

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. 2004-CP-10-4129

Edisto Island Open Land Trust, Inc. Respondent,

v.

State of South Carolina, Melissa M. Adams, Philip Rhodes, George Henry Walter,
Gailya Privette, Jeffery Baker, June C. & William L. McRoy,
and Patricia P. & Thomas M. New, Defendants,

of whom, the State of South Carolina is Appellant, and

Melissa M. Adams, Philip Rhodes, George Henry Walter,
Gailya Privette, Jeffery Baker, June C. & William L. McRoy,
and Patricia P. & Thomas M. New, are Respondents.

MOTION FOR LEAVE TO CONSIDER RULE 60 MOTION
AND STAY / HOLD IN ABEYANCE
APPELLATE DEADLINES

The Appellant State of South Carolina moves for this Court to grant it leave to maintain its
its Motion for Relief from Orders currently pending before the Master in Equity and for the Master to
Master to consider that Motion and rule on it. (copy attached). The Master has announced his
intention today to grant the Motion absent objection and that he will make his ruling on June 30.
(email attached with string redacted). That date of the 30th comes after the deadline for filing the
Notice of Appeal as to the Orders from which relief is sought. Therefore, the State has noticed this

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SC Court of Appeals

this appeal to protect its interests. If this Court grants this Motion and the Master grants the Rule 60 Rule 60 Motion, the Appellant anticipates that it will move to withdraw its appeal. Therefore, this this Motion serves purposes of judicial economy.

Pursuant to Rule 60, SCRCP, a party may request leave of the Appellate Court to make a motion under that Rule. Because the Rule 60 Motion has already been made, the State respectfully requests leave for that Motion to be fully considered and decided. Should, *arguendo*, a remand be necessary for the limited purpose of considering the Rule 60 Motion, the State would request such a remand, but Rule 60 references only leave as being needed.

Should this Court grant this Motion for Leave, the State also request that this Court stay all of the deadlines in the appellate process including, but not limited to, the deadline for ordering the transcript of record, until such time as the Court of Common Pleas rules on the pending Rule 60 Motion.

While the instant motion is being considered, the State respectfully requests that all appellate deadlines be held in abeyance, including, but not limited to, the deadline for ordering the transcript of record.

Undersigned counsel has emailed counsel for the other parties as to whether they consent to to this motion for leave and to stay. He has not heard from them except for Christopher Holmes, counsel for Defendants / Respondents George Henry Walter, Gailya Privette, June C. McRoy, William McRoy, Patricia P. New and Thomas M. New. Mr. Holmes consents. Further, counsel for counsel for Plaintiff / Respondent consents to the Rule 60 Motion and all other counsel either consent or take no position regarding that Motion.

For the foregoing reasons, the State of South Carolina respectfully requests that this Motion be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR THE DEFENDANT STATE OF
SOUTH CAROLINA

June 20, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
Edisto Open Land Trust Inc. ,et al)
 Plaintiff,)
 vs.)
)
State of South Carolina, et al)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2004-CP-10-4129

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: See attached list, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: See attached list, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

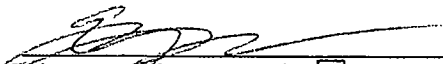
SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES/ NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

June 17, 2014
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect
<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party
<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief
<input type="checkbox"/> Motion for Stay in Bankruptcy
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____
<input type="checkbox"/> Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

ATTACHMENT TO COVER SHEET – LIST OF COUNSEL – Rule 60 Motion

Plaintiff's Counsel

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Edisto Island Open Land Trust, Inc.,)	2004-CP-10-4129
)	
Plaintiff,)	
)	
-vs-)	
)	MOTION FOR RELIEF FROM
State of South Carolina, Melissa Adams,)	JUDGMENT AND ORDER
Philip Rhodes, George Henry Walter,)	
Gailya Privette, Jeffery Baker, June C. &)	
William L. McRoy, and Patricia P. &)	
Thomas M. New,)	
Defendants.)	
)	

Without waiving any defenses or appeal rights herein and without making any admissions, the State of South Carolina through its undersigned counsel, moves pursuant to Rule 60 (a) and (b), SCRPC, for the following reasons. for relief from this Court’s Orders of May 16, 2014 and July 19, 2011:

1. This Court’s Order of May 16, 2014 denied the Defendant State of South Carolina’s Motion to Alter or Amend the July 19, 2011 Order of this Court confirming title to the property at issue in Plaintiff Edisto Open Land Trust.
2. Respectfully, the Motion to Alter or Amend identified errors in the Order that need correction to avoid confusion in the future.
3. The Third Affidavit of Thomas Bessent of April 24, 2012 and submitted to this Court Court that year provides clarifying information that should be incorporated into or referenced referenced by a revised Order on the merits of the case. In particular, that affidavit, at paragraph 5, states that “. . . the cross-hatched marshland acres contained as exhibits to the

the Deed into [EOLT] . . . attached hereto as Exhibit 4 and incorporated herein by reference reference lie within the boundary lines of the marsh tracts shown on Exhibits 1, 2 and 3 hereto.” This affidavit helps to avoid confusion in the record as to the labeling of the exhibits and the reference in the order to an exhibit that is not attached. Those problems are addressed in grounds 1 – 3 of the Motion to Alter

4. The Order should be modified to refer to any island within the cross-hatched area to clarify ambiguities in the transcript as to whether islands are included. *See* ground 4 of Motion to Alter.

5. The reference to the *Coburg* cases on p. 7 of the 2011 Order should be eliminated because those cases were overruled by the *Tenney* decision as noted on p. 10. *See* Ground 5 of Motion to Alter.

6. Respectfully, this Court should modify or eliminate the reference in the 2011 Order that the “State has failed to” come forward with evidence in contravention of the evidence EIOLT introduced to overcome the presumption of State ownership. Order at p. 9. The State did not “fail” to come forward with such evidence as it did not allege any basis for its title to the marsh other than the presumption of State ownership of marsh. *See*, Ground 6 of Motion to Alter.

7. The Order should also be corrected as to the address and representation errors noted in the letter of Christopher Holmes, Esquire to this Court on August 3, 2011.

8. An addition should be made on the last page of the order to limit the settling parties to those referenced in earlier parts of the order

Although the State recognizes and respects that this Court has denied the Motion to Alter or Amend,

Amend, the State believes that these changes need to be made in the 2011 and 2014 Orders to avoid avoid any future difficulties in their interpretation and application.

Rule 60(a) permits correction of clerical mistakes and errors arising from oversight or omission at any time. The State submits that all of the above concerns may be corrected in the 2011 order under this rule, or by correcting the 2014 Order so as to permit alteration or amendment of the 2011 Order.

These concerns or errors also are a basis for relief under Rule 60(b) due to (1) mistake or inadvertence. Although a motion on ground 60(b)(1) must be made within one year after the order was entered, the 2011 Order was under the review of the Court pursuant to the Rule 59 Motion until this May. Even if, *arguendo*, the Rule 60(b) part of this motion, could not directly challenge the 2011 Order, the failure of the 2014 Order to correct the mistakes of 2011 may be addressed under that Rule and thereby correct the 2011 Order.

For the foregoing reasons, the States respectfully requests that this motion be granted and that the 2011 and 2014 Orders be corrected as set forth above.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

[Signature block continued next page]

J. EMORY SMITH, JR.
Deputy Solicitor General
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(803) 734-3680
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR THE DEFENDANT STATE OF
SOUTH CAROLINA

June 17, 2014

RULE 11, SCRPC CERTIFICATION:

Undersigned counsel certifies that he has communicated with counsel for the parties. Mr. Mason takes no position as to this motion, and all other counsel consent.

BY: 

J. EMORY SMITH, JR.

June 17, 2014

Emory Smith

From: Mikell Scarborough <master@charlestoncounty.org>
Sent: Friday, June 20, 2014 11:01 AM
To: 'Edward Pritchard'; Emory Smith
Cc: 'Mark Mason'; 'Chris Holmes'; 'Shahid, Mary D.'; Spencer Craig; 'lbeck@charlestoncounty.org'; 'John'
Subject: RE: Edisto Open Land Trust (EIOLT) V. SOUTH CAROLINA ET AL; CASE NO. 2004-CP-10-4129

Importance: Low

Unless I receive an objection, I therefore intend to grant the State's Rule 60 motion and execute the Order submitted by Emory Smith.

I would request any objection or, if you consent, be submitted in the next week.
I plan to address this on June 30, 2014.

Mikell R. Scarborough
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