – 34). However, the Court of Appeals Opinion reversed the original Dock Case Order and remanded the case to the Master to determine whether Appellant

owns the subject property. Respondents did not appeal the Court of Appeals Opinion, and it became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000).

On remand, the Master ruled against Respondents on adverse possession. (Order on Remand, p. 5) (R. p. 883) ("As to the remaining affirmative defenses presented by the Defendants on their claim to ownership of the land in question, I have already found that they do not own the property by adverse possession.") Thus, Respondents stipulated to Appellant's record title and have no remaining affirmative defenses.

Where there are no viable affirmative defenses, Appellant's record title is good title. Thus, the Master erred in failing to find that Appellant owns the property above the mean high-water mark shown on the Kennerty 2005 Topographic Survey which is riverward of Respondent's lots.

6. TO THE EXTENT ANY OF RESPONDENTS AFFIRMATIVE DEFENSES REMAINED AVAILABLE ON REMAND, IN RULING AGINST THEM, THE MASTER SHOULD HAVE CITED AUTHORITY.

As discussed above, Respondents' affirmative defenses did not remain available to them on remand; however, if they had, then, in ruling against Respondents' affirmative defenses, the Master's Order on Remand should have stated the authority against those defenses.

The Statute of Limitations for Nuisance does not apply to an action for injunctive relief. Silvester v. Spring Valley Country Club, 344 S.C. 280, 288, 543 S.E.2d 563, 567 (Ct. App. 2001).

The Statute of Limitations for Trespass does not apply to an action for injunctive relief. Richland County v. Kaiser, 351 S.C. 89, 95, 567 S.E.2d 260, 263 (Ct. App. 2002). Continuous

trespass will be enjoined by a court of equity. Gunter's Island Hunting Club v. Hucks, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984).

Demetre's predecessor's properly recorded title precluded an Estoppel defense. Boyd v. Bellsouth Telephone Co. , Inc., 369 S.C. 410, 633 S.E.2d 136 (2006).

Lack of belief of ownership precluded Respondents from claiming title by equitable estoppel. See Southern Railway- Carolina Div. v. Horne Inv. Co., 233 S.C. 440, 105 S.E.2d 527 (1958).

Laches does not apply because the Dock Defendants suffered no prejudice by having the use of the docks; delay alone in the assertion of a right, without injury to the adversary, does not constitute laches. Grossman v. Grossman, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963); Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993).

Ripeness does not apply because the State is not a necessary party to determination of ownership and quiet title to property above the mean high-water mark. See McQueen v. South Carolina Coastal Council, 154 S.C. 142, 580 S.E.2d 116 (2003).

Laches and Staleness of Demand do not apply where an Adverse Possession analysis applies, since the issue is controlled by the Adverse Possession statute. Crotwell v. Whitney, 229 S.C. 213, 92 S.E.2d 473 (1956).

Unclean hands does not apply to a property purchaser's attempt to remove encroachments, such as the subject docks. See Am. Jur. Proof of Facts 3d 429 § 12 (discussing that a purchaser is bound to purchase contract where he had full knowledge of defects, including encroachments). A purchaser has no duty to obtain a third-party encroacher's approval prior to purchase.

7. THE MASTER ERRED IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST AND DOES NOT REQUIRE LANDOWNER CONSENT.

The Master's Order on Remand states, " . . . Defendants had a vested property interest, granted under license from the state, to the docks which run from in front of their property, commencing in the Indian Avenue, and running to the Folly River." (Order on Remand, p. 5) (R. p. 883).

However, as acknowledged by the Respondents' themselves in their dock permit applications, dock permits are a revocable licenses and do not convey any property interest. (R. p. 447) (" . . . 8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public . . . 10. That authorization for activities or structures herein shall constitute a revocable license . . .")

Respondents should have ascertained that the property between their lots and the Folly River was owned by Appellant's predecessor in interest where their dock permit applications showed several hundred feet of highland between their property lines and the Folly River. (R. pp. 451, 460). The title to Appellant's predecessor in interest's property was properly recorded. Boyd v. Bellsouth Telephone Co. , Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). ("A properly recorded title normally precludes an equitable estoppel against assertion of that title due to requirement that the party raising the estoppel be ignorant of the true state of the title or reasonable means of discovering it").

However, Respondents installed their docks across the property of Appellant's predecessor in interest without obtaining his consent. Lowcountry Open Land Trust v. Atkins,

347 S.C. 96, 110, 552 S.E.2d 778, 786 (Ct. App. 2001) ("A public permit, however, 'does not displace the need to obtain the landowner's consent to wharf on land where title is in one other than the permitting authority.' (Citations omitted). To the contrary, if ownership vests in private hands, an adjacent landowner desiring to build on tidelands must obtain the express consent of the fee simple owner.").

The Permit Administrator for the South Carolina Coastal Council at the time Respondents applied for permits testified that if the agency knew that high ground owned by another party was being crossed by a proposed dock, it was fair to say that the applicant would have to get the permission of the property owner, buy the property, or otherwise take care of the property rights issue before a permit would be issued. (Trial Tr. 242:04 – 242:18) (R. p. 277). Appellant has a right to seek removal of encroachments. Brown v. Clemons, 287 S.C. 328, 338 S.E.2d 338 (1985).

8. THE ORDER ON REMAND CONFLICTS WITH STATE V. BEACH CO., 271 S.C. 425, 248 S.E.2d 115 (178) IN FINDING THAT THE STATE OWNS ACCRETED HIGHLAND.

The Master's Order on Remand conflicts with State v. Beach Co., 271 S.C. 425, 248 S.E.2d 115 (1978), which holds that natural accretion benefits the private highland owner to whose property it adds. State v. Beach Co., 271 S.C. 425, 429, 248 S.E.2d 115, 117 (1978) ("Accretion by natural alluvial action to lands on a navigable steam, such as ocean waters, become the property of the owner of the land accreted or increased."); Horry County v. Woodward, 282 S.C. 366, 369, 318 S.E.2d 584, 586 (Ct. App. 1984) ("South Carolina recognizes the general common law rule that accretions by natural alluvial action to riparian or littoral lands become the property of the riparian or littoral owner whose lands are added to.")

In the present case, there is no evidence in the record or presented at trial in 2005 to support the Master's finding that the subject property was below the mean high-water mark in 1920. Nonetheless, as shown by the 2005 Kennerty Topographic Survey (R. p. 664 – Oversized Document) and Appellant's chain of title (R. 479 - 659), the highland to which any accretion, had it occurred, would have added was the highland of Appellant, and, before him, the highland of Appellant's predecessor's in interest.

However, rather than finding that Appellant owns the subject highland, the Master's Order on Remand finds that the State owns it. (Master's Order on Remand, p. 5) (R. p. 883) ("SUMMARY OF THE FINDINGS OF FACT . . . 5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of "Marshland on the 1920 plat of Folly Island. 6. The State of South Carolina is the owner of the land seaward of the Defendant's lots.")

Thus, while Respondents never presented any evidence of accretion at trial, under Beach Co., Appellant, as the riparian private property owner to whose highland any accretion would have added, would have benefited from any accretion had it occurred, not the State, but the Master found that the State benefited from this accretion. Thus, this finding in the Master's Order on Remand conflicts with Beach Co.

9. THE ORDER ON REMAND CONFLICTS WITH DREHERE V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012) IN FINDING THAT THE STATE, RATHER THAN APPELLANT, OWNS THE SUBJECT PROPERTY.

The Master's Order on remand conflicts with Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012). Dreher holds that certain high marsh is part of Folly Island and is owned by a Dreher, a private citizen.

In the present case, with respect to the Master's finding concerning the words "MARSH LAND" on the 1920 Plat, the subject high marsh is identically situated to the subject high marsh in Dreher. Both the subject property in Dreher and the subject property in this case are in the same part of the 1920 Plat near the words "MARSH LAND." (1968 Tracing of the 1920 Plat) (R. p. 1070 - Oversized Document). The subject property in the present case includes lots 209 and 210 East Indian Avenue. The subject property in Dreher includes lot 806 East Cooper Avenue and high mash extending from 809 East Cooper Avenue to lot 805 East Cooper Avenue. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 261, 730 S.E.2d 922, 923 (Ct. App. 2012). Both the Dreher property and Appellant's property are on the same part of the 1920 Plat with regard to the words "MARSH LAND." (1968 Tracing of the 1920 Plat) (R. p. 1070 – Oversized Document).

Further, the subject high marsh in the present case shares the same key links in its chain of title as those in Dreher. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012), n. 1 ("The title abstract for Dreher's property demonstrates that her title derives from an original grant on November 8, 1918, to Folly Island Company . . .").

In Dreher, based on the same chain of title as Appellant's, the subject high marsh was found to be part of Folly Island and owned by Dreher, a private citizen. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012) ("Dreher also presented substantial evidence to support the ALC's finding that Tract D is on and within the legal boundaries of Folly Island. The title abstract of Tract D states that Dreher's title derives from a grant made on November 8, 1918 . . . Attached to the deed is a plat recorded on December 9, 1895, showing the property described in the grant. Accordingly, Tract

D is included both in metes and bounds of the 1918 deed and within the surveyed boundaries of the 1895 plat. Based on Dreher's deed and subsequent chain of title, Tract D is, by legal description, on and a part of Folly Island.")

This same 1918 conveyance in Dreher is a link in Appellant's chain of title. (Deed from Folly Island Company to Folly Beach Corporation) (R. p. 557) ("Being the same property conveyed to Folly Island Company by . . . . deed dated 8th day of November 1918, and recorded in the R.M.C. Office . . . ").

However, in the present case, the Master's Order on Remand finds that the subject high marsh in the present case is owned by the State. (Master's Order on Remand, p. 5) (R. p. 883) ("SUMMARY OF THE FINDINGS OF FACT . . . 5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of 'Marshland' on the 1920 plat of Folly Island. 6. The State of South Carolina is the owner of the land seaward of the Defendant's lots.")

Thus, the Master's finding in the present case that the State owns the subject high marsh conflicts with Dreher, in which high marsh in the same area of the 1920 Plat was found to be part of Folly Island and owned by a private citizen.

10. THE ORDER ON REMAND ERRS IN FINDING THAT FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT.

The Order on Remand finds that Appellant's predecessor in interest, the Folly Beach Corporation, took title by the 1920 Plat. (Master's Order on Remand, p. 3) (R. p. 881) (" . . . a clear, even cursory, review of the 1920 Cummings and McCrady plat, upon which the Folly Beach Corporation took title to the property, shows the area in question to be "Marshlands.")

However, as shown by Appellant's chain of title, Folly Beach Corporation took title not by the 1920 Plat but rather by a November 18, 1919 general warranty deed referencing the 1895 Tartus Map. (R. p. 557) (". . . and more particularly delineated by the red line upon a certain map of Folly Island or the Folly Islands" made by A.G. Tartus, Surveyor, and recorded in the R.M.C. Office for Charleston County in Plat Book D, page 190.") The Tartus Map, which bore a red line surrounding Folly Island, conveyed all the property within that red line. (R. p. 658) (R. 1067 – Oversized Document). Furthermore, the deed bounded the property, ". . . on the west by the channel of the Folly River and the Folly Creek . . .") (R. p. 557).

As found in Dreher, the Tartus map (R. p. 658) (R. 1067 – Oversized Document) conveyed the subject area. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 263-64, 730 S.E.2d 922, 924 (Ct. App. 2012) (". . . Attached to the deed is a plat recorded on December 9, 1895, showing the property described in the grant. Accordingly, Tract D is included both in metes and bounds of the 1918 deed and within the surveyed boundaries of the 1895 plat. Based on Dreher's deed and subsequent chain of title, Tract D is, by legal description, on and a part of Folly Island.")

The Order on Remand conflicts with Dreher by finding that the State, rather than Appellant, owns the subject property. This property is within the red line of the Tartus Map. (R. p. 658) (R. p. 1067 – Oversized Document). Thus, the property was conveyed to Appellant, and the Master errs by failing to find that Appellant owns the highland property shown on the 2005 Kennerty Topographic Survey (R. p. 664, Oversized Document) riverward of the Respondents' lots.

11. THE ORDER ON REMAND ERRS IN FINDING THAT EARLIER PLATS WHICH DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK ARE MORE PRECISE REGARDING THAT ISSUE THAN ONE WHICH DOES SHOW ITS LOCATION.

The Master found that the 1786, 1895, and 1920 plats ("Early Plats") are more precise than the 2005 Kennerty Topographic Survey regarding what property is above the mean high-water mark. (Master's Order Denying Plaintiff's Rule 59e Motion for Relief, pp. 1 – 2) (R. pp. 885 – 86) ("While the Kennerty plat shows some of the property to be above the mean high water mark, this property clearly appears as Marsh Land on the 1786 Grant and plat, the 1895 Engineer Tartus' survey (upon which Plaintiffs rely) and the 1920 Cummings and McCrady plat. Because I find the plats more precise as to what property is being described, I conclude that the property in question was not contained in the January 1943 Master's deed to Plaintiff's predecessor in interest when he was conveyed most of Folly Island.")

However, only the 2005 Kennerty Topographic Survey shows the location of the mean high water mark. (R. p. 664, Oversize Document). The Early Plats do not.

The 1786 Plat the Master cites was not presented at trial, is not in the record, and the Master erred by considering evidence not presented at trial or in the record. Regardless, the 1786 Plat is described in Querry v. Burgess, 371 S.C. 407, 412, 639 S.E.2d 455, 457 (Ct. App. 2007), which states, "The plat roughly delineates Folly Island. The plat contains the barebones of a survey and is neither precise nor detailed."

The 1895 Tartus map does not show what part of the marsh is above or below the mean high-water mark (R. 658) (R. 1067 – Oversized Document), but, as found in Dreher, it shows that the subject area was part of what was conveyed in Appellant's chain of title. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 264, 730 S.E.2d 922,

924 (Ct. App. 2012) ("Accordingly, Tract D is included both in metes and bounds of the 1918 deed and within the surveyed boundaries of the 1895 plat.")

The Master was in no better a position than an appellate court to determine whether the Early Plats are more precise regarding the location of the mean high-water mark than the 2005 Kennerty Topographic Survey. The Early Plats bear no indication of the location of the mean high-water mark. The Master clearly erred in finding that the Early Plats, which do not show the mean high-water mark, are more precise regarding its location than the 2005 Kennerty Topographic Survey.

Thus, the Master erred in failing to find that Appellant owns the property above the mean high-water mark as shown on the 2005 Kennerty Topographic Survey which is riverward of Respondents' lots. (R. p. 664 - Oversize Document).

12. THE ORDER ON REMAND ERRS AND CONFLICTS WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2D 40 (1995), IN FINDING THAT APPELLANT'S LOTS "DO NOT EXIST."

The Master's Order on Remand finds that Appellant's lots "do not exist" because they are not shown on the 1920 Plat. (R. p. 883) ("SUMMARY OF THE FINDINGS OF FACT . . . 2. On the 1920 plat the so-called Demetre "lots" are not shown and therefore do not exist.")

This finding conflicts with the Court of Appeals Opinion, which remands the case to the Master to determine whether Appellant owns the portions of the lots above the mean high water mark. (Court of Appeals Opinion, p. 9) (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.") Thus, the Master's finding that the lots "do not exist" conflicts with the Court of Appeals

Opinion reversing and remanding the Dock Case for a determination of whether Appellant owns the portions of the lots above the mean high-water mark.

The Master's finding that the lots "do not exist" further conflicts with Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1995). Appellant's deeds sufficiently describe the location of the lots, but even if the description were ambiguous, extrinsic evidence is admissible to identify the location of the deeded property. Richardson v. Register, 227 S.C. 81, 88, 87 S.E.2d 40, 43 (1995). ("Parol evidence is admissible to elucidate latent ambiguities in written instruments generally (citations omitted)."); Gardner v. Mozingo, 293 S.C. 23, 25,358 S.E.2d 390, 391-92 (1987) ("When intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it.")

Here, the grantor's intention to convey the subject property is expressed accurately in the subject deeds. However, even if it were not, there is sufficient parol evidence to identify Appellant's lots. The lots are shown on the 1965 Plat and the 2005 Kennerty Topographic Survey. (R. p. 664, Oversize Document).

Thus, the Master erred by finding that Appellant's lots "do not exist" and in failing to find that Appellant owns the property above the mean high-water mark riverward of Respondent's lots as shown on the 2005 Kennerty Topographic Survey.

13. THE ORDER ON REMAND LACKS EVIDENTIARY SUPPORT AND CONFLICTS WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT DID NOT INTEND TO ADD THE SUBJECT LOTS.

The Master's Order on Remand errs and conflicts with the Court of Appeals Opinion in finding that the 1965 Plat was "incorrect" and did not intend to add the subject lots.

The Master's Order on Remand finds that the 1965 Plat is "incorrect" and did not intend to add the subject lots, and it finds that the 1968 Plat was intended to "correct" the 1965 Plat. (Master's Order on Remand, p. 3) (R. p. 881) ("Because I find that the 1965 redraw of Folly Beach properties was designed to be a redraw (apparently the 1920 plat was deteriorating badly) and not a creation of new lots, I find that this 1965 plat is incorrect and, therefore, cannot serve as a basis for creation of new lots on Folly Beach. The subsequent plat from 1968 also shows the area in question to be marshland. I find that the 1968 plat evidently intended to correct the 1965 plat error.")

However, there is no evidence to support this finding. Rather, all of the evidence is that the 1965 Plat re-drew the 1920 Plat, adding lots, and the 1968 Plat traced the 1920 Plat.

Further, the Order on Remand's finding that the 1965 Plat did not add parcels to the 1920 Plat conflicts with Court of Appeals Opinion. (R. p. 871) ("Subsequently, in 1965 the 1920 plat was redrawn because of deterioration and in 1968 it was traced. The redraw added parcels to the 1920 plat; however, the tracing appears to be identical to the 1920 plat.")

The Master's conclusion that the 1965 Plat did not add parcels conflicts with Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012), in which the highland at issue in that case is not shown on the 1920 Plat, but highland is evidenced by the addition of lots on the 1965 Plat. (1968 Tracing of 1920 Plat) (R. p. 659) (R. p. 1070 – Oversized Document). (1965 Plat) (R. 477) (R. p. 1069 – Oversized Document). The subject property in the present case includes lots 209 and 210 East Indian Avenue, which were added by the 1965 Plat.

The subject property in Dreher includes lot 806 East Cooper Avenue and high mash extending from 809 East Cooper Avenue to lot 805 East Cooper Avenue. This area is highland shown on the 1965 Plat in lots drawn riverward of East Cooper Avenue.

The Master's finding that the addition of lots on the 1965 Plat is "incorrect" is clearly erroneous. To reach the Master's conclusion, one has to assume that detailed, specific lots were added by mistake. Here, where the Master's finding is based on the plats themselves, he is in no better a position than an appellate court to determine whether the 1965 Plat is "incorrect."

As can be seen on the face of the plats, the 1920 Plat is deteriorating (R. 663) (R. 1068 – Oversized Document), the 1968 Plat is an exact tracing of the 1920 Plat (R. p. 1070 – Oversized Document), and the 1965 Plat adds lots (R. pp. 477, 659) (R. p. 1069 – Oversized Document).

The Order on Remand's reasoning is circular. Although the location of the mean-high water mark is not shown on the 1920 Plat, the Order on Remand finds that the words "MARSH LAND" on the 1920 Plat must mean that the property in that area is below the mean high-water mark. However, since the 1965 Plat shows lots in this area, to maintain the first finding that this area is below the mean high-water mark, the Order on Remand must make a second, strained finding that the 1965 Plat is "incorrect." Further, despite the fact that the 1968 Plat is obviously an exact tracing of the 1920 Plat, the Order on Remand makes a third implausible finding that it is instead a "correction" of the 1965 Plat.

Thus, the Order on Remand errs and conflicts with Court of Appeals Opinion in finding that that the 1965 Plat did not intend to add the subject lots. Based on this error, the Master further erred in not finding that Appellant owns the highland shown on the 2005 Kennerty Topographic Survey which is riverward of Respondents' lots.

14. THE ORDER ON REMAND ERRS IN FINDING THAT APPELLANT'S PREDECESSOR IN INTEREST BELIEVED HE DID NOT HAVE TITLE.

The Master's Order on Remand errs in finding that Appellant's predecessor in interest, Ed Seabrook, Jr. ("Appellant's Predecessor") believed that the subject lots "did not exist."

The Order on Remand erroneously finds that the subject lots do not exist and that this fact was known to Appellant's Predecessor. (Order on Remand, p. 3) (R. p. 881) ("Consequently, this court finds that these purported lots do not exist as legal lots today. This fact was apparently known to Ed Seabrook (Jr.) who determined he would only convey the lots in question to Plaintiff by Quitclaim deed in 2004.")

However, the Master's reasoning is based on the factual error that Appellant's Predecessor conveyed lots in that area only by quitclaim deed, not by general warranty deed. The Order on Remand cites no other evidence to support its finding that Appellant's Predecessor knew that he did not own the lots.

Although low marsh is not at issue in this case, the only evidence in the record is that Appellant's Predecessor conveyed the subject property using a quitclaim deed because he was, in addition to the subject high marsh, also conveying low marsh for which he had not brought a quiet claim action against the State, and he only sold low marsh by quitclaim deed. (R.p. 227).

In fact, Appellant's Predecessor conveyed other property in the 200 block of East Indian Avenue by general warranty deed where he was conveying only highland. These deeds are in the record within Plaintiff's chain of title: the 1948 deed to William C. and Harriett S. Dawson for lot 201 East Indian Avenue (R. p. 533), the 1949 deed to William C. and Harriett S. Dawson for lot 202 East Indian Avenue (R. p. 597), and the 1950 deed to Elizabeth D. Muller for Lots 203, 204, and 205 East Indian Avenue (R. 640).

Further, the only evidence in the record is that Appellant's Predecessor believed that he owned the lots. (Trial Tr. 134:21 – 134:23) (R. p. 227). Thus, the Master's Order on Remand errs in finding that Appellant's Predecessor knew that the lots "did not exist."

15. THE ORDER ON REMAND CONFLICTS WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 338 S.C. 171, 525 S.E.2d 869 (2000).

The Master's Order on Remand conflicts with Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000). Charleston Lumber Co. holds that an unappealed decision of the Court of Appeals is the law of the case. 338 S.C. at 174, 525 S.E.2d at 871. ("This ruling was adverse to Charleston Lumber. Accordingly, it was incumbent upon Charleston Lumber to seek rehearing and/or petition this Court for a writ of certiorari or be bound by Charleston Lumber I as the law of the case.")

In the present case, the Master's original March 26, 2007 Dock Order ruled for Respondents on each of their affirmative defenses, except for adverse possession. However, the Court of Appeals Opinion reversed the original Road Case Order. Respondents neither petitioned for rehearing nor sought a writ of certiorari to the South Carolina Supreme Court. Therefore, Respondents were bound by the reversal of the original Road Case Order.

The Master's Order on Remand rules against Respondents on adverse possession, 20 year grant, and 40 year grant. (Order on Remand, p. 5) (R. p. 883) ("As to the remaining affirmative defenses presented by Defendants on their claim to ownership of the land in question, I have already found that they do not own the property by grant (either 20 or 40 years) nor do they own the possess the property by laches.")

Nonetheless, the Order or Remand finds that Respondents' Affirmative Defenses remain available to them to argue on remand. (Order on Remand, p. 5) (R. p. 883) ("Plaintiff's counsel

argued during the Hearing in this matter, that Affirmative Defenses were not available to Respondents, but this Court disagrees.") However, since the Court of Appeals' unappealed reversal of the Original Dock Case Order was the law of the case, this finding in the Master's Order on Remand conflicts with Charleston Lumber Co. Therefore, any affirmative defenses were not available on remand.

16. THE MASTER'S ORDER ON REMAND ERRS AND CONFLICTS WITH THE COURT OF APPEALS OPINION WHERE IT FINDS THAT THE STATE OWNS THE UNDEVELOPED ROADWAY RIVERWARD OF RESPONDENTS' LOTS.

The Master's original Road Case Order found that the road owned by the City of Folly Beach ends less than three hundred feet from the intersection of Second Street East and East Indian Avenue, which is several lots before Respondents' lots. (Road Case Order, p. 5) (R. p. 13) ("The Street is open for approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into a wooded area.")

The Court of Appeals affirmed the Master's Road Order, twice citing evidence that the road owned by the City of Folly Beach ends at the northeast corner of lot 205 East Huron Avenue, which is several lots before Respondents' lots at 209 and 210 East Huron Avenue. (Court of Appeals Opinion, p. 3) (R. p. 871) ("Both the 1920 plat and the 1968 redraw show a portion of East Indian Avenue extending from lot 201 to the northwest corner of lot 205."); (Court of Appeals Opinion, p. 7) (R. p. 875) ("Also, the 1920 plat, which was referenced in Seabrook's deed, shows East Indian Avenue extending from lot 201 to the northwest corner of lot 205"). Lot 205 East Huron Avenue is several lots before Respondents' lots, lots 209 and 210 East Huron Avenue.

Respondents did not petition for rehearing or a writ of certiorari. Thus, the Court of Appeals' Opinion affirming the Road Case Order became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000).

However, conflicting with the Road Case Order, the Master's original Dock Case Order found that the road owned by the City of Folly Beach, rather than ending several lots before Respondents' lots, extended alongside Respondents' lots. (Master's Original Dock Order, pp. 17-18) (R. pp. 33 – 34). However, the roadway in this area was undeveloped and was not owned by the City of Folly Beach. Ultimately, the Court of Appeals reversed the Dock Case Order's finding that the City of Folly Beach owned this undeveloped roadway.

The first Court of Appeals Opinion dated January 14, 2009, found that Folly Beach owned East Indian Avenue riverward of the Respondents' lots. As set forth below, the substituted April 21, 2009 Opinion removed the finding that East Indian Avenue extended to the Respondents' lots.

Original January 14, 2009 Opinion, p. 9 (R. p. 867)	Substituted April 21, 2009 Opinion, p. 9 (R. p. 877)
Demetre sought a declaration that he owns all the property between the Crowleys' and the Beckmanns' lots and the mean high water mark, and he sought to quiet title to any defects in his title to the land. The master did not rule on either request and only held that the Crowleys and the Beckmanns believed the State owned the land when they applied for the dock permits, which does not resolve the question of actual ownership. ***We already determined in the Road case Folly Beach is the owner of East Indian Avenue; thus, Demetre is not entitled to a declaration that he owns the property between the Crowleys' and Beckmanns' lots and his lots.*** Also, Demetre does not dispute . . . (Emphasis added).	Demetre sought a declaration that he owns the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet title to the land. The master did not rule on either request and only held the Crowleys and Beckmanns believed the State owned the land when they applied for their dock permits, which does not resolve the question of actual ownership. Demetre does not dispute . . .

Thus, the Court of Appeals Substituted April 21, 2009 Opinion found that East Indian Avenue extends only from Lot 201 to the northwest corner of Lot 205 (pp. 3, 7) (R. p. 871) and removed the finding that East Indian Avenue extends to the Defendants' lots. (p. 9) (R. p. 877).

Further, the Court of Appeals amended its mandate on remand in its substituted opinion to reflect that the road does not extend to the Defendants' lots.

In its original January 14, 2009 Opinion, the Court of Appeals remanded the Dock Case for a determination of whether Demetre owns the land between ***East Indian Avenue*** and the mean high water mark on lots 209 and 210 East Indian Avenue. (Court of Appeals January 14, 2009 Opinion, p. 10) (R. p. 868).

However, in its substituted April 21, 2009 Opinion, the Court of Appeals amended its mandate on remand to a determination on whether Demetre owns the land between ***the Dock Defendants' lots*** and the mean high water mark on lots 209 and 210 East Indian Avenue. (Court of Appeals April 21, 2009 Opinion, p. 10) (R. p. 878).

Thus, the Court of Appeals amended its mandate in its substituted April 21, 2009 Opinion to reflect that the road does not extend to the Respondents' lots:

Original January 14, 2009 Opinion, p. 10 (R. p. 868)	Substituted April 21, 2009 Opinion (R. p. 878)
We need not address Demetre's remaining issues because we remand this case for a determination of whether Demetre owns the land between ***East Indian Avenue*** and the mean high water mark on lots 209 and 210 East Indian Avenue (emphasis added).	We need not address Demetre's remaining issues because we remand this case for a determination on whether Demetre owns the land between ***the Crowleys' and the Beckmanns' lots*** and the high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

Thus the Court of Appeals' April 21, 2009 substituted Opinion reversed the original Dock Case Order's finding that the City of Folly Beach owned the undeveloped roadway along Respondents' lots.

Nonetheless, in the original Dock Case Order, in finding that the City of Folly Beach owned this area, the Master's original Dock Case Order contained a correct implicit finding that this area is above the mean high-water mark ("highland").

The Court of Appeals reversed the original Dock Case Order, found highland in that area, and remanded the Dock Case to the Master to determine whether Appellant owns that highland. (Court of Appeals Opinion, p. 9) (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of that issue.")

However, despite the Court of Appeals' finding of highland in that area, and despite the original Dock Case Order's implicit finding of highland in that area, the Master's Order on Remand finds that the State owns that area. This finding is in error and conflicts with the Court of Appeals Opinion. Thus, the Master erred by failing to find that Appellant owns the property above the mean high-water mark as shown on the 2005 Kennerty Topographic Survey riverward of Respondents' lots.

CONCLUSION

For the foregoing reasons, the Master's Order on Remand should be reversed and title should be quieted in Appellant Milton P. Demetre Family Limited Partnership to the property above the mean high-water mark in the undeveloped roadway and lots 209 and 210 East Indian Avenue riverward of Respondents' lots shown on the 2005 Kennerty Topographic Survey.

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant
Cain Denny, P.A.

By: Cain Denny
Cain Denny, Esquire
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

The Milton P. Demetre Family Limited Partnership .....Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson .....Respondents.

CERTIFICATION

Appellant's counsel hereby certifies that the Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b), SCACR.

July 1, 2013

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant

Cain Denny, P.A.

By: Cain Denny
Cain Denny, Esquire
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

Other Counsel of Record:

Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, S.C. 29211
Attorneys for Respondents

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PROOF OF SERVICE

I certify that I have served one copy of the Certification of Appellant's Counsel that the Final Brief of Appellant and the Final Reply Brief of Appellant Comply with Rule 211(b), SCACR, on Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson by depositing a copy of it in the United States Mail, postage prepaid, on July 1, 2013, addressed to their attorneys of record, Jefferson D. Griffith, III, Esquire, and Richard L. Witt, Esquire, Austin & Rogers, P.A., Post Office Box 11716, Columbia, South Carolina 29211.

July 1, 2013

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant

Cain Denny, P.A.

By: Cain Denny
Cain Denny, Esquire
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

Other Counsel of Record:

Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, S.C. 29211
Attorneys for Respondents