

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-000329

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SC Court of Appeals

Julius Brazell, ...Appellant,

v.

Town of Chapin, South Carolina; and
County of Lexington, South Carolina, ... Respondents.

RECORD ON APPEAL

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Attorneys for Respondent Town of
Chapin, SC

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ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and,
County of Lexington, South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-32-01537

**ORDER GRANTING DEFENDANT
TOWN OF CHAPIN'S MOTION FOR
SUMMARY JUDGMENT**

FILED
CLERK OF COURT
LEXINGTON, SC

2014 SEP 26 AM 11:41

FILED

A hearing on Defendant Town of Chapin's ("Chapin or Town") motion for summary judgment was held at the Lexington County Courthouse on September 5, 2014. The Plaintiff was represented by Jake Moore of the Moore Taylor Firm, P.A. Defendant Chapin was represented by Daniel R. Settana, Jr. of McKay, Cauthen, Settana & Stublely, P.A.

STATEMENT OF THE CASE

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This case centers on two pieces of real estate that the Plaintiff alleged he purchased at a Lexington County tax auction in June of 2011. Plaintiff brought this lawsuit as a real estate title dispute but also brought claims in tort and for equitable relief. The Plaintiff is Julius Brazell, a resident and citizen of Lexington County, South Carolina. The Defendants are the City of Chapin, which owns one of the properties at issue and has an easement on the other, and the County of Lexington ("County") which held the tax auction.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule

56(c), S.C.R.C.P. "In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Fleming v. Rose*, 35 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002). However, Rule 56(e) provides, in part:

(e) ...When a Motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

"[T]he plain language of Rule 56(e) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corporation v. Catrett*, 477 U.S. 317 (1986).

WPL
#2

BACKGROUND

The Plaintiff purchased his Tax Title to Real Estate ("Tax Title") for two properties (Tax Map Nos.: 001100-05-011 ("Parcel 011") and 001106-01-028 ("Parcel 028") at issue for \$900.00 and \$500.00 respectively. (Pl.'s Resp. to Req. to Produc.). The Plaintiff did not physically inspect the properties in question before his attempt at purchasing them at the tax sale. (Pl.'s Ans. to Interrog., ¶16). He discovered that Parcel 028 mainly consisted of the Town's Sewer Lift Station ("Pump Station") and that Parcel 011 contained an access road after the tax sale. (*Id.* at ¶17). After his discovery of the Town's pump station and roadway, he placed a chain and lock across the road to prevent access to them. (*Id.* at ¶14).

Relief Sought

Plaintiff's Complaint asks the Court to "declare the Plaintiff to be the owner of the real estate in question." Complaint ¶ 5. The Complaint also offers a number of separate legal theories including conversion, trespass, unjust enrichment and requests declaratory and injunctive relief. Specifically, Plaintiff also requested that the Court:

1. Declare that Plaintiff is entitled to remove the Master Pump Station for the Town of Chapin and its easement road from the real estate or have its operation ceased. Compl. ¶6.
2. Order that the Town of Chapin and Lexington County cannot enter the properties. Compl. ¶9.
3. Award damages for the removal of barriers and chains he installed on the property. Compl. ¶10.
4. Award damages for rental use of the road on the property. Compl. ¶10.
5. Order an accounting for revenue produced by the Defendants use of the property. Compl. ¶11.
6. Award damages for the alleged trespass of the Defendants. Compl. ¶ 14-15.

Finally, Plaintiff's Complaint recognizes that if the County of Lexington did not have the authority to sell the property in question, that he be entitled to recover the benefit of his bargain for the property. Compl. ¶ 18.

Whe
#3

Chain of Title

In its Motion the Town submitted the Affidavit of Spencer Andrew Syrett and the records of the Office of the Register of Deeds for Lexington County to establish the chain of title for the two parcels. These document show the chain of title for Parcel 028 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504

at page 131.

- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey the system and the pump station sites to the Town of Chapin.
- g. New Horizon Development, LLC conveyed the sewer system and the pump station site to the Town of Chapin in fee simple by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.
- h. The Town of Chapin has held fee simple title to the pump station continuously since the last transfer of Parcel 028 in 1999.

The chain of title for Parcel 011 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504 at page 131.
- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey access to all of the sewer infrastructure by an easement to the Town of Chapin.
- g. New Horizon Development, LLC conveyed a permanent easement to the sewer system and the pump station site to the Town of Chapin by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.

- h. New Horizon, LLC mortgaged a portion of the property that became Parcel 011 to Twins, Inc. on September 16, 1999, and was recorded in Record Book 5462 at page 128.
- i. Branch Banking and Trust ("BB&T") acquired Twins, Inc. interest by Masters Deed on March 18, 2003. The parcel was transferred by BB&T to John Haas, as Chapter 11 Trustee for Twins, Inc. as recorded in Record Book 8064 at page 193.
- j. Julius Brazell acquired the parcel, as encumbered by the prior easement to the pump station, via Tax Deed from John Haas, as Chapter 11 Trustee for Twins, Inc., now Isom, LLC on June 30, 2011.

LEGAL ANALYSIS

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Generally, when a party seeks to have their ownership of real property declared by the Courts, the cause of action is one to quiet title. An action to quiet title is one in equity. See Van Every v. Chinquapin Hollow, Inc., 265 S.C. 474, 477, 219 S.E.2d 909, 910 (1975); Freeman v. Freeman, 323 S.C. 95, 98, 473 S.E.2d 467, 469 (Ct.App.1996). However, where, as here, one party asserts paramount title to the disputed land to defeat the other party's claims, it is an action at law. Mountain Lake Colony v. McJunkin, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992); see also Watson v. Suggs, 313 S.C. 291, 293, 437 S.E.2d 172, 173 (Ct.App.1993) (holding that [a]n action brought for the primary purpose of determining title to a disputed land is in the nature of a trespass action to try title, which is an action at law).

A. Chain of Title is Dispositive of Legal Issues

The South Carolina Courts have found in other contests over real property that "detailed analysis of the chain of title [is] not only relevant, but also dispositive of the issue before us." Greene v. Griffith, 2004-UP-056, 2004 WL 6248971 (S.C. Ct. App. Jan. 29, 2004). The South Carolina Supreme Court has also stated that "as record title is concerned, where both parties claim under a common source, the elder or better title will prevail." Marsh Plywood Corp. v. Graham, 240 S.C. 486, 493, 126 S.E.2d 510, 513 (1962)

This case can be decided on the issue of paramount title alone, as Plaintiff's other theories for relief are predicated on his unencumbered ownership of the real properties in question. When pleadings present both legal and equitable issues, those should be tried first that are likely to result in a final judgment and render unnecessary the consideration of the other issues. Rush v. Thompson, 203 S.C. 106, 111, 26 S.E.2d 411 (1942).

B. Analysis of the Chain of Title Shows the Town Owned One of the Properties and Had An Easement on the Other

WAL #6
The Town of Chapin's Summary Judgment Motion is supported by affidavit from the title insurance issuing agent, Spencer Andy Syrett, who conducted the title examination of properties which are in the chain of title for properties conveyed to the Town of Chapin for the properties at issue. The title insurance issuing agent's affidavit and its supporting documents delineate the chain of title and attests to the fact that the Town of Chapin has unencumbered fee simple title to Parcel 028 and its pump station and an indefeasible right to access the station by the easements granted on Parcel 011.

The property the Plaintiff bid on at the tax auction was a portion of the property mortgaged by New Horizon LLC to Twins, Inc. in September 1999 and later acquired by BB&T at foreclosure. A grantor of real property can transfer no greater interest than he himself has in the property. Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct.App.1985). Therefore when the Plaintiff attempted to purchase the parcels via tax title at auction, Parcel 011 was already encumbered by the easements to the Town, which survived the foreclosure and the tax sale, since New Horizon had already permanently conveyed the easement through the property to the Town.

In regards to Parcel 028, New Horizon conveyed the Lift Station to the Town in August 1999. Therefore Twins Inc. acquired no interest in Parcel 028 or the Lift Station by its Mortgage

dated September 16, 1999, nor did BB&T acquire title by in 2003, since it was not part of the collateral being foreclosed, nor could it transfer said title to John Haas (as Chapter 11 Trustee for Twins, Inc.)

Analysis of the chain of title irrefutably demonstrates that the Town held senior and proper title to the real property at issue. This is dispositive of the legal question of paramount title and thus the Town is entitled to summary judgment on the claims brought by the Plaintiff.

C. The Parcels at Issue could not be Sold at Tax Auction

Furthermore, the property owned by the Town could not be sold at a tax auction as the Town cannot be in arrears for taxes owed because it cannot be taxed for this property. The South Carolina Constitution provides that "[t]here shall be exempt from ad valorem taxation: all property of the State, counties, municipalities, school districts and other political subdivisions, if the property is used exclusively for public purposes. S.C. CONST Art. X, § 3(a). S.C. Code Ann. §12-37-220 also provide a statutory tax exemption for "all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes." Exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 486 (1982) (citing Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), citing State v. City of Columbia, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920).

Generally "[t]he question of whether an act is for a public purpose is primarily one for the Legislature" and that the Courts should "not interfere unless the determination by that body is clearly wrong." Elliott v. McNair, 250 S.C. 75, 88, 156 S.E.2d 421, 428 (1967). Even so, South Carolina case law has recognized that it "would seem to be self-evident" that "the prosperity of a

city, which it is the general purpose of a water supply to promote, is even more directly promoted by making such water supply available for, and by using it upon fair terms to supply, the needs of industries upon which the prosperity of so many modern urban communities vitally depends.” Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 357 (1929). The Supreme Court of South Carolina has recognized that even “[w]aterworks and other utilities...located beyond the corporate limits of municipalities ^{HAVE BEEN} [has] done much to promote expanded industrial activity. Elliott v. McNair, 250 S.C. 75, 87, 156 S.E.2d 421, 427-28 (1967)

The provision of water utility services by a political subdivision of the State of South Carolina to its residents is an exclusively public purpose. Therefore property of the Town of Chapin used for public purposes is exempt from taxation and cannot be in arrears for taxes owed or subject to tax sale by the County of Lexington. Therefore, as a matter of law, any tax sale of the properties was improper and the Town of Chapin still owns the property claimed by Plaintiff.

D. Plaintiff Fails the Burden of Proving Paramount Title on the Merits

WPA #8
The Plaintiff's claims also fail on the merits. In an action of trespass to try title, the defendant in actual possession of the disputed property is regarded as the rightful owner of the property. See Watson v. Suggs, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993), reh'g denied, (Nov. 10, 1993); Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992), reh'g denied, (Feb. 20, 1992). A mere *prima facie* showing of paper title by the plaintiff is not enough. *Id.* The plaintiff has the burden of proving paramount title to the land by any methods: (1) perfect legal paper title shown by a grant from the state to a predecessor in title with successive deeds to the plaintiff; (2) tracing title to a common grantor with the defendant if the plaintiff can show an earlier deed deriving from the common source. *Id.* There also two methods to prove paramount title by adverse possession which are inapplicable here.

ORIGINAL

In this case the Plaintiff has only his imperfect Tax Titles to rely on and the Town has submitted perfect legal paper title shown by grant from the state with successive deeds evidencing ownership by the Town. Plaintiff purchased imperfect title from the County of Lexington and is seeking the recover the benefit of his bargain from the rightful owner who was not involved in the improper deed conveyances or the erroneous tax sale itself.

CONCLUSIONS OF LAW

After reviewing all of the pleadings, Affidavits and evidence filed with the Court and after considering the arguments of the attorney for the Defendant, I find that the Plaintiff failed to ^{WPM}~~meet his burden of proof to~~ overcome the Defendant's Motion for Summary Judgment. Therefore, because there is no genuine issue as to any material fact, the Defendant is entitled to judgment as a matter of law.

#9
IT IS THEREFORE ORDERED that Defendant Town of Chapin's Motion for Summary Judgment is hereby granted as to all causes of action;

IT IS FURTHER ORDERED that Defendant Town of Chapin Davis is dismissed with prejudice from this action.

IT IS SO ORDERED.

Lexington, South Carolina

JAN. 21, 2015

William P. Keesley
William P. Keesley
Circuit Court Judge
Eleventh Judicial Circuit

BELETA CARRIGG
CLERK OF COURT
LEXINGTON, SC

2015 JAN 20 A 11:46

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and,
County of Lexington, South Carolina,

Defendants.

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2014 JUL -2 P

CASE NO: 2014-CP-32-01537

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO

**DEFENDANT TOWN OF CHAPIN'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

COPY

TO: S. JAHUE MOORE, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant Town of Chapin ("Defendant"), by and through its undersigned attorneys, will move the Court for an Order granting it summary judgment in this case pursuant to the grounds set forth in this Motion. Said Motion will be heard within ten (10) days, or at other such time and place as may be set by the Court thereafter in the Court of Common Pleas for Richland County, of which you will be notified.

Defendant moves pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting the Defendant Summary Judgment and dismissing the case against it on the grounds that the pleadings, discovery, and material on file show that there is no genuine issue as to any material fact, and it is entitled to judgment as a matter of law for the following reasons:

1. Plaintiff fails to state a cause of action under the Constitution and laws of the United States or the State of South Carolina; the claims are frivolous and without merit; there is no genuine issue as to any material fact; and the Complaint does not state a claim upon which relief can be granted;

2. Defendant has unfettered fee simple ownership of the Master Pump Station and the land on which it is located and unfettered easement giving it the right to use the twelve (12) foot easement for access, ingress and egress to the Master Pump Station without interference from the Plaintiff, Defendant County of Lexington or anyone else.

3. Pursuant to the South Carolina Constitution Article X §3 and S.C. Code Ann. §12-37-220, property of the Town of Chapin used for public purposes is exempt from taxation and could not be in arrears for taxes owed or subject to tax sale by the County of Lexington and therefore the Town of Chapin still owns the property claimed by Plaintiff in this case.

3. Defendant has not violated any of Plaintiff's legally protected rights;

4. Defendant is immune from suit pursuant to the doctrine of sovereign immunity;

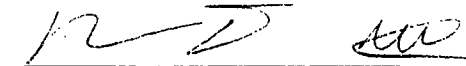
5. Defendant is immune from suit pursuant to S.C. CODE ANN. §§ 15-78-60(1), (2), (3), (4), (5), (7), (9), (11), (12), (13), (15), and (20); and

6. Plaintiff has failed to plead or establish the prerequisites for injunctive, declaratory, monetary, or any other relief.

This Motion is supported by the pleadings in the case, the South Carolina Rules of Civil Procedure, the South Carolina Tort Claims Act, the statutory and decisional law of the United States of America and the State of South Carolina, the Affidavit of Spencer Andrew Syrett (attached hereto as Exhibit 1), the attached exhibits, and any such other and further documents as this Court may accept for filing.

REA

[Signature Block Follows]



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Richard E. Marsh, III, Esquire
McKay, Cauthen, Settana & Stuble, P.A.
1303 Blanding Street (29201)
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(803) 256-4645
Attorneys for Defendant Town of Chapin

July 2, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

2014 JUL -2 P 4: 25

Julius Brazell,

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

COPY

vs.

AFFIDAVIT OF SPENCER ANDREW SYRETT

Town of Chapin and
County of Lexington,

2014-CP-32-1537

Defendants.)

Spencer Andrew Syrett, being first duly sworn, hereby deposes and states as follows:

1. My name is Spencer Andrew Syrett. I am an attorney licensed to practice in South Carolina. I earned a B.A. degree from the University of Virginia in 1972 and a Juris Doctor degree from the University of South Carolina School of Law in 1975. I was admitted to practice in South Carolina on November 11, 1975, and have practiced law in South Carolina continuously since that time.
2. I am also admitted to practice in the Federal District Court (inactive) and the United States Supreme Court.
3. I have been licensed as a title insurance issuing agent since 1978, first with Commonwealth Land Title Insurance Company through mid-2009 and now with Old Republic National Title Insurance Company. Commonwealth Land Title Insurance Company, Lawyers Title Insurance Company, Lawyers Fund and Old Republic National Title Insurance Company have retained my services over many years to clear title defects and to represent their insureds in title insurance claims litigation.
4. In formulating the opinions set forth in this Affidavit, I have reviewed the Complaint filed in this matter and the records of the Office of the Register of Deeds for Lexington County.
5. I have conducted a title examination of properties which are in the chain of title for properties conveyed to the Town of Chapin for an extension of the public sewer

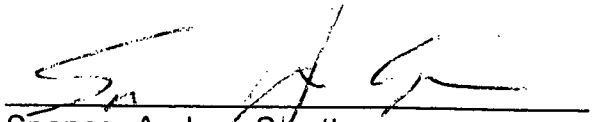
system to serve a subdivision known as Bush River Plantation, Phase I and Phase II. The pump station at issue is designated as Pump Station No. 31. The pump station is currently identified on the Tax Maps of Lexington County as Parcel 001106-01-028.

6. The chain of title is as follows (Copies of the relevant documents are attached hereto and incorporated by reference):
 - a. The parent parcel was owned by D.M. Hostetter.
 - b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
 - c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
 - d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504 at page 131.
 - e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed the parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
 - f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey the system and the pump station sites to the Town of Chapin and access to all of the sewer infrastructure by easement.
 - g. New Horizon Development., LLC conveyed the sewer system, the pump station sites and the easements to the Town of Chapin by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.
 - h. The Town of Chapin has held title to the system, the pump station sites and the easements continuously since the last transfer.
7. The Town of Chapin has unencumbered fee simple title to the pump station and an

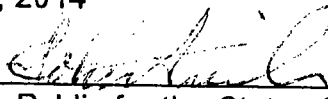
indefeasible right to access the station by the easements granted.

8. As of the date of the deed recorded in Record Book 5432 at page 151, New Horizon, LLC had no interest in the pump station site and any subsequent deed executed by New Horizon, LLC purporting to convey the pump station site would be of no force or effect.
9. Any error made by the Lexington County Auditor, Assessor or Treasurer in failing to properly record the transfer on their respective records would have no effect on the ownership of the parcel and easement by the Town of Chapin.
10. Any purported sale of the pump station site for taxes allegedly owed on the site for any year after 1999, would be void.

THIS COMPLETES MY STATEMENT.


Spencer Andrew Syrett

SWORN TO BEFORE ME
July 1, 2014


Notary Public for the State of South Carolina
My Commission Expires: 9/16/19

0032333 Bk: 4756 Pg: 0145

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that JACK J. GRIFFIN, RONALD G. MOYER AND LINDA T. LISCIO (Hereinafter referred to as Grantor), for and in consideration of the sum of FIVE DOLLARS (\$5.00) AND ASSUMPTION OF DEBT TO TWINS, INC., to the Grantor in hand paid at and before the sealing of these presents, by NEW HORIZON DEVELOPMENT, LLC (hereinafter referred to as Grantee) in the State and County aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the Grantee, its Successors and Assigns:

SEE EXHIBIT "A" ATTACHED HERETO

*Mortgage Assumption to Twins, Inc.
Bk. 4504/134 Rec. 2-3-98 Securing: 500,000.00*

TMS#: 1100-05-011, 1100-05-013, 1122-01-020 and 1500-02-24

Grantee Address: P. O. Box 210486, Columbia, SC 29221

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in any way incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, their Heirs, Successors and Assigns forever.

And the Grantors do hereby bind themselves and their heirs, successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, their Heirs, Successors and Assigns against themselves and their Heirs, Successors and Assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Any references in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

FILED, RECORDED, INDEXED
97/10/1998 11:11 AM Rod DWG
Rec Fees 10.00 St Fees 0.00
Co Fees 0.00 Page 1 of 3
LEX. CO. REGISTER OF DEEDS
DEBRA M. BLAIR

0032333 Bk: 4756 Pg: 0146

Witness his Hand and Seal this 9 ^{July}th day of ~~March~~ in
the year of our Lord one thousand nine hundred and ninety-
eight.

Signed, Sealed and Delivered
in the Presence of:

Sharon R. Walker
Witness #1

Sharon R. Walker
Witness #2

JACK F. GARRETT

RONALD G. MOYER

LINDA T. LISCIO

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

PERSONALLY appeared before me the undersigned witness
and made oath that s/he saw the within-named Grantors sign,
seal and as their act and deed, deliver the within-written
Deed for the uses and purposes therein mentioned, and that
s/he, with the other witnesses subscribed above, witnessed the
execution thereof.

SWORN to before me this
9 day of ~~March~~ ^{July}, 1998

Sharon R. Walker
Witness #1

Sharon R. Walker (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-2-2006

EXHIBIT "A" 0032333 Bk: 4756 Pg: 0147

All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, being more particularly shown and delineated as Parcel "B", containing 4.24 acrss on a plat prepared for Donald M. Hostetter, Sr. and Melba D. Hostetter by Richard C. Yongue, RLS, dated 1/25/86 and recorded in the Office of the RMC for Lexington County in Plat Book 207-G at Page 192. For a more complete and accurate description of said property, reference is made to said recorded plat.

AND

All that certain piece, parcel or tract of land, situate, lying and being in the County of Lexington, State of South Carolina, and being more particularly shown and delineated as 24.25 acres on a plat prepared for E. W. Derrick, Sr. by Richard C. Yongue, dated 1/25/86, and recorded in the Office of the RMC for Lexington County in Plat Book 211-G at Page 503. For a more complete and accurate description of said property, reference is made to said recorded plat.

AND

All that certain triangular piece, parcel or tract of land, situate, lying and being in the County of Lexington, State of South Carolina, and being more particularly shown and delineated as containing .07 acre upon a plat prepared for E. W. Derrick, Sr. by Richard C. Yongue, dated 3/2/86, and recorded in the RMC office for Lexington County in Plat Book 211-G at Page 502.

AND

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, and being more particularly shown and delineated as Lot L on a plat prepared for E. W. Derrick By Jacob M. Bedenbaugh, RLS, dated June 24, 1960 and revised June 14, 1969 to show Lot L, and having the following boundaries and measurements: On the North by Lot K, measuring thereon 450'; On the East by a 20' driveway, measuring thereon 202.4'; On the South by land of SCE&G measuring thereon 450'; and on the West by land of SCE&G measuring thereon 104.5'; all measurements being a little more or less.

Derivation: This being the same property conveyed to This being the same property conveyed to Melba D. Hostetter by Deed of Distribution dated 4/2/93 and recorded in the Office of the RMC

0032333 Sk: 4756 Pg: 0148
for Lexington County in Deed Book 2490 at Page 315 and further
conveyed to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio
by deed of Melba D. Hostetter dated 10/31/97 and to be recorded
simultaneously with this Mortgage in Deed Book 4504 at Page
131.

TMS#: 1100-05-011, 1100-05-013 and 1122-01-020

Grantee Address:

0032333 Bk: 4756 Pg: 0149

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at 4.24 acres, 24.25 acres, .07 acre, and Lot L, bearing Lexington County Tax Map Number 1100-05-011, 1100-05-013, 1122-01-020 and 1500-02-24 and was transferred by Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio to New Horizon Development, LLC on 7/9/98.

The transaction was (Check one):

 an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$.

 X not an arm's length real property transaction and the fair market value of the property is \$295,000.00

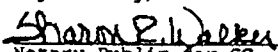
The above-transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et seq. because the deed is exemption #10.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: closing agent.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Purchaser, Legal Representative
of the Purchaser, or other
Responsible Person Connected with
the Transaction

SWORN to before me 9th
day of July, 1998


Notary Public for SC
My Commission Expires: 1/2/2006

0045703 Bk: 5432 Pg: 0151

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

DEED AND EASEMENT
Sewer System
BUSH RIVER PLANTATION
Phase II

THIS CONVEYANCE made this 25 day of August 1999, by NEW HORIZON DEVELOPMENT, LLC, a South Carolina Limited Liability Company, Grantor, unto The TOWN OF CHAPIN, Grantee.

WITNESSETH, That for and in consideration of the sum of \$5.00, acceptance of the system conveyed hereby by the Grantee, ~~and other valuable consideration~~, receipt of which is acknowledged, pursuant to that certain Sewer Agreement between the Parties dated January 20 1999, recorded in the Register of Deeds for Lexington Co SC in Record Book 5173 page 309;

NEW HORIZON DEVELOPMENT, LLC (hereafter designated NHD) hereby grants, releases, and conveys unto the Town of Chapin, its successors and assigns, all its right, title, and interest in and to:

(a) **SEWER SYSTEM:** The Sanitary Sewer System of BUSH RIVER PLANTATION PHASE II, as approved and certified by SCDHEC, including a 4" Force Main from a "Tee" (off-site) on an existing Municipal Sewer Main within the R/W of Dutchman Shores Circle, running northerly for approximately 363' to a Master Pump Station located in Phase I (undeveloped) of the Project, ALSO an 8" Gravity Main running westerly from the Master Pump Station within reserved Basements approximately along the 365' contour of Lake Murray and/or the rear lot lines of LOTS 1 through 5 of the Project, as shown on a Bonded Plat of Bush River Plantation Phase II dated June 3 1998, revised July 1 1998, recorded in the Register of Deeds for Lexington County SC in Plat Slide 396 #7; ALSO, air release valves, cleanouts, and "T's" along the Force Main for service connections to Lots in Phase II, and all appurtenances thereto, (but excluding any service connector

Page - 1

FILED, RECORDED, INDEXED
09/03/1999 03:30:24PM
Rec Fees 10.00 St Fees 0.00
Co Fees 0.00 Pages 3
LEX. CO. REGISTER OF DEEDS
DEBRA H. GUNTER

0045703 Bk: 5432 Pg: 0152

lines within Lots 1 through 5 to be installed by contractors from constructed residences to the "T's) all as shown on "UTILITY PLAN" for Bush River Plantation Phase II by Power Engineering Company Inc, Job No. 1782 dated July 21 1999, on file at Chapin Town Hall.

(b) **MASTER PUMP STATION:** All that piece parcel or lot of land, situate lying and being within Bush River Plantation Phase I, near the Town of Chapin, in Lexington County, South Carolina, containing approximately 400 square feet, and being the site of the Master Sewer Pump Station serving Bush River Plantation Phase II, according to a Plat prepared for the Town of Chapin by Associated E&S Inc dated Aug 5 1999, recorded in Plat Book ~~288~~ page ~~314~~, reference being craved to said Plat for metes and bounds of the site.

EASEMENTS: NHD further grants and assigns unto the Town of Chapin, its successors and assigns: A permanent EASEMENT, 15' feet in width, approximately 7 1/2 feet either side of the Gravity Main, "as-built" for access to the sewer system, over, under, and through Grantor's property which Grantor has reserved for Utility Easements, as shown and depicted on a Bonded Plat for Bush River Plantation Phase II dated June 3 1998, revised July 1 1998, recorded on July 8 1998 in Plat Slide 396 Plat #7; ALSO an Easement 12' in width for an all-weather Gravel Road for access to the Master Pump Station from Lazy Creek Court, as shown on said Bonded Plat, and as further shown on the Pump Station Plat referenced hereinabove; ALSO, Easements (off-site) which NHD reserved for utility Easements as recorded in Record Book 4838 page 169/Plat Book 284 page 799; Record Book 4838 page 161; and Record Book 4819 page 337/Plat Book 284 page 681.

DERIVATION: Being a portion of that property conveyed to New Horizon Development, LLC by deed of Jack Griffin, Ronald Moyer, and Linda Liscio dated July 9 1998, recorded on July 10 1998 in Record Book 4756 page 145, and by deed of SCE&G Co dated April 28 1998, recorded on July 7 1998 in Record Book 4748 page 167.

TMS: portion of 1100-05-011

Grantee's Address: PO Box 183 Chapin SC 29036

TOGETHER WITH all the rights, members, hereditaments, improvements, and appurtenances to said premises belonging or in any way incident or appertaining thereto,

0045703 Bk: 5432 Pg: 0153

TO HAVE AND TO HOLD the premises unto the said Grantee, its successors and assigns, forever.

AND GRANTOR does hereby bind itself and its successors, to warrant and forever defend the premises herein conveyed unto the said Grantee, its successors and assigns, against the Grantor and its successors and assigns.

WITNESSETH Grantor's hand this 16 day of August 1999:

IN THE PRESENCE OF:

NEW HORIZON DEVELOPMENT, LLC

Witness

Witness

By

Its

Grantor

ACCEPTED:

Witness

TOWN OF CHAPIN

By

Its

Grantee

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

PROBATE

PERSONALLY APPEARED before the undersigned Notary Public, one of the above witnesses who, being duly sworn, made oath that s/he saw NEW HORIZON DEVELOPMENT, LLC, Grantor, by its duly authorized representative, sign and deliver the within Deed for the uses and purposes therein stated, and that s/he, along with the other witness, witnessed the execution thereof.

SWORN TO BEFORE ME this

16th day of August 1999

Notary Public for South Carolina

My Commission Expires My Commission Expires December 2, 2007

Witness

NOTARY PUBLIC

0016295 BK: 5173 Pg: 0309

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
TOWN OF CHAPIN)

SEWER AGREEMENT

DUSH RIVER PLANTATION SUBDIVISION
Phase I- 86 lots
Phase II- 5 Lots

THIS AGREEMENT entered into this 20 day of January 1999 by and between **NEW SCRIPSON DEVELOPMENT CO., LLC**, (Owner of the property subject to this Agreement) and the **TOWN OF CHAPIN**:

WHEREAS The **TOWN OF CHAPIN** (hereafter Chapin) owns and operates a wastewater transportation and treatment system known as the Chapin Regional Sewer System, pursuant to the Central Midlands Regional Planning Council Area 201/208 (Federal Clean Water Act) Plans, and

WHEREAS pursuant to the 201/208 Plans, Chapin is mandated to supervise the orderly construction and extension of public sanitary wastewater facilities within the Chapin Municipal Service Area, and

WHEREAS Owner (hereafter Developer) owns a tract of land in the Chapin Municipal Service Area to be known as "DUSH RIVER PLANTATION", and

WHEREAS Developer intends to construct, or contract to construct, Water and Sewer Systems designed to serve up to 91 residential units in the Subdivision, Phase I and II (The Project) and to connect the Sewer System therein onto the existing Chapin Regional Sewer System at an agreed point, as determined by the project engineers, and to connect the water system therein onto the City of Columbia system, and

WHEREAS Developer desires that Chapin accept ownership, operation and maintenance of the Project Sewer System infrastructure within the Project, as constructed in accordance with standard design specifications as established by Chapin and approved by SCDMSC, as set forth in EXHIBITS as described below, and

WHEREAS Chapin will have sufficient available Sewer treatment capacity to serve 91 Residential Units in the Project, and

WHEREAS, Chapin and Hollingshed Creek Inc have an agreement for sale of Regional Sewer Taps in the Chapin Municipal Service Area;

NOW THEREFORE, for and in consideration of these recitals and the mutual covenants and promises hereinafter set forth, it is hereby agreed:

1. **ACCEPTANCE BY CHAPIN:** Chapin will accept ownership and operation of the on-site (and off-site as necessary) sewer infrastructure designed and constructed by/for Developer pursuant to the plans and specifications for the Project as approved by Chapin and SCDMSC, as shown and described in the following EXHIBITS: (ALL OF WHICH ARE CONDITIONS PRECEDENT TO CHAPIN'S

11999

Page 1

FILED RETURNED TO SENDER
JAN 20 1999
NEW SCRIPSON DEVELOPMENT CO., LLC
C/O FAYT & CO.
LEX, CO. LEXINGTON & MARIETTA
BIRMINGHAM, ALABAMA

0015235 EM: 5173 Pg: 0310

ACCEPTANCE AND ISSUANCE OF AN OPERATION AND MAINTENANCE LETTER TO SCHEIC, AND CHAPIN MAY REFUSE TO ISSUE THE O&M LETTER AND MAY REFUSE TO ACCEPT ANY SEWAGE FROM THE PROJECT IF DEVELOPER FAILS TO FURNISH ALL SUCH DOCUMENTATION TO CHAPIN IN A TIMELY MANNER, I.E. PRIOR TO SALE OF ANY LOT in Developer's Subdivision, unless expressly waived in writing):

— EXHIBIT A: Design specifications for the Project sewer infrastructure, to be constructed by/for Developer and conveyed to Chapin.

— EXHIBIT B: Engineering Drawings of the Project sewer infrastructure to be constructed by/for Developer and conveyed to Chapin, for preliminary/final review by Chapin's engineer.

— EXHIBIT C: Declaration of Covenants, Restrictions, Easements, Charges, and Liens for the Project Subdivision as, or to be, recorded in the Lexington County REC office, PRIOR TO ANY LOT SALE:

NOTE: The DECLARATION OF COVENANTS shall contain a reservation of utility easements in favor of the Developer, its successors and assigns, and shall contain a clause substantially as follows:

SEWAGE DISPOSAL: All platted lots in Bush River Plantation Subdivision must be connected to the Municipal Sewer System operated by the TOWN OF CHAPIN, the regional sewer service provider pursuant to Lexington County Ordinances 87-12. No individual Septic Tanks or Drain Fields shall be permitted on any lot, unless expressly authorized by the TOWN OF CHAPIN. The TOWN OF CHAPIN, its agents, successors, or assigns, shall have the right of access to all portions of the Municipal Sewer System located within the Subdivision, in accordance with easements as reserved by the Developer, and as shown on all recorded plats. The Owner of each platted LOT shall be subject to all sewer fees and charges assessed upon the property by Ordinance and by Contract between the Developer and the TOWN OF CHAPIN, including uniform "Sewer Availability Fees" assessed upon each unimproved platted lot. At the time of issuance of a Building Permit, or upon the purchase of a Water Tap Certificate from the City of Columbia, whichever first occurs, the Owner of the Lot is then subject to "Sewer Use Fees" assessed upon each improved lot. All such fees and charges, including late charges, lien filing fees, and attorney fees, shall constitute a lien upon the property assessed, and such lien shall be superior to all other liens except liens for unpaid property taxes, as authorized by statute/ordinance. And the TOWN OF CHAPIN reserves the right to refuse or terminate sewer service to a Lot for failure of the owner to pay the sewer fees and charges as set by Town Ordinance.

— EXHIBIT D: Bonded or Final Plat of the project, approved by Lexington County Planning & Development, showing all utility easements necessary for access to the sewer infrastructure.

— EXHIBIT E: Recordable Plat(s) delineating all Sewer Pump Station sites (if required) to be deeded to Chapin. Such sites may be incorporated into Exhibit D, or otherwise will be depicted on individual Site Surveys to be recorded with the deed to the infrastructure and easements.

0016273 DM: 5173 Pg: 0311

EXHIBIT F: Copy of Contract to Construct the Infrastructure for the Project.

EXHIBIT G: Copies of all SC Highway Dept A/W Permits, and County Encroachment Permits, as applicable.

EXHIBIT H: Copy of approval of the Project Water System Infrastructure issued by City of Columbia.

EXHIBIT I: Evidence of purchase of three Regional Sewer Tape (in addition to Certificates 61826, 61827, and 6436 sold to Developer by Chapin)

2. RESPONSIBILITIES OF CHAPIN:

(a) Chapin will review and, if acceptable, approve engineering plans for the Project.

(b) Chapin will periodically inspect the sewer construction Project to ensure that construction is being performed in accordance with the plans and sound engineering standards and principles.

(c) Upon SCDHEC final certification, Chapin will accept the facilities as constructed by recordable Deeds/Encumbrances and commence the operation and maintenance of the systems conveyed.

(d) None of the above shall constitute a waiver of any claims for negligence or breach of warranties which the Town may have against the Developer or its contractors.

3. RESPONSIBILITIES OF DEVELOPER:

(a) Developer shall construct, or contract to construct, the complete sewer infrastructure for the Project as described in EXHIBIT B, in accordance with the design specifications as described in EXHIBIT A. Developer shall increase capacity in the two Master Pump Stations associated with the Project according to specifications required by Chapin's Engineer. The Phase Two Pump Station shall be up-sized to accommodate the flow requirements of the Project, plus the flow generated by the Dutchman Shores subsystem. The Phase I Pump Station shall be up-sized to accommodate the flow requirements of the Project, plus the flow generated by the Dutchman Shores subsystem, plus the flow of the Regional Sewer System transmitted through the existing Force Main at the intersection of Old Bush River Road and Murray Lindler Road.

(b) Developer shall increase water capacity by up-sizing the Water Main along Old Bush River Road, from the intersection of Old Bush River Road and Murray Lindler Road to the boundary of the Project, from Eight(8) inches to Twelve(12) inches.

(c) Developer shall be responsible for obtaining all necessary licenses, permits, easements, deeds, and releases from third parties, at Developer's expense, including attorney fees, filing fees, and all other necessary legal costs, for the Project infrastructure, on-site and off-site, and

0016295 Pa: 3173 Pp: 0318

(d) Developer shall furnish to Chapin ALL EXHIBITS as listed in Paragraph 1. above, including a copy of the Declaration of Covenants for the Project which include the Notice provision as to fees and statutory liens as stated hereinabove (EXHIBIT C), showing recording date thereon prior to any lot sale, or if after sale of any Lots, Developer shall give notice of the Declaration, any Amendments, and the conditions and obligations imposed by this Agreement, to all lot purchasers of record.

(e) Developer shall be responsible for all costs and legal fees, and for all appraised or court-ordered compensation to third-party landowners, resulting from invocation of Chapin's power of eminent domain, if necessary for Chapin's acquisition of title to real estate or easements thereon for the Project, unless otherwise agreed by written amendment hereto.

(f) Developer shall be responsible for all engineering costs of the Project, including all reasonable costs of review of project plans by Chapin's contract engineering firm.

(g) Upon completion of the Infrastructure, Developer shall furnish to Chapin and to SCDHEC a) a Certificate stating that the Project was built according to the permitted plans and with good engineering practices, and b) a letter certifying to pressure and leakage tests on all Force Mains, and c) a letter certifying satisfactory test results on all Pump Stations.

4. CONVEYANCE OF SYSTEMS: Upon completion of construction, certification by SCDHEC, and approval by Chapin, and prior to issuance of a Letter of Acceptance by Chapin to SCDHEC, Developer will transfer ownership of the Project infrastructure and Pump Station Sites to Chapin by Bill of Sale and Deed(s), and grant access to all infrastructure (including from the Subdivision to the agreed off-site sewer connection point if necessary) by Easements, or assignments thereof, without monetary compensation from Chapin. Deeds and Easements will be drafted by Developer's attorneys (or by the Town attorney if requested), Bonded, Final, and any Pump Station Site Plans will be commissioned, and recorded, at Developer's expense.

5. SEWER TAP CERTIFICATES: Chapin will assign to Developer's Project 91 Regional Sewer Tap Certificates (RSTC), one Tap to be assigned to each Lot in the Project. The total value of the 91 RSTC's is \$200,200.00. For and in consideration of the specified construction, installation, and related work agreed to be performed by Developer pursuant to Paragraphs 1(a) and 3(b) hereinabove, Chapin will assign to Developer 28 RSTC's at no cost to Developer, which RSTC's shall be available to Developer for immediate use in the Project. After Developer is credited with six RSTC's purchased before the date of this Agreement, Developer shall pay for the remaining 56 RSTC's according to the following plan:

- a) \$4,400.00 (2 RSTC) due upon the signing of this Agreement; then
- b) \$13,200.00 (6 RSTC) due 6 months from date of this Agreement (on _____ 19____); then
- c) \$32,600.00 (24 RSTC) due 12 months from the date of this Agreement (on _____ 19____); then

0016295 Em: 3173 Pg: 0313

d) \$52,800.00 (24 MSEC) due 18 months from date of this Agreement (on _____ 20____)

5e. **LETTER OF CREDIT:** To guarantee payment to Chapin according to the above schedule, Developer agrees to cause to be issued an Irrevocable Stand-by Letter of Credit in the face amount of \$118,800.00, naming the Town of Chapin as the beneficiary thereof, by an accredited financial institution acceptable to Chapin. The Letter of Credit shall have an Expiration Date not sooner than TWO YEARS from date of issue. The Letter of Credit shall specify that the issuing bank shall be obligated to pay any Draft made payable thereunder upon presentation of a Sight Draft signed by the Mayor together with an Affidavit of Default, specifying the breach of conditions for which presentment is made. The Letter of Credit may provide for partial draws in any appropriate amount until the earlier of (a) the expiration date of the Letter of Credit, or (b) the drawing of the entire face amount thereof. In the event that Chapin draws upon the Letter of Credit due to a default of Developer, and after curing the default and paying Chapin's reasonable expenses and attorney fees, there are excess drawn funds remaining, such funds will be refunded to Developer, or its assigns.

6. **OPERATION OF SYSTEM:** After conveyance of the system to Chapin by Deeds/Easements and Bill of Sale, and acceptance by Chapin, the Town shall have total operational and maintenance responsibility for the project power system infrastructure, subject to continuing WARRANTY obligations of the Developer as agreed herein, pursuant to regulatory authority of SCHEMC and Central Midlands Planning Council 201/208 Plans.

7. **WARRANTIES and ASSIGNMENT OF CLAIMS:**

(a) Developer warrants good title to all facilities to be conveyed hereby, at the time of transfer, and will convey all facilities free and clear of all encumbrances. There will be no recorded mortgages, mechanics liens, security interests, judgments, or unrecorded encumbrances which would affect Chapin's first-priority interest in the realty, facilities and easements to be conveyed. Developer will furnish a Lien Waiver from the Contractor prior to acceptance.

(b) Developer warrants authority to transfer the systems to Chapin, free of any claims, rights, or interests of any other person or entity. If consents from third parties are required, Developer will have obtained such consents in writing.

(c) Developer warrants that the systems will be constructed in exact accordance to the standard design specifications as set forth in EXHIBIT A, and that the systems "as-built" will be certifiable by SCHEMC upon completion of construction.

(d) Developer warrants that the system to be conveyed will be in good working order at time of conveyance, and will remain so for a period of ONE (1) YEAR thereafter, with all warranty repairs (due to defective materials, parts, or workmanship) to be at Developer's sole expense, excepting routine maintenance and repairs.

0015295 Bk: 3173 Pg: 0314

(e) Developer agrees to assign to Chapin all manufacturer's Warranties, and all claims it may have against architects, engineers, and contractors, or against sellers of materials, products or equipment, for defective or negligent design, supervision, workmanship, materials, or for breach of contract, concerning the construction and intended use of the system and its components.

8. CONDITIONS OF DEFAULT:

(a) If the Developer should fail to complete the Conditions Precedent stated in Section 1, fails to make any payments under Section 3, or breaches any Warranties in Section 7, hereinabove;

(b) If the Developer should fail to deliver a recordable Survey, and execute a recordable Deed to the Town conveying undivided fee simple title to the site of all Sewer Pump Stations, the sites having an area not less than 15'x 15', together with an Easement for access to each site as necessary;

(c) In the event that any contractor, subcontractor, laborer, or materialsman should file any Notice of Lien against the property of the Developer to be conveyed to the Town in the recording office for the County, or serve Notice of Lien upon the Town, and shall thereafter fail to timely discharge same and release the property from the Lien;

(d) If the Developer fails to perform any other obligations or conditions established under this Agreement.

In event of default in any term of the Agreement by either party, the damaged party shall have the right to recover all damages and costs attributable to the default, including a reasonable attorney fee. This remedy shall be in addition to, and not in lieu of, any other remedy in law or equity, including but not limited to the right of specific performance.

9. SUSPENSION OF OBLIGATIONS: If at any time Chapin is prohibited from performing any obligations, duties, or covenants pursuant to this Agreement, because of any legal proceedings, Administrative Orders, or Emergency Ordinances affecting the operation of the system conveyed, Chapin may suspend any or all of its obligations so prohibited, but shall continue to perform all obligations not prohibited or rendered practically impossible by such proceedings, orders, or ordinances.

10. FEES AND CHARGES:

(a) Chapin shall charge to all customers in the Subdivision the same fees and charges as charged to all other customers of the Municipal system similarly situated (put-of town), subject to all valid Ordinances passed by Town Council, including sewer availability fees and user fees. All such fees and charges shall constitute a lien upon the property assessed, superior to all other liens except liens for unpaid taxes, as authorized by statute.

(b) Availability Fees: Subject to any exceptions herein, beginning with the first month after the Sewer System Extension in any Phase of the project is accepted by Chapin, Chapin shall charge to the owner of each platted Lot in that Phase (based upon the Bonded Plat or Final Plat, whichever is first

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recorded) a uniform Sewer Availability Fee, which is to compensate the Chapin Utility Department for operation, maintenance, and repairs to the system. The Availability Fee will be the same as that charged uniformly throughout the system, as set by Council.

11. AMENDMENT: This Agreement represents the entire agreement between the parties, and may not be amended, except by written addendum, signed by both parties.

12. ASSIGNMENT: Developer may assign its rights and obligations under this Agreement by collateral assignment to the lender financing the project. However, such lender shall be entitled to the benefits of this Agreement only if the lender completes Developer's obligations hereunder. Otherwise, this Agreement may not be assigned in any respect by either party, except by written addendum, signed by both parties.

13. ANNEXATION: Developer hereby petitions the Town of Chapin to annex the Subdivision into the corporate limits of the Town of Chapin, at such time as the Subdivision property becomes contiguous to the Town Limits.

14. NOTICES: Any notice, demand, or other communication which either party is required to give pursuant to this Agreement or any addendum hereto, shall be in writing, and shall be deemed to be served when delivered personally, or deposited in the US Mail with proper postage affixed, addressed as follows:

To Chapin: Chapin Town Hall
PO Box 183 Chapin SC 29016

To Developer: Chapin Development LLC
PO Box 183
Chapin SC 29016

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the ____ day of ____ 1999.

FOR DEVELOPER:

[Signature]
Witness At
[Signature]
Witness (Notary)

Chapin Development LLC
[Signature]
Its President

FOR THE TOWN OF CHAPIN:

[Signature]
Witness At
[Signature]

TOWN OF CHAPIN
By [Signature]
Its Mayor

11999

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0016298 Doc: 5173 Page 0316

Witness (Notary)

STATE OF SOUTH CAROLINA)
COUNTY OF)

FROM: AS TO DEVELOPER

PERSONALLY appeared before me the undersigned witness who made oath that s/he saw the above Developer, by its duly authorized officer, sign, seal, and deliver the within written Agreement for the uses and purposes therein mentioned, and that s/he, with the other witness subscribed above witnessed the execution thereof.

SWORN TO BEFORE ME this 2
day of July 1999

Richard Eby
Witness #1

Notary Public for South Carolina
My commission expires 10-16-01

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FROM: AS TO CHAPIN

PERSONALLY appeared before me the undersigned witness who made oath that s/he saw the above Town of Chapin, by its duly authorized representative, sign, seal, and deliver the within written Agreement for the uses and purposes therein mentioned, and that s/he, with the other witness subscribed above witnessed the execution thereof.

SWORN TO BEFORE ME this 2
day of July 1999

Dawn E. Dean
Witness #1

Notary Public for South Carolina
My commission expires 10-16-01

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and,
County of Lexington, South Carolina,

Defendants.

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2014 SEP -5 CASE NO: 2014-CP-32-01537

DEBRA A. GARRIGG
CLERK OF COURT
LEXINGTON SC

**DEFENDANT TOWN OF CHAPIN'S
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Defendant Town of Chapin ("Town") respectfully submits this Memorandum in support of its Motion for Summary Judgment, which should be granted because there is no genuine issue of material fact as to this defendant, and the Town of Chapin is entitled to judgment as a matter of law.

BACKGROUND

This case centers on two pieces of real estate that the Plaintiff allegedly purchased at a Lexington County tax auction in June of 2011. Plaintiff brought this lawsuit as a real estate title dispute but also brought claims in tort and for equitable relief. The Plaintiff is Julius Brazell, a resident and citizen of Lexington County, South Carolina. The defendants are the City of Chapin, which owns one of the properties at issue and has an easement on the other, and the County of Lexington ("County") which held the tax auction.

The Plaintiff purchased the Tax Title to Real Estate for two properties (Tax Map Nos.: 001100-05-011 ("Parcel 011") and 001106-01-028 ("Parcel 028") at issue for \$900.00 and \$500.00 respectively. (Pl.'s Resp. to Req. to Produc.). The Plaintiff did not physically inspect the properties in question before his attempt at purchasing them at the tax sale. (Pl.'s Ans. to

Interrog., ¶16). He discovered that Parcel 028 mainly consisted of the Town's Sewer Lift Station ("Pump Station") and that Parcel 011 contained an access road after the tax sale. (*Id.* at ¶17). After his discovery of the Town's pump station and roadway, he placed a chain and lock across the road to prevent access to them. (*Id.* at ¶14).

Chain of Title

The chain of title for Parcel 028 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504 at page 131.
- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey the system and the pump station sites to the Town of Chapin.
- g. New Horizon Development, LLC conveyed the sewer system and the pump station site to the Town of Chapin in fee simple by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.
- h. The Town of Chapin has held fee simple title to the pump station continuously since the last transfer of Parcel 028 in 1999.

The chain of title for Parcel 011 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504 at page 131.
- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey access to all of the sewer infrastructure by an easement to the Town of Chapin.
- g. New Horizon Development, LLC conveyed a permanent easement to the sewer system and the pump station site to the Town of Chapin by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.
- h. New Horizon, LLC mortgaged a portion of the property that became Parcel 011 to Twins, Inc. on September 16, 1999, and was recorded in Record Book 5462 at page 128.
- i. Branch Banking and Trust ("BB&T") acquired Twins, Inc. interest by Masters Deed on March 18, 2003. The parcel was transferred by BB&T to John Haas, as Chapter 11 Trustee for Twins, Inc. as recorded in Record Book 8064 at page 193.
- j. Julius Brazell acquired the parcel, as encumbered by the prior easement to the pump station, via Tax Deed from John Haas, as Chapter 11 Trustee for Twins, Inc., now Isom, LLC on June 30, 2011.

The Tax Title to Real Estate ("Tax Title") was based on the March 17, 2009 default by John E. Haas, as Chapter 11 Trustee of Twins, Inc. (now Isom LLC). The Tax Title and deed

relied upon by Plaintiff makes no mention of the pump station and the legal description does not describe it or reference the easements. Plaintiff did not identify any attorney or other person who searched the chain of title when Plaintiff purchased the Tax Title.¹ (Pl.'s Ans. to Interrog., ¶11.).

Plaintiff's Causes of Action

Plaintiff's Complaint asks the Court to "declare the Plaintiff to be the owner of the real estate in question." Complaint ¶ 5. The Complaint also offers a number of separate legal theories including conversion, trespass, unjust enrichment and requests declaratory and injunctive relief. Specifically, Plaintiff also requests that the Court:

1. Declare that Plaintiff is entitled to remove the Master Pump Station for the Town of Chapin and its easement road from the real estate or have its operation ceased. Compl. ¶6.
2. Order that the Town of Chapin and Lexington County cannot enter the properties. Compl. ¶9.
3. Award damages for the removal of barriers and chains he installed on the property. Compl. ¶10.
4. Award damages for rental use of the road on the property. Compl. ¶10.
5. Order an accounting for revenue produced by the Defendants use of the property. Compl. ¶11.
6. Award damages for the alleged trespass of the Defendants. Compl. ¶ 14-15.

Finally, Plaintiff's Complaint recognizes that if the County of Lexington did not have the authority to sell the property in question, that he be entitled to recover the benefit of his bargain for the property. Compl. ¶ 18.

PROCEDURAL HISTORY

Plaintiff filed this lawsuit on April 24, 2014. The Town of Chapin answered the Complaint on May 12, 2014. The Town filed its Motion for Summary Judgment on July 2, 2014.

ARGUMENT

Generally, when a party seeks to have their ownership of real property declared by the

¹ Plaintiff stated he could not recall but that counsel would supplement if this information became available.

Courts, the cause of action is one to quiet title. An action to quiet title is one in equity. *See Van Every v. Chinquapin Hollow, Inc.*, 265 S.C. 474, 477, 219 S.E.2d 909, 910 (1975); *Freeman v. Freeman*, 323 S.C. 95, 98, 473 S.E.2d 467, 469 (Ct.App.1996). However, where, as here, one party asserts paramount title to the disputed land to defeat the other party's claims, it is an action at law. *Mountain Lake Colony v. McJunkin*, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992); *see also Watson v. Suggs*, 313 S.C. 291, 293, 437 S.E.2d 172, 173 (Ct.App.1993) (holding that [a]n action brought for the primary purpose of determining title to a disputed land is in the nature of a trespass action to try title, which is an action at law).

A. Chain of Title is Dispositive of Legal Issues

The South Carolina Courts have found in other contests over real property that “detailed analysis of the chain of title [is] not only relevant, but also dispositive of the issue before us.” *Greene v. Griffith*, 2004-UP-056, 2004 WL 6248971 (S.C. Ct. App. Jan. 29, 2004). The South Carolina Supreme Court has also stated that “as record title is concerned, where both parties claim under a common source, the elder or better title will prevail.” *Marsh Plywood Corp. v. Graham*, 240 S.C. 486, 493, 126 S.E.2d 510, 513 (1962)

This case can be decided on the issue of paramount title alone, as Plaintiff's other theories for relief are predicated on his unencumbered ownership of the real properties in question. When pleadings present both legal and equitable issues, those should be tried first that are likely to result in a final judgment and render unnecessary the consideration of the other issues. *Rush v. Thompson*, 203 S.C. 106, 111, 26 S.E.2d 411 (1942).

**B. Analysis of the Chain of Title Shows the Town Owned One of the Properties
and Had An Easement on the Other**

The Town of Chapin's Summary Judgment Motion is supported by affidavit from the title insurance issuing agent, Spencer Andy Syrett, who conducted the title examination of properties which are in the chain of title for properties conveyed to the Town of Chapin for the properties at issue. The title insurance issuing agent's affidavit and its supporting documents delineate the chain of title and attests to the fact that the Town of Chapin has unencumbered fee system title to Parcel 028 and its pump station and an indefeasible right to access the station by the easements granted on Parcel 011.

The property the Plaintiff bid on at the tax auction was a portion of the property mortgaged by New Horizon LLC to Twins, Inc. in September 1999 and later acquired by BB&T at foreclosure. A grantor of real property can transfer no greater interest than he himself has in the property. Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct.App.1985). Therefore when the Plaintiff attempted to purchase the parcels via tax title at auction, Parcel 011 was already encumbered by the easements to the Town, which survived the foreclosure and the tax sale, since New Horizon had already permanently conveyed the easement through the property to the Town.

In regards to Parcel 028, New Horizon conveyed the Lift Station to the Town in August 1999. Therefore Twins Inc. acquired no interest in Parcel 028 or the Lift Station by its Mortgage dated September 16, 1999, nor did BB&T acquire title by in 2003, since it was not part of the collateral being foreclosed, nor could it transfer said title to John Haas (as Chapter 11 Trustee for Twins, Inc.)

Analysis of the chain of title irrefutably demonstrates that the Town held senior and

proper title to the real property at issue. This is dispositive of the legal question of paramount title and thus the Town is entitled to summary judgment on the claims brought by the Plaintiff.

C. The Parcels at Issue could not be Sold at Tax Auction

The property owned by the Town could not be sold at a tax auction as the Town cannot be in arrears for taxes owed because it cannot be taxed for this property. The South Carolina Constitution provides that “[t]here shall be exempt from ad valorem taxation: all property of the State, counties, municipalities, school districts and other political subdivisions, if the property is used exclusively for public purposes. S.C. CONST Art. X, § 3(a). S.C. Code Ann. §12-37-220 also provide a statutory tax exemption for “all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes.” Exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 486 (1982) (citing Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), citing State v. City of Columbia, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920)).

Clearly, the provision of water utility services by a political subdivision of the State of South Carolina to its residents is an exclusively public purpose. Therefore property of the Town of Chapin used for public purposes is exempt from taxation and cannot be in arrears for taxes owed or subject to tax sale by the County of Lexington. Therefore, as a matter of law, any tax sale of the properties was improper and the Town of Chapin still owns the property claimed by Plaintiff.

D. Plaintiff Fails the Burden of Proving Paramount Title on the Merits

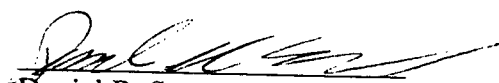
The Plaintiff's claims also fail on the merits. In an action of trespass to try title, the defendant in actual possession of the disputed property is regarded as the rightful owner of the property. See Watson v. Suggs, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993), reh'g denied, (Nov. 10, 1993); Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992), reh'g denied, (Feb. 20, 1992). A mere prima facie showing of paper title by the plaintiff is not enough. *Id.* The plaintiff has the burden of proving paramount title to the land by any methods: (1) perfect legal paper title shown by a grant from the state to a predecessor in title with successive deeds to the plaintiff; (2) tracing title to a common grantor with the defendant if the plaintiff can show an earlier deed deriving from the common source. *Id.* There also two methods to prove paramount title by adverse possession which are inapplicable here.

In this case the Plaintiff has only his imperfect Tax Titles to rely on and the Town has submitted perfect legal paper title shown by grant from the state with successive deeds evidencing ownership by the Town. Simply stated, Plaintiff purchased imperfect title from the County of Lexington and is seeking to recover the benefit of his bargain from the rightful owner who was not involved in the improper deed conveyances or the erroneous tax sale itself.

CONCLUSION

In sum, Defendant Town of Chapin would respectfully submit that Defendant Town of Chapin is entitled to summary judgment as to all of Plaintiff's claims, and therefore, respectfully requests that the Court grant it summary judgment, dismissing the Plaintiff's claims against it with prejudice.

Respectfully submitted,


Daniel R. Settana, Jr., Esquire
Richard E. Marsh, III, Esquire
McKay, Cauthen, Settana & Stubley, P.A.
1303 Blanding Street (29201)
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645
Attorneys for Defendant Town of Chapin

September 5, 2014
Columbia, South Carolina



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS

The Plaintiff above-named Complaining of the Defendants herein alleges that:

1. Plaintiff is a resident and citizen of Lexington County, South Carolina. The Town of Chapin, South Carolina is a political subdivision of the State of South Carolina. The County of Lexington is a political subdivision of the State of South Carolina.
2. This is an action for declaratory judgment and for injunctive relief.
3. Attached hereto are two deeds to the Plaintiff dated July 1, 2011.
4. Pursuant to the deeds in question, the Plaintiff was deeded two parcels of real estate in Lexington County, South Carolina.
5. Plaintiff is the owner of the two parcels of real estate and this Court should declare the Plaintiff to be the owner of the real estate in question.
6. Various items are affixed to the real estate in question. Plaintiff is entitled to a declaration from this Court that he is the owner of the property in question and is entitled to remove the property from the real estate or to have its operation ceased.
7. The property in question consists of a road as well as a piece of real estate.

8. The Plaintiff is the owner of the road and the Town of Chapin continues to trespass upon the road after notice.

9. Plaintiff is entitled to injunctive relief ordering the Defendants to remain off of the Plaintiff's property.

10. Agents of the Defendant, Town of Chapin, have regularly cut or destroyed barriers and chains. Plaintiff is entitled to judgment against the Town for the damage done and for the reasonable rental of the use of the road.

11. In addition to the foregoing, the Defendants have secured significant amounts of revenue as a result of the illegal use of the Plaintiff's property. The Plaintiff is entitled to an accounting as to those items of revenue which have been secured by the Defendants illegally using the Plaintiff's property.

FOR A SECOND CAUSE OF ACTION

12. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

13. The continued use of the road and of Plaintiff's property amounts to a continuing trespass.

14. As a direct and proximate result of the aforementioned trespass by the Defendant, Town of Chapin, the Defendants have been unjustly enriched; Plaintiff has been damaged in that his property has been destroyed and wrongfully used; and Plaintiff has been otherwise damaged.

15. Plaintiff is entitled to judgment against these Defendants for actual damages.

FOR A THIRD CAUSE OF ACTION

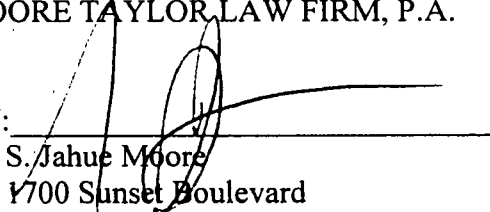
16. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

17. The property was conveyed to the Plaintiff by deed of Lexington County pursuant to a contractual bid at auction.

18. If the County of Lexington did not have the authority to sell the property in question then the Plaintiff has lost the benefit of his bargain and is entitled to recover the fair value of the property for which he paid.

WHEREFORE, Plaintiff prays for judgment against the Defendants declaring the rights of the parties one to another; declaring the Plaintiff to be the lawful owner of the property which is the subject of this action; for actual damages; for injunctive relief; and for such other and further relief as this Court might deem just and proper.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
April 22, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

TAX TITLE TO REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, by laws of the State of South Carolina, including S.C. Code Section 12-51-40 et seq. "...RELATING TO THE COLLECTION OF PROPERTY TAXES...", and Acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by the law for the payment of taxes in any year, the County Treasurer of each County shall and is hereby authorized and directed to issue in the name of the State a Warrant of Execution, in duplicate, against each defaulting taxpayer in this County, signed by him in his official capacity, directed to the Tax Collector of his County or his lawful Deputy, requiring and commanding him to levy the same by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, assessments, penalties and costs of such defaulter; and

WHEREAS, it is further provided by said Act, and Amendatory Acts, that under and by virtue of said Warrant of Execution, the Tax Collector shall seize and take exclusive possession of so much of the defaulting taxpayer's estate, real or personal, or both, as may be necessary to raise the sum of money mentioned therein, and the charges thereon, and after due advertisement sell the same at the Court House door of the County, on a regular sales day and within the usual hours for public sales, for cash, give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of sale, if the property sold be not redeemed as therein provided, and annex said receipt with the duplicate Warrant with the endorsement thereon of his action there under; and

WHEREAS, the County Treasurer of Lexington County, has issued his Warrant, directed to me, by authority of said Act, **John E. Haas, Chapter 11 Trustee of Twins, Inc., now ISOM, LLC**, defaulting taxpayer of said County, strictly charging and commanding me, as Tax Collector of said County, to levy by distress and sale of the real estate of the said **John E. Haas, Chapter 11 Trustee of Twins, Inc., now ISOM, LLC**, defaulter, and the following information is set forth herein pursuant to said act, to wit:

Presale Notice:

Defaulting Taxpayer: John E. Haas, Chapter 11 Trustee of Twins, Inc., now ISOM, LLC

Date of Execution: March 17, 2009

Certified Notice Mailed to:

John E. Haas Trustee for Twins, Inc.
5847 Shakespeare Rd.
Columbia, SC 29223

Date Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 29, 2009

Certified Notice Mailed to:

ISOM, LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Dated Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 27, 2009

Date Property Posted: n/a

By:

Certified Notice of End of Redemption Period :

Certified Notice Mailed to:

ISOM, LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Date Mailed: October 26, 2010

Date Received: November 8, 2010

Certified Notice Mailed to:

Branch Banking & Trust Co. of South Carolina
1901 Assembly Street
Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

Certified Notice Mailed to:

Bank of America, NA
1091 Main Street, 2nd Floor
Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

WHEREAS, by virtue of said Warrant of Execution, the Treasurer of Lexington County as Tax Collector of the County and State aforesaid, did seize and take possession of the said property as above set out, hereinafter described, and on the 7th day of **December in the year 2009**, during the usual hours of sale, after due advertisement, sell the same to **Julius Brazell**, the purchaser, and the highest bidder at such sale for the sum of **Five hundred and no/100 dollars**; and gave a receipt for said purchase money to said purchaser; and

WHEREAS, twelve months have elapsed since the date of said sale, and the said **John E. Haas, Trustee of Twins, Inc., now ISOM, LLC**, the defaulting taxpayer or other parties interested, after due notice has failed to redeem said land so sold for taxes;

NOW, THEREFORE, I, James R. Eckstrom, Treasurer of Lexington County, as Tax Collector of said County, in consideration of the premises and the sum **Five hundred and no/100 dollars** to the Treasurer of Lexington County paid by the said **Julius Brazell**, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Julius Brazell, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on the Eastern side of Lazy Creek Court, in the County of Lexington, State of South Carolina, being shown and designated as **LEXINGTON COUNTY TAX MAP NO. 001106, BLOCK 01, LOT 028** and being bounded as follows: on the West by property designated a Lexington County TMS 001100-05-011; on the North by property of Gary T. Crump and Karen E. Crump; on the East by property of Bush River Plantation Homeowners Association, Inc.; on the South by property of John W. Fowler and Maragaret C. Fowler and by property of Robert Gary DeLoach and Ruby H. DeLoach.

DERIVATION: Book 13445 Page 185

TAX MAP NUMBER: 001106-01-028

GRANTEE'S ADDRESS: 116 Metts Rd.
Leesville, SC 29070

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, with the appurtenances, unto the said **Julius Brazell**, his heirs and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my hand and seal this 30 day of June in the year of Our Lord Two Thousand Eleven.

Signed, Sealed and Delivered
in the Presence of:

Kelley Brazell
Erin Schaff

James R. Eckstrom
JAMES R. ECKSTROM, TREASURER
OF LEXINGTON COUNTY
AS TAX COLLECTOR

PLEASE INDEX THIS DEED IN GRANTOR INDEX UNDER:

1. Lexington County Tax Collector;
2. John E. Haas, Chapter 11 Trustee of Twins, Inc.
3. ISOM, LLC

GRANTEE: Julius Brazell

STATE OF SOUTH CAROLINA)
) P R O B A T E
COUNTY OF LEXINGTON)

PERSONALLY APPEARED before me the undersigned witness and made oath that s/he saw the within-named James R. Eckstrom, Treasurer of Lexington County as Tax Collector, sign, seal and, as his act and deed, deliver the within-written Tax Title to Real Estate for the uses and purposes therein mentioned, and that s/he, with the other witness whose signature appears hereinabove, witnessed the execution thereof.

Kelley Brazell

SWORN to before me this 30

day of JUNE, 2011.

Erin Schaff (L.S.)
Notary Public of South Carolina
My commission expires: DEC 15, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) TAX TITLE TO REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, by laws of the State of South Carolina, including S.C. Code Section 12-51-40 et seq. "...RELATING TO THE COLLECTION OF PROPERTY TAXES...", and Acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by the law for the payment of taxes in any year, the County Treasurer of each County shall and is hereby authorized and directed to issue in the name of the State a Warrant of Execution, in duplicate, against each defaulting taxpayer in this County, signed by him in his official capacity, directed to the Tax Collector of his County or his lawful Deputy, requiring and commanding him to levy the same by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, assessments, penalties and costs of such defaulter; and

WHEREAS, it is further provided by said Act, and Amendatory Acts, that under and by virtue of said Warrant of Execution, the Tax Collector shall seize and take exclusive possession of so much of the defaulting taxpayer's estate, real or personal, or both, as may be necessary to raise the sum of money mentioned therein, and the charges thereon, and after due advertisement sell the same at the Court House door of the County, on a regular sales day and within the usual hours for public sales, for cash, give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of sale, if the property sold be not redeemed as therein provided, and annex said receipt with the duplicate Warrant with the endorsement thereon of his action there under; and

WHEREAS, the County Treasurer of Lexington County, has issued his Warrant, directed to me, by authority of said Act, **John E. Haas, Chapter 11 Trustee of Twins, Inc., now Isom LLC**, defaulting taxpayer of said County, strictly charging and commanding me, as Tax Collector of said County, to levy by distress and sale of the real estate of the said **John E. Haas, Chapter 11 Trustee of Twins, Inc., now Isom LLC**, defaulter, and the following information is set forth herein pursuant to said act, to wit:

Presale Notice:

Defaulting Taxpayer: John E. Haas, Trustee of Twins, Inc., now Isom LLC

Date of Execution: March 17, 2009

Certified Notice Mailed to:

John E. Haas, Trustee of Twins, Inc.
5847 Shakespeare Rd.
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Date Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 29, 2009

Certified Notice Mailed to:

Isom LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Date Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 27, 2009

Date Property Posted: n/a **By:**

Certified Notice of End of Redemption Period :

Certified Notice Mailed to:

Isom LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Date Mailed: October 26, 2010

Date Received: November 8, 2010

Certified Notice Mailed to:

Branch Banking & Trust Co. of South Carolina
1901 Assembly Street
Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

Certified Notice Mailed to:

Bank of America NA

1091 Main Street

2nd Floor

Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

WHEREAS, by virtue of said Warrant of Execution, the Treasurer of Lexington County as Tax Collector of the County and State aforesaid, did seize and take possession of the said property as above set out, hereinafter described, and on the **7th day of December in the year 2009**, during the usual hours of sale, after due advertisement, sell the same to **Julius Brazell**, the purchaser, and the highest bidder at such sale for the sum of **Nine hundred and no/100 dollars**; and gave a receipt for said purchase money to said purchaser; and

WHEREAS, twelve months have elapsed since the date of said sale, and the said **John E. Haas, Chapter 11 Trustee of Twins, Inc., now Isom LLC** the defaulting taxpayer or other parties interested, after due notice has failed to redeem said land so sold for taxes;

NOW, THEREFORE, I, James R. Eckstrom, Treasurer of Lexington County, as Tax Collector of said County, in consideration of the premises and the sum **Nine hundred and no/100 dollars** to the Treasurer of Lexington County paid by the said **Julius Brazell**, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Julius Brazell, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Lexington County Tax Map No. 001100, Block 05, Lot 011 and being bounded as follows: on the West by Lazy Creek Court; on the North by property of Gary T. Crump and Karen E. Crump; on the East by property of the Grantor described below; and on the South by property of John W. Fowler and Maragaret C. Fowler.

DERIVATION: Book 13445 Page 185

TAX MAP NUMBER: 001100-05-011

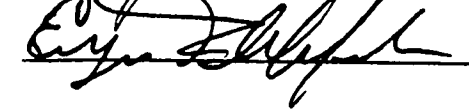
GRANTEE'S ADDRESS: 116 Metts Rd.
Leesville, SC 29070

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, with the appurtenances, unto the said **Julius Brazell**, his heirs and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my hand and seal this 30 day of June in the year of Our Lord Two Thousand Eleven.

Signed, Sealed and Delivered
in the Presence of:


JAMES R. ECKSTROM, TREASURER
OF LEXINGTON COUNTY
AS TAX COLLECTOR

PLEASE INDEX THIS DEED IN GRANTOR INDEX UNDER:

1. Lexington County Tax Collector;
2. John E. Haas, Chapter 11 Trustee of Twins, Inc.
3. Isom LLC

GRANTEE: Julius Brazell

PROBATE

Kelly Budden

day of June, 2011.

Notary Public of South Carolina

My commission expires: DEC 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and,
County of Lexington, South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-30-01537

**ANSWER OF DEFENDANT
TOWN OF CHAPIN
(Jury Trial Demanded)**

TO: S. JAHUE MOORE, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Town of Chapin ("Defendant"), by and through its undersigned attorneys, not waiving but specifically reserving its right to be heard under all Rule 12 Motions, answering the Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute any cause of action or claim for which relief can be granted against this Defendant.

FOR A SECOND DEFENSE

2. Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

3. Defendant admits the allegations of Paragraph 1 of the Complaint.

4. Defendant denies the allegations of Paragraph 2 of the Complaint and demands strict proof thereof.

5. Defendant admits only so much of the allegations of Paragraph 3 of the Complaint as alleges the Complaint contains an attachment, but denies the remaining allegations

REM

of Paragraph 3 of the Complaint.

6. Defendant denies the allegations of Paragraphs 4, 5, and 6 of the Complaint and demands strict proof thereof.

7. Defendant denies the allegations of Paragraph 7 of the Complaint, as worded, and demands strict proof thereof.

8. Defendant denies the allegations of Paragraphs 8, 9, 10, and 11 of the Complaint and demands strict proof thereof.

9. Paragraph 12 of the Complaint can be neither admitted nor denied and the Defendant herein reasserts and realleges its answers to the prior allegations of the Complaint as set forth above.

10. Defendant denies the allegations of Paragraphs 13, 14, and 15 of the Complaint and demands strict proof thereof.

11. Paragraph 16 of the Complaint can be neither admitted nor denied and the Defendant herein reasserts and realleges its answers to the prior allegations of the Complaint as set forth above.

12. Defendant is without sufficient information or knowledge to admit or deny the allegations of Paragraph 17 of the Complaint, and therefore denies same and demands strict proof thereof.

13. The allegations of paragraph 18 of the Complaint call for a legal conclusion and can be neither admitted nor denied but to the extent a response is required the Defendant therefore denies same and demands strict proof thereof.

14. Defendant denies all remaining allegations of the Complaint, including all prayers

2 REM

for relief and requests that this action be dismissed with prejudice.

FOR A THIRD DEFENSE

15. The Complaint fails to state a claim against this Defendant upon which relief can be granted.

FOR A FOURTH DEFENSE

16. The Complaint fails to state a cause of action against this Defendant.

FOR A FIFTH DEFENSE

17. This Defendant would show that such injury or loss as the Plaintiff may have sustained, if any, and the same is hereby expressly denied, was due to, caused and occasioned by the sole negligence, carelessness, recklessness and wantonness of Plaintiff at the time and date in question and Defendant pleads Plaintiff's sole negligence as a complete bar to this action.

FOR A SIXTH DEFENSE

18. This Defendant would further show, upon information and belief, and in the alternative, that if this Defendant was negligent, which this Defendant denies, then the Plaintiff was likewise negligent and the Plaintiff's negligence, carelessness and recklessness directly and proximately caused the Plaintiff's damages and injuries and that the negligence, carelessness and recklessness exceeded any negligence, carelessness or recklessness on the part of this Defendant. Therefore, Defendant pleads the Plaintiff's greater degree of comparative fault as a complete bar to Plaintiff's recovery against this Defendant.

FOR A SEVENTH DEFENSE

19. If this Defendant was negligent in any respect, which is expressly denied, and if the Defendant's conduct operated as any cause of the Plaintiff's resulting injuries or damages, if

any, which is also expressly denied, Defendant is entitled to a determination as to the percentage of the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to this incident and to a reduction of any amount awarded to the Plaintiff equal to the percentage of the Plaintiff's own negligence, gross negligence, recklessness, willful and wanton conduct.

FOR AN EIGHTH DEFENSE

20. This Defendant denies any negligence whatsoever and alleges that the sole negligent acts and omissions of a third party or parties were the sole and proximate cause of injuries and damages to Plaintiff, if any, and one or more of those parties caused the injuries and damages to Plaintiff. These acts and omissions of the third party or parties were the sole and proximate cause of injuries or damages to Plaintiff and therefore the action against this Defendant should be dismissed.

FOR A NINTH DEFENSE

21. This Defendant asserts that even if he was or had been negligent or reckless in any respect, which is expressly denied, this Defendant is not liable to Plaintiff for the resulting damages, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts and omissions of third parties, including those parties whose identities are unknown at the present time, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the injuries or damages, if any, sustained by Plaintiff.

22. This Defendant asserts that the intervening acts and omissions of the third party or parties were the sole and proximate cause of any injuries to Plaintiff and this action should therefore be dismissed.

FOR A TENTH DEFENSE

23. The conduct of this Defendant is not the proximate cause of the Plaintiff's injuries or damages, if any, which this Defendant specifically denies.

FOR AN ELEVENTH DEFENSE

24. If this Defendant is deemed to be acting under color of state law, then Defendant is immune from liability and cannot be sued without an express waiver of sovereign immunity.

FOR A TWELFTH DEFENSE

25. At all times relevant to the allegations contained in the Complaint, this Defendant acted in accordance with specific laws, rules, ordinances and regulations of the State of South Carolina or the Town of Chapin or other City or County specific laws, rules, ordinances and regulations, and therefore is immune from suit and pleads such statutory or regulatory authorization as a complete defense and bar to this action.

FOR A THIRTEENTH DEFENSE

26. This Defendant would show that any actions taken by this Defendant and/or procedures followed by agents of this Defendant with regard to Plaintiff were taken in good faith, in a reasonable manner, and that said actions and/or procedures were authorized by statutes, reasonable in time and manner, and therefore, Plaintiff is precluded from recovery against this Defendant.

FOR A FOURTEENTH DEFENSE

27. Any injury or damage sustained by the Plaintiff as alleged in the Complaint was or is due to, caused, or is the direct and proximate result of action(s) or inaction(s) of or by the Plaintiff, and Defendant pleads such action(s) or inaction(s) of or by the Plaintiff as a complete

5 REM

bar to this action.

FOR A FIFTEENTH DEFENSE

28. Any injury or damage sustained by the Plaintiff as alleged in the Complaint was or is due to, caused, or is the direct and proximate result of external event(s) or incident(s) over which this Defendant has or had no control, and Defendant pleads such external event(s) or incident(s) as a complete bar to this action.

FOR A SIXTEENTH DEFENSE

29. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Complaint were a direct and proximate result of one or more independent or intervening causes which the Defendant affirmatively pleads as a complete bar to this action.

FOR AN SEVENTEENTH DEFENSE

30. The conduct of this Defendant is not the proximate cause of the Plaintiff's damages, if any, which this Defendant specifically denies.

FOR A EIGHTEENTH DEFENSE

31. This Defendant asserts that Plaintiff's alleged damages are speculative, and therefore cannot be recovered.

FOR A NINETEENTH DEFENSE

32. The actions of this Defendant were objectively reasonable in light of the existing law, and therefore, he is entitled to immunity.

FOR AN TWENTIETH DEFENSE

33. Plaintiff's claims are barred by the equitable defenses of waiver, estoppel, laches, and/or unclean hands.

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FOR AN TWENTY-FIRST DEFENSE

34. To the extent the Complaint alleges claims against this Defendant as a “political subdivision” and/or agent of a “governmental entity” as those terms are defined within the South Carolina Tort Claims act, this Defendant is immune from liability pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et seq.* Defendant is specifically immune pursuant to S.C. Code Ann. §15-78-60(1), (2), (3), (4), (5), (7), (9), (11), (12), (13), (15), and (20).

35. Further, any damages the Plaintiff suffered, which are hereby denied, would be limited by any cap on recovery as set forth at S.C. Code Ann. §15-78-120.

36. S.C. Code Ann. §15-78-120(b), bars the recovery of punitive damages in actions brought pursuant to the South Carolina Tort Claims Act. Accordingly, Plaintiff cannot recover punitive damages on any state law claims and all claims for such relief should be dismissed.

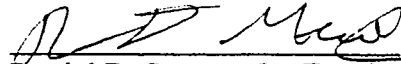
37. Further, Defendants affirmatively plead and assert all defenses, conditions of recovery, exceptions to waiver of immunity, limitations on liability, statutes of limitations, limitations as to damages and caps as to damages, as set forth in the South Carolina Tort Claims Act.

FOR A TWENTY-SECOND DEFENSE

38. Defendants affirmatively assert that the Plaintiff’s claims are barred by the two year statute of limitations as set forth at S.C. Code Ann. §15-78-110.

WHEREFORE, the Defendant prays that Plaintiff’s action be dismissed, or in the alternative for a jury trial and for such other and further relief as this Court deems just and proper.

7 REM



Daniel R. Settana, Jr., Esquire
Richard E. Marsh, III, Esquire
McKay, Cauthen, Settana & Stubley, P.A.
1303 Blanding Street (29201)
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645
Attorneys for Defendant Town of Chapin

May ____, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	Civil Action No.: 2014-CP-32-01537
Julius Brazell,	)	
	)	ANSWER OF THE DEFENDANT
Plaintiff,	)	COUNTY OF LEXINGTON
	)	
Vs.	)	
	)	
Town of Chapin, South Carolina; and	)	
County of Lexington, South Carolina,	)	
	)	
<u>Defendants.</u>	)	

THE DEFENDANT, County of Lexington, answering the Complaint of the Plaintiff, alleges as follows:

FOR A FIRST DEFENSE:

1. Each and every allegation of the Complaint not specifically hereinafter admitted is denied.
2. This Defendant admits so much of Paragraph 1 as alleges that the Town of Chapin and the County of Lexington are political subdivisions of the State of South Carolina, but this Defendant lacks sufficient knowledge and information as to form a belief as to the remaining allegations of Paragraph 1.
3. This Defendant admits Paragraphs 2, 3, and 4.
4. This Defendant lacks sufficient knowledge and information as to form a belief as to the allegations contained in Paragraphs 5, 6 and 7 and therefore denies such Paragraphs.
5. This Defendant lacks sufficient knowledge and information as to form a belief as to the allegations contained in Paragraphs 8, 9, and 10, and therefore denies such Paragraphs.
6. Paragraph 11 is denied as to this Defendant, and this Defendant lacks sufficient knowledge and information to form a belief as to the Co-Defendant, and therefore denies such remaining allegations of Paragraph 11.
7. Paragraph 12 requires no response.
8. This Defendant lacks sufficient knowledge and information as to form a belief as to the allegations contained in Paragraph 13 and therefore denies Paragraph 13.

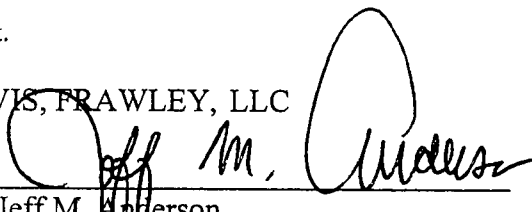
9. This Defendant denies so much of Paragraph 14 as alleges that this Defendant has been unjustly enriched, and this Defendant lacks sufficient knowledge and information as to form a belief as to the remaining allegations of Paragraph 14 and therefore denies such remaining allegations of Paragraph 14.
10. Paragraph 15 is denied.
11. Paragraph 16 requires no response.
12. Paragraph 17 is admitted, but would allege that the tax deed is a quit claim deed.
13. Paragraph 18 is denied.

FOR A SECOND DEFENSE:

15. The allegations of Paragraphs 1 through 14 of the First Defense are reasserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Second and Affirmative Defense.
16. This Defendant would allege §15-78-60 (11) as a complete defense to any allegation as to this Defendant.

WHEREFORE, This Defendant asks the Court to determine the rights of the parties herein and to dismiss any claim against this Defendant.

DAVIS, FRAWLEY, LLC

By: 

Jeff M. Anderson

140 East Main Street, Post Office Box 489

Lexington, South Carolina 29072

Phone No.: (803) 359-2512

ATTORNEYS FOR THE DEFENDANT
COUNTY OF LEXINGTON

Lexington, South Carolina

26 May, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and
County of Lexington, South Carolina

Defendants.

C.A. No.: 2014-CP-30-01537

**PLAINTIFF JULIUS BRAZELL'S
ANSWERS TO
DEFENDANT'S INTERROGATORIES**

TO: DANIEL R. SETTANA, JR., ESQ., AND RICHARD E. MARSH III, ESQ.,
COUNSEL FOR THE DEFENDANT TOWN OF CHAPIN:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response:

**Julius "Jack" Brazell
162 378 Highway
Lexington, SC 29072
No statement has been taken at this time.**

**Brenda Brazell
162 378 Highway
Lexington, SC 29072
No statement has been taken at this time.**

Plaintiff's counsel reserves the right to supplement this response upon further discovery.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case.

Response: Plaintiff is in possession of a receipt from the tax sale where he purchased the subject property, a notification of the lot being for sale, a tax title to the subject property, a deed for the subject property, and a letter from Lexington County concerning the subject property.

3. Set forth an itemized statement of all damages claimed to have been sustained by the party.

Response: Plaintiff's counsel does not have a complete list at this time, but will supplement upon further discovery. However, the damages being sought are stated in the Complaint.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness in the trial of this case.

Response: Plaintiff's counsel has not retained an expert witness at this time but reserves the right to do so. Plaintiff's counsel reserves the right to supplement this response upon further discovery.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

Response: Mr. and Mrs. Brazell are very familiar with and can testify to the facts set out in the Complaint of this litigation. Plaintiff's counsel reserves the right to supplement upon further discovery.

6. Provide a list of all parties you have contracted with for the sale of the property (or any portion thereof) that is the subject of this lawsuit, and the current status of those contracts. Give addresses and telephone numbers for these parties.

Response: Not applicable.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

Response: See response to Interrogatory #5.

8. Please set forth the Plaintiff's full legal name, date of birth, place of birth, social security number and driver's license number.

Response: Julius Lee Brazell
DOB: 03-22-54
POB: Richland County
SSN: ***-**-4705
DL: 001948239

- 10.) List each and every parcel of property or other designation of property owned by the Plaintiff, whether by partial ownership, total ownership or through other companies for the last ten years.

Response: 5582 N. Main St. Columbia, SC
162 Hwy 378 Lexington, SC
106 Newland Rd. Columbia, SC
10126 Broad River Rd. Irmo, SC
20 acres on 378 near Gilbert
5 acres on 378 right outside of Lexington
116 Meetze Rd. Saluda, SC

¼ acre lot off 378 in West Columbia, SC

- 11.) Please identify the lawyer, attorney, or other person who searched the title to the property in question when the Plaintiff, purported to purchase the property in question.

Response: Plaintiff does not recall at this time. Plaintiff's counsel will supplement if this information becomes available.

- 12.) Set forth all facts known to the Plaintiff, or his predecessors in interest, supporting the contention, if any, that he or any of his successors in interest owns any portion the property in question.

Response: Mr. Brazell bought this piece of property at a tax sale. He was the highest bidder and his bid was redeemed. He was sent a letter from the county (see attached) affirming his high bid and agreeing to send him a deed to the property. The deed that has been provided by the Town of Chapin does not include Mr. Brazell's name or the party who sold the land at the tax sale.

- 13.) Set forth all improvements made to any portion of the property in question by the Plaintiff or any of their predecessors in interest, including the erection of fences, chains, and other barriers to entry.

Response: Mr. Brazell put up a locked gate across the road access to the property.

- 14.) Identify all persons whom you contend cut or destroyed barriers and chains, posted any "no trespassing" signs, erected any gates or fences, or built any structure(s) on the property in question from April 24, 2004 through present.

Response: It is upon Plaintiff's information and belief that the locks were cut and people trespassed on the property to gain access to the roadway and the pump station. Mr. Brazell erected the gate across the roadway to try to

prevent this from occurring. The identities of the individual(s) who destroyed the locks and trespassed upon the property is unknown at this time.

- 15.) Identify the specific facts that prove each of your claims or allegations in this lawsuit, also identifying as to each the fact the witnesses who have knowledge to established, or the exhibits capable of establishing, such facts.

Response: See Response to Interrogatory #12.

- 16.) Did the Plaintiff physically inspect the property in question prior to purchasing the property and if so were the road and pumping station located on the property prior to his purchase?

Response: No.

- 17.) When were the pumping station and its service road placed upon the property in question, or when did the Plaintiff discover they were on the property?

Response: Mr. Brazell discovered the pumping station and roadway after he bought the property.

MOORE TAYLOR LAW FIRM, P.A.

BY: _____
S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
July 28, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and
County of Lexington, South Carolina,

Defendants.

C.A. No.: 2014-CP-30-01537

**PLAINTIFF JULIUS BRAZELL'S
ANSWERS TO
DEFENDANT'S REQUESTS TO
PRODUCE**

TO: DANIEL R. SETTANA, JR., ESQ., AND RICHARD E. MARSH III, ESQ.,
COUNSEL FOR THE DEFENDANT TOWN OF CHAPIN:

1. Copies of any and all documents identified in your answers to this Defendant's Interrogatories or any other Defendant's Interrogatories to you.

Response: See attached.

2. All documents including letters, files, notes, documents, reports, items, photographs, diagrams, drawings, or other similar material relating to the allegations in the Complaint or any defenses asserted in this case.

Response: See attached.

3. All statements of possible witnesses whether written, oral, summarized, on video or audio format or otherwise produced or reproduced in any manner relating to the allegations set forth in the Complaint.

Response: There are no statements at this time.

4. Any and all documentation supporting Plaintiff's claims against any of the Defendants.

Response: See attached.

5. Each and every document, file, chart, drawing, sketch, or other document or exhibit that you or your attorney intend to use as an exhibit during the trial of this case.

Response: See attached.

6. Any and all diaries, journals, or other documents created by you or on your behalf, or by any principal or officer or director, employee or otherwise, which in any way memorialize or document you recollection (or the recollections of anyone listed within this request) or any events relating to the allegations in your Complaint, including but not limited to any damages of any sort claimed.

Response: Not applicable.

7. Any and all bills, fee agreements, or other items relating to Plaintiff's demands for damages or for attorney's fees.

Response: None at this time. Plaintiff's counsel reserves the right to supplement upon further discovery.

8. Any and all statements, costs, documents or items relating to your claim in the Complaint for actual damages.

Response: None at this time. Plaintiff's counsel reserves the right to supplement upon further discovery.

9. Copies of any and all policies, directives, guidelines, statutes, case law, regulations, ordinances, county directives or regulations or ordinances or otherwise, city directives or regulations or ordinances or otherwise, or any such time that the Plaintiff alleges were violated by any of the Defendants in this lawsuit or are applicable to this lawsuit.

Response: None at this time. Plaintiff's counsel reserves the right to supplement upon further discovery.

10. As associated with this litigation

- a. Any and all emails, photographs, text messages, iPad notes or other documentation (oral or written) stored on iPads or other mobile device or cell phone;

Response: None at this time.

- b. Any and all documents or other items stored on any computer (whether desktop or laptop), slides, videotapes, audiotapes, film (both still-photography film and moving picture - whether strips of respective frames, digital or otherwise), compilations, plats, sketches, diagrams, or any other documents or tangible items associated with this litigation.

Response: Not applicable.

11. Any and all documents or other tangible items relevant or related to any claim or defense in this litigation that have been received from any third party, regardless of whether or not a subpoena was utilized or issued, either before you filed this lawsuit or since the commencement of this action.

Response: Not applicable.

12. Regarding the property in question related to this litigation, please produce the following documents or tangible items relating thereto:
- a. Any and all notes, including promissory notes or agreements with silent partners;
 - b. Any and all mortgages, or other encumbrances; and/or
 - c. Any other debt regarding the above referenced property.

Response: Not applicable.

13. Any and all documents or other tangible items that you have provided to or received from the Town of Chapin or Lexington County regarding the property in question set forth in your Complaint.

Response: See attached.

14. Any and all deeds for the property in question as set forth in your Complaint.

Response: See attached.

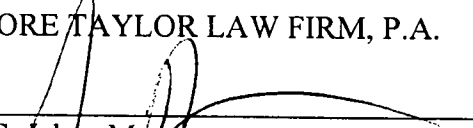
15. Any and all documents, including correspondence in any format, related to the Plaintiff for the last ten years regarding the property in question as set forth in the Complaint.

Response: See attached.

16. Any and all documents, exhibits, or other tangible items that you plan to use at the trial of this lawsuit.

Response: See attached.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

S. Jahne Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
July 28, 2014



**OFFICE OF THE TREASURER
COUNTY OF LEXINGTON, SOUTH CAROLINA**

212 South Lake Drive, Suite 102, Lexington, South Carolina 29072
PHONE: (803) 785-8345 FAX: (803) 785-0023

JAMES R. ECKSTROM
TREASURER OF LEXINGTON COUNTY

Date: 06/10/2011

Brazell, Julius
116 Metts Rd
Leesville SC 29070

Dear Bidder:

On Delinquent Tax Sale Date of 12/07/2009 you were the successful bidder on the property in the name of HAAS, JOHN E TRUSTEE OF TWINS, INC, TMS # 001100-05-011 , ITEM # 311. We have now received the deed from our Attorney.

Under the Uniform Tax Collection Laws, we are required to collect \$100.00 for the cost of the tax title preparation, \$10.00 recording fee and \$3.70 for documentary stamps.

Please send us \$113.70 payable to Lexington County Tax Collector, so that we can record the deed for you. If there are any unpaid taxes due at this time, we are enclosing the bills. We will take payment on these without penalties if paid within 30 days of the date of the letter.

Sincerely,
Eugene B. Rishkofski
Deputy Tax Collector
Lexington County, South Carolina
(803) 785-8344

cc: FILE

✓ #13921
#362.55



**OFFICE OF THE TREASURER
COUNTY OF LEXINGTON, SOUTH CAROLINA**

212 South Lake Drive, Suite 102, Lexington, South Carolina 29072
PHONE: (803) 785-8345 FAX: (803) 785-0023

**JAMES R. ECKSTROM
TREASURER OF LEXINGTON COUNTY**

Date: 06/13/2011

Brazell, Julius
116 Metts Rd
Leesville SC 29070

Dear Bidder:

On Delinquent Tax Sale Date of 12/07/2009 you were the successful bidder on the property in the name of HAAS, JOHN E TRUSTEE FOR TWINS, INC, TMS # 001106-01-028 , ITEM # 309. We have now received the deed from our Attorney.

Under the Uniform Tax Collection Laws, we are required to collect \$100.00 for the cost of the tax title preparation, \$10.00 recording fee and \$1.85 for documentary stamps.

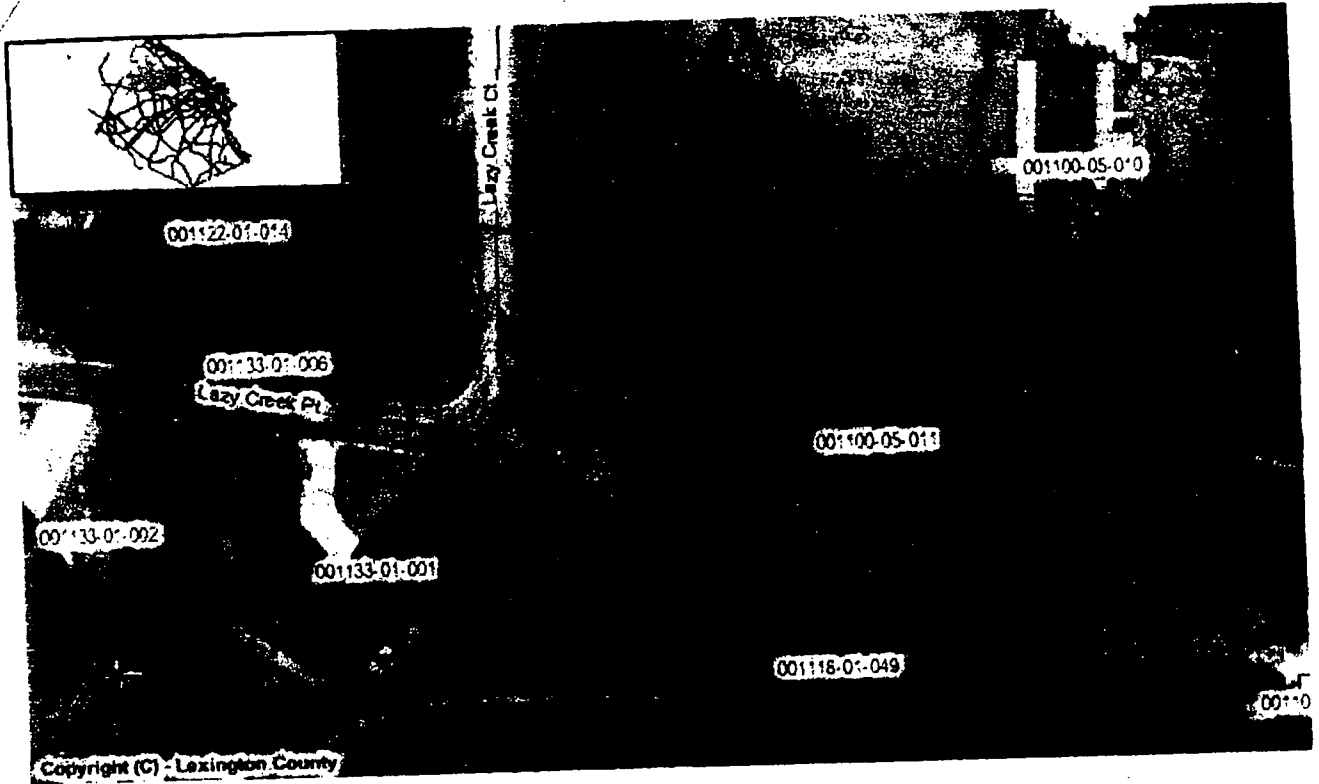
Please send us \$111.85 payable to Lexington County Tax Collector, so that we can record the deed for you. If there are any unpaid taxes due at this time, we are enclosing the bills. We will take payment on these without penalties if paid within 30 days of the date of the letter.

Sincerely,
Eugene B. Rishkofski
Deputy Tax Collector
Lexington County, South Carolina
(803) 785-8344

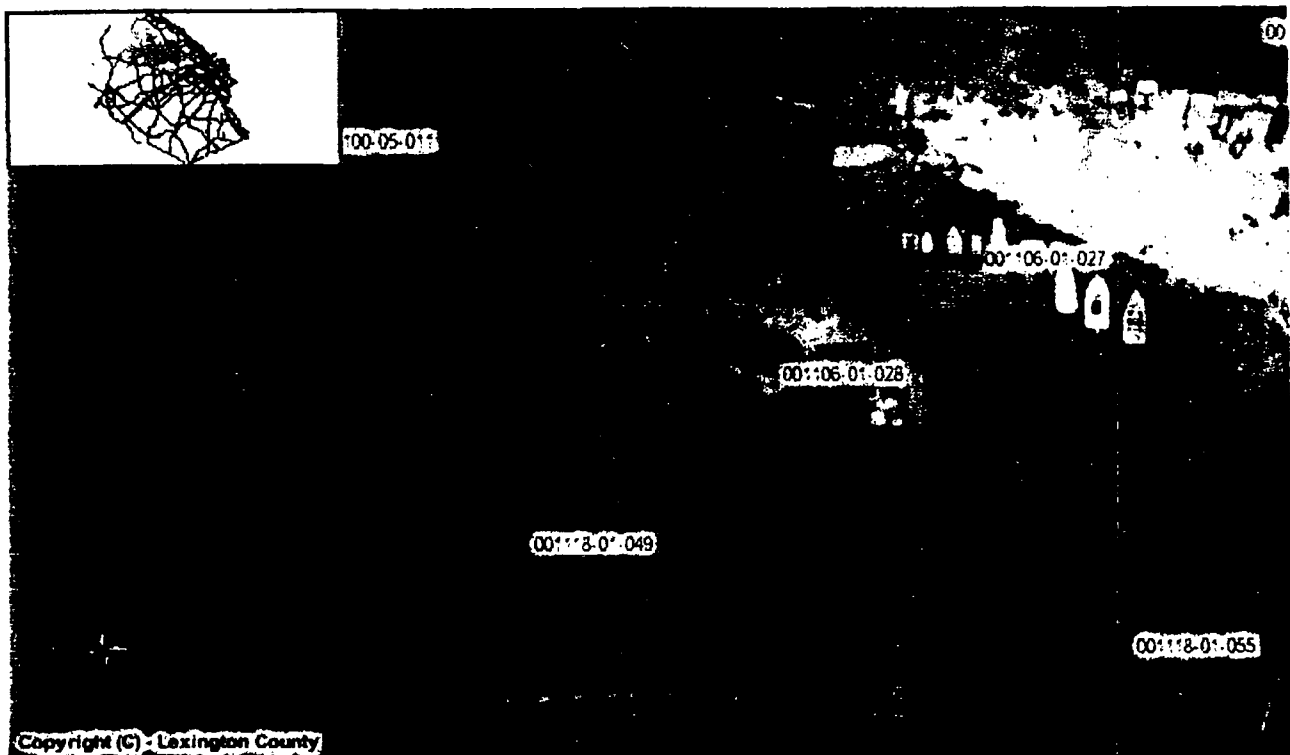
cc: FILE

✓ #1319
#122.50

MS Viewer



TMS 001100-05-011
E/S Lazy Creek Ct.



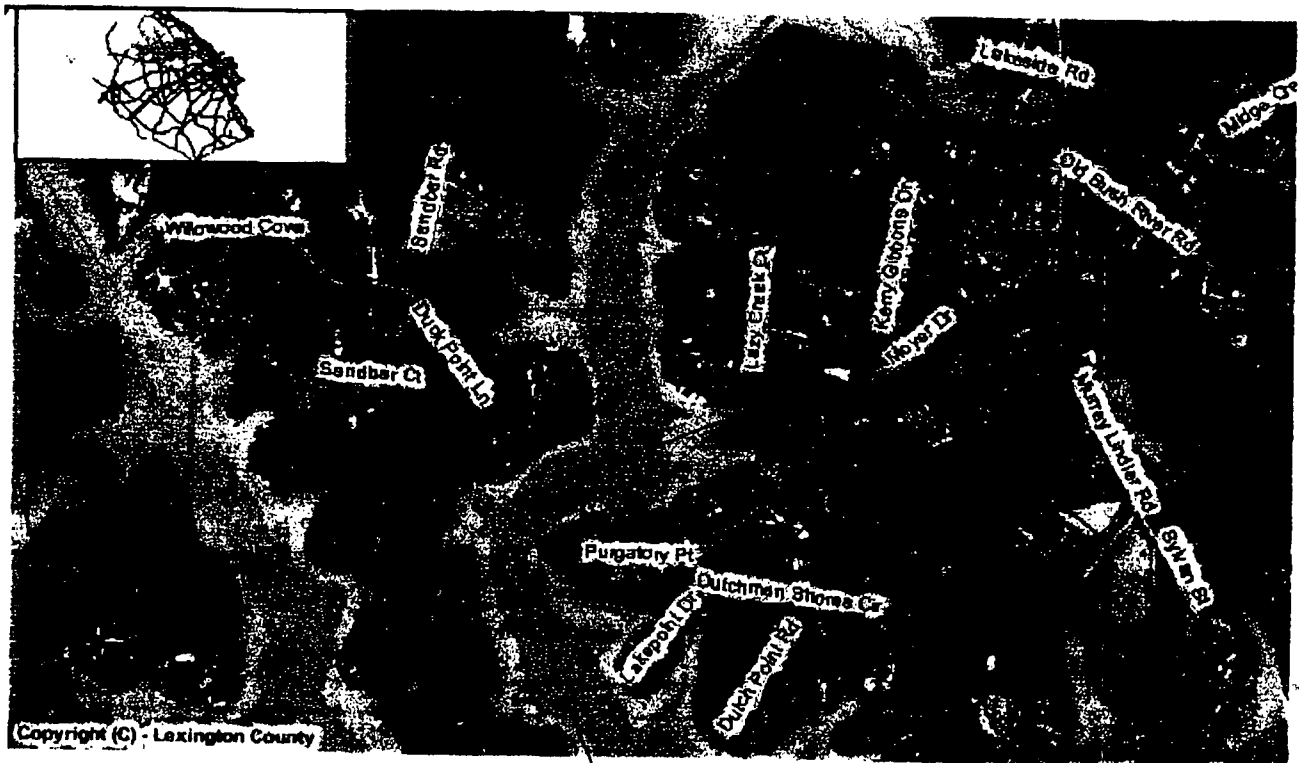
TMS# 001106-01-028

S/W Mayer Dr.

Bush River Plantation

Ph I.B

Lift Station



this is the
lift station

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

DEED AND EASEMENT
Sewer System
BUSH RIVER PLANTATION
Phase II

THIS CONVEYANCE made this 25 day of August 1999, by NEW HORIZON DEVELOPMENT, LLC, a South Carolina Limited Liability Company, Grantor, unto The TOWN OF CHAPIN, Grantee.

WITNESSETH, That for and in consideration of the sum of \$5.00, acceptance of the system conveyed hereby by the Grantee, ~~and other valuable consideration~~, receipt of which is acknowledged, pursuant to that certain Sewer Agreement between the Parties dated January 20 1999, recorded in the Register of Deeds for Lexington Co SC in Record Book 5173 page 309;

NEW HORIZON DEVELOPMENT, LLC (hereafter designated NHD) hereby grants, releases, and conveys unto the Town of Chapin, its successors and assigns, all its right, title, and interest in and to:

(a) **SEWER SYSTEM:** The Sanitary Sewer System of BUSH RIVER PLANTATION PHASE II, as approved and certified by SCDHEC, including a 4" Force Main from a "Tee" (off-site) on an existing Municipal Sewer Main within the R/W of Dutchman Shores Circle, running northerly for approximately 363' to a Master Pump Station located in Phase I (undeveloped) of the Project, ALSO an 8" Gravity Main running westerly from the Master Pump Station within reserved Easements approximately along the 365' contour of Lake Murray and/or the rear lot lines of LOTS 1 through 5 of the Project, as shown on a Bonded Plat of Bush River Plantation Phase II dated June 3 1998, revised July 1 1998, recorded in the Register of Deeds for Lexington County SC in Plat Slide 396 #7; ALSO, air release valves, cleanouts, and "T's" along the Force Main for service connections to Lots in Phase II, and all appurtenances thereto, (but excluding any service connector

lines within Lots 1 through 5 to be installed by contractors from constructed residences to the "T"s) all as shown on "UTILITY PLAN" for Bush River Plantation Phase II by Power Engineering Company Inc, Job No. 1782 dated July 21 1999, on file at Chapin Town Hall.

(b) **MASTER PUMP STATION:** All that piece parcel or lot of land, situate lying and being within Bush River Plantation Phase I, near the Town of Chapin, in Lexington County, South Carolina, containing approximately 400 square feet, and being the site of the Master Sewer Pump Station serving Bush River Plantation Phase II, according to a Plat prepared for the Town of Chapin by Associated E&S Inc dated Aug 5 1999, recorded in Plat Book 288 page 314; reference being craved to said Plat for metes and bounds of the site.

EASEMENTS: NHD further grants and assigns unto the Town of Chapin, its successors and assigns: A permanent EASEMENT, 15' feet in width, approximately 7 1/2 feet either side of the Gravity Main, "as-built" for access to the sewer system, over, under, and through Grantor's property which Grantor has reserved for Utility Easements, as shown and depicted on a Bonded Plat for Bush River Plantation Phase II dated June 3 1998, revised July 1 1998, recorded on July 8 1998 in Plat Slide 396 Plat #7; ALSO an Easement 12' in width for an all-weather Gravel Road for access to the Master Pump Station from Lazy Creek Court, as shown on said Bonded Plat, and as further shown on the Pump Station Plat referenced hereinabove; ALSO, Easements (off-site) which NHD reserved for utility Easements as recorded in Record Book 4838 page 169/Plat Book 284 page 799; Record Book 4838 page 161; and Record Book 4819 page 337/Plat Book 284 page 681.

DERIVATION: Being a portion of that property conveyed to New Horizon Development, LLC by deed of Jack Griffin, Ronald Moyer, and Linda Liscio dated July 9 1998, recorded on July 10 1998 in Record Book 4756 page 145, and by deed of SCE&G Co dated April 28 1998, recorded on July 7 1998 in Record Book 4748 page 167.

TMS: portion of 1100-05-011

Grantee's Address: PO Box 183 Chapin SC 29036

TOGETHER WITH all the rights, members, hereditaments, improvements, and appurtenances to said premises belonging or in any way incident or appertaining thereto,

TO HAVE AND TO HOLD the premises unto the said Grantee, its successors and assigns, forever.

AND GRANTOR does hereby bind itself and its successors, to warrant and forever defend the premises herein conveyed unto the said Grantee, its successors and assigns, against the Grantor and its successors and assigns.

WITNESSETH Grantor's hand this 26 day of August 1999:

IN THE PRESENCE OF:

NEW HORIZON DEVELOPMENT, LLC

Witness

Witness

By

Its

Grantor

ACCEPTED:

Witness

TOWN OF CHAPIN

By

Its

Grantee

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

PROBATE

PERSONALLY APPEARED before the undersigned Notary Public, one of the above witnesses who, being duly sworn, made oath that s/he saw NEW HORIZON DEVELOPMENT, LLC, Grantor, by its duly authorized representative, sign and deliver the within Deed for the uses and purposes therein stated, and that s/he, along with the other witness, witnessed the execution thereof.

SWORN TO BEFORE ME this

18th day of August 1999

Notary Public for South Carolina

My Commission Expires My Commission Expires December 2, 2007

Witness

2005 02 26 14:00

LAZY CREEK
LAZY CREEK POINT

IRON PIN
1/2" REBAR

S 10°22'46" W
20.90'

S 55°42'07" E
21.82'

S 73°05'50" E
107.67'

BOOK FILED, RECORDED, INDEXED
09/04/1999 03:30:40PM
St Fee: 0.00
Reg Fee: 5.00
Pages: 1
L.A. CO. REGISTER OF DEEDS
LARRY W. SMITH, S.C., P.L.S. NO. 3724

12' WIDE ALL WEATHER GRAVEL ACCESS ROAD
AND INGRESS-EGRESS EASEMENT.
(BEARINGS ARE CENTERLINE OF ESMT.)

BUSH RIVER PLANTATION
PHASE I

S 42°42'18" E
22.96'

S 78°27'26" E
110.39'

S 68°56'56" E
308.19'

15' TOWN OF CHAPIN
SAN. SEWER EASEMENT

10' U.S. UTILITIES
WATERLINE EASEMENT

POWER POLE

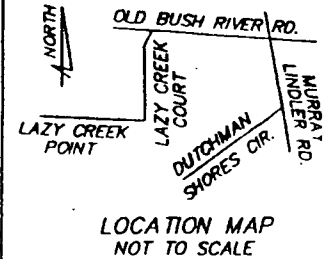
OLD IRON
1/2" REBAR

15' FORCE MAIN EASEMENT
S 06°52'10" E
134.16'

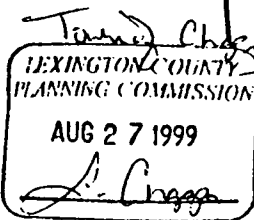
10' WATERLINE EASEMENT

OLD IRON
1-1/4" PIPE

POWER POLE



BUSH RIVER PLANTATION
PHASE II



N / F
JOHN W. AND
MARGARET C. FOWLER

POINT	BEARING	DIST.
1 - 2	S 02°32'26" E	20.75'
2 - 3	S 84°04'17" W	21.52'
3 - 4	N 00°00'57" E	21.31'
4 - 1	N 85°24'50" E	20.55'

POINTS 1, 2 & 4 ARE
NEW IRON PINS OF 1/2" REBAR

N / F
ROBERT G. AND
RUBY H. DELOACH

PLAT PREPARED FOR
TOWN OF CHAPIN

SITE LOCATED IN LEXINGTON COUNTY, SOUTH CAROLINA

SCALE: 1" = 50'



DATE: AUG. 5, 1999

CERTIFICATION:

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

Larry W. Smith
LARRY W. SMITH, S.C., P.L.S. NO. 3724

ASSOCIATED E & S, INC.
800 VIOLET STREET, WEST COLUMBIA, SOUTH CAROLINA 29169 - PH. 791-1550

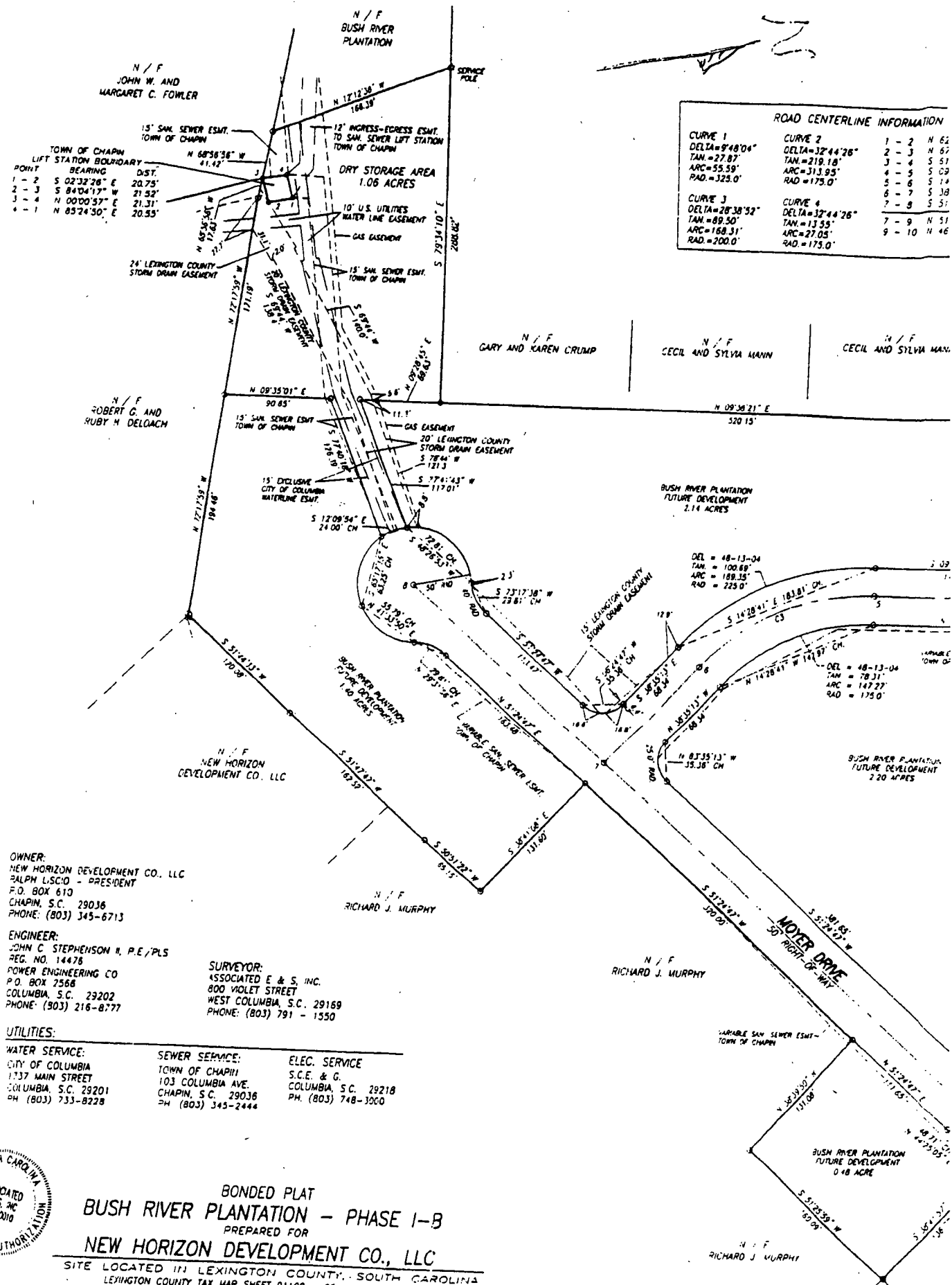
REFERENCES:

BONDED PLAT OF BUSH RIVER PLANTATION, PHASE II PREPARED FOR NEW HORIZON DEVELOPMENT, LLC BY ASSOCIATED E & S, INC. DATED JUNE 3, 1998 AND LAST REVISED MARCH 17, 1999.

PLAT PREPARED FOR JOHN W. AND MARGARET C. FOWLER BY ASSOCIATED E & S, INC. DATED MAY 21, 1998.

ROA0000000081

P/S 574 #3



ROA000000082

Property Card Information



Lexington County, SC

Good Friends and Great Communities



Data last updated: 12/02/2010

TMS#: 001100-05-011 [Show Map](#)

TAX YEAR: 2008

OWNER: HAAS, JOHN E TRUSTEE OF TWINS, INC

ADDRESS: PO BOX 23136

COLUMBIA, SC 29224

PROPERTY ADDRESS: E/S OF LAZY CREEK CT

LEGAL DESCRIPTION: PARCEL B & PT LOT 29 DUTCHMAN SHORES

DEED BOOK & PAGE: 8064-193

PLAT: SLID-396-7

LAND USE: 0001:RESIDENTIAL - UNIMPROVED

TAX DISTRICT: 5

ASSESSMENT INFORMATION

LOTS: 0

ACRES: .73

APPRAISED LAND: 14600

APPRAISED BUILDING: 0

ASSESSMENT LAND: 880

ASSESSMENT BUILDING: 0

HOMESTEAD EXEMPT ASSESSMENT: 0

TAX RELIEF EXEMPT ASSESSMENT: 0

BUILDING INFORMATION

SQUARE FOOT LIVING AREA:

UNFINISHED AREA:

YEAR BUILT:

NUMBER OF BEDROOMS:

NUMBER OF FULL BATHS:

NUMBER OF HALF BATHS:

HEATING SYSTEM:

HEAT:

SALES INFORMATION

<u>SALE DATE</u>	<u>SELLER</u>	<u>BUYER</u>	<u>PRICE BOOK/PAGE</u>	
03/03/2009	HAAS, JOHN E TRUSTEE OF TWINS, INC	ISOM LLC	1969	13445-185
03/18/2003	BRANCH BANKING & TRUST COMPANY	HAAS, JOHN E TRUSTEE OF TWINS, INC	10	8064-193
12/12/2002	NEW HORIZON DEVELOPMENT LLC	BRANCH BANKING & TRUST COMPANY	2500	7799-189
07/01/1998	GRIFFIN J J ETALS	NEW HORIZON DEVELOPMENT LLC	5	4756-145
07/01/1998	MURPHY RICHARD J	NEW HORIZON DEVELOPMENT LLC	50000	4838-047
11/01/1997	HOSTETTER M D	GRIFFIN J J ETALS	295000	4504-131
04/01/1993	HOSTETTER DM(ESTATE)	HOSTETTER M D	1	2490-315

12/17/10 09:38:25 Bidder: 25 Brazell, Julius
cb675-1a FOR: 2009

County of Lexington
TAX SALE PROPERTY BY BIDDER

Page 1
sk1

PKGS#	December Owner	TMS #	Property Description	Status	Bid
	92 BRADLEY, WILLIE ETAL	001925-04-007	7441 FORREST CT	REDEEMED	850.00
R	109 BURNING RIDGE INVESTMENTS INC	004644-07-033	625 PARSON ST	OPEN	825.00
R	131 CARABALLO, EDWARD	012117-01-005	420 JIM RUCKER RD	REDEEMED	1,200.00
R	162 CORDER, JAMES	001621-01-011	AMICKS FERRY RD	OPEN	100.00
R	166 COTTAGE RD LAND HOLDING LLC	007928-01-006	156 COTTAGE RD	REDEEMED	600.00
R	209 DAVIS, GORDON W	009000-05-051	S/S OF GLEN RD	REDEEMED	700.00
R	273 G B L ASSOCIATES INC	004000-03-081	NEW VILLAGE RD	REDEEMED	300.00
R	275 G B L INC	004337-02-011	WATER OAK DR	OPEN	300.00
R	279 GARDINER, MARK A & STEPHANIE S	001100-06-110	MIDGE CREEK CT	REDEEMED	200.00
R	310 HAAS, JOHN E TRUSTEE FOR TWIN	001131-01-006	LAZY CREEK POINT RD	OPEN	1,000.00
R	309 HAAS, JOHN E TRUSTEE FOR TWIN	001106-01-028	S/W MAYER DR	OPEN	500.00
R	311 HAAS, JOHN E TRUSTEE OF TWINS.	001100-05-011	S/R LAZY CREEK CT	OPEN	500.00
TOTAL BID					7,475.00

State of South Carolina)
County of Lexington)

In the Court of Common Pleas
Eleventh Judicial Circuit
2014-CP-32-01537

Julius Brazell,
Plaintiff,

vs.

Town of Chapin, et al,
Defendants.

Transcript of Record

September 5, 2014
Darlington, South Carolina

B e f o r e:

The Honorable William P. Keesley, Judge

A p p e a r a n c e s:

Daniel R. Settana, Jr., Esquire
Richard E. Marsh, III, Esquire
Jeffrey M. Anderson, Esquire
Attorneys for the Defendants

S. Jahue Moore, Esquire
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NO.
Motion/Mr. Settana	4
Response/Mr. Moore	10
Reply/Mr. Anderson	14
Reply/Mr. Settana	16
Decision by the Court	18
Certificate Page	19

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
C-1	Letter Document, 2 pgs.	18	

THE COURT: All right. What we got?

MR. SETTANA: May it please the Court.

THE COURT: Yes, sir.

MR. SETTANA: Your Honor, I'm Dan Settana. I represent the Town of Chapin, and this is our motion for summary judgement. I have a memorandum I'd like to hand up this morning.

THE COURT: Yes, sir.

(Mr. Settana hands a document to the Court.)

MR. SETTANA: There's also attached to it a copy of the complaint -- I wasn't sure if it would be easy access for you -- copy of the plaintiff's discovery answers and our motion.

Judge, in this case ---

MR. MOORE: I'm sorry. If I might -- this -- this is the first time this morning that I've seen this memorandum, too. I would like an opportunity to respond to it in writing if I could. But I thank the Court and I thank Mr. Settana for providing me a copy of the document.

THE COURT: All right.

MR. SETTANA: Your Honor, Mr. Brazell, the plaintiff, purchased two lots in a tax sale from Lexington County. I don't represent the County. I represent the Town.

The problem is -- and -- and where this lawsuit arises is the -- one of the lots was owned in fee simple by the

Town, the County couldn't sell it. The Town didn't owe taxes on it. A town doesn't have to pay taxes on it.

The other one was an easement -- the other lot had an easement going across it, which even if it was properly sold at a tax auction, easement -- easement does not disappear. So that is the basis for the summary judgement motion, Your Honor, and I'll cover a little more in detail.

If you look at the back of the memorandum, we actually have a photograph, satellite shot, of the property in question. And on one of them, there is a small, red square. That is Parcel 28, one of the -- the parcels sold for, like, \$500.

That little red square is owned in fee simple by the Town of Chapin. It has been since the 1990s. On it is a pumping station, and it had always been there since the early 2000s, long before this was sold.

Right beside it -- and if you're looking at that map at the top, there's a blue line across the top -- directly to the left of the little red square there is a lot. That is Lot 11; and on Lot 11, there's an easement that runs basically along the property line with a road.

And -- and Judge, this property was purchased sight unseen by the plaintiff. That's the reason I handed up the discovery answers because they admitted that. So when he purchases the property at a tax sale for a total of \$1400 -

- 900 on one piece of property; 500 on another -- he gets out there and he sees that the Town has a pumping station on its own property.

Now, Your Honor, the causes of action in the -- well, first of all, attached to our summary judgement motion is an affidavit of Andy Syrett, along with all of the chain of title documents, all the deeds going back to the 1990s, before this land was divided up.

Also in my memorandum, we go through the chain of title for the two lots individually, and I could spend all morning running through these. I don't think I need to because they're there in the documentation.

Your Honor, the causes of action are basically declaratory relief, injunctive relief, and also actions for conversion and trespass and unjust enrichment. The plaintiff is claiming that the Town is unjustly enrichment -- enriching itself from a pumping station on its own property.

There is an alternative relief sought because the -- one of the co-defendants is the County -- who sold this property mistakenly at tax sale -- which recognizes that the County of Lexington did not have authority to sell the property in question; that he, being the plaintiff, be entitled to recover the benefit of his bargain for that property.

Since we didn't receive anything from the plaintiff, I don't think the benefit of the bargain would come from the Town of Chapin.

Now, Judge, our argument is that when a party seeks to have ownership of real property declared by the Courts, the cause of action is one usually to acquire title, which is inequity; however, as here, when one party asserts paramount title to the disputed land to defeat the other party's claims, it is an action at law.

We site, Judge, to *Mountain Lake Colony vs. McJunkin and Watson vs. Suggs*, holding that (as read): "An action brought for the primary purpose of determining title to disputed land is in the nature of a trespass action to try title, which is an action at law."

Judge, the first argument, again, chain of title is dispositive of the legal issues. We have a good chain of title. We submitted it in an affidavit to the Court. The affidavit has not been countered by the plaintiff in this case. We -- we've had nothing from the plaintiff saying Mr. Syrett's affidavit and the chain of title he presented is incorrect or that there's even a question of fact there.

We would submit to you, since this case was filed in April of 2014, that before an action such as this to quiet title is filed, I'm sure the plaintiff would have gone out and done his work and gotten the title work done. I -- I

understand why he might not have done it at a tax sale, but since the tax sale was before this lawsuit was filed, it would have been incumbent upon the plaintiff to do the title work also.

Judge, the case can be decided on the issue of paramount title alone. The plaintiff's other theories of relief are predicated on this unencumbered possession, which the plaintiff doesn't have. The plaintiff doesn't have ownership at least of Parcel 28; and on Parcel 11, the Town still has an easement. They can't -- the plaintiff can't purchase the property without the easement on it. The Town -- the County, at the tax sale, can't wipe out the Town's easement, is what I'm trying to say.

Judge, the second argument is that the analysis of the chain of title shows that the Town owned one of the properties and had an easement on the other, as I just have stated.

The third argument: The parcels at issue cannot be sold at a tax auction. South Carolina Constitution, Article 10, Section 3(a) states that the -- (as read): "All property of the -- of a state, county, municipality, school district, and other political subdivisions is not tax -- is exempt from *ad valorem* taxation if the property is used exclusively for public purposes," which a pumping station is for public purpose.

Also, Judge, South Carolina Code Annotated Section 12-37-220 basically says the exact same thing, and it addresses water and sewer authorities in that.

And so, Judge, we would submit that the County could not sell the Town's property for tax purposes. And so once again, there was a mistake, but it's not the Town's fault.

Judge, I'm almost wound up. I just want to make sure I've got it all covered.

(Brief pause.)

MR. SETTANA: The plaintiff has the burden of proving paramount title to land by showing perfect legal paper title, which it hasn't done; or by tracing title to a common grantor with the defendant, if the plaintiff can show an earlier deed deriving from a common source. Once again, hasn't been done.

And adverse possession, which is a third possibility, is not applicable here, simply because the tax sale only occurred a couple of years ago, if that. Maybe less than two years ago now. So the -- the time for adverse possession hasn't run.

Your Honor, finally, once again, this is a summary judgement motion because I represent the Town of Chapin, who's a defendant. And we would also assert the Tort Claims Act, sub -- 15-78-60, subsections 9 and 20, I think would be applicable to a -- for immunity for the Town.

Twenty specifically, which says that the Town's immune from (as read): "... the acts or omissions of a person other than an employee ...", which in this case would be someone outside the town, who sold the property at a tax sale. Thank you, Your Honor.

THE COURT: Mr. Moore?

MR. MOORE: May it please Your Honor. There are two defendants in this case. What you have here is the Town of Chapin coming into court saying, "Well, gee. The County messed up."

We have -- if I might hand these up to the Court. And I would like an opportunity to respond to his memorandum in writing. I just haven't had time this morning to digest it.

But we have two tax deeds, wherein the County of Lexington has provided us deeds to the two parcels of real estate. Although -- does the Court already have copies of those?

THE COURT: I don't know.

(Brief pause.)

THE COURT: I have tax title to real estate attached to his brief, signed by James R. Eckstrom, Treasurer of Lexington County, two of them.

MR. MOORE: Yes, sir. Those -- those are the deeds. Your Honor, my client has two tax deeds which have

been duly issued by Lexington County for the two parcels of land in question. My understanding is that the action here is against Chapin as well as Lexington County; and Lexington County is represented by Mr. Anderson.

It's my understanding that those -- those tax deeds are presumed valid on their face. And I understand that tax deeds are not favored in the law, but when a deed is issued, it is presumed valid on its face.

The property in this case is not located within the corporate limits of the Town of Chapin, and counsel indicates that it is used for a public purpose. It's actually used for a business purpose.

My understanding is that the Courts have recognized that when a municipality goes outside of its borders and begins to enter into contracts for the providing of utilities, it actually is engaging in the business of utilities.

However, we do know that Chapin is a political subdivision of the State of South Carolina. We do know that Chapin has not paid any taxes on the property, at least according to the -- the files that we have here.

Your Honor, Parcel 2 is a roadway, upon which -- which bank -- bank -- Branch Banking and Trust, BB&T, had a mortgage. We believe that mortgage was placed on the property prior to any easement being placed on the

property, but we don't know that for sure.

If that's the case, the mortgage would have been superior in time to any easement. Of course, an easement being a non-freehold interest, it would be our position that any easement would have been extinguished by virtue of the foreclosure; that obviously giving rise to a question of fact as to exactly what was and was not foreclosed out by virtue of the Master's deed.

Your Honor, again, we -- we've got a situation here where Chapin, as a sovereign, is certainly charged with the notice of the sovereign, and would be on notice that taxes were not being paid; and would be on notice of what the sovereign is basically doing.

If there has basically been an error here in regard to the one parcel of land, we have a situation where we need an explanation from the County, before anybody is dismissed from the action, as to how in the world you wind up executing deeds, in favor of purchasers, who are relying upon you to do so; and taking money in exchange for property the County apparently says they don't own.

Your Honor, I'd also like to hand up a letter from Attorney David W. Knight, the Chapin town attorney, which may or may not be included. But in that letter, the letter is written to the plaintiff that -- where Mr. Knight, on behalf of the Town, acknowledges that the tax deed

transfers title to Mr. Brazell. I'm sure counsel has seen that, but Mr. Knight, on behalf of -- of the Town, has acknowledged that title was passed, at least as to a portion of this, by virtue of the road.

(Mr. Moore hands a document to Mr. Settana.)

MR. MOORE: This whole matter seems to me to be something that ought to be referred to the Master-in-Equity for a complete resolution as to who did what and why.

If I might hand this up, Your Honor?

THE COURT: Sure.

(Mr. Moore hands a document to the Court.)

MR. MOORE: In this letter, Mr. Knight acknowledges, at least as to a portion of the property, my client owns it by virtue of a tax sale.

Your Honor, we have two deeds that are presumptive on their face. You have two different parties, each pointing the finger apparently at the other.

It appears to me that -- that there are -- and again, I have not had a chance to respond to his brief because I haven't been able to read it until this morning. But it would appear to me, with the fact that the County, obviously, sees this as a tax -- delinquent tax sale, there becomes a question of fact as to why the County would have sold something, if in fact the -- the Town of Chapin owned it and wasn't paying the taxes it was supposed to pay.

One thing is for certain, the taxes on the property should have been paid, were not paid. The property is owned outside of the corporate limits of Chapin, for their business purposes; and if that's the case, they would have been required to pay taxes.

So apparently taxes weren't paid, a deed was executed, my client bought it, and is simply here, looking to the governmental entities from whom he purchased it, saying we would like to have -- he just simply wants what he bought.

Thank you, Your Honor.

MR. SETTANA: May it please The Court.

THE COURT: Mr. Anderson, you have any input on this?

MR. ANDERSON: I'm Jeff Anderson. I -- I am here for the County. I have not filed a motion, but I will -- I will make a couple of comments just based on what I've heard here today.

Tax sale deed is a quitclaim deed. It's not a warranty deed. In -- in -- in this particular case and what I've reviewed all -- reviewed the memorandum and affidavits and -- and reviewing the title, apparently, back in 1999, there was a deed to the Town of Chapin for this well for the pump station site.

Thereafter, where the confusion got within the County's Office and the Assessor's Office, is a bank foreclosed on -- as -- as I remember, a bank foreclosed on

some property, and then the property went through bankruptcy; and then the bankruptcy trustee deeded out some property to who the County thought was -- who -- who -- to a third party that -- that included this tax map number; when -- when in fact, the property had already been deeded to the Town years before that.

So the -- the County's records got mixed up because of a deed from a bankruptcy trustee to a third party. The third party did not pay the taxes on the property, and therefore, the County sold the property at tax sale.

It was not a -- the County selling the Town of Lexington property. They did not know it was Town of Lexington or their records didn't reflect that at the time. But since then, they do reflect that it's owned by the Town of Lexington -- or the Town of Chapin.

So there's -- what I'm saying is there's a -- there's a chain of title that's got messed up after or -- or appeared to the County to -- to deed the property to a third party, based on a deed from a bankruptcy trustee that actually included this tax map number or referenced this tax map number in the legal description. So the -- the County records got mixed up at that point. Even though the property had been deeded to the Town.

And we're talking about two different pieces of property. I want to make sure we understand that. One is

a pump station. It's just a little round pump station -- or a little square obsession. That's what -- that's what I'm talking about here. That was deeded to the Town in 1999. Since then there -- the deeds I'm talking about got confusing as to that deed to that pump station.

The adjoining property, Mr. Moore's client did purchase it at a tax sale, and I -- as far as I know, it's a good sale. But it's subject to, from what I understand, an easement for the Town to get to their pump station, through that property.

So he may own a piece of property. Like any other tax sale, it's a quitclaim deed, and subject to whatever's on that property at that time. There's an easement on that property. They've got an easement to get to that pump station.

So the real crux of this, I think, is the pump station, which was deeded to the Town, as I -- as I review the records, in 1999; and the County just -- the records got confused after the deed -- deeded to the Town.

THE COURT: Thank you. Mr. Settana, you have anything else?

MR. SETTANA: Yes, Your Honor. As to the argument -- as to the BB&T argument, I just want to point out that in our memorandum and in the affidavit it sorts that out, that the BB&T mortgage came after the -- the deed to the Town.

The BB&T mortgage was in September of '99, and the deed to the Town was in August of '99. So we beat it by a month, Number 1.

Secondly, Judge, there's two cases I would point out to you: *Elliott vs. McNair*, 250 SC 75; and *Charleston County Aviation Authority vs. Wasson* -- W-a-s-s-o-n -- 277 SC 480 -- both of which involve similar incidents where a municipality owned property outside of -- of the -- the town or -- or the municipality or the political entity's boundaries, and it is still non-taxable.

So that's not a -- the fact that it's outside of -- of the -- the boundaries does not make it a taxable event. And I think that the statute section that I cited, which encompasses water and soil which this is, is directly on point.

Your Honor, the last thing, and just to support what Mr. Anderson just said, the affidavit of Mr. Syrett, which we submitted in paragraph 9, accounts for and -- and points out that there was an error made in the deed process, in the 2000s, after all these conveyances were made

And it -- it's just as Mr. Anderson said, through the bankruptcy and the foreclosures and all that, that -- that the mistake was made. I wasn't trying to say that the County was the one who -- who made the mistake. Thank you.

THE COURT: Mr. Moore?

MR. MOORE: I don't have any appeal. I would like some time to respond to this brief.

THE COURT: How much time?

MR. MOORE: Would 10 days be all right?

THE COURT: Yes, sir.

MR. MOORE: Thank you.

THE COURT: All right. (To the court reporter) Mark this as a Court's exhibit, please.

(Marked Court's Exhibit No. 1; 2-page letter.)

THE COURT: I'll notify you of my decision in writing. Thank you.

-- END OF TRANSCRIPT RECORD --

75066

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-32-01537

Julius Brazell,

Appellant,

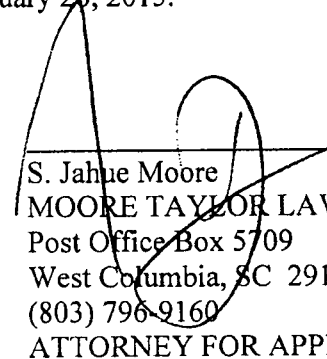
vs.

Town of Chapin, South Carolina; and County of Lexington South Carolina,

Respondent.

NOTICE OF APPEAL

Appellant, Julius Brazell, appeals the order of the Honorable William P. Keesley, dated January 21, 2015, a copy of which is attached hereto and incorporated here. Appellant received written notice of entry of this Order on January 26, 2015.


S. Jahue Moore
MOORE TAYLOR LAW FIRM, P.A.
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR APPELLANT

Other Counsel of Record:

Daniel R. Settana Jr., Esq.
PO Box 7217
Columbia, SC 29202
(803) 256-4645

RECEIVED

FEB 17 2015

SC Court of Appeals

Richard Eugene Marsh, III, Esq.
PO Box 7217
Columbia, SC 29202
(803) 256-4645

Jeffrey M. Anderson, Esq.
PO Box 489
Lexington, SC 29071
(803) 359-2512
ATTORNEYS FOR THE RESPONDENT

Copy

RECEIVED

ORIGINAL

FEB 17 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Julius Brazell,

Plaintiff,

vs.

Town of Chapin, South Carolina; and,
County of Lexington, South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-32-01537

ORDER GRANTING DEFENDANT
TOWN OF CHAPIN'S MOTION FOR
SUMMARY JUDGMENT

FILED
CLERK OF COURT
LEXINGTON, SC

2014 FEB 26 AM 11:41

FILED

A hearing on Defendant Town of Chapin's ("Chapin or Town") motion for summary judgment was held at the Lexington County Courthouse on September 5, 2014. The Plaintiff was represented by Jake Moore of the Moore Taylor Firm, P.A. Defendant Chapin was represented by Daniel R. Settana, Jr. of McKay, Cauthen, Settana & Stublely, P.A.

Whe
#1

STATEMENT OF THE CASE

This case centers on two pieces of real estate that the Plaintiff alleged he purchased at a Lexington County tax auction in June of 2011. Plaintiff brought this lawsuit as a real estate title dispute but also brought claims in tort and for equitable relief. The Plaintiff is Julius Brazell, a resident and citizen of Lexington County, South Carolina. The Defendants are the City of Chapin, which owns one of the properties at issue and has an easement on the other, and the County of Lexington ("County") which held the tax auction.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule

56(c), S.C.R.C.P. "In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Fleming v. Rose*, 35 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002). However, Rule 56(e) provides, in part:

(e) ...When a Motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

"[T]he plain language of Rule 56(e) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corporation v. Catrett*, 477 U.S. 317 (1986).

WPH
#2

BACKGROUND

The Plaintiff purchased his Tax Title to Real Estate ("Tax Title") for two properties (Tax Map Nos.: 001100-05-011 ("Parcel 011") and 001106-01-028 ("Parcel 028") at issue for \$900.00 and \$500.00 respectively. (Pl.'s Resp. to Req. to Produc.). The Plaintiff did not physically inspect the properties in question before his attempt at purchasing them at the tax sale. (Pl.'s Ans. to Interrog., ¶16). He discovered that Parcel 028 mainly consisted of the Town's Sewer Lift Station ("Pump Station") and that Parcel 011 contained an access road after the tax sale. (*Id.* at ¶17). After his discovery of the Town's pump station and roadway, he placed a chain and lock across the road to prevent access to them. (*Id.* at ¶14).

Relief Sought

Plaintiff's Complaint asks the Court to "declare the Plaintiff to be the owner of the real estate in question." Complaint ¶ 5. The Complaint also offers a number of separate legal theories including conversion, trespass, unjust enrichment and requests declaratory and injunctive relief.

Specifically, Plaintiff also requested that the Court:

1. Declare that Plaintiff is entitled to remove the Master Pump Station for the Town of Chapin and its easement road from the real estate or have its operation ceased. Compl. ¶6.
2. Order that the Town of Chapin and Lexington County cannot enter the properties. Compl. ¶9.
3. Award damages for the removal of barriers and chains he installed on the property. Compl. ¶10.
4. Award damages for rental use of the road on the property. Compl. ¶10.
5. Order an accounting for revenue produced by the Defendants use of the property. Compl. ¶11.
6. Award damages for the alleged trespass of the Defendants. Compl. ¶ 14-15.

Finally, Plaintiff's Complaint recognizes that if the County of Lexington did not have the authority to sell the property in question, that he be entitled to recover the benefit of his bargain for the property. Compl. ¶ 18.

Chain of Title

In its Motion the Town submitted the Affidavit of Spencer Andrew Syrett and the records of the Office of the Register of Deeds for Lexington County to establish the chain of title for the two parcels. These document show the chain of title for Parcel 028 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504

at page 131.

- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey the system and the pump station sites to the Town of Chapin.
- g. New Horizon Development, LLC conveyed the sewer system and the pump station site to the Town of Chapin in fee simple by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.
- h. The Town of Chapin has held fee simple title to the pump station continuously since the last transfer of Parcel 028 in 1999.

The chain of title for Parcel 011 is as follows:

- a. The parent parcel was owned by D.M. Hostetter.
- b. D.M. Hostetter died testate. His estate is filed in the Office of the Probate Court for Lexington County as 1993-ES-32-196.
- c. The Personal Representative of the Estate of D.M. Hostetter conveyed several parcels to Melba D. Hostetter by Deed of Distribution dated April 2, 1993, and recorded in Record Book 2490 at page 315.
- d. Melba D. Hostetter conveyed the parcels to Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio by deed dated November 3, 1997, and recorded in Record Book 4504 at page 131.
- e. Jack J. Griffin, Ronald G. Moyer and Linda T. Liscio conveyed parcels to New Horizon Development, LLC by deed dated July 9, 1998, and recorded in Record Book 4756 at page 145.
- f. On January 20, 1999, New Horizon, LLC and the Town of Chapin entered into a Sewer Agreement for Bush River Plantation. The agreement was recorded in Record Book 5173 at page 309. In Paragraph 4 of the Agreement, New Horizon LLC agreed to convey access to all of the sewer infrastructure by an easement to the Town of Chapin.
- g. New Horizon Development, LLC conveyed a permanent easement to the sewer system and the pump station site to the Town of Chapin by deed dated August 25, 1999, and recorded in Record Book 5432 at page 151.

- h. New Horizon, LLC mortgaged a portion of the property that became Parcel 011 to Twins, Inc. on September 16, 1999, and was recorded in Record Book 5462 at page 128.
- i. Branch Banking and Trust ("BB&T") acquired Twins, Inc. interest by Masters Deed on March 18, 2003. The parcel was transferred by BB&T to John Haas, as Chapter 11 Trustee for Twins, Inc. as recorded in Record Book 8064 at page 193.
- j. Julius Brazell acquired the parcel, as encumbered by the prior easement to the pump station, via Tax Deed from John Haas, as Chapter 11 Trustee for Twins, Inc., now Isom, LLC on June 30, 2011.

LEGAL ANALYSIS

Generally, when a party seeks to have their ownership of real property declared by the Courts, the cause of action is one to quiet title. An action to quiet title is one in equity. *See Van Every v. Chinquapin Hollow, Inc.*, 265 S.C. 474, 477, 219 S.E.2d 909, 910 (1975); *Freeman v. Freeman*, 323 S.C. 95, 98, 473 S.E.2d 467, 469 (Ct.App.1996). However, where, as here, one party asserts paramount title to the disputed land to defeat the other party's claims, it is an action at law. *Mountain Lake Colony v. McJunkin*, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992); *see also Watson v. Suggs*, 313 S.C. 291, 293, 437 S.E.2d 172, 173 (Ct.App.1993) (holding that [a]n action brought for the primary purpose of determining title to a disputed land is in the nature of a trespass action to try title, which is an action at law).

A. Chain of Title is Dispositive of Legal Issues

The South Carolina Courts have found in other contests over real property that "detailed analysis of the chain of title [is] not only relevant, but also dispositive of the issue before us." *Greene v. Griffith*, 2004-UP-056, 2004 WL 6248971 (S.C. Ct. App. Jan. 29, 2004). The South Carolina Supreme Court has also stated that "as record title is concerned, where both parties claim under a common source, the elder or better title will prevail." *Marsh Plywood Corp. v. Graham*, 240 S.C. 486, 493, 126 S.E.2d 510, 513 (1962)

This case can be decided on the issue of paramount title alone, as Plaintiff's other theories for relief are predicated on his unencumbered ownership of the real properties in question. When pleadings present both legal and equitable issues, those should be tried first that are likely to result in a final judgment and render unnecessary the consideration of the other issues. Rush v. Thompson, 203 S.C. 106, 111, 26 S.E.2d 411 (1942).

B. Analysis of the Chain of Title Shows the Town Owned One of the Properties and Had An Easement on the Other

WAL #6
The Town of Chapin's Summary Judgment Motion is supported by affidavit from the title insurance issuing agent, Spencer Andy Syrett, who conducted the title examination of properties which are in the chain of title for properties conveyed to the Town of Chapin for the properties at issue. The title insurance issuing agent's affidavit and its supporting documents delineate the chain of title and attests to the fact that the Town of Chapin has unencumbered fee simple title to Parcel 028 and its pump station and an indefeasible right to access the station by the easements granted on Parcel 011.

The property the Plaintiff bid on at the tax auction was a portion of the property mortgaged by New Horizon LLC to Twins, Inc. in September 1999 and later acquired by BB&T at foreclosure. A grantor of real property can transfer no greater interest than he himself has in the property. Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct.App.1985). Therefore when the Plaintiff attempted to purchase the parcels via tax title at auction, Parcel 011 was already encumbered by the easements to the Town, which survived the foreclosure and the tax sale, since New Horizon had already permanently conveyed the easement through the property to the Town.

In regards to Parcel 028, New Horizon conveyed the Lift Station to the Town in August 1999. Therefore Twins Inc. acquired no interest in Parcel 028 or the Lift Station by its Mortgage

dated September 16, 1999, nor did BB&T acquire title by in 2003, since it was not part of the collateral being foreclosed, nor could it transfer said title to John Haas (as Chapter 11 Trustee for Twins, Inc.)

Analysis of the chain of title irrefutably demonstrates that the Town held senior and proper title to the real property at issue. This is dispositive of the legal question of paramount title and thus the Town is entitled to summary judgment on the claims brought by the Plaintiff.

C. The Parcels at Issue could not be Sold at Tax Auction

Furthermore, the property owned by the Town could not be sold at a tax auction as the Town cannot be in arrears for taxes owed because it cannot be taxed for this property. The South Carolina Constitution provides that "[t]here shall be exempt from ad valorem taxation: all property of the State, counties, municipalities, school districts and other political subdivisions, if the property is used exclusively for public purposes. S.C. CONST Art. X, § 3(a). S.C. Code Ann. §12-37-220 also provide a statutory tax exemption for "all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes." Exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 486 (1982) (citing *Town of Myrtle Beach v. Holliday*, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), citing *State v. City of Columbia*, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920).

Generally "[t]he question of whether an act is for a public purpose is primarily one for the Legislature" and that the Courts should "not interfere unless the determination by that body is clearly wrong." *Elliott v. McNair*, 250 S.C. 75, 88, 156 S.E.2d 421, 428 (1967). Even so, South Carolina case law has recognized that it "would seem to be self-evident" that "the prosperity of a

city, which it is the general purpose of a water supply to promote, is even more directly promoted by making such water supply available for, and by using it upon fair terms to supply, the needs of industries upon which the prosperity of so many modern urban communities vitally depends." Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 357 (1929). The Supreme Court of South Carolina has recognized that even "[w]aterworks and other utilities...located beyond the corporate limits of municipalities ^{HAVE ~~WATER~~} [has] done much to promote expanded industrial activity. Elliott v. McNair, 250 S.C. 75, 87, 156 S.E.2d 421, 427-28 (1967)

The provision of water utility services by a political subdivision of the State of South Carolina to its residents is an exclusively public purpose. Therefore property of the Town of Chapin used for public purposes is exempt from taxation and cannot be in arrears for taxes owed or subject to tax sale by the County of Lexington. Therefore, as a matter of law, any tax sale of the properties was improper and the Town of Chapin still owns the property claimed by Plaintiff.

WPA #8

D. Plaintiff Fails the Burden of Proving Paramount Title on the Merits

The Plaintiff's claims also fail on the merits. In an action of trespass to try title, the defendant in actual possession of the disputed property is regarded as the rightful owner of the property. See Watson v. Suggs, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993), reh'g denied, (Nov. 10, 1993); Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992), reh'g denied, (Feb. 20, 1992). A mere *prima facie* showing of paper title by the plaintiff is not enough. *Id.* The plaintiff has the burden of proving paramount title to the land by any methods: (1) perfect legal paper title shown by a grant from the state to a predecessor in title with successive deeds to the plaintiff; (2) tracing title to a common grantor with the defendant if the plaintiff can show an earlier deed deriving from the common source. *Id.* There also two methods to prove paramount title by adverse possession which are inapplicable here.

ORIGINAL

In this case the Plaintiff has only his imperfect Tax Titles to rely on and the Town has submitted perfect legal paper title shown by grant from the state with successive deeds evidencing ownership by the Town. Plaintiff purchased imperfect title from the County of Lexington and is seeking the recover the benefit of his bargain from the rightful owner who was not involved in the improper deed conveyances or the erroneous tax sale itself.

CONCLUSIONS OF LAW

After reviewing all of the pleadings, Affidavits and evidence filed with the Court and after considering the arguments of the attorney for the Defendant, I find that the Plaintiff failed to ^(WPM) ~~meet his burden of proof to~~ overcome the Defendant's Motion for Summary Judgment. Therefore, because there is no genuine issue as to any material fact, the Defendant is entitled to judgment as a matter of law.

#9 **IT IS THEREFORE ORDERED** that Defendant Town of Chapin's Motion for Summary Judgment is hereby granted as to all causes of action;

IT IS FURTHER ORDERED that Defendant Town of Chapin Davis is dismissed with prejudice from this action.

IT IS SO ORDERED.

William P. Keesley
William P. Keesley
Circuit Court Judge
Eleventh Judicial Circuit

BEITH CARROLL
CLERK OF COURT
LEXINGTON, SC

2015 JAN 20 A 11:46

FILED

Lexington, South Carolina
JAN. 21, 2015

David Webster Knight, P.A.

ATTORNEY AT LAW
POST OFFICE BOX 22
CHAPIN, SOUTH CAROLINA 29036

TELEPHONE (803) 345-6540

FAX (803) 345-7473

April 25, 2013

236 COLUMBIA AVENUE
CHAPIN, SOUTH CAROLINA 29036

Julius Brazell
116 Metts Road
Leesville SC 29070

Re: Town of Chapin Sewer Lift Station #31

COPY

Dear Jack:

Following your call and a request by the Chapin Utility Dept, I have done extensive research on the status of the Sewer Lift Station serving Bush River Plantation Ph I, and part of Dutchman Shores.

The results of my search are as follows:

1. As to Parcel 1100-05-011, it does appear that you have a tax title to that parcel between Lazy Creek Ct and the subject Lift Station. But as you may know, tax titles are not marketable, and should have a competent title search, followed by a suit to quiet title.

A search of Parcel 011 would have revealed that in the chain of title, New Horizon Development LLC owned the subject parcel and others, out of which Bush River Plantation Phases I & II were built. New Horizon acquired the property by several deeds in 1998. Then in August 1999, New Horizon conveyed the subject Sewer Lift Station to the Town of Chapin, along with the 15' easements for the sewer main and the 12' access road to the Lift Station. See Record Book 5432 page 131 (copy attached). It is a principal of law that one can only sell such property as it owns, and any such sale is subject to easements and restrictions of record.

The property which you bid at Tax Sale was a portion of that property mortgaged by New Horizon to Twins Inc in Sept 1999, recorded in Record Book 5462 page 128 (Twins interest was later acquired by BE&T which foreclosed). Therefore the parcel (011) purchased by you at Tax Sale was already

encumbered by the easements to Chapin, which survived the foreclosure, and the Tax Sale, since New Horizon had already permanently conveyed same to Chapin.

II. As to Parcel 1106-01-028, as stated above, New Horizon conveyed the Lift Station to Chapin in August 1999, ref Record Book 5432 page 151. Therefore, Twins Inc acquired no interest in the Lift Station by its Mortgage dated Sept 16, 1999 (Record Book 5462 page 128), nor did BB&T acquire title to said Lift Station by Masters Deed in 2003 (RB 7799 page 189), since it was not part of the collateral being foreclosed, nor could it transfer title to same to John Haas as Chapter 11 Trustee for Twins Inc, nor did the Tax Assessor acquire any interest in the Lift Station since neither John Haas, Trustee or ISOM LLC acquired any interest in same. The fact that the deeds from John Haas Trustee to ISOM LLC and the Tax Deed from ISOM to you cited "TMS 1106-01-028", there was no mention of a "Sewer Lift Station", and the legal description does not even describe the Lift Station since it was and is entirely within the Boat Storage area for BRP. While you may in fact own some interest in property near the BRP Boat Storage area, it is not in my purview to determine what interest that may be.

I have contacted the Lexington Co. Mapping Dept, and am informed that it should be no problem to correct the ownership of the Sewer Lift Station, ending any tax liability on that parcel. The dept. is referring the matter to the County Attorney for review and input.

I recommend that you obtain a real estate attorney to confirm my findings and conclusions. Thank you for bringing this matter to my attention.

Yours truly,

David W Knight
Chapin Town Attorney

Cc: Mayor Shealy
LexCo mapping Dept
Lexington Co. Atty

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

TAX TITLE TO REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, by laws of the State of South Carolina, including S.C. Code Section 12-51-40 et seq. "...RELATING TO THE COLLECTION OF PROPERTY TAXES...", and Acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by the law for the payment of taxes in any year, the County Treasurer of each County shall and is hereby authorized and directed to issue in the name of the State a Warrant of Execution, in duplicate, against each defaulting taxpayer in this County, signed by him in his official capacity, directed to the Tax Collector of his County or his lawful Deputy, requiring and commanding him to levy the same by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, assessments, penalties and costs of such defaulter; and

WHEREAS, it is further provided by said Act, and Amendatory Acts, that under and by virtue of said Warrant of Execution, the Tax Collector shall seize and take exclusive possession of so much of the defaulting taxpayer's estate, real or personal, or both, as may be necessary to raise the sum of money mentioned therein, and the charges thereon, and after due advertisement sell the same at the Court House door of the County, on a regular sales day and within the usual hours for public sales, for cash, give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of sale, if the property sold be not redeemed as therein provided, and annex said receipt with the duplicate Warrant with the endorsement thereon of his action there under; and

WHEREAS, the County Treasurer of Lexington County, has issued his Warrant, directed to me, by authority of said Act, **John E. Haas, Chapter 11 Trustee of Twins, Inc., now ISOM, LLC**, defaulting taxpayer of said County, strictly charging and commanding me, as Tax Collector of said County, to levy by distress and sale of the real estate of the said **John E. Haas, Chapter 11 Trustee of Twins, Inc., now ISOM, LLC**, defaulter, and the following information is set forth herein pursuant to said act, to wit:

Presale Notice:

Defaulting Taxpayer: John E. Haas, Chapter 11 Trustee of Twins, Inc., now ISOM, LLC

Date of Execution: March 17, 2009

Certified Notice Mailed to:

John E. Haas Trustee for Twins, Inc.
5847 Shakespeare Rd.
Columbia, SC 29223

Date Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 29, 2009

Certified Notice Mailed to:

ISOM, LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Dated Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 27, 2009

Date Property Posted: n/a

By:

Certified Notice of End of Redemption Period :

Certified Notice Mailed to:

ISOM, LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Date Mailed: October 26, 2010

Date Received: November 8, 2010

Certified Notice Mailed to:

Branch Banking & Trust Co. of South Carolina
1901 Assembly Street
Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

Certified Notice Mailed to:

Bank of America, NA
1091 Main Street, 2nd Floor
Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

WHEREAS, by virtue of said Warrant of Execution, the Treasurer of Lexington County as Tax Collector of the County and State aforesaid, did seize and take possession of the said property as above set out, hereinafter described, and on the 7th day of December in the year 2009, during the usual hours of sale, after due advertisement, sell the same to **Julius Brazell**, the purchaser, and the highest bidder at such sale for the sum of **Five hundred and no/100 dollars**; and gave a receipt for said purchase money to said purchaser; and

WHEREAS, twelve months have elapsed since the date of said sale, and the said **John E. Haas, Trustee of Twins, Inc., now ISOM, LLC**, the defaulting taxpayer or other parties interested, after due notice has failed to redeem said land so sold for taxes;

NOW, THEREFORE, I, James R. Eckstrom, Treasurer of Lexington County, as Tax Collector of said County, in consideration of the premises and the sum **Five hundred and no/100 dollars** to the Treasurer of Lexington County paid by the said **Julius Brazell**, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Julius Brazell, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on the Eastern side of Lazy Creek Court, in the County of Lexington, State of South Carolina, being shown and designated as **LEXINGTON COUNTY TAX MAP NO. 001106, BLOCK 01, LOT 028** and being bounded as follows: on the West by property designated a Lexington County TMS 001100-05-011; on the North by property of Gary T. Crump and Karen E. Crump; on the East by property of Bush River Plantation Homeowners Association, Inc.; on the South by property of John W. Fowler and Maragaret C. Fowler and by property of Robert Gary DeLoach and Ruby H. DeLoach.

DERIVATION: Book 13445 Page 185

TAX MAP NUMBER: 001106-01-028

GRANTEE'S ADDRESS: 116 Metts Rd.
Leesville, SC 29070

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, with the appurtenances, unto the said **Julius Brazell**, his heirs and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my hand and seal this 20 day of June in the year of Our Lord Two Thousand Eleven.

Signed, Sealed and Delivered
in the Presence of:

Kelly Brazell
Erin Schaff

James R. Eckstrom
JAMES R. ECKSTROM, TREASURER
OF LEXINGTON COUNTY
AS TAX COLLECTOR

PLEASE INDEX THIS DEED IN GRANTOR INDEX UNDER:

1. Lexington County Tax Collector;
2. John E. Haas, Chapter 11 Trustee of Twins, Inc.
3. ISOM, LLC

GRANTEE: Julius Brazell

STATE OF SOUTH CAROLINA)
) P R O B A T E
COUNTY OF LEXINGTON)

PERSONALLY APPEARED before me the undersigned witness and made oath that s/he saw the within-named James R. Eckstrom, Treasurer of Lexington County as Tax Collector, sign, seal and, as his act and deed, deliver the within-written Tax Title to Real Estate for the uses and purposes therein mentioned, and that s/he, with the other witness whose signature appears hereinabove, witnessed the execution thereof.

Kelly Brazell

SWORN to before me this 30

day of JUNE, 2011.

Erin Schaff (L.S.)
Notary Public of South Carolina
My commission expires: DEC 15, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

TAX TITLE TO REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, by laws of the State of South Carolina, including S.C. Code Section 12-51-40 et seq. "...RELATING TO THE COLLECTION OF PROPERTY TAXES...", and Acts amendatory thereof, it is provided that hereafter, immediately upon the expiration of the time allowed by the law for the payment of taxes in any year, the County Treasurer of each County shall and is hereby authorized and directed to issue in the name of the State a Warrant of Execution, in duplicate, against each defaulting taxpayer in this County, signed by him in his official capacity, directed to the Tax Collector of his County or his lawful Deputy, requiring and commanding him to levy the same by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, assessments, penalties and costs of such defaulter; and

WHEREAS, it is further provided by said Act, and Amendatory Acts, that under and by virtue of said Warrant of Execution, the Tax Collector shall seize and take exclusive possession of so much of the defaulting taxpayer's estate, real or personal, or both, as may be necessary to raise the sum of money mentioned therein, and the charges thereon, and after due advertisement sell the same at the Court House door of the County, on a regular sales day and within the usual hours for public sales, for cash, give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of sale, if the property sold be not redeemed as therein provided, and annex said receipt with the duplicate Warrant with the endorsement thereon of his action there under; and

WHEREAS, the County Treasurer of Lexington County, has issued his Warrant, directed to me, by authority of said Act, **John E. Haas, Chapter 11 Trustee of Twins, Inc., now Isom LLC**, defaulting taxpayer of said County, strictly charging and commanding me, as Tax Collector of said County, to levy by distress and sale of the real estate of the said **John E. Haas, Chapter 11 Trustee of Twins, Inc., now Isom LLC**, defaulter, and the following information is set forth herein pursuant to said act, to wit:

Presale Notice:

Defaulting Taxpayer: John E. Haas, Trustee of Twins, Inc., now Isom LLC

Date of Execution: March 17, 2009

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John E. Haas, Trustee of Twins, Inc.
5847 Shakespeare Rd.
Columbia, SC 29223

Date Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 29, 2009

Certified Notice Mailed to:

Isom LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Date Certified Notice Mailed: May 26, 2009

Date Received by Addressee: May 27, 2009

Date Property Posted: n/a **By:**

Certified Notice of End of Redemption Period :

Certified Notice Mailed to:

Isom LLC
5847 Shakespeare Rd.
Columbia, SC 29223

Date Mailed: October 26, 2010

Date Received: November 8, 2010

Certified Notice Mailed to:

Branch Banking & Trust Co. of South Carolina
1901 Assembly Street
Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

Certified Notice Mailed to:

Bank of America NA

1091 Main Street

2nd Floor

Columbia, SC 29201

Date Mailed: November 3, 2010

Date Received: November 10, 2010

WHEREAS, by virtue of said Warrant of Execution, the Treasurer of Lexington County as Tax Collector of the County and State aforesaid, did seize and take possession of the said property as above set out, hereinafter described, and on the 7th day of December in the year 2009, during the usual hours of sale, after due advertisement, sell the same to **Julius Brazell**, the purchaser, and the highest bidder at such sale for the sum of **Nine hundred and no/100 dollars**; and gave a receipt for said purchase money to said purchaser; and

WHEREAS, twelve months have elapsed since the date of said sale, and the said **John E. Haas, Chapter 11 Trustee of Twins, Inc., now Isom LLC** the defaulting taxpayer or other parties interested, after due notice has failed to redeem said land so sold for taxes;

NOW, THEREFORE, I, James R. Eckstrom, Treasurer of Lexington County, as Tax Collector of said County, in consideration of the premises and the sum **Nine hundred and no/100 dollars** to the Treasurer of Lexington County paid by the said **Julius Brazell**, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Julius Brazell, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Lexington County Tax Map No. 001100, Block 05, Lot 011 and being bounded as follows: on the West by Lazy Creek Court; on the North by property of Gary T. Crump and Karen E. Crump; on the East by property of the Grantor described below; and on the South by property of John W. Fowler and Maragaret C. Fowler.

DERIVATION: Book 13445 Page 185

TAX MAP NUMBER: 001100-05-011

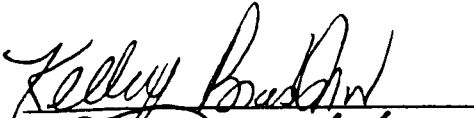
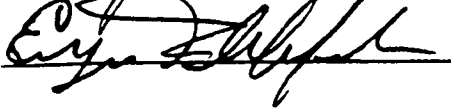
GRANTEE'S ADDRESS: 116 Metts Rd.
Leesville, SC 29070

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, with the appurtenances, unto the said **Julius Brazell**, his heirs and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina in such cases made and provided.

WITNESS my hand and seal this 30 day of June in the year of Our Lord Two Thousand Eleven.

Signed, Sealed and Delivered
in the Presence of:


JAMES R. ECKSTROM, TREASURER
OF LEXINGTON COUNTY
AS TAX COLLECTOR

PLEASE INDEX THIS DEED IN GRANTOR INDEX UNDER:

1. Lexington County Tax Collector;
2. John E. Haas, Chapter 11 Trustee of Twins, Inc.
3. Isom LLC

GRANTEE: **Julius Brazell**

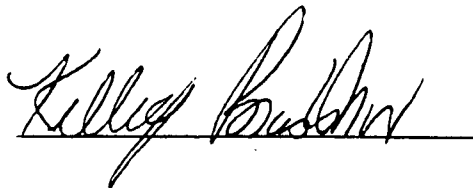
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

PROBATE

FILED
2011 APR 24 P 1:39

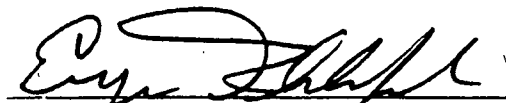
ETHEL S. BROWN
NOTARY PUBLIC

PERSONALLY APPEARED before me the undersigned witness and made oath that s/he saw the within-named James R. Eckstrom, Treasurer of Lexington County as Tax Collector, sign, seal and, as his act and deed, deliver the within-written Tax Title to Real Estate for the uses and purposes therein mentioned, and that s/he, with the other witness whose signature appears hereinabove, witnessed the execution thereof.



SWORN to before me this 30

day of June, 2011.

 (L.S.)

Notary Public of South Carolina

My commission expires: DEC 15, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-000329

RECEIVED
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SC Court of Appeals

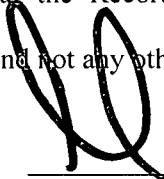
Julius Brazell, ...Appellant,

v.

Town of Chapin, South Carolina; and
County of Lexington, South Carolina, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.


S. Jahue Moore, SC Bar #4063
John C. Bradley, Jr., SC Bar #7869
Moore Taylor Law Firm, PA
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West Columbia, SC 29171
(803) 796-9160
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ATTORNEYS FOR APPELLANT

November 11, 2015