

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No.: 2014-002737

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S.C. Supreme Court

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

v.

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

RETURN  
TO  
PETITION FOR A WRIT OF CERTIORARI

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**INDEX**

1. “The Court of Appeals Opinion is incorrect that there is land on Folly Island that no one, not even the state, owns” ..... 4

2. “The Court of Appeals Opinion conflicts with prior decisions of South Carolina Supreme Court which hold that effect must be given to every part of a deed if it can be done consistently with the law” ..... 5

3. “The Court of Appeals Opinion conflicts with prior decisions of the South Carolina Supreme Court which hold that a land description in a deed is sufficient if it is adequate to locate the land” ..... 8

4. “Where, as here, the Respondents stipulated to Petitioner's "record title," and the Respondents' claims of adverse possession and affirmative defenses to Petitioner’s title were ruled against, and the Respondents did not appeal those rulings, the Court of Appeals is incorrect that under South Carolina law Petitioner still does not have good title” .....9

5. “The Court of Appeals Opinion conflicts with its own finding that Seabrook Jr. had title to the subject lots to convey to Petitioner and it conflicts with prior decisions of the South Carolina Supreme Court which hold that a quitclaim deed is a lawful means to convey title and with cases which hold that the slightest consideration is sufficient to convey title” .....11

ARGUMENT IN RETURN.....4

CONCLUSION.....14

## ARGUMENT IN RETURN

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

In reviewing the sixteen<sup>1</sup> exceptions raised by Petitioner in his Final Brief before the South Carolina Court of Appeals, and Petitioner's Petition for Rehearing, the exception above is not listed, and therefore, this issue is not properly before this Court. "Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court", (emphasis not in original), Rule 242(d)(2), South Carolina Appellate Court Rules.

Assuming *arguendo*, that this Court will accept this exception, the Court of Appeals specifically found that the Master in Equity for Charleston County had exceeded his mandate from the Court of Appeals in Demetre I. The Court of Appeals vacated the Master's findings with regard to those issues of ownership as being in excess of the Master's authority. Those issues were in essence, not properly before the Master. The real question was whether or not the Master could, based on the facts before him, quiet title in the real estate in question in Petitioner. The Court of Appeal's mandate directed the Master, "... to rule on [**Petitioner's**] requests for a declaration of ownership and to quiet title to the portions of the lots above the high water mark." (Ct. of App. Opinion No. 5263, filed August 20, 2014). All that the Court of Appeals in Demetre II did was to rule that the Master had improperly decided who actually owned the property in question, namely, the State of South Carolina.

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<sup>1</sup> The South Carolina Court of Appeals consolidated Petitioner's sixteen arguments, into four issues, (see, footnote "8", for the Court's Order refiled on November 20, 2014).

The Court of Appeal's decisions did not reverse the Master's findings that the Petitioner should not have title quieted in it. In fact, the Court of Appeals specifically held that, "We agree with the master's conclusion that [Petitioner] failed in his burden of proving title to Lots 209 and 210." (Ct. of App. Opinion No. 5263, filed August 20, 2014).

Therefore Lots 209 and 210 are not, as Petitioner suggests, *terra nullius*. Lots 209 and 210 are simply property that Petitioner does not own. The Master made that determination in no uncertain terms, based on overwhelming evidence, and the Court of Appeals, based on the Record before it, agreed.

**2. THE COURT OF APPEALS' OPINION DOES NOT CONFLICT WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT EFFECT MUST BE GIVEN TO EVERY PART OF A DEED IF IT CAN BE DONE CONSISTENTLY WITH THE LAW.**

Petitioner is trying to make semantic mischief. In the first paragraph of Petitioner's Petition, Petitioner states that the plat to which Petitioner's 2004 deed<sup>2</sup> refers, is the 1965 "plat". Plat is a very generous term since 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 a "redraw"<sup>3</sup>. Conveniently, this is the only drawn document on which Petitioner's Lots appear. Inconveniently, the 2004 deed only makes reference to a 1920 Jefferson Construction Company plat<sup>4</sup>, which does not show the lots purportedly conveyed to Petitioner.

First, consider Petitioner's statement that the 2004 deed states that the deed 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. Thirdly, in the 1965 redraw of the 1920 Jefferson Construction plat there are two small, almost unnoticeable references to the size of the lots and a scale and the following language "Chas. S.C. Feb. 1920".

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<sup>2</sup> Quitclaim Deed from Seabrook, Jr. to Milton P. Demetretre Family Limited Partnership R. p. 633, (hereinafter "Petitioner").

<sup>3</sup> Oversized Plat R. p 1069.

<sup>4</sup> Oversized Plat R. p 1068.

Based on this verbiage, Petitioner attempts to turn the 1965 Redraw, into the 1920 Jefferson Construction Plat. However, there is some additional, almost unnoticeable verbiage referencing another document at the top right corner of the 1965 Redraw 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 Cummings and McCready Plat<sup>5</sup> which is the third and final iteration of the 1920 Jefferson Construction plat. Using Petitioner's previous stilted logic, then the 1968 plat should become the 1920 Jefferson Company plat. Unfortunately for Petitioner's argument, this last iteration of the 1920 Jefferson Construction plat *does not* contain the two Lots which the 2004 deed purports to convey, yet they are the closest in time to the 2004 deed (1968 vs. 1965).

Petitioner cites K & A Acquisition<sup>6</sup>. Petitioner's partial quote is misleading, 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. Mozingo, 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.* ""

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<sup>5</sup> 1968 Cummings & McCready Plat R. p. 1070.

<sup>6</sup>K& A Acquisition Group, LLC v Island Pointe, LLC 383 SC 563,581, 682 SE 2d 252,262 (2009).

The simplest answer is that the deed meant what it said and that the plat referenced did not include Petitioner's Lots 209 and 210. "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.*" Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581 (1981), (Internal citations omitted), (Emphasis added).

Petitioner is therefore left with two bad choices. If Petitioner's Deed is clear and the parties to it, Seabrook, Jr., (Petitioner's Grantor) and Petitioner, intended to use the 1920 plat, Petitioner's Lots 209 and 210 do not exist. If Petitioner's Deed is open to interpretation, then extrinsic evidence may be used to interpret it. The best possible explanation is the one which the Master arrived; with all of the deeds, plats, and other extrinsic evidence before the Master, he determined that the parties to Petitioner's 2004 Deed intention was to use the original 1920 Jefferson construction plat and Petitioner's Lots 209 and 210 simply do not exist. Indeed, it is the only reasonable option left to the Master. Because, to interpret otherwise, would be to place a plat into the Petitioner's chain of title which did not exist at the time Petitioner's predecessor in title inherited the property, or to somehow construe a reference to a 1920 plat to a drawing made in 1965 and ignore a more recent 1968 plat.

There was abundant evidence in the Record upon which the Master could base his decision and, "...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."<sup>7</sup>

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<sup>7</sup> Tenney v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 100, 712 S.E.2d 395 (2011).

**3. THE COURT OF APPEALS' OPINION DOES NOT CONFLICT WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT A LAND DESCRIPTION IN A DEED IS SUFFICIENT IF IT IS ADEQUATE TO LOCATE THE LAND.**

In general, as to all of Petitioner's arguments in this exception, it does not matter about any of the particulars in Petitioner's Deed if Petitioner's predecessors in title, did not hold title to convey to Petitioner. "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. App. 1992).

Petitioner cannot show good title through its chain of title nor errors in interpreting the intentions of the parties to the Seabrook, Jr., (Petitioner's Grantor)-Petitioner's 2004.

Assuming *arguendo*, that this Court would like to hear further argument, Petitioner's premise is wrong. There is a plat which is referenced in the deed, the 1920 plat. "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. It is difficult to imagine how more precisely to express intent as to the location of boundaries than to incorporate an accurate plat in the description." Hobonny Club, Inc. v. McEachern, 272 SC 392, 397-398, 252 SE 2d 133 (SC 1979) (internal citations omitted). Petitioner misinterprets the Court's ruling in the case to state that a plat only controls when it is more precise than the words of the deed.<sup>8</sup> The converse is true as set out in the Hobonny citation above.

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<sup>8</sup> P. 10 of Petition for Certiorari.

Petitioner must, in order to prevail, have a 1965 redraw of the 1920 plat, be the only document which is referenced in the 2004 deed. The Master would have had to ignore (i) the 1786 plat to Folly Island, (ii) the 1895 Tartus map (showing marshland where Petitioner claims his lots), (iii) the original 1920 plat (iv) its 1968 successor (neither of which shows the purported lots claimed by Petitioner), (v) the quitclaim deed and (vi) its limited consideration for the purchase of the purported lots (which should have brought a substantially higher sum for a warranty deed) and (vii) and the complete lack of any evidence showing that Petitioner's immediate predecessor in title (Seabrook, Jr.) ever exhibited the slightest interest in, or dominion over, Petitioner's purported Lots 209 and 210. The weight of the evidence supports the Master's findings that Petitioner did not succeed in quieting title in itself. Given this evidence, this Court should affirm the Master's 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", Ct. of App. Opinion No. 5263, filed August 20, 2014, citing Lowcountry Open Land Trust v. State, 347 S.C. 96, 101, 552 S.E.2d 778, 781 (Ct. of App. 2001), (citing, Wigfall v. Fobbs, 295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988)).

**4. THE COURT OF APPEALS CORRECTLY FOUND, THAT UNDER SOUTH CAROLINA LAW, PETITIONER DOES NOT HAVE GOOD TITLE DESPITE THE STIPULATION IN THIS CASE, AND THE COURT'S RULING ON RESPONDENTS' CLAIMS OF ADVERSE POSSESSION AND AFFIRMATIVE DEFENSES.**

Petitioner's premise for the fourth exception is based on an invalid assumption, that there was a Stipulation to its title to the land. Petitioner's legal counsel has, throughout this case and the appeals process, "cherry picked" portions of the trial transcript to support the absurd notion that title to his client's property was somehow given to it by a Stipulation, which the Record shows was made to speed up the trial.

The Court of Appeals found the following instructive as to the actual nature of the stipulation between the parties. “During the trial, 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 [Petitioner] 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**.” (Emphasis added), (Ct. of App. Opinion No. 5263, filed August 20, 2014).

Given the fact that all of the parties' titles had been stipulated to, “as far as record title”, no property had been singled out for special treatment, nor was one title designated as superior in any aspect to the other. The Master, at the remand hearing, just as he had at the time of the original trial, correctly understood that “... the stipulations were ‘to how each got their title.’” Ct. of App. Opinion No. 5263, filed August 20, 2014.

"A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys." Kirkland v. Allcraft Steel Co., Inc., 329 S.C. 389, 496 SE 2d 624 (1998). “The court must construe [a stipulation] like a contract, i.e., interpret it in a manner consistent with the parties' intentions. 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. Whether or not to abrogate the Stipulation is addressed to the 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.” Porter v. S.C. Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328 (1998).

“We [South Carolina Court of Appeals] conclude the master properly interpreted the meaning of the stipulation at issue in this case. The question litigated was not whether Petitioner 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 Petitioner.”<sup>9</sup>

**5. THE COURT OF APPEALS’ OPINION DOES NOT CONFLICT WITH ITS OWN FINDING THAT SEABROOK JR. HAD TITLE TO THE SUBJECT LOTS TO CONVEY TO PETITIONER AND IT DOES NOT CONFLICT WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT WHICH HOLD THAT A QUITCLAIM DEED IS A LAWFUL MEANS TO CONVEY TITLE AND WITH CASES WHICH HOLD THAT THE SLIGHTEST CONSIDERATION IS SUFFICIENT TO CONVEY TITLE?**

In order to make Petitioner’s compound question manageable, we consider this exception in three parts.

**1. The Court of Appeals’ Opinion does not conflict with its finding that Seabrook Jr. had title to the subject lots.**

This portion of the exception is without merit. Nowhere does the Court of Appeals directly make such a finding. The Court of Appeals simply recites the title into Seabrook, Jr. (Petitioner’s Grantor). Petitioner somehow through manipulation of the facts of this case, comes to an improper conclusion that Seabrook, Jr. (Petitioner’s Grantor) owns the property. The correct interpretation is that Seabrook, Jr. took all of the remaining highland portions of Folly Island by inheritance, but could not have taken anything in the marsh because (i) the State of South Carolina presumptively owns the marsh (ii) there is no reference to the purported lots in any of the plats in his chain of title and (iii) Seabrook Jr., could not have title to land that was not extant at the time title to his property arose. The 1965 redraw of the 1920 plat is not in Seabrook, Jr.’s chain of title, because it did not exist at the time his predecessor in title, (Seabrook, Sr.) purchased Folly Island in 1942.

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<sup>9</sup> Ct. of App. Opinion No. 5263, filed August 20, 2014.

Further, and perhaps more importantly, Seabrook, Jr. quitclaimed the lots to Petitioner, for a sum that is not reflective of the value of real property on the island and with specific reference to a plat (1920) that does not show the Petitioner's Lots 209 and 210 in existence, but in their stead, marshland.

**2. The Court of Appeal's Opinion does not conflict with decisions of the South Carolina Supreme Court with regard to the efficacy of a quit claim deed to pass title.**

The Court of Appeal's Opinion specifically states that a quitclaim deed is a perfectly good instrument to convey title to real estate in South Carolina. "A quitclaim deed is a lawful means of conveying title. [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." (Ct. of App. Opinion No. 5263, filed August 20, 2014).

The Court of Appeals does however; go on to explain the shortcomings of a quitclaim deed. "A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey. [A] quitclaim deed does not convey the fee, but only the right, title[,] and interest of the grantor." (Ct. of App. Opinion No. 5263, filed August 20, 2014). The Court of Appeals further explains the difference between a warranty deed and a quitclaim deed by pointing out that anyone taking under a quitclaim deed should at least be on inquiry notice that something is questionable about the title to the property being conveyed. "...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." (Ct. of App. Opinion No. 5263, filed August 20, 2014).

**3. The lack of consideration, or minimal consideration, does not affect the ability of a grantor to convey real property.**

It is axiomatic that recited consideration of minimal amounts is enough to convey property. If not, then untold numbers of deeds that recite “Five dollars, love and affection” or “Five dollars and other valuable consideration” would be invalidated. Petitioner misses the point. As between the parties to the quitclaim deed, Seabrook, Jr. [Petitioner’s Grantor] and Petitioner, the consideration was adequate to support the conveyance and as between those two parties the conveyance was good. Seabrook, Jr. gave up any claim that he had to the Petitioner’s purported Lots 209 and 210 and as between himself and Petitioner there can be no question about who now had superior title. However, the fact that there was minimal consideration requested and given should have also put Petitioner on inquiry notice that what he was being conveyed...not much as far as real title or real property. The fact that money, or any consideration for that matter, changed hands does not create something out of nothing.

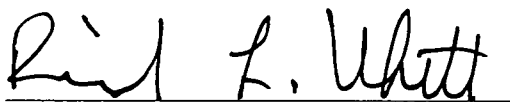
What the Petitioner did was gamble a relatively small amount of money on a quit claim deed which would allow him to attempt to “bully” the Respondents into paying ransom to use an area which Petitioner claimed by virtue of Petitioner’s quitclaim deed. That quitclaim deed has proven to be insufficient to quiet title in Petitioner, which was Petitioner’s ultimate goal.

"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. One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies. [A] deed cannot convey an interest which the grantor does not have." (Ct. of App. Opinion No. 5263, filed August 20, 2014).

**CONCLUSION**

Based on the facts and evidence in the Record of this case, applicable statutes and applicable South Carolina case law, this Court should deny the relief sought by Petitioner and affirm the decisions of the South Carolina Court of Appeals, and the decisions of the Master previously rendered in this action.

Respectfully Submitted,  
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THE STATE OF SOUTH CAROLINA  
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**S.C. Supreme Court**

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v.

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and Annie Ruth Crowley Atkinson.....Respondents.

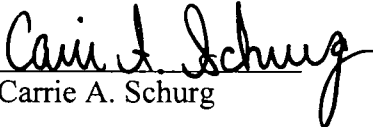
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**PROOF OF SERVICE**

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I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused copies of Respondents' Return to Petition for a Writ of Certiorari and this Proof of Service to be served, via U.S. Mail on February 12, 2015, as addressed below.

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FEB 12 2015

February 12, 2015

**S.C. Supreme Court**

**VIA, HAND-DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

- Re: • The Milton P. Demetre Family Limited Partnership vs. Harry Beckmann, III, *et al.*  
• Appellate Case No.: 2014-002737  
• **Respondents' Return to Petition for a Writ of Certiorari**

Dear Mr. Shearouse:

Enclosed for filing in the above-referenced matter, please find the following:

1. Return to Petition for a Writ of Certiorari, and the required six (6) copies of the Return; and
2. Proof of Service.

Please accept these documents for filing and acknowledge receipt of the same by file-stamping the extra copies enclosed and returning them to me, via our courier. Please don't hesitate to contact the undersigned if you have any questions or concerns. With best regards, we are,

RLW/cas  
Enclosures  
cc: Cain Denny, Esquire

Respectfully Yours,  
AUSTIN & ROGERS, P.A.



Richard L. Whitt  
Jefferson D. Griffith, III