

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. Supreme Court

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

APPENDIX

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**THE STATE OF SOUTH CAROLINA**  
**In The 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

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

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Opinion No. 5263  
Heard June 2, 2014 – Filed August 20, 2014  
Withdrawn, Substituted and Refiled November 26, 2014

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**AFFIRMED IN PART AND VACATED IN PART**

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John Hughes Cooper and John Townsend Cooper, both  
of John Hughes Cooper, P.C., of Mount Pleasant, and  
Cain Denny, of Cain Denny, P.A., of Charleston, for  
Appellant.

Jefferson D. Griffith, III, and Richard L. Whitt, both of  
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**SHORT, J.:** In this action to quiet title, the Milton P. Demetre Family Limited Partnership (Demetre) appeals an order of the Master-in-Equity (the master), arguing the master erred in finding Demetre did not quiet title to certain property on Folly Island. We affirm in part and vacate in part.

## **I. BACKGROUND FACTS<sup>1</sup>**

In 1920, Jefferson Construction Company platted and subdivided most of the Island of Folly Beach, South Carolina. The 1920 plat was recorded in the Charleston County Register of Mesne Conveyance Office (RMC). In 1965, the 1920 plat was redrawn due to deterioration, and in 1968, it was traced. The redraw added parcels to the 1920 plat; however, the tracing appears to be identical to the 1920 plat. The 1965 and 1968 plats were also recorded and share the same book and page number as the 1920 plat. The 1965 plat added parcels to the 1920 plat; however, the 1968 plat appears to be identical to the 1920 plat and does not include the subject parcels, lots 209 and 210, on Indian Avenue, East.

Between approximately 1921 and 1926, the Folly Beach Improvement Company (FBIC) acquired the entire island of Folly Beach and mortgaged its complete interest to Citizens and Southern National Bank of Savannah (C & S Bank). In 1937, the FBIC sold the streets, avenues, and/or lanes 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 Edward Seabrook, Sr., purchased the land 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." The 1942 deed also states the property conveyed is "bounded . . . on the West by the Channel of Folly River and Folly Creek . . . as delineated by the red line" of an 1895 plat (the Tartus survey). Seabrook, Sr., and his wife, Fannie, conveyed Seabrook's property to their son, Edward Seabrook, Jr., through the wills of Seabrook, Sr., who died in 1956, and of Fannie, who died in 1960.

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<sup>1</sup> The Background Facts are substantially taken from the facts in *The Milton P. Demetre Family Limited Partnership v. Beckmann*, Op. No. 2009-UP-029 (S.C. Ct. App. filed Jan. 14, 2009, withdrawn, substituted, and refiled, Apr. 21, 2009). We refer to the April 2009 opinion as *Demetre I*.

From Seabrook, Jr., in 2002, Demetre purchased lots 206 to 208 on Indian Avenue, East for \$45,000. Demetre purchased lots 202 to 205 in 2002 from another seller for \$475,000. Also in 2002, Demetre purchased "[a]ny and all interest in marshland or highland north of lot 201 Indian Avenue East" for \$5 from another seller.

On May 30, 2002, Demetre purchased from Seabrook, Jr., the "portion of . . . roadway [on Indian Avenue] that is undeveloped and unpaved" bordering lots 201 to 205 for \$10,000 by quitclaim deed. After contact with the City of Folly Beach, Demetre believed Seabrook owned the land.<sup>2</sup> However, neither the mayor nor the city administrator remembered notifying Demetre or its realtor that the City of Folly Beach did not own the land.

On December 6, 2002, Demetre brought an action against the City of Folly Beach to quiet title in the road located at the two-hundred block of East Indian Avenue on Folly Beach, South Carolina ("Road"), which borders other property Demetre owns (The "Road" case). Folly Beach asserted ownership of the Road. Emily Brown, intervenor, owns lot 204 on East Huron Avenue and has used the Road to access her property since January 30, 1986.

On January 23, 2004, Demetre purchased 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.<sup>3</sup> Lots 209 and 210 are shown on the 1965 plat, but they do not appear on the 1920 plat or the Charleston County tax map.<sup>4</sup> Both the 1920 plat and the 1968 plat portray a portion of East Indian Avenue extending from lot 201 to the northwest corner of lot 205. Beyond that, the plats portray the land as marshland.

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<sup>2</sup> Demetre's realtor, Keith McCann, sent Demetre a letter stating the Mayor and City Administrator had determined the City of Folly Beach did not own the road and that Seabrook did.

<sup>3</sup> The quitclaim deed also states, "portions of the roadways named Indian Avenue, East and Third Street, East conveyed by this deed are unimproved, undeveloped, unpaved, undedicated, and abandoned; and, now become[] part of a private fifty (50) foot wide roadway owned by [Demetre] . . . as shown on the [1920] Plat that is adjacent to and borders on Lot Numbers [201-210] Indian Avenue, East."

<sup>4</sup> Demetre alleged he paid taxes on the property, including the roads and marshland.

In a separate action, on October 7, 2005, Demetre brought an action against Annie Crowley, Raymond Crowley, Donald Crowley, Harris Crowley, Jr., and Annie Atkinson (the "Crowleys"), and Harry and Patricia Beckmann (the "Beckmanns") for declaratory judgment and to quiet title to lots 209 and 210 where the Crowleys and Beckmanns have docks. The Crowleys and Beckmanns were permitted to intervene in the Road case because their lots abut East Indian Avenue. 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 the deeds referenced the 1920 plat, which shows no lots between their lots and the marsh abutting the river. The Crowleys and Beckmanns believed they owned all of the property from their homes to the marsh. Harry Beckmann testified he believed the State owned everything from his property line to the Folly River. In 1988, both the Crowleys and the Beckmanns applied for permits from the South Carolina Coastal Council (Council) to construct docks from their lots to the Folly River across East Indian Avenue lots 209 and 210. The Council granted the permits, and the docks were constructed.<sup>5</sup>

After reference to the master and consolidation, 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 the City of Folly Beach owned the Road. On March 26, 2007, the master issued the "Dock" Order, ruling in favor of the dock owners on all grounds. The master denied Demetre's post-trial motions to reconsider. Demetre timely appealed both orders to this court, and we consolidated the appeals. This court heard the matter, *Demetre I*, on November 6, 2008, and issued its refiled opinion on April 21, 2009.<sup>6</sup>

In *Demetre I*, this court separated the appeal into "The Road Case" and "The Dock Case." As to the Road Case, the court explained the 1937 deed dedicated all streets, avenues, and/or lanes to Folly Beach. The court noted the 1920 plat, which was referenced in Demetre's deeds, showed East Indian Avenue extending from lot 201 to the northwest corner of lot 205. The court affirmed the master's finding that the Road was dedicated to Folly Beach, and it accepted the dedication. The court also affirmed the master's finding that Demetre did not satisfy the elements of

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<sup>5</sup> The docks were destroyed by Hurricane Hugo in 1989, and they were rebuilt in approximately 1990.

<sup>6</sup> The original opinion in *Demetre I* was filed January 14, 2009. The original opinion was withdrawn, substituted, and refiled April 21, 2009.

equitable estoppel. In its conclusion, the court stated: "[W]e affirm the master's . . . order finding Folly Beach owns East Indian Avenue . . . ."

As to the Dock Case, this court found the following:

Demetre sought a declaration that [it] owns all the property between the Crowleys' and the Beckmanns' lots and the mean high water mark, and [it] sought to quiet any defects in [its] 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.

The supreme court denied Demetre's petition for certiorari on April 8, 2010.

## **II. FACTS PERTAINING TO THIS APPEAL**

On remand, after Demetre's written request, the master heard arguments without receiving additional evidence. Demetre initially argued the issue on remand was settled because the parties stipulated at trial to record title. The Crowleys and Beckmanns (Respondents) argued the stipulation was merely "that the records were what the records were, and we simply were stipulating that if you went down to the [RMC] . . . that this is what you would find. There were deeds into [Demetre]. . . . But what those deeds mean, that's a whole 'nother story. We certainly are not stipulating to any good title . . . ."

Demetre also argued Respondents' affirmative defenses were no longer viable because they had "been either abandoned or lost at the trial level and/or overruled by the Court of Appeals." Demetre argued the defenses were either not ruled upon; not appealed; waived; and/or law of the case. Respondents disputed their affirmative defenses were not viable. Respondents claimed entitlement to the

defenses of the forty-year statutory presumption of a grant; the twenty-year common law presumption of a grant; adverse possession; and laches.

On the merits, the parties argued the issues as "Chain of Title" and "Accretion." Demetre argued the deeds described the footage of the Respondents' lots as 150 feet from East Huron Avenue and did not "say anything about going an inch further than 150 feet" and did not mention East Indian Avenue. Demetre also argued Respondents' permit applications, signed under oath, claimed 150 feet from Huron Avenue. Demetre relied on his chain of title, including the quitclaim deed, for property north of lots 209 and 210 to the Folly River and the "unpaved roadway bordering 201 through 210 and Third Street roadway adjacent to Lot 210 East Indian."

Respondents argued any property not owned by the State from their lots to the Folly River belongs to them because their deeds reference the 1920 plat showing nothing behind their lots except marshland, and Demetre's alleged lots situated between Respondents' lots and the marshland were not effectively transferred by the quitclaim deed.

Demetre next argued the only evidence of true delineation was in a 2005 plat (referred to by the parties as the Kennerty Topographic Survey) and the 1965 plat. Demetre argued the 1920 plat did not indicate the mean high water mark, and its designation of "marshland" included low and high land. Demetre argued because the 1965 plat indicates the lots, and Respondents stipulated to record title, then it purchased the lots by its quitclaim deed. Further, Demetre argued it was entitled to quiet title because the 1965 plat is recorded at the same location, page 158 of Plat Book C, as the 1920 plat.

As to the accretion argument, Respondents maintained the State owned the marsh, and any accretion belonged to them as owners of the properties adjacent to the marsh. Demetre maintained there was no evidence of accretion. Demetre also argued Respondents' dock permit applications indicated Respondents were not claiming accretion. Demetre argued the attachments to the permit applications showed high marshland beyond the 150 feet that Respondents did not claim. The permit applications were for 700 foot docks "to Folly River."

The master questioned if the State needed to be a party to the action. Demetre and Respondents argued the issue was related to land above the high water mark; therefore, the State was not required to be a party.

By order filed January 13, 2012, the master first determined "any challenge to ownership of this marshland must be pursued in an action against the State . . . ." The master, after noting the parties did not want to add the State as a party, concluded, "this court disagrees [because] the 'high marsh' is contained within the area previously denoted as Marshland." The master determined the issue was the "highland contained within what was formerly marshland" and looked to the chain of title, finding although the 2005 Kennerty plat delineates both high and low marsh, the 1920 plat shows the property in question to be "Marshlands." The master further found only the 1965 plat shows lots located at the area in dispute. Thus, the master found the "1965 plat is incorrect and, therefore, cannot serve as a basis for the creation of new lots on Folly Beach." The master found the lots "did not exist" at the time of the conveyance to Seabrook, Sr. The master also found, "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."

The master found the 1942<sup>7</sup> deed to Seabrook, Sr., did not include the lots, stating "[t]his fact was apparently known to [Seabrook, Jr.,] who determined he would only convey the lots in question to [Demetre] by Quitclaim deed in 2004," which the master recognized "is not a representation of good and valid title. . . ." The master concluded Respondents' docks had been in place for many years prior to Demetre's purchase of the property, and Demetre's purchase was done "with full knowledge and understanding that [Respondents] had a vested property interest, granted under license from the [S]tate, to the docks which run from in front of their property, commencing in . . . Indian Avenue, and running to the Folly River."

The master also found the following,

[W]hile 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*[v. *Burgess*, 371 S.C. 407, 639 S.E.2d 455 (Ct. App. 2006)], 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

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<sup>7</sup> The master's reference to the "Master's Deed of January 5, 1943" to Seabrook, Sr., refers to the 1942 deed, which was recorded January 5, 1943.

present the full history of title to the court for a complete hearing.

The purpose of the remand order was to determine [Demetre's] interest in the property and quiet title in [Demetre] if applicable. I find under the facts presented here, as between these parties, that [Demetre] 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.

The master summarized the findings of fact: (1) Demetre's deeds refer to the 1920 plat; (2) the 1920 plat does not show Demetre's lots; therefore, they do not exist; (3) Demetre can only own what was deeded in the 1920 plat, which is described as marshland; (4) Respondents' deeds show East Indian Avenue as their riverward boundary; (5) any highland riverward of Respondents' lots was contained within the designation of "Marshland" in the 1920 plat; (6) the State is the owner of the land seaward of Respondents' lots; and (7) Demetre is not entitled to quiet title. The master ruled against Respondents on their affirmative defenses. The master concluded: "[Demetre] does not own any portion of the highland between [Respondents'] lots and the mean high water mark on lots 209 and 210, East Indian Avenue; [and Demetre] is not entitled to have title quieted in its name." Demetre moved for reconsideration, which the master denied, finding the 1786 plat dispositive. This appeal followed.

### **III. LAW/ANALYSIS<sup>8</sup>**

#### **1. The Stipulation Issue<sup>9</sup>**

Demetre argues the master erred by disregarding Respondents' stipulation to record title. We disagree.

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<sup>8</sup> We consolidate Demetre's sixteen arguments into four issues: (1) the stipulation; (2) Respondents' affirmative defenses; (3) the master's findings as to the State or Respondents' ownership in the property; and (4) the master's finding Demetre failed in its burden of proof to quiet title.

<sup>9</sup> Demetre's Issue 4.

During the trial,<sup>10</sup> the parties retired to the master's chambers to discuss the parties' stipulations. After returning to the courtroom, the parties entered the following stipulation on the record:

It is stipulated by and between attorneys for the parties  
that record title for [Demetre] has been stipulated to.

. . . .

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

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

All of those have been agreed by counsel that they are  
stipulated to, as far as record title.

During the hearing, Demetre argued entitlement to quiet title because the parties stipulated at trial to record title. Respondents argued the stipulation was merely that "the records were what the records were, and we simply were stipulating that if you went down to the [RMC] . . . that this is what you would find. There were deeds into [Demetre]. . . . But what those deeds mean, that's a whole 'nother story. We certainly are not stipulating to any good title . . . ." The master found the stipulations were "to how each got their title."

"A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys." *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998). "Stipulations, of course, are binding upon those who make them." *Id.* "The court must construe [a stipulation] like a contract, i.e., interpret it in a manner consistent with the parties' intentions." *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 30, 507 S.E.2d 328, 337 (1998). The interpretation of a stipulation is addressed to the sound discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. *See id.* at 31, 507 S.E.2d at 337 ("Whether to abrogate the stipulation is addressed to the

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<sup>10</sup> References to the trial refer to the trial prior to the first appeal in *Demetre I*; references to the hearing refer to the post-remand hearing.

sound discretion of the trial judge, and an appellate court will not interfere with that decision except when there is a manifest abuse of discretion.").

We conclude the master properly interpreted the meaning of the stipulation at issue in this case. The question litigated was not whether Demetre held record title to the property; rather, the question litigated was whether the record title validly conveyed the subject property as to quiet title in Demetre. Accordingly, we affirm the master's interpretation of the stipulations.<sup>11</sup>

## **2. Respondents' Affirmative Defenses<sup>12</sup>**

Demetre argues the master erred in ruling on the affirmative defenses, claiming the court's action in *Demetre I* rendered the affirmative defenses "law of the case." It also argues the master should have cited to authority in ruling against Respondents on their affirmative defenses. We find no reversible error.

During the hearing, Demetre argued Respondents' affirmative defenses were no longer viable because they had "been either abandoned or lost at the trial level and/or overruled by the Court of Appeals." Demetre argued the defenses were either not ruled upon, not appealed, waived, and/or law of the case. Respondents asserted their affirmative defenses were viable. The master ruled against Respondents on its affirmative defenses. We find no prejudice to Demetre arising from the master's rulings against Respondents on their affirmative defenses; thus, any error is not reversible. See *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 489, 429 S.E.2d 839, 841 (Ct. App. 1993) ("An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant.").

Finally, Demetre argues the master erred in failing to quiet title in Demetre because the master ruled against Respondents' affirmative defenses. Demetre claims, without citation to authority, "Where there are no affirmative defenses, record title is good." Respondents argue a stipulation to record title is not a stipulation to good title. Respondents maintain Demetre had the burden to prove good title. "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.*

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<sup>11</sup> We find no merit to Demetre's summary argument that it is entitled to quiet title because it paid property taxes on the property at issue. The citations to the record do not support Demetre's argument.

<sup>12</sup> Demetre's issues 5, 6, and 15.

*City of Beaufort*, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct. App. 1992) (citations omitted). We find no merit to Demetre's claim of automatic vesting of title in its action to quiet title based on Respondents' failure to prove its affirmative defenses.

### 3. The Master's Findings Granting Property Interests to Others<sup>13</sup>

Demetre argues the master erred in the following: (1) finding the State was a necessary party; (2) holding the State owns the subject property above the mean high water mark; (3) concluding Respondents have vested property interests in their docks; (4) finding the State owns any accreted highland; (5) finding the State owns the land seaward of Respondents' lots because the subject property was within the designation of "Marshland" on the 1920 plat of Folly Island; (6) finding the 1965 plat was "incorrect" and the 1968 plat corrected the error; and (7) finding the State owns the undeveloped portion of the roadway riverward of Respondents' lots when *Demetre I* affirmed only the Town's ownership to the end of the northeast corner of Lot 205. As to all findings regarding the necessity of the State as a party, the State or Respondents' interests in the subject property, and the interpretation of all plats other than as applied to the issue of Demetre's ability to quiet title in Lots 209 and 210, we agree and vacate those portions of the order on appeal.

"[A] trial court has no authority to exceed the mandate of the appellate court on remand." *S.C. Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 250, 551 S.E.2d 274, 279 (Ct. App. 2001). "The mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court's directions." *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (citation omitted); see *Basnight*, 346 S.C. at 250-51, 551 S.E.2d at 279 (noting "[o]nce a mandate is issued from an appellate court to a trial court, the trial court 'is vested with jurisdiction only to the extent conferred by the appellate court's opinion and mandate'" (quoting 5 Am. Jur. 2d *Appellate Review* § 784, at 453 (1995))).

The mandate in *Demetre I* directed the master 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." To the extent the master exceeded the mandate by finding the State was a necessary party, by finding any property interest in the State or Respondents, by finding the 1965 plat was "incorrect," and by determining the location of the mean high water mark, we vacate that portion of the order.

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<sup>13</sup> Demetre's issues 2, 3, 7, 8, 9, 13, and 16.

#### 4. Demetre's Failure to Quiet Title in Lots 209 and 210<sup>14</sup>

Demetre argues the master erred in the following: (1) relying on the 1920 plat to determine Demetre's claim; (2) finding its predecessor in interest, Folly Beach Corporation, took title based on the 1920 plat, rather than the 1895 Tartus Map referenced in the deed to Folly Beach Corporation;<sup>15</sup> (3) finding the 1786,<sup>16</sup> 1895, and 1920 plats are more precise than the 2005 Kennerty Topographic Survey, which is the only plat that shows the location of the mean high water mark; (4) finding Lots 209 and 210 "do not exist" because they are not shown on the 1920 plat;<sup>17</sup> and (5) finding Seabrook, Jr., believed he did not have title to the property.

Demetre entered an exhibit indicating the following chain of title:

- Deed from Folly Island Company to Folly Beach Corporation recorded November 18, 1919, referring to the 1895 Tartus Map;
- Deed and quitclaim deed from Alexander family members to Folly Beach Corporation recorded January 17, 1921, referring to an 1863 Parker survey;<sup>18</sup>

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<sup>14</sup> Demetre's issues 1, 10, 11, 12, and 14.

<sup>15</sup> This issue also asserts error in the master's finding that the State owns the property, which we vacate in the previous section. To the extent the master erred in finding the deed referenced the 1920 plat rather than the 1895 plat, we find no prejudice because neither plat depicts the lots Demetre claims.

<sup>16</sup> The 1786 plat is referred to in *Query v. Burgess*, 371 S.C. 407, 412, 639 S.E.2d 455, 457 (Ct. App. 2006) ("The plat roughly delineates Folly Island. The plat contains the bare bones of a survey and is neither precise nor detailed.").

<sup>17</sup> We find no merit to Demetre's claim that the master's finding—that lots 209 and 210 on Indian Avenue East do not exist—conflicts with the remand mandate in *Demetre I*. The mandate directed the master 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 read the mandate as requiring the master to determine whether Demetre proved the right to quiet title. We do not read, as argued by Demetre, a directive to determine who owns the subject property.

<sup>18</sup> Neither Demetre nor the master relied on the 1863 Parker survey.

- Deed except for lots already conveyed from Folly Beach Corporation to Folly Beach Improvement Company recorded January 20, 1926, referring to the 1863 Parker survey and February and May 1920 plats;
- 1942 master's deed to Seabrook, Sr., except for lots already conveyed, recorded January 5, 1943;
- Seabrook, Sr., to Seabrook, Jr., by will;
- Quitclaim deed from Seabrook, Jr., to Demetre of lots 209 and 210 Indian Avenue, East, including the roadway, referring to February 1920 plat.

Thus, Demetre's chain of title references the 1863 survey, the 1895 Tartus plat, and the 1920 plat. The deed to Demetre references only the 1920 plat.

During the trial, when asked why he only paid \$23,000 for the lots, Milton Demetre testified Seabrook, Jr., told him to make him an offer. Mr. Demetre continued, "He could have sold it for \$5 and a deed. I don't know." When asked why he offered Seabrook, Jr., \$23,000, Mr. Demetre responded, "He said make him an offer, and that's what I did."

As to Demetre's deeds, the master found the following: (1) Demetre's deeds refer to the 1920 plat; (2) the 1920 plat does not show Demetre's lots; therefore, they do not exist; (3) Demetre can only own what was deeded by reference to the 1920 plat, which is described as marshland; and (4) Demetre is not entitled to quiet title. After finding the lots did "not exist as legal lots today," the master found "[t]his . . . was apparently known to [Seabrook, Jr.,] who determined he would only convey the lots in question to [Demetre] by [q]uitclaim deed." The master further found Seabrook, Jr. "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 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*, 315 S.C. at 313, 433 S.E.2d at 880. "One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." *Id.* at 313, 433 S.E.2d at 880-81 (citing *Belue v. Fetner*, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968) (stating a deed cannot convey an interest which the grantor does not have)).

"[T]he purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution." *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). "Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979) (citations omitted). In construing a deed, the court must determine the intent of the grantor. *K & A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009). To determine the grantor's intent, the deed must be construed as a whole. *Id.*

A quitclaim deed is a lawful means of conveying title. *Martin v. Ragsdale*, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905) (citing former version of S.C. Code Ann. § 27-7-20 (2007)) ("[T]his section shall be so construed as not to oblige any person to insert the clause of warranty or to restrain him from inserting any other clause in conveyances, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms formerly in use within this State.")). However, "[a] quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey." *Mulherin-Howell v. Cobb*, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) (acknowledging "a quitclaim deed does not convey the fee, but only the right, title[,] and interest of the grantor") (citing *Martin*, 71 S.C. at 77, 50 S.E. at 674)). Although the supreme court in *Martin* was discussing a purchaser whose seller took title under a quitclaim deed, we find the following language instructive:

The authorities are conflicting as to whether a person can interpose the defense of purchaser for valuable consideration without notice, when he derives his title from one holding under a mere quitclaim deed. In the case of *Aultman v. Utsey*, 34 S.C. 559, 571, 13 S.E. 848, the Court says: "Some of the cases go so far as to hold that one who purchases from another, holding under a quitclaim deed, cannot, by reason of that fact, claim to be a purchaser without notice. See 2 Pom. Eq. Jur., sec. 753, where the cases both *pro* and *con* are cited in a note. . . . The reason given is, that such a purchaser buys no more than what his grantor can lawfully convey; to which, we think, might be added, that the fact that the

grantor is unwilling to warrant the title, tends at least to show that there is some defect in the title, known to or apprehended by him, and, therefore, the purchaser is put upon inquiry. While we are not prepared at present to go to the full extent to which the doctrine has been carried by some of the cases, yet we are satisfied that the fact that the immediate grantor of the purchaser holds under a quitclaim deed, is a circumstance well calculated to excite inquiry, which, if not pursued properly, will affect the purchaser with notice of every fact which such inquiry, pursued with due diligence, would disclose . . . .

*Martin*, 71 S.C. at 76-77, 50 S.E. at 674.

We agree with the master's conclusion that Demetre failed in his burden of proving title to Lots 209 and 210. Neither the 1920 plat nor the 1895 Tartus plat depict the lots. Demetre acknowledged at the remand hearing that the lots did not exist as lots on the 1920 plat. Demetre relies on the 2005 Kennerty plat and the 1965 plat, which are not in his chain of title and were not in existence at the time the property was last deeded prior to the quitclaim deed to Demetre. Furthermore, as to the master's finding that Seabrook, Jr., believed that he did not have title, we find evidence in the record to support the master's finding. *See Estate of Tenney v. S.C. Dep't of Health & Env'tl. Control*, 393 S.C. 100, 105, 712 S.E.2d 395, 397 (2011) (stating a master's factual findings in an action to quiet title will be affirmed by an appellate court if there is any evidence in the record reasonably supporting the findings). We find Demetre has failed to meet his burden of proving title to lots 209 and 210. Accordingly, we affirm the master's order to the extent it found Demetre failed to quiet title in lots 209 and 210.

#### IV. CONCLUSION

We affirm the master's order regarding the stipulation, Respondents' affirmative defenses, and Demetre's failure to quiet title in lots 209 and 210. To the extent the master exceeded the mandate by finding the State was a necessary party, by finding any property interest in the State or Respondents, by finding the 1965 plat was "incorrect," and by determining the location of the mean high water mark, we vacate the order.

**FEW, C.J., and GEATHERS, J., concur.**



# 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.

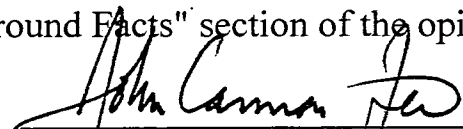
Appellate Case No. 2012-212136

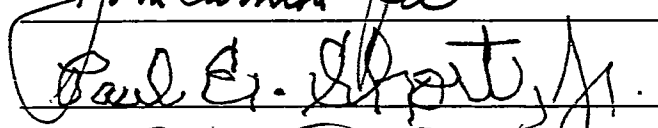
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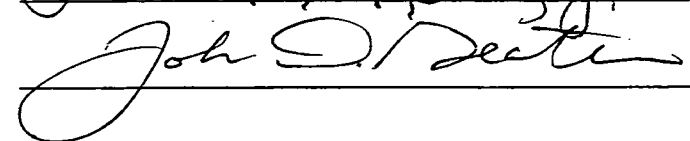
## ORDER

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Respondents' motion to strike is denied. Appellant's petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn. The sole change in the substituted opinion is the deletion of the sentence, "The 1942 Deed also refers to the 1920 plat." from the "Background Facts" section of the opinion.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

cc:

Cain Denny, Esquire

John Hughes Cooper, Esquire

John Townsend Cooper, Esquire

**FILED**

November 26, 2014

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

**RECEIVED**

SEP 23 2014

**SC Court of Appeals**

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

v.

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

**APPELLANT'S PETITION FOR REHEARING REGARDING  
OPINION NO. 5263 FILED AUGUST 20, 2014**

Appellant, the Milton P. Demetre Family Limited Partnership ("Demetre") respectfully submits this Petition for Rehearing regarding Opinion No. 5263 filed August 20, 2014 ("Opinion").

1. THE OPINION MISAPPREHENDS DEMETRE'S ARGUMENT AND CONFLICTS WITH K & A ACQUISITION GRP., LLC v. ISLAND POINTE, LLC, 383 S.C. 563, 682 S.E.2d 252 (2009) (THE DEED MUST BE CONSTRUED AS A WHOLE AND EFFECT GIVEN TO EVERY PART IF IT CAN BE DONE CONSISTENTLY WITH THE LAW.)

The Opinion misapprehends Demetre's argument, stating, "Further Demetre argued it was entitled to quiet title because the 1965 plat is recorded at the same location, page 158 of Plat Book C, as the 1920 Plat." (Opinion, p. 6). However, Demetre instead argues that his Deed to lots 209 and 210 Indian Avenue East ("Demetre's Deed") actually refers to the 1965 Plat.

Demetre's Deed refers to, "a plat of the lands of Folly Beach Corporation made by Jefferson Construction Company ***dated*** February 1920 and recorded in in RMC Office for Charleston County in Plat Book C at page 158." (Emphasis added). (R. p. 633). As found by the Opinion, both the 1965 Plat and the 1920 Plat are recorded in Plat Book C at page 158.

Demetre's Deed references a plat "***dated***" February 1920, not a plat "***recorded***" in February 1920. (Deed, R. p. 633) ("... a plat of the lands of Folly Beach Corporation made by Jefferson Construction Company ***dated*** February 1920 and recorded in in RMC Office for Charleston County in Plat Book C at page 158") (emphasis added). Both the 1965 Plat and the 1920 Plat are dated February 1920. The "February 1920" date appears in two places at the top of the 1965 Plat as follows:

BETWEEN THE CENTER LINE OF STREETS 760 FT.  
BETWEEN THE CENTER LINE OF AVENUES 200 FT.  
STREETS AND AVENUES 50 FT. WIDE.  
SCALE 1" IS 400'     **CHAS. S.C. FEB. 1920**

(Emphasis added). (1965 Plat, R. p. 659, Oversized Copy R. p. 1069).

Thus, the 1965 Plat is dated February 1920.<sup>1</sup>

However, the 1965 Plat depicts lots 209 and 210 Indian Avenue East ("Lots"), but the 1920 Plat does not. In determining the grantor's intent, the deed must be construed as a whole and effect

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<sup>1</sup> Neither the 1965 Plat nor the 1920 Plat states on its face who made it. The 1965 Plat has sometimes been referred to in this litigation as the "Weston" plat, but actually the only reference to "Weston" is its certification by "J.B. Weston" of "CHAS. CO. PUB. WKS. DEPT.," "I CERTIFY THAT THIS IS A REDUCED COPY OF THE ORIGINAL PLAT RECORDED IN PLAT BOOK 'C' AT PAGES 157 & 158." (1965 Plat, R. p. 659, Oversized copy R. p. 1069).

given to every part if it can be done consistently with the law. K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009).<sup>2</sup>

Interpreting the Deed to refer to the 1920 Plat instead of the 1965 Plat fails to give effect to the Deed's precise metes and bounds description of the lots "which will appear by reference to said plat:"

Each of the said lots measuring and containing on the North and South lines seventy (70) feet and on the East and West lines One Hundred and Fifty (150) feet *which will appear by reference to said plat* (emphasis added).

Butting and bounding to the North on marshland of Edward M. Seabrook; Lot Number 210 to the East on Third Street East and to the West on Lot Number 209 Indian Avenue, East; Lot Number 209 to the East on Lot Number 210 Indian Avenue, East and to the West on Lot Number 208 Indian Avenue, East; and each said lot to the South on Indian Avenue, East.

A portion of TMS #: 328-10-00-132.

(Deed to lots 209 and 210 Indian Avenue East, R. p. 633).

Thus, to give effect to every part of the Deed, the Deed must be interpreted to refer to the 1965 Plat. K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009) ("In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law); Wayburn v. Smith, 239 S.E.2d 890, 270 S.C. 38 (1977); Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582-83 (2009); Gardner v. Mazingo, 293 S.C. 23, 358 S.E.2d 390, 391-92 (1987).

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<sup>2</sup> The Opinion cites K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009). (Opinion, p. 14).

2. THE OPINION MISAPPREHENDS THE CHAIN OF TITLE ASSERTED BY DEMETRE

The Opinion misapprehends the chain of title of Demetre's predecessor in interest ("Chain of Title") asserted by Demetre. The conveyances in the Chain of Title are by reference to the 1895 Tartus Plat, not the 1920 Plat. The 1895 Tartus Plat conveys all of Folly Island to the Folly River.

In Demetre's Chain of Title, only exceptions to the conveyances are described by reference to 1920 plats. The fact that the subject lots are not subdivided on the 1920 Plat shows that they are not *excepted*, not that they were not *conveyed*. (R. p. 539, Deed from Folly Beach Corporation to Folly Beach Improvement Company) ("Saving and excepting therefrom the lots on said Island described by the plats made in [illegible]uary and May 1920 by Jefferson Construction Co. and recorded in the R.M.C. Office aforesaid, heretofore conveyed by said Folly Beach Corporation to parties to wit . . . [specific lots listed].")

The Opinion cites the fact that the 1895 Tartus plat does not depict the lots. ("Neither the 1920 plat nor the 1895 Tartus plat depict the lots.") (Opinion, p. 15); (" . . . To the extent the master erred in finding the deed referenced the 1920 plat rather than the 1895 plat, we find no prejudice because neither plat depicts the lots Demetre claims.") (Opinion, p. 12, n. 15).

However, the 1895 Tartus Plat conveys the whole of Folly Island, "bounded . . . on the West by the Channel of the Folly River and Folly Creek . . . as delineated by the red line upon a certain 'Map of Folly Island or the Folly Islands made by A.G. Tartus Surveyors' . . ." (Deed from Folly Beach Corporation to Folly Beach Improvement Company) (R. p. 539); (1895 Tartus Plat, R. p. 658, Oversized Copy, R. p. 1067). Thus, the 1895 Tartus Plat necessarily includes the property which was later subdivided into the subject lots.

None of Folly Island was subdivided into lots at the time of the 1895 Tartus Plat. However the chain of title for the majority of lot owners on Folly Island today is based on conveyances

referencing that plat.<sup>3</sup> Since the whole of Folly Island to the Folly River was conveyed by the 1895 Tartus Plat, the conveyance necessarily included the area later subdivided into lots 209 and 210 Indian Avenue East.

The Opinion also states that the 1942 Deed refers to the 1920 Plat.<sup>4</sup> (“The 1942 Deed also refers to the 1920 plat”)(Opinion, p. 2). However, the 1942 Deed does not refer to the 1920 Plat. (R. pp. 536 – 37).<sup>5</sup>

3. THE OPINION OVERLOOKS DEMETRE’S CITATION TO DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 730 S.E.2D 922, 399 S.C. 259 (Ct. App. 2012) IN WHICH THIS COURT QUIETED TITLE FOR DREHER WITH THE SAME CHAIN OF TITLE AS DEMETRE’S CHAIN OF TITLE IN THIS CASE

Despite the equal protection clauses of the federal and state constitutions providing that no person shall be denied the equal protection of the laws, the Opinion denies Demetre’s request to quiet title based on the same chain of title by which this Court quieted title for Ann Dreher in Dreher v. South Carolina Dept. of Health and Environmental Control, 730 S.E.2d 922, 399 S.C. 259 (Ct. App. 2012). Equal protection requires “all persons to be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed. GTE Sprint

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<sup>3</sup> If Demetre is unable to quiet title today because his lots were not subdivided in 1895 at the time the Tartus Plat was made, then most Folly Island lot owners have clouded title.

<sup>4</sup> The Opinion also refers to the 1942 Deed, which was recorded in 1943, as the 1943 Deed.

<sup>5</sup> The Opinion also finds that the subject lots are not on the Charleston County Tax Map. (“Lots 209 and 210 are shown on the 1965 plat, but they do not appear on the 1920 plat or the Charleston County tax map.”) (Opinion, p. 3). However, first, the Charleston County Tax Map is not in the Record on Appeal. Second, the tract which includes the lots, which is paid by Demetre, is on the Charleston County Tax Map as TMS#: 328-10-00-244, formerly TMS# 328-10-00-132 in the name of Edward Seabrook.

4. THE OPINION OVERLOOKS DEMETRE'S ARGUMENT THAT EVEN IF DEMETRE'S DEED HAD REFERENCED THE 1920 PLAT, THE LOTS STILL CONVEYED

As discussed above, Demetre's Deed to lots 209 and 210 Indian Avenue East referenced the 1965 Plat, not the 1920 Plat. However, even if the Deed had mistakenly referenced the 1920 Plat, because the location of the lots was precisely set forth by a metes and bounds description, lots 209 and 210 Indian Avenue East would still have conveyed per the rules of deed construction.

a. That is certain which can be made certain.

A deed is not void for uncertainty, because there may be errors or an inconsistency, in some of the particulars. Generally the rule may be stated to be that the deed will be sustained, if it is possible from the whole description, to ascertain and identify the land intended to be conveyed. As that is certain which can be made certain, the description, if it will enable a person of ordinary prudence acting in good faith and making inquiries, which the description would suggest to him to identify the land, is sufficient. Brownlee v. Miller, 37 S.E.2d 658, 208 S.C. 252 (S.C. 1946); McNair v. Johnson, 78 S.E. 892, 95 S.C. 176 (1913).

b. A deed remains valid if an adequate description remains after rejection of erroneous part.

If the deed contains two descriptions, one correct and the other false in fact, the latter should be rejected as surplusage. If sufficient remains after rejecting a part of the description which is false, the deed will take effect. McNair v. Johnson, 78 S.E. 892, 95 S.C. 176 (S.C. 1913). Any particular of a description may be rejected, if it is manifestly erroneous, and enough remains to identify the land intended to be conveyed. Norwood v. Byrd, 1 Rich. 135, 42 Am.Dec. 406 (1845).

c. A construction rendering a deed valid is favored over one rendering it a nullity.

Provided it is not legally impossible for it to do so, an instrument intended to operate as a deed should so operate. Accordingly, an interpretation which will give a deed force will be adopted

in preference to one which will make it of no effect. A deed will not be construed as to render it a nullity as to any of the parties thereto, if, by any reasonable construction, such result can be avoided. 26A CJS Deeds § 183.

d. A deed must be interpreted to give effect to each of its parts.

The Opinion cites Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979), for the proposition that a plat cited by a deed becomes part of the deed. However, in Hobonny, the plat controlled the description because, in that case, the plat was more precise than the words of the deed. Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 398, 252 S.E.2d 133, 136 (1979) (“The specificity of the attached plats outweigh, in our judgment, the general terms of the descriptions in the grants in determining the intent of the grantor.”)

e. The purpose and effect of a plat is a question of the intention of the parties.

The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and circumstances surrounding its execution. Lancaster v. Smith, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). All parts of a deed should be taken together and no part suffered to control absolutely over others. Richardson v. Register, 87 S.E.2d 40, 277 S.C. 18 (1955).

f. A clear, explicit, and certain description will not be varied by a generalized one.

Here, the Deed’s metes and bounds description is clear, explicit, and certain. A deed will generally be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed with reasonable certainty. A clear, explicit, and certain description of land in a deed will not be varied by a generalized or less definite description. 26A C.J.S. Deeds § 255.

- g. Where there is doubt as to intention, an interpretation leading to injustice will be rejected.

Here, the Opinion considers the intent of Demetre's predecessor, Seabrook, to convey the property. In construing a deed in which doubt arises as to the real intention, an interpretation which plainly leads to injustice should be rejected, and one which does not produce unusual or unjust results, adopted. 26A CJS Deeds § 184.

- h. A court will declare a deed void only after resorting to extrinsic evidence.

When intention is not expressed accurately in the deed, evidence *allunde* may be admitted to supply it. The instrument is not thereby varied or contradicted but is explained or corrected. Gardner v. Mozingo, 358 S.E.2d 390, 293 S.C. 23 (1987); Smith v. Durant, 286 S.C. 80, 113 S.E.2d 349 (1960). A court will declare a deed void for uncertainty only where, after resorting to oral proof or after relying upon other extrinsic proof or evidence, that which was intended by the instrument remains a mere matter of conjecture, or where the description cannot be made applicable to but one definite tract. 26A C.J.S. Deeds § 51.

- i. A plat does not invalidate lots where another method could be used to locate them.

A deed must be interpreted to give effect to every part of the document. In reviewing deeds, a court's first duty is to give effect to every word, sentence, and provision where possible to do so. The language of a deed must be so interpreted and applied as to be meaningful and valid. Thus, the construction of a deed will be adopted, if legally permissible, so as to give effect to the whole instrument and each word and term used. 26A C.J.S. Deeds § 202. Here, effect must be given to the metes and bounds description precisely describing the land.

- j. A description from which a surveyor can locate the land is adequate.

A description is sufficient if it enables a person or ordinary prudence acting in good faith and making inquiries suggested by the description to identify the land. Brownlee v. Miller, 208

S.C. 252, 37 S.E.2d 658 (1946). Here, as evidenced by the 2005 Kennerty Topographic Survey, a surveyor was able to precisely identify the land. (Kennerty Topographic Survey, Oversized Document R. p. 1071).

5. THE OPINION MISAPPREHENDS DEMETRE’S ARGUMENT THAT THE MASTER’S ORDER CONFLICTS WITH BELUE V. FETNER, 251 S.C. 600, 164 S.E.2d 753 (1968)

The Master’s Order conflicts with Belue v. Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968). The parties’ stipulation to Demetre’s record title, given the current procedural posture of this case, equates to Demetre’s good title.

The procedural posture is as follows:

- a. The parties stipulated to Demetre’s “record title” to the subject lots. (R. pp. 141 – 43).
- b. Respondents asserted various affirmative defenses to Demetre’s title, including adverse possession, but the master ruled against each of them. (Opinion, p. 10).
- c. The Opinion clarifies that neither the State nor Respondents have title to the subject property. (Opinion, p. 15).

Belue v. Fetner, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968), holds that, “When counsel enter into an agreed stipulation, the court will not go beyond such stipulation to determine the facts upon which the case is to be decided.” The parties stipulated to Demetre’s “record title” to the subject lots. (R. pp. 141 – 43). “Record title” is “paper title” or “title of record” and is, “A title as it appears in the public records after the deed is properly recorded.” Blacks Law Dictionary, Eighth Edition (2004), p. 1523).

Record title means a chain of paper title. See Lynch v. Lynch, 115 S.E.2d 301, 236 S.C. 612 (S.C. 1960) (“The respondent had, by the deeds in her chain of title, the Will of her husband, and the plats, shown paper or record title in herself to a life estate in the Steele lands, of which the disputed area was a part.”); Knight v. Hilton, 79 S.E.2d 871, 873 224 S.C. 452, 456 (S.C. 1954) (“It is clear that the legal or record title to the 50 acre tract is vested in the heirs-at-law of T. W. Knight and Cecil G. Knight. Possession is presumed to follow such title and the burden is on the respondent to prove all the facts necessary to establish adverse possession.”).

“In the context of ownership of land, ‘record title’ is generally used to describe ownership of a particular parcel of real property by the person in whose name title appears in the official deed records, in contrast to one who claims ownership through unrecorded documents.” High Knob Associates v. Douglas, 457 S.E.2d 349 (Va. 1995), *citing* Black’s Law Dictionary 1274 (6th ed. 1990).

Respondents contend that their stipulation was only that the documents Demetre entered into evidence at trial were the same as the documents recorded in the Charleston County RMC office, but that would have been only a stipulation to the authenticity of the documents, not a stipulation that Demetre has record title to the subject property.

For the subject lots, Respondents claimed neither a prior recorded deed nor prior possession with an unrecorded deed. They claimed various affirmative defenses to Demetre’s title, including adverse possession, but each of those defenses was ruled against. In an ejectment the legal title must prevail, when no equitable defense is available. 28A C.J.S. Ejectment § 10.

Thus, between Demetre and Respondents, under the current procedural posture of the case, where Respondents’ stipulated to Demetre’s record title, were ruled against on each of their

affirmative defenses, including adverse possession, and they claim no deed to the subject property, Demetre has good title to the subject property.

6. THE SEABROOKS' CONVEYANCES OVER TIME SHOWED BELIEF OF OWNERSHIP

Property conveyances from the subject area over more than a fifty-year period by Demetre's predecessors in interest, the Seabrooks, showed that they believed they owned the subject property. As far back as 1948, the Seabrooks began selling lots off the 200 block of Indian Avenue East. (R. p. 533 – 34). In 1948, Edward Seabrook, Sr. sold lot 201 Indian Avenue East. (R. p. 533 – 34). In 1949, he sold lot 202 Indian Avenue East. (R. p. 596 – 97). In 1950, he sold lots 203, 204, and 205 Indian Avenue East. (R. p. 639 – 40). As the 1965 Plat had not yet been recorded, the deeds to these lots identified them to be known as their respective lot numbers “when the property in the two hundred (200) block in Indian Avenue East is plotted and recorded.” (R. p. 533 - 34, 596 – 97, 630 – 40). Later Demetre acquired these lots from their respective owners.

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

7. THE OPINION SHOULD CLARIFY DEMETRE'S OWNERSHIP TO THE ROADWAY

This case was remanded to the master for a determination of Demetre's title to all the highland riverward of Respondents' lots. (R. p. 877, *Demetre I* Opinion, Unpublished Opinion No. 2009-CP-029, Substituted and Refiled April 21, 2009) (“Demetre sought a declaration that he owns all the property between the Crowleys' and Beckmanns' lots and the mean high water mark,

and he sought to quiet any defects in his title to the land . . . Therefore, because the master failed to rule on Demetre's requests for a declaration of ownership and to quiet title to the portions of the lots above the mean high water mark, we remand this case to the master for a determination of this issue.") This area includes the fifty-foot-wide undeveloped roadway bounding on Respondents' lots 209 and 210 Huron Avenue East and lots 209 and 210 Indian Avenue East. The Opinion in this case found that neither the State, the Respondents, nor any other party owns the roadway. (Opinion, p. 11) ("Demetre argues the master erred in the following . . . (7) finding the State owns the undeveloped portion of the roadway riverward of Respondents lots when *Demetre I* affirmed only the Town's ownership to the end of the northeast corner of Lot 205. As to all findings regarding the necessity of the State as a party, the State or Respondents' interests in the subject property, and the interpretation of all plats other than as applied to the issues of Demetre's ability to quiet title in Lots 209 and 210, we agree and vacate those portions of the order on appeal.")

However, the Opinion should clarify that title is quieted in Demetre to the roadway bounding riverward on the Respondents' lots 209 and 210 Huron Avenue East and bounding on lots 209 and 210 Indian Avenue East.

#### CONCLUSION

For the foregoing reasons, title to the property in the undeveloped roadway bounding riverward on Respondents' lots 209 and 210 Huron Avenue East and bounding on lots 209 and 210 Indian Avenue East and the portions of lots 209 and 210 Indian Avenue East above the mean high water mark as shown on the Kennerty 2005 Topographic Survey (Oversized Document – R. p. 1071) should be quieted in the name of the Milton P. Demetre Family Limited Partnership.

September 19, 2014

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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Trial Court Case No. 2005-CP-10-4101

**Appellate Case No.: 2012-212136**

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

v.

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

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**RETURN  
TO APPELLANT'S PETITION FOR REHEARING  
REGARDING OPINION NO. 5263 FILED AUGUST 20, 2014**

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## ARGUMENT IN RETURN

1. **“THE OPINION MISAPPREHENDS APPELLANT’S ARGUMENT AND CONFLICTS WITH K & A ACQUISITION GRP., LLC V. ISLAND POINTE, LLC. 383 S.C. 563, 682 S.E.2D 252 (2009) (THE DEED MUST BE CONSTRUED AS A WHOLE AND EFFECT GIVEN TO EVERY PART IF IT CAN BE DONE CONSISTENTLY WITH THE LAW.)”**

Appellant is trying to make semantic mischief.

On page one of Appellant’s Petition for Rehearing, Appellant states that the plat to which Appellant’s 2004 deed<sup>1</sup> refers to, is the 1965 “Plat”. Calling this document a, “Plat” is being generous, term because the 1965 “Plat” contains no seal or signature of an engineer or a registered land surveyor and thus can be more properly referred to, as it will hereinafter, as a “Tracing”<sup>2</sup>. Conveniently for the Appellant, this is the only document on which Appellant can base his claim. Inconveniently for the Appellant, the 2004 deed only makes reference to a 1920 Jefferson Construction Company plat<sup>3</sup> which does not show the lots purportedly conveyed to Appellant. Appellant tries to account for this inconvenient truth as follows.

First, Appellant states on page two of Appellant’s Petition for Rehearing, that the 2004 deed says that the plat was “dated February 1920” and not “recorded in February 1920”. Second, both documents are recorded in the same plat book in Charleston County, **albeit thirty five years apart**. The third part comes next, in the 1965 Tracing of the 1920 Jefferson Construction Plat there are two small, almost unnoticeable references a scale and the following language, “Chas. S.C. Feb. 1920”. Based on this, Appellant improperly turns the 1965 Tracing into the 1920 Jefferson Construction plat.

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<sup>1</sup> Quitclaim Deed from Seabrook, Jr. to Milton P. Demetre Family Limited Partnership Transcript, (R. p. 1070).

<sup>2</sup> Oversized Plat (R. p. 1069).

<sup>3</sup> Oversized Plat, (R. p. 1068).

However, there is some additional, almost unnoticeable, reference to another document at the top right corner of the 1965 Tracing which contains the following language, "Plan File I, Drawer \_\_, Folder 15, Drawing No. 15 & 16". Plan File I, Drawer \_\_, Folder 15, Drawing No. 15 & 16 is the file which contains the 1968 Redraw<sup>4</sup> which is the third and final iteration of the 1920 Jefferson Construction plat, (R. p. 1068). Using Appellant's previous improper argument, the 1968 Redraw should become the 1920 Jefferson Company plat. Unfortunately for Appellant, this last iteration of the plat *does not* depict the lots which the 2004 deed purports to convey (R. p. 1070).

Appellant cites a partial quote from, K & W Acquisition Group v. Island Pointe 383 S.C. 563, 682 S.E.2d 252 (2009), but the full quote is more informative as to the correct construction of a deed. "In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." Wayburn v. Smith, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." Gardner v. Mazingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987). "The intention of the grantor must be found within the four corners of the deed." *Id.* at 25, 358 S.E.2d at 392. "When intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it." *Id.* "The instrument is not thereby varied or contradicted but is explained or corrected." *Id.* " K & A Acquisition Group, *supra* at, p. 581.

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<sup>4</sup> 1968 Redraw (R. p. 1070).

"Most times the obvious answer is the correct answer<sup>5</sup>. The simplest answer is that the deed meant what it said and that the plat referenced did not include the lots on question. "As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and *are usually held to furnish the true description of the boundaries of the land...*" (citation omitted), (emphasis added), Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941).

Appellant is therefore left with two bad choices. If the deed is clear and the parties to it, Seabrook and Appellant intended to use the 1920 deed, Appellant's lots do not exist. If the deed is open to interpretation, extrinsic evidence may be used to explain it. The best possible explanation is the one that the Master arrived at, at Trial. The Master, with all of the deeds, plats, and other extrinsic evidence before him, determined that the parties to Appellant's 2004 intention was to use the original 1920 Jefferson construction plat and the lots simply did not exist, (R. p. 879- p. 884). Therefore, there was more than ample evidence in the Record on which the Master could make his decision. "...a master's factual findings in an action to quiet title will be affirmed by an appellate court if there is any evidence in the record reasonably supporting the findings." Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011).

## **2. "THE OPINION MISAPPREHENDS THE CHAIN OF TITLE ASSERTED BY APPELLANT"**

This Court's Opinion does not misapprehend the chain of title. This Court's Opinion is very clear on Appellant's chain of title and follows the chain of title, as set forth in the case by the grantee and the chain of title, as set out in the Dreher case.

Appellant, trying to make a whole case out of bits and pieces, seizes on a footnote (15) of this Court's opinion in Demetre II, in which the this Court clarifies, that even if Appellant took title by reference to the Tartus map through his predecessor in title rather than the 1920 Jefferson Construction plat, it made no difference because neither map, nor plat, showed Appellant's lots.

In South Carolina, it is well settled that marshland presumptively belongs to the State of South Carolina. *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 102, 552 S.E.2d 778, 781-82 (Ct. App. 2001). The facts that (i) the entire "island" was conveyed in the chain of title<sup>6</sup> and (ii) that its boundaries are shown as bodies of water, does not change the fact that marshland adjacent to, part of and within, the bodies of water cannot be conveyed, only the highland shown on the Tartus Map, (R. p. 1067).

Therefore, the property which was merely quitclaimed to Appellant should have put Appellant on inquiry notice to make sure that Appellant was not buying property that flooded twice a day. Moreover, the fact that marshland exists and that Appellant's "lots" are a part of it, does not place all of the other property on Folly Beach, conveyed using the 1895 Tartus map, under a cloud. Only Appellant's specific lots, due to their location, or more appropriately, the lots non-location on the 1985 Tartus Map and 1920 Jefferson Construction plat, are called into question and have been appropriately dealt with by the Master. Indeed, Appellant's property rights, must rise or fall on their own merit<sup>7</sup> (*Hobonney*), and cannot rely on the weakness of other titles when there are clear factual differences between the title set out in Query v Burgess, 371 S.C. 407, 639 S.E.2d 455 (Ct. of App. 2006).

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<sup>6</sup> Query v. Burgess, 371 S.C. 407, 639 SE 2d 455 (Ct. of App. 2006).

<sup>7</sup> Hooenboom v. City of Beaufort, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct. App. 1992).

Appellant also argues that the 1920 Jefferson Construction Plat was used to exclude lots from the 1921 Conveyance, (R. p. 539 – p. 551). Although, the deed lists all of the lots being excepted from the conveyance, the converse must also be true, that the lots not being excepted were being conveyed in the deed and the 1920 Jefferson Construction plat was a reliable reference.

The 1920 Jefferson Construction plat, serves two purposes: (i) it reinforces the Tartus Plat showing only marshland where the lots are claimed to exist and (ii) that all of the lots, in existence on the 1920 Jefferson Construction plat and not excepted from it, were conveyed, (R. p. 539 –p. 551). Clearly on both the 1895 Tartus map and the 1920 Jefferson Construction plat, Appellant's claimed lots were not depicted.

Finally, Appellant argues in Appellant's Petition for Rehearing, page "5", "The Opinion also states that the 1942 Deed refers to the 1920 Plat ('The 1942 Deed also refers to the 1920 Plat') (Opinion p. 2) However, the 1942 Deed does not refer to the 1920 Plat. (R. pp. 536-537)." This is a harmless, scrivener's error. In the main discussion of the chain of title in this Court's Opinion under Section "4" of the Opinion, titled "Appellant's Failure to Quiet Title in Lots 209 and 210", this Court, in reciting the chain of title in this case, makes no reference to and does not rely on the 1920 plat in the 1942 deed.

**3. "THE OPINION OVERLOOKS APPELLANT'S CITATION TO DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 730 S.E.2D 922, 399 S.C. 259 (CT. APP. 2012) IN WHICH THIS COURT QUIETED TITLE FOR DREHER WITH THE SAME CHAIN OF TITLE AS APPELLANT'S CHAIN OF TITLE IN THIS CASE."**

This Exception was not listed in Appellant's Statement of Issues on Appeal. See Rule 208(b)(1)(B), SCACR. Appellant cannot raise an issue for the first time in a Petition for Rehearing.

This Court's Opinion does not misapprehend the chain of title. This Court's Opinion is very clear on the chain of title and follows the chain as set forth in the case by the grantee and the chain as set out in the Dreher case.

First, because there is no mention in the Dreher case that Dreher took title by a quitclaim deed, it is reasonable to assume that Dreher took title by warranty deed. Because, Appellant took title by a quitclaim deed, Appellant should have been on notice that there were potential problems in Seabrooks's chain of title, Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005).

Appellant's argument improperly overlooks Footnote "2" in the Dreher decision, in which the Dreher Court says that all eight deeds describe the same property conveyed to Dreher and that the description of Tract D describes it as extending, "...to the edge of the marshes of the Folly River". That distinction from the Dreher case defeats Appellant's argument. If the 1895 Tartus map and the 1920 Jefferson Construction plat<sup>8</sup>, do not show Appellant's claimed lots, not extending to the edges of the marshes of the Folly River as in Dreher, but Appellant's lots are simply not there, and therefore do not exist.

This Court also stated that the 1895 Tartus did not show the lots. (See footnote 15 of the this Court's decision, Opinion No. 5263) Thus, the only two maps or plats in evidence which were in existence prior to the conveyance to Seabrook Sr., and in Appellant's direct chain of title (the 1965 Tracing and 1968 Redraw occurring after the 1942 deed into Seabrook Sr.) show no lots or land, where Appellant claims his lots are located.

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<sup>8</sup> Which plats were the only ones in existence at the time of the conveyance, in 1942, from the Charleston Master to Appellant's predecessor in interest and therefore the only ones in Appellant's chain of title.

Further, the Master made clear in his Order that he felt none of the maps or plats before him was dispositive of the marshland adjacent to Folly Beach and took judicial notice of a 1786 plat presented in the Query case to determine that marshland was not conveyed to Appellant's predecessors in interest, (R. p. 879 - p. 884). This confirmed for the Master that Appellant could not take title to property his predecessor did not own. "One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." (citing Belue v. Fetner, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968) (stating a deed cannot convey an interest which the grantor does not have)). Hoogenboom v City of Beaufort, 315 SC 306, 433 SE 2d 875, 880 (S.C. Ct. of App. 1992).

The substantial differences in the documents both in and out of Appellant's chain of title and indeed, the quality of title under which Appellant takes, show substantial and substantive differences between the titleholder in the Dreher case and Appellant. Any argument that the parties are similarly situated fails and with those factual differences, Appellant's argument fails.

4. **"THE OPINION OVERLOOKS APPELLANT'S ARGUMENT THAT EVEN IF APPELLANT'S DEED HAD REFERENCED THE 1920 PLAT, THE LOTS STILL CONVEYED (SIC)."**

**Common Argument to Exception "4" and all Sub-Parts Thereto.**

Appellant's argument is replete with *ipse dixit*, statements, which are not supported by South Carolina Law or Case Law. It does not matter about any of the particulars in Appellant's quitclaim deed, if Appellant's predecessors in title did not hold title to convey to Appellant. "One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." (citing Belue v. Fetner, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968) (stating a deed cannot convey an interest which the grantor does not have)) Hoogenboom v City of Beaufort 315 SC 306, 433 SE 2d 875, 880 (SC App. 1992).

For all of the reasons set forth in arguments 1, 2, and 3 hereinabove, Appellant cannot show good title through Appellant's chain of title, nor errors in interpreting the intentions of the parties to the Seabrook-Appellant 2004 deed. Additionally, as a general proposition, the same arguments have been addressed and answered in arguments 1, 2, and-3 hereinabove.

A. **THAT IS CERTAIN WHICH CAN BE MADE CERTAIN.**

Appellant's reliance on Brownlee is misplaced. Brownlee deals with the acreage in a particular description and stands for the proposition that boundaries govern acreage. In the case *sub judice*, the boundaries are well described, but they don't exist on the plats, and the plats described the areas on which Appellant's claimed "lots" are located, as marshland.

B. **A DEED REMAINS VALID IF AN ADEQUATE DESCRIPTION REMAINS AFTER REJECTION OF ERRONEOUS PART.**

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

C. **A CONSTRUCTION RENDERING A DEED VALID IS FAVORED OVER ONE RENDERING IT A NULLITY.**

In relying on a quitclaim deed, the Grantee only takes what the Grantor has. "(A) quitclaim deed does not convey the fee, but only the right, title[,] and interest of the grantor." Mulherin-Howell v. Cobb, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005). When there is nothing to convey then the Deed need not be declared a nullity, because the action of quitclaiming property to which the grantor has no title, is in itself a futile act.

**D. A DEED MUST BE INTERPRETED TO GIVE EFFECT OF ITS PARTS.**

Appellant's quitclaim deed is missing the warranties that come with a Warranty Deed and there is a reference to a plat, which does not show Appellant's lots, the chain of title is bad, Appellant's minimal consideration for property that should have brought a premium price, indicating doubt in both parties to the deed. The sum of the parts indicates the deficiency of the quitclaim deed, upon which Appellant relies and this Court was correct in its previous decision.

**E. THE PURPOSE AND EFFECT OF A PLAT IS A QUESTION OF THE INTENTION OF THE PARTIES.**

The plat referred to in Appellant's deed did not show Appellant's claimed lots, (R. p. 1068). The 1920 Jefferson Construction Plat that Appellant's predecessor in interest took title to the area in question only showed marshland, (R. p. 1068). The 1895 Tartus map does not show the Appellant's claimed lots and it shows only marshland where Appellant's lots were claimed to be located, (R. p. 1067). If the Tartus map had shown the Appellant's claimed lots, there would be a basis for an argument. Because Appellant's claimed lots were not shown on the Tartus map, the only explanation can be that the lots do not exist. "[i]t is difficult to imagine how more precisely to express intent as to the location of boundaries than to incorporate an accurate plat in the description." Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 398, 252 SE 2d 133 (1979).

**F. A CLEAR, EXPLICIT, AND CERTAIN DESCRIPTION WILL NOT BE VARIED BY A GENERALIZED ONE.**

There can be no clear explicit and certain description to property that may, or may not exist. The quitclaim deed, which itself casts doubt as to the efficacy of the title and the confidence of the grantor in his title, does not specify which of the drawings to which it has reference, (R. p. 633 – p. 638). If, as Appellant suggests in his argument above the 1965 Tracing is the 1920 plat, then the 1968 Redraw is also the 1920 plat.

Using Appellant's logic, would dictate the plat which is closest in time to the date of Appellant's Deed would be the correct 1920 plat and the lots which Appellant believes he has, disappear into the marshland. Using the Master's logic and this Court's logic, the simpler answer, is that the parties to the Seabrook-Appellant deed, relied on the original 1920 Jefferson Construction plat which does not show Appellant's claimed lots.

**G. WHERE THERE IS DOUBT AS TO INTENTION, AN INTERPRETATION LEADING TO INJUSTICE WILL BE REJECTED.**

Again Appellant took by quitclaim deed. The Grantor was so uncertain of his own title that he refused to use a warranty deed and Appellant took what the grantor had. There is no injustice, when Appellant having been put on actual notice of the grantor's indifference as to the quality of Appellant's title or Grantor's uncertainty of the quality of his Title and unwillingness to give a warranty deed and Appellant's acceptance of it. Appellant's knowledge that there were potential problems, leads to no injustice

**H. A COURT WILL DECLARE A DEED VOID ONLY AFTER RESORTING TO EXTRINSIC EVIDENCE.**

In Appellant's quitclaim deed, his claimed lots are reasonably described. However, when (i) the plat, referred to in the deed does not, in two iterations even show the lots in question, in the 1965 iteration shows the lots drawn but actually drawn inside areas designated as marshland, the Master was required to determine the ability of the Grantor (Seabrook) to Convey the property in the deed to Appellant. The Master, relying on all of the extrinsic evidence before him, correctly decided, based on the facts before him that the grantor concluded that he did not have good title and would only convey title to the Appellant's claimed lots, using a quitclaim deed. "One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." Id. at 313, 433 S.E.2d at 880-81 (citing Belue v. Fetner, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968) (stating a deed cannot convey an interest which the grantor does not have))." The deed was not declared void but interpreted by the Master.

I. **A PLAT DOES NOT INVALIDATE LOTS WHERE ANOTHER METHOD COULD BE USED TO LOCATE THEM.**

Appellant relies on *Corpus Juris Secundum* and not South Carolina Case Law. However, accepting this premise as true, no other method could be used to locate these claimed lots? The 1920 plat? No. The 1965 Tracing? No. The 1965 Tracing is not really a plat at all. The 1968 Redraw? No. Appellant's claimed lots are not shown on the 1968 Redraw. The 1895 Tartus map does not show the Appellant's claimed lots. The Master appropriately interpreted the deed and came to a conclusion the lots did not exist, which is supported by ample evidence.

J. **A DESCRIPTION FROM WHICH A SURVEYOR CAN LOCATE THE LAND IS ADEQUATE.**

The deed refers to a 1920 Jefferson Construction plat which shows no lots and the most recent version of the 1920 plat, the 1968 redraw does not show the lots, (R. p. 1070.) Inconsistent and contradictory plats led the Master to correctly conclude that the correct plat was the plat actually referenced in the deed, which did not depict Appellant's claimed lots.

The Master was correct in relying upon the plain language in the deed and was correct when he found that Appellant's grantor was so concerned about his own title to the lots in question in giving Appellant a warranty deed that he refused to do so and resorted to a quitclaim deed. There was ample evidence for the master to reach his conclusions and this Court to reject Appellant's Petition. A master's factual findings in an action to quiet title will be affirmed by an appellate court if there is any evidence in the record reasonably supporting the findings. Estate of Tenney v. S.C. Dep't of Health & Envtl. Control, 393 S.C. 100, 105, 712 S.E.2d 395, 397 (2011).

5. **“THE OPINION MISAPPREHENDS APPELLANT’S ARGUMENT THAT THE MASTER’S ORDER CONFLICTS WITH BELUE V. FETNER, 251 S.C. 600,164 S.E.2D 753 (1968)”.**

This Court previously ruled on Appellant’s argument on this issue, in its Order filed August 20, 2014, Opinion No.: 5263, “III. LAW/ANALYSIS” “1. “The Stipulation Issue.” Appellant’s rehash of Appellant’s earlier argument on the stipulation, is improper. It “...[is not] the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” (internal citation omitted) Herron v. Centry BMW, 719 SE2d 640 (2011).

For the record, Respondents’ argument when this issue was presented to this Court the first time, can be summarized as follows. Appellant’s Counsel carefully selects portions of the transcript to make it seem as if the Appellant’s title was somehow validated by the Stipulation. A Stipulation was put on the record by Respondent’s Counsel in which the title of record to Respondent, Crowley’s, and Respondent Beckmanns’ property was stipulated “...**as far as record title.**” (Emphasis added), (December 12, 2006, Hearing, R. p. 892, Lines 1-15).

Appellant improperly tries to bootstrap a Stipulation of record title for all of the parties’ property discussed in the original hearing in this matter, into good title for Appellant (December 12, 2006, Hearing, R. p. 921, Line 21 – R. p. 922, Line 2; R. p. 892, Lines 1-15). (See, Respondents’ Final Brief, filed with this Court on October 28, 2013, page “18”).

6. **“THE SEABROOKS’ CONVEYANCES OVER TIME SHOWED (SIC) BELIEF OF OWNERSHIP”.**

Appellant previously made this argument before this Court in his Exception “14” on page “28”, in Appellant’s Final Brief, as filed with this Court. Appellant’s rehash of its earlier argument on this issue is improper, “...nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” (internal citation omitted) Herron v. Centry BMW, 719 SE2d 640 (2011).

For the record, Respondents' argument when this issue was presented to this Court the first time, can be summarized as follows. Appellant mischaracterizes the Master's Order on Remand, (*Order on Remand*, R. pp. 879-884). The Master found that the lots in question do not exist, (*Order on Remand*, R. p. 881). The Master went on to say that fact was apparently known to Mr. Seabrook when he quitclaimed the lots to Appellant by use of a quit claim deed (*Order on Remand*, R. p. 881). Mr. Seabrook, was not willing to and did not, give the ordinary warranties that are contained in a general warranty deed, because Mr. Seabrook used a quitclaim deed. The plat referred to in the quitclaim deed (the 1920) Plat doesn't show the lots purportedly being conveyed. (See, Respondents' Final Brief, filed with this Court on October 28, 2013, page "34").

**7. "THE OPINION SHOULD CLARIFY APPELLANT'S OWNERSHIP TO THE ROADWAY"**

This Exception was not listed in Appellant's Statement of Issues on Appeal. See Rule 208(b)(1)(B), SCACR. Appellant cannot raise an issue for the first time in a Petition for Rehearing. Furthermore, this matter was settled in "the Road Case" in Demetre I.

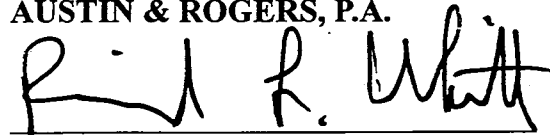
For all of the reasons stated throughout this response this, this argument is without merit.. Because the road, to the extent Appellant claims it does, not exist on the 1920 plat and is not otherwise described in the quitclaim deed, then Appellant is not entitled to the relief requested.

## CONCLUSION

Appellant tries to obfuscate this Appeal, with (i) a reference to scrivener's errors in this Court's Opinion (ii) by twisting logic to the breaking point in trying to describe a 1965 Tracing of a 1920 plat redraw as the 1920 plat itself (iii) by using scare tactics to try to put into question all of the title to property on Folly Beach, when the title to all of the *highland property* on Folly Beach is not threatened by this Court's Opinion (iv), by trying to pick apart the deed from Seabrook to Appellant in a vacuum, in order to make it convey title to Appellant, when all of extrinsic evidence points in the opposite direction (v) in rehashing the stipulation argument and delving into the mind of his grantor and (vi) bringing up for the first time a claim to the road that was clearly settled in Demetre I. Appellant's Petition for Rehearing is without merit and it should be dismissed and this Court's Opinion confirmed.

Respectfully Submitted,  
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October 16, 2014  
Columbia, South Carolina

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

**RECEIVED**

OCT 30 2014

**SC Court of Appeals**

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

v.

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

**APPELLANT'S REPLY**

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

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

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

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

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

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

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

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

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<sup>1</sup> As found in *Demetre I*, the 1965 Plat is actually a “redraw” because it adds lots not shown on the 1920 Plat, and the 1968 Plat, not the 1965 Plat, is a “tracing” of the 1920 Plat. (R. pp. 860- 61).

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

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

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

B. The Law Respondents Quote Supports Demetre’s Argument

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

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

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

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

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

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

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

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

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

E. The Master’s Conclusion that the “Lots Do Not Exist” is Unsupported

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

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

2. The 1895 Tartus Plat in the Chain of Title Conveyed the Entire Island to the Folly River
  - a. The Lots Conveyed because they are Above the Mean High-Water Mark:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. That is Certain Which Can be Made Certain

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Reply to Respondent's Conclusion

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

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

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

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

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

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

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

#### CONCLUSION

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

RESPECTFULLY SUBMITTED,

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October 27, 2014