

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 20 2015

APPEAL FROM JASPER COUNTY
Court of Common Pleas

SC Court of Appeals

C. Stephen Bennett, Special Referee

APPELLATE CASE NO. 2015-000681
(Trial Case Number 2013-CP-27-00379)

Mungin Creek Partners, LLC, formerly
MUNGIN CREEK PARTNERS, a South
Carolina General Partnership,

Respondent,

vs.

The Heirs and Distributees of PRINCE
WAITERS (#1), *et al*,

Appellants.

SECOND AMENDED - NOTICE OF APPEAL

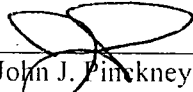
Lawrence Waiters and Johnnie Mae Polite, *as members of the class of persons named herein as JOHN DOE*, appeal the order of the Honorable C. Stephen Bennett, Special Referee, dated February 24, 2015, entitled "ORDER OVERRULING DEFENDANT'S 59(e) AND 59 (c) MOTIONS." This order confirmed the Special Referee's prior "Report and Final Order" dated September 8, 2014. Appellants received written notice of entry of the ORDER OVERRULING DEFENDANT'S 59(e) AND 59 (c) MOTIONS on March 2, 2015. Appellants Lawrence Waiters and Johnnie Mae Polite, although not individually named in the original Summons and Complaint, a clocked copy of which is attached hereto, are *named as members* of the class of persons named herein as "JOHN DOE" Defendants.

April 9, 2015

PINCKNEY LAW FIRM, LLC

Other Counsel of Record:

R. Thayer Rivers, Jr.
252 Russell Street
Ridgeland, SC 29936
843-726-8136
Attorney for Respondent


John J. Pinckney, SC Bar #64232
14 Westbury Park Way, #200
Bluffton, SC 29910
(843) 815-3530

*Attorneys for Appellants Lawrence Waiters and
Johnnie Mae Polite*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. Stephen Bennett, Special Referee

APPELLATE CASE NO. 2015-000681
(Trial Case Number 2013-CP-27-00379)

Mungin Creek Partners, LLC, formerly
MUNGIN CREEK PARTNERS, a South
Carolina General Partnership,

Respondent,

vs.

The Heirs and Distributees of PRINCE
WAITERS (#1), *et al*,


Appellants.

PROOF OF SERVICE

I certify that I have served the Second Amended - Notice of Appeal upon the Special Referee, the Respondent, and all parties and counsel of record for whom I have addresses, by depositing a copy of it in the United States Mail, addressed as shown in the attached mailing matrix, postage prepaid, on April 16, 2015.

April 16, 2015

PINCKNEY LAW FIRM, LLC



John J. Pinckney, SC Bar #64232
14 Westbury Park Way, #200
Bluffton, SC 29910
(843) 815-3530
Attorneys for Appellants

MAILING MATRIX FOR NOTICE OF APPEAL
Case No. 2013-CP-27-00379

C. Stephen Bennett, Esq.
Bennett Law Firm, P.A.
1130 Third Avenue
Post Office Box 1929
Ridgeland, South Carolina 29936
Special Referee

R. Thayer Rivers, Jr., Esq.
R. Thayer Rivers, Jr., Law Office
P.O. Box 668
Ridgeland, SC 29936
Attorney for Respondent

Robert M. Hughes
Robert Milton Hughes, Esq.
Fourteenth Circuit Public Defender
PO Box 388
Ridgeland, SC 29936
Guardian Ad Litem

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Mungin Creek PARTNERS, LLC,
formerly Mungin Creek
PARTNERS, a SC General
PARTNERSHIP Plaintiff(s)

vs.
Heirs of Prince Waiters Heirs of
Scipio Waiters, Heirs of Matilda
Waiters, et al Defendant(s)

Submitted By: R. Thayer Rivers, Jr.

Address: 252 Russell St.
P.O. Box 668
Ridgeland, SC 29936

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. **RECEIVED**

13 -CP- 27 APR 20/2015

SC Court of Appeals

SC Bar #: 4754
Telephone #: 843-726-8136
Fax #: 843-726-4421
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADK. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (260) | <input type="checkbox"/> Assault/Slander/Label (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20__-CP-_____ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input checked="" type="checkbox"/> Other (499) |
| <input type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Administrative Law/Relief | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SC DOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Worker's Comp (960) |
| <input type="checkbox"/> Special/Complex /Other | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Zoning Board (970) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Unfair Trade Practices (640) | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) | <input type="checkbox"/> Public Service Comm. (990) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Out-of State Depositions (650) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) | | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature:

R. Thayer Rivers, Jr.

Date: 7-25-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

MUNGIN CREEK PARTNERS, LLC,)
formerly MUNGIN CREEK PARTNERS,)
a South Carolina General Partnership,)

Plaintiff,)

vs.)

The Heirs and Distributees of PRINCE)
WAITERS (#1), The Heirs and)
Distributees of SCIPIO WAITERS, The)
Heirs and Distributees of MATILDA)
WAITERS, The Heirs and Distributees)
of JOSIE WAITERS, The Heirs and)
Distributees of PRINCE WAITERS (#2),)
The Heirs and Distributees of ROBERT)
WAITERS, The Heirs and Distributees of)
EDDIE WAITERS, The Heirs and)
Distributees of JULIA BRIGHT, MARY)
JANE RILEY, MAGGIE BENTLEY,)
ALBERTHA WILLIAMS, WILLIE)
WAITERS, ANNIE MAE HART)
LEVY CENTER, LLC; LILLIE MAE)
BENTLEY, DAVID HEAPE and ANDREW)
FISHKIND, NATHANIEL RILEY,)
COWAN INVESTMENTS, LLC, JASPER)
COUNTY and all other heirs at law,)
devisees, or persons unknown, claiming by,)
under, or through the above-named persons,)
JOHN DOE and MARY ROE, being)
fictitious names designating a class of)
persons, or a legal entity, infants,)
incompetents, persons in the Armed Forces)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL
CIRCUIT

CASE NO. 13-CP-27-379

(A NON-JURY MATTER)

SUMMONS


FILED
2013
MAY 25 PM 4:12

of the United States of America, if any,)
known or unknown, who may be an heir,)
devisee, legatee, issue, alienee,)
administrator, executor, creditor, successor)
or assign having any right, title, interest,)
estate in or lien upon the real estate)
described in the Complaint herein,)
)
)
Defendants.)
_____)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your answer thereto upon the subscribers at their offices, 252 Russell Street, Ridgeland, South Carolina, within thirty (30) days after the service hereof, exclusive of the date of such service, and if you fail to answer the Complaint within such time, the Plaintiff in this action will apply to the Court for the relief demanded therein.

LAW OFFICE OF R. THAYER RIVERS, JR.
Post Office Box 668
252 Russell Street
Ridgeland, South Carolina 29936
(843) 726-8136



R. THAYER RIVERS, JR.
ATTORNEY FOR THE PLAINTIFF

Ridgeland, South Carolina

July 25, 2013

incompetents, persons in the Armed Forces)
 of the United States of America, if any,)
 known or unknown, who may be an heir,)
 devisee, legatee, issue, alienee,)
 administrator, executor, creditor, successor)
 or assign having any right, title, interest,)
 estate in or lien upon the real estate)
 described in the Complaint herein,)
)
 Defendants.)
)

The Plaintiff would allege and say as follows:

P1
 1) That the Plaintiff, Mungin Creek Partners, LLC is a South Carolina Limited Liability Company, formerly known as Mungin Creek Partners, a South Carolina General Partnership (hereinafter referred to as "Mungin Creek"), having converted from a General Partnership to a Limited Liability Company by filing Articles of Organization with the South Carolina Secretary of State on December 21, 1999, and that the parcel of land which is the subject of this action is located in Jasper County, South Carolina; and this Honorable Court has jurisdiction in this matter.

2) That Levy Center, LLC, Lillie Mae Bentley, David Heape and Andrew Fishkind, Nathaniel Riley, and Cowan Investments, LLC are adjacent landowners and are made Defendants for that reason, and so as to establish and confirm the boundaries of the property which is the subject of this action.

3) That the Heirs of Prince Waiters (#1), the Heirs of Scipio Waiters, the Heirs of Matilda Waiters, the Heirs of Josie Waiters, the Heirs of Prince Waiters (#2), the Heirs of Robert Waiters, the Heirs of Eddie Waiters, the Heirs of Julia Bright, Mary Jane Riley, Maggie Bentley, Albertha Williams, Lawrence Waiters, Willie Waiters, and Annie Mae Hart may be adjacent

landowners and are made Defendants for that reason and so as to establish and confirm the boundaries of the property which is the subject of this action; further, that the Defendants Mary Jane Riley, Maggie Bentley, Albertha Williams, Lawrence Waiters, Willie Waiters and Annie Mae Hart are made parties to this action as a result of various deeds, plats, and other documents and/or letters that have been recorded in the Office of the Clerk of Court or in the Office of the Jasper County Tax Assessor, which allege a potential claim to the Subject Property or a portion thereof.

4) That Jasper County is made a Defendant hereto because it is the local taxing authority.

*P 2
rmb*
5) That John Doe and Mary Roe are fictitious names used to represent a class of persons who are infants, incompetents, in the military service or otherwise unknown to Plaintiff and who may have an interest in and to the subject real property.

6) The property which is the subject of this action is described as follows:

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.

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

(hereinafter the "Subject Property")

7) That the Subject Property was formerly within the bounds of Yemassee Township, Beaufort County, South Carolina until 1952, at which time it became a part of Jasper County, South Carolina.

I
p 3
pml

8) That the Defendant, Prince Waiters (#1), acquired title to a portion of the Subject Property by deed of Joseph F. Pelot, dated May 10, 1876 and recorded October 7, 1876 in Deed Book 10 at Page 361 in the Office of the ROD for Beaufort County, South Carolina. Said deed called for a parcel containing 38 acres, more or less, bounded North and East by the Estate of J. D. Jones; South by Elijah Bright and Abram Crawford, and West by L. Williams and Joe Jenkins.

II

9) That the Defendant, Scipio Waiters, son of Prince Waiters (#1), acquired title to a portion of the Subject Property by deed of Joseph F. Pelot, dated June 15, 1877, recorded January 19, 1878 in Deed Book 11 at Page 127 in the Office of the ROD for Beaufort County, South Carolina. Said deed called for a parcel containing 25 acres, more or less, bounded East by Toby Ragg; South by Elijah Bright; West by Prince Waters (sic), and North by Joseph F. Pelot.

10) That, upon information and belief, the Defendant Prince Waiters (#1), died intestate prior to October 10, 1899, seized and possessed of the property described in Paragraph Number 7, above.

III

11) That on October 10, 1899, Scipio Waiters and Matilda Waiters (widow of Prince Waiters (#1) and stepmother of Scipio Waiters) effected a partition of the Estate of Prince

Waiters, whereby Scipio Waiters, for one dollar (\$1.00), conveyed thirteen (13) acres, carved from his father's land, to Matilda Waiters. Said parcel being bounded on the South by lands of Elijah Bright and on the East, North and West by his (Scipio Waiter's) lands. This deed was recorded in the Office of the ROD for Beaufort County, South Carolina in Deed Book 24 at Page 202 on March 21st, 1901.

12) That, upon information and belief, Scipio Waiters died intestate after October 10, 1899, seized and possessed of the property described above.

13) That the property of Matilda Waiters, returned for taxes as thirteen (13) acres, was seized for nonpayment of taxes in 1913, and was conveyed to the Sinking Fund Commissioners of the State of South Carolina by deed of James H. Bailey, Sheriff of Beaufort County, recorded March 31, 1925 in Deed Book 34 at Page 229 in the Office of the ROD for Beaufort County, South Carolina.

14) That the property assessed in the name of "Heirs of Prince Waiters", returned for taxes as twenty-five (25) acres, was sold for 1950 delinquent taxes. Said property was described as being bound, on the East by lands formerly of Ernie Rag now belonging to Dr. Chisolm, and on the West by lands of Joe Jenkins (now David Heape, et al., a Defendant herein), Sammie Ferguerson and Sandy Drayton (Ferguerson and Drayton now being Levy Center, LLC, a Defendant herein).

15) That in 1945, J. E. McTeer, Sheriff of Beaufort County, South Carolina, conveyed to Ed Waiters the property formerly belonging to Matilda Waiters (Deed Book 58, page 305, Beaufort County ROD), and in 1952, J. E. McTeer, Sheriff of Beaufort County, South Carolina, conveyed to Ed Waiters the property formerly belonging to Prince Waiters (Deed Book 26, page 96, Jasper County Clerk of Court's Office).

2/2/03

16) That Ed Waiters, by General Warranty Deed, subsequently conveyed both parcels of property to Dr. Julian F. Chisholm, Sr. by deed dated November 28, 1952, recorded in Deed Book 26 at Page 110 in the Office of the Clerk of Court for Jasper County, South Carolina (this portion of Beaufort County having been annexed by Jasper County in 1952). The properties conveyed by this deed, by their descriptions, contain the entirety of the Subject Property, and, per the records of the Jasper County Assessor's Office, have a planimetered area of 60 acres, +/-.

*CS
and*

17) That Dr. Julian F. Chisholm, Sr. thereafter conveyed the aforesaid parcels of land to his sons, Julian F. Chisholm, Jr. and William Washington Chisholm by deed dated January 16, 1953 and recorded January 23, 1953 in Deed Book 26 at Page 134 in the Office of the Clerk of Court for Jasper County, South Carolina.

18) That the undivided interest of Julian F. Chisholm, Jr. was thereafter transferred to his widow, Gladding H. Chisholm by Deed of Distribution dated March 1, 1989 (Jasper County Probate Court, Estate of Julian F. Chisholm, Sr., File No. 90-ES27-70), who thereafter conveyed her one-half undivided interest in said property to her nephew, William Washington Chisholm, Jr., by deed dated March 30, 1994 and recorded May 6, 1994 in Deed Book 134 at Page 38 in the Office of the Clerk of Court for Jasper County, South Carolina.

19) That William Washington Chisholm and William Washington Chisholm, Jr. thereafter formed a South Carolina General Partnership, Mungin Creek Partners, and conveyed the Subject Property to said Partnership by deed 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. That Mungin Creek Partners was converted from a General Partnership to a Mungin Creek Partners, a South Carolina Limited

Liability Company by filing Articles of Organization with the State of South Carolina Secretary of State on December 21, 1999.

20) That since 1952, the Plaintiff, and its predecessors in title have claimed ownership of the property formerly owned by Prince Waiters (#1), Matilda Waiters, and Scipio Waiters, and have held said land in an open, adverse, notorious and hostile manner against all persons.

21) That various persons who have represented themselves as "Heirs of Prince Waiters" and/or "Heirs of Scipio Waiters" have engaged in the recording of deeds, plats and/or maps in an effort to substantiate a claim to all, or a portion of, the Subject Property.

22) That on February 20, 2001, a plat of 24.525 acres, purporting to represent property owned by the "Heirs of Scipio Waiters", was recorded in Plat Book 25 at Page 62 in the Office of the Clerk of Court for Jasper County, South Carolina, and utilized by the Tax Assessor's Office for mapping purposes. This 24.525 acre parcel is a portion of the Subject Property and was assigned a Tax Map Ref. Number of 039-00-11-015; the remainder of the Subject Property had a Tax Map Ref. Number of 039-00-11-028.

23) That by written request of Lawrence Waiters (a Defendant herein), dated November 17, 2003, the Jasper County Tax Assessor's Office was requested to combine the two (2) adjoining parcels of 38 acres, +/-, and the parcel of 24.525 acres, into one Tax Map Parcel of Sixty (60) acres, more or less, being the entirety of the Subject Property. The 2004 Tax Notice for the parcel of Sixty (60) acres, more is less, is to be sent to Lawrence Waiters, et al., a Defendant herein, and has a Tax Map Ref. of 039-00-11-015. Tax Map Reference Number 039-00-11-028 has been deleted.

24) That the original Jasper County Assessor's Property Card for the Subject Property, which contains background information, reports of double-claims, and notes, including field

notes taken by representatives of the Assessor's Office, is "missing" from the files, and a Duplicate card, with little background information or notations, is now in use. There is no notation on the Duplicate card of any double-claim on the Subject Property.


25) That your Plaintiff has no adequate remedy at law.

2/1/13
26) That your Plaintiff is informed and believes that the potential claims of the various Defendants constitute a cloud upon the title of the Plaintiff; and that your Plaintiff has superior title and is entitled to have that cloud removed.

WHEREFORE, having fully set forth its case, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and grant the Plaintiff the following relief:

- a. That this Court determine the rights of the parties and the true boundaries of the Subject Property;
- b. That this Court issue an Order clearing and confirming title to the property which is the subject of this action in the name of the Plaintiff, Mungin Creek Partners, LLC (formerly Mungin Creek Partners, a South Carolina General Partnership);
- c. For such other and further relief as this Honorable Court shall deem just and proper.

LAW OFFICE OF R. THAYER RIVERS, JR.
Post Office Box 668
252 Russell Street
Ridgeland, SC 29936
(843) 726-8136



R. Thayer Rivers, Jr.
Attorney for the Plaintiff

Ridgeland, South Carolina

July 25, 2013