

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JOSEPH W. KEATING,
Plaintiff,

Case No. 2025-CP-10-1165

vs.

**PLAINTIFF'S MOTION FOR
RECONSIDERATION**

HARRISON WILDER, JR., HOPE WILDER
BROWN, ESTATE OF HARRISON WILDER.

Defendants / Counterclaim Plaintiffs and Third-
Party Plaintiffs.

vs.

JOSEPH W. KEATING d/b/a KEATING TREE
SERVICE, and JAMES ISLAND
PRESERVATION TRUST, JOSEPH W.
KEATING, as TRUSTEE

Third Party Defendants.

RECEIVED

APR 27 2026

SC Court of Appeals

Plaintiff Joseph W. Keating respectfully submits this memorandum of law in support of his Motion for Reconsideration pertaining to the Order on Motion to Dismiss And/Or Summary Judgment in which Plaintiff's Complaint for Adverse Possession and quiet title to any portion of TMS 331-05-00-001 was dismissed and Striking Lis Pendens, 2025LP1000176 dated December 3, 2025 ("Order").

The Plaintiff contends that there are genuine issues of material fact and that the evidence was not viewed in the light most favorable to the non-moving party.

Summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. See Kitchen Planners, LLC v. Friedman, 440 S.C. 456 (2023). "Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there

is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.” Woodson v. DLI Proprs., LLC, 406 S.C. 517, 753 S.E.2d 428 (S.C. 2014). Furthermore, summary judgement should not be granted if there is a dispute as to the conclusion that could be drawn from evidentiary facts. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (S.C. 2000). “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” Id. citing Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988).

The criteria to prove continuous, hostile, open, actual, notorious, and exclusive possession are as follows:

1. Continuous and Actual Possession

Acts of ownership of open land need only be exercised in a way consistent with the possible uses of the land and as the situation of the property permits, without actual residency or occupancy. Butler v. Lindsey, 293 S.C. 466, 471, 361 S.E.2d 621, 623 (Ct.App.1987); Jones v. Leagan, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct. App. 2009). This Court in the Order acknowledged that the Plaintiff claimed possession of the property “since 2008.” The Rule of Repose applies to the case at hand, in which, the Plaintiff contends that the Defendants’ claim is no longer valid since he possessed the land for more than 10 years. S.C. Ann. § 15-67-210. The accusation that the Plaintiff stopped his activities at the demand of public authorities occurred after the ten years had expired, therefore, his actions cannot be used against him regarding use of the land. The passage of ten years with open, notorious, continuous, hostile possession of said property is enough to state continuous and actual possession for a claim of adverse possession.

In 2008, Plaintiff Keating purchased a property on Battery Island Drive (TMS 3310500035). Shortly thereafter, the Plaintiff took possession of the disputed property from Battery Island Drive to the drainage ditch on the disputed property. The Plaintiff described in detail the portion of the applicable property in his Complaint and it is shown on Exhibit A of said Complaint. Additionally,

the Complaint denotes the abutting natural boundaries which include the ditch, dikes, and marsh in Exhibit A. The boundaries of the disputed property are easily identifiable. The Plaintiff clearly knew where the boundaries were but stated that a surveyor would be needed to confirm the measurements for a description to be written to place on the Master's Deed. He never had a question about the location of the boundaries, just did not know how to create a precise legal description. Entering land under color of title and possession of the property will be "constructively extended to the boundaries defined by his color of title, excepting in so far as the land so included is in the adverse possession of another." Weston v. Morgan, 162 S.C. 177, 209, 160 S.E. 436 (S.C. 1931) (citing McColman v. Wilkes, 3 Strob. 465, 51 Am. Dec. 637).

"However, the rule requiring continuity of possession does not mean the person in possession must be actually on the land during the whole of the statutory period. Mullis, 237 S.C. at 495, 118 S.E.2d at 65 . Actual possession, once taken, will continue, though the party taking such possession should not continue to rest with his foot upon the soil, until he be disseised, or until he [does] some act which amounts to a voluntary abandonment of the possession." Id. In determining whether continuity of possession is broken, the nature and location of the land should be considered and whether the use to which the land has been put comports with the usual management of such property." Jones v. Leagan, 681 S.E.2d 6, 384 S.C. 1 (S.C. App. 2009), 16 (citing Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61 (S.C. 1961)).

The Court noted that "Occasional and temporary use or occupation does not constitute adverse possession. Taylor v. Heirs of William Taylor, 419 S.C. 639, 651–52, 799 S.E.2d 919, 925 (Ct. App. 2017)." However, the Plaintiffs use was far more than occasional or temporary. The Plaintiff claimed that he improved the land by bringing in fill dirt to build up the land that he used for storage, that he removed abandoned vehicles, numerous piles of construction debris such as lumbar, sheetrock, shingles, bags and piles of household garbage, furniture, drug paraphernalia, barrels of used oil and diesel fuel, stumps and landscape debris, among other items. Additionally, the Plaintiff

drastically improved the road, installed silt fencing, and put up a gate in which he locked out all other parties. Plaintiff further stated that he used the property for recreation, storage, parking, and bonfires.

2. Open and Notorious

“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. Acts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy.” Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on notice that his land is being adversely possessed.” Taylor, 799 S.E.2d at 651. Plaintiff testified that shortly after 2008 he placed a chain and a locked gate on the property shortly after 2008 to prevent everyone in the world except him and those he gave permission to get on the property being claimed. This gate is visible from Battery Island Drive and would be obvious to anyone taking a remote interest in the property.

Plaintiff testified that he cleared trees on the property from Battery Island Drive to the dike shortly after acquiring the neighboring property. This evidence is furthered by the Defendants’ statement in Paragraph 12 of their Verified Answer to Plaintiff’s Complaint, Affirmative Defenses, Counterclaims and Third-Party Claims (“Counterclaims”), that the Plaintiff was depositing “large stumps, trees and branches” on the property (although the date given by the Defendants for this activity is 2019). The Defendants have not produced any evidence that the work was not being completed or completed prior to 2019. The Plaintiff testified to bringing in the dirt from the construction of the bridges to Folly Beach until the bridges were complete, in approximately 2014. Furthermore, the Plaintiff testified that he put several loads of wood on the newly graded road to be used later for campfires and to make sure that bikers and four wheelers who had not been there since 2011 would not return.

3. Exclusive possession

In the Order, this Court noted that “Claimant's 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 SC 487, 118 S.E.2d 61 (1961); Gregg v Moore, 226 SC 366, 85 S.E.2d 279 (1954); Lynch v. Lynch, 236 SC 612, 115 S.E.2d 301 (1960).” This Court determined that the Plaintiff did not meet the elements for exclusivity on the basis that other people intruded on the property. The Plaintiff testified that he expelled anyone who would enter the property including campers, people dumping debris, dirt bikers, those riding four wheelers, and hunters. Thus, the Plaintiff was acting as the true owner of the property. The Plaintiff does not know of any trespassers since 2010 which is a testament to 15 years of exclusivity. Furthermore, the Plaintiff stated that individuals would ask him for permission to use the property and he would decide if the individual was able to use the disputed property. The Plaintiff disclosed witnesses, other than his wife Macarena, who will corroborate these facts.

The Defendants did not trespass on the property in question until the Sheriff's Office told the Plaintiff that the family had a right of way and advised the Defendants on the Civil Process (and presumably also telling them that they could not be restricted from the property if they had a right of way) in January 2025. If the Defendants had not been given incorrect legal advice, they would not have been on that part of the property since the dike was built. On March 3, 2025, as listed in the Defendant's Counterclaim, the Plaintiff notified the Defendants that they were not allowed to trespass on the property belonging to the James Island Trust. By the time the Defendants entered the property, the Plaintiff had already fulfilled the statutory requirements for adverse possession. The Plaintiff possessed the property over 10 years exclusively before the Defendants ever tried to dispute the Plaintiff's possession of the property.

Further evidence of the lack of convenient physical access to a portion of the subject property is the Defendant's request from the Court for an "Easement by Necessity" across the Plaintiff's land to access the disputed property. Under Section 15-67-210, in actions "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 appears that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action."

4. Hostility and Claim of Right

The Plaintiff admitted that he did not have permission to use the land and knew that the disputed property belonged to the Defendants, and possessed and controlled the disputed property regardless. The Defendants stated that the Plaintiff never had permission to use the land. Seventeen years after the Plaintiff took possession of the disputed portion of property, two officers of the law came to the Plaintiff and told him to remove what was on the property. The Plaintiff told the officers the same thing that he did to the Defendants, that he would "rectify" the problem. Like the opposing attorney in the deposition, the law enforcement officers misinterpreted what the Plaintiff said. The Plaintiff testified in his deposition that he meant that he would file for adverse possession. The Plaintiff has not removed anything from the property and has brought in more material for the road which is physical proof of what the Plaintiff meant and his hostile claim of right as well as his possession being open and notorious. The law enforcement officials need to be cross examined in the presence of the Court for the Court to get a full picture of what was said with examination and cross examination.

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests this Honorable Court to reconsider the Order on Motion to Dismiss And/Or Summary Judgment in which Plaintiff's Complaint for Adverse Possession and quiet title to any portion of TMS 331-05-00-001 was dismissed and Striking Lis Pendens, 2025LP1000176 dated December 3, 2025 ("Order") and to conclude that the Plaintiff presented genuine issues of material fact reflecting the law outlined in this motion and there should be a full trial as the nuances of this matter cannot be fully explained without oral testimony.

S/Elizabeth Brisotti

Elizabeth Brisotti

CAROLINA LAW LADY, LLC

44 Markfield Drive, Suite B

Charleston, SC 29407

Tel: 843.405.2751

Email: elizabeth@lawladyhelp.com

Attorney for Plaintiff and Third-Party Defendants

December 12, 2025
Charleston, South Carolina