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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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Appellate Case No. 2026-002149

Roger Lemacks.....Appellant,

v.

Clarence James.....Respondent,

MOTION FOR ORDER IMPOSING SUPERSEDEAS

The Appellant, Plaintiff below, hereby moves the Court to impose an order of supersedeas as to those portions of the lower court's Final Order of Judgment for Defendant filed August 19, 2026, and its order denying Appellant's post-trial motions and denying a stay filed September 18, 2026, insofar as such orders direct Respondent to "remove the metal shed or garage", located on the Appellant's property. Ownership of the shed/garage is one of the disputed issues in the case below and an issue in this appeal. Removal was ordered within thirty (30) days of the trial judge's order becoming final.

This motion is filed pursuant to South Carolina Appellate Court Rule 241(c) and is necessary to prevent a contested issue (the ownership of the shed/garage) from becoming moot.

Generally, under Rule 241(a) the filing of the Notice of Appeal stays matters decided in the orders or judgment of the lower court, however, the circumstances hereinafter described, arguably fit within exceptions described in Rule 241(b)(2) and (3), and therefore this motion is necessary. Further,

Appellant has heard sounds emanating from the shed/garage consistent with attempts to remove it from its foundation.

A copy of the lower court's Final Order of Judgment (Exhibit "A") and Order denying Appellant's post-trial motions including motion for stay are attached hereto as Exhibit "B". A copy of Appellant's post-trial motions are attached hereto as Exhibit "C."

BACKGROUND RELEVANT TO THIS MOTION

Appellant and Respondent are owners of adjoining properties in the West Ashley area of Charleston County.

Appellant's property known, as 1082 Jenkins Road is a "flag lot" connected to Jenkins Road by a twenty (20') foot wide strip. The "flag" portion of the lot lies behind Respondent's property as viewed from Jenkins Road. The shed/garage in question is the only building located on Appellant's property.

The Respondent's property is known as 1082 Jenkins Road upon which is located a home that serves as Respondent's residence.

For clarity, a plat prepared by Atlantic Surveying which was introduced before the trial court is attached hereto as Exhibit "D" to this motion showing the location of the properties and the shed/garage.

The properties were, prior to 1985 one tract owned by Albert James, Respondent's uncle. Albert James subdivided his property into two lots by recordation of a plat prepared by W.L. Gaillard and recorded in the ROD Office for Charleson County in Book BF, Page 105. The shed/garage is not depicted on that plat. The record indicates that the shed/garage pre-existed the subdivision of the Albert James property into the two current lots.

In 1985, Albert James conveyed the Respondent's property to his daughter Margaret James a/k/a Margaret Manigault and by subsequent conveyances it has been conveyed to Respondent.

Albert James conveyed Appellant's lot to his son, Franklin James who conveyed it to Appellant

in 2017.

The shed/garage is a metal building with approximate dimensions of 12 feet by 20 feet. Its construction is of corrugated metal siding, attached to a metal pole framework which serve as wall studs. The vertical portion of the metal poles are embedded in a concrete slab foundation and support the siding and roof.

The building has two windows on each side wall and "a barn door" at the end of the building nearest the property line between Appellant's and Respondent's properties.

Appellant contended at trial and will in this appeal, that the shed/garage and slab foundation are a part and parcel of Appellant's real property as a tenement or appurtenance that was conveyed to him by the deed from Franklin James.

Respondent contended at trial and the Court ordered, that the shed/garage was personal property regardless of it built into a concrete slab foundation, which had been devised to Respondent by the will of his mother, Margaret James a/k/a Manigault.

ARGUMENT

Unless the supersedeas is granted, the Respondent is likely to remove the shed/garage and an important issue in this appeal would become moot.

Although Appellant contended at trial that Respondent's occupation of the shed/garage was a trespass, and will so argue in this appeal, this motion does not seek to eject Respondent from occupation of the shed during the pendency of the appeal. Rather, the motion seeks a supersedeas to prevent the removal of the shed/garage in order to preserve the status quo until the appeal is decided.

In *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E. 24 469 (Ct. App. 1990), this Court citing 4A C.J.S. Appeal & Error, Section 662 at 494-95 (1957) stated:

> "The purpose "...of a supersedeas... is to....stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal...and to preserve to Appellant the fruits of a meritorious appeal where there might otherwise be lost to him." " *Id.* at 301 S.C. 130.

This is precisely the circumstance here. A successful appeal would result in either a determination that the shed/garage is real property owned by the Appellant or that Appellant is entitled to a new trial with errors corrected, allowing him the opportunity to obtain such relief in the lower court.

If the shed/garage is removed from Appellant's property and off its foundation, the issue of ownership potentially becomes moot and deprives the Appellant of the possibility of successful appellate relief.

Appellant suggests that there is no need for a bond if the supersedeas is ordered as the shed/garage will remain on its permanent foundation and current location and within the jurisdiction of the Court during the pendency of the appeal.

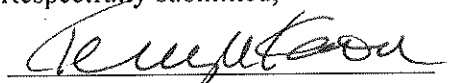
However, if the Court requires a bond, Appellant points out that the record below indicates that the value of the shed/garage is between $8,000.00 and $9,000.00. A bond not to exceed $9,000.00 would be appropriate.

CONCLUSION

The Court should issue an order of supersedeas preserving the status quo until this appeal is determined with finality.

October 1, 2026

Respectfully submitted,



Kerry W. Koon
SC BAR # 3605
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
843.795.7000
kerrykoon@hotmail.com
Attorney for Appellant

VERIFICATION

Roger Lemacks being duly sworn, says that he is the Appellant herein, and has read the foregoing Motion for Order to Impose Supersedeas and knows the contents thereof, that the same is true of his own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters he believes them to be true.

Roger Lemacks

SWORN to and subscribed before me
this 1 day of October, 2026.

Printed Name of Notary: Megan Mitchum
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4/16/2029

Ex. "A"

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	)	**CASE NO.: 2022-CP-10-02037**
	)	
ROGER LEMACKS,	)	
	)	
Plaintiff,	)	
	)	**FINAL ORDER OF JUDGMENT**
v.	)	**FOR DEFENDANT**
	)	
CLARENCE JAMES,	)	
	)	
Defendant.	)	
	)	

This matter was tried before me without a jury on June 17 and 18, 2026. The Plaintiff, Roger Lemacks, was represented by Kerry W. Koon, Esquire. The Defendant, Clarence James, was represented by Kelvin M. Huger, Esquire.

The action arises from a dispute over the ownership of a metal shed or garage situated at the common boundary of the parties' adjoining parcels on Jenkins Road in the St. Andrew's Parish area of Charleston County. Plaintiff contends the shed passed to him as part and parcel of the real property he purchased in 2017. Defendant contends the shed is, and has at all relevant times been, personal property belonging first to his grandfather, then to his mother, and now to him by distribution from his mother's estate.

At the close of the evidence, the Court identified the dispositive question and requested proposed orders addressing it: whether the shed is "personal property" or "appurtenant to — is it part of the real estate." (Tr. 226:23–25; 228:4–8.) Defendant's counsel framed the same issue as "whether or not it is personal property, the transfer in the deed, versus appurtenant to the land purchased by Mr. Lemacks," which the Court agreed was "the crux of the argument." (Tr. 226:11–17.) Defendant no longer presses his claims of adverse possession or acquiescence, and the Court does not reach them. (Tr. 224:14–17; 225:7–9.)

Having heard the testimony of the witnesses, observed their demeanor, reviewed the exhibits admitted into evidence, and considered the arguments of counsel, I make the following findings of fact and conclusions of law.

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BACKGROUND

1. The parties own adjoining parcels on the south side of Jenkins Road in the West Ashley area of Charleston County.

2. The James property is known as 1080 Jenkins Road and is identified by Charleston County TMS No.: 351-14-00-009. It contains approximately .19 acre and is improved with a residence in which Defendant lives.

3. The Lemacks property is known as 1082 Jenkins Road and is identified by Charleston County TMS No.: 351-14-00-080. It contains approximately .28 acre and is a "flag" lot, the twenty-foot "pole" portion running west of the James residence to Jenkins Road and the "flag" portion lying behind the James property. It is unimproved except for the shed in dispute.

4. Both parcels were formerly a single tract owned by Reverend Albert Peter James, the Defendant's grandfather.

5. The metal shed in dispute was placed on the tract in 1980 by Albert Peter James, at a time when he owned the entire undivided tract. (Tr. 20:17; 138:10–15.) It is identified on the Charleston County Tax Records for TMS No. 351-14-00-009 as "utility shed," record 01/1980. (Def. Ex. 3; Tr. 153:19–25; 197:21–23.)

6. Five years after the shed was placed, Albert Peter James caused the tract to be subdivided by a plat prepared by W.L. Gaillard dated June 28, 1985, and recorded in the R.O.D. Office for Charleston County in Plat Book BF, Page 105. (Pl. Ex. 2, 2A.) The shed is not depicted on the Gaillard plat.

7. By deeds each recorded October 30, 1985, Albert Peter James conveyed the .19-acre parcel (TMS No.: 351-14-00-009) to his daughter, Margaret James, also known as Margaret A. Manigault, the Defendant's mother, in Book E-149, Page 663; and conveyed the .28-acre parcel (TMS No.: 351-14-00-080) to his son, Franklin James, in Book E-149, Page 659. (Pl. Ex. 14, 17.)

8. The chains of title to the two parcels are set out on Plaintiff's Exhibit 14, which is incorporated here by reference. Margaret James Manigault died April 12, 2011. Her estate was administered in the Charleston County Probate Court as Case No. 2011-ES-10-01074. (Def. Ex.

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1.) By deed of distribution recorded July 17, 2012, and by intervening conveyances from Dedra Manigault and Yvonne James Pinckney, Defendant Clarence James became the one hundred percent owner of TMS No. 351-14-00-009 by deed recorded March 26, 2015, in Book 0464, Page 903. (Pl. Ex. 14.)

9. Franklin James conveyed TMS No.: 351-14-00-080 to Roger Lemacks by deed dated August 15, 2017, and recorded August 24, 2017, in Book 0661, Page 603. (Pl. Ex. 6, 14.) Franklin James is now deceased. Mr. Lemacks never met him. (Tr. 24:17–22.)

10. The shed is a structure approximately twelve feet by twenty feet, constructed of corrugated aluminum siding on tubing pipe posts set roughly four feet apart, rising about five feet to a pitched corrugated aluminum roof. The posts are set into a concrete slab. (Tr. 41:8–17.) It has double "barn" doors, four windows, and no rear door. (Tr. 30:17–24; 158:16–19.) The doors are the only means of entry, and they face and open onto 1080 Jenkins Road. (Tr. 158:20–22.) The shed is served by electricity run from the residence at 1080 Jenkins Road. (Tr. 157:23–158:2.)

11. The shed sits astride the boundary between the two parcels. According to the plat prepared for Plaintiff by Atlantic Surveying, Inc. (Pl. Ex. 3), the greater portion of the structure lies on TMS No.: 351-14-00-080 and approximately .6 to .7 of a foot lies on TMS No.: 351-14-00-009. (Tr. 21:1–6.) The Defendant disputed certain measurements on the Atlantic plat but acknowledged he is not a surveyor. For the reasons stated below, the precise location of the boundary line is not material to the disposition of this case.

FINDINGS OF FACT

12. I find that the shed is a prefabricated metal utility building of the ordinary sort, not a masonry or frame building integrated into the land. Its walls and roof are corrugated aluminum panels. Its structural members are lengths of metal tubing. Nothing about it is unique to, or specially adapted for, the .28-acre parcel on which it principally rests. It is not a dwelling, it has no plumbing, and it serves no function that is peculiar to the land beneath it.

13. I find that the shed is capable of being removed as a unit without material injury to the freehold. This finding rests substantially on the testimony of the Plaintiff himself. Mr. Lemacks, a man of forty-five years' experience in the surveying and construction trades, testified

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that if he prevailed he would "cut with a concrete cutter six inches inside of the walls all the way around the building and hoist it up with the concrete poles in place and use timber to reenforce the structures of the building," then "raise it up using the oak tree above it and some cables and turn the building . . . 90 degrees" and "put it on a new foundation." (Tr. 59:12–22.) He estimated the work would take a month or two. (Tr. 60:9–13.)

14. The Defendant likewise testified that he is able to move the shed onto his own parcel, that he has cleared a place for it, that he has "people standing by," and that the task would take thirty days. (Tr. 157:3–158:12; 167:14–19.)

15. I therefore find, on the testimony of both parties, that this structure can be severed from the ground and relocated. That is not a characteristic of a building that has become part and parcel of the soil. The concrete slab may well remain a part of the realty; the aluminum building standing upon it need not, and does not, share that character.

16. I further find it significant that the Plaintiff himself draws precisely this distinction on his own land. Asked why he does not store his motorcycles and equipment in the several other outbuildings he owns — which include a ten-by-twelve metal storage building, an eight-by-eight wooden shed, and a twelve-by-twenty storage shed — Mr. Lemacks answered that those structures are "up off the ground," "not on a concrete pad," "all elevated," and "not attached to the land." (Tr. 82:5–10.) The Plaintiff thus understands, and applies to his own property, the distinction between a building that has merged with the soil and one that has not.

17. I find that when Albert Peter James placed the shed in 1980, he used it as a garage for his 1976 Cadillac and as storage for the lawn and landscaping equipment he used in his trade. (Tr. 169:6–12.) It was, from its inception, a chattel used to house other chattels.

18. I find that in 1985, when Albert Peter James divided his land, he did not treat the shed as belonging to the .28-acre back lot. The credible testimony is that he gave his daughter Margaret "the utility shed and the house" at 1080 Jenkins Road (Tr. 140:11–14), and gave the bare back lot to his son Franklin. Both deeds describe only acreage by reference to the Gaillard plat; neither mentions any building; and the shed appears on neither the plat nor any property description in either chain of title. (Tr. 185:14–186:20.)

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19. I find that from 1985 until 2018 — a period of some thirty-three years — not one person ever asserted that the shed belonged to Franklin James or to the back lot. Franklin James never lived at either address; he lived on Jaywood Circle. (Tr. 169:22–23.) He never used the shed, never stored anything in it, and never claimed it. (Tr. 144:8–14.) He came to the back lot so seldom that the Defendant cut its grass for twenty-five years. (Tr. 150:14–18; 170:1–7.) The ownership of the shed was never questioned during Margaret Manigault's lifetime, never questioned during the administration of her estate, and never questioned by anyone prior December 2018 and this lawsuit in 2022. (Tr. 144:3–7; 153:7–9; 168:8–13.)

20. I find that Charleston County has carried the shed on the Tax Records for the Defendant's parcel, TMS No.: 351-14-00-009, as a "utility shed" dating from 1980, for the entire period of the Defendant's and Defendant's predecessors' in ownership. (Def. Ex. 3; Tr. 153:19–25.) It has never appeared on the Tax Records for TMS No.: 351-14-00-080. The County Tax Records do not adjudicate title, and the Court does not treat them as doing so. I find they are one more contemporaneous indication of how everyone concerned understood this structure for four decades.

21. The Court raised at trial an apparent inconsistency in the Defendant's testimony: he stated more than once that his mother received "the property" through probate, when in fact she took her interest in the land by deed from her father in 1985. (Tr. 219:20–220:1.) Having reviewed Defendant's Exhibit 1, I find the inconsistency is resolved and resolved in the Defendant's favor. Margaret Manigault took the *land* by deed. She passed the *shed* by will. The Defendant was describing the shed.

22. The Amended Inventory and Appraisement filed in *Estate of Margaret A. Manigault*, No. 2011-ES-10-01074, lists the metal shed among the decedent's personal property. (Def. Ex. 1, p. 4; Tr. 143:6–10; 206:20–22.) As the Court observed at trial, the shed is "the first thing listed in the inventory of items that are listed in there." (Tr. 221:18–20.)

23. The Proposal of Distribution filed in that estate draws the very line this case requires the Court to draw. It distributes the *real property* separately and by Tax Map Number — an "undivided one-half interest of 1080 Jenkins Road . . . TMS number 351-14-00-009" to Yvonne James Pinckney and a like interest to Clarence A. James — and then separately distributes the

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personal property listed on Attachment A, one-half to each of the same two devisees. The remaining devisee, Dedra Manigault, received an item of personal property, a 2004 Chevrolet Malibu. (Def. Ex. 1; Tr. 145:5–22.) The first item appearing on Attachment A is the metal garage. (Tr. 145:25–146:7.)

24. I find that the Probate Court, the personal representative, and the devisees all treated the metal shed as personal property of the estate, distinct from the real property at 1080 Jenkins Road, and distributed it as such. No party objected then, and no party has ever challenged that distribution.

25. Yvonne James Pinckney thereafter conveyed her remaining interest to the Defendant by instrument recorded March 26, 2015 in Deed Book 0464 at Page 903. (Def. Ex. 2; Pl. Ex. 14.) I find that Clarence James holds the entire interest in the shed formerly held by his mother's estate.

26. Paragraph 3 of the contract of sale between Franklin James and Roger Lemacks (Pl. Ex. 4) provides:

> Parties agree that no personal property will transfer as part of this sale except described below. And/or attachments, sheds/garage at no value.

(Tr. 29:14–22; 92:11–15.)

27. I find this provision to be revealing, and that it cuts against the Plaintiff. Paragraph 3 is the personal property paragraph of the contract. A structure that is part and parcel of the realty passes automatically under the granting and appurtenance clauses of the deed; it requires no mention in a contract term governing what personal property will and will not transfer. The parties to the Lemacks sale placed the shed in the personal property paragraph. They there assigned it no value.

28. Troy Phillips, the buyer's agent, drafted the contract language. He testified that he never visited the property, does not know where the shed is located, does not know where its door is, never spoke with Clarence James, and made no inquiry whatever into who owned the shed. He testified: "I can only assume that Mr. James Franklin signed and agreed to it that he knew he owned

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the shed," and confirmed there was "no independent verification." (Tr. 95:3–97:14.) He described the shed as not "a major part of this transaction at that point in time." (Tr. 96:5–9.)

29. James Dingle, the listing agent for Franklin James, testified that the shed was not identified in the listing agreement and was "kind of understood that it was an old shed that would just convey." (Tr. 129:19–22.) He then testified, in response to questions from the Court, that before the listing there had been "discussions . . . that if Mr. Clarence was interested in the shed, he can move the shed or just — or something. He can have the shed and move it on his property." (Tr. 129:25–130:3.) I find this testimony credible and significant. It reflects an understanding on the seller's own side of the transaction that the shed was a removable thing that Clarence James might take away with him.

30. I find that Clarence James asserted his ownership of the shed to Mr. Lemacks in their first conversation after the closing, and proposed an accommodation under which Mr. Lemacks would use the sister's driveway for access and Mr. James would continue to use the shed. Mr. Lemacks declined. (Tr. 218:17–219:5.) Mr. James has maintained the same position, without deviation, ever since.

31. I find that at the time Mr. Lemacks purchased, a no trespassing sign was posted on the shed door. (Tr. 83:15–20.) I further find that a lis pendens signed by Clarence James was filed of record on July 31, 2017 — approximately ten days after the contract was signed and roughly two weeks before the closing on August 15, 2017. (Pl. Ex. 15; Tr. 130:14–18.) The lis pendens was legally ineffective, as it described the wrong parcel, and I attach no legal significance to it as an instrument – it only shows intent.

32. Plaintiff places considerable weight on evidence that the shed was emptied of its contents approximately five days before closing and refilled shortly afterward. I find the evidence on this point inconclusive and immaterial.

33. Mr. Dingle observed a pile of items outside the shed during a drive-by. He never went inside the shed, never opened its doors, believed it to be locked, could not identify a single item in the pile, and conceded that he was "assuming" the items had come from inside and could not "guarantee" it. (Tr. 118:23–123:21.) His view was of the rear of the building; the doors are on the opposite side, facing 1080 Jenkins Road. Mr. Phillips never visited the property at all and

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relayed what Mr. Dingle told him. (Tr. 95:3–17.) Mr. Lemacks looked through a rear window from a distance. Mr. James testified the shed was never emptied. (Tr. 146:18–147:4.)

34. On cross-examination in rebuttal, Mr. Lemacks acknowledged that he never saw items being taken out of the shed, never saw items being put back in, and never checked to see whether the items had been returned to the shed at all. (Tr. 214:16–216:20.) He conceded the items might simply have been reorganized. (Tr. 215:9–11.)

35. More fundamentally, this evidence goes to the location of the contents, not to the title of the shed. Whether Mr. James temporarily moved his lawn equipment out of his shed in August of 2017 has no bearing on who owned the shed. Nothing in the contract or the deed purported to make the emptying of the shed a conveyance of it.

CONCLUSIONS OF LAW

A. The Governing Test

36. The question presented is one of South Carolina fixture law, and it is not answered by the general statutory definitions of real property. S.C. Code Ann. § 12-37-10(1), a provision of the taxation title, defines real property to include structures "annexed or attached thereto *which pass to the vendee by the conveyance of land or lot*." That qualifier assumes the answer to the question presented: whether this structure passes to the vendee by the conveyance of the land is the issue to be decided, not the premise from which to decide it. S.C. Code Ann. §14-1-20, provides that "real property" and "real estate" are coextensive with lands, tenements, and hereditaments, is likewise definitional. Neither section tells the Court whether this particular structure is a tenement of this particular parcel. For that, the Court must apply the settled common-law test.

37. Under that test, a fixture is "an article which was a chattel, but by being physically annexed to the realty by one having an interest in the soil becomes a part and parcel of it." *Creative Displays, Inc. v. S.C. Highway Dep't*, 272 S.C. 68, 72, 248 S.E.2d 916, 917 (1978). Critically, "[b]y mere affixation the chattel does not become a fixture." *Id.* The criteria for determining whether an item remains personalty or has become a fixture are: "(1) mode of attachment, (2) character of the structure or article, (3) the intent of the parties making the annexation, and (4) the

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relationship of the parties." *Id.* (citing *Carroll v. Britt*, 227 S.C. 9, 86 S.E.2d 612 (1955)); *accord Carson v. Living Word Outreach Ministries, Inc.*, 315 S.C. 64, 70, 431 S.E.2d 615, 618 (Ct. App. 1993); *Hyman v. Wellman Enters., Inc.*, 337 S.C. 80, 84, 522 S.E.2d 150, 152 (Ct. App. 1999); *Carjow, LLC v. Simmons*, 349 S.C. 514, 563 S.E.2d 359 (Ct. App. 2002).

38. Whether an item is a fixture is a mixed question of law and fact. "It is incumbent on the court to define a fixture, but whether it is such in a particular instance depends upon the facts of that case, unless the facts are susceptible of but one inference." *Carson*, 315 S.C. at 70, 431 S.E.2d at 618 (citing *Rawls v. Am. Cent. Ins. Co.*, 97 S.C. 189, 81 S.E. 505 (1914)). Where the other factors are not in genuine dispute, "our analysis hinges on the intent of the parties." *Carjow*, 349 S.C. at 519, 563 S.E.2d at 362.

B. Application of the Four Factors

39. *Mode of attachment.* The metal posts of this building are set in a concrete slab. Standing alone, that fact does not make the building a fixture, because "[b]y mere affixation the chattel does not become a fixture." *Creative Displays* is instructive. Our Supreme Court there held that an outdoor advertising sign was "personal property, both by stipulation of the parties to the lease and as a matter of law," 272 S.C. at 72, 248 S.E.2d at 917, notwithstanding that the sign was substantially annexed to the ground. The record in that case described the structure as a large double-faced sign mounted on six steel beams anchored roughly eight feet deep in concrete, which could be removed only by dismantling it and cutting the beams with a torch. *Id.* at 75–76, 248 S.E.2d at 920 (Lewis, C.J., dissenting) (reproducing the order of the circuit court). The Court reached that result notwithstanding that degree of annexation, resting its analysis on the parties' expressed intention and on the removable character of the article. The mode of attachment here — tubing posts set in a slab — is no more substantial than that, and the parties' expressed intention, as discussed below, points the same way. This factor does not carry the Plaintiff's burden.

40. *Character of the structure.* This is a twelve-by-twenty prefabricated corrugated aluminum utility building. It is not adapted in any special way to the .28-acre lot. It houses lawn equipment, a washing machine, a stove, tools, and similar chattels. Both parties testified it can be lifted from its slab and set down elsewhere. In *South Carolina State Highway Department v. Smith*, 253 S.C. 639, 172 S.E.2d 827 (1970), quoted at length in *Creative Displays*, 272 S.C. at 72–73,

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248 S.E.2d at 918, the Court drew the distinction simply: "personal property, unlike fixtures, can be removed from the condemned premises." This building can be removed. This factor favors the Defendant.

41. *Intent of the party making the annexation.* This is the decisive factor, *Carjow*, 349 S.C. at 519, 563 S.E.2d at 362, and every indication in this record points one way. Albert Peter James annexed the shed in 1980. Five years later he divided his land, and in doing so he gave the shed, together with the house, to his daughter at 1080 Jenkins Road, while conveying the bare back lot to his son. He built the building so that its only doors opened toward 1080 Jenkins Road. Electricity to the shed was, and is, drawn from the house at 1080 Jenkins Road. The County carries the shed on the Tax Card for 1080 Jenkins Road. For thirty-three years, no member of this family, and no owner of the back lot, ever suggested otherwise. Where the owner of both the chattel and the soil manifests an intention that the chattel remain personalty, and acts consistently with that intention for nearly four decades, the chattel does not become part and parcel of the freehold.

42. *Relationship of the parties.* "[T]he principal cause of confusion in the law of fixtures is the failure to recognize the fact that there are various relationships under which the question may arise, and the same rule does not apply to all." *Hyman*, 337 S.C. at 85, 522 S.E.2d at 152. The rule must accordingly be applied "with reference to the relation of the parties." *Id.* Here the annexation was made by a common owner of an undivided family tract, who thereafter divided the tract among his children. This is neither a landlord-tenant case nor a vendor-purchaser case as to the annexation. The presumption invoked by Plaintiff — that whatever is annexed to the freehold belongs to whoever takes the freehold — has its greatest force between a seller and a buyer of the same land who dealt with each other at the time of annexation. It has little force where, as here, the annexor divided his own land and by his own act separated the building from the parcel on which it stood.

C. The Parties to the 2017 Sale Themselves Classified the Shed as Personalty

43. Even if the four factors left the matter in equipoise, the contract of sale would resolve it. Parties who wish to remove any doubt about whether a questionable item passes with the land ordinarily do so by naming that item in the contract. These parties named the shed — and they named it in the paragraph governing *personal property*, at no value. Paragraph 3 begins,

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"Parties agree that no personal property will transfer as part of this sale except described below." The shed is described below. The Plaintiff cannot rely on that paragraph to acquire the shed while simultaneously contending the shed was never personal property at all.

D. Franklin James Could Not Convey What He Did Not Own

44. A deed of real estate "passes to the grantee the entire interest of the grantor in the property described in the deed." S.C. Code Ann. § 27-5-130(A). It passes no more than that. The granting language on which Plaintiff relies — "Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging" (Tr. 42:14–19) — conveys what belongs to the premises. It does not convey a chattel belonging to a stranger to the deed that happens to be sitting on the premises.

45. It was urged at trial that because the Defendant produced no deed or other recorded instrument conveying the shed from Albert James to Margaret Manigault, the shed must instead have passed to Franklin James along with the land. (Tr. 224:2–10.) The Court does not accept that reasoning. First, it inverts the burden of proof: it is the Plaintiff who must establish his own title to the thing he claims. Second, and dispositively, the transfer of a chattel requires no deed. Personal property passes by delivery, and thereafter by will and by order of the Probate Court. The absence of a recorded conveyance of a metal shed proves nothing except that this family did not believe a deed was necessary — which is in itself evidence that they regarded the shed as personalty.

E. The Encroachment

46. The shed straddles the boundary. On Plaintiff's own survey, a portion of the structure stands on the Defendant's land. This fact reinforces rather than undermines the conclusion reached above. A single building cannot be part and parcel of two separate freeholds held by two different owners. That the structure rests on both parcels is a further indication that it is best understood as a discrete article of personal property standing upon the land rather than as an appurtenance to either lot.

47. Because the shed is personal property that its owner will remove, the encroachment resolves itself, and the Court need not determine the precise location of the boundary line as between the Gaillard and Atlantic plats. Nothing in this Order shall be construed as adjudicating the location of that line for any other purpose.

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F. Trespass

48. Plaintiff's claim for damages is founded on trespass, which is an injury to possession. Because I conclude that the shed is the Defendant's personal property, the Defendant's storage of his own goods in his own building is not a trespass upon the Plaintiff's possession of the land. Plaintiff's claim for lost rental value under *Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 747 S.E.2d 468 (2013), therefore fails, and no damages are awarded.

49. The Defendant is entitled, as the owner of a chattel resting on the land of another, to remove it within a reasonable time and to such access as removal reasonably requires. The Defendant has testified he can accomplish removal within thirty days. That is a reasonable time and it is the period the Court will allow. However, in the event the shed is not relocated within ninety (90) days, the Court concludes the Defendant will have abandoned the shed to the Plaintiff.

G. Attorney's Fees

50. Both parties requested an award of attorney's fees. Attorney's fees are not recoverable absent a contract or statute authorizing them, and neither party has identified one. Each party shall bear his own attorney's fees.

ORDER

IT IS THEREFORE

ORDERED that the metal shed or garage located at the common boundary of 1080 Jenkins Road and 1082 Jenkins Road, Charleston, South Carolina, is personal property and is not a fixture, tenement, or appurtenance to, or part and parcel of, the real property identified as Charleston County TMS No.: 351-14-00-080; and it is further

ORDERED that title to and ownership of said metal shed or garage is vested in the Defendant, Clarence James, having passed from Reverend Albert Peter James to Margaret James, also known as Margaret A. Manigault, and from her estate to the Defendant by distribution in Charleston County Probate Court Case No. 2011-ES-10-01074, together with the subsequent conveyance of Yvonne James Pinckney's interest to the Defendant; and it is further

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ORDERED that neither the contract of sale dated July 2017 (Plaintiff's Exhibit 4) nor the deed of Franklin James to Roger Lemacks dated August 15, 2017, and recorded in Book 0661, Page 603, R.O.D. Office for Charleston County, conveyed any right, title, or interest in said metal shed or garage to the Plaintiff, Franklin James having held none; and it is further

ORDERED that the Plaintiff's causes of action for trespass and for damages for loss of use are DENIED, and judgment is entered for the Defendant thereon; and it is further

ORDERED that the Defendant shall remove the metal shed or garage, together with its contents, from the Plaintiff's property within thirty (30) days of the date of finality of this Order. Thereafter, Defendant shall repair or remove any concrete slab, footing, or debris remaining on the Plaintiff's property within twenty (20) days of the removal of the shed or garage, together with its contents. Defendant shall leave that portion of the Plaintiff's property in a safe and reasonably level condition; and it is further

ORDERED that the Plaintiff shall permit the Defendant, his agents, employees, and contractors reasonable access to the Plaintiff's property for the sole and limited purpose of accomplishing the removal directed above. Defendant shall be responsible for any damage to the Plaintiff's property occasioned by the removal beyond the footprint of the shed, and shall not enter for any other purpose; and it is further

ORDERED that upon the Defendant's removal of the shed as directed, the Plaintiff's title to the real property described as Charleston County TMS No. 351-14-00-080 shall stand free of any claim of the Defendant to the shed or to the ground upon which it stood, and the Defendant shall have no further right of entry upon the Plaintiff's property; and it is further

ORDERED that should the Defendant fail to remove the shed within the ninety (90) days allowed, unless Defendant requests an extension to be granted from this Court only upon good cause shown, the Defendant will have abandoned the shed to the Plaintiff; and it is further

ORDERED that each party shall bear his own attorney's fees.

AND IT IS SO ORDERED!

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

Charleston, South Carolina
_____, 2026

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Charleston Common Pleas

Case Caption: Roger Lemacks VS Clarence James
Case Number: 2022CP1002037
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Ex. "B"

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1002037

Roger Lemacks
PLAINTIFF(S)

Clarence James
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Upon review and consideration of the Plaintiff's Motion for a New Trial or to Alter or Amend, filed August 28, 2026, the Court grants the Motion only as to the concrete slab remaining undisturbed after the Defendant removes the metal shed. The Court adopts the Defendant's Return and Memorandum in Opposition for the reasoning behind its decision to respectfully deny the Plaintiff's Motion for a New Trial, deny the Plaintiff's Motion to Alter or Amend in part, and deny Plaintiff's Motion for Stay.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/18/2026 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2026 Sep 18 1:44 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002037

ELECTRONICALLY FILED - 2026 Sep 18 1:44 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002037

Charleston Common Pleas

Case Caption:	Roger Lemacks VS Clarence James
Case Number:	2022CP1002037
Type:	Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Ex. "C"

ELECTRONICALLY FILED - 2026 Aug 28 12:29 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002037

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	)	**CASE #: 2022-CP-10-2037**
ROGER LEMACKS,	)	
	)	
Plaintiff,	)	
	)	***MOTION FOR NEW TRIAL UNDER***
v.	)	***S.C.R.C.P. RULE 59(a) OR IN THE***
	)	***ALTERNATIVE TO ALTER OR AMEND***
CLARENCE JAMES,	)	***JUDGMENT UNDER RULE 59(e)***
	)	***AND FOR STAY***
Defendant.	)	
	)	

Plaintiff respectfully moves for a new trial, for a stay of the Final Order of Judgment of Defendant or in alternative to alter or amend the "Final Order of Judgment for Defendant" filed August 19, 2026, on the following grounds:

1. That the Court erred by failing to find that the metal shed/garage located on Plaintiff's property is a fixture, tenement, or appurtenance to and part and parcel of real property owned by Plaintiff.

2. That the Court erred in failing to order that the metal shed/garage was conveyed as a part and parcel of real property by Albert James to Franklin James by deed dated August 29, 1985, and recorded in the ROD Office for Charleston County in Book E-149, Page 695 and by deed of Franklin James to Roger Lemacks dated August 15, 2017, and recorded in the ROD Office aforesaid in Book 0661, Page 603.

3. That the Court erred in finding that the shed/garage is capable of being removed as a unit, without material injury to Lemacks freehold in that the shed/garage consists of metal siding over metal poles serving as studs which are permanently embedded into a concrete slab foundation located on the Lemacks property.

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4. That the Court erred in finding that the metal shed/garage could be removed by deconstructing the foundation 6 inches inside the perimeter of the walls of the metal shed/garage and replacing the same on a new foundation indicates that the metal shed/garage was movable personal property rather than incorporated into the real estate.

The ability to deconstruct the foundation does not change the character of the metal shed/garage as part and parcel of real property.

5. That the Court erred by finding that although the concrete slab may remain a part of the realty, the aluminum building standing upon it does not, the error being that the aluminum building is permanently affixed to the concrete slab and cannot be moved without partial or complete deconstruction.

6. To the extent that the order finds that the alleged ownership of the metal shed/garage by Margaret Manigault was not questioned during her lifetime nor during the administration of the estate, the same is without evidentiary support as there is no competent evidence of any interaction between her and Franklin James, nor is there evidence that "everyone concerned understood the structure for four decades."

7. That the Court erred by determining that the metal shed/garage is personal property (chattel) which passed to Defendant by Margaret Manigault's estate in that there is no competent evidence before the Court that she actually owned the shed or was conveyed the shed by her father, Albert James.

To the extent that the Court relied on the paragraph in the sales contract between Franklin James and Plaintiff describing the shed under a general heading "Personal property", the same was not intended to be legally binding distinction between realty and personalty as, it was not drafted by an attorney and was simply a clarification to ensure that the intent of the parties that the shed

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conveyed was noted. Such clause is not authority for the proposition that the shed is not a part and parcel of the real property.

8. The Court erred in determining that Defendant did not have the burden to prove Margaret Manigualt's ownership of the shed and that Plaintiff's contention that the record must show her title in some fashion "inverts the burden of proof." The Defendant has counterclaimed for ownership of the shed and therefore has the burden of proving Margaret Manigualt's ownership which he has not done.

9. The Court erred in finding that the determining factor in this case is whether or not the metal shed/garage was a fixture. A fixture as stated in the Court's Order, is "an article which was a chattel, but by being physically annexed to the realty by one having an interest in the soil becomes a part and parcel of it" citing Creative Displays, Inc. v. S.C. Highway Dep't, 272 S.C. 68, 72, 248 S,E, 2nd 916, 917 (1978). There is no evidence that the metal shed/garage ever existed as a separate chattel which was later attached to the concrete foundation. Rather the evidence suggests that, like any other building, that it was likely constructed piece by piece upon its concrete foundation becoming a part and parcel of the real estate, just as any other building would be.

To the extent that the building is determined a fixture, the first two (2) factors of *Creative Displays,* Supra, predominate, as the mode of attachment, being upon a permanent foundation and the character of the structure as a building which can be removed only by deconstruction either total or partial, indicate that the shed has been incorporated into the Lemacks's real property.

As to the third and fourth factors, the record is entirely devoid of support for the conclusion that Albert James in any way intended that the building not transfer as a part and parcel of the real estate upon which it was affixed. Neither is there any evidence in the record that the relationship between the parties Albert James to Franklin James other than the relationship of grantor and

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grantee which would create any presumption that the building which is permanently attached to the real estate did not transfer with the real estate.

10. The Court erred in failing to find that the traditional and statutory definition of "real estate" as including all appurtenances and tenements control, including the metal shed/garage.

11. The Court erred in finding that the metal shed/garage was a personal property asset of the Estate of Margaret Manigault and was conveyed to Defendant by her will. Further, Franklin James was not an interested party to her estate nor is there any evidence that he was even aware that the estate documents purported to deprive him of the building existing on his property.

12. The Court erred in ordering that the Defendant shall "...repair or remove any concrete slab, footing, or debris remaining on the Plaintiff's property..." the error being that as recognized in the Court's findings "…. the concrete slab may well remain as part of the realty;..." Without a doubt the concrete slab is a part of the real estate and at a minimum the concrete slab should remain undisturbed.

13. The Court erred in failing to find that Defendant's occupation of the shed is a trespass upon the real estate of Plaintiff and further erred in failing to award damages for the same.

14. Plaintiff further moves for stay of the Final Order of Judgment for Defendant in order to preserve the status quo, until such time as the order becomes final subsequent to any appeal.

CONCLUSION

Plaintiff respectfully moves the Court to either order a new trial or alter or amend its Final Order of Judgment of Defendant to award judgment and possession of the metal shed/garage to the Plaintiff as a tenement, appurtenance or part and parcel of the real property conveyed by Franklin James to Roger Lemacks by deed dated August 15, 2017, and recorded in the ROD Office

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for Charleston County in Book 0661, Page 603; and order that Margaret Manigault had no interest in the metal shed/garage and therefore her estate could not transfer any interest in the same to the Defendant; order that Defendant remove his stored personal property from the metal shed/garage; award judgment to the Plaintiff for trespassing in the amount of at least $25,111.00 or such amount as may be determined by the Court; and confirm title to the property owned by the Plaintiff and described in the Complaint in the name of Roger Lemacks including the metal shed/garage, and the land beneath its footprint.

To the extent that this matter is not automatically stayed by Rule 241 S.C.R.A.P., the Court should stay the operation of it's Order and preserve the status quo, until and unless the Order becomes final subsequent to any appeal which may be taken.

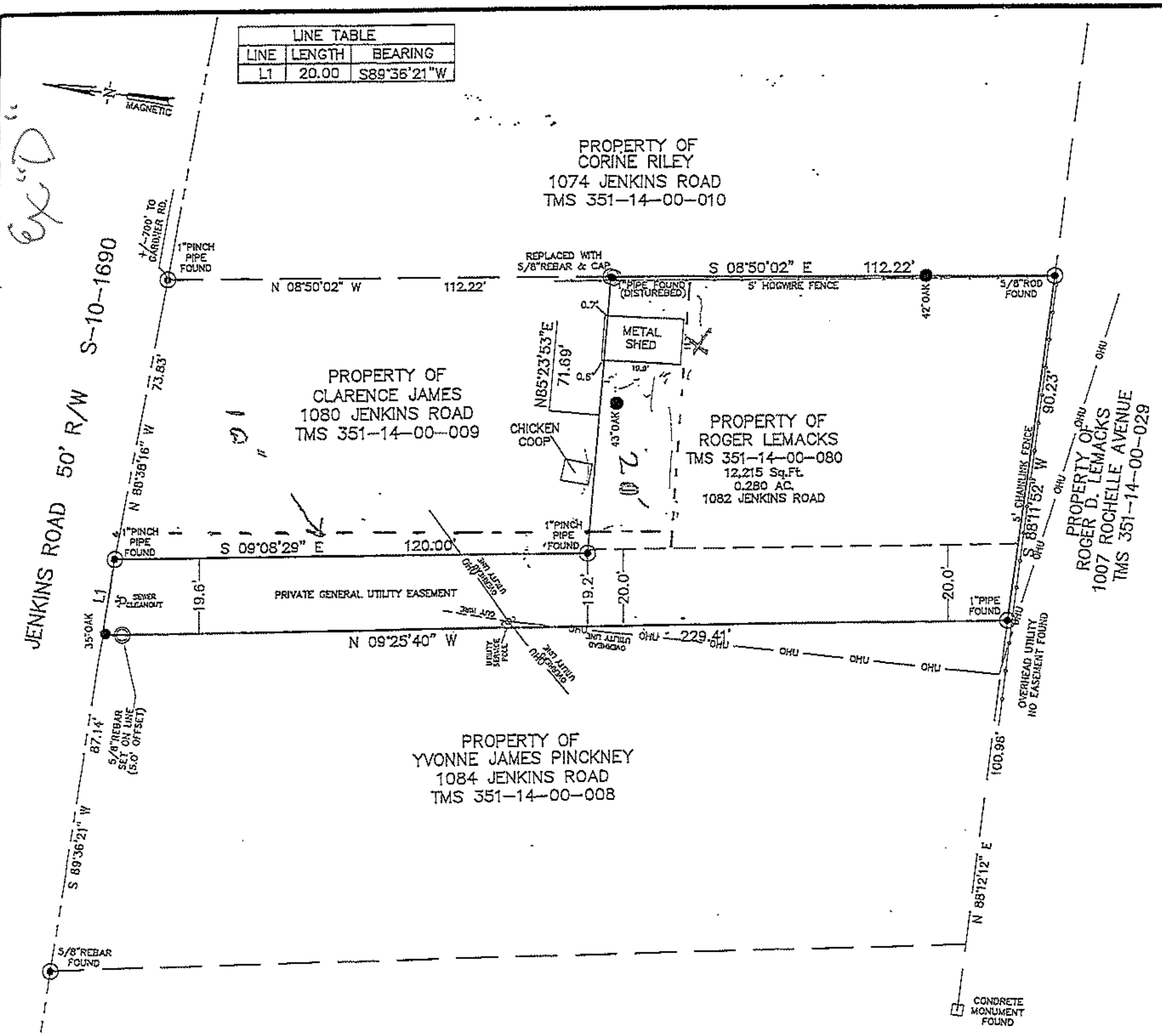
Respectfully submitted,

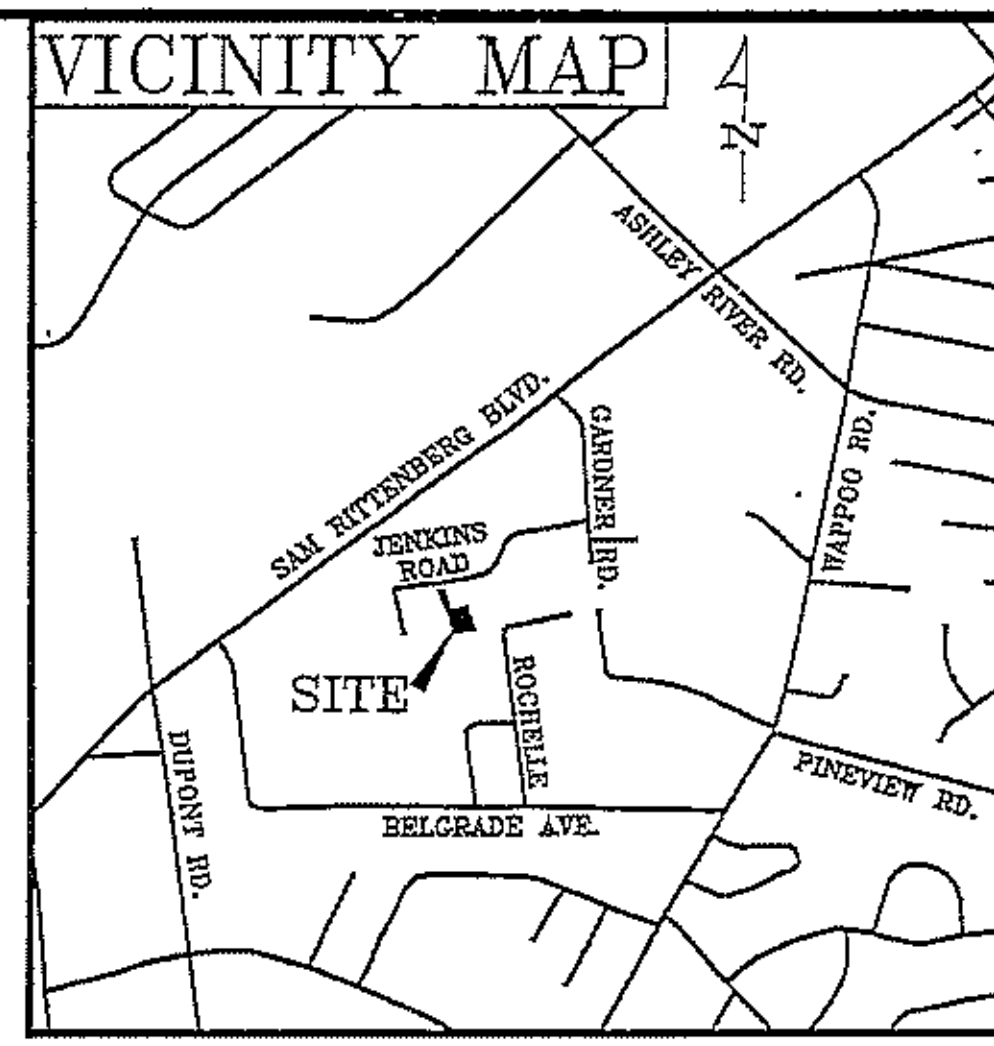
August 28, 2026

S/Kerry W. Koon
KERRY W. KOON, ESQ.
SC BAR #: 3605
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
843.795.7000
ATTORNEY FOR PLAINTIFF

THE DRAWING HEREON IS THE PROPERTY OF ATLANTIC SURVEYING AND MAY NOT BE USED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT. WILL BE SUBJECT TO LEGAL ACTION

LINE TABLE		
LINE	LENGTH	BEARING
L1	20.00	S89°36'21"W





ATLANTIC SURVEYING, INC.
1058 GARDNER ROAD
CHARLESTON, SOUTH CAROLINA 29407
(843) 763-6069; (843) 763-7411 FAX
www.atlanticsurvey.com

Atlantic Surveying, Inc.

NOTES & REFERENCES:

1. REFERENCE PLAT BY W.L. GAILLARD RECORDED IN THE CHARLESTON CO. R.M.C. OFFICE IN PLAT BOOK BF AT PAGE 105.
2. THIS SURVEY DOES NOT REFLECT A TITLE SEARCH AND IS BASED ENTIRELY ON THE ABOVE REFERENCED DOCUMENT(S) AND FIELD EVIDENCE. THIS SURVEY DOES NOT GUARANTEE TITLE NOR DEPICT ANY ENCUMBRANCES NOT SHOW ON THE REFERENCED PLAT.
3. THIS PROPERTY LIES WITHIN THE CITY OF CHARLESTON JC (JOB CENTER) ZONING DISTRICT. ZONING AND SETBACKS ARE A LEGAL MATTER AND MUST BE VERIFIED BY THE PROPER CITY OF CHARLESTON OFFICIAL.
4. AS DETERMINED BY GRAPHICALLY SCALING F.E.M.A. F.I.R.M. 45019C 0792 J, DATE NOV. 17, 2004, THIS PROPERTY APPEARS TO LIE IN FLOOD ZONE X. FLOOD ZONES ARE SUBJECT TO ONGOING FLOOD STUDIES AND MUST BE VERIFIED BY THE PROPER CITY OF CHARLESTON OFFICIAL.
5. CERTIFICATION IS TO THE PARTY/PARTIES FOR WHOM THIS SURVEY WAS PREPARED AND IS NOT TRANSFERABLE TO ANY OTHER INSTITUTIONS OR INDIVIDUALS.
6. TOTAL AREA OF EXISTING LOT IS 0.280 ACRES.

BOUNDARY SURVEY OF AN EXISTING 0.280 ACRE PARCEL (TMS 351-14-00-080) LOCATED ON JENKINS ROAD IN ST. ANDREWS PARISH IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, S.C.

PROPERTY OF
ROGER LEMACKS

GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON 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 RE-QUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

JAMES KELLY DAVIS, R.L.S. No. 9758

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION — ATLANTIC SURVEYING, INC. COA No. 3421

SOUTH CAROLINA REGISTERED LAND SURVEYOR — JAMES KELLY DAVIS 9758

NO.	REVISED	CHECKED / DATE
DRAWN: KELLY	APPROVED: COVERT	DATE: 7/3/2018
FIELD CREW CHIEF: SEABORN	CHECKED: SONYA	JOB NO.: 20040
		SCALE: 1"=20

PLANNING AND RMC USE ONLY

PLANNING USE ONLY
ENGINEERING DIVISION
CITY OF CHARLESTON
DATE PLAT APPROVED: 11/14/18
APPROVED BY CITY ENGINEER
APPROVED BY FOR CITY ENGINEER

RECORDED
DATE: 11/15/2018 TIME: 3:23:21 PM
Book-Page: S18 0261 DocType: Small Plat
Elaine H. Bozman, Register, Charleston County, SC

		Filed By
Record Fee	$10.00	CITY OF CHARLESTON
Postage	$0.00	0
TOTAL	$10.00	0
Drawer		0
Clerk		

Location: JENKINS RD

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Oct 01 2026
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

---

Appellate Case No. 2026-002149

Roger Lemacks.....Appellant,

v.

Clarence James.....Respondent,

PROOF OF SERVICE

I certify that I have served the Motion for Order to Impose Supersedeas, by depositing a copy of it in the United States Mail, postage prepaid and via electronic mail, addressed to the following:

Kelvin M. Huger, Esq.
Counts & Huger, LLC
27 Gamecock Ave., Ste. 200
Charleston, SC 29407
kmhuger@countsandhuger.com

October 1, 2026

Kerry W. Koon
SC BAR # 3605
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
843.795.7000
kerrykoon@hotmail.com
Attorney for Appellant

Telephone: Bus: (843) 795-7000
Fax: (843) 762-5276

KERRY W. KOON
Attorney at Law
147 Wappoo Creek Drive
Wappoo Centre, Suite 203
Charleston, South Carolina 29412

October 1, 2026

VIA EMAIL ctappfilings@sccourts.org & U.S. MAIL
Jenny Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
PO Box 11629 (29211)
Columbia, SC 29201

RE: Roger Lemacks v. Clarence James
Case #: 2022-CP-10-2037

Dear Madam Clerk,

Please find enclosed a Motion for Order to Impose Supersedeas together with a Verification and Proof of Service of the same for filing in the above referenced matter. The motion fee is being sent by U.S. Mail.

With kindest regards, I am

Very truly yours,

Kerry W. Koon

KWK:mm
Enclosures

cc: Kelvin M. Huger, Esq.