

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

THE TRUSTEES AND STEWARDS )  
AND MEMBERS OF FIRST AFRICAN )  
METHODIST EPISCOPAL CHURCH )  
AND THE SEVENTH EPISCOPAL )  
DISTRICT OF THE AFRICAN )  
METHODIST EPISCOPAL CHURCH )  
AND REVEREND PAMELA M. )  
JACOBS, )

Plaintiffs, )

vs. )

FIRST AFRICAN METHODIST )  
CHURCH INCORPORATED AND )  
THE BOARD OF DIRECTORS, BOARD )  
OF STEWARDS AND BOARD OF )  
TRUSTEES AND MEMBERS OF FIRST )  
AFRICAN METHODIST CHURCH, )  
ALL JOINTLY AND SEVERALLY, )

Defendants. )

2016 JUN 23 PM 4:46  
M. HOPE CLAWSON

FINAL JUDGMENT AND ORDER

2008-CP-42-1022

RECEIVED

JUL 29 2016

SC Court of Appeals

This matter is before the Court by way of the Summons and Complaint of the Plaintiffs filed on February 25, 2008 and the Consent Order of Reference filed September 10, 2014. The case came before me for trial on May 23 and 24, 2016. The Plaintiffs were represented by Kenneth A. Davis of Boykin & Davis, Columbia, South Carolina and the Defendants were represented by Gary L. Compton of the Spartanburg County Bar.

The Complaint alleges nine (9) causes of action, all of which were abandoned at trial except for the fifth (5<sup>th</sup>) cause of action alleging title to real estate by adverse possession. The Defendants timely answered and counterclaimed, but the counterclaim was also abandoned at trial. The sole issue before the Court is whether the Plaintiffs are entitled to ownership of certain real

property, located in the City of Spartanburg ("the property") and presently titled to the Defendants, by adverse possession.

Prior to the taking of testimony, the parties entered into evidence as joint exhibits copies of deeds and mortgages pertaining to the property obtained from the Register of Deeds Office for Spartanburg County. Also admitted as a joint exhibit was a certified copy of the Non-Profit Corporation Articles of Amendment filed with the South Carolina Secretary of State on March 6, 2003. Thereafter, the Plaintiff presented the testimony of six (6) witnesses. At the close of the testimony, both parties made motions for a directed verdict.

### FINDINGS OF FACT

In 1889, the African Methodist Episcopal Church ("the Plaintiffs") purchased property on Magnolia Street in the City of Spartanburg and there established Trinity AME Church. This property was purchased by the AME Church Conference and was deeded to the Trustees of Trinity AME Church.

In 1972, a dispute arose among the Trinity membership. When the Plaintiffs re-assigned the pastor, Reverend Benjamin Glover, he and a group of Trinity members attempted to remove themselves and the church realty from the AME organization, including deeding the church property to another entity. The Plaintiffs filed suit, and by Order dated June 20, 1972, this Court held that the Trustees of Trinity AME Church were the proper owners of the church property, and that the Plaintiffs had the authority to appoint the pastor and determine the membership.

Subsequently, a group of Trinity members withdrew from the church. After meeting elsewhere for approximately one (1) year, these former members of Trinity ("the Defendants") purchased the property which is the subject of this action, which is the former

sanctuary and associated buildings of the Central Church of Christ, located at 504 North Church Street in the City of Spartanburg. The Defendants duly established First African Methodist Church, Inc. as a corporation with the South Carolina Secretary of State, and titled the property in the name of the corporation.

In 1974 or 1975, Reverend Glover resolved his differences with the Plaintiffs and accepted their offer of the presidency of Allen University, a college primarily supported by the Plaintiffs. Upon his departure, the parties began an association whereby the Plaintiffs would assign the Defendants an AME pastor, for whose salary the Defendants were responsible. The Defendants sent representatives to the Plaintiffs' annual conference and paid annual assessments. At some point, the Defendants began referring to their congregation as "First AME Church".

In the years since, the Defendants purchased additional parcels of land contiguous with the initial purchase. All of these purchases were made by the Defendant corporation except for a purchase in 2002, which property was at that time deeded to "First AME Church". However, a mortgage executed by the Defendant corporation contemporaneously covered this property as well as the property initially purchased containing the sanctuary. In order to insure that all of the property was titled in the name of the same entity which secured the mortgage, a corrective deed was executed by the original grantor and recorded in 2006.

All of the purchases of property and the execution of mortgages were done with the knowledge and consent of the Plaintiffs, even though their consent was required according to the doctrine and discipline of the AME church. At quarterly conferences conducted by the presiding elder, the Defendants were requested to convey the realty as required by the doctrine and discipline, but these requests were repeatedly refused. The Plaintiffs had actual and constructive

#3  
AK

knowledge that they did not own the property. The Plaintiffs paid no portion of the purchase price of the property, were not obligated on the mortgages and did not make the monthly payments.

In 2003, Non-Profit Corporation Articles of Amendment were filed with the South Carolina Secretary of State purporting to change the name of the Defendant corporation from First African Methodist Church, Inc. to First African Methodist Episcopal Church, Inc. The articles were executed by then-pastor Harold O. Wilson. However, AME pastors are not members of the church they serve, and Reverend Wilson was not authorized to act on behalf of the Defendant corporation when the Articles of Amendment were filed. Mr. Aaron Williams, who was Chairman of the Board of Trustees at that time, presented uncontradicted testimony, and I find, that no meeting was held by the trustees for that purpose as set forth in the Articles of Amendment.

The association between the parties continued until 2006, when another dispute developed between the Defendants and the pastor assigned to them by the Plaintiffs, Reverend Pamela Jacobs. Uncontradicted testimony indicated that the church became delinquent on its obligations, particularly the mortgage, and Reverend Jacobs had assumed complete control over the church's finances. The Defendants advised the Plaintiffs that they desired to discontinue their association. The Plaintiffs initially brought suit in Magistrate Court to regain entry onto the property, but that action was dismissed. The Plaintiffs thereafter instituted the present action.

#### APPLICABLE LAW

In order to constitute adverse possession which results in obtaining title to property, the possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period. Claimant's possession must be such as to indicate his exclusive ownership of the property. Not only must his possession be without subserviency to, or recognition of, the title of the true owner, but it must be hostile thereto and to the whole world. Mullis v. Winchester, 237

*SC 487, 118 SE 2d 61 (1961), South Carolina Code Section 15-67-210 et seq.* To invoke adverse possession, possession of property must be adverse and not permissive. A party who uses property with the knowledge and tacit permission of the owner could not establish that his possession of property was hostile, and thus, could not prove his claim of adverse possession. *Davis v. Monteith*, 345 SE 2d 724, 289 SC 176 (1986).

Adverse possession requires "hostile possession", that is, possession with intent to dispossess the owner; mere possession of land does not in and of itself manifest hostility toward the landowner. *Lusk v. Callaham*, 339 SE 2d 156, 287 SC 459 (1986). One who enters land under permission from the titleholder can never acquire an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the titleholder. *Young v. Nix*, 332 SE 2d 773, 286 SC 134 (1985).

**CONCLUSIONS OF LAW AND ORDER**

It is axiomatic that to establish title to real estate by adverse possession, the Plaintiffs must first establish that they actually possessed the property. That threshold requirement must be followed by proof of specific characteristics of the possession, which for our purposes here, are exclusivity and hostility. The "possession" of the Plaintiffs was, at best, a permissive use with the knowledge and consent of the record titleholder. Further, any such possession was not exclusive on the part of the Plaintiffs, nor was it accompanied by any attempt to dispossess the Defendants of their ownership. The court concludes, therefore, that the Plaintiffs failed to meet the burden of proving the essential elements of adverse possession, that the motion of the Defendants for a directed verdict should be granted, and that the motion of the Plaintiffs for a directed verdict should be denied.

J. H. E. BLACKLEY  
2016 JUN 23 PM 4:46



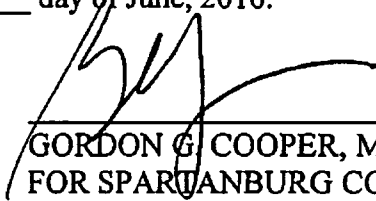
The court further concludes that the filing of the Articles of Amendment with the South Carolina Secretary of State in 2003 was an ultra vires act on the part of Plaintiffs' representative Reverend Harold Wilson, and the Secretary of State should be required to restore the name of the corporation to First African Methodist Church, Inc.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Complaint of the Plaintiffs is hereby dismissed with prejudice.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the counterclaim of the Defendants is hereby dismissed with prejudice.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Non-Profit Corporation Articles of Amendment filed with the South Carolina Secretary of State on March 6, 2003 are hereby declared null and void, and the Secretary of State is hereby ordered to restore the name of the Defendant corporation to First African Methodist Church, Inc.

**IT IS SO ORDERED** this 23<sup>rd</sup> day of June, 2016.

  
\_\_\_\_\_  
GORDON G. COOPER, MASTER-IN-EQUITY  
FOR SPARTANBURG COUNTY

Spartanburg, S. C.

A CERTIFIED COPY  
M. Hope Blackley  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY [Signature] D.C.  
DATED 6-23-16

2016 JUN 23 PM 4:46  
M. HOPE BLACKLEY

