

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Maite Murphy

Trial Court Case No.: 2020-CP-07-00829
Appellate Court Case No.: 2023-001278

Carol Jenkins Jackson and Judy Sharon Jenkins Watson, Appellants.

v.

Michael F. Rivers, R.M. Lapp, Trustee for St. Helena Asset Trust, Heirs of Harrison Rivers, Heirs of Ophelia Rivers, Heirs of Harold W. Rivers, Heirs of Rachel Chisholm, Heirs of Florence C. Parker, Heirs at Law of Rueben M. Chisholm, and also Vernell I. Smashum, Barbara McClarking, Beverly J. Scott, Amos Williams, Clifford Huff, Sandra Mack-Huff, a Trustee for the Margaret Loyd Sumpter Trust dated August 30, 2002, Joseph A. Moore all of whom are believed to be adjacent landowners and are made Defendants in this action, and also all other persons unknown having or claiming to have any right, title, estate, interest in or lien upon the real property or any part thereof described in the Complaint herein as John Dor and Mary Roe, including all persons who may be deceased, minors, in the military service of the United States with the naming of Title 50 United States Code, referred to as the Service Members Civil Relief Act, as amended, persons Compos Mentis and any other disability, Defendants,

Of whom Michael F. Rivers is the Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF THE CASE

This is an action to confirm and quiet title to real estate located on St. Helena Island in Beaufort County, South Carolina. It was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on April 6, 2020. ROA, pg. 25. In his Complaint the original Plaintiff, Benjamin Jenkins, alleges that he is the owner of a 4.3 acre tract of unimproved land and that the Respondent Michael F. Rivers, who owns adjoining real estate, was trespassing upon his 4.3 acres of land. In the first cause of action, the Complaint prays for judgment against the Respondent Michael Rivers for actual damages sustained as a result of the trespass, and in the second cause of action the Complaint prays for a declaration that the Plaintiff is the owner of the entire 4.3 acre parcel.

Contemporaneously with the filing of the Summons and Complaint, the original Plaintiff Benjamin Jenkins also filed a Lis Pendens regarding the subject action.

On May 8, 2020 the Respondent Michael F. Rivers accepted service of the Summons, Complaint and Lis Pendens.

On June 4, 2020 the Respondent Michael F. Rivers filed his Answer to the Complaint, denying the material allegations thereof and requesting, among other things, an Order directing the Plaintiff not to interfere with the Respondent's peaceful enjoyment of his own property. ROA, pg. 32.

On September 8, 2020 an Order appointing Frampton L. Harper, II, Esquire as Guardian *ad Litem* for unknown party defendants, resident or non-resident, minors, defendants in the Armed Forces of the United States, and defendants who are *non compos mentis* or under any other disability, was filed. The Answer of the Guardian *ad Litem*, which neither admits or denies the allegations of the Complaint, was filed on February 23, 2022.

An Order authorizing service by publication was filed on September 8, 2020 and the pleadings were subsequently published in the Beaufort Gazette, a local newspaper, once a week for three (3) consecutive weeks.

Other than the Respondent Michael R. Rivers, all other Defendants are in default.

On October 23, 2020 an Order referring this action to the Beaufort County Master in Equity was filed, but on October 27, 2020 the Master in Equity, *sua sponte*, due to a conflict, recused himself from the case.

On August 5, 2021 a Consent Order was issued substituting the original Plaintiff Benjamin Jenkins, who passed away on November 2, 2020 with the current Appellants, Carol Jenkins Jackson and Judy Sharon Jenkins Watkins.

On February 22, 2022 this case was tried non-jury before the Honorable Maite Murphy, Presiding Judge of the Beaufort County Court of Common Pleas.

At the conclusion of the trial the case was taken under advisement and on May 6, 2022 Judge Murphy filed her Final Judgment Quieting Title in which she determined, among other things, that the Respondent Michael F. Rivers held fee simple absolute title to a portion of the 4.3 acre parcel of land claimed by the Appellants in the Complaint. ROA, pg. 3-20.

On May 13, 2022 the Appellants filed a Motion for Reconsideration and on July 18, 2023 an Order Denying the Motion for Reconsideration was filed. ROA, pg. 37-39.

The Appellants filed their Notice of Appeal to the South Carolina Court of Appeals on August 8, 2023. ROA, pg. 44-47.

STANDARD OF REVIEW

“The determination of title to real property is a legal issue.” *Wigfall v. Fobbs*, 295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988), citing *May v. Jeter*, 245 S.C. 529, 141 S.E.2d 655 (1965); and

Capell v. Moses, 36 S.C. 559, 15 S.E. 711 (1892). Therefore, in a case tried without a jury, the factual findings of a Judge regarding title will not be disturbed on appeal unless found to be without evidence which reasonably supports the Judge's findings. *Id.*

“In an action at law, tried without a jury, the Appellate Court standard of review extends only to the correction of errors of law.” *Okatie River, LLC v. Southeast Site Prep, LLC*, 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct.App. 2003). “Questions regarding credibility and the weight of the evidence are exclusively for the Trial Court.” *Regions Bank v. Strawn*, 399 S.C. 530, 537, 732 S.E.2d 230, 234 (Ct.App. 2012).

“The nature of the underlying issue determines whether a suit for declaratory judgment is legal or ethical.” *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct.App. 1998). When the case involves the determination of title to real property, then it is a question of law. *Id.*

Since the issue in this case is who holds title to the disputed property, i.e., the Appellants or the Respondent, it is respectfully submitted that this Court's appellate review is limited to the correction of errors of law.

I. THERE IS EVIDENCE THAT REASONBLY SUPPORTS THE FACTUAL FINDINGS OF THE TRIAL JUDGE.

The Appellants argue that the evidence “taken as a whole” does not support the Trial Judge’s factual findings.

As noted above, this is not the correct standard of review. The correct issue on appeal is whether or not there is any evidence to reasonably support the Trial Judge’s factual findings. As will be shown below, not only is there evidence that reasonably supports the Trial Judge’s factual findings, but the evidence is so overwhelming that the Trial Judge could not possibly have reached any other conclusion.

This saga began on March 11, 1913 when Ruben Chisolm acquired a 10 acre parcel of land pursuant to a Deed recorded in Deed Book 33 at Page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. This 10 acre square parcel is simply described as being bounded on the North by lands belonging to John Ford, on the East by lands belonging to Joseph Logan, and South by lands belonging to William Wallace, and on the West by lands belonging to Butler Mitchell. Each of these surrounding properties, as well as the property conveyed to Ruben Chisolm, is a 10 acre square lot of land. See Deed at Deed Book 33, Page 29. ROA, pg. 284.

Ruben Chisolm retained ownership of the entire 10 acre square lot of land until March 13, 1933 when he sold and deeded a portion of this land to Harrison Rivers, who is the father of the Respondent Michael Rivers. This Deed, which is recorded in Deed Book 51 at Page 213, describes the property being conveyed as follows:

A certain part of a ten acre tract described as follows: - bounded on the North by lands now or formerly of John Ford, on the East by lands now or formerly of Joseph Logan, on the South by lands now or formerly of William Wallace and on the West by lands now or formerly of Butler Mitchell, it being a part of what is known as the Frogmore Plantation and purchased by me from N. Christensen by

deed dated February 10, 1913, the road leading from Club Bridge to Coffins Point running through this lot in a southwest to northeast direction: Beginning at the point where the said highway intersects with the southern line of said ten acre lot and running in a westerly directing (sic, direction) along the boundary two hundred and ten feet, thence in a northerly direction two hundred and ten feet, thence in an easterly direction two hundred and (sic) feet to the said highway, thence along the said highway in a southerly direction to the point of starting, said lot containing one (1) acre, more or less.

ROA, pg. 285.

On April 23, 2019 the original Plaintiff, Benjamin Jenkins, had the disputed property surveyed. The resulting plat, dated April 23, 2019 entitled "Boundary Survey Prepared for Benjamin Jenkins," was prepared by David S. Youmans, a Registered Land Surveyor. North is directly to the top of this plat. On this plat there is depicted the location of a chain link fence which is labeled "Fence Encroachment." There is no dispute between the parties that the Appellants own that portion of the 4.31 acres located to the north of the "Fence Encroachment." Also on this plat is a 1.24 acre parcel on which the location of a house, among other things, is depicted. It is undisputed by the parties that this 1.24 acre parcel is owned by Michael Rivers. ROA, pp. 384-385.

The Appellants contend that the boundary line between their property and the property of Respondent Rivers are those two solid straight lines, shown on above Plat, one running S00-14'24" West for a distance of 300.94 feet, which then takes a right turn in the direction S89 46'53" E for a distance of 210.60 feet. See Plat, *Id.*

Respondent Rivers, on the other hand, contends that the location of the boundary line between his property and that of the Appellants' is the chain link fence labeled "Fence Encroachment." See Plat, *Id.*

Accordingly, the dispute between these parties is who holds title to the roughly rectangular shaped parcel of property immediately to the west of the 1.24 acre parcel which Judge Murphy refers to in her Order as the "Disputed Rectangle" and the triangular shaped parcel located immediately to the north of the 1.24 acre parcel which Judge Murphy in her Order refers to as the "Disputed Triangle". ROA, pg. 5.

Judge Murphy concluded that the legal description of the property conveyed by Ruben Chisolm to Harrison Rivers in the 1933 Deed is ambiguous. ROA, pg. 8, Finding of Fact No. 8. This finding is amply supported by the evidence. The Appellants' own expert title researcher admitted that the description was "vague." ROA, pp. 93-95. It is not possible for the conveyed property to be bounded on all four sides by the lands of John Ford, Joseph Logan, William Wallace and Butler Mitchell, and yet be only one acre in size, since "bounded by" means the properties share a common boundary. Additionally, none of the conveyed parcel's property lines can run "along the said highway in a southerly direction" as recited in the Deed, since the highway does not run in a southerly direction. ROA, pp. 94 and 109.

Most significantly, this Deed from Ruben Chisolm to Harrison Rivers, on its face, expressly conveys nearly all of the disputed rectangle to Harrison Rivers. The metes and bounds expressly set out in the 1933 Deed begin "at the point where the said highway intersects with the southern line of the said ten (10) acre lot and running in a westerly direction along the boundary two hundred and ten feet." This boundary line coincides with the southern boundary line of the Disputed Rectangle. If the metes and bounds are then followed, as directed in the Deed, going north, then east, then due south for two hundred and ten feet each, the property expressly conveyed by this deed encompasses nearly all of the Disputed Rectangle.

As Judge Murphy found, however, the aforesaid ambiguity begins to make sense when one recognizes that at the time of this conveyance there was a house that was located on the disputed rectangle. Benjamin Jenkins testified that this old house was in existence when Ruben Chisolm sold this property to Harrison Rivers. Jenkins Deposition, pg. 12. Ruben Chisolm was Benjamin Jenkins' grandfather, and Benjamin Jenkins was Ruben Chisolm's ultimate heir. Benjamin Jenkins testified repeatedly that his grandfather, Ruben Chisolm, sold one acre **and** the house to Harrison Rivers. *Id.*, pg. 13, lines 23 – 24; pg. 14, line 23, pg. 23, line 12, pg. 40, lines 2 – 3 (“he . . . sold the house and that acre of land to Harrison Rivers”). There is accordingly ample evidence directly from the mouth of the Appellants' predecessor in title that it was in the intent of the parties in the 1933 Deed to convey both the house **and** the acre of land described in the deed.

Accordingly, by its express terms, the 1933 Deed conveyed most of the Disputed Rectangle to Harrison Rivers.

After being deeded the property in the 1933 Deed, Harrison Rivers, together with his wife Ophelia, moved into and occupied as their home the then existing house as well as the property which now comprises the 1.24 acre parcel. In addition to the other evidence, this is admitted by the Appellants in their Complaint, in which they allege:

“When Harrison Rivers acquired his acre from Ruben Chisolm in 1933, he and his wife Ophelia went into possession of a dwelling house that was not within the description of the one acre that he was conveyed by Ruben Chisolm.”

ROA, pg. 28, ¶6.

Ruben Chisolm passed away on January 31, 1944. ROA, pg. 29, ¶8. During his lifetime, the only property that he conveyed out of the ten (10) acre parcel which he acquired in 1913 is that property which he conveyed to Harrison Rivers in 1933.

Ruben Chisolm left as his sole heirs his wife Rachel Chisolm and a daughter Florence C. Parker. On January 20, 1960 Rachel Chisolm died, leaving her daughter Florence C. Parker as her only heir. ROA, pg. 29, ¶8 and ¶11.

In 2000, Florence C. Parker died intestate, leaving her son Benjamin Jenkins, the original Plaintiff to this action, as her sole heir. ROA, pg. 29, ¶11.

Following the death of Ruben Chisolm his heirs conveyed out of the original ten (10) acre parcel a piece of property Amos Williams. The Amos Williams property is shown on the Boundary Survey Prepared for Benjamin Jenkins as lying immediately to the west of the Disputed Rectangle. ROA, pp. 384-385.

Following the death of Ruben Chisolm, his heirs also conveyed out of the original ten (10) acre parcel a piece of property to Margaret Loyd Sumpter. The Sumpter property lies immediately to the east of the 1.24 acre parcel and the Disputed Triangle as shown on the Boundary Survey Prepared for Benjamin Jenkins. ROA, pp. 384-385.

Shortly after the execution and filing of the 1933 Deed, Harrison and Ophelia Rivers occupied, used, and began exercising dominion and control over not just the 1.24 acre parcel, but also the Disputed Rectangle and the Disputed Triangle. The land in this area is heavily wooded, and the Disputed Rectangle and Disputed Triangle were cleared up to the "Fence Encroachment" line as shown on the Boundary Survey Prepared for Benjamin Jenkins. To the south of that line the land is cleared. Immediately to the north of that line the land is heavily wooded. There was a wire fence in the location of the Fence Encroachment line, remnants of which are still visible today. ROA, pp. 232, lines 17-18; pg. 242, line 1 to 246, line 3; pg. 251, lines 13-14; pg. 397 and pp. 399-400.

After moving onto the property in 1933, Harrison and Ophelia Rivers utilized the Disputed Rectangle as if it were their own property. Primarily, they used the Disputed Rectangle for farming and growing various crops such as corn, beans, peas, squash, and watermelon. They tilled the land with a horse and plow. The Disputed Rectangle is easily observable from Seaside Road, a public road, and the use of the Disputed Rectangle was open, obvious, and apparent to anyone passing by. ROA, pp. 137-140, 160, 165, 208, 212-213.

After moving onto the property in 1933 Harrison and Ophelia Rivers also used the Disputed Triangle as if it were their own property. On the Disputed Triangle, since the ground was a little higher, they grew peanuts. In this area they also built a stable to house the horses which they used in farming. They also raised hogs and constructed a hog pen on the Disputed Triangle. For a while Ophelia Rivers raised turkeys in this area. ROA, pp. 229, 234-235, and 281. Once their son, the Respondent Rivers, was born, they built a tree house on the Disputed Triangle for him. ROA, pg. 108.

In 1958 the Respondent Rivers was born and was raised as an only child by Harrison and Ophelia Rivers in the house on the property. His earliest memories as an infant are of his father and mother farming the Disputed Rectangle with the horse and plow, as well as the horses and hogs maintained in the stable and pen. He recalls the wire fence that ran along a line of the Fence Encroachment, and his parents treated the land south of the wire fence as their property, and recognized the heavily wooded land to the north of the wire fence as belonging to the Jenkins family. ROA, pp. 210, 232, 239-240, 265.

In 1970 Harrison and Ophelia Rivers built a new house immediately to the west of their existing house. The footprint of this new house is shown on the Boundary Survey Prepared for Benjamin Jenkins within the 1.24 acre parcel, labelled "House." At that time, they moved into the

new house and razed the old house which has been located on the Disputed Rectangle. ROA, pg. 223. Harrison and Ophelia Rivers, together with the help of their son the Respondent Rivers, continued their use and dominion of both the Disputed Triangle and the Disputed Rectangle until the death of Harrison Rivers in 1980. Ophelia Rivers continued the farming and other activities on the Disputed Rectangle and the Disputed Triangle following the death of her husband, albeit on a smaller scale, until shortly before her passing in 1991. ROA, pp. 208-209, 215, 220, 232-233.

Following the passing of her husband, Ophelia Rivers erected a chain link fence for security purposes around three (3) sides of the residence, since at that time she was residing there alone, and her son Michael Rivers was serving a tour of duty in the military. ROA, pg. 200.

Upon her death in 1991, Ophelia Rivers passed her interest in the property to her son Michael Rivers. Michael Rivers lost the property in a foreclosure to Wells Fargo Bank. Michael Rivers arranged for his aunts, Shirley B. Mack and Arabelle Bonds, to be the successful bidders at the foreclosure sale, and he continued to occupy the property pursuant to an agreement with them where they were to serve as "placeholders" until he could regain title. This was in 2006. In 2012, the property was again lost at a foreclosure sale and Calvin Scott was the successful bidder. Michael Rivers continued to reside in the property pursuant to an agreement with Calvin Scott. Mr. Scott subsequently sold the property to R.M. Lapp, Trustee, and once again, Michael Rivers continued to reside on the property, except for about six (6) months, pursuant to an agreement with Mr. Lapp. In 2020, Mr. Lapp deeded the property to Michael Rivers, who continued to reside in his parents' former house. ROA, pp. 297-346.

Each of the deeds of conveyance in the foregoing chain of title to Michael Rivers utilizes the same legal description in the original Deed from Ruben Chisolm to Harrison Rivers that references the property as being bounded on all four sides (i.e., north, south, east and west) by the

ten (10) acre parcels formerly belonging to Ford, Logan, Wallace, and Mitchell. Each of these deeds also expressly recite that this is the same property acquired by the Grantor in the Deed from that Grantor's previous Grantor. ROA, pp. 95-96. In 2006, however, the deeds began referencing a plat prepared by Surveyor Zyad Kahlil which was recorded in Book 81 at Page 77 on June 26, 2001. This plat was prepared for Benjamin Jenkins and is the plat upon which the 2019 Youmans' plat is based. This plat shows, for the first time, the boundary line between the Jenkins and the Rivers property that is now claimed by the Appellants. ROA, pg. 323. Judge Murphy did not give this plat much weight, and for good reasons. The Appellants did not call Surveyor Kahlil as a witness. There was, accordingly, no evidence explaining how he arrived at the boundary line shown on this plat. Additionally, this plat is in direct conflict with the express language of the 1933 Deed which, as previously noted, expressly conveys most of the Disputed Rectangle to Harrison Rivers. In short, there is absolutely no evidence in the record supporting the boundary line depicted on this plat.

Following his mother's passing, the Respondent Rivers continued to reside on the property, which is where he now resides with his wife. He continued to farm the property, although on a much smaller scale inasmuch as, unlike his parents, he was not dependent upon farming for his sustenance. He has extensively landscaped the property with trees, azaleas, and crepe myrtles, and has cleared old stumps, and mows and keeps the property cleared, landscaped and maintained. He had to replace the septic tank and drain field to his house, and this extends well into the Disputed Rectangle. ROA, pp. 227, 248, 267-268, 237-241. Until shortly prior to the filing of this lawsuit, none of these actions were contested or objected to by the Appellants or their predecessors in title.

The Respondent Rivers claimed ownership of the Disputed Parcels partly by virtue of the express language in the 1933 Deed and partly by adverse possession under color of title. The color of title is the 1933 Deed.

Section 15-67-230 of the South Carolina Code of Laws sets forth what constitutes adverse possession under a written instrument, such as the 1933 Deed, as follows:

“For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

- (1) When it has been usually cultivated or improved;
- (2) When it has been protected by a substantial enclosure;
- (3) When, although not enclosed, it has been used for the supply of fuel or the fencing timber, for the purposes of husbandry or for the ordinary use of the occupant; and
- (4) When a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

S.C. Code Ann §15-67-230. See also, *Woods v. Bivens*, 292 S.C. 76, 354 S.E.2d 909 (1987) and *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621 (Ct.App. 1987).

There is evidence in record that supports Judge Murphy’s finding that the Disputed Rectangle and the Disputed Triangle were “usually cultivated” or “improved” by Harrison and Ophelia Rivers from 1933 up until the time of their deaths in 1980 and 1991, respectively, within the meaning of Subsection (1) of §15-67-230. ROA, pp. 200-203.

Likewise, there is evidence in the record supporting the finding by Judge Murphy that the Disputed Rectangle and the Dispute Triangle were both “protected by substantial enclosure” by

Harrison and Ophelia Rivers from 1933 up until the time of their deaths in 1980 and 1991, respectively, within the meaning of Subsection (2) of §15-67-230. ROA, pp. 232-233, 243, 254, and 397.

Additionally, there is evidence in the record supporting the finding by Judge Murphy that the Disputed Rectangle and the Disputed Triangle were utilized for “purposes of husbandry or for the ordinary use of the occupant” by Harrison Rivers and Ophelia Rivers until the time of their deaths in 1980 and 1991, respectively, within the meaning of Subsection (3) of §15-67-230. ROA, pp. 208, 212-215, 237-238.

Finally, there is evidence in the record that during the timeframe when Harrison Rivers and Ophelia Rivers were utilizing the Disputed Rectangle and the Disputed Triangle for farming and husbandry, particularly during the earlier decades, these activities were not engaged in as a hobby, but for needed sustenance, and accordingly Subsection (4) of §15-67-230 also applies to the facts of this case. *Id.*

Even if there were no claim under color of title or under a written instrument such as the 1933 Deed, §15-67-250 of the South Carolina Code of Laws includes fencing, cultivation, and improvements within the definition of adverse possession. These are circumstances that are present within this case. See S.C. Code Ann. §15-67-250; *Miller v. Learid*, 307 S.C. 56, 413 S.E.2d 841 (1992); *Woods v. Bivens*, 292 S.C. 76, 354 S.E.2d 909 (1987).

Pursuant to the clear and express terms of the 1933 Deed to his father, Michael Rivers holds title to the square shaped parcel of land that begins at the point where the southern line of the original ten acre lot intersects with Seaside Road and then runs for 210 feet each west, then north, then east and, south to the point of beginning, which is essentially the description of the Disputed Rectangle.

Additionally, there is evidence in the record that the Respondent Rivers established title to the remainder of the disputed property by the adverse possession of his predecessors in title, Harrison and Ophelia Rivers, pursuant to both the ten (10) year statute of limitations and the twenty (20) year presumption of a grant. Harrison and Ophelia Rivers, from the time they moved onto and took possession of the Disputed Property in 1933 until they passed away in 1980 and 1991, respectively, were in actual, open, notorious, continuous, hostile, and exclusive possession of the disputed premises not only for the full ten (10) year period, but also for the twenty (20) year period for the presumption of a grant. See, *Terwilliger v. Daniels*, 222 S.C. 191, 72 S.E.2d 167 (1952); *Weston v. Morgan*, 152 S.C. 177, 160 S.E. 436 (1931); and *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997).

II. IS THE PLAINTIFF ENTITLED TO A RULING AS TO HIS OWNERSHIP AGAINST ANY OTHERS.

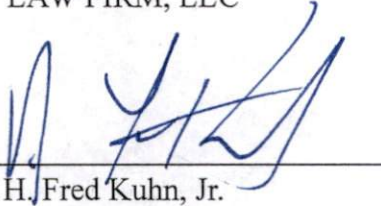
This argument is directed towards Respondent's Co-Defendants, and does not involve Respondent. Accordingly, Respondent is not addressing this argument.

CONCLUSION

There is evidence in the record supporting the findings of the Trial Judge, who personally observed and heard the witnesses and had the opportunity to judge their demeanor and credibility. It is accordingly respectfully requested that the Order of the Honorable Maite Murphy finding title to the Disputed Rectangle and the Disputed Triangle vested in the Respondent be affirmed.

Respectfully submitted,

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