

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

19850

APPEAL FROM CHARLESTON COUNTY
CASE NO. 2009 - CP -10 - 5343
Circuit Court Judge J.C. Nicholson, Jr.

ROOSEVELT SIMMONS)
Plaintiff, Appellant)
Vs.)
HATTIE BAILUM, RUBY BAILUM)
VERDONE BAILUM,)
JULIE B. JOHNSON,)
MONICA MIDDLETON,)
MARIE SMITH, MELVIN SINGLETON,)
FRANKLIN SMITH, LMC, LLC,)
JOHN MARTIN, ESQ. as TRUSTEE)
Defendants, Respondents)

RECORD ON APPEAL – VOLUME II

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
843-471-2082
Attorney for Appellant
Roosevelt Simmons

John A. Massalon, Esq.
I. Sonja Taylor, Esq.
Wills Massalon & Allen, LLC
97 Broad Street
Charleston, S.C. 29401
843-727-1144
Attorneys for Respondents Hattie Bailum,
Ruby Bailum, Verdone Bailum,
Julie B. Johnson, Monica Middleton,
Melvin Singleton, LMC, LLC and
John Martin, Esq. as Trustee

RECEIVED
AUG 09 2012
SC Court of Appeals

INDEX
VOLUME I

Order granting summary judgment to defendants filed January 11, 2011.....	1
Order denying defendants motion to dismiss filed October 6, 2010.....	22
Order denying plaintiff's motion to disqualify Bruce Berlinsky, Esq. filed November 3, 2010.....	23
Order denying plaintiff's motion for temporary injunction filed November 3, 2010.....	24
Order denying plaintiff's motion for reconsideration filed March 2, 2011.....	25
Complaint filed August 24, 2009.....	26
Summons filed August 24, 2009.....	42
Lis pendens filed August 24, 2009.....	43
Defendants' motion to dismiss filed September 16, 2009.....	45
Plaintiff's motion to disqualify Bruce Berlinsky, Esq. filed November 5, 2009.....	50
Affidavit of Roosevelt Simmons filed November 5, 2009.....	54
Supplemental Affidavit of Roosevelt Simmons filed November 23, 2009.....	58
Plaintiff's motion for temporary injunction filed December 10, 2009.....	62
Affidavit of Roosevelt Simmons filed December 10, 2009.....	67
Affidavit of John Martin, Esq. filed February 26, 2010.....	70
Plaintiff's Opposition to defendants' motion to dismiss filed March 1, 2010.....	80
Affidavit of Roosevelt Simmons filed March 1, 2010.....	94
Supplemental Memorandum in Support of Defendants' motion to dismiss filed September 23, 2010.....	97
Attachment to Supplemental Memorandum filed September 30, 2010.....	107

Order dated September 4, 2007 denying motion for Supersedeas and other	
Relief filed September 4, 2007.....	411
Order of Dismissal filed March 24, 2008.....	413
Order reinstating appeal filed May 14, 2008.....	415
Order of Dismissal filed August 20, 2008.....	417
Order denying rehearing of Dismissal filed October 24, 2008.....	419
Remittitur filed December 1, 2008.....	421
Complaint filed April 1, 2004.....	423
Lis Pendens filed April 1, 2004.....	432
Amended Complaint filed July 29, 2004.....	434
Amended Lis Pendens filed July 29, 2004.....	444
Answer and Counterclaim of Roosevelt Simmons filed January 20, 2005.....	446
Plaintiff's Answer to Counterclaim filed March 3, 2005.....	451
Second Amended Complaint filed September 13, 2005.....	452
Affidavit of Ruth Cupp, Esq. in support of motion to withdraw as counsel	
filed November 10, 2005.....	459
Motion for Order of Reference to Special Referee dated February 14, 2006.....	461
Notice of Appearance by Bruce Berlinsky, Esq. filed October 13, 2006.....	463
Motion by Roosevelt Simmons for new trial dated January 19, 2007.....	464
Affidavit of Roosevelt Simmons in support of new trial dated January 19, 2007.....	465
Marie Smith's motion to alter/amend judgment filed February 7, 2007.....	467
Appellant's Notice of Appeal filed March 29, 2007.....	470

Amended Notice of Appeal filed April 24, 2007.....	471
Motion for Stay of sale by Roosevelt Simmons filed May 4, 2007.....	474
Appellant’s motion to reinstate appeal filed June 6, 2007	477
Affidavit of Charles Houston, Esq., in support of motion to reinstate appeal filed June 6, 2007.....	482
Appellant’s Motion for order of Supersedeas filed July 13, 2007.....	485
Appellant’s Memorandum of Law in support of Supersedeas filed July 13, 2007.....	491
Respondents’ Return to Motion for Order of Supersedeas, Dismissal filed July 31, 2007.....	528
Appellant’s Petition for Full Appellate Review filed September 12, 2007	540
Respondents’ motion to dismiss appeal filed March 26, 2008.....	543
Appellant’s motion to reinstate appeal dated March 24, 2008.....	547
Respondents’ Return to Motion to reinstate appeal filed April 8, 2008.....	551
Respondents’ motion to file return to motion to reinstate appeal out of time filed April 17, 2008.....	556
Appellant’s motion for extension of time to file initial brief dated July 7, 2008.....	559
Respondents’ return to appellant’s motion for leave to file late filed July 21, 2008.....	562
Respondents’ return to appellant’s motion for an extension of time filed July 28, 2008.....	567
Appellant’s Initial Brief filed August 7, 2008.....	572
Appellant’s petition for full appellate review of dismissal filed August 28, 2008.....	619
Respondents’ return to motion for full appellate review filed September 4, 2008.....	622

Appellant’s motion for reconsideration filed October 31, 2008.....	626
Respondents’ return to motion for reconsideration filed November 10, 2008.....	630
Transcript of May 15, 2005 (excerpts).....	635
Transcript of June 6, 2007 hearing (excerpts).....	645
Letter dated November 15, 2005 from Roosevelt Simmons to Hon. Roger Young.....	664
Letter dated Nov. 18, 2008 from Clerk of the Court of Appeals	665

CERTIFICATION

Counsel for appellant hereby certifies that the Record contains all the material designated by the parties to the appeal and no other materials.

Edward A. Bertele, Esq.

February 09, 2012

SN6

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO.: 04-CP-10-1459

HATTIE BAILUM, RUBY BAILUM,
VERDONE GRAY, ESTATE OF CLARA
BAILUM, and ESTATE OF THOMAS
BAILUM.)

Plaintiffs,)

v.)

CONSENT ORDER TO
AMEND COMPLAINT

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2), ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, LEON ELIJAH)
SINGLETON, MABEL SINGLETON HICKS.)
WALTER BURNS, ALONZETTA BURNS,)
SHEILA BURNS OWENS, LOUISE CANTY)
and J. DOE, adults, and M. ROE, infants, insane)
persons, incompetents, being fictitious names)
designating a class of persons, known or)
unknown, who may be heirs, distributees,)
devisees, legatees, widow.)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership, or)
any cloud on plaintiffs' title,)

Defendants.)

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2005 SEP 13 AM 10:08

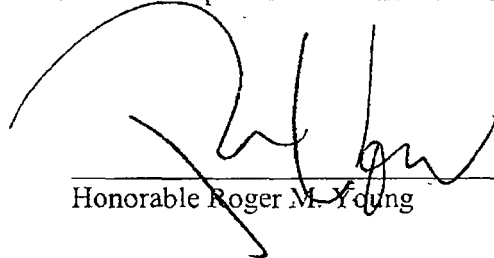
FILED

Rx # 05-011353

2354

COME NOW THE PLAINTIFFS with the consent of the Defendant, and move to be permitted to amend the complaint in this matter to include additional heirs as party defendants to this Action to Quiet Title. These heirs names were produced by Defendant. Defendant consents to this motion, and the proposed Second Amended Complaint is attached hereto.

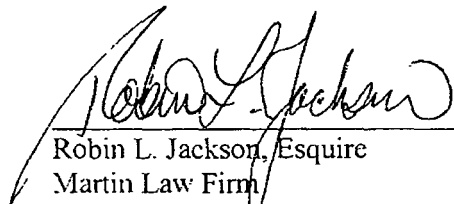
IT IS SO ORDERED that the Plaintiffs be permitted to file the Second Amended Complaint.



Honorable Roger M. Young

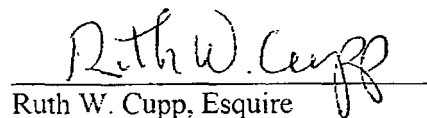
9/8, 2005

I SO MOVE:



Robin L. Jackson, Esquire
Martin Law Firm
113 Wappoo Creek Drive
Charleston, South Carolina 29412
Office: 843.762.2121
Fax: 843.762.2333
robinjackson@themartinlawfirm.net

I SO CONSENT:



Ruth W. Cupp, Esquire
Duffy Cupp & Stratos
1031 Chuck Dawley Blvd
Mt. Pleasant, SC 29464
Office: 843.216.7739
Fax: 843.216.0804

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS

04-CP-10-1439

COUNTY OF CHARLESTON)

HATTIE BAILUM, et al)

Versus)

ROOSEVELT SIMMONS, et al)

ORDER

FILED
2005 NOV 10 PM 2:21
JULIE J. ARISTRONG
CLERK OF COURT

WHEREAS, Ruth W. Cupp, attorney for Roosevelt Simmons has requested to be relieved as attorney of record for Roosevelt Simmons for reasons related to her inability to communicate with Roosevelt Simmons, and

UPON consideration of this matter and upon request of Ruth W. Cupp finds that it is the best interest of the matter to relieve Ruth W. Cupp in representing Roosevelt Simmons in this action.

THEREFORE, it is ORDERED, that Ruth W. Cupp is relieved of the Representation of Roosevelt Simmons in the captioned case.

Roger M. Young, Chief Administrative Judge
Ninth Judicial Circuit

11 November, 2005

I SO MOVE;

Ruth W. Cupp

This order contingent upon attorney Cupp serving client with copy of this order. Client has 30 days from receipt of order to obtain new counsel or be prepared to proceed pro se. py

R356

05/014283

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A Number: 04-CP-10-1459

FILED
2009 FEB 17 PM 4:50
CLERK OF COURT
JULIA A. HARRIS

HATTIE BAILUM, et al,
Plaintiff,
-VS-
ROOSEVELT SIMMONS,
Defendant.

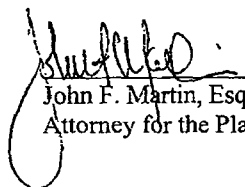
CONSENT ORDER OF
REFERENCE TO SPECIAL REFEREE

06-2009
This matter is before the Court upon the joint Motion of counsel for an Order of Reference to a Special Referee pursuant to The South Carolina Code of Laws and Rule 53 of the South Carolina Rules of Civil Procedure. The parties consent to the Honorable Joseph Mendelsohn serving as Special Referee. The Special Referee shall enter a final Judgment as to the causes of action referred. The compensation of the Special Referee shall be split equally by the parties.

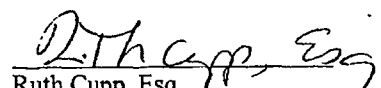
Any appeal shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.

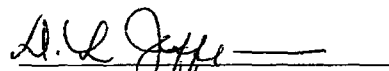
I consent:


John F. Martin, Esq.
Attorney for the Plaintiffs

I consent:


Ruth Cupp, Esq.
Attorney for the Defendant

Dated: January 25, 2005


Presiding Judge
Ninth Judicial Circuit

2/16/06
Chas., SC

R 357

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

HATTIE BAILUM a/k/a HATTIE BALAAM.
RUBY BAILUM a/k/a RUBY BALAAM;
VERDONE GRAY; JULIE B. JOHNSON; and
MONICA MIDDLETON,

Plaintiffs,

versus

ROOSEVELT SIMMONS, LEON SINGLETON,
MABEL SINGLETON HICKS a/k/a MAYBELL
HICKS, WALTER BURNS; SHEILA B. OWENS,
LOUISE CANTY; ALONZETTA BURNS;
SHARON BURNS, MELVIN SINGLETON,
MARIE SMITH, ELMORE SINGLETON,
THEODESIA SINGLETON, MILDRED
SINGLETON MAHONEY, ANDRE SINGLETON,
EUGENIE SINGLETON, LEON ELIJAH
SINGLETON, ERNEST GREEN, JR., KAREN
GREEN, DELOIRS GREEN, JOAN GREEN
WELLS, DELBERT BURNS, JOE LOUIS
BURNS, JR., a/k/a JOE LEWIS BURNS, JR.,
VONIE BURNS, SHELLY BURNS, ANASTACIA
BURNS, TREMAYNE BURNS, JOSHUA
BURNS, JARRED BURNS, AMBER BURNS, if
they be alive, and JOHN DOE and MARY ROE,
adults, and RICHARD ROE and JANE DOE,
~~infants, persons under disability or incompetence, if~~
any, including those persons who might be in the
military and covered under the Soldier's and Sailor's
Relief Act, fictitious names designating the unknown
heirs, devisees, distributes, issue, executors,
administrators, successors or assigns of the above
named defendants, and also the following deceased
persons: ESTATE OF SAMUEL BAILUM a/k/a
SAMUEL BAALUM, deceased or the ESTATE OF
HESTER SINGLETON BAILUM a/k/a ESTHER
BAILUM a/k/a ESTHER BAALUM, HESTER
SINGLETON BAALUM, THOMAS BAILUM,
SAMUEL BAILUM, SAMMY BAILUM, FANNIE
BAILUM MIDDLETON, MARY WARREN,
WILLIS BAILUM, TONY BAILUM, MARY
BAILUM, SAM BAILUM, HESTER BAILUM,
JOSH SINGLETON, ELOUISE SINGLETON,
CARRIE BURNS, JERRY SINGLETON,
ARTHUR SINGLETON, EUGENE
SINGLETON, RICHARDINE SINGLETON,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-10-1459

SPECIAL REFEREE'S ORDER
QUIET TITLE PARTITION
AND SALE

BY

JULIE J. ANNETT, CLERK OF COURT

2007 JAN 11 PM 2:48

FILED

R 358

EUEGENE SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER BURNS, JULIUS)
BURNS, ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE LOUIS BURNS)
a/k/a JOE LEWIS BURNS, EMILY BURNS,)
QUEEN SINGLETON, and JULUIS BURNS, JR.,)
and all other persons known or claiming any right,)
title, estate in or lien upon the real estate described in)
the Complaint herein,)

Defendants.)

This matter came before me for a final hearing. Present were the Plaintiffs and their counsel, John F. Martin, and the various Defendants and their counsel, Louis E. Condon and Bruce Berlinsky, and the Guardian-ad-Litem, Francis X. McCann. Supplemental testimony was taken from Leon Singleton and Melvin Singleton on September 5, 2006. Further supplemental testimony was taken from Melvin Singleton on September 22, 2006.

JURISDICTION

Pursuant to SCRCP Rule 53(b), and by consent of the parties, Joseph S. Mendelsohn was selected to act as special referee in this matter to hear all issues and render a final binding decision on the parties. The consent was signed by counsel on January 25, 2005, prior to Joseph S. Mendelsohn holding any hearings on the matter, and was later filed with the clerk of court.

PROCEDURAL HISTORY

This action was commenced by the filing of a Summons and Complaint on March 29, 2004. The action was amended by consent upon the death of Clara Bailum, a former Plaintiff in this matter. Her daughter, Hattie Bailum was substituted as a party Plaintiff. The action was amended a second time by the consent of the parties to realign the parties and add additional defendants. An Answer and Counterclaim was filed and the issues joined. All defendants were either served via their counsel, personally by publication or they appeared in this action.

R359

To ensure that all interested persons' interests were fully protected, the Pleadings were also served upon all defendants, and J. Doe and M. Roe by publication. The final Affidavit of Publication was filed on December 13, 2006. Francis X. McCann was appointed as Guardian-ad-Litem to protect the interests of any heir or heirs or person or persons known or unknown either named as a defendant or not who may have an interest in this litigation or this property. No response was received by any person to the published notices. At the time of the trial, counsel for the parties entered into the record several stipulations.

First, this action involves the quieting of the title, partition and sale of the four parcels of land identified by the TMS Numbers 311-00-00-024 (Parcel 1); 312-00-00-065 (Parcel 2) 312-00-00-032 (Parcel 3) and 312-00-00-067 (Parcel 4).

Second, since 1904, the "Bailum" name has sometimes been spelled as "Balaam". The parties stipulate that reference to "Balaam" is reference to "Bailum" and the caption shall reflect "Bailum a/k/a Balaam". Further, there are instances where "Hester Bailum" is referred to as "Esther Bailum". The parties stipulate that Hester Bailum and Esther Bailum are the same person. The caption shall reflect "Hester Bailum a/k/a Esther Bailum".

Third, the parties shall be realigned such that the living heirs of Samuel Bailum; to wit: Hattie Bailum, Ruby Bailum, Verdone Gray, Julie Johnson and Monica Middleton shall appear in the caption as Plaintiffs. The known living heirs of Hester Bailum shall remain as defendants.

Fourth, the parties stipulate that due to health, age, and travel considerations, Hattie Bailum, James Bailum, Verdone Gray, Julie Johnson, Leon Singleton and Melvin Singleton were permitted to testify by telephone.

Fifth, the parties stipulate to the admissibility of previously marked exhibits which were submitted and reviewed by counsel for all parties and the Guardian ad Litem prior to trial.

Sixth, the Guardian ad Litem, Francis X. McCann is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Guardian ad Litem's fee is \$200 per hour.

Seventh, the Special Referee is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Special Referee's fee is \$200.00 per hour.

Eighth, the prayer for relief is amended by stipulation to seek to have Title to the four above-mentioned parcels quieted and that once Title is established, the parcels be partitioned


3

R 360

and/or sold with the respective shares of the proceeds being distributed to the heirs of Samuel Bailum, Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton or the heirs of Hester Bailum as determined appropriate by this Court.

Ninth, the parties stipulate to the court reporter's qualifications.

FINDING OF FACT

This action is brought to determine the heirs of Samuel Balaam (a/k/a Bailum) and Hester Balaam (a/k/a Bailum) and the extent of each heirs interest in the parcels of land distributed hereinafter, and to Code Section 15-61-10, et seq. of the South Carolina Code of Laws, for the purpose of partitioning the parcels in kind or by sale. The real property that is the subject of this action is more particularly described as follows:

Parcel 1:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

(NOTE: This parcel now is reflected as 15 acres on the Charleston County Tax Rolls, by appraisal, and by survey)

Parcel 2:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B.

R 361

034

Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 3: All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-067.

Parcel 4: All that certain piece or parcel of land situate and lying and being on Johns Island I the County of Charleston and State of South Carolina, measuring and contain five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-032.

PARCEL 1

On July 2, 1910, Samuel Bailum (hereinafter "Samuel") purchased twenty acres from Amarntha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185. On information and belief, this Samuel Bailum died intestate, leaving as heirs, his wife Hester Bailum, and his children: Willis Bailum, Thomas Bailum, Tony Bailum, Samuel Bailum (hereinafter "Sam") Mary Bailum and Fannie Bailum. Hester Bailum received a statutory one-third (1/3) interest in the property. Samuel's children would have shared a two-third's (2/3) interest. Current tax map references, surveys, property cards and appraisals indicate the correct acreage is fifteen (15) acres of highland.

Hester Bailum had six children from a previous marriage. These children were Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burns, Elouise Singleton and Josh Singleton. Hester Bailum died intestate, leaving her children as her sole heirs.

DM
5

R362

The Plaintiffs, herein Hattie Bailum, Ruby Bailum, Verdone Gray, Julie B. Johnson and Monica Middleton are descendants of "Samuel". Through their ancestors, they share the 2/3 interest in parcel one.

Hester Bailums' descendants, the Defendants' herein, share her one (1/3) interest in parcel one. Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty, Maybell Hicks and Leon Singleton have deeded their interest in the property to the Defendant Roosevelt Simmons, and as such no longer have an interest in this litigation.

PARCELS 2,3, & 4

Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton, the children of Samuel Bailum, acquired approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four (54) acres described in Book T24 on page 137, as follows: to Sam Bailum, twenty-four (24) acres, (Book W24, at Page 327); Tony Bailum, ten (10) acres (Book O25, at Page 181); Thomas Bailum, ten (10) acres (Book W24, at page 188); Mary Bailum, five (5) acres (Book E26, at Page 257); and Fannie Bailum Middleton, five (5) acres (Book W25, at Page 284). Subsequent conveyances out have left as remaining heirs' property parcels 2, 3, and 4 as described hereinabove. The heirs of Hester Singleton Bailum have no claim or interest in parcel 2, 3 or 4 as her husband Samuel Bailum had no interest in this property.

SAMUEL BAILUM HEIRS

The Court took testimony from Hattie Bailum, James Bailum, Verdone B. Gray and Julie B. Johnson. The Court also reviewed numerous exhibits. The Court finds that the following were the sole heirs of Samuel Bailum (with regards to Parcel 1) and Sam Bailum, Tony Bailum, Thomas Bailum, Mary Bailum, and Fannie B. Middleton (with regards to Parcels 2, 3, & 4).

R363

Om
6

Hattie Bailum is the daughter of Sam Bailum's son Thomas (deceased) and granddaughter of Sam Bailum (deceased) and great granddaughter of Samuel Bailum. (deceased)

Ruby Bailum is the wife of Sam Bailum's son Sammy (deceased). She is the mother of Verdane Gray. Sam Bailum was Sammy's father and Ruby's father-in-law. Samuel is her grandfather-in-law.

Monica Middleton is the daughter of Fannie Bailum Middleton (deceased), the granddaughter of Sam Bailum, and the great granddaughter of Samuel Bailum

Julie Bailum Johnson is the daughter of Sam Bailum. Sam Bailum took as a second wife Mary Warren (deceased). Julie Bailum Johnson is the granddaughter of Samuel Bailum. The witnesses all testified that there are no other Bailum heirs alive other than the Plaintiffs to this action.

Thus, the heirs of Samuel Bailum who are living and who share a 2/3 interest in Parcel 1 are Hattie Bailum, Ruby Bailum, Julia Bailum Johnson and Monica Middleton.

The heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton, who are living and who share the entire interest in Parcels 2, 3, and 4 are Hattie Bailum, Ruby Bailum, Monica Middleton and Julie Bailum Johnson.

HESTER BAILUM HEIRS

The Court took testimony from Roosevelt Simmons. Leon Singleton and Melvin Singleton. The Court also received numerous exhibits including a family tree prepared by Mr. Simmons with the assistance of prior counsel, Ruth Cupp, Esq. As noted above when Hester Bailum died, she was survived by six children. All of these children are now deceased. The Defendants in this action are descendents of Hester Bailum's six children. Of those heirs, Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty and Mabell Hicks have deeded their interest in Parcel 1 to Roosevelt Simmons. The remaining Hester Bailum heirs have not deeded their intestate interests and as such would receive their pro-rata share of the sale proceeds from Parcel 1 if a sale is ordered. Those other heirs are Melvin Singleton and Marie Smith.

R 364



LEGAL ISSUES

The issues before the Court are the action for Declaratory Judgment to determine the heirs and their respective interests in the above referenced parcels, to quiet Title, the Partition in land or sale and the counterclaim of adverse possession by the Defendant Roosevelt Simmons.

Declaratory Judgment and Partition

From a review of the pleadings, testimony and exhibits, it is clear that all the parties desire to have the title to the property quieted, through a declaratory judgment. In some cases, interests in the property has passed by intestate distribution through three generations. The court finds it in the best interest of all that the title be established as a matter of law. Once the ownership interests were established the Court would have considered if partition in kind could be fairly and equitably accomplished. Since the only answering Defendant, Roosevelt Simmons, has, through his counsel, withdrawn his request for Partition of Parcel 1, this will not be necessary. Therefore the court may proceed with a sale of all the property.

A Partition and sale procedure must be fair and equitable to all parties of the action.

Pruitt v. Pruitt, 298 S.C. 411, 380 S.E. 2d 862 (Ct. App. 1989). If a Court determines that a partition cannot be fairly and equitably made, the Court may order a sale of the property and a division of the proceeds according to the rights of the parties. S. C. Code Ann. § 15-61-100, et seq. (2005). Additionally, if partition in kind or by allotment cannot be fairly and impartially made without injury to any of the parties in interest, then the Court has jurisdiction to order sale of the property and the division of the proceeds. S.C. Code Ann. §15-61-50 (2005).

In this case, due to the size, shape and location of Parcel 1, a partition in kind is not practicable or expedient. It would be practically impossible to partition the property, leave multiple parcels with ingress and egress, not lose substantial value to all parcels or even create parcels suitable for building. Thus, a sale is an appropriate resolution. The Defendant, Roosevelt Simmons concurs. Further, the Plaintiffs do not request a judicial sale wherein the sale price is an unknown amount. There is a ready and willing purchaser for this property who has agreed to

R365

pay the value that this Court sets for this parcel of property. The parties are guaranteed to receive the full fair-market value of the property, as determined by the Court. The Court in a prior hearing ordered an appraisal of Parcel 1. That appraisal is part of the record herein.

Plaintiffs, by and through Hattie Bailum, contracted to sell parcels 1, 2, 3 and 4 in August, 2003. This action was necessary because of the dispute regarding ownership of Parcel 1 and the value of the property. As Ordered by the Court, an independent appraiser inspected the property and provided the parties with its value. The appraiser was Trina Walters of Atlantic Appraisals. She determined that the appraised fair-market value of parcel 1 was Two Hundred Twenty Thousand and 00/100ths (\$220,000.00) Dollars.

The Plaintiffs agree that the Defendants have an interest in Parcel 1 and are willing to deliver one-third (1/3) of the net closing proceeds for Parcel 1 to the Heirs of Hester Bailum in accordance with their interests therein. Plaintiffs have asked that the Court order the funds be disbursed accordingly.

The Court, based upon the testimony, and exhibits concurs that the Heirs of Hester Bailum possess a one-third (1/3) interest in Parcel 1. The Court also concludes that the Heirs of Hester Bailum possess no interest in Parcels 2, 3 or 4. The Heirs of Samuel Bailum, possess a two thirds (2/3) interest in Parcel 1. Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton possess the full interest in Parcels 2, 3 and 4.

ADVERSE POSSESSION

I.

(In General)

The Defendants, specifically, Roosevelt Simmons, raised as a defense and claim the theory of adverse possession.

To prevail upon an adverse possession theory, Mr. Simmons, as the adverse possessor, must prove each element of the theory. These elements are:

- (1) Continuous;
- (2) Hostile;
- (3) Open and Notorious;
- (4) Actual; and

R366

[Handwritten signature]

(5) Exclusive

These elements of adverse possession have been determined in South Carolina by an extensive body of case law. (see eg. Lusk vs. Callahan 339 SE 2nd 56 (Ct App. 1986 and the cases cited therein.) To prevail, a claimant must establish that each element exists and is concurrent.

A.

CONTINUOUS

Possession must be continuous and uninterrupted for the requisite period. Temporary occupation does not constitute possession. (Atlantic CLR Co. vs. Searson 133 SE 567 (1926). Roosevelt Simmons does not occupy the property. Roosevelt Simmons testified that if any other rightful heir sought to use the property, they would be entitled to do so. As such, possession, if found to exist, would not be uninterrupted.

B.

HOSTILE

Hostile possession is possession with the intent to dispossess the true owner. Ouzts vs. McKnight 108 SE 561 (1920). There must be a trespass by the adverse possessor against the owner Massev v. Duren 3 SE 34 (1871). An heir going upon the property does not acquire title by adverse possession as he is not a trespasser but rather he is an owner. Permissive entry is not hostile. If the possessor has permission or an ownership interest, there can be no adverse possession. One who enters land with permission cannot acquire title by adverse possession. (Fradv vs. Ivester 110 SE 135 (1921). Lastly, as to the possession being hostile, an heir coming into possession cannot obtain title by adverse possession against other heirs claiming an interest in the property. The heir in possession of the property as it relates to the other heirs is that of a fiduciary (Vaux vs. Nesbit 6 SE Eq. (1 McCord) 352 (1826). There has been no testimony that any heir with an interest in this property has attempted to dispossess any other rightful owner. To the contrary, testimony is that Roosevelt Simmons acted with regard to preserving the property for all the Bailum Heirs and not with regard to dispossessing any other true owner.

R 367

10

C.

OPEN & NOTORIOUS

The intent to possess the land must not be hidden but apparent. The possession must be so notorious that a legal owner by ordinary diligence should have known of the intent to possess. (*Graniteville Co. vs. Williams* 39 SE 2d 202 (1946)). Possession with knowledge by the owners of an heir acting in a fiduciary capacity is not indicative of intent to possess. As evidenced by numerous letters in evidence, there was not intent to possess by Roosevelt Simmons for his own interest. By letter, dated October 19, 2003, Mr. Simmons writes to Hattie and Clara Bailum with a request that the matter of ownership interests of the family be decided by the Probate Court. He signed the letter "Roosevelt Simmons and Family". Leon Singleton, another Hester Bailum heir, wrote to Ruth Cupp, Esq. on December 27, 2004. His letter references the "Bailum property". Mr. Singleton also wrote to Hattie Bailum in June 2005 and describes Roosevelt Simmons as follows: "Roosevelt, my first cousin, has been the caretaker as well as taxpayer for the land...". He also describes the land as holding the family heritage to be passed down through the generations. Lastly, Leon asks that if Hattie decides to sell, that Leon and Roosevelt be given the percentage of their ownership for the work they have put into the land. Roosevelt Simmons testified that he was not possessing the property in his own right but serving as a caretaker.

D.

ACTUAL

There can be no adverse possession of land against an owner where there has been no possession for which the true owner could bring a trespass claim. *Steadman vs. Hilliard* 37 SCE (3 Rich) 10 (1840). This, if a party has a legal right as an owner by virtue of his being a legal heir, there can be no trespass and thus no trespass claim would follow. In the absence of the ability to bring a trespass claim, there can be no adverse possession as a matter of law. Roosevelt Simmons has a legal right as an owner to use the property. As such, he cannot be classified as a trespasser.

E.

EXCLUSIVE

Possession must be such as to indicate exclusive ownership of the property. Curtis vs. Descamps 350 SE 201 (Ct. App. 1986). When the owner(s) of the property and an occupant are both in possession, the possession of the legal owner prevails to the exclusion of the adverse possessor. The exclusiveness provision is not satisfied if occupancy is shared with an owner or agent of the owner. Butler vs. Lindsey 361 SE 2d 621 (Ct. App. 1987). Roosevelt Simmons shares ownership with numerous heirs. As evidenced by testimony and exhibits, other heirs would clearly have occupied the property if not for the County disallowing their requests, a fact acknowledged by witnesses for the Plaintiffs and Defendants. Roosevelt was not acting as an exclusive owner, but rather as the family caretaker.

ADVERSE POSSESSION

II.

(by Heirs)

In addition to the numerous cases addressing adverse possession by the third parties, South Carolina Courts have also confronted the issue of adverse possession by heirs. For adverse possession by an heir against all others to be found to exist, the previously discussed five elements must be proven as well as a sixth element of ouster.

With heirs property, possession is presumed to follow legal title. Lynch vs. Lynch 115 SE 2d 201 (1960). When an heir "occupies" property, there is every presumption that such occupancy is subordinate to legal title. Occupancy by the family or other relation **does not** create hostility in possession. Knight vs. Hilton 79 SE 2d 873.

Permissive entry or possession by an heir under color of title is not hostile. One who enters and with permission or under color of title cannot acquire title by adverse possession absent a disclaimer of the owner or other heirs. No disclaimer has been given by any of Samuel Bailum's heirs or Hester Bailum's heirs in this dispute.

Further, where one seeks to acquire title by adverse possession against his brothers and sisters "such an unconscionable claim should not be sustained..." The presumption is that the possession of a tenant is of the benefit of all. It must appear that the holding heir claimed the

R369

property as his own and has in unequivocal terms so notified the other heirs". Whitaker vs. Jeffcoat 122 SE 495 (1924).

Thus to prevail, an heir must prove by conclusive evidence that he has complied with the law of ouster in order to adversely possess against other heirs. Fender vs. Heirs of Smashum 581 SE 2d 853 (Ct. App. 2003).

Ouster is the actual turning out or excluding a party entitled to possession of any real property. The acts must be unequivocal and distinctly hostile. There must be unequivocal terms notified to the other heirs. Fender at 642. Only in rare extreme cases will the ouster of one heir by another heir be implied for dealings with the property. Fender at 642.

The well-established principle is that possession by one is the possession for all. Watson vs. Little 79 SE 2d 384 (1953). To prevail on an adverse possession claim, one tenant must overcome the presumption that he holds possession in recognition of the co-tenants. The fact that a claimant paid taxes does not constitute Ouster. Fender at 643. Payment of taxes by a co-tenant entitled the co-tenant to only proportionate contribution from the other co-tenants and nothing more. See Watson at 387. Mr. Simmons has testified that there is no ouster of his family or any other rightful heir with an interest in the property. To the contrary, by his own testimony, if they sought to use the property, he would welcome them.

Mr. Simmons has for several years served a vital role as caretaker of this heirs' property. He has watched over the property, collected rent, and paid taxes. The Court recognizes his efforts in this regard.

CONCLUSIONS OF LAW

A.

Declaratory Judgment

The Court concludes as a matter of law that the title to this property be quieted as set out specifically hereinbelow. As for Parcel 1 (311-00-00-024) Title is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest). As for Parcels 2, 3, and 4, title is vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton. Those heirs are the Plaintiffs in this action.

R370

PARTITION

The Court concludes as a matter of law that the property is to be partitioned by sale and the proceeds divided fairly and equitably. The Plaintiff's have requested a sale. The Defendants Roosevelt Simmons has requested he be allowed to purchase the other heirs interest in Parcel 1 if the Court determined that he was not the owner through adverse possession

SALE

As to Parcel 1, in 2003, Hattie Bailum entered a contract of sale. As part of this action, this Court ordered an appraisal of Parcel 1. The independent appraisal established a fair-market value on the property at \$220,000.00. The Court finds this value fair and reasonable. The parties have executed an addendum to their contract to sell Parcel 1 for the appraised value. The Court concludes that since the sale price is the fair-market value price, it is in the best interests of all the parties that the contract be fully performed. Doing so eliminates the need to list and sell the property thus saving six percent (6%) to ten percent (10%) of the purchase price in real estate commissions and avoids unnecessary delays. By ordering the sale, the heirs who will share in the proceeds will receive a greater share, not diminished by unnecessary costs and delays.

Mr. Roosevelt Simmons has asked for the opportunity to purchase Parcel 1. This matter has been pending for several years. Mr. Simmons, on previous occasions, has been offered the opportunity by this Court to buy out the remaining heirs with an interest in Parcel 1. The Court shall grant to Roosevelt Simmons the opportunity to acquire Parcel 1. This opportunity is assignable but only to individuals related by blood or marriage to a party herein. Mr. Simmons shall have ten (10) days from the date of service of this Order to provide to the Court written confirmation of a loan approval or of funds available by a licensed lender. Mr. Simmons shall have thirty (30) days to consummate the sale from the date of service of this Order. Should Mr. Simmons fail to provide the letter or consummate the transaction, the property shall be immediately sold in accordance with the contract for the fair-market value price of Two hundred twenty thousand (\$220,000.00) Dollars.

The Court recognizes that over time certain heirs, both plaintiff and defendant herein, have contributed to the taxes and maintenance expenses for the four parcels. Those contributions

R 371

13

can not be fixed with certainty. However, in recognition of Mr. Simmons' efforts to preserve the property for the benefit of all the heirs, the Court concludes he is to be given \$10,000.00 from the proceeds of the sale of the four parcels over and above his interest as an heir in Parcel 1. The parties agree that this sum is fair and equitable compensation for his dedicated service in preserving this property for the benefit of all Bailum heirs.

The net proceeds from the sale, shall be distributed after the fees for the Special Referee and Guardian ad Litem are deducted, with one-third (1/3) being forwarded to the Heirs of Hester Bailum and two-thirds (2/3) being forwarded to the Heirs of Samuel Bailum.

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

As to Parcels 2, 3, and 4, in 2003 Hattie Bailum entered a contract for sale with a purchaser who is an adjoining land owner. This property was also appraised pursuant to Court Order. The independent appraisal establishes the combined fair-market value of these parcels at \$337,000.00. The Court finds their value fair and reasonable. The parties have executed an addendum to their contract to sell Parcels 2, 3, and 4 for the appraised value.

The Court concludes that since the sale price is fair-market value, it is in the best interest of the sole heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton that the contract be fully performed. This conclusion is in accord with the relief

R372

OM
14

sought in the Plaintiff's complaint, wishes and prayers. The net proceeds from the sale shall be distributed, after usual and customary closing costs are deducted as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

ADVERSE POSSESSION

The Court concludes that the Defendant Roosevelt Simmons did not prove the required elements of an adverse possession theory. By his own testimony, each of the elements was negated rather than proved.

COSTS AND EXPENSES

The Court concludes that although S.C. Code 15-61-10, et seq. permits it to award Plaintiffs' fees and costs, the Court will decline to do so. The Court does not find that the Defendants' position was baseless or meritless. To the contrary, all parties concede that the title must be quieted. The objection by Mr. Simmons as to the partition and sale was not entered into lightly or frivolously. He raised fair questions for this Court to decide. The court concludes that each side shall pay their attorney's fees and costs.

As customary in such case and as stipulated by the parties, the Guardian ad Litem's fees (\$1,200.00) and the Special Referee's fee (\$6,000.00) are to be paid from the sale of the four parcels before distribution to the heirs.

ORDER

This Court issues its Order as follows:

1. Title to Parcel 1 is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest).

R 373

2. By Special Referee Deed, Parcel 1 may be sold to Roosevelt Simmons or his permitted assigns if and only if Mr. Simmons or his permitted assigns provides to the Clerk of Court for filing and date stamp within ten (10) days of the date of service of this Order a loan approval letter for \$220,000.00 (less the sum due, before costs are deducted of \$58,888.89). Mr. Simmons or his assigns must consummate this transaction within thirty (30) days of this Order. Failure to produce the required proof or his or his assigns' ability to pay or close in the time allotted will result in a Special Referee's Deed conveying Parcel 1 in accordance with the contract

3. The Guardian ad Litem's fee of \$1,200.00 shall be deducted pro rate from the closing proceeds for the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

4. The Special Referee's fee of \$6,000.00 shall be deducted pro rate from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

5. Ten Thousand Dollars (\$10,000.00) shall be paid at closing to Mr. Roosevelt Simmons and deducted from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

6. All standard and customary closing costs of the seller with regard to Parcel 1 shall be deducted from the closing proceeds from the sale of Parcel 1.

7. The net proceeds from the closing proceeds from the sale of Parcel 1 shall be distributed as follows:

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
~~Melvin Singleton~~ N.E. Family	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)

R374

Jim
16

Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

8. Title to Parcels 2, 3, & 4 are vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Fanne B. Middleton and Mary Bailum.

9. By Special Referee Deed, Parcels 2, 3, and 4 are sold in accordance with the contract for the sum of \$337,000.00

10. All standard and customary closing costs of the seller shall be deducted from the closing proceeds from the sale of Parcels 2, 3 and 4. The closing shall occur within thirty (30) days of the date of this Order.

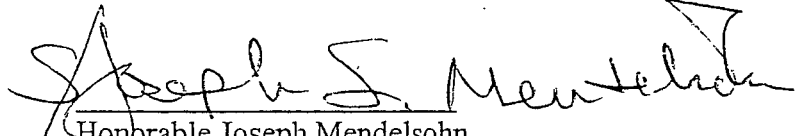
11. The net proceeds from the closing proceeds from the sale of Parcels 2, 3, and 4 shall be distributed as follows:

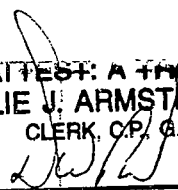
Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

12. The Defendants' claim of Title by adverse possession is denied.

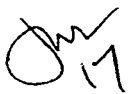
AND IT IS SO ORDERED!

January 17th, 2007
Charleston, South Carolina


Honorable Joseph Mendelsohn
Special Referee

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By 
DEPUTY CLERK

R375



COUNTY OF CHARLESTON

Plaintiffs,

versus

ROOSEVELT SIMMONS, LEON SINGLETON,
MABEL SINGLETON HICKS a/k/a MAYBELL
HICKS, WALTER BURNS; SHEILA B. OWENS,
LOUISE CANTY; ALONZETTA BURNS;
SHARON BURNS, MELVIN SINGLETON,
MARIE SMITH, ELMORE SINGLETON,
THEODESIA SINGLETON, MILDRED
SINGLETON MAHONEY, ANDRE SINGLETON,
EUGENIE SINGLETON, LEON ELIJAH
SINGLETON, ERNEST GREEN, JR., KAREN
GREEN, DELOIRS GREEN, JOAN GREEN
WELLS, DELBERT BURNS, JOE LOUIS
BURNS, JR., a/k/a JOE LEWIS BURNS, JR.,
VONIE BURNS, SHELLY BURNS, ANASTACIA
BURNS, TREMAYNE BURNS, JOSHUA
BURNS, JARRED BURNS, AMBER BURNS, if
they be alive, and JOHN DOE and MARY ROE,
adults, and RICHARD ROE and JANE DOE,
infants, persons under disability or incompetence, if
any, including those persons who might be in the
military and covered under the Soldier's and Sailor's
Relief Act, fictitious names designating the unknown
heirs, devisees, distributes, issue, executors,
administrators, successors or assigns of the above

named defendants, and also the following deceased)
persons: ESTATE OF SAMUEL BAILUM a/k/a)
SAMUEL BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a ESTHER)
BAILUM a/k/a ESTHER BAALUM, HESTER)
SINGLETON BAALUM, THOMAS BAILUM,)
SAMUEL BAILUM, SAMMY BAILUM, FANNIE)
BAILUM MIDDLETON, MARY WARREN,)
WILLIS BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER BAILUM,)
JOSH SINGLETON, ELOUISE SINGLETON,)
CARRIE BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUGENE)
SINGLETON, RICHARDINE SINGLETON,)

**AMENDED
SPECIAL REFEREE'S ORDER
QUIET TITLE PARTITION
AND SALE**

FILED
2007 MAR -6 AM 11:10
JULIE J. ARMSTRONG
CLERK OF COURT

R376

Defendants.

R 377

To ensure that all interested persons' interests were fully protected, the Pleadings were also served upon all defendants, and J. Doe and M. Roe by publication. The final Affidavit of Publication was filed on December 13, 2006. Francis X. McCann was appointed as Guardian-ad-Litem to protect the interests of any heir or heirs or person or persons known or unknown either named as a defendant or not who may have an interest in this litigation or this property. No response was received by any person to the published notices. At the time of the trial, counsel for the parties entered into the record several stipulations.

First, this action involves the quieting of the title, partition and sale of the four parcels of land identified by the TMS Numbers 311-00-00-024 (Parcel 1); 312-00-00-065 (Parcel 2) 312-00-00-032 (Parcel 3) and 312-00-00-067 (Parcel 4).

Second, since 1904, the "Bailum" name has sometimes been spelled as "Balaam". The parties stipulate that reference to "Balaam" is reference to "Bailum" and the caption shall reflect "Bailum a/k/a Balaam". Further, there are instances where "Hester Bailum" is referred to as "Esther Bailum". The parties stipulate that Hester Bailum and Esther Bailum are the same person. The caption shall reflect "Hester Bailum a/k/a Esther Bailum".

Third, the parties shall be realigned such that the living heirs of Samuel Bailum; to wit: Hattie Bailum, Ruby Bailum, Verdone Gray, Julie Johnson and Monica Middleton shall appear in the caption as Plaintiffs. The known living heirs of Hester Bailum shall remain as defendants.

Fourth, the parties stipulate that due to health, age, and travel considerations, Hattie Bailum, James Bailum, Verdone Gray, Julie Johnson, Leon Singleton and Melvin Singleton were permitted to testify by telephone.

Fifth, the parties stipulate to the admissibility of previously marked exhibits which were submitted and reviewed by counsel for all parties and the Guardian ad Litem prior to trial.

Sixth, the Guardian ad Litem, Francis X. McCann is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Guardian ad Litem's fee is \$200 per hour.

Seventh, the Special Referee is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Special Referee's fee is \$200.00 per hour.

Eighth, the prayer for relief is amended by stipulation to seek to have Title to the four above-mentioned parcels quieted and that once Title is established, the parcels be partitioned

3
Jan

R 378

and/or sold with the respective shares of the proceeds being distributed to the heirs of Samuel Bailum, Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton or the heirs of Hester Bailum as determined appropriate by this Court.

Ninth, the parties stipulate to the court reporter's qualifications.

FINDING OF FACT

This action is brought to determine the heirs of Samuel Balaam (a/k/a Bailum) and Hester Balaam (a/k/a Bailum) and the extent of each heirs interest in the parcels of land distributed hereinafter, and to Code Section 15-61-10, et seq. of the South Carolina Code of Laws, for the purpose of partitioning the parcels in kind or by sale. The real property that is the subject of this action is more particularly described as follows:

Parcel 1:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing — twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

(NOTE: This parcel now is reflected as 15 acres on the Charleston County Tax Rolls, by appraisal, and by survey)

Parcel 2:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B.



2379

Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 3: All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-067.

Parcel 4: All that certain piece or parcel of land situate and lying and being on Johns Island I the County of Charleston and State of South Carolina, measuring and contain five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-032.

PARCEL 1

On July 2, 1910, Samuel Bailum (hereinafter "Samuel") purchased twenty acres from Amarntha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185. ~~On information and belief, this Samuel Bailum died intestate, leaving as heirs, his~~ wife Hester Bailum, and his children: Willis Bailum, Thomas Bailum, Tony Bailum, Samuel Bailum (hereinafter "Sam") Mary Bailum and Fannie Bailum. Hester Bailum received a statutory one-third (1/3) interest in the property. Samuel's children would have shared a two-third's (2/3) interest. Current tax map references, surveys, property cards and appraisals indicate the correct acreage is fifteen (15) acres of highland.

Hester Bailum had six children from a previous marriage. These children were Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burns, Elouise Singleton and Josh Singleton. Hester Bailum died intestate, leaving her children as her sole heirs.

R380

The Plaintiffs, herein Hattie Bailum, Ruby Bailum, Verdone Gray, Julie B. Johnson and Monica Middleton are descendants of "Samuel". Through their ancestors, they share the 2/3 interest in parcel one.

Hester Bailums' descendants, the Defendants' herein, share her one (1/3) interest in parcel one. Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty, Maybell Hicks and Leon Singleton have deeded their interest in the property to the Defendant Roosevelt Simmons, and as such no longer have an interest in this litigation.

PARCELS 2,3, & 4

Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton, the children of Samuel Bailum, acquired approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four (54) acres described in Book T24 on page 137, as follows: to Sam Bailum, twenty-four (24) acres, (Book W24, at Page 327); Tony Bailum, ten (10) acres (Book O25, at Page 181); Thomas Bailum, ten (10) acres (Book W24, at page 188); Mary Bailum, five (5) acres (Book E26, at Page 257); and Fannie Bailum Middleton, five (5) acres (Book W25, at Page 284). Subsequent conveyances out have left as remaining heirs' property parcels 2, 3, and 4 as described hereinabove. The heirs of Hester Singleton Bailum have no claim or interest in parcel 2, 3 or 4 as her husband Samuel Bailum had no interest in this property.

SAMUEL BAILUM HEIRS

The Court took testimony from Hattie Bailum, James Bailum, Verdone B. Gray and Julie B. Johnson. The Court also reviewed numerous exhibits. The Court finds that the following were the sole heirs of Samuel Bailum (with regards to Parcel 1) and Sam Bailum, Tony Bailum, Thomas Bailum, Mary Bailum, and Fannie B. Middleton (with regards to Parcels 2, 3, & 4).

R 381



Hattie Bailum is the daughter of Sam Bailum's son Thomas (deceased) and granddaughter of Sam Bailum (deceased) and great granddaughter of Samuel Bailum. (deceased)

Ruby Bailum is the wife of Sam Bailum's son Sammy (deceased). She is the mother of Verdone Gray. Sam Bailum was Sammy's father and Ruby's father-in-law. Samuel is her grandfather-in-law.

Monica Middleton is the daughter of Fannie Bailum Middleton (deceased), the granddaughter of Sam Bailum, and the great granddaughter of Samuel Bailum

Julie Bailum Johnson is the daughter of Sam Bailum. Sam Bailum took as a second wife Mary Warren (deceased). Julie Bailum Johnson is the granddaughter of Samuel Bailum. The witnesses all testified that there are no other Bailum heirs alive other than the Plaintiffs to this action.

Thus, the heirs of Samuel Bailum who are living and who share a 2/3 interest in Parcel 1 are Hattie Bailum, Ruby Bailum, Julia Bailum Johnson and Monica Middleton.

The heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton, who are living and who share the entire interest in Parcels 2, 3, and 4 are Hattie Bailum, Ruby Bailum, Monica Middleton and Julie Bailum Johnson.

HESTER BAILUM HEIRS

The Court took testimony from Roosevelt Simmons, Leon Singleton and Melvin Singleton. The Court also received numerous exhibits including a family tree prepared by Mr. Simmons with the assistance of prior counsel, Ruth Cupp, Esq. As noted above when Hester Bailum died, she was survived by six children. All of these children are now deceased. The Defendants in this action are descendents of Hester Bailum's six children. Of those heirs, Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty and Mabell Hicks have deeded their interest in Parcel 1 to Roosevelt Simmons. The remaining Hester Bailum heirs have not deeded their intestate interests and as such would receive their pro-rata share of the sale proceeds from Parcel 1 if a sale is ordered. Those other heirs are Melvin Singleton and Marie Smith.

R382



LEGAL ISSUES

The issues before the Court are the action for Declaratory Judgment to determine the heirs and their respective interests in the above referenced parcels, to quiet Title, the Partition in land or sale and the counterclaim of adverse possession by the Defendant Roosevelt Simmons.

Declaratory Judgment and Partition

From a review of the pleadings, testimony and exhibits, it is clear that all the parties desire to have the title to the property quieted, through a declaratory judgment. In some cases, interests in the property has passed by intestate distribution through three generations. The court finds it in the best interest of all that the title be established as a matter of law. Once the ownership interests were established the Court would have considered if partition in kind could be fairly and equitably accomplished. Since the only answering Defendant, Roosevelt Simmons, has, through his counsel, withdrawn his request for Partition of Parcel 1, this will not be necessary. Therefore, the court may proceed with a sale of all the property.

A Partition and sale procedure must be fair and equitable to all parties of the action. Pruitt v. Pruitt, 298 S.C. 411, 380 S.E. 2d 862 (Ct. App. 1989). If a Court determines that a partition cannot be fairly and equitably made, the Court may order a sale of the property and a division of the proceeds according to the rights of the parties. S. C. Code Ann. § 15-61-100, et seq. (2005). Additionally, if partition in kind or by allotment cannot be fairly and impartially made without injury to any of the parties in interest, then the Court has jurisdiction to order sale of the property and the division of the proceeds. S.C. Code Ann. §15-61-50 (2005).

In this case, due to the size, shape and location of Parcel 1, a partition in kind is not practicable or expedient. It would be practically impossible to partition the property, leave multiple parcels with ingress and egress, not lose substantial value to all parcels or even create parcels suitable for building. Thus, a sale is an appropriate resolution. The Defendant, Roosevelt Simmons concurs. Further, the Plaintiffs do not request a judicial sale wherein the sale price is an unknown amount. There is a ready and willing purchaser for this property who has agreed to

R383

8
Jaw

pay the value that this Court sets for this parcel of property. The parties are guaranteed to receive the full fair-market value of the property, as determined by the Court. The Court in a prior hearing ordered an appraisal of Parcel 1. That appraisal is part of the record herein.

Plaintiffs, by and through Hattie Bailum, contracted to sell parcels 1, 2, 3 and 4 in August, 2003. This action was necessary because of the dispute regarding ownership of Parcel 1 and the value of the property. As Ordered by the Court, an independent appraiser inspected the property and provided the parties with its value. The appraiser was Trina Walters of Atlantic Appraisals. She determined that the appraised fair-market value of parcel 1 was Two Hundred Twenty Thousand and 00/100ths (\$220,000.00) Dollars.

The Plaintiffs agree that the Defendants have an interest in Parcel 1 and are willing to deliver one-third (1/3) of the net closing proceeds for Parcel 1 to the Heirs of Hester Bailum in accordance with their interests therein. Plaintiffs have asked that the Court order the funds be disbursed accordingly.

The Court, based upon the testimony, and exhibits concurs that the Heirs of Hester Bailum possess a one-third (1/3) interest in Parcel 1. The Court also concludes that the Heirs of Hester Bailum possess no interest in Parcels 2, 3 or 4. The Heirs of Samuel Bailum, possess a two thirds (2/3) interest in Parcel 1. Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton possess the full interest in Parcels 2, 3 and 4.

ADVERSE POSSESSION

I.

(In General)

The Defendants, specifically, Roosevelt Simmons, raised as a defense and claim the theory of adverse possession.

To prevail upon an adverse possession theory, Mr. Simmons, as the adverse possessor, must prove each element of the theory. These elements are:

- (1) Continuous;
- (2) Hostile;
- (3) Open and Notorious;
- (4) Actual; and

R384



(5) Exclusive

These elements of adverse possession have been determined in South Carolina by an extensive body of case law. (see eg. Lusk vs. Callahan 339 SE 2nd 56 (Ct App. 1986 and the cases cited therein.) To prevail, a claimant must establish that each element exists and is concurrent.

A.

CONTINUOUS

Possession must be continuous and uninterrupted for the requisite period. Temporary occupation does not constitute possession. (Atlantic CLR Co. vs. Searson 133 SE 567 (1926). Roosevelt Simmons does not occupy the property. Roosevelt Simmons testified that if any other rightful heir sought to use the property, they would be entitled to do so. As such, possession, if found to exist, would not be uninterrupted.

B.

HOSTILE

Hostile possession is possession with the intent to dispossess the true owner. Ouzts vs. McKnight 108 SE 561 (1920). There must be a trespass by the adverse possessor against the owner Massey v. Duren 3 SE 34 (1871). An heir going upon the property does not acquire title by adverse possession as he is not a trespasser but rather he is an owner. Permissive entry is not hostile. If the possessor has permission or an ownership interest, there can be no adverse possession. One who enters land with permission cannot acquire title by adverse possession. (Frady vs. Ivester 110 SE 135 (1921). Lastly, as to the possession being hostile, an heir coming into possession cannot obtain title by adverse possession against other heirs claiming an interest in the property. The heir in possession of the property as it relates to the other heirs is that of a fiduciary (Vaux vs. Nesbit 6 SE Eq. (1 McCord) 352 (1826). There has been no testimony that any heir with an interest in this property has attempted to dispossess any other rightful owner. To the contrary, testimony is that Roosevelt Simmons acted with regard to preserving the property for all the Bailum Heirs and not with regard to dispossessing any other true owner.

C.

OPEN & NOTORIOUS

The intent to possess the land must not be hidden but apparent. The possession must be so notorious that a legal owner by ordinary diligence should have known of the intent to possess. (*Graniteville Co. vs. Williams* 39 SE 2d 202 (1946)). Possession with knowledge by the owners of an heir acting in a fiduciary capacity is not indicative of intent to possess. As evidenced by numerous letters in evidence, there was not intent to possess by Roosevelt Simmons for his own interest. By letter, dated October 19, 2003, Mr. Simmons writes to Hattie and Clara Bailum with a request that the matter of ownership interests of the family be decided by the Probate Court. He signed the letter "Roosevelt Simmons and Family". Leon Singleton, another Hester Bailum heir, wrote to Ruth Cupp, Esq. on December 27, 2004. His letter references the "Bailum property". Mr. Singleton also wrote to Hattie Bailum in June 2005 and describes Roosevelt Simmons as follows: "Roosevelt, my first cousin, has been the caretaker as well as taxpayer for the land...". He also describes the land as holding the family heritage to be passed down through the generations. Lastly, Leon asks that if Hattie decides to sell, that Leon and Roosevelt be given the percentage of their ownership for the work they have put into the land. Roosevelt Simmons testified that he was not possessing the property in his own right but serving as a caretaker.

D.

ACTUAL

There can be no adverse possession of land against an owner where there has been no possession for which the true owner could bring a trespass claim. *Steadman vs. Hilliard* 37 SCE (3 Rich) 10 (1846). This, if a party has a legal right as an owner by virtue of his being a legal heir, there can be no trespass and thus no trespass claim would follow. In the absence of the ability to bring a trespass claim, there can be no adverse possession as a matter of law. Roosevelt Simmons has a legal right as an owner to use the property. As such, he cannot be classified as a trespasser.

R 386

10
Jan

E.

EXCLUSIVE

Possession must be such as to indicate exclusive ownership of the property. Curtis vs. Deschamps 350 SE 201 (Ct. App. 1986). When the owner(s) of the property and an occupant are both in possession, the possession of the legal owner prevails to the exclusion of the adverse possessor. The exclusiveness provision is not satisfied if occupancy is shared with an owner or agent of the owner. Butler vs. Lindsey 361 SE 2d 621 (Ct. App. 1987). Roosevelt Simmons shares ownership with numerous heirs. As evidenced by testimony and exhibits, other heirs would clearly have occupied the property if not for the County disallowing their requests, a fact acknowledged by witnesses for the Plaintiffs and Defendants. Roosevelt was not acting as an exclusive owner, but rather as the family caretaker.

ADVERSE POSSESSION

II.

(by Heirs)

In addition to the numerous cases addressing adverse possession by the third parties, South Carolina Courts have also confronted the issue of adverse possession by heirs. For adverse possession by an heir against all others to be found to exist, the previously discussed five elements must be proven as well as a sixth element of ouster.

With heirs property, possession is presumed to follow legal title. Lynch vs. Lynch 115 SE 2d 201 (1960). When an heir "occupies" property, there is every presumption that such occupancy is subordinate to legal title. Occupancy by the family or other relation **does not** create hostility in possession. Knight vs. Hilton 79 SE 2d 873.

Permissive entry or possession by an heir under color of title is not hostile. One who enters and with permission or under color of title cannot acquire title by adverse possession absent a disclaimer of the owner or other heirs. No disclaimer has been given by any of Samuel Bailum's heirs or Hester Bailum's heirs in this dispute.

Further, where one seeks to acquire title by adverse possession against his brothers and sisters "such an unconscionable claim should not be sustained..." The presumption is that the possession of a tenant is of the benefit of all. It must appear that the holding heir claimed the

property as his own and has in unequivocal terms so notified the other heirs". Whitaker vs. Jeffcoat 122 SE 495 (1924).

Thus to prevail, an heir must prove by conclusive evidence that he has complied with the law of ouster in order to adversely possess against other heirs. Fender vs. Heirs of Smashum 581 SE 2d 853 (Ct. App. 2003).

Ouster is the actual turning out or excluding a party entitled to possession of any real property. The acts must be unequivocal and distinctly hostile. There must be unequivocal terms notified to the other heirs. Fender at 642. Only in rare extreme cases will the ouster of one heir by another heir be implied for dealings with the property. Fender at 642.

The well-established principle is that possession by one is the possession for all. Watson vs. Little 79 SE 2d 384 (1953). To prevail on an adverse possession claim, one tenant must overcome the presumption that he holds possession in recognition of the co-tenants. The fact that a claimant paid taxes does not constitute Ouster. Fender at 643. Payment of taxes by a co-tenant entitled the co-tenant to only proportionate contribution from the other co-tenants and nothing more. See Watson at 387. Mr. Simmons has testified that there is no ouster of his family or any other rightful heir with an interest in the property. To the contrary, by his own testimony, if they sought to use the property, he would welcome them.

Mr. Simmons has for several years served a vital role as caretaker of this heirs' property. He has watched over the property, collected rent, and paid taxes. The Court recognizes his efforts in this regard.

CONCLUSIONS OF LAW

A.

Declaratory Judgment

The Court concludes as a matter of law that the title to this property be quieted as set out specifically hereinbelow. As for Parcel 1 (311-00-00-024) Title is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest). As for Parcels 2, 3, and 4, title is vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton. Those heirs are the Plaintiffs in this action.

R388

12
Jan

PARTITION

The Court concludes as a matter of law that the property is to be partitioned by sale and the proceeds divided fairly and equitably. The Plaintiff's have requested a sale. The Defendants Roosevelt Simmons and Marie Smith have requested they be allowed to purchase the other heirs interest in Parcel 1 if the Court determined that Roosevelt Simmons was not the owner through adverse possession

SALE

As to Parcel 1, in 2003, Hattie Bailum entered a contract of sale. As part of this action, this Court ordered an appraisal of Parcel 1. The independent appraisal established a fair-market value on the property at \$220,000.00. The Court finds this value fair and reasonable. The parties have executed an addendum to their contract to sell Parcel 1 for the appraised value. The Court concludes that since the sale price is the fair-market value price, it is in the best interests of all the parties that the contract be fully performed. Doing so eliminates the need to list and sell the property thus saving six percent (6%) to ten percent (10%) of the purchase price in real estate commissions and avoids unnecessary delays. By ordering the sale, the heirs who will share in the proceeds will receive a greater share, not diminished by unnecessary costs and delays.

Mr. Roosevelt Simmons and Mrs. Marie Smith have asked for the opportunity to purchase Parcel 1. This matter has been pending for several years. Mr. Simmons, on previous occasions, has been offered the opportunity by this Court to buy out the remaining heirs with an interest in Parcel 1. The Court shall grant to Roosevelt Simmons and Mrs. Marie Smith the opportunity to acquire Parcel 1. This opportunity is assignable but only to individuals related by blood or marriage to a party herein. Mr. Simmons or Mrs. Marie Smith shall have ten (10) days from the date of service of this Order to provide to the Court written confirmation of a loan approval or of funds available by a licensed lender. Mr. Simmons or Mrs. Marie Smith shall have thirty (30) days to consummate the sale from the date of service of this Order. Should Mr. Simmons or Mrs. Marie Smith fail to provide the letter or consummate the transaction, the property shall be immediately sold in accordance with the contract for the fair-market value price of Two hundred twenty thousand (\$220,000.00) Dollars.



R389

The Court recognizes that over time certain heirs, both plaintiff and defendant herein, have contributed to the taxes and maintenance expenses for the four parcels. Those contributions can not be fixed with certainty. However, in recognition of Mr. Simmons' efforts to preserve the property for the benefit of all the heirs, the Court concludes he is to be given \$10,000.00 from the proceeds of the sale of the four parcels over and above his interest as an heir in Parcel 1. The parties agree that this sum is fair and equitable compensation for his dedicated service in preserving this property for the benefit of all Bailum heirs.

The net proceeds from the sale, shall be distributed after the fees for the Special Referee and Guardian ad Litem are deducted, with one-third (1/3) being forwarded to the Heirs of Hester Bailum and two-thirds (2/3) being forwarded to the Heirs of Samuel Bailum.

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

As to Parcels 2, 3, and 4, in 2003 Hattie Bailum entered a contract for sale with a purchaser who is an adjoining land owner. This property was also appraised pursuant to Court Order. The independent appraisal establishes the combined fair-market value of these parcels at \$337,000.00. The Court finds their value fair and reasonable. The parties have executed an addendum to their contract to sell Parcels 2, 3, and 4 for the appraised value.

The Court concludes that since the sale price is fair-market value, it is in the best interest of the sole heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B.

R390

14
for

Middleton that the contract be fully performed. This conclusion is in accord with the relief sought in the Plaintiff's complaint, wishes and prayers. The net proceeds from the sale shall be distributed, after usual and customary closing costs are deducted as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

ADVERSE POSSESSION

The Court concludes that the Defendant Roosevelt Simmons did not prove the required elements of an adverse possession theory. By his own testimony, each of the elements was negated rather than proved.

COSTS AND EXPENSES

The Court concludes that although S.C. Code 15-61-10, et seq. permits it to award Plaintiffs' fees and costs, the Court will decline to do so. The Court does not find that the Defendants' position was baseless or meritless. To the contrary, all parties concede that the title must be quieted. The objection by Mr. Simmons as to the partition and sale was not entered into lightly or frivolously. He raised fair questions for this Court to decide. The court concludes that

each side shall pay their attorney's fees and costs.

As customary in such case and as stipulated by the parties, the Guardian ad Litem's fees (\$1,200.00) and the Special Referee's fee (\$6,000.00) are to be paid from the sale of the four parcels before distribution to the heirs.

ORDER

This Court issues its Order as follows:

R 391



1. Title to Parcel 1 is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest).

2. By Special Referee Deed, Parcel 1 may be sold to Roosevelt Simmons and Marie Smith or their permitted assigns if and only if Mr. Simmons and Mrs. Smith or their permitted assigns provides to the Clerk of Court for filing and date stamp within ten (10) days of the date of service of this Order a loan approval letter for \$220,000.00 (less the sum due, before costs are deducted of \$58,888.89). Mr. Simmons and Mrs. Smith or their or their assigns must consummate this transaction within thirty (30) days of this Order. Failure to produce the required proof or his or his assigns' ability to pay or close in the time allotted will result in a Special Referee's Deed conveying Parcel 1 in accordance with the contract

3. The Guardian ad Litem's fee of \$1,200.00 shall be deducted pro rate from the closing proceeds for the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

4. The Special Referee's fee of \$6,000.00 shall be deducted pro rate from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

5. Ten Thousand Dollars (\$10,000.00) shall be paid at closing to Mr. Roosevelt Simmons and deducted from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

6. All standard and customary closing costs of the seller with regard to Parcel 1 shall be deducted from the closing proceeds from the sale of Parcel 1.

7. The net proceeds from the closing proceeds from the sale of Parcel 1 shall be distributed as follows:

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

2392

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

8. Title to Parcels 2, 3, & 4 are vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Fanne B. Middleton and Mary Bailum.

9. By Special Referee Deed, Parcels 2, 3, and 4 are sold in accordance with the contract for the sum of \$337,000.00

10. All standard and customary closing costs of the seller shall be deducted from the closing proceeds from the sale of Parcels 2, 3 and 4. The closing shall occur within thirty (30) days of the date of this Order.

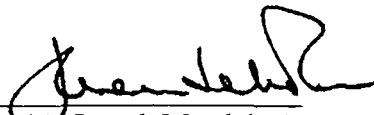
11. The net proceeds from the closing proceeds from the sale of Parcels 2, 3, and 4 shall be distributed as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

12. The Defendants' claim of Title by adverse possession is denied.

AND IT IS SO ORDERED!

February 16, 2007
Charleston, South Carolina


Honorable Joseph Mendelsohn
Special Referee

2393

17


STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs,)

VS.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS;)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)

BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-10-1459

ORDER

FILED
2007 MAR -6 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT

[Handwritten signature]

2394

devisees, distributes, issue, executors,)
 administrators, successors or assigns)
 of the above named defendants, and)
 also the following deceased persons:)
 ESTATE OF SAMUEL BAILUM)
 a/k/a SAMUEL BALAAM,)
 deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM)
 a/k/a ESTHER BAILUM a/k/a)
 ESTHER BALAAM, HESTER)
 SINGLETON BALAAM,)
 THOMAS BAILUM, SAMUEL)
 BAILUM, SAMMY BAILUM,)
 FANNIE BAILUM MIDDLETON,)
 MARY WARREN, WILLIS)
 BAILUM, TONY BAILUM, MARY)
 BAILUM, SAM BAILUM, HESTER)
 BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE)
 BURNS, JERRY SINGLETON,)
 ARTHUR SINGLETON, EUEGENE)
 SINGLETON, RICHARDINE)
 SINGLETON, EUEGENE)
 SINGLETON, JR., GARY)
 SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS,)
 ARTHUR LEE BURNS, ARLENE)
 GREEN, ERNEST GREEN, JOE)
 LOUIS BURNS a/k/a JOE LEWIS)
 BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS,)
 JR., and all other persons known or)
 claiming any right, title, estate in or)
 lien upon the real estate described in)
 the Complaint herein,)

Defendants.)

This matter came before me on February 16, 2007 for a final hearing upon
 Defendant Marie Smith's Motion to Alter or Amend judgment and the Plaintiff Roosevelt
 Simmons Motion for Reconsideration or New Trial. Present were John F. Martin,
 Esquire, counsel for the Plaintiff's; Louis Condon, Esquire, counsel for Roosevelt
 Simmons; Roosevelt Simmons; Bruce Berlinsky, Esquire, counsel for Marie Smith.

2/16/07

MARIE SMITH

The Plaintiff's have consented to amend the judgment to grant to Marie Smith the same option to purchase Parcel 1 as was accorded to the Defendant Roosevelt Simmons. This request complies with the provision of §15-61-25 of S.C. Code Ann which grants to heirs the right to purchase the property at issue herein. Since Plaintiff consents and since the Court finds the motion timely and proper, the Defendant Marie Smith's Motion to Alter or Amend is granted. The court has executed an Amended Special Referees Order to be filed and served with this change included.

ROOSEVELT SIMMONS

The Defendant Roosevelt Simmons raises by motion and affidavit numerous matters for the Court to consider in support of his argument for Reconsideration or New Trial. Those objections are fully set forth on this motion and affidavit filed in support.

The Court has carefully considered each of Mr. Simmons's arguments and respectfully denies each of them. The evidentiary hearing in this matter, testimony and documentary evidence were preserved by a court reporter. The transcript and copy of the exhibits are available to any party who wishes to order and pay for the same.

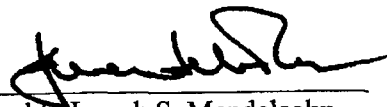
As for adverse possession with regard to all parcels of land at issue, the Court finds there has been no error of law or procedure with regard to its findings and conclusions.

As for the time allowed to Mr. Simmons after service of the Order to obtain financing, the Court ordered appraisal on this property was obtained and made available to counsel nearly 2 years ago. Further, the Final Order was filed and served January 11, 2007. That order confirms the sales price and Mr. Simmons right, if he so elects, to purchase the property. Mr. Simmons has had ample time to secure a loan commitment or other acceptable financing to buy out the interest of all other heirs.

3/
C

With regard to any property taxes paid during the pendency of this action for years 2005, 2006 and part of 2007, at the time of the sale of the parcels, reimbursement shall be made on a pro-rata basis to any person or persons who paid the taxes. To be entitled to reimbursement, the person or persons who paid must deliver proof of payment to the Special Referee not less than 48 hours before disbursement of sale proceeds.

AND IT IS SO ORDERED.



Honorable Joseph S. Mendelsohn
Special Referee



12397

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam;
 Ruby Bailum a/k/a Ruby Balaam;
 Verdona Gray; Julie B. Johnson; and
 Monica Middleton,

Plaintiffs,

Of Whom Hattie Bailum a/k/a Hattie
 Balaam is

Respondent,

v.

Roosevelt Simmons, Leon Singleton,
 Mabel Singleton Hicks a/k/a Maybell
 Hicks, Walter Burns, Sheila B. Owens,
 Louise Canty, Alonzetta Burns, Sharon
 Burns, Melvin Singleton, Marie Smith,
 Elmore Singleton, Theodosia Singleton,
 Mildred Singleton Mahoney, Andre
 Singleton, Eugenie Singleton, Leon
 Elijah Singleton, Ernest Green, Jr.,
 Karen Green, Deloires Green, Joan Green
 Wells, Delbert Burns, Joe Louis Burns, Jr.
 a/k/a Joe Lewis Burns, Jr., Vonie Burns,
 Shellie Burns, Anastacia Burns, Tremayne
 Burns, Joshua Burns, Jarred Burns, Amber
 Burns, if they be alive, and John Doe and
 Mary Roe, adults, and Richard Doe and
 Jane Doe, infants, persons under disability
 or incompetence, if any, including those
 persons who might be in the military and
 covered under the Soldier's and Sailor's
 Relief Act, fictitious names designating the
 unknown heirs devisees, distributees, issue,
 executors, administrators, successors or
 assigns of the above named defendants and
 also the following deceased persons: Estate of
 Samuel Bailum a/k/a Samuel Baalum,
 deceased or the Estate of Hester Singleton
 Bailum a/k/a Esther Bailum a/k/a Esther
 Baalum, Hester Singleton Baalum, Thomas
 Baalum, Samuel Bailum, Sammy Bailum, Fannie
 Bailum Middleton, Mary Warren, Willis Bailum,
 Tony B. Baalum, Mary, Bailum, Sam Bailum, Hester
 Baalum, Leon Singleton, Elouise Singleton, Carrie

FILED
 2007 JUN -4 PM 2:26
 JULIE J. ARMSTRONG
 CLERK OF COURT
 103

Burns, Gary Singleton, Arthur Singleton, Eugene
Singleton, Richard Singleton, Eugene
Singleton, Jr., Gary Singleton, Christopher Burns,
Jeffrey Burns, Arthur Lee Burns, Arlene, Green,
Ernest Green, Joe Louis Burns a/k/a Joe Lewis
Burns, Billy Burns, Queen Singleton and Juluis
Burns, and all other persons known or
claiming any right, title, estate in or lien upon
real estate described in the Complaint herein, Defendants,

John Roosevelt Simmons is the Appellant.

Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

ORDER of DISMISSAL

The above captioned case is pending on appeal in this Court. Due to the failure of appellant to provide proof of ordering the transcript and/or failure to serve and file the Appellant's Initial Brief and Description of Matter in the above matter, as provided for in Rules 207, 208 and 209 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Charleston County after fifteen (15) days, exclusive of the date of filing this Order.

Kenneth A. Rickstad CLERK
For the Court *ldp*

Columbia, South Carolina
5/31/2007

cc: Charles E. Houston, Jr., Esq.
John P. Martin, Esquire
The Honorable Julie J. Armstrong

2007 JUN 4 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

FILED



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 18, 2007

Charles E. Houston, Jr., Esq.
4 Carriage Lane, Suite 206
Charleston, SC 29407

Re: Bailum, Hattie v. Simmons, Roosevelt

Dear Counsel:

The following Order has been endorsed on your Motion for Reinstatement of Appeal in the above entitled case on appeal.

"Granted.

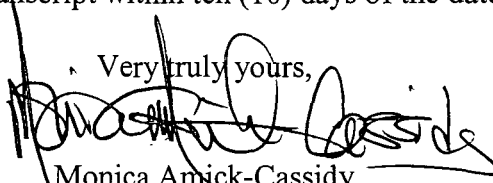
Kaye G. Hearn C.J.
For the Court

By s/ Kenneth A. Richstad
Clerk

June 18, 2007."

Please be advised it will be necessary for you to provide the Court with a copy of your letter to the court reporter ordering the transcript within ten (10) days of the date of this letter.

Very truly yours,


Monica Amick-Cassidy
Docketing Specialist

/ma

cc: John F. Martin, Esquire

R 400

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs,)

VS.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-10-1459

ORDER

FILED
2007 JUN 28 PM 3:54
JULIE J. ARMSTRONG
CLERK OF COURT



R401

devisees, distributes, issue, executors,))
 administrators, successors or assigns))
 of the above named defendants, and))
 also the following deceased persons:))
 ESTATE OF SAMUEL BAILUM))
 a/k/a SAMUEL BALAAM,))
 deceased or the ESTATE OF))
 HESTER SINGLETON BAILUM))
 a/k/a ESTHER BAILUM a/k/a))
 ESTHER BALAAM, HESTER))
 SINGLETON BALAAM,))
 THOMAS BAILUM, SAMUEL))
 BAILUM, SAMMY BAILUM,))
 FANNIE BAILUM MIDDLETON,))
 MARY WARREN, WILLIS))
 BAILUM, TONY BAILUM, MARY))
 BAILUM, SAM BAILUM, HESTER))
 BAILUM, JOSH SINGLETON,))
 ELOUISE SINGLETON, CARRIE))
 BURNS, JERRY SINGLETON,))
 ARTHUR SINGLETON, EUEGENE))
 SINGLETON, RICHARDINE))
 SINGLETON, EUEGENE))
 SINGLETON, JR., GARY))
 SINGLETON, CHRISTOPHER))
 BURNS, JULIUS BURNS,))
 ARTHUR LEE BURNS, ARLENE))
 GREEN, ERNEST GREEN, JOE))
 LOUIS BURNS a/k/a JOE LEWIS))
 BURNS, EMILY BURNS, QUEEN))
 SINGLETON, and JULIUS BURNS,))
 JR., and all other persons known or))
 claiming any right, title, estate in or))
 lien upon the real estate described in))
 the Complaint herein,))

Defendants.))

This matter came before the undersigned as Special Referee for a hearing on
 Defendant Roosevelt Simmons's Motion to Stay enforcement of the Amended Special
 Referee's Order signed February 16, 2007, filed and served on March 6, 2007. Present



R402

were, John Martin, counsel for the Plaintiffs, Bruce Berlinsky, counsel for Defendant Marie Smith, Charles Houston, counsel for Defendant Roosevelt Simmons and Roosevelt Simmons.

The Amended Special Referee's Order addresses the conveyance of four (4) parcels of land. The parties have reached an agreement with regard to these parcels. Said agreement is set forth herein below. The parcels as discussed herein are more fully described in prior Orders. This Order craves reference to any prior order for the legal description of any parcel identified herein by parcel number.

Parcel 1

With regard to this parcel, Mr. Roosevelt Simmons's Motion to Stay is, by agreement, denied. The court finds that Mr. Simmons failed to timely exercise his option to purchase this parcel. He failed to file with the Clerk of Court his proof of financing as required by the Order of January 11, 2007 recorded on the same date and by the Amended Order of February 16, 2007, filed and served March 6, 2007. As such, having failed to preserve his rights as an heir to purchase this parcel, the final order now requires this parcel be sold and title conveyed to Mr. Mark Goldberg.

Mrs. Marie Smith, also a Defendant, had timely filed her proof of financing for ½ of the purchase price of this parcel. By agreement of counsel she will, as an heir, complete the purchase of ½ of this parcel. The remaining ½ shall be conveyed to Mr. Goldberg pursuant to prior Court Orders.

R403

 3

Since the Order requires the immediate sale of this parcel, Roosevelt Simmons sought a stay of enforcement of the Order by way of a motion for a supersedeas filed pursuant to Supreme Court Rule 225 and South Carolina Code Section §18-9-170.

After reviewing the record and hearing the argument of counsel, the court concludes, counsel consents and Mr. Simmons agrees on the record to the denial of the stay and the sale of Parcel 1. Parcel 1 shall be sold to Mr. Goldberg and to Mrs. Marie Smith in equal shares and as tenants in common. Upon the property being subdivided in two equal shares and a suitable plat recorded, appropriate deeds shall be exchanged so that Mrs. Smith and Mr. Goldberg own 50% of parcel 1 in their individual capacity. The sale price shall be the price set forth in the Amended Order of February 16, 2007. Mr. Goldberg and Mrs. Smith shall each contribute 50% of the sum necessary to conclude the sale. Subsequent disbursement of the net proceeds shall be in accord with that Order.

A deed shall be delivered to Plaintiff's counsel within ten (10) days of the execution of this Order, which deed shall convey Parcel 1 to Mr. Mark Goldberg and Mrs. Marie Smith as tenants in common.

With regard to his appeal, Mr. Simmons shall proceed with his appeal in which he alleges ownership of parcel 1 by adverse possession. That issue is the sole and exclusive issue upon which he shall, by agreement, appeal this Courts prior Order relative to Parcel 1.

Parcels 2, 3 and 4

In the Amended Order of the Special Referee dated February 16, 2007 which was filed and served March 6, 2007, Parcels 2, 3 and 4 are to be conveyed to Mrs. Hazel

Jan
4

R 404

Goldberg for consideration stated in that order. The Order found that the heirs of Hester Bailum had no interest in parcels 2, 3 and 4. Mr. Simmons has asserted a claim of adverse possession as to these parcels. That claim was denied by prior Order. He also now asserts as a ground for his appeal alleged newly discovered evidence which, he argues, grants to him a statutory intestate interest in these parcels.

If Mr. Simmons is correct, as a descendent of Sam Bailum's second wife, Hester Bailum, he would have an interest as follows. Parcels 2, 3 and 4 were owned by five Bailum family members, one of whom was named Sam Bailum. The evidence at trial was that this Sam Bailum was the child of the Sam Bailum who owned parcel 1. If Mr. Simmons is permitted to offer new evidence and if he is able to establish his rights, if any, to parcels 2, 3 and 4 he would take as follows.

Sam Bailum owned $\frac{1}{5}$ of the property. He died intestate leaving his children, his second wife Hester Bailum and her children from a prior marriage. Hester would have received a statutory $\frac{1}{3}$ interest in Sam Bailum's $\frac{1}{5}$ interest. Thus, the portion of parcels 2, 3 and 4 that Mr. Simmons would have an interest in by his own at most would be $\frac{1}{15}$ of the whole. But, Mr. Simmons is but one of fifteen surviving heirs of Hester Bailum (pursuant to the family tree submitted by Mr. Simmons at the trial of the case). As such, Mr. Simmons interest in parcels 2, 3 and 4, should he prevail on the issue of ancestry and statutory descent and distribution, is $\frac{1}{15}$ of $\frac{1}{15}$ or $\frac{1}{225}^{\text{th}}$ of the whole. The appraised value of parcels 2, 3 and 4 is \$337,000.00. Thus, Mr. Simmons, should prevail on appeal, shall be entitled to \$1,497.73 from the sale of parcels 2, 3 and 4.

With regard to parcels 2, 3 and 4, the court concludes, counsel consents and Mr. Simmons agrees on the record that the motion to stay with regard to these parcels is by

A handwritten signature in black ink, appearing to be 'CW' with a large '5' written below it.

R405

agreement denied. A Special Referee's deed shall be issued conveying these three parcels free and clear of any liens, encumbrances, lis pendens, claims, suits or appeals to Hazel Goldberg as per this court's prior Order. This deed shall be delivered to counsel for the Plaintiff's within ten (10) days of the execution of this Order.

At such time, the deed shall be recorded and proceeds disbursed in accord with prior Order except 1/3 of the net proceeds shall be delivered to the special referee to be deposited into an interest bearing account pending the conclusion of the appeal referenced herein below.

Mr. Simmons shall immediately waive any claims, suits, or appeals alleging adverse possession or ouster of parcels 2, 3 and 4. He waives any and all claims that affect title to parcels 2, 3 and 4. He expressly reserves his claim on appeal to a determination of the amount, if any, of the funds held in escrow that he will receive.

Mr. Simmons sole and exclusive claim on the appeal shall be the correctness of the determination of his interest, if any, in the sale proceeds from parcels 2, 3 and 4. At trial and by prior Order, he was found to have no interest in parcels 2, 3 and 4. It is that matter and only that matter which shall be pursued on appeal.

In the event the Appellate Courts affirms the ruling with regard to Mr. Simmons having no interest parcels 2, 3 and 4 then the funds held in escrow shall be disbursed to Plaintiffs.

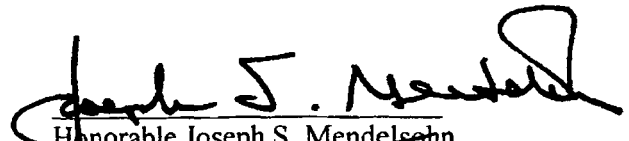
In the event the Appellate Courts remand the ruling with regard to Mr. Simmons having no interest parcels 2, 3 and 4, then the funds held in escrow shall remain in escrow until such time as the matter is decided with finality by Order or settlement.



R406

Counsel for the Plaintiff is Ordered to disburse 2/3 of the net proceeds from the sale to the Plaintiffs per the attached disbursement summary.

AND IT IS SO ORDERED.


Honorable Joseph S. Mendelsohn
Special Referee

Charleston, South Carolina
June 28, 2007

R407

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam;
Ruby Bailum a/k/a Ruby Balaam;
Verdone Gray; Julie B. Johnson; and
Monica Middleton,

Plaintiffs,

Of Whom Hattie Bailum a/k/a Hattie
Balaam is

Respondent,

v.

R 408

Roosevelt Simmons, Leon Singleton,
Mabel Singleton Hicks a/k/a Maybell
Hicks, Walter Burns, Sheila B. Owens,
Louise Canty, Alonzetta Burns, Sharon
Burns, Melvin Singleton, Marie Smith,
Elmore Singleton, Theodosia
Singleton, Mildred Singleton Mahoney,
Andre Singleton, Eugenie Singleton,
Leon Elijah Singleton, Ernest Green,
Jr., Karen Green, Deloris Green, Joan
Green Wells, Delbert Burns, Joe Louis
Burns, Jr. a/k/a Joe Lewis Burns, Jr.,
Vonie Burns, Shellie Burns, Anastacia
Burns, Tremayne Burns, Joshua Burns,
Jarred Burns, Amber Burns, if they be
alive, and John Doe and Mary Roe,
adults, and Richard Doe and Jane Doe,
infants, persons under disability or
incompetence, if any, including those
persons who might be in the military
and covered under the Soldier's and
Sailor's Relief Act, fictitious names
designating the unknown heirs
devisees, distributes, issue, executors,
administrators, successors or assigns of
the above named defendants and also
the following deceased persons: Estate
of Samuel Bailum a/k/a Samuel
Baalum, deceased or the Estate of
Hester Singleton Bailum a/k/a Esther
Bailum a/k/a Esther Baalum, Hester
Singleton Baalum, Thomas Bailum,
Samuel Bailum, Sammy Bailum,
Fannie Bailum Middleton, Mary
Warren, Willis Bailum, Tony Bailum,
Mary, Bailum, Sam Bailum, Hester
Bailum, Josh Singleton, Elouise
Singleton, Carrie Burns, Jerry
Singleton, Arthur Singleton, Eugene
Singleton, Richardine Singleton,
Eugene Singleton, Jr., Gary Singleton,
Christopher Burns, Julius Burns, Arthur
Lee Burns, Arlene, Green, Ernest
Green, Joe Louis Burns a/k/a Joe Lewis
Burns, Emily Burns, Queen Singleton
and Juluis Burns, Jr., and all other
persons known or claiming any right,
title, estate in or lien upon real estate
described in the Complaint herein, Defendants,

R 409

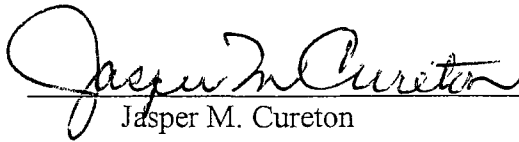
Of Whom Roosevelt Simmons is the Appellant.

Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

ORDER

Appellant Roosevelt Simmons filed a motion for supersedeas, dismissal, and other relief. This court asked for a return due no later than July 23, 2007. Respondent has asked for an extension of time to serve and file the return. The extension is granted. Respondent shall serve and file the return no later than August 3, 2007. Additionally, this court temporarily stays the sale of any property involved in the underlying appeal until further order of this court. The temporary stay will be reconsidered upon receipt of the return by Respondent.

AND IT IS SO ORDERED.

 , A.J.
Jasper M. Cureton

Columbia, South Carolina

7/17/2007

cc: Charles E. Houston, Jr., Esq.
John F. Martin, Esquire

FILED

7/18/07 *dhj*

R 410



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

September 4, 2007

Charles E. Houston, Jr., Esq.
4 Carriage Lane, Suite 206
Charleston, SC 29407

Bruce Alan Berlinsky, Esquire
P.O. Box 206
Charleston, SC 29402

Re: Bailum, Hattie v. Simmons, Roosevelt

Dear Counsel:

The following Order has been endorsed on Mr. Houston's Motion to Dismiss and/or Intervene as a Party Defendant in the above entitled case on appeal.

"Denied.

s/ Jasper M. Cureton A.J.

September 04, 2007."

The following Order has been endorsed on Mr. Houston's Motion for Order of Supercedeas, Dismissal and Other Relief in the above entitled case on appeal.

"Denied.

s/ Jasper M. Cureton A.J.

September 04, 2007."

The following Order has been endorsed on Mr. Berlinsky's Motion to Extend Time in the above entitled case on appeal.

R 411

"Motion is Moot. Return has been accepted and reviewed by the Court

s/ Jasper M. Cureton A.J.

September 04, 2007."

The following Order has been endorsed on your Motion to File Reply Out of Time in the above entitled case on appeal.

"Granted.

s/ Jasper M. Cureton A.J.

September 04, 2007."

Counsel for the Appellant is requested to provide the Court with an update on the transcript within ten (10) days of the date of this letter.

Very truly yours,


CLERK

KAR/ma

cc: John F. Martin, Esquire

R412

04-CP-10-1459

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam; Ruby
Bailum a/k/a Ruby Balaam; Verdone Gray;
Julie B. Johnson; and Monica Middleton, Respondents,

v.

Roosevelt Simmons, Leon Singleton,
Mabel Singleton Hicks a/k/a Maybell
Hicks, Walter Burns, Sheila B. Owens,
Louise Canty, Alonzetta Burns, Sharon
Burns, Melvin Singleton, Marie Smith,
Elmore Singleton, Theodosia
Singleton, Mildred Singleton Mahoney,
Andre Singleton, Eugenie Singleton,
Leon Elijah Singleton, Ernest Green,
Jr., Karen Green, Deloris Green, Joan
Green Wells, Delbert Burns, Joe Louis
Burns, Jr. a/k/a Joe Lewis Burns, Jr.,
Vonie Burns, Shellie Burns,
Anastacia Burns, Tremayne Burns,
Joshua Burns, Jarred Burns, Amber
Burns, if they be alive, and John Doe
and Mary Roe, adults, and Richard Doe
and Jane Doe, infants, persons under
disability or incompetence, if any,
including those persons who might be
in the military and covered under the
Soldier's and Sailor's Relief Act,
fictitious names designating the
unknown heirs devisees, distributes,
issue, executors, administrators,
successors or assigns of the above
named defendants and also the
following deceased persons: Estate of
Samuel Bailum a/k/a Samuel Baalum,
deceased or the Estate of Hester
Singleton Bailum a/k/a Esther Bailum
a/k/a Esther Baalum, Hester Singleton
Baalum, Thomas Bailum, Samuel
Bailum, Sammy Bailum, Fannie
Bailum Middleton, Mary Warren,

R413

Willis Bailum, Tony Bailum, Mary,
 Bailum, Sam Bailum, Hester Bailum, Josh
 Singleton, Elouise Singleton, Carrie Burns,
 Jerry Singleton, Arthur Singleton, Eugene
 Singleton, Richardine Singleton, Eugene
 Singleton, Jr., Gary Singleton, Christopher
 Burns, Julius Burns, Arthur Lee Burns,
 Arlene, Green, Ernest Green, Joe Louis
 Burns a/k/a Joe Lewis Burns, Emily Burns,
 Queen Singleton and Juluis Burns, Jr., and
 all other persons known or claiming any
 right, title, estate in or lien upon real estate
 described in the Complaint herein,

Defendants,

Of Whom Roosevelt Simmons is the

Appellant

And Marie Smith is

Respondent.

2008 MAR 24 AM 10:34
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY BA

FILED

Honorable Joseph Mendelsohn
 Charleston County
 Trial Court Case No. 2004-CP-10-01459

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to serve and file the Appellant's Initial Brief and Designation of Matter in the above matter, as provided for in Rules 208 and 209 of the South Carolina Appellate Court Rules and the Court's letter of February 11, 2008,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Charleston County after fifteen (15) days, exclusive of the date of filing this Order.

Kenneth A. Smith CLERK
 For the Court

Columbia, South Carolina
 3/20/2008

cc: Charles E. Houston, Jr., Esq.
 Bruce Alan Berlinsky, Esquire
 John F. Martin, Esquire
 The Honorable Julie J. Armstrong

R 414

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam; Ruby Bailum a/k/a
Ruby Balaam; Verdone Gray; Julie B. Johnson; and
Monica Middleton,

Respondents,

v.

Roosevelt Simmons, Leon Singleton, Mabel Singleton
Hicks a/k/a Maybell Hicks, Walter Burns, Sheila B.
Owens, Louise Canty, Alonzetta Burns, Sharon Burns,
Melvin Singleton, Marie Smith, Elmore Singleton,
Theodosia Singleton, Mildred Singleton Mahoney, Andre
Singleton, Eugenie Singleton, Leon Elijah Singleton,
Ernest Green, Jr., Karen Green, Deloris Green, Joan Green
Wells, Delbert Burns, Joe Louis Burns, Jr. a/k/a Joe Lewis
Burns, Jr., Vonie Burns, Shellie Burns, Anastacia Burns,
Tremayne Burns, Joshua Burns, Jarred Burns, Amber
Burns, if they be alive, and John Doe and Mary Roe,
adults, and Richard Doe and Jane Doe, infants, persons
under disability or incompetence, if any, including those
persons who might be in the military and covered under
the Soldier's and Sailor's Relief Act, fictitious names
designating the unknown heirs devisees, distributes, issue,
executors, administrators, successors or assigns of the
above named defendants and also the following deceased
persons: Estate of Samuel Bailum a/k/a Samuel Baalum,
deceased or the Estate of Hester Singleton Bailum a/k/a
Esther Bailum a/k/a Esther Baalum, Hester Singleton
Baalum, Thomas Bailum, Samuel Bailum, Sammy
Bailum, Fannie Bailum Middleton, Mary Warren, Willis
Bailum, Tony Bailum, Mary, Bailum, Sam Bailum, Hester
Bailum, Josh Singleton, Elouise Singleton, Carrie Burns,
Jerry Singleton, Arthur Singleton, Eugene Singleton,
Richardine Singleton, Eugene Singleton, Jr., Gary
Singleton, Christopher Burns, Julius Burns, Arthur Lee
Burns, Arlene, Green, Ernest Green, Joe Louis Burns a/k/a
Joe Lewis Burns, Emily Burns, Queen Singleton and
Julius Burns, Jr., and all other persons known or claiming
any right, title, estate in or lien upon real estate described
in the Complaint herein,

Defendants,

Of Whom Roosevelt Simmons is the

Appellant

And Marie Smith is

Respondent.

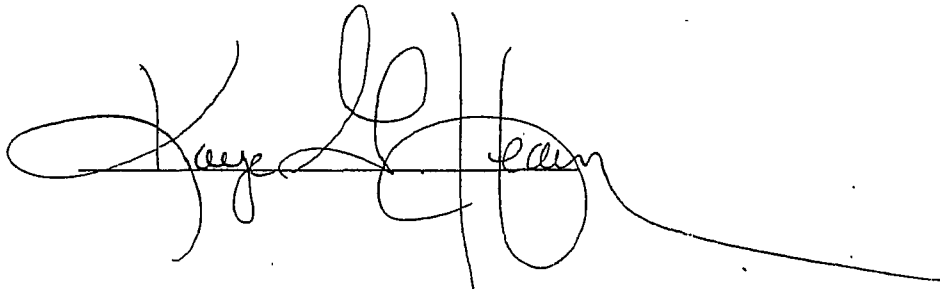
Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

R 415

ORDER

On March 20, 2008, the above-captioned appeal was dismissed for failure to file and serve Appellant's Initial Brief and Designation of Matter. Appellant now petitions this Court to reinstate the appeal, explaining he had not yet received a transcript from one of the court reporters. Respondents filed a Return, opposing the motion. After careful review of the motion, return, and extensive file in this appeal, Appellant's motion to reinstate is granted. However, the Court's review of the file revealed extraordinary delays in this case. In the petition to reinstate, counsel for Appellant stated the missing transcript was mailed on March 24, 2008. Because counsel for Appellant should now have all transcripts, the Initial Appellant's Brief and Designation of Matter must be filed and served thirty days from the filing date of this order. No further extensions will be granted to Appellant absent extraordinary circumstances.

AND IT IS SO ORDERED.



Columbia, South Carolina

5/14, 2008

cc: Charles E. Houston, Jr., Esq.
Bruce Alan Berlinsky, Esquire
John F. Martin, Esquire

FILED

5/14/08 dlp

R416

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam; Ruby
Bailum a/k/a Ruby Balaam; Verdone Gray;
Juhe B. Johnson; and Monica Middleton, Respondents,

v.

Roosevelt Simmons, Leon Singleton,
Mabel Singleton Hicks a/k/a Maybell
Hicks, Walter Burns, Sheila B. Owens,
Louise Canry, Alonzetta Burns, Sharon
Burns, Melvin Singleton, Marie Smith,
Elmore Singleton, Theodosia
Singleton, Mildred Singleton Mahoney,
Andre Singleton, Eugenie Singleton,
Leon Elijah Singleton, Ernest Green,
Jr., Karen Green, Deloires Green, Joan
Green Wells, Delbert Burns, Joe Louis
Burns, Jr. a/k/a Joe Lewis Burns, Jr.,
Vonie Burns, Shellie Burns,
Anastacia Burns, Tremayne Burns,
Joshua Burns, Jarred Burns, Amber
Burns, if they be alive, and John Doe
and Mary Roe, adults, and Richard Doe
and Jane Doe, infants, persons under
disability or incompetence, if any,
including those persons who might be
in the military and covered under the
Soldier's and Sailor's Relief Act,
fictitious names designating the
unknown heirs devisees, distributes,
issue, executors, administrators,
successors or assigns of the above
named defendants and also the
following deceased persons: Estate of
Samuel Bailum a/k/a Samuel Baalum,
deceased or the Estate of Hester
Singleton Bailum a/k/a Esther Bailum
a/k/a Esther Baalum, Hester Singleton
Baalum, Thomas Bailum, Samuel
Bailum, Sammy Bailum, Fannie

FILED
2008 AUG 21 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Bailum Middleton, Mary Warren, Willis
Bailum, Tony Bailum, Mary, Bailum, Sam
Bailum, Hester Bailum, Josh Singleton,
Elouise Singleton, Carne Burns, Jerry
Singleton, Arthur Singleton, Eugene
Singleton, Richardine Singleton, Eugene
Singleton, Jr., Gary Singleton, Christopher
Burns, Julius Burns, Arthur Lee Burns,
Arlene, Green, Ernest GReen, Joe Louis
Burns a/k/a Joe Lewis Burns, Emily Burns,
Queen Singleton and Juluis Burns, Jr., and
all other persons known or claiming any
right, title, estate in or lien upon real estate
described in the COMplaint herein,

Defendants,

Of Whom Roosevelt Simmons is the

Appellant

And Marie Smith is

Respondent.

Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

ORDER

A review of the file in this case reveals that it should have been dismissed when the June 13, 2008
deadline for filing the initial brief was passed.

Consequently, this appeal is now administratively dismissed under Rule 221. The motion to dismiss
and the motion for an extension are therefore moot.

IT IS SO ORDERED.

Kenneth A. Riepstaedt CLERK
For the Court

Columbia, South Carolina
August 20, 2008

cc: Charles E. Houston, Jr., Esq.
Bruce Alan Berlinsky, Esquire
John F. Martin, Esquire
The Honorable Julie J. Armstrong

2418

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam; Ruby Bailum
a/k/a Ruby Balaam; Verdone Gray; Julie B.
Johnson; and Monica Middleton,

Respondents,

v.

Roosevelt Simmons, Leon Singleton, Mabel
Singleton Hicks a/k/a Maybell Hicks, Walter
Burns, Sheila B. Owens, Louise Canty,
Alonzetta Burns, Sharon Burns, Melvin
Singleton, Marie Smith, Elmore Singleton,
Theodosia Singleton, Mildred Singleton
Mahoney, Andre Singleton, Eugenie Singleton,
Leon Elijah Singleton, Ernest Green, Jr., Karen
Green, Deloires Green, Joan Green Wells,
Delbert Burns, Joe Louis Burns, Jr. a/k/a Joe
Lewis Burns, Jr., Vonie Burns, Shellie Burns,
Anastacia Burns, Tremayne Burns, Joshua
Burns, Jarred Burns, Amber Burns, if they be
alive, and John Doe and Mary Roe, adults, and
Richard Doe and Jane Doe, infants, persons
under disability or incompetence, if any,
including those persons who might be in the
military and covered under the Soldier's and
Sailor's Relief Act, fictitious names designating
the unknown heirs devisees, distributes, issue,
executors, administrators, successors or assigns
of the above named defendants and also the
following deceased persons: Estate of Samuel
Bailum a/k/a Samuel Baalum, deceased or the
Estate of Hester Singleton Bailum a/k/a Esther
Bailum a/k/a Esther Baalum, Hester Singleton
Baalum, Thomas Bailum, Samuel Bailum,
Sammy Bailum, Fannie Bailum Middleton,
Mary Warren, Willis Bailum, Tony Bailum,
Mary, Bailum, Sam Bailum, Hester Bailum,
Josh Singleton, Elouise Singleton, Carrie
Burns, Jerry Singleton, Arthur Singleton,
Euegene Singleton, Richardine Singleton,
Euegene Singleton, Jr., Gary Singleton,
Christopher Burns, Julius Burns, Arthur Lee
Burns, Arlene, Green, Ernest Green, Joe Louis
Burns a/k/a Joe Lewis Burns, Emily Burns,
Queen Singleton and Juluis Burns, Jr., and all
other persons known or claiming any right,
title, estate in or lien upon real estate described
in the Complaint herein,

Defendants,

Of Whom Roosevelt Simmons is the

Appellant

FILED

OCT 27 2008

JULIE J. ARMSTRONG
CLERK, C.P. & C.E.

And Marie Smith is

Respondent.

Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

FILED
2008 OCT 27 PM 1:12
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER

Appellant petitions our Court to rehear the dismissal of the above-captioned appeal. After a careful consideration, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating the appeal.

AND IT IS SO ORDERED.

Kaye L. Hearn
Jasper W. Curston A.J.
C. Thomas Gorbely

Columbia, South Carolina

October 24, 2008

cc: Charles E. Houston, Jr., Esq.
Bruce Alan Berlinsky, Esquire
John F. Martin, Esquire

FILED

10/24/08 clrp

R 420

The South Carolina Court of Appeals

Hattie Bailum a/k/a Hattie Balaam; Ruby
Bailum a/k/a Ruby Balaam; Verdone Gray;
Julie B. Johnson; and Monica Middleton,

Respondents,

v.

Roosevelt Simmons, Leon Singleton, Mabel
Singleton Hicks a/k/a Maybell Hicks, Walter
Burns, Sheila B. Owens, Louise Canty,
Alonzetta Burns, Sharon Burns, Melvin
Singleton, Marie Smith, Elmore Singleton,
Theodosia Singleton, Mildred Singleton
Mahoney, Andre Singleton, Eugenie Singleton,
Leon Elijah Singleton, Ernest Green, Jr., Karen
Green, Deloires Green, Joan Green Wells,
Delbert Burns, Joe Louis Burns, Jr. a/k/a Joe
Lewis Burns, Jr., Vonie Burns, Shellie Burns,
Anastacia Burns, Tremayne Burns, Joshua
Burns, Jarred Burns, Amber Burns, if they be
alive, and John Doe and Mary Roe, adults, and
Richard Doe and Jane Doe, infants, persons
under disability or incompetence, if any,
including those persons who might be in the
military and covered under the Soldier's and
Sailor's Relief Act, fictitious names designating
the unknown heirs devisees, distributes, issue,
executors, administrators, successors or assigns
of the above named defendants and also the
following deceased persons: Estate of Samuel
Bailum a/k/a Samuel Baalum, deceased or the
Estate of Hester Singleton Bailum a/k/a Esther
Bailum a/k/a Esther Baalum, Hester Singleton
Baalum, Thomas Bailum, Samuel Bailum,
Sammy Bailum, Fannie Bailum Middleton,
Mary Warren, Willis Bailum, Tony Bailum,
Mary, Bailum, Sam Bailum, Hester Bailum,
Josh Singleton, Elouise Singleton, Carrie
Burns, Jerry Singleton, Arthur Singleton,
Euegene Singleton, Richardine Singleton,
Euegene Singleton, Jr., Gary Singleton,
Christopher Burns, Julius Burns, Arthur Lee
Burns, Arlene, Green, Ernest Green, Joe Louis
Burns a/k/a Joe Lewis Burns, Emily Burns,
Queen Singleton and Juluis Burns, Jr., and all
other persons known or claiming any right,
title, estate in or lien upon real estate described
in the Complaint herein,

Of Whom Roosevelt Simmons is the

And Marie Smith is

Defendants,

Appellant

Respondent.

FILED

DEC - 2 2008

JULIE J. ARMSTRONG
CLERK, CP. & G.S.

R 421

2

Honorable Joseph Mendelsohn
Charleston County
Trial Court Case No. 2004-CP-10-01459

REMITTITUR

No Petition for Certiorari having been filed in the above matter since issuance of this Court's
Order dated October 24, 2008,

IT IS SO ORDERED that the above appeal be and hereby is remitted.


For the Court

CLERK

Columbia, South Carolina
December 1, 2008

Original to: The Honorable Julie Armstrong
cc: Charles E. Houston, Jr., Esq.
Bruce Alan Berlinsky, Esquire
John F. Martin, Esquire

FILED
2008 DEC -2 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

R422
1 OF 2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
HATTIE BAILUM, RUBY BAILUM and)
VERDONE GRAY)
Plaintiffs,)
v)
ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL)
MIDDLETON, J DOE, adults, and M ROE,)
infants, insane persons, incompetents, being)
fictitious names designating a class of persons,)
known or unknown, who may be heirs,)
distributees, devisees, legatees, widow, widower,)
assignees, executors, administrators, creditors,)
successors, issue, and aliases of the ESTATE)
of SAMUEL BAILAAM, deceased, and ALL)
OTHER PERSONS UNKNOWN, claiming any)
right, title, estate, interest in or lien upon the real)
property described in the complaint, adverse to)
plaintiffs' ownership, or any cloud on plaintiffs')
title,)
Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

COMPLAINT
(Quiet Title, Injunction)

FILED
APR 11 AM 9:08
CLERK OF COURT

COME NOW Plaintiffs, HATTIE BAILUM, RUBY BAILUM, AND VERDONE
BAILUM GRAY complaining of the herein named defendants, ROOSEVELT SIMMONS,
JULIE JOHNSON, MONICA MIDDLETON, PAUL MIDDLETON, and all other persons
known or unknown, who claim any right, title, estate, lien, or interest in the real property
described herein that are adverse to plaintiffs' title, and for a cause of action allege that

FIRST CAUSE OF ACTION

(Quiet Title)

- 1 The real property that is the subject of this action, is situated on Johns Island, in
Charleston County, in the State of South Carolina, and that the subject matter, and all

2423

of the matters and things herein alleged are within the jurisdiction of this honorable Court

2 Plaintiff HATTIE BAILUM resides in Cypress, Texas

3 Plaintiffs RUBY BAILUM and VERDONE GRAY reside in Bronx, New York

4 Defendant JULIE JOHNSON resides in East Orange, New Jersey

5 Defendant ROOSEVELT SIMMONS resides in Charleston County, South Carolina

6 Upon information and belief MONICA MIDDLETON resides in New York, New York

7 It is unknown where PAUL MIDDLETON (son of Paul and Monica Middleton), resides

8 It is unknown where PAUL MIDDLETON and MONICA MIDDLETON's other children reside

9 The true names, relationships, or capacities, whether individual, corporate, associate, or otherwise, of defendants named in this action as Does 1 through 100 are unknown to Plaintiffs, who sue such defendants by such fictitious names, and Plaintiffs will amend this complaint to show their true names and capacities, upon such ascertainment

10 Plaintiffs are informed and believe, and on that basis, allege, that each of the Do defendants claims, or may claim, some interest in the real property described more fully in Paragraph 9 of this complaint

11 The real property that is the subject of this action, is more particularly described as follows

(1) Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hanc on January 20, 1904 and recorded in the R M C office in Charleston County in Book J24, page 137, December 1905 Lot 24 being bounded as follows on the north by lots No 25 and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W B Guizard in January 1883 The current TMS number for this property is 312-00-00-065

(2) Parcel 2

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No 10, south by a public road and west by Lot No 12 Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

- 12 Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to plaintiffs, defendant's claim is without any right, and defendant has no right, estate, title, lien, or interest in or to the property, or any part of it
- 13 Defendant, JULIE JOHNSON, claims an interest and estate in such property adverse to plaintiffs, defendant's claim is without documentation to show that she is a rightful

- heir of Samuel Balaam, and defendant has no substantiated right, estate, title, lien, or interest in or to the property, or any part of it
- 14 Defendants, (J DOE, M DOE), may claim some estate, right, title, lien, or interest in or to the property adverse to plaintiffs' title, and such claim or claims constitute a cloud on plaintiffs' title to the property
- 15 This action is brought pursuant to Code Section 15-67-10 to 15-67-100 of the South Carolina Code of Laws, for the purpose of quieting all title to real property and all other claims adverse to that of the Plaintiffs herein named
- 16 Samuel Balaam, Thomas Balaam, Tony Balaam, Mary Balaam, and Fannie Balaam Middleton, purchased approximately fifty-four acres on Johns Island from Nettie M Hane and Eliza A Hane on January 20, 1904, as described and recorded in Book T24 on page 137
- 17 On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four acres described in Book T24 on page 137, as follows to Sam Balaam, twenty-four acres, (Book W24-327), Tony Balaam, ten acres (Book D25-181), Thomas Balaam, ten acres (Book W24-188), Mary Balaam, five acres (Book E26-257), and Fanny Balaam Middleton, five acres (Book W25-284)
- 18 On July 2, 1910 Samuel Balaam purchased twenty acres from Amarantha Hane Smith and Nettie M Hane as described and recorded in Book H29 on page 185
- 19 On information and belief, Samuel Balaam (born 5/19/1902) put his brother, Thomas Baulum (born 11/21/1901), and his son, Samuel Baulum (born 8/29/1928), in charge of his property

- 20 On information and belief, Samuel Bailum, died intestate, on or about January 19, 1975, leaving as heirs, his wife Evelyn (Ogden) Bailum, and his five sons Ellis Bailum, now deceased, with no wife and no issue, Samuel Bailum, who died intestate, on or about September 1999, leaving as heirs his wife Ruby and one child, Verdona Gray, Bussy Bailum, now deceased, leaving as heirs, his common law wife Liza, now deceased, with no issue (one step-daughter Evelyn), and Walter Bailum, now deceased, whose wife's name is unknown, with no issue of the marriage, Thomas Bailum, now deceased, his wife Clara (Middleton) Bailum, now deceased, and daughter Hattie Bailum, and one son Tony, who died testate, leaving his interest in the land to his wife Sarah (5 acres), and dividing his remaining five acres between his brother Samuel Bailum, his brother Thomas Bailum, and his nephew Paul Middleton (son of his sister Fannie Middleton Bailum),
- 21 On information and belief, when Samuel Balaam died, he gave his entire estate to his wife, Josephine Balaam
- 22 On information and belief, Josephine Balaam gave all of the property located on Johns Island, given to her by her husband, Samuel Balaam, to their son, Samuel Bailum
- 23 On information and belief, Samuel Bailum, the son, wanted to keep the property in the Balaam family, and gave his uncle, Thomas Bailum, half interest in the property, and each agreed to pay one-half of the taxes and property maintenance
- 24 On information and belief, Thomas Bailum, died intestate, on or about July 24, 1966, leaving as heirs, his wife, Clara Bailum, and daughter Hattie Bailum

- 25 Upon information and belief, Clara Bailum died intestate, in March, 2004, leaving as her heir, her only daughter Hattie Bailum
- 26 Tony Balaam died leaving five of his ten acres to his wife Sarah, one and two-thirds acres to his brother Samuel Balaam, one and two-thirds acres to his brother Thomas Balaam, and one and two-thirds acres to his nephew Paul Middleton (son of his sister, Fannie Balaam Middleton), as partly shown by the deed from Thomas Balaam to T W Limchouse, dated May 16, 1936 and recorded in Book B39 on page 21, conveying the five acres that Tony Balaam left to Sarah Balaam, and one of the one and two-thirds acres parcels that Tony Balaam left to his brother, Thomas Balaam
- 27 On information and belief, Fannie Balaam Middleton is deceased, her husband's name and status are unknown, her son Paul Middleton is now deceased, and appears to have been her sole heir
- 28 On information and belief, Paul Middleton is deceased, leaving his wife Monica Middleton, and their three children, Paul Middleton, and two others whose names are unknown, as his sole heirs
- 29 On information and belief, Mary Balaam died intestate, leaving no heirs
- 30 On information and belief, the tax map showing certain parcels of the Balaam estate property are incorrect, in particular, TMS # 311-00-00-024 and TMS # 312-00-00-067, shown as part of the estate of Thomas Balaam should be shown as being part of the estate of Samuel Balaam
- 31 TMS # 312-00-00-068 may have been incorrectly conveyed and/or recorded, since the tax map, as of November 30, 2003, shows that TMS # 312-00-00-068 "crosses"

parcels TMS # 312-00-00-067 and TMS # 312-00-00-066, leaving parcel TMS # 312-00-00-067 and TMS # 312-00-00-032 "land locked "

SECOND CAUSE OF ACTION

(Injunction)

- 1 Plaintiffs hereby reallege, as if fully set forth, the allegations of Paragraphs 1 through 30 herein
- 2 Defendant, ROOSEVELT SIMMONS, is wrongfully interfering with Plaintiffs' use of Parcel 2, described above, and, in particular, has wrongfully possessed the premises located thereon, and claims the land as his own
- 3 Defendant's, ROOSEVELT SIMMONS, actual and continued interference with Plaintiffs use of Parcel 2, unless and until enjoined by order of this court, will cause grave and irreparable injury to Plaintiffs, HATTIE BALAAM, RUBY BALAAM, and VERDONE GRAY, in that Plaintiffs are being deprived of the use of Parcel 2, described above
- 4 Plaintiffs have no adequate remedy at law for Defendant's wrongful possession of the premises located on Parcel 2 and claim to the real property, described above as Parcel 1 and Parcel 2, in that it would be impossible for Plaintiffs to determine the precise amount of damage Plaintiffs will suffer if Defendant's conduct is not restrained, and Plaintiffs will be deprived of the use of their real property which cannot be compensated in damages

WHEREFORE, Plaintiffs, HATTIE BALAAM, RUBY BALAAM, and VERDONE GRAY request judgment as follows

- 1 Defendants and all persons claiming under defendants, and all other persons unknown, claiming any right, title, estate, lien, or interest in the real property described in the complaint adverse to plaintiffs' ownership, or casting any cloud on plaintiffs' title thereto, be required to set forth the nature of their several claims,
- 2 All adverse claims of defendants or any of them be determined by a decree of this court,
- 3 Such decree shall declare and adjudge that plaintiffs are the lawful owners of the premises in fee simple as tenants in common and are entitled to the lawful, peaceable, and uninterrupted possession thereof as against defendants, and all others, and that defendants, or any of them, have or has no estate or interest whatever in or to the land and premises,
- 4 The decree permanently enjoin each and every defendant, and all persons claiming under them, and that they be forever barred from asserting any claim whatsoever in or to the land and premises, or lien or encumbrance thereon of any kind or nature, adverse to plaintiffs,
- 5 If such decree does not alter the boundaries of parcel TMS # 312-00-00-068, that such decree shall award Plaintiffs a right-of-way or easement sufficient to permit proper egress that attaches individually to parcel TMS # 312-00-00-067 and to parcel TMS # 312-00-00-032,
- 6 Plaintiffs request judgment against Defendant, ROOSEVELT SIMMONS, for a temporary restraining order, a preliminary injunction, and a permanent injunction

prohibiting Defendant, ROOSEVELT SIMMONS, from interfering with Plaintiffs' ownership rights and right of possession of Parcel 1 and Parcel 2, or attempting to sell or convey any portion of the above described real property,

7 Plaintiffs be awarded costs of this action, and

8 Plaintiffs be awarded such other and further relief as this court deems proper

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY

Judy Benson Moore

John F. Martin

Judy Benson Moore

113 Wappoo Creek Drive

Charleston, South Carolina 29412

(843) 762-2121

Charleston, South Carolina

Date 3/29/04

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
HATTIE BAILUM, RUBY BAILUM and)
VERDONE GRAY)
Plaintiffs,)
v)
ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL)
MIDDLETON, J DOE, adults, and M ROE,)
infants, insane persons, incompetents, being)
fictitious names designating a class of persons,)
known or unknown, who may be heirs,)
distributees, devisees, legatees, widow, widower,)
assignees, executors, administrators, creditors,)
successors, issue, and alienees of the ESTATE)
of SAMUEL BALAAM, deceased, and ALL)
OTHER PERSONS UNKNOWN, claiming any)
right, title, estate, interest in or lien upon the real)
property described in the complaint, adverse to)
plaintiffs' ownership, or any cloud on plaintiffs')
title,)
Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

LIS PENDENS

FILED
2004 APR - 1 AM 9:08
CLERK OF COURT
BY _____

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for the County of Charleston, South Carolina, upon a Complaint of the above named Plaintiffs against the above named Defendants for the purpose of determining the interests of the Plaintiffs and interest of the Defendants in the parcel of land hereinafter described, and is brought under the provisions of the South Carolina Code of Laws, Section 15-67-10, et seq, for the purpose of obtaining a Decree establishing that the above named Plaintiffs be declared the owners in fee simple, having good and marketable title to the herein below described property That the premises to be affected by the said Complaint in the action hereby commenced was, as the time of the filing of this Lis Pendens situated, lying and being in the County of Charleston, State of South Carolina, and is more particularly described as follows

Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R M C office in Charleston County in Book J24, page 137, December 1900 Lot 24 being bounded as follows on the north by lots No 25 and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W B Guerard in January 1883 The current TMS number for this property is 312-00-00-065

R432

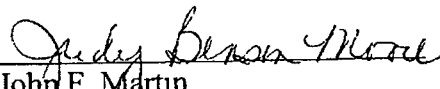
Parcel 2

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No 10, south by a public road and west by Lot No 12 Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY


John F Martin
Judy Benson Moore
113 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 762-2121

Charleston, South Carolina

Date 3/29/04

R433

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
HATTIE BAILUM, RUBY BAILUM,)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM, and ESTATE OF THOMAS)
BAILUM,)

Plaintiffs,)

v)

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2), ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, and J DOE,)
adults, and M ROE, infants, insane persons,)
incompetents, being fictitious names designating)
a class of persons, known or unknown, who may)
be heirs, distributees, devisees, legatees, widow,)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership, or)
any cloud on plaintiffs' title,)

Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

AMENDED COMPLAINT
(Quiet Title, Injunction)

BY _____
JULIE JOHNSON
CLERK OF COURT

2004 JUL 29 AM 9:47

FILED

COME NOW Plaintiffs, HATTIE BAILUM, RUBY BAILUM, VERDONE BAILUM
GRAY, ESTATE OF CLARA BAILUM, and ESTATE OF THOMAS BAILUM complaining of

2434

the herein named defendants, ROOSEVELT SIMMONS, JULIE JOHNSON, MONICA MIDDLETON, PAUL MIDDLETON (2), ESTATE OF JULIA MORRIS BAILUM, ESTATE OF ELLIS BAILUM, ESTATE OF SAMUEL BAILUM (2), ESTATE OF LUCILLE BAILUM, ESTATE OF SAMUEL BAILUM (3), ESTATE OF BUBSY BAILUM, ESTATE OF EVELYN BAILUM, ESTATE OF WALTER BAILUM, ESTATE OF MARY BAILUM, ESTATE OF TONY BAILUM, ESTATE OF SARAH BAILUM, ESTATE OF FANNIE MIDDLETON, ESTATE OF PAUL MIDDLETON, ESTATE OF ESTHER SINGLETON BAILUM and all other persons known or unknown, who claim any right, title, estate, lien, or interest in the real property described herein that are adverse to plaintiffs' title, and for a cause of action allege that

FIRST CAUSE OF ACTION

(Quiet Title)

- 1 The real property that is the subject of this action, is situated on Johns Island, in Charleston County, in the State of South Carolina, and that the subject matter, and all of the matters and things herein alleged are within the jurisdiction of this honorable Court
- 2 Plaintiff HATTIE BAILUM resides in Cypress, Texas
- 3 Plaintiffs RUBY BAILUM and VERDONE GRAY reside in Bronx, New York
- 4 Defendant JULIE JOHNSON resides in East Orange, New Jersey
- 5 Defendant ROOSEVELT SIMMONS resides in Charleston County, South Carolina
- 6 Upon information and belief MONICA MIDDLETON resides in New York, New York
- 7 It is unknown where PAUL MIDDLETON (2)(son of Paul and Monica Middleton), resides

- 8 It is unknown where PAUL and MONICA MIDDLETON's other children reside
9 The true names, relationships, or capacities, whether individual, corporate, associate,
or otherwise, of defendants named in this action as Does 1 through 100 are unknown
to Plaintiffs, who sue such defendants by such fictitious names, and Plaintiffs will
amend this complaint to show their true names and capacities, upon such
ascertainment
10. Plaintiffs are informed and believe, and on that basis, allege, that each of the Doe
defendants claims, or may claim, some interest in the real property described more
fully in Paragraph 11 of this complaint
- 11 The real property that is the subject of this action, is more particularly described as
follows.

(1) Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island
in the County of Charleston and State of South Carolina, measuring and
containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four
acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and
recorded in the R M C office in Charleston County in Book J24, page 137,
December 1905 Lot 24 being bounded as follows on the north by lots No 25
and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the
west by a public road, which said boundaries are shown on a plat made by W B
Guerard in January 1883 The current TMS number for this property is 312-00-
00-065

(2) Parcel 2

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No 10, south by a public road and west by Lot No. 12 Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

- 12 Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to plaintiffs; defendant's claim is without any right, and defendant has no right, estate, title, lien, or interest in or to the property, or any part of it
- 13 Defendant, JULIE JOHNSON, claims an interest and estate in such property adverse to plaintiffs, defendant's claim is without documentation to show that she is a rightful heir of Samuel Balaam, and defendant has no substantiated right, estate, title, lien, or interest in or to the property, or any part of it
- 14 Defendants, (J DOE, M DOE), may claim some estate, right, title, lien, or interest in or to the property adverse to plaintiffs' title, and such claim or claims constitute a cloud on plaintiffs' title to the property
- 15 This action is brought pursuant to Code Section 15-67-10 to 15-67-100 of the South Carolina Code of Laws, for the purpose of quieting all title to real property and all other claims adverse to that of the Plaintiffs herein named
- 16 Samuel Balaam, Thomas Balaam, Tony Balaam, Mary Balaam, and Fannie Balaam Middleton, purchased approximately fifty-four acres on Johns Island from Nettie M Hane and Eliza A Hane on January 20, 1904, as described and recorded in Book T24 on page 137

- 17 On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four acres described in Book T24 on page 137, as follows to Sam Balaam, twenty-four acres, (Book W24-327), Tony Balaam, ten acres (Book D25-181), Thomas Balaam, ten acres (Book W24-188), Mary Balaam, five acres (Book E26-257), and Fanny Balaam Middleton, five acres (Book W25-284).
- 18 On July 2, 1910 Samuel Balaam purchased twenty acres from Amarntha Hane Smith and Nettie M Hane as described and recorded in Book H29 on page 185
- 19 On information and belief, Samuel Bailum (1), died intestate, leaving as heirs, his wife Josephine Simmons Bailum, and his six sons and one daughter Ellis Bailum, now deceased, with no wife and no issue, Samuel Bailum (2), who died intestate, on or about Janary 19, 1975, leaving as heirs his wife, Evelyn Ogden Bailum, and one son, Samuel Bailum (3) who died intestate, on or about September 1999, leaving as heirs his wife Ruby Bailum and one child, Verdone Gray; Bubsy Bailum, now deceased, leaving as heirs, his common law wife Eliza Mack Bailum, now deceased, with no issue (one step-daughter Evelyn), Walter Bailum, now deceased, whose wife's name is unknown, with no issue of the marriage, Thomas Bailum, now deceased, his wife Clara (Middleton) Bailum, now deceased, and daughter Hattie Bailum, Tony Bailum, who died testate, leaving his interest in the land to his wife Sarah (5 acres), and dividing his remaining five acres between his brother Samuel Bailum (2), his brother Thomas Bailum, and his nephew Paul Middleton (son of his sister Fannie Middleton Bailum), and Fannie Bailum Middleton, now deceased, whose husband's name is unknown with one son Paul Middleton (1), now deceased, his wife Monica Middleton, his son Paul Middleton (2) and two other children

- 20 On information and belief, Mary ("Mae") Bailum, daughter of Samuel Balaam (1) may have predeceased Samuel Balaam (1)
- 21 On information and belief, Samuel Balaam (1) put his son Samuel Bailum (2) and his son Thomas Bailum in charge of his property.
- 22 On information and belief, when Samuel Balaam (1) died, he gave his entire estate to his wife, Josephine Balaam
- 23 On information and belief, Josephine Balaam gave all of the property located on Johns Island, given to her by her husband, Samuel Balaam (1), to their son, Samuel Bailum (2)
- 24 On information and belief, Samuel Bailum (2) (born 5/19/1902) put his brother, Thomas Bailum (born 11/21/1901) (birth dates taken from death certificates), and his son, Samuel Bailum (3) (born 8/29/1928), in charge of his property
- 25 On information and belief, when Samuel Bailum (2) died, Samuel Bailum (3), his son, wanted to keep the property in the Balaam family, and gave his uncle, Thomas Bailum, half interest in the property, and each agreed to pay one-half of the taxes and property maintenance
- 26 On information and belief, Samuel Bailum (2) had another daughter, Julie Johnson, born (September 16, 1955) outside marriage to Mary Warren
- 27 On information and belief, Samuel Bailum (3) died intestate, on or about September 17, 1999, leaving as heirs, his wife Ruby Bailum, and daughter Verdone Gray
- 28 On information and belief, Thomas Bailum, died intestate, on or about July 24, 1966, leaving as heirs, his wife, Clara Bailum, and daughter Hattie Bailum.

- 29 Upon information and belief, Clara Bailum died intestate, on or about March 9, 2004, leaving as her heir, her and Thomas Bailum's only child, Hattie Bailum
- 30 Tony Balaam died leaving five of his ten acres to his wife Sarah, one and two-thirds acres to his brother Samuel Balaam, one and two-thirds acres to his brother Thomas Balaam, and one and two-thirds acres to his nephew Paul Middleton (son of his sister, Fannie Balaam Middleton), as partly shown by the deed from Thomas Balaam to T W Limehouse, dated May 16, 1936 and recorded in Book B39 on page 21, conveying the five acres that Tony Balaam left to Sarah Balaam, and one of the one and two-thirds acres parcels that Tony Balaam left to his brother, Thomas Balaam
- 31 On information and belief, Fannie Balaam Middleton is deceased, her husband's name and status are unknown, her son Paul Middleton (1) is now deceased
- 32 On information and belief, Paul Middleton (1) is deceased, leaving his wife Monica Middleton, and their three children, Paul Middleton (2), and two others whose names are unknown, as his sole heirs
- 33 On information and belief, Mary ("Mae") Balaam died intestate, leaving one daughter Wilhelmena Bailum, whose status and whereabouts are unknown.
- 34 On information and belief, the tax map showing certain parcels of the Balaam estate property are incorrect, in particular, TMS # 311-00-00-024 and TMS # 312-00-00-067, shown as part of the estate of Thomas Balaam should be shown as being part of the estate of Samuel Balaam
- 35 TMS # 312-00-00-068 may have been incorrectly conveyed and/or recorded, since the tax map, as of November 30, 2003, shows that TMS # 312-00-00-068 "crosses"

parcels TMS # 312-00-00-067 and TMS # 312-00-00-066, leaving parcel TMS # 312-00-00-067 and TMS # 312-00-00-032 "land locked "

SECOND CAUSE OF ACTION

(Injunction)

- 1 Plaintiffs hereby reallege, as if fully set forth, the allegations of Paragraphs 1 through 30 herein.
2. Defendant, ROOSEVELT SIMMONS, is wrongfully interfering with Plaintiffs' use of Parcel 2, described above, and, in particular, has wrongfully possessed the premises located thereon, and claims the land as his own
- 3 Defendant's, ROOSEVELT SIMMONS, actual and continued interference with Plaintiffs use of Parcel 2, unless and until enjoined by order of this court, will cause grave and irreparable injury to Plaintiffs, HATTIE BALAAM, RUBY BALAAM, VERDONE GRAY, ESTATE OF THOMAS BAILUM and ESTATE OF CLARA BAILUM in that Plaintiffs are being deprived of the use of Parcel 2, described above
- 4 Plaintiffs have no adequate remedy at law for Defendant's wrongful possession of the premises located on Parcel 2 and claim to the real property, described above as Parcel 1 and Parcel 2, in that it would be impossible for Plaintiffs to determine the precise amount of damage Plaintiffs will suffer if Defendant's conduct is not restrained, and Plaintiffs will be deprived of the use of their real property which cannot be compensated in damages

WHEREFORE, Plaintiffs, HATTIE BALAAM, RUBY BALAAM, VERDONE GRAY, ESTATE OF THOMAS BAILUM and ESTATE OF CLARA BAILUM request judgment as follows

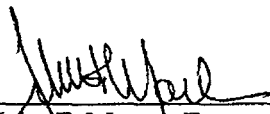
- 1 Defendants and all persons claiming under defendants, and all other persons unknown, claiming any right, title, estate, lien, or interest in the real property described in the complaint adverse to plaintiffs' ownership, or casting any cloud on plaintiffs' title thereto, be required to set forth the nature of their several claims,
- 2 All adverse claims of defendants or any of them be determined by a decree of this court,
- 3 Such decree shall declare and adjudge that plaintiffs are the lawful owners of the premises in fee simple as tenants in common and are entitled to the lawful, peaceable, and uninterrupted possession thereof as against defendants, and all others, and that defendants, or any of them, have or has no estate or interest whatever in or to the land and premises,
- 4 The decree permanently enjoin each and every defendant, and all persons claiming under them, and that they be forever barred from asserting any claim whatsoever in or to the land and premises, or lien or encumbrance thereon of any kind or nature, adverse to plaintiffs,
- 5 If such decree does not alter the boundaries of parcel TMS # 312-00-00-068; that such decree shall award Plaintiffs a right-of-way or easement sufficient to permit proper egress that attaches individually to parcel TMS # 312-00-00-067 and to parcel TMS # 312-00-00-032,

- 6 Plaintiffs request judgment against Defendant, ROOSEVELT SIMMONS, for a temporary restraining order, a preliminary injunction, and a permanent injunction prohibiting Defendant, ROOSEVELT SIMMONS, from interfering with Plaintiffs' ownership rights and right of possession of Parcel 1 and Parcel 2, or attempting to sell or convey any portion of the above described real property,
- 7 Plaintiffs be awarded costs of this action, and
8. Plaintiffs be awarded such other and further relief as this court deems proper

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY



John F. Martin, Esquire
113 Wappoo Creek Drive
Charleston, South Carolina 29412
Office (843) 762-2121
Fax (843) 762-2333

Charleston, South Carolina

Date 6/28/24

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
HATTIE BAILUM, RUBY BAILUM,)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM, and ESTATE OF THOMAS)
BAILUM,)

Plaintiffs,)

v)

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2), ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, and J DOE,)
adults, and M ROE, infants, insane persons,)
incompetents, being fictitious names designating)
a class of persons, known or unknown, who may)
be heirs, distributees, devisees, legatees, widow,)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership, or)
any cloud on plaintiffs' title,)

Defendants)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO 04-CP-10-1459

AMENDED LIS PENDENS

2004 JUL 29 AM 9:47
JULIE JOHNSON
CLERK OF COURT
BY _____

FILED

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for the County of Charleston, South Carolina, upon a Complaint of the above named Plaintiffs against the above named Defendants for the purpose of determining the interests of the Plaintiffs and interest of the Defendants in the parcel of land hereinafter described, and is brought under the provisions of the South Carolina Code of Laws;

2444

Section 15-67-10, et seq, for the purpose of obtaining a Decree establishing that the above named Plaintiffs be declared the owners in fee simple, having good and marketable title to the herein below described property That the premises to be affected by the said Complaint in the action hereby commenced was, as the time of the filing of this Lis Pendens situated, lying and being in the County of Charleston, State of South Carolina, and is more particularly described as follows:

Parcel 1

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R M C office in Charleston County in Book J24, page 137, December 1900 Lot 24 being bounded as follows on the north by lots No 25 and No 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W B Guerard in January 1883 The current TMS number for this property is 312-00-00-065

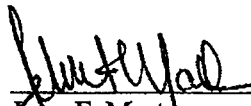
Parcel 2.

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less, butting and bounding on the north by Lots No 3 and 4, east by Lot No. 10, south by a public road and west by Lot No 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11 The current TMS number for this property is 311-00-00-024

RESPECTFULLY SUBMITTED,

MARTIN LAW FIRM

BY:


John F. Martin
113 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 762-2121

Charleston, South Carolina

Date: 6/28/04

R 445

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
COUNTY OF CHARLESTON) PLEAS, NINTH JUDICIAL
CIRCUIT NO.: 04-CP-10-1459

HATTIE BAILUM, RUBY BAILUM)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM and ESTATE OF THOMAS)
BAILUM, Plaintiffs)

Versus)

ANSWER AND
COUNTERCLAIM

ROOSEVELT SIMMONS, et al)
Defendants)

FILED
2005 JAN 20 AM 9:06
JULIE J. ARMSTRONG
CLERK OF COURT

THE DEFENDANT, ROOSEVELT SIMMONS, ANSWERING THE
COMPLAINT OF THE PLAINTIFFS, WOULD ALLEGE AND SHOW AS
FOLLOWS:

1. That he denies each and every allegation of the Complaint's FIRST CAUSE OF ACTION not hereinafter specifically admitted or modified.
2. That he agrees with the allegations in the First Cause of Action as alleged in paragraphs 1, 5, and 16.
3. That he agrees with so much of paragraph 12 as says, "Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to the plaintiffs," and denies the balance of the allegations in paragraph 12.
4. That he does not have sufficient information to form a belief in the

R 446

allegations contained in paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

5. That he denies each and every allegation of the Complaint's
SECOND CAUSE OF ACTION.

FURTHER ANSWERING THE COMPLAINT AND AS AN
AFFIRMATIVE DEFENSE THERETO AND AS A COUNTERCLAIM,
DEFENDANT ROOSEVELT SIMMONS AND SHOWS AS FOLLOWS:

6. That this Defendant, Roosevelt Simmons, realleges each and every answer to paragraphs one through one through thirty-five of the FIRST CAUSE OF ACTION and paragraphs one through four of the SECOND CAUSE OF ACTION hereinabove set forth in the Answer as if repeated verbatim herein.

1. That the Amended Lis Pendens of this law suit describes the real property which is the subject of this action as being: (A) 24 acres, part lot no, 24, Johns Island. TMS No. 312-00-00-065., and (B) 20 acres and known as Lot #11 on the Gibbs-Murray tract of Johns Island. TMS No. 311-00-00-024.

2. That this Defendant, Roosevelt Simmons, alleges that he has contributed to make the payment of the county taxes on the subject

R 447

properties since 1963 when he was fourteen years of age, that he has exclusively paid all of the county taxes due on the subject properties since the death of Sam Balaam (2), and on the year after the death of Sam Balaam (2), he redeemed the property from being sold at a county tax sale and has continued to pay all the taxes due since that time.

3. That this Defendant, Roosevelt Simmons, alleges and will show to this court that the county's tax records will establish that the Plaintiffs are not, and have not paid the county taxes due on this property.

4. That this Defendant, Roosevelt Simmons, is a grandson of the widow of Sam Balaam (1) whose name was Lucinda Hester Sargent-Singleton-Bailum and she was born in 1877 and died in 1952 leaving six children by two previous marriages prior to her marriage to Sam Balaam.(1).

5. That this Defendant, Roosevelt Simmons, received a deed to the subject property identified by the tax map no. 311-00-00-024, from five other heirs of his grandmother, Hester Balaam a/k/a Linda Hester Sargent-Singleton-Bailum; namely, Walter Burns, Alonzetta Burns, Sheila Barns Ownes, Louise Canty, and Mabell (Singleton) Hicks by deed recorded in Book L 491 page 742 in the R.M.C. Office for Charleston County on April 21, 2004.

6. That this Defendant, Roosevelt Simmons, received a deed to the

2448

subject property identified by the TMS No. 311-00-00-024 from another descendent of Hester Balaam a/k/a Lucinda Hester Sargent-Singleton-Bailum, Leon E. Singleton by deed dated July 15, 2004 and recorded in Book T 510 page 469 on September 20, 2004.

7. That this Defendant, Roosevelt Simmons, is and has been in exclusive possession and control of these two properties since at least 1991 and prior to that date he shared exclusive possession and control of the said properties with his cousin, Walter Burns, who at one time sold the timber off the 24 acres tract. There is a cinder block building on the premises and it is occupied under a rental agreement originally given by this Defendant, Roosevelt Simmons and his cousin, Walter Burns.

8. That this Defendant, Roosevelt Simmons, will show unto this Court that there is evidence that Sam Balaam (2) did not believe that he had exclusive ownership of the subject properties.

WHEREFORE, having answered the Complaint, this Defendant prays as follows:

A) That the Plaintiff's Complaint be dismissed.

B) That this Court inquire as to the title of the properties that are the subject of this lawsuit, and declare this Defendant, Roosevelt Simmons, to have controlling interest in the fee to the property identified by TMS No.

R 449

311-00-00-024 and that he has an interest in the fee to the property identified by TMS No, 312-00-00-065, that he has exercised exclusive care and control of both properties since 1991, shared care and control of the properties for many years, having contributed to the payment of county taxes from 1963 until the death of Sam Balaam (2) and exclusively paid the taxes due since that time.

C) For such other and further relief as to this Court may deem just and proper.

Charleston, S.C.
18 January 2005


Ruth W. Cupp, Es.
1031 Chuck Dawley
Mt. Pleasant, S.C., 29464
(843) 216-7739

R 450

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 04-CP-10-1459

Defendants.

ANSWER TO DEFENDANTS' COUNTERCLAIM

1. The Plaintiff denies each and every allegation in Defendant's Answer and Counterclaim to Plaintiff.

MARTIN LAW FIRM

John F. Martin, Esquire
113 Wappoo Creek Drive
Charleston, South Carolina 29405
(843) 762-2121

Attorney for Plaintiff

Charleston, South Carolina
Dated: February 23, 2005

2005 MAR -3 PM 2:26
JULIA J. ARMSTRONG
CLERK OF COURT

7
1
1
1
1
1

2451

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NO.: 04-CP-10-1459

HATTIE BAILUM, RUBY BAILUM,)
VERDONE GRAY, ESTATE OF CLARA)
BAILUM, and ESTATE OF THOMAS)
BAILUM,)

Plaintiffs,)

v.)

SECOND AMENDED COMPLAINT
(Quiet Title, Injunction)

ROOSEVELT SIMMONS, JULIE JOHNSON)
MONICA MIDDLETON, PAUL MIDDLETON)
(2). ESTATE OF JOSEPHINE SIMMONS)
BAILUM, ESTATE OF ELLIS BAILUM,)
ESTATE OF SAMUEL BAILUM (2), ESTATE)
OF BUBSY BAILUM, ESTATE OF WALTER)
BAILUM, ESTATE OF MARY BAILUM,)
ESTATE OF TONY BAILUM, ESTATE OF)
FANNIE BAILUM MIDDLETON, ESTATE)
OF LUCILLE BAILUM, ESTATE OF)
EVELYN BAILUM, ESTATE OF ELIZA)
MACK BAILUM, ESTATE OF SARAH)
BAILUM, ESTATE OF SAMUEL BAILUM(3),)
ESTATE OF PAUL MIDDLETON(1), ESTATE)
OF ESTHER SINGLETON BAILUM, ESTATE)
OF JULIA MORRIS BAILUM, LEON ELIJAH)
SINGLETON, MABEL SINGLETON HICKS.)
WALTER BURNS, ALONZETTA BURNS,)
SHEILA BURNS OWENS, LOUISE CANTY,)
SHELLY BURNS, SHARON BURNS,)
MELVIN SINGLETON, FRANKLIN SMITH)
and J. DOE, adults, and M. ROE, infants, insane)
persons, incompetents, being fictitious names)
designating a class of persons, known or)
unknown, who may be heirs, distributees,)
devisees, legatees, widow,)
widower, assignees, executors, administrators,)
creditors, successors, issue, and alienees of the)
ESTATE of SAMUEL BALAAM, deceased,)
and ALL OTHER PERSONS UNKNOWN,)
claiming any right, title, estate, interest in or lien)
upon the real property described in the)
complaint, adverse to plaintiffs' ownership, or)
any cloud on plaintiffs' title,)

Defendants.)

FILED
2005 SEP 13 AM 10:08
JULIE J. ARMSTRONG
CLERK OF COURT
CY

COME NOW Plaintiffs, HATTIE BAILUM, RUBY BAILUM, VERDONE BAILUM GRAY, ESTATE OF CLARA BAILUM, and ESTATE OF THOMAS BAILUM complaining of the herein named defendants, ROOSEVELT SIMMONS, JULIE JOHNSON, MONICA MIDDLETON, PAUL MIDDLETON (2), ESTATE OF JULIA MORRIS BAILUM, ESTATE OF ELLIS BAILUM, ESTATE OF SAMUEL BAILUM (2), ESTATE OF LUCILLE BAILUM, ESTATE OF SAMUEL BAILUM (3), ESTATE OF BUBSY BAILUM, ESTATE OF EVELYN BAILUM, ESTATE OF WALTER BAILUM, ESTATE OF MARY BAILUM, ESTATE OF TONY BAILUM, ESTATE OF SARAH BAILUM, ESTATE OF FANNIE MIDDLETON, ESTATE OF PAUL MIDDLETON, ESTATE OF ESTHER SINGLETON BAILUM, LEON ELIJAH SINGLETON, MABEL SINGLETON HICKS, WALTER BURNS, ALONZETTA BURNS, SHEILA BURNS OWENS, LOUISE CANTY, SHELLY BURNS, SHARON BURNS, MELVIN SINGLETON, FRANKLIN SMITH and all other persons known or unknown, who claim any right, title, estate, lien, or interest in the real property described herein that are adverse to plaintiffs' title, and for a cause of action allege that:

FIRST CAUSE OF ACTION: Quiet Title

1. The real property that is the subject of this action is situated on Johns Island, in Charleston County, in the State of South Carolina, and that the subject matter, and all of the matters and things herein alleged are within the jurisdiction of this honorable Court.
2. Plaintiff HATTIE BAILUM resides in Cypress, Texas.
3. Plaintiffs RUBY BAILUM and VERDONE GRAY reside in Bronx, New York.
4. Defendant JULIE JOHNSON resides in East Orange, New Jersey.
5. Defendant ROOSEVELT SIMMONS resides in Charleston County, South Carolina.
6. Upon information and belief MONICA MIDDLETON resides in New York, New York.
7. It is unknown where PAUL MIDDLETON (2)(son of Paul and Monica Middleton), resides.
8. It is unknown where PAUL and MONICA MIDDLETON's other children reside.

9. Upon information and belief LEON ELIJAH SINGLETON has deeded over any interest he may have to ROOSEVELT SIMMONS.
10. Upon information and belief MABEL SINGLETON HICKS has deeded over any interest she may have to ROOSEVELT SIMMONS.
11. Upon information and belief WALTER BURNS has deeded over any interest he may have to ROOSEVELT SIMMONS.
12. Upon information and belief ALONZETTA BURNS has deeded over any interest she may have to ROOSEVELT SIMMONS.
13. Upon information and belief SHEILA BURNS OWENS has deeded over any interest she may have to ROOSEVELT SIMMONS.
14. Upon information and belief LOUISE CANTY has deeded over any interest she may have to ROOSEVELT SIMMONS.
15. The true names, relationships, or capacities, whether individual, corporate, associate, or otherwise, of defendants named in this action as Does 1 through 100 are unknown to Plaintiffs, who sue such defendants by such fictitious names, and Plaintiffs will amend this complaint to show their true names and capacities, upon such ascertainment.
16. Plaintiffs are informed and believe, and on that basis, allege, that each of the Doe defendants claims, or may claim, some interest in the real property described more fully in Paragraph 15 of this complaint.
17. The real property that is the subject of this action, is more particularly described as follows:

Parcel 1:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B. Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 2:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

18. Defendant, ROOSEVELT SIMMONS, claims an interest and estate in such property adverse to plaintiffs; defendant's claim is without any right, and defendant has no right, estate, title, lien, or interest in or to the property, or any part of it.
19. Defendant, JULIE JOHNSON, claims an interest and estate in such property adverse to plaintiffs; defendant's claim is without documentation to show that she is a rightful heir of Samuel Balaam, and defendant has no substantiated right, estate, title, lien, or interest in or to the property, or any part of it.
20. Defendants, (J. DOE, M. DOE), may claim some estate, right, title, lien, or interest in or to the property adverse to plaintiffs' title, and such claim or claims constitute a cloud on plaintiffs' title to the property.
21. This action is brought pursuant to Code Section 15-67-10 to 15-67-100 of the South Carolina Code of Laws, for the purpose of quieting all title to real property and all other claims adverse to that of the Plaintiffs herein named.
22. Samuel Balaam, Thomas Balaam, Tony Balaam, Mary Balaam, and Fannie Balaam Middleton, purchased approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137.
23. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four acres described in Book T24 on page 137, as follows: to Sam Balaam, twenty-four acres, (Book W24-327); Tony Balaam, ten acres (Book D25-181); Thomas Balaam, ten acres (Book W24-188); Mary Balaam, five acres (Book E26-257); and Fanny Balaam Middleton, five acres (Book W25-284).
24. On July 2, 1910 Samuel Balaam purchased twenty acres from Amarntha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185.

25. On information and belief, Samuel Bailum (1), died intestate, leaving as heirs, his wife Hester Bailum, and his three sons: Willis Bailum, now deceased; Samuel Bailum (2) now deceased; and Thomas Bailum, now deceased.
26. Hester Bailum received the statutory 1/3 interest in the property and Willis, Samuel and Thomas shared a 2/3 interest in the property.
27. The property at issue in this matter is the 1/3 interest of Hester Bailum.
28. On information and belief, Hester Bailum had six children from previous marriages, Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burnes, Elouise Singleton and Josh Singleton.
29. On information and belief, Hester Balaam died intestate, leaving these six children as her sole heirs, each receiving a One-Eighteenth interest in the property.
30. On information and belief, the tax map showing certain parcels of the Balaam estate property are incorrect, in particular, TMS # 311-00-00-024 and TMS # 312-00-00-067, shown as part of the estate of Thomas Balaam should be shown as being part of the estate of Samuel Balaam.
31. TMS # 312-00-00-068 may have been incorrectly conveyed and/or recorded, since the tax map, as of November 30, 2003, shows that TMS # 312-00-00-068 "crosses" parcels TMS # 312-00-00-067 and TMS # 312-00-00-066, leaving parcel TMS # 312-00-00-067 and TMS # 312-00-00-032 "land locked."

SECOND CAUSE OF ACTION: Injunction

32. Plaintiffs hereby re-allege, as if fully set forth, the allegations of Paragraphs 1 through 30 herein.
33. Defendant, ROOSEVELT SIMMONS, is wrongfully interfering with Plaintiffs' use of Parcel 2, described above, and, in particular, has wrongfully possessed the premises located thereon, and claims the land as his own.
34. Defendant's, ROOSEVELT SIMMONS, actual and continued interference with Plaintiffs use of Parcel 2, unless and until enjoined by order of this court, will cause grave and irreparable injury to Plaintiffs, HATTIE BALAAM, RUBY BALAAM,

and VERDONE GRAY, in that Plaintiffs are being deprived of the use of Parcel 2, described above.

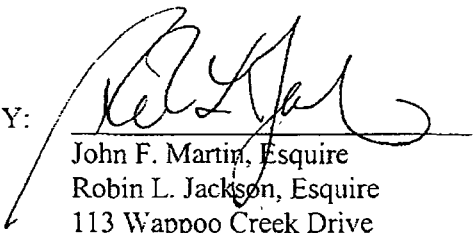
35. Plaintiffs have no adequate remedy at law for Defendant's wrongful possession of the premises located on Parcel 2 and claim to the real property, described above as Parcel 1 and Parcel 2, in that it would be impossible for Plaintiffs to determine the precise amount of damage Plaintiffs will suffer if Defendant's conduct is not restrained, and Plaintiffs will be deprived of the use of their real property which cannot be compensated in damages.

WHEREFORE, Plaintiffs, HATTIE BALAAM, RUBY BALAAM, VERDONE GRAY, ESTATE OF THOMAS BAILUM and ESTATE OF CLARA BAILUM request judgment as follows:

1. Defendants and all persons claiming under defendants, and all other persons unknown, claiming any right, title, estate, lien, or interest in the real property described in the complaint adverse to plaintiffs' ownership, or casting any cloud on plaintiffs' title thereto, be required to set forth the nature of their several claims;
2. All adverse claims of defendants or any of them be determined by a decree of this court;
3. Such decree shall declare and adjudge that plaintiffs are the lawful owners of the premises in fee simple as tenants in common and are entitled to the lawful, peaceable, and uninterrupted possession thereof as against defendants, and all others, and that defendants, or any of them, have or has no estate or interest whatever in or to the land and premises;
4. The decree permanently enjoin each and every defendant, and all persons claiming under them, and that they be forever barred from asserting any claim whatsoever in or to the land and premises, or lien or encumbrance thereon of any kind or nature, adverse to plaintiffs;
5. If such decree does not alter the boundaries of parcel TMS # 312-00-00-068; that such decree shall award Plaintiffs a right-of-way or easement sufficient to permit proper egress that attaches individually to parcel TMS # 312-00-00-067 and to parcel TMS # 312-00-00-032;

6. Plaintiffs request judgment against Defendant, ROOSEVELT SIMMONS, for a temporary restraining order, a preliminary injunction, and a permanent injunction prohibiting Defendant, ROOSEVELT SIMMONS, from interfering with Plaintiffs' ownership rights and right of possession of Parcel 1 and Parcel 2, or attempting to sell or convey any portion of the above described real property;
7. Plaintiffs be awarded costs of this action; and
8. Plaintiffs be awarded such other and further relief as this court deems proper.

MARTIN LAW FIRM

BY: 

John F. Martin, Esquire
Robin L. Jackson, Esquire
113 Wappoo Creek Drive
Charleston, South Carolina 29412
Office: (843) 762-2121
Fax: (843) 762-2333
robinjackson@themartinlawfirm.net

Charleston, South Carolina
Date: Aug 31, 2005

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS

04-CP-10-1459

HATTIE BAILUM, et al)
Plaintiffs)

Versus)

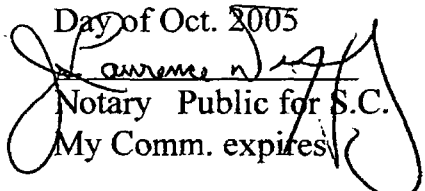
AFFIDAVIT

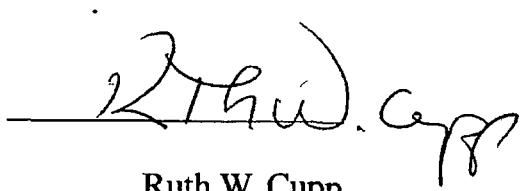
ROOSEVELT SIMMONS, et al)
Defendants)
-----)

FILED
2005 NOV 10 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Ruth W. Cupp, who being duly sworn deposes and says that I wish to be relieved as attorney of record in representing Roosevelt Simmons in the captioned matter. I believe that I am unable to explain to Roosevelt Simmons the prevailing law underlining this case nor am I able to explain to him what I believe I can and not do for him in this case. Roosevelt Simmons has asked me to no longer represent him in this action. His daughter, C. Ivy Simmons, LT. Commander, U.S. Public Service has written me a letter and asked me to no longer represent her father in this matter. A original of this letter is attached.

WITNESS this 26th
Day of Oct. 2005


Notary Public for S.C.
My Comm. expires _____


Ruth W. Cupp

12459

Ruth Williams- Cupp, Esq.
1031 Chuck Dawley Blvd
Mount Pleasant, SC 29465

Regarding: Mr Roosevelt Simmons Sr.
3416 Kitford Road
John's Island, SC

October 21, 2005

Dear Ms Williams-Cupp,

I am writing to express some concerns regarding services provided to my father, Mr. Simmons. My greatest concern today revolves around what appears to be unsatisfactory practices. My father has been presented with legal advice that encourages him to accept settlement with the opposing attorney, Mr Martin; which is against the overall legal objective.

The goal of my father retaining legal services from you included securing legal assistance with establishing property ownership and preserving family owned land.

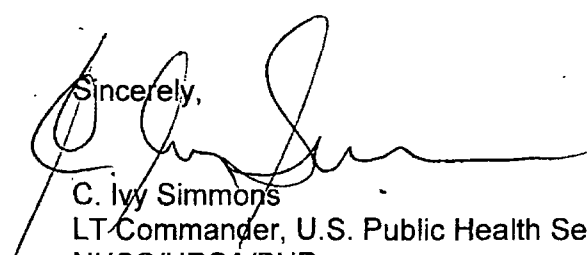
To this end, my father and other members of the family are greatly dissatisfied.

My father is requesting a refund in the amount of \$1000.00 that was provided to you in January of this year, again for unsatisfactory representation.

It is our hopes that you will see fit to refund this fee and re-evaluate whether you are able to continue to represent my father and our family with the above goal stated.

Feel free to contact either myself or my father in an effort to address the above concerns.

Sincerely,



C. Ivy Simmons
LT Commander, U.S. Public Health Services
NHSC/HRSA/BHP
(410) 467-6040 X 2205
(410) 467-2421- Fax
(240) 350-6377-Cell
LCDRSimmons@hrsa.gov

R-460

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Hattie Bailum, et al.

☒ Plaintiff

v.

Roosevelt Simmons,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2004-CP-10-1459

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
John F. Martin, Bar No. 6492
Address:
113 Wappoo Creek Drive
Charleston, SC 29412
phone: 762-2121 fax: 762-2333
e-mail: johnmartin@themartinlawfirm.net other:
elicegraham@themartinlawfirm.net

Defendant's Attorney:
Ruth Cupp, Bar No.
Address:
Post Office Box 1499
Mt. Pleasant, SC 29465
phone: 216-7739 fax: 216-0804
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: 1

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☒ Defendant

February 14, 2006

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

- ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

SCCA/233 (11-03)

12461

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
C/A Number: 04-CP-10-1459

FILED
2005 FEB 17 PM 4:50
JULIA A. STRONG
CLERK OF COURT

HATTIE BAILUM, et al,
Plaintiff,
-VS-
ROOSEVELT SIMMONS,
Defendant.

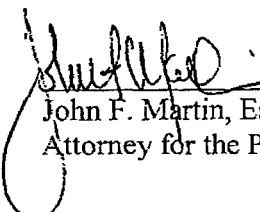
CONSENT ORDER OF
REFERENCE TO SPECIAL REFEREE

04-2006
This matter is before the Court upon the joint Motion of counsel for an Order of Reference to a Special Referee pursuant to The South Carolina Code of Laws and Rule 53 of the South Carolina Rules of Civil Procedure. The parties consent to the Honorable Joseph Mendelsohn serving as Special Referee. The Special Referee shall enter a final Judgment as to the causes of action referred. The compensation of the Special Referee shall be split equally by the parties.

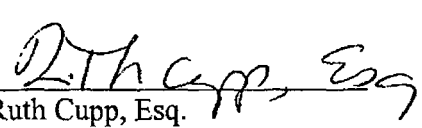
Any appeal shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.

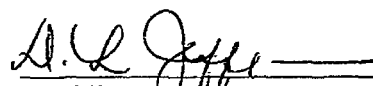
I consent:


John F. Martin, Esq.
Attorney for the Plaintiffs

I consent:


Ruth Cupp, Esq.
Attorney for the Defendant

Dated: January 25, 2005


Presiding Judge
Ninth Judicial Circuit

2/16/06
Chas., SC

R 462

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs,)

v.)

ROOSEVELT SIMMONS, et al.)

Defendants.)

NOTICE OF APPEARANCE

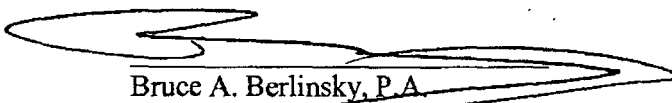
BY JULIE J. ARHSTRONG
CLERK OF COURT

2006 OCT 13 PM 12:31

FILED

PLEASE TAKE NOTICE that the undersigned hereby gives notice he has been
retained to represent Defendant, Marie D. Smith in the captioned matter.

BRUCE A. BERLINSKY, P.A.



Bruce A. Berlinsky, P.A.
Post Office Box 206
One Carriage Lane
Charleston, SC 29407
(843) 852-2202 (office)
(843) 852-4844 (facsimile)

Charleston, South Carolina

October 6th, 2006.

R463

Copy

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2004-CP-10-1459
HATTIE BAILUM, et al	)	
	)	
Plaintiffs	)	NOTICE OF MOTION AND MOTION
Versus	)	TO RECONSIDER ORDER OF
	)	SPECIAL REFEREE
ROOSEVELT SIMMONS, et al	)	
	)	
Defendants	)	
	)	

TO: John F. Martin, Attorney for the Plaintiffs

You will please take notice that ten (10) days after the service hereof, or so soon thereafter as the parties may be heard, the Defendant Roosevelt Simmons, in accordance with Rule 59 of the South Carolina Rules of Civil Procedure, shall appear before the Special Referee to present testimony and affidavits in support of his position that the Order for Judgment entered herein on the 11th day of January, 2007, contains errors of fact as well as erroneous conclusions of law and equity based thereon. Further, there is no record of the proceedings on which he can appeal or the appellate court could make a decision. Accordingly, the Defendant asks that a new trial be granted or the judgment altered or amended as needed.

Please be present if you are of a mind to object.

Charleston, SC
January 19, 2007



Louis E. Condon, Esquire
Attorney for Roosevelt Simmons
81 Mary Street
Charleston, SC 29403
843 329-1000, Ext 2409
SC Bar No. 1354

R 464

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2004-CP-10-1459

HATTIE BAILUM, et al)
)
Plaintiffs)
Versus)
ROOSEVELT SIMMONS, et al)
)
Defendants)
_____)

AFFIDAVIT

Roosevelt Simmons, being duly sworn, deposes and says:

1. That he is one of the Defendants in the above styled action.
Prior to their coming to Charleston a few years ago he was not aware of the existence of any of the Plaintiffs.
2. That when he was asked for whom he was preserving the property in this action his answer was forthright and intended to mean the Heirs of Hester Balaam because he did not know of any other living Balaam heirs when he assumed that responsibility from his cousin Walter Burns, who had taken over care of all of the properties from his (Walter Burns) mother Carrie Burns.
3. That despite his repeated request that a record of the proceedings be made, the Plaintiffs' attorney opposed making a record and, therefore, there is no verbatim transcript for review by this defendant or the appellate court to substantiate or refute the alleged findings in the court's order.
4. That this defendant prefers that the matter be heard by the standing Master in Equity for Charleston County who routinely hears and decides such cases. He has no recollection of ever agreeing to the appointment of a Special Referee.

R465

5. That, as was his custom, Roosevelt Simmons paid the 2006 property taxes on all four parcels in the amount of \$355.24, in order to avoid the penalty which would have come due after January 17, 2007.
6. That it appears that Mr. Simmons was not allowed the customary thirty (30) days to arrange financing because he had been given the opportunity many months ago to purchase the property and didn't. However, this is incorrect in that not until December 2006, was Mr. Simmons told how much he would have to pay for the property rather than the full appraised value, which was the purchase price less the sum to be paid to him.
7. That the sum paid by Mr. Simmons for the taxes and protection of the property can be calculated from the receipts he submitted to the court. That the amount proposed to compensate Mr. Simmons for preserving the property is totally inadequate, unreasonable and inequitable.
8. That the Plaintiffs' position as to Roosevelt Simmon's lack of interest in lots 2,3 and 4 are inconsistent with the measure used to determine whether or not he had an interest by adverse possession (i.e. he had an interest as an heir) and the decision as to adverse possession of the parcels should be reversed.



Roosevelt Simmons

Sworn to before me this 19th day
of January, 2007.



Louis E. Condon, Notary Public for SC
My Commission Expires Mar. 15, 2009

2466

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
HATTIE BAILUM, et al.,)
)
Plaintiff,)
)
versus)
)
ROOSEVELT SIMMONS, et al.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2004-CP-10-1459

MOTION OF DEFENDANT
TO ALTER OR AMEND
PURSUANT TO RULE 60 (a)

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2007 FEB - 7 PM 2:40

FILED

TO: THE HONORABLE Joseph S. Mendelsohn, John F. Martin, Esquire, as attorney for Plaintiffs and Judge Louis E. Condon, attorney for Roosevelt Simmons, Defendant.

Please take notice that the Defendant, Marie D. Smith, by its undersigned counsel, will move before the Honorable Joseph S. Mendelsohn, Special Referee for Charleston County, pursuant to the provisions of S.C. Rule of Civil Procedure 60(a) for an Order altering and amending the Order of the Honorable Joseph S. Mendelsohn filed January 11, 2007, which granted only Roosevelt Simmons the right to purchase Parcel 1.

The grounds for this Motion are as follows:

1. The Marie Smith's name was inadvertently omitted from the Order allowing her to purchase the property with Roosevelt Simmons.
2. That based on the case law and on a copy of email letter dated January 4, 2007, attached hereto as Exhibit "A" and incorporated by reference, the relief should be granted.

IT IS SO MOVED.


BRUCE A. BERLINSKY
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202

Charleston, South Carolina
February 5, 2007

Exhibit "A"

BRUCE A. BERLINSKY, P.A.

Attorney at Law

Mailing Address:

P.O. Box 206

Charleston, SC 29402

One Carriage Lane, Building F

Charleston, SC 29407

Office: (843) 852-2202

Fax: (843) 852-4844

bablaw@bellsouth.net

January 4, 2007

VIA EMAIL ONLY

The Honorable Joseph S. Mendelsohn

VIA EMAIL ONLY

John F. Martin, Esquire

VIA EMAIL ONLY

The Honorable Louis E. Condon

RE: Bailum v. Simmons, et al.
04-CP-10-1459

Dear Joe and Skip:

I have had the opportunity to review the proposed Order in the Bailum case and have several comments:

1. Parcel 1 is being sold to Roosevelt Simmons and Franklin Smith and Marie Smith. Several of Franklin's siblings may want to participate so the Order will have to allow assignment. If you do want to place a limitation on assignment, it should be allowed to other family members but not to the general public.
2. Both Judge Condon and I objected at the hearing to a ten (10) day requirement on providing confirmation of funds available. This is not normally a provision in these types of actions where the matter is heard by the Master. Also, the Master typically gives a buyer sixty (60) days to close. Finally, no bank will even consider a loan without a contract or Court Order so the buyers could not comply with a ten (10) to thirty (30) day requirement.
3. The Special Referee's fee should not be assessed against anyone other than the Skip's clients. There is no reason stated in the Order as to why it was referred to a Special Referee rather than heard by the Master-in-Equity, which could have only been a One Hundred Twenty-Five (\$125.00) Dollar fee. Additionally, if the Charleston Master had a conflict, this case would have been heard by the Dorchester or Berkeley Master. Essentially, there is no

R468

factual or legal basis for having this matter heard by someone other than the Master; hence, there is no factual or legal basis to have the fees paid by anyone other than Skip's clients.

Once the above changes are made, please forward a revised Order to me for review.

With kind regards I am,

Sincerely,

Bruce A. Berlinsky

BAB/jdc

R469

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Joseph S. Mendelsohn, Special Referee

Case No. 2004-CP-10-1459

Hattie Bailum, et al Respondent
v.
Roosevelt Simons, et al, of whom
Roosevelt Simmons is the Appellant

NOTICE OF APPEAL

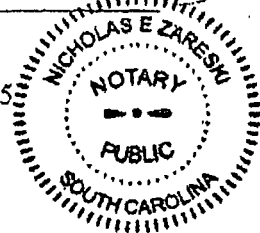
Roosevelt Simmons appeals the undated order of the Honorable Joseph S. Mendelsohn filed with the Clerk of Court on March 6, 2007, a copy of which was delivered to him on the 6th day of March, 2007.

Roosevelt Simmons

Roosevelt Simmons
3416 Kitford Road
Johns Island, SC 29455
(843) 559-1351
Pro Se

Counsel of Record:
John F. Martin, sq.
113 Wappoo Creek Drive
Charleston, SC 29412
Attorney for Respondent
(843) 762-2121

Bruce A. Berlinsky, Esq.
One Carriage Lane, Building F
P.O. Box 206
Charleston, SC 29402
Attorney for Appellant Marie Smith
(843) 852-2202



FILED
2007 MAR 29 AM 11:10
JULIE J. ARMSTRONG
CLERK OF COURT

My Commission Expires 9/29/2016
[Signature]

R470

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

FILED
2007 APR 24 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

R 471

covered under the Soldier's Relief Act,)
 fictitious names designating the)
 unknown heirs, devisees, distributes,)
 issue, executors, administrators,)
 successors or assigns of the above)
 named Defendants, and also the)
 following deceased persons: ESTATE OF)
 SAMUEL BAILUM a/k/a SAMUEL)
 BAALUM, deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM a/k/a)
 ESTHER BAILUM a/k/a ESTHER BAALUM,)
 HESTER SINGLETON BAALUM, THOMAS)
 BAILUM, SAMUEL BAILUM, SAMMY)
 BAILUM, FANNIE BAILUM MIDDLETON,)
 MARY BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE BURNS,)
 JERRY SINGLETON, ARTHUR SINGLETON)
 EUGENE SINGLETON, RICHARDINE)
 SINGLETON, EUGENE SINGLETON, JR.,)
 GARY SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS, ARTHUR LEE)
 BURNS, ARLENE GREEN, ERNEST)
 GREEN, JOE LOUIS BURNS a/k/a JOE)
 LEWIS BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS, JR.,)
 and all other persons know or claiming)
 any right, title, estate in or lien upon the)
 the real estate in or lien upon the real)
 estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)

Roosevelt Simmons is the)

Defendant/Appellant)

AMENDED NOTICE OF APPEAL

The above named Appellant appeals the Order of the Special Referee filed January 11, 2007 and the Amended Order Quiet Title

R 472

Partition and Sale of the Special Referee filed March 6, 2007 denying Defendants/Appellants Motion for Reconsideration from the Order of January 11, 2007. Appellant received written notice of entry of the March 6, 2007 Order on March 6, 2007. The Notice of Appeal was filed on March 29, 2007.

THE HOUSTON LAW FIRM, P.A.



By: Charles E. Houston, Jr.
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900
Attorney for the Appellants

Charleston, South Carolina
April 18, 2007

R473

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;
RUBY BALIUM a/k/a RUBY BALAAM;
VERDONE GRAY; JULIE B. JOHNSON;
and MONICA MIDDLETON,

Plaintiffs, Respondents

versus

ROOSEVELT SIMMONS, LEON
SINGLETON, MABEL SINGLETON HICKS
a/k/a MAYBELL HICKS, WALTER BURNS;
SHEILA B. OWENS, LOUISE CANTY;
ALONZETTA BURNS; SHARON BURNS,
MELVIN SINGLETON, MARIE SMITH,
ELMORE SINGLETON, THEODESIA
SINGLETON, MILDRED SINGLETON
MAHONEY, ANDRE SINGLETON, EUGENE
LEON ELIJAH SINGLETON, ERNEST
GREEN, Jr., KAREN GREEN, DELORIS
GREEN, JOAN GREEN WELLS, DELBERT
BURNS, JOE LOUIS BURNS, JR., a/k/a
JOE LEWIS BURNS, JR., VONIE BURNS,
SHELLY BURNS, ANASTACIA BURNS,
TREMAYNE BURNS, JOSHUA BURNS,
JARRED BURNS, AMBER BURNS, if they
be alive, and JOHN DOE and MARY ROE,
adults, and Richard ROE and JANE DOE,
infants, person under disability or
incompetence, if any, including those
persons who might be in the military
covered under the Soldier's Relief Act,
fictitious names designating the
unknown heirs, devisees, distributes,
issue, executors, administrators,
successors or assigns of the above
named Defendants, and also the
following deceased persons: ESTATE OF
SAMUEL BAILUM a/k/a SAMUEL

BY

JULIE J. ARMSI RONG
CLERK OF COURT

2007 MAY -4 PM 2:49

FILED

MOTION FOR STAYING
JUDGMENT. FOR SALE OR
DELIVERY OF LAND

RA74

BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,))
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON))
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the))
the real estate in or lien upon the real)
estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)

Roosevelt Simmons is the)

Defendant/Appellant)

TO: JOHN F. MARTIN, Esquire ATTORNEY FOR THE PLAINTIFF
AND BRUCE A. BERLINSKY, ESQUIRE, ATTORNEY FOR DESIGNATED
DEFENDANTS

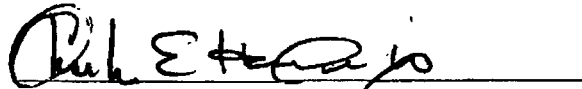
PLEASE TAKE NOTICE that the Defendant, Roosevelt Simmons
through his undersigned attorney will move before the Special Referee,
Joseph S. Mendelsohn, Esquire pursuant to Section 18-9-160 and
Section 18-9-170 of The Code of Laws of South Carolina and South
Carolina Rules of Appellate Procedure, Rule 225 for an Order staying a

R475

judgment for sale on delivery of land in the action herein pending the conclusion of the Appeal taken in this matter.

Respectfully submitted

THE HOUSTON LAW FIRM

A handwritten signature in black ink, appearing to read "Charles E. Houston, Jr.", written over a horizontal line.

Charles E. Houston, Jr.
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900
E-mail: charles@houstonlawfirm.net

Attorney for the Defendant,
Roosevelt Simmons

Charleston, South Carolina
May 4, 2007

Q476

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

covered under the Soldier's Relief Act,)
 fictitious names designating the)
 unknown heirs, devisees, distributes,)
 issue, executors, administrators,)
 successors or assigns of the above)
 named Defendants, and also the)
 following deceased persons: ESTATE OF)
 SAMUEL BAILUM a/k/a SAMUEL)
 BAALUM, deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM a/k/a)
 ESTHER BAILUM a/k/a ESTHER BAALUM,)
 HESTER SINGLETON BAALUM, THOMAS)
 BAILUM, SAMUEL BAILUM, SAMMY)
 BAILUM, FANNIE BAILUM MIDDLETON,)
 MARY BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE BURNS,)
 JERRY SINGLETON, ARTHUR SINGLETON)
 EUGENE SINGLETON, RICHARDINE)
 SINGLETON, EUGENE SINGLETON, JR.,)
 GARY SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS, ARTHUR LEE)
 BURNS, ARLENE GREEN, ERNEST)
 GREEN, JOE LOUIS BURNS a/k/a JOE)
 LEWIS BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS, JR.,)
 and all other persons know or claiming)
 any right, title, estate in or lien upon the)
 the real estate in or lien upon the real)
 estate described in the Complaint herein,)
)
 Defendant. Respondents)
)
 Of whom)
 Roosevelt Simmons is the)
)
 Defendant/Appellant)
 _____)

MOTION FOR REINSTATEMENT OF APPEAL

The above named Appellant, through his undersigned attorney,
 with leave of Court, would move the Court, pursuant to South Carolina

2478

Appellate Court Rules, Rule 231, for an Order reinstating the within Appeal. The Appeal was dismissed by Order of the Court dated May 31, 2007 upon the grounds of the failure of the Appellant to provide proof of ordering the transcript/and or failure to serve and file the Appellant's Initial brief and Designation of matter , as provided for in Rules 207, 208 and 209 of the South Carolina Appellate Court Rules

In support of the motion the Appellant would show unto the Court that the Appellant through his counsel exercised due diligence in complying with the above cited Rules of the Court but was unduly hindered in his efforts by reason of the fact that

1) The Appellant, a layman filed a "pro se" Notice of Appeal prior to engaging his present undersigned counsel.

2) The Appellant's counsel on April 18, 2007 filed an Amended Notice of Appeal with the Court and informed the Court in his cover letter of the problem of obtaining the transcript. The text of the letter was the following:

"Roosevelt Simmons, the Defendant/Appellant in the above referenced matter has retained our office to represent him in this Appeal now pending before the Court.

We are submitting for filing with the Court an Amended Notice of Appeal along with copies of the Orders being appealed from which were not included with the earlier submittal.

From the facts that I have been able to gather, a court reporter was not present for the greater part of the proceedings as required by the SCRP Rule 71. I am by copy of this letter asking each of the counsels of record to furnish me with the names of the court reporters if any that were used and if not to inform me of this fact prior to filing so that I will be able to fulfill my responsibilities under Rule 207 of the South Carolina Appellant Court Rules; or other appropriate action.

R479

By copy of this letter I am serving the Amended Notice of Appeal upon all counsel of records and parties of interest."

3) All of the testimony relating to the pretrial motions and post trial proceedings such as the Motion for Reconsideration had been conducted without the benefit of a court reporter.

4) The dates and the nature of the various hearings that had been held were not available on the docketing menu of the Clerk of Court's website. Counsel's letter dated May 17, 2007 addressed to the Special Referee requesting this information is attached as Exhibit#1.

5) The name of the Court Reporter who appeared at the only recorded proceeding held on May 15, 2006 was not immediately available or identifiable. On or about May 17, 2007 the court reporter was identified as ANGELA VANOY, COURT REPORTER CLARK & ASSOCIATES, INC. P.O. Box 73129, Charleston, SC 29415 -Phone: 843-762-6294.

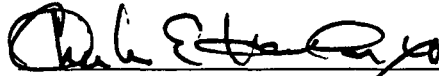
6) That on May 17, 2007 counsel was informed by Ms. Vanoy, the court reporter; that the entire transcript had not been "proofed" and that counsel would be notified by her immediately upon its completion.

7) That this Petition in support of the Motion is further supported by the attached affidavit of counsel.

Respectfully submitted,

R 480

THE HOUSTON LAW FIRM



Charles E. Houston, Jr.
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900
E-mail: charles@houstonlawfirm.net

Attorney for the Appellant

Charleston, South Carolina
June 1, 2007

R481

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

R482

covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)

Roosevelt Simmons is the)

Defendant/Appellant)

AFFIDAVIT OF COUNSEL

2483

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY, appeared before me, Charles E. Houston, Jr.,
who upon being duly sworn, deposes and states the following:

1.

That I am a member of the South Carolina Bar and represent the
Appellant, Roosevelt Simmons in this Appeal.

2.

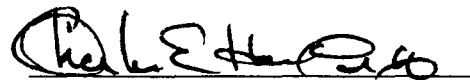
That the factual assertions stated in the Petition in support of the
Motion herein are true.

3.

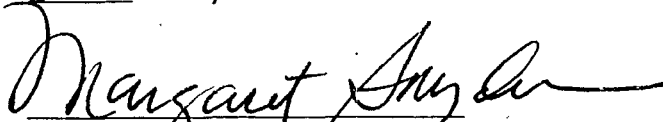
That counsel is informed and believes that the best interest in
obtaining justice would be obtained if the relief sought in the Motion
were granted by the Court to the end that the matter may be decided
upon its merit, and

4.

That counsel is further informed and believes that none of the
parties to this proceeding would be prejudiced by the relief sought by
the Appellant being granted by this Honorable Court.


Charles E. Houston, Jr.

Sworn to before me this
2th day of June 2007.


Notary Public for South Carolina
My Commission expires Feb 15, 2015

R484

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

Plaintiffs, Respondents

versus

ROOSEVELT SIMMONS, LEON SINGLETON, MABEL SINGLETON HICKS a/k/a MAYBELL HICKS, WALTER BURNS; SHEILA B. OWENS, LOUISE CANTY; ALONZETTA BURNS; SHARON BURNS, MELVIN SINGLETON, MARIE SMITH, ELMORE SINGLETON, THEODESIA SINGLETON, MILDRED SINGLETON MAHONEY, ANDRE SINGLETON, EUGENE LEON ELIJAH SINGLETON, ERNEST GREEN, Jr., KAREN GREEN, DELORIS GREEN, JOAN GREEN WELLS, DELBERT BURNS, JOE LOUIS BURNS, JR., a/k/a JOE LEWIS BURNS, JR., VONIE BURNS, SHELLY BURNS, ANASTACIA BURNS, TREMAYNE BURNS, JOSHUA BURNS, JARRED BURNS, AMBER BURNS, if they be alive, and JOHN DOE and MARY ROE, adults, and Richard ROE and JANE DOE, infants, person under disability or incompetence, if any, including those

MOTION FOR ORDER OF
SUPERCEDEAS, DISMISSAL
AND OTHER RELIEF

persons who might be in the military)
covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)
Defendant. Respondents)
Of whom)
Roosevelt Simmons is the)
Defendant/Appellant)

TO: ALL OPPOSSING ATTORNEYS OF RECORD, JOHN F. MARTIN AND
BRUCE BERLINSKY

YOU WILL PLEASE TAKE NOTICE that the Defendant/Appellant,
by and through his undersigned attorney, will

R 486

First: pursuant to SCACR Rule 225(d) (3) move the Court to inquire into the matters here in below presented and immediately and during the interval period issue and Order of Supercedeas staying the Order of the Special Referee dated June 28, 2007 until further Order of this Court, and

Second: requesting the Court to determine whether the Court below acquired jurisdiction of all the unknown parties who have an interest in the property where the record reflects that the Plaintiff failed to move for and obtain an Order for Publication from the Court ; then should this proceeding be dismissed for lack of jurisdiction and

Third: requesting the Court to determine whether if there was an insufficiency of service of process wherein in the absence of an Order for Publication a publication of the Lis Pendens was made that but gave an inadequate and misleading description of the property, then should this proceeding be dismissed for lack of jurisdiction and

Fourth: requesting the Court to determine whether the right of the Appellant, Roosevelt Simmons to exercise his option to purchase his allotted interest in the heirs property was improperly denied to him by (a) error of law (b) error of fact and or (c) abuse of discretion by the Special Referee and

Fifth: requesting the Court to determine whether the proceedings held below should be dismissed or sanctions imposed on grounds of lack of due process procedures exercised and tolerated by the Court including the taking of unrecorded testimony of witnesses over the telephone

without a court reporter being present at the transmitting end to properly identify the witness and having them sworn prior to their testimony being tendered, and

Sixth: requesting the Court to determine whether the underlining facts upon which the Special Referee predicated his findings of facts upon were falsely and the record may show fraudulently presented through the telephone witnesses. (The witnesses were not properly sworn so a charge of perjured testimony may not lie.) A simple examination of the birth death and marriage certificates admitted into evidence to establish facts of pedigree also demonstrate that none of the Plaintiff's were adults in 1905 the year the property was alleged to have been conveyed to them and

Seventh: requesting the Court to determine whether the U.S Census reports from the years 1950 back to 1910 along with certain burial records obtained from Fielding Funeral Home, Charleston, SC may be admitted as newly discovered evidence fore the purpose of granting a new trial and or under SCRCF, Rule 60 for relief of judgment based on fraud. The motion was orally made at the June ____ 2007 hearing and the proffered new evidence was admitted but no action taken by the Court other then to modify the manner the money would be escrowed pending the appeal taken, and

Eight: requesting the Court to determine what disposition should be made pertaining to the Court's failure to maintain itself as a court of record as provided by the applicable provisions of the South Carolina Constitution and Rules of the Circuit and Appellate Courts. Absent the transcripts that was secured by the Appellant of the May 16, 2006 and June 19 2007 hearings no others were made. Transcriptions of the

evidentiary hearings held on September 5, 2006 and September 22, 2006 where testimony was rendered via telephone were not memorized by a court reporter nor at any of the Motion Hearings. (See Affidavit of Emily Robinson with attachment that lists the nature of the issues testified upon.)

This malfeasance or omission by the Court now unfairly wrecks havoc on the Appellant's present counsel, who did not participate in the proceedings below, attempts to mirror to our Appellate Court appealable issues that occurred but were not transcribed into the record for Appellate Court review, the same being both contrite and contrary to applicable provisions under SCRCP, Rule 71.

Ninth: requesting the Court to determine whether and upon what authority the Special Referee may dictate and frame the scope of issues of error that the Appellant may present to this court.

Tenth: The Appellant joins in the Motion of Deloris Singleton to Dismiss the action herein and /or to restart the proceedings anew with her joined as a party Defendant upon the grounds that she was not served with process or proper notice of the institution of this proceeding.

Wherefore, Roosevelt Simmons, the Appellant herein prays the Court for an Order staying the Order of the Special Referee filed on June 28, 2007 and restraining any action from being taken from under the authority it represents and

For an Order dismissing the action herein for lack of jurisdiction and or insufficiency of service of process and or upon the grounds of

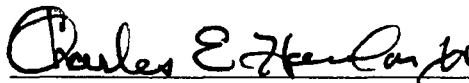
fundamental denial of due process of law and or upon such sanctions as this Court in its sole discretion would deem to impose.

For and Order remanding the case back to the Circuit Court for Charleston County for the Master in Equity for Charleston County to make a determination of the issues presented herein, and or

For such other and further relief as this Court may deem necessary to fashion to protect the dignity and honor of the Courts as our institution for justice for all people and that the ends of justice may best be served thereby.

Respectfully submitted

The Houston Law Firm



Charles E. Houston, Jr.

SC Bar # 2663

4 Carriage lane, Suite 206

Charleston, SC 29407

Phone: 843-406-0101

Fax: 843-406-8900

E-mail: charles@houstonlawfirm.net

Attorney for the Defendant/Appellant
Roosevelt Simmons

July 13, 2007

Charleston, South Carolina

R490

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)
covered under the Soldier's Relief Act,)

R491

fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)
)
Defendant. Respondents)
Of whom)
Roosevelt Simmons is the)
)
Defendant/Appellant)
_____)

MEMORANDUM OF LAW

R492

Statement of the Case

This case is a declaratory judgment proceeding to quiet title to real estate among the various claims of persons claiming to have heirs title possessory interest in the property. The property situated in Charleston County, on Johns Island, SC consists of an approximately 54 acres tract. The property was conveyed by deed in 1905 to Sam, Thomas, Tony, Mary Bailum and Fannie Bailum Middleton. The court found (Amended Referee's Order filed March 6, 2007) that this Sam Bailum referred to as Sam (2) was the son of the elder Sam Bailum referred to as Sam 1) that was married to Hester Bailum and died around 1950 and that Thomas Tony Mary and Fannie were his siblings. The Court found that the defendant Roosevelt Simmons had no claim by descent to this property described as lots 2, 3 and 4 and denied his claims of adverse possession to it. The Court further found that there was a conveyance made in 1910 to Sam Bailum (Sam 1) recorded in Book H29 at page 185 for a twenty acre now determined to be a 15 acre tract. That at the time of his death Sam (1) had been predeceased by his first wife; the mother of Sam (2) and his siblings referred to above and left surviving his widow, Hattie Bailum who had six children by a prior marriage. the Court determined that a 1/3 interest in this property belonged to the surviving children of Hattie Bailum through whom the interest of the defendant, Roosevelt Simmons is derivative. The remaining 2/3 interest was inherited by Sam(2) and his siblings identified above. The adverse possession claims of Roosevelt Simmons against the 2/3 interest of these heirs was denied by the Court.

The Appellant asserts that a review of the birth death and marriage certificates introduced into evidence by the plaintiff's show that it was impossible for Sam (2) and his siblings to have been even alive in 1905 the year of the grant of the property. The appellant further asserts by

R493

newly discovered evidence consisting of data taken from the published US Census Reports from 1900 forward and from burial records obtained from a local funeral home that the 1905 conveyance of the 54 acre tract was not to Sam (2) and his siblings but to Sam (1) and his siblings whose names were similar to those of Sam (2). The census records reflect the age of Sam (1) as being 34 in 1910.

Staying the Order of the Special Referee filed June 28 and served on July 5, 2007

A provision in the order states that Mr. Roosevelt Simmons Motion to Stay is denied. *The Court finds that Mr. Simmons failed to timely exercise his option to purchase this parcel He failed to file with the Clerk his proof of financing as required by the Order of January 11, 2007 recorded the same date and by the Amended Order of February 16, 2007 filed and served on March 6, 2007. As such, having failed to preserved his rights as and heir to purchase this parcel the final order now requires this parcel be sold and title conveyed to Mr. Mark Goldberg.*

Appellant submits that first the Referee was attempting to make the options to purchase available in line with § S.C. Code Ann. § 15-61-25 (2006) As such he committed a due process procedural error as this section affords an eligible heir the right to announce his desire to exercise the option to purchase 10 days prior to the final hearing. The record is void of this procedure having been followed.

§ 15-61-25. Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure reads as follows:

(A) For the purposes of this section, "joint tenants and tenants in common" include heirs or devisees. Upon the filing of a petition for

R494

partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning 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. The nonpetitioning 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.

(B) In the circumstances described in subsection (A) of this section, and in the event 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 competent 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. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest in the property described in the petition for partition.

(C) In the event that the petitioning joint tenants or tenants in common object to the value of the interests as determined by the appointed appraisers, those joint tenants or tenants in common shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value. An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted, and an order as to the valuation of the interests of the petitioning joint tenants or tenants in common shall be issued.

(D) After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty-five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers.

(E) In the event that the nonpetitioning joint tenants or tenants in common fail to pay the purchase price as provided in subsection (D) of this section, the court shall proceed according to its traditional practices in partition sales.

Secondly, even under the improper procedure implemented by the Special Referee, the Appellant did file a timely response within the ten day period. (The Affidavits of Christian Redell and Fred Fields who both assisted Roosevelt Simmons in raising the purchase money to buy the property are attached). These affidavits show that proof of financing was both adequate and timely tendered by Roosevelt Simmons.

SCRCP Rule 71 (Duty to transcribe record)

South Carolina Supreme Court Rule 8, Section 7, provides:

"This court will not consider any fact which does not appear in the transcript of record and therefore counsel must not embody in their briefs any fact which does not appear in the transcript of record. Nor will any facts stated in an exception be considered unless it appears from the transcript of record that it is true."

In the case of South Carolina National Bank v. B. Dale Joyner 289 S.C. 382; 346 S.E.2d 329 The Court of Appeals of South Carolina stated that "it will not consider any fact which does not appear in the

transcript of record and therefore counsel must not embody in their briefs any fact which does not appear in the transcript of record. Nor will any facts stated in an exception be considered unless it appears from the transcript of record that it is true.

Since these rulings SCRCF, Rule 71 has placed the responsibility on the Special Referee acting in the capacity and with the attendant powers of a Circuit Court Judge to insure that a proper record of cases are memorialized.

SCRCF, RULE 71. FORECLOSURE AND PARTITION reads as follows:

(a) Proceedings, Reference. Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53. In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due upon default, the rate of interest and interest from date of default to hearing date, any other relevant interest charged, any amounts due or to be credited on escrow items, the taxable costs of collection prior to hearing, and the amount of allowable attorneys fees due and anticipated through conclusion of the action. Also included shall be the rate of interest to accrue until the date of the judgment and the post judgment interest rate. The judge or master may also establish the priority and compute the amounts due of any other liens when a determination of lien priorities appears necessary or desirable prior to a foreclosure sale. Any party who has appeared in the action may present proof that the debt may be satisfied by selling the property in parcels, rather than selling the whole to satisfy the claims. Only parties who have appeared and filed pleadings in the action shall be entitled to the usual notice of hearings and other proceedings unless the pleadings state an unliquidated claim. In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due. Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all other claimants have complied with the statutes pertaining to the filing of notices of Lis Pendens. **In all actions a record of hearings shall be made and preserved in the case file in the office of the clerk of court.**

SCRCF, Rule 71 (e) reads as follows:

2497

Actions When Title Is at Issue. In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. **In all such actions a transcript of record shall be made and preserved in the case file in the office of the clerk of court.**

Documental evidence submitted into evidence contradicts the pedigree and ancestral derivation of title testimony false

The marriage birth and death certificates introduced into evidence through the Plaintiff's witnesses for the purpose of establishing family pedigree and the derivation of their title when examined would also show that none of the persons submitted as being the grantees to the 54 acre tract in 1905 would have been alive at that time nor 18 years of age. (Certificates are attached)

Defendant/Appellant has proffered newly discovered evidence contradicting the factual findings of the Court on the derivation of the title to the property.

The proffered evidence received into evidence by the Court at the June 19, 2007 hearing consists of data drawn from the U.S. Census Reports dated back to the 1900 Census. The reports does not list any of the purported grantees as being alive in 1905. By the finding of fact of the court the grantees of the 1905 conveyance were Sam (2) and his siblings. According to the Census reports Sam Bailum (1) was 34 years of age in 1905 and a Tony Bailum a younger brother was age 25. This evidence establishes the fact that the 1905 deed would have been to Sam Bailum (1) and his siblings rather the to Sam (2) the deceased son of Sam (1) first wife. (See family diagram submitted into the record as an exhibit.)

The Court lacks Jurisdiction of the unknown parties.

2498

This assertion is premised on the fact that an examination of the records of the Clerk of Court for Charleston County would show that the Plaintiff never Motion the Court for an Order for Publication and no such order was ever filed into the record. S.C. Code Ann. § 15-67-40 (2006) the applicable statute states the following:

§ 15-67-40. Service on unknown parties; notice of Lis Pendens.

In any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: "Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State. The plaintiff shall before commencement of such publication file with the clerk of the court a notice of the pendency of the action, a copy of which shall be published in the same newspaper with and immediately following the summons

S.C. Code Ann. § 15-9-710 (2006) provides for the following:

§ 15-9-710. (4) (5) When service by publication may be had.

When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas, the master, or the probate judge of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by the publication of the summons in any one or more of the following cases:

(4) when the defendant is not a resident of this State but has property therein and the court has jurisdiction of the subject of the action;

(5) when the subject of the action is real or personal property in this

R499

State and the defendant has or claims a lien or interest, actual or contingent, therein or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

Therefore if an Order of Publication was not obtained as required by these statutes , service of process of all the persons contained in subsection 4 and 5 of § 15-9-710 the Court never obtained jurisdiction of these persons and any Order issued without having jurisdiction of these persons would be void and a nullity and open and subject to collateral challenges.

The proceedings below should be dismissed for lack of sufficiency of process.

§ 15-67-40. Referred to above require the publication of the Summons and Notice of the Pendency of the Action. The Notice of Pendency of the Action contains the legal description of the property subject to the Court's jurisdiction. The design goal and legislative purpose for these rules is to provide citizens with notice of the action so they may be afforded the opportunity to appear and participate in the proceedings. Often people reading the Summons may not recognize from the caption of the case the names of the parties or their individual names may not appear. With the publishing of the description of the property which they may recognize they are afforded additional opportunity of receiving notice that the action affects their interest in property.

In our instant case the Plaintiff without an order of Publication being obtained nevertheless did publish a copy of the Summons and a Notice of the Pendency of the Action. However the publication was deficient where the complete and inadequate description of the property was not given. Compare the text of the description of the property as published in the order and in the Amended Lis Pendes with the description in the Notice of the Pendency of the Action. The description even fails to mention the T.M.S. tax number for the property. If lack of adequate notice as required by statute is not rendered then this would constitute insufficiency of process and insufficiency of service of process service of process under SCRCP, Rule 12 (b) (4) and (5).

Taking of sworn testimony by telephone without a notary public or Court Reporter.

This scrivener is unaware of any cognizable Rule of Court procedure that permits the testimony of witnesses being received

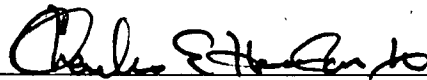
R500

directly into evidence by telephone, especially where there are no assurances that the person who is rendering testimony over the phone is the person whom he or she purports to be. The common practice is to take the deposition testimony of an unavailable witness by having a court reporter within there jurisdiction to appear at there home or nursing home take positive identification of the person and have them sworn prior to the commencement of their telephone deposition that is transcribed by the court reporter. Allowing the proceeding to progress by telephone testimony that is not being recorded at either end would be tantamount to and abuse of discretion by the trial judge despite the concurrence of counsel. The Special Referee is the person embodied and charged with the responsibility of a circuit court judge to see that the proceedings are conducted under rule of law. It is respectfully suggested that this practice would be a constitutional denial of due process of law as well as the special referee dictating the limitations of errors of law that the defendant may submit to this court on appeal.

A Glossary of exhibits are identified and attached.

Respectfully submitted,

THE HOUSTON LAW FIRM



Charles E. Houston, Jr.
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900
E-mail: charles@houstonlawfirm.net
Attorney for the Appellant,
Roosevelt Simmons

Charleston, South Carolina
July 12, 2007

R501

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)
covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)

GLOSSARY OF EXHIBITS

R 502

following deceased persons: ESTATE OF)
 SAMUEL BAILUM a/k/a SAMUEL)
 BAALUM, deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM a/k/a)
 ESTHER BAILUM a/k/a ESTHER BAALUM,)
 HESTER SINGLETON BAALUM, THOMAS)
 BAILUM, SAMUEL BAILUM, SAMMY)
 BAILUM, FANNIE BAILUM MIDDLETON,)
 MARY BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE BURNS,)
 JERRY SINGLETON, ARTHUR SINGLETON)
 EUGENE SINGLETON, RICHARDINE)
 SINGLETON, EUGENE SINGLETON, JR.,)
 GARY SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS, ARTHUR LEE)
 BURNS, ARLENE GREEN, ERNEST)
 GREEN, JOE LOUIS BURNS a/k/a JOE)
 LEWIS BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS, JR.,)
 and all other persons know or claiming)
 any right, title, estate in or lien upon the)
 the real estate in or lien upon the real)
 estate described in the Complaint herein,)

Defendant, Respondents)

Of whom)

Roosevelt Simmons is the)

Defendant/Appellant)

The Glossary of Exhibits is as follows:

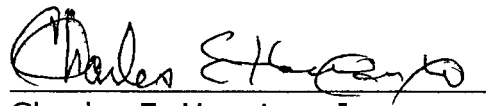
- Exhibit 1: Affidavit of Christian Redell
- Exhibit 2: Affidavit of Emily Robinson
- Exhibit 3: Affidavit of Roosevelt Simmons
- Exhibit 4: Affidavit of Fredrick Fields
- Exhibit 5: Affidavit of Dolores Singleton
- Exhibit 6: Death Certificate of Clarence Leonard Singleton
- Exhibit 7: Special Referee's Order Quiet Title Partition and Sale,
- Exhibit 8: Amended Special Referee's Order Quiet Title Partition and Sale
- Exhibit 9: Order

2503

- Exhibit 10: Genealogy Exhibit
Exhibit 11: Affidavit of Publication
Exhibit 12: United States Federal Census Bureau
Exhibit 13: Proof of Marriage License of Abraham Balaan and Mary Streety
Exhibit 14: South Carolina Death Index, Tony Balaam
South Carolina Death Index, Sarah Balaam

Respectfully submitted,

THE HOUSTON LAW FIRM



Charles E. Houston, Jr.
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900
E-mail: charles@houstonlawfirm.net
Attorney for the
Intervenor/Defendant,
Deloris Singleton

Charleston, South Carolina
July 13, 2007

R504

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

I, Christian Redell, upon first being duly sworn, deposes and state the following facts as my own personal knowledge:

1.

I am a citizen and resident of Charleston County residing at 2340 Herndon Drive, Charleston SC. Phone:843-571-4306.

2.

I attended one court hearing in this case with Mr. Roosevelt Simmons at the law office of Joseph Mendelsohn on Broad Street, Charleston, SC. This was during the month of February, 2007. Present were Judge Mendelsohn, Atty. Martin, Atty. Berlinsky, Mr. Simmons, Atty. Condon and myself. There was no court reporter present at this session.

3.

Atty. Louis E. Condon, Roosevelt Simmons attorney at that time, argued his positions upon his Motion for Reconsideration before Judge Mendelsohn. One of the points he raised was that all of the proceeding had not been recorded. Atty. Condon stated that the law requires the recording of all Court of Common Pleas proceedings as being mandatory; especially this being a court of record. Nevertheless, Judge Mendelsohn denied his Motion.

4.

Near the end of the session Judge Mendelsohn indicated that he was ready to rule on the case. At that time I asked the judge's permission to speak and he said yes. Then I asked Judge Mendelsohn if Mr. Simmons still has the right to purchase the property. The judge said yes and that Mr. Simmons would have 10 days to get the money or to show documentation from financial institutions that he has the money available and would have 30 days more to purchase the property. I stated that I would make the money available to Mr. Simmons if necessary and if he so desired.

5.

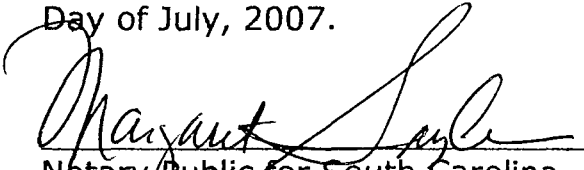
R505

Within 10 days, on Friday the 16th of March, Mr. Simmons, myself and my wife faxed/e-mailed Judge Mendelsohn and Mr. Condon respectively the required documentations showing the availability of the funds for the purchase of the property. On Monday, the 19th of March, Mr. Condon responded with an e-mail confirming the receipt of the documents. Exact and genuine reproduced copies of those documents are annexed hereto and incorporated as part of this affidavit and identified as Exhibit 1.

I have read this Affidavit and retained a copy for my possession.


Christian Redell

Sworn to before me this 11th
Day of July, 2007.


Notary Public for South Carolina

My Commission expires: Feb. 17, 2015

Q506



To Whom it may concern:

Christian H. Redell, a SunTrust client has a balance in excess of \$15,000 on March 13, 2007. If you have any further questions regarding this account, we would be happy to assist at Mr. Redell's request.

Mitch McCain

A handwritten signature in cursive script that reads "Mitch McCain".

Financial Services Representative
SunTrust Bank
3125 Bees Ferry Rd
Charleston, SC 29414
843 573 3163

R 507

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

I, Emily Robinson, upon first being duly sworn, depose and state the following facts as my own personal knowledge:

1.

I am a citizen and resident of Charleston County residing at P.O. Box 654, Johns Island, SC 29457, Charleston, SC. Phone: 843-270-8117.

2.

I attended a court hearing in this case with Mr. Roosevelt Simmons on January 25, 2005 at the law office of John Martin on James Island, SC.

3.

That during the course of the hearing, the testimony of a person alleged to be Hattie Baillium and her son (Alonzo) both from Texas and Monica Middleton from New York, NY.

4.

That during the time of the telephone call the person purported to be Hattie Baillium stated that she did not have any knowledge of a contract of sale with Mark Goldberg.

5.

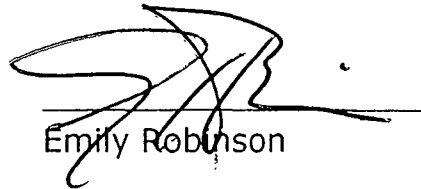
That there was no court reporter present at the hearing and the interview was conducted by Joseph Mendelsohn as a Special Referee.

6.

That since there was no court reporter present at the hearing; I personally transcribed everything that I heard. A copy of that transcription is annexed to this affidavit as Exhibit 1.

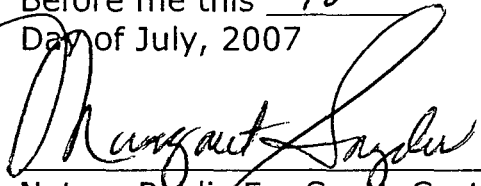
R508

That I have read this Affidavit and am familiar with the contents stated therein and have retained a copy of the same in my possession.



Emily Robinson

Sworn to and subscribed
Before me this 10th
Day of July, 2007



Notary Public For South Carolina
My Commission expires: Feb. 17, 2015

RS04

1-26-05

11:33 A.M.-

1. SOME QUESTIONS FROM THE JUDGE- IF THERE ARE HIERS-WHO HAS A PIECE OF THE PROPERTY. IF NOT WHO LIVED ON THE LAND (MUST DECIDE?
2. TRACE HIM ON TREE-A. (IS THE CONCERN ABOUT BOTH THE (24&15)
3. DEEDS-CERTIFIED DEED(ATTY MARTIN-HAS THEM)
4. 5 BALAAM CHILDRED (WAS 54 ACRES). IT IS SEPARTED NOW.

CLAIRE BALAAM? DIED, PAST AWAY, SHE HAD GRAND CHILDREN. WHO ARE THE GRAND CHILDREN?

HATTIE BALAAM ON THE PHONE (STAND BY).

1. NAME HEIR?
2. EST OWNERSHIP?
3. SELL PROPERTY?
4. WHAT IS THE VALUE OF OWNERSHIP-A. WHAT IS THE AMOUNT-(15 & 24 ACRES)
5. WHAT WAS THE SALE OFFERED(NEED TO KNOW)
6. CAUSE OF ACTION MARTIN?
7. CAUSE TO QUIET TITLE
8. CAUSE-ADJUCTION(STOP HIM FROM COLLECTING RENT)

MR. SIMMONS RESPOND-HE HAS BEEN PAYING THE TAXES ON THE PROPERTY & SUPERVISORING THE PROPERTY-PARCEL 1(1880 PLOT PARCEL1-15 ACRES)

JULIA JOHNSON- PARCEL 24 ACRES-JULY 2, 1910- ATTACHED TO SUMMARY. NETTLES HAYNES SMITH DEEDED PAGE 89

SAM BALAAM-SOLD TO DR. -20 TO 15 ACRES. NEVER SUB DIVIDED-5 ACRES WENT TO - NO ONE CLAIN OWNERSHIP-JAN 1960 HENRY SCHMDT TO DR. ROBERT-4.2 ACRES TOTAL OF 5.5.

JUNE 20, 1904- NETTLE HAYNES DEED TO 5 BALAAM (T24-1907 BOOK)

SAM BALAAM HAD 8 CHILDRED- SAME FIVE ON 1904-BALAAM ACQUIRED DEED 1904-LOOK AT- WHO SIGNED THE DEED FOR CHILDDREN-PARCEL 11- (PARCEL 1 SAM BALAAM- TWO BIRTHDATE IS 1 BORN 1902.

1. SAM BALAAM (DIED 1975- BIRTH DATE 1902) MOTHER & FATHER- JULIA

2. SAM BALAAM # 2 1999

3. CHILDREN- MARY, THOMAS, TONY, AND?

MR. SIMMONS-(1) BALAAM HAD 3 SONS- SAM BALAAM THE GRANDSON OF HESTER- LIVED ON THE PROPERTY WITH HESTER

HOW SAM #1 IS #1 AND SAM 2 IS # 2

LIVED ON PROPERTY UNTIL 1964 AND PAID TAXES

A. AUNT CARIE BURNS RESPONSIBLE

B. SON WALTER BURNS HER SON

C. TO MR. SIMMONS

2510

⑦

D. SAM BALAAM DIED
E. GRANDMOTHER 15 YRS. LIVED ON PROPERTY-UNCLE JOSH, LOUISE
& THE OTHERS.
HOW LONG CONTRIBUTE TO TAX- UP TO 2004 THE PRESENT.
A. WHO MOVE IN HOUSE(ATTY MARTIN HAD A QUESTON ABOUT IT)
B. WHO IS IN THE HOUSE NOW-(\$75.00 RENT)
HESTER 6 CHILDREN (WIDOW)
LOOK AT COMMON LAW AROUND 1942
CODE FOR 1791-WIDOW 1/3 OF THE ESTATE & CHILDREN 2/3-FRANKLIN
O SMITH IS DR. PAGE 133-LOT 24-O25-HATTIE WANTED TO PUT A MOBLE
HOME ON THE PROPERTY.
THE PROPERTY DID NOT PURK
DAUGHTER OF THOMAS & CLAIRE
1995 MET SAM BALAAM #2
PAYING ON 24 ACRES
18 ACRES TRACT MR SIMMONS TAKING CARE OF
ASK ABOUT HER TRIBUTE TO TAXES
WHER IS HATTIE BALAAM INTERST IN PROPERTY
MR. SIMMONS IF HE DIDN'T GET OFF OF TAX SALE
3 ACRES TRACT OFF SHERIFF SALE
5 ACRES TRACT -COUSIN IN NY
ATTY MARTIN QUESTIONS
TAX RECEIPTS, PLAT. PROPERTY RECORDS
2 DEEDS
ARTICLES
LETTER FROM MR. SINGLETON
8 EXHIBITS FROM ATTY CUPP
AND SHE WANTS ALL CONTRACTS ON PROPERTY IN EXHIBITS
ATTY MARTIN- WANTS TAX RECEIPTS FROM OTHER TAX BILL PAID
HE HAD THEM ALSO
2004, 24 ACRES-2003, 2002, (2004-3.3-2004 & 2003-24 ACRES
2002 BOTH & 2001 BOTH
DID WRITE LETTER AFTER ATTY GOT ENVOLVE-WALTER BURNS TO
YOU-DID'T KNOW HATTIE BALAAM- ONLY KNEW SAM BALAAM.
HESTER BORN BEFORE CIVIL WAR- CARRIE BORN 19? HESTER WAS
MUCH YOUNGER THEN-WHEN DID HESTER DIED- WHEN DID SAM
BALAAM DIED. DID HE ADOPT ANY OF THE OTHER CHILDREN? THE SIX
CHILDRENS-DID THEY KEEP THE SAME NAME?
DID EVER KNOW THOMAS BALAAM ACROSS THE STREET-WHO PAID
THE TAXES ON THE 5 ACRES AND THE 3 ACRES. DISD THOMAS
BALAAM? DID NOT KNOW
DID YOU CALL- DID NOT HAVE NAME
COLLECTION OF DEEDS
1 DEED FROM NETTIE HAYNES SMITH TO SAM BALAAM
2 TRACT 24- HAYNES 54 ACRES 1904 TO ALL BALAAM
3 24 ACRES TO SAM FROM TONY-24 TO 54 ACRES

2511

2

4 24 ACRES- 10-10-5-5 (54 ACRES)
5 DEATH CERTIFICATE- JANUARY 19,1975-EVELYN ODOM-JULIA
BALAAM
6 DEATH CERTIFICATES SEPT. 1999- RUBY MITCHUM NEXT-RUBY
BALAAM MARRIED NAME(SAMUEL& LUCILLE) DIED IN NY IN
ROOSELVT HOSPITAL IN NEW YORK-BORN 1928
QUESTION STILL BY ATTY MARTIN- 1910 OR 1904-
9 CHILDREN
ISSUES
A. SAM #1 IS SAM #1
B. HESTER DIED & IS SIMMONS IN THE DEAL
C. HE IS ALSO IN DEAL BECAUSE OF DEED
D. IF COUSIN NOT IN IS IT THEN OUT
E. HESTER SAM#1 HAS 1/3 AND HESTER FOLKS & 2/3 THE OTHER
F. ASSUMES ALL OF HEIRS OF HESTER SAM #1
G. ESTABLISH THE VALUE OF PIECE OF PROPERTY
H. HOW MUCH VALUE FOR EACH PERSON IF PROPERTY IS SOLD
I. THE TAXES EACH INDIVIDUAL HAS PAID -ALSO FOR THE
COURTS TO AVOID LEGAL FEES TO STRAGHTEN ALL THINGS
OUT
J. THE REAL ISSUE IS SALE OF PROPERTY
K. FIND OUT WHO IS IN THE POT
L. ONE SIDE WANTS TO SELL AND THE OTHER DONOT WANT TO
SELL
M. 5,3,24,15 GOLDBERG WANTS TO BUY
N. FIGURE OUT IS PART OF IT THE 3& 5 MUST BE CALUATE IN
THE TOTAL
O. 15 ACRES
P. CAN WE PICK A PIECE OF LAND THAT WOULD HAVE THE
VALUE FOR MR. SIMMONS FOR THE TAXES THAT WAS PAID
Q. TRACTS OF PARCEL ON BOTH PART OF LAND
WHO TOOK CARE OF LAND-UNCLE SAMUEL & DAD THOMAS
UNCLE SAM FATHER BROTHER
GRADUALLY DAD PUT THE RESPONIBLITY ON SAMUEL &
THOMAS?
GRAND DAD FATHER OF WALTER-BUDSBE COUSIN MOTHER SAID
HESTER-DONOT KNOW
WHO IS GRAND DADDY WIFE-HATTIE
TONY STARTED KPROPERTY
SAMUEL BALAAM GRANDDAD, JOE MENDLEN?-69
NEVER LIVED ON PROPERTY, NEVER LIVED IN
CHARLESTON.LIVED IN HALLEM & MOVED TO CHARLESTON
WITH COUSIN- AND THEN MOVED TO TEXAS 1940 OR 1950-
HARLEM. DID NOT COME TO CHARLESTON
SAM BALAAM 1999- WAS TAKEN CARE OF PROPERTY DADDY
PASS IN 1966 IN NEW YORK. SAMMIE BALAAM TOOK OVER

R 512

3

PROPERTY. UNCLE WALLACE & MS BAKER- BAKER RELATED TO BURNS.

DID YOU PAY TAXES-

DO YOU HAVE ANY RECEIPTS THAT YOU PAID FOR ALL THE YEARS?

DID YOU TRY TO PAY TAXES

ATTY CUPP QUESTIONS

UNCLE THOMAS TOOK CARE OF PROPERTY AND PAYING TAXES SHE HAS RECEIPTS- PLEASE SEND ALL YOUR RECEIPTS TO YOUR ATTY MARTIN

SON ON PHONE: COME BACK TO SON

MS BALAAM COUSIN WALTER-DONOT KNOWS COUSIN WALTER BURNS. COUSIN WALTER MIDDLETON. WHO WAS MS BAKER-DONOT KNOW FIRST NAME

ARE YOU AWARE OF A TAX SALE ON THE PROPERTY?-WHEN ABOUT 4 YRS AGO.WHO DID NOT PAY THE TAXES.SAMUEL DID NOT PAY. SHE HAS THE RECEIPTS THE ATTY MARTIN HAS THEM NEED TO SEE ALL PAID RECEIPTS FROM TAX SALES.

SPEAK-HER SON

JAMES BALAAM-ALONZA-47 YEARS OLD- 1100 TAXAS WORK SECURITY OFFICER.

WHEN WERE YOU IN CHARLESTON? 4 YRS AGO

HAD A SURVEY AND SOMETHING WITH WATER. COST \$6,000.00-

DO YOU HAVE PAPERS

SEND THE PAPERS ALSO TO ATTY MARTIN

ALWAYS HAD A INTEREST IN PROPERTY

GRANDMOTHER CLARA MARRIED TO THOMAS BALAAM-2 PIECES EACH SIDE OF ROAD.

HOW DID YOU ARRIVE AT 2 ½ ACRES- SAMMIE GRANDMOTHER, & SISTER. HOW LONG HERE IN CHARLESTON 3 TO 4 YRS LIVED

LIVED AT MAYNERS CAY ON FOLLY RD CHARLESTON

DO YOU KNOW OF CONTRACT OF SELL ON PROPERTY BY MS. GOLDBERG? NO

WHAT KIND OF WORK DID YOU DO? WAS NOT WORKING

LIVED AT MAYNER CAY FOR 1 YEAR THEN MOVED TO JAMES ISLAND. THEN BROUGHT A TRAILER IN THE MOBILE PARK.

WIFE WAS NOT EMPLOYED.

HAD A CONSTRUCTION COMPANY TO CLEAR LAND-COKER LAND CLEARING COMPANY

END

R513



STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

I, Roosevelt Simmons, upon first being duly sworn, depose and state the following facts as my own personal knowledge:

1.

I am a citizen and resident of Charleston County residing at 3416 Kitford Road, Johns Island, SC 29455, Charleston, SC. Phone: 843-559-1351

2.

That I attended a court hearing on January 25, 2005 at the law office of John Martin on James Island, SC.

3.

That by receipt of a letter dated January 23, 2007, from Louis E. Condon, Esq., the letter stated the purchase price of the property was \$161,111.11.

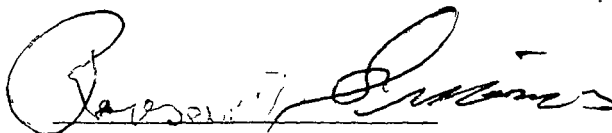
4.

That I, timely obtained the necessary financing and sent proof of it to Louis Condon, Esq., Joe Mendelsohn, Special Referee and Julie Armstrong, Clerk of Court, Charleston County Court. The proof consisted of a letter from The bank of South Carolina to Fred Fields that they would lend him \$150,000 coupled with a letter from Fred fields to myself that he would cosign on the loan for me. The second letter was a letter from Sun Trust Bank stating that Chris Ridell had funds on account with the bank in excess of \$15, 000.00 coupled with a letter from Chris Ridell to myself stating that the funds were available to me upon request to purchase the property.

R514

5.

that I immediately furnished a copy of these letters to each attorney of record, to Joseph Mendelsohn, the Special Referee and to Julie Armstrong, the Clerk of Court for Charleston County this was a transmitted by fax on March 16, 2005. A copy of the faxed receipt is annexed.

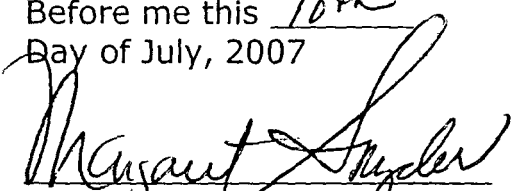


Roosevelt Simmons

Sworn to and subscribed

Before me this 10th

Day of July, 2007



Notary Public For South Carolina

My Commission expires: Feb. 17, 2015

R 515

with Mendelson as of the moment I have not heard from anyone. When I do hear from you, let me know. Mendelson poses the choice early on today so I could not believe his copy probably mean you get a new trial. Of course if that happens you can ask that the case be heard by the Master in Equity. Likewise, if you have to appeal to the Court of Appeals and win the relief would probably be a new trial. Because of my workload here at the School as I told you before you made your decision, I am unable to handle any further appeal. There are several lawyers who might handle an appeal for you. I would recommend that you talk to Dwayne Green first. His phone number is 647-269-2716. It last doesn't work out you might try Kevin Campbell (884-6874) Joe Cunniff (617-524-0742) or Brianne Yarehn (762-7871).

AJ: I also told you the other day you must show proof that you have the means to purchase lot No. 1. If the suit (the forthcoming one) fails, the motion to reconsider the judgment will be denied. The judge makes a decision. If you have the money, the bank or a loan commitment for \$100,000. If you or take a few dollars, the bank will

I delivered the Motion to Reconsider to Judge Mendelson and Mr. Ward and

Dear Valued Subscriber:

REGISTRATION IS REQUIRED TO BE ADDED TO BILLY'S CASE

11/13/2013

5416 Kinnard Rd
Barnstable, MA 02536

ML-Roosevelt Simons

WILLIAM C. SHIRLEY

100

1000-4302 (Print) and 1000-4302/00/0000-0000\$10.00/0

989 B. Williams Dr.
Charleston, South Carolina 29403

Mediation – Abridged

NOTES CONTINUED

[illegible]

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466

	(0)	MSEAS
	(0-300)	CASA-SL

ST. LOUIS, MO. (AP) — A St. Louis man has been charged with the murder of a woman who was found dead in a car trunk in the city's central business district.

67-3806-1B
JAN 1968

STANDARD
RECORDS SECTION
FBI - MEMPHIS



CONFIDENTIAL - EYES ONLY - NO FOREIGN DISSEM

MedRxiv preprint doi: <https://doi.org/10.1101/2020.04.01.20038316>; this version posted April 1, 2020. The copyright holder for this preprint (which was not certified by peer review) is the author/funder, who has granted medRxiv a license to display the preprint in perpetuity. It is made available under a CC-BY 4.0 International license.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	52

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)
covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)

AFFIDAVIT OF
FREDERICK FIELDS

R517

BAALUM, deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM a/k/a)
 ESTHER BAILUM a/k/a ESTHER BAALUM,)
 HESTER SINGLETON BAALUM, THOMAS)
 BAILUM, SAMUEL BAILUM, SAMMY)
 BAILUM, FANNIE BAILUM MIDDLETON,)
 MARY BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE BURNS,)
 JERRY SINGLETON, ARTHUR SINGLETON)
 EUGENE SINGLETON, RICHARDINE)
 SINGLETON, EUGENE SINGLETON, JR.,)
 GARY SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS, ARTHUR LEE)
 BURNS, ARLENE GREEN, ERNEST)
 GREEN, JOE LOUIS BURNS a/k/a JOE)
 LEWIS BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS, JR.,)
 and all other persons know or claiming)
 any right, title, estate in or lien upon the)
 the real estate in or lien upon the real)
 estate described in the Complaint herein,)
)
 Defendant. Respondents)
)
 Of whom)
 Roosevelt Simmons is the)
)
 Defendant/Appellant)
)
 _____)

STATE OF SOUTH CAROLINA }
 COUNTY OF CHARLESTON }

PERSONALLY appeared before me Frederick Fields, who upon
 first being duly sworn upon oath, states the following:

1.

I am a resident of Charleston, SC, residing at 3129 River Road,
 John's Island, SC.

R 518

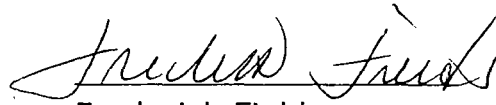
2.

That I know Roosevelt Simmons and informed him by letter dated March 16, 2007 that I had the money available for him to purchase his family property on River Road that is subject to this action.

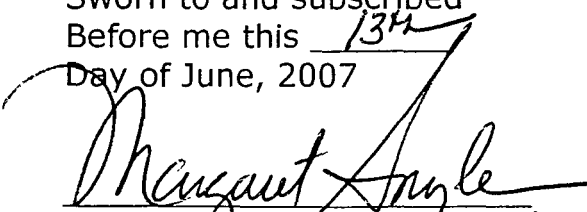
3.

That this Affidavit is to correct any misunderstandings that the money from the Bank of South Carolina was for me to purchase the property. I am borrowing the money for Roosevelt Simmons to have to purchase the property. Additionally, the funds remain available to purchase the entire 15-18 acre tract referred to as Parcel 1 and TMS-311-00-00-024.

That I have read this Affidavit and am familiar with the contents stated therein and have retained a copy of the same in my possession.


Frederick Fields

Sworn to and subscribed
Before me this 13th
Day of June, 2007


Notary Public for South Carolina
My Commission expires: Feb. 15, 2017

R519

The Bank of South Carolina
CHARLESTON

Hugh C. Lane, Jr.
President

March 16, 2007

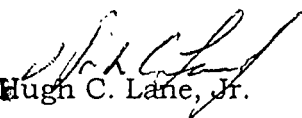
Mr. Frederick Fields
3129 River Road
Johns Island, SC 29455

Dear Fred:

This confirms our conversation today that The Bank of South Carolina is prepared to loan you up to \$150,000 to purchase your percentage interest in 18.44 acres off River Road, identified on the tax map as parcel 311-00-00-024.

We appreciate the opportunity to assist you with this transaction. This commitment is valid for one year. Naturally, based on our relationship, we'd be pleased to extend it if that is required.

Sincerely,


Hugh C. Lane, Jr.

HCLjr/jbs

EX. #4

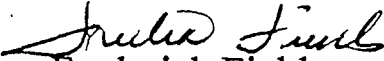
March 16, 2007

To: Roosevelt Simmons

From: Frederick Fields

Attached, please find a letter of intent from my bank "The Bank of South Carolina" stating my commitment on behalf of our purchase agreement for the property on River Road.
TMS # 311-00-00-024.

Sincerely


Frederick Fields

EXIB # 7

R521

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)
covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)

AFFIDAVIT OF
DOLORES SINGLETON

R 522

HESTER SINGLETON BAILUM a/k/a)
 ESTHER BAILUM a/k/a ESTHER BAALUM,)
 HESTER SINGLETON BAALUM, THOMAS)
 BAILUM, SAMUEL BAILUM, SAMMY)
 BAILUM, FANNIE BAILUM MIDDLETON,)
 MARY BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE BURNS,)
 JERRY SINGLETON, ARTHUR SINGLETON)
 EUGENE SINGLETON, RICHARDINE)
 SINGLETON, EUGENE SINGLETON, JR.,)
 GARY SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS, ARTHUR LEE)
 BURNS, ARLENE GREEN, ERNEST)
 GREEN, JOE LOUIS BURNS a/k/a JOE)
 LEWIS BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS, JR.,)
 and all other persons know or claiming)
 any right, title, estate in or lien upon the)
 the real estate in or lien upon the real)
 estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)
 Roosevelt Simmons is the)

Defendant/Appellant)

STATE OF MARYLAND }
 COUNTY OF PRINCE GEORGE }

PERSONALLY appeared before me Dolores Singleton, who upon
 first being duly sworn upon oath, states the following:

1.

I, Dolores Singleton, am a citizen of Maryland and I reside at
 4703 Davis Avenue, Suitland, Maryland 20746.

R 523

2.

That Clarence Singleton, deceased, was my late husband, and he in turn was the son of Jerry Singleton. Jerry Singleton was a son of Hester Balaam and that Hester Balaam was the widow of Sam Balaam. Sam Balaam died seized of the property that is subject to this action.

3.

That neither, Jerry Singleton, Clarence Singleton or I were designated as parties in the action herein, and further;

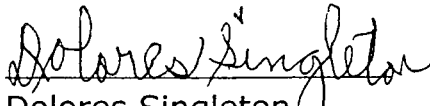
4.

That the publication of the service of process did not give a description and TMS Number of the property that was subject to this action, a copy of the deficient publication is attached as exhibit number one.

5.

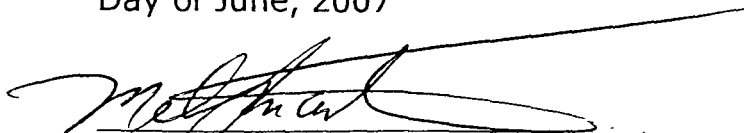
That I am informed and believe that the Court has not acquired jurisdiction over all of the parties that have an interest in the property that is subject to this action.

That I have read this Affidavit and am familiar with the contents stated therein and have retained a copy of the same in my possession.


Dolores Singleton

RS24

Sworn to and subscribed
Before me this 13th
Day of June, 2007



Notary Public for Maryland **MELVIN J. MARTIN**
My Commission expires: **COMMISSION EXPIRES 11/01/2009**

MELVIN J. MARTIN-NOTARY
COMMISSION EXPIRES 11/01/2009

R525

IMPRESSED
SEAL

DATE ISSUED:

MAY 09 2006

STATE OF MARYLAND
RECORD ON FILE IN THE DIVISION OF VITAL RECORDS

Geneva S. Sparks
STATE REGISTRAR OF VITAL RECORDS

Please Type or Print in Black Indelible Ink. Ensure All Copies Are Legible.

State of Maryland / Department of Health and Mental Hygiene

Certificate of Death

Reg. No.

Physician Medical Examiner	1. Decedent's Name (First, Middle, Last) Clarence Leonard Singleton		2. Date of Death Month Day Year May 1, 2006		3. Time of Death 3:30A M.	
	4a. Facility Name, (If not institution, give street and number) 4703 Davis Avenue		4b. City, Town, or Location of Death Suitland		4c. County of Death Prince Georges	
Funeral Director	5. Social Security Number 208-26-0269		6. Sex ☒ M ☐ F		7. Age (In yrs. last birthday) 71 Yrs.	
	8. Date of Birth (Month, Day, Year) Sept. 6, 1934		9. Birthplace (State or Foreign Country) PA			
To Be Completed by Funeral Director	10a. State Md.		10b. County PG		10c. City, Town or Location Suitland	
	10d. Inside City Limits ☒ Yes ☐ No		10e. Street and Number 4703 Davis Avenue		10f. Zip Code 20746	
To Be Completed by Physician/Medical Examiner	10g. Citizen of What Country? United States		11. Marital Status ☐ Never Married ☒ Married ☐ Widowed ☐ Divorced		12. Was Decedent Ever in U.S. Armed Forces? ☒ Yes ☐ No If Yes, Give Year or Dates: 1954-1962	
	13. Was Decedent of Hispanic Origin? (Specify Yes or No. If Yes, specify Cuban, Mexican, Puerto Rican, etc.) ☐ Yes ☒ No Specify:		14. Race - American Indian, Black, White, etc. Specify: Black		15. Decedent's Education (Specify only highest grade completed) Elementary/Secondary (0-12) 2 College (1-4 or 5+)	
To Be Completed by Physician/Medical Examiner	16a. Decedent's Usual Occupation (Give kind of work done during most of working life. DO NOT use retired) Quality Assurance Manager		16b. Kind of Business/Industry IBM		17. Father's Name (First, Middle, Last) Jerry Singleton	
	18. Mother's Name (First, Middle, Maiden Surname) Queenie Jones		19a. Informant's Name/Relationship (Type, Print) Dolores Singleton/wife		19b. Mailing Address (Street and Number or Rural Route Number, City or Town, State, Zip Code) 4703 Davis Avenue Suitland, MD. 20746	
To Be Completed by Physician/Medical Examiner	20a. Method of Disposition ☒ Burial ☐ Cremation ☐ Removal from State ☐ Donation ☐ Other (Specify)		20b. Place of Disposition (Name of cemetery, crematory or other place) Md. Veterans Cem.		20c. Location - City or Town, State Cheltenham, MD.	
	21. Signature of Funeral Service Licensee <i>Prince Edwards</i>		22. Name and Address of Facility Hodges & Edwards F.H. 3910 Silver Hill Rd., Suitland, MD. 20746		23a. Part I. Enter the disease, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Acute Fatal Arrhythmia (myocardial infarction) Due to (or as a consequence of): Underlying Coronary Artery Disease Due to (or as a consequence of): Due to (or as a consequence of): Due to (or as a consequence of):	
To Be Completed by Physician/Medical Examiner	23b. Was decedent pregnant in the past 12 months? ☐ Yes ☒ No ☐ Unknown		23c. If yes, outcome of pregnancy ☐ Live birth ☐ Fetal death ☐ Ectopic pregnancy ☐ Other (Specify) ☐ Pregnant at time of death ☐ Unknown		23d. Date of delivery Month Day Year	
	Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I. Severe stroke, Insulin Dependent Diabetes Immobility, Frailty		23e. Did tobacco use contribute to the cause of death? ☐ Yes ☒ No ☐ Probably ☐ Unknown		24a. Was an autopsy performed? ☐ Yes ☒ No	
To Be Completed by Physician/Medical Examiner	24b. Were autopsy findings available prior to completion of cause of death? ☐ Yes ☒ No		25. Was case referred to medical examiner? ☐ Yes ☒ No		26. Place of Death (Check only one) Hospital: ☐ Inpatient ☐ ER/Outpatient ☐ DOA Other: ☒ Nursing Home ☐ Residence ☐ Other (Specify)	
	27. Manner of Death ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending investigation ☐ Could not be determined		28a. Date of Injury (Month, Day Year)		28b. Time of Injury M	
To Be Completed by Physician/Medical Examiner	28c. Injury at Work? ☐ Yes ☒ No		28d. Describe how injury occurred		28e. Place of Injury - At home, farm, street, factory, office building, etc. (Specify) 2526	
	28f. Location (Street and Number or Rural Route Number, City or Town, State)					

completely

State
gistrar

ev 1/2001

Medical

29a. Certifier (Check only one) ☒ 1. Certifying Physician: To the best of my knowledge, death occurred at the time, date and place, and due to the cause(s) and manner as stated. ☐ 2. Medical Examiner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.		
29b. Signature and title of certifier <i>Richard A. Farnsworth MD</i>	29c. License number <i>D02237 MD</i>	29d. Date signed (Month, Day, Year) <i>5/4/06</i>
30. Name and address of person who completed cause of death (Item 23a) (Type, Print) <i>Richard A. Farnsworth MD 10 St Patrick Dr Ste 203 Walcott, MD 20603</i>		
31. Date filed (Month, Day, Year) <i>MAY 09 2006</i>	32. Registrar's Signature <i>[Signature]</i>	

ORIGINAL

R527

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Case No. 2004-CP-10-1459

Hattie Bailum et al.....Respondents,

v.

Roosevelt Simmons et al.....Defendants.
of whom Roosevelt Simmons is the Appellant
and of whom Marie Smith is a Respondent

RETURN TO MOTION FOR ORDER OF
SUPERCEDEAS, DISMISSAL AND OTHER RELIEF
AND MOTION TO DISMISS

The Appellant seeks relief pursuant to two motions. He sets forth ten separate arguments in support of his position. The Respondents herein (Plaintiffs and a Co-Defendant of Appellant in the action below) will address the Appellant's arguments raised in both motions and in the order in which they are presented.

R 528

I.

Rule 225 Stay

The Appellant sought a stay of enforcement of the Amended Special Referees Order filed March 6, 2007. The matter came before the Honorable Joseph Mendelsohn, Special Referee for a hearing. That motion was heard, an Order issued and filed June 28, 2007. The Order denying the stay has not been appealed. As such the matter of a stay has been decided with finality. Second, Rule 225 requires a written petition verified by the Client be filed. No such petition verified by Appellant has been filed or served. As such, the Motion as filed is lacking and this Court should deny the Motion to Stay.

Lastly, there has been no showing by Appellant as required by the rules that the petition for relief in the lower court was unjustifiably denied. A certified copy of the Order denying the Appellant's prior Motion to Stay has not been filed with the Court of Appeals. That Order fully supports the lower courts' decision to decline to grant a stay. A filed stamped copy of that Order is affixed hereto as Exhibit 1. The Transcript of that hearing is affixed hereto as Exhibit 5.

Judge Mendelsohn carefully considered the Appellants' arguments as to each matter set forth. Of importance is the provision in the Order on page four (4) in the section styled "Parcel 1", wherein the Order states, "Mr. Simmons agrees on the record to the denial of the stay and the sale of Parcel 1." Further, with regard to the remaining parcels, the Order notes on page five (5). "Mr. Simmons agrees on the record that the Motion to Stay with regard to these parcels is by agreement denied." (See also Transcript of hearing, Exhibit 5, p. 54-95.)

The unappealed Order denying the Stay is the law of the case. Should this Court determine to hear the Appellant on this Motion, the Respondent's respectfully object to the granting of a stay. For factual background, the Respondents crave reference to the Amended

Special Referee's Order filed March 6, 2007 (Exhibit 2). As noted in the record, the Respondents are elderly ladies of very limited resources and are in poor health. Since 2003, the Respondents have steadfastly offered to the heirs of Hester Bailum their statutory interest in Parcel 1. Denying the stay and permitting the sale to proceed will not prejudice the Appellants rights. The most Appellant can ever achieve is his portion of Hester Bailum's 1/3 statutory interest in Parcel 1. The Court has ordered that interest be protected and the Respondents have concurred by consent.

There is no showing that the Appellant is entitled as a matter of law to a stay. If the Court grants a stay, the Respondents respectfully request the same be in compliance with §18-9-130 of the S.C. Code and a written undertaking with two sureties in double the appraised value of the property be posted. The appraisal value of all the property that is pending sale pursuant to prior court Order is \$537,000.00. Thus, a statutory bond of \$1,074,000.00 should be imposed by statute and rule if a stay is granted.

II.

Service by Publication

The pleadings in this matter have been filed and served by publication three times, most recently pursuant to Court Order in November, 2006. The court has maintained jurisdiction over this matter and the parties since its inception.

Subsequent to the final evidentiary hearing in this matter, Judge Mendelsohn asked the attorneys to prepare proposed Orders. At the time the Appellant was represented by the Honorable Louis E. Condon, former Master-In-Equity for Charleston County. Counsel exchanged proposed Orders on several occasions, but could not agree on certain language to be included. On October 6, 2006 Judge Mendelsohn convened a status conference with all counsel

to discuss the final Order. Appellant's present attorney, his fourth or record, was not present. Appellant's third attorney, Louis E. Condon, was present.

At the conclusion of the conference, Judge Mendelsohn indicated his intent to bring finality to this case. To insure the ends of justice were met by protecting everyone's rights whether they be present or not, he Ordered the pleadings be republished. He further indicated he would refrain from entering any Order on the merits and would keep the record open until sufficient time had passed for any person or persons to be heard.

On November 9, 2006, the pleadings were published for the first time of a three week run. Published were the Summons, the Lis Pendens listing the TMS numbers of all four (4) parcels addressed in the pleadings, Notice of the Appointment of a Guardian, Notice of Filing and Notice of Reference to a Special Referee (Exhibit 3).

The Summons lists as parties Defendant, in addition to known heirs, "John Doe and Mary Roe, adults and Richard Roe and Jane Roe, infants, persons under disability or incompetence, if any, including those persons who might be in the military and covered under the Soldier's and Sailor's Relief Act, fictitious names, designating the unknown heirs, devisees, distributees, issue, executors, administrators, successors and assigns of the above named Defendants." The Summons goes on further to name "and all other persons known or claiming any right, title, estate in or lien upon the real estate described in the Complaint herein."

After sufficient time had expired, Judge Mendelsohn, on January 11, 2007, executed the initial Referees Order. Between November 23, 2006 and January 11, 2007 no person or entity responded. As such, having received no response, Judge Mendelsohn executed his Order. That Order was subsequently amended following post trial motions (Exhibit 2).

There is no doubt that the Special Referee acquired and maintained sufficient jurisdiction over all persons affected by the outcome of this litigation.

III.

Lis Pendens

The services of process had been addressed in II above. The Lis Pendens as published in November 2006 identified specifically and with particularity each parcel of property which is subject to this litigation. There has been no denial of due process or equal protection.

IV.

Appellants Right to Purchase

The Respondents do not believe this matter may be addressed by Motion and is more properly addressed on Appeal. The Appellants purchase rights have been set forth in the Amended Special Referee's Order (Exhibit 2) and Order Denying the Stay (Exhibit 1). To the extent the Court will entertain this argument, the Appellant's motion and exhibits defeat his argument.

The matter of Mr. Simmons purchase of the heirs property was specifically addressed in the March 6, 2007 Order wherein it discusses on page 13. "Mr. Roosevelt Simmons asked for the opportunity to purchase parcel 1. This matter has been pending for several years. Mr. Simmons, on previous occasions, has been offered the opportunity by this Court to buy out the remaining heirs with an interest in Parcel 1,"

"The Court shall grant to Roosevelt Simmons the opportunity to acquire Parcel 1. This opportunity is assignable but only to individuals related by blood or marriage."

Further, on page 16, the Court ordered,

2. By Special Referee Deed, Parcel 1 may be sold to Roosevelt Simmons... or permitted assigns if and only if (emphasis added) Mr. Simmons... or permitted assigns provides to the Clerk of Court (emphasis added) for filing and date stamp within ten (10) days of the date of service of this order a loan approval letter for \$220,000.00 (emphasis added)."

"Failure to produce the required proof (emphasis added) of his or his assigns ability to pay or close in the time allotted will result in a Special Referees Deed conveying parcel 1.... in accordance with the Contract."

Mr. Simmons was served with the Order on March 6, 2007 at 4:47 p.m. (Exhibit 4).

Thus, Mr. Simmons had until March 16, 2007 to file with the Clerk of Court proof of his ability to pay by virtue of a loan approval or loan commitment for \$220,000.00 or close. \$220,000.00 is the value of parcel 1 as determined by a Court Ordered appraisal.

Mr. Simmons failed in every aspect to comply with the Court's order. First, as of the date of this reply of his motion, he has filed nothing with the Clerk of Court. What he has delivered to counsel and submitted as exhibits herein are:

1. A letter of 3/16/07 to Frederick Fields from the Bank of South Carolina. That letter is a commitment to Mr. Fields to finance Mr. Fields purchase of all or a part of what is known as parcel 1. Mr. Fields is not a permitted assign. Further, only \$150,000.00 is offered as a loan to Mr. Fields.
2. An undated letter from Chris Redell to Appellant with an attached letter from Suntrust indicating Mr. Redell is making \$15,000.00 available to Appellant.

These letters are not in compliance with the Order in that they were never filed nor do they set forth the consideration needed to purchase.

As of March 17, 2007 and continuing to date, Appellant has utterly and totally disregarded clear and specific provisions of the Special Referee's Orders.

V.

Telephone Testimony

As with Item IV above, Respondents do not believe this matter may properly be addressed by motion. To the extent it may be argued by Motion, the Respondents reply as follows.

The Appellant argues, in essence, judicial misconduct resulting in a lack of due process due to the courts allowing several elderly witnesses to testify telephonically.

At a pretrial status conference with Appellants second attorney, Ruth S. Cupp, Esq., and Respondents counsel, the court discussed the date, time and logistics of the evidentiary hearing in this matter. All counsel agreed that the testimony of certain specifically enumerated witnesses would be taken telephonically. The matter was then set for trial.

Subsequent to that pretrial conference, Ms. Cupp was discharged by the Appellant. Appellant elected to proceed Pro-Se. Judge Mendelsohn scheduled another pretrial conference due to Appellants Pro-Se status. Appellant failed to appear. Another pretrial conference was slated. At that conference, Judge Mendelsohn required all parties be present in person or by phone so that he could explain the Special Referee process, the trial process and the sequence of events to follow. This was done in deference to Appellants Pro-Se status. This was not an evidentiary hearing as has been alluded to in documents filed with the Court by Appellant's current counsel who was not counsel of record until recently.

Judge Mendelsohn, by speakerphone, spoke with each Plaintiff and was satisfied with their identity, the restrictions with travel, and of the need to testify by phone. Judge Mendelsohn encouraged Appellant to seek the advice of counsel prior to proceeding with a trial. At the final pretrial, Appellant voiced no objection to the proposed method of taking testimony from these witnesses. Appellant subsequently secured the services of Honorable Louis E. Condon, and the matter was reset for trial.

When the case was called for trial, as previously discussed and agreed, specific witnesses were permitted to testify by phone. Each witness had before him or her all of the exhibits which had been premarked and delivered. Mr. Simmons counsel had a full, fair and complete opportunity to cross examine each witness. A court reporter was present and the testimony preserved. The Order of March 6, 2007 on page three (3) notes special stipulations of record. Stipulation number four (4) on that list states that due to health, age and travel consideration, six (6) named witnesses would be permitted to testify by phone. On behalf of Appellant, this stipulation was agreed to by Ruth Cupp, Esquire; Appellant, and Louis E. Condon, Esquire.

VI.

Factual Interpretation by the Court

This argument as all arguments before is properly an argument for appeal. To the extent a reply is required, the Respondents crave reference to Item V above with regard to the propriety of testimony via telephone.

Simply stated, the allegations of the Appellant are false. The record is absent of any testimony that the Respondents assert they were adults in 1905. To the contrary, the record and Order is abundantly clear that the Respondents are lineral descendants of Sam Bailum and his

children. The Respondents crave reference to the March 6, 2007 Order (Exhibit 2) which sets for the beginning on page 5 at "Parcel 1" the lineage of the Respondents herein specifically and with particularity.

Judge Mendelsohn had before him over seventy (70) exhibits and hours of testimony. He made his findings of fact. The Appellant disagrees. However, he has shown no abuse of judicial discretion. Absent an abuse of discretion, the facts may not be challenged on appeal.

VII.

New Evidence and Fraud

The Appellant asserts he has newly discovery evidence which would support his motion for a new trial. As noted above, this argument is properly a matter for appeal. To the extent a reply is required, Respondents, reply as follows.

Appellant attempted to proffer this new evidence by oral motion at the hearing upon his motion to stay on June 19, 2007. He proffers this evidence again as an exhibit to his motion for supersedeas.

The Appellant cites Rule 60 as the basis for his motion. Rule 60 (b)(2) permits the Court to relieve a party from a final judgment if newly discovered evidence which by due diligence could not have been discovered (emphasis added) in time to move for a new trial under Rule 59 (b).

The newly discovered "evidence" consists of census data which is and has been publically available for decades. The Appellant has had three (3) able litigation counsel representing him up to and including the trial of this case. Those attorneys have decades of experience and are well versed in heirs property disputes. Those counsel were Arthur McFarland, Esquire; Ruth S. Cupp, Esquire; and Honorable Louis E. Condon, Esquire.

The proffered documents were easily and readily available to anyone. A modicum of due diligence by Appellant while pro se or by his three (3) prior trial counsel would have revealed this data. There is nothing new about the evidence proffered. As such under Rule 60(b)(2) it should not be admitted as it was easily discoverable by anyone who chose to exert the simplest amount of effort.

To the extent the evidence is admissible, it further proves the Respondents lineage and claim to title and tends to disapprove Appellants claims of ownership to Parcels 2, 3 and 4. Appellant argues at trial that Sam Bailum's sons Thomas Bailum and Tony Bailum were too young in 1905 to acquire an interest in Parcels 2, 3 and 4. The evidence proffered indicates in 1904 Thomas was thirty (30) and his brother Tony was twenty-seven (27). Clearly, they were old enough to acquire real estate. The evidence proffered is unadmissible as it does not meet the requirements of Rule 60 (b). To the extent it is admissible, failing to admit it at this late date is harmless error under Rule 61. The evidence is merely cumulative and does nothing more than to bolster Respondents case.

VIII.

The Record

There have been numerous pretrial conferences and status conferences held in this matter. There had been but one evidentiary hearing which record was preserved by a court reporter.

It is not common that a court reporter be present at a pretrial or status conferences. The majority of the pretrial conferences or status conferences were required by Appellants constant discharge of counsel, acting pro-se and then retaining new counsel.

X.

Deloris Singleton

With regard to Ms. Singleton's motion to dismiss or intervene filed separately but addressed herein, this motion should be denied. The issue of service has been fully addressed in paragraphs II and III above. Simply stated, she has been served as has been the Court appointed Guardian-Ad-Litem. Ms. Singleton's interest have been fully protected. It is interesting to note that the Appellant with the assistance of counsel (by Cupp) prepared and submitted into evidence at trial (by Condon) a family tree. By Appellants own testimony, every possible lineal descendent of Hester Bailum had either executed a deed in his favor or was dead. Marie Smith, a defendant in this action was shown as "incompetent" on the family tree. Quite the contrary is true. She and her counsel, Bruce Berlinsky, Esquire were quite active once it was discovered she was alive and quite well.

Appellant asserted in testimony Mr. Melvin Singleton was not related, however, evidence was to the contrary. Lastly, in his family tree Appellant indicated Jerry Singleton and his wife Queen had no children. Apparently, Ms. Singleton, the intervener herein claims she is the granddaughter of Jerry Singleton.

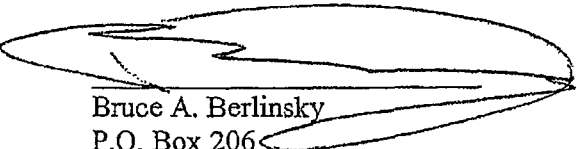
Appellants counsel herein also represents Deloris Singleton in her motion to intervene. Appellant had established a pattern of dismissing possible living heirs who had failed to sign deeds of their interest into them. Their absence as heirs only served to increase his potential monetary recovery upon partition and sale.

Further, Appellant claims title to all Parcels in this action by adverse possession against all others, including all heirs. His position is in direct conflict with the intervener's assertion that she has a possessory interest in the very same property. Despite this obvious conflict both Ms,

Singleton and Appellant are represented by the same counsel. (See e.g. letter to counsel 6/18/07 Exhibit 6).

The portion of Parcel 1 which inures to the benefit of the heirs of Hester Bailum is 1/3. Adding more Defendants to the case at this juncture does not change the requirement that the property be sold and proceeds be distributed. Further, it does not affect the statutory determination of Hester Bailum's heirs recovery of 1/3 of the proceeds from the sale of Parcel 1. All that adding Defendants at this point would accomplish would be to divide the Hester Bailum proceeds into even smaller pieces and this reducing Appellant's interest in Parcel 1. Ms. Singleton's presence nor absence does not in any way alter the findings for partition and sale. The Respondents are quite willing to consent to the deposit of 1/3 of the net proceeds from the sale of Parcel 1 with the Clerk of Court by way of an interpleader so that the Hester Bailum heirs may resolve the allocation of these proceeds amongst themselves.

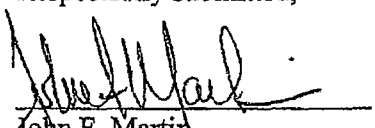
Wherefore having fully responded to Appellants Motion to Intervene or Dismiss and Motion for Order of Supercedeas, Dismissal and other relief, the Respondent prays the same be dismissed with costs, as permitted, and attorneys fees, if any, pursuant to S.C. Appellate Court Rule, Rule 222.



Bruce A. Berlinsky
P.O. Box 206
Charleston, SC 29402
(843) 852-2202
Attorney for Respondent Marie Smith

Charleston, South Carolina
July 31, 2007

Respectfully submitted,



John F. Martin
113 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 762-2121
Attorney for Respondents Hattie Bailum,
Ruby Bailum, Verdone Gray, Julie B.
Johnson and Monica Middleton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

RECEIVED
SEP 12 2007
SC Court of Appeals

2540

covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)

Roosevelt Simmons is the)

Defendant/Appellant)

PETITION FOR FULL APPELLATE REVIEW

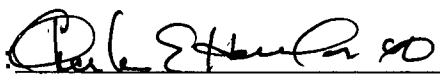
The above named Appellant, through his undersigned attorney, with leave of Court, pursuant to SCRAP, Rule 225 (d) (2) petitions the full appellate court for

First: A review of the Order filed by the individual justice, the Hon. Jasper M. Cureton; dated September 4, 2007 denying the Motion to Dismiss and /or to Intervene as a party defendant, and for

Second A review of the Order filed by the individual justice, the Hon. Jasper M. Cureton; dated September 4, 2007 denying the Motion for Order of Supercedas, Dismissal and Other Relief in the above entitled case.

Respectfully submitted

THE Houston Law Firm
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900
E-mail: charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr.
Attorney for the Appellant

Charleston, South Carolina
September 10, 2007

12542

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs, Respondents)

vs.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)

FILED
2008 MAR 26 PM 3:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY JS

R543

be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)
devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUEGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUEGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)

Defendants,)

R544

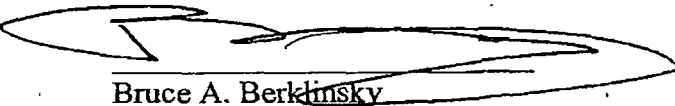
Of Whom Roosevelt Simmons is)
the Appellant)

And Marie Smith is a Respondent.)
_____)

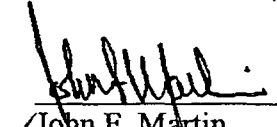
MOTION TO DISMISS APPEAL

The Respondents, Hattie Bailum a/k/a Hattie Balaam, Ruby Bailum a/k/a Ruby Ballaam, Verdone Gray, Julie B. Johnson, Monica Middleton and Marie Smith respectfully move pursuant to Rule 208(4) of the South Carolina Appellate Court Rules to dismiss the appeal due to the failure of the Appellant to file and serve his brief within the time prescribed, such time being more fully set forth in a letter to Appellant's counsel dated February 11, 2008 and attached hereto as Exhibit "A".

The Respondents respectfully request the appeal be dismissed and the clerk remit the case to the lower court in accordance with Rule 221.



Bruce A. Berkinsky
Attorney for Respondent Marie Smith



John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

EXHIBIT A



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccouris.org

February 11, 2008

Charles E. Houston, Jr., Esq.
4 Carriage Lane, Suite 206
Charleston, SC 29407

Re: Bailum, Hattie v. Simmons, Roosevelt

Dear Counsel:

Upon review, it appears that the necessary transcripts have now been received. The Appellant's Initial Brief and Designation of Matter must be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

Kenneth A. Richstad
CLERK

KAR/ma

cc: Bruce Alan Berlinsky, Esquire
John F. Martin, Esquire

2 546

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM; RUBY BALIUM a/k/a RUBY BALAAM;
VERDONE GRAY; JULIE B. JOHNSON; and MONICA MIDDLETON,

PLAINTIFFS, RESPONDENTS

versus

ROOSEVELT SIMMONS, LEON SINGLETON, MABEL SINGLETON HICKS a/k/a MAYBELL HICKS, WALTER BURNS; SHEILA B. OWENS, LOUISE CANTY; ALONZETTA BURNS; SHARON BURNS, MELVIN SINGLETON, MARIE SMITH, ELMORE SINGLETON, THEODESIA SINGLETON, MILDRED SINGLETON MAHONEY, ANDRE SINGLETON, EUGENE LEON ELIJAH SINGLETON, ERNEST GREEN, Jr., KAREN GREEN, DELORIS GREEN, JOAN GREEN WELLS, DELBERT BURNS, JOE LOUIS BURNS, JR., a/k/a JOE LEWIS BURNS, JR., VONIE BURNS, SHELLEY BURNS, ANASTACIA BURNS, TREMAYNE BURNS, JOSHUA BURNS, JARRED BURNS, AMBER BURNS, if they be alive, and JOHN DOE and MARY ROE, adults, and Richard ROE and JANE DOE, infants, person under disability or incompetence, if any, including those persons who might be in the military covered under the Soldier's Relief Act, fictitious names designating the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of the above named Defendants, and also the following deceased persons: ESTATE OF SAMUEL BAILUM a/k/a SAMUEL BAALUM, deceased or the ESTATE OF HESTER SINGLETON BAILUM a/k/a ESTHER BAILUM a/k/a ESTHER BAALUM, HESTER SINGLETON BAALUM, THOMAS BAILUM, SAMUEL BAILUM, SAMMY BAILUM, FANNIE BAILUM MIDDLETON, MARY BAILUM, JOSH SINGLETON, ELOUISE SINGLETON, CARRIE BURNS, JERRY SINGLETON, ARTHUR SINGLETON, EUGENE SINGLETON, RICHARDINE SINGLETON, EUGENE SINGLETON, JR., GARY SINGLETON, CHRISTOPHER BURNS, JULIUS BURNS, ARTHUR LEE BURNS, ARLENE GREEN, ERNEST GREEN, JOE LOUIS BURNS a/k/a JOE LEWIS BURNS, EMILY BURNS, QUEEN SINGLETON, and JULIUS BURNS, JR., and all other persons know or claiming any right, title, estate in or lien upon the real estate in or lien upon the real estate described in the Complaint herein,

DEFENDANT/ RESPONDENT

Of whom
ROOSEVELT SIMMONS is the

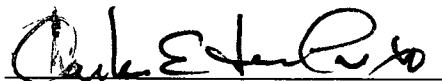
DEFENDANT/APPELLANT

**MOTION FOR REINSTATING APPEAL, SECURING TRANSCRIPT
OUT OF TIME
AND
FOR FILING APPELLANT'S BRIEF OUT OF TIME**

The undersign Counsel for Roosevelt Simmons, the Appellant herein, would, upon leave of Court, move the Court, pursuant to SCRAP Rule 224, for an Order reinstating the appeal and permitting the securing of one remaining transcript out of time and for filing of the Appellant's Brief out of time. The ground for the Motion is that the remaining transcript that had been ordered but not received has been found by the court reporter and will be mailed to Appellant's counsel on March 25, 2008. The letter from the court reporter is attached as Exhibit 1 in support of this Motion.

Respectfully submitted,

The Houston Law Firm
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900



Charles E. Houston, Jr.
SC Bar # 2663
Attorney for the Appellant

Charleston, SC
March 24, 2008

**MOTION FOR REINSTATING APPEAL, SECURING TRANSCRIPT
OUT OF TIME
AND
FOR FILING APPELLANT'S BRIEF OUT OF TIME**

The undersign Counsel for Roosevelt Simmons, the Appellant herein, would, upon leave of Court, move the Court, pursuant to SCRAP Rule 224, for an Order reinstating the appeal and permitting the securing of one remaining transcript out of time and for filing of the Appellant's Brief out of time. The ground for the Motion is that the remaining transcript that had been ordered but not received has been found by the court reporter and will be mailed to Appellant's counsel on March 25, 2008. The letter from the court reporter is attached as Exhibit 1 in support of this Motion.

Respectfully submitted,

The Houston Law Firm
4 Carriage Lane, Suite 206
Charleston, SC 29407
Telephone: (843) 406-0101
Facsimile: (843) 406-8900



Charles E. Houston, Jr.
SC Bar # 2663
Attorney for the Appellant

Charleston, SC
March 24, 2008



FACSIMILE TRANSMITTAL SHEET

TO.	Mr. Charles E. Houston Jr.	FROM.	Betty Pogue
COMPANY.	Houston Law Firm	DATE.	MARCH 24, 2008
FAX NUMBER.	843-406-8900	TOTAL NO. OF PAGES INCLUDING COVER.	1
PHONE NUMBER.	843-406-0101		
RE:	Referee Hearing Roosevelt Simmons		

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS

Mr. Houston

I apologize for all the confusion with finding this transcript. It will be delivered to your office tomorrow by Bullet Courier Service. Should you have any further questions please feel free to call our office. Thank you as always for your business.

Betty Pogue

R 550

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 08 2008

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs, Respondents)

vs.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)

2551

be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)
devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUEGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUEGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)
)
Defendants,)

Of Whom Roosevelt Simmons is)
the Appellant)
)
And Marie Smith is a Respondent.)
_____)

RETURN TO MOTION TO REINSTATE
THE APPEAL

The Appellant seeks relief from an Order dismissing his Appeal. The Respondent's herein respectfully request this Court deny Appellant's Motion.

I.

Rule 207

The Appellant has failed to comply with the requirements of Rule 207 of the South Carolina Appellate Rules. Specifically 207 (a)(5) requires an Appellant to notify the Office of Court Administration, the Clerk of the Appellate Court and the Court reporter if Appellant does not receive a transcript within the allocated time.

Appellant has submitted no memorandum or supporting documentation with his motion that he has at any time either complied or attempted to comply with the requirements of Rule 207.

Further, the Appellants motion is vague and ambiguous as to which transcript, if any, he lacks when he writes, "one remaining transcript". There are but two transcripts in this case.

The trial transcript of May 15, 2006 is and has been in the possession of the Appellant since well before July 12, 2007. Appellant cited from and attached excerpts from said transcript in his Motion for Order of Supercedeas, Dismissal and other relief.

The second transcript emanates from the hearing on post-trial motions filed by the Appellant and the Respondent Marie Smith. That hearing occurred on June 6, 2007. That transcript has been in the possession of the counsel for the Appellant since July 31, 2007. Attached hereto as Exhibit 1 is an invoice from Clark and Associates showing that the transcript was prepared and delivered to counsel for the Respondents on July 24, 2007. Further, counsel for the respondent in his Return to Appellants July 12, 2007 motion attached as Exhibit 5 to the Return the June 6, 2007 transcript in its entirety. This Return was timely filed with the Clerk of the Court of Appeals and served upon Appellant's counsel on July 31, 2007.

As such, Appellant's counsel has had in his possession all transcripts of record since July 31, 2007. There is not cause or justifiable excuse for the failure of the Appellant to timely file and serve his initial brief and designation of matter to be included. Had Appellant's counsel complied with Rule 207 by writing to the Clerk of the Appellate Court and copying either of the counsel for the Respondent's, he would have been provided another copy of the transcript he improperly alleges he did not possess. Had Appellants counsel reviewed his file prior to receiving the Order dismissing the appeal he would have noted it contained all transcripts of record, which transcripts have been in his possession for over seven (7) months.

II

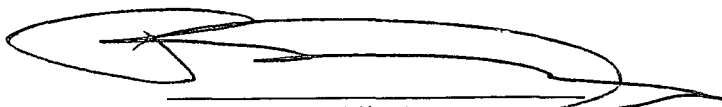
Rule 224, 208 and 231

The Appellant's Motion fails to comply with the requirements of Rule 224. The motion fails to cite authority for the relief sought. Further, pursuant to Rule 208 (a)(4) upon the failure to file and serve a brief, the appeal shall be dismissed and only reinstated as provided by Rule 231. Pursuant to Rule 231 (a) when an Appellant fails to comply with the rules, a case once dismissed, may not be reinstated except by leave of court, upon cause cause shown (emphasis

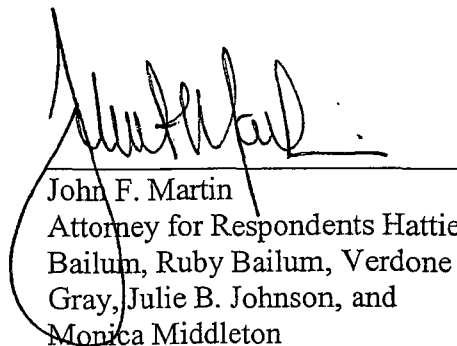
added). The Appellant has failed to show good cause. He has had a full and complete copy of every transcript prepared in this case since July 31, 2007. Counsel should not be granted relief under the good cause standard, due to his failure to merely look in his file or read the pleadings, motions and returns. The Appellant has not provided any cause for his failure to comply with Rule 207 by communication with the Court Administration, Clerk of Court, Court Reporter or Counsel. Counsel cites no authority required by Rule 224 which would hold that his failure to review his file, which review would have revealed the presence of both transcripts, as good cause. Lastly, counsel simply has no cause which would permit him being allowed to file out of time.

Conclusion

The Respondents respectfully request the Order dismissing this Appeal be affirmed and the case be remitted to the lower court pursuant to Rule 221. The Appellate Court Rules exist for the preservation of the timely and efficient administration of justice. Some of the Respondents, as noted in prior orders, and exhibits filed in response to other motions filed by Appellants are elderly and ill. Throughout this litigation, Appellant has undertaken a course of conduct calculated to delay the administration of justice in this matter. He should not now be rewarded for his violation of the Appellate Court Rules by being permitted to file his brief and designation of matter to be included in the record late. He does not meet the good cause requirements of Rule 231.



Bruce A. Berklinsky
Attorney for Respondent Marie Smith



John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs, Respondents)

vs.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2008 APR 17 AM 9:42

FILED

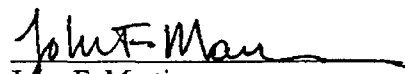
R556

be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)
devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)
)
Defendants,)

Of Whom Roosevelt Simmons is)
the Appellant)
And Marie Smith is a Respondent.)
_____)

MOTION TO FILE RETURN TO MOTION TO
REINSTATE THE APPEAL OUT OF TIME

The Plaintiffs by and through the undersigned attorney respectfully request the Return to the Motion to Reinstate Appeal be accepted late. The Appellant's Motion was received while the undersigned attorney was on spring break with his family. Upon return counsel for all respondents conferred and prepared their return to the motion and filed the same as soon as possible. The Respondents respectfully request the Court accept the Return to Appellants Motion to Reinstate the Appeal out of time for good cause shown.


John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

2559

covered under the Soldier's Relief Act,)
 fictitious names designating the)
 unknown heirs, devisees, distributes,)
 issue, executors, administrators,)
 successors or assigns of the above)
 named Defendants, and also the)
 following deceased persons: ESTATE OF)
 SAMUEL BAILUM a/k/a SAMUEL)
 BAALUM, deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM a/k/a)
 ESTHER BAILUM a/k/a ESTHER BAALUM,)
 HESTER SINGLETON BAALUM, THOMAS)
 BAILUM, SAMUEL BAILUM, SAMMY)
 BAILUM, FANNIE BAILUM MIDDLETON,)
 MARY BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE BURNS,)
 JERRY SINGLETON, ARTHUR SINGLETON)
 EUGENE SINGLETON, RICHARDINE)
 SINGLETON, EUGENE SINGLETON, JR.,)
 GARY SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS, ARTHUR LEE)
 BURNS, ARLENE GREEN, ERNEST)
 GREEN, JOE LOUIS BURNS a/k/a JOE)
 LEWIS BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS, JR.,)
 and all other persons know or claiming)
 any right, title, estate in or lien upon the)
 the real estate in or lien upon the real)
 estate described in the Complaint herein,)
)
 Defendant, Respondents)
)
 Of whom)
 Roosevelt Simmons is the)
)
 Defendant/Appellant)
)

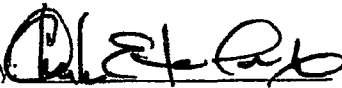
MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF

R 560

Roosevelt Simmons, the Appellant herein, through his undersigned counsel, would move the Court, with leave, for an Order extending the time to July 30, 2008 to file his Initial Brief and Designation of Matters as provided by the applicable South Carolina Rules of Appellate Procedure. Counsel's Affidavit in support of this motion is annexed hereto.

Respectfully submitted,

Houston Law Firm, LLC
236 Browns Cove Road, Suite 801D
Ridgeland, SC 29936
Telephone: (843) 645-9120
Facsimile: (843) 645-9121
charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr., Esq.
Attorney for the Appellant

July 7, 2008
Ridgeland, SC

2561

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs, Respondents)

vs.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)

2008 JUL 21 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY Bj

FILED

R 562

be alive, and JOHN DOE and)
 MARY ROE, adults, and RICHARD)
 ROE and JANE DOE, infants,)
 persons under disability or)
 incompetence, if any, including those)
 persons who might be in the military)
 and covered under the Soldier's and)
 Sailor's Relief Act, fictitious names)
 designating the unknown heirs,)
 devisees, distributes, issue, executors,)
 administrators, successors or assigns)
 of the above named defendants, and)
 also the following deceased persons:)
 ESTATE OF SAMUEL BAILUM)
 a/k/a SAMUEL BALAAM,)
 deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM)
 a/k/a ESTHER BAILUM a/k/a)
 ESTHER BALAAM, HESTER)
 SINGLETON BALAAM,)
 THOMAS BAILUM, SAMUEL)
 BAILUM, SAMMY BAILUM,)
 FANNIE BAILUM MIDDLETON,)
 MARY WARREN, WILLIS)
 BAILUM, TONY BAILUM, MARY)
 BAILUM, SAM BAILUM, HESTER)
 BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE)
 BURNS, JERRY SINGLETON,)
 ARTHUR SINGLETON, EUEGENE)
 SINGLETON, RICHARDINE)
 SINGLETON, EUEGENE)
 SINGLETON, JR., GARY)
 SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS,)
 ARTHUR LEE BURNS, ARLENE)
 GREEN, ERNEST GREEN, JOE)
 LOUIS BURNS a/k/a JOE LEWIS)
 BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS,)
 JR., and all other persons known or)
 claiming any right, title, estate in or)
 lien upon the real estate described in)
 the Complaint herein,)
)
 Defendants,)

Of Whom Roosevelt Simmons is)
the Appellant)
And Marie Smith is a Respondent.)
_____)

RETURN TO APPELLANT'S MOTION
FOR LEAVE TO FILE LATE

2008 JUL 21 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

The Respondents herein respectfully file this Return to Appellants Motion for Leave to file his initial brief and designation of matter late.

The Respondents, while empathetic to counsel's reasons as set forth in its affidavit, do not consent to the motion. The Respondents expressly object to the relief sought. The Respondents' respectfully crave reference to the court's file for prior motions of the Appellant and the replies of the Respondents to Appellant's motions.

Certain Respondents herein are elderly. One of the original plaintiff's in this action has passed away and her daughter was substituted as a party. Other respondents are ill. One respondent has been forced to move in with her children due to her inability to pay for her basic health care needs. Another respondent has been compelled to borrow money in order to pay her very modest living expenses. The respondents are in dire need for this matter to be ended. They do not have control of the process for the resolution of this matter. The circumstances underlying the Appellant's motion, contrary to his affidavit, have been squarely in Appellant Counsel's control. He has chosen not to control the management of this appeal and compliance with Court order.

2564

With regard to Appellant counsel's affidavit, Respondents do not believe just cause has been submitted to support the issuance of yet another extension. Each and every matter addressed in the affidavit which counsel asserts as being beyond his control, simply stated, are or were fully within his control. Counsel was fairly warned in the prior Order granting an extension to June 13, 2008 that further extensions would not be granted. He has chosen either to ignore the Order and the Rules of Appellate Practice or has failed to act in a timely manner.

With due deference to counsel, when the health of counsel becomes an issue, counsel should, at a minimum seek protection from the Court. Realistically, counsel should refer pending matters to other counsel. In this case Appellant's counsel has done neither. When staffing becomes an issue, numerous resources for temporary, competent, and capable support staff are available.

Counsel for the Appellant first appeared in this action prior to April 2007 at a time which, according to his own affidavit, he was in no position to undertake this case, either professionally with regard to his office and staffing issues or personally with regard to his health and family issues.

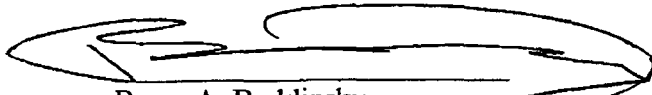
At no time during the last fifteen months has counsel's health or staffing problems been brought to the undersigned's attention. It is only after he is served with Respondent's motion to dismiss due to his failure to comply with this court's prior Order that he has again sought permission to file late.

Rule 231 of the S.C. Appellate Court Rules requires a showing of good cause in order for an appeal to be reinstated. The initial brief and designation of matter was due June 13, 2008. As counsel notes in his affidavit, by June of this year he was declared physically fit. There has been

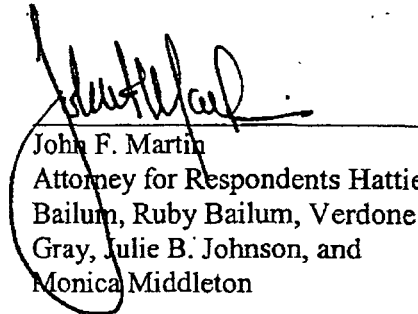
R 565

no cause shown as to why either an initial brief and designation of matter was not filed by June 13, 2008 or a timely extension sought.

The Respondents respectfully pray that this appeal be dismissed in accordance with the South Carolina Rules of Appellate Practice.



Bruce A. Berklinsky
Attorney for Respondent Marie Smith



John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs, Respondents)

vs.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)
BURNS, AMBER BURNS, if they)

FILED
2008 JUL 28 PM 2:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY BM

2567

be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)
devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUEGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUEGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)
)
Defendants,)

2568

Of Whom Roosevelt Simmons is)
the Appellant)
)
And Marie Smith is a Respondent.)
_____)

RETURN TO APPELLANT'S MOTION
FOR AN EXTENSION OF TIME

The Respondents herein respectfully file this Return to Appellants Motion for an Extension of Time to file his initial brief and designation of matter late.

The Respondents, while empathetic to counsel's reasons as set forth in its affidavit, do not consent to the motion. The Respondents expressly object to the relief sought. The Respondents' respectfully crave reference to the court's file for prior motions of the Appellant and the replies of the Respondents to Appellant's motions.

Certain Respondents herein are elderly. One of the original plaintiff's in this action has passed away and her daughter was substituted as a party. Other respondents are ill. One respondent has been forced to move in with her children due to her inability to pay for her basic health care needs. Another respondent has been compelled to borrow money in order to pay her very modest living expenses. The respondents are in dire need for this matter to be ended. They do not have control of the process for the resolution of this matter. The circumstances underlying the Appellant's motion, contrary to his affidavit, have been squarely in Appellant Counsel's control. He has chosen not to control the management of this appeal and compliance with Court order.

With regard to Appellant counsel's affidavit, Respondents do not believe just cause has been submitted to support the issuance of yet another extension. Each and every matter addressed in the affidavit which counsel asserts as being beyond his control, simply stated, are or were fully within his control. Counsel was fairly warned in the prior Order granting an extension to June 13, 2008 that further extensions would not be granted. He has chosen either to ignore the Order and the Rules of Appellate Practice or has failed to act in a timely manner.

With due deference to counsel, when the health of counsel becomes an issue, counsel should, at a minimum seek protection from the Court. Realistically, counsel should refer pending matters to other counsel. In this case Appellant's counsel has done neither. When staffing becomes an issue, numerous resources for temporary, competent, and capable support staff are available.

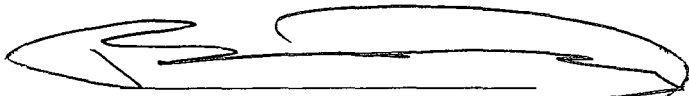
Counsel for the Appellant first appeared in this action prior to April 2007 at a time which, according to his own affidavit, he was in no position to undertake this case, either professionally with regard to his office and staffing issues or personally with regard to his health and family issues.

At no time during the last fifteen months has counsel's health or staffing problems been brought to the undersigned's attention. It is only after he is served with Respondent's motion to dismiss due to his failure to comply with this court's prior Order that he has again sought permission to file late.

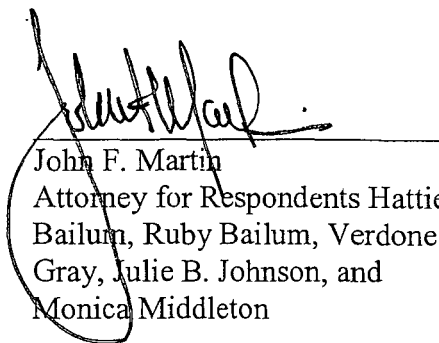
Rule 231 of the S.C. Appellate Court Rules requires a showing of good cause in order for an appeal to be reinstated. The initial brief and designation of matter was due June 13, 2008. As counsel notes in his affidavit, by June of this year he was declared physically fit. There has been

no cause shown as to why either an initial brief and designation of matter was not filed by June 13, 2008 or a timely extension sought.

The Respondents respectfully pray that this appeal be dismissed in accordance with the South Carolina Rules of Appellate Practice.



Bruce A. Berklinsky
Attorney for Respondent Marie Smith



John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

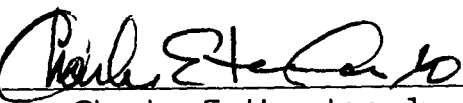
ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)

2572

BRIEF OF APPELLANT

The Houston Law Firm, LLC
Riverwalk Business Park
326 Browns Cove Road, Bldg. 801D
Ridgeland, SC 29936
Phone: 843-645-9120
Fax: 843-645-9121
E-Mail: Charles@houstonlawfirm.net

By:



Charles E. Houston, Jr.

State Bar# 2663

Attorney for Appellant

Q574

TABLE OF CONTENTS

Table of Authorities	iv
Statement of Issues on Appeal	vi
Statement of the Case	viii
Facts	x
Arguments	

I The administering of the oath by a South Carolina notary present in South Carolina to an out of state resident who is testifying from a location out of state via telephone is improper and jurisdictionally defective. This incorrect procedure is jurisdictionally defective and does not place that witness under oath in the South Carolina proceeding. The testimony rendered by such witness would be unsworn testimony and therefore inadmissible. Therefore, it was impermissible error for the Special Referee to receive and consider these unsworn testimonies into the record from the Plaintiff's witnesses. Unsworn testimony should be stricken from the record *sua sponte*, by this Court; whether previously formally objected to or not. In the instant case the Special Referee failed to adhere to ^{this} ~~the~~ Defendant's objections to this testimony.

1

II The Court did not acquire jurisdiction of all unknown parties where the publication of service of process was made without a court order and the description of the property described in the publication differed from

the description in the Lis Pendens and the Complaint. Service by publication is a hybrid or substitution for personal service and is only permitted by court order.

7

III The Special Referee erred by proceeding with a Reference hearing without having it transcribed by a court reporter or notary transcriptionist. The Circuit Court is a court of record and this procedure ^{by the Special Referee} was a denial, nullification and abridgement of the Defendant's right to due process that severely harmed and prejudiced the Defendant.

10

IV There is no credible evidence in the record to support the findings of the Special Referee that the Plaintiff's derived their title from a conveyance made in 1905 to particular ancestors. The Plaintiff's own submitted documents show that in 1905, when the property was conveyed ^{to} their immediate ancestors through whom they claim ^{they} received title to the property, ^{these ancestors} were not alive or had ^{not} reach their majority to be seized with real property.

13

V. The Special Referee ruling that the Defendant did not qualify to purchase his determined intestate portion or share of the property was inconsistent with the provisions that S.C. Code Ann. § 15-61-25 provides to the Defendant.

16

Qⁱⁱ 576

VI The special referee erred after admitting into evidence the exhibits in support of the Defendant's Motion to Admit Newly Discovered genealogical evidence but erred in not reversing his findings that the plaintiff ~~claim~~ of derivation of title was defective.

17

VII The special referee erred in finding in his initial findings of fact and upon the defendant's motion for reconsideration that the defendant did not have an intestate interest in the entire property rather than solely in parcel 1, and the special referee findings did not account for the entire 54 acres to the property as described in the original deed, but limited his findings ^{and rulings} to only 49 acres, ^{and} as there does not exist any credible evidence to support his findings to the contrary.

26

Conclusion

28

12577

TABLE OF AUTHORITIES

CASES

	PAGE
H.J. Baker & Bro v. Doe,	
88S.C. 69,70 S.E.431(1911)	9
Blackmon v. Weaver,	
366 S.C. 245, 621 S.E.2d 42 (CT. App. 2005)	26
Chavous v. Brown	
299 S.C. 398; 385 S.E.2d 206; (CT. App. 1989)	16
Chavous v. Brown,	
305 S.C. 387, 409 S.E.2d 356, (1991)	16
<u>Durham fertilizer Company v. Marshburn</u>	
122 N.C. 411, 29 S.E. 411 (1898)	9
Eagles v. South Carolina National Bank	
301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990)	26
Gasque, Inc., et al. V. Nates, Commissioner of Labor	
of South Carolina et al. South Carolina Dyers	
& Cleaners Ass'n et al. V. Nates, Commissioner	
191 S.C. 271; 2 S.E.2d 36; (1939).	16
Green v. Raybestos-Manhattan, Inc.	
250.S.C. 58, 156 S.E. 2d 318(1967)	5
<u>In the Interest of Joseph T.,</u>	
312 S.C. 15 430 S.E.2d 523;	16

Johnston v. Belk McKnight Co. of Newberry, SC Inc.

188 S.C. 149; 198 S.E. 395 (1938) 18

Knight v. Fidelity & Casualty Co. of N.Y.

184 S.C. 362, 192 S.E. 558 9

Lanier v Lanier

364 S.C. 211; 612 S.E.2d 456, (2005 CT. App.). 18

Mellen V. Lane

377 S.C. 261, 659 S.E.2d 236, (Ct. App2008). 6

South Carolina National Bank v. B. Dale Joyner

289 S.C. 382; 346 S.E.2d 329 12

Thompson v. South Carolina Com. on Alcohol & Drug Abuse,

267 S.C. 463; 229 S.E.2d 718 14

Twelfth RMA Partners , L.P. v. National Safe Corporation

35 S.C. 635, 518 S.E. 2d 44 (Ct. App.1999). 6

Yarbrough v. Collins

290 S.C.76, 348 S.E. 2d 194(CT. APP.1986) , reversed on other grounds,

Yarbrough v. Collins

293 S.C. 290, 360 S.E.2d 300 (1987) 9

STATUTES

S.C. Code Ann. § 14 -5 -330

2

S.C. Code Ann. § 15-61-25 (2006) 6

S.C. Code Ann. § 15-67-40. 6

S.C. Code Ann. § 15-9-720 (2006)	7
S.C. Code Ann. § 15-67-40.	6
S.C. Code Ann. §26-3-20.	2, 3
S.C. Code Ann. § 15-61-25,	13, 14, 15
S.C. Code Ann. § 15-61-25 (D)	13
S.C. Code Ann. §15- 5 -330	2, 3
S.C. Code Ann. § 26-3 20	2, 3
South Carolina Constitution, Article 1 § 3	16
USCS Const. Amend. 14, § 1	16
The Uniform Recognition of Acknowledgements Act	3

OTHER AUTHORITIES

SCRAP, Rule 8, Section 7	12
SCRCP, RULE 71	10, 11,&12
Note to Amendment SCRCP, RULE 71	9, 10
SCRE, Rule 603.	1

STATEMENT OF ISSUES ON APPEAL

I Is the administering of the oath by a South Carolina notary present in South Carolina properly and jurisdictionally administered to an out of state resident who is testifying from a location out of state via telephone properly place that witness under oath in the South Carolina proceeding? If not , then 1)did the Special Referee commit error by permitting the introduction of this testimony from the Plaintiff's witnesses and 2) should unsworn testimony be stricken from the record *sua sponte*, by this Court whether formally objected to or not and 3) where testimony is received in this manner without a Court reporter or notary-public transcriptionist present?

II Did the court acquire jurisdiction of all unknown parties where the publication of service of process was made without a court order and the description of the property described in the publication differed from the description in the Lis Pendens and the Complaint?

III Did the Special Referee err by proceeding with a Reference hearing without having it transcribed by a court reporter or notary transcriptionist and was this a denial, nullification and abridgement of the Defendant's right to due process?

IV Was the Special Referee ruling that the Defendant did not qualify to purchase his determined intestate portion or share of the property consistent with the provisions that S.C. Code Ann. § 15-61-25 provides to the Defendant?

v. Did the court abuse its' discretion in allowing the appellant only ten (10) days to produce proof of financing for the purchase of his intestate share or percentage ownership interest in the property.

V Did the Special Referee after admitting into evidence the exhibits in support of the Defendant's Motion to Admit Newly Discovered Evidence, then err in not reversing his findings that the plaintiff's claim of derivation of title was not defective?

VII Did the Special Referee err in finding in his initial findings of fact and later upon the Defendant's Motion for Reconsideration: 1) that the Defendant did not have an intestate interest in the entire property rather than solely in Parcel 1? 2) by not accounting for the entire 54 acres to the property as described in the original deed limiting his findings to only 49 acres; as there does not exist any credible evidence to support these inconsistent and contradictory findings.

STATEMENT OF THE CASE

This case is a declaratory judgment proceeding to quiet title to real estate among the various claims of persons claiming to have heir's title possessory interest in the property. It appears from the records filed in the case that it was commenced by the filing of a Summons, Lis Pendens, Complaint, and an Order for Appointment of Guardian Ad Litem on April 1, 2004.

An Amended Complaint was filed on July 29, 2004. An Answer and Counterclaim was filed by the Defendant Simmons on January 20, 2005. There was an unrecorded Referee Hearing held on January 25, 2005 where the testimony of out of state, witnesses was ^{improperly used} ~~procured~~; ^{unsworn} However an Order of Reference was not filed until February 17, 2006. The hearing was also followed by an Answer for additional Defendants filed on March 3, 2005.

By consent Order a Second Amended Complaint was filed on September 13, 2005. There was a subsequent Referee Hearing held on May 15, 2006. An Order was filed by the Special Referee on January 11, 2007. From the filing of Defendant's Simmons's Motion for Reconsideration, a further hearing was held on February 16, 2007. Thereafter an Amended Order without transcripts attached dated February 16, 2007 was filed on March 6, 2007.

A Pro Se Notice of Appeal was filed by Defendant Simmons on March 27, 2007. With the appearance of new counsel for the Appellant an Amended Notice of Appeal was served on April 18, 2007. A Motion to Stay the Sale of the property was filed on May 6, 2008 and heard on June 6, 2007. The Order of the Special Referee denying the stay was filed on June 28, 2007. The Defendant

Appellant, Simmons' Motion for Order of Supersedes was filed with this Court on July 13, 2007.

FACTS

This case is a declaratory judgment proceeding to quiet title to real estate among the various claims of persons claiming to have heirs title possessory interest in the property. The property situated in Charleston County, on Johns Island, SC consists of an approximately 54 acres tract. The property was conveyed by deed in 1905 to Sam, Thomas, Tony, Mary Bailum and Fannie Bailum Middleton. The court found (Amended Referee's Order filed March 6, 2007) that this Sam Bailum referred to as Sam (2) was the son of the elder Sam Bailum referred to as Sam 1) that was married to Hester Bailum and died around 1950 and that Thomas Tony Mary and Fannie were his siblings. The Court found that the defendant Roosevelt Simmons had no claim by descent to this property described as lots 2, 3 and 4 and denied his claims of adverse possession to it. The Court further found that there was a conveyance made in 1910 to Sam Bailum (Sam 1) recorded in Book H29 at page 185 for a twenty acre now determined to be a 15 acre tract. That at the time of his death Sam (1) had been predeceased by his first wife; the mother of Sam (2) and his siblings referred to above and left surviving his widow, Hattie Bailum who had six children by a prior marriage. the Court determined that a 1/3 interest in this property belonged to the surviving children of Hattie Bailum through whom the interest of the defendant, Roosevelt Simmons is derivative. The remaining 2/3 interest was inherited by Sam(2) and his siblings identified above. The adverse possession claims of Roosevelt Simmons against the 2/3 interest of these heirs was denied by the Court.

The Appellant asserts that a review of the birth death and marriage certificates introduced into evidence by the plaintiff's show that it was impossible for Sam (Jr).(2) and his siblings to have been even alive in 1905 the year of the grant of the property. The appellant further asserts by newly

discovered evidence consisting of data taken from the published US Census Reports from 1900 forward and from burial records obtained from a local funeral home that the 1905 conveyance of the 54 acre tract was not to Sam (Jr.)(2)(son) and his siblings but to Sam (1) and his siblings (aunts and uncles) whose names were similar to those of Sam (2). The census records reflect the age of Sam (1) as being 34 in 1910.

ARGUMENTS

I

THE ADMINISTERING OF THE OATH BY A SOUTH CAROLINA NOTARY PRESENT IN SOUTH CAROLINA TO AN OUT OF STATE RESIDENT WHO IS TESTIFYING FROM A LOCATION OUT OF STATE VIA TELEPHONE IS IMPROPER AND JURISDICTIONALLY DEFECTIVE. THIS INCORRECT PROCEDURE IS JURISDICTIONALLY DEFECTIVE AND DOES NOT PLACE THAT WITNESS UNDER OATH IN THE SOUTH CAROLINA PROCEEDING. THE TESTIMONY RENDERED BY SUCH WITNESS WOULD BE UNSWORN TESTIMONY AND THEREFORE INADMISSIBLE ^{in Court.} THEREFORE, IT WAS IMPERMISSIBLE ERROR FOR THE SPECIAL REFEREE TO RECEIVE AND CONSIDER THESE TESTIMONIES INTO THE RECORD FROM THE PLAINTIFF'S ^{P.} WITNESSES. UNSWORN TESTIMONY SHOULD BE STRICKEN FROM THE RECORD *SUA SPONTE*, BY THIS COURT; WHETHER PREVIOUSLY FORMALLY OBJECTED TO OR NOT, ^{by the Defendant.} IN THE INSTANT CASE THE SPECIAL REFEREE FAILED TO ADHERE TO THE ^{pro se} DEFENDANT'S OBJECTIONS TO THIS TESTIMONY.

The legal system of justice in South Carolina requires that witnesses be sworn. South Carolina Rules of Evidence, Rule 603. Oath or Affirmation states the following:

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form

calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

The testimony of the Plaintiff's witnesses in the proceedings below consisted of unsworn testimony because the Court reporter was a South Carolina Commissioned Notary in South Carolina administering the oath to non-resident witnesses in Texas and New York, at the time the oath was administered. At the first hearing no stenographer was present. As immediately shown below, this is not consistent with the rule of law, contrary to the uniform application of the law, the denial of due process and an unfair trial.

First, the Special Referee is not *per se* empowered to administer oaths to witnesses. *in another State and not before him.* There is nothing in the rules or Title 14 Chapter 5 .et seq. of the SC Code of Laws that empowers a judge *pro se* to serve as an officer to administer the oath to *out of state* witnesses. TR., Pg 85 line 11 & Pg 232. Further, the record does not tell us whether the Special Referee was a Notary. In any event, no such power, even if conferred, would extend beyond the geographic limits of South Carolina.

Secondly, notarial acts cannot be performed outside of the state. § 14 -5 - 330 of the South Carolina Code provides the following: "*The Circuit Court may administer all necessary oaths or affirmations.*" The reasonable interpretation of this is that the Court through its officers and personnel specifically empowered or commissioned to take oaths shall administer the oaths for the Court. This section does not state that the Circuit Court judge shall administer the oaths. "The "coup de grace" or fatal aspect to the procedure exercised in this case is that a South Carolina Notary does not have extra jurisdiction powers beyond or outside the

State of South Carolina to swear or administer the oath to witnesses in Texas/^{and New York}The Appellant relies upon § 26-3-20 Code of Laws of South Carolina referred to as the Uniform Recognition of Acknowledgements Act in support of this assertion. The applicable text of the statute reads as follows:

SECTION 26-3-20. "Notarial acts" defined; notarial acts performed outside of State.

For the purposes of this chapter, "notarial acts" means acts which the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this State:

(1) A notary public authorized to perform notarial acts in the place in which the act is performed;

The Uniform Recognition of Acknowledgements Act therefore required a Texas Notary to have been present to have sworn the witnesses at the place and time that they rendered their telephonic testimony. In this case, because the oath was not properly administered to them, the out of state witnesses were free to testify without any fear of committing perjury. Additionally, there is no proof in the records that these witnesses were truly who they stated themselves to be or

the authenticity of the documents their testimony related to. They could have been imposters.

Hattie Bailum, Tr., Pg 16;

1 MR CONDON: He's just called Ms. Hattie
2 Bailum on the phone, and I wanted you all to hear
3 what she had to say.

4 MS. MAGWOOD: Okay.

5 MR. MARTIN: Ms. Bailum, can you hear me?

6 MS. BAILUM: Yes, I can hear you.

7 MR. MARTIN: I think everybody here can
8 hear you. Judge, are you ready?

9 THE COURT: Yes, sir, I'm ready. Ms.
10 Bailum?

11 MS. BAILUM: Yes.

- 12 THE COURT: This is Joe Mendelsohn.
- 13 HATTIE BAILUM,

14 having been first duly sworn, was examined and testified
15 as follows:

16 THE COURT: Ms. Bailum, Mr. Martin is
17 going to ask you some questions, and then Mr. Condon,
18 if he has any, will ask you some questions, and if I
19 have any, I'll ask you some questions. I'm not sure
20 what your situation is where you are, but in the
21 event that you need a break or if you lose contact

22 with us, we'll call you back or whatever. So just
23 hang up the telephone, but hopefully, that won't
24 occur.

Verdone Gray, Tr., Pg 127

25 THE WITNESS: Okay

MR. MARTIN: Ms. Gray, it's Mr. Martin.

7 The people that are here are myself, Judge Joe
8 Mendelsohn, who will speak to you in a minute and
9 give you the oath, Mr. Louis Condon, who represents
10 Roosevelt Simmons, Mr. Simmons and the court
11 reporter. And so Judge Mendelsohn will put you under
12 oath, and then we'll ask you some questions. I'll
13 start first, and then Mr. Condon may have some other
14 questions for you. And then if you would answer all
15 of our questions for us, we'd appreciate it.

16 MS. GRAY: Okay. Thank you.

17 VERDONE GRAY,
18 having been first duly sworn, was examined and testified
19 as follows:

20 THE COURT: Mr. Martin will take it from
21 here.

22 EXAMINATION

23 BY MR. MARTIN:

24 Q. Thank you, Ms. Gray. For the record, what

25 is your full name, please?

128

1 A. I'm sorry?

2 Q. For the record, what is your full name,
3 please?

4 A. Verdone Gray.

5 Q. And where do you reside?

6 A. I reside at 3223 Grand Concord, New York.

See also James Bailum Alonzo, Tr., Pg. 85 and Julie Johnson Tr., Pg 168.

The Appellants assertion that the unsworn testimony of the Plaintiff's witnesses whose testimony the Special Referee relied upon are required to be stricken from the record and this case remanded is supported by the case of Green v. Raybestos-Manhattan, Inc. 250.S.C. 58, 156 S.E. 2d 318(1967). The Appellant had objected to this manner of taking the testimony of these out of state witnesses at a prior Reference Hearing held on January 25, 2005 and was overruled. The Special Referee did not preserve a recorded record of this hearing. This would make the decision of this Court in Twelfth RMA Partners , L.P. v. National Safe Corporation 335 S.C. 635, 518 S.E. 2d 44 (Ct. App.1999) not applicable. Further, without this unsworn testimony there is insufficient evidence to reasonably support the findings of the Special Referee. Mellen V. Lane 377 S.C. 261, 659 S.E.2d 236, (Ct. App2008).

II

THE COURT DID NOT ACQUIRE JURISDICTION OF ALL UNKNOWN PARTIES WHERE THE PUBLICATION OF SERVICE OF PROCESS WAS MADE WITHOUT A COURT ORDER AND THE DESCRIPTION OF THE PROPERTY DESCRIBED IN THE PUBLICATION DIFFERED FROM THE DESCRIPTION IN THE LIS PENDENS AND THE COMPLAINT. SERVICE BY PUBLICATION IS A HYBRID OR SUBSTITUTION FOR PERSONAL SERVICE AND IS ONLY PERMITTED BY COURT ORDER.

This assertion is premised on the fact that an examination of the records of the Clerk of Court for Charleston County would show that the Plaintiff never moved the Court for an Order for Publication and no such Order was ever filed into the record. S.C. Code Ann. § 15-67-40 (2006) one of the applicable statutes states the following:

§ 15-67-40. Service on unknown parties; notice of lis pendens.

In any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: "Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State. The plaintiff shall before commencement of such publication file

with the clerk of the court a notice of the pendency of the action, a copy of which shall be published in the same newspaper with and immediately following the summons.

The Plaintiff complied with this section but did not comply with § 15-9-720.

§15-9-720 requires the submittal of an Affidavit and the obtaining of a Court order for Publication. This Statute reads as follows:

SECTION 15-9-720. Service on unknown parties by publication.

In actions (1) affecting the title to real property, (2) for the partition of real estate or (3) for the foreclosure of a mortgage on real estate, if (a) any party having any interest in or lien upon such real estate is unknown to the plaintiff, (b) the residence of such party cannot, with reasonable diligence, be ascertained by him and (c) such facts shall be made to appear by affidavit to the court, judge, clerk of court, master or judge of probate of the county in which the cause is pending, such court, judge, clerk, master or judge of probate shall grant an order that the summons be served on such unknown party by publishing it once a week for three weeks in a newspaper printed in the county where the premises are situated. Such publication shall be equivalent to a personal service on such unknown party.

An Affidavit for Publication and Order of Publication and Affidavit of Publication are all required by statute for the Court to obtain personal jurisdiction of all unknown parties. The “coup de grace” being the failure of the Plaintiff to submit an Affidavit for Publication and obtain an Order for Publication therefore was fatal to the Court obtaining jurisdiction of all unknown parties. The Court

never acquiring jurisdiction of these necessary parties the action is required to be dismissed for such lack of jurisdiction. On this point see the Affidavit of Deloris Singleton who petitioned to be joined as a party Defendant.

Insufficiency of process and insufficiency of service of process under SCRCP, Rule 12 (b) (4) and (5). constitute further grounds for the dismissal of the action on jurisdictional basis. Yarbrough v. Collins 290 S.C.76, 348 S.E. 2d 194(CT. APP.1986) , reversed on other grounds, Yarbrough v. Collins 293 S.C. 290, 360 S.E.2d 300 (1987) (a defect in the service of process by publication is jurisdictional); Durham Fertilizer Co. v. Marshburn, 122 N.C. 411, 29 S.E. 411 (1898) (the court had no jurisdiction over the defendants where the summons was improperly issued and served); See Knight v. Fidelity & Casualty Co. of N.Y., 184 S.C. 362, 192 S.E. 558 (1937) (Supreme Court's conclusion that the trial court did not have jurisdiction of the action rendered academic the appellant's other exceptions); H. J. Baker & Bro. v. Doe, 88 S.C. 69, 70 S.E. 431 (1911) (where defendant appealed one order refusing the vacate an attachment and another order refusing to set aside the service of summons and the court sustained an exception that raised a jurisdictional question, the other exceptions were not properly before the court).

§ 15-67-40 referred to above requires the publication of the Summons and Notice of the Pendency of the Action. The Notice of Pendency of the Action contains the legal description of the property subject to the Court's jurisdiction. The design goal and legislative purpose for these rules is to provide citizens with notice of the action so they may be afforded the opportunity to appear and participate in the proceedings. Often people reading the Summons may not

recognize from the caption of the case the names of the parties or their individual names may not appear. With the publishing of the description of the property which they may recognize they are afforded additional opportunity of receiving notice that the action affects their interest in property.

In our instant case the Plaintiff without and order of Publication being obtained nevertheless did publish a copy of the Summons and a Notice of the Pendency of the Action. However the publication was deficient where the complete and inadequate description of the property was not given. Compare the text of the description of the property as published in the order and in the Amended Lis Pendes with the description in the Notice of the Pendency of the Action. The description even fails to mention the T.M.S. tax number for the property. If lack of adequate notice as require by statute is not rendered then this would constitute insufficiency of process and insufficiency of service of process.

III

THE SPECIAL REFEREE ERRED BY PROCEEDING WITH A REFERENCE HEARING WITHOUT HAVING IT RECORDED AND CONSTITUTED A DENIAL, NULLIFICATION AND ABRIDGEMENT OF THE DEFENDANT'S RIGHT TO DUE PROCESS.

A Reference hearing was held on January 26, 2005 and at other times not contained in the record where Plaintiff's witnesses testified by telephone and the Defendant testified in person and exhibits were received into evidence. No transcription of these hearings was taken. (See Affidavit of Emily Robinson and Motion for reconsideration). This was improper and a dialect of duty or abuse of discretion for the

Special Referee to proceed with the hearing without a court reporter present to transcribe all of the proceedings. The Special Referee committed reversible error by not adjourning or discontinuing the hearing in the absence of a court reporter. In support of this position the Court's attention is invited to take into cognizance SCRCP, Rule 71 that emphatically emphasizes the duty of the Courts (Special Referee) to require the recording of reference hearings for the record

SCRCP, Rule 71 (e) reads as follows:

***Actions When Title Is at Issue.** In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. In all such actions a transcript of record shall be made and preserved in the case file in the office of the clerk of court.*

SCRCP Rule 71(a) Foreclosure and Petitions is consistent with this and demands the same requirement except that this rule was amended to allow a record of the hearing , but not necessarily a typed transcript , is preserved in the file. Note to 1986 Amendment. This Amendment was not added to Rule 71(e) and by inference shows that the Court is particularly concerned that reference hearings pertaining to the title of real estate be recorded and filed with the Clerk of Court. The complete record of the proceeding could not be filed owing to its not being recorded and

transcribed.(See Motion for Reconsideration with Affidavit of Roosevelt Simmons attached thereto.)

Because the Special Referee permitted the hearing to proceed without a court reporter to transcribe the hearing the Appellant has been greatly harm and prejudiced in presenting on appeal the other improper evidence that the Special referee considered and evidence that does not appear in making his findings of fact under SCRAP, Rule 8 §7. The Appellant has been denied the substantial right of seeking upon review this Court's finding whether the Special Referee erred in not finding that the Defendant had established his claim of adverse possession of the property.

SCRAP, Rule 8, Section 7, provides for the following:

"This court will not consider any fact which does not appear in the transcript of record and therefore counsel must not embody in their briefs any fact which does not appear in the transcript of record. Nor will any facts stated in an exception be considered unless it appears from the transcript of record that it is true."

In the case of South Carolina National Bank v. B. Dale Joyner 289 S.C. 382; 346 S.E.2d 329 The Court of Appeals of South Carolina stated that "it will not consider any fact which does not appear in the transcript of record and therefore counsel must not embody in their briefs any fact which does not appear in the transcript of record. Nor will any facts stated in an exception be considered unless it appears from the transcript of record that it is true.

SCRCP, Rule 71 has placed the responsibility on the Special Referee acting in the capacity and with the attendant powers of a Circuit Court Judge to insure that a proper record of cases are memorialized. The failure to carry out this mandate of the Court leaves the Appellant in this instance without any appropriate remedy but for the Court to dismiss the action below for this drastic failure. A court of competent jurisdiction is a court of record!

IV

THE SPECIAL REFEREE'S RULING THAT THE DEFENDANT DID NOT QUALIFY TO PURCHASE HIS DETERMINED INTTESTATE PORTION OR SHARE OF THE HEIRS PROPERTY WAS INCONSISTENT AND CONTRARY TO THE PROVISIONS THAT S.C. CODE ANN. § 15-61-25 PROVIDES TO HIM AND WAS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION AND CONSTITUTED AN ABUSE OF DISCRETION.

The statute § 15-61-25 does not require that a co-tenant produce proof of financing availability to the Court. It states that from the issuing of the Final Order the cotenant shall have forty-five (45) days to complete the purchase. The text of § 15-61-25 (D) states the following:

After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty-five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall

execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers.

The Special Referee awarded the sale of Tracts 2, 3 and 4 to Hazel Goldberg and Tract 1 of the property to Mark Goldberg purchasing the Tract 1 property. A provision in the Order June 28, 2007 states that *"The Court finds that Mr. Simmons failed to timely exercise his option to purchase this parcel He failed to file with the Clerk his proof of financing as required by the Order of January 11, 2007 recorded the same date and by the Amended Order of February 16, 2007 filed and served on March 6, 2007. As such, having failed to preserve his rights as an heir to purchase this parcel the final order now requires this parcel be sold and title conveyed to Mr. Mark Goldberg.*

The record is void of what, if any, uniform Notice the Court furnished to the parties involved in the proceeding that they were to follow in the event they were interested in purchasing portions of the ancestral property as provided by § 15-61-25 Code of Laws of South Carolina. There is no record of the time of the filing of the Appraisal Report to indicate the commencement of the forty-five (45) days for the purchase price to be tendered to the Court. Further, the Appraisal Report dated May 27, 2005 from Atlantic Appraisers covered only 38 acres of land. A new or amended appraisal was not made for the additional property included in the action that is described in the Amended Complaint. The result is that an appraisal of the property was never made as required by § 15-61-25. The Special Referee did not adhere to the "Rule of Law" provided under § 15-61-25 but instead chose to make one of himself.

The statute makes no mention of proof of financing. The Special Referee requiring Roosevelt Simmons to show proof of fiscal ability within 10 days to the Court and that such proof must be filed with, among other persons, the Charleston County Clerk of Court was contrary to the statute. However though improper, this mandate being made applicable only to one party; the Defendant, Simmons and not the other parties violates the Fourteenth Amendment clause of the U.S. Constitutional guarantee of equal protection under the law. The record does not reflect Hazel Goldberg, or Mark Goldberg who had contracted to buy the interest of the Plaintiff heirs being required to file their proof of fiscal ability with the Clerk of Court's office as the Special Referee has demanded the Defendant, Simmons, to do.

Further, the Special Referee abused his discretion in ruling that the financial documents of support submitted by the Defendant were insufficient as the letters from the financial institutions were addressed to other parties. The parties were friends of the Defendant who obtained loan committals from their bank in their individual names to lend to the Defendant to purchase the property. (See Affidavit and letters submitted to Special Referee.

Again, rather than following the "Rule of Law" as provided by § 15-61-25, the Special Referee chose to formulate his own law for the case; one that was unequally applied and highly favorable to the Goldberg's' and another and different application being extremely detrimental and prejudicial to Roosevelt Simmons; a classic factual pattern of the unequal application of the law.

The application of this Statute in question by the Special Referee is unconstitutional, applied in that it violates both the terms of the South Carolina Constitution and of the Constitution of the United States, in abridging the liberty of the Defendant citizen to contract and be contracted with, to acquire and enjoy his property; it impairs the obligations of contracts and denies the equal protection of the laws to the Defendant citizen of our State. In the sphere of its application it affects differently all persons similarly situated, under the provisions of the 14th amendment. USCS Const. Amend. 14, § 1, South Carolina Constitution, Article 1 § 3, Chavous v. Brown 299 S.C. 398; 385 S.E.2d 206; CT. App. 1989), affirmed by. Chavous v. Brown, 305 S.C. 387, 409 S.E.2d 356, (1991); (In the Interest of Joseph T., 312 S.C. 15 430 S.E.2d 523; (1993) Thompson v. South Carolina Com. on Alcohol & Drug Abuse, 267 S.C. 463; 229 S.E.2d 718; (1976) as to statute being unconstitutional applied see Gasque, Inc., et al. v. Nates, Commissioner of Labor of South Carolina et al. South Carolina Dyers & Cleaners Ass'n et al. v. Nates, Commissioner 191 S.C. 271; 2 S.E.2d 36; (1939).

V

THE COURT ABUSED ITS' DISCRETION IN ALLOWING THE APPELLANT ONLY TEN (10) DAYS TO PRODUCE PROOF OF FINANCING FOR THE PURCHASE OF HIS INTESTATE SHARE OR PERCENTAGE OWNERSHIP INTEREST IN THE PROPERTY.

The Court abused its' discretion in limiting the Defendant to ten days to show proof of his ability to purchase the property in the following particulars:

First the § 15-61-25 provides for a period of forty five days for the Defendant to have tendered the funds to the Court for the purchase price.

Second: It is commercially impossible to obtain financing for the purchase of "heir's title" property for raw or unimproved property within ten (10) days using the property as the source of collateral. First, lending institutions other than "predatory lenders" will not loan money against property that does not have marketable title.

Third: Lending institutions including "predatory lenders" do not lend money against property without a recent appraisal. In most instances an appraiser cannot start the appraisal process within ten days. In the instant case the property that the Defendant wanted to purchase had not been included in the appraisal report.

Fourth: Property encumbered with "heirs title" the land needs to be surveyed (the present included) in order for the appraiser to render a complete comprehensive appraisal report.

Fifth: That until the date of the Special Referee's Order of June 6, 2007 the amount of the Defendant's intestate share had remained in contention.

VI

**THE SPECIAL REFEREE AFTER ADMITTING INTO EVIDENCE THE EXHIBITS
IN SUPPORT OF THE DEFENDANT'S MOTION TO ADMIT NEWLY DISCOVERED**

GENEALOGICAL EVIDENCE THEN ERRED IN NOT REVERSING HIS FINDINGS THAT THE PLAINTIFF'S CLAIM OF DERIVATION OF TITLE WAS NOT DEFECTIVE .

Defendant filed a Motion for the Admission of Newly Discovered Evidence that was not ruled upon. The proffered newly discovered evidence that was admitted contradicted the factual findings of the Special Referee on the derivation of the title to the property and if properly considered would have affected and changed the outcome of the case. Johnston v. Belk McKnight Co. of Newberry, SC Inc. 188 S.C. 149; 198 S.E. 395 (1938), Lanier v Lanier. 364 S.C. 211; 612 S.E.2d 456 (2005 CT. App.).

The Special Referee was advised that the Defendant was going to request the Appellate Court to remand the case back to the Circuit Court to address the Defendant's Motion for a new trial based on newly discovered evidence as a basis for the Special referee not to issue an order for the sale of the property at that time. The Special Referee however decided to receive the evidence into the record (Tr.pg 30 -33).

The exhibits received into evidence at the Motion for Stay hearing on June 19, 2007 consists of data drawn from the U.S. Census Reports dated back to the 1900 Census. The reports do not list any of the purported grantees as being alive in 1905. By the finding of fact of the Special Referee the grantees of the 1905 conveyance were Sam (2) and his siblings. According to the Census reports Sam Bailum (1) was 34 years of age in 1905 and a Tony Bailum a younger brother was age 25. This evidence establishes the fact that the 1905 deed would have been to Sam Bailum (1) and his siblings rather than to Sam (2) the deceased son of Sam (1)

first wife. (See family diagram submitted into the record as an exhibit.). The pertinent testimony on this point is as follows:

Tr.pg 30 -33

THE COURT: Tell me why -- tell me number

22 one why I should stay it, please, and under the
23 circumstances of staying it, what do we do to
24 protect the other people in this case and the third
25 parties who have contracts to pay a better than

0030

1 fair market value or the fair market value of this
2 property, and so tell me about that.

3 MR. HOUSTON: All right. Thank you, Your
4 Honor. I appreciate this opportunity. And I think
5 that you have framed the substantive issue that
6 needs to be addressed quite succinctly, and I plan
7 to respond to it in a likewise manner, Your Honor.

8 Your Honor, this is the heart and germane
9 aspect of the points that we were going to bring up
10 on an appeal, and this is the same reasons why
11 we've urged the court not to go ahead with the sale
12 of this property at this particular time. Because
13 if it's sold at this particular time, irreparable
14 damage would be caused in the future when we
15 prevail on this particular matter.

16 Now, why do we feel strongly that we're
17 going to prevail? There are grave evidentiary
18 problems with the evidence in this particular case
19 as to the ancestry of this particular property.
20 What we have that may be in the form of newly
21 discovered evidence are the census reports that
22 were not introduced in this particular proceeding.

23 And the first thing is the evidence that was
24 produced in the proceeding as to the birth
25 certificates, the marriage licenses, and the death

0031

1 certificates would show that the deed conveyed in
2 1905 to Sam Bailum and others was not to Sam
3 Bailum, Jr., but that deed was conveyed to Sam
4 Bailum, I, and his siblings and not his nieces and
5 nephews.

6 So the whole chain of the ownership of the
7 property is affected right there. You know, we
8 have a Tony Bailum. He died in September 2, 1925.
9 He was 47 years of age at the time this census was
10 taken.

11 THE COURT: Who?

12 MR. HOUSTON: Tony.

13 THE COURT: Tony who?

14 MR. HOUSTON: Bailum. He was the brother of
15 Sam Bailum, I, not his nephew. See, that whole
16 line where they say, you know, that deed of 1905,
17 those people who the plaintiffs claim it was
18 granted to weren't even alive at that particular
19 time. Those -- that deed was conveyed to Sam
20 Bailum, I, and his heirs, and not Sam Bailum, II.
21 Sam Bailum, II, would not have been old enough at
22 that particular time to have received a deed.

23 And if you look at the death certificate and
24 birth certificate and marriage license of Sam
25 Bailum, II, it will show from the plaintiff's own

0032

1 evidence that he was not born at that particular
2 time the deed was made. So the deed couldn't have
3 been to him. So this upsets the whole
4 distribution.

5 THE COURT: How?

6 MR. HOUSTON: Because what it does is
7 they're claiming under title, and they had no
8 title. They're claiming on a partition date. So
9 this affects not only the property that has been
10 part of this action, but it affects all the other
11 properties and other actions also.

12 THE COURT: How?

13 MR. HOUSTON: Because they didn't have
14 title.

15 THE COURT: Who didn't have title?

16 MR. HOUSTON: They never received a
17 two-thirds interest, a separate interest. What
18 they're saying, the court here ordered was that
19 Sam -- that Mr. Simmons only is entitled to
20 one-third of a particular portion. I think it was
21 15 acres. And our position is that, no, he would
22 at least be at least one-third of the entire thing,
23 because that --

24 THE COURT: When you say the entire thing,
25 what's the entire thing? What does that mean to

0033

1 you?

2 MR. HOUSTON: The entire 50 acres, the
3 entire 54-acre tract.

4 THE COURT: That would be parcels --

5 MR. MARTIN: -- one, two, three, and four.
6 He's claiming a one-third interest in all four
7 parcels.

8 MR. HOUSTON: And this would also come back
9 to shine a different light on his claim for adverse

10 possession.

11 THE COURT: Why?

12 MR. HOUSTON: Because it would eliminate
13 their claim of possession under the claim of
14 title. And basically we also may be looking at
15 some -- I forget the word where you give false
16 testimony in court.

17 MR. SIMMONS: Perjury.

18 MR. HOUSTON: Perjury. And this also ties
19 in with the fact that the people who gave this
20 testimony, they didn't have the court reporter
21 there to identify them as particular persons. Now,
22 they can say, well, somebody else was an imposter.

23 So what we plan on doing, Your Honor, is ask
24 the court if they either would remand, you know,
25 ask the court to remand this thing back so we can

0034

1 bring the motion before you on the basis of newly
2 discovered evidence and let you rule upon it,
3 rather than take the time to go through all of
4 these issues on appeal. Because as I said before,
5 we're not here for any dilatory tactic, but we are
6 here for the truth to come out.

7 THE COURT: Okay.

8 MR. HOUSTON: And these are the reasons why
9 I asked you to stay the signing of these deeds and
10 also for waiving, you know, the requirement of my
11 client posting bond. Because we do have a
12 meritorious cause. And for everybody's edification
13 here, here's my proof.

14 THE COURT: What?

15 MR. HOUSTON: I said for everyone's
16 edification, here is our proof.

17 THE COURT: What is that?

18 MR. HOUSTON: That's the census data.

19 MR. MARTIN: But it's not --

20 MR. HOUSTON: It hasn't been introduced in
21 evidence, but it's available.

22 THE COURT: All right. Do you have anything
23 else you want me to listen to?

24 MR. HOUSTON: Well, what I was going to do,
25 let me put this into evidence for the reasons

0035

1 why --

2 THE COURT: You want to put this in evidence
3 right now?

4 MR. HOUSTON: Right. On the grounds that
5 why the deed should not be granted and that we have

6 a meritorious claim.

7 MR. MARTIN: And just for procedural
8 grounds, if he's moving to put it into evidence, I
9 would object to it coming in as there's no grounds
10 for it, it's not substantiated, and there's no
11 certification it's a true and accurate record, and
12 it's not exempt under the hearsay rules. So for a
13 variety of reasons at this point for a motion
14 hearing on a motion to stay, I would object to an
15 attempt to interject evidence in that was not
16 relevant to the motion to stay.

17 MR. HOUSTON: The court can take judicial
18 notice of the census records.

19 THE COURT: All right. I'm going to, for
20 purposes of the motion, I'm going to accept the
21 records, and I'm going to mark them for purposes of
22 this motion. I'm going to put Motion Number 1,
23 6/6/07, and I initialed it. I'm going to make that
24 a part of this record.

25 Then I'm going to make this one Motion

0036

1 Number 2, 6/6, and I'm going to initial it. Then
2 I'm going to make that a part of this record. And
3 there's another one, and I'm going to make that

4 Motion Number 3 6/6/07, and I'm going to make that
5 a part of the record in this motion. Okay.

This Court, as the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990). Blackmon v. Weaver, 366 S.C. 245, *; 621 S.E.2d 42 (Ct. App. 2005).

VII

THE SPECIAL REFEREE ERRED IN FINDING IN HIS INITIAL FINDINGS OF FACT AND UPON THE DEFENDANT'S MOTION FOR RECONSIDERATION THAT THE DEFENDANT DID NOT HAVE AN INTESTATE INTEREST IN THE ENTIRE PROPERTY RATHER THAN SOLELY IN PARCEL 1 AND THE SPECIAL REFEREE FINDINGS DID NOT ACCOUNT FOR THE ENTIRE 54 ACRES TO THE PROPERTY AS DESCRIBED IN THE ORIGINAL DEED BUT LIMITED HIS FINDINGS TO ONLY 49 ACRES; AS THERE DOES NOT EXIST ANY CREDIBLE EVIDENCE TO SUPPORT HIS FINDINGS TO THE CONTRARY.

The Special Referee did not account for in his Findings of Fact the reason why the Defendant's interest in the property was limited to Parcel 1 and not the entire tract other than the fact that the Goldberg's had allegedly entered to buy Tract 1, 2, 3, and 4 from the Plaintiffs. Additionally, the compass or scope of the Special Referee's Findings of Fact does not explain the discrepancy between the 54 acres described in the Amended Complaint and the 49 acres he assigned

among the hers as he found their interest to appear. These issues were raised in the Defendant's Motion for Reconsideration but remained unaddressed in the Special referee's Order in response to the Motion. Again, the failure of the Special Referee to hold Reference Hearings without a court reporter present and not file the transcripts that were taken is a denial of due process and an unfair adjudication of the subject matter all to the detriment and prejudice to the Defendant presenting the issues on appeal.

CONCLUSION

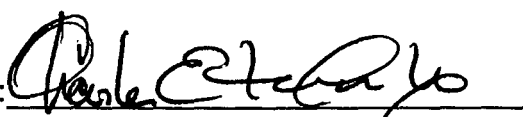
Severe violations and infractions of the jurisdictional, substantive evidential and procedural rules in this proceeding have created incurable due process deprivations. The more blatant infractions include the filing of the Final Order without the transcript annexed to it. Receiving witness testimony and conducting hearings without a court reporter, failing to reduce the agreements and stipulations of counsel to writing and the Court predicating its findings of fact established by unsworn witness testimony.

Rule of Law" cannot be changed or abandoned because the party litigants conspire or agree among themselves to do so without crippling our judicial system's ability to achieve the goal for which it was established; to dispense justice uniformly and equally.

The Court is urged to reverse and or set-aside the Decision of the Circuit Court and remand this case back to the Circuit Court directing that it be dismissed and or retried before the Master in Equity and grant such further relief as it may in its discretion deem appropriate in the premises.

Respectfully submitted,

The Houston Law Firm, LLC
326 Brown Cove Road, Bldg 801-Suite D
Ridgeland, SC 29936
Phone: (843) 645-9120
Fax: (843) 645-9121
E-Mail: charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr.
Attorney for the Appellant

Ridgeland, SC
July 31, 2008

among the hers as he found their interest to appear. These issues were raised in the Defendant's Motion for Reconsideration but remained unaddressed in the Special referee's Order in response to the Motion. Again, the failure of the Special Referee to hold Reference Hearings without a court reporter present and not file the transcripts that were taken is a denial of due process and an unfair adjudication of the subject matter all to the detriment and prejudice to the Defendant presenting the issues on appeal.

CONCLUSION

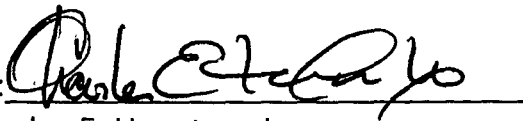
Severe violations and infractions of the jurisdictional, substantive evidential and procedural rules in this proceeding have created incurable due process deprivations. The more blatant infractions include the filing of the Final Order without the transcript annexed to it. Receiving witness testimony and conducting hearings without a court reporter, failing to reduce the agreements and stipulations of counsel to writing and the Court predicating its findings of fact established by unsworn witness testimony.

Rule of Law" cannot be changed or abandoned because the party litigants conspire or agree among themselves to do so without crippling our judicial system's ability to achieve the goal for which it was established; to dispense justice uniformly and equally.

The Court is urged to reverse and or set-aside the Decision of the Circuit Court and remand this case back to the Circuit Court directing that it be dismissed and or retried before the Master in Equity and grant such further relief as it may in its discretion deem appropriate in the premises.

Respectfully submitted,

The Houston Law Firm, LLC
326 Brown Cove Road, Bldg 801-Suite D
Ridgeland, SC 29936
Phone: (843) 645-9120
Fax: (843) 645-9121
E-Mail: charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr.
Attorney for the Appellant

Ridgeland, SC
July 31, 2008

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)

Defendant, Respondents)

Of whom)
Roosevelt Simmons is the)

Defendant/Appellant)
_____)

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

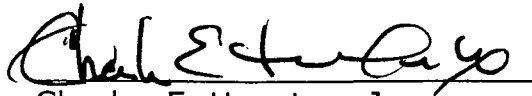
Appellant proposes the following be included in the Record on Appeal:

1. Les Pendens	April 1, 2004
2. Complaint	April 1, 2004
3. Amended Complaint	July 29, 2004
4. Answer and Counterclaim	January 20, 2005
5 Exhibits from Reference Hearing If identified (no transcript taken)	January 25, 2005
6. Answer for Additional defendants	March 3, 2005
7. Second Amended Complaint	September 13, 2005
8. Order of Reference	February 17, 2006
9. Reference Hearing Defendant's Exhibits) In error Plaintiff's Exhibits 1-8	May 15, 2006
10. Transcript testimony Pg 12, L22-Pg.13, L6 PG 16,85,126, and 168	
10. Service by Publication	November 09, 2006
11. Order of Special Referee	January 11, 2007
12. Motion for Reconsideration and annexed	
13. Affidavit of Roosevelt Simmons	
14 Transcript testimony from Reference Hearing	February 16, 2007
Exhibits from Reference Hearing	February 16, 2007
15. Amended Order of Special Referee	dated February 16 2007 filed March 6, 2007

16. Motion to Stay Sale of Property	May 6, 2007
17. Motion to Dismiss and /or to Admit Additional Parties, Defendants and	May 6, 2007
18. Affidavit of Deloris Singleton	May 6, 2007
19. Motion to Stay Sale of Property With Exhibits	May 6, 2007
Lane letter	
Sun Trust letter	
Wachovia letter	
Fields letter	
20. Motion for the Admission of Newly Discovered Evidence with Exhibits	
21. Transcript testimony from Hearing on Motions	June 6, 2007
Tr. Pg 30, L8-Pg. 36 L5	
Tr. Pg65.L6-L20	
22 Exhibits from Hearing on Motion	June 6, 2007
Defendant's (in error) Plaintiff's Exhibits 1-8	
23. Order of Special Referee	June 28, 2007

I certify that this designation contains no matter which is irrelevant to this appeal.

THE HOUSTON LAW FIRM, LLC
326 Brown Cove Road, Bldg 801-SuiteD
Ridgeland, SC 29936
Phone: (843) 645-9120
Fax: (843) 645-9121
E-Mail: charles@houstonlawfirm.net



Charles E. Houston, Jr.
State Bar # 2663
Attorney for the Plaintiff

Ridgeland, SC
July 31, 2008

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

FILED
2008 AUG 28 PM 3:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY PS

covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)
Roosevelt Simmons is the)

Defendant/Appellant)

PETITION FOR FULL APPELLATE REVIEW

R 620

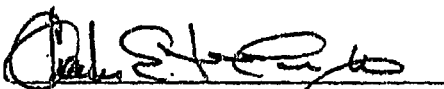
The above named Appellant, through his undersigned attorney, with leave of Court, pursuant to SCRAP, Rule 225 (d) (2) petitions the Full Appellate Court for the following relief:

First: To review and reverse the Order filed by, the Hon. Kenneth A. Richstad, Clerk dated August 20, 2008 administratively dismissing the appeal herein Nunc Pro Tunc, approximately thirty days after the Appellant had submitted his Initial Brief. A copy of the Initial Brief and Designation of Matters is attached hereto.

Second : This Motion will be further supported by supplemental Affidavits.

Respectfully submitted

THE Houston Law Firm, LLC
326 Browns Cove Road, Bldg. 801D
Ridgeland, SC 29936
Telephone: (843) 645-9120
Facsimile: (843) 645-9121
E-mail: charles@houstonlawfirm.net

By 
Charles E. Houston, Jr.
Attorney for the Appellant

Ridgeland, South Carolina
August 24, 2008

R 621

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE
BALAAM; RUBY BAILUM a/k/a
RUBY BALAAM; VERDONE
GRAY; JULIE B. JOHNSON; and
MONICA MIDDLETON,

Plaintiffs, Respondents

vs.

ROOSEVELT SIMMONS,
LEON SINGLETON, MABEL
SINGLETON HICKS a/k/a
MAYBELL HICKS; WALTER
BURNS; SHEILA B. OWENS,
LOUISE CANTY; ALONZETTA
BURNS; SHARON BURNS,
MELVIN SINGLETON, MARIE
SMITH, ELMORE SINGLETON,
THEODESIA SINGLETON,
MILDRED SINGLETON
MAHONEY, ANDRE
SINGLETON, EUGENIE
SINGLETON, LEON ELIJAH
SINGLETON, ERNEST GREEN,
JR., KAREN GREEN, DELORIS
GREEN, JOAN GREEN WELLS,
DELBERT BURNS, JOE LOUIS
BURNS, JR., a/k/a JOE LEWIS
BURNS, JR., VONIE BURNS,
SHELLY BURNS, ANASTACIA
BURNS, TREMAYNE BURNS,
JOSHUA BURNS, JARRED
BURNS, AMBER BURNS, if they

2008 SEP 14 PM 1:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY *DD*

FILED

R622

be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)
devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)

Defendants,)

R 623

Of Whom Roosevelt Simmons is)
the Appellant)
And Marie Smith is a Respondent.)
_____)

RETURN TO MOTION

Appellant seeks relief of the dismissal of his appeal pursuant to Rule 225 (d) (2). The Appellants are not entitled to any relief pursuant to Rule 225 which rule addresses either a stay of matters decided in the Judgment on Appeal, (which is the special referee's Order,) or a Supersedeas to lift the stay imposed by Rule 225 (b). Appellant is entitled to no relief under Rule 225 as Rule 225 is inapplicable to the matter before the Court. As such, the Respondents respectfully request the Motion be denied.

To the extent the Appellant has properly preserved this matter for further argument the Respondents reply as follows.

Rule 231 addresses the process for a party to follow when the Clerk remits the case to a lower court when a party has failed to comply with the requirements of the rules. The Appellant in this case must file a motion to reinstate with the Court within fifteen (15) days of the dismissal setting forth good cause. Appellant has failed to do so and as such this matter must be dismissed with finality. Further, the Appellant has failed to comply with the requirements of Rule 224 in that he has filed no memorandum citing any authority in support of his argument. While Rule 224 (e) does not require a Return to a petition for reinstatement after a rule 221 dismissal, by filing a return, the Respondents are notifying the court in accordance with the rules that they do not consent to the relief sought in the motion or petition. In further support of this return the

R624

Respondents crave reference to numerous Orders, Motions or Returns previously filed in this tortured appeal.

Ex. 1 – Order of March 20, 2008 Dismissing the Appeal.

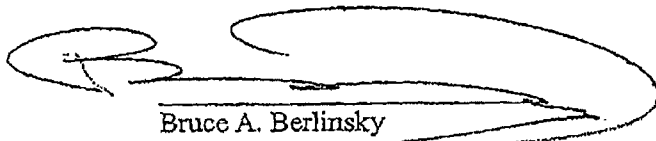
Ex. 2 – Respondents Return to Appellants Motion to Reinstate the Appeal.

Ex. 3 – Justice Kay G. Hearn's Order of May 14, 2008 reinstating the Appeal with leave to file and serve Brief and Designation by June 13, 2008.

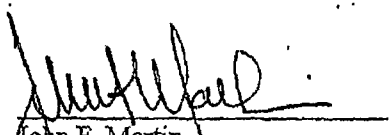
Ex. 4 – Respondents Motion to Dismiss for failure to comply with Justice Hearn's Order.

Ex. 5 – Respondents Return to Appellant's Motion for an Extension of Time.

Having replied to the Appellant's Rule 225 (d) motion, the Respondents respectfully request Appellants' motion be dismissed and this appeal ended.



Bruce A. Berlinsky
Attorney for Respondent Marie Smith



John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Joseph S. Mendelsohn, Special Referee

Case No.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE BALLAM;)
RUBY BALIUM a/k/a RUBY BALAAM;)
VERDONE GRAY; JULIE B. JOHNSON;)
and MONICA MIDDLETON,)

Plaintiffs, Respondents)

versus)

ROOSEVELT SIMMONS, LEON)
SINGLETON, MABEL SINGLETON HICKS)
a/k/a MAYBELL HICKS, WALTER BURNS;)
SHEILA B. OWENS, LOUISE CANTY;)
ALONZETTA BURNS; SHARON BURNS,)
MELVIN SINGLETON, MARIE SMITH,)
ELMORE SINGLETON, THEODESIA)
SINGLETON, MILDRED SINGLETON)
MAHONEY, ANDRE SINGLETON, EUGENE)
LEON ELIJAH SINGLETON, ERNEST)
GREEN, Jr., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS, DELBERT)
BURNS, JOE LOUIS BURNS, JR., a/k/a)
JOE LEWIS BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA BURNS,)
TREMAYNE BURNS, JOSHUA BURNS,)
JARRED BURNS, AMBER BURNS, if they)
be alive, and JOHN DOE and MARY ROE,)
adults, and Richard ROE and JANE DOE,)
infants, person under disability or)
incompetence, if any, including those)
persons who might be in the military)

FILED
2008 OCT 31 PM 3:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY BY

covered under the Soldier's Relief Act,)
fictitious names designating the)
unknown heirs, devisees, distributes,)
issue, executors, administrators,)
successors or assigns of the above)
named Defendants, and also the)
following deceased persons: ESTATE OF)
SAMUEL BAILUM a/k/a SAMUEL)
BAALUM, deceased or the ESTATE OF)
HESTER SINGLETON BAILUM a/k/a)
ESTHER BAILUM a/k/a ESTHER BAALUM,)
HESTER SINGLETON BAALUM, THOMAS)
BAILUM, SAMUEL BAILUM, SAMMY)
BAILUM, FANNIE BAILUM MIDDLETON,)
MARY BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE BURNS,)
JERRY SINGLETON, ARTHUR SINGLETON)
EUGENE SINGLETON, RICHARDINE)
SINGLETON, EUGENE SINGLETON, JR.,)
GARY SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS, ARTHUR LEE)
BURNS, ARLENE GREEN, ERNEST)
GREEN, JOE LOUIS BURNS a/k/a JOE)
LEWIS BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS, JR.,)
and all other persons know or claiming)
any right, title, estate in or lien upon the)
the real estate in or lien upon the real)
estate described in the Complaint herein,)

Defendant. Respondents)

Of whom)
Roosevelt Simmons is the)

Defendant/Appellant)

MOTION FOR RECONSIDERATION

The above named Appellant, through his undersigned attorney, with leave of Court, pursuant to SCRAP, Rule 225 (d) (2) petitions the full appellate court for a review and reconsideration of its Order filed October 24, 2008 denying the Appellant's Motion for the Court to withdraw and recall its Order of Remittitur and reinstating the appeal herein.

The grounds for the Motion are the following:

1. The record of this proceeding from the Appellant's counsel first filing a Writ of Supersedeas to filing the Appellant's brief demonstrates that counsel has not been dilatory in proceeding with this appeal and the absence of the Plaintiff/Appellee not having provided a full transcript of the proceedings made the undertaking of the appeal more complicated and arduous, especially where the following factors are considered:

1. Appellant's counsel was not involved with the proceedings below until after the filing of the Special Referee's Final Order.

2. Upon reading the Motion for Writ of Supersedeas and the Appellant's Brief it is clearly shown that the Appellant has a meritorious appeal and that in balancing the equities involved between the parties a greater injustice would be inflicted by dismissing this appeal on technical grounds whether than the merits.

3. That the Appellant is indigent and has not had the financial ability to contribute towards the expense of the undertaking of this appeal.

4. That during this appellate process appellant's counsel was recuperating from three hospitalization periods while involved with three other simultaneous appeals before this court and one before the

United States Court of Appeals for the Fourth Circuit; all which appear in the record of this proceeding.

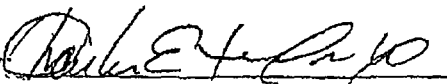
5. That the preparation of the Record on Appeal where the record of the Circuit Court proceeding was void of transcribed evidential matters was a gargantuan undertaking necessitated more time than permitted by the SCRAP.

6. That the Court erred in denying the Appellant's Motion for Supersedeas under which the matter could have been corrected to provide a complete record of transcribed testimony.

7. That counsel is a sole practitioner representing indigenous clients having limited resources himself while under medical impairment attempting under the best of his ability to administer and fulfill his oath of office as an attorney to "assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any persons cause for profit or malice"

Respectfully submitted

THE Houston Law Firm, LLC
326 Brown Cove Road, Bldg. 801D
Ridgeland, SC 29936
Telephone: (843) 645-9120
Facsimile: (843) 645-9121
E-mail: charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr.
Attorney for the Appellant

Ridgeland, South Carolina
October 30, 2008

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 10 2008

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. Joseph S. Mendelsohn, Special Referee

CASE NO.: 2004-CP-10-1459

HATTIE BAILUM a/k/a HATTIE)
BALAAM; RUBY BAILUM a/k/a)
RUBY BALAAM; VERDONE)
GRAY; JULIE B. JOHNSON; and)
MONICA MIDDLETON,)

Plaintiffs, Respondents)

vs.)

ROOSEVELT SIMMONS,)
LEON SINGLETON, MABEL)
SINGLETON HICKS a/k/a)
MAYBELL HICKS; WALTER)
BURNS; SHEILA B. OWENS,)
LOUISE CANTY; ALONZETTA)
BURNS; SHARON BURNS,)
MELVIN SINGLETON; MARIE)
SMITH, ELMORE SINGLETON,)
THEODESIA SINGLETON,)
MILDRED SINGLETON)
MAHONEY, ANDRE)
SINGLETON, EUGENIE)
SINGLETON, LEON ELIJAH)
SINGLETON, ERNEST GREEN,)
JR., KAREN GREEN, DELORIS)
GREEN, JOAN GREEN WELLS,)
DELBERT BURNS, JOE LOUIS)
BURNS, JR., a/k/a JOE LEWIS)
BURNS, JR., VONIE BURNS,)
SHELLY BURNS, ANASTACIA)
BURNS, TREMAYNE BURNS,)
JOSHUA BURNS, JARRED)

R 630

BURNS, AMBER BURNS, if they)
 be alive, and JOHN DOE and)
 MARY ROE, adults, and RICHARD)
 ROE and JANE DOE, infants,)
 persons under disability or)
 incompetence, if any, including those)
 persons who might be in the military)
 and covered under the Soldier's and)
 Sailor's Relief Act, fictitious names)
 designating the unknown heirs,)
 devisees, distributees, issue, executors,)
 administrators, successors or assigns)
 of the above named defendants, and)
 also the following deceased persons:)
 ESTATE OF SAMUEL BAILUM)
 a/k/a SAMUEL BALAAM,)
 deceased or the ESTATE OF)
 HESTER SINGLETON BAILUM)
 a/k/a ESTHER BAILUM a/k/a)
 ESTHER BALAAM, HESTER)
 SINGLETON BALAAM,)
 THOMAS BAILUM, SAMUEL)
 BAILUM, SAMMY BAILUM,)
 FANNIE BAILUM MIDDLETON,)
 MARY WARREN, WILLIS)
 BAILUM, TONY BAILUM, MARY)
 BAILUM, SAM BAILUM, HESTER)
 BAILUM, JOSH SINGLETON,)
 ELOUISE SINGLETON, CARRIE)
 BURNS, JERRY SINGLETON,)
 ARTHUR SINGLETON, EUEGENE)
 SINGLETON, RICHARDINE)
 SINGLETON, EUEGENE)
 SINGLETON, JR., GARY)
 SINGLETON, CHRISTOPHER)
 BURNS, JULIUS BURNS,)
 ARTHUR LEE BURNS, ARLENE)
 GREEN, ERNEST GREEN, JOE)
 LOUIS BURNS a/k/a JOE LEWIS)
 BURNS, EMILY BURNS, QUEEN)
 SINGLETON, and JULIUS BURNS,)
 JR., and all other persons known or)
 claiming any right, title, estate in or)
 lien upon the real estate described in)
 the Complaint herein,)
)

be alive, and JOHN DOE and)
MARY ROE, adults, and RICHARD)
ROE and JANE DOE, infants,)
persons under disability or)
incompetence, if any, including those)
persons who might be in the military)
and covered under the Soldier's and)
Sailor's Relief Act, fictitious names)
designating the unknown heirs,)
devisees, distributes, issue, executors,)
administrators, successors or assigns)
of the above named defendants, and)
also the following deceased persons:)
ESTATE OF SAMUEL BAILUM)
a/k/a SAMUEL BALAAM,)
deceased or the ESTATE OF)
HESTER SINGLETON BAILUM)
a/k/a ESTHER BAILUM a/k/a)
ESTHER BALAAM, HESTER)
SINGLETON BALAAM,)
THOMAS BAILUM, SAMUEL)
BAILUM, SAMMY BAILUM,)
FANNIE BAILUM MIDDLETON,)
MARY WARREN, WILLIS)
BAILUM, TONY BAILUM, MARY)
BAILUM, SAM BAILUM, HESTER)
BAILUM, JOSH SINGLETON,)
ELOUISE SINGLETON, CARRIE)
BURNS, JERRY SINGLETON,)
ARTHUR SINGLETON, EUGENE)
SINGLETON, RICHARDINE)
SINGLETON, EUGENE)
SINGLETON, JR., GARY)
SINGLETON, CHRISTOPHER)
BURNS, JULIUS BURNS,)
ARTHUR LEE BURNS, ARLENE)
GREEN, ERNEST GREEN, JOE)
LOUIS BURNS a/k/a JOE LEWIS)
BURNS, EMILY BURNS, QUEEN)
SINGLETON, and JULIUS BURNS,)
JR., and all other persons known or)
claiming any right, title, estate in or)
lien upon the real estate described in)
the Complaint herein,)
Defendants,)

R632

Defendants,)
Of Whom Roosevelt Simmons is)
the Appellant)
)
And Marie Smith is a Respondent.)
_____)

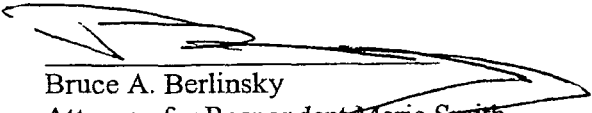
RETURN TO APPELLANTS' MOTION FOR RECONSIDERATION

The above named Respondents by and through their undersigned counsel submit the following Return to the Appellant's Motion for Reconsideration served via US Mail on October 30, 2008 and received November 3, 2008.

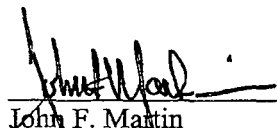
The Respondents respectfully request the Court deny the Appellant's Motion. The Appellant sets forth no error of law or procedure which would support the relief he seeks. Further, Rule 225(b)(2) of the Appellate Court Rules which Appellant asserts as the basis for his Motion addresses matters of Stays or Supersedeas and not the relief which Appellant seeks. Rule 221 governs petitions for rehearings. Any such petition must state with particularity the points overlooked or misapprehended by the Court. The Appellant's Motion does nothing more than restate earlier arguments and does not set forth with particularity any matter of law or procedure previously overlooked by the Court. Each matter set forth by Appellant has been fully addressed in the record before the Court.

The Respondents respectfully crave reference to the record and ask that this Motion be dismissed.

(SIGNATURE PAGE TO FOLLOW.)



Bruce A. Berlinsky
Attorney for Respondent ~~Marie Smith~~



John F. Martin
Attorney for Respondents Hattie
Bailum, Ruby Bailum, Verdone
Gray, Julie B. Johnson, and
Monica Middleton

Charleston, South Carolina
November 7, 2008

Transcript of Special Referee Hearing

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

HATTIE BAILUM, RUBY BAILUM,
VERDONE GRAY, ESTATE OF CLARA
BAILUM, and ESTATE OF THOMAS
BAILUM,

Plaintiffs,

vs.

CASE NO. 04-CP-10-1459

ROOSEVELT SIMMONS, JULIE JOHNSON,
MONICA MIDDLETON, PAUL MIDDLETON
(2), ESTATE OF JOSEPHINE SIMMONS
BAILUM, ESTATE OF ELLIS BAILUM,
ESTATE OF SAMUEL BAILUM (2), ESTATE
OF BUBSY BAILUM, ESTATE OF WALTER
BAILUM, ESTATE OF MARY BAILUM,
ESTATE OF TONY BAILUM, ESTATE OF
FANNIE BAILUM, ESTATE OF
EVELYN BAILUM, ESTATE OF ELIZA
MACK BAILUM, ESTATE OF SARAH
BAILUM, ESTATE OF SAMUEL BAILUM (3),
ESTATE OF PAUL MIDDLETON (1), ESTATE
OF ESTHER SINGLETON BAILUM, ESTATE
OF JULIA MORRIS BAILUM, LEON ELIJAH
SINGLETON, MABEL SINGLETON HICKS,
WALTER BURNS, ALONZETTA BURNS,
SHEILA BURNS OWENS, LOUISE CANTY
and J. DOE, adults, and M. ROE, infants,
insane persons, incompetents, being
fictitious names designating a class
of persons, known or unknown, who may be
heirs, distributees, devisees, legatees,
widow, widower, assignees, executors,
administrators, creditors, successors,
issue, and alienees of the ESTATE of
SAMUEL BAILUM, deceased, and ALL OTHER
PERSONS UNKNOWN, claiming any right,

Clark & Associates, Inc.
843.762.6294

R635

565e526c-70cf-41ad-85eb-3fb7ac6b1549

Transcript of Special Referee Hearing

Page 2

1 title, estate, interest in or lien
2 upon the real property described in the
3 complaint, adverse to plaintiffs'
4 ownership, or any cloud on plaintiff's
title,
5 Defendants.

6 BEFORE THE HONORABLE JOE MENDELSON

7
8 DATE: MAY 15, 2006

9 TIME: 10:00 AM

10 LOCATION: MARTIN LAW FIRM
11 113 Wappoo Creek Drive
12 James Island, South Carolina
13
14
15
16
17
18
19
20
21

22 REPORTED BY:

ANGELA VANOY, ~~W. R. V. Name of~~
COURT REPORTER
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294

23
24
25
Clark & Associates, Inc.
843.762.6294

R636

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

MARTIN LAW FIRM
BY: JOHN MARTIN
113 Wappoo Creek Drive
James Island, SC 29412

ON BEHALF OF THE DEFENDANTS:

LOUIS E. CONDON LAW FIRM
BY: LOUIS E. CONDON
999-B Morrison Drive
Charleston, SC 29403

GUARDIAN AD LITEM:

MCCANN LAW FIRM
BY: FRANCIS MCCANN
66 Hassell Street
Charleston, SC 29401

SPECIAL REFEREE:

JOSEPH S. MENDELSON
104 Broad Street
Charleston, SC 29401

Transcript of Special Referee Hearing

Page 16

1 MR CONDON: He's just called Ms. Hattie
2 Bailum on the phone, and I wanted you all to hear
3 what she had to say.

4 MS. MAGWOOD: Okay.

5 MR. MARTIN: Ms. Bailum, can you hear me?

6 MS. BAILUM: Yes, I can hear you.

7 MR. MARTIN: I think everybody here can
8 hear you. Judge, are you ready?

9 THE COURT: Yes, sir, I'm ready. Ms.
10 Bailum?

11 MS. BAILUM: Yes.

12 THE COURT: This is Joe Mendelsohn.

13 HATTIE BAILUM,
14 having been first duly sworn, was examined and testified
15 as follows:

16 THE COURT: Ms. Bailum, Mr. Martin is
17 going to ask you some questions, and then Mr. Condon,
18 if he has any, will ask you some questions, and if I
19 have any, I'll ask you some questions. I'm not sure
20 what your situation is where you are, but in the
21 event that you need a break or if you lose contact
22 with us, we'll call you back or whatever. So just
23 hang up the telephone, but hopefully, that won't
24 occur.

25 THE WITNESS: Okay.

Transcript of Special Referee Hearing

Page 127

1 to talk to now?

2 MR. MARTIN: Verdone Gray, V-E-R-D-O-N-E,
3 Gray, G-R-A-Y.

4 THE COURT: Verdone Gray?

5 MR. MARTIN: Right. Yes.

6 MR. MARTIN: Ms. Gray, it's Mr. Martin.
7 The people that are here are myself, Judge Joe
8 Mendelsohn, who will speak to you in a minute and
9 give you the oath, Mr. Louis Condon, who represents
10 Roosevelt Simmons, Mr. Simmons and the court
11 reporter. And so Judge Mendelsohn will put you under
12 oath, and then we'll ask you some questions. I'll
13 start first, and then Mr. Condon may have some other
14 questions for you. And then if you would answer all
15 of our questions for us, we'd appreciate it.

16 MS. GRAY: Okay. Thank you.

17 VERDONE GRAY,
18 having been first duly sworn, was examined and testified
19 as follows:

20 THE COURT: Mr. Martin will take it from
21 here.

22 EXAMINATION

23 BY MR. MARTIN:

24 Q. Thank you, Ms. Gray. For the record, what
25 is your full name, please?

Transcript of Special Referee Hearing

Page 128

1 A. I'm sorry?

2 Q. For the record, what is your full name,
3 please?

4 A. Verdone Gray.

5 Q. And where do you reside?

6 A. I reside at 3223 Grand Concord, New York.

7 Q. And are you the daughter of Sammy Bailum
8 and Ruby Bailum?

9 A. That's correct.

10 Q. And is your grandfather Samuel Balium who
11 was married to Julie Morris Bailum?

12 A. That's correct.

13 Q. And did your grandfather own property in
14 Charleston, South Carolina?

15 A. That's correct.

16 Q. Did he own property along with his
17 brothers and sister?

18 A. Yes.

19 Q. And did his father, Samuel Bailum, which
20 would be your great-grandfather, also own property in
21 Charleston?

22 A. Yes.

23 Q. If you would, please, and I know you've
24 been sent a package of about 73 different documents.
25 Would you look at Exhibit Number 2 for me, please?

Transcript of Special Referee Hearing

Page 147

1 A. Yes.

2 Q. Did he frequently visit the property?

3 A. Yes.

4 Q. Did he receive and pay tax bills and pay
5 taxes?

6 A. Yes.

7 Q. And you have evidence of those taxes which
8 we just reviewed?

9 A. Yes.

10 Q. Now, since 1999, have Clara Bailum and
11 Hattie Bailum been dealing with the property?

12 A. Yes.

13 Q. And I've also sent you a copy of the
14 document marked the Bailum's family tree?

15 A. Uh-huh.

16 Q. To the best of your recollection and your
17 knowledge of your family, is that a true and accurate
18 reflection of the Samuel Bailum heirs?

19 A. Yes.

20 Q. Now, I see you on the left -- what I call
21 box of the chart where it says Verdone Bailum --

22 A. Yes.

23 Q. -- actually it's Verdone Gray --

24 A. Uh-huh.

25 Q. -- because you're married. But is that

Transcript of Special Referee Hearing

Page 148

1 correct where it shows you as the daughter of Sammy
2 and Ruby?

3 A. Yes.

4 Q. And then your cousin is Hattie?

5 A. Yes.

6 Q. And your cousin is Monica?

7 A. Yes.

8 Q. Hattie's parents were Thomas and Clara?

9 A. Uh-huh.

10 Q. And do you know this -- and you know of
11 your personal knowledge that Thomas and Clara were
12 married, and they were Hattie's parents?

13 A. Excuse me?

14 Q. Do you know of your personal knowledge
15 that Hattie's parents were Thomas and Clara?

16 A. Yes.

17 Q. And Thomas was your uncle?

18 A. Yes.

19 Q. And Sammy and Thomas, did they also have a
20 sister named Fannie?

21 A. Yes.

22 Q. And was she married to a gentleman named
23 Paul Middleton?

24 A. Yes.

25 Q. And did Fannie have a daughter named

Clark & Associates, Inc.

843.762.6294

R642

565e526c-70cf-41ad-85eb-3fb7ac6b1549

Transcript of Special Referee Hearing

Page 149

1 Monica?

2 A. Yes.

3 Q. And actually her name is Monica Middleton
4 now. So is your mother still alive?

5 A. Yes.

6 Q. And up the chain above your father, your
7 uncle and your aunt was Samuel who was married to
8 Julia Morris Bailum?

9 A. Yes.

10 Q. Did he have brothers and sisters?

11 A. Yes.

12 Q. Was he the last surviving, in that line,
13 to have children?

14 A. Sammy, yes.

15 Q. He outlived everybody else?

16 A. That's correct.

17 Q. And Sammy, your grandfather, was the son
18 of Sam Balium who was married to Hester Bailum?

19 A. Yes.

20 Q. So as we speak now, there are only four
21 Bailums left, Ruby, Verdone, Hattie and Monica; is
22 that correct?

23 A. No.

24 Q. There's one more. There's Julie, right?

25 A. Yes.

Clark & Associates, Inc.

843.762.6294

R 643

565e526c-70cf-41ad-85eb-3fb7ac6b1549

Transcript of Special Referee Hearing

Page 171

1 Q. And that was her maiden name, Mary Warren
2 Bailum?

3 A. Yes.

4 Q. And how old was she at the time of your
5 birth?

6 A. 19.

7 Q. Was your mother a second wife for Mr.
8 Bailum?

9 A. Yes, it certainly was.

10 Q. And this is the Sam Bailum who was married
11 to Verdone's father, Sammy?

12 A. Yes.

13 Q. Oh, excuse me. Let me back up. I got
14 myself confused there. This is the Sammy -- your
15 father was the Sam Bailum, the same one that was
16 married to Julia Morris Bailum?

17 A. Yes.

18 Q. That was his first wife. His second wife
19 was Mary Warren, your mother?

20 A. Yes.

21 Q. So you are Verdone's aunt?

22 A. Yes.

23 Q. Even though you're younger than her,
24 you're her aunt?

25 A. Yes, I am.

Clark & Associates, Inc.

843.762.6294

R 644

565e526c-70cf-41ad-85eb-3fb7ac6b1549

Transcript of Special Referee Hearing

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

SPECIAL REFEREE HEARING

4 HATTIE BAILUM a/k/a HATTIE BALLAM; RUBY BAILUM a/k/a
5 RUBY BALAAM; VERDONE GRAY; ~~JULIE B. JOHNSON~~; MONICA
6 MIDDLETON,

Plaintiffs, Respondents,

COPY

vs.

CASE NO. 04-CP-10-1459

7 ROOSEVELT SIMMONS, LEON SINGLETON, MABEL SINGLETON HICKS
8 a/k/a MAYBELL HICKS, WALTER BURNS; SHEILA B. OWENS,
9 LOUISE CANTY; ALONZETTA BURNS; SHARON BURNS, MELVIN
10 SINGLETON, MARIE SMITH, ELMORE SINGLETON, THEODESIA
11 SINGLETON, MILDRED SINGLETON MAHONEY, ANDRE SINGLETON,
12 EUGENE LEON ELIJAH SINGLETON, ERNEST GREEN, JR., KAREN
13 GREEN, DELORIS GREEN, JOAN GREEN WELLS, DELBERT BURNS,
14 JOE LOUIS BURNS, JR., a/k/a JOE LEWIS BURNS, JR., VONIE
15 BURNS, SHELLY BURNS, ANASTACIA BURNS, TREMAYNE BURNS,
16 JOSHUA BURNS, JARRED BURNS, AMBER BURNS, if they be
17 alive, and JOHN DOE and MARY ROE, adults, and Richard
18 ROE and JANE DOE, infants, person under disability or
19 incompetence, if any, including those persons who might
20 be in the military covered under the Soldier's Relief
21 Act, fictitious names designating the unknown heirs,
22 devisees, distributes, issue, executors, administrators,
23 successors or assigns of the above named Defendants, and
24 also the following deceased persons: ESTATE OF SAMUEL
25 BAILUM a/k/a SAMUEL BAALUM, deceased or the ESTATE OF
HESTER SINGLETON BAILUM a/k/a ESTHER BAILUM a/k/a ESTHER
BAALUM, HESTER SINGLETON BAALUM, THOMAS BAILUM, SAMUEL
BAILUM, SAMMY BAILUM, FANNIE BAILUM MIDDLETON, MARY
BAILUM, JOSH SINGLETON, ELOUISE SINGLETON, CARRIE BURNS,
JERRY SINGLETON, ARTHUR SINGLETON, EUGENE SINGLETON,
RICHARDINE SINGLETON, EUGENE SINGLETON, JR., GARY
SINGLETON, CHRISTOPHER BURNS, JULIUS BURNS, ARTHUR LEE
BURNS, ARLENE GREEN, ERNEST GREEN, JOE LOUIS BURNS a/k/a
JOE LEWIS BURNS, EMILY BURNS, QUEEN SINGLETON, and
JULIUS BURNS, JR., and all other persons know or
claiming any right, title, estate in or lien upon the
real estate in or lien upon the real estate described in
the Complaint herein,

Defendant, Respondents,
Of whom Roosevelt Simmons is the Defendant/Appellant.

Defendants.

Transcript of Special Referee Hearing

1 BEFORE: HON.. JOSEPH S. MENDELSON, SPECIAL REFEREE

2 DATE: JUNE 6, 2007

3 TIME: 9:30 A.M.

4 LOCATION: MARTIN LAW FIRM
113 Wappoo Creek Drive
5 Charleston, South Carolina

6 REPORTED BY: DENISE MCCAULEY, RPR, IA-CSR, GA-CCR
CLARK & ASSOCIATES
7 P.O. Box 73129
North Charleston, South Carolina 29422
8 (843) 762-6294

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A P P E A R A N C E S:
2 BEFORE:
3 HON. JOSEPH S. MENDELSON,
4 Special Referee
5 P.O. Box 250
6 Charleston, South-Carolina 29402

7 ON BEHALF OF THE PLAINTIFFS:

8 MARTIN LAW FIRM
9 BY: JOHN F. MARTIN, ESQ.
10 113 Wappoo Creek Drive
11 Charleston, South Carolina 29412
12 (843)762-2121

13 ON BEHALF OF THE DEFENDANT, MARIE SMITH:

14 BY: BRUCE A. BERLINSKY, ESQ.
15 P.O. Box 206
16 Charleston, South Carolina 29402

17 ON BEHALF OF THE DEFENDANT, ROOSEVELT SIMMONS:

18 THE HOUSTON LAW FIRM
19 BY: CHARLES E. HOUSTON, JR.
20 Four Carriage Lane, Suite 206
21 Charleston, South Carolina 29407
22 (843)406-0101

23 ALSO PRESENT:

24 ROOSEVELT SIMMONS
25

R 647

Transcript of Special Referee Hearing

1 reconsidered by me. I signed it. It was an order
2 denying -- I made some changes to it.

3 MR. MARTIN: It related to Bruce's --

4 ~~THE COURT: Related to Bruce.~~

5 MR. BERLINSKY: Related to, yeah, my motion.

6 THE COURT: And I made some changes, and
7 then that order was signed, and that's the final
8 order of this case as amended. Then there was a
9 motion by Louie Condon to reconsider the order. We
10 did make some changes.

11 MR. MARTIN: Only to Bruce.

12 THE COURT: Only to Bruce.

13 MR. MARTIN: Right.

14 THE COURT: And then I denied any other
15 changes as it applies to Mr. Simmons. And so that
16 order as amended is now the order of the court.
17 Then Mr. Simmons files his pro se appeal, and he
18 does that on March the 27th. And I guess any way
19 you look at it that was timing.

20 MR. MARTIN: Because he was served, for the
21 record, and there's a recorded in the clerk of
22 court affidavit of service where he was personally
23 served with those orders on March the 6th, so he
24 was well within his appeal time.

25 THE COURT: He -- yeah. So he then timely

Transcript of Special Referee Hearing

1 files an appeal. Then I don't know what happens,
2 because all the next thing I know you make demand
3 on me to sign deeds, and simultaneously or close to
4 it I get the appearance of Mr. Houston and a
5 petition for me not to do that. And that's the
6 reason I called it today is to figure out where we
7 need to go with that, so --

8 MR. HOUSTON: There was also one other
9 outstanding matter, and that was the matter of
10 Mr. Simmons' right to purchase the property, and I
11 think he produced the financial evidence.

12 MR. MARTIN: First of all, that's water
13 under the bridge. It was a matter decided by the
14 court. There's an amended order which was specific
15 as to what Mr. Simmons do. He failed to do it.
16 That's why I've asked the judge to issue the deeds.

17 MR. HOUSTON: Well, that has to be
18 determined whether or not he failed to do it or
19 not, because he has the letter from the bank
20 pertaining to the --

21 MR. SIMMONS: Everybody got that memo. I
22 mailed a copy to everybody who was concerned.

23 MR. HOUSTON: Do you have that? I need
24 that.

25 THE COURT: I made a finding on February the

Transcript of Special Referee Hearing

1 16th that Mr. Simmons has had ample time to secure
2 a loan commitment or other acceptable financing to
3 buy out the interest of all other heirs.

4 -- MR. MARTIN: ~~There's the exact provision~~
5 right there.

6 MR. HOUSTON 2: Is that in an order?

7 MR. MARTIN: It's in two orders.

8 MR. HOUSTON: Which one is that in?

9 MR. MARTIN: The amended order and the order
10 denying post-trial motions. Very precise, very
11 specific language. Judge, it's in Paragraph 2 of
12 your final order.

13 THE COURT: I'm just -- okay. Marie Smith,
14 that's Bruce's --

15 MR. BERLINSKY: My client.

16 THE COURT: -- Bruce's lady. We made an
17 order about that and made that. Then it goes to
18 the second paragraph, Mr. Simmons. Mr. Simmons
19 raises by motion an affidavit numerous matters for
20 the court to consider in his support of his
21 argument for reconsideration of a new trial. Those
22 objections are fully set forth on this motion. An
23 affidavit filed in support. The court has
24 carefully considered each of those -- each of
25 Mr. Simmons' arguments and respectfully denies each

Transcript of Special Referee Hearing

1 of them.

2 The evidentiary hearing in this matter,
3 testimony, and documentary evidence were preserved
4 by a court reporter. The transcript copy of the
5 exhibits are available to any party who wishes to
6 see them. As for the adverse possession with
7 regard to all parcels of land at issue, the court
8 finds there has been no error of law or procedure
9 with regard to its findings and conclusions.

10 As for the time allowed Mr. Simmons after
11 service of the order to obtain financing, it goes
12 on to explain that an appraisal was obtained, made
13 available to everybody two years ago. Final order
14 was served January 11, 2007. It was then since
15 amended. The first final order was January, 2007.

16 MR. MARTIN: Right.

17 THE COURT: It was then since amended, and
18 basically the court found that Mr. Simmons just
19 simply hasn't done what it was that the court had
20 basically ordered that he had the opportunity to
21 do. Not that he had to do it. It was just that he
22 had a chance to do it.

23 MR. MARTIN: And that was in the January
24 order, and it was again stated in the February
25 order, and in neither instance Mr. Houston

Transcript of Special Referee Hearing

1 complied.

2 THE COURT: So, Mr. Houston, there isn't
3 anything else --

4 MR. HOUSTON: Here --

5 THE COURT: There isn't anything else to do
6 in regards to what Mr. Simmons has done or not
7 done. He -- that may be an issue for an appeal,
8 but that's not where we are today. Where we are
9 today is for you --

10 MR. HOUSTON: Well, I just want to get a
11 point for the record.

12 THE COURT: Sure.

13 MR. HOUSTON: Was he given a specific time
14 in which to provide proof of financing?

15 MR. SIMMONS: Ten days.

16 MR. MARTIN: In both orders.

17 THE COURT: In both orders he was given ten
18 days, in Paragraph 2 of both orders.

19 MR. HOUSTON: All right. Now, was -- what
20 date was that?

21 MR. MARTIN: The first order was January
22 11. The second order was February 16. And in
23 neither case did he comply with the order.

24 THE COURT: Right. In either case he
25 didn't, he didn't do what, apparently did not do

Transcript of Special Referee Hearing

1 what he was supposed to do, which was to provide
2 certain things.

3 MR. HOUSTON: Well, was this made a part of
4 the record, this letter here from the bank?

5 MR. BERLINSKY: It's dated a month after the
6 hearing. It couldn't have possibly been made part
7 of the record.

8 THE COURT: Well, first of all, Mr. Houston
9 -- excuse me, gentlemen. This is, this letter, is
10 a letter to Frederick Fields. This is not a letter
11 to Mr. Simmons. This is a letter to Frederick
12 Fields, number one. And, number two, this is a
13 letter to -- it's March the 16th. And the order of
14 the court, the last order of the court as
15 amended --

16 MR. HOUSTON: Well, I think I know how we
17 can solve that, Your Honor.

18 THE COURT: Whoa, wait a minute, gentlemen.
19 Just hang on. Keep it orderly. The last order of
20 the court was February the 16th, and it was filed
21 March the 16th. The order of the court was filed
22 March the 16th, and the amended order of the court
23 was --

24 MR. BERLINSKY: The 6th.

25 MR. MARTIN: Served on the 6th.

Transcript of Special Referee Hearing

1 THE COURT: The 6th. I'm sorry. And the
2 order that the letter you have from the bank --

3 MR. MARTIN: March 16.

4 THE COURT: ~~-----is dated March the 16th, but~~
5 it's not -- it doesn't, it doesn't say anything
6 about Mr. Simmons.

7 MR. HOUSTON: Well, I tell you how we can
8 treat that, your honor, how we're going to treat
9 that. We'll file a motion for relief of judgment
10 on that particular issue, produce our evidence, and
11 then the court can rule on that particular matter
12 rather than going through it now.

13 MR. MARTIN: Well, and very briefly for the
14 record, this is a letter to Mr. Fields for him to
15 purchase a percentage interest in a parcel of land
16 on River Road. It's not addressed to Mr. Simmons.
17 And the order specifically states that Mr. Simmons'
18 right to purchase is non-assignable and
19 non-transferable. This is an assignment of a
20 purchase interest made to Mr. Fields. It was never
21 recorded with the clerk of court as required by two
22 orders, so it's of no effect.

23 MR. HOUSTON: Who was it filed with?

24 THE COURT: It wasn't filed with anybody.

25 MR. SIMMONS: I sent Mr. Martin an order and

Transcript of Special Referee Hearing

1 I sent Mr. Berlinsky.

2 MR. HOUSTON: A copy of this?

3 MR. SIMMONS: Proof of where the money was
4 coming from.

5 MR. HOUSTON: You sent them a copy of this
6 letter?

7 MR. SIMMONS: Yeah. I delivered the judge
8 that copy of that to his office.

9 THE COURT: I don't deny that. It's
10 probably in there somewhere.

11 MR. SIMMONS: I left there with your
12 secretary and made sure she got it, and she said --

13 MR. HOUSTON: Well, what we'll do on that
14 particular point, your honor, is we'll raise a
15 motion for relief of judgment and address this
16 matter in that particular motion.

17 MR. MARTIN: I think you're barred from
18 doing that because you've appealed the order and
19 that is an item which is in both orders, so I think
20 you have to address that with the Supreme Court.

21 THE COURT: The only thing I've got, first
22 of all --

23 MR. MARTIN: The only thing you have
24 jurisdiction over is a motion to stay or
25 supersedeas.

1 pending the conclusion of the appeal.

2 MR. HOUSTON: Right.

3 THE COURT: And you cite 18.9.160, 18.9.170.

4 What are those? Is that the appellate rules?

5 MR. MARTIN: Is 18.9.170 is says the
6 property is not stayed by an appeal.

7 THE COURT: Okay. I've are read that
8 before.

9 MR. MARTIN: And rule 225 is the appellate
10 rule on the same issue.

11 THE COURT: There's a list. There's a list
12 of things that are stayed, and there's a list of
13 things that are not stayed.

14 MR. MARTIN: Uh-huh.

15 THE COURT: And this falls in the category
16 of not stayed.

17 MR. MARTIN: Correct.

18 THE COURT: Like child support, like
19 alimony, like all those kind of things.

20 MR. MARTIN: For the record, 225 --

21 THE COURT: Tell me why -- tell me number
22 one why I should stay it, please, and under the
23 circumstances of staying it, what do we do to
24 protect the other people in this case and the third
25 parties who have contracts to pay a better than

R 656

1 fair market value or the fair market value of this
2 property, and so tell me about that.

3 MR. HOUSTON: All right. Thank you, Your
4 Honor. I appreciate this opportunity. And I think
5 that you have framed the substantive issue that
6 needs to be addressed quite succinctly, and I plan
7 to respond to it in a likewise manner, Your Honor.

8 Your Honor, this is the heart and germane
9 aspect of the points that we were going to bring up
10 on an appeal, and this is the same reasons why
11 we've urged the court not to go ahead with the sale
12 of this property at this particular time. Because
13 if it's sold at this particular time, irreparable
14 damage would be caused in the future when we
15 prevail on this particular matter.

16 Now, why do we feel strongly that we're
17 going to prevail? There are grave evidentiary
18 problems with the evidence in this particular case
19 as to the ancestry of this particular property.
20 What we have that may be in the form of newly
21 discovered evidence are the census reports that
22 were not introduced in this particular proceeding.

23 And the first thing is the evidence that was
24 produced in the proceeding as to the birth
25 certificates, the marriage licenses, and the death

R657

1 certificates would show that the deed conveyed in
2 1905 to Sam Bailum and others was not to Sam
3 Bailum, Jr., but that deed was conveyed to Sam
4 Bailum, I, and his siblings and not his nieces and
5 nephews.

6 So the whole chain of the ownership of the
7 property is affected right there. You know, we
8 have a Tony Bailum. He died in September 2, 1925.
9 He was 47 years of age at the time this census was
10 taken.

11 THE COURT: Who?

12 MR. HOUSTON: Tony.

13 THE COURT: Tony who?

14 MR. HOUSTON: Bailum. He was the brother of
15 Sam Bailum, I, not his nephew. See, that whole
16 line where they say, you know, that deed of 1905,
17 those people who the plaintiffs claim it was
18 granted to weren't even alive at that particular
19 time. Those -- that deed was conveyed to Sam
20 Bailum, I, and his heirs, and not Sam Bailum, II.
21 Sam Bailum, II, would not have been old enough at
22 that particular time to have received a deed.

23 And if you look at the death certificate and
24 birth certificate and marriage license of Sam
25 Bailum, II, it will show from the plaintiff's own

1 evidence that he was not born at that particular
2 time the deed was made. So the deed couldn't have
3 been to him. So this upsets the whole
4 distribution.

5 THE COURT: How?

6 MR. HOUSTON: Because what it does is
7 they're claiming under title, and they had no
8 title. They're claiming on a partition date. So
9 this affects not only the property that has been
10 part of this action, but it affects all the other
11 properties and other actions also.

12 THE COURT: How?

13 MR. HOUSTON: Because they didn't have
14 title.

15 THE COURT: Who didn't have title?

16 MR. HOUSTON: They never received a
17 two-thirds interest, a separate interest. What
18 they're saying, the court here ordered was that
19 Sam -- that Mr. Simmons only is entitled to
20 one-third of a particular portion. I think it was
21 15 acres. And our position is that, no, he would
22 at least be at least one-third of the entire thing,
23 because that --

24 THE COURT: When you say the entire thing,
25 what's the entire thing? What does that mean to

1 you?

2 MR. HOUSTON: The entire 50 acres, the
3 entire 54-acre tract.

4 THE COURT: That would be parcels --

5 MR. MARTIN: -- one, two, three, and four.
6 He's claiming a one-third interest in all four
7 parcels.

8 MR. HOUSTON: And this would also come back
9 to shine a different light on his claim for adverse
10 possession.

11 THE COURT: Why?

12 MR. HOUSTON: Because it would eliminate
13 their claim of possession under the claim of
14 title. And basically we also may be looking at
15 some -- I forget the word where you give false
16 testimony in court.

17 MR. SIMMONS: Perjury.

18 MR. HOUSTON: Perjury. And this also ties
19 in with the fact that the people who gave this
20 testimony, they didn't have the court reporter
21 there to identify them as particular persons. Now,
22 they can say, well, somebody else was an imposter.

23 So what we plan on doing, Your Honor, is ask
24 the court if they either would remand, you know,
25 ask the court to remand this thing back so we can

R 660

1 bring the motion before you on the basis of newly
2 discovered evidence and let you rule upon it,
3 rather than take the time to go through all of
4 these issues on appeal. Because as I said before,
5 we're not here for any dilatory tactic, but we are
6 here for the truth to come out.

7 THE COURT: Okay.

8 MR. HOUSTON: And these are the reasons why
9 I asked you to stay the signing of these deeds and
10 also for waiving, you know, the requirement of my
11 client posting bond. Because we do have a
12 meritorious cause. And for everybody's edification
13 here, here's my proof.

14 THE COURT: What?

15 MR. HOUSTON: I said for everyone's
16 edification, here is our proof.

17 THE COURT: What is that?

18 MR. HOUSTON: That's the census data.

19 MR. MARTIN: But it's not --

20 MR. HOUSTON: It hasn't been introduced in
21 evidence, but it's available.

22 THE COURT: All right. Do you have anything
23 else you want me to listen to?

24 MR. HOUSTON: Well, what I was going to do,
25 let me put this into evidence for the reasons

R 661

1 why --

2 THE COURT: You want to put this in evidence
3 right now?

4 MR. HOUSTON: Right. On the grounds that
5 why the deed should not be granted and that we have
6 a meritorious claim.

7 MR. MARTIN: And just for procedural
8 grounds, if he's moving to put it into evidence, I
9 would object to it coming in as there's no grounds
10 for it, it's not substantiated, and there's no
11 certification it's a true and accurate record, and
12 it's not exempt under the hearsay rules. So for a
13 variety of reasons at this point for a motion
14 hearing on a motion to stay, I would object to an
15 attempt to interject evidence in that was not
16 relevant to the motion to stay.

17 MR. HOUSTON: The court can take judicial
18 notice of the census records.

19 THE COURT: All right. I'm going to, for
20 purposes of the motion, I'm going to accept the
21 records, and I'm going to mark them for purposes of
22 this motion. I'm going to put Motion Number 1,
23 6/6/07, and I initialed it. I'm going to make that
24 a part of this record.

25 Then I'm going to make this one Motion

R 662

1 Number 2, 6/6, and I'm going to initial it. Then
2 I'm going to make that a part of this record. And
3 there's another one, and I'm going to make that
4 Motion Number 3 6/6/07, and I'm going to make that
5 a part of the record in this motion. Okay.

6 MR. BERLINSKY: Your Honor, before you
7 proceed, let me just put on the record so it's
8 preserved. I don't know if I'm going to argue it
9 later on or not, but I'm going to object for the
10 same reasons Mr. Martin did.

11 THE COURT: Well, I've got that in.
12 Objections by Berlinsky and Martin and statement of
13 the record. Although they'll be in, just tell me
14 too little too late, not verified.

15 MR. MARTIN: Not verified, hearsay -- not
16 verified, hearsay, not newly discovered evidence,
17 and I can go into the substance of it in a moment.

18 THE COURT: I'm going to let you go in a
19 minute.

20 MR. MARTIN: Yeah. Just it's not, it's not
21 relevant to the issue for motion to stay.

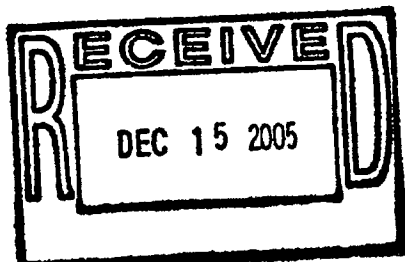
22 THE COURT: Let's keep it in order now. All
23 right. I've heard what you had to say about why I
24 should stay and why I should accept these as
25 evidence. I've accepted them over objections just

R 663

-1459

Att: Roger M. Young
CHIEF ADMINISTRATIVE JUDGE

Roosevelt Simmons
3416 Kitford Road
Johns Island, South Carolina
29455
(843) 559-1351



Re: Bailum VS Simmons
Case Number: 04-CP-10-1459
~~04-CP-10-1369~~
Date: November 30, 2005

File in Clerk's file

In Regards to the above matter, I'm writing this letter of concern. I have been dealing with this matter with you in superiority for some time. Under your instructions, the opposing persons were to report to you on matters discussed in an arbitrary setting on January 28, 2005 in the office of Skip Martin Attorney at law. There were questions and concerns that you ordered answered. I believe that Attorney Ruth Cupp failed to follow up on your request and that she did not make the opposing party comply. My daughter Carol Simmons wrote to her making her aware that we were not satisfied with her services. Attorney Cupp Found it necessary to remove herself from legal counsel for reasons I believe to be indicative of conflicting interests. To this date, there is still no concrete proof from the opposing side that I am not a family member of the Bailums, neither is there proof of a contract that the opposing party speaks of binding them to sale of the land. This matter is becoming costly to me in my quest to secure my family land. I have proven repeatedly my heritage. I have shown proof of taxes paid by me. I have controlling interest over the property. I have declined repeatedly monetary offers for settlement and will continue to decline these offers. My stance then and still is that the property is not for sale. I have since received correspondence from Roger M. Young Chief Administrative Judge Ninth Circuit in regards to Attorney Cupps request to relieve herself of counsel. As per his request I am responding with notification of my intent to proceed pro-se. A copy of this letter will be forwarded to the honorable Roger M. Young.

Respectively Yours,

Roosevelt Simmons
Roosevelt Simmons

R 664



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 18, 2008

Bruce Alan Berlinsky, Esquire
P.O. Box 206
Charleston, SC 29402

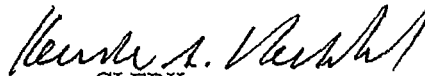
John F. Martin, Esquire
113 Wappoo Creek Dr.
Charleston, SC 29412

Re: Bailum, Hattie v. Simmons, Roosevelt

Dear Counsel:

We have received your Return to Motion for Reconsideration in the above matter. However, the Court is not considering that motion and it has been returned to counsel for the Appellant. We are herewith returning your original Return to you.

Very truly yours,


CLERK

KAR/ma

cc: Charles E. Houston, Jr., Esq.

R 665