

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS
The Honorable Carmen T. Mullen, Presiding Judge

Case No. 2010-CP-07-05231

ALBERT JACKSON, Appellant

v.

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

RESPONDENTS' FINAL BRIEF

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CODES

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STATEMENT OF THE CASE

In this case, Appellant, Albert Jackson, Jr., seeks recovery of damages allegedly sustained as a result of the demolition of a home he allegedly owned. In his verified Summons and Complaint filed with the Beaufort County Court of Common Pleas on October 22, 2010, Appellant asserts causes of action in negligence, conversion, and eminent domain, and seeks injunctive relief against the Respondents City of Beaufort (“City”), Leopardo Companies, Inc. (“Leopardo”), Swamp Fox Utilities, LLC (“Swamp Fox”), and LCK Construction Services, Inc. (“LCK”), (collectively referred to as “Respondents”).

With its Answer, Respondent City filed its Motion for Summary Judgment (R. p. 76) upon the grounds that it was the rightful owner of the subject property and Jackson therefore had no claim to damages or any other relief associated with the demolition of the subject structure. Thereafter, based upon the information provided by the City, the remaining Respondents, Leopardo, LCK, and Swamp Fox, each filed a Motion for Summary Judgment. (R. pp. 68, 73, 71) These motions were heard by the Honorable Carmen Mullen on June 7, 2011.

Judge Mullen issued an Order on June 23, 2011 (R. p. 1), granting summary judgment to the Respondents, finding that no genuine issues of material fact existed as to a) whether the subject structure was located on lot 26; b) whether the City owned lot 26; and c) whether the City had the right to demolish the structure on lot 26.

Jackson filed a Notice of Intent to Appeal the Court’s Order on July 29, 2011. (R. p. 278)

STATEMENT OF FACTS

This case arises out of the demolition of a building in connection with the construction of the Beaufort Municipal Complex. The properties referenced in this matter are the lots located at 1907 Lovejoy Street (lot 26 Higgonville), on which this building was located, and which was cleared and utilized as a roadway entrance to the Municipal Complex, and 1905 Lovejoy Street (lot 24 Higgonville) which is adjacent.

In his verified Complaint, Appellant alleges that “the Plaintiff was the owner of a lot shown with an address of 1907 Lovejoy Street..upon which the Plaintiff had a residence....” (R. p. 10, ¶6) The Complaint further states, “Plaintiff was at all times the owner of property located on lot 26, Higgonville Subdivision, more specifically designated on Beaufort plats as 1907 Lovejoy Street....”(R. p. 14, ¶15) Finally, the Complaint alleges “that all of the Defendants are without any ownership interest in the property shown and designated as lot 26, Higgonville and 1907 Lovejoy Street....” (R. p. 16, ¶24)

In or about 1865, by Head of Family Certificate #1869 recorded in the RMC office of Beaufort County, William Jones acquired fee simple title and interest to lot 26 Higgonville (a/k/a “Higginsonville”), the property at issue in this action. (R. p. 268) It is of record that William Jones made no conveyance of this property during his lifetime. William Jones died intestate seized and possessed of the subject property, without a surviving spouse, leaving only his two daughters, namely Elloie Jones and Lillie Jones, as heirs-at-law. Elloie Jones died intestate in or around 1942, without a surviving spouse, leaving only her two

daughters, namely, Florie Jones and Margaret Jones, and her son, Daniel Green, as heirs-at-law. Florie Jones and Margaret Jones subsequently died intestate, without surviving spouse or issue, leaving their brother, namely Daniel Green, as their heir-at-law. (R. p. 149) Lillie Jones died intestate in or around 1984, without surviving spouse, issue or siblings, leaving her nephew Daniel Green, as her heir-at-law. (R. p. 149) Accordingly, based upon this intestate succession, Daniel Green appeared to be the sole owner of record of lot 26 as of 1984.

On May 22, 2003, Daniel Green deeded his interest in lot 26 to the City of Beaufort, in a deed recorded in Deed Book 1794 at Page 613 in the RMC Office of Beaufort County. (R. p. 149) In order to clear any remaining title issues concerning lot 26, on February 19, 2004, Respondent City instituted a Quiet Title action, bearing CA # 2004-CP-07-349. (R. p. 162) By Order filed March 2, 2004, James Wegmann, Esquire, was appointed Guardian ad Litem for the unknown party defendants in this Quiet Title action. (R. p. 193) The unknown and non-resident Defendants in the Quiet Title action were served with process by an Order of Publication which was filed on March 2, 2004. (R. p. 191) James Wegmann, Esquire, as GAL, was personally served. An Affidavit of Default was filed in said action on July 27, 2004. (R. p. 178)

A hearing was held in the Quiet Title action on September 24, 2004, before the Honorable Curtis Coltrane, Beaufort County Master-in-Equity. This hearing resulted in an Order dated and filed September 24, 2004, quieting the title to lot 26 in the Respondent City, “free and clear of all encumbrances and claims of others.” (R. p. 162) There was no appeal

of this Order which is now final in all respects. It is also noteworthy that Appellant made no motion or other effort to reopen the judgment in this Quiet Title action.

In his Return to the Respondents' motions for summary judgment (which Return contains no affidavits or other documents of record)¹, Appellant submitted numerous photos of the house which his counsel argued at the hearing was on Appellant's property, and which the City demolished. (Exhibit 1 to Appellant's Return, R. p. 83) In 2002, in preparation for the purchase offer made to Daniel Green, Respondent City had an appraisal made of lot 26, which contains a photo of the same house which Appellant claims was wrongfully demolished. (R. pp. 230-240, Court's Exhibit 19)

The City's acquisition of lot 26, along with the acquisition of numerous other parcels, was for the construction of the City's Municipal Complex, which included a new City Hall, as well as a separate building for the Police Department and Municipal Court. In conjunction with this construction project, the City performed a boundary survey, which showed acquisition of lot 26 and lot 25, over which an entrance was constructed to the Municipal Complex. (R. p. 229) This boundary survey shows the small house on lot 26, which was later demolished by the City. (Id.)

Having legally acquired all of the necessary property, the City contracted with the other Respondents for the clearing, grading and construction of the Municipal Complex, including the entrance road over what was lot 26.

¹At the hearing, Appellant Albert Jackson and his sister Valerie Jackson were allowed to make statements to the Court. However, they were not sworn, and there is no sworn statement or other document of record supporting any position espoused by the Appellant.

The Circuit Court conducted a hearing on the Respondents' Motions for Summary Judgment on June 7, 2011. When presented with the evidence of record that the City was the owner of lot 26 (1907 Lovejoy Street), Appellant's counsel "argued that the house may have been located on 1905 Lovejoy Street." (R. p. 3) Appellant presented to the Court tax receipts and other documents showing ownership of 1905 Lovejoy Street. (R. p. 139) Respondent City admitted that Appellant and his family own 1905 Lovejoy Street. However there is no evidence that Respondents did any work or otherwise altered or damaged 1905 Lovejoy Street. (Order, R. p. 4) Further, Appellant "acknowledged that he could not produce any document of record showing that the house was located on 1905 Lovejoy Street." (Order, R. p. 3) To the contrary, an appraisal of 1905 Lovejoy Street (lot 24) performed by the City in 2002 (well before any site clearance had begun) shows that there was no structure on this lot (R. p. 241, Court's Exhibit 20), which is confirmed by the Boundary Survey dated 2006. (R. p. 229, Court's Exhibit 18)

Presented with this overwhelming evidence in support of the Respondents' Motions, and with the complete absence of any credible evidence or affidavit to the contrary, the Circuit Court granted Summary Judgment in favor of the Respondents, stating as follows: "....there is no genuine issue of material fact as to the ownership of the lot and house that were cleared by the Defendants in connection with construction of the Municipal Government Center. Defendants cannot be held liable for demolishing a structure that the City owned." (Order, R. p. 5)

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, the Court of Appeals applies the same standard as that required for the circuit court under Rule 56(c), SCRPC. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Adamson v. Richland Cnty. Sch. Dist. One*, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1998). "To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the [nonmoving] party." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Further, "in cases applying the preponderance of the evidence burden of proof, the [nonmoving] party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ." *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." *Id.*

Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or

denials contained in the pleadings but must come forward with specific facts showing there is a genuine issue for trial. Rule 56(e), SCRCPP; *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571 579 55 S.E.2d 732, 736 (Ct. App. 2001). Specifically, Rule 56(e) states in pertinent part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(Emphasis added.)

"Where the plaintiff relies solely upon the pleadings, files no counter- affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law." *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991). The Court of Appeals "ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment." *West v. Gladney*, 341 S.C. 127, 135, 533 S.E.2d 334, 338 (Ct. App. 2000).

ARGUMENT

Presented with Overwhelming Evidence that the City Owns the Property in Question, and with the Complete Absence of Any Credible Evidence or Affidavit to the Contrary, the Circuit Court Properly Granted Summary Judgment to the Respondents.

Appellant produced no evidence to support the sworn statements of his Complaint that he was the owner of lot 26, 1907 Lovejoy Street. The only evidence submitted was that

Appellant owned lot 24, 1905 Lovejoy Street, but this fact was admitted by Respondents and is completely irrelevant to the issue of ownership of 1907 Lovejoy Street. Further, the only evidence presented to the Circuit Court was that the house in question was located on 1907 Lovejoy, and that none of the Respondents did any work on, or made any alteration to 1905 Lovejoy. Appellant takes issue with the Quiet Title action, but offers no evidence and no law as to why it is not *res judicata*, applicable to him as it is to the rest of the world. Appellant has cited no law upon which this Court should reverse the lower court.

Appellant also contends that summary judgment was premature because the discovery process was not complete. This argument is unpersuasive. "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted). Therefore, "the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (internal citation and quotation marks omitted).

Appellant's argument regarding the lack of discovery fails on two fronts. First, it conveniently ignores the vast amount of evidence of record before the trial court at the hearing. Secondly, Jackson fails to offer even a theory as to what additional evidence might be uncovered during additional discovery that might be relevant to the issues at bar. The only

relevant question relates to the ownership of the subject structure which the Complaint alleges was wrongfully demolished and converted. Unless Appellant establishes himself as the owner of the structure, he has no standing, and the litigation must be ended. See, *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999) (To have standing, a party must have a personal stake in the subject matter of the lawsuit. *Sea Pines Ass'n for the Prot. Of Wildlife, Inc. v. South Carolina Dept. of Natural Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001)).

Clearly, nothing Appellant could obtain from Respondents in further discovery would assist in this regard. The City has provided numerous documents of record substantiating its claim of ownership; Appellant has provided no documents or other evidence to the contrary.

The fact that Appellant does not offer a single example of what information might be discovered solidifies the fact that no additional discovery is necessary.

**Appellant Abandoned or Waived His Appeal
of the Circuit Court's Order Granting Summary Judgment
to Respondents LCK, Leopardo and Swamp Fox.**

Appellant has abandoned or waived his appeal from the Circuit Court's Order granting summary judgment in favor of Respondents LCK, Leopardo, and Swamp Fox. All issues raised by an appellant must be presented in the Statement of Issues on Appeal and argued in the Initial Brief. Rule 208(b), SCACR. "Ordinarily, no point will be considered which is not set forth in the state of the issues on appeal." *Id.* Although the circuit court granted summary judgment in favor of all Respondents, Appellant's Statement of Issues on Appeal, and his initial brief only take appeal from the summary judgment granted to the City. Therefore, by

the plain language of the Appellate Court rule, Jackson must be deemed to have abandoned or waived his appeal of the summary judgments granted in favor of Respondents LCK, Leopardo, and Swamp Fox. The Circuit Court's Order with respect to those Respondents must be affirmed.

CONCLUSION

There is absolutely no genuine issue of material fact. The City owned lot 26, 1907 Lovejoy Street, and limited its relevant construction activities to this property. All evidence shows clearly that the house/structure in question was located on lot 26. Appellant may own lot 24, 1905 Lovejoy Street, but there is no evidence of any demolition or construction activity by the Respondents on lot 24. As the lower court correctly ruled, Respondents cannot be held liable for demolishing a structure that the City owned. This ruling must be affirmed.

Additionally, Appellant has abandoned or waived his appeal from the Circuit Court's Order granting summary judgment in favor of Respondents LCK, Leopardo, and Swamp Fox.

///

For the foregoing reasons, Respondents respectfully request that the Court of Appeals affirm the Order of the Circuit Court granting Summary Judgment in favor of the Respondents.

**Respectfully submitted on behalf
of all Respondents,**

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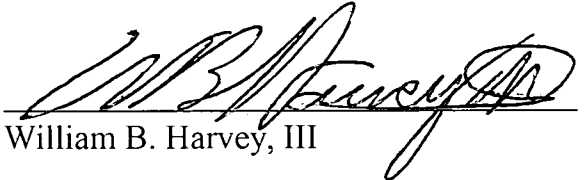
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Dated: **September 4, 2012**

Attorneys for Respondent,
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RULE 211(b) CERTIFICATION

The undersigned certifies that the Respondents' Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules. The undersigned further certifies that this document is in compliance with the South Carolina Supreme Court's Order, of August 13, 2007, regarding the redaction or sealing of personal data identifiers and other sensitive information.


William B. Harvey, III

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PROOF OF SERVICE

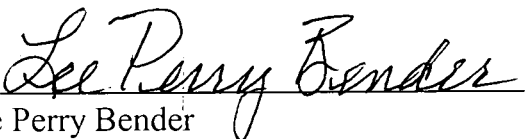
I certify that I am a paralegal at Harvey & Battey, P.A., and that I have served the **RESPONDENTS' FINAL BRIEF** on Appellant and Co-Respondents, by depositing a copy of same in the United States Mail, postage prepaid, on September 4, 2012, addressed to counsel of record, as follows:

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