

**EXHIBIT A**

**RECEIVED**

**Aug 13 2024**

**SC Court of Appeals**

**EXHIBIT A**



On January 11, 1999, shortly prior to her death in 2000, Louise Heyward conveyed title to her son Robert Heyward (father and husband of the Defendants) by deed recorded in the Charleston County RMC Office for “\$5 Love and Affection.” Def. Ex. 3

Robert Heyward later died on June 18, 2014. His estate was probated in 2015-ES-10-0947 and a Deed of Distribution recorded in the Charleston County ROD Office on May 27, 2016. Def. Ex. 5. During the probate process, Antoine Heyward contacted the Plaintiffs and demanded they start paying him rent. Plaintiffs refused to pay rent and, instead, commenced this action in 2018 seeking title by adverse possession.

This action concerns the ownership of the property and whether Plaintiffs have met the requirements to establish title by adverse possession and/or are entitled to title based on their defense of laches to Defendants’ Quiet Title counterclaim. Plaintiffs contend their family have continuously occupied, improved, and maintained the property from 1966 to the present. Plaintiffs believed that they owned the property after the death of Louise Heyward, based on a plat which showed Plaintiffs’ mother, Alethia Steed, as owner of the property. The unrecorded plat is dated September 18, 1998 (Pl. Ex. 1), only four (4) months prior to the Louise Heyward’s deed into Robert Heyward in January 1999. Def. Ex. 3.

Plaintiffs contend Robert Heyward never disclosed to them that he had been deeded the property by his mother Louise Heyward and that Robert only had occasional visits to the property after his mother died in 2000.

The questions to be determined by the Court are:<sup>1</sup>

1. Has the occupation of 516 Bank Street by Plaintiffs from 2008 until this action was brought in 2018 been exclusive and hostile?

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<sup>1</sup> The Court of Appeals held these were the remaining questions of material fact on Defendants’ appeal from summary judgment granted to Plaintiffs. See *Steed v. Heyward*, 2022-UP-445 (S.C. App. Dec. 7, 2022).

Or, if the Court does not find exclusivity and hostility:

2. Does the doctrine of laches bar Defendants' claim to own 516 Bank Street?

### FINDINGS OF FACTS

#### **1. Visits to the property**

Defendant Antoine Heyward lives in Chicago, Illinois, with his mother, Defendant Ruby Heyward, for whom he holds her power of attorney. The Plaintiffs are cousins who Defendant testified he met when he was young and came to visit them at 516 Bank Street. The Plaintiffs have always lived at the Property to Antoine's knowledge. Heyward Deposition at pp. 6-8. Prior to commencement of this action in 2018, Antoine Heyward last visited the Property in 2014 when Plaintiffs hosted the repass for his father Robert Heyward's funeral service at Bank Street. *Id.* at p. 8-9.

In 2015, after his father died, Antoine told Plaintiffs that he and his mother now owned 516 Bank Street and requested that the Plaintiffs pay him rent. Plaintiffs had never paid rent previously and Robert Heyward had never requested rent from Plaintiffs. Plaintiffs refused to pay rent. This lawsuit followed.

Robert Heyward lived in Chicago from before his mother's death in 2000 until his death in 2014. He spent the summers at the Property while his mother was alive. After his mother's death in 2000, Robert Heyward continued to spend his summers at the Property. He always contacted the Plaintiffs prior to visiting and asked if he could stay there. Plaintiffs acknowledged that they always allowed him. Antoine Heyward Deposition, at pp.19-20. There is no evidence that Robert Heyward visited the property after 2008. Trial Transcript, pp. 23, 53. He stopped visiting the

property after he became ill from Alzheimer's/dementia.<sup>2</sup> The testimony differed as to how long he suffered from dementia - from 2 years to as long as 5 years prior to his death in 2014.

## 2. Payment of Taxes

The testimony as to who paid the real estate taxes on the property conflicted.

As title to the property after 1999 was in the name of either Robert Heyward or the Defendants, all parties testified the tax bills went to the Heywards in Chicago. Bernard Steed testified that, at one point in time, his aunt Ruby Heyward paid a portion of the taxes and he paid a portion, but that, "after a while," he started paying the whole thing. When asked on cross examination who paid the taxes since 2000 he said, "I can't ... probably me. I would say me." While the tax bills went to Chicago, he testified at some point he went to the County Office building and paid the bills in person. Trial Transcript, pp. 27-29. On cross-examination, after being shown an envelope and check dated December 14, 2013 (Def. Ex.6), Bernard Steed admitted that he had sent the check for \$2,136 to Defendant Ruby Heyward. He could not recall if that was for all of the taxes or just a portion. Trial Transcript, pp. 30-31. In addition, Plaintiffs admitted a check (Pl. Ex. 2) in the amount of \$2,216 which showed the Steeds contributed to Ruby Heyward's payment (at least in part) for the 2014 real estate taxes.

While Defendants introduced the tax bills and receipts into evidence (Def. Ex. 9 and 10), the money orders and documents alleged to have originated with Robert Heyward were only allowed to be marked for Identification purposes as they were not produced in discovery. Def. Ex. Marked for Id as #8.

Contrary to the testimony of Bernard Steed, Antoine testified that from 1999 until his death in 2014, his father paid the taxes on the property. On further questioning, Antoine admitted that

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<sup>2</sup> The cause of death on Robert Heyward's death certificate was Alzheimer's, a disease that causes dementia.

the Steeds paid a portion of the taxes. I find the testimony of all parties was that the Steeds provided funds to help pay the taxes on the property but that the Heywards were responsible and saw that the taxes were paid. I find Bernard Steed not credible on the issue that his family paid the taxes as I find both parties contributed payment through the years. Trial Transcript p. 102.

### **3. Maintenance and Repairs to 516 Bank Street**

The residential structure on the Property is made up of two rectangles attached to each other. Louise Heyward built the first house on the lot. With the permission of Louise Heyward, Plaintiffs' mother, Alethia Steed, built the back house after the death of her husband in 1966. The Plaintiffs lived in the entire house after Louise Heyward's death in 2000. In addition, Plaintiffs maintained the property over the years, including the purchase and installation of a central air unit and appliances; installation of a fence, gutters, insulation, hardwood floors, cabinets, and tile flooring; and construction of a new roof and a room to house the new washer and dryer. Trial Transcript, pp. 17-19.

Neither Antoine nor Robert Heyward made improvements or maintained the structures on the Property. Heyward Deposition, pp. 22-23; 57-58; Trial Transcript, pp. 18-19. Bernard Steed paid for insurance on the property. Trial Transcript, pp. 19-20, 25. Antoine Heyward acknowledged that Plaintiffs built the back structure on the Property. Also, to his knowledge, no one from his family ever told the Plaintiffs they did not own the Property nor could they live there until he talked to Bonita Steed in 2015. Heyward Deposition, pp. 30-31.

Antoine Heyward never visited the Property without notifying the Plaintiffs. Heyward Deposition, at p. 38. No one, other than the Plaintiffs, have lived at the property since 2000 when Mrs. Louise Heyward died. *Id.* at p. 42. Plaintiffs contend that they own the Property based on their living there exclusively since 2000.

The Plaintiffs testified that neither Antoine, Ruby, nor Robert Heyward ever gave them permission to live on the property. Instead, it was Robert who sought permission from Plaintiffs to stay there when he was alive. Heyward's niece offered to pay Plaintiffs for the use of the Property for Heyward's funeral repass, which the Steeds declined. Trial Transcript, pp. 41-42.

Antoine Heyward testified that the Steed family always lived at 516 Bank Street. He stated the Plaintiffs never asked his permission to live there and, to his knowledge, he had no evidence of them asking Robert Heyward if they could live there. "They always lived there. They never had to ask me." Heyward Deposition, pp. 72-73. When Antoine told the Plaintiffs in 2015 that he now owned the Property and he wanted them to start paying rent, the Plaintiffs expressly opposed the claim. *Id.*, p. 33. Based upon the evidence presented, I find this was the first time the Plaintiffs expressly stated their claim to ownership of the property at 516 Bank Street.

#### CONCLUSIONS OF LAW

This Court has jurisdiction over the subject matter of this action and of the parties hereto. In Taylor v. Heirs of Taylor, 419 S.C. 639, 799 S.E.2d 919 (Ct. App. 2017), the Court of Appeals handled a case similar to the one before the Court and reversed the trial court's decision that adverse possession had not been proven and set forth a thorough discussion of the evidence required:

The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time." *Id.* In South Carolina, the statutory period for adverse possession is ten years. S.C. Code Ann. § 15-67-210 (2005); *Jones v. Leagan*, 384 S.C. at 10, 681 S.E.2d at 11. A party asserting ownership by adverse possession must show he has met the elements by clear and convincing evidence. *Jones*, 384 S.C. at 10-11, 681 S.E.2d at 11.

For possession to be open and notorious, "the legal owner need not have actual knowledge the claimant is claiming property adversely, [but] the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it." *Jones*, 384 S.C. at 13-14, 681 S.E.2d at 13. ...

To show the possession was hostile, the adverse claimant is required to show only that his possession was actual, exclusive, open, notorious, and without the consent of the title owner. *Knox v. Bogan*, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996). The mistaken belief rule, which requires the possessor to be aware he does not have title and intend to dispossess the true owner, is not applicable in disputes over entire tracts of land. *Id.*; see also *Perry v. Heirs at Law & Distributees of Gadsden*, 316 S.C. 224, 226, 449 S.E.2d 250, 251 (1994) (per curiam) (finding the mistaken belief rule does not apply in a dispute over an entire tract of land, rather it applies in a boundary line dispute). Thus, for the possession to be hostile when an entire tract of land is at issue, the adverse claimant need not show a conscious intent to dispossess the true owner. *McDaniel v. Kendrick*, 386 S.C. 437, 442–43, 688 S.E.2d 852, 855 (Ct. App. 2009). The claimant may establish hostile possession by showing he occupied the property without the title owner's consent even if he occupied the property under the mistaken belief that it belonged to him. *Id.*

419 S.C. at 650-652, 799 S.E.2d 924-925.

Plaintiffs must present clear and convincing evidence that their possession of this property was actual, open, notorious, hostile, exclusive and continuous for the statutory period of 10 years in order to prove Adverse Possession.

#### A. Exclusivity Element

The Court of Appeals remanded this case for trial to determine if the Plaintiff's occupation of the property was exclusive and hostile. Plaintiffs testified that their occupation was exclusive for the ten (10) years prior to the initiation of this action; however, Robert Heyward visited the property yearly after 2000 and until 2008 when he began to show evidence of dementia prior to his death in 2014. He would call and inform the Steed family before coming to stay at the Property. The Plaintiffs testified they never denied Robert Heyward from staying at the property.

“The exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with the owner....” *Butler v. Lindsay*, 293 S.C. 466, 361 S.E.2d 621 (1987). The Court concludes that Plaintiffs' occupation of the property was not exclusive nor proven by

clear and convincing as they regularly shared occupancy of the property with Mr. Robert Heyward during his lifetime.

### **B. Hostility Element**

Regarding hostility, as set forth in Taylor, the Plaintiffs “may establish hostile possession by showing [they] occupied the property without the title owner’s consent even if [they] occupied the property under the mistaken belief that it belonged to [them].” *Id.* In Taylor, the Court held that “there was no evidence in the record indicating [claimants] possessed the property with title owner’s permission or consent.” Similarly, in the present case, there is no evidence that the title owner, Robert Heyward from 2000 to his death in 2014, ever gave permission or consent to Plaintiffs’ possession. Heyward knew that the Steeds had possession and acknowledged their possession. Plaintiffs assumed occupation at the invitation of the original owner, Louise Heyward. After her death, they believed they were the owners and were occupying the house under a right of ownership.

While Defendants did not put forth evidence that Plaintiffs possessed the Property with the title owner’s consent, Defendants’ awareness that Plaintiffs lived on the Property is not sufficient to show that Plaintiffs claimed they owned the Property.

This case is similar to McDaniel v. Kendrick, 386 S.C. 437, 688 S.E.2d 852 (2009) and Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986).

“Mere possession of land is insufficient and any presumption is that the occupancy is in subordination to the legal title.” Davis, 289 S.C. at 180. This seems especially true where the parties are in relation to one another. Knight v. Hilton, 224 S.C. 452, 79 S.E.2d 871 (1954). In addition, ‘One who enters with permission does not establish Adverse Possession without a “clear

and positive disclaimer of the title under which entry was made is brought home to the other party.” Young v. Nix, 286 S.C. 134, 332 S.E.2d 773 (1985).

See also Lusk v. Callahan, 287 S.C. 459, 339 S.E.2d 156 (1986).

The Court concludes the Plaintiffs’ first disclaimer of the legal title sufficient to begin the Adverse Possession claim came when they refused to pay the rent demanded by Robert Heyward in 2015 - only 3 years prior to initiating this action. Clearly, this does not meet the requisite time of ten (10) years required under the statute for adverse possession.

Defendant Antoine Heyward’s testimony that he never saw his father do anything on the Property that an owner would do is consistent with a landlord who rents his house on a long-term lease. Furthermore, Plaintiffs’ payment of the taxes to both the Defendants and Robert Heyward over the years is further evidence of this rental arrangement. See Wigfall v. Fobbs, 295 S.C. 59, 367 S.E.2d 156 (1989). As an additional ground, the recording of the deeds from both Louise Heyward to Robert Heyward and the deed of distribution to the Defendants is constructive notice to Plaintiffs and the world of Defendant’s legal ownership and interest in the property. Spence v. Spence, 368 S.C. 106, 119, 128 S.E.2d 869, 876 (2006).

### **C. Equitable Relief**

#### **1. Laches Defense**

Plaintiffs further contend the Defendants’ claim to the Property is barred by the equitable doctrine of laches. A party asserting adverse possession in a quiet title action can establish the defense of laches. See Jones v. Leagan, 384 S.C. 1, 20, 681 S.E.2d 6, 16 (Ct. App. 2009) (“The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice.”). Because the court concludes that the time period for the running of the statute of limitations for adverse possession has only been 3 years, laches would not

suffice to establish their claim, especially in this case where the parties are related and the Defendants' father and husband, Robert Heyward apparently suffered from dementia. See Knight v. Hilton, supra and Ham v. Flowers, 214 S.C. 212, 51 S.E. 2d 753 (1949).

## **2. Betterments Claim**

As in Jones, Knight and Ham, the Plaintiffs here have invested both time and money to improve the Property during the period they claim to have owned the house. In the older cases, the court provided for an accounting to be performed. This Court concludes this case presents a scenario for the Defendants to claim a right to the value of their improvements to the property under the Betterments statute. S.C. Code Ann. Section 27-27-10 et seq.

At no point during the relevant period did any of the Defendants or Robert Heyward tell Plaintiffs that they had a deed to the Property nor did Defendants contribute to the upkeep or improvements to the property. Clearly the Plaintiffs believed they owned the property. Accordingly, it would be inequitable to permit the Defendants to take the value of all improvements Plaintiffs made to the Property, despite knowing the substantial time and money that Plaintiffs had invested in the Property.

## CONCLUSION

I conclude that the Defendants' lack of expression of ownership and inaction in making repairs and improvements to the Property is not subject to the doctrine of laches to bar Defendants from claiming ownership to the property but, instead, allows Plaintiffs to pursue a claim under the betterments statute.

Upon resolution of this matter, Plaintiffs will have a very short period of time (2 days) in which to amend their pleadings and bring this statutory claim to seek compensation for the property

they improved under their mistaken belief that they owned the property. S.C. Code Ann. Section 27-27-30.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the following property is quieted and confirmed into Defendants Antoine and Ruby Heyward, who are vested with fee simple title to 516 Bank Street, Mt. Pleasant, SC 29464 (TMS # 532-05-00-113).

IT IS FURTHER ORDERED, ADJUDGED and DECREED that while legal title remains vested in the Defendants, that this matter is hereby stayed subject to any claim the Plaintiffs may bring under the South Carolina Betterments statute.

IT IS ORDERED this \_\_\_ day of February, 2024, at Charleston, South Carolina.

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Mikell Scarborough  
Master-in-Equity



Charleston Common Pleas

**Case Caption:** Bonita Steed , plaintiff, et al VS Antoine Heyward , defendant, et al

**Case Number:** 2018CP1004284

**Type:** Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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**EXHIBIT B**

**EXHIBIT B**

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP10-04284
BONITA STEED, et al.,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	<b>ORDER</b>
	)	
ANTOINE HEYWARD, RUBY	)	
HEYWARD, et al	)	
	)	
Defendant.	)	
	)	

This matter came before the court on April 10, 2024, on Plaintiff's Motion to Amend the Complaint filed February 7, 2024, and Plaintiff's Motion to Reconsider the court's order of February 6, 2024, filed February 8, 2024. Defendants filed their Memorandum in Opposition to Motion to Reconsider on February 21, 2024, and Memorandum in Opposition to Amend the Complaint on February 22, 2024.

On the Motion to Reconsider Plaintiff's argue they established the equitable defense of laches as well as satisfied both the exclusivity and hostility elements to establish adverse possession of the property by their continued occupation of the property. The Motion to Reconsider is respectfully DENIED.

The Motion to Amend the Complaint is GRANTED to pursue its claim for betterments as improvements to the property under SC Code § 27-27-10. Accordingly, Plaintiffs shall submit an appraisal of the property effective as of August 29, 2018 (the date of filing) which details the value of the property with and without improvements thereon. Upon receipt of the appraisal and response from the Defendants, the court will set a hearing to determine the value of the improvements.

**AND IT IS SO ORDERED!**

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Mikell R. Scarborough  
Master-in-Equity for County of Charleston



Charleston Common Pleas

**Case Caption:** Bonita Steed , plaintiff, et al VS Antoine Heyward , defendant, et al

**Case Number:** 2018CP1004284

**Type:** Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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**EXHIBIT C**

**EXHIBIT C**

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. 2018-CP-10-04284

Bonita Steed and Bernard Steed, Robert Steed and Ernest Steed,..... Appellants,

v.

Antoine Heyward, Ruby Heyward, and also All Other Persons Unknown, claiming any right,  
title, estate, interest in or lien upon the real estate described herein in the amended complaint  
herein..... Respondents.

NOTICE OF APPEAL

Appellants Bonita Steed, Bernard Steed, Robert Steed, and Ernest Steed (hereafter  
“Appellants”) appeal the trial court’s order dated April 10, 2024, denying Plaintiff’s Motion to  
Reconsider the Court’s order of February 6, 2024. A copy of the order dated April 10, 2024, is  
attached hereto as **Exhibit A**. A copy of the order dated February 6, 2024, is attached hereto as  
**Exhibit B**.

[SIGNATURE ON FOLLOWING PAGE]

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May 9, 2024

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ATTORNEY FOR RESPONDENTS

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-10-04284

BONITA STEED, et al. )  
 )  
 )  
Plaintiffs, )

**MOTION TO VACATE STAY  
OF THE APPEAL**

VS. )  
)  
)

ANTOINE HEYWARD, RUBY )  
HEYWARD, et al. )  
 )  
Defendants. )

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Defendants, Antoine Heyward and Ruby Heyward, by and through their undersigned counsel, respectfully submit this Motion to Vacate Stay of the Appeal so that Defendants may occupy or generate income by renting the property because Plaintiffs have failed to comply with S.C. Code 18-9-170.

**HISTORY**

Plaintiffs Bonita Steed, Bernard Steed, Ernest Steed and Robert Steed filed an Adverse Possession Complaint against Defendants and Defendants counterclaimed with a Quiet Title action. The property in dispute was 516 Bank Street, Mount Pleasant, South Carolina. A Non-Jury Trial was conducted on September 14, 2023.

In the Court’s Order filed on February 6, 2024, the Court ruled that the property was quieted and confirmed into Defendants Antoine and Ruby Heyward, who were vested with fee simple title to 516 Bank Street, Mt. Pleasant, SC 29464 (TMS#532-05-00-113). **See Order filed 2/6/2024 attached as Exhibit A.**

Plaintiffs filed a Motion for Reconsideration and April 10, 2024, the Court issued its’

Order and denied Plaintiff's Motion for Reconsideration. See **Order filed 4/10/2024 attached as Exhibit B.**

On May 9, 2024, Plaintiffs filed an Appeal with the S.C. Court of Appeals. See **Notice of Appeal dated 5/9/2024 attached as Exhibit C.**

### LEGAL AUTHORITY

Generally speaking, when a Notice of Appeal is filed, the lower court matter is stayed until such time as there is a decision rendered by the appellate court. See SCACR, Rule 241(a). An **exception** to the automatic stay is set forth in SCACR, Rule 241(b)(4) and further explained in S.C. Code 18-9-170:

**“If the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment shall NOT be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by appellant, he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding the sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.”**

Only upon the party executing the bond in the terms set forth above, will the appealed judgment be stayed in the court below. See S.C. Code 18-9-180.

### ARGUMENT

On February 6, 2024 and April 10, 2024, the Court issued two rulings that stated that the property is owned by Defendants Heyward. Despite these Orders, Plaintiffs refused to vacate the property thereby denying Defendants' ownership rights to the property. Since Plaintiffs continued to reside on Defendants' property, Plaintiffs had a statutory obligation to produce a written undertaking with two sureties. As set forth above, the purpose of the undertaking was to protect Defendants' property from damage that may be caused by Plaintiffs while this appeal was

pending. No surety bond(s) have been forthcoming.

### CONCLUSION

Defendants respectfully request that the Court grant their Motion to Vacate Stay of the Appeal for the reasons set forth above so that Defendants may proceed with evicting Plaintiffs from the Defendants' property located at 516 Bank Street, Mount Pleasant, SC. This will allow the Defendants, as owners, to make decisions regarding their property as they see fit.

Dated: August 12, 2024  
Mount Pleasant, SC

DeJong Law Firm, LLC

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