THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2005-CP-10-4101

Appellate Case No.: 2012-212136

The Milton P. Demetre Family Limited Partnership.....Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson.....Respondents.

FINAL BRIEF OF RESPONDENTS
(Amended Pursuant to This Court's Order, Filed October 3, 2013)

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STATEMENT OF THE CASE

This case began in the Charleston County Master-in-Equity's Court. The case before the Master, was tried on December 12, 2006, concerning two different matters, the "Road Case", Case No.: 2002-CP-10-4880, and the "Dock Case", Case No.: 2005-CP-10-4101. The Master issued Orders on both matters in March, 2007. Appellant herein, appealed both Orders to the South Carolina Court of Appeals. Before the South Carolina Court of Appeals, this action was also denominated in two parts, the "Road Case", and the "Dock Case". The "Road Case" has been concluded and this Court remanded[1] the Dock Case to the Master, to make a sole determination on the issue of whether Appellant Demetre owns the land between Respondent Crowleys' and Respondent Beckmanns' lots and the mean high water mark on lots 209 and 210, East Indian Avenue.

On remand of the Dock Case, on October 21, 2011, the Master heard arguments from counsel for both parties. Appellant's counsel objected to the Court receiving additional evidence and the Master proceeded without taking additional evidence, *(Correspondence from counsel for Appellant, dated September 12, 2011, R. p. 1039)*. An Order on Remand was filed on January 13, 2012, *(Order R. pp. 879-884)*. On February 2, 2012, counsel for Appellant filed a Rule 59(e) Motion *(Motion, R. pp. 1011-1030)*. The Master filed an Order Denying the Appellant's Rule 59(e) Motion on April 19, 2012 *(Order, R. pp. 885-886)*. Appellant's Notice of Appeal to the South Carolina Court of Appeals, was dated May 31, 2012, *(Notice of Appeal, R. pp. 1033)*.

[1] Demetre Family v Beckmann. III, *et al* and Demetre v City of Folly Beach, *et. al.*, Court of Appeals, Unpublished Opinion No. 20099-UP-029, Filed January 14. 2009, Re-filed April 21, 2009.

STATEMENT OF THE CASE (Cont.)

Counsel for Appellant failed to file the required Designation of Matter, with the Court, and the Court of Appeals notified counsel of that deficiency, by way of correspondence dated September 13, 2012, *(Correspondence from Ct. of Appeals, dated September 13, 2012, R. pp. 1041-1042)*. Counsel for Appellant then filed a Motion with this Court, for it to accept the Designation of Matter and Initial Brief out of time, *(Motion, R. pp. 1035-1036)*.

Counsel for Appellant's Initial Brief and Designation of Matter were accepted by this Court, by Order filed November 15, 2012 *(Order, R. p. 887)*. By that same Order, Respondents' Initial Brief and Designation of Matter were due to be filed by November 30, 2012. Prior to that date, Respondents' Counsel filed a Motion for Extension of Time on November 19, 2012, asking for an extension of time to file Respondents' Initial Brief, until December 15, 2012 (Respondents request was based on the fact that Respondents also had another Initial Brief due to be filed with this Court on November 30, 2012), *(Motion, R. pp. 1037-1038)*. Appellant's Appeal followed:

ARGUMENT

1. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. MURRELL'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972) (A PLAT WHICH DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK IS IRRELEVANT TO DETERMINING WHETHER MARSH IS ABOVE OR BELOW THE MEAN HIGH WATER MARK), IN FINDING THAT THE WORDS "MARSH LAND" ON THE 1920 PLAT MEAN THAT THE PROPERTY IN THAT AREA IS NECESSARILY BELOW THE MEAN HIGH-WATER MARK WHERE THE 1920 PLAT DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK?

Appellant's reference to State v. Murrells Inlet Camp & Marina Inc. 259 S.C. 404, 192 S. E 2d 199 (1972), is inapposite to this Appeal, because the plats in the Murrells Inlet case were not admitted into evidence and were unavailable for the jury in the Murrells Inlet case, to consider as a part of their decision-making process. In the case, *sub judice*, the plats were a part of the evidence before the Master, to which all of the parties stipulated and the plats were an important part of the fact-finding at trial and at the Remand Hearing, *(December 12, 2006, Hearing, R. p. 891, Line 24 – R. p. 892, Line 21).*

Additionally, there was testimony from Respondent Beckmann, which substantiates the Master's findings with regard to the fact that the marshland depicted in the 1920 Plat *(1920 Cummings and McCrady Plat, R. p. 1068)*, was marshland which presumptively belongs to the State of South Carolina, *(December 12, 2006, Hearing, R. p. 902, Line 12 - R. p. 920, Line 9).*

The Master was not required to find that high areas within the marsh as depicted on the Kennerty Plat *(2005 Kennerty Topographic Plat, R. p. 1071)*, overcame all of the other evidence before him. The 1920 Plat *(1920 Cummings and McCrady Plat, R. p. 1068)*, which was not prepared in anticipation of litigation or the description in the deeds, which refers to the marsh behind the Respondent Beckmanns' and the Respondent Crowley's property.

The 1965 tracing of the 1920 Plat *(1965 Plat, R. p. 1069)*, came decades after the property was conveyed to the Respondents' Grantor who gave title to the Respondent by reference to the 1920 Plat *(1920 Cummings and McCrady Plat, R. p. 1068)*.

Appellant continues to try to make Appellant's title superior to the Respondents' title, by referencing a Plat that was redrawn forty-five years after the Plat referenced in the Respondents' deeds *(1965 Plat, R. p. 1069)*. The Plat on which Appellant relies was subsequently redrawn to reflect the original 1920 Plat, *(1920 Cummings and McCrady Plat, R. p. 1068)*, which does not depict Appellant's lots. *(1968 Plat Redrawn, R. p. 1070)*.

Appellant, in order to quiet title in itself, must rely on the superiority of its title, not on any alleged weakness in Defendants' title. Appellant has failed to show the superiority of Appellant's title. "In an action to quiet title, the [Appellant] must recover on the strength of his own title, not on the alleged weakness of the [Respondents'] title." Hoogenboom v. City of Beaufort, 315, S.C. 306, 433 S.E.2d 875, 880 (S.C. Ct. App. 1992).

2. **BASED ON THE WORDS "MARSH LAND" ON THE 1920 PLAT, THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THE STATE IS A NECESSARY PARTY. THE COURT OF APPEALS' OPINION REVERSED THE DOCK CASE ORDER AND REMANDED THE DOCK CASE WITHOUT THE STATE AS A PARTY FOR THE MASTER TO DETERMINE WHETHER APPELLANT OWNS THE SUBJECT PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION WHERE IT AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY?**

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court, *(Motion, R. pp. 1017-1018)*. The Respondents respond below, without waiving this objection.

This Court previously determined in the "Road Case", that the City of Folly Beach is the owner of East Indian Avenue, *(Unpublished Opinion No.: 2009-UP-029, Re-filed, April 21, 2009, S.C. Ct. of App., R. pp. 869-878)*.

Thus, Appellant Demetre is not entitled to a declaration that Appellant owns the property between the Respondent Crowleys' and the Respondent Beckmanns' lots and Appellant's "marsh" lots. Also, Appellant Demetre does not dispute that the State holds the property below the mean high water mark in trust for public purposes, *(Order on Remand, R. p. 879-884)*.

"Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." Hobonny Club, Inc., v. Mceachern Jr., Director of the Division of General Services, Budget and Control Board, State of South Carolina, 272 S.C. 392, 398, 252 S.E.2d 133 (1979), (Internal citations omitted).

In the instant case, the Appellant's Deed references the 1920 Plat that depicts marsh where Appellant claims its lots are located, *(Appellant's Deed, R. p. 838-)*. The Master's Order *(Order denying Appellant's Rule 59(e) Motion, R. pp. 885-886)*, which cites the 1786 Plat, *(1786 Grant and Plat, Supplemental R. pp. 1073-1074)*, the Tartus' Plat, *(1895 Tartus' Plat, R. p. 1067)*, and the 1920 Plat shows marshland behind Respondent Beckmanns' and Respondent Crowley's lots, where Appellant's lots purport to be, *(1920 Cummings and McCrady Plat, R. p. 1068)*.

Because the Master properly concluded that the 1943 Master's Deed *(1943, Master's Deed; R. pp. 835-837)*, conveying property to the Appellant's Predecessor in interest, did not include any land contained in the Marsh, the Appellant's Predecessor in title did not have title to marshland to convey to Appellant. Appellant's quit claim deed tried to convey property by reference to the 1920 Plat, when in fact, Appellant's Predecessor in interest had no claim to the marshland to convey, *(1920 Cumming and McCrady Plat, R. p. 1068)*.

"In an action to quiet title, the [Appellant] must recover on the strength of [Appellant's] own title, not on the alleged weakness of the [Respondent's] title." Hoogenboom v. City of Beaufort 315 SC 306, 433 SE 2d 875,880 (S.C. Ct. of App. 1992). The Master properly concluded that Appellant's "Record Title" was insufficient to convey good title to Appellant, as against the State, *(Order on Remand, R. pp. 879-884)*.

The testimony from the surveyor Kennerty is not dispositive, with Kennerty having admitted that he had originally done the survey wrong, *(December 12, 2006, Hearing, R. p. 895, Lines 18-20)*, the instructions which Kennerty downloaded off the internet were convoluted *(December 12, 2006, Hearing, R. p. 895, Lines 20-23)* and that the Plat drawn in this case was the first time that Kennerty had established a mean high water mark *(December 12, 2006, Hearing, R. p. 897, Lines 17-18)*.

It is only many years after the 1920 Plat was drawn that the Kennerty Plat was created, which purports to show some highland interspersed among what was originally described as marshland, *(2005 Kennerty Topographic Plat, R. p. 1071).*

The other evidence in the record includes the three plats described in the Rule 59(e) Order, *(Order Denying Rule 59(e) Motion, R. pp. 885-886)*, which show the land behind the Respondents' lots was marshland, *(Order denying Rule 59(e) Motion, R. pp. 885-886).* Therefore, if any highland exists today, as described in the Kennerty Plat, *(2005 Kennerty Topographic Plat, R. p. 1071)*, the land must have accreted. Accreted land generally benefits the land which it abuts. "Accretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the property of the owner of the land accreted or increased." The State of South Carolina, Appellant-Respondent, v. The Beach Co. and Gulf-Stream Dredging Company, Inc., Respondents-Appellants 271 S.C. 425, 429-430, 248 S.E.2d 115 (1978).

"...when land which is so increased, is subject to an easement or dedication, the increased area is subject to the same burdens. Therefore, if any of the area in question in this action is burdened with an easement or has been dedicated to public use, the increase or accretion bears the same limitation." Beach *supra* at, 429-430.

Under the instant circumstances, because the highland abuts the Road, the ownership of which was settled in the Road Case, *(Unpublished Opinion No.: 2009-UP-029, Re-filed, April 21, 2009, S.C. Ct. of App., R. pp. 869-878)*, then the only reasonable conclusion is that the Town of Folly Beach owns any highland which abuts its property.

3. **DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 393 S.C. 100, 712 S.E.2d 395 (2011) (THE PUBLIC TRUST DOCTRINE DOES NOT EXTEND ABOVE THE MEAN HIGH-WATER MARK), WHERE, BASED ON THE PUBLIC TRUST DOCTRINE, THE MASTER FINDS THAT THE STATE OWNS PROPERTY ABOVE THE MEAN HIGH-WATER MARK?**

Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011), does not conflict with the Master's Order on Remand, *(Order on Remand, R. pp. 879-884)*. The Tenney case indicates that Coburg I and II are overruled to the extent that marsh islands (also described as hummocks or hammocks) do not follow ownership of the marsh. Tenney, *supra* at, 111. However, Tenney does not stand for the broad proposition that mere high places which, exceed the average high water mark but are separated to a substantial degree by the surrounding marsh which is regularly inundated, is not in fact part of the marshland which presumptively belongs to the State of South Carolina.

If Appellant's claim were carried to its logical conclusion, every high place in the marsh which exceeded the mean high water mark would be subject to a claim of ownership from every property owner on its landward side. Clearly Tenney was intended to clarify the issue of ownership of hummocks or hammocks, not to create the right to claim ownership to every high spot in the marsh.

Having presented no evidence of a grant from the State of South Carolina or a Kings Grant, the high places in the marsh must in fact, be presumed to belong to the State of South Carolina, unless and until, the Appellant is able to prove otherwise in a case filed against the State of South Carolina.

4. THE PARTIES STIPULATED ON THE RECORD AT TRIAL THAT APPELLANT HAS RECORD TITLE TO THE SUBJECT PROPERTY. HOWEVER, THE MASTER'S ORDER ON REMAND FINDS THAT, IN APPELLANT'S CHAIN OF TITLE, HIS LOTS "DID NOT EXIST." DOES 'THE MASTER'S ORDER ON REMAND CONFLICT WITH BELUE V. FETNER. 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) (THE COURT WILL NOT GO BEYOND PARTIES' STIPULATION TO DETERMINE THE FACTS)?

Counsel for Appellant continues to try to support Appellant's Appeal, by continual references to a Stipulation before the Master, agreed to during the original Hearing in this matter, *(December 12, 2006, Hearing R. p. 892, Lines 1-15)*. The Stipulation was simply a Stipulation to "Record Title", and nothing more. Counsel for the Respondents made it clear, as to the scope of the Stipulation, *(October 21, 2011, Hearing, R. p. 929, Lines 9-21)*. During the Hearing on Remand in this case, on October 21, 2011, the Master prudently revisited the issue of the scope of the Stipulation, *(October 21, 2011, Hearing, R. p. 928, Line 10 – R. p. 930, Line 5; R. p. 932, Lines 3-5)*. The colloquy between the Master, Respondents' Counsel and Appellant's Counsel, during the Hearing on Remand, reveals that Appellant's Counsel's repeated references to the Stipulation, as being of some import in this Appeal, is without a factual basis, *(October 21, 2011, Hearing, R. p. 928, Lines 18-21)*, *(December 12, 2006, Hearing R. p. 921, Line 21 – R. p. 922, Line 2)*.

Appellant's Counsel carefully selects portions of the transcript to make it seem as if the Appellant's title was somehow validated by the Stipulation. A Stipulation was put on the record by Respondent's Counsel in which the title of record to Respondent, Crowley's, and Respondent Beckmanns' property was stipulated "...**as far as record title."** (Emphasis added), *(December 12, 2006, Hearing, R. p. 892, Lines 1-15)*. Appellant improperly tries to bootstrap a Stipulation of record title for all of the parties' property discussed in the original hearing in this matter, into good title for Appellant *(December 12, 2006, Hearing, R. p. 921, Line 21 – R. p. 922, Line 2; R. p. 892, Lines 1-15)*.

The Stipulation applies to all the parties to this action and not all of the titles can be good titles, but all of the litigants have record title. It is clear from the language of the Stipulation that it was done for the purpose of avoiding burdensome testimony as to record title, *(October 21, 2011, Hearing, R. p. 928, Lines 9-21).*

The Master, specifically referring to documents stipulated to, in the Remand Hearing, states after hearing from Appellant's Counsel about the Stipulation of title and Respondent's Counsel that there were additional Stipulations, the following: "It does go on. Line 7, chain of title, -- Emily Brown has been stipulated to, to the Crowleys its been stipulated to, to the Beckmans, its been stipulated to. I guess that brings up the question, what does the stipulation mean? Record title is what record title was for Mr. Demetre. ...Okay. So I guess from a stipulation standpoint, stipulating how each (party) got its title, would be what I understand" *(October 21, 2011, Hearing, R. p. 928, Lines 18-21; R. p. 930, Lines 1-5; R. p. 932, Lines 15-25).*

Additionally, the Master when summarizing the matters in dispute, at the end of the December 12, 2006 Hearing, stated that, "Because I'm not likely to grant any Motions. I'm just here to tell you that. *We've got a factual dispute over title to land.* And the question is going to be is title in the name of the Plaintiff, the Demetre Family Trust? Or is title in the Defendants? Or is title in the City of Folly Beach? Or is title in the State of South Carolina?" *(December 12, 2006, Hearing, R. p. 921, Line 21 – R. p. 922, Line 2)*, (Emphasis added).

In an action at law tried by the Master alone, an Appellate Court's review is limited to correcting errors of law and this Court should affirm the Master's factual findings if there is any evidence in the record which reasonably supports them. Lowcountry Open Land Trust v. State, 347 S.C. 96, 101-02, 552 S.E.2d 778, 781 (Ct. App. 2001). In the instant case, the Master properly found that the record titles were stipulated to, in order to show how each party got its title, not to show the efficacy of the titles, *(October 21, 2011, Hearing, R. p. 928, Lines 9-21).*

5. WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE COURT OF APPEALS REVERSED THE ORIGINAL DOCK CASE ORDER FINDING FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT ADVERSE POSSESSION, AND, ON REMAND, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, DID THE MASTER ERR IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY?

Appellant's issue misstates the facts of this Appeal and Appellant's argument is inapposite. An Appellant provides no citation or reference for this issue. The Court of Appeals did not find for Respondents on each of their affirmative defenses except adverse possession, as Appellant argues. Before the lower Court the Judge stated, "Plaintiff's counsel argued during the Hearing in this matter, that Affirmative Defenses were not available to Respondents, but the Court disagrees. I find that there is no basis for Plaintiff's argument." *(Order on Remand, R. p. 883).*

As stated above, Respondents stipulated to "Record Title" and not "Good Title" *(October 21, 2011, Hearing, R. p. 928, Lines 18-21; R. p. 930, Lines 1-5; R. p. 932, Lines 15-25), (December 12, 2006, Hearing, R. p. 921, Line 21 – R. p. 922, Line 2; R. p. 892, Lines 1-15)*, and the premise of Appellant's issue is invalid, (see Respondents' response to Appellant's argument on the Stipulation, in issue "4" hereinabove, which is incorporated herein by reference).

6. TO THE EXTENT THAT ANY OF RESPONDENTS' AFFIRMATIVE DEFENSES REMAINED AVAILABLE FOR THEM TO ARGUE ON REMAND, IN RULING AGAINST THOSE AFFIRMATIVE DEFENSES. SHOULD THE MASTER HAVE CITED AUTHORITY?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court, *(Motion, R. pp. 1025-1027)*. The Respondents respond below, without waiving this objection.

Appellant's argument is nonsensical. Respondents' Affirmative defenses remain available to the Respondent, except for adverse possession or possession by grant and laches, *(Order on Remand, R. p. 883)*. Furthermore, the Order on Remand specifically states, "[Appellant's] Plaintiff's counsel argued during the Hearing in this matter, that Affirmative Defenses were not available to Respondents, but the Court disagrees. I find that there is no basis for [Appellant's] Plaintiff's argument." *(Order on Remand, R. p. 883)*.

7. DID THE MASTER ERR IN FINDING THAT A DOCK. PERMIT IS A VESTED PROPERTY INTEREST WHICH DOES NOT REQUIRE CONSENT OF THE LANDOWNER OVER WHOSE PROPERTY THE DOCK WHARFS?

Appellant again misstates the Master's Order on Remand, *(Order on Remand, R. p. 883)* the Master states, "I do find that the [Respondents'] docks have been there for many years prior to [Appellant's] purported purchase of the property and so [Appellant's] purchase of the property was done with the full knowledge and understanding that the [Respondents] had a vested property interest, granted under license from the state, *to the docks*...", *(Order on Remand, R. p. 883)*. In this sentence the Master does not impute any ownership of the land underneath the docks to the Respondents, but merely confirms that (**i**) the Appellant knew the docks were there at the time the Appellant obtained his quit claim deed to the marsh and (**ii**) the Respondents did have a vested interest in the licenses granted from the State, *(Order on Remand, R. p. 883)*.

While it is clearly the law that under the exercise of its police power, the state may revoke a dock permit that it has allowed (Section 48-39-150 (E) S.C. Code Ann., 1976, as amended), it is the state's responsibility to do so and only, "...after written notice of intention to do so has been given the holder and the holder given an opportunity to present an explanation to the department (OCRM)." (Section 48-39-150 (E) S.C. Code Ann., 1976, as amended). Until the State revokes or modifies the Respondents' permit then such permit is valid and the Respondents are free to engage in the activity permitted. The Master was simply reinforcing his finding that the State was a necessary party if there were going to be a determination of the rights of the Respondents to continue in their use of the docks.

8. THE MASTER'S ORDER ON REMAND FINDS THAT THE SUBJECT PROPERTY ACCRETED AFTER 1920. THERE IS NO EVIDENCE TO SUPPORT THAT THE PROPERTY WAS BELOW THE MEAN HIGH-WATER MARK ON 1920. HOWEVER, APPELLANT'S PROPERTY IS THE HIGHLAND TO WHICH ANY ACCRETION WOULD HAVE ADDED IF ANY HAD OCCURRED. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT THE STATE OWNS THE PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. BEACH CO., 248 S.C. 115, 271 S.E.2d 115 (1978). (NATURAL ACCRETION BENEFITS THE PRIVATE HIGHLAND OWNER TO WHOSE PROPERTY IT ADDS)?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court *(Motion, R. pp. 1016-1018)*. The Respondents respond below, without waiving this objection.

The Master found that there were no lots to which Appellant could lay claim to title *(Order on Remand, R. pp. 879-884)*. The Master found, that as of the date of deed through which Appellant claims, there was only marshland there *(Order on Remand, R. pp. 879-884)*. The Master further found that Appellant did not refute the Plats in evidence as to the extent of the marshland as described on the Plat referred to in Appellant's deed, *(Order on Remand, R. pp. 879-884)*. There was no testimony as to when the property accreted.

As of the date of the 1920 Plat, the only thing in evidence showing the extent of the marsh at that time, shows "Marshland" to the riverward of Respondents' property, *(1920 Cummings and McCrady Plat, R. p. 1068)*. Under the facts of this case, and pursuant to State v Beach Co. 271 S.C. 425, 429-430, 248 S.E.2d 115 (1978), the Respondents own the property, "Accretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the property of the owner of the land accreted or increased". Beach Co., *supra* at, 429.

However, because this Court has ruled in the Road Case, that the City of Folly Beach owns Indian Avenue, the City may be the beneficiary of the accreted land, *(Unpublished Opinion No.: 2009-UP-029, Re-filed, April 21, 2009, S.C. Ct. of App., R. pp. 869-878).* "... when land which is so increased is subject to an easement or dedication, the increased area is subject to the same burdens, Beach Co., *supra* at, 429-430. Therefore, if any of the area in question in this action is burdened with an easement or has been dedicated to public use, the increase or accretion bears the same limitation. Beach Co., *supra* at, 430. If the narrow strip of land originally left between ... (the street) and mean high-water mark has been dedicated to the public, then the accreted areas are also dedicated to the public. Beach Co., *supra* at, 429-430. If ... (the property owner) has fee simple title to the narrow strip, it has fee simple title to the entire area.

The Appellant, having received "Marshland" by a mere quit claim deed, cannot be the beneficiary of accretion. As the marsh area accretes to the higher shoreward property, the Marshland is lost and becomes highland. Conversely, if highland is eroded away it becomes marshland. Significantly, under South Carolina law, wetlands created by the encroachment of navigable tidal water belong to the State. Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E.2d 547 (1995). (Other portions of Coburg overruled in the Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011)).

Proof that land was highland at the time of grant and tidelands were subsequently created by the rising of tidal water cannot defeat the State's presumptive title to tidelands. State v. Fain, 273 S.C. 748, 259 S.E.2d 606 (1979); McQueen v South Carolina Coastal Council 354 S.C. 142, 150, 580 S.E.2d 116 (2003).

9. APPELLANT'S PROPERTY IS IDENTICALLY SITUATED TO AND SHARES THE SAME KEY LINKS IN ITS CHAIN OF TITLE AS THE SUBJECT PROPERTY IN DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL 399 S.C. 259, 730 SE.2d, 922, (S.C. Ct. App. 2012) (FINDING THAT CERTAIN HIGH MARSH IS PART OF FOLLY ISLAND AND OWNED BY DREHER, A PRIVATE CITIZEN). DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH DREHER WHERE IT FINDS THAT THE SUBJECT HIGH MARSH IN THE PRESENT CASE IS OWNED BY THE STATE?

In the Dreher case, the Appellate Court found the fact that the tract of land in question was a part of Folly Beach was the law of the case even though DHEC tried to correct that finding at the very beginning of the appeal. The Master, in the instant case, is not bound by the factual findings in another case which apply only to that case. "As an initial matter, we note the ALC's finding of fact that Tract D is a part of Folly Island is the law of the case. DHEC initially filed a motion to reconsider this particular finding by the ALC, stating "[t]he [c]ourt's finding that `notwithstanding the man-made excavation, Petitioner's property, geologically, geographically, and by legal description, is on and within the boundaries of Folly Island' is inconsistent with the evidence presented and misleading in light of the court's correct legal conclusions." Dreher v South Carolina Department of Health and Environmental Control, 399 S.C. 259, 730 SE.2d, 922, (S.C. Ct. App. 2012).

"Despite DHEC's attempt to correct this alleged inconsistency in the Order, the Administrative Law Court did not rule on the motion and DHEC failed to challenge the Administrative Law Court's finding on appeal; therefore, the finding that Tract D is a part of Folly Island is the law of the case." Dreher v South Carolina Department of Health and Environmental Control, 399 S.C. 259, 730 SE.2d, 922, (S.C. Ct. App. 2012). It is obvious that a Finding of specific facts in one case, is not necessarily binding in another case. It is axiomatic that, the Law of the Case Doctrine binds the parties involved in that case but does not bind parties who are strangers to the case.

10. DOES THE ORDER ON REMAND ERR IN FINDING THAT THE FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT?

The Master, in his Order denying Appellant's Rule 59 (e) Motion, *(Order Denying Rule 59(e) Motion, R. pp. 885-886)*, specifically finds that Appellant relies on the assertion that the Folly Beach Corporation took title based on the Tartus' Plat, *(1895 Tartus' Plat, R. p. 1067)*, which the Master specifically finds shows marshland where the Appellant's property purportedly lies, *(Order denying Rule 59(e) Motion, R. pp. 885-886)*.

Because the Master finds that the Tartus Plat *(1895 Tartus' Plat, R. p. 1067)*, is consistent with the 1786 Plat, *(1786 Grant and Plat, Supplemental R. pp. 1073-1074)*, and the 1920 Plat, *(1920 Cummings and McCrady Plat, R. p. 1068)*, that the 1943 Master's Deed *(1943, Master's Deed; R. pp. 835-837)* could not convey marshland to the Appellant's predecessors in interest and therefore the quitclaim deed to the Appellant could convey nothing because, Appellant's purported lots are located in the middle of marshland.

11. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT THE 1786, 1895, AND 1920 PLATS ARE MORE PRECISE AS TO THE LOCATION OF THE MEAN HIGH-WATER MARK THAN THE 2005 KENNERTY TOPOGRAPHIC SURVEY WHERE THE EARLIER PLATS DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK, BUT THE 2005 KENNERTY TOPOGRAPHIC SURVEY DOES?

Appellant's issue is unsupported by the facts of this case. The Master relied on the plats that were referred to in the quit claim deeds, the Tartus' Plat *(1895 Tartus' Plat, R. p. 1067)*, and the 1786 Plat, *(1786 Grant and Plat, Supplemental R. pp. 1073-1074).* There was no evidence, (the Appellant admitting that he did not know what went on the property prior to his purchase *(December 12, 2006, Hearing, R. p. 897, Lines 23-25; R. p. 898 Lines 1-11)*, that indicated what the area looked like when the property was purchased by the parties' predecessors in interest other than the area was referred to as "marsh" in all the old Plats.

The Appellants deed refers to and includes a reference to a 1920 Plat *(1920 Cummings and McCrady Plat, R. p. 1068)*. On that plat Appellants "lots" do not appear, *(1920 Cummings and McCrady Plat, R. p. 1068)*. Appellant insists that his lots appear on the 1965 tracing of the 1920 Plat, *(1965 Plat, tracing of 1920 Plat, R. p. 1069)*, but a subsequent 1968 Plat, *(1968 Plat Redraw, R. p. 1070*), reverts to the original 1920 Plat, *(1920 Cummings and McCrady Plat, R. p. 1068)*, dimensions and Appellant's lots disappear.

Appellant's unsupported claim for any of the property fails because Appellant's deed only refers to marsh *(Appellant's Deed, R. pp. 838-839)*. Appellant bought his "lots" in 2004 and could have referred to the 1965 tracing *(1965 Plat, tracing the 1920 Plat, R. p. 1069)*, if that had been the parties intent but instead his deed refers to the 1920 Plat *(1920 Cummings and McCrady Plat, R. p. 1068)*, which does not include its lots. "It is difficult to imagine how more precisely to express intent as to the location of boundaries than to incorporate an accurate plat in the description." Hobonny Club, Inc., Respondent, v. Mceachern Jr., Director of the Division of General Services, Budget and Control Board, State of South Carolina, Appellant 272 S.C. 392,

398, 252 S.E.2d 133 (1979). "As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance, they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of land. *Since respondent received the property by way of the... deed describing the property as that shown on the 1916 plat, we hold that he is limited to that description. This is especially true in view of the fact that respondent, on at least five occasions, sold lots from this tract by deeds referring to the ... plat."* Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581 (1981), (Internal citations omitted), (Emphasis added).

Additionally, the Master relying on Query v. Burgess, 371 S.C. 407, 39 SE 2d 455 (S.C. Ct. of App. 2006), found that based on that case neither the State of South Carolina nor the King ever deeded any marshland away around Folly Beach and therefore the Appellant's Predecessors in interest did not have any interest in the marshland to convey.

12. DOES THE ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER. 227 S.C. 81, 87 S.E.2d 40 (1995), IN FINDING THAT APPELLANT'S LOTS "DO NOT EXIST?"

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court *(Motion, R. pp. 1013-1016)*. The Respondents respond below, without waiving this objection.

Richardson v. Register 227 S.C. 81, 87 S.E.2d 40 (1995), is not applicable to this case. Richardson is a latent ambiguity case, in which parties to the deed agreed on a location for an adjoining property line to be located. They agreed that if they were incorrect they would correct the error later. Richardson, *supra* at, 85-86. In the instant case, there is complete clarity about the description and none of the parties to the case were parties to the deed between appellant and Mr. Seabrook, Appellant's Grantor.

The construction of a clear and unambiguous deed is a question of law for the court. Hammond v. Lindsay, 277 S.C. 182, 284 S.E.(2d) 581 (1981).

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action." Townes Associates Ltd., v. City of Greenville, 266 S.C. 81, 85-86, 221 S.E.2d 773 (1976).

13. DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT IS "INCORRECT" IN ADDING LOTS AND THAT THE 1968 PLAT WAS INTENDED TO "CORRECT" THE 1965 PLAT?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court *(Motion, R. pp. 1023)*. The Respondents respond below, without waiving this objection.

Appellant misstates the holding of the Court of Appeals. In its Findings of Fact the Court of Appeals found on the second page of its Order, "Most of the Island of Folly Beach, South Carolina was platted and subdivided by the Jefferson Construction Company in 1920 and recorded in the Charleston County Register of Mesne Conveyance RMC, *(1920 Jefferson Plat, R. p. 663)*. Subsequently, in 1965 the 1920 Plat, was traced *(1965 Plat, R. p. 1069)*, because of deterioration and in 1968 it was redrawn, *(1968 Plat Redrawn, R. p. 1070)*. The redraw added parcels to the 1920 plat, *(1968 Plat Redrawn, R. p. 1070)*: however, the tracing appears to be identical to the 1920 plat, *(1965 Plat, R. p. 1069)*. All three Plats share the same book and page number at the RMC Office." *(Unpublished Opinion No.: 2009-UP-029, Re-filed April 21, 2009, S.C. Ct. of Appeals, R. pp. 869-878)*.

Later, on the fourth page of the Court of Appeals decision, the Court Found in the "Dock Case" that "On January 23, 2004, [Appellant] bought two riverfront lots, 209 and 210, on East Indian Avenue from Seabrook, Jr., for $23,700 by quitclaim deed, *(Appellant's Deed, R. pp. 838-839)*. The deed references the 1920 plat. [Appellant's] lots are shown on the 1965 redraw *(1965 Plat, R. p. 1069)*, but they do not appear on the 1920 plat, or the Charleston County tax map." *(Unpublished Opinion No.: 2009-UP-029, Re-filed April 21, 2009, S.C. Ct. of App., R. p. 872)*.

Finally the Court of Appeals Order on the fourth page, references the Respondents deeds as follows: "The Crowleys purchased lot 210, East Huron Avenue, on September 1, 1964, and the Beckmanns purchased lot 209, East Huron Avenue, on April 27, 1972. Both of their deeds referenced the 1920 plat, which shows no lots between their lots and the marsh abutting the river. The [Respondents] both believed they owned all the property behind their homes down to the marsh." *(Unpublished Opinion No.: 2009-UP-029, Re-filed April 21, 2009, S.C. Ct. of App., R. p. 872).*

The Appellant is incorrect in its assertion that the findings of the Master on Remand were in conflict with the findings of the Court of Appeals. The Master, as instructed by this Court, reviewed the evidence, all of the plats and deeds in evidence, specifically relying on the1786 Plat, *(1786 Grant and Plat, Supplemental R. pp. 1073-1074)*, the Tartus' Plat (1895 Tartus' Plat, R. p. 1067), and the 1920 Plat *(1920 Cummings and McCrady Plat, R. p. 1068)*. After reviewing the evidence, the Master determined that based on the evidence, that Appellant's Predecessor in interest took title at a foreclosure sale in 1943 and the Master's Deed *(1943, Master's Deed; R. pp. 835-837),* did not convey any marshland to the Appellant's Predecessor in title and thus Appellant could have no claim to the marshland shown in his quitclaim deed.

Appellant's lots only appear in a 1965 tracing of the 1920 Plat, *(1965 Plat, tracing the 1920 Plat, R. p. 1069)*, which the Master found to be "incorrect" *(Order on Remand, R. p. 881)*, (a subsequent Plat redraw in 1968 corrected the 1965 errors), *(1968 Plat Redrawn, R. p. 1070)*. Obviously, the 1965 tracing could not serve as the basis for the Master's 1943 Deed, because it post dated the 1943 Master's Deed, *(1943, Master's Deed; R. pp. 835-837).* The Master found that this fact was known to Appellant's Grantor, Edward Seabrook, Jr., based on Mr. Seabrook's conveyance by Quitclaim Deed, to the Appellant *(Order on Remand, R. p. 881).*

Thus, the Master's Order on Remand was in harmony with this Court's Order and supported by ample evidence, (*Order on Remand, R. pp. 879-884).*

The construction of a clear and unambiguous deed is a question of law for the court. Hammond v. Lindsay, 277 S.C. 182, 284 S.E.(2d) 581 (1981). In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action. Townes Associates Ltd., v City of Greenville, 266 S.C. 81, 85-86, 221 S.E. 2d 773 (1976).

14. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT APPELLANT'S PREDECESSOR IN INTEREST BELIEVED THAT HE DID NOT OWN THE SUBJECT LOTS BASED ON THE FINDING THAT HE SOLD THE PROPERTY IN THAT AREA WITH A QUITCLAIM DEED WHERE THE EVIDENCE SHOWS THAT APPELLANT'S PREDECESSOR IN INTEREST ALSO SOLD PROPERTY IN THAT AREA BY GENERAL WARRANTY DEEDS?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court *(Motion, R. pp. 1023-1024)*. The Respondents respond below, without waiving this objection.

Appellant mischaracterizes the Master's Order on Remand, *(Order on Remand, R. pp. 879-884)*. The Master found that the lots in question do not exist, *(Order on Remand, R. p. 881)*. The Master went on to say that fact was apparently known to Mr. Seabrook when he quitclaimed the lots to Appellant by use of a quit claim deed *(Order on Remand, R. p. 881)*. Mr. Seabrook, was not willing to and did not, give the ordinary warranties that are contained in a general warranty deed, because Mr. Seabrook used a quitclaim deed. The plat referred to in the quitclaim deed (the 1920) Plat doesn't show the lots purportedly being conveyed.

Appellant received its deed in 2004, *(Appellant's 2004 Deed from Seabrook, Jr., R. pp. 838-839)*. The 1965 Plat *(1965 Plat, tracing the 1920 Plat, R. p. 1069)* and the 1968 Plat *(1968 Plat, Redrawn; R. p. 1070)*, were on record at the Charleston County RMC. However, the deed refers to neither of the more recent representations of the area specifically referring to the 1920 Plat *(1920 Jefferson Construction Plat, R. p. 663)* and specifically mentioning it by name. "When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed.

("`As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument **and are usually held to furnish the true description of the boundaries of the land....**'") Bennett v. Investors Title Ins. Co., 370 S.C. 578, 594, 635 SE 2d 649 (S.C. Ct. of App. 2006), (emphasis added), (internal citations omitted).

"The construction of a clear and unambiguous deed is a question of law for the court." Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.(2d) 581 (1981). "The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself. Smith v. DuRant, 236 S.C. 80, 113 S.E. (2d) 349 (1960)" Gardner v Mozingo 293 S.C. 23, 25-26, 358 S.E.2d 390 (1987).

Here the Master correctly construed the deed to the Appellant as conveying nothing, *(Order on Remand, R. pp. 879-884).*

15. **THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT FOR ADVERSE POSSESSION. HOWEVER, THE COURT OF APPEALS REVERSED THE DOCK CASE ORDER, AND RESPONDENTS DID NOT PETITION FOR REHEARING OR FOR A WRIT OF CERTIORARI. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT RESPONDENTS' AFFIRMATIVE DEFENSES ARE AVAILABLE TO THEM TO ARGUE ON REMAND. DOES THIS FINDING CONFLICT WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP.. 388 S.C. 171, 525 S.E.2d 869 (2000) (AN UNAPPEALED RULING BY THE COURT OF APPEALS BECOMES THE LAW OF THE CASE)?**

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court *(Motion, R. pp. 1025-1027)*. The Respondents respond below, without waiving this objection.

The case referenced above held that, Charleston Lumber was bound by a previous Court of Appeal's case. Under those specific facts that was true. If the Appellant is suggesting that the Master in this case is bound to do what this Court instructed the Master to do, he has done just that. The Master found title could not be quieted in Appellant and so denied that based on the evidence and case law before the Master, *(Order on Remand, R. pp. 883-884), (Order Denying Rule 59(e) Motion, R. pp. 885-886)*. The Master is in complete harmony with the Court of Appeals ruling in this case.

16. WHERE THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THERE IS HIGHLAND IN THE AREA OF THE UNDEVELOPED ROADWAY RUNNING ALONG RESPONDENTS' LOTS, AND WHERE THE COURT OF APPEALS OPINION FOUND THAT THERE IS HIGHLAND IN THAT AREA, DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE STATE OWNS THAT AREA?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court, *(Motion, R. pp. 1016-1017)*. The Respondents respond below, without waiving this objection.

This issue raised by Appellant, makes unsupported claims, without a reference to support Appellant's issue. Respondents are unaware of support in the Court of Appeal's Order, which supports Appellant's claim that there is highland between the Respondents' lots and the marsh.

The Master in his Order on Remand, finds that Appellant only received a quitclaim deed to marshland, and referring to the 1920 Plat, finds that Appellant's lots do not exist, *(Order on Remand, R. p. 881)*. The Master further finds in his Order on Remand, that any highland was designated on the 1920 Plat, as marsh, *(Order on Remand, R. p. 882)*. The Master then properly finds that there is no basis to quiet title in the Appellant, *(Order on Remand, R. p. 882)*.

The Master provided further guidance in his Order denying Appellant's Rule 59(e) Motion, that even if there was highland where Appellant claims its lots are located, the Appellant's Predecessor in interest was not conveyed any land in the marsh in the 1943 Master's Deed *(Order Denying Rule 59(e) Motion, R. p. 886)*. Therefore, Appellant's Predecessor in interest did not have any claim to the marshland or highland in controversy and could not convey any interest to Appellant.

17. RESPONDENTS RESPECTFULLY REQUEST, PURSUANT TO RULE 220(C) OF THE SOUTH CAROLINA APPELLATE COURT RULES, THAT THIS COURT AFFIRM THE DECISIONS OF MASTER ON ANY GROUND APPEARING IN THE RECORD.

As additional sustaining grounds, please consider the following.

The Respondent to an Appeal, may raise on Appeal, any additional reasons the Appellate Court should affirm the Master's ruling, regardless of whether those reasons have been ruled on by the Master.

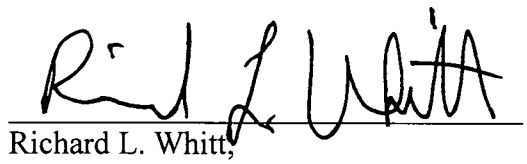
Therefore, this additional sustaining ground is appropriate for consideration on Appeal, along with other sustaining grounds, should this Court be so disposed.

CONCLUSION

Appellant bears the burden of demonstrating that the Master erred. Duckett by Duckett v. Payne, 279 S.C. 94, 302 S.E.2d 342 (1983); Cook v. Elter, 298 S.C. 395, 380 S.E.2d 853 (Ct. of App. 1989). For a variety of reasons, Appellant has not met that burden. For example, Appellant fails to demonstrate in Appellant's Initial Brief any error in the Master's decision. Similarly, Appellant fails to assign specific error to the decision below and Appellant only makes conclusory statements without adequate supporting authority or argument. Finally, Appellant has failed to meet its burden showing that there was any legal or factual error in the Master's Order on Remand, or in his Order denying Appellant's Rule 59(e) Motion.

[Signature Page Follows]

AUSTIN & ROGERS, P.A.

By: 

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October 28th, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2005-CP-10-4101
Appellate Case No.: 2012-212136

The Milton P. Demetre Family Limited Partnership.....Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson.....Respondents.

PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused a copy of the Final Brief of Respondents, (Amended Pursuant to This Court's Order, Filed October 3, 2013), Certificate of Counsel and this Proof of Service to be served, via U.S. Mail on October 28, 2013, as addressed below.

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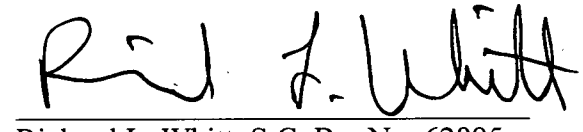
CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondents, (Amended Pursuant to This Court's Order, Filed October 3, 2013), complies with Rule 211(b), SCACR.

AUSTIN & ROGERS, P.A.

By: 

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