THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scaborough, Master-in-Equity

Case No. 2012-CP-10-6835

Joanne S. Reed,.....Appellant

vs.

Harold Salters, Johnnie Salters, Darrel Martin, Sametta Heyward, James Salters, Charles Tyler, Margerette Brown, Danny Tyler, Joseph Tyler, Calvin Tyler, Willie Washington, David Tyler, George Grant, Olivia Heyward, Lisa Canady, Sylvia Grant Heyward, Janis Magwood, Tatum Grant, Abraham Grant, III, Lillian Sanders, Latricia Sanders-Roberts, Mary Sanders, Martha Sanders, Ruthie Mae Sanders Butler, Elizabeth Sanders, Georgiana S. Stone, Sandra S. Brown, Carolyn S. Hissong, George Sanders, Jr., William Sanders, Althea Salters, Sam Wes, Matthew Sanders, Eddie Sanders, JOHN DOE AND MARY ROE fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and RICHARD ROE and JANE DOE, fictitious names representing unknown heirs, devisees, distributes, or personal representatives of the following deceased persons The Estate of John Salters, Viola Salters, Evelina Salters Sanders, Christina Salters, Wesley Salters, Lula Salters, Dorthy Salters, James Salters, Mary Salters-Tyler, Josephine Salters, Vermel Martin, Sam Heyward, Helen Tyler, Henrietta Sanders Grant, Abraham Grant, Abraham Grant, Jr., Eddie Sanders, George Leroy Sanders, Dorothy S. Heyward,

of Whom

Jesse Townsend, Jr. a/k/a Jessie M. Townsend, Jr.....Respondent.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Factual and Procedural History

On October 16, 2012, the Plaintiff, Joann Reed a/k/a Joanne S. Reed, filed a suit to quiet title and partition by allotment for real property located at 5461 Salters Hill Road, Ravenel, Charleston County, South Carolina (Complaint dated October 16, 2012). Mrs. Reed is the daughter of Evelina Salters Sanders, and her maternal grandfather was John Salters a/k/a Grandfather Salters in the underlying matter. (Order Determining Heirs dated December 23, 2015). Upon subsequent information identifying the potential heirs identified as Defendants in this matter, Mrs. Reed, through her counsel, filed an amended suit to quiet title and partition by allotment for the same real property (Amended Complaint dated June 3, 2013). This matter was referred to the Master-in-Equity for Charleston County by Order dated March 4, 2014 (Consent Order of Referenced dated March 4, 2014). The Defendant, Jesse Townsend, filed an Answer and Counterclaim as to the original October 16, 2012 Complaint asserting a counterclaim of adverse possession as to a portion of the property identified as Lot C on an unrecorded 1981 plat and a claim that he held ownership rights through Great-Grandfather Salters (Answer and Counterclaim of Jesse Townsend dated December 4, 2014). Mrs. Reed and Mr. Townsend share the same great-grandfather but not the same grandfather (Order Determining Heirs dated December 23, 2015).

A hearing was held on August 17, 2015 at which time the Master-in-Equity addressed the ownership rights in the real property (Transcript of August 17, 2015 Hearing). At the August 17, 2015 hearing, it was determined that the Defendant, Jesse Townsend, had no familial lineage and no rights through such lineage to the subject real

property because it was Grandfather Salters and not Great-grandfather Salters who acquired the subject real property (Order Determining Heirs dated December 23, 2015).

The Defendant, Jesse Townsend, filed a Motion to Reconsider the Master-in-Equity's Order Determining Heirs (Motion to Reconsider Order filed January 6 dated January 15, 2016). The Plaintiff subsequently filed a Memorandum in Opposition to the Defendant Jesse Townsend's Motion to Reconsider indicating that Judge Scarborough prefaced his verbal ruling on the determination of heirs by requesting that either counsel provide him with any supplemental information to the contrary of the verbal ruling determining Mr. Townsend was potentially an heir (Plaintiff's Memorandum in Opposition to the Defendant Jesse Townsend's Motion to Reconsider dated March 9, 2016). Judge Scarborough reaffirmed his ruling in the Order Determining Heirs at the subsequent final hearing in this matter held on May 2, 2016 (Transcript of May 2, 2016 Hearing, pg. 141, Lines 23-25, pg. 142, Lines 1-10, pg. 149, Lines 3-14).

A final hearing was held on May 2, 2016 to determine if the Defendant, Jesse Townsend, met the necessary requirements for a claim to the subject real property by adverse possession (Transcript of May 2, 2016 Hearing). Mr. Townsend's claim of adverse possession was based on his occupancy of a mobile home on the subject real property along with his father's prior usage of a portion of the subject real property for the operation of a junkyard (Answer and Counterclaim of Jesse Townsend dated December 4, 2014). Judge Scarborough requested that counsel for the Plaintiff and the Defendant, Jesse Townsend, submit proposed orders before he made a final determination in the case (Transcript of May 2, 2016 Hearing). An order determining that the Defendant, Jesse Townsend, met the necessary requirements for adverse

possession was issued by Judge Scarborough on July 14, 2016 (Order dated July 14, 2016).

The Plaintiff, by her counsel, received the Master-in-Equity's Order on July 20, 2016. The Plaintiff then filed a Motion to Reconsider the Master-in-Equity's July 14th Order (Plaintiff's Motion to Reconsider dated July 25, 2016). The Defendant, Jesse Townsend filed an Objection to the Plaintiff's Motion to Reconsider (Defendant's Objection to Motion to Reconsider Order dated October 5, 2016). The Plaintiff subsequently filed a Memorandum in Support of her Motion to Reconsider (Plaintiff's Memorandum in Support of the Plaintiff's Motion to Reconsider Pursuant to Rule 59(e) SCRCP dated October 11, 2016). Judge Scarborough then held a hearing for the Motion to Reconsider on October 11, 2016. Judge Scarborough denied the Plaintiff's Motion to Reconsider by an Order dated October 28, 2016 (Order Denying Motion to Reconsider dated October 28, 2016).

The Plaintiff, by her counsel, received the Order Denying Motion to Reconsider on November 7, 2016. The Plaintiff filed her Notice of Appeal on November 15, 2016 (Notice of Appeal dated November 15, 2016).

STANDARD OF REVIEW

This is an action in equity, and appellate courts will review factual findings and legal conclusions in an equitable action *de novo*. *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). "De novo review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court's findings." *Id.* 392 S.C. at 390, 709 S.E.2d at 654. However, under this broad standard of review, the appellate court is not required to disregard the factual findings of the trial court or ignore the fact that the trial court is in a better position to assess the credibility of the witnesses. *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

"An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Bloody Point Property Owner's Ass'n v. Ashton*, 410 S.C. 62, 66, 762 S.E.2d 729, 731 (Ct. App. 2014) (quoting *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012)) see also *State v. McClinton*, 369 S.C. 167, 170, 631 S.E.2d 895 (2006). "The inartful use of an abuse of discretion deferential standard of review merely represents the appellate courts' effort to incorporate the two sound principles underlying the proper review of an equity case." *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423-24 (2014) (quoting *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655). "[T]hose two principles are the superior position of the [master] to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that..." the applicable evidentiary standard "...is against the finding of the [master]." *Id.* at 452, 759 S.E.2d at 424 (quoting *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655).

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE DEFENDANT JESSE TOWNSEND ADVERSE POSSESSION WHERE THE NECESSARY REQUIREMENTS FOR ALL FACTORS WERE NOT MET BY CLEAR AND CONVINCING EVIDENCE

The trial court improperly granted the Defendant, Jesse Townsend, adverse possession as to the real property that is the subject of the underlying lawsuit. The Master-in-Equity did not adequately address the elements of adverse possession in regards to Defendant Townsend in that two of the elements, hostility and exclusivity, did not meet the clear and convincing evidentiary standard applied to adverse possession.

"An adverse possession claim is an action at law." *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852, 854 (Ct. App. 2010) citing *Miller v. Leaird*, 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992). "In order to establish a claim of adverse possession, **the claimant must prove by clear and convincing evidence** his possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period." *McDaniel,* 386 S.C. 437, 688 S.E.2d at 855 citing *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.*, 358 S.C. 209, 229, 595 S.E.2d 253, 265 (Ct. App. 2004) (emphasis added). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts **a firm belief** as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt..." *Anonymous v. State Board of Med. Examiners*, 329 S.C. 371, 379, 496 S.E.2d 17 (1998) citing *Peeler v. Spartan Radiocasting, Inc.*, 324 S.C. 261, 478 S.E.2d 282, 283 n.4 (1996) (emphasis added).

A. THE DEFENDANT JESSE TOWNSEND DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE HIS CLAIM OF ADVERSE POSSESSION

The Defendant Jesse Townsend did not prove his affirmative defense of adverse possession by clear and convincing evidence as evidenced by the case law in South Carolina. See *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223, 225 (Ct. App. 1997); *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986); *Thomas v. Dempsey*, 53 S.C. 216, 31 S.E. 231 (1898). There is significant conflict between Mr. Townsend's own testimony from both the August 17, 2015 hearing and the May 2, 2016 as to his intent in occupying the subject real property. The evidence conflicts as to a potential belief on the part of Mr. Townsend that his father was an heir to the subject Property. See generally *Transcript of August 17, 2015 Hearing* and *Transcript of May 2, 2016 Hearing*.

> Attorney Brees: ...Mr. Townsend, referring to Lines 13 through 20, will you please clarify for the Court **who you received permission from to reside on the property in question.**
>
> Mr. Townsend: The heirs. Moses Middleton, Senior, who was in charge of the property; his cousin, Lula Salters, who was Joanne's aunt and she also helped with the tax bill, and some of the other older heirs.
>
> Attorney Brees: **So you had an actual conversation to request permission to reside on the property?**
>
> Mr. Townsend: **Right**. Because at that juncture my mother – my father was an heir.
>
> . . .

Attorney Brees: And on Lines 19 and 20, this is again her mother or her aunt, who is the mother that you're referring to there?

Mr. Townsend: Ms. Reed.

Attorney Brees: Ms. Reed's mother?

Mr. Townsend: Uh-huh.

Attorney Brees: And who is the aunt who is referred to there?

Mr. Townsend: Lula Lucas (sic).

Attorney Brees: Okay.

Mr. Townsend: I think her last name was Lucas.

Attorney Brees: Did you ever speak with Ms. Reed or anyone else?

Mr. Townsend: At that time she wasn't there. Her mother was still living.

Attorney Brees: And you spoke with her mother?

Mr. Townsend: Uh-huh.

Attorney Brees: You did? Do you recall if there was anybody else with you when you had that conversation?

Mr. Townsend: My father. Again, he was - - along with some of the others they were given the responsibility of being in charge of the property.

Attorney Brees: Was there ever anything documented in writing about your permission to reside on the property?

Mr. Townsend: Not other than the paperwork with the plat, which had to go through permission from Hollywood for that to happen.

. . .

Attorney Brees: **But it is your understanding that both you and your father received permission to reside on the property?**

Mr. Townsend: My father didn't live on the property. **I got permission for me to move my trailer on the property.**

. . .

Attorney Brees: Was it at the time that your father passed away that you asked for permission to reside on the property?

Mr. Townsend: No. It was before he died.

Transcript of May 2, 2016 Hearing, Page 15, Line 13 through Page 18, Line 21. (emphasis added).

The conflicting testimony above is enough for this Court to question if the Master-in-Equity, in reviewing this evidence, believed that such evidence is susceptible of but one inference, or if instead, it surmounts to an abuse of discretion in his assessment. See *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621, 623 (Ct. App. 1987) (emphasis added). The conflicting testimony from Mr. Townsend fails to meet the clear and convincing evidentiary standard necessary to establish a successful adverse possession claim.

1. THE DEFENDANT JESSE TOWNSEND DID NOT MEET THE REQUIREMENTS OF THE HOSTILITY ELEMENT OF ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE

The Master-in-Equity improperly found that the Defendant, Jesse Townsend met the clear and convincing evidentiary standard for the hostility element of adverse possession. The majority view in South Carolina as to the element of hostility evolved over the last several years. The Court in the present case addressed how the parties reconciled the permission granted to the Defendant, Jesse Townsend with the case of *Perry v. Heirs at Law and Distributees of Gadsden. Transcript of May 2, 2016 Hearing*, Page 6.

After further investigation, instead of examining *Perry*, the Court looks to the more recent case of *McDaniel v. Kendrick* which addresses the same hostility requirement as *Perry*. The question to the Court was whether "...there is no longer a hostility requirement where the claim is to an entire tract, or...[whether] South Carolina does in fact follow the majority view that the mental attitude of the possessor of the land is immaterial. **Under the majority view, an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the status of limitations has run."** 688 S.E.2d 852, 386 S.C. 437 (Ct. App. 2009) citing *Knox v. Bogan*, 472 S.E.2d 43, 322 S.C. 64 (1996) (emphasis added).

It is the lack of consent that surmounts to adversity for such a claim. Mr. Townsend repeatedly testified that he asked for permission from the heirs to occupy the Property. **If there was consent, then where is the adversity?** (emphasis added). Under a clear and convincing evidentiary standard, Mr. Townsend **must create a "firm belief"**

in the mind of the fact finder that his allegations are valid. See *Anonymous v. State Bd. of Med. Exam'rs*, 496 S.E.2d 17, 329 S.C. 371 (1998) (emphasis added). Mr. Townsend **does not meet this burden** as through his own repeated testimony it is evident that he always sought the permission of the owners to occupy the Property. See *Transcript of May 2, 2016 Hearing* and *Transcript of August 17, 2015 Hearing*.

"The majority view represents the most practical approach to the hostility requirement of adverse possession as in keeping with the national trend of authority." *Knox v. Bogan*, 472 S.E.2d 43, 47, 322 S.C. 64 (Ct. App. 1996) citing *South Carolina Law on Boundary Disputes*, 12 S.C.L.Q. 418, 424 (1960) (emphasis added). ***McDaniel* examined the Court's earlier analysis in Knox addressing the fact that the Court did not "...eliminate the hostility requirement when a party claims adverse possession of an entire tract of land.** The Court simply explained that **the hostility requirement is not necessarily predicated upon the claimant's conscience intention to possess the property against the true owner's wishes."** *Id.* at 855 (emphasis added).

In *Knox*, the Court held that there was a "...reasonable inference deducible from the evidence...that regardless of the intent of the original possessor in entering the tract, the Knoxes and their predecessor in title...intended to possess the tract with the intention of owning it exclusively and **without the actual or implied permission of anyone**." *Knox*, 472 S.E.2d at 48 (emphasis added). *Knox* is distinguished from the case at hand as the Defendant, Jesse Townsend provided significant testimony that he both sought and received permission to occupy the Property.

"A claimant may establish adverse possession if he occupies the property under the mistaken belief that it belongs to him." *Id.* (emphasis added). In *McDaniel*,

it was established that the party claiming adverse possession, Carolyn, always thought that the home was hers, and that she did not need to ask permission from the titleholder, Wendy. *Id.* **This is in sharp contrast to the case at hand where by Mr. Townsend's own testimony at two separate hearings, he indicated that he obtained "...permission from the heirs..." to reside on the property.** *Transcript of May 2, 2016 Hearing*, Page 15 (emphasis added).

The Court finds no testimony from Mr. Townsend that he is a titleholder to the Property or that he did not need to seek permission to occupy the Property. At all times throughout his occupancy and use, he sought permission to remain on the Property. See *Transcript of May 2, 2016 Hearing* and *Transcript of August 17, 2015 Hearing.* At the May 2nd hearing, Mr. Townsend testified that he had in-person conversations with the "heirs" to the subject Property including Moses Middleton, Senior, and Lula Salters. *Id.*

The testimony provided by Mr. Townsend and several family members throughout the May 2nd hearing indicate that both Mr. Townsend and his father were given explicit permission to occupy the Property. *See Id.*

> Mr. Townsend: My father operated a junkyard. We salvage cars.
>
> Attorney Brees: And when your father asked for permission to go on the property, you mentioned earlier, it was clarified for me. Did you mention earlier that the junkyard was something that he asked permission to do on the property?
>
> Mr. Townsend: Yes, after they quit farming.
>
> Attorney Brees: Okay. So it's your understanding that your father specifically asked for permission to operate the junkyard on a portion of the property?

Mr. Townsend: Yes.

Attorney Brees: After your father passed away, Mr. Townsend, did you continue to operate the junkyard on the property?

Mr. Townsend: Along with my brother, yes.

Attorney Brees: And do you currently operate the junkyard on the property today?

Mr. Townsend: Not as much as we did back then.

. . .

Attorney Brees: Okay. And I see some other houses that appear to be above as well, the property. Those are also other family members?

Mr. Townsend: Yes.

Attorney Brees: And below your mobile home I also see an additional home - - not below - - to the left of yours. Are you aware if that's contained or another mobile home? Are you familiar with that one?...

Mr. Townsend: It belongs to my brother.

Attorney Brees: And is it your understanding that this is on the property? Yes or no?

Mr. Townsend: Yes.

. . .

Attorney Brees: Okay. What other items are near that mobile home?

Mr. Townsend: Well, the junkyard.

Transcript of May 2, 2016 Hearing, Page 22, Line 15 through Page 24, Line 20.

Such conflicting evidence fails to meet the requirement of hostility by clear and convincing evidence because the fact finder cannot arise at a firm belief that the

claim meets all of the requirements of adverse possession. *McDaniel v. Kendrick*, 688 S.E.2d. at 856, 386 S.C. 437 (Ct. App. 2009) (emphasis added).

> Attorney Davis: And Moses Middleton owned a portion of the undivided interest in the property?
>
> Mr. Townsend: Yes.
>
> Attorney Davis: When Lula Salters agreed - - was it consistent that she was agreeing as a co-owner of the property - -
>
> Mr. Townsend: Yes.
>
> Attorney Davis: - - or was it consistent that she was the sole owner of the property?
>
> Mr. Townsend: No, she was a co-owner.
>
> . . .
>
> Mr. Stutts: Uncle Wesley Salters. He was living there.
>
> Attorney Davis: Was anybody else farming it?
>
> Mr. Stutts: Mr. Middleton. He was - - he had - - everybody had a little lot to plant who wanted to.
>
> Attorney Davis: Who was everybody? How many different people?
>
> . . .
>
> Mr. Stutts: There were two people that I know of were planting.
>
> Attorney Davis: Okay. But other people could have?
>
> Mr. Stutts: If they wanted to.
>
> *Transcript of May 2, 2016 Hearing, Page 36, Line 2 through Line 11; Page 92, Line 24 through Page 93, Line 9.*

McDaniel also brings to light a different analysis where an occupant enters the land with permission (or understood permission) from the owner and then claims adverse possession at a later time. *Id.* The time at which the clock starts running for the hostility requirement would be at such time when the occupant is asked to vacate the property and refuses to do so. *Id.* **The Defendant, Mr. Townsend, still fails to meet the hostility requirement for adverse possession if he does not actually hold the property adverse to the rights of the owners.** *Id.* (emphasis added).

The Plaintiff filed the within lawsuit in October 2012. *Complaint dated October 16, 2012.* Prior to that time, there is no evidence that the Defendant, Jesse Townsend, was asked to vacate the Property. See generally *Transcript of August 17, 2015 Hearing* and *Transcript of May 2, 2016 Hearing.* If the Court looks to the filing of this lawsuit as the first attempt to remove Jesse Townsend from the Property by the owners to said Property, then this filing date does not allow Mr. Townsend to meet the requisite statutory period for adverse possession regardless of his ability to meet the other requirements. *McDaniel* at 856. **Thus, Mr. Townsend fails to meet the requirements of the hostility element, thereby failing to prove his affirmative defense of adverse possession.**

2. THE DEFENDANT JESSE TOWNSEND DID NOT MEET THE REQUIREMENTS OF THE EXCLUSIVITY ELEMENT OF ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE

In addition to not meeting the requirement for hostility, the Master-in-Equity improperly found that Mr. Townsend met the requirement of the exclusivity element of adverse possession. "...An adverse claimant must occupy the land by exclusive possession, **which means that adverse possession must be such as to indicate his or her exclusive ownership of the property, and not only must his possession be without subservience to or recognition of the title of the true owner but it must be hostile thereto as to the whole world.** *Curtis v. DesChamps*, 350 S.E.2d 201, 290 S.C. 315 (Ct. App. 1986) citing *Mullis v. Winchester*, 118 S.E.2d 61, 237 S.C. 487 (1961); See also *Gregg v. Moore*, 85 S.E.2d 279, 281, 226 S.C. 366 (1954) citing 1 Am.Jur., *Adverse Possession*, Section 130 (emphasis added). Reading *Gregg v. Moore*, the Court recognizes that the hostility element and the exclusivity element run hand-in-hand, as it is the claim of exclusive ownership by the adverse possessor that arises to hostility against the true owner. *85 S.E.2d at 281.*

"The general rule is that where an owner of property and an occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other." *Butler v. Lindsey*, 361 S.E.2d 621, 624, 293 S.C. 466 (Ct. App. 1987) citing *Middleton v. Dupuis*, 11 S.C.L. (2 Nott & McC.) 310 (1820). "The **exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with the owner or with agents of the owner.**" *Butler*, 361 S.E.2d at 624 citing *Farella v. Rumney*, 649 P.2d 185 (Wyo. 1982); 3 Am.Jur.2d, *Adverse Possession*, Section 78 (1986) (emphasis added).

Mr. Stutts: Yeah. My granddaddy's [Grandfather Salters] family. His family was living on it. Everybody living on it was kin to my granddaddy. They were raised up on there. The people who they're talking about now, all of them were raised there.

. . .

Attorney Davis: Was Wesley [Salters] also living on the property?

Mr. Stutts: Yes, sir. He was born and raised there, too.

. . .

Attorney Brees: Have you ever personally been involved with the property?

Mr. Stutts: I don't have to have a deed to go on the property. That's my father - - I can go there anytime, and I still do not. I stay with my cousin.

Attorney Brees: Where do you stay?

Mr. Stutts: I stay with Arthur Lee Townsend.

Attorney Brees: So you're residing on the property currently?

Mr. Stutts: Yes, I'm residing on it, yes.

. . .

Mr. Stutts: Everybody who is kin to my granddaddy has a right to be on there.

Attorney Brees: And you said your grandfather, correct?

Mr. Stutts: My mother's daddy.

. . .

Attorney Brees: On what portion of the land does Arthur Lee Townsend live?

Mr. Stutts: He lives on the Salters' property.

Attorney Brees: On what portion, though, Mr. Stutts?
What part of it?
Mr. Stutts: I don't know...

Transcript of May 2, 2016 Hearing, Page 92, Line 24 through Page 101, Line 5.

Harold Stutts provided testimony at the May 2nd hearing as to the lineage of the titleholder and his understanding that "everybody" owned the Property. See generally *Transcript of May 2, 2016 Hearing*. Mr. Stutts is the brother of the Plaintiff and an heir to Grandfather Salters. *Id.* at Page 92, Lines 1-5. In addition to Mr. Stutts' testimony, Mr. Townsend's brother, Ernest Townsend testified about his co-tenancy on the Property. *Transcript of May 2, 2016 Hearing*, Page 119, Line 12 through Page 121, Line 17. This is not a case of one possessor or a collection of possessors claiming adverse possession. **The conflicting testimony about lineage and occupancy of the Property leaves the Court with a lack of clarity as to the exclusive possession by Mr. Townsend failing to meet the clear and convincing evidentiary standard.** (emphasis added).

Counsel for the Defendant, Jesse Townsend, postured that the hostility requirement for adverse possession was not necessary under current South Carolina case law. *Transcript of the May 2, 2016 Hearing,* Page 8, Lines 13 through 25. This assumption is incorrect as it relates to the current case law regarding the hostility requirement. Within this same testimony, counsel for the Defendant indicated that there was an assumption between all the parties that they were co-tenants, all owning the Property together. *Id.* Such an assumption creates a conflict for the Court as to the element of exclusivity. If Mr. Townsend assumes that he is a co-tenant on the Property,

his adverse treatment as to the other co-tenants as to be uniform. See *Butler*, 361 S.E.2d at 624.

In the case at hand, the Court cannot reconcile the allegation that Mr. Townsend is a co-tenant with an assertion that he adversely possessed the Property. "**Only where the evidence as to adverse possession is susceptible of but one inference does the question become one of law for the court.**" *Butler*, 361 S.E.2d at 623 citing *Mullis v. Winchester*, 118 S.E.2d 61, 237 S.C. 487 (1961); *Atlantic Coast Line Ry. Co. v. Searson*, 135 S.E. 567, 137 S.C. 468 (1926) (emphasis added).

The Court cannot reach a singular inference in the present case, as testimony from Mr. Townsend as well as other witnesses for the Defendant indicates that Mr. Townsend cooperatively occupied the Property with other co-tenants. See generally *Transcript of May 2, 2016 Hearing*. *Butler* clarifies that the Court finds **exclusivity to necessitate adversity as to <u>all</u> owners or agents of the owner, not just selected owners**, alleged or not. 361 S.E.2d at 624 (emphasis added).

CONCLUSION

The Master-in-Equity abused his discretion by improperly granting the Defendant Jesse Townsend's claim of adverse possession as the Defendant failed to meet the applicable clear and convincing evidentiary standard for adverse possession and failed to satisfy the requirements of the hostility and exclusivity elements of adverse possession, as all elements of adverse possession must be met for a grant of the same.

Charleston, South Carolina
March 8, 2017

Respectfully submitted,

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