

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

.....

APPEAL FROM THE BEAUFORT COUNTY COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CARMEN T. MULLEN, PRESIDING JUDGE

CASE NO: 2010-CP-07-5231

.....

ALBERT JACKSON, JR.,

Appellant,

v.

LEOPARDO COMPANIES, INC.,
SWAMP FOX UTILITIES, L.L.C.,
LCK CONSTRUCTION SERVICES,
LLC, AND CITY OF BEAUFORT,

Respondents.

.....

FINAL BRIEF OF APPELLANT

.....

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE CITY OF BEAUFORT WHEN DISCOVERY HAD NOT BEEN COMPLETED?

2. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE CITY OF BEAUFORT WHEN ISSUES OF FACT SHOWED THE PLAINTIFF'S HOUSE HAD BEEN ERRONEOUSLY TAKEN BY THE CITY OF BEAUFORT?

STATEMENT OF THE CASE

This matter involves the City of Beaufort and the construction of a new City Hall in downtown Beaufort, South Carolina. The construction of the new City Hall required the City to take property from an adjoining subdivision known as Higgonville Subdivision, comprised of numerous small lots. The Plaintiff was the owner of a house and lot, upon which his house had been located for over twenty (20) years. Higgonville Subdivision bordered the commercial area of Beaufort, which the City had either purchased or condemned to build the City Hall. These lots were small lots, and were largely inhabited by minorities. These houses fronted on the rear of a commercial area, and the street was known as Lovejoy. The commercial area was basically the rear of stores such as Beaufort Muffler. These stores were being operated and fronted on Boundary Street, a main thoroughfare of Beaufort.

The City of Beaufort had contracted with the Defendant companies in this case to perform site clearing and construction. This action was filed on October 22, 2010 against Leopardo Companies, Inc., Swamp Fox Utilities, L.L.C., LCK Construction Services, LLC, and City of Beaufort. The Causes of Action initially brought were for Negligence, Conversion, a Taking, Condemnation and Injunctive Relief. It is true that the Complaint originally alleged an address of 1907 Lovejoy Street, which was in error, and was reported to the Defendants. The whole issue at this hearing involved whether or not the house of the Plaintiff which was destroyed was on Lot 1905 or Lot 1907, Lovejoy Street. It should be noted that the residential lots had different numbers, in addition to the street numbers.

It is true that Bill Harvey, representing the City of Beaufort, had brought a quiet title action in 2004-CP-07-349, which was an exhibit placed into evidence. That action named none of these Plaintiffs. It alleged the heirs of William Jones and Daniel Green as the owners of this property.

Daniel Green was subsequently paid \$38,000.00 from the City of Beaufort for his interest in 1907 Lovejoy Street.

The description on the quiet title action did not involve this Plaintiff's property, as the description reads "and bounded ... on the East by Higgonville Lot 24 (now or formerly of Albert Jackson and Charlene Jackson)." Clearly, the Jackson property was *not* part of the property on which title was quieted. [See the description on the quiet title action which was introduced into evidence as No. 10, Court's Exhibit on the *Lis Pendens*, ROA, ppgs. 176-177].

The description on this quiet title action, that is No. 10, Court's Exhibit, clearly shows that Lot 24 [also 1905] was not condemned, nor were the Jacksons named as parties.

The City had approached the Plaintiff about buying this property, but the Plaintiff refused. The next thing the Plaintiff knew was a neighbor calling him and telling him his house had been mowed down by a bulldozer.

All of the Defendants claimed that the City was the owner of the property; therefore, they only did what the City told them to do, and that the City actually owned the land. As stated, Discovery had not been completed, nor had the first deposition been taken by either side.

Therefore, the only issues before the Court were whether a house was upon this property [Lot 24, 1905], who owned that house and lot, and was the house torn down without any notice to the Plaintiff.

ARGUMENT

1. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE CITY OF BEAUFORT WHEN DISCOVERY HAD NOT BEEN COMPLETED?
2. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE CITY OF BEAUFORT WHEN ISSUES OF FACT SHOWED THE PLAINTIFF'S HOUSE HAD BEEN ERRONEOUSLY TAKEN BY THE CITY OF BEAUFORT?

The Plaintiff, in his *Returns to Motions for Summary Judgment*, stated that the Plaintiff and his sister would give testimony at the Summary Judgment hearing as to the location and use for twenty (20+) plus years of the house and property in question.

This house was located on the property since 1956 or longer. The house was originally in the name of Albert Jackson, Jr. and his wife. It is now in the name of Albert Jackson, Jr. and his sister.

The argument before the Court was that Mr. Harvey continued to insist the subject of the law suit was 1907, as was erroneously stated in the initial Complaint. The Plaintiff continued to argue that it was 1905 Lovejoy Street. Numerous photographs were offered showing the house on the property, and were produced to the Defendants as well as to the Court.

The City referred to a lien for the taking of a shack located behind a house, which lien the Jacksons paid to the City. If the Jacksons did not own this property, why would they pay the lien?

Exhibit 1 shows the house which was on the property prior to its destruction and commencement of the construction of the City complex, of which the Plaintiff never had notice. The large tree, which is located in Plaintiff's Exhibit 1 [ROA, pg. 83 and 158], is still there so that the lot upon which the house actually sat can be located. The tree is still present, and *stands next to Lot 1905*. This was physically shown to the Court. [ROA, Court's Exhibits 6 and 7, ppgs. 157, 158]. The tree in the background, after construction, is the same tree as shown in the photograph of the

demolished house. Exhibit 7 shows the house as it was on Lot 1905, and Exhibit 6 shows the same tree when the house was bulldozed from the property. [ROA, Court's Exhibits 6 and 7 of a large tree at the right of the house before it was torn down, ppgs. 157, 158]. That same large tree can be seen in the rear of the second photo where the house is not present.

Also, the Court's Exhibit 8 shows the re-roof and repair to the house of Albert L. Jackson dated July 3, 1995. It shows the location of the house at 1905 Lovejoy. [ROA, Court's Exhibit 8, pg. 159]. The Court's Exhibit 10 contains a *Lis Pendens* showing the description of the property, which was filed on March 9, 2004. It states, "... and bounded ... on the East by Higgonville Lot 24 (now or formerly of Albert Jackson and Charlene Jackson)." [ROA, Court's Exhibit 10, ppgs. 176, 177]. The Court's Exhibit 15 also shows this house when it was initially under construction. [ROA, Court's Exhibit 15, pg. 225].

The Plaintiff was called to testify on Page 20 of the Transcript of Record. He testified as follows:

"MR. ALBERT JACKSON: And, I just heard everything, especially Mr. Harvey. Yes, we met with him before my mother died about the same property and we refused to sell it. I never –

THE COURT: Are you talking about 1905?

MR. ALBERT JACKSON: I'm talking about this house." [ROA, pg. 131. ll. 6-12].

The Plaintiff then testified:

"I'm not talking about the house that's - - I'm not talking about 1907, 1905. I'm talking about my house. I refused to sell it and to this day, I have not received anything from anyone from Beaufort City about my house. I just got a phone call from a friend, Pearl Polite one night - - one evening - - and she say, 'your house is gone.'

And what really troubles me the most is my mother died, probably a week after that because that house was gone, and that was something her and my father left me." [ROA, pg. 131, ll. 14-23].

The Plaintiff went on to testify:

"We refused to sell it to them. And the next thing you know, it was gone. [ROA, pg. 131, ll. 24-25].

THE COURT: And you still have - - do you still own the lot next door?

MR. ALBERT JACKSON: I pay taxes on a lot." [ROA, pg. 132, ll. 1-4].

The Plaintiff then went on to testify:

"The lot that we are talking about, this house that they tore down, they did not tell me anything, did not say anything. As of today, I have not received a letter. I have not received any notification that they were tearing it down. But it's gone." [ROA,, pg. 132, ll. 6-11].

The Plaintiff further testified:

"I celebrated my 58th birthday yesterday and that house has been there as long as I can remember.... Since I was four or five." [ROA, pg. 132, ll. 19-21; l. 23].

The Plaintiff went on to testify:

"But - - and then, me and my wife, we started renovating it, same little house, because we had tore out all the electrical stuff all over, then we put in central air and heating. Modernized it." [ROA, pg. 134, ll. 13-18].

The Plaintiff also set forth the names of the numerous people who had lived in the house when his father owned the same.


Additionally, Valerie Jackson, the Plaintiff's sister, testified about the land. On Page 27, she discussed how the tax notices did not say whether a house was on the property or not on the property. She testified that, in fact, the tax notices for the last several years showed no house on the property when, in fact, the little house was on the property. The little house was the house that was continuously referred to by everyone on Lot 24 at 1905 address. She said unequivocally it was on there for a number of years, and the lien they were talking about was a different piece of property. [ROA, ppgs. 136-137].

This issue was a genuine issue of material fact as regards the land which was taken. The most solid thing in the record that shows nothing has changed other than the taking of this house

is the fact of the two (2) photographs [ROA, Court's Exhibits 6 and 7, ppgs. 157, 158]. One (1) photograph shows the large oak tree next to the house that was destroyed, and the second photograph shows the same tree in the background after the bulldozer had bulldozed the house and cleared the property. [ROA, Court's Exhibits 6 and 7, ppgs. 157, 158]. That oak tree, obviously many years old, did not move, and that, in and of itself, is substantial evidence in the record. Additional evidence in the record shows the house was re-roofed in 1995, and that taxes were continually being paid on the land, even though the County indicated there was no house on the lot. It is also clear from the quiet title action that the quiet title was actually done on the adjoining piece of property, citing the Jacksons as the next door or neighbor to the East, and Daniel Green was paid \$38,000.00 for an interest on that particular piece of land. The Plaintiff was not named as a Defendant. Also, the description shows that the Plaintiff's property was next to the property, which the City of Beaufort bought. Most importantly, while the large oak tree next to the Plaintiff's house is still there, Plaintiff's house is gone.

CERTIFICATE OF COUNSEL

I do hereby certify that this *Final Brief of Appellant* comports fully with the requirements of
Rule 211(b), SCACR.



James H. Moss
Counsel for Appellant

Beaufort, South Carolina

September 4, 2012

CONCLUSION

There is a substantive and material issue of fact in this case, and the Court erred in its grant of summary judgment, and this matter should be remanded to its correct place on the jury calendar.

MOSS, KUHN & FLEMING, P.A.

By: _____

JAMES H. MOSS

Beaufort, South Carolina

September 4, 2012

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing **APPELLANT'S FINAL BRIEF** upon opposing counsel:

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by placing copies of the same in the United States Mail, properly addressed and with sufficient postage affixed thereto as required by law.

Beaufort, South Carolina

September 7, 2012



JAMES H. MOSS