THE STATE OF SOUTH CAROLINA
In the Supreme Court

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 .....Petitioner

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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PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 26, 2014.

QUESTIONS PRESENTED

1. IS THE COURT OF APPEALS OPINION CORRECT IN FINDING THAT THERE IS LAND ON FOLLY ISLAND NO ONE, NOT EVEN THE STATE, OWNS?

2. DOES THE COURT OF APPEALS OPINION CONFLICT WITH PRIOR DECISIONS OF SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT EFFECT MUST BE GIVEN TO EVERY PART OF A DEED IF IT CAN BE DONE CONSISTENTLY WITH THE LAW?

3. DOES THE COURT OF APPEALS OPINION CONFLICT WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT A LAND DESCRIPTION IN A DEED IS SUFFICIENT IF IT IS ADEQUATE TO LOCATE THE LAND?

4. WHERE THE RESPONDENTS STIPULATED TO PETITIONER'S "RECORD TITLE," AND THEIR CLAIMS OF ADVERSE POSSESSION AND AFFIRMATIVE DEFENSES TO PETITIONER'S TITLE WERE RULED AGAINST, AND RESPONDENTS DID NOT APPEAL THOSE RULINGS, IS THE COURT OF APPEALS CORRECT THAT UNDER SOUTH CAROLINA LAW PETITIONER STILL DOES NOT HAVE GOOD TITLE?

5. DOES THE COURT OF APPEALS OPINION CONFLICT WITH ITS OWN FINDING THAT SEABROOK JR. HAD TITLE TO THE SUBJECT LOTS TO CONVEY TO PETITIONER AND DOES IT CONFLICT WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT A QUITCLAIM DEED IS A LAWFUL MEANS TO CONVEY TITLE AND WITH CASES WHICH HOLD THAT THE SLIGHTEST CONSIDERATION IS SUFFICIENT TO CONVEY TITLE?

STATEMENT OF THE CASE

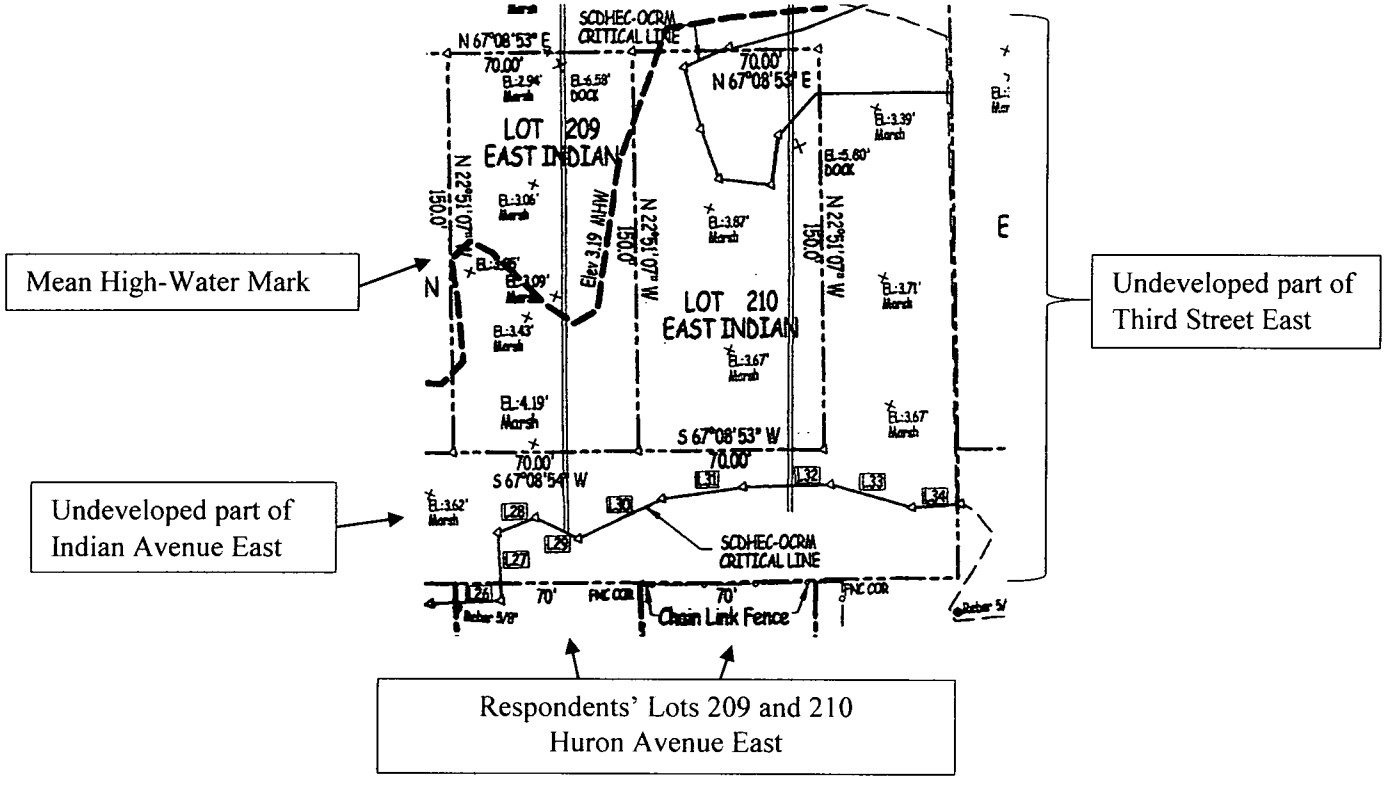
This is an action to quiet title tried before the Charleston County Master-in-Equity ("Master"). Petitioner ("Demetre") seeks to quiet title on the Island of Folly Beach, South Carolina to two lots and parts of undeveloped roadways. The Master denied relief to Demetre. Demetre appealed, and the Court of Appeals affirmed in part and reversed and remanded in part. The Master's Order on Remand again denied relief to Demetre. Demetre appealed, and the Court of Appeals affirmed in part and vacated in part. Demetre petitioned for rehearing, and the Court of Appeals granted Demetre's Petition for Rehearing, deleted a finding, but denied Demetre relief.

ARGUMENTS

1. THE COURT OF APPEALS OPINION IS INCORRECT THAT THERE IS LAND ON FOLLY ISLAND THAT NO ONE, NOT EVEN THE STATE, OWNS.

Edward Seabrook Jr. conveyed two lots and parts of undeveloped roadways to Demetre on the Island of Folly Beach, South Carolina ("Land"). The Land is lots 209 and 210 Indian Avenue East ("Lots"), a fifty-foot wide undeveloped part of Indian Avenue East bordering the two lots, and a fifty-food wide undeveloped part of Third Street East intersecting the undeveloped part of

Indian Avenue East and also bordering the eastern side of lot 210 Indian Avenue East. In this action, Demetre seeks to quiet title only to the land above the mean high-water mark. The Land is shown on the Kennerty Topographic Survey (Kennerty Topographic Survey, R. Oversized Document p. 1071) as follows:



The Land was encroached upon by docks owned by the Respondents ("Encroachers"). The Court of Appeals Opinion No. 5263 filed August 20, 2014, withdrawn, substituted and refiled November 26, 2014 ("Opinion") finds that neither Demetre, the Encroachers, the City of Folly Beach, nor the State of South Carolina owns this Folly Island Land.[1]

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[1] (Opinion, App. p. 1089) ("We affirm the master's order regarding . . . Demetre's failure to quiet title to lots 209 and 210.); (Opinion App. p. 1085) ("Demetre argues the master erred in the following . . . (7) finding the State owns the undeveloped portion of the roadway riverward of Respondents' lots when *Demetre I* affirmed the Town's ownership to the end of the northeast corner of Lot 205. As to all findings regarding the necessity of the State as a party, the State or Respondents' interests in the subject property . . . we agree and vacate those portions of the order on appeal.")

The Opinion further finds that Seabrook Jr., except for certain previously conveyed streets, avenues, lanes, and lots not at issue here ("Previous Conveyances"), inherited the entire Folly Island. However, as discussed in Section "5" below, the Opinion, despite deleting the basis for this finding, also makes the contradictory finding that there is evidence to support Seabrook Jr.'s belief that he did not own the subject Folly Island Land. Thus, the Opinion finds that neither Demetre, the Encroahers, the City of Folly Beach, nor the State owns the Land, and that, despite inheriting the Land, Seabrook Jr. believed he did not own it. Either the Opinion is correct that the Land was *terra nullius* – land belonging to no one – or, as Demetre asserts herein, the Opinion is incorrect.

2. THE COURT OF APPEALS OPINION CONFLICTS WITH PRIOR DECISIONS OF SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT EFFECT MUST BE GIVEN TO EVERY PART OF A DEED IF IT CAN BE DONE CONSISTENTLY WITH THE LAW.

The Deed describes the subject lots ("Lots") by measurements using distance and direction and states that the Lots will appear on a certain plat dated February 1920 and recorded in Plat Book C at page 158. At that book and page, there are three plats of the same area. However, only two of the three are dated February 1920, and only one of those two shows the Lots. Thus, as detailed below, only one of the three plats gives effect to each part of the deed specifying a plat (1) recorded in Plat Book C at page 158, (2) dated February 1920, and (3) showing the Lots the deed describes.

First, the Deed describes the Lots by measurements using distance and direction and states that they will appear on a certain plat ("Plat"):

> Each of ***the said lots*** measuring and containing on the North and South lines seventy (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). (Deed, R. p. 633).

Second, the Deed states that the Plat is recorded in Plat Book C at page 158:

> ***All those lots*** of land situate, lying and being on Folly Island, in the County of Charleston, State of South Carolina, known as Lot Numbers 209 and 210 Indian Avenue, East on a plat made by Jefferson Construction Company dated February 1920 and ***recorded*** in the RMC Office for Charleston County ***in Plat Book C at page 158***. (Emphasis added). (Deed, R. p. 633).

As found by the Court of Appeals Opinion, three plats of the same area are recorded in Plat Book C at page 158, referred to in the record as the 1920 Plat, the 1965 Plat, and the 1968 Plat:

> The 1965 and 1968 plats were also recorded and share the same book and page number as the 1920 plat. (Court of Appeals Opinion Substituted and Refiled November 26, 2014, App. p. 1076).

Third, the Deed also states that the Plat is dated February 1920:

> All those lots of land situate, lying and being on Folly Island, in the County of Charleston, State of South Carolina, known as Lot Numbers 209 and 210 Indian Avenue, East ***on a plat*** made by Jefferson Construction Company ***dated February 1920*** and recorded in the RMC Office for Charleston County in Plat Book C at page 158. (Emphasis added). (Deed, R. p. 633).

Of the three plats recorded in Plat Book C at page 158, only two are dated February 1920, the plats referred to in the record as the 1920 Plat and the 1965 Plat. Both bear the same language dating those plats February 1920. On the 1920 Plat, this language is handwritten but illegible and appears once at the top of that plat. (1920 Plat, Oversized Document R. p. 1068). On the 1965 Plat, the language is typed and appears at two places at the top of the plat. (1965 Plat, Oversized Document R. p. 1069). The 1968 Plat dated December 1968. (1968 Plat, Oversized Document R. p. 1070). The "February 1920" date is stated as follows on both the 1920 Plat and the 1965 Plat:

> BETWEEN THE CENTER LINE OF STREETS 760 FT.
> BETWEEN THE CENTER LINE OF AVENUES 200 FT.
> STREETS AND AVENUES 50 FT. WIDE
> SCALE 1" = 400' **CHAS. S.C. FEB. 1920**
>
> (Emphasis added). (1920 Plat, Oversized Document R. p. 1068; 1965 Plat, Oversized Document R. 1069).

The Deed describes the Lots by measurements and states that they will appear on the Plat:

> Each of ***the said lots*** measuring and containing on the North and South lines seventy (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). (Deed, R. p. 633).

Of the three plats recorded in Plat Book C at page 158, only the 1965 Plat shows the Lots. (1965 Plat, Oversized Document R. p. 1069). The 1920 Plat does not show the Lots (1920 Plat, Oversized Document, R. p. 1068), nor does the 1968 Plat show the Lots. (1968 Plat, Oversized Document, R. p. 1070).

Thus, only the 1965 Plat gives effect to each part of the Deed:

	1920 Plat	1965 Plat	1968 Plat
At Plat Book C, page 158	√	√	√
Dated February 1920	√	√	**X**
Shows the lots described	**X**	√	**X**

Under well-established South Carolina Supreme Court case law, in determining the grantor's intent, the deed must be construed as a whole and effect given to each part of a deed if it can be done consistently with law. K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009); Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582-83 (2009); Gardner v. Mazingo, 293 S.C. 23, 358 S.E.2d 390, 391-92 (1987); Wayburn v. Smith, 239 S.E.2d 890, 270 S.C. 38 (1977); 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).

Only the 1965 Plat, which shows the subject lots, gives effect to each part of the deed's description of a plat (1) recorded in Plat Book C at page 158, (2) dated February 1920, and (3) which shows the lots the deed describes.

However, the Court of Appeals found that the Deed refers to the 1920 Plat which does ***not*** show the lots, that the 1965 Plat showing the lots is not in Demetre's chain of title, and that therefore Demetre failed to prove title:

> 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. Demetre acknowledged at the remand hearing that the lots did not exist as lots on the 1920 plat. ***Demetre relies on the 2005 Kennerty plat and the 1965 plat, which are not in his chain of title*** and were not in existence at the time the property was last deeded prior to the quitclaim deed to Demetre. (Emphasis added). (Court of Appeals November 26, 2014 Opinion, App. p. 1089).

This finding that the 1965 Plat, the only plat which gives effect to each part of Demetre's Deed, is not in Demetre's chain of title is the primary basis on which the Opinion denies Demetre relief, and it conflicts with above-cited well-settled South Carolina Supreme Court case law.

3. THE COURT OF APPEALS OPINION CONFLICTS WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT A LAND DESCRIPTION IN A DEED IS SUFFICIENT IF IT IS ADEQUATE TO LOCATE THE LAND.

As discussed above, despite the fact that the Deed describes the subject Lots and states that they will appear on the plat to which the Deed refers, the Court of Appeals Opinion found that the Deed instead refers to the plat which does not show the Lots.

Further, the Court of Appeals disregarded the fact that, regardless of whether the Land is shown on the plat, the language of the Deed itself describing the Land by measurements using distance and direction is adequate to locate the Land.

The Deed describes the Land by measurements using distance and direction, stating:

> Each of said lots measuring and containing the North and South lines seventy (70) feet and on the East and West lines One Hundred and Fifty (150) feet which will appear by reference to said plat.
>
> Butting and bounding to the North on marshland of Edward M. Seabrook; Lot Number 210 to the East on Third Street East and to the West on Lot Number 209 Indian Avenue, East; Lot Number 209 to the East on Lot Number 210 Indian Avenue, East and to the West on Lot 208 Indian Avenue, East; and each said lot to the South on Indian Avenue, East.
>
> A portion of TMS#: 328-10-00-132.
>
> * * * *
>
> Also
>
> All that lot of land that is a portion of a roadway named Third Street, East, extending from and being adjacent and bordering on Indian Avenue, East and on Lot Number 210, Indian Avenue East and beginning at the Northeastern corner point of Lot Number 210 Huron Avenue, East and ending at the Northeastern corner point of Lot 210 Indian Avenue, East. Said roadway measures fifty (50) feet wide and two hundred (200) feet long, more or less.
>
> Also
>
> All that lot of land that is a portion of a roadway named Indian Avenue, East extending from and being adjacent and bordering on Lot Number 209 and Lot Number 210 Indian Avenue, East and beginning at the Southeastern corner point of Lot Number 208 Indian Avenue, East, and ending at the Southeastern corner point of Lot Number 210 Indian Avenue, East. Said roadway measures fifty (50) feet wide and one hundred forty (140) feet long, more or less.
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> (Deed, R. p. 633).

Using these measurements, a surveyor was able to precisely locate the Land, resulting in the Kennerty Topographic Survey. (Kennerty Topographic Survey, Oversized Document R. p. 1071).[2]

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[2] Independently, after Seabrook Jr.'s sale of the Lots to Demetre, Charleston County was able to locate the Lots to move them from former tax map number 328-10-00-132 to Demetre's tax map number 328-10-00-244.

A land description is sufficient if it would enable a person of ordinary prudence acting in good faith and making inquiries suggested by the description to identify land. Brownlee v. Miller, 37 S.E.2d 658, 208 S.C. 252 (1946) (Since that 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); McNair v. Johnson, 78 S.E.2d 892, 95 S.C. 176 (1913).

As discussed above, the Deed referenced the 1965 Plat, but even if the Deed had mistakenly referenced the 1920 Plat of the area which was drawn before the Lots were platted, since the language in the deed itself is sufficient to locate the Lots, the deed takes effect. McNair v. Johnson, 78 S.E.2d 892, 95 S.C. 176 (1913); Norwood v. Byrd, 1 Rich. 135, 42 Am. Dec. 406 (1845); 26A C.J.S. Deeds § 183 (A deed will not be construed to render it a nullity as to any of the parties thereto, if, by any reasonable construction, such result can be avoided.)

A plat controls the description of lots only where the plat is more precise than the words of the deed. See Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979) ("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").

Further, even if the Deed had mistakenly referred to the 1920 plat, and, although in this case the Land was actually located by a surveyor using the Deed's land description, even if the language of the Deed had been less than adequate to locate the Lots, since the 1965 Plat showing the Lots, which was in evidence at trial, was in existence at the time of their subject conveyance in 2004, the 1965 Plat would be admissible extrinsic evidence to locate the lots. Gardner v. Mazingo, 358 S.E.2d 390, 293 S.C. 23 (1987); Smith v. Durant, 286 S.C. 80, 113 S.E.2d 349 (1960) (When intention is not expressed accurately in the deed, evidence *alliunde* may be admitted

to supply it. The instrument is not thereby varied or contradicted but is explained or corrected); 26 A C.J.S. Deeds § 51 (A court will declare a deed void for uncertainty only where, after resorting to oral proof or after relying on other extrinsic proof or evidence, that which was intended by the instrument remains a mere matter of conjecture, or where the description cannot be made applicable but to one definite tract).

4. WHERE, AS HERE, THE RESPONDENTS STIPULATED TO PETITIONER'S "RECORD TITLE," AND THE RESPONDENTS' CLAIMS OF ADVERSE POSSESSION AND AFFIRMATIVE DEFENSES TO DEMETRE'S TITLE WERE RULED AGAINST, AND THE RESPONDENTS DID NOT APPEAL THOSE RULINGS, IS THE COURT OF APPEALS IS INCORRECT THAT UNDER SOUTH CAROLINA LAW PETITIONER STILL DOES NOT HAVE GOOD TITLE.

At trial, regarding the subject Lots, the Encroachers stipulated without qualification to Demetre's "record title." (R. p. 142) ("It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership has been stipulated to.")

Encroachers asserted adverse possession of the Lots and various affirmative defenses to Demetre's good title to the Land. However, Encroachers were ruled against on adverse possession and each of their affirmative defenses. (Opinion. App. p. 1084) ("The master ruled against Respondents on [their] affirmative defenses.")

When counsel enter into a stipulation, the court will not go beyond such stipulation to determine the facts of the case to be decided. Belue v. Fetner, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968). The parties stipulated to Demetre's "record title" to the Land.

Against Demetre's record title, Encroachers have shown no evidence of superior title. They do not claim a deed to the Lots, and they were ruled against on adverse possession.

"Record title" is "paper title" or "title of record" and is, "A title as it appears in the public records after the deed is properly recorded." Blacks Law Dictionary, Eighth Edition (2004), p. 1523. Record title means a chain of paper title. 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" (emphasis added).) Record title also means "legal title." Knight v. Hilton, 79 S.E.2d 871, 873, 224 S.C. 452, 456 (1954) ("It is clear that ***legal or record title*** to the 50 acre tract is vested in the heirs-at-law of T.W. Knight and Cecil G. Knight. Possession is presumed to follow such title and the burden is on the respondent to prove all the facts necessary to establish adverse possession" (emphasis added).)

"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 on 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), citing Black's Law Dictionary, 1274 (6th Ed. 1990).

In the present case, Encroachers stipulated to Demetre's record title to the lots, claimed no deed to the lots themselves, and were ruled against on their claims of adverse possession and their other affirmative defenses and did not appeal those rulings. Where record or legal title is established, the burden is on the party claiming adverse possession. Knight v. Hilton, 79 S.E.2d 871, 873, 224 S.C. 452, 456 (1954) (Possession is presumed to follow such title [legal or record title] and the burden is on the respondent to prove all the facts necessary to establish adverse possession."); 28A C.J.S. Ejectment § 10. (In an ejectment the legal title must prevail, when no equitable defense is available.) Thus, where, as here, Encroachers stipulated to Demetre's record title and failed to prove adverse possession or any other affirmative defense, Demetre's record title prevails

5. THE COURT OF APPEALS OPINION CONFLICTS WITH ITS OWN FINDING THAT SEABROOK JR. HAD TITLE TO THE SUBJECT LOTS TO CONVEY TO PETITIONER AND IT CONFLICTS WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT A QUITCLAIM DEED IS A LAWFUL MEANS TO CONVEY TITLE AND WITH CASES WHICH HOLD THAT THE SLIGHTEST CONSIDERATION IS SUFFICIENT TO CONVEY TITLE.

Seabrook Jr. died shortly after conveying the subject Land to Demetre, so his testimony was not available in this case. The Court of Appeals Opinion affirms the Master-in-Equity's unsupported finding that Demetre's predecessor, Seabrook Jr., believed he did not have title. However, despite retaining this finding in its Substituted and Refiled November 26, 2014 Opinion, the Court of Appeals, in granting Demetre's Petition for Rehearing, actually removed the basis for this finding. The Opinion discusses this finding by the Master as follows:

> The master found the 1942 deed to Seabrook, Sr., did not include the lots, stating, "[t]his fact was apparently known to [Seabrook, Jr.,] who determined he would only convey the lots in question to [Demetre] by Quitclaim deed in 2004," which the master recognized "is not a representation of good and valid title . . ." (Court of Appeals November 26, 2014 Opinion, App. p. 1081).

However, this finding by the Master was based on the Master's erroneous finding that the 1942 Deed, as well as an earlier link in Seabrook Jr.'s chain of title, referred to the 1920 Plat on which the Road Case was based, which does not show the subject Lots, and is discussed in the Master's Order as follows:[3]

> When Charleston County Master-in-Equity Wm. McG. Morrison conveyed the property to Edward M. Seabrook (Sr.) in the Master's Deed of January 5, 1943, he conveyed only what existed at the time – this included Indian Avenue as found in the "Road Case" – but could not have included the lots (209 and 210 Indian Avenue) as they did not exist at that time. (Master's Order on Remand, p. 3).

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[3] The same deed, which is dated 1942 but was recorded in 1943, in various documents in this case is referred to as both the 1942 Deed and the 1943 Deed.

However, the 1942 Deed does not refer to the 1920 Plat, and this finding was deleted from the Court of Appeals Substituted and Refiled November 26, 2014 by its November 26, 2014 Order, stating in pertinent part:

> The sole change in the substituted opinion is the deletion of the sentence, "The 1942 Deed also refers to the 1920 plat." (Court of Appeals November 26, 2014 Order, App. p. 1091).

In fact, rather than the 1920 Deed, the Court of Appeals November 26, 2014 Opinion finds the 1942 Deed referred to the 1895 Tartus Plat and conveyed the entire Folly Island to Edward Seabrook Sr. except for certain Prior Conveyances not at issue here:

> Between approximately 1921 and 1926, the Folly Beach Improvement Company (FBIC) acquired ***the entire island*** of Folly Beach and mortgaged its ***complete interest*** to Citizens and Southern National Bank of Savannah (C & S Bank). In 1937, the FBIC sold the streets, avenues, and/or lanes upon Folly Island to the Board of Township Commission of Folly Island for the use of the public.
> In 1942, C & S Bank foreclosed the mortgage, and Edward Seabrook, Sr., purchased the land at public auction. ***The deed conveyed the island to Seabrook*** "[s]aving and excepting therefrom such lots and portions of land as have from time to time been conveyed to sundry parties by [FBIC] by deeds recorded in the RMC Office for Charleston County." The 1942 deed also states the property conveyed is "bounded . . . on the West by the Channel of the Folly River and Folly Creek . . . as delineated by the red line" of the 1895 plat (the Tartus survey). Seabrook, Sr., and his wife, Fannie, conveyed Seabrook's property to their son, Edward Seabrook, Jr., through the wills of Seabrook, Jr., who died in 1956, and of Fannie, who died in 1960. (Emphasis added).
>
> (Court of Appeals Substituted and Refiled November 26, 2014 Opinion, App. p. 1076).

Thus, the 1942 Deed was not based on the 1920 Plat, which does not show the subject Lots, but rather was based on the 1895 Taruts plat, which conveyed the entire island to the Folly River.

Hence, Court of Appeals Opinion, while affirming the Master's finding that Seabrook, Jr. believed he did not own the property, actually removed the Master's basis for that finding.[4]

The Opinion also superseded the Master's other erroneous finding that the Folly Beach Corporation took title to the property by reference to the 1920 Plat not showing the subject Lots, by finding that its successor in interest, the Folly Beach Improvement Corporation, acquired the entire island. (Court of Appeals November 26, 2014 Opinion, App. p. 1076) ("Between approximately 1921 and 1926, the Folly Beach Improvement Company (FBIC) acquired the entire island of Folly Beach and mortgaged its complete interest to the Citizens and Southern National Bank of Savannah (C & S Bank)").[5]

Thus, the Court of Appeals Opinion deleted or superseded the Master's findings that Seabrook Jr.'s chain of title was conveyed by reference to the 1920 Plat not showing the lots.

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[4] In fact, Seabrook Sr. and Seabrook Jr.'s property conveyances in the subject area over more than a sixty-year period show they believed they owned the subject property. As far back as 1948, the Seabrooks began selling lots off the 200 block of Indian Avenue East. (R. p. 334-34). In 1949, Seabrook Sr. sold lot 201 Indian Avenue East. (R. p. 533 – 34). In 1949, he sold lot 202 Indian Avenue East. (R. pp. 596-97). In 1950, he sold lots 203, 204, and 205 Indian Avenue East. (R. pp. 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 of Indian Avenue East is plotted and recorded." (R. pp. 533 - 34, 596 – 97, 630 – 40). Later Demetre acquired these lots from their respective owners.

In 2002, Edward Seabrook, Jr. sold Demetre lots 206, 207, and 208 and the undeveloped roadway bounding riverward on Huron Avenue East lots. (R. pp. 599 – 604). In 2004, Seabrook Jr. sold Demetre the subject lots 209 and 210 and the undeveloped roadways riverward of Encroachers' lots. (R. p. 633 – 37). Thus, the Seabrooks' belief of ownership is shown by the fact that they sold lots off the 200 block of Indian Avenue East over more than a sixty-year period.

Further, Seabrook Sr.'s devise to Seabrook Jr. included over six-hundred acres of marshland. (R. p. 622).

[5] The only reference in Seabrook Jr.'s chain of title to the 1920 Plat is regarding exceptions from conveyances. (R. p. 593) ("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 Folly Beach Corporation to parties to wit [specific lots being excepted are listed].") Since the subject Lots are not shown on the 1920 Plat, they could not have been excepted.

However, the Opinion failed to remove the finding that this gave rise to Seabrook Jr.'s belief that he did not own the Lots and his consequent use of a quitclaim deed to convey the Lots to Demetre.

The following is the Master's erroneous finding that Seabrook Jr. conveyed the Land to Demetre with a quitclaim deed because Seabrook Jr.'s chain of title was based on the 1920 Plat not showing the Lots:[6]

> Consequently, this court finds that these purported lots do not exist as legal lots today. This fact was apparently known to Ed Seabrook (Jr.) who determined he would only convey the lots in question to the Plaintiff by Quitclaim deed in 2004. (Master's Order on Remand, p. 3).

Despite, as discussed above, deleting or superseding the support for this finding, the Court of Appeals Opinion affirmed the finding itself, stating:

> Furthermore, as to the master's finding that Seabrook, Jr. believed that he did not have title, we find evidence in the record to support the master's finding. (Court of Appeals November 26, 2014 Opinion, App. p. 1089).

Thus, the Opinion deleted or superseded the Master's erroneous findings that Seabrook Jr.'s title to Folly Island was by reference to the 1920 Plat and therefore did not include the Lots.[7] The Opinion instead found that Seabrook, Jr., except for certain Prior Conveyances not at issue here, inherited the entire Folly Island. However, the Opinion nonetheless retained the unsupported

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[6] A quitclaim deed conveys no warranty of title. The only evidence in the record why Seabrook Jr. used a quitclaim deed in the subject transfer to Demetre is that, in addition to the highland property at issue in this case, the Deed also conveyed low marshland not at issue here, and Seabrook conveyed title to low marshland only by quitclaim deed. (R. p. 227).

[7] The Opinion vacated certain other patently erroneous findings by the Master: (1) that under the public trust doctrine the State claims property above the mean high-water mark, (2) that "marshland" can mean only marsh below the mean-high-water mark, and (3) that the 1965 Plat, which was used in hundreds of transactions, was "incorrect" by adding the subject lots. (Opinion, App. p. 1085).

finding that Seabrook Jr. used a quitclaim deed to convey the Land to Demetre because he believed he did not own the Land.

However, since the Opinion eliminated the Master's erroneous finding, the only evidence the Opinion cites for its finding that Seabrook Jr. did not believe he owned the Land is that (1) Seabrook Jr. used a quitclaim deed to convey the Land and (2) the amount of consideration Demetre paid for the Land was $23,700. However, under South Carolina Supreme Court decisions, this evidence is insufficient to support a finding that Seabrook Jr. did not believe he owned the Lots. As acknowledged by the Opinion itself, a quitclaim deed is a lawful means of conveying title. Martin v. Ragsdale, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905). Further, the amount of consideration Demetre paid for the Deed, $23,700, was adequate consideration to support the conveyance. First National Bank of South Carolina v. Wade, 245 S.C. 426, 431, 141 S.E.2d 102, 104 (1965). (The South Carolina Supreme Court has held that "the slightest consideration is sufficient to support the most onerous obligation . . .") Further, regardless of Seabrook Jr.'s belief, as found by the Opinion, he inherited the Land, so he had the Land to convey to Demetre.

The Opinion's conclusion that no one owns the land is simply wrong. Actually, Seabrook Jr., except for certain Prior Conveyances not at issue here, as found by the Opinion itself, inherited the entire Folly Island. Thus, Seabrook Jr. inherited the subject Land.[8] Rather than referring to the 1920 Plat which does not show the subject Lots, Seabrook Jr.'s Deed to Demetre referred to the 1965 Plat which does show them. Independently, the language of the Deed describes the Lots sufficiently to be located by a surveyor, which was actually done in the Kennerty Topographic

[8] Despite the fact that in the present case the South Carolina Court of Appeals failed to quiet title to the subject property for Demetre, in Dreher v. South Carolina Dept. of Health and Environmental Control, 730 S.E.2d 922, 399 S.C. 259 (Ct. App. 2012), the Court of Appeals quieted title to property for Ann Dreher she received from Edward Seabrook Jr. with the same chain of title as the subject Lots, lots shown on the 1965 Plat.

Survey. Thus, Seabrook Jr. owned the Land described in the Deed, including the two Lots and the undeveloped portions of the roadways above the mean-high water mark as shown on the Kennerty Topographic Survey, and Seabrook Jr.'s Deed conveyed the Land to Demetre. (Kennerty Topographic Survey, Oversized Document R. p. 1071; Deed, R. p. 633 - 34).

CONCLUSION

1. The Opinion is wrong in finding that no one owns the Land.

2. The Deed refers to the 1965 Plat showing the Lots since it is the only plat (1) recorded in Plat Book C at page 158, (2) dated February 1920, and (3) which shows the lots the Deed describes.

3. The Deed conveys the Lots because (1) it references the 1965 Plat showing the Lots, (2) it described them sufficiently to locate them on the 2005 Kennerty Topographic Survey, and, (3) independently, even if it had referenced the 1920 Plat not showing the lots, the Lots would nonetheless be shown by admissible extrinsic evidence – the 1965 Plat.

4. Since the Encroachers stipulated to Demetre's record title to the Land, did not claim to have a deed to the Land, were ruled against on adverse possession and the other affirmative defenses they asserted and did not appeal those rulings, Demetre's title to the Land prevails.

5. The Land conveyed because (1) the Court of Appeals removed the finding that the 1943 Deed referred to the 1920 Plat which did not show the Lots, (2) per the Court of Appeals Opinion, Seabrook Jr. had inherited the Land, except for certain Prior Conveyances not at issue here, with the rest of Folly Island, so he had the Land to convey to Demetre, (3) a quitclaim deed is a lawful means of conveyance, and (4) $23,700 was adequate consideration to support the conveyance.

For the foregoing reasons, the Court of Appeals Opinion should be reversed, and title should be quieted for Demetre to the portions of the following above the mean-high water mark as described in the Deed and as shown on the Kennerty Topographic Survey: (1) lots 209 and 210 Indian Avenue East, (2) the fifty-foot wide undeveloped portion of Indian Avenue East bordering lots 209 and 210 Indian Avenue East, and (3) the fifty-foot wide undeveloped portion of Third Street East intersecting with the undeveloped portion of Indian Avenue East and also bordering eastern side of lot 210 Indian Avenue East. (Deed R. pp. 633 – 34; Kennerty Topographic Survey, Oversized Document, R. p. 1071).

RESPECTFULLY SUBMITTED,

Cain Denny, P.A.

By: Cain Denny

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Attorney for Petitioner

December 24, 2014

Charleston, SC

RECEIVED
DEC 29 2014
S.C. Supreme Court

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 Petition for a Writ of Certiorari 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 December 24, 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.

December 24, 2014

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PM 12-24-14

December 24, 2014

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
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 Mr. Shearouse:

Enclosed please find:

- the original and seven (7) copies of Appellant's Petition for a Writ of Certiorari;
- the original and one (1) copy of the Proof of Service;
- two (2) copies of an Appendix;
- two (2) copies of the Record on Appeal;
- two (2) copies each of the five (5) oversized documents;
- two (2) copies of the Supplemental Record on Appeal;
- two (2) copies of the briefs; and
- a $100 filing fee.

Please return a stamped copy of the Proof of Service 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

The Supreme Court of South Carolina

Cain Denny, P.A. 12/29/2014

RECEIPT #74595

Fee Type:	Case Initiation Fee
Amount:	$100.00
Payment Type:	Check
Reference No:	362578
Check/Money Order Date:	12/24/2014
Comments:	Milton P. Demetre Family Limited Partnership v. Harry Beckman, III