

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
CASE NO. 2009 - CP -10 - 5343
Circuit Court Judge J.C. Nicholson, Jr.

ROOSEVELT SIMMONS	)
Plaintiff, Appellant	)
	)
Vs.	)
	)
HATTIE BAILUM, RUBY BAILUM	)
VERDONE BAILUM,	)
JULIE B. JOHNSON,	)
MONICA MIDDLETON,	)
MARIE SMITH, MELVIN SINGLETON,	)
FRANKLIN SMITH, LMC, LLC,	)
JOHN MARTIN, ESQ. as TRUSTEE	)
Defendants, Respondents	)

RECORD ON APPEAL – VOLUME II

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Julie B. Johnson, Monica Middleton,
Melvin Singleton, LMC, LLC and
John Martin, Esq. as Trustee

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CERTIFICATION

Counsel for appellant hereby certifies that the Record contains all the material designated by the parties to the appeal and no other materials.

Edward A. Bertele, Esq.

February 09, 2012

SN6

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO.: 04-CP-10-1459

HATTIE BAILUM, RUBY BAILUM,)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM, and ESTATE OF THOMAS)
BAILUM,)

Plaintiffs,)

v.)

CONSENT ORDER TO
AMEND COMPLAINT

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2), ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, LEON ELIJAH)
SINGLETON, MABEL SINGLETON HICKS,)
WALTER BURNS, ALONZETTA BURNS,)
SHEILA BURNS OWENS, LOUISE CANTY)
and J. DOE, adults, and M. ROE, infants, insane)
persons, incompetents, being fictitious names)
designating a class of persons, known or)
unknown. who may be heirs, distributees,)
devisees, legatees, widow.)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership. or)
any cloud on plaintiffs' title,)

Defendants.)

FILED

JULIE J. ARMSTRONG
CLERK OF COURT

2005 SEP 13 AM 10:08

FILED

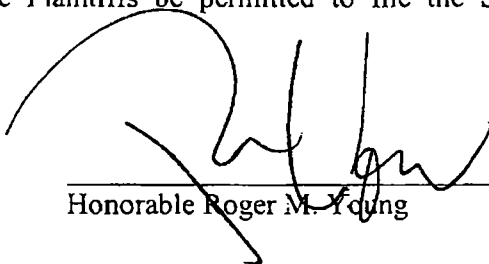
Rt # 25-011343

R354

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COME NOW THE PLAINTIFFS with the consent of the Defendant, and move to be permitted to amend the complaint in this matter to include additional heirs as party defendants to this Action to Quiet Title. These heirs names were produced by Defendant. Defendant consents to this motion, and the proposed Second Amended Complaint is attached hereto.

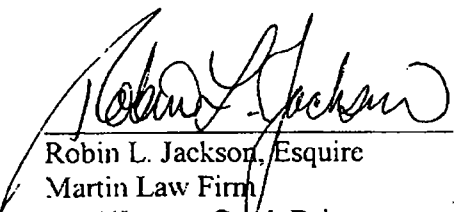
IT IS SO ORDERED that the Plaintiffs be permitted to file the Second Amended Complaint.



Honorable Roger M. Young

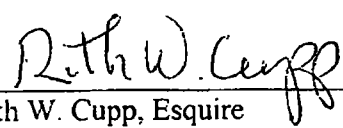
9/8, 2005

I SO MOVE:



Robin L. Jackson, Esquire
Martin Law Firm
113 Wappoo Creek Drive
Charleston, South Carolina 29412
Office: 843.762.2121
Fax: 843.762.2333
robinjackson@themartinlawfirm.net

I SO CONSENT:



Ruth W. Cupp, Esquire
Duffy Cupp & Stratos
1031 Chuck Dawley Blvd
Mt. Pleasant, SC 29464
Office: 843.216.7739
Fax: 843.216.0804

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS

04-CP-10-1439

COUNTY OF CHARLESTON)

HATTIE BAILUM, et al)

Versus)

ROOSEVELT SIMMONS, et al)

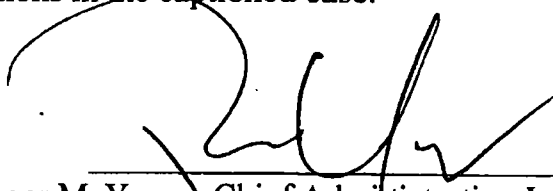
ORDER

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2005 NOV 10 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

WHEREAS, Ruth W. Cupp, attorney for Roosevelt Simmons has requested to be relieved as attorney of record for Roosevelt Simmons for reasons related to her inability to communicate with Roosevelt Simmons, and

UPON consideration of this matter and upon request of Ruth W. Cupp finds that it is the best interest of the matter to relieve Ruth W. Cupp in representing Roosevelt Simmons in this action.

THEREFORE, it is ORDERED, that Ruth W. Cupp is relieved of the Representation of Roosevelt Simmons in the captioned case.


Roger M. Young, Chief Administrative Judge
Ninth Judicial Circuit

11 November, 2005

I SO MOVE:

Ruth W. Cupp

This order contingent upon attorney Cupp serving client with copy of this order. Client has 30 days from receipt of order to obtain new counsel or be prepared to proceed pro se. py

R 356

05/014283

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A Number: 04-CP-10-1459

FILED
2006 FEB 17 PM 4:50
JULIA A. STRONG
CLERK OF COURT

HATTIE BAILUM, et al,

Plaintiff,

-VS-

ROOSEVELT SIMMONS,

Defendant.

CONSENT ORDER OF

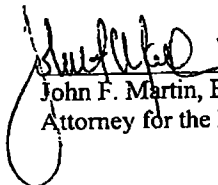
REFERENCE TO SPECIAL REFEREE

De-2006
This matter is before the Court upon the joint Motion of counsel for an Order of Reference to a Special Referee pursuant to The South Carolina Code of Laws and Rule 53 of the South Carolina Rules of Civil Procedure. The parties consent to the Honorable Joseph Mendelsohn serving as Special Referee. The Special Referee shall enter a final Judgment as to the causes of action referred. The compensation of the Special Referee shall be split equally by the parties.

Any appeal shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.

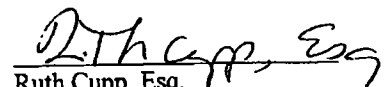
I consent:

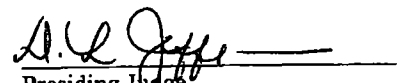

John F. Martin, Esq.
Attorney for the Plaintiffs

Dated: January 25, 2005

2/16/06
Chas., SC

I consent:


Ruth Cupp, Esq.
Attorney for the Defendant


Presiding Judge
Ninth Judicial Circuit

R 357

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

HATTIE BAILUM a/k/a HATTIE BALAAM;
RUBY BAILUM a/k/a RUBY BALAAM;
VERDONE GRAY; JULIE B. JOHNSON; and
MONICA MIDDLETON,

Plaintiffs,

versus

ROOSEVELT SIMMONS, LEON SINGLETON,
MABEL SINGLETON HICKS a/k/a MAYBELL
HICKS, WALTER BURNS, SHEILA B. OWENS,
LOUISE CANTY, ALONZETTA BURNS;
SHARON BURNS, MELVIN SINGLETON,
MARIE SMITH, ELMORE SINGLETON,
THEODESIA SINGLETON, MILDRED
SINGLETON MAHONEY, ANDRE SINGLETON,
EUGENIE SINGLETON, LEON ELIJAH
SINGLETON, ERNEST GREEN, JR., KAREN
GREEN, DELOIRS GREEN, JOAN GREEN
WELLS, DELBERT BURNS, JOE LOUIS
BURNS, JR., a/k/a JOE LEWIS BURNS, JR.,
VONIE BURNS, SHELLY BURNS, ANASTACIA
BURNS, TREMAYNE BURNS, JOSHUA
BURNS, JARRED BURNS, AMBER BURNS, if
they be alive, and JOHN DOE and MARY ROE,
adults, and RICHARD ROE and JANE DOE,
infants, persons under disability or incompetence, if
any, including those persons who might be in the
military and covered under the Soldier's and Sailor's
Relief Act, fictitious names designating the unknown
heirs, devisees, distributes, issue, executors,
administrators, successors or assigns of the above
named defendants, and also the following deceased
persons: ESTATE OF SAMUEL BAILUM a/k/a
SAMUEL BAALUM, deceased or the ESTATE OF
HESTER SINGLETON BAILUM a/k/a ESTHER
BAILUM a/k/a ESTHER BAALUM, HESTER
SINGLETON BAALUM, THOMAS BAILUM,
SAMUEL BAILUM, SAMMY BAILUM, FANNIE
BAILUM MIDDLETON, MARY WARREN,
WILLIS BAILUM, TONY BAILUM, MARY
BAILUM, SAM BAILUM, HESTER BAILUM,
JOSH SINGLETON, ELOUISE SINGLETON,
CARRIE BURNS, JERRY SINGLETON,
ARTHUR SINGLETON, EUEGENE
SINGLETON, RICHARDINE SINGLETON,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-10-1459

**SPECIAL REFEREE'S ORDER
QUIET TITLE PARTITION
AND SALE**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2007 JAN 11 PM 2:48

FILED

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Defendants.

JURISDICTION

PROCEDURAL HISTORY

[Handwritten signature]

To ensure that all interested persons' interests were fully protected, the Pleadings were also served upon all defendants, and J. Doe and M. Roe by publication. The final Affidavit of Publication was filed on December 13, 2006. Francis X. McCann was appointed as Guardian-ad-Litem to protect the interests of any heir or heirs or person or persons known or unknown either named as a defendant or not who may have an interest in this litigation or this property. No response was received by any person to the published notices. At the time of the trial, counsel for the parties entered into the record several stipulations.

First, this action involves the quieting of the title, partition and sale of the four parcels of land identified by the TMS Numbers 311-00-00-024 (Parcel 1); 312-00-00-065 (Parcel 2) 312-00-00-032 (Parcel 3) and 312-00-00-067 (Parcel 4).

Second, since 1904, the "Bailum" name has sometimes been spelled as "Balaam". The parties stipulate that reference to "Balaam" is reference to "Bailum" and the caption shall reflect "Bailum a/k/a Balaam". Further, there are instances where "Hester Bailum" is referred to as "Esther Bailum". The parties stipulate that Hester Bailum and Esther Bailum are the same person. The caption shall reflect "Hester Bailum a/k/a Esther Bailum".

Third, the parties shall be realigned such that the living heirs of Samuel Bailum; to wit: Hattie Bailum, Ruby Bailum, Verdone Gray, Julie Johnson and Monica Middleton shall appear in the caption as Plaintiffs. The known living heirs of Hester Bailum shall remain as defendants.

Fourth, the parties stipulate that due to health, age, and travel considerations, Hattie Bailum, James Bailum, Verdone Gray, Julie Johnson, Leon Singleton and Melvin Singleton were permitted to testify by telephone.

Fifth, the parties stipulate to the admissibility of previously marked exhibits which were submitted and reviewed by counsel for all parties and the Guardian ad Litem prior to trial.

Sixth, the Guardian ad Litem, Francis X. McCann is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Guardian ad Litem's fee is \$200 per hour.

Seventh, the Special Referee is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Special Referee's fee is \$200.00 per hour.

Eighth, the prayer for relief is amended by stipulation to seek to have Title to the four above-mentioned parcels quieted and that once Title is established, the parcels be partitioned

and/or sold with the respective shares of the proceeds being distributed to the heirs of Samuel Bailum, Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton or the heirs of Hester Bailum as determined appropriate by this Court.

Ninth, the parties stipulate to the court reporter's qualifications.

FINDING OF FACT

This action is brought to determine the heirs of Samuel Balaam (a/k/a Bailum) and Hester Balaam (a/k/a Bailum) and the extent of each heirs interest in the parcels of land distributed hereinafter, and to Code Section 15-61-10, et seq. of the South Carolina Code of Laws, for the purpose of partitioning the parcels in kind or by sale. The real property that is the subject of this action is more particularly described as follows:

Parcel 1:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

(NOTE: This parcel now is reflected as 15 acres on the Charleston County Tax Rolls, by appraisal, and by survey)

Parcel 2:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B.

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Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 3: All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-067.

Parcel 4: All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and contain five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-032.

PARCEL 1

On July 2, 1910, Samuel Bailum (hereinafter "Samuel") purchased twenty acres from Amarantha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185. On information and belief, this Samuel Bailum died intestate, leaving as heirs, his wife Hester Bailum, and his children: Willis Bailum, Thomas Bailum, Tony Bailum, Samuel Bailum (hereinafter "Sam") Mary Bailum and Fannie Bailum. Hester Bailum received a statutory one-third ($1/3$) interest in the property. Samuel's children would have shared a two-third's ($2/3$) interest. Current tax map references, surveys, property cards and appraisals indicate the correct acreage is fifteen (15) acres of highland.

Hester Bailum had six children from a previous marriage. These children were Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burns, Elouise Singleton and Josh Singleton. Hester Bailum died intestate, leaving her children as her sole heirs.

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The Plaintiffs, herein Hattie Bailum, Ruby Bailum, Verdone Gray, Julie B. Johnson and Monica Middleton are descendants of "Samuel". Through their ancestors, they share the 2/3 interest in parcel one.

Hester Bailums' descendants, the Defendants' herein, share her one (1/3) interest in parcel one. Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty, Maybell Hicks and Leon Singleton have deeded their interest in the property to the Defendant Roosevelt Simmons, and as such no longer have an interest in this litigation.

PARCELS 2,3, & 4

Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton, the children of Samuel Bailum, acquired approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four (54) acres described in Book T24 on page 137, as follows: to Sam Bailum, twenty-four (24) acres, (Book W24, at Page 327); Tony Bailum, ten (10) acres (Book O25, at Page 181); Thomas Bailum, ten (10) acres (Book W24, at page 188); Mary Bailum, five (5) acres (Book E26, at Page 257); and Fannie Bailum Middleton, five (5) acres (Book W25, at Page 284). Subsequent conveyances out have left as remaining heirs' property parcels 2, 3, and 4 as described hereinabove. The heirs of Hester Singleton Bailum have no claim or interest in parcel 2, 3 or 4 as her husband Samuel Bailum had no interest in this property.

SAMUEL BAILUM HEIRS

The Court took testimony from Hattie Bailum, James Bailum, Verdone B. Gray and Julie B. Johnson. The Court also reviewed numerous exhibits. The Court finds that the following were the sole heirs of Samuel Bailum (with regards to Parcel 1) and Sam Bailum, Tony Bailum, Thomas Bailum, Mary Bailum, and Fannie B. Middleton (with regards to Parcels 2, 3, & 4).

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Hattie Bailum is the daughter of Sam Bailum's son Thomas (deceased) and granddaughter of Sam Bailum (deceased) and great granddaughter of Samuel Bailum. (deceased)

Ruby Bailum is the wife of Sam Bailum's son Sammy (deceased). She is the mother of Verdone Gray. Sam Bailum was Sammy's father and Ruby's father-in-law. Samuel is her grandfather-in-law.

Monica Middleton is the daughter of Fannie Bailum Middleton (deceased), the granddaughter of Sam Bailum, and the great granddaughter of Samuel Bailum

Julie Bailum Johnson is the daughter of Sam Bailum. Sam Bailum took as a second wife Mary Warren (deceased). Julie Bailum Johnson is the granddaughter of Samuel Bailum. The witnesses all testified that there are no other Bailum heirs alive other than the Plaintiffs to this action.

Thus, the heirs of Samuel Bailum who are living and who share a 2/3 interest in Parcel 1 are Hattie Bailum, Ruby Bailum, Julia Bailum Johnson and Monica Middleton.

The heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton, who are living and who share the entire interest in Parcels 2, 3, and 4 are Hattie Bailum, Ruby Bailum, Monica Middleton and Julie Bailum Johnson.

HESTER BAILUM HEIRS

The Court took testimony from Roosevelt Simmons, Leon Singleton and Melvin Singleton. The Court also received numerous exhibits including a family tree prepared by Mr. Simmons with the assistance of prior counsel, Ruth Cupp, Esq. As noted above when Hester Bailum died, she was survived by six children. All of these children are now deceased. The Defendants in this action are descendents of Hester Bailum's six children. Of those heirs, Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty and Mabell Hicks have deeded their interest in Parcel 1 to Roosevelt Simmons. The remaining Hester Bailum heirs have not deeded their intestate interests and as such would receive their pro-rata share of the sale proceeds from Parcel 1 if a sale is ordered. Those other heirs are Melvin Singleton and Marie Smith.

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LEGAL ISSUES

The issues before the Court are the action for Declaratory Judgment to determine the heirs and their respective interests in the above referenced parcels, to quiet Title, the Partition in land or sale and the counterclaim of adverse possession by the Defendant Roosevelt Simmons.

Declaratory Judgment and Partition

From a review of the pleadings, testimony and exhibits, it is clear that all the parties desire to have the title to the property quieted, through a declaratory judgment. In some cases, interests in the property has passed by intestate distribution through three generations. The court finds it in the best interest of all that the title be established as a matter of law. Once the ownership interests were established the Court would have considered if partition in kind could be fairly and equitably accomplished. Since the only answering Defendant, Roosevelt Simmons, has, through his counsel, withdrawn his request for Partition of Parcel 1, this will not be necessary. Therefore the court may proceed with a sale of all the property.

A Partition and sale procedure must be fair and equitable to all parties of the action.

Pruitt v. Pruitt, 298 S.C. 411, 380 S.E. 2d 862 (Ct. App. 1989). If a Court determines that a partition cannot be fairly and equitably made, the Court may order a sale of the property and a division of the proceeds according to the rights of the parties. S. C. Code Ann. § 15-61-100, et seq. (2005). Additionally, if partition in kind or by allotment cannot be fairly and impartially made without injury to any of the parties in interest, then the Court has jurisdiction to order sale of the property and the division of the proceeds. S.C. Code Ann. §15-61-50 (2005).

In this case, due to the size, shape and location of Parcel 1, a partition in kind is not practicable or expedient. It would be practically impossible to partition the property, leave multiple parcels with ingress and egress, not lose substantial value to all parcels or even create parcels suitable for building. Thus, a sale is an appropriate resolution. The Defendant, Roosevelt Simmons concurs. Further, the Plaintiffs do not request a judicial sale wherein the sale price is an unknown amount. There is a ready and willing purchaser for this property who has agreed to

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pay the value that this Court sets for this parcel of property. The parties are guaranteed to receive the full fair-market value of the property, as determined by the Court. The Court in a prior hearing ordered an appraisal of Parcel 1. That appraisal is part of the record herein.

Plaintiffs, by and through Hattie Bailum, contracted to sell parcels 1, 2, 3 and 4 in August, 2003. This action was necessary because of the dispute regarding ownership of Parcel 1 and the value of the property. As Ordered by the Court, an independent appraiser inspected the property and provided the parties with its value. The appraiser was Trina Walters of Atlantic Appraisals. She determined that the appraised fair-market value of parcel 1 was Two Hundred Twenty Thousand and 00/100ths (\$220,000.00) Dollars.

The Plaintiffs agree that the Defendants have an interest in Parcel 1 and are willing to deliver one-third (1/3) of the net closing proceeds for Parcel 1 to the Heirs of Hester Bailum in accordance with their interests therein. Plaintiffs have asked that the Court order the funds be disbursed accordingly.

The Court, based upon the testimony, and exhibits concurs that the Heirs of Hester Bailum possess a one-third (1/3) interest in Parcel 1. The Court also concludes that the Heirs of Hester Bailum possess no interest in Parcels 2, 3 or 4. The Heirs of Samuel Bailum, possess a two thirds (2/3) interest in Parcel 1. Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton possess the full interest in Parcels 2, 3 and 4.

ADVERSE POSSESSION

I.

(In General)

The Defendants, specifically, Roosevelt Simmons, raised as a defense and claim the theory of adverse possession.

To prevail upon an adverse possession theory, Mr. Simmons, as the adverse possessor, must prove each element of the theory. These elements are:

- (1) Continuous;
- (2) Hostile;
- (3) Open and Notorious;
- (4) Actual; and

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(5) Exclusive

These elements of adverse possession have been determined in South Carolina by an extensive body of case law. (see eg. Lusk vs. Callahan 339 SE 2nd 56 (Ct App. 1986 and the cases cited therein.) To prevail, a claimant must establish that each element exists and is concurrent.

A.

CONTINUOUS

Possession must be continuous and uninterrupted for the requisite period. Temporary occupation does not constitute possession. (Atlantic CLR Co. vs. Searson 133 SE 567 (1926). Roosevelt Simmons does not occupy the property. Roosevelt Simmons testified that if any other rightful heir sought to use the property, they would be entitled to do so. As such, possession, if found to exist, would not be uninterrupted.

B.

HOSTILE

Hostile possession is possession with the intent to dispossess the true owner. Ouzts vs. McKnight 108 SE 561 (1920). There must be a trespass by the adverse possessor against the owner Massev v. Duren 3 SE 34 (1871). An heir going upon the property does not acquire title by adverse possession as he is not a trespasser but rather he is an owner. Permissive entry is not hostile. If the possessor has permission or an ownership interest, there can be no adverse possession. One who enters land with permission cannot acquire title by adverse possession. (Fradv vs. Ivester 110 SE 135 (1921). Lastly, as to the possession being hostile, an heir coming into possession cannot obtain title by adverse possession against other heirs claiming an interest in the property. The heir in possession of the property as it relates to the other heirs is that of a fiduciary (Vaux vs. Nesbit 6 SE Eq. (1 McCord) 352 (1826). There has been no testimony that any heir with an interest in this property has attempted to dispossess any other rightful owner. To the contrary, testimony is that Roosevelt Simmons acted with regard to preserving the property for all the Bailum Heirs and not with regard to dispossessing any other true owner.

C.

OPEN & NOTORIOUS

The intent to possess the land must not be hidden but apparent. The possession must be so notorious that a legal owner by ordinary diligence should have known of the intent to possess. (*Graniteville Co. vs. Williams* 39 SE 2d 202 (1946). Possession with knowledge by the owners of an heir acting in a fiduciary capacity is not indicative of intent to possess. As evidenced by numerous letters in evidence, there was not intent to possess by Roosevelt Simmons for his own interest. By letter, dated October 19, 2003, Mr. Simmons writes to Hattie and Clara Bailum with a request that the matter of ownership interests of the family be decided by the Probate Court. He signed the letter "Roosevelt Simmons and Family". Leon Singleton, another Hester Bailum heir, wrote to Ruth Cupp, Esq. on December 27, 2004. His letter references the "Bailum property". Mr. Singleton also wrote to Hattie Bailum in June 2005 and describes Roosevelt Simmons as follows: "Roosevelt, my first cousin, has been the caretaker as well as taxpayer for the land...". He also describes the land as holding the family heritage to be passed down through the generations. Lastly, Leon asks that if Hattie decides to sell, that Leon and Roosevelt be given the percentage of their ownership for the work they have put into the land. Roosevelt Simmons testified that he was not possessing the property in his own right but serving as a caretaker.

D.

ACTUAL

There can be no adverse possession of land against an owner where there has been no possession for which the true owner could bring a trespass claim. *Steadman vs. Hilliard* 37 SCE (3 Rich) 10 (1846). This, if a party has a legal right as an owner by virtue of his being a legal heir, there can be no trespass and thus no trespass claim would follow. In the absence of the ability to bring a trespass claim, there can be no adverse possession as a matter of law. Roosevelt Simmons has a legal right as an owner to use the property. As such, he cannot be classified as a trespasser.

E.

EXCLUSIVE

Possession must be such as to indicate exclusive ownership of the property. Curtis vs. Deschamps 350 SE 201 (Ct. App. 1986). When the owner(s) of the property and an occupant are both in possession, the possession of the legal owner prevails to the exclusion of the adverse possessor. The exclusiveness provision is not satisfied if occupancy is shared with an owner or agent of the owner. Butler vs. Lindsey 361 SE 2d 621 (Ct. App. 1987). Roosevelt Simmons shares ownership with numerous heirs. As evidenced by testimony and exhibits, other heirs would clearly have occupied the property if not for the County disallowing their requests, a fact acknowledged by witnesses for the Plaintiffs and Defendants. Roosevelt was not acting as an exclusive owner, but rather as the family caretaker.

ADVERSE POSSESSION

II.

(by Heirs)

In addition to the numerous cases addressing adverse possession by the third parties, South Carolina Courts have also confronted the issue of adverse possession by heirs. For adverse possession by an heir against all others to be found to exist, the previously discussed five elements must be proven as well as a sixth element of ouster.

With heirs property, possession is presumed to follow legal title. Lynch vs. Lynch 115 SE 2d 201 (1960). When an heir "occupies" property, there is every presumption that such occupancy is subordinate to legal title. Occupancy by the family or other relation **does not** create hostility in possession. Knight vs. Hilton 79 SE 2d 873.

Permissive entry or possession by an heir under color of title is not hostile. One who enters and with permission or under color of title cannot acquire title by adverse possession absent a disclaimer of the owner or other heirs. No disclaimer has been given by any of Samuel Bailum's heirs or Hester Bailum's heirs in this dispute.

Further, where one seeks to acquire title by adverse possession against his brothers and sisters "such an unconscionable claim should not be sustained..." The presumption is that the possession of a tenant is of the benefit of all. It must appear that the holding heir claimed the

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property as his own and has in unequivocal terms so notified the other heirs". Whitaker vs. Jeffcoat 122 SE 495 (1924).

Thus to prevail, an heir must prove by conclusive evidence that he has complied with the law of ouster in order to adversely possess against other heirs. Fender vs. Heirs of Smashum 581 SE 2d 853 (Ct. App. 2003).

Ouster is the actual turning out or excluding a party entitled to possession of any real property. The acts must be unequivocal and distinctly hostile. There must be unequivocal terms notified to the other heirs. Fender at 642. Only in rare extreme cases will the ouster of one heir by another heir be implied for dealings with the property. Fender at 642.

The well-established principle is that possession by one is the possession for all. Watson vs. Little 79 SE 2d 384 (1953). To prevail on an adverse possession claim, one tenant must overcome the presumption that he holds possession in recognition of the co-tenants. The fact that a claimant paid taxes does not constitute Ouster. Fender at 643. Payment of taxes by a co-tenant entitled the co-tenant to only proportionate contribution from the other co-tenants and nothing more. See Watson at 387. Mr. Simmons has testified that there is no ouster of his family or any other rightful heir with an interest in the property. To the contrary, by his own testimony, if they sought to use the property, he would welcome them.

Mr. Simmons has for several years served a vital role as caretaker of this heirs' property. He has watched over the property, collected rent, and paid taxes. The Court recognizes his efforts in this regard.

CONCLUSIONS OF LAW

A.

Declaratory Judgment

The Court concludes as a matter of law that the title to this property be quieted as set out specifically hereinbelow. As for Parcel 1 (311-00-00-024) Title is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest). As for Parcels 2, 3, and 4, title is vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton. Those heirs are the Plaintiffs in this action.

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PARTITION

The Court concludes as a matter of law that the property is to be partitioned by sale and the proceeds divided fairly and equitably. The Plaintiff's have requested a sale. The Defendants Roosevelt Simmons has requested he be allowed to purchase the other heirs interest in Parcel 1 if the Court determined that he was not the owner through adverse possession

SALE

As to Parcel 1, in 2003, Hattie Bailum entered a contract of sale. As part of this action, this Court ordered an appraisal of Parcel 1. The independent appraisal established a fair-market value on the property at \$220,000.00. The Court finds this value fair and reasonable. The parties have executed an addendum to their contract to sell Parcel 1 for the appraised value. The Court concludes that since the sale price is the fair-market value price, it is in the best interests of all the parties that the contract be fully performed. Doing so eliminates the need to list and sell the property thus saving six percent (6%) to ten percent (10%) of the purchase price in real estate commissions and avoids unnecessary delays. By ordering the sale, the heirs who will share in the proceeds will receive a greater share, not diminished by unnecessary costs and delays.

Mr. Roosevelt Simmons has asked for the opportunity to purchase Parcel 1. This matter has been pending for several years. Mr. Simmons, on previous occasions, has been offered the opportunity by this Court to buy out the remaining heirs with an interest in Parcel 1. The Court shall grant to Roosevelt Simmons the opportunity to acquire Parcel 1. This opportunity is assignable but only to individuals related by blood or marriage to a party herein. Mr. Simmons shall have ten (10) days from the date of service of this Order to provide to the Court written confirmation of a loan approval or of funds available by a licensed lender. Mr. Simmons shall have thirty (30) days to consummate the sale from the date of service of this Order. Should Mr. Simmons fail to provide the letter or consummate the transaction, the property shall be immediately sold in accordance with the contract for the fair-market value price of Two hundred twenty thousand (\$220,000.00) Dollars.

The Court recognizes that over time certain heirs, both plaintiff and defendant herein, have contributed to the taxes and maintenance expenses for the four parcels. Those contributions

can not be fixed with certainty. However, in recognition of Mr. Simmons' efforts to preserve the property for the benefit of all the heirs, the Court concludes he is to be given \$10,000.00 from the proceeds of the sale of the four parcels over and above his interest as an heir in Parcel 1. The parties agree that this sum is fair and equitable compensation for his dedicated service in preserving this property for the benefit of all Bailum heirs.

The net proceeds from the sale, shall be distributed after the fees for the Special Referee and Guardian ad Litem are deducted, with one-third (1/3) being forwarded to the Heirs of Hester Bailum and two-thirds (2/3) being forwarded to the Heirs of Samuel Bailum.

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

As to Parcels 2, 3, and 4, in 2003 Hattie Bailum entered a contract for sale with a purchaser who is an adjoining land owner. This property was also appraised pursuant to Court Order. The independent appraisal establishes the combined fair-market value of these parcels at \$337,000.00. The Court finds their value fair and reasonable. The parties have executed an addendum to their contract to sell Parcels 2, 3, and 4 for the appraised value.

The Court concludes that since the sale price is fair-market value, it is in the best interest of the sole heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton that the contract be fully performed. This conclusion is in accord with the relief

sought in the Plaintiff's complaint; wishes and prayers. The net proceeds from the sale shall be distributed, after usual and customary closing costs are deducted as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

ADVERSE POSSESSION

The Court concludes that the Defendant Roosevelt Simmons did not prove the required elements of an adverse possession theory. By his own testimony, each of the elements was negated rather than proved.

COSTS AND EXPENSES

The Court concludes that although S.C. Code 15-61-10, et seq. permits it to award Plaintiffs' fees and costs, the Court will decline to do so. The Court does not find that the Defendants' position was baseless or meritless. To the contrary, all parties concede that the title must be quieted. The objection by Mr. Simmons as to the partition and sale was not entered into lightly or frivolously. He raised fair questions for this Court to decide. The court concludes that each side shall pay their attorney's fees and costs.

As customary in such case and as stipulated by the parties, the Guardian ad Litem's fees (\$1,200.00) and the Special Referee's fee (\$6,000.00) are to be paid from the sale of the four parcels before distribution to the heirs.

ORDER

This Court issues its Order as follows:

1. Title to Parcel 1 is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest).

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2. By Special Referee Deed, Parcel 1 may be sold to Roosevelt Simmons or his permitted assigns if and only if Mr. Simmons or his permitted assigns provides to the Clerk of Court for filing and date stamp within ten (10) days of the date of service of this Order a loan approval letter for \$220,000.00 (less the sum due, before costs are deducted of \$58,888.89). Mr. Simmons or his assigns must consummate this transaction within thirty (30) days of this Order. Failure to produce the required proof or his or his assigns' ability to pay or close in the time allotted will result in a Special Referee's Deed conveying Parcel 1 in accordance with the contract

3. The Guardian ad Litem's fee of \$1,200.00 shall be deducted pro rate from the closing proceeds for the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

4. The Special Referee's fee of \$6,000.00 shall be deducted pro rate from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

5. Ten Thousand Dollars (\$10,000.00) shall be paid at closing to Mr. Roosevelt Simmons and deducted from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

6. All standard and customary closing costs of the seller with regard to Parcel 1 shall be deducted from the closing proceeds from the sale of Parcel 1.

7. The net proceeds from the closing proceeds from the sale of Parcel 1 shall be distributed as follows:

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons

Two-ninths (2/9)

~~Melvin Singleton~~

One-eighteenth (1/18)

Marie Smith

One-eighteenth (1/18)

Total Hester Bailum net disbursement

One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum

One-sixth (1/6)

Ruby Bailum

One-twelfth (1/12)

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Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

8. Title to Parcels 2, 3, & 4 are vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Fanne B. Middleton and Mary Bailum.

9. By Special Referee Deed, Parcels 2, 3, and 4 are sold in accordance with the contract for the sum of \$337,000.00

10. All standard and customary closing costs of the seller shall be deducted from the closing proceeds from the sale of Parcels 2, 3 and 4. The closing shall occur within thirty (30) days of the date of this Order.

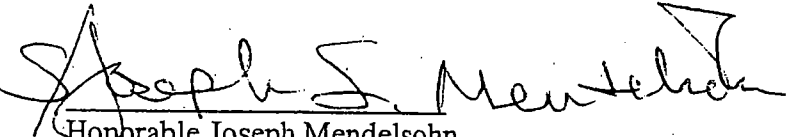
11. The net proceeds from the closing proceeds from the sale of Parcels 2, 3, and 4 shall be distributed as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

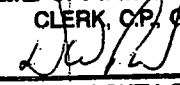
12. The Defendants' claim of Title by adverse possession is denied.

AND IT IS SO ORDERED!

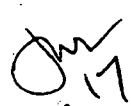
January 17, 2007
Charleston, South Carolina


Honorable Joseph Mendelsohn
Special Referee

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP, C.S. & F.C.

By 
DEPUTY CLERK

R375



COUNTY OF CHARLESTON

Plaintiffs,

versus

ROOSEVELT SIMMONS, LEON SINGLETON,
MABEL SINGLETON HICKS a/k/a MAYBELL
HICKS, WALTER BURNS; SHEILA B. OWENS,
LOUISE CANTY; ALONZETTA BURNS;
SHARON BURNS, MELVIN SINGLETON,
MARIE SMITH, ELMORE SINGLETON,
THEODESIA SINGLETON, MILDRED
SINGLETON MAHONEY, ANDRE SINGLETON,
EUGENIE SINGLETON, LEON ELIJAH
SINGLETON, ERNEST GREEN, JR., KAREN
GREEN, DELOIRS GREEN, JOAN GREEN
WELLS, DELBERT BURNS, JOE LOUIS
BURNS, JR., a/k/a JOE LEWIS BURNS, JR.,
VONIE BURNS, SHELLY BURNS, ANASTACIA
BURNS, TREMAYNE BURNS, JOSHUA
BURNS, JARRED BURNS, AMBER BURNS, if
they be alive, and JOHN DOE and MARY ROE,
adults, and RICHARD ROE and JANE DOE,
infants, persons under disability or incompetence, if
any, including those persons who might be in the
military and covered under the Soldier's and Sailor's
Relief Act, fictitious names designating the unknown
heirs, devisees, distributes, issue, executors,
administrators, successors or assigns of the above

named defendants, and also the following deceased persons: ESTATE OF SAMUEL BAILUM a/k/a SAMUEL BAALUM, deceased or the ESTATE OF HESTER SINGLETON BAILUM a/k/a ESTHER BAILUM a/k/a ESTHER BAALUM, HESTER SINGLETON BAALUM, THOMAS BAILUM, SAMUEL BAILUM, SAMMY BAILUM, FANNIE BAILUM MIDDLETON, MARY WARREN, WILLIS BAILUM, TONY BAILUM, MARY BAILUM, SAM BAILUM, HESTER BAILUM, JOSH SINGLETON, ELOUISE SINGLETON, CARRIE BURNS, JERRY SINGLETON, ARTHUR SINGLETON, EUGENE SINGLETON, RICHARDINE SINGLETON.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-10-1459

**AMENDED
SPECIAL REFEREE'S ORDER
QUIET TITLE PARTITION
AND SALE**

FILED
2007 MAR -6 AM 11:10
JULIE J. ARMSTRONG
CLERK OF COURT

2376

Defendants.

JURISDICTION

PROCEDURAL HISTORY

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To ensure that all interested persons' interests were fully protected, the Pleadings were also served upon all defendants, and J. Doe and M. Roe by publication. The final Affidavit of Publication was filed on December 13, 2006. Francis X. McCann was appointed as Guardian-ad-Litem to protect the interests of any heir or heirs or person or persons known or unknown either named as a defendant or not who may have an interest in this litigation or this property. No response was received by any person to the published notices. At the time of the trial, counsel for the parties entered into the record several stipulations.

First, this action involves the quieting of the title, partition and sale of the four parcels of land identified by the TMS Numbers 311-00-00-024 (Parcel 1); 312-00-00-065 (Parcel 2) 312-00-00-032 (Parcel 3) and 312-00-00-067 (Parcel 4).

Second, since 1904, the "Bailum" name has sometimes been spelled as "Balaam". The parties stipulate that reference to "Balaam" is reference to "Bailum" and the caption shall reflect "Bailum a/k/a Balaam". Further, there are instances where "Hester Bailum" is referred to as "Esther Bailum". The parties stipulate that Hester Bailum and Esther Bailum are the same person. The caption shall reflect "Hester Bailum a/k/a Esther Bailum".

Third, the parties shall be realigned such that the living heirs of Samuel Bailum; to wit: Hattie Bailum, Ruby Bailum, Verdone Gray, Julie Johnson and Monica Middleton shall appear in the caption as Plaintiffs. The known living heirs of Hester Bailum shall remain as defendants.

Fourth, the parties stipulate that due to health, age, and travel considerations, Hattie Bailum, James Bailum, Verdone Gray, Julie Johnson, Leon Singleton and Melvin Singleton were permitted to testify by telephone.

Fifth, the parties stipulate to the admissibility of previously marked exhibits which were submitted and reviewed by counsel for all parties and the Guardian ad Litem prior to trial.

Sixth, the Guardian ad Litem, Francis X. McCann is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Guardian ad Litem's fee is \$200 per hour.

Seventh, the Special Referee is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Special Referee's fee is \$200.00 per hour.

Eighth, the prayer for relief is amended by stipulation to seek to have Title to the four above-mentioned parcels quieted and that once Title is established, the parcels be partitioned

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and/or sold with the respective shares of the proceeds being distributed to the heirs of Samuel Bailum, Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton or the heirs of Hester Bailum as determined appropriate by this Court.

Ninth, the parties stipulate to the court reporter's qualifications.

FINDING OF FACT

This action is brought to determine the heirs of Samuel Balaam (a/k/a Bailum) and Hester Balaam (a/k/a Bailum) and the extent of each heirs interest in the parcels of land distributed hereinafter, and to Code Section 15-61-10, et seq. of the South Carolina Code of Laws, for the purpose of partitioning the parcels in kind or by sale. The real property that is the subject of this action is more particularly described as follows:

Parcel 1:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing — twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

(NOTE: This parcel now is reflected as 15 acres on the Charleston County Tax Rolls, by appraisal, and by survey)

Parcel 2:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B.



Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 3: All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-067.

Parcel 4: All that certain piece or parcel of land situate and lying and being on Johns Island I the County of Charleston and State of South Carolina, measuring and contain five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-032.

PARCEL 1

On July 2, 1910, Samuel Bailum (hereinafter "Samuel") purchased twenty acres from Amarntha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185. ~~On information and belief, this Samuel Bailum died intestate, leaving as heirs, his~~ wife Hester Bailum, and his children: Willis Bailum, Thomas Bailum, Tony Bailum, Samuel Bailum (hereinafter "Sam") Mary Bailum and Fannie Bailum. Hester Bailum received a statutory one-third (1/3) interest in the property. Samuel's children would have shared a two-third's (2/3) interest. Current tax map references, surveys, property cards and appraisals indicate the correct acreage is fifteen (15) acres of highland.

Hester Bailum had six children from a previous marriage. These children were Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burns, Elouise Singleton and Josh Singleton. Hester Bailum died intestate, leaving her children as her sole heirs.

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The Plaintiffs, herein Hattie Bailum, Ruby Bailum, Verdone Gray, Julie B. Johnson and Monica Middleton are descendants of "Samuel". Through their ancestors, they share the 2/3 interest in parcel one.

Hester Bailums' descendants, the Defendants' herein, share her one (1/3) interest in parcel one. Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty, Maybell Hicks and Leon Singleton have deeded their interest in the property to the Defendant Roosevelt Simmons, and as such no longer have an interest in this litigation.

PARCELS 2,3, & 4

Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton, the children of Samuel Bailum, acquired approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four (54) acres described in Book T24 on page 137, as follows: to Sam Bailum, twenty-four (24) acres, (Book W24, at Page 327); Tony Bailum, ten (10) acres (Book O25, at Page 181); Thomas Bailum, ten (10) acres (Book W24, at page 188); Mary Bailum, five (5) acres (Book E26, at Page 257); and Fannie Bailum Middleton, five (5) acres (Book W25, at Page 284). Subsequent conveyances out have left as remaining heirs' property parcels 2, 3, and 4 as described hereinabove. The heirs of Hester Singleton Bailum have no claim or interest in parcel 2, 3 or 4 as her husband Samuel Bailum had no interest in this property.

SAMUEL BAILUM HEIRS

The Court took testimony from Hattie Bailum, James Bailum, Verdone B. Gray and Julie B. Johnson. The Court also reviewed numerous exhibits. The Court finds that the following were the sole heirs of Samuel Bailum (with regards to Parcel 1) and Sam Bailum, Tony Bailum, Thomas Bailum, Mary Bailum, and Fannie B. Middleton (with regards to Parcels 2, 3, & 4).

Hattie Bailum is the daughter of Sam Bailum's son Thomas (deceased) and granddaughter of Sam Bailum (deceased) and great granddaughter of Samuel Bailum. (deceased)

Ruby Bailum is the wife of Sam Bailum's son Sammy (deceased). She is the mother of Verdone Gray. Sam Bailum was Sammy's father and Ruby's father-in-law. Samuel is her grandfather-in-law.

Monica Middleton is the daughter of Fannie Bailum Middleton (deceased), the granddaughter of Sam Bailum, and the great granddaughter of Samuel Bailum

Julie Bailum Johnson is the daughter of Sam Bailum. Sam Bailum took as a second wife Mary Warren (deceased). Julie Bailum Johnson is the granddaughter of Samuel Bailum. The witnesses all testified that there are no other Bailum heirs alive other than the Plaintiffs to this action.

Thus, the heirs of Samuel Bailum who are living and who share a 2/3 interest in Parcel 1 are Hattie Bailum, Ruby Bailum, Julia Bailum Johnson and Monica Middleton.

The heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton, who are living and who share the entire interest in Parcels 2, 3, and 4 are Hattie Bailum, Ruby Bailum, Monica Middleton and Julie Bailum Johnson.

HESTER BAILUM HEIRS

The Court took testimony from Roosevelt Simmons, Leon Singleton and Melvin Singleton. The Court also received numerous exhibits including a family tree prepared by Mr. Simmons with the assistance of prior counsel, Ruth Cupp, Esq. As noted above when Hester Bailum died, she was survived by six children. All of these children are now deceased. The Defendants in this action are descendants of Hester Bailum's six children. Of those heirs, Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty and Mabell Hicks have deeded their interest in Parcel 1 to Roosevelt Simmons. The remaining Hester Bailum heirs have not deeded their intestate interests and as such would receive their pro-rata share of the sale proceeds from Parcel 1 if a sale is ordered. Those other heirs are Melvin Singleton and Marie Smith.

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LEGAL ISSUES

The issues before the Court are the action for Declaratory Judgment to determine the heirs and their respective interests in the above referenced parcels, to quiet Title, the Partition in land or sale and the counterclaim of adverse possession by the Defendant Roosevelt Simmons.

Declaratory Judgment and Partition

From a review of the pleadings, testimony and exhibits, it is clear that all the parties desire to have the title to the property quieted, through a declaratory judgment. In some cases, interests in the property has passed by intestate distribution through three generations. The court finds it in the best interest of all that the title be established as a matter of law. Once the ownership interests were established the Court would have considered if partition in kind could be fairly and equitably accomplished. Since the only answering Defendant, Roosevelt Simmons, has, through his counsel, withdrawn his request for Partition of Parcel 1, this will not be necessary. Therefore, the court may proceed with a sale of all the property.

A Partition and sale procedure must be fair and equitable to all parties of the action. Pruitt v. Pruitt, 298 S.C. 411, 380 S.E. 2d 862 (Ct. App. 1989). If a Court determines that a partition cannot be fairly and equitably made, the Court may order a sale of the property and a division of the proceeds according to the rights of the parties. S. C. Code Ann. § 15-61-100, et seq. (2005). Additionally, if partition in kind or by allotment cannot be fairly and impartially made without injury to any of the parties in interest, then the Court has jurisdiction to order sale of the property and the division of the proceeds. S.C. Code Ann. §15-61-50 (2005).

In this case, due to the size, shape and location of Parcel 1, a partition in kind is not practicable or expedient. It would be practically impossible to partition the property, leave multiple parcels with ingress and egress, not lose substantial value to all parcels or even create parcels suitable for building. Thus, a sale is an appropriate resolution. The Defendant, Roosevelt Simmons concurs. Further, the Plaintiffs do not request a judicial sale wherein the sale price is an unknown amount. There is a ready and willing purchaser for this property who has agreed to

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pay the value that this Court sets for this parcel of property. The parties are guaranteed to receive the full fair-market value of the property, as determined by the Court. The Court in a prior hearing ordered an appraisal of Parcel 1. That appraisal is part of the record herein.

Plaintiffs, by and through Hattie Bailum, contracted to sell parcels 1, 2, 3 and 4 in August, 2003. This action was necessary because of the dispute regarding ownership of Parcel 1 and the value of the property. As Ordered by the Court, an independent appraiser inspected the property and provided the parties with its value. The appraiser was Trina Walters of Atlantic Appraisals. She determined that the appraised fair-market value of parcel 1 was Two Hundred Twenty Thousand and 00/100ths (\$220,000.00) Dollars.

The Plaintiffs agree that the Defendants have an interest in Parcel 1 and are willing to deliver one-third (1/3) of the net closing proceeds for Parcel 1 to the Heirs of Hester Bailum in accordance with their interests therein. Plaintiffs have asked that the Court order the funds be disbursed accordingly.

The Court, based upon the testimony, and exhibits concurs that the Heirs of Hester Bailum possess a one-third (1/3) interest in Parcel 1. The Court also concludes that the Heirs of Hester Bailum possess no interest in Parcels 2, 3 or 4. The Heirs of Samuel Bailum, possess a two thirds (2/3) interest in Parcel 1. Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton possess the full interest in Parcels 2, 3 and 4.

ADVERSE POSSESSION

I.

(In General)

The Defendants, specifically, Roosevelt Simmons, raised as a defense and claim the theory of adverse possession.

To prevail upon an adverse possession theory, Mr. Simmons, as the adverse possessor, must prove each element of the theory. These elements are:

- (1) Continuous;
- (2) Hostile;
- (3) Open and Notorious;
- (4) Actual; and

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(5) Exclusive

These elements of adverse possession have been determined in South Carolina by an extensive body of case law. (see eg. Lusk vs. Callahan 339 SE 2nd 56 (Ct App. 1986 and the cases cited therein.) To prevail, a claimant must establish that each element exists and is concurrent.

A.

CONTINUOUS

Possession must be continuous and uninterrupted for the requisite period. Temporary occupation does not constitute possession. (Atlantic CLR Co. vs. Searson 133 SE 567 (1926). Roosevelt Simmons does not occupy the property. Roosevelt Simmons testified that if any other rightful heir sought to use the property, they would be entitled to do so. As such, possession, if found to exist, would not be uninterrupted.

B.

HOSTILE

Hostile possession is possession with the intent to dispossess the true owner. Ouzts vs. McKnight 108 SE 561 (1920). There must be a trespass by the adverse possessor against the owner Massey v. Duren 3 SE 34 (1871). An heir going upon the property does not acquire title by adverse possession as he is not a trespasser but rather he is an owner. Permissive entry is not hostile. If the possessor has permission or an ownership interest, there can be no adverse possession. One who enters land with permission cannot acquire title by adverse possession. (Fradv vs. Ivester 110 SE 135 (1921). Lastly, as to the possession being hostile, an heir coming into possession cannot obtain title by adverse possession against other heirs claiming an interest in the property. The heir in possession of the property as it relates to the other heirs is that of a fiduciary (Vaux vs. Nesbit 6 SE Eq. (1 McCord) 352 (1826). There has been no testimony that any heir with an interest in this property has attempted to dispossess any other rightful owner. To the contrary, testimony is that Roosevelt Simmons acted with regard to preserving the property for all the Bailum Heirs and not with regard to dispossessing any other true owner.

C.

OPEN & NOTORIOUS

The intent to possess the land must not be hidden but apparent. The possession must be so notorious that a legal owner by ordinary diligence should have known of the intent to possess. (*Graniteville Co. vs. Williams* 39 SE 2d 202 (1946). Possession with knowledge by the owners of an heir acting in a fiduciary capacity is not indicative of intent to possess. As evidenced by numerous letters in evidence, there was not intent to possess by Roosevelt Simmons for his own interest. By letter, dated October 19, 2003, Mr. Simmons writes to Hattie and Clara Bailum with a request that the matter of ownership interests of the family be decided by the Probate Court. He signed the letter "Roosevelt Simmons and Family". Leon Singleton, another Hester Bailum heir, wrote to Ruth Cupp, Esq. on December 27, 2004. His letter references the "Bailum property". Mr. Singleton also wrote to Hattie Bailum in June 2005 and describes Roosevelt Simmons as follows: "Roosevelt, my first cousin, has been the caretaker as well as taxpayer for the land...". He also describes the land as holding the family heritage to be passed down through the generations. Lastly, Leon asks that if Hattie decides to sell, that Leon and Roosevelt be given the percentage of their ownership for the work they have put into the land. Roosevelt Simmons testified that he was not possessing the property in his own right but serving as a caretaker.

D.

ACTUAL

There can be no adverse possession of land against an owner where there has been no possession for which the true owner could bring a trespass claim. *Steadman vs. Hilliard* 37 SCE (3 Rich) 10 (1846). This, if a party has a legal right as an owner by virtue of his being a legal heir, there can be no trespass and thus no trespass claim would follow. In the absence of the ability to bring a trespass claim, there can be no adverse possession as a matter of law. Roosevelt Simmons has a legal right as an owner to use the property. As such, he cannot be classified as a trespasser.

E.

EXCLUSIVE

Possession must be such as to indicate exclusive ownership of the property. Curtis vs. Deschamps 350 SE 201 (Ct. App. 1986). When the owner(s) of the property and an occupant are both in possession, the possession of the legal owner prevails to the exclusion of the adverse possessor. The exclusiveness provision is not satisfied if occupancy is shared with an owner or agent of the owner. Butler vs. Lindsey 361 SE 2d 621 (Ct. App. 1987). Roosevelt Simmons shares ownership with numerous heirs. As evidenced by testimony and exhibits, other heirs would clearly have occupied the property if not for the County disallowing their requests, a fact acknowledged by witnesses for the Plaintiffs and Defendants. Roosevelt was not acting as an exclusive owner, but rather as the family caretaker.

ADVERSE POSSESSION

II.

(by Heirs)

In addition to the numerous cases addressing adverse possession by the third parties, South Carolina Courts have also confronted the issue of adverse possession by heirs. For adverse possession by an heir against all others to be found to exist, the previously discussed five elements must be proven as well as a sixth element of ouster.

With heirs property, possession is presumed to follow legal title. Lynch vs. Lynch 115 SE 2d 201 (1960). When an heir "occupies" property, there is every presumption that such occupancy is subordinate to legal title. Occupancy by the family or other relation **does not** create hostility in possession. Knight vs. Hilton 79 SE 2d 873.

Permissive entry or possession by an heir under color of title is not hostile. One who enters and with permission or under color of title cannot acquire title by adverse possession absent a disclaimer of the owner or other heirs. No disclaimer has been given by any of Samuel Bailum's heirs or Hester Bailum's heirs in this dispute.

Further, where one seeks to acquire title by adverse possession against his brothers and sisters "such an unconscionable claim should not be sustained..." The presumption is that the possession of a tenant is of the benefit of all. It must appear that the holding heir claimed the

property as his own and has in unequivocal terms so notified the other heirs". Whitaker vs. Jeffcoat 122 SE 495 (1924).

Thus to prevail, an heir must prove by conclusive evidence that he has complied with the law of ouster in order to adversely possess against other heirs. Fender vs. Heirs of Smashum 581 SE 2d 853 (Ct. App. 2003).

Ouster is the actual turning out or excluding a party entitled to possession of any real property. The acts must be unequivocal and distinctly hostile. There must be unequivocal terms notified to the other heirs. Fender at 642. Only in rare extreme cases will the ouster of one heir by another heir be implied for dealings with the property. Fender at 642.

The well-established principle is that possession by one is the possession for all. Watson vs. Little 79 SE 2d 384 (1953). To prevail on an adverse possession claim, one tenant must overcome the presumption that he holds possession in recognition of the co-tenants. The fact that a claimant paid taxes does not constitute Ouster. Fender at 643. Payment of taxes by a co-tenant entitled the co-tenant to only proportionate contribution from the other co-tenants and nothing more. See Watson at 387. Mr. Simmons has testified that there is no ouster of his family or any other rightful heir with an interest in the property. To the contrary, by his own testimony, if they sought to use the property, he would welcome them.

Mr. Simmons has for several years served a vital role as caretaker of this heirs' property. He has watched over the property, collected rent, and paid taxes. The Court recognizes his efforts in this regard.

CONCLUSIONS OF LAW

A.

Declaratory Judgment

The Court concludes as a matter of law that the title to this property be quieted as set out specifically hereinbelow. As for Parcel 1 (311-00-00-024) Title is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest). As for Parcels 2, 3, and 4, title is vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton. Those heirs are the Plaintiffs in this action.

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PARTITION

The Court concludes as a matter of law that the property is to be partitioned by sale and the proceeds divided fairly and equitably. The Plaintiff's have requested a sale. The Defendants Roosevelt Simmons and Marie Smith have requested they be allowed to purchase the other heirs interest in Parcel 1 if the Court determined that Roosevelt Simmons was not the owner through adverse possession

SALE

As to Parcel 1, in 2003, Hattie Bailum entered a contract of sale. As part of this action, this Court ordered an appraisal of Parcel 1. The independent appraisal established a fair-market value on the property at \$220,000.00. The Court finds this value fair and reasonable. The parties have executed an addendum to their contract to sell Parcel 1 for the appraised value. The Court concludes that since the sale price is the fair-market value price, it is in the best interests of all the parties that the contract be fully performed. Doing so eliminates the need to list and sell the property thus saving six percent (6%) to ten percent (10%) of the purchase price in real estate commissions and avoids unnecessary delays. By ordering the sale, the heirs who will share in the proceeds will receive a greater share, not diminished by unnecessary costs and delays.

Mr. Roosevelt Simmons and Mrs. Marie Smith have asked for the opportunity to purchase Parcel 1. This matter has been pending for several years. Mr. Simmons, on previous occasions, has been offered the opportunity by this Court to buy out the remaining heirs with an interest in Parcel 1. The Court shall grant to Roosevelt Simmons and Mrs. Marie Smith the opportunity to acquire Parcel 1. This opportunity is assignable but only to individuals related by blood or marriage to a party herein. Mr. Simmons or Mrs. Marie Smith shall have ten (10) days from the date of service of this Order to provide to the Court written confirmation of a loan approval or of funds available by a licensed lender. Mr. Simmons or Mrs. Marie Smith shall have thirty (30) days to consummate the sale from the date of service of this Order. Should Mr. Simmons or Mrs. Marie Smith fail to provide the letter or consummate the transaction, the property shall be immediately sold in accordance with the contract for the fair-market value price of Two hundred twenty thousand (\$220,000.00) Dollars.



The Court recognizes that over time certain heirs, both plaintiff and defendant herein, have contributed to the taxes and maintenance expenses for the four parcels. Those contributions can not be fixed with certainty. However, in recognition of Mr. Simmons' efforts to preserve the property for the benefit of all the heirs, the Court concludes he is to be given \$10,000.00 from the proceeds of the sale of the four parcels over and above his interest as an heir in Parcel 1. The parties agree that this sum is fair and equitable compensation for his dedicated service in preserving this property for the benefit of all Bailum heirs.

The net proceeds from the sale, shall be distributed after the fees for the Special Referee and Guardian ad Litem are deducted, with one-third (1/3) being forwarded to the Heirs of Hester Bailum and two-thirds (2/3) being forwarded to the Heirs of Samuel Bailum.

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

As to Parcels 2, 3, and 4, in 2003 Hattie Bailum entered a contract for sale with a purchaser who is an adjoining land owner. This property was also appraised pursuant to Court Order. The independent appraisal establishes the combined fair-market value of these parcels at \$337,000.00. The Court finds their value fair and reasonable. The parties have executed an addendum to their contract to sell Parcels 2, 3, and 4 for the appraised value.

The Court concludes that since the sale price is fair-market value, it is in the best interest of the sole heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B.

Middleton that the contract be fully performed. This conclusion is in accord with the relief sought in the Plaintiff's complaint, wishes and prayers. The net proceeds from the sale shall be distributed, after usual and customary closing costs are deducted as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

ADVERSE POSSESSION

The Court concludes that the Defendant Roosevelt Simmons did not prove the required elements of an adverse possession theory. By his own testimony, each of the elements was negated rather than proved.

COSTS AND EXPENSES

The Court concludes that although S.C. Code 15-61-10, et seq. permits it to award Plaintiffs' fees and costs, the Court will decline to do so. The Court does not find that the Defendants' position was baseless or meritless. To the contrary, all parties concede that the title must be quieted. The objection by Mr. Simmons as to the partition and sale was not entered into lightly or frivolously. He raised fair questions for this Court to decide. The court concludes that

each side shall pay their attorney's fees and costs.

As customary in such case and as stipulated by the parties, the Guardian ad Litem's fees (\$1,200.00) and the Special Referee's fee (\$6,000.00) are to be paid from the sale of the four parcels before distribution to the heirs.

ORDER

This Court issues its Order as follows:

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Handwritten signature and initials, possibly "R 391" or similar, in the bottom right corner.

1. Title to Parcel 1 is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest).

2. By Special Referee Deed, Parcel 1 may be sold to Roosevelt Simmons and Marie Smith or their permitted assigns if and only if Mr. Simmons and Mrs. Smith or their permitted assigns provides to the Clerk of Court for filing and date stamp within ten (10) days of the date of service of this Order a loan approval letter for \$220,000.00 (less the sum due, before costs are deducted of \$58,888.89). Mr. Simmons and Mrs. Smith or their or their assigns must consummate this transaction within thirty (30) days of this Order. Failure to produce the required proof or his or his assigns' ability to pay or close in the time allotted will result in a Special Referee's Deed conveying Parcel 1 in accordance with the contract

3. The Guardian ad Litem's fee of \$1,200.00 shall be deducted pro rate from the closing proceeds for the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

4. The Special Referee's fee of \$6,000.00 shall be deducted pro rate from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

5. Ten Thousand Dollars (\$10,000.00) shall be paid at closing to Mr. Roosevelt Simmons and deducted from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

6. All standard and customary closing costs of the seller with regard to Parcel 1 shall be deducted from the closing proceeds from the sale of Parcel 1.

7. The net proceeds from the closing proceeds from the sale of Parcel 1 shall be distributed as follows:

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

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Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

8. Title to Parcels 2, 3, & 4 are vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Fanne B. Middleton and Mary Bailum.

9. By Special Referee Deed, Parcels 2, 3, and 4 are sold in accordance with the contract for the sum of \$337,000.00

10. All standard and customary closing costs of the seller shall be deducted from the closing proceeds from the sale of Parcels 2, 3 and 4. The closing shall occur within thirty (30) days of the date of this Order.

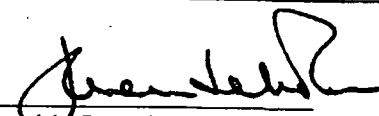
11. The net proceeds from the closing proceeds from the sale of Parcels 2, 3, and 4 shall be distributed as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

12. The Defendants' claim of Title by adverse possession is denied.

AND IT IS SO ORDERED!

February 16, 2007
Charleston, South Carolina


Honorable Joseph Mendelsohn
Special Referee

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs,)

VS.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)

BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-10-1459

ORDER

FILED
2007 MAR -6 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT

2394

devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUEGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUEGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)

Defendants.

This matter came before me on February 16, 2007 for a final hearing upon Defendant Marie Smith's Motion to Alter or Amend judgment and the Plaintiff Roosevelt Simmons Motion for Reconsideration or New Trial. Present were John F. Martin, Esquire, counsel for the Plaintiff's; Louis Condon, Esquire, counsel for Roosevelt Simmons; Roosevelt Simmons; Bruce Berlinsky, Esquire, counsel for Marie Smith.

Handwritten signature/initials.

MARIE SMITH

The Plaintiff's have consented to amend the judgment to grant to Marie Smith the same option to purchase Parcel 1 as was accorded to the Defendant Roosevelt Simmons. This request complies with the provision of §15-61-25 of S.C. Code Ann which grants to heirs the right to purchase the property at issue herein. Since Plaintiff consents and since the Court finds the motion timely and proper, the Defendant Marie Smith's Motion to Alter or Amend is granted. The court has executed an Amended Special Referees Order to be filed and served with this change included.

ROOSEVELT SIMMONS

The Defendant Roosevelt Simmons raises by motion and affidavit numerous matters for the Court to consider in support of his argument for Reconsideration or New Trial. Those objections are fully set forth on this motion and affidavit filed in support.

The Court has carefully considered each of Mr. Simmons's arguments and respectfully denies each of them. The evidentiary hearing in this matter, testimony and documentary evidence were preserved by a court reporter. The transcript and copy of the exhibits are available to any party who wishes to order and pay for the same.

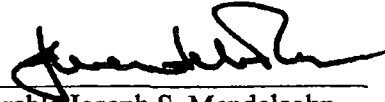
As for adverse possession with regard to all parcels of land at issue, the Court finds there has been no error of law or procedure with regard to its findings and conclusions.

As for the time allowed to Mr. Simmons after service of the Order to obtain financing, the Court ordered appraisal on this property was obtained and made available to counsel nearly 2 years ago. Further, the Final Order was filed and served January 11, 2007. That order confirms the sales price and Mr. Simmons right, if he so elects, to purchase the property. Mr. Simmons has had ample time to secure a loan commitment or other acceptable financing to buy out the interest of all other heirs.

3/5

With regard to any property taxes paid during the pendancy of this action for years 2005, 2006 and part of 2007, at the time of the sale of the parcels, reimbursement shall be made on a pro-rata basis to any person or persons who paid the taxes. To be entitled to reimbursement, the person or persons who paid must deliver proof of payment to the Special Referee not less than 48 hours before disbursement of sale proceeds.

AND IT IS SO ORDERED.



Honorable Joseph S. Mendelsohn
Special Referee



2397

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam;
Ruby Bailum a/k/a Ruby Balaam;
Verdone Gray; Julie B. Johnson; and
Monica Middleton,

Plaintiffs,

Of Whom Hattie Bailum a/k/a Hattie
Balaam is

Respondent,

v.

Roosevelt Simmons, Leon Singleton,
Mabel Singleton Hicks a/k/a Maybell
Hicks, Walter Burns, Sheila B. Owens,
Louise Canty, Alonzetta Burns, Sharon
Burns, Melvin Singleton, Marie Smith,
Elmore Singleton, Theodosia Singleton,
Mildred Singleton Mahoney, Andre
Singleton, Eugenie Singleton, Leon
Elijah Singleton, Ernest Green, Jr.,
Karen Green, Deloires Green, Joan Green
Wells, Delbert Burns, Joe Louis Burns, Jr.
a/k/a Joe Lewis Burns, Jr., Vonie Burns,
Shellie Burns, Anastacia Burns, Tremayne
Burns, Joshua Burns, Jarred Burns, Amber
Burns, if they be alive, and John Doe and
Mary Roe, adults, and Richard Doe and
Jane Doe, infants, persons under disability
or incompetence, if any, including those
persons who might be in the military and
covered under the Soldier's and Sailor's
Relief Act, fictitious names designating the
unknown heirs devisees, distributes, issue,
executors, administrators, successors or
assigns to the above named defendants and
also the following deceased persons: Estate of
Samuel Bailum a/k/a Samuel Baalum,
deceased or the Estate of Hester Singleton
Bailum a/k/a Esther Bailum a/k/a Esther
Bailum, Hester Singleton Baalum, Thomas
Bailum, Samuel Bailum, Sammy Bailum, Fannie
Bailum Middleton, Mary Warren, Willis Bailum,
Tony B. Bailum, Mary, Bailum, Sam Bailum, Hester
Bailum, Leon Singleton, Elouise Singleton, Carrie

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2007 JUN -4 PM 2:26
JULIE J. ARISTRONG
CLERK OF COURT
JBJ

Burns, Gary Singleton, Arthur Singleton, Eugene
Singleton, Hardine Singleton, Eugene
Singleton, Gary Singleton, Christopher Burns,
Jeffery Lee Burns, Arthur Lee Burns, Arlene, Green,
Ernest Green, Joe Louis Burns a/k/a Joe Lewis
Burns, Billy Burns, Queen Singleton and Juluis
Burns, and all other persons known or
claiming any right, title, estate in or lien upon
real estate described in the Complaint herein, Defendants,

John Roosevelt Simmons is the Appellant.

Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

ORDER of DISMISSAL

The above captioned case is pending on appeal in this Court. Due to the failure of appellant to provide proof of ordering the transcript and/or failure to serve and file the Appellant's Initial Brief and Description of Matter in the above matter, as provided for in Rules 207, 208 and 209 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Charleston County after fifteen (15) days, exclusive of the date of filing this Order.

Kenneth A. Rickstady CLERK
For the Court *alp*

Columbia, SC
5/31/2007

cc: Charles H. Houston, Jr., Esq.
John P. Martin, Esquire
The Honorable Julie J. Armstrong

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2007 JUN -4 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

HATTIE BAILUM, RUBY BAILUM and)
VERDONE GRAY)

Plaintiffs,)

v)

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL)
MIDDLETON, J. DOE, adults, and M. ROE,)
infants, insane persons, incompetents, being)
fictitious names designating a class of persons,)
known or unknown, who may be heirs,)
distributees, devisees, legatees, widow, widower,)
assignees, executors, administrators, creditors,)
successors, issue, and aliases of the ESTATE)
of SAMUEL BALAAM, deceased, and ALL)
OTHER PERSONS UNKNOWN, claiming any)
right, title, estate, interest in or lien upon the real)
property described in the complaint, adverse to)
plaintiffs' ownership, or any cloud on plaintiffs')
title.)

Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

COMPLAINT
(Quiet Title, Injunction)

FILED
APR 11 AM 9:08
CLERK OF COURT

COME NOW Plaintiffs, HATTIE BAILUM, RUBY BAILUM, AND VERDONE
BAILUM GRAY complaining of the herein named defendants, ROOSEVELT SIMMONS,
JULIE JOHNSON, MONICA MIDDLETON, PAUL MIDDLETON, and all other persons
known or unknown, who claim any right, title, estate, lien, or interest in the real property
described herein that are adverse to plaintiffs' title, and for a cause of action allege that

FIRST CAUSE OF ACTION

(Quiet Title)

- 1 The real property that is the subject of this action, is situated on Johns Island, in
Charleston County, in the State of South Carolina, and that the subject matter, and all

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of the matters and things herein alleged are within the jurisdiction of this honorable Court

2 Plaintiff HATTIE BAILUM resides in Cypress, Texas

3 Plaintiffs RUBY BAILUM and VERDONE GRAY reside in Bronx, New York

4 Defendant JULIE JOHNSON resides in East Orange, New Jersey

5 Defendant ROOSEVELT SIMMONS resides in Charleston County, South Carolina

6 Upon information and belief MONICA MIDDLETON resides in New York, New York

7 It is unknown where PAUL MIDDLETON (son of Paul and Monica Middleton), resides

8 It is unknown where PAUL MIDDLETON and MONICA MIDDLETON's other children reside

9 The true names, relationships, or capacities, whether individual, corporate, associate, or otherwise, of defendants named in this action as Does 1 through 100 are unknown to Plaintiffs, who sue such defendants by such fictitious names, and Plaintiffs will amend this complaint to show their true names and capacities, upon such ascertainment

10 Plaintiffs are informed and believe, and on that basis, allege, that each of the Defendants claims, or may claim, some interest in the real property described more fully in Paragraph 9 of this complaint

11 The real property that is the subject of this action, is more particularly described as follows

(1) Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hanc on January 20, 1904 and recorded in the R M C office in Charleston County in Book J24, page 137, December 1905 Lot 24 being bounded as follows on the north by lots No 25 and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W B Gueriard in January 1883 The current TMS number for this property is 312-00-00-065

(2) Parcel 2

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No 10, south by a public road and west by Lot No 12 Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

- 12 Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to plaintiffs, defendant's claim is without any right, and defendant has no right, estate, title, lien, or interest in or to the property, or any part of it
- 13 Defendant, JULIE JOHNSON, claims an interest and estate in such property adverse to plaintiffs, defendant's claim is without documentation to show that she is a rightful

- hen of Samuel Balaam, and defendant has no substantiated right, estate, title, lien, or interest in or to the property, or any part of it
- 14 Defendants, (J DOE, M DOE), may claim some estate, right, title, lien, or interest in or to the property adverse to plaintiffs' title, and such claim or claims constitute a cloud on plaintiffs' title to the property
- 15 This action is brought pursuant to Code Section 15-67-10 to 15-67-100 of the South Carolina Code of Laws, for the purpose of quieting all title to real property and all other claims adverse to that of the Plaintiffs herein named
- 16 Samuel Balaam, Thomas Balaam, Tony Balaam, Mary Balaam, and Fannie Balaam Middleton, purchased approximately fifty-four acres on Johns Island from Nettie M Hane and Eliza A Hane on January 20, 1904, as described and recorded in Book T24 on page 137
- 17 On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four acres described in Book T24 on page 137, as follows to Sam Balaam, twenty-four acres, (Book W24-327), Tony Balaam, ten acres (Book D25-181), Thomas Balaam, ten acres (Book W24-188), Mary Balaam, five acres (Book E26-257), and Fanny Balaam Middleton, five acres (Book W25-284)
- 18 On July 2, 1910 Samuel Balaam purchased twenty acres from Amarntha Hane Smith and Nettie M Hane as described and recorded in Book H29 on page 185
- 19 On information and belief, Samuel Balaam (born 5/19/1902) put his brother, Thomas Bailum (born 11/21/1901), and his son, Samuel Bailum (born 8/29/1928), in charge of his property

- 20 On information and belief, Samuel Bailum, died intestate, on or about January 19, 1975, leaving as heirs, his wife Evelyn (Ogden) Bailum, and his five sons Ellis Bailum, now deceased, with no wife and no issue, Samuel Bailum, who died intestate, on or about September 1999, leaving as heirs his wife Ruby and one child, Verdone Gray, Bussy Bailum, now deceased, leaving as heirs, his common law wife Liza, now deceased, with no issue (one step-daughter Evelyn), and Walter Bailum, now deceased, whose wife's name is unknown, with no issue of the marriage, Thomas Bailum, now deceased, his wife Clara (Middleton) Bailum, now deceased, and daughter Hattie Bailum, and one son Tony, who died testate, leaving his interest in the land to his wife Sarah (5 acres), and dividing his remaining five acres between his brother Samuel Bailum, his brother Thomas Bailum, and his nephew Paul Middleton (son of his sister Fannie Middleton Bailum),
- 21 On information and belief, when Samuel Balaam died, he gave his entire estate to his wife, Josephine Balaam
- 22 On information and belief, Josephine Balaam gave all of the property located on Johns Island, given to her by her husband, Samuel Balaam, to their son, Samuel Bailum
- 23 On information and belief, Samuel Bailum, the son, wanted to keep the property in the Balaam family, and gave his uncle, Thomas Bailum, half interest in the property, and each agreed to pay one-half of the taxes and property maintenance
- 24 On information and belief, Thomas Bailum, died intestate, on or about July 24, 1966, leaving as heirs, his wife, Clara Bailum, and daughter Hattie Bailum

- 25 Upon information and belief, Clara Bailum died intestate, in March, 2004, leaving as her heir, her only daughter Hattie Bailum
- 26 Tony Balaam died leaving five of his ten acres to his wife Sarah, one and two-thirds acres to his brother Samuel Balaam, one and two-thirds acres to his brother Thomas Balaam, and one and two-thirds acres to his nephew Paul Middleton (son of his sister, Fannie Balaam Middleton), as partly shown by the deed from Thomas Balaam to T W Limchouse, dated May 16, 1936 and recorded in Book B39 on page 21, conveying the five acres that Tony Balaam left to Sarah Balaam, and one of the one and two-thirds acres parcels that Tony Balaam left to his brother, Thomas Balaam
- 27 On information and belief, Fannie Balaam Middleton is deceased, her husband's name and status are unknown, her son Paul Middleton is now deceased, and appears to have been her sole heir
- 28 On information and belief, Paul Middleton is deceased, leaving his wife Monica Middleton, and their three children, Paul Middleton, and two others whose names are unknown, as his sole heirs
- 29 On information and belief, Mary Balaam died intestate, leaving no heirs
- 30 On information and belief, the tax map showing certain parcels of the Balaam estate property are incorrect, in particular, TMS # 311-00-00-024 and TMS # 312-00-00-067, shown as part of the estate of Thomas Balaam should be shown as being part of the estate of Samuel Balaam
- 31 TMS # 312-00-00-068 may have been incorrectly conveyed and/or recorded, since the tax map, as of November 30, 2003, shows that TMS # 312-00-00-068 "crosses"

parcels TMS # 312-00-00-067 and TMS # 312-00-00-066, leaving parcel TMS # 312-00-00-067 and TMS # 312-00-00-032 "land locked "

SECOND CAUSE OF ACTION

(Injunction)

- 1 Plaintiffs hereby reallege, as if fully set forth, the allegations of Paragraphs 1 through 30 herein
- 2 Defendant, ROOSEVELT SIMMONS, is wrongfully interfering with Plaintiffs' use of Parcel 2, described above, and, in particular, has wrongfully possessed the premises located thereon, and claims the land as his own
- 3 Defendant's, ROOSEVELT SIMMONS, actual and continued interference with Plaintiffs use of Parcel 2, unless and until enjoined by order of this court, will cause grave and irreparable injury to Plaintiffs, HATTIE BALAAM, RUBY BALAAM, and VERDONE GRAY, in that Plaintiffs are being deprived of the use of Parcel 2, described above
- 4 Plaintiffs have no adequate remedy at law for Defendant's wrongful possession of the premises located on Parcel 2 and claim to the real property, described above as Parcel 1 and Parcel 2, in that it would be impossible for Plaintiffs to determine the precise amount of damage Plaintiffs will suffer if Defendant's conduct is not restrained, and Plaintiffs will be deprived of the use of their real property which cannot be compensated in damages

WHEREFORE. Plaintiffs. HATTIE BALAAM, RUBY BALAAM, and VERDONE GRAY
request judgment as follows

- 1 Defendants and all persons claiming under defendants, and all other persons
unknown, claiming any right, title, estate, lien, or interest in the real property
described in the complaint adverse to plaintiffs' ownership, or casting any cloud on
plaintiffs' title thereto, be required to set forth the nature of their several claims,
- 2 All adverse claims of defendants or any of them be determined by a decree of this
court,
- 3 Such decree shall declare and adjudge that plaintiffs are the lawful owners of the
premises in fee simple as tenants in common and are entitled to the lawful, peaceable,
and uninterrupted possession thereof as against defendants, and all others, and that
defendants, or any of them, have or has no estate or interest whatever in or to the land
and premises,
- 4 The decree permanently enjoin each and every defendant, and all persons claiming
under them, and that they be forever barred from asserting any claim whatsoever in or
to the land and premises, or lien or encumbrance thereon of any kind or nature,
adverse to plaintiffs,
- 5 If such decree does not alter the boundaries of parcel TMS # 312-00-00-068, that
such decree shall award Plaintiffs a right-of-way or easement sufficient to permit
proper egress that attaches individually to parcel TMS # 312-00-00-067 and to parcel
TMS # 312-00-00-032,
- 6 Plaintiffs request judgment against Defendant, ROOSEVELT SIMMONS, for a
temporary restraining order, a preliminary injunction, and a permanent injunction

prohibiting Defendant, ROOSEVELT SIMMONS, from interfering with Plaintiffs' ownership rights and right of possession of Parcel 1 and Parcel 2, or attempting to sell or convey any portion of the above described real property,

7 Plaintiffs be awarded costs of this action, and

8 Plaintiffs be awarded such other and further relief as this court deems proper

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY

Judy Benson Moore

John F. Martin

Judy Benson Moore

113 Wappoo Creek Drive

Charleston, South Carolina 29412

(843) 762-2121

Charleston, South Carolina

Date 3/29/04

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
HATTIE BAILUM, RUBY BAILUM and)
VERDONE GRAY)
Plaintiffs,)
v)
ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL)
MIDDLETON, J DOE, adults, and M ROE,)
infants, insane persons, incompetents, being)
fictitious names designating a class of persons,)
known or unknown, who may be heirs,)
distributees, devisees, legatees, widow, widower,)
assignees, executors, administrators, creditors,)
successors, issue, and alienees of the ESTATE)
of SAMUEL BALAAM, deceased, and ALL)
OTHER PERSONS UNKNOWN, claiming any)
right, title, estate, interest in or lien upon the real)
property described in the complaint, adverse to)
plaintiffs' ownership, or any cloud on plaintiffs')
title,)
Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

LIS PENDENS

7009 APR -1 AM 9-08
CLERK OF COURT
3Y

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for the County of Charleston, South Carolina, upon a Complaint of the above named Plaintiffs against the above named Defendants for the purpose of determining the interests of the Plaintiffs and interest of the Defendants in the parcel of land hereinafter described, and is brought under the provisions of the South Carolina Code of Laws, Section 15-67-10, et seq, for the purpose of obtaining a Decree establishing that the above named Plaintiffs be declared the owners in fee simple, having good and marketable title to the herein below described property That the premises to be affected by the said Complaint in the action hereby commenced was, as the time of the filing of this Lis Pendens situated, lying and being in the County of Charleston, State of South Carolina, and is more particularly described as follows

Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R M C office in Charleston County in Book J24, page 137, December 1900 Lot 24 being bounded as follows on the north by lots No 25 and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W B Guerard in January 1883 The current TMS number for this property is 312-00-00-065

R 432

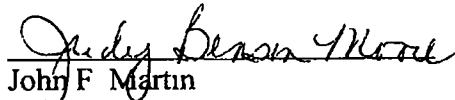
Parcel 2

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No 10, south by a public road and west by Lot No 12 Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY


John F Martin
Judy Benson Moore
113 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 762-2121

Charleston, South Carolina

Date 3/29/04

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
HATTIE BAILUM, RUBY BAILUM,)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM, and ESTATE OF THOMAS)
BAILUM,)

Plaintiffs,)

v)

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2), ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, and J DOE,)
adults, and M ROE, infants, insane persons,)
incompetents, being fictitious names designating)
a class of persons, known or unknown, who may)
be heirs, distributees, devisees, legatees, widow,)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership, or)
any cloud on plaintiffs' title,)

Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

AMENDED COMPLAINT
(Quiet Title, Injunction)

BY _____
JULIE JOHNSON
CLERK OF COURT

2004 JUL 29 AM 9:47

FILED

COME NOW Plaintiffs, HATTIE BAILUM, RUBY BAILUM, VERDONE BAILUM
GRAY, ESTATE OF CLARA BAILUM, and ESTATE OF THOMAS BAILUM complaining of

2434

the herein named defendants, ROOSEVELT SIMMONS, JULIE JOHNSON, MONICA MIDDLETON, PAUL MIDDLETON (2), ESTATE OF JULIA MORRIS BAILUM, ESTATE OF ELLIS BAILUM, ESTATE OF SAMUEL BAILUM (2), ESTATE OF LUCILLE BAILUM, ESTATE OF SAMUEL BAILUM (3), ESTATE OF BUBSY BAILUM, ESTATE OF EVELYN BAILUM, ESTATE OF WALTER BAILUM, ESTATE OF MARY BAILUM, ESTATE OF TONY BAILUM, ESTATE OF SARAH BAILUM, ESTATE OF FANNIE MIDDLETON, ESTATE OF PAUL MIDDLETON, ESTATE OF ESTHER SINGLETON BAILUM and all other persons known or unknown, who claim any right, title, estate, lien, or interest in the real property described herein that are adverse to plaintiffs' title, and for a cause of action allege that

FIRST CAUSE OF ACTION

(Quiet Title)

- 1 The real property that is the subject of this action, is situated on Johns Island, in Charleston County, in the State of South Carolina, and that the subject matter, and all of the matters and things herein alleged are within the jurisdiction of this honorable Court
- 2 Plaintiff HATTIE BAILUM resides in Cypress, Texas
- 3 Plaintiffs RUBY BAILUM and VERDONE GRAY reside in Bronx, New York
4. Defendant JULIE JOHNSON resides in East Orange, New Jersey
- 5 Defendant ROOSEVELT SIMMONS resides in Charleston County, South Carolina
- 6 Upon information and belief MONICA MIDDLETON resides in New York, New York
- 7 It is unknown where PAUL MIDDLETON (2)(son of Paul and Monica Middleton), resides

8 It is unknown where PAUL and MONICA MIDDLETON's other children reside
9 The true names, relationships, or capacities, whether individual, corporate, associate,
or otherwise, of defendants named in this action as Does 1 through 100 are unknown
to Plaintiffs, who sue such defendants by such fictitious names, and Plaintiffs will
amend this complaint to show their true names and capacities, upon such
ascertainment

10. Plaintiffs are informed and believe, and on that basis, allege, that each of the Doe
defendants claims, or may claim, some interest in the real property described more
fully in Paragraph 11 of this complaint

11 The real property that is the subject of this action, is more particularly described as
follows.

(1) Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island
in the County of Charleston and State of South Carolina, measuring and
containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four
acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and
recorded in the R M C office in Charleston County in Book J24, page 137,
December 1905 Lot 24 being bounded as follows on the north by lots No 25
and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the
west by a public road, which said boundaries are shown on a plat made by W B
Guerard in January 1883 The current TMS number for this property is 312-00-
00-065

(2) Parcel 2

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No 10, south by a public road and west by Lot No. 12 Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

- 12 Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to plaintiffs; defendant's claim is without any right, and defendant has no right, estate, title, lien, or interest in or to the property, or any part of it
- 13 Defendant, JULIE JOHNSON, claims an interest and estate in such property adverse to plaintiffs, defendant's claim is without documentation to show that she is a rightful heir of Samuel Balaam, and defendant has no substantiated right, estate, title, lien, or interest in or to the property, or any part of it
- 14 Defendants, (J DOE, M DOE), may claim some estate, right, title, lien, or interest in or to the property adverse to plaintiffs' title, and such claim or claims constitute a cloud on plaintiffs' title to the property
- 15 This action is brought pursuant to Code Section 15-67-10 to 15-67-100 of the South Carolina Code of Laws, for the purpose of quieting all title to real property and all other claims adverse to that of the Plaintiffs herein named
- 16 Samuel Balaam, Thomas Balaam, Tony Balaam, Mary Balaam, and Fannie Balaam Middleton, purchased approximately fifty-four acres on Johns Island from Nettie M Hane and Eliza A Hane on January 20, 1904, as described and recorded in Book T24 on page 137

- 17 On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four acres described in Book T24 on page 137, as follows to Sam Balaam, twenty-four acres, (Book W24-327), Tony Balaam, ten acres (Book D25-181), Thomas Balaam, ten acres (Book W24-188), Mary Balaam, five acres (Book E26-257), and Fanny Balaam Middleton, five acres (Book W25-284).
- 18 On July 2, 1910 Samuel Balaam purchased twenty acres from Amarntha Hane Smith and Nettie M Hane as described and recorded in Book H29 on page 185
- 19 On information and belief, Samuel Bailum (1), died intestate, leaving as heirs, his wife Josephine Simmons Bailum, and his six sons and one daughter Ellis Bailum, now deceased, with no wife and no issue, Samuel Bailum (2), who died intestate, on or about Janary 19, 1975, leaving as heirs his wife, Evelyn Ogden Bailum, and one son, Samuel Bailum (3) who died intestate, on or about September 1999, leaving as heirs his wife Ruby Bailum and one child, Verdone Gray; Bussy Bailum, now deceased, leaving as heirs, his common law wife Eliza Mack Bailum, now deceased, with no issue (one step-daughter Evelyn), Walter Bailum, now deceased, whose wife's name is unknown, with no issue of the marriage, Thomas Bailum, now deceased, his wife Clara (Middleton) Bailum, now deceased, and daughter Hattie Bailum, Tony Bailum, who died testate, leaving his interest in the land to his wife Sarah (5 acres), and dividing his remaining five acres between his brother Samuel Bailum (2), his brother Thomas Bailum, and his nephew Paul Middleton (son of his sister Fannie Middleton Bailum), and Fannie Bailum Middleton, now deceased, whose husband's name is unknown with one son Paul Middleton (1), now deceased, his wife Monica Middleton, his son Paul Middleton (2) and two other children

- 20 On information and belief, Mary ("Mae") Bailum, daughter of Samuel Balaam (1) may have predeceased Samuel Balaam (1)
- 21 On information and belief, Samuel Balaam (1) put his son Samuel Bailum (2) and his son Thomas Bailum in charge of his property.
- 22 On information and belief, when Samuel Balaam (1) died, he gave his entire estate to his wife, Josephine Balaam
- 23 On information and belief, Josephine Balaam gave all of the property located on Johns Island, given to her by her husband, Samuel Balaam (1), to their son, Samuel Bailum (2)
- 24 On information and belief, Samuel Bailum (2) (born 5/19/1902) put his brother, Thomas Bailum (born 11/21/1901) (birth dates taken from death certificates), and his son, Samuel Bailum (3) (born 8/29/1928), in charge of his property
- 25 On information and belief, when Samuel Bailum (2) died, Samuel Bailum (3), his son, wanted to keep the property in the Balaam family, and gave his uncle, Thomas Bailum, half interest in the property, and each agreed to pay one-half of the taxes and property maintenance
- 26 On information and belief, Samuel Bailum (2) had another daughter, Julie Johnson, born (September 16, 1955) outside marriage to Mary Warren
- 27 On information and belief, Samuel Bailum (3) died intestate, on or about September 17, 1999, leaving as heirs, his wife Ruby Bailum, and daughter Verdone Gray
- 28 On information and belief, Thomas Bailum, died intestate, on or about July 24, 1966, leaving as heirs, his wife, Clara Bailum, and daughter Hattie Bailum.

- 29 Upon information and belief, Clara Bailum died intestate, on or about March 9, 2004, leaving as her heir, her and Thomas Bailum's only child, Hattie Bailum
- 30 Tony Balaam died leaving five of his ten acres to his wife Sarah, one and two-thirds acres to his brother Samuel Balaam, one and two-thirds acres to his brother Thomas Balaam, and one and two-thirds acres to his nephew Paul Middleton (son of his sister, Fannie Balaam Middleton), as partly shown by the deed from Thomas Balaam to T W Limehouse, dated May 16, 1936 and recorded in Book B39 on page 21, conveying the five acres that Tony Balaam left to Sarah Balaam, and one of the one and two-thirds acres parcels that Tony Balaam left to his brother, Thomas Balaam
- 31 On information and belief, Fannie Balaam Middleton is deceased, her husband's name and status are unknown, her son Paul Middleton (1) is now deceased
- 32 On information and belief, Paul Middleton (1) is deceased, leaving his wife Monica Middleton, and their three children, Paul Middleton (2), and two others whose names are unknown, as his sole heirs
- 33 On information and belief, Mary ("Mae") Balaam died intestate, leaving one daughter Wilhelmena Bailum, whose status and whereabouts are unknown.
- 34 On information and belief, the tax map showing certain parcels of the Balaam estate property are incorrect, in particular, TMS # 311-00-00-024 and TMS # 312-00-00-067, shown as part of the estate of Thomas Balaam should be shown as being part of the estate of Samuel Balaam
35. TMS # 312-00-00-068 may have been incorrectly conveyed and/or recorded, since the tax map, as of November 30, 2003, shows that TMS # 312-00-00-068 "crosses"

parcels TMS # 312-00-00-067 and TMS # 312-00-00-066, leaving parcel TMS # 312-00-00-067 and TMS # 312-00-00-032 "land locked "

SECOND CAUSE OF ACTION

(Injunction)

- 1 Plaintiffs hereby reallege, as if fully set forth, the allegations of Paragraphs 1 through 30 herein.
2. Defendant, ROOSEVELT SIMMONS, is wrongfully interfering with Plaintiffs' use of Parcel 2, described above, and, in particular, has wrongfully possessed the premises located thereon, and claims the land as his own
- 3 Defendant's, ROOSEVELT SIMMONS, actual and continued interference with Plaintiffs use of Parcel 2, unless and until enjoined by order of this court, will cause grave and irreparable injury to Plaintiffs, HATTIE BALAAM, RUBY BALAAM, VERDONE GRAY, ESTATE OF THOMAS BAILUM and ESTATE OF CLARA BAILUM in that Plaintiffs are being deprived of the use of Parcel 2, described above
- 4 Plaintiffs have no adequate remedy at law for Defendant's wrongful possession of the premises located on Parcel 2 and claim to the real property, described above as Parcel 1 and Parcel 2, in that it would be impossible for Plaintiffs to determine the precise amount of damage Plaintiffs will suffer if Defendant's conduct is not restrained, and Plaintiffs will be deprived of the use of their real property which cannot be compensated in damages

WHEREFORE, Plaintiffs, HATTIE BALAAM, RUBY BALAAM, VERDONE GRAY, ESTATE OF THOMAS BAILUM and ESTATE OF CLARA BAILUM request judgment as follows

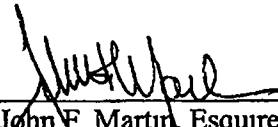
- 1 Defendants and all persons claiming under defendants, and all other persons unknown, claiming any right, title, estate, lien, or interest in the real property described in the complaint adverse to plaintiffs' ownership, or casting any cloud on plaintiffs' title thereto, be required to set forth the nature of their several claims,
- 2 All adverse claims of defendants or any of them be determined by a decree of this court,
- 3 Such decree shall declare and adjudge that plaintiffs are the lawful owners of the premises in fee simple as tenants in common and are entitled to the lawful, peaceable, and uninterrupted possession thereof as against defendants, and all others, and that defendants, or any of them, have or has no estate or interest whatever in or to the land and premises,
- 4 The decree permanently enjoin each and every defendant, and all persons claiming under them, and that they be forever barred from asserting any claim whatsoever in or to the land and premises, or lien or encumbrance thereon of any kind or nature, adverse to plaintiffs,
- 5 If such decree does not alter the boundaries of parcel TMS # 312-00-00-068; that such decree shall award Plaintiffs a right-of-way or easement sufficient to permit proper egress that attaches individually to parcel TMS # 312-00-00-067 and to parcel TMS # 312-00-00-032,

- 6 Plaintiffs request judgment against Defendant, ROOSEVELT SIMMONS, for a temporary restraining order, a preliminary injunction, and a permanent injunction prohibiting Defendant, ROOSEVELT SIMMONS, from interfering with Plaintiffs' ownership rights and right of possession of Parcel 1 and Parcel 2, or attempting to sell or convey any portion of the above described real property,
- 7 Plaintiffs be awarded costs of this action, and
8. Plaintiffs be awarded such other and further relief as this court deems proper

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY



John F. Martin, Esquire
113 Wappoo Creek Drive
Charleston, South Carolina 29412
Office (843) 762-2121
Fax (843) 762-2333

Charleston, South Carolina
Date 6/28/04

Section 15-67-10, et seq, for the purpose of obtaining a Decree establishing that the above named Plaintiffs be declared the owners in fee simple, having good and marketable title to the herein below described property That the premises to be affected by the said Complaint in the action hereby commenced was, as the time of the filing of this Lis Pendens situated, lying and being in the County of Charleston, State of South Carolina, and is more particularly described as follows:

Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R M C office in Charleston County in Book J24, page 137, December 1900 Lot 24 being bounded as follows on the north by lots No 25 and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W B Guerard in January 1883 The current TMS number for this property is 312-00-00-065

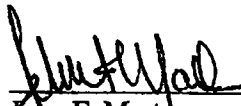
Parcel 2.

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No. 10, south by a public road and west by Lot No 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY:


John F. Martin
113 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 762-2121

Charleston, South Carolina

Date:

6/28/04

2445

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
COUNTY OF CHARLESTON) PLEAS, NINTH JUDICIAL
CIRCUIT NO.: 04-CP-10-1459

HATTIE BAILUM, RUBY BAILUM)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM and ESTATE OF THOMAS)
BAILUM, Plaintiffs)

Versus)

ANSWER AND
COUNTERCLAIM

ROOSEVELT SIMMONS, et al)
Defendants)

FILED
2005 JAN 20 AM 9:06
JULIE J. ARMSTRONG
CLERK OF COURT
[Signature]

THE DEFENDANT, ROOSEVELT SIMMONS, ANSWERING THE
COMPLAINT OF THE PLAINTIFFS, WOULD ALLEGE AND SHOW AS
FOLLOWS:

1. That he denies each and every allegation of the Complaint's FIRST CAUSE OF ACTION not hereinafter specifically admitted or modified.
2. That he agrees with the allegations in the First Cause of Action as alleged in paragraphs 1, 5, and 16.
3. That he agrees with so much of paragraph 12 as says, "Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to the plaintiffs," and denies the balance of the allegations in paragraph 12.
4. That he does not have sufficient information to form a belief in the

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allegations contained in paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

5. That he denies each and every allegation of the Complaint's
SECOND CAUSE OF ACTION.

FURTHER ANSWERING THE COMPLAINT AND AS AN
AFFIRMATIVE DEFENSE THERETO AND AS A COUNTERCLAIM,
DEFENDANT ROOSEVELT SIMMONS AND SHOWS AS FOLLOWS:

6. That this Defendant, Roosevelt Simmons, realleges each and every
answer to paragraphs one through one through thirty-five of the FIRST
CAUSE OF ACTION and paragraphs one through four of the SECOND
CAUSE OF ACTION hereinabove set forth in the Answer as if repeated
verbatim herein.

1. That the Amended Lis Pendens of this law suit describes the real
property which is the subject of this action as being: (A) 24 acres, part lot
no,24, Johns Island. TMS No. 312-00-00-065., and (B) 20 acres and known
as Lot #11 on the Gibbs-Murray tract of Johns Island. TMS No. 311-00-00-
024.

2. That this Defendant, Roosevelt Simmons, alleges that he has
contributed to make the payment of the county taxes on the subject

properties since 1963 when he was fourteen years of age, that he has exclusively paid all of the county taxes due on the subject properties since the death of Sam Balaam (2), and on the year after the death of Sam Balaam (2), he redeemed the property from being sold at a county tax sale and has continued to pay all the taxes due since that time.

3. That this Defendant, Roosevelt Simmons, alleges and will show to this court that the county's tax records will establish that the Plaintiffs are not, and have not paid the county taxes due on this property.

4. That this Defendant, Roosevelt Simmons, is a grandson of the widow of Sam Balaam (1) whose name was Lucinda Hester Sargent-Singleton-Bailum and she was born in 1877 and died in 1952 leaving six children by two previous marriages prior to her marriage to Sam Balaam.(1).

5. That this Defendant, Roosevelt Simmons, received a deed to the subject property identified by the tax map no. 311-00-00-024, from five other heirs of his grandmother, Hester Balaam a/k/a Linda Hester Sargent-Singleton-Bailum; namely, Walter Burns, Alonzetta Burns, Sheila Barns Ownes, Louise Canty, and Mabell (Singleton) Hicks by deed recorded in Book L 491 page 742 in the R.M.C. Office for Charleston County on April 21, 2004.

6. That this Defendant, Roosevelt Simmons, received a deed to the

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subject property identified by the TMS No. 311-00-00-024 from another descendent of Hester Balaam a/k/a Lucinda Hester Sargent-Singleton-Bailum, Leon E. Singleton by deed dated July 15, 2004 and recorded in Book T 510 page 469 on September 20, 2004.

7. That this Defendant, Roosevelt Simmons, is and has been in exclusive possession and control of these two properties since at least 1991 and prior to that date he shared exclusive possession and control of the said properties with his cousin, Walter Burns, who at one time sold the timber off the 24 acres tract. There is a cinder block building on the premises and it is occupied under a rental agreement originally given by this Defendant, Roosevelt Simmons and his cousin, Walter Burns.

8. That this Defendant, Roosevelt Simmons, will show unto this Court that there is evidence that Sam Balaam (2) did not believe that he had exclusive ownership of the subject properties.

WHEREFORE, having answered the Complaint, this Defendant prays as follows:

- A) That the Plaintiff's Complaint be dismissed.
- B) That this Court inquire as to the title of the properties that are the subject of this lawsuit, and declare this Defendant, Roosevelt Simmons, to have controlling interest in the fee to the property identified by TMS No.

311-00-00-024 and that he has an interest in the fee to the property identified by TMS No, 312-00-00-065, that he has exercised exclusive care and control of both properties since 1991, shared care and control of the properties for many years, having contributed to the payment of county taxes from 1963 until the death of Sam Balaam (2) and exclusively paid the taxes due since that time.

C) For such other and further relief as to this Court may deem just and proper.


Ruth W. Cupp, Es.
1031 Chuck Dawley
Mt. Pleasant, S.C., 29464
(843) 216-7739

Charleston, S.C.
18 January 2005

R 450

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 04-CP-10-1459

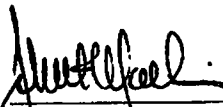
HATTIE BAILUM, RUBY BAILUM)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM and ESTATE OF THOMAS)
BAILUM,)
Plaintiffs,)
-vs-)
ROOSEVELT SIMMONS, et al.,)
Defendants.)

ANSWER TO DEFENDANTS'
COUNTERCLAIM

The Plaintiff, HATTIE BAILUM, et al, and through his undersigned counsel, Answer the Defendant's Counterclaim as follows:

1. The Plaintiff denies each and every allegation in Defendant's Answer and Counterclaim to Plaintiff.

MARTIN LAW FIRM


John F. Martin, Esquire
113 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 762-2121

Attorney for Plaintiff

Charleston, South Carolina
Dated: February 23, 2005

2005 MAR -3 PM 2:26
JULIA J. ARMSTRONG
CLERK OF COURT

FILED

2451

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

HATTIE BAILUM, RUBY BAILUM,)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM, and ESTATE OF THOMAS)
BAILUM,)

Plaintiffs,)

v.)

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2), ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, LEON ELIJAH)
SINGLETON, MABEL SINGLETON HICKS,)
WALTER BURNS, ALONZETTA BURNS,)
SHEILA BURNS OWENS, LOUISE CANTY,)
SHELLY BURNS, SHARON BURNS,)
MELVIN SINGLETON, FRANKLIN SMITH)
and J. DOE, adults, and M. ROE, infants, insane)
persons, incompetents, being fictitious names)
designating a class of persons, known or)
unknown, who may be heirs, distributees,)
devisees, legatees, widow,)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership, or)
any cloud on plaintiffs' title,)

Defendants.)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO.: 04-CP-10-1459

SECOND AMENDED COMPLAINT
(Quiet Title, Injunction)

FILED
2005 SEP 13 AM 10:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

COME NOW Plaintiffs, HATTIE BAILUM, RUBY BAILUM, VERDONE BAILUM GRAY, ESTATE OF CLARA BAILUM, and ESTATE OF THOMAS BAILUM complaining of the herein named defendants, ROOSEVELT SIMMONS, JULIE JOHNSON, MONICA MIDDLETON, PAUL MIDDLETON (2), ESTATE OF JULIA MORRIS BAILUM, ESTATE OF ELLIS BAILUM, ESTATE OF SAMUEL BAILUM (2), ESTATE OF LUCILLE BAILUM, ESTATE OF SAMUEL BAILUM (3), ESTATE OF BUBSY BAILUM, ESTATE OF EVELYN BAILUM, ESTATE OF WALTER BAILUM, ESTATE OF MARY BAILUM, ESTATE OF TONY BAILUM, ESTATE OF SARAH BAILUM, ESTATE OF FANNIE MIDDLETON, ESTATE OF PAUL MIDDLETON, ESTATE OF ESTHER SINGLETON BAILUM, LEON ELIJAH SINGLETON, MABEL SINGLETON HICKS, WALTER BURNS, ALONZETTA BURNS, SHEILA BURNS OWENS, LOUISE CANTY, SHELLY BURNS, SHARON BURNS, MELVIN SINGLETON, FRANKLIN SMITH and all other persons known or unknown, who claim any right, title, estate, lien, or interest in the real property described herein that are adverse to plaintiffs' title, and for a cause of action allege that:

FIRST CAUSE OF ACTION: Quiet Title

1. The real property that is the subject of this action is situated on Johns Island, in Charleston County, in the State of South Carolina, and that the subject matter, and all of the matters and things herein alleged are within the jurisdiction of this honorable Court.
2. Plaintiff HATTIE BAILUM resides in Cypress, Texas.
3. Plaintiffs RUBY BAILUM and VERDONE GRAY reside in Bronx, New York.
4. Defendant JULIE JOHNSON resides in East Orange, New Jersey.
5. Defendant ROOSEVELT SIMMONS resides in Charleston County, South Carolina.
6. Upon information and belief MONICA MIDDLETON resides in New York, New York.
7. It is unknown where PAUL MIDDLETON (2)(son of Paul and Monica Middleton), resides.
8. It is unknown where PAUL and MONICA MIDDLETON's other children reside.

9. Upon information and belief LEON ELIJAH SINGLETON has deeded over any interest he may have to ROOSEVELT SIMMONS.
10. Upon information and belief MABEL SINGLETON HICKS has deeded over any interest she may have to ROOSEVELT SIMMONS.
11. Upon information and belief WALTER BURNS has deeded over any interest he may have to ROOSEVELT SIMMONS.
12. Upon information and belief ALONZETTA BURNS has deeded over any interest she may have to ROOSEVELT SIMMONS.
13. Upon information and belief SHEILA BURNS OWENS has deeded over any interest she may have to ROOSEVELT SIMMONS.
14. Upon information and belief LOUISE CANTY has deeded over any interest she may have to ROOSEVELT SIMMONS.
15. The true names, relationships, or capacities, whether individual, corporate, associate, or otherwise, of defendants named in this action as Does 1 through 100 are unknown to Plaintiffs, who sue such defendants by such fictitious names, and Plaintiffs will amend this complaint to show their true names and capacities, upon such ascertainment.
16. Plaintiffs are informed and believe, and on that basis, allege, that each of the Doe defendants claims, or may claim, some interest in the real property described more fully in Paragraph 15 of this complaint.
17. The real property that is the subject of this action, is more particularly described as follows:

Parcel 1:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B. Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 2:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

18. Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to plaintiffs; defendant's claim is without any right, and defendant has no right, estate, title, lien, or interest in or to the property, or any part of it.
19. Defendant, JULIE JOHNSON, claims an interest and estate in such property adverse to plaintiffs; defendant's claim is without documentation to show that she is a rightful heir of Samuel Balaam, and defendant has no substantiated right, estate, title, lien, or interest in or to the property, or any part of it.
20. Defendants, (J. DOE, M. DOE), may claim some estate, right, title, lien, or interest in or to the property adverse to plaintiffs' title, and such claim or claims constitute a cloud on plaintiffs' title to the property.
21. This action is brought pursuant to Code Section 15-67-10 to 15-67-100 of the South Carolina Code of Laws, for the purpose of quieting all title to real property and all other claims adverse to that of the Plaintiffs herein named.
22. Samuel Balaam, Thomas Balaam, Tony Balaam, Mary Balaam, and Fannie Balaam Middleton, purchased approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137.
23. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four acres described in Book T24 on page 137, as follows: to Sam Balaam, twenty-four acres, (Book W24-327); Tony Balaam, ten acres (Book D25-181); Thomas Balaam, ten acres (Book W24-188); Mary Balaam, five acres (Book E26-257); and Fanny Balaam Middleton, five acres (Book W25-284).
24. On July 2, 1910 Samuel Balaam purchased twenty acres from Amarntha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185.

25. On information and belief, Samuel Bailum (1), died intestate, leaving as heirs, his wife Hester Bailum, and his three sons: Willis Bailum, now deceased; Samuel Bailum (2) now deceased; and Thomas Bailum, now deceased.
26. Hester Bailum received the statutory 1/3 interest in the property and Willis, Samuel and Thomas shared a 2/3 interest in the property.
27. The property at issue in this matter is the 1/3 interest of Hester Bailum.
28. On information and belief, Hester Bailum had six children from previous marriages, Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burnes, Elouise Singleton and Josh Singleton.
29. On information and belief, Hester Balaam died intestate, leaving these six children as her sole heirs, each receiving a One-Eighteenth interest in the property.
30. On information and belief, the tax map showing certain parcels of the Balaam estate property are incorrect, in particular, TMS # 311-00-00-024 and TMS # 312-00-00-067, shown as part of the estate of Thomas Balaam should be shown as being part of the estate of Samuel Balaam.
31. TMS # 312-00-00-068 may have been incorrectly conveyed and/or recorded, since the tax map, as of November 30, 2003, shows that TMS # 312-00-00-068 "crosses" parcels TMS # 312-00-00-067 and TMS # 312-00-00-066, leaving parcel TMS # 312-00-00-067 and TMS # 312-00-00-032 "land locked."

SECOND CAUSE OF ACTION: Injunction

32. Plaintiffs hereby re-allege, as if fully set forth, the allegations of Paragraphs 1 through 30 herein.
33. Defendant, ROOSEVELT SIMMONS, is wrongfully interfering with Plaintiffs' use of Parcel 2, described above, and, in particular, has wrongfully possessed the premises located thereon, and claims the land as his own.
34. Defendant's, ROOSEVELT SIMMONS, actual and continued interference with Plaintiffs use of Parcel 2, unless and until enjoined by order of this court, will cause grave and irreparable injury to Plaintiffs, HATTIE BALAAM, RUBY BALAAM,

and VERDONE GRAY, in that Plaintiffs are being deprived of the use of Parcel 2, described above.

35. Plaintiffs have no adequate remedy at law for Defendant's wrongful possession of the premises located on Parcel 2 and claim to the real property, described above as Parcel 1 and Parcel 2, in that it would be impossible for Plaintiffs to determine the precise amount of damage Plaintiffs will suffer if Defendant's conduct is not restrained, and Plaintiffs will be deprived of the use of their real property which cannot be compensated in damages.

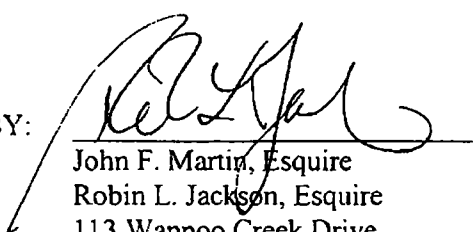
WHEREFORE, Plaintiffs, HATTIE BALAAM, RUBY BALAAM, VERDONE GRAY, ESTATE OF THOMAS BAILUM and ESTATE OF CLARA BAILUM request judgment as follows:

1. Defendants and all persons claiming under defendants, and all other persons unknown, claiming any right, title, estate, lien, or interest in the real property described in the complaint adverse to plaintiffs' ownership, or casting any cloud on plaintiffs' title thereto, be required to set forth the nature of their several claims;
2. All adverse claims of defendants or any of them be determined by a decree of this court;
3. Such decree shall declare and adjudge that plaintiffs are the lawful owners of the premises in fee simple as tenants in common and are entitled to the lawful, peaceable, and uninterrupted possession thereof as against defendants, and all others, and that defendants, or any of them, have or has no estate or interest whatever in or to the land and premises;
4. The decree permanently enjoin each and every defendant, and all persons claiming under them, and that they be forever barred from asserting any claim whatsoever in or to the land and premises, or lien or encumbrance thereon of any kind or nature, adverse to plaintiffs;
5. If such decree does not alter the boundaries of parcel TMS # 312-00-00-068; that such decree shall award Plaintiffs a right-of-way or easement sufficient to permit proper egress that attaches individually to parcel TMS # 312-00-00-067 and to parcel TMS # 312-00-00-032;

6. Plaintiffs request judgment against Defendant, ROOSEVELT SIMMONS, for a temporary restraining order, a preliminary injunction, and a permanent injunction prohibiting Defendant, ROOSEVELT SIMMONS, from interfering with Plaintiffs' ownership rights and right of possession of Parcel 1 and Parcel 2, or attempting to sell or convey any portion of the above described real property;
7. Plaintiffs be awarded costs of this action; and
8. Plaintiffs be awarded such other and further relief as this court deems proper.

MARTIN LAW FIRM

BY:


John F. Martin, Esquire
Robin L. Jackson, Esquire
113 Wappoo Creek Drive
Charleston, South Carolina 29412
Office: (843) 762-2121
Fax: (843) 762-2333
robinjackson@themartinlawfirm.net

Charleston, South Carolina
Date: Aug 31, 2005

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS

04-CP-10-1459

HATTIE BAILUM, et al)
Plaintiffs

Versus)

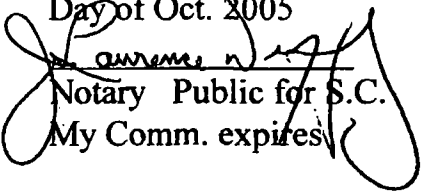
ROOSEVELT SIMMONS, et al)
Defendants
-----)

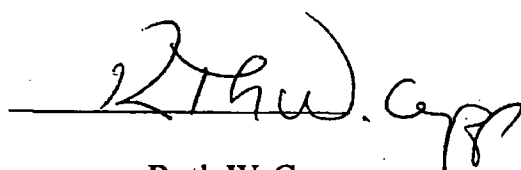
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FILED
2005 NOV 10 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Ruth W. Cupp, who being duly sworn deposes and says that I wish to be relieved as attorney of record in representing Roosevelt Simmons in the captioned matter. I believe that I am unable to explain to Roosevelt Simmons the prevailing law underlining this case nor am I able to explain to him what I believe I can and not do for him in this case. Roosevelt Simmons has asked me to no longer represent him in this action. His daughter, C. Ivy Simmons, LT. Commander, U.S. Public Service has written me a letter and asked me to no longer represent her father in this matter. A original of this letter is attached.

WITNESS this 26th
Day of Oct. 2005


Notary Public for S.C.
My Comm. expires


Ruth W. Cupp

12459

Ruth Williams- Cupp, Esq.
1031 Chuck Dawley Blvd
Mount Pleasant, SC 29465

Regarding: Mr Roosevelt Simmons Sr.
3416 Kitford Road
John's Island, SC

October 21, 2005

Dear Ms Williams-Cupp,

I am writing to express some concerns regarding services provided to my father, Mr. Simmons. My greatest concern today revolves around what appears to be unsatisfactory practices. My father has been presented with legal advice that encourages him to accept settlement with the opposing attorney, Mr Martin; which is against the overall legal objective.

The goal of my father retaining legal services from you included securing legal assistance with establishing property ownership and preserving family owned land.

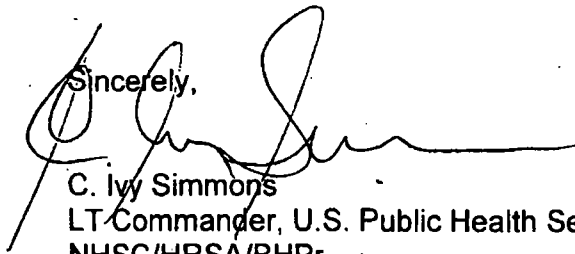
To this end, my father and other members of the family are greatly dissatisfied.

My father is requesting a refund in the amount of \$1000.00 that was provided to you in January of this year, again for unsatisfactory representation.

It is our hopes that you will see fit to refund this fee and re-evaluate whether you are able to continue to represent my father and our family with the above goal stated.

Feel free to contact either myself or my father in an effort to address the above concerns.

Sincerely,



C. Ivy Simmons
LT Commander, U.S. Public Health Services
NHSC/HRSA/BHPr
(410) 467-6040 X 2205
(410) 467-2421- Fax
(240) 350-6377-Cell
LCDRSimmons@hrsa.gov

R-460

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Hattie Bailum, et al.

☒ Plaintiff

v.

Roosevelt Simmons,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2004-CP-10-1459

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
John F. Martin, Bar No. 6492
Address:
113 Wappoo Creek Drive
Charleston, SC 29412
phone: 762-2121 fax: 762-2333
e-mail: johnmartin@themartinlawfirm.net other:
elicegraham@themartinlawfirm.net

Defendant's Attorney:
Ruth Cupp, Bar No.
Address:
Post Office Box 1499
Mt. Pleasant, SC 29465
phone: 216-7739 fax: 216-0804
e-mail: other:

- ☐ 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

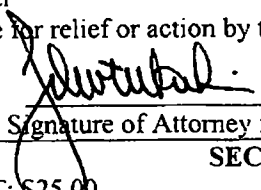
Nature of Motion: I

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

February 14, 2006

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ 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:
☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
C/A Number: 04-CP-10-1459

FILED
2006 FEB 17 PM 4:50
JULIE K. STRONG
CLERK OF COURT

HATTIE BAILUM, et al,
Plaintiff,
-VS-
ROOSEVELT SIMMONS,
Defendant.

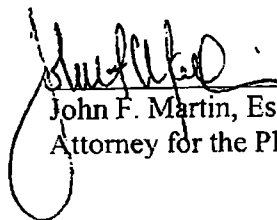
CONSENT ORDER OF
REFERENCE TO SPECIAL REFEREE

06-2006
This matter is before the Court upon the joint Motion of counsel for an Order of Reference to a Special Referee pursuant to The South Carolina Code of Laws and Rule 53 of the South Carolina Rules of Civil Procedure. The parties consent to the Honorable Joseph Mendelsohn serving as Special Referee. The Special Referee shall enter a final Judgment as to the causes of action referred. The compensation of the Special Referee shall be split equally by the parties.

Any appeal shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.

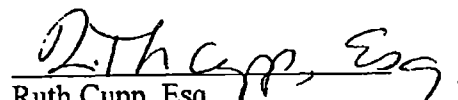
I consent:

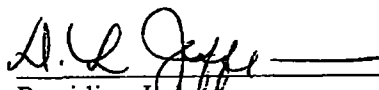

John F. Martin, Esq.
Attorney for the Plaintiffs

Dated: January 25, 2005

2/16/06
Chas., SC

I consent:


Ruth Cupp, Esq.
Attorney for the Defendant


Presiding Judge
Ninth Judicial Circuit

R 462

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)
)

Plaintiffs,)
)
)

v.)
)
)

ROOSEVELT SIMMONS, et al.)
)
)

Defendants.)
)
)

NOTICE OF APPEARANCE

BY _____
JULIE J. ARSTRONG
CLERK OF COURT

2006 OCT 13 PM 12:31

FILED

PLEASE TAKE NOTICE that the undersigned hereby gives notice he has been
retained to represent Defendant, Marie D. Smith in the captioned matter.

BRUCE A. BERLINSKY, P.A.



Bruce A. Berlinsky, P.A.
Post Office Box 206
One Carriage Lane
Charleston, SC 29407
(843) 852-2202 (office)
(843) 852-4844 (facsimile)

Charleston, South Carolina

October 6th, 2006.

2463

Copy

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

HATTIE BAILUM, et al)
Plaintiffs)
Versus)
ROOSEVELT SIMMONS, et al)
Defendants)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2004-CP-10-1459

NOTICE OF MOTION AND MOTION
TO RECONSIDER ORDER OF
SPECIAL REFEREE

TO: John F. Martin, Attorney for the Plaintiffs

You will please take notice that ten (10) days after the service hereof, or so soon thereafter as the parties may be heard, the Defendant Roosevelt Simmons, in accordance with Rule 59 of the South Carolina Rules of Civil Procedure, shall appear before the Special Referee to present testimony and affidavits in support of his position that the Order for Judgment entered herein on the 11th day of January, 2007, contains errors of fact as well as erroneous conclusions of law and equity based thereon. Further, there is no record of the proceedings on which he can appeal or the appellate court could make a decision. Accordingly, the Defendant asks that a new trial be granted or the judgment altered or amended as needed.

Please be present if you are of a mind to object.



Louis E. Condon, Esquire
Attorney for Roosevelt Simmons
81 Mary Street
Charleston, SC 29403
843 329-1000, Ext 2409
SC Bar No. 1354

Charleston, SC
January 19, 2007

R 464

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2004-CP-10-1459

HATTIE BAILUM, et al)
Plaintiffs)
Versus)
ROOSEVELT SIMMONS, et al)
Defendants)

AFFIDAVIT

Roosevelt Simmons, being duly sworn, deposes and says:

1. That he is one of the Defendants in the above styled action.
Prior to their coming to Charleston a few years ago he was not aware of the existence of any of the Plaintiffs.
2. That when he was asked for whom he was preserving the property in this action his answer was forthright and intended to mean the Heirs of Hester Balaam because he did not know of any other living Balaam heirs when he assumed that responsibility from his cousin Walter Burns, who had taken over care of all of the properties from his (Walter Burns) mother Carrie Burns.
3. That despite his repeated request that a record of the proceedings be made, the Plaintiffs' attorney opposed making a record and, therefore, there is no verbatim transcript for review by this defendant or the appellate court to substantiate or refute the alleged findings in the court's order.
4. That this defendant prefers that the matter be heard by the standing Master in Equity for Charleston County who routinely hears and decides such cases. He has no recollection of ever agreeing to the appointment of a Special Referee.

R465

5. That, as was his custom, Roosevelt Simmons paid the 2006 property taxes on all four parcels in the amount of \$355.24, in order to avoid the penalty which would have come due after January 17, 2007.
6. That it appears that Mr. Simmons was not allowed the customary thirty (30) days to arrange financing because he had been given the opportunity many months ago to purchase the property and didn't. However, this is incorrect in that not until December 2006, was Mr. Simmons told how much he would have to pay for the property rather than the full appraised value, which was the purchase price less the sum to be paid to him.
7. That the sum paid by Mr. Simmons for the taxes and protection of the property can be calculated from the receipts he submitted to the court. That the amount proposed to compensate Mr. Simmons for preserving the property is totally inadequate, unreasonable and inequitable.
8. That the Plaintiffs' position as to Roosevelt Simmon's lack of interest in lots 2,3 and 4 are inconsistent with the measure used to determine whether or not he had an interest by adverse possession (i.e. he had an interest as an heir) and the decision as to adverse possession of the parcels should be reversed.



Roosevelt Simmons

Sworn to before me this 19th day
of January, 2007.



Louis E. Condon, Notary Public for SC
My Commission Expires Mar. 15, 2009

2466

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
HATTIE BAILUM, et al.,)
Plaintiff,)
versus)
ROOSEVELT SIMMONS, et al.)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2004-CP-10-1459

MOTION OF DEFENDANT
TO ALTER OR AMEND
PURSUANT TO RULE 60 (a)

BY

2007 FEB -7 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: THE HONORABLE Joseph S. Mendelsohn, John F. Martin, Esquire, as attorney for Plaintiffs and Judge Louis E. Condon, attorney for Roosevelt Simmons, Defendant.

Please take notice that the Defendant, Marie D. Smith, by its undersigned counsel, will move before the Honorable Joseph S. Mendelsohn, Special Referee for Charleston County, pursuant to the provisions of S.C. Rule of Civil Procedure 60(a) for an Order altering and amending the Order of the Honorable Joseph S. Mendelsohn filed January 11, 2007, which granted only Roosevelt Simmons the right to purchase Parcel 1.

The grounds for this Motion are as follows:

1. The Marie Smith's name was inadvertently omitted from the Order allowing her to purchase the property with Roosevelt Simmons.
2. That based on the case law and on a copy of email letter dated January 4, 2007, attached hereto as Exhibit "A" and incorporated by reference, the relief should be granted.

IT IS SO MOVED.


BRUCE A. BERLINSKY
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202

Charleston, South Carolina
February 5, 2007

Exhibit "A"

BRUCE A. BERLINSKY, P.A.

Attorney at Law

Mailing Address:
P.O. Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
bablaw@bellsouth.net

January 4, 2007

VIA EMAIL ONLY

The Honorable Joseph S. Mendelsohn

VIA EMAIL ONLY

John F. Martin, Esquire

VIA EMAIL ONLY

The Honorable Louis E. Condon

RE: Bailum v. Simmons, et al.
04-CP-10-1459

Dear Joe and Skip:

I have had the opportunity to review the proposed Order in the Bailum case and have several comments:

1. Parcel 1 is being sold to Roosevelt Simmons and Franklin Smith and Marie Smith. Several of Franklin's siblings may want to participate so the Order will have to allow assignment. If you do want to place a limitation on assignment, it should be allowed to other family members but not to the general public.
2. Both Judge Condon and I objected at the hearing to a ten (10) day requirement on providing confirmation of funds available. This is not normally a provision in these types of actions where the matter is heard by the Master. Also, the Master typically gives a buyer sixty (60) days to close. Finally, no bank will even consider a loan without a contract or Court Order so the buyers could not comply with a ten (10) to thirty (30) day requirement.
3. The Special Referee's fee should not be assessed against anyone other than the Skip's clients. There is no reason stated in the Order as to why it was referred to a Special Referee rather than heard by the Master-in-Equity, which could have only been a One Hundred Twenty-Five (\$125.00) Dollar fee. Additionally, if the Charleston Master had a conflict, this case would have been heard by the Dorchester or Berkeley Master. Essentially, there is no

R 468

factual or legal basis for having this matter heard by someone other than the Master; hence, there is no factual or legal basis to have the fees paid by anyone other than Skip's clients.

Once the above changes are made, please forward a revised Order to me for review.

With kind regards I am,

Sincerely,

Bruce A. Berlinsky

BAB/jdc

2469

Transcript of Special Referee Hearing

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

HATTIE BAILUM, RUBY BAILUM,
VERDONE GRAY, ESTATE OF CLARA
BAILUM, and ESTATE OF THOMAS
BAILUM,

Plaintiffs,

vs.

CASE NO. 04-CP-10-1459

ROOSEVELT SIMMONS, JULIE JOHNSON,
MONICA MIDDLETON, PAUL MIDDLETON
(2), ESTATE OF JOSEPHINE SIMMONS
BAILUM, ESTATE OF ELLIS BAILUM,
ESTATE OF SAMUEL BAILUM (2), ESTATE
OF BUBSY BAILUM, ESTATE OF WALTER
BAILUM, ESTATE OF MARY BAILUM,
ESTATE OF TONY BAILUM, ESTATE OF
FANNIE BAILUM, ESTATE OF
EVELYN BAILUM, ESTATE OF ELIZA
MACK BAILUM, ESTATE OF SARAH
BAILUM, ESTATE OF SAMUEL BAILUM (3),
ESTATE OF PAUL MIDDLETON (1), ESTATE
OF ESTHER SINGLETON BAILUM, ESTATE
OF JULIA MORRIS BAILUM, LEON ELIJAH
SINGLETON, MABEL SINGLETON HICKS,
WALTER BURNS, ALONZETTA BURNS,
SHEILA BURNS OWENS, LOUISE CANTY
and J. DOE, adults, and M. ROE, infants,
insane persons, incompetents, being
fictitious names designating a class
of persons, known or unknown, who may be
heirs, distributees, devisees, legatees,
widow, widower, assignees, executors,
administrators, creditors, successors,
issue, and alienees of the ESTATE of
SAMUEL BAILUM, deceased, and ALL OTHER
PERSONS UNKNOWN, claiming any right,

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843.762.6294

R635

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Transcript of Special Referee Hearing

Page 2

1 title, estate, interest in or lien
2 upon the real property described in the
3 complaint, adverse to plaintiffs'
4 ownership, or any cloud on plaintiff's
title,
Defendants.

6 BEFORE THE HONORABLE JOE MENDELSON

8 DATE: MAY 15, 2006

9 TIME: 10:00 AM

10 LOCATION: MARTIN LAW FIRM
11 113 Wappoo Creek Drive
12 James Island, South Carolina
13
14
15
16
17
18
19
20

21 REPORTED BY:

22 ANGELA VANOY, ~~W. J. Menzel~~ Name of
COURT REPORTER
CLARK & ASSOCIATES, INC.
23 P.O. Box 73129
24 Charleston, SC 29415
25 843-762-6294

Clark & Associates, Inc.
843.762.6294

R636

565e526c-70cf-41ad-85eb-3fb7ac6b1549

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

MARTIN LAW FIRM
BY: JOHN MARTIN
113 Wappoo Creek Drive
James Island, SC 29412

ON BEHALF OF THE DEFENDANTS:

LOUIS E. CONDON LAW FIRM
BY: LOUIS E. CONDON
999-B Morrison Drive
Charleston, SC 29403

GUARDIAN AD LITEM:

MCCANN LAW FIRM
BY: FRANCIS MCCANN
66 Hassell Street
Charleston, SC 29401

SPECIAL REFEREE:

JOSEPH S. MENDELSON
104 Broad Street
Charleston, SC 29401

Transcript of Special Referee Hearing

Page 16

1 MR CONDON: He's just called Ms. Hattie
2 Bailum on the phone, and I wanted you all to hear
3 what she had to say.

4 MS. MAGWOOD: Okay.

5 MR. MARTIN: Ms. Bailum, can you hear me?

6 MS. BAILUM: Yes, I can hear you.

7 MR. MARTIN: I think everybody here can
8 hear you. Judge, are you ready?

9 THE COURT: Yes, sir, I'm ready. Ms.
10 Bailum?

11 MS. BAILUM: Yes.

12 THE COURT: This is Joe Mendelsohn.

13 HATTIE BAILUM,
14 having been first duly sworn, was examined and testified
15 as follows:

16 THE COURT: Ms. Bailum, Mr. Martin is
17 going to ask you some questions, and then Mr. Condon,
18 if he has any, will ask you some questions, and if I
19 have any, I'll ask you some questions. I'm not sure
20 what your situation is where you are, but in the
21 event that you need a break or if you lose contact
22 with us, we'll call you back or whatever. So just
23 hang up the telephone, but hopefully, that won't
24 occur.

25 THE WITNESS: Okay.

Transcript of Special Referee Hearing

Page 127

1 to talk to now?

2 MR. MARTIN: Verdone Gray, V-E-R-D-O-N-E,
3 Gray, G-R-A-Y.

4 THE COURT: Verdone Gray?

5 MR. MARTIN: Right. Yes.

6 MR. MARTIN: Ms. Gray, it's Mr. Martin.
7 The people that are here are myself, Judge Joe
8 Mendelsohn, who will speak to you in a minute and
9 give you the oath, Mr. Louis Condon, who represents
10 Roosevelt Simmons, Mr. Simmons and the court
11 reporter. And so Judge Mendelsohn will put you under
12 oath, and then we'll ask you some questions. I'll
13 start first, and then Mr. Condon may have some other
14 questions for you. And then if you would answer all
15 of our questions for us, we'd appreciate it.

16 MS. GRAY: Okay. Thank you.

17 VERDONE GRAY,
18 having been first duly sworn, was examined and testified
19 as follows:

20 THE COURT: Mr. Martin will take it from
21 here.

22 EXAMINATION

23 BY MR. MARTIN:

24 Q. Thank you, Ms. Gray. For the record, what
25 is your full name, please?

Transcript of Special Referee Hearing

Page 128

1 A. I'm sorry?

2 Q. For the record, what is your full name,
3 please?

4 A. Verdone Gray.

5 Q. And where do you reside?

6 A. I reside at 3223 Grand Concord, New York.

7 Q. And are you the daughter of Sammy Bailum
8 and Ruby Bailum?

9 A. That's correct.

10 Q. And is your grandfather Samuel Balium who
11 was married to Julie Morris Bailum?

12 A. That's correct.

13 Q. And did your grandfather own property in
14 Charleston, South Carolina?

15 A. That's correct.

16 Q. Did he own property along with his
17 brothers and sister?

18 A. Yes.

19 Q. And did his father, Samuel Bailum, which
20 would be your great-grandfather, also own property in
21 Charleston?

22 A. Yes.

23 Q. If you would, please, and I know you've
24 been sent a package of about 73 different documents.
25 Would you look at Exhibit Number 2 for me, please?

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R 640

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Transcript of Special Referee Hearing

Page 147

1 A. Yes.

2 Q. Did he frequently visit the property?

3 A. Yes.

4 Q. Did he receive and pay tax bills and pay
5 taxes?

6 A. Yes.

7 Q. And you have evidence of those taxes which
8 we just reviewed?

9 A. Yes.

10 Q. Now, since 1999, have Clara Bailum and
11 Hattie Bailum been dealing with the property?

12 A. Yes.

13 Q. And I've also sent you a copy of the
14 document marked the Bailum's family tree?

15 A. Uh-huh.

16 Q. To the best of your recollection and your
17 knowledge of your family, is that a true and accurate
18 reflection of the Samuel Bailum heirs?

19 A. Yes.

20 Q. Now, I see you on the left -- what I call
21 box of the chart where it says Verdone Bailum --

22 A. Yes.

23 Q. -- actually it's Verdone Gray --

24 A. Uh-huh.

25 Q. -- because you're married. But is that

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R 64

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Transcript of Special Referee Hearing

Page 148

1 correct where it shows you as the daughter of Sammy
2 and Ruby?

3 A. Yes.

4 Q. And then your cousin is Hattie?

5 A. Yes.

6 Q. And your cousin is Monica?

7 A. Yes.

8 Q. Hattie's parents were Thomas and Clara?

9 A. Uh-huh.

10 Q. And do you know this -- and you know of
11 your personal knowledge that Thomas and Clara were
12 married, and they were Hattie's parents?

13 A. Excuse me?

14 Q. Do you know of your personal knowledge
15 that Hattie's parents were Thomas and Clara?

16 A. Yes.

17 Q. And Thomas was your uncle?

18 A. Yes.

19 Q. And Sammy and Thomas, did they also have a
20 sister named Fannie?

21 A. Yes.

22 Q. And was she married to a gentleman named
23 Paul Middleton?

24 A. Yes.

25 Q. And did Fannie have a daughter named

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R642

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Transcript of Special Referee Hearing

Page 149

1 Monica?

2 A. Yes.

3 Q. And actually her name is Monica Middleton
4 now. So is your mother still alive?

5 A. Yes.

6 Q. And up the chain above your father, your
7 uncle and your aunt was Samuel who was married to
8 Julia Morris Bailum?

9 A. Yes.

10 Q. Did he have brothers and sisters?

11 A. Yes.

12 Q. Was he the last surviving, in that line,
13 to have children?

14 A. Sammy, yes.

15 Q. He outlived everybody else?

16 A. That's correct.

17 Q. And Sammy, your grandfather, was the son
18 of Sam Balium who was married to Hester Bailum?

19 A. Yes.

20 Q. So as we speak now, there are only four
21 Bailums left, Ruby, Verdone, Hattie and Monica; is
22 that correct?

23 A. No.

24 Q. There's one more. There's Julie, right?

25 A. Yes.

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R 643

565e526c-70cf-41ad-85eb-3fb7ac6b1549

Transcript of Special Referee Hearing

Page 171

1 Q. And that was her maiden name, Mary Warren
2 Bailum?

3 A. Yes.

4 Q. And how old was she at the time of your
5 birth?

6 A. 19.

7 Q. Was your mother a second wife for Mr.
8 Bailum?

9 A. Yes, it certainly was.

10 Q. And this is the Sam Bailum who was married
11 to Verdone's father, Sammy?

12 A. Yes.

13 Q. Oh, excuse me. Let me back up. I got
14 myself confused there. This is the Sammy -- your
15 father was the Sam Bailum, the same one that was
16 married to Julia Morris Bailum?

17 A. Yes.

18 Q. That was his first wife. His second wife
19 was Mary Warren, your mother?

20 A. Yes.

21 Q. So you are Verdone's aunt?

22 A. Yes.

23 Q. Even though you're younger than her,
24 you're her aunt?

25 A. Yes, I am.

Clark & Associates, Inc.

843.762.6294

R 644

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Transcript of Special Referee Hearing

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

SPECIAL REFEREE HEARING

HATTIE BAILUM a/k/a HATTIE BALLAM; RUBY BAILUM a/k/a
RUBY BALAAM; VERDONE GRAY; JULIE B. JOHNSON; MONICA
MIDDLETON,

Plaintiffs, Respondents,

COPY

vs.

CASE NO. 04-CP-10-1459

ROOSEVELT SIMMONS, LEON SINGLETON, MABEL SINGLETON HICKS
a/k/a MAYBELL HICKS, WALTER BURNS; SHEILA B. OWENS,
LOUISE CANTY; ALONZETTA BURNS; SHARON BURNS, MELVIN
SINGLETON, MARIE SMITH, ELMORE SINGLETON, THEODESIA
SINGLETON, MILDRED SINGLETON MAHONEY, ANDRE SINGLETON,
EUGENE LEON ELIJAH SINGLETON, ERNEST GREEN, JR., KAREN
GREEN, DELORIS GREEN, JOAN GREEN WELLS, DELBERT BURNS,
JOE LOUIS BURNS, JR., a/k/a JOE LEWIS BURNS, JR., VONIE
BURNS, SHELLY BURNS, ANASTACIA BURNS, TREMAYNE BURNS,
JOSHUA BURNS, JARRED BURNS, AMBER BURNS, if they be
alive, and JOHN DOE and MARY ROE, adults, and Richard
ROE and JANE DOE, infants, person under disability or
incompetence, if any, including those persons who might
be in the military covered under the Soldier's Relief
Act, fictitious names designating the unknown heirs,
devisees, distributes, issue, executors, administrators,
successors or assigns of the above named Defendants, and
also the following deceased persons: ESTATE OF SAMUEL
BAILUM a/k/a SAMUEL BAALUM, deceased or the ESTATE OF
HESTER SINGLETON BAILUM a/k/a ESTHER BAILUM a/k/a ESTHER
BAALUM, HESTER SINGLETON BAALUM, THOMAS BAILUM, SAMUEL
BAILUM, SAMMY BAILUM, FANNIE BAILUM MIDDLETON, MARY
BAILUM, JOSH SINGLETON, ELOUISE SINGLETON, CARRIE BURNS,
JERRY SINGLETON, ARTHUR SINGLETON, EUGENE SINGLETON,
RICHARDINE SINGLETON, EUGENE SINGLETON, JR., GARY
SINGLETON, CHRISTOPHER BURNS, JULIUS BURNS, ARTHUR LEE
BURNS, ARLENE GREEN, ERNEST GREEN, JOE LOUIS BURNS a/k/a
JOE LEWIS BURNS, EMILY BURNS, QUEEN SINGLETON, and
JULIUS BURNS, JR., and all other persons know or
claiming any right, title, estate in or lien upon the
real estate in or lien upon the real estate described in
the Complaint herein,

Defendant, Respondents,
Of whom Roosevelt Simmons is the Defendant/Appellant.

Defendants.

Transcript of Special Referee Hearing

1 BEFORE: HON. JOSEPH S. MENDELSON, SPECIAL REFEREE

2 DATE: JUNE 6, 2007

3 TIME: 9:30 A.M.

4 LOCATION: MARTIN LAW FIRM
113 Wappoo Creek Drive
5 Charleston, South Carolina

6 REPORTED BY: DENISE MCCAULEY, RPR, IA-CSR, GA-CCR
CLARK & ASSOCIATES
7 P.O. Box 73129
North Charleston, South Carolina 29422
8 (843) 762-6294

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1 A P P E A R A N C E S:

2 BEFORE:

3 HON. JOSEPH S. MENDELSON,
4 Special Referee
5 P.O. Box 250
6 Charleston, South Carolina 29402

5

6

7 ON BEHALF OF THE PLAINTIFFS:

7

8 MARTIN LAW FIRM
9 BY: JOHN F. MARTIN, ESQ.
10 113 Wappoo Creek Drive
11 Charleston, South Carolina 29412
12 (843)762-2121

10

11

12 ON BEHALF OF THE DEFENDANT, MARIE SMITH:

12

13 BY: BRUCE A. BERLINSKY, ESQ.
14 P.O. Box 206
15 Charleston, South Carolina 29402

14

15

16 ON BEHALF OF THE DEFENDANT, ROOSEVELT SIMMONS:

16

17 THE HOUSTON LAW FIRM
18 BY: CHARLES E. HOUSTON, JR.
19 Four Carriage Lane, Suite 206
20 Charleston, South Carolina 29407
21 (843)406-0101

19

20

22 ALSO PRESENT:

21

22 ROOSEVELT SIMMONS

22

23

24

25

R 647

Transcript of Special Referee Hearing

1 reconsidered by me. I signed it. It was an order
2 denying -- I made some changes to it.

3 MR. MARTIN: It related to Bruce's --

4 ~~THE COURT: Related to Bruce.~~

5 MR. BERLINSKY: Related to, yeah, my motion.

6 THE COURT: And I made some changes, and
7 then that order was signed, and that's the final
8 order of this case as amended. Then there was a
9 motion by Louie Condon to reconsider the order. We
10 did make some changes.

11 MR. MARTIN: Only to Bruce.

12 THE COURT: Only to Bruce.

13 MR. MARTIN: Right.

14 THE COURT: And then I denied any other
15 changes as it applies to Mr. Simmons. And so that
16 order as amended is now the order of the court.
17 Then Mr. Simmons files his pro se appeal, and he
18 does that on March the 27th. And I guess any way
19 you look at it that was timing.

20 MR. MARTIN: Because he was served, for the
21 record, and there's a recorded in the clerk of
22 court affidavit of service where he was personally
23 served with those orders on March the 6th, so he
24 was well within his appeal time.

25 THE COURT: He -- yeah. So he then timely

Transcript of Special Referee Hearing

1 files an appeal. Then I don't know what happens,
2 because all the next thing I know you make demand
3 on me to sign deeds, and simultaneously or close to
4 it I get the appearance of Mr. Houston and a
5 petition for me not to do that. And that's the
6 reason I called it today is to figure out where we
7 need to go with that, so --

8 MR. HOUSTON: There was also one other
9 outstanding matter, and that was the matter of
10 Mr. Simmons' right to purchase the property, and I
11 think he produced the financial evidence.

12 MR. MARTIN: First of all, that's water
13 under the bridge. It was a matter decided by the
14 court. There's an amended order which was specific
15 as to what Mr. Simmons do. He failed to do it.
16 That's why I've asked the judge to issue the deeds.

17 MR. HOUSTON: Well, that has to be
18 determined whether or not he failed to do it or
19 not, because he has the letter from the bank
20 pertaining to the --

21 MR. SIMMONS: Everybody got that memo. I
22 mailed a copy to everybody who was concerned.

23 MR. HOUSTON: Do you have that? I need
24 that.

25 THE COURT: I made a finding on February the

Transcript of Special Referee Hearing

1 16th that Mr. Simmons has had ample time to secure
2 a loan commitment or other acceptable financing to
3 buy out the interest of all other heirs.

4 MR. MARTIN: ~~There's the exact provision~~
5 right there.

6 MR. HOUSTON 2: Is that in an order?

7 MR. MARTIN: It's in two orders.

8 MR. HOUSTON: Which one is that in?

9 MR. MARTIN: The amended order and the order
10 denying post-trial motions. Very precise, very
11 specific language. Judge, it's in Paragraph 2 of
12 your final order.

13 THE COURT: I'm just -- okay. Marie Smith,
14 that's Bruce's --

15 MR. BERLINSKY: My client.

16 THE COURT: -- Bruce's lady. We made an
17 order about that and made that. Then it goes to
18 the second paragraph, Mr. Simmons. Mr. Simmons
19 raises by motion an affidavit numerous matters for
20 the court to consider in his support of his
21 argument for reconsideration of a new trial. Those
22 objections are fully set forth on this motion. An
23 affidavit filed in support. The court has
24 carefully considered each of those -- each of
25 Mr. Simmons' arguments and respectfully denies each

Transcript of Special Referee Hearing

1 of them.

2 The evidentiary hearing in this matter,
3 testimony, and documentary evidence were preserved
4 by a court reporter. The transcript copy of the
5 exhibits are available to any party who wishes to
6 see them. As for the adverse possession with
7 regard to all parcels of land at issue, the court
8 finds there has been no error of law or procedure
9 with regard to its findings and conclusions.

10 As for the time allowed Mr. Simmons after
11 service of the order to obtain financing, it goes
12 on to explain that an appraisal was obtained, made
13 available to everybody two years ago. Final order
14 was served January 11, 2007. It was then since
15 amended. The first final order was January, 2007.

16 MR. MARTIN: Right.

17 THE COURT: It was then since amended, and
18 basically the court found that Mr. Simmons just
19 simply hasn't done what it was that the court had
20 basically ordered that he had the opportunity to
21 do. Not that he had to do it. It was just that he
22 had a chance to do it.

23 MR. MARTIN: And that was in the January
24 order, and it was again stated in the February
25 order, and in neither instance Mr. Houston

Transcript of Special Referee Hearing

1 complied.

2 THE COURT: So, Mr. Houston, there isn't
3 anything else --

4 MR. HOUSTON: Here --

5 THE COURT: There isn't anything else to do
6 in regards to what Mr. Simmons has done or not
7 done. He -- that may be an issue for an appeal,
8 but that's not where we are today. Where we are
9 today is for you --

10 MR. HOUSTON: Well, I just want to get a
11 point for the record.

12 THE COURT: Sure.

13 MR. HOUSTON: Was he given a specific time
14 in which to provide proof of financing?

15 MR. SIMMONS: Ten days.

16 MR. MARTIN: In both orders.

17 THE COURT: In both orders he was given ten
18 days, in Paragraph 2 of both orders.

19 MR. HOUSTON: All right. Now, was -- what
20 date was that?

21 MR. MARTIN: The first order was January
22 11. The second order was February 16. And in
23 neither case did he comply with the order.

24 THE COURT: Right. In either case he
25 didn't, he didn't do what, apparently did not do

Transcript of Special Referee Hearing

1 what he was supposed to do, which was to provide
2 certain things.

3 MR. HOUSTON: Well, was this made a part of
4 the record, this letter here from the bank?

5 MR. BERLINSKY: It's dated a month after the
6 hearing. It couldn't have possibly been made part
7 of the record.

8 THE COURT: Well, first of all, Mr. Houston
9 -- excuse me, gentlemen. This is, this letter, is
10 a letter to Frederick Fields. This is not a letter
11 to Mr. Simmons. This is a letter to Frederick
12 Fields, number one. And, number two, this is a
13 letter to -- it's March the 16th. And the order of
14 the court, the last order of the court as
15 amended --

16 MR. HOUSTON: Well, I think I know how we
17 can solve that, Your Honor.

18 THE COURT: Whoa, wait a minute, gentlemen.
19 Just hang on. Keep it orderly. The last order of
20 the court was February the 16th, and it was filed
21 March the 16th. The order of the court was filed
22 March the 16th, and the amended order of the court
23 was --

24 MR. BERLINSKY: The 6th.

25 MR. MARTIN: Served on the 6th.

Transcript of Special Referee Hearing

1 THE COURT: The 6th. I'm sorry. And the
2 order that the letter you have from the bank --

3 MR. MARTIN: March 16.

4 THE COURT: ~~-----is dated March the 16th,~~ but
5 it's not -- it doesn't, it doesn't say anything
6 about Mr. Simmons.

7 MR. HOUSTON: Well, I tell you how we can
8 treat that, your honor, how we're going to treat
9 that. We'll file a motion for relief of judgment
10 on that particular issue, produce our evidence, and
11 then the court can rule on that particular matter
12 rather than going through it now.

13 MR. MARTIN: Well, and very briefly for the
14 record, this is a letter to Mr. Fields for him to
15 purchase a percentage interest in a parcel of land
16 on River Road. It's not addressed to Mr. Simmons.
17 And the order specifically states that Mr. Simmons'
18 right to purchase is non-assignable and
19 non-transferable. This is an assignment of a
20 purchase interest made to Mr. Fields. It was never
21 recorded with the clerk of court as required by two
22 orders, so it's of no effect.

23 MR. HOUSTON: Who was it filed with?

24 THE COURT: It wasn't filed with anybody.

25 MR. SIMMONS: I sent Mr. Martin an order and

Transcript of Special Referee Hearing

1 I sent Mr. Berlinsky.

2 MR. HOUSTON: A copy of this?

3 MR. SIMMONS: Proof of where the money was
4 coming from.

5 MR. HOUSTON: You sent them a copy of this
6 letter?

7 MR. SIMMONS: Yeah. I delivered the judge
8 that copy of that to his office.

9 THE COURT: I don't deny that. It's
10 probably in there somewhere.

11 MR. SIMMONS: I left there with your
12 secretary and made sure she got it, and she said --

13 MR. HOUSTON: Well, what we'll do on that
14 particular point, your honor, is we'll raise a
15 motion for relief of judgment and address this
16 matter in that particular motion.

17 MR. MARTIN: I think you're barred from
18 doing that because you've appealed the order and
19 that is an item which is in both orders, so I think
20 you have to address that with the Supreme Court.

21 THE COURT: The only thing I've got, first
22 of all --

23 MR. MARTIN: The only thing you have
24 jurisdiction over is a motion to stay or
25 supersedeas.

1 pending the conclusion of the appeal.

2 MR. HOUSTON: Right.

3 THE COURT: And you cite 18.9.160, 18.9.170.
4 What are those? Is that the appellate rules?

5 MR. MARTIN: Is 18.9.170 is says the
6 property is not stayed by an appeal.

7 THE COURT: Okay. I've are read that
8 before.

9 MR. MARTIN: And rule 225 is the appellate
10 rule on the same issue.

11 THE COURT: There's a list. There's a list
12 of things that are stayed, and there's a list of
13 things that are not stayed.

14 MR. MARTIN: Uh-huh.

15 THE COURT: And this falls in the category
16 of not stayed.

17 MR. MARTIN: Correct.

18 THE COURT: Like child support, like
19 alimony, like all those kind of things.

20 MR. MARTIN: For the record, 225 --

21 THE COURT: Tell me why -- tell me number
22 one why I should stay it, please, and under the
23 circumstances of staying it, what do we do to
24 protect the other people in this case and the third
25 parties who have contracts to pay a better than

R 656

1 fair market value or the fair market value of this
2 property, and so tell me about that.

3 MR. HOUSTON: All right. Thank you, Your
4 Honor. I appreciate this opportunity. And I think
5 that you have framed the substantive issue that
6 needs to be addressed quite succinctly, and I plan
7 to respond to it in a likewise manner, Your Honor.

8 Your Honor, this is the heart and germane
9 aspect of the points that we were going to bring up
10 on an appeal, and this is the same reasons why
11 we've urged the court not to go ahead with the sale
12 of this property at this particular time. Because
13 if it's sold at this particular time, irreparable
14 damage would be caused in the future when we
15 prevail on this particular matter.

16 Now, why do we feel strongly that we're
17 going to prevail? There are grave evidentiary
18 problems with the evidence in this particular case
19 as to the ancestry of this particular property.
20 What we have that may be in the form of newly
21 discovered evidence are the census reports that
22 were not introduced in this particular proceeding.

23 And the first thing is the evidence that was
24 produced in the proceeding as to the birth
25 certificates, the marriage licenses, and the death

R657

1 certificates would show that the deed conveyed in
2 1905 to Sam Bailum and others was not to Sam
3 Bailum, Jr., but that deed was conveyed to Sam
4 Bailum, I, and his siblings and not his nieces and
5 nephews.

6 So the whole chain of the ownership of the
7 property is affected right there. You know, we
8 have a Tony Bailum. He died in September 2, 1925.
9 He was 47 years of age at the time this census was
10 taken.

11 THE COURT: Who?

12 MR. HOUSTON: Tony.

13 THE COURT: Tony who?

14 MR. HOUSTON: Bailum. He was the brother of
15 Sam Bailum, I, not his nephew. See, that whole
16 line where they say, you know, that deed of 1905,
17 those people who the plaintiffs claim it was
18 granted to weren't even alive at that particular
19 time. Those -- that deed was conveyed to Sam
20 Bailum, I, and his heirs, and not Sam Bailum, II.
21 Sam Bailum, II, would not have been old enough at
22 that particular time to have received a deed.

23 And if you look at the death certificate and
24 birth certificate and marriage license of Sam
25 Bailum, II, it will show from the plaintiff's own

1 evidence that he was not born at that particular
2 time the deed was made. So the deed couldn't have
3 been to him. So this upsets the whole
4 distribution.

5 THE COURT: How?

6 MR. HOUSTON: Because what it does is
7 they're claiming under title, and they had no
8 title. They're claiming on a partition date. So
9 this affects not only the property that has been
10 part of this action, but it affects all the other
11 properties and other actions also.

12 THE COURT: How?

13 MR. HOUSTON: Because they didn't have
14 title.

15 THE COURT: Who didn't have title?

16 MR. HOUSTON: They never received a
17 two-thirds interest, a separate interest. What
18 they're saying, the court here ordered was that
19 Sam -- that Mr. Simmons only is entitled to
20 one-third of a particular portion. I think it was
21 15 acres. And our position is that, no, he would
22 at least be at least one-third of the entire thing,
23 because that --

24 THE COURT: When you say the entire thing,
25 what's the entire thing? What does that mean to

1 you?

2 MR. HOUSTON: The entire 50 acres, the
3 entire 54-acre tract.

4 THE COURT: That would be parcels --

5 MR. MARTIN: -- one, two, three, and four.
6 He's claiming a one-third interest in all four
7 parcels.

8 MR. HOUSTON: And this would also come back
9 to shine a different light on his claim for adverse
10 possession.

11 THE COURT: Why?

12 MR. HOUSTON: Because it would eliminate
13 their claim of possession under the claim of
14 title. And basically we also may be looking at
15 some -- I forget the word where you give false
16 testimony in court.

17 MR. SIMMONS: Perjury.

18 MR. HOUSTON: Perjury. And this also ties
19 in with the fact that the people who gave this
20 testimony, they didn't have the court reporter
21 there to identify them as particular persons. Now,
22 they can say, well, somebody else was an imposter.

23 So what we plan on doing, Your Honor, is ask
24 the court if they either would remand, you know,
25 ask the court to remand this thing back so we can

R 660

1 bring the motion before you on the basis of newly
2 discovered evidence and let you rule upon it,
3 rather than take the time to go through all of
4 these issues on appeal. Because as I said before,
5 we're not here for any dilatory tactic, but we are
6 here for the truth to come out.

7 THE COURT: Okay.

8 MR. HOUSTON: And these are the reasons why
9 I asked you to stay the signing of these deeds and
10 also for waiving, you know, the requirement of my
11 client posting bond. Because we do have a
12 meritorious cause. And for everybody's edification
13 here, here's my proof.

14 THE COURT: What?

15 MR. HOUSTON: I said for everyone's
16 edification, here is our proof.

17 THE COURT: What is that?

18 MR. HOUSTON: That's the census data.

19 MR. MARTIN: But it's not --

20 MR. HOUSTON: It hasn't been introduced in
21 evidence, but it's available.

22 THE COURT: All right. Do you have anything
23 else you want me to listen to?

24 MR. HOUSTON: Well, what I was going to do,
25 let me put this into evidence for the reasons

R 661

1 why --

2 THE COURT: You want to put this in evidence
3 right now?

4 MR. HOUSTON: Right. On the grounds that
5 why the deed should not be granted and that we have
6 a meritorious claim.

7 MR. MARTIN: And just for procedural
8 grounds, if he's moving to put it into evidence, I
9 would object to it coming in as there's no grounds
10 for it, it's not substantiated, and there's no
11 certification it's a true and accurate record, and
12 it's not exempt under the hearsay rules. So for a
13 variety of reasons at this point for a motion
14 hearing on a motion to stay, I would object to an
15 attempt to interject evidence in that was not
16 relevant to the motion to stay.

17 MR. HOUSTON: The court can take judicial
18 notice of the census records.

19 THE COURT: All right. I'm going to, for
20 purposes of the motion, I'm going to accept the
21 records, and I'm going to mark them for purposes of
22 this motion. I'm going to put Motion Number 1,
23 6/6/07, and I initialed it. I'm going to make that
24 a part of this record.

25 Then I'm going to make this one Motion

R 662

1 Number 2, 6/6, and I'm going to initial it. Then
2 I'm going to make that a part of this record. And
3 there's another one, and I'm going to make that
4 Motion Number 3 6/6/07, and I'm going to make that
5 a part of the record in this motion. Okay.

6 MR. BERLINSKY: Your Honor, before you
7 proceed, let me just put on the record so it's
8 preserved. I don't know if I'm going to argue it
9 later on or not, but I'm going to object for the
10 same reasons Mr. Martin did.

11 THE COURT: Well, I've got that in.
12 Objections by Berlinsky and Martin and statement of
13 the record. Although they'll be in, just tell me
14 too little too late, not verified.

15 MR. MARTIN: Not verified, hearsay -- not
16 verified, hearsay, not newly discovered evidence,
17 and I can go into the substance of it in a moment.

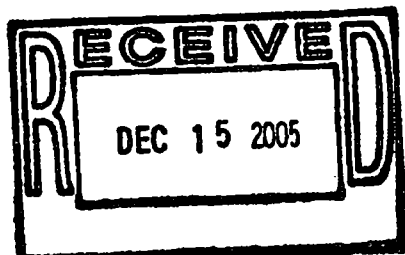
18 THE COURT: I'm going to let you go in a
19 minute.

20 MR. MARTIN: Yeah. Just it's not, it's not
21 relevant to the issue for motion to stay.

22 THE COURT: Let's keep it in order now. All
23 right. I've heard what you had to say about why I
24 should stay and why I should accept these as
25 evidence. I've accepted them over objections just

-1459
Att: Roger M. Young
CHIEF ADMINISTRATIVE JUDGE

Roosevelt Simmons
3416 Kitford Road
Johns Island, South Carolina
29455
(843) 559-1351



Re: Bailum VS Simmons
Case Number: 04-CP-10-1459
~~04-CP-10-1369~~
Date: November 30, 2005

File in Clerk's file

In Regards to the above matter, I'm writing this letter of concern. I have been dealing with this matter with you in superiority for some time. Under your instructions, the opposing persons were to report to you on matters discussed in an arbitrary setting on January 28, 2005 in the office of Skip Martin Attorney at law. There were questions and concerns that you ordered answered. I believe that Attorney Ruth Cupp failed to follow up on your request and that she did not make the opposing party comply. My daughter Carol Simmons wrote to her making her aware that we were not satisfied with her services. Attorney Cupp Found it necessary to remove herself from legal counsel for reasons I believe to be indicative of conflicting interests. To this date, there is still no concrete proof from the opposing side that I am not a family member of the Bailums, neither is there proof of a contract that the opposing party speaks of binding them to sale of the land. This matter is becoming costly to me in my quest to secure my family land. I have proven repeatedly my heritage. I have shown proof of taxes paid by me. I have controlling interest over the property. I have declined repeatedly monetary offers for settlement and will continue to decline these offers. My stance then and still is that the property is not for sale. I have since received correspondence from Roger M. Young Chief Administrative Judge Ninth Circuit in regards to Attorney Cupps request to relieve herself of counsel. As per his request I am responding with notification of my intent to proceed pro-se. A copy of this letter will be forwarded to the honorable Roger M. Young.

Respectively Yours,

Roosevelt Simmons
Roosevelt Simmons

R 664