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August 12, 2024

Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, S.C. 29211

RECEIVED
AUG 26 2024
SC Court of Appeals

Re: Catherine P. Gadsden vs. Charleston Opportunity Fund, LLC.
Case No.: 2020-CP-10-03575

Dear Ms. Kitchings:

Enclosed you will find the original and one (1) copy of the Notice of Appeal with the Proof of Service regarding the above-referenced matter. Also enclosed is the filing fee in the amount of \$250.00.

With kindest regards, I am

Very truly yours,



Arthur C. McFarland

ACM/vlf

Enclosures

cc: Brooklyn A. O'Shea, Esquire (by: email: brooklyn@oshealaw.com and regular mail)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Judge

Case No.: 2020-CP-10-03575

CATHERINE P. GADSDEN,

Appellant,

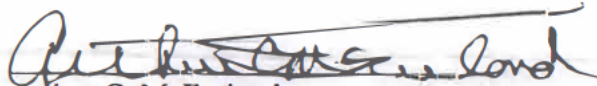
vs.

CHARLESTON OPPORTUNITY FUND, LLC.

Respondent.

NOTICE OF APPEAL

Catherine P. Gadsden appeals the Order of Judgment In Favor of Defendant Charleston Opportunity Fund, LLC of the Honorable Mikell R. Scarborough dated July 10, 2024. Appellant's attorney received notice of the Order on July 11, 2024.



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Charleston, S.C.

August 12, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Catherine P. Gadsden

Plaintiff,

v.

Charleston Opportunity Fund, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-10-03575

**ORDER OF JUDGMENT IN FAVOR OF
DEFENDANT CHARLESTON
OPPORTUNITY FUND, LLC**

RECEIVED

AUG 26 2024

SC Court of Appeals

This matter was referred to the undersigned pursuant to Rule 53, SCRPC, to make appropriate findings of fact and conclusions of law with authority to enter a final judgment pursuant to Rules 52 and 58, SCRPC. Any appeal from the final judgment entered by the Master-In-Equity shall be directly to the South Carolina Supreme Court or South Carolina Court of Appeals, as provided in the South Carolina Appellate Court Rules. For the reasons set forth below, the Court finds in favor of the Defendant Charleston Opportunity Fund, LLC.

BACKGROUND & PROCEDURAL HISTORY

On August 17, 2020, Plaintiff filed a Lis Pendens and Summons and Complaint against Defendant seeking a declaratory judgment to determine ownership interests in, and to recover possession of, certain real property located at 15 Strawberry Lane, Charleston, SC 29403, in Charleston County, South Carolina ("Subject Property") under Plaintiff's theory of adverse possession under color of title. Defendant filed a Motion to Dismiss on October 22, 2020, which this Court denied on March 10, 2021. On March 25, 2021, Defendant filed an Answer and Counterclaim. On April 8, 2022, Defendant filed a Motion for Summary Judgment, which this

Court denied on June 17, 2022. On June 30, 2022, this Court ordered both parties to conduct title examinations back to 1900 of all relevant lots in this dispute.¹

A trial in this matter was held on March 27, 2023. Plaintiff Catherine P. Gadsden ("Plaintiff") was present with her attorney, Arthur C. McFarland of The Law Office of Arthur C. McFarland. Defendant Charleston Opportunity Fund, LLC ("Defendant") was present with its attorneys, Brooklyn O'Shea and Ian O'Shea of the O'Shea Law Firm. After the Plaintiff and Defendant rested, the Court instructed the parties to electronically file their trial exhibits and attempt to locate additional historic records and information related to Charleston County Tax Map Parcels 460-03-02-061 and 460-03-02-168 and to apprise the Court as to the parties' findings, if any. Defendant subsequently located additional historic records and information pursuant to the Court's request and filed a Motion to Proffer Evidence and for Judicial Notice.

A hearing on Defendant's Motion was held on May 8, 2024. Present at the hearing was Arthur C. McFarland on behalf the Plaintiff and Ian O'Shea on behalf of the Defendant. Pursuant to Rule 52, SCRPC, based on the evidence presented to this Court, I hereby make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff brought this action pursuant to the provisions of the South Carolina Uniform Declaratory Judgments Act, §15-53-10, et. seq., Code of Laws for South Carolina, 1976, to obtain a declaration of the rights, status and other legal relations of the parties hereto in respect to the real estate hereinafter described.

¹ Defendant was the only party to conduct a title examination and provide it to the Court.

2. The real estate which is the subject matter of this action, the Subject Property, is situated in the County of Charleston, State of South Carolina, and is more fully described as follows:

NUMBER 15 S. Strawberry Lane, Charleston, South Carolina, being the westernmost half of Lot No. 25 on a plan of 56 lots made by F. J. Smith, Surveyor, and recorded in Plat Book C at Page 28 in the Charleston County Register of Deeds Office. Said lot having the size, shape, dimensions, buttings and boundings, more or less, as are shown on said Plat, which is specifically incorporated herein by reference.

Being the same property conveyed to 782A Rutledge, LLC by deed of Daniel M. Gregory, Delinquent Tax Collector for the County of Charleston, dated March 23, 2017 and recorded in the Charleston County Register of Deeds Office in Book 0627 at Page 875; and subsequently conveyed to Charleston Opportunity Fund, LLC by deed of 782A Rutledge, LLC dated September 19, 2018 and recorded in Charleston County Register of Deeds Office in Book 0748 at Page 463; and subsequently conveyed to 782A Rutledge, LLC by corrective deed of Edrian J. Trakas, Delinquent Tax Collector for the County of Charleston, dated February 1, 2023 and recorded in Charleston County Register of Deeds Office in Book 1161 at Page 479; and subsequently conveyed to Charleston Opportunity Fund, LLC by deed of 782A Rutledge, LLC dated February 16, 2023 and recorded in the Charleston County Register of Deeds Office in Book 1164 at Page 071.

TMS No.: 460-03-02-168.

3. The Subject Property is known as 15 Strawberry Lane in the City of Charleston and was conveyed to Defendant Charleston Opportunity Fund, LLC by deed of 782A Rutledge, LLC dated September 19, 2018 and recorded in the Charleston County Register of Deeds Office in Book 0748 at Page 463; and subsequently conveyed to Charleston Opportunity Fund, LLC by deed of 782A Rutledge, LLC by deed dated February 16, 2023 and recorded in the Charleston County Register of Deeds Office in Book 1164 at Page 071.

4. Adjacent to the Subject Property is a separate parcel of land known as 17 Strawberry Lane in the City of Charleston ("Adjacent Parcel") which was conveyed to Plaintiff Catherine P. Gadsden by deed of Charlie Gadsden a/k/a Charlie Gadsden, Sr. dated October 22, 1993 and recorded in the Charleston County Register of Deeds Office in Book R233 at Page 871; and subsequently conveyed to Catherine P. Gadsden by deed of Catherine P. Gadsden, as Personal Representative of the Estate of Charles Gadsden, Sr., dated January 22, 2020 and recorded in the Charleston County Register of Deeds Office in Book 0906 at Page 462.
5. The Subject Property, presently known as 15 Strawberry Lane and identified by Charleston County Tax Map Number 460-03-02-168, is a legally distinct and separate 20' wide by 94' deep parcel of land owned by Defendant Charleston Opportunity Fund, LLC, and is comprised of the westernmost half of Lot No. 25 shown on a plan of 56 lots made by F. J. Smith, Surveyor, and recorded in Plat Book C at Page 28 in the Charleston County Register of Deeds Office.
6. The Adjacent Parcel, presently known as 17 Strawberry Lane and identified by Charleston County Tax Map Number 460-03-02-061, is a legally distinct and separate 20' wide by 94' deep parcel of land owned by Plaintiff Catherine P. Gadsden, and is comprised of the easternmost half of Lot No. 25 shown on a plan of 56 lots made by F. J. Smith, Surveyor, and recorded in Plat Book C at Page 28 in the Charleston County Register of Deeds Office.
7. On May 21, 1881, Lot No. 25 was originally created as a 40' wide by 94' deep parcel as shown on that certain plan of 56 lots made by F. J. Smith, Surveyor, and recorded in Plat Book C at Page 28 in the Charleston County Register of Deeds

Office.

8. On May 23, 1901, Lot No. 25 was conveyed as a 40' wide by 94' deep parcel to William Henry Parker, Jr. by deed of W. Gibbes Whaley, as Master-In-Equity for Charleston County, recorded in the Charleston County Register of Deeds Office in Book F23 at Page 292.
9. On December 5, 1906, William Henry Parker, Jr. separated Lot No. 25 into two legally distinct and separate 20' wide by 94' deep parcels of land, the westernmost half of Lot No. 25 and the easternmost half of Lot No. 25, when he conveyed the Subject Property, being the 20' wide by 94' deep westernmost half of Lot No. 25, to Mary Ann Swinton, by deed recorded in the Charleston County Register of Deeds Office in Book D22 at Page 328. Thereafter, William Henry Parker, Jr. conveyed the newly separated Adjacent Parcel, being the 20' wide by 94' deep easternmost half of Lot No. 25, to Joseph Peter Burns by deed dated October 3, 1907 and recorded in the Charleston County Register of Deeds Office in Book D26 at Page 086.
10. Since William Henry Parker Jr.'s separation of Lot No. 25 into two separate 20' wide by 94' deep parcels, the parcels have existed and remained as legally separate and distinct parcels.²
11. Notwithstanding any scrivener's errors contained within various deeds in the Defendant's chain of title for the Subject Property,³ being the 20' wide by 94' deep westernmost half of Lot No. 25 presently known as 15 Strawberry Lane and

² There was no requirement for a recorded survey or plat at the time and none has been presented.

³ Some deeds mistakenly reference "east" when the property is clearly to the west.

identified by Charleston County Tax Map Number 460-03-02-168, the Court finds that fee simple ownership in the Subject Property is vested in Defendant Charleston Opportunity Fund, LLC.⁴

12. The Court finds that Plaintiff's claim of ownership to the Subject Property by adverse possession or through her predecessors-in-title is without merit and she is a stranger to title who holds no ownership to the Subject Property.⁵ Specifically, Plaintiff's claim that her predecessor-in-title W. F. Smoak was conveyed title to the Subject Property by deed of L. A. Hutto, City Sheriff of the City of Charleston, dated April 5, 1971 and recorded in the Charleston County Register of Deeds Office in Book J90 at Page 143, is without merit. The Court finds the deed of L. A. Hutto, City Sheriff of the City of Charleston, to W.F. Smoak, dated April 5, 1971 and

⁴ It is well settled that in construing a deed, the Court must determine the intent of the grantor. "In the construction of a deed, where there is a contradiction in the description of the premises granted, the Court may reject part of the description as false, or mistaken, for the purpose of giving effect to the deed." *Norwood v. Byrd*, 30 S.C.L. 135, 141 (S.C. App. L. 1844). "In determining the grantor's intent, *the deed must be construed as a whole and effect given to every part if it can be done consistently with the law.* The intention of the grantor must be found within the four corners of the deed." *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012) (emphasis in original) quoting *Windham*, 381 S.C. at 201, 672 S.E.2d at 582-83 (citations and quotation marks omitted).

⁵ The doctrine of adverse possession must be strictly construed in favor of the owner of the title to land. 2 C.J.S. *Adverse Possession* § 5; *King v. Hawkins*, 282 S.C. 508, 511, 319 S.E.2d 361, 363 (Ct. App. 1984). Plaintiff bears the burden of proof in this case by a standard of clear and convincing evidence. *McDaniel v. Kendrick*, 386 S.C. 437, 442, 688 S.E.2d 852, 855 (Ct. App. 2009). Plaintiff admits she did not adversely possess the Subject Property by way of the Admissions on file. See Order filed June 17, 2022 denying Plaintiff's Motion to Withdraw her Admissions to Defendant's Requests to Admit; Rule 36(b), SCRCP; *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 650-51, 579 S.E.2d 151, 157 (Ct. App. 2003); *Higgins v. Medical University of South Carolina* (Ct. App. 1997) 326 S.C. 592, 486 S.E.2d 269. Plaintiff also abandoned her adverse possession claims on the record at the beginning of trial and claimed to have good record title to the property through her predecessor-in-title W. F. Smoak.

recorded in the Charleston County Register of Deeds Office in Book J90 at Page 143, only conveyed the Adjacent Parcel, being the 20' wide by 94' deep easternmost half of Lot No. 25 presently known as 17 Strawberry Lane and identified by Charleston County Tax Map Number 460-03-02-061, to the Plaintiff's predecessor-in-title W. F. Smoak.

13. The Court finds that Defendant Charleston Opportunity Fund, LLC is in actual possession of the Subject Property and Plaintiff has failed to prove her ownership to the Subject Property and therefore cannot recover possession on the strength of her own title.⁶
14. The Court further finds that Plaintiff unreasonably delayed asserting her ownership claim to the Subject Property and Defendant has been prejudiced by Plaintiff's unreasonable delay and has therefore established the defense of laches.⁷

⁶ The possessor of property shall be presumed the owner and shall not be dispossessed of the property by the opposing party proving the weakness of the possessor's title; rather the opposing party shall only dispossess the possessor of the property upon the strength of its title. "In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct.App.1992). See also *Watson v. Suggs*, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993) ("In action of trespass to try title, defendant in actual possession of disputed property is regarded as rightful owner of property until plaintiff proves perfect title, and mere prima facie showing of paper title by plaintiff is not enough.").

⁷ For the defense of laches to be sustained, the circumstances must have been such as to import that the Plaintiff had abandoned or surrendered the claim or right which she now asserts. *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009). "The determination of whether laches has been established is largely within the discretion of the trial court." *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001) (citing *Grossman v. Grossman*, 242 S.C. 298, 130 S.E.2d 850 (1963)). "Delay alone is not enough to constitute laches; it must be unreasonable, and the party asserting laches must show prejudice. The question of whether a claim is barred by laches is to be determined in light of the facts of the particular case." *Id.* (citing *Hallums v. Hallums*, 296 S.C. 195, 371 S.E.2d 525-527 (1988)). Here, the Plaintiff failed to assert her claim of ownership for years while the Defendant possessed the Subject Property and sat idly by as the Defendant constructed a dwelling on the Subject Property before ever asserting her ownership claim.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The following is a description of the real estate which is the subject matter of this action, the Subject Property, situated in the County of Charleston, State of South Carolina, and is more fully described as follows:

NUMBER 15 S. Strawberry Lane, Charleston, South Carolina, being the westernmost half of Lot No. 25 on a plan of 56 lots made by F. J. Smith, Surveyor, and recorded in Plat Book C at Page 28 in the Charleston County Register of Deeds Office. Said lot having the size, shape, dimensions, buttings and boundings, more or less, as are shown on said Plat, which is specifically incorporated herein by reference.

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TMS No.: 460-03-02-168.

2. The Plaintiff, Catherine P. Gadsden, is a stranger to title who holds no ownership to the Subject Property and all claims, rights, titles, interests, estates, liens and any other claims of the Plaintiff, or any other person or entity claiming under, by, or through Catherine P. Gadsden, in, to, or upon the Subject Property are forever barred.

3. The Court hereby confirms and quiets marketable, fee simple title to the Subject Property in Defendant, Charleston Opportunity Fund, LLC, and the marketable, fee simple title of Defendant, Charleston Opportunity Fund, LLC, to the Subject Property is certain and free from all reasonable doubt.
4. Defendant's counterclaim for Abuse of Process is respectfully DENIED.

AND IT IS SO ORDERED!

_____, 2024
Charleston, SC

Mikell R. Scarborough
Master in Equity, Charleston County



Charleston Common Pleas

Case Caption: Catherine P Gadsden VS Charleston Opportunity Fund Llc
Case Number: 2020CP1003575
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
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AUG 26 2024
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Mikell R. Scarborough, Judge

Case No.: 2020-CP-10-03575

CATHERINE P. GADSDEN,

Appellant,

vs.

CHARLESTON OPPORTUNITY FUND, LLC.

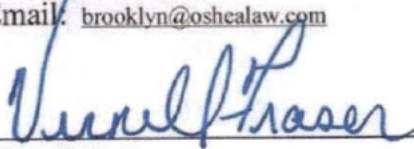
Respondent.

PROOF OF SERVICE

I, Virnell Fraser, Legal Assistant to Arthur C. McFarland, hereby certify that a copy of the Notice of Appeal submitted by the Appellant was sent to counsel for the Respondent by United States Mail, postage pre-paid and e-mail addressed as follows:

Brooklyn A. O'Shea, Esquire
1120 Folly Road
Charleston, SC 29412
Email: brooklyn@oshealaw.com

By:


Virnell Fraser
Legal Assistant to Arthur C. McFarland
Attorney for Appellant

Charleston, S.C.

August 12, 2024

Law Office of Arthur C. McFarland

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Ms. Catherine s. Harrison
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