

COPY

RECEIVED

ORIGINAL  
FEB 17 2015  
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and,  
County of Lexington, South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-32-01537

ORDER GRANTING DEFENDANT  
TOWN OF CHAPIN'S MOTION FOR  
SUMMARY JUDGMENT

LETTER CARNOGG  
COURT  
LEXINGTON, SC

2015 FEB 26 AM 11:41

FILED

A hearing on Defendant Town of Chapin's ("Chapin or Town") motion for summary judgment was held at the Lexington County Courthouse on September 5, 2014. The Plaintiff was represented by Jake Moore of the Moore Taylor Firm, P.A. Defendant Chapin was represented by Daniel R. Settana, Jr. of McKay, Cauthen, Settana & Stublely, P.A.

**STATEMENT OF THE CASE**

This case centers on two pieces of real estate that the Plaintiff alleged he purchased at a Lexington County tax auction in June of 2011. Plaintiff brought this lawsuit as a real estate title dispute but also brought claims in tort and for equitable relief. The Plaintiff is Julius Brazell, a resident and citizen of Lexington County, South Carolina. The Defendants are the City of Chapin, which owns one of the properties at issue and has an easement on the other, and the County of Lexington ("County") which held the tax auction.

**SUMMARY JUDGMENT STANDARD**

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule

WPC  
#1

56(c), S.C.R.C.P. “In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *Fleming v. Rose*, 35 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002). However, Rule 56(e) provides, in part:

(e) ...When a Motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

“[T]he plain language of Rule 56(e) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. *Celotex Corporation v. Catrett*, 477 U.S. 317 (1986).

WPA  
#2

### BACKGROUND

The Plaintiff purchased his Tax Title to Real Estate (“Tax Title”) for two properties (Tax Map Nos.: 001100-05-011 (“Parcel 011”) and 001106-01-028 (“Parcel 028”) at issue for \$900.00 and \$500.00 respectively. (Pl.’s Resp. to Req. to Produc.). The Plaintiff did not physically inspect the properties in question before his attempt at purchasing them at the tax sale. (Pl.’s Ans. to Interrog., ¶16). He discovered that Parcel 028 mainly consisted of the Town’s Sewer Lift Station (“Pump Station”) and that Parcel 011 contained an access road after the tax sale. (*Id.* at ¶17). After his discovery of the Town’s pump station and roadway, he placed a chain and lock across the road to prevent access to them. (*Id.* at ¶14).

### Relief Sought

Plaintiff's Complaint asks the Court to "declare the Plaintiff to be the owner of the real estate in question." Complaint ¶ 5. The Complaint also offers a number of separate legal theories including conversion, trespass, unjust enrichment and requests declaratory and injunctive relief. Specifically, Plaintiff also requested that the Court:

1. Declare that Plaintiff is entitled to remove the Master Pump Station for the Town of Chapin and its easement road from the real estate or have its operation ceased. Compl. ¶6.
2. Order that the Town of Chapin and Lexington County cannot enter the properties. Compl. ¶9.
3. Award damages for the removal of barriers and chains he installed on the property. Compl. ¶10.
4. Award damages for rental use of the road on the property. Compl. ¶10.
5. Order an accounting for revenue produced by the Defendants use of the property. Compl. ¶11.
6. Award damages for the alleged trespass of the Defendants. Compl. ¶ 14-15.

Finally, Plaintiff's Complaint recognizes that if the County of Lexington did not have the authority to sell the property in question, that he be entitled to recover the benefit of his bargain for the property. Compl. ¶ 18.

WAC  
#3

### Chain of Title

In its Motion the Town submitted the Affidavit of Spencer Andrew Syrett and the records of the Office of the Register of Deeds for Lexington County to establish the chain of title for the two parcels. These document show the chain of title for Parcel 028 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504

at page 131.

- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey the system and the pump station sites to the Town of Chapin.
- g. New Horizon Development, LLC conveyed the sewer system and the pump station site to the Town of Chapin in fee simple by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.
- h. The Town of Chapin has held fee simple title to the pump station continuously since the last transfer of Parcel 028 in 1999.

The chain of title for Parcel 011 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504 at page 131.
- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey access to all of the sewer infrastructure by an easement to the Town of Chapin.
- g. New Horizon Development, LLC conveyed a permanent easement to the sewer system and the pump station site to the Town of Chapin by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.

- h. New Horizon, LLC mortgaged a portion of the property that became Parcel 011 to Twins, Inc. on September 16, 1999, and was recorded in Record Book 5462 at page 128.
- i. Branch Banking and Trust (“BB&T”) acquired Twins, Inc. interest by Masters Deed on March 18, 2003. The parcel was transferred by BB&T to John Haas, as Chapter 11 Trustee for Twins, Inc. as recorded in Record Book 8064 at page 193.
- j. Julius Brazell acquired the parcel, as encumbered by the prior easement to the pump station, via Tax Deed from John Haas, as Chapter 11 Trustee for Twins, Inc., now Isom, LLC on June 30, 2011.

### LEGAL ANALYSIS

Generally, when a party seeks to have their ownership of real property declared by the Courts, the cause of action is one to quiet title. An action to quiet title is one in equity. *See Van Every v. Chinquapin Hollow, Inc.*, 265 S.C. 474, 477, 219 S.E.2d 909, 910 (1975); *Freeman v. Freeman*, 323 S.C. 95, 98, 473 S.E.2d 467, 469 (Ct.App.1996). However, where, as here, one party asserts paramount title to the disputed land to defeat the other party's claims, it is an action at law. *Mountain Lake Colony v. McJunkin*, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992); *see also Watson v. Suggs*, 313 S.C. 291, 293, 437 S.E.2d 172, 173 (Ct.App.1993) (holding that [a]n action brought for the primary purpose of determining title to a disputed land is in the nature of a trespass action to try title, which is an action at law).

WPK  
#5

#### **A. Chain of Title is Dispositive of Legal Issues**

The South Carolina Courts have found in other contests over real property that “detailed analysis of the chain of title [is] not only relevant, but also dispositive of the issue before us.” *Greene v. Griffith*, 2004-UP-056, 2004 WL 6248971 (S.C. Ct. App. Jan. 29, 2004). The South Carolina Supreme Court has also stated that “as record title is concerned, where both parties claim under a common source, the elder or better title will prevail.” *Marsh Plywood Corp. v. Graham*, 240 S.C. 486, 493, 126 S.E.2d 510, 513 (1962)

This case can be decided on the issue of paramount title alone, as Plaintiff's other theories for relief are predicated on his unencumbered ownership of the real properties in question. When pleadings present both legal and equitable issues, those should be tried first that are likely to result in a final judgment and render unnecessary the consideration of the other issues. Rush v. Thompson, 203 S.C. 106, 111, 26 S.E.2d 411 (1942).

**B. Analysis of the Chain of Title Shows the Town Owned One of the Properties and Had An Easement on the Other**

The Town of Chapin's Summary Judgment Motion is supported by affidavit from the title insurance issuing agent, Spencer Andy Syrett, who conducted the title examination of properties which are in the chain of title for properties conveyed to the Town of Chapin for the properties at issue. The title insurance issuing agent's affidavit and its supporting documents delineate the chain of title and attests to the fact that the Town of Chapin has unencumbered fee simple title to Parcel 028 and its pump station and an indefeasible right to access the station by the easements granted on Parcel 011.

WPA  
#6

The property the Plaintiff bid on at the tax auction was a portion of the property mortgaged by New Horizon LLC to Twins, Inc. in September 1999 and later acquired by BB&T at foreclosure. A grantor of real property can transfer no greater interest than he himself has in the property. Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct.App.1985). Therefore when the Plaintiff attempted to purchase the parcels via tax title at auction, Parcel 011 was already encumbered by the easements to the Town, which survived the foreclosure and the tax sale, since New Horizon had already permanently conveyed the easement through the property to the Town.

In regards to Parcel 028, New Horizon conveyed the Lift Station to the Town in August 1999. Therefore Twins Inc. acquired no interest in Parcel 028 or the Lift Station by its Mortgage

dated September 16, 1999, nor did BB&T acquire title by in 2003, since it was not part of the collateral being foreclosed, nor could it transfer said title to John Haas (as Chapter 11 Trustee for Twins, Inc.)

Analysis of the chain of title irrefutably demonstrates that the Town held senior and proper title to the real property at issue. This is dispositive of the legal question of paramount title and thus the Town is entitled to summary judgment on the claims brought by the Plaintiff.

### **C. The Parcels at Issue could not be Sold at Tax Auction**

Furthermore, the property owned by the Town could not be sold at a tax auction as the Town cannot be in arrears for taxes owed because it cannot be taxed for this property. The South Carolina Constitution provides that “[t]here shall be exempt from ad valorem taxation: all property of the State, counties, municipalities, school districts and other political subdivisions, if the property is used exclusively for public purposes. S.C. CONST Art. X, § 3(a). S.C. Code Ann. §12-37-220 also provide a statutory tax exemption for “all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes.” Exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 486 (1982) (citing Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), citing State v. City of Columbia, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920).

WPA  
#7

Generally “[t]he question of whether an act is for a public purpose is primarily one for the Legislature” and that the Courts should “not interfere unless the determination by that body is clearly wrong.” Elliott v. McNair, 250 S.C. 75, 88, 156 S.E.2d 421, 428 (1967). Even so, South Carolina case law has recognized that it “would seem to be self-evident” that “the prosperity of a

city, which it is the general purpose of a water supply to promote, is even more directly promoted by making such water supply available for, and by using it upon fair terms to supply, the needs of industries upon which the prosperity of so many modern urban communities vitally depends.” Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 357 (1929). The Supreme Court of South Carolina has recognized that even “[w]aterworks and other utilities...located beyond the corporate limits of municipalities <sup>HAVE (was)</sup> [has] done much to promote expanded industrial activity. Elliott v. McNair, 250 S.C. 75, 87, 156 S.E.2d 421, 427-28 (1967)

The provision of water utility services by a political subdivision of the State of South Carolina to its residents is an exclusively public purpose. Therefore property of the Town of Chapin used for public purposes is exempt from taxation and cannot be in arrears for taxes owed or subject to tax sale by the County of Lexington. Therefore, as a matter of law, any tax sale of the properties was improper and the Town of Chapin still owns the property claimed by Plaintiff.

#### **D. Plaintiff Fails the Burden of Proving Paramount Title on the Merits**

The Plaintiff's claims also fail on the merits. In an action of trespass to try title, the defendant in actual possession of the disputed property is regarded as the rightful owner of the property. See Watson v. Suggs, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993), reh'g denied, (Nov. 10, 1993); Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992), reh'g denied, (Feb. 20, 1992). A mere *prima facie* showing of paper title by the plaintiff is not enough. *Id.* The plaintiff has the burden of proving paramount title to the land by any methods: (1) perfect legal paper title shown by a grant from the state to a predecessor in title with successive deeds to the plaintiff; (2) tracing title to a common grantor with the defendant if the plaintiff can show an earlier deed deriving from the common source. *Id.* There also two methods to prove paramount title by adverse possession which are inapplicable here.

**ORIGINAL**

In this case the Plaintiff has only his imperfect Tax Titles to rely on and the Town has submitted perfect legal paper title shown by grant from the state with successive deeds evidencing ownership by the Town. Plaintiff purchased imperfect title from the County of Lexington and is seeking the recover the benefit of his bargain from the rightful owner who was not involved in the improper deed conveyances or the erroneous tax sale itself.

**CONCLUSIONS OF LAW**

After reviewing all of the pleadings, Affidavits and evidence filed with the Court and after considering the arguments of the attorney for the Defendant, I find that the Plaintiff failed to <sup>(WPA)</sup> ~~meet his burden of proof to~~ overcome the Defendant's Motion for Summary Judgment. Therefore, because there is no genuine issue as to any material fact, the Defendant is entitled to judgment as a matter of law.

#9

**IT IS THEREFORE ORDERED** that Defendant Town of Chapin's Motion for Summary Judgment is hereby granted as to all causes of action;

**IT IS FURTHER ORDERED** that Defendant Town of Chapin Davis is dismissed with prejudice from this action.

**IT IS SO ORDERED.**

*William P. Keesley*  
William P. Keesley  
Circuit Court Judge  
Eleventh Judicial Circuit

BEITH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

2015 JAN 21 A 11:46

FILED

Lexington, South Carolina  
JAN. 21, 2015

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP3201537**

<b>Julius Brazell</b>	<b>Chapin Town of</b> <b>County of Lexington</b> <b>South Carolina</b>
-----------------------	---

**PLAINTIFF(S)**

**DEFENDANT(S)**

<b>Submitted by:</b>	<b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
----------------------	--

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**                       Rule 12(b), SCRPC;                       Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);                       Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**                       Rule 40(j) SCRPC;                       Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;                       Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;     Reversed;     Remanded;     Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

**This order**  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

<b>Judgment in Favor of (List name(s) below)</b>	<b>Judgment Against (List name(s) below)</b>	<b>Judgment Amount To be Enrolled (List amount(s) below)</b>

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**Circuit Court Judge**

**Judge Code**

1/29/2015

**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on 1/26/2015, and a copy mailed first class or placed in the appropriate attorney's box on 1/29/2015, to attorneys of record or to parties (when appearing pro se) as follows:

**S. Jahue Moore, Esq.**  
Moore, Taylor Law Firm  
PO Box 5709  
West Columbia, SC 29171

**Richard Eugene Marsh, III, Esq.**  
PO Box 7217  
Columbia, SC 29202

**Jeffrey M. Anderson, Esq.**  
PO Box 489  
Lexington, SC 29071-0489

**Daniel R Settana Jr., Esq.**  
PO Box 7217  
Columbia, SC 29202

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Beth A. Carrigg/ppb*

---

**Court Reporter**

---

**Beth A. Carrigg - Clerk of Court**

---

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

---

---

---

---

---

---

---

---