

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT

RECEIVED

Willie Riley,

PLAINTIFF,

NOV 23 2015
Docket# 2009-CP-38-1696
SC Court of Appeals

vs.

Ulysses Green, individually and

as Personal Representative of the

Estate of Daniel Green, and Estate of Daniel Green

Pearlie Mae Graves, Sarah Lee Green, Daniel Green, III

Mildred Ann Green, Larry B. Green, Thomas Price, John Doe

and Richard Roe, fictitious persons designated to represent

all the unknown heirs and distributees of Ernestine Green and

Daniel Green, Jr. deceased, and all other unknown person or

persons claiming through them or any infant or person under

disability or in the Armed Forces of the United States of

America and Mary Roe, fictitious person designated to

represent the surviving spouse of the parties herein

claiming a spousal interest in the herein described real

property and John Doe, Richard Roe and Mary Roe,

fictitious persons designated as a class to represent all other

persons unknown claiming any right, title, interest or

lien upon the real estate described herein, and TO WHOM

IT MAY CONCERN.

DEFENDANTS.

2011 MAY 26 A 10:30
FILED FOR RECORD
WINNIEA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

AMENDED
ORDER

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

04/11

This Order is amended to reflect changes not timely conveyed between legal counsel prior to submission to the Court. A hearing was held on April 26, 2011, based

on a Motion to Reconsider brought by Andrew S. Radeker, Esquire, on behalf of Defendant Ulysses Green. The motion was denied but counsel for the Plaintiff and Mr. Radeker agreed to amend the Court's previous Order to incorporate changes requested by Mr. Radeker.

This action was brought before me on August 2, 2010, at the Courthouse in Orangeburg, South Carolina. Present at the August 2, 2010 hearing were the Plaintiff, his attorney, Dennis Wayne Catoe, Esquire, Defendant, Ulysses Green, acting pro se, and the Plaintiff's witness, Vince Lyde of Midlands Title, LLC. The case was commenced and testimony was given by Mr. Lyde but due to a scheduling conflict this matter was continued until October 6, 2010. Present at the October 6 hearing were the Plaintiff, his attorney, Dennis Wayne Catoe, Esquire, Defendant, Ulysses Green and his attorney, Andrew S. Radeker, Esquire. The court reporter was Suesan L. Richardson of Low Country Reporting Service whom was present at both hearings. Mr. Radeker was retained by Ulysses Green after the hearing on the merits had commenced on August 2. All other defendants were not present and are in default. It appears that all defendants have been named and served that there are no unknown defendants or defendants under any disability and no need for a Guardian ad Litem. The evidence and testimony of the parties having been heard, the following findings of facts and conclusions of law are hereby made.

FINDING OF FACT

1. The Summons, Complaint and Lis Pendens were filed October 19, 2009. Defendants, Ulysses Green, Pearlie Mae Graves, Sarah Lee Green, Daniel Green, III, Mildred Ann Green, and Larry B. Green, were served with the Summons and Complaint

by certified mail as evidenced by Affidavits of Service filed with the Court. Service by publication was made upon the remaining known and unknown Defendants, John Doe, Richard Roe and Mary Roe, by publication in a newspaper in the Times and Democrat News in the Orangeburg County, South Carolina area as authorized by the Order for Service of Publication filed with the Court. Defendant, Ulysses Green, had a pending motion for leave to amend his Answer, to which the Plaintiff consented and said Answer was accepted at the final hearing. All other defendants were in default, as shown by Affidavit of Default filed on March 17, 2010. An Order for Reference was filed on April 26, 2010. Notice of the hearing was mailed to the defendants on May 3, 2010 by certified mail as evidenced by Affidavits of Service filed with the Court.

2. Plaintiff, Willie Riley, is a resident and citizen of the County of Orangeburg, State of South Carolina and the property which is subject to this action is located in the County of Orangeburg, State of South Carolina. Ulysses Green, individually and as the Personal Representative of the Estate of Daniel Green, and Sarah Lee Green are residents and citizens of the County of Richland, State of South Carolina. Defendants, Harriet Felder and Mildred Ann Green, are residents and citizens of the County of Orangeburg, State of South Carolina. Defendant, Pearlie Mae Graves, is a resident and citizen of the City of Durham, County of Durham, State of North Carolina. Defendant, Daniel Green, III, is a resident and citizen of the Town of Lakeview Terrace, County of Los Angeles, State of California. Defendant, Thomas Price, is a resident and citizen of the Town of College Park, County of Clayton, State of Georgia. Defendant, Larry Green, is a resident and citizen of the Town of Eastover, County of Richland, State of South Carolina.

3. That the property that is the subject of this action is situate in the County of Orangeburg, Sate of South Carolina, and is described as follows, to-wit:

All that certain piece, parcel or lot of land, with dwelling and other Improvements thereon, situate, lying and being in Orange Township, School District No. 5 (outside), the County of Orangeburg, State of South Carolina, being all of Lot 3 and the eastern half of Lot 2, as shown on a plat of property of H. A. Lyons made by H. Frank O'Cain, C.E., dated May 31, 1961, recorded in the office of the Clerk of Court for Orangeburg County, South Carolina, in Plat book 17 at Page 83, together having the following boundaries and measurements: Northwest by S.C. Highway S-38-796 and fronting thereon 135 feet. Northeast by property of Jones Terrace subdivision 135 feet and Southwest by remaining one-half portion of lot 2 on said plat 150 feet. The same being more fully shown and set forth on the above mentioned plat.

Being the same property conveyed to Daniel Green, Jr. by deed of George R. Zimmerman dated February 22, 1971 and being recorded February 23, 1971, in Deed Book 341 at Page 189 in the Office of the Clerk of Court for the State and County aforesaid.

TMS # 0182-14-05-014.000 (new) 0192-15-08-006.000 (old)
aka 2181 Whittaker Parkway, Orangeburg, SC

And also,

All that certain piece, parcel or lot of land, with dwelling and other Improvements thereon, situate, lying and being in Orange Township, School District No. 5 (outside), the County of Orangeburg, State of South Carolina, designated as Lots No. 11 and 12, on a subdivision plat of property of Willie Jones by H. Frank O'Cain, C.E., dated September 19, 1960, recorded in the office of the Clerk of Court for Orangeburg County, South Carolina, having the following boundaries and measurements: Northeast by lands of Willie Jones and measuring Two Hundred (200) Feet; Northwest by lands of Willie Jones and measuring thereon One Hundred twenty (120) feet; Southwest by Lot No. 10 on said plat, lands of Willie Jones, and measuring thereon Two hundred (200) feet; and southeast by a county road and measuring thereon one hundred Twenty (120) feet. Said lot being a portion of that same tract of land of ninety-six acres, more or less.

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Being the same property conveyed to Ernestine Price by deed of Willie Jones dated October 10, 1960, and recorded in Clerk of County for Orangeburg County on October 13, 1960, in Deed Book 235 at page 352.

TMS # 0182-14-04-012.000 (new) 0192-15-20-0120.000 (old)
aka 2181 Whittaker Parkway, Orangeburg, SC

4. Venue is proper in Orangeburg County pursuant to South Carolina Code Annotated 15-7-10 (1).

5. The Plaintiff brings this action pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, Section 15-53-10, Code of Laws of South Carolina, 1976, for the purpose of obtaining a decree adjudging that the Plaintiff is seized in fee simple of a good and marketable title to real estate herein below

described and that no Defendants have any interest or estate in or lien upon the said real estate. Plaintiff has sought to quiet title as to Lot 3 and Lots 11 and 12.

6. Based on the testimony and matters of public record it appears that on or before May 19, 2006, Ulysses Green, as the Personal Representative of the Estate of Daniel Green, and Harriet Felder entered into a real estate sales contract in writing, pursuant to which Harriet Felder agreed to purchase and defendant agreed to sell for the sum of \$70,000.00 the property described as follows: 2181 Whittaker Parkway, Orangeburg, SC. A closing was done on May 19, 2006. This sale arose from a Probate Order regarding the Estate of Daniel Green 2000-ES-38-179 dated February 1, 2006, that ordered the sale of two lots, Lot 3 and Lot 1, both located on Whitaker Parkway. A deed purporting to convey Lots 11 and 12 prepared by an attorney for and executed by Ulysses Green, as the Personal Representative of the Estate of Daniel Green. The Orangeburg County Register of Deeds Office records reflect a deed from Mr. Green as PR for the Estate of Daniel Green to Harriet Felder dated May 9, 2006 and recorded May 25, 2006 at Deed Book 1152 at Page 198. It is not contested by Defendant Ulysses Green that he believed that the property that being conveyed in the deed to Harriet Felder was Lot 3. Further, Harriet Felder moved into the Lot 3 although the deed reflected Lot 11 and 12. Ms. Felder gave a mortgage, but that mortgage described "All of Lot 1 and the western One-half of Lot 2" as the property subject thereof. Thereafter, Ms. Felder stopped making mortgage payments and Aurora Mortgage foreclosed on the mortgage. Apparently, the mortgage was reformed in that foreclosure to described Lots 11 and 12 as the property subject thereof; however testimony at court indicated that the appraisal at closing was for Lot 3 and that Lot 3 is the home that Ms.

Felder moved into. Although the foreclosure proceedings were already commenced, Defendant, Ulysses Green, as the Personal Representative of the Estate of Daniel Green, executed a document entitled corrective deed; however, this deed described "All of Lot 1 and the western One-half of Lot 2" as the property subject thereof. This is not contested by the parties. The foreclosure resulted in a Order and Sale listing Lots 11 and 12 as the property subject thereof. After being the successful bidder upon foreclosure and receiving a Master's deed, dated June 18, 2007, and recorded July 3, 2007, in at Book 1217 at Page 224 to Aurora Loan Services, LLC, Aurora Loan Services, LLC, sold this property listed as Lots 11 and 12 to Plaintiff, Willie Riley, for \$3,800.00 by deed dated July 22, 2008 and recorded August 1, 2008, at Book 1276 at page 263. Plaintiff, Mr. Riley, proceeded to do improvement work on the house at Lot 11 and 12 which he testified in the approximate amount of \$35,000.00 Plaintiff was approached by Mr. Ulysses Green as to a mistake of the correct lot sold. Plaintiff ceased construction and commenced this legal action to clear the title.

7. The Court heard from counsel for the Plaintiff and counsel for the Defendant Ulysses Green to ascertain the parties' positions and arguments before taking testimony at the October 6 hearing. Plaintiff contends that he is the successor in interest to Harriet Felder and that he is entitled to have Defendant Ulysses Green, individually or as the Personal Representative of the Estate of Daniel Green, execute and deliver to Plaintiff a deed for Lot 3 correcting and reforming this error or in the alternative quieting title on behalf of the Plaintiff. Plaintiff acknowledges that he intended to buy Lots 11 and 12 but contends Estate of Daniel Green nor Defendant Ulysses Green has authority to convey these lots as they belong to the heirs of

Ernestine Green. Ulysses Green testified that Daniel Green was married to Ernestine Green, also known as Ernestine Price at the time of her death. Plaintiff's witness, Vince Lyde, a title abstractor whom had researched the title abstract of Lot 3, Lot 11 and Lot 12, and the probate files for Daniel Green and Ernestine Price testified that the probate files of the Estate of Ernestine Price does not indicate a husband and list her only heirs as her two sons, Thomas Price and Larry B. Green. Plaintiff contends that his damages consisting of repairs to Lots 11 and 12 and loss of revenue for the duration of action which can only be compensated by awarding him Lot 3 which has greater market value. Defendant Ulysses Green contends that Lot 3 should be retained by him as the only heir of the Estate of Daniel Green. All other heirs of Daniel Green or heirs of Ernestine Green have quitclaimed their interest to Ulysses Green or have defaulted in the current action.

Defendant Ulysses Green contends, as is further noted in his memorandum of law filed and served on October 6, 2010, that Plaintiff is not entitled to relief on any of his claims. Defendant Ulysses Green argues that the Plaintiff received no title to Lot 3 or Lots 11, and 12 and thus not entitled to either parcel quieted in the Plaintiff. He points out that under South Carolina Law, "[e]xcept where the will of the decedent authorized to the contrary, a personal representative may not sell real property of the estate except as authorized pursuant to the procedure described in section 62-3-1301, et. Seq." S.C. Code 62-3-711(b). Here, Daniel Green's will did not authorize the personal representative to sell any real property. Though the Probate Court ordered a sale pursuant section 62-3-1301, et. Seq., the ordered sale was of Lot 3, not 11 and 12, which was the property described in the deed. According to Defendant Ulysses Green's

argument, Harriet Felder never received title to any property subject of this case and thus could not mortgage any such property, so that Aurora Loan services foreclosure resulted in no title being conveyed out therefrom to Aurora Loan Services; thus Aurora Loan Services has no title to convey to Plaintiff. Defendant Ulysses Green maintains that the Plaintiff is not entitled to reformation of any deed at issue here because the plaintiff is a buyer from a party that was itself a buyer at foreclosure sale and thus lacked privity with Harriet Felder and with the Estate of Daniel Green. Finally, Defendant Ulysses Green argues that a person cannot claim that he is a bona fide purchaser status if his grantor never had title to the property and as Aurora Loan Services never acquired title to Lot 3 or Lots 11 and 12, the Plaintiff cannot claim that he is a bona fide purchaser for value without notice. Defendant Ulysses Green moved for a directed verdict or involuntary nonsuit at the close of the Plaintiff's evidence on the these grounds, which he renewed at the close of all evidence. The Court denied these motions.

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The Plaintiff argues that the public records showed that the Estate of Daniel Green was authorized by the Probate Court to sell property to pay several debts. That erroneously the Probate Order provided for the sale of Lot 1 and Lot 3. All parties agree that Lot 1 was not part of the estate but it is not clear from the records if the Probate Court intended Lot 11 and 12 rather than the erroneously listed Lot 1. Substantial repairs were initiated by Ulysses Green as Personal Representative to Lot 3 which were paid out of the sale at the closing. The Plaintiff's witness indicated that the records reflect an appraisal was done on Lot 3 in conjunction with the sale of a lot to Harriet Felter. All parties agree that Harriet Felter moved into Lot 3 after her loan closing. The

Estate for Daniel Green was paid the net proceeds; however, after Daniel Green failed to file an accounting with the Probate Court, he was removed as the Personal Representative. Although the deed and mortgage reflected Lots 11 and 12, all parties agree that Lot 3 is the lot Harriet Felter intended to purchase. Aurora Loan Services later foreclosed on Ms. Felter and named Lots 11 and 12 relying on its deed and mortgage for Lots 11 and 12. The Plaintiff disputes Defendant's argument that Aurora had no title to convey on any lots but Plaintiff argues instead that Aurora had a defective title which was curable. The Plaintiff has argued that Aurora Loan Service could have brought an action for reformation to correct the deed to Lot 3 based on the facts set forth above. Plaintiff argues he did not bring a reformation action but rather an action to quiet title, naming all parties that may have some interest in these lots, to clear up title to effected lots and resolve errors made at the various prior sales as well as the errors in the Estate of Daniel Green file in Probate Court and the foreclosure action in Master in Equity's Court. The Plaintiff argues that it would not be proper or equitable to allow Defendant Ulysses Green to regain ownership of Lot 3 after being paid in full for the repairs to Lot 3 and retaining all net proceeds to Lot 3 that were never distributed properly through the Estate of Daniel Green. Based on these facts and arguments, the Court denied Defendant's motions for directed verdict.

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8. It appears from the testimony and matters of public record that numerous errors were made in the conveyance of these lots which were not properly corrected in the Probate action nor the foreclosure action. Both Plaintiff and Defendant Ulysses Green have arguably "unclean hands" although Defendant's counsel disputes this reference. The Court is in somewhat of a quandary in that Plaintiff is seeking a lot (Lot

3) that he did not intend to buy and for which he did not pay market value and Defendant Ulysses Green was already fully compensated for the previous attempted sale of Lot 3 and now wants to retain title to it. Yet both of these parties are the last two remaining interested parties in this action and both have incurred substantial costs regarding protection of the property. Defendant Ulysses Green has paid delinquent property taxes on Lot 3 in the amount of \$4,682.29 to keep it from tax sale and Plaintiff indicates that he has expended approximately \$35,000.00 in numerous repairs and expenses on Lots 11 and 12. \$902.78 is currently due in taxes for Lots 11 and 12. It appears that a compromise on the relief would be fairest to the parties.

CONCLUSIONS OF LAW

The Court finds that it has jurisdiction over the subject matter as to Lot 3 and Lots 11 and 12, all located in Orangeburg County. The Court finds that it has jurisdiction over all persons necessary to render a decision in this matter.

IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the Plaintiff Willey Riley and Defendant Ulysses Green own jointly in fee simple and are entitled to quiet and peaceful possession of that certain parcel of land situated in the County of Orangeburg, State of South Carolina, and described as follows:

W/R

All that certain piece, parcel or lot of land, with dwelling and other improvements thereon, situate, lying and being in Orange Township, School District No. 5 (outside), the County of Orangeburg, State of South Carolina, being all of Lot 3 and the eastern half of Lot 2, as shown on a plat of property of H. A. Lyons made by H. Frank O'Cain, C.E., dated May 31, 1961, recorded in the office of the Clerk of Court for Orangeburg County, South Carolina, in Plat book 17 at Page 83, together having the following boundaries and measurements: Northwest by S.C. Highway S-38-796 and fronting thereon 135 feet. Northeast by property of Jones Terrace subdivision 135 feet and Southwest by remaining one-half portion of lot 2 on said plat 150 feet. The same being more fully shown and set forth on the above mentioned plat.

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Being the same property conveyed to Ernestine Price by deed of Willie Jones dated October 10, 1960, and recorded in Clerk of County for Orangeburg County on October 13, 1960, in Deed Book 235 at page 352.

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2. Plaintiff Willey Riley's and Defendant Ulysses Green's title to said real property is hereby forever quieted against any and all claims or demands of other Defendants, herein named, and any person claiming under them to any estate, right, title, lien, or interest in said real property.

3. All other Defendants are permanently enjoined and restrained from asserting any claim or interest in or to said real property or any part thereof.

4. The Plaintiff Willey Riley and Defendant Ulysses Green shall place both properties on the market through a realtor, that they can agree upon, and at a price for each lot as they can agree upon with consultation with their realtor.

5. Upon sale of the properties, certain costs shall be paid from the proceeds, including the closing costs, realtor fees and the Plaintiff Willey Riley shall be reimbursed

taxes paid on Lots 11 and 12 in the amount of \$902.78, upon proof of payment thereof, and Defendant Ulysses Green shall be reimbursed \$4,682.29, proof of payment thereof for delinquent taxes paid on Lot 3 then the net balance shall be distributed equally between the Plaintiff and the Defendant Ulysses Green. No offset shall be made for Plaintiff's prior improvements of the property as this will be reflected out of the increased sales price of the total lots; however, any improvements or repairs made by either party and with the advise of the realtor after the date of this order shall be reimbursed to the party incurring said cost from the sale prior to the net disbursements to Plaintiff and the Defendant Ulysses Green.

6. That in the event after 6 months from the date of this Order, these properties have not been sold, the Court shall order a public sale based on the terms set forth above to finally dispose this matter.



OLIN DAVIE BURGDORF
MASTER IN EQUITY
for Orangeburg County

Orangeburg, South Carolina
May 25, 2011