

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLEMSON UNIVERSITY,

Plaintiff,

vs.

SEABOARD ISLAND, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2021-CP-10-01638

QUIET TITLE ORDER

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SC Court of Appeals

This matter came before the Court for hearing on September 28, 2023 on Cross-Motions for Summary Judgment filed by Plaintiff, Clemson University (“Plaintiff” or “Clemson”) and by Defendant, Seaboard Island, LLC (“Defendant” or “Seaboard Island”). Present at the hearing were Shawn R. Willis, Esq. for Clemson and John L. Duffy, III, Esq. for Seaboard Island.¹ Neither party submitted affidavits in opposition to the motions, but instead materials from written discovery and excerpts from depositions were submitted and published into the record. Having reviewed such materials, heard the oral arguments of counsel, and reviewed the memoranda of counsel, the Court grants Clemson’s Motion for Summary Judgment against Seaboard Island and denies Seaboard Island’s Motion for Summary Judgment against Clemson. The grounds for this decision are set forth below.

¹ The Court wishes to acknowledge the thought and preparation both counsel put into this matter through their briefs and argument. As this case presents a question of law, the Court requested the parties to file their cross-motions for summary judgment.

INTRODUCTION

Clemson commenced this quiet title action against Seaboard Island regarding a portion of a tract owned by Clemson containing approximately 198 acres located between Highway 17 and the Stono River in West Ashley, known generally as Clemson's Coastal Research and Education Center, or the "Coastal REC" (the "Clemson Property").² The portion of the Clemson Property in dispute is a strip of land lying within the boundaries of an abandoned railroad right-of-way near the Stono River. Seaboard Island was the plaintiff in a prior quiet title action regarding ownership of the disputed strip of land, civil action number 2016-CP-10-04986 against a sole defendant, CSX Transportation, Inc. ("CSX") (the "Prior Quiet Title Action"). Although Clemson held fee simple title to the disputed strip of land and also to the adjacent property surrounding it, for whatever reason, Clemson was not joined as a party to the Prior Quiet Title Action.

FINDINGS OF FACT

Clemson acquired fee simple title to the Clemson Property through that certain deed from David K. E. Bruce dated December 18, 1939 and recorded in the Office of the Register of Deeds for Charleston County in Book H41 at Page 417 (the "Bruce Deed"). Pltf.'s Memo Ex. A. The legal description of the Clemson Property contained in the Bruce Deed references that certain plat entitled "A Map of a Portion of Cherokee Plantation Owned by David K. Bruce About to be Conveyed to Clemson College, Situate in St. Andrews Parish, Charleston County, S.C., Containing 198.0 Acres, Surveyed Nov. 1938 by J.P. Gaillard, C.E." recorded in the Office of the Register of Deeds for Charleston County in Plat Book E at Page 195 (the "Bruce Plat"). Pltf.'s Memo Ex. B.

² This action was consolidated for purposes of discovery and trial with Seaboard Island, LLC v. The Estate of Jack A. Eades and Rebekah F. Weigand, Civil Action No. 2020-CP-10-03044 (the "Eades Case") by order entered December 30, 2021. The Eades Case was determined by this Court's Order filed on July 15, 2022.

As described in the Bruce Deed and the Bruce Plat, the Clemson Property is a portion of a larger tract historically known as “Cherokee Plantation.”

In 1916, prior to Clemson’s acquisition of the Clemson Property in 1939, Clemson’s predecessor in title, the Charleston, South Carolina Mining and Manufacturing Company, granted to CSX’s predecessor, Seaboard Air Line Railway Company, a railroad right-of-way (the “CSX Right-of-Way”) over certain property it owned in Charleston County, which included the Clemson Property and also additional property, by instrument recorded in the Office of the Register of Deeds for Charleston County in Book C28 at Page 253 on June 26, 1916 (the “CSX Right-of-way Grant”). Pltf.’s Memo Ex. C.³ The Bruce Plat shows an approximately 3.2 acre portion of the CSX Right-of-Way crossing over the Clemson Property in the southernmost portion of the Clemson Property near the Stono River (the “Disputed Strip”). Pltf.’s Memo Ex. B. Title to the Disputed Strip is the subject of this quiet title action.⁴

CSX’s predecessor abandoned the CSX Right of Way, including the portion over the Disputed Strip, through order of the Interstate Commerce Commission (the “ICC”) dated December 3, 1976, as referenced in the Federal Register on February 3, 1977 in Vol. 42, No. 23, at Page 6690 (the “Federal Abandonment Order”). Pltf.’s Memo Ex. D. Twenty-two years later, CSX recorded an instrument in the Office of the Register of Deeds for Charleston County in Book F-317 at page 884 on December 23, 1998 (the “CSX Disclaimer”) as further evidence of CSX’s prior abandonment. Pltf.’s Memo Ex. E.

³ The Court takes judicial notice that Seaboard Air Line Railway Company changed its name to Seaboard Air Line Railroad, and thereafter merged with Atlantic Coast Line Railroad to become Seaboard Coast Line Railroad Company. Subsequently, Seaboard Coast Line Railroad Company was merged into the Seaboard System, which was thereafter renamed as CSX Transportation, Inc.

⁴ The Bruce Plat also shows a 5.5 acre railroad on the northern portion of the Clemson Property (the “Atlantic Coast Line Right-of-Way”), which is separate from the Disputed Strip and not the subject of this action.

In November 1998, James Southard, Jr. ("Southard") executed a quit claim deed from himself as grantor to himself as grantee, which is recorded in the Charleston County Register of Deeds office recorded in Book Y314 at page 675 (the "Southard Deed"). Pltf.'s Memo Ex. T. The Southard Deed purported to quit claim to himself portions of CSX's abandoned right of way, which included the Disputed Strip. Southard did not hold fee simple title to, or any other interest in, the Disputed Strip at the time of the Southard Deed.⁵

In 2016, Southard commenced the Prior Quiet Title Action against CSX seeking to quiet title to the Disputed Strip in Southard. In 2019, based on a Motion to Substitute Plaintiff filed by Southard, Defendant Seaboard Island was substituted as plaintiff in the Prior Quiet Title Action. Pltf.'s Memo Ex. U. Seaboard Island is a single member limited liability company, and its sole member is not Southard, but instead is Southard's wife. Hrg. Tr. p.11, lines 9-11.

Seaboard Island claimed in the Prior Quiet Title Action that it acquired its alleged title to the Disputed Strip in 2018 through that certain quit claim deed from Julia Elizabeth Bradham, Margaret Bradham Thornton f/k/a Margaret Claire Bradham, John McLeod Bradham, William McLeod Rhodes, Anne Rhodes Lee, and Malcolm McLeod Rhodes dated July 10, 2018 and recorded in the Office of the Register of Deeds for Charleston County in Book 0731 at Page 914 (the "McLeod Family Quit Claim Deed"). Pltf.'s Memo Ex. G, U and V. Defendant's claim that it acquired title to the Disputed Strip from the McLeod Family Quit Claim Deed was the basis for the Final Decree of Title entered on September 13, 2019 in the Prior Quiet Title Action (the "Prior Quiet Title Order") and also the Master in Equity's Deed to Defendant signed on October 9, 2019

⁵ The Court takes judicial notice that the Southard Deed is not color of title as a matter of law, because Southard had no title to convey to himself or to accept from himself. See *Frazier v. Goszczyński*, 161 So.3d 542 (Fla. 5th DCA 2014)(a "wild deed" is a purported instrument of conveyance executed by the grantor knowing the grantor had no title of any kind to the property, and adverse possession under color of title may not be had where title is accepted with knowledge that it is invalid or that the grantor had no title in the property); see also *State v. King*, 77 W.Va. 37, 87 S.E. 170 (1915); *In re Estate of Duran*, 133 N.M. 553, 66 P.3d 326 (2003).

and recorded in the Charleston County Register of Deeds office in Book 0836 at Page 389 (the “Master’s Deed”). Pltf.’s Memo Ex. H and I. There is no evidence that Southard conveyed any interest that he claimed in the Disputed Strip to Seaboard Island. Pltf.’s Memo Ex. W.^{6 7}

Clemson was not joined as a party to the Prior Quiet Title Action. Also, no unknown owners or claimants were joined as defendants in the Prior Quiet Title Action pursuant to S.C. Code Ann. §§ 15–67-30, 15–67-40 and 15–67-30.

LEGAL STANDARD

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); *Young v. South Carolina Dep't of Disabilities & Special Needs*, 374 S.C. 360, 649 S.E.2d 488 (2007); *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007). In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007); *Helms Realty, Inc. v. Gibson–Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005).

⁶ Transcript of Rule 30(b)(6) SCRPC Deposition of Defendant from Eades Case (“Southard Tr.”) 142:22 – 143:8.

⁷ The Court takes judicial notice that the Defendant is collaterally estopped from asserting that it acquired title through Southard rather than through the McLeod family. See *Nelson v. QHG of South Carolina, Inc.*, 354 S.C. 290, 580 S.E. 2d 171 (Ct. App. 2003); see also *McNaughton-McKay Elec. Co. of N.C. v. Andrick*, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1997)(noting collateral estoppel will bar relitigation of an issue that was actually litigated and necessary to the outcome of a prior lawsuit.)

CONCLUSIONS OF LAW

Clemson has legal fee simple title in and to the Disputed Strip as a matter of law. Seaboard Island's affirmative defense and counterclaim fail as a matter of law. Further, no evidence exists to support Seaboard Island's general defenses, and it has not identified any facts which create a genuine issue for trial. Accordingly, and as detailed herein, Clemson prevails as a matter of law.

1. Clemson is not bound by the Prior Quiet Title Order.

A non-joined party is not bound by the factual findings or legal conclusions of the court. *See Bonney v. Granger*, 292 S.C. 308, 321, 356 S.E.2d 138, 146 (Ct. App. 1987). Clemson was a necessary party due to its claim to legal title in and to the Disputed Strip, and necessary parties must be joined in actions regarding title to real property. *See, e.g.*, SCRCP 19(a); *Ex parte Harmon*, 256 S.C. 328, 331, 182 S.E.2d 300, 302 (1971) ("The courts in this State have routinely held that where two persons claim title to the same property it is appropriate for both to be made a party to the action wherein title is to be determined."); *Bradley v. Meighan*, 102 S.C. 161, 86 S.E. 378, 379 (1915) (holding proper the joinder of a non-party remainderman where other alleged remaindermen were already parties to the action). Clemson is not bound by the Prior Quiet Title Order as a matter of law.

2. Clemson holds fee simple title to the Disputed Strip free of any claim of Seaboard Island.

a. The CSX Right of Way over the Disputed Strip was an easement.

The CSX Right of Way Grant granted an easement to the railroad company over the Disputed Strip rather than fee simple title. "One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened. In arriving at such intention, the deed must be construed as a whole, and effect given

to every part, if such can be done consistently with law.” *Southern Ry. Co. v. Smoak*, 243 S.C. 331, 336, 133 S.E.2d 806, 808 (1963); *see also Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582-83 (2009). Use of the phrase “right of way” is contextual, and courts have interpreted this phrase to mean easement or fee simple depending on the surrounding language. *See Great Northern R. Co. v. U.S.*, 315 U.S. 262, 271-72 (1942).

Numerous South Carolina opinions have held that words of limitation in the granting and/or the habendum clauses result in the grant of a railroad right-of-way only being an easement rather than a fee simple interest. *See Southern Ry. Co. v. Smoak*, 243 S.C. 331, 335, 133 S.E.2d 806, 808 (1963)(affirming that the deed in question did not convey property in fee simple where limiting language appeared in habendum clause); *Atlanta & C.A. Ry. Co. v. Victor Mfg. Co.*, 93 S.C. 397, 76 S.E. 1091, 1093 (1913) (noting that conveyance by deed of “a right of way 200 feet wide . . . convey[s] an easement 200 feet in width”); *Am. Spinning Co. v. Southern Ry. Co.*, 81 S.C. 482, 62 S.E. 787, 788 (1908) (concluding that deed conveyed easement where grantor conveyed “all the land contained within 100 feet in width on each side of the track or roadway . . . through which said railway may be constructed, run and operated. . . . for railroad purposes forever and for no other in fee simple”); *see also Ward v. Evans*, 387 S.C. 401, 410, 693 S.E.2d 7, 11 (Ct. App. 2010) (determining, inter alia, that conveyance by deed of “a thirty-foot right-of-way for the construction of a road or highway for ingress and egress” was express easement); *see also Faulkenberry v. Norfolk Southern Ry. Co.*, 349 S.C. 318, 563 S.E.2d 644 (2002); *Boney v. Cornwell*, 117 S.C. 426, 109 S.E. 271 (1921); *Southern Ry. v. Beaudrot*, 63 S.C. 266, 41 S.E. 299 (1902); *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998).

The granting clause in the CSX Right of Way Grant grants to “Seaboard Air Line Railway Company, its successors and assigns, but subject always to all of the conditions and covenants

hereof, a strip of land for the purposes of a railroad right of way...over and upon all that tract of land belonging to the Grantor . . . ” and the habendum clause states: “[t]o Have [and] to hold all and singular the said premises unto the said Seaboard Air Line Railway Company, its successors and assigns forever, subject, however, to all the reservations, covenants, conditions, restrictions and limitations hereinbefore mentioned.” (Emphasis added.) The words of limitation in both the granting and habendum clauses in the CSX Right of Way Grant, which expressly limits the grant to railroad purposes, result in the CSX Right of Way being merely an easement and not a fee simple interest. The intent of the parties to the CSX Right of Way Grant to be an easement is underscored by the use of the phrase “over and upon all that tract of land belonging to the Grantor” in the granting clause. *See Great Northern*, 315 U.S. at 271 (explaining that a grant of a property interest “over” another’s property interest is inconsistent with the notion that the grant was in fee simple). Accordingly, the CSX Right of Way was an easement over the Disputed Strip.

b. *The Bruce Deed conveyed fee simple title to the Disputed Strip to Clemson.*

The construction of a clear and unambiguous deed is a question of law for the court. *Hammond v. Lindsay*, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981). “One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened.” *Smoak, supra*. Moreover, in ascertaining such intention, the deed must be construed as a whole and effect given to every part thereof, if such can be done consistently with law. *Wayburn v. Smith*, 270 S.C. 38, 41, 42, 239 S.E.2d 890, 892 (1977); *see Bean v. Bean*, 253 S.C. 340, 343, 170 S.E.2d 654, 655 (1969); *see also First Carolinas Joint Stock Land Bank of Columbia v. Ford*, 177 S.C. 40, 46, 180 S.E. 562, 565 (1935) (“Larger and more sensible rules of construction require that the whole deed should be considered together, and effect be given to every part, if all can stand together consistently with law....”).

When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979); *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); see also *Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) (“ ‘As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land’ ”)

The legal description in the Bruce Deed expressly references and incorporates the Bruce Plat and describes the property conveyed to Clemson as 198 acres, more or less, as shown on the Bruce Plat. The 3.2 acres within the Disputed Strip are included in the 198 acres shown on the Bruce Plat, as reflected by the surveyor’s notes on the Bruce Plat. The Bruce Deed also contains a butting and bounding description, which describes the southern boundary of the Clemson Property as “on the South partly on the center line of said creek, partly on Stono River and partly on a bank of the edge of a marsh separating the same from the marshlands of P.B. and R.S. Bradley, being part of the Bolton Tract,” and describes the western boundary as “on the West partly on marshes of said Bolton Tract of P.B. and R.S. Bradley, partly on an island in said marshes, and partly on property of South Carolina ‘Truck Experiment Station.’” The butting and boundings legal description and the Bruce Plat include the Disputed Strip and the adjacent property on both sides of the Disputed Strip.

Seaboard Island asserts that the second paragraph of the legal description in the Bruce Deed, which contains the following language, excluded the Disputed Strip from the fee simple grant to Clemson:

“There is excluded from this conveyance, but not to be deducted from the acreage hereinabove referred to,an area belonging to the Seaboard Air Line Railway

constituting a part of its right-of-way, which traverses the said property, and which area contains three and two-tenths (3.2) acres more or less, shown on the said plat. The plat above referred to is recorded in the R.M.C. Office for Charleston County, South Carolina, in Plat Book E, at page 195.”

Under South Carolina’s common law rules of deed construction, since the CSX Right of Way was only an easement over the Disputed Strip, this language did not exclude the Disputed Strip from the fee simple grant to Clemson, but instead included the fee simple title to the Disputed Strip in the grant to Clemson subject to the railroad’s easement over the Disputed Strip. *See Bennett v. Invs. Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006) (the acreage within the boundaries of a right of way is not excluded from the fee simple grant to the grantee when the grant is for the total acreage shown on the plat referenced in the grant.) The Court finds that Clemson was conveyed fee simple title to the Disputed Strip by the Bruce Deed.⁸

c. *The McLeod family never held title to the Disputed Strip.*

The Prior Quiet Title Order found and concluded that the McLeod family acquired fee simple title to the Disputed Strip through various deeds in 1949 and 1983 and subsequently conveyed fee simple title to the Disputed Strip to Defendant. Pltf.’s Memo Ex. J, K, L and M. The Prior Quiet Title Order also concluded that the McLeod family were the owners of the property adjacent to the Disputed Strip at the time CSX abandoned the CSX Right-of-Way, and as such, would have acquired CSX’s interest in the Disputed Strip at the time of abandonment under *Goldman v. RBC, Inc.*, 369 S.C. 462, 469, 632 S.E.2d 850, 853 (2006).⁹

⁸ The Court takes judicial notice that even if the CSX Right of Way Grant was a grant of fee simple rather than an easement, the fee simple title to the Disputed Strip would have reverted upon abandonment of the right-of-way to the owner of the adjacent property, which was Clemson, under *Goldman v. RBC, Inc.*, 369 S.C. 462, 469, 632 S.E.2d 850, 853 (2006)(property reverts to present adjoining landowners when no longer used as a railroad).

⁹ The Court takes judicial notice that the Prior Quiet Title Order correctly found and concluded that the rule in *Goldman* regarding adjoining landowners is applicable in the determination of the ownership of a railroad right of way after abandonment by the railroad company. Here, Clemson has held fee simple title to the property adjacent to both sides of the Disputed Strip since 1939.

However, the McLeod family never held title to the Disputed Strip or any other portion of the Clemson Property. The deeds into the McLeod family referenced in the Prior Quiet Title Order do not include the Disputed Strip or any other portion of the Clemson Property, but rather describe property historically known as Bolton Plantation (the "Bolton Tract"). The 1949 deeds into Dorothy McLeod Rhodes and Helen McLeod Bradham (the "1949 Bolton Deeds") (Pltf.'s Memo Ex. J and K) conveyed approximately 3,000 acres, approximately 1,443 acres of which are marshland, as shown on a map compiled April 21, 1947 by J.P. Gaillard, C.E. for Bradley Estates, Inc. (the "Bolton Plat") (Pltf.'s Memo Ex. N). The 1983 deeds into Julia Elizabeth Bradham, Margaret Bradham Thornton f/k/a Margaret Claire Bradham, John McLeod Bradham, William McLeod Rhodes, Anne Rhodes Lee, and Malcolm McLeod Rhodes (the "1983 Bolton Deeds") (Pltf.'s Memo Ex. L and M) conveyed the approximately 1,443 acres of marshlands in the Bolton Tract as shown on the Bolton Plat (the "Bolton Marsh"), together with an abandoned railroad right-of-way described in the deed dated July 25, 1951 recorded in Book X53 at page 114 (the "Atlantic Coast Line Spur") (the "Atlantic Coast Line Spur Deed") (Pltf.'s Memo Ex. O). The Atlantic Coast Line Spur Deed contains a blue print attached to it that depicts the Atlantic Coast Line Spur (the "Atlantic Coast Line Spur Map").

The Atlantic Coast Line Spur is not the Disputed Strip. It is a separate parcel that was conveyed by the McLeod family to The Bolton Corporation of Charleston in 1993 by deed recorded in Book C227 at page 471 (Pltf.'s Memo Ex. P) and is located approximately 2 miles west of the Disputed Strip.¹⁰

Also, the Bolton Marsh is located to the west of the Clemson Property and does not include the Disputed Strip or any portion of the Clemson Property. The boundary line between the Bolton

¹⁰ Pltf.'s Memo Ex. O contains an aerial image of the Atlantic Coast Line Spur from the Charleston County GIS mapping department.

Marsh and the Clemson Property is clearly shown in the same location between Bolton Plantation and Cherokee Plantation on both the Bolton Plat and the Bruce Plat. The legal description in the Bruce Deed conveying title to Clemson, which references the Bruce Plat, clearly describes the boundary between the Bolton Marsh and the Clemson Property in the same location as shown on the Bolton Plat and describes the southern boundary of the Clemson Property as the Stono River. It is now clear from the title records that the McLeod family's title to the Bolton Marsh did not extend to any portion of the Clemson Property, which was instead part of Cherokee Plantation.

Marion Weatherford prepared a plat for Seaboard Island dated November 30, 2017 and recorded in Plat Book L18 at page 437 (the "Weatherford Plat"). Pltf.'s Memo Ex. R. The Weatherford Plat was incorporated by reference into the legal description in the McLeod Family Quit Claim Deed to Seaboard Island and was submitted to the Court by Seaboard Island in the Prior Quiet Title Action as evidence supporting Seaboard Island's claim of title to the Disputed Strip. Consequently, the Weatherford Plat was referenced in the legal description in the Prior Quiet Title Order and the Master's Deed; however, the Court finds that the Weatherford Plat erroneously included the Disputed Strip. The Weatherford Plat also incorrectly labeled the portion of the Clemson Property located adjacent to the Disputed Strip between it and the Stono River as being owned by the McLeod family. The McLeod family never held title to the Disputed Strip or the property between the Disputed Strip and the Stono River.

Accordingly, the McLeod family never had title to the Disputed Strip or any other portion of the Clemson Property. Therefore, the instruments on which the Prior Quiet Title Order and Master's Deed are based are erroneous with regard to the Disputed Strip. The McLeod Family Quit Claim Deed could have only conveyed title to the Defendant to the portion of the property described therein located within the boundaries of the Bolton Tract. The McLeod Family Quit

Claim Deed did not convey any title or other interest to the Disputed Property or any other portion of the Clemson Property to Defendant. The Weatherford Plat, and the incorporation of the Weatherford Plat into the McLeod Family Quit Claim Deed, the Prior Quiet Title Order and the Master's Deed, create a cloud on Clemson's legal fee simple title to the Disputed Strip. Accordingly, Clemson is entitled to summary judgment as a matter of law confirming that Clemson has fee simple title to the Disputed Strip and quiets the title against Seaboard Island and in favor of Clemson.

d. *Defendant has not acquired title to the Disputed Strip through possession.*

Seaboard Island asserts as an affirmative defense and counterclaim in its Answer that it acquired title to the Disputed Strip through the common law 20-year presumption of a grant based on tacking to a period of adverse possession of the Disputed Strip by Southard; however, the Court concludes that Seaboard Island's affirmative defense/counterclaim fails as a matter of law.

Title through adverse possession may generally be established under a 10-year statute of limitation under S.C. Code Ann. §15-3-340. *Getsinger v. Midland Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997). South Carolina's common law also recognizes a 20-year presumption of grant, which is not statutory. *See generally* S.C. Juris. Adverse Possession § 4 n. 4 (1991)(There are several methods for acquiring property through the passage of time, and the acquisition of land under the common law period is more accurately labeled the 20-year presumption of a grant). Common law presumption of a grant requires the claiming party to prove actual, open, notorious, hostile, continuous and exclusive possession by such party, or by one or more persons through whom such party claimed, for a period of twenty (20) years. *See Terwilliger v. Daniels*, 222 S.C. 191, 72 S.E.2d 167 (1952); *Getsinger, supra*.

However, neither the 10-year adverse possession under S.C. Code Ann. §15-3-340 nor the 20-year common law presumption of a grant are available against State agencies. The South Carolina Supreme Court held in *South Carolina Department of Transportation v. Horry County*, 391 S.C. 76, 705 S.E.2d 21 (2011) that the State cannot be divested of title through adverse possession or presumption of a grant and, instead, the only bar against the State for actions regarding title to real property is S.C. Code Ann. § 15-3-310, which is a 20-year statute of limitations specific to the State. Clemson University is a State agency. See *EllisDon Const., Inc. v. Clemson University*, 391 S.C. 552, 707 S.E.2d 399 (2011), *Op. S.C. Att’y Gen.*, 1967 WL 12089 (August 2, 1967), *Op. S.C. Att’y Gen.*, 1979 WL 43635 (July 16, 1979), *Op. S.C. Att’y Gen.*, 1980 WL 120858 (September 8, 1980), *Op. S.C. Att’y Gen.*, 1990 WL 599264 (July 25, 1990). Accordingly, neither the 10-year adverse possession under S.C. Code Ann. §15-3-340 nor the 20-year common law presumption of a grant are available against Clemson as a matter of law.

Horry County, supra, clearly holds that the common law 20-year presumption of a grant is separate and distinct from the 20-year statute of limitations under S.C. Code Ann. § 15-3-310, which distinction is in line with long-established South Carolina law. “Statutes of limitations and presumptions arising from lapse of time are very different in their natures, and we see no reason why they both may not exist at the same time.” *Garrett v. Weinberg*, 48 S.C. 28, 26 S.E. 3 (1896). The Defendant did not plead the statute of limitations under S.C. Code Ann. § 15-3-310, but instead pled 20-year common law presumption of a grant. Not only is this theory unavailable against Clemson as a State agency as a matter of law but, since Defendant did not plead the statute of limitations in its Answer as required by Rule 8(c) SCRCPP, Defendant has waived the right to assert S.C. Code Ann. § 15-3-310 against Clemson. See *Earthscapes Unlimited, Inc. v. Ulbrich*,

390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010); *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002)).

Moreover, even if Defendant had not waived the right to assert S.C. Code Ann. § 15–3–310 against Clemson, the statute of limitations would not bar Clemson’s action. *Horry County* is clear that the bar of S.C. Code Ann. § 15–3–310 is “predicated on ‘a presumption of possession that follows the establishment of legal title.’” *Id.*, at 85, 24 (quoting *State v. Fain*, 273 S.C. 748, 755, 259 S.E.2d 606, 609 (1979)(relying on *State v. Yelsen Land Co.*, 265 S.C. 78, 216 S.E. 2d 876 (1975)). It is well-established in South Carolina that possession is presumed by law to follow the legal title to land. *See Knight v. Hilton*, 224 S.C. 452, 79 S.E.2d 871 (1954); *Lyles v. Fellers*, 138 S.C. 31, 136 S.E. 13 (1926). *See also Haithcock v. Haithcock*, 123 S.C. 61, 115 S.E. 727 (1923). It is also well-established that a party claiming title based on possession under a statute of limitations is presumed to be a trespasser throughout the period of limitation:

“He who claims under a presumption of a grant is entitled to stand on the same ground as if he produced the grant. The law substitutes the presumption in the place of the grant. The case is wholly unlike a title under the statute of limitations. One who claims under the statute was a trespasser throughout. His possession began in a trespass, and so continued until the statutory time had run out.... until his title was perfected he could not convey, and consequently that possession, or in other words several distinct trespasses, could not be joined together so as to defeat the title of the true owner.”

McLeod v. Rogers, 31 S.C.L. 19 (S.C. App. L. 1845). Seaboard Island was not conveyed legal title to the Disputed Strip by the McLeod Family Deed, because the McLeod family had no title in the Disputed Strip to convey. Under *Horry County*, *Fain* and *Yelsen*, Seaboard Island is not presumed to be in possession of the Disputed Strip, but instead is presumed to be a trespasser. Clemson still has the presumption of possession as the holder of legal title, which is determinative under *Horry County*, *Fain* and *Yelsen* for purposes of the 20-year statute of limitations under S.C. Code Ann. § 15–3–310.

Additionally, although tacking is permitted for common law 20-year presumption of a grant, it is well-settled in South Carolina that tacking is not permitted for purposes of the 10-year statute of limitation under S.C. Code Ann. § 15–3–340, except between ancestors and heirs. See *Terwilliger v. Daniels*, 222 S.C. 191, 72 S.E.2d 167 (1952); *Garrett, supra* (“The possession of the defendants and of those from whom they claim cannot be united so that the premises shall be deemed to have been held adversely for the statutory period. In other words, they cannot tack their possession to that of those from whom they claim, so as to sustain a title by adverse possession.”)(citing *Johnson v. Cobb*, 29 S. C. 372, 7 S. E. 601); see also *Boykin v. Ancrum*, 28 S. C. 489, 6 S. E. 305; *Ellen v. Ellen*, 16 S. C. 132; *Congdon v. Morgan*, 14 S. C. 596. As discussed in *Garrett*, the reason that tacking between ancestors and heirs is permitted for purposes of the 10-year statute of limitation under S.C. Code Ann. § 15–3–340 is due to language contained in the statute that expressly permits tacking between ancestors and heirs. Conversely, the 20-year statute of limitations under S.C. Code Ann. § 15–3–310 contains no language that permits tacking of any type, and therefore tacking is prohibited. As a result, Defendant is not permitted to tack onto Southard’s period of purported possession for purposes of the statute of limitations as a matter of law.¹¹

In order for Seaboard Island to assert the statute of limitations under S.C. Code Ann. § 15–3–310, Seaboard Island must have a presumption of possession that followed the establishment of legal title 20 years prior to Clemson filing this action. Even though Clemson is still presumed in possession as a matter of law, viewing the facts and all conclusions that could be drawn from them

¹¹ If Seaboard Island was permitted as a matter of law to tack to Southard for purposes of S.C. Code Ann. § 15–3–310, then the record reflects that summary judgment would not be appropriate for Seaboard Island because material issues of fact exist regarding whether Southard’s possession was actual, open, notorious, hostile, continuous and exclusive for the requisite period, which must be proved by the party asserting title by possession by clear and convincing evidence. *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986).

in the light most favorable to Seaboard Island, the earliest the 20-year statute of limitations under S.C. Code Ann. § 15-3-310 could have commenced against Clemson for this action would have been July 10, 2018, which is the date of Defendant's purported entry into possession of the Disputed Strip through the grant from the McLeod Family Quit Claim Deed.¹² Clemson filed this action on April 7, 2021, only 2 years and 9 months later.

CONCLUSION

For the reasons and grounds set forth herein, the Court hereby GRANTS Plaintiff Clemson University's Motion for Summary Judgment as to each of Clemson's causes of action and DENIES Defendant Seaboard Island's Motion for Summary Judgment. Defendant Seaboard Island's counterclaim is hereby DISMISSED with prejudice.

IT IS, THEREFORE, ORDERED AND CONFIRMED that Plaintiff, Clemson University, holds fee simple legal title to the below described property, free of any and all claims thereto by Defendant Seaboard Island:

ALL that tract of land situate in St. Andrew's Parish, Charleston County, South Carolina, containing three and two-tenths (3.2) acres, more or less, located within the former right of way for Seaboard Air Line Railway (S.A.L.R.R.) shown on the plat entitled: "Map of a portion of Cherokee Plantation owned by David K. Bruce, about to be conveyed to Clemson College, surveyed by J.P. Gaillard, C.E.", and dated November 1938, blue print of which is attached to contract between David K. E. Bruce and The Clemson Agricultural College of South Carolina, dated December 16, 1938, and which is recorded in the Office of the Register of Deeds for Charleston County in Plat Book E at Page 195.

Said three and two-tenths (3.2) acres, more or less, being a portion of that tract of land situate in St. Andrew's Parish, Charleston County, South Carolina, containing One Hundred and Ninety-eight (198) acres more or less, butting and bounding on the North on South Carolina Highway No. 17 separating the same from a portion of Cherokee Plantation now the property of the United States of America; on the East by the center line of a creek separating the same from another portion of said Cherokee Plantation, now the property of the said David K. E. Bruce; on the South partly on the center line of said creek, partly on Stono River and partly on a bank on

¹² The Court takes judicial notice that Defendant Seaboard Island was formed through the filing of Articles of Organization with the South Carolina Secretary of State's office on November 18, 2017.

the edge of a marsh separating the same from the marshlands of P.B. and R.S. Bradley, being part of the Bolton Tract, and on the West partly on marshes of said Bolton Tract of P.B. and R.S. Bradley, partly on an island in said marshes, and partly on property of South Carolina "Truck Experiment Station", all of which will more fully appear by a plat entitled: "Map of a portion of Cherokee Plantation owned by David K. Bruce, about to be conveyed to Clemson College, surveyed by J.P. Gaillard, C.E.", and dated November 1938, blue print of which is attached to contract between David K. E. Bruce and The Clemson Agricultural College of South Carolina, dated December 16, 1938, and which is recorded in the Office of the Register of Deeds for Charleston County in Plat Book E at Page 195.

Said three and two-tenths (3.2) acres, more or less, also being a portion of that certain piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, and being shown and designated as "Now or Formerly Sea Board Island, LLC TMS: 308-00-00-011" on a plat prepared for Seaboard Island, LLC by Marion H. Weatherford, SCPLS dated November 30, 2017 and recorded in the Charleston County Register of Deeds office in Plat Book L18 at Page 437 on August 29, 2018.

IT IS FURTHER ORDERED that, for the limited purpose of ensuring that this order is readily discoverable in the public real estate records for title searches, the Charleston County ROD shall record this order and index it under Plaintiff Clemson University as Grantee and Defendant Seaboard Island, LLC as Grantor.

IT IS FURTHER ORDERED that the Charleston County tax assessor and GIS mapping department shall correct their records to reflect the boundaries of the Clemson Property as shown by the Bruce Plat, including showing the Disputed Strip and the portion of the Clemson Property between the Disputed Strip and the Stono River as being part of the TMS Number associated with the Clemson Property, TMS No.: 308-00-00-002.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master-in-Equity, Charleston County

_____, 20____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Clemson University VS Seaboard Island Llc
Case Number: 2021CP1001638
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-04-16 15:40:41 page 19 of 19