

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 MARGARET B. MOORE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ANNABEL POUIGNIER and JEAN )  
 POUIGNIER, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 ALEC ELIZABETH CLEARY, )  
 )  
 Party-in-Interest. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2012-CP-10-1850

MASTER FINAL ORDER  
 RECEIVED

AUG 12 2015  
 SC Court of Appeals

FILED  
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 JULIE J. ARMSTRONG  
 CLERK OF COURT

THIS MATTER came before the Court on May 4, 2015, for a final hearing on the merits to determine the true and correct boundary line between two adjoining parcels of real property owned by Margaret B. Moore ("Plaintiff") and Annabel and Jean Pougner ("Defendants") located in Charleston County, South Carolina. After duly considering the evidence, this Court arrives at the following findings of fact and conclusions of law, and renders this Final Order.

**PROCEDURAL BACKGROUND**

Plaintiff commenced this case through the filing of a Complaint against Defendants in the Court of Common Pleas for Charleston County on March 16, 2012.<sup>1</sup> The Complaint alleged that Plaintiff is the record owner of Lot 37, and that Defendants have trespassed upon a portion

<sup>1</sup> On November 18, 2013, Defendants' Motion to Join an Indispensable Party pursuant to SCRPC 19 and 20 was granted. Specifically, it was ordered that Alex Elizabeth Cleary be added as a party to this case. Since that time, Alex Cleary transferred her interest to her mother Sandra Moore, who, in turn, transferred the interest to Margaret Moore. At the time of trial, Margaret Moore owned 100% of the title. Consequently, Alex Cleary was removed as a party to this action.

thereof. Plaintiff asserted several claims against Defendants, including adverse possession, acquiescence, trespass, injunction, and a declaratory judgment to determine the correct boundary line between the parties' respective properties.<sup>2</sup>

Defendants responded with an Answer, and subsequently, an Amended Answer and Counterclaim was filed on September 18, 2014. Defendants denied any wrongdoing or liability to Plaintiff on the basis that Defendants owned the property. Defendants also alleged a counterclaim against Plaintiff for a declaratory judgment, seeking a judicial determination as to the location of the boundary line between the two properties.

### JURISDICTION AND VENUE

This Court has jurisdiction over the parties and the subject matter of this action, and venue is proper herein. By Consent Order, this case was referred to this Court, and all parties have stipulated that this matter is properly heard and decided by this Court.

### FINDINGS OF FACT

1. Plaintiff is the owner of approximately 0.48 acres of real property located within Charleston County, bearing TMS No. 517-06-00-037, shown as Lot 37 on a plat entitled, "Block A of Bayview Acres Subdivision," which was prepared by the John McCrady Company dated February 1948 and filed on April 17, 1948 ("Moore Property").

2. Defendants are the owners of approximately 0.55 acres of real property located within Charleston County, bearing TMS No. 517-06-00-035, shown as Lot 36 on a plat entitled, "Block A of Bayview Acres Subdivision," which was prepared by the John McCrady Company dated February 1948 and filed on April 17, 1948 ("Pougnier Property").

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<sup>2</sup> On April 17, 2015, the Court executed a Consent Order dismissing Plaintiff's cause of action for adverse possession, with prejudice.

3. This dispute involves the location of the western boundary line of the Moore Property ~~Property~~ and the eastern boundary line of the Pougner Property. The controversy concerns the location of the southwestern corner of the Moore Property.

4. Plaintiff concedes Defendants' are the title owners of the disputed portion of property.

5. The earliest record of the disputed boundary line, and the senior plat of record, is in evidence as Defendants' Exhibit 1, John McCrady Plat, a 1948 plat showing a survey of Bayview Acres Subdivision.<sup>3</sup>

6. The John McCrady Plat describes the boundary line by course and distance; specifically, a line that starts at a point nearest Bay View Drive and then running at a course and direction of south 14 degrees 30 minutes east (S. 14° 30' E) for two hundred fifty-one feet (251'). The location of the starting point nearest Bay View Drive was not disputed at trial.

7. The John McCrady Plat is identified and referenced in each deed in Plaintiff's chain of title.<sup>4</sup> Plaintiff presented no evidence to the contrary and made no attempt to challenge this contention on cross-examination, or through competing expert testimony.

8. The John McCrady Plat is identified and referenced in each deed in Defendants' chain of title.<sup>5</sup> Defendants' presented evidence to establish that the true boundary line between the properties is as shown on the John McCrady Plat, and as described in all of the relevant deeds.

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<sup>3</sup> Recorded April 17, 1948, in the RMC Office for Charleston County, South Carolina, in Plat Book G, at Page 48-A.

<sup>4</sup> The five prior deeds in Plaintiff's claim of title conveyed certain property, known as Lot 37, Block A, Bay View Acres Subdivision, and are in evidence as Defendants' Exhibits 2-8.

<sup>5</sup> The three prior deeds in Defendants' claim of title conveyed certain property, known as Lot 36, Block A, Bay View Acres, and are in evidence as Defendants' Exhibits 9-11.

9. On December 7, 2010, Plaintiff completed an application for a dock permit, which was submitted to the South Carolina Department of Health and Environmental Control's Office of Coastal Resource Management ("SCDHEC-OCRM"). This permit application was received by SCDHEC-OCRM on December 15, 2010.<sup>6</sup>

10. Plaintiff engaged E.M. Seabrook Jr., Inc., to assist her with the dock permit application process. As an integral part of that engagement, Lewis Seabrook prepared a survey of the Moore Property to demonstrate the boundary lines. This survey established the boundary lines in conformity with the lines declared in the John McCrady Plat.<sup>7</sup>

11. The next most senior plat drawing the boundary line in question is a February 2011 Plat, Resurvey of Lot 37 Block A, by Lewis E. Seabrook. This resurvey established the boundary line in conformity with the line declared in the John McCrady Plat.<sup>8</sup> The Seabrook Plat was created as part of the dock permit application process.

12. Plaintiff contends that she is the owner of real property, that Plaintiff and Defendants' predecessors in title agreed to a property boundary between their respective parcels and both allowed this boundary to serve as their understanding of the boundary for a period in excess of twenty years.<sup>9</sup>

13. Plaintiff presented no evidence to support her contention that the boundary line was other than that established in the John McCrady Plat, and as described in all the deeds.

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<sup>6</sup> The permit application is in evidence as part of Defendants' Exhibit 12.

<sup>7</sup> This survey is in evidence as part of Defendants' Exhibit 15.

<sup>8</sup> The February 2011 Plat is in evidence as part of Defendants' Exhibit 14.

<sup>9</sup> Defendants' predecessor-in-interest, the Nelsons, are deceased. Consequently, the Dead Man's Statute prohibits testimony concerning conversations or transactions with Decedents. Brooks v. Kay, 339 S.C. 479, 486, 530 S.E.2d 120, 123, (2000) (citing Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997)).



14. At trial, Gerald Moore, Jr., testified that he maintained the property up to a hedgerow. Specifically, he claims he removed shrubs, mowed grass, and trimmed and planted trees. Mr. Moore also testified that the southwest corner of the Moore Property was marked by a pipe on the edge of the marsh. However, Plaintiff offered no evidence to establish the location of the pipe on the edge of the marsh. Moreover, Plaintiff submitted no photographic evidence of the purported marsh pipe, the purported hedgerow, or any other objective indication of the boundary line.

15. At trial, Plaintiff testified that she owned only that property which was purchased by her father and subsequently conveyed to her by deed. Specifically, Plaintiff testified:

Q. And as I understand it you agree that whatever your father purchased that's what you have now?

A. I agree that whatever he purchased I have now. (Tr. 59:8-10)

Q. So I guess my question simply is, do you have any more property than what your father purchased in 1966?

A. I hope not. (Tr. 61:24-25; 62: 1-2).

16. Plaintiff further testified the she did not intend to move or alter the boundary line described in the John McCrady Plat. Specifically, Plaintiff testified:

Q. You don't believe in moving property lines, do you?

A. Most definitely not. I have never moved nor do I know of any property line that has ever been moved. (Tr. 60:4-7, May 4, 2014).

Q. As we sit here today your property is, it is that which is described by deed. It is that which was established by plat in 1948 because you don't move property lines?

A. I do not move property lines. (Tr. 61: 10-14).

Q. That is your intent, right?

A. That is my intent. (Tr. 61:15-16).



17. Plaintiff's testimony that she had no intention to establish a different boundary line, is sufficient evidence to support the Court's finding of lack of acquiescence.

18. Defendants assert that the eastern boundary line of their property is consistent with the lines of occupation that have been recognized since 1948, such that the boundary line continues to be two hundred fifty-one feet (251') with a directional coordinate of S. 14° 30'E, as shown on the John McCrady Plat.

19. At trial, Defendants called Lewis Seabrook, a registered land surveyor and civil engineer. Mr. Seabrook was qualified as an expert land surveyor, and was the only witness to offer expert testimony in the case.

20. Mr. Seabrook testified that he established both the length and dimensions of the boundary lines in the 2010 survey and 2011 plat by utilizing information from the John McCrady Plat. Mr. Seabrook also testified that he was able to establish the existence and location of the disputed southwest corner by using the property description from the John McCrady Plat. Finally, he testified he reset an iron rebar in the southwest corner, consistent with where Mr. McCrady had set that same line in 1948. His testimony was un-contradicted.

21. Plaintiff presented no evidence to challenge Mr. Seabrook's testimony on cross-examination, or through competing expert testimony. In fact, Plaintiff did not present any objective evidence to establish either the location of the disputed southwest corner or the location of the boundary line other than that described in the John McCrady Plat.

#### STANDARD OF REVIEW

A suit for declaratory judgment may be legal or equitable, and is characterized as such by the nature of the underlying issue outlined in the complaint. Lowcountry Open Land Trust v. State, 347 S.C. 96, 552 S.E.2d 778 (S.C. App. 2001). A declaratory judgment action is



appropriate for the adjudication of a boundary dispute. Knox v. Bogan, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996). Plaintiff filed this action seeking a judicial determination of the correct boundary line between the parties' respective properties. Accordingly, the Court reviews this as an equitable matter involving the location of a boundary. Knox v. Bogan, 322 S.C. 64, 67, 472 S.E.2d 43, 45 (Ct. App. 1996) (An action to settle or fix a boundary may be treated as an equitable matter.); see also Uxbridge Co., 135 S.C. 26, 30-31, 133 S.E. 461, 462 (holding that when the plaintiff cannot prove with certainty where a boundary line is to show the defendant has overstepped it, ordinary remedies at law are inadequate and such a circumstance requires the interposition of equity).

#### CONCLUSIONS OF LAW

##### A. Incorporation of the John McCrady Plat

"The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution." Lancaster v. Smithco, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). When a deed describes land as 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. Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979); Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); see also Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) ("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 . . . .").

It is undisputed that the John McCrady Plat is identified and referenced in each deed of Plaintiff's chain of title. Therefore, the plat is part of her deed and describes the boundaries, metes, courses and distances of the property conveyed. More specifically, the John McCrady Plat provides a description of the boundary line between the Moore and Pougner properties. Plaintiff made no attempt to challenge the accuracy of the descriptions within the deeds as it relates to the boundary line between the Moore and Pougner properties. Accordingly, the Court finds the terms of the deeds unambiguous, accurately conveying the parties respective properties as described within the deeds.

**B. Ownership by Acquiescence**

A boundary dispute is an action at law. Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 544, 455 S.E.2d 194, 197 (Ct. App. 1995)(citations omitted). "A disputed boundary line can be established by acquiescence of the parties." Kirkland v. Gross, 286 S.C. 193, 197, 332 S.E.2d 546, 548-49 (Ct. App. 1985). "[A]cquiescence is a question of fact determined by the intent of the parties." Id. at 198, 332 S.E.2d at 549. "[I]f adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming in the boundary line thus recognized and acquiesced in is not the true one." Croft v. Sanders, 323 S.E.2d 791, 792, 283 S.C. 507 (Ct. App. 1984)(citing Klapman v. Hook, 206 S.C. 51, 57, 32 S.E.2d 882, 884 (1945). For a new boundary to be established by acquiescence, both parties must recognize and accept a particular line constituted the true boundary line. See Croft v. Sanders, 283 S.C. 507, 510, 323 S.E.2d 791, 793 (Ct. App. 1984); see also Knox v. Bogan, 322 S.C. 64, 71-73, 472 S.E.2d 43, 48-49 (Ct. App. 1996) (holding adjoining property owners' mutual acquiescence in and recognition of a clearly defined boundary line for a long period of time is proof of acquiescence).



To support a finding of acquiescence, all parties, including the Plaintiff and Defendants (and/or their predecessors in interest) must have recognized and accepted the modified boundary line as the true line. However, in this case, there is no evidence that the parties mutually recognized any clearly defined line (other than that described by the John McCrady Plat) nor evidence to support a finding they mutually acquiesced in the modified boundary line. The Nelsons are deceased, and there was no evidence offered at trial that they recognized and/or accepted a clearly defined boundary other than the line established by the John McCrady Plat. Absent evidence of the parties' acknowledgment of a clearly defined boundary, there can be no acquiescence. Knox, at 71-73, 48-49; see also Croft v. Sanders, 323 S.E.2d 791, 283 S.C. 507 (Ct. App. 1984) ("Absent mutual recognition by both parties that a particular line was the true property line, a new boundary line cannot be established by acquiescence.").

Moreover, there has been no evidence of any intent to establish a boundary line that is different from the boundary line as shown on the John McCrady Plat. More specifically, Plaintiff testified that she owned only that property which was purchased by her father and subsequently conveyed to her by deed. She conceded that her deed describes the property with express reference to the John McCrady Plat. Finally, Plaintiff affirmatively testified it was not her intent to move property lines. These facts are fatal to her acquiescence claim. See Kirkland v. Gross, 286 S.C. 193, 332 S.E.2d 564 (Ct. App. 1985) ("[t]he mere existence of a fence between properties is not sufficient to establish a boundary line by acquiescence absent intent."); see also Harrison v. Lanoway, 214 S.C. 294, 52 S.E.2d 264 (S.C. 1949) ("defendant failed to establish title by acquiescence . . . where there was no showing that the hedge was intended to mark boundary line").



Aside from Plaintiff's own testimony, the most compelling evidence against the acquiescence claim is Plaintiff's application for a dock permit submitted to SCDHEC-OCRM which was submitted to SCDHEC-OCRM in December 2010, less than one month following the Defendants' purchase of Lot 36. Plaintiff engaged E.M. Seabrook, Jr. Inc., to assist her with the dock permit application process. As part of that engagement, Lewis Seabrook prepared a survey of the Moore Property to establish the boundary lines, which in turn would determine the dock corridor. The survey established the boundary lines in conformity with the lines described in the John McCrady Plat and was submitted to SCDHEC-OCRM as part of the application drawings.

Subsequently, SCDHEC-OCRM requested Plaintiff provide a new plat showing the current critical line. The February 2011 Plat, Resurvey of Lot 37 Block A, was approved and submitted to SCDHEC-OCRM. This plat also established the boundary lines in conformity with the lines described in the John McCrady Plat. Mr. Seabrook testified that his crew did not initially find an iron rebar at the disputed southwest corner; however, they were able to reset an iron rebar in the southwest corner by utilizing the information from the John McCrady Plat. Mr. Seabrook's testimony concerning the results of his survey was un-contradicted.

Finally, Plaintiff completely failed in her burden of proof that the boundary line was other than that contained in the John McCrady Plat. Defendants, however, offered ample evidence to establish that the true boundary line between the properties is as shown on the John McCrady Plat, and as described in all of the deeds. Accordingly, the Court finds Plaintiff failed to meet her burden of proof in establishing ownership by acquiescence. Even if the Court were inclined to side with Plaintiff on her claim of acquiescence, Plaintiff failed to produce sufficient evidence with which the Court could define the boundary line.



As a result of Plaintiff's failure to establish ownership, Defendants are entitled to judgment as a matter of law. Since the Court concludes Plaintiff failed to prove ownership of the disputed property, the Court declines to address Plaintiff's remaining claims.

**C. Boundary Line Determination**

Based upon the evidence presented and controlling law, the Court finds and concludes that the boundary line at issue is correctly located in accordance with Defendants' asserted placement of the line as reflected in Defendants' Exhibit 1.

**D. Conclusions**

Based on the foregoing findings of fact and conclusions of law, it is hereby:

**ORDERED, ADJUDGED AND DECREED** that the boundary line between the Moore and Pougner properties is that which is described in the John McCrady Plat and which is incorporated by reference in the deeds of both parties; and it is further

**ORDERED, ADJUDGED AND DECREED** that the southwest corner of the boundary line between the Moore and Pougner properties has been physically defined by the placement of rebar/iron pipe by Lewis E. Seabrook and/or E.M. Seabrook, Jr., Inc.; and it is further

**ORDERED, ADJUDGED AND DECREED** that judgment be, and it hereby is, entered in favor of Defendants against all claims and causes of action asserted in Plaintiff's Complaint; and it is further

**ORDERED, ADJUDGED AND DECREED** that judgment be, and it hereby is, entered in favor of Defendants and against Plaintiff in Defendants' Counterclaim for declaratory judgment; and it is further

**ORDERED, ADJUDGED AND DECREED** that within ninety (90) days of the date of this Order, Defendants, at their sole option and expense, may have Lewis E. Seabrook and/or



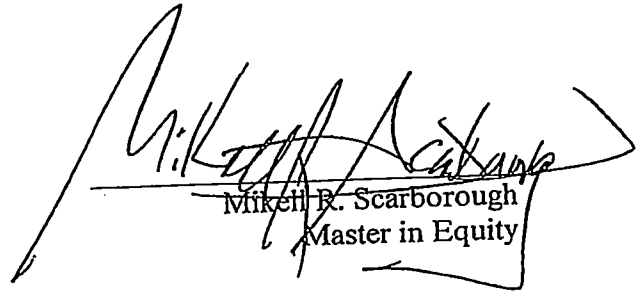
E.M. Seabrook, Jr., Inc., confirm the existence of the rebar/iron pipe in the southwest corner of the boundary line; and it is further

**ORDERED, ADJUDGED AND DECREED** that in the event the rebar/iron pipe cannot be located, Defendants, at their sole option and expense, may have Lewis E. Seabrook and/or E.M. Seabrook, Jr., Inc., reset the rebar/iron pipe in accordance with the John McCrady Plat, herein incorporated by reference; and it is further

**ORDERED, ADJUDGED AND DECREED** that Plaintiff and Plaintiff's agents, are restrained and enjoined from relocating and/or removing the rebar/iron pipe at any time for any purpose;

**AND IT IS SO ORDERED!**

7/6, 2015  
Charleston, SC

  
Michael B. Scarborough  
Master in Equity