

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-33-00277

Bevance Lynch,  
Plaintiff,  
vs.  
Bertha E. Dunham,  
Defendant.

ORDER GRANTING  
SUMMARY JUDGMENT, ORDER TO  
QUIT PREMISES, AND  
WARRANT OF EJECTMENT

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SC Court of Appeals

This matter came before the Court on November 28, 2023, for a hearing on the motion of Plaintiff Bevance Lynch who requests an Order granting summary judgment in his favor and a Writ of Assistance instructing the Marion County Sheriff's Office to assist with the eviction of the other parties named in this action. Present at the hearing was counsel for all parties.

**FACTUAL AND PROCEDURAL BACKGROUND**

This is an eviction action transferred to this Court by the Marion County Magistrate's Court and concerning real property located in Marion County.

**1) Bertha E. Dunham owned real property.**

In 1975, Bertha E. Dunham and William Dunham, Jr., purchased the real property in Marion County as shown by a recorded quitclaim deed. (MSJ – Exhibit A). In 1983, William Dunham, Jr., transferred his undivided one-half interest to Bertha E. Dunham as shown by a recorded deed. (MSJ – Exhibit B). In 1988, Beula Mae Dunham, the daughter of Bertha E. Dunham, married James Oneal Belin as shown by a marriage certificate. (MSJ – Exhibit C). In 1996, Beulah Mae Dunham n/k/a Beula Mae Belin states she moved a mobile home on the property and, in 2008, installed a fence on the property. (Aff. ¶¶ 2 – 3).

**2) Bertha E. Dunham mortgaged her real property, defaulted on her loan, and the mortgage holder commenced a foreclosure action.**

In 2006, Bertha E. Dunham executed a mortgage to secure a promissory note in favor of CitiFinancial and said mortgage was recorded in Mortgage Book 819, at page 146. In 2017, the mortgage was later assigned to Citifinacial Servicing, LLC, and said

assignment was recorded in Volume 401, at page 5. The mortgage was then assigned to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A and said assignment was recorded in Volume 401, at page 6.

In 2018, the mortgage holder commenced a foreclosure action against Bertha E. Dunham after she defaulted on her repayment obligations. (Civil Action No. 2018-CP-33-00653). The above-referenced mortgage and assignments are public records appearing in the Marion County recording office as well as the foreclosure action.

**3) The court-appointed special referee, Hon. Haig Porter, ordered the sale of the real property and the real property was sold at public auction to the creditor.**

The foreclosure action was referred to the Honorable Haig Porter as Special Referee who issued an Order of Judgment of Foreclosure and Sale Decree. In his Order, the Special Referee found, among other things, that service was proper; Bertha E. Dunham failed to answer and was in default; the promissory note, mortgage, and assignments were properly introduced into evidence at the hearing; and ordered that the property be sold after proper publication. The property was then sold at public auction to the mortgage holder as the highest bidder and a Foreclosure Deed was granted. (MSJ – Exhibit D). The mortgage holder (now owner/grantee) filed a motion for a sheriff's Writ of Assistance claiming the debtor continued her occupancy and refused to leave and remove her personal property. On October 2, 2019, the Special Referee issued an Order for Writ of Assistance authorizing officers with the Marion County Sheriff to enter the premises any time after 1:00 p.m., on October 29, 2019.

**4) Beulah Mae and James Belin file a motion to intervene and the Special Referee denied the motion**

Four days before the Sherriff's Office was authorized to enter and assist with eviction, the debtor's daughter (Beulah Mae Belin) and son-in-law (James Belin) filed, through counsel, a motion in the foreclosure action to intervene claiming a legal interest in the property through adverse possession and, therefore, were entitled to notice in the foreclosure action. (MSJ – Exhibit E). The Special Referee, however, denied this motion and found, among other things, that the Belins had no deeded interest in the subject property, placement of the Belins' mobile home on the subject property was "no different than the parking of a moped on a piece of property," and that the Belins had not asserted

a claim of adverse possession in a separate civil action against the landowner, Bertha Dunham. (MSJ – Exhibit F).

- 5) The creditor / high bidder sold the property to an LLC; the Belins appeal; the LLC sold the property to Plaintiff; and Plaintiff filed a Notice to Quit Action in Magistrate Court which was transferred to this Court.**

On December 23, 2019, the creditor sold the property to a limited liability company named “2019 Castle, LLC” by quitclaim deed. (MSJ – Exhibit G). On January 28, 2020, the Belins filed a Notice of Appeal with the South Carolina Court of Appeals to appeal the denial of their motion to intervene in the foreclosure action. On March 3, 2020, the property was sold to Plaintiff Bevance Lynch by special warranty deed. (MSJ – Exhibit H). Plaintiff then filed a Notice to Quit action in Magistrate Court. (MSJ – Exhibit I). Bertha Dunham, through counsel, filed an Answer, Motion to Add Parties, and Motion to Dismiss or Transfer. (MSJ – Exhibit J). The motion sought to add Beulah Mae Belin (f/k/a Beulah Mae Dunham) and James Belin as interested parties and argued that these added parties had an equitable interest in the subject property through adverse possession and the Marion Magistrate Court transferred the Notice to Quit case to this Court<sup>1</sup>. (MSJ – Exhibit K).

- 6) This action awaited appellate decisions for more than three (3) years.**

In August of 2022, the South Carolina Court of Appeals affirmed the Special Referee’s denial of the Belins’ motion to intervene based, in part, on the Belins’ delayed attempt to assert their claim of adverse possession. (MSJ – Exhibit L). In May of 2023, the Supreme Court of South Carolina denied the Belins’ petition for writ of certiorari. (MSJ – Exhibit M).

### **LEGAL STANDARD**

Summary judgment is appropriate when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. All ambiguities, conclusions, and inferences arising from the evidence

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<sup>1</sup> The Magistrate Court has no jurisdiction “[w]hen the title to real property shall come in question,” S.C. Code § 22-3-20, provided that “[a]t the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by a least one sufficient surety and approved by the magistrate[.]” S.C. Code §22-3-1120. The transferred record in this case shows no such written and approved undertaking.

must be construed against the movant. *Willis v. Wu*, 607 S.E.2d 63, 65 (S.C. 2004). The non-moving party, however, “may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRPC.

### LEGAL DISCUSSION

Rule 1, SCRPC, requires that procedural rules “be construed to secure the just, speedy, and inexpensive determination of every action.” This action has been pending for more than three (3) years pending exhaustion of appeals by the Belins, who were not signatories to the foreclosed mortgage. The South Carolina Court of Appeals affirmed denial of the Belins’ request to intervene in the foreclosure action more than one year after the creditor filed a foreclosure *lis pendens* and more than four months after the property was sold at public auction. Thereafter, certiorari was denied by the South Carolina Supreme Court.

In this case, the Belins raise the same arguments previously rejected by our appellate courts. The Belins, once again, claim a right to notice in the foreclosure action based on their repeated argument of adverse possession. In opposition to summary judgment, the defendant “may not rest upon the mere allegations or denials of his pleading”. Rule 56(e), SCRPC. Instead, the Court only considers affidavits that “set forth specific facts showing that there is a genuine issue for trial.” *Id.* The only affidavit in opposition to summary judgment is the affidavit of Beulah Belin who avers that she and her husband have occupied part of the land, took care of the land they occupied, did not receive notice of the foreclosure action, and are in the process of filing a quiet title action. (Aff. Belin ¶¶ 3 – 7). These affidavit statements do not create genuine issue of fact sufficient to overcome summary judgment.

Nothing in Mrs. Belin’s affidavit creates a genuine fact issue concerning her claim of adverse possession. Like the Special Referee noted in the foreclosure action, the Belins have never filed an adverse possession action against their mother / mother-in-law. There is no evidence that they moved the mobile home behind the house of their

mother / mother-in-law and installed a fence without her permission.<sup>2</sup> Her statement that “[m]y husband and I were advised that if we took care of the property and paid the property taxes, we would receive a deed” (Aff. ¶ 4) is inadmissible hearsay.<sup>3</sup> Mrs. Belin’s claim that “[m]y husband and I are in the process of filing a quiet title action[,]” is likewise insufficient to create a genuine issue of material fact in this case. The Belins have had many years to file an action for adverse possession and/or quiet title and still have not done so; by cross-claim against Bertha Dunham, a separate action, or otherwise.

The Court also finds that the doctrine of non-mutual offensive collateral estoppel would bar the Belins from intervening in this case. The doctrine of non-mutual offensive collateral estoppel was adopted in this State in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984) and was confirmed as the law of this State by our Supreme Court in *South Carolina Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Under the doctrine of offensive non-mutual collateral estoppel, a party may be prevented from relitigating issues actually determined in a prior action so long as the party estopped had a full and fair opportunity to litigate the issue in the first action and there are no circumstances which justify affording him an opportunity to retry the issue. *Beall*, 281 S.C. 363, 315 S.E.2d 186; *Roberts v. Recovery Bur., Inc.*, 450 S.E.2d 616, 619 (S.C. App. 1994) (citing *McPherson v. South Carolina Dept. of Highways and Pub. Transp.*, 297 S.C. 303, 376 S.E.2d 780 (Ct.App.1989)). In the prior foreclosure

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<sup>2</sup> See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner’s tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); *Fradley v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) (“The defendant’s entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse possession.”); *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct.App.1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner’s widower did not establish claim of adverse possession without a “clear and positive disclaimer of the title under which entry was made”). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner’s title. *All Saints Parish, Waccamaw*, 358 S.C. at 233, 595 S.E.2d at 266-67.

<sup>3</sup> See Rule 56(e), SCRCP, “affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence[.]”

action, the Special Referee's *Order Denying Third Party Motion to Intervene and Motion to Set Aside Judgment* (MSJ – Exhibit F) demonstrates that the Belins had a full and fair opportunity to litigate their claims of an interest in the subject real property and, after a thorough review of that prior Order and the subsequent appellate Opinion (MSJ – Exhibit L), there are no circumstances which justify affording the Belins an opportunity to retry the issue of a property interest in this case.

Finally, Defense counsel argued at the hearing that summary judgment is premature because discovery *might* reveal genuine fact issues. The Court notes that this case has been pending since 2020 and the defendant has had *years* to conduct discovery and advanced no good reason why she had insufficient time to develop genuine admissible evidence of facts in opposition to summary judgment.<sup>4</sup> Defense counsel also argued at the hearing that the plaintiff did not comply with the eviction procedures required by S.C. Code § 27-47-530 of the South Carolina Manufactured Home Park Tenancy Act, S.C. Code §27-47-10 *et. seq.*, however, that Act applies only to owners of a "manufactured home park" which is defined by statute "as a use of land in which lots or spaces are offered for rent or lease for the placement of manufactured homes and in which the primary use of the park is residential." S.C. Code § 27-47-210(3). In this case, the plaintiff clearly does not operate a "manufactured home park" and the Act does not apply.

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<sup>4</sup> See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."); *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (holding summary judgment was appropriate because the nonmoving party "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment"); *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 743 (Ct. App. 2001) (holding the circuit court did not err in granting summary judgment because the record did not demonstrate that further discovery was necessary).





Marion Common Pleas

**Case Caption:** Bevance Lynch VS Bertha Dunham

**Case Number:** 2020CP3300277

**Type:** Order/Summary Judgment

So Ordered

s/T.L.HUGHSTON, JR. 2008