

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2005-CP-29- 724

Evelyn Lowery,)
PLAINTIFF,)

vs.)

Eula M. Daniels, Darrell Waiters, Monique Thompson,)
Phinessa R. Waiters, Pearl Mahjoub, Tommie Lee James,)
John William James, William C. Waiters, Mary L. Bailey,)
James C. Bell, William Bailey, Harold Bascomb,)
Romona Bascomb, Nakia Williams, Nerisse Williams,)
Carlton McPhaul, Donnell McPhaul, Idell R. Waiters,)
Ella R. Waiters, Eddie Waiters, Elizabeth Ann Moore,)
Donald Waiters, Brenda Wade, Glenda Waiters, Wilric Waiters,)
Dorothy Johnson, Ruth Jordan, Ronald Sweet,)
Donald Johnson, David Lee Richardson, Raymond Richardson)
Lafayette Richardson, Jr., Robert C. Richardson, Bill Moses,)
Margaret Jones, Herman Sweet, Jr., Reginal Coleman,)
Ronald Coleman, Michael Coleman, Sharon Coleman,)
Tammy Coleman, Bridgette Coleman, Delfreda Coleman,)
Phillip Hatchet, Iceola Weeks, Charles Burt,)
Theodore R. Brewer, Leola Waiters, Betty J. Catoe,)
Carrie Waiters, Ernest L. Waiters, Irene Carr, Janice Dixon,)
Donald F. Waiters, Rayford J. Waiters, Carolyn McKenny,)
Larry Waiters, Denise Allen, Kevin Waiters, Ginger Ann Waiters)
Harry Waiters, III, Deshone Waiters, Willie W. Addison,)
Bessie M. Waiters, Linda D. Addison, Angelet Hardin,)
Irene Sanders, Joseph Coleman, Jr., Wyle Mingo,)
Joyce Ann Benjamin, Gary W. Coleman, Jr., Lilyan A. Coleman,)
John C. Waiters, Estate of Anna B. Waiters, Anna E. Perkins,)
Willie James Hall, Lena Tibbs, Janese R. Allen, Leonard Hall, Jr.)
Clinton James Hall, Leotis Hall, Christine C. Hall, Alma R. Grant,)
Pearl Hall, Mary Hall, Mark Hall, Kevin Hall, Doris Hall,)
Iris Hall, Maggie Hall, Jimmy L. Hall, Jr., Marilyn Hall,)
Lowarren Hall, Clifton Hall, Dywayne Hall, Novella Hall,)
Lenonne Addison, Brendetta Hall, NaSheqeca Bekia Hall,)
Marquavious Tramble Hall, Sabrina McWaters, Renonia Church,)
Gwen McWaters, Jacqueline McWaters, Renee McWaters,)
Connie C. Parker, Alice C. Truesdale, Eliza C. Truesdale,)
Roy Caskey, Randy Caskey, Maggie Caskey, Leon Caskey, III,)
Sharon Harris, Eliza Furgerson, David Hall, Robert Hall,)

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OCT 28 2015

SC Court of Appeals

ORDER

FILED
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CLERK OF COURT
LANCASTER, SC

Joseph Hall, Henrietta Hall, Linda Duncan, M. L. Hall, Alvin Hall,)
 Oscar Hall, Jr., Laura Mae Hall, Stanford Hall, Anna Hall,)
 Patricia H. Bentley, Casey Hall, Janie Hall, Janie Douglas,)
 Mary Bradlee, Elizabeth Hall, Teresa Pope, Devron Wright,)
 Dyron J. Hall, Romelle Simpson, Estate of Alma Tilman,)
 Ren Tilman, Chris Waiters, if living and if any of the said)
 Defendants are deceased, then their heirs or devisees at law,)
 and all other persons claiming any right, title, interest in or lien)
 upon the real estate described herein, and any unknown)
 infants or persons under disability or persons in the military)
 service hereby designated as a class John Doe and Jane Roe,)
DEFENDANTS.)

This matter is before the undersigned Special Referee pursuant to an Order of Reference file on April 28, 2014. A hearing was held on June 20, 2014 to receive evidence and hear arguments from the parties. Based upon the pleadings, the evidence and the arguments of counsel received at that hearing, the court makes the following findings of fact and conclusions of law.

Service was properly made upon all unknown persons by the proper publication of notice in The Lancaster News, and proof of that publication was filed with the clerk of court on August 20, 2013. The parties to this action are all persons who may claim a right, title to or interest in the real property described below.

This is an action to quiet title, to partition real property and for other relief. The real property which is the subject of this action is located in Lancaster County, South Carolina, being all of that property conveyed to Can Waitis (sic) by deed of J.P. Williams filed in the Office of the Clerk of Court for Lancaster County, South Carolina on December 7, 1905 in Deed Book 0-2 at Page 330, and being further described as follows:

All of that certain piece, parcel or tract of land lying, situate and being in Cedar Creek Township, County of Lancaster, State of South Carolina, containing Two Hundred (200) acres, more or less, and being bounded on the East by Stewart Place Road and by lands now or formerly of A.D. Tillman and P.H. McDow; and being bounded on the South by lands now or formerly of C.O. Witts and P.A. McDow; and being bounded on the West by lands now or formerly of Mrs. Annie Wilson.

and including the following tracts of real property derived from said tract:

All of that real property conveyed to William C. Waiters, John C. Waiters, et. al. by deed recorded in Registry of Deeds for Lancaster County, SC in Deed Book D-6 at Page 6067, consisting of 109 acres, more or less, and being further that parcel identified as Tax Map #130-00-28.00; and

ALSO: All of that real property conveyed to William C. Waiters, et. al. by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book W-6 at Page 167, Deed Book Z-9 at Page 51, Deed Book 0-9 at Page 125 and Deed Book 51 at Page 329, consisting of 30 acres, more or less, and being further that parcel identified as Tax Map # 130-00-28.01; and

ALSO: All of that real property conveyed to Mary L. Bailey, Eula N. Daniel, James C. Bell, Monique Thompson, Darrell Waiters, Phinessa R. Waiters, Dervin Bailey and William G. Bailey by deed recorded in the Registry of Deeds for Lancaster County, SC in Book 139 at Page 82, consisting of 2 acres, more or less, and being further that parcel identified as Tax Map # 146-00-22.01; and

ALSO: All of that real property conveyed to Chris Waiters by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book 198 at Page 214, consisting of 2 acres, more or less, and being further that parcel identified as Tax Map # 146-00-23.01.

HOWEVER, LESS AND EXCLUDING: All of that property derived from the aforesaid conveyance from J.P. Williams to Cam Waiters, and being all of said lands lying and being south of Hoke Road, and being all of that piece, parcel and tract of land, being that fifty (50) acres, more or less, conveyed by Rena Stewart to Emanuel and Eliza Bell by deed recorded in the Register of Deeds for Lancaster County in Deed Book A at Page 285. Said property having been partitioned and divided between the heirs of Emanuel and Eliza Bell by Decree of William Catoe, Special Referee in the Court of Common Pleas Case No. 1976-CP-29-629, and said lands are therefore not subject to this action.

The Property described above, less the land identified as tax map number 146-00-23.01, is referred to in this Order as the Property.

The chain of title for the Property is convoluted and complex. A large number of persons hold interests in the Property, and the amounts of those interests vary. Counsel are to be commended for the diligence shown in investigating this issue. Based upon all of the evidence presented at the hearing, including the testimony of John Waiters, the court finds that undivided

interests in the Property are vested in the persons named on the attached exhibit 1 to this Order, and the percentage interest each person holds in the Property is set forth in the final column on the right-hand side of that exhibit.

Each of these persons owns an undivided interest in the entire property. Over the course of many years, several persons have filed deeds which purport to subdivide the property and convey a specific portion to an individual. None of these deeds, which are identified in the legal description above, were properly executed by all of the persons holding an interest in that portion of the Property at the time the deeds were executed.

One of these deeds purports to convey the land designated as tax map number 146-00-23.01. Chris Waiters ("Chris") currently occupies the land, which he purchased from a third party. A prior owner had managed to obtain a mortgage on this land, which was foreclosed upon by Wachovia Bank. A notice of the sale in the foreclosure would have been published, and there is no evidence that any person contested that sale. Chris currently occupies a home located on that land, and title to that parcel should be quieted in his name as a grantor of the purchaser at foreclosure. The remaining deeds of portions of the property are void.

No showing has been made by any other grantor to support a claim of adverse possession. The elements of an adverse possession claim are well-established under South Carolina law, and no other grantor made an effort to defend any title purportedly conveyed by any of the other deeds.

Having identified the Property which is subject to partition and identified the persons who own an interest in the Property, the court must next turn to the question of how to partition the property. The property may either be sold or a distribution in kind may be made to the various owners. The number of owners of the Property make a partition in kind of the entire Property not

practical. Over 100 persons have an interest in the property, and the court does not see a reasonable way to get each of these persons an individual parcel.

Partition is an equitable action, and the procedure must be fair and equitable to all parties. Partition in kind is favored when it can be fairly made. The court is allowed to use equitable considerations such as length of ownership and sentimental attachment to property to guide it. The court may also consider the parties living situations, including whether a party has made significant improvements. The general rule is that a joint tenant who has placed permanent improvements on land is entitled in partition to compensation for those improvements -- the court does not want to enrich one owner at the expense of another. If the court can set off land with improvements for the party who made the improvements without material injury to others, that part should be set off to the improving landowner. *See Campbell v. Jordan*, 382 S.C. 445 (Ct. App. 2009); *Tedder v. Tedder*, 109 S.C. 451 (1918); *Shumaker v. Shumaker*, 234 S.C. 421 (1959).

The court finds that eight parties have residences located on the Property, and some of them have resided here for lengthy periods. The general location of the residences and the identities of those parties appear on the sketch attached to the Order as Exhibit 2. Unrefuted testimony that the parties did not wish to force any person living on the property to leave it was received into evidence. Applying the principles set forth above, and considering the proof received at the hearing, I find that the portion of the property surrounding these eight homes as shown on Exhibit 2 shall be subdivided in kind. The subdivision shall be accomplished in a fashion which leaves each residence in some areas surrounding it with access to a public road sufficient to comply with Lancaster County subdivision regulations. The parcel should be divided among the eight persons based on the percentages of each owner set forth in exhibit 1. If this division creates one or more lots that are not large enough to satisfy applicable subdivision regulations, the surveyor shall have

the discretion to increase the size of that lot or lots as necessary to gain government approval. The surveyor accomplishing this work shall also have discretion in laying out the boundaries of each of the eight lots, taking into account topography and existing driveways and other improvements associated with each residence.

A survey will also be necessary to facilitate a sale of the property under the terms set forth in this order. That cost may be paid out any remaining proceeds from the harvesting of timber on the property or from the proceeds of the sale of the remaining portions of the Property. The court will appoint a trustee to oversee and administer this process.

The remainder of the property shall be subdivided as shown on the sketch attached to this order is Exhibit 2. This sketch creates opportunities for lots of various sizes to be purchased by family members. Persons wanting larger properties may purchase larger parcels, and will also be free to purchase multiple adjacent parcels and combine them. The intent of the court is to create a variety of opportunities for family members who wish to own part of the Property to have that opportunity.

The court finds that the value of the Property without improvements and without timber which has been previously removed from the property is \$1200 per acre. Testimony was received from an expert appraiser, Andy Harper. The court finds Mr. Harper to be qualified to provide an opinion regarding the value of rural unimproved real estate in Lancaster County based upon his education and experience. The witness identified appropriate comparable parcels to assist in his evaluation. After noting that the Property has good road frontage, the witness also acknowledged that there is a very limited market for the property. While the witness provided a range of values up to \$1400 per acre, the court finds the \$1200 per acre estimate to be the appropriate value given the limited marketability of the property.

This court is vested with the discretion to order the sale of the property upon such terms as it shall deem right. Parties have requested that the property be sold at a private auction, and the court agrees that this is an appropriate way to proceed. The auction shall be conducted under the supervision of the trustee to be appointed by the court, who shall have the power to contract with an auctioneer. The trustee is vested with the authority to determine the time the auction will take place, what notice will be given and how that notice will be given.

The auction will be private, and the participants limited to the persons identified on Exhibit 1 and their children by blood or marriage. The auction shall be conducted with a minimum price on each lot, and the amount of that minimum bid shall be determined by the trustee. A minimum bid will be required to eliminate the possibility of collusive bidding, since this is a private auction with a limited number of bidders. The purchasers at the auction shall be required to pay for deed preparation, deed stamps and filing fees assessed by the register of deeds for Lancaster County. Any parcels not sold at the private auction will be sold at a public auction on terms approved by the trustee to be appointed.

Proceeds of the auction will be placed into a common fund under the supervision of the trustee. Proceeds may be used to pay the costs of sale, including the cost of the auctioneer, the cost of providing notice, costs of survey, filing fees for subdivision approval if any, and other reasonable expenses associated with the duties of the trustee and the sale of the property. After paying all of these costs, all remaining funds will be distributed to the persons identified on Exhibit 1 who did not receive a distribution in kind in the proportionate shares shown on that document. Any payment due to Donald Waiters will be distributed pro rata to others until the sums due from him set forth hereinafter are paid in full.

Evidence was presented that in prior years other parties had harvested timber, deposited the proceeds in a bank account and used the proceeds to pay taxes on the property. This harvesting was done for the benefit of all parties and results in no liability of any participant in that harvesting.

The fees and disbursements of counsel in this action shall be paid from a common fund. The actions taken by all counsel have been for and led to the benefit of all property owners. The expenses should therefore be borne by all parties through a common fund.

The factors for the court to consider in determining awards of attorneys' fees and costs are set forth in the seminal Baron Data case. The court will analyze each factor jointly as to counsel Ronald Robbins, Mark Grier and Chris Mills.

Regarding the nature and difficulty of the work in this case, the court has already noted that this was a complex case which placed extensive demands on the time and resources of all counsel. The large number of parties involved in the complex legal issues, with which most lawyers are not generally familiar, would place additional demands on the time of all counsel. Regarding professional standing, all of the attorneys in this case are very experienced and highly regarded. I find that a rate of \$300 per hour would be reasonable under the circumstances for all counsel. The court notes that all of counsel in this case have charged less than this amount for their work. The court has reviewed the time spent by all counsel and the expenses they incurred, and find it to be necessary and reasonable.

The court therefore awards Chris Mills a total of \$5652 for fees and expenses. The court awards Mark Grier \$15,249.83 for fees and costs, and also directs that an additional \$3300 be paid to Plaintiff to reimburse her for added fees and costs that she advanced to Mr. Grier. The court awards Ronald Robbins \$14,974.94 in fees and costs, and also directs that \$4997 be paid to defendant John Waiters for fees and costs advanced by him.

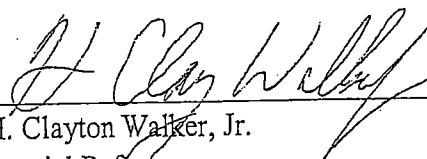
Time devoted to this matter by the special referee at the rate of \$275 an hour results in a total of over \$8500. The special referee is charging a total of \$5000 for all fees and costs associated with services as special referee.

Disbursements for these fees and costs shall be made out of the \$50,000 received for timber harvesting which is being held in the special referee's trust account. The remaining balance of those five shall be turned over to a trustee as soon as one is appointed by the court.

It is therefore ordered, adjudged and decreed that title to the Property be vested in the persons set forth on exhibit 1, that the deeds of portions of the Property be set aside, that title to the land known as tax map number 146-00-23.01 be quieted in the name of Chris Waiters, that the eight persons with homes located on the Property shall have a portion of the Property identified and conveyed to them in kind as set forth above, that the remainder of the Property be subdivided and auctioned as set forth above, that defendants Carrie Waiters and Donald Waiters pay \$8189 into the fund to be established as set forth above, that fees and costs be paid as set forth above and the remaining proceeds from the recent timber harvesting be paid over to the common fund when it is established.

IT IS SO ORDERED.

September 11, 2015
Columbia, South Carolina


H. Clayton Walker, Jr.
Special Referee

TITLE	LAST NAME	SUF.	FIRST NAME	Total	%														% of Total
	1. William	1/7																	
	Walters					5/24	1/12	1/16	1/24	1/48	1/84								0.02976
Ms.	Balley		Mary L		5/24	0.20833													0.02976
Mr.	Walters		William C.		5/24	0.20833													0.01180
Ms.	Walters		Idell R.		1/12		0.08333												0.00695
Ms.	Mahjoub		Pearl L.		1/24				0.04167										0.00695
Mr.	James		John William		1/24				0.04167										0.00695
Ms.	James		Tomme Lee		1/24				0.04167										0.00695
Mr.	Bascomb		Harold		1/24				0.04167										0.00695
Ms.	Bascomb		Ramona		1/24				0.04167										0.00298
Ms.	Danels		Eula M.		1/48					0.02083									0.00298
Mr.	Balley		William		1/48					0.02083									0.00298
Mr.	Walters		James C.		1/48					0.02083									0.00298
Mr.	Walters		Darrell		1/48					0.02083									0.00298
Mr.	Thompson		Monique		1/48					0.02083									0.00298
Ms.	Walters		Phnessa R.		1/48					0.02083									0.00298
Ms.	Williams		Nakia		1/48					0.02083									0.00298
Ms.	Williams		Nerisse		1/48					0.02083									0.00298
Mr.	McPhaul		Carlton		1/48					0.02083									0.00298
	McPhaul		Donnell		1/48					0.02083									0.00170
Ms.	Walters		Ella R.		1/84						0.01190								0.00170
Mr.	Walters		Eddie		1/84						0.01190								0.00170
Ms.	Moore		Elizabeth Ann		1/84						0.01190								0.00170
Mr.	Walters		Donald		1/84						0.01190								0.00170
Ms.	Walters		Brenda		1/84						0.01190								0.00170

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 ANDOVER, SC

OK Exhibit #2

EXHIBIT
 1

4. Anna Waiters Hall				1/7	1/12	1/18	1/24	1/32	1/36	1/48	1/72	1/80	1/84	1/90	1/96	1/144	1/168	1/270	1/288	1/576		
Mr.	Hall	Jr.	Oscar		1/12																	0.01190
Ms.	Grant		Alma R.		1/12																	0.01190
Ms.	Hall		Pearl		1/12																	0.01190
Ms.	Ferguson		Casey		1/12																	0.01190
Ms.	Bentley		Patricia H.		1/24				0.05556													0.00794
Ms.	Hall		Mary		1/24					0.04167												0.00596
Ms.	Hall		Lola		1/24					0.04167												0.00596
Ms.	Hall		Laura Mae		1/24					0.04167												0.00596
Ms.	Hall		Maggie		1/32																	0.00446
Ms.	Hall		Anna (Casey Hall Widow)		1/36						0.02778											0.00397
Ms.	Hall		Janie		1/36						0.02778											0.00397
Ms.	Hall		Standford		1/48							0.02083										0.00298
Ms.	Hall		Anna		1/48							0.02083										0.00298
Ms.	Parker		Connie C.		1/72								0.01389									0.00198
Ms.	Truesdale		Alice C.		1/72									0.01389								0.00198
Ms.	Truesdale		Eliza C.		1/72										0.01389							0.00198
Mr.	Caskey		Randy		1/72											0.01389						0.00198
Mr.	Caskey		Roy		1/72												0.01389					0.00198
Ms.	Church		Renonia		1/80												0.01250					0.00179
Ms.	McWaters		Sabrina		1/80													0.01250				0.00179
Ms.	McWaters		Gwen		1/80														0.01250			0.00179
Ms.	McWaters		Jacqueline		1/80															0.01250		0.00179
Ms.	McWaters		Renee		1/80																0.01250	0.00179

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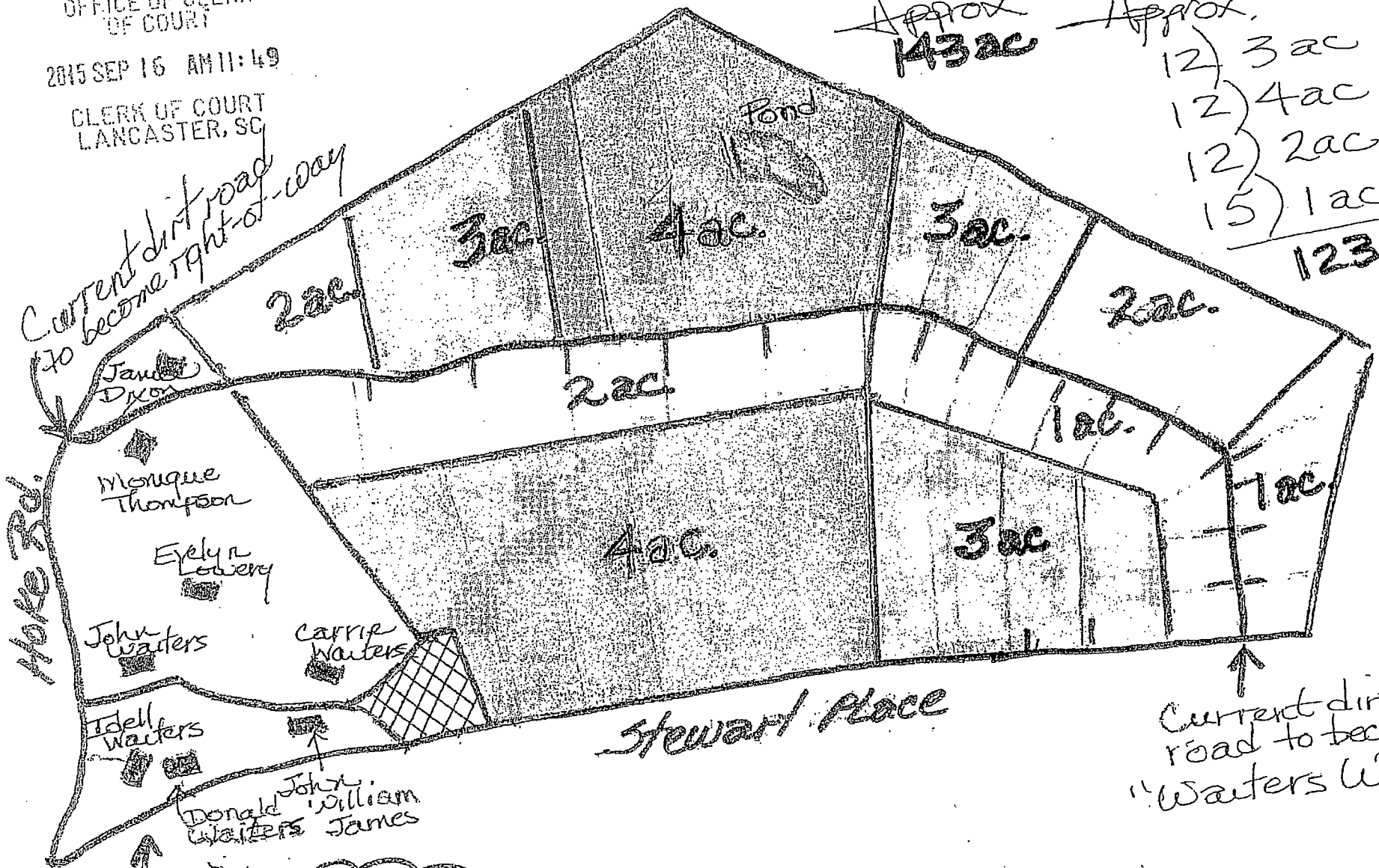
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LANCASTER, SC

Approx
143 ac

Approx.
12) 3 ac
12) 4 ac
12) 2 ac
15) 1 ac

123 ac



19.924 acres
allocated to 8 existing
homes

EXHIBIT
2

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

EVELYN M. LOWERY,
PLAINTIFF,

VS.

EULA M. DANIELS, et. al.,
DEFENDANTS.

) IN THE COURT OF
) COMMON PLEAS

) 05-CP-29-724

) CERTIFICATE
) OF MAILING

) **RECEIVED**

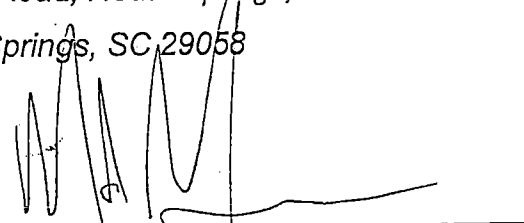
) OCT 28 2015

) SC Court of Appeals

I, Mark Grier, attorney for the Plaintiff certify that the Order of Special Referee H. Clayton Walker, Jr., dated September 11, 2015 in the above-captioned matter were served upon the Defendants named hereinbelow by depositing in the United States Mail with the proper postage attached thereto on the 25th day of September, 2015, addressed as follows:

- Carrie Lee Waiters, 4818 Waiters Circle, Heath Springs, SC, 29058*
- Donald F. Waiters, 4816 Waiters Circle, Heath Springs, SC, 29058*
- Kevan L. Waiters, 4819 Stewart Place Road, Heath Springs, SC 29058*
- Ginger Ann Waiters, 4818 Waiters Circle, Heath Springs, SC, 29058*
- Larry D. Waiters, 4771 Stewart Place Road, Heath Springs, SC 29058*
- Carolyn McKinney, 560 Foster Heights, Lancaster, SC 29720*
- Rayford J. Waiters, 4779 Stewart Place Road, Heath Springs, SC 29058*
- Janice Dixon: 3268 Hoke Road, Heath Springs, SC, 29058*

Lancaster, South Carolina
September 25, 2015



Mark Grier
Attorney for Plaintiff
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