

STATE OF SOUTH CAROLINA

COUNTY OF Jasper

Mungin Creek Partners, LLC

vs.

Prince Waiters, et al.,

Defendants.

FILED

2015 FEB 25 AM 9:18

MARGARET BOSLOCK
CLERK OF COURT
JASPER COUNTY SC

IN THE COURT OF COMMON PLEAS
14th JUDICIAL CIRCUIT

ORDER OVERRULING
DEFENDANT'S
59(e) AND 59(c) MOTIONS

RECEIVED

Docket No. 2013-CP-27-00379 MAR 31 2015

SC Court of Appeals

This matter was originally heard before me on August 20, 2014 and my order was issued September 8, 2014. Thereafter, John J. Pinckney, attorney for Lawrence Waiters and Johnny Mae Polite, filed motions for reconsideration and also to set aside defaults that have been at issue in the matter.

His initial objection was that the captions on the various pleadings in the case did not name Lawrence Waiters as a party and Defendant. I know from the record that Mr. Waiters was in fact served by registered mail in this matter and that thereafter on the Motion to Appoint a Special Referee as well as the notice of the hearing were all sent to him at his address in California by which he had been served with the original pleadings. In those services, he was served as "Prince Waiters and Scipio Waiters in care of Lawrence Waiters" at his address in California. The action in chief was brought against, amongst others, The Heirs and Distributees of Prince Waiters (1) the Heirs and Distributees of Scipio Waiters(2).

It appears that in whatever capacity Mr. Pinckney's putative heirs appear, it is in their capacity as heirs of Prince Waiters and Scipio Waiters. I find that proper service had been made on them by publication pursuant to the South Carolina Rules of Civil Procedure. I further find that Lawrence Waiters individually had been personally served with the pleadings in this matter.

There is further complaint that heirs of one Annie Mae Hart were not made parties to the matter. Ms. Hart, if she was an heir, had been properly served by publication and inasmuch as she made no answer and did not otherwise appear I certainly cannot hold it against the attorney for the Plaintiff that he did not discover that she had died, much less that she had left other heirs that could have been brought in as substitute parties for her. Likewise as to the "Intervening Party-Defendant Johnnie Mae Polite" who maintains that she is a great granddaughter of Scipio Waiters, the publication in the Jasper County Sun,


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a newspaper of general circulation in Jasper County would have provided effective service over her. The same applies to the list of other parties who also maintain that they are heirs of Scipio Waiters.

It is the opinion of this writer that the proper parties were properly served by publication and that having made no appearances they were in fact in default.

I would note that in a prior litigation involving the same properties that Lawrence Waiters in fact not only appeared but hired an attorney and actually gave testimony. Having been served with Summons and Complaint in this matter, and having taken no action, he is certainly completely in default.

For the forgoing reasons I decline to change my prior ruling and it so stands.



C. Stephen Bennett, Presiding Judge

February 24, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-27-00379

MUNGIN CREEK PARTNERS, LLC,)
)
Plaintiff,)
)
v.)
)
PRINCE WAITERS, ET AL.,)
)
Defendant.)

**SPECIAL REFEREE'S REPORT
AND FINAL ORDER**

2014 SEP -8 PM 1:22
CLERK OF COURT
JASPER COUNTY SC

This matter came to be heard before me as Special Referee for Jasper County, on the 20th day of August, 2014 at 10 a.m. at the the law office of R. Thayer Rivers Jr. in Ridgeland, South Carolina. I was appointed as Special Referee by the Hon. Carmen T. Mullen to preside over the hearing, make findings of fact, and issue such Orders as appropriate, with finality, and with appeal only to the South Carolina Court of Appeals. I have the Clerk's file in hand, and a Report from the appointed Guardian Ad Litem, Robert Hughes, Esquire, is made in this matter, stating that there are no known minors, incompetents, soldiers, sailors, or other persons whose interests are in need of the protection of this Court.

Present at the hearing were Plaintiff's Attorney R. Thayer Rivers, Jr., witness Anne Starr Hughes and William "Bill" Chisolm, Jr., representing the Plaintiff Mungin Creek Partners, LLC. Also present was John J. Pinckney, Esquire, who made appearance to represent Lawrence Waiters of California and Johnny Mae Polite of Hardeeville, and other various unspecified heirs of Prince Waiters and/or Scipio Waiters. Also present was Adolph Brown, a real estate agent for one or more heirs. Neither Lawrence Waiters, Johnny Mae Polite, nor any other alleged heir appeared in this matter. I find that Notice of this action and Notice of this Hearing, were adequately made.

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Attorney Pinckney filed a Notice of Appearance, a Motion for Intervention and a Motion for Continuance. No motions for relief of default were filed by any Defendant or Heir, or filed by any representative of any Defendant or heir, in this matter. It appears that the only Defendants not in default were neighboring landowners who were not heirs in this matter.

While I recognized Attorney Pinckney's appearance in this matter, I denied the Motion for Continuance based upon the duration of the pendency of this case and the effective service by publication in this matter made by the Plaintiff's attorney. In addition to publication, instances of service by registered mail were also effected.

I note that the persons listed as putative heirs who were not specifically named as Defendants reside mainly in Jasper County. I note that the one heir who filed an affidavit, Johnny Mae Polite, lives in Hardeeville, South Carolina, an area served by the local newspaper by which publication was run for the requisite period for service. I further note that this is an acceptable method of substitute service and that would have legally put persons, named or unnamed, on notice that an action was pending affecting their interest in the properties by virtue of their kinship to the named party-Defendants. (I reserved a decision on the remaining Motion to Intervene, until after taking testimony under oath in this matter.)

This is an action to Quiet Title filed by the Plaintiff. This is at least the second such action filed involving this property. The original action was filed in 2005 and was dismissed without prejudice and was re-filed as the present action.

The property (hereinafter "the property" or "property") involved in this matter is:

ALL that certain piece, parcel or tract of land situate, lying and being in the County of Jasper, State of South Carolina, in the Levy's Section, containing Thirty-eight (38) acres, more or less, same being further shown as Sixty (60) acres, more or less, on the Tax Records, and bounded now or formerly as follows:

On the North by lands of LC of South Carolina, Inc.; On the East by other lands of Mungin Creek Partners; On the South by other lands of Mungin Creek Partners and lands of Nathaniel Riley and Lillie Mae Bentley, Trustee, and on the West by lands of David Heape, et al, and Adolphus Harris, et al.

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This being the same property conveyed to Dr. Julian F. Chisholm, Sr. by deed of Ed Waiters, dated November 18, 1952 and recorded in Deed Book 26 at Page 110 in the Office of the Clerk of Court for Jasper County, South Carolina, and, is a portion of that same property conveyed to Mungin Creek Partners, a South Carolina General Partnership, by deed of William Washington Chisholm and William Washington Chisholm, Jr., recorded May 6, 1994 in Deed Book 134 at Page 42 in the Office of the Clerk of Court for Jasper County, South Carolina, and, re-recorded on May 23, 2003 in Deed Book 275 at Page 64, office aforesaid.

2003 Jasper County Tax Map Ref 039-00-11-015 and 039-00-11-028
2004 Jasper County Tax Map Ref 039-00-11-015

Testimony was taken under oath from Anne Starr Hughes, a real estate paralegal for the Rivers Law Firm, showing the various plats of the property indicating that the property has always been treated as a 60 acre parcel, and on the one plat prepared at the request of the purported Intervenor, the bulk of the property was actually shown as belonging to the Chisolm family, which are the predecessors in title to the Plaintiff, Mungin Creek Partners, LLC. Other plats to the property in the Chisolm (Mungin Creek Partners, LLC) Title all show the property in question to be Chisolm property and with one exception showing it as containing a total of 70 acres, the property is steadfastly shown as being a 60-acre parcel of land.

It appears that this property has previously been described in the past as totaling 38 acres, however, it is uncontroverted that all persons in this matter have always treated this as a 60-acre parcel. The various plats, deeds, tax notices and other legal descriptions also substantiate the property as being a 60-acre parcel located in the Cook Landing Road section of lower Jasper County, South Carolina. This property was originally a part of Beaufort County, however, is now totally in Jasper County, South Carolina.

More significantly, it appears by clear and convincing evidence from Ms. Hughes' testimony and from the documents she refers to, which were placed into evidence in the Plaintiff's case, that the Plaintiff's chain of title is as shown in the attached Exhibit A, is unbroken and complete.

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From the deeds of record in the RMC for Beaufort County and the ROD for Jasper County, it is evident that by general warranty deed, Mr. Edward Waiters, a distant relative of Prince Waiters and/or Scipio Waiters, purchased the subject property from the "Sinking Fund of Beaufort County" and from J.E. McTeer, Sheriff of Beaufort County, and that he later subsequently conveyed the property to the Plaintiff's predecessor in title, Dr. Julian F. Chisolm, Sr.

It further appears that this is a complete and unbroken "paper" chain of title from at least 1952 until the date of this hearing, a period of well over 60 years. The purported intervenors point to various deeds between them, filed back and forth, but which were filed after the conveyance by Edward Waiters to the Chisolm Family. When those various deeds were filed, they were of no moment and no consequence, since legal title had already clearly been vested in the Chisolm family from Edward Waiters, their predecessor in title.

Testimony under oath was further taken from William Chisolm Jr. who at the time of this hearing was 67 years of age. Mr. William Chisolm, Jr. resides in Savannah, Georgia, some 15 miles from the property, and he has hunted and occupied the property with his family members his entire life.

Mr. Chisolm further testified that he leased other acreage in the surrounding area and had several hunting clubs which caused him to be on and near the property on at least a weekly or semi-weekly basis, and otherwise in nearly constant contact with the property through himself and his agents (foresters, land managers, etc.) I take judicial notice that the seasons for hunting deer, quail, dove and turkey, in lower South Carolina start around August 15th and a season for each runs during that time period, until the end of Turkey Season, on May 1st, of each year.

Mr. Chisolm also testified that a substantial dove field was planted and replanted, in the center of the property for at least the last 30 years and was regularly hunted by him and his guests. It was additionally established through Mr. Chisolm that the Chisolm Family's ownership

of the premises had never been challenged, that the only people ever caught on the property were poachers who were prosecuted, and that no one had ever done anything to impede their uninterrupted use, ownership and control of the premises for over 50 years.

Mr. Chisolm additionally testified that the only access to the property was through a locked gate on a dirt road leading from Cook Landing Road (a paved public road between Bellinger Hill Community and Cook Landing) and that the gate had been consistently locked and under the exclusive control of the Chisolm family for a period of over 40 years. Thus, the Plaintiff in addition to his paper chain of title, has certainly made out the case to establish good title to the property by adverse possession.

Once hearing the documentary evidence through testimony as to the uncontroverted chain of title and the approximate metes and bounds of the 60 acre tract (the "property"), it then became clear that those persons wishing to intervene who were represented by attorney Pinckney were folks whose interests in the property had long before now been transferred and deeded first to the Chisolm family, and then deeded from the Chisolm Family to Mungin Creek Partners, LLC.

These conclusions and findings as to the chain of title are uncontroverted by all the evidence presented and I was presented with no counter testimony, counter affidavits or any other counter documents to refute those facts as to the chain of title, and the one affidavit produced on behalf of the purported intervenors actually tied the claim of title into their ancestors who lost the property at a Beaufort County tax sales, in one instance 70 years ago and in another instance almost 100 years ago. This was established and evidenced further by the chain of title presented.

Accordingly, I respectfully deny the Motion to Intervene, and below make such Orders consistent with the Plaintiff, Mungin Creek Partners, LLC's exclusive ownership in the property described herein, consisting of 60 acres, more or less, in Jasper County, South Carolina.

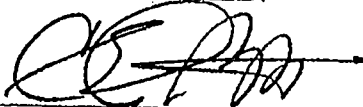
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Now, Based upon the foregoing, I make the following

**FINDINGS OF FACT AND CONCLUSIONS OF LAW & ORDERS OF THIS
COURT:**

1. That it is Ordered that this Court has subject matter jurisdiction of the matters before me, and personal jurisdiction over the parties.
2. That it is Ordered, based upon my findings of fact, that proper service by substitute process - newspaper publication - was done and effected conferring jurisdiction on all persons claiming an interest in the property, and proper notice of the hearing was made by publication, and by personal service where possible.
3. That it is Ordered that the Plaintiff has proven an uninterrupted chain of title for at least the last 60 years to the property.
4. That it is Ordered that while the deeds in question used by all parties denominate this as being 38 acres, it shown to be 60 acres by the tax office, it has been treated by all parties concerned as being 60 acres and the surveys introduced verify a minimum of 60 acres being the land claimed by the Plaintiffs, and this Court declares the property to contain 60 acres, more or less.
5. That it is Ordered that in addition to proof of documentary or "paper chain of title", the Plaintiffs have established ownership, dominion and control to the exclusion of the world by adverse possession, for a period in excess of 60 years. They further had the property under color of title for more than 20 years and the chain of title shows uninterrupted, continuous, exclusive ownership, control and use of the property for over 60 years.
6. That it is Ordered that since confusion has been created in the ROD Office for Jasper County, and the Office of the Tax Assessor in Jasper County by the filing of various deeds and plats, back and forth, by various heirs of Prince Waiters and/or Scipio Waiters, which created the necessity for this quiet title clearance action, and by this Order, I am hereby quieting title into the Plaintiff, Mungin Creek Partners, LLC, and I will issue a Special Referee's deed into the Plaintiff, Mungin Creek Partners LLC, to prevent such confusion in the future.
7. That it is Ordered that a Special Referee fee of \$1,000.00, is appropriate, a fee of \$250.00 is due to the Guardian ad Litem; and all fees and costs in this matter, shall all be borne by the Plaintiff; and

IT IS SO ORDERED.



C. Stephen Bennett
Special Referee,
Jasper County

Date: September 8, 2014
At: Ridgeland, South Carolina.

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EXHIBIT "A" TO ORDER OF SPECIAL REFEREE
MUNGIN CREEK PARTNERS, LLC VS. HEIRS OF WAITERS, ET AL.
CASE NO. : 2013-CP-27-379

CHAIN OF TITLE:

- 1) Deed Book 10, Page 361, Beaufort County, SC

Joseph F. Pelot to Prince Waiters (#1), dated May 10, 1876, recorded October 7, 1876
38 acres, +/-, bounded North & East by Estate of J. D. Jones; South by Elijah Bright &
Abram Crawford and West by L. Williams & Joe Jenkins.

- 2) Deed Book 11, Page 127, Beaufort County, SC

Joseph F. Pelot to Scipio Waiters, dated June 15, 1877, recorded January 19, 1878
25 acres, +/-, bounded East by Toby Ragg; South by Elijah Bright; West by Prince Waters
(sic) and North by Joseph F. Pelot.

- 3) Deed Book 24, Page 202, Beaufort County, SC

Estate of Prince Waiters, partition by Scipio Waiters, son of Prince Waiters and Matilda
Waiters, widow of Prince Waiters.

Scipio Waiters to Matilda Waiters, dated October 10, 1899, recorded March 21, 1901
13 acres, carved from his father's lands, bounded on the South by lands of Elijah Bright
and on the East, North and West by his lands.

- 4) Deed Book 34, Page 229, Beaufort County, SC

James H. Bailey, Sheriff of Beaufort County to the Sinking Fund Commissioners of the
State of South Carolina, dated Dec. 27, 1924, recorded March 31, 1925.

Property of the defaulting taxpayer for 1913, Matilda Waiters
13 acres, with a building thereon, being bound as follows: On the North by marsh land,
East by Prince Waters, South by Lige Bright & West by Cook Landing Road.

- 5) Deed Book 58, Page 305, Beaufort County, SC

J. E. McTeer and other members of the Sinking Fund for Beaufort County, South
Carolina to Edward Waiters, dated July 19, 1946, recorded July 29, 1946, for \$66.75
consideration.

13 acres more or less, bounded on the North by Marsh land, East by lands now or formerly owned by Prince Waiters, South by lands now or formerly owned by Lige Bright, and on the West by Cooks Landing Creek. Being the same land sold by Sheriff J. H. Bailey, Sheriff of Beaufort County, at delinquent tax sale on December 27, 1924, and recorded in the records of the Clerk of Court for Beaufort County in Book 34, page 229.

- 6) Deed Book 26, Page 96, Jasper County, SC (Subject Property annexed by Jasper Co. in 1952)

J. E. McTeer, Sheriff of Beaufort County to Ed Waiters, dated Oct. 20, 1952, recorded November 28, 1952, for \$11.80 consideration.

Property of defaulting taxpayer for 1950, sold October 1, 1951 (while still a portion of Beaufort County, SC) against the Heirs of Prince Waiters.

25 acres, Yemassee Township, Jasper County, was Beaufort County, State of South Carolina Bounded North by lands of Blake Crosby; East by lands formerly of Ernie Rag now belonging to Dr. Chisolm; South by lands formerly of Calvin Bright now belonging to Dr. Chisolm and on the West by lands of Joe Jenkins, Sammie Ferguson and Sandy Drayton. This property is on the left side of Cooks Landing Road coming from Bellinger Hill.

Note: This description as to boundaries and adjoining landowners encompasses the entirety of the present "60" acre, +/- tract.

- 7) Deed Book 26, Page 110, Jasper County, SC

Ed Waiters, by General Warranty Deed, to Dr. Julian F. Chisolm, Sr., for \$500.00 consideration, dated November 28, 1952, recorded December 20, 1952

2 parcels:

25 acres, +/-, bounded North by Blake Crosby; East by Dr. Chisolm; South by Dr. Chisolm and West by Joe Jenkins, Sammie Ferguson & Sandy Drayton; is on the Left side of Cook's Landing Road coming from Bellinger Hill. Derivation, Deed Book 26, Page 96.

ALSO,

13 acres, +/-, bounded North by Blake Crosby; East by Dr Chisolm; South by Dr. Julian Chisolm and on the West by Dr. Julian Chisolm, formerly Prince Waiters. Derivation, Deed from J. E. McTeer, Sheriff of Beaufort County, SC in 1946 (Deed Book 58, page 305).

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Note: This description as to boundaries and adjoining landowners encompasses the entirety of the present "60" acre, +/- tract.

- 8) Deed Book 26, Page 134, Jasper County, SC

Dr. Julian F. Chisholm, Sr. by General Warranty Deed, to my sons, Julian F. Chisholm, Jr. and William Washington Chisholm, \$ 1.00 Love and Affection, dated January 16, 1953, recorded January 23, 1953

2 parcels:

25 acres, +/-, bounded North by Blake Crosby, East by Dr. Chisholm, South by Dr. Chisholm and West by Joe Jenkins, Sammie Ferguson and Sandy Drayton. Being on the LEFT side of Cook's Landing Road coming from Bellinger Hill.

ALSO,

13 acres, +/- bounded North by Blake Crosby, East by Dr. Chisholm, South by Dr. Julian Chisholm and West by Dr. Julian Chisholm, formerly Prince Waiters.

Derivation for both parcels: Deed from Ed Waters, dated November 28, 1952, recorded in Deed Book 26, Page 110.

Note: This description as to boundaries and adjoining landowners encompasses the entirety of the present "60" acre, +/- tract.

- 9) Will File No. 90-ES-27-70, Jasper County SC Probate Court

Julian F. Chisholm, Jr., ½ undivided interest in subject property and other properties devised to his widow, Gladding H. Chisholm, dated March 1, 1989

- 10) Deed Book 134, Page 38, Jasper County, SC

Gladding H. Chisholm to (nephew) William Washington Chisholm, Jr.
½ undivided interest in subject property and other properties, dated March 30, 1994 and recorded May 6, 1994

Subject Property and other properties

25 acres, +/-, bound on the North by Blake Crosby, on the East by Dr. Chisholm, on the South by Dr. Chisholm and West by Joe Jenkins, Sammie Ferguson and Sandy Drayton. Being on the LEFT side of Cook's Landing Road coming from Bellinger Hill.

ALSO,

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13 acres, +/-, bound on the North by Blake Crosby, East by Dr. Chisholm, South by Dr. Julian Chisholm and West by Dr. Julian Chisholm, formerly Prince Waiters,

Derivation for both parcels: Deed from Ed Waiters, dated November 28, 1952, recorded in Deed Book 26, page 110.

Note: This description as to boundaries and adjoining landowners encompasses the entirety of the present "60" acre, +/- tract.

- 11) Deed Book 134, Page 42, re-recorded Deed Book 275, Page 64

William Washington Chisholm Sr. and William Washington Chisholm, Jr. to Mungin Creek Partners, a SC General Partnership (formed by Chisholm Sr. & Jr.), recorded May 6, 1994, re-recorded May 23, 2003

Subject Property and other properties

25 acres, +/-, bound on the North by Blake Crosby, on the East by Dr. Chisholm, on the South by Dr. Chisholm and West by Joe Jenkins, Sammie Ferguson and Sandy Drayton. Being on the LEFT side of Cook's Landing Road coming from Bellinger Hill.

ALSO,

13 acres, +/-, bound on the North by Blake Crosby, East by Dr. Chisholm, South by Dr. Julian Chisholm and West by Dr. Julian Chisholm, formerly Prince Waiters,

Derivation for both parcels: Deed from Ed Waiters, dated November 28, 1952, recorded in Deed Book 26, page 110.

Note: This description as to boundaries and adjoining landowner's encompasses the entirety of the present "60" acre, +/- tract.

- 12) Articles of Organization with the South Carolina Secretary of State, December 21, 1999

Mungin Creek Partners was converted from a General Partnership to Mungin Creek Partners, a South Carolina Limited Liability Company (per testimony of William Chisholm, is comprised of himself, his wife and children).

Current as of 08/20/2014

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