

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-000329

Julius Brazell,..... Appellant,

v.

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

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**FINAL BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT?
2. DID THE TRIAL COURT ERR IN HOLDING THAT THE CHAIN OF TITLE IS NOT CONTROLLING?
3. DID THE TRIAL COURT ERR IN RULING THAT THE APPELLANT FAILED TO PROVE PARAMOUNT TITLE AS A MATTER OF LAW?
4. DID THE TRIAL COURT PREMATURELY GRANT SUMMARY JUDGMENT?

## STATEMENT OF THE CASE

Appellant Julius Brazell commenced this action against Respondent Town of Chapin, South Carolina (“Town of Chapin”) and Defendant County of Lexington, South Carolina (“Lexington County”) (not a party to this appeal). (R. pp. 42-53.) Appellant’s Complaint sought injunctive and declaratory relief/judgment, an accounting, and actual damages for trespass arising out of his purchase of two parcels of real estate located in Lexington County, South Carolina at a tax sale. (R. pp. 1-9; 42-53.)

Respondent Town of Chapin and Defendant Lexington County both answered Appellant’s Complaint and the parties subsequently engaged in limited discovery. (R. pp. 54-84.) Respondent Town of Chapin subsequently moved for Summary Judgment. (R. pp. 10-31.)

This matter came before the Honorable William P. Keesley, Presiding Judge of the Eleventh Judicial Circuit on September 5, 2014. (R. pp. 85-102.) On January 21, 2015, Judge Keesley issued his Order granting Respondent Town of Chapin’s Motion for Summary Judgment. (R. pp. 1-9.) Appellant’s appeal timely followed. (R. pp. 103-113.)

## STATEMENT OF THE FACTS

Appellant Julius Brazell is a resident of Lexington County, South Carolina. (R. pp. 42-53). In 2011, Appellant purchased two separate parcels of property at a tax sale in Lexington County (R. pp. 1-9; 116-124.) These two pieces of property are more fully described at Tax Map Number: 001100-5-0011 (“Parcel 011”) and Tax Map Number: 001106-01-028 (“Parcel 028”).

These parcels are not located in the boundaries of the Town of Chapin, but are instead located in Lexington County near Lake Murray. (R. p. 95.) Appellant purchased

them for \$900.00 dollars and \$500.00 dollars respectively. (R. p. 2.) Appellant was provided with two valid tax deeds to these parcels signed by James R. Eckstrom, Treasurer of Lexington County. (R. p. 116-124.) The property was deeded to Appellant on or about July 1, 2011. (R. pp. 42-53.) These sales were valid and have not been questioned in any respect by Respondent Town of Chapin or Defendant Lexington County.

Following his purchase of these parcels, Appellant discovered that Parcel 028 contained Respondent Town of Chapin's sewer lift station, while Parcel 011 contained a road granting access to the pump station. (R. p. 2.) A dispute regarding the status of the pump station and the right of access to it ensued between the Appellant and the Respondent Town of Chapin. (R. pp. 114-115.) The parties attempted to resolve this matter but were unable to do so.

Appellant subsequently brought this action seeking declaratory and injunctive relief; an accounting as well as actual damages for trespass across his property by representatives of Respondent Town of Chapin to gain access to and/or reach the pump station; for damages caused by removal of barriers and chains he placed across the road; and for reasonable rent for past and continued use of the road across his property. (R. pp. 42-53.) Finally, Appellant's Complaint sought damages against the County of Lexington in the event it was determined that the County did not have authority to sell him the purchased property. (R. pp. 1-9; 42-53.)

## STANDARD OF REVIEW

The Appellate Court's standard of review in evaluating a summary judgment motion is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn there from. *Lattie v. SHS Enterprises, Inc.*, 390 S.C. 417, 389 S.E.2d 300 (Ct. App. 1990); *Gilmore v. Ivey*, 290 S.C. 53, 348, S.E.2d 180 (Ct. App. 1986). Summary Judgment is proper only when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. (Rule 56(c), SCRPC.) To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

## ARGUMENT

### **I. THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

#### **A. The Chain of Title is Not Controlling**

In granting the Respondent Town of Chapin's Motion for Summary Judgment, the Court relied exclusively on the chain of title attached to Respondent's motion and memorandum, finding that the chain of title was "dispositive of the issues before the Court." (R. pp. 5-6.) The Court's Order is clearly erroneous as the chain of title furnished by Respondent is not dispositive of the issues before the Court. Relying solely on the chain of title to decide this case ignores outstanding issues regarding how Appellant came to hold title to the property, how these properties came to be included in a Lexington County Tax Sale in the first place, and the effect of that tax sale on any existing liens and encumbrances on the property.

The chain of title relied upon by the Court with respect to these parcels clearly ignores the fact that the Appellant obtained title to the property from the Defendant Lexington County pursuant to a valid tax sale. (R. pp. 116-124.) The Trial Court's Order ignores the letter from Respondent's Attorney conceding that Appellant owned an interest in these parcels which he acquired at the Lexington County tax sale. (R. pp. 114-115.) At the hearing, counsel for the Appellant argued that additional factual development was needed to determine how Lexington County ended up with title to this property to convey at the tax sale and the effect of this ownership in any existing liens and encumbrances. (R. pp. 85-102.) The Trial Court ignored these outstanding factual issues in granting summary judgment. The Court's Order, ignoring these questions of fact is erroneous and should be reversed by this Court.

**B. The Trial Court Erred in Ruling that Appellant Failed to Prove Paramount Title as a Matter of Law**

The Trial Court ruled that Appellant failed to meet his burden of proving paramount title and that his claims fail as a matter of law. (R. pp. 8-9.) The Trial Court erroneously concluded as a matter of law that the Respondent Town of Chapin was the party in actual possession of the property at issue in this case. (R. p. 8.) The evidence presented before him at the hearing did not establish that fact. The Appellant asserted throughout these proceedings that he was in possession of the two lots he purchased. Therefore, the Court's reliance upon the cases of *Watson v. Suggs*, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993) and *Cummings v. Varn*, 307 S.C. 37, 413 S.E.2d 829 (1992) was misplaced. The evidence presented before Judge Keesley did not establish that Respondent and not Appellant was the party in actual possession of the disputed property.

Further, Judge Keesley's Order ignores the letter to Appellant from David Webster Knight which was submitted to him at the hearing. (R. pp. 114-115.) The letter which concedes and recognizes that the Appellant owns an interest in both lots 011 and 028 raises potential questions of fact, which were ignored by the Court.

The Trial Court erred in granting Respondent Town of Chapin's Motion for Summary Judgment based on paramount title failed as a matter of law. The Trial Court's Order should be reversed by the Court.

**C. Even if Respondent's Easement is Valid, the Trial Court Erred in Granting Respondent's Motion for Summary Judgment**

At the hearing before Judge Keesley, counsel for the Appellant informed the Court that this matter should be referred to the Master in Equity for a complete resolution of the issues raised by Appellant in his Complaint. (R. p. 97.) The Trial Court ignored the outstanding issues/questions of fact and ruled as a matter of law that Respondent Town of Chapin held a valid enforceable easement through the Appellant's property which was unaltered or unaffected by the events leading up to the Appellant's purchases of Parcels 028 and 011.

While the determination of the existence of an easement is a question of law, the question as to the extent of that easement is an action or equity. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (2008). Therefore, even if the Respondent holds a valid easement across Parcel 011, the Trial Court erred in its findings as to the extent or scope of this easement and his Order should be reversed by this Court.

#### **D. Summary Judgment is Premature**

At the hearing, counsel for Appellant requested to the Court that this matter be referred to the Master in order to sort out the chain of title and other issues pertaining to Appellant's property. Instead of referring this matter to the Master for further proceedings, the Court granted summary judgment. This was clearly erroneous and premature. The Court's Order should be reversed and this matter should be remanded to the Lower Court for further proceedings.

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no personal will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); *see also Hollowman v. McAlister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. BlueCross & BlueShield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002).

As set forth above, the Court's Order leaves many questions pertaining to this matter unanswered. For instance, while the Court went to great lengths to set forth the chains of title to these properties, the Court's Order is completely silent as to how Parcel 028 containing the pump station ended up involved in a foreclosure proceeding that resulted in Appellant obtaining clear title to it. Further, the Court's Order rules that the

Town of Chapin utilizes Appellant's property for a "public purpose," without any evidence being placed in the record to support this contention.

Clearly, further clarification is necessary to sort through the facts of this case prior to applying them to the applicable law. For this purpose, the Court's Order granting Summary Judgment is premature and should be reversed by this Court.

**CONCLUSION**

For the reasons set forth above the Court's Order granting Summary Judgment to Respondent Town of Chapin is clearly erroneous and should be reversed and remanded by this Court.

Respectfully submitted,



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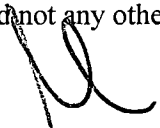
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**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Final Brief of Appellant contains all material proposed to be included by any of the parties and not any other material.



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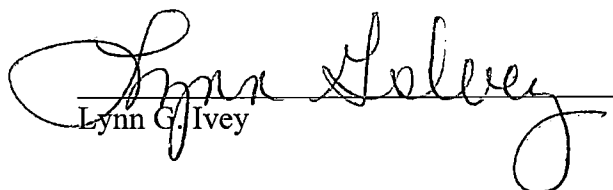
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**PROOF OF SERVICE**

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA certify that I have served the Final Brief of Appellant, on counsel of record for Respondents in this action by depositing a copy of same in the US Mail, postage prepaid, on December 10, 2015 to:

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