THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

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SC Court of Appeals

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

v.

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

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APPELLANT'S REPLY

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1. The 1965 Plat is the Only Plat to which Demetre's Deed can Refer

Respondents assert that the 1965 Plat is not the plat to which Appellant's ("Demetre's) deed to lots 209 and 210 Indian Avenue East ("Deed") refers. (Return p. 4).

However, the 1965 Plat is the only Plat to which Demetre's Deed can refer to give effect to each of the Deed's parts since only the 1965 Plat is (1) recorded in Plat Book C at page 158, (2) dated February 1920, and (3) shows the lots described by the Deed. (Deed, R. 633) ("Each of said lots measuring on the North and South lines (70) feet and on the East and West lines One Hundred and Fifty (150) feet ***which will appear by reference to said plat.***") (Emphasis added). K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 682 S.E.2d 252 (2009) (A deed must be construed as a whole and effect given to every part if it can be done consistently with law).

a. A Plat can be a Plat without a Seal or Signature: Respondents argue that the 1965 Plat is not a "plat" since it contains no engineer's or surveyor's signature or seal. (Return p. 4).; however, a seal or signature of an engineer or surveyor is not required for a plat to be a "plat." A plat is just "[a] map describing a piece of land and its features, such as boundaries, roads, and easements." Black's Law Dictionary, pp. 1188 – 89 (Eighth Edition, 2004). Demetre's Deed refers to "a plat." (R. p. 633). A deed is interpreted using the ordinary meaning of words. Antley v. Antley, 132 S.C. 302, 128 S.E.2d 31 (1925) ("[E]ach and every word contained in the deed must be given force and effect according to its usual and ordinary meaning, unless some settled rule should be affected.")

b. A Plat can be a Plat even if it is a Tracing: Respondents assert that the 1965 Plat is not a "plat" since, they contend, it is a "tracing" (Return p. 4); however, as shown by the breadth of the definition quoted in Section "1.a" above, a plat can be a "plat" even if it is a tracing.[1]

c. The Deed refers to a plat Dated February 1920: Respondents assert that the Deed refers to "a 1920 Jefferson Construction plat;" however, the Deed does not refer to "a 1920 Jefferson Construction plat," but rather to a plat, ". . . made by Jefferson Construction Company dated February 1920 . . . " (R. p. 633), and the 1965 Plat is dated February 1920 (R. p. 1069).

d. The 1965 Plat is Dated February 1920: Respondents argue that the 1920 Plat and the 1965 Plat were recorded [forty]-five years apart; however that is irrelevant since the Deed refers to a plat "dated February 1920," not a plat recorded on any particular date. (R. p. 633).

e. The "FEB. 1920" Date is as Large as Most Wording on the 1965 Plat: Respondents argue that the February 1920 date on the 1965 Plat is "small" and "almost unnoticeable" (Return p. 4); however, the size of the date "FEB. 1920" on the 1965 Plat is as large as most of its other wording, including the lot numbers, street names, and feature identifications,

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[1] As found in *Demetre I,* the 1965 Plat is a actually a "redraw" because it adds lots not shown on the 1920 Plat, and the 1968 Plat, not the 1965 Plat, is a "tracing" of the 1920 Plat. (R. pp. 860- 61).

and the "FEB. 1920" date appears two places at the top of the 1965 Plat (R. p. 1069), whereas the date on the 1920 Plat is too small to be legible (R p. 1068).

f. The Label on the 1965 Plat Does Not Negate the Deed's Reference to It

Respondents argue that the 1965 Plat bears the words "Plan File I, Drawer ___, Folder 15, Drawing No. 15 & 16" (Return p. 5); however, those words on the 1965 Plat in no way negate the Deed's reference to it.

B. The Law Respondents Quote Supports Demetre's Argument

Respondents argue that Demetre cites a partial quote from K & W Acquisition Group v. Island Pointe, 383 S.C. 563, 682 S.E.2d 252 (2009), but that a "full quote" is "more informative as to the correct construction of the deed." (Return p. 5).

However, the law Respondents quote supports Demetre's argument that the Deed must refer to the 1965 Plat, since: (1) per the cases cited by Respondents, "effect should be given to every part of [a deed];" (2) only the 1965 Plat shows the subject lots, and (3) construing Demetre's Deed to refer to the 1965 Plat is the only way to give effect to the Deed's lot descriptions.

C. A Plat Description Controls Only When More Precise than the Words of the Deed

Respondents cite Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) for the proposition, "As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and *are usually held to furnish the true description of the boundaries of the land* . . ." (Respondents' emphasis) (Return p. 6).

However, as shown in Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979), a plat controls the description only where the plat is more precise than the words of the deed. *Id.* ("The specificity of the attached plats outweigh, in our judgment, the general terms of the description in the grants in determining the intent of the grantor.") In the present case, the Deed cites the 1965 Plat, which is specific as to the location of the lots. However, if the Deed

cited a plat not as specific as the lot description in the Deed, then the words of the Deed would control.

D. Either the Deed Identifies the Lots or Extrinsic Evidence Can Be Used to Do So

Respondents argue, "Appellant is therefore left with two bad choices. If the deed is clear . . . Seabrook and Appellant intended to use the 1920 deed, [and] Appellant's lots do not exist. If the deed is open to interpretation, extrinsic evidence may be used to explain it." (Return p. 6).

However, if the Deed is clear, then it refers to the 1965 Plat, because that is the only plat which gives effect to the Deed's description of the lots. If, on the other hand, somehow the Deed is not clear, then extrinsic evidence can be used, and, based on the Deed's metes and bounds description, the 2005 Kennerty Topographic Survey precisely locates the lots (R. p. 1071). Respondents admit the adequacy of the Deed's lot description. (Respondents' Return p. 11) ("In the case *sub judice*, the boundaries are well described . . ."); (Respondents' Return p. 13) ("In Appellant's quitclaim deed, his claimed lots are reasonably described.").

E. The Master's Conclusion that the "Lots Do Not Exist" is Unsupported

Respondents argue that the best possible explanation is the one that the Master's reached, that the "lots simply do not exist." (Return p. 6).

However, to conclude that the "lots do not exist," the Master had to disregard the description of the lots in the Deed, find that the 1965 Plat showing the lots is "incorrect," and disregard the 2005 Kennerty Topographic Survey locating the lots based on the Deed's metes and bounds description. Respondents assert that there was "more than ample evidence in the Record" to support the Master's decision, but, other than what has been addressed above, they cite none.

2. The 1895 Tartus Plat in the Chain of Title Conveyed the Entire Island to the Folly River

a. The Lots Conveyed because they are Above the Mean High-Water Mark:

Respondents argue that while the entire island conveyed, the subject lots did not convey because they are "marshland" adjacent to, within, or part of the Folly River and not part of the "highland" of Folly Island. (Return, p. 7).

However, this argument is incorrect, because the conveyances per the 1895 Tartus Plat included the entire island to the Folly River. (1926 Deed, R. p. 536)(1942 Deed, R. p. 539) (". . . being bounded on the west by the channel of the Folly River and Folly Creek . . .") When a property is bounded by a tidal navigable waterway such as the Folly River, the boundary line is the high water mark. State v. Hardee, 259 S.C. 535, 539, 193 S.E.2d 497, 499 (1972). Therefore, these transfers conveyed all highland to the river, including all high marsh.

The lots conveyed even though they are "marshland" because high marsh above the mean high-water mark conveys, since the State, under the public trust doctrine, does not claim property above the mean high-water mark[2]. Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011).

The master's finding that the area was below the mean high-water mark was erroneous because plats upon which he relied do not show the location of the mean-high-water mark. (R. pp. R. pp. 1067, 1068). The *Demetre II* Opinion vacated the master's determination of the mean high

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[2] "Marshland" can be either high marsh above the mean high-water mark or low marsh below the mean high-water mark. Plats which do not show the location of the mean high-water mark are irrelevant to a determination of whether property is low marsh or high marsh. State v. Murrell's Inlet Camp and Marina, Inc., 192 S.E.2d 199, 259 S.C. 404, 408 (1972)("The maps do not purport to locate the mean high-water mark, and do not discriminate between high and low marsh in any manner . . . Since the record is barren of any evidence by which the jury could possibly correlate the platted line to this issue [the location of the mean high-water mark], the conclusion of the judge that the plats were irrelevant is abundantly supported.")

water mark. (*Demetre II* Opinion, p. 11) ("To the extent the master exceeded his mandate by . . . determining the location of the mean high water mark, we vacate that portion of the order.")

The only evidence in the record regarding the location of the mean-high-water mark is the 2005 Kennerty Topographic Survery, which shows that the subject lots are above the mean high-water mark. (R. p. 1071).

Thus, all high marsh conveyed, since the 1895 Tartus Plat conveyances included all highland to the Folly River, including all high marsh, and, under the public trust doctrine, the State does not claim property above the mean high-water mark.

b. Only Exceptions, Not Conveyances, were by Reference to the 1920 Plat: Respondents argue, "The 1920 Jefferson Construction plat served two purposes . . ." First, they argue, "it reinforces the Tartus Plat showing only marshland where the lots are claimed to exist . . ." (Return, p. 8).

However, the 1895 Tartus Plat does not show "marshland" were the subject lots are claimed to exist, but instead it conveys the entire Folly Island to the Folly River, which includes the area of the subject lots. (R. p. 1067). When a property is bounded by a tidal navigable waterway such as the Folly River, the boundary line is the high-water mark. State v. Hardee, 259 S.C. 535, 539, 193 S.E.2d 497, 499 (1972).

Second, Respondents argue, regarding the 1920 Jefferson Construction Plat, "(ii) that all of the lots, in existence on the 1920 Jefferson Construction plat and not excepted from it, were conveyed." (Return p. 8).

However, Respondents have this confused. Rather than conveying everything on the 1920 Plat, the transfer conveyed everything on the 1895 Tartus Plat, which is the entire Folly Island to the Folly River, ***except for*** the lots previously conveyed using the 1920 Plat (R. p. 539), stating:

> Saving and excepting therefrom the lots on said island described by the plats made in [illegible]uary and May 1920 by Jefferson Construction Co. and recorded in the R.M.C. Office aforesaid, heretofore conveyed by said Folly Beach Corporation to parties to wit [specific lots being excepted are listed].

Since the lots are not shown on the 1920 Plat, those lots could not have been excepted from the conveyance, so they were necessarily conveyed in Demetre's chain of title.

c. The Error that the 1942 Deed Referenced the 1920 Deed is Harmful: Respondents argue that the erroneous finding that the 1942 Deed refers to the 1920 Plat is harmless error, because the Opinion's main discussion of the chain of title does not rely on the 1942 Deed's referencing the 1920 Plat (Return, p. 8).

However, the master's error that the 1942 Deed cites the 1920 Plat – which it does not - was a basis for the master's denying Demetre relief. Further, the *Demetre II* Opinion cites the fact that the lots are not shown on the 1920 Plat in denying Demetre relief (*Demetre II* Opinion, p. 15) ("We agree with the master's conclusion that Demetre failed in his burden of proving title to lots 209 and 210. Neither the 1920 plat nor the 1895 Tartus plat depict the lots").

3. This Court Quieted Dreher's Title with the Same Chain of Title as Demetre's Title

a. This Exception was in Appellant's Statement of Issues on Appeal: Respondents assert, "This Exception [that the Opinion overlooks Appellant's Citiation to Dreher v. South Carolina Dept. of Health and Environmental Control, 730 S.E.2d 922, 399 S.C. 259 (Ct. App. 2012)] was not listed in Appellant's Statement of Issues on Appeal; however, it was listed as Issue #9 in the Final Brief of Appellant in the Statement of Issues on Appeal.

b. A Quitclaim Deed is as Strong as the Chain of Title: Respondents argue, "First, because there is no mention in the Dreher case that Dreher took title by a quitclaim deed, it is reasonable to assume that Dreher took title by warranty deed. Because Appellant took title by quitclaim deed, Appellant should have been on notice that there were potential problems in Seabrook's chain of title." (Return p. 9).

However, this argument is not sound, because, if Dreher and Demetre have the same chain of title, then it does not matter whether Demetre took by quitclaim deed or general warranty deed. The strength of one's chain of title, not what kind of deed one has, determines title. Providing a quitclaim deed is a proper method of conveying a fee-simple title. Martin v. Ragsdale, 71 S.C. 67, 50 S.E.671, 674 (1905).

c. Demetre's Deeds Use the Same Language as Drehere's Deeds: Respondents argue, "Appellant's argument improperly overlooks Footnote '2' in the Dreher decision, in which the Dreher Court says that all eight deeds describe the same property conveyed to Dreher and that the description of Tract D describes it as extending, '. . . to the edge of the marshes of the Folly River.' That distinction from the Dreher case defeats Appellant's argument."

However, first, Footnote "2" in the Dreher case does not state what Respondents assert. It instead states, "The property description found in the eight subsequent deeds, including the grant to Dreher in 1994, is identical to the original grant to the Folly Island Company in 1918," and Dreher's Footnote "1" quotes the language of the 1918 Deed as follows:

> The title abstract for Tract D states that Dreher's title derives from a grant made on November 8, 1918, to Folly Island Company of a tract described as, "'the Folly Islands,' or more commonly known collectively as 'Folly Island,' ***being bounded*** on the East by the Atlantic Ocean, on the South by the channel of the Stono Inlet, and ***on the west by the channel of the Folly River and Folly Creek*** and on the North by the channel of Lighthouse Inlet." (Emphasis added).

Thus, Dreher's deeds do not state what Respondents assert. Further, the title conveyed to Demetre's predecessor in interest is based on this same 1918 Deed as Dreher's title with the same language as that quoted above in Footnote 1 of the Dreher case.[3] (R. p. 539).

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[3] In fact, in the Record in this case, in Seabrook Sr.'s devise to Seabrook Jr., lots 806 and 809 Erie Avenue East and 4.506 acres of marsh are listed under "Lots and Acreage Under Contract." (R. p. 623). Erie Avenue East is between Cooper Avenue East and the Folly River. (R. p. 1069). By plotting the description of "Tract D" in the Dreher case on the 1965 Plat (R. p. 1069), it can be seen that these lots and marsh later became part of "Tract D," which was quieted in the Dreher case. Dreher v. South Carolina Dept. of Health and Environmental Control, 730 S.E.2d 922, 923, 399

As in Dreher, the language in Demetre's chain of title bounds the land "on the west by the channel of the Folly River and Folly Creek." When a property is bounded by a tidal navigable waterway, the boundary line is the high water mark. State v. Hardee, 259 S.C. 535, 539, 193 S.E.2d 497, 499 (1972). Thus, per the 1918 Deed in the chains of title of Dreher and Demetre, all highland was conveyed to the Folly River.

d. Equal Protection Requires Like Treatment in Like Circumstances: This Court quieted title for Dreher with the same chain of title as Demetre. Denying relief to Demetre violates the equal protection clauses of the South Carolina and United States Constitutions. U.S. Const. amend. XIV § 1; S.C. Const. art. I § 3; GTE Sprint Commc'ns Corp. v. Pub. Serv. Comm'n of South Carolina, 288 S.C. 174, 181, 341 S.E.2d 126, 129 (1986) (Equal protection requires "all persons to be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed").

e. The Lots are Shown on the 1965 Plat: Respondents argue that the lots are not shown on the 1895 Plat or the 1920 Plat, the only two plats in existence prior to the 1942 conveyance to Seabrook Sr. (Return p. 9).

However, the fact that the lots were not platted until the 1965 Plat is simply irrelevant. The land itself was conveyed, and then the lots were platted later.

f. The Lots Conveyed with the Rest of Folly Island: Respondents argue that the lots are "marshland" because the master found them to be "marshland" based on the plats before him and the 1786 plat in the Query case (Return p. 10).

However, while the 1920 Plat does bear the words "MARSH LAND" near the area where the lots are shown on the 1965 Plat, as discussed above, marsh can be high marsh above the mean

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S.C. 259, 261 (Ct. App. 2012) ("Tract D commences at the southeastern corner of lot 809 East Cooper Avenue and extends to the edges of the marsh of the Folly River and then approximately 290 feet to the west and back to the eastern line of 805 East Cooper Avenue and then back to the starting point at lot 809.")

high-water mark, and the lots are high-marsh as shown on the 2005 Kennerty Topographic Survey. (R. p. 1071). Also, the fact that the lots are not shown on the 1786, 1895, or 1920 plats is irrelevant because the lots were platted later. They are shown on the 1965 Plat.

As discussed in Section "1.A" above, Respondents' are incorrect that the 1965 Plat is "not really a plat" because a plat need not contain the signature or seal of an engineer or surveyor to be a plat. The *Demetre II* Opinion vacated the master's finding that the 1965 Plat was "incorrect." (Opinion, p. 11) ("To the extent the master exceeded the mandate by finding . . . the 1965 plat was "incorrect" . . . we vacate that portion of the order.")

g. Demetre's Chain of Title is Identical to Dreher's Chain of Title

Respondents argue, "The substantial differences in the documents both in and out of Appellant's chain of title and indeed, the quality of title under which Appellant takes, show substantial and substantive differences between the titleholder in the Dreher case and the Appellant."

However, first, as discussed above, Respondents misstate the language in Dreher's title. The language in the chain of title to Demetre's prececessors in interest is the same language as the language in the chain of title to Dreher's. Since a quitclaim deed is as strong as one's chain of title, while there is no evidence of what type of deed Dreher had, regardless of its type, since Demetre and Dreher had the same chain of title, they are similarly situated.

4. Even if the Deed Referenced the 1920 Plat, the Lots Still Conveyed

Respondents argue, "Appellant's argument [in Section "4"] is replete with *ipse dixit* statements, which are not supported by South Carolina Law or case Law. However, in Section "4," Demetre's Petition cites eight (8) South Carolina Supreme Court cases.

a. That is Certain Which Can be Made Certain

Respondents argue, "In the case *sub judice*, the boundaries are well described, but they don't exist on the plats, and the plats described the areas on which Appellant's claimed 'lots' are located as marshland." (Return p. 11).

However, as discussed in Section "1" (pp. 1 – 3), Demetre's Deed (R. p. 633) refers to the 1965 Plat since it is the only plat that gives effect to each of its parts and it is the only plat (1) recorded in Plat Book "C" at page 158, (2) dated February 1920, and (3) which shows the lots it describes. (R. 1069).

As discussed above in Section "2" (pp. 5 – 6), marshland can be high marsh above the mean high-water mark,[4] the State does not claim high marsh,[5] and the only plat in the Record showing the location of the mean high-water mark, the 2005 Kennerty Topographic Survey (R. p. 1071), shows that the lots are above the mean high-water mark.

Respondents make no direct return to Demetre's point that, since "[t]hat is certain which can be made certain, the description, if it will enable a person of ordinary prudence acting in good faith and making inquiries, which the description would suggest to him to identify the land, is sufficient." Brownlee v. Miller, 37 S.E.2d 658, 208 S.C. 252 (1946); McNair v. Johnson, 78 S.E.2d 892, 95 S.C. 176 (1913). Here, the Deed cites the 1965 Plat, which shows the lots. But even if the Deed had cited no plat or the wrong plat, the Deed's description of the lots is sufficient to locate them as was actually done in the 2005 Kennerty Topographic Survey. (R. p. 1071).

Respondents themselves admit that the lot descriptions in the Deed are adequate. (Respondents' Return p. 11) (In the case *sub judice*, the boundaries are well described . . ."); (Respondents' Return p. 13) ("In Appellant's quitclaim deed, his claimed lots are reasonably described.") Respondents' argument that the lots are not on the plats is incorrect, but, regardless, it does not address the point – which is undisputed - that the location of the lots can be determined by their description in the Deed.

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4 State v. Murrell's Inlet Camp and Marina, Inc., 192 S.E.2d 199, 259 S.C. 404, 408 (1972) (Marsh can be "low marsh" below the mean high water mark or "high marsh" above it.)

5 Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011) (Under the public trust doctrine, the State does not claim property above the mean high-water mark).

b. A Deed Remains Valid if an Adequate Description Remains After Rejection of Erroneous Part

Respondents argue, "Once again, Appellant's reliance on the case is not justified. The folly of relying on a quitclaim deed and a plat that omits any reference to Appellant's claimed lots, has been discussed hereinabove. Even if Appellant's deed was dissected down to the words and punctuation thereon, the result would be the same as reached by this Court in its previous Order." (Return p. 11).

However, first, providing a quitclaim deed is a proper method of conveying fee-simple title. Martin v. Ragsdale, 71 S.C. 67, 50 S.E.2d 671, 674 (1905).

Second, the Deed cites the 1965 Plat, since it is the only plat recorded in Plat Book "C" at page 158, dated February 1920, and which shows the lots it describes.

Third, Respondents fail to specify why they assert that Demetre's reliance on the cases cited is misplaced. The two cases cited stand for the proposition, "If sufficient remains after rejecting a part of the description which is false, the deed will take effect." McNair v. Johnson, 78 S.E. 892, 95 S.C. 176 (1913); Norwood v. Byrd, 1 Rich. 135, 42 Am. Dec. 406 (1845). In the present case, Respondents assert that Demetre's Deed cites the wrong plat, the 1920 Plat which does not show the lots, instead of the 1965 Plat which does show the lots.

However, if this were true, then the reference to the plat would be rejected, but the deed would still takes effect because "sufficient remains," because the metes and bounds description of the lots is adequate to identify them, as was done by the 2005 Kennerty Topographic Survey (R. p. 1071). Even Respondents admit that the Deed's description of the lots is adequate.

c. A Construction Rendering a Deed Valid is Favored Over One Rendering it a Nullity

Respondents argue, "In relying on a quitclaim deed, the Grantee takes only what the Grantor has. '[A] quitclaim deed does not convey the fee, but only the right, title[,] and interest

of the grantor.'" Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005).

However, first, providing a quitclaim deed is a proper method of conveying fee-simple title. Martin v. Ragsdale, 71 S.C. 67, 50 S.E.2d 671, 674 (1905).

Second, Respondents misquote Mulherin-Howell v. Cobb, which actually states, "A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey." Mulhurin-Howell v. Cobb, 326 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005).

Third, Respondents make no return to Demetre's point, which is that a construction rendering a deed valid is favored over one rendering it a nullity. 26A C.J.S. Deeds § 183.

In the present case, where the Deed cites a plat recorded in Plat Book "C" at page 158, and there is more than one plat recorded at that page, the Deed must be construed to give effect to the plat which renders it valid, which is the 1965 Plat, because that plat shows the lots to which the Deed refers.

d. A Deed Must be Interpreted to Give Effect to Each of its Parts

Respondents argue, "Appellant's quitclaim deed is missing the warranties that come with a Warranty Deed and is a reference to a plat, which does not show the Appellant's lots, the chain of title is bad, Appellant's minimal consideration for the property that should have brought a premium price, indicating doubt in both parties to the deed."

However, first, providing a quitclaim deed is a proper method of conveying fee-simple title. Martin v. Ragsdale, 71 S.C. 67, 50 S.E.2d 671, 674 (1905).

Second, because a quitclaim deed, by definition, conveys no warranties, obtaining warranties is unnecessary to convey fee-simple title. A quitclaim deed, although it conveys no warranties, conveys whatever title the grantor has. Mulhurin-Howell v. Cobb, 326 S.C. 588, 601,

608 S.E.2d 587, 594 (Ct. App. 2005) ("A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.")

Third, Demetre's chain of title is good. The only problems with Demetre's chain of title Respondents claim are (1) that Demetre's Deed, Respondents assert, refers to the 1920 Plat which does not show the lots and (2) the conveyances by the 1895 Tartus Plat, Respondents assert, did not convey the lots because the lots are marshland. However, the Deed instead refers to the 1965 Plat, which shows the lots, and the 1895 Tartus Plat convey the entire Folly Island to the Folly River, including the subject high marsh.

Fourth, Respondents make no return to Demetre's point that a deed must be interpreted to give effect to each of its parts. Demetre's Deed refers to the 1965 Plat, not the 1920 Plat, because the 1965 Plat is the only plat that can give effect to each of its parts, since only it is recorded in Plat Book "C" at page 158, dated February 1920, and shows the lots the Deed describes.

Even if the Deed referred to the wrong plat or no plat, then effect is given to its metes and bounds description of the lots, which was sufficient to identify them in the 2005 Kennerty Topographic Survey. (R. p. 1071).

e. The Purpose and Effect of a Plat is a Question of the Intention of the Parties

Respondents argue that the plat to which Demetre's Deed refers does not show the lots, that the 1920 Plat by which Demetre's predecessor in interest took title only showed marshland, and the 1895 Tartus Plat only showed marshland.

However, first, Demetre's Deed referred to the 1965 Plat, because it is the only plat recorded in Plat Book "C" at page 158, dated February 1920, which shows the lots described in the Deed.

Second, Demetre's predecessor in interest did not take by reference to the 1920 Plat, but rather by reference to the 1895 Tartus Plat. On page 8 of their Return, Respondents admit that the finding that the 1942 Deed refers to the 1920 Plat is error but argue that it is harmless error.

(Respondents' Return, p. 8) ("This [finding that 1942 Deed refers to the 1920 Plat] is harmless error.") Nonetheless, on page 12 of their Return, Respondents assert that Demetre's predecessor in interest took by reference to the 1920 Plat.

In fact, none of Demetre's predecessors in interest took by reference to the 1920 Plat. Only ***exceptions*** from conveyances in Demetre's chain of title were by reference to the 1920 Plat. (R. p. 593) ("Saving and excepting therefrom the lots on said island described by the plats made in [illegigle]uary and May 1920 by Jefferson Construction Co. and recorded in the R.M.C. Office aforesaid, heretofore conveyed by said Folly Beach Corporation to parties to wit [specific lots being excepted are listed].")

Third, as discussed in Section "2.a" (pp. 5 – 6), the 1895 Plat transfers conveyed the entire Folly Island to the Folly River,[6] which included all "high marsh" above the mean high-water mark,[7] since the State does not claim any property above the mean high-water mark under the public trust doctrine.[8]

Fourth, Respondents make no return to Demetre's point that, "The question as to the purpose and effect of a plat is a question of the intention of the parties to be determined from the whole instrument and circumstances surrounding its execution." Lancaster v. Smith, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). Here, it is obvious that the Deed intended to refer to the 1965 Plat, which is the only plat recorded in Plat Book "C" at page 158, dated February 1920,

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6 State v. Hardee, 259 S.C. 535, 539, 193 S.E.2d 497, 499 (1972) (When property is bounded by a tidal navigable waterway the boundary line is the high water mark).

7 Murrell's Inlet Camp and Marina, Inc., 192 S.E.2d 199, 259 S.C. 404, 408 (1972) (Marsh can be "low marsh" below the mean high-water mark or "high marsh" above it).

8 Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 717 S.E.2d 395 (2011) (The public trust doctrine does not extend above the mean high-water mark).

and which shows the lots. Interpreting the Deed to respond to a plat that does not show the lots would frustrate the intention of the parties.

f. A Clear, Explicit, and Certain Description Will Not be Varied by a Generalized One

Respondents argue that Demetre's Deed does not specify the drawing which it references (Return p. 12). However, the Deed specifies the plat recorded in Plat Book C at page 158 dated February 1920, and it describes a plat on which the lots are shown, and the 1965 Plat is the only plat which meets those specifications, so it is the plat the Deed specifies.

Respondents make no return to Demetre's argument that here the metes and bounds description is clear, explicit, and certain. Even if the Deed cited a plat inadequately identifying the lots, the Deed's description is sufficient to identify them. A clear, explicit, and certain description of land in a deed will not be varied by a generalized or less definite description. 26A C.J.S. Deeds § 255.

g. Where there is Doubt as to Intention, an Interpretation Leading to Injustice Will be Rejected

Respondents argue that, since Demetre took by quitclaim deed, he was on notice of the grantor's doubt regarding the title, and, thus, there is no injustice in his being denied relief because he had such notice. (Return p. 13).

However, the evidence supports that Seabrook believed he had title to the highland. The record indicates that Seabrook sold low marsh only by quitclaim deed, and, while only high marsh is at issue in this case, the subject Deed conveyed both high and low marsh. (R. p. 633).

Seabrook Sr. and Seabrook Jr.'s conveyances of lots in the area for more than a fifty-year period going back to 1947 indicates that they believed they had title. (R. pp. 533 – 34, 596 – 97, 639 – 40, 599 – 604, 633 - 37). Here, there is injustice in denying Demetre relief, because it frustrates the intent of the parties to the transaction and denies Demetre consideration in return for the $23,700 he paid.

Respondents make no direct return to Demetre's point that, "In construing a deed in which doubt arises as to the real intention, an interpretation which plainly leads to justice should be rejected, and one which does not produce unusual or unjust results, adopted." 26A C.J.S. Deeds § 184. Here, the interpretation that Seabrook intended to convey title by the Deed and intended the Deed to refer to the plat which shows the lots – the 1965 Plat – should be adopted, and the interpretation which produces unjust results, that the Deed instead refers to a plat which does not show the lots – the 1920 Plat – should be rejected.

h. A Court will Declare a Deed Void Only After Resorting to Extrinsic Evidence

Respondents argue that the plat referred to in the deed "in two iterations" does not show the lots, so the Master was required to find that the grantor concluded he did not have title and would convey using quitclaim deed.

However, it is irrelevant that the lots are not shown on the 1920 and 1968 plats. They were subdivided after the 1920 Plat, and the 1968 Plat is just a tracing of the 1920 Plat. The lots are shown on the 1965 Plat. (R. p. 1069).

Respondents make no return to Demetre's point that a court will declare a deed void only after relying on extrinsic evidence that what was intended by the instrument remains a matter of conjecture or where a description cannot be made applicable to but one definite tract. 26 C.J.S. Deeds § 51. Here, the Deed description is applicable to but one definite tract shown on the 1965 Plat (p. 1069) and, independently, platted on the 2005 Kennerty Topographic Survey. (R. p. 1071).

i. A Plat Does Not Invalidate Lots where Another Method Could be Used to Locate Them

Respondents argue that the lots could not be located using the 1895, 1920, or 1968 plats because they do not show the lots, or the 1965 "Tracing" because it "is not really a plat at all."

However, it is irrelevant that the lots cannot be located on the 1895, 1920, or 1968 plats. The 1895 and 1920 plats were drawn before the lots were platted, and the 1968 Plat is just a tracing

of the 1920 Plat. The lots can be located on the 1965 Plat, which, as discussed in Section "1.a" (p.2) is a "plat" despite not bearing an engineer's or surveyor's seal or signature, since a plat is just a map that shows various features about a property.

Respondents make no return to Demetre's argument that, even if the Deed cited the wrong plat, the lots could be located using the precise metes and bounds description in the Deed. 26A C.J.S. Deeds § 202 (The construction of a deed will be adopted, if legally permissible, so as to give effect to the whole instrument and every term used.)

j. A Description from which a Surveyor Can Locate the Land is Adequate

Respondents argue, "There was "ample evidence" to support the master's conclusion that the "lots do not exist." (Return p. 14). However, the lots exist and are shown on the 1965 Plat (R. p. 1069).

Even if they had not been shown on that plat, they can be identified by a survey using the metes and bounds description of the lots as shown by the 2005 Kennerty Topographic Survey. (R. p. 1071).

5. Respondents Stipulated to Demetre's Record Title; Record Title is Paper or Legal Title; Record Title Prevails where No Equitable Defenses are Available

Respondents argue, "Appellant's counsel carefully selects portions of the transcript to make it seem as if the Appellant's title was somehow validated by the Stipulation . . . Appellant improperly tries to bootstrap a Stipulation of record title for all of the parties' property discussed in the original hearing in this matter, into good title for Appellant . . .")

However, first, Demetre cited all of the relevant portions of the transcript, and, although Respondents now dispute the meaning of the stipulation, it is undisputed that Respondents stipulated to Demetre's "record title."

Second, Demetre does not argue that Respondents' stipulation alone is good title, but rather that Respondents' stipulation combined with the Master's ruling against each of Respondents'

affirmative defenses and this Court's clarification that neither the State nor Respondents have title to the subject property, equates to Demetre's good title.

Respondents make no return to Demetre's citation to case law that "record title" means a chain of paper title or "legal title," and legal title must prevail where no equitable defense is available. See Lynch v. Lynch, 115 S.E.2d 301, 236 S.C. 612 (1960) ("The respondent had, by the deeds in her chain of title, the Will of her husband, and the plats, shown paper or record title in herself to a life estate in the Steele lands, of which the disputed area was part."); Knight v. Hilton, 79 S.E.2d 871, 873, 224 S.C. 452, 456 (1954) ("It is clear that the legal or record title to the 50 acre tract is vested in the heir-at-law of T.W. Knight and Cecil G. Knight. Possession is presumed to follow such title and burden is on the respondent to prove all the facts necessary to establish adverse possession.") "In the context of ownership of land, 'record title' is generally used to describe ownership of a particular parcel of real property by the person in whose name title appears in the official deed records, in contrast to one who claims ownership through unrecorded documents." High Knob Associates v. Douglas, 457 S.E.2d 349 (Va. 1995). In an ejectment action the legal title must prevail, when no equitable defense is available. 28A C.J.S. Ejectment § 10.

6. The Seabrooks' Conveyances Over Time Showed Their Belief of Ownership

Respondents argue, "The Master found that the lots in question do not exist . . . Mr. Seabrook was not willing to and did not give the ordinary warranties that are contained in a general warranty deed because Mr. Seabrook used a quitclaim deed . . ."

However, the Master's finding that the lots do not exist was based on two fundamental errors. First, the Master mistakenly found that the 1942 Deed referenced the 1920 Plat which did not show the lots rather than the 1895 Plat conveying the whole Folly Island to the Folly River, which includes the area of the lots. Second, the Master mistakenly found that Demetre's Deed

referred to the 1920 Plat which did not show the lots rather than the 1965 Plat which did show the lots.

Respondents make no return to Demetre's point that the Seabrooks conveyed lots on the second block of Indian Avenue East over more than a fifty-year period. Also, the Record in this case shows that Seabrook Sr.'s devise to Seabrook Jr. included over six hundred (300) acres of high marsh. (R. p. 622) ("Acreage: 348.59 High @ $200.00/ acre").

The platting of the 200 block of Indian Avenue East ("200 Block") over time shows that the Seabrooks believed they owned that area. The original 1920 Plat locates and defines the 200 Block starting at Second Street East as a partially a developed roadway and partially an undeveloped roadway shown by dashed lines. On the 1895 Tartus Plat, 200 Block is located within Folly Island and within its boundary of the Folly River. The 200 Block is part of the over six hundred (300) acres of high marsh devised from Seabrook Sr. to Seabrook Jr. (R. p. 622).

The 200 Block is high marsh. At trial, Beckmann testified that the Respondents' dock permit applications, which were drafted by Crowley, a professional engineer, showed over four hundred (400) feet of highland between their property lines and the mean-high-water mark of the Folly River.

At trial, Beckmann testified that, over the years, there has been erosion of the back of Folly Island bording the Folly River. (R. p. 911, lines 19 – 23) ("It [the mean high-water mark] may have changed a foot or so, I don't really know . . . We're talking 18 years. We have more water in the ocean now. We have – erosion has taken place in the front of the island, and the back of the island . . ."). The highland between Respondents' lots and the Folly River where the subject lots are located is shown on the 2005 Kennerty Topographic Survey (R. p. 1071).

There is no evidence in the record supporting a finding that Seabrook doubted he had title to the lots. The only testimony in the record on the issue is that Seabrook believed he owned the property. (R. p. 227) ("[Demetre:] A. . . . Mr. Seabrook told me that he owned that property - - ").

The only evidence in the record regarding why Seabrook conveyed used a quitclaim deed is that Seabrook only sold his low marsh property by quitclaim deed. (R. p. 227). While in this case Demetre seeks to quiet title only to the property above the mean high-water mark, the Deed actually also conveys low marsh below the mean-high water mark. (R. p. 633 – 34).

The fact that Demetre paid Seabrook the substantial sum of $23,700 for the lots undermines any argument that Demetre doubted that Seabrook owned the lots. This amount far exceeds any amount of consideration needed to sustain the transaction. When deciding whether there has been a failure of consideration, the South Carolina Supreme Court has held that "the slightest consideration is sufficient to support the most onerous obligation...." First National Bank of South Carolina v. Wade, 245 S.C. 426, 431, 141 S.E.2d 102, 104 (1965).

Seabrook Sr. and Seabrook Jr.'s belief that they owned the area is evidenced by their conveyances of lots 201 through 210 on Indian Avenue East over more than a fifty-year period dating back to 1948.[9]

7. The Opinion Should Clarify Demetre's Ownership of the Roadway

Respondent first argues, "This Exception was not listed in Appellant's Statement of Issues on Appeal." However, the issue of the roadway is listed in the Statement of Issues on Appeal. (Final Brief of Appellant, p. 7, Issue 16). Also, Demetre requests clarification of this Court's

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[9] In 1948, the Seabrooks began selling lots off the 200 Block. (R. pp. 533 – 34). In 1948, Seabrook Sr. sold lot 201 Indian Avenue East. (R. p. 533 – 34). In 1949, he sold lot 202 Indian Avenue East. (R. p. 639 – 40). As the 1965 Plat had not yet been recorded, the deeds to these lots identified them to be known by their respective lot numbers "when the property in the two hundred (200) block in Indian Avenue East is plotted and recorded." (R. p. 533 – 34, 596 – 97, 630 – 34). Later Demetre acquired these lots from their respective owners.

In 2002, Seabrook Jr. sold Demetre lots 206, 207, and 208 and the undeveloped roadway bounding riverward on the Huron Avenue East lots. (R. p. 599 – 604). In 2004, Seabrook Jr. sold Demetre the subject lots 209 and 210 and the undeveloped roadways riverward of Respondents' lots. (R. p. 633 – 37).

Opinion regarding his ownership of the roadway and this Court's Opinion was not issued until after the parties' briefs had been submitted.

Second, Respondent argues, "Furthermore, this matter was settled in 'the Road Case' in *Demetre I*." However, actually, the Road Case in Demetre I dealt with the road only through the northwest corner of lot 205 Huron Avenue East. (Opinion, p. 4) ("In *Demetre I*, this court separated the appeal into 'The Road Case' and 'The Dock Case . . . The court noted the 1920 plat, which was referenced in Demetre's deeds, showed East Indian Avenue extending from lot 201 to the northwest corner of lot 205.") In fact, the dock case was remanded for a determination of all the highland riverward of Respondents' lots, which includes the fifty-foot undeveloped roadway. (R. p. 877, *Demetre I* Opinion, Unpublished Opinion No. 2009-CP-029, Substituted and Refiled April 21, 2009) ("Demetre sought a declaration that he owns all the property between the Crowelys' and Beckmanns' lots and the mean high water mark, and he sought to quiet any defects in his title to the land . . . Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and to quiet title to the portions of the lots above the mean high water mark, we remand this case to the master for a determination of this issue.")

Third, Respondent argues, "For all the reasons stated throughout this response this argument is without merit. Because the road, to the extent Appellant claims it does, not exist on the 1920 plat and is not otherwise described in the quitclaim deed, then Appellant is not entitled to the relief requested."

However, the undeveloped roadway is actually shown on the 1920 Plat as a dotted line between Respondents' lots and the Folly River (R. p. 1068). It is also shown on the 1965 Plat (R. p. 1069) and the 2005 Kennerty Topographic Survey (R. p. 1071). Further, the undeveloped roadway is described in Demetre's Deed (R. p. 634) ("All that lot of land that is a portion of a roadway named Indian Avenue, East extending and beginning adjacent and bordering on Lot Number 209 and Lot Number 210 Indian Avenue, East . . .").

8. Reply to Respondent's Conclusion

Respondents argue, "Appellant tries to obfuscate this Appeal with the following:

(i) "a reference to a scrivener's error in this Court's Opinion . . .;" however, the error is harmful, since the errors is that the 1942 Deed was based on the 1920 Plat, and both the Master and the Opinion cited the fact that the lots are not shown on the 1920 Plat in denying Demetre relief, when, in fact, none of Demetre's conveyances are based on the 1920 Plat, and, instead only exceptions to the conveyances in his chain of title are by reference to the 1920 Plat.

(ii) "by twisting logic to the breaking point in trying to describe a 1965 Tracing of a 1920 Plat redraw as the 1920 plat itself . . .;" however, the 1965 Plat is not a "tracing," because it adds lots not shown on the 1920 Plat, and the 1968 Plat is the tracing of the 1920 Plat. The 1965 Plat is not the 1920 Plat. But the Deed references the 1965 Plat because it is the only plat recorded in Plat Book "C" at page 158, dated February 1920, and which shows the lots the Deed describes.

(iii) "by using scare tactics to try to put into question all the title to property on Folly Beach, when the title to all the *highland property* on Folly Beach is not threatened by this Court's Opinion . . .;" however, the Opinion finds that Demetre cannot quiet his title not because they are *low marsh*, but simply because they were not platted on the 1895 Plat, but no lots on Folly Island were platting 1895. There is no evidence that Demetre's lots are below the mean-high-water mark, and the only evidence is that they are above the mean-high-water mark. (2005 Kennerty Topographic Survey, p. 1071). If Demetre cannot quiet title today because his lots were not subdivided in 1895, then no lot owner on Folly Island has clear title.

(iv) "by trying to pick apart the deed from Seabrook to Appellant in a vacuum, in order to make it convey title to Appellant, when all of the extrinsic evidence points to the opposite direction . . .." However, even if the Deed mistakenly referred to the 1920 Plat, its metes and bounds description would locate the lots.

(v) "in rehashing the stipulation argument and delving into the mind of the grantor . . ; "however, Respondents make no return to Demetre's citation to authority that record title is paper or legal title and that record or legal title prevails where no equitable defense is available.

(vi) "by bringing up for the first time a claim to the road that was clearly settled in *Demetre I*;" however, only the road to the northwest corner of lot 205 Huron Avenue East was settled in *Demetre I*, and *Demetre I* remanded the Dock Case to the Master for a determination of ownership to the highland between Respondents' lots and the Folly River, which includes a fifty-foot strip of undeveloped roadway.

CONCLUSION

For the foregoing reasons, Appellant's Petition for Rehearing should be granted.

RESPECTFULLY SUBMITTED,

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By: Cain Denny

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October 27, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

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

v.

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

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PROOF OF SERVICE

I certify that I have served a copy of Appellant's Reply on Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson by depositing a copy of it in the United States Mail, postage prepaid, on October 27, 2014, addressed to their attorneys of record, Jefferson D. Griffith, III, Esquire, and Richard L. Witt, Esquire, Austin & Rogers, P.A., Post Office Box 11716, Columbia, South Carolina 29211.

October 27, 2014

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October 27, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The Milton P. Demetre Family Limited Partnership vs.
Harry Beckmann, III, et al
Appellate Case No. 2012-212136
Charleston County Court of Common Pleas Case No. 2005-CP-10-4101

Dear Ms. Kitchings:

Enclosed please find:

- the original and seven (7) copies of Appellant's Reply; and
- the original and one (1) copy of the Proof of Service.

Please return stamped copies in the self-addressed envelope provided.

Best wishes.

Very truly yours,

Cain Denny

Cain Denny

c.c. Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Mr. Milton P. Demetre

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