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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEE COUNTY  
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2010-CP-31-195

**RECEIVED**  
AUG 29 2012  
**SC Court of Appeals**

Cecil L. Josey, Jr., ..... Respondent,

v.

Stanley D. Josey, Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr., as Trustee of the Josey  
Family Trust, ..... Defendants,

Of Whom Stanley D. Josey is the ..... Appellant,

and of whom Courtney Gamble, Spencer  
Josey, Elizabeth Ann Geddings, Cecil L. Josey,  
Jr., as Trustee of the Josey Family Trust, are ..... Respondents.

**PETITION FOR WRIT OF SUPERSEDEAS**

This petition is filed pursuant to Rule 241 of the South Carolina Appellate Court Rules. This is an appeal in an action to partition a substantial amount of real and personal property in Lee County. In this petition, Stanley D. Josey requests that this Court issue a writ of supersedeas staying the lower court's distribution of one piece of real property and allowing him to have access to that property during this appeal.

## FACTUAL/PROCEDURAL BACKGROUND

This is an action to divide property that is jointly owned by several members of an extended family. Stanley Josey is the appellant. The other parties are Stanley's nieces and nephews and a trust of which those nieces and nephews are the beneficiaries. The name of that trust is the Josey Family Trust.

The parties are the joint owners of several pieces of real and personal property, but the property at the center of this controversy is a 32 acre tract of land with nine (9) storage buildings on it. Exhibit 9 from trial is a plat illustrating the boundaries of this property. The jointly owned property is designated with the label "Josey Family Trust and Stanley B. Josey." Exhibit 3 from trial is an appraisal of this property and contains a "plat map" that designates the 9 buildings by number. These exhibits are attached to this petition as **Attachment A.**

This particular parcel of land has been in the Josey family since the 1950's and is the base of the Josey family's farming operation. Among other things, the nine (9) storage buildings house various pieces of farm equipment as well as tools for maintaining that equipment. In the past, the parties operated the farming business as a joint enterprise. That joint enterprise dissolved around the same general time that this lawsuit began.

The Josey family also has an extensive history of working on vintage or "classic" automobiles. In addition to housing farm equipment, the nine (9) storage buildings contain several vintage automobiles and a large collection of automobile parts, tools, and machines.

These nine (9) buildings also contain various items that some of the parties own individually. For example, building #5 contains six classic automobiles owned solely by

Stanley. See **Attachment B** (a trial exhibit listing some of the individually owned property stored in these buildings).

A special referee presided over the trial, and his division of the jointly-owned property calls for this parcel of land to be deeded in its entirety to the beneficiaries of the Josey Family Trust. The referee awarded Stanley several specific items that are currently housed in the nine (9) buildings. These items include eight (8) classic cars, two trailers, one and a half a buildings' worth of "miscellaneous car parts," an air compressor, two milling machines, three lathes, an electric organ, "rollup" doors, and various other property.

The referee's order instructed Stanley to remove all of his property from the 32 acres within 180 days and at his own expense. The order also instructed Stanley to use a specific means of accessing his property, a dirt road known as the "Atkinson Road."

Stanley cannot move his property without expending a substantial amount of financial resources, and even if he could move the property, he has no ability to store the property. His affidavit is attached to this petition as **Attachment C**.

Stanley filed a motion asking the special referee to stay his order of partition, and the referee denied Stanley's request in an order dated March 15, 2012 and filed March 21, 2012. A certified copy of that order is attached to this petition as **Attachment D**.

Rule 241(d)(3) requires a party requesting a writ of supersedeas to attach a certified copy of the lower court's order and a copy of the notice of appeal with its proof of service. Those documents are **Attachment E**.

Stanley's initial brief is **Attachment F**. The opening sections of that brief describe more of the background for this appeal and attempt to do so in neutral terms.

## ARGUMENT

### I. **Superseding the Order of Distribution Is Necessary to Allow Stanley Josey Any Ability to Maintain and Use His Personal Property.**

The special referee's order is not stayed during this appeal. Under sections 18-9-160 and -170 of the South Carolina Code, judgments directing the delivery of real property or the execution of a conveyance are not stayed by an appeal. The same is true for judgments directing the delivery of personal property. See S.C. Code Ann. § 18-9-150 (Supp. 2011). Thus, in a normal partition case where one party was awarded land and another party was awarded an item of property on the land, both parties would be entitled to their respective awards pending an appeal. The order in this case honors this scheme by specifying that the only purpose for which Stanley may access the buildings at issue is to remove his property. See **Attachment D**.

Stanley has not removed his property from these buildings because of the expense involved, the fact that he has nowhere else to store the property, and because he believes this particular scheme of distribution is unfair. As Stanley put it at trial, "there's a fair way to divide that land back there so we both get expansion room[] [and] we both get buildings . . ." **Attachment F**, pp.15-16 (from Stanley's initial brief). Although Stanley is entitled to the immediate use and enjoyment of the items awarded to him in the distribution, the reality is that he cannot even take possession of the property because he cannot afford to move it from the only place it has ever been stored.

The property in the buildings also includes at least 6 other classic automobiles owned by Stanley individually. As Stanley's affidavit describes, some of these automobiles are

extremely valuable. See **Attachment C** (Stanley's affidavit). Here again, the reality is that Stanley cannot take possession of this property because he has no other means of storing it.

The parties are unfortunately unable to work together to resolve this issue. For example, although the parties were able to arrange for Stanley to take possession of the boat he has traditionally kept in one of the buildings on the property, Stanley's requests to return that boat to the storage building have gone unanswered. See **Attachment C** (Stanley's affidavit). Stanley's classic automobiles also require regular maintenance and service, and because he is being prevented from accessing those automobiles, he cannot perform that maintenance. The present circumstances are operating to absolutely bar Stanley from his property. He has no present ability to use his property, maintain his property, verify the security of his property, and verify that his property is not deteriorating.

## **II. The Court Should Not Condition Supersedeas on Filing a Bond.**

Rule 241(c)(3) instructs that the court can condition a grant of supersedeas on terms to include the filing of a bond. A similar requirement appears in the statute that relates to judgments directing the delivery of personal property. See § 18-9-150.

Stanley is not asking this Court to supersede the referee's distribution of personal property. For that reason, the bond provision of section 18-9-150 should not apply.

The only guiding principle contained in Rule 241(c)'s description of a bond is that the terms of the supersedeas shall be whatever terms the court "may deem appropriate."

In the circumstances of this case, the most appropriate approach would be to abstain from conditioning the writ on the filing of a bond. The parties have owned property together for a number of years and the personal property housed in the storage buildings has been in

those buildings for an extended period of time. Although the beneficiaries of the Josey Family Trust are entitled to seek division of the property they jointly own with Stanley and to have that division enforced, the reality of the referee's order is that it cannot be immediately enforced without causing injury to Stanley. Stanley is asking only that the court require the parties to maintain the status quo during the pendency of this appeal. In the circumstances of this case, that is the most equitable approach.

**III. If the Court Supercedes the Referee's Order, the Court May Need to Specify the Route of Stanley's Access to the Property.**

As the plat included in trial exhibit 3 illustrates, several of the storage buildings are located toward the back of this parcel of property, away from the paved road. See **Attachment A**, p.4. The parties have traditionally used two routes to access this portion of the property. One is the asphalt driveway shown on the plat. The other is a dirt road located partially on the parties' jointly-owned land and partially on their neighbor's land. The special referee's order of distribution instructs Stanley to utilize this dirt road to the extent possible. **Attachment E**, p.6.

Specifying this means of accessing the property may have been an attempt to minimize contact between the parties. The asphalt driveway passes closely by the current home of Cecil L. Josey, Jr., the plaintiff in this case and the trustee of the Josey Family Trust. But the fact remains that the Atkinson Road is not located entirely on the Josey family's property. The plaintiff described this at trial, explaining that the front half of the Atkinson road was on the Josey family's property and the back half was located on Mrs. Atkinson's property. **Attachment G** (portions of the trial transcript).

Stanley has no philosophical objection to using this road to access his property. For years, this road has been the primary route used by the Josey family to move farm equipment to the back of their property. However, nothing in the record indicates that Stanley has a right to cross Mrs. Atkinson's land or that a court has the right to order him to cross Mrs. Atkinson's land. Stanley's trial testimony indicated that the asphalt driveway was once a gravel road, and that the Josey family paved the driveway once they acquired antique cars that were of such quality that driving over a gravel road was undesirable. **Attachment G.** There is no principled reason why Stanley should be barred from continuing such use during the pendency of this appeal.

#### CONCLUSION

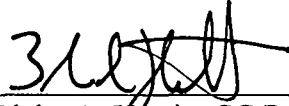
This motion is driven by the fact that Stanley Josey is effectively being prevented from exercising any control over all of the personal property he was awarded in this partition action, as well as a substantial amount of his individually owned property that has been stored on this parcel of land for years. Stanley cannot afford to move this property, and it would be nonsensical to force him to move it during this appeal because if the appeal is successful, he may not have to move his property at all.

This partition action is complicated by several factors including the amount of the property involved and the fact that the parties have had substantial disagreements in the past, but Stanley respectfully submits that it is inequitable to completely bar him from accessing and maintaining his property while this appeal is pending. He therefore requests that this Court issue a writ superseding the special referee's distribution of the 32 acres and nine (9) buildings to the beneficiaries of the Josey Family Trust, and that the Court specify the

conditions for Stanley's access to that property during the pendency of this appeal. The affidavit attached to this petition describes his proposal for access in more detail.

August 17, 2012

Respectfully submitted,



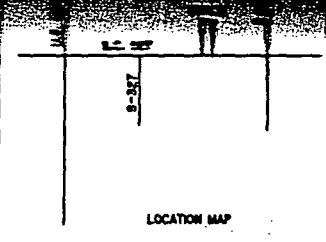
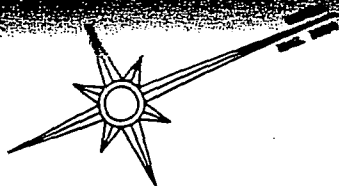
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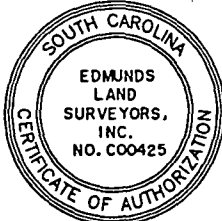
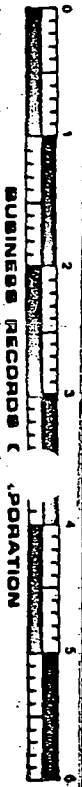
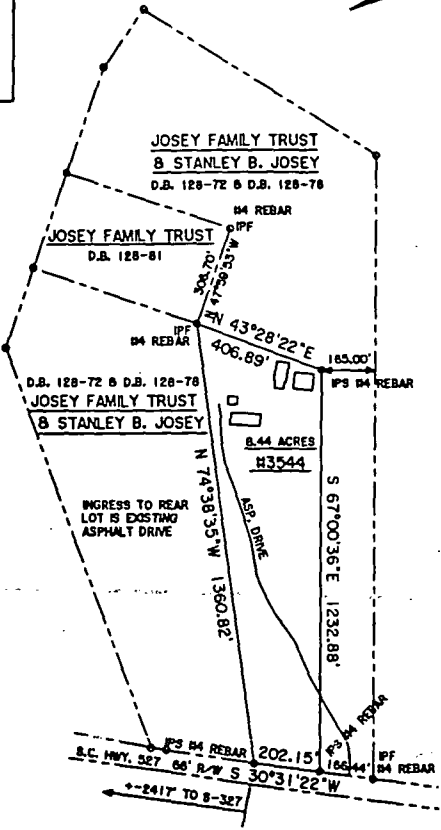
Attorneys for Appellant

A

PLAINTIFF'S  
EXHIBIT  
9 427-11

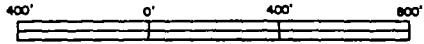


Certified as a True Copy  
*James L. Davis*  
Clerk, Court of Common Pleas  
and General Sessions, Lee  
County, South Carolina



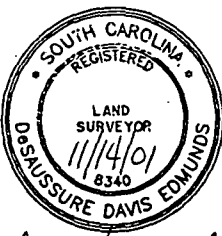
Approved by  
Lee County Planning Commission  
*11-21-01*  
*Karen Smith*

000002570 Bk: I-1 Pg: 11  
11/21/2001 04:15:44PM  
James L. Davis, Clerk of Court  
Lee County, SC  
REC 26615.00



SOUTH CAROLINA

LEE COUNTY



THIS IS A PLAT OF SURVEY OF AN 8.44 ACRES TRACT CUT FROM THAT 41.42 ACRES TRACT SHOWN ON A PLAT BY ME DATED JANUARY 28, 1994. THIS PLAT WAS REQUESTED BY:  
  
CECIL L. JOSEY, JR.

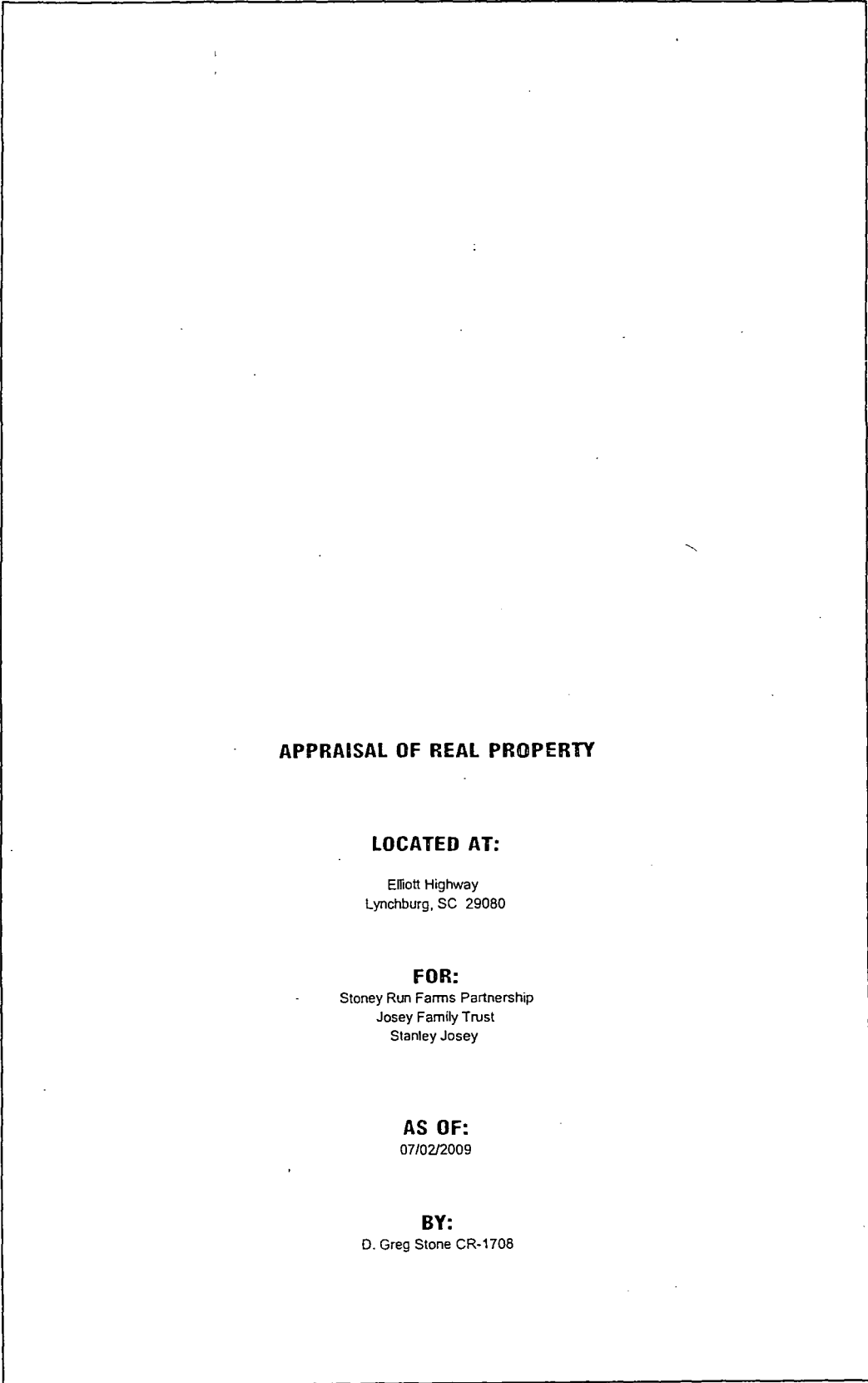
EDMUNDS LAND SURVEYORS, INC.  
P.O. BOX 905  
SUMTER, S.C. 29151  
PH: 803-773-1030

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. MY OPINION IS F. I. A. MAPS INDICATE THIS PROPERTY TO BE N/A A 100 YEAR FLOOD HAZARD AREA PER PANEL NO. DATED

*D. S. Sasure Davis*

1" = 400' SCALE	66-69 (PART) TAX MAP	NOVEMBER 14, 2001 DATE	D/C BY	01152 FILE
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many -- 8



**APPRAISAL OF REAL PROPERTY**

**LOCATED AT:**

Elliott Highway  
Lynchburg, SC 29080

**FOR:**

Stoney Run Farms Partnership  
Josey Family Trust  
Stanley Josey

**AS OF:**

07/02/2009

**BY:**

D. Greg Stone CR-1708

PLAINTIFF'S  
EXHIBIT  
3 4-27-11

**Supplemental Addendum**

File No.

Borrower/Client JOSEY			
Property Address Elliott Highway			
City Lynchburg	County Lee	State SC	Zip Code 29080
Lender N/A			

August 07, 2009

Mr. Rainey Josey  
3542 Elliott Highway  
Lynchburg, SC 29080

RE: Restricted Use Appraisal Report - Several Farm Buildings/Cabin

Dear Mr. Josey,

In accordance with your request, I have inspected, investigated, analyzed, and appraised those properties identified in this report located on Elliott Highway, Lynchburg, Lee County, SC. Subject properties are barns, sheds, workshops and a cabin. Property currently titled in name of Cecil L. Josey Sr(life estate). These improvements are located on tax map 066-00-00-069.

This letter serves as a Restricted Use Appraisal Report of the subject as of the appraisal date, July 02, 2009. I understand this appraisal report will be used to determine the value of the above referenced property for use in the division of the improvements. I have physically inspected the subject improvements and have investigated all factors influencing value. Value of improvements only no value assigned site.

This appraisal complies with the minimum appraisal reporting requirements of the USPAP of the Appraisal Foundation. As this appraisal is a Restricted Use Appraisal Report, this appraisal may not be fully understood without additional information retained in my files. This report has been prepared for your exclusive use in decisions related to the possible division of the property and is not intended to be used for mortgage lending purposes. The intended user is the client named in this report. The highest and best use of the these improvements is for continued use as sheds, workshops, and cabin.

Value of improvements is based on replacement cost minus depreciation. Appraiser has assigned a value for each improvement. This is based on my inspections, investigations and analysis and conclude an estimate of the unencumbered fee simple interest of the subject improvements as of the appraisal date, July 02, 2009 in 'AS IS' condition as follows:

1 - 40 x 80 Shed/Enclosure Wood sided with a tin roof	\$3,000
2 - 26 x 41 Covered shed with a tin roof	\$500
3 - 36 x 41 Enclosed with a shed	\$2,000
4 - 27 x 60 Workshop, concrete floor & aluminum roof	\$5,000
5 - 21 x 101 Car storage 10 door metal frame	\$7,500
6 - 40 x 60 Workshop Steel frame	\$12,000
7 - 32 x 90 Enclosed with rear shed CCB/Wood	\$10,000
8 - 36 x 60 Hoover building	\$6,000
9 - Two story cabin 2150+-square feet	\$15,000

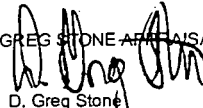
Subject site contains 32.98 acres and located on tax map 066-00-00-069 as noted on Lee County tax assessors maps. Subject site is valued as if vacant. Also the large ponds have been assigned no value for purposes of the report.

Value of subject site is based on sales of similar properties located in subjects area. This is based on my inspections, investigations and analysis and conclude an estimate of the unencumbered fee simple interest of the subject site as of the appraisal date, July 02, 2009 in 'AS IS' condition as follows:

TWO THOUSAND DOLLARS PER ACRE  
(\$2,000)

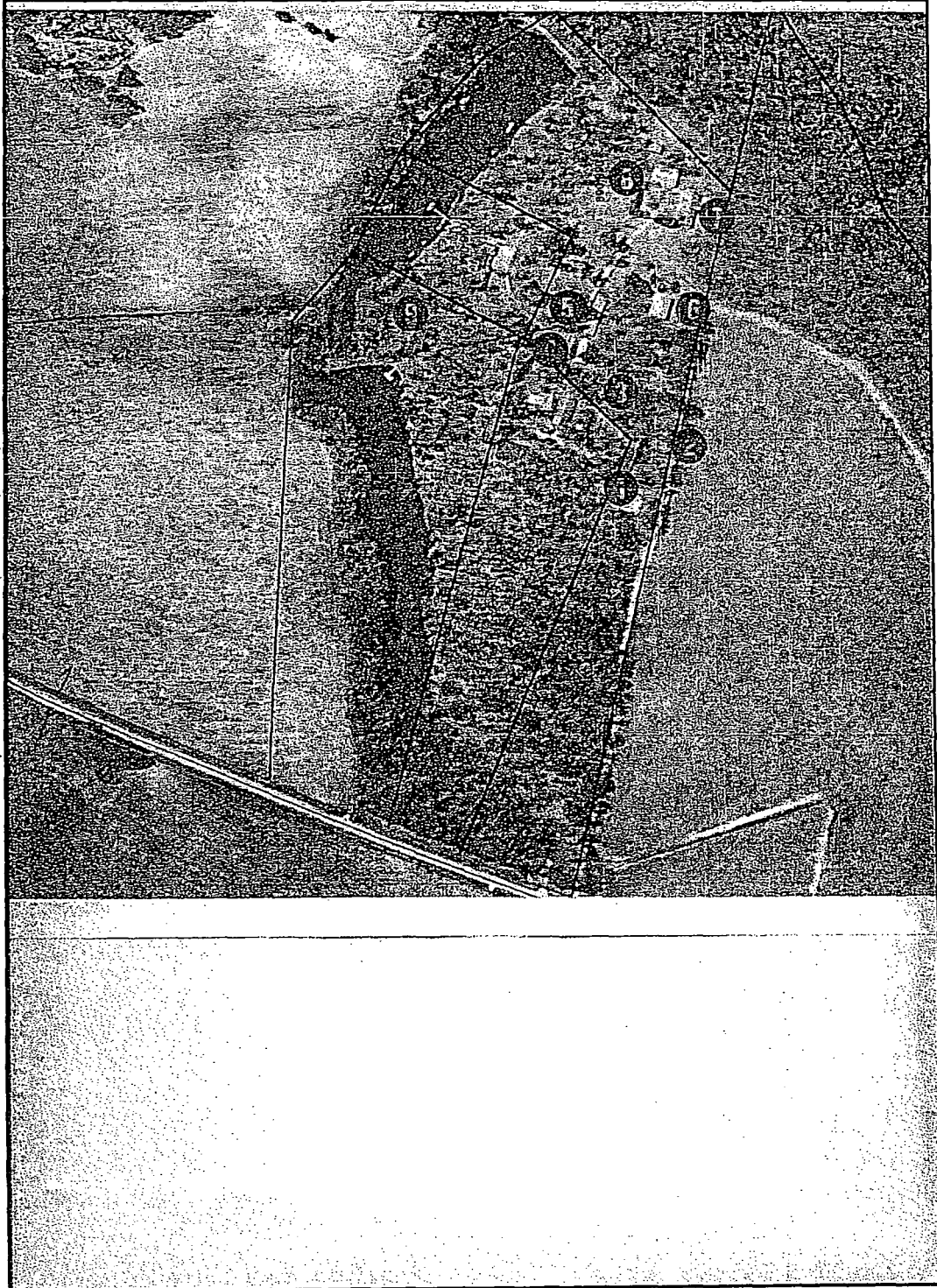
Sincerely,

GREG STONE APPRAISAL COMPANY

  
D. Greg Stone  
Inspecting Appraiser  
SC Certified Residential  
Real Estate Appraiser CR-1708

# Site Map

Borrower/Client JOSEY			
Property Address Elliott Highway			
City Lynchburg	County Lee	State SC	Zip Code 29080
Lender N/A			





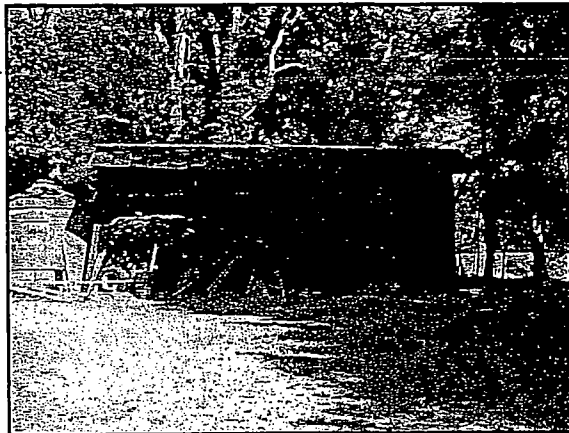
### Subject Photo Page

Borrower/Client JOSEY				
Property Address Elliott Highway				
City Lynchburg	County Lee	State SC	Zip Code 29080	
Lender N/A				



1

Elliott Highway  
Sales Price  
Gross Living Area  
Total Rooms  
Total Bedrooms  
Total Bathrooms  
Location  
View  
Site  
Quality  
Age



2



3

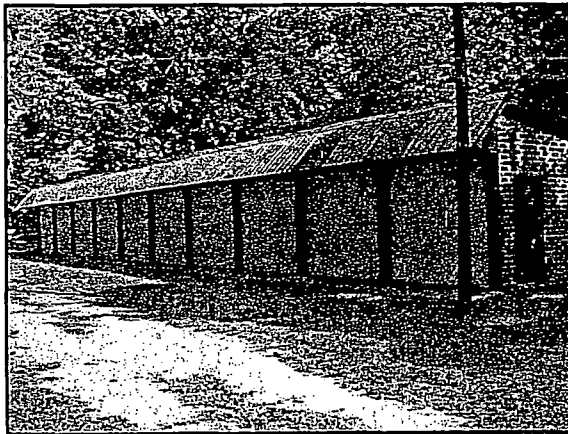
Subject Photo Page

Borrower/Client JOSEY				
Property Address Elliott Highway				
City Lynchburg	County Lee	State SC	Zip Code 29080	
Lender N/A				

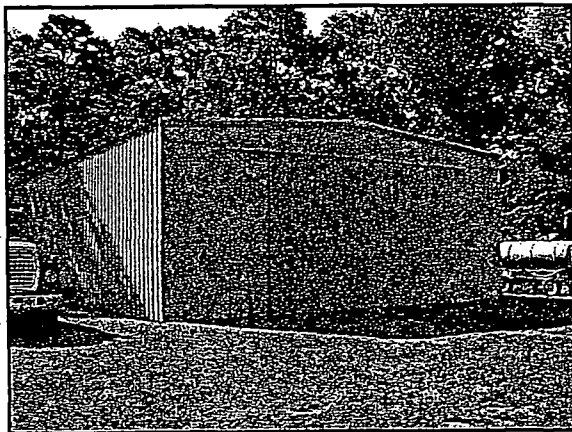


4

Elliott Highway  
Sales Price  
Gross Living Area  
Total Rooms  
Total Bedrooms  
Total Bathrooms  
Location  
View  
Site  
Quality  
Age



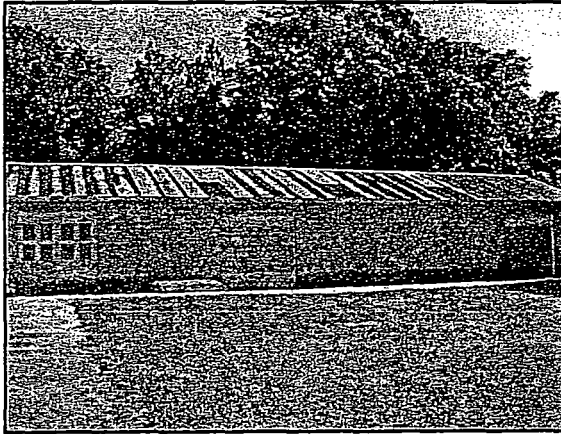
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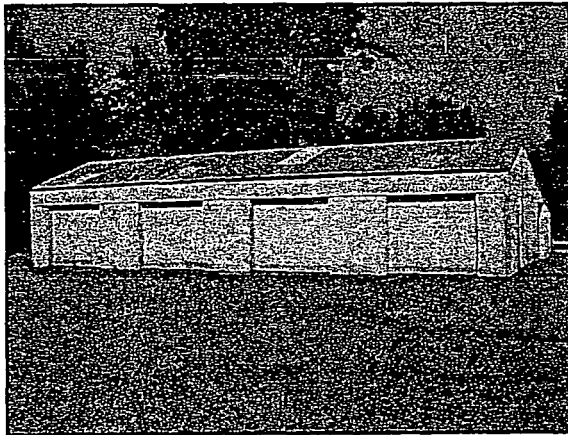
### Subject Photo Page

Borrower/Client JOSEY				
Property Address Elliott Highway				
City Lynchburg	County Lee	State SC	Zip Code 29080	
Lender N/A				



7

Elliott Highway  
Sales Price  
Gross Living Area  
Total Rooms  
Total Bedrooms  
Total Bathrooms  
Location  
View  
Site  
Quality  
Age



8



9

B

Building 1:	Rainey Josey:	Item 1	Reddick Nitrogen Appl
		Item 2	Reddick Sprayer
Building 2:	Rainey Josey:	Item 1	Case IH Drill / Reddick ditcher
		Item 2	JD Corn header
		Item 3	Scout boat
		Item 4	JD 997 lawnmower
		Item 5	Fuel tank (green)
		Item 6	Fuel tank trailer (red)
		Item 7	JD tractor 7410
		Item 8	JD MX7 Bush hog
Building 3:	All 50/50		
Building 4:	All 50/50		
Building 5:	Stan Josey:	Item 1	Jaguar E-type grey
		Item 2	Jaguar E-type blue
		Item 3	Winton
		Item 4	Morman
		Item 5	Overland
		Item 6	Model T
	Elizabeth Ann G:	Item 7	Paige Detroit
	Courtney Gamble:	Item 8	Franklin
	Rainey Josey:	Item 9	Willys Knight
		Item 10	Roamer
Building 6:	Stan Josey:	Item 1	Boat
	Rainey Josey:	Item 2	JD tractor 7810
		Item 3	JD Planters
		Item 4	Tools/welder/air comp/parts/farm supplies
Building 7:	Spencer Josey:	Item 1	Pierce Arrow
		Item 2	Hupmobile
		Item 3	Model T
		Item 4	(3) Surveillance cameras
	Stan Josey:	Item 5	4 Wheeler
		Item 6	Model T
		Item 7	Misc wood on 50/50 owned trailer
Building 8:	Courtney Gamble:	Item 1	Model T
		Item 2	Studebaker
	Elizabeth Ann G:	Item 3	MG Replica
		Item 4	Model T
	Rainey Josey:	Item 5	Model T
	Stan Josey:	Item 6	Chalmers
Building 9:	Rainey Josey:	Item 1	2 Window unit A/C
		Item 2	1 Bunk bed
		Item 3	Double bed
		Item 4	Skeet thrower
		Item 5	Pool table & balls/ques
		Item 6	TV
		Item 7	Fire wood rack
	Spencer Josey:	Item 8	Electronics / radio / speaker / cd player
		Item 9	Gun cabinet
	Courtney Gamble:	Item 10	Butcher block
		Item 11	Microwave
	Elizabeth Ann G:	Item 12	Pinball machine
	Stan Josey:	Item 13	Fishing rods
		Item 14	Deer mounts / skin / antlers on wall



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Cecil L. Josey, Jr., )  
)  
Respondent, )  
)  
v. )  
)  
Stanley D. Josey, Courtney Gamble, )  
Spencer Josey, Elizabeth Ann )  
Geddings, and Cecil L. Josey, Jr., )  
as Trustee of the Josey Family Trust, )  
)  
Defendants, )  
)  
Of whom Stanley D. Josey is the, )  
)  
Appellant, )  
)  
and Courtney Gamble, Spencer Josey, )  
Elizabeth Ann Geddings, and )  
Cecil L. Josey, Jr., as Trustee of )  
the Josey Family Trust are, )  
)  
Respondents. )  
\_\_\_\_\_ )

**AFFIDAVIT OF STANLEY D. JOSEY**

Stanley D. Josey personally appeared, was duly sworn, and says the following:

1. I am over the age of eighteen, and I am not suffering under any temporary or permanent disability or incapacity that would prevent me from swearing to the truth of the statements in this affidavit.
2. I am the appellant in this appeal.
3. The 32 acres of land at issue in this appeal has been in my family since the 1950's. My father purchased the land when I was a boy and we moved on the property when I was about six (6) years old. My mother died when I was a teenager, my father died in 1998, and my brother died 2001.

4. In the years since my father purchased this property, my family accumulated a sizeable amount of farm equipment, tools, automobiles, automobile parts, and machines that have always been stored in buildings that we constructed on the property. Some of these automobiles, tools, and pieces of equipment are owned jointly by me and the other members of my family. Other items of property are owned by me or other members of my family individually. The jointly owned property is at issue in this partition case.

5. I conservatively estimate that I have roughly \$400,000.00 worth of property currently stored in the buildings. Two of my classic automobiles have been designated as First National Winners by the Antique Automobile Club of America. I estimate my most valuable automobile to be worth approximately \$150,000.00, however, it is difficult to value antique automobiles. We believe some of the cars stored in the buildings may be one of a kind.

6. My family constructed the storage buildings and sheds for the specific purpose of housing and maintaining these tools, machines, automobiles, and this equipment. Some of these buildings are insulated because insulated storage is important for maintaining the condition of certain pieces of property like antique automobiles.

7. Although I respect the fact that the special referee ordered me to remove my property from the 32 acres and nine (9) buildings, I have not removed any property because of the expense involved in such a move and because I have no other means of storing this property. I do not have the present ability to store multiple classic automobiles, large pieces of farm equipment, milling machines and lathes, an electric organ, a fishing boat, and several of the other pieces of property that I have traditionally kept in these storage buildings. This property consists of items awarded to me in this lawsuit as well as items owned individually by me. Pictures of a few pieces of this property are attached to this affidavit.

8. It is important for me to be able to access my property during the pendency of this appeal because some of my property requires preventative maintenance. Classic automobiles require consistent maintenance. To take one example, it is important to maintain the proper air pressure in the tires on a classic automobile, even when that automobile is parked. The tires on a classic automobile are costly and when the air pressure in those tires is inadequate, the tire suffers structural damage. These tires are small diameter tires and require high pressure. A drop of only a few pounds in pressure causes the sidewall to buckle from the weight of the car and the beading in the tire to separate. At a minimum, maintaining the proper pressure in the tires requires weekly attention. Some of these cars also have valuable metal components made of German silver, nickel, brass, and copper, and the interiors of some of the cars contain high-quality leather. Maintaining the integrity of these materials also requires weekly attention, and I have traditionally performed this maintenance myself.

9. It is also important for me to be able to store equipment in the buildings and sheds during this appeal, and to be able to retrieve and use that equipment during reasonable hours. My wife and I operate a 1,500 acre farm, and all of our heavy equipment has traditionally been stored in the buildings and sheds on this property. This heavy equipment includes our tractor, our Bush Hog, our backhoe, and various pieces of seed planting equipment. Because I am unable to access the 32 acre property for the purpose of storing equipment, my tractor and backhoe are currently parked outside at my farm and exposed to the weather.

10. I have not been on the 32 acres or in the nine (9) buildings since November of 2011, which was during a visit to the property arranged by my attorney. Additional requests to inspect my property have gone unanswered. I was only able to acquire my boat for use by agreeing to allow my nephew, who is the plaintiff in this suit, to leave the boat on our neighbor's

property for me to retrieve. My requests to return the boat to the storage building have also gone unanswered. The aluminum on the boat is now suffering damage because although I have the ability to place a cover over the boat, failure to store the boat in a building allows the aluminum to oxidize and deteriorate.

11. I estimate that I need 30 hours of access to this property per week in order to maintain the property I have stored there. I also need the ability to continue to store farm equipment in the buildings and sheds on the property, and to retrieve and return that equipment at reasonable hours, for example, between 7 a.m. and 7 p.m.

12. I will strictly abide by whatever terms of access are specified by the Court. In this affidavit, I have endeavored to request only the access which I believe is reasonably necessary to maintain the property I have described.

Further Affiant sayeth not.

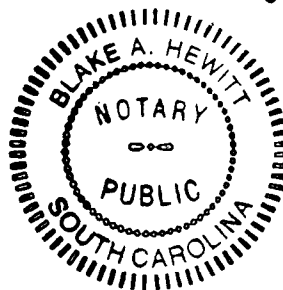
SWORN TO AND SUBSCRIBED

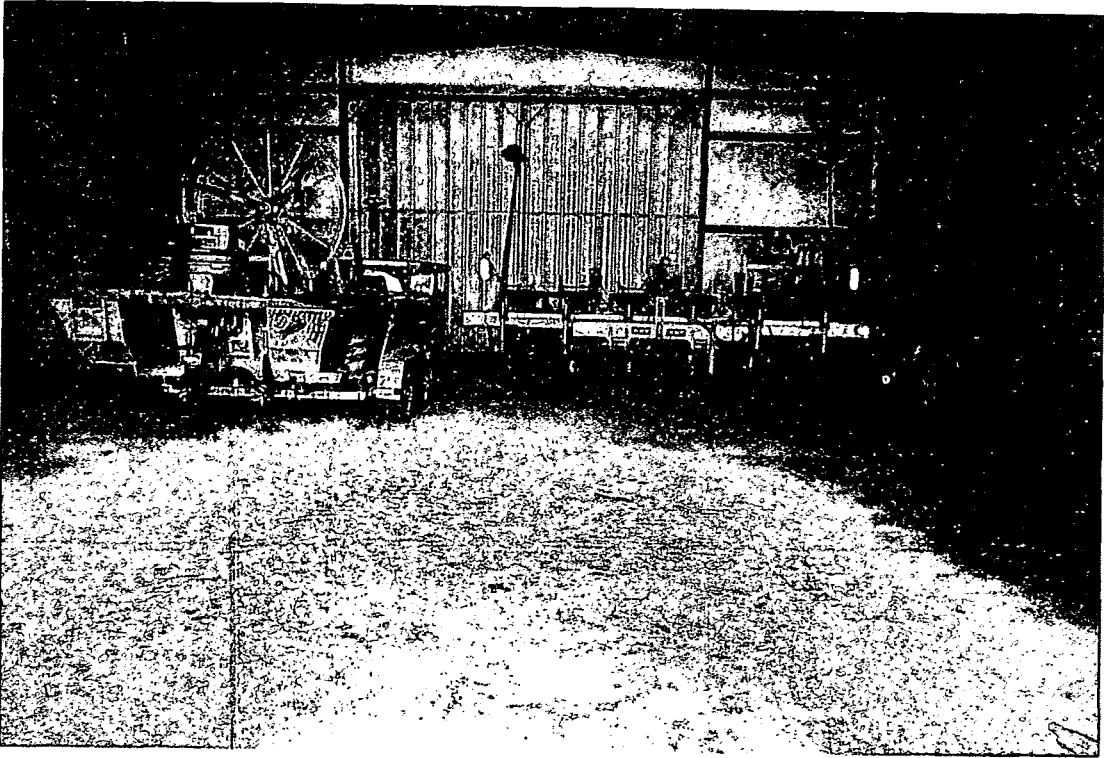
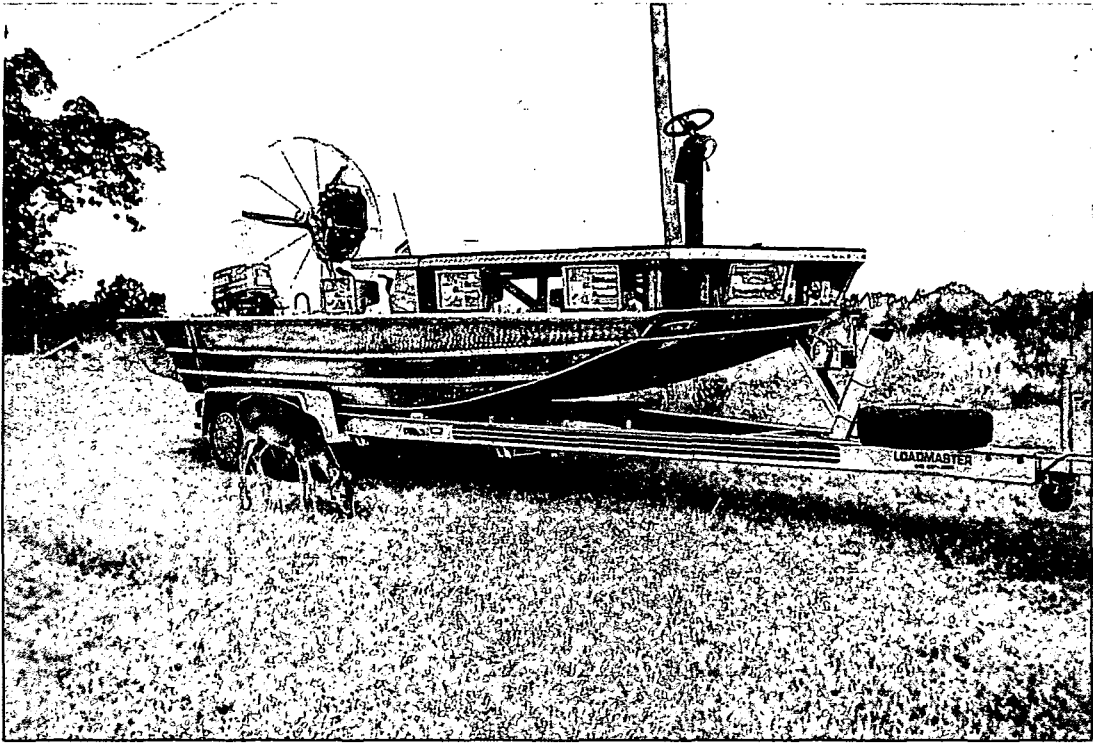
before me this 17<sup>th</sup> day  
of AUGUST, 2012

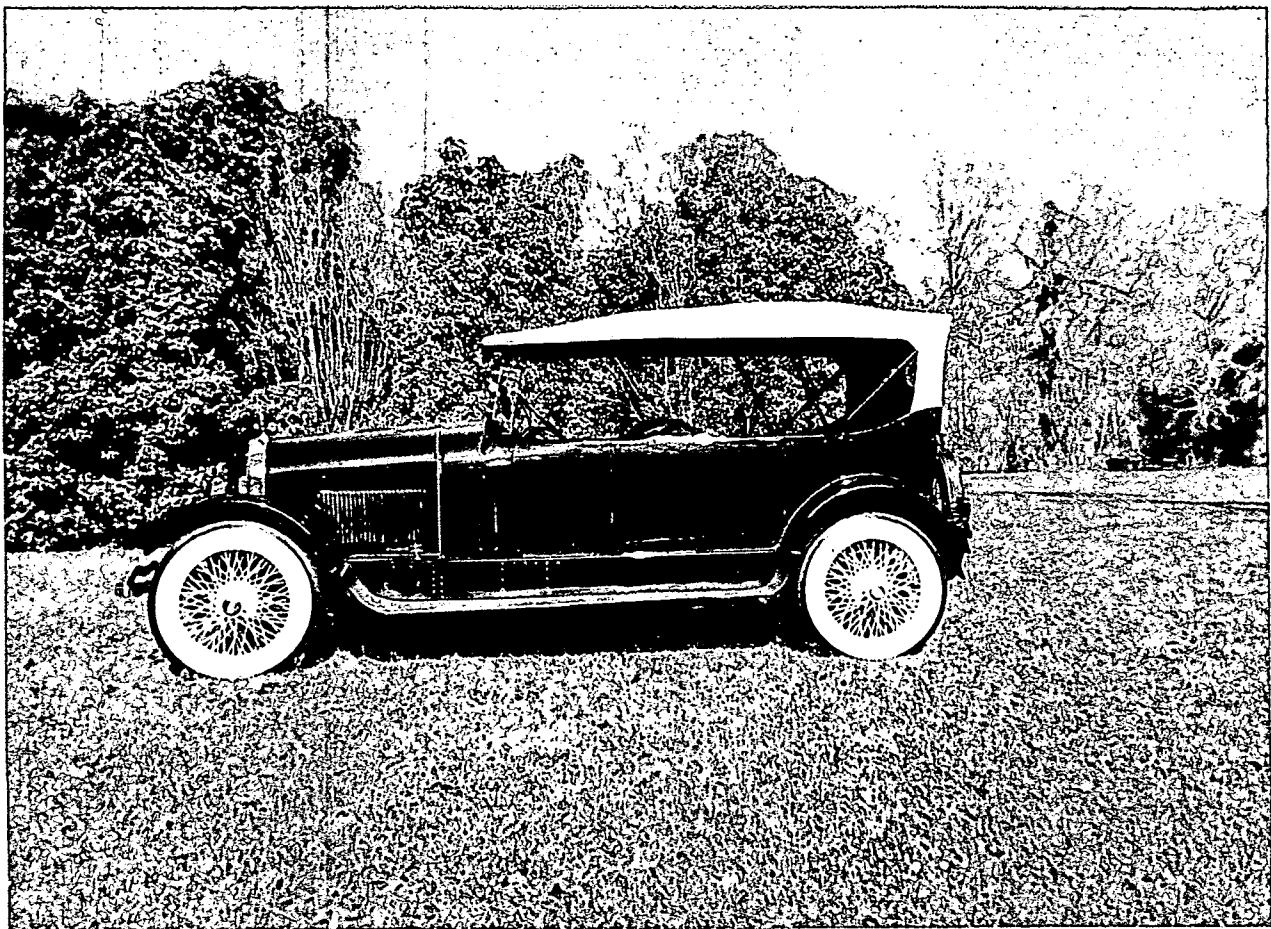
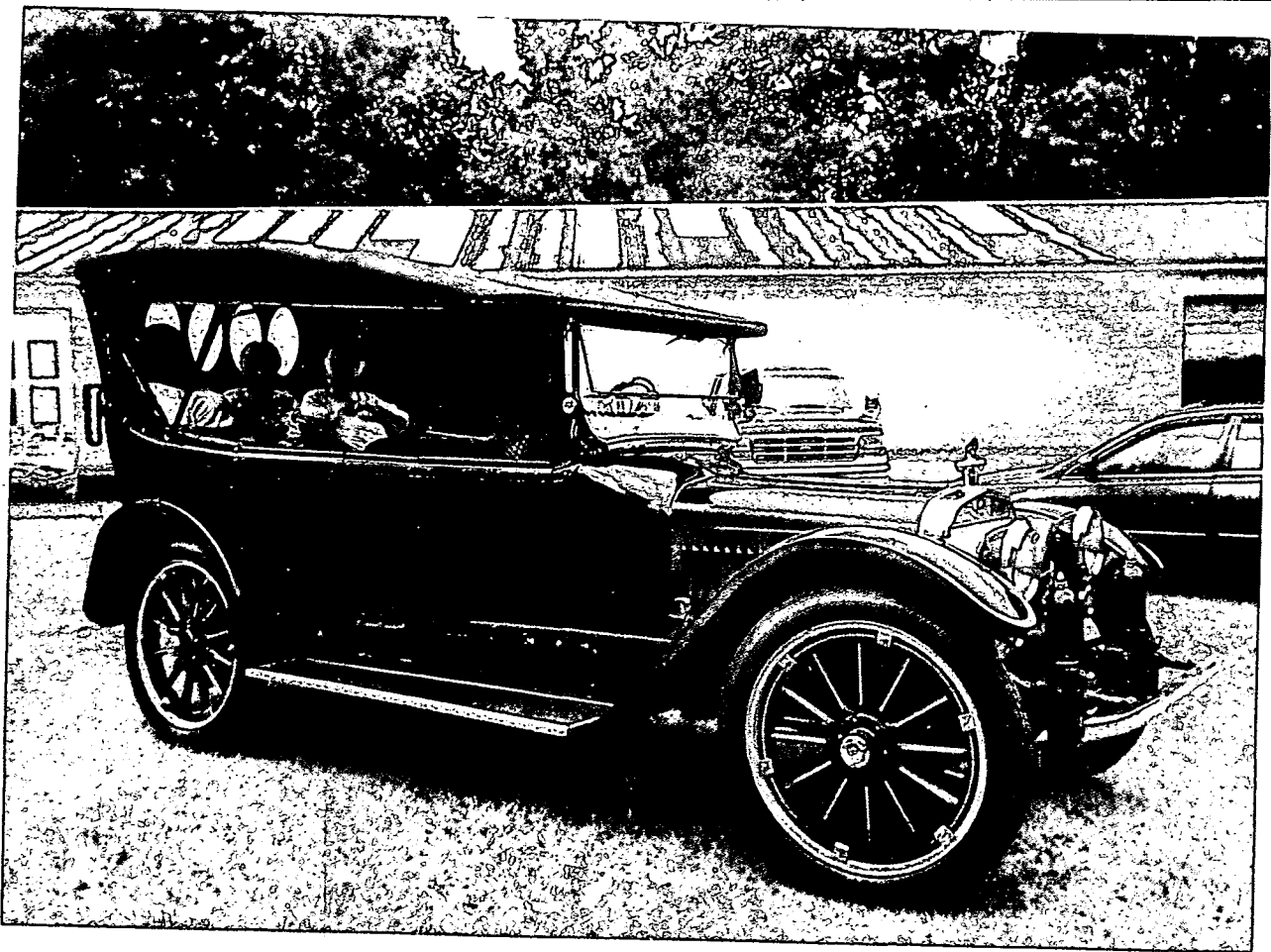
Blake A. Hewitt  
Notary Public

My Commission Expires: 25 August 2015

Stanley D. Josey  
Stanley D. Josey









STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEE ) Case No. 2010-CP-31-195

Cecil L. Josey, Jr., )  
 ) Plaintiffs, )  
 )  
 ) versus )  
 )  
Stanley D. Josey, Courtney Gamble, )  
Spencer Josey, Elizabeth Ann )  
Geddings, Cecil L. Josey, Jr. as )  
Trustee of the Josey Family Trust, )  
 )  
 ) Defendants. )  
 )

ORDER



JUDGE: HONORABLE W. HAIGH PORTER  
DATE OF HEARING: OCTOBER 10, 2011  
ATTORNEY FOR PLAINTIFF: S. BRYAN DOBY  
ATTY FOR DEFENDANT, STANLEY JOSEY: PATRICK M. KILLEN  
ATTY FOR GAMBLE, JOSEY, GEDDINGS & JOSEY FAMILY TRUST: DANIEL W. STACY, JR.  
COURT REPORTER: DORIS TOMPKINS BROWN

This matter is pending before the Court based on two motions. The first motion is filed by the Defendant, Stanley D. Josey whereby he requests this Court to stay the Order of July 5, 2011 and Amended Order of August 5, 2011 pending any appeal in this matter, as a Notice of Intent to Appeal has been filed by this Defendant, Stanley D. Josey.

Mr. Doby, on behalf of the Plaintiff, Cecil L. Josey, Jr., filed a Motion concerning the ability of the Defendant, Stanley D. Josey to enter on the 32 acres property, which is subject to this partition action.

Certified as a True Copy

*James I. Davis*  
Clerk, Court of Common Pleas  
and General Sessions, Lee  
County, South Carolina

Initially the Court finds that it has jurisdiction to decide these motions under Rule 205 and Rule 241, SCACR. The Court also notes that all parties in this matter agreed at the beginning of the hearing that the Court has jurisdiction over these Motions. The Court, therefore, finds that it has subject matter jurisdiction to hear these matters.


As to the Defendant, Stanley D. Josey's Motion for a stay of the Court's orders of July 5, 2011 and August 5, 2011, the Court denies this Motion and declines to grant a stay of the Orders pending any appeal. The Court provided for Mr. Stanley D. Josey to remove certain personal property that he owned from the property subject to this partition action and provided for certain time limits. The Court also provided an extensive list of the problems and friction between Stanley Josey and the remaining parties. The Court does not believe that a stay of orders issued on July 5, 2011 and August 5, 2011 is appropriate and declines to grant such a stay.

As to the request by the Plaintiff, Cecil L. Josey, Jr., to further restrict access by Defendant, Stanley D. Josey, to the 32 acre tract of land subject to this partition action, the Court would deny such motion. The intent of the wording on pages 5 and 6 of the Orders is clear. Stanley Josey is to have the right to remove items of personal property as designated at specific times and restrictions as set forth on page 6 of the

orders dated July 5, 2011 and August 5, 2011. The only purpose for this Defendant, Stanley D. Josey, to enter upon the 32 acres was for the removal of personal property awarded to him. His access to this property awarded to the remaining parties should be limited to such removal of personal property.

Therefore, the Motion of Defendant, Stanley D. Josey, seeking a stay of Orders of July 5, 2011 and August 5, 2011 is denied. The Motion of Plaintiff, Cecil L. Josey, Jr., seeking modification of Orders dated July 5, 2011 and August 5, 2011 is denied with the clarification that intent of the Order was for Mr. Stanley Josey to have the right to remove items of personal property as designated at specific times and the only purpose for him going on the 32 acres subject to this partition suit was for the removal of his personal property awarded to him pursuant to the above referenced Orders.

AND IT IS SO ORDERED.



---

HAIGH PORTER, SPECIAL REFEREE

*March 15*, 2012  
Florence, SC

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEE COUNTY  
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2010-CP-31-195

Stanley D. Josey. . . . . Appellant,

v.

Cecil L. Josey, Courtney Gamble, Spencer Josey, Elizabeth Ann Geddings, Cecil L. Josey, Jr., as Trustee of the Josey Family Trust. . . Respondents.

NOTICE OF APPEAL

Stanley D. Josey appeals the Amended Order dated August 9, 2011 Appellant received written notice of entry of this order on August 15, 2011.

DATED: 8/16/11

*Patrick M Killen*

Patrick M. Killen  
28 North Main Street  
Sumter, South Carolina 29150  
(803) 774-5026  
Attorney for Appellant

RECEIVED  
AUG 18 2011  
SC Court of Appeals

RECEIVED  
AUG 18 2011  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEE COUNTY  
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2010-CP-31-195

RECEIVED  
AUG 18 2011  
SC COURT OF APPEALS

Stanley D. Josey. . . . . Appellant,

v.

Cecil L. Josey, Courtney Gamble, Spencer Josey, Elizabeth Ann Geddings, Cecil L.  
Josey, Jr., as Trustee of the Josey Family Trust. . . . Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all Defendants by depositing copies of it in the United States Mail, postage prepaid, on August 16, 2011, addressed to their attorneys of record, S. Bryan Doby, Post Office Box 106, Bishopville, South Carolina 29010 and Daniel W. Stacy, Jr., 90 Wall Street, Unit B, Pawleys Island, SC 29585.

DATED: 8/16/11



Patrick M. Killen  
28 North Main Street  
Sumter, South Carolina 29150  
(803) 744-5026  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEE )

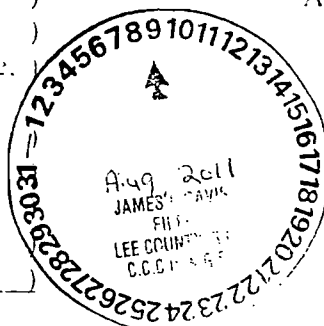
IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2010-CP-31-195

Cecil L. Josey, Jr. )  
 )  
Plaintiff. )

vs. )

AMENDED ORDER

Stanley D. Josey, Courtney Gamble,  
Spencer Josey, Elizabeth Ann  
Geddings, Cecil L. Josey, Jr., as  
Trustee of the Josey Family Trust,  
Defendants.



Certified as a True Copy  
*James H. James, III*  
Clerk of Common Pleas  
Lee County, South Carolina

This matter was referred to me as Special Referee pursuant to an Order of Reference filed with the Clerk of Court for Lee County.

A hearing on the merits was held on April 26, 2011. The Plaintiff was present with his attorney, S. Byran Doby. The Defendant, Stanley D. Josey was present with his attorney, Patrick M. Killen. The remaining Defendants were present with their attorney Daniel W. Stacy, Jr. It is noted that these Defendants are the siblings of the Plaintiff. The Defendant, Stanley D. Josey, is the uncle of the Plaintiff and remaining Defendants.

An Order was issued by me on July 5, 2011 and filed with the Office of the Clerk of Court for Lee County on July 7, 2011. By and through his attorney the defendant Stanley D. Josey filed a Motion for New Trial pursuant to Rule 59, SCRPC or, in the alternative, Motion for Reconsideration of Order with an Addendum to the Motion submitted on July 19, 2011. A hearing was held on the Motions on Tuesday, August 2, 2011. The original Order of July 5<sup>th</sup> is hereby amended and or modified as set forth hereinbelow

FACTS

The late C. W. Josey, Jr., a/k/a C. Wofford Josey, hereinafter "Wofford", died in November 1998. Prior to his death he accumulated holdings of farm land, commercial real estate and personal property. From the testimony, one can conclude that he was not only a successful farmer and businessman but also a talented restorer of vintage automobiles.

Wofford had two sons, Cecil L. Josey, hereinafter "Cecil", and Stanley D. Josey, hereinafter "Stanley".

*JS*

From the testimony, one can conclude that Cecil, like his father, was successful as a farmer, businessman, and was known as a restorer of vintage vehicles.

Stanley worked with the Honda Corporation Motorcycle division for a few years and worked for his father and later his brother, Cecil. He stated that he "retired" upon the death of Cecil, but liked to work on old furniture.

After the death of Wofford, Cecil conveyed his interest in the subject assets, set out herein below, to the Josey Family Trust, hereinafter "Trust". The beneficiaries of the Trust being Cecil L. Josey, Jr., Courtney Gamble, Spencer Josey, and Elizabeth Ann Geddings, all being Cecil's children. Later the Trust conveyed a 1% interest to each of the four (4) beneficiaries.

There is no dispute as to the ownership being Fifty (50%) in Stanley, Forty-six (46%) in the Trust, and the remaining Four (4%) percent with the children of Cecil.

The property, real and personal, subject to this action consists of the following:

1. Note and Mortgage due Josey Marital Trust with outstanding principal and accumulated payments:
2. Britton Farm 30 acres more or less  
(Plaintiff's Exhibit 1 - appraisal)
3. Fertilizer Plant 4.6 acres more or less  
(Plaintiff's Exhibit 2 -- appraisal)
4. 32.98 acres more or less with nine (9) buildings/sheds  
(Plaintiff's Exhibit 3 -- appraisal) and  
(Plaintiff's Exhibit 9- plat)
5. Vintage Automobiles
6. Parts and Tools

The unique assets consist of Items 5 and 6 in the schedule above. Reference is hereby made to the various photographs in evidence as Exhibit 29. Subsequent to the merits hearing, the undersigned, along with Mr. Killen and Mr. Doby viewed the property in person, examining the proximity to other properties owned by Josey Family Trust, the children of Cecil, and Cecil L. Josey, Jr.

In addition to the professional appraisals set out in Plaintiff's Exhibits 1, 2, and 3, the Plaintiff introduced Exhibit 28 prepared by Plaintiff with assistance of Spencer Josey.

(Copy Attached.) The Defendant, Stanley, did not introduce any appraisals of such items and the Plaintiff's appraisal and estimate of value was unchallenged. After viewing the personal property the undersigned was awestruck by the magnitude of trying to appraise the personality by item and in particular as to the great quantity of old parts acquired by Wofford and Cecil over a long career in the restoration business.

Plaintiff's Exhibit 29 (copy attached) sets out the ownership of various items. Again, this listing was not challenged

Plaintiff's Exhibit 30 (copy attached) was a proposal for allocation of assets between the parties.

In reviewing Exhibits 28, 29 and 30, an error in arithmetic was noted. The total of \$34,000.00 in the estimated value column should be \$45,900.00

Pursuant to Section 15-61-25, (Code of Laws of South Carolina, 1976, as amended), each of the non-petitioning parties in this matter was notified of their right to purchase all or part of the real property subject to this litigation. Each of the non-petitioning parties, in this case, all of the Defendants, notified this Court through their Answers and Counter-claims of their interest in purchasing all or part of the real and/or personal property at issue.

#### PRIMARY ISSUE

The real bone of contention is whether the 32.8 acre parcel should be partitioned, allotted or sold.

#### DISCUSSION

Partition actions so often involve sentimental or emotional interests of some or all of the parties to the action. Prior to the merits hearing, the parties were advised that family relationships should be preserved if at all possible, and that a division by the court may not be the more digestible resolution. The parties were given a further opportunity to mutually resolve this dispute and after a lengthy discussion, they could not agree.

To some extent Zimmerman vs. Marsh, 365 SC 383; 618 SE 2<sup>nd</sup> 898 (2005) raises matters parallel to the instant case.

Citing Pruitt vs. Pruitt, 298 SC 411; 380 SE 2<sup>nd</sup> 862 (1989), the Court of Appeals stated:

"The partition procedure must be fair and equitable to all parties of the action....when the Court determines a partition cannot be fairly and equally made, the court may order a sale of the property...SC Code Ann. Section 15-61-100 (2005)".

The Court of Appeals further stated:

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“while we find that equitable considerations such as the length and ownership and sentimental attachment to the property may be considered, the pecuniary interests of the parties is the determining factor in deciding whether to require a judicial sale or allow a partition by allotment citing Ark Land Co. vs. Harper, 599 SE 2<sup>nd</sup> (W. Va. 2004).

From the testimony, exhibits and an on-site viewing of the 32.98 acre tract, it appears that when taken as a whole, the assets could be fairly and equitably divided and that even if partitioning does not satisfy all of the parties, a public sale could create further chaos. It is indeed unfortunate that this court must reach a decision for them.

### CONCLUSIONS

The court declines to grant to any of the non-petitioning parties the right to purchase the petitioning parties' interest in the subject real estate for the following reasons: First, the Court cannot grant to more than one party the same right. If the Court were to grant to one of the non-petitioning parties the right of first refusal, the remaining defendants in this matter would by default be deprived of the same right. Second, the Court would be forced to arbitrarily award one of the non-petitioning parties the right of purchase under the circumstances of this case. The Court does not desire to, nor should it be forced to, arbitrarily award the right of purchase to one party among the 5 possible selections in this case. Third, the grant to one party of the right of purchase the petitioning party's interest will not resolve the problem which exists among the Plaintiff and other Defendants and Defendant Stanley Josey. The parties in this matter deserve a final resolution of this matter and a purchase by one of the non-petitioning parties will leave the parties in essentially the same situation that currently exists. For instance, if Stanley is allowed to purchase the 1% interest owned by the Plaintiff, the parties will still own an interest in contiguous tracts of land and the problems which have brought the parties to this litigation will continue. Fourth, the proposal submitted by Plaintiff in this matter provides for a reasonable financial resolution to this matter consistent with the equitable principles to be imposed by this Court that an award of the right of purchase would not adequately address.

Therefore, when the Court considers all of the equities in this matter, it declines to grant to any Defendant as a non-petitioning party the right to purchase any of the petitioning party's interest in the subject real estate or personality.

### ORDER

NOW, THEREFORE, I find and Order that the jointly held assets shall be divided and allotted as follows:

#4  
+B

To Stanley D. Josey:

1. Note and Mortgage due Josey Marital Trust with all accrued principal and interest up to date of turnover.
2. Britton Farm.
3. Fertilizer Plant.
4. 1922 Velie.
5. 1926 Essix.
6. 1966 Ford.
7. 1924 Nash.
8. 1919 Model T Truck.
9. 1960 MGA (burgundy).
10. 1928 Studebaker.
11. 1922 Jewett.
12. Parts and tools as set out in Exhibit 28 consisting of the following:

Building 1 - Item 2.

Building 3 - Item 1 Misc. car parts North side; Item 2-Misc car parts in center shed.  
Building 4 - Item 1 Air Compressor, Item 2. 2 Milling machines, Item 3. 16 South Bend long lathe, Item 4. Bead Blaster, Item 5. South Bend lathe, Item 6. Logan Lathe thread maker, Item 7. OTC Hyd press, Item 8 Frejoth lathe, Item 9. West side misc. tools & toolbox, etc. Item 10. East side misc. tools, motors, etc.

Building 7 - Item 2. Model T brass radiator, Item 3. Flatbed trailer, Item 4. electric organ.

Building 8 Item 2. West side new rollup doors/hardware, Item 3. West side misc.

Rainey's Barn, Item 2. Car Parts in Center.

To the Josey Family Trust and the four beneficiaries:

1. 32.98 acres with improvements thereon consisting of 9 buildings.
2. All parts and tools not allocated to Stanley D. Josey.

Under the above division, Stanley D. Josey receives the note and mortgage due the Josey Marital Trust. The note and mortgage being the remaining asset of said trust, the remaining beneficiaries of that trust would have no further interest in the Josey Marital Trust, and Stanley D. Josey becomes sole beneficiary and can elect himself as Trustee.

I acknowledge that logistical problems will be inherent in accomplishing the removal of the items of personal property allotted to Stanley. The parties are urged to keep cool heads and remain civil.

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I further Order that deeds and appropriate Bills of Sale to be executed by the Court shall be prepared by Plaintiff attorney to complete the transfers of ownership. Pending the division and removal of personal property by Stanley, each party shall be responsible for any fire and casualty insurance to protect his or her interest. Any deeds and Bills of Sale required to carry out this Order will be prepared and submitted to the attorneys of record for review. AND.

I further Order that Stanley shall have up to One Hundred Eighty (180) days from the filing of this Order to remove the personal property as designated to him hereinabove. Any removal shall be between the hours of 8:00 AM and 8:00 PM, if before October 16, 2011, and if after October 15, 2011 between 8 AM and 4 PM, and notice shall be given to Plaintiff seventy-two (72) hours prior to any days designated for removal. Such notices shall be given thru their respective attorneys. Stanley shall not enter the property except on those dates and times designated for removal of the items of personal property. In removing the items, the use of the dirt lane as referred to as Atkinson Road will be utilized to the extent possible. The Plaintiff shall make reasonable effort to facilitate the removal. AND.

I further Order as to the Counterclaims and Cross-Claims set forth in the Amended pleadings of Stanley as the fourth, fifth and sixth defenses counterclaims and cross-claims. I find that the allegations are premature and not ripe for this courts consideration. Therefore these counterclaims and cross-claims are hereby dismissed without prejudice as they are not properly before this court. AND.

IT IS SO ORDERED.

HS

  
HAIGH PORTER, SPECIAL REFEREE

August 5, 2011

Florence, South Carolina

		NET VALUE	EST VALUE	
Building #1	Farm Tractor Shed	\$ 3,000.00		
	Item 1 Misc wood / seed cleaners		\$ 500.00	\$ 500.00
	Item 2 Enclosed trailer		\$ 750.00	
	**Less Rainey's boat & Farm equip. (tractors, mowers, drills, etc)			
Building #2	Tractor / Wood Shed	\$ 500.00		
	Item 1 Misc wood		\$ 500.00	\$ 500.00
	**Less Rainey's Farm equip. (sprayer & applicator)			
Building #3	Wood Working shop	\$ 2,000.00		
	Item 1 Misc car parts North side		\$ 2,500.00	
	Item 2 Misc car parts in center shed		\$ 1,000.00	
	Item 3 Wood working tools; south side		\$ 1,500.00	\$ 1,500.00
Building #4	Machine Shop	\$ 6,000.00		
	Item 1 Air Compressor		\$ 600.00	
	Item 2 2 Milling machines		\$ 750.00	
	Item 3 16 South Bend long lathe		\$ 800.00	
	Item 4 Bead Blaster		\$ 500.00	
	Item 5 South Bend Lathe		\$ 500.00	
	Item 6 Logan Lathe thread maker		\$ 500.00	
	Item 7 OTC Hyd press		\$ 500.00	
	Item 8 Frejofh lathe		\$ 800.00	
	Item 9 West side misc tools & toolbox etc		\$ 2,500.00	
	Item 10 East side misc tools, motors, etc		\$ 3,500.00	
Building #5	10 Bay Car storage	\$ 7,500.00		
	Item 1 2 John Deere Bicycles & safety cycle		\$ 1,200.00	\$ 1,200.00
	**Less Individual cars owned by diff. parties			
Building #6	Farm Shop	\$ 12,000.00		
	Item 1 1/2 drive sockets		\$ 500.00	\$ 500.00
	**Less Rainey's farm tools, equipment			
Building #7	Cecil's Main Shop	\$ 10,000.00		
	Item 1 Misc Hand Tools / parts		\$ 2,000.00	\$ 2,000.00
	Item 2 Model T brass radiator		\$ 800.00	
	Item 3 Flatbed trailer		\$ 500.00	
	Item 4 Electric organ		\$ 500.00	
	**Less Stan's boat, pine wood, Individual's cars			
Building #8	Cecil's Hoover Building	\$ 6,000.00		
	Item 1 East / front side sewing tools / leather / misc		\$ 800.00	\$ 800.00
	Item 2 West side new rollup doors / hardware		\$ 1,000.00	
	Item 3 West side Misc		\$ 500.00	
	**Less Individual cars owned by diff. parties			
Building #9	Cabin	\$ 15,000.00		
	Item 1 Electric Organ		\$ 500.00	\$ 500.00
	Item 2 Tables / Furniture		\$ 500.00	\$ 500.00
	**Less individual owned pool table, pinball, beds, deer mounts			
Rainey's Office	Item 1 Car Parts		\$ 5,000.00	\$ 5,000.00
Rainey's Barn	Item 1 Car Parts South side		\$ 3,000.00	\$ 3,000.00
	Item 2 Car Parts in Center		\$ 5,000.00	
	Item 3 John Deere tractor		\$ 1,500.00	\$ 1,500.00

**PLAINTIFF'S EXHIBIT**  
 28 4.27-11

L7



Building 1:	Rainey Josey:	Item 1	Reddick Nitrogen Appl
		Item 2	Reddick Sprayer
Building 2:	Rainey Josey:	Item 1	Case IH Drill / Reddick ditcher
		Item 2	JD Corn header
		Item 3	Scout boat
		Item 4	JD 997 lawnmower
		Item 5	Fuel tank (green)
		Item 6	Fuel tank trailer (red)
		Item 7	JD tractor 7410
		Item 8	JD MX7 Bush hog
Building 3:	All 50/50		
Building 4:	All 50/50		
Building 5:	Stan Josey:	Item 1	Jaguar E-type grey
		Item 2	Jaguar E-type blue
		Item 3	Winton
		Item 4	Morman
		Item 5	Overland
		Item 6	Model T
	Elizabeth Ann G:	Item 7	Paige Detroit
	Courtney Gamble:	Item 8	Franklin
	Rainey Josey:	Item 9	Willys Knight
		Item 10	Roamer
Building 6:	Stan Josey:	Item 1	Boat
	Rainey Josey:	Item 2	JD tractor 7810
		Item 3	JD Planters
		Item 4	Tools/welder/air comp/parts/farm supplies
Building 7:	Spencer Josey:	Item 1	Pierce Arrow
		Item 2	Hupmobile
		Item 3	Model T
		Item 4	(3) Surveillance cameras
	Stan Josey:	Item 5	4 Wheeler
		Item 6	Model T
		Item 7	Misc wood on 50/50 owned trailer
Building 8:	Courtney Gamble:	Item 1	Model T
		Item 2	Studebaker
	Elizabeth Ann G:	Item 3	MG Replica
		Item 4	Model T
	Rainey Josey:	Item 5	Model T
	Stan Josey:	Item 6	Chalmers
Building 9:	Rainey Josey:	Item 1	2 Window unit A/C
		Item 2	1 Bunk bed
		Item 3	Double bed
		Item 4	Skeet thrower
		Item 5	Pool table & balls/ques
		Item 6	TV
		Item 7	Fire wood rack
	Spencer Josey:	Item 8	Electronics / radio / speaker / cd player
		Item 9	Gun cabinet
	Courtney Gamble:	Item 10	Butcher block
		Item 11	Microwave
	Elizabeth Ann G:	Item 12	Pinball machine
	Stan Josey:	Item 13	Fishing rods
		Item 14	Deer mounts / skin / antlers on wall

48  
65

10/50 Owned Property

Rainey Josey  
Spencer Josey  
Courtney Gamble  
Elizabeth Ann Gi Stan Josey

	(Check acct+principal)		Appraised value		
Josey Marital Trust (\$482.67/mnth)	(\$3371.00+\$16005.00)	10% int	\$ 19,376.00		\$ 19,376.00
Britton Farm	30 acres		\$ 38,000.00		\$ 38,000.00
Fertilizer Plant	4.6 acres		\$ 30,000.00		\$ 30,000.00
Buildings			\$ 61,000.00	\$ 61,000.00	
2.98 Acres			\$ 65,960.00	\$ 65,960.00	
922 Velje			\$ 20,000.00		\$ 20,000.00
926 Essix			\$ 2,500.00		\$ 2,500.00
368 Ford			\$ 1,500.00		\$ 1,500.00
324 Nash			\$ 2,500.00		\$ 2,500.00
319 Model T Truck			\$ 2,500.00		\$ 2,500.00
360 MGA (burgandy)			\$ 2,500.00		\$ 2,500.00
328 Studebaker			\$ 2,500.00		\$ 2,500.00
322 Jewett			\$ 3,500.00		\$ 3,500.00
Parts/Tools in Buildings			\$ 34,400.00	\$ 17,500.00	<del>\$ 16,900.00</del>
			\$ 286,236.00	\$ 144,460.00	\$ 141,776.00

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sp

PLAINTIFF'S  
EXHIBIT  
30 4.27.11

		NET VALUE	EST VALUE	
Building #1	Farm Tractor Shed	\$ 3,000.00		
	Item 1 Misc wood / seed cleaners		\$ 500.00	\$ 500.00
	Item 2 Enclosed trailer		\$ 750.00	
	**Less Rainey's boat & Farm equip. (tractors, mowers, drills, etc)			
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	Item 2 2 Milling machines		\$ 750.00	
	Item 3 18 South Bend long lathe		\$ 800.00	
	Item 4 Bead Blaster		\$ 500.00	
	Item 5 South Bend Lathe		\$ 500.00	
	Item 6 Logan Lathe thread maker		\$ 500.00	
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	Item 9 West side misc tools & toolbox etc		\$ 2,500.00	
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	Item 2 West side new rollup doors / hardware		\$ 1,000.00	
	Item 3 West side Misc		\$ 500.00	
	**Less Individual cars owned by diff. parties			
Building #9	Cabin	\$ 15,000.00		
	Item 1 Electric Organ		\$ 500.00	\$ 500.00
	Item 2 Tables / Furniture		\$ 500.00	\$ 500.00
	**Less individual owned pool table, pinball, beds, deer mounts			
Rainey's Office	Item 1 Car Parts		\$ 5,000.00	\$ 5,000.00
Rainey's Barn	Item 1 Car Parts South side		\$ 3,000.00	\$ 3,000.00
	Item 2 Car Parts in Center		\$ 5,000.00	
	Item 3 John Deere tractor		\$ 1,500.00	\$ 1,500.00

**PLAINTIFF'S EXHIBIT**  
 28 4.27-11



Building 1:	Rainey Josey:	Item 1 Item 2	Reddick Nitrogen Appl Reddick Sprayer
Building 2:	Rainey Josey:	Item 1 Item 2 Item 3 Item 4 Item 5 Item 6 Item 7 Item 8	Case IH Drill / Reddick ditcher JD Corn header Scout boat JD 997 lawnmower Fuel tank (green) Fuel tank trailer (red) JD tractor 7410 JD MX7 Bush hog
Building 3:	All 50/50		
Building 4:	All 50/50		
Building 5:	Stan Josey:	Item 1 Item 2 Item 3 Item 4 Item 5 Item 6 Item 7 Item 8 Elizabeth Ann G: Courtney Gamble: Rainey Josey:	Jaguar E-type grey Jaguar E-type blue Winton Morman Overland Model T Paige Detroit Franklin Willys Knight Roamer
Building 6:	Stan Josey: Rainey Josey:	Item 1 Item 2 Item 3 Item 4	Boat JD tractor 7810 JD Planters Tools/welder/air comp/parts/farm supplies
Building 7:	Spencer Josey:  Stan Josey:	Item 1 Item 2 Item 3 Item 4 Item 5 Item 6 Item 7	Pierce Arrow Hupmobile Model T (3) Surveillance cameras 4 Wheeler Model T Misc wood on 50/50 owned trailer
Building 8:	Courtney Gamble: Elizabeth Ann G: Rainey Josey: Stan Josey:	Item 1 Item 2 Item 3 Item 4 Item 5 Item 6	Model T Studebaker MG Replica Model T Model T Chalmers
Building 9:	Rainey Josey:  Spencer Josey:  Courtney Gamble:  Elizabeth Ann G: Stan Josey:	Item 1 Item 2 Item 3 Item 4 Item 5 Item 6 Item 7 Item 8 Item 9 Item 10 Item 11 Item 12 Item 13 Item 14	2 Window unit A/C 1 Bunk bed Double bed Skeet thrower Pool table & balls/ques TV Fire wood rack Electronics / radio / speaker / cd player Gun cabinet Butcher block Microwave Pinball machine Fishing rods Deer mounts / skin / antlers on wall

48  
65

30/50 Owned Property

Rainey Josey  
Spencer Josey  
Courtney Gamble  
Elizabeth Ann Gi Stan Josey

	(Check acct+principal)		<u>Appraised value</u>	
Josey Marital Trust (\$482.67/mnth)	(\$3371.00+\$16005.00)	10% int	\$ 19,376.00	\$ 19,376.00
Britton Farm	30 acres		\$ 38,000.00	\$ 38,000.00
Fertilizer Plant	4.6 acres		\$ 30,000.00	\$ 30,000.00
Buildings			\$ 61,000.00	\$ 61,000.00
2.98 Acres			\$ 65,960.00	\$ 65,960.00
922 Velle			\$ 20,000.00	\$ 20,000.00
926 Essix			\$ 2,500.00	\$ 2,500.00
966 Ford			\$ 1,500.00	\$ 1,500.00
924 Nash			\$ 2,500.00	\$ 2,500.00
919 Model T Truck			\$ 2,500.00	\$ 2,500.00
960 MGA (burgandy)			\$ 2,500.00	\$ 2,500.00
928 Studebaker			\$ 2,500.00	\$ 2,500.00
922 Jewett			\$ 3,500.00	\$ 3,500.00
Arts/Tools in Buildings			\$ 34,400.00	\$ 17,500.00
			<u>\$ 286,236.00</u>	<u>\$ 144,480.00</u>
				<u>\$ 141,776.00</u>

19  
2

PLAINTIFF'S  
EXHIBIT  
30 4-27-11

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
JUL 30 2012  
SC Court of Appeals

APPEAL FROM LEE COUNTY  
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2010-CP-31-195

Cecil L. Josey, Jr., ..... Respondent,

v.

Stanley D. Josey, Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr., as Trustee of the Josey  
Family Trust, ..... Defendants,

Of Whom Stanley D. Josey is the ..... Appellant,

and of whom Courtney Gamble, Spencer  
Josey, Elizabeth Ann Geddings, Cecil L. Josey,  
Jr., as Trustee of the Josey Family Trust, are ..... Respondents.

INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

- I. In an Action to Divide Jointly Owned Property, Whether a Group of Co-tenants May Lawfully Defeat an Opposing Co-tenant's Right to Purchase the Property by Having One of Them Act as a Plaintiff in a Partition Action So That the Remainder — Named as Defendants but Cooperating with the Plaintiff — Can Also Request a Buyout.
- II. Whether this Partition Order Is Fair When it Divides Jointly Held Property by Awarding the Real Property and the Storage Buildings on That Property to the Cooperating Parties and by Giving the Opposing Party a Substantial Amount of the Personal Property in the Storage Buildings; Property Which He Must Remove at His Own Expense and Has No Present Ability to Store.

## STATEMENT OF THE CASE

This is an appeal in an action to partition real and personal property in Lee County. There are two questions presented. The first question involves the statute that gives co-tenants the right to "buy out" the interest of a co-tenant that has asked the court to divide jointly owned property. The second question involves the fairness of how the special referee ordered this property divided.

Although this suit involves three (3) separate pieces of real property, the property at the center of the controversy is a 32 acre tract of land, the nine (9) buildings on that land, and the contents of those buildings. Those contents include several vintage automobiles and a large collection of automobile parts, tools, and machines. The amount of automobile parts, tools, and machines is staggering. In his order, the special referee described that he was "awestruck" at the quantity of property involved. See (Order, p.3).

The 32 acres and the personal property stored on it are the center of the controversy because some of the parties — the plaintiff and three of the four individual defendants —

intend that the remaining defendant have no portion of the 32 acres of land. Not surprisingly, the remaining defendant disagrees with this approach. Some of the potential reasons for the parties' disagreement are explored in the statement of facts and argument sections of this brief.

This litigation is a dispute between family members. The patriarch of the family was Wofford Josey, who died in November of 1998. See (Complaint, p.2 ¶2). Wofford had two sons, Stanley and Cecil. See (Order, p.1). Stanley and Cecil each inherited undivided 50% interests in the 32 acre property from their father. See (Trial Tr.p.45, lines 19-22).

In August of 2001, Cecil transferred his ownership interest in this property to a trust named The Josey Family Trust. See (Complaint p.2). Cecil died later that month. See (Trial Tr.p.47, lines 3-14). The beneficiaries of the Josey Family Trust are Cecil's adult sons and daughters. See (Complaint, p.4 ¶5); (Trial Tr.p.115, lines 7-14).

The parties to this suit are Stanley, the beneficiaries of the Josey Family Trust, and the trust itself, through its trustee. The trust beneficiaries are Stanley's nieces and nephews.

Cecil L. Josey, Jr., is Cecil's son and the trustee of the Josey Family Trust. (Trial Tr.p.47, lines 15-16). At times, he is referred to in the record as "Rainey" Josey. See, e.g., (Trial Tr.p.171, lines 23-25). Rainey initiated this suit by filing a complaint in September of 2010. See (Complaint). He named his uncle, his siblings, and himself (as trustee) as defendants. The suit alleged that the parties owned property as tenants in common and sought an in-kind division of the property and an equitable assessment of attorney's fees.

Stanley filed responsive pleadings — an answer and, later, an amended answer — that (among other things) gave notice that Stanley was willing to purchase the other parties'

interests in the 32 acre tract. See (Answer p.2, ¶10) (Answer); and (Amended Answer p.2, ¶10) (Amended Answer). Stanley's responsive pleadings also contained a counterclaim and cross-claim, but those claims are not relevant to the procedural background of this appeal.

The other defendants — Rainey (as trustee) and his siblings — filed a joint answer. Their answer admitted all but one of the allegations of Rainey's complaint. (Their Answer, p.1) (admitting all but paragraph 11 of the complaint, which requested that any defendant who wished to purchase the property give notice to the court). In addition, the answer asked the court to divide the property by giving the 32 acres to the Josey Family Trust and its beneficiaries, and by giving the rest of the property to Stanley. (Their Answer, p.3, ¶2).

The circuit court referred the matter to a special referee. See Rules 53 and 71, SCRCF. The parties tried the case on April 27, 2011.<sup>1</sup> At the opening of trial, Stanley reiterated his request to purchase the other parties' interest in the property. (Trial Tr.p.10, line 25 - p.11, line 9). The other defendants — including Rainey, acting not as the plaintiff, but as the trustee of the (defendant) trust — made the same request. (*Id.*, lines 10-13).

The special referee's original order was dated July 5, 2011, and filed July 7, 2011. See (First Order). That order listed four reasons for denying the parties' requests that they be able to "buy the others out." First, the special referee found that the court could not grant more than one party the right to buy the property. Second, the referee found that if he granted one of the co-tenants the right to buy the others out, the decision as to which co-tenant was allowed to purchase the property would be arbitrary — supposedly there was no

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<sup>1</sup>The special referee's order incorrectly recites the date of the hearing as April 26 instead of April 27. Compare (First Order, p.1) (from the referee's order) with (Trial Tr.p.1) (the trial transcript) and (Notice of Hearing) (pre-trial notice of the hearing).

working to dissolve the partnership. (Trial Tr.p.62, line 24 - p.63, line 8). Rainey said that Stan was against splitting the property. (Id.p.68, lines 22-25). The dissolution of the farming business is not relevant to this partition suit, but it was mentioned throughout the trial.

The parties offer very different versions of the circumstances that led to this lawsuit. According to Rainey, he and his siblings had different objectives and goals from Stanley with respect to their farming business. See (Trial Tr.p.63, lines 12-18). Rainey also said it was difficult to get Stanley to “help maintain anything.” (Id.p.63, lines 20-25). For his part, Stanley testified that the animosity between the parties had been manufactured by Rainey and his siblings after Stan refused to sell them his interest in the 32 acres. See (Id.p.194, lines 12-24). According to Stanley, nobody did significant maintenance to the jointly owned property after that because noone knew “what [they] were going to end up with.” (Id.p.233, lines 3-18). Whether one party purposefully created difficulties in the family relationship is another example of an issue that is arguably irrelevant to the issues in a partition suit, which are the percentage of ownership in joint property and whether the property can be fairly divided in-kind. Nevertheless, a great deal of the trial testimony concerns this subject.

A final fact that may be helpful to the Court is that from 2001 to September of 2010, Stanley and the Josey Family Trust owned equal shares of the 32 acres and the buildings. In a deed signed September 17, 2010 and recorded four days later, Rainey, acting as trustee, gave himself and his siblings 1% undivided interests in this property; dividing the ownership 50% to Stanley, 46% to the trust, and an 1% each to Rainey and his siblings. See (Exhibit 20) (the deed) and (Order, p.2) (the referee’s listing of ownership interests). Rainey signed the complaint in this lawsuit the day after the deed was recorded. See (Complaint).

## ARGUMENT

The first question in this appeal is whether South Carolina law allows a group of co-tenants to coordinate and defeat an opposing co-tenant's statutory right to purchase the interests of those who have asked the court to divide jointly owned property. The Court should hold that it does not. Regardless of how the caption reads, Stanley Josey was on one side of the battlefield in this case and his nieces and nephews were on the other. All of the members of the Josey Family Trust were "petitioning parties" — they all asked the court to divide this property and to divide it in a specific way — and the record shows complete coordination and commonality of interest between them.

The second question in this appeal is whether it is fair to divide the 32 acre tract, the buildings on it, and the personal property in the buildings by giving the land and the buildings to the Josey Family Trust and awarding Stanley a sizeable amount of the personal property. The Court should hold that it is not. While the special referee's division of property gives roughly equal values of property to both sides, the division is not fair in effect. The referee ordered Stanley to remove his property and effectively forced him to build new buildings to house it, all at his expense. The Court should find that this does not meet the requirements for a partition award, which must be fair and avoid injury to all parties.

### **I. South Carolina Law Does Not Allow a Group of Co-tenants to Coordinate and Defeat an Opposing Co-tenant's Statutory Right to Purchase the Interests of Parties That Have Asked the Court to Partition Jointly Owned Property.**

Section 15-61-25 of the South Carolina Code (Supp. \_\_\_\_ ) gives a co-owner of property the first right of refusal to purchase the property prior to partition. The first part of

the statute is a notice provision. In relevant part, it provides:

Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case.

S.C. Code Ann. 15-61-25(A). The statute goes on to list procedures for determining the value of the jointly owned property and for carrying out the purchase of a co-tenant's share.

As of the date of this brief, this statute has not been construed by an appellate court.

**A. The Right of Refusal Statute Focuses on the Relief a Party Requests and Allows the Co-tenants That Do Not Ask the Court to Divide the Property to Purchase the Interests of the Co-tenants That Do Ask the Court to Divide the Property.**

The interpretation of a statute is a question of law, and an appellate court reviews a question of law *de novo*. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). The primary consideration in interpreting a statute is discovering and giving effect to the legislature's intent in passing the statute. *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). The words of the statute are the best evidence of the statute's purpose. *City of Rock Hill v. Harris*, 391 S.C. 149, 155, 705 S.E.2d 53, 55 (2011).

In describing the right of first refusal, section 15-61-25 draws a distinction between petitioning parties and non-petitioning parties. This is important because the words "petitioning" and "non-petitioning" direct the focus to the relief the party is requesting — the statute gives the right of first refusal to any co-tenants who do not seek division of the property. Although the terms "plaintiff" and "petitioner" can have some similar applications, they are not full synonyms. Compare BLACK'S LAW DICTIONARY 1262 (9th ed. 2009)

(defining petition as “[I]n some states, the first pleading in a lawsuit.”) with BLACK’S LAW DICTIONARY 1031 (5th ed. 1979) and THE NEW MERRIAM-WEBSTER DICTIONARY 545 (1989) (defining petition as a request for relief). More importantly, the terms “non-petitioning party” and “defendant” do not mean the same thing. The defendant is the person or entity being sued; the “non-petitioning” party in a partition action is the party who does not ask the court to divide the property. This second distinction is significant because the right of first refusal belongs only to non-petitioning parties. By using the term “non-petitioning,” the statute focuses on the relief requested and gives parties that do not ask the court to divide the property the right of first refusal to purchase the property. If the right of first refusal was conditioned on a party’s status as plaintiff or defendant, the legislature would likely have written it that way. The legislature has shown the ability to use those terms. See, e.g., S.C. Code Ann. § 15-79-125(A) (Supp. \_\_\_\_ ) (medical malpractice statute describing what a “plaintiff” must prepare and serve on all “defendants” prior to filing suit).

There is more evidence throughout the statute of the intent to distinguish between parties who are seeking partition and parties who are not. The statute describes that the costs of appraising the property are to be included as the court costs of “those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest.” Section 15-61-25(B). The statute further describes that when the parties disagree with the value set by the appraisers, the court should hold a hearing for the purpose of determining “the interests of the petitioning joint tenants or tenants[.]” Section 15-61-25(C). Once the court sets the value of petitioning party’s (or parties’) interest, the non-petitioning co-tenants have 45 days to deposit the appropriate funds with the court. Section 15-61-25(D).

This should throw one error in the special referee's order into sharp focus: In denying Stanley's request to purchase the property, the referee observed that it could not grant more than one party the right of first refusal. (Order, p.4). The statute does not contain this limitation; indeed, the statute's language rejects it. Every section of the statute discusses a plural right of refusal. See, e.g., Section 15-61-25(D) (the "nonpetitioning joint tenants or tenants in common" have 45 days to pay the purchase price to the court) (emphasis added). This means that if 5 people own property together and 3 do not ask the court to divide the property, the court must determine the value of the interest held by the 2 co-tenants who seek partition. After that, the 3 co-tenants who do not seek partition have 45 days to deliver the money. The circumstances of the present case are another example. If Rainey Josey was truly the only petitioning party, the statute says that the court should value Rainey's interest and allow the other parties — his uncle and his siblings — to purchase his interest. The statute expresses a sensible legislative policy that favors allowing joint owners of property to keep that property together when one or more of them, but not all of them, "wants out."

**B. The Right of Refusal Statute Requires That Stanley Be Given the Opportunity to Purchase the 32 Acres Because All of the Other Parties Asked the Court to Divide the Property.**

Regardless of the fact that the caption of this case lists them as "defendants," the beneficiaries of the Josey Family Trust and the trust itself are not "non-petitioning parties."

The best evidence of this is their pleadings. The joint answer filed by Rainey (as trustee) and his siblings admits every allegation of the complaint with the exception of the complaint's "allegation" that asked any defendant desiring to exercise the right of refusal to

give notice to the court. See (Their Answer, p.1, ¶2) (referencing Complaint, p.5, ¶11). As a result, the answer is functionally equivalent to the complaint. The answer did not assert any defenses, and the relevant part of the prayer for relief requested “that the partition be awarded and that this court award [the trust and its beneficiaries] title to the 32.9 acres +/- with the balance of the property being awarded to [] Stanley D. Josey.” (*Id.*, p.3, ¶ 2). Contrast this with Stanley’s pleadings, which joined in the request to partition the “Britton Farm” and the “Fertilizer Plant” — the two other pieces of real property at issue — but gave notice that he would purchase the other parties’ interests in the 32 acres. See, e.g., (*Id.*, p.2, ¶¶9 & 10). The “answer” filed by Stanley’s “co-defendants” made the same allegations as the complaint and requested the same relief.

Other evidence of the parties’ cooperation and coordination is the method of distribution that Rainey proposed to the special referee; a method the referee adopted. See (Exhibit 30). This proposed distribution had three columns. The first column listed the appraised value of all jointly owned property. The third column listed property proposed to be awarded to Stanley. The middle column listed property proposed to be collectively awarded to “Rainey Josey, Spencer Josey, Courtney Gamble, and Elizabeth Ann Geddings.” *Id.* The special referee’s order followed suit; it listed the property awarded to Stanley and, below that, the property awarded to “the Josey Family Trust and the four beneficiaries.” (Order, p.5). A partition action involving four property owners splits the value of the property four ways; not one-fourth in one camp and three-fourths in another.

There is more evidence in the record that Rainey’s interest was not truly adverse to the trust or his siblings. For one thing, consider the fact that Rainey (as trustee) executed the

deed giving himself and each of his siblings undivided 1% shares in the property. See (Exhibit 20) (deed of the 1% interests). If this suit was truly an action to divide the property among the parties, the way to initiate that would have been to deed *all* of the trust's interests to the beneficiaries and then initiate the partition action. But the beneficiaries of the trust did not truly want to partition this property; they wanted to force their uncle out. Consider also that this deed was recorded the day before Rainey signed the complaint. See (Exhibit 20) (deed of the 1% interests) and (Complaint) (the complaint). The timing of the deed is not a game-changer, but the timing should say *something*. Rainey's testimony told more of the story of the parties' cooperation and coordination. He described how he and his brother identified the jointly owned property, attempted to put values on the property, and came up with a proposal for "what *we* propose that *we* would get, and . . . what *we* propose that Stanley would get." (Trial Tr.p.91, line 14 - p.102, line 9) (emphasis added).

The right of refusal statute draws a distinction between the parties that ask the court to divide property and the parties that do not, and because the record reflects that Stanley Josey was the only party falling in the latter category, the Court should reverse the special referee's decision denying Stanley's request to exercise his right of refusal.

**II. The Special Referee Erred in Dividing the 32 Acre Tract, the Buildings on It, and the Personal Property in the Buildings by Giving the Land and the Buildings to the Josey Family Trust and Awarding Stanley a Sizeable Amount of the Personal Property.**

An action for partition is an action in equity. *Anderson v. Anderson*, 299 S.C. 110, 113, 382 S.E.2d 897, 899 (1989). In an appeal of an action in equity, this Court may find facts based on its own view of the preponderance of the evidence. *Id.* at 113, 382 S.E.2d at

899; *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). Although the standard of review is *de novo*, to win reversal, an appellant must generally demonstrate both error and prejudice in the lower court's judgment, and where credibility is an issue, an appellate court generally recognizes that the lower court was in a superior position to make credibility determinations. *Lewis*, 392 S.C. at 385, 709 S.E.2d at 651-52.

The finding challenged here is the special referee's finding that the division of property submitted by the beneficiaries of the Josey Family Trust provided "for a reasonable financial resolution . . . consistent with the equitable principles" of a partition action. See (Order, p.4).

**A. The Law Favors Partition In-kind, but the In-kind Division must Be "Fair" and must Not Injure Any of the Co-tenants.**

There is a statutory preference for partition in-kind or partition by allotment.<sup>2</sup> The relevant statute instructs that jointly owned property should be divided "in kind or by allotment" except for cases where such a division "cannot be fairly and impartially made and without injury to any of the parties in interest." S.C. Code Ann. § 15-61-50 (Supp. \_\_\_\_); see also *Anderson*, 299 S.C. at 113-14, 382 S.E.2d at 899 (noting the statutory preference for in-kind partition). It is appropriate for a court to account for "equitable considerations such

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<sup>2</sup>Partition by allotment is where the court awards the property to one party and orders him to pay his co-tenant for the co-tenant's share. See *Cox v. Frierson*, 316 S.C. 469, 451 S.E.2d 392 (1994) (reversing an order of a judicial sale because although the special referee found partition in kind was not feasible, he did not consider the option of partition by allotment). The alternative to partition in-kind and by allotment is a judicial sale with the proceeds being divided among the parties in proportion to their ownership. See Section 15-61-50 (describing "the sale of the property and the division of the proceeds according to the rights of the parties.").

as the length of ownership and sentimental attachment to property,” but “the pecuniary interests of all of the parties is the determining factor[.]” *Campbell v. Jordan*, 382 S.C. 445, 451, 675 S.E.2d 801, 804 (Ct. App. 2009). Again, the touchstone for an appropriate division by partition or allotment is that the division be “fair as to all co-tenants.” *Pinckney v. Atkins*, 317 S.C. 340, 345, 454 S.E.2d 339, 342 (Ct. App. 1995).

**B. The Special Referee’s Order Injures Stanley and Is Not Fair Because Stanley must Remove His Property and Store it at His Own Expense.**

Under the special referee’s partition order, Stanley is the only party who must move property, and in the context of this case, having to move (and store) property is significant. This is not equivalent to ordering a co-tenant to move out of a house. Stanley is required to move at least eight (8) classic cars, two trailers, one and a half a buildings’ worth of “miscellaneous car parts,” an air compressor, two milling machines, three lathes, an electric organ, “rollup” doors, and various other property.<sup>3</sup> Pictures showing each building and the items housed in them were introduced at trial. See (Exhibits 37 to 45). Moving this property is a tremendous undertaking, and storing it requires a large amount of space.

The harm is made more acute by the fact that Stanley has no place to put this property — the current location is the only place the property has even been. See (Trial Tr.p.184, line 18 - p.185, line 11; p.214, line 16 - p.215, line 10) (Stanley’s trial testimony). The

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<sup>3</sup>The eight classic cars are items 4 through 11 on the special referee’s distribution. See (Order, p.5). The two trailers are building 1, item 2 and building 7, item 3; both of which were awarded to Stanley. See (Exhibit 28) (listing the buildings and items) and (Order, p.5) (the award of items to the parties). The car parts are building 3, items 1 and 2; the milling machines, the lathes, and the air compressor are all in building 4; the organ is building 7, item 4; and the “rollup” doors are building 8, item 2. *Id.*

beneficiaries of the Josey Family Trust suffer no inconvenience beyond the fact that they must to wait for Stanley to remove his property; after that, they can enjoy the full benefit of the land and buildings they were awarded. Their role is entirely passive and does not require them to suffer any new expense. This order is not fair to both sides. Yes, it divides the property in roughly the appropriate proportions, but the effects of the order could not be more disproportionate.<sup>4</sup>

The theory of the case that Rainey and his siblings put forth was that they did not want to own property next to Stanley. See, e.g. (Trial Tr.p.87, lines 13-17). While that may be motivated by any number of things — either genuine or malicious — it should have been largely irrelevant. The core of a partition suit is not about whether people should or should not own property *next to* one another. The core of a partition suit is about how to divide property so people no longer own the same property *together*. Partition and family discord are not unlikely bedfellows, see *Anderson*, 299 S.C. at 114, 382 S.E.2d at 899 (observing that land “must be partitioned due to the enmity between the parties”), but family discord cannot be the sole justification for an award that requires one party to shoulder all of the burden of affirmative action and expense. And this is not a small tract of land with one storage barn. The parties jointly own 32 acres of land with nine (9) storage buildings. See (Exhibit 3) (the appraisal of the 32 acre tract, showing the buildings by number). As Stanley put it, “there’s

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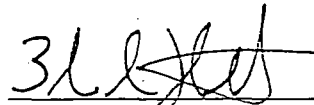
<sup>4</sup>The order divides property with 50.4% to the beneficiaries of the Josey Family Trust and 49.5% to Stanley. See (Exhibit 30) (listing the total value for property and the value awarded to both sides). The order references an error in arithmetic in Rainey’s proposed distribution, see (Order p.3), and the math in the order itself is also incorrect, but the difference is not significant. Compare (Order p.3) (referencing Exhibit 30 and instructing that the value of “Parts/Tools in Buildings” should be \$45,900.00) with (Exhibit 28) (actually listing \$40,900 worth of property in the “EST VALUE” column, but incorrectly listing the sum as \$34,400).

a fair way to divide that land back there so we both get expansion room, we both get buildings, and we both get a pond.” (Trial Tr.p.215, lines 4-6).

### CONCLUSION

In *Wilson v. McGuire*, this Court wrote that it “was offended” by the fact that some of the parties pre-selected their parcels in a partition action. See 320 S.C. 137, \_\_\_ n.2, 463 S.E.2d 614, \_\_\_ n.2 (Ct. App. 1995). Some of the conduct here is cut from the same cloth. South Carolina law should not allow a group of co-tenants to coordinate and defeat an opposing co-tenant’s statutory right to purchase the interests of those who have asked the court to divide jointly owned property, and in this case, it is not fair to divide the 32 acre tract, the buildings on it, and the personal property in the buildings by giving the land and the buildings to the Josey Family Trust and awarding Stanley a sizeable amount of the personal property. For both reasons, the appellants respectfully ask this Court to reverse.

Respectfully submitted,



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Attorneys for Appellant

July 30, 2012

G



1 MR. DOBY: Judge, I would call Cecil L.  
2 Josey, Jr.

3 THE COURT: If you'll come around to that  
4 seat. Would you raise your right hand. The  
5 evidence you shall give be the truth, the whole  
6 truth and nothing but the truth so help you God?

7 MR. JOSEY: Yes, sir.

8 THE COURT: Thank you.

9 EXAMINATION BY MR. DOBY:

10 Q. Mr. Josey, tell me how old you are.

11 A. Forty-one (41).

12 Q. And are you married?

13 A. Yes.

14 Q. And do you have children?

15 A. She and I have three children.

16 Q. Okay. How old are they?

17 A. Thirteen (13), twelve (12) and nine.

18 Q. Okay. And where do you live?

19 A. 3542 Elliot Avenue.

20 Q. And are you employed?

21 A. I am.

22 Q. And are you employed at several different occupations?

23 A. I do; I'm an Operations Manager for Blanchard  
24 Caterpillar. I handle the Florence operations, Myrtle  
25 Beach operations, the Charleston operations and Hilton

1 mother lives in, too.

2 Q. It's also access to the cabin, isn't it?

3 A. There is a dirt road that goes from my house to the  
4 cabin; there is. But you can barely see it. It's  
5 like a ---

6 Q. Where does the asphalt ---

7 A. -- dirt road that goes right here. (Witness  
8 indicates).

9 Q. Where does the asphalt end?

10 A. It ends right at my house. It loops -- the asphalt  
11 goes right under my carport, and then it goes under my  
12 carport back out to the highway.

13 Q. And then you can turn left off of it and go to the  
14 cabin; isn't that right?

15 A. There's a little dirt road that goes right there to  
16 the cabin.

17 Q. All right.

18 A. And then there's a dirt road on the other side of my  
19 house that you can barely see here that goes to my  
20 mother's.

21 Q. Would you deny that Stan's been using the asphalt  
22 drive to get to the cabin for over twenty (20) years?

23 A. Oh, I'm sure he's used it at some point in time to get  
24 to the cabin.

25 Q. Okay. Now -- now, that road to the north, it's a sand

1 road you can see part of it?

2 A. It is dirt, yes.

3 Q. That's on somebody else's property; right?

4 A. No. What we did, when that dirt road was built, the  
5 first half of it to here is on our property. (Witness  
6 indicates). The second half of it is on our  
7 neighbor's property.

8 Q. Okay. Well, the second half of it is owned by  
9 somebody else?

10 A. Our neighbors, you know, the farmer and the landowner  
11 here, they use this dirt road to get to their  
12 property, and we use it to get to our property. And  
13 the first half of it, they're on our property, the  
14 second half of it, we're on their property.

15 Q. All right. Who owns that up there? What is the  
16 person's name?

17 A. Ms. Richardson.

18 Q. Ms. Richardson. Ms. Richardson could tell Stan and  
19 you and anybody, any of you all tomorrow not to come  
20 on her road anymore, couldn't she?

21 A. It would have to -- we would have to move it over ten  
22 or fifteen feet. This part of it, we would have to  
23 move that dirt road over (witness indicates).

24 Q. The point is, it's hers and she can shut it down if  
25 she wanted to?

1 MR. JOSEY: I do.

2 THE COURT: Thank you, sir.

3 (Stanley D. Josey, having been duly sworn, testifies as  
4 follows:)

5 EXAMINATION BY MR. KILLEN:

6 Q. Stan, why don't you go ahead and state your name for  
7 the court reporter.

8 A. First of all, my name is Stanley Dennis Josey.

9 MR. JOSEY: And Your Honor, before I  
10 even start with Patrick, I would like to  
11 apologize to you for how my nieces and  
12 nephews, for how low they are going to  
13 try to steal property from me.

14 Q. Stan. You can answer my questions, okay? I know  
15 you're upset.

16 A. Okay.

17 Q. All right. Stan, you just said nieces and nephews.  
18 Now, the other parties involved in this case are your  
19 brother's children; is that right?

20 A. Right.

21 Q. And your brother's name is what?

22 A. Cecil Josey.

23 Q. Okay. And we went through on Rainey's direct  
24 examination the chain of Title to the property leading  
25 up to how it is titled now?

1 started. Is it fair to say that when you all couldn't  
2 come to an agreement on primarily the thirty-two point  
3 nine (32.9) acres that these problems began?

4 A. That's exactly when they started. It was a planned  
5 strategy he had. I wouldn't be surprised if he didn't  
6 have a log book saying -- if this doesn't work, I'll  
7 try this, and if this doesn't work, I'll try that.

8 Q. Well, Rainey testified that it was all your problem;  
9 do you agree with that?

10 A. No, sir. That's wrong.

11 Q. Did you ever have any problems with him before you ---

12 A. Never.

13 Q. -- wouldn't sell the property?

14 A. In Rainey's heart and soul, he knows that. He knows  
15 what kind of person I am. He's bringing all of this  
16 out today to try and make him shine.

17 Q. Is it fair to say that you wouldn't go along and  
18 that's when the problems started?

19 A. That is exactly when it started.

20 Q. Let me talk about that asphalt drive, Stan. You know  
21 which one I'm talking about?

22 A. Yes.

23 Q. How long have you been using that?

24 A. Since I was six years old.

25 Q. You were riding in a car with your daddy or something?

1 A. It was a -- it was a gravel type dirt road at first.  
2 I was driving at six years old on the farm. We had a  
3 little purple Jeep that was a strange looking vehicle,  
4 but I was driving when I was that -- that old. But it  
5 was a gravel -- gravel lane at first, and it stayed  
6 that way until we started doing the antique cars. And  
7 we had some that were so nice, we didn't want to take  
8 them out on the dirt road. So, Dad had that paved.  
9 And that's the reason that he paved that asphalt lane.  
10 I've been using it all of my life.

11 Q. When did you get your Driver's License?

12 A. When I was fourteen (14).

13 Q. They'd give it to you at fourteen (14) back then?

14 A. Yeah.

15 Q. Did you drive on that road when you were fourteen  
16 (14)?

17 A. I sure did.

18 Q. Whose car were you driving?

19 A. I was fortunate; it was my car. My daddy bought me a  
20 car. I had my own car.

21 Q. What kind was it?

22 A. It was a '65 Mustang convertible.

23 Q. You don't still have that one, do you?

24 A. No. I got rid of that one.

25 Q. So, sixteen (16), and you're sixty (60) now; right?

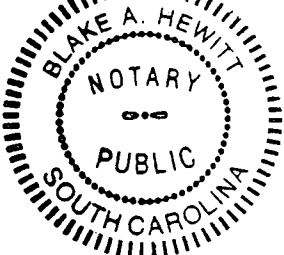
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Cecil L. Josey, Jr., )  
)  
Respondent, )  
)  
v. )  
)  
Stanley D. Josey, Courtney Gamble, )  
Spencer Josey, Elizabeth Ann )  
Geddings, and Cecil L. Josey, Jr., )  
as Trustee of the Josey Family Trust, )  
)  
Defendants, )  
)  
Of whom Stanley D. Josey is the, )  
)  
Appellant, )  
)  
and Courtney Gamble, Spencer Josey, )  
Elizabeth Ann Geddings, and )  
Cecil L. Josey, Jr., as Trustee of )  
the Josey Family Trust are, )  
)  
Respondents. )  
\_\_\_\_\_ )

**VERIFICATION**

Stanley D. Josey personally appeared, was duly sworn, and says that he is the appellant in this case and is petitioning this Court to issue a writ of supersedeas. He further states that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as matters therein stated to be alleged on information and belief. To those matters alleged on information and belief, he further says that he believes them to be true.

SWORN TO AND SUBSCRIBED  
before me this 17<sup>TH</sup> day  
of AUGUST, 2012  
Blake A. Hewitt  
Notary Public  
My Commission Expires: 25 August 2015

Stanley D. Josey  
Stanley D. Josey  


THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEE COUNTY  
Court of Common Pleas

Haigh Porter, Special Referee

---

Case No. 2010-CP-31-195

---

**RECEIVED**  
AUG 29 2012  
**SC Court of Appeals**

Cecil L. Josey, Jr., ..... Respondent,

v.

Stanley D. Josey, Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr., as Trustee of the Josey  
Family Trust ..... Defendants,

Of Whom Stanley D. Josey is the, ..... Appellant,

and Of Whom Courtney Gamble, Spencer  
Josey, Elizabeth Ann Geddings, Cecil L. Josey,  
Jr., as Trustee of the Josey Family Trust, are, ..... Respondents.

---

**PROOF OF SERVICE**

---

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Petition for Writ of Supersedeas* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

S. Bryan Doby, Esquire  
Jennings & Jennings, P.A.  
Post Office Box 106  
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(Attorney for Respondent Cecil L. Josey, Jr.)

Daniel W. Stacy, Jr., Esquire  
Oxner & Stacy, P.A.  
90 Wall Street, Unit B  
Pawleys Island, SC 29585  
(Attorney for Respondents Courtney Gamble,  
Spencer Josey, and Elizabeth Ann Geddings)

August 29, 2012



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Erin Bridges  
Paralegal  
BLUESTEIN, NICHOLS, THOMPSON  
& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC  
ATTORNEYS AT LAW

Margaret Miles Bluestein  
John Shannon Nichols  
Stacy Elizabeth Thompson  
John Dennis Delgado  
Allison Paige Sullivan  
Ashley Trout Thompson  
Blake Alexander Hewitt

OF COUNSEL  
O. Eugene Powell, Jr.  
Rebecca Cagle Patrick

August 29, 2012

RECEIVED  
AUG 29 2012

SC Court of Appeals

**VIA HAND DELIVERY**

Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Josey v. Josey  
Case Tracking No: 2011-197626

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Petition for Writ of Supersedeas* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Respondents and a check in the amount of \$25.00 for filing this motion. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges  
Paralegal to Blake A. Hewitt  
BLUESTEIN, NICHOLS, THOMPSON &  
DELGADO, LLC

/emb

Enclosures

cc: Patrick M. Killen, Esquire  
Daniel W. Stacy, Jr., Esquire  
S. Bryan Doby, Esquire  
Mr. & Mrs. Stanley Josey