

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
The Honorable H. Clayton Walker, Jr., Special Referee

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SC Court of Appeals

Evelyn M. Lowery,

RESPONDENT,

V.

APPELLANT.

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

Patricia, H. Bentley, Janie Hall, Janie Douglas, Mary Bradlee, Elizabeth Hall, Teresa Pope, Devron Wright, Dyron J. Hall, Romelle Simpson, Estate of Alma Tilman, Ren Tilman, Chris Waiters, Bennie Evelyn M. Martin, William Martin, Mildred Bell McCray, John Lee Moore, William E. Bell, Minniette Malone Sims, Lorenzo Bell, Blanche B. Bell, Cerento Martin Eccles, Lucinda Bell Miller; and if any of the said Defendants are deceased, then their heirs or devisees at law, and all other persons claiming any right, title, interest in or lien upon the real estate described herein, and any unknown infants or persons in the military service hereby designated as a class John Doe or Jane Roe, (Of Whom Kevan Waiters is Appellant).

APPELLATE CASE NO. 2015-002243

**INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTERS**

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W. Harold Jones, v. Mandy Leagan, Jeff Leagan, James D. Owens and Helen M. Owens, SC Court of Appeals Opinion No. 4551, Filed May 27, 2009

In re: Estate of Atn burns Livingston, Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns Livingston and Emma Lou Martin v. Clyde B. Livingston, Miller Communications, Inc., Citibank South Dakota, N.A., Branch Banking and Trust Company of South Carolina; and American First Federal, 404 S.C. 137 744 S.E.2d 203 (2013).

South Carolina State Highway Department v. Estate of R.M. League, 251 S.C. 368 (1968), p. 371.

Rules Civ.Proc., Rules 17(f), 71(d)(1).

S.C. Code of Laws Section 15-61-20

S.C. Code of Laws Section 15-61-25

SC Rules of Evidence 801

STATEMENT OF ISSUES ON APPEAL

1. The Special Referee erred in declaring deeds executed by the heirs of the estate to be null and finding that there was no evidence to support a claim of adverse possession.
2. The Special Referee erred in failing to value the properties and the improvements of the lots assigned to the individual heirs with homes located on the property to determine whether they received more than their proportionate share of the joint property.
3. The Special Referee erred in admitting into evidence a handwritten statement allegedly written by Darryl Waiters, who was deceased at the time of the trial.
4. The Special Referee erred in concluding that the Appellant's family cut approximately \$8,189.00 of timber from the property during the pendency of this action.
5. The Special Referee erred in failing to allow Appellant and remaining co-Defendants as non-petitioning joint tenants or tenants in common the opportunity to purchase the property or share of the property prior to a trial pursuant to SC Code of Laws Section 15-61-25.
6. The Special Referee erred in valuing the property at \$1,200.00 per acre.
7. The Special Referee erred in proceeding with the partition action once he became aware that there were possibly heirs of one of the children of Ken Waiters, whose name was Beaudry, during the trial, which resulting in not protecting the interests of the unknown heirs who could have been incompetent or minors.

STATEMENT OF THE CASE

This case was commenced with the filing of a Summons and Complaint on or about August 23, 2005 to partition land owned by multiple generations of family members. An amended complaint was filed on or about November 23, 2005. The amended complaint included property conveyed to Can Waiters by deed of J.P. Williams filed in the Office of the Clerk of Court for Lancaster County, South Carolina on December 7, 1905 in Deed Book 0-2 at page 330. The amended complaint further included tracks of real property derived from that tract which had since been conveyed to third parties, including property conveyed to William C. Waiters, John Waiters, et.al. by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book D-6 at Page 6067 consisting of approximately 109 with Tax Map #130-00-28-00; property conveyed to William C. Waiters, et.al. by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book W-6 at Page 167, Deed Book Z-9 at Page 51, Deed Book 0-9 at Page 125 and Deed Book 51 at Page 329, consisting of approximately 30 with Tax Map #130-00-28-01; property conveyed to Bennie Evelyn M. Martin by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book C-6 Page 6149 consisting of approximately 1.673 acres with Tax Map #146-00-22.00; property conveyed to Mary L. Bailey, Eula N. Daniel, James C. Bell, Monique Thompson, Darrell Waiters, Phinessa R. Waiters, Dervin Bailey and William G. Bailey by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book 139 at page 82 consisting of approximately 2 acres with Tax Map #146-00-22.01; property conveyed to Janice W. Dixon by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book 134 at page 144 consisting of approximately 1 acres with Tax Map #146-00-22.02; property conveyed to Bennie Evelyn M. Martin and William Martin by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book J-0 at Page 34 consisting of

approximately 27.78 acres with Tax Map#146-00-22.03; property conveyed to Mildred Bell McCray by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book C-6 at page 6154 consisting of approximately 2.73 acres with Tax Map#146-00-22.04; property conveyed to John Lee Moore, Jr. by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book C-6 at page 6153 consisting of approximately 3.93 acres with Tax Map #146-00-22.05; property conveyed to William E. Bell by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book C-6 at page 6155 consisting of approximately 3.26 acres with Tax Map #146-00-22.06; property conveyed to Minniette Malone Sims by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book C-6 at page 6152 consisting of approximately 3.114 acres with Tax Map #146-00-22.07; property conveyed to Lorenzo and Blanche B. Bell by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book D-6 at page 572 consisting of approximately 1 acre with Tax Map #146-00-22.08; property conveyed to Cerento Martin Eccles by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book C-6 at page 6150 consisting of approximately 1.676 acres with Tax Map #146-00-22.09; property conveyed to Lucinda Bell Miller by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book E-6 at page 1811 consisting of approximately .4543 acres with Tax Map #146-00-22.10; and property conveyed to Chris Waiters by deed recorded in the Registry of Deeds for Lancaster County, SC in Deed Book 168 at page 214 consisting of approximately 2 acres with Tax Map #146-00-23.01. Plaintiff further filed for Injunctive Relief on or about November 23, 2005 regarding the above referenced properties seeking to prevent heirs and/or third parties from cutting timber from the properties or otherwise damaging, destroying or diminishing the values of said properties.

Plaintiff alleged that Can Waiters died intestate in 1906 in possession of above described properties, survived by his wife, Serena Waiters and nine (9) children, William Waiters, Maggie Waiters Sweet, Henry Waiters, Manuel Waiters, Eliza Waiters Thompson, Anna Waiters Hall, Annie B. Tilman, Boodley Waiters and Robert Waiters. Upon the death of Can Waiters one-third (1/3) of his interest in real property passed to his wife, Serena Waiters, and two-thirds (2/3) of his interest in real property passed to his children.

Plaintiff further alleged that Can Waiter's wife, Serena Waiters died intestate on December 24, 1926, leaving as her sole heirs her children above-named. Boodley Waiters and Robert Waiters, are believed to have died intestate, unwed and without children, however their date of death is unknown. Their interest in the subject real property passed to their seven siblings, William Waiters, Maggie Waiters Sweet, Henry Waiters, Manuel Waiters, Eliza Waiters Thompson, Anna Waiters, Hall and Annie B. Tilman, and their children.

William Waiters, son of Can Waiters, died intestate on October 7, 1951 survived by his wife, Mary Waiters and survived by six (6) children, Ella Ree Belk, Willie Mae James, William C. Waiters, Mary L. Bailey, Tommiecena Bascomb and James H. Waiters. Upon the death of William Waiters one-third (1/3) of his interest in real property passed to his wife, Mary Waiters, and two-thirds (2/3) of his interest in real property passed to his children.

Mary Waiters died intestate on June 4, 1964, leaving as her sole heirs her children above-named. It is further believed that Ella Ree Belk, daughter of William and Mary Waiters, died intestate on June 22, 1989 unmarried and survived by one (1) child, Wilhelmina Cook. Wilhelmina Cook, daughter of William and Mary Waiters died testate on September 15, 1999. The Estate of Wilhelmina Cook was administered in the Probate Court of Lancaster County, South Carolina Case Number 2000ES2900079. The interest of Wilhelmina Cook was devised in equal parts to Mary L. Bailey, and her living children James C. Bell,

Dervin W. Bailey and William G. Bailey, and to Eula N. Daniels and her living children Darrell Waiters, Monique Thompson and Phinessa R. Waiters.

Dervin W. Bailey died in April 2003, unmarried and without children leaving his mother Mary L. Bailey as his sole heir.

Willie Mae James, daughter of William and Mary Waiters, died intestate February 21, 1996 survived by her husband, Wyatt James and five (5) children, Eula M. Daniel, Pearl Mahjoub, Tommie Lee James, John Willie James and Crawford W. James. Upon the death of Willie Mae James one-half (1/2) of her interest in real property passed to her husband, Wyatt James, and one-half (1/2) of her interest in real property passed to her issue. Wyatt James, husband of Willie Mae James, died unmarried and intestate in 1997, the specific date which could not be determined, leaving his children as his sole heirs. Crawford W. James died intestate, unmarried and without children, leaving his siblings as his sole heirs.

Tommiecena Bascomb, daughter of William and Mary Waiters, died intestate after July 1, 1987, however, the specific date could not be determined, survived by her husband, Charlie Bascomb and one (1) child, Harold Bascomb and predeceased by three (3) children, Cynthia Williams, Yolanda McPhaul and Kathy Bascomb. Upon information and belief, upon the death of Tommiecena Bascomb one-half (1/2) of her interest in real property passed to her husband, Charlie Bascomb, and one-half (1/2) of her interest in real property passed to her issue.

Cynthia Williams, daughter of Tommie Cena Bascomb and Charlie Bascomb, died intestate on January 11, 1990, unmarried and survived by two (2) children, Nakia Williams, and Nerisse Williams, as her sole heirs.

Yolanda McPhaul, daughter of Tommie Cena Bascomb and Charlie Bascomb, died intestate, however, the specific date could not be determined, unmarried and survived by two (2) children, Carlton McPhaul and DonnelJ McPhaul, as her sole heirs.

Kathy Bascomb, daughter of Tommiecena Bascomb and Charlie Bascomb, died intestate, however, the specific date could not be determined, unmarried, without children, leaving her father, Charlie Bascomb as her sole heir.

James H. Waiters, son of William and Mary Waiters died intestate on September 9, 2000, survived by his wife Idell R. Waiters, and by six (6) children, Ella R. Waiters, Eddie Waiters, Elizabeth Ann Moore, Donald Waiters, Brenda Wade and Glenda Waiters, and predeceased by one (1) child, Willie James Waiters. Upon the death of James H. Waiters one-half (1/2) of his interest in real property passed to his wife, Idell R. Waiters, and one-half (1/2) of his interest in real property passed to his issue.

Willie James Waiters, son of James Henry Waiters and Idell R. Waiters, died intestate on or about March 2, 2003, unmarried, survived by two (2) children, Wilric Waiters and Jaquanda Hammond, as his sole heirs. Jaquanda Hammond, daughter of Willie James Waiters, died intestate, unmarried, leaving her brother Wilric Waiters as her sole heir. The one-seventh (1/7) undivided interest that William Waiters inherited from the estate of Can Waiters is now owned by the heirs of William Waiters as follows:

Mary L Bailey	5/24
James C. Bell	1/48
William Bailey	1/48
Eula M. Daniels	3/48
Darrell Waiters	1/48
Monique Thompson	1/48
Phinessa R. Waiters	1/48
Pearl Mahjoub	1/24
Tommie Lee James	1/24
John William James	1/24
William C. Waiters	5/24
Charlie Bascomb	5/48
Harold Bascomb	1/48
Nakia Williams	1/96
Nerisse Williams	1/96
Carlton McPhaul	1/96
Donnell McPhaul	1/96
Idell R. Waiters	1/12
Ella R. Waiters	1/84
Eddie Waiters	1/84

Elizabeth Ann Moore	1/84
Donald Waiters	1/84
Brenda Waiters	1/84
Glenda Waiters	1/84
Wilric Waiters	1/84

Maggie Waiters Sweet, daughter of Can Waiters, died intestate on January 10, 1949, survived by her husband, William Sweet and survived by six (6) children, Dorothy Johnson, Eva Johnson, Maggie Sweet, Marie Richardson, Clifford Sweet and Herman Sweet. Upon the death of Maggie Waiters Sweet one-third (1/3) of her interest in real property passed to her husband, William Sweet, and two-thirds (2/3) of her interest in real property passed to her children. That upon information and belief, William Sweet died in October 1987 intestate and unmarried.

Dorothy Johnson, daughter of Maggie and William Sweet, is a resident of Crossett, Arkansas. Eva Johnson, daughter of Maggie and William Sweet, died intestate March 5, 1931, unmarried, and was survived by three (3) children, Ruth Jordan, Ronald Sweet and Donald Johnson, as her sole heirs. Maggie Sweet, daughter of Maggie and William Sweet, died intestate on December 5, 1948, unmarried, without children, leaving her parents, Maggie and William Sweet, as her sole heirs. Marie Richardson, daughter of Maggie and William Sweet, died intestate March 22, 1996, unmarried, and survived by five (5) children, David Lee Richardson, Raymond Richardson, Lafayette Richardson, Jr., Robert C. Richardson and Bill Moses, as her sole heirs.

Clifford Sweet, son of Maggie and William Sweet, died intestate August 18, 1994, unmarried, a resident of Las Vegas, Nevada, survived by one (1) child, Margaret Jones, as his sole heir. Herman Sweet, son of Maggie and William Sweet, died intestate August 14, 1974, unmarried and survived by one (1) child, Herman Sweet, Jr., as his sole heir. The one-seventh (1/7) undivided interest that Maggie Waiters Sweet, inherited from the estate of Can Waiters is now owned by the heirs of Maggie Waiters Sweet as follows:

Dorothy Johnson	1/5
Ruth Jordan	1/15

Ronald Sweet	1/15
Donald Johnson	1/15
David Lee Richardson	1/25
Raymond Richardson	1/25
Lafayette Richardson, Jr.	1/25
Robert C. Richardson	1/25
Bill Moses	1/25
Margaret Jones	1/5
Herman Sweet, Jr.	1/5

Henry Waiters, son of Can Waiters, died intestate on December 13, 1966 survived by his wife, Bessie Waiters and survived by seven (7) children, Irene Watts, David H. Waiters, Harry L. Waiters, Evelyn M. Lowery, Clairee Addison, Mary E. Coleman and John C. Waiters.

John H. Coleman and Rosa L. Burk and their descendants are named as defendants because the descendants of John H. Coleman and Rosa L. Burk may claim that John H. Coleman and/or Rosa L. Burk are lawful children of Henry Waiters. However, upon information and belief, as of the date of the filing of this complaint, no one purporting to be a child of Henry Waiters has obtained an Order from any Court of Competent Jurisdiction declaring them to be the child of Henry Waiters. Therefore, John H. Coleman and Rosa L. Burk and their descendants and persons claiming an interest in the subject property through them should be excluded as heirs of Henry Waiters.

Upon the death of Henry Waiters one-third (1/3) of his interest in real property passed to his wife, Bessie Waiters, and two-thirds (2/3) of his interest in real property passed to his children. That upon information and belief, Bessie Waiters, died unmarried and intestate on April 24, 1982 leaving her seven (7) children as her lawful heirs. John H. Coleman, who may be alleged to be the son of Henry Waiters, died intestate on June 22, 1989, unmarried, and survived by three (3) children, Eloise Coleman, Hazel Mae Coleman and Loretta Coleman, and predeceased by four (4) children, John H. Coleman, Jr., Betty Coleman, Nathaniel Coleman and Dave Coleman.

John H. Coleman, Jr., son of John H. Coleman, died intestate in February 1971, unmarried and

without children. Betty Coleman, daughter of John H. Coleman, died intestate, June 1, 1991, unmarried and survived by four (4) children, Reginal Coleman, Ronald Coleman, Michael Coleman and Sharon Coleman. Nathaniel Coleman, son of John H. Coleman, died intestate on October 16, 1995, unmarried, survived by five (5) children, Tammy Coleman, Bridgette Coleman, Deifreda Coleman, Phillip Hatchet, and Iceola Weeks. Dave Coleman, son of John H. Coleman.

Rosa L. Burt, who may be alleged to be the daughter of Henry Waiters died intestate, unmarried, survived by one (1) son, Charles Burt.

Irene Watts, daughter of Henry and Bessie Waiters, died intestate on September 22, 1977 survived by her husband, Lester Watts and survived by one (1) child, Theodore R. Brewer. Thereafter, Lester Watts died unmarried leaving Theodore R. Brewer as his sole heir.

David Henry Waiters, son of Henry and Bessie Waiters, died intestate on November 14, 1955 survived by his wife, Leola Waiters, and survived by two (2) children, Betty J. Catoe and Tommie L. Waiters. Upon information and belief, upon the death of David Henry Waiters one-third (1/3) of his interest in real property passed to his wife, Leona Waiters, and two-thirds (2/3) of his interest in real property passed to his issue.

Tommie L. Waiters, son of David Henry Waiters, died intestate on March 1, 1990, unmarried and without children, leaving his mother, Leona Waiters, as his sole heir. Thereafter, upon information and belief, Leona Waiters died intestate and unmarried.

Harry L. Waiters, son of Henry and Bessie Waiters, died intestate on March 22, 1983 survived by his wife, Carrie Waiters, and survived by eleven (11) children, Ernest L. Waiters, Irene Carr, Janice Dixon, Donald F. Waiters, Rayford J. Waiters, Carolyn McKenny, Larry Waiters, Denise Allen, Kevin Waiters, Ginger Ann Waiters and Harry Waiters, Jr. Upon information and belief, upon the death of Harry L. Waiters one-third (1/3) of his interest in real property passed to his wife, Carrie Waiters, and two-thirds (2/3) of his

interest in real property passed to his issue. Harry Waiters, Jr., son of Harry L. Waiters, died intestate, unmarried, and survived by two (2) children, Harry Waiters, III, and Deshone Waiters, as his sole heirs.

Evelyn M. Lowery, the Plaintiff in this action, is the daughter of Henry and Bessie Waiters, and is a resident of Lancaster County, South Carolina.

Clairee Addison, daughter of Henry and Bessie Waiters, died intestate February 4, 1971, survived by her husband, Willie W. Addison and two (2) children, Bessie M. Waiters and Linda D. Addison. Upon information and belief, upon the death of Clairee Addison one-third (1/3) of her interest in real property passed to her husband, Willie W. Addison, and two-thirds (2/3) of her interest in real property passed to her issue.

Mary E. Coleman, the daughter of Henry and Bessie Waiters, is a resident of Buffalo, New York.

John C. Waiters, the son of Henry and Bessie Waiters, is a resident of Lancaster County, South Carolina.

Eliza Waiters Thompson, daughter of Can and Serena Waiters, conveyed all of her interest in and to the subject property to Henry Waiters by deed dated August 16, 1948 and filed in the Office of the Registry of Deeds for Lancaster County, South Carolina on August 16, 1948. Therefore, upon information and belief, the one-seventh (1/7) undivided interest that Eliza Waiters Thompson inherited from the estate of Can Waiters is now owned by the heirs of Henry Waiters. Therefore, the two-sevenths (2/7) undivided interest that Henry Waiters inherited from the estate of Can Waiters and acquired from Eliza Waiters Thompson is now owned by the heirs of Henry Waiters as follows:

Theodore R. Brewer	1/7
Estate of Leona Waiters	3/28
Betty J. Catoe	1/28
Carrie Waiters	1/21
Ernest L. Waiters	22/231
Irene Carr	22/231
Janice Dixon	22/231
Donald F. Waiters	22/231

Rayford J. Waiters	22/231
Carolyn McKenny	22/231
Larry Waiters	22/231
Denise Allen	22/231
Kevin Waiters	22/231
Ginger Ann Waiters	22/231
Harry Waiters, III	11/231
Deshone Waiters	11/231
Evelyn Lowery	1/7
Willie W. Addison	1/28
Bessie M. Waiters	1/28
Linda D. Addison	1/28
Mary E. Coleman	1/7
John C. Waiters	1/7

Manuel Waiters, son of Can Waiters, died intestate on January 7, 1919, survived by his wife, Josephine Waiters and survived by one (1) child, Anna B. Waiters. Upon the death of Manuel Waiters one-third (1/3) of his interest in real property passed to his wife, Josephine Waiters, and two-thirds (2/3) of his interest in real property passed to his child, Anna B. Waiters. That upon information and belief, Josephine Waiters died intestate and unmarried, leaving Anna B. Waiters as her sole heir. Anna B. Waiters, daughter of Manuel and Josephine Waiters, died unmarried and without children in Buffalo, New York. The one-seventh (1/7) undivided interest that Manuel Waiters inherited from the estate of Can Waiters is now owned by the heirs of Manuel Waiters as follows:

Estate of Anna B. Waiters 100%

Eliza Waiters Thompson, daughter of Can Waiters, died intestate in 1968, however, the specific date could not be determined, survived by her husband, Phelix Thompson and survived by one (1) child, Robert Thompson. Upon the death of Eliza Waiters Thompson one-third (1/3) of her interest in real property passed to her husband, Phelix Thompson, and two-thirds (2/3) of her interest in real property passed to her child, Robert Thompson. That upon information and belief, Phelix Thompson died intestate on December 8, 1971, unmarried, leaving Robert Thompson as his sole heir.

Robert Thompson, son of Eliza and Phelix Thompson, died intestate March 9, 1973, survived by his wife, Ophelia Thompson, and survived by three (3) children, William Paul Thompson, Bobby Ray Thompson and Horace Lee Thompson, and predeceased by one child, Andrew D. Thompson. Upon information and belief, upon the death of Robert Thompson one-third (1/3) of his interest in real property passed to his wife, Ophelia Thompson, and two-thirds (2/3) of his interest in real property passed to his issue. That upon information and belief Ophelia Thompson died intestate and unmarried on January 20, 2003, leaving her issue as her sole heirs.

Andrew D. Thompson, son of Robert and Ophelia Thompson, died intestate February 17, 1971, unmarried, without children, leaving his mother, Ophelia Thompson, as his sole heir.

Eliza Waiters Thompson conveyed all of her interest in and to the subject property to Henry Waiters by deed dated August 16, 1948 and filed in the Office of the Registry of Deeds for Lancaster County, South Carolina. The one-seventh (1/7) undivided interest that Eliza Waiters Thompson inherited from the estate of Can Waiters is now owned by the heirs of Henry Waiters as set forth above.

Anna Waiters Hall, daughter of Can Waiters, died intestate on July 19, 1930, by her husband, James Hall and survived twelve (12) children, Jessie Hall, James Hall, Jr., Roy Hall, Issac Hall, John Hall, Elizabeth Caskey, Eliza Ferguson, Henry Hall, Oscar Hall, Can Hall, Casey Hall and Daniel Hall. Upon the death of Anna Waiters Hall one-third (1/3) of her interest in real property passed to her husband, James Hall, and two-thirds (2/3) of her interest in real property passed to her children. James Hall died intestate, in December 1973, unmarried, leaving his issue as his sole heirs. Jessie Hall, son of Anna Waiters Hall and James Hall, died intestate on May 7, 1991, unmarried, and survived by seven (7) children, Anna E. Perkins, Willie James Hall, Lena Tibbs, Levater Hall, Leonard Hall, Leotis Hall and Cecil Hall, as his sole heirs. Cecil Hall, son of Jessie Hall, died intestate March 20, 1982, unmarried, survived by one (1) child, Christine C. Hall, as his sole heir.

James Hall, Jr., son of Anna Waiters Hail and James Hall, died intestate on March 26, 2003, unmarried, survived by one (1) child, Alma R. Grant, as his sole heir.

Roy Hall, son of Anna Waiters Hall and James Hall, died intestate on April 1, 1997, survived by his wife, Pearl Hall, without children, leaving his wife, Pearl Hall, as his sole heir. Issac Hall, son of Anna Waiters Hall and James Hall, died intestate on April 19, 1997, survived by his wife Mary Hall, and four (4) children, Mark Hall, Kevin Hall, Doris Hall and Iris Hall. Upon the death of Issac Hall one-half (1/2) of his interest in real property passed to his wife, Mary Hall, and one-half (1/2) of his interest in real property passed to his issue.

John Hall, son of Anna Waiters Hall and James Hall, died intestate on October 19, 1978, survived by his wife, Lola Hall, and two (2) children, Jimmy L Hall, Sr. and Mary McWaters. Upon information and belief, upon the death of John Hall one-third (1/3) of his interest in real property passed to his wife, Lola Hall, and two-third (2/3) of his interest in real property passed to his issue. Jimmy L. Hall, Sr., son of John and Lola Hall, died intestate October 28, 1992, survived by his wife, Maggie Hall, and eight (8) children, Jimmy L. Hall, Jr., Lowarren Hall, Clifton Hail, Dywayne Hall, Marilyn Hall, Novella Hall, Lenonne Addison and Brendetta Hall, and predeceased by one (1) child, Stevie Wonder Hall. Upon the death of Jimmy L. Hall, Sr., one-half (1/2) of his interest in real property passed to his wife, Maggie Hall, and one-half (1/2) of his interest in real property passed to his issue.

Stevie Wonder Hall, son of Jimmie L Hail and Maggie Hall, died intestate in December 1998, unmarried, and survived by two (2) children, NaSheqeca Bekia Hall and Marquaivious Tramble Hall.

Mary McWaters, daughter of John and Lola Hall, died intestate, unmarried, and survived by (5) children, Sabrina McWaters, Renonia Church, Gwen McWaters, Jacqueline McWaters and Renee McWaters, as her sole heirs.

Elizabeth Caskey, daughter of Anna Waiters Hall and James Hall, died intestate January 27, 2003,

unmarried, survived by five (5) children, Connie C. Parker, Alice C. Truesdale, Eliza C. Truesdale, Roy Caskey and Randy Caskey, and predeceased by one (1) child, Leon Caskey, Jr., leaving her issue as her sole heirs. Leon Caskey, Jr., son of Elizabeth Caskey, died intestate June 3, 1996, survived by his wife, Maggie Caskey, and two (2) children, Leon Caskey and Sharon Harris.. Upon the death of Leon Caskey, Jr., one-half (1/2) of his interest in real property passed to his wife, Maggie Caskey, and one-half (1/2) of his interest in real property passed to his issue.

Eliza Furgerson, daughter of Anna Waiters Hall and James Bertha Hall, died intestate November 26, 2000, unmarried, and, survived by one (1) child, Casey Furgerson, as her sole heir.

Henry Hall, son of Anna Waiters Hall and James Hall, is a resident of Lancaster County, South Carolina.

Oscar Hall, Jr., son of Jessie and Bertha Hall, is a resident of Lancaster County, South Carolina.

Can Hall, son of Anna Waiters Hall and James Hall, died intestate on May 28, 1963, survived by his wife, Laura Mae Hall, and survived by two (2) children, Stanford Hall and Anna Hall. Upon information and belief, upon the death of Can Hall one-third (1/3) of his interest in real property passed to his wife, Laura Mae Hall, and two-thirds (2/3) of his interest in real property passed to his issue.

Casey Hall, son of Anna Waiters Hall and James Hall, died intestate on December 19, 1986, survived by his wife, Anna Hall, and survived by one (1) child, Patricia H. Bentley. Upon information and belief, upon the death of Casey Hall one-third (1/3) of his interest in real property passed to his wife, Anna Hall, and two-thirds (2/3) of his interest in real property passed to his issue.

Daniel Hall, son of Anna Waiters Hall and James Hall, died intestate on June 16, 1972, survived by his wife, Janie Hall, and survived by five (5) children, Janie Douglas, Mary Bradlee, Elizabeth Hall, Teresa Pope and Jerome Hall. Upon the death of Daniel Hall, one-third (1/3) of his interest in real property passed to his wife, Janie Hall, and two-thirds (2/3) of his interest in real property passed to his issue.

Jerome Hall, son of Daniel and Janie Hall, died intestate on June 10, 1997, unmarried, and survived by (3) children, Devron Wright, Dyron J. Hall and Romelle Simpson, as his sole heirs. The one-seventh (1/7) undivided interest that Anna Waiters Hall inherited from the estate of Can Waiters is now owned by the heirs of Anna Waiters Hall as follows:

Anna E. Perkins	1/84
Willie James Hall	1/84
Lena Tibbs	1/84
Levater Hall	1/84
Leonard Hall	1/84
Leotis Hall	1/84
Christine C. Hall	1/84
Alma R. Grant	1/12
Pearl Hall	1/12
Mary Hall	1/24
Mark Hall	1/96
Kevin Hall	1/96
Doris Hall	1/96
Iris Hall	1/96
Lola Hall	1/24
Maggie Hall	1/96
Jimmy L. Hall, Jr.	1/432
Lowarren Hall	1/432
Clifton Hall	1/432
Dywayne Hall	1/432
Marilyn Hall	1/432
Novella Hall	1/432
Lenonne Addison	1/432
Brendetta Hall	1/432
NaSheqeca Bekia Hall	1/864
Marquaivious Tramble Hall	1/864
Sabrina McWaters	1/240
Renonia Church	1/240
Gwen McWaters	1/240
Jacqueline McWaters	1/240
Renee McWaters	1/240
Connie C. Parker	1/72
Alice C. Truesdale	1/72
Eliza C. Truesdale	1/72
Roy Caskey	1/72
Randy Caskey	1/72
Maggie Caskey	1/144
Leon Caskey, III	1/288

Sharon Harris	1/288
Casey Ferguson	1/12
Henry Hall	1/12
Oscar Hall, Jr.	1/12
Laura Mae Hall	1/24
Stanford Hall	1/48
Anna Hall	1/48
Anna Hall (Casey Hall's widow)	1/36
Patricia H. Bentley	1/18
Janie Hall	1/36
Janie Douglas	1/90
Mary Bradlee	1/90
Elizabeth Hall	1/90
Teresa Pope	1/90
Devron Wright	1/270
Dyron J. Hall	1/270
Romelle Simpson	1/270

Annie Bell Tilman, daughter of Can Waiters, died intestate on February 18, 1919, survived by her husband, Eddie Tilman and survived by one (1) child, Ren Tilman. Upon the death of Annie Bell Tilman one-third (1/3) of her interest in real property passed to her husband, Eddie Tilman, and two-thirds (2/3) of her interest in real property passed to her child, Ren Tilman. That upon information and belief, Eddie Tilman died intestate prior to July 1, 1987, survived by his wife Alma Tilman and by Ren Tilman. Upon the death of Eddie Tilman one-third (1/3) of his interest in real property passed to his wife, Alma Tilman, and two-thirds (2/3) of her interest in real property passed to his issue. That upon information and belief, Alma Tilman died intestate, prior to July 1, 1987, without children.

Ren Tilman, son of Annie Bell Tilman and Eddie Tilman, is a resident of Detroit, Michigan.

The one-seventh (1/7) undivided interest that Annie Bell Tilman inherited from the estate of Can Waiters is now owned by the heirs of Anna Bell Tilman Waiters as follows:

Estate of Alma Tilman	1/9
Ren Tilman	8/9

Plaintiff further alleged that timber had been taken from the subject property and that monies paid for said timber have been placed in an account for the purpose of paying taxes and expenses for the management of the subject real property, and that the Defendants Carrie Lee Waiters, John Waiters and William Waiters were in possession of said funds. Plaintiff alleged that the Defendant Donald F. Waiters has cut and removed timber from the subject property, that said timber is the common property of certain parties hereto, and that the Defendant Donald F. Waiters and all persons should be restrained from cutting or removing timber from the subject property except with the authorization of the Court and that the Defendant Donald F. Waiters and any other person who cuts and removes timber from the subject property be held to account and for the value of the timber cut and removed from the subject property. Plaintiff asked for an accounting of the funds and requested that the Court take possession of the funds, and that said funds should be applied to the common expenses of the Plaintiff and Defendants in reference to the subject property and to help cover litigation costs.

Plaintiff asked the court to include the following parcels of land into the Estate of Cam Waiters and partition the same among his heirs, while allowing the heirs to purchase any shares that can't be partitioned:

- a. William C. Waiters, John C. Waiters, et. al.; Tax Map # 130-00-28.00, consisting of 109 acres, reference to Deed Book D-6 at Page 6067; and
- b. William C. Waiters, James H. Waiters, Willie Mae James, Wilhemina W. Cook, Tommie Bascomb, Mary L. Bailey and Pearl James; Tax Map # 130-00-28.01, consisting of 30 acres, reference to Deed Book D-6 at Page 6067, Deed Book W-6 at Page 167, Deed Book Z-9 at Page 51, Deed Book 0-9 at Page 125 and Deed Book 51 at Page 329; and
- c. Bennie Evelyn M. Martin; Tax Map # 146-00-22.00, consisting of 1.673: acres, reference to Deed Book C-6 at Page 6149; and
- d. Mary L. Bailey, Eula N. Daniel, James C. Bell, Monique Thompson, Darrell Waiters,

Phinessa R. Waiters, Dervin Bailey, William G. Bailey; Tax Map # 146-00-22.01, consisting of 2 acres, reference to Deed Book 139 at Page 82; and

e. Janice W. Dixon; Tax Map # 146-00-22.02, consisting of 1 acre, reference to Deed Book 134 at Page 144; and

f. Bennie Evelyn M. Martin and William Martin; Tax Map # 146-00-22.03, consisting of 27.78 acres, reference to Deed Book J-9 at Page 34; and

g. Mildred Bell McCray; Tax Map # 146-00-22.04, consisting of 2.73 acres, reference to Deed Book C-6 at Page 6154; and

h. John Lee Moore, Jr.; Tax Map # 146-00-22.05, consisting of 3.93 acres, reference to Deed Book C-6 at Page 6153; and

i. William E. Bell; Tax Map # 146-00-22.06, consisting of 3.26 acres, reference to Deed Book C-6 at Page 6155; and

j. Minniette Malone Sims; Tax Map # 146-00-22.07, consisting of 3.114 acres, reference to Deed Book C-6 at Page 6152; and

k. Lorenzo and Blanch B. Bell; Tax Map # 146-00-22.08, consisting of 1 acre, reference to Deed Book D-6 at Page 572; and

l. Cerento Martin Eccles; Tax Map # 146-00-22.09, consisting of 1.676 acres, reference to Deed Book C-6 at Page 6150; and

m. Lucinda Bell Miller; Tax Map # 146-00-22.10, consisting of 0.4543 acres, reference to Deed Book E-6 at Page 1811; and

n. Chris Waiters; Tax Map # 146-00-23.10, consisting of 2 acres, reference to Deed Book 168 at Page 214.

Plaintiff further asked that the Court divide the proceeds of the private sale of the subject real property and the proceeds from timber sales from the property among the owners of the property as their respective interests may appear after payment of the attorney's fees and costs.

Mark Grier, Esquire appeared on behalf of Plaintiff. Ronald Robbins appeared on behalf of Defendants. Christopher Mills appeared as Guardian Ad Litem for unknown Defendants. Kevaofan Waiters and Donald Frank Waiters appeared pro se.

Appellant believes a first trial was held on or about June 20, 2014 (referenced by Ronald Robbins on page 25 and 27 of the Transcript) before a Special Referee William t. Moody, who was subsequently disbarred. He was replaced by the Honorable H. Clayton Walker, Jr. and a trial was conducted on or about June 20, 2014.

The Court took testimony from Andy Harper, a real estate appraiser and broker. Mr. Harper testified as to the value of the property not including the timber. He testified that the land would be worth \$12 to \$1,400.00 per acre (Transcript page 11). He further testified that he based his valuation in part on similar properties in Heath Springs and Stoneboro, selling for approximately \$2,000.00 per acre. However, he also indicated about a "managed timber tract" indicating that no timber was being cut off of the property significantly dropping the value of the property. He testified that on Pleasant Hill tract, the purchaser was able to cut timber off the land and get approximately \$60,000 for the timber, with the total value of 125 acres sold for \$250,000.00. When speaking specifically about the heir property which is subject of this litigation, Mr. Harper testified that the "the only people that would be buying land down there would be either timber company or for hunting purposes." (Transcript, page 12). He further testified that there "is no hot demand" for property in this area. He also testified that "it had good road frontage" (Transcript page 12) but could not state the exact amount (Transcript page 14). Mr. Harper's exhibits were admitted without objections from Mr. Robbins and Mr. Mills.

Appellant would argue that the Mr. Harper's valuations were based on the parties selling the property to a timber company or hunters. The land in question is not equipped for hunting, and there isn't enough timber to interest a timber company. Without the interest of timber companies or hunters, the parties are left to divide the property into individual lots. Further, the

land in question is heir property surrounded by relatives of both Plaintiff and Defendants. The land has not been developed to include a water and/or sewer access or road access to the main county roads.

The Court took testimony from Phillip Smith, a licensed professional land surveyor. Mr. Smith testified about the cost of subdividing the property. He provided a rough estimate of \$6,000.00, which includes 12,600 linear feet at 43cents a foot for a total of \$5,400.00 plus \$600.00 for a creek on the property. This includes the perimeter. Mr. Smith testified that if there are other considerations if subdividing the remaining property including whether the timber was cut or he had to work around the timber. If the property were cleared, Mr. Smith estimated a cost of 40 cents a linear foot to divide the property, plus the cost of drawing up plats for each individual lot, and \$25 per lot to go through "Planning" to comply with zoning regulations.

Andy Harper and Phillip Smith were the only two experts questioned regarding the property. Appellant would argue that the valuations provided by the appraiser would be irrelevant if the land was to be subdivided into individual lots. Further, the values of both Mr. Harper and Mr. Smith failed to consider the cost of road access, and water and sewer access. Their testimony further takes into consideration the Court adding all lots, which are occupied by various heirs, back into the Waiters estate.

The Court took testimony from David McKittrick. Mr. McKittick testified as to his knowledge of working with timber. The Court admitted a "whole timber cruise survey" from a previous trial in this case. Mr. McKittrick testified that he looked at the Waiters heir property in 2013. He valued the remaining timber on the property to be worth \$50,000.00 and made an offer to purchase it for that price. He further estimated that approximately \$10,000.00 of timber had been cut from the property.

On cross examination by Appellant, the witness testified that it would take approximately 21 loads to remove \$10,000.00 worth of timber, and that with one man removing the timber it would take approximately one load per day or 21 approximate loads.

The Court took testimony from John C. Waiters who testified he has lived on the Waiters estate property for eighty years. He further testified that he assisted with creating a spread sheet, marked as Plaintiff's exhibit 2, which details the heirs of this estate and their percentages of interest (as indicated in the above summation of Plaintiff's complaint). He testified that Idell Waiters, Donald Waiters, John Willie James, Larry Waiters, Williams Waiters, Evelyn Waiters, Janice Dixon, Carrie Waiters, and he have homes located on the property (Transcript pages 51-55). He further testified that over the hundred years that the property has belonged to the Waiters estate, various deeds have been made and various pole had staked a claim to certain parts of the original 140 acre tract resulting in separate tax map numbers for many parts of the property (as outlined above in the summation of Plaintiff's complaint). He testified that these deeds were not proper and should be declared null, adding all parcels should be added back into and included as a part of the original Waiters estate.

The Court took testimony from Kevaofan Waiters. He testified that he is the son of Carrie Waiters, who has lived on the property for 73 years, and Harry Waiters. He testified that his father, Harry Waiters and his uncle, John Coleman, purchased an heir property (Transcript page 109) that was never cut out from the original tract. Based on this purchased, he and his mother assumed ownership of this property and did not consider it to be a part of or owned by the Waiters estate. He further testified that an attorney had advised he and his mother than so long as the separate their purchased tract of land from the 140 acres, she had free reign to cut timber an maintain the property. He testified filed that they cut small pulpwood timber, and

used it to pay taxes on the property during the '70s. He testified that at the last hearing, it was addressed that the land belong to Janice Dixon was going to be cut out of the estate, as well as the parcel belong to William C. Waiters. He testified that the property belonging to Chris Waiters that was foreclosed was purchased by Larry Waiters at the foreclosure sale. He also testified that "the property family members at the time signed off" on the deeds transferring property. (Transcript page 122). He testified that "the way from our previous hearing and still today," those particular deeds are legitimate deeds." (Transcript page 124) He testified that at the last hearing the "judge ruled that if it wasn't in writing" that the land had to be placed back into the Waiters estate once mortgages were paid off for heirs residing on the property, then "you couldn't do that". (Transcript page 122) Mr. Waiters' testimony supports the heirs position that they owned the land in a manner hostile to the Waiters estate, whether they alleged adverse possession as part of these proceedings.

Special Referee H. Clayton Walker, Jr. ordered that:

- a. Service was properly made upon all unknown persons by the proper publication of notice in The Lancaster News, and proof of that publication was filed with the clerk of court on August 20, 2013. The parties to this action are all persons who may claim a right, title to or interest in the real property described below.
- b. The real property which is the subject of this action is located in Lancaster County, South Carolina, being all of that property conveyed to Can Waiters (sic) by deed of J.P. Williams filed in the Office of the Clerk of Court for Lancaster County, South Carolina on December 7, 1905 in Deed Book 0-2 at Page 330, and being further described as follows:

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

and being bounded on the West by lands now or formerly of Mrs. Annie Wilson.
and including the following tracts of real property derived from said tract:

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

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

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

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

HOWEVER, LESS AND EXCLUDING: All of that property derived from the aforesaid conveyance from J.P. Williams to Cam Waiters, and being all of said lands lying and being south of Hoke Road, and being all of that piece, parcel and tract of land, being that fifty (50) acres, more or less, conveyed by Rena Stewart to Emanuel and Eliza Bell by deed recorded in the Register of Deeds for Lancaster County in Deed Book A at Page 285. Said property having been partitioned and divided between the heirs of Emanuel and Eliza Bell by Decree of William Catoe, Special Referee in the Court of Common Pleas Case No. 1976-CP-29-629, and in said lands are therefore not subject to this action. The Property described above, less the land identified as tax map number 146-00-23.01, is referred to in this Order as the Property.

- c. The interests in the Property are vested in the persons named on the attached exhibit 1 to this Order, and the percentage interest each person holds in the Property is set forth in the final column on the right-hand side of that exhibit.
- d. Over the course of many years, several persons have filed deeds which purport to subdivide the property and convey a specific portion to an individual. None of these deeds, which are identified in the legal description above, were properly executed by all

of the persons holding an interest in that portion of the Property at the time the deeds were executed.

- e. One of these deeds purports to convey the land designated as tax map number 146-00-23.01. Chris Waiters ("Chris") currently occupies the land, which he purchased from a third party. A prior owner had managed to obtain a mortgage on this land, which was foreclosed upon by Wachovia Bank. A notice of the sale in the foreclosure would have been published, and there is no evidence that any person contested that sale. Chris currently occupies a home located on that land, and title to that parcel should be quieted in his name as a grantor of the purchaser at foreclosure. The remaining deeds of portions of the property are void.
- f. No showing has been made by any other grantor to support a claim of adverse possession.
- g. The portion of the property surrounding these eight homes as shown on Exhibit 2 shall be subdivided in kind. The subdivision shall be accomplished in a fashion which leaves each residence in some areas surrounding it with access to a public road sufficient to comply with Lancaster County subdivision regulations. The parcel should be divided among the eight persons based on the percentages of each owner set forth in exhibit 1. If this division creates one or more lots that are not large enough to satisfy applicable subdivision regulations, the surveyor shall have the discretion to increase the size of that lot or lots as necessary to gain government approval. The surveyor accomplishing this work shall also have discretion in laying out the boundaries of each of the eight lots, taking into account topography and existing driveways and other improvements associated with each residence.

- h. A survey will also be necessary to facilitate a sale of the property under the terms set forth in this order. That cost may be paid out any remaining proceeds from the harvesting of timber on the property or from the proceeds of the sale of the remaining portions of the Property. The court will appoint a trustee to oversee and administer this process.
- i. The remainder of the property shall be subdivided as shown on the sketch attached to this order is Exhibit 2. This sketch creates opportunities for lots of various sizes to be purchased by family members. Persons wanting larger properties may purchase larger parcels, and will also be free to purchase multiple adjacent parcels and combine them. The intent of the court is to create a variety of opportunities for family members who wish to own part of the Property to have that opportunity.
- j. The court finds that the value of the Property without improvements and without timber which has been previously removed from the property is \$1200 per acre.
- k. The property shall be sold at a private auction, limited to the persons identified on Exhibit I and their children by blood or marriage. The auction shall be conducted under the supervision of the trustee to be appointed by the court, who shall have the power to contract with an auctioneer. The trustee is vested with the authority to determine the time the auction will take place, what notice will be given and how that notice will be given. The auction shall be conducted with a minimum price on each lot, and the amount of that minimum bid shall be determined by the trustee. A minimum bid will be required to eliminate the possibility of collusive bidding, since this is a private auction with a limited number of bidders. The purchasers at the auction shall be required to pay for deed preparation, deed stamps and filing fees assessed by the register of deeds for Lancaster County. Any parcels not sold at the private auction will be sold at a public auction on

terms approved by the trustee to be appointed.

- l. Proceeds of the auction will be placed into a common fund under the supervision of the trustee. Proceeds may be used to pay the costs of sale, including the cost of the auctioneer, the cost of providing notice, costs of survey, filing fees for subdivision approval if any, and other reasonable expenses associated with the duties of the trustee and the sale of the property. After paying all of these costs, all remaining funds will be distributed to the persons identified on Exhibit 1 who did not receive a distribution in kind in the proportionate shares shown on that document. Any payment due to Donald Waiters will be distributed pro rata to others until the sums due from him set forth hereinafter are paid in full.
- m. The fees and disbursements of counsel in this action shall be paid from a common fund. The actions taken by all counsel have been for and led to the benefit of all property owners. The expenses should therefore be borne by all parties through a common fund.
- n. The court therefore awards Chris Mills a total of \$5652 for fees and expenses. The court awards Mark Grier \$15,249.83 for fees and costs, and also directs that an additional \$3300 be paid to Plaintiff to reimburse her for added fees and costs that she advanced to Mr. Grier. The court awards Ronald Robbins \$14,974.94 in fees and costs, and also directs that \$4997 be paid to defendant John Waiters for fees and costs advanced by him.
- o. The special referee is charging a total of \$5000 for all fees and costs associated with services as special referee.
- p. Disbursements for these fees and costs shall be made out of the \$50,000 received for timber harvesting which is being held in the special referee's trust account. The remaining balance of those five shall be turned over to a trustee as soon as one is appointed by the court.
- q. Title to the Property is to be vested in the persons set forth on exhibit 1, that the deeds of

portions of the Property be set aside.

- r. Defendants Carrie Waiters and Donald Waiters pay \$8189 into the fund to be established as set forth above, that fees and costs be paid as set forth above and the remaining proceeds from the recent timber harvesting be paid over to the common fund when it is established.

This appeal followed.

ARGUMENT

1. The Special Referee erred in declaring deeds executed by the heirs of the estate to be null and finding that there was no evidence to support a claim of adverse possession.

The properties in question and the action filed by Plaintiff spans more than one hundred (100) years, with all of the original owners, their children, and many of their grandchildren having passed away. During the current action which lasted ten (10) years, other problems with deceased heirs and property transfers clouded the title to the properties and created more parties with some type of interest in the properties. Pinckney v. Atkins, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995).

A title searched would have revealed liens and other encumbrances associated with the property and make known any necessary parties with interest in the property. John Waiters (T. page 60, lines 11-24) indicated that only a small portion of the original tract of land hasn't been subdivided, sold for taxes or given a new tax number. He further indicates (T. page 62, line 22) indicates that previous deeds or divisions of the original tract of land are not proper. However, these deeds were granted to third parties, with possible consideration paid by those third parties, who would be interested and necessary parties and not made a party to this action. Any interested parties not named in Plaintiff's lawsuit would not be bound by the results of Plaintiff's litigation and could potentially file a future action. S.C. Code of Laws Section 15-61-20. Failure to name all necessary parties violated SCRPC 17(f). J.J. Lawter Plumbing v. Wen Chow Int'l Trade & Inv., Inc., 286 S.C. 49, 331 S.E.2d 789 (Ct. App. 1985).

There was testimony from all parties involved that the various family members had lived on the land for many decades, showing continuous, hostile, open, actual, notorious and exclusive

use and ownership of the land. All of the parties and other heirs recognized the individual lots of land and the accompanying homes to belong to the heir that lived in that home. All of the parties testified about the cutting of the timber on the property. All parties indicated that the land had been divided and deeded among the heirs resulting in separate tax map numbers for the lots, and resulting in Plaintiff asking for the deeds and other transfers to be declared null and void and have the property added back into the estate. All heirs testified as to the assumption of ownership by the living heirs residing on the original estate property. Kevofan Waiters testified that he understood from the first hearing that the parts of the estate that were removed from the various heirs living on the estate property “were actually removed from the estate, and that they wouldn’t be included in the hearing, the proceeding of this estate” (Transcript page 113). He testified as to the money spent maintaining the pond on the land and cleaning and maintaining the property. Each heir living on the property identified the property as belonging to the heir living on the actual property. He testified that there were eight heirs residing on the property with none of the home owners paying taxes, and that once the land was partitioned and subdivided each lot would be taxed separately causing a higher tax base. The Special Referee subsequently granted the homes with improvements to the respective heirs that lived in the homes. However, the parties further testified that the timber on the property had been cut by various family members dating back to Cam Waiters, the original owners. Until this action was started, there were no actions to stop the open use of the land, including the cutting of timber, by the heirs of Cam Waiters.

Further, Appellant alleges that the family members have assumed active, open, and hostile possession of the property for many for more than a century, granting certain possessory rights

through adverse possession, commonly referred to as “squatter’s rights”. Carl W. Mullis v. Annie Burns Winchester, 237 S.C. 487, 118 S.E.2d 61 (1961), p. 491, 496.

- 2. The Special Referee erred in failing to value the properties and the improvements of the lots assigned to the individual heirs with homes located on the property to determine whether they received more than their proportionate share of the joint property.**

The Special Referee allocated the parts of the property to the heirs who had their homes including improvements directly to those heirs. The Special Referee failed to require any appraisal or assessment of the values of those lots with any improvements to determine if those heirs were receiving their proportionate share of the estate property. (Franklin Pinckney v. Ruth P. Atkins, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995) (pp. 342-345).

“Generally, the court favors partition in kind when it can be fairly made without manifest injury to all co-tenants. Few v. Few, 242 S.C. 433, 131 S.E.2d 248 (1963); Bennett v. Floyd, 237 S.C. 64, 115 S.E.2d 659 (1960). In like manner, a court of equity may allocate a portion of the property under partition to one or more heirs while disposing of the remainder by sale. *Id.* Nevertheless, the division must be fair to all of the cotenants. See Pruitt v. Pruitt, 298 S.C. 411, 380 S.E.2d 862 (Ct.App.1989) (partition being equitable must be fair and equitable to all parties to the action).” (Franklin Pinckney v. Ruth P. Atkins, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995) (pp. 342-345).

3. The Special Referee erred in including in the record a statement allegedly written by Darryl Waiters, who was deceased at the time of the trial.

The statement was inadmissible, unauthenticated hearsay, which was not taken under oath nor was the witness cross examined. During the trial of this case, Plaintiff's submitted a written statement allegedly written by Darryl Waiters, who was deceased, to show that timber had been cut from the property. This statement is inadmissible hearsay under SC Rules of Evidence 801, in that the declarant was unavailable, had never testified under oath or been subject to cross examination by the opposing parties, and was offered to prove the truth of the matter asserted.

4. The Special Referee erred in concluding that the Appellant's family cut approximately \$8,189.00 of timber from the property during the pendency of this action.

John Waiters (T. page 95) testified that he did not know how much timber was cut. The Court can't place a value of any cut timber if there are no accurate recordings of the amount of timber cut. There are no records to contradict testimony that the cut timber was used to pay taxes on the property in question. The parties would have no obligation to repay monies used to pay the taxes on the properties. Further, Plaintiff testified (T. page 94) that the taxes were paid by family for approximately 10 years when he was not living on the property. Plaintiff has further requested reimbursement for his expenses towards to property. Any other contributing family members would be entitled to the same.

Appellant alleges that the Special Referee erred in relying on Darryl Waiters' alleged written statement and testimony from Andy Harper and David McKittick regarding the amount of

timber cut. There was no testimony as to when the particular timber was cut, the amount received for the timber, or whether the proceeds were used for the benefit of the property.

5. The Special Referee erred in failing to allow Appellant and remaining co-Defendants as non-petitioning joint tenants or tenants in common the opportunity to purchase the property or share of the property prior to a trial pursuant to SC Code of Laws Section 15-61-25.

John Waiters testified (T. page 59) that the intent of the Plaintiffs and Defendants was to divide the land among the heirs. There was no intention to see “anybody get thrown out of their home” and the heirs were supposed to get their “home and some property with their home”. Pursuant to SC Code of Laws Section 15-61-25 (A), upon the “filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the non-petitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case.” Estate of Livingston v. Livingston, p. 148. “The non-petitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.” Section (B) provides that “in the even the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more real estate appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment.” Neither appellant or the remaining Defendants were made aware of or given the opportunity to purchase the property or even a portion of the property. After the conclusion of the action, the approximately \$50,000.00 expected from the sale

of timber will be used to pay legal fees and costs. Appellant and the remaining co-Defendants who want any of the property will be forced to purchase it at a private auction, without the benefit of timber. They would further be forced to pay survey and plat expenses, tax deeds, road access and sewer expenses out of pocket. Appellant has been opposed to the selling of this property throughout the litigation in this case. Appellant and the remaining co-defendants were also entitled to an evidentiary hearing to address any disputes regarding the proposed valuation of the property after appraisal.

The division of property in partition action must be fair to all heirs with an interest in the property. Pinckney v. Atkins, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995).

6. The Special Referee erred in valuing the property at \$1,200.00 per acre.

Andy Harper testified that his comparison of values was based on land that was in high demand by “timber companies or people buying it for hunting purposes. (Transcript page 12). However, the land in question falls into neither category. It is unimproved heir property that Appellant family has maintained by routinely cutting timber to pay expenses associated with the property, making it unattractive for timber companies. There is no active sewer system or access roads allowing all areas of the land to reach the main roads. Additionally, it isn’t equipped with sufficient wildlife to attract hunters. By Mr. Harper’s testimony, there is “no hot demand” for the land which is the subject of this suit, unlike the comparison properties which were good for timber or hunting. (Transcript page 12). The witness testified about the frontage road, however, failed to provide a clear estimate for dividing tracts, zoning approval, providing sewer system to tie in with the county sewer system, cost of taxes associated with individual lots, or road access to tie in with county roads. Appellant testified that there would be additional costs tied to partitioning the land.

Failing to properly value the land, improvements including timber, or expenses was reversible error and not fair to all parties. Pinckney v. Atkins, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995).

The price for the property should be based on property with “elements of similarity which must be shown relate, generally, to location and character of the property and conditions surrounding the sale” and “that location, usability and character of other land was sufficiently similar” to the land in question. South Carolina State Highway Department v. Estate of R.M. League, 251 S.C. 368 (1968), p. 371.

- 7. The Special Referee erred in proceeding with the partition action once he became aware that there were possibly heirs of one of the children, Beaudry Waiters, during the trial, which resulting in not protecting the interests of the unknown heirs who could have been incompetent or minors.**

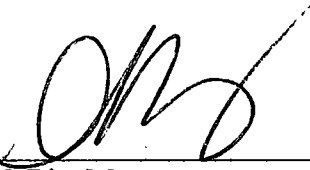
The Court was made aware of unknown heirs of a deceased party not made parties to the complaint which heirs could have been competent or perhaps minors, requiring protection of their interests in this property (Transcript page 67, line 12). Heirs at law of deceased owner were necessary parties to partition action should have been named as party defendants and served with the pleadings. Rules Civ.Proc., Rules 17(f), 71(d)(1). Pinckney v. Atkins, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995).

CONCLUSION

The judgment of the Special Referee should be reversed to allow Appellant and remaining co-Defendants to purchase the property or parts of the property prior to partition. Appellant

further asks the court to find that there is insufficient evidence to prove who cut timber from the property resulting in an unfair result to require specific family members to repay \$8,189.00 into the estate, considering testimony that the heirs had been cutting the timber for decades to benefit the property. The heirs of Beaudry Waiters should have been added as parties, and their interests protected. The value of the homes and improvements should have been appraised prior to granting possession and title to the heirs residing on the property. Appellant requests and order of this Court reversing the ruling of the Special Referee, properly valuing the property to include costs associated with dividing the property and allowing the Appellant and non-petitioning parties the right to purchase the property.

Respectfully submitted,



M. Rita Metts
Attorney for Appellant

This 6th day of April, 2016