

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES	ii
QUESTIONS PRESENTED	1 and 1.5
STATEMENT OF THE CASE	2
Continuation of the Statement of the Case	3 and 4
ARGUMENT	
QUESTION 1:	5
QUESTION 2:	6
QUESTION 3:	7
QUESTION 4:	8 and 9
CERTIFICATION REGARDING REHEARING Rule 242(d)(1)	iii
RECORD FOOTNOTE 01	10
CONCLUSION	11
CERTIFICATE OF SERVICE	12

AMERO

Table of Cases and Authorities

<u>CASES</u>	<u>Page</u>
<u>Board of Medical Examiners v. Fenwick Hall</u> , 300 S.C. 274, 387 S.E.2d 458 (1990).	07
<u>Bowers v. Robinson</u> , 311 S.C. 412, 429 S.E.2d 799 (1993).	07
<u>Carlisle v. Prior</u> , 48 S.C. 183, 26 S.E. 244 (1897) . . .	09
<u>Creed v. Stokes</u> , 285 S.C. 542, 331 S.E.2d 351 (1985).	07
<u>In the Matter of Ned Gregory, II., Respondent</u> , 306 S.C. 270, 411 S.E.2d 430 (1991).	02
<u>Metropolitan Life Ins. Co. v. Stuckey</u> , 194 S.C. 469, 10 S.E.2d 3, (1940).	1.5, 8 and 9
<u>Stewart-Jones Co. v. Shehan</u> , 127 S.C. 451, 121 S.E. 374 (1924).	8 and 9

OTHER AUTHORITIES

[SC Statutes]

- §22-3-1110
- §22-3-1120
- §22-3-1130
- §27-37-20
- §27-37-40

Rule 208(b)(1)(c), SCACR

CERTIFICATION REGARDING REHEARING

Petitioner certifies that a Petition for Rehearing was ruled on by the Court of Appeals on April 24, 2014, as a final matter, with a copy of the Order attached hereto in the Appendix, Page A62.

QUESTIONS PRESENTED FOR REVIEW

1. Is it lawful for a magistrate to proceed with an eviction action where the defendant pleads SC Statutes §22-3-1110 (Defense of Questionable Title), §22-3-1120, and also §22-3-1130, which requires discontinuance of the action where the cost bond required by SC Statute §22-3-1130 is filed?

2. Is it lawful for a magistrate to issue a "10 day Notice to Show Cause" on the mere word of someone claiming to be a landlord, in secret, and without a summons and complaint and 30 days to answer, as is required for all other classes of litigants in South Carolina?

3. Is it constitutional to have two classes of litigants in South Carolina, those who claim to be landowners and landlords, as opposed to those who are unfortunate enough to be labeled tenants?

Questions Continued

4. Did the Court of Appeals err when it chose to cite Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3, (1940), and then ignore Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) which contains the exact same wording as Metropolitan except that in the very next sentence (in Stewart-Jones) is the admonition that summary eviction cannot be used to evict a landowner, but can only be used against someone truly a tenant.

(this issue was brought squarely before the Court of Appeals in the Petitioner's Rule 240(f) SCACR Reply, and is fully explained there, Appendix pages A58-A61)

STATEMENT OF THE CASE

This case is about respondent trying to evict appellant Mell Woods, where respondent has no legal right to proceed. The case has roots in a probate proceeding where appellant should have been a party to the proceeding but was never notified, and as a result extrinsic fraud was practiced upon the probate court. Appellant is not a tenant as is falsely claimed by respondent. This eviction case is for revenge because appellant Mell Woods is in litigation over the Will of Mrs. Hinson. Appellant purchased some land from the decedent, Mrs. Hinson. The land was purchased in good faith, for value, and without notice of any infirmity, R.pp. 603A - 603B; Mrs. Hinson died and Ned Gregory, II, a licensed South Carolina attorney prepared a standard probate form, or petition, #300, R.pp. 782-783; in Section II of the form the direct question is asked: "Are you aware of any instrument or document amending or revoking the Will?" The answer was, "No." R.pp. 782-783; Ned Gregory, II is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents. Gregory filled out the probate form for the

probate court, and then obtained the signature under oath of Mr. Breakfield, the Respondent herein, knowing full well that another will existed which revoked the will that Gregory wanted probated, (RECORD, this was brought up during oral argument in Circuit Court, [and also Magistrate Court], circuit transcript page 23 lines 16-19, attached hereto as "Record Note 01" R.pp. 73-76; R.pp. 89-92; R.pp. 99-101; R.pp. 159-163; R.p. 269; R.pp. 387-392; R.pp. 515-516; R.pp. 577-578; R.pp. 584-588; R.pp. 614-619; R.pp. 772-778; R.pp. 580-581; R.p. 654; R.p. 678 lines 14-25; R.p. 679; R.p. 746; R.pp. 699-705; R.pp. 2-588.

In addition, the summary eviction method used by South Carolina was ruled as being constitutional by the magistrate court, and the circuit court, R.p. 642 (at bottom) and R.p. 746 (at bottom also) and brought up in the Rule 59(e) Motion R.p. 746.

11/10/13

ARGUMENT

As to Question 1

South Carolina Statute §22-3-1130 makes it very clear that where there is a Question of title, that the matter be left alone as far as a magistrate court is concerned. The Record will show that appellant Mell Woods filed a verified answer which denied that respondents had any title whatsoever in the land, *R.p. 603B, (Response to No. 3) R.p. 606 (Response to No. 10) R.p. 604, (Interrogatory No. 7)*; and in addition, filed the bond and cash deposit as required to discontinue the action, Record, *R.pp. 609-611*; This should have been the end of the magistrate case, but no. Here is the case in the South Carolina Court of Appeals. Clear statutes do not mean anything where revenge is involved, and where the person seeking revenge wants to get even.

As to Question 2

In South Carolina to be labeled a tenant is to be treated worse than a dog -- perhaps not a dog, because dogs do have rights, maybe a rattlesnake is a better example. The label "tenant" is nearly synonymous with sharecropper, and the South Carolina summary eviction procedure is from the old days, and is part and parcel of the sharecropper system. The "10 day Notice to Show Cause," SC Statute §27-37-20, and its counterpart SC Statute §27-37-40 fail to meet constitutional muster. If everyone else is allowed 30 days to answer, then it cannot be fair to label, and then create another class of persons with less rights.

As to Question 3

"A defendant has thirty days from the date of service of the complaint to serve his answer." Bowers v. Robinson, 311 S.C. 412, 429 S.E.2d 799 (1993).

"A summons requiring an appearance in less than the statutory time is fatally and jurisdictionally defective." Rule 12 entitles a defendant to thirty days to respond. Board of Medical Examiners v. Fenwick Hall, 300 S.C. 274, 387 S.E.2d 458 (1990).

An issue affecting title to land is a substantial right and should be tried in front of a jury in common pleas court, Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985).

As to Question 4

1. Quoting Mr. Brackett's own case, Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) which Mr. Brackett claims to have the same language as Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3 (1940), and as used by the un-named author of the unpublished opinion in number 2014-UP-076 to support the contention that: "Otherwise any tenant, by merely denying the landlord's title or by asserting superior title in himself or another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute." -- Yes that is the language of Metropolitan but the language, word for word came straight from Stewart-Jones Co. v. Shehan, as above and Mr. Brackett's favorite case. The reason that they used Metropolitan instead of Stewart-Jones Co. is the fact that in the very next sentence in Stewart-Jones Co. is the admonition, directly after (the plain and salutary object of the statute) that: "On the other hand, it is equally apparent that by merely asserting the claim that another is in possession of real estate as his tenant a party may not be permitted to use the summary statutory proceeding to eject the true owner of the premises or one in possession under the true owner." *Carlisle v. Prior, supra.*

As to Question 4

2. Stewart-Jones Co. v. Shehan also held that the 1895 Constitution limited the jurisdiction of the magistrates, and that a magistrate court has no jurisdiction where the title to real estate is in question and further that any cases to the contrary were decided before the adoption of the 1895 Constitution.

3. The use of Metropolitan Life Ins Co. as it has been used by the Court of Appeals in this case, just does not square with Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244. (1897).

4. The case cited by Mr. Brackett (Stewart-Jones) actually supports the position of appellant and petitioner Mell Woods, if the material parts discussed in the first paragraph above are included and applied.

5. These three cases, Stewart-Jones Co. v. Shehan, Metropolitan Life Ins Co., and Carlisle v. Prior are part and parcel with one another and need to be read together in order to see the precedent which needs to be applied to the present case.

1 talk about the magistrate bench book, that's something --
2 it's a training manual they write up there, it's not really
3 the law citing that. And he cited that older statute, I
4 didn't get the number of it. But I mean, the South
5 Carolina Rules of Civil Procedure superceded those older
6 statutes and everybody nowadays is entitled to a 30 day
7 notice of anything and a summons. But he's claiming that
8 this annotated law is still the law in South Carolina and
9 it's not, under the Rules of Civil Procedure they have to
10 go by it. I'm not trying to reform everything but it may
11 be time to get the bench book rewritten. The Rules of
12 Civil Procedures controls all cases even in the magistrates
13 court. And all the stuff we're talking about are all jury
14 issues, if we can ever get in here in front of a jury we
15 can get things straightened out but it's never going to get
16 over the way we're going. And the root cause of this
17 problem is they've probated the wrong will instead of
18 Ms. Hinson's will and they swore to a lie to get into
19 court, that's what the main root of all of this problem is.
20 If you ever get this --

21 THE COURT: You're talking about the probate court.

22 MR. WOODS: I'm talking about probate court.

23 MR. BRACKETT: Your Honor, that's been heard and
24 decided by you previously in a summary judgment order when
25 you affirmed to Judge Gettys' probate court order.

Petitioner Mell Woods hereby adopts by reference the entire Record in this case, the final Appellant Brief, Reply Brief of the Appellant, Petition for Rehearing filed in the Court of Appeals, the replies concerning the Petition for Rehearing, also the papers and Briefs filed by the Respondent, and incorporates the listed documents as part of this Petition for Certiorari.

CONCLUSION

Based on the cases cited in this Petition, the Record in this case, past Rulings of the South Carolina Supreme Court and the facts contained within the Record, petitioner asks that a Writ of Certiorari be issued to further examine the Ruling of the Court of Appeals.

Respectfully submitted,
this 23 day of June, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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SOUTH CAROLINA SUPREME COURT

Supreme Court Number 2014-001039

Breakfield v. Woods

Appeal from Chester County

Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

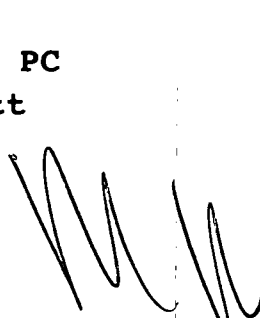
Proof of Service

Trial Court Case Number: 2011-CP-12-00291

Court of Appeals Internal Tracking Number: 2012 212318

I hereby certify that I have on the 23 day of June, 2014, served the respondents with a true copy of the within and foregoing *Petition for Certiorari*, and also with a copy of the *Appendix*, by placing the copies in the U.S. Mail with sufficient postage addressed to:

Moses Koon & Brackett, PC
c/o: B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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