

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

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Case No. 2010-CP-10-00250

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**RECEIVED**

JUL 06 2012

**SC Court of Appeals**

Eugene Gathers,.....Respondent,

v.

Ernest McKnight,.....Appellant.

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RESPONDENT'S MEMORANDUM ADDRESSING APPEALABILITY

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Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
P.O. Box 600  
Charleston, SC 29402

*Attorney for the Respondent*

## STATEMENT OF CASE

On January 12, 2010, John Wright (hereinafter "Wright") filed his Complaint seeking an order quieting title to certain real property and declaring that he held fee simple title thereto (Exhibit "1"). On March 18, 2010, Appellant answered the Complaint and asserted three counterclaims including claims for adverse possession, reimbursement of taxes and foreclosure of mortgage (Exhibit "2"). On May 19, 2010, Wright filed a motion for judgment on the pleadings pursuant to Rule 12 (c) or in the alternative, a motion for summary judgment as to Appellant's counterclaim for adverse possession (Exhibit "3"). On August 2, 2010, a Consent Order of Dismissal was issued by the Honorable Roger M. Young under which the parties consented to Appellant's counterclaim for adverse possession being dismissed (Exhibit "4"). Appellant's remaining counterclaims for reimbursement of taxes and foreclosure of mortgage were unaffected by this Order.

On October 8, 2010, Wright filed a motion for summary judgment as to all defendants **except** Appellant (Exhibit "5"). An Order of Default had been issued as to all other defendants (Exhibit "6"). On April 6, 2011, Wright served a Notice of Hearing on Appellant and the Guardian ad Litem (Exhibit "7"). On April 21, 2011, Judge Nicholson heard Wright's motion for summary judgment. Appellant, nor his counsel, appeared. The Guardian ad Litem advised the Court that he had been timely served but had received no communication from any of the defendants since his appointment (Exhibit "8"). No defendants appeared or contested the motion, which Judge Nicholson granted (Exhibit "9"). Judge Nicholson's order expressly preserved Appellant's counterclaims.

On September 27, 2011, Appellant filed a motion to set aside Judge Nicholson's order granting summary judgment as to all defendants except Appellant (Exhibit "10"). Judge Nicholson heard Appellant's motion on February 13, 2012. On May 2, 2012, Judge Nicholson issued an order denying Appellant's motion (Exhibit "11"). On February 24, 2012, Judge Nicholson issued an order amending the caption to substitute Eugene Gathers (hereinafter "Respondent") as Plaintiff (Exhibit "12"). On March 8, 2012 an Offer of Judgment in the amount of \$6,187.00, the sum set forth on Appellant's mortgage, was filed and served upon Appellant's counsel (Exhibit "13").

### **RIGHT TO APPEAL**

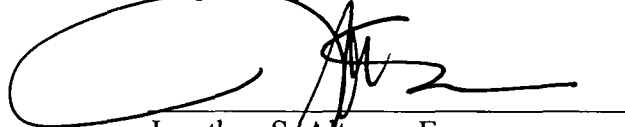
Appellant's appeal is not proper and should be dismissed. Under ACR Rule 201 (b), "*only a party aggrieved by an order, judgment, sentence or decision may appeal*". In the present case, Respondent sought summary judgment as to all defendants **except** Appellant. Judge Nicholson's order expressly preserved Appellant's counterclaims. Appellant, nor his counsel, chose to appear or contest the granting of this motion.

Appellant now contends that Judge Nicholson's order granting summary judgment against the other defendants somehow impact rights that he holds under S.C. Code Ann. § 15-61-25. As Judge Nicholson stated, Appellant is incorrect. In his Answer and Counterclaim, Appellant seeks reimbursement for taxes he purportedly paid on the subject property and asserts a claim under a mortgage. Respondent does not dispute that monies are owed to Appellant and has filed an Offer of Judgment in the amount set forth on Appellant's mortgage. Under S.C. Code Ann. § 15-61-25, joint tenants or tenants in common are provided certain rights. Respondent is neither a joint tenant nor a tenant in common. Rather, he is a creditor with no statutory right of refusal. Procedurally, the sole

remaining issue in this case is the determination of the monies owed to Appellant by Respondent. In light of Judge Young's order dismissing Appellant's claim for adverse possession and Judge Nicholson's order granting summary judgment as to all defendants **except** Appellant (which no other party has appealed) and ACR Rule 201, Appellant's appeal is improper and must be dismissed.

Date: July 5, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jonathan S. Altman', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
P.O. Box 600  
Charleston, SC 29402

*Attorney for the Respondent*

# **Exhibit 1**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-260

John Wright, )  
 )  
Plaintiff, )  
 )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devises, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
 )  
Defendants. )

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2010 JAN 12 AM 11:07  
JULIE J. ARMSTRONG  
CLERK OF COURT

**COMPLAINT**  
  
Suit to Quiet Title  
(Non-Jury)

The Plaintiff would respectfully show unto this honorable court as follows:

1. That the Plaintiff, John Wright (hereinafter "Plaintiff"), is a grandson of Ned Wright (hereinafter referred to as "Decedent") and the sole heir and son of Decedent's daughter, Hattie W. Gaston, who died in 1982.
2. That some of the defendants, including Defendant Ernest McKnight, are residents of Charleston County and the State of South Carolina.
3. By virtue of the subject property being situated in the County of Charleston, State of South Carolina, Plaintiff alleges that this Court possesses subject matter and *in personam* jurisdiction in this action.
4. That the Plaintiff commences this action against the defendants named herein and John Doe; adults and Mary Roe, infants, insane persons, incompetents being fictitious names designating a class of persons, known or unknown, claiming any right, title, estate, interest in or lien upon, the parcel of real estate that is the subject of this action and that it is proper for the Court to appoint a Guardian ad Litem during the pendency of this action to protect any such interests that may exist as to these parties.
5. That joined as Defendants are other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Complaint herein.
6. That the Plaintiff does not know the true names of all defendants, including persons unknown claiming any legal or equitable right, title, estate, lien or interest in the property described in the Complaint adverse to Plaintiff's interest or any cloud on Plaintiff's interest, and therefore sues them by those fictitious names, Plaintiff is informed and believes, and on that basis alleges, that each such defendant claims, or may claim, some interest in the real property described in this Complaint.

7. That any claim of an estate or interest in the real property by the unknown defendants would be adverse to the interest of the Plaintiff.

8. That the real property (hereinafter "the property") that is the subject of this action is located in Charleston County, State of South Carolina, and is more specifically described as follows:

ALL that certain lot, parcel, or tract of land situated, lying and being in Adams Run Township, formerly of Colleton County and now of Charleston County, in the State of South Carolina, containing ten and one-fourth acres, more or less, and bounded as follows: North by Jacksonboro Road, East by lands of Abner Young, and on the South and West by lands formerly owned by J. T. Mitchell, now owned by Fitzsimons, as will more fully appear when reference is had to plat of property made by Wm. Horne, Surveyor, and dated March 12, 1875.

BEING the same property conveyed to Ned Wright by Deed of Margaret Singleton and J. William Washington dated January 21, 1908, and recorded in the Office of the Register of Deeds for Colleton County in Deed Book 31, at Page 86 on January 30, 1908, and recorded in the Office of the Register of Deeds for Charleston County in Deed Book N27, at Page 19.

TMS No. 245-00-00-026

9. That the Decedent acquired the subject property by deed dated January 21, 1908 and recorded in the Colleton County RMC Office on January 30, 1908 and designated as TMS No. 245-00-00-026.

10. That the Plaintiff desires to have this Court determine the parties' respective interests in the property.

11. Defendant Ernest McKnight is named as a defendant herein by virtue of Defendant McKnight's status as an adjacent property owner and Plaintiff's belief that Defendant McKnight may claim an interest in the property.

12. That Decedent died intestate leaving as his heirs and distributees at law, his children, Defendants Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel

Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright and Henry Wright. Upon information and belief, the estates of said children of Decedent have not been probated and they are therefore identified as defendants herein.

13. Defendant Wright died during the 1960's and was survived by three children, Defendants Oscar Wright, Leroy Wright and a third son whose name is unknown. Defendants Oscar Wright and Leroy Wright have since died. Upon information and belief, their estates have not been probated and they are identified as Defendants.

14. Defendant Edward Wright died during the 1970's. Upon information and belief, his estate has not been probated and he is identified as a Defendant. Defendant Edward Wright was survived by two children, Defendants Delores Wright and Carolyn Wright, who, upon information and belief, are the sole heirs of his estate.

15. Defendant Samuel Wright died during the 1960's. Upon information and belief, Defendant Samuel Wright's estate has not been probated and he is identified as a Defendant in this action. Defendant Samuel Wright was survived by three children, Harold Wright, Charles Wright and Samuel Wright, Jr. who have all since died. Upon information and belief, their estates have not been probated and they are identified as Defendants.

16. Defendants James Wright and his wife, Hattie Wright, died during the 1960's. Neither Defendants James Wright or Hattie Wright's estates have been probated and they are identified as Defendants in this action. Upon information and belief, Defendants James Wright and Hattie Wright had no children.

17. Defendant Earline Wright Maxwell is deceased and her estate was not probated. Upon information and belief, Defendant Earline Wright Maxwell was survived by one

child, who has since died. Plaintiff has no information or belief as to whether Defendant Earline Wright Maxwell's child predeceased her or was survived by any heirs.

18. Defendant Wilmenia Wright died during the 1960's. Upon information and belief, her estate was not probated and she is identified as a Defendant in this action. Defendant Wilmenia Wright was predeceased by her spouse and, upon information and belief, was survived by no children.

19. Defendant Henry Wright died in 1982. His estate has not been probated and he is identified as a Defendant herein. Upon information and belief, Defendant Henry Wright was survived by his spouse, Defendant Ernestine Wright, who has since died, along with one child, Defendant Henry Wright, Jr., who died on June 26, 1997. Upon information and belief, the Estates of Ernestine Wright and Henry Wright, Jr. have not been probated and they are identified as Defendants herein.

20. Plaintiff paid taxes and maintained possession of the property for a period of over twenty years and that such possession was open, notorious, hostile and continuous for the stated period of time and as such constituted an ouster of all other heirs and possible claimants of the property. As a result of said acts, title to the subject parcel should vest in Plaintiff because of the ouster of all other claimants through adverse possession of the property.


21. Plaintiff possesses no knowledge or belief as to the existence of any other heirs of Decedent, defendants or interested parties other than those individuals identified herein. Plaintiff brings this action for the purpose of having an order issued by the Court recognizing Plaintiff's holding of fee simple title to the property. That unknown Defendants may exist or be deceased with heirs having been undetermined. Therefore, a

Guardian ad Litem should be appointed to represent the interests of said unknown persons.

WHEREFORE, Plaintiff prays that this Court inquire as to the matters herein and adjudge and declare:

1. That Plaintiff is the owner of the subject property holding fee simple title thereto;
2. That Plaintiff has acquired title to the subject property through adverse possession; and
3. That Defendants named and all entities joined as Defendants in this action in the fictitious names of John Doe, adults and Mary Roe, infants, insane persons, incompetents be declared forever barred of and from any claim, right, title, estate, interest and/or lien upon the parcel of real estate above described or any part thereof and that they be barred from claiming any right, title, estate, interest or lien thereon.

Date: 12.2010  
Charleston, South Carolina

  
DERFNER, ALTMAN & WILBORN, LLC  
Jonathan S. Altman, Esq.  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402  
843-723-9804

*Attorney for the Plaintiff*

# **Exhibit 2**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NUMBER 2010-CP-10-0250

John Wright, )  
 )  
Plaintiff, )

-versus-

**ANSWER  
and  
COUNTERCLAIM**

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, Henry )  
Wright, Jr., Ernest McKnight, along )  
with John Doe or Mary Roe, fictitious )  
names to designate minors, infants, )  
persons of unsound mind, under )  
disability or incompetent persons in )  
prison, persons in the military service )  
within meaning of Title 50, United )  
States Code, commonly referred to as )  
The Soldiers and Sailors Civil Service )  
Act of 1940, if any, and Richard Roe )  
and Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devises, distributes, issue, executors, )  
administrators, successors or assigns )  
of Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright, Wilmenia Wright, )  
Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright and Henry Wright, )  
Jr., also all other unknown persons )  
claiming any right, title, estate or lien )  
upon the real estate which is the )

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

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subject of this action, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**COMES NOW THE DEFENDANT, ERNESTINE McKNIGHT,**  
answering the Summons and Complaint of the Plaintiff above named, who would  
show unto this Honorable Court as follows:

- 1.) **THAT** each and every allegation contained in the Plaintiff's Complaint which is not hereinafter specifically admitted, qualified and explained is hereby denied.
- 2.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraph One (1) of the Plaintiff's Complaint and therefore demands strict proof thereof.
- 3.) **THAT** the Defendant admits paragraph Three (3) of the Plaintiff's Complaint.
- 4.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraphs Three (3) through Seven (7) of the Plaintiff's Complaint and therefore demands strict proof thereof.
- 5.) **THAT** the Defendant admits paragraph Eight (8) of the Plaintiff's Complaint.
- 6.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraphs Nine (9) through Ten (10) of the Plaintiff's Complaint and therefore demands strict proof thereof.

7.) **THAT** the Defendant admits paragraph Eleven (11) of the Plaintiff's Complaint.

8.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraphs Twelve (12) through Nineteen (19) of the Plaintiff's Complaint and therefore demands strict proof thereof.

9.) **THAT** the Defendant denies paragraph Twenty (20) of the Plaintiff's Complaint and therefore demands strict proof thereof.

10.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraph Twenty-one (21) of the Plaintiff's Complaint and therefore demands strict proof thereof.

**FURTHER ANSWERING THE ALLEGATIONS CONTAINED IN THE  
PLAINTIFF'S COMPLAINT THE DEFENDANT WOULD SAY AND  
SHOW THE FOLLOWING:**

11.) **THAT** the Defendant has paid the taxes and maintain continuous, open, notorious, hostile, unbroken and adverse possession of the subject premises for a period of ten years prior to the initiation of this action.

12.) **THAT** the Defendant is informed and believes that the Defendant has an equitable interest in the subject property and he therefore claims ownership of the same by adverse possession.

13.) **THAT** on September 25, 2003, John Wright, Anna Michelle Porcher and Harold L. Wright executed a Note in the amount of \$6,187.52 in favor of the Defendant Ernest McKnight.

14.) **THAT** on September 25, 2003, John Wright, Anna Michelle Porcher and Harold L. Wright executed a Mortgage in the principal amount of \$6,187.52 in favor of the Defendant Ernest McKnight and said mortgage was filed on September 29, 2003 in the Charleston County R.M.C. Office in Book M-469, at page 341.

**COUNTERCLAIM  
(Adverse Possession)**

15.) **THAT** the Defendant realleges the allegations contained in paragraphs One (1) through Fourteen (14) above as if full setforth fully herein.

16.) **THAT** the Defendant is informed and believes that he should be awarded ownership of the subject property and that he should be given title there by deed of the Master.

**COUNTERCLAIM  
(Reimbursement of Taxes)**

17.) **THAT** the Defendant realleges the allegations contained in paragraphs One (1) through Sixteen (16) above as if full setforth fully herein.

18.) **THAT** the Defendant is informed and believes that he should be reimbursed for the taxes he paid on the subject property.

**COUNTERCLAIM  
(Foreclosure of Mortgage)**

19.) **THAT** the Defendant realleges the allegations contained in paragraphs One (1) through Eighteen (18) above as if full setforth fully herein.

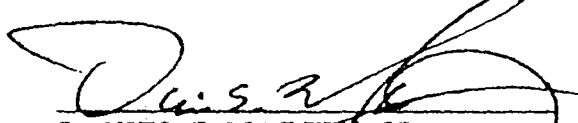
20.) **THAT** according to the terms and conditions of the said note and mortgage, it is provided that in the event the mortgagors failed to pay the taxes, the entire amount of the debt shall become due at the option of the mortgagee.

21.) **THAT** the Defendant is informed and believes that the mortgagors failed to pay taxes for 2003, 2004, 2005, 2006, 2007, 2008 and 2009 and that all of the taxes for those years were paid by the Defendant, Ernest McKnight.

22.) **THAT** the Defendant is further informed and believes that the mortgagors are in default of their obligations under the aforesaid note and mortgage and that he is entitled to have judgment of foreclosure for all amounts due and owing thereon, together with any taxes which may be due, or which have already been paid on behalf of the mortgagors, with a reasonable sum as attorney fees and for the costs incurred in this action.

**WHEREFORE**, the Defendant having set forth the above, prays that the Plaintiff's Complaint be dismissed and that he be granted the relief sought in his Counterclaim and for such other and further relief as this Court may deem just and proper.

**RESPECTFULLY SUBMITTED,**



**DANIEL E. MARTIN, JR.**  
61 MORRIS STREET  
POST OFFICE BOX 21830  
CHARLESTON, S.C. 29403  
(843) 723-1686

**ATTORNEY FOR  
ERNEST McKNIGHT**

Charleston, South Carolina

March 16, 2010

# **Exhibit 3**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-0250

John Wright, )  
 )  
Plaintiff, )  
 )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action. )

Defendants. )

2010 MAY 19 PM 1:55  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

**MOTION FOR JUDGMENT ON  
THE PLEADINGS PURSUANT TO  
SCRCP RULE 12(c) OR IN THE  
ALTERNATIVE MOTION FOR SUMMARY  
JUDGMENT AS PROVIDED FOR IN  
SCRCP RULE 56 AS TO  
DEFENDANT ERNEST MCKNIGHT'S  
COUNTERCLAIM FOR  
ADVERSE POSSESSION**

TO: DANIEL E. MARTIN, JR., ESQ.: Attorney for Defendant Ernest McKnight

Please take notice that ten days after service hereof, or as soon thereafter as counsel may be heard the Plaintiff, by and through his undersigned attorney, will move before the Presiding Judge of the Ninth Judicial Circuit, Charleston County for an Order granting Plaintiff judgment on the pleadings pursuant to S.C.R.C.P. Rule 12 (c) or in the alternative, summary judgment as provided for in S.C.R.C.P. Rule 56 as to Defendant Ernest McKnight's Counterclaim for adverse possession. Plaintiff's motion is based upon the allegations set forth in Defendant McKnight's answer and counterclaim, including Defendant McKnight's allegation that he is the holder of a note and mortgage on the subject property dated September 25, 2003. Defendant McKnight claims this note is due and asserts a counterclaim seeking foreclosure of the mortgage securing said note. In so much as Defendant McKnight alleges that he holds a security interest in the subject property and seeks recognition of this lien, Defendant McKnight can not support a claim for adverse possession.



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575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29403  
Telephone: (843) 723-9804

Date: May 3, 2010  
Charleston, South Carolina

*Attorney for the Plaintiff*

# **Exhibit 4**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-250

John Wright, )  
 )  
Plaintiff, )  
 )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devises, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
 )  
 )  
Defendants. )

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JULIE J. ARMSTRONG  
CLERK OF COURT

FILED


CONSENT ORDER OF DISMISSAL

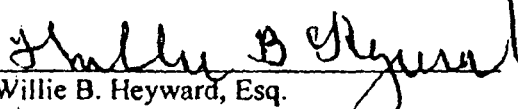
This matter comes before the court on Plaintiff's Motion for Summary Judgment on the Pleadings Pursuant to SCRPC Rule 12(c) or in the Alternative Motion for Summary Judgment as provided for in SCRPC 56 as to Defendant Ernest McKnight's Counterclaim for Adverse Possession. Prior to said motion being heard, the parties advised the court that Defendant McKnight had agreed to the dismissal of his counterclaim for adverse possession with prejudice. All other counterclaims set forth in Defendant McKnight's Answer and Counterclaim survive this order and remain pending.

WE SO MOVE.

WE CONSENT:

WE CONSENT:

  
Jonathan S. Altman, Esq.  
DERFNER, ALTMAN & WILBORN, LLC  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402  
(843) 723-9804  
Fax: (843) 723-7446

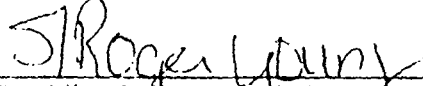
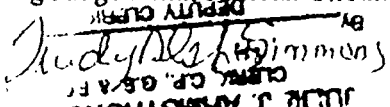
  
Willie B. Heyward, Esq.  
Heirs' Property Law Center, LLC  
2148 Dorchester Rd.  
North Charleston, SC 29405

*Attorney for the Plaintiff*

*Attorney for the Defendant Ernest McKnight*

IT IS SO ORDERED, this \_\_\_\_\_ day of 7/29 2010.

Date: \_\_\_\_\_

  
Presiding Judge Ninth Judicial Circuit  
  
JULIE J. ARMSTRONG  
CLERK, CP, O.S.A.F.  
BY  
JUDY A. SIMMONS  
DEPUTY CLERK

# **Exhibit 5**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

John Wright, )  
Plaintiff, )

vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
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Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Act of 1940, if )  
any, Richard Roe and Sarah Roe, )  
fictitious names to designate the )  
unknown heirs, devisees, distributees, )  
issue, executors, administrators, )  
successors or assigns of Ned Wright, )  
Hattie Wright Gaston, Annie M. )  
Wright, Edward Wright, Samuel )  
Wright, James Wright, Earline )  
Wright, Wilmenia Wright, Henry )  
Wright, Oscar Wright, Leroy Wright, )  
Harold Wright, Charles Wright, )  
Samuel Wright, Jr., Ernestine Wright )  
and Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )

Defendants. )

IN THE COURT OF COMMON PLEAS )  
FOR THE NINTH JUDICIAL CIRCUIT )  
CASE NO.: 2010-CP-10-0250<sup>R</sup> )

2010 OCT -8 PM 4: 08  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

Motion for Summary Judgment as to )  
Defendants Ned Wright, Hattie Wright )  
Gaston, Annie M. Wright, Edward )  
Wright, Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, Charles )  
Wright, Samuel Wright, Jr., Ernestine )  
Wright, Henry Wright, Jr., along with )  
John Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, persons in )  
the military service within meaning of )  
Title 50, United States Code, commonly )  
referred to as The Soldiers and Sailors Act )  
of 1940, if any, Richard Roe and Sarah )  
Roe, fictitious names to designate the )  
unknown heirs, devisees, distributees, )  
issue, executors, administrators, )  
successors or assigns of Ned Wright, )  
Hattie Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, James )  
Wright, Earline Wright, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, Charles )  
Wright, Samuel Wright, Jr., Ernestine )  
Wright and Henry Wright, Jr., also all )  
other unknown persons claiming any )  
right, title, estate or lien upon the real )  
estate which is the subject of this action )

TO: Defendants above named and Marcus W. Meetze, Esquire, as Guardian ad Litem:

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, the Plaintiff, by and through his undersigned attorney, will move before the Presiding Judge of the Ninth Judicial Circuit, Charleston County for an Order granting Plaintiff Summary Judgment on all matters and causes set forth in Plaintiff's Complaint pursuant to the *South Carolina Rules of Civil Procedure*, Rule 56, as to all Defendants except Ernest McKnight on the grounds that an Order of Default was issued as to these Defendants, a copy of which is attached hereto, and as such there are no genuine issues as to any material fact with regard to the causes of action set forth in Plaintiff's Complaint against these Defendants, and therefore, the Plaintiff is entitled to Summary Judgment as a matter of law.



---

Jonathan S. Altman, Esq.  
Dorfner, Altman & Wilborn, LLC  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29403  
Telephone: (843) 723-9804

Date: Oct 6, 2010  
Charleston, South Carolina

*Attorney for the Plaintiff*

# **Exhibit 6**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
 COUNTY OF CHARLESTON ) CASE NO. 2010-CP-10-250

John Wright, )

Plaintiff, )

v. )

Ned Wright, Hattie Wright Gaston, )  
 Annie M. Wright, Edward Wright, )  
 Samuel Wright, James Wright, )  
 Earline Wright Maxwell, Wilmenia )  
 Wright, Henry Wright, Oscar )  
 Wright, Leroy Wright, Harold )  
 Wright, Charles Wright, Samuel )  
 Wright, Jr., Ernestine Wright, )  
 Henry Wright, Jr., Ernest )  
 McKnight, along with John Doe or )  
 Mary Roe, fictitious names to )  
 designate minors, infants, persons )  
 of unsound mind, under disability )  
 or incompetent, persons in prison, )  
 persons in the military service )  
 within meaning of Title 50, United )  
 States Code, commonly referred to )  
 as The Soldiers and Sailors Civil )  
 Service Act) of 1940, if any, and )  
 Richard Roe and Sarah Roe, )  
 fictitious names to designate the )  
 unknown heirs, devisees, )  
 distributees, issue, executors, )  
 administrators, successors or )  
 assigns of Ned Wright, Hattie, )

Defendant. )

**ORDER OF DEFAULT**

2010 APR - 1 AM 10:32  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

**FILED**

IT appearing from the Affidavit of Publication, dated February 17, 2010, and the Affidavit of Default of Jonathan S. Altman, attorney for the Plaintiff, that the below-named Defendants have been duly served with the Summons and Complaint and more than thirty days have elapsed since said service during which no responsive pleadings were filed by said Defendants.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following

Defendants are hereby declared to be in default:

1. Ned Wright,
2. Hattie Wright Gaston,
3. Annie M. Wright,
4. Edward Wright,
5. Samuel Wright,
6. James Wright,
7. Earline Wright Maxwell,
8. Wilmenia Wright,
9. Henry Wright,
10. Oscar Wright,
11. Leroy Wright,
12. Harold Wright,
13. Charles Wright,
14. Samuel Wright, Jr.,
15. Ernestine Wright,
16. Henry Wright, Jr.

Date:

3/3/10

Presiding Judge, Ninth Judicial Circuit

2010-2581

# **Exhibit 7**

D A W

DERFNER  
ALTMAN &  
WILBORN

April 6, 2011

Willie B. Heyward, Esq.  
Heirs' Property Law Center, LLC  
2148 Dorchester Rd.  
North Charleston, SC 29405

Marcus W. Meetze, Esq.  
P.O. Box 265  
Charleston, SC 29402

RE: *John Wright v. The Estate of Ned Wright, et al.*  
Case No.: 2010-CP-10-250

Dear Willie and Wes:

Please find enclosed a Notice of Hearing relative to the above referenced case scheduling Plaintiff's Motion for Summary Judgment for April 21, 2011 at 11:30 a.m. Please contact me with any questions regarding the above.

Yours Very Truly,

DERFNER, ALTMAN & WILBORN, LLC



Jonathan S. Altman

JSA/rs

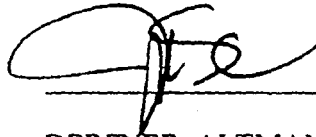
Enclosures



TO: The above named Defendants, Willie B. Heyward, Esq. as attorney for Defendant Ernest McKnight and Marcus W. Meetze, Esq. as Guardian Ad Litem

**YOU WILL PLEASE TAKE NOTICE** that Plaintiff's Motion for Summary Judgment will be heard on April 21, 2011 @ 11:30 a.m. at the Charleston County Courthouse located at 100 Broad Street, Courtroom 3E, Charleston, SC 29401.

Date: 4.6.11



DERFNER, ALTMAN & WILBORN, LLC  
Jonathan S. Altman, Esq.  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29403  
Telephone: (843) 723-9804

# **Exhibit 8**

**ALTMAN & COKER, LLC**

Attorneys and Counselors at Law

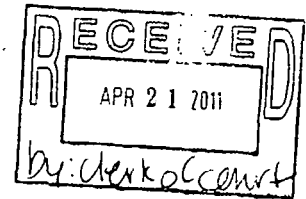
575 King Street, Suite A  
Charleston, South Carolina 29403

Telephone: (843) 853-9907  
Facsimile: (843) 853-9838

Mailing Address:  
Post Office Box 265  
Charleston, SC 29402

April 20, 2011

Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
575 King Street, Suite B  
Charleston, SC 29403



RE: John Wright v. The Estate of Ned Wright, et al.  
Case No.: 2010-CP-10-250

Dear Jonathan:

I am in receipt of the Notice of Hearing relative to Plaintiff's Motion for Summary Judgment as to All Defendants except Defendant Ernest McKnight in the above referenced case. Please be advised that I have had no contact or communication with any of the named Defendants. As Guardian ad Litem, I have no objection to the relief sought in Plaintiff's Motion for Summary Judgment.

If you have any additional questions or require any additional information, please contact me.

Very Truly Yours,

ALTMAN & COKER, LLC

A handwritten signature in cursive script, appearing to read "M. W. Meetze".

Marcus W. Meetze, Esq.

MWM/rs

# Exhibit 9

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-250

John Wright, )  
 )  
Plaintiff, )

vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
 devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
 )  
Defendants. )

ORDER

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 APR 21 PM 12:19

FILED

This matter came before the Court on Plaintiff's Motion for Summary Judgment as to all Defendants except Defendant Ernest McKnight. Plaintiff's motion was filed on October 8, 2010. Present was Jonathan S. Altman, attorney for Plaintiff. No Defendants were present. Marcus W. Meetze, Esq., in his capacity as Guardian ad Litem was not present but provided a letter to the Court advising that he had been timely served with the Notice of Hearing and had received no communication or contact from any of the Defendants since his appointment on January 12, 2010.

The record in this case reflects Plaintiff's Suit to Quiet Title was filed on January 12, 2010. On that date, Marcus W. Meetze was appointed Guardian ad Litem for minors, imprisoned or incompetent persons, members of the military and unknown persons who may have claim or interest in the subject property. An Order for Publication was issued on January 12, 2010. An Affidavit of Publication was filed on February 17, 2010. No answers were filed by any of the Defendants other than Ernest McKnight and an Affidavit of Default was filed on March 30, 2010. An Order of Default was issued on March 31, 2010 and filed on April 1, 2010. Plaintiff's Motion for Summary Judgment was filed on October 8, 2010.

The real property that is the subject of this action is located in the County of Charleston, State of South Carolina and is more specifically described as follows:

ALL that certain lot, parcel, or tract of land situated, lying and being in Adams Run Township, formerly of Colleton County and now of Charleston County, in the State of South Carolina, containing ten and one-fourth acres, more or less, and bounded as follows: North by Jacksonboro Road, East by lands of Abner Young, and on the South and West by lands formerly owned by J. T. Mitchell, now owned by Fitzsimons, as will more fully appear when reference is had to plat of property made by Wm. Home, Surveyor, and dated March 12, 1875.

BEING the same property conveyed to Ned Wright by Deed of Margaret Singleton and J. William Washington dated January 21, 1908, and recorded in the Office of the Register of Deeds for Colleton County in Deed Book 31, at Page 86 on January 30, 1908, and recorded in the Office of the Register of Deeds for Charleston County in Deed Book N27, at Page 19.

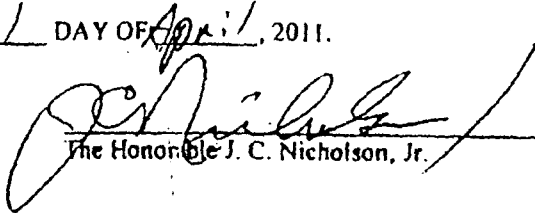
TMS No. 245-00-00-026

As alleged in his Complaint, Plaintiff paid taxes and maintained possession of the property for a period of over twenty years. Plaintiff's possession was open, notorious, hostile and continuous for this period. As such, Plaintiff's actions constitute an ouster of all other heirs and possible claimants. As a result of Plaintiff's acts, title to the subject property has vested in Plaintiff. The record reflects that the Defendants were properly served and an Order of Default has been entered against them.

WHEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff is the owner of the property holding fee simple title thereto by virtue of the ouster of all others who may claim an ownership interest in the property; and
2. All Defendants, except Defendant Ernest McKnight, and all entities joined as Defendants in this action and the fictitious names of John Doe, adults and Mary Roe, infants, insane persons, incompetents are forever barred of and from any claim, right, title, estate, interest and/or lien upon the parcel of real estate above described or any part thereof from claiming any right title, estate, interest or lien in the property.

IT IS SO ORDERED THIS 21 DAY OF April, 2011.

  
The Honorable J. C. Nicholson, Jr.

# **Exhibit 10**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

JOHN WRIGHT

PLAINTIFF,

VS.

NED WRIGHT, HATTIE WRIGHT  
GASTON, ANNIE M. WRIGHT, EDWARD  
WRIGHT, SAMUEL WRIGHT, JAMES  
WRIGHT, WARLINE WRIGHT  
MAXWELL, WILMENIA WRIGHT,  
HENRY WRIGHT, OSCAR WRIGHT,  
LEROY WRIGHT, HAROLD WRIGHT,  
CHARLES WRIGHT, SAMUEL WRIGHT,  
JR. ERNESTINE WRIGHT, HENRY  
WRIGHT, JR., ERNEST MCKNIGHT,  
along with JOHN DOE OR MARY ROE.  
FICTITIOUS NAMES TO DESIGNATE  
MINORS, INFANTS, PERSON OF  
UNSOOUND MIND, UNDER DISABILITY  
OR INCOMPETENT, PERSONS IN  
PRINSON, PERSONS IN THE  
MILITARY SERVICE WITHIN  
MEANING OF TITLE 20, UNITED  
STATES CODE, COMMONLY  
REFERRED TO AS THE SOLDIERS AND  
SAILORS CIVIL SERVICE ACT OF 1940.  
IF ANY, AND RICHARD ROE AND  
SARAH ROE, FICTITIOUS NAME TO  
DESIGNATE THE UNKNOWN HEIRS,  
DEVISEES, DISTRIBUTEES, ISSUE,  
EXECUTORS, ADMINISTRATORS,  
SUCCESSORS OR ASSIGNS OF NED  
WRIGHT, HATTIE WRIGHT GASTON,  
ANNIE M. WRIGHT, EDWARD WRIGHT,  
SAMUEL WRIGHT, JAMES WRIGHT,  
EARLINE WRIGHT, WILMENIA  
WRIGHT, HENRY WRIGHT, OSCAR  
WRIGHT, LEROY WRIGHT, HAROLD  
WRIGHT, CHARLES WRIGHT, SAMUEL  
WRIGHT, JR., ERNESTINE WRIGHT,  
AND HENRY WRIGHT, JR., ALSO ALL

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-10-250

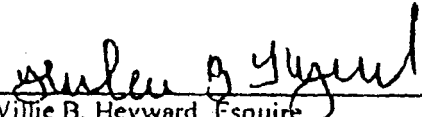
FILED  
2011 SEP 27 PM 4:51  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

MOTION TO SET ASIDE  
SUMMARY JUDGEMENT

OTHER UNKNOWN PERSONS )  
CLAIMING ANY RIGHT TITLE, ESTATE )  
OR LIEN UPON THE REAL ESTATE )  
WHICH IS THE SUBJECT OF THIS )  
ACTION. )  
DEFENDANTS )  
\_\_\_\_\_ )

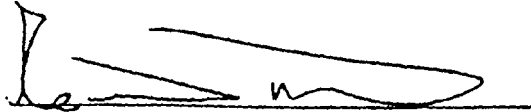
TO Defendants above-named and Marcus W. Meetze, Esquire, as Guardian *ad Litem*:

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, the Plaintiff, Ernest McKnight by and through his undersigned attorney, <sup>via</sup> will move before the Presiding Judge of the Ninth Judicial Circuit, Charleston County for an Order to Set-Aside Summary Judgement as set forth in Plaintiffs Memorandum in support of this Motion pursuant to the South Carolina Rules of Civil Procedure, Rule 59e.

  
Willie B. Heyward, Esquire  
Heirs Property Law Center, LLC  
27 Gamecock Ave., Suite 200  
Charleston, SC 29407  
Telephone: (843) 225-8754

Charleston, SC  
Dated: September 19, 2011





**ERNEST MCKNIGHT**  
763 Seaman Lane  
Johns Island, SC 29455

Sworn to before me this  
8<sup>th</sup> Day of September, 2011  
Edward D. Worthington  
Notary Public of South Carolina  
My Commission Expires: 5-14-2020



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

JOHN WRIGHT )

Plaintiff, )

vs. )

NED WRIGHT ET AL. )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case Number 2010-CP-10-250

AFFIDAVIT OF  
ANNA MICHELLE PORCHER

2011 SEP 27 PM 4:52  
JULIE J. ARMSTRONG  
CLERK OF COURT

PERSONALLY appeared before me the undersigned who, under oath, deposes and says:

1. I am the daughter of Henry Wright, Sr. a Defendant in the above-referenced action and I am the sister of the Defendant, Henry Wright, Jr. I also have another bother, Edward Wright, who also has snot received any pleadings in this matter.

2. I also live in a mobile home located on the subject property. My father also built a the single-family-home-located-at-4777-Savannah-Highway, Ravenel, South-Carolina; this building-is also located on the subject property.

3. My father and I have paid the property taxes on the subject property for over Twenty (20) years.

4. I have not received any pleadings in this matter after repeated requests to the Plaintiff's attorney to provide same.

5. I have also not received the Notice of Motion for a hearing in which I have been divested of any possible interest I may have had in the subject property.

6. I ask that I be served with all pleadings in this matter so as to ascertain my rights in the subject property and defend my rights to continue my possession of same.

Anna Michelle Porcher

ANNA MICHELLE PORCHER  
4789 Savannah Highway, Ravenel SC

Sworn to before me this  
9 Day of September, 2011

[Signature]

Notary Public of South Carolina

My Commission Expires: 3-12-2019

PAMELA PORCHER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES MARCH 12, 2019

# **Exhibit 11**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-00250

Eugene Gathers, )  
 )  
Plaintiff, )  
 )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )

Defendants. )  
\_\_\_\_\_ )

FILED  
2012 MAY -4 AM 9:27  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

ORDER

This matter came before the Court on February 13, 2012 on Defendant Ernest McKnight's (hereinafter "Defendant McKnight") motion to set aside summary judgment. Present at the hearing were Willie B. Heyward, attorney for Defendant McKnight and Jonathan S. Altman, attorney for Plaintiff Eugene Gathers (hereinafter "Plaintiff").

The record in this case reflects that Plaintiff's suit to quiet title was filed on January 12, 2010. On March 18, 2010, Defendant McKnight answered Plaintiff's complaint and asserted three (3) counterclaims including claims for adverse possession, reimbursement of taxes and foreclosure of mortgage.

On May 19, 2010, Plaintiff filed a motion for judgment on the pleadings pursuant to rule 12(c) or in the alternative motion for summary judgment as to Defendant McKnight's counterclaim for adverse possession. On August 2, 2010, a Consent Order of Dismissal was issued by the Honorable Roger Young under which the parties consented to the dismissal of Defendant McKnight's counterclaim for adverse possession. Defendant McKnight's remaining counterclaims for reimbursement of taxes and foreclosure of mortgage were unaffected by this order.

On October 8, 2010, Plaintiff filed a motion for summary judgment as to all Defendants except Defendant McKnight. An order of default had been issued as to all other Defendants. Plaintiff served a notice of hearing on Defendant McKnight.

On April 21, 2011, I heard Plaintiff's motion for summary judgment. Defendant McKnight nor his counsel appeared. The Guardian ad Litem advised the Court that he had been timely served and had received no communication from any of the Defendants since his appointment. No parties appeared to contest Plaintiff's motion which was granted. My order expressly preserved Defendant McKnight's remaining counterclaims.

On September 27, 2011, Defendant McKnight filed a motion to set aside summary judgment. It does not appear that Defendant McKnight provided Plaintiff's counsel with notice of this filing. The Court was not served with a copy of this motion until several months after its filing.

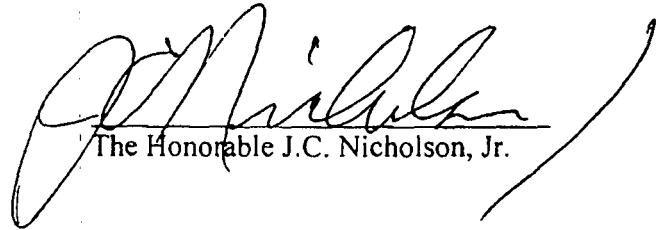
### FINDINGS

Defendant McKnight contends that he has standing to assert claims under S.C. Code Ann. § 15-61-25 entitled "Right of First Refusal of Joint Tenants or Tenants in Common" and that the granting of Plaintiff's motion jeopardizes this claim. In his answer and counterclaim, Defendant McKnight seeks reimbursement for taxes he purportedly paid on the subject property and asserts a claim under a mortgage. Plaintiff does not dispute that monies are owed to Defendant McKnight but contests the amount of that debt. Defendant McKnight's claims were expressly preserved in this Court's prior order. Under S.C. Code Ann. § 15-61-25, joint tenants or tenants in common are provided certain rights. Defendant McKnight is neither a joint tenant nor a tenant in common. As a creditor, he has no statutory right of first refusal under S.C. Code Ann. § 15-61-25 which provides no basis for the setting aside of this Court's prior order.

Defendant McKnight's motion is also untimely and improper. SCRCP 59(e) requires a motion to alter or amend judgment be served no later than ten (10) days after receipt of written notice. Defendant McKnight was properly served with notice of the hearing for Plaintiff's motion for summary judgment which was heard and granted on April 21, 2011. Defendant McKnight nor his counsel appeared to contest Plaintiff's motion. The record reflects that Plaintiff McKnight received a copy of this Court's prior order no later than August 2011. Defendant McKnight's motion was not filed until

September 27, 2011. In addition, Defendant McKnight failed to serve a copy of his motion on Plaintiff's counsel or the Court within ten (10) days as required by Rule 59(e). For the reasons set forth herein, Defendant McKnight's motion to set aside summary judgment and/or motion for reconsideration is hereby DENIED.

Date: 5/2/12

  
The Honorable J.C. Nicholson, Jr.

**JULIE J. ARMSTRONG**  
CLERK OF COURT, C.P. & G.S.  
100 BROAD STREET, SUITE 106  
CHARLESTON, SC 29401-2258  
**RETURN SERVICE REQUESTED**



[www3.charlestoncounty.org](http://www3.charlestoncounty.org)



37



JONATHAN SCOTT ALTMAN  
DERFNER ALTMAN & WILBORN, LLC  
PO BOX 600  
CHARLESTON SC 29402-0600

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order/Mcknight mot to set aside sum judg is denied**

**CASE NO: 2010CP1000250**

**John Wright VS Ned Wright , defendant, et al**

This judgment was entered on the 04th day of May, 2012, and a copy mailed first class on Tuesday, May 08, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at [www3.charlestoncounty.org](http://www3.charlestoncounty.org).

# **Exhibit 12**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-0250

John Wright, )  
 )  
Plaintiff, )  
 )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military-service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
 )  
 )  
Defendants. )

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

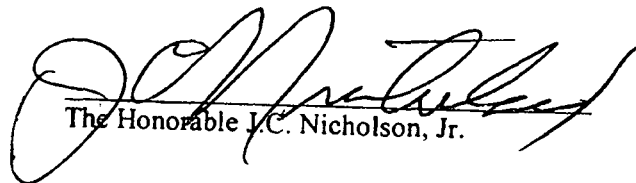
2012 FEB 29 AM 10:25

FILED

ORDER

Upon motion of Jonathan S. Altman, Esq., attorney for Plaintiffs John Wright and Eugene Gathers and in accordance with SCRPC Rule 25(c), Eugene Gathers is hereby substituted as party Plaintiff for John Wright.

IT IS SO ORDERED THIS 24 day of Feb., 2012.

  
The Honorable J.C. Nicholson, Jr.

WE SO MOVE:

\_\_\_\_\_  
Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
P.O. Box 600  
Charleston, SC 29402

*Attorney for Plaintiff*

# **Exhibit 13**

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-0250

Eugene Gathers, )  
)  
Plaintiff, )

vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright,)  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe; fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )

Defendants. )

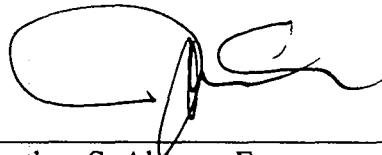
**OFFER OF JUDGMENT**

BY  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2012 MAR -8 PM 3:33

FILED

Pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, Plaintiff hereby offers to allow judgment to be entered against him in this action in the amount of \$6,187.00 as to all of Defendant Ernest McKnight's claims. This offer of judgment is made for the purposes specified in SCRCRCP Rule 68 and is not to be construed as either an admission that Plaintiff is liable in this action or that Defendant Ernest McKnight has suffered any damages.

Respectfully submitted,



Date: March 7, 2012

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Jonathan S. Altman, Esq.  
DERFNER, ALTMAN & WILBORN, LLC  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402

*Attorney for Plaintiff*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

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Case No. 2010-CP-10-00250

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Eugene Gathers,.....Respondent,

v.

Ernest McKnight,.....Appellant.

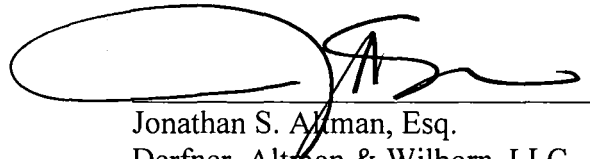
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**PROOF OF SERVICE**

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I certify that I have served Respondent's Memorandum Addressing Appealability upon Appellant by depositing a copy of it in the United States Mail, postage prepaid, on July 5, 2012, addressed to its attorney of record, Willie B. Heyward, Esq.

July 5, 2012



Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
P.O. Box 600  
Charleston, SC 29402  
Telephone: (843) 723-9804

*Attorney for Respondent*

D · A · W

D E R F N E R  
A L T M A N &  
W I L B O R N

July 5, 2012

South Carolina Court of Appeals  
V. Claire Allen, Deputy  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

JUL 06 2012

**SC Court of Appeals**

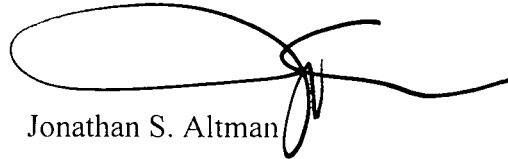
RE: Eugene Gathers v. Ernest McKnight  
Appellate Case No.: 2012-212101

Dear Madam Clerk:

Per your letter of June 28, 2012, please find enclosed Respondent's Memorandum Addressing Appealability of Judge Nicholson's orders. A Proof of Service is attached hereto confirming service of this memorandum upon counsel for Appellant.

Yours Very Truly,

DERFNER, ALTMAN & WILBORN, LLC



Jonathan S. Altman

JSA/rs

Enclosures

cc: Willie B. Heyward, Esq.