

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:

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. MURRELL'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972) (A PLAT WHICH DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK IS IRRELEVANT TO DETERMINE WHETHER MARSH IS ABOVE OR BELOW THE MEAN HIGH WATER MARK), IN FINDING THAT THE WORDS "MARSH LAND" ON THE 1920 PLAT MEAN THAT THE PROPERTY IN THAT AREA IS NECESSARILY BELOW THE MEAN HIGH-WATER MARK WHERE THE 1920 PLAT DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK?
2. BASED ON THE WORDS "MARSH LAND" ON THE 1920 PLAT, THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THE STATE IS A NECESSARY PARTY. THE COURT OF APPEALS' OPINION REVERSED THE DOCK CASE ORDER AND REMANDED THE DOCK CASE WITHOUT THE STATE AS A PARTY FOR THE MASTER TO DETERMINE WHETHER APPELLANT OWNS THE SUBJECT PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION WHERE IT AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY?
3. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 393 S.C. 100, 712 S.E.2d 395 (2011) (THE PUBLIC TRUST DOCTRINE DOES NOT EXTEND ABOVE THE MEAN HIGH-WATER MARK), WHERE, BASED ON THE PUBLIC TRUST DOCTRINE, THE MASTER FINDS THAT THE STATE OWNS PROPERTY ABOVE THE MEAN HIGH-WATER MARK?
4. THE PARTIES STIPULATED ON THE RECORD AT TRIAL THAT APPELLANT HAS RECORD TITLE TO THE SUBJECT PROPERTY. HOWEVER, THE MASTER'S ORDER ON REMAND FINDS THAT, IN APPELLANT'S CHAIN OF TITLE, HIS LOTS "DID NOT EXIST." DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH BELUE V. FETNER, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) (THE COURT WILL NOT GO BEYOND PARTIES STIPULATION TO DETERMINE THE FACTS)?
5. WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE COURT OF APPEALS REVERSED THE ORIGINAL DOCK CASE ORDER'S FINDINGS FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT ADVERSE POSSESSION, AND, ON REMAND, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, DID THE MASTER ERR IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY?
6. TO THE EXTENT THAT ANY OF RESPONDENTS' AFFIRMATIVE DEFENSES REMAINED AVAILABLE FOR THEM TO ARGUE ON REMAND, IN RULING

AGAINST THOSE AFFIRMATIVE DEFENSES, SHOULD THE MASTER HAVE CITED AUTHORITY?

7. DID THE MASTER ERR IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST WHICH DOES NOT REQUIRE CONSENT OF THE LANDOWNER OVER WHOSE PROPERTY THE DOCK WHARFS?
8. THE MASTER'S ORDER ON REMAND FINDS THAT THE SUBJECT PROPERTY ACCRETED AFTER 1920. THERE IS NO EVIDENCE TO SUPPORT THAT THE PROPERTY WAS BELOW THE MEAN HIGH-WATER MARK IN 1920. HOWEVER, APPELLANT'S PROPERTY IS THE HIGHLAND TO WHICH ANY ACCRETION WOULD HAVE ADDED IF ANY HAD OCCURRED. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT THE STATE OWNS THE PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. BEACH CO., 248 S.C. 115, 271 S.E.2d 115 (1978) (NATURAL ACCRETION BENEFITS THE PRIVATE HIGHLAND OWNER TO WHOSE PROPERTY IT ADDS)?
9. APPELLANT'S PROPERTY IS IDENTICALLY SITUATED TO AND SHARES THE SAME KEY LINKS IN ITS CHAIN OF TITLE AS THE SUBJECT PROPERTY IN DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012) (FINDING THAT CERTAIN HIGH MARSH IS PART OF FOLLY ISLAND AND OWNED BY DREHER, A PRIVATE CITIZEN). DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH DREHER WHERE IT FINDS THAT THE SUBJECT HIGH MARSH IN THE PRESENT CASE IS OWNED BY THE STATE?
10. DOES THE ORDER ON REMAND ERR IN FINDING THAT THE FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT?
11. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT THE 1786, 1895, AND 1920 PLATS ARE MORE PRECISE AS TO THE LOCATION OF THE MEAN HIGH-WATER MARK THAN THE 2005 KENNERTY TOPOGRAPHIC SURVEY WHERE THE EARLIER PLATS DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK, BUT THE 2005 KENNERTY TOPOGRAPHIC SURVEY DOES?
12. DOES THE ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2d 40 (1995), IN FINDING THAT APPELLANTS' LOTS "DO NOT EXIST?"
13. DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT IS "INCORRECT" IN ADDING LOTS AND THAT THE 1968 PLAT WAS INTENDED TO "CORRECT" THE 1965 PLAT?

14. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT APPELLANT'S PREDECESSOR IN INTEREST BELIEVED THAT HE DID NOT OWN THE SUBJECT LOTS BASED ON THE FINDING THAT HE SOLD THE PROPERTY IN THAT AREA WITH A QUITCLAIM DEED WHERE THE EVIDENCE SHOWS THAT APPELLANT'S PREDECESSOR IN INTEREST ALSO SOLD PROPERTY IN THAT AREA BY GENERAL WARRANTY DEEDS?
15. THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT FOR ADVERSE POSSESSION. HOWEVER, THE COURT OF APPEALS REVERSED THE DOCK CASE ORDER, AND RESPONDENTS DID NOT PETITION FOR REHEARING OR A WRIT OF CERTIORARI. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT RESPONDENTS' AFFIRMATIVE DEFENSES ARE AVAILABLE TO THEM TO ARGUE ON REMAND. DOES THIS FINDING CONFLICT WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 388 S.C. 171, 525 S.E.2d 869 (2000) (AN UNAPPEALED RULING BY THE COURT OF APPEALS BECOMES THE LAW OF THE CASE)?
16. WHERE THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THERE IS HIGHLAND IN THE AREA OF THE UNDEVELOPED ROADWAY RUNNING ALONG RESPONDENTS' LOTS, AND WHERE THE COURT OF APPEALS OPINION FOUND THAT THERE IS HIGHLAND IN THAT AREA, DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE STATE OWNS THAT AREA?

STATEMENT OF THE CASE

Civil Action Nos. 2002-CP-10-4880 ("Road Case) and 2005-CP-10-4101 ("Dock Case") were consolidated and referred to the Charleston County Master-in-Equity ("Master"). They were tried together before the Master on December 12, 2006. The Master filed the Road Case Order on March 7, 2007, and the Dock Case Order on March 26, 2007. Appellant filed SCRCP Rule 59(e) Motions regarding both orders. The Master denied those Motions, and Appellant appealed.

The Court of Appeals filed an Opinion on January 14, 2009, withdrew that Opinion, and substituted and re-filed Unpublished Opinion No. 2009-UP-029 on April 21, 2009, which affirmed the Road Case Order and reversed and remanded the Dock Case Order.

On remand of the Dock Case, the Master heard arguments without taking any additional evidence on October 21, 2011. He filed an Order on Remand on January 13, 2012. Appellant's counsel received notice of the Order on Remand on January 23, 2012 and timely filed a SCRCF Rule 59(e) Motion on February 2, 2012. The Master filed an Order Denying the Appellant's Rule 59(e) Motion on April 19, 2012. Appellant's counsel received that Notice on May 7, 2012. Appellant timely appealed to the South Carolina Court of Appeals on May 31, 2012.

ARGUMENT

1. THE ORDER ON REMAND CONFLICTS WITH STATE V. MURRELLS'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972), AND WITH THE COURT OF APPEALS' REVERSAL OF THE MASTER'S ORIGINAL DOCK CASE ORDER.

The Master's Order on Remand conflicts with State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972) and conflicts with the Court of Appeals' reversal of the Master's original March 27, 2007 "Dock Case" Order. Murrell's Inlet Camp & Marina, Inc. holds that a plat which does not show the location of the mean high-water mark is irrelevant to a determination of whether marsh is above or below the mean high water mark. 259 S.C. at 408, 192 S.E.2d at 201 ("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 [of the location of the mean-high water mark], the conclusion of the judge that the plats were irrelevant is abundantly clear.")

Despite Murrell's Inlet Camp & Marina, Inc., the Master's Order on Remand finds based solely on the words "MARSH LAND" on 1920 Plat that the property in that area is necessarily below the mean high-water mark. (Order on Remand, p. 1.) (R. p. 879) ("As to the lands

extending to the Folly River, a review of the 1920 plat (Plat Book C 128) by which the lots of Folly Island were conveyed shows this property as 'MARSH LAND.');" (Order on Remand, p. 4) (R. p. 882) ("Both parties contend the State is not a necessary party to this action; however, this court disagrees since 'high marsh' is contained within the area previously denoted as Marshland.")

However, the 1920 Plat is just a developer's sales plat, is not topographic, and was not intended to show what property is above or below the mean high-water mark. It does not show the location of the mean high-water mark. (1920 Plat) (R. p. 803). (1920 Plat – Oversized Document) (R. p. 1068). Thus, the Master's finding that the words "MARSH LAND" necessarily mean low marsh below the mean high-water mark conflicts with Murrell's Inlet Camp & Marina, Inc.

The only evidence in the record regarding what property is above the mean high-water mark is the 2005 Kennerty Topographic Survey, which alone shows its location. (2005 Kennerty Topographic Survey - Oversized Document) (R. p. 664). The 2005 Kennerty Topographic Survey shows that portions of the subject area are above the mean high-water mark.

Thus, the Master's Order on Remand conflicts with Murrell's Inlet Camp & Marina, Inc. and errs by failing to find that Appellant owns the property above the mean high-water mark riverward of Respondents' lots shown on the 2005 Kennerty Topographic Survey.

2. THE MASTER'S ORDER ON REMAND CONFLICTS WITH THE COURT OF APPEALS REVERSAL OF THE MASTER'S ORIGINAL DOCK CASE ORDER WHERE THE MASTER AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY.

The Master's original March 26, 2007 "Dock Case" Order found that, based solely on the words "MARSH LAND" on the 1920 Plat, the subject area is below the mean high-water mark,

and that, based on the State's presumptive ownership of lands below the mean high-water mark, that the State was a necessary party. (Master's Original March 26, 2007 Dock Case Order, p. 18) (R. p. 34) ("As to the remaining lands extending to the Folly River, this court's review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland. Therefore I conclude any challenge to ownership of this marshland must be pursued in an action against the State to challenge its presumptive title to the marsh which can only be overcome by evidence which is clear and convincing (citation omitted).")

However, the Court of Appeals reversed the Master's original Dock Order, found that portions of the lots are above the mean high-water mark, and remanded the case, without the State as a party, for a determination of whether Appellant owns those portions of the lots. (The Milton P. Demetre Family Limited Partnership v. Beckmann, Unpublished Opinion No. 2009-UP-029, filed January 14, 2009, Withdrawn, Substituted, and Refiled April 21, 2009, p. 9) (herein "Court of Appeals' Opinion") (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of that issue."); (Court of Appeals Opinion, p. 10) (R. p. 878) ("However, we reverse the master's March 26, 2007 order and remand for findings in accordance with this opinion."). Respondents did not petition for a rehearing or for a writ of certiorari regarding the Court of Appeals Opinion's finding that portions of the lots are above the mean high-water mark, and it became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000).

Thus, the Court of Appeals reversed the Master's finding that all of the subject property was below the mean high-water mark, but, in his Order on Remand, the Master again makes the same finding. Thus, the Master's Order on Remand conflicts with the Court of Appeals Opinion.

3. THE ORDER ON REMAND CONFLICTS WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 393 S.C. 100, 712 S.E.2d 395 (2011), AND WITH THE COURT OF APPEALS' REVERSAL OF THE MASTER'S ORIGINAL DOCK CASE ORDER.

The Master's Order on Remand conflicts with Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011) and with the Court of Appeals' reversal of the Master's Original "Dock Case" Order.

Estate of Tenney holds that the State's claim to land under the public trust doctrine does not extend to land above the mean high water mark. 393 S.C. at 106-07, 712 S.E.2d at 398 (2011) ("The proposition that the public trust doctrine extends above the high water mark first appeared in Coburg I (citation omitted) . . . We decide today that neither the facts, nor the holding of McCullough v. Wall offer a substantial enough foundation for the principal propounded in Coburg.")

Based solely on the words "MARSH LAND" on the 1920 Plat, the Master's original March 26, 2007 Dock Case Order found that the property in that area of the 1920 Plat is below the mean high-water mark and that the State is a necessary party. (Original Dock Case Order, p. 18) (R. p. 34) ("Therefore, I conclude any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina . . ."); (Original Dock Case Order, p. 19) (R. p. 35) ("CONCLUSION . . . 3. That this court does not have the proper parties before it to determine the title to marshlands.")

However, the Court of Appeals reversed the Master's original Dock Case Order, found that portions of the lots are above the mean high-water mark, and remanded the case, without the State as a party, for a determination of whether Appellant owns those portions of the lots. (Court of Appeals Opinion, p. 9) (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of that issue); (Court of Appeals Opinion, p. 10) (R. p. 878) ("However, we reverse the master's March 26, 2007 order and remand for findings in accordance with this opinion.")

Nonetheless, although the State is not a party to the case, and although, per Estate of Tenney, the State, under the public trust doctrine, does not claim property above the mean high-water mark, the Master's Order on Remand finds that the State owns the subject property above the mean high water mark. (Master's Order on Remand, p. 5) (R. p. 883) ("5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of "Marshland on the 1920 plat of Folly Island. 6. The State of South Carolina is the owner of the land seaward of the Defendant's lots.")

Thus, the Master's finding that, under the public trust doctrine, the State owns the subject property above the mean high-water mark conflicts with Estate of Tenney and conflicts with the Court of Appeals' reversal of the Master's original Dock Case Order.

4. THE ORDER ON REMAND CONFLICTS WITH BELUE V. FETNER, 251 S.C. 600, 164 S.E.2d 753 (1968) IN DISREGARDING THE PARTIES' STIPULATION.

The Master's Order on Remand conflicts with Belue v. Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968), which holds that, "[w]hen counsel enter into an agreed stipulation, the court will not

go beyond such stipulation to determine the facts upon which the case is to be decided.” 251 S.C. at 606, 164 S.E.2d at 755 (1968); Rule 43(k), SCRPC (Stipulations are not binding unless written or entered on the record).

The parties in the present case stipulated on the record at trial that Appellant has record title to the subject property. (Trial Tr.. 05:24 – 07:25) (R. pp. 141 – 43) (“MR. COOPER [APPELLANT’S COUNSEL]: . . . Again, we just want to put a stipulation on the record consistent with our discussions with the Court in chambers. It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership [Appellant] has been stipulated to . . . That’s the stipulation, as I understand it, your Honor. COURT: Any response by the Defendants? Everybody in agreement with that? MR. PEEPLES [CITY OF FOLLY BEACH’S COUNSEL]: Yes, your honor. MS. DEUTSCH [RESPONDENTS’ COUNSEL]: Yes, your honor.”)

However, the Master’s Order on Remand finds that, in Appellant’s chain of title, the subject lots “do not exist.” (Master’s Order on Remand, p. 5) (R. p. 883) (“SUMMARY OF THE FINDINGS OF FACT . . . 2. On the 1920 plat the so-called Demetre ‘lots’ are not shown and therefore do not exist.”).

The Master’s finding that the lots “do not exist” is based on his same error, discussed above, regarding the words “MARSH LAND” on the 1920 Plat. There is no evidentiary support for this finding.

In fact, the record shows that Appellant paid property taxes on these lots since purchasing them as had his predecessor in interest Seabrook before him. (Trial Tr. 156:24 – 157:04) (R. pp. 243 - 44). (“[COURT] Q And so you pay property taxes on the lots that you own? [DEMETRE] A. Yes, I do. Q And you pay the property tax, do you not, on the marsh out to the Folly River.

A. Yes, I do. And Mr. Seabrook paid the taxes on it.”) In contrast, Respondents have never paid any property taxes on the subject lots.

Regardless, the Master’s finding that Appellant’s lots “do not exist” conflicts with the parties’ stipulation on the record at trial that Appellant has record title to the subject property. The Master’s disregard of the parties’ stipulation conflicts with Belue.

5. THE MASTER ERRED IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY WHERE RESPONDENTS STIPULATED TO APPELLANT’S RECORD TITLE, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, AND THEY HAD NO REMAINING AFFIRMATIVE DEFENSES.

The Master erred in failing to find that Appellant owns the subject property where Respondents stipulated to Appellant’s title and where all of Respondents’ affirmative defenses have been ruled against. Where there are no affirmative defenses, record title is good title.

Respondents stipulated to Appellant’s record title on the record at trial. (Trial Tr. 05:24 - 07:25) (R. pp. 141 – 43). (“MR. COOPER [APPELLANT’S COUNSEL]: . . . Again, we just want to put a stipulation on the record consistent with our discussions with the Court in chambers. It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership [Appellant] has been stipulated to . . . That’s the stipulation, as I understand it, your Honor. COURT: Any response by the Defendants? Everybody in agreement with that? MR. PEEPLES [CITY OF FOLLY BEACH’S COUNSEL]: Yes, your honor. MS. DEUTSCH [RESPONDENTS’ COUNSEL]: Yes, your honor.”)

The Master’s original Dock Case Order found for Respondents on each of their affirmative defenses except adverse possession, on which it did not rule. (Original Dock Case Order, pp. 9 – 18) (R. pp. 25 – 34). However, the Court of Appeals Opinion reversed the original Dock Case Order and remanded the case to the Master to determine whether Appellant

owns the subject property. Respondents did not appeal the Court of Appeals Opinion, and it became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000).

On remand, the Master ruled against Respondents on adverse possession. (Order on Remand, p. 5) (R. p. 883) ("As to the remaining affirmative defenses presented by the Defendants on their claim to ownership of the land in question, I have already found that they do not own the property by adverse possession.") Thus, Respondents stipulated to Appellant's record title and have no remaining affirmative defenses.

Where there are no viable affirmative defenses, Appellant's record title is good title. Thus, the Master erred in failing to find that Appellant owns the property above the mean high-water mark shown on the Kennerty 2005 Topographic Survey which is riverward of Respondent's lots.

6. TO THE EXTENT ANY OF RESPONDENTS AFFIRMATIVE DEFENSES REMAINED AVAILABLE ON REMAND, IN RULING AGAINST THEM, THE MASTER SHOULD HAVE CITED AUTHORITY.

As discussed above, Respondents' affirmative defenses did not remain available to them on remand; however, if they had, then, in ruling against Respondents' affirmative defenses, the Master's Order on Remand should have stated the authority against those defenses.

The Statute of Limitations for Nuisance does not apply to an action for injunctive relief. Silvester v. Spring Valley Country Club, 344 S.C. 280, 288, 543 S.E.2d 563, 567 (Ct. App. 2001).

The Statute of Limitations for Trespass does not apply to an action for injunctive relief. Richland County v. Kaiser, 351 S.C. 89, 95, 567 S.E.2d 260, 263 (Ct. App. 2002). Continuous

trespass will be enjoined by a court of equity. Gunter's Island Hunting Club v. Hucks, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984).

Demetre's predecessor's properly recorded title precluded an Estoppel defense. Boyd v. Bellsouth Telephone Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006).

Lack of belief of ownership precluded Respondents from claiming title by equitable estoppel. See Southern Railway- Carolina Div. v. Home Inv. Co., 233 S.C. 440, 105 S.E.2d 527 (1958).

Laches does not apply because the Dock Defendants suffered no prejudice by having the use of the docks; delay alone in the assertion of a right, without injury to the adversary, does not constitute laches. Grossman v. Grossman, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963); Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993).

Ripeness does not apply because the State is not a necessary party to determination of ownership and quiet title to property above the mean high-water mark. See McQueen v. South Carolina Coastal Council, 154 S.C. 142, 580 S.E.2d 116 (2003).

Laches and Staleness of Demand do not apply where an Adverse Possession analysis applies, since the issue is controlled by the Adverse Possession statute. Crotwell v. Whitney, 229 S.C. 213, 92 S.E.2d 473 (1956).

Unclean hands does not apply to a property purchaser's attempt to remove encroachments, such as the subject docks. See Am. Jur. Proof of Facts 3d 429 § 12 (discussing that a purchaser is bound to purchase contract where he had full knowledge of defects, including encroachments). A purchaser has no duty to obtain a third-party encroacher's approval prior to purchase.

7. THE MASTER ERRED IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST AND DOES NOT REQUIRE LANDOWNER CONSENT.

The Master's Order on Remand states, "... Defendants had a vested property interest, granted under license from the state, to the docks which run from in front of their property, commencing in the Indian Avenue, and running to the Folly River." (Order on Remand, p. 5) (R. p. 883).

However, as acknowledged by the Respondents' themselves in their dock permit applications, dock permits are a revocable licenses and do not convey any property interest. (R. p. 447) ("... 8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public ... 10. That authorization for activities or structures herein shall constitute a revocable license")

Respondents should have ascertained that the property between their lots and the Folly River was owned by Appellant's predecessor in interest where their dock permit applications showed several hundred feet of highland between their property lines and the Folly River. (R. pp. 451, 460). The title to Appellant's predecessor in interest's property was properly recorded. Boyd v. Bellsouth Telephone Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). ("A properly recorded title normally precludes an equitable estoppel against assertion of that title due to requirement that the party raising the estoppel be ignorant of the true state of the title or reasonable means of discovering it").

However, Respondents installed their docks across the property of Appellant's predecessor in interest without obtaining his consent. Lowcountry Open Land Trust v. Atkins,

347 S.C. 96, 110, 552 S.E.2d 778, 786 (Ct. App. 2001) (“A public permit, however, ‘does not displace the need to obtain the landowner’s consent to wharf on land where title is in one other than the permitting authority.’ (Citations omitted). To the contrary, if ownership vests in private hands, an adjacent landowner desiring to build on tidelands must obtain the express consent of the fee simple owner.”).

The Permit Administrator for the South Carolina Coastal Council at the time Respondents applied for permits testified that if the agency knew that high ground owned by another party was being crossed by a proposed dock, it was fair to say that the applicant would have to get the permission of the property owner, buy the property, or otherwise take care of the property rights issue before a permit would be issued. (Trial Tr. 242:04 – 242:18) (R. p. 277). Appellant has a right to seek removal of encroachments. Brown v. Clemons, 287 S.C. 328, 338 S.E.2d 338 (1985).

8. THE ORDER ON REMAND CONFLICTS WITH STATE V. BEACH CO., 271 S.C. 425, 248 S.E.2d 115 (1978) IN FINDING THAT THE STATE OWNS ACCRETED HIGHLAND.

The Master’s Order on Remand conflicts with State v. Beach Co., 271 S.C. 425, 248 S.E.2d 115 (1978), which holds that natural accretion benefits the private highland owner to whose property it adds. State v. Beach Co., 271 S.C. 425, 429, 248 S.E.2d 115, 117 (1978) (“Accretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the property of the owner of the land accreted or increased.”); Horry County v. Woodward, 282 S.C. 366, 369, 318 S.E.2d 584, 586 (Ct. App. 1984) (“South Carolina recognizes the general common law rule that accretions by natural alluvial action to riparian or littoral lands become the property of the riparian or littoral owner whose lands are added to.”)

In the present case, there is no evidence in the record or presented at trial in 2005 to support the Master's finding that the subject property was below the mean high-water mark in 1920. Nonetheless, as shown by the 2005 Kennerty Topographic Survey (R. p. 664 – Oversized Document) and Appellant's chain of title (R. 479 - 659), the highland to which any accretion, had it occurred, would have added was the highland of Appellant, and, before him, the highland of Appellant's predecessor's in interest.

However, rather than finding that Appellant owns the subject highland, the Master's Order on Remand finds that the State owns it. (Master's Order on Remand, p. 5) (R. p. 883) (“SUMMARY OF THE FINDINGS OF FACT . . . 5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of “Marshland on the 1920 plat of Folly Island. 6. The State of South Carolina is the owner of the land seaward of the Defendant's lots.”)

Thus, while Respondents never presented any evidence of accretion at trial, under Beach Co., Appellant, as the riparian private property owner to whose highland any accretion would have added, would have benefited from any accretion had it occurred, not the State, but the Master found that the State benefited from this accretion. Thus, this finding in the Master's Order on Remand conflicts with Beach Co.

9. THE ORDER ON REMAND CONFLICTS WITH DREHERE V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012) IN FINDING THAT THE STATE, RATHER THAN APPELLANT, OWNS THE SUBJECT PROPERTY.

The Master's Order on remand conflicts with Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012). Dreher holds that certain high marsh is part of Folly Island and is owned by a Dreher, a private citizen.

In the present case, with respect to the Master's finding concerning the words "MARSH LAND" on the 1920 Plat, the subject high marsh is identically situated to the subject high marsh in Dreher. Both the subject property in Dreher and the subject property in this case are in the same part of the 1920 Plat near the words "MARSH LAND." (1968 Tracing of the 1920 Plat) (R. p. 1070 - Oversized Document). The subject property in the present case includes lots 209 and 210 East Indian Avenue. The subject property in Dreher includes lot 806 East Cooper Avenue and high mash extending from 809 East Cooper Avenue to lot 805 East Cooper Avenue. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 261, 730 S.E.2d 922, 923 (Ct. App. 2012). Both the Dreher property and Appellant's property are on the same part of the 1920 Plat with regard to the words "MARSH LAND." (1968 Tracing of the 1920 Plat) (R. p. 1070 – Oversized Document).

Further, the subject high marsh in the present case shares the same key links in its chain of title as those in Dreher. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012), n. 1 ("The title abstract for Dreher's property demonstrates that her title derives from an original grant on November 8, 1918, to Folly Island Company . . .").

In Dreher, based on the same chain of title as Appellant's, the subject high marsh was found to be part of Folly Island and owned by Dreher, a private citizen. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012) ("Dreher also presented substantial evidence to support the ALC's finding that Tract D is on and within the legal boundaries of Folly Island. The title abstract of Tract D states that Dreher's title derives from a grant made on November 8, 1918 . . . Attached to the deed is a plat recorded on December 9, 1895, showing the property described in the grant. Accordingly, Tract

D is included both in metes and bounds of the 1918 deed and within the surveyed boundaries of the 1895 plat. Based on Dreher's deed and subsequent chain of title, Tract D is, by legal description, on and a part of Folly Island.")

This same 1918 conveyance in Dreher is a link in Appellant's chain of title. (Deed from Folly Island Company to Folly Beach Corporation) (R. p. 557) ("Being the same property conveyed to Folly Island Company by . . . deed dated 8th day of November 1918, and recorded in the R.M.C. Office . . . ").

However, in the present case, the Master's Order on Remand finds that the subject high marsh in the present case is owned by the State. (Master's Order on Remand, p. 5) (R. p. 883) ("SUMMARY OF THE FINDINGS OF FACT . . . 5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of 'Marshland' on the 1920 plat of Folly Island. 6. The State of South Carolina is the owner of the land seaward of the Defendant's lots.")

Thus, the Master's finding in the present case that the State owns the subject high marsh conflicts with Dreher, in which high marsh in the same area of the 1920 Plat was found to be part of Folly Island and owned by a private citizen.

10. THE ORDER ON REMAND ERRS IN FINDING THAT FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT.

The Order on Remand finds that Appellant's predecessor in interest, the Folly Beach Corporation, took title by the 1920 Plat. (Master's Order on Remand, p. 3) (R. p. 881) (" . . . a clear, even cursory, review of the 1920 Cummings and McCrady plat, upon which the Folly Beach Corporation took title to the property, shows the area in question to be "Marshlands.")

However, as shown by Appellant's chain of title, Folly Beach Corporation took title not by the 1920 Plat but rather by a November 18, 1919 general warranty deed referencing the 1895 Tartus Map. (R. p. 557) (" . . . and more particularly delineated by the red line upon a certain map of Folly Island or the Folly Islands" made by A.G. Tartus, Surveyor, and recorded in the R.M.C. Office for Charleston County in Plat Book D, page 190.") The Tartus Map, which bore a red line surrounding Folly Island, conveyed all the property within that red line. (R. p. 658) (R. 1067 – Oversized Document). Furthermore, the deed bounded the property, ". . . on the west by the channel of the Folly River and the Folly Creek . . .") (R. p. 557).

As found in Dreher, the Tartus map (R. p. 658) (R. 1067 – Oversized Document) conveyed the subject area. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 263-64, 730 S.E.2d 922, 924 (Ct. App. 2012) (" . . . Attached to the deed is a plat recorded on December 9, 1895, showing the property described in the grant. Accordingly, Tract D is included both in metes and bounds of the 1918 deed and within the surveyed boundaries of the 1895 plat. Based on Dreher's deed and subsequent chain of title, Tract D is, by legal description, on and a part of Folly Island.")

The Order on Remand conflicts with Dreher by finding that the State, rather than Appellant, owns the subject property. This property is within the red line of the Tartus Map. (R. p. 658) (R. p. 1067 – Oversized Document). Thus, the property was conveyed to Appellant, and the Master errs by failing to find that Appellant owns the highland property shown on the 2005 Kennerty Topographic Survey (R. p. 664, Oversized Document) riverward of the Respondents' lots.

11. THE ORDER ON REMAND ERRS IN FINDING THAT EARLIER PLATS WHICH DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK ARE MORE PRECISE REGARDING THAT ISSUE THAN ONE WHICH DOES SHOW ITS LOCATION.

The Master found that the 1786, 1895, and 1920 plats ("Early Plats") are more precise than the 2005 Kennerty Topographic Survey regarding what property is above the mean high-water mark. (Master's Order Denying Plaintiff's Rule 59e Motion for Relief, pp. 1 – 2) (R. pp. 885 – 86) ("While the Kennerty plat shows some of the property to be above the mean high water mark, this property clearly appears as Marsh Land on the 1786 Grant and plat, the 1895 Engineer Tartus' survey (upon which Plaintiffs rely) and the 1920 Cummings and McCrady plat. Because I find the plats more precise as to what property is being described, I conclude that the property in question was not contained in the January 1943 Master's deed to Plaintiff's predecessor in interest when he was conveyed most of Folly Island.")

However, only the 2005 Kennerty Topographic Survey shows the location of the mean high water mark. (R. p. 664, Oversize Document). The Early Plats do not.

The 1786 Plat the Master cites was not presented at trial, is not in the record, and the Master erred by considering evidence not presented at trial or in the record. Regardless, the 1786 Plat is described in Querry v. Burgess, 371 S.C. 407, 412, 639 S.E.2d 455, 457 (Ct. App. 2007), which states, "The plat roughly delineates Folly Island. The plat contains the barebones of a survey and is neither precise nor detailed."

The 1895 Tartus map does not show what part of the marsh is above or below the mean high-water mark (R. 658) (R. 1067 – Oversized Document), but, as found in Dreher, it shows that the subject area was part of what was conveyed in Appellant's chain of title. Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 264, 730 S.E.2d 922,

924 (Ct. App. 2012) (“Accordingly, Tract D is included both in metes and bounds of the 1918 deed and within the surveyed boundaries of the 1895 plat.”)

The Master was in no better a position than an appellate court to determine whether the Early Plats are more precise regarding the location of the mean high-water mark than the 2005 Kennerty Topographic Survey. The Early Plats bear no indication of the location of the mean high-water mark. The Master clearly erred in finding that the Early Plats, which do not show the mean high-water mark, are more precise regarding its location than the 2005 Kennerty Topographic Survey.

Thus, the Master erred in failing to find that Appellant owns the property above the mean high-water mark as shown on the 2005 Kennerty Topographic Survey which is riverward of Respondents’ lots. (R. p. 664 - Oversize Document).

12. THE ORDER ON REMAND ERRS AND CONFLICTS WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2D 40 (1995), IN FINDING THAT APPELLANT’S LOTS “DO NOT EXIST.”

The Master’s Order on Remand finds that Appellant’s lots “do not exist” because they are not shown on the 1920 Plat. (R. p. 883) (“SUMMARY OF THE FINDINGS OF FACT . . . 2. On the 1920 plat the so-called Demetre “lots” are not shown and therefore do not exist.”)

This finding conflicts with the Court of Appeals Opinion, which remands the case to the Master to determine whether Appellant owns the portions of the lots above the mean high water mark. (Court of Appeals Opinion, p. 9) (R. p. 877) (“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 high water mark, we remand this case to the master for a determination of this issue.”) Thus, the Master’s finding that the lots “do not exist” conflicts with the Court of Appeals

Opinion reversing and remanding the Dock Case for a determination of whether Appellant owns the portions of the lots above the mean high-water mark.

The Master's finding that the lots "do not exist" further conflicts with Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1995). Appellant's deeds sufficiently describe the location of the lots, but even if the description were ambiguous, extrinsic evidence is admissible to identify the location of the deeded property. Richardson v. Register, 227 S.C. 81, 88, 87 S.E.2d 40, 43 (1995). ("Parol evidence is admissible to elucidate latent ambiguities in written instruments generally (citations omitted)."); Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987) ("When intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it.")

Here, the grantor's intention to convey the subject property is expressed accurately in the subject deeds. However, even if it were not, there is sufficient parol evidence to identify Appellant's lots. The lots are shown on the 1965 Plat and the 2005 Kennerty Topographic Survey. (R. p. 664, Oversize Document).

Thus, the Master erred by finding that Appellant's lots "do not exist" and in failing to find that Appellant owns the property above the mean high-water mark riverward of Respondent's lots as shown on the 2005 Kennerty Topographic Survey.

13. THE ORDER ON REMAND LACKS EVIDENTIARY SUPPORT AND CONFLICTS WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT DID NOT INTEND TO ADD THE SUBJECT LOTS.

The Master's Order on Remand errs and conflicts with the Court of Appeals Opinion in finding that the 1965 Plat was "incorrect" and did not intend to add the subject lots.

The Master's Order on Remand finds that the 1965 Plat is "incorrect" and did not intend to add the subject lots, and it finds that the 1968 Plat was intended to "correct" the 1965 Plat. (Master's Order on Remand, p. 3) (R. p. 881) ("Because I find that the 1965 redraw of Folly Beach properties was designed to be a redraw (apparently the 1920 plat was deteriorating badly) and not a creation of new lots, I find that this 1965 plat is incorrect and, therefore, cannot serve as a basis for creation of new lots on Folly Beach. The subsequent plat from 1968 also shows the area in question to be marshland. I find that the 1968 plat evidently intended to correct the 1965 plat error.")

However, there is no evidence to support this finding. Rather, all of the evidence is that the 1965 Plat re-drew the 1920 Plat, adding lots, and the 1968 Plat traced the 1920 Plat.

Further, the Order on Remand's finding that the 1965 Plat did not add parcels to the 1920 Plat conflicts with Court of Appeals Opinion. (R. p. 871) ("Subsequently, in 1965 the 1920 plat was redrawn because of deterioration and in 1968 it was traced. The redraw added parcels to the 1920 plat; however, the tracing appears to be identical to the 1920 plat.")

The Master's conclusion that the 1965 Plat did not add parcels conflicts with Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012), in which the highland at issue in that case is not shown on the 1920 Plat, but highland is evidenced by the addition of lots on the 1965 Plat. (1968 Tracing of 1920 Plat) (R. p. 659) (R. p. 1070 – Oversized Document). (1965 Plat) (R. 477) (R. p. 1069 – Oversized Document). The subject property in the present case includes lots 209 and 210 East Indian Avenue, which were added by the 1965 Plat.

The subject property in Dreher includes lot 806 East Cooper Avenue and high marsh extending from 809 East Cooper Avenue to lot 805 East Cooper Avenue. This area is highland shown on the 1965 Plat in lots drawn riverward of East Cooper Avenue.

The Master's finding that the addition of lots on the 1965 Plat is "incorrect" is clearly erroneous. To reach the Master's conclusion, one has to assume that detailed, specific lots were added by mistake. Here, where the Master's finding is based on the plats themselves, he is in no better a position than an appellate court to determine whether the 1965 Plat is "incorrect."

As can be seen on the face of the plats, the 1920 Plat is deteriorating (R. 663) (R. 1068 – Oversized Document), the 1968 Plat is an exact tracing of the 1920 Plat (R. p. 1070 – Oversized Document), and the 1965 Plat adds lots (R. pp. 477, 659) (R. p. 1069 – Oversized Document).

The Order on Remand's reasoning is circular. Although the location of the mean-high water mark is not shown on the 1920 Plat, the Order on Remand finds that the words "MARSH LAND" on the 1920 Plat must mean that the property in that area is below the mean high-water mark. However, since the 1965 Plat shows lots in this area, to maintain the first finding that this area is below the mean high-water mark, the Order on Remand must make a second, strained finding that the 1965 Plat is "incorrect." Further, despite the fact that the 1968 Plat is obviously an exact tracing of the 1920 Plat, the Order on Remand makes a third implausible finding that it is instead a "correction" of the 1965 Plat.

Thus, the Order on Remand errs and conflicts with Court of Appeals Opinion in finding that that the 1965 Plat did not intend to add the subject lots. Based on this error, the Master further erred in not finding that Appellant owns the highland shown on the 2005 Kennerty Topographic Survey which is riverward of Respondents' lots.

14. THE ORDER ON REMAND ERRS IN FINDING THAT APPELLANT'S PREDECESSOR IN INTEREST BELIEVED HE DID NOT HAVE TITLE.

The Master's Order on Remand errs in finding that Appellant's predecessor in interest, Ed Seabrook, Jr. ("Appellant's Predecessor") believed that the subject lots "did not exist."

The Order on Remand erroneously finds that the subject lots do not exist and that this fact was known to Appellant's Predecessor. (Order on Remand, p. 3) (R. p. 881) ("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 Plaintiff by Quitclaim deed in 2004.")

However, the Master's reasoning is based on the factual error that Appellant's Predecessor conveyed lots in that area only by quitclaim deed, not by general warranty deed. The Order on Remand cites no other evidence to support its finding that Appellant's Predecessor knew that he did not own the lots.

Although low marsh is not at issue in this case, the only evidence in the record is that Appellant's Predecessor conveyed the subject property using a quitclaim deed because he was, in addition to the subject high marsh, also conveying low marsh for which he had not brought a quiet claim action against the State, and he only sold low marsh by quitclaim deed. (R.p. 227).

In fact, Appellant's Predecessor conveyed other property in the 200 block of East Indian Avenue by general warranty deed where he was conveying only highland. These deeds are in the record within Plaintiff's chain of title: the 1948 deed to William C. and Harriett S. Dawson for lot 201 East Indian Avenue (R. p. 533), the 1949 deed to William C. and Harriett S. Dawson for lot 202 East Indian Avenue (R. p. 597), and the 1950 deed to Elizabeth D. Muller for Lots 203, 204, and 205 East Indian Avenue (R. 640).

Further, the only evidence in the record is that Appellant's Predecessor believed that he owned the lots. (Trial Tr. 134:21 – 134:23) (R. p. 227). Thus, the Master's Order on Remand errs in finding that Appellant's Predecessor knew that the lots "did not exist."

15. THE ORDER ON REMAND CONFLICTS WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 338 S.C. 171, 525 S.E.2d 869 (2000).

The Master's Order on Remand conflicts with Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000). Charleston Lumber Co. holds that an unappealed decision of the Court of Appeals is the law of the case. 338 S.C. at 174, 525 S.E.2d at 871. ("This ruling was adverse to Charleston Lumber. Accordingly, it was incumbent upon Charleston Lumber to seek rehearing and/or petition this Court for a writ of certiorari or be bound by Charleston Lumber I as the law of the case.")

In the present case, the Master's original March 26, 2007 Dock Order ruled for Respondents on each of their affirmative defenses, except for adverse possession. However, the Court of Appeals Opinion reversed the original Road Case Order. Respondents neither petitioned for rehearing nor sought a writ of certiorari to the South Carolina Supreme Court. Therefore, Respondents were bound by the reversal of the original Road Case Order.

The Master's Order on Remand rules against Respondents on adverse possession, 20 year grant, and 40 year grant. (Order on Remand, p. 5) (R. p. 883) ("As to the remaining affirmative defenses presented by Defendants on their claim to ownership of the land in question, I have already found that they do not own the property by grant (either 20 or 40 years) nor do they own the possess the property by laches.")

Nonetheless, the Order or Remand finds that Respondents' Affirmative Defenses remain available to them to argue on remand. (Order on Remand, p. 5) (R. p. 883) ("Plaintiff's counsel

argued during the Hearing in this matter, that Affirmative Defenses were not available to Respondents, but this Court disagrees.”) However, since the Court of Appeals’ unappealed reversal of the Original Dock Case Order was the law of the case, this finding in the Master’s Order on Remand conflicts with Charleston Lumber Co. Therefore, any affirmative defenses were not available on remand.

16. THE MASTER’S ORDER ON REMAND ERRS AND CONFLICTS WITH THE COURT OF APPEALS OPINION WHERE IT FINDS THAT THE STATE OWNS THE UNDEVELOPED ROADWAY RIVERWARD OF RESPONDENTS’ LOTS.

The Master’s original Road Case Order found that the road owned by the City of Folly Beach ends less than three hundred feet from the intersection of Second Street East and East Indian Avenue, which is several lots before Respondents’ lots. (Road Case Order, p. 5) (R. p. 13) (“The Street is open for approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into a wooded area.”)

The Court of Appeals affirmed the Master’s Road Order, twice citing evidence that the road owned by the City of Folly Beach ends at the northeast corner of lot 205 East Huron Avenue, which is several lots before Respondents’ lots at 209 and 210 East Huron Avenue. (Court of Appeals Opinion, p. 3) (R. p. 871) (“Both the 1920 plat and the 1968 redraw show a portion of East Indian Avenue extending from lot 201 to the northwest corner of lot 205.”); (Court of Appeals Opinion, p. 7) (R. p. 875) (“Also, the 1920 plat, which was referenced in Seabrook’s deed, shows East Indian Avenue extending from lot 201 to the northwest corner of lot 205”). Lot 205 East Huron Avenue is several lots before Respondents’ lots, lots 209 and 210 East Huron Avenue.

Respondents did not petition for rehearing or a writ of certiorari. Thus, the Court of Appeals' Opinion affirming the Road Case Order became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 525 S.E.2d 869 (2000).

However, conflicting with the Road Case Order, the Master's original Dock Case Order found that the road owned by the City of Folly Beach, rather than ending several lots before Respondents' lots, extended alongside Respondents' lots. (Master's Original Dock Order, pp. 17-18) (R. pp. 33 – 34). However, the roadway in this area was undeveloped and was not owned by the City of Folly Beach. Ultimately, the Court of Appeals reversed the Dock Case Order's finding that the City of Folly Beach owned this undeveloped roadway.

The first Court of Appeals Opinion dated January 14, 2009, found that Folly Beach owned East Indian Avenue riverward of the Respondents' lots. As set forth below, the substituted April 21, 2009 Opinion removed the finding that East Indian Avenue extended to the Respondents' lots.

Original January 14, 2009
Opinion. p. 9 (R. p. 867)

Demetre sought a declaration that he owns all the property between the Crowleys' and the Beckmanns' lots and the mean high water mark, and he sought to quiet title to any defects in his title to the land. The master did not rule on either request and only held that the Crowleys and the Beckmanns believed the State owned the land when they applied for the dock permits, which does not resolve the question of actual ownership. *We already determined in the Road case Folly Beach is the owner of East Indian Avenue; thus, Demetre is not entitled to a declaration that he owns the property between the Crowleys' and Beckmanns' lots and his lots.* Also, Demetre does not dispute . . . (Emphasis added).

Substituted April 21, 2009
Opinion. p. 9 (R. p. 877)

Demetre sought a declaration that he owns the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet title to the land. The master did not rule on either request and only held the Crowleys and Beckmanns believed the State owned the land when they applied for their dock permits, which does not resolve the question of actual ownership. Demetre does not dispute . . .

Thus, the Court of Appeals Substituted April 21, 2009 Opinion found that East Indian Avenue extends only from Lot 201 to the northwest corner of Lot 205 (pp. 3, 7) (R. p. 871) and removed the finding that East Indian Avenue extends to the Defendants' lots. (p. 9) (R. p. 877).

Further, the Court of Appeals amended its mandate on remand in its substituted opinion to reflect that the road does not extend to the Defendants' lots.

In its original January 14, 2009 Opinion, the Court of Appeals remanded the Dock Case for a determination of whether Demetre owns the land between *East Indian Avenue* and the mean high water mark on lots 209 and 210 East Indian Avenue. (Court of Appeals January 14, 2009 Opinion, p. 10) (R. p. 868).

However, in its substituted April 21, 2009 Opinion, the Court of Appeals amended its mandate on remand to a determination on whether Demetre owns the land between *the Dock Defendants' lots* and the mean high water mark on lots 209 and 210 East Indian Avenue. (Court of Appeals April 21, 2009 Opinion, p. 10) (R. p. 878).

Thus, the Court of Appeals amended its mandate in its substituted April 21, 2009 Opinion to reflect that the road does not extend to the Respondents' lots:

Original January 14, 2009
Opinion, p. 10 (R. p. 868)

We need not address Demetre's remaining issues because we remand this case for a determination of whether Demetre owns the land between *East Indian Avenue* and the mean high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

Substituted April 21, 2009
Opinion (R. p. 878)

We need not address Demetre's remaining issues because we remand this case for a determination on whether Demetre owns the land between *the Crowleys' and the Beckmanns' lots* and the high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

Thus the Court of Appeals' April 21, 2009 substituted Opinion reversed the original Dock Case Order's finding that the City of Folly Beach owned the undeveloped roadway along Respondents' lots.

Nonetheless, in the original Dock Case Order, in finding that the City of Folly Beach owned this area, the Master's original Dock Case Order contained a correct implicit finding that this area is above the mean high-water mark ("highland").

The Court of Appeals reversed the original Dock Case Order, found highland in that area, and remanded the Dock Case to the Master to determine whether Appellant owns that highland. (Court of Appeals Opinion, p. 9) (R. p. 877) ("Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of that issue.")

However, despite the Court of Appeals' finding of highland in that area, and despite the original Dock Case Order's implicit finding of highland in that area, the Master's Order on Remand finds that the State owns that area. This finding is in error and conflicts with the Court of Appeals Opinion. Thus, the Master erred by failing to find that Appellant owns the property above the mean high-water mark as shown on the 2005 Kennerty Topographic Survey riverward of Respondents' lots.

CONCLUSION

For the foregoing reasons, the Master's Order on Remand should be reversed and title should be quieted in Appellant Milton P. Demetre Family Limited Partnership to the property above the mean high-water mark in the undeveloped roadway and lots 209 and 210 East Indian Avenue riverward of Respondents' lots shown on the 2005 Kennerty Topographic Survey.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

RECEIVED
JUN 18 2013
SC Court of Appeals

Case No. 2005-CP-10-4101

Appellate Case No.: 2012-212136

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 Akinson.....Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This case began in the Charleston County Master-in-Equity's Court. The case before the Master, was tried on December 12, 2006, concerning two different matters, the "Road Case", Case No.: 2002-CP-10-4880, and the "Dock Case", Case No.: 2005-CP-10-4101. The Master issued Orders on both matters in March, 2007. Appellant herein, appealed both Orders to the South Carolina Court of Appeals. Before the South Carolina Court of Appeals, this action was also denominated in two parts, the "Road Case", and the "Dock Case". The "Road Case" has been concluded and this Court remanded¹ the Dock Case to the Master, to make a sole determination on the issue of whether Appellant Demetre owns the land between Respondent Crowleys' and Respondent Beckmanns' lots and the mean high water mark on lots 209 and 210, East Indian Avenue.

On remand of the Dock Case, on October 21, 2011, the Master heard arguments from counsel for both parties. Appellant's counsel objected to the Court receiving additional evidence and the Master proceeded without taking additional evidence, (*Correspondence from counsel for Appellant, dated September 12, 2011, R. p. 1039*). An Order on Remand was filed on January 13, 2012, (*Order R. pp. 879-884*). On February 2, 2012, counsel for Appellant filed a Rule 59(e) Motion (*Motion, R. pp. 1011-1030*). The Master filed an Order Denying the Appellant's Rule 59(e) Motion on April 19, 2012 (*Order, R. pp. 885-886*). Appellant's Notice of Appeal to the South Carolina Court of Appeals, was dated May 31, 2012, (*Notice of Appeal, R. pp. 1033*).

¹ Demetre Family v Beckmann, III, et al and Demetre v City of Folly Beach, et. al., Court of Appeals, Unpublished Opinion No. 20099-UP-029, Filed January 14, 2009, Re-filed April 21, 2009.

STATEMENT OF THE CASE (Cont.)

Counsel for Appellant failed to file the required Designation of Matter, with the Court, and the Court of Appeals notified counsel of that deficiency, by way of correspondence dated September 13, 2012, (*Correspondence from Ct. of Appeals, dated September 13, 2012, R. pp. 1041-1042*). Counsel for Appellant then filed a Motion with this Court, for it to accept the Designation of Matter and Initial Brief out of time, (*Motion, R. pp. 1035-1036*).

Counsel for Appellant's Initial Brief and Designation of Matter were accepted by this Court, by Order filed November 15, 2012 (*Order, R. p. 887*). By that same Order, Respondents' Initial Brief and Designation of Matter were due to be filed by November 30, 2012. Prior to that date, Respondents' Counsel filed a Motion for Extension of Time on November 19, 2012, asking for an extension of time to file Respondents' Initial Brief, until December 15, 2012 (Respondents request was based on the fact that Respondents also had another Initial Brief due to be filed with this Court on November 30, 2012), (*Motion, R. pp. 1037-1038*). Appellant's Appeal followed:

ARGUMENT

1. **DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. MURRELL'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972) (A PLAT WHICH DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK IS IRRELEVANT TO DETERMINING WHETHER MARSH IS ABOVE OR BELOW THE MEAN HIGH WATER MARK), IN FINDING THAT THE WORDS "MARSH LAND" ON THE 1920 PLAT MEAN THAT THE PROPERTY IN THAT AREA IS NECESSARILY BELOW THE MEAN HIGH-WATER MARK WHERE THE 1920 PLAT DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK?**

Appellant's reference to State v. Murrells Inlet Camp & Marina Inc. 259 S.C. 404, 192 S. E 2d 199 (1972), is inapposite to this Appeal, because the plats in the Murrells Inlet case were not admitted into evidence and were unavailable for the jury in the Murrells Inlet case, to consider as a part of their decision-making process. In the case, *sub judice*, the plats were a part of the evidence before the Master, to which all of the parties stipulated and the plats were an important part of the fact-finding at trial and at the Remand Hearing, (*December 12, 2006, Hearing, R. p. 891, Line 24 – R. p. 892, Line 21*).

Additionally, there was testimony from Respondent Beckmann, which substantiates the Master's findings with regard to the fact that the marshland depicted in the 1920 Plat (*1920 Cummings and McCrady Plat, R. p. 1068*), was marshland which presumptively belongs to the State of South Carolina, (*December 12, 2006, Hearing, R. p. 902, Line 12 - R. p. 920, Line 9*).

The Master was not required to find that high areas within the marsh as depicted on the Kennerty Plat (*2005 Kennerty Topographic Plat, R. p. 1071*), overcame all of the other evidence before him. The 1920 Plat (*1920 Cummings and McCrady Plat, R. p. 1068*), which was not prepared in anticipation of litigation or the description in the deeds, which refers to the marsh behind the Respondent Beckmanns' and the Respondent Crowley's property.

The 1965 tracing of the 1920 Plat (*1965 Plat, R. p. 1069*), came decades after the property was conveyed to the Respondents' Grantor who gave title to the Respondent by reference to the 1920 Plat (*1920 Cummings and McCrady Plat, R. p. 1068*).

Appellant continues to try to make Appellant's title superior to the Respondents' title, by referencing a Plat that was redrawn forty-five years after the Plat referenced in the Respondents' deeds (*1965 Plat, R. p. 1069*). The Plat on which Appellant relies was subsequently redrawn to reflect the original 1920 Plat, (*1920 Cummings and McCrady Plat, R. p. 1068*), which does not depict Appellant's lots. (*1968 Plat Redrawn, R. p. 1070*).

Appellant, in order to quiet title in itself, must rely on the superiority of its title, not on any alleged weakness in Defendants' title. Appellant has failed to show the superiority of Appellant's title. "In an action to quiet title, the [Appellant] must recover on the strength of his own title, not on the alleged weakness of the [Respondents'] title." Hoogenboom v. City of Beaufort, 315, S.C. 306, 433 S.E.2d 875, 880 (S.C. Ct. App. 1992).

2. **BASED ON THE WORDS "MARSH LAND" ON THE 1920 PLAT, THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THE STATE IS A NECESSARY PARTY. THE COURT OF APPEALS' OPINION REVERSED THE DOCK CASE ORDER AND REMANDED THE DOCK CASE WITHOUT THE STATE AS A PARTY FOR THE MASTER TO DETERMINE WHETHER APPELLANT OWNS THE SUBJECT PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION WHERE IT AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY?**

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court, (*Motion, R. pp. 1017-1018*). The Respondents respond below, without waiving this objection.

This Court previously determined in the “Road Case”, that the City of Folly Beach is the owner of East Indian Avenue, (*Unpublished Opinion No.: 2009-UP-029, Re-filed, April 21, 2009, S.C. Ct. of App., R. pp. 869-878*).

Thus, Appellant Demetre is not entitled to a declaration that Appellant owns the property between the Respondent Crowleys' and the Respondent Beckmanns' lots and Appellant's “marsh” lots. Also, Appellant Demetre does not dispute that the State holds the property below the mean high water mark in trust for public purposes, (*Order on Remand, R. p. 879-884*).

“Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed.” Hobonny Club, Inc., v. Mceachern Jr., Director of the Division of General Services, Budget and Control Board, State of South Carolina, 272 S.C. 392, 398, 252 S.E.2d 133 (1979), (Internal citations omitted).

In the instant case, the Appellant's Deed references the 1920 Plat that depicts marsh where Appellant claims its lots are located, (*Appellant's Deed*, R. p. 838-). The Master's Order (*Order denying Appellant's Rule 59(e) Motion*, R. pp. 885-886), which cites the 1786 Plat, (*1786 Grant and Plat, Supplemental R. pp. 1073-1074*), the Tartus' Plat, (*1895 Tartus' Plat*, R. p. 1067), and the 1920 Plat shows marshland behind Respondent Beckmanns' and Respondent Crowley's lots, where Appellant's lots purport to be, (*1920 Cummings and McCrady Plat*, R. p. 1068).

Because the Master properly concluded that the 1943 Master's Deed (*1943, Master's Deed*; R. pp. 835-837), conveying property to the Appellant's Predecessor in interest, did not include any land contained in the Marsh, the Appellant's Predecessor in title did not have title to marshland to convey to Appellant. Appellant's quit claim deed tried to convey property by reference to the 1920 Plat, when in fact, Appellant's Predecessor in interest had no claim to the marshland to convey, (*1920 Cumming and McCrady Plat*, R. p. 1068).

"In an action to quiet title, the [Appellant] must recover on the strength of [Appellant's] own title, not on the alleged weakness of the [Respondent's] title." Hoogenboom v. City of Beaufort 315 SC 306, 433 SE 2d 875,880 (S.C. Ct. of App. 1992). The Master properly concluded that Appellant's "Record Title" was insufficient to convey good title to Appellant, as against the State, (*Order on Remand*, R. pp. 879-884).

The testimony from the surveyor Kennerty is not dispositive, with Kennerty having admitted that he had originally done the survey wrong, (*December 12, 2006, Hearing*, R. p. 895, Lines 18-20), the instructions which Kennerty downloaded off the internet were convoluted (*December 12, 2006, Hearing*, R. p. 895, Lines 20-23) and that the Plat drawn in this case was the first time that Kennerty had established a mean high water mark (*December 12, 2006, Hearing*, R. p. 897, Lines 17-18).

It is only many years after the 1920 Plat was drawn that the Kennerty Plat was created, which purports to show some highland interspersed among what was originally described as marshland, (2005 Kennerty Topographic Plat, R. p. 1071).

The other evidence in the record includes the three plats described in the Rule 59(e) Order, (Order Denying Rule 59(e) Motion, R. pp. 885-886), which show the land behind the Respondents' lots was marshland, (Order denying Rule 59(e) Motion, R. pp. 885-886). Therefore, if any highland exists today, as described in the Kennerty Plat, (2005 Kennerty Topographic Plat, R. p. 1071), the land must have accreted. Accreted land generally benefits the land which it abuts. "Accretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the property of the owner of the land accreted or increased." The State of South Carolina, Appellant-Respondent, v. The Beach Co. and Gulf-Stream Dredging Company, Inc., Respondents-Appellants 271 S.C. 425, 429-430, 248 S.E.2d 115 (1978).

"...when land which is so increased, is subject to an easement or dedication, the increased area is subject to the same burdens. Therefore, if any of the area in question in this action is burdened with an easement or has been dedicated to public use, the increase or accretion bears the same limitation." Beach *supra* at, 429-430.

Under the instant circumstances, because the highland abuts the Road, the ownership of which was settled in the Road Case, (Unpublished Opinion No.: 2009-UP-029, Re-filed, April 21, 2009, S.C. Ct. of App., R. pp. 869-878), then the only reasonable conclusion is that the Town of Folly Beach owns any highland which abuts its property.

3. **DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 393 S.C. 100, 712 S.E.2d 395 (2011) (THE PUBLIC TRUST DOCTRINE DOES NOT EXTEND ABOVE THE MEAN HIGH-WATER MARK), WHERE, BASED ON THE PUBLIC TRUST DOCTRINE, THE MASTER FINDS THAT THE STATE OWNS PROPERTY ABOVE THE MEAN HIGH-WATER MARK?**

Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011), does not conflict with the Master's Order on Remand, (*Order on Remand*, R. pp. 879-884). The Tenney case indicates that Coburg I and II are overruled to the extent that marsh islands (also described as hummocks or hammocks) do not follow ownership of the marsh. Tenney, *supra* at, 111. However, Tenney does not stand for the broad proposition that mere high places which, exceed the average high water mark but are separated to a substantial degree by the surrounding marsh which is regularly inundated, is not in fact part of the marshland which presumptively belongs to the State of South Carolina.

If Appellant's claim were carried to its logical conclusion, every high place in the marsh which exceeded the mean high water mark would be subject to a claim of ownership from every property owner on its landward side. Clearly Tenney was intended to clarify the issue of ownership of hummocks or hammocks, not to create the right to claim ownership to every high spot in the marsh.

Having presented no evidence of a grant from the State of South Carolina or a Kings Grant, the high places in the marsh must in fact, be presumed to belong to the State of South Carolina, unless and until, the Appellant is able to prove otherwise in a case filed against the State of South Carolina.

4. **THE PARTIES STIPULATED ON THE RECORD AT TRIAL THAT APPELLANT HAS RECORD TITLE TO THE SUBJECT PROPERTY. HOWEVER, THE MASTER'S ORDER ON REMAND FINDS THAT, IN APPELLANT'S CHAIN OF TITLE, HIS LOTS "DID NOT EXIST." DOES 'THE MASTER'S ORDER ON REMAND CONFLICT WITH BELUE V. FETNER, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) (THE COURT WILL NOT GO BEYOND PARTIES' STIPULATION TO DETERMINE THE FACTS)?**

Counsel for Appellant continues to try to support Appellant's Appeal, by continual references to a Stipulation before the Master, agreed to during the original Hearing in this matter, (*December 12, 2006, Hearing R. p. 892, Lines 1-15*). The Stipulation was simply a Stipulation to "Record Title", and nothing more. Counsel for the Respondents made it clear, as to the scope of the Stipulation, (*October 21, 2011, Hearing, R. p. 929, Lines 9-21*). During the Hearing on Remand in this case, on October 21, 2011, the Master prudently revisited the issue of the scope of the Stipulation, (*October 21, 2011, Hearing, R. p. 928, Line 10 – R. p. 930, Line 5; R. p. 932, Lines 3-5*). The colloquy between the Master, Respondents' Counsel and Appellant's Counsel, during the Hearing on Remand, reveals that Appellant's Counsel's repeated references to the Stipulation, as being of some import in this Appeal, is without a factual basis, (*October 21, 2011, Hearing, R. p. 928, Lines 18-21*), (*December 12, 2006, Hearing R. p. 921, Line 21 – R. p. 922, Line 2*).

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. A Stipulation was put on the record by Respondent's Counsel in which the title of record to Respondent, Crowley's, and Respondent Beckmanns' property was stipulated "...as far as record title." (Emphasis added), (*December 12, 2006, Hearing, R. p. 892, Lines 1-15*). 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 (*December 12, 2006, Hearing, R. p. 921, Line 21 – R. p. 922, Line 2; R. p. 892, Lines 1-15*).

The Stipulation applies to all the parties to this action and not all of the titles can be good titles, but all of the litigants have record title. It is clear from the language of the Stipulation that it was done for the purpose of avoiding burdensome testimony as to record title, (*October 21, 2011, Hearing, R. p. 928, Lines 9-21*).

The Master, specifically referring to documents stipulated to, in the Remand Hearing, states after hearing from Appellant's Counsel about the Stipulation of title and Respondent's Counsel that there were additional Stipulations, the following: "It does go on. Line 7, chain of title, -- Emily Brown has been stipulated to, to the Crowleys its been stipulated to, to the Beckmans, its been stipulated to. I guess that brings up the question, what does the stipulation mean? Record title is what record title was for Mr. Demetre. ...Okay. So I guess from a stipulation standpoint, stipulating how each (party) got its title, would be what I understand" (*October 21, 2011, Hearing, R. p. 928, Lines 18-21; R. p. 930, Lines 1-5; R. p. 932, Lines 15-25*).

Additionally, the Master when summarizing the matters in dispute, at the end of the December 12, 2006 Hearing, stated that, "Because I'm not likely to grant any Motions. I'm just here to tell you that. *We've got a factual dispute over title to land.* And the question is going to be is title in the name of the Plaintiff, the Demetre Family Trust? Or is title in the Defendants? Or is title in the City of Folly Beach? Or is title in the State of South Carolina?" (*December 12, 2006, Hearing, R. p. 921, Line 21 – R. p. 922, Line 2*), (Emphasis added).

In an action at law tried by the Master alone, an Appellate Court's review is limited to correcting errors of law and this Court should affirm the Master's factual findings if there is any evidence in the record which reasonably supports them. Lowcountry Open Land Trust v. State, 347 S.C. 96, 101-02, 552 S.E.2d 778, 781 (Ct. App. 2001). In the instant case, the Master properly found that the record titles were stipulated to, in order to show how each party got its title, not to show the efficacy of the titles, (*October 21, 2011, Hearing, R. p. 928, Lines 9-21*).

5. WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE COURT OF APPEALS REVERSED THE ORIGINAL DOCK CASE ORDER FINDING FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT ADVERSE POSSESSION, AND, ON REMAND, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, DID THE MASTER ERR IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY?

Appellant's issue misstates the facts of this Appeal and Appellant's argument is inapposite. An Appellant provides no citation or reference for this issue. The Court of Appeals did not find for Respondents on each of their affirmative defenses except adverse possession, as Appellant argues. Before the lower Court the Judge stated, "Plaintiff's counsel argued during the Hearing in this matter, that Affirmative Defenses were not available to Respondents, but the Court disagrees. I find that there is no basis for Plaintiff's argument." (*Order on Remand*, R. p. 883).

As stated above, Respondents stipulated to "Record Title" and not "Good Title" (*October 21, 2011, Hearing*, R. p. 928, Lines 18-21; R. p. 930, Lines 1-5; R. p. 932, Lines 15-25), (*December 12, 2006, Hearing*, R. p. 921, Line 21 – R. p. 922, Line 2; R. p. 892, Lines 1-15), and the premise of Appellant's issue is invalid, (see Respondents' response to Appellant's argument on the Stipulation, in issue "4" hereinabove, which is incorporated herein by reference).

6. TO THE EXTENT THAT ANY OF RESPONDENTS' AFFIRMATIVE DEFENSES REMAINED AVAILABLE FOR THEM TO ARGUE ON REMAND, IN RULING AGAINST THOSE AFFIRMATIVE DEFENSES. SHOULD THE MASTER HAVE CITED AUTHORITY?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court, (*Motion, R. pp. 1025-1027*). The Respondents respond below, without waiving this objection.

Appellant's argument is nonsensical. Respondents' Affirmative defenses remain available to the Respondent, except for adverse possession or possession by grant and laches, (*Order on Remand, R. p. 883*). Furthermore, the Order on Remand specifically states, "[Appellant's] Plaintiff's counsel argued during the Hearing in this matter, that Affirmative Defenses were not available to Respondents, but the Court disagrees. I find that there is no basis for [Appellant's] Plaintiff's argument." (*Order on Remand, R. p. 883*).

7. **DID THE MASTER ERR IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST WHICH DOES NOT REQUIRE CONSENT OF THE LANDOWNER OVER WHOSE PROPERTY THE DOCK WHARFS?**

Appellant again misstates the Master's Order on Remand, (*Order on Remand*, R. p. 883) the Master states, "I do find that the [Respondents'] docks have been there for many years prior to [Appellant's] purported purchase of the property and so [Appellant's] purchase of the property was done with the full knowledge and understanding that the [Respondents] had a vested property interest, granted under license from the state, to the docks...", (*Order on Remand*, R. p. 883). In this sentence the Master does not impute any ownership of the land underneath the docks to the Respondents, but merely confirms that (i) the Appellant knew the docks were there at the time the Appellant obtained his quit claim deed to the marsh and (ii) the Respondents did have a vested interest in the licenses granted from the State, (*Order on Remand*, R. p. 883).

While it is clearly the law that under the exercise of its police power, the state may revoke a dock permit that it has allowed (Section 48-39-150 (E) S.C. Code Ann., 1976, as amended), it is the state's responsibility to do so and only, "...after written notice of intention to do so has been given the holder and the holder given an opportunity to present an explanation to the department (OCRM)." (Section 48-39-150 (E) S.C. Code Ann., 1976, as amended). Until the State revokes or modifies the Respondents' permit then such permit is valid and the Respondents are free to engage in the activity permitted. The Master was simply reinforcing his finding that the State was a necessary party if there were going to be a determination of the rights of the Respondents to continue in their use of the docks.

8. **THE MASTER'S ORDER ON REMAND FINDS THAT THE SUBJECT PROPERTY ACCRETED AFTER 1920. THERE IS NO EVIDENCE TO SUPPORT THAT THE PROPERTY WAS BELOW THE MEAN HIGH-WATER MARK ON 1920. HOWEVER, APPELLANT'S PROPERTY IS THE HIGHLAND TO WHICH ANY ACCRETION WOULD HAVE ADDED IF ANY HAD OCCURRED. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT THE STATE OWNS THE PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. BEACH CO., 248 S.C. 115, 271 S.E.2d 115 (1978). (NATURAL ACCRETION BENEFITS THE PRIVATE HIGHLAND OWNER TO WHOSE PROPERTY IT ADDS)?**

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court (*Motion, R. pp. 1016-1018*). The Respondents respond below, without waiving this objection.

The Master found that there were no lots to which Appellant could lay claim to title (*Order on Remand, R. pp. 879-884*). The Master found, that as of the date of deed through which Appellant claims, there was only marshland there (*Order on Remand, R. pp. 879-884*). The Master further found that Appellant did not refute the Plats in evidence as to the extent of the marshland as described on the Plat referred to in Appellant's deed, (*Order on Remand, R. pp. 879-884*). There was no testimony as to when the property accreted.

As of the date of the 1920 Plat, the only thing in evidence showing the extent of the marsh at that time, shows "Marshland" to the riverward of Respondents' property, (*1920 Cummings and McCrady Plat, R. p. 1068*). Under the facts of this case, and pursuant to State v Beach Co. 271 S.C. 425, 429-430, 248 S.E.2d 115 (1978), the Respondents own the property, "Accretion by natural alluvial action to lands on a navigable stream, such as ocean waters, become the property of the owner of the land accreted or increased". Beach Co., *supra* at, 429.

However, because this Court has ruled in the Road Case, that the City of Folly Beach owns Indian Avenue, the City may be the beneficiary of the accreted land, (*Unpublished Opinion No.: 2009-UP-029, Re-filed, April 21, 2009, S.C. Ct. of App., R. pp. 869-878*). "... when land which is so increased is subject to an easement or dedication, the increased area is subject to the same burdens, Beach Co., supra at, 429-430. Therefore, if any of the area in question in this action is burdened with an easement or has been dedicated to public use, the increase or accretion bears the same limitation. Beach Co., supra at, 430. If the narrow strip of land originally left between ... (the street) and mean high-water mark has been dedicated to the public, then the accreted areas are also dedicated to the public. Beach Co., supra at, 429-430. If ... (the property owner) has fee simple title to the narrow strip, it has fee simple title to the entire area.

The Appellant, having received "Marshland" by a mere quit claim deed, cannot be the beneficiary of accretion. As the marsh area accretes to the higher shoreward property, the Marshland is lost and becomes highland. Conversely, if highland is eroded away it becomes marshland. Significantly, under South Carolina law, wetlands created by the encroachment of navigable tidal water belong to the State. Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E.2d 547 (1995). (Other portions of Coburg overruled in the Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011)).

Proof that land was highland at the time of grant and tidelands were subsequently created by the rising of tidal water cannot defeat the State's presumptive title to tidelands. State v. Fain, 273 S.C. 748, 259 S.E.2d 606 (1979); McQueen v South Carolina Coastal Council 354 S.C. 142, 150, 580 S.E.2d 116 (2003).

9. APPELLANT'S PROPERTY IS IDENTICALLY SITUATED TO AND SHARES THE SAME KEY LINKS IN ITS CHAIN OF TITLE AS THE SUBJECT PROPERTY IN DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL 399 S.C. 259, 730 SE.2d, 922, (S.C. Ct. App. 2012) (FINDING THAT CERTAIN HIGH MARSH IS PART OF FOLLY ISLAND AND OWNED BY DREHER, A PRIVATE CITIZEN). DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH DREHER WHERE IT FINDS THAT THE SUBJECT HIGH MARSH IN THE PRESENT CASE IS OWNED BY THE STATE?

In the Dreher case, the Appellate Court found the fact that the tract of land in question was a part of Folly Beach was the law of the case even though DHEC tried to correct that finding at the very beginning of the appeal. The Master, in the instant case, is not bound by the factual findings in another case which apply only to that case. "As an initial matter, we note the ALC's finding of fact that Tract D is a part of Folly Island is the law of the case. DHEC initially filed a motion to reconsider this particular finding by the ALC, stating "[t]he [c]ourt's finding that 'notwithstanding the man-made excavation, Petitioner's property, geologically, geographically, and by legal description, is on and within the boundaries of Folly Island' is inconsistent with the evidence presented and misleading in light of the court's correct legal conclusions." Dreher v South Carolina Department of Health and Environmental Control, 399 S.C. 259, 730 SE.2d, 922, (S.C. Ct. App. 2012).

"Despite DHEC's attempt to correct this alleged inconsistency in the Order, the Administrative Law Court did not rule on the motion and DHEC failed to challenge the Administrative Law Court's finding on appeal; therefore, the finding that Tract D is a part of Folly Island is the law of the case." Dreher v South Carolina Department of Health and Environmental Control, 399 S.C. 259, 730 SE.2d, 922, (S.C. Ct. App. 2012). It is obvious that a Finding of specific facts in one case, is not necessarily binding in another case. It is axiomatic that, the Law of the Case Doctrine binds the parties involved in that case but does not bind parties who are strangers to the case.

10. DOES THE ORDER ON REMAND ERR IN FINDING THAT THE FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT?

The Master, in his Order denying Appellant's Rule 59 (e) Motion, (*Order Denying Rule 59(e) Motion*, R. pp. 885-886), specifically finds that Appellant relies on the assertion that the Folly Beach Corporation took title based on the Tartus' Plat, (*1895 Tartus' Plat*, R. p. 1067), which the Master specifically finds shows marshland where the Appellant's property purportedly lies, (*Order denying Rule 59(e) Motion*, R. pp. 885-886).

Because the Master finds that the Tartus Plat (*1895 Tartus' Plat*, R. p. 1067), is consistent with the 1786 Plat, (*1786 Grant and Plat, Supplemental* R. pp. 1073-1074), and the 1920 Plat, (*1920 Cummings and McCrady Plat*, R. p. 1068), that the 1943 Master's Deed (*1943, Master's Deed*; R. pp. 835-837) could not convey marshland to the Appellant's predecessors in interest and therefore the quitclaim deed to the Appellant could convey nothing because, Appellant's purported lots are located in the middle of marshland.

11. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT THE 1786, 1895, AND 1920 PLATS ARE MORE PRECISE AS TO THE LOCATION OF THE MEAN HIGH-WATER MARK THAN THE 2005 KENNERTY TOPOGRAPHIC SURVEY WHERE THE EARLIER PLATS DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK, BUT THE 2005 KENNERTY TOPOGRAPHIC SURVEY DOES?

Appellant's issue is unsupported by the facts of this case. The Master relied on the plats that were referred to in the quit claim deeds, the Tartus' Plat (*1895 Tartus' Plat, R. p. 1067*), and the 1786 Plat, (*1786 Grant and Plat, Supplemental R. pp. 1073-1074*). There was no evidence, (the Appellant admitting that he did not know what went on the property prior to his purchase (*December 12, 2006, Hearing, R. p. 897, Lines 23-25; R. p. 898 Lines 1-11*), that indicated what the area looked like when the property was purchased by the parties' predecessors in interest other than the area was referred to as "marsh" in all the old Plats.

The Appellants deed refers to and includes a reference to a 1920 Plat (*1920 Cummings and McCrady Plat, R. p. 1068*). On that plat Appellants "lots" do not appear, (*1920 Cummings and McCrady Plat, R. p. 1068*). Appellant insists that his lots appear on the 1965 tracing of the 1920 Plat, (*1965 Plat, tracing of 1920 Plat, R. p. 1069*), but a subsequent 1968 Plat, (*1968 Plat Redraw, R. p. 1070*), reverts to the original 1920 Plat, (*1920 Cummings and McCrady Plat, R. p. 1068*), dimensions and Appellant's lots disappear.

Appellant's unsupported claim for any of the property fails because Appellant's deed only refers to marsh (*Appellant's Deed, R. pp. 838-839*). Appellant bought his "lots" in 2004 and could have referred to the 1965 tracing (*1965 Plat, tracing the 1920 Plat, R. p. 1069*), if that had been the parties intent but instead his deed refers to the 1920 Plat (*1920 Cummings and McCrady Plat, R. p. 1068*), which does not include its lots. "It is difficult to imagine how more precisely to express intent as to the location of boundaries than to incorporate an accurate plat in the description." Hobonny Club, Inc., Respondent, v. McEachern Jr., Director of the Division of General Services, Budget and Control Board, State of South Carolina, Appellant 272 S.C. 392,

398, 252 S.E.2d 133 (1979). “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 land. *Since respondent received the property by way of the... deed describing the property as that shown on the 1916 plat, we hold that he is limited to that description. This is especially true in view of the fact that respondent, on at least five occasions, sold lots from this tract by deeds referring to the ... plat.*” Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581 (1981), (Internal citations omitted), (Emphasis added).

Additionally, the Master relying on Query v. Burgess, 371 S.C. 407, 39 SE 2d 455 (S.C. Ct. of App. 2006), found that based on that case neither the State of South Carolina nor the King ever deeded any marshland away around Folly Beach and therefore the Appellant’s Predecessors in interest did not have any interest in the marshland to convey.

12. **DOES THE ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2d 40 (1995), IN FINDING THAT APPELLANT'S LOTS "DO NOT EXIST?"**

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court (*Motion, R. pp. 1013-1016*). The Respondents respond below, without waiving this objection.

Richardson v. Register 227 S.C. 81, 87 S.E.2d 40 (1995), is not applicable to this case. Richardson is a latent ambiguity case, in which parties to the deed agreed on a location for an adjoining property line to be located. They agreed that if they were incorrect they would correct the error later. Richardson, *supra* at, 85-86. In the instant case, there is complete clarity about the description and none of the parties to the case were parties to the deed between appellant and Mr. Seabrook, Appellant's Grantor.

The construction of a clear and unambiguous deed is a question of law for the court. Hammond v. Lindsay, 277 S.C. 182, 284 S.E.(2d) 581 (1981).

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action." Townes Associates Ltd., v. City of Greenville, 266 S.C. 81, 85-86, 221 S.E.2d 773 (1976).

13. DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT IS "INCORRECT" IN ADDING LOTS AND THAT THE 1968 PLAT WAS INTENDED TO "CORRECT" THE 1965 PLAT?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court (*Motion, R. pp. 1023*). The Respondents respond below, without waiving this objection.

Appellant misstates the holding of the Court of Appeals. In its Findings of Fact the Court of Appeals found on the second page of its Order, “Most of the Island of Folly Beach, South Carolina was platted and subdivided by the Jefferson Construction Company in 1920 and recorded in the Charleston County Register of Mesne Conveyance RMC, (*1920 Jefferson Plat, R. p. 663*). Subsequently, in 1965 the 1920 Plat, was traced (*1965 Plat, R. p. 1069*), because of deterioration and in 1968 it was redrawn, (*1968 Plat Redrawn, R. p. 1070*). The redraw added parcels to the 1920 plat, (*1968 Plat Redrawn, R. p. 1070*): however, the tracing appears to be identical to the 1920 plat, (*1965 Plat, R. p. 1069*). All three Plats share the same book and page number at the RMC Office.” (*Unpublished Opinion No.: 2009-UP-029, Re-filed April 21, 2009, S.C. Ct. of Appeals, R. pp. 869-878*).

Later, on the fourth page of the Court of Appeals decision, the Court Found in the “Dock Case” that “On January 23, 2004, [Appellant] bought two riverfront lots, 209 and 210, on East Indian Avenue from Seabrook, Jr., for \$23,700 by quitclaim deed, (*Appellant’s Deed, R. pp. 838-839*). The deed references the 1920 plat. [Appellant’s] lots are shown on the 1965 redraw (*1965 Plat, R. p. 1069*), but they do not appear on the 1920 plat, or the Charleston County tax map.” (*Unpublished Opinion No.: 2009-UP-029, Re-filed April 21, 2009, S.C. Ct. of App., R. p. 872*).

Finally the Court of Appeals Order on the fourth page, references the Respondents deeds as follows: “The Crowleys purchased lot 210, East Huron Avenue, on September 1, 1964, and the Beckmanns purchased lot 209, East Huron Avenue, on April 27, 1972. Both of their deeds referenced the 1920 plat, which shows no lots between their lots and the marsh abutting the river. The [Respondents] both believed they owned all the property behind their homes down to the marsh.” (*Unpublished Opinion No.: 2009-UP-029, Re-filed April 21, 2009, S.C. Ct. of App., R. p. 872*).

The Appellant is incorrect in its assertion that the findings of the Master on Remand were in conflict with the findings of the Court of Appeals. The Master, as instructed by this Court, reviewed the evidence, all of the plats and deeds in evidence, specifically relying on the 1786 Plat, (*1786 Grant and Plat, Supplemental R. pp. 1073-1074*), the Tartus’ Plat (1895 Tartus’ Plat, R. p. 1067), and the 1920 Plat (*1920 Cummings and McCrady Plat, R. p. 1068*). After reviewing the evidence, the Master determined that based on the evidence, that Appellant’s Predecessor in interest took title at a foreclosure sale in 1943 and the Master’s Deed (*1943, Master’s Deed; R. pp. 835-837*), did not convey any marshland to the Appellant’s Predecessor in title and thus Appellant could have no claim to the marshland shown in his quitclaim deed.

Appellant’s lots only appear in a 1965 tracing of the 1920 Plat, (*1965 Plat, tracing the 1920 Plat, R. p. 1069*), which the Master found to be “incorrect” (*Order on Remand, R. p. 881*), (a subsequent Plat redraw in 1968 corrected the 1965 errors), (*1968 Plat Redrawn, R. p. 1070*). Obviously, the 1965 tracing could not serve as the basis for the Master’s 1943 Deed, because it post dated the 1943 Master’s Deed, (*1943, Master’s Deed; R. pp. 835-837*). The Master found that this fact was known to Appellant’s Grantor, Edward Seabrook, Jr., based on Mr. Seabrook’s conveyance by Quitclaim Deed, to the Appellant (*Order on Remand, R. p. 881*).

Thus, the Master's Order on Remand was in harmony with this Court's Order and supported by ample evidence, (*Order on Remand*, R. pp. 879-884).

The construction of a clear and unambiguous deed is a question of law for the court. Hammond v. Lindsay, 277 S.C. 182, 284 S.E.(2d) 581 (1981). In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action. Townes Associates Ltd., v City of Greenville, 266 S.C. 81, 85-86, 221 S.E. 2d 773 (1976).

14. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT APPELLANT'S PREDECESSOR IN INTEREST BELIEVED THAT HE DID NOT OWN THE SUBJECT LOTS BASED ON THE FINDING THAT HE SOLD THE PROPERTY IN THAT AREA WITH A QUITCLAIM DEED WHERE THE EVIDENCE SHOWS THAT APPELLANT'S PREDECESSOR IN INTEREST ALSO SOLD PROPERTY IN THAT AREA BY GENERAL WARRANTY DEEDS?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court (*Motion, R. pp. 1023-1024*). The Respondents respond below, without waiving this objection.

Appellant mischaracterizes the Master's Order on Remand, (*Order on Remand, R. pp. 879-884*). The Master found that the lots in question do not exist, (*Order on Remand, R. p. 881*). The Master went on to say that fact was apparently known to Mr. Seabrook when he quitclaimed the lots to Appellant by use of a quit claim deed (*Order on Remand, R. p. 881*). 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. The plat referred to in the quitclaim deed (the 1920) Plat doesn't show the lots purportedly being conveyed.

Appellant received its deed in 2004, (*Appellant's 2004 Deed from Seabrook, Jr., R. pp. 838-839*). The 1965 Plat (*1965 Plat, tracing the 1920 Plat, R. p. 1069*) and the 1968 Plat (*1968 Plat, Redrawn; R. p. 1070*), were on record at the Charleston County RMC. However, the deed refers to neither of the more recent representations of the area specifically referring to the 1920 Plat (*1920 Jefferson Construction Plat, R. p. 663*) and specifically mentioning it by name.

"When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed.

("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....**") Bennett v. Investors Title Ins. Co., 370 S.C. 578, 594, 635 SE 2d 649 (S.C. Ct. of App. 2006), (emphasis added), (internal citations omitted).

"The construction of a clear and unambiguous deed is a question of law for the court." Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.(2d) 581 (1981). "The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself. Smith v. DuRant, 236 S.C. 80, 113 S.E. (2d) 349 (1960)" Gardner v Mozingo 293 S.C. 23, 25-26, 358 S.E.2d 390 (1987).

Here the Master correctly construed the deed to the Appellant as conveying nothing, (*Order on Remand*, R. pp. 879-884).

15. **THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT FOR ADVERSE POSSESSION. HOWEVER, THE COURT OF APPEALS REVERSED THE DOCK CASE ORDER, AND RESPONDENTS DID NOT PETITION FOR REHEARING OR FOR A WRIT OF CERTIORARI. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT RESPONDENTS' AFFIRMATIVE DEFENSES ARE AVAILABLE TO THEM TO ARGUE ON REMAND. DOES THIS FINDING CONFLICT WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 388 S.C. 171, 525 S.E.2d 869 (2000) (AN UNAPPEALED RULING BY THE COURT OF APPEALS BECOMES THE LAW OF THE CASE)?**

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court (*Motion, R. pp. 1025-1027*). The Respondents respond below, without waiving this objection.

The case referenced above held that, Charleston Lumber was bound by a previous Court of Appeal's case. Under those specific facts that was true. If the Appellant is suggesting that the Master in this case is bound to do what this Court instructed the Master to do, he has done just that. The Master found title could not be quieted in Appellant and so denied that based on the evidence and case law before the Master, (*Order on Remand, R. pp. 883-884*), (*Order Denying Rule 59(e) Motion, R. pp. 885-886*). The Master is in complete harmony with the Court of Appeals ruling in this case.

16. WHERE THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THERE IS HIGHLAND IN THE AREA OF THE UNDEVELOPED ROADWAY RUNNING ALONG RESPONDENTS' LOTS, AND WHERE THE COURT OF APPEALS OPINION FOUND THAT THERE IS HIGHLAND IN THAT AREA, DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE STATE OWNS THAT AREA?

This argument is not properly before this Court, because this argument was not argued before, the Trial Court. Instead, the Appellant improperly raised this argument for the first time, by way of a Rule 59(e) Motion, filed with the Trial Court, (*Motion, R. pp. 1016-1017*). The Respondents respond below, without waiving this objection.

This issue raised by Appellant, makes unsupported claims, without a reference to support Appellant's issue. Respondents are unaware of support in the Court of Appeal's Order, which supports Appellant's claim that there is highland between the Respondents' lots and the marsh.

The Master in his Order on Remand, finds that Appellant only received a quitclaim deed to marshland, and referring to the 1920 Plat, finds that Appellant's lots do not exist, (*Order on Remand, R. p. 881*). The Master further finds in his Order on Remand, that any highland was designated on the 1920 Plat, as marsh, (*Order on Remand, R. p. 882*). The Master then properly finds that there is no basis to quiet title in the Appellant, (*Order on Remand, R. p. 882*).

The Master provided further guidance in his Order denying Appellant's Rule 59(e) Motion, that even if there was highland where Appellant claims its lots are located, the Appellant's Predecessor in interest was not conveyed any land in the marsh in the 1943 Master's Deed (*Order Denying Rule 59(e) Motion, R. p. 886*). Therefore, Appellant's Predecessor in interest did not have any claim to the marshland or highland in controversy and could not convey any interest to Appellant.

**17. RESPONDENTS RESPECTFULLY REQUEST, PURSUANT TO
RULE 220(C) OF THE SOUTH CAROLINA APPELLATE COURT RULES,
THAT THIS COURT AFFIRM THE DECISIONS OF MASTER ON ANY
GROUND APPEARING IN THE RECORD.**

As additional sustaining grounds, please consider the following.

The Respondent to an Appeal, may raise on Appeal, any additional reasons the Appellate Court should affirm the Master's ruling, regardless of whether those reasons have been ruled on by the Master.

Therefore, this additional sustaining ground is appropriate for consideration on Appeal, along with other sustaining grounds, should this Court be so disposed.

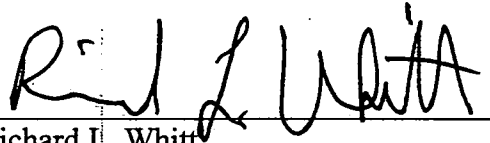
CONCLUSION

Appellant bears the burden of demonstrating that the Master erred. Duckett by Duckett v. Payne, 279 S.C. 94, 302 S.E.2d 342 (1983); Cook v. Elter, 298 S.C. 395, 380 S.E.2d 853 (Ct. of App. 1989). For a variety of reasons, Appellant has not met that burden. For example, Appellant fails to demonstrate in Appellant's Initial Brief any error in the Master's decision. Similarly, Appellant fails to assign specific error to the decision below and Appellant only makes conclusory statements without adequate supporting authority or argument. Finally, Appellant has failed to meet its burden showing that there was any legal or factual error in the Master's Order on Remand, or in his Order denying Appellant's Rule 59(e) Motion.

[Signature Page Follows]

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October 28th, 2013

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.

FINAL REPLY BRIEF OF APPELLANT

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1. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. MURRELL'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972) (A PLAT WHICH DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK IS IRRELEVANT TO DETERMINING WHETHER MARSH IS ABOVE OR BELOW THE MEAN HIGH WATER MARK), IN FINDING THAT THE WORDS "MARSH LAND" ON THE 1920 PLAT MEAN THAT THE PROPERTY IN THAT AREA IS NECESSARILY BELOW THE MEAN HIGH-WATER MARK WHERE THE 1920 PLAT DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK?

A. Plats Cited by Master Do Not Locate the Mean High-Water Mark

Respondents argue that State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972), is inapposite because the plats in that case were not admitted into evidence.

However, Respondents make no return to the fact that the plats on which the Master relied in the present case do not locate the mean high-water mark.¹ Thus, those plats do not support his finding that the subject property was below the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (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 [of the location of the mean high-water mark], the conclusion of the judge that the plats were irrelevant is abundantly clear.")

Evidence, though admitted into the record, is insufficient to prove a fact it does not support. See Mack v. Edens, 464 S.E.2d 124, 126, 320 S.C. 236, 240 (Ct. App. 1995). In the present case, although two of the plats on which the Master relied were in evidence, they did not bear on the point of whether the property was high or low marsh. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 409, 192 S.E.2d 199, 201-02 (1972) ("If admitted, the plats would have been merely cumulative on this point [location of the inlet], and, since they bear on no other, their exclusion could not have prejudiced the State").

¹ The Master relied on the 1920, 1895, and 1786 Plats, none of which show the mean high-water mark. (1920 Plat) (R. p. 803) (R. p. 1068 – Oversized Document); (1895 Plat) (R. p. 658) (R. p. 1067 – Oversized Document). The 1786 Plat, which the Master cited in his Order on Remand at page 4, was not in evidence. The 2005 Kennerty Topographic Survey, which was in evidence, shows the mean high-water mark and that the subject property is highland. (2005 Kennerty Topographic Survey) (R. p. 384) (R. pp. 704, 1071 – Oversized Document).

Thus, the Master's finding that the subject property was below the mean high-water mark, based on plats admitted into evidence but not showing the mean high-water mark, conflicts with State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972).

B. Beckmann's Testimony Shows the Property was Above Mean High-Water Mark

Respondents next assert, although the Master did not cite Respondent Beckmann's testimony for this finding, that Beckmann's trial testimony at pages 298 through 317 supports the Master's finding that the property was below the mean high-water mark.

However, Respondents cite nothing specific in Beckmann's testimony, and it shows that the subject property was above the mean high-water mark, not below it. First, Beckmann testified that the profile drawing he submitted with his dock permit application showed about 400 feet of property above the high tide mark between his property line and the Folly River:

Q. Okay. And this is what you submitted to the Coastal Council, at that time, to obtain your permit?

A. That's true.

Q. Okay. And this does show, approximately, and just less than 400 feet of land between the end of your property and where the elevation of the property goes below the high tide mark?

A. That's what it shows.

(Beckmann Testimony, Trial Tr. 307:22 – 308:04) (R. pp. 910 – 11).

Second, Beckmann testified that had he searched the public records before building his dock he would have found that lots had been platted between his property and the Folly River:²

Q And so do you believe if you had gone to the RMC Office looking to see if anybody owned any lots, or other pieces of property out in front of you, you could have determined that these lots had been platted out in front of you?

A Well, I would agree that was on file in 1987.

(Beckmann Testimony, Trial Tr. p. 302:09 – 302:14) (R. p. 906).

² Respondent Beckmann further admitted that when he applied for his dock permit, the lots were also shown on the tax map. (Trial Tr. 302:15 – 302:24) (R. p. 906). (TMS 132).

Third, consistent with generally known data, Beckmann testified that, if anything, the water level has risen over time because there is a growing amount of water in the ocean. He also testified that Folly Island, both in front of the island and at the back of the island along the Folly River, has suffered from erosion:

A. It [the mean high-water mark] may have changed a foot or so, I don't really know.

Q. Mr. Beckmann, how would it have changed about a foot or two?

A. We're talking 18 years. We have more water in the ocean now. We have – erosion has taken place in front of the island, and the back of the island . . .

(Beckmann testimony, Trial Tr. 308:17 – 308:23) (R. p. 911).

Thus, in the part of the trial transcript which Respondents cite, Respondent Beckmann testified that between his property line and the Folly River, there was over 400 feet of highland and lots recorded in the public record,³ and, that, if anything, over time, rather than accretion, there has been a rise in the water level and erosion.

C. The 1968 Plat Does Not “Correct” the 1965 Plat

Respondents next cite the Master's finding that the 1968 Plat redrew the 1965 Plat to correct it by removing the lots it added which were not shown on the 1920 Plat. However, there is no evidence to support this finding, and it is inconsistent with the Opinion of the Court of Appeals and the record.

First, the Court of Appeals found that the 1965 Plat added lots and that the 1968 Plat traced the 1920 Plat. (April 21, 2009 Opinion, pp. 2 -3) (R. pp. 870 – 71). Second, that is what is apparent from plats themselves. (1965 Plat) (R. p. 477, 659) (R. p. 1069 – Oversized Document); (1920 Plat) (R. p. 803) (R. p. 1068 – Oversized Document); (1968 Plat) (R. p. 1070 – Oversized Document).

³ The highland is visible in aerial photos of the area, which mirror the 2005 Kennerty Topographic Survey. (Defendant's Ex. 1-K) (R. p. 850); (Defendant's Ex. 1-M) (R. p. 852); (2005 Kennerty Topographic Survey) (R. p. 384) (R. pp. 704, 1071 – Oversized Document).

Third, real estate attorney Lynda Sullivan, who testified as an expert and had reviewed the public record, testified that nothing in the record disavowed the accuracy of the 1965 Plat:

Q. Have you ever seen any recorded document where the Folly Beach Improvement Corporation, Ed Seabrook, the elder, or Ed Seabrook, the son, ever disavowed the accuracy of this plat we've been talking about [the 1920 Plat], or the 1965 redraw? . . .

A. . . . I didn't see anything in the record.

(Sullivan Testimony; Trial Tr. 80:18 – 81:01) (R. p. 895 - 96).

Fourth, the evidence is that the Seabrooks owned many lots referencing the 1965 plat:⁴

Q. So Ed Seabrook, the Folly Beach Company, dad and son, sold their million. But they owned thousands and thousands of properties, and many many lots, all referencing to these two plats [the 1920 Plat and the 1965 Plat]?

A. They did.

(Sullivan Testimony, Trial Tr. 81:06 – 81:10) (R. 896).

Fifth and finally, the Master's finding that the 1965 Plat was "incorrect" because it added lots not shown on the 1920 Plat conflicts with deeds in the record predating the 1965 Plat which anticipate the recording of a future plat adding lots. Those deeds identify their lots "to be known as" certain lot numbers "when the property in the two hundred (200) block in Indian Avenue is plotted and recorded."⁵

For these reasons, the Master's finding that the 1965 Plat was "incorrect" in adding lots not shown the 1920 Plat is not supported, and conflicts with the Opinion of the Court of Appeals and the evidence in the record.

⁴ The Master's ruling that the 1965 Plat is "incorrect" casts a cloud over numerous property owners' titles on Folly Island, South Carolina.

⁵ In 1948, Edward Seabrook, Sr. sold a lot "to be known as lot 201 Indian Avenue East when the property in the two hundred (200) block in Indian Avenue is plotted and recorded." (1948 Deed for Lot 201 East Indian Avenue) (R. p. 533). In 1949, Seabrook sold a lot "to be known as lot 202 Indian Avenue East when the property in the two hundred (200) block of Indian Avenue East is plotted and recorded." (1949 Deed for Lot 202 East Indian Avenue) (R. p. 596). In 1950, Seabrook sold lots "to be known as 203, 204, 205 Indian Avenue, East, when the property in the two hundred (200) block in Indian Avenue, East is plotted and recorded." (1950 Deed from for Lots 203, 204, and 205) (R. p. 639).

D. Appellant Proved his Title

Respondents next argue that Appellant must show the superiority of his own title not the weakness of Respondents' title. However, first, Appellant proved his title through the testimony of real estate attorney Lynda Sullivan and by placing his chain of title into the record. (Sullivan testimony, Trial Tr. 43:13 – 43:20) (R. pp. 899); (Appellant's Chain of Title) (R. pp. 479 – 659).

Moreover, Respondents stipulated to Appellant's record title, and that stipulation together with the rulings against their affirmative defenses equates to Appellant's good title:

MR. COOPER: . . . It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership [Appellant] has been stipulated to.
(Trial Tr. 06:04 – 06:06) (R. p. 142).

* * * *

COURT: Any response by the Defendant? Everybody in agreement with that? . . .

MS. DEUTSCH [for Respondents]: Yes, your Honor.
(Trial Tr. 07:22 – 07:25) (R. p. 143).

Each of Respondents' affirmative defenses to Appellant's title was ruled against. The Master's original Dock Case Order dismissed Appellant's case based in part on its findings for Respondents on each of their affirmative defenses except adverse possession. (Master's Original March 26, 2007 Dock Case Order, pp. 9 - 18) (R. pp. 25 – 34).⁶

However, the Opinion of the Court of Appeals reversed and remanded the case to the Master. (April 21, 2009 Opinion, p. 10) (R. p. 878) ("However, we reverse the master's March 26, 2007 [Dock Case] order and remand for further findings in accordance with this opinion."). Thus, the Opinion implicitly reversed the Master's findings for Respondents on their affirmative defenses,

⁶ The Master's original Dock Case Order found for Respondents on each of their affirmative defenses except for adverse possession. (Master's original March 26, 2007 Dock Case Order) (Finding for Respondents on Statute of Limitations for Nuisance, pp. 9 - 10 (R. p. 25 - 26); Finding for Respondents on Statute of Limitations for Trespass, pp. 10 - 12 (R. pp. 26 - 28); Finding for Respondents on Estoppel, pp. 12 - 14 (R. pp. 28 - 30); Finding for Respondents on Laches, pp. 14 - 15 (R. pp. 30 - 31); Finding for Respondents on Staleness of Demand, pp. 15 - 16 (R. pp. 31 - 32); Finding for Respondents on Unclean Hands, pp. 16 - 17 (R. pp. 16 - 17).

because, had it affirmed any of those findings, it would have affirmed the dismissal of the case and would not have remanded the case for a determination of Appellant's title.

Respondents did not petition for rehearing or seek a writ of certiorari, and the Opinion's reversal regarding each of their affirmative defenses except adverse possession became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 71, 525 S.E.2d 869 (2000) (An unappealed ruling becomes the law of the case).⁷

On remand, the Master explicitly ruled against Respondents' remaining affirmative defense of adverse possession:

As to the remaining affirmative defenses presented by the Defendants on the claim to ownership of the land in question, I have already found that they do not own the property by adverse possession. I further conclude that they do not own the property by grant (either 20 or 40 years) nor do they possess the property by laches . . . (Master's Order on Remand, p. 5) (R. p. 883).

Thus, Respondents stipulated to Appellant's record title, and each of their affirmative defenses was ruled against, which, together, equates to Appellant's good title.

C. Appellant Preserved the Issues

Respondents assert that various issues were not preserved for appeal. They made the same assertion in their Motion to Dismiss Appeal, which was denied. (Respondents' Motion to Dismiss Appeal). (Order [Denying Respondents' Motion to Dismiss Appeal]).

However, Appellant raised these issues both prior to and again in to his Rule 59(e) Motion. Issue "2" was raised in Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order at pp. 3 - 4 (R. pp. 979 - 80). Issue "6" was raised in Plaintiff's proposed "Final Order" at pp. 8 - 10. (R. 1050 - 52). Issues "12" and "13" were raised in Plaintiff's Memorandum in Opposition to the Dock Defendant's Proposed Order at pp. 15 - 17 (R. pp. 1057 - 59). Issue "14" was raised in Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order at pp. 14 - 19 (R.

⁷ Independently, the Opinion of the Court of Appeals remanded the case to the Master for findings "in accordance with this opinion," thereby precluding any conflicting findings. (April 21, 2009 Opinion, p. 10) (R. p. 878).

pp. 990 - 95). Issue "15" was raised in Plaintiff's Reply to the Dock Defendant's Correspondence to the Court of April 21, 2012 at p. 2 (R. p. 1000). Issue "16" was raised in Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order at pp. 11 - 13 (R. 987 - 89). Thus, these issues were raised prior to the Master's Order on Remand. They were raised again in Appellant's Rule 59(e) Motion. (Appellant's Rule 59(e) Motion) (R. 1011 - 31).

2. BASED ON THE WORDS "MARSH LAND" ON THE 1920 PLAT, THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THE STATE IS A NECESSARY PARTY. THE COURT OF APPEALS OPINION REVERSED THE DOCK CASE ORDER AND REMANDED THE DOCK CASE WITHOUT THE STATE AS A PARTY FOR THE MASTER TO DETERMINE WHETHER APPELLANT OWNS THE SUBJECT PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION WHERE IT AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY?

A. The Road Ended About 280 Feet Into East Indian Avenue

Respondents first assert that the Master found in his Road Case Order filed March 7, 2007 that Folly Beach owns East Indian Avenue, including the subject area between Respondents' lots and the Folly River. However, the Road Case Order did not so find. Instead, it found that about 280 feet into East Indian Avenue from its intersection with Second Street, which is before the Respondents lots (2005 Kennerty Topographic Survey) (R. pp. 704, 1071 - Oversized Document), the road disappeared into the marsh and a wooded area:

The Street is open for approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into a wooded area.

(Master's Road Case Order filed March 7, 2007, p. 5) (R. p. 13).

B. Substituted Opinion Removed the Finding Respondents Assert

Respondents further assert that Appellant is not entitled to a decision that he owns the area between Respondents' lots and the Folly River. However, this assertion restates the finding in the original January 14, 2009 Opinion of the Court of Appeals and disregards that it was removed in the substituted April 21, 2009 Court of Appeals Opinion. (Original January 14, 2009 Opinion, p. 9) (R. p. 867); (Substituted April 21, 2009 Opinion, p. 9) (R. p. 877):

Original January 14, 2009
Opinion, p. 9 (R. p. 867)

Demetre sought a declaration that he owns the property between the Crowleys' and Beckmann's lots and the mean high water mark, and he sought to quiet title to any defects in his title to the land. The master did not rule on either request and only held that the Crowleys and the Beckmanns believed the State owned the land when they applied for the dock permits, which does not resolve the question of actual ownership. *We already determined in the Road case Folly Beach is the owner of East Indian Avenue; thus Demetre is not entitled to a declaration that he owns the property between the Crowleys' and the Beckmanns' lots and his lot.* Also, Demetre does not dispute . . . (Emphasis added).

Substituted April 21, 2009
Opinion, p. 9 (R. p. 877)

Demetre sought a declaration that he owns the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet title to the land. The master did not rule on either request and only held that the Crowleys and Beckmanns believed that the State owned the land when they applied for the dock permits, which does not resolve the question of actual ownership. Demetre does not dispute . . .

C. Substituted Opinion Amended the Mandate on Remand

Also, Respondents disregard that the Court of Appeals amended its mandate on remand in its April 21, 2009 Opinion to reflect that the road does not extend to Respondents' lots and to require the Master to determine whether Appellant owns that area. (Original January 14, 2009 Opinion, p. 10) (R. p. 868); (Substituted April 21, 2009 Opinion, p. 10) (R. p. 878):

Original January 14, 2009
Opinion, p. 10 (R. p. 868)

We need not address Demetre's remaining issues because we remand this case for a determination of whether Demetre owns the land between *East Indian Avenue* and the mean high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

Substituted April 21, 2009
Opinion, p. 10 (R. 878)

We need not address Demetre's remaining issues because we remand this case for a determination on whether Demetre owns the land between *the Crowleys' and the Beckmanns' lots* and the mean high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

D. Opinion of Court of Appeals Found Road Ends at Lot 205

Further, the Opinion of the Court of Appeals at page 7 found that the road ends at the northwest corner of lot 205 East Huron Avenue, which is before Respondents lots 209 and 210 East

Huron Avenue. (R. p. 875). (1965 Plat, showing the location of lots on East Huron Avenue) (R. p. 477) (R. p. 1069 – Oversized Document):

Also, the 1920 Plat, which was referenced in Seabrook’s deed, shows East Indian Avenue extending from Lot 201 to the Northwest corner of Lot 205.

(April 21, 2009 Opinion of the Court of Appeals, p. 7) (R. p. 875).

E. Court of Appeals Opinion Reversed Dock Case Order

Moreover, the Master’s finding in his Order on Remand that the subject property was below the mean high-water mark had already been implicitly reversed by the Court of Appeals.

The Master’s original Dock Case Order dismissed Appellant’s case in part on the erroneous basis that since the 1920 Plat was marked “marshland” in the subject area, the property was below the mean high-water mark and thus the State was a necessary party:

As to the remaining lands extending to the Folly River, this court’s review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland.

Therefore, I conclude that any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina to challenge its presumptive title to the marsh which can only be overcome by clear and convincing evidence (citation omitted).

(Master’s Original March 26, 2007 Dock Case Order, p. 18) (R. p. 34).

* * * *

Based upon the above, having taken into account all evidence and testimony, I make the following Order:

... 3. That this court does not have the proper parties before it to determine title to the marshlands.

(Master’s Original March 26, 2007 Dock Case Order, p. 19)(R. p. 35).

However, the Opinion of the Court of Appeals reversed the Master’s Dock Case Order and remanded the case to him for a determination of whether Appellant owns the portions of the lots above the mean high-water mark, implicitly reversing the Master’s finding that the subject property was below the mean high-water mark. (April 21, 2009 Opinion, p. 9) (R. p. 877) (“Therefore, because the master failed to rule on Demetre’s [Appellant’s] request for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.”)

Thus, the Master's finding in his Order on Remand that the State owns the subject property conflicts with the Opinion of the Court of Appeals.

F. 1943 Deed Conveyed the Subject Area

Respondents argue that the Master concluded that the 1943 Master's Deed to Appellant's predecessor in interest, Edward Seabrook, Sr., did not convey the subject area. However, first, as discussed above in Section 1 at pages 1 to 2, this finding was based on the Master's error of relying on plats which do not show the mean high-water mark to find that the subject property was below the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

Second, this finding was based on the Master's erroneous finding that the 1943 Deed referenced the 1920 Plat. (Order on Remand, pp. 2 – 3) (R. pp. 880 – 81). However, the 1943 Deed instead referenced the 1895 Tartus Plat.

The Tartus Plat, which bore a red line surrounding Folly Island, conveyed all the property within that red line (Tartus Plat) (R. p. 658) (R. p. 1067 – Oversized Document), and the description in 1943 Deed bounded the property on the Folly River, stating in pertinent part, "on the west by the channel of the Folly River and the Folly Creek . . ." (1943 Deed) (R. p. 539). Where a deed bounds a property on a navigable waterway, the conveyance includes all property to the ordinary high-water mark. State v. Pinckney, 22 S.C. 484, 492 (1885). Thus, the 1943 Deed conveyed all highland to the Folly River.

Third, this finding by the Master that the 1943 Deed did not convey the subject property conflicts with the parties' stipulation that Appellant has record title to the subject property:

It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership has been stipulated to.

(Stipulation, Trial Tr., p. 06:04 – 06:08) (R. p. 142).

As a matter of law, the trial court will not go beyond the parties' stipulations to determine the facts upon which the case is decided. Belue v. Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968).

G. Respondent has Proven his Title

Respondents argue that Appellant must recover on the strength of his title, not the weakness of Respondents' title. However, as discussed above in Section 1 at pages 5 to 6, Appellant proved his chain of title, and, independently, Respondents stipulated to Appellant's record title and their affirmative defenses were ruled against, equating to Appellant's good title.

H. No Evidence that Kennerty's Amended Survey is Inaccurate

Respondents argue that Larry Kennerty admitted he originally did his survey wrong. However, Kennerty testified that in his 2005 Topographic Survey, as amended, there was nothing inaccurate. (Kennerty Testimony Trial Tr. 11:21 – 11:25) (R. p. 145). There is no evidence to the contrary. Thus, the only evidence is that the 2005 Kennerty Topographic Survey showing the location of the mean high-water mark is correct.

I. Respondents Misconstrue the Road Case Order and the Court of Appeals Opinion

Respondents argue that the 2005 Kennerty Topographic Survey was drawn years after the 1920 Plat, that it and the two earlier plats from 1786 and 1895 show marshland in the area, and that any highland accreted to the benefit of the City of Folly Beach because, Respondents assert, Folly Beach owned the roadway between Respondents' lots and the Folly River.

However, first, there is no evidence of accretion in the record. Second, as quoted above in Section 1 at page 3, Respondent Beckmann testified that, if anything, over time, the water level has risen and the back of Folly Island along the Folly River has suffered from erosion. (Trial Tr. 308:21 – 308:23) (R. p. 911). Third, regardless, any accretion during the time between the 1920 Plat and the 2005 Kennerty Topographic Survey would have benefited Appellant's predecessors in interest or Appellant as the owners of the highland to which any accretion would have added.

Respondents' argument that any accretion would have benefited the City of Folly Beach is based on their erroneous assertion, discussed above in Section 2 at pages 7 to 9 that the road owned by the City of Folly Beach extended along Respondents' lots when in fact the Road Case Order found that it ended about 280 feet into East Indian Avenue from its intersection with Second Street, and the Opinion of the Court of Appeals likewise found that it ended at lot 205 East Huron Avenue,

which is before Respondents' lots 209 and 210 East Huron Avenue. (March 2, 2007 Road Case Order, p. 5) (R. p. 13); (Substituted April 21, 2009 Opinion, p. 7) (R. p. 875).

3. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 390 S.C. 100, 712 S.E.2d 395 (2011) (THE PUBLIC TRUST DOCTRINE DOES NOT EXTEND ABOVE THE MEAN HIGH-WATER MARK), WHERE, BASED ON THE PUBLIC TRUST DOCTRINE, THE MASTER FINDS THAT THE STATE OWNS PROPERTY ABOVE THE MEAN HIGH-WATER MARK?

A. The State Does Not Claim Property Above the Mean High-Water Mark

Respondents argue that Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 390 S.C. 100, 712 S.E.2d 395 (2011) does not hold that "mere high places" in the marsh should be subject to claims from property owner on their landward side. Respondents provide no distinction between what they call "mere high places" and highland marsh. However, Estate of Tenney reaffirms the longstanding rule in South Carolina that the State does not claim title to property above the mean high-water mark, applying this same rule to marsh islands.

In the present case, the primary property at issue is highland marsh attached to the mainland of Folly Island.⁸ In direct conflict with Estate of Tenney, the Master's Order on Remand finds that the State owns the subject property because it was highland contained within the designation "Marshland on the 1920 Plat of Folly Island." (Order on Remand, p. 5):

5. Any highland, which is riverward of Bekcman and Crowley lots, was contained within the designation "Marshland in the 1920 Plat of Folly Island."
 6. The State of South Carolina is the owner of the land seaward of the Defendants' lots.
- (Order on Remand, p. 5) (R. p. 883).

Thus, the Master's Order on Remand conflicts with Estate of Tenney vs. South Carolina Dept. of Health and Environmental Control, 390 S.C. 100, 712 S.E.2d 395 (2011).

⁸ The subject property primarily consists of highland attached to Folly Island but also includes at least one small marsh island.

B. This Case Pertains only to Property Above the Mean High-Water Mark

Respondents further argue that having presented no evidence of a grant from the State of South Carolina or a Kings Grant, the high places in the marsh must in fact be presumed to be owned by the State of South Carolina.

However, a grant from the State of South Carolina or Kings Grant must be proven only to quiet title below the mean high-water mark. Under the public trust doctrine, the State has presumptive title to property only below the mean high-water mark. McQueen v. S.C. Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003). In this case, Appellant seeks to quiet title only above the mean high-water mark. (Trial Tr. 08:10 – 08:19) (R. p. 144).

4. THE PARTIES STIPULATED ON THE RECORD AT TRIAL THAT APPELLANT HAS RECORD TITLE TO THE SUBJECT PROPERTY. HOWEVER, THE MASTER'S ORDER ON REMAND FINDS THAT, IN APPELLANT'S CHAIN OF TITLE, HIS LOTS "DID NOT EXIST." DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH BELUE V. FETNER, 251 S.C. 600, 606, 164 S.E.2D 753, 755 (1968) (THE COURT WILL NOT GO BEYOND PARTIES' STIPULATION TO DETERMINE THE FACTS)?

Respondents argue that their stipulation was to nothing more than Appellant's "record title" and that Appellant tries to bootstrap that into good title. However, as discussed above in Section 1 at pages 5 to 6, Appellant does not argue that the stipulation alone equates to good title. Rather, Respondents' stipulation to Appellant's record title together with the rulings against their affirmative defenses equates to Appellant's good title.

Respondents assert that their stipulation was of no import to the appeal. However, it was because it conflicts directly with the Master's erroneous finding that Appellant's lots "do not exist." (Master's Order on Remand, p. 5) (R. p. 883) ("...2. On the 1920 plat the so-called Demetre 'lots' are not shown and therefore do not exist.")

Respondents also argue that the parties stipulated that all litigants have record title. However, the parties stipulated that Respondents' have record title to their lots and that Appellant has record title to the property he claims. (Trial Tr. p. 06:04 – 06:06) (R. p. 142). There was no stipulation that any party other than Appellant has record title to the property he claims.

Despite the parties' stipulation, the Master erred in finding that the State, rather than Appellant, has title to the area. (Order on Remand, p. 5) (R. p. 883) (" . . . 6. The State of South Carolina is the owner of the land seaward of the Defendants' [Respondents'] lots"). However, the State was not a party to this action and there was no stipulation that the State had title.

5. WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE COURT OF APPEALS REVERSED THE ORIGINAL DOCK CASE ORDER FINDING FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT ADVERSE POSSESSION, AND, ON REMAND, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, DID THE MASTER ERR IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY?

Respondents argue that the Court of Appeals did not find against them on their affirmative defenses. However, as discussed above in Section 1 at pages 5 to 6, this argument disregards the procedural history of the case, because the Master had dismissed Appellant's case based in part on his finding for Respondents on each of their affirmative defenses except for adverse possession, but the Court of Appeals reversed the Master and remanded the case to him to determine whether Appellant owns the subject highland. (Original Dock Case Order filed March 26, 2007, pp. 9 – 19) (R. pp. 25 – 35); (April 21, 2009 Opinion, p. 9) (R. p. 877).

As discussed above in Section 1 at pages 5 to 6, had the Court of Appeals affirmed the Master's rulings on any of Respondents' affirmative defenses rather than reversing them, it would have affirmed the Master's dismissal of the case and would not have remanded the case. Respondents did not appeal the Court of Appeals' reversal of the Dock Case Order, and that reversal became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 71, 525 S.E.2d 869 (2000).

As discussed above in Section 1 at page 6, the Master's Order on Remand explicitly ruled against Respondents' adverse possession affirmative defense. (Order on Remand, p. 5) (R. p. 883).

Respondents argue that they stipulated to "record title" and not "good title." However, that stipulation, together with the rulings against their affirmative defenses equates to Appellant's good title.

6. TO THE EXTENT THAT ANY OF RESPONDENTS' AFFIRMATIVE DEFENSES REMAINED AVAILABLE TO THEM TO ARGUE ON REMAND, IN RULING AGAINST THOSE AFFIRMATIVE DEFENSES, SHOULD THE MASTER HAVE CITED AUTHORITY?

Respondents argue that their affirmative defenses remained available for them to argue on remand.⁹ However, as discussed above in Section 1 at pages 5 to 6 and again above in Section 5 at pages 14, this argument disregards the procedural history of the case. Respondents make no return to the argument that the Master should have cited authority in ruling against any remaining affirmative defenses.

7. DID THE MASTER ERR IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST WHICH DOES NOT REQUIRE CONSENT OF THE LANDOWNER OVER WHOSE PROPERTY THE DOCK WHARFS?

Respondents argue that until the State revokes their dock permits, they may engage in the activity permitted and that the Master was reinforcing the finding that the State was a necessary party to this action to determine whether Respondents could continue to use their docks.

However, this action does not concern revocation of the Respondent's dock permits. (Trial Tr. 04:07 – 04:11) (R. p. 140). The Master's dismissal of Appellant's case in his original March 26, 2007 Dock Case Order, as discussed above in Section 2 at pages 9 to 10, was based in part on his erroneous finding that the State was a necessary party, and that finding was implicitly reversed by the Court of Appeals in reversing and remanding the Dock Case to him. (April 21, 2009 Opinion, p. 10) (R. p. 878).

As acknowledged by Respondents in their dock permit applications, dock permits do not convey vested property rights.¹⁰ Further, the dock permitting administrator for the State at the time Respondents applied for their dock permits testified that if the Respondents had disclosed that their

⁹ Appellant addresses above in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

¹⁰ Respondent Beckmann's dock permit application states in pertinent part, "...8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privilege; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public . . ." (Respondent Beckmann's Dock Permit Application) (R. p. 447).

docks would cross another owner's property, then they would not have been granted dock permits without showing some right to use the upland property. (Trial Tr., 251:13 – 251:16) (R. p. 901) (“QUESTION: “They would either have to buy the property, or get permission from the property owner?” ANSWER: “Show some right to use the upland property, yes.”)

8. THE MASTER'S ORDER ON REMAND FINDS THAT THE SUBJECT PROPERTY ACCRETED AFTER 1920. THERE IS NO EVIDENCE TO SUPPORT THAT THE PROPERTY WAS BELOW THE MEAN HIGH-WATER MARK IN 1920. HOWEVER, APPELLANT'S PROPERTY IS THE HIGHLAND TO WHICH ANY ACCRETION WOULD HAVE ADDED IF ANY HAD OCCURRED. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT THE STATE OWNS THE PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. BEACH CO., 248 S.C. 115, 271 S.E.2d 115 (1978) (NATURAL ACCRETION BENEFITS THE PRIVATE HIGHLAND OWNER TO WHOSE PROPERTY IT ADDS)?

Respondents argue that the Master found that there were no lots to which Appellant could lay a claim.¹¹ However, first, as discussed above in Section 1 at pages 5 to 6, this finding conflicts with the Respondents' stipulation to Appellant's record title. (Trial Tr. p. 6, Stipulation) (R. p. 142).

Second, this finding was based on the Master's error discussed above in Section 1 at pages 1 to 2 that the 1920 Plat could be a basis to find that the subject property is below the mean high-water mark when it does not locate the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

Third, as discussed in Section 1 at pages 5 to 6, this finding that there were no lots to which Appellant could lay claim was already implicitly reversed by the April 21, 2009 Opinion of the Court of Appeals remanding the case for a determination of the ownership of title to the portions of the subject lots above the mean high-water mark:

Therefore, because the master failed to rule on Demetre's request for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.
(April 21, 2009 Opinion, p. 9) (R. p. 877).

¹¹ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

Next, Respondents assert that any accretion inured to the benefit of the City of Folly Beach because, they assert, the Road Case Order found that the City owned the property between the Respondents' lots and the Folly River.

However, as discussed in Section 1 at page 3, there is no evidence of accretion, and Respondent Beckmann admitted that the back of Folly Island along the Folly River, over time, rather than benefiting from accretion, actually suffered from erosion and a rise in the water level. (Respondent Beckmann's testimony, Trial Tr. 308:21 – 308:23) (R. p. 911). Thus, there is no evidence that the subject property, which was shown as highland on the 2005 Kennerty Topographic Survey, was not highland at all material times.

Regardless, as discussed above in Section 2 at pages 7 to 9, the Road Case Order actually found that the road owned by the City of Folly Beach ends about 280 feet from the intersection of Second Avenue and East Indian Avenue, several lots before Respondents lots, and the Opinion of the Court of Appeals found that the road owned by the City of Folly Beach ended at lot 205 East Huron Avenue, which is before Respondents' lots 209 and 210 East Huron Avenue. (Road Case Order, p. 5) (R. p. 13); (April 21, 2009 Opinion of the Court of Appeals, p. 7) (R. p. 875).¹²

As shown by the 1965 Plat and the 2005 Kennerty Topographic Survey, Appellant's property was the highland next to the Folly River. Thus, rather than the City of Folly Beach, Appellant's predecessors in interest and then Appellant were the highland owners to which any accretion would have added. (1965 Plat) (R. p. 477) (R. p. 1069 – Oversized Document); (2005 Kennerty Topographic Survey) (R. p. 384) (R. p. 704, 1071 – Oversized Document).

Finally, Respondents argue that proof that the land was highland at the time of the grant and that rising water subsequently created tidelands cannot defeat the State's presumptive grant. However, in the present case, Appellant does not seek title to tidelands below the mean high-water

¹² Also, as discussed above in Section 2 at page 8, the substituted April 21, 2009 Opinion removed the finding in the January 14, 2009 Opinion that Appellant is not entitled to a finding that he owns the property between Respondents lots and the Folly River. (April 12, 2009 Opinion, p. 9) (R. p. 877). Additionally, as also discussed in Section 2 at page 8, the Court of Appeals amended the mandate on remand to require the Master to determine whether Appellant owns that property. (April 21, 2009 Opinion, p. 10) (R. p. 878).

mark but rather highland above the mean high-water mark. As shown by the 2005 Kennerty Topographic Survey, the subject property is not tidelands but highland. (2005 Kennerty Topographic Survey) (R. p. 384) (R. p. 704, 1071 – Oversized Document).

9. APPELLANT’S PROPERTY IS IDENTICALLY SITUATED TO AND SHARES THE SAME KEY LINKS IN ITS CHAIN OF TITLE AS THE SUBJECT PROPERTY IN DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 399 S.C. 259, 730 S.E.2d 922 (CT. APP. 2012) (FINDING THAT CERTAIN HIGH MARSH IS PART OF FOLLY ISLAND AND OWNED BY DREHER, A PRIVATE CITIZEN). DOES THE MASTER’S ORDER ON REMAND CONFLICT WITH DREHER WHERE IT FINDS THAT THE SUBJECT HIGH MARSH IN THE PRESENT CASE IS OWNED BY THE STATE?

Respondents argue that the parties in the present case are not bound by the finding in Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012), that Tract D, which has the same key links in its chain of title as the subject property in the present case, is part of Folly Island and owned by a private individual rather than the State, because, they assert, the finding of specific facts in one case binds only the parties to that case but not parties who are strangers to that case.

However, mutuality is no longer a requirement of collateral estoppel. Doe v. Doe, 346 S.C. 145, 149, 551 S.E.2d 257, 259 (2001). Rather, the requirement to apply collateral estoppel is that the party against whom the ruling was made had a full and fair opportunity to litigate the issue. Snaveley v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008). The ruling regarding Tract D in Dreher was against the State, which had a full and fair opportunity in Dreher to litigate that issue. The State is the same party the Master found in the present case owns the subject property, a finding conflicting with Dreher.

10. DOES THE ORDER ON REMAND ERR IN FINDING THAT THE FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT?

Respondents argue that the Master in his Order Denying Appellant’s Rule 59 (e) Motion for Relief finds that Appellant relies on the assertion that his title is based on the 1895 Tartus Plat, a plat the Master finds shows “marshland.”

However, the Master’s Order Denying Plaintiff’s [Appellant’s] Rule 59(e) Motion does modify his Order on Remand, nor does it correct the error in his Order on Remand that Appellant’s

predecessor in interest, the Folly Beach Corporation, took title based on the 1920 Plat rather than the 1895 Plat. (Master's Order on Remand, pp. 2 - 3) (R. pp. 880 – 81).

Respondents argue that the Master's Order Denying Plaintiff's [Appellant's] Rule 59(e) Motion finds that the 1895 Tartus Plat is the same as the 1786 Plat and the 1920 Plat in showing marshland. However, as discussed above in Section 1 at pages 1 to 2, the Master makes the same error regarding all three plats, finding that the marsh indicated is below the mean high-water mark despite the fact that none of the plats locate the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

11. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT THE 1786, 1895, AND 1920 PLATS ARE MORE PRECISE AS TO THE LOCATION OF THE MEAN HIGH-WATER MARK THAN THE 2005 KENNERTY TOPOGRAPHIC SURVEY WHERE THE EARLIER PLATS DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK, BUT THE 2005 KENNERTY TOPOGRAPHIC SURVEY DOES?

Respondents argue that at the time of the 1920 Plat, there was no evidence of what the property looked like other than that there was "marsh" in all of the old plats. However, as discussed above in Section 1 at pages 1 to 2, the Master erred in finding that the 1786, 1895, and 1920 plats, which do not locate the mean high-water mark, were a basis to find that the subject property is below the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

Respondents argue that Appellant's lots do not appear on the 1920 Plat, that Appellant's deed could have referred to the 1965 Plat but instead referred to the 1920 Plat, and that when a plat is referenced by a deed it becomes part of the deed.

However, where the property description in the deed conflicts with the plat the deed references, the deed is ambiguous. Here, the property description in the deed conflicts with the 1920 Plat it references, which does not show the lots the deed describes.

Where a deed is ambiguous, extrinsic evidence should be used to determine the intent of the grantor. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955). Respondents stipulated to Appellant's record title for the subject property. (Trial Tr., p. 6, Parties' Stipulation) (R. p. 142).

The location of Appellant's property is identifiable by extrinsic evidence in the record, the 1965 Plat and the 2005 Kennerty Topographic Survey. (1965 Plat) (R. p. 477) (R. p. 1069 – Oversized Document); (2005 Kennerty Topographic Survey) (R. p. 384) (R. p. 704, 1071 – Oversized Document). It was error for the Master not to consider this evidence and thereby fail to effectuate the intent of the deed. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955).

Respondents argue that the 1968 Plat reverts to the 1920 Plat. However, as discussed above in Section 1 at pages 3 to 4, the evidence is that the 1968 Plat was a tracing of the 1920 Plat, not a correction of the 1965 Plat. (1968 Plat) (R. p. 1070 – Oversized Document); (1920 Plat) (R. p. 663) (R. p. 1068 – Oversized Document). Nothing in the public record disavows the accuracy of the 1965 Plat, and the Seabrooks referenced it for many lots. (Sullivan Testimony, Trial Tr. 80:18 – 81:10) (R. p. 896). Further, deeds recorded as early as 1948 anticipated a future plat adding lots in the subject area. (R. pp. 553, 596, 639).

Respondents argue that the Master found that under Query v. Burgess, 371 S.C. 407, 39 S.E.2d 455 (Ct. App. 2006), the State deeded no marshland in the subject area. However, Query merely found that the State deeded no marsh below the mean high-water mark. Marsh can be either low marsh below the mean high-water mark or high marsh above the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972). In the present case, Appellant is not asserting that the State deeded any property below the mean high-water mark.

12. DOES THE ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2d 40 (1955), IN FINDING THAT APPELLANT'S LOTS "DO NOT EXIST?"

Respondents argue that Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955) is a latent ambiguity case and that construction of a clear and unambiguous deed is a question of law for the court.¹³ However, as discussed above in Section 11 at pages 19 to 20, the deed in this case is not clear and unambiguous, because its property description conflicts with the 1920 Plat it references. Where the deed is ambiguous, extrinsic evidence is competent to determine the location of the

¹³ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

property. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955). Thus, the Master's failure to consider the 1965 Plat and the 2005 Kennety Topographic Survey in determining the location of the lots described in the deed conflicts with Richardson.¹⁴

Respondents argue that in an action at law tried without a jury, the findings of the judge will not be disturbed unless found to be without evidence which reasonably supports the judge's findings. However, in the present case, no evidence supports the Master's findings, they are based on errors of law, and they conflict with the Opinion of the Court of Appeals reversing and remanding the case.

13. DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT IS "INCORRECT" IN ADDING LOTS AND THAT THE 1968 PLAT WAS INTENDED TO "CORRECT" THE 1965 PLAT?

Respondents argue that the construction of a clear and unambiguous deed is a question of law for the court.¹⁵ However, as discussed above in Section 11 at pages 19 to 20, here, the deed was not clear and unambiguous, and the Master erred in failing to consider extrinsic evidence to locate Appellant's lots. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955).

Respondents argue that the Master found that the 1965 Plat was "incorrect" in adding lots and that the 1968 Plat was intended to correct the 1965 Plat rather than to trace the 1920 Plat. However, as discussed above in Section 1 at page 3 to 4, the Opinion of the Court of Appeals found that the 1968 Plat traced the 1920 Plat, nothing in the public record disavowed the accuracy of the 1965 Plat, the Seabrooks sold many lots referring to it, and deeds recorded as early as 1948 anticipated the recording of a later plat adding lots. (Trial Tr. 80:18 – 81:10) (R. p. 895); (1948, 1949, and 1950 Deeds) (R. pp. 553, 596, 639).

Respondents argue that in an action tried without a jury, a Judge's findings will not be disturbed unless they are without evidentiary support. However, here, no evidence supports the

¹⁴ Respondents also assert that none of the parties to this case were parties to the deed. However, that is not relevant, and, regardless, is factually incorrect, because Appellant was the grantee of the deed. (Appellant's Deed) (R. pp. 633 – 35).

¹⁵ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

Master's findings, they are based on errors of law, and they conflict with the Opinion of the Court of Appeals reversing and remanding the case.

14. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT APPELLANT'S PREDECESSORS IN INTEREST BELIEVED THAT HE DID NOT OWN THE SUBJECT LOTS BASED ON THE FINDING THAT HE SOLD THE PROPERTY IN THAT AREA WITH A QUITCLAIM DEED WHERE THE EVIDENCE SHOWS THAT APPELLANT'S PREDECESSOR IN INTEREST ALSO SOLD PROPERTY IN THAT AREA BY GENERAL WARRANTY DEED?

Respondents argue that the Master found that the lots in question do not exist. However, this finding conflicts with Respondents' stipulation to Appellant's record title. (Trial Tr., p. 6, Parties' Stipulation) (R. p. 142).¹⁶

Further, there is no evidence to support this finding. The only evidence is that Seabrook believed he owned the lots and that he paid property taxes on the lots. (Trial Tr. 134:21 – 135:01; R. 227 – 28); (Trial Tr. 157:02 – 157:04) (R. p. 244). Additionally, the evidence in the record is that Seabrook sold lots with the same chain of title with a general warranty deeds. (R. 553, 596, 639).

Respondents further argue that the construction of a clear and unambiguous deed is a question of law for the court and that the terms of a clear an unambiguous deed may not be contradicted by evidence drawn from sources other than the deed itself.

However, as discussed above in Section 11 at pages 19 to 20, the deed in the present case is not clear and unambiguous, because its property description conflicts with the plat it references, and the Master should have considered the extrinsic evidence in the record to locate Appellant's lots. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955).

15. THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT FOR ADVERSE POSSESSION. HOWEVER, THE COURT OF APPEALS REVERSED THE DOCK CASE ORDER, AND RESPONDENTS DID NOT PETITION FOR REHEARING OR FOR A WRIT OF CERTIORARI. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT RESPONDENTS' AFFIRMATIVE DEFENSES ARE AVAILABLE TO THEM TO ARGUE ON REMAND. DOES THIS FINDING CONFLICT WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 388 S.C. 171, 525 S.E.2d 869 (2000) (AN UNAPPEALED RULING BY THE COURT OF APPEALS BECOMES THE LAW OF THE CASE)?

¹⁶ Appellant addresses above in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

Respondents assert that the Master followed the instructions of the Court of Appeals, but he did not.¹⁷ As discussed above in Section 1 at pages 5 to 7, the Master disregarded the procedural posture of the case. He originally dismissed the Dock Case based in part on finding for Respondents on their affirmative defenses and in part based on finding that the property was below the mean high-water mark and therefore the State was a necessary party. (March 26, 2007 Dock Case Order, pp. 9 - 19) (R. pp. 25 - 35).

However, the Court of Appeals reversed the Master's original Dock Case Order and remanded the case to him without the State as party for a determination of whether Appellant owns the subject property above the mean high-water mark. (April 21, 2009 Opinion, pp. 9 - 10) (R. pp. 877 - 78). Disregarding the procedural history of the case and the mandate on remand, the Master instead found that the State owned the highland.

Respondents make no return to Appellant's point that the reversal of the Master's Dock Order became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 71, 525 S.E.2d 869 (2000) (An unappealed ruling becomes the law of the case).

16. WHERE THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THERE IS HIGHLAND IN THE AREA OF THE UNDEVELOPED ROADWAY RUNNING ALONG RESPONDENT'S LOTS, AND WHERE THE COURT OF APPEALS OPINION FOUND THAT THERE IS HIGHLAND IN THAT AREA, DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE STATE OWNS THAT AREA?

A. Appellant Cited and Quoted the Opinion of the Court of Appeals

Respondents assert that Appellant makes no reference to the record to support this argument and that Respondents are unaware of support in the Opinion of the Court of Appeals that there is highland between Respondents' lots and the marsh.¹⁸ However, the Initial Brief of Appellant as well as Section 2 above at pages 7 to 10 cite and quote the Opinion of the Court of Appeals. (April 21,

¹⁷ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

¹⁸ Appellant addresses above in Section 1 at pages 6 to 7 Appellant's preservation for appeal the issues in this section.

2009 Opinion, p. 9) (R. p. 877) (“Therefore, because the master failed to rule on Demetre’s request for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.”).

B. 1920 Plat Did Not Show the Location of the Mean High-Water Mark

Respondents further argue that the Master found that any highland was designated on the 1920 Plat as “marshland.” However, as discussed above in Section 1 at pages 1 to 2, marsh can be above or below the mean high-water mark, and it was error for the Master to find that the subject property was below the mean high-water mark when the 1920 Plat does not show the location of the mean high-water mark. State v. Murrell’s Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972). The 2005 Kennerty Topographic Survey shows that the property is above the mean high-water mark. (2005 Kennerty Topographic Survey) (R. p. 384) (R. pp. 704, 1071 – Oversized Document).

Respondents argue that even if there was highland, Appellant’s predecessor in interest was not conveyed any interest in 1943. However, the property was conveyed in 1943 per the 1895 Tartus Plat, which conveyed all of Folly Island to the Folly River. (Tartus Plat) (R. p. 658) (R. p. 1067 – Oversized Document). Further, the 1943 deed bounded the property on the Folly River. (1943 Deed) (R. p. 539). A conveyance with a tidal waterway as a boundary conveys to the mean high-water mark. State v. Pinckney, 22 S.C. 484, 492 (1885). As discussed above in Section 8 at pages 16 to 18, any accretion would have benefited Appellant. Moreover, as quoted above in Section 1 at page 5, Respondents stipulated to Appellant’s record title. (Trial Tr. 06:06 – 06:08) (R. p. 142).

17. RESPONDENTS SPECIFY NO ADDITIONAL SUSTAINING GROUNDS

Respondents argue that additional sustaining grounds may be used to support the Master’s Order on Remand, but they specify no such additional sustaining grounds.

CONCLUSION

For the foregoing reasons, the Master's Order on Remand should be reversed and title should be quieted in Appellant Milton P. Demetre Family Limited Partnership to the property in the undeveloped roadway and lots 209 and 210 East Indian Avenue above the mean high-water mark riverward of Respondents' lots as shown on the 2005 Kennerty Topographic Survey.

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