THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Solomon Johnson; Frank Johnson; Ruth Green; Dorothy Jones; Theresa Scott; Erma Johnson; Kelly Barbara Jean Ferguson a/k/a Barbara Jean Albergottie; Alphonzo Albergottie; David Pringle; Pauline Lesesne; Marion Pringle, Jr.; Frederick Scott; Paul K. Scott; HaroLd Jones; Sandra Williamson Powell; Frederick L. Williamson; Elvin Bennett; Janie L. Ganues; Bertha Stafford; Patrice Stafford; Mary Lee Gary; Alnethia Gary; Edward Stanley Stafford; Luerta Gary; Kenneth Gary; Carlos Gary; Ron Kenneth Stewart; Mary Frances Duncan; Debra Williams; Larry Williams; Barbara Williams Smith; Johnie Williams; Terri Elaine Weaver; Letha G. Rhem; Patricia Ann White; Sharon White; Nolen White; Johnny Washington.....RESPONDENTS

VERSUS

The Heirs or Devisees of Solomon White; Mary Ann Pinckney White; Edward White; Jacob White; Mary White; Carrie White; Ellen White Gary; Sam Gary; Emma Gary Johnson; Miller Johnson, Sr.; Oscar Johnson; Eloise Johnson; Miller Johnson, Jr.; Leola Johnson; Richard (Ritchie) Johnson; Sarah H. Johnson; Mack Coles; Emily Johnson Albergottie; Robert Albergottie; Louise Johnson Pringle; Marion Pringle; Mamie Gary; Thomas Brown; Carrie Scott; Clarence Scott; Jessie Mae Scott Smalls; Williams Smalls, Jr.; Nathaniel Scott; Camerine Scott; Hermon V. Scott; Luther Scott; Earnestine Steward; Epstein Steward; Lonny Brown; Gussy Brown; Charles Brown; Danza Gary; Victoria Brown; Dorothy Williams; Joseph Williamson, Sr.; Elijah Williamson; Joseph Williamson, Jr.; Helen (Sweetie) Brown Bennett; Ervin Bennett; Janie Bennett Green; Eloise Bennett Nixs; Benjamin Nixs; Terry Nixs; Carrie Gary; Harry Julius; Richard Gary; Fronnie Gary; Ella Gary; Francis Gary; Florence (Nan) Gary; Aletha (Tiny) Gary Watson; Andrew Gadsden; Frank Watson; Elizabeth Gary Stafford; Lee Stafford; John Lee Stafford; Joseph Gary; Nehemiah Gary; Dorothy Gary; Harold Gary; Cleveland Gary; Henry Gary; Florrie Gary; Naomi Gary Stafford; James Stafford, Sr.; Hattie Mae Stafford; Edna Brooker; Henry Brooker; Inell Jones; Raymond Jones; James Stafford; Jr.; Hazel Gary; Henry Gary, Jr.; Henry Gary, III; Herman Gary; Mary Ellen Gary Williams; Herbert Williams, Sr.; Herbert Williams, Jr.; Louise Gary White; Jimmy White; Lou Ethel Washington; Margaret Gary Levine; David Levine; Eddie James Gary; Wilhelmina Gary Murray; Ezekiel Murray, Sr.; Josephone Gary Jenkins; Eddie Jenkins, Joe Louis Gary; Heirs of David Pringle; Salt Marsh Partners, L.P.; Janice E. Jones and Ralph E. Johnson; Bobbie J. Collins; Leroy Norris and Odis Ann Norris; M. Lane Morrison; Milles Lanes Morrison and Bank of America, N.A., as Trustees; Beaufort County Open Land Trust; Williams McLean Mixon and Barbara Hill Mixon, as Trustees of the Mixon Revocable Trust Agreement dated July 24, 2008; Robert J. Pinckney; Mamie Brown; Susie Cordeaux; Dorothy Lesesne; Ben Pinckney; Etta Pinckney; Henry Pinckney; Herbert Pinckney; Ernestine P. Rogers; Lillie Shell; and Ruth P. Simmons;

Richard Johnson, Jr.; Helen Coles; Jackie Smalls; Sharon Smalls; Andrea Smalls; Brooke Smalls; Allan Scott; Cleon Scott; Nia Malika Singletary; Loretta L. Steward; Nathan Jones; Eric Williamson; Dwayne Williamson; Audrey Brown; Joseph Johnson; Jacqueline Johnson Major; Robert Lee Green; Kenneth Green; Juanita Green; Keith Green; Joseph Green; Ellis Green; Carl Green; Brown Bennett; Dorsey Bennett; Williams Nixs; Jennifer Nixs; Jason Nixs; Thaddaus Nixs; Edward Nixs; Charles Nixs; Althea Nixs; Clara Gary; Francis Gary, Jr.; Adelia Gary; Charles Gary; Albert Gary; Ulysses Gary; Bernard Gary; David Gary; Annette Singleton; Lillie Mae Gifford; Shawndea Stafford; James Stafford; Beaulah Gadsden; Jordan Harris; Leon Stafford; Alvin Brooker; Michael Stafford; Shirley Stafford White; Gail Stafford Marquez; Jacqueline Stafford; Stephanie Jones; Renata Jones; Ranell Jones; Germaine Jones; Nathaniel Stafford; Angela Stafford; Sonya Green; James Stafford, III; Rasheen James; Jusean James; Kierra Stafford; Lena (Evelyn) Gary; Brenda Patterson; Jeanette Rutledge; Issac Williams; Carolyn Achampny; Antoinette Lewis; Geraldine Brown; Johnny Washington; Kurt Washington; Diane Gary; Tracy Washington; Carren Washington; Lunetha Gary; James Stanley Gary; Gerald R. Gary; if living, and if not living then the heirs or devisees of all such persons named above, and all persons unknown having or claiming to have any right, title, estate, interest in or lien upon the real property described in the Complaint herein, being designated collectively as John Doe and Mary Roe, including all persons who may be decesased, minors, in the Armed Forces of the United States, *Non Compos Mentis,* and under any other disability;

Of which Clara Gary; Adelia Gary; David Gary; Annette Singleton; Albert Gary; Ulysses Gary; Bernard Gary; Francis Gary, Jr.; and Charles Gary are .....APPELLANTS.

INITIAL BRIEF OF RESPONDENTS

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TABLE OF AUTHORITIES

A. CASES

B. OTHER AUTHORITIES

STATEMENT OF CASE

The Statement of Case presented by the Appellants is mostly correct. It leaves out these matters and events.

1. A previous case regarding the same or similar issues was instituted in CA 2006-CP-07-00609 which resulted in a decision by the Master In Equity that there were insufficient facts upon which to reach any decision so all claims and counterclaims were dismissed without prejudice.

2. A Motion made by the Plaintiff prior to the trial of April 22-23, 2013 to establish the east boundary line of the 30 acre parcel that was heard during the middle of the trial of April 22-23, 2013 resulting in an Order of May 2, 2013.

3. A Motion by Salt Marsh Partners (a Defendant) against the Appellants for contempt which resulted in an Order of August 5, 2013.

4. A Supplemental Order of September 18, 2013.

5. A Motion to have the heirs of Solomon White and Mary Ann White (those that were deceased or unknown) determined which resulted in an Order of March 11, 2014.

STATEMENT OF FACTS

The Respondent disagrees with the Statement of Facts set forth in the Initial Brief of the Appellants and relies upon the Findings of Facts set forth by the Trial Judge in the various Orders and Decrees that are on file in this case for the correct Statement of the Facts.

Standard of Review

Appellants did not address the issue of the Standard of Review for the Appellant Court in this case even though it is recommended by appellant scholars.[1] Thus, the Respondent addresses that issue here.

The Complaint in this case sets forth these causes of action:[2]

1. Determination of Heirs.
2. Determination of Boundary Disputes.
3. Ouster (of unknown/unidentified heirs) and Waiver of Rights (by unknown/unidentified heirs).
4. Partition.

The First Amended Answer of the Appellants sets forth these Defenses and causes of action:[3]

1. Denials.
2. Adverse possession by the Appellants.
3. Ouster (against all heirs except the Appellants).
4. Unjust enrichment.

The Reply of the Plaintiffs sets forth these responses/claims[4]

1. Denials of the claims by the Appellants.
2. A partition of the land into six parcels (one for each family branch).

By consent of the parties and their attorneys at the original trial of April 22 and 23, 2013, certain Stipulations were entered into between the parties and they agreed to

bifurcate the various claims, causes of action, defenses, and counterclaims so that testimony was presented at that trial only upon two issues. Those two issues were:

1. A determination of the heirs of Solomon White and Mary Ann White who purchased two parcels of real property in the 1880's.
2. Had there been an ouster by the Appellants against the other heirs of Solomon White and Mary Ann White.[5]

An action to determine heirs is declaratory judgment action as it seeks to determine pre-existing rights. The Court may treat a suit as one for a declaratory judgment even though it is not in form an action for declaratory judgment where the relief sought is declaratory in character. A declaratory judgment action is neither a legal nor equitable action per se. Rather, its character as a legal or equitable action is determined by the underlying issue.[6] In this case, the underlying issue tried on April 22/23, 2013 was ouster.

An ouster was originally an action for ejectment but in the modern context it is an action by a cotenant to acquire adverse title against other cotenants; i.e., it is an adverse possession claim by a cotenant against another cotenant for 20 continuous years with all of the characteristics of adverse possession.[7] Thus, the ouster that is involved in this case is an action at law, i.e., it is to be decided by a jury.[8]

The sole issue presented by the Appellants in their Brief is --- Did the Trial Court err by finding that the Clara Gary family (the Appellants) was not the sole owner of the properties based upon ouster of the cotenants.[9] By raising that sole issue the

Appellants challenge the factual decisions made by the Trial Judge who was sitting as the trier of fact by agreement of the parties.

The Standard of Review in an action at law, on appeal of a case tried without a jury, is that the findings of fact of the Trial Judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. In other words, the judge's findings are equivalent to a jury's findings in a law action.[10]

In an action at law tried only by a Judge (or Master or Referee), the Judge has the right and the obligation to charge him/her self in the same manner as a judge would charge a jury. That charge would be as follows:

> Under our constitution and code of laws, you and I have separate and distinct duties. Only you, the jury, can make the findings of fact in the case. I am not permitted to indicate to you how I may feel about the testimony and evidence presented. Throughout the trial I have attempted to be fair and impartial toward all of the parties.
>
> To determine the facts in the case you will have to evaluate the credibility, which means believability, of each witness. In considering whether to believe a witness's testimony about a particular matter, you may consider:
>
> What was the manner and appearance of the witness who testified -- was he or she straightforward, or hesitant in answering?

Was the testimony of a witness consistent -- or inconsistent?

How did the witness come to know the facts that he or she testified to? -- Or what was his or her ability to know these facts?

Is there some reason a witness would want to give testimony which would help -- or hurt -- one side or the other? In other words, was the witness biased or prejudiced?

And was the testimony of a witness strengthened -- or weakened -- by other testimony or evidence?

You can believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite.

Throughout this process you have but one objective -- to seek the truth, regardless of its source.[11]

The Respondent's Brief will be directed towards showing that the Trial Court had more than sufficient evidence to deny the claim of the ouster asserted by the Appellants.

ARGUMENT

More so than in other cases where there has just been only a trial and maybe one Motion, the Appellant Court should take plenary and cogent recognition that the Trial Judge as the trier of fact in this case had a greater opportunity to follow the jury charges made by Judges to juries to assess the credibility and demeanor of all the witnesses and the authenticity and accuracy of the documents that were before him for consideration. That opportunity is the result of the numerous proceedings in this case that took place before the same judge. Please review the Introduction to the Final Decree which outlines the history of the trial, and Motions, and hearings on those Motions and the various Orders which emanated from those hearings.[12] This history includes the hearing during the trial (April 22/23, 2013) of a Motion to establish a boundary line which testimony resulted in an Order of May 2, 2013 of a fine being levied against the Appellants and that an Order of Contempt would be issued for the failure to recognize the boundary line.[13] Subsequently, upon a Motion by the boundary owner for contempt against the Appellants, a hearing was held on August 1, 2013 which resulted in an Order holding two of the Appellants in contempt and for another monetary fine.[14] They purged themselves of the contempt.[15] Surely the trier of fact gained some insight into the credibility of the Appellants and their intent to do the correct thing from the testimony and documents in all of these Motions and hearings.

The cotenant claiming ouster must prove the elements of adverse possession for 20 or more years.[16] And, that proof must be by a clear and unmistakable nature [17] that is brought home to the other owners.[18] The elements of adverse possession that must be proved are (1) continuous, (2) hostile, (3) open, (4) actual, (5) notorious, and (6) exclusive. Each element must exist.[19] At the time of the trial in this case the burden of

proof of all six of these elements was upon the Appellants as they claim ouster against all of the other cotenants. Thus, one of the decisions that the Trial Judge, as the trier of fact, had to make was not just whose witnesses and documents were the most truthful, but also whether all six of the required elements of ouster were proven by the Appellants. The trier of fact could have believed all of the testimony presented by the Appellants which they argue in their Brief, but if those facts do not prove all six of the elements of ouster then the testimony fails. The trial judge made specific and detailed Findings of Fact [20] and reached the legal conclusion that the Appellants failed to present facts to establish those six elements. [21] The Appellants did not address this issue in their Appeal Brief of their having to prove all of the six elements of adverse possession at the trial. Nor did the Appellants address the issue that their claim against the other cotenants of sole ownership had to be "brought home" by clear and convincing evidence; i.e., by significant proof of facts as to that issue. Rather, their appeal, just like what was presented at the trial, is a selection of random prejudiced testimony. Unlike the Respondents who had witnesses outside of their family group,[22] no one outside of the family group of the Appellants testified for them.[23] Standing alone, the testimony of the Appellants might make them look good but that testimony does not prove the six required elements of ouster/adverse possession and it does not prove clear and convincing notice to the other heirs(cotenants) of the sole claim to the land by the Appellants. Possession by one cotenant is presumed possession by all and if one cotenant uses more than their share without a complaint by the cotenants, there is a presumption of consent by the other cotenants.[24]

As the burden of proof of this appeal for the Appellants is that they must prove that the Trial Judge, as trier of fact, did not have reasonable facts before him in order to

reach a decision, the Respondents rely in response upon the Findings of Fact in the Partial Decree to emphasize that the Trial Judge was extremely diligent and thorough in examining and reviewing the testimony and reporting his findings in writing.[25] A reading of the Findings of Fact affirmatively reveals that the Trial Judge had more than ample reason and authority to conclude that the Appellants failed to meet their burden of proof. At the time the Partial Decree of July 24, 2013 was issued, no Transcript of the trial proceedings had been prepared. That Transcript was not prepared until this appeal was entered. Thus, it was not possible for the Trial Judge to footnote his Findings of Fact in the Partial Decree so he relied upon the notes he took during the trial and his memory to write the Partial Decree.

The single thrust of the testimony presented at the trial by the Appellants was an attempt to prove their exclusive possession. This concept of attempting to prove exclusive possession and of not proving all six elements of adverse possession was rejected by the Trial Court by the following legal principles and factual findings:

1. Law:

   a. Possession by one cotenant is possession of all cotenants. Freeman v. Freeman, 323 S.C. 95, 99; 473 SE2d 467 (SC Ct. App. 1996).

   b. The mere exclusive possession, accompanied by no other acts, will not be held to amount to a disseisin of cotenants. 3 AM JUR 2nd Adverse Possession § 227.

c. If one cotenant uses or possesses more than his share of the common property without complaint by his cotenants, the law presumes that the cotenants consent to the use and possession of more than his share. 6 SC Jurisprudence, Cotenancies §53; 20 AM JUR 2d Cotenancy §117.

d. Possession in cotenancy is presumed to be permissive, not hostile. 3 AM JUR 2d Adverse Possession §224.

e. The mere knowledge by cotenants out of possession of the obvious fact of possession by one cotenant does not account to proof of knowledge that the one in possession is claiming adversely. 3 AM JUR 2d Adverse Possession §228.

f. The conduct and nature of the possessor's exclusive adverse possession must be sufficiently clear to "bring this home" to the other cotenants. 6 SC Jurisprudence, Cotenancies §24; Watson v. Little, 224 S.C. 359, 79 SE2d 384 (1953); 3 AM JUR 2d Adverse Possession §226.

2. Facts:

The Trial Court made these factual conclusions based on the testimony:

a. The Clara Gary Defendants could not name a single heir of Solomon White and Mary Ann White that they denied access to occupy or use the land.[26] The Clara Gary Defendants disagreed with the dates

testified to by the Plaintiff's witnesses about who used various areas on the land and when some of the occupations occurred. I do not believe the exact dates or the location or use of the 30 acres to be that important for the Court is left with the facts that a number of the heirs came and went as they so desired to occupy or use whatever portion of the land they desired without interference by any of the other heirs.

b. The Clara Gary Defendants claimed Solomon Johnson and Brenda Patterson paid rent. They had receipts they introduced for 2011 and 2012 from Solomon Johnson which said "rent" on them, but, he had Postal money orders payable to the Clara Gary Defendants dated prior to those receipts which have "taxes" written on them.[27] Solomon Johnson testified that the first time he ever heard anything about the payment of rent was when his deposition was taken (July 2006) in the 2006 case (CA 2006-CP-07-00609) and the Clara Gary Defendants attorney asked him about the payment of rent.[28] This claim of rent was then followed up on August 2006 by the attorney for Clara Gary writing a letter to Solomon Johnson demanding rent to which Solomon Johnson wrote a strong letter of rebuttal to include the family tradition of how the payment of taxes was made. In addition, Solomon Johnson's daughter (Janice Jones) wrote a letter in 2010 to the Clara Gary Defendants disclaiming the payment of rent.[29] If there has been the payment of rent, that implies some form of an agreement in like manner as a lease which agreement would include the size of the area of land leased, the duration of the term of the lease, who is responsible

for repairs and insurance on the buildings and who is liable for injuries. The Clara Gary Defendants had no reasonable answers to what the rental agreement was on those specific issues.[30] It is hard for the Court to accept the position that an 86 year old man (Solomon Johnson) born on the land purchased by his great grandfather (Solomon White) and who has lived there all of his life is renting that land from anyone, much less a relative in the same family, in the absence of clear and convincing evidence which was certainly not proven.[31]

c. There was a great deal of testimony about the issue of the use of the 30 acres for (1) planting of corn, watermelons, okra, and other crops used to feed farm animals, (2) family plot type gardens, and (3) the pasturing of cows, pigs, and chickens. This testimony centered upon these activities being conducted mostly by the Clara Gary branch and also the Emma Johnson (Solomon) branch. The testimony was mostly about where these activities were conducted on the land and what size of an area was used by one branch or another branch of the family of these heirs (cotenants).

While the Clara Gary Defendants stated that they controlled these activities, such was denied by both Solomon Johnson and the other witnesses and no other facts were presented to establish any control other than the oral statements. The Clara Gary Defendants stated that they put up "No Trespassing" signs but upon cross examination

admitted that there would be no way that any heir of Solomon White or Mary Ann White would know that such signs were directed at them as the signs only said "No Trespassing". How could anyone reading such a sign not think it was to protect all of the heirs?[32]

The sum total of this disputed testimony about who used what portion of the of the 30 acres or how much of it was used by one branch or the other of the same family is that these two branches of the family both used substantial portions of the 30 acres for the raising of livestock, and food for themselves, and food for their livestock, and these activities were primarily for their personal family use. These are normal consensual activities of cotenants and I see no ouster created by such uses that was revealed by the testimony.[33]

CONCLUSIONS

The Appellants did not prove that they "brought home" to the other Defendants that they alone were claiming sole title to the heirs land and the Trial Court ruled on that issue.

The Appellants did not present evidence at the Trial on the six elements of ouster/adverse possession and the Trial Court ruled on that issue.

The Standard of Review is that the decision of a Trial Judge acting as a trier of fact in a law case will not be disturbed on appeal where there is reasonable evidence at the trial that supports the decision. In this case there is more than substantial evidence for the Trial Court to judge the witnesses and documents and to reach a decision.

Footnotes

1. Appellant Practice in South Carolina by Toal, VaFai and Muckenfuss, 1999, p. 154.

2. Complaint - pp.

3. First Amended Answer -- pp.

4. Reply - pp.

5. Partial Decree -- pp.

6. Harvey et al -vs- SC Department of Corrections, 338 S.C. 500, 506; 527 S.E.2d 765.

7. 6 S.C. Jurisprudence, Co-Tenancies, § 24, 45.

8. Appellant Practice in South Carolina by Toal, VaFai and Muckenfuss, 1999, p. 190 (Ejectment) and p. 191 (Title to Real Property).

9. Appellant's Initial Brief pp. 1 and 7.

10. Hardaway Concrete Company -vs- Hall Contracting Corp., 374 S.C. 216; 647 S.E.2d 488, (S.C. App., 2007).

11. General Instructions -- Basic Charge 1-1, Ervin's South Carolina Requests to Charge -- Civil by South Carolina Bar, 1994.

12. Final Decree p.

13. Order of May 2, 2013. p.

14. Order of August 5, 2013. p.

15. Supplemental Order of September 18, 2013. p.

16. 8 S.C. Jurisprudence, Adverse Possession, § 15.

17. 6 S.C. Jurisprudence, Cotenancies, §24; Watson V. Little, 224 S.C. 359, 79 S.E.2d 384 (1953).

18. Same as Footnote 17.

19. 6 S.C. Jurisprudence, Cotenancies, § 24; Bevard V. Fortune, 221 S.C. 117, 69 S.E.2d 355 (1952); Fender v. Smashum, 354 S.C. 504, 581 S.E.2d 853 (Ct. App. 1986).

20. Partial Decree. p. 9, paragraphs 201 through 207.

21. Partial Decree. p. 16, paragraph 305.

22. Partial Decree. p. 13, paragraph 206.
TR p. 40-41 (Maria Ernestine); TR pp. 205-206 (Abraham Johnson); TR p. 443- (David Youmans); TR p. 6- Item 36 - Deposition of Lillie Mae Gilford.

23. Partial Decree p. 13, paragraph 206.
TR pp. 3-4 (David Gary, Annette Singleton, Albert Gary, Ulysses Gary).

24. Freeman v. Freeman, 323 S.C. 95, 99; 473 S.E.2d 467 (SC App. 1996); 6 S.C. Jurisprudence, Cotenancies § 53; 20 AM JUR 2d Cotenancies § 117.

25. Partial Decree, pp. 7-14 (Findings of Fact in two categories -- Determination of Heirs and Ouster).

26. See Trial Judge's conclusion of the facts. Partial Decree - p. 10- Last paragraph of Item 202.

David Gary testified no one in the Clara Gary family branch (the Appellants) put together a list of the Heirs of Solomon White and Mary Ann White so he did not have information (a family tree) to use to notify the other heirs of their sole claim. Thus, he never notified the other heirs of that claim. TR pp. 546-547.

Annette Gary Singleton testified she did not put together a family tree so she did not know who to inform of the Appellants claim of sole ownership. Also, she did not name any heir she ran off. TR pp. 603-608.

Albert Gary testified he did not notify any of the other heirs of the sole claim by the Appellants nor did he run any of them off. TR pp. 631-632, 634. Ulysses Gary testified he did not do a family tree so he did not notify the other heirs. TR pp. 655-658. Also, he did not run off any other heirs - TR pp. 653-654.

27. TR p. 532; TR pp. 138-141; Exhibits 30, 31, 32, 33, 34.

28. TR pp. 127-129.

29. TR p. 129 - Exhibit 27; TR pp. 134-137 - Exhibits 28 and 29.

30. Solomon Johnson testified that the family tradition was that the tax notice was sent to the oldest heir living on the land who collected equal amounts from all the heirs living on the land who then paid the county. (TR pp. 122-123). This was corroborated by his son Ralph (TR pp. 270-272) and also by Brenda Patterson (TR p. 217), another Plaintiff. That is the normal custom in heirs families per the title researcher (TR p. 76) who has performed some 1,000 title abstracts in Beaufort County per year for over 20 years (TR p. 41), in which about 30 of those annual title searches have involved heirs property (TR p. 73); and she has been a frequent testifier in Court about these matters (TR p. 74).

Solomon Johnson testified that there was never a discussion about a lease nor any terms of a lease such as (a) the size of the land rented, nor (b) who was responsible if the house he lived in burned down, nor (c) liability for an injury or a slip and fall on the premises, nor (d) who paid for any insurance, nor, (e) who was to pay the utilities, nor, (f) the length of the term of the lease (rental period). TR pp. 144-146.

Ralph Johnson (son of Solomon who helps him with his business activities - TR p. 121 and TR pp. 249-250, 268) testified that while he handles his 86 year old father's business activities, he never heard anything about the payment of rent until it was brought up in a letter from an attorney for the Appellants in 2006. TR pp. 268-270. He has never had any discussion with any of the Appellants about rent nor of the provisions of a lease or rental agreement with such issues as (a) the length of the rental, nor (b) who would pay insurance. TR p. 270. The money that was paid was for payment of taxes. TR pp. 270-272.

Brenda Patterson (a Plaintiff and daughter of Henry Gary) testified that the oldest family member collected the taxes who would then pay them. TR p. 217. She participated in that process as to payment of the taxes and saw her mother pay taxes also. TR pp. 217-218. The taxes were paid to Aunt Clara (an Appellant) up until last year (the trial was in 2013). TR p. 218. That was the first time (last year) she ever heard anything about the payment of rent. TR pp. 218-219. David Gary testified that an agreement was made about Solomon paying rent (TR pp. 532-538) with his mother (Clara Gary who never appeared in the court room) but he could not state (a) when the rent payment was due, nor (b) the amount of the rent, nor (c) who (landlord or tenant) would pay any insurance, nor (d) who would be liable/or injuries on the premises, nor (e) when this rental agreement was entered into, nor (f) the boundary of the rented area (maybe 100 feet or 200 feet on each side). According to him, every one of the tax receipts for the 10 acres and the 30 acres say "Heirs" of Solomon White and Mary Ann White. This fact was confirmed by the title researcher who testified for the Respondents (TR pp. 72 and 101) and who also testified that none of the public records indicate that either of the two parcels of land was owned by someone named Gary (the Appellants). TR p. 72.

31. By Solomon Johnson - TR pp. 109-110; pp. 117-119; p. 121; p. 125. By Ulysses Gary - TR pp. 645 and 654.

32. David Gary testified he put up "No Trespassing" signs about ten years ago. TR pp. 357, 365, 381. Yet, he was unable to tell the trier of fact how an heir of Solomon White or Mary Ann White would know that the signs were directed at them. TR pp. 544-548.

33. The Appellants did not perform acts as would an ordinary person claiming a parcel of land to be owned solely by themselves. For example, they never had the land surveyed. TR p. 517. They do not know the boundaries of the land. TR p. 519. They did not perform a title search. TR p. 559. They never made an attempt to put together a list of heirs of Solomon White and Mary Ann White so they could not have notified the other heirs that they alone were claiming the heirs land. TR p. 547; TR pp. 603, 605; TR p. 634; and TR p. 658.

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CERTIFICATE OF COUNSEL

The Counsel for the Respondents certifies that the Initial Brief fully complies with Rule 211, SCRAP, and that a copy has been served on Counsel for the Appellants.

September 17, 2015

J. Thomas Mikell

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File: 4858.0002

STATE OF SOUTH CAROLINA)
) PROOF OF SERVICE
COUNTY OF BEAUFORT)

Date: September 17, 2015

Document(s): Initial Brief of Respondents

Addressee(s):		
	Clerk of Court SC Court of Appeals P.O. Box 11629 Columbia, SC 29211	One Copy
	Kelvin M. Huger Attorney for Appellants P.O. Drawer 20669 Charleston, SC 29416	One Copy
	Harold A. Boney, Jr. Attorney for Salt Marsh Partners P.O. Box 1151 Beaufort, SC 29901	One Copy

The undersigned hereby certifies that she placed true and accurate copies of the Document(s) named above to the Addressee(s) named above on the Date stated above in an envelope with prepaid first class U.S. postage thereon and delivered the same to the U.S. Postal Service.

Julie W. Bowman
Secretary to J. Thomas Mikell
Attorney for Respondents