

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.

RECORD ON APPEAL
VOLUME THREE

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099

Attorneys for Appellant
Milton P. Demetre Family Limited Partnership

Cain Denny, Esquire
Cain Denny, P.A.
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692

Attorney for Appellant
Milton P. Demetre Family Limited Partnership

Richard L. Whitt, Esquire
Jefferson D. Griffith, III, Esquire
Austin & Rogers, PA
508 Hampton Street, Suite 300
Columbia, SC 29201
(803) 251-7442

Attorneys for Respondents

*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*

INDEX

VOLUME III

Unpublished Opinion No. 2009-UP-029 Heard November 6, 2008 – Filed January 14, 2009	859
Unpublished Opinion No. 2009-UP-029 Heard November 6, 2008, Filed January 14, 2009, Withdrawn, Substituted, and Refiled April 21, 2009	869
Order on Remand	879
Order Denying Plaintiff's Rule 59e Motion for Relief	885
Order of the South Carolina Court of Appeals filed November 11, 2012	887
Transcript of Proceedings Held on December 12, 2006	889
Transcript of Proceedings Held on October 21, 2011	923
Plaintiff's Memorandum in Opposition to the Dock Defendant's Proposed Order.....	977
Plaintiff's Reply to the Dock Defendants' Correspondence to the Court of April 21, 2010.....	999
Plaintiff's Rule 59(e) Motion to Alter or Amend the Order on Remand	1011
Notice of Appeal	1033
Appellant's Motion to Accept Designation of Matter and Initial Brief Out of Time	1035
Respondent's Motion for Extension of Time	1037
Correspondence from Appellant's Counsel dated September 12, 2011.....	1039
Correspondence from the South Carolina Court of Appeals dated September 13, 2012	1041
Proposed Final Order submitted by Plaintiff to Master-in-Equity	1043
1895 Tartus Plat (Oversized Document).....	1067
1920 Plat (Oversized Document)	1068
1965 Plat (Oversized Document)	1069
1968 Plat (Oversized Document)	1070
2005 Kennerty Topographic Survey (Oversized Document).....	1071
Certification of Counsel.....	1072

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The Milton P. Demetre Family Limited
Partnership, Plaintiff,

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, Defendants.

The Milton P. Demetre Family Limited
Partnership, Plaintiff,

v.

City of Folly Beach, Defendant,
and Emily S. Brown, Annie Ruth Hilton
Crowley, Harry Beckmann, III, and Patricia P.
Beckmann, Intervenor,

of whom The Milton P. Demetre Family
Limited Partnership is the Appellant,

and City of Folly Beach, Emily S. Brown,
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
are the Respondents.

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2009-UP-029
Heard November 6, 2008 – Filed January 14, 2009

**AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED**

Richard D. Bybee and Stanley E. Barnett, of Mount Pleasant, John Hughes Cooper, of Sullivan's Island and Cain Denny, of Charleston, for Appellant.

Stephanie P. McDonald, O. Benjamin Peeples, Jr., and Joseph S. Mendelsohn, of Charleston and Richard L. Whitt and Jefferson D. Griffith, III, of Columbia, for Respondents.

PER CURIAM: The Milton P. Demetre Family Limited Partnership (Demetre) appeals two orders of the master-in-equity. Demetre argues the master erred by determining the City of Folly Beach (Folly Beach) owned East Indian Avenue. Demetre also argues the master erred by dismissing his claims for declaratory judgment, decree to quiet title, and an injunction and damages for trespass and nuisance. We affirm in part, reverse in part, and remand.

FACTS

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) Office. 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. All three plats share the same book and page number at the RMC Office.

Between 1921 and 1925, the Folly Beach Improvement Company (FBIC) acquired the entire island of Folly Beach and mortgaged its complete interest to C & S Bank. In 1937, the FBIC sold "all the streets, avenues, and/or lanes in and upon Folly Island" to the Board of Township Commission of Folly Island for the use of the public. In 1942, C & S Bank foreclosed on the mortgage and the land was bought by Edward Seabrook, Sr., at a public auction. The deed conveyed the island to Seabrook "[s]aving and excepting therefrom such lots and portions of land as have from time to time been conveyed to sundry parties by [FBIC] by deeds recorded in the RMC Office for Charleston County."¹

On May 30, 2002, Demetre purchased from Seabrook, Jr., a "portion of [East Indian Avenue] that is undeveloped and unpaved" bordering lots 201 to 205 for \$10,000 by quitclaim deed (the Road).² 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. Prior to purchasing the Road, Demetre's realtor stated he had a conversation with the Folly Beach mayor and city administrator in which they told him Folly Beach did not own the Road and suggested Demetre talk to Seabrook, Jr.³ Subsequently, Folly Beach asserted

¹ Seabrook, Sr., and his wife, Fannie, conveyed Seabrook's property to their son, Edward Seabrook, Jr., through the wills of Seabrook, Sr., who died in 1956, and Fannie, who died in 1960.

² Also, in 2002, Demetre bought lots 206 to 208 for \$45,000 from Seabrook, Jr.; lots 202 to 205 for \$475,000 from another seller; and "any and all interest in marshland or highland north of lot 201 Indian Avenue East" for \$5 from a third seller.

³ Demetre's realtor, Keith McCann, sent Demetre a letter stating the Folly Beach mayor and city administrator had determined Folly Beach did not own the Road. He also stated the city officials suggested Demetre talk to Seabrook, Jr., who then offered to sell the land to Demetre. However, at trial,

ownership of the Road. As a result, on December 6, 2002, Demetre brought an action against Folly Beach to quiet title in Road, which borders other property Demetre owns (the Road case). Emily Brown, who was allowed to intervene in the case, owns lot 204 on East Huron Avenue and has used the Road daily to access her property since January 30, 1986.

On January 23, 2004, Demetre bought two riverfront lots, 209 and 210, on East Indian Avenue from Seabrook, Jr., for \$23,700 by quitclaim deed. The deed references the 1920 plat. Demetre's lots are shown on the 1965 redraw, but they do not appear on the 1920 plat or the Charleston County tax map. When Demetre purchased East Indian Avenue lots 209 and 210, two existing docks from East Huron Avenue lots 209 and 210 crossed over a portion of Demetre's lots to reach the water. As a result, on October 7, 2005, Demetre brought an action against Annie Crowley, Raymond Crowley, Donald Crowley, Harris Crowley, Jr., and Annie Atkinson (the Crowleys),⁴ and Harry and Patricia Beckmann (the Beckmanns) for declaratory judgment and to quiet title to lots East Indian Avenue 209 and 210 where the Crowleys' and Beckmanns' docks cross over the property (the Dock case).⁵

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 Crowleys and Beckmanns both believed they owned all the property behind their homes down to the marsh. Beckmann testified he believed everything from his

the mayor and city administrator both testified they did not remember telling Demetre or his realtor that Folly Beach did not own the Road.

⁴ Harris and Annie Crowley were the original owners of 210 East Huron Avenue; however, Harris died on April 26, 1995, leaving Annie Crowley with a life estate in the property and a fifty percent remainder interest in the property to Raymond Crowley, Donald Crowley, Harris Crowley, Jr., and Annie Atkinson. The new deed was dated August 15, 1996.

⁵ The Crowleys and Beckmanns were permitted to intervene in the Road case because the rear of their lots abut East Indian Avenue.

property line to the Folly River was owned by the State.⁶ In 1988, both the Crowleys and the Beckmanns applied for permits from the South Carolina Coastal Council (Council) to construct docks from their lots north to the Folly River across East Indian Avenue lots 209 and 210. Both permits were granted by the Council and the docks were constructed; however, they were destroyed by Hurricane Hugo in 1989 and rebuilt in 1990.

On the motion of the parties, these two cases were referred to a master-in-equity and consolidated on August 21, 2006. The cases were tried on December 12, 2006. On March 2, 2007, the master issued the Road Order, finding the Road was dedicated to the public and Folly Beach owned the Road. On March 26, 2007, the master issued the Dock Order, ruling in favor of the Crowleys and the Beckmanns on all grounds. Demetre timely filed Rule 59(e) motions in both cases, which were denied. Demetre then timely appealed both orders to this court and we consolidated the appeals on September 13, 2007.

LAW/ANALYSIS

I. The Road Case

a. Standard of Review

"The determination of whether a roadway has been dedicated to the public is an action in equity." Mack v. Edens, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). Therefore, we may find the facts in accordance with our own view of the preponderance of the evidence; however, we are not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 574-75, 629 S.E.2d 697, 699 (Ct. App. 2006).

⁶ In fact, Demetre's October 7, 2005 Complaint states portions of lots 209 and 210 on East Indian Avenue are "located within the critical area and; therefore, would require a permit for utilization from the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Management."

b. Dedication

Demetre argues the master erred by finding Folly Beach accepted the dedication by recording the deed. We disagree.

Dedication requires two elements: (1) intent to dedicate and (2) acceptance of the dedication. Mack, 320 S.C. at 239, 464 S.E.2d at 126. The intention of an owner to dedicate his property to public use must be expressed in a positive and unmistakable manner. Horry County v. Laychur, 315 S.C. 364, 368, 434 S.E.2d 259, 261 (1993). "It is generally held that when the owner of land has it subdivided and platted into lots and streets and sells and conveys the lots with reference to the plat, he thereby dedicates the streets to the use of such lot owners, their successors in title, and the public." Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924-25 (1965). "A recorded plat may be sufficient to disclose a landowner's intent to dedicate property to public use." Van Blaricum v. City of N. Myrtle Beach, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999). The burden of proving intent to dedicate is on the party asserting dedication. Shia v. Pendergrass, 222 S.C. 342, 349, 72 S.E.2d 699, 702 (1952); Vick v. SCDOT, 347 S.C. 470, 477 n.2, 556 S.E.2d 693, 697 n.2 (Ct. App. 2001).

Evidence of acceptance of a dedication must be by clear, convincing, and unequivocal proof. Vick, 347 S.C. at 477 n.2, 556 S.E.2d at 697 n.2. An express or implied public acceptance of the property offered for dedication must occur within a reasonable time. Helsel v. City of N. Myrtle Beach, 307 S.C. 24, 27, 413 S.E.2d 821, 823 (1992). An acceptance of an offer of dedication may be implied by the public or the public authority's continuous use or maintenance of the property in some fashion. Boyd v. Hyatt, 294 S.C. 360, 365-66, 364 S.E.2d 478, 481 (Ct. App. 1988). "Acceptance of dedication may be shown by use by a comparatively small number of persons, as in the case of a short street to the seashore." 23 Am. Jur. 2d Dedication § 50 (2002). "The public use need not be constant, but merely continuous in light of the particular nature of the land." Id. Also, the non-assessment of taxes is a factor in the determination of dedication and acceptance. Tupper v. Dorchester County, 326 S.C. 318, 327, 487 S.E.2d 187, 192 (1997).

The 1937 deed from the FBIC to the Board of Township Commission of Folly Island stated it was dedicating "all the streets, avenues, and/or lanes in and upon Folly Island" for the use of the public, which was properly recorded. The foreclosure deed to Seabrook stated it was conveying to him the land "saving and excepting . . . such lots and portions of land as have from time to time been conveyed to sundry parties by Folly Beach Corporation and [FBIC] by deeds recorded in the RMC Office for Charleston County." 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; and the Road is not included on the tax map. Furthermore, Seabrook's quitclaim deed to Demetre references the 1920 plat.

Additionally, evidence was presented at trial that Folly Beach regularly filled in pot holes on the Road, sprayed the Road for mosquitoes, removed trees from the Road after Hurricane Hugo, and some governmental agency paved the Road at one time. Brown also testified she and her family have used the Road daily for twenty years to access her property and the public regularly uses the Road to park cars, jog, bike, and walk dogs. Therefore, we find the master correctly held the Road was dedicated to Folly Beach by deed and plat, and Folly Beach accepted the dedication by recording the deed and by using and maintaining the Road.

c. Equitable Estoppel

Demetre also argues the master erred by finding he did not satisfy the elements of equitable estoppel. We disagree.

"Government agents, acting within the scope of their authority, can by their acts give rise to estoppel against a municipality." Landing Dev. Corp. v. City of Myrtle Beach, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985). Equitable estoppel is found to exist when the following elements are present:

- (1) [C]onduct by the party estopped which amounts to a false representation or concealment of material facts or which is calculated to convey the impression that the facts are otherwise than and inconsistent with those which the party subsequently attempts to assert;
- (2) the intention or at least expectation that such

conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the true facts; (4) lack of knowledge or the means of knowledge of the facts by the other party; (5) reliance upon the conduct by the other party; and (6) a detrimental change of position by the other party because of his reliance.

McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill, 360 S.C. 301, 305, 599 S.E.2d 617, 619 (Ct. App. 2004). The burden of proof lies with the party asserting an estoppel. Pamplico Bank & Trust Co. v. Prosser, 262 S.C. 153, 159, 203 S.E.2d 110, 112 (1974).

Demetre claims Folly Beach is estopped to repudiate its former interpretation of its ownership of the Road because he and his agent lacked the knowledge or means to know whether the city had formally or implicitly accepted a dedication of the Road. Demetre also claims his purchase of the property is evidence of his reliance and detrimental change in position based on their statements. However, Demetre should have exercised further diligence in determining the true ownership of the parcels instead of just relying on the alleged statements of the mayor and city administrator, especially because (1) there was initial confusion over the Road's ownership, (2) Seabrook only gave Demetre a quitclaim deed, (3) the price for the property was relatively inexpensive, and (4) the Road does not appear on the tax map. Therefore, we find the master correctly determined Demetre did not satisfy the elements of equitable estoppel.

II. The Dock Case

a. Standard of Review

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "To make this determination we look to the main purpose of the action as determined by the complaint." Estate of Revis v. Revis, 326 S.C. 470, 476, 484 S.E.2d 112, 115 (Ct. App. 1997). When "the main purpose of the complaint concerns the determination of title to real property, it is an action at law." Query v. Burgess, 371 S.C.

407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006); see also Wigfall v. Fobbs, 295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988) ("The determination of title to real property is a legal issue."). In an action at law tried by the master alone, our review is limited to correcting errors of law and we will 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).

b. Ownership of the Property

Demetre argues the master erred by failing to make a determination that he owned all the property between the Crowleys' and the Beckmanns' lots and the mean high water mark.

"Historically, the State holds presumptive title to land below the high water mark." McQueen v. S.C. Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003); Hilton Head Plantation Prop. Owners' Ass'n, Inc. v. McDonald, 375 S.C. 220, 224, 651 S.E.2d 614, 616 (Ct. App. 2007); see also Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 396, 252 S.E.2d 133, 135 (1979) ("This Court has held that lands lying between the usual high water line and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held by the State in trust for public purposes."). "One asserting title to this land must prove a specific grant from the sovereign[,] which is strictly construed against the grantee." Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 512, 458 S.E.2d 547, 548 (1995).

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 any defects in his title to the land. The master did not rule on either request and only held the Crowleys and the Beckmanns believed the State owned the land when they applied for their 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 lots. Also, Demetre does not dispute the State holds in trust for public purposes the property below the mean high water mark. 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 on this issue.

c. Other Issues

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

CONCLUSION

Therefore, we affirm the master's March 2, 2007 Order finding Folly Beach owns East Indian Avenue and Demetre failed to satisfy the elements of equitable estoppel. However, we reverse the master's March 26, 2007 Order and remand for findings in accordance with this opinion.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

HEARN, C.J., and SHORT and KONDUROS, JJ., concur.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The Milton P. Demetre Family Limited
Partnership,

Plaintiff,

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,

Defendants.

The Milton P. Demetre Family Limited
Partnership,

Plaintiff,

v.

City of Folly Beach,

Defendant,

and Emily S. Brown, Annie Ruth Hilton
Crowley, Harry Beckmann, III, and Patricia P.
Beckmann,

Intervenors,

of whom The Milton P. Demetre Family
Limited Partnership is the

Appellant,

and City of Folly Beach, Emily S. Brown,
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
are the

Respondents.

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2009-UP-029
Heard November 6, 2008 – Filed January 14, 2009
Withdrawn, Substituted and Refiled April 21, 2009

**AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED**

Richard D. Bybee and Stanley E. Barnett, of Mount Pleasant, John Hughes Cooper, of Sullivan's Island and Cain Denny, of Charleston, for Appellant.

Stephanie P. McDonald, O. Benjamin Peeples, Jr., and Joseph S. Mendelsohn, of Charleston and Richard L. Whitt and Jefferson D. Griffith, III, of Columbia, for Respondents.

PER CURIAM: The Milton P. Demetre Family Limited Partnership (Demetre) appeals two orders of the master-in-equity. Demetre argues the master erred by determining the City of Folly Beach (Folly Beach) owned East Indian Avenue. Demetre also argues the master erred by dismissing his claims for declaratory judgment, decree to quiet title, and an injunction and damages for trespass and nuisance. We affirm in part, reverse in part, and remand.

FACTS

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) Office.

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. All three plats share the same book and page number at the RMC Office.

Between 1921 and 1925, the Folly Beach Improvement Company (FBIC) acquired the entire island of Folly Beach and mortgaged its complete interest to C & S Bank. In 1937, the FBIC sold "all the streets, avenues, and/or lanes in and upon Folly Island" to the Board of Township Commission of Folly Island for the use of the public. In 1942, C & S Bank foreclosed on the mortgage and the land was bought by Edward Seabrook, Sr., at a public auction. The deed conveyed the island to Seabrook "[s]aving and excepting therefrom such lots and portions of land as have from time to time been conveyed to sundry parties by [FBIC] by deeds recorded in the RMC Office for Charleston County."¹

On May 30, 2002, Demetre purchased from Seabrook, Jr., a "portion of [East Indian Avenue] that is undeveloped and unpaved" bordering lots 201 to 205 for \$10,000 by quitclaim deed (the Road).² 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. Prior to purchasing the Road, Demetre's realtor stated he had a conversation with the Folly Beach mayor and city administrator in which they told him Folly Beach did not own the Road and suggested Demetre talk to Seabrook, Jr.³ Subsequently, Folly Beach asserted

¹ Seabrook, Sr., and his wife, Fannie, conveyed Seabrook's property to their son, Edward Seabrook, Jr., through the wills of Seabrook, Sr., who died in 1956, and Fannie, who died in 1960.

² Also, in 2002, Demetre bought lots 206 to 208 for \$45,000 from Seabrook, Jr.; lots 202 to 205 for \$475,000 from another seller; and "any and all interest in marshland or highland north of lot 201 Indian Avenue East" for \$5 from a third seller.

³ Demetre's realtor, Keith McCann, sent Demetre a letter stating the Folly Beach mayor and city administrator had determined Folly Beach did not own the Road. He also stated the city officials suggested Demetre talk to Seabrook, Jr., who then offered to sell the land to Demetre. However, at trial,

ownership of the Road. As a result, on December 6, 2002, Demetre brought an action against Folly Beach to quiet title in Road, which borders other property Demetre owns (the Road case). Emily Brown, who was allowed to intervene in the case, owns lot 204 on East Huron Avenue and has used the Road daily to access her property since January 30, 1986.

On January 23, 2004, Demetre bought two riverfront lots, 209 and 210, on East Indian Avenue from Seabrook, Jr., for \$23,700 by quitclaim deed. The deed references the 1920 plat. Demetre's lots are shown on the 1965 redraw, but they do not appear on the 1920 plat or the Charleston County tax map. When Demetre purchased East Indian Avenue lots 209 and 210, two existing docks from East Huron Avenue lots 209 and 210 crossed over a portion of Demetre's lots to reach the water. As a result, on October 7, 2005, Demetre brought an action against Annie Crowley, Raymond Crowley, Donald Crowley, Harris Crowley, Jr., and Annie Atkinson (the Crowleys),⁴ and Harry and Patricia Beckmann (the Beckmanns) for declaratory judgment and to quiet title to lots East Indian Avenue 209 and 210, where the Crowleys' and Beckmanns' docks cross over the property (the Dock case).⁵

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 Crowleys and Beckmanns both believed they owned all the property behind their homes down to the marsh. Beckmann testified he believed everything from his

the depositions of the mayor and city administrator were read into the record. They both testified they did not remember telling Demetre or his realtor that Folly Beach did not own the Road.

⁴ Harris and Annie Crowley were the original owners of 210 East Huron Avenue; however, Harris died on April 26, 1995, leaving Annie Crowley with a life estate in the property and a fifty percent remainder interest in the property to Raymond Crowley, Donald Crowley, Harris Crowley, Jr., and Annie Atkinson. The new deed was dated August 15, 1996.

⁵ The Crowleys and Beckmanns were permitted to intervene in the Road case because the rear of their lots abut East Indian Avenue.

property line to the Folly River was owned by the State.⁶ In 1988, both the Crowleys and the Beckmanns applied for permits from the South Carolina Coastal Council (Council) to construct docks from their lots north to the Folly River across East Indian Avenue lots 209 and 210. Both permits were granted by the Council and the docks were constructed; however, they were destroyed by Hurricane Hugo in 1989 and rebuilt in 1990.

On the motion of the parties, these two cases were referred to a master-in-equity and consolidated on August 21, 2006. The cases were tried on December 12, 2006. On March 2, 2007, the master issued the Road Order, finding the Road was dedicated to the public and Folly Beach owned the Road. On March 26, 2007, the master issued the Dock Order, ruling in favor of the Crowleys and the Beckmanns on all grounds. Demetre timely filed Rule 59(e), SCRCF, motions in both cases, which were denied. Demetre then timely appealed both orders to this court and we consolidated the appeals on September 13, 2007.

LAW/ANALYSIS

I. The Road Case

A. Standard of Review

"The determination of whether a roadway has been dedicated to the public is an action in equity." Mack v. Edens, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). Therefore, we may find the facts in accordance with our own view of the preponderance of the evidence; however, we are not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 574-75, 629 S.E.2d 697, 699 (Ct. App. 2006).

⁶ In fact, Demetre's October 7, 2005 complaint states portions of lots 209 and 210 on East Indian Avenue are "located within the critical area and; therefore, would require a permit for utilization from the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Management."

B. Dedication

Demetre argues the master erred by finding Folly Beach accepted the dedication by recording the deed. We disagree.

Dedication requires two elements: (1) intent to dedicate and (2) acceptance of the dedication. Mack, 320 S.C. at 239, 464 S.E.2d at 126. The intention of an owner to dedicate his property to public use must be expressed in a positive and unmistakable manner. Horry County v. Laychur, 315 S.C. 364, 368, 434 S.E.2d 259, 261 (1993). "It is generally held that when the owner of land has it subdivided and platted into lots and streets and sells and conveys the lots with reference to the plat, he thereby dedicates the streets to the use of such lot owners, their successors in title, and the public." Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924-25 (1965). "A recorded plat may be sufficient to disclose a landowner's intent to dedicate property to public use." Van Blarcum v. City of N. Myrtle Beach, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999). The burden of proving intent to dedicate is on the party asserting dedication. Shia v. Pendergrass, 222 S.C. 342, 349, 72 S.E.2d 699, 702 (1952); Vick v. S.C. Dep't of Transp., 347 S.C. 470, 477 n.2, 556 S.E.2d 693, 697 n.2 (Ct. App. 2001).

Evidence of acceptance of a dedication must be by clear, convincing, and unequivocal proof. Vick, 347 S.C. at 477 n.2, 556 S.E.2d at 697 n.2. An express or implied public acceptance of the property offered for dedication must occur within a reasonable time. Helsel v. City of N. Myrtle Beach, 307 S.C. 24, 27, 413 S.E.2d 821, 823 (1992). An acceptance of an offer of dedication may be implied by the public or the public authority's continuous use or maintenance of the property in some fashion. Boyd v. Hyatt, 294 S.C. 360, 365-66, 364 S.E.2d 478, 481 (Ct. App. 1988). "Acceptance of dedication may be shown by use by a comparatively small number of persons, as in the case of a short street to the seashore." 23 Am. Jur. 2d Dedication § 50 (2002). "The public use need not be constant, but merely continuous in light of the particular nature of the land." Id. Also, the non-assessment of taxes is a factor in the determination of dedication and acceptance. Tupper v. Dorchester County, 326 S.C. 318, 327, 487 S.E.2d 187, 192 (1997).

The 1937 deed from the FBIC to the Board of Township Commission of Folly Island stated it was dedicating "all the streets, avenues, and/or lanes in and upon Folly Island" for the use of the public, which was properly recorded. The foreclosure deed to Seabrook stated it was conveying to him the land "saving and excepting . . . such lots and portions of land as have from time to time been conveyed to sundry parties by Folly Beach Corporation and [FBIC] by deeds recorded in the RMC Office for Charleston County." 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; and the Road is not included on the tax map. Furthermore, Seabrook's quitclaim deed to Demetre references the 1920 plat.

Additionally, evidence was presented at trial that the Road was paved at one time, and Folly Beach filled in pot holes on the Road, sprayed the Road for mosquitoes, and removed trees from the Road after Hurricane Hugo. Brown also testified she and her family have used the Road daily for twenty years to access her property and the public uses the Road to park cars, jog, bike, and walk dogs. Therefore, we find the master correctly held the Road was dedicated to Folly Beach by deed and plat, and Folly Beach accepted the dedication by using and maintaining the Road.

C. Equitable Estoppel

Demetre also argues the master erred by finding he did not satisfy the elements of equitable estoppel. We disagree.

"Government agents, acting within the scope of their authority, can by their acts give rise to estoppel against a municipality." Landing Dev. Corp. v. City of Myrtle Beach, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985). Equitable estoppel is found to exist when the following elements are present:

- (1) [C]onduct by the party estopped which amounts to a false representation or concealment of material facts or which is calculated to convey the impression that the facts are otherwise than and inconsistent with those which the party subsequently attempts to assert;
- (2) the intention or at least expectation that such conduct shall be acted upon by the other party;
- (3)

knowledge, actual or constructive, of the true facts; (4) lack of knowledge or the means of knowledge of the facts by the other party; (5) reliance upon the conduct by the other party; and (6) a detrimental change of position by the other party because of his reliance.

McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill, 360 S.C. 301, 305, 599 S.E.2d 617, 619 (Ct. App. 2004). The burden of proof lies with the party asserting an estoppel. Pamplico Bank & Trust Co. v. Prosser, 262 S.C. 153, 159, 203 S.E.2d 110, 112 (1974).

Demetre claims Folly Beach is estopped to repudiate its former interpretation of its ownership of the Road because he and his agent lacked the knowledge or means to know whether the city had formally or implicitly accepted a dedication of the Road. Demetre also claims his purchase of the property is evidence of his reliance and detrimental change in position based on their statements. However, Demetre should have exercised further diligence in determining the true ownership of the parcels instead of simply relying on the alleged statements of the mayor and city administrator, especially because (1) there was initial confusion over the Road's ownership, (2) Seabrook only gave Demetre a quitclaim deed, (3) the price for the property was relatively inexpensive, and (4) the Road does not appear on the tax map. Therefore, we find the master correctly determined Demetre did not satisfy the elements of equitable estoppel.

II. The Dock Case

A. Standard of Review

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "To make this determination we look to the main purpose of the action as determined by the complaint." Estate of Revis v. Revis, 326 S.C. 470, 476, 484 S.E.2d 112, 115 (Ct. App. 1997). When "the main purpose of the complaint concerns the determination of title to real property, it is an action at law." Query v. Burgess, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006); see also Wigfall v. Fobbs,

295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988) ("The determination of title to real property is a legal issue."). In an action at law tried by the master alone, our review is limited to correcting errors of law and we will affirm the master's factual findings if any evidence in the record reasonably supports the findings. Lowcountry Open Land Trust v. State, 347 S.C. 96, 101-02, 552 S.E.2d 778, 781 (Ct. App. 2001).

B. Ownership of the Property

Demetre argues the master erred by failing to make a determination that he owned all the property between the Crowleys' and the Beckmanns' lots and the mean high water mark.

"Historically, the State holds presumptive title to land below the high water mark." McQueen v. S.C. Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003); Hilton Head Plantation Prop. Owners' Ass'n, Inc. v. McDonald, 375 S.C. 220, 224, 651 S.E.2d 614, 616 (Ct. App. 2007); see also Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 396, 252 S.E.2d 133, 135 (1979) ("This Court has held that lands lying between the usual high water line and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held by the State in trust for public purposes."). "One asserting title to this land must prove a specific grant from the sovereign[,] which is strictly construed against the grantee." Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 512, 458 S.E.2d 547, 548 (1995).

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 any defects in his title to the land. The master did not rule on either request and only held the Crowleys and the 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 the presumption that the State holds in trust for public purposes the property below the mean high water mark. 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 on this issue.

C. Other Issues

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.

CONCLUSION

Therefore, we affirm the master's March 2, 2007 order finding Folly Beach owns East Indian Avenue and Demetre failed to satisfy the elements of equitable estoppel. However, we reverse the master's March 26, 2007 order and remand for findings in accordance with this opinion.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

HEARN, C.J., and SHORT and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The Milton P. Demetre Family)
Limited Partnership,)

Plaintiff,)

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,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION No. 2005-CP-10-4101

ORDER on REMAND

FILED
2012 JAN 13 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I ruled in tandem case No. 2002-CP-10-4880 (the "Road case") in an order filed March 7, 2007, that title to the Indian Avenue roadway was vested in the City of Folly Beach. I found that these parties' claims to the disputed land, which included the Indian Avenue roadway, failed because title to the roadway was held by the City for the benefit of the public. This ruling was affirmed by the SC Court of Appeals in Unpublished Opinion # 2009-UP-029 (April 21, 2009). This case (the "Dock case") was remanded to determine whether the Plaintiff owns the land located between the Defendants' lots and the Folly River.

As to the lands extending to the Folly River, a review of the 1920 plat (Plat Book C 128) by which the lots on Folly Island were created shows this property as "MARSH LAND." I concluded in my 2007 Order 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 evidence which is clear and convincing. Coburg v Lesser, 309 SC 252, 422 SE2d 96 (1992). (Coburg I). No action was pursued against the State.



Since my ruling, Coburg I has been overruled by the Supreme Court in Tenney v. SCDHEC-OCRM, 393 SC 100, 712 SE 2d 395 (2011). Specifically, the Court overruled the principle in Coburg I that "ownership of islands situate within marshland follows ownership of the marshland. Tenney at 111. While this is not an island case, it does present the issue of highland contained within what was formerly marshland.

Accordingly, this court must look to the chain of title submitted as well as prior case law for guidance. The court cites this authority as precedent and takes judicial notice of both prior case law and, especially, those cases which have come before it. In particular, the Court of Appeals Order on Remand cited to this court's prior decision in Query v. Burgess, 371 SC 407, 639 SE 2d 455 (Ct. App. 2006).

In Query, the Court of Appeals opinion states:

The master examined the 1786 grant and accompanying plat and found they lacked the requisite specificity to indicate the State's intent to grant the marshlands to one of Query's predecessors in title.... Based on these factual findings, the master reasonably determined the 1786 grant and accompanying plat did not demonstrate the State's intent to grant title to the marshlands. The master thus found the plat was not sufficiently detailed to rebut the State's presumption of title to land below the high water mark.

The Court of Appeals remand opinion also cites to Hobonny Club, Inc. v. McEachern, 272 SC 302, 252 SE2d 133 (1979), for the proposition that, "... [T]his court has held that lands lying between the usual high water line and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held by the State in trust for public purposes." 272 SC at 396. In Query, the opinion cites to Hobonny for the "holding that an exceptionally detailed and mathematically precise plat can rebut the State's presumption of title to marshes."

While I find the plat prepared by Larry Kennerty dated October 17, 2005 (Plaintiff Ex. N) is quite detailed and delineates both high marsh and low marsh in its description of the property,

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."

Only the 1965 redraw plat shows lots located on Indian Avenue at the area in question. 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 the creation of new lots on Folly Beach. The subsequent plat from 1968 also shows the area in question to be marshland. I find the 1968 plat evidently intended to correct the 1965 plat error.

This finding is further supported by the fact that, while Folly Island was platted into lots in 1920, title to the island was affected by the foreclosure action brought against the original developer in 1941. When Charleston County Master-in-Equity Wm. McG. Morrison conveyed the property to Edward M. Seabrook (Sr.) in the Master's Deed of January 5, 1943, he conveyed only what existed at the time – this included Indian Avenue as found in the "Road Case" - but could not have included the lots (209 and 210 Indian Avenue) as they did not exist at that time.

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. Black's Law Dictionary, Fifth Edition, (1979) defines a quitclaim deed as "A deed of conveyance operating by way of release; that is, intended to pass any title, interest or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title." As a quitclaim deed is not a representation of good and valid title, Mr Seabrook was willing (for a price) to grant whatever title he may have had in this property – whether he had any interest in this property or not.

In this court's original order denying title in Plaintiff, I ordered that the State of South Carolina should be made a party due to the question of title to the Marshland. Neither party wanted to make the state a party to this action at that time. At the commencement of the hearing on remand, this court again inquired of the parties as to why the state should not be made a party. Both parties contend the State is not a necessary party to this action; however, this court disagrees since the "high marsh" is contained within the area previously denoted as Marshland.

This court is convinced, now more than ever, that Plaintiff seeks to assert valid legal title to the property over which the Defendants' docks cross, that it will have to challenge the validity of the title to the marshland as it is presumed to rest in the state. "One asserting title to this land must prove a specific grant from the sovereign which is strictly construed against the grantee." Coburg Dairy, Inc. v. Lesser, 318 SC 510, 458 SE2d 547 (1995). Also cited in the Order on Remand dated April 21, 2009. (Coburg II). I find the high marsh contained in the Kennerty plat was previously contained within the "Marshland" as designated on the 1920 subdivision plat.

Accordingly, while the oldest diagram submitted to the court in this litigation was an 1895 engineer's "Map of Folly Island," this court concludes, based upon Query, that the 1786 plat is the genesis for title to all marshland located on Folly Island – this issue has previously been decided by Query and is adverse to the position taken by either party in this litigation. At a minimum, the parties should present the full history of title to the court for a complete hearing.

The purpose of the remand order was to determine Plaintiff's interest in the property and quiet title in the Plaintiff if applicable. I find under the facts presented here, as between these parties, that the Plaintiff has not prevailed under its burden of proof. I further find that there is no basis to quiet title, in Demetre, based on Demetre's claim of title to the land.¹

¹ In an action to quiet title, the Plaintiff must recover on the strength of his own title, not on the alleged weakness of the Defendant's title. Hoogenboom v. City of Beaufort, 315 S.C. 306, 433 S.E.2d 875,880 (S.C. Ct. App. 1992).

SUMMARY OF THE FINDINGS OF FACT

1. The Demetre, Crowley and Beckmann deeds all refer to the 1920 plat.
2. On the 1920 plat the so-called Demetre "lots" are not shown and therefore do not exist.
3. Demetre can only own what was deeded to him according to the 1920 plat, which is a part and parcel of his deed and is described as marshland.
4. The Beckmann and Crowley deeds show East Indian Avenue as their riverward boundary.
5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of "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.
7. There is no basis to quiet title, in Demetre, based on Demetre's claim of title to the land.

As to the Affirmative Defenses.

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. Plaintiffs also made an argument on Rule 59(e) S.C.R.C.P, but I find that the Respondents, as the prevailing party, were not required to file a Rule 59(e) Motion.

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. 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. I do find that the Defendants' docks have been there for many years prior to Plaintiff's purported purchase of the property and so Plaintiff's purchase of the property was done with full knowledge and understanding that the 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.

CONCLUSIONS OF LAW

The Court concludes, as a matter of law, that there is no basis to hold, that Demetre owns any land riverward of the Crowley and Beckmann lots and East Indian Avenue;

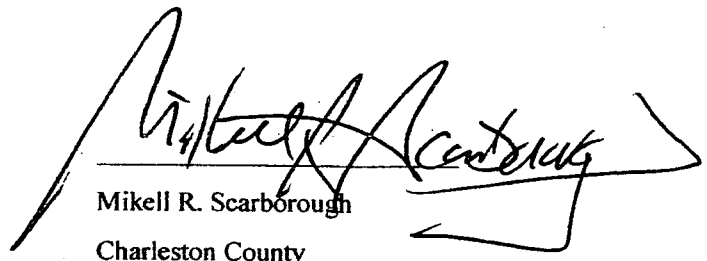
The Court further concludes, as a matter of law, that Demetre is not entitled to have title quieted in its name.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that:

The Milton P. Demetre Family Limited Partnership does not own any portion of the highland between the Crowleys' and the Beckmanns' lots and the mean high water mark on lots 209 and 210, East Indian Avenue;

The Milton P. Demetre Family Limited Partnership is not entitled to have title quieted in its name.

AND IT IS SO ORDERED!


Mikell R. Scarborough
Charleston County
Master-In-Equity

January 13, 2012
Charleston, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

The Milton P. Demetre Family)
Limited Partnership,)

Plaintiff,)

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,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION No. 2005-CP-10-4101

ORDER DENYING PLAINTIFF
RULE 59e MOTION FOR RELIEF

2012 APR 19 AM 9:50
JULIE J. ARSTRONG
CLERK OF COURT
BY

FILED

Plaintiff, through its able and competent counsel, filed its 24 page motion on February 2, 2012 for relief under Rule 59(e), SCRCF, requesting that this court alter or amend its Order on Remand issued on January 13, 2012. Having thoroughly reviewed the Plaintiff's motion, the court declines to alter or amend its ruling herein.

This court is convinced that the 1786 grant and plat, referenced in the Order on Remand, are dispositive of the issue before it. Plaintiff argues in its motion that the property in question is "high marsh" created by the accretion of land over the years and, as such, is not subject to the state's presumption of ownership. Hobonny Club v. McEachern, 272 SC 392, 252 SE2d 133 (1979). While the 2005 Kennerty plat shows some of the property in question to lie above the mean high water mark, this property clearly appears as Marsh Land in the 1786 Grant and plat, the 1895 Engineer Tartus' survey (upon which Plaintiffs rely) and the 1920 Cummings and McCrady plat.

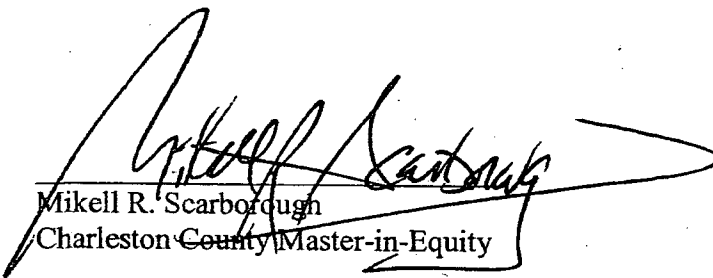


Because I find the plats to be more precise as to what property is being described, I conclude the property in question was not contained in the January 1943 Master's deed to Plaintiff's predecessor in interest when he was conveyed title to most of Folly Island. Therefore, Edward Seabrook, Jr.'s subsequent Quitclaim Deed did not convey title to the property in question. Accordingly, this court declines to quiet title to subject property in Plaintiff.

As to any and all other issues raised in Plaintiff's motion, to the extent not specifically ruled upon herein, they are hereby respectfully denied.

AND IT IS SO ORDERED!

April 16, 2012
Charleston, S.C.



Mikell R. Scarborough
Charleston County Master-in-Equity

The South Carolina Court of Appeals

The Milton P. Demetre Family Limited Partnership,
Appellant,

v.

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

Appellate Case No. 2012-212136

ORDER

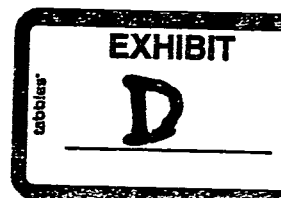
Appellant has filed a motion to accept the designation of matter and appellant's initial brief out of time. The motion is granted and the appellant's brief and designation are accepted as filed. Additionally, Respondents are ordered to serve and file the respondents' initial brief and designation of matter no more than fifteen (15) days from the date of this order.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
JS 11/15/12



cc:

Cain Denny

John Hughes Cooper

John Townsend Cooper

Jeff D. Griffith, III

Richard Lee Whitt

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2) CASE NO. 2005-CP-10-4101

3 COUNTY OF CHARLESTON)

4 THE MILTON P. DEMITRE)
5 FAMILY LIMITED)
6 PARTNERSHIP,)

7 Plaintiff)

8 VS)

9 HARRY BECKMANN, III,)
10 ET AL)

11 Defendants)

ORIGINAL

12 THE MILTON P. DEMETRE)
13 FAMILY LIMITED)
14 PARTNERSHIP)

15 Plaintiff,)

16 VS)

17 CITY OF FOLLY BEACH,)
18 ET AL)

19 Defendants.)
20)

21 HARING held on this the 12th day of December
22 2006, before the Honorable Mikell R. Scarborough,
23 Master in Equity for Charleston County.

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

25 JON HUGHES COOPER, ESQ.,
26 CAR DENNY, ESQ.,
27 Attorneys for the Plaintiff,

28 JEFFERSON D. GRIFFITH, III, ESQ.
29 AMBER S. DEUTSCH, ESQ.,
30 Attorneys for the Crowleys,

1 And then I saw Ms. Lesley Riley out there. And
2 let me just ask my first question, which I've got. And
3 that is why is DHEC, OCRM, not a party? I need to make
4 a record about that.

5 Mr. Cooper, Mr. Denny, you all want to tell me
6 about that?

7 MR. DENNY: Your Honor, we have an action in
8 the Complaint to attempt to void the permits. But
9 they're not a party, and we don't think that we can go
10 forward on that action. The rest of it is just a
11 property dispute.

12 COURT: Okay. All right.

13 So the way I interpret that is that you are not
14 fighting over ownership of the marshlands, or any of
15 the property below the mean high water, is that
16 correct?

17 MR. DENNY: That's right, your Honor. We're
18 not--the case is exclusively about the property above
19 the mean high water mark.

20 COURT: Okay. All right.

21 MR. COOPER: Your Honor, John Hughes Cooper for
22 the Plaintiff. Before we get started, I discussed
23 briefly with Ms. Deutsch and Mr. Griffith and Mr.
24 Peeples. I haven't had a chance to talk to Mr.
25 Mendelsohn, because he just walked in.

1 But we think that it might save a lot of time
2 if we can have a brief conference with the Court before
3 we get started.

4 COURT: All right. I'm always willing to do
5 that.

6 Do you want to do that here? You want to do
7 that in chambers?

8 MR. COOPER: In chambers.

9 COURT: Okay. I'd be glad to do that.

10 MR. MENDELSON: I walked in because he told me
11 10 o'clock.

12 MR. COOPER: I did, your Honor. That was
13 several days ago. I was under the impression it was 10
14 o'clock. And I apologize to the Court.

15 COURT: And for the record, I'm reading my
16 Order of August 21. It says this case is set for trial
17 December 12, 13, 14, 2006, at 9:30 a.m.

18 So anyway, I don't always walk out here at
19 9:30, but I did today. I'll be happy to do it. I'll
20 try and do it everyday this week. How about that?

21 (Court, counsel retire to Judge's chambers)

22 (Hearing convenes)

23 COURT: Mr. Cooper...

24 MR. COOPER: Yes, your Honor. John Hughes
25 Cooper for the Plaintiff.

1 Again, we just want to put a stipulation on the
2 record consistent with our discussions with the Court in
3 chambers.

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

7 The chain of title of Emily S. Brown to Lot 204
8 Huron Avenue East has been stipulated to.

9 The chain of title for Lot 210 Huron Avenue
10 East into the Crowleys has been stipulated to.

11 And the chain of title to the Beckmanns to Lot
12 209 Huron Avenue East has been stipulated to.

13 All of those have been agreed by counsel that
14 they are stipulated to, as far as record title. And the
15 documents are in evidence as Plaintiff's Exhibits.

16 I will pass up for the Court a copy of that as
17 well.

18 (Documents handed up to the Court)

19 In addition to that, your Honor, the
20 Plaintiff's A through Z are in evidence, without
21 objection.

22 And Plaintiff's book of photographs--the
23 photographs themselves are in evidence. But the
24 writings on the photographs, it has been stipulated by
25 and between the attorneys, is of no evidentiary

1 consideration whatsoever. It's just an accomodation to
2 the attorneys not to have to erase all of the writings
3 on the photographs.

4 COURT: All right.

5 So the photographs, but not the writing on the
6 photos, would be evidence?

7 MR. COOPER: Correct.

8 I think that's it.

9 There's also a revised Kennerty Surveying plat.
10 It has been revised several times. The latest revision
11 is in Plaintiff's trial exhibits as Exhibit--

12 COURT: N as in Nancy?

13 MR. COOPER: N as in Nancy.

14 And the one that we're putting into evidence
15 I've written down on it N - Plaintiff's Exhibit N
16 (amended).

17 COURT: Okay.

18 MR. COOPER: And so there are some other
19 versions floating around.

20 That's the stipulation, as I understand it,
21 your Honor.

22 COURT: Any response by the Defendants?
23 Everybody is in agreement with that?

24 MR. PEEPLES: Yes, your Honor.

25 MS. DEUTSCH: Yes, your Honor.

1 COURT: Very good. Okay.

2 All right. The stipulations are in.

3 I stated to the attorneys in chambers, and I
4 think I would just state this for the record. And for
5 those of you who are here, as I see this case, the
6 issue, and I raised that issue with Ms. Riley earlier
7 on, she is with South Carolina DHEC/OCRM, is a question
8 of title to the high land to which the Plaintiffs claim
9 is between the Defendants lots and the marsh.

10 And the question is quieting title to that high
11 land, and significantly not the marsh - not the low
12 land, probably below the mean high water mark and the
13 existence of the docks, which are the Defendants docks,
14 which exist over that.

15 So that is what we are here to determine, is
16 who has got title to that high land between what's
17 marked as Plaintiff lots, and that which exist in the
18 marsh between there and the marsh. That's as I see it.
19 Okay.

20 With that question, then, Mr. Cooper you may
21 start your case.

22 MR. COOPER: Yes, your Honor.

23 The Plaintiff calls Larry Kennerty to the
24 stand.

25 COURT: All right. Mr. Kennerty...

1 Q Okay. And if you would, tell the Court -
2 summarize for the Court what the differences are between
3 Plaintiff's Exhibit A and Plaintiff's Exhibit N, as
4 amended.

5 A We have added some dimensions to Lots 209 and 210
6 East Huron. And I think we also added some dimensions
7 to some of the lots on East Indian Avenue.

8 Also we've added or changed the - amended the mean
9 high water mark on this latest plat from what it was on
10 the earlier version.

11 Q Okay. And explain to the Court why you amended
12 the mean high water mark.

13 A Due to some further information, we originally had
14 gone by the height of the tidal level in that area.
15 Which I think was 5.45, and divided that in two. And
16 just commonly what we had used over the years in this
17 area as mean high water, dividing that number in two.

18 But after further talking with Dr. Lewis Lapine
19 with the State Geological Survey yesterday, I found that
20 was definitely the incorrect way to do it. And we
21 downloaded some charts off of Internet with his
22 guidance, and also a convoluted set of instructions on
23 how to read that chart. And further determined that the
24 high water mark was actually approximately 3.19 feet and
25 not the 2.65 feet which we had earlier determined it to

1 be. This is a much more accurate way to determine mean
2 high water mark.

3 Q And is determining the mean high water mark
4 something surveyors do in their normal course of their
5 business?

6 A Yes, sir.

7 Q And you do that on a regular basis?

8 A No. We do--when we're doing surveys like this.
9 But normally what we are doing is boundary-type surveys.
10 And I think in the past years, surveyors hadn't done a
11 lot of mean high water mark. Whereas today a lot of
12 surveys are going to the critical line, and not mean
13 high water mark. But while the older surveys were all
14 based on mean high water marks.

15 Q Okay. And is this survey, Plaintiff's Exhibit N,
16 as amended, does it locate the mean high-water mark
17 accurately?

18 A Yes, sir.

19 Q And does it also locate the critical line?

20 A Yes, sir.

21 Q Okay. I ask you now to look on Plaintiff's
22 Exhibit N, as amended, is there anything on there that
23 you know of, that's inaccurate or needs to be corrected?

24 A No, sir. I think everything on here is accurate,
25 to the best of my knowledge.

1 A One says mean low water--
2 Q But the same height--
3 A The land will be the same height.
4 Q Thank you.
5 MS. DEUTSCH: And I have just two follow up
6 questions.
7 FURTHER CROSS-EXAMINATION BY MS. DEUTSCH:
8 Q Mr. Kennerty, is this the first time you've ever
9 done mean high water this way?
10 A Based on the 3.19?
11 Q Based on that new instructions that--
12 A Yes, it is.
13 Q So I guess it would be safe to say that all mean
14 high water lines that you've set in the past have been
15 wrong?
16 A I really have not set any mean high water marks.
17 This is really the first one I've had to really
18 establish the mean high water mark. On recent surveys,
19 we really don't use the mean high water any more.
20 Q You use the critical line?
21 A We use the critical line.
22 Q But the State is the only entity that's certified
23 to set the critical line. So your critical line is just
24 a guess?
25 A This critical line would have to be certified by

1 the State. But I wouldn't expect for them to come back
2 with anything different. I have quite a number of
3 these. And this is pretty well defined from the ones
4 I've done over the years.

5 Q So at that critical line there's a pretty big drop
6 in elevation?

7 A Oh yeah.

8 Q Right down into the marsh with the Juncus and the
9 Spartina?

10 A Yes.

11 Q Okay. And do you have your instructions with you
12 today that you got yesterday?

13 A Yes.

14 Q May I take a look at them?

15 A Yes. (Tenders document)

16 MS. DEUTSCH: Your Honor, may I ask your
17 indulgence for a few minutes to look at this?

18 COURT: Sure.

19 Q Mr. Kennerty, I don't understand a word of this.
20 So I'll hand it back to you.

21 A It took me a while to figure them out, too. And
22 I'm still not sure I understand them.

23 Q Amen.

24 Who makes the determination about those particular
25 figures, the various and sundry letters that we've used

1 Q Okay. And where are you employed?
2 A I'm self-employed. I have a law practice in North
3 Charleston.
4 Q And have you done any work in the area of real
5 property?
6 A Yes. I've been working in the area of real
7 property since I was 18. I'll be 40 in February, so...
8 Q Is it fair to say that that's your main area of
9 concentration?
10 A Yes.
11 Q And have you done any title work?
12 A Yes.
13 Q And did you do the title work which is reflected
14 in Plaintiff's Exhibit D, which is the chain of title
15 for the Milton P. Demetre Family Limited Partnership?
16 A Yes.
17 Q And is that chain of title accurate in that
18 exhibit?
19 A It is. I had some other deeds I'd like to add, if
20 it's all right.
21 Q Okay. What additions would you like to make?
22 A Can I get them?
23 Q Yes.
24 (Witness gets additional deeds and returns to
25 witness stand)

1 Just generally, do you see an index in front of
2 the chain of title exhibit?

3 A Yes.

4 Q Okay. And as far as what's indicated on there, is
5 it accurate?

6 A The information there is accurate. I just wanted
7 to add a few deeds.

8 Q And so the general nature of what you want to add,
9 if you would explain to the Court what the general
10 nature of that is.

11 A It's just to complete - just to add some other
12 deeds that were in the chain, just to complete it.

13 Q All right. And explain to the Judge what the
14 other deeds are that would add to that summary.

15 A Do you want me to just give them to you, or do you
16 want to explain--

17 Q Just explain, generally, what they show.

18 A It generally shows back in the chain of title,
19 Folly Beach Investment Company owned the property in
20 1926, or owned the island in 1926.

21 And there are some portions in the chain of title
22 that relate to Folly Beach Investment Company's
23 ownership, at that time. And there were some
24 one-quarter interest deeds that were not reflected in
25 the summary, and I could give those to you now.

1 Q Okay. So generally speaking, though, everything
2 that you would add would be additional deeds into Folly
3 Beach--

4 A Investment Company, right. Just additional deeds
5 into Folly Beach Investment Company.

6 Q Back in 1926 or thereabout?

7 A Between about 1921 to 1925 roughly, yes.

8 Q And so the significance of these other deeds is
9 that the summary there only shows one deed to them, and
10 there were actually several?

11 A Right. One of the deeds was like a quitclaim
12 deed. Well, there were several - some deeds that--to
13 clear up, if there was a question on the title or
14 something, back in the chain. But I have the vesting
15 deeds.

16 Q Okay. And would you like to read those off, and
17 then we'll offer them into evidence, if they show the
18 title.

19 A Okay. This is a deed from E. H. Jennings to Folly
20 Beach Improvement Company. It's in Book Z, as in zebra,
21 at page 160. And it was recorded on December 16, 1925,
22 and it was for one-quarter interest in the island.

23 Q Okay.

24 A Of the island minus lots previously conveyed.

25 Q All right.

1 A The next deed is a one-quarter interest deed from
2 W.C. McMurphy to Folly Beach Investment Company. It was
3 recorded in Book Z-33 at page 163, on the 16th of
4 December 1925. And it was again for a one-quarter
5 interest in Folly Island, minus previous lots conveyed.
6 Q All right.
7 A The next deed is a deed from E. W. Durant. It's
8 recorded in Book Z-33 at page 161. It was recorded the
9 16th of December 1925. It's for a one-quarter interest
10 in Folly Island minus lots previously conveyed.
11 Q All right.
12 A This is a deed from Citizens and Southern Company
13 to Folly Beach Improvement Company. It's recorded the
14 20th of January, 1926. It's for a one-quarter interest
15 in Folly Island minus lots previously conveyed.
16 Q Okay. Are all the deeds that you're talking about
17 now conveying interest into Folly Beach Investment
18 Corporation?
19 A Well, we can stop, I guess. Let me see--I gave
20 you--the last one I gave you C&S-- Yep, that's it.
21 Q Okay. And are those the only additional deeds
22 that need to be added in the chain?
23 A Let me look at my notes here.
24 I would like to add one note that--
25 Q Okay.

1 A About the Estate of Seabrook, there's an
2 instrument recorded in File 864 at 161 in the Probate
3 Court, wherein there's an Order from both estates of
4 Fannie Lee Seabrook and Edward M. Seabrook, that are in
5 the chain of title. Although the history indicates
6 Edward and M. Seabrook, the elder. Where it indicates
7 that, it should also indicate and Fannie Lee Seabrook.

8 Q Are there any other corrections or additions you'd
9 like to add?

10 A Regarding Lot 202, Indian Avenue, I'd like to add
11 a deed. The deed that's reflected in Item 9 about Lot
12 201, recorded in Book A-92 at 248 is also a part of the
13 chain of title for Lot 202. That's about it.

14 Q Ms. Sullivan, are there any other additions or
15 changes to the summary in the front of that exhibit,
16 that you'd like to make?

17 A On page 4 I would like to add that to the legal
18 description on the far right, at the top. It includes
19 property north of 50 foot 3rd Street, in that deed. I
20 think that's about it.

21 Q Are there any other changes or additions that
22 you'd like to make?

23 A This is regarding just Mr. Demetre's title?

24 Q Correct.

25 A Nope. Nope.

1 Q Okay. So it would be fair to say that with the
2 additions and the corrections that you've just mentioned
3 to the Court, that the summary in that exhibit is a
4 correct summary of the chain of title of Mr. Demetre?

5 A Yes.

6 Q Okay. Have you had occasion to examine the chain
7 of title for Lot 210 Huron Avenue, which is now in the
8 Crowleys, is that right?

9 A Yes.

10 Q And is the summary you've got in that book
11 accurate as to the chain of title for Lot 210, East
12 Huron, Folly Beach?

13 A I have my notes--I don't think there's anything,
14 but can I look?

15 Q Sure. Check it out.

16 A I have several deeds. The first deed is recorded
17 in Book F-278, at page 609. It is Annie Ruth Crowley
18 now known as Annie Ruth Crowley Atkinson to Annie Ruth
19 Crowley. And it was recorded the 30th of December,
20 1996. And it's for Lot 210 Huron and some other
21 properties.

22 The next deed is recorded in Book R-275 at page
23 809. It's a deed from Harris L. Crowley, Jr to Annie
24 Ruth Crowley for Lot 210, and some other properties.

25 Q And that's Lot 210 East Huron?

1 Q And this was recorded, do you recall when?
2 A The recording date...
3 Q We'll take it, sometime in the 1920s.
4 A Okay.
5 Q To your knowledge, Folly Beach Improvement
6 Company, Ed Seabrook, the elder, and Ed Seabrook, the
7 junior, deeded many, many, many, many deeds with
8 reference to this very plat, correct?
9 A C-158--
10 Q C-159.
11 A Right.
12 Q And that plat is in 1920?
13 A Yes.
14 Q Have you ever seen any recorded document where it
15 disavowed the accuracy of this plat, or the accuracy of
16 the 1965 redraw?
17 A Have I seen--say that again.
18 Q Have you ever seen any recorded document where the
19 Folly Beach Improvement Company, Ed Seabrook, the elder,
20 or Ed Seabrook, the son, ever disavowed the accuracy of
21 this plat, the one we've been talking about, or the 1965
22 redraw?
23 A This--
24 Q I'll take a yes or no. All you've got to do is
25 say yes or no, real simple.

1 A I didn't see anything on the record.

2 Q So the answer is, no?

3 A I searched the chain and I don't see--I mean I
4 searched the subject property and I don't see anything
5 that's relevant for the question you are asking me.

6 Q So Ed Seabrook, the Folly Beach Improvement
7 Company, dad and son, sold their million. But they
8 owned thousands and thousands of property, and many,
9 many lots, all referring to these two plats?

10 A They did.

11 Q Okay. I don't have any other questions.

12 MR. MENDELSON: I have no questions.

13 COURT: Anything further?

14 MR. GRIFFITH: Nothing further, your Honor.

15 COURT: Before I let you go, I've got to ask you
16 some questions.

17 I think my question first--

18 Mr. Denny, can you find that blowup of the
19 original 1920 plat? I want to make sure we're talking
20 about apples and oranges - or apples and apples.

21 (Plat tendered to the Court)

22 MR. DENNY: The 1968 retrace is basically the
23 exact same thing as this.

24 COURT: Well, that's what I want to explore.

25 You had one highlighted up there somewhere.

1 COURT: Just one second, Gentlemen. Just one
2 second both of you.

3 All right. Mr. Griffith is entitled to ask the
4 questions.

5 Mr. Demetre, you need to answer the question in a
6 yes or no. You can answer it yes, or no, and then I'm
7 going to give you the opportunity to explain your
8 answer. I will give you that opportunity.

9 WITNESS: Okay. Thank you.

10 COURT: So let's just start over again with that
11 line of questioning.

12 Q Your deed, Mr. Demetre, refers to the plat on
13 Exhibit K?

14 A That's correct.

15 Q Your lots do not exist on the plat on Exhibit K?

16 A Not in 1920.

17 Q And that's the only one that's referred to in your
18 deed?

19 A Well, you've got to qualify that, now. You're
20 trying to take something out of context.

21 Q It either is or is not on your deed.

22 A My deed says C-158. And it's the redraw.

23 Q Mr. Demetre, prior to your purchasing this
24 marshland from Mr. Seabrook, had you ever been on this
25 property?

1 A Prior to purchasing it?
2 Q Yes, sir.
3 A The marshland?
4 Q Yes, sir.
5 A I walked it at the time I was getting ready to
6 purchase it.
7 Q Prior to that?
8 A No.
9 Q And prior to that time, you had no idea what went
10 on, on that property, prior to your purchasing it?
11 A No.
12 Q You have no idea what the Crowleys or the
13 Beckmanns did with that property, prior to your
14 purchasing it, other than the open and obvious dock?
15 A No, I have knowledge of what the OCRM permits--
16 Q No. That's not what I asked you. What did they
17 do?
18 A No, I don't know that.
19 Q Okay. That's all.
20 REDIRECT-EXAMINATION BY MR. COOPER:
21 Q Mr. Demetre, your deed to Lots 209 and 210 East
22 Indian Avenue refer to Plat recorded at C-158?
23 A That's right.
24 Q And have you been down to the RMC Office?
25 A Yes.

1 Q Did you ever try to pay taxes on East Indian
2 Avenue, the second block?

3 A Right. I'm glad you ask me that question. When I
4 bought 209 and 210 and the roadway, I went down to the
5 tax map division of the Assessor's Office--

6 MR. PEEPLES: I think I feel hearsay coming.

7 Q Did you ever try to pay the taxes?

8 A I told them that I had bought those roads, and
9 they should change their tax map. And they said until I
10 get a--

11 MR. PEEPLES: I object, your Honor. Hearsay.

12 COURT: I'll sustain. He can tell me what
13 happened there.

14 A I told them I had a lawsuit to quiet my title.
15 And they said once you quiet your title, then come back
16 to us, and we'll revise the map.

17 Q They wouldn't take your money?

18 A No, no. They needed some authority to change the
19 map.

20 Q You were able to pay the property tax on your
21 lots?

22 A I pay the property tax on the TMS 132, I think it
23 is 244 now.

24 Q And so you pay property tax on the lots that you
25 own?

1 A Yes, I do.

2 Q And you pay the property tax, do you not, on the
3 marsh out to the Folly River?

4 A Yes, I do. And Mr. Seabrook paid the taxes on it.

5 Q Now, when Mr. Beckmann and Mr. Crowley applied for
6 permits and built their docks across what is now Lot 209
7 and Lot 210, when they did that, the redraw of the 1965
8 redraw was in existence then, was it not?

9 A Yes.

10 Q It was in existence since 1965?

11 A Since 1965.

12 Q And it was probably 1980 when they tried to get
13 their second permits '89 or '90?

14 A They got their permits in 1987 and 1988. In '88.

15 Q Then Hugo required some rebuilding, and they got
16 some more permits, is that right?

17 A Yes, and some amendments to it.

18 Q Anyway, all the permits that they got, that you
19 know about, were after 1965?

20 A That's right.

21 Q And this C-158, which is the redraw, was in
22 existence showing your lots?

23 A That's my understanding.

24 Q And again, Plaintiff's Exhibit B was the tax map
25 and the page you testified to. And that was in

1 ANSWER: "Yes."

2 QUESTION: "These actual permit applications do
3 not disclose any high ground that's owned by somebody
4 else?"

5 ANSWER: "No."

6 QUESTION: "Between the lots and the river,
7 correct?"

8 ANSWER: "They don't, in my opinion."

9 QUESTION: "And had they disclosed that, that
10 there was ownership of high ground between them and the
11 river, there would have been additional requirements?"

12 ANSWER: "Yes."

13 QUESTION: "They would either have to buy the
14 property, or get permission of the property owner?"

15 ANSWER: "Show some right to use the upland
16 property, yes."

17 QUESTION: "And at the time these permits were
18 issued in the late '80s - early '90s, that was a well
19 established policy at OCRM?"

20 ANSWER: "Yes."

21 Over on page 35 beginning at line 19, your Honor.

22 QUESTION: "Can you tell from the drawing whether
23 or not there is any high land that Mrs. Stutter's dock
24 crossed on Mrs. Muller's property?"

25 ANSWER: "I'm trying to figure out what different

1 A No, I did not.

2 MS. DEUTSCH: Your Honor, I beg your indulgence.

3 COURT: Uh-huh.

4 Q Did you have any luck growing grass?

5 A Do I have what?

6 Q Luck growing grass? That grass that you said just
7 kind of grew?

8 A Oh luck. Oh luck. Any luck. No, there's not on
9 the higher portion of my lot. Actually, the back
10 property pins of my lot are in what I consider the
11 marsh, probably three to four feet of it goes beyond
12 where my grass grows.

13 Q Okay. Why do you consider that the marsh?

14 A Well, the plat says it's marsh. Your feet will
15 get wet when you step into it. Water does come up into
16 it. Fiddlers enjoy it.

17 Q Is there marsh grass?

18 A Excuse me?

19 Q Is there Spartina?

20 A There is some Spartina grass off on the right hand
21 side, as well as what we call needle grass. I think the
22 proper name was given yesterday, but I don't remember
23 what it was.

24 Q The grass that you have grown on your property,
25 how do you water that?

1 A I installed a sprinkler system in the yard.
2 Q Does it go around all your grass?
3 A It does.
4 Q Mr. Beckmann, I don't have any more questions. If
5 you'd just answer any questions that anybody else has,
6 I'd appreciate it.
7 COURT: Mr. Cooper...
8 CROSS-EXAMINATION BY MR. COOPER:
9 Q Mr. Beckmann, I am John Hughes Cooper. I met you
10 at your deposition.
11 A We did.
12 Q I have some questions for you about your
13 testimony.
14 You testified, I believe, a few minutes ago, that
15 you had gotten not only a permit from the Coastal
16 Council, but also permission from Folly Beach. Did you
17 get anything in writing from Folly Beach about your
18 dock?
19 A We got a written permit.
20 Q Okay. You have a written permit from Folly Beach?
21 A Yes, sir.
22 Q Do you have that with you?
23 A I believe possibly my attorney does.
24 Q And your attorney has had that?
25 A They have a copy of it. We have the original.

1 Q Right. But you gave that to your attorney?
2 A I did.
3 Q Okay. And is it your understanding that Folly
4 Beach permitted the docks?
5 A Folly Beach did give us a building permit for the
6 dock.
7 Q Okay. A building permit. And do you know if
8 that's the same sort of a building permit that Folly
9 Beach would give you for the construction of an out-
10 building or addition on your house?
11 A I don't remember whether--I don't know if it
12 designated what it was. It has been a long time.
13 Q Thank you.
14 I don't believe we have ever seen that. Did you
15 all put it in?
16 MS. DEUTSCH: I will look. I don't believe--it's
17 public record. I don't believe I have that in my
18 possession.
19 A If they don't, Mr. Cooper, we can provide it. It
20 would take a while, but we could provide it.
21 Q Thank you.
22 A I apologize for you not having it.
23 Q I would like to show you now what I've marked as
24 Plaintiff's Exhibit AA, which is, for the record, the
25 same document that is provided to opposing counsel in

1 the case. And it's numbered PLT-154 through 166.

2 And this is the same document we asked you about
3 at your deposition.

4 Mr. Beckmann, do you recognize that as being a
5 copy of your permit application to Coastal Council?

6 A This is the same one we saw in the deposition?

7 Q Yes.

8 A Then it should not be changed, so it should be. I
9 will not--do you want me to read through it?

10 Q Well, just looking at it, does it look like the
11 same permit application?

12 A It looks like the same one that you and I
13 discussed in November.

14 Q That's right. And on the front page of that, on
15 what is marked as PLT-154, paragraph No. 5 calls for the
16 names and addresses of adjacent property owners?

17 A It does. It does.

18 Q And who did you put down as adjacent property
19 owners?

20 A I have listed Harris L. Crowley and Mr. Paul
21 Wright.

22 Q Okay. And you didn't indicate Mr. Edward
23 Seabrook, did you?

24 A No, Mr. Cooper, we did not.

25 Q Now, what is the date when you submitted that

1 permit application?

2 A 29 December, 1987.

3 Q And in 1987, do you know whether or not at C-158
4 down in the RMC Office whether or not there was on file
5 a plat that has been referred to as the redraw, the 1965
6 redraw?

7 A Well, from what we established yesterday, it
8 probably was.

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

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

15 Q And in 1987 the tax map to East Indian Avenue, Lot
16 201, 202, and 3, 4, and 5 were all together. This is on
17 Indian Avenue, your lot being here. This was owned by
18 Mr. Edward Seabrook?

19 A It shows that.

20 Q Okay. And that is the state of the tax map, at
21 the time that you submitted your dock application?

22 A I did not see it then. But if you say that was
23 there then, I think we have determined that it was there
24 then.

25 Q You didn't look at any tax maps?

1 A Only the one that the City of Folly Beach had
2 posted.

3 Q And what tax map did they have posted?

4 A I believe it was--we've discovered now that it was
5 the one drawn in 1920, where there was nothing--

6 Q That's a plat.

7 A A plat. I beg your pardon.

8 Q The 1920 plat.

9 A A plat, I beg your pardon.

10 Q And that was posted by Folly Beach?

11 A Correct.

12 Q But you are not disputing that these documents
13 were available, that information was available when you
14 submitted your permit application?

15 A I will not dispute that.

16 Q Now, if you would, let me refer you to the
17 permit--to permit application page that's labeled
18 PLT-156. Is this a planned view of the marsh, and your
19 dock - a proposed dock and so forth?

20 A It is.

21 Q Does it also show a proposed dock for Mr. Crowley?

22 A It does.

23 Q And does it show Indian Avenue coming down as far
24 as the docks were being constructed?

25 A It does.

1 Q Does it show that the docks would cross Indian
2 Avenue, or does it show Indian Avenue stopping before?
3 A It shows Indian Avenue stopping before.
4 Q Before the docks?
5 A Right.
6 Q Okay. And did you ever discuss with anybody at
7 Folly Beach, the fact that the docks would cross an area
8 that might be platted as Indian Avenue?
9 A No, sir, we did not.
10 Q Let me refer you now to a page that is labeled
11 PLT-161, which is the existing profile of the marsh.
12 Are you familiar with that?
13 A We've seen that a number of times, yes.
14 Q And that's the one that we have a blowup of here?
15 A That's correct.
16 Q Okay. You would agree with me that those show
17 over here--it hard to read on the blowup, but on the
18 left-hand side, and I guess this is the top of the
19 permit page that you have. It says "property line?"
20 A It does.
21 Q And that represents your back property line, does
22 it not?
23 A It does, yes.
24 Q Okay. And then the profile was just how the
25 profile of the marsh is, out to the Folly River?

1 that said property is "all the property that is
2 contiguous to, and landward of the area in which the
3 work proposed and permit application is to be conducted.

4 "Furthermore, I certify that as record owner, that
5 I have, or will have, prior to undertaking the work,
6 necessary approvable permission from all other persons
7 with a legal interest in said property.

8 "This affidavit applies only to high land, and
9 does not apply to wetlands or any area below mean high
10 water."

11 And the legal description that you provided of the
12 property that you own, is basically your lot, Lot 209
13 East Huron Avenue. Is that what it says?

14 A It does.

15 Q Okay. And that was your property?

16 A Yes.

17 Q And still is your property?

18 A It is.

19 Q And you've continued to pay taxes on that?

20 A I have.

21 Q Have you ever paid any taxes on the land where the
22 dock is, out beyond your back property line?

23 A The property taxes did go up a little bit after we
24 built a dock.

25 Q Right. But did you ever pay property taxes on

1 that land out there?

2 A No.

3 Q Now, Mr. Beckmann, going back just a minute to the
4 profile here. You own your lot 209 East Huron, which is
5 70-feet by 150-feet, correct?

6 A Correct.

7 Q Okay. And nobody else has any rights to that,
8 except you and your wife?

9 A That's true.

10 Q Okay. And this is the property line that is
11 indicated on this document here, the existing profile of
12 marsh. That's the same property line we are talking
13 about, is the property line on the back of your lot
14 closest to the Folly River, is that correct?

15 A That's correct.

16 Q Okay. And this particular diagram indicates, does
17 it not, the high tide mark?

18 A It does.

19 Q Okay. And this is your signature down here at the
20 bottom?

21 A It is.

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

24 A That's true.

25 Q Okay. And this does show, approximately, and just

1 less than 400 feet of land between the end of your
2 property and where the elevation of the property goes
3 below the high tide mark?

4 A That's what it shows.

5 Q Is that fair?

6 A It is.

7 Q Okay. And that was accurate when you submitted
8 it?

9 A To my knowledge it was.

10 Q As far as you know it was accurate, at that time?

11 A May I say where the documents came from? Excuse
12 me, to my knowledge, yes.

13 Q And this--when you submitted this, you believed it
14 to be accurate?

15 A I did.

16 Q And you believe it to be accurate now?

17 A It may have changed a foot or so, I don't really
18 know.

19 Q Mr. Beckmann, how would it have changed about a
20 foot or so?

21 A We're talking 18 years. We have more water in the
22 ocean now. We have--erosion has taken place in front of
23 the island, at the back of the island. So it may have.
24 I'm not saying that it has. It may be exactly the same.

25 Q It is true, isn't it, that in your deposition--let

1 me just do it this way.

2 We have the original transcripts filed with the
3 Court. I don't know whether you have seen them or not.

4 COURT: If they were filed with the Clerk, they
5 are probably down with the Clerk.

6 Q Let me just rephrase the question. Mr. Beckmann,
7 you remember giving your deposition in this case?

8 A I do.

9 Q On November 3, 2006?

10 A That's true.

11 Q At 10:00 a.m. in your attorney's offices?

12 A We did.

13 Q And do you remember being sworn to tell the truth,
14 the whole truth, and nothing but the truth, so help you
15 God?

16 A I do.

17 Q And you did?

18 A Yeah, I did that.

19 Q And to the best of your ability you did do that?

20 A I did do that.

21 Q Let me show you now your testimony on page 17. If
22 you would turn with me to page 17 of your deposition
23 transcript. And I'm just going to read a few lines
24 starting at line 10. And you check me to make sure I'm
25 reading this correctly.

1 A Yes, sir.

2 Q "Okay. And just to be clear about it, it was your
3 understanding when you submitted this permit
4 application, that you owned the lot 209 East Huron, and
5 the State of South Carolina owned from your property
6 line out to the Folly River?"

7 And your answer is: "That's correct."

8 And the question is: "Okay. And that's still
9 your understanding?"

10 And your answer was: "It is."

11 Did I read that correctly?

12 A Yes, you did.

13 Q And then on the next page, if you would, turn over
14 to page 18. And beginning at line 8, I'm going to read
15 some of this, and then I'll ask you a question on this.

16 "And I'll show you now, page 6 of 7 of your permit
17 application, which is also labeled as Plaintiff's 161.
18 And it is titled existing profile of marsh?"

19 ANSWER: "It is."

20 QUESTION: "And I think it is signed down here at
21 the bottom. Is that your signature?"

22 ANSWER: "That is my signature."

23 QUESTION: "So this is a sketch of the marks
24 profile that you provided with your dock application?"

25 ANSWER: "That's true."

1 QUESTION: "And on this, if I understand it
2 correctly, this I guess, the left-hand side of the page
3 it says 'property line,' is that what it says?"

4 ANSWER: "It does."

5 QUESTION: "And so this would be the property line
6 on your Lot 209, is that correct?"

7 ANSWER: "I believe that's correct."

8 QUESTION: "And then there is a wiggly line?"

9 ANSWER: "A wiggly line."

10 QUESTION: "A wiggly line that goes out to
11 basically the Folly River, is that right?"

12 ANSWER: "That's right."

13 QUESTION: "And the wiggly line is supposed to
14 represent, isn't it, the elevation?"

15 ANSWER: "The elevations."

16 QUESTION: "Of the land?"

17 ANSWER: "I would suppose."

18 QUESTION: "And it appears that there is
19 approximately a little less than 400 feet of it that
20 would be above the mean high tide mark, is it that what
21 this indicates?"

22 ANSWER: "Yeah. That looks like it indicates
23 that."

24 QUESTION: "And then the balance of the area out
25 to the Folly River would be below?"

1 ANSWER: "Would be below."
2 QUESTION: "The mean high tide mark?"
3 ANSWER: "Correct."
4 QUESTION: "And this is how the elevation of the
5 land was when you submitted the permit, as bes you could
6 tell?"
7 ANSWER: "That is the one I submitted."
8 QUESTION: "And this is accurate, as far as you
9 knew at the time?"
10 On page 20.
11 ANSWER: "As far as I know."
12 And the final question:
13 "And as far as you know now, it is still
14 accurate?"
15 ANSWER: "I do."
16 Do you still believe it's accurate, or have you
17 changed your...
18 A It is probably still accurate.
19 Q And so if it is still accurate, would it be
20 correct to say that above the high tide mark is
21 approximately 400 feet remaining, at the end of your
22 property line and the Folly River?
23 A Right.
24 Q Now, Mr. Beckmann, other than what you have
25 already said, which is your assumption that everything

1 from your property line out to the Folly River was owned
2 by the State of South Carolina, do you have any
3 information that this property above the mean high is
4 owned by anybody different than the State of South
5 Carolina?

6 A Not up until the time that I received the paper
7 work from Mr. Demetre claiming ownership. Is that what
8 you just asked me?

9 Q Yes.

10 And so up until you got some paperwork from Mr.
11 Demetre, you assumed everything from your property line
12 on out toward the Folly River was belonging to the State
13 of South Carolina?

14 A I had maintained the property.

15 Q But you assumed that it was owned by the State of
16 South Carolina, and that you had a dock permit?

17 A That is what I said in my deposition.

18 Q Okay. And when you submitted your application to
19 the South Carolina Coastal Council, and you certified
20 what property that you owned or controlled, you gave a
21 legal description. And the only thing you claimed to
22 own on the property was within the bounds of your lot
23 209?

24 A That's correct. That's true.

25 Q Now, Mr. Beckmann, do you know what high water

1 mark means?

2 A I think we've learned since the deposition what
3 the mean high water mark is. I think we have a
4 definition now, since you and I talked at our
5 deposition.

6 Q Okay. And so--are you an engineer?

7 A No, I'm not.

8 Q A surveyor?

9 A No, I'm not.

10 Q Or a person that's licensed to determine mean high
11 water?

12 A A telephone man.

13 Q Now, has anyone ever used the area that's marked
14 as the mean high water between your lot and out to the
15 Folly River? Has anybody used that property since
16 you've owned your lot?

17 A No.

18 Q Okay.

19 No further questions. Thank you.

20 A Thank you, sir.

21 COURT: Anything, Mr. Peeples or Mr. Mendelsohn?

22 MR. MENDELSON: I have nothing.

23 MR. PEEPLES: None for me, your Honor.

24 COURT: Ms. Deutsch...

25 MS. DEUTSCH: Very brief redirect, your Honor.

1 REDIRECT-EXAMINATION BY MS. DEUTSCH:

2 Q Mr. Beckmann, you said in response to the question
3 about whether you had looked at any tax maps, you said
4 that you went and looked at the plat at the City of
5 Folly Beach, right?

6 A That's correct.

7 Q You actually went to City Hall to somebody's
8 office to look at this plat?

9 A My wife and I did.

10 Q And you took the information that was given to you
11 by the City about whether there was any ownership of
12 property between you and the river?

13 A I depended on the City.

14 Q Okay. And that Coastal Council application that
15 you were talking about right here with Plaintiff's
16 exhibit, the Affidavit of Ownership or Control, you
17 certified that you are the record owner, right?

18 A That's correct.

19 Q So you must have believed that you owned the
20 property on which you built the dock, right?

21 A That's true.

22 Q And when you submitted the profile that's blown up
23 right there with your application, were you seeking to
24 try and assert anything about technical terms likes mean
25 high water, tidal cycles, anything along those lines?

1 A No, I was not.

2 Q Was that required, any kind of marsh profile, was
3 that required by Coastal Council with your application?

4 A I don't know.

5 Q Why did you submit it?

6 A The paperwork that was submitted to Coastal
7 Council was assembled by Mr. Crowley, who was a
8 professional engineer. And he provided the paperwork to
9 Mr. Cope and to I. And we submitted, we used that
10 profile that was provided for us from an engineer.

11 Q Okay. Thank you.

12 And you were just talking with Mr. Cooper about
13 your property line and who owns what beyond your
14 property line. What do you think the State could have
15 claim to? Are we talking about a part of your backyard?
16 Are you talking about some of the marsh out there near
17 the river?

18 A Well, actually, since my property line is--the
19 property pins of my property line, of my property, are
20 below my high ground. I suppose if the State said that
21 it is ours, then--now I can't use it. There's nothing
22 that I can use it for. It doesn't grow grass...

23 Q It's not suitable, right?

24 A It's not buildable. I mean I'm not going to fill
25 it, so I can extend my yard out four feet. If they

1 wanted to claim it...

2 Q So, do I understand correctly that your belief is
3 that your property extends out till the ground drops
4 away, and then there's marsh?

5 A That's true.

6 Q And if anybody owns the marsh, and it's not you,
7 then who would it be?

8 A It would be the State.

9 Q Thank you very much, Mr. Beckmann.

10 MR. COOPER: Just one quick thing, your Honor.

11 RE-CROSS-EXAMINATION BY MR. COOPER:

12 Q Mr. Beckmann, on your Affidavit of Ownership or
13 Control, the only property that you are claiming you
14 actually own in that affidavit that you submitted to the
15 South Carolina Coastal Council, is your 70 foot by 150
16 foot lot, correct?

17 A Yes, sir.

18 Q You didn't claim you owned anything beyond that?

19 A Not on the application, no.

20 COURT: And so while we are on that subject, I
21 think you testified this. I just want to make sure.

22 Your testimony is that you've got four pins that
23 designate the four corners of your lot?

24 WITNESS: That's correct.

25 COURT: But the two that are closest to the marsh,

1 MR. COOPER: The Plaintiff rests, your Honor.

2 COURT: Mr. Cooper, thank you, sir.

3 Was there something that you wanted to renew?

4 MR. COOPER: I think we are good with that, your
5 Honor. We would like to put into the record, as well,
6 just depositions of Mr. Beckmann and Mrs. Crowley.

7 COURT: Okay. All right.

8 MS. DEUTSCH: No objection.

9 COURT: All right, without objection.

10 (Beckmann and Crowley depositions entered into
11 evidence as Plaintiff's CC and DD, respectively)

12 I know there was a video, but I don't think we
13 need to see that.

14 MR. DENNY: We don't need to see that, your Honor.

15 COURT: Thank you, Mr. Denny. I appreciate that.

16 All right. Do you all want to take a few minutes
17 to--I've got about 10 minutes that I'm going to be here.
18 Do you all want to take a few minutes, or do you want to
19 come back later and argue, or would you like to hear
20 from me on what I think the case is?

21 Because I'm not likely to grant any Motions. I'm
22 just here to tell you that. We've got a factual dispute
23 over title to land. And the question is going to be is
24 title in the name of the Plaintiff, the Demetre Family
25 Trust? Or is title in the Defendants? Or is title in

1 the City of Folly Beach? Or is title in the State of
2 South Carolina? The way I look at it.

3 And let me brief you gently on some of those
4 issues. Because this is what--let me just state at the
5 outset: Gentlemen, we've done in a day and a half what
6 I thought was going to take three days to do. So I'm
7 very please with that. I want to thank you all for your
8 presentation, for your promptness, and also for the
9 thoroughness with which you have presented the case.
10 You've each done a great job representing your clients.

11 I knew that this was going to be a difficult case.
12 They are all difficult cases any time you get around the
13 marsh, so... And as I tell people, the rule of law, as
14 I know it, doesn't exist on Folly Beach. So that's
15 where Mr. Peeples comes in. He's got permanent
16 employment out there. So it's always a question of how
17 it is going to apply.

18 As I see it, and Ms. Brown is not here today. But
19 clearly that was the source, sort of, of yesterday's
20 inquiry with the road, and then today the Defendants
21 talking about their title. But as it relates to the
22 road--before I can get there.

23 What I want to do is, and my typical practice is
24 thi: I will give you each 30 days to submit to me
25 proposed Orders, okay. And put in that proposed Order

10-21-11Demetre (2)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

THE MILTON P. DEMETRE FAMILY)
LIMITED PARTNERSHIP,)
Plaintiffs,)
VS.)
HARRY BECKMANN, III, ET AL,)
Defendants.)

CASE NO.:2005-CP-10-4101

Hearing before the
Honorable Mikell R. Scarborough, reported by Bernadette A.
Cali, CSR and Notary Public, at 10:00 a.m. on October 21,
2012 at 100 Broad Street, Charleston, South Carolina.

Bernadette Cali, CSR
Notary Public

A P P E A R A N C E S

Page 1

10-21-11Demetre (2)

For the Plaintiff: John Hughes Cooper, Esq.
Proctor in Admiralty
PO Box 21897
Charleston, S.C. 29413

Cain Denny, Esq.
Cain Denny, PA
PO Box 6
Sullivans Island, S.C.

For the Defendants: Jeff D. Griffith, III, Esq.
Austin & Rogers, PA
PO Box 11716
Columbia, S.C. 29211

8

3

1 (Hearing commenced.)

2 THE COURT: Today we have the return of the
3 Milton -- the Demetre Family Limited Partnership versus
4 Harry Beckmann, III and others; the Crowleys,
5 Atkinsons. Case number is 2005-CP-1401. This matter
6 has been tried before me, gone to the Second Court of

Page 2

7 Appeals affirmed in one respect and remanded in
8 another. The case really had two issues. One was the
9 ownership of a road. I'm trying to remember the name
10 of that road now. East Indian?

11 MR. COOPER: East Indian Avenue.

12 THE COURT: That's been resolved. The matter left
13 unresolved and the reason we're back here today on
14 remand has to do with question of title to land between
15 the Crowley, Beckmann and Atkinson properties, I
16 believe, and Folly River, and who has title to that
17 property.

18 I glanced briefly at the court's Order on Remand,
19 Court of Appeals. I didn't see a whole lot of guidance
20 from them. I just saw where they said you didn't rule
21 on that, so you have to rule on that. So I would take
22 that to be the position of the Plaintiffs in this case
23 and, therefore, just from a standpoint of who is going
24 to be the moving party, then, for the Plaintiffs,
25 Mr. John Hughes Cooper and Mr. Cain Denny are present;

4

1 and for the Defendants I have Mr. Jeff Griffith and
2 Mr. Richard Whitt; is that correct, Mr. Whitt?

3 MR. WHITT: Yes, Your Honor, thank you.

4 (Discussion off the record.)

5 THE COURT: Anything we need to take up?

6 There was an issue at one point in time -- let me
7 tell you, gentlemen, I have proposed orders from both
8 of you and I have reviewed them. At least I did a
9 while back. I was glancing at them again this morning.
10 It's just my position that if I'm not clear on
11 something I like to have a hearing, and I think that it

12 helps to sort of refresh my memory as to what went on
13 at the trial, and then anything that may bring us
14 current as to what law is applicable to the case. So
15 that's really what I'm looking for this morning.

16 I saw some discussion about whether or not there
17 would be additional testimony. I don't think, based on
18 what you-all are telling me -- we'll just review the
19 record that we have and then bring current the
20 arguments as to title to this land, to this property.

21 Anything else?

22 MR. COOPER: I think that's all from the
23 Plaintiff's perspective.

24 MR. GRIFFITH: Nothing else from the Respondent.

25 THE COURT: Mr. Cooper, would you like to proceed,

5

1 then, sir?

2 MR. COOPER: Yes, Your Honor. Let me just say
3 that we have submitted several memorandums which have
4 been filed with the Court. We've also submitted a
5 final order, which Your Honor has mentioned this
6 morning.

7 If it pleases the Court, I'm going to be very
8 brief. Most everything that could be said about this
9 has been said better in these written submissions than
10 I'm going to be able to do it, but I will say that it's
11 just my view, Your Honor, that the big picture here is,
12 I believe, that Your Honor ruled at the trial level, in
13 your first Order, that the defenses of adverse
14 possession were not proven but that the Court credited
15 the other affirmative defenses of the Defendants, and

10-21-11Demetre (2)
16 so that was, then, Your Honor's Order.

17 Then on appeal the Court of Appeals, as I
18 understand it, overruled that Order. So it's our
19 position, very simply, that at the beginning of the
20 trial the Plaintiffs offered to prove up the
21 Plaintiff's title, and Defendants said let's not do
22 that, we'll stipulate to record title.

23 So at that point, at the beginning of the trial,
24 it's the Plaintiff's position that we had proven record
25 title through a stipulation and that the only thing

6

1 that was keeping that from being actual title in the
2 name of the Plaintiff was these affirmative defenses,
3 which now have been either abandoned or lost at the
4 trial level and/or overruled by the Court of Appeals.

5 So we just think we have record title. That's
6 just about as simple as it gets.

7 Now, if there are any questions the Court has I'll
8 be glad to address them or talk about them. But we've
9 summarized all this in our final order and --

10 THE COURT: Take me specifically to it. My
11 recollection, when I read your memo and your proposed
12 order, was just that, there was a stipulation as to the
13 fact -- I think from reading Mr. Griffith's proposal,
14 there is a question as to what that stipulation would
15 have meant. I think that's probably what we're getting
16 at. Let's go back to the stipulation and let's make
17 sure we're talking on the same wavelength.

18 MR. COOPER: I believe it's at page 6 of the
19 transcript, I believe. Let's see.

20 Beginning on page 6 of the transcript, Your Honor,
Page 5

21 it says -- again, we just want to put a stipulation on
22 the record consistent with our discussions with the
23 Court in chambers. It is stipulated by and between the
24 attorneys for the parties that record title from Milton
25 P. Demetre Family Limited Partnership has been

7

1 stipulated to.

2 Of course, there is more beyond that but, I mean,
3 it just seems like that there is a stipulation to
4 record title in Milton P. Demetre Family Limited
5 Partnership. The only thing that stands between that
6 and being good title is these affirmative defenses.

7 THE COURT: All right. You want to be heard on
8 that?

9 MR. GRIFFITH: Just right below it you'll see --
10 talk about chain of title -- chain of title will -- the
11 thought, I think, that we all had was that we would be
12 here days on end if we had to prove up title to all of
13 these things; that the records were what the records
14 were, and we simply were stipulating that if you went
15 down to the Register of Mesne Conveyances or the Clerk
16 of Court, wherever they might be, that this is what you
17 would find. There were deeds into the Milton P.
18 Demetre Family Trust. No question about that. But
19 what those deeds mean, that's a whole 'nother story.
20 We certainly are not stipulating to any good title,
21 just stipulating there was a chain title into them.

22 THE COURT: It does go on. Line 7, chain of
23 title -- Emily Brown has been stipulated to, to the
24 Crowleys it's been stipulated to, to the Beckmanns it's

25 10-21-11Demetre (2)
been stipulated to.

8

1 I guess that brings the question, what does that
2 stipulation mean? Record title is what record title
3 was for Mr. Demetre. My recollection was that he got
4 title from Edward Seabrook at some point in time. I
5 don't remember when. And I can't remember when these
6 people got title but --

7 MR. GRIFFITH: The timeline is this. John Hughes,
8 correct me if I'm wrong. The time sequence is this.
9 That just from our client's standpoint they got title
10 from the original developer -- for lack of a better
11 word -- of the subdivision. And it has come forward.
12 The question really is a 1920 plat. There was a plat
13 which drew -- our clients, the Beckmanns and the
14 Crowleys, in both of their deeds it refers to the 1920
15 plat.

16 I've got something to hand up to Your Honor so you
17 can see the plat. We've blown it up. On that drawing
18 there is nothing behind them except marsh, on the 1920
19 plat.

20 THE COURT: Okay.

21 MR. GRIFFITH: Subsequent to that there was a
22 bankruptcy and out of that a 1965 redraw was done. The
23 Seabrooks got the property out of bankruptcy. The 1965
24 redraw of the plat was done and lots were added out in
25 the marsh, what this plat would show is the marsh. So,

9

1 ultimately, the Demetre Family Limited Partnership
2 purchased some of those in fee title from some owners,

3 and then the lots that they purchased directly between
4 our clients and the marsh now, they purchased on quit
5 claim deed. So the big issue for us is, of course, the
6 plat plays into this in a big way.

7 In Your Honor's earlier Order, you relied heavily
8 on that, because if there is marshland back there you
9 determined it was marshland when it was originally
10 deeded into this chain of title; didn't belong to the
11 State of South Carolina, if it is, in fact, marshland.
12 If the Court has ruled -- and I agree with Your Honor,
13 that we did not get much guidance from the appellate
14 court -- if the Court has ruled that there is high land
15 back there -- and there is proof of that in the
16 record -- if there is high land back there who does
17 that high land then belong to? So there is a chain of
18 title that says it would belong to the Demetre Family
19 Limited Partnership, and there is chain that would say
20 it belongs to our clients.

21 We do not think that our defenses are now washed
22 away by this Order, because clearly those issues are
23 not squarely before Your Honor. If, in fact, the court
24 has given you that much guidance that there is high
25 land back there, then it doesn't belong to the State of

10

1 South Carolina, and so now all of our defenses as to
2 the property, you have to make a decision on those.

3 THE COURT: Okay. So I guess from the stipulation
4 standpoint, stipulating to how each got their title,
5 would be what I understand.

6 As I hear it from the Defendant's perspective the

10-21-11Demetre (2)
7 argument would be that title had already been conveyed
8 out and once -- that title had already been conveyed
9 out. Once it's conveyed out it can't be conveyed out
10 again?
11 MR. GRIFFITH: That is correct, Your Honor. To
12 the extent the marsh accretes, that property belongs to
13 the property owner.
14 THE COURT: Okay. So you can only convey title --
15 there would only be one chain of title would be your
16 first argument. The second argument, if land has
17 accreted who does it accrete to the benefit of?
18 MR. GRIFFITH: That is correct. And then to the
19 extent that the chain of title that the Demetre Limited
20 Partnership has, there are a number of defenses that we
21 raised. I've got a little guide here for Your Honor.
22 I don't want to get ahead of Mr. Cooper, but I'm happy
23 to tell you what our thoughts are on this.
24 (Hands up document.)
25 THE COURT: Let's talk about the chain of title.

11

1 Let's discuss the chain of title first, so we're all on
2 the same wavelength there. Then we'll come back to the
3 accretion argument. I've got two things I hope you-all
4 are up to speed on that -- and one is that what I
5 thought was the law from the Coburg cases is no longer
6 the law. So we've had a change in the law there.
7 That's of recent origin.
8 The other had to do with the -- what rights of a
9 littoral property owner would be. So let's get to that
10 second. Let's talk about the chain of title first.
11 How do you all get your chain? Just refresh my

Page 9

12 memory, and I'll come back and ask you-all on that
13 one -- come back to you-all.

14 MR. GRIFFITH: Your Honor, our chain comes --

15 THE COURT: In other words, what did we stipulate
16 to, I guess, is my question.

17 MR. GRIFFITH: We stipulated that our title goes
18 back to the original developers. It comes out of a
19 1921 deed. And our clients -- and if you look at the
20 document I just handed Your Honor, behind Tab 4 is a
21 copy of the original 1920 plat which is in evidence,
22 and then behind Tab 5 is a close up that I've drawn on
23 to show Your Honor where the testimony shows these two
24 lots were. If you'll look behind Tab 5 you can see 209
25 and 210, and that says Huron but it should say East

12

1 Huron Avenue. Those are the lots in question.

2 As Your Honor can see, and I've bolded it for you,
3 that line that squiggles through there and cuts off
4 corners of both of those lots is denominated in the
5 plat as marsh. So in our chain of title, in our chain
6 of title this 1920 plat is referred to throughout. So
7 there is nothing behind our lots. East Indian Avenue
8 is on the water at that juncture. So to the extent
9 that there was any -- there is no high land back there.
10 That belongs to the State of South Carolina in 1920.

11 THE COURT: The marshland would?

12 MR. GRIFFITH: That is correct. So to the extent
13 that it has accreted at all it would belong to us.

14 THE COURT: As adjacent property owners?

15 MR. GRIFFITH: Yes, sir.

10-21-11Demetre (2)
16 So now I'll let Mr. Cooper tell you about his
17 title, but our title comes from the original developer
18 before there was a bankruptcy. I'll look back through
19 the record. I may have given you my record where I had
20 the title in there but --
21 THE COURT: Looks like the entire record.
22 MR. GRIFFITH: There are two volumes.
23 THE COURT: Are there?
24 There are some diagrams in here.
25 MR. GRIFFITH: Our title for the 209 Huron Avenue

13

1 East lot comes out of a 1941 deed that refers to the
2 1920 plat. Then as to the Crowley deeds there is a
3 1926 deed.
4 THE COURT: Okay.
5 MR. GRIFFITH: That's 210.
6 THE COURT: In the transcript?
7 MR. GRIFFITH: Yes, sir. It's starting at about
8 page 754 in the transcript going to about page 779 is
9 the 209 lot. And then starting at page 780 going for a
10 number of pages thereafter is the 210 Huron title. You
11 don't have it up there, but I'll be happy to hand that
12 up to you.
13 THE COURT: All right.
14 (Hands up document.)
15 THE COURT: All right, sir.
16 (Pause)
17 THE COURT: These properties would front on East
18 Huron; is that right?
19 MR. GRIFFITH: They front on East Huron, Your
20 Honor and to the extent that East Indian was x'd at the
Page 11

21 1920 draw, East Indian would have been on the water at
22 that time.

23 THE COURT: I'm with you. Okay. So I'm looking
24 at, on page 770 of the transcript, a conveyance from
25 the Folly Beach Improvement Company, conveyance for

14

1 \$10 -- I'm trying to make sure I'm clear on this -- to
2 Joseph Morse. They are conveying Lot 209. They
3 describe that as being 70 feet by 150 feet in depth,
4 designated as Lot 209 East Huron on plat made by
5 Jefferson Construction dated February 1920, Plat Book C
6 Page 158. That's your 1920 plat; right?

7 MR. GRIFFITH: That is correct, Your Honor.

8 THE COURT: Then the title into Folly Beach
9 Improvement was from the Folly Beach Corporation. That
10 looks to be a general warranty deed. That's delivered
11 to -- that's recorded in 1941. That's your 1941 deed.
12 Lot 209 is the Beckmann lot? Is that right?

13 MR. GRIFFITH: Hang on one second, Judge.

14 THE COURT: The one on the corner is 210, looks
15 like.

16 MR. GRIFFITH: Right.

17 THE COURT: Okay.

18 MR. GRIFFITH: Yes, 209 is the Beckmann lot; 210
19 is the Crowley lot.

20 THE COURT: Okay.

21 Now, assuming there is something similar to Lot
22 210 --

23 MR. GRIFFITH: Yes, sir. I think I marked it,
24 Your Honor, with that sign here.

25 10-21-11Demetre (2)
THE COURT: The green? Yup.

15

1 On page 800 of the transcript you've got Folly
2 Beach Improvement Company conveying for \$10 to, looks
3 like, Earnest King, Lot 210, which is also described as
4 70 feet by 150 feet. And reference is Plat Book C152?
5 158?

6 MR. GRIFFITH: 158, I believe, Your Honor.

7 THE COURT: 158. Okay.

8 MR. GRIFFITH: That's, again, the 1920 plat.

9 THE COURT: Got you. All right. That's how they
10 get title to their lot. Based on this diagram of
11 lot -- excuse me, plat C158, the rear of those lots
12 would appear to be under water or at least would be
13 marshland at that time; right?

14 MR. GRIFFITH: That is correct, Your Honor.

15 THE COURT: All right. Let me hear from you on
16 that, Mr. Cooper.

17 MR. COOPER: Thank you, Your Honor. Let me just
18 say that we do agree that these deeds all come --
19 reference C158, but C158 is not really a topographic
20 plat. It's more of a subdivision plat to deed out
21 these lots.

22 It's our position, Your Honor, that the deeds, if
23 you look at the deeds for the Crowleys and for the
24 Beckmanns, they say all that certain lot, lands situate
25 so forth, and it describes it as measuring 70 feet

16

1 along East Huron Avenue, and from there toward the
2 river 150 feet in depth. It doesn't say anything about
Page 13

3 going an inch further than 150 feet. And every deed,
4 whether it's the original ones to the Kings into the --
5 into Mr. Morse coming all the way up to the Beckmanns
6 and Crowleys, it describes the lot as being 70 feet,
7 depth of 150 feet. Doesn't mention East Indian Avenue
8 being back there. Just says going back 150 feet.

9 It's our position that the only topo map in
10 evidence is the Kennerty plat which clearly shows some
11 high marsh and some low marsh on the riverward side of
12 these two lots.

13 It seems to me that there is adequate case law
14 that we've cited in our proposed order and in our
15 briefs where the Supreme Court has said that not all
16 marshland is below the mean high water. By definition
17 some of it is above mean high water, and that would be
18 what the Supreme Court calls high marsh, and even the
19 permit applications --

20 THE COURT: Let me stop you. You're talking about
21 their lots. Let's talk about your lots. Let's go to
22 your chain of title, then let's come back to where that
23 makes the distinction. Clearly they've been conveyed a
24 lot as described on a plat. That's plat C158. We're
25 all in agreement on that.

17

1 MR. COOPER: That is correct. We don't challenge
2 that they own lots 209 and 210, but the lots actually
3 shown on C158, we agree they own those 70 by 150-foot
4 lots. What's in dispute, as I understand it from
5 Mr. Griffith, is whether or not they own something
6 beyond that. Their deeds specifically say 70 feet by

7 150 feet.

8 THE COURT: Right.

9 MR. COOPER: Our deeds go back -- these, of
10 course, are all in evidence, but various of our
11 properties go back further than others do. In other
12 words, some -- they were bought at different times,
13 Your Honor. I'm not sure exactly, other than just
14 saying that not only did we have a stipulation, but we
15 also put into the record the chains of title go with
16 all the deeds. So that's in the record in this case.

17 Not sure exactly how --

18 THE COURT: Let's go to the direct deed into the
19 trust. Let's take a look at that one. My records
20 reflect that came out --

21 (Discussion off the record.)

22 THE COURT: What was the deed into the Plaintiff?
23 Let's start there. Instead of starting at the back,
24 let's start here, because I understand what you're
25 saying. You have to build that chain, but let's start

18

1 at your most recent one. My reason for that is because
2 they say -- are referencing the same 1920 plat. I'm
3 trying to get the description of the property onto the
4 plat, if I can.

5 MR. COOPER: Right. Well, with regard to Lot 201,
6 our deed was recorded January 29, 2002. And it is from
7 the Blackmers(phonetic) to the Milton P. Demetre Family
8 Limited Partnership. Respectfully, this is Lot 201
9 Indian Avenue East. Lot 202 Indian Avenue East was
10 recorded in 2002 as well. We got that from James
11 Rocco, R-O-C-C-O, to the Milton P. Demetre Family

12 Limited Partnership. And -- let's see. Lots 203, 204
13 and 205 East Indian we got by deed from James Rocco
14 recorded February 20, 2002 from Rocco into Milton P.
15 Demetre Family Limited Partnership, and then looks like
16 lots 206, 207 and 208 East Indian Avenue we got by deed
17 from Edward M. Seabrook, recorded October 2, 2002 into
18 the Milton P. Demetre Family Partnership. Then lots
19 209 and 210 East Indian Avenue we got a deed from
20 Edward M. Seabrook recorded January 25th, 2004 into the
21 Milton P. Demetre Family Limited Partnership. That was
22 a quit claim to lots 209 and 210 East Indian Avenue;
23 property north of 209 and 210 to the Folly river,
24 unpaved roadway bordering 201 through 210 and Third
25 Street roadway adjacent to Lot 210 East Indian. That's

19

1 what was contained in that deed.

2 Then we have highland north of --

3 THE COURT: Let me stop you right there, because
4 those are the ones that ring a bell with me.

5 what is the plat reference on lots 209 and 210?

6 MR. COOPER: Let's see. It's deed -- at Deed Book
7 H482 Page 212. Let me see. I believe these are --
8 better be sure, though. Your Honor, let me look at it
9 real quickly. Yes. C158. It's the same plat.

10 THE COURT: All right. Show me, if you can, where
11 these lots are on C158. Because I'm not seeing that.
12 I may have -- just have a piece of this in the record
13 you've got. I'm looking --

14 MR. GRIFFITH: Just so you have the whole shebang
15 there, so you know that you're looking at -- if you

16 look behind Tab 4, that's a copy of what went into the
17 record.

18 THE COURT: All right.

19 MR. GRIFFITH: Your Honor can trace -- you can see
20 where the marsh kind of squiggles through there and
21 then behind Tab 5 is just sort of, I guess, the eastern
22 boundary of that thing blown up a little bit, so we
23 could see it a little better. So behind Tab 4 is a
24 copy that was in the record of -- as a matter of fact,
25 it's attached to the chain of title, I believe, on both

20

1 the Beckmann and Crowley -- part of the appeal record.

2 THE COURT: That blow-up was; right?

3 MR. GRIFFITH: No, sir. The little small one
4 behind 4. I believe number 4 up -- so that we would
5 zero in on the lots really in question.

6 And, of course, Your Honor the lots 209, 210 East
7 Indian do not appear on this plat.

8 THE COURT: That's where I'm looking. It's so
9 hard. I can't see the numbers but you've -- what I've
10 got on your diagram here is a blow up highlighted in
11 pink is -- I guess, that's Huron Avenue East, and then
12 209 and 210 with a line drawn to it, but I can't make
13 out the numbers on that block. I have to assume they
14 are 1, 2 3, 4, 5, 6, 7, 8, 9, 10. That's my
15 assumption.

16 MR. GRIFFITH: Yes, sir.

17 THE COURT: But I can't make out the other ones
18 behind it. So there are no lots equivalent on the 1920
19 plat that are located on East Indian Avenue, is what
20 I'm seeing. That's why I'm asking that question.

21 MR. COOPER: I think you're absolutely right, Your
22 Honor. I'm reading from the deed here and it does
23 reference, on a plat of the lands of Folly Beach
24 Corporation made by Jefferson Construction Company
25 dated February 1920 and recorded in the RMC Office for

21

1 Charleston County in Plat Book C at Page 158, and
2 that -- the old 1920 plat, we obviously agree that it
3 doesn't show these lots. But there was a 1965 redraw
4 of the 1920 plat which is also -- if you go to the RMC
5 office they have both those plats right there at C158.

6 So I think that the only logical conclusion is to
7 say that this deed, which was done in 2004, must be --
8 since it's talking about these lots 209 and 210 East
9 Indian Avenue, the only one of those plats at C158 that
10 even shows those is the 1965 redraw and, therefore, I
11 would suggest to the Court that the only logical
12 interpretation is that our deed is actually referring
13 to the C158 which is the redraw which shows these lots
14 as opposed to the original C158 which doesn't show
15 these lots.

16 THE COURT: So by definition these lots did not
17 exist in 1920. We would agree with that?

18 MR. COOPER: As lots. They might have been land.
19 Like any other subdivision plat, you only draw out lots
20 that you're prepared to sell at that time. That
21 doesn't mean there isn't some high -- just like up in
22 Orangeburg County, might be certainly a lot more land
23 around your development, and the only thing that a
24 development plat usually shows is the lots that the

25 10-21-11Demetre (2)
developer at that time is preparing to sell.

22

1 THE COURT: I'm with you on that. The 1965
2 redraw, is that in our transcript as well?

3 MR. COOPER: It's in evidence, Your Honor.

4 THE COURT: Can you take me to that? I assume
5 those lots would show in '65 then?

6 (Hands up document.)

7 THE COURT: I remember something about this from
8 the trial. I remember it's confusing. All right.
9 Here we go.

10 MR. COOPER: Your Honor, if it would be helpful we
11 have a copy of the Kennerty survey that shows all the
12 lots. It's topographic, showing the mean high water
13 and so forth so on.

14 MR. GRIFFITH: That's in evidence?

15 MR. COOPER: Yes, it is. It's Plaintiff's Exhibit
16 N in evidence, Your Honor.

17 THE COURT: So what I'm looking at says -- it's
18 signed off on by somebody at Charleston County Public
19 Works Department, J. B. Weston or Warton or somebody.
20 So those are showing -- now we're showing lots that are
21 fronting on Indian and they look to run from numbers
22 201 to 210, and Lot 209 being delineated here as
23 Seabrook lots. But the conveyance out is not from this
24 plat or was from this plat?

25 MR. COOPER: It was from this plat. In other

23

1 words -- I don't spend that much time in the RMC
2 Office. This is the only time I've gone to one

3 place -- well, I guess in some of the old ones they
4 have more than one map on one page. But they had the
5 C158 with the original 1920 plat. Somebody redrew it
6 in 1965 and it was put in the RMC, recorded at C158
7 with the old one. So there is the old one, 1920, then
8 there is the new one, 1965. The only real difference
9 is there are some additional lots on the 1965. But
10 it's still --

11 THE COURT: That would include these lots?

12 MR. COOPER: That is correct.

13 THE COURT: What always amazes me about these
14 plats is how similar the land looks. What shows as
15 slews and flats over here looks like the same sort
16 of -- the state of Michigan sticking out over there.

17 what used to -- would have been marshland in 1920
18 looks to be it's getting lots drawn on it in '65.
19 Right?

20 MR. COOPER: And it's still, to this day, it's
21 high marsh.

22 THE COURT: What about the 1968 plat? Some
23 reference was made to that one as well. That one's in
24 the record somewhere? Can you take me to that in the
25 record?

24

1 MR. COOPER: Yes, Your Honor. This is Plaintiff's
2 C. It is the redraw of the -- the 1965 redraw of C158.
3 That's in the record as Plaintiff's C, Your Honor.

4 THE COURT: All right.

5 (Pause)

6 THE COURT: I found, on page 599 of the

7 transcript, the deed into the Demetre Partnership for
 8 lots 206, 7 and 8 Indian Avenue. It references the
 9 1920 plat recorded at C158. Then it references butting
 10 on the north, Lot 209. I haven't located which page in
 11 the transcript that is, but I'm assuming it's going to
 12 be similar. But when I look at the actual plat there
 13 is no such lot. You would have to go to the 1965 plat
 14 to create that lot. The evidence put forth from the
 15 Defendants is that their title is 209 and 210 Huron and
 16 there is no 209 and 210 Indian; right?

17 MR. GRIFFITH: That is correct, Your Honor. From
 18 1920 to 1965 is 45 years. And while the plats do look
 19 similar, that's 40 years worth of accretion, and I'm
 20 not saying -- and, of course, nobody knows how deep the
 21 marshland was. It might have been very shallow and
 22 dried out, then all of a sudden you've got these lots
 23 behind our lots. But our title, our title sells us up
 24 to the marsh. I realize they are described with
 25 particularity, as Mr. Cooper pointed out, but as Your

25

1 Honor is well aware, in this state a plat will
 2 predominate over a written description in a deed
 3 generally, because when you're referring to a plat
 4 you're referring to something that has particularity to
 5 it; drawn by an engineer or registered land surveyor.
 6 A plat will, as I say, predominate over a deed every
 7 time.

8 There is also, just in response to Mr. Cooper
 9 saying that there are no lots drawn there because they
 10 weren't ready to sell them, I would just call to Your
 11 Honor's attention on the 1920 plat that there are lots

12 drawn on East Indian Avenue, and I don't know whether
13 this thing runs east or west. I'm just going to say on
14 the left-hand side you see lots drawn in on East Indian
15 Avenue, and to the right of our lots you see lots drawn
16 in. So that doesn't say to me, gee, we're holding
17 these precious lots out here in the middle. What that
18 says to me is it's in the middle of the marsh, we can't
19 put any lots out there.

20 THE COURT: Okay. I'm with you.

21 And because it's marshland, presumptively title
22 would be in the State? Is that the next part of your
23 argument?

24 MR. GRIFFITH: That is correct, Your Honor, except
25 to this extent. If there is high land there now, and

26

1 this topo map shows that there is some high land out
2 there, any accretion from a riparian or littoral owner
3 goes to the good of the property that abutts it. So if
4 there is a build-up there, whether through evulsion or
5 simply accretion, that dirt that butts up against our
6 lots belongs to us.

7 THE COURT: Isn't your lot -- I'll play devil's
8 advocate with you, then. Isn't your lot -- doesn't it
9 abut East Indian, your lot?

10 MR. GRIFFITH: Well, on the map it shows East
11 Indian going through there, but it shows East Indian on
12 to the marsh. So there is nothing there for us to abut
13 up against except marsh.

14 THE COURT: Okay. All right. Let me hear from
15 you on that, Mr. Cooper.

16 MR. COOPER: Well, Your Honor, we would, again,
 17 just point out that the deeds say 150 feet from East
 18 Huron and, in fact, the fact that, you know, riparian
 19 and littoral rights, you know, may come about by
 20 accretion, the problem Mr. -- that we have in this case
 21 or Defendant's have, there is just no evidence of that.
 22 Mr. Griffith says that the gap between the lots on East
 23 Indian that are shown where presumably there was some
 24 marsh, say to him a certain thing, but that's pure
 25 speculation. There is no evidence from anybody that

27

1 this stuff was under water back then and is now high
 2 ground. The only evidence we have of what the
 3 topographic situation is out there is the Kennerty plat
 4 done in 2006. That's in the record as Plaintiff's
 5 Exhibit N, and none of these other -- I mean, the C158,
 6 neither the 1920 plat nor the 1965 redraw is anything
 7 that could be considered a topo map.

8 It seems like to me that there is an indication of
 9 general marsh, but I don't think the fact that the edge
 10 of the marsh is shown on the 1920 plat or the 1965
 11 redraw qualifies it for -- as evidence of where that
 12 mean high water mark is, which is really what we're
 13 talking about here, because if part of the marshland
 14 abutting these was high marsh then -- and somebody else
 15 had title to it other than the State of South Carolina,
 16 say, you know, the Town of Folly Beach having title to
 17 the road or whatever, or Mr. Demetre or Mr. Seabrook
 18 having it because he bought the bank's interest in the
 19 foreclosure back in 1943 -- you know, regardless of who
 20 owned that, I just don't see how Mr. Griffith can

21 say -- I don't see his accretion argument, looking at
 22 the record as it is now. That's our point, is that
 23 maybe if he had put in evidence of that, that it was
 24 low at one time and then it built up through accretion
 25 and had some evidence of it, then, other than what's in

28

1 the record, I might agree with him. I agree with him
 2 on the principle that that could happen. But there is
 3 just not any evidence in this case of that, other than
 4 just the very circumstantial indication on C158 that
 5 there are certain lots along East Indian and then there
 6 are no lots plotted out and then there are other lots
 7 down further. To me there could be any number of
 8 reasons why -- just seems like that's legally
 9 insufficient to prove what he's got to prove in order
 10 to sustain that position.

11 THE COURT: Okay. I know he's jumping to answer
 12 that one.

13 (Laughter)

14 MR. GRIFFITH: I'm glad Mr. Cooper hasn't done
 15 much title work because I'm going to tell you, if I see
 16 this deed and I see this plat and I'm examining this
 17 title, what further proof do you need that the marsh is
 18 extant in 1920 other than this? So to the contrary,
 19 there is not any proof to show otherwise. This is the
 20 proof in evidence. There was marshland there; 1920.
 21 That's where our deeds came from. That's what they
 22 refer to. Anything else -- and we've got record title
 23 that predates all their title. We have record title
 24 that predates anything they've got. They are late

25 10-21-11Demetre (2)
comers to this party.

29

1 I don't know what better proof you can ask for.
2 Certainly we can't have a seance and ask the 1920
3 surveyor what he was thinking other than this is his
4 testimony, there was marsh there.

5 THE COURT: Mr. McCrady might be available that
6 way.

7 (Laughter)

8 (Discussion off the record.)

9 MR. GRIFFITH: He's testifying now.

10 There is no better evidence than the evidence Your
11 Honor has before you that there was marshland there.
12 If there were a few bumps in it, who knows? We can't
13 know. All we know is that he drew a line there which
14 we have to say is the marsh line; and nothing else
15 appears behind it, nothing else appears adjacent to it.
16 I guess we could have a flight of fancy and say, hey,
17 they were going to go put these things in there. What
18 they've got in there is what was high land at the time.
19 What they don't have in there was under water or
20 unbuildable, in the marsh.

21 THE COURT: Do we have a plat in the record that
22 predates the 1920 plat? Do we have something?

23 MR. GWINN: No.

24 THE COURT: What you-all are raising to me is the
25 specter of whether or not the State needs to be a party

30

1 to this thing. That's what I'm wrestling with in my
2 mind as we talk.

3 MR. COOPER: Could I --

4 THE COURT: I hate to raise that at this time, but
5 I'm telling you, this gets me back to that Coburg line
6 of cases.

7 MR. GRIFFITH: Here's how I would answer that
8 question, Your Honor. Clearly there is high land there
9 now.

10 THE COURT: My recollection is that is what
11 Mr. Kennerty's plat shows. That's my recollection.

12 MR. GRIFFITH: There is high land there. How it
13 got there we think -- I think it accreted. We've got
14 no evidence otherwise. We have no evidence from
15 anybody coming in there and dumping anything. So the
16 only real conclusion you can draw from former marsh to
17 a little bit of high land is it accreted to it.
18 Anything above the high water mark the State's got no
19 interest in, so the State doesn't need to be a party to
20 this thing now. The question, as I understand, that
21 came from the Court of Appeals is, we have evidence of
22 high land here, who does it belong to? The Court
23 didn't say, find out about what's going on with the low
24 land.

25 THE COURT: Okay.

31

1 MR. COOPER: Your Honor, could I be heard?

2 THE COURT: Yes. To the extent it's high land,
3 the State has no interest in it?

4 MR. COOPER: Correct.

5 THE COURT: I think that's the -- your case
6 predates the most recent -- I'm trying to remember the

7 name of the case.

8 MR. COOPER: Tenny.

9 THE COURT: The Tenny case says Coburg was an
10 aberration, we're not going to go there any more.

11 MR. COOPER: That's right. So -- but, Your Honor,
12 let me just say that I think Mr. Griffith has really
13 said sort of what I have been trying to make the point
14 of and have been unable to, is that the 1920 plat has a
15 label out in that marsh area. It says marshland.
16 That's, of course, way out there almost to the -- half
17 way to the Folly River. And so what that tells me is
18 that the line that is indicated on there, and that
19 dotted line that's showing where the marsh comes, so to
20 speak, the marshland, that's not the mean high water
21 mark. That's the edge of where the marsh grasses grow
22 on something like that. In other words, it includes
23 not only the low land marsh, which the State has
24 presumptive title to, but it also includes the area of
25 marsh which is above the mean high water mark which

32

1 is -- and so I think that clearly shows that the 1920
2 plat, it having only one line, would show most likely
3 what -- all the marshland, the low marshland and the
4 high marshland, and that would be the edge of it coming
5 along there. And so I don't think Mr. Griffith's
6 interpretation of that is correct.

7 In other words, if it did have a mean high water
8 mark on that 1920 plat I would have to agree with him,
9 that that is presumptive that everything below that
10 is -- belongs to the State, everything above is maybe
11 accreted or belongs to somebody or whatever. But I

12 think what's happened is that the surveyor back in 1920
13 just delineated where the marsh grasses were and didn't
14 plat anything out in the high marsh, because back then
15 land was cheaper. You can look at the deeds and see
16 land was cheaper and it just wasn't as valuable, if it
17 were subject to flooding at any time.

18 So it seems to me the logical conclusion for the
19 Court to reach is that the 1920 plat shows the edge of
20 all the marsh, both the low marsh and the high marsh,
21 and the cases of the South Carolina Supreme Court make
22 it clear that, most recently with Tenny versus DHEC,
23 that everything above mean high water mark, even though
24 it's marshland, can be owned and is private property.

25 So we would just say that, really, the only

33

1 evidence of how much of this is high marsh and how much
2 is low marsh is the Kennerty plat, and there is nothing
3 before that that delineates the difference between high
4 marsh and low marsh. And certainly back in 1920
5 labeling of the plat as marshland would include both.

6 THE COURT: Let me take a look at that Kennerty
7 plat, if you would.

8 (Hands up document.)

9 THE COURT: Thank you.

10 For the sake of argument I can focus just on
11 lots 209 and 210 East Indian, is what we're referring
12 to here today; right?

13 MR. GRIFFITH: That is correct.

14 MR. COOPER: Yes, Your Honor.

15 THE COURT: All right. So he's showing a mean

16 high water mark out into the marsh, and I'm assuming
17 this to be a critical line.

18 MR. GRIFFITH: Little spotted line, Your Honor, I
19 believe that's the DHEC critical line if you follow it.

20 THE COURT: Mean high water mark is what he's
21 showing there.

22 MR. GRIFFITH: Let's see.

23 MR. COOPER: I think there is a critical line.

24 THE COURT: He's showing marsh in those lots, but
25 he's also showing -- this is mean high water, looks

34

1 like. He's showing that to be a critical line way back
2 here. Both those lots remain seaward of the critical
3 line, but most of 210 is between the critical line and
4 the mean high water. And I assume by that it would be
5 defined as high marsh; right? Lot 209 is about half
6 and half, is what that shows. But he's got these
7 little spots of marsh in both of them, it looks like.
8 Maybe those are just elevation marks.

9 MR. COOPER: This is mean high water here so lots
10 209, 210, 208, all these are totally landward of the
11 mean high water mark, so they are in the high marsh.
12 But the marsh line is still up here close to the
13 Beckmann and Crowley lots. I don't think there has
14 been much change. Just we've had more focus from the
15 engineering folks on exactly what's out there.

16 THE COURT: I'm with you.

17 MR. COOPER: So --

18 THE COURT: Okay. All right. That helps. That's
19 the only topo survey we've got.

20 MR. COOPER: Right. This one which is in evidence
Page 29

21 as Plaintiffs N. Your Honor should have this.

22 THE COURT: It references -- I should have it
23 somewhere. It references it was a blow-up, so it
24 wasn't in the actual transcript.

25 MR. COOPER: We've got another copy if you would

35

1 like this one.

2 THE COURT: All right.

3 (Hands up document.)

4 THE COURT: It was the N, as in Nancy, exhibit?

5 MR. COOPER: Yes.

6 MR. GRIFFITH: It should appear on the exhibit
7 sticker.

8 THE COURT: Okay. Let's go back, then, because I
9 think that's a separate legal question. But let's go
10 back to your chain of title.

11 I'm wrestling with who owns the land, because to
12 me, common sense, if you're getting conveyed a lot 209
13 and 210 by plat and those lots don't exist on that plat
14 I'm not sure you've got title to anything.

15 MR. COOPER: Except, Your Honor, we're -- there
16 are two plats filed in Plat Book C at pages 157, 158.
17 There are two of them; two plats. In other words,
18 it's -- 1965 redraw is not a 1965 plat. It's a 1965
19 redraw of the 1920 plat. So there is a 1920 plat that
20 is not redrawn which doesn't show these lots. Then
21 there is a, quote, redraw done by, apparently, J. B.
22 Watson with the Charleston County Public Works
23 Department which shows these additional lots. They are
24 both recorded and they are both originally done by this

10-21-11Demetre (2)
25 Johnson -- in other words, so -- not sure. I didn't

36

1 draft the deed. But I think the only logical
2 conclusion is that if there are two deeds -- I mean two
3 plats at one plat book and page number reference and
4 one shows what you're talking about and one doesn't
5 show it, then you go with the one that does show it.
6 That would just be the Plaintiff's position on that,
7 Your Honor.

8 THE COURT: If I hear you right, if you go to Plat
9 Book C158 you'll actually find two plats there?

10 MR. COOPER: Correct. And the Defendant
11 stipulated to the record title as well. So for them to
12 come now and say we don't have record title because of
13 this defect -- we could have sorted all this out when
14 we had our witnesses here, and we could have gone
15 through all this for days, but that's why we did the
16 stipulation. But if you go -- if you do go to that
17 Plat Book C at Page 158 you will find the original 1920
18 plat, and you'll also find not a redraw that was done
19 by our people or anybody else but by Charleston County
20 Public Works. The old plat was getting so crumpled up
21 that they redrew it, retraced it or something and
22 somehow they put these new lots in there. I don't
23 know. Maybe Seabrook asked them to do it. But, at any
24 rate, that's what's recorded.

25 THE COURT: It's disconcerting, but that appears

37

1 to be how they got there. Right? No question about
2 that. They did not appear in the 1920 plat.

Page 31

3 MR. GRIFFITH: You have my transcript, so I can't
4 look through it, but if my recollection is -- when
5 Mr. Hughes was -- Mr. Cooper was reciting his
6 description off of his East Indian lots, there may be
7 two plats at that plat book but there is only one 1920
8 plat. And if there is a scrivener's error, that
9 scrivener's error appears in his title. There wouldn't
10 be any correcting it at the court. That's what was
11 stipulated to as what the deeds say. That's a heck of
12 scrivener's error when they refer to the 1920 plat and
13 the 1920 plat doesn't show those lots. So they were
14 conveying marshland in my view. If I was checking the
15 title I'm afraid that's what I would report to the
16 person I was checking the title for; that that would
17 need to be addressed. But what's in the record and
18 what's in the record title is the 1920 plat that
19 doesn't show their lots.

20 THE COURT: All right. You made reference also to
21 a 1968 plat. What is that?

22 MR. GRIFFITH: Judge, the truth of the matter is I
23 don't remember. We had a 1965 redraw and was there a
24 '68?

25 MR. COOPER: I don't think there was. I think

38

1 it's '65.

2 MR. GRIFFITH: I may be completely confused by
3 that. I thought there was a '68, too, but I don't
4 remember.

5 THE COURT: 1968 tracing is what you referenced.

6 MR. COOPER: Your Honor, I may be incorrect.

7 Maybe I've been saying 1965. Maybe it is 1968. There
8 is a retracing of the 1920 plat. But whether or not
9 there is '65 or '68, I honestly don't remember.

10 MR. GRIFFITH: My recollection is there were three
11 plats. The '68 plat had a little more definition than
12 just a tracing. Maybe they've gone out -- simply don't
13 remember. It was oversized in one part of the record,
14 if it exists at all.

15 THE COURT: Exhibit K is the 1920 Jefferson plat
16 and the '68 comes in as McCrady plat oversized and
17 filed separately. Okay.

18 On the chain of title question, then, do we have
19 in the record the plat into the Folly Beach Company or
20 Folly Beach Improvement Company or are we only coming
21 out of there?

22 MR. GRIFFITH: I think the only plats in the
23 record, certainly the 1920 plat and the '65-'68 plat
24 which were oversized and now part of the of record.

25 MR. COOPER: Our title comes from December 9,

39

1 1895, A.G. Tartus plat, Folly Islands Plat Book D, Page
2 170.

3 THE COURT: Do we have that one, too?

4 MR. COOPER: I think it's in the record, Your
5 Honor, but I don't think anybody focused on that. But
6 I believe it is in the record.

7 (Hands up document.)

8 MR. COOPER: This is it right here, Your Honor.

9 THE COURT: All right. That's the old one.

10 MR. COOPER: That's Tartus.

11 THE COURT: All right.
Page 33

12 MR. COOPER: Your Honor, on that Tartus plat if
13 you go over to the RMC there is a red line on it. They
14 say we're conveying everything inside the red line.
15 Unfortunately, in a black and white it doesn't come out
16 very well.

17 THE COURT: You probably can't see the red line
18 today anyway.

19 MR. COOPER: I think it is still visible at the
20 RMC.

21 THE COURT: Okay. It looks to me like -- do you
22 have the deed that references that? Is that in the
23 record, too?

24 MR. COOPER: It's in there, Your Honor.

25 THE COURT: There is a deed attached to it, but

40

1 I'm looking to see if it's the same -- title of real
2 estate. Particularly delineated by the red line upon a
3 certain map of, by a Tartus surveyor. Okay. That's
4 referenced Plat Book D, Page 170. That's, I assume, a
5 condensed version of that?

6 MR. COOPER: Yes.

7 THE COURT: Okay.

8 (Pause)

9 THE COURT: The deed that's attached to this plat
10 is from a Durant -- R. W. Durant. He's only conveying
11 a one fourth interest, but I would assume that all the
12 deeds would be the same. It describes Folly Island on
13 the Tartus survey. That's from 1895, that survey?

14 MR. COOPER: Yes, Your Honor.

15 THE COURT: They save and except certain lots

16 shown on the plat made by Jefferson Construction
 17 Company in May 1920. Then they hold back the property
 18 conveyed to the U.S. Government for a radio station,
 19 the Folly Beach Pier is held back, and then there is
 20 some exception along the western side of the Folly
 21 River Bridge, which I think has moved through the years
 22 just based on trial experience I've had with Folly. I
 23 think you gentlemen know my position. There is so much
 24 litigation out there, I always say the law as you and I
 25 know it doesn't exist on Folly Beach. It's just a

41

1 whole different animal unto itself. Has a lot to do
 2 with the fact it went under not too far after it got
 3 started.

4 It seems to make a reference subject to the lots
 5 as shown on the 1920 plat. There seems to be a
 6 conveyance, it jibes with the 1920 plat again. I'm not
 7 sure where on the Tartus survey our property would be.
 8 Do you know? It comes and goes? It just looks like a
 9 long foot. It's an elongated version of Hilton Head
 10 Island, is what it looks like. I'm not sure where on
 11 there -- so because I don't have the red line I don't
 12 know where it is, but I would assume it's around the
 13 exterior of the island. I don't know. Have you-all
 14 looked to see that?

15 MR. COOPER: It's within the red line, the best we
 16 can tell.

17 THE COURT: would be the island, wouldn't you
 18 think?

19 MR. COOPER: Yes.

20 THE COURT: That would be my guess. All right.

21 So let's turn our attention to the accretion argument.
22 Let's talk about that. Anything else you want to be
23 heard on, on that one?

24 MR. GRIFFITH: Judge, my client's pointed out to
25 me, you've got my record up here, just -- and I don't

42

1 know because I haven't reread all the record, but the
2 1968 redraw we've been talking about, their
3 recollection is -- of course, the transcript will speak
4 for itself -- their recollection is that in 1968 the
5 redraw redrew it as the 1920 plat appears now, without
6 any lots on it.

7 THE COURT: I think that's what your proposed
8 order says. You referred to the 1968 as a tracing of
9 the plat.

10 MR. GRIFFITH: Yes, sir.

11 THE COURT: But, in any event, all conveyances in
12 both chains of title are to the 1920 plat; right? we
13 agree with that?

14 MR. COOPER: They reference the 1920 plat. The
15 Court of Appeals, Your Honor, in its opinion on page 4
16 does mention this. It says on January 23rd, 2004
17 Demetre bought two river front lots, 209 and 210 on
18 East Indian Avenue, from Seabrook, Jr. for 23,700 by
19 quit claim deed. The deed references the 1920 plat.
20 Demetre's lots are shown on the 1965 redraw, but they
21 do not appear on the 1920 plat or the Charleston County
22 tax map. When Demetre purchased the East Indian Avenue
23 lots 209 and 210, two existing docks -- and it goes on
24 to describe what the situation is. But it does mention

25 it there.

43

1 If you look at the 1965 redraw it does have these
2 additional lots on there, but it also does reference
3 that it's a redraw of the 1920 Jefferson plat.

4 THE COURT: That's about as much guidance as they
5 gave us; right?

6 (Laughter)

7 THE COURT: Okay. So let's talk about the law of
8 accretion and where it comes into play, if at all.

9 Mr. Cooper?

10 MR. COOPER: Your Honor, it would be Plaintiff's
11 position that it doesn't come into play, because there
12 is no proof of any accretion and that the only topo map
13 that we have is the Kennerty plat, and we know what the
14 situation was then in terms of where the mean high
15 water mark -- it's out beyond Mr. Demetre's lots, and
16 the presumption has to be that it's been that way for a
17 good long time; and that the property between the mean
18 high water mark and up to where the marsh grass ends is
19 the high marsh that Mr. Demetre has bought from
20 Mr. Seabrook, who got it from the bank in foreclosure
21 in the 1940's, and who got it from the Folly Beach
22 Improvement Company which got it from on down the line.
23 So that's our position. That there is nothing that
24 would -- there is just no evidence of any change of
25 elevation out there, and so the presumption has to be

44

1 that the -- that's just been high marsh.

2 We would cite the Court, of course, to State

3 versus Murrell's Inlet Camp and Marina, Inc. This is
4 at 259 South Carolina 404, quoting from page 407 of --
5 this is a 1972 case. I think the Tenny decision just
6 reaffirms that. Says, land ordinarily covered by tides
7 occurring daily is referred to in the record as low
8 marsh. It's claimed by the State as tidal land. Land
9 less frequently flooded, but covered by spring tides
10 and other unusually high tides, is referred to as high
11 marsh and not claimed by the State.

12 The Tenny decision just reaffirms the position
13 that everything above the mean high water mark can be
14 privately owned, at least presumptively, and everything
15 below the mean high water mark would be presumptively
16 owned by the State of South Carolina.

17 So we don't think there is any evidence in the
18 record of accretion. So while those are doctrines that
19 could come into play if there were some proof, there
20 has to be proof, Your Honor. We don't think that there
21 is any. And, of course, we direct the Court back to
22 the deeds of the Beckmanns and Crowleys, and the
23 testimony of the Beckmanns and Crowleys that they owned
24 150 feet from East Huron and no further to the Folly
25 River than that. Then they score when they got these

45

1 permits that are in the record, Your Honor, as AA and
2 BB, I believe; the permit applications. They actually
3 have to sign under oath saying what their property
4 interest is and they describe it as stopping 150 feet
5 from Huron Avenue.

6 So it's beyond me how Mr. Griffith seems -- how he

7 can prove that there has been accretion, number one,
 8 and; number two, that it benefited the Crowleys and the
 9 Beckmanns when they, as a precondition to getting their
 10 dock permits, said they weren't claiming any accretion.
 11 There are plats here showing the marsh and so forth
 12 that are attached to their dock applications, Your
 13 Honor. There is, here, an existing profile of the
 14 marsh that shows the property line. Then 400 feet out
 15 into the marsh it shows that it goes below the high
 16 tide mark. So clearly at the time they applied for
 17 their dock permits they claimed 150 feet from East
 18 Huron and that was the end of their property, and they
 19 showed high marsh going out from there. They make no
 20 claim to it. There is a very specific requirement in
 21 the permit application. They have to describe what
 22 their legal interest is, and they give what's in their
 23 deed which is 150 feet toward the river from East
 24 Huron. So we just don't think accretion comes into it.
 25 There is no evidence of it, and while it's a valid

46

1 doctrine there is just nothing in this record that
 2 could support that.

3 THE COURT: All right. Thank you, sir.
 4 Mr. Griffith?

5 MR. GRIFFITH: Your Honor, a couple of things.
 6 Number one, we do have evidence; the 1920 plat. We
 7 don't have any evidence of where the high marsh was or
 8 low marsh was. We have property owners whose property
 9 was inundated by marsh grass. We see that.

10 If you look at this topo map you can see -- here
 11 is Lot 209 and 210 Huron, the lots of the Beckmanns and

12 Crowleys. You don't see any marsh here. So from 1920,
 13 80 years later, 85 years later, there is no marsh here.
 14 As Your Honor said before, I know that the Folly bridge
 15 has moved several times. The Folly River is a living
 16 vibrant thing and it moves inside it's own boundaries.
 17 Best evidence we have, no evidence to refute it, is
 18 that this was the marsh, and we don't know whether it's
 19 high marsh, low marsh, because the claim is 80, 85
 20 years old. Their evidence is, in 2005, this marsh has
 21 moved toward the river such that Lot 210 has no marsh
 22 on it. The marsh is way back out here. Lot 209 has no
 23 marsh on it. The marsh is way back out here. This
 24 line is the DHEC critical line. There is no marsh
 25 there. And so the evidence, the best evidence before

47

1 Your Honor is that that marsh is retreating back toward
 2 the Folly River. You can't say that this fellow in
 3 1920 was so poor with what he was doing that he didn't
 4 know where the marsh was. And yet 85 years later there
 5 it is, no marsh. There is no marsh on this, on either
 6 one of those lots.

7 So taking the evidence before Your Honor, the only
 8 conclusion that you can come to is that this land has
 9 accreted over the past 85 years due to the actions of
 10 the tides, the marsh -- excuse me -- the river moving
 11 and slow and gradual accretion of that property.

12 So the law is, if I've got marsh and it's not
 13 marsh any more, I get the benefit of the accretion.
 14 And so it belongs -- any new high land belongs to us.
 15 The only evidence we have of any high water mark, low

16 water mark is this topo map. The testimony was we
17 thought -- my clients thought anything in the marsh
18 belonged to the State, so certainly they wouldn't be
19 claiming against the State, but as to anybody else,
20 this belongs to me.

21 So we think that the accretion argument is a fair
22 one and there is plenty of evidence before Your Honor
23 for you to reach that conclusion.

24 THE COURT: What, if any, weight do you put on the
25 fact that these docks evidently preexisted the

48

1 conveyance -- the conveyance on lots 209 and 210 were
2 in '04?

3 MR. COOPER: The conveyance from Seabrook, but in
4 other words, Seabrook got the property back in the
5 early 40's.

6 THE COURT: That was at Master's sale?

7 MR. COOPER: Right. So to the extent that there
8 is accretion after that, it would potentially go to
9 Seabrook, but we don't think there was any.

10 MR. GRIFFITH: Wait now. My deeds predate both
11 his deeds, so to the extent that -- you can't now all
12 of a sudden say, hey, there is additional land here,
13 we're going to sell that. No. The accretion belongs
14 to the owner that precedes all the others.

15 THE COURT: Okay. The Master's sale, which was --
16 there was a foreclosure, I guess, coming out of this
17 thing.

18 MR. COOPER: Foreclosure by C&S Bank out of
19 Savannah in about '38, I believe, and then there was a
20 Master's sale in the early '40's, maybe '42.

25 10-21-11Demetre (2)
Beckmann lot as well.

50

1 THE COURT: When you say it was released it -- was
2 it specifically released or --

3 MR. COOPER: I believe it was. I think it's
4 released -- well, it says -- in other words, the fact
5 that their predecessors in title had bought before the
6 foreclosure and the Master's sale, they were excluded.

7 THE COURT: By definition?

8 MR. COOPER: By definition in the deed. The deed
9 says excluding all the lots that we've already sold,
10 and the roads, I think.

11 THE COURT: Improvements, I think they used the
12 term. It's hard to read the bottom of the first page
13 but --

14 All right. Then is there any other title to which
15 Plaintiff relies other than deed into lots 209 and 210
16 on the quit claim deed?

17 MR. COOPER: Just the stipulation, Your Honor.

18 THE COURT: Okay. I think I've got it.

19 Anything further you-all want to bring to my
20 attention? Mr. Griffith?

21 MR. GRIFFITH: Yes, Your Honor.

22 THE COURT: Mr. Cooper, anything further?

23 MR. COOPER: Nothing from the Plaintiff, Your
24 Honor.

25 THE COURT: All right. I'm going to take it under

51

1 advisement. I do have your all's proposed orders.

2 MR. GRIFFITH: Your Honor, I have several points I
Page 43

3 want to raise with Your Honor.

4 THE COURT: Okay. That was what I just asked.

5 MR. GRIFFITH: I thought I said yes.

6 THE COURT: I'm sorry.

7 MR. GRIFFITH: I call Your Honor's attention to
8 our hand out. We've already beat the horse pretty bad
9 about accretion. But since Your Honor, they sent --
10 the court sent this back to you to make a determination
11 on title. From Your Honor's previous Order you relied
12 on this 1920 plat and determined this was marshland
13 and, really, that belonged to the State, and we didn't
14 have any authority to make a determination on that. So
15 now that the court has sent back -- there is high land
16 back here, let's talk about it. We believe all the
17 defenses we raised and proved in our case in chief at
18 the trial are now before Your Honor.

19 First of all, we believe that they are barred by
20 the 40-year statutory presumption of a grant. That is
21 referred to in our brief to Your Honor behind Tab 3.
22 I'm trying to find --

23 It's on the second page behind Tab 3. This is
24 statutory, Your Honor. Someone has to, if they are
25 going to make a claim -- once my clients had this color

52

1 of title, which shows their land going up to the
2 marshland on this plat -- 40 years after they take
3 title somebody has to do something. There is no
4 question that our clients and their predecessors in
5 interest had title, 1921, 1941, 80-plus years, 60-plus
6 years prior to this action being brought. So they are

7 time barred. There is no evidence otherwise before
 8 Your Honor. Nobody's come here said, hey, you guys are
 9 in the way here; hey, we've got a better title than
 10 you. There is -- no effort has been made to alert
 11 either one of the Respondents that someone else has a
 12 claim and they have -- it's more than a claim. It
 13 says -- let's see.

14 Unless the person claiming his ancestor or grantor
 15 was actually in possession of the same or a part
 16 thereof within 40 years from the time of the
 17 commencement of the action. Nobody's been in
 18 possession of this.

19 Nobody has gone out there and put up as much as a
 20 tent pole. Therefore, we believe they are time barred.

21 There is an additional 20-year presumption of a
 22 grant which is common law. The 20-year presumption of
 23 a grant is much like the 10-year adverse possession
 24 except you can attack from strangers, obviously they
 25 have been in possession of this property and everything

53

1 that extended out to the marsh.

2 Mr. Cooper has made much of these dock permits.
 3 with open land in the State of South Carolina, Your
 4 Honor, you use it for what it can usually be used for.
 5 Under these circumstances there is testimony that they
 6 used it for picnics, they used it to bring in driftwood
 7 for firewood, and certainly the most open and obvious
 8 and notorious and hostile and adverse claim you can
 9 possibly make is you say I can start here and I can go
 10 there and I have a dock. So we would say that they
 11 have adversely possessed under the 10-year statute and

Page 45

12 under the 20-year presumption of the grant.

13 Finally, Your Honor, and one of reasons we've all
14 been struggling here today is we're dealing with
15 something that predates all of our births, something
16 that occurred, according to some of these deeds, in the
17 19th Century and certainly the crux of this case is
18 established in the early 20th Century.

19 A stale claim or laches is the long period of
20 time, the extended period of time in which a claim, if
21 there is a claim, ought to be brought. If no claim is
22 brought and if the Respondents rely on that and do
23 things to their detriment, then a claim like this is
24 barred by laches. Laches is also -- includes in South
25 Carolina, as I read the law, it's sub -- staleness of

54

1 demand is subsumed in laches. Staleness of demand is
2 exactly that. It is an even more extended period of
3 time than laches, and the reason that a claim is stale
4 is that people die, memories fade, plats get old. They
5 have to be redrawn. If you are so derelict in bringing
6 your claim, if you are so deficient in bringing your
7 claim, then the State of South Carolina says too late,
8 you can't bring your claim.

9 So to sum up, we believe we own the property. We
10 believe that our deed shows we own the property. If we
11 don't own the property we have color of title and more
12 than 40 years have passed by operation of statute. We
13 own any property between our property and the high
14 land. The 20-year presumption of a grant under the
15 common law we believe we meet all the monuments of

16 adverse possession. Because this is open land, there
17 is no particular thing you need to do to occupy it,
18 especially under color of title. And that applies also
19 for adverse possession.

20 But really, truly, Your Honor, it's a claim that
21 should have been brought many, many years ago to
22 establish this, and we suggest to Your Honor that they
23 couldn't bring it because it was all marshland. But
24 now to bring it at this late date is the very thing
25 that staleness of demand has established and laches has

55

1 established to prevent it.

2 So all of those defenses apply now, whereas when
3 Your Honor determined before it was marshland, they
4 would not have applied, but now Your Honor is free to
5 apply them to any claim that they have.

6 Thank you.

7 THE COURT: Mr. Cooper?

8 MR. COOPER: Your Honor, very briefly. The
9 adverse possession claims were pled by the Defendants,
10 they were not addressed in your Order. They didn't
11 make a Rule 59(e) to get a ruling on adverse
12 possession. That's waived.

13 The opinion was appealed to the Court of Appeals
14 and the Court of Appeals, rightly or wrongly, reversed
15 your Order and reversed, in particular, the affirmative
16 defenses that were addressed in your Order, the Statute
17 of Limitations for nuisance, Statute of Limitations for
18 trespass; ripeness, estoppel, laches, staleness of
19 demand and unclean hands, which I'll refer to as the
20 affirmative defenses. And so there were affirmative

Page 47

21 defenses that were in your Order but those were
22 reversed.

23 The Defendants did not seek further review of that
24 and that's the law of the case. They did not get a
25 ruling on adverse possession from Your Honor, and when

56

1 the other adverse possession -- the other affirmative
2 defenses went up on appeal they were -- those findings
3 were reversed so -- and they didn't appeal, didn't seek
4 further review, and that's the law of case. And,
5 regardless, there is not anything Your Honor did wrong.
6 It's just the Defendants didn't protect their position
7 on those issues.

8 Thank you.

9 MR. GRIFFITH: Your Honor, one minor point. You
10 did not rule against us in your order, so a 59(e) was
11 not necessary. You were not reversed. The Court
12 reversed it and remanded it to you on one issue, and
13 the Order says how we reverse -- (reading) and remand
14 for findings in accordance with this opinion.

15 They want you to determine who owns the high land.
16 And that puts you in a position to make a ruling on who
17 owns the high land whether through deeds or through
18 operation of law. All of those defenses are now before
19 Your Honor, because the Court has put it back to Your
20 Honor to make that decision.

21 (Pause)

22 THE COURT: I'm looking at -- the Court of
23 Appeals' bifurcated the ruling and found on the Road
24 Case, is how they described it, that that was affirmed.

10-21-11Demetre (2)
25 That included the Plaintiff's argument on equitable

57

1 estoppel. That was affirmed.

2 The dock case, which is why we're here today, is
3 right of the Defendants to retain their dock into the
4 Folly River. They go back to Mr. Demetre's
5 partnership; question of a declaration of who owns the
6 property between the Crowleys; the Beckmann's lots and
7 the mean high water mark and to quiet any defects in
8 title. So quiet title -- DJ quiet title action.

9 Says (reading) Master did not rule on either
10 request. Either quiet title or the declaration, and
11 only held -- the Crowleys and Beckmanns believed the
12 State owned the land when they applied for their dock
13 permits, which does not resolve the question of actual
14 ownership.

15 Demetre does not dispute the presumption that the
16 State holds in trust, for public purposes, property
17 below mean high water. Therefore, because the Master
18 failed to rule on Demetre's request for declaration of
19 ownership and quiet title to the portions of lots above
20 high water we remand for a determination of this
21 question.

22 So I would say that the remand is clearly for the
23 question of ownership of the high land, which is why
24 we're going through the chain of title at length.

25 We (reading) need not address Demetre's remaining

58

1 issues, because we remand this case for determination
2 on whether Demetre owns the land between the Crowleys

Page 49

3 and the Beckmann's lots and the mean high water mark on
4 lots 209, 210 East Indian.

5 THE COURT: That's how they do it. They conclude
6 it's reversed and remanded for finding in accordance
7 with that.

8 The reversal you're referring to -- they are not
9 specifically addressing any of these points. Is that
10 your position, then, that they ruled on that?

11 MR. COOPER: On page 10 it says, we reverse the
12 Master's March 26, 2007 order and remand for findings
13 in accordance with this opinion. But I think that does
14 effectively reverse your findings that these
15 affirmative defenses would provide a defense. So it's
16 our position that that's the law of case.

17 THE COURT: Okay. And refresh my memory. I don't
18 recall. Must have been two orders, one about the road
19 of March of '02 and one about the dock in March of '06.

20 MR. COOPER: All these affirmative defenses we
21 have litigated in the Court of Appeals, each
22 separately.

23 THE COURT: You agree they've not ruled on any of
24 those defenses; is that right? They don't address
25 them?

59

1 MR. COOPER: They don't address them. They just
2 say that your Order finding that there would be a
3 reason to -- you know, defenses to Mr. Demetre's title
4 is reversed. So it's our position that they have ruled
5 on it. How else do they do -- other than to say my
6 reversed. That's a ruling.

7 THE COURT: Okay. Reverse and remand in
8 accordance with the findings, but they didn't make any
9 findings.

10 (Laughter)

11 MR. GRIFFITH: Your Honor, Respondent's position
12 is this. First of all, we won before Your Honor
13 before. You don't make a 59(e) when you win. There
14 was no need for us to make a Rule 59(e) motion. I'm
15 looking at your Order. It says, as to adverse
16 possession, 20-year presumption of grant -- couple
17 paragraphs. While this argument may be valid between
18 Plaintiff and these Defendants I have ruled in the road
19 case that the title vested in the Defendant Folly Beach
20 I find parties claim dispute land (reading) indicates
21 this property is marshland. Therefore, I conclude any
22 challenge to ownership of the marshland must be pursued
23 in an action against the State of South Carolina.

24 So, Your Honor said, as between these parties, may
25 be valid, but it looks like marshland to me, and so the

60

1 State of South Carolina presumptively owns that.

2 So you haven't ruled on any of those things and
3 the Court in it's Order says all right, go back and
4 tell me who owns this property. When they say go back
5 and tell me who owns this property they said, okay, the
6 State of South Carolina doesn't own it. As between
7 these parties, now you have these defenses that you
8 must apply if, in fact, you determine that the deed is
9 not sufficient.

10 THE COURT: All right. So just to make sure I'm
11 clear on that, because that gets back to what I was

12 thinking earlier today and I think you-all got me back
13 off that -- no question but that everybody's in
14 agreement that to the extent it's below the mean high
15 water it's State?

16 MR. COOPER: It's presumptively owned by the
17 State. It's certainly not a part of this action.

18 THE COURT: We don't need them in here to
19 determine who owns the high land between what would be
20 the road and the water; right?

21 MR. COOPER: Correct, Your Honor.

22 MR. GRIFFITH: Correct.

23 THE COURT: All right. In case I have to see this
24 again -- I just want to make sure I'm all clear on
25 that. I don't mind getting reversed. I prefer not to

61

1 be, but I don't mind getting reversed, but I hate
2 getting remanded, so here I am having to decide a case
3 again which I will assure you I tried to decide the
4 first time but, evidently, I did not. At least that's
5 what the Court of Appeals is telling me.

6 I think I've heard what I needed to hear. I think
7 we tried this case in early '06. Does that sound
8 right? It was a long process. I'm going to take it
9 under advisement. I'm going to review the record as I
10 see it and I will review these proposed orders. I will
11 want to go back --

12 You-all cited multiple cases, today. We've talked
13 about Tenny and the Murrell's Inlet case. I'm going to
14 go back and take look at those as well. And I'll give
15 you -- my goal is to give you -- I've got drafts to

10-21-11Demetre (2)
16 work with and have you all email them to me as well? I
17 would ask you do that. Sometimes I'll take them and
18 manipulate them.
19 MR. GRIFFITH: Into word format?
20 THE COURT: Yes.
21 MR. COOPER: What's the email?
22 THE COURT: Master@charlestoncounty.org. Today's
23 my birthday. Glad to share it with you. I'll give you
24 an answer by Thanksgiving.
25 MR. COOPER: Thank you.

62

1 MR. GWINN: Thank you, Your Honor.
2 THE COURT: Thank you all.
3 (Hearing concluded.)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

21
22
23
24
25

STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF CHARLESTON)

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this June 12, 2012.

Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

[Intentionally Blank]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) BEFORE THE MASTER IN EQUITY

The Milton P. Demetre
Family Limited Partnershp,

Plaintiff,

vs.

Harry Beckmann, III et al,

Defendants.

**PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO THE
DOCK DEFENDANTS' PROPOSED ORDER**

Civil Action No. 2005-CP-10-4101

The Milton P. Demetre
Family Limited Partnership,

Plaintiff,

vs.

City of Folly Beach et al,

Civil Action No. 2002-CP-10-4880

2010 APR 16 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

COMES NOW the Peter Demetre Family Limited Partnership ("Demetre") and submits this Memorandum in Opposition to the proposed order of Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, David William Crowley, Jr., and Annie Ruth Crowley Atkinson ("Dock Defendants"). Demetre incorporates herein by reference his proposed order regarding the Dock Case submitted to the Master-in-Equity on March 26, 2010.

A. The Dock Defendants Stipulated to Demetre's Record Title

1. The Dock Defendants' proposed order is predicated on their current assertion that the deed by which Demetre took the subject property did not convey record title.

2. However, at trial, Demetre proved his record title (Trial Tr. pp. 42 - 91) and entered his chain of title into evidence (Pl.'s Trial Ex. "D").
3. Moreover, the Dock Defendants stipulated at trial to Demetre's record title to the subject property. (Ex. A, Trial Tr. p. 6, lines 1 - 6).
4. A stipulation on the record is binding. Rule 43(k), SCRCP.
5. A "stipulation" is an agreement, admission, or concession made in judicial proceedings by the parties thereto or their attorneys, and stipulations are binding upon those who make them. *Griffith v. Griffith*, 332 S.C. 620, 506 S.E.2d 526 (Ct. App. 1998).
6. When counsel enter into an agreed stipulation of facts as a basis for a decision by the court, both sides will be bound by such a stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided. *McCrea v. City of Georgetown*, 384 S.C. 328, 681 S.E.2d 918 (Ct. App. 2009).
7. The Dock Defendants admitted on appeal that at trial they had stipulated to Demetre's record title to the subject property:

The parties stipulated that each had, "record" title, specifically the Respondents Beckmann and Crowley stipulated that, " . . . record title for Milton P. Demetre has been stipulated to." (R. 142 LL 5 - 6).

(Respondents' [Dock Defendants'] Response to Appellant's Reply to Respondents' Return to Appellant's Petition for Rehearing, p. 2).

8. Since the Dock Defendants stipulated to Demetre's record title to the subject property, and since as a matter of law, that stipulation is binding on them, the Dock Defendants' proposed finding that Demetre does not have record title is clearly erroneous.

B. The Court of Appeals Rejected the "Marshland" Argument

1. Despite having stipulated to Demetre's record title to the subject property, the Dock Defendants now assert that Demetre's deed did not convey record title because the 1920 Plat bore the word "marshland."
2. The Dock Defendants argue that the word "marshland" necessarily means marsh below the mean high water mark; however, "marshland" can be either lowland or highland marsh.
3. In other words, it can be marsh either below the mean high water mark (herein "lowland marsh") or marsh above the mean high water mark (herein "highland marsh").
4. The South Carolina Supreme Court discusses this distinction in *State v. Murrell's Inlet Camp & Marina, Inc.*:

Land ordinarily covered by tides occurring daily is referred to in the record as low marsh and is claimed by the State as tidal land. Land less frequently flooded but covered by spring tides and other unusually high tides is referred to as high marsh and is not claimed by the State.

State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972).

5. There is no evidence in the record that the subject property was lowland marsh when the 1920 Plat was drawn or at the time of trial; the Dock Defendants cite nothing other than the word "marshland" on the 1920 Plat.
6. However, the word "marshland" on the 1920 Plat is not evidence that the subject property was necessarily lowland marsh.
7. The Dock Defendants made this same argument at trial and on appeal to assert that the property was below the mean high water mark and that the State was therefore a necessary party to a determination of ownership of the subject property.
8. The Court of Appeals rejected that argument and remanded the case for a determination of Demetre's ownership and quiet title to the subject highland property.
9. Thus, the Dock Defendants' proposed order is predicated on one of the same errors for which the case was remanded.

C. All the Evidence is that the Property is Highland Marsh

1. All the evidence in the record is that the subject property is highland marsh:
 - a. The Kennerty Topographic Survey showed the subject property as above the mean high water mark. (Trial Exhibit "N").
 - b. The Dock Defendants' own profile drawings they submitted with their dock applications each showed approximately 400 feet of highland between their back lot lines and the mean high water mark. (Pl.'s Trial Ex. "E" and "AA").

2. There is no evidence in the record that the subject property was lowland marsh either when the 1920 Plat was drawn or when Demetre purchased the subject property.

D. The Dock Defendants' Documents Refute Their "Marshland" Argument

1. With their dock permit applications, the Dock Defendants each submitted a "Plan View" drawing and a "Profile" drawing which refute their current assertion that the term "marsh" necessarily means property below the mean high water mark.
2. The Dock Defendants' "Plan View" drawings each show the subject property labeled "marsh" (Pl.'s Trial Ex. "AA"), and their "Profile" drawings each show a cross-section of the same area they labeled "marsh" on their "Plan View" drawings. (Pl.'s Trial Ex. "E" and "AA").
3. The Profile Drawing of each Dock Defendant shows that approximately 400 feet of the area labeled "marsh" on their "Plan View" drawings is land above the high tide mark. (Plaintiff's Trial Ex. "E" and "AA").
4. Thus, the Dock Defendants' own documents, which they signed, refute their current assertion that the term "marsh" necessarily means property below the mean high water mark.

E. The Court of Appeals Did Not Accept the "Accretion" Argument

1. There is no evidence in the record that the subject highland property resulted from accretion after the 1920 Plat was drawn.
2. The Dock Defendants did not raise this accretion argument at trial and submitted no evidence to support it.

3. However, they asserted their accretion argument on appeal. (Respondents' Response to Appellant's Reply to Respondents' Return to Appellant's Petition for Rehearing, pp. 5 - 6).
4. Nonetheless, the Court of Appeals did not accept the Dock Defendants' accretion argument and remanded the case for a determination of Demetre's ownership and quiet title to the highland property.
5. The Dock Defendants' accretion argument is also predicated on their assertion that the word "marshland" on the 1920 Plat necessarily means land below the mean high water mark.
6. However, as discussed above, "marshland" can be either lowland or highland marsh. See *State v. Murrell's Inlet Camp & Marina, Inc.*, 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972).
7. The Dock Defendants argue that, since the 1920 Plat bears the word "marshland," any highland must have accreted since that plat was drawn.
8. However, the word "marshland" does not support this argument, and the Dock Defendants cite nothing else in support of it.
9. The Court of Appeals already considered and did not accept the Dock Defendants' "accretion" argument, which, in turn, is predicated on their "marshland" argument, which the Court of Appeals rejected.
10. Thus, the Dock Defendants' proposed order is based on an "accretion" argument which is supported by no evidence and which the Court of Appeals did not accept.

F. The Deeds to the Dock Defendants' Lots
Do Not Bound on East Indian Avenue

1. The Dock Defendants propose a finding that, "The Beckmann and Crowley deeds show East Indian Avenue as their riverward boundary."
2. However, this proposed finding is a clear error of fact because the deeds of Dock Defendants do not describe their boundaries as East Indian Avenue.
3. In fact, the Dock Defendants' deeds do not refer to East Indian Avenue at all. (Pl.'s Trial Ex. "Q" and "R").
4. Rather, their deeds each describe their back boundary as "150 feet in depth" from East Huron Avenue. (Pl.'s Trial Ex. "Q" and "R").
5. The 1920 Plat does not show East Indian Avenue adjacent to the Dock Defendants' lots, only an area with dotted lines for a possible future extension of East Indian Avenue. (Pl.'s Trial Ex. "K").
6. Thus, the Dock Defendants' proposed finding that their back boundary is East Indian Avenue is unsupported and is clear factual error.

G. Dock Defendants' Affidavits of Ownership Showed Lots 70' x 150'

1. The Affidavits of Ownership the Dock Defendants submitted along with their deeds with their dock permit applications each showed lots only 70 feet by 150 feet, and they each showed the back boundaries of their respective lots as only 150 feet from East Huron Avenue. (Pl.'s Trial Exhibit "AA").

H. The Dock Defendants Were Not Riparian Owners

1. The Dock Defendants propose a finding that they were riparian owners who obtained the right to lands formed by accretion.
2. The Dock Defendants cite *Hilton Head Prop. Owners' Assn. v. Donald*, 375 S.C. 220, 651 S.E.2d 614 (2007), for the proposition that, "[A]ny increase of soil to land adjacent to or contiguous to a navigable stream or water, formed by accretion, belongs to the riparian or littoral owner."
3. However, first, as discussed above, there is no evidence in the record of accretion after the 1920 Plat was drawn.
4. Moreover, even if there had been accretion, the Dock Defendants were not riparian owners, so any accretion would not have benefited them.
5. Rather, any accretion would have benefited Demetre's predecessor in interest, the owner of the highland between the Dock Defendants' lots and the Folly River.
6. The Dock Defendants are not riparian owners because there is highland between their lots and the Folly River. See *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001).
7. A riparian landowner is one whose land is adjacent or contiguous to navigable water. *Hilton Head Plantation Property Owners' Ass'n, Inc. v. Donald*, 375 S.C. 220, 651 S.E.2d 614 (2007).
8. "Riparian" means, "Of, relating to, or located on the bank of a river or stream (or occasionally another body of water, such as a lake)." Black's Law Dictionary, p. 1328, Seventh Edition (1999).

9. The Dock Defendants' lots were not adjacent or contiguous to any navigable river, stream, or lake.
10. All of the evidence is that there was highland between the Dock Defendants' lots and the navigable water:
 - a. The Kennerty Topographic Survey showed highland between the Dock Defendants' back lot lines and the Folly River. (Pl.'s Trial Exhibit "N").
 - b. The Dock Defendants' own Profile Drawings they submitted with their dock permit applications each show approximately 400 feet of highland between their lot property lines and the Folly River. (Pl.'s Trial Ex. "E" and "AA").
11. The Court of Appeals April 21, 2009 Opinion found that there was highland between the Dock Defendants' lots and the mean high water mark. It remanded the case for a determination on Demetre's ownership to that highland. (Court of Appeals April 21, 2009 Opinion, pp. 9 - 10).
12. Land above the mean high water mark is not "navigable water."
13. The Dock Defendants cite the word "marshland" on the 1920 Plat, but that is not evidence that there was navigable water adjacent to their lots; "marshland" does not mean "navigable water."
14. There is no navigable water shown adjacent to the Dock Defendants' lots on the 1920 Plat. (Pl.'s Trial Ex. "K").
15. The Dock Defendant's proposed finding that they are riparian owners is unsupported and is a clearly erroneous.

I. The Dock Defendants' Plan View

1. The Dock Defendants' "Plan View" drawings they each submitted with their dock permit applications do not show East Indian Avenue adjacent to their lots. (Pl.'s Trial Ex. "AA").
2. Rather, the Dock Defendants' "Plan View" drawings showed their proposed docks crossing marsh, not a road.
3. Their "Profile" drawings showed that approximately 400 feet of that "marsh" was above the mean high water mark. (Pl.'s Trial Ex. "E" and "AA").

J. The Court of Appeals Found that the Road Extends Only to The Northwest Corner of Lot 205 East Huron Avenue

1. The Dock Defendants propose a finding that the East Indian Avenue extends along their lots.
2. This proposed finding conflicts with the finding of the Court of Appeals that the road extends only to the northwest corner of lot 205 East Huron Avenue.
3. In the April 21, 2009 Opinion, the Court of Appeals found:

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.

(April 21, 2009 Court of Appeals Order, p. 3).

* * * *

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; and the Road is not included on the tax map.

(April 21, 2009 Court of Appeals Order, p. 7).

4. Thus, the Court of Appeals' Opinion found that East Indian Avenue extends only from lot 201 to the northwest corner of lot 205 East Huron Avenue. (Court of Appeals April 21, 2009 Opinion, pp. 3, 7).

K. The Road Order Found that the Road Ends Long Before the Dock Defendants' Lots

1. The Dock Defendants seek a finding that the road extends to their lots.
2. However, the Road Order, which was affirmed by the Court of Appeals, found that the road "disappears" approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue:

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

(Master-in-Equity's Road Order, p. 5).

3. Thus, the Dock Defendant's proposed finding that the road extends along their lots conflicts with the above-cited finding in the Road Order, which was affirmed by the Court of Appeals.

L. The Court of Appeals Amended its Finding on the Road's Length

2. The first Court of Appeals Opinion dated January 14, 2009, found that Folly Beach owned East Indian Avenue riverward of the Dock Defendants' lots.

3. However, Demetre filed a Petition for Rehearing, arguing in part that East Indian Avenue did not extend to the Dock Defendants' lots, citing, among other facts, that the Dock Defendants' docks crossed that area.
4. The Substituted April 21, 2009 Opinion removed the finding that East Indian Avenue extended to the Dock Defendants' lots:

Original January 14, 2009
Opinion, Page 9

Demetre sought a declaration that he owns all the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet any defects in his 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 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, Page 9

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 any defects in his 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 . . .

5. 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) and removed the finding

that East Indian Avenue extends to the Dock Defendants' lots (p. 9).

6. Further, the Court of Appeals amended its mandate on remand in its substituted opinion to reflect that the road does not extend to the Dock Defendants' lots.
7. In its original January 14, 2009, Opinion, the Court of Appeals remanded the Dock Case for a determination on 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).
8. 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).
9. 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 Dock Defendants' lots:

Original January 14, 2009
Opinion, p. 10

We need not address Demetre's remaining issues because we remand this case for a determination on 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

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).

10. Thus, the Dock Defendants' proposed finding that the road extends to their lots conflicts with the Court of Appeals' Opinion.
11. The Court of Appeals' finding that the road extends only to the northwest corner of Lot 205 East Huron Avenue is the law of the case. See *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000).
12. The Dock Defendants' proposed finding that East Indian Avenue extends to their lots conflicts with the Court of Appeals' mandate on remand.
13. However, the rule of mandate requires a trial court to act on the mandate of an appellate court, without variation. 5 Am. Jur. 2d Appellate Review § 740 (2009).

M. Demetre's Chain of Title is in Evidence

1. Demetre's chain of title is in evidence without objection. (Plaintiff's Trial Ex. "D").
2. Independently, the Dock Defendants stipulated to his record title to the subject property. (Ex. A, Trial Tr. p. 6, lines 4 - 6).
3. As discussed above, all the evidence is that the subject lots include property above the mean high water mark.
4. All the evidence is that Demetre and his predecessor in interest were the only parties to pay property taxes on the subject property.
5. Demetre proved his record title at trial. (Trial Tr. pp. 42 - 91).

6. The 1920 Plat was drawn from the 1895 Tartas map filed in the Charleston County RMC Office in Plat Book D at Page 170. (Pl.'s Trial Ex. "D").
7. The Folly Beach Corporation obtained deeds to the property from various individuals and the Folly Island Corporation from 1919 to 1921. (Pl.'s Trial Ex. "D").
8. The Folly Beach Improvement Company obtained the property from the Folly Beach Corporation in 1926 and mortgaged it to the Citizens and Southern Bank of Savannah, GA ("Bank"). (Pl.'s Trial Ex. "D").
9. In 1942, the Bank foreclosed on the property, and, in 1943, it was sold by the Charleston County Master-in-Equity to Edward M. Seabrook, Sr. (Pl.'s Trial Ex. "D").
10. Seabrook willed the property to his son, Edward M. Seabrook, Jr. (Plaintiff's Trial Ex. "D").
11. Edward Seabrook, Jr. deeded the subject property, which is riverward of the Dock Defendants' lots, to Demetre in 2004. (Plaintiff's Trial Ex. "D").

N. Demetre's Lots are Shown on the 1965 Redraw

1. Despite their stipulation to Demetre's record title, the Dock Defendants now propose a finding that the Demetre lots "do not exist."
2. However, the Court of Appeals found that Demetre's lots are shown on the 1965 redraw. (Court of Appeals April 21, 2009 Opinion, p. 4).

3. The 1920 plat, the 1965 redraw, and the 1968 tracing share the same book and page number at the RMC Office. (Court of Appeals April 21, 2009 Opinion, p. 3).
4. The Court of Appeals April 21, 2009 Opinion identifies the location of the subject lots as, "between the Crowleys' and Beckmanns' lots and the mean high water mark on lots 209 and 210 East Indian Avenue." (Court of Appeals April 21, 2009 Opinion, p. 9). The Court Appeals' mandate on remand requires a determination on ownership of those lots.
5. The locations of lots 209 and 210 East Indian Avenue are identifiable from the 1920 Plat by their dimensions, their boundaries along the proposed extension of East Indian Avenue, and the locations of the 209 and 210 lots on the adjacent East Huron Avenue. (Pl.'s Trial Ex. "D").
6. Demetre's deed further identifies the location of the lots by referencing the tax map number and the property descriptions in the will of Edward Seabrook the elder. (Pl.'s Trial Ex. "D").
7. The Court of Appeals April 21, 2009 Opinion found that the lots were shown on the 1965 Redraw and identifies the location of the subject lots as riverward of the Dock Defendants' lots.
8. Further, the Kennerty Topographic survey precisely identifies the locations of the lots with their exact measurements. (Pl.'s Trial Ex. "N").
9. Although Demetre's deed sufficiently describes the location of the lots, to the extent a description is ambiguous, extrinsic evidence is admissible to identify the location of deeded

property. *Richardson v. Register*, 227 S.C. 81, 87 S.E.2d 40 (1955); 23 Am. Jur. 2d Deeds § 40 (2010).

10. Thus, the Dock Defendants' proposed finding that Demetre's lots "do not exist" is clear error, because it conflicts with the description in Demetre's deed and the findings of the Court of Appeals April 21, 2009 Opinion.

0. The Bank Released Lots Only 70 Feet by 150 Feet

1. On April 3, 1941, Citizens and Southern Bank of Savannah, GA ("Bank") released a mortgage on the Lot 209 East Huron Avenue now owned by the Beckmanns. (Pl.'s Trial Ex. "Q").
2. On April 12, 1941, Lot 209 East Huron Avenue was sold to one of the Beckmann's predecessors in interest. (Pl.'s Trial Ex. "Q").
3. The description in the April 12, 1941 deed describes a lot 209 East Huron Avenue as, ". . . bounding East Huron Avenue and measuring thereon seventy (70) feet by One Hundred & Fifty (150) feet in depth . . . " (Pl.'s Trial Ex. "Q").
4. Regarding the Dock Defendants' lots, there is no evidence that the Bank released any property beyond the 70-feet-by-150-feet lots.
5. In 1942, the Bank foreclosed on the mortgage and the foreclosed property was sold to Demetre's predecessor in interest. (Pl.'s Trial Ex. "D").
6. Thus, the Bank did not release, and, in fact, it excluded the property riverward of the Dock Defendants' 150-feet-in-depth

lots. Instead, that property was sold in foreclosure to Demetre's predecessor in interest.

7. The fact that the Bank's release of the Dock Defendants' lots was for lots only 70 feet by 150 feet in depth from East Huron Avenue is dispositive against the Dock Defendants' assertion that they were riparian owners and refutes any claim to the land riverward of the Dock Defendants' lots.
8. Rather, Demetre's predecessor was the riparian owner.
9. As discussed above, the Dock Defendants have presented no evidence of accretion after the 1920 Plat was drawn.
10. Regardless, Demetre's predecessor, as the riparian owner, would have obtained the benefit of any accretion, not the Dock Defendants.

P. The Lot Price Did Not Make the Title Unmarketable

1. The Dock Defendants argue that the price of the lot Demetre purchased indicated that title was defective.
2. However, the lot price merely contemplated the necessity of this litigation against the Dock Defendants.
3. Determination of record title is based on the chain of title, not the sale price.
4. Here, Demetre proved his chain of title at trial (Trial Tr. pp. 48 - 54) and entered his chain of title into the record (Pl.'s Trial Exhibit "D").
5. Further, despositively, the Dock Defendants stipulated to Demetre's record title. (Ex. A, Trial Tr. p. 6, lines 1 - 6).

Q. A Quitclaim Deed Can Convey Good Title

1. The Dock Defendants argue that Demetre knew his title was not good because he accepted a quitclaim deed.
2. This argument is legally erroneous.
3. A quitclaim deed can convey good title. See *Vick v. SCDOT*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001).

R. Known Encroachments Do Not Preclude Transfer of Title

1. The Dock Defendants argue that Demetre knew or should have known he was not getting title to the property because of the Dock Defendants' docks.
2. However, encroachments do not prevent conveyance of title. See 52 Am Jur Proof of Facts 3d 429 § 12 (discussing that a purchaser is bound to a purchase contract where he had full knowledge of defects, including encroachments).

Conclusion

For the foregoing reasons, the Dock Defendants' proposed order is fatally predicated on clear factual and legal errors.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:


JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

JOHN TOWNSEND COOPER, ESQUIRE

Federal Court ID 10172

South Carolina Bar 76087

1808 Middle Street

Post Office Box 395

Sullivan's Island, SC 29482

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF,

THE MILTON P. DEMETRE FAMILY

LIMITED PARTNERSHIP

Sullivan's Island, South Carolina

April 16, 2010

C E R T I F I C A T E O F S E R V I C E

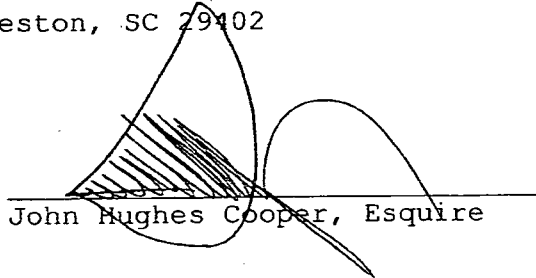
I hereby certify that on April 16, 2010, I served the foregoing Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order via first class U.S. mail with sufficient postage affixed to opposing counsel as follows:

Jefferson D. Griffith, III
Richard L. Whitt
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, SC 29201

Stephanie P. McDonald, Esquire
Senn McDonald & Leinbach, LLC
3 Wesley Drive
Charleston, SC 29407

Otis Benjamin Peebles, Jr., Esquire
105 Wappoo Creek Drive, Ste. 1A
Charleston, SC 29412

Joseph S. Mendelsohn, Esquire
P.O. Box 250
Charleston, SC 29402


John Hughes Cooper, Esquire

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 APR 16 PM 2:54

FILED

1 Again, we just want to put a stipulation on the
2 record consistent with our discussions with the Court in
3 chambers.

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

7 The chain of title of Emily S. Brown to Lot 204
8 Huron Avenue East has been stipulated to.

9 The chain of title for Lot 210 Huron Avenue
10 East into the Crowleys has been stipulated to.

11 And the chain of title to the Beckmanns to Lot
12 209 Huron Avenue East has been stipulated to.

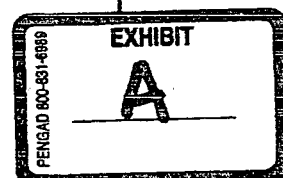
13 All of those have been agreed by counsel that
14 they are stipulated to, as far as record title. And the
15 documents are in evidence as Plaintiff's Exhibits.

16 I will pass up for the Court a copy of that as
17 well.

18 (Documents handed up to the Court)

19 In addition to that, your Honor, the
20 Plaintiff's A through Z are in evidence, without
21 objection.

22 And Plaintiff's book of photographs--the
23 photographs themselves are in evidence. But the
24 writings on the photographs, it has been stipulated by
25 and between the attorneys, is of no evidentiary



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) BEFORE THE MASTER IN EQUITY

The Milton P. Demetre
Family Limited Partnershp,

Plaintiff,

vs.

Harry Beckmann, III et al,

Defendants.

The Milton P. Demetre
Family Limited Partnership,

Plaintiff,

vs.

City of Folly Beach et al,

PLAINTIFF'S REPLY TO THE
DOCK DEFENDANTS' CORRESPONDENCE
TO THE COURT OF APRIL 21, 2010

Civil Action No. 2005-CP-10-4880

FILED
2014 APR 23 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT

Civil Action No. 2002-CP-10-4880

COMES NOW the Peter Demetre Family Limited Partnership ("Demetre") and submits this Reply to the April 21, 2010 correspondence to the Court of Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, David William Crowley, Jr., and Annie Ruth Crowley Atkinson ("Dock Defendants").

I. Record Title is Good Title Where No Affirmative Defenses Remain

1. The Dock Defendants argue that Demetre asserts that they stipulated to "good title."
2. Rather, Demetre asserts, and the Dock Defendants admit, that they stipulated to Demetre's "record title."

3. Nonetheless, where no affirmative defenses remain, record title is good title.
4. The Dock Defendants asserted affirmative defenses at trial, but the Court of Appeals ruled against those affirmative defenses.
5. The Dock Defendants did not appeal the Court of Appeals' ruling against their affirmative defenses, so that ruling is the law of the case. See *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000).
6. The Dock Defendants now propose a finding that Demetre's lots "do not exist." (Dock Defendants' Proposed Order, p. 3, Finding No. 2).
7. However, the Dock Defendants stipulated to Demetre's record title. (Trial Tr. p. 6, lines 1 - 6).
8. Their stipulation is binding on them. Rule 43(k), SCRPC; *Griffith v. Griffith*, 332 S.C. 620, 506 S.E.2d 526 (Ct. App. 1998); *McCrea v. City of Georgetown*, 384 S.C. 328, 681 S.E.2d 918 (Ct. App. 2009).
9. Here, Demetre proved his title at trial (Trial Tr. pp. 42 - 91), and his chain of title is in evidence (Pl. Trial Ex. "D").
10. Regardless, where no affirmative defenses to record title remain, record title is good title.

II. Demetre's Lots Do Exist

1. The Dock Defendants assert, "We do not, and have not, argued that Demetre's lots do not 'exist' . . ." (Dock Defendants' Correspondence to the Court of April 21, 2009).
2. However, this assertion conflicts with the Dock Defendants' proposed order, p. 3, finding No. 2 under "Summary of the Findings of Fact:"

Dock Defendants'
April 21, 2010 Correspondence
to the Court

We do not, and have not, argued that Demetre's lots do not "exist" . . .

Dock Defendants' Proposed Order
Page 3,
Finding No. 2

2. On the 1920 plat the so-called Demetre "lots" are not shown and therefore do not exist.

3. Thus, despite having stipulated to Demetre's record title, the Dock Defendants' propose a finding that Demetre's lots, "do not exist."

III. The Court of Appeals Found that the Road Does Not Extend to the Dock Defendants' Lots

1. The Dock Defendants state on Page 2 of their April 21, 2010 Correspondence to the Court, "The plat correctly showed East Indian Avenue or the marsh as their [the Dock Defendants'] riverward boundary . . ."
2. In Footnote 2 to that sentence, they add, "The Court of Appeals Order referenced in footnote 1 hereinabove, found that the City of Folly Beach to be the owner of East Indian Avenue."

3. Together, these statements could be taken to imply that the Court of Appeals found that the road extends to the Dock Defendants' lots.
4. However, in its April 21, 2009 Opinion, the Court of Appeals removed the finding that the road extends to the Dock Defendants' lots and kept the finding that the road extends only to the northwest corner of lot 205 East Huron Avenue. (April 21, 2009 Court of Appeals Opinion, pp. 3, 7, 9, 10).
5. The Dock Defendants make no return to Demetre's point that the Court of Appeals April 21, 2010 Order found that the road extended only from lot 201 to the northwest corner of lot 205 East Huron Avenue. (April 21, 2009 Court of Appeals Opinion, pp. 3, 7).
6. They make no return to Demetre's point that the Master's Road Order, which the Court of Appeals affirmed, found that the road ends long before the Dock Defendants' lots. (Master-in-Equity's Road Order, p. 5).
7. The Dock Defendants make no return to Demetre's point that the Court of Appeals substituted April 21, 2009 Opinion removed the finding that East Indian Avenue extends to the Dock Defendants' lots. (Compare the January 14, 2009 Opinion, p. 9 with the Substituted April 21, 2009 Opinion, p. 9).
8. They make no return to Demetre's point that the Court of Appeals amended its mandate on remand in its April 21, 2009 Opinion to a determination on Demetre's ownership to the highland between the Dock Defendants' lots and the mean high water mark as opposed to

a determination on his ownership to the highland between *East Indian Avenue* and the mean high water mark. (Compare the January 14, 2009 Opinion, p. 9 to the April 21, 2009 Opinion, p. 10).

9. Thus, the Court of Appeals found that the road extends from lot 201 only to the northwest corner of lot 205 East Huron Avenue.

IV. Rule 5(b)(3) Contemplates Opposition to Proposed Orders

1. The Dock Defendants object to Demetre's opposition to their proposed order, but Rule 5(b)(3), SCRCP, contemplates such opposition.
2. Rule 5(b)(3) requires any party submitting a proposed order to serve copies on all counsel of record.
3. The purpose of this provision is to allow opposing counsel to raise concerns regarding proposed orders. See *First Financial Ins. Co. v. Sea Island Sport Fishing Soc., Inc.*, 327 S.C. 12, 490 S.E.2d 257, fn. 3 (1997) (finding no prejudice where opposing counsel had an opportunity to raise concerns about a proposed order in a hearing).
4. The Dock Defendants assert that they did not have adequate time to respond to Demetre's opposition.
5. However, instead of requesting additional time to respond, the Dock Defendants sent the Court a separate April 21, 2010 letter stating, "Your Honor's consideration of proposed Orders, submitted by the undersigned as counsel for the Beckmanns and Crowleys and counsel for Demetre seems appropriate now."

V. The Dock Defendants Make No Return to Demetre's Other Points

1. The Dock Defendants make no return to Demetre's point that the word "marshland" on the 1920 Plat does not necessarily mean marsh below the mean high water mark. See *State v. Murrell's Inlet Camp & Marina, Inc.*, 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972) (distinguishing low marsh from high marsh).
2. They make no return to Demetre's point that they cite nothing other than the word "marshland" for their argument that any highland must have accreted since the 1920 Plat was drawn.
3. The Dock Defendants make no return to Demetre's point that their argument that they are "riparian" owners and therefore benefited from any accretion is predicated on their assertion that the word "marshland" on the 1920 Plat means that there was "navigable water" adjacent to their lots.
4. They further make no return to Demetre's point that "marshland" does not mean "navigable water."
5. The Dock Defendants make no return to Demetre's point that all the evidence at trial was that there is highland between their lots and the Folly River. (Kennerty Topographic Survey, Pl.'s Trial Ex. "N;" Dock Defendants' Profile Drawings, Pl.'s Trial Ex. "E" and "AA").
6. They make no return to Demetre's point that in the documents they submitted with their dock permit applications, their "Profile Drawing" shows over 400 feet of highland in the area they labeled "marsh" on their "Plan View" drawing.
7. The Dock Defendants make no return to Demetre's point that the Court of Appeals April 21, 2009 Opinion found that there is

- highland between the Dock Defendants' lots and the Folly River.
(Court of Appeals April 21, 2009 Opinion, pp. 9 - 10).
8. They make no return to Demetre's point that their deeds neither reference East Indian Avenue nor the marsh, but instead describe their back lot lines as 150 feet from East Huron Avenue. (Pl. Trial Exs. "Q" and "R").
 9. The Dock Defendants make no return to Demetre's point that the 1920 Plat does not show East Indian Avenue adjacent to their lots, only an area with dotted lines showing a possible future extension of East Indian Avenue. (Pl.'s Trial Ex. "K").
 10. They make no return to Demetre's point that the Court of Appeals April 21, 2009 Opinion finds that Demetre's lots are shown on the 1965 Redraw. (Court of Appeals April 21, 2009 Opinion, p. 4).
 11. The Dock Defendants make no return to Demetre's point that the April 21, 2009 Opinion identifies the location of the subject lots as, "between the Crowleys' and Beckmanns' lots and the mean high water mark on lots 209 and 210 East Indian Avenue." (Court of Appeals April 21, 2009 Opinion, p. 9).
 12. They make no return to Demetre's point that the locations of lots 209 and 210 East Indian Avenue are identifiable from the 1920 Plat and their dimensions, their boundaries along the proposed extension of East Indian Avenue, and the location of lots 209 and 210 on the adjacent East Indian Avenue. (Pl.'s Trial Ex. "D").
 13. The Dock Defendants make no return to Demetre's point that his deed identifies the location of the lots by referencing the tax map number and the property descriptions in the will of Edward Seabrook the elder. (Pl.'s Trial Ex. "D").

- d. Regarding the Dock Defendants' lots, there is no evidence that the Bank released any property beyond the 70-feet-by-150-feet lots.
 - e. In 1942, the Bank foreclosed on the mortgage and the foreclosed property was sold to Demetre's predecessor in interest. (Pl.'s Trial Ex. "D").
 - f. Thus, the Bank did not release, and, in fact, it excluded the property riverward of the Dock Defendants' 150-feet-in-depth lots. Instead, that property was sold in foreclosure to Demetre's predecessor in interest.
 - g. The fact that the Bank's release of the Dock Defendants' lots was for lots only 70 feet by 150 feet in depth from East Huron Avenue is dispositive against their assertion that they were riparian owners and refutes any claim to the land riverward of the Dock Defendants' lots.
 - h. Rather, Demetre's predecessor was the riparian owner.
 - i. The Dock Defendants have presented no evidence of accretion after the 1920 Plat was drawn.
 - j. Regardless, Demetre's predecessor, as the riparian owner, would have obtained the benefit of any accretion, not the Dock Defendants.
17. The Dock Defendants make no return to Demetre's point that the lot price did not make title unmarketable and instead merely reflected the need for this litigation against them.
18. They make no return to Demetre's point that a quitclaim deed can convey good title. See *Vick v. SCDOT*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001).

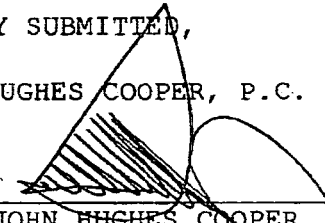
19. The Dock Defendants make no return to Demetre's point that encroachments do not prevent the conveyance of title. See 52 Am. Jur. Proof of Facts 3d 429 § 12 (discussing that a purchaser is bound to a purchase contract where he had full knowledge of defects, including encroachments).

Conclusion

The Dock Defendants' proposed order is fatally predicated on errors of law and fact.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

JOHN TOWNSEND COOPER, ESQUIRE

Federal Court ID 10172

South Carolina Bar 76087

1808 Middle Street

Post Office Box 395

Sullivan's Island, SC 29482

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF,

THE MILTON P. DEMETRE FAMILY

LIMITED PARTNERSHIP

Sullivan's Island, South Carolina

April 23, 2010

C E R T I F I C A T E O F S E R V I C E

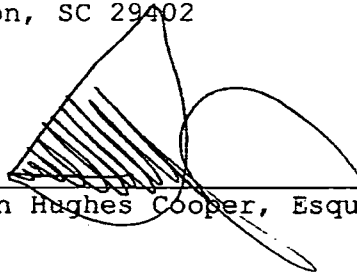
I hereby certify that on April 23, 2010, I served the foregoing Plaintiff's Reply to the Dock Defendants' Correspondence to the Court of April 21, 2010 via first class U.S. mail with sufficient postage affixed to opposing counsel as follows:

Jefferson D. Griffith, III
Richard L. Whitt
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, SC 29201

Stephanie P. McDonald, Esquire
Senn McDonald & Leinbach, LLC
3 Wesley Drive
Charleston, SC 29407

Otis Benjamin Peeples, Jr., Esquire
105 Wappoo Creek Drive, Ste. 1A
Charleston, SC 29412

Joseph S. Mendelsohn, Esquire
P.O. Box 250
Charleston, SC 29402



John Hughes Cooper, Esquire

FILED
2010 APR 23 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

[Intentionally Blank]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

The Milton P. Demetre)
Family Limited Partnership,)
)
Plaintiff,)

CIVIL ACTION NO. 2005-CP-10-4101

v.)

PLAINTIFF'S RULE 59(e) MOTION
TO ALTER OR AMEND THE
ORDER ON REMAND

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

FILED
2012 FEB -2 PM 1:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW Plaintiff and moves, pursuant to Rule 59(e), SCRCP, to
Alter or Amend this Court's Order on Remand filed January 13, 2012
("Order on Remand"). Plaintiff's counsel received notice of the Order
on Remand on January 23, 2012.

The Road Extends Only to the Northwest Corner of
Lot 205 East Huron Avenue

The Order on Remand states on page 1, "I ruled in tandem case No.
2002-CP-10-4880 (the "Road case") in an order filed March 7, 2007,
that title to the Indian Avenue roadway was vested in the City of
Folly Beach."

However, as the Order on Remand appears to acknowledge at other
points, on page 1, it should clarify that the March 7, 2007 "Road
Order" found that the City had ownership of the roadway only from its
intersection with Second Street to the northwest corner of Lot 205
East Huron Avenue, stating:

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

(March 7, 2007 Road Order).

The March 7, 2007 Road Order was affirmed by the South Carolina Court of Appeals in Unpublished Opinion # 2009-UP-029 (April 21, 2009), was not further appealed, and is law of the case. See ~~Charleston Lumber Co., Inc. v. Miller Housing Corp.~~, 338 S.C. 171, 525 S.E.2d 869 (2000).

In the April 21, 2009 Opinion, the Court of Appeals recognized that the City's claim to the roadway ended at the northwest corner of Lot 205 East Huron Avenue as defined by the marshland contour line demarked on the 1920 Plat, stating:

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.

(April 21, 2009 Court of Appeals Order, p. 3).

* * * *

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; and the Road is not included in the tax map.

(April 21, 2009 Court of Appeals Order, p. 7).

The Road Order Found that the Road Ends
Long Before the Defendants' Lots

As mentioned above, the March 7, 2007 Road Order, which was affirmed by the Court of Appeals, found that the road "disappears" approximately two hundred feet from the intersection of Second Street East and East Indian Avenue:

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

(March 7, 2007 Road Order, p. 5).

Thus, any finding suggesting that the road extends along the Beckmann and Crowley Defendants' lots conflicts with the above-cited finding in the Road Order, which was affirmed by the Court of Appeals.

The Court of Appeals Amended its Finding on the Road's Length

The first Court of Appeals Opinion dated January 14, 2009, found that Folly Beach owned East Indian Avenue riverward of the Defendants' lots. As set forth on the following page, the Substituted April 21, 2009 Opinion removed the finding that East Indian Avenue extended to the Defendants' lots:

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).

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) and removed the finding that East Indian Avenue extends to the Defendants' lots. (p. 9).

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).

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 201 East Indian Avenue. (Court of Appeals April 21, 2009 Opinion, p. 10).

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 Defendants' lots:

Original January 14, 2009
Opinion, p. 10

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

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 lots 209 and 2010 East Indian Avenue. (Emphasis added).

Thus, any finding that the road extends to the Defendants' lots conflicts with the Court of Appeals' Opinion.

The Court of Appeals' finding that the road extends only to the northwest corner of Lot 205 East Huron Avenue is the law of the case. See *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 388 S.C. 171, 525 S.E.2d 869 (2000).

Any finding that the road extends to the Defendants' lots conflicts with the Court of Appeals' mandate on remand. The rule of

mandate requires a trial court to act on the mandate of the appellate court, without variation. 5 Am. Jur.2d Appellate Review § 740 (2009).

As correctly noted in the Order on Remand, the Substituted April 21, 2009, Opinion remanded the case to determine ownership of the property between the Defendants' lots and the mean high water mark (as opposed to the property between the undeveloped roadway and the mean high water mark).

"MARSH LAND" can be "High Marsh" or "Low Marsh"

The Order on Remand states on page 1, "As to the lands extending to the Folly River, a review of the 1920 plat (Plat Book C 128) shows the subject property as "MARSH LAND."

However, the 1920 plat was a sales plat of lots on a section of Folly Island, not a topographical plat. The words "MARSH LAND" on the 1920 plat do not indicate what marshland was below the mean high water mark. The area labeled "MARSH LAND" on the 1920 plat also was not part of the area on the plat in which the lots were being subdivided.

South Carolina law recognizes both "high marsh" above the mean high water mark and "low marsh" below the mean high water mark. *State v. Murrell's Inlet Camp & Marina, Inc.*, 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972). The Order on Remand itself, in the final paragraph on page 2, recognizes the distinction between "high marsh" and "low marsh."

The 1920 plat was not surveyed or platted to show the developer's marshland ownership. It does not show the mean high water mark and is not relevant to a determination of where that mark is. See *Murrell's Inlet v. Camp & Marina*, 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972)

(affirming the exclusion from evidence of a plat which showed only the "high water mark" as opposed to the "mean high water mark.") The only topographical survey in evidence is the Kennerty survey, which shows that the subject property is above the mean high water mark. (Pl.'s Trial Ex. "N"). Defendants' own dock permit applications in 1987 and 1988, in their profile drawings, show over four-hundred (400) feet of highland between their property lines and the Folly River. (Pl.'s Trial Ex. "E," "AA," and "BB").

The Court of Appeals Opinion Reversed the Dock Order's Finding that the State is a Necessary Party

The Order on Remand states on page 1, "I concluded in my 2007 Order 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 be overcome by evidence which is clear and convincing."

However, low marsh is not in dispute in this case, just property above the mean high water mark (herein referred to as "highland" or "high marsh"). The State does not claim ownership to such property. See *Estate of Tenney v. South Carolina Dept. of Health and Environmental Control*, 393 S.C. 100, 712 S.E.2d 395 (2011). The Order on Remand fails to recognize that the Court of Appeals reversed the March 26, 2007 Dock Order's conclusion that the State was a necessary party.

The Order on Remand itself, on page 2, recognizes that there is high marsh in the subject lots. ("While I find that the plat prepared by Larry Kennerty dated October 17, 2005 (Plaintiff Ex. N) is quite

detailed and delineates both high marsh and low marsh in the description of the property . . .").

By remanding the case for a determination of the ownership of the property above the mean high water mark without requiring the State to be a party, the April 19, 2009 Court of Appeals Opinion reversed the March 26, 2007 Dock Order's finding that the State was a necessary party.

Folly Beach Corporation Took Title by Reference to the Tartus Map,
Not the 1920 Plat

The Order on Remand states on pages 2 - 3, "While I find the plat prepared by Larry Kennerty dated October 17, 2005 (Plaintiff's Ex. N) is quite detailed and delineates both high and low marsh in its description of the property, 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, Folly Beach Corporation did not take title by the 1920 plat. Rather, it took title in 1919, and its deed instead referenced the 1895 Tartus "Map of Folly Island," which includes the area of the subject lots and, in fact, includes all marshland. In the subject area, the 1919 deed bounds the property by the channel of the Folly River and includes all property within the Tartus Map's red line, including the subject property. (Pl.'s Ex. "D"). ("All those pieces or tracts of land . . . known collectively as 'Folly Island,' . . . being bound . . . on the West by the Channel of Folly River . . . and were 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 of Charleston County in Plat Book D. page 170.")

Likewise, Folly Beach Corporation's successor, Edward Seabrook, Sr., in 1943, took title by the same deed description, which bounds the property in the subject area by the channel of the Folly River and includes all property within the red line of the 1895 Tartus Map. (Pl.'s Trial Ex. "D"). The "MARSH LAND" shown on the 1920 Plat is included within this area.

High Marsh is Not Within the Public Trust

The Order on Remand, on page 2, describing *Estate of Tenney v. South Carolina Dept. of Health and Environmental Control*, 393 S.C. 100, 712 S.E.2d 395 (2011), states, "While this is not an island case, it does present the issue of highland contained within what was formerly marshland."

However, there is no evidence in the record that the subject highland was formerly contained within low marsh. Regardless, *Tenney* holds that the State does not claim land above the mean high water mark, even where it is surrounded by low marsh.

The Order on Remand, on page 2, cites *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 252 S.E.2d 133 (1979) for the proposition that lands lying between the usual high water line [mean high water mark] and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held in trust for public purposes.

record title to the highland. A quitclaim deed can convey good title.
See *Vick v. SCDOT*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001).

As Previously Determined by the Court of Appeals,
The State is Not a Necessary Party

The Order on Remand states, "In this court's original order denying title to Plaintiff, I ordered that the State of South Carolina should be made a party due to the question of title to the Marshland."

----- However, the original order was reversed by the Court of the Appeals and remanded for a determination of title without the State as a party, so the original order's conclusion that the State is a necessary party was reversed. (April 19, 2009 Opinion of the Court of Appeals) ("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.")

Nonetheless, the Order on Remand finds that the State is a necessary party to this action because, "high marsh" is contained within the area previously denoted as Marshland."

However, the South Carolina Supreme Court held in *Estate of Tenney v. South Carolina Dept. of Health and Environmental Control*, 393 S.C. 100, 712 S.E.2d 395 (2011), that the public trust doctrine extends only up to the mean high water mark.

There is no evidence that the subject property was formerly low marsh. Regardless, the public trust doctrine does not extend to former low marsh which, due to accretion, has formed highland. See *Tenney*. There is no evidence that the subject property was ever low

marsh, nor is there any evidence that the subject property was ever filled or altered.

The Order on Remand cites *Coburg Dairy, Inc. v. Lesser*, 318 S.C. 510, 458 S.E.2d 547 (1995), stating, "Also cited in the Order on Remand dated April 21, 2009 (Coburg II) I find the high marshland contained in the Kennerty plat was previously contained within the 'Marshland' as designated in the 1920 subdivision plat."

However, the proposition in *Coburg II* that the State claims highland islands within low marsh was abrogated by *Tenney*. Second, there is no evidence that the subject highland was "contained" within low marsh. Rather, as shown on the Kennerty Plat, it is attached to the highland of Folly Island. (Pl.'s Trial Ex. "N").

The Order on Remand states, "Accordingly, while the oldest diagram submitted to the court in this litigation was a 1895 engineer's 'Map of Folly Island,' this court concludes, based on *Query*, that the 1786 plat is the genesis for title to all marshland located on Folly Island - this issue has previously been decided in *Query* and is adverse to the position taken by either party in this litigation."

However, the plaintiff in *Query* claimed title to low marsh, not, as in the present case, highland. The Court of Appeals in *Query* confirmed title in the State to the property only below the mean high water mark of the Folly River.

Defendants Stipulated to Plaintiff's Record Title

The Order on Remand, in its "Summary of the Findings of Facts," states, " . . . 2. On the 1920 plat the so-called Demetre 'lots' are not shown and therefore do not exist." However, first, the Defendants stipulated to Plaintiff's record title, which is dispositive. The court will not go beyond an agreed stipulation to determine the facts. *McCrea v. City of Georgetown*, 384 S.C. 328, 618 S.E.2d 918 (Ct. App. 2009). Stipulations are binding on those who make them. Rule 43(k), SCRPC; *Griffith v. Griffith*, 332 S.C. 328, 681 S.E.2d 918 (Ct. App. 2009).

Second, Plaintiff proved his chain of title at trial. He placed his chain of title into evidence. (Pl.'s Ex. "D"). He also had an attorney, Lynda J. Sullivan, who practiced in the area of real property, testify regarding his chain of title.

Demetre's deeds (Pl.'s Ex. "D") reference the lots and undeveloped roadway shown in the 1965 redraw of the 1920 plat recorded at the same book and page as the original 1920 plat. The lots are further described in the deed by metes and bounds in reference to that plat. The grantor's intent to convey the property is clear. In the construction of a deed, unless the intention contravenes some well-settled rule of law or public policy, the intention of the grantor must be ascertained and effectuated. *Wayburn v. Smith*, 270 S.C. 38, 239 S.E.2d 890 (1977).

Extrinsic Evidence, If Needed, Identifies the Lots

Plaintiff'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, 87 S.E.2d 40 (1995). Here, the 1965 redraw of the 1920 plat shows the lots. As noted in the April 29, 2009 Court of Appeals Opinion, "All three plats [the 1920 plat, the 1965 plat, and the 1968 plat] share the same book and page number at the RMC Office." Further, the Kennerty Topographical Survey precisely identifies the locations of the lots with their exact measurements. (Pl.'s Trial Ex. "N").

The Order on Remand states in the "SUMMARY OF THE FINDINGS OF FACT," at page 5 " . . . 5. Any highland, which is to the riverward of the Beckmann and Crowley lots, was contained within the designation of "Marshland in the 1920 plat of Folly Island." However, the 1920 plat did not designate any of the undeveloped roadway as below the mean high water mark, and the roadway is clearly above the mean high water mark as shown on the Kennerty Topographic Survey. (Pl.'s Trial Ex. "N").

Any Accretion Benefited Plaintiff or His Predecessors

There is no evidence in the record that accretion occurred since the 1920 plat was drawn. Defendants did not argue that at trial, did not submit any evidence of accretion at trial, and raised the idea for the first time on appeal. However, any accretion would have benefited Plaintiff or his predecessors in interest, since accretion inures to

the benefit of the highland owner. See *Estate of Tenney v. South Carolina Dept. of Health and Environmental Control*, 393 S.C. 100, 712 S.E.2d 395 (2011).

Defendants' Deeds Do Not Reference East Indian Avenue

The Order on Remand states under, "SUMMARY OF THE FINDINGS OF FACT," on page 5, "The Beckman and Crowley deeds show East Indian Avenue as their riverward boundary."---However, the Beckmann and Crowley deeds do not reference East Indian Avenue, and the 1920 plat which the Beckmann and Crowley deeds reference shows only dotted lines for a possible future extension of East Indian Avenue on their riverward boundary. ("All that certain lot of land . . . measuring on said East Huron Avenue, 70 feet by 150 in depth, and having such location, shape, and bounds as are shown on said plat")(Pl.'s Trial Ex. "Q" and "R").

All Property at Issue is Above the Mean High Water Mark

The Order on Remand states under, "SUMMARY OF THE FINDINGS OF FACT," on page 5, ". . . 6. The State of South Carolina is the owner of the land seaward of the Defendants' lots." First, the public trust doctrine does not extend to land above the mean high water mark. *Estate of Tenney v. South Carolina Dept. of Health and Environmental Control*, 393 S.C. 100, 712 S.E.2d 395 (2011). All of the land at issue in this case, as shown on the Kennerty Topographic Survey, including within the undeveloped roadway and Plaintiff's lots 209 and 210, is above the mean high water mark. Second, the State of South

Carolina is not a party to this action. The public trust doctrine does not extent to land above the mean high water mark, and the State does not have title to any land between the Beckmann and Crowley's lots and the mean high water mark of the Folly River.

Declaration that State Holds Title Exceeds Mandate on Remand

The mandate on remand was limited to a determination of whether Plaintiff could quiet title, not a determination of whether the State has title. The rule of mandate requires a trial court to act on the mandate of the appellate court, without variation. 5 Am. Jur. 2d Appellate Review § 740 (2009). The State is not a party, and there is no jurisdiction to rule on the State's title.

Reversal of Defendants' Affirmative Defenses is the Law of the Case

The Order on Remand states on page 5, "Plaintiff's counsel argued during the Hearing in this matter that Affirmative Defenses were not available to Respondents, but the Court disagrees."

However, the original March 26, 2007 Dock Order ruled for the Defendants on each of their affirmative defenses, the Court of Appeals Opinion reversed that order. The Beckmanns and Crowleys did not petition for reconsideration or for certiorari, so the Court of Appeals' Opinion became the law of the case. See *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000).

The Order on Remand rules against Defendants on each of their affirmative defenses but cites no reasons for doing so. Demetre cited the following authorities at trial and on appeal:

- a. 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).
- b. 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).
- c. Demetre's predecessor's properly recorded record title precluded an Estoppel defense. *Boyd v. Bellsouth Telegraph Co., Inc.*, 369 S.C. 410, 633 S.E.2d 136 (2006).
- d. Lack of belief of ownership precluded the Dock Defendants from claiming title by equitable estoppel. See *Southern Railway-Carolina Div. v. Horne Inv. Co.*, 233 S.C. 440, 105 S.E.2d 527 (1958).
- e. Laches does not apply because the Dock Defendants suffered no prejudice by having 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).
- f. Ripeness does not apply because the State is not a necessary party to determination of ownership and quiet title to the property above the mean high water mark. See *McQueen v. South Carolina Coastal Council*, 154 S.C. 142, 580 S.E.2d 116 (2003).

- g. 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).
- h. Unclean hands does not apply to a property purchaser's attempt to remove encroachments, such as the subject docks. See 52 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.

Defendants Built the Docks without the Required Notice

Despite finding against each of Defendants' legal and equitable affirmative defenses, the Order on Remand states, "I do find that the Defendants' docks have been there for many years prior to Plaintiff's purported purchase of the property and so Plaintiff's purchase was done with full knowledge and understanding that the Defendants had a vested property interest, granted under license from the state, to the docks which run from the front of their property, commencing in the Indian Avenue, and running to the Folly River."

However, the Defendants obtained their dock permits without providing the statutorily required notice to Plaintiff's predecessor in interest. Rather than a vested property interest, a dock permit is a revocable license. The permit applications themselves, signed by the Defendants, stated in part, "7. That this permit does not convey, expressly or impliedly, any property rights in real estate or material or any exclusive privileges; nor does it authorize the permittee to

alienate, diminish, or infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use." (Pl.'s Trial Ex. "AA" and "BB").

A former OCRM dock permit administrator who served in that position during the timeframe Defendants applied for their docks testified in this case that it was fair to say that the reason Defendants' permits were issued was ~~that they did not disclose the~~ owner of the highland whose property their docks would cross. (Depo. of Stephen P. Moore, p. 40, lines 17 - 22, admitted into evidence at trial without objection).

Defendants' dock permit applications in 1987 and 1988, in their profile drawings, show highland between their lots and the Folly River over which their docks would cross (Pl. Tr. Ex. "E"), so they knew or should have known that there was an adjacent landowner to notice with their dock permit applications. The adjacent landowner was Plaintiff's predecessor in interest, whose title was properly recorded in the Charleston County R.M.C. office and was identified by a separate tax map number.

The Defendants were required to obtain consent from Seabrook to place their docks across his property. *Lowcountry Open Land Trust v. Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) (An owner whose property abuts tidal waters possesses no littoral right to wharf out to a navigable stream, and therefore must obtain permission from the underlying landowner before erecting a dock, pier or comparable structure.)

Further, S.C. Code Ann. § 48-39-140(B) required Defendants, when they submitted their applications for dock permits, to file a copy of the instrument by which they claimed ownership or to file a document evidencing permission of the property owner. It also required them to list adjoining landowners or provide a sworn affidavit that with due diligence such information was not ascertainable. However, Defendants failed to comply with these requirements.

Thus, Defendants obtained ~~revocable dock licenses~~ by failing to give the statutorily required notice to the landowner over whose property their docks would cross.

Conclusion

The Order on Remand should be altered or amended to conclude that Plaintiff has ownership and quiet title to all property between lots 209 and 210 East Huron Avenue and the mean high water mark of the Folly River.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER P.C.

By:

JOHN HUGHES COOPER, ESQUIRE
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
JOHN TOWNSEND COOPER, ESQUIRE
Federal Court ID 10172
South Carolina Bar 76087
1808 Middle Street
Post Office Box 395
Sullivan's Island, SC 29482
shiplaw@jhcooper.com

ATTORNEYS FOR PLAINTIFF,
THE MILTON P. DEMETRE
FAMILY LIMITED PARTNERSHIP

CAIN DENNY, ESQUIRE
CAIN DENNY, P.A.
P.O. Box 1205
Charleston, S.C. 29402
(843) 478-0692
cain.denny@gmail.com

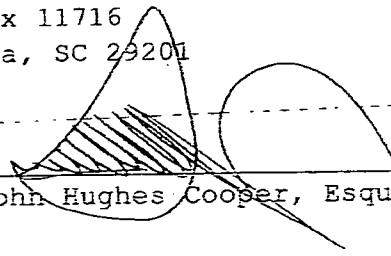
Sullivan's Island, South Carolina

February 2, 2012

C E R T I F I C A T E O F S E R V I C E

I hereby certify that on February 2, 2012, the foregoing Plaintiff's Rule 59(e) Motion to Alter or Amend was served by first class mail on opposing counsel as follows:

Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, SC 29201


John Hughes Cooper, Esquire

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2012 FEB -2 PM 1:50

FILED

[Intentionally Blank]

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.

NOTICE OF APPEAL

The Milton P. Demetre Family Limited Partnership appeals the Order on Remand of the Honorable Mikell R. Scarborough filed January 13, 2012 and the Order Denying Plaintiff's Rule 59(e) Motion for Relief of the Honorable Mikell R. Scarborough filed April 19, 2012.

Regarding the Order Denying Plaintiff's Rule 59(e) Motion for Relief filed April 19, 2012, the Charleston County Clerk of Court mailed Notice of Entry of Judgment on May 3, 2012, and Appellant's counsel received that Notice on May 7, 2012.

May 31, 2012

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant

Cain Denny, P.A.

By: Cain Denny
Cain Denny, Esquire
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

[Intentionally Blank]

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.

APPELLANT'S MOTION TO ACCEPT DESIGNATION OF MATTER
AND INITIAL BRIEF OUT OF TIME

Appellant respectfully moves this Honorable Court to accept Appellant's Designation of Matter and Initial Brief out of time. Appellant's counsel received the transcript of the hearing on remand on July 23, 2012.¹ Appellant timely filed his Initial Brief and Proof of Service by first class mail on August 22, 2012; however, Appellant's Initial Brief was deficient in that Appellant's below-signed counsel failed to accompany it with a Designation of Matter.²

¹ The transcript was originally mailed to Appellant's counsel's former address. When this was discovered, the court reporter immediately mailed it to Appellant's counsel's current address and e-mailed a digital copy. Appellant's counsel received the digital copy by e-mail on July 23, 2012.

² This case is being appealed for a second time. Appellant's Initial Brief cites to the original Record on Appeal and inadvertently is not accompanied by a Designation of Matter.

Appellant's counsel recognizes that the South Carolina Rules are not mere technicalities but provide an orderly mechanism to guide appeals. Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). (Requiring correction of deficiencies in Initial Brief). In response to the Clerk's September 13, 2012 letter, Appellant seeks to correct the deficiency within ten (10) days of that letter by herewith filing a Designation of Matter. Appellant requests that his Designation of Matter and Initial Brief be accepted out of time.

September 21, 2012

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant

Cain Denny, P.A.

By: Cain Denny
Cain Denny, Esquire
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

 **COPY**

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

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.

RESPONDENTS' MOTION FOR EXTENSION OF TIME

Jefferson D. Griffith, III
Richard L. Whitt
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, South Carolina 29211
Attorneys for Respondents

John Hughes Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, South Carolina 29464
Attorney for Appellants

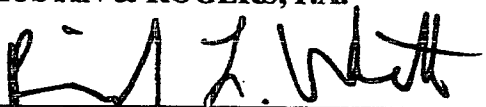
MOTION

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for the Respondents, files this Motion for an extension of the deadline for serving and filing the Respondents' Initial Brief and Designation of Matter to be included in the Record on Appeal. Pursuant to **this Court's Order, filed November 15, 2012**, Respondents' Initial Brief and Designation of Matter, are **due to be filed by Respondents on November 30, 2012**.

Counsel for Respondents have another Initial Brief and Designation of Matter due on November 30, 2012, in Appellate Case No.: 2012-209587, "Chris Phillips and Chris Phillips Builder, Inc., vs. Frank Ferez and Suzie Ferez", and Respondents' Counsel will be unable to complete these documents by the November 30, 2012 deadline. Accordingly, Counsel respectfully **moves for a fifteen-day extension** in which to file the Respondents' Initial Brief and Designation of Matter, **to and including December 15, 2012**.

Respectfully Submitted,
AUSTIN & ROGERS, P.A.

By:


Richard L. Whitt
Jefferson D. Griffith, III
508 Hampton Street, Suite 300
P.O. Box 15907
Columbia, South Carolina 29211
Phone: (803) 256-4000
Fax: (803) 252-3679
Attorneys for Respondents

Columbia, South Carolina
November 19, 2012

JOHN HUGHES COOPER, P.C.

Attorney at Law § Proctor in Admiralty

Telephone 843-883-9099
Toll Free 800-883-9099

Fax 843-883-9335
E-Mail shiplaw@jhcooper.com
Website www.jhcooper.com

September 12, 2011

The Honorable Mikell R. Scarborough
Charleston County, Master-in-Equity
100 Broad Street, Suite 266
Charleston, SC 29401

Re: The Milton P. Demetre Family Limited Partnership vs.
Harry Beckmann, III et al
Civil Action No.: 2005-CP-10-4101

Dear Judge Scarborough:

The Plaintiff respectfully objects to Mr. Griffith's suggestion that the Court consider admitting additional evidence on remand. After a case has been remanded by an appellate court, a party cannot submit additional evidence unless the appellate court has given leave to do so. See *Piedmont Natural Gas*, 301 S.C. 50, 54, 389 S.E.2d 655, 657 (1990); *Parker v. South Carolina Public Service Commission*, 288 S.C. 304, 307, 342 S.E.2d 403, 405 (1986).

The rationale for this rule is straightforward: "no party may afford itself two bites at the apple." *Parker*, 288 S.C. at 307, 342 S.E.2d at 405.

Here, the Court of Appeals did not give leave for additional evidence to be submitted on remand.

Best regards.

Very truly yours,

John Hughes Cooper
John Hughes Cooper

cc: Jefferson D. Griffith, III, Esquire
Mr. Milton P. Demetre

[Intentionally Blank]



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 13, 2012

Mr. Cain Denny
PO Box 6
Sullivans Island SC 29482

Re: The Milton P. Demetre Family Ltd. Partnership v. Harry Beckmann, III.
Appellate Case No. 2012-212136

Dear Counsel:

Upon reviewing your appellant's initial brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The initial brief is not accompanied by a designation of matter to be included in the record on appeal.
- The date that you received the transcript has not been provided.
- A motion requesting that the Court accept your designation of matter and initial brief out of time.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: John Hughes Cooper
John Townsend Cooper
Jeff D. Griffith, III
Richard Lee Whitt

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

The Milton P. Demetre)
Family Limited Partnership,)
)
Plaintiff,)

vs.)

CIVIL ACTION NO. 2005-CP-10-4101

Harry Beckmann, III, et al,)
)
Defendants.)

FINAL ORDER

The Milton P. Demetre)
Family Limited Partnership,)
)
Plaintiff,)

vs.)

CIVIL ACTION NO. 2002-CP-10-4880

City of Folly Beach,)
)
Defendant,)

and)

Emily S. Brown et al.,)
)
Intervenors.)

This matter was tried before this court on December 12th and 13th, 2006. The “Dock Case” now comes before the court on remand from the South Carolina Court of Appeals Substituted Opinion of April 21, 2009. Having considered the submissions of counsel and the evidence in the record, this court makes the following findings of fact and conclusions of law.

Findings of Fact

1. Plaintiff Milton P. Demetre Family Limited Partnership is referred to herein as “Demetre.”
2. Defendants 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 are referred to herein as the “Dock Defendants.”
3. At trial, the Dock Defendants stipulated to Demetre’s record title to the subject property. (Tr. p. 6, lines 4 – 6).
4. Independently, Demetre proved his chain of title at trial. (Trial Tr. p. 48, lines 1 – 5; p. 50, lines 21 – 22; p. 54, lines 17 – 24).
5. Demetre and his predecessor paid property taxes on the subject property. The Dock Defendants did not.
6. The Dock Defendants entered the subject property permissively with dock permits. Their sole use of the property was pursuant to their dock *permits*, which was, by definition, a permissive use.
7. The Dock Defendants admitted that at the time they obtained their dock permits through the time of this action, they believed that the State owned the subject property:

Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of South Carolina owned from your property line out to the Folly River?

A. That’s correct.

Q. And that’s still your understanding?

A. It is.

(Beckmann Depo. p. 17, lines 10 – 17).¹

¹ Demetre placed the transcripts of the Dock Defendants’ depositions into evidence at trial without objection. (Trial Tr. p. 346, line 4 – 8).

Conclusions of Law

Affirmative Defenses Reversed

1. The Dock Defendants asserted the following affirmative defenses: Statute of Limitations for Nuisance, Statute of Limitations for Trespass, Ripeness, Estoppel, Laches, Staleness of Demand, and Unclean Hands (“Affirmative Defenses”).
2. The Master’s Final Decision and Order filed March 26, 2007 (“Dock Order”) dismissed Demetre’s claims based on the Dock Defendants’ Affirmative Defenses. (Dock Order, p. 19).
3. Nonetheless, the Court of Appeals reversed the Dock Order:

. . . However, we reverse the master’s March 26, 2007 Order and remand for findings in accordance with this Opinion.

(Court of Appeals’ April 21, 2009 Substituted Opinion, p. 10).
4. Thus, the South Carolina Court of Appeals reversed the Dock Order regarding the Dock Defendants’ Affirmative Defenses.
5. It was incumbent upon the Dock Defendants to seek a rehearing and/or a petition to the South Carolina Supreme Court for a writ of certiorari or be bound by the Court of Appeals’ decision as the law of the case. *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000).
6. The Dock Defendants did not seek a rehearing or petition for certiorari, and thus, they are bound by the Court of Appeals’ reversal of the Dock Order’s dismissal of Demetre’s claims. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997)(unappealed ruling is law of the case); *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)(an unchallenged ruling, “right or wrong,” is the law of the case and requires affirmance”).

7. The Court of Appeals did not remand the case for further consideration regarding the Dock Defendant's Affirmative Defenses.
8. The only remanded matters are Demetre's request for declaration of ownership and to quiet title to the highland between Beckmann's and Crowley's lots 209 and 210 East Huron Avenue and the mean high water mark of the Folly River:

Demetre sought a declaration that he owns all the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet any defects in his 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 . . . 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.

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

(Court of Appeals' April 21, 2009 Substituted Opinion, pp. 9 – 10).

9. Because the Court of Appeals reversed the Dock Order and the Dock Defendants did not appeal that reversal, the Dock Defendants' Affirmative Defenses are not before the Court on remand.
10. In other words, there is no jurisdiction on remand to rehear the Dock Defendants' Affirmative Defenses.
11. The Court of Appeals cannot remand to the trial Court issues which the Dock Defendants did not preserve on appeal.
12. For these reasons, the Dock Defendants have not preserved their Affirmative Defenses.

Adverse Possession Claims Not Preserved

1. The Dock Defendants asserted Adverse Possession claims, including Forty Year and Twenty Year Presumption of Grant claims (herein “Adverse Possession Claims”).
2. Only Demetre filed a Rule 59(e) Motion objecting to the Dock Order’s ruling that title could not be determined to the subject property, and only Demetre filed a Rule 59(e) Motion requesting a declaration that he had ownership and quiet title to the subject property.
3. Also, only Demetre appealed that ruling.
4. One party may not benefit or bootstrap from another party’s objection or challenge. *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888 (2006).
5. The Dock Order did not rule for the Dock Defendants on their Adverse Possession claims. (Dock Order, pp. 17 – 18).
6. It was incumbent upon the Dock Defendants to file a Rule 59(e) motion and/or to appeal to preserve their Adverse Possession claims, but they did not do so.
7. A party must file a motion to alter or amend when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Rule 59(e), SCRPC; *Chastain v. Hiltabide*, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009).
8. South Carolina appellate courts do not recognize the “plain error rule” under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 722 (2004).
9. Where a party raises an issue, the trial court fails to rule upon the issue, and the party fails to raise the court’s omission by way of Rule 59 motion, the issue is not ruled upon, and

therefore, not preserved for appeal. *Great Games, Inc. v. South Carolina Dep't Revenue*, 339 S.C. 79, 529 S.E.2d 6 (2000).

10. Here, the Dock Defendants neither filed a Rule 59(e) Motion nor appealed the Dock Order's failure to grant their Adverse Possession claims.
11. Because the Dock Defendants failed to file a Rule 59(e) Motion, they failed to preserve their Adverse Possession claims.
12. The Dock Defendants acknowledged on appeal that the Dock Order did not rule on their adverse possession claims:

The only defense which the Master did not find applicable was the defense of adverse possession which the Master did not rule on because . . .

(Respondent's Return to Appellant's Petition for Rehearing, p. 1).

13. If an issue is not strictly ruled upon in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appellate review. *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888 (Ct. App. 2006).
14. Because the Dock Defendants made no post-trial motion, and, independently, because they did not appeal the Dock Order's failure to grant their Adverse Possession claims, they did not preserve those claims.
15. The Court of Appeals cannot remand to the trial Court issues which were not preserved on appeal.
16. Thus, the Dock Defendants' Adverse Possession Claims are not before the Court on remand.
17. The rule of mandate requires the trial court to act on the mandate of an appellate court, without variation. 5 Am. Jur. 2d Appellate Review § 740 (2009).

18. Under the mandate rule, a lower court cannot give any other or further relief beyond the scope of the mandate. 5 Am. Jur. 2d Appellate Review § 740 (2009).
19. Any proceedings on remand which are contrary to the directions contained in the mandate from the appellate court may be considered null and void. 5 Am. Jur. 2d Appellate Review § 740 (2009).
20. There is no jurisdiction on remand to hear the Dock Defendants' Adverse Possession Claims.

The Dock Defendants Stipulated to Demetre's Record Title.

1. At trial, the Dock Defendants stipulated to Demetre's record title. (Tr. p. 6, lines 4 – 6).
2. A stipulation on the record is binding. Rule 43(k), SCRCP.
3. A "stipulation" is an agreement, admission, or concession made in judicial proceedings by the parties thereto or their attorneys, and stipulations are binding upon those who make them. *Griffith v. Griffith*, 332 S.C. 620, 506 S.E.2d 526 (Ct. App. 1998).
4. When counsel enter into an agreed stipulation of facts as a basis for a decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided. *McCrea v. City of Georgetown*, 384 S.C. 328, 681 S.E.2d 918 (Ct. App. 2009).
5. Independently, Demetre proved his chain of title at trial. (Trial Tr. p. 48, lines 1 – 5; p. 50, lines 21 – 22; p. 54, lines 17 – 24).
6. As discussed above, while the Master's Dock Order found for the Dock Defendants on their affirmative defenses, the Order of the Court of Appeals reversed the Dock Order.
7. That reversal is a final, unappealed ruling.

8. As discussed above, the trial court did not grant the Dock Defendants' Adverse Possession Claims, and the Dock Defendants did not file a Rule 59(e) Motion or appeal.
9. Thus, the Dock Defendants' Adverse Possession Claims are not preserved.
10. Each of the defenses the Dock Defendants asserted at trial were either not preserved through appeal or reversed by the Court of Appeals and not further appealed.
11. At trial, the Dock Defendants stipulated to Demetre's record title and have no remaining defenses to it.
12. Based on the Dock Defendants' stipulation to Demetre's record title, and, independently, Demetre's proof of his chain of title at trial, Demetre has ownership and quiet title to the subject property.

Bases for Reversal of Affirmative Defenses

1. As discussed above, the Court of Appeals reversed the Dock Order's finding for the Dock Defendants on their Affirmative Defenses.
2. Demetre cited the following authorities against those Affirmative Defenses:
 - a. 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).
 - b. 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).

- c. Demetre's predecessor's properly recorded record title precluded an Estoppel defense. *Boyd v. Bellsouth Telegraph Co., Inc.*, 369 S.C. 410, 633 S.E.2d 136 (2006).
- d. Lack of belief of ownership precluded the Dock Defendants from claiming title by equitable estoppel. *See Southern Railway-Carolina Div. v. Horne Inv. Co.*, 233 S.C. 440, 105 S.E.2d 527 (1958).
- e. Laches does not apply because the Dock Defendants suffered no prejudice by having 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).
- f. Ripeness does not apply because the State is not a necessary party to determination of ownership and quiet title to the property above the mean high water mark. *See McQueen v. South Carolina Coastal Council*, 154 S.C. 142, 580 S.E.2d 116 (2003).
- g. 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).
- h. Unclean hands does not apply to a property purchaser's attempt to remove encroachments, such as the subject docks. *See* 52 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.

3. These authorities preclude the Dock Defendants' Affirmative Defenses.
4. After consideration of the Dock Order's granting of the Dock Defendants' Affirmative Defenses, the Court of Appeals reversed the Dock Order.
5. The Dock Defendants did not appeal that reversal.

Permissive Entry Precluded Adverse Possession

1. The Dock Defendants' permissive entry onto the property precluded Adverse Possession.
2. The Dock Defendants submitted permit applications and obtained permits from the State through the Office of Coastal Resource Management to build their docks.
3. By definition, permits are permissive and revocable licenses.
4. *Black's Law Dictionary* defines "permit" as, "A certificate evidencing permission; a license . . ." *Black's Law Dictionary, Ninth Edition*, p. 1255 (2009).
5. *Black's* defines "license" as, "A permission, usu. revocable, to commit some act that would otherwise be unlawful, esp., an agreement (not amounting to a lease or profit a pendre) that is lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal, such as hunting game." *Black's Law Dictionary, Ninth Edition*, p. 1002 (2009).
6. *Black's* Defines "revocable" as, "Capable of being cancelled or withdrawn <a revocable transfer>." *Black's Law Dictionary, Ninth Edition*, p. 1435 (2009).
7. The Dock Defendants' building docks with dock permits from the State was a permissive use, not a hostile use.
8. Adverse Possession requires hostility toward the true owner and the whole world. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961).

9. Adverse possession requires a claimant to prove possession was hostile from its inception. *Lynch v. Lynch*, 236 S.C. 612, 619, 115 S.E.2d 301, 304-5 (1960) (Among other elements that are necessary for an adverse claimant to prove is that any possession was hostile from its inception.); *Bruson v. Sport*, 239 S.C. 58, 121 S.E.2d 294 (1961)(Where one enters into possession of land, recognizing rights of others therein, he cannot make his possession adverse without either giving notice of design to the owner or doing some act indicative of adverse possession); *Weston v. Morgan*, 162 S.C. 177, 160 S.E.2d 177 (1931) (Adverse possession must be hostile from the beginning).
10. To invoke adverse possession, possession must be hostile and not permissive. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986) (Free use of property for 30 years or more, without paying rent or any taxes, by a former purchaser of the property, who failed to tender the balance of purchase price within 30 days of contract date, as required by contract of sale and, thus, had no legal right to the property under that contract of sale, was permissive and did not give rise to equitable interest in the property, where former purchaser knew he did not have legal title to the property and was trying to get the deed from the vendor).
11. Permissive entry is not hostile. 8 S.C. Jur. Adverse Possession § 21 (2010).
12. Possession without hostility affords no basis for title by adverse possession however long continued, or exclusive in character. 2 C.J.S. Adverse Possession § 64:
13. To be hostile, the possession must be with intent to claim and hold the land against the true owner and the whole world. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961).
14. Dock Defendant Harry Beckmann testified in his deposition, which was entered into the trial record:

Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of South Carolina owned from your property line out to the Folly River?

A. That's correct.

Q. And that's still your understanding?

A. It is.

(Beckmann Depo. p. 17, lines 10 – 17).

15. At trial, Mr. Beckmann again admitted that he did not claim ownership:

Q And so up until you got some paperwork from Mr. Demetre, you assumed everything from your property line on out toward the Folly River was belonging to the State of South Carolina?

A I had maintained the property.

Q But you assumed that it was owned by the State of South Carolina, and that you had a dock permit?

A That is what I said in my deposition.

Q Okay. And when you submitted your application to the South Carolina Coastal Council, and you certified what property that you owned or controlled, you gave a legal description. And the only thing you claimed to own on the property was within the bounds of your lot 209?

A That's correct. That's true.

(Trial Tr. p. 312, line 24 to p. 313, line 24).

16. Likewise, Annie Ruth Croweley testified that when she and her late husband applied for their dock permits, they claimed no ownership beyond lot 210 East Huron Avenue. (Trial Tr. p. 337, line 22 – p. 338, line 23).

17. Further, the Dock Defendants admitted on appeal that they believed that the State owned the subject property:

First, the most compelling evidence of record is testimony from all of the Respondents Beckmann and Crowley, at deposition and at trial, that they believed that the property beyond their property was the marsh and that the State owned it.

(Respondents' Return to Appellant's Petition for Rehearing, p. 4).

18. The Dock Defendants' belief that the State owned the property is dispositive against any adverse possession claim.
19. For adverse possession, not only must possession be without subservience to, or recognition of, the true owner, but it must be hostile against the whole world. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961).
20. Permissive possession cannot avail against paper title. *Carr v. Mouzon*, 86 S.C. 461, 68 S.E. 661 (1910) (Presumption of the acquisition of title by deed or grant arises from adverse possession for 20 years, and cannot arise from permissive possession however long continued).
21. One who enters land under permission from the owner cannot acquire title by adverse possession unless a clear and positive disclaimer of the title under which entry was made is brought home to the owner. 8 S.C. Jur. Adverse Possession § 21 (2010); *Young v. Nix*, 286 S.C. 134, 322 S.E.2d 733 (Ct. App. 1985)(Farmer's use of land for more than 40 years was permissive and not hostile, precluding farmer's acquisition of title to farm land by adverse possession, where farmer's father obtained permission to use the land from the record titleholder and farmer subsequently farmed and paid taxes on the land for more than 40 years without further communication to subsequent titleholders of any disclaimer of their title).
22. Possession does not give currency to statute or prescriptive period, or raise a duty on owner to assert rights against one in possession unless possession is adverse. *Brunson v. Sports*, 239 S.C. 58, 121 S.E.2d 294 (1961)(Individual's possession as trustee for those entitled to estate of interest could not be adverse to them without open disavowal of trust,

and where there was no evidence of any hostile act or declaration on her part there was no adverse possession).

23. The Opinion of the Court of Appeals affirmed the Master's finding that when the Dock Defendants applied for their dock permits, they believed that the State owned the land:

Demetre sought a declaration that he owns all the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet any defects in the 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. (Emphasis added).

(Court of Appeals Substituted April 21, 2009 Opinion, p. 9).

24. This language from the Court of Appeals Substituted April 21, 2009 Opinion reflects the deposition testimony entered into the trial record:

Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of south Carolina owned from your property line out to the Folly River?

A. That's correct.

Q. And that's still your understanding?

A. It is.

(Beckmann Depo. p. 17, lines 10 – 17).

25. Here, the Dock Defendants entered permissively to build docks.
26. They made no other use of the property.²
27. When the use of property has been by permission or under some right or authority derived from the owner, adverse possession does not commence until such permission or

² The Dock Defendants assert they excluded trespassers and cleared driftwood, but such acts would have been consistent with permissive dock use. Possession alone, without hostility, is insufficient for adverse possession. *See Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986).

authority has been repudiated and renounced and the possessor thereafter has assumed the attitude of hostility. 68 Am. Jur. Proof of Facts 3d 239 (2009).

28. The Dock Defendants never repudiated or renounced their initial permissive use of the property for docks under State-issued dock permits.
29. Absent some clear, positive and unequivocal subsequent hostile act, one who enters permissively cannot later claim adverse possession. *Brunson v. Sports*, 239 S.C. 58, 121 S.E.2d 294 (1961); *Weston v. Morgan*, 162 S.C. 177, 160 S.E.2d 177 (1931).
30. Here, the Dock Defendants entered permissively to build docks and made no subsequent hostile use or act:

Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of south Carolina owned from your property line out to the Folly River?

A. That's correct.

Q. And that's still your understanding?

A. It is.

(Beckmann Depo. p. 17, lines 10 – 17).

Dock Defendants Signed Conditions Acknowledging
That They Made No Claim to Property Rights

1. The Dock Defendants signed the below numbered conditions to accept their dock permits, acknowledging that the permits gave them no property rights:

5. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. The permit authorizes no invasion of private property or rights in property . . .

* * * *

7. That this permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein .

8. That this permit does not convey, expressly or impliedly, any property rights in real estate or 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; nor shall this permit be interpreted as appropriating public properties for private use.

* * * *

10. The authorization for activities or structures herein shall constitute a revocable license.

* * * *

19. . . PERMITTEE'S ATTENTION IS DIRECTED TO [the above] GENERAL CONDITIONS NUMBERS . . . AND EIGHT (8) . . .

(Plaintiff's Exhibit BB, Dock Permit General Conditions).

2. The Dock Defendants signed and accepted these conditions.

Dock Defendants' Sworn Documents Show
They Entered Permissively

1. Further, the Dock Defendants submitted the following documents with their dock permit applications showing they did not claim ownership of the subject property:

a. The Dock Defendants each submitted a "Profile of Mud Line Across Marsh" ("Profile Drawing") showing 400 feet of highland above the mean high water mark beyond their respective property lines, but they did not assert ownership of this highland. (Plaintiff's Exhibit E, Trial Tr. p. 307, line 10 – p. 308, line 15; p. 312, lines 16 - 23).

- b. The Dock Defendants each submitted an “Affidavit of Ownership or Control” swearing ownership respectively only to their Lots 209 and 210, not the subject property. ((Trial Tr. p. 337, line 22 – p. 338, line 23).
 - c. The Dock Defendants submitted deeds showing ownership only 150 feet toward the Folly River from East Huron Avenue and not the 400 feet of highland beyond their property lines shown on their Profile drawings. (Trial Tr. p. 337, line 22 – p. 338, line 23).
2. Thus, the Dock Defendants’ own sworn statements showed that did not claim ownership of the subject property.

The Dock Defendants’ Argument that they Stipulated Only to Record Title

1. The Dock Defendants made various arguments to the Court of Appeals, none of which the Court of Appeals accepted.
2. The Dock Defendants argued to the Court of Appeals that they stipulated only that Demetre has record title, not good title. (Respondents’ Return to Appellant’s Petition for Rehearing, p. 1).
3. However, the Dock Defendants stipulation to Demetre’s record title now equates to a stipulation to good title because the Dock Defendants have no affirmative defenses left against Demetre’s record title.
4. The Court of Appeals reversed the Dock Order’s ruling for the Dock Defendants on their Affirmative Defenses, and the Dock Defendants failed to appeal the Dock Order’s lack of ruling for them on Adverse Possession.

5. Thus, the Dock Defendants' stipulation to Demetre's record title is dispositive of his good title.

The Dock Defendants' Argument that the Court of Appeals
Failed to Realize that the Master Ruled for Them on Their Affirmative Defenses

1. The Dock Defendants argued to the Court of Appeals that it failed to realize that the Dock Order ruled for them on each of their Affirmative Defenses except Adverse Possession. (Respondents' Return to Appellant's Petition for Rehearing, pp. 1 – 2).
2. The Court of Appeals did not accept that argument.
3. The Dock Order ruled for the Dock Defendants on their Affirmative Defenses, but the Court of Appeals clearly reversed the Dock Order:

... However, we reverse the master's March 26, 2007 Order and remand for findings in accordance with this Opinion.

(Court of Appeals' April 21, 2009 Substituted Opinion, p. 10).

The Dock Defendants' Argument that They Had No Reason
To Determine Ownership of the Subject Property

1. The Dock Defendants argued to the Court of Appeals that they had no reason to determine who owned the highland beyond their lots. (Respondents' Return to Appellant's Petition for Rehearing, p. 2).
2. The Court of Appeals did not accept that argument.
3. The Dock Defendants identified over 400 feet of highland beyond their respective lots in their dock permit applications. (Plaintiff's Exhibit E, Trial Tr. p. 307, line 10 – p. 308, line 15; p. 312, lines 16 - 23).
4. The Dock Defendants had statutory, regulatory, and common law duties to determine who owned the highland they had identified beyond their lots toward the Folly River.

S.C. Code Ann. § 48-39-140(B) (“Each applicant for a permit shall file with the Council and shall include . . . (5) A list of adjoining landowners and their addresses or a sworn affidavit that with due diligence such information is not ascertainable.”); S.C. Code of Reg. Ann. R. 30-2 (“The following minimum information shall ordinarily be required before a permit application is considered complete . . . (5) A list of all adjoining landowners and their addresses or a sworn affidavit that with due diligence such information is not ascertainable.”); *Lowcountry Open Land Trust v. State and Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) (an owner whose property abuts tidal waters possesses no littoral right to wharf out to a navigable stream, and therefore must obtain permission from the underlying landowner before erecting a dock, pier or comparable structure).

5. The Permit Administrator for the Office of Coastal Resource Management at the time of the Dock Defendants’ dock permit applications, gave the following deposition testimony, which was entered into the record at trial:

Q If OCRM knew that high ground owned by another party was being crossed by a proposed dock, is it fair to say that OCRM’s position would be that you have to get the permission of that other property owner or buy the property or somehow take care of those property rights before we’re going to issue a permit?

A Yes

Q So it was a requirement that you either own all the high ground property you were going to cross or have permission to go across it before the permit would be issued?

A Sure. The OCRM couldn’t issue a permit to cross somebody’s property, especially high ground property.

(Steve Moore Deposition, p. 10, lines 7 – 19).

The Dock Defendants' Assertion that their Deeds
Described Property Beyond their East Huron Lots

1. The Dock Defendants asserted to the Court of Appeals that they, "... testified at trial that they believed their deeds described their lot, a road, and then marshland." (Respondents' Return to Appellant's Petition for Rehearing, p. 2).
2. This assertion is incorrect as shown by the trial transcript and the plain language of the Dock Defendants' deeds.
3. The Dock Defendants' admitted at trial that their respective deeds described lots only 75 feet wide and only 150 feet toward the Folly River from East Huron Avenue. (Trial Tr. p. 322, lines 3 – 11; p. 337, line 22 – p. 338, line 23).
4. The Dock Defendants submitted profile drawings with their respective dock permit applications showing their respective property lines ending 150 feet toward the Folly River from East Huron Avenue. (Plaintiff's Exhibit E, Trial Tr. p. 307, line 10 – p. 308, line 15, p. 312, lines 16 – 23).
5. In depositions and at trial, the Dock Defendants admitted that they believed that the State owned the property toward the Folly River beyond their lot lines. (Beckmann Depo. p. 17, lines 10 – 17; Trial Tr. p. 312, line 24 to p. 313, line 24).
6. On Appeal, the Dock Defendants again reconfirmed that they believed that the State, rather than they, owned the property:

First, the most compelling evidence of record is testimony from all of the Respondents Beckmann and Crowley, at deposition and at trial, that they believed that the property beyond their property was the marsh and that the State owned it.

(Respondents' Return to Appellant's Petition for Rehearing, p. 4).

7. The Court of Appeals did not accept the Dock Defendants' argument that they believed that their respective deeds described lots more than 75 feet by 150 feet.

Conclusions

1. The Court of Appeals Order's reversal regarding the Dock Defendants' Affirmative Defenses is a final, unappealed ruling.
2. The Dock Defendants failed to preserve their Adverse Possession Claims by failing to file a Rule 59(e) Motion and failing to appeal the Master's denial of them.
3. The Dock Defendants signed General Conditions when accepting their dock permits, by definition a permissive use, acknowledging that their permits did not give them any property rights in the subject property.
4. The Court of Appeals affirmed this Court's ruling that the Dock Defendants did not believe they owned the subject property when they submitted their dock permit applications:

Demetre sought a declaration that he owns all the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet any defects in his 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 . . .

(Court of Appeals' April 21, 2009 Substituted Opinion, p. 9).

5. The Dock Defendants submitted sworn documents with their dock permit applications showing they did not claim the subject property.
6. At trial, the Dock Defendants stipulated to Demetre's record title.

7. Demetre and his predecessor continuously paid property taxes as record owners of the highland on which the docks are constructed.
8. Demetre proved his record title at trial.
9. The Dock Defendants made no claim of ownership to the land between their respective lot property lines and the mean high water mark in their State of South Carolina OCRM permit applications.
10. The Dock Defendants signed and agreed to the provisions and conditions in their dock permits authorizing no invasion of private property or rights in property.
11. The Dock Defendants expressly agreed that their dock permits neither expressly nor impliedly conveyed property rights in real estate.
12. The Dock Defendants expressly agreed that their dock permits did not authorize them to alienate, diminish, or infringe upon the property rights of others.
13. The provisions and conditions to which the Dock Defendants agreed show clearly that they claimed no ownership to the subject property.
14. The Dock Defendants admitted in their depositions, at trial, and on appeal of this matter that they believed that the State owned the property when they submitted their permit applications and that was still their understanding at trial, a belief inconsistent with the adverse possession requirement of hostility:

Admission at Trial

- Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of South Carolina owned from your property line out to the Folly River?
- A. That's correct.
- Q. And that's still your understanding?
- A. It is.

(Beckmann Depo. p. 17, lines 10 – 17).

* * * *

Admission at Trial

Q And so up until you got some paperwork from Mr. Demetre, you assumed that everything from your property line out toward the Folly River was belonging to the State of South Carolina?

A I had maintained the property.

Q But you assumed that it was owned by the State of South Carolina, and that you had a dock permit?

A That is what I said in my deposition.

Q Okay. And when you submitted your application to the South Carolina Coastal Council, and you certified what property that you owned or controlled, you gave a legal description. And the only thing you claimed to own on the property was within the bounds of your lot 209?

A That's correct. That's true.

(Trial Tr. p. 312, line 24 to p. 313, line 24).

* * * *

Admission On Appeal

First, the most compelling evidence of record is testimony from all the Respondents Beckmann and Crowley, at deposition and at trial, that they believed that the property beyond their property was the marsh and that the State owned it.

(Respondents' Return to Appellant's Petition for Rehearing, p. 4).

15. For the foregoing reasons, Demetre owns and has quiet title to all property between the Crowleys' and Beckmanns' lots 209 and 210 East Huron Avenue and the mean high water mark of the Folly River.

WHEREFORE, it is ORDERED, ADJDUDGED, AND DECREED that

The Milton Peter Demetre Family Limited Partnership has ownership of and quiet title to all property between the lots 209 and 210 East Huron Avenue and the mean high water mark of the Folly River.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

_____, 2010

(Oversized Document)
1895 Tartus Plat

(Oversized Document)
1920 Plat

(Oversized Document)
1965 Plat

(Oversized Document)
1968 Plat

(Oversized Document)
2005 Kennerty Topographic Survey

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.

CERTIFICATION

Appellant's counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 29, 2013

John Hughes Cooper, Esquire
John Townsend Cooper, Esquire
John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mt. Pleasant, S.C. 29464
(843) 883-9099
Attorneys for Appellant

Cain Denny, P.A.

By: Cain Denny
Cain Denny, Esquire
Post Office Box 1205
Charleston, S.C. 29402
(843) 478-0692
Attorney for Appellant

Other Counsel of Record:

Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Austin & Rogers, P.A.
P.O. Box 11716
Columbia, S.C. 29211
Attorneys for Respondents