

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

The Milton P. Demetre Family Limited Partnership Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,
and Annie Ruth Crowley Atkinson Respondents.

FINAL REPLY BRIEF OF APPELLANT

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1. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. MURRELL'S INLET CAMP & MARINA, INC., 259 S.C. 404, 192 S.E.2d 199 (1972) (A PLAT WHICH DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK IS IRRELEVANT TO DETERMINING WHETHER MARSH IS ABOVE OR BELOW THE MEAN HIGH WATER MARK), IN FINDING THAT THE WORDS "MARSH LAND" ON THE 1920 PLAT MEAN THAT THE PROPERTY IN THAT AREA IS NECESSARILY BELOW THE MEAN HIGH-WATER MARK WHERE THE 1920 PLAT DOES NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK?

A. Plats Cited by Master Do Not Locate the Mean High-Water Mark

Respondents argue that State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972), is inapposite because the plats in that case were not admitted into evidence.

However, Respondents make no return to the fact that the plats on which the Master relied in the present case do not locate the mean high-water mark.¹ Thus, those plats do not support his finding that the subject property was below the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972) ("The maps do not purport to locate the mean high-water mark and do not discriminate between high and low marsh in any manner . . . Since the record is barren of any evidence by which the jury could possibly correlate the platted line to this issue [of the location of the mean high-water mark], the conclusion of the judge that the plats were irrelevant is abundantly clear.")

Evidence, though admitted into the record, is insufficient to prove a fact it does not support. See Mack v. Edens, 464 S.E.2d 124, 126, 320 S.C. 236, 240 (Ct. App. 1995). In the present case, although two of the plats on which the Master relied were in evidence, they did not bear on the point of whether the property was high or low marsh. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 409, 192 S.E.2d 199, 201-02 (1972) ("If admitted, the plats would have been merely cumulative on this point [location of the inlet], and, since they bear on no other, their exclusion could not have prejudiced the State").

¹ The Master relied on the 1920, 1895, and 1786 Plats, none of which show the mean high-water mark. (1920 Plat) (R. p. 803) (R. p. 1068 – Oversized Document); (1895 Plat) (R. p. 658) (R. p. 1067 – Oversized Document). The 1786 Plat, which the Master cited in his Order on Remand at page 4, was not in evidence. The 2005 Kennerty Topographic Survey, which was in evidence, shows the mean high-water mark and that the subject property is highland. (2005 Kennerty Topographic Survey) (R. p. 384) (R. pp. 704, 1071 – Oversized Document).

Thus, the Master's finding that the subject property was below the mean high-water mark, based on plats admitted into evidence but not showing the mean high-water mark, conflicts with State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972).

B. Beckmann's Testimony Shows the Property was Above Mean High-Water Mark

Respondents next assert, although the Master did not cite Respondent Beckmann's testimony for this finding, that Beckmann's trial testimony at pages 298 through 317 supports the Master's finding that the property was below the mean high-water mark.

However, Respondents cite nothing specific in Beckmann's testimony, and it shows that the subject property was above the mean high-water mark, not below it. First, Beckmann testified that the profile drawing he submitted with his dock permit application showed about 400 feet of property above the high tide mark between his property line and the Folly River:

Q. Okay. And this is what you submitted to the Coastal Council, at that time, to obtain your permit?

A. That's true.

Q. Okay. And this does show, approximately, and just less than 400 feet of land between the end of your property and where the elevation of the property goes below the high tide mark?

A. That's what it shows.

(Beckmann Testimony, Trial Tr. 307:22 – 308:04) (R. pp. 910 – 11).

Second, Beckmann testified that had he searched the public records before building his dock he would have found that lots had been platted between his property and the Folly River:²

Q And so do you believe if you had gone to the RMC Office looking to see if anybody owned any lots, or other pieces of property out in front of you, you could have determined that these lots had been platted out in front of you?

A Well, I would agree that was on file in 1987.

(Beckmann Testimony, Trial Tr. p. 302:09 – 302:14) (R. p. 906).

² Respondent Beckmann further admitted that when he applied for his dock permit, the lots were also shown on the tax map. (Trial Tr. 302:15 – 302:24) (R. p. 906). (TMS 132).

Third, consistent with generally known data, Beckmann testified that, if anything, the water level has risen over time because there is a growing amount of water in the ocean. He also testified that Folly Island, both in front of the island and at the back of the island along the Folly River, has suffered from erosion:

- A. It [the mean high-water mark] may have changed a foot or so, I don't really know.
- Q. Mr. Beckmann, how would it have changed about a foot or two?
- A. We're talking 18 years. We have more water in the ocean now. We have – erosion has taken place in front of the island, and the back of the island . . .

(Beckmann testimony, Trial Tr. 308:17 – 308:23) (R. p. 911).

Thus, in the part of the trial transcript which Respondents cite, Respondent Beckmann testified that between his property line and the Folly River, there was over 400 feet of highland and lots recorded in the public record,³ and, that, if anything, over time, rather than accretion, there has been a rise in the water level and erosion.

C. The 1968 Plat Does Not “Correct” the 1965 Plat

Respondents next cite the Master's finding that the 1968 Plat redrew the 1965 Plat to correct it by removing the lots it added which were not shown on the 1920 Plat. However, there is no evidence to support this finding, and it is inconsistent with the Opinion of the Court of Appeals and the record.

First, the Court of Appeals found that the 1965 Plat added lots and that the 1968 Plat traced the 1920 Plat. (April 21, 2009 Opinion, pp. 2 -3) (R. pp. 870 – 71). Second, that is what is apparent from plats themselves. (1965 Plat) (R. p. 477, 659) (R. p. 1069 – Oversized Document); (1920 Plat) (R. p. 803) (R. p. 1068 – Oversized Document); (1968 Plat) (R. p. 1070 – Oversized Document).

³ The highland is visible in aerial photos of the area, which mirror the 2005 Kennerty Topographic Survey. (Defendant's Ex. 1-K) (R. p. 850); (Defendant's Ex. 1-M) (R. p. 852); (2005 Kennerty Topographic Survey) (R. p. 384) (R. pp. 704, 1071 – Oversized Document).

Third, real estate attorney Lynda Sullivan, who testified as an expert and had reviewed the public record, testified that nothing in the record disavowed the accuracy of the 1965 Plat:

Q. Have you ever seen any recorded document where the Folly Beach Improvement Corporation, Ed Seabrook, the elder, or Ed Seabrook, the son, ever disavowed the accuracy of this plat we've been talking about [the 1920 Plat], or the 1965 redraw? . . .

A. . . . I didn't see anything in the record.
(Sullivan Testimony, Trial Tr. 80:18 – 81:01) (R. p. 895 - 96).

Fourth, the evidence is that the Seabrooks owned many lots referencing the 1965 plat:⁴

Q. So Ed Seabrook, the Folly Beach Company, dad and son, sold their million. But they owned thousands and thousands of properties, and many many lots, all referencing to these two plats [the 1920 Plat and the 1965 Plat]?

A. They did.
(Sullivan Testimony, Trial Tr. 81:06 – 81:10) (R. 896).

Fifth and finally, the Master's finding that the 1965 Plat was "incorrect" because it added lots not shown on the 1920 Plat conflicts with deeds in the record predating the 1965 Plat which anticipate the recording of a future plat adding lots. Those deeds identify their lots "to be known as" certain lot numbers "when the property in the two hundred (200) block in Indian Avenue is plotted and recorded."⁵

For these reasons, the Master's finding that the 1965 Plat was "incorrect" in adding lots not shown the 1920 Plat is not supported, and conflicts with the Opinion of the Court of Appeals and the evidence in the record.

⁴ The Master's ruling that the 1965 Plat is "incorrect" casts a cloud over numerous property owners' titles on Folly Island, South Carolina.

⁵ In 1948, Edward Seabrook, Sr. sold a lot "to be known as lot 201 Indian Avenue East when the property in the two hundred (200) block in Indian Avenue is plotted and recorded." (1948 Deed for Lot 201 East Indian Avenue) (R. p. 533). In 1949, Seabrook sold a lot "to be known as lot 202 Indian Avenue East when the property in the two hundred (200) block of Indian Avenue East is plotted and recorded." (1949 Deed for Lot 202 East Indian Avenue) (R. p. 596). In 1950, Seabrook sold lots "to be known as 203, 204, 205 Indian Avenue, East, when the property in the two hundred (200) block in Indian Avenue, East is plotted and recorded." (1950 Deed from for Lots 203, 204, and 205) (R. p. 639).

D. Appellant Proved his Title

Respondents next argue that Appellant must show the superiority of his own title not the weakness of Respondents' title. However, first, Appellant proved his title through the testimony of real estate attorney Lynda Sullivan and by placing his chain of title into the record. (Sullivan testimony, Trial Tr. 43:13 – 43:20) (R. pp. 899); (Appellant's Chain of Title) (R. pp. 479 – 659).

Moreover, Respondents stipulated to Appellant's record title, and that stipulation together with the rulings against their affirmative defenses equates to Appellant's good title:

MR. COOPER: . . . It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership [Appellant] has been stipulated to.
(Trial Tr. 06:04 – 06:06) (R. p. 142).

* * * *

COURT: Any response by the Defendant? Everybody in agreement with that? . . .

MS. DEUTSCH [for Respondents]: Yes, your Honor.
(Trial Tr. 07:22 – 07:25) (R. p. 143).

Each of Respondents' affirmative defenses to Appellant's title was ruled against. The Master's original Dock Case Order dismissed Appellant's case based in part on its findings for Respondents on each of their affirmative defenses except adverse possession. (Master's Original March 26, 2007 Dock Case Order, pp. 9 - 18) (R. pp. 25 – 34).⁶

However, the Opinion of the Court of Appeals reversed and remanded the case to the Master. (April 21, 2009 Opinion, p. 10) (R. p. 878) ("However, we reverse the master's March 26, 2007 [Dock Case] order and remand for further findings in accordance with this opinion."). Thus, the Opinion implicitly reversed the Master's findings for Respondents on their affirmative defenses,

⁶ The Master's original Dock Case Order found for Respondents on each of their affirmative defenses except for adverse possession. (Master's original March 26, 2007 Dock Case Order) (Finding for Respondents on Statute of Limitations for Nuisance, pp. 9 - 10 (R. p. 25 - 26); Finding for Respondents on Statute of Limitations for Trespass, pp. 10 – 12 (R. pp. 26 – 28); Finding for Respondents on Estoppel, pp. 12 – 14 (R. pp. 28 – 30); Finding for Respondents on Laches, pp. 14 – 15 (R. pp. 30 – 31); Finding for Respondents on Staleness of Demand, pp. 15 – 16 (R. pp. 31 – 32); Finding for Respondents on Unclean Hands, pp. 16 – 17 (R. pp. 16 - 17)).

because, had it affirmed any of those findings, it would have affirmed the dismissal of the case and would not have remanded the case for a determination of Appellant's title.

Respondents did not petition for rehearing or seek a writ of certiorari, and the Opinion's reversal regarding each of their affirmative defenses except adverse possession became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 71, 525 S.E.2d 869 (2000) (An unappealed ruling becomes the law of the case).⁷

On remand, the Master explicitly ruled against Respondents' remaining affirmative defense of adverse possession:

As to the remaining affirmative defenses presented by the Defendants on the claim to ownership of the land in question, I have already found that they do not own the property by adverse possession. I further conclude that they do not own the property by grant (either 20 or 40 years) nor do they possess the property by laches . . . (Master's Order on Remand, p. 5) (R. p. 883).

Thus, Respondents stipulated to Appellant's record title, and each of their affirmative defenses was ruled against, which, together, equates to Appellant's good title.

C. Appellant Preserved the Issues

Respondents assert that various issues were not preserved for appeal. They made the same assertion in their Motion to Dismiss Appeal, which was denied. (Respondents' Motion to Dismiss Appeal). (Order [Denying Respondents' Motion to Dismiss Appeal]).

However, Appellant raised these issues both prior to and again in to his Rule 59(e) Motion. Issue "2" was raised in Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order at pp. 3 - 4 (R. pp. 979 - 80). Issue "6" was raised in Plaintiff's proposed "Final Order" at pp. 8 - 10. (R. 1050 - 52). Issues "12" and "13" were raised in Plaintiff's Memorandum in Opposition to the Dock Defendant's Proposed Order at pp. 15 - 17 (R. pp. 1057 - 59). Issue "14" was raised in Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order at pp. 14 - 19 (R.

⁷ Independently, the Opinion of the Court of Appeals remanded the case to the Master for findings "in accordance with this opinion," thereby precluding any conflicting findings. (April 21, 2009 Opinion, p. 10) (R. p. 878).

pp. 990 - 95). Issue "15" was raised in Plaintiff's Reply to the Dock Defendant's Correspondence to the Court of April 21, 2012 at p. 2 (R. p. 1000). Issue "16" was raised in Plaintiff's Memorandum in Opposition to the Dock Defendants' Proposed Order at pp. 11 - 13 (R. 987 - 89). Thus, these issues were raised prior to the Master's Order on Remand. They were raised again in Appellant's Rule 59(e) Motion. (Appellant's Rule 59(e) Motion) (R. 1011 - 31).

2. BASED ON THE WORDS "MARSH LAND" ON THE 1920 PLAT, THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THE STATE IS A NECESSARY PARTY. THE COURT OF APPEALS OPINION REVERSED THE DOCK CASE ORDER AND REMANDED THE DOCK CASE WITHOUT THE STATE AS A PARTY FOR THE MASTER TO DETERMINE WHETHER APPELLANT OWNS THE SUBJECT PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION WHERE IT AGAIN FINDS THAT THE STATE IS A NECESSARY PARTY AND IN FACT FINDS THAT THE STATE OWNS THE SUBJECT PROPERTY?

A. The Road Ended About 280 Feet Into East Indian Avenue

Respondents first assert that the Master found in his Road Case Order filed March 7, 2007 that Folly Beach owns East Indian Avenue, including the subject area between Respondents' lots and the Folly River. However, the Road Case Order did not so find. Instead, it found that about 280 feet into East Indian Avenue from its intersection with Second Street, which is before the Respondents lots (2005 Kennerty Topographic Survey) (R. pp. 704, 1071 - Oversized Document), the road disappeared into the marsh and a wooded area:

The Street is open for approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into a wooded area.

(Master's Road Case Order filed March 7, 2007, p. 5) (R. p. 13).

B. Substituted Opinion Removed the Finding Respondents Assert

Respondents further assert that Appellant is not entitled to a decision that he owns the area between Respondents' lots and the Folly River. However, this assertion restates the finding in the original January 14, 2009 Opinion of the Court of Appeals and disregards that it was removed in the substituted April 21, 2009 Court of Appeals Opinion. (Original January 14, 2009 Opinion, p. 9) (R. p. 867); (Substituted April 21, 2009 Opinion, p. 9) (R. p. 877):

Original January 14, 2009
Opinion, p. 9 (R. p. 867)

Demetre sought a declaration that he owns the property between the Crowleys' and Beckmann's lots and the mean high water mark, and he sought to quiet title to any defects in his title to the land. The master did not rule on either request and only held that the Crowleys and the Beckmanns believed the State owned the land when they applied for the dock permits, which does not resolve the question of actual ownership. *We already determined in the Road case Folly Beach is the owner of East Indian Avenue; thus Demetre is not entitled to a declaration that he owns the property between the Crowleys' and the Beckmanns' lots and his lot.* Also, Demetre does not dispute . . . (Emphasis added).

Substituted April 21, 2009
Opinion, p. 9 (R. p. 877)

Demetre sought a declaration that he owns the property between the Crowleys' and Beckmanns' lots and the mean high water mark, and he sought to quiet title to the land. The master did not rule on either request and only held that the Crowleys and Beckmanns believed that the State owned the land when they applied for the dock permits, which does not resolve the question of actual ownership. Demetre does not dispute . . .

C. Substituted Opinion Amended the Mandate on Remand

Also, Respondents disregard that the Court of Appeals amended its mandate on remand in its April 21, 2009 Opinion to reflect that the road does not extend to Respondents' lots and to require the Master to determine whether Appellant owns that area. (Original January 14, 2009 Opinion, p. 10) (R. p. 868); (Substituted April 21, 2009 Opinion, p. 10) (R. p. 878):

Original January 14, 2009
Opinion, p. 10 (R. p. 868)

We need not address Demetre's remaining issues because we remand this case for a determination of whether Demetre owns the land between *East Indian Avenue* and the mean high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

Substituted April 21, 2009
Opinion, p. 10 (R. 878)

We need not address Demetre's remaining issues because we remand this case for a determination on whether Demetre owns the land between *the Crowleys' and the Beckmanns' lots* and the mean high water mark on lots 209 and 210 East Indian Avenue (emphasis added).

D. Opinion of Court of Appeals Found Road Ends at Lot 205

Further, the Opinion of the Court of Appeals at page 7 found that the road ends at the northwest corner of lot 205 East Huron Avenue, which is before Respondents lots 209 and 210 East

Huron Avenue. (R. p. 875). (1965 Plat, showing the location of lots on East Huron Avenue) (R. p. 477) (R. p. 1069 – Oversized Document):

Also, the 1920 Plat, which was referenced in Seabrook's deed, shows East Indian Avenue extending from Lot 201 to the Northwest corner of Lot 205.

(April 21, 2009 Opinion of the Court of Appeals, p. 7) (R. p. 875).

E. Court of Appeals Opinion Reversed Dock Case Order

Moreover, the Master's finding in his Order on Remand that the subject property was below the mean high-water mark had already been implicitly reversed by the Court of Appeals.

The Master's original Dock Case Order dismissed Appellant's case in part on the erroneous basis that since the 1920 Plat was marked "marshland" in the subject area, the property was below the mean high-water mark and thus the State was a necessary party:

As to the remaining lands extending to the Folly River, this court's review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland.

Therefore, I conclude that any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina to challenge its presumptive title to the marsh which can only be overcome by clear and convincing evidence (citation omitted).

(Master's Original March 26, 2007 Dock Case Order, p. 18) (R. p. 34).

* * * *

Based upon the above, having taken into account all evidence and testimony, I make the following Order:

. . . 3. That this court does not have the proper parties before it to determine title to the marshlands.

(Master's Original March 26, 2007 Dock Case Order, p. 19)(R. p. 35).

However, the Opinion of the Court of Appeals reversed the Master's Dock Case Order and remanded the case to him for a determination of whether Appellant owns the portions of the lots above the mean high-water mark, implicitly reversing the Master's finding that the subject property was below the mean high-water mark. (April 21, 2009 Opinion, p. 9) (R. p. 877) ("Therefore, because the master failed to rule on Demetre's [Appellant's] request for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.")

Thus, the Master's finding in his Order on Remand that the State owns the subject property conflicts with the Opinion of the Court of Appeals.

F. 1943 Deed Conveyed the Subject Area

Respondents argue that the Master concluded that the 1943 Master's Deed to Appellant's predecessor in interest, Edward Seabrook, Sr., did not convey the subject area. However, first, as discussed above in Section 1 at pages 1 to 2, this finding was based on the Master's error of relying on plats which do not show the mean high-water mark to find that the subject property was below the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

Second, this finding was based on the Master's erroneous finding that the 1943 Deed referenced the 1920 Plat. (Order on Remand, pp. 2 – 3) (R. pp. 880 – 81). However, the 1943 Deed instead referenced the 1895 Tartus Plat.

The Tartus Plat, which bore a red line surrounding Folly Island, conveyed all the property within that red line (Tartus Plat) (R. p. 658) (R. p. 1067 – Oversized Document), and the description in 1943 Deed bounded the property on the Folly River, stating in pertinent part, “on the west by the channel of the Folly River and the Folly Creek . . .” (1943 Deed) (R. p. 539). Where a deed bounds a property on a navigable waterway, the conveyance includes all property to the ordinary high-water mark. State v. Pinckney, 22 S.C. 484, 492 (1885). Thus, the 1943 Deed conveyed all highland to the Folly River.

Third, this finding by the Master that the 1943 Deed did not convey the subject property conflicts with the parties' stipulation that Appellant has record title to the subject property:

It is stipulated by and between attorneys for the parties that record title for Milton P. Demetre Family Limited Partnership has been stipulated to.
(Stipulation, Trial Tr., p. 06:04 – 06:08) (R. p. 142).

As a matter of law, the trial court will not go beyond the parties' stipulations to determine the facts upon which the case is decided. Belue v. Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968).

G. Respondent has Proven his Title

Respondents argue that Appellant must recover on the strength of his title, not the weakness of Respondents' title. However, as discussed above in Section 1 at pages 5 to 6, Appellant proved his chain of title, and, independently, Respondents stipulated to Appellant's record title and their affirmative defenses were ruled against, equating to Appellant's good title.

H. No Evidence that Kennerty's Amended Survey is Inaccurate

Respondents argue that Larry Kennerty admitted he originally did his survey wrong. However, Kennerty testified that in his 2005 Topographic Survey, as amended, there was nothing inaccurate. (Kennerty Testimony Trial Tr. 11:21 – 11:25) (R. p. 145). There is no evidence to the contrary. Thus, the only evidence is that the 2005 Kennerty Topographic Survey showing the location of the mean high-water mark is correct.

I. Respondents Misconstrue the Road Case Order and the Court of Appeals Opinion

Respondents argue that the 2005 Kennerty Topographic Survey was drawn years after the 1920 Plat, that it and the two earlier plats from 1786 and 1895 show marshland in the area, and that any highland accreted to the benefit of the City of Folly Beach because, Respondents assert, Folly Beach owned the roadway between Respondents' lots and the Folly River.

However, first, there is no evidence of accretion in the record. Second, as quoted above in Section 1 at page 3, Respondent Beckmann testified that, if anything, over time, the water level has risen and the back of Folly Island along the Folly River has suffered from erosion. (Trial Tr. 308:21 – 308:23) (R. p. 911). Third, regardless, any accretion during the time between the 1920 Plat and the 2005 Kennerty Topographic Survey would have benefited Appellant's predecessors in interest or Appellant as the owners of the highland to which any accretion would have added.

Respondents' argument that any accretion would have benefited the City of Folly Beach is based on their erroneous assertion, discussed above in Section 2 at pages 7 to 9 that the road owned by the City of Folly Beach extended along Respondents' lots when in fact the Road Case Order found that it ended about 280 feet into East Indian Avenue from its intersection with Second Street, and the Opinion of the Court of Appeals likewise found that it ended at lot 205 East Huron Avenue,

which is before Respondents' lots 209 and 210 East Huron Avenue. (March 2, 2007 Road Case Order, p. 5) (R. p. 13); (Substituted April 21, 2009 Opinion, p. 7) (R. p. 875).

3. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH ESTATE OF TENNEY V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 390 S.C. 100, 712 S.E.2d 395 (2011) (THE PUBLIC TRUST DOCTRINE DOES NOT EXTEND ABOVE THE MEAN HIGH-WATER MARK), WHERE, BASED ON THE PUBLIC TRUST DOCTRINE, THE MASTER FINDS THAT THE STATE OWNS PROPERTY ABOVE THE MEAN HIGH-WATER MARK?

A. The State Does Not Claim Property Above the Mean High-Water Mark

Respondents argue that Estate of Tenney v. South Carolina Dept. of Health and Environmental Control, 390 S.C. 100, 712 S.E.2d 395 (2011) does not hold that "mere high places" in the marsh should be subject to claims from property owner on their landward side. Respondents provide no distinction between what they call "mere high places" and highland marsh. However, Estate of Tenney reaffirms the longstanding rule in South Carolina that the State does not claim title to property above the mean high-water mark, applying this same rule to marsh islands.

In the present case, the primary property at issue is highland marsh attached to the mainland of Folly Island.⁸ In direct conflict with Estate of Tenney, the Master's Order on Remand finds that the State owns the subject property because it was highland contained within the designation "Marshland on the 1920 Plat of Folly Island." (Order on Remand, p. 5):

5. Any highland, which is riverward of Bekcmann and Crowley lots, was contained within the designation "Marshland in the 1920 Plat of Folly Island."
 6. The State of South Carolina is the owner of the land seaward of the Defendants' lots.
- (Order on Remand, p. 5) (R. p. 883).

Thus, the Master's Order on Remand conflicts with Estate of Tenney vs. South Carolina Dept. of Health and Environmental Control, 390 S.C. 100, 712 S.E.2d 395 (2011).

⁸ The subject property primarily consists of highland attached to Folly Island but also includes at least one small marsh island.

B. This Case Pertains only to Property Above the Mean High-Water Mark

Respondents further argue that having presented no evidence of a grant from the State of South Carolina or a Kings Grant, the high places in the marsh must in fact be presumed to be owned by the State of South Carolina.

However, a grant from the State of South Carolina or Kings Grant must be proven only to quiet title below the mean high-water mark. Under the public trust doctrine, the State has presumptive title to property only below the mean high-water mark. McQueen v. S.C. Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003). In this case, Appellant seeks to quiet title only above the mean high-water mark. (Trial Tr. 08:10 – 08:19) (R. p. 144).

4. THE PARTIES STIPULATED ON THE RECORD AT TRIAL THAT APPELLANT HAS RECORD TITLE TO THE SUBJECT PROPERTY. HOWEVER, THE MASTER'S ORDER ON REMAND FINDS THAT, IN APPELLANT'S CHAIN OF TITLE, HIS LOTS "DID NOT EXIST." DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH BELUE V. FETNER, 251 S.C. 600, 606, 164 S.E.2D 753, 755 (1968) (THE COURT WILL NOT GO BEYOND PARTIES' STIPULATION TO DETERMINE THE FACTS)?

Respondents argue that their stipulation was to nothing more than Appellant's "record title" and that Appellant tries to bootstrap that into good title. However, as discussed above in Section 1 at pages 5 to 6, Appellant does not argue that the stipulation alone equates to good title. Rather, Respondents' stipulation to Appellant's record title together with the rulings against their affirmative defenses equates to Appellant's good title.

Respondents assert that their stipulation was of no import to the appeal. However, it was because it conflicts directly with the Master's erroneous finding that Appellant's lots "do not exist." (Master's Order on Remand, p. 5) (R. p. 883) ("...2. On the 1920 plat the so-called Demetre 'lots' are not shown and therefore do not exist.")

Respondents also argue that the parties stipulated that all litigants have record title. However, the parties stipulated that Respondents' have record title to their lots and that Appellant has record title to the property he claims. (Trial Tr. p. 06:04 – 06:06) (R. p. 142). There was no stipulation that any party other than Appellant has record title to the property he claims.

Despite the parties' stipulation, the Master erred in finding that the State, rather than Appellant, has title to the area. (Order on Remand, p. 5) (R. p. 883) (" . . . 6. The State of South Carolina is the owner of the land seaward of the Defendants' [Respondents'] lots"). However, the State was not a party to this action and there was no stipulation that the State had title.

5. WHERE RESPONDENTS STIPULATED TO APPELLANT'S RECORD TITLE, THE COURT OF APPEALS REVERSED THE ORIGINAL DOCK CASE ORDER FINDING FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT ADVERSE POSSESSION, AND, ON REMAND, THE MASTER RULED AGAINST RESPONDENTS ON ADVERSE POSSESSION, DID THE MASTER ERR IN FAILING TO FIND THAT APPELLANT OWNS THE SUBJECT PROPERTY?

Respondents argue that the Court of Appeals did not find against them on their affirmative defenses. However, as discussed above in Section 1 at pages 5 to 6, this argument disregards the procedural history of the case, because the Master had dismissed Appellant's case based in part on his finding for Respondents on each of their affirmative defenses except for adverse possession, but the Court of Appeals reversed the Master and remanded the case to him to determine whether Appellant owns the subject highland. (Original Dock Case Order filed March 26, 2007, pp. 9 – 19) (R. pp. 25 – 35); (April 21, 2009 Opinion, p. 9) (R. p. 877).

As discussed above in Section 1 at pages 5 to 6, had the Court of Appeals affirmed the Master's rulings on any of Respondents' affirmative defenses rather than reversing them, it would have affirmed the Master's dismissal of the case and would not have remanded the case. Respondents did not appeal the Court of Appeals' reversal of the Dock Case Order, and that reversal became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 71, 525 S.E.2d 869 (2000).

As discussed above in Section 1 at page 6, the Master's Order on Remand explicitly ruled against Respondents' adverse possession affirmative defense. (Order on Remand, p. 5) (R. p. 883).

Respondents argue that they stipulated to "record title" and not "good title." However, that stipulation, together with the rulings against their affirmative defenses equates to Appellant's good title.

6. TO THE EXTENT THAT ANY OF RESPONDENTS' AFFIRMATIVE DEFENSES REMAINED AVAILABLE TO THEM TO ARGUE ON REMAND, IN RULING AGAINST THOSE AFFIRMATIVE DEFENSES, SHOULD THE MASTER HAVE CITED AUTHORITY?

Respondents argue that their affirmative defenses remained available for them to argue on remand.⁹ However, as discussed above in Section 1 at pages 5 to 6 and again above in Section 5 at pages 14, this argument disregards the procedural history of the case. Respondents make no return to the argument that the Master should have cited authority in ruling against any remaining affirmative defenses.

7. DID THE MASTER ERR IN FINDING THAT A DOCK PERMIT IS A VESTED PROPERTY INTEREST WHICH DOES NOT REQUIRE CONSENT OF THE LANDOWNER OVER WHOSE PROPERTY THE DOCK WHARFS?

Respondents argue that until the State revokes their dock permits, they may engage in the activity permitted and that the Master was reinforcing the finding that the State was a necessary party to this action to determine whether Respondents could continue to use their docks.

However, this action does not concern revocation of the Respondent's dock permits. (Trial Tr. 04:07 – 04:11) (R. p. 140). The Master's dismissal of Appellant's case in his original March 26, 2007 Dock Case Order, as discussed above in Section 2 at pages 9 to 10, was based in part on his erroneous finding that the State was a necessary party, and that finding was implicitly reversed by the Court of Appeals in reversing and remanding the Dock Case to him. (April 21, 2009 Opinion, p. 10) (R. p. 878).

As acknowledged by Respondents in their dock permit applications, dock permits do not convey vested property rights.¹⁰ Further, the dock permitting administrator for the State at the time Respondents applied for their dock permits testified that if the Respondents had disclosed that their

⁹ Appellant addresses above in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

¹⁰ Respondent Beckmann's dock permit application states in pertinent part, "...8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privilege; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public . . ." (Respondent Beckmann's Dock Permit Application) (R. p. 447).

docks would cross another owner's property, then they would not have been granted dock permits without showing some right to use the upland property. (Trial Tr., 251:13 – 251:16) (R. p. 901) (“QUESTION: “They would either have to buy the property, or get permission from the property owner?” ANSWER: “Show some right to use the upland property, yes.”)

8. THE MASTER'S ORDER ON REMAND FINDS THAT THE SUBJECT PROPERTY ACCRETED AFTER 1920. THERE IS NO EVIDENCE TO SUPPORT THAT THE PROPERTY WAS BELOW THE MEAN HIGH-WATER MARK IN 1920. HOWEVER, APPELLANT'S PROPERTY IS THE HIGHLAND TO WHICH ANY ACCRETION WOULD HAVE ADDED IF ANY HAD OCCURRED. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT THE STATE OWNS THE PROPERTY. DOES THE MASTER'S ORDER ON REMAND CONFLICT WITH STATE V. BEACH CO., 248 S.C. 115, 271 S.E.2d 115 (1978) (NATURAL ACCRETION BENEFITS THE PRIVATE HIGHLAND OWNER TO WHOSE PROPERTY IT ADDS)?

Respondents argue that the Master found that there were no lots to which Appellant could lay a claim.¹¹ However, first, as discussed above in Section 1 at pages 5 to 6, this finding conflicts with the Respondents' stipulation to Appellant's record title. (Trial Tr. p. 6, Stipulation) (R. p. 142).

Second, this finding was based on the Master's error discussed above in Section 1 at pages 1 to 2 that the 1920 Plat could be a basis to find that the subject property is below the mean high-water mark when it does not locate the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

Third, as discussed in Section 1 at pages 5 to 6, this finding that there were no lots to which Appellant could lay claim was already implicitly reversed by the April 21, 2009 Opinion of the Court of Appeals remanding the case for a determination of the ownership of title to the portions of the subject lots above the mean high-water mark:

Therefore, because the master failed to rule on Demetre's request for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.
(April 21, 2009 Opinion, p. 9) (R. p. 877).

¹¹ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

Next, Respondents assert that any accretion inured to the benefit of the City of Folly Beach because, they assert, the Road Case Order found that the City owned the property between the Respondents' lots and the Folly River.

However, as discussed in Section 1 at page 3, there is no evidence of accretion, and Respondent Beckmann admitted that the back of Folly Island along the Folly River, over time, rather than benefiting from accretion, actually suffered from erosion and a rise in the water level. (Respondent Beckmann's testimony, Trial Tr. 308:21 – 308:23) (R. p. 911). Thus, there is no evidence that the subject property, which was shown as highland on the 2005 Kennerty Topographic Survey, was not highland at all material times.

Regardless, as discussed above in Section 2 at pages 7 to 9, the Road Case Order actually found that the road owned by the City of Folly Beach ends about 280 feet from the intersection of Second Avenue and East Indian Avenue, several lots before Respondents lots, and the Opinion of the Court of Appeals found that the road owned by the City of Folly Beach ended at lot 205 East Huron Avenue, which is before Respondents' lots 209 and 210 East Huron Avenue. (Road Case Order, p. 5) (R. p. 13); (April 21, 2009 Opinion of the Court of Appeals, p. 7) (R. p. 875).¹²

As shown by the 1965 Plat and the 2005 Kennerty Topographic Survey, Appellant's property was the highland next to the Folly River. Thus, rather than the City of Folly Beach, Appellant's predecessors in interest and then Appellant were the highland owners to which any accretion would have added. (1965 Plat) (R. p. 477) (R. p. 1069 – Oversized Document); (2005 Kennerty Topographic Survey) (R. p. 384) (R. p. 704, 1071 – Oversized Document).

Finally, Respondents argue that proof that the land was highland at the time of the grant and that rising water subsequently created tidelands cannot defeat the State's presumptive grant. However, in the present case, Appellant does not seek title to tidelands below the mean high-water

¹² Also, as discussed above in Section 2 at page 8, the substituted April 21, 2009 Opinion removed the finding in the January 14, 2009 Opinion that Appellant is not entitled to a finding that he owns the property between Respondents lots and the Folly River. (April 12, 2009 Opinion, p. 9) (R. p. 877). Additionally, as also discussed in Section 2 at page 8, the Court of Appeals amended the mandate on remand to require the Master to determine whether Appellant owns that property. (April 21, 2009 Opinion, p. 10) (R. p. 878).

mark but rather highland above the mean high-water mark. As shown by the 2005 Kennerty Topographic Survey, the subject property is not tidelands but highland. (2005 Kennerty Topographic Survey) (R. p. 384) (R. p. 704, 1071 – Oversized Document).

9. APPELLANT’S PROPERTY IS IDENTICALLY SITUATED TO AND SHARES THE SAME KEY LINKS IN ITS CHAIN OF TITLE AS THE SUBJECT PROPERTY IN DREHER V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 399 S.C. 259, 730 S.E.2d 922 (CT. APP. 2012) (FINDING THAT CERTAIN HIGH MARSH IS PART OF FOLLY ISLAND AND OWNED BY DREHER, A PRIVATE CITIZEN). DOES THE MASTER’S ORDER ON REMAND CONFLICT WITH DREHER WHERE IT FINDS THAT THE SUBJECT HIGH MARSH IN THE PRESENT CASE IS OWNED BY THE STATE?

Respondents argue that the parties in the present case are not bound by the finding in Dreher v. South Carolina Dept. of Health and Environmental Control, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012), that Tract D, which has the same key links in its chain of title as the subject property in the present case, is part of Folly Island and owned by a private individual rather than the State, because, they assert, the finding of specific facts in one case binds only the parties to that case but not parties who are strangers to that case.

However, mutuality is no longer a requirement of collateral estoppel. Doe v. Doe, 346 S.C. 145, 149, 551 S.E.2d 257, 259 (2001). Rather, the requirement to apply collateral estoppel is that the party against whom the ruling was made had a full and fair opportunity to litigate the issue. Snavelly v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008). The ruling regarding Tract D in Dreher was against the State, which had a full and fair opportunity in Dreher to litigate that issue. The State is the same party the Master found in the present case owns the subject property, a finding conflicting with Dreher.

10. DOES THE ORDER ON REMAND ERR IN FINDING THAT THE FOLLY BEACH CORPORATION TOOK TITLE BASED ON THE 1920 PLAT?

Respondents argue that the Master in his Order Denying Appellant’s Rule 59 (e) Motion for Relief finds that Appellant relies on the assertion that his title is based on the 1895 Tartus Plat, a plat the Master finds shows “marshland.”

However, the Master’s Order Denying Plaintiff’s [Appellant’s] Rule 59(e) Motion does modify his Order on Remand, nor does it correct the error in his Order on Remand that Appellant’s

predecessor in interest, the Folly Beach Corporation, took title based on the 1920 Plat rather than the 1895 Plat. (Master's Order on Remand, pp. 2 - 3) (R. pp. 880 – 81).

Respondents argue that the Master's Order Denying Plaintiff's [Appellant's] Rule 59(e) Motion finds that the 1895 Tartus Plat is the same as the 1786 Plat and the 1920 Plat in showing marshland. However, as discussed above in Section 1 at pages 1 to 2, the Master makes the same error regarding all three plats, finding that the marsh indicated is below the mean high-water mark despite the fact that none of the plats locate the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

11. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT THE 1786, 1895, AND 1920 PLATS ARE MORE PRECISE AS TO THE LOCATION OF THE MEAN HIGH-WATER MARK THAN THE 2005 KENNERTY TOPOGRAPHIC SURVEY WHERE THE EARLIER PLATS DO NOT SHOW THE LOCATION OF THE MEAN HIGH-WATER MARK, BUT THE 2005 KENNERTY TOPOGRAPHIC SURVEY DOES?

Respondents argue that at the time of the 1920 Plat, there was no evidence of what the property looked like other than that there was "marsh" in all of the old plats. However, as discussed above in Section 1 at pages 1 to 2, the Master erred in finding that the 1786, 1895, and 1920 plats, which do not locate the mean high-water mark, were a basis to find that the subject property is below the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972).

Respondents argue that Appellant's lots do not appear on the 1920 Plat, that Appellant's deed could have referred to the 1965 Plat but instead referred to the 1920 Plat, and that when a plat is referenced by a deed it becomes part of the deed.

However, where the property description in the deed conflicts with the plat the deed references, the deed is ambiguous. Here, the property description in the deed conflicts with the 1920 Plat it references, which does not show the lots the deed describes.

Where a deed is ambiguous, extrinsic evidence should be used to determine the intent of the grantor. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955). Respondents stipulated to Appellant's record title for the subject property. (Trial Tr., p. 6, Parties' Stipulation) (R. p. 142).

The location of Appellant's property is identifiable by extrinsic evidence in the record, the 1965 Plat and the 2005 Kennerty Topographic Survey. (1965 Plat) (R. p. 477) (R. p. 1069 – Oversized Document); (2005 Kennerty Topographic Survey) (R. p. 384) (R. p. 704, 1071 – Oversized Document). It was error for the Master not to consider this evidence and thereby fail to effectuate the intent of the deed. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955).

Respondents argue that the 1968 Plat reverts to the 1920 Plat. However, as discussed above in Section 1 at pages 3 to 4, the evidence is that the 1968 Plat was a tracing of the 1920 Plat, not a correction of the 1965 Plat. (1968 Plat) (R. p. 1070 – Oversized Document); (1920 Plat) (R. p. 663) (R. p. 1068 – Oversized Document). Nothing in the public record disavows the accuracy of the 1965 Plat, and the Seabrooks referenced it for many lots. (Sullivan Testimony, Trial Tr. 80:18 – 81:10) (R. p. 896). Further, deeds recorded as early as 1948 anticipated a future plat adding lots in the subject area. (R. pp. 553, 596, 639).

Respondents argue that the Master found that under Query v. Burgess, 371 S.C. 407, 39 S.E.2d 455 (Ct. App. 2006), the State deeded no marshland in the subject area. However, Query merely found that the State deeded no marsh below the mean high-water mark. Marsh can be either low marsh below the mean high-water mark or high marsh above the mean high-water mark. State v. Murrell's Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972). In the present case, Appellant is not asserting that the State deeded any property below the mean high-water mark.

12. DOES THE ORDER ON REMAND CONFLICT WITH THE COURT OF APPEALS OPINION AND WITH RICHARDSON V. REGISTER, 227 S.C. 81, 87 S.E.2d 40 (1955), IN FINDING THAT APPELLANT'S LOTS "DO NOT EXIST?"

Respondents argue that Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955) is a latent ambiguity case and that construction of a clear and unambiguous deed is a question of law for the court.¹³ However, as discussed above in Section 11 at pages 19 to 20, the deed in this case is not clear and unambiguous, because its property description conflicts with the 1920 Plat it references. Where the deed is ambiguous, extrinsic evidence is competent to determine the location of the

¹³ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

property. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955). Thus, the Master's failure to consider the 1965 Plat and the 2005 Kennety Topographic Survey in determining the location of the lots described in the deed conflicts with Richardson.¹⁴

Respondents argue that in an action at law tried without a jury, the findings of the judge will not be disturbed unless found to be without evidence which reasonably supports the judge's findings. However, in the present case, no evidence supports the Master's findings, they are based on errors of law, and they conflict with the Opinion of the Court of Appeals reversing and remanding the case.

13. DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE 1965 PLAT IS "INCORRECT" IN ADDING LOTS AND THAT THE 1968 PLAT WAS INTENDED TO "CORRECT" THE 1965 PLAT?

Respondents argue that the construction of a clear and unambiguous deed is a question of law for the court.¹⁵ However, as discussed above in Section 11 at pages 19 to 20, here, the deed was not clear and unambiguous, and the Master erred in failing to consider extrinsic evidence to locate Appellant's lots. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955).

Respondents argue that the Master found that the 1965 Plat was "incorrect" in adding lots and that the 1968 Plat was intended to correct the 1965 Plat rather than to trace the 1920 Plat. However, as discussed above in Section 1 at page 3 to 4, the Opinion of the Court of Appeals found that the 1968 Plat traced the 1920 Plat, nothing in the public record disavowed the accuracy of the 1965 Plat, the Seabrooks sold many lots referring to it, and deeds recorded as early as 1948 anticipated the recording of a later plat adding lots. (Trial Tr. 80:18 – 81:10) (R. p. 895); (1948, 1949, and 1950 Deeds) (R. pp. 553, 596, 639).

Respondents argue that in an action tried without a jury, a Judge's findings will not be disturbed unless they are without evidentiary support. However, here, no evidence supports the

¹⁴ Respondents also assert that none of the parties to this case were parties to the deed. However, that is not relevant, and, regardless, is factually incorrect, because Appellant was the grantee of the deed. (Appellant's Deed) (R. pp. 633 – 35).

¹⁵ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

Master's findings, they are based on errors of law, and they conflict with the Opinion of the Court of Appeals reversing and remanding the case.

14. DOES THE MASTER'S ORDER ON REMAND ERR IN FINDING THAT APPELLANT'S PREDECESSORS IN INTEREST BELIEVED THAT HE DID NOT OWN THE SUBJECT LOTS BASED ON THE FINDING THAT HE SOLD THE PROPERTY IN THAT AREA WITH A QUITCLAIM DEED WHERE THE EVIDENCE SHOWS THAT APPELLANT'S PREDECESSOR IN INTEREST ALSO SOLD PROPERTY IN THAT AREA BY GENERAL WARRANTY DEED?

Respondents argue that the Master found that the lots in question do not exist. However, this finding conflicts with Respondents' stipulation to Appellant's record title. (Trial Tr., p. 6, Parties' Stipulation) (R. p. 142).¹⁶

Further, there is no evidence to support this finding. The only evidence is that Seabrook believed he owned the lots and that he paid property taxes on the lots. (Trial Tr. 134:21 – 135:01; R. 227 – 28); (Trial Tr. 157:02 – 157:04) (R. p. 244). Additionally, the evidence in the record is that Seabrook sold lots with the same chain of title with a general warranty deeds. (R. 553, 596, 639).

Respondents further argue that the construction of a clear and unambiguous deed is a question of law for the court and that the terms of a clear an unambiguous deed may not be contradicted by evidence drawn from sources other than the deed itself.

However, as discussed above in Section 11 at pages 19 to 20, the deed in the present case is not clear and unambiguous, because its property description conflicts with the plat it references, and the Master should have considered the extrinsic evidence in the record to locate Appellant's lots. Richardson v. Register, 227 S.C. 81, 87 S.E.2d 40 (1955).

15. THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND FOR RESPONDENTS ON EACH OF THEIR AFFIRMATIVE DEFENSES EXCEPT FOR ADVERSE POSSESSION. HOWEVER, THE COURT OF APPEALS REVERSED THE DOCK CASE ORDER, AND RESPONDENTS DID NOT PETITION FOR REHEARING OR FOR A WRIT OF CERTIORARI. NONETHELESS, THE MASTER'S ORDER ON REMAND FINDS THAT RESPONDENTS' AFFIRMATIVE DEFENSES ARE AVAILABLE TO THEM TO ARGUE ON REMAND. DOES THIS FINDING CONFLICT WITH CHARLESTON LUMBER CO. INC. V. MILLER HOUSING CORP., 388 S.C. 171, 525 S.E.2d 869 (2000) (AN UNAPPEALED RULING BY THE COURT OF APPEALS BECOMES THE LAW OF THE CASE)?

¹⁶ Appellant addresses above in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

Respondents assert that the Master followed the instructions of the Court of Appeals, but he did not.¹⁷ As discussed above in Section 1 at pages 5 to 7, the Master disregarded the procedural posture of the case. He originally dismissed the Dock Case based in part on finding for Respondents on their affirmative defenses and in part based on finding that the property was below the mean high-water mark and therefore the State was a necessary party. (March 26, 2007 Dock Case Order, pp. 9 - 19) (R. pp. 25 - 35).

However, the Court of Appeals reversed the Master's original Dock Case Order and remanded the case to him without the State as party for a determination of whether Appellant owns the subject property above the mean high-water mark. (April 21, 2009 Opinion, pp. 9 - 10) (R. pp. 877 - 78). Disregarding the procedural history of the case and the mandate on remand, the Master instead found that the State owned the highland.

Respondents make no return to Appellant's point that the reversal of the Master's Dock Order became the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 71, 525 S.E.2d 869 (2000) (An unappealed ruling becomes the law of the case).

16. WHERE THE MASTER'S ORIGINAL DOCK CASE ORDER FOUND THAT THERE IS HIGHLAND IN THE AREA OF THE UNDEVELOPED ROADWAY RUNNING ALONG RESPONDENT'S LOTS, AND WHERE THE COURT OF APPEALS OPINION FOUND THAT THERE IS HIGHLAND IN THAT AREA, DOES THE MASTER'S ORDER ON REMAND LACK EVIDENTIARY SUPPORT AND CONFLICT WITH THE COURT OF APPEALS OPINION IN FINDING THAT THE STATE OWNS THAT AREA?

A. Appellant Cited and Quoted the Opinion of the Court of Appeals

Respondents assert that Appellant makes no reference to the record to support this argument and that Respondents are unaware of support in the Opinion of the Court of Appeals that there is highland between Respondents' lots and the marsh.¹⁸ However, the Initial Brief of Appellant as well as Section 2 above at pages 7 to 10 cite and quote the Opinion of the Court of Appeals. (April 21,

¹⁷ Appellant addresses in Section 1 at pages 6 to 7 Appellant's preservation of the issues in this section for appeal.

¹⁸ Appellant addresses above in Section 1 at pages 6 to 7 Appellant's preservation for appeal the issues in this section.

2009 Opinion, p. 9) (R. p. 877) (“Therefore, because the master failed to rule on Demetre’s request for a declaration of ownership and to quiet title to the portions of the lots above the high water mark, we remand this case to the master for a determination of this issue.”).

B. 1920 Plat Did Not Show the Location of the Mean High-Water Mark

Respondents further argue that the Master found that any highland was designated on the 1920 Plat as “marshland.” However, as discussed above in Section 1 at pages 1 to 2, marsh can be above or below the mean high-water mark, and it was error for the Master to find that the subject property was below the mean high-water mark when the 1920 Plat does not show the location of the mean high-water mark. State v. Murrell’s Inlet Camp & Marina, Inc., 259 S.C. 404, 408, 192 S.E.2d 199, 201 (1972). The 2005 Kennerty Topographic Survey shows that the property is above the mean high-water mark. (2005 Kennerty Topographic Survey) (R. p. 384) (R. pp. 704, 1071 – Oversized Document).

Respondents argue that even if there was highland, Appellant’s predecessor in interest was not conveyed any interest in 1943. However, the property was conveyed in 1943 per the 1895 Tartus Plat, which conveyed all of Folly Island to the Folly River. (Tartus Plat) (R. p. 658) (R. p. 1067 – Oversized Document). Further, the 1943 deed bounded the property on the Folly River. (1943 Deed) (R. p. 539). A conveyance with a tidal waterway as a boundary conveys to the mean high-water mark. State v. Pinckney, 22 S.C. 484, 492 (1885). As discussed above in Section 8 at pages 16 to 18, any accretion would have benefited Appellant. Moreover, as quoted above in Section 1 at page 5, Respondents stipulated to Appellant’s record title. (Trial Tr. 06:06 – 06:08) (R. p. 142).

17. RESPONDENTS SPECIFY NO ADDITIONAL SUSTAINING GROUNDS

Respondents argue that additional sustaining grounds may be used to support the Master’s Order on Remand, but they specify no such additional sustaining grounds.

CONCLUSION

For the foregoing reasons, the Master's Order on Remand should be reversed and title should be quieted in Appellant Milton P. Demetre Family Limited Partnership to the property in the undeveloped roadway and lots 209 and 210 East Indian Avenue above the mean high-water mark riverward of Respondents' lots as shown on the 2005 Kennerty Topographic Survey.

Charleston, SC

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

The Milton P. Demetre Family Limited Partnership Appellant,

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,
and Annie Ruth Crowley Atkinson Respondents.

CERTIFICATION

Appellant's counsel hereby certifies that the Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b), SCACR.

July 1, 2013

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