THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

MARVIN H. DUKES, III, PRESIDING JUDGE

CASE NO: 2011-CP-07-2148

BRUCE MILLER, Appellant,

vs.

COLUMBIA FOREST, INC.
FOREST HATCH and IDA M.
SINGLETON, Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE COURT ERRED IN ALLOWING THE DEFENDANT/RESPONDENT, IDA MAE SINGLETON, OUT OF DEFAULT WHEN NO SHOWING OF "GOOD CAUSE" WAS MADE.

2. WHETHER THE COURT ERRED IN RULING THAT PLAINTIFF HAD NOT ESTABLISHED A CLAIM FOR ADVERSE POSSESSION OF THE REAL ESTATE INVOLVED IN THIS MATTER.

STATEMENT OF THE CASE

This matter was commenced by the filing of a Summons & Complaint on May 12, 2011. The First Cause of Action requested a temporary injunction and the issuance of a Rule to Show Cause and the Court's awarding the Appellant the property encompassed on the basis of adverse possession for more than 26 years and for the Court's Order, permanently enjoining the named Respondents from removing the vehicles and coming onto the property of the Appellant.

The Second Cause of Action requested relief of actual and punitive damages based on the allegation of conversion of the Appellant's personal property and taking said property and having the same sold for salvage. This was a verified Complaint. Attached to the Complaint was tax information on the property, showing a building and two (2) acres of property owned by the Appellant. Tax records and photographs of the land in question, showed salvage vehicles upon the land.

Ida Mae Singleton was served with the Summons and Complaint by Certified Mail - Return Receipt Requested, signed by her, on May 15th, 2011. Contemporaneous with the filing of the Summons and Complaint, an Order & Rule to Show Cause was also filed on May 12th, 2011. Ms. Singleton signed for the CM-RRR package on May 16th, 2011 containing both the Summons & Complaint and Order & Rule to Show Cause. [TOR - Summons & Complaint, Order & Rule to Show Cause, and CM-RRR service]. The Rule to Show Cause did not concern Ida Mae Singleton, as it involved Forest Hatch, who was taking the vehicles of the Appellant and selling them for salvage. He was also defacing the property by digging holes in the interior roads to prevent Appellant from reaching the physical location of his vehicles.

At that time, it appears that the Appellant and the Respondents entered into a temporary agreement, which was done without prejudice to a subsequent hearing in this matter involving the same issues on May 31, 2011 at 8:30 a.m. That was all placed in the Order by this Court on May 25, 2011. [TOR - Consent Order, filed May 25th, 2011].

Thereafter, an Affidavit of Default was filed on June 27, 2011 by James H. Moss. That Affidavit clearly shows that the Respondents, Columbia Forest, Inc. and Forest Hatch, as well as Ida Mae Singleton, were in default, and Bentley D. Price, the attorney who appeared initially on behalf of the Respondents, Columbia Forest, Inc. and Forest Hatch, failed to appear, filed no Answer, Counterclaim, or other document with the Court. Additionally, in said Affidavit of Default, it states:

> "I also certify that a Summons and Complaint in the above entitled matter was served on the Defendant, Ida M. Singleton, via certified mail, return receipt requested, on May 16, 2011, and that more than thirty (30) days have elapsed since the service of said Summons and Complaint, and that the Defendant, Ida M. Singleton, has failed and refused to give Notice of Appearance or Answer, and the said Defendant is; therefore, in default herein." [TOR - Affidavit of Default].

An Order of Default was entered at that time on June 30, 2011. Set forth in the Order of Default is the notice of hearing on August 3, 2011 at 9:00 a.m. [TOR - Order of Default]. Thereafter, on July 5, 2011, by Certified Mail, an Order of Default was sent to Ms. Singleton, setting forth a hearing on August 3, 2011 at 9:00 a.m. This was signed for by Ida Mae Singleton on July 8, 2011. [TOR - CM-RRR service on Singleton]. For the first time since the service of the Summons & Complaint, some 78 days earlier, Ms. Singleton came to the damages hearing on August 3rd, 2011, at which time the Court advised her to secure counsel, as she was in default.

On August 17, 2011, after Ms. Singleton had come to the hearing on August 3, 2011, Colden R. Battey, Jr. filed a Notice of Motion and Motion stating that Ms. Singleton believed that

somebody had filed documents on her behalf and, according to her testimony, she talked to some individual on the phone. Apparently, she never paid any attorney's fees or, otherwise, obtained the services of any attorney. This information came to the Court by way of Mr. Battey's Motion and without any testimony; consequently it was all hearsay. [TOR - Notice of Motion & Motion, dated August 17th, 2011].

At hearing on October 5th, 2011, on Ms. Singleton's Motion to Set Aside Default, Ida Mae Singleton, the alleged owner of the property, testified that she had never been on the property, had no one in charge of the property, and had been living in California before Appellant obtained possession of the property. She testified she has never used the property for anything, nor visited the property, nor had anything to do with the property since 1992. An Order was issued on October 13th, 2011, vacating judgment as to Ms. Singleton, and allowing Defendant, Singleton, 20 days to file an Answer. [TOR - Order Vacating Default].

The Court erred in allowing the Defendant, Singleton, to re-enter the case and serve responsive pleadings, when an Order had already been issued by the Court, finding her in default. No "good cause" was shown as the basis for vacation of the default judgment. [See *Sundown Operating Co., Inc. vs. Intedge Industries, Inc., 681 S. E. 2d 885; Top Value Homes, Inc. Vs. Harden, 460 S.E. 2d 427].* This is especially true where the owner has had nothing to do with the property since 1992, has not been there physically, has no one in charge, and lived in California since 1992.

The issues in this case came before the Court for final hearing on July 26th, 2012. As a result of hearing, the Court entered its Order dated October 4th, 2012 from which Appellant moved for reconsideration [TOR - Order dated October 4, 2012], resulting in the Court's Order denying

reconsideration dated January 30, 2013 [TOR - Order denying reconsideration]. Appeal was thereafter timely filed.

ARGUMENT

1. WHETHER THE COURT ERRED IN ALLOWING THE DEFENDANT/RESPONDENT, IDA MAE SINGLETON, OUT OF DEFAULT WHEN NO SHOWING OF "GOOD CAUSE" WAS MADE.

2. WHETHER THE COURT ERRED IN RULING THAT PLAINTIFF HAD NOT ESTABLISHED A CLAIM FOR ADVERSE POSSESSION OF THE REAL ESTATE INVOLVED IN THIS MATTER.

Bruce Miller testified that he moved to this property in 1985 or 1986, and began storing cars on the property. He believed that he owned at least two (2) acres and, obviously, placed cars all over the property. A plat was prepared by Mr. Youmans, a surveyor, showing the perimeter of the vehicles, and where they were located. From the testimony, it is clear that Bruce Miller has continually been on this property since the mid 1980's. Also, he was cited by the County to place fencing on the property and/or move the vehicles out of sight, pursuant to County Ordinances. Presented to the County was a list of witnesses indicating the individuals who knew that Bruce Miller has had a business at 33 Lawson Road, Beaufort, South Carolina 29906. A statement signed by those individuals indicating that Bruce Miller was on the property for over twenty (20) years was also introduced. Those statements were signed by those individuals in March, 2006. The witnesses are Gary Bright, Henry Mitchell, David Woodruff, Angela Hraban, ElmerHarris, Ira Friedman, Tina Helton, David Edmonds, Dwayne Radford, and Ronald Bernard. These documents had previously been given to Beaufort County to show Bruce Miller's time he had spent on this property in answer to the County's request for screening of the same.

Additionally, it appears that "No Trespassing" signs were placed on the property and, additionally, ditches and berms were placed on the property which kept other individuals from coming onto the property. Also, fences were placed on the property fencing in the area close to

the house and, also, areas outside of the house, as testified by Bruce Miller. Roads were also on the property, which extended throughout the property, and were done for the purpose of placing cars on the land, and removing cars from the land. This ingress and egress was interfered with by Columbia Forest, Inc. and Forest Hatch when they came to cut the trees. Holes were dug preventing the use of the roads, and trees were also cut to lay across the roads, preventing ingress and egress by Mr. Miller. [*TOR*, *Plaintiff's Exhibits*, Nos. 1 - 17, presented at final hearing].

In order for one to claim adverse possession, one must show that he has been on the property continuously, openly, opening, adversely, notoriously, hostilely, and exclusively.

Ida Singleton admitted that she has never been to the property, never let anyone tend to or watch the property, and also never requested Mr. Miller at any time to remove himself from the property. Mr. Miller not only had "No Trespassing" signs upon the property but, as testified by him, he additionally had dogs who roamed the property to protect the same. It is obvious that Mr. Miller had a salvage yard, as the County contacted him when they wanted the property to be screened and, apparently, Ida Singleton was never contacted or called, and had nothing to do with the land.

> "In addition to the ten 10-year statute of limitation for adverse possession, South Carolina common law recognizes 20-year presumption of grant. Under the presumption of a grant, the time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish the 20-year period." *Getsinger v. Midlands Orthopedic Profit Sharing Plan, 327 S.C. 385, 327 S.C. 424, 489 S.E.2d 223.*

> "This common law presumption rests upon the theory that after a long period of peaceful possession, the possessor, or those under whom the possessor hold, will be presumed to have entered upon and possessed the property under a valid grant, now lost. The doctrine is a legal fiction, aimed at quieting title to and possession of real property. (1) The presumption is one of law and is irrebuttable. (2) The grant is presumed to have been made at or before the beginning of the 20-year period, so the original entry is also presumed to be rightful rather than tortious, (3) contrary

to the theory of the other statutory forms of adverse possession. Adverse possession continuously for 20 years warrants a presumption of a grant from the state, (4) or an ouster, (5) vesting title with the adverse claimant." *8 S.C. Jur. Adverse Possession § 10.*

Here, no tacking is necessary as Bruce Miller has been on this property for over twenty (20) years, which is clear from his testimony and his wife's testimony.

Additionally, this is an equitable matter.

"The equitable 'doctrine of laches' is neglect for an unreasonable and unexplained length of time, under the circumstances affording opportunity for diligence, to do what in law should have been done; under the doctrine, if a party, knowing his rights, does not seasonably assert them, buy by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. The party seeking to establish laches mush show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice." *Kelley v. Kelley, 368 S.C. 602, 629 S.E.2d 388.*

In this case, there is no question a delay has been shown, and it is certainly unreasonable that this lady acquired this property in 1992, and has never attended the same to this date until the action was brought by the Plaintiff herein placing her on notice. She never appeared or took any action until a full **78 days after service**. *Sara Mae Robinson, et al. v. The Estate of Eloise Pinckney, et al, 389 S.C. 360, 698 S.E.2d 801, 2010.*

There is also a ten (10) year statute of limitation which is codified in *§ 15-3-340*. It states:

"No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action. " *Harrelson v. Sarvis, 39 S.C. 14, 17 S.E. 368, 1993; Jones v. Leagan, 384 S.C. 1, 681 S.E.2d 6.*

Next is *§ 15-67-210,* Presumption of possession; when occupation deemed under legal title, which provides:

"In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action." (emphasis added).

The issue of title by adverse possession being one of law, factual review by the Supreme Court is limited to the determination of whether there was any evidence reasonably sustaining the judgment of the lower court. *Seagle v. Montgomery, 227 S.C. 436, 88 S.E.2d 357, 1955.*

A person who has been in adverse possession on land for a statutory period has a good and valid title by virtue of such adverse possession, which may be affirmatively asserted against one not protected by some disability. The statute of limitations has a double aspect; besides offering a shield of defense, it may under certain circumstances give title capable of being asserted actively. *Liles v. Fellows, South Carolina, 1926, 138 S.C. 31, 136 S.E.2d 13.*

Adverse possession commencing prior to the insertion of this section is former code 1962 *§ 10-2-421* with a ten-10 limitation provision, must have continued for a full 20 year period before it could ripen into a right. *Hodge v. Hodge, 56 S.C. 263, 34 S.E. 517, 1899.* In order to constitute adverse possession which results from obtaining title to property, the possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period. Continuous possession must be such as to indicate his exclusive ownership of the property. Not only must his possession be without subserviency to, or recognition of, the title of the true owner, but it must be hostile thereto and to the whole world. *Mullis v. Winchester, 237 S.C. 487, 118 S.E. 2d 61, 1961.*

The Court apparently asked some questions concerning *§15-67-230,* and I would refer the Court to *Jones v. Leagan, 2009, 384 S.C. 1, 681 S.E.2d 6* in which the Court held that resident's

possession of the property, which included regular bush-hogging the lot, installing a driveway and wire fence, cutting timber, installing "no trespassing" signs and property stakes, and storing business supplies such as concrete blocks, timber and a trailer on the lot, consisted of open and notorious acts for purposes of their adverse possession defense and record owner's quiet title action. *Jones v. Leagan*, Id.

In this case, it is clear that the property in question is totally covered with vehicles, and that is the purpose for which the plat was prepared by Mr. Youmans. The entire area within that plat is covered with the vehicles in question, and roads that have actually been prepared, which have been there for over twenty (20) years by Mr. Miller. Mr. Miller had the land totally covered with salvage cars, equipment, and other items stored on the property, as well as roads within the property, including the land being posted with dogs running on the property, and part of the land fenced or bermed so that it is clear what Mr. Miller claims. Plaintiff has even requested that the Court view the property, if it so desires. [TOR, Plaintiff's Exhibits at final hearing].

CONCLUSION

For the reasons above stated, the Appellant believes he is entitled to a reversal of the judgment by Order dated October 4, 2012 and the denial of reconsideration of same by Order dated January 30, 2013, on the following grounds:

1. The Respondent, Singleton, was, and is in default as the Court never found "good cause" to allow her out of default. It is, therefore, the opinion of the writer, under South Carolina law, that the default is still valid, as an Order had been signed by the Court before the Defendant ever appeared at Court for the *Holiday Inn* hearing.

2. The Appellant has shown adverse possession through presumption of a grant, and he has claimed the land continuously, openly, hostilely, notoriously, adversely, and exclusively for a period of twenty (20+) plus years. The Court also can consider the doctrine of *laches* and abandonment by the Respondent of said property.

MOSS, KUHN & FLEMING, P.A.

By: ______________________

JAMES H. MOSS

Beaufort, South Carolina

October 14, 2013

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing *INITIAL BRIEF OF APPELLANT* upon opposing counsel:

Colden R. Battey, Jr., Esquire
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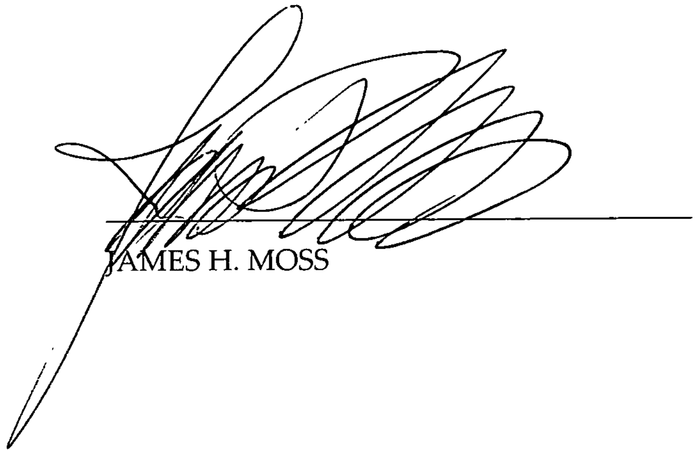
by placing a copy of the same in the United States Mail, properly addressed and with sufficient postage affixed thereto as required by law.



JAMES H. MOSS

Beaufort, South Carolina

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