THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.

Howell Jackson Gregory, The Gregory Company and The City of Lancaster, Defendants,

Of whom Howell Jackson Gregory and The Gregory Company, Inc., are the Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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APPELLANT'S AGRUMENT IN REPLY

PREAMBLE:

Respondent's counterstatement of the case headlines the two cases that comprise this appeal by consolidation; however, a third case is discussed which is a cross-action by Respondent in May, 2006 against Appellant after the main action, a mechanic's lien was settled in September, 2005 when Appellant paid to the attorney for Tod Snipes, contractor $15,500.00 (R. pp. 49, 74-75) for the new roof installed by Snipes in 2004 to a Lancaster tract building. (R. pp. 50-51) Respondent refused to participate in 2004-5 with Appellant about obtaining a new roof, ignoring two faxed memos, July 2004 and January, 2005 from Appellant (R. pp. 134-136) during and after the 2004 efforts to appeal the City of Lancaster condemnation order of that building from the letter of Richard Bowers, Lancaster Building Official dated October 29, 2003 (R. pp. 52-53) that provided over $1,000. a day fine for non-compliance. (R. p. 53) Six letters in 2004 (R. p. 46) (R. pp. 54-59) were sent back and forth to reschedule the appeal to the owners/parties and counsel and when it appeared fruitless Appellant was able to obtain the identical bid from Tod Snipes in 2004 (R. p. 51) that Respondent obtained from him in 2003 (R. p. 50) to roof the condemned building for $13,500.00. (R. pp. 50-51) Aware that time was running out with the city and the upcoming partition auction of the Lancaster tract Appellant contracted with Tod Snipes to install a new roof and prevent waste of the Lancaster tract assets of the parties.

The May 27, 2006 Order of Kenneth G. Goode (R. pp. 26-30) is the result of the cross-action trial on May 1, 2006, occurring just days after the April 25, 2006 Order of Master in Equity J. Stanton Cross, Jr. (R. pp. 2-4) was issued in Respondent's partition action and that Cross order was prepared by the Respondent's attorney, Clifford Welsh. (R. p. 148, lines 9-17) It provides: Appellant may setoff "any funds" (R. p. 3) he contributed that he can prove that Respondent did

not contribute to.

Respondent appears to undermine the equitable intent of his own partition case that provided at trial the conceded (R. p. 3) sum of $7,940.00 Appellant paid for the removal of the gas tanks. He amended his pleadings on May 1, 2006 from the original that consisted of the same language he pled in his partition case (R. pp. 87-106) (R. pp. 107-109) and then orally asks the court to order that he not be held responsible for the cost of the new roof improvement creating an unjust enrichment for Respondent. He also awards himself attorney fees for representing himself and does not attach a qualifying affidavit to the Goode Order of May 27, 2006. (R. pp. 26-30) The order is without any reference to the April 25, 2006 Cross Order. (R. pp. 2-4) Respondent thereby presents a conflict of his equitable intent on improvements to the Lancaster tract to benefit him and a fraud upon the court.

In a proposed order to William C. Tindal, Special Referee Appellant presented the doctrine of judicial estoppel recognized in South Carolina (R. pp. 138-144); however, Tindal did not consider the issue.

Respondent has now brought three pro se actions against Appellant all relating to the partition of the jointly owned assets in Horry and Lancaster Counties as follows, to wit:

1. First case in Lancaster County in 2000 for partition, moved to Horry County in 2002, and Respondent then hired counsel, Clifford L. Welsh;
2. Second case in Lancaster County in 2006 as a cross-action all pro se ; and
3. Third case in Lancaster County in 2008 for fraudulent deed, amended in 2012 alleging a violation of the Statute of Elizabeth, after Respondent hired counsel, Palmer Freeman.

Respondent leaves the appearance that he will go to any length pro se to obtain favorable

rulings no matter how many courts he must engage, regardless of his initial partition action.

FIRST CASE: THE 2000 PARTITION

The counterstatement misidentifies the Lancaster tract as "three adjacent parcels in downtown Lancaster" in his description of the start of the partition case even though it does describe the property today. The subdivision of the Lancaster tract did not occur until after The Gregory Company, Inc. was deeded the property and then had it platted by a local surveyor in 2008. Both documents were recorded simultaneously in June, 2008. (R. p. 130) (R. p. 149)

The reference in Respondent's brief that the Nunc Pro Tunc Order by J. Stanton Cross, Jr., Master in Equity dated August 10, 2006 (R. p. 5) is an ex parte order simply is not true and there is no proof that it is. (R. p. 46) This allegation was confirmed to be false with the joint issuance of the two August 9, 2006 checks (R. p. 37) by Cliff Welsh and Appellant to Judge Cross.

The two checks conceded in the May 15, 2013 Howe Order (R. p. 21) represented the money needed by the Cross court to conclude the Lancaster sale and Respondent misallocates the use of those funds, as he does not follow the two documents (R. pp. 61-62) prepared by his counsel Welsh and presented at the Cross conference on the Friday just prior to May 22, 2006, the date of the Welsh letter (R. p. 60) memorializing the event attended by counsel. A follow up conference was held with counsel at the Cross court on August 9, 2006 (R. p. 41) (R. pp. 45-46) as that was the date that those two checks (R. p. 37) were issued, to wit: The Gregory Company check for $5,097.03 as balance interest and the Clifford L. Welsh Trust check for $2,500.00 as rent collected during litigation to go to the buyer of the

Lancaster tract. That total of $7,597.03 was used by the Cross court to end the Lancaster sale. It paid off the Lancaster sale costs of $2,228.00 (R. p. 47) with the balance of $5,369.03 going to interest charged The Gregory Company, Inc. plus the interest paid by The Gregory Company, Inc. on April 28, 2006 of $8,925.00 over and above the required one-half the bid amount of $85,000.00 from the check of $93,925.00. (R. pp. 43-44)

This makes the interest paid to the Cross court by The Gregory Company, Inc. in 2006 on April 28 ($8,925.00) and on August 9 ($5,369.03) for a total paid $14,294.03. From the Welsh letter of May 22, 2006 (R. p. 60) and applying the 8.25% interest rate (R. p. 62) used by the Cross court this court take judicial notice that from June 6, 2005 (date of auction sale) (R. p. 137) to April 28, 2006 (date of bid payment) (R. pp. 43-44) is ten months and three weeks. That interest at the rate of 8.25% on the bid amount of $170,000.00 for one year amounts to $14,025.00; but if figured on the one-half bid amount of $85,000.00 it is $7,012.50. Obviously, Welsh was using the one-half bid amount to figure the interest (R. p. 62) to conform with the Respondent's argument that Jack Gregory was the bidder and paid his one-half amount, but the Cross court required The Gregory Company, Inc. as the grantee to pay interest on the full bid of $170,000.00 and it did so and is the legitimate legal grantee for doing so, as it was in the discretion of the equitable trial judge in the matter who applied equity to the facts in the case to conclude the sale.

The Gregory Company, Inc. overpaid the interest to the Cross court by $1,802.40 creating a surplus. This is figured on the ten months and three weeks from bid to payment. The required interest on that time frame at 8.25% on $170,000.00 is $12,491.63, thus the actual interest paid $14,294.03 is $1,802.40 above the required sum. Based upon the math the Cross court properly carried out the conclusion of the Lancaster sale, collected the $2,228.00

costs of sale in satisfaction of that number in the April 25, 2006 Cross Order and received sufficient interest to justify the deeding of the Lancaster tract to The Gregory Company, Inc.

Master in Equity Cross did not require the full bid amount to be paid as Jack Gregory owned a one-half interest and would get back that one-half payment, so in his wisdom and discretion he waived strict compliance and he charged 8.25% interest on the full bid amount ($170,000.00) and was overpaid that required amount by $1,802.40 for equity to prevail.

SECOND CASE: THE 2006 CROSS ACTION

A misstatement in Respondent's counterstatement would lead one to think that "Judge Goode's order approving the settlement and dismissing the case forbade charging respondent Ned Gregory for any portion of the payment" was all decided in one order, but it was not. Actually, the first order of Judge Goode was on September 26, 2005 (R. p. 25) following the payment by The Gregory Company, Inc. to the attorney for Tod Snipes, contractor of $15,500.00. (R. p. 39) (R. p. 46) (R. p. 49) (R. pp. 74-75) It was that order that settled the mechanic's lien suit. (R. p. 25) The second Goode Order May 27, 2006 (R. pp. 26-30) as discussed in the preamble is the one that Respondent relies on that is unlawful.

The timing of the Cross Order of April 25, 2006 (R. pp. 2-4) in concluding the partition case is key to to understanding why the Goode Order of May 27, 2006 (R. pp. 26-30) is suspect and unlawful. The die was cast in that Cross order with language prepared by Respondent's own lawyer (R. p. 125, lines 20-25) (R. p. 148, lines 9-17) Clifford Welsh:

> "The Defendant (Appellant) is entitled to a setoff to the amount expended by the Plaintiff (Respondent) of ANY FUNDS (emphasis ours) that he (Appellant) can prove that he (Appellant) contributed, without contribution from the Plaintiff (Respondent)."

This equity action that Respondent initiated in 2000 to partition the common assets of the parties by 2006 had already seen the real estate auctioned. The Myrtle Beach home was sold in May, 2005 for $600,000.00 and paid for by Appellant Jack Gregory and Lancaster tract was sold June 6, 2005 for $170,000.00 (R. p. 137) and paid for by The Gregory Company, Inc. ten months and three weeks later on April 28, 2006. (R. pp. 43-44) In the interim Appellants paid for improvements to the Lancaster tract with the removal of the gas tanks (R. p. 3) (R. p. 5) (conceded at trial by Respondent in 2004 for $7,940.00 and part of the April 25, 2006 Cross Order) and installation of a new roof in 2004 by Tod Snipes, contractor who was paid $13,500.00 by Appellants from a September 12, 2005 check for $15,500.00 to his attorney. (R. pp. 74-75)

At the sale of the Lancaster tract on June 6, 2005 the 2003 condemnation by the city had been satisfied and dismissed with the new roof. The gas tanks had been removed earlier. Even though the three commercial buildings were vacant in June, 2005 Lancaster tract was in the best condition for an auction sale with no detractions and multiple bidders. (R. p. 137) Respondent derived the best benefit from the sale, rather than sale of a condemned building.

Lancaster sale payment occurred on April 28, 2006 (R. pp. 43-44) three days before May 1, 2006 cross-action trial (R. p. 26, line 1) and Respondent had already laid equitable groundwork in his partition case for applying equity with the conceded sum of $7,940.00 to Appellant for his removal of the gas tanks. This award for Appellant was included in the Cross Order of April 25, 2006 (R. p. 3) and is in accord with the existing South Carolina partition law as set forth in Ackerman v. Heard, 287 S.C. 626, 340 S.E.2d 560 (Ct. App. 1986):

> "An appeal of a partition and accounting action wherein the general rule was set forth that a joint tenant who, at his own expense, places permanent improvements upon the common property is entitled in a partition suit to compensation for the improvements whether his cotenants assented thereto or not. Compensation is allowed not as a matter of legal right, but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another."

The Ackerman decision was later followed in O'Bratis v. O'Bratis an appeal from the Richland County Master in Equity to the SC Court of Appeals and reported as Opinion No. 3858 in 2004. The Master in Equity has exclusive jurisdiction over such matters including partition as set forth in Rule 71 of the SCRCP after his appointment by an order of reference with finality under Rule 53. (R. p. 1)

> The SC Code of Laws, Ann. Section 14-11-85 provides: "When some or all of the causes of action in a case are referred to a master-in-equity... he shall enter final judgment as to those causes of action..."

With this background Respondent entered the Goode court May 1, 2006 and attempted to undermine his own partition equity position on improvements to the common property paid for by Appellant, knowing aforethought that the Cross Order of April 25, 2006 stating that "any funds" (R. p. 3) would include the money Appellant paid for the new roof. So, reversing his equity position from the partition case Respondent seeks and draws an order denying to himself any liability for the cost of the new roof. This juxtaposition by Respondent can only be seen as letting greed trump common sense.

This equity issue remains with the partition court and cannot be hijacked in a cross-action in another court just because Respondent does not like the door opening language his counsel prepared in the Cross Order of April 25, 2006. (R. p. 148, lines 9-17) Respondent's court maneuvering might have looked hot in 2006, but not in 2014 as he avoids the legal maxims

that need to be weighed in the case, as equity is as equity does, he who seeks equity must do equity and the doctrines of unjust enrichment and of unclean hands.

> The doctrine of "unclean hands" precludes a plaintiff (Respondent) from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant (Appellant). Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735 (1943) was cited in Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (S.C. App. 1984).

Our opinion of the Goode Order of May 27, 2006 (R. pp. 26-30) is it's the epitome of prejudice to the Appellant in this case as the Cross Order of April 25, 2006 (R. pp. 2-4) is prior and the law of the partition case which is the primary equity action initiated by Respondent and controls.

Also, the doctrine of judicial estoppel should intervene and declare the Goode Order of May 27, 2006 void as it violates the truth-seeking function of the equity court in the partition case, as it prevents the balancing of the equities of the parties that Judge Cross was right in doing so pursuant to the October 12, 2001 Short Order of Reference with Finality. (R. p. 1)

In applying the doctrine of judicial estoppel a discussion in the South Carolina Supreme Court decision of Hayne Federal Credit Union v. Bailey, et al., 327 S.C. 242, 489 S.E.2d 472 (S.C. 1997) is craved:

> " Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. See Colleton Reg. Hosp. v. MGS Med. Rev. Systs., 866 F. Supp. 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. Estoppel & Waiver, Section 139 at 593 (1996). Judicial estoppel generally applies only to inconsistent statements of fact. Cannon v. H.K. Porter Co., 705 F.Supp. 288 (E.D.Va. 1989). Although some courts have held to the contrary, the doctrine does not apply to conclusions of law or assertions of legal theories. See United States v. Siegel, 472 F. Supp. 440 (N.D. Ill. 1979).

Our research of South Carolina case law has not revealed an explicit discussion of judicial estoppel; however, there are opinions alluding to the doctrine. For example, Boykin v. Prioleau, 255 S.C. 437, 179 S.E.2d 599 (1971) intimated that the doctrine exists in this state: "The defense of judicial estoppel has not been raised and the facts appearing here would not support it." Id. at 441, 179 S.E.2d at 601; see also Zimmerman v. Central Union Bank, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position.")

We now explicitly adopt the doctrine of judicial estoppel as it relates to matters of fact (not law). In order for the judicial process to function property litigants must approach [327 S.C. 252] it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. It is certainly conceivable that parties may want to present novel legal theories, which may require changing one's previous legal theory. [1] However, the truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence.... Notes: [1] The discussion here is not intended to suggest an alteration of our rules of preservation."

See also John S. Clark Co. v. Faggert & Frieden, P.C., 65 F.3d 26, 29 (4th Cir. 1995) (stating goal of judicial estoppel "is to prevent a party from playing 'fast and loose' with the courts, and to protect the essential integrity of the process.").

By applying the doctrine of judicial estoppel here the court would preserve the intent of the partition equity trial, sales and post trial follow-up of the judgment and setoffs per April 25, 2006 (R. pp. 2-4) and August 10, 2006 Nunc Pro Tunc for April 25, 2006 (R. p. 5) Cross Orders, the law of the case. The use of the term "any funds" (R. p. 3) left the door open for Appellant to return to court later with the proof, which he did, on August 9, 2006 and was awarded as setoffs the new roof payment of $13,500.00 and the Horry taxes of $4,077.99 via nunc pro tunc order.

> The legal definition in Black's Law Dictionary of "Nunc Pro Tunc" is a phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect." Black's Law Dictionary 737 (7th ed. 1991)

Master in Equity J. Stanton Cross, Jr. did not correct an error with his August 9, 2006 Nunc Pro Tunc Order for April 25, 2006, but simply placed into the record the evidence of his judicial action of August 9, 2006 that was anticipated by counsel. (R. pp. 45-46) After perusing the proof presented Cross awarded Appellant setoffs to Respondent's judgment in compliance with the South Carolina law governing nunc pro tunc orders. In the partition case the act of proving Appellant's expenses for the good of the common property, that Respondent did not contribute towards, was set up in the Welsh prepared Cross Order of April 25, 2006. (R. pp. 2-4) Those Appellant expenses proven later were authorized by Master in Equity Cross in that order.

This proof requirement accomplished on August 9, 2006 was not something that the court failed to take into account on April 25, 2006 or to correct an error or supply an omission of judicial action, as it was anticipated by the parties through their counsel that if proof was provided then the "any funds" (R. p. 3) language would allow Appellant to offset expenses proven against Respondent's judgment amount.

The case of Ex Parte J. P. Strom, Jr., 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000) is our authority and it stated that Nunc pro tunc orders can only be [page 703] used to place in the record evidence of judicial action that has actually taken place. "A prerequisite for a nunc pro tunc order...is some previous action by the court that is not adequately reflected in its record." Dewees v. Sweeney, 947 S.W. 2d 861 (Tenn.Ct.App. 1996), app. den'd (1997); see also Simmons v. Atlantic Coast Line R.R. Co., 235 F. Supp. 325, 330 (D.S.C. 1964 (nunc pro tunc entry cannot be made to serve the office of correcting a decision or of supplying non-action on the part of the court); Carroll v. Carroll, 338 S.W. 2d 694, 695 [343 S.C. 265] (Ky. 1960) ("The error could not be corrected by nunc pro tunc order because such as order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error or supply an omission of judicial action."); 20 Am. Jur. Courts 29 (1995) (the order cannot supply the record with action that the court failed to take).

If partition trial gas tank removal conceded sum of $7,940.00 per said order (R. p. 3) then why in the name of logic would a new roof to stop a building condemnation and $1,000. a

day fine (R. p. 129, lines 12-25) prior to auction sale not be the same thing. They both seek the same result to maximize the shape of the common property for sale to bring the highest bid. Otherwise, it causes a hardship to the owner who paid for the improvements, but doesn't get reimbursement and other owner gains a windfall through unjust enrichment.

On May 1, 2006 Respondent attempted to modify by conflict his initial intent with the conceded sum for the gas tanks removal by reversing the equitable aspect of his partition case in obtaining an order to forbid him from being charged for the new roof improvement. This direction change by Respondent appears to be an effort on his behalf to take the truth-seeking function lightly in his own partition suit in equity court, by playing fast and loose with the courts, as his cross-action trial was just days after April 25, 2006 Order that alerted him that the new roof job would become a setoff just like the gas tanks removal against his judgment sum. There is no question that the new roof payment is includable in the language of that order as "any funds". Respondent did not contribute toward that cost. Thus, the May 27, 2006 Goode Order (R. pp. 26-30) is suspect and unlawful.

Respondent makes argument in his brief that Appellant has failed to establish a record for this appeal from the partition case; however, since no testimony was allowed and mere discussion was had with the successor Master in Equity Howe in 2013: (R. p. 117)
Diane Mercer (R. p. 118, lines 6-25) (R. p. 119, lines 1-19) and
Jim Irvin (R. p. 125, lines 20-25) (R. p. lines 1-11) Appellant has relied on exhibited documents in establishing the record for review.

Appellant relies on the following South Carolina cases concerning Rule 71, the record and appeal of partition cases:

"This requirement [that the special referee make and preserve a

> separate record of the proceedings] is merely directory, and hold that failure to comply with the rule does not serve as a basis for invalidating the judgment." Cox v. Frierson, 311 S.C. 528, 429 S.E.2d 866, 868 (Ct. App. 1993).
>
> "A partition action is an equitable action, heard by a judge alone and, as such, this court may find facts in accordance with our own view of the preponderance of the evidence." Wilson v. McGuire, 320 S.C. 137, 140-41, 463 W.E.2d 614, 616 (Ct. App. 1995).

The partition action brought by Respondent in 2000 is an equity action and Master in Equity J. Stanton Cross, Jr. who tried the case weighed the equities of the parties as he was charged to do and he carried out their intent during and after trial and it was his equity court the one to determine the improvements questions to the common properties, not by another judge in another court a few days after his April 25, 2006 order was issued. (R. pp. 2-4) The truth–seeking function of the Cross court appears robbed of its function with the advent of the May 27, 2006 Goode Order (R. pp. 26-30) which is not the proper avenue Respondent should have taken in the matter. By applying the equity to this factual scene as submitted in the exhibited documents in the record that activity in the Goode court in May, 2006 should be abated and declared null and void as unlawful in the name of equity.

THIRD CASE: THE 2008 FRAUDULENT DEED & THIRD LIS PENDENS

This pro se fraudulent deed claim by Respondent in 2008 was based on two events occurring on June 10, 2008. The plat of the Lancaster tract was recorded on that date (R. p. 149) and the Horry County Clerk of Court issued a transcript of judgment dated June 10, 2008. (R. p. 33) The suit did not contain a copy of the transcript of judgment and it was not until February 7, 2012 that Respondent and his new counsel appeared in the Special Referee

pre-trial conference and produced the document for the first time to Appellants and counsel (R. p. 128, lines 1-25) (R. p. 129, lines 1-25) basing their amended suit upon the allegation that the Cross deed of the Lancaster tract to The Gregory Company, Inc. is a violation of the Statute of Elizabeth, S.C. Code Ann. Section 27-23-10.

The June 10, 2008 transcript of judgment (R. p. 33) (R. p. 124, lines 13-17) contained three glaring errors:

One: The costs of the Lancaster sale in the amount of $2,228.00 was listed as part of the Respondent's judgment increasing his award from $42,859.47 to $45,087.47;

Two: Appellant's setoffs were not listed from the two 2006 Cross orders; (R. pp. 2-5) and

Three: The two checks issued August 9, 2006 to Horry Master in Equity (R. p. 37) totaling $7,597.03 which included the payoff of the costs of the Lancaster sale of $2,228.00 were not listed.

This arbitrary total sum in Respondent's favor of $45,087.47 was quite a shock that such a document would exist. The facts of the partition trial were known to the parties and counsel, and didn't rule this way, but Respondent opted to secrete it for well over three years for some ulterior purpose when Respondent should have as an officer of the court contacted the Horry County Clerk of Court and report the discrepancy he obtained in June, 2008.

Along with the suit a Third Lis Pendens (R. p. 86) was filed against the Lancaster tract in 2008. Appellants filed an emergency motion to cancel the invalid lien in 2008. (R. p. 31) It was not until Tindal's order in April, 2013 that denied the motion. (R. p. 10) The Third Lis Pendens (3LP) was out of date according to the S.C. Code Ann. Section 15-11-10, et seq. providing for amendments to be within five years and as the time from the second lis pendens in 2002 (2LP) (R. pp. 84-85) when the partition case was removed from Lancaster to Horry

County to 2008 is six years and invalid, but still it remains a cloud on the title.

> "Since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the statutory provisions is required." Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002) rehearing denied, certiorari denied.

The Special Referee William Tindal orders (R. pp. 7-17) ordering the sale of Lancaster tract at public auction did not place the title of the real estate in the name of Howell Jackson Gregory, as Respondent alludes to in his brief, but plainly ordered the sale based upon the belief that the Statute of Elizabeth was violated, but the dollar amount driving the sale orders was based upon the orders of the successor Master in Equity Cynthia Graham Howe who violated SCRCP Rule 63 by not continuing the specific language in the Master in Equity J. Stanton Cross, Jr. orders of 2006 as the law of the case as they were not appealed. Respondent prepared a memorandum and filed with the Howe court at one hearing (R. 120, lines 1-18) and memo filed 7-22-13 (R. pp. 77-81) and suggested to her to read SCRCP Rule 63, but her response was to deny her violation. (R. p. 147, lines 2-25)

The key argument by Appellant to Judge Howe at the October 13, 2013 hearing was that Appellant is in agreement with Judge Howe that when Judge Cross ruled the case was over; (R. p. 121, lines 5-9) however, it was pointed out to Judge Howe that Appellant has not been given the proper three credits totaling $25,517.99. (R. p. 121, line 5 - R. p. 122, line 25) This was why the Horry Clerk of Court's office (Diane Mercer) was present to testify, but no testimony was allowed. (R. p. 123, lines 22-25) (R. p. 125, lines 24-25) (R. p. 148, lines 1-11) Thus, the orders by Judge Howe are not proper under SCRCP Rule 63 and must be reversed by the court in review in order to give the Cross orders the proper weight they deserve, save the conceded sum of the two checks (R. p. 37) as set forth in the May 15, 2013 Howe Order. (R. p. 21)

Also, for Judge Howe to rule that Appellant did not prove the three checks he paid for the Horry County tax years 2002, 2003 and 2004 amounting to $4,077.99 (R. p. 5) (R. p. 63) and (R. pp. 63-70) and the $13,500.00 (R. p. 5) (R. p. 40) (R. p. 46) (R. p. 49) and (R. pp. 74-75) new roof job check of $15,500.00 that were proven to Judge Cross; ergo, his Nunc Pro Tunc Order appears that she is applying her own method of handling trials, as she does not understand how Judge Cross handled his cases, so as an option, she just denies, as his method did not mirror hers. (R. p.123, lines 1-25) This is how she is violating SCRCP Rule 63 for the Cross Orders were not appealed and are the law of the case, but Judge Howe in denying their content is changing the rulings in both of Judge Cross' 2006 Orders and contra to the Charleston County DSS Case.

> Case of Charleston County DSS v. Father, et al., 317 S.C. 283, 454 S.E.2d 307 (1995) holding that a successor judge in the same court cannot change the prior orders of the retired judge.

Until the math is completed from the rulings in the partition case and a review of the Master In Equity J. Stanton Cross, Jr. orders in 2006 a final monetary judgment still does not exist here. S. C. Code Ann. Section 15-35-810 provides that a final money judgment constitutes a lien.

CONCLUSION

In order for equity to prevail in this partition action the following awards and setoffs must be computed in setting the record straight and establishing the truth in the matter.

1. Respondent have judgment against Appellant for $42,859.47 which is the total of his claims for rent and accounting;

2. Appellant have the right to setoff against Respondent's judgment "any funds" that he can prove that Respondent did not contribute towards common property improvements and Appellant proved the following three items with the trial judge Cross:

One - $7,940.00 gas tanks removal, conceded at trial in 2004;

Two - $4,077.99 Horry County taxes for years 2002, 2003 and 2004 by three cleared checks presented on August 9, 2006 at that Judge Cross conference; and

Three- $13,500.00 from the cleared check presented on August 9, 2006 in the amount of $15,500.00 to attorney for Tod Snipes at that Judge Cross conference.

Appellant's Total setoff amount of $25,517.99 per Judge Cross;

3. Ergo, net judgment amount is $42,859.47 less $25,517.99 for balance of $17,341.48.

The Respondent's push to collect a non final partition judgment, plus relief from a suspect and unlawful Goode Order of May 27, 2006 awarding Respondent attorney fees for representing himself pro se without an affidavit attached in an obvious move to thwart the truth-seeking function of the partition court is simply viewed as a civil extortion attempt against Appellants. Abate the Goode Order of May 27, 2006 and declare it null and void as unlawful in equity.

For the reasons stated the Special Referee Tindal orders of sale of the Lancaster tract are not only premature, but The Gregory Company, Inc. was the proper grantee as it met all of the deed requirements by the Horry Master in Equity Cross who tried the case and applied the equitable standards of his court and no violation of the Statute of Elizabeth has occurred. When Appellant, Jack Gregory assigned the bid to Appellant corporation his one-half interest valued at $85,000.00 was being transferred to The Gregory Company, Inc. as the total bid was $170,000.00 and to say that there was no consideration is false. Furthermore, The Gregory Company, Inc. met the interest demands from J. Stanton Cross, Jr., Horry County Master in Equity in 2006 and paid the following amounts orchestrated by Clifford L. Welsh, Respondent's counsel as evidenced in his May, 2006 two documents (R. pp. 61-62) and as required in the equity court:

1. $93,925.00 for the one-half bid amount of $85,000.00 including $8,925.00 interest paid

on April 28, 2006;

2. $7,597.03 from the two August 9, 2006 conceded checks (May 15, 2013 Howe Order) (R. p. 21) represents the $2,228.00 Lancaster sale costs and the interest balance of $5,369.03;

3 $1,802.40 represents the overpayment of interest by The Gregory Company, Inc. creating a surplus with the Horry County Master in Equity Court in that amount.

Now, Respondent would argue (and Appellants deny) that a violation of the Statute of Elizabeth occurred and that Special Referee Tindal's Orders are correct and that the title to the Lancaster tract reverts to Jack Gregory, as he cannot assign the bid. If this was the case then the interest required by the equity court figured on the full bid amount and overpaid by The Gregory Company, Inc. in the amount of $1,802.40 needs to be revisited as a bigger surplus would then have been created with the Horry County Master in Equity Office in the summer of 2006.

By applying the math, the required interest demand for the full bid of $170,000.00 at the rate of 8.25% is established as $12,491.63 when using the time frame of ten months and three weeks (bid on June 6, 2005 and $85,000.00 payment on April 28, 2006). The interest requirement on half the bid ($85,000.00) would then be $6,245.83. The Gregory Company, Inc. paid on two occasions the total sum of interest to the equity court amounting to $14,294.03. The $6,245.83 sum subtracted from the total interest paid by The Gregory Company, Inc. to the equity court of $14,294.03 would leave a balance or surplus with the equity court amounting to $8,048.20.

Appellants argue: Leave the deed in the name of The Gregory Company, Inc. There was consideration and no fraud so no violation of the Statute of Elizabeth. All of the requirements of the Cross equity court have been met and a surplus of $1,802.40 has been created that remains with the Cross equity court.

Respondent argues that the Statute of Elizabeth was violated; however, if that were the case and the Lancaster tract title did revert to Jack Gregory, then the interest paid the equity court by The Gregory Company, Inc. would have created a surplus of $8,048.20 that still remains in the Cross equity court.

The goal here is for the final monetary judgment to be determined and as a court of equity in resolving the partition matter all three of these cases must be resolved that Respondent has brought pro se, as they are all related to his initial 2000 partition case where the truth-seeking function needs to stay and apply the equity maxims from the parties conduct to determine the just conclusion.

Respectfully submitted,

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